

ORIGINAL

1 State of Ohio,)
2 County of Cuyahoga.) SS:
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4 IN THE COURT OF COMMON PLEAS

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6 Timothy J. Butti, Administrator)
7 of the Estate of Megan Elizabeth)
8 (Jones) Butti, deceased, et al.,)
9 Plaintiffs,)
10 vs.) Case No. 237,214
11 MetroHealth Medical Center,) Judge Villanueva
12 et al.,)
13 Defendants.)

14 - - -

15 Videotaped deposition of Wayne R. Burrows, M.D.,
16 called by the plaintiffs for oral examination, pursuant to
17 the Ohio Rules of Civil Procedure, taken before
18 Kathleen Cawley, Court Reporter and Notary Public in and
19 for the State of Ohio, pursuant to notice, at the offices
20 of Weston, Hurd, Fallon, Paisley & Howley, 2500 Terminal
21 Tower, Cleveland, Ohio 44115, on Thursday, May 27, 1993,
22 commencing at 1:37 p.m.

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25

I N D E XWitness:

Cross

Wayne R. Burrows

by Mr. Pieper

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- - -

E X H I B I T SPlaintiffs'Mark'd

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1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Timothy Pieper, Esq.
4 Law Offices of Timothy Pieper
5 139 Herrick Avenue East
6 Wellington, Ohio 44090

7 On behalf of the Defendants:

8 Stephen D. Walters, Esq.
9 Weston, Hurd, Fallon, Paisley & Howley
10 2500 Terminal Tower
11 Cleveland, Ohio 44115

12 Also Present:

13 Nicholas Del Re, Video technician
14 Timothy J. Buttie
15 Laura Jones

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17 (Plaintiffs' Exhibits
18 1 thru 5 marked for
19 identification.)

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PROCEEDINGS

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2 THE NOTARY: I am Kathleen Cawley,
3 court reporter and Notary Public employed by the
4 firm of Fincun-Mancini Court Reporters. We are at
5 the law offices of Weston, Hurd, Fallon, Paisley &
6 Howley, Suite 2500 in the Terminal Tower in
7 Cleveland, Ohio, on Thursday, May 27, 1993, to take
8 the deposition of Dr. Wayne Burrows in the matter of
9 Timothy Butti, Administrator of the Estate of
10 Megan Elizabeth Butti, deceased, et al, versus
11 MetroHealth Medical Center, et al, pending in the
12 Court of Common Pleas, Cuyahoga County, Case No.
13 237,214.

14 Mr. Nick Del Re is the Video Technician
15 today who will record the testimony by videotape.

16 Will counsel please state their appearances?

17 MR. PIEPER: Timothy Pieper for the
18 plaintiffs, along with me, Mr. Timothy Butti and
19 Mrs. Laura Jones.

20 MR. WALTERS: And I'm Stephen Walters
21 on behalf of the defendants.

22 THE NOTARY: Doctor, will you raise
23 your right hand, please?
24
25

1 WAYNE R. BURROWS, M.D.
2 of lawful age, being first duly sworn, as hereinafter
3 certified, was examined and testified as follows:

4 MR. PIEPER: Let the record reflect
5 that this deposition today is held per the agreement
6 of the counsel. And I take it that all objections
7 as of time, date, and so forth regarding the
8 deposition are hereby waived?

9 MR. WALTERS: Time, date and
10 everything are waived certainly. I'm not sure what
11 the "so forth" is, but, yeah, we're here.

12 MR. PIEPER: Any objections
13 whatsoever to the deposition are hereby waived?

14 MR. WALTERS: To the deposition going
15 forward, no.

16 MR. PIEPER: Okay.

17 MR. WALTERS: I might make one
18 mention, and I am not going to object to the
19 deposition going forward, but some time ago we had
20 requested a copy of the videotape that was taken by
21 Mr. Butti on February 8th, and you sent me a tape.
22 The tape you sent me is has a total length of about
23 five minutes, the first minute of which is in the
24 labor and delivery room, the last four minutes or so
25 are in the operating suite. The tape ends when

1 someone -- a woman says to Mr. Butti, "You can see
2 better if you move here."

3 MR. PIEPER: Correct.

4 MR. WALTERS: And that's the end of
5 it. That's the whole tape?

6 MR. PIEPER: Yeah, I object to
7 counsel's statement at this point in time, but --
8 and put a motion to strike the following. But in
9 answering the question, that is the full videotape.
10 You have everything we have.

11 MR. WALTERS: Fine.

12 CROSS-EXAMINATION

13 By Mr. Pieper:

14 Q Okay. Now, Doctor, could you state your full name
15 for the record and spell your last name, please?

16 A Certainly. Wayne Richard Burrows, B-u-r-r-o-w-s.

17 Q And, Doctor, you've had your deposition taken
18 before, haven't you?

19 A Yes.

20 Q And same thing would go, I'm sure, as went then.
21 We'll need you to verbalize your responses to my
22 questions. I will be asking you various questions
23 regarding this matter throughout this deposition.

24 If at any time you don't understand my
25 question, you will need to let me know, and I can

1 rephrase it for you. If you answer, I'll take it
2 that you understood the question and answered
3 accordingly, fair enough?

4 A Yes, sir.

5 Q Okay. Thank you.

6 What documents have you reviewed today to --
7 in your preparation for this deposition?

8 A We reviewed the chart from Metro Hospital from
9 Ms. Jones' admission in February of last year.

10 Q Uh-huh. Any other records that you reviewed in
11 preparation, not just today, but previous to this
12 point?

13 A I reviewed Megan's records, as well, previously.

14 Q Okay. Any other records or documents?

15 A None that I can think of.

16 Q Videotapes? Audiotapes?

17 A No, sir, I have not.

18 Q Okay. I previously requested a couple documents
19 from counsel. I have received some of them. One
20 document I requested was any and all contracts or
21 agreements that you had with MetroHealth Medical
22 Center.

23 A I didn't have any, sir.

24 Q Okay. You don't have any written contracts, written
25 agreements or anything of that nature?

- 1 A No, sir.
- 2 Q Okay. Do you have a written contract or agreement
3 with anyone regarding your working for MetroHealth
4 that sets forth your duties, responsibilities, and
5 so forth?
- 6 A No, sir.
- 7 Q Okay. Do you have any drafts of the operative
8 report that you dictated in March of '92?
- 9 A Drafts?
- 10 Q Yes, do you have any drafts of it? And I have what
11 purports to be an operative report in the record.
12 Do you have any drafts of that particular report?
- 13 A That's the one that I completed following the --
- 14 Q Right. Uh-huh.
- 15 A No, sir, there are no drafts.
- 16 Q Okay. That's -- that is it, then, you say?
- 17 A That is it.
- 18 Q Okay. I've received your CV from Attorney Walters.
19 At what date were you licensed to practice law?
- 20 A I was never --
- 21 Q I'm sorry. Licensed to practice medicine. Excuse
22 me.
- 23 A Okay. I'm trying to think. Excuse me a second. I
24 believe my first license was in Georgia in 1983.
- 25 Q Okay. You completed medical school in '82; is that

- 1 correct?
- 2 A Yes.
- 3 Q Okay. What was your class standing at that point?
- 4 A I honestly don't recall, Mr. Pieper.
- 5 Q Top half? Bottom half?
- 6 A I'm sure it was the top half, but I don't know
- 7 where.
- 8 Q Okay. You believe you were licensed to practice in
- 9 '83?
- 10 A To the best of my recollection.
- 11 Q And what state was that with?
- 12 A Georgia.
- 13 Q Okay. Where did you go from there? From medical
- 14 school in '82, you went to where?
- 15 A I did a residency in obstetrics and gynecology at
- 16 Emory University affiliated hospitals, basically
- 17 Grady Hospital and some of the other Emory
- 18 Hospitals.
- 19 Q Did you have any particular emphasis in that
- 20 residential -- residency program?
- 21 A No formal emphasis. It was OB/GYN.
- 22 Q Okay. But that was -- you didn't -- that was not
- 23 the type of program where you could emphasize any
- 24 certain area of OB/GYN?
- 25 A No, sir.

1 Q What type of rotations did you have or residency
2 with Emory University?

3 A There was three hospitals in the system, and I'm not
4 sure I understand what you mean by what type of
5 rotations.

6 Q What sort of subjects did you study as part of the
7 residency?

8 A We rotated through general obstetrics, benign
9 gynecology, emergency gynecology, and gynecologic
10 oncology.

11 Q Did you ever study fibroids, fibroid tumors in the
12 uterus?

13 A (Witness nods head.)

14 Q You will need to verbalize.

15 A Yes, sir. Sorry.

16 Q You went to a fellowship at MetroHealth Medical
17 Center in 19 -- back up a second. You were first
18 employed in the -- with the U.S. Air Force in 1986;
19 is that correct?

20 A Yes, sir.

21 Q Okay. How did you -- how did that employment come
22 about?

23 A Through a scholarship fund; they paid my way through
24 medical school, and I owed them four years so --

25 Q And what -- you were in the OB/GYN program there?

- 1 A Yes, sir.
- 2 Q Okay. What were your primary responsibilities,
3 let's say, the first year you were at the
4 U.S. Air Force?
- 5 A I'm sorry. I am not sure I'll answer the question
6 properly. Could you be more specific?
- 7 Q During your first year with the U.S. Air Force, what
8 were your primary responsibilities?
- 9 A Practice of obstetrics and gynecology.
- 10 Q I understand that. But what was your emphasis in
11 that area? What did you primarily do?
- 12 MR. WALTERS: He's assuming that you
13 had an emphasis.
- 14 A Oh, no. I was responsible for general obstetrics
15 and gynecology care.
- 16 Q Okay. And what did that encompass?
- 17 A The same sort of things that benign gynecology, the
18 gynecologic oncology, some endocrinology and
19 obstetrics.
- 20 Q Did you spend most of your time in the gynecology
21 and/or the obstetrical end of the practice?
- 22 A Probably majority of the time in obstetrics.
- 23 Q What -- you have had -- you birthed children, I take
24 it, back in the U.S. Air Force days?
- 25 A Yes, sir.

- 1 Q Did you ever birth a child who had a fibroid in the
2 lower uterine segment?
- 3 A Whose Mom had a fibroid?
- 4 Q Yes.
- 5 A I'm sure I have.
- 6 Q Okay. Do you specifically recall that?
- 7 A Not off the top of my head, no. Fibroids are
8 common, however, and I'm sure I've had the
9 experience before.
- 10 Q Okay. But you can't specifically recall it right
11 now.
- 12 A Not a specific case.
- 13 Q I see. What occasioned you leaving the U.S. Air
14 Force and going on to MetroHealth?
- 15 A The decision to do a maternal/fetal medicine
16 fellowship.
- 17 Q That was in perinatology? Is that another word for
18 it?
- 19 A Yes.
- 20 Q And with the perinatology, is that -- can you
21 explain what that is, that specific designation?
- 22 A It's a subspecialty that involves the care of
23 high-risk pregnancies.
- 24 Q That's also in the college of obstetrics and
25 gynecology?

1 MR. WALTERS: The college, did you
2 say?

3 MR. PIEPER: Uh-huh.

4 A I am not trying to be wise. Are you --

5 Q That's an area within the board?

6 A It's a separate board.

7 Q It's a subspecialty, though?

8 A Right. Right.

9 Q Did you feel that you couldn't get the appropriate
10 training at the U.S. Air Force to go to receive your
11 perinatology?

12 A The U.S. Air Force doesn't have a perinatology
13 program. The army has one if you desire to stay in
14 the military, and I did not so desire so --

15 Q Did you feel that you had enough boards or could get
16 enough boards during the military -- could get
17 enough deliveries to take your perinatology board if
18 you would have stayed with the U.S. Air Force?

19 A I would not have been eligible without the
20 fellowship.

21 Q So when you went to the MetroHealth Medical Center,
22 what was your agreement with them as to your duties
23 and responsibilities?

24 A My understanding was that I was to be trained in the
25 specialty of high-risk obstetrics or perinatology.

1 Q And, again, there was nothing in writing as to that?

2 A No, sir.

3 Q Okay. You've received what is called a complaint
4 and also an amended complaint with this lawsuit.

5 A Yes, sir.

6 Q And in the amended complaint there was a statement
7 on paragraph 3 --

8 MR. WALTERS: I don't have it in front
9 of me if you want to take the time, or you can read
10 it and hand it over me, however you want to do it.
11 I'm not sure I brought it down with me.

12 Q In paragraph No. 3 --

13 MR. WALTERS: Which of the two, the
14 complaint or the --

15 MR. PIEPER: Amended complaint.

16 MR. WALTERS: Go ahead. I'll listen
17 to you as I am looking.

18 Q The statement and the allegation in the complaint
19 states that "Plaintiffs further state that
20 Defendants Wayne R. Burrows and Juan Martinez, M.D.,
21 at all times pertinent hereto, contracted with
22 MetroHealth Medical Center and/or were employees of
23 MetroHealth Medical Center." And then down at the
24 end of the paragraph it states that "...and at all
25 times were acting within the scope of their

1 employment."

2 Now, in your answer to the same -- in answer
3 to the amended complaint you state, essentially that
4 you, as a defendant, and Juan Martinez, were
5 licensed physicians and "This answering defendant
6 was employed by the MetroHealth Medical Center to
7 teach, to do research and render care to the
8 medically indigent.

9 A Yes.

10 Q Okay. Now, in this particular instance,
11 Mrs. Butti -- prefer that to Mrs. Jones, as you
12 might know her, as Mrs. Butti, also -- she was not
13 medically indigent, was she not?

14 A Not that I'm aware of.

15 Q No, she was not. She was a private patient?

16 A Right.

17 Q Okay. What is your understanding with your
18 agreement with MetroHealth Medical Center when this
19 comes about? Is it your understanding that that's
20 one of your responsibilities to treat a private
21 patient?

22 A Yes, sir.

23 Q Okay. Is this within the scope of your
24 responsibility, of your duties, as you understand
25 them?

1 A You keep mentioning responsibilities. Are you using
2 it the term in a way I might not be familiar with
3 it?

4 Q You have been well versed, Doctor. I'm using the
5 term --

6 MR. WALTERS: I'll object to the
7 prefatory statement. Maybe I can interject. I'm
8 not sure where you're going with this line, but you
9 understand -- and, of course, this is not something
10 that would go to the jury, but MetroHealth is
11 self-insured, and --

12 MR. PIEPER: I understand.

13 MR. WALTERS: -- and there's full
14 coverage for him. There's no question about that.
15 I don't know if that helps you at all but --

16 MR. PIEPER: That does. My point is
17 this: Within the scope of responsibility -- and I
18 will ask counsel, is it stipulated, then, that he
19 was acting within the scope of his responsibility as
20 an employee of Metro?

21 MR. WALTERS: To be perfectly
22 accurate, as best I can, in a situation of a private
23 patient, the full-time staff members render
24 treatment to those patients not as employees of
25 Metro, but as any private physician -- for example,

1 Dr. Siew, who was the previous OB for Mrs. Jones --

2 MR. PIEPER: I understand.

3 MR. WALTERS: -- renders care to a
4 patient, it has nothing to do with the existence of
5 full coverage under the self-insurance program with
6 Metro. Now, whether or not that applied in this
7 case because Dr. Burrows was a fellow, I don't know.
8 He and I have never talked about that aspect of it.

9 MR. PIEPER: I understand. What
10 you're saying is, though, that he's covered?
11 There's no question of the coverage -- insurance
12 coverage for him?

13 MR. WALTERS: There's absolutely --
14 absolutely not.

15 MR. PIEPER: Whether he was under the
16 scope or responsibility --

17 MR. WALTERS: It wouldn't matter.

18 THE WITNESS: This was my
19 understanding, too.

20 MR. WALTERS: It wouldn't matter

21 MR. PIEPER: Okay. That's fine.

22 By Mr. Pieper:

23 Q Now, you were a visitant; is that correct?

24 A Yes, sir.

25 Q Okay. Could you explain what a visitant is?

- 1 A Yes, sir, you stay in the hospital during the time
2 of your call. You visit, if you will. That's where
3 the term came from, I believe.
- 4 Q Okay. And I'm handing you what is marked as
5 Plaintiff's Exhibit No. 1, and could you identify
6 that for me, please?
- 7 A It's a call schedule.
- 8 Q Okay. That's your scheduling for the month of
9 February '92; is that correct?
- 10 A Yes, sir.
- 11 Q Okay. And you'll see by February 8th there is a
12 notation that you are the visitant?
- 13 A Yes, sir.
- 14 Q Okay. What were your duties and responsibilities on
15 that day, as you understood them?
- 16 A Excuse me. The previous statement that you read
17 about providing teaching --
- 18 Q Uh-huh.
- 19 A -- providing care for not just obstetrics patients,
20 in that case, but gynecologic patients as well and
21 teaching residents, and if we had any medical
22 students, teaching them.
- 23 Q On that particular day, you're saying?
- 24 A That was the general responsibility of being a
25 resident.

- 1 Q You'll note that there is no -- it says "L & D" up
2 at the top, "a.m. and p.m." I'm taking -- that's
3 labor and delivery?
- 4 A Yes.
- 5 Q Okay. There are no L & D doctors listed on that
6 day, are there?
- 7 A No, that was a weekend.
- 8 Q Okay. And that --
- 9 A So we wouldn't have a day coverage and a night; that
10 would be an all day and night.
- 11 Q Generally, on nonweekends there are doctors who have
12 this special designation of labor and delivery room?
- 13 A Right. That's correct.
- 14 Q Okay. What were their duties and responsibilities,
15 as you understand it?
- 16 A They were responsible for overseeing patient care on
17 labor and delivery during those times.
- 18 Q Did your responsibilities overlap with labor and
19 delivery responsibilities on February 8th?
- 20 A Yes, sir.
- 21 Q Okay. So you were to cover the labor and delivery
22 room, also?
- 23 A Yes.
- 24 Q Were there any other doctors -- nonresident doctors
25 present to assist you on that date, on February 8th,

1 in the morning or the afternoon specifically?

2 MR. WALTERS: I didn't mean to talk
3 over you, and I apologize. When you talk about
4 nonresident doctors, you mean physicians who are
5 something other than residents in training; is that
6 what you mean?

7 MR. PIEPER: That's what I'm saying.

8 A No, sir, none to assist me.

9 Q Okay. You were the only one --

10 A In labor and delivery.

11 Q I'm sorry?

12 A Not in labor and delivery, no.

13 Q Okay. So you were the only one present to handle
14 the labor and delivery on that day for MetroHealth?

15 A Yes, sir.

16 MR. WALTERS: The only active staff
17 member, I think it's understood?

18 THE WITNESS: Right.

19 Q Okay. Now, let's take a Monday -- you'll see the --
20 actually, the Friday before, on the 7th -- February
21 7th, you will see a Dr. -- actually, initials "H"
22 there, which seems to indicate a Dr. Hendriks --

23 A Yes, sir.

24 Q Okay -- for labor and delivery. Okay. What
25 would -- let's say there were a patient that came

1 into MetroHealth in active labor. You'll see
2 Dr. Stewart's listed as a visitant. Who would
3 handle that patient? Would it be Dr. Hendriks or
4 Dr. Stewart?

5 A It would depend upon the time. The a.m. and p.m.
6 were morning and afternoon coverage during the day.
7 And then in the evening, when the call schedule
8 started, it would have been Dr. Stewart.

9 Q Okay. So that on -- where it says a.m. and p.m. for
10 labor and delivery, what time period would that be?

11 A I don't recall exactly, but roughly 8:00 in the
12 morning until noon, and maybe noon until 5:00,
13 something of that nature.

14 Q Okay. Were there more doctors -- nonresident
15 doctors available during the weekdays than there are
16 during the weekends at, let's say, a 2:00 delivery
17 time?

18 A Yes, sir.

19 Q Okay. Now, you've stated you also did teaching at
20 MetroHealth Medical Center. What did you teach,
21 what specific courses?

22 A There's a course in obstetrics and gynecology, and I
23 had some specific lectures that I gave in the
24 course; I believe they were on breach presentation
25 and multiple pregnancy. They may have changed over

1 the time I was there. Those were the ones that I
2 remember at this time.

3 Q Okay. Any other courses that you taught?

4 A The medical students rotated in the labor and
5 delivery area with patient care, and we would try to
6 involve them in situations on labor and delivery.

7 Q Did you have any particular emphasis with
8 MetroHealth Medical Center -- and teaching
9 responsibilities I'm referring to?

10 A Yes, I tried to --

11 Q Within obstetrics and gynecology, any particular
12 emphasis?

13 A Yes, I tried to emphasize the maternal/fetal
14 medicine or perinatology aspects.

15 Q Okay. How about sonograms?

16 A I didn't teach those very frequently. The
17 ultrasound unit itself was -- it was not amenable to
18 having students rotate through it, so there wasn't a
19 lot of teaching in the ultrasound unit.

20 Q You had duties and responsibilities regarding --
21 taking sonograms for MetroHealth Medical Center?

22 A Yes.

23 Q Okay. How much of that time did -- was -- how much
24 of your time was involved taking sonograms?

25 A Oh, that varied a lot, but I'd say roughly an

1 average of two to two-and-a-half days a week.

2 Q Okay. So it would be close to the majority of your
3 time doing sonogram work?

4 A At times it was. Sometimes it -- sometimes you go a
5 whole month without having an assignment there. But
6 when you did have assignments there, you spent a
7 considerable amount of time in the ultrasound unit.

8 Q Okay. Overall, week in and week out, was most of
9 your time spent in the sonogram area?

10 A Again, sir, that varied a lot depending on what you
11 were doing in the particular month. I spent a
12 considerable amount of time there, if that will help
13 answer the question.

14 Q Uh-huh. What were your primary responsibilities --
15 or let me ask you: What was your schedule the
16 morning of February 8, 1992?

17 A I didn't have a formal schedule. I came on and
18 spoke with Dr. Stewart about the patients who were
19 present on labor and delivery.

20 Q Okay. What time did you come into the hospital?

21 A I really don't recall, Mr. Pieper.

22 Q What time would you have normally come in, knowing
23 that your schedule as a visitant on February 8th --

24 A I know what you're asking. I really don't recall
25 the exact time. It was some time in the morning,

1 and I don't remember the exact time. Probably 8:00
2 or 9:00.

3 Q Okay. You spoke with Dr. Stewart?

4 A Yes, sir.

5 Q Okay. What was Dr. -- what was your conversation
6 involving Dr. Stewart as to Mrs. Jones, if any?

7 A He told me that Dr. Siew was sending a patient from
8 Elyria who had ruptured membranes and was preterm,
9 that's the best of my recollection of it.

10 Q Okay. When do you first remember becoming involved
11 with Laura Jones and her case?

12 A Shortly after that conversation with Dr. Stewart,
13 one of the nurses came and said that the patient
14 being sent from Elyria was present.

15 Q And what do you recall doing from there?

16 A I believe we finished up talking about the patients
17 who were present in labor and delivery, and then I
18 went over to meet Mrs. Jones -- Mrs. Butti.

19 Q And did you prepare -- or did you give her an
20 examination at that point in time?

21 A Yes, sir.

22 Q And is that contained on page 8 of --

23 A This is your Exhibit 2, I believe.

24 Q Yes. Okay. First -- excuse you -- excuse me.

25 Handing you Plaintiff's Exhibit No. 2, could you

1 identify that for the record, please?

2 A This is Ms. Jones' chart from her admission at
3 MetroHealth.

4 Q Okay. And page 8, what does that contain?

5 A An admission note on the top of the page and another
6 shorter note at the bottom of the page both written
7 by me.

8 Q And what was the primary emphasis or the gist of
9 what your examination was -- the results of your
10 examination of Mrs. Jones?

11 A My assessment after the examination?

12 Q Uh-huh.

13 A Intrauterine pregnancy at 33 weeks with premature
14 ruptured membranes ruptured prior to the onset of
15 labor. Footling breech, fetal presentation --

16 THE NOTARY: I'm sorry.

17 A Footling breech and preeclampsia, which I was
18 concerned might be severe preeclampsia.

19 Q Okay. That was never confirmed?

20 A No, I can't honestly say I confirmed the diagnosis.
21 It was sufficiently evident for me to act on it; and
22 that I had found a lower uterine segment leiomyoma
23 or fibroid.

24 Q This note was written at 9:45. When did the
25 examination take place? Do you have any

1 recollection of how many minutes before that time
2 period --

3 A No, sir, I really don't know.

4 Q Is it safe to say it took place a short after -- you
5 wrote this within a short time after the
6 examination?

7 A That's reasonable.

8 Q Now, you have made mention of an ultrasound single
9 footling breech and then it says, "three centimeters
10 right of midline" -- "fibroid three centimeters
11 right of midline, six centimeters." Do you see that
12 where it's noted?

13 A Yes.

14 Q Okay. How did you come to that conclusion?

15 A By the ultrasound examination I did at that time.

16 Q Okay. You did an ultrasound on Mrs. Jones?

17 A Yes, sir.

18 Q Okay. And how long did the ultrasound take?

19 A Oh, I doubt it took more than five minutes, but I
20 don't recall exactly.

21 Q Okay. So this was more of just a preliminary
22 ultrasound?

23 A It was confirming the data that I received from her
24 transferring physician.

25 Q Did this confirm the data you received?

- 1 A Basically, yes.
- 2 Q Okay. You say that the centimeter -- or that the
3 fibroid is six centimeters. Do you see where that's
4 noted?
- 5 A That was my approximation.
- 6 Q Okay. I'll hand you Plaintiff's Exhibit No. 5, and
7 do you recall seeing those records?
- 8 A I'm reasonably certain these were the records that
9 were brought with the patient, yes.
- 10 Q Okay. From Elyria Memorial Hospital?
- 11 A Right.
- 12 Q Okay. Do you recall viewing these?
- 13 A Again, it's been a long time. I don't recall these
14 specifically, but it appears to be the same records
15 that I saw at that time.
- 16 Q You'll note that there is an ultrasound
17 examination -- actually, two of them, and there
18 appears to be a reading from 12-17-91?
- 19 A Yes.
- 20 Q And you see where it's noted that, down in the
21 clinical information, identifies a uterine fibroid?
- 22 A Yes.
- 23 Q And what is the size that is stated of that fibroid?
- 24 A They state nine by ten-and-a-half centimeters.
- 25 Q Okay. That's on 12-17-91?

- 1 A That's right.
- 2 Q And then you'll see another sonogram reading dated
3 1-20-92?
- 4 A Yes.
- 5 Q And you'll note on the second page of that
6 particular document the size of the fibroid is noted
7 as being what size?
- 8 A Twelve by ten -- excuse me. 12.1 by 10.1 by 7.8
9 centimeters.
- 10 Q Okay. That's not the same as a six centimeter
11 reading?
- 12 A Certainly could be. Certainly could be. I did not
13 do three-dimensional measurements on it, and the
14 6 centimeter and the 7.8 centimeter diameters are
15 sufficiently close that if I hadn't done formal
16 measurements, that's probably the view I was looking
17 at.
- 18 Q This reading gives you an indication of a larger
19 size fibroid, does it not?
- 20 A I'm sorry. That's what they measured the fibroid
21 as. I didn't formally measure it. I was trying to
22 approximate a size.
- 23 Q I understand. But did you go into this operation
24 thinking it was a six meter -- six centimeter
25 fibroid or 12 by 1, 10 by 1, 7.8 centimeter fibroid?

1 MR. WALTERS: I'll object. The
2 witness in a previous answer two questions ago
3 indicated that this states three dimensions. He
4 only approximated one. And you've given him only an
5 either/or option to answer the question.

6 If you can answer it, go ahead. I think
7 it's a little unfair.

8 A I was aware of the ultrasound report from Elyria;
9 had no reason to doubt this specific size of the
10 fibroid that was measured there; and was simply
11 confirming the fact that I saw it, and that in the
12 one view I looked at it, it was approximately six
13 centimeters without formal measurement.

14 Q If you wanted to get formal measurement, you could
15 have at that time, could you not, when you did the
16 ultrasound examination?

17 A I don't recall. The machine that we had available
18 was not the highest quality. I assume I could have,
19 yes.

20 Q But you could have if you wished? You could have --

21 A At least approximated in several dimensions if I
22 wished to.

23 Q Now, this centimeter also would give -- this
24 measurement of centimeters regarding the fibroid
25 would also give you the impression that the fibroid

1 would extend around to the posterior side of the
2 uterus, would it not?

3 A I'd have to read this again. I don't know. The
4 size wouldn't tell you that.

5 MR. WALTERS: Take a moment to read
6 it.

7 A (Witness reading document.)

8 Are you asking -- if I may, you're asking
9 specifically does the size indicate that it goes
10 posterior?

11 Q Would that -- given the size of that fibroid at that
12 point in time, would that not indicate to you that
13 that fibroid would have to extend to the posterior
14 wall of the uterus?

15 A No, that size would not indicate that, sir. It
16 could be coming out of the anterior wall of the
17 uterus and still be that size.

18 Q But you knew there was -- you knew that the fibroid
19 extended into the posterior area after you did your
20 preliminary ultrasound, did you not?

21 A I don't recall making that conclusion.

22 Q Okay.

23 MR. PIEPER: Off the record.

24 VIDEO TECHNICIAN: One moment, please.

25 (Brief recess.)

1 VIDEO TECHNICIAN: We are back on the
2 record.

3 MR. PIEPER: Could you read back the
4 last question, please?

5 THE NOTARY: The last question was:
6 "You knew that the fibroid extended into the
7 posterior area after you did your preliminary
8 ultrasound, did you not?

9 "Answer: I don't recall making that
10 conclusion."

11 By Mr. Pieper:

12 Q Do you remember a conversation with
13 Mr. and Mrs. Butti March 17, 1992, at your office?

14 A I don't recall the date, but I know we had a
15 conversation, yes.

16 Q Okay. You had a face-to-face conversation with the
17 Buttis?

18 A Yes.

19 Q Okay. Do you remember that topic coming up?

20 MR. WALTERS: Show my -- I want to
21 object for the record, and I'm going to let him
22 answer.

23 The basis for the objection is that some
24 days ago counsel sent to me two audio tapes, one on
25 the container of which had a date of March 17th, and

1 upon listening to it, it appeared to me to be a tape
2 of a conversation between Dr. Burrows on the one
3 hand and Mr. and Mrs. Butti on the other in some
4 sort of meeting.

5 The second one had a date on it of March
6 25th. And upon listening to it, I determined that
7 it appeared to be initially a call placed to
8 Dr. Burrows' former secretary Noreen, followed by a
9 call placed to Dr. Burrows at home by both
10 Mr. and Mrs. Butti.

11 The reason for my objection is that both of
12 those audio tapes were made surreptitiously. I make
13 no representation as to taking a position as to the
14 legality of that. And I object -- and I don't want
15 to keep interrupting, but I object to any questions
16 pertaining to those taped conversations.

17 Again, I'm not instructing him not to
18 answer, but I just want that on the table so that my
19 silence is not construed to be an acceptance of the
20 legality of what was done, much less the ethics.

21 MR. PIEPER: I understand.

22 Q You can answer, Doctor.

23 THE WITNESS: I'm sorry. Would you
24 mind repeating the question that Mr. Pieper asked?

25 Q I will rephrase it. I'll restate it.

1 MR. WALTERS: So I don't have to
2 interrupt, can I have a standing objection as to
3 these?

4 MR. PIEPER: So noted.

5 MR. WALTERS: I don't want to
6 to come in after each question --

7 MR. PIEPER: That's fine. So noted.

8 By Mr. Pieper

9 Q On March 17th, you had a conversation with the
10 Buttis in your office, March 17, 1992, and the
11 specific subject of the fibroid and whether it
12 extended into the posterior area of the uterus came
13 up as a topic; is that correct?

14 A I'm certain it did, sir.

15 Q You're certain it did?

16 A Yes.

17 Q Okay. Do you remember, what was your response when
18 you were asked whether you realized the fibroid
19 extended into the posterior section of the uterus?

20 A I don't recall my response. At the time of surgery,
21 I recognized that there was a posterior fibroid
22 which may or may not have been part of the one I saw
23 on ultrasound. It was also seen in Elyria.

24 Q It was also noted -- a posterior fibroid was also
25 noted in Elyria are you saying?

1 A No. I said at the time of surgery I noted a
2 posterior fibroid. It may or may not have been part
3 of the one that was noted by my ultrasound and the
4 ultrasound at Elyria.

5 Q I see. During your ultrasound examination, though,
6 you realized that the fibroid extended into the
7 posterior area?

8 A No, sir, I never did realize that on my ultrasound
9 examination.

10 Q Do you recall responding to Mr. Butti's question
11 of -- "What I'm saying is" -- this is Mr. Butti
12 talking -- "in all these sonograms and these
13 pictures, the baby's -- the baby always had plenty
14 of room, and they could localize on the fibroid and
15 then the baby, and they weren't against each other
16 in any one of the pictures."

17 You had a response, "I didn't see a
18 post-alterior fibroid on my ultrasound. I saw the
19 one that's lateral on the right. I knew there was a
20 posterior one there because you never saw an end
21 to it."

22 MR. WALTERS: Okay. I am going to
23 object. He can't possibly answer that question.
24 You clearly must have a transcript. Dr. Burrows has
25 never heard those tapes. I have heard them. He has

1 never heard those tapes. If you are going to
2 examine him on precise language of question and
3 answer, then it's your responsibility as an officer
4 of the court to point where it is, let him take a
5 look at it.

6 MR. PIEPER: I understand.

7 MR. WALTERS: And this is grossly
8 unfair. If you have such a thing -- I'm not going
9 to instruct him not to answer, but unless you can
10 show him those things, I don't believe he can
11 answer.

12 MR. PIEPER: Well, I was getting to
13 that.

14 Q But do you recall making that statement, first?

15 MR. WALTERS: Well, same objection.
16 That's --

17 A I don't know, Mr. Pieper.

18 Q Okay. Could you read where it says -- the paragraph
19 where it's noted "105"?

20 MR. WALTERS: May I just see what you
21 have handed to him before --

22 MR. PIEPER: Sure. Sure.

23 And for the record, I'd like to state the
24 tapes were provided so many days ago. You had an
25 opportunity to make a transcript; you had an

1 opportunity to review them. And what you do with
2 your time is your time.

3 MR. WALTERS: That's right. I didn't
4 want --

5 MR. PIEPER: But they were provided.

6 MR. WALTERS: That's right. And I
7 didn't want to dignify them.

8 MR. PIEPER: I will object to that
9 remark. Motion to strike.

10 MR. WALTERS: Counsel has placed
11 before the witness what appears to be a typed
12 transcript, I guess, prepared by counsel's --
13 prepared by counsel's office.

14 MR. PIEPER: Prepared by my office,
15 yes.

16 MR. WALTERS: And, Dr. Burrows, I
17 instruct you that this may be accurate, may not be
18 accurate. I don't know. It's not like a court
19 reporter's certification where they are licensed
20 to --

21 MR. PIEPER: We'll listen to the
22 tape, too.

23 MR. WALTERS: -- to say that. So I'm
24 not taking one position on the other. I just want
25 it clear what he is putting in front of you and the

1 nature of it and you can feel free to look at it,
2 read it, and to attempt an answer to his question,
3 if you can.

4 MR. PIEPER: Let me do this, also,
5 while you're reviewing that, Doctor. I'll represent
6 that this is a copy of the audio tape of the
7 March 17th conversation, and I'll play it for the
8 record.

9 MR. WALTERS: What's the purpose of
10 playing it?

11 MR. PIEPER: He can identify his
12 voice and identify it's him talking if he has any --
13 and identify that that's a statement made, if you
14 wish to --

15 MR. WALTERS: That doesn't go anywhere
16 to helping him decide whether or not he said
17 something and whether or not he was asked a specific
18 question.

19 MR. PIEPER: Well, I think it can if
20 you wish it to be played is what I am saying. I
21 have it here, and you can test the accuracy of it.

22 MR. WALTERS: It's not a question of
23 me wishing it to be played. Again, my position is
24 that this taping was done illegally. And at the
25 appropriate time, I'll call that to the attention of

1 the court.

2 But be that as it may, my only interest now
3 is that if you ask a question, that the doctor has a
4 sufficient ability and opportunity to place into
5 context where your question fits. That's all.
6 That's why I asked if you had a transcript.

7 You represent that this is an accurate
8 transcript. For purposes of your question, we'll
9 assume that that's -- that that's true. I don't
10 know whether it's true or not. And he can look at
11 that and try to answer the question. But absent
12 playing the entire tape and having him compare what
13 he hears with what's on that piece of paper, I don't
14 see that it accomplishes anything.

15 Q Well, go ahead, Doctor, and if you can answer that
16 question.

17 MR. WALTERS: Can we have this marked
18 as an exhibit?

19 MR. PIEPER: Yes, sure can.

20 MR. WALTERS: What's the last one you
21 have marked?

22 THE WITNESS: Here's a 5.

23 MR. WALTERS: That's probably the last
24 one.

25 (Plaintiffs' Exhibit

1 6 marked for
2 identification.)
3 Q I will represent to you, Doctor, that this is a
4 transcript of your March 17, 1992, conversation.
5 Could you note where it states the paragraph beside
6 No. 105?
7 A You want me to read it?
8 Q Yes.
9 MR. WALTERS: Let the record show I'm
10 not waiving any objections at this point.
11 MR. PIEPER: I understand you have a
12 standing objection.
13 A "Dr. Burrows: I didn't see a posterior --
14 post-alterior --
15 Q Okay. Go ahead.
16 A -- "fibroid on my ultrasound. I saw the one that's
17 lateral on the right. I knew there was a posterior
18 one there because you never saw an end to it, but I
19 never really saw a posterior fibroid on my
20 ultrasound. We did it real quickly. I was trying
21 to confirm what you guys brought. Elyria has a bad
22 karma. Sometimes they'll find something that's not
23 there, so I always confirm whatever I see on an
24 ultrasound. That posterior wall fibroid, the
25 posterior wall portion of the fibroid took up a
tremendous amount of the uterus. Did you see that?

1 Did I show you that thing?

2 "Tim: Yeah, you showed it to me."

3 Q Okay. That's fine. As I understand that --

4 MR. WALTERS: The court reporter, I
5 trust, has that in quotes.

6 Q As I understand your statement, what you're saying
7 is you did -- that you knew there was a posterior
8 one because you never saw an end to it on the
9 ultrasound?

10 A I looked in one direction and I never saw the full
11 documentation of the fibroid.

12 Q Okay. Those are your words, are they not?

13 MR. WALTERS: Well, he doesn't know?

14 A I don't know.

15 MR. PIEPER: Let the witness answer.
16 You can have your standing objection.

17 MR. WALTERS: Yeah, but at a point
18 when you ask him a confusing question -- "Those are
19 your words?" -- he's already indicated he has not
20 heard the tape and --

21 MR. PIEPER: Your objections are
22 noted. You can --

23 MR. WALTERS: Well, don't ask him a
24 question like "Those are your words?" You can ask
25 him, "Do you remember if that's exactly what you

1 said?"

2 MR. PIEPER: Uh-huh.

3 A That sounds reasonable for something -- I mean, I
4 have no reason to think I didn't say it.

5 Q Okay. Now, in your examination of Laura Jones, you
6 took a blood pressure reading, did you not?

7 A I don't recall if I did one personally or not.

8 Q Okay. You will refer to the chart.

9 A Page 8 again?

10 Q Page 8.

11 A Okay. I wrote down a blood pressure. I don't know
12 if it's one that I took myself or if it was one that
13 was recorded.

14 Q Do you have any orders -- do you ever see any orders
15 at 9:45 regarding the administration of any drugs
16 that you had mentioned that --

17 A These aren't orders, sir, these are progress notes.

18 Q I understand. But did you request that any drugs
19 are to be administered?

20 A Not at that time, no. Not that I recall. Let me
21 look at the orders and double check, if you would.

22 Q Uh-huh.

23 A I guess I did. Let's see. Magnesium sulfate, that
24 was 9:45.

25 Q Okay. What page are you on?

1 A 27.

2 Q Okay. And when was that requested?

3 A According to the chart, 9:45.

4 Q Okay. When was that administered?

5 A I don't know. I will have to look in the -- further
6 in the record. Do you happen to know the page?

7 MR. WALTERS: Do you want him to
8 search through for the medication record, which is a
9 nurse's record?

10 Q Yes, if you would.

11 VIDEO TECHNICIAN: Excuse me. If we can go
12 off the record for a minute.

13 (Brief recess.)

14 VIDEO TECHNICIAN: We are back on the
15 record.

16 MR. WALTERS: Before he answers your
17 question, just so the rest of the record is clear,
18 Exhibit 2 is the first portion of the mother's
19 chart, and Exhibit 4 appears to be the continuation
20 of the mother's chart rather than 3.

21 MR. PIEPER: Yes, I think that's how
22 the court reporter noted it.

23 A If --

24 MR. WALTERS: I think his question
25 was, "When was that given?"

1 A Right, that was your question, "when was the
2 magnesium given?"

3 Q Yes.

4 A I don't know exactly. I see the order was taken off
5 at 10:30.

6 Q If you would turn to page 50 of the mother's chart,
7 do you note when these nurses -- the nursing
8 assessment first starts? What time is that?

9 A On this page, it's 11:00.

10 Q Okay. Are there any other nurses assessments before
11 that time period?

12 MR. WALTERS: To answer each of these
13 questions, he obviously has to leaf through the
14 chart. If you happen to know where to look to save
15 time, why don't you just tell him?

16 MR. PIEPER: I haven't seen any other
17 nurses assessment notes before this period.

18 A Thumbing through the chart, I agree with you. I
19 don't see any others, either.

20 Q Okay. Would this be a violation of protocol, as you
21 understand it, knowing that the patient was admitted
22 at 9:00?

23 A First of all, the admission order is 9:45. Second
24 of all, I'm not sure which protocol you're referring
25 to.

1 Q Okay. Well, we'll skip over that one.

2 You had the nurse -- you had the electronic
3 fetal monitoring that was placed on Mrs. Jones?

4 A Yes.

5 Q Okay. Why was that placed on Mrs. Jones? What's
6 the purpose of that?

7 A To keep track of the baby's heart rate variabilities
8 and so forth.

9 Q Okay. Is that the most accurate way to assess the
10 fetal heart rate, fetal well being?

11 A That's a very controversial subject, but that's the
12 way that it's commonly used in this country.

13 Q Okay. What would be the alternatives for monitoring
14 the heart rate if you didn't have an electronic
15 fetal monitor?

16 A For the heart rate specifically, that's probably one
17 of the best.

18 Q Okay. You also made a decision to -- at some point
19 in time, to go with the birth of the child rather
20 than waiting --

21 A Yes.

22 Q -- For the birth. Okay. And it had to -- you said
23 at some point in time -- let's see. If you refer
24 to -- let's go off the record a second.

25 VIDEO TECHNICIAN: One moment, please.

1 (Brief recess.)

2 VIDEO TECHNICIAN: We are on the record.

3 (Plaintiffs' Exhibit
4 7 marked for
identification.)

5 By Mr. Pieper:

6 Q I'll hand your counsel what's marked Plaintiff's No.
7 Exhibit 7.

8 MR. WALTERS: What do you want me to
9 do with it?

10 MR. PIEPER: If you will hand it to
11 Dr. Burrows.

12 Q Doctor, could you identify that for me, please?

13 A Looks like a letter I sent to Dr. Siew on
14 February 18th.

15 Q Okay. In the second paragraph you state that,
16 "Given this and the relative neonatal risk of a
17 sepsis versus respiratory distress, I opted for
18 early delivery"?

19 A Yes.

20 Q Okay. What were you -- what was your thought
21 process as to why the early delivery of -- or why
22 the delivery versus waiting to have the C-section?

23 A My initial evaluation showed that Ms. Jones was not
24 contracting at that time, so I would have had the
25 option of waiting to deliver when she did start

1 contracting or had any evidence of infection, or
2 going ahead with delivery.

3 Based on reports and the literature that at
4 approximately 33 weeks, the risk to the fetus with
5 ruptured membranes is higher from sepsis rather than
6 respiratory distress as it is prior to that time in
7 the gestation, I elected to go ahead and proceed
8 with delivery.

9 Q You would suspect a 33 week old fetus, then, to have
10 an adequate lung maturity to carry on life?

11 A With support, if not without.

12 Q Okay. Is it also true that pregnancy induced
13 hypertension is known to accelerate lung maturity?

14 A If I can -- again, not trying to be an
15 obstructionist, but would you define how you're
16 using pregnancy induced hypertension, because it's
17 used in different ways? Are you meaning
18 preeclampsia and other hypertensive disorders of
19 pregnancy?

20 Q The pregnancy induced hypertension itself where
21 there was no record of hypertension previous to the
22 pregnancy?

23 A Right. Okay. Yes, there -- that's thought to
24 accelerate lung maturity in some cases.

25 Q Okay. Is that the case -- is that the type of

1 hypertension that Mrs. Jones had?

2 A Yes, based on what we discussed, I would say.

3 Q Okay. You also opted for a C-section over a vaginal
4 delivery?

5 A Yes, sir.

6 Q Okay. Where was that?

7 A The fibroid appeared to be obstructing the -- what
8 would have been the labor process. The baby was
9 breech and was of a size, by my best estimate, where
10 I probably could have entertained the option
11 otherwise, but I thought that the fibroid would
12 obstruct the process because of its position.

13 Q Uh-huh. Did you believe that it would be traumatic
14 to have a vaginal delivery -- traumatic to the
15 fetus?

16 A That's your concern with vaginal breech delivery,
17 and so you try to find the optimal candidates for
18 that approach, and I didn't think the situation was
19 optimal. It wasn't that I thought it would be
20 traumatic, it was that I wanted to avoid that
21 possibility if I could.

22 Q You wanted to avoid trauma; is that correct?

23 A Yes, sir.

24 Q There was a surgery -- Mrs. Jones' surgery was
25 originally scheduled around 11:00; is that correct?

1 A I don't recall the exact time, but that seems
2 reasonable.

3 Q Okay. And why didn't it go forward at that time?

4 A Again, if you'll allow me to just recollect based on
5 what I can, I believe there was another patient who
6 was having some evidence of fetal distress, but was
7 close to delivery. And the -- I don't know if it
8 was the anesthesiologist or the nurses had asked me
9 if I'd just wait a few minutes and let them see
10 whether or not this lady was going to need to go to
11 surgery first.

12 Q So hers was a condition -- this other patient's was
13 a condition where it superseded Mrs. Jones' --

14 A It could have. If I recall, she delivered before it
15 became an issue, but we did wait a while to see
16 whether or not they would need the operating room
17 first for her.

18 Q Who delivered? The other patient, you're saying?

19 A I believe. Again, if memory serves me correctly,
20 that's my memory of it.

21 Q Okay. So Mrs. Jones' delivery was moved back til
22 about 2:30?

23 A I can't recall the time. May I refer to the chart
24 or --

25 Q Well, it was moved back in the afternoon?

1 A Yes.

2 Q Okay. Hers was not a case where it was necessary to
3 have the C-section immediately upon admission to the
4 hospital?

5 A Not immediately, no.

6 Q Was it -- you stated that there was a problem, or
7 you stated that the Mrs. Jones' operation was moved
8 back because of another patient. Were there -- were
9 there -- was it an anesthesiologist problem, a
10 coverage problem?

11 A I don't think it was a coverage problem so much as
12 not wanting to spread ourselves too thin, if you
13 would, and the fact that I was still trying to
14 stabilize Ms. Jones because of the blood pressure.

15 Q Did you deliver the other child?

16 A I don't think I did. I believe one of the residents
17 did.

18 Q Okay. The anesthesiologist -- I think my clients
19 were given the indication that the
20 anesthesiologist -- there was only one on duty?

21 A That could be.

22 Q Okay. Is there usually more on duty during the
23 weeks -- on weekdays -- during weekends -- than
24 during the weekends?

25 MR. WALTERS: If you know.

1 A As far as I know, yes.

2 Q Okay. Do you believe the delay in the delivery --
3 delivery itself -- delay in the operation caused any
4 problem or caused a demise in the fetal well being?

5 MR. WALTERS: Objection to the form.

6 Go ahead

7 MR. PIEPER: I will restate it.

8 Q Do you believe that the delay had any bearing on the
9 outcome in this matter?

10 A No.

11 MR. WALTERS: Objection.

12 Q Your answer?

13 MR. WALTERS: Did you get his answer?

14 THE NOTARY: Yes.

15 Q Your answer is no?

16 A That's correct.

17 Q Okay. Basically, from what I gather from the
18 records, the electronic fetal monitor -- heart --
19 fetal heart monitor was hooked up about all the way
20 to abdominal prep. Would that be your memory of it?

21 A My recollection, that sounds reasonable, yes.

22 Q Okay. Were you at any time made aware of any
23 problems with fetal demise or any fetal distress
24 readings on the fetal heart monitor strips?

25 A There was no evidence of fetal demise on the monitor

1 strips, and I was not aware of any significant
2 evidence of distress.

3 Q Okay. So, basically, up until the time of delivery,
4 there was no indication of any fetal demise or any
5 fetal distress with the child?

6 A That's a correct statement.

7 Q Okay. Who was present at the surgery?

8 A Oh, let me try to remember. There was myself,
9 Dr. Jean Reinhold; the anesthesiologist, whose name
10 escapes me, and I'm sure it's on the record; scrub
11 nurse; circulating nurse; and we called the NICU
12 team I don't remember how many people there were;
13 there were several.

14 Q Okay. Dr. Reinhold was the resident?

15 A Yes, sir.

16 Q Okay. And how many years has she been a resident,
17 do you know, at that point in time?

18 A I should. I don't recall what year she was.

19 Q Okay. Do you know if she had any experience
20 performing a C-section with a fibroid in the lower
21 uterine segment of the mother?

22 A I don't know if she did specifically or not.

23 Q Okay. Who made the abdominal incision?

24 A If memory serves me correctly, it would have been
25 Dr. Reinhold because I was scrubbed in with the

1 surgery with her, and that's part of my teaching
2 role, is to be present and able to take over if
3 necessary, but to try to teach the methods.

4 Q Okay. During this operation, that was your teaching
5 role?

6 A As far as I recall.

7 Q Okay. And this -- what type of abdominal incision
8 was this -- was made?

9 A Pfannenstiel, if I recall correctly.

10 Q Is that also called a bikini cut? Have you heard it
11 referred to in that --

12 A A lot of people refer to it that way, yes.

13 Q Okay. Why is it referred to in that manner?

14 A Because it's usually below the pubic hairline and so
15 would be covered by a bikini, I assume.

16 Q For cosmetic reasons?

17 A Did I make the incision for cosmetic reasons, or is
18 that why it's called --

19 Q No, I'm saying is that why it's called a bikini cut?

20 A I guess that's probably why.

21 Q Okay. And what were your options when it comes to
22 abdominal incisions? What type of options did you
23 have?

24 A Oh, there are numerous ones. You could make a
25 Pfannenstiel, a Maylard incision, which would

1 involve cutting the rectus muscles on both sides
2 going in.

3 Q Let me ask you about one. How about a vertical
4 incision?

5 A That's an option.

6 Q Okay. Which would have given you the best surgical
7 or maximum surgical exposure, the Pfannenstiel or
8 vertical incision?

9 MR. WALTERS: Objection. Earlier --
10 the last few questions you've been asking generally
11 about C-section. Is your question now specifically
12 about Laura Jones?

13 MR. PIEPER: Yes. Yes, it is.

14 A Pelvic exposure is frequently better with a
15 transverse incision than with a vertical incision.
16 If you feel you need to extend an incision on the
17 skin, then you need -- for instance, in a cancer
18 operation, you're probably better to do the vertical
19 incision so that you have much more leeway in that
20 regard.

21 Q How about surgical exposure to the uterus, which
22 gives you the best?

23 A I believe the transverse incisions give you better
24 pelvic exposure, which includes the uterus.

25 Q So the vertical is easier to extend?

- 1 A Yes.
- 2 Q With Pfannenstiel, the transverse incision, does
3 it -- is surgical -- is your surgical exposure
4 reduced when you have someone who's carrying some
5 extra pounds, as in this case, Mrs. Jones?
- 6 A Are you talking about from a pregnancy?
- 7 Q No, I'm talking about nonpregnancy extra weight?
- 8 A I don't recall Mrs. Jones being overweight.
- 9 Q No, it's not that she was -- she was carrying a
10 little more weight than her average -- than an
11 average weight for a woman her size, was she not?
- 12 A For a pregnant woman her size?
- 13 Q Yes.
- 14 A Not that I recall.
- 15 Q Okay. Dr. Reinhold then made the abdominal
16 incision?
- 17 A As far as I recollect, yes.
- 18 Q Okay. As to the anesthesia, did you discuss the
19 type of anesthesia with the anesthesiologist?
- 20 A I really don't remember if I did discuss it directly
21 with the anesthesiologist or not.
- 22 Q Okay. Did you find it to be uneventful overall?
- 23 A Did I find the anesthesia to be uneventful?
- 24 Q The administering of the anesthesia.
- 25 A I was trying to hold Mrs. Jones so that she would be

1 able to stay steady. She was having considerable
2 pain at that time. When the anesthesia was
3 administered and we tested for adequacy of
4 anesthesia, I don't recall any problems with it.

5 Q Okay. What happened from the point of the abdominal
6 incision on? Can you give me an idea of how the
7 surgery progressed?

8 A In other words, we're through the abdomen, and now
9 you want to know what happened at that point?

10 Q Yes.

11 A We made a bladder flap; technical procedure to
12 protect the bladder. We looked at the uterus and
13 there appeared to be a well developed lower uterine
14 segment, which you can't always take for granted at
15 33 weeks.

16 Q What was the size of the lower uterine segment?

17 A I'd be guessing. I would say seven or eight
18 centimeters, maybe.

19 Q For the lower -- you're saying well developed for a
20 mother who's carrying a 33 week old child?

21 A Yes. Some ladies have them well developed at 33
22 weeks and some don't.

23 Q Okay.

24 A We saw the fibroid, and I knew from the ultrasound I
25 had done that the placenta was anteriorly placed

1 and --

2 Q And extended to the posterior?

3 A I can't recall. You may be correct. I really don't
4 recall the details.

5 Q Okay.

6 A Based on that, we tried to decide what kind of
7 uterine incision to make. I thought that there was
8 a significant possibility of other fibroids that I
9 hadn't seen on ultrasound. I thought that we had a
10 well developed lower uterine segment, and we could
11 go above the right lower quadrant fibroid that we
12 described in detail earlier. And so we made a
13 transverse incision in the uterus and extended
14 it bluntly.

15 Then Dr. Reinhold, if memory serves me
16 correctly, started the delivery process with the
17 baby, and we were talking about the delivery
18 process, I'm sure.

19 Q Let me stop you there if I can, Doctor.

20 A Sure.

21 MR. PIEPER: Can you mark this as an
22 Exhibit, please?

23

24 (Plaintiffs' Exhibit
25 8 marked for
 identification.)

1 Q Okay. I'm handing you what is a blowup of a
2 uterus -- pregnant uterus that was found in one of
3 the medical textbooks. Here is a black pen and a
4 red pen. Could you make a --

5 A Sketch of the surgery?

6 Q Yes, if you would.

7 A Sure.

8 Q Sketch or a drawing of the transverse uterine
9 incision --

10 A I'd be glad to.

11 Q -- locating the fibroid, also?

12 A The fibroid was located in this region.

13 (Indicating.) This was the lower segment here.

14 (Indicating.) This is the upper segment.

15 (Indicating.) For demonstration purposes, maybe I
16 can do something like that showing where the
17 demarcation would be. (Indicating.)

18 Q Okay. So I'll note that you made a dotted line
19 across the picture with a red pen denoting upper
20 and lower.

21 MR. WALTERS: I don't think that your
22 dotted line is going to show up when the court
23 reporter makes copies of this. It's Mr. Pieper's
24 deposition. He can decide. But I'm just -- from
25 here, it looks awfully light.

1 Q Sure. Why don't you make it deeper, if you would.

2 A Sure, I'd be glad to. (Witness drawing diagram.)

3 Okay.

4 MR. WALTERS: Maybe you want might
5 want to put an "F" in the circle that you've
6 indicated as a fibroid. I don't know how
7 complicated this is going to get. For my sake, if
8 anything else.

9 A I'll label it.

10 (Witness marking document.)

11 Q That's fine.

12 A The uterine incision was sort of curved linear, sort
13 of smile shaped, if you will, like that.

14 (Indicating.)

15 Q Okay. You're indicating it's lateral from side to
16 side just underneath the red line which denotes
17 upper and lower segment?

18 A Right.

19 Q Okay. What were your options as to uterine
20 incisions?

21 A There are three options that are generally
22 considered: The transverse lower segment incision,
23 which this represents; the vertical lower segment
24 incision; and the classical incision, which is a
25 vertical incision into the upper portion of

1 the uterus.

2 Q Where was the placenta located?

3 A If memory serves me correctly, it was about there.
4 (Indicating.)

5 Q Okay. Anter-lateral, would that be an apt
6 description of it?

7 A Probably. I don't recall. I know it was anterior.
8 I don't believe I drew a picture of what I saw, and
9 I don't think I took a picture of the ultrasound I
10 did myself so --

11 Q So you're saying that placenta is not dead center,
12 in other words, from your memory?

13 A Well, I don't think so. It was close. It was
14 covering the anterior portion of the uterus, as I
15 recall it.

16 Q But lateral? Anter-lateral would be an apt
17 description.

18 MR. WALTERS: Objection, asked and
19 answered.

20 A No.

21 Q Your options, you stated, you can do a classic
22 incision?

23 A Classical.

24 Q Classical incision?

25 A Yes.

1 Q The classical incision would have been in the upper
2 uterine segment?

3 A Right, it's a vertical incision in the upper portion
4 of the uterus.

5 Q So one option would have been to do the classical,
6 and could you not have peeled back or separated off
7 the placenta --

8 MR. WALTERS: Show -- I'm sorry.
9 Go ahead.

10 Q Separated out the placenta or peeled back the
11 placenta and so, therefore, you wouldn't have to cut
12 through it yet make a --

13 MR. WALTERS: Doctor, you have to
14 pause a beat before you answer so that if I want to
15 make an objection, I have a chance to get it in.

16 THE WITNESS: Sure. Okay.

17 MR. WALTERS: Objection. He addressed
18 himself to three options in any caesarean. He was
19 not directing his answer to Laura Jones. You keep
20 jumping back from the specific to the general and
21 back and forth.

22 Please listen carefully, Doctor, to make
23 sure whether you know if he is talking in general or
24 in Mrs. Jones' case -- or Mrs. Butti's case,
25 whatever.

- 1 Q As to Mrs. Jones, the same question. In other
2 words, it could have -- you could have made a
3 classical incision, could you have not, and then
4 peeled back the placenta? Would that have been one
5 option?
- 6 A No, that would be the -- essentially an abruption.
7 That would not be your best option.
- 8 Q That would be one option is what I'm saying. I'm
9 not saying the best option, I'm saying one option.
- 10 A That's one of the worst operations.
- 11 Q Okay. You could also make a vertical incision in
12 the lower uterine segment?
- 13 A Yes, sir.
- 14 Q Okay. And why wasn't that done in this case?
- 15 A My diagram may not be giving adequate information,
16 but it appeared to me like the fibroid was going
17 close to, if not over, the midline. So that would
18 have been difficult to do without going much more
19 laterally, which increases the risk of getting too
20 far laterally and into bleeding vessels.
- 21 Q You could -- you could make a vertical incision
22 without touching the fibroid, though, could you not?
- 23 A I wasn't sure of that at that time.
- 24 Q Okay. So you opted for the transverse incision?
- 25 A On your last question, if I may go back, I could --

1 I'm not sure I could have made a low vertical
2 incision.

3 Q That's what I am saying. I'm speaking of low
4 vertical, not classical.

5 A I thought you were. I just wanted to clarify. Now,
6 I'm sorry. You said --

7 Q Now, with the transverse incision, you still --
8 that is made in the lower uterine segment, correct?

9 A Yes.

10 Q Okay. And you still have the fibroid in the lower
11 uterine segment?

12 A Yes.

13 Q Okay. So you still have the potential that the
14 fibroid is going to come into play during the
15 birthing process, do you not?

16 A Come into play in the birthing process, I am not
17 sure -- in other words, would it have the potential
18 to interfere with the incision?

19 Q Yes, you still have that potential?

20 A They always have that potential.

21 Q I'm sorry.

22 A They always have that potential. It seemed like the
23 transverse incision gave less of a potential than
24 the vertical incision would have.

25 Q And when you diagramed your transverse incision, you

1 have that pretty much of a -- what? -- 180 degree --
2 somewhat of a curved -- a curved line from one end
3 to the other of the uterus. Now, when you described
4 the incision to the Buttis, did you not indicate
5 that it was not quite a regular -- not quite a
6 normal incision?

7 A Yes, and that's correct. This is a cartoon I was
8 trying to draw for illustrative purposes. In terms
9 of accuracy, you're absolutely correct. It wasn't a
10 perfectly curved lineal incision like you -- like
11 just exactly like you said.

12 Q But also, I think, the incision that you described
13 earlier to the Buttis was more at an angle than a --

14 A That's correct.

15 Q -- straight across?

16 A That's correct.

17 Q Okay. Why the discrepancy here?

18 A Because I'm not an artist.

19 Q Okay. So, basically, the incision that you
20 described earlier would have been more at an angle,
21 would it not?

22 A No, sir. You're drawing a vertical incision, and
23 that's -- if I may try again here on the artwork.
24 May I have one of these I could use?

25 Q Do you wish to use another one, is that what you're

1 saying? We can mark that later.

2 A Okay. Perhaps that shape would more accurately
3 indicate the initial incision. (Indicating.)

4 Q Okay.

5 A Trying to avoid the fibroid, but having still have a
6 transverse-type incision.

7 Q Okay. More of a downward thrust, you're saying?

8 MR. WALTERS: Objection. That's a
9 gross mischaracterization of what he just drew on
10 there, downward thrust.

11 Q But it is curving downward, is it not, compared to
12 your first one?

13 A At one point.

14 MR. WALTERS: Doctor, describe what
15 you read -- what you just drew because I think
16 Counsel is mischaracterizing it on the record.

17 A What I drew is a transverse incision that's not
18 perfectly curved linear. And it starts -- in the
19 case of Ms. Jones, it starts above the fibroid and
20 is sort of S-shaped -- slightly S-shaped; slightly
21 question mark shaped, something of that nature.

22 Q I understand. But you believe that would be the
23 more accurate representation of the two?

24 A In terms of the incision?

25 Q Yes, in terms of the incision that you drew.

- 1 A Yes. Again, I'm not an artist and, you know, I'm
2 not -- I'm certain neither of them is perfectly
3 accurate, but I'm just trying to give an impression
4 for you.
- 5 Q I see. So we have the birthing process, and
6 Dr. Reinhold has just made the uterine incision; is
7 that correct?
- 8 A Yes, sir, we discussed where we were going to make
9 it and, if I recall correctly, she probably made the
10 incision, based on what we usually do.
- 11 Q Okay. And how long was the incision?
- 12 A I don't recall exactly. I would guess six
13 centimeters maybe, maybe a little more.
- 14 Q Okay. What happened from there -- from that point
15 after the uterine incision was made?
- 16 A Let's see. I believe Dr. Reinhold started to
17 deliver the baby's feet. And then we got down to
18 Megan's hips, and at that point I usually have a
19 small talk I give to everybody about watching
20 putting your thumbs up above the sacrum in the back
21 because that can cause trauma.
- 22 Q Which position was the child? In which position?
23 Face up? Back up?
- 24 A I believe she was back up. And then we wrapped -- I
25 say "we" -- one of us wrapped some sort of

1 laparotomy pad around the baby's waist area and
2 hips, again, giving something for traction.
3 Dr. Reinhold, if I recall, delivered the baby down
4 to about the level of the shoulders or possibly the
5 arms.

6 Q Uh-huh. Was there any resistance noted up to that
7 level?

8 A Nothing significant. There was some resistance, as
9 I recall, but it was nothing major.

10 Q You did note that there was resistance in your --
11 one of your -- either your operative note -- at some
12 point in time you noted in documentation that it was
13 resistance --

14 A I'm sure I did.

15 Q -- up to the birth of the shoulders?

16 A I'm sure I did. That's how I recall it.

17 Q What was causing the resistance?

18 A In my opinion, there was a fibroid that was in the
19 posterior wall of the uterus that I had not seen on
20 the ultrasound scan. And I believe the proximity
21 of -- I don't know if it was one big fibroid or two
22 fibroids or what have you. But the position of the
23 baby with respect to the fibroid or fibroids
24 required that the -- there was a channel, for
25 instance, where the baby could move to, and you had

1 to have the baby in the channel in order to get
2 parts of her body out, delivered.

3 Q Did you stop and -- did Dr. Reinhold or yourself
4 stop and note what was causing the resistance at
5 that time?

6 A I can't recall when. It was around that time.

7 Q Okay. Well, the resistance was noted around
8 after -- right about the time of birthing the waist,
9 was it not?

10 A Again, it wasn't major resistance, but it was
11 obvious that it was not very simple delivery at that
12 point.

13 Q Okay. When you --

14 A I'm sure we stopped around then and checked and
15 tried to find out why.

16 Q Okay. You're sure, but you have no recollection of
17 doing so?

18 MR. WALTERS: He just answered it --

19 A I recall doing so, I don't recall when --

20 MR. WALTERS: Doctor, wait a second.
21 It's asked and answered.

22 Go ahead. And I object to counsel's
23 restating questions repeatedly after there has been
24 an answer to them in order to get an answer which,
25 for some reason, squares up with what he wants to

1 get.

2 MR. PIEPER: I object to counsel's
3 characterization of this. Motion to strike.

4 Q Counsel -- Doctor --

5 A Sure.

6 Q -- we have the birthing process completed up to the
7 waist. Can you give me a scenario or give me the
8 gist of what happened from that point forward?

9 A Well, again, I believe Dr. Reinhold delivered the
10 baby to the level of the shoulders or the arms,
11 perhaps. We realized that there was some
12 obstruction somewhere in the uterus. It was very
13 difficult to determine exactly what -- what size and
14 so forth. And Dr. Reinhold and I, probably by
15 mutual agreement, decided I would conduct the rest
16 of the delivery because of that.

17 We attempted to deliver Megan's head and
18 realized that there was obstruction and that that
19 was not going to work and stopped at that point. So
20 we extended the uterine incision. I believe we cut
21 a rectus muscle in order to provide more room so
22 that there wouldn't be any problem there.

23 Q Let me stop you -- excuse me. Let me stop you at
24 that point in time. You noted that there was
25 resistance when you were delivering the fetal head

1 or --

2 A Yes, sir.

3 Q -- attempting to deliver the head?

4 A When we were attempting to deliver the head, there
5 was resistance that was significant at that point.

6 Q So at that point in time, you have the child who's
7 being birthed up to the head. The head is the only
8 part of the body left in the uterus, then; is that
9 correct?

10 A As far as I recall, yes.

11 Q Okay. I'm talking about up to that point --

12 A Right.

13 Q -- where the head is the only part left in the
14 uterus.

15 Now, did -- my understanding is that the
16 child was rotated upward?

17 A In a breech delivery you tend to hold the feet up
18 while you're trying to get the head delivered. And
19 the process involves the baby flexing the head in
20 order to come through the incision in the uterus or
21 vaginally; it's the same process.

22 Q Okay. When did -- how did you know to take over for
23 Dr. Reinhold and at what point?

24 A Again, she either delivered to the shoulders or the
25 arms, and then we realized that there was a

1 significant resistance.

2 Q Okay. How did you realize that?

3 A We were trying to deliver the baby, and the baby
4 wasn't being delivered with reasonable amount of
5 force trying to effect the delivery.

6 Q So you were applying upward traction?

7 A No, sir. I said I lifted the feet up or
8 Dr. Reinhold did one; didn't say we put traction on
9 the baby.

10 Q Okay. Doctor, if you will refer to page 46 of
11 mother's notes or mother's chart.

12 MR. WALTERS: Would it be in part 2 --
13 yeah, I guess it would.

14 A Uh-huh.

15 Q This is an operative report that was prepared by
16 you?

17 A Yes, sir.

18 Q Okay. And this was prepared some time in -- looks
19 like March; is that correct?

20 A I --

21 Q Up at the top where it says "Dictated March 31,
22 1992"?

23 A It's kind of cut off, but that's what it looks like
24 to me so --

25 Q Okay. Now -- well, look at the last paragraph on

1 page 46, if you would, and if you will read that for
2 me?

3 A Sure. "The fetal legs were delivered into the
4 incision. Resistance was then noted as the fetal
5 body was delivered. With gentle turning" --

6 THE NOTARY: I'm sorry.

7 MR. PIEPER: You have to slow down a
8 little so she can get it down.

9 THE WITNESS: I'm sorry. I'm so
10 sorry. I'm sorry.

11 Q "The fetal legs were delivered into the incision" --

12 MR. WALTERS: You don't need to show
13 it her. It's all through the ears.

14 THE WITNESS: Okay. Okay.

15 A "Resistance was then noted as the fetal body was
16 delivered. With gentle turning movements of the
17 fetus, the body and shoulders/arms were delivered.
18 The head did not come with upward traction of the
19 body and the pressure on the jaw."

20 I take it that's what you wanted me to read?

21 Q Yes. That seems to indicate to me that upward
22 traction was applied?

23 A I was sloppy in my terminology. You do not apply
24 traction as in pulling the baby. What you do is you
25 track upward maybe is a better term. You hold the

1 legs up. And you're absolutely right, that's what
2 it says. And I'm sorry. That was a misstatement on
3 my part. I should have been more precise.

4 Q Doctor, isn't it true that you did, in fact, apply
5 upward traction to try to birth the child at that
6 point in time?

7 A No, sir.

8 Q Isn't it true that Mrs. Butti even noted that you
9 were pulling her up off of the table?

10 A I don't recall that.

11 Q Isn't it true that Mr. Butti conveyed that thought
12 to you from Mrs. Butti?

13 A I don't recall it. Mr. Butti may have said
14 something to that effect. What you usually do is
15 during this process is to press --

16 Q No. Just answer the question.

17 MR. WALTERS: Wait. Wait. Don't cut
18 him off. He's answering.

19 Go ahead.

20 MR. PIEPER: No, my question --

21 MR. WALTERS: Let him finish his
22 answer, and then if you don't like it, you can
23 strike it, but let him finish his answer. There's
24 no jury here.

25 A You press on the mom's abdomen putting some pressure

1 on the abdomen in order to try to effect delivery of
2 the head. Just like moms push out baby's vaginally,
3 there's -- we have to do that process during
4 caesarean section.

5 I don't know what Mrs. Jones felt. And
6 Mr. Butti may very well have said something to that
7 effect, but we were not lifting Ms. Butti off the
8 table, that I was aware of, at any point during the
9 surgery.

10 Q Isn't it true that you stated to Mr. Butti and
11 Mrs. Butti that they were going to feel some
12 pulling?

13 A Right. Most ladies do complain of that, that's
14 correct.

15 Q Okay. And that occurred after you found that you
16 couldn't initially birth the head, so you applied
17 traction at that point?

18 A No, sir, we did not apply traction. Again, if
19 you'll pardon my misstatement, that was a poor
20 choice of words.

21 Q I see.

22 A What happens during any caesarean section is when
23 you are putting pressure on the abdomen, a lot of
24 ladies feel pulling or pushing or pressure of some
25 sort.

- 1 Q When did you first apply pressure to the abdomen?
2 Was this before the extension or after the
3 extensions?
- 4 A I honestly don't recall if we tried to put some
5 pressure on the abdomen before the extension or not.
6 I really don't recall.
- 7 Q Okay.
- 8 A We may have, but I don't know.
- 9 Q Okay. You had to make some uterine -- uterine
10 extensions in order to birth the child; is that
11 correct?
- 12 A Right, we extended the uterine incision.
- 13 Q So up until the point of birthing the head, we have
14 the head that's basically, at this point, trapped in
15 the uterus?
- 16 A Right.
- 17 Q Okay. It can not come out? You weren't able to
18 get --
- 19 A We weren't able to get it out.
- 20 Q At that point in time, I'm talking about, before the
21 extensions.
- 22 A Uh-huh.
- 23 Q Okay. The incision, basically, is inadequate at
24 that point in time to allow birth of the child, is
25 it not?

- 1 A That sounds like a reasonable statement.
- 2 Q Okay. So now you go into some extensions of the
3 uterine incision?
- 4 A That's correct.
- 5 Q Okay. Let me back up a second. Also, when you took
6 over for Dr. Reinhold, that's when you placed your
7 hands inside the uterus to see the position of the
8 child or position of the child's head?
- 9 A That sounds correct.
- 10 Q What position did you find the head?
- 11 A Extended and facing -- if I recall, facing down,
12 like, toward the floor.
- 13 Q Okay. Would it be in a hyperextended position?
- 14 A I couldn't tell you from the feel of it.
- 15 Q Is it true that Mrs. -- that Dr. Reinhold stated to
16 you that she could not get her hand up far enough to
17 grab the maxilla part of the head and to bring it
18 down or to --
- 19 A She may have, Mr. Pieper. That's a reasonable thing
20 to suggest that she say that.
- 21 Q Did you try that maneuver?
- 22 A I'm sure I did.
- 23 Q Okay. And were you able to do that? Were you able
24 to flex the head or -- I'm sorry --
- 25 A You're asking before I extended the incision as

1 opposed to after?

2 Q Yes, before.

3 A I was never able to flex her head until after we
4 extended the incision when I had more room for my
5 hand.

6 Q Okay.

7 A If that will answer your question adequately, I'm
8 hoping.

9 Q Okay. You tried flexing the head, though, right?

10 A Right. I was trying to move the jaw -- manipulate
11 the jaw to flex her head.

12 Q Okay. Did you also try turning the jaw at that
13 point in time in order to birth the child?

14 A Yes, there was a -- I was trying to turn her head
15 from facing downward to facing Ms. Jones' left to
16 some extent, because it felt like there was some
17 more room in that area where I could effect the
18 delivery.

19 Q Okay. And how were you accomplishing that?

20 A With my fingers.

21 Q Okay. How were you fingers and thumb on the
22 child -- on the child's head?

23 A This is by feel and recollection, from a long time
24 ago, but I believe it was something of this effect
25 that I was trying to do. (Indicating.)

1 Q You're indicating on the tip of the jaw, front of
2 the jaw?

3 A In a baby, there is not that much jaw. I'm sure,
4 you know, relatively, I was probably here doing it
5 on an adult, you know. (Indicating.)

6 Q Uh-huh. So on the baby, though, you're saying back
7 in the --

8 A Around halfway back, maxilla on either side, maybe,
9 I assume.

10 Q Okay. Which hand were you utilizing?

11 A I don't know.

12 Q Okay. You were turning the child's head to which
13 direction?

14 A Toward Ms. Jones' left.

15 Q Okay. So that would be turning the head to the
16 right.

17 MR. WALTERS: To whose right?

18 Q It would be to your right. In other words, you're
19 turning -- as you're standing in front of
20 Mrs. Jones, correct?

21 A No, sir, I'm on her right.

22 Q Okay. You're on the right of Mrs. Jones. And
23 you're not sure which hand you were using?

24 A No. I don't recall it off the top of my head, no.

25 Q Okay. You're turning the child's head. The child

1 is back up, correct?

2 A Yes.

3 Q Okay. And now you have the child in a vertical
4 position, straight up and down, in other words; is
5 that a fair characterization? If it's not, correct
6 me.

7 A I don't recall. Somewhere between about 45 degrees
8 and straight up and down. Like you say, it's
9 usually where you put the baby's legs. I don't
10 recall exactly.

11 Q Okay. So then you're turning the jaw to where
12 the -- you're turning the head of the baby, then, to
13 Mrs. Jones' left, you say?

14 A Sorry. I'm getting myself confused. Yes.

15 Q Okay. Okay. What happened from that point? You
16 found that you couldn't turn the jaw or the jaw was
17 not turning and staying?

18 A You're right. You had asked me about something
19 before, and I had previously tried to do that
20 before, extending the uterine incision, and I had
21 not --

22 Q We're talking about before the uterine incision.

23 A Before the extension?

24 Q I'm sorry. Before the extension, correct.

25 A Okay. And then I was not able to get the baby's

1 head in the position I wanted, or it wouldn't stay,
2 if I recall.

3 Q Yeah. This conversation, at that point, has been
4 before the uterine extension?

5 A Okay.

6 MR. WALTERS: What conversation?

7 Q I'm talking about what the -- when you were talking
8 about turning the head of the baby, and my --

9 A Right, I tried that prior to uterine incision
10 extension.

11 Q Okay. That was my point I was making, as I
12 understand your testimony.

13 A Right.

14 Q Okay. Then --

15 A But in terms of where I put my hand on the baby's
16 face and all, I wasn't able to do that that well
17 until after the extension of the incision.

18 Q Uh-huh. So this is, again, prior to the extension,
19 you're trying to turn the baby's head to mother's
20 left?

21 A Right.

22 Q Okay. And that --

23 A Correct. I'm sorry.

24 Q In order to effectuate the birth of the baby?

25 A Right. That's correct.

1 Q I'm sorry.

2 Why wouldn't it -- why didn't it stay in
3 that area, or why didn't it work at that point in
4 time?

5 A My opinion is because I was trying to move the baby
6 with not enough ability to get my hand inside the
7 uterus and moving the baby into the area of the
8 fibroid that was posterior.

9 Q Was it moving -- was the head moving -- was the jaw
10 moving back into position -- into the prior position
11 after you turn it or --

12 A My recollection is, yes, I just couldn't -- I could
13 move the baby's head, but it wouldn't stay there,
14 so --

15 Q Uh-huh. Then when you were -- you're having the
16 baby straight up and down or, as you said, 45 to
17 straight up and down, then you're turning the jaw
18 also. Are you holding the baby with one hand and
19 turning Megan's jaw with the other, turning her
20 head?

21 A Oh, Mr. Pieper, I'm sorry. I don't recall who was
22 holding the baby's feet. It might have been
23 Dr. Reinhold or it might have been myself. I
24 honestly don't recall. I know at some point I must
25 have been holding and trying to figure out angles

1 and so forth.

2 Q Okay. What areas were you holding the child?

3 A Usually hold the feet or -- between the feet and the
4 knees.

5 Q How about down in the thigh area from time to time?

6 A Possibly.

7 Q On this child?

8 A I don't recall specifically.

9 Q Now, when you're -- when you were birthing this
10 child, what type of time period are we talking about
11 from the -- in uterine -- initially from the in
12 uterine incision to the birthing up to the waist?

13 MR. WALTERS: I'm sorry. Could you
14 read that back to me?

15 MR. PIEPER: Let me rephrase that.

16 Q My question is: What type of time period are we
17 talking about? How much time did it take to birth
18 the child from the point of the uterine incision
19 until the -- until the shoulders were birthed, until
20 we were left with just the head in the uterus?

21 A Mr. Pieper, I don't know that because I wasn't, you
22 know, watching the clock myself. My understanding
23 from someone in the room -- and I can't even tell
24 you who it was anymore -- was that it was about six
25 minutes from the time of the uterine incision to the

1 time of the completion of the birth process.

2 I'd say, just off the top of my head, a
3 rough guess, maybe half that time was trying to get
4 the head delivered, maybe even a little more. We
5 were trying not to rush and not to panic, you know,
6 so --

7 Q I understand, Doctor.

8 How long would it normally take to make the
9 uterine incision? How long would you expect that to
10 take?

11 A Just to make the uterine incision?

12 Q Yes, just to make the uterine incision itself.

13 A Thirty seconds or maybe a minute. I don't know.

14 Q How about up to the shoulders?

15 A You mean delivery up to the shoulders?

16 Q Yes.

17 A In a normal situation of a breech baby with no
18 fibroids and no problems?

19 Q Yes.

20 A Oh, I don't know, a minute or two, maybe.

21 Q How about in this case, what kind of time did it
22 take to go after the incision to the birthing up to
23 the head?

24 A Again, my understanding from someone else was that
25 it was six minutes from the uterine incision to

1 complete delivery. I'm guessing roughly half the
2 time or a little more was delivering the baby's
3 head.

4 VIDEO TECHNICIAN: Excuse me. Can we go
5 off the record to change the audio tape?

6 (Brief recess.)

7 VIDEO TECHNICIAN: We are back on the
8 record.

9 By Mr. Pieper:

10 Q Okay. Now, when you first -- after you had got to
11 the point where the head was the only thing left to
12 be birthed from the uterus itself, you explained
13 that you made different manipulations?

14 A Yes.

15 Q Okay. You tried to flex the head, and the head
16 wouldn't flex?

17 A No, sir, we tried -- I tried initially before
18 extending the uterine incision to flex the head and
19 turn it somewhat to Ms. Jones' left.

20 Q Were you doing that at the same --

21 A My recollection --

22 Q I'm sorry. Were you doing that at the same time --

23 MR. WALTERS: Let -- you keep cutting
24 him off. Let him finish his answer.

25 A I don't -- I don't know. I mean, that was my

1 eventual goal was trying to reach this area that
2 seemed to have more room.

3 Q So you were trying to draw the head down and also
4 turn it to the side; would that be correct?

5 A Yes. I don't know if I did it simultaneously or did
6 one and then the other. I mean, it's been a long
7 time, but that was my intention. And --

8 Q How long did you spend on those --

9 MR. WALTERS: You know, every time he
10 wants to complete his answer, you come in with a
11 question. Now, he said "and," and then you began to
12 ask a question. It just would go a lot of easier if
13 he finished because maybe it's anticipating what
14 you're about to ask.

15 Were you finished, Doctor?

16 THE WITNESS: I guess. I am now.

17 MR. WALTERS: All right.

18 By Mr. Pieper:

19 Q You stated that you had, again, tried to flex the
20 head and move the head to the side. This is, again,
21 before the uterine extensions?

22 A Yes.

23 Q What type of time was spent doing this maneuvering?

24 A I really don't know. I wasn't watching the clock at
25 the time.

- 1 Q I take it you wanted to spend some time and to try
2 to birth the head without making an extension; would
3 that be correct?
- 4 A That would be a reasonable assessment.
- 5 Q Would it be reasonable to say you spent a minute or
6 two minutes doing this type of --
- 7 A I have no idea, Mr. Pieper. I didn't see the clock.
8 I don't know. I really don't know. Time has a
9 habit of really getting away from you in surgery
10 because you're not watching a clock, and something
11 that you think took five minutes took 30 seconds,
12 and something you think took 30 seconds took five
13 minutes. And I don't know how to approximate that
14 properly for you to answer the question right.
- 15 Q Now, you made some uterine -- you made a uterine
16 extension; is that correct?
- 17 A Yes.
- 18 Q Okay. Now, who -- you actually made that extension
19 surgically? Did you or Dr. Reinhold, in other
20 words, make the extension?
- 21 A I don't recall. I presume I did, but I'm not
22 certain of that.
- 23 Q Okay. And how was the extension made, and if you
24 could use the diagram, the second diagram here, and
25 you could use the other -- the red pen to note that

- 1 it's an extension?
- 2 A About like that. (Indicating.)
- 3 Q Okay. You were extending it laterally?
- 4 A Laterally, slightly upward. We stayed within the
- 5 lower segment, which was not the intent necessarily;
- 6 it was just that's the way it came out.
- 7 Q How many uterine extensions did you make?
- 8 A I only recall one.
- 9 Q Okay. In your progress notes on page 12 of the
- 10 record, page 12 --
- 11 A I'm with you.
- 12 Q Do you see about halfway down in that paragraph
- 13 where it states, "After suprapubic pressure, jaw
- 14 pressure on the fetus, and several extensions of
- 15 uterine incision and left rectus" -- do you see that
- 16 sentence?
- 17 A Uh-huh.
- 18 Q Okay. That refers to several extensions?
- 19 A That's right. We had the left rectus. And as far
- 20 as I recall, we made may have extended the right
- 21 rectus. I didn't write it down if we did --
- 22 Q Well, this --
- 23 A And then the uterine incision, so that's several.
- 24 Q Okay. But this says "several extensions of the
- 25 uterine extension"?

- 1 A "And left rectus."
- 2 Q Okay. That doesn't indicate to you more than one
3 extension of the uterus?
- 4 A No.
- 5 Q Do you recall making more than one extension of the
6 uterus?
- 7 A I don't recall making more than one.
- 8 Q Okay. You also extended the rectus muscle?
- 9 A Right.
- 10 Q Okay. And how was that done?
- 11 A With the scissors. They're called bandage scissors,
12 and you clip. Usually you wind up clipping, if you
13 will, several times.
- 14 Q Okay. What was the purpose of the these extensions?
- 15 A Try to get more room over on Mrs. Jones' left so
16 that I could be able to feel the baby's head; be
17 able to place my fingers on the jaw better.
- 18 Q Okay. What happened from that point forward in the
19 delivery from the point of making the -- which was
20 made first, the uterine incision or the rectus
21 incision?
- 22 A I have no idea, sir.
- 23 Q Okay. After those extensions -- I'm sorry -- were
24 made, what happened from that point forward?
- 25 A As I recall, we -- I took my hand and was able to

1 feel Megan's chin -- jaw region and put her head in
2 the position I was trying to get it in. At that
3 point -- I don't know if I asked Dr. Reinhold to go
4 ahead and put some abdominal pressure on; see if we
5 could get the baby delivered, and she delivered.

6 Q You stated you turned the head again?

7 A As I recall, yeah.

8 Q Okay. Was the -- you used -- you were holding the
9 jaw to turn the head?

10 A Yes.

11 Q Okay. And from that point, did the head stay in
12 that position?

13 A As I recall. I didn't keep my hand on the whole
14 time I was doing that because my hand would have
15 gotten in the way.

16 Q There was resistance yet?

17 A Not -- not that I recall. At that point it seemed
18 like the resistance would have been, if not
19 eliminated, at least significantly reduced. There
20 didn't appear to be any resistance to the delivery
21 at that point.

22 Q But you requested that Dr. Reinhold apply suprapubic
23 pressure?

24 A Right, that's done in a breech caesarean delivery in
25 order to deliver the head. I don't know if it's

1 routinely, but very commonly anyway.

2 Q Okay. Could this child have been delivered without
3 the suprapubic pressure?

4 A I don't -- I don't know. I don't think so.

5 Q You noted that, again, on page -- actually, this is
6 in the operative report back to page 46 --

7 A Okay.

8 Q -- that several manipulations were used to try to
9 effect delivery without upward extension. Then you
10 have in parenthesis a "T"?

11 A Right.

12 Q Okay. What is the T extension?

13 A Let me use this diagram since --

14 Q Okay. Back to Exhibit 8.

15 A Did you want to exhibit this one?

16 Q No, not at this point.

17 A See how it looks like an upside down T?

18 Q Yes, an inverted T?

19 A Yes.

20 MR. WALTERS: I don't want any
21 confusion. If I understand, the doctor is
22 indicating something that was considered.

23 THE WITNESS: Right.

24 MR. WALTERS: Here's my problem, up to
25 now this Exhibit 8 has shown what was there and what

1 was done. Now we have added onto it something that
2 was considered. I don't want to have a lot of
3 confusion --

4 MR. PIEPER: Why don't we do this?
5 Why don't we make another one just to show the
6 incision -- uterine incision as it was made, and
7 then the possible variation of the T incision.

8 MR. WALTERS: See, I hate when we get
9 all bound up in diagrams because it starts to get
10 real confusing.

11 Do you understand, Doctor, what he's asking
12 you to show now?

13 THE WITNESS: What a T was?

14 MR. PIEPER: Right.

15 MR. WALTERS: You want a T on this
16 one?

17 MR. PIEPER: Right. Exactly. Yeah,
18 the T incision --

19 THE WITNESS: This was not done.

20 MR. WALTERS: No, I understand that,
21 but the option of utilizing the T incision.

22 A (Witness marking document.)

23 There you go. Again, I'm not an artist, but
24 that's the best I can do.

25 Q Okay. And what is the purpose of the T incision?

- 1 A Well, the T incision, in a lot of cases, can give
2 you more room. The type of extension we made, I
3 guess you would call, like a J extension as opposed
4 to a T, which can also give you more room.
- 5 Q A J extension is a vertical extension of the uterine
6 incision, is it not?
- 7 A It's directed upward, yes.
- 8 Q Okay. It's commonly known as a vertical extension,
9 though, is it not?
- 10 A No, sir, I believe the common term for it is just
11 the J extension.
- 12 Q Your extensions were lateral, though?
- 13 A Lateral and upward. And I had one extension on the
14 uterus; I believe we discussed that already.
- 15 Q Okay. The one extension was lateral?
- 16 A Yes, and upward.
- 17 Q And then you had the option -- you mentioned the
18 T incision was a potential option?
- 19 A That's a potential option, yes, sir.
- 20 Q Okay. Would you have had to have dissected the
21 rectus muscle any further with that incision?
- 22 A The dissection of the rectus muscle had nothing to
23 do with the extension of the uterine incision. It
24 was an attempt to make sure that there was plenty of
25 room wherever you wanted to put your hand or effect

1 delivery or what have you.

2 Q With this option, if a T incision were utilized,
3 would that -- would you necessarily had to have used
4 a rectus incision also, or would you have gotten --

5 A I don't know if I necessarily would have had to. I
6 would have anyway.

7 Q Okay. Would not the T incision have automatically
8 released the pressure?

9 A Which pressure is that, sir?

10 Q The pressure that was holding the child or the
11 resistance?

12 A I don't think so.

13 Q Okay. But the -- you were noted that there was
14 resistance after you made the lateral extension; is
15 that correct?

16 A No, sir. I noted that there was resistance prior to
17 the lateral extension. After the lateral extension,
18 I was able to put my hand inside the uterus and
19 change the position of Megan's head. And by doing
20 so -- I don't recall if the resistance went away or
21 was significantly reduced to where it was no longer
22 consequential, but it was certainly a change.

23 Q Which would have taken the less time, a T incision
24 or the incisions that you utilized?

25 A I don't know that there would have been a major

1 difference in either of them in terms of time.

2 Q This delivery took about six minutes?

3 A That's what I recall being told by someone else.

4 Q That's a little longer than average; is it not?

5 MR. WALTERS: Average for what type of
6 delivery?

7 Q The average type of incision; average type of
8 service caesarean section surgery?

9 A This was no average caesarean section, but I don't
10 know exactly what the average is. It's a little
11 longer than I usually take.

12 Q Have you ever had a caesarean section operation that
13 took longer than six minutes?

14 A Most certainly.

15 Q Okay. And how many of those have you had?

16 A I don't recall the exact number; several.

17 Q Don't you usually try to have a caesarean section
18 surgery done in about 90 seconds to two minutes?

19 A An entire caesarean section in two minutes?

20 Q No, I'm talking about from uterine incision forward?

21 A I would say that's reasonable if there is no
22 problem. If there is a very simple situation, I
23 don't think so that's unreasonable.

24 Q Let me rephrase my other question. Have you ever
25 had any caesarean section operations where it took

1 more than six minutes from the point of uterine
2 incision to deliver it?

3 A Yes, sir, I know I have.

4 Q You have. Okay. Now, with your incision you
5 have -- you stated that Dr. Reinhold applied
6 suprapubic pressure?

7 A Yes, as far as I can recall, Dr. Reinhold did.

8 Q Where was she applying that and how she was applying
9 it? Can you give us an explanation of that?

10 A Well --

11 MR. WALTERS: Why don't you try to
12 explain it? I'm getting real concerned that we have
13 a bunch of diagrams that show various things, some
14 that were done; some in response to counsel's
15 questions of what options are in a general case. So
16 if you can answer it without using a diagram, do so.
17 If you need a diagram, then fine. We're not trying
18 to save on paper. I'm just trying to save confusion
19 later on.

20 MR. PIEPER: That's fine. We'll mark
21 those exhibits promptly here.

22 A I think I can answer it verbally for you. If
23 Megan's head was just above the incision line, then
24 the pressure would have been applied -- oh, roughly
25 at the level of her -- top of her head. That's as

1 far as I can recall, that's correct, and that's --

2 Q The head would be in the lower uterine segment yet,
3 would it not?

4 A That's a reasonable assumption, yes.

5 Q Now, from that point forward, you have the -- the
6 head then is finally birthed. What is the condition
7 of the child at that point in time?

8 A She was very floppy -- floppy meaning no tone, no
9 spontaneous tone -- and she didn't have a
10 spontaneous cry.

11 Q What was the condition of her jaw?

12 A It seemed to be displaced, and I was concerned that
13 I might have caused the jaw displacement.

14 Q Dislocated would that be another word?

15 A Exactly. Yes.

16 Q Same as displaced, dislocated?

17 A It's not the same, but I think that's a better word
18 that you suggested. That's what my concern was.

19 Q And that you had dislocated the jaw?

20 A I was concerned that I had without realizing it,
21 yes.

22 Q Without realizing --

23 A Again, I didn't think I was putting that much
24 pressure on, but then when the baby came out, her
25 jaw was displayed. It was not dislocated, it turned

1 out. And my concern was that I had caused the
2 dislocation without even realizing that.

3 Q You had, in fact, caused the dislocation or the
4 displacement of the jaw, though, did you not?

5 MR. WALTERS: Objection.

6 A Not that I'm aware of.

7 Q Do you recall --

*when was this
/ conversation*

8 A From my understanding in the conversation with
9 Ms. Jones, she showed me a picture of herself at
10 birth with a very similar jaw displacement, if you
11 will.

12 MR. PIEPER: I'll object to that
13 characterization.

14 Q Mrs. Jones showed you a picture, but the
15 displacement of the jaw was nothing even close to
16 the displacement of this child, was it not?

17 A To me, they looked about the same; at least similar.

18 Q Okay. Did Mrs. Jones' jaw have bruises on the side
19 when she was born, do you know?

20 A I don't know.

21 Q Okay. Did this jaw have bruises on the side when
22 this -- when Megan was born?

23 A I don't remember, but I wouldn't be surprised if she
24 did.

25 Q You noted that there were bruises on the jaw, did

1 you not?

2 A I don't -- you may be right, Mr. Pieper. I don't
3 know.

4 Q Okay. You noted in a letter to Dr. Siew that there
5 were bruises on the jaw?

6 A I believe you. That's a reasonable statement.

7 Q Okay. How do you know that you didn't dislocate
8 this jaw?

9 A That's what I asked the pathologists.

10 Q Ashmead?

11 A No, Dr. Ashmead was responsible mostly for the
12 neuropathology. Dr. Sawady, I believe, was
13 responsible for the general autopsy.

14 Q Okay. So what -- again, we have a jaw that is
15 displaced after birth, and did you not say to the
16 family within an hour of the death of the child that
17 you apologize profusely for fracturing the jaw?

18 A I don't know about fracturing. I think I was
19 worried about dislocating the jaw, as you said. But
20 I'm very sure you're right, that I came and
21 apologized and said I thought I had done trauma to
22 her jaw and I was sorry if I had.

23 Q Okay. You also stated in the progress notes that --

24 A I'm sure you're right.

25 MR. WALTERS: Don't be so sure he's

1 right until you look. Okay, Doctor? I know you're
2 trying to be real polite, but if there's something
3 he refers to in a record, you look at the record
4 before you answer. Okay?

5 Q Page 12 we have, "Jaw trauma to the fetus caused by
6 my manipulating," about halfway down in the
7 paragraph.

8 MR. WALTERS: Where are you looking?
9 Page 12?

10 MR. PIEPER: Page 12.

11 MR. WALTERS: Of Exhibit 2?

12 MR. PIEPER: I believe so, the
13 progress notes.

14 A Yes, that's what it says.

15 Q Okay. And then, also, you have a statement to
16 Dr. Siew -- or a statement regarding the jaw to
17 Dr. Siew, in your letter to Dr. Siew?

18 MR. WALTERS: This is Exhibit 7.

19 MR. PIEPER: Yes, I believe so.

20 Q Exhibit 7, bottom paragraph, "The only trauma noted
21 was bruising to the legs and a jaw dislocation"?

22 A Uh-huh.

23 Q "I'm sure I caused the jaw dislocation turning the
24 baby's head to deliver around the fibroid"?

25 A Yes, sir, I was sure at the time that it was

1 dislocated based on appearance.

2 Q And this letter says that you're sure you caused it?

3 A I couldn't think of any other reason, so I thought
4 it had to have been my manipulation of the jaw.

5 Q You thought you put enough pressure on that jaw to
6 dislocate it?

7 A It didn't seem like I had, but I thought that was
8 the only explanation that would make sense.

9 Q This is in a February 18th letter, ten days after
10 the birth?

11 A That's right.

12 Q Okay. What evidence do you have that you didn't
13 dislocate the jaw or that something else caused the
14 dislocation or displacement?

15 A Subsequent discussions that I had with the pathology
16 team indicated that there was no jaw dislocation.
17 That should have been noted at autopsy.

18 Q It was a displacement, is that correct, was their
19 terminology?

20 A I'm not sure what the exact terminology would be.

21 Q Okay. I'll represent to you they stated it was a
22 displacement. To you, what is the difference
23 between a dislocation and displacement?

24 A In a dislocation, you actually have the joint -- for
25 lack of a better term -- excuse me -- out of whack.

1 The jaw is knocked out of its usual alignment or
2 balance. A displacement is just a deviation from
3 normal expected appearance.

4 Q Okay. Along with the bruising on the jaw?

5 A Right.

6 Q Okay. And you were explaining your evidence of a
7 different cause of this -- alleged different cause
8 of this displacement?

9 A I don't know if that's the cause or not. But
10 Ms. Jones had a picture of herself as a baby, and
11 she asked me if I was aware that she had something
12 on her jaw. And I had not been aware of that.
13 That's not something I would have expected her to
14 tell me, you know, prior to that conversation. And
15 it seemed similar to me. So I don't know if it was
16 a family trait that I have not been exposed to
17 before or what have you. I don't know.

18 Q Any other reasons that you can think of as to why
19 this would have been caused by something else rather
20 than your manipulation?

21 A I don't know. I guess the fibroid could have been
22 pressing against it for a prolonged period of time.

23 Q Do you have any evidence of that?

24 A Not directly, no.

25 Q Okay. There was cytogenetics testing or genetic

1 testing done on the child; is that correct?

2 A I honestly don't know, Mr. Pieper. That would have
3 been at autopsy, and I asked about it if --
4 somewhere back in my memory it seems like it was,
5 but I don't know.

6 Q I'll represent to you that there was genetic testing
7 done.

8 A Okay.

9 Q And do you know what the result of that testing was?

10 A No, sir.

11 Q Okay. As far as I understand, there was no
12 abnormalities.

13 A That's good.

14 Q Okay. Would that be consistent with your
15 understanding?

16 MR. WALTERS: He said he didn't know
17 the results.

18 Q You don't know the results?

19 A You just told me it was normal.

20 Q Okay. You never discussed that at any time with any
21 other residents or any other individual?

22 A I know I had asked about -- Ms. Jones or Mr. Butti,
23 one had asked me if there had been a chromosomal
24 analysis done, and I said I would check on it. And
25 I'm sure I called the pathology people and probably

1 the genetics people as well and left a message that,
2 you know, to find out.

3 As I recall, I never found out. I mean,
4 somewhere in the back of my mind it seems like
5 somebody told me, "Yeah, it was done," but I don't
6 recall who or when or what time or what have you.
7 But I surely didn't know the result, so I'm glad that
8 it was normal.

9 Q On the risk -- when we are talking about different
10 risk during the birth process, your manipulation of
11 the jaw and displacing the jaw was a risk, was it
12 not?

13 A Risk of what?

14 Q It was a risk that it would happen by your
15 manipulation?

16 MR. WALTERS: What would happen?

17 A What would happen?

18 Q In other words, the procedure that you utilized in
19 turning the jaw, is it not a risk factor that you
20 will dislocate or displace a jaw when you are trying
21 to turn it and there is resistance?

22 A If you try to turn it against resistance, I'm sure
23 that's true. We got to the point where we didn't
24 have to do that, and I don't think that -- again, I
25 was shocked when I saw the baby's jaw displaced

1 because I couldn't think of any other explanation,
2 other than that it had been me at the time.

3 Q Thank you. Thank you, Doctor. You have stated that
4 a couple times.

5 MR. WALTERS: Well, you know -- were
6 you finished with your answer? I think you were,
7 maybe you we weren't.

8 THE WITNESS: I guess I am.

9 MR. WALTERS: So whether you -- if you
10 don't like his answer, don't cut it off. You may
11 want to do whatever you want with it later, but
12 don't cut it off.

13 MR. PIEPER: I wasn't aware that I
14 was cutting it off.

15 Q Doctor, you stated that -- you stated before in this
16 deposition that there was resistance before the
17 extension was made to the uterus and you were trying
18 to turn the jaw, there was resistance, was there
19 not?

20 A I couldn't keep the baby's head in position. I
21 don't know if I stated there was resistance or I had
22 difficulty keeping the head in position, but it was
23 obviously not going to work, what I was attempting
24 at that point.

25 Q Would that not be a correct characterization of it?

1 There was resistance when you were turning the head
2 at that particular point in time?

3 A I don't recall turning it against resistance, which
4 is what it sounds like you're suggesting. I recall
5 trying to turn the head, getting the head turned,
6 and it went back to where it had been previously.
7 That's my recollection of it

8 Q Okay. You were trying to turn the head, and it was
9 going back into place?

10 A Right, it wouldn't stay in the turned position.

11 Q Would that not note to you that there was resistance
12 there when you were turning the head?

13 MR. WALTERS: Objection, asked and
14 answered.

15 A No, sir.

16 Q I see. Also, when we are talking about the
17 different manipulations that were used, you were, at
18 some point in time, were applying traction to the
19 child?

20 A Again, I'll answer that. That was an unfortunate
21 use of terms in one of my summaries -- I don't
22 remember which one now. If you're asking about
23 traction with the proper definition of pulling, no,
24 we were not pulling on the child. We were lifting
25 the child's feet up.

1 Q You were lifting the child's feet up? You were not
2 applying traction to get the head of the --

3 A We were not pulling in this nature. (Indicating.)
4 We were lifting the feet up to keep it in that
5 position.

6 Q You weren't doing any pulling to get the head
7 birthed from the uterus?

8 A No.

9 Q I see. And, also, Doctor, when we have the
10 difference -- you stated that the head was extended,
11 and that -- I characterize it as a hyperextension --
12 that there might be a hyperextension of the neck?

13 A I don't recall a hyperextension, as in over 30
14 degrees extended. I recall an extension, and it
15 seemed to be in that area where there was a little
16 more room.

17 Q When we're talking about an extension, an extension
18 so far that you could not get your hands up to grab
19 the maxilla? Would not that be a hyperextension?

20 A That was not the reason I couldn't get my hand up to
21 grab the maxilla.

22 Q Okay. What was the reason?

23 A The obstruction from the other fibroid.

24 Q Dr. Reinhold testified in her deposition that the
25 head was extended so far that she could not grab the

1 maxilla.

2 MR. WALTERS: What's the page and line
3 in that?

4 MR. PIEPER: Page 51 of her
5 deposition.

6 Q And she stated, "It was extended -- I'm looking for
7 the right word. The baby's head was" -- "the baby's
8 head was so extended, I couldn't even reach up to
9 grab the maxilla." Would that indicate to you a
10 hyperextension?

11 A No. I am not sure what Dr. Reinhold was trying to
12 indicate.

13 Q Then, on page 52 she states, "Well, as far as I
14 could reach" -- line 16 of page 52, "Well, as far as
15 I could reach, I could only reach to here, and I
16 couldn't even get a finger up here to be able to
17 flex the baby's head."

18 A Okay.

19 MR. WALTERS: Is there a question?

20 MR. PIEPER: Yes.

21 Q The question would be: Does that indicate to you
22 that the head is -- if she could not get her finger
23 up to, as she puts it, appear to be able to flex the
24 baby's head, that would be a hyperextension of the
25 head?

1 A No, that doesn't necessary suggest a hyperextension.
2 There's also a fibroid in the way.

3 Q I see. You talked about different potential causes
4 of deaths with Butti -- with the Buttis March 17th
5 and March 25th, did you not?

6 A I don't know the dates. I wasn't recording those
7 conversations.

8 Q I see. But you did meet with the Buttis on
9 March 17th and us had a telephone conversation on
10 March 25th?

11 A That sounds reasonable to me, from my recollection.

12 Q Okay. When you talked with them about the -- let me
13 ask you, basically, as I understand it, the basis of
14 this conversation was to find out the cause of death
15 of the child? They wanted to know the cause of
16 death; is that --

17 MR. WALTERS: Objection. He doesn't
18 know what's in their mind. I suggest, because of
19 the surreptitious and probably illegal taping, that
20 the basic purpose was to try to make a lawsuit to
21 get some money. Okay.

22 MR. PIEPER: I'll --

23 MR. WALTERS: You want to talk about
24 what their motivation was? That's what I'll suggest
25 it was, because if they really just wanted facts,

1 they would do what decent people do, which is talk
2 openly with someone and not sneak around with tape
3 recorders.

4 MR. PIEPER: Objection, motion to
5 strike.

6 VIDEO TECHNICIAN: Excuse me. Can we go
7 off the record to change the audio -- videotape?

8 THE WITNESS: Can we take a little
9 break?

10 VIDEO TECHNICIAN: One moment, please.

11 (Brief recess.)

12 VIDEO TECHNICIAN: We are on the record.

13 This is the beginning of the second
14 videotape of the deposition of Dr. Wayne Burrows.

15 By Mr. Pieper:

16 Q To back up a second, Doctor, at the point of the
17 uterine incision, you said the legs were delivered
18 into the uterine incision?

19 A After the --

20 Q Legs of Megan, after the uterine incision were made?

21 A Right.

22 Q Okay. Were the legs flexed at that point in time?

23 A I don't recall.

24 Q Okay. Then, throughout the birthing up to the
25 shoulders, was there movement in the child, the legs

1 were moving and so forth?

2 A I believe I recall I felt what I thought was a kick
3 at the time. It's been a long time, but I believe I
4 recall that. Dr. Reinhold -- what was it I
5 discussed with -- maybe Dr. Jo Ashmead explained if
6 you get a reflex kick, you can't tell that from a
7 spontaneous kick at some point to me; I remember
8 that.

9 Q Oh, I see, Doctor. That's from Dr. Ashmead?

10 A I believe.

11 MR. PIEPER: Okay. Objection to
12 hearsay.

13 Q At the point in time up until the delivery of the
14 shoulders, was there any indication of a problem
15 with Megan?

16 A Not that I was aware of.

17 Q Okay. Now, Doctor, after the delivery of the child,
18 what happened specifically from the point after the
19 child was delivered to the -- well, exactly what
20 happened from that point forward?

21 A Mr. Pieper, we hand the baby off to the neonatal
22 team.

23 Q I understand.

24 A So I can only tell you what I heard and so forth.

25 Q Okay. What did you hear and see?

1 MR. WALTERS: Just tell him what you
2 observed first. If he wants to hear something else,
3 he'll ask.

4 A Okay. What I was able to see, it looked like they
5 were resuscitating her, and it was taking longer
6 than I expected, and they brought her out of the
7 delivery area.

8 Q Do you know who was resuscitating her?

9 A I don't recall.

10 Q Do you know who the NICU personnel were?

11 A Not off the top of my head, no.

12 Q Okay. And, Doctor, at some point in time you had a
13 couple of peer review meetings or tissue review
14 meetings, do you recall that, with MetroHealth?

15 A No.

16 Q Okay. You had a couple of review meetings,
17 pathology review regarding this case?

18 A We had a pathology review at one point yes.

19 Q Okay. How many meetings did you ever, review style
20 meetings?

21 MR. WALTERS: I am not sure I know
22 what review style meetings and --

23 MR. PIEPER: Well, there's --

24 Q When you talk about a peer review meeting, were
25 there any peer review meetings regarding this case?

- 1 A Not that I'm aware of.
- 2 Q Were there any pathology review meetings regarding
3 this case?
- 4 A Megan's case was discussed at a combined meeting of
5 pathology, neonatal and OB, that we held on a
6 regular basis.
- 7 Q Okay. How many of those meetings did you attend?
- 8 A I don't remember. I attended as many of them as I
9 could while I was there.
- 10 Q No, I am saying regarding this child specifically,
11 how many meetings did you attend?
- 12 A I only know of her having been discussed once.
- 13 Q Okay. No other meetings, in other words, whether
14 they were review meetings or any other type of
15 meetings, any other meetings involving this child?
- 16 A We have departmental rounds. I presented the
17 situation that had occurred at the rounds. I don't
18 know if it was the next Monday or Tuesday or
19 whatever, whatever day rounds were.
- 20 Q Okay. Who was present at the review -- pathology
21 review meeting?
- 22 A Well, again, we had a regularly scheduled meeting
23 with pathology, obstetrics, OB/GYN and neonatology.
- 24 Q Okay. Do you recall the date of that meeting?
- 25 A No, sir.

1 Q Okay. The meeting, did it take place on the same
2 date as one of your conversations with the Buttis?

3 A May have. I don't know.

4 Q Okay. You had a couple different conversations with
5 the Buttis on March 17th and March 25th; is that
6 correct?

7 MR. WALTERS: A couple of each date
8 are you saying?

9 Q No, I am saying, you had two. Well, you tell me.
10 How many conversations do you recall having with the
11 Buttis once they were released from the hospital?

12 A I don't -- two or three. I don't recall the exact
13 number.

14 Q Okay. You had how many face-to-face meetings,
15 again, after Mrs. Jones was released?

16 A I believe we just had one, if I am not mistaken. We
17 set up an appointment for her.

18 Q Okay. Would that be the March 17th meeting?

19 A I don't know. That's reasonable.

20 Q Okay. Then how many telephone conversations did you
21 have again after Mrs. Jones was released from the
22 hospital with the Buttis?

23 A One or two. I don't recall exactly.

24 Q How about just one, would that ring a bell, on
25 March 25th?

1 A It's all right with me. I don't recall.

2 MR. WALTERS: He said he doesn't
3 recall the date. What do you want to do, hit him
4 over the head?

5 Q That's fine. During these different conversations
6 that you had with the Buttis after Mrs. Jones was
7 released, you mentioned various potential causes of
8 death. One would be a diaphragmatic hernia?

9 A Yes.

10 Q Okay. That was ruled out as far as you know?

11 A That was ruled out, I believe, before Ms. Jones left
12 the hospital. She had asked me to let her know,
13 even if they were considering something, what it was
14 so she could keep posted on it -- or maybe Mr. Butti
15 asked me, but one of them asked me.

16 Q Okay. Also, you mentioned a pneumothorax?

17 A Right.

18 Q That was ruled out?

19 A As far as I recall. I believe there was some
20 confusion in my initial question about a
21 pneumothorax was answered one way, and then someone
22 didn't understand what I was asking and said there
23 was not, if I recall.

24 Q A pulmonary hyperplasia was also discussed?

25 A Right.

1 Q Okay. And it was found that that was not -- that
2 was not present with Megan?

3 A Right. It -- I have to honestly admit, I thought it
4 was a reasonable possibility, but I was never
5 convinced that that was what happened.

6 Q Respiratory distress syndrome was discussed?

7 A I don't think so. The presentation would have been
8 extremely peculiar for respiratory distress
9 syndrome.

10 Q Okay. So that would not be a mechanism in your
11 mind?

12 A Wouldn't be high on my list of possible causes.

13 Q You also mentioned a hypothyroid -- hypothyroidism
14 of Mrs. Jones. Does that have any bearing on this
15 case, do you believe?

16 A I don't recall. I can't think of it bearing on this
17 case in terms of Megan's outcome, no.

18 Q Okay. You also mentioned trauma, brainstem trauma
19 as a result of the --

20 A Right, that was a concern that I had.

21 Q You also stated that you had discussions with a Dr.
22 Ashmead?

23 A Yes.

24 Q Okay. And during these discussions it was --
25 evidently, she came to the conclusion that the

1 herniation in the brainstem occurred one half hour
2 to an hour after birth; does that --

3 A I don't recall that.

4 Q You don't recall that conversation?

5 A No.

6 Q Okay. If I told you that you made that statement in
7 the March 17th conversation with the Buttis, would
8 that refresh your memory?

9 MR. WALTERS: Again, show my objection
10 which I articulated before with regard to the tapes.
11 I don't want to sound like a broken record.

12 MR. PIEPER: You have a standing
13 objection.

14 MR. WALTERS: You're using
15 surreptitiously made tapes as if they were somehow
16 prior in court testimony. It's not only wrong, it's
17 unethical, in my opinion, and I object to it.

18 MR. PIEPER: So noted. Motion to
19 strike everything except the relevance part of the
20 objection.

21 Q You don't recall making that statement about the --
22 regarding the herniation appearing either a half an
23 hour to an hour after birth?

24 A I don't recall that. That was a possibility that
25 was discussed at one point, but I don't think that

1 was ever proven. And I may have made the statement,
2 Mr. Pieper, because I know it was discussed;
3 herniation prior to the birth, or could have been a
4 herniation after birth or what have you. But I
5 don't know enough pathology to know how to tell, and
6 I don't recall that that was a proven fact or just a
7 consideration or what have you.

8 Q As to when -- a proven fact as to when the
9 herniation, in fact, took place; is that what you're
10 stating?

11 MR. WALTERS: Objection, if there was
12 a herniation.

13 Q It's your understanding there was a herniation after
14 your --

15 A I don't know. I know it was discussed. And I'm
16 sure if it was discussed with me, I would have
17 passed it along to Ms. Jones and Mr. Butti, as they
18 requested. I don't know. I don't know the details
19 of that conversation off the top of my head, and I
20 don't know what was being discussed at that time in
21 terms of the timing or whether the herniation was a
22 certainty. I just don't recall.

23 Q You also mentioned during the March 17th
24 conversation that there's a possibility that the
25 manipulation over a period of time caused a cut off

1 in the blood flow to the vertebral arteries.

2 MR. WALTERS: Wait for a question. He
3 just made a statement.

4 Q Is that -- is that, in fact, the statement that you
5 recall making?

6 A I don't recall the statements I made at that
7 conversation, Mr. Pieper. I'm sure that was a
8 concern. I'm sure that I was concerned over the
9 possibility.

10 MR. WALTERS: Look, this is a lawsuit
11 involving a claim of medical negligence. It's not a
12 memory game. You're trying to make it into a memory
13 game. It's improper. Now, I ask you as an officer
14 of the court to stop that. If you want to ask him
15 did he say thus and such, again, put it in front of
16 him. You're trying to ask him whether he remembers
17 everything that was discussed at a conversation that
18 apparently took place more than a year ago --

19 MR. PIEPER: That's correct.

20 MR. WALTERS: -- in which, to his
21 knowledge, no record was being made and no record
22 has been available that he has reviewed.

23 MR. PIEPER: But you did have -- you
24 did receive the tapes.

25 MR. WALTERS: That's right, and I

1 wasn't going to dignify those tapes by treating them
2 as if they were a deposition and put them in front
3 of him. That's right. They're garbage, and I
4 wouldn't put them in front of him because I don't
5 practice law that way and I don't live my life that
6 way, either.

7 MR. PIEPER: Objection.

8 MR. WALTERS: If I wanted -- you know
9 if they wanted to --

10 MR. PIEPER: Let's not get into this.

11 MR. WALTERS: No. No. Let's just put
12 it on the record. If they had wanted to tape a
13 conversation with him, I'm sure all they would have
14 needed to say is, "Dr. Burrows, do you mind if we
15 tape this so that we can think about it later?" And
16 he would have said, "Sure. Go ahead." They didn't
17 have to sneak around.

18 MR. PIEPER: Objection. Motion to
19 strike.

20 By Mr. Pieper:

21 Q Doctor, would you have been any less candid in your
22 comments had you known that the taping was taking
23 place?

24 A I don't think it's a matter of candor. I mean, I'm
25 kind of disappointed that the taping was taking

1 place.

2 Q Just answer my question.

3 MR. WALTERS: He was -- he is
4 answering your question.

5 A I am trying to, Mr. Pieper. I think it was
6 disappointing that the taping was taking place
7 without my knowledge. I think any time you have a
8 conversation that's recorded, you tend to be very,
9 very careful about your wording of things as much as
10 you're able. Perhaps there wouldn't have been any
11 less candor, but there would have been a little bit
12 more careful wording of comments or, you know,
13 specifically stating that this was a consideration,
14 but not a proven fact in different cases. I don't
15 know.

16 Q In order to protect yourself as much as you could?

17 MR. WALTERS: Objection, he didn't say
18 that.

19 A I don't know if that's the reason so much as just
20 because if something is being recorded, you know
21 every little word is going to be evaluated.

22 Q Doctor, you've discussed with my clients in a very
23 candid conversation that you couldn't rule out
24 brainstem trauma.

25 MR. WALTERS: Do you recall that? He

1 makes statements, and then doesn't ask a question.
2 Just because he stops, don't assume that there's a
3 question because that's the way it's supposed to be
4 done.

5 Q Do you recall that?

6 A I recall that.

7 Q Uh-huh. And do you recall stating to them that you
8 couldn't stand and -- you couldn't sit before them
9 and look them straight in the eye and tell them you
10 didn't cause brainstem trauma?

11 A Right, I never saw any proof of exactly what caused
12 Megan's demise. I never saw any proof that
13 satisfied me, and I assume they never saw any proof
14 that satisfied them, either. So I can't rule out
15 any possibility because of that.

16 Q Uh-huh. There was -- there was noted in the
17 autopsy, was there not, that there was a
18 brainstem -- or evidence of a brainstem herniation;
19 is that your understanding?

20 A I'd have to refer to the autopsy report at this
21 point.

22 Q Okay. Refer to --

23 A Do you know which -- it would be Megan's chart, I'm
24 sure.

25 MR. WALTERS: 3.

1 THE WITNESS: Uh-huh.

2 MR. WALTERS: Yeah. Do you have a
3 page number?

4 MR. PIEPER: Yes.

5 THE WITNESS: 48, is that in the
6 neighborhood?

7 Q Page 50 of the exhibit -- what exhibit number is
8 that?

9 A 3.

10 Q Okay. Page 50, Megan's chart; is it not?

11 A Right.

12 Q Okay. Do you recall -- do you recall seeing this
13 document before?

14 A I'm sure I did.

15 Q Okay. Do you see in the first paragraph where it
16 states, "Fragmentation of edematous frontal lobes"?

17 A Edematous front lobes, yes, where it says, "Possible
18 increased intracranial pressure and herniation"?
19 Yes, I see it.

20 Q Okay. And the "fragmentation of lateral mid-brain"?

21 A Yes.

22 Q "Fragmentation of cerebrum" -- or "cerebellum with
23 CNS fragments and leptomeninges"?

24 A Right.

25 Q Okay. Are those items that were discussed --

1 A Yes.

2 Q -- by you with Dr. Ashmead?

3 A Yes, at the pathology conference that you mentioned
4 earlier.

5 Q Okay. So at this point in time, you can't rule out
6 brainstem damage, can you?

7 A No.

8 Q And that would be consistent with a child who was
9 born depressed at birth with no respiratory effort
10 and a low heartbeat, would it not?

11 A Sure could.

12 Q And that's the best explanation of it -- of a -- it
13 is -- is that not the best explanation of the demise
14 of this child?

15 MR. WALTERS: Objection to form.

16 Q I'm sorry?

17 MR. WALTERS: Yeah, you can answer.

18 A I'm sorry.

19 MR. WALTERS: It was improperly asked.

20 A I don't know what the best explanation is at this
21 point, Mr. Pieper. And I have consistently said I
22 don't know what the best explanation for the demise
23 of this child is.

24 Q Do you have any explanation, any mechanism that you
25 can think of, other than trauma, that caused this

1 child's demise?

2 A I am not a pathologist. I am not a neonatologist.

3 Q I understand.

4 A And I don't know. I could probably make up lists,
5 and half of the stuff I put on the list would be
6 silly to someone in the field, but I don't know what
7 caused her death.

8 Q Do you know what kind of resuscitation efforts were
9 used after you handed the child over?

10 A I know she was intubated.

11 Q Do you know if she was intubated properly or not?

12 A There was an X-ray I saw in the neonatal intensive
13 care unit when I went over there after the surgery.
14 And I remember holding up the X-ray and, I believe,
15 I was the one who pointed out and said, "Well the
16 tube is in the right place." That's all I can
17 recall about it.

18 There was nothing -- people were concerned
19 about the possibility of a diaphragmatic hernia,
20 like you mentioned earlier, and you can't always
21 tell that on X-ray, but sometimes you can. And
22 there was nothing to indicate a diaphragmatic hernia
23 on the X-ray.

24 Q Regarding X-rays, as part of your duties as an
25 obstetrician, at some point in time, you have to

1 take over the resuscitation efforts if someone is
2 not qualified to do resuscitation; is that correct?

3 MR. WALTERS: Objection. In what
4 setting are you talking about?

5 MR. PIEPER: I'm talking about --

6 Q As part of your duties as an obstetrician, if
7 someone was not present to do the resuscitation, you
8 would have to carry on that role, would you not, in
9 resuscitating a child --

10 A In other words, have --

11 Q -- as if a pediatrics or a neonatologist were not
12 present?

13 A Right, I've been trained to intubate babies and been
14 trained to carry on resuscitation, for instance,
15 while waiting for someone more qualified to arrive,
16 yes.

17 Q Okay. Now, in that X-ray you were talking about, if
18 you saw that X-ray again, could you identify that?

19 A I don't think so at this point, sir, no.

20 Q Okay. In that X-ray, were the lungs expanded?

21 A I honestly just don't recall. I really don't
22 recall.

23 Q Was there air in the stomach?

24 A I don't recall.

25 Q Well, what type of view of X-ray was it?

1 A In neonates, they do a flat plate it's called, and
2 it has almost the whole baby on it just to see the
3 chest. And I'm assuming that that's what I was
4 looking at is an X-ray of that nature.

5 Q Do you have any complaints regarding the care
6 rendered by the -- rendered in this case to Megan
7 and to Mrs. Jones by the nurses at MetroHealth
8 Medical Center, any complaints as to their care?

9 A Do I have any complaints?

10 Q Yes, yourself.

11 A No.

12 Q Okay. Do you have any complaints as to the care
13 rendered by Dr. Reinhold?

14 A No.

15 Q Any complaints to the care rendered by the
16 anesthesiologist?

17 A No.

18 Q Okay. Any complaints as to any other personnel at
19 MetroHealth Medical Center?

20 A Nothing that I recall specifically, no, sir.

21 Q Okay. Any complaints as to the care rendered
22 previous to yours by Dr. Siew to Mrs. Jones.

23 MR. WALTERS: Wait a second. How
24 would he have any knowledge of that? He didn't see
25 Mrs. Jones until she arrived at Metro. I mean, he

1 just -- it's outside his personal knowledge, so I
2 object for that reason.

3 MR. PIEPER: I understand.

4 Q But you can answer to the best of your ability. You
5 did see various records regarding Mrs. Jones' care
6 by Dr. Siew, did you not?

7 A I guess that's true, yes, sir.

8 Q Did you have any complaints regarding the care,
9 based on those records?

10 MR. WALTERS: Objection.

11 A No.

12 Q I'm sorry?

13 A Not particularly.

14 Q Any complaints?

15 MR. WALTERS: Same objection. I don't
16 want to keep -- Doctor, I'm objecting because he's
17 asking you a question with regard to care that, by
18 its very definition, was rendered prior to you ever
19 even hearing of Mrs. Jones.

20 MR. PIEPER: Exactly.

21 MR. WALTERS: And so there would be
22 limitations of your knowledge. The fact that I'm
23 objecting, I'm not telling you not to answer. Don't
24 be put off by it. I'm just continuing to object to
25 this particular line.

1 THE WITNESS: I understand

2 MR. WALTERS: So you may answer the
3 questions.

4 A I get the feeling you're trying to ask me something,
5 and I'm missing the boat, Mr. Pieper. And I'm not
6 meaning to be an obstructionist.

7 Q I'm just asking you if you have any complaints as to
8 the care rendered by anyone else to --

9 A No, sir. Everybody does things their own way. I
10 might have done something differently here or there.
11 I don't recall anything specific, but I don't have
12 any complaints that I recall.

13 I seem to remember Mr. Butti said somebody
14 upset them. I don't even remember what the
15 circumstances were. I would complain about that.
16 That was uncalled for. But I don't recall the
17 details well enough to give you any specifics. I
18 don't have any complaints about anyone else's role
19 in the care of Ms. Jones or Megan, no, sir.

20 Q You prepared the -- what purports to be an operative
21 report for this case; is that correct?

22 MR. WALTERS: He prepared the
23 operative report. I object to the "purports to be."

24 Q Did you not?

25 A I dictated an operative report long after the

1 surgery was done, yes, sir.

2 Q Uh-huh. This was what -- the surgery was on
3 February 8th, and the report was dictated on
4 March 31st?

5 A Do you remember the page that the report is on?
6 Here we go. 46?

7 Q Yes, 46.

8 A This is the one that's cut off, but yes, that's what
9 it looks like.

10 MR. WALTERS: This one might be
11 better, this copy.

12 Q At the top of mine it says, "Dictated 3-31-92, typed
13 4-7-92."

14 A Sure.

15 Q Okay. Have you ever seen the report that was
16 dictated by Dr. Reinhold?

17 A No, sir, I didn't.

18 Q Had that ever been presented at any of the meetings
19 that you attended regarding this case?

20 A Yes. My meeting with Mr. Butti and Mrs. Jones, I
21 had told them that I had thought I had seen
22 something. I'd gotten a copy --

23 Q No, that wasn't my question. My question was --

24 MR. WALTERS: Let him --

25 MR. PIEPER: I want to ask the

1 question, then he can go on.

2 Q Had you ever seen --

3 MR. WALTERS: Objection to him being
4 cut off, but go ahead.

5 MR. PIEPER: He's not answering my
6 question.

7 Q My question was: Did you ever see the operative
8 report that was dictated by Dr. Reinhold at any of
9 the meetings that you attended at MetroHealth?

10 A No, sir.

11 Q Okay. Have you ever seen that operative report?

12 A No, sir.

13 MR. WALTERS: Now finish what you were
14 going to say.

15 Q Fine.

16 A I told, I believe it was Mr. Butti, that there was a
17 paper on my desk, it had Mrs. Jones' name on it. I
18 had already seen the dictated discharge summary, so
19 that was probably the op report, and I'd let them
20 know. I may be wrong. You have the transcripts of
21 the conversation. But that's the gist of what I
22 recall. And when I got back to my office and looked
23 at it, it turned out to be a second copy of the
24 discharge summary. I never saw the original op
25 report.

- 1 Q You believe you saw the second copy? I'm sorry. I
2 lost you there.
- 3 A They send copies of the discharge summaries, page 4,
4 and you can see the name up there at the top. We
5 usually only send one copy. I believe I had a stack
6 of papers on my desk and saw Ms. Jones' name on the
7 top of the page and thought, "It's got to be the
8 operative summary, because I've already seen the
9 discharge summary, and I was incorrect.
- 10 Q The operative summary is a different format, is it
11 not, than that --
- 12 A It's very similar. See, if you have two of them
13 here, we can test my memory for exactness on that.
14 See. Her name is at the top. (Indicating.)
- 15 Q I see.
- 16 A And I was hoping I saw the operative summary, and I
17 did not.
- 18 Q I see. So this operative report that was dictated
19 on March 31st, did you receive any notices from
20 MetroHealth that the operative report was past due?
- 21 A No, sir.
- 22 Q As far as you know, did Dr. Reinhold receive any, to
23 the best of your knowledge?
- 24 A I don't know. She didn't mention it to me.
- 25 Q Okay. That's -- what happened to the original

1 operative report, if you know?

2 A I haven't the foggiest notion.

3 Q You stated in your answers to interrogatories that
4 you told the Buttis it was never transcribed?

5 A That's my guess.

6 Q Okay. Do you recall telling the Buttis that
7 specifically?

8 A That's a reasonable statement.

9 Q No, I'm saying do you recall telling them that?

10 A No, not word for word, but I have no objection to
11 your assuming that I said that.

12 Q Thank you. You don't have any -- you also have --
13 don't have any objection to the statement made by
14 yourself that you believe that the operative report
15 was on your desk at one point in time?

16 A No, I thought it was at one point in time.

17 MR. PIEPER: Off the record, please.

18 VIDEO TECHNICIAN: One moment, please.

19 (Brief recess.)

20 VIDEO TECHNICIAN: We are back on the
21 record.

22 By Mr. Pieper:

23 Q Doctor, you have made drawings on two documents
24 here.

25 A Yes.

1 Q Could you --

2 MR. PIEPER: First, we'll have the
3 court reporter identify them, please.

4 MR. WALTERS: I think he's made them
5 on three total.

6 MR. PIEPER: Yes, three total, but
7 I'm saying two unmarked at this point in time. So
8 we will have the court reporter mark those and then
9 we'll refer to them.

10 (Plaintiffs' Exhibits
11 9 and 10 marked for
identification.)

12 Q Okay. Could you identify those documents for us,
13 please?

14 A Yes, this is the drawing you asked me to make.

15 Q What exhibit is that? Excuse me.

16 A 9.

17 Q Okay. Plaintiff's Exhibit 9?

18 A And I was trying to give a generalized, if you will,
19 a cartoon view of a low transverse C-section on this
20 drawing, and you asked me to be more specific on
21 this one. (Indicating.)

22 MR. WALTERS: On which one? You say
23 "this."

24 A No. 9.

25 MR. WALTERS: Okay. So you say 9 is

- 1 the more specific; is that what you're saying?
- 2 A Yes, within the limits of my artistic talent that
- 3 indicates the incision made in Mrs. Jones' uterus.
- 4 Q You have the incision as noted in black ink and the
- 5 extension in red ink; is that correct?
- 6 A Yes, sir.
- 7 Q Okay. Now, Plaintiff's Exhibit No. 10, could you
- 8 describe that, please?
- 9 A Yes, sir, that's another drawing that we made, a
- 10 similar sort of incision line, and it's showing what
- 11 a T incision looks like.
- 12 Q Uh-huh. Which was not done in this case?
- 13 A No, sir.
- 14 Q Okay. Then in Exhibit -- Plaintiff's Exhibit No. 8,
- 15 that is a drawing -- your first drawing of the
- 16 uterine incision that you later modified, and also
- 17 including a division between lower uterine segment
- 18 and upper uterine segment; is that correct?
- 19 A Right, the thick portion and thin portion of the
- 20 uterus, right.
- 21 Q Could you do this for me, on this Plaintiff's
- 22 Exhibit 9 --
- 23 A Do you want me to do the demarcation line?
- 24 Q Yes, if you would, please.
- 25 A Sure, I'd be glad to.

1 Q And while you're doing that, on Exhibit No. 8, you
2 also made a T incision line in red ink?

3 A Uh-huh.

4 MR. WALTERS: But let the record show
5 that as the witness indicated at the time, a T was
6 not done in this case.

7 MR. PIEPER: Yes.

8 MR. WALTERS: That's what has been
9 worrying me about the two of those exhibits that
10 show a T.

11 Q Could you also locate the fibroid and the placenta
12 in those -- in that Exhibit No. 9, please?

13 A 9. I'm not an artist. I'll do my best.

14 Q Sure. That's all we can ask.

15 A (Witness marking document.)

16 I'm not very good at circles. I'm sorry,
17 Mr. Pieper.

18 Q Okay. And you have noted the fibroid as an "F" and
19 the placenta as a "P" --

20 A Yes, sir.

21 Q -- on Plaintiff's Exhibit 9?

22 A Yes, sir.

23 Q Okay. Now, does this -- as far -- I understand your
24 limitations as an artist, this is the most accurate
25 representation that you -- this is the most adequate

1 representation of the three of the incisions that
2 was done, position of the fibroid and the placenta,
3 to the best of your knowledge?

4 A Yes, sir, best of my knowledge and abilities.

5 Q Okay. Now, you took a sonogram, ultrasound reading,
6 did you not?

7 A I did an ultrasound exam, yes.

8 Q Yes. And were any hard copies created of that?

9 A Not that I recall, and it would have been unusual to
10 do that. Usually, the only hard copies you took and
11 used in using that ultrasound were if you were doing
12 an ultrasound for dating and wanted to record the
13 numbers.

14 Q Were any documents produced of the ultrasound
15 reading itself, hard copies, films?

16 A No. Other than my note?

17 Q Yes.

18 A No, sir, not that I'm aware of.

19 Q No photographic representations of the ultrasound
20 itself through film or hard copy?

21 A No, nothing that I recall.

22 Q Okay. Dr. Reinhold in her deposition stated that
23 she saw the ultrasound hard copy from Mrs. Jones?

24 A She may have. Mrs. Jones brought some ultrasound
25 films with her that had been done at Elyria.

1 Q Oh, she did?

2 A As I recall, yeah.

3 Q She brought ultrasound films with her?

4 A Yes, I recall. I don't know exactly when in her
5 admission, but that could have been what she saw

6 MR. PIEPER: I have not received
7 those from you.

8 MR. WALTERS: I've never seen them.

9 THE WITNESS: I don't know what
10 happened to them. I don't know. I saw them.

11 Q I see. You recall seeing those ultrasound films
12 from MetroHealth?

13 A At MetroHealth, not from MetroHealth.

14 Q I'm sorry. At MetroHealth from Elyria Memorial
15 Hospital?

16 A Yes, sir.

17 Q Okay. Do you know what dates, how recent the
18 ultrasounds were?

19 A Oh, no, I don't, but I believe they were -- on a
20 guess, just based on what I recall of them, I would
21 say it wasn't that long prior to my meeting
22 Mrs. Jones; maybe a month or so.

23 Q Did they match up with the ultrasound report that
24 you saw and was delivered from Elyria Memorial
25 hospital to Metro?

1 A I didn't go over it with a fine-tooth comb, but I
2 didn't see any major differences; nothing that
3 struck me at the time.

4 Q Okay. Again, these were films that you were
5 referring to that you saw?

6 A Right.

7 MR. PIEPER: I have no further
8 questions at this time.

9 MR. WALTERS: Okay. If this is
10 transcribed, he'll want to see it, and since he's in
11 South Carolina, I would ask that the transcript be
12 sent to me, and that we have, like, two weeks to get
13 it back turn-around time instead of the typical one
14 week.

15 MR. PIEPER: I have no problem with
16 that.

17 THE WITNESS: Thank you.

18 MR. WALTERS: I'll explain to you,
19 Doctor, what that means what we just said.

20 MR. PIEPER: That's fine. Go ahead
21 and write it up.

22 (Deposition concluded at 4:45 p.m.)

23 (Signature not waived.)

24

25

Enata sheet?

1 I have read the foregoing transcript from page 1
2 through 138 and note the following corrections:

3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
	PAGE	LINE																				

Wayne R. Burrows, M.D.

Subscribed and sworn to before me this _____ day
of _____, 1993.

Notary Public

My commission expires _____.

1 State of Ohio,)
) SS: CERTIFICATE
2 County of Cuyahoga,)

3 I, Kathleen A. Cawley, Court Reporter and Notary
4 Public in and for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that the within named
6 witness, Wayne R. Burrows, M.D., was by me first duly
7 sworn to testify the truth, the whole truth, and nothing
8 but the truth in the cause aforesaid; that the testimony
9 then given by him was by me reduced to stenotypy/computer
10 in the presence of said witness, afterward transcribed,
11 and that the foregoing is a true and correct transcript of
12 the testimony so given by him as aforesaid.

13 I do further certify that the testimony given by
14 the witness was recorded by video-audiotape, and that the
15 videotape hereto attached is a true and correct visual and
16 audio reproduction of the testimony given by him.

17 I do further certify that this deposition was taken
18 at the offices of at the offices of Weston, Hurd,
19 Fallon, Paisley & Howley, 2500 Terminal Tower, Cleveland,
20 Ohio 44115, on Thursday, May 27, 1993, commencing
21 at 1:37 p.m. and was completed without adjournment at
22 4:45 p.m.

23 I do further certify that I am not a relative,
24 counsel, or attorney of either party, or otherwise
25 interested in the event of this action.

1 IN WITNESS WHEREOF, I have hereunto set my hand
2
3 and affixed my seal of office at Cleveland, Ohio, on
4 this 10th day of June, 1993.

5 Kathleen A. Cawley
6 Kathleen A. Cawley
7 Notary Public in and for the State of Ohio.
8 My commission expires May 6, 1995.

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ERRATA SHEET

Page	Line	
18	25	"resident" should be "visitant"
40	"	"documentation" should be "limitation"
46	3	"and" should be "in"
93	23	"think so that's" should be "think that's so"
95	25	"displayed" should be "displaced."
102	7	"now" should be "know"

James R. Pennington