

**In The Matter Of:**

*Eric Gwynne, etc. v.  
University Hospitals of Cleveland, et al.*

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*Avroy Fanaroff, M.D.  
February 7, 2003*

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Court Reporters  
1750 Midland Building  
101 Prospect Avenue West  
Cleveland, OH 44115  
(216) 621-4984*

*Original File 030207AFASC, 63 Pages  
Min-U-Script® File ID: 1645636959*

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Page 1

[1] IN THE COURT OF COMMON PLEAS  
[2] CUYAHOGA COUNTY, OHIO  
[3] ERIC GWYNNE, ADMINISTRATOR  
of the ESTATE OF EMILY  
[4] GWYNNE, deceased,  
[5] Plaintiff,  
JUDGE GAUL  
[6] -vs- CASE NO. 468327  
[7] UNIVERSITY HOSPITALS OF  
CLEVELAND, et al.,  
[8] Defendants.  
[9]  
[10] Deposition of AVROY FANAROFF, M.D., taken as  
[11] if upon cross-examination before Pamela S.  
[12] Greenfield, a Registered Diplomat Reporter,  
[13] Certified Realtime Reporter and Notary Public  
[14] within and for the State of Ohio, at Rainbow  
[15] Babies and Children's Hospital, 11100 Euclid  
[16] Avenue, Cleveland, Ohio, at 12:30 p.m. Friday,  
[17] February 7, 2003, pursuant to notice and/or  
[18] stipulations of counsel, on behalf of the  
[19] Plaintiff in this cause.  
[20]  
MEHLER & HAGESTROM  
Court Reporters  
[22]  
CLEVELAND AKRON  
[23] 1750 Midland Building 1015 Key Building  
Cleveland, Ohio 44115 Akron, Ohio 44308  
[24] 216.621.4984 330.535.7300  
FAX 821.0050 FAX 535.0050  
[25] 800.822.0650 800.562.7100

Page 2

[1] APPEARANCES:  
[2] Thomas Conway, Esq.  
Friedman, Domiano & Smith  
[3] 600 Standard Building  
Cleveland, Ohio 44113  
[4] (216) 621-0070,  
[5] On behalf of the Plaintiff;  
[6] Carol Moskowitz, Esq.  
Moscarino & Treu  
[7] 630 Hanna Building  
1422 Euclid Avenue  
[8] Cleveland, Ohio 44115  
(216) 621-1000,  
[9]  
On behalf of the Defendant  
[10] University Hospitals of Cleveland;  
[11] James L. Malone, Esq.  
Reminger & Reminger  
[12] 1400 Midland Building  
401 West Prospect Avenue  
[13] Cleveland, Ohio 44115  
(216) 687-1811,  
[14]  
On behalf of the Defendants  
[5] Avroy Fanaroff, M.D. and  
Ricardo Rodriguez, M.D.;  
[6]  
[7] Marilena DiSilvio, Esq. (Via phone)  
Reminger & Reminger  
[8] 1400 Midland Building  
101 West Prospect Avenue  
[9] Cleveland, Ohio 44115  
(216) 687-1311,  
[0]  
On behalf of the Defendant  
[1] Arthur Zinn, M.D.  
[2] ALSO PRESENT:  
[3] Ricardo Rodriguez, M.D.  
[4]  
[5]

	Page 3
[1] WITNESS INDEX	
[2]	
	PAGE
[3] CROSS-EXAMINATION	
AVROY FANAROFF, M.D.	
[4] BY MR. CONWAY.....	4
[5] CROSS-EXAMINATION	
AVROY FANAROFF, M.D.	
[6] BY MS. DISILVIO.....	52
[7] CONTINUED CROSS-EXAMINATION	
AVROY FANAROFF, M.D.	
[8] BY MR. CONWAY.....	57
[9] EXHIBIT INDEX	
[10] EXHIBIT	MARKED
[11] Plaintiff's Exhibit 1,	
Fanaroff Deposition,	
[12] 46-page Fanaroff CV.....	15
[13] Plaintiff's Exhibit 2,	
Fanaroff Deposition,	
[14] two-page 3/7/00	
discharge summary.....	15
[15]	
[16]	
[17]	
[18]	
[19]	
[20]	
[21]	
[22]	
[23]	
[24]	
[25]	

[1] AVROY FANAROFF, M.D., of lawful age,  
[2] called by the Plaintiff for the purpose of  
[3] cross-examination, as provided by the Rules of  
[4] Civil Procedure, being by me first duly sworn, as  
[5] hereinafter certified, deposed and said as  
[6] follows:

[7] CROSS-EXAMINATION OF AVROY FANAROFF, M.D.  
[8] BY MR. CONWAY:

[9] Q: Doctor, would you please state your full name for  
[10] the record spelling your last name for the court  
[11] reporter.

[12] A: It's Avroy, A-V-R-O-Y, A. Fanaroff,  
[13] F-A-N-A-R-O-F-F.

[14] Q: Doctor, you had the opportunity to sit in on  
[15] Dr. Rodriguez' deposition that we just concluded,  
[16] correct?

[17] A: Correct.

[18] Q: I'm just going to go over real quickly the same  
[19] ground rules that we had before with  
[20] Dr. Rodriguez.

[21] Obviously you're aware that this is my only  
[22] opportunity to ask you questions about your  
[23] involvement in the case and your opinions about  
[24] things. Do you understand that?

[25] A: Correct.

Page 5

[1] Q: You've had an opportunity to talk with your  
[2] attorney, Mr. Malone, prior to the deposition; is  
[3] that correct?

[4] A: Correct.

[5] Q: You understand that everything you say is being  
[6] taken down by the court reporter. You're under  
[7] oath. This has the same effect and significance  
[8] as if we were in front of a judge and jury. You  
[9] understand that?

[0] A: I do.

[1] Q: If at any time you don't understand a question  
[2] that I'm asking, please indicate so. I'll be  
[3] glad to rephrase it, restate it so that you can  
[4] understand it. All right?

[5] A: Okay.

[6] Q: If you do answer a question, I'm going to assume  
[7] and rely upon the fact that you understood it.  
[8] Is that fair?

[9] A: That's fair.

[0] Q: If at any time you want to add, subtract, delete,  
[1] supplement anything that you've previously said  
[2] in your deposition, feel free to do so. We'll go  
[3] on the record and do so. Okay?

[4] A: Will do.

[5] Q: Doctor, you wrote or dictated the discharge

Page 6

[1] summary in this particular case, didn't you?

[2] A: I did.

[3] Q: And feel free to, your attorney has a number of  
[4] medical records there.

[5] If you need to look at anything to answer a  
[6] question, feel free to look at whatever you want.

[7] Let's go to your discharge summary. It says  
[8] discharged 12/27/99, correct, at the top?

[9] A: Correct.

[0] Q: And you dictated it and cc'ed a copy to yourself  
[1] so you would have a copy in your division's  
[2] record? Would that be the reason for doing that?

[3] A: That's automatic.

[4] Q: This discharge summary was dictated on March 7th  
[5] of 2000; is that correct?

[6] A: That's what, I think I had seen that before. I'm  
[7] not seeing it on the form — oh, here we go.  
[8] Dictated March 7th, transcribed March 13th.

[9] Q: So you did not dictate this discharge summary  
[0] until March 7th of 2000, correct?

[1] A: Correct.

[2] Q: And then your stenographer would have transcribed  
[3] it by or on March 13th of 2000, correct?

[4] A: Correct.

[5] Q: Doctor, why did you dictate the discharge summary

Page 7

[1] in this particular case involving Emily?  
[2] **A:** I think this is a quirk of our medical records  
[3] system. We need a dictation and a number of  
[4] physicians had taken care of this baby. I'd been  
[5] responsible on day one and the chart eventually  
[6] Banded in my box and so I dictated the discharge,  
[7] even though I had had minimal involvement in  
[8] Emily's care.  
[9] **Q:** The physician who dictates the discharge summary  
[10] has the responsibility to go back through the  
[11] patient's medical chart and read through it so  
[12] that an accurate summary can be dictated,  
[13] correct?  
[14] **A:** That's correct.  
[15] **Q:** So before dictating this discharge summary on  
[16] March 7, 2000, you would have went back through  
[17] Emily's chart here at Rainbow Babies; is that  
[18] correct?  
[19] **A:** That's correct.  
[20] **Q:** And after reading carefully through that chart,  
[21] you would have picked out what you felt were the  
[22] pertinent pieces of information to put into your  
[23] discharge summary; is that correct?  
[24] **A:** That's what I attempted.  
[25] **Q:** Did you have an opportunity to read the Aultman

Page 8

[1] records in this case?  
[2] **A:** Never.  
[3] **Q:** Did you ever ask to review them?  
[4] **A:** No.  
[5] **Q:** From a professional, I hate to use the word  
[6] curiosity standpoint; but just from  
[7] inquisitiveness as to what happened in this  
[8] particular case, did you at any time have a  
[9] desire to read the Aultman records?  
[10] **MR. MALONE:** Show an objection.  
[11] It's irrelevant. He would read what I  
[12] asked him to read. I'm his attorney. I'm  
[13] guiding him through this. He's been sued.  
[14] This is beyond professional curiosity.  
[15] Go ahead and answer it, if you  
[16] can.  
[17] **A:** No.  
[18] **Q:** And, doctor, I don't mean to involve myself in  
[19] what Mr. Malone wants you to do or not do.  
[20] My question was addressed to the time period  
[21] presuit, before you knew you were being sued.  
[22] Did you have an opportunity just out of  
[23] professional curiosity to contact Aultman  
[24] Hospital to see how this patient turned out?  
[25] **A:** No.

Page 9

[1] **Q:** All right. Let me just go through and ask you  
[2] just a couple questions about the discharge  
[3] summary.  
[4] You indicate that the pregnancy was  
[5] complicated by acute fatty liver, correct?  
[6] **A:** Correct.  
[7] **Q:** And that there was a genetic consultation,  
[8] correct?  
[9] **A:** Correct.  
[10] **Q:** And you were aware that genetic consultation was  
[11] with Dr. Zinn; is that correct?  
[12] **A:** Correct.  
[13] **Q:** At the time you dictated this discharge summary  
[14] in March of 2000, did you ever go back to speak  
[15] with Dr. Zinn regarding Emily?  
[16] **A:** No, I did not.  
[17] **Q:** Any reason why you didn't?  
[18] **A:** I didn't really feel I had cause to. The notes  
[19] indicated that genetics were involved and that  
[20] there was going to be follow-up by the family  
[21] with genetics. I didn't see anything further  
[22] that I needed to do.  
[23] **Q:** Did you assume that genetics in fact would have  
[24] followed up with the family?  
[25] **MS. DiSILVIO:** objection.

Page 10

[1] **A:** I did.  
[2] **Q:** I assume if you had any concern regarding Emily  
[3] slipping through the cracks; that is, genetics  
[4] not following up with the family, you would have  
[5] gotten involved in this case; is that correct?  
[6] **MS. DiSILVIO:** Objection. A  
[7] particular objection to whatever "slipping  
[8] through the cracks" might mean.  
[9] **Q:** All right.  
[10] **A:** When I'm primarily responsible for a patient,  
[11] then I follow through on that, yes.  
[12] **Q:** Were you primarily responsible for this patient?  
[13] **A:** No.  
[14] **Q:** Who was the — in your opinion, doctor, who was  
[15] the neonatologist who was primarily responsible  
[16] for this patient?  
[17] **A:** Well, Dr. Rodriguez was responsible in the month  
[18] of November; Dr. Bearer was responsible in  
[19] December when the baby was transferred to  
[20] Aultman.  
[21] **Q:** At the time of your dictating this discharge, did  
[22] you ever contact Dr. Rodriguez or Dr. Bearer?  
[23] **A:** No.  
[24] **Q:** In deference to Marilena's objection to my  
[25] grammar, I'll rephrase the question, doctor.

Page 11

Page 13

[1] Doctor, if during March in going back through  
[2] the, this patient's medical records and in  
[3] preparation for dictating your discharge summary,  
[4] if you had at that point believed that genetics  
[5] was not following up with Emily and her parents,  
[6] would you have become involved —  
[7] **MR. MALONE:** Objection.  
[8] **Q:** — in notifying the parents and/or Dr. Zinn?  
[9] **MR. MALONE:** Objection.  
[10] **MS. DISILVIO:** Objection.  
[11] **A:** I don't see why genetics wouldn't have been  
[12] involved.  
[13] **Q:** I understand that.  
[14] **A:** The way the system works is that we deal with  
[15] very complicated patients. We call in  
[16] consultants and when the consultants assume  
[17] responsibility for an area, that's their area of  
[18] responsibility. I trust them and have faith that  
[19] they will do the appropriate follow-up.  
[20] **Q:** So as of March 7th of 2000, you had put your  
[21] trust in Dr. Zinn to follow up with Emily's LCHAD  
[22] situation; is that correct?  
[23] **MS. DISILVIO:** Objection.  
[24] **A:** Correct.  
[25] **Q:** Jonathon Fanaroff is your, I heard you saying

Page 12

[1] that he's your son but he's a pediatric resident;  
[2] is that correct?  
[3] **A:** Well, at the time in 1999 he was a pediatric  
[4] resident. He is now a neonatal fellow.  
[5] **Q:** Mere?  
[6] **A:** Here.  
[7] **Q:** Are you still engaged in the full-time practice  
[8] of clinical medicine at this time?  
[9] **A:** Very much so.  
[10] **Q:** Okay. You're a member of the American Academy of  
[11] Pediatrics?  
[12] **A:** Yes.  
[13] **Q:** Are you an officer?  
[14] **A:** Not an officer but I'm of counsel to the  
[15] executive committee of the perinatal section.  
[16] **Q:** Have you ever been an officer with that  
[17] organization?  
[18] **A:** I've served on committees of that organization.  
[19] **Q:** It's obviously a good organization to belong to,  
[20] correct?  
[21] **A:** Correct.  
[22] **Q:** If you're a neonatologist, correct?  
[23] **A:** Correct.  
[24] **Q:** And you would agree that that organization issues  
[25] reasonable and prudent policies and guidelines?

[1] **A:** They certainly do.  
[2] **Q:** Is Dr. Zinn's division here, what is it called,  
[3] genetics or genetics metabolism; do you know?  
[4] **A:** I think Dr. Zinn is in the department of genetics  
[5] but there is also a metabolic endocrine division  
[6] and there is some overlap, I think, his area of  
[7] expertise is in inborn errors of metabolism.  
[8] **Q:** Which would be pediatrics, correct?  
[9] **A:** Pediatrics, yes.  
[10] **Q:** Who pays or who cuts your check to you for  
[11] working here at Rainbow Babies?  
[12] **A:** Case Western Reserve University. All members of  
[13] the department of pediatrics are employees of  
[14] Case Western Reserve University.  
[15] **Q:** Because you're also an associate professor,  
[16] correct?  
[17] **A:** I — that's incorrect. I've been a professor for  
[18] a number of years.  
[19] **Q:** I apologize. Professor. Do you know if  
[20] Dr. Rodriguez is a professor or assistant  
[21] professor?  
[22] **A:** Dr. Rodriguez currently is assistant. He's being  
[23] considered for promotion which I'm sure he will  
[24] get.  
[25] **Q:** Who determines whether someone gets promoted?

Page 14

[1] **A:** You first have to go through the departmental  
[2] promotion committee and then that's reviewed at  
[3] the medical school promotion committee.  
[4] **Q:** Are you a member of any type of practice group  
[5] here?  
[6] **A:** Not really. We're, we practice together, the  
[7] members of the neonatal division, but we're not  
[8] incorporated. We're all members of the  
[9] department of pediatrics and we have a common  
[10] billing. In fact, the whole of University  
[11] Hospital is a medical service organization with a  
[12] single billing service.  
[13] **Q:** Do you have any, right now we're actually located  
[14] in Rainbow Babies' Hospital, correct?  
[15] **A:** Correct.  
[16] **Q:** Which is one of the hospitals which is part of  
[17] University Hospitals, right?  
[18] **A:** Correct.  
[19] **Q:** Do you have or to your knowledge does  
[20] Dr. Rodriguez have any office outside of your  
[21] offices located in Rainbow Babies' Hospital?  
[22] **A:** I don't. Dr. Rodriguez is the neonatal director  
[23] of Geauga Community Hospital, so he may have an  
[24] office there.  
[25] **Q:** In going through Emily's — strike that.

Page 15

[1] By March the 7th of 2000, you would have had  
[2] Emily's entire chart in front of you in order to  
[3] dictate this note, correct?

[4] A: I would have had whatever was available in  
[5] medical records when I dictated the chart.

[6] MR. CONWAY: Why don't we just  
[7] mark this as an exhibit.

[8]  
[9] (Thereupon, Plaintiff's Exhibit 1,  
[10] Fanaroff Deposition, 46-page Fanaroff CV was  
[11] marked for purposes of identification.)  
[12]

[13] (Thereupon, Plaintiff's Exhibit 2,  
[14] Fanaroff Deposition, two-page 3/7/00 discharge  
[15] summary was marked for purposes of  
[16] identification.)

[17]  
[18] Q: Doctor, this two-page discharge summary is in  
[19] fact the discharge summary you dictated on March  
[20] 7th regarding Emily Gwynne?

[21] A: Correct.

[22] Q: Showing you what's been marked for  
[23] identification, showing you what's been marked  
[24] for purposes of identification as Plaintiff's  
[25] Exhibit Rodriguez 1, those were the medical

Page 16

[1] records that were provided to me by Mr. Malone,  
[2] your attorney, with the representation that these  
[3] were the division's own records that are kept  
[4] apart from the hospital chart?

[5] A: That's correct.

[6] Q: And in looking through those, those appear to be  
[7] the totality of the records that you would have  
[8] had on Emily Gwynne?

[9] A: That's right.

[10] Q: Showing you what's been marked for identification  
[11] as Plaintiff's Exhibit Number 8, Rodriguez —  
[12] strike that. Let's go back.

[13] When was the first time you became involved  
[14] in Emily Gwynne's care and treatment?

[15] A: I was involved in the day of birth, which was the  
[16] 28th of October, 1999.

[17] Q: And what was your involvement at that time?

[18] A: I was completing my tour of duty as the attending  
[19] in the neonatal intensive care unit. She was  
[20] admitted. I examined her, evaluated her,  
[21] discussed her plan of management with the team  
[22] and made a note in the chart that that in fact  
[23] had taken place.

[24] Q: On October 28th, excuse me, on October 28th,  
[25] 1999, you would have been aware of the condition

Page 17

[1] that Emily's mother had suffered from and which  
[2] led to the premature delivery, correct?

[3] A: That's Correct.

[4] Q: And what condition were you aware that she  
[5] suffered from?

[6] A: She had fatty liver of pregnancy.

[7] Q: Were you aware at that point, as of October 28th,  
[8] that fatty liver of pregnancy is associated with  
[9] LCHAD condition in the newborn?

[10] A: I was, as were other members of our team and  
[11] that's why they drew the bloods that they did and  
[12] got genetics involved so quickly.

[13] Q: Were you aware of Dr. Ibdah's article prior to  
[14] your involvement with Emily on October 28th?

[15] A: Yeah. I think that article came out in July, if  
[16] I remember —

[17] Q: And just showing you for the record —

[18] A: — and I had seen it.

[19] Q: Okay. Plaintiff's Exhibit Number 8, Rodriguez,  
[20] you were aware and had read this article prior to  
[21] your becoming involved in the care and treatment  
[22] of Emily?

[23] A: I need to check the date of this. Do you have  
[24] the date this was published? June 3rd. Yes.

[25] Q: Was it your decision to bring Dr. Zinn in as a

Page 18

[1] genetics consult in this case?

[2] A: No. I believe it was Dr. Stork that called for  
[3] the consultation.

[4] Q: You would have been involved on the 28th, October  
[5] 28th?

[6] A: Correct.

[7] Q: When was the next time you were involved with any  
[8] aspect of Emily's care and treatment?

[9] A: I don't believe I was involved thereafter until I  
[10] received the medical records to summarize them.

[11] I —

[12] MR. MALONE: In March.

[13] A: In March. I don't recall exactly what happened  
[14] with the first quantitative chemistries which  
[15] came back. I do not have a direct recall of  
[16] discussing those with Dr. Zinn, although  
[17] obviously he was aware of those results.

[18] Q: Why do you say obviously he was aware of those  
[19] results?

[20] A: Because you have testimony from Dr. Nielson that  
[21] they were aware of those results.

[22] Q: Now, you had an opportunity, prior to your  
[23] deposition, to review Dr. Nielson's deposition;  
[24] is that correct?

[25] A: I did.

Page 19

[1] Q: And you also had an opportunity to review  
[2] Dr. Zinn's deposition, correct?  
[3] A: Correct.  
[4] Q: Showing you what's been marked for identification  
[5] as Rodriguez Plaintiff's Exhibit 5, that appears  
[6] to be addressed to you, that particular report?  
[7] A: That's correct.  
[8] Q: Is it your recollection that at some point in  
[9] time you did in fact receive that report?  
[10] A: I have no recollection of receiving it. I saw it  
[11] in our chart but I don't recall specifically  
[12] getting this piece of paper.  
[13] Q: Assuming that at some point you did come across  
[14] that piece of paper, whether on your desk or in a  
[15] chart, would it have been your custom and  
[16] practice to talk to Dr. Zinn about this  
[17] particular lab report?  
[18] A: Yes, I would talk to Dr. Zinn or to Dr. Doug  
[19] Kerr, another member of our department, for help  
[20] in interpretation.  
[21] Q: Dr. Who?  
[22] A: Douglas Kerr.  
[23] Q: What type of specialist is Dr. —  
[24] A: He's an endocrinologist, metabolism person.  
[25] Q: You had an opportunity to review this chart,

Page 20

[1] obviously, in doing your dictation summary at  
[2] great length and obviously also in preparation  
[3] for your depo, correct?  
[4] A: Correct.  
[5] Q: Is Dr. Kerr involved in the care and treatment?  
[6] A: Not at all, but you asked the question of who I  
[7] would discuss this with and so I'm telling you  
[8] more than I should.  
[9] Q: That's all right. So if you didn't discuss it  
[10] with Dr. Kerr, then you would have discussed it  
[11] with Dr. Zinn?  
[12] A: With Dr. Zinn, correct.  
[13] Q: You would have relied upon Dr. Zinn's  
[14] interpretation of the significance of this  
[15] particular report?  
[16] A: Absolutely.  
[17] Q: Plaintiff's Exhibits, Rodriguez 6 and Rodriguez  
[18] 7, do you recall ever having come across these  
[19] reports prior to the time you went through the  
[20] entire chart to dictate your summary?  
[21] A: No.  
[22] Q: And obviously you would have come across those in  
[23] the charts that you dictated your summary,  
[24] correct?  
[25] A: Correct.

Page 21

[1] Q: In the medical records that were provided by  
[2] Mr. Malone, I came across apparently two  
[3] discharge summaries, March 7th.  
[4] One of them doesn't have a second page to it  
[5] and there's things underlined.  
[6] Do you know who would have underlined the  
[7] items that are underlined in that discharge  
[8] summary?  
[9] A: I think I underlined them.  
[10] Q: Do you know when you would have underlined those?  
[11] A: I think this report I went to get when I got the  
[12] letter from your office because I had no  
[13] recollection of dealing with this patient. When  
[14] I went down to medical records, the records were  
[15] not available to me and this is a copy of the  
[16] discharge summary that you can take off line.  
[17] Q: Do you know what's that mark down by the —  
[18] A: The Z?  
[19] Q: — physician's signature?  
[20] A: I have no idea what that is. I don't know what  
[21] it is.  
[22] Q: That's good, then. All right. And then we have  
[23] the other —  
[24] A: It's the same summary. It's exactly the same  
[25] summary. There's no difference.

Page 22

[1] Q: Okay.  
[2] A: It's just printed on a different form.  
[3] Q: But you would have had this discharge summary,  
[4] the one that's, that doesn't have the underlining  
[5] in it, this would have been in the division's  
[6] chart, anyway, right?  
[7] A: It should have been but the filing is very  
[8] variable.  
[9] Q: Because this one here says physician copy,  
[10] correct?  
[11] A: Correct.  
[12] Q: Showing you what's been marked as Rodriguez  
[13] Plaintiff's Exhibit 3, have you ever seen that  
[14] particular document before?  
[15] A: Never.  
[16] Q: You can read it through if you want.  
[17] After a patient is discharged from the NICU  
[18] and the care and treatment of a neonatologist and  
[19] you have received correspondence from another  
[20] institution where that patient had been  
[21] transferred addressed to one of the  
[22] neonatologists, would that typically go into the  
[23] division's own chart?  
[24] A: Correct. It's rare. We don't transfer many  
[25] babies to other units.



Page 23

[1] Q: Correct. Mostly you're getting the transfers in?

[2] A: Mostly it's the other direction; but I think in  
[3] this patient, because of where the family lived,  
[4] it was probably for their convenience that the  
[5] transfer to Aultman took place before we would  
[6] have normally discharged the patient.

[7] Q: And you wouldn't have discharged the patient if  
[8] you felt that there were any medical, significant  
[9] medical concerns regarding the other prematurity  
[10] issues?

[11] A: Well, no, that's not necessarily correct because  
[12] They have a very competent group of  
[13] neonatologists there **and** are a state-designated  
[14] subspecialty or level three unit and they may be  
[15] in a position to be able to deal with it. We  
[16] would not be transferring a baby who was, had a  
[17] number of life-threatening, immediate conditions?

[18] Q: You would agree that LCHAD is a life-threatening  
[19] condition, though?

[20] A: If you're sick with LCHAD and you know that you  
[21] have LCHAD, the answer is yes, but —

[22] Q: Well, whether —

[23] MR. MALONE: Let him finish his  
[24] answer, please.

[25] A: But if you've got no evidence other than maternal

Page 24

[1] history to make you look for it and your tests  
[2] have been negative, this **is** not considered as a  
[3] lifethreatening situation.

[4] Q: But whether or not a, let's not look at it from a  
[5] situation of someone's perspective, let's just  
[6] look at it objectively.

[7] A child who is suffering from LCHAD has a  
[8] lifethreatening condition, correct?

[9] MR. MALONE: I'm not sure — I'm  
[10] going to object because: I don't think  
[11] there's any evidence that the child was  
[12] suffering from LCHAD at any time when she  
[13] was in our care at this institution. I  
[14] don't know what you mean by the word  
[15] suffering. Do you mean did she have the  
[16] mutation, the genetic mutation?

[17] Q: Could you understand my question, doctor, at all?

[18] A: Well, you said if she's suffering from LCHAD, so  
[19] I assume you mean she has the disease.

[20] Q: Right. Yeah. I'm a layperson. I'm not a  
[21] physician like Mr. Malone.

[22] A: And I actually don't —

[23] MR. MALONE: You know what, Tom,  
[24] that's not necessary. You don't need to  
[25] say that.

Page 25

[1] A: I don't know what the outcome is. I don't know  
[2] how long you live with LCHAD.

[3] Q: All right. If LCHAD is not treated, though, an  
[4] individual will die from that disease process,  
[5] correct?

[6] A: I assume so, but I don't know when.

[7] Q: Right. And I'm, you might have thought I was  
[8] getting, trying to get you pinned down to your  
[9] opinion regarding survivability or Me —

[10] A: No.

[11] Q: — expectancy.

[12] A: No. I thought you were saying at the time of her  
[13] discharge and I'm saying that at the time of her  
[14] discharge, her systems were stable enough that  
[15] our team felt comfortable in transferring the  
[16] baby to the care of the team at Aultman.

[17] Q: And I'm not, that's —

[18] A: That's what I'm saying.

[19] Q: I'm not disputing what you're saying on that  
[20] part. My whole point was as of 1999, just going  
[21] to what your knowledge of LCHAD is, that  
[22] condition, that condition, put aside that we're  
[23] talking about Emily, that condition in general is  
[24] a lifethreatening condition, correct?

[25] A: Can be.

Page 26

[1] Q: All right. Now, I had asked Dr. Rodriguez some  
[2] questions regarding whether or not he had an  
[3] opinion regarding Emily's life expectancy. Let  
[4] me just for the record go through them with you  
[5] and if you don't have an opinion, you don't. If  
[6] you do, you do. All right?

[7] Do you have an opinion regarding Emily's life  
[8] expectancy if she had received dietary treatment  
[9] for the LCHAD at two weeks of life?

[10] MS. DISILVIO: Objection.

[11] A: I don't.

[12] MS. DISILVIO: Pam, please show a  
[13] continuing objection to these questions so  
[14] that I don't keep interrupting.

[15] Q: Same question at one month of life.

[16] A: I don't.

[17] Q: At two months of life.

[18] A: I don't.

[19] Q: By December 27th, 1999.

[20] A: I don't.

[21] Q: By July 4th of 2000.

[22] A: I don't.

[23] Q: Do you have any criticism of any of the medical  
[24] providers who provided care and treatment to  
[25] Emily after her discharge and transfer from

Page 27

[1] Rainbow Babies?

[2] **MR. MALONE:** Objection.

[3] **A:** I'm not aware of what they did, so I don't have  
[4] any criticism.

[5] **Q:** Are there specific protocols or procedures that  
[6] your division has regarding the transfer or  
[7] discharge of a patient such as Emily?

[8] **A:** There are no specific procedures and policies for  
[9] transfer of patients from one intensive care unit  
[10] to the other.

[11] What we do is we communicate with the  
[12] physicians at the receiving hospital, bring them  
[13] up to speed on what the current problems are,  
[14] what has been done for the child, what  
[15] medications they are receiving and there's also a  
[16] communication from the nursing staff to the  
[17] nursing staff at the receiving hospital.

[18] **Q:** Are those supposed to be written communications?

[19] **A:** Those are verbal communications usually. There  
[20] is also the written transfer note.

[21] **Q:** Was there a written transfer note in this  
[22] particular case?

[23] **A:** I think Dr. Collison's note serves as the  
[24] transfer note.

[25] **Q:** What kind of note was that, do you recall, or you

Page 28

[1] can use —

[2] **A:** I think —

[3] **MR. MALONE:** It says transfer note  
[4] at the beginning of it.

[5] **Q:** It was in the progress notes, I think.

[6] **A:** It's in the progress notes. I believe it's  
[7] transfer on 12/27/99.

[8] **Q:** And in your review of the chart, was there a  
[9] written nursing note that served as a nursing  
[10] transfer note?

[11] **A:** I did not look through every page of the nursing  
[12] notes. It's possible there is one. I didn't  
[13] look for that.

[14] **Q:** Any indication that there was any verbal  
[15] communication between any of the physicians at  
[16] Rainbow Babies who had treated Emily and any of  
[17] the physicians at Aultman?

[18] **A:** I didn't see anything recorded, but the transfer  
[19] can't take place without the attending physician  
[20] at Aultman accepting the patient; so I infer that  
[21] there was a verbal communication between our  
[22] attending and their attending.

[23] **Q:** Who would your attending have been?

[24] **A:** Dr. Bearer.

[25] **Q:** When you were dictating this discharge summary on

Page 29

[1] March 7th of 2000, prior to that, did you go back  
[2] and talk with Dr. Bearer about this case at all?

[3] **A:** No. Where is the Aultman thing?

[4] **MR. MALONE:** What do you need?

[5] **THE WITNESS:** I just wanted to see  
[6] when she was discharged from Aultman.

[7] **Q:** She was discharged from Aultman January 17th of  
[8] 2000. Obviously in your review of the medical  
[9] chart, you found no indication that Emily had  
[10] suffered hypoglycemia prior to her discharge to  
[11] Aultman, correct?

[12] **A:** That's correct.

[13] **Q:** Nor in your review of the chart did you see any  
[14] other indications that she was suffering from  
[15] signs and symptoms of LCHAD?

[16] **A:** No.

[17] **Q:** I've got some questions regarding DNA testing,  
[18] okay?

[19] Did you have any knowledge or understanding  
[20] as to how LCHAD could conclusively be ruled in or  
[21] ruled out?

[22] **A:** No.

[23] **Q:** Were you deferring to Dr. Zinn's knowledge of  
[24] that area?

[25] **A:** I indeed was.

Page 30

[1] **Q:** And I assume you —

[2] **A:** I wasn't involved in the patient at the time.

[3] **Q:** You have no problem with the neonatologist  
[4] attendings bringing in Dr. Zinn as a genetics  
[5] consult on this case, correct?

[6] **A:** Not at all. He's a brilliant mind who is, we  
[7] think very highly of him. He contributes a chapter  
[8] on metabolic disorders of the newborn to our  
[9] textbook.

[10] **Q:** So you would be, all of the neonatologists would  
[11] be relying on, upon his clinical judgment in  
[12] determining how best to rule in or rule out  
[13] Emily's LCHAD, correct?

[14] **A:** Indeed.

[15] **Q:** You've been involved in writing a couple of  
[16] textbooks, correct?

[17] **A:** Correct.

[18] **Q:** Writing or editing them?

[19] **A:** Both. The one book I did a lot of the writing.  
[20] The other, the large text, I mainly edited.

[21] **Q:** Have you written or made any type of presentation  
[22] during your career on, regarding the issue of  
[23] inborn errors of metabolism?

[24] **A:** No.

[25] **Q:** How about genetic anomalies such as LCHAD?

Page 31

[1] A:: Wouldn't go near it.  
[2] Q: And I presume you've written nothing on LCHAD; is  
[3] that correct?  
[4] A: Not qualified to.  
[5] Q: A geneticist would be qualified to?  
[6] A: Not all geneticists. Only geneticists who really  
[7] understand metabolism.  
[8] Q: Is it an attending physician's responsibility at  
[9] the time of discharge or transfer to make sure  
[10] all of the testing, care and treatment  
[11] recommended for a patient is in fact carried out  
[12] or arrangements have been made to carry that out?  
[13] MR. MALONE: Objection.  
[14] A: Yes.  
[15] Q: Have you ever referred patients for DNA testing  
[16] without involving Dr. Zinn?  
[17] A: There is one condition where we have babies who  
[18] may have a deficiency of the surfactant protein B  
[19] and we will send secretions to Cincinnati or to a  
[20] Dr. Nogi directly. Other than that, everything  
[21] is always done through genetics.  
[22] Q: How many people are in genetics besides Dr. Zinn,  
[23] how many attendings?  
[24] A: I don't know off the top of my head. The  
[25] department keeps changing; but I really would

Page 32

[1] need to look at their list in order to tell you.  
[2] Q: I take it you have nothing to add to the, my  
[3] questions regarding billing other than what  
[4] Dr. Rodriguez —  
[5] A: No. We fill in those forms that you've seen and  
[6] then that's the last we ever know about it. The  
[7] only other thing that we do is occasionally we  
[8] have to write, if you looked at the, our records,  
[9] we try and assist the patients by getting Bureau  
[10] for Children with Medical Handicaps, we apply for  
[11] support from the State and we sometimes have to  
[12] write notes for that, but we don't see, we don't  
[13] get involved in billing in any other way.  
[14] Q: Okay. You don't have any opinion regarding  
[15] whether or not Emily was receiving the proper —  
[16] strike that.  
[17] Would you agree that if a condition is not,  
[18] if a suspected condition is not ruled out then a  
[19] prudent physician has to continue to consider the  
[20] possibility that the patient is suffering from  
[21] that condition?  
[22] MR. MALONE: Objection.  
[23] A: It's a very broad statement that — medicine is a  
[24] very complex subject. There are lots of  
[25] conditions to rule in and rule out and I'd really

Page 33

[1] need to know what you're specifically asking.  
[2] Q: Okay. Well, in this particular case, all right?  
[3] There was obviously right from the beginning  
[4] a concern that, because of the mother's  
[5] presentation, this child could be suffering from  
[6] LCHAD, correct?  
[7] A: Correct.  
[8] Q: And you would agree that for the, at least the  
[9] first 30 days or so, there was reference to  
[10] ruling out LCHAD at the top of progress notes  
[11] throughout this chart, correct?  
[12] A: Correct.  
[13] Q: So in this particular case, do you think a  
[14] prudent physician, until this disease is ruled  
[15] out, has to consider that in fact Emily is  
[16] suffering from the disease?  
[17] MR. MALONE: Show an objection.  
[18] A: I think that our physicians were prudent. I  
[19] think that the notes put it on the back burner  
[20] through December, it wasn't prominent like it was  
[21] during the November notes; but prior to  
[22] discharge, transfer of the patient to Aultman,  
[23] genetics were reconsulted and the repeat testing  
[24] was done so I think that they very much had this  
[25] in mind and were doing everything in their power

Page 34

[1] to rule this condition in or out and I think the  
[2] tests, the two sets of tests both came back as  
[3] negative.  
[4] Q: According to Dr. Zinn's interpretation?  
[5] A: According to Dr. Zinn's interpretation.  
[6] Q: Did you ever discuss with Dr. Zinn whether or not  
[7] Emily's blood was going to have a DNA analysis  
[8] done on it to determine the existence of LCHAD?  
[9] A: No.  
[10] Q: At the time of Emily's discharge/transfer to  
[11] Aultman, in reviewing these medical records, were  
[12] you satisfied with the weight gain that she had  
[13] put on during the time that she was here at  
[14] Rainbow Babies?  
[15] A: Well, that's an interesting question. She was  
[16] born at 750 grams. She doubled her weight  
[17] because she was just over 1,500 at 59 days of  
[18] life.  
[19] One of the most difficult things with these  
[20] extremely low birth weight, immature babies is to  
[21] get them to thrive; and despite our best efforts,  
[22] if you look at this cohort of babies, all of them  
[23] are underweight at the time that they go home or  
[24] at the time that they reach 36 weeks corrected  
[25] age relative to term babies or babies who would

Page 35

[1] have grown in utero all their time; so it's a  
[2] very daunting task to nourish these babies. I  
[3] think they did very well in nourishment.  
[4] Q: So you were satisfied with the weight gain that  
[5] had been put on?  
[6] A: Yes. That was the long answer.  
[7] Q: Dr. Rodriguez had cited some statistics regarding  
[8] the rate of survival for babies born at 25 weeks  
[9] and I think he used the number 75 to 80 percent  
[10] of the babies who are born here and treated here  
[11] in fact survive; is that correct?  
[12] A: That's absolutely correct.  
[13] Q: You would agree that at the time of Emily's  
[14] discharge transfer to Aultman, the issue of  
[15] whether or not she had LCHAD was in fact  
[16] unresolved?  
[17] MS. DiSILVIO: Objection.  
[18] A: Correct.  
[19] Q: Emily was enrolled in a particular study here at  
[20] Rainbow Babies after she was born, right?  
[21] A: Correct.  
[22] Q: Was that a, I forgot, are you considered a leader  
[23] or what's that term?  
[24] A: I'm the principal investigator.  
[25] Q: All right. And that was a particular study for

Page 36

[1] what?  
[2] A: This was a National Institute of Health and Child  
[3] Development trial. We are part of the NIHCD  
[4] neonatal research network. We perform  
[5] collaborative research. This happened to be a  
[6] trial in babies 401 to 1,000 grams birth weight  
[7] and the objective was to give glutamine  
[8] supplementation with the objective of reducing  
[9] mortality and morbidity from infection.  
[10] There were I believe 14 or 15 participating  
[11] centers. We were one of them and the results  
[12] actually showed no difference between the  
[13] glutamine supplemented babies and those who  
[14] weren't.  
[15] Q: Did Emily receive glutamine supplement or  
[16] placebo?  
[17] A: I don't know. We're masked as to what they  
[18] receive.  
[19] Q: Who actually knows?  
[20] A: The data center.  
[21] Q: Do they like pass out vials and some has the  
[22] supplement, some doesn't? I'm just curious.  
[23] A: The preparation is done in pharmacy and there  
[24] were two solutions of amino acids that we were  
[25] using, they both have the same amount of nitrogen

Page 37

[1] in them and the one has been supplemented with 20  
[2] percent glutamine.  
[3] Q: What is glutamine?  
[4] A: It's an amino acid.  
[5] Q: It's a protein?  
[6] A: It's a protein.  
[7] Q: Now, Rainbow Babies or University Hospitals  
[8] receives giant money for these studies? Is that  
[9] how it works?  
[10] A: Correct.  
[11] Q: To your knowledge, has University Hospital ever  
[12] been involved in a study involving children born  
[13] with LCHAD or children who are suspected to have  
[14] LCHAD?  
[15] A: No. The disease is so rare — no. The answer is  
[16] no.  
[17] Q: Well, are you aware of any other universities or  
[18] any other medical institutions, back in 1999 —  
[19] strike that.  
[20] Back in 1999 were you aware of any  
[21] universities or other medical institutions who  
[22] were involved in the study of infants born where  
[23] there was a suspicion of LCHAD?  
[24] A: No.  
[25] Q: You weren't aware of any?

Page 38

[1] A: No. Other than the publication from Dr. Ibdah's  
[2] group. It's not an area that I would follow,  
[3] take particular note of.  
[4] Q: I take it any child, first of all, and I can't  
[5] remember if I asked you this question or  
[6] Dr. Rodriguez, prior to 1999, had you ever  
[7] treated a child who had LCHAD?  
[8] A: No.  
[9] Q: To your knowledge, subsequent to Emily, have you  
[10] treated any child you know that had LCHAD?  
[11] A: No.  
[12] Q: Back in 1999, your state of the knowledge at that  
[13] point, what was your understanding of some  
[14] factors or signs and symptoms which would raise a  
[15] suspicion that a child had LCHAD?  
[16] A: I'm not sure I knew any specific signs and  
[17] symptoms. There are general signs and symptoms  
[18] that point to metabolic disease in newborns in  
[19] which case we immediately call for help from the  
[20] metabolic specialists. These include babies with  
[21] sudden heart problems, low blood sugar, liver  
[22] disorders, profound hypotonia, weakness.  
[23] Q: Hypotonia?  
[24] A: Hypotonia, H-Y-P-O-T-O-N-I-A.  
[25] Q: That's —

Page 39	Page 41
<p>[1] MR. MALONE: Soft muscles.</p> <p>[2] A: That's very floppy babies.</p> <p>[3] Q: And the metabolic specialist is Dr. Zinn?</p> <p>[4] A: Correct.</p> <p>[5] Q: You're going to have to excuse me because I can't</p> <p>[6] recall whether I asked him some questions or</p> <p>[7] whether I've asked you.</p> <p>[8] A: That's fine.</p> <p>[9] Q: Did you at any time in March of 2000 or any time</p> <p>[10] after that contact anyone at Aultman regarding</p> <p>[11] Emily?</p> <p>[12] A: No, I did not.</p> <p>[13] Q: In March of 2000, did you contact Emily's</p> <p>[14] parents?</p> <p>[15] A: No.</p> <p>[16] Q: Did you recommend or speak to any of the other</p> <p>[17] neonatologists here, including Dr. Bearer —</p> <p>[18] A: No.</p> <p>[19] Q: — about contacting Emily's parents?</p> <p>[20] A: No.</p> <p>[21] Q: Or contacting Aultman?</p> <p>[22] A: No.</p> <p>[23] Q: And to your knowledge, no one from Aultman</p> <p>[24] contacted, as far as it's reflected in the chart,</p> <p>[25] no one from Aultman contacted any of the</p>	<p>[1] Q: And I assume you don't have any recollection of</p> <p>[2] her parents?</p> <p>[3] A: I do not.</p> <p>[4] Q: Let me just have a couple minutes here, doctor.</p> <p>[5]</p> <p>[6] (Thereupon, a discussion was had off</p> <p>[7] the record.)</p> <p>[8]</p> <p>[9] Q: I see looking at your, Dr. Rodriguez's lab coat,</p> <p>[10] that's Rainbow Babies' hospital, what does that</p> <p>[11] say? I can't — Rainbow?</p> <p>[12] DR. RODRIGUEZ: Rainbow Babies'</p> <p>[13] and Children's Hospital.</p> <p>[14] Q: Rainbow Babies' and Children's Hospital, correct.</p> <p>[15] And then it has University Hospitals of Cleveland</p> <p>[16] on his lab coat; is that right? And then — is</p> <p>[17] that right? You have to answer out loud for the</p> <p>[18] court reporter.</p> <p>[19] A: Yes.</p> <p>[20] Q: And then on yours it says your name and you're</p> <p>[21] the chief, division of neonatology?</p> <p>[22] A: This is an old coat. I'm not the chief. I'm the</p> <p>[23] co-director. I have not been the chief since</p> <p>[24] 1998, but lab coats have a way of going into the</p> <p>[25] laundry and never reappearing, so.</p>
Page 40	Page 42
<p>[1] neonatologists here?</p> <p>[2] A: Not that I'm aware of.</p> <p>[3] Q: Is the genetics division separate from the</p> <p>[4] neonatologist division?</p> <p>[5] A: Yes.</p> <p>[6] Q: Where are they located in the building?</p> <p>[7] A: They're not in this building.</p> <p>[8] Q: Where are they located?</p> <p>[9] A: I think they're in the medical school somewhere.</p> <p>[10] Q: So they're not even located in Rainbow Babies —</p> <p>[11] A: No.</p> <p>[12] Q: — the hospital part of University Hospitals?</p> <p>[13] A: Correct.</p> <p>[14] Q: To your knowledge, does Aultman have a genetics</p> <p>[15] specialist down there?</p> <p>[16] A: I'm not aware of whether they do or don't.</p> <p>[17] Q: Prior to, well, when you dictated the discharge</p> <p>[18] summary in March of 2000, at that time did you</p> <p>[19] have an independent recollection of Emily?</p> <p>[20] A: No.</p> <p>[21] Q: As we sit here today, do you have an independent</p> <p>[22] recollection of Emily?</p> <p>[23] A: Not at all. I saw, I see lots and lots of</p> <p>[24] patients. This was a patient that I had a</p> <p>[25] one-time contact with.</p>	<p>[1] Q: And the reason I ask that is because I see</p> <p>[2] that you have the same Rainbow Babies' and</p> <p>[3] Children's Hospital patch on your lab coat that</p> <p>[4] Dr. Rodriguez has?</p> <p>[5] A: Our secretaries sew these on. These coats are</p> <p>[6] not issued by the hospital.</p> <p>[7] Q: So you would have had this coat back in 1998?</p> <p>[8] A: Yes.</p> <p>[9] Q: She just never updated your designation as far as</p> <p>[10] chief?</p> <p>[11] A: Correct. I could have worn a suit.</p> <p>[12] Q: These investigational studies for, this study</p> <p>[13] which you're an investigator for, do you ever</p> <p>[14] contact the family afterwards to let them know</p> <p>[15] how things come out on these studies?</p> <p>[16] A: No, we don't usually contact the family.</p> <p>[17] Q: Did you, in reading through the entire chart, did</p> <p>[18] you see any written discharge instructions that</p> <p>[19] were given to the family, Emily's parents?</p> <p>[20] MR. MALONE: Again I'm going to</p> <p>[21] object. This child wasn't discharged home.</p> <p>[22] This child was transferred to another</p> <p>[23] institution for intensive care management.</p> <p>[24] Q: Discharged, transferred, were there any —</p> <p>[25] A: There were transfer notes. At that point there</p>

Page 43

[1] wouldn't be instructions to the family.  
[2] Q: And that's my question.  
[3] A: Okay.  
[4] Q: You wouldn't, in this particular instance, give  
[5] any type of written instructions to the family,  
[6] correct?  
[7] A: No. No. That would be, they would get  
[8] instructions, and they're not always written, at  
[9] the time that they go home.  
[10] Q: So if Emily had been discharged home, directly  
[11] home, there may or may not have been written  
[12] discharge instructions given to the family?  
[13] A: From Rainbow?  
[14] Q: From Rainbow.  
[15] A: Correct.  
[16] Q: In this particular case, since she was, when she  
[17] was transferred, when she was discharged from  
[18] here, she was transferred directly to another  
[19] hospital, there wouldn't have been any written  
[20] discharge instructions given to the family,  
[21] correct?  
[22] A: Correct.  
[23] Q: You wrote a note on October 8th, 1999, 4:15 p.m.,  
[24] I believe.  
[25] Could you read into the record what that note

Page 44

[1] says?  
[2] A: 4:15 p.m. 10/28/99. Seen and evaluated.  
[3] Extreme immaturity, maternal fatty liver. Severe  
[4] respiratory distress syndrome. Needs surfactant.  
[5] Continue mechanical ventilation and IV fluids.  
[6] Follow blood pressure and electrolytes.  
[7] Q: If you could, could you go to I believe the NICU  
[8] admission history and physical page, which would  
[9] be right at the beginning of your progress notes?  
[10] A: This is Page 14?  
[11] Q: Page 14 and then there's Page 15?  
[12] A: Correct.  
[13] Q: You would have read Page 14 and 15 prior to  
[14] signing off on this nurse's history and physical,  
[15] correct?  
[16] A: That's correct.  
[17] Q: That's your signature at the bottom?  
[18] A: That's my countersignature, yes.  
[19] Q: As of 10/29/99 you were no longer involved in the  
[20] day-to-day care of Emily; is that correct?  
[21] A: That's correct.  
[22] Q: This signature here on Page 124?  
[23] A: 124?  
[24] Q: Yes. Bates stamped —  
[25] MR. MALONE: It's Collison.

Page 45

[1] That's a resident.  
[2] Q: It's Collison?  
[3] A: That's Craig Collison.  
[4] Q: And he would have been a resident?  
[5] A: He was a resident, yes.  
[6] Q: And would an attending have to sign off on these  
[7] resident notes eventually or no?  
[8] A: No. The attending writes the other note which is  
[9] on the next page.  
[10] Q: The attending would review the resident's note,  
[11] though?  
[12] A: Sometimes not because they're written after the  
[13] attending note. Some you'd review it the next  
[14] day.  
[15] Q: But eventually it would be the practice of this  
[16] division that where a resident writes a note, at  
[17] some point an attending physician from the  
[18] neonatology division would read that note?  
[19] A: Correct.  
[20] Q: And so to speak sign off on it?  
[21] A: Well, they don't —  
[22] Q: They don't actually sign?  
[23] A: They don't sign off on it. They actually, they  
[24] read it but they write their own notes.  
[25] Q: And obviously if an attending reads through one

Page 46

[1] of the resident's notes and finds something  
[2] inaccurate or something they have a problem with,  
[3] they'll deal with that situation?  
[4] A: They'll indicate it in their note. I mean, I  
[5] think it's very clear on 10/27 — correction,  
[6] 12/27 with the patient going to be transferred to  
[7] Aultman, Dr. Bearer's note says transfer to  
[8] Aultman today. Follow up with genetics.  
[9] Q: Right. It's clear to Dr. Bearer that's what's to  
[10] occur, obviously, because she spells that out,  
[11] right?  
[12] A: Well, she's met with them the day before because  
[13] they have, genetics, labs pending, will follow up  
[14] as an outpatient.  
[15] Q: She's met with who the day before?  
[16] A: Genetics.  
[17] Q: Right. So it's clear to Dr. Bearer and to  
[18] genetics that there's supposed to be genetic  
[19] follow up, correct?  
[20] MS. DiSILVIO: Objection.  
[21] Q: Correct?  
[22] A: That's what the record indicates.  
[23] Q: I mean, you're the one that brought that up,  
[24] right?  
[25] A: Right.

Page 47

[1] Q: Okay. Going to Page 1176?  
[2] A: 1176?  
[3] Q: Yes. This would be in the daily orders.  
[4] A: Yeah.  
[5] Q: It says entered by Nancy Newman, protocol order  
[6] entered for, I assume that's you?  
[7] A: Correct.  
[8] Q: How does your name out of the blue on November  
[9] 30th end up in the order section?  
[10] A: Because this patient has just been enrolled, the  
[11] patient is in the glutamine study and she's  
[12] entered an order and she can't enter orders under  
[13] her name so she's entered it under my name.  
[14] Q: What's tropha —  
[15] A: Trophamine is the amino acid solution. That's  
[16] part of the so-called total parenteral nutrition  
[17] that we: gee.  
[18] Q: Could that in any way affect a child who is, who  
[19] has LCHAD?  
[20] A: Can you be more specific by what you mean by  
[21] affect?  
[22] Q: Yes. Is there any, well, could it aggravate the  
[23] condition?  
[24] A: I'm not sure that it could, but it didn't appear  
[25] to.

Page 48

[1] Q: Now, just explain, this is at 344. This is in  
[2] the miscellaneous labs section. I'm just trying  
[3] to figure out how your name popped up here under  
[4] respiratory therapy for physician.  
[5] A: 344?  
[6] Q: Yes. 344. It says under November 19th and here  
[7] 18th?  
[8] A: I'm on the wrong —  
[9] MR. MALONE: Here. Right here is  
[10] your name. That's all. You know, I'm  
[11] going to show an objection. These aren't  
[12] records that my client prepares. I think  
[13] you ought to ask the person who prepared  
[14] the record how his name gets there. He's  
[15] testified he didn't see the child and no,  
[16] had no involvement in her care after the  
[17] date of birth.  
[18] MR. CONWAY: That's fine.  
[19] MR. MALONE: I know it's fine. Tom. And I  
[20] I'm glad you think it's fine. Tom. And I  
[21] thank you for your vote of support. You  
[22] don't need to be sarcastic. I'm just  
[23] trying to help my client get through your  
[24] challenging questions.  
[25] MR. CONWAY: Note my voice tone,

Page 49

[1] for the record, Jim, was not sarcastic.  
[2] MR. MALONE: Yes, it was.  
[3] MR. CONWAY: I'm having a nice  
[4] discussion with Dr. Fanaroff. I'm just  
[5] interested in finding out, since I am not,  
[6] do not work here, how his name popped up on  
[7] these pages, if he has an explanation.  
[8] A: I don't.  
[9] Q: Okay. That's fair, doctor. I know you have  
[10] nothing to do with preparing these cumulative  
[11] reports. I mean, when I leave here today, I want  
[12] to make sure that it's your position that in  
[13] refreshing your recollection possibly or showing  
[14] you these, that something doesn't pop up where  
[15] you say, well, maybe I did order a blood draw or  
[16] something.  
[17] A: No.  
[18] Q: Okay. Going to, those were, and there's other  
[19] pages in there in the cumulative report and I  
[20] take it you don't have an explanation for how  
[21] your name is popping up in there?  
[22] A: No.  
[23] Q: What about 3541 Which is kind of near, I think  
[24] it's — okay. Requested by Dr. Fanaroff,  
[25] collected on November 6th?

Page 50

[1] A: I think this, again, I have no answer. It's  
[2] possible that there were, the stamp had my name  
[3] on it because of the day of admission. It was  
[4] then changed to Dr. Rodriguez. It may have been  
[5] different stamps sitting around and the secretary  
[6] used a stamp but that's, this is not, this is  
[7] collected a week after I've gone off service, so  
[8] Dr. Rodriguez' team would have done that.  
[9] Q: In preparing your discharge summary on March 7th,  
[10] did you come across in the chart the DNA report  
[11] from the Center for Human Genetics with, I think  
[12] it's Rates stamped Page 182.  
[13] Did you come across that?  
[14] A: I've seen that report but as I recall, it just  
[15] said they got the sample, they've separated it.  
[16] They have the DNA ready. That's all that it  
[17] says. DNA was extracted from peripheral blood  
[18] and has been stored per directive of the  
[19] referring physician. The referring physician is  
[20] Dr. Arthur Zinn.  
[21]  
[22] (Thereupon, a recess was had.)  
[23]  
[24] (Thereupon, the requested portion of  
[25] the record was read by the Notary.)

Page 51

[1]  
[2] Q: And obviously, you were relying totally upon  
[3] Dr. Zinn's clinical judgment in how to go about  
[4] analyzing the DNA. Would that be correct?  
[5] MS. DISILVIO: Objection.  
[6] A: That's correct.  
[7] MS. DISILVIO: I don't think  
[8] Dr. Zinn himself analyzes DNA, but with  
[9] that objection, go ahead.  
[10] Q: Okay. You would be relying upon Dr. Zinn's  
[11] clinical judgment in deciding how to arrange DNA  
[12] analysis of this particular sample, correct?  
[13] MS. DISILVIO: Objection. If it's  
[14] necessary. Go ahead.  
[15] A: We're relying on Dr. Zinn if and when further  
[16] analysis was necessary.  
[17] Q: You don't have any criticism of any of your  
[18] fellow neonatologists in their care and treatment  
[19] of Emily, do you, doctor?  
[20] A: Not at all.  
[21] Q: You're licensed to practice in Ohio?  
[22] A: I am.  
[23] Q: And what percentage of your professional time is  
[24] devoted to the clinical practice or teaching of  
[25] pediatric and/or neonatology medicine?

Page 52

[1] A: Probably 60, 75 percent.  
[2] Q: Have you had an opportunity to review the  
[3] autopsy?  
[4] A: I read through the autopsy, yes.  
[5] Q: Do you agree with the conclusion that Emily died  
[6] as a result of LCHAD?  
[7] A: I think the autopsy, together with the genetic  
[8] studies indicate that.  
[9] MR. GONWAY: Okay. I don't have  
[10] anything further. Thanks, doctor.  
[11] THE WITNESS: Thank you.  
[12]  
[13] CROSS-EXAMINATION OF AVROY FANAROFF, M.D.  
[14] BY MS. DISILVIO:  
[15] Q: Dr. Fanaroff. My name is Marilena DeSilvio. I  
[16] represent Dr. Zinn. Do you have any knowledge  
[17] one way or the other as to whether or not the  
[18] standard of care in 1999 required DNA testing for  
[19] the evaluation of children with suspected LCHAD?  
[20] A: I don't believe there were any such standards.  
[21] Q: With respect to follow-up of this patient by  
[22] genetics, would you agree that the nature and  
[23] extent of that follow-up would be properly  
[24] determined by genetics?  
[25] A: I agree.

Page 53

[1] Q: In cases in which follow-up is done by  
[2] neonatology for any given reason, is there a  
[3] patient responsibility to that component of  
[4] follow-up?  
[5] A: That's a tough question. In our follow-up clinic  
[6] we often have to repeatedly invite them back to  
[7] carry out the follow-up. They don't always come.  
[8] Q: In this case, do you have any knowledge one way  
[9] or the other as to what if any follow-up was  
[10] going to be entertained, by that I mean do you  
[11] have any specific knowledge as to what if any  
[12] follow-up was going to be entertained?  
[13] A: Well, I have no specific knowledge. I note in  
[14] the discharge summary from Aultman, it said that  
[15] follow-up was going to occur in, at a  
[16] Dr. Witmer's, I believe, office, one week after  
[17] discharge and it was follow-up by neonatology and  
[18] it didn't specify whether it was the Aultman  
[19] neonatology or Rainbow neonatology three months  
[20] after discharge.  
[21] Q: We have talked at great length about the article  
[22] that has been marked as Rodriguez, is it 8?  
[23] MR. MALONE: The Ibdah article.  
[24] Q: And we've been calling it the Ibdah article but  
[25] in truth, would you not agree with me, doctor,

Page 54

[1] that Dr. Ibdah is but one of several authors?  
[2] A: Dr. Ibdah is the first author. That's why  
[3] they're referring to it as the Ibdah article.  
[4] All the other authors would be very upset.  
[5] They'd like their names mentioned, too.  
[6] Q: And do you have any understanding as to whether  
[7] Dr. Ibdah is actually junior to one of the  
[8] co-authors, Dr. Strauss?  
[9] A: I don't have specific knowledge of that. I did  
[10] not look at the qualifications and titles of the  
[11] authors.  
[12] Q: Mr. Conway asked you some questions about the  
[13] American Academy of Pediatrics and the guidelines  
[14] promulgated by that organization.  
[15] Would you agree with me that whether a  
[16] particular guideline or policy applies in a given  
[17] matter is something that needs to be assessed on  
[18] a case-by-case basis?  
[19] A: Guidelines are guidelines. They take into  
[20] account physicians will make individual decisions  
[21] with patients.  
[22] Q: With respect to Emily Gwynne, did you at any  
[23] point in time receive any telephone calls from  
[24] any care providers or the parents themselves  
[25] asking you as to whether or not a diagnosis of



Page 55

[1] LCHAD had or had not been made?  
[2] **A:** No, I did not.  
[3] **Q:** Mr. Conway asked you several questions about  
[4] LCHAD and whethes or not the condition is  
[5] life-threatening.  
[6] **My** question to you is this: If LCHAD is left  
[7] untreated, would you not agree with me that  
[8] clinical signs and symptoms will develop at some  
[9] juncture?  
[10] **A:** From the limited knowledge I have of this  
[11] disorder, yes.  
[12] **Q:** At any point in time did you receive a call from  
[13] any subsequent healthcare provider or the parents  
[14] themselves reporting to you any signs or symptoms  
[15] or any problems that Emily was having?  
[16] **A:** No. I was not aware of her beyond the  
[17] hospitalization here.  
[18] **Q:** Mr. Conway asked you whether or not you were  
[19] satisfied with Emily's weight gain at the time of  
[20] transfer.  
[21] At any juncture were you ever notified about  
[22] any caregiver's concerns regarding Emily's weight  
[23] gain or weight loss?  
[24] **A:** No.  
[25] **Q:** Mr. Conway asked you questions about

Page 56

[1] survivability at 25 weeks. It's my understanding  
[2] that Emily had an intraventricular hemorrhage?  
[3] **A:** She had a Grade 2 intraventricular hemorrhage.  
[4] That's not going to alter survival. It **m y**  
[5] affect neural development but a Grade 2  
[6] intraventricular hemorrhage which resolved during  
[7] her stay is not a major indicator.  
[8] **Q:** With respect to Dr. Bearer, there were several  
[9] questions regarding her role and her involvement  
[10] at the time of discharge.  
[11] Would it have been the custom and practice of  
[12] the attending in Dr. Bearer's shoes, transferring  
[13] the patient, the patient's family to another  
[14] facility, to discuss with the family that  
[15] transfer and the plans for that transfer?  
[16] **MR. CQNWAY:** Objection.  
[17] **A:** I — yes, and I would be very surprised if she  
[18] did not in fact do that.  
[19] I would imagine that the initiator of the  
[20] transfer actually came from the family, that they  
[21] would have raised it with Dr. Bearer.  
[22] **MR. CQNWAY:** You know, I withdraw  
[23] that objection, for the record.  
[24] **Q:** And based upon custom and piactice, would  
[25] Dr. Bearer have discussed with them her comments

Page 57

[1] or her note regarding genetics follow-up?  
[2] **MR. CQNWAY:** I will object to  
[3] that.  
[4] **A:** I have no way of knowing.  
[5] **Q:** And that's something for us, that we should  
[6] direct to Dr. Bearer?  
[7] **A:** That you would have to ask Dr. Bearer.  
[8] **MS. DISILVIO:** Fair enough. I  
[9] don't have any other questions. Thank you.  
[10] **MR. MALONE:** Barbara, any  
[11] questions?  
[12] **MS. MOSKQWITZ:** No questions.  
[13] **MR. CQNWAY:** I've just got a  
[14] couple follow-up, doctor.  
[15]  
[16] **CONTINUED CROSS-EXAMINATION**  
[17] **OF AVROY FANAROFF, M.D.**  
[18] **BY MR. CQNWAY:**  
[19] **Q:** You were asked some questions regarding the  
[20] standard of care for DNA testing back in 1999 and  
[21] I'm not sure I followed your answer. What is  
[22] your answer?  
[23] **A:** Which question?  
[24] **Q:** Well, you were asked whether or not the standard  
[25] of care required DNA testing!

Page 58

[1] **A:** Who asked that question?  
[2] **Q:** I thought —  
[3] **A:** She did not ask that question.  
[4] **Q:** Do you recall?  
[5] **A:** She said the American Academy has guidelines and  
[6] the word DNA was never mentioned.  
[7] **Q:** But I think she asked a previous question  
[8] where — doctor, I guess my question will be  
[9] this: As a neonatologist, do you have any  
[10] opinion on whether or not in 1999 the standard of  
[11] care required Dr. Zinn to have Stefanie — strike  
[12] that.  
[13] **MR. MALONE:** The child's name is  
[14] Emily.  
[15] **Q:** Doctor, as a neonatologist, do you have an  
[16] opinion to a reasonable degree of medical  
[17] probability as to what the standard of care was  
[18] in 1999 for whether a geneticist should have a  
[19] baby's cord blood analyzed, DNA analyzed for  
[20] LCHAD?  
[21] **MR. MALONE:** Objection.  
[22] **MS. DISILVIO:** Objection.  
[23] **A:** No, I don't.  
[24] **Q:** Right. Because that's not your area of  
[25] specialization?

Page 59	Page 61
<p>[1] A: No.</p> <p>[2] Q: Right?</p> <p>[3] A: Right.</p> <p>[4] Q: You were asked some questions regarding patient</p> <p>[5] responsibility.</p> <p>[6] Is there any indication whatsoever in I</p> <p>[7] presume at one point your very thorough review of</p> <p>[8] this chart, that the parents were noncompliant?</p> <p>[9] A: No.</p> <p>[10] Q: In fact, how would you characterize the concern</p> <p>[11] and the Level of commitment they were showing to</p> <p>[12] their daughter during her prolonged</p> <p>[13] hospitalization?</p> <p>[14] MR. MALONE: Well, again,</p> <p>[15] objection. He wasn't there. He didn't see</p> <p>[16] the child during that long hospitalization.</p> <p>[17] You can ask him what the record says, if</p> <p>[18] anything, on that subject but he wasn't</p> <p>[19] there. He didn't see this child. He</p> <p>[20] didn't see the parents.</p> <p>[21] MR. CONWAY: Can you read back</p> <p>[22] what my last question was.</p> <p>[23]</p> <p>[24] (Thereupon, the requested portion of</p> <p>[25] the record was read by the Notary.)</p>	<p>[1] Q: All right. That's what we've been referring to</p> <p>[2] as Dr. Ibdah's article, correct?</p> <p>[3] A: Correct.</p> <p>[4] Q: You're familiar with how these abstracts are</p> <p>[5] published, correct?</p> <p>[6] A: Yeah.</p> <p>[7] Q: You've published some yourself, I'm sure, over</p> <p>[8] the years?</p> <p>[9] A: I've published a number, yes.</p> <p>[10] Q: I guess to answer everyone's question, is there</p> <p>[11] any indication on who the lead writer was?</p> <p>[12] A: No. I, Ibdah is the first author. Ibdah's at</p> <p>[13] Wake Forest. Dr. Strauss at the time of this</p> <p>[14] article was in the department of molecular</p> <p>[15] biology and pharmacology at Washington University</p> <p>[16] School of Medicine in Saint Louis, so I don't</p> <p>[17] know who ran what tests where, okay?</p> <p>[18] Q: All right. Is there any indication from your</p> <p>[19] review of the medical records in this case prior</p> <p>[20] to writing your discharge summary on March 7th of</p> <p>[21] 2000, that Dr. Zinn contacted either Dr. Strauss</p> <p>[22] or Dr. Ibdah or any of the other individuals</p> <p>[23] reflected as being involved in writing this</p> <p>[24] abstract?</p> <p>[25] A: No.</p>
Page 60	Page 62
<p>[1]</p> <p>[2] Q: And that's based on a follow-up on my last</p> <p>[3] question based on your thorough review of the</p> <p>[4] medical records.</p> <p>[5] MR. MALONE: Thank you.</p> <p>[6] A: I have no indicators that they were other than</p> <p>[7] loving parents.</p> <p>[8] Q: Question regarding Dr. Stixuss. Ms. DiSilvio was</p> <p>[9] asking you some questions regarding Dr. Strauss.</p> <p>[10] Do you know who Dr. Strauss is?</p> <p>[11] A: No.</p> <p>[12] Q: Other than reading his name on —</p> <p>[13] A: Other than seeing his name on the article.</p> <p>[14] Q: To your knowledge —</p> <p>[15] A: But often in an article, the senior author, who</p> <p>[16] is the last name on the article, is the person</p> <p>[17] who, in whose lab the work takes place or who was</p> <p>[18] the mentor for the first author.</p> <p>[19] Q: Let's assume Dr. Strauss was the mentor for</p> <p>[20] Dr. Ibdah.</p> <p>[21] A: Can I see the article?</p> <p>[22] Q: Sure. I'm going to strike that question.</p> <p>[23] Doctor, you're obviously looking at the</p> <p>[24] exhibit, correct?</p> <p>[25] A: Correct.</p>	<p>[1] MR. CONWAY: I don't have anything</p> <p>[2] further. Thanks.</p> <p>[3] MS. DiSILVIO: Thank you,</p> <p>[4] Dr. Fanaroff.</p> <p>[5] THE WITNESS: Thank you.</p> <p>[6]</p> <p>[7]</p> <p>[8] AVROY FANAROFF, M.D.</p> <p>[9]</p> <p>[10]</p> <p>[11]</p> <p>[12]</p> <p>[13]</p> <p>[14]</p> <p>[15]</p> <p>[16]</p> <p>[17]</p> <p>[18]</p> <p>[19]</p> <p>[20]</p> <p>[21]</p> <p>[22]</p> <p>[23]</p> <p>[24]</p> <p>[25]</p>

Page 64

[1]

[2]

CERTIFICATE

[3]

[4] The State of Ohio, ) SS:

County of Cuyahoga.)

[5]

[6]

I, Pamela S. Greenfield, a Notary Public

[7] within and for the State of Ohio, authorized to

administer oaths and to take and certify

[8] depositions, do hereby certify that the

above-named witness was by me, before the giving

[9] of their deposition, first duly sworn to testify

the truth, the whole truth, and nothing but the

[10] truth; that the deposition as above-set forth was

reduced to writing by me by means of stenotypy,

[11] and was later transcribed into typewriting under

my direction; that this is a true record of the

[12] testimony given by the witness; that said

deposition was taken at the aforementioned time,

[13] date and place, pursuant to notice or

stipulations of counsel; that I am not a relative

[14] or employee or attorney of any of the parties, or

a relative or employee of such attorney or

[15] financially interested in this action; that I am

not, nor is the court reporting firm with which I

[16] am affiliated, under a contract as defined in

Civil Rule 28(D).

[17]

IN WITNESS WHEREOF, I have hereunto set my

[18] hand and seal of office, at Cleveland, Ohio, this

\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_.

[19]

[20]

[21] Pamela Greenfield, Notary Public, State of Ohio

1750 Midland Building, Cleveland, Ohio 44115

[22] My commission expires June 30, 2003

[23]

[24]

[25]

## Lawyer's Notes

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1                   IN THE COURT OF COMMON PLEAS

2                   CUYAHOGA COUNTY, OHIO

3           ERIC GWYNNE, ADMINISTRATOR  
4           of the ESTATE OF EMILY  
          GWYNNE, deceased,

5                               Plaintiff,

6                   -vs-

JUDGE GAUL  
CASE NO. 468327

7           UNIVERSITY HOSPITALS OF  
8           CLEVELAND, et al.,

                              Defendants.  
9                   - - - -

10                   Deposition of AVROY FANAROFF, M.D., taken as  
11           if upon cross-examination before Pamela S.  
12           Greenfield, a Registered Diplomate Reporter,  
13           Certified Realtime Reporter and Notary Public  
14           within and for the State of Ohio, at Rainbow  
15           Babies and Children's Hospital, 11100 Euclid  
16           Avenue, Cleveland, Ohio, at 12:30 p.m. Friday,  
17           February 7, 2003, pursuant to notice and/or  
18           stipulations of counsel, on behalf of the  
19           Plaintiff in this cause.

20  
21                               MEHLER & HAGESTROM  
22                               Court Reporters

23                   CLEVELAND  
24           1750 Midland Building  
          Cleveland, Ohio 44115  
          216.621.4984  
          FAX 621.0050  
25           800.822.0650

                              AKRON  
          1015 Key Building  
          Akron, Ohio 44308  
          330.535.7300  
          FAX 535.0050  
          800.562.7100

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FEB 26 2003



**TO THE REPORTER:** I have read the entire transcript of my deposition taken on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page, and I authorize you to attach the following changes to the original transcript:

PAGE	LINE	CORRECTION OR CHANGE AND REASON THEREFORE
30	7	my name is Avery not ERIC Chapter - not chat
31	20	Nogee is I believe how you spell his name.

Signature of Dependent





1 MR. CONWAY: I don't have anything  
2 further. Thanks.

3 MS. DiSILVIO: Thank you,  
4 Dr. Fanaroff.

5 THE WITNESS: Thank you.

6

7

  
AVROY FANAROFF, M.D.

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