

COMMON PLEAS COURT

FRANKLIN COUNTY

STATE OF OHIO

- - -

THOMAS DIEDERICH, ET AL., :

PLAINTIFFS, :

VS.

CASE NO. 93CVA09-6510

PRINCIPAL HEALTH CARE
OF OHIO, INC., ET AL.,

DEFENDANTS. :

- - -

DEPOSITION OF

STEPHEN J. DEVOE, M.D.

SEPTEMBER 28, 1995

- - -

E & A REPORTING SERVICE, INC.
915 SOUTH FRONT STREET
COLUMBUS, OHIO 43206
(614) 445-6300

- - -

DEPOSITION OF STEPHEN J. DEVOE, M.D., A
WITNESS CALLED BY THE PLAINTIFF AS IF UPON CROSS-
EXAMINATION, TAKEN BEFORE ME, MISTIANN OCANAS, A
NOTARY PUBLIC WITHIN AND FOR THE STATE OF OHIO, AT
THE OFFICES OF THE DEPONENT, 3555 OLENTANGY RIVER
ROAD, SUITE 3070, COLUMBUS, OHIO 43214, COMMENCING
AT 11:25 A.M., SAID DEPOSITION TAKEN PURSUANT TO THE
STIPULATIONS HEREINAFTER SET FORTH.

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APPEARANCES :

/

GERALD S. LEESEBERG, ESQ., OF THE LAW
FIRM OF LEESEBERG, MALOON, SCHULMAN & VALENTINE, 175
SOUTH THIRD STREET, COLUMBUS, OHIO 43215, APPEARING
VIA TELEPHONE ON BEHALF OF THE PLAINTIFFS.

JAMES S. OLIPHANT, ESQ., OF THE LAW FIRM
OF PORTER, WRIGHT, MORRIS & ARTHUR, 41 SOUTH HIGH
STREET, COLUMBUS, OHIO 43215, APPEARING ON BEHALF OF
THE DEFENDANTS.

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STIPULATIONS

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IT IS AGREED AND STIPULATED BY AND
BETWEEN COUNSEL FOR THE RESPECTIVE PARTIES HEREIN
THAT THIS DEPOSITION MAY BE TAKEN IN SHORTHAND BY
MISTIANN OCANAS, WHO MAY LATER, OUT OF THE PRESENCE
OF THE WITNESS, TRANSCRIBE OR CAUSE SAID SHORTHAND
NOTES TO BE TRANSCRIBED; THAT THE FORMALITIES AS TO
THE TIME AND PLACE OF THE TAKING OF THE DEPOSITION
ARE BY AGREEMENT OF COUNSEL; AND THAT THE
QUALIFICATIONS OF THE OFFICER BEFORE WHOM TAKEN AND
THE SIGNATURE OF THE WITNESS SHALL BE EXPRESSLY
WAIVED.

- - -

I,

THEREUPON,

STEPHEN J. DEVOE, M.D.

BEING BY ME FIRST DULY SWORN,

AS HEREINAFTER CERTIFIED,

TESTIFIES AS FOLLOWS:

CROSS-EXAMINATION

BY MR. LEESEBERG:

Q I'M GOING TO ASK YOU SOME QUESTIONS ABOUT YOUR ROLE IN THIS CASE. STANDARD INSTRUCTIONS, IF YOU DON'T UNDERSTAND ANY OF MY QUESTIONS OR IF YOU CAN'T HEAR BECAUSE OF THIS PHONE SITUATION, JUST LET ME KNOW OR LET THE REPORTER KNOW, AND I'LL CLARIFY THE QUESTION OR RESTATE IT SO YOU DO HEAR IT OR UNDERSTAND IT; OKAY?

A THAT'S FINE.

Q WHO RETAINED YOU IN THIS CASE?

A KEN BLUMENTHAL.

Q AND WHEN DID HE FIRST CONTACT YOU?

A A LITTLE OVER A YEAR AGO.

Q OKAY. JUST A SECOND, PLEASE.

I HAD TO CLOSE MY DOOR. WHAT DID IR. BLUMENTHAL ASK YOU TO DO?

A HE ASKED ME TO REVIEW THE MEDICAL RECORD OF MRS. DIEDERICH AND GIVE HIM AN OPINION WHETHER I

THOUGHT THE CARE WAS UP TO STANDARD.

2 Q THE CARE BY WHOM?

3 A THE PEOPLE AT PRINCIPAL HEALTH CARE,
4 PARTICULARLY AMATO, VICKERS, CEBUL. AMATO, VICKERS,
5 CEBUL, I GUESS.

6 Q OKAY. DO YOU KNOW THOSE GENTLEMEN?

7 A YES.

8 Q HOW DO YOU KNOW THEM?

9 A PROFESSIONALLY ONLY. THEY'RE MEMBERS OF
10 THE RIVERSIDE OB DEPARTMENT AND SO AM I.

11 Q SO YOU SEE THEM ON A REGULAR BASIS?

12 A I PASS THEM IN THE HALL, YES.

13 Q OKAY. DO YOU REFER PATIENTS BACK AND
14 FORTH, FOR EXAMPLE?

15 A NO.

16 Q THEY'RE JUST IN A DIFFERENT GROUP BUT
17 THEY PRACTICE IN THE SAME HOSPITAL?

18 A EXACTLY.

19 Q OKAY. ARE YOU FAMILIAR WITH THEIR
20 METHODS OF PRACTICING?

21 A NOT REALLY. I MEAN, YOU KNOW, THOUGH WE
22 PASS EACH OTHER IN THE HALL, WE DON'T SCRUB IN THE
23 SAME CASES OR LOOK OVER EACH OTHER'S SHOULDERS IN
24 PATIENT MANAGEMENT OR IN ON THE DELIVERY ROOMS

2

1 TOGETHER.

2 Q OKAY. DO YOU KNOW THEM OTHER THAN IN A
3 PROFESSIONAL CAPACITY?

4 A NO.

5 Q DO YOU BELONG TO ANY OF THE SAME
6 PROFESSIONAL ASSOCIATIONS THAT YOU GET TOGETHER WITH
7 ON A REGULAR BASIS FOR MEETINGS OR ANYTHING LIKE
8 THAT?

9 A I BELONG TO THE COLUMBUS OB-GYN SOCIETY.
10 I DON'T RECALL EVER SEEING ANY OF THEM DOWN THERE.
11 THEY COULD BELONG. THEY DON'T COME FREQUENTLY. I
12 USUALLY HIT EVERY MEETING.

13 Q WHAT KIND OF A PRACTICE DO YOU
14 UNDERSTAND THEM TO HAVE?

15 A A GENERAL OB-GYN PRACTICE.

16 Q DO YOU HAVE AN UNDERSTANDING AS TO
17 WHETHER OR NOT THEY HOLD THEMSELVES OUT AS AND
18 UNDERTAKE THE CARE OF HIGH-RISK OB PATIENTS?

19 A WE ALL TAKE CARE OF SOME PATIENTS WHO
20 MEET THE CRITERIA OF HIGH-RISK OB PATIENTS FROM TIME
21 TO TIME. I DO NOT THINK THEY DESCRIBE THEMSELVES AS
22 HIGH-RISK SPECIALISTS, BUT THE LIST OF THINGS THAT
23 MAKES SOMEONE HIGH RISK IS SO LONG THAT THEY
24 INEVITABLY ARE PART OF EVERYONE'S PRACTICE.

Q OKAY. DO YOU MAKE REFERRALS OF SOME OF
YOUR OB PATIENTS WHO YOU CONSIDER TO BE HIGH RISK?

A USUALLY NOT, BECAUSE I TOOK A
MATERNAL-FETAL MEDICINE FELLOWSHIP ALSO.

Q SO YOU FEEL QUALIFIED AND COMPETENT TO
HANDLE ANY OBSTETRICAL PROBLEM?

A I REFER OR GET CONSULTATIONS
OCCASIONALLY JUST TO VERIFY MY OWN OPINION, AND I DO
OCCASIONALLY REFER FOR DETAILED ULTRASOUND EXAMS.

Q WHO DO YOU REFER TO UNDER THOSE
CIRCUMSTANCES?

A USUALLY THE RIVERSIDE PERINATAL
SERVICES, DICK O'SHAUGHNESSY.

Q OKAY.

A HE'S ONE OF SEVERAL GUYS FROM UNIVERSITY
WHO FILL THE POSITION, THE HOSPITAL BASED POSITION,
AT RIVERSIDE. DICK IS THE GUY IN CHARGE, AND HE'S
HERE MOST OF THE TIME.

Q ARE YOU TALKING ABOUT RICHARD
O'SHAUGHNESSY FROM OSU?

A YES.

Q OKAY. HOW MANY HOURS HAVE YOU SPENT ON
THIS CASE TO DATE?

A I SPENT SIX LAST FALL I SAW IN MY NOTES

1 THERE, A YEAR AGO, AND I HAVE PROBABLY SPENT EIGHT OR
2 NINE SINCE THEN.

3 Q WHAT HAVE YOU DONE SINCE YOUR SIX HOURS
4 OF TIME LAST FALL?

5 A WHAT I'VE DONE RECENTLY, THEN, IS WHAT
6 I'LL TELL YOU. I HAVE READ MAINLY DEPOSITIONS THAT
7 HAVE BEEN SENT ALONG TO ME SINCE THEY'VE BEEN
8 ACCUMULATED.

9 Q WHOSE DEPOS HAVE YOU READ?

10 A I'LL TELL YOU EVERYBODY I'VE READ. I
11 THINK I'VE READ THEM ALL RECENTLY. I DON'T THINK ANY
12 OF THEM WERE AVAILABLE LAST FALL, BUT I THINK I COULD
13 BE WRONG ABOUT THAT. CEBUL, VICKERS, AMATO,
14 CHRISTENSEN, GRUNEBAUM, O'SHAUGHNESSY, DIEDERICH'S --
15 MOTHER, MR. AND MRS., I READ THOSE A YEAR AGO.

16 Q RIGHT.

17 A O'SHAUGHNESSY, DID I SAY THAT?
18 GRUNEBAUM. I READ A LETTER FROM MEREDITH SERHANS OR
19 SERMONS.

20 MR. OLIPHANT: STEMPEL.

21 A AND STEMPEL. I THINK THAT'S IT. I CAN
22 READ MY FILE.

23 BY MR. LEESEBERG:

24 Q YOU'VE READ DR. STEMPEL'S DEPOSITION?

3

1 A YES.

2 Q AND YOU'VE READ O'SHAUGHNESSY'S AND
3 GRUNEBAUM'S?

4 A YES.

5 Q WAS THERE ANYTHING THAT DR. STEMPEL SAID
6 THAT, AS YOU RECALL AS YOU SIT HERE TODAY, THAT YOU
7 WOULD DISAGREE WITH?

8 MR. OLIPHANT: OBJECTION.

9 A YOU KNOW, I CAN'T RECALL THE WHOLE
10 DEPOSITION, AND DON'T KNOW IT VERBATIM, BUT I DO NOT
11 RECALL DISAGREEING WITH ANYTHING LARRY SAID ACTUALLY.
12 WE TEND TO THINK A LOT ALIKE.

13 BY MR. LEESEBERG:

14 Q OKAY. AND I APPRECIATE THAT YOU DON'T
15 HAVE IT THERE IN FRONT OF YOU AND HAVEN'T MEMORIZED
16 IT, BUT WE CAN PROBABLY SHORTEN THIS UP A LOT BY
17 PROCEEDING THAT WAY. IN TERMS OF WHAT HE DESCRIBED
18 THE STANDARD OF CARE TO BE AS YOU RECALL HIS
19 TESTIMONY, YOU PRETTY MUCH -- YOUR FEELINGS COINCIDE
20 WITH HIS IN THAT REGARD?

21 MR. OLIPHANT: OBJECTION.

22 A YES, BUT I WISH YOU'D BE SPECIFIC SO --
23 I'LL KIND OF HOLD OUT THE POSSIBILITY I MIGHT
24 DISAGREE IN **SOME** SMALL POINT LATER.

3

1 BY MR. LEESEBERG:

2 Q OKAY. WHAT ABOUT DR. O'SHAUGHNESSY'S
3 DEPOSITION, DO YOU RECALL ANY AREAS IN WHICH YOU
4 DISAGREED WITH DR. O'SHAUGHNESSY?

5 A OFF THE TOP OF MY --

6 MR. OLIPHANT: OBJECTION.

7 GO AHEAD.

8 A OFF THE TOP OF MY HEAD, AGAIN, I DON'T.
9 I DID NOT FEEL THAT WAS AS GOOD A FIT AS STEMPEL'S
10 WAS, BUT I CAN'T GIVE A SPECIFIC ANSWER WITHOUT
11 LOOKING THROUGH IT OR LOOKING AT MY NOTES OR
12 SOMETHING.

13 BY MR. LEESEBERG:

14 Q DO YOU CONSIDER DR. O'SHAUGHNESSY TO BE
15 A HIGHLY COMPETENT, QUALIFIED HIGH-RISK OBSTETRICAL
16 PHYSICIAN HERE IN TOWN?

17 A I THINK HE'S VERY QUALIFIED AND
18 COMPETENT. SO IS LARRY STEMPEL.

19 Q ALL RIGHT. DO YOU KNOW DR. BRESSLER?

20 A BRESSLER, YES.

21 Q I THINK IT'S FRANK BRESSLER.

22 A YES, I KNOW HIM.

23 Q DID YOU REVIEW HIS RECORDS FROM MOUNT
24 CARMEL AFTER THE DELIVERY OF JACOB DIEDERICH?

3

1 A YES. THAT WAS PART OF THE MEDICAL
2 RECORD THAT I WAS PROVIDED INITIALLY, AND I REVIEWED
3 IT.

4 Q DID YOU SEE THE PLAN THAT HE SET FORTH
5 IN THE MEDICAL RECORDS FOR FUTURE PREGNANCIES FOR
6 ELIZABETH?

7 A YES.

8 Q WOULD YOU AGREE OR DISAGREE WITH THAT
9 PLAN AS AN APPROPRIATE WAY TO MANAGE FUTURE
10 PREGNANCIES?

11 A I WOULD DISAGREE. I THINK IT'S TERRIBLY
12 INAPPROPRIATE.

13 Q AND WHY IS IT INAPPROPRIATE?

14 A HE WANTS TO HOSPITALIZE HER FROM
15 BASICALLY THE PERIOD OF TIME RUPTURE OF THE UTERUS
16 COULD OCCUR ON. I DON'T REMEMBER WHAT HE SAID,
17 EITHER 36 OR THE LAST TRIMESTER OR SOMETHING.
18 RUPTURE OF THE UTERUS IN PEOPLE WITH CLASSICAL
19 INCISIONS HAS BEEN DESCRIBED AS EARLY AS 14, 15 WEEKS
20 OF PREGNANCY AND IS VERY UNPREDICTABLE AND ALSO HAS A
21 VERY LOW INCIDENCE, SO THAT I THINK IT'S OVERKILL AND
22 STILL MAY NOT MAKE ANY DIFFERENCE IN THE OUTCOME.

23 Q WAS THERE ANY REASON THAT AN
24 AMNIOCENTESIS WAS CONTRAINDICATED IN ELIZABETH

3 1 DIEDERICH AT ABOUT 36 WEEKS?

2 A CONTRAINDICATED AND INDICATED ARE TWO
3 DIFFERENT WAYS OF LOOKING AT THE SAME QUESTION. IT
4 WOULD NOT BE NECESSARILY CONTRAINDICATED. AT THE
5 SAME TIME, THAT'S NOT TO INFER IT IS INDICATED.

6 Q RIGHT. I UNDERSTAND. BUT WHAT I'M
7 TRYING TO GET AT IS, THERE WAS NO MEDICAL REASON
8 YOU'RE AWARE OF WHY ONE COULD NOT HAVE BEEN DONE AT
9 THAT TIME?

10 A I DO NOT KNOW WHERE THE LOCATION OF THE
11 PLACENTA WAS, AND THAT MAY BE A RELATIVE
12 CONTRADICTION TO AN AMNIOCENTESIS IF ALL THE
13 ACCESSIBLE AREAS OF AMNIOTIC FLUID ARE COVERED BY
4 14 PLACENTA. THEN YOU HAVE TO WEIGH WHETHER OR NOT IT'S
15 WORTH DOING AN AMNIOCENTESIS TO GO THROUGH THE
16 PLACENTA.

17 Q BUT YOU'RE NOT AWARE OF ANY MEDICAL
18 REASON WHY SHE COULD NOT HAVE HAD ONE AT 36 WEEKS?

19 A PLACENTA AS A CAVEAT, OTHERWISE I'M NOT.

20 Q HAD A PLACENTA -- HAD AN AMNIOCENTESIS
21 BEEN DONE AT 36 WEEKS, DO YOU HAVE AN OPINION AS TO
22 WHAT THE LIKELIHOOD WAS OF THAT TEST REVEALING FETAL
23 LUNG MATURITY?

24 A PROBABLY IT WOULD HAVE REVEALED FETAL

4 1 LUNG MATURITY TO SOME DEGREE. THERE ARE DEGREES OF
2 2 FETAL LUNG MATURITY, AND THE BABY PROBABLY WOULD HAVE
3 3 BEEN MATURE OR TRANSITIONING TO MATURE.

4 Q AND REGARDLESS OF WHAT DEGREE OF
5 5 MATURITY, IS IT YOUR OPINION THAT THE TEST RESULT
6 6 WOULD HAVE INDICATED THAT THE FETUS WAS SUFFICIENTLY
7 7 MATURE TO BE ABLE TO BE DELIVERED AT THAT TIME?

8 A I DON'T KNOW THAT. I CAN'T SAY THAT
9 9 WITH A REASONABLE DEGREE OF CERTAINTY. MANY
10 10 BABIES -- MOST BABIES ARE AT 36 WEEKS, BUT THERE ARE
11 11 DEFINITELY SOME THAT ARE NOT. AND SECONDLY, SOME OF
12 12 THE BABIES WHO HAVE MATURE RATIOS THAT JUST BARELY
13 13 ARE MATURE DON'T DO WELL IN THE NURSERY OR HAVE SOME
14 14 ILLNESS IN THE NURSERY AND ONCE IN A BLUE MOON THEY
15 15 GET REAL SICK. I'VE HAD A COUPLE OF BABIES GET
16 16 REALLY SICK WITH MATURE LS RATIOS WITH NO OTHER
17 17 REASON OR EXPLANATION.

18 Q IS IT YOUR TESTIMONY THAT IT IS -- OR
19 19 YOUR OPINION THAT A FETAL LUNG MATURITY TEST DONE AT
20 20 36 WEEKS IN THIS CASE WOULD HAVE REVEALED MORE LIKELY
21 21 THAN NOT FETAL LUNG MATURITY?

22 MR. OLIPHANT: OBJECTION.

23 GO AHEAD.

24 A TO SOME EXTENT. AGAIN, THE MATURITY --

4

1 WE GET BACK AT LEAST TWO RESULTS WHEN YOU DO THE
2 TEST. ONE IS THE FLM, WHICH IS A FLUORESCENCE TEST,
3 THE OTHER IS LS RATIO. YOU CAN GET A BABY WITH A
4 MATURE LS THAT STILL HAS SOME RESPIRATORY PROBLEMS IN
5 THE NURSERY, SO PROBABLY WOULD BE MATURE BUT MAYBE
6 NOT 100 PERCENT MATURE.

7 BY MR. LEESEBERG:

8 Q OKAY. BUT THE TEST ITSELF WOULD
9 PROBABLY DEMONSTRATE MATURITY. WHETHER OR NOT THE
10 CHILD EVENTUALLY HAD RESPIRATORY PROBLEMS IN THE
11 NURSERY IS A DIFFERENT QUESTION; RIGHT?

12 A IT MAY NOT REPORT MATURITY. THAT'S WHAT
13 I'M TRYING TO SAY. YOU GET BACK TWO DIFFERENT TESTS
14 AND THEY DON'T ALWAYS COINCIDE 100 PERCENT.

15 9 BUT THE LITERATURE REPORTS I THINK THAT
16 AT 36 WEEKS SOMEWHERE IN THE ORDER OF 90 TO 95
17 PERCENT OF THE FETUSES WILL DEMONSTRATE FETAL LUNG
18 MATURITY WITH AMNIOCENTESIS; ISN'T THAT CORRECT?

19 A RIGHT.

20 Q AND DO YOU HAVE ANY REASON TO SUSPECT
21 THAT JACOB DIEDERICH WOULD NOT HAVE BEEN DEMONSTRATED
22 ON AMNIOCENTESIS TO HAVE FETAL LUNG MATURITY?

23 A NO, BUT WE DON'T KNOW THAT IT WOULD FOR
24 SURE EITHER.

4 1 Q OKAY.

2 A MOST DO. THAT IS WHAT I SAID IN THE
3 BEGINNING.

4 Q HAD JACOB DIEDERICH BEEN DELIVERED AT 36
5 WEEKS, DO YOU HAVE ANY REASON TO BELIEVE THAT HE
6 WOULD NOT HAVE SURVIVED AND LIVED AND BEEN A HEALTHY
7 BABY?

8 A ASSUMING HE SURVIVED THE AMNIOCENTESIS,
9 I HAVE NO REASON TO BELIEVE HE'D HAVE TROUBLE IN THE
10 NURSERY.

11 Q WOULD YOU AGREE THAT THIS CHILD DIED
12 BECAUSE THERE WAS AN ABRUPTION OF A PLACENTA AT 38
13 PLUS WEEKS?

14 A YES. AND I THINK THE -- I DON'T KNOW
15 WHAT HAPPENED FIRST. I IMAGINE THE UTERUS RUPTURED
16 AND THEN THE PLACENTA SEPARATED, AND THAT'S WHY HE
17 DIED, AS A RESULT OF THE COMPLICATIONS OF ASPHYXIA.

18 Q AND WOULD YOU AGREE THAT HAD THE CHILD
19 BEEN DELIVERED BY C SECTION AT 36 WEEKS THE CHILD
20 WOULD NOT HAVE DIED?

21 A RIGHT.

22 Q DR. GRUNEBAUM SET FORTH A PLAN OF
23 MANAGEMENT. DO YOU RECALL HIS TESTIMONY CONCERNING
24 WHAT HE BELIEVED WAS THE APPROPRIATE PLAN OF

MANAGEMENT FOR THIS PREGNANCY?

A YES.

Q DID YOU FIND HIS TESTIMONY CONCERNING THE APPROPRIATE PLAN OF MANAGEMENT TO BE SIMILAR TO WHAT DR. O'SHAUGHNESSY DESCRIBED WOULD BE HIS PLAN OF MANAGEMENT?

A NO.

Q WHAT DID YOU UNDERSTAND DR. O'SHAUGHNESSY'S PLAN OF MANAGEMENT TO BE, WHAT HE WOULD FOLLOW IN THIS CIRCUMSTANCE?

A I'LL HAVE TO LOOK AT MY NOTES ON THAT. I FOCUSED MORE ON GRUNEBAUM, BUT I'D LIKE TO LOOK AT O'SHAUGHNESSY'S.

Q WITHOUT HAVING TO DO THAT, LET ME SEE IF I CAN SHORTEN IT UP. DID YOU DISAGREE WITH THE PLAN OF MANAGEMENT THAT DR. O'SHAUGHNESSY INDICATED HE WOULD HAVE FOLLOWED IN THIS CASE?

MR. OLIPHANT: OBJECTION.

GO AHEAD.

A WELL, AGAIN, I'M --

MR. OLIPHANT: WHAT PLAN IS THAT?

A I WAS GOING TO SAY, I NEED TO SEE WHAT I'M AGREEING OR DISAGREEING WITH.

MR. OLIPHANT: WHAT PLAN DO YOU MEAN?

5

1 A BECAUSE HE REFERRED TO BLUMENTHAL'S
2 PLAN -- OR BLUMENFELD WAS THE GUY THAT TOOK CARE OF
3 HER IN 1987 AT UNIVERSITY, AND SHE -- OR SOMEONE
4 SUGGESTED -- BLUMENFELD SAID SHE OUGHT TO BE IN THE
5 HOSPITAL FOR 30 DAYS, SERIAL AMNIOS AND ALL THIS SORT
6 OF STUFF. O'SHAUGHNESSY DIDN'T REALLY ENDORSE THAT
7 PLAN. IF YOU'RE REFERRING TO THAT, I DON'T KNOW IF I
8 AGREE WITH THAT. I'M NOT SURE WHAT YOU'RE SAYING WAS
9 O'SHAUGHNESSY'S PLAN. HE DIDN'T AGREE WITH
10 BLUMENFELD, DIDN'T ENDORSE SERIAL AMNIOCENTESSES.
11 SEEMED TO ME HE MIGHT HAVE DELIVERED A LITTLE EARLIER
12 THAN THE 39 WEEKS, ALTHOUGH I DON'T WANT TO HANG MY
13 HAT ON THAT.

14 BY MR. LEESEBERG:

15 Q RIGHT. WELL, AFTER HAVING READ
16 O'SHAUGHNESSY'S DEPOSITION, WERE YOU OF THE OPINION
17 THAT DR. O'SHAUGHNESSY'S PROPOSED PLAN OF MANAGEMENT
18 FOR HOW HE WOULD MANAGE THIS PREGNANCY WAS
19 INAPPROPRIATE?

20 MR. OLIPHANT: OBJECTION. I ASK YOU
21 FOR THE RECORD TO BE MORE SPECIFIC, UNLESS YOU KNOW
22 EXACTLY WHAT THAT PLAN WAS.

23 A I DON'T REALLY HAVE A GOOD HANDLE ON
24 WHAT O'SHAUGHNESSY'S PLAN WAS. THAT'S WHY I'M

5 1 FUMBLING ON THE --

2 BY MR. LEESEBERG:

3 Q THAT'S FINE. ALL I'M ASKING, THOUGH, IS
4 AS YOU SIT HERE TODAY, DO YOU RECALL HAVING
5 DISAGREEMENT WITH WHAT DR. O'SHAUGHNESSY SAID HE
6 WOULD DO --

7 MR. OLIPHANT: IF YOU RECALL.

8 Q -- IN THE CIRCUMSTANCES?

9 A I CAN'T RECALL HIS PLAN; THEREFORE, I
10 CAN'T AGREE OR DISAGREE. I DON'T KNOW IF HE REA'L'
11 CAME UP WITH A CODIFIED PLAN LIKE GRUNEBAUM LAID OUT
12 AND --

13 Q OKAY. DO YOU THINK THAT DR. GRUNEBAUM'S
14 PROPOSED PLAN OF MANAGEMENT OF THIS PREGNANCY IS
15 OUTSIDE ACCEPTABLE STANDARDS OF MEDICAL PRACTICE?

16 A YES.

17 Q IN OTHER WORDS, IT WOULD BE MEDICAL
18 MALPRACTICE TO MANAGE THIS PATIENT IN THE MANNER THAT
19 DR. GRUNEBAUM OUTLINED? }

20 A WELL, I THINK, YOU KNOW, MEDICAL
21 MALPRACTICE REQUIRES SOME PROXIMATE CAUSE THINGS, AND
22 MOST OF THE STUFF HE DID PROBABLY WOULDN'T HAVE DONE
23 ANY HARM, IT JUST WAS NOT APPROPRIATE. MOST OF THE
24 STUFF HE RECOMMENDED WOULDN'T HAVE PROBABLY

5 1 BROUGHT -- DONE HARM WITH THE POSSIBLE EXCEPTION OF
2 THE AMNIOCENTESES. YOU KNOW, HE WANTED TO DO
3 NONSTRESS TESTS. HE MADE -- BIOPHYSICAL PROFILES.
4 THEY HAVE NO RELATIONSHIP TO THIS CASE OR THE
5 DEVELOPMENTS IN THIS CASE AND THEY WOULD NOT HAVE
6 FORECAST THIS RUPTURE OF THE UTERUS.

7 HE MADE A GREAT TO-DO ABOUT INADEQUATE
8 FOLLOW UP BECAUSE SHE HAD BLEEDING AT 25 WEEKS,
9 INCONSEQUENTIAL AMOUNT OF BLEEDING AT 25 WEEKS.
10 THAT, IN MY OPINION, HAS NOTHING TO DO WITH THE
11 OUTCOME. HE MADE A BIG FUSS OVER HER HAVING SOME
12 SYSTOLIC HYPERTENSION, STILL WITHIN THE NORMAL LIMITS
13 BLOOD PRESSUREWISE, AND SAID SHE SHOULD HAVE HAD ALL
14 KINDS OF FOLLOW-UP BECAUSE OF THAT. THAT HAS NOTHING
15 TO DO WITH THIS CASE. SO THAT THE THINGS HE SAID I
16 THINK ARE OUTSIDE THE STANDARD OF CARE WOULD NOT
17 NECESSARILY BE PROXIMALLY RELATED TO THIS OUTCOME OR
18 AN OUTCOME AND THEREFORE PROBABLY NOT NEGLIGENCE.

19 Q WITH RESPECT TO THE ULTIMATE ISSUE IN
20 THIS CASE, IS IT YOUR UNDERSTANDING THAT DR.
21 GRUNEBAUM ADVOCATED DOING AN AMNIOCENTESIS AT 36
22 WEEKS, AND IF FETAL LUNG MATURITY WAS DEMONSTRATED,
23 DOING A DELIVERY?

24 A HE INDICATED SO MUCH. I THINK HE DID,

5 1 BUT I'M GOING TO LOOK AT THAT.

2 Q OKAY.

3 A BECAUSE AT ONE POINT HE SAID DOING A
4 SECTION AT 37 WEEKS WITHOUT AN AMNIOCENTESIS WAS
5 PROBABLY A DEVIATION. SO I THINK HE SAID SHOULD HAVE
6 STARTED AT 36 WEEKS. ACTUALLY CONTRADICTING HIMSELF
7 IS WHY I'M HAVING A -- AMNIOCENTESIS SHOULD START AT
8 36 WEEKS, AND THE FAILURE TO DELIVER AT 36 WEEKS IS A
9 DEVIATION. THEN HE SAID 39 IS TOO LATE. THEN HE
10 SAID SCHEDULING A SECTION AT 37 WEEKS WITHOUT
11 AMNIOCENTESIS PROBABLY IS A DEVIATION. SO I DON'T
12 KNOW WHAT HE BELIEVED. I GOT THE IMPRESSION HE
13 THOUGHT SHE SHOULD HAVE AMNIOCENTESES. I THINK
14 THAT'S WRONG. SERIAL AMNIOS, I THINK THAT'S WRONG.

15 Q DO YOU THINK THAT HAVING AN
16 AMNIOCENTESIS AT 36 WEEKS WOULD HAVE BEEN
17 INAPPROPRIATE MEDICAL CARE?

18 A I THINK IT PROBABLY WOULD HAVE BEEN
19 INAPPROPRIATE. I DON'T KNOW. IF IT KILLED THE BABY,
20 IT CERTAINLY WOULD HAVE BEEN INAPPROPRIATE, AND YOU
21 WOULD HAVE BEEN HERE ON THE SAME THING.

22 Q HAVE YOU EVER KILLED A BABY WITH A
23 AMNIOCENTESIS?

24 A I THINK SO.

6

1 Q YOU HAVE?

2 A I THINK SO.

3 Q HOW MANY TIMES?

4 A I DON'T KNOW IF I DID, BUT I DID AN
5 AMNIOCENTESIS ABOUT 15 YEARS AGO AT TERM, AND A LADY
6 CAME IN WITH A DEAD BABY ABOUT 18 HOURS LATER. NO
7 NEEDLE HOLES IN THE BABY, BUT IT WAS DEAD AND NORMAL.

8 Q AND YOU THINK YOU KILLED THE BABY?

9 A I DON'T KNOW.

10 MR. OLIPHANT: OBJECTION TO THAT,

11 BUT --

12 A I HAVE NO IDEA. WE EXAMINED IT
13 CAREFULLY. HAD AN AUTOPSY. EXAMINED THE PLACENTA
14 CAREFULLY. NO NEEDLE HOLES, BUT IT WAS DEAD.

15 BY MR. LEESEBERG:

16 Q IS IT YOUR OPINION TO A REASONABLE
17 DEGREE OF MEDICAL PROBABILITY THAT THE PERFORMANCE OF
18 THAT AMNIOCENTESIS CAUSED THE DEATH OF THAT CHILD?

19 MR. OLIPHANT: OBJECTION.

20 A I HAVE NO IDEA, GERRY. THAT'S TOTALLY
21 OUT THE WINDOW, OUT TO LUNCH.

22 BY MR. LEESEBERG:

23 Q FIFTEEN YEARS AGO?

24 A A NUMBER OF YEARS. PROBABLY 15 YEARS.

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Q SINCE THAT TIME HAVE YOU LOST OR SUSPECT THAT YOU LOST ANY OTHER PREGNANCY OR CHILD BECAUSE OF AN AMNIOCENTESIS?

A IN LATE PREGNANCY, NO. WE'VE REALLY GOT AWAY FROM DOING AMNIOS. AND I THINK YOU'VE GOT TO UNDERSTAND THAT THE USE OF ULTRASOUND TO DATE PREGNANCIES, EARLY ULTRASOUND TO DATE PREGNANCY, HAS LARGELY OBTIATED THE NEED FOR AMNIOS. USED TO DO LOTS OF AMNIOS BEFORE ULTRASOUND DATING WAS WORKED OUT AS WELL AS IT HAS.

Q GIVEN THAT, WOULD YOU AGREE THAT AN ULTRASOUND COULD HAVE PROPERLY DATED THIS PREGNANCY AND THE CHILD DELIVERED AT 36 OR 37 WEEKS BY CESAREAN SECTION WITH A REASONABLE ASSUMPTION THAT THE LUNGS WOULD HAVE BEEN MATURE?

A I THINK SHE HAD GOOD ULTRASOUND DATES AT 13 WEEKS, AND THE RANGE OF ERROR THEN IS PROBABLY SEVEN -- SIX OR SEVEN DAYS, SO AT 13 WEEKS THE ULTRASOUND THAT WAS DONE FIXED HER DUE DATE, SO I THINK WE HAD GOOD ULTRASOUND DATING. I THINK IT'S A LITTLE RISKY TO DELIVER A BABY ELECTIVELY AT 36 WEEKS. THEY DO GET IN TROUBLE WITH OR WITHOUT AN AMNIOCENTESIS. I THINK THAT WOULD HAVE BEEN WRONG.

Q WHAT ABOUT 37 IN WEEKS?

6

1 A I SAID 36 OR 37 JUST NOW.

2 Q YOU'RE SAYING IT WOULD HAVE BEEN
3 MALPRACTICE TO DELIVER THIS CHILD AT 36 OR 37 WEEKS
4 BASED ON ULTRASOUND WITHOUT DOING AN AMNIOCENTESIS?

5 A IT WOULD HAVE BEEN MALPRACTICE IF YOU
6 GOT A BAD RESULT.

7 Q WELL, WHY ISN'T THIS BABY DYING
8 MALPRACTICE THEN?

9 A THAT'S -- I DON'T HAVE TO THINK ABOUT
10 THAT QUESTION. THAT'S COMING AROUND TO THE OTHER
11 DIRECTION. BECAUSE WE CLEARLY HAVE A BAD RESULT
12 HERE, BUT IT DOESN'T MEAN IT'S BAD MALPRACTICE JUST
13 BECAUSE THERE'S A BAD RESULT.

14 Q YOU JUST GOT DONE SAYING IF IT WAS A BAD
15 RESULT IT WOULD BE MALPRACTICE.

16 MR. OLIPHANT: OBJECTION. THAT'S NOT
17 WHAT HE SAID.

18 A YEAH.

19 BY MR. LEESEBERG:

20 Q WHAT I'M ASKING YOU **IS**, YOU GOT GOOD
21 ULTRASOUND DATES AND YOU GOT A 90 TO 95 PERCENT
22 ASSURANCE OF FETAL LUNG MATURITY AT 36 WEEKS. WHY
23 WOULD IT NOT HAVE BEEN APPROPRIATE AND PRUDENT AND
24 WITHIN KEEPING OF ACCEPTED STANDARDS OF CARE TO HAVE

6 1 DELIVERED THIS CHILD AT 37 WEEKS?

2 A BECAUSE YOUR QUESTION CONTAINS THE
3 ANSWER. 5 OR 10 PERCENT OF THEM ARE NOT MATURE AND
4 DON'T DO WELL, AND THE INCIDENCE OF RUPTURED UTERUS
5 IN A CLASSICAL SCAR IS A LOT LOWER THAN THAT. SO IT
6 WOULD BE RISKIER TO DELIVER THE BABY AT 36 OR 37 AND
7 TAKE OUR CHANCE OF RDS THAN IT WOULD BE TO WAIT A
8 COUPLE MORE WEEKS AND RUN THE RISK OF HAVING A
9 RUPTURED UTERUS.

10 Q IF A WOMAN HAS A RUPTURED UTERUS AT
11 HOME, THE PROBABILITIES ARE EXTREMELY HIGH; THE CHILD
12 IS GOING TO DIE, ARE NOT THEY?

13 A AT LEAST 50 PERCENT.

14 Q WHAT'S THE HARM, THEN, AT 37 WEEKS,
15 RATHER THAN DOING ELECTIVE CESAREAN SECTION, OF
16 HOSPITALIZING THE WOMAN FOR A WEEK?

17 A WAIT A MINUTE. AT 37 WEEKS, HOSPITALIZE
18 HER, INSTEAD OF DOING THE SECTION, JUST HOSPITALIZING
19 HER?

20 Q RIGHT. SO IF SHE DOES GO ON TO RUPTURE
21 HER UTERUS, IT'LL HAPPEN IN THE HOSPITAL.

22 A WELL, THAT CERTAINLY DOESN'T GUARANTEE
23 THAT THE BABY WILL SURVIVE THAT IN THE FIRST PLACE.
24 IT **MAY** INCREASE ITS CHANCES, BUT IT'S NO GUARANTEE.

7 1 SECONDLY, I THINK THE INCIDENCE OF RUPTURED UTERUS IS
2 2 SO LOW THAT -- IN RETROSPECT, I'M SURE WE WISH THAT
3 3 WOULD HAVE BEEN DONE HERE. EVERYBODY DOES. ON THE
4 4 OTHER HAND, THE RUPTURED -- THE INCIDENCE OF RUPTURED
5 5 UTERUS WITH CLASSICAL SECTIONS IS SO LOW THAT THAT'S
6 6 NOT JUSTIFIED. THAT MEANS FOR 100 PATIENTS WITH A
7 7 RUPTURED -- 100 PATIENTS WITH PREVIOUS CLASSICAL
8 8 INCISIONS, YOU'RE GOING TO HOSPITALIZE ALL OF THEM
9 9 BECAUSE MAYBE 2 PERCENT ARE GOING TO RUPTURE. THAT'S
10 10 NOT DONE ANYMORE. NOT ALLOWED TO BE DONE.

11 Q BY WHOM?

12 A INSURANCE COMPANIES, UNFORTUNATELY.

13 Q YOU'RE SAYING THAT THE INSURANCE
14 14 COMPANIES ARE DICTATING HOW MEDICINE IS PRACTICED BY
15 15 YOU?

16 MR. OLIPHANT: OBJECTION.

17 A YOU'RE GETTING PRETTY FAR AFIELD HERE,
18 18 BUT THERE'S NO DOUBT ABOUT THAT.

19 BY MR. LEESEBERG:

20 Q OKAY. ARE YOU SAYING THAT BASED ON
21 21 WHAT -- YOU SAY WE ALL WISH THAT THAT HAD HAPPENED IN
22 22 THIS CASE. ARE YOU SAYING THAT BASED ON WHAT YOU
23 23 KNOW NOW, IF YOU WERE TAKING CARE OF ELIZABETH
24 24 DIEDERICH UNDER THE SAME CIRCUMSTANCES, THAT YOU

7 1 WOULD HAVE HOSPITALIZED HER OR THAT YOU WOULD HAVE
2 DONE AN ELECTIVE CESAREAN SECTION?

3 A NO, OF COURSE NOT. WHAT I'M SAYING, IF
4 WE CAN READ THE FUTURE, WE WOULD ALTER THE OUTCOME.
5 IF YOU SIT DOWN WITH A CRYSTAL BALL ON SEPTEMBER 1ST
6 AND SAY THIS LADY'S GOING TO RUPTURE HER UTERUS,
7 LET'S DO SOMETHING DIFFERENT, WE'D DO THAT.
8 UNFORTUNATELY, WE DON'T HAVE THAT FORESIGHT.

9 Q SO YOU'RE SAYING THAT EVEN THOUGH TWO
10 INFANTS OUT OF 100 ARE AT RISK FOR DYING BECAUSE OF A
11 RUPTURED UTERUS, THAT'S NOT GOING TO PERSUADE YOU TO
12 ALTER YOUR MANAGEMENT OF THOSE 100 PATIENTS, TO
13 EITHER HOSPITALIZE THEM FOR THE LAST WEEK OR PERFORM
14 AN AMNIOCENTESIS AND A CESAREAN SECTION?

15 MR. OLIPHANT: OBJECTION.

16 A I DIDN'T SAY THAT.
17 BY MR. LEESEBERG:

18 Q WELL, WOULD YOU IN THE FUTURE, BECAUSE
19 OF WHAT HAPPENED IN THIS CASE, ALTER YOUR MANAGEMENT
20 OF THESE PATIENTS BECAUSE OF THE RISK OF DEATH OF TWO
21 OF THOSE 100 INFANTS?

22 MR. OLIPHANT: OBJECTION.

23 A I'LL HAVE TO DECIDE WHEN I DEAL WITH IT.
24 I HAVEN'T GOT A PLAN FOR A PATIENT I HAVEN'T GOT, I'M

7 1 NOT SEEING AT THIS POINT.

2 BY MR. LEESEBERG:

3 Q HAVE YOU EVER TAKEN CARE OF A PATIENT
4 WITH A PREVIOUS UTERINE RUPTURE?

5 A LET ME THINK. YOU'RE TALKING ABOUT
6 DRAMATIC RUPTURES, LIKE THIS CASE, NOT A DEHISCENCE I
7 ASSUME.

8 Q RIGHT.

9 A IT SEEMS TO ME I DID A NUMBER OF YEARS
10 AGO, THAT SOMEONE RUPTURED ELSEWHERE AND I DELIVERED
11 HER AT 39 WEEKS BY AN ELECTIVE REPEAT SECTION. SHE
12 DID FINE.

13 Q THAT WAS IN A PREGNANCY FOLLOWING A
14 PREVIOUS UTERUS RUPTURE?

15 A THAT'S CORRECT.

16 Q THAT WAS ONE CASE THAT YOU CAN REMEMBER
17 A NUMBER OF YEARS AGO?

18 A YES. AND THAT'S REALLY HAZY.

19 Q SO YOU CERTAINLY HAVEN'T SEEN 100 OF
20 THESE PATIENTS.

21 A VERY FEW PEOPLE HAVE.

22 Q OKAY. SO IN THE COURSE OF YOUR
23 PRACTICE, YOU CAN ONLY REMEMBER ONE PATIENT THAT
24 WOULD FIT IN THESE CIRCUMSTANCES?

7 1 A OF A PREVIOUS CLASSICAL SECTION THAT
2 2 RUPTURED, YEAH, THAT'S RIGHT.

3 Q GIVEN THAT JACOB WOULD HAVE BEEN ALIVE
4 4 HAD HE BEEN DELIVERED BY ELECTIVE CESAREAN SECTION
5 5 FOLLOWING AMNIOCENTESIS AT 36 WEEKS OR 37 WEEKS, AND
6 6 GIVEN THAT HE DIED BECAUSE OF A UTERUS RUPTURE AT 39
7 7 WEEKS, DO YOU THINK THAT THE PARENTS HAVE THE RIGHT
8 8 TO DECIDE HOW THE PREGNANCY SHOULD BE MANAGED BY THE
9 9 OBSTETRICIAN?

10 A THAT'S SUCH A GENERAL, BROAD,
11 11 ALL-ENCOMPASSING QUESTION, I'D SAY PROBABLY YES, BUT
12 12 I THINK I'D LIKE TO HAVE YOU BE MORE SPECIFIC.

13 Q WELL, WOULD YOU SIT DOWN WITH A PATIENT
14 14 SUCH AS ELIZABETH DIEDERICH AND SAY, LOOK, WE'VE GOT
15 15 TWO CHOICES, WE CAN WAIT UNTIL WE'RE ABSOLUTELY 100
16 16 PERCENT CERTAIN OF FETAL LUNG MATURITY AT ABOUT 39
17 17 WEEKS AND/OR EVEN WAIT FOR A -- WAIT FOR LABOR TO
18 18 BEGIN AND HOSPITALIZE YOU AND DO A CESAREAN SECTION
19 19 AT THAT TIME. THAT'S PLAN A. }

8 20 A YOU GAVE TWO PLANS, AND I DON'T THINK
21 21 ANYBODY ADVOCATED WAITING FOR LABOR TO BEGIN.

22 Q OKAY. WELL, WAITING UNTIL 39 WEEKS --

23 A OKAY.

24 Q -- TO ASSURE FETAL LUNG MATURITY AND

8

1 THEN DOING A CESAREAN SECTION.

2 A THAT WAS PLAN A.

3 Q AND THAT'S WHAT YOUR UNDERSTANDING IS
4 WHAT WAS PROPOSED IN THIS CASE?

5 A RIGHT.

6 Q AND PLAN B, ELIZABETH, WE CAN HAVE YOU
7 UNDERGO AMNIOCENTESIS, OR WE CAN RELY ON ULTRASOUND
8 IF WE BELIEVE WE'VE GOT GOOD DATES, AND WE CAN
9 PERFORM A CESAREAN SECTION ON YOU AT 36 WEEKS OR 37
10 WEEKS AND TRY TO AVOID THE ONSET OF LABOR PRIOR TO 39
11 WEEKS, WHICH MIGHT RESULT IN A UTERUS RUPTURE AT HOME
12 AND THE DEATH OF YOUR CHILD. THE ONLY RISK TO THAT
13 WOULD BE THAT YOUR CHILD MIGHT BE DELIVERED, 5 TO 10
14 PERCENT CHANCE, WITH SOME FETAL LUNG IMMATURITY WHICH
15 MIGHT PRESENT YOUR CHILD WITH SOME RESPIRATORY
16 DIFFICULTIES AND A PROLONGED HOSPITAL STAY IN THE
17 NURSERY. THAT WOULD BE PLAN B. DO YOU THINK THAT
18 THE PATIENT HAS THE RIGHT TO BE PRESENTED WITH THOSE
19 TWO OPTIONS AND TO MAKE THE DECISION AS TO WHICH PLAN
20 TO FOLLOW?

21 A I THINK IT'S OKAY TO PRESENT THOSE
22 OPTIONS TO THE PATIENT, BUT WHAT THE PATIENT'S GOING
23 TO DECIDE IS REALLY BASED ON WHAT YOU TELL THEM ABOUT
24 THE FACTS. LET ME FINISH MY ANSWER.

8 1 MR. OLIPHANT: LET HIM FINISH.

2 BY MR. LEESEBERG:

3 Q SORRY.

4 A BECAUSE WE'RE SITTING HERE ON SEPTEMBER
5 1ST, PLAN A DOES NOT -- NOBODY IN THIS GROUP,
6 INCLUDING THIS PATIENT, HAS HAD EXPERIENCE WITH
7 RUPTURED UTERUS, AND THEY VIEW IT TO BE AN UNLIKELY
8 POSSIBILITY, WHICH IT IS. AND THEY OFFER AN
9 AMNIOCENTESIS, AND SHE SAYS, HYPOTHETICALLY, WELL,
10 CAN THE AMNIOCENTESIS HURT THE BABY, AND HE SAYS,
11 WELL, THERE'S A CHANCE IT COULD KILL THE BABY OR
12 RESULT IN FETAL DISTRESS AND AN EMERGENCY SECTION.
13 YOU KNOW, SO IF YOU GIVE HER THAT SCENARIO, SHE'S
14 GOING TO SAY LET'S WAIT UNTIL 39 WEEKS, JUST LIKE THE
15 AMERICAN COLLEGE OF OB-GYNS SAYS I WANT YOU TO DO IT,
16 BY THE WAY.

17 Q YOU'RE PREDICTING WHAT SHE'S GOING TO
18 SAY. DO YOU THINK THE OBSTETRICIAN HAS THE
19 OBLIGATION TO PRESENT THOSE NARRATIVES TO THE PATIENT
20 AND LET THE PATIENT DECIDE WHICH COURSE TO FOLLOW?

21 A YOU DIDN'T LET ME FINISH. THE ANSWER IS
22 NO, TO GIVE YOU A SHORT ANSWER.

23 Q YOU DON'T THINK THE OBSTETRICIAN HAS AN
24 OBLIGATION TO DO THAT?

8

1 A NO. I THINK -- WHAT I WAS TRYING TO
2 ILLUSTRATE BEFORE YOU CUT ME OFF WAS, I THINK IT'S SO
3 COMPLICATED, AND THERE'S SO MANY NUANCES TO THIS
4 DECISION AND SO MANY PROS AND CONS OF EACH APPROACH,
5 YOU'RE GOING TO OVERWHELM THIS 21-YEAR-OLD GIRL, OR
6 WHATEVER SHE IS, AND SHE'LL SAY, DOCTOR, DO WHAT YOU
7 THINK IS BEST.

8 THE AMERICAN COLLEGE OF OB-GYNS SAYS
9 THAT PEOPLE SHOULD HAVE A VARIETY OF CRITERIA FOR
10 DOING ELECTIVE REPEATS THAT CENTER AROUND DOING THEM
11 AT 39 NINE WEEKS, AND SHE -- AND THEY'RE GOING TO SAY
12 WE'LL DO **YOU** WHAT YOU THINK IS RIGHT, AND IF THAT'S
13 WHAT YOUR NATIONAL GOVERNING BODY SAYS, THEN THAT'S
14 WHAT WE WANT TO DO. DO NOT WANT TO TAKE ANY
15 UNNECESSARY RISK. THESE INFORMED CONSENT
16 CONVERSATIONS, IF YOU INFORM THEM OF EVERY POSSIBLE
17 THING, CAN BE SO COMPLICATED THEY'RE OVERWHELMED, AND
18 IT'S NOT LOGICAL OR FAIR.

19 Q BECAUSE IT'S COMPLICATED, IT'S NOT FAIR
20 TO PRESENT IT TO THE PATIENT?

21 MR. OLIPHANT: OBJECTION.

22 A NO. NO.

23 MR. OLIPHANT: DR. DEVOE TESTIFIED
24 THAT IN HIS OPINION THE PATIENT SHOULD NOT HAVE BEEN

a

1 GIVEN THE OPTION.

2 MR. LEESEBERG: WHAT DID YOU SAY, JIM?

3 MR. OLIPHANT: DR. DEVOE TESTIFIED
4 THAT IN HIS OPINION THAT THE OPTIONS SHOULD NOT HAVE
5 BEEN GIVEN THE PATIENT, THAT IT'S A MEDICAL DECISION
6 FOR THE PHYSICIAN.

7 MR. LEESEBERG: I THANK YOU FOR YOUR
8 TESTIMONY, JIM, BUT THAT'S NOT WHAT HE SAID. HE
9 DOESN'T THINK IT'S THE OBLIGATION OF THE
10 OBSTETRICIAN, BUT IT WOULD BE A GOOD IDEA.

11 A IT'S ACCEPTABLE, NOT AN OBLIGATION. YOU
12 DIDN'T CHARACTERIZE IT ACCURATELY EITHER.

13 BY MR. LEESEBERG:

14 Q OKAY. MY QUESTION, THOUGH, IS DIRECTED
15 TO YOUR COMMENT THAT IT WOULDN'T BE FAIR, AND I'M NOT
16 SURE WHAT YOU MEANT BY THAT. ARE YOU SAYING IT'S NOT
17 FAIR TO PRESENT ALL THIS INFORMATION TO THE PATIENT
18 AND EXPECT THE PATIENT TO MAKE A DECISION?

19 A IF YOU PRESENT THE KIND OF STUFF THAT
20 YOU'RE INFERRING WE SHOULD PRESENT, YOU OVERWHELM
21 THEM TO THE POINT WHERE THEY'RE A QUIVERING MASS OF
22 JELLY WORRYING ABOUT THINGS THAT ARE EXTRAORDINARILY
23 UNCOMMON, BECAUSE THEY ARE -- YOU'RE ATTEMPTING TO BE
24 ALL ENCOMPASSING. THEY LEAVE THE ROOM WORRYING,

9

9 1 TREMBLING, WORRIED ABOUT RED HERRINGS. DO WHATEVER
2 2 YOU THINK IS BEST. WE HAVE NO IDEA HOW TO PROCEED.
3 3 IT'S NOT FAIR TO DO THAT TO A PATIENT. NOT FAIR TO
4 4 WORRY PATIENTS ABOUT THINGS THAT OCCUR VERY RARELY.

5 MR. OLIPHANT: ARE YOU THERE?

6 MR. LEESEBERG: YEAH.

7 MR. OLIPHANT: OKAY. ALL RIGHT. WE
8 8 THOUGHT WE MIGHT HAVE LOST YOU.

9 MR. LEESEBERG: NO, NO. YOU DID LOSE
10 10 ME, BUT I'M STILL HERE.

11 11 BY MR. LEESEBERG:

12 Q WOULD YOU AGREE THAT A PATIENT SUCH AS
13 13 ELIZABETH DIEDERICH, AT THE FIRST SIGN OF POSSIBLE
14 14 LABOR OR CONTRACTIONS, THAT SHE NEEDED TO BE
15 15 HOSPITALIZED?

16 A YES.

17 Q IS IT YOUR UNDERSTANDING THAT LABOR
18 18 PRECIPITATED THIS UTERINE RUPTURE?

19 A NO, I ACTUALLY DON'T THINK IT DID,
20 20 BECAUSE SHE APPARENTLY DEVELOPED THIS SEVERE, RIGID,
21 21 DRAMATIC, EXPLOSIVE PAIN ALL OF A SUDDEN WITHOUT ANY
22 22 HISTORY OF CONTRACTIONS -- WITHOUT ANY HISTORY OF
23 23 CONTRACTIONS GIVEN CONTEMPORANEOUSLY WITH THE EVENTS
24 24 OF SEPTEMBER 17TH.

9 1 Q WHAT, IN YOUR OPINION, PRECIPITATED THE
2 RUPTURE OF THE UTERUS?

3 A UNKNOWN. IT MIGHT HAVE BEEN SOME
4 SUBCLINICAL CONTRACTIONS, IT MIGHT HAVE JUST BEEN
5 DISTENTION BECAUSE IT'S GROWING. IT'S UNKNOWN. SHE
6 WAS NOT IN LABOR.

7 Q DO YOU RECALL HER TESTIMONY CONCERNING
8 PAINS THAT SHE WAS HAVING AT THE DOCTOR'S OFFICE?

9 A THAT'S INTERESTING, BECAUSE WHEN SHE
10 GAVE HER HISTORY AT THE TIME OF THE EVENTS, SHE
11 TALKED OF A PAIN THAT BEGAN 30 MINUTES EARLIER, YOU
12 KNOW, ON SEPTEMBER 17TH. THERE'S NO MENTION AT THAT
13 TIME OF ANYTHING -- ABOUT PAINS IN THE DOCTOR'S
14 OFFICE, AND THAT DOESN'T APPEAR UNTIL MUCH LATER. SO
15 I'M BASING MY OPINION ON HER COMMENTS TO THE
16 EMERGENCY SQUAD PEOPLE ON HAMILTON ROAD.

17 Q DO YOU KNOW HOW LONG IT HAD BEEN SINCE
18 SHE HAD BEEN AT THE DOCTOR'S OFFICE?

19 A I DON'T KNOW THAT FOR SURE, BUT HER BOSS
20 CALLED THE PRINCIPAL HEALTH CARE AT 1:00 ON THE 17TH,
21 AND I THINK -- I CAN INFER FROM THE RECORD HER
22 APPOINTMENT WAS MID MORNING. HER BOSS CALLED THE
23 PRINCIPAL HEALTH CARE AND SAID SHE'D HAD PAIN FOR A
24 HALF HOUR, HALF HOUR AGO SHE DEVELOPED THIS SEVERE,

1 DRAMATIC PAIN. THAT WOULD MAKE IT 12:30. AND I
2 SOMEHOW DREW THE CONCLUSION THAT SHE WAS SEEN TWO OR
3 THREE HOURS BEFORE THAT. SO I DON'T THINK SHE HAD
4 THIS PAIN WHEN SHE WAS AT THE DOCTOR'S OFFICE.

5 Q OKAY. BUT YOU RECALL HER TESTIMONY THAT
6 SHE WAS HAVING PAINS IN THE DOCTOR'S OFFICE?

7 A YEAH, BUT THAT TESTIMONY WAS GIVEN QUITE
8 A WHILE AFTER THE FACT.

9 Q SO YOU JUST DON'T BELIEVE HER?

10 MR. OLIPHANT: OBJECTION.

11 A YOU KNOW, I WOULD BELIEVE, YOU KNOW,
12 WHAT IS RECORDED CONTEMPORANEOUSLY WITH THE ONSET OF
13 EVENTS.

14 BY MR. LEESEBERG:

15 Q WHAT IS YOUR UNDERSTANDING AS TO WHERE
16 ELIZABETH DIEDERICH HAD BEEN PRIOR TO -- STRIKE THAT.

17 FIRST OF ALL, WHAT IS YOUR UNDERSTANDING
18 AS TO WHERE SHE WAS WHEN SHE HAD A UTERINE RUPTURE?

19 A TACO BELL. MAYBE THAT'S WHY IT
20 RUPTURED.

21 Q AND WHAT IS YOUR UNDERSTANDING AS TO
22 WHERE SHE HAD BEEN IMMEDIATELY BEFORE THAT?

23 A SOME OTHER FAST FOOD RESTAURANT, I
24 THINK.

9

1 Q AND WHAT IS YOUR UNDERSTANDING AS TO
2 WHERE SHE HAD BEEN IMMEDIATELY BEFORE THAT?

3 A YOU KNOW, AS I SAID, IT'S MY INFERENCE
4 THAT SEVERAL HOURS EARLIER SHE HAD A DOCTOR'S
5 APPOINTMENT. I DON'T KNOW THE TIME OF HER
6 APPOINTMENT AT PRINCIPAL, BUT I THINK IT WAS A GOOD
7 BIT EARLIER.

8 Q OKAY. HOW FREQUENTLY DO YOU DO
9 AMNIOCENTESIS?

10 A YOU MEAN LATE IN PREGNANCY OR GENETIC?

11 Q WE'LL START WITH GENETIC. :

12 A OH, I DON'T KNOW. SEVERAL A MONTH.

13 Q AND LATE PREGNANCY?

14 A VERY SELDOM. PROBABLY THREE OR FOUR A
15 YEAR.

16 Q AND THEN WHAT DO YOU DO -- FOR WHAT
17 REASON DO YOU DO THOSE?

18 A PEOPLE WHO HAVE -- WE REALLY NEED TO
19 DELIVER EARLY FOR-SOME REASON, OR RH DISEASE ON RARE
20 OCCASIONS.

21 Q WHEN YOU SAY FOR PEOPLE WHO NEED TO
22 DELIVER EARLY, WHO ARE YOU REFERRING TO?

23 A DIABETICS WITH VASCULOPATHY OR KIDNEY
24 DISEASE, PEOPLE WITH CHRONIC RENAL FAILURE OR CHRONIC

9 1 RENAL PROBLEMS, THOSE KINDS OF THINGS.

2 Q AND WHY DOES THAT INDICATE A NEED TO
3 DELIVER EARLY TO YOU?

10 4 A WE'RE GETTING INTO A TOTALLY DIFFERENT
5 SET OF QUESTIONS HERE. IF SOMEBODY'S -- WE'RE
6 WORRIED ABOUT THEM KNOCKING OFF THEIR BABY DUE TO
7 THEIR SEVERE DIABETES, THAT WOULD BE A GOOD REASON TO
8 SEE IF THE BABY'S READY AND GET IT OUT OF THERE. IF
9 THERE'S A PRETTY HIGH RISK OF FETAL LOSS AND YOU HAVE
10 RENAL INSUFFICIENCY AS A COMPLICATION OF DIABETES.

11 Q BUT YOU MAKE A DETERMINATION IN THAT
12 SITUATION THAT WHATEVER RISK IS ASSOCIATED WITH
13 AMNIOCENTESIS, IT'S WORTH TAKING IN THAT SITUATION?

14 A IS EXCEEDED BY THE RISK OF CONTINUING
15 THE PREGNANCY UNLESS THE BABY IS IMMATURE. AND WE
16 DON'T DO VERY MANY AMNIOS. WE USED TO DO THEM 20
17 YEARS AGO. BEFORE ULTRASOUND, WE USED TO DO ONE OR
18 TWO A WEEK, AND NOW WE DO ABOUT ONE A QUARTER OR
19 LESS.

20 Q YOU SAID ONE OR **TWO** A WEEK?

21 A TWENTY YEARS AGO. ONE OR TWO A WEEK.

22 Q YEAH. I THINK THAT'S ALL I GOT.

23 MR. OLIPHANT: THANK YOU,

24 Q THANKS, DR. DEVOE. **APPRECIATE** YOU

1 LETTING ME DO THIS BY PHONE.

2 MR. OLIPHANT: JUST FOR THE RECORD,
3 YOU HAVE THE RIGHT TO READ THIS DEPOSITION AFTER IT'S
4 TRANSCRIBED TO VERIFY IT'S ACCURACY, OR YOU CAN WAIVE
5 THAT RIGHT. IT'S UP TO YOU.

6 THE WITNESS: I'LL WAIVE IT.

7 - - -

8 SIGNATURE WAIVED.

9 - - -

10 THEREUPON, AT 12:05 P.M.,
11 THURSDAY, SEPTEMBER 28, 1995,
12 THE DEPOSITION WAS CONCLUDED.

13 - - -
14
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24

C E R T I F I C A T E

STATE OF OHIO)
) SS:
 COUNTY OF FRANKLIN)

I, MISTIANN OCANAS, NOTARY PUBLIC IN AND
 FOR THE STATE OF OHIO, DO HEREBY CERTIFY THAT, BEFORE
 THE GIVING OF HIS DEPOSITION, STEPHEN J. DEVOE, M.D.
 WAS FIRST DULY SWORN BY ME TO TELL THE TRUTH, THE
 WHOLE TRUTH, AND NOTHING BUT THE TRUTH;

THAT SAID DEPOSITION WAS TAKEN IN ALL
 RESPECTS PURSUANT TO THE STIPULATIONS OF COUNSEL
 HERETOFORE SET FORTH;

THAT THE FOREGOING IS THE DEPOSITION
 GIVEN AT THE SAID TIME AND PLACE BY THE SAID STEPHEN
 J. DEVOE, M.D.;

THAT I AM NOT AN ATTORNEY FOR OR
 RELATIVE OF EITHER PARTY AND HAVE NO INTEREST
 WHATSOEVER IN THE EVENT OF THIS LITIGATION.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET
 MY HAND AND OFFICIAL SEAL OF OFFICE AT COLUMBUS,
 OHIO, ON THIS 13TH DAY OF OCTOBER, 1995.

Mistiann Ocanas

MISTIANN OCANAS, NOTARY PUBLIC
 IN AND FOR THE STATE OF OHIO.

MY COMMISSION EXPIRES: APRIL 30, 1996.