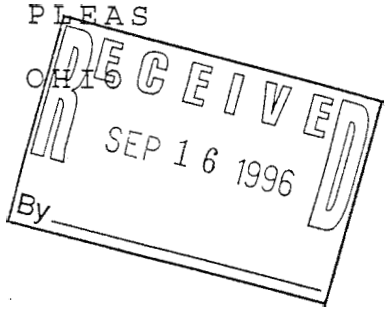
IN THE COURT OF COMMON PLEAS

OF COLUMBIANA COUNTY, OHIO



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Raymond Virden, et al.,

Plaintiffs,

vs. Case No. 95-VC-1.87

Vern Orlang, M.D., et al.,

Defendants.

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Deposition of MARK LANDON, M.D., a Witness herein, called by the Plaintiffs for cross-examination under the statute, taken before me, Kathryn E. Stischok, a Registered Professional Reporter and Notary Public in and for the State of Ohio, by agreement of counsel and without notice or other legal formality, at the offices of Ramada University Hotel, 3110 Olentangy River Road, Columbus, Ohio, on Tuesday, September 10, 1996, at 5:23 o'clock p.m.

APPEARANCES:

Lancione & Simon
1300 East 9th Street
1717 Bond Court Building
Cleveland, Ohio 44114
By Mr. John G. Lancione,

On behalf of the Plaintiffs.

Harrington & Mitchell, Ltd.
1200 Mahoning Bank Building
Youngstown, Ohio 44503
By Mr. James L. Blomstrom,

On behalf *of* the Defendant
Vern Orlang, M.D.

Tuesday Evening Session
September 10, 1996
5:23 o'clock p.m.

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It is stipulated by and between counsel for the respective parties that the deposition of MARK LANDON, M.D., a Witness herein, called by the Plaintiffs for cross-examination under the statute, may be taken at this time by the Notary, by agreement of counsel without notice or other legal formality; that said deposition may be reduced to writing in stenotypy by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived.

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MARK LANDON, M D

AX EP first auly sworn, as hereinafter certified, apposed and says as follows:

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CROSS-EXAMINATION

BY R LANCIONE:

Q. Would you state your full name, please, for the record?

A Mark a Landon

Q Doctor, are you prepared to offer opinions in this case regarding the conduct of the defendant, Dr. Orlang?

A. I am.

Q. And how did you become involved in this case as an expert witness?

A. Mr. Blomstrom contacted me some time in -- some time, I believe, last year regarding my willingness to review the records and offer an opinion concerning the care of Melinda Wirden AY Dr Orlang

Q. Had you done any reviewing for Mr. Blomstrom in the past?

A. No, I had not.

Q. Do you know how he got your name?

A. No, I do not.
Q. Has your name ever been supplied to an expert witness service?
A. Not by me.
Q. Are you familiar with an expert witness service in New York by the name of MedQuest?
A. I think I know the name, yes.
Q. Did you ever speak to anyone from MedQuest about using your name as a reviewer for potential medical malpractice cases by plaintiffs or defendants?
A. It is possible, but I haven't -- to my knowledge, I haven't received any inquiries for review that have had their origination in any referral network, if you will.
Q. Very good.
How long have you been reviewing cases involving medical malpractice?
A. Approximately ten years.
Q. So that started when you were in Philadelphia?
A. That is correct.
Q. And approximately how many cases do

you review each year?
A. Over the last two to three years, I would say I am receiving two to three cases per month.
Q. You say over the last two or three years; that is since you have been here in Columbus?
A. Correct.
Q. How about when you were in Philadelphia?
A. Much less.
Q. Prior to the time you came to Columbus, did you have any particular organizations or entities or lawyers or law firms that you reviewed cases for?
A. Not particularly.
Q. Just whoever called you and asked you to review something?
A. (Nods head up and down.)
Q. You have to say yes or no.
A. We are speaking in Philadelphia?
Q. Yes.
A. In Philadelphia, the number of cases I did we could count on both of my hands; so

they were really sporadic and from different sources.

Q. Had you ever testified in court prior to coming to Columbus?

A. No.

Q. Had you testified in depositions prior to coming to Columbus?

A. Yes, I believe so.

Q. For doctors or against doctors or both?

A. Probably both, but I honestly can't recall.

Q. Since coming to Columbus, what is the reason that your schedule of reviewing medical malpractice cases has taken such an increase as you described?

A. I guess it is from several reasons. First of all would be the fact that I have become more senior in the specialty and recognized on a national level, so that people around the country know my name. And this generates some referrals of certain types of cases.

The second reason would be my

willingness to do more work in this area. And along with that comes additional referrals from having met attorneys on both sides.

Q. What particular field of obstetrics and gynecology is it that you are prominent in that would generate inquiries?

A. Well, I am a subspecialist in maternal/fetal medicine, which is high-risk obstetrics in lay terms, so that almost any obstetrics case would potentially come to me for review.

My academic interest, clinical research interest that is, is diabetes in pregnancy, so that this has prompted certain types of cases to be sent to me on that basis.

Q. I noted in your CV that you had a number of peer review articles on the subject of diabetes in pregnancy.

A. That is correct.

Q. Were there any articles that you have had published in peer review books that deal with HIE?

A. Not specifically.

Q. Perinatal asphyxia?

A. I certainly have written on antepartum fetal surveillance, more so in the setting of diabetic pregnancy, but these are, of course, tests of fetal condition used to predict the metabolic state of fetuses.

Q. Have you reviewed obstetrical malpractice cases for any local lawyers here in Columbus?

A. Yes.

Q. Can you name them?

A. Well, I have reviewed primarily for the defense within the City of Columbus for the law firm of Jacobson, Maynard, Tuschman & Kalur principally

Q. No plaintiff's lawyers or plaintiff s firms that you can think of?

A. I may have reviewed for some plaintiff firms with the caveat that I would be a primary reviewer and offer opinion. But under the condition that I would not serve as an expert within the City of Columbus

Q. Why is that?

A It is a political decision essentially

Q. So that if you would review a case for a plaintiff and you would find that there was medical negligence, you would not be willing to act as an expert witness in the Franklin County area; is that right?

A. To date I have not, but I really have only been asked once or twice, frankly, to look at a plaintiff's case in Franklin County.

I have certainly been asked to look at plaintiff cases outside of Franklin County in Ohio, but it really hasn't come up all that much, to be honest.

Let me just add, I guess the expectation for most of the plaintiff's attorneys within the City of Columbus is that I would not be willing to look at such cases and that in fact has been told to me by several -- by at least one prominent plaintiff's counsel in the city.

Q. And the reason would be because of your association with the Jacobson, Maynard firm and the fact that they are all representing doctors?

A. No. Simply because I practice within the City of Columbus and I have a referral practice. And their expectation would be for someone in my position not to be willing to look at plaintiff's cases within Franklin County and serve as an expert.

Q. Because of why?

A. I would guess that they surmise that I would be unwilling to do it for fear of losing referrals from practicing physicians in the area.

Q. Have you testified in any court in Ohio on a malpractice case for either the plaintiff or defendant where the issue was perinatal asphyxia due to failure to deliver the child promptly?

A. I don't think I have testified in court in Ohio on this particular issue.

Q. Or any other state on that particular issue, anywhere, in any court?

A. Not in court.

Q. In any case where you testified on a deposition which was actually read in court in trial, if you know?

A. That is possible, but I wouldn't know.

Q. What materials did you review in reaching your opinions in this case?

A. The antepartum and intrapartum records of Melinda Sirpen; the neonatal records of Raymond Sirpen at I Medical Liverpool, as well as the facility to which he was transferred; the depositions of Dr. Klang and Dr. Harlan Giles.

Q. Have you written any reports in the case?

A. No. I have not.

Q. Do you have any notes that you have made in connection with your review?

A. Yes.

Q. Could I see those, please?

A. (Complies with request.)

MR. LANCIONE: Would you mark these, please, as exhibits?

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Thereupon, Deposition Exhibit Nos. 1 & 2 were marked for purposes of identification.

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BY MR. LANCIONE:

Q. If you would just tell us what these are for the record so that we -- Exhibits 1 and 2.

A. Exhibit 1 is handwritten notes concerning a general outline of the case, labor and delivery progress. Exhibit 2 are some notes regarding the deposition of Dr. Giles.

Q. Do you have an opinion as to what this child's diagnosis was upon being born and sent over to Children's Hospital?

A. I gather the discharge, at least one of the discharge face sheets suggested that the child had birth asphyxia.

Q. Is that your opinion? I want to know what your opinion is from reading the records.

A. From reading the records, I think that that is a fair assumption.

Q. Okay. What else? Encephalopathy?

A. I think there was, at least according to the records, clearly some

hypotonia, some neurologic dysfunction and some possible seizure activity upon transfer, talking about the immediate neonatal period.

Q. Did the child have some permanent brain damage that was sustained during the perinatal period?

A. I think there is permanent brain damage that was potentially sustained during the perinatal period.

Q. Have you read some of the recent hospital records in the last two years?

A. I think the child is two years old, if I am not mistaken.

Q. '94, '95 -- well, the last hospitalizations over the last year, year and a half.

A. I don't think per se, but I have been generally apprised of the condition of the child.

Q. What is the condition of the child' now basically?

A. I understand the child has cortical blindness, has feeding difficulties, has motor difficulties.

Q. And what caused those, do you know?
A. I believe an intrauterine hypoxic event.
Q. When did that occur?
A. I am not sure.
Q. Do you have an opinion based upon reasonable medical certainty as to the time when the brain insult occurred that caused this child's various problems and conditions that we have talked about?
A. I think that quite likely in the final days in utero and quite possibly a perinatal event, but it is impossible for me to be completely certain of that.

Let me just say that I have not been completely privileged to some of the radiologic, perhaps imaging study studies of the neonate and subsequent materials, but I am not a pediatric or neonatal expert either to interpret them, if they might be useful in helping date the occurrence of hypoxia.

Q. Well, are you able to give us an opinion based upon reasonable medical probability as to when in a certain time

period the hypoxic/anoxic events occurred that' caused the brain damage that we have talked about?

A. I don't think I can completely.

Q. Okay. Now you said that there may have been some intrauterine hypoxia in the days -- did you say in the days prior to the delivery of the baby?

A. I think it is possible. That is all I am saying.

Q. Okay. But it is more likely among the possibilities that it occurred closer to the time of delivery, I take it? Just generally speaking.

A. I guess I would be hard pressed to say that it is more likely perinatal versus in the day prior to delivery, but I think it is fair to say that there more likely than not was a perinatal event involved in this case and -- thank you.

Q. I didn't mean to interrupt your answer. Go ahead and finish.

(Discussion off the record.)

BY MR. LANCIONE:

Q. What was the cause of the perinatal hypoxia that the fetus sustained during labor?
A. I am not sure.
Q. Tell me what you believe the meaning of appropriate and acceptable standard of care is in obstetrics with respect to delivering a baby.
MR. BLOMSTROM: Can I have that back again?

grounds that the question is rather vague and overbroad.
A. I suppose my answer would be to render care that a reasonable and prudent physician would do in most circumstances concerning the events of labor and delivery.
Q. And in selecting that physician as a reasonable and prudent physician, what kind of assumptions do you make with respect to his training?
In other words, if someone is giving obstetrical care, is he held to a standard of care of a board certified obstetrician? Or is

there's some other standard of care that you would apply to that physician?

A I think in rendering general obstetric care for an uncomplicated pregnancy, in terms of the antepartum period, to consider that first, I wouldn't distinguish greatly between a family practitioner and a general obstetrician in their delivering of care, again, to an uncomplicated pregnancy

With respect to intrapartum care, I think there may be some differentiation between an obstetrician and a family practitioner only inasmuch as certain family practitioners seem to be more experienced than others in handling intrapartum abnormalities versus others

A. Well, I am referring more to the standard of care that they would be held to, not to the actual capabilities of each individual practitioner that one might look at

MR SLOMSKOM: What is the question?

clarify my question to the Doctor, if he understands it.

A. I guess, to attempt to answer the question, I think there may be certain qualifiers on a family practitioner, depending upon their experience with regard to managing a normal labor and delivery. That is about the best I can do. Maybe you can help me further.

Q. Let me try to get to it this way: In looking at this case, or any other case, you are a specialist, you are certified in two different areas, you teach residents, presumably the way you have been taught and the way you have developed in your practice to render a certain standard of care to your patients.

Do you apply that same standard of care when you look at cases that may come in to you for review, applying that standard of care for the time, of course, if something has changed, but taking the date of the occurrence, try to apply that standard as you knew it and taught it at that time and

expected your residents to go out and practice it?

A. No.

Q. What standard do you apply then?

A, I apply the standard that in my mind I believe exists for either a practicing general obstetrician or for a family practitioner in obstetrics based upon my experience with these two types of individuals in giving care.

Q. So basically two different, perhaps not different in every respect, but two different standards of care?

A. I think there may be some differentiation, but I don't think it is terribly wide apart in most obstetric cases frankly.

Q. Did you find any deviations from acceptable standards of care in anything that Dr. Orlang did in this case?

A. No.

Q. If you would apply the standard of care for a board certified obstetrician, would you have found anything below the standard of

care in anything Dr. Orlang did?
A. No.
Q. Was there anything in the fetal monitor strips that indicated that this fetus was having what would be called fetal distress?
A. I guess it depends upon one's definition of fetal distress, but I would have to answer the question no.
Q. So I take it that you feel it was acceptable for Dr. Orlang to permit the second stage of labor to go along just as it did go along and deliver the baby just when he delivered the baby; is that right?
A. I guess that is -- my answer is correct, yes.
Q. You guess it is correct or is it correct?
A. I am not sure how you are asking the question. You asked if it was permissible.
Q. If it was acceptable and in accordance with a reasonably prudent obstetrician -- family doctor acting as an obstetrician.

A. I guess -- my answer is yes.
Q. So if this baby sustained some hypoxic ischemic damage during this period, this would have been just one of the risks of having a baby; is that it?
A. Well, I think there was fetal monitoring going on during the second stage, so that the condition of the fetus was being considered.
Q. But I take it that you saw no evidence in that fetal monitoring that would correlate with the degree of devastating brain injury that this baby actually has?
A. That is certainly correct.
Q. But if the hypoxic ischemic damage occurred within the last hour before birth, then presumably whatever damage that was could have been avoided by an earlier delivery.
A. With those assumptions, my answer is yes.
Q. But what you are telling us, and what your idea and opinion is here, is that there was no reason for Dr. Orlang to see that the baby was delivered one hour or two hours

or three hours earlier?
A. Other than the second stage being quite prolonged and one might arbitrarily make a decision to terminate the second stage based upon length, I do not believe that the fetal tracing, per se, mandated earlier delivery.
Q. So that the prolonged second stage and the fact that there was maybe not a technical arrest, but there was an informal type of an arrest in the progression of the fetal head at station +2 for a long time and there was a fetal monitor, those things put together would not have called for delivery, prompt delivery, attempted prompt delivery in accordance with acceptable standards of care; is that what you are saying?
A. Right. Not necessarily.
Q. So it would have been elective, it was just one course he could have taken, which was acceptable, if he would have decided to try to deliver, that would have been acceptable too?
A. Clearly many obstetricians would have terminated the second stage earlier.

Q. But that is not the standard of care that you are applying?
A. That is correct.
Q. Likewise, I suppose that you would not feel that Dr. Orlang would have been required at any time prior to the delivery to call for a surgeon to do a Cesarean?
A. Correct.
Q. Even though he had that option apparently in accordance with the operation of the hospital and his practice, right?
A. I would understand that to be so. I am not certain of that, but I would find it hard to believe that he could practice obstetrics in 1994 and not have that service available to him.
Q. Okay. Was there anything about the nursing care that you found fell below standards of care that contributed to cause this child's injuries?
A. No,
Q. What about the resuscitation?
A. I would reserve judgment on the resuscitation for a neonatologist or a

pediatrician for that matter.
Q. From the obstetrical point of view, what is your feeling about Dr. Orlang not calling for a pediatrician to be in attendance prior to the time that he actually delivered the baby? Apparently there was some delay of somebody showing up.
A. I understand that.
Q. Okay. So what, of his failure, if there was, of seeing that a pediatrician was there?
A. I suppose it depends upon the degree of concern on the part of Dr. Orlang regarding the condition of the fetus. Clearly if he felt there was evidence of compromise, potential compromise, then it would be prudent to call pediatrics prior to the delivery or just prior to attempting the delivery.
Q. Well, regardless of what he may have thought, what should he have thought from the records, in your opinion?
A. Based upon the tracing and when he initiated the delivery, I do not feel he was obligated to call pediatrics at that time.

Q. Do you rely at all on any literature in support of any of your opinions in this case?
A. Only my general fund of knowledge which is rooted in lots of literature, but I can't, off the top of my head, point to a specific article that I actually reviewed in helping me form opinions.
Q. So that you are not going to cite any specific literature, either any ACOG bulletins or specific articles which you are claiming support your opinions in this case at the time you testify at trial as of now?
A. Only if I were asked a question that required me to support my opinion by producing literature.
Q. Have you been asked to do that?
A. Not so far today.
MR. LANCIONE: I am not going to ask you. I have got all the literature I need. Not meaning that it controverts what you are saying, just all the literature.
That is all I have, Doctor.
Thank you.

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Thereupon, the deposition was concluded at 6:02 o clock p.m.

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MARK LANDON, M.D.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at _____, Ohio, on this _____ day of _____, 1996.

_____

Notary Public in and for the _____

My commission expires:_____

CERTIFICATE

STATE OF OHIO

COUNTY OF FRANKLIN : SS.

I, Kathryn E. Stischok, a Registered Professional Reporter and Notary Public in and for the State of Ohio duly commissioned and qualified, do hereby certify that MARK LANDON, M.D. 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 then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed by means of computer; that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid; and that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party herein, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 13th day of September, 1996.

KATHRYN E. STISCHOK, Notary Public - State of Ohio.

My commission expires December 11, 1999