

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4 ALICIA WARNER, ETC., ET AL:

5 Plaintiffs :

6 vs. : CASE NO. 5:98 CV 2144

7 URMIL ARORA, M.D., ET AL. :

8 Defendants : Pages 1 - 55

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12 Deposition of Stuart C. Edelberg, M.D.

13 Baltimore, Maryland

14 Friday, March 10, 2000

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18 Reported by: Kathleen R. Turk, RPR-RMR

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5 March 10, 2000
6 2:01 p.m.
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8 Deposition of Stuart C. Edelberg, M.D., held at the
9 offices of:
10
11
12 Esquire Deposition Services
13 The World Trade Center
14 401 East Pratt Street, Suite 425
15 Baltimore, MD 21202
16
17
18 Pursuant to notice, before Kathleen R. Turk, RPR-RMR,
19 a Notary Public of the State of Maryland.
20
21

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1 Thereupon,
2 STUART C. EDELBERG, M.D.
3 A Witness, called for oral examination by counsel for
4 the Defendant, having been first duly sworn by the
5 Notary Public, was examined and testified as follows:
6 EXAMINATION BY COUNSEL FOR THE DEFENDANT
7 BY MS. MALNAR:
8 Q Hi, Doctor Edelberg.
9 A Hello. How are you?
10 Q I'm fine, thanks. How are you doing?
11 A Fine, thank you.
12 Q Thanks for rearranging this so quickly.
13 A Thank you for accommodating me.
14 Q Oh, no problem.
15 I am going to be asking you today some
16 questions about your opinions in the Alicia Warner
17 case.
18 I trust you've been deposed before.
19 A Yes, I have.
20 Q Okay. And just a few of the basics, then.
21 If I should ask you a question you don't

<p style="text-align: right;">Page 6</p> <p>1 understand, please let me know, I will be happy to</p> <p>2 repeat or rephrase it. Otherwise, we'll assume you</p> <p>3 understood the question as I asked it.</p> <p>4 Okay?</p> <p>5 A Fair enough.</p> <p>6 Q Also, as you have been doing it,</p> <p>7 particularly today because we are doing this by a</p> <p>8 teleconference, if you could please make sure you keep</p> <p>9 all your answers to my questions verbal, it would be</p> <p>10 very helpful.</p> <p>11 A I will try.</p> <p>12 Q Thank you.</p> <p>13 And finally, I will certainly permit you to</p> <p>14 finish your answers before I begin my next question,</p> <p>15 and likewise if you would try to permit me to finish</p> <p>16 my question before you begin your answers, that should</p> <p>17 make things go a little bit more smoothly.</p> <p>18 A Fair enough.</p> <p>19 Q Excellent.</p> <p>20 Shall we start by, could you spell your --</p> <p>21 give us your full name, and spell your last name for</p>	<p style="text-align: right;">Page 8</p> <p>1 21201.</p> <p>2 Q Okay. I have a Margarette Avenue address.</p> <p>3 A That's my home address.</p> <p>4 Q Okay. Are the phone numbers on this your</p> <p>5 home phone numbers?</p> <p>6 A Those numbers ring at home, yes.</p> <p>7 Q Okay. That's very brave of you.</p> <p>8 I have two reports that you've authored</p> <p>9 concerning the Alicia Warner case, one dated</p> <p>10 June 28th, 1999, and one dated May 20th, 1999.</p> <p>11 Are those the only two reports you've</p> <p>12 authored in this case?</p> <p>13 A Yes, they are.</p> <p>14 Q Why did you author two separate reports in</p> <p>15 this matter as opposed to just one?</p> <p>16 A Well, I was asked to author them.</p> <p>17 One was after I reviewed the records, and</p> <p>18 the other was after I reviewed depositions.</p> <p>19 Q Okay. Can you tell me, then, what records</p> <p>20 you reviewed prior to offering your first report?</p> <p>21 A I had the mother's prenatal records,</p>
<p style="text-align: right;">Page 7</p> <p>1 the Court Reporter.</p> <p>2 A Stuart Charles Edelberg.</p> <p>3 Last name is E-d-e-l-b-e-r-g.</p> <p>4 Q And you're -- are you in the Court</p> <p>5 Reporter's office today?</p> <p>6 A Yes, I am.</p> <p>7 Q Was there a particular reason you didn't</p> <p>8 want to do this at your office, Doctor?</p> <p>9 A Well, because my office is located in the</p> <p>10 middle of a busy clinic, and it would be very</p> <p>11 inappropriate for me to lock the door and lock my</p> <p>12 residents out.</p> <p>13 Q Is that the same -- are you in a new office?</p> <p>14 I was down to depose you probably about, oh,</p> <p>15 probably two or three years ago. Have you moved since</p> <p>16 then?</p> <p>17 A Well, I was at Sinai. I'm now at Maryland</p> <p>18 General Hospital.</p> <p>19 Q Oh, okay.</p> <p>20 What's your office address?</p> <p>21 A 827 Linden Avenue, Baltimore, Maryland,</p>	<p style="text-align: right;">Page 9</p> <p>1 obstetrical records, and some -- the neonatal records</p> <p>2 of the baby.</p> <p>3 Q Before the first one?</p> <p>4 A Correct.</p> <p>5 Q Okay. And what about the second one? What</p> <p>6 did you have --</p> <p>7 A Wait, wait --</p> <p>8 Q -- additionally?</p> <p>9 A No, wait a minute, let me -- let me go over</p> <p>10 what I have here exactly.</p> <p>11 Q Okay.</p> <p>12 A It says Joanne Warner, mother, and those</p> <p>13 look like the obstetrical records primarily, but they</p> <p>14 do have some neo -- some prenatal records in there. I</p> <p>15 don't know if it's -- obviously, it's not a complete</p> <p>16 set.</p> <p>17 I then have a very thin folder, Doctor Arora</p> <p>18 prenatal records, Doctor Arora interpretation. That's</p> <p>19 where they have written in some interpretation of some</p> <p>20 areas that are very difficult to read. And then it</p> <p>21 says Wooster Community Hospital, and this looks like</p>

1 the face sheet from the, the mother. And then I have
2 Wooster interpretation which is, again, the face sheet
3 from the mother with, I guess, the attorney's
4 interpretation of what was written there because it's
5 very difficult to read it.
6 MR. BECKER: PJ --
7 MS. MALNAR: Yes.
8 MR. BECKER: -- I want to help you and
9 clarify something.
10 I think the reason that we have two
11 reports, that I asked Doctor Edelberg for two reports,
12 is initially I asked him simply to comment on the
13 obstetrical standard of care by the attending, your
14 client, and I think, as I recall, I had difficulty
15 finding a nurse who was practicing back in the
16 seventies to review this, and then I went back to
17 Doctor Edelberg and asked him if he could comment on
18 the nursing standard of care.
19 I think that -- I'm not sure that
20 Doctor Edelberg recalls it, but I think that's what,
21 the background on the two reports, to be straight with

1 you.
2 MS. MALNAR: Okay, fair enough.
3 Thanks, Mike.
4 Q (By Ms. Malnar) Doctor, you indicated also
5 that you had reviewed some depositions.
6 A Yes.
7 Q What depositions have you reviewed?
8 A There are only two depositions. There's
9 Doctor Arora's deposition, and then there is Shirley
10 Geiser.
11 Q Have you seen Joanne Warner's deposition?
12 A I do not believe so.
13 Q Have you seen any summaries of that
14 deposition?
15 A No, I have not.
16 Q I want to follow up on something you said
17 earlier.
18 You indicated that you had some medical
19 records with some interpretations on them.
20 A Correct.
21 Q I'm going to try and describe what I think

1 that is.
2 Do they have certain words circled and then
3 written in someone's handwriting alongside?
4 A Correct, or above the writing.
5 Q Okay. Just to be safe, Doctor, if you would
6 provide the Court Reporter with those so that she can
7 make me copies and send them with the, with the
8 transcript.
9 Would you do that?
10 A Surely.
11 Q And then have those marked as exhibits.
12 MS. MALNAR: I'm not sure how many
13 pages there are; however you think it's best to mark
14 them, Court Reporter.
15 THE REPORTER: Okay.
16 THE WITNESS: Let's see now.
17 I guess we have this one -- I have one,
18 two pages here -- I'll put bottom stickers on them --
19 this one has to be copied, this one has to be copied,
20 and then -- so in the first section, I think there are
21 two pages to be copied, and in the second section one,

1 two, three -- well, there's nothing written on Page 3,
2 so there's no interpretation there. There's nothing
3 on -- well, there is a little something on 4, I'll put
4 that on, and then there's nothing on 5, there is
5 something on 6, there is a lot on 7, there's nothing
6 on 8, and there's nothing on 9, and there's nothing on
7 10.
8 So any of the interpretation sheets
9 have been appropriately marked, and there's nothing on
10 11.
11 MS. MALNAR: Okay, thank you.
12 (Documents were marked
13 Edelberg Deposition
14 Exhibit Nos. 1-A-G.)
15 Q (By Ms. Malnar) Doctor Edelberg, were you
16 delivering babies during the period of time when
17 Alicia Warner was born?
18 A Yes, I was.
19 Q Okay. And how long had you been in practice
20 in 1979?
21 A I was in practice -- I finished my program

<p style="text-align: right;">Page 14</p> <p>1 in '68, so essentially practice began in '68 in the 2 military itself. 3 Q Okay. Where were you in 1979? Do you 4 remember? 5 A I was in Tucson, Arizona, and I had 6 privileges at three hospitals. 7 Q And what was your practice at that point? 8 Were you doing OB and GYN or what? 9 A Yes, I was a generalist in OB/GYN. 10 Q And what were the hospitals that you were 11 practicing at, if you recall? 12 A I was at a tertiary care center, which was 13 Tucson Medical Center, I was in a Level I hospital, 14 which was St. Joseph's Hospital, and then I was in a 15 hospital which did not have obstetrics, and that was 16 Eldorado Hospital. 17 Q Okay. Did you have any teaching 18 responsibilities at that time? 19 A I was still -- I was on the staff of the 20 University of Arizona, but I had no teaching 21 responsibilities at the time. I no longer had medical</p>	<p style="text-align: right;">Page 16</p> <p>1 many, many lectures. Thereafter, I went into private 2 practice in Tucson, Arizona, and I would have medical 3 students rotating through my office for obstetrical 4 and gynecological training at the medical student's 5 level, so they did scrub on deliveries at Tucson 6 Medical Center. 7 Q Okay. When did you first start reviewing 8 cases for medical/legal issues, if you recall? 9 A I saw very few in the seventies; maybe three 10 or four over a period of twelve years. 11 I became much more active when I returned to 12 academic medicine in 1983. 13 Q Okay. Do you have any idea how many you've 14 reviewed since 1983? 15 A A fair number at this point. 16 Q Okay. Do you know how many cases you 17 currently have under review? 18 A No. 19 I see about twenty-five new cases per year. 20 Q Okay. 21 A My files would be much smaller if attorneys</p>
<p style="text-align: right;">Page 15</p> <p>1 students rotating through my office at the time. 2 Q Had you had prior to 1979? 3 A Yes, I did. 4 Q Prior to 1979, had you been teaching 5 residents how to deliver babies? 6 A Primarily, I had medical students in Tucson, 7 Arizona. 8 Q So you would not have been having medical 9 students deliver babies; is that correct? 10 A No, I -- yes, we did. 11 When I -- when I was assigned to 12 Davis-Monthan Air Force Base Hospital in Tucson, 13 Arizona, we were then -- four of us were assigned out 14 there to take over the primary teaching 15 responsibilities for the newly-opened medical school, 16 we were the OB/GYN Department, and our job was to take 17 medical students and take them through a clerkship 18 while we were out there. So they were trained in 19 obstetrics; at least, from a medical student's level. 20 So my first two years was intimately 21 involved in teaching, a one-on-one basis, plus giving</p>	<p style="text-align: right;">Page 17</p> <p>1 called me when a case was done. 2 MS. MALNAR: Did you hear that, Mike? 3 MR. BECKER: I'm pretty good at that. 4 Q (By Ms. Malnar) Of those cases that you 5 review, could you break them down for me in terms of 6 how many are plaintiff cases versus how many are 7 defense cases? 8 A Prior to 1990, it was about a third defense 9 and two-thirds plaintiff. 10 When I moved to Baltimore, there was a 11 shift, and it's now about eighty-five to ninety 12 percent plaintiff and ten to fifteen percent defense. 13 THE WITNESS: Excuse me, I just got a 14 page. 15 MS. MALNAR: Okay. Just let us know if 16 you need to take it. 17 THE WITNESS: I can take that in a few 18 minutes. 19 MS. MALNAR: Okay. 20 THE WITNESS: There's no urgency on 21 that one.</p>

1 MS. MALNAR: Okay, let us know.
 2 THE WITNESS: Okay.
 3 Q (By Ms. Malnar) What's your fee for
 4 reviewing a case? How is that set up?
 5 A I currently charge three hundred dollars an
 6 hour.
 7 Q Is that for review and trial testimony?
 8 A I charge at deposition and trial three-fifty
 9 an hour.
 10 Q Do you appear live at trial?
 11 A If I can.
 12 As opposed to dead.
 13 Q Okay, you got me there.
 14 What I meant was videotape.
 15 A Yeah, if I can -- if I can appear live, I
 16 do; yes, I do.
 17 Q Okay. Prior to authoring the reports in
 18 this case, did you go back and look at any literature
 19 from 1979?
 20 A Not at the time I authored the letters.
 21 Q Have you since then?

1 A Just for this deposition. I reviewed some
 2 of the old Williams textbooks.
 3 Q That's Williams on Obstetrics?
 4 A Correct.
 5 Q And why did you do that, Doctor?
 6 A Just to get me in the 1979 mood.
 7 I'm fairly comfortable there, and the reason
 8 being is that since we moved, I moved offices many
 9 times, I'm quite aware of what I was doing at
 10 different periods of my life.
 11 Q Could we agree, Doctor, that over the years
 12 medicine has changed?
 13 A Oh, of course.
 14 Q We can also agree that there has been
 15 changes in how prenatal care is rendered?
 16 A That is correct.
 17 Q Can we also agree that the standard of care
 18 for a physician has changed between 1979 and 19 -- or
 19 in 2000, actually?
 20 A That is correct.
 21 Q Have you ever been involved in teaching

1 obstetrical nurses?
 2 A Yes, I have.
 3 Q And tell me when and in what context,
 4 please.
 5 A Actually, it's been since I was in the
 6 military. We gave lectures to the nurses on the floor
 7 in terms of in-servicing. At Tucson Medical Center, I
 8 did in-servicing of nursing. At Sinai Hospital of
 9 Baltimore, I actually taught a course on fetal
 10 monitoring to nurses who were being trained to run a
 11 fetal monitor unit.
 12 So I've done nurse education for years.
 13 Q Were you educating any nurses on obstetrics
 14 in 1979?
 15 A Yes, I was.
 16 Q And how was that?
 17 A That was in-servicing where -- let's say we
 18 do it on fetal monitoring or we do it on labor
 19 management -- we'd be asked to speak about various
 20 topics for in-service education.
 21 Q Did you have fetal monitoring in 1979?

1 A Oh, sure.
 2 We had fetal monitoring from about 1973 on.
 3 Q And both of the hospitals where you were,
 4 had privileges in 1979, had fetal monitors?
 5 A Oh, yes.
 6 Q And how common was their use?
 7 A Very common.
 8 Tucson was a very medically-aggressive
 9 advanced town.
 10 Q Okay. Other than the Williams OB textbooks,
 11 have you reviewed anything else in preparation for
 12 your deposition today?
 13 A No, I did not.
 14 Q Have you worked with Mr. Becker or his
 15 office in the past?
 16 A Yes, I have.
 17 Q Do you know on how many occasions?
 18 A Oh, I can't give you an exact number because
 19 it's been many, many years.
 20 Q Okay.
 21 A And I'd be strictly guessing whether I've

1 seen five cases or ten cases out of his office. I
 2 really can't give you a number.
 3 Q Can you say it was more or less than twenty?
 4 A I think it's less than twenty. I can't be a
 5 hundred percent sure, but I have -- I don't think it's
 6 been that frequently because there was a hiatus where
 7 I didn't see any and then I saw more again.
 8 Q Fair enough.
 9 Do you recall, or do you have in front of
 10 you when you were first contacted relating to this
 11 lawsuit?
 12 A Let me see what I have here.
 13 I have a letter dated May 17th, 1999, that
 14 basically says thank you for agreeing to review the
 15 above case and here's Doctor Arora's prenatal records,
 16 Wooster Community Hospital records, and Doctor Arora's
 17 deposition.
 18 Q Is that the substance of the correspondence?
 19 A Basically.
 20 There's another very short paragraph
 21 thereafter.

1 Q What's it say?
 2 A It says please review the above with a view
 3 toward determining whether or not the care given to
 4 Joanne -- that Joanne received during her labor and
 5 delivery met accepted standards of practice.
 6 Specifically, based on Joanne's status on admission
 7 (twenty-nine weeks gestation, footling breech, PROM,
 8 complaint of back discomfort), please determine
 9 whether vaginal examinations were indicated and if an
 10 imminent delivery should have been anticipated. After
 11 you have had the opportunity to review the enclosed,
 12 please telephone our office at the 800 number to
 13 discuss this matter in more detail. Please do not
 14 write a report at this time.
 15 Q Okay. Could you ask the Court Reporter to
 16 mark that as well so I can take a look at it?
 17 (Document was marked
 18 Edelberg Deposition
 19 Exhibit No. 2.)
 20 Q (By Ms. Malnar) Doctor, let's take a look
 21 first at your May 20th report, and could you enumerate

1 for me what your criticisms of Doctor Arora are?
 2 A Well, standard of care in '79 was basically
 3 breeches were all sectioned. The standard began to
 4 kick in around 1974 or '75. By 1979, we were very
 5 aggressive about doing all breeches by Caesarean
 6 section, and particularly premature breeches.
 7 The -- when one admits a patient to the
 8 hospital with rupture of membranes in the third
 9 trimester, one has to anticipate labor occurring
 10 shortly thereafter, and standards of care require that
 11 when a patient is complaining, has -- when a patient
 12 has rupture of membranes and complains of
 13 contractions, albeit whether they are back pains or
 14 whether they're cramping, you've got to evaluate the
 15 patient to see whether she's having labor, whether
 16 labor is ensuing.
 17 Now, in 1979 -- at least, in Tucson,
 18 Arizona -- and I can't comment on the Cleveland
 19 basin -- we were transferring these patients to a
 20 Level III hospital, and I don't know what was going on
 21 here.

1 According to the doctor's deposition, they
 2 were not doing that.
 3 And at this point in time, I am not yet
 4 critical of that because I don't have information as
 5 to whether they -- that was, in fact, standard of care
 6 in this area.
 7 But a patient who has rupture of membranes
 8 and is complaining of cramping has to be evaluated,
 9 and there are a number of ways that you can evaluate
 10 the patient, none of which were done.
 11 And that's what I'm critical of because my
 12 opinion is that had they done a modicum of evaluation,
 13 they would have determined that the patient was in
 14 labor, they would have determined that the patient was
 15 progressing, and that they would have proceeded
 16 directly to Caesarean section, and that's basically
 17 the bottom line.
 18 Q So it sounds -- would it be fair for me to
 19 say that as we sit here today, you are not critical of
 20 them not transferring Joanne Warner to another
 21 hospital for delivery?

1 A At this point, no, I don't have enough
2 information.
3 Q Doctor, how many weeks was Mrs. Warner on
4 the date that she delivered?
5 A I believe she was about twenty-nine weeks
6 gestational age.
7 There -- there are two other dates on the
8 chart; one that says thirty weeks, and one says
9 thirty-two weeks. They're all essentially the same
10 dating; at least, the outcome is essentially the same
11 in that window.
12 Q In 1979, what were the risks in delivering
13 by a C-section an infant of that gestational age?
14 A There were really no risks to the infant,
15 you know, other than any, any -- the risks of any
16 Caesarean section to an infant, and the risks are,
17 number one, the baby can always be nicked by a knife
18 and, number two -- and it doesn't apply to this
19 baby -- is that Caesarean section may give you wet
20 lungs.
21 In a breech, that doesn't happen. It only

1 happens -- what, what prevents wet lungs is a vaginal
2 delivery, head first, where the chest cavity is
3 squeezed during the delivery process. It does not
4 always happen with a breech delivery.
5 Q Can it happen with a breech delivery?
6 A It could.
7 We never did, not did a Caesarean section
8 for reasons of wet lungs. That was just a transient
9 problem in the newborn period.
10 Q What about lung development? Isn't that an
11 issue in a preemie?
12 A Oh, you want to wait until the patient
13 declares herself at twenty-nine weeks gestational age.
14 In other words, the standard of care even
15 today is a twenty-nine-weeker will not be immediately
16 delivered. They are delivered when they declare
17 themselves or when labor ensues.
18 Q So even today, if a patient has premature
19 rupture of membranes at twenty-nine weeks, they may be
20 kept without a C-section delivery until they begin
21 labor?

1 A That is correct.
2 That would be standard of care, was -- it
3 was then and it is now.
4 Q All right. And that's because at
5 twenty-nine weeks gestational age, an infant's lungs
6 may not be developed?
7 A That is correct.
8 Q In 1979, what options were available for
9 treating an infant whose lungs were not yet developed?
10 A We would not give steroids to a patient who
11 is twenty-nine weeks gestational age in 1979. We were
12 actually reluctant to give steroids to any, anyone,
13 but we did to a certain specific group.
14 Q And that would be steroids such as
15 surfactin?
16 A No, no, surfactin was not available.
17 Q Okay.
18 A Surfactin -- steroids being the
19 Betamethasone, and we were beginning to give it to
20 mothers who were twenty-eight to thirty-four weeks
21 gestational age.

1 But with rupture of membranes, we did not
2 give it.
3 Q Would it be fair for me to say,
4 Doctor Edelberg, that twenty-nine-week-old babies who
5 were delivered in 1979 were at a greater likelihood
6 for adverse complications than would be a
7 twenty-nine-week-old gestational-age infant in 2000?
8 MR. BECKER: I'm sorry, I do not
9 understand the question.
10 MS. MALNAR: Okay.
11 MR. BECKER: Would you repeat it, PJ,
12 please?
13 MS. MALNAR: Yeah, and I struggled with
14 that, I'm sorry.
15 Q (By Ms. Malnar) Would it be fair for me to
16 say, Doctor Edelberg, that an infant delivered at a
17 gestational age of twenty-nine weeks in 1979 was at a
18 higher risk for adverse complications than an infant
19 at twenty-nine weeks gestational age in 2000?
20 A That is correct.
21 Q And why is that?

<p style="text-align: right;">Page 30</p> <p>1 A Well, because today we give steroids to all 2 comers, and it appears to make a statistical 3 difference. 4 So we have less respiratory problems in the 5 newborn period, they are less complicated in the 6 newborn period, we have less necrotizing 7 enterocolitis, we have fewer intracranial bleeds. 8 Q Can infants develop cerebral palsy without 9 medical negligence? 10 A Yes, that is absolutely true. 11 Q Was that also true in 1979? 12 A Yes, it was. 13 Q Was the development of cerebral palsy more 14 common in 1979 because of the state of medicine? 15 A That is very hard to state -- to, to ferret 16 out -- and the reason being is because we've got more 17 survivors today in the very low birth weight group 18 which has a high incidence of cerebral palsy. 19 Q Would you consider Alicia Warner to have 20 been in a low birth weight group? 21 A Low birth weight, but I'm saying very low</p>	<p style="text-align: right;">Page 32</p> <p>1 A Breeches we considered at risk, unless they 2 had Caesarean section, and if they had a Caesarean 3 section, we thought then that equaled then a vertex 4 delivery or a head-first delivery. 5 Q It sounds to me through your testimony like 6 you believe that this infant should have been 7 delivered by C-section; is that correct? 8 A She would have been delivered by C-section 9 in '79, and she would be delivered by C-section today. 10 Q All right. It also sounds to me, though, 11 like your testimony is that the C-section should not 12 be performed until the, the patient declares themself, 13 correct? 14 A That is correct. 15 Either that -- either they have developed a 16 chorioamnionitis or they are in labor. 17 Q All right. At what point in time do you 18 believe Joanne Warner was in labor? 19 A I think when she complained of cramping or 20 pain, and that would be at five o'clock. 21 Q That's five p.m.?</p>
<p style="text-align: right;">Page 31</p> <p>1 birth weight, and that's where we've had the dramatic 2 increase in survival and that's the group that's at 3 very high risk for cerebral palsy. 4 Q When you say very low birth weight, what -- 5 can you characterize that for me? 6 A Under -- about eight hundred grams. 7 Q Which would be what in ounces? 8 A Well, it's about a thousand -- I think -- I 9 think the pediatricians use a thousand grams today. 10 I'm not sure exactly what they use, but, in 11 other words, where our survival is occurring today is 12 at twenty-six weeks gestational age, and we had very 13 few survivors at twenty-six weeks in 1979. 14 Q What about at twenty-nine weeks? 15 A Twenty-nine weeks, we had very good survival 16 in '79. 17 Not quite as -- not as good as we have 18 today, but very good survival. 19 Q And when you talk about survival rates, is 20 that impacted at all about whether or not the infant 21 has a breech presentation?</p>	<p style="text-align: right;">Page 33</p> <p>1 A Correct. 2 Well, let me, let me look at the, the, the 3 progress note to, to state that for a fact. 4 Yes, at five p.m. 5 Q And you believe that that complaint of back 6 pain, in fact, was labor pains? 7 A Yes, I do. 8 Q Why? 9 A Well, because -- first of all, if you have 10 somebody with rupture of membranes, you expect them to 11 go into labor at some point after the rupture. 12 What it needs is evaluation at that point, 13 and the evaluation would be to place her on a monitor 14 and see if the contractions are rhythmical, and in all 15 probability they were, and then to do a speculum exam, 16 and the speculum exam would reveal cervical 17 dilatation. 18 Now, I can say that because we know 19 ultimately she had to be in labor because she 20 delivered. 21 Q Who would you expect to do that initial</p>

1 examination?
 2 A I think the physician has to do that
 3 examination.
 4 Q And that would presuppose that she's advised
 5 of the back pain?
 6 A Correct, or the stomach pain or the cramping
 7 or the mild contractions.
 8 Q But in this case, the only information we
 9 have is that Joanne Warner was complaining of back
 10 pain, correct?
 11 A No, no, no. We have a note at five p.m.
 12 that says mild contractions. We have then another
 13 note at five p.m. that says back pain and cramps. We
 14 have then -- that's all I have there.
 15 Q Okay.
 16 A Oh, and nine-thirty, we have back cramps.
 17 Q What are you looking at, Doctor?
 18 A I am looking at the labor record which is a
 19 contemporaneous record kept by the nurses of a patient
 20 on the labor floor.
 21 Q Okay. What do you believe should have

1 happened, then, at five o'clock where it's noted mild
 2 contractions?
 3 A I believe that she should have been placed
 4 on a monitor at that point or the nurse had to sit by
 5 the bedside and ask the patient, whenever she got a
 6 contraction, to tell her when it started and when it
 7 ended.
 8 Q All right.
 9 A Either would be appropriate.
 10 Q Do you know whether or not Wooster Community
 11 Hospital had a fetal monitor available?
 12 A I believe they did.
 13 Q Do you know if they were using it at that
 14 point in time?
 15 A They should have been.
 16 Q Doctor, are you prepared to comment on what
 17 difference it would have made in Alicia's outcome if
 18 she had been sectioned -- if Joanne had been
 19 sectioned?
 20 A There would not have been trauma to the
 21 baby, or there -- and -- now, what the outcome would

1 be would be up to a neonatologist, a pediatrician, or
 2 a pediatric neurologist to tell you.
 3 Q Okay. So, then, you're not prepared to
 4 offer an opinion as to whether or not Alicia's outcome
 5 would have been any different had she been sectioned;
 6 is that correct?
 7 A Well, I can only comment as far as an
 8 obstetrician, and an obstetrician, as an obstetrician,
 9 we know that for a breech delivery that it -- there is
 10 less fetal trauma if they have a Caesarean section.
 11 Number two, I know that in the newborn
 12 period, the baby had some neurological misbehavior.
 13 It sounds like seizure activity, but it's out of my
 14 area of expertise. Now I have to turn it over to a
 15 pediatric neurologist or a neonatologist or a
 16 pediatrician.
 17 Q Okay. Let me do it this way so it will be
 18 easier for me.
 19 MR. BECKER: Yeah, he's not going to
 20 speak to causation, P.J.
 21 MS. MALNAR: Oh, okay.

1 Thanks, Mike.
 2 MR. BECKER: I mean, other than what
 3 he's already said about trauma.
 4 The issue of causation is going to be
 5 directly spoken to by Doctor Cherish on Monday.
 6 MS. MALNAR: Okay, thanks.
 7 Q (By Mr. Malnar) Doctor Edelberg, can you
 8 tell me, do you have criticisms of the nurses in this
 9 case?
 10 A Yes. I have criticisms of the nurses in
 11 terms of their identifying a patient who was having
 12 contractions who had rupture of membranes.
 13 Q Tell me what those criticisms are, if you
 14 would.
 15 A Well, the failure to appreciate the fact
 16 that the patient was complaining of contractions and
 17 that the doctor should have been notified and that
 18 they should have specifically then monitored the
 19 patient.
 20 Now, whether they have to wait for a
 21 doctor's order, that's fine, but they have to notify

1 the doctor that there's been a change in status of the
2 patient, that she is having symptoms that may be
3 indicative of labor, and that's either back pains,
4 cramping, or contractions, all of which are noted in
5 the records.

6 Q Do you know if the nurses did notify
7 Doctor Arora of any of those changes in condition?

8 A I am not aware of the fact that he was made
9 aware of those conditions.

10 And I'm also aware of the fact that in the
11 deposition the nurses did not recognize, or the nurse
12 that did the deposition, did not recognize that back
13 pain or back cramping could be a sign of labor.

14 Q All right. So you're critical of the nurses
15 failing to identify the complaints as indicative of
16 labor; is that fair?

17 A They -- or possible labor, right, so that
18 the appropriate diagnostic tools could be instituted.

19 Q Do you have any other criticisms of the
20 nurses?

21 A No, I do not.

1 Well, we can go on in terms of the irregular
2 heartbeat also should have prompted the need to notify
3 the physician or institute the fetal monitor to assess
4 what the irregularities were.

5 That depends on hospital policy. Early on,
6 nurses -- some hospitals, you could initiate fetal
7 monitoring without a doctor's orders, and in others
8 you had to have a doctor's orders in order to put the
9 monitor on.

10 Q When you say early on, you mean early on in
11 the use of fetal monitors?

12 A That is correct.

13 Q I note in your report it indicates that, or
14 you talk about them permitting the patient to
15 ambulate.

16 Is that a criticism that you have?

17 A Yes, it is.

18 Q Okay. Tell me about that.

19 A Well, if a patient is -- first of all, a
20 patient may ambulate in labor, but not if they are a
21 breech, and particularly not if they're a footling

1 breech, the reason being is that there are risks for a
2 prolapsed cord.

3 Now, that, also, nursing was not aware of.

4 The statement made by nursing in, the nurse
5 in her deposition, was that a preemie breech would not
6 be at risk for cord prolapse, only a term breech.

7 That's clearly wrong -- it's exactly the
8 opposite -- because the smaller the baby, the more
9 likely the cord is to fall through the door.

10 Q At what point in time can you recognize that
11 a baby is breech?

12 A You can recognize a breech presentation --
13 well, I don't quite understand your question because
14 by ultrasound you can make the diagnosis at three
15 weeks gestational age.

16 Q Do you know if an ultrasound was available
17 in this case?

18 A There probably was ultrasound, but they
19 didn't need it. They knew the baby was breech.

20 Q And why is it that you believe that they
21 knew that it was breech?

1 MR. BECKER: Are you talking about the
2 nurses or the doctor?

3 MS. MALNAR: Well, let's take them
4 separately, and I guess I was just sort of responding
5 to the Doctor's comment.

6 Q (By Ms. Malnar) Who is it that you believe
7 knew the baby was a breech presentation?

8 A I'm sorry, I made a -- I may have made a
9 mistake there, hold on.

10 Q Okay.

11 A Let me -- I believe in the office records he
12 discusses that it's breech. I can't put my hands on
13 them immediately.

14 Q But it's your belief that Doctor Arora knew,
15 even in the office records, that the baby was a breech
16 presentation?

17 A I believe so, I'm trying to confirm that
18 now, and I'm frantically looking for the office
19 records.

20 Yes, it's in the office records. 9/20,
21 twenty-nine -- twenty-nine, 9/20, twenty -- no --

1 9/20.
2 She's twenty-nine weeks, we have rupture of
3 membranes. It says breech with an arrow down.
4 Q So that would be the visit from the date of
5 delivery?
6 A Correct.
7 Q So is that something you can determine as an
8 OB by exam?
9 A Correct.
10 Q Do you believe that in this case that the,
11 permitting Mrs. Warner to ambulate did, in fact, cause
12 cord prolapse?
13 A It contributed to the cord prolapse.
14 I can't say one hundred percent that that's
15 the only reason it occurred, but we certainly would
16 not ambulate a footling breech.
17 Q Do you believe that this infant did have
18 cord prolapse?
19 Hello?
20 A Yeah, I'm looking.
21 Q Okay.

1 A I'm looking.
2 No, I don't think they ever documented a
3 cord prolapse. She was just at risk for it.
4 Q All right. So there's no evidence that
5 permitting the patient to ambulate had any negative
6 impact on the infant, correct?
7 A No, it just should not have been done.
8 Q Fair enough.
9 Doctor, have we talked about all your
10 criticisms of the nurses in this case?
11 A I believe we have.
12 Q All right. Have we talked about all your
13 criticisms of Doctor Arora in this case?
14 A I believe -- again, I believe that is, would
15 be correct.
16 Q Okay.
17 MR. BECKER: Do you want to look at
18 your report again?
19 THE WITNESS: Let me, let me --
20 MR. BECKER: Obviously, what he hasn't
21 spoken to in his report is fair game, so just to be

1 fair, just revisit your report.
2 I think you've covered everything,
3 but --
4 THE WITNESS: Well, let me go over the
5 report.
6 MR. BECKER: Yeah.
7 (Witness reading.)
8 A I think one could be critical of
9 Doctor Arora having come back into the hospital and
10 really not obtained enough information from nursing.
11 I am not suggesting that he had to read the
12 nursing notes, but there is a two-way street that both
13 nurses have to tell the doc what's going on and the
14 doc has to assess what is going on with the patient.
15 Q (By Ms. Malnar) And what time when
16 Doctor Arora comes back do you believe that occurs?
17 A That's at eight-thirty.
18 P.m.
19 Q And why is it that you believe that she
20 didn't get enough information at that point in time,
21 if that's what you believe?

1 A Well, had there been that communication at
2 that point, a speculum exam would have been done,
3 probably a foot would have been seen high in the
4 vagina, the cervix would have been dilated, and an
5 urgent section would have been performed. And,
6 hopefully, it could be accomplished reasonably quickly
7 even in a Level I hospital.
8 Q Is there a point in time when it is no
9 longer safe to perform a C-section?
10 A No.
11 I remember that being mentioned by the
12 doctor in deposition, and that is clearly incorrect.
13 I have done many a Caesarean section on a breech baby
14 with the foot hanging out of the vagina.
15 As a matter of fact, the foot may hang out
16 of the vagina for hours.
17 For those of us who delivered footling
18 breeches some thirty years ago from below, that was
19 not an uncommon problem, to have the foot hanging out
20 for hours during labor.
21 Q So you have had situations where a footling

<p style="text-align: right;">Page 46</p> <p>1 breech has delivered a foot?</p> <p>2 A Oh, of course.</p> <p>3 Q And that that situation has existed for</p> <p>4 hours prior to a C-section?</p> <p>5 A Well, remember, in the sixties, we did not</p> <p>6 do a Caesarean section for footling breeches, or in</p> <p>7 the early seventies, and we labored those patients,</p> <p>8 and a foot may well hang out of the vagina for hours</p> <p>9 while they labor.</p> <p>10 Q Did those babies all go on to develop CP?</p> <p>11 A No, no, no.</p> <p>12 The risk is probably about one to two</p> <p>13 percent for having a major calamity from a breech</p> <p>14 delivery.</p> <p>15 Q So a twenty-nine-weeks gestational-age</p> <p>16 infant can be delivered vaginally in a footling breech</p> <p>17 situation?</p> <p>18 A Oh, it's certainly possible to deliver them.</p> <p>19 We don't electively deliver any footling</p> <p>20 breeches from below from 1977 on or thereabouts.</p> <p>21 Q And a twenty-nine-week gestational-age</p>	<p style="text-align: right;">Page 48</p> <p>1 gestational-age baby with a footling breech that did</p> <p>2 not develop CP?</p> <p>3 A I'm sure I have.</p> <p>4 I don't know what the course of all the</p> <p>5 babies I delivered, what they all did, but I'm sure</p> <p>6 that in the sixties I delivered some healthy neonates</p> <p>7 vaginally at twenty-nine weeks who were footling</p> <p>8 breeches.</p> <p>9 Q And you were delivering vaginally</p> <p>10 twenty-nine-week gestational-age infants as late as</p> <p>11 1977?</p> <p>12 A No, about -- I -- we switched in Tucson,</p> <p>13 Arizona, around '74 or '75.</p> <p>14 Q But Tucson, I think you told me, was sort of</p> <p>15 on the cutting edge.</p> <p>16 A Correct, and by 1977 or thereabouts, it was</p> <p>17 a national standard.</p> <p>18 And I think the doctor's admitted that in</p> <p>19 her deposition.</p> <p>20 Q Doctor, do you intend to offer any comments</p> <p>21 about the administration of Second?</p>
<p style="text-align: right;">Page 47</p> <p>1 footling breech presentation can be delivered</p> <p>2 vaginally without the development of CP?</p> <p>3 A Oh, it could happen.</p> <p>4 The problem is that it occurs -- damage to</p> <p>5 the baby occurs more frequently with a breech</p> <p>6 delivery, with a footling breech delivery done</p> <p>7 vaginally.</p> <p>8 Q Did you just tell me that it occurs in one</p> <p>9 to two percent of those deliveries?</p> <p>10 A That we get a major injury to the baby.</p> <p>11 MR. BECKER: Full-term we're talking</p> <p>12 now.</p> <p>13 A Correct, not prematures.</p> <p>14 Q Can you deliver a twenty-nine-week</p> <p>15 gestational-age footling breech vaginally without the</p> <p>16 development of CP?</p> <p>17 A Oh, it's certainly possible.</p> <p>18 Q Have you ever done that?</p> <p>19 A Years ago, yes. In the sixties, yes.</p> <p>20 That's old-fashioned obstetrics.</p> <p>21 Q Have you ever delivered a twenty-nine-week</p>	<p style="text-align: right;">Page 49</p> <p>1 A No, I do not.</p> <p>2 Q What impact can smoking during pregnancy</p> <p>3 have on an infant?</p> <p>4 A Well, smoking produces a</p> <p>5 small-for-gestational-age baby because of some changes</p> <p>6 in vasculature, so we worry about placental</p> <p>7 insufficiency, we worry about small-for-dates babies.</p> <p>8 In '79, we did not warn patients about the</p> <p>9 dangers of smoking in pregnancy.</p> <p>10 Q Can placental insufficiency cause CP?</p> <p>11 A Anything is possible.</p> <p>12 It has not -- it has not been related to</p> <p>13 smoking, to my knowledge.</p> <p>14 Q What has not been related to smoking?</p> <p>15 A Cerebral palsy.</p> <p>16 Q Has it been related to placental</p> <p>17 insufficiency?</p> <p>18 A Not that I'm aware of.</p> <p>19 Q When I say it, I'm referring to CP.</p> <p>20 A Yeah, and I'm talking about pure cerebral</p> <p>21 palsy has not been related to --</p>

1 Q Placental insufficiency?
 2 A -- placental insufficiency.
 3 Placental insufficiency which causes global
 4 damage to the baby -- in other words, motor, mental
 5 damage, and cerebral palsy -- there is a relationship
 6 between placental insufficiency and cerebral palsy.
 7 Q Do you know whether or not Alicia Warner has
 8 pure cerebral palsy as you called it?
 9 A I don't know her current status.
 10 I do know that the baby was normally grown
 11 and so that we would not suggest that there was
 12 placental insufficiency. We know that the baby was
 13 not asphyxiated at birth. That does not go along,
 14 then, with placental insufficiency.
 15 Q How long do you believe that Joanne Warner
 16 was in labor prior to the delivery of this infant?
 17 A Well, I believe she was probably in labor by
 18 five p.m., and that would fit very nicely with a
 19 delivery some six hours later or so.
 20 MS. MALNAR: Doctor Edelberg, I don't
 21 think I have anything else for you right now.

1 Thank you.
 2 THE WITNESS: Thank you very much.
 3 MS. MALNAR: May I have a copy?
 4 May I have the deposition, please?
 5 THE REPORTER: Yes.
 6 MS. MALNAR: The transcript.
 7 THE REPORTER: Yes.
 8 MR. BECKER: Doctor, I'd recommend you
 9 read it rather than waive signature and, PJ, if we
 10 need more time, you have no problem with that?
 11 MS. MALNAR: No problem.
 12 MR. BECKER: Miss Court Reporter, I
 13 would take a copy.
 14 THE REPORTER: Okay.
 15 (Thereupon, at 2:55 p.m., the
 16 examination of the witness was concluded.)
 17
 18
 19
 20
 21

1 ACKNOWLEDGMENT OF DEPONENT
 2 I, Stuart C. Edelberg, M.D., do hereby
 3 acknowledge I have read and examined the foregoing
 4 pages of testimony, and the same is a true, correct
 5 and complete transcription of the testimony given by
 6 me, and any changes and/or corrections, if any, appear
 7 in the attached errata sheet signed by me.
 8
 9 _____
 10 Date Stuart C. Edelberg, M.D.
 11
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 21

1 CERTIFICATE OF NOTARY PUBLIC
 2 I, Kathleen R. Turk, the officer before
 3 whom the foregoing deposition was taken, do hereby
 4 certify that the witness whose testimony appears in
 5 the foregoing deposition was duly sworn by me; that
 6 the testimony of said witness was taken by me in
 7 stenotype and thereafter reduced to typewriting under
 8 my direction; that said deposition is a true record of
 9 the testimony given by said witness; that I am neither
 10 counsel for, related to, nor employed by any of the
 11 parties to the action in which this deposition was
 12 taken; and, further, that I am not a relative or
 13 employee of any attorney or counsel employed by the
 14 parties hereto, nor financially or otherwise
 15 interested in the outcome of the action.
 16
 17 _____
 18 Kathleen R. Turk
 19 Notary Public in and for the
 20 State of Maryland.
 21 My Commission Expires:
 22 March 1, 2003.
 23

1 March 11, 2000
2 Dr. Stuart C. Edelberg
3 1309 Margarette Avenue
4 Baltimore, MD 21286
5 Re: Alicia Warner, et al., vs. Urmil Arora, M.D.
6 Deposition of Stuart C. Edelberg, M.D.
7 Attached for your review and signature is a copy of
8 the above-referenced deposition. We ask that you read
9 the transcript carefully. If it is necessary to make
10 any corrections, please do so on the enclosed errata
11 sheet, indicating the page, line number, and
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13 dated. Also, you must sign the Acknowledgment of
14 Deponent enclosed in the transcript.
15 Additionally, under the Maryland Rules, if you do not
16 complete the reading and signing within thirty days,
17 you may have waived your right to make corrections.
18 Therefore, your prompt attention to this matter is
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21 to our office at 401 E. Pratt Street, Suite 425,
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6 ERRATA SHEET
7 Case Name: Alicia Warner, et al., vs. Urmil Arora,
8 M.D.,
9 Witness Name: Stuart C. Edelberg, M.D.
10 Deposition Date: March 10, 2000
11 Job No.: 192289
12 Reason For
13 Page No. Line No. Correction Correction
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19
20
21 Signature Date

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