

1 IN THE COURT OF COMMON PLEAS

2 OF CUYAHOGA COUNTY, OHIO

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4 ERIKA EVANS, etc.,

5 Plaintiffs,

6 vs

Case No. 444182

Judge William Coyne

7 LAKEWOOD HOSPITAL, et al.,

8 Defendants.

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10 DEPOSITION OF GERALDINE KERN, R.N.

11 THURSDAY, JANUARY 24, 2002

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13 Deposition of GERALDINE KERN, R.N., a
14 Witness herein, called by counsel on behalf of
15 the Plaintiff for examination under the statute,
16 taken before me, Vivian L. Gordon, a Registered
17 Diplomate Reporter and Notary Public in and for
18 the State of Ohio, pursuant to agreement of
19 counsel, at the offices of Lakewood Hospital,
20 Lakewood, Ohio, commencing at 11:25 o'clock a.m.
21 on the day and date above set forth.

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1 APPEARANCES:

2 On behalf of the Plaintiff

3 Becker & Mishkind

4 KATHERINE A. VADAS, ESQ.

5 Skylight Office Tower Suite 660

6 1660 W. 2nd Street

7 Cleveland, Ohio 44113

8 216-241-2600

9

10 On behalf of the Defendant Lakewood Hospital

11 Moscarino & Treu

12 THOMAS H. ALLISON, ESQ.

13 Hanna Building Suite 630

14 1422 Euclid Avenue

15 Cleveland, Ohio 44115

16 216-621-1000

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18

19 ALSO PRESENT:

20

21 Kathleen Sweeney

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1 GERALDINE KERN, R.N., a witness herein,
2 called for examination, as provided by the Ohio
3 Rules of Civil Procedure, being by me first duly
4 sworn, as hereinafter certified, was deposed and
5 said as follows:

6 EXAMINATION OF GERALDINE KERN, R.N.

7 BY MS. VADAS:

8 Q. Is it okay if I call you Geri?

9 A. Sure.

10 Q. Can you state your name for the
11 record, please, and spell your last name.

12 A. Geraldine Marie Kern, K-E-R-N.

13 Q. And what is your home address?

14 A. 17019 Bradgate Avenue and that's
15 Cleveland, Ohio, 44111.

16 Q. And is that an apartment or a single
17 home?

18 A. A single home.

19 Q. Have you ever had your deposition
20 taken before?

21 A. No.

22 Q. This is a question and answer session
23 under oath. Everything that we ask you today
24 may be relied on to prepare our questions for
25 you at the time of trial.

1 There are no right or wrong answers.
2 It's important that you understand the question.
3 And I have already had three depositions and
4 some poor questions, so if you have problems,
5 feel free to ask and I will rephrase it or your
6 attorney may ask me to rephrase it for you.

7 MR. ALLISON: He might.

8 Q. If you answer the question, I'm going
9 to assume you understood what I meant.

10 A. Okay.

11 Q. So please give your answers verbally,
12 because the court reporter needs to take them
13 down.

14 This is not a memory game. If you
15 wish to refer to the medical records, feel free
16 to do so. During this deposition your counsel
17 will object. Feel free to answer unless he
18 instructs you not to, okay?

19 What have you reviewed for your
20 deposition today?

21 A. I don't understand the question
22 already.

23 Q. Did you review anything for this
24 deposition before coming down here today?

25 MR. ALLISON: Look at anything.

1 A. Yes.

2 Q. And what was that?

3 A. Parts of the medical records.

4 Q. Do you remember which parts?

5 A. Basically my notes to the chart.

6 Q. Did you review any standards of care?

7 A. No.

8 Q. Did you review any medical literature
9 or reference materials?

10 A. No.

11 Q. Did you review any materials
12 referencing meningitis?

13 A. No.

14 Q. Neonatal infection?

15 A. No.

16 Q. Neonatal sepsis?

17 A. No.

18 Q. Did you do any type of on-line
19 research?

20 A. No.

21 Q. Since this case was filed, have you
22 discussed this case with any of the doctors or
23 nurses at Lakewood Hospital?

24 A. No.

25 Q. Other than with counsel, have you

1 discussed this case with anyone else?

2 A. No.

3 Q. Do you have any personal notes or
4 personal file on this case?

5 A. No.

6 Q. Have you ever generated such notes?

7 A. No.

8 Q. Who is your current employer?

9 A. Lakewood Hospital.

10 Q. Were you employed by Lakewood in
11 February of 2000?

12 A. Yes.

13 Q. You are a registered nurse in the
14 State of Ohio; is that correct?

15 A. Yes.

16 Q. When did you receive your nursing
17 license?

18 A. In 1981.

19 Q. What type of program was your basic
20 nursing program?

21 A. A diploma program.

22 Q. Your basic nursing program, did you
23 take any courses in pediatrics?

24 A. Well, neonatal resuscitation.

25 Q. Do you have any additional medical

1 related training beyond your initial nursing
2 program?

3 A. No.

4 Q. Do you hold any certifications?

5 A. No.

6 Q. What pediatric nursing journals do
7 you subscribe to?

8 A. None.

9 Q. Do you own any pediatric nursing
10 texts?

11 A. Just the basic, you know, about OB,
12 which has references to pediatrics.

13 Q. Do you know who the author of that
14 book is?

15 A. No, I don't, offhand.

16 Q. Do you have any pediatric nursing
17 texts that you refer to?

18 A. Yes.

19 Q. Do you know the names and authors of
20 those?

21 A. No. There are many. There are texts
22 on the floor that we refer to.

23 Q. Do you know the titles of the texts
24 on the floor?

25 A. Not offhand, no.

1 Q. When did you first become employed at
2 Lakewood Hospital?

3 A. In 1985.

4 Q. Did you work anywhere else in nursing
5 before becoming employed at Lakewood?

6 A. Yes.

7 Q. Where?

8 A. I was six years at St. Luke's
9 Hospital.

10 Q. What ward did you work in?

11 A. Labor and delivery.

12 Q. What is your current title and
13 position?

14 A. You know, also besides St. Luke's, I
15 was at St. Alexis Hospital and I was there eight
16 years.

17 Q. What ward did you work in?

18 A. Also OB. We did all three units.

19 Q. Any place else?

20 A. No.

21 Q. What is your current title and
22 position?

23 A. Registered nurse, staff nurse.

24 Q. In February of 2000, was your title
25 and position the same?

1 A. Yes.

2 Q. Have you ever held any other titles
3 at Lakewood Hospital?

4 A. No.

5 Q. In February of 2000, were you a
6 full-time employee of Lakewood Hospital?

7 A. Part time.

8 Q. Were you also working somewhere else?

9 A. No.

10 Q. Approximately how many hours a week
11 did you work?

12 A. At that time, I believe I was 32.

13 Q. Did you work a steady shift?

14 A. Yes.

15 Q. What shift did you work?

16 A. I worked day shift, occasional
17 rotating to nights.

18 Q. Did you work a 12 hour shift even
19 though you were part time?

20 A. Occasionally.

21 Q. What was your normal shift?

22 A. For that day?

23 Q. Your part-time status, did you
24 normally work eight hours a day?

25 A. Right.

1 Q. What time would you start and what
2 time would you finish?

3 A. 7-A to 3:30.

4 Q. In February of 2000, were you a
5 regular staff member of the birthing center at
6 Lakewood Hospital?

7 A. Yes.

8 Q. When did you first start working in
9 the birthing center?

10 A. September of 1985.

11 Q. Do you still work in that unit?

12 A. Yes.

13 Q. Were you required to have any special
14 training to work in the birthing center?

15 A. CPR. Neonatal resuscitation.

16 Q. Did you go through any type of
17 orientation program?

18 A. Yes.

19 Q. Have you ever worked on a regular
20 basis in any other nursing units at Lakewood
21 Hospital?

22 A. No.

23 Q. In February of 2000, what were your
24 duties and responsibilities at Lakewood
25 Hospital?

1 A. Patient care in the birthing center,
2 including labor and delivery, postpartum, and
3 nursery care.

4 Q. Did you interface with physicians
5 regarding baby's care?

6 A. Yes.

7 Q. Mother's care?

8 A. Yes.

9 Q. Were you responsible for checking for
10 new orders and initiating appropriate action for
11 babies and mothers?

12 A. Yes.

13 Q. On average, in February of 2000, if
14 you can remember, how many babies were usually
15 assigned to you?

16 A. I can't remember.

17 Q. Who is your immediate clinical
18 supervisor?

19 A. Chris Ward.

20 (Discussion off the record.)

21 Q. During the day, how many registered
22 nurses would usually be working the birthing
23 center?

24 A. Three. Three to four.

25 Q. Would all nurses be providing direct

1 patient care?

2 A Yes

3 Q Besides registered nurses, were there
4 any other medical personnel assigned to the
5 maternity -- to the birthing center that were
6 providing patient care?

7 A No

8 Q In February of 2000, if one of the
9 babies had symptoms of infection which you
10 believed required a physician's evaluation, is
11 there a standard of care you would follow?

12 MR. ALLISON: Objection. Go ahead
13 and answer.

14 A. Yes.

15 Q Let's start with the first step you
16 would take. What would you do first?

17 A Evaluate the infant, take vital
18 signs.

19 Q Besides vital signs, is there
20 anything else that your evaluation would take
21 into account?

22 A Observation of the infant.

23 Q After your initial evaluation, if you
24 still believed that the patient required a
25 physician's evaluation, then what you would do?

1 A. Call the physician.

2 Q. Upon arrival of the physician, would
3 you stay to assist him?

4 A. Yes.

5 Q. Do the house physicians at Lakewood
6 have pagers?

7 A. Yes.

8 Q. On average, how quickly would a house
9 physician arrive to a call?

10 MR. ALLISON: Objection. Go ahead
11 and answer if you can.

12 A. They answer fairly quick.

13 Q. And in your training and education,
14 did you learn how to **do** a physical assessment of
15 a neonate?

16 A. Yes.

17 Q. Were you taught to recognize
18 deviations from normal?

19 A. Yes.

20 Q. What is the standard of care on how
21 often a newborn's temperature should be taken?

22 MR. ALLISON: Objection. Go ahead
23 and answer.

24 A. If the baby isn't showing any signs
25 or symptoms of distress, it's usually in the

1 initial, after the initial birth, it's every
2 half hour times three, and then it goes to Q
3 shift. If the mom was treated for group B
4 strep, then the baby's vital signs are taken Q 4
5 hours.

6 Q. Is the standard of care the same with
7 regard to respirations being counted?

8 MR. ALLISON: Objection. Go ahead
9 and answer.

10 A. Yes.

11 Q. With regard to pulse being taken?

12 MR. ALLISON: Objection. Go ahead
13 and answer.

14 A. Yes.

15 Q. Is there a standard of care on when a
16 newborn should be attempted to be fed for the
17 first time?

18 MR. ALLISON: Objection. Go ahead
19 and answer.

20 A. No.

21 Q. Is there a standard of care on how
22 often a nurse should chart on a newborn?

23 MR. ALLISON: Objection. Go ahead
24 and answer.

25 A. No.

1 Q. Is there a standard of care on
2 charting if there is a change in the newborn's
3 condition?

4 MR. ALLISON: Objection. Go ahead
5 and answer.

6 A. Could you repeat that question again?

7 Q. Is there a standard **of** care on
8 charting on a newborn if there is a change in
9 their condition?

10 MR. ALLISON: Objection. Go ahead
11 and answer.

12 A. Yes.

13 Q. What does the standard of care
14 require on charting when there is a change in
15 the newborn's condition?

16 MR. ALLISON: Objection. Go ahead
17 and answer.

18 A. You should chart at least every 15 to
19 30 minutes, monitoring vital signs.

20 Q. As a nurse, in your experience, what
21 are some things with regard to a newborn's
22 condition that can change that would lead you to
23 start charting?

24 A. Well, the baby's vital signs, the
25 baby's color. Any type of unusual behavior.

1 Q. What would be considered unusual
2 behavior?

3 A. If the infant, say, after feeding,
4 you know, would vomit, anything of that sort.
5 If the infant was more irritable than normal. I
6 mean, being a nurse, I can kind of tell when I
7 feel an infant is not in the routine of a normal
8 newborn.

9 a. So if there is a lack of charting,
10 can we agree that that means that the newborn's
11 condition remained unchanged?

12 MR. ALLISON: Objection. Go ahead
13 and answer.

14 A. Yes.

15 Q. Is there a policy in regard to making
16 late entries in the medical records?

17 A. Yes.

18 a. What does that policy require?

19 MR. ALLISON: Objection. Go ahead
20 and answer.

21 A. Just that you state, you do document
22 late entry and what time the incident occurred.

23 a. Does the policy require the writer to
24 place the current time that it's being written
25 and date on it?

1 MR. ALLISON: Go ahead and answer.

2 A. That, I don't know.

3 Q. Is there a standard of care with
4 regard to taking a pulse oximetry?

5 A. Yes.

6 Q. That is?

7 A. Just basically how to apply the
8 equipment to the baby and what is within the
9 normal limits.

10 Q. And what is within the normal limits?

11 A. On room air, I would say it could be
12 97 to 100 percent.

13 Q. What would make a nurse take a pulse
14 oximetry?

15 A. If you noticed any change in the
16 vital signs, change in the baby's color.

17 Q. This is not a test that would be done
18 on every baby?

19 A. Routinely, no.

20 Q. Is there a copy of the standard of
21 care kept on the unit for reference?

22 MR. ALLISON: Objection. Go ahead
23 and answer.

24 A. Yes.

25 Q. Are you aware of the exact title of

1 the standard of care manual?

2 MR. ALLISON: Objection. Go ahead
3 and answer.

4 A. I believe it's just standards of
5 care.

6 Q. What is the normal body temperature
7 of a newborn?

8 A. Normal body temperature would be
9 36.8, 37. 36.8 to 37.

10 Q. At what temperature is a newborn's
11 temperature considered low?

12 A. I would say, I would consider 36.2.

13 Q. And high?

14 A. High, 38 axillary.

15 Q. What does axillary mean?

16 A. Under the arm.

17 Q. At what low temperature would you
18 start to be concerned about the newborn?

19 MR. ALLISON: Objection.

20 A. I would say 36.1.

21 Q. At what body temperature is a newborn
22 considered hypothermic?

23 MR. ALLISON: Objection. Go ahead
24 and answer.

25 A. Hypothermia would be in the 35's.

1 Q. Is there a standard of care for
2 treating a newborn with a low body temperature?

3 MR. ALLISON: Objection. Go ahead
4 and answer.

5 A. Yes.

6 Q. What would you do first?

7 A. I would place the infant under the
8 heat warmer with the temperature probe on.

9 Q. How long would you leave the baby in
10 the warmer?

11 A. Under the warmer? Until the
12 temperature reached within the normal limits.

13 (Discussion off the record.)

14 Q. Is there a point in time that the
15 baby is in the warmer after a certain period of
16 time, say, three hours, four hours, where you
17 would start to become concerned about the baby?

18 MR. ALLISON: From being in the
19 warmer?

20 Q. If the temperature is not increasing.

21 A. Yes, you know, if the warmer was at
22 an adequate temperature and we were doing
23 everything possible, I would say at least an
24 hour.

25 Q. What are some possible causes of low

1 body temperature in newborns?

2 MR. ALLISON: Objection. Go ahead
3 and answer.

4 A. Well, after birth, I mean, when the
5 baby is born, it usually comes into a cold
6 environment, that might cause the baby's
7 temperature to be down. It could be infection.

8 Q. If you considered it to be infection,
9 are there any things that you can do as a nurse
10 to rule out the possibility of infection?

11 MR. ALLISON: Objection. To the
12 extent that nurses rule out infection without
13 the involvement of physicians, go ahead and
14 answer.

15 A. Well, under a doctor's order, you
16 know, we would take blood for blood cultures,
17 you know, and regular routine bloods to check
18 the white blood count for infection.

19 Q. Can you measure blood sugar?

20 A. Yes.

21 Q. Does that require a doctor's orders?

22 A. Actually, we have -- it's more or
23 less a standard order that we follow. If there
24 is any, you know, if there are any unusual signs
25 in a baby, usually we do take a blood sugar.

1 Q. In a healthy newborn, how long does
2 acrocyanosis usually last?

3 A. Well, that's hard to say. Every
4 infant is different. I would usually say within
5 two to three hours it should be resolved.

6 Q. Is a lack of reflexes normal in a
7 newborn?

8 A. No.

9 Q. Would a lack of reflexes cause you
10 concern in a newborn?

11 MR. ALLISON: Objection. Go ahead
12 and answer.

13 A. No.

14 Q. As a neonatal nursery nurse, have you
15 been trained to recognize signs and symptoms of
16 sepsis?

17 A. Yes.

18 Q. What is sepsis?

19 A. Sepsis just means infection.

20 Q. What are the signs and symptoms?

21 A. The signs and symptoms of infection
22 could be -- well, there could be lethargy.
23 Increased respirations. Increase or some --
24 well, I would say they mostly do have an
25 increased temp, not so much a decrease in the

1 temp. I would look more for an increase in the
2 temp. They could be irritable also.

3 Q. Can hypothermia be a sign of newborn
4 sepsis?

5 MR. ALLISON: Objection. Go ahead
6 and answer. She just testified increased
7 temperature, not so much decreased.

8 A. I would say more so increased
9 temperature. Also, if you want to add, a lot of
10 times white blood count is increased as far as
11 labs.

12 Q. Can poor feeding be a sign of newborn
13 sepsis?

14 MR. ALLISON: Objection. Go ahead
15 and answer.

16 A. Yes.

17 Q. Can jaundice be a sign of newborn
18 sepsis?

19 MR. ALLISON: Objection. Go ahead
20 and answer.

21 A. Could it? That's hard to say. I'm
22 going to say no.

23 Q. As a birthing center nurse, under the
24 direction of a physician, have you ever cared
25 for a newborn infant with sepsis?

1 A. Yes.

2 Q. Approximately how many, if you can
3 say?

4 A. I can't.

5 Q. As a birthing center nurse under the
6 direction of a physician, have you ever cared
7 for a newborn with meningitis?

8 A. In my 21 years, no.

9 Q. What is the responsibility of a nurse
10 if you suspect neonatal sepsis?

11 MR. ALLISON: Objection. Asked and
12 answered. Go ahead and answer it again.

13 A. Notify the physician.

14 Q. As a birthing center nurse, can you
15 administer antibiotics to a newborn without
16 direction of a physician?

17 A. No.

18 Q. Do you have a recollection separate
19 from the medical records of Baby Jasmine?

20 A. Yes.

21 Q. What **do** you remember?

22 A. Just the day that I found the baby.
23 Do you want me to go through the whole incident?

24 Q. Yes, will you, please.

25 A. You know, it was early in the

1 morning. We were passing out breakfast trays,
2 and the mom motioned. I happened to look down
3 the hall and the mother motioned for somebody to
4 come down to the room. So when I approached
5 her, she said to me, I can't wake my baby.

6 So I immediately went into the room.
7 The first place I looked was in the crib, you
8 know, because I thought that's where the baby
9 would be, but the baby was not in there; the
10 baby was lying on her bed. When I noticed how
11 the baby looked, I immediately picked up the
12 baby and stated to the mother, I need to take
13 your baby to the nursery immediately, and did
14 so.

15 Q. How did the baby look?

16 A. The baby was not breathing. The
17 color was mottled. It also appeared jaundice.

18 Q. What do you mean color was mottled?

19 A. There is almost like a, there is a
20 bluish color to the skin in certain areas. It's
21 not completely -- the extremity is not
22 completely, but it's almost like a spotty
23 looking condition to the skin.

24 Q. In your experience as a nurse, do you
25 know what causes this mottled condition?

1 A. No.

2 Q. Were you assigned to care for
3 Jasmine?

4 A. No.

5 Q. So your interaction with them is you
6 just happened to be there?

7 A. Right.

8 - - - - -

9 (Thereupon, Plaintiff's Deposition
10 Exhibit 4 was marked for
11 purposes of identification.)

12 - - - - -

13 Q. Can you read this into the record for
14 me, please?

15 MR. ALLISON: Before you start, read
16 slowly because we tend to read a lot faster than
17 we talk and it's difficult for the court
18 reporter to take down what you are reading.

19 A. Date, 2-11-00. At 0832 late entry.
20 While walking down the hall, noticed mother
21 standing outside her room waving her arm.
22 Approached mother to ask if she needed something
23 and she said, in quotes, I can't wake my baby.
24 Upon entering room, found infant lying on back
25 on bed unresponsive. The color pale, jaundice

1 in the lower extremities. Took infant
2 immediately to nursery and placed under radiant
3 warmer. Resuscitative efforts in progress. See
4 special care flow chart and physician's notes.

5 a. Do you know when you wrote that late
6 entry?

7 A. It was probably right after, when I
8 brought the infant to the nursery and we started
9 the resuscitation effort and after the code was
10 called, it was after that. So I cannot tell you
11 an exact time.

12 Q. Was it on the same day?

13 A. Yes.

14 Q. Did you write this note on your own
15 accord?

16 A. Yes.

17 a. Is there a reason why you wrote it on
18 a separate piece of paper and didn't put it in
19 the chart?

20 MR. ALLISON: Objection to didn't put
21 it in the chart. It's in the chart.

22 A. It's in the chart.

23 a. Well, continued on a page.

24 A. Because, apparently in the progress
25 notes --

1 MR. ALLISON: Not necessarily. I'm
2 not sure that's correct either. The page before
3 that is full, if you want to think about it that
4 way.

5 MS. VADAS: We don't get the chart
6 exactly as you have it.

7 MR. ALLISON: I'm not going to say
8 it's exactly the same way now as it was when it
9 was present on the floor that day. But I do
10 know that the prior nurses' narrative notes are
11 on a page which has been written through the
12 very end of the last line, and this is the next
13 nursing note. The other notes were made by
14 other individuals, primarily Dr. Perlman.

15 I was concerned about the
16 characterization.

17 MS. VADAS: We get a pile of paper,
18 so it's hard for us to tell. And the way it
19 appeared to me was that it was not in order.

20 MR. ALLISON: I understand. You are
21 welcome to look at this chart if you like to.

22 Yes, the characterization bothered
23 me. But there is her note. It is on a separate
24 piece of paper, that is true.

25 Q. Is there a reason why this note isn't

1 stamped like the rest of them?

2 A. No, you know, perhaps --

3 MR. ALLISON: Don't guess. If you
4 know, fine. If you don't know, fine.

5 A. No.

6 Q. What was Erika's appearance to you?

7 MR. ALLISON: At the time --

8 Q. At the time you found her baby.

9 MR. ALLISON: Versus when she first
10 saw her in the hall?

11 Q. Let's start with the hallway. What
12 was Erika's appearance to you in the hallway?

13 A. When I first glanced over to look at
14 her, she, like I said, was standing outside the
15 door and she kind of just waived her hand.

16 When I went up to approach her, she
17 was tearful, but she spoke in a very soft tone
18 of voice and she just said, I can't wake my
19 baby.

20 Q. What was she like in the room as you
21 were making your initial assessment of the baby?

22 A. She did not say anything to me. She
23 just remained tearful. And I picked up the baby
24 as soon as I could, because I told her, I had to
25 get the baby to the nursery, and left the room

1 immediately.

2 Q. In your opinion, was anything about
3 the baby unusual besides the fact that it wasn't
4 breathing, obviously? I mean, anything about
5 the circumstances of how you found the baby?

6 That's a very bad question.

7 MR. ALLISON: True.

8 MS. VADAS: Let me rethink this.

9 Q. Is there anything in the
10 circumstances of the way you came upon Jasmine
11 that would lead you to believe that Erika in
12 some way injured her baby?

13 MR. ALLISON: Objection. Go ahead
14 and answer.

15 A. I'm not sure if I could answer that.
16 I would say at that moment, my thought, no.

17 Q. You say at that moment.

18 A. Because you said -- didn't you say at
19 that --

20 Q. Yes. Since then, have you formulated
21 any opinions on whether or not you think Jasmine
22 could have injured her baby --

23 MR. ALLISON: That Erika could have.

24 Q. -- Erika could have injured her
25 baby?

1 MR. ALLISON: Objection. Go ahead
2 and answer.

3 A. No.

4 Q. Did you have any further interaction
5 with Erika?

6 A. After this incident?

7 Q. After this incident.

8 A. Yes. Immediately after when the code
9 was called and there was nothing more that we
10 could do, after I was done in the nursery, I
11 went to her room just to check on her to see how
12 she was.

13 Upon entering the room, she was
14 sitting in the bed still tearful. You know, I
15 believe I asked her -- or I don't really
16 remember what I asked her, but just gave her a
17 hug, and then said, is there any -- do you have
18 any family that I can call for you? And she
19 stated, no, I have no family, but she mentioned
20 a friend that she could possibly contact, and
21 she was going to call this friend.

22 I sat with her for a few more
23 minutes, but she was very quiet. She would not
24 offer anything to me. She said nothing more
25 after that. So then I left the room, and the

1 only other contact I had with her prior to
2 leaving my shift that day, I did stop in the
3 room to talk with her a few seconds to tell her
4 how sorry I was. Her friend was in the room at
5 that time.

6 She was not tearful at that time.
7 After I gave her my sympathy, she just said
8 thank you and that was it.

9 **a.** If on previous occasions in Jasmine's
10 life there had been troubles waking the baby,
11 would you find what appears to be Erika's
12 calmness at the time she consulted you to be
13 strange?

14 MR. ALLISON: Objection. **To** the
15 extent that you can answer, go ahead, if you
16 understand the question.

17 A. I don't understand the question.

18 Q. A couple of hours prior to this there
19 had been an incident where the baby required
20 extensive stimulation **to** be awoken. If Erika
21 believed that the baby was sleeping and required
22 extensive stimulation and she couldn't wake the
23 baby, would her apparent lack of an emergency
24 type concern seem strange to you?

25 A. Yes.

1 MR. ALLISON: Objection. Go ahead
2 and answer.

3 A. Yes.

4 Q. Even considering that had occurred in
5 the past?

6 MR. ALLISON: Objection. Go ahead
7 and answer.

8 A. Yes.

9 Q. Would you expect Erika to be able to
10 assess the baby to realize that she wasn't
11 breathing --

12 A. No.

13 MR. ALLISON: Objection. Go ahead
14 and answer. Wait until she finishes her
15 question.

16 Q. -- wasn't breathing and didn't have
17 a heart rate?

18 MR. ALLISON: Objection. Go ahead
19 and answer if you can.

20 A. I don't understand the question
21 again.

22 Q. What is your opinion of how Erika
23 initially presented to you? Was it emergent,
24 was it calm, was it fearful? How would you, if
25 you had to, describe it?

1 A. I would say she was calm, but also
2 fearful.

3 Q. In your opinion, was that an
4 appropriate response --

5 MR. ALLISON: Objection.

6 Q. -- to the situation?

7 MR. ALLISON: Objection.

8 A. Again, I don't feel I could answer
9 that.

10 Q. Prior to Erika's release, did you
11 have any further interactions with her besides
12 what you have already explained to me?

13 A. No.

14 MS. VADAS: I have no further
15 questions. Thank you.

16

17 - - - - -

18 (Deposition concluded at 12:10 p.m.)

19 (Signature not waived.)

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1

AFFIDAVIT

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I have read the foregoing transcript from
page 1 through 33 and note the following
corrections:

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PAGE LINE

REQUESTED CHANGE

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GERALDINE KERN, R.N.

18

Subscribed and sworn to before me this

19

day of , 2002.

20

21

Notary Public

22

23

My commission expires

24

25

CERTIFICATE

State of Ohio,

SS:

County of Cuyahoga.

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named GERALDINE KERN, R.N. was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action. 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 WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 30th day of January, 2002.



Vivian L. Gordon, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

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