Bianca Keyes, etc., et al. vs. John P. Iafelice, M.D., et al. Cuyahoga County Common Pleas Case No. 357504

Deposition of Mark Jacobstein, M.D. June 28, 2002

ORIGINAL

Bish & Associates, Inc. 159 South Main Street 812 Key Building Akron, Ohio 44308 (330) 762-0031 (800) 332-0607 FAX (330) 762-0300

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IN THE COURT OF COMMON PLEAS				
	1 MARK JACOBSTEIN, M.D.			
CUYAHOGA COUNTY, OHIO	2 of lawful age, a Witness herein, called for			
	3 examination, as provided by the Ohio Rules of			
BIANCA KEYES, etc.,) et al.,)	4 Civil Procedure, being by me first duly sworn,			
) Plaintiffs,)	5 as hereinafter certified, deposed and said as			
) vs.) Case No. 357504	6 follows:			
) Lillian Greene	7 CROSS-EXAMINATION			
John P. Iafelice,) M.D., et al.,)	8 BY MR. BECKER:			
) Defendants.)				
Deposition of MARK JACOBSTEIN, M.D., a	10 full name, please.			
Witness herein, called by the Plaintiffs for	11 A. It's Mark David Jacobstein.			
cross-examination pursuant to the Ohio Rules of	12 Q. And handing you what has been marked as			
	13 Plaintiffs' Exhibit 1, would you identify that			
Civil Procedure, taken before me, the	14 for the record?			
undersigned, Heidi L. Tsimpiris, a Notary	15 A. It's my curriculum vitae.			
Public in and for the State of Ohio, at the	16 Q. Is that current?			
offices of Mark Jacobstein, M.D., Children's	17 A. It is more or less current. I was more			
Hospital Medical Center, One Perkins Square,	18 obsessive about keeping track of this when I			
Akron, Ohio, on Friday, the 28th day of June,	19 was at University Hospitals in an academic			
2002, at 4:06 o'clock p.m.	20 setting than I have been recently, but, yes,			
	21 it's current.			
BISH & ASSOCIATES, INC. 159 South Main Street	22 Q. When did you leave UH?			
Suite 812 Akron, Ohio 44308-1303				
(330) 762-0031 (800) 332-0607				
FAX (330) 762-0300 E-Mail: bishassociates@neo.rr.com	24 Q. Did you come directly here to Akron?			
	25 A. Correct.			
APPEARANCES :				
	4			
On Behalf of the Plaintiffs:	4 1 Q. So you've been here at Akron ever since			
On Behalf of the Plaintiffs: Becker & Mishkind Co., L.P.A.	2 you left UH?			
On Behalf of the Plaintiffs: Becker & Mishkind Co., L.P.A. By: Michael F. Becker, Attorney at Law Lawrence Peskin, Attorney at Law	2 you left UH? 3 A. That's correct.			
On Behalf of the Plaintiffs: Becker & Mishkind Co., L.P.A. By: Michael F. Becker, Attorney at Law Lawrence Peskin, Attorney at Law Becker Haynes Building 134 Middle Avenue	 you left UH? A. That's correct. Q. What was the reason you left UH? 			
On Behalf of the Plaintiffs: Becker & Mishkind Co., L.P.A. By: Michael F. Becker, Attorney at Law Lawrence Peskin, Attorney at Law Becker Haynes Building 134 Middle Avenue Elyria, Ohio 44035	 2 you left UH? 3 A. That's correct. 4 Q. What was the reason you left UH? 5 A. This was a better job. 			
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Mark Jacobstein, M.D.

1 A. I was sotually the acting chief of 2 cardiology for the last three yeers, and I was director of the each all besentially the whole 4 time I was there. 1 And I had investigated a compound 2 called Cyclorestine which was a 2 called Cyclorestine which was a 4 compound of the each all yeers as a period 6 of the wen neither of us were there. So he 9 came after I had left. 2 2 2 1 And I had investigated a compound 4 compound of the each all yeers a noncommercially available chemical that was fed 4 to the rate abaed of time to see if it would 5 protect rat hearts from 9 compared perparation? 2 2 2 1 1 4 1 4 1 4 1 4 1 4 5 1 1 4 5 1 1 4 1 4 1 4 1 4 1 4 1 4 0 1 6 0 1 <th></th> <th></th> <th></th> <th></th> <th></th>					
2 cardiology for the last three years, and I was 3 director of the echo lase sestially the whole 4 time I was there. 5 0. All right. And after you left, did 6 2 conka become director of echo lab' 7 A. He actually came there was a period 7 A. He actually came there was a period 9 out extrement of us were there. So he 9 out extrement of us were there. So he 10 0. Okay. So there was little gap when it 11 was neither you nor Sonka between '89 and 12 roughly '90 or '92? 13 A. Thei's correct. 14 0. Okay. Let me just do you have a copy 15 of it. Tou did scome pestdectoral work in '91, 16 of it. Tou did scome pestdectoral work in '91, 17 '82. Scotter: 18 Mem Single Call actually with fanaroff, 'Weonatal 19 was about. 24 A. The assong equivalant of wy thid 25 St Ke. Excreme. 20 Oracle actually was a did dog 21 and American Heart Association at 21		5			7
 director of the echo lab essentially the whole time true there. Q. All right. And after you left, did Z. Conka become director of echo lab? A. The actually case — there was a period of time when neither of us were there. So he caracter I had left. cover and the same time batter of a server there. Q. Okay. So there was little gap when it true you not konka between '89 and croughy '80 or '92' d. That's correct. Q. Okay. Let me just do you have a copy of the vitae' I just have some questions off of the vitae' I just have some questions off of the vitae' I just have some questions off at that in case you need to refer to it. P. MR. ECCER: Q and American Beart Association at Mount Sinai. Tell me just briefly what that was about. A. That was my equivalant of my third year of cardiology fellowship. And I did dog terscons, animal research on the autonomic cardiology at Case Western Rainbow Babkes and G. Tom were you don't have any academic A. I do. T'm A. Tak. That was an instructor in pediatrio cardiology at Case Western Rainbow Babkes and G. Now were you don't have any academic perstions. Q. Nay. One of your grasts has to do with ischemia in hypertrophied myocardim. Do you see that? Q. Nay. one of your grasts has to do with ischemia in hypertrophied myocardim. Do you see that? Q. Nay. and of your grasts has to do with ischemia in hypertrophied myocardim. Do you see that? Q. Nay. and of your grasts has to do with ischemia in hypertrophied myocardim. Do you see that? Q. Nay. and of your grasts has to do with ischemia in hypertrophied myocardim. Do you see that? Q. Nay. one of your grast			1	And I had investigated a compound	
4 time I mag there. 4 to the rate also of time to use if it would 5 0. All right. And after you left, did 5 portext rat hearts from			2	called Cyclocreatine which was a	
 9. All right. And after you left, did 20nka become director of echo lab? A. Tha attrack income - there was a period cana fater I had left. Q. Okay. So there was initia gap when it was neither you nor Zonka between '89 and Q. Okay. So there was litle gap when it Q. Okay. So there was litle gap when it Was neither you nor Zonka between '89 and a. That's correct. Q. Okay. So there was initia gap when it Was neither you nor Zonka between '89 and G. Other itae': I just have some questions off of the vitae': I just have some questions off at hat in case you need to refer to it. G. The SCKKR: Q. For a Marcian Beart Association at Was an instructor in pediatric cardiology at Case Western Rainbow Babies and G. Tow were - you don't have any academic A. That was an instructor in pediatric cardiology at Case Western Rainbow Babies and Q. Tow were - you don't have any academic A. I do. I'm A. Tes. Q. Okay. Gor of your grants has to do with A. Tes. G. Okay. Cor of your grants has to do with G. Okay. Cor of your grants has to do with G. Okay. Cor of your grants has to do with S. And there was eridence that pulnonary Was doing the ago, 15, 16 years ago. Tell Q. Okay. Cor of your grants has to do with S. And there was eridence that there was a Mark that that was about. A. Tes. G. Okay. Cor of your grants has to do with S. And there was eridence that there was a Mark that that was about. A. Tes. G. Okay. Cor of your grants has to do with S. Ares. G. Okay. Cor of your grants has to do with S. Ares. G. Okay. Cor of your grants has to do with S. Ares. S. Ares. G. Okay. Cor of your grants has to do with<th></th><td>director of the echo lab essentially the whole</td><th>3</th><td>noncommercially available chemical that was fed</td><td></td>		director of the echo lab essentially the whole	3	noncommercially available chemical that was fed	
6 2 Convert. 6 0. Oxygen. depravation? 7 A. He actually cume there was a period 6 0. Oxygen. depravation? 7 A. He actually cume there was inter gap when it 9 Correct. 9 0. Oxyg. So there was little gap when it 1 0. Okay. So there was little gap when it 11 was neither you nor Zonka between '\$9 and 0. Okay. Under publications, you 13 A. That's correct. 0. Okay. So there was its was sequestions off 14 0. Okay. Little is just do you have a copy 15 A. Tes. 16 of it. Tou did some postdoctoral work in '81, 15 A. Tes. 17 '82 '14 O. Correct. 16 18 M. SCHOBERT: He wants you to look 19 at that in case you need to refere to it. 16 19 at that in case you need to refere to it. 17 A. Tat was a about. 20 What was the you have the about and it did dog 21 P and American Heart Association at was about. 21 9. Some eridence that just C-section itself 23 Year of cardiology fellowship. And I did dog 11 research, animal research on the autonomaic 11 12 <th>4</th> <td></td> <th>4</th> <td>to the rats ahead of time to see if it would</td> <td></td>	4		4	to the rats ahead of time to see if it would	
 A. He actually came there was a period G time when mather of us ware there. So here C. Okay. So you kind of jut gave me a Sourcett. Q. Okay. So there was little gap when it Was neither you nor 200k between '89 and roughly '90 or '92? A. That's correct. Q. Okay. May. Let me just do you have a copy of the vitae? I just have some questions off of the vitae? I just have some questions off of the vitae? I just have some questions off of the vitae? I just have some questions off of the vitae? I just have some questions off of the scheele the vitae? I just have some questions off of the scheele the vitae? I just have some questions off of the scheele the vitae? I just have some questions off of the scheele the vitae? I just have some questions off of the scheele the vitae? I just have some questions off of the scheele the vitae? I just have some questions off of the scheele the vitae? I just have some question at Q. Okay. Scheele the vitae? I just have some question at Q. The was about. We scheele the vitae? A. That was any - equivalent of my third year of cardiology fellowship. And I did dog research, animal research on the autonomic nervous system and the affects on the heart. A. That was any - equivalent of my third doing that, I was an instructor in pediatric oratheterivations. Q. Tow ware you don't have any academic positions currently? A. The science of pediatrics A. The science Q. Now were you don't have any academic g. Now C-section hables are known to have more likelihood to have more likelihood we coll of the science that thare reflected A. Are a doing perfursed at heart A. The science, likelihood to have more likelihoo	5		5	protect rat hearts from	
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 ¹⁷ ¹⁸² ¹⁸ MR. SCHOEERT: He wants you to look at that in case you need to refer to it. ¹⁷ A. That was as a fellow that I had done ¹⁸ that in case you need to refer to it. ¹⁹ BT MR. BECKER: ¹⁰ Q and American Heart Association at ¹¹ Mount Sinai. Tell me just briefly what that ¹² Mount Sinai. Tell me just briefly what that ¹³ was about. ¹⁴ A. That was my equivalent of my third ¹⁵ year of cardiology fellowship. And I did dog ¹⁶ research, animal research on the autonomic ¹⁷ nervous system and the affects on the heart. ¹⁸ A. Tak mas an instructor in pediatric cardiology at Case Western Rainbow Bubies and ¹⁹ A. I do. I'm ¹⁰ A. I do. T'm ¹¹ Q. Is that reflected ¹¹ A. Tak was as fullow Induced for the mode echocardiogram. ¹² Q. Okay. One of your grants has to do with ¹³ at Northeast Ohio University College of ¹⁴ Medicine. ¹⁵ Q. Okay. One of your grants has to do with ¹⁶ is schema in hypertrophied myocardium. Do you ¹⁷ see thi? ¹⁸ A. Tes. ¹⁹ Q. Long time ago, 15, 16 years ago. Tell ¹⁹ Q. Sung time ago, 15, 16 years ago. Tell ¹⁰ me briefly what that was about. ¹¹ A. I was doing perfused rat heart ¹² Q. Sure. ¹³ A. Tes. ¹⁴ Q. Long time ago, 15, 16 years ago. Tell ¹⁵ Q. Long time ago, 15, 16 years ago. Tell ¹⁶ Q. Sure. ¹⁷ Q. Cardiothy at using that as a tool ¹⁸ A. Tes. ¹⁹ Q. Long time ago, 15, 16 years ago. Tell ¹⁹ Q. All right. Any of the articles that ¹⁰ you've authored, coauthored that are reflected ¹¹ On Flaintiffs' Exhibit 1 that would be ¹² A. Felaintiffs' Exhibit No. 1? 	16		16	0. Tell me again	
18 MR. SCHOBERT: He wants you to look 19 at that in case you need to refer to it. 19 at that in case you need to refer to it. 20 BF MR. BECKER: 21 Q and American Heart Association at 22 Mount Sinai. Tell me just briefly what that 23 was about. 24 A. That was my equivalent of my third 25 year of cardiology fellowship. And I did dog 26 research, animal research on the autonomic 2 nervous system and the affects on the heart. 3 And at the same time that I was 4 doing that, I was an instructor in pediatric 5 cardiology at Case Western Rainhow Babies and 6 C. Tou were you don't have any academic 9 positions currently? 10 C. Is that reflected 1 A. Tes. 19 Q. Long time ago, 15, 16 years ago. Tell 10 ne briefly what that was about. 11 me state about, at was about. 12 A. I was doing perfused rat heart 14 O. Newy. One of your grants has to do with 16 ischemia	1	=		-	
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25 ISCHEMITA. 25 MR. SCHOBERT: YOUR CV.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<pre>cardiology at Case Western Rainbow Babies and Children's Hospital doing heart catheterizations. Q. You were you don't have any academic positions currently? A. I do. I'm Q. Is that reflected A I'm associate professor of pediatrics at Northeast Ohio University College of Medicine. Q. Okay. One of your grants has to do with ischemia in hypertrophied myocardium. Do you see that? A. Yes. Q. Long time ago, 15, 16 years ago. Tell me briefly what that was about. A. I was doing perfused rat heart experiments doing phosphorus enema or spectroscopy, looking at using that as a tool</pre>	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. And what was the upshot of that? A. Well Q. C-section baby has a fall in pulmonary vascular resistance? A. No. C-section babies are known to have more likelihood to have more likelihood to have respiratory distress after birth. Q. All right. They have less fluid? A. Retain fluid. Q. Sure. A. And there was evidence that there was a mild delay in the fall of the normal postnatal fall in pulmonary vascular resistance. Q. All right. Any of the articles that you've authored, coauthored that are reflected on Plaintiffs' Exhibit 1 that would be potentially relevant to the subject matter of this case?	
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	9	-	11
1	BY MR. BECKER:	1	a verbatim transcript of that sometime in the
2	Q. Your vitae.	2	future?
3	A. Okay. Anything in here that would be relevant to this current case?	3	MR. SCHOBERT: Well, as long as the
4		4	doctor doesn't have a problem dictating it, I
-	Q. Yes.	5	mean, I can attempt to have it
6	A. No.	6	BY MR. BECKER:
	Q. Okay.	7	Q. I'd be happy to pay you for your time,
8	A. Specifically related to like infants and diabetic mothers and that?	8	Doctor, but I don't want to take the time
9		9	today.
	Q. Anything that you think is relevant to	10	A. Okay.
11	the subject matter or bases for your opinion or		Q. So if you would just kind of go through
12	consistent with your opinion, anything along	12	the questions only.
13	those lines?	13	A. This includes also like, I mean, I'm
14	A. No.	14	keeping notes on the number of hours I've spent
15	Q. Okay. Have you had your deposition taken before?	15	reviewing things. You want that, too?
16		16	Q. No. I don't need that.
1	A. Yes.	17	A. Okay. I'll skip that.
18	Q. I just want to review the ground rules	18	Q. Okay. Just take Plaintiffs' Exhibit 2
19 20	with you. This is a question and answer	19	and look for questions you've asked.
20	session under oath. It's important that you understand the question I ask.	20	A. Okay. Well, the first question mark I
22	-	21	put here was related to the facts of the case. I had some confusion about after birth if this
22	If the question doesn't make sense	22	
24	or isn't artfully phrased, you stop me and tell me so and I'd be pleased to attempt to rephrase	23 24	baby was described as hyper or hypotonic.
24	or restate the question, fair enough?	24	Q. Okay.
Ľ	of festate the question, fail enough:		A. And I put a question mark to that
r		k /~~~~	
	10		12
	A. Yes.	1	effect.
2	A. Yes. Q. However, unless you indicate otherwise	2	effect. Q. Okay. Next question.
2 3	 A. Yes. Q. However, unless you indicate otherwise to me, I'm going to assume that you have fully 	2 3	effect. Q. Okay. Next question. A. Sometimes those things get dictated one
2 3 4	 A. Yes. Q. However, unless you indicate otherwise to me, I'm going to assume that you have fully understood the question that has been posed, 	2 3 4	effect. Q. Okay. Next question. A. Sometimes those things get dictated one way and transcribed another way. I wasn't sure
2 3 4 5	A. Yes. Q. However, unless you indicate otherwise to me, I'm going to assume that you have fully understood the question that has been posed, and you're giving me your best and most	2 3 4 5	effect. Q. Okay. Next question. A. Sometimes those things get dictated one way and transcribed another way. I wasn't sure if that was the problem.
2 3 4	A. Yes. Q. However, unless you indicate otherwise to me, I'm going to assume that you have fully understood the question that has been posed, and you're giving me your best and most complete answer today, fair enough?	2 3 4	effect. Q. Okay. Next question. A. Sometimes those things get dictated one way and transcribed another way. I wasn't sure if that was the problem. The next question was the same
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 A. Yes. Q. However, unless you indicate otherwise to me, I'm going to assume that you have fully understood the question that has been posed, and you're giving me your best and most complete answer today, fair enough? A. I understand. Q. All right. Showing you what's been marked as Plaintiffs' Exhibit 2, would you identify this, please? A. These are notes I've taken periodically as I've been reviewing the case, more notes to myself just some of it is factual things, just noting things that were in the medical records. Some are questions that I've thought about or at least at the time I was reading the various reports that I was given that I was thinking about. Q. I'd just like to go through the questions that you asked yourself. A. Okay. Q. Just if you can find them. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<pre>effect. Q. Okay. Next question. A. Sometimes those things get dictated one way and transcribed another way. I wasn't sure if that was the problem. The next question was the same thing. I keep coming upon that. Q. Okay. Next question? A. Then I have a question here, "EEG question abnormal." I'm not even sure what I meant by that, whether I was questioning was there an EEG done, or was it abnormal, or how it was abnormal. Q. Next question? A. I have a question here that says, "Question, prenatal versus postnatal asphyxia," and that regarded the deposition of Dr. Sediqui? MR. SCHOBERT: I think that's correct. BY MR. BECKER: Q. Okay. A. And I think that was one of the</pre>
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 A. Yes. Q. However, unless you indicate otherwise to me, I'm going to assume that you have fully understood the question that has been posed, and you're giving me your best and most complete answer today, fair enough? A. I understand. Q. All right. Showing you what's been marked as Plaintiffs' Exhibit 2, would you identify this, please? A. These are notes I've taken periodically as I've been reviewing the case, more notes to myself just some of it is factual things, just noting things that were in the medical records. Some are questions that I've thought about or at least at the time I was reading the various reports that I was given that I was thinking about. Q. I'd just like to go through the questions that you asked yourself. A. Okay. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<pre>effect. Q. Okay. Next question. A. Sometimes those things get dictated one way and transcribed another way. I wasn't sure if that was the problem.</pre>

.....

	13		15
1	for me to think about.	1	that's harder to know for sure.
2	Q. Okay.	2	Q. Okay.
3	A. Questioned role of hypertrophic	3	A. And
4	cardiomyopathy in brain injury that this baby	4	MR. SCHOBERT: Wait. Go ahead if
5	suffered. I questioned the prenatal I	5	you have
6	questioned whether there could be prenatal	6	BY MR. BECKER:
	7 decrease in cardiac output secondary to the		Q. In terms of you indicated that it's
8	2 u		possibly related to something before, but you
9	Q. Let's stay with those two.	8	
10	A. Okay.	10	<pre>don't have enough evidence, or experience, or education, or literature support to say that</pre>
11	Q. They seem somewhat relevant here. The	10	· · · ·
12	first one you questioned was the role of		it's a prenatal thing; is that fair?
13	cardiac cardiomyopathy hypertrophic	12	A. I think that's correct.
14		13	Q. Okay. I cut you off. We talked about
15	cardiomyopathy and the role it plays in brain		the first there were two questions that
15	damage?	15	peaked my interest.
	A. Correct.	16	Did you get the second one, Larry?
17	Q. Okay. And as a result of that, did you	17	MR. PESKIN: No, I didn't get the
18	engage in any research?	18	second one.
. 19	A. I did not look up anything specific, no.	19	THE WITNESS: Whether there was
20	Q. Okay. So what was what was the	20	prenatal decrease in cardiac output could have
21	reason you questioned it?	21	occurred secondary to the hypertrophic
22	A. I was just noting this as this was	22	cardiomyopathy.
23	something for me to think about as I was	23	BY MR. BECKER:
24	reviewing the case.	24	Q. Okay.
25	Q. Okay.	25	A. And the other question I had was the
r		.	
	14		16
1	A. And I mean I've after thinking about	1	role of the hypertrophic cardiomyopathy brain
2	A. And I mean I've after thinking about it all, putting it all together these were	1 2	role of the hypertrophic cardiomyopathy brain injury which I think we've just addressed.
2 3	A. And I mean I've after thinking about it all, putting it all together these were notes I was doing on the fly as I was reading	1 2 3	role of the hypertrophic cardiomyopathy brain injury which I think we've just addressed. Q. Next question?
2 3 4	A. And I mean I've after thinking about it all, putting it all together these were notes I was doing on the fly as I was reading these reports.	1 2 3 4	<pre>role of the hypertrophic cardiomyopathy brain injury which I think we've just addressed. Q. Next question? A. The next question was about the name</pre>
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2 3 4	 A. And I mean I've after thinking about it all, putting it all together these were notes I was doing on the fly as I was reading these reports. Q. Okay. A. But I mean it is my opinion that the 	1 2 3 4	<pre>role of the hypertrophic cardiomyopathy brain injury which I think we've just addressed. Q. Next question? A. The next question was about the name because I came upon a report where somebody referred to the baby as Nichole and I just</pre>
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2 3 5 6 7 8	 A. And I mean I've after thinking about it all, putting it all together these were notes I was doing on the fly as I was reading these reports. Q. Okay. A. But I mean it is my opinion that the hypertrophic cardiomyopathy played a significant role in the events that occurred 	1 2 3 4 5	<pre>role of the hypertrophic cardiomyopathy brain injury which I think we've just addressed. Q. Next question? A. The next question was about the name because I came upon a report where somebody referred to the baby as Nichole and I just</pre>
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	17		19
1	A. Well	1	A. Yes.
2	0. Third trimester?	2	Q. Did you take any notes as a result of
3	A. Yes.	3	your review?
4	Q. Okay.	4	A. No, I did not. If I did, it would be
5	A. I mean, hypertrophic it didn't occur	5	something in here.
6	in the last two hours, or the last two days.	6	Q. Can you just give me a thumbnail sketch
7	It's been well shown that this is generally	7	of what you saw on the 10/7 versus the 10/25?
8	something that occurs over the last trimester.	8	A. Yes. The 10/7/94 study, the first study
9	Q. Okay. Next question?	9	shows quite severe hypertrophic cardiomyopathy
10	A. That was it. That's it.	10	with marked narrowing of the left ventricular
11	Q. Okay. Doctor, it's true that you looked	11	outflow tract and moderate mitral valve
12	at the echoes of the BPP, the biophysical	12	insufficiency.
13	profiles, of I think one was on the 28th of	13	Q. Okay. Anything else?
14	September as well as October 7?	14	A. No.
15	A. I did not see anything from the	15	Q. 10/25?
16	biophysical profiles other than the report.	16	A. The 10/25 study showed significant
17	Q. So you never had an opportunity to look	17	improvement in the degree of left ventricular
18	at the echoes?	18	hypertrophy. It was still abnormal, but not
19	A. The echoes done as part of the	19	nearly as severe as the first time.
20	biophysical profile?	20	Q. How do you treat left outflow tract
21	Q. Yes.	21	obstruction in a newborn?
22	A. I did not	22	A. You're talking about visa the infants of
23	Q. Did you ask to look at	23	diabetic mothers? There are different kinds of
24	A and I would not hold myself out as an	24	left ventricular outflow tract obstruction,
25	expert on doing general fetal ultrasound	25	first of all.
L			
	18		20
1	studies or biophysical profiles.	1	Q. Okay.
2	Q. But if there was an indication of the	2	A. So there are congenital birth defects.
3	if there was an appearance or a view or a	3	I assume you're not asking me about that?
4	window as you say in your business of the fetal	4	Q. Right.
5	echo, would you be	5	A. The specific left ventricular
6	A. If there was a decent study of the fetal	6	hypertrophy in the outflow tract obstruction
7	heart, I would be qualified to comment on that.	7	that occurs due to maternal diabetes really has
8	Q. So since you've not looked at them, why	8	no specific treatment in support of.
9	are they in your possession?	9	Q. Okay. Not beta blockers or anything
10	A. Those aren't. Those are postnatal	10	like that?
11	echocardiograms.	11	A. In fact, beta blockers is one of the
12	Q. Excuse me. So can you tell me the dates	12	things that's that was not used as far as I
13	of the postnatal?	13	can see in this girl, but that is commonly
14	A. Yes. This was the first one was, I	14	used.
15	believe, on the day of birth, $10/7/94$, and the	15	Same thing with giving fluids, but
16	second one was 10/25/94. They were both done	16	there is nothing there is no specific
17	at Rainbow Babies and Children's Hospital.	17	there's no drug that makes it go away and
110	Q. Can you tell what time of day on $10/7/94$	18	there's no surgery alternative for it. But,
18		1	was bets blockers are compthing that are used
19	by looking at that?	19	yes, beta blockers are something that are used.
1	by looking at that? A. Oh, no. I don't know that now. There	19 20	Q. What is generally the reaction of
19			
19 20	A. Oh, no. I don't know that now. There	20	Q. What is generally the reaction of
19 20 21	A. Oh, no. I don't know that now. There may be times list recorded on the tape.	20 21	Q. What is generally the reaction of treating hypertrophic cardiomyopathy secondary

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Did you look at them?

Q. Did you study the 10/7 and the 10/25/94?

24

25

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24

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A. Generally speaking we try to avoid using

presser agents because theoretically it can

Mark Jacobstein, M.D.

3		B [
	21		23
1	make the outflow tract obstruction worse.	1	You don't have to tell me the name of the case,
2	Q. Okay. Why is that?	2	but
3	A. Well, part of the the problem with	3	A. I know. The first was a case where a
4	the hypertrophic cardiomyopathy in general, and	4	child had surgery on what was felt to be an
5	certainly it's true of infants of diabetic	5	atrio-septo defect.
6	mothers, is that it's not a problem with the	6	Q. Okay.
7	heart squeezing down. It's stiffness and	7	A. And it turned out there was no
8	thickening of pumping chambers so that the	8	atrio-septo defect. The surgeon honestly came
9	heart doesn't fill with blood easily.	9	out and told that to the family.
10	So it's a stiff pumping chamber that	10	Q. Okay.
11	can't relax, can't fill with blood. Presser	11	A. And it ended up getting settled. I
12	agents help the heart squeeze down better.	12	didn't have to testify in that, just generated
13	They do not particularly help the ability of	13	a report. I reviewed a case for Plaintiff's
14	the heart to relax.	14	attorney on a baby that had Tetralogy of
15	And by increasing heart rate, which	15	Fallot and I think the complaint was that it
16	is one of the side effects from that medicine,	16	was more of a wrongful life than wrongful
17	and by, if anything, increasing the strength of	17	death, but there was some problems that should
18	the heartbeat, you may aggravate the blockage,	18	have been recognized because I don't
19	the blockage in the pathway out to the body.	19	remember it too well.
20	Q. Okay. Have you looked at this child's	20	I was mumbling. I think it was
21	records, I suppose the prenatal as well as the	21	what's called a wrongful life case. It was a
22	neonatal records of Bianca Keyes?	22	baby that had multiple problems. And the
23	A. Yeah. I've got everything that I looked	23	lawsuit involved that it wasn't picked up
24	at here. So I did look at prenatal I looked	24	beforehand. They would have terminated the
25	at prenatal records for the mom and I looked at	25	pregnancy had it been picked up. And the baby
	Leveren Lot oue wow and I routed as		pregnancy had it been picked up. And the baby
	22		24]
1	22 the baby's records after.	1	also had heart disease. And I was asked to
1 2	the baby's records after.	1 2	also had heart disease. And I was asked to
		2	also had heart disease. And I was asked to review that.
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25 27 A. Yes. This says, "IDM hypertrophic Q. Tell me what IHSS is. 1 1 cardiomyopathy of IDM. Severe in utero. A. IHSS stands for idiopathic hypertrophic 2 2 3 Insult severe encephalopathy in utero and subaortic stenosis. And it is another term, 3 4 multiple organ involvement and dysfunction." 4 although not the preferred term, for the Q. Okay. And why is that note on this 5 5 hypertrophic cardiomyopathy. The reason --6 letter? hypertrophic cardiomyopathy -- cardiomyopathy б 7 A. That was probably somebody was telling 7 means sick heart muscle. Hypertrophic means 8 me about the case as they were asking me, or 8 abnormally thick. 9 somewhere along the line. I don't know. I 9 And that condition can lead to don't remember when I wrote this. I did not 10 10 narrowing of the left ventricular outflow tract 11 date it. and subaortic stenosis, but you can have the 11 12 Q. But someone must have told you that? 12 same condition without subaortic stenosis. So A. Either that, or they called me again 13 13 generally the preferred term that people use about the case and I pulled this out and this now is just hypertrophic cardiomyopathy, but 14 14 15 happened to be the first letter. 15 they're synonyms. 16 MR. BECKER: Let's mark that as 16 Q. So they're synonymous? 17 Plaintiffs' Exhibit 3. 17 A. Yes. (Plaintiffs' Exhibit 3 18 18 Q. IHSS and hypertrophic cardiomyopathy? 19 marked for identification.) 19 A. Yes. 20 BY MR. BECKER: 20 Q. Now, would you defer to another 21 Q. Handing you what has been marked as 21 specialist what happens to a fetus in the event 22 22 Exhibit 3, would you identify that document? that the mother's gestational diabetes isn't 23 What is it? 23 greatly controlled or is poorly controlled? 24 A. It's a letter from Mr. Schobert to 24 A. You mean the effects during the 25 25 myself dated October 24, 2001. obstetrical care? 26 28 Q. Do you know any of the caregivers 1 Q. Yeah. 1 A. Yes. 2 involved that are party defendants in this 2 3 3 Q. Now, let's talk about your main opinion case? A. None of them -- well, I should say I here that is in the early neonatal period or Δ 4 5 probably know some of the pediatric folks that 5 postnatally you feel that part of this child's were taking care of the baby after. 6 response of the heart was due to the cardiac or 6 7 Q. Okay. But I'm more specifically 7 the hypertrophic cardiomyopathy; is that fair? 8 interested in Dr. Thompson, Chernin, or Muise? 8 A. Correct. 9 A. I know none of them. 9 Q. Okay. Now, can you separate out how 10 Q. Okay. All right. Let's cover your 10 much of the child's heart response was due to 11 opinions, Doctor, that I believe are reflected 11 asphyxia? 12 in the April 1, 2002 report. Do you have a 12 A. I mean the term asphyxia to me means 13 copy of that report at hand? 13 sort of interruption of oxygen and perhaps 14 MR. SCHOBERT: I think it's probably 14 delivery to the -- oxygen delivery to the 15 underneath that file there, Mike. 15 tissues. MR. BECKER: Sorry. 16 16 Asphyxia can cause heart dysfunction 17 MR. SCHOBERT: That's all right. 17 with nothing wrong with the heart, and heart

18 BY MR. BECKER: 19 Q. There it is

Q. There it is. Doctor, there was an
expert or two early on in this case that had
the opinion that this child had, and I'm going
to screw this up, Jeff, IHSS?
A. Uh-huh.
Q. Is that right?

A. Yes.

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conditions can cause the, whatever we describe

when we talk about asphyxia. And it can be a

vicious cycle where one makes the other worse.

A. I'm not sure I answered your question.

Q. No. I think you did. Are you familiar

with a concept of -- some neonatologists refer

to as the ability of a fetus to make the

Q. Okay. Are you --

ſ) [
	29		31
1	"neonatal transition"? Are you familiar with	1	and they just said edema. I never saw the
2	that?	2	baby.
3	A. Yes. There's a circulatory trend that	3	Q. Okay. And would you how would you
4	there's probably more than just circulatory,	4	define hydrops?
5	but at least I'm knowledgeable about the	5	A. Hydrops is evidence of fetal heart of
6	circulatory transitions that occur from	6	in utero fetal heart failure.
7	prenatal, postnatal life.	7	
8			Q. Okay. But is there a marker that you
	Q. Okay. Do you have an opinion as to	8	see fluid in a certain area first like the
9	whether or not this hypertrophic cardiomyopathy	9	abdomen or the lungs?
10	played any part or deterrent in the quote	10	A. You can see it in the skin. You can see
11	"neonatal transition" in the birth?	11	it in the chest space in the abdomen. So
12	A. Tes, I think the hypertrophic	12	sightings in the lungs, in the skin is evidence
13	cardiomyopathy played a significant role in the	13	of fetal heart failure.
14	adaptation to postnatal life.	14	Q. Now, the reasons you have cited to me as
15	Q. Are you familiar with any recent	15	to why you feel the hypertrophic cardiomyopathy
16	literature in the last couple years that stands	16	played a role, multi-system organ failure, that
17	for the proposition that the most common reason		
18	fetuses do not make the neonatal transition is	17	can be explained from birth asphyxia, correct?
19		18	A. True. I guess I'm also basing it on the
1	profound birth asphyxia?	19	way the heart looked on the ultrasound study.
20	MR. SCHOBERT: Objection.	20	That is a major find.
21	THE WITNESS: I'm not I'm not	21	Q. The way it looked, but of course the way
22	aware of this.	22	it looked could be in response to asphyxia?
23	MS. PETRELLO: Could I ask everyone	23	A. No. That I disagree with. The
24	to keep their voices up?	24	ultrasound appearance of an asphyxiated heart
25	THE WITNESS: Sorry.	25	is generally one that is enlarged, not
r			
	30		32
1	BY MR. BECKER:	1.	32 squeezing down well, and often with leaking
1 2	BY MR. BECKER: Q. Now, I want to understand each and every	1 2	
1	BY MR. BECKER: Q. Now, I want to understand each and every bases for your opinion that it was the		squeezing down well, and often with leaking
2	BY MR. BECKER: Q. Now, I want to understand each and every	2	squeezing down well, and often with leaking tricuspid valve. This was a picture of a small volume
2 3	BY MR. BECKER: Q. Now, I want to understand each and every bases for your opinion that it was the	2 3	squeezing down well, and often with leaking tricuspid valve. This was a picture of a small volume left ventricle, smaller than normal volume in
2 3 4	BY MR. BECKER: Q. Now, I want to understand each and every bases for your opinion that it was the hypertrophic cardiomyopathy that impacted the	2 3 4	squeezing down well, and often with leaking tricuspid valve. This was a picture of a small volume left ventricle, smaller than normal volume in left ventricle with very thick walls, severe
2 3 4 5	BY MR. BECKER: Q. Now, I want to understand each and every bases for your opinion that it was the hypertrophic cardiomyopathy that impacted the heart function in the first is it the first	2 3 4 5	squeezing down well, and often with leaking tricuspid valve. This was a picture of a small volume left ventricle, smaller than normal volume in left ventricle with very thick walls, severe significant subaortic stenosis and mitral valve
2 3 4 5	 BY MR. BECKER: Q. Now, I want to understand each and every bases for your opinion that it was the hypertrophic cardiomyopathy that impacted the heart function in the first is it the first hour or the first week of life? A. Certainly the first hour is significant, 	2 3 4 5 6 7	squeezing down well, and often with leaking tricuspid valve. This was a picture of a small volume left ventricle, smaller than normal volume in left ventricle with very thick walls, severe significant subaortic stenosis and mitral valve insufficiency. I do not believe asphyxia alone
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	33			35
1	reasons?	1	stipulate as to that comment. I mean, you	
2	A. And the course immediately at birth and	2	certainly had an opportunity to discuss this	
3	subsequently in the next days.	3	with him, although albeit brief.	
4	Q. Okay. Now, did you notice did you	4	BY MR. BECKER:	
5	study and take a look at the base excess of the	5	Q. Doctor, do you know Dr. Reed Thompson at	
6	this baby?	6	Johns Hopkins University in Baltimore?	
7	A. The baby had significant acidosis at	7	MR. SCHOBERT: Object.	
8	birth.	8	Go ahead.	
9	Q. Okay. Now, you don't get significant	9	THE WITNESS: No, I do not.	
10	acidosis at birth in a matter of a half an	10	BY MR. BECKER:	
11	hour, do you, or would you defer to a	11	Q. Okay. Now, you know, I didn't ask you	
12	neonatologist?	12	whether or not you saw any evidence of	
13	A. I would. I would defer it to a	13	congestion within the neonatal echoes,	
14	neonatologist.	14	particularly on the 7th?	
15	Q. Okay. And as far as the number, the	15	A. I do not congestive heart failure?	
16	base excess, whether it's 20 or 25 or 30 as to	16	Q. Yes.	
17	assisting one in timing this asphyxia or the	17	A. That is not something you can see on an	
18	acidosis, you would again defer to a	18	echocardiogram.	
19	neonatologist?	19	Q. Okay. Would you agree that there's a	
20	A. Yes.	20	high incidence of hypertrophic cardiomyopathy	
21	MR. BECKER: Jeff, can we get a	21	in fetuses whose mothers have diabetes?	
22	stipulation on the record that before this	22	A. Yes.	
23	deposition I did obtain and fax to your office	23	Q. Would you agree it's not clear often in	
24	today a report from Dr. Reed Thompson?	24	literature whether there is a linear	
25	MR. SCHOBERT: Yeah. I mean, that's	25	relationship between the degree of control of	
	34			36
1	an obvious. You sent to my office at some	1	glucose during pregnancy and the severity of	
2	point I received it late this afternoon. I	2	the hypertrophic cardiomyopathy?	
3	don't know exactly what time it was faxed over,	3	A. My understanding, and I may not be the	
4	but by	4	greatest expert on it, but my understanding is	
5	MR. BECKER: Sometime today?	5	that there is a relationship between the degree	
6	MR. SCHOBERT: Sometime today, this	6	of control. It's not a perfect relationship so	0
7	afternoon, yes.	7	that you can get hot wires on both sides, but	
8	BY MR. BECKER:	8	that there is a relationship between the degree	e
9	Q. Doctor, do you know Dr. Reed Thompson	9	of control and hypertrophic cardiomyopathy.	
10	MS. PETRELLO: Excuse me. Did you	10	And in my own experience, the worst	
11	fax that to Mark?	11	cases of hypertrophic cardiomyopathy of IDM has	s
12	MR. BECKER: Yes.	12	been the ones where there has been poor	
13	MR. SCHOBERT: But before we go on,	13	control.	
14	just so I can put on the record, again, I did	14	Q. Can you cite me to any literature	
15	not supply that report to Dr. Jacobstein for	15	A. No.	
16	review based on our ongoing discussion that I	16	Q to support that proposition?	
17	am not waiving any arguments I have about the	17	A. No.	
18	identification of the expert.	18	Q. That's just your personal experience?	
19	And I will, as long as I've got an	19	A. And also from and based on reading of	

20 literature in the past. I cannot specifically 21 name you any. I did not do any type of

- 22 literature research for this review. 23 Q. Can we agree that hypertrophic
- 24 cardiomyopathy in an infant born to a
- 25 gestational diabetic mother is almost always

ongoing objection that these questions don't

question him about a consultant, that's fine,

but I'm not waiving any argument that I have as

MR. BECKER: Well, I'm not going to

waive my arguments, if you want to make --

to your ability to use that expert.

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1	37		39
1 2	transient and resolves spontaneously without intervention within a matter of months?	1	condition played a significant role in why that
3		2	child was so sick right at birth.
4	A. It definitely resolves spontaneously usually I don't know if months, but	3	Q. Okay. But whether or not what role
5	- ,	4	how that led to do you have an opinion as
6	significantly resolves within months and completely resolves typically within a year.	5	to whether or not this low or slow neonatal
7		6	transition due to the congestive heart failure
8	But that doesn't mean that it always does that. It can be a life-threatening condition.	7	or low cardiac output, do you have an opinion
9	Q. Can we agree that in cases of extreme	8	as you sit here today whether or not that led
10	9. Can we agree that in cases of extreme hypertrophy, most infants are asymptomatic?	9	to any brain damage in Bianca, or would that be
11		10	outside of your specialty?
12	MR. SCHOBERT: I'm sorry. Can you repeat the sentence?		MR. SCHOBERT: Objection.
13	BY MR. BECKER:	12	Go ahead.
14		13	THE WITNESS: I mean, I might have
15	Q. In cases of severe hypertrophy, most	14	some opinions on it. I would I guess I
16	newborns are asymptomatic?	15	would defer to a neurologist in terms of I
17	A. I would be willing to say that most	16	mean, I feel comfortable talking about the
18	hypertrophic cardiomyopathy that occurs in		heart condition and what affected it.
10	infants of diabetic mothers causes no symptoms.	18	It is known that severe low cardiac
20	Q. Okay. A. I guess I would object to the I'm not	19	output states can cause brain damage, but I'm
21	sure what you mean by severe hypertrophic	20	not a neurologist. I feel a little
22	cardiomyopathy. I think severe hypertrophic	21	uncomfortable saying exactly when the brain
23	cardiomyopathy is associated with symptoms.	22	damage occurred.
24	Did I make that distinction?	23 24	BY MR. BECKER:
25	MR. BECKER: Yes.	24	Q. Okay. Do you have an opinion as to whether or not this child had sustained brain
Ľ	MR. BECALK. 185.	25	whether or not this child had sustained brain
	38		40
1	38 We're going to take a short	1	40 damage at the time it was born by the time
1 2			
1	We're going to take a short	1	damage at the time it was born by the time
2	We're going to take a short two-minute break.	1	damage at the time it was born by the time it was born?
2 3	We're going to take a short two-minute break. THE WITNESS: Okay. (A short recess was had.) BY MR. BECKER:	1	damage at the time it was born by the time it was born? MR. SCHOBERT: Objection.
2 3 4	We're going to take a short two-minute break. THE WITNESS: Okay. (A short recess was had.) BY MR. BECKER: Q. Doctor, I understand your opinion to be	1 2 3 4	<pre>damage at the time it was born by the time it was born? MR. SCHOBERT: Objection. Go ahead.</pre>
2 3 4 5	We're going to take a short two-minute break. THE WITNESS: Okay. (A short recess was had.) BY MR. BECKER:	1 2 3 4 5	<pre>damage at the time it was born by the time it was born? MR. SCHOBERT: Objection. Go ahead. THE WITNESS: Same thing I would say</pre>
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2 3 4 5 6 7 8	We're going to take a short two-minute break. THE WITNESS: Okay. (A short recess was had.) BY MR. BECKER: Q. Doctor, I understand your opinion to be that the hypertrophic cardiomyopathy secondary to the mother's gestation diabetes was in part	1 2 3 4 5 6 7 8	<pre>damage at the time it was born by the time it was born?</pre>
2 3 4 5 6 7 8 9 10 11	We're going to take a short two-minute break. THE WITNESS: Okay. (A short recess was had.) BY MR. BECKER: Q. Doctor, I understand your opinion to be that the hypertrophic cardiomyopathy secondary to the mother's gestation diabetes was in part responsible for some asphyxia that was occurring in the neonatal period; is that fair? MR. SCHOBERT: Objection.	1 2 3 4 5 6 7 8 9	<pre>damage at the time it was born by the time it was born?</pre>
2 3 4 5 6 7 8 9 10 11 12	<pre>We're going to take a short two-minute break. THE WITNESS: Okay. (A short recess was had.) BY MR. BECKER: Q. Doctor, I understand your opinion to be that the hypertrophic cardiomyopathy secondary to the mother's gestation diabetes was in part responsible for some asphyxia that was occurring in the neonatal period; is that fair? MR. SCHOBERT: Objection. THE WITNESS: I'm sorry. Could you</pre>	1 2 3 4 5 6 7 8 9 10	<pre>damage at the time it was born by the time it was born?</pre>
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1	the interpretation at University Hospital of
2	the people that did the studies of $10/7$ and
3	10/24?
4	A. No.
5	Q. Do you know the people that did the
6	interpretation?
7	A. Ido.
8	Q. Okay.
9	A. I think it was Dr. Levine, Mark Levine.
10	Q. Who is no longer with UH as well?
11	A. He is on the east coast somewhere.
12	MR. BECKER: That's all I have,
13	Doctor.
14	MR. SCHOBERT: Colleen?
15	MS. PETRELLO: I don't have any.
16	Thanks.
17	<u> </u>
18	(Deposition concluded at 5:00 o'clock p.m.)
19	
20	
21	
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23	
24	
25	

CERTIFICATE

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STATE OF OHIO,)) SS: SUMMIT COUNTY.)

I, Heidi L. Tsimpiris, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, MARK JACOBSTEIN, M.D., was by me 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 the witness was by me reduced to Stenotypy in the presence of said witness, afterwards transoribed upon a computer; and that the foregoing is a true and correct transcription of the testimony so given by the witness as aforesaid.

I do further certify that this deposition was taken at the time and place in the forzegoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee of or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney of any of the parties in the above-captioned action; I am not financially interested in the action; and I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS HEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 9th day of July, 2002.

Heidi L. Tsimpiris, Notaby Public in and for the State of Ohio. . 1

My Commission expires December 28, 2004.

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From Depravation to Handing

Mark Jacobstein, M.D.

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