DE-IDENTIFIED EBT OF PEDIATRIC CRITICAL CARE DOCTOR

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2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF QUEENS

4 ----------x

5 , as Parents and
Natural Guardians of , an
6 infant under the age of fourteen years,

7 Plaintiffs,

8 - against -

9 , M.D.,
MEDICAL CENTER, , M.D.,
10 , M.D., , M.D.,
, M.D.,
11
Defendants.
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15
August 13, 2002
16 10:14 A.M.

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18 EXAMINATION BEFORE TRIAL of

19 the Defendant, , M.D.

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Medical Center, Drs. ,
, and

BY: , ESQ.

** ** **

S T I P U L A T I O N S

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, M.D. 5

, M.D.,

called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY

MR. OGINSKI:

Q State your name for the record, please.

A , M.D.

Q Your address, please?

A , ,

.

Q Good morning, doctor. Before coming here this morning, did you review 's hospital record?

A With my attorney, yes.

Q Did you review any other documents in preparation for today's deposition?

A No.

Q Did you review any transcripts relating to this particular case?

A No.

Q Did you read any medical

literature or textbooks in preparation for discussing the medical issues that were involved in this case?

A No.

Q Do you have an independent memory

of ?

A I have a vague recollection of the case.

Q Do you recall her parents, and ?

A I have a vague recollection of the family.

Q In August of , what was your position at Medical Center?

A Attending physician.

Q In what department?

A Pediatrics.

Q For how long had you been an attending at as of August of ?

A Since July of .

Q Are you board certified, doctor?

A Yes, I am.

Q You are board certified in pediatrics, correct?

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A Correct.

Q As well as internal medicine?

A That is correct.

Q And you have a subspecialty in pediatric critical care medicine?

A That is correct.

Q Now, your attorney has provided a copy of your c.v. Have you had a chance to see that?

A Yes.

Q To the best of your knowledge, is it accurate at the present time?

A Yes.

Q Is there a particular area of the hospital that you worked in as an attending physician in August of ?

A Yes.

Q Which one?

A The pediatric intensive care unit.

Q Can you tell me what a cold agglutinin test is?

A Cold agglutinin is a test that looks for reactivity of a red blood cell to

some sample.

Q In this particular case involving , are you aware that a cold agglutinin test was performed on August 31, ?

MR. : He had no further involvement with the child after the 29th. You mean from his review?

MR. OGINSKI: Yes.

MR. : From his review of the chart; is that right?

MR. OGINSKI: Correct.

A I reviewed the chart with my

attorney to see whether or not I was involved -- I was not -- and to refresh my recollection.

Q As you sit here now, are you aware that a cold agglutinin test was performed on August 31, ?

A From reviewing the chart, yes.

Q And also you are aware that was admitted to on August 19, , correct?

A That is correct.

Q Your involvement with began approximately two days after she was admitted to the hospital, correct, when she was transferred from the regular floor to the pediatric intensive care unit?

A That is correct.

MR. : That was 8/21 if I am not mistaken.

THE WITNESS: Yes.

Q And am I also correct that your involvement ended with her on or about August 29th, ?

A The 28th would have been my last day. I would have to look back to be certain.

Q Okay. I will get to that.

Generally, can you tell me under what circumstances you as a physician would order a test known as cold agglutinin?

A Cold agglutinins would be used on occasion if suspecting a pneumonia, atypical pneumonia. That is a non-specific test for that entity.

MS. : Can you read back that answer, please.

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(Record not read.)

MR. : I think he said cold agglutinin is a non-specific test for atypical.

Q At what point in time do you begin to suspect the patient might be suffering from an atypical pneumonia?

MR. : Are you talking about in a broad general sense?

MR. OGINSKI: General matter.

A I think any time you treat a patient you look at the history, the physical exam, the patient's presenting complaints, and pertinent laboratory and radiographic evidence when trying to arrive at a diagnostic answer.

Q Is there a particular length of time that you will wait before seeing whether or not the patient becomes responsive to certain therapies before determining that a particular condition is atypical?

A Not necessarily.

MR. : There are too many variables for too many problems to answer a question like that.

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Q Would a cold agglutinin test have assisted you in diagnosing and treating shortly after her admission to Hospital?

MR. : I am going to object to "assisted you." In hindsight, I mean, that is not the standard that we are talking about here. You can ask him with a reasonable degree of medical certainty whether he felt a cold agglutinin test was called for under the particular circumstances of this case during the time he was treating this patient. I have no problem with that

question.

Q Did you ever call for an infectious disease consult at any time you were caring for ?

A No.

Q Did you form any opinion as to whether the antibiotic therapy that was being administered to her was effective in treating her condition?

A Yes.

Q What was your opinion?

A That she had improved.

Q Was it your opinion that she was improving because of the antibiotic therapy or some other therapy in conjunction with that or something else?

MR. : I object to the

form of the question. You can answer him what was the basis for your feeling that she was improving.

MR. OGINSKI: Fine.

Q Was there a particular mode of therapy that you felt was contributing to her improvement during the time you were caring for her?

A Yes.

Q What was that?

A A combination of antibiotics, chest tube drainage, positive pressure ventilation.

Q Anything else?

A I have no specific recollection at this time.

Q Were there any indications that you were aware of that you recall as you sit

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here now during the time that you cared for

that called for the

performing of the cold agglutinin test?

A I'm sorry. You will have to

repeat that.

MR. OGINSKI: Can you read that

back, please.

(Record not read.)

MR. : Were there any

indications that you were aware of during the

time that you were treating

that indicated she needed a cold agglutinin

test?

THE WITNESS: No.

Q Are you aware of any specific

reasons as to why a cold agglutinin test was

ultimately ordered on August 31st?

A After reviewing the chart to see

the extent of my involvement, I know that that

test was by infectious disease.

Q Do you know why?

A No.

Q Did you have any conversations with any infectious disease physicians during

the course of time that you were caring for ?

A No.

Q At any time after August 28th or August 29th when you last saw her, did you ever speak to any infectious disease physician afterwards but before she had left the hospital?

A No.

Q Do you know who it was specifically who ordered the cold agglutinin test?

A No. I could look in the record if you like.

MR. OGINSKI: Let me ask you to turn, please, to the infectious disease consult note, doctor.

THE WITNESS: I think this was done after my involvement in the case.

MR. : I am going to object to any questions about things that happened after the 28th. He had no involvement with --

THE WITNESS: I didn't

participate in the child's care then.

MR. : You have already questioned Dr. who was on watch at that time frame.

Q In August of , was there a fellow that was assigned to the pediatric intensive care unit?

A Yes.

Q What was the name of that fellow, if there was just one?

A In August, I believe, it would be .

MR. OGINSKI: I would like you to turn, please, to the first note that Dr. wrote for this patient, page 8, on the bottom right-hand side. It says, "PICU Fellow Admit Note." There is a date of August 21, and the second page of her note is listed as page 11 on the bottom right.

MR. : We have it.

Q Under her plan on the second page -- it's page 11 -- she writes, "Continuous CV, RR monitoring, start Nafcillin for possible staph infection." I would like

you to read the next two lines, doctor.

A It says, Consider Vancomycin (phonetic) -- I can't really read her handwriting -- for possible drug-resistant pneumococci. ID approval -- I don't know what the next two words are.

Q Does that indicate "not obtained"?

A It's possible.

Q Can you tell me what you interpret this paragraph to mean, doctor?

A I assume -- our hospital requires Infectious Disease from the pharmacy to release certain medications, not in qualification form, but just simply that they are aware that the medicines are being released for use. That's what I think that is.

MR. : You are asking him to interpret her note. He gave you what his interpretation is.

Q Is it your understanding that Infectious Disease has to approve the release of certain medications? Is that what you are

indicating?

MR. : I don't think that's exactly what he said. I think he said pharmacy requires --

A Sometimes they require some kind of note or something from Infectious Disease.

Q For certain types of medication?

A You would have to speak with our pharmacy. I am not certain.

Q Is there anything in Dr. 's note to indicate or suggest to you that an Infectious Disease consult was not approved?

A No.

Q Is there anything to suggest on admission to the pediatric intensive care unit that this child required an Infectious Disease consult?

A No.

Q At any time from the time you first began treating on or about August 21st until approximately a week later, did you form any opinion as to whether the antibiotic therapy that she was receiving,

the Nafcillin and the ceftriaxone, was effective in treating her condition?

A I believe I already answered this question, but the answer is yes.

Q Were there any laboratory studies that you could point to that would indicate or suggest that she was becoming responsive to

those particular antibiotics?

A I have no specific recollection.

Do you want me to look in the record now?

Q What laboratory tests would suggest to you that she was responsive to those antibiotics?

A I think that's -- I think a falling white count would indicate -- or a decreasing white count, I should say, would indicate improvement.

Q Are you familiar with the term known as a "whiteout" on an X-ray?

A Yes.

Q What does that mean to you?

A It means that a portion of the chest X-ray appears white.

Q What is the clinical significance

of that, if any?

A It could indicate a consolidated lung, or it could indicate a lung that is collapsed. It could indicate a lung that has fluid around it.

Q To your recollection and also upon your review of the chart, did you learn that had been noted to have a whiteout on her lung?

A Yes.

Q What was the impression that you had from that diagnostic test?

A I am not sure I understand your question.

Q What did it mean to you that she had a whiteout?

A One of those three clinical indications.

Q When you first examined when she was in the pediatric ICU, did you form your own opinion as to how she looked, just from a general observation?

A I have no specific recollection of seeing her.

Q I will get to your notes in a little bit. Right now I am just asking about your observations.

What was the custom and practice back in August of as far as how often you would see the patient on a regular basis? On a daily basis or some other frequency?

A Daily basis.

Q Did you see and examine the patient yourself, or was it generally the residents, a fellow, or someone else?

A It could be both.

Q In cases where you would see the patient with a fellow, was it customary for the fellow to write a note about the

examination and the findings?

A I can't speak to somebody else's medical practice but, yes, many times the house staff would write a note.

Q In addition to the computer-generated templates that you made entries on that appear in the record, do you have any handwritten notes separate and apart from any procedure note?

A Separate from the record?

Q Let me rephrase.

From time to time did you write any handwritten progress notes for this patient?

A No. At least I don't think so, unless there is something in the chart I am not aware of.

MR. : Again, you are asking him these questions without allowing him to -- I won't say "allowing," but without having him go through the chart. In fact, you are creating the inference that you are going to go into the chart later, which I am not objecting to, but again to some extent it is unfair. If you have something in your mind, you can point it out to him. If not, I think he has the right to look at the chart.

Apparently this form-type report each and every day that he saw the child is there, with the exception of the one for the 21st because she didn't come into the unit until 1:30 and these notes are generated in the morning. But it would appear to me from a

review of the chart that there is a fellow and

resident's note each and every day, and then there is his computer-generated note, as we are referring to it. I don't know if it is generated by a computer but it is typed.

Q Doctor, I am going to ask you to turn to page 9. On the bottom right it says, "Accept Note, Resident's Progress Note." Do you know the name of the individual who wrote that note?

A No.

Q Can you tell from this note what year the resident was?

A No.

Q The residents that rotate through the pediatric intensive care unit, would they generally be pediatric residents?

A That is correct.

Q Are there any other type of residents that rotate through that unit?

A Not to my recollection.

Q You still work in the pediatric

ICU?

A That is correct.

Q While you were caring for , did you ever come to the conclusion that she was suffering from mycoplasmal pneumonia?

A No.

Q Was there any suggestion or indication to you that she would have had mycoplasmal pneumonia?

A No.

Q Did you ever have any conversation with the patient's treating pediatrician, Dr. , at any time while you were caring for ?

A No.

Q If you had a conversation with

the child's pediatrician, would you customarily make a note of that in the child's chart?

MS. : Note my objection.

A No.

Q Did you learn that upon the admission to the pediatric intensive care unit that had not received any antibiotics prior to her admission to the

hospital?

A It would be customary for me to review the charts of her physical examination and previous medical history made in the record.

Q Is there anything that you recall now as you sit here today that indicates to you that she had not received any antibiotics

prior to her arrival at the hospital?

A There's notations to that effect in the chart.

Q Do you know for how long a period of time she had been experiencing certain symptoms relating to the condition which brought her to ?

A That would be part of my review, yes.

Q What did your review indicate as to how long she had been experiencing these problems?

A Looking at the chart now, it indicates a four- to five-day history of fever, non-productive cough.

Q Just for the record, which note

are you referring to?

A This is the note from the fellow and there are different notations --

Q That's all right. I just wanted to know the page number that you are referring to.

A I think that's on your page 8, I think.

Q Did you have a conversation with the pediatric ICU fellow after was admitted to the PICU?

A I have no specific recollection of same, but it would be usual and customary for me to do so.

Q On page 11 at the conclusion of Dr. 's note, she writes, "Discussed with Dr. ." Do you see that?

A I do.

Q Do you recall the substance of that conversation?

A No.

Q Do you recall where you were at the time that such a conversation took place?

A I just told you. You are asking

the same question over again. I have no specific recollection, but it would be usual and customary, since I am in the PICU all the time, for that conversation to occur in the intensive care unit.

Q What type of drug is Nafcillin?

A Nafcillin is a penicillin antibiotic.

Q Is Nafcillin an appropriate medication for mycoplasmal pneumonia?

MR. : I am going to object.

MR. OGINSKI: I will rephrase the question.

Q How do you treat mycoplasmal pneumonia?

MR. : I will let him answer that over my objection. You can answer. How would you --

THE WITNESS: How would I?

MR. OGINSKI: Yes.

A Mycoplasmal pneumonia can be treated with a macrolide antibiotic or a tetracycline antibiotic.

Q Does Nafcillin fall within either one of those two categories that you just mentioned?

A No.

Q Does ceftriaxone fall within either one of those two categories?

A No.

Q What type of medication is ceftriaxone?

A Ceftriaxone is a third-generation cephalosporin.

Q Do you have an opinion as you sit here now as to whether would have needed to have a chest tube inserted had she originally been treated with a macrolide or a tetracycline antibiotic shortly after her admission to ?

MR. : That is kind of speculative but I will let him answer over my objection, if you can.

A I don't think I can answer it.

Q Are you aware that she underwent lung surgery toward the end of her admission?

A After reviewing the chart with my

attorney, I come to find out that she had that, yes.

Q Do you have an opinion with a reasonable degree of medical probability as to whether would have required the same surgery had she been treated with a macrolide or tetracycline antibiotic shortly after her admission to ?

MR. : That's very speculative. Can you answer it?

THE WITNESS: I don't think anybody can answer that.

MR. OGINSKI: But can you answer?

THE WITNESS: No.

MR. : He said he doesn't think anybody could answer that.

Q Is there any other method that you as a physician can treat mycoplasmal pneumonia other than the method that you described, with the two different categories of antibiotics?

A I am not sure I understand your question.

Q Other than treating mycoplasmal

pneumonia with a macrolide or tetracycline antibiotic, is there any other recognized mode of therapy to treat that condition?

A You are not defining your question.

Q Let me rephrase the question.

Once the diagnosis of mycoplasmal pneumonia is made, is there any other way to treat that condition other than by treating with a macrolide antibiotic or a tetracycline antibiotic?

A You are assuming, of course, that the patient requires medication for mycoplasmal pneumonia.

Q Are there times when you as a physician would not render any treatment for

mycoplasmal pneumonia?

A This is speculative.

MR. : We are talking about this case, this particular child. You are going far afield. To me, you know, hypothetical questions -- I don't think there is one answer to these questions. I don't think he can answer that. I will advise him

not to answer the question.

Q Doctor, I just want to be clear. Other than macrolide and tetracycline, is there any other way to treat mycoplasma pneumonia?

A I just answered your question.

Q I am sorry?

A You are assuming that mycoplasmal pneumonia requires -- in your question you are

assuming that mycoplasmal pneumonia -- or the organism, I should say, requires medication therapy.

Q Under what circumstances would you not give medication therapy for that condition?

A There is no way to answer that question.

Q Are you familiar with legionella?

A Yes.

Q In your opinion should legionella be considered as part of a differential diagnosis when evaluating pneumonia?

A Again, your question is difficult to -- it can be a part of the differential

diagnosis.

Q Is mycoplasmal pneumonia

generally part of a differential diagnosis when evaluating different types of pneumonia?

A It can be.

Q Under what circumstances would it be?

A Mycoplasma pneumonia, the organism, usually causes meaningful clinical illness in older children and adults. In a child of four years of age it would be very unusual.

Q Is Nafcillin considered a broad-spectrum antibiotic?

A Yes.

Q Is ceftriaxone also considered a broad-spectrum antibiotic?

A Yes.

Q Why did require a chest tube?

A For the evacuation of a pleural effusion, empyema.

Q What is an empyema?

A Empyema is a collection of fluid

in the chest that is either infectious or the result of an infection.

Q Are you able to characterize the type of pleural effusion that had when she was hospitalized during the period of time you were caring for her?

A Yes.

Q How would you characterize it?

A As an exudative effusion.

Q Can you characterize the empyema with any similar caption?

A They are the same thing, exudative effusion. It would have the characteristic of an empyema.

Q What clinical effect does this have on the child in terms of any symptoms she may exhibit?

A It causes fever. It may elevate the while blood cell count. It may produce respiratory symptoms.

Q When you say "respiratory symptoms," could you be more specific?

A Yes.

Q Go ahead.

A Fast respiratory rate, respiratory distress, it may create an oxygen requirement by compressing the lung.

Q Any others?

A I think that's pretty encompassing.

Q Did there come a time that needed to be placed on a respirator?

A Yes.

Q Why was she placed on a

respirator?

A Again from reviewing the chart, demonstrated respiratory distress several minutes after the evacuation of the fluid from her chest by the interventional radiology staff.

Q What did that suggest to you, if anything?

A I am not sure I understand the question.

Q The fact that she had the respiratory distress after the removal of the fluid, clinically what did that indicate to you?

A That she required respiratory support.

Q As part of the placement onto the

respiratory, was she also sedated?

A That is correct.

Q What is the purpose of sedating a child of that age while placed on a respirator?

A It would help the patient to provide Syncurine. It's compassionate to provide sedation.

Q Do you know for how long she remained on a respirator?

A I would have to review the record. I don't have a specific recollection.

Q Are you also aware that she underwent a bronchoscopy?

A Yes, I am.

Q For what reason did she receive the bronchoscopy?

A received a bronchoscopy to effect pulmonary toilet or evacuate secretions, same thing.

Q Did you participate in the

placement of the chest tube, the first one?

A I would have to look at the record, but I believe I was present for it.

Q Were you present at all during the bronchoscopy? When I say "present," present as part of the procedure.

A I don't have a specific recollection but I presume being down in the unit as I was rounding I would have been there.

Q Were you present during the performance of the open thoracotomy?

A It was after the child was under someone else's care, so no.

Q Did you have any conversations with Dr. prior to coming here today regarding ?

A I am not sure I understand your question.

Q You are aware that Dr. was here last week and gave testimony in this case?

MR. : You are assuming he is aware. I don't know whether he is or

not.

Q Did you speak with Dr. at any time from a week ago about this case up until today?

A No.

Q Have you spoken with 's parents at any time after you last treated up until today?

A No recollection of that, but I don't think so.

Q From the time that you were treating from August 21st for the week after, for that following week, did her condition worsen before it began to improve during that week?

MR. : That is sort of a double negative. You can ask him to describe her condition over that period of time.

MR. OGINSKI: I will withdraw the question.

Q While she remained under your care in the pediatric intensive care unit, did her condition worsen?

A It's too nebulous a question.

You need to define your question.

MR. : You can ask him to describe her condition. It seems to me

it's reflected in the notes which you, for some reason, don't want him to refer to.

MR. OGINSKI: It's not that I don't want him to. I will get to it.

MR. : I don't think it's fair to ask him to do this off the top of his head when he said he had a vague recollection of these events but he obviously needs the chart to refresh his recollection.

Q Did you ever form an opinion with a reasonable degree of medical probability as to whether the treatment rendered by the child's pediatrician prior to her coming to the hospital was within good and accepted medical standards?

MS. : Note my objection.

MR. : You are asking him to be an expert against the co-defendant.

MR. OGINSKI: That is not what I meant.

Q While you were caring for

in August of , did there come a time that you rendered an opinion with a reasonable degree of medical probability as to whether the treatment that she had received from her pediatrician, Dr. , was within accepted medical standards?

MR. : Did he render an opinion --

MR. OGINSKI: At that time.

MS. : Just note my objection, to the extent that he would be aware of what the treatment was.

MR. : You asked him did he render an opinion. That seems to convey that he did have an opinion. Did he have an opinion? I don't know he had an opinion.

A I don't have access to any of Dr. 's charts. I had no specific

discussion with him. I think it is unfair for you to ask me to judge his plan of treatment.

Q I am only asking whether or not at some point you did form an opinion when you were treating .

A I have no specific recollection

of same.

Q From the chart you are aware that the cold agglutinin test was positive, correct?

A As I already testified in my prior answer, my participation in the patient's care had ended, but my review of the chart indicated that there was a cold agglutinin test ordered.

Q Not only that it was ordered but that the results of that test came back

positive, correct?

A I would have to look.

Q I will get back to that.

What is nasal flaring?

A It is the process of the nose going outward during inspiration.

Q Does that occur with respiratory distress?

A It can.

Q How does it occur? If the patient is in respiratory distress, what is the method that it occurs?

MR. : The method?

A It's one of the body's signs of respiratory distress. I am not sure I understand your question.

Q On the admit note to the PICU, on

page 8, Dr. indicates in the middle of the page under her general survey: The patient is awake, alert, anxious, in mild to moderate distress. Do you see that?

A I see "mod." It appears the word is "respiratory," and it appears the word is "distress."

Q What does that suggest to you?

A That the patient has respiratory distress.

Q And right underneath that it says, "Head Eyes Ears Nose and Throat: On/off nasal flaring," agreed?

A Agreed.

Q What does that mean to you clinically?

MR. : What does "flaring" mean or all the rest of it mean?

A In sum total this note is describing a child that is in respiratory

distress, if that's what you are asking.

Q Is it important for you as a physician treating a patient such as to identify the type of organism that she is suffering from?

MR. : I object to "is it important."

Q On page 11 of Dr. 's note under her assessment she writes: Left lower lobe pneumonia with effusion. Correct?

A It appears to say that.

Q In treating a patient with a pneumonia, is it important for you to determine what the etiology or what type of pneumonia the patient has?

MR. : I object to "is it important." You can ask him is it a consideration.

MR. OGINSKI: I am not going to accept that word, but I will rephrase the question.

Q Once an assessment of a pneumonia is made in a patient, is it good medical practice to try and determine what type of

pneumonia?

MR. : I'm going to object to "is it good medical practice." Many things are good medical practice, but it doesn't necessarily mean that not doing it is bad medical practice. So that is why I object to that type of question, because a lot of things are good. The question is with a reasonable degree of medical certainty are they necessary.

Q Is it important for you as the

patient's treating physician, if you suspect they are suffering from pneumonia, to find out what type of pneumonia they are suffering from?

MR. : Again, I object to the form of the question.

MR. OGINSKI: I want to know if it is important for him in terms of diagnosis and treatment to learn what type of organism is causing the pneumonia.

MR. : Object to the word "important."

Q In diagnosing and treating a

patient who you believe has pneumonia, is there any medical significance to learning the etiology of the pneumonia?

MR. : You can answer it

if you can understand it.

A Your question is vague.

Q Then let me rephrase it.

Is there any medical reason why you would want to know what type of organism the patient had in terms of treating a particular pneumonia?

A With as much diagnostic certainty as possible, yes.

Q Why?

A Our therapy would be dictated to a degree on the type of pneumonia.

Q And how do you differentiate between the different types of pneumonia that a patient may be suffering from?

A We have already answered this question.

Q I am asking a specific question addressed to how you determine what type of pneumonia the patient is having.

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A From the patient's history, from the patient's physical examination, from all of the pertinent findings that you can glean on physical examination and -- I have already answered.

Q What diagnostic laboratory tests are available to you to determine and isolate a particular type of pneumonia?

A There are different cultures.

Q Can you be specific?

A I don't know how to be more specific than that.

Q What kind of cultures are available to you?

A Sputum cultures; there are cultures of all bodily fluids.

Q What other diagnostic tests are available to you to evaluate and isolate a particular organism that is causing a

pneumonia?

A Your question is vague. Our decision to run diagnostic tests are based upon decisions that are made clinically.

Q Are blood cultures of any medical

use or significance in evaluating pneumonia?

A I just answered that question. I just said the cultures of bodily fluids may be helpful to determine the etiology.

Q In August of , how long did it take for you to receive the results of blood cultures?

A I would have to ask my laboratory. The cultures are sent down 24 hours a day.

Q My question is: How long did it take to get the results back from a blood

culture?

A Blood cultures are held for over a week.

Q How long would it take for you to get back the results of a sputum culture?

A I have no specific knowledge of this. I would think several days.

Q I don't want you to guess, doctor.

A I have no specific knowledge. You would have to call my laboratory.

Q Can you turn, please, to page 15.

Is this the first note that you have for this patient?

A I believe it is.

Q And am I correct that this is a note that you signed?

A That is correct.

Q Is this the note that we discussed earlier in terms of making entries into the computer based upon your examination of the patient?

A That is correct.

Q On August 22nd when you examined the patient, was it your opinion that this patient had a left pneumonia?

A That is correct.

Q And also an effusion?

A Yes.

Q And the supplemental oxygen that she was receiving, was that nasal cannula, face mask, or something else?

A I see that I had two liters per minute. I would have to look at the rest of the record for the nurse's notes.

Q Just based on your note alone --

A No.

Q -- for the moment, is there anything to suggest to you what type of oxygen she was receiving?

A There is nothing in my note that discusses that.

Q Under your comment you write, "desaturation this morning." What do you mean by that?

A That the oxygen to hematocrit saturation was low or lower at some point during the morning rounds.

Q And did you make any determination as to why it was low?

A I am not sure I understand the focus of your question. The answer would be it's a relationship to a child who was admitted for a pneumonia.

Q The desaturation, was that in

comparison to how she was the day before or in relation to something else?

A In relationship to our nursing flow sheet. I don't have -- well, maybe I do have. Let me look back in the record to see

if there's a record of oxygen saturation.

(Referring.)

Yes, there is a saturation note. Usually when we write something of this nature, it's in reference to our nursing flow sheet.

Q According to the ID portion of the note she was febrile, light reactive?

A Yes.

Q With a maximum temperature of 102.2?

A That is correct.

Q What temperature do you consider to be febrile?

A 101.5 is what I consider to be febrile.

Q You note that she was receiving ceftriaxone number 3?

A That's correct.

Q I would like you to read, please, your general comments that you noted.

A I write: Five-year-old with left pneumonia and effusion; mild worsening of respiratory distress yesterday. Transfer to

PICU.

Q I'm sorry, doctor. I just want to clarify. It says "respiratory distress yesterday" and there is an arrow, correct?

A That's just a shorthand version

to say because of that she was transferred to PICU.

Q Okay. Go ahead.

A Patient O2 -- that stands for requirement this A.M. -- anticipate tube thoracostomy this A.M.

Q And that tube thoracostomy was for what reason?

A To drain her effusion.

Q And just to be clear, you wrote that she was five years old --

A That's a mistake.

Q -- in the note. Am I correct that she was actually four at the time?

A That's correct.

Q Did the oxygen assist her in resolving any of her respiratory distress?

A I have no specific recollection, but most likely it did.

, M.D. 50

Q Is there anything in the note to indicate that the oxygen administration was assisting her in resolving some of the respiratory distress?

A No.

Q Who placed the chest tube?

A There is a note that is titled from the 22nd.

Q What page, please?

A It looks like page 19.

Q Would that be Dr. 's note?

A That's correct.

Q It says that she was supervised by you?

A That's correct.

Q Does that mean that you were present for the procedure?

A Yes.

Q Was that done in the PICU?

A That is correct.

Q And in the note she writes that chest X-ray was taken and it showed a positive pneumothorax?

A That's actually a zero with a slash through it. No pneumothorax, that's how I would interpret that.

Q Following that line she writes -- there is something before "desaturation." Would that also be no desaturation?

A No desaturation.

Q The second to last line, doctor, there is a note where Dr. has a question mark and then it states "laryngospasm." Do you see that?

A I see your question, yes.

Q Did you form an opinion during

the procedure or at some point after the procedure that the patient had a laryngospasm?

A Your question is vague.

Q I will rephrase the question.

Is there anything to suggest to you that during the course of the procedure the patient had a laryngospasm?

A During the course of the procedure?

MR. : That's a misinterpretation of the note. I mean, the

note indicates to me post-procedure and it's questionable.

MR. OGINSKI: That's what I am trying to find out.

A It says here 5-slash-slash, which I take to mean five minutes after the

procedure the event of your question occurs. It is after the procedure.

Q What is a laryngospasm?

A A spasm of the upper airway.

Q What causes that?

A It could be coughing, a coughing response, a sensitive airway.

Q Is this a significant finding to you?

A Only in that it may or may not need medical attention.

Q In your opinion did it need medical attention?

A She responded to intervention here and appropriately improved and didn't require any further intervention.

Q Can you turn, please, to page 16?

A What page?

, M.D. 53

Q Sixteen.

A One-six.

Q This again is Dr. 's note; is that correct?

A It looks like her handwriting, yes.

Q At the top under her subjective section, under the words "left lower lobe pneumonia," she writes something and I wonder if you can read that, please.

A I don't see -- "with effusion."

MR. : Objection.

Q No; underneath that, doctor.

A No. I know the first two --

Q After that, does that look like "hypoxia"?

A It could.

Q Do you know what that refers to?

A No.

Q Did the patient experience any

hypoxia after the insertion of the chest tube?

A I believe that is reflected on the nurse's flow chart. It says: Desaturation with coughing five minutes after

procedure.

Q To the right side of Dr. 's note on page 16 where she writes, "Status post left chest tube insertion," can you read what she has written there on the right side?

A It looks like -- I can't make out the first but maybe "desaturation this A. M."

Q To 80s?

A I guess.

Q I don't want you to guess.

MR. : If you know, fine. If you don't, fine. She is the best

one to read her note, not you.

THE WITNESS: Okay.

Q From time to time is it necessary for you to read other physicians' notes in the patient's chart?

A Yes.

Q And in the event that you cannot make it out or read it, the other physician's note, do you then speak to them?

A Yes.

Q And ask them what they said?

A Yes.

Q In the event that you can't contact that person who wrote that note, what do you do in trying to evaluate the patient?

MR. : Objection as argumentative; next question.

Q On the same portion of the note where it says, plus sign, grunting, can you read for me the word after the word "grunting"?

A No. You would have to ask Dr. .

Q On the bottom of that note under the chest X-ray she notes as part of the finding a tracheal shift to the right. Did I read that correctly?

A That is what the words appear to be, yes.

Q What does that mean to you?

A There are many things that cause a tracheal shift.

MR. : He didn't ask for the causes. He is asking what is a tracheal shift. I assume that is what he's asking.

, M.D. 56

MR. OGINSKI: Yes, correct.

MR. : So other than a trachea being to the right, I don't know how more he can explain it to you.

A It means that the trachea shifted to the right.

Q In this instance do you know what caused the trachea to shift to the right?

A I would -- strike that.

Left-sided pneumonia can cause a trachea to shift to the right.

Q Can you turn, please, to page 23. This is a note that you have for August 23rd?

A Yes.

Q For how long a period of time did you remain the PICU attending? Is it for a week shift or some other period of time?

A Usually approximately a week.

Q After that week where would you go, if you did?

A To other various responsibilities

in the intensive care unit.

Q Under the respiration section of your note you write "desaturation this A.M."

Was this something different than what you had written the previous morning?

A I would assume "this morning" is for from the previous A.M.

Q On the August 22nd note, doctor, you had written "desaturation this A.M.," and correct me if I'm wrong, that refers to August 22nd?

A Correct.

Q And now it is August 23rd and you write "desaturation this A.M.," correct?

A I would have to go to the nurse's note. I can do that now if you like.

Q Let's finish this line, please.

"Chest tube drainage, 200 cc's over the last 20 hours," correct?

A Correct.

Q Can you characterize the amount of fluid that was removed at that point? Is that a lot fluid to come out of a chest tube for a four year old?

A Certainly.

Q Can you go back to the nurse's notes now and tell me whether the desaturation

related to August 22nd and the 23rd or something else?

MR. : The 22nd and the 23rd?

MR. OGINSKI: Yes.

A I see a notation here in the nurse's note of a desaturation on the morning

of the 22nd, and I see a reference to desaturation on the 23rd as well.

Q That would be oxygen desaturation?

A That's correct.

Q What page are we on?

A Page 23.

Q As a result of the desaturation that was observed on the 22nd and the 23rd, is there any long-term sequela that you would expect to see in a patient as a result of that desaturation?

A No.

Q In the ID portion of the note it says "pleural fluid"; is that correct?

A I see that.

Q There is a pH of 7.13. Does that

relate to the pleural fluid?

A Correct.

Q Is that finding within normal limits?

A No, it's not.

Q What does that finding suggest to you? How would you characterize it?

A That finding suggests an empyema.

Q And the LDH of 6.0, what does that suggest to you?

A That happens to be a typo.

Q What should that be?

A I would have to go back to look at the laboratory.

Q "T PROT," what is that?

A That would be total protein.

Q Is that within normal limits?

A The total protein and the LDH are used in reference to a patient's serum values to make a determination as to whether it is transudative or exudative and would be related

to an empyema.

Q At the bottom you note, "Clinically improved after tube thoracostomy

yesterday." What was it that was improved? Was it the respiratory efforts or something else that you are referring to?

A I think there's a clinical feeling of improvement, either respiratory or fever or white count.

Q She was still febrile as of that date, correct?

A I would have to refer to the nursing notes.

Q As of the time you examined her was she febrile?

A I didn't write it. Would you like me to look now?

Q Sure.

A She had a fever late in the day on the 23rd.

Q How much of a fever?

A She was 104.7.

Q That was after this note was written, right? Can you go back to the day before and tell me what the maximum temperature was from the 22nd to the 23rd?

A I think I just described that to

you, did I not?

Q No.

A This is the 22nd to the 23rd?

Q Yes.

A The temperature maximum on this day appears to be 100.9.

Q In addition to the antibiotics

that she was receiving, was she also getting various medication to reduce the fever?

A I would have to familiarize myself with the record but it would be customary.

Q Let's turn to page 29, please.

By the way, before we get to that note, what is a Gram stain?

A Gram stain is where a solution or fluid of some -- usually a bodily fluid, is subjected to a series of stainings in an attempt to identify the type of organism in the form of gram-positive, purple, or gram-negative, blue.

Q It is also written at the bottom of the note, August 23rd, that the patient was going to have a chest CT, correct? Page 23.

A Thank you.

"Will plan CT chest today."

Q What was the purpose of the chest CT?

A I have no specific recollection

Q Is it something that obviously you felt was necessary to evaluate the patient, or was it customarily done?

A Customarily done.

Q Did she need to be sedated to have the CT?

A I have no specific recollection of same.

Q Before we go to 29, if you can turn, please, to page 25. Dr. notes in the middle of the page under culture results, "pleural fluid." Can you read that?

A "Fluid culture."

Q Is that negative or no organisms?

A I can't conjecture at this time, but that's what I would interpret that to mean.

Q Also, Gram stain no organisms?

A Yes. That's what I would

interpret that to mean.

Q Under blood culture, what do you interpret that to read?

A It looks like "NG."

Q What would that represent?

A It could be representing "no growth."

Q Why was Nafcillin added to the antibiotic therapy that was receiving?

A Nafcillin offers additional coverage of staphylococcus and streptococcus organisms, the latter being the most common organism for pneumonia.

Q Can you turn, please, to page 29.

This again is your note dated the following day, August 24th?

A That's correct.

Q Under the comment for respiratory it says, "Chest tube drainage of 4 cc's over the last 24 hours"?

A That's correct.

Q Is that an improvement in comparison to what the original drainage was?

A Yes.

Q How was she receiving her feedings, just according to your note?

A It just says "Feeds, advancing diet." I would have to look. Would you like me to do so now?

Q No, not now.

Under your ID section of your

note, doctor, under comments you write: Full fluid culture without growth and AFB -- meaning acid-fast bacillus -- were negative?

A Right.

Q What does that mean to you?

A It means that the culture hasn't grown.

Q And the acid-fast bacillus being negative, what has the significance of that shown to you?

A It means the acid-fast bacillus is negative.

Q Are you attempting to rule out the different types of pneumonia that she was suffering from?

A No.

MR. : You can ask him

why.

Q By obtaining the cultures and acid-fast bacillus test, what was the purpose of those two tests in this case?

A We are repeating ourselves. We talked earlier about cultures being used as an assistance in trying to determine etiology.

Q And the fact that at this point there is no growth in the pleural fluid and negative acid-fast bacillus, what information does that tell you as to what type of pneumonia she might be suffering from?

A It doesn't tell at all.

Q She had a T-max of 104.7, correct?

A I believe that was the fever you were just describing, yes.

Q What is the "BC sent"? What does that mean?

A That is blood culture sent.

Q What was the reason for obtaining

that blood culture?

A It is customary for us to culture

a patient when they develop a fever.

Q Did you form any opinion at that time on August 24th as to what could be causing her fevers?

A Your question is vague.

Q Why was she experiencing fevers?

A I was treating her for pneumonia and empyema.

Q How would the blood cultures have assisted you in determining a diagnosis? What did you expect to learn from a blood culture?

MR. : How about "hope"?

Q What did you hope to learn?

A Possibly the etiologic agent.

Q Did the blood cultures ever grow

any specific organisms as you recall now?

A I have no specific recollection, but if you like I can look through the chart for the laboratory results.

Q On the bottom of your note under general comments, you wrote: CT chest today to evaluate empyema versus consolidation. Correct?

A Correct.

Q What is the difference between empyema compared to a consolidation?

A A consolidated portion of lung is one that is involved with pneumonia. Empyema reflects the fluid that would collect around the lung. On the chest X-ray, those are very difficult, if not sometimes impossible, to determine or distinguish between.

Q Is there a different way to treat each one of those situations?

A With an empyema, the fluid needs to be drained. With a consolidation, either it will resolve or whatever treatment you prescribe will clear it up.

Q You are talking about medical treatment?

A Yes.

Q Who is ?

A He is one of our division attendings.

Q Can you explain how his signature appears on this note, the page 29, August 24th note?

A No. I have no specific

recollection.

Q Were there situations back in August of where one of your colleagues conducted rounds or an examination for you and at some point later on that day you co-signed their note?

A I have no specific recollection of that.

Q Do you know why or how Dr. 's name and signature appear on this particular note?

MR. : I think he just answered that.

A I have no specific recollection. I just told you that.

Q Can you turn, please, to page 35. This is a note dated August 24th, 6:00 P.M.; is that correct?

A That's correct.

Q And you wrote this note?

A That is my handwriting.

Q Can you read your note, please, and, if there are abbreviations, just tell us

what they represent.

MR. : I just suggest when you read, slow down a little bit because it's not conversational when you read and it makes it more difficult.

THE WITNESS: Sure.

A Pediatric Critical Care Note: In the usual sterile manner, the right groin was prepped and draped. A 4.2 french broviac catheter was inserted into the right femoral vein over a sterile guide wire and turned to exit the right lower abdominal wall in the usual subcutaneous fashion. Percutaneous site closed with Prolene 3.0 times 2 silicone. Catheter exit site closed with chromic single times 1 Prolene 3.0. Estimated blood loss 2 cc's. Anesthesia: 2% local Lidocaine/sedation

protocol.

In a similar fashion the left chest wall was prepped and draped. An 18-gauge needle was passed into the pleural space with thick, serosanguineous pleural fluid obtained; needle removed. EBL -- or estimated blood loss -- 0 cc's. Follow-up chest X-ray without pneumothorax.

And it's signed by myself.

Q What was the purpose of performing this procedure?

A This is two procedures. The first was performed to provided a special IV catheter to administer long-term antibiotics. The second would be to attempt to drain fluid again from the chest.

Q Was this another chest tube that

had been inserted?

A This is not a chest tube. This is a start of a thoracentesis.

Q And the performance of the thoracentesis, were you able to express any fluid at that time?

A I note that a thick, serosanguineous pleural fluid was obtained.

Q Did you make any estimate as to how much was obtained?

A I didn't make a notation of that.

Q Did you form any opinion as to whether the child improved as a result of that thoracentesis?

MR. : You mean

instantaneously with the procedure?

Q As a result of the procedure, did

the child, in your opinion, make any sort of improvement?

MR. : I mean, I don't think he can see an improvement. If the note was written contemporaneously with the event, I don't think you can see instantaneous improvement.

Q Did you form any opinion shortly after doing the thoracentesis whether there was any direct correlation between any improvement that you noted and the procedure itself?

A Still unclear as to -- I am unclear as to your question.

Q Did improve as a result of the thoracentesis?

A The thoracentesis was designed -- or an attempt to evacuate fluid that was determined by the chest CT to be away from the drainage site of the first chest tube.

Q On the mornings when you

25 mentioned you would customarily examine the

2 patient, did you speak with her during any of
3 those examinations?
4 A I have no specific recollection
5 of same, but it would be customary for us to
6 talk with our patients.
7 Q In this case, did make
8 any complaints to you on any of the days that
9 you saw and examined her?
10 A I have no specific recollection
11 of same.
12 Q Did make any complaints
13 to you during the procedures that you had
14 performed that you just read to me on August
15 24th?
16 A I have no specific recollection
17 of same. If you would like me to turn to the

sedation sheet --

Q I am just asking based on your note and your memory of anything that you recall.

Did you form an opinion as to whether developed any type of fear of doctors while she was in the hospital during the time you were caring for her?

A I have no specific recollection of same.

MR. : How can he know what she was scared of?

Q Did express to you, while you were in her room examining her and talking to her, any fears or concerns that she had about the care that she was receiving?

A I have no specific recollection

of same.

Q Did you observe crying during any of the times that you were present when you were evaluating her?

A I have no specific recollection of same.

Q When you were examining her, would one or both of her parents be present in the room during your examination?

A I have no recollection of same.

Q Was the child in a hospital crib?

A I have no specific recollection.

Q Was it customary for a four-year old to be put into a crib as opposed to a bed, a regular bed?

A Not necessarily.

Q Do you have any memory of

Mrs. describing to you her daughter's concerns of pain and fear of needles?

A I have no recollection of same.

Q Prior to performing these two procedures that you have now told me about on August 24th in your 6:00 P.M. note, was it necessary for you to obtain the parents' consent prior to doing those procedures?

A It's usual and customary for us to obtain a consent from the family.

Q Would that be a written consent?

A Usually it is written, but it sometimes can be an oral consent.

Q In your review of the chart -- and I know you have not gone through every single page -- did you come to any written consent relating to those two procedures?

A Let's look now.

Q Fine.

THE WITNESS: Do you have any bookmark?

MR. : Not off the top

of my head. I have more stickers than I have pages almost.

A I see a consent here from the 24th; I see a consent from the 22nd.

Q Can you tell me, doctor, the consent form on the 22nd, what does that refer to?

A Chest tube insertions under intravenous sedation.

Q And the one on the 24th, what does that refer to?

A Sedation and broviac line insertion placement, a chest tube placement.

Q Can you tell which of the patient's parents signed that form?

A Which one are you referring to?

Q The 24th.

A I can't read the signature but I can read the print.

Q What does it say?

A , Father."

Q Did you have a conversation with one or more of 's parents about the need to put chest tubes in to drain the fluid

from her lungs?

A I answered your question. There is a consent form there.

Q I'm sorry. Let me rephrase the question.

Before doing your procedure, I assume you spoke to the parents and had them sign a consent form?

A It's customary for us to obtain informed consent, yes.

Q Do you recall telling 's parents that if the chest tube drain did not work that you would then need to insert a tube down into her throat to break up the fluid in her lungs -- or in substance?

A I have no specific recollection of a conversation of that nature.

Q Did you learn whether the bronchoscopy was successful in achieving its purpose?

MR. : I am going to object to the form of the question.

MR. OGINSKI: I will rephrase it.

Q Did you participate in the

bronchoscopy?

A The bronchoscopy? The bronchoscopy, I believe, was done on the 27th.

I was the attending of record.

MR. : I assume he wants to know were you present in the room when the bronchoscopy was performed.

MR. OGINSKI: Exactly.

A I have no specific recollection but I was the attending of record and it would be customary for me to be present when I was the attending of record.

Q Did you make any separate notes based upon that procedure?

A Not necessarily.

MR. : Other than the note he made on the 28th which might have mentioned it?

MR. OGINSKI: Other than that.

A No.

Q Did you learn whether any fluid was able to be obtained from the bronchoscopy?

MR. : Why don't we go to the bronchoscopy report?

THE WITNESS: Do you have a page number?

(Referring.)

I think I have it.

MR. : Now we are looking at the bronchoscopy report of August 28th.

Q What page?

A It appears to be page 59.

Q Who performed the bronchoscopy?

A That would be Dr. .

Q Do you know what his specialty is?

A Dr. is a pediatric pulmonologist.

Q And other than having you named as being the referring physician at the top,

does this note indicate whether you were present during the procedure?

MR. : Well, you know, it's written by somebody else. I don't know. Dr. may have some code that he uses. I have no idea.

Q Is there anything in Dr. 's

note that suggests that you were present for his procedure?

A I don't see anything that suggests anybody was present for his procedure. There is no notation there whatever.

MR. : In that regard.

THE WITNESS: Right, to that end.

Q What were Dr. 's findings on the bronchoscopy?

A Repeat the question, please.

MR. : What were his findings?

A He writes: Thin, serous secretions being aspirated. No inflammation visible.

Q On page 60, the following page, are those photographs of what was observed during the course of the bronchoscopy?

A These would be photographs, yes.

Q Let's turn back, please, to page 38. This is your August 25th note, correct?

A That's correct.

Q Under respiratory you write,

"Removed chest tube yesterday," correct?

A That's correct.

Q What was the reason for removing

the chest tube at that point?

A The chest tube would be removed since it had completed its drainage of the area that was to be drained.

Q At that time the patient was still on ceftriaxone and the Nafcillin?

A That's correct.

Q And the numbers that appear after each of those medications represent the number of days that she had been on the antibiotic?

A Usual and customary for us to do so.

Q According to the note she was still febrile?

A I note here that the T-max is 101.6. I will have to find out what the nursing note says for the night. Let's go to the notes.

Q That would be the night of the 24th into the 25th?

A Yes.

It appears that she had a fever on the morning of the 24th at 1:00 A.M. of 101.5.

(Referring.)

Q At the bottom of your note under general comments you wrote: Remains febrile with left lung consolidation and lower lobe empyema. Correct?

A Correct.

Q "Percutaneous drainage yesterday; drained small amount," correct?

A Correct.

Q You have: Will arrange CT-guided drainage, correct?

A Correct.

Q How would that have helped you in comparison to the drainage that you had attempted earlier?

A The goal of the drainage -- the goal of the chest tube was to effect drainage of pleural pus fluid from the chest. We were able with our first chest tube to evacuate one area of oculated empyema; and the goal of this procedure would be to drain another area that

we could not get to to install drainage the preceding day.

Q In your opinion had improved as of August 25th in comparison to when you first began to treat her on August 21th?

A There is improvement in the sense that one pocket of empyema is now evacuated and there is continued need to drain an additional pocket of fluid.

Q Did you have any discussion with

's parents as to how long you expected her to remain in the hospital as of the 25th of August?

A I have no specific recollection of same.

Q Can you turn, please, to page 45. That is Dr. 's note of August 25th?

A It appears to be her handwriting.

Q At 11:00 P.M. she writes that you and Dr. accompanied the patient to a CAT scan?

A Correct.

MR. : The note apparently is an historical note. Looking back at the nurse's note, it appears there was a CAT scan around 2 o'clock in the afternoon.

MR. OGINSKI: Correct.

MR. : So 11:00 is when she wrote it.

THE WITNESS: She has a late entry here.

MR. : They didn't take her to a CAT scan at 11:00 P.M. The door would have been locked.

MR. OGINSKI: That's not true.

Q Did you learn the results of the CAT scan that was taken that day?

A I was present for the CAT scan.

Q What were the results of the CAT scan?

A This was a CT-guided CAT scan to place a chest tube, and I believe the physicians who performed the procedure wrote a note to that effect. We passed them somewhere. I saw it a minute ago.

(Referring.)

Here it is. There is a note from the physicians in reference to the procedure.

Q Can you read their assessment, doctor? First of all, what page is that?

A It looks like page 37.

Q The placement of the catheter, according to the note, was successful, correct?

A The second note documents successful placement of the 10 F, which stands for french.

Q Approximately 5 cc's of serosanguineous fluid was aspirated?

A I can't read the units. There was approximately something cc's.

Q Do you know if that is a 5 or some other number?

A No; I have no idea.

Q Turn, please, to page 46.

At the bottom of your note --

A What page?

Q Page 46. The date is 8/26/00.

The bottom of your note appears to read: Difficult afternoon yesterday with

coughing and laryngospasm during CT-guided drainage. Correct?

A That's correct.

Q You continue and say: It required intubation and mechanical ventilation. Were you referring to the procedure that we have just read from?

A Yes, that's correct.

Q Was there anything in that procedure to indicate that the patient had a laryngospasm during that procedure?

MR. : Is there anything in the notes by the physicians who did that that mention that item; is that what you are asking?

MR. OGINSKI: Yes.

A No, there is nothing in their notes.

Q Was there anything in their notes indicating that the child required to be intubated and mechanically ventilated?

A Not during the procedure.

Q Was it at some point after the procedure had been completed that she required

this intervention?

A That is correct.

Q Where was the child when she required intubation? Was she in the PICU, was

she in the CT room, or someplace else?

A In the CT room.

Q Was she intubated in the CT room?

A That is correct.

Q Who intubated her?

A I did.

Q Why did she require intubation?

A I wrote in my note here that she developed coughing and laryngospasm.

Q What was it about those two events that you felt needed intubation?

A Dr. documented the procedure. There is an entry in her note.

MR. : That's page 45, isn't it?

THE WITNESS: There it is.

(Indicating.)

Q A third of the way down into her note she starts a sentence, "Last scan patient noted to have oxygen saturation 40s," correct?

A It appears that is what that says, yes.

Q Can you read what it says after that?

A "With" -- again there's a zero with a slash through it which I take to mean no airway entry -- "PPV" --which is our usual custom for positive pressure ventilation -- "started with bag/mask."

Q Let me stop you for a second. The "oxygen saturation 40s," that is a markedly abnormal finding, correct?

A That's correct.

Q And the fact that there is no air entry, what does that suggest to you?

A Something is blocking air entry.

Q Dr. continues by saying, "Patient difficult to bag." What does that suggest to you?

A Something is impeding air entry into the lungs.

Q And then she continues by saying, "Sats," with an arrow going up, 80, paren, to 90s, correct?

A Correct.

Q What is the normal range for oxygen saturation for a four-year-old patient such as this?

A We usually accept 88 to 90 percent saturation.

Q And she writes, "Probable laryngospasm did not resolve." Were there any other possibilities that were going through your mind at the time as to the cause for this child's decrease in oxygen saturation?

A I have no specific recollection

of same.

Q Dr. continues the note by saying, "No bradycardia"; is that correct?

A Yes.

Q The note continues saying, "Patient paralysed with..." -- what is the name of that?

A Mivacurium.

Q Is that a paralyzing agent?

A That's a nondepolarizing paralyzing agent.

Q "And was intubated," correct?

A Yes.

Q She continues her note, "Patient brought back to PICU. CAT scan (last) and chest X-ray," and then she has a note. What does that refer to?

A It looks like a positive.

Q Positive pneumothorax on the right?

A That's what it looks like.

Q What does that mean to you, doctor?

A That would suggest a pneumothorax to the right, although I would have to look at the radiology. I believe the procedure was done to the left.

Q "Attempts made by undersigned and Dr. to insert..." -- is that a "freshman"?

A Ferman (phonetic).

Q "...catheter to drain pocket"?

A Correct.

Q Pocket of what?

A Air.

Q That would be in the right lung?

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A I would have to look at the chest X-ray.

MR. : It is possible that might be a typo and she meant left, considering they were working on the left.

Q Regardless at this point --

MR. : But it doesn't really make any difference.

Q Regardless, it refers to the pneumothorax?

A Right.

Q "Procedure unsuccessful," she writes. Can you explain to me how the catheter is inserted in an attempt to remove the air pocket?

A The cylinder technique is the one described. A needle is inserted into a body cavity. It could be a vein. It could be an artery. The needle is inserted. Through that

needle a small wire is passed. The needle is removed and over the wire a catheter of some form is advanced.

Q In what part of the body was the needle placed into the catheter?

A The attempt would be to drain or to remove the air that reside outside the lung but inside the chest wall, a pneumothorax.

Q Can you read what she has written afterwards?

A Afterwards what?

Q After it says "procedure unsuccessful."

A It looks like "no nodes noted during procedure." I can't read the first word. The second word -- "lateral shows minimal amount pneumothorax."

Q Go ahead, please.

A "Will hold off on inserting the catheter for pneumothorax. Continue mechanical ventilation, paralysis, sedation."

Q Do you know whether Dr. had any conversations with Mr. and Mrs. at some point after these events occurred?

A I have no idea.

Q Would it be customary for the fellow to have ongoing discussions with the patient's family on a day-to-day basis?

MR. : I have to object. I mean, there are parents that never show up and there are parents that are always there and then there are parents who are occasionally there. It's just not a fair

question.

Q Do you know as you sit here now whether she had any conversations with Mr. or Mrs. ?

A I have no specific knowledge of same.

Q Turn back, please, to page 46.

A Forward.

Q Yes, forward. That is your August 26th note?

A That's correct.

Q Continuing under your general comments you write: Able to achieve excellent pulmonary toilet with PPV. Correct?

A Correct.

Q What does that mean?

A With positive pressure ventilation we have access to the airway through the trache tube, and we are often able

to help or assist evacuating secretions from the lung.

Q Then you write: Small pneumothorax on chest X-ray; evacuate left chest today. Correct?

A Correct.

Q Is that referring to the procedure you just read on page 45?

A No. I think we are referring to a procedure to come or that was done at the time or around the time of this note.

Q You continue your note: Will plan continued respiratory support, neuromuscular blockade, aggressive pulmonary toilet. Anticipate bronchoscopy with lavage on 8/28. Start feeds today; start gtt.

Did I read that right?

A Correct.

Q Now, when you refer to the neuromuscular blockade, is that the paralyzing

agent?

A Correct.

Q So she remains on a ventilator in a paralysed or comatose state at this point?

MR. : I am going to object to "comatose."

MR. OGINSKI: Let me rephrase the question.

Q Describe for me what a neuromuscular blockade is.

A A neuromuscular blockade --

MR. : He did this already.

A -- relaxes the patient's muscles.

Q Is the patient able to talk?

A They are on a ventilator.

Q Are they able to move any of

their extremities?

A Usually not.

Q Are they generally awake?

A No; they are sedated.

Q Can you tell me the purpose of the anticipated bronchoscopy with lavage?

A The same purpose that we would have with the pulmonary toilet, with the ventilator.

Q The "gtt.", that would be feeding by what method?

A No; the gtt. is shorthand for a drip.

Q The feeding that you mention, by what method was that?

A I have no specific recollection. If you like, I can look at the nurse's notes.

Q No; I don't want you to take the time.

The dopamine, what type of medication is that?

A Dopamine is a vasoactive infusion.

Q To keep your blood pressure up?

A That could be one of its uses.

Q According to the ID section of your note you write that she was afebrile, right?

A I see I placed a check in the afebrile box.

Q Was there any suggestion as of August 26th that the antibiotic therapy that she was receiving was ineffective in treating her condition?

A No.

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Q Was there any suggestion by anyone that you could tell as of August 26th that another medication was suggested in lieu of the ceftriaxone and Nafcillin?

A No.

Q Was there anything up until this point in time on August 26th to indicate that an infectious disease consult would have been beneficial to you for purposes of treating this child?

A No.

Q Can you tell me as a general question, what are the clinical symptoms of pneumonia in a four-year-old child?

MR. : There are different kinds of pneumonia; there are different kinds of children; there are different stages. You can ask him what the clinical signs of pneumonia were in this child, although he has already told you.

Q Can you tell me what are the general clinical symptoms that you observe as a physician in a child with pneumonia?

A Fever, cough, sometimes sputum

production, sometimes chest pain, oxygen requirement, or respiratory distress.

Q Is abdominal pain a symptom that you would associate with a sign of pneumonia?

A It can be.

Q I would like you to turn, please, to page 48. At the top of the page, do you know the name of the individual who wrote that note? It's a continued note.

A It appears to be , .

Q Is that a physician?

A Dr. is one of the fellows

at

Q Do you know why Dr. was testing for Candida and Trichophyton and also PPD?

A Yes.

Q Why?

A Because Candida and Trichophyton are commonly used as agents to test -- to test the patient's immune system to see if it will react or not react to the placement of the PPV.

Q The results of those tests, what did that indicate?

A I would have to look forward. Usually those tests are read in 24 to 48 hours after placement.

MR. : We are beyond the

point where the doctor was involved with her care here. Do you want him to go through each page of a 2-inch-high chart?

Q During the time that you were treating , did you learn the results of those tests that were done by Dr. ?

A If those were placed on the 26th, they would have been read on the 28th or 29th when my tour of time with the patient had past.

Q Turn, please, to page 52. Is this Dr. 's note for August 26th?

A It appears to be same.

Q Towards the bottom of the page under the ID section, Dr. discusses various things, including a T-max of 102 at one point, correct? It says, "Yesterday T-max of 102"?

A That would refer to the 22nd.

Q "Cultures sent; blood cultures from August 19 through August 25 negative to date," correct?

A That's what it says.

Q Also it says, "Pleural fluid culture negative," correct?

A Yes.

Q Was there any clinical significance to you about the blood cultures being negative and the pleural fluids being negative?

A Not necessarily.

Q At this point the patient was still sedated and paralysed?

A Dr. 's note notes sedation and paralysis, yes.

Q Under the plan he -- it's a he, correct?

A It's a she.

Q Thank you.

-- writes "bronchoscopy on Monday" and then underneath "supervised by Dr. ," correct?

A Yes.

Q What was that you were supervising?

A I am not sure I understand the question. Dr. is a fellow and I am the attending of record.

Q Were you present during Dr. 's examination of the patient on August 26th?

A I have no specific recollection but it was usual and customary for me to be present during rounds. These notes summarize those findings.

Q Can you turn, please, to page 57,

your August 27th note. The patient is on a ventilator at that point, correct?

A Yes.

Q She is febrile with a maximum temperature of 101.4 according to your note?

A I would have to refer to the nurse's note.

Q Just according to your note.

A It's T-max 101.4.

Q Under "Procedures" it says,

"chest tube," correct, at the bottom of the page?

A Correct.

Q Does that refer to an additional chest tube, or are you referring back to the one that was done days earlier?

A I believe that refers to the

chest tube that we are discussing on the 26th that Dr. was able to evacuate the small pneumothorax, the procedure you read a few minutes ago.

Q You write, "Breath sounds improved on left," with an exclamation point, correct?

A Correct.

Q "Still remains febrile; pneumothorax evacuated yesterday morning; will plan bronchoscopy today for l0 feeds after procedure," correct?

A Correct.

Q How had her breath sounds improved from the day before or from prior examinations?

A I have no specific recollection,

but I have that in my note that they improved.

Q Doctor, the fact that she was still febrile now eight days into her hospital admission, what did that signify to you?

A That she still has fever.

Q Did you have an opinion as to why she still had any type of infection that was ongoing at that time?

A Not necessarily.

Q Did you form any opinion as of August 27th as to whether the pneumonia she was experiencing was viral in nature?

A Not necessarily.

Q Did you form any opinion as of August 27th as to whether was experiencing some form of bacterial pneumonia?

A We were treating her for same.

Q Can you turn, please, to page 65. This is your note dated August 28th?

A That's correct.

Q The patient is still on a

23 respirator, correct?

24 A Correct.

25 Q As of that note, that morning you

2 wrote that she was afebrile, correct?

3 A Correct.

4 Q And she had a maximum temperature

5 of 100.7?

6 A Correct.

7 Q Would you consider that to be a

8 low-grade temperature?

9 A No.

10 Q You write in your comments,

11 "Bronchoscopy yesterday; lavage sent; will

12 decrease PEEP to 5 AM"; is that right?

13 A Correct.

14 Q And that refers to the ventilator

15 sets?

A Correct.

Q And you wrote "discontinue NMB."

That would be neuromuscular blockade?

A Correct.

Q And add 2 IBC's of packed red blood cells?

A Correct.

Q Maximize DA O2 oxygen delivery?

A Agreed.

Q And then, in-line sweeps to

provide Lasix to balance ins and outs, correct?

A Correct.

Q Drawing your attention to your respiratory section on the same note, the upper chest tube, this drained 55 cc's over a 24-hour period?

A Correct.

Q And the interventional lower CT drained 51 cc's also within a 24-hour period of time?

A Yes.

Q And that is on a different day; am I correct?

A I'm sorry. I don't understand your question.

Q Sure. There are two chest tubes that she has in her at this time, correct? She has an upper tube and a lower tube. They were referring to each tube individually in the amount of fluid that was drained from each one?

A Correct.

Q Had you formed any opinion as to

her progress on August 28th?

A I have no specific recollection of same.

Q Is there anything in your note to indicate to you as you sit here now what her progress was in comparison to prior days?

A Her fever is gone. Her white count has returned to a normal white count. She continues to drain fluid from her chest.

Q In your opinion was she responding to the antibiotic therapy?

A Your question is vague. The patient responded to earlier intervention.

Q Let me rephrase the question.

Was there any discussion back on August 27th or 28th as to whether this patient might develop any resistance to the antibiotics that she was receiving?

A I have no specific recollection of same.

Q Did there come a time while you were caring for this patient that the

antibiotics were changed from the ceftriaxone and the Nafcillin?

A While I was caring for the patient?

Q Yes.

A No.

Q After completing the PICU service, after August 28th, did you learn from any physician that was caring for that her antibiotic therapy was changed?

A I have no specific recollection of same.

Q Can you turn, please, to page 69. This is the second page of Dr. 's note for August 28th, timed at 10:40 A.M. Did I read that right?

A Yes.

Q And the second page under ID, culture results, can you read for me what she has written?

A I hope I can read Dr. 's writing, but it appears to read "Candida" and the results are pending.

Q Please continue.

A Influenza A, with a negative sign after it; Borrelia, with a pending surrounding

it; "GS," which stands for Gram stain, negative at 24 hours/no organism; "RSV," which is an abbreviation for respiratory syncytial virus, negative.

Q What do those tests suggest to you as their results are reported here, if anything?

A Suggest that Influenza A and RSV

antigen tests are negative and the other ones are pending.

Q If this patient was responding to the therapy that she was already receiving, what was the reason for continuing to test for the different cultures?

MR. : I am going to object to that.

MR. OGINSKI: I will rephrase the question.

MR. : The ones that were pending were pending for awhile.

MR. OGINSKI: Withdraw the question.

Q What was the reason for testing for legionella, influenza, RSV, and the other

tests that were noted?

A Those are done after a bronchoscopy. They are routine cultures that are done following a bronchoscopy.

Q And you are referring to all of these six tests that are noted?

A I would have to look at the specific tests that Dr. checked off, but those are the usual tests that are run off after a bronchoscopy.

Q Do you know Dr. ?

A The surgeon Dr. ? Yes, I do know Dr. .

Q Did you have any conversation with Dr. at any time while was a patient at ?

A No specific recollection of same.

Q Did you have any conversation with Dr. at any time after he had performed surgery on on September 6, ?

A I have no recollection of same.

Q Did you learn from any physician at that during the

procedure that Dr. performed on September 6th that various complications arose during the procedure?

A I have no recollection of same, but I noted, in reviewing the chart with my attorney to determine the areas that I participated in, Dr. 's description.

Q When you would come off -- is that the right term, "coming off service" and another colleague going on service as the attending in the PICU?

A Yes.

Q When you were going off service, was it Dr. who then came on service to take over the duties that you had?

A Correct.

Q Did you have any conversations with him about ?

A I have no recollection but it is usual and customary for us to go through each patient in detail.

Q Was there anything up until August 28, to suggest to you that this patient was suffering from an atypical

pneumonia?

A No; not necessarily.

Q When you say "not necessarily," can you be more specific?

A No.

Q Are you licensed to practice medicine in the State of ?

A I am.

Q And you were licensed in ?

A Yes.

MR. : If this was

and he was licensed in --

Q Has your license to practice

medicine ever been suspended or revoked?

A No.

Q Have your privileges to practice

at any hospital ever been suspended or

revoked?

A No.

Q In the year , what hospitals

were you affiliated with?

A Medical

Center.

Q Any others?

A No.

Q As part of the publications that you participated in over the years, have you published any articles or abstracts in any field of medicine related to the diagnosis and treatment of pneumonia in children?

A No.

Q Do you currently hold any titles at the Medical Center?

A We don't have any titles.

Q Are you an attending physician?

A Attending.

Q Do you hold any other titles or positions?

A Assistant Professor of Pediatrics at College of Medicine.

Q You performed your fellowship in critical care pediatrics at ?

A That is correct.

Q Do you recall having any conversation with any physician about the need to perform cold agglutinin tests at any time after you last saw and treated on

25 August 28th?

2 A No.

3 Q Did anybody to your recollection

4 suggest to you the performance of cold

5 agglutinin tests from August 19th when the

6 child was first admitted to the hospital up

7 until August 28th when you last saw and

8 treated her?

9 A No.

10 Q I want you to assume that

11 contained within the hospital record it states

12 that the cold agglutinin test that was done

13 was positive. Assuming that fact to be true,

14 do you have any opinion as you sit here now as

15 to whether that test also would have been

16 positive if it had been performed and tested

17 when she was admitted to the hospital in or

around August 19th?

MR. : I am objecting. That's highly speculative. I am not going to allow that type of hypothetical question at a deposition.

MR. OGINSKI: I am entitled to probe his experience and his knowledge, and I suggest that is a fair question and I am --

MR. : No, it's not a fair question.

MR. OGINSKI: It is. I am just asking whether you have an opinion. Let me rephrase the question.

Q Do you have an opinion as to whether a cold agglutinin test, if it had been performed shortly after was admitted to on August 19th, whether it would

have been positive in light of the findings that it turned out to be positive after August 31st?

MR. : Objection to the form of the question. It's an impossible question to answer.

MR. OGINSKI: No. That --

MR. : I will let him answer over my objection.

A I have no opinion.

MR. OGINSKI: Thank you, doctor.

(Time noted: 12:13 P.M.)

A C K N O W L E D G M E N T

STATE OF NEW YORK)
:ss
COUNTY OF)

I, , M.D., hereby certify that I have read the transcript of my testimony taken under oath in my deposition of August 13, ; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

Signed and subscribed to before me, this day of , 2002.

_____

25 Notary Public

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C E R T I F I C A T E

I, , hereby certify that the Examination Before Trial of , M.D. was held before me on August 13, ;

That said witness was duly sworn before the commencement of his testimony;

That the within testimony was stenographically recorded by myself, and is a

true and accurate record of the Examination Before Trial of said witness;

That the parties herein were represented by counsel as stated herein;

That I am not connected by blood or marriage with any of the parties. I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of August, .
