

State of Ohio,)
County of Cuyahoga.) SS:

IN THE COURT OF COMMON PLEAS

MATTHEW CASE WAGONER, ETC,)
et al.,)
)
) Plaintiffs,)
) Case No. 497179
vs.)
)
MARK R. EVANS, M.D, et al.,)
)
) Defendants.)
)

THE DEPOSITION OF MERLITA EVANGELISTA, M.D.
WEDNESDAY, MARCH 10, 2004

The deposition of MERLITA EVANGELISTA, M.D.,
called by the Plaintiff for examination pursuant to
the Ohio Rules of Civil Procedure, taken before me,
the undersigned, Marcie S. Smith, a Registered
Professional Reporter and Notary Public within and

for the State of Ohio, taken at Fairview General

Hospital, 18099 Lorain Avenue, Cleveland, Ohio,

commencing at 9:05 a.m., the day and date above set

forth.

APPEARANCES:

On behalf of the Plaintiffs (via telephone):

Michael Becker, Esq.
Becker & Mishkind Co., LPA
660 Skylight Office Tower
1660 West Second Street
Cleveland, Ohio 44113

On behalf of Defendant Fairview General
Hospital:

John T. Bulloch, Esq.
Moscarino & Treu LLP
The Hanna Building
1422 Euclid Avenue, Suite 630
Cleveland, Ohio 44115

On behalf of Defendant Dr. Evans:

Bradley Barmen, Esq.
Reminger & Reminger
1400 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115

On behalf of Defendant Parma Community
General Hospital:

Kenneth A. Torgerson, Esq.
Weston Hurd Fallon Paisley & Howley, LLP
The Tower at Erieview
1301 East Ninth Street
Suite 1900
Cleveland, Ohio 44114

CADY REPORTING SERVICES, INC.

1 MERLITA EVANGELISTA, M.D.

2 of lawful age, called by the Plaintiffs for
3 examination pursuant to the Ohio Rules of Civil
4 Procedure, having been first duly sworn, as
5 hereinafter certified, was examined and
6 testified as follows:

7 MR. BECKER: John?

8 MR. BULLOCH: Yes, sir.

9 MR. BECKER: Off the record.

10 (Off the record.)

11 EXAMINATION OF MERLITA EVANGELISTA, M.D.

12 BY MR. BECKER:

13 Q Doctor, good morning.

14 A Good morning.

15 Q Would you, first of all, tell me your name and
16 spell your last name.

17 A Merlita Evangelista. E-V-A-N-G-E-L-I-S-T-A.

18 Q And what is your current position?

19 A I am a pediatrician at Fairview Hospital in
20 pediatrics.

21 Q You're currently a house staff pediatrician?

22 A Yes.

23 Q And as a house staff pediatrician, what are your
24 duties and responsibilities?

25 A My responsibility is to see patients on the

1 pediatric floor and newborn intensive care unit
2 and in the delivery room during the night.

3 And during the day, we have several
4 pediatricians who are working with us and we go
5 deeper into places during the day. Like one is
6 outpatient department, one is in the inpatient,
7 and then the unit only deals in -- the unit in
8 newborn intensive unit working with us, too.

9 Q So let me see if I can recap that, Doctor. Your
10 responsibilities include night service?

11 A Uh-huh.

12 Q As well as day service in various departments?

13 A Yes.

14 Q And when you are on duty, is it normally an
15 eight, 12- or 24-hour shift?

16 A 24-hour shift.

17 Q So I'm assuming you sleep there at the hospital?

18 A Yes.

19 Q And back in August of 1999, did you hold the
20 same position?

21 A Yes.

22 Q Same responsibilities and duties as you already
23 outlined as you have today?

24 A Yes.

25 Q Tell me about your medical education, Doctor.

1 A I was educated in the Philippines, Manila
2 Central University, and I graduated medical
3 school in 1963. Then I came here in 1972 and
4 had training in Toledo Medical College of Ohio,
5 Toledo, Department of Pediatrics. Then this is
6 my first job out of training. I'm board
7 certified in pediatrics and I recertified just
8 twice already. And the last one was in 2001, I
9 think.

10 Q So you did your residency in the United States
11 at MCO?

12 A Yes.

13 Q Was that a three-year or four-year program?

14 A Three-year program.

15 Q And after that, you obtained a job with
16 Fairview?

17 A Yes.

18 Q And did you pass your boards the first time you
19 took them?

20 A Yes -- the first time, no, I did not pass the
21 board. I had to take it the second time.

22 Q Okay. And, Doctor, I assume you've had your
23 deposition taken before?

24 A No, I have not.

25 Q This is the first time?

1 A Yes. I'm shaking.

2 MR. BULLOCH: Mike, you know,
3 she was telling me the other day she's to the
4 point in her career that she's just starting to
5 think about retirement and then you had to come
6 along and do this to her, so I hope you're
7 feeling real bad.

8 MR. BECKER: I'm feeling very
9 bad.

10 Q Doctor, I'm sorry to put you through this but
11 I'm sure it will not be painful and this will
12 hopefully be rather short.

13 Just to review the ground rules for you,
14 this is a question and answer session under
15 oath. It's important you understand the
16 questions that I have posed. If you don't
17 understand the question or if it's unartfully
18 phrased, I want you to stop me and tell me so
19 and I'd be most pleased to attempt to rephrase
20 or restate the question. Fair enough?

21 A Yes.

22 Q However, unless you indicate otherwise, I'm
23 going to assume that you have fully understood
24 the question that has been posed by me and you
25 are giving me your best and most complete answer

1 today. Fair enough?

2 A Yes.

3 MR. BULLOCH: You can assume
4 that, Mike, but of course she has a right to
5 change her answers on the errata sheet.

6 Q And, Doctor, because we're doing this by phone,
7 I'd ask you to keep your voice up.

8 MR. BECKER: Or I'm not sure
9 if it's possible to move -- John, to move the
10 phone a little bit closer to her.

11 Q But please keep your voice up and please make
12 sure that I have completed my question before
13 you begin your answer, okay?

14 A Okay.

15 MR. BULLOCH: Mike, we have it
16 pretty close to her so just let us know if she's
17 fading out and we'll do our best.

18 Q What have you reviewed in preparation for
19 today's deposition?

20 A I didn't understand the question.

21 Q Good. I'm glad you told me that. And if you
22 don't understand, just tell me so.

23 My question is: In preparation for this
24 deposition today, what materials or research did
25 you review?

1 A I went down last night to scan the chart.

2 Q Okay.

3 A And because I was so busy last night, I just
4 read the notes where I wrote the notes.

5 Q You read your own notes in the chart, correct?

6 A Yeah. In 1999 when I was with the patient.

7 Q Yes, ma'am. Is that the extent of your
8 preparation for today's deposition other than
9 talking to your counsel?

10 A Yes.

11 Q He didn't do any research?

12 A No. There's nothing to research about.

13 Q Okay. You didn't look at any policies,
14 procedures or guidelines?

15 A No.

16 Q Okay. So, Doctor, I want you to feel free to
17 look at the chart. I'm going to first ask you
18 to interpret all your entries in the chart,
19 including abbreviations, okay?

20 A Okay.

21 Q And it looks like our first entry is at 8-25.

22 What is the time of your first entry?

23 A My first entry here I wrote "7:05 p.m. on August
24 25, 1999."

25 Q Okay. Go ahead and read it to me.

1 A "Child requiring more oxygen. Oximeter dips to
2 50."

3 MR. BULLOCH: Mike, Ken
4 Torgerson just walked in, so if you can hold on
5 a minute until he gets organized.

6 Why don't you start over, Doctor, reading
7 that chart.

8 A Okay. My entry was "7:05 p.m. August 25, 1999.
9 Child requiring more oxygen. Oximeter dips to
10 50. Very dusky. Transillumination positive on
11 the right side. Size 12 chest tube put in
12 place."

13 Q Can you tell by the chart, Doctor, as to how you
14 happened to have been called or why were you
15 called to see this patient?

16 A I was called by the nurse because of the
17 oximeter dip and the child is requiring more and
18 more oxygen.

19 Q Okay. In your entry where you say
20 "transillumination positive", I think I know
21 what that means but tell me what you mean by
22 that.

23 A When there is question whether the child has
24 blown a pneumothorax, we have a high intensity
25 light that we put against the chest wall to see

1 if the light will go through and through the
2 chest wall. And that's how we diagnose
3 pneumothorax.

4 Q And if the light goes through?

5 A It is positive transillumination.

6 Q It's positive for pneumothorax?

7 A Yes.

8 Q Okay.

9 A And it went through, so it was positive on the
10 right side.

11 Q Okay. And then I'm assuming that's much quicker
12 than doing a chest film?

13 A Yes. It's just a lot quicker.

14 Q Okay. And then you put in a chest tube as
15 management of the pneumothorax?

16 A Yes. We have to do it right away.

17 Q Okay. And why did you choose size 12?

18 A Because of the size of the baby. We have a
19 guideline. And according to the weight of the
20 baby, there is a guideline on what size of tube
21 we have to use.

22 Q Okay. So you just looked at your guideline,
23 knowing what the baby's weight is, and that told
24 you the size of the tube to utilize?

25 A Yes.

1 Q Okay. As a result of your seeing this child,
2 in the progress note at 7:05, did you create any
3 orders at that time?

4 A Okay. I ordered chest X-ray for chest tube
5 placement and arteriole blood gases.

6 Q So you ordered a portable chest film to confirm
7 the chest tube placement?

8 A Yes.

9 Q And you also ordered gases on this child?

10 A Yes.

11 Q And when did you anticipate or expect the gases
12 to be drawn in time?

13 A Right away. As soon as I finish my placement,
14 you know.

15 Q Okay. Was that a stat order then, Doctor?

16 A Yes. That is supposed -- any time you order
17 arteriole blood gases, it's stat all the time.

18 Q Why don't you just read me your orders then
19 verbatim.

20 A "Chest X-ray. AP only for chest tube placement
21 on the right side and arteriole blood gases."

22 Q Okay. Is that the extent of your orders at that
23 time?

24 A Yes.

25 Q Okay. When did you next see this child?

1 A I saw this child again around 11:00 in the
2 evening because he had, again, had another
3 oximeter dip and he turned blue and we
4 transilluminated the left side. And it's,
5 again, positive so I inserted another chest
6 tube.

7 Q Okay. So the time between the -- so at 7:05 we
8 had a right pneumothorax and at 11:00,
9 11:00 p.m., we had a left pneumothorax?

10 A Yes.

11 Q Yes?

12 A Yes.

13 Q Okay. That number 89, is that a sat number?

14 A The oximeter dip is through the monitor.

15 Q Right. The monitor that's on the baby?

16 A Yeah.

17 Q And what's that "89" mean?

18 A The 89 is the one that's reading in the monitor.

19 Q Okay. And do you have an explanation as to,
20 first of all, going back to 7:05, as to why the
21 right pneumothorax occurred?

22 A I don't know.

23 Q Okay. Do you have an explanation at 11:00 why
24 the left pneumothorax occurred?

25 A I don't know.

1 Q Okay. Were there any orders as a result of your
2 11:00 assessment?

3 A Yes. I give the child pain medicine, morphine,
4 .2 milligram IV, and then I did another chest
5 X-ray for chest tube placement on the left side.

6 Q What was the purpose of the morphine?

7 A At the time we do procedure in the child, we can
8 look and if the child is, you know, having pain,
9 we give morphine for pain.

10 Q Is that a good idea when the child's having
11 oxygenation problems?

12 A Yes. That helps a lot in babies who have
13 procedure.

14 Q Any other orders as a result of the 11:00
15 assessment?

16 A That's it, that I wrote here. That is the only
17 order that I wrote in the chart that I can
18 remember.

19 Q Did you, either at 7:00 or 11:00, or any time
20 that evening, did you contact Dr. Lillian to let
21 him know what has transpired with this child?

22 A I assume, even if I didn't write this there, I
23 have to talk to him if the child has problem
24 like this.

25 Q So it would be your routine course to call him

1 when you find it necessary to place a chest tube
2 in a neonate?

3 A Yes. Exactly. Because when he signed out to me
4 that afternoon, he told me to expect
5 pneumothorax in patient, you know. He will --
6 when he makes rounds at 5:00 to 5:30 in the
7 evening -- in the afternoon, before he leaves
8 the hospital, we will make a sign-out round and
9 he will tell me what to expect in each of the
10 babies.

11 "This baby you don't have to worry."

12 "This baby you expect pneumothorax." "This baby
13 you expect...". He just goes on and on with the
14 patients. So I have to write it down and that's
15 how I know, and then I'll contact him if
16 something happens.

17 Q So it's your understanding that Dr. Lillian
18 likely told you to expect pneumothorax in this
19 baby?

20 MR. BULLOCH: Objection. I'm
21 not sure that's what she said, Mike.

22 But go ahead, Doctor.

23 A I did not quite understand the question.

24 Q Just so I understand what you're saying, at 5:30
25 or so when Dr. Lillian left, he told you what to

1 anticipate in this baby, and as to this
2 patient/baby, he told you to anticipate --

3 A No. What I'm telling you is all the babies in
4 the hospital in the NICU, when he's signing out,
5 he will tell us what to expect, you know, in all
6 the babies. Not only with this baby, but all
7 the babies who have problems.

8 Q I can't hear you, Doctor.

9 A In all babies who have problems, he will tell us
10 what to expect, not expect exactly. They might
11 do this, you know, they might do -- the child --

12 Q Let me ask it this way: Did he likely tell you
13 this baby was at increased risk for a
14 pneumothorax?

15 A I don't remember because I don't remember this
16 kid really. I'm just going by the chart.

17 Q Okay. But even though I don't see a chart
18 charting that, you feel it's likely you called
19 Dr. Lillian after -- either after the first or
20 certainly after the second event?

21 A Yes.

22 Q Did you see this child again?

23 A After the second event?

24 Q Yes.

25 A No.

1 Q That's the only time you saw this child?

2 A Yes.

3 MR. BECKER: Off the record
4 one moment.

5 (Off the record.)

6 Q Doctor?

7 A Yes.

8 Q At the time this child sustained the
9 pneumothorax, bilateral pneumothorax, clearly
10 this child had already been intubated, correct?

11 A Yes.

12 Q Would you turn to the chart where it has the
13 ventilator settings?

14 MR. BULLOCH: Mike, just so
15 you understand, this is not a part that the
16 doctor has reviewed. Are you talking about the
17 ventilator settings that were on the newborn
18 intensive care flow sheet, which might be Bates
19 numbered for you as 432 or 93 with a circle
20 drawn around it?

21 MR. BECKER: 93.

22 MR. BULLOCH: Okay. She's
23 there, Mike.

24 A I'm seeing this now.

25 Q Doctor, do you understand how to interpret

1 ventilation even though you are a pediatrician
2 and not a neonatologist? Do you understand the
3 ventilation and ventilation pressures?

4 A I understand just a little bit, but every time
5 we set this up, I always talk to the
6 neonatologist.

7 Q Okay. Would it be your routine if he -- if
8 you're called in to see a patient that's already
9 intubated, to look at the ped pressures or the
10 ventilation pressures during your assessment?

11 A I always ask them to call Dr. Lillian, whoever
12 is on call, to check if, you know, if the
13 setting is okay.

14 Q Doctor --

15 MR. BULLOCH: Doctor, do you
16 have to get that?

17 Mike, can you hold on a second? She's
18 being paged.

19 Do you have to get that, Doctor?

20 THE WITNESS: This is probably
21 my husband. He came for me.

22 MR. BULLOCH: Mike, can we
23 break for a second? She needs to use the phone.

24 (Recess taken.)

25 Q Doctor, have you ever ordered the administration

1 of Cerfactin?

2 A No. It's -- no.

3 Q Is that something that would be solely within
4 the province of a neonatologist?

5 A Yes.

6 Q And, Doctor, are you aware whether or not there
7 was any policy or procedure or guideline within
8 Fairview in 1999 that outlines when Cerfactin is
9 indicated and how to administer it?

10 MR. BULLOCH: Mike, are you
11 referring to any guidelines that might have been
12 promulgated by the manufacturer or by the
13 American College of Pediatricians, or are you
14 talking about --

15 MR. BECKER: I'm talking
16 about hospital guidelines.

17 MR. BULLOCH: Okay.

18 A I don't know.

19 Q Okay. Do you have, by chance, any recollection
20 of this particular patient, Doctor?

21 A I don't have any recollection. I'm just going
22 by the chart.

23 Q Okay. And by not having any recollection, I'm
24 assuming you don't recall any conversation that
25 you had with either the parents or Dr. Lillian,

1 or any other doctors that took care of this
2 child?

3 A No.

4 MR. BECKER: That's all I
5 have.

6 MR. BULLOCH: Okay. We
7 will -- I'm sorry.

8 Do you guys have any questions?

9 (No response.)

10 MR. BULLOCH: Being no
11 questions, we will reserve our right to read the
12 deposition transcript.

13 Doctor, what that means is that you have a
14 right to read what this court reporter is going
15 to transcribe on paper and make any corrections
16 that you might have. Because occasionally --
17 they don't make very many mistakes, but
18 occasionally you might have said "no" to
19 something and she inadvertently put down "yes".
20 So I will get that to you and you'll have the
21 opportunity to read it and make any corrections,
22 okay?

23 THE WITNESS: Okay.

24 MR. BULLOCH: Thank you very
25 much.

THE WITNESS: Thank you.

(Deposition concluded at 9:30 a.m.)

- - - - -

THE STATE OF OHIO,)
COUNTY OF CUYAHOGA.)

SS:

I, Marcie S. Smith, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that Merlita Evangelista, M.D, was first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer/printer, and that the foregoing is a true and correct transcript of the testimony so given by her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified. I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 21st day of March, 2006.

Marcie S. Smith, Notary Public
within and for the State of Ohio
My Commission expires April 28, 2009.

CADY REPORTING SERVICES, INC.

THE STATE OF)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said state and county, personally appeared the above-named Merlita Evangelista, M.D, who acknowledged that she did sign the foregoing transcript and that the same is a true and correct transcript of the testimony so given.

IN TESTIMONY WHEREOF, I have hereunto
affixed my name and official seal at
this day
of
2006.

Merlita Evangelista, M.D.

Notary Public

My Commission expires:

CADY REPORTING SERVICES, INC.