

1 IN THE COURT OF COMMON PLEAS
2 OF CUYAHOGA COUNTY, OHIO

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4 CHARLES TENNEY, III, etc.,
5 et al.,



6 Plaintiffs,

7

vs

Case No. 448548

8

9 URMILA PATEL, M.D., et al.,

10

Defendants.

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12 - - - - -
13 DEPOSITION OF LOIS CRICKS, RN

14 MONDAY, APRIL 22, 2002

15 - - - - -

16 Deposition of LOIS CRICKS, RN, a Witness
17 herein, called by counsel on behalf of the
18 Plaintiff for examination under the statute,
19 taken before me, Vivian L. Gordon, a Registered
20 Diplomat Reporter and Notary Public in and for
21 the State of Ohio, pursuant to agreement of
22 counsel, at the offices of Southwest General
23 Health Center, Middleburg Heights, Ohio,
24 commencing at 12:15 o'clock p.m. on the day and
25 date above set forth.

1 APPEARANCES:

2 On behalf of the Plaintiff

Becker & Mishkind

3 HOWARD D. MISHKIND, ESQ.

Skylight Office Tower Suite 660

4 Cleveland, Ohio 44113

216-241-2600

5

6 On behalf of the Defendant Southwest General
Health Center

7 Bonezzi, Switzer, Murphy & Polito

DONALD SWITZER, ESQ.

8 1400 Leader Building

Cleveland, Ohio 44114

9 216-875-2767

10 On behalf of the Defendant Patel

Weston, Hurd, Fallon, Paisley & Howley

11 BEVERLY HARRIS, ESQ.,

2500 Terminal Tower

12 Cleveland, Ohio 44113

216-687-3269

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1 LOIS CRICKS, RN, a witness herein, called
2 for examination, as provided by the Ohio Rules
3 of Civil Procedure, being by me first duly
4 sworn, as hereinafter certified, was deposed and
5 said as follows:

6 EXAMINATION OF LOIS CRICKS, RN
7 BY MR. MISHKIND:

8 Q. Please state your name.

9 A. Lois Cricks.

10 Q. Your address, please.

11 A. 14170 Walking Stick Way,
12 Strongsville, 44136.

13 Q. Have you ever had your deposition
14 taken before?

15 A. Yes.

16 Q. How many times?

17 A. Once.

18 Q. In what connection?

19 A. With a case through the hospital.

20 Q. Were you involved in some aspect of
21 labor and delivery that caused your deposition
22 to be taken in another case?

23 A. Yes.

24 Q. How long ago was your deposition
25 taken?

1 A. Two years, three years. Longer than
2 that?

3 MR. SWITZER: It's pre PIE days.
4 Probably six or seven years.

5 Q. The name of the patient in that case?

6 A. I don't remember.

7 Q. What was the nature of the medical
8 condition?

9 A. There was some kind of injury to the
10 baby.

11 Q. There was a birth injury. Do you
12 know what type of injury the baby sustained?

13 A. No.

14 Q. Did the baby survive?

15 A. Yes.

16 Q. Was the baby brain damaged?

17 A. As far as I know, from what I heard.
18 I mean, I don't know them. I didn't see the
19 baby or anything.

20 Q. Do you remember the name of the
21 attorney that deposed you?

22 A. No.

23 Q. Do you remember my name?

24 A. No.

25 (Discussion off the record.)

1 Q. You say that this was more than a
2 couple years ago --

3 A. Yes.

4 Q. -- that your deposition was taken?

5 A. I believe so.

6 Q. Did you testify at trial in that
7 case?

8 A. Yes.

9 Q. Do you remember the name of the
10 judge?

11 A. Patricia Cleary.

12 Q. Do you recall the outcome of that
13 case?

14 A. I don't know that I ever found out.
15 (Discussion off the record.)

16 Q. That is the only other time that your
17 deposition was taken?

18 A. Yes.

19 Q. You are employed here at the
20 hospital?

21 A. Yes.

22 Q. How long have you been employed?

23 A. Sixteen plus years.

24 Q. You work in obstetrics and
25 gynecology?

1 A. Yes. Labor and delivery.

2 Q. Labor and delivery?

3 A. Yes.

4 Q. What do you do up in labor and
5 delivery?

6 A. I'm a staff nurse and I also am a
7 systems manager for our computerized charting
8 system.

9 Q. Explain to me if you would, please,
10 why there was a shutdown on the QS system the
11 morning of Charlie Tenney's delivery.

12 A. I don't know specifically what the
13 shutdown was for, but periodically they will
14 send us information that they are upgrading a
15 particular program in the system, so they
16 schedule us a shutdown so you can't use the work
17 stations because they dial in -- well, at that
18 time they were in Annapolis -- to the server and
19 upgrade the whole system.

20 I don't know specifically what that
21 one was for, but they do that to fix glitches or
22 problems or problems with designing different
23 forms and things and they put the fixes in
24 through these upgrades.

25 Q. Little patches that they send

1 through?

2 A. Yes.

3 Q. As far as what the glitch or the
4 issue was sometime in the 9:45 time period in
5 this case, any knowledge?

6 A. No, I don't recall what it was. If
7 it was a scheduled shutdown, we knew about it
8 ahead of time. They sort of like try to pick a
9 day or time of a day when they can fit you in
10 their schedule so the staff knows on this day at
11 this time you have to chart on paper from this
12 time to that time.

13 Q. And in fact the record does reflect
14 that it was a scheduled shutdown of QS system at
15 9:48 and Lisa Piscola records that at 9:50. Do
16 you see that?

17 A. Uh-huh.

18 Q. That's a yes?

19 A. Yes, I'm sorry.

20 Q. That's all right. Have you reviewed
21 any of the records to prepare yourself for
22 today?

23 A. Yes.

24 Q. What have you reviewed?

25 A. I looked over the labor and delivery

1 charting and the L&D summary, the apgar sheet.

2 That's pretty much it.

3 Q. When is the last time you had any
4 contact with Lisa Piscola?

5 A. Before she left, which I don't know
6 when that was.

7 Q. Were you her preceptor?

8 A. I was not a preceptor at the time,
9 no.

10 Q. Were you co-managing with -- did you
11 have any supervisory roll over Lisa on the
12 morning of September 13th?

13 A. Then, I don't know. If the preceptor
14 was off that day, they would often ask for
15 another RN that was on that day to buddy up with
16 their orientee if she was in orientation. I
17 have done that before.

18 Q. Do you know whether that was the case
19 on September 13th?

20 A. No, I don't.

21 Q. Were you involved in any aspect of
22 the labor management of Dawn prior to the
23 shoulder dystocia being encountered?

24 A. Not that I know of, no.

25 Q. Tell me when is the last time you

1 talked to Dr. Patel about this case?

2 A. I have not talked to her about this
3 case.

4 Q. Do you know her deposition was taken?

5 A. Yes.

6 Q. From whom did you obtain that
7 information?

8 A. From Don.

9 Q. You have not talked directly to her
10 about her deposition?

11 A. No.

12 Q. Any memory of Dawn Davis?

13 A. No.

14 Q. Any memory of family members?

15 A. No.

16 Q. Any memory of Charlie Tenney, the
17 baby?

18 A. No. Only that I remember hearing
19 about a baby in the nursery with the pneumos,
20 but other than that, no.

21 Q. What was explained to you by any
22 doctors or nurses as to the cause of the
23 pneumothoraces?

24 A. There wasn't. Nobody discussed that
25 with me.

1 Q. What was your role on September 13th,
2 2000, as it relates to this case?

3 A. As far as I can gather from the
4 chart, because I don't really recall this
5 patient or this delivery, was I must've
6 responded to the code pink or a call for help or
7 something, only because there is no incidence
8 where I had anything charted or had taken any
9 orders. I know my name appears on the summary
10 and the apgar sheet and that I gave her some
11 Stadol after delivery.

12 Q. Based upon your name being on the
13 summary of pregnancy, labor and delivery, is it
14 likely that you were present in the birthing
15 room at the time that the shoulder dystocia was
16 being managed?

17 A. I was in the room at some point, yes.

18 Q. Do you know whether you were in the
19 room before the baby's full body was delivered?

20 A. No, I don't recall. I don't actually
21 recall when I was in there or what I had any
22 part in doing in there.

23 Q. Are you able to shed any light on
24 what -- strike that.

25 Besides Lisa, according to the

1 summary of pregnancy, labor and delivery, who
2 else would have been in the room during the
3 actual delivery besides Dr. Patel by way of
4 medical personnel?

5 A. Jackie Whittington and myself.

6 Q. Do you know whether Jackie came in
7 before, after, or with you?

8 A. No, I don't know.

9 Q. What role would Jackie have played as
10 compared to what role you would have played?

11 A. She would have been the nursery nurse
12 that was catching the baby or responsible for
13 the care of the baby.

14 Q. The handoff, if you will?

15 A. Yes.

16 Q. You're distinguished from her in what
17 capacity? You are not involved in the newborn
18 nursery?

19 A. No, I don't work for the nursery.

20 Q. Do you have any reason to believe
21 that you would have assisted Dr. Patel if, in
22 fact, a shoulder dystocia was encountered and
23 assistance was needed by her to manage the
24 shoulder dystocia?

25 A. You want to know if I would have

1 responded to or -- I'm not sure what you are
2 asking me.

3 Q. Let's assume you were in the room
4 when Dr. Patel screamed out that the head was
5 stuck.

6 MS. HARRIS: Objection.

7 Q. Hypothetically, would you have
8 assisted Dr. Patel if called upon to implement
9 any maneuvers to free the baby's shoulder from
10 the birth canal?

11 MS. HARRIS: I'm sorry, I objected
12 too soon. Objection now.

13 A. If she asked me to help at some point
14 during this delivery, would I have helped if I
15 was in the room? Yes.

16 Q. Have you ever assisted Dr. Patel
17 during any shoulder dystocia deliveries?

18 A. Not that I know specifically.

19 Q. Have you been in a birthing room,
20 delivery room, whatever you want to call it, at
21 a time that a shoulder dystocia has been
22 encountered?

23 A. Probably at some point in 16 years.

24 Q. This is going back a little bit less
25 than two years ago. Over the last two years,

1 have you been involved in a shoulder dystocia
2 delivery?

3 A. Not that I can say or not that I have
4 any memory of.

5 Q. In experiencing a shoulder dystocia,
6 as a nurse, it's an anxious moment, is it not?

7 A. Yes.

8 Q. Something that typically is
9 remembered by you as a nurse?

10 A. Not necessarily. I have a lot of
11 anxious moments with a lot of deliveries.

12 Q. Nothing stands out in this case in
13 your mind about being involved in any aspect,
14 for example, of assisting Dr. Patel in getting
15 mom into the McRoberts position?

16 A. I don't really have any memory of
17 what I was doing.

18 Q. And the record doesn't reflect
19 specifically that you as a nurse participated in
20 either putting mom in the lithotomy position or
21 putting mom into the McRoberts maneuver to
22 attempt to free the baby's anterior or posterior
23 shoulder; true?

24 A. True. It does not say that.

25 Q. And is there any reason for you to

1 say based upon the record and knowing that this
2 was a shoulder dystocia that you most likely
3 were assisting her in some aspect of the
4 delivery?

5 A. Can you say that again? I might have
6 been, but I don't have any recollection of what
7 I did.

8 Q. So it would be pure speculation on
9 your part?

10 A. Yes.

11 Q. Would you have been part of the code
12 pink team?

13 A. I could have been.

14 Q. And as part of the code pink team,
15 what would have been your responsibility?

16 A. I would have been like the second RN
17 in the room at the time, which is what is
18 required with a code pink, so I would have done
19 any assisting, had the nursery nurse needed
20 something, but the hospitalist was there too, so
21 my role as a code pink person at that point,
22 having the nursery nurse and a hospitalist there
23 was probably nothing, unless they needed me to
24 get them something. They probably didn't need a
25 third set of hands at that time.

1 Q. The hospitalist would have been
2 Dr. McKnight?

3 A. Yes.

4 Q. Do you have any idea who is being
5 referenced when Dr. Patel says the respiratory
6 and pediatric house physician was in the
7 delivery room, who the respiratory physician is?

8 A. That's probably the respiratory
9 therapist, and pediatrician house physician
10 would be something they would call the
11 hospitalist. They call them different things at
12 different times when they are figuring out what
13 they were doing with these people.

14 Q. The therapist would not have
15 participated in any aspect of assisting
16 Dr. Patel in delivering the baby?

17 A. No.

18 Q. Coming in as part of the code pink
19 team in the middle of a shoulder dystocia, would
20 you have been in a position to assist Dr. Patel,
21 if necessary?

22 A. Yes.

23 Q. You just don't have any recollection
24 of doing so?

25 A. No.

1 Q. Would it have been inappropriate to
2 have applied fundal pressure once the shoulder
3 dystocia was encountered?

4 A. Yes.

5 Q. Once the shoulder dystocia is
6 encountered, would it be inappropriate to have
7 mom continue in her efforts to push?

8 A. Well, I don't know. I can't say
9 that. I would not be the one directing her what
10 to do.

11 Q. That would be Dr. Patel?

12 A. Correct.

13 Q. Do you have any recollection one way
14 or another on who was doing what in an attempt
15 to free the baby's shoulder once the shoulder
16 dystocia was encountered?

17 A. No.

18 Q. And do the records reflect what was
19 being done by any of the nurses in an attempt to
20 free the shoulder once the shoulder dystocia was
21 encountered?

22 A. Once the head was delivered, there is
23 a note about suprapubic pressure.

24 Q. And I think that's the computer
25 generated note by Lisa?

1 A. Right.

2 Q. Where else are you noted other than
3 on the summary of pregnancy, labor and delivery?

4 A. On the top of the apgar sheet, I
5 believe, as a member of the code pink team.

6 Q. And beyond that?

7 A. Nowhere that I know of.

8 Q. Do any of those notes assist you in
9 saying most likely what you would have been
10 doing during this process?

11 A. Not really.

12 Q. Do you know why Lisa left the
13 hospital?

14 A. No.

15 Q. Do you know if, in fact, Lisa was in
16 orientation, whether she was required to be
17 precepted or co-managed during her work in labor
18 and delivery?

19 A. Well, all new people are required for
20 some period of time depending on their
21 experience is there. So if, in fact, she was in
22 her orientation, some other nurse would have
23 been responsible for supervising her.

24 Depending on where she was in her
25 orientation. There is a different degree of

1 supervisory needed depending on where they are.
2 I believe that when she came to us, she had OB
3 experience. And I don't know how far this was
4 into her orientation. I mean, at some point you
5 are just sort of there as their mentor if they
6 have questions about charting or forms or
7 hospital based things.

8 Q. Were you friendly with Lisa while she
9 was here?

10 A. I wouldn't say I was friendly with
11 her. I worked with her, but I didn't have any
12 kind of relationship with her.

13 Q. You didn't socialize with her outside
14 of work?

15 A. No.

16 Q. But did you have a fairly decent
17 working relationship with her?

18 A. I would say so, yeah.

19 Q. You worked some of the same shifts?

20 A. Yes. She was in orientation during
21 the day and I was a day shift person, at that
22 time maybe only working half time.

23 Q. If she was in orientation and you
24 were the day shift person, would you then have
25 been her supervisor?

1 A. I might have been.

2 Q. Do you know the reason that she was
3 fired?

4 MR. SWITZER: Objection.

5 A. No.

6 MR. SWITZER: There is no indication
7 that she was fired.

8 Q. Do you know the reason that she left
9 the hospital?

10 A. No.

11 Q. Do you know whether she left the
12 hospital because she was fired?

13 A. No.

14 Q. When is the last time you had any
15 contact with her?

16 A. Before she left. I'm not sure when.

17 Q. Would you take a look at the OB, the
18 computer generated notes.

19 MR. SWITZER: What time?

20 MR. MISHKIND: 11:24.

21 Q. Just a little bit of clarification.
22 I am pretty clear on the process, but I'm still
23 learning how these notes are generated.

24 A. Okay.

25 Q. The 11:24 entry and then with the

1 annotations below that, in this particular case,
2 how did Lisa choose that 11:24 time frame?

3 A. You mean like physically how do you
4 do that?

5 Q. Right.

6 A. You click on that area of the strip.

7 Q. Okay.

8 A. The strip is on the computer screen
9 the same as it is coming out on paper.

10 Q. So the 11:24 note within the
11 annotations that shows delivery vaginal code
12 pink team present, she would have entered the
13 time of 11:24?

14 A. She would have selected that area of
15 the strip to put that note there.

16 Q. Now, her note, her actual note was
17 not recorded until 1343 or almost two hours
18 later; true?

19 A. True.

20 Q. Do you know why Lisa did not record
21 this entry until two hours and 20 minutes later?

22 A. No, I don't know why.

23 Q. That's not consistent with normal
24 nursing practice, is it?

25 MR. SWITZER: Objection.

1 A. Well, it depends.

2 Q. Depends on what?

3 A. Because all of the charting in labor
4 and delivery is late charting, so if you are
5 reading your notes and go, oh, you know what, I
6 forgot to put that I did an exam or I called the
7 doctor at this time or whatever, just like you
8 can make a late entry on any other chart in the
9 hospital, you can do that.

10 Q. Do you know, is this reflected as a
11 late entry?

12 A. Only that it denotes the time the
13 entry was made. It will put them in
14 chronological order as far as when the events
15 occurred, but it will always notate what time
16 the entry was made.

17 Q. And again, the 11:20 note also, what
18 does that note designate?

19 A. The time of that note. The time of
20 the occurrence of that.

21 Q. So this designates that the baby's
22 head was delivered at 11:20?

23 A. Correct.

24 Q. Even though Lisa didn't record it
25 until two hours and 21 minutes later?

1 A. Correct.

2 Q. How does she pick up the time of
3 11:20? What is it she is basing that on?

4 A. I wouldn't know.

5 Q. Did you ever talk with Dr. Patel
6 about the four minutes from 11:20 to 11:24 as to
7 whether or not she felt that that was or was not
8 consistent with how long it took from head to
9 body for this baby to be delivered?

10 A. No.

11 Q. You didn't have any contact with mom
12 in the -- or did you have contact with mom
13 during postpartum?

14 A. No, not that I could tell.

15 Q. All right.

16 A. I don't usually work that side
17 anyhow.

18 Q. Is there anything else from looking
19 at the notes that you have concluded that you
20 most likely did or saw other than what we have
21 talked about?

22 A. No.

23 MR. MISHKIND: Nothing further.

24 MS. HARRIS: Nothing.

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1 (Deposition concluded at 12:45 p.m.)

2 (Signature not waived.)

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1 AFFIDAVIT

2 I have read the foregoing transcript from
3 page 1 through 23 and note the following
4 corrections:

5 PAGE LINE REQUESTED CHANGE

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18 LOIS CRICKS, RN

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20 Subscribed and sworn to before me this
21 day of , 2002.

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23 Notary Public

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25 My commission expires .

CERTIFICATE

State of Ohio,

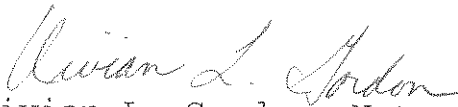
SS:

County of Cuyahoga.

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named LOIS CRICKS, RN was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action. I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 29th day of April, 2002.


Vivian L. Gordon, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

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