

STATE OF OHIO }
TRUMBULL COUNTY } SS: IN THE COURT OF COMMON PLEAS

CASE NO. 00 CV 969

JA MIRRA HEASLEY, a minor,
by and through her mother
and next friend, Melissa
Heasley, ET AL

Plaintiffs

VS.

ST. JOSEPH HEALTH CENTER, ET AL
Defendants

DEPOSITION

OF

YOUNG K. LEE, M.D.

DEPOSITION taken before me, Debra M. Moore, a
Notary Public within and for the State of Ohio, on the
23rd Day of February, 2001, pursuant to Agreement and at
the time and place therein specified, to be used pursuant
to the Rules of Civil Procedure or by agreement of counsel
in the above cause of action, pending in the Court of
Common Pleas, within and for the County of Trumbull, State
of Ohio.

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APPEARANCES

On Behalf of Plaintiff:

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On Behalf of Defendant St. Joseph Health
Center and Dr. Lee:

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STIPULATIONS

6 It is stipulated and agreed by and between
7 counsel for the parties hereto that this deposition may be
8 taken at this time, 9:00 a.m., February 23, 2001, in the
9 offices of Comstock, Springer & Wilson, 100 Federal Plaza
10 East, Suite 926, Youngstown, Ohio.
11 It is further stipulated and agreed by and
12 between counsel that the deposition may be taken in
13 shorthand by Debra M. Moore, a Notary Public within and
14 for the State of Ohio, and may be by her transcribed with
15 the use of computer-assisted transcription; that the
16 witness will read and sign the finished transcript of
17 his/her deposition.
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1 WHEREUPON,
2 YOUNG K. LEE, M.D.,
3 of lawful age, being by me first duly
4 sworn to testify the truth, the whole
5 truth, and nothing but the truth, as
6 hereinafter certified, deposes and
7 says as follows:
8 CROSS EXAMINATION:
9 By Mr. Burnett
10 Q Doctor, will you please tell us your
11 full name?
12 A Young K. Lee. Last name is L-E-E.
13 Q Thank you. Doctor, I represent the
14 minor plaintiff in this case, Ja Mirra Heasley. My name
15 is John Burnett. Do you understand, sir, that this is a
16 question and answer session under oath?
17 A Yes.
18 Q Okay. And, sir, it will be helpful as
19 we proceed through this process if you answer my questions
20 audibly in a clear voice, instead of nodding your head yes
21 or no or saying huh-uh or uh-huh. Is that fair enough,
22 sir?
23 A That's fine.
24 Q Next, I hope you will do me the favor of
25 if I've asked you a question that is unclear or there's a

1 question that you do not understand, I hope you will tell
2 me. Will you agree to do that, please?
3 A Sure.
4 Q Otherwise, Doctor, if you answer the
5 question, I will conclude that you have understood the
6 question and have answered it to the best of your ability
7 today; is that fair enough?
8 A Right.
9 Q Finally, I'm going to ask you to do
10 something that's completely unnatural, and that is you're
11 going to see where I'm going with a question, and out of
12 courtesy to me, you will attempt to respond to it before
13 I've finished asking it. In normal, everyday
14 conversation, that's fine. But when a court reporter is
15 typing this all down, it's best if you wait until I've
16 finished asking the question and wait a heartbeat to
17 ensure that you've understood the question and you're
18 formulating an accurate response. Is that fair enough?
19 A Okay.
20 Q Okay. Doctor, your practice group as of
21 December of 1998, what was it, please, sir?
22 A I didn't get that, I'm sorry.
23 Q Your practice group as of December of
24 1998, what was that, sir?
25 A '98?

1 MR. COMSTOCK: Who was with you?
2 What was the form of your practice? Was it a corporation,
3 partnership, et cetera?
4 Q Yes, and its name, although I think your
5 counsel provided me with a curriculum vitae.
6 MR. TREADON: Do you have an extra
7 CV, by any chance?
8 MR. COMSTOCK: I'll get you one.
9 MR. BURNETT: You can look at mine.
10 A 1998?
11 Q In the December time frame. Would it be
12 the Women's Care Center?
13 A Yes. There's another lady there. She
14 was leave of absence.
15 MR. COMSTOCK: Physician?
16 A A physician.
17 MR. COMSTOCK: What was the name of
18 your group?
19 A Dr. Ho was there. That was 1998, had
20 been Dr. Ho.
21 MR. COMSTOCK: How do you spell
22 that?
23 THE WITNESS: H-O.
24 A And Dr. Hirs, H-I-R-S.
25 MR. COMSTOCK: You and I are going

1 to switch chairs so she can hear you and you'll be closer
2 to her. Now, I'm not sure he finished his answer.
3 A Dr. Hirs and Dr. Ho were there, yes.
4 Q Okay. The actual name of the group
5 itself, was it -- were you called the Women's Care Center?
6 A Yes, Women's Care Center.
7 Q And I take it you had privileges at St.
8 Joe's Hospital?
9 A Yes, right.
10 Q Were you a house officer at St. Joe's?
11 A A house officer, what is a house
12 officer?
13 MR. COMSTOCK: Maybe you better
14 explain that to him, John, what you mean by house officer,
15 and then he can answer it.
16 Q You had admitting privileges there?
17 A Yes.
18 MR. COMSTOCK: He was employed by
19 St. Joseph's Hospital.
20 Q That's what I'm trying to get out.
21 A Yes.
22 Q You were employed by St. Joe's?
23 A Yes.
24 Q Okay. You got a paycheck from St. Joe's
25 Hospital?

1 A Yes, right. 9
 2 Q All right. And for how long a period of
 3 time had you been employed by St. Joe's Hospital?
 4 A Since 1995.
 5 Q Okay. And I take it from looking at
 6 your curriculum vitae, which we'll have marked as Exhibit
 7 1 in a moment, that would have been about in July of 1995?
 8 A Yes, July, yes.
 9 Q And before that, it appears that you
 10 were in private medical practice?
 11 A Yes.
 12 Q From 1976 until 1995?
 13 A Yes.
 14 Q And I see in your curriculum vitae it
 15 says, parenthetically, OBG. What does that mean?
 16 A Obstetrics/gynecology.
 17 Q Okay. That's fine. And what was the
 18 name of your practice group when you were in private
 19 practice?
 20 A I did it by myself as a solo.
 21 Q Were you incorporated?
 22 A No, just private.
 23 Q All right. And I see before that you
 24 were a house physician at St. Joseph's Riverside Hospital?
 25 A Right.

1 Q And did you practice in obstetrics and 10
 2 gynecology at that point?
 3 A No, I didn't do practice at that time.
 4 Q Why weren't you practicing at that time?
 5 A Because I was preparing my license.
 6 Q Okay. I don't understand what you mean
 7 by preparing your license. Tell me about that.
 8 A At that time I didn't get the license
 9 yet.
 10 Q You weren't licensed to practice in Ohio
 11 yet?
 12 A Right.
 13 Q Okay. And it appears that the reason
 14 you weren't licensed to practice in Ohio, you were
 15 practicing for a period of time in Brooklyn, New York; is
 16 that right?
 17 A Right.
 18 Q And you were a resident there at Wyckoff
 19 Heights Hospital?
 20 A Right.
 21 Q Let me back up, okay --
 22 A Yes.
 23 Q -- instead of doing this backwards like
 24 this. When you received your M.D. in Seoul, Korea, in
 25 1968, you appeared to have gone to Korea University

1 Hospital as a rotating intern? 11
 2 A Right.
 3 Q What does that mean, rotating intern?
 4 A Rotating internship means you do rotate
 5 over a couple months general surgery, couple months
 6 OB/GYN, that kind of stuff.
 7 Q Then you came here to this country. Why
 8 did you leave Korea, tell me?
 9 A Better education.
 10 Q Okay. You wanted to come to America?
 11 A Yeah.
 12 Q You came to St. Joseph's Hospital in
 13 Paterson, New Jersey, where you were again a rotating
 14 intern?
 15 A Right.
 16 Q As part of that rotating internship, did
 17 you go through a phase of obstetrics and gynecology?
 18 A Yes.
 19 Q You appear, then, in 1970 to have left
 20 Paterson, New Jersey, and you went to Cleveland Metro
 21 General Hospital?
 22 A Right.
 23 Q Okay. What brought you from Paterson,
 24 New Jersey, to Cleveland Metro General?
 25 A Because Cleveland Metro General Hospital

1 is bigger hospital for the OB/GYN. 12
 2 Q And you were an OBG resident then?
 3 A Yes, right.
 4 Q What caused you to go from Cleveland
 5 Metro General Hospital to Wyckoff Heights Hospital in
 6 Brooklyn in 1974?
 7 A That Cleveland Metro General Hospital,
 8 that's connected with University Hospital, and we have a
 9 lot of students coming from Case Western. But I did have
 10 problem to speak the language, honestly.
 11 Q Okay.
 12 A And I couldn't handle it by myself as
 13 a --
 14 Q As a what?
 15 A I couldn't handle doing my duty right.
 16 That's why I have to study more, learn more English.
 17 Q I see. So it was a problem with your
 18 language skills --
 19 A Right.
 20 Q -- there? Were you asked to leave
 21 Cleveland Metro General?
 22 A No.
 23 Q Okay. What was it about working at
 24 Wyckoff Heights Hospital in Brooklyn, New York, that --
 25 A As a third-year chief resident.

13

1 Q As a third-year what?

2 A Chief resident.

3 Q Chip?

4 A Yeah, chief.

5 Q What's chip mean?

6 A C-H-I-E-F, chief.

7 MR. COMSTOCK: Chief.

8 Q Chief resident, I'm sorry. I apologize.

9 So you were the chief resident, then, at Wyckoff Heights

10 Hospital?

11 A Right.

12 Q And during that period of time, did you

13 work on your language skills such that you could

14 communicate?

15 A Yeah, I studied by myself, yes.

16 Q Okay. Then I see, Doctor, that you came

17 from Brooklyn, New York, back to St. Joseph's Riverside

18 Hospital in Warren; is that right?

19 A Yes, right.

20 Q Tell me again why you made the change.

21 MR. COMSTOCK: I'm not sure that's

22 accurate. You say back to. He had been at a different

23 St. Joseph's Hospital in Paterson, New Jersey.

24 MR. BURNETT: You're right. Thank

25 you.

14

1 Q You came from Brooklyn, New York, to

2 Warren, Ohio?

3 A Right.

4 Q Okay. Why that move?

5 A Because I was there in New York. I

6 thought I may like it in New York City, but I didn't like

7 New York City.

8 Q Were you asked to leave?

9 A No, no, no.

10 Q Okay. Any of your places of employment

11 here in this curriculum vitae, were you ever asked to

12 leave any of them?

13 A No.

14 Q Were you licensed to practice medicine

15 in New York?

16 A No.

17 Q And when did you get your license to

18 practice medicine in Ohio, what year, Doctor?

19 A I think 1995. No, '75 or '76, I don't

20 remember.

21 Q And you had to take a test to do that;

22 right?

23 A Yes.

24 Q And did you pass the test the first

25 time?

15

1 A Yes.

2 Q After that, did you ever become Board

3 Certified in any specialty?

4 A No.

5 Q Has your practice been limited to

6 obstetrics and gynecology since you became licensed to

7 practice here in Ohio?

8 A I'm sorry?

9 Q Has your practice been limited to

10 obstetrics and gynecology since you became licensed to

11 practice here in Ohio?

12 A Just a minute. I just chose to practice

13 sole OB/GYN.

14 Q That's all you've done since you've been

15 here?

16 A Right.

17 Q And that's since you've been here in

18 Ohio, since 1975 or '76?

19 A Right.

20 Q Is that a yes, sir?

21 A Yes.

22 Q Doctor, to your knowledge, has your

23 license here in Ohio ever been suspended, revoked, or

24 called into question?

25 A Never.

16

1 Q To your knowledge, have there been any

2 complaints about you to the State Medical Board?

3 A No.

4 Q Now, you're doing pretty good, and

5 you're starting to answer my questions before I finish

6 them. And for her sake, we'll have to just watch that a

7 little bit; okay?

8 A Thank you.

9 Q Otherwise, you're doing fine.

10 A Thank you.

11 Q Doctor, have you ever been deposed

12 before? That's what's happening here.

13 A Yes.

14 Q How many times?

15 A Maybe four.

16 Q Okay.

17 A Maybe four.

18 Q If you can, please tell me roughly when

19 the first time was that you were deposed.

20 A Couple I don't remember. Both those

21 cases were dismissed.

22 Q Okay.

23 A So one of them was gross retardation,

24 and the other one -- the other one I don't remember. And

25 one of them, rupture of the uterus.

17

1 Q Okay. When was the one dealing with
2 gross retardation? When was that deposition taken, do you
3 remember?
4 A About more than ten years ago.
5 Q And you were a defendant in that
6 lawsuit, sir?
7 A Yes.
8 Q With regard to that lawsuit, do you
9 remember, was it here in Mahoning County?
10 A The place I did it?
11 Q Well, the place where you were sued, if
12 you remember. Were you in Mahoning County or Ashtabula
13 County?
14 A Trumbull County.
15 Q Trumbull County?
16 A Yes.
17 Q Okay. Do you remember the name of the
18 plaintiff in that case?
19 A I don't remember at all.
20 Q Okay. The next case involved a rupture
21 of the uterus in which you were deposed?
22 A Right.
23 Q And do you remember when that would have
24 occurred, roughly?
25 A It was in 1990 sometime, yes.

18

1 Q Sometime in the 1990s?
2 A Yes.
3 Q Again, was that in Trumbull County?
4 A Trumbull County.
5 Q With regard to the first case, Doctor,
6 the case involving gross retardation, for lack of a better
7 way of asking you this, what did the plaintiffs say that
8 you did that you shouldn't have done or didn't do that you
9 should have done? What do they say that you did wrong, do
10 you remember?
11 A On that case, I don't remember at all
12 right now.
13 Q Okay. How did that case resolve? What
14 happened?
15 A That case was dismissed.
16 Q That was dismissed?
17 A Yeah, dismissed.
18 Q By the plaintiffs?
19 A Right.
20 Q No money was paid on your behalf to
21 settle it?
22 A No.
23 Q The rupture of the uterus --
24 A Yes.
25 Q -- case, if you can, please, tell me what

19

1 you remember the plaintiffs claimed that you did wrong in
2 that case?
3 A Uterus was ruptured, and baby was born
4 brain damaged.
5 Q Okay. Do you remember the name of the
6 plaintiff in that case?
7 A I don't remember name at all.
8 Q Okay. How did that case resolve,
9 Doctor?
10 A It settled.
11 Q It settled, okay. Now, you told me
12 about four times when you were deposed. You've told me
13 the two times you remember being deposed; is that right?
14 A I think maybe one of I don't know.
15 Q Do you think there's another time when
16 you were deposed?
17 A One of them, I think the other doctor,
18 he was involved, but there was my name there. No, no, no,
19 excuse me, I'm sorry.
20 Q Okay.
21 A I didn't do deposition. I think
22 somebody else -- yeah, I think they brought up these
23 issues, and then it was -- case was dismissed. I didn't
24 do a deposition.
25 Q Okay. So we've talked about three cases

20

1 in which you were a defendant --
2 A Yes.
3 Q -- in a lawsuit. Is that right, sir?
4 A Just a minute. Yes, three cases.
5 Q Okay. Aside from those cases and this
6 case, were there any other cases in which you were a
7 defendant in a lawsuit?
8 A Except three of them?
9 Q Yeah, except for these three we've just
10 discussed?
11 A No.
12 Q Okay. Have you ever done -- by the way,
13 with regard to those depositions you remember, did you, by
14 any chance, keep copies of the deposition transcripts?
15 A About --
16 Q When you were deposed, when you went
17 through this process we're going through today, she's
18 typing up something called a transcript. Did you, by any
19 chance, sir, keep copies of the deposition transcripts?
20 A Before we got judgment?
21 MR. COMSTOCK: Do you still have
22 any?
23 A No, I don't.
24 Q Okay. That's fine.
25 A I don't have anything.

1 Q All right. Have you done any medical 21
2 legal work in the past, that is, consulting with attorneys
3 to determine whether another doctor has fallen below the
4 standard of care in his practice?
5 A No.
6 Q Have you published any articles, sir?
7 A No.
8 Q Sir, what did you review in preparation
9 for this deposition today?
10 A The textbook.
11 Q Pardon me?
12 A Textbook.
13 Q A textbook, okay. What textbook did you
14 review?
15 A Williams.
16 Q On Obstetrics?
17 A Yes.
18 Q Do you remember what edition?
19 A I would say that's the 20th.
20 Q Twenty years?
21 A The 20th edition.
22 Q 20th. Did you review the chart, sir?
23 A Yes.
24 Q And aside from any conversations you may
25 have had with your counsel or someone associated with his

1 office, did you discuss this upcoming deposition with 22
2 anybody?
3 A No.
4 Q Doctor, it's my understanding that this
5 delivery, which occurred on the 29th of December, 1998,
6 was complicated by a shoulder dystocia; correct?
7 A Yes.
8 Q And it's also my understanding, Doctor,
9 that the baby sustained a brachial plexus injury; correct?
10 A Right.
11 Q Is it likely that the brachial plexus
12 injury sustained by Ja Mirra Heasley was a result of the
13 birth process?
14 A That I don't know, but that happened.
15 Q Pardon me?
16 A That happened. I don't know why that
17 happened.
18 Q Okay. Talk to me a little bit about
19 your experience in obstetrics and gynecology, really
20 obstetrics, with shoulder dystocias. As of December of
21 1998, how many times had you encountered shoulder
22 dystocia?
23 A Once in a while, we may have a shoulder
24 dystocia that's mild. That's mild rate. Some of them,
25 they are born with some weakness. I wouldn't say that the

1 severe, but -- 23
2 MR. COMSTOCK: He wants to know,
3 Doctor, how often or how many times you've encountered
4 shoulder dystocia. I think that's the question.
5 Q Yes.
6 A I've never had this kind of case.
7 Q Okay. But cases in which the shoulder
8 was -- the baby was being delivered and you found out that
9 the shoulder was stuck, one of the shoulders anterior or
10 posterior --
11 A Yeah, anterior.
12 Q -- can you give me any idea how many of
13 those cases you had encountered as of the date of this
14 delivery? How many times had you seen that happen in the
15 past when you were trying to deliver a baby?
16 A That's good question. By statistics,
17 maybe .2 to 1 percent. But I did have a few of them, but
18 was not that severe. Most of time they were all right. I
19 never had this -- any this kind of problem.
20 Q Never had a brachial plexus injury?
21 A Right. I did have some, but probably
22 they were all right. It was a mild case.
23 Q You think the brachial plexus injury
24 probably resolved in the past?
25 A Yes.

1 Q Can you tell me, perhaps, how many times 24
2 a child you delivered sustained a brachial plexus injury?
3 Can you give me an estimate?
4 A How many times?
5 Q Yes.
6 A Probably, I would say, maybe once a
7 year. It's a very occasional. But most of time, even
8 without the macrosomic, big baby, even without having the
9 macrosomic, even less than 9 pounds, I would say this is,
10 by statistics, about 50 percent of people, they may have a
11 shoulder dystocia too.
12 Q Okay. But I'm going to say my question
13 again, because I want to make sure that you've understood
14 it. I'm not asking you now how many times you encountered
15 shoulder dystocia. I'm asking you, of the times you've
16 encountered shoulder dystocia, do you remember how many
17 times the infant sustained a brachial plexus injury?
18 A To me, very mild, but even I don't
19 remember the number.
20 Q Okay. But you recall infants sustaining
21 mild brachial plexus injuries in the past?
22 A This is kind of definition of shoulder
23 dystocia. Some people, even they have some mild shoulder
24 dystocia, even, they don't write anything, they don't say
25 anything if everything's all right. I don't know how

1 to -- 25
 2 MR. COMSTOCK: I think the question
 3 is, can you recall any instances of patients who had
 4 shoulder dystocia where they had some brachial plexus
 5 injury as a result of the dystocia?
 6 A Very occasional case, but that was
 7 really mild.
 8 Q Okay. And can you give me some idea of
 9 the numbers, one occasion, two occasions, three occasions?
 10 A Through my life?
 11 Q Yes.
 12 A Oh, that's very hard to say.
 13 MR. COMSTOCK: Then you don't --
 14 that's --
 15 Q Would you have, by any chance, have kept
 16 a log or a diary or a list of your patients who may have
 17 sustained a brachial plexus or the children who may have
 18 sustained a brachial plexus injury?
 19 A I would say very few got some kind of
 20 weakness. I wouldn't say brachial plexus. Could be
 21 brachial plexus injury, but could be very mild.
 22 Q Okay. Did you, by any chance, however,
 23 keep any list or a log or a diary of that?
 24 A I don't have.
 25 Q Okay. With regard to this case, Doctor,

1 who -- and please feel free to refer to the chart anytime -- 26
 2 A Okay, thank you.
 3 Q -- as we go through this. Can you tell
 4 me who the nurses were who participated in the delivery of
 5 the child? And by that I mean from the time of
 6 presentation, when she was in labor, until the time she
 7 delivered, can you tell by looking at the chart who the
 8 nurses were?
 9 A I was looking for. I don't remember. I
 10 don't know which is, who was there.
 11 Q Can you tell by looking at signatures or
 12 initials, for instance?
 13 A No. I looked at, but I don't.
 14 Q You can't tell?
 15 A No, I can't tell.
 16 Q I'm going to -- let's have your
 17 curriculum vitae marked.
 18 (Whereupon Plaintiff's Exhibits 1 and 2 were marked.)
 19 MR. BURNETT: Gentlemen, this is a
 20 labor and delivery record.
 21 MR. COMSTOCK: Yeah.
 22 Q Doctor, I've highlighted some things on
 23 Exhibit 2. I'm handing it to you. Do you recognize those
 24 initials?
 25 A Yes, I do, but I never pay attention

1 about it. I don't know who she -- 27
 2 Q You don't know who she is?
 3 A No, I don't. I don't know.
 4 Q So I understand your testimony, from
 5 reviewing the chart, as we sit here today, you can't
 6 identify for me who the nurses were who were present
 7 during the labor and delivery process; is that correct?
 8 A She was there. I don't know.
 9 Q With regard to the nurses in the
 10 delivery suite, once shoulder dystocia was encountered,
 11 would the nurses have been taking direction from you with
 12 regard to any efforts to relieve the dystocia?
 13 A Yes.
 14 Q Okay. Doctor, again, handing you
 15 Plaintiff's Exhibit 2, the last entry on there indicates
 16 fundal pressure. Can you tell me at what point after
 17 shoulder dystocia was encountered was fundal pressure
 18 applied?
 19 MR. COMSTOCK: I want to object to
 20 the assumption that it was applied after the discovery of
 21 shoulder dystocia. I don't know that that's -- if you
 22 want to give him that assumption, that's fine. But I
 23 don't think that's -- anyway, I've made my objection.
 24 Q Can you answer the question as I've
 25 stated it?

1 A Okay. As normal delivery, I'm saying 28
 2 normal delivery -- I'm not talking about this case yet --
 3 once baby's head is out, then any kind of delay once, say,
 4 baby's head is out already, but if you have any delay, we
 5 have to think about the baby's condition, so we better
 6 hurry. But that baby should be born as soon as possible.
 7 We do give, just normal deliveries, we do give them
 8 tractions, gentle but moderate pressure, downward
 9 tractions, once in a while with fundal pressure too. Once
 10 in a while with fundal pressure, which is normal delivery.
 11 At the beginning -- I do remember this case -- one of
 12 the nurses gave me fundal pressure, but when I looked at
 13 the baby, the baby's head was appeared to be retracting to
 14 the perineum. That means classical sign of shoulder
 15 dystocia. And then I told her no more fundal pressure.
 16 That at the beginning once. And then I called the nursing
 17 station, nurses stations for help.
 18 Q So I understand your testimony, it
 19 appears that when the head appeared, that you saw what's
 20 called a turtle sign; is that right?
 21 A Right.
 22 Q The head retracted?
 23 A Right.
 24 Q Okay. With regard to the appearance of
 25 the head and the retraction of the head --

29

1 A Right.

2 Q -- when was fundal pressure applied by

3 the nurse?

4 A Before that. And then I suspected she

5 may have a shoulder dystocia. For the shoulder dystocia,

6 we don't do fundal pressure.

7 Q When you say fundal pressure was applied

8 before that --

9 A Yeah, before I realize.

10 Q -- when was the fundal pressure applied?

11 That's a poor question. Let me ask it to you this way.

12 Was the sequence, Doctor, that the head appeared, and once

13 the head appeared, fundal pressure was applied?

14 A Head appeared, I suctioned, suctioned

15 the baby from the mouth, suctioning mucus from the mouth,

16 and then we put the fundal -- she gave me fundal pressure.

17 But at that time I didn't realize that she's going to be

18 shoulder dystocia. I tried to -- go ahead.

19 Q Okay. Define fundal pressure for me,

20 please.

21 A I'm sorry?

22 Q Define fundal pressure. What is fundal

23 pressure?

24 A Giving them moderate pressure on the

25 fundus.

30

1 Q At the top of the abdomen?

2 A That's right.

3 Q And this would have been done by a

4 nurse?

5 A By a nurse.

6 Q Okay. One nurse or two nurses?

7 A No, just one. But there was -- happened

8 to be I do remember there was one.

9 Q And would this nurse have been acting at

10 your direction, sir?

11 A Yes.

12 Q By the time --

13 A I think at that time --

14 Q I'm sorry, go ahead.

15 A I think that really I don't remember.

16 As I told you, normal delivery, in case of delay, that

17 baby should be born as soon as possible. At that time I

18 think -- I don't know what happened. She gave me fundal

19 pressure, and then after that, I realized this one could

20 be shoulder dystocia.

21 Q Was the fundal pressure applied before

22 you noticed the turtle sign?

23 A Right.

24 Q At what point relative to when fundal

25 pressure was applied did you attempt downward traction on

31

1 the infant's head?

2 A I'm sorry?

3 Q At what point relative to when fundal

4 pressure was applied did you attempt downward traction on

5 the infant's head?

6 A As soon as I applied gentle downward

7 pressure, I felt baby's head was retracting. That's a

8 classical sign. That's why I stopped.

9 Q And at that point, when you attempted

10 gentle downward pressure and felt the baby's head

11 retracting, had fundal pressure already been applied?

12 A Just once, yes.

13 Q After you realized that the baby's head

14 was retracting and that the shoulder may be stuck, tell me

15 again what you did.

16 A I tried again to apply tractions

17 downward again with maternal -- mom. She was pushing,

18 maternal effort, tried again, but it didn't help.

19 Q Okay.

20 A Without pressure, anything.

21 Q Okay. So you applied gentle downward or

22 you applied downward traction on the infant's head twice?

23 A With the mom, not the fundal pressure

24 then.

25 Q Okay. But you did apply downward

32

1 traction on the head twice?

2 A Yes, twice.

3 Q Okay. Describe for me, if you will,

4 where your hands were on the infant's head.

5 A On lateral, both sides, this way.

6 Q It looks like you put your -- in

7 demonstrating this, you put your hands near your temples;

8 is that correct?

9 A Right, right.

10 Q So you would have likely grasped the

11 infant in the temple area?

12 A Right, temple area.

13 Q With your fingertips or your palms?

14 A All together, gently holding.

15 Q Your whole hand?

16 A Yes.

17 Q Okay. Once you have attempted downward

18 traction on the second occasion, with the mother's

19 expulsive efforts helping, and you realized that the

20 infant is not coming out --

21 A Right.

22 Q -- what do you do then?

23 A Then I told the patient not to push

24 anymore.

25 Q Okay.

1 A That's the usual practice. 33
 2 Q Okay.
 3 A And then I asked the nurses to hold both
 4 thighs, legs, making so-called McRoberts maneuver. We
 5 making the hyperflexion of the thigh up in the abdomen.
 6 That makes a lumbosacral -- that's straightening of
 7 lumbosacral and making more space.
 8 Q Did you bend her knees?
 9 A Oh, yes, not -- knee all together this
 10 way, thigh to here.
 11 Q How many nurses assisted with the
 12 McRoberts maneuver?
 13 A At least more than two of them there,
 14 maybe three. One of them for stand by for the baby. I
 15 think two nurses holding her.
 16 Q After you realized you had encountered a
 17 shoulder dystocia, you said you called for help?
 18 A Oh, yes.
 19 Q Okay. And what did you intend to do by
 20 calling for help? Were you asking for another doctor or
 21 more nurses?
 22 A Everybody if they could help me. But
 23 the nurses, I think -- this is usual, I don't remember,
 24 but I told them call even anesthesia, even a pediatrician
 25 on call, whoever.

1 Q Okay. Now, when you had the nurses 34
 2 utilize the McRoberts position, did you do anything else
 3 in conjunction with the McRoberts position?
 4 A As I told you, sir, I applied traction
 5 again downward again.
 6 Q So this would have been a third time?
 7 A Yeah, third time, yes.
 8 Q Okay. And what happened?
 9 A And then that didn't help much, so I
 10 told them give me some suprapubic pressure.
 11 Q And define suprapubic pressure for me.
 12 A Suprapubic pressure, symphysis pubis,
 13 just above the symphysis pubis.
 14 Q This would have been in the area where
 15 there's pubic hair; correct?
 16 A Yes, yes.
 17 Q Right around there? And one of the
 18 nurses applied suprapubic pressure at that point?
 19 A Right.
 20 Q Okay. What happened?
 21 A Sir, didn't happen. Nothing happened.
 22 Q Let me interrupt you for one moment.
 23 After you applied traction on the head again with the
 24 nurses flexing the legs in the McRoberts position --
 25 A Right.

1 Q -- so I understand the sequence, you 35
 2 then instructed one of the nurses to apply suprapubic
 3 pressure?
 4 A Right.
 5 Q As she was applying suprapubic pressure,
 6 did you again apply downward traction on the infant's
 7 head?
 8 A Yes.
 9 Q So that's the fourth time you've applied
 10 downward traction on the infant's head; correct?
 11 A That's right.
 12 Q What happened then?
 13 A Still nothing happened.
 14 Q Okay.
 15 A But time has been passed. Baby should
 16 be born at least within four or five minutes.
 17 Q Okay. By the way, at this point in
 18 time, how many minutes have passed, by your best estimate,
 19 likely?
 20 A I think almost three minutes passed
 21 already.
 22 Q Okay.
 23 A I think so.
 24 Q Okay. So it's likely that three minutes
 25 passed?

1 A Yeah, three minutes. 36
 2 Q Okay. What do you do then?
 3 A And then I tried to put my fingers,
 4 putting the back of the posterior arms, turning to the --
 5 anteriorly to the 180 degrees, this way.
 6 Q Okay.
 7 A If we do it this way, that anterior
 8 shoulder, that could be released from under the symphysis
 9 pubis.
 10 Q Okay.
 11 A That's so-called Woods maneuver.
 12 Q Woods screw maneuver?
 13 A Yes.
 14 Q And was that successful?
 15 A Yes, that was successful. Baby came
 16 out.
 17 Q At some point in time, did you cut an
 18 episiotomy?
 19 A Oh, yes, I did episiotomy already.
 20 Q At what point in time did you cut the
 21 episiotomy?
 22 A Before baby came out.
 23 Q Before the head appeared?
 24 A Yes.
 25 Q So, really, you only insert your hand in

1 the mother's vagina on one occasion to attempt a Woods
2 screw maneuver; correct?
3 A Right.
4 Q And that was successful in freeing the
5 shoulder?
6 A Right.
7 Q Why did you not attempt a Woods screw
8 maneuver prior to applying suprapubic pressure?
9 A In general, people, they do have
10 shoulder dystocia, most of times a McRoberts maneuver,
11 that's supposed to take care of. And also that didn't
12 help, but additional suprapubic, that's supposed to take
13 care of. That's in general. If that didn't help, there's
14 no other choice. You have to go some other maneuver.
15 That's not the first choice.
16 Q In your prior experience before this
17 birth, had you ever had occasion to utilize the Woods
18 screw maneuver?
19 A No.
20 Q This was the first time ever?
21 A Ever.
22 Q When you attempted the Woods screw
23 maneuver, were either of your hands on the baby's head?
24 A No, not the baby's head.
25 Q Tell me again so I understand where your

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1 hands would have been in your -- when you conduct the
2 Woods screw maneuver.
3 A This was behind the posterior shoulder.
4 Q Okay. Do you remember which shoulder
5 was stuck?
6 A Most of time we do put fingers back of
7 the posterior shoulder.
8 Q Where would your -- would you have slid
9 your index and middle finger along the infant's spine?
10 A With the index finger, middle finger,
11 that's it. And with this, we give them the pressure to
12 the anteriorly.
13 Q Okay. You twist your hand?
14 A Yeah.
15 Q And at that point in time, the infant
16 was born?
17 A Right.
18 Q Okay. Was there anything about the
19 labor process here that indicated to you that the baby was
20 experiencing any type of fetal stress or fetal distress?
21 A No, sir.
22 Q Okay. Including the Woods screw
23 maneuver, can you give me some idea of your best estimate
24 of what the likely head-to-body time was?
25 A I would say about four minutes. That is

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1 my estimation.
2 Q Thank you. Is that charted anywhere,
3 Doctor?
4 A No.
5 Q This is just by memory; correct, sir?
6 A Yeah, right.
7 Q And you remember this birth; correct?
8 A Right. I do remember this case. It was
9 pretty bad case, yeah.
10 Q Doctor, tell me, sir, if you would, how
11 many times in your career in delivering babies you had to
12 apply gentle downward traction on an infant's head on more
13 than one occasion in attempting a delivery?
14 A Gentle --
15 Q Downward traction on the infant's head?
16 A Most of times, for normal delivery, we
17 do very gentle downward pressure tractions.
18 Q And it's just one time; right?
19 A I mean, for --
20 MR. COMSTOCK: One time for each
21 birth, is that the question?
22 Q Yeah, yeah.
23 A Sometimes if we have to apply one a
24 couple different times, or steady pressure.
25 Q Have you ever, in the past, had to apply

39

1 downward traction on the infant's head four times, like
2 you did in this case?
3 A Oh, we can't talk about that's once,
4 twice, three times. Once baby's head comes out, getting
5 anterior shoulder, most of time we do gentle but steady
6 pressure until baby's born.
7 Q Okay.
8 A I wouldn't say one or two or three
9 different times.
10 Q In this case --
11 A Oh, this case? Oh.
12 MR. COMSTOCK: He's talking about
13 the general situation.
14 Q The general situation. I mean, I
15 understood your testimony to be that at different stages
16 of attempting to relieve this shoulder dystocia, that you
17 applied downward traction on the infant's head on four
18 separate occasions?
19 A Right.
20 Q At different stages; correct, sir?
21 A Right.
22 Q Okay. In the past, have you ever had to
23 apply downward traction that many times on the infant's
24 head, or is this the first time?
25 A I didn't get you.

40

1 Q Okay. Prior to this delivery -- 41
 2 A Yes.
 3 Q -- had you ever had to apply downward
 4 traction on the infant's head four times?
 5 A No.
 6 Q Now, with regard to, as you termed it,
 7 gentle downward traction, how were you taught to apply
 8 gentle downward traction in your training, tell me?
 9 A Gentle traction?
 10 Q Yes. And by that I mean, Doctor,
 11 thinking back to when you were a resident or when you were
 12 in medical school, for instance, did a more senior
 13 physician stand with you and say put your hands on this
 14 infant's head, and we're going to pull together, and I'm
 15 going to tell you what gentle downward traction is? Did
 16 something like that happen? How were you taught to do
 17 that?
 18 A We do pull baby's head downward, but
 19 without pressure, just pulling down to downward very, very
 20 gently. Most of time, if this is a normal delivery, that
 21 anterior shoulder may come out without any difficulty.
 22 Q And, again, I'll go back to my question,
 23 because I'm wondering, in your training, how were you
 24 taught what gentle downward traction is, as opposed to
 25 excessive downward traction?

1 A That's a different matter. 42
 2 Q I mean, how were you taught to
 3 differentiate between the two, Doctor?
 4 A Just as you said, the gentle, without
 5 jerking, but very smoothly.
 6 Q And how were you taught to do that in
 7 your training process, do you recall?
 8 MR. COMSTOCK: I guess the question
 9 is confusing in the sense that did your professor or
 10 teacher who initially taught you stand next to you, or did
 11 he show you first by doing it himself and then allowing
 12 you to do it? Is this what you're getting at?
 13 MR. BURNETT: Yes.
 14 MR. COMSTOCK: He's trying to
 15 understand the process by which you were taught to do
 16 this.
 17 A Just gentle, but without excessive, as
 18 you mentioned. I don't know how to --
 19 MR. BURNETT: Let's go off the
 20 record for a minute.
 21 (Discussion off the record)
 22 A As I said, the meaning of gentle,
 23 without pressure. First of all, most of time I do holding
 24 the baby's head first, and then giving them little bit
 25 more pressure, steady pressure, without jerking, without

1 excessive. 43
 2 MR. COMSTOCK: Now, you're showing
 3 here one hand up and one hand under?
 4 THE WITNESS: Right.
 5 MR. COMSTOCK: Is that what you're
 6 talking about?
 7 THE WITNESS: Right.
 8 Q Okay. And do you recall one of your
 9 teachers or instructors in medical school or in your
 10 residency or internship trying to show you what they meant
 11 by gentle downward traction? Do you have a memory of
 12 that?
 13 A I don't, but long time ago.
 14 Q Do you remember -- the same question
 15 with regard to the Woods screw maneuver. Do you recall an
 16 instructor in medical school or your residency or your
 17 internship showing you how to perform the Woods screw
 18 maneuver?
 19 A That's right.
 20 Q You recall that?
 21 A That's right, but that's most of time I
 22 learn from the textbook too.
 23 Q Okay. But this was the first time in
 24 your career, so I understand your testimony, you had
 25 effectuated a Woods screw maneuver yourself?

1 A Right. 44
 2 Q That's a yes?
 3 A Yes.
 4 Q Had you ever, as of this time,
 5 participated in a birth in which you watched someone else
 6 perform a Woods screw maneuver?
 7 A No.
 8 Q Now, when this mother appeared on the
 9 day she was delivered, did you do anything to assess the
 10 fetal weight or find out what the likely fetal weight was?
 11 A Before she delivered?
 12 Q Yes.
 13 A I thought about -- I didn't think it's
 14 more than 9-and-a-half pounds.
 15 Q Okay. And why?
 16 MR. COMSTOCK: His question is, on
 17 the day she came in, she was in labor, did you do anything
 18 to assess her weight on that day?
 19 A Actually, talking about baby weight,
 20 that's impossible to figure because she was so heavy.
 21 Q I understand from looking at the chart
 22 she was over 310 pounds?
 23 A Yes.
 24 Q Okay. But on the day the baby was
 25 delivered, did you attempt a Leopold's maneuver?

1 A Yes, but it's very difficult to examine⁴⁵
 2 with this lady.
 3 Q You recall doing a Leopold's maneuver?
 4 A Yes.
 5 Q I note that you didn't chart that?
 6 A Right.
 7 Q Is there a reason why you would not have
 8 charted the Leopold's maneuver?
 9 A That usual practice. Most of the time,
 10 we don't write that down.
 11 Q Just so I understand your testimony, you
 12 recall actually laying your hands on the mother's abdomen
 13 in an attempt to determine how large the baby was?
 14 A Actually, when I examined the baby, baby
 15 was so high when I examined, and I think I wrote down the
 16 progress note. When I examined again one more time, still
 17 the same, and then I examined the abdomen and the baby. I
 18 was holding the baby's head. I was just going to make
 19 sure about how big this baby is or whatever. That's, as
 20 you said, assessment. I hold the baby's head from here to
 21 suboccipital, and then I press downward to the pelvic
 22 cavity to see what's going on, and then I examined again.
 23 And the baby's head is coming down when I examined.
 24 That's at the time I tried to give her some augmentation
 25 inductions.

1 Q I think you used Pitocin; is that right?⁴⁶
 2 A Yes, Pitocin.
 3 Q When did you last see her, your next
 4 preceding visit with her? When did you last see her,
 5 Doctor?
 6 A I didn't get your point.
 7 MR. COMSTOCK: Before she came in on
 8 the day of delivery, when had you last seen her before
 9 that?
 10 MR. BURNETT: Thanks.
 11 A I would say December 22.
 12 Q Okay. And my understanding is, in this
 13 case, sir, that there was an ultrasound performed on
 14 December 16 by Dr. Brennan. Is that your understanding as
 15 well?
 16 A Right.
 17 Q Was the only time you saw her before the
 18 birth on the 22nd, or did you see her after the -- how
 19 many times after the fetal ultrasound was taken did you
 20 see her before she was born?
 21 A I think she had ultrasound three
 22 different times. Just a minute.
 23 Q Yeah, but the ultrasound of the 16th,
 24 December 16 --
 25 A Yeah, 16th.

1 Q How many times did you see her between⁴⁷
 2 the 16th and the 29th? Let's take a look.
 3 A I saw her December 15 in the office.
 4 Q Okay.
 5 A And then I saw her December 22 --
 6 Q Okay.
 7 A -- according to this.
 8 Q And when was the next time you saw her
 9 after December 22?
 10 MR. COMSTOCK: I think the day she
 11 came in.
 12 A That was when she was in the hospital.
 13 MR. COMSTOCK: I don't think there's
 14 any record of his seeing her before that.
 15 MR. BURNETT: Yeah, I think you're
 16 right.
 17 Q So it appears that, so I understand the
 18 sequence, sir, you saw her on the 15th. It appears that
 19 you ordered a fetal ultrasound, which was done on the
 20 16th. Then you saw her again on the 22nd; is that right?
 21 A Right.
 22 Q Then you didn't see her again until the
 23 29th, which is the day of the birth; correct?
 24 A I think so.
 25 Q Doctor, is it likely that in assessing

1 the fetal weight of this child on the 22nd and the 29th,⁴⁸
 2 you would have also relied upon not just your Leopold
 3 maneuver, but upon the results of the sonogram?
 4 A Yes, sonogram.
 5 Q All right. I think you answered my
 6 question, and I was going to ask another one, but I'm not.
 7 By the way, Doctor, in this birth, during the labor
 8 process, did you at all anticipate that a shoulder
 9 dystocia would occur before the head was delivered?
 10 A I didn't get your point.
 11 Q Prior to the appearance of the head --
 12 A Uh-huh.
 13 Q -- did you anticipate a shoulder
 14 dystocia in this case?
 15 A This is an unpredictable with this kind
 16 of shoulder dystocia. As I told you, even less than 4,000
 17 grams, some people may have shoulder dystocia. So in case
 18 you have problem, always we have to prepare.
 19 MR. COMSTOCK: I think the question,
 20 though, Doctor, is did you expect -- he said anticipate.
 21 Means did you expect that this baby would present with
 22 shoulder dystocia before the head arrived? Did you expect
 23 it?
 24 A No, I didn't.
 25 MR. BURNETT: Off the record.

1 (Discussion off the record) 49
 2 Q Doctor, you told me in the beginning of
 3 this deposition that in preparation for it, you reviewed
 4 Williams on Obstetrics; right?
 5 A Right.
 6 Q Do you consider Williams on Obstetrics
 7 authoritative, sir?
 8 A Yes.
 9 Q And so I understand your testimony, the
 10 fundal pressure was applied at least initially after the
 11 shoulder was stuck, but before you realized the shoulder
 12 was stuck?
 13 A Right, before.
 14 Q So the shoulder was impacted at the time
 15 the fundal pressure was applied; correct?
 16 A As I told you, even for normal delivery,
 17 once in a while we may need some fundal pressure. But if
 18 you do suspect a shoulder dystocia, we shouldn't apply
 19 that.
 20 Q But in this case --
 21 A In this case, she applied only once, and
 22 then realized.
 23 Q And when she applied the fundal
 24 pressure, the shoulder was already impacted; right?
 25 A Yes, I realized.

1 MR. COMSTOCK: I'm sorry, I didn't 50
 2 hear your answer. Was the shoulder already impacted when
 3 she pressed down?
 4 A When she gave me fundal pressure once, I
 5 applied to get the baby's head out, but I realized that
 6 baby's head is retracting.
 7 MR. COMSTOCK: But his question is,
 8 was the shoulder already impacted when she applied the
 9 fundal pressure?
 10 A No, I didn't realize that.
 11 Q I'm not talking about whether you
 12 realized it or not. Is it likely that by the time the
 13 fundal pressure was applied, the shoulder was already
 14 impacted?
 15 A No.
 16 Q Why do you say that?
 17 A No, I didn't realize that.
 18 Q Okay.
 19 A And then after -- once I applied my
 20 tractions, that's the time I realized.
 21 Q That's the time you realized the
 22 shoulder was stuck?
 23 A Right.
 24 Q But it certainly is likely by the time,
 25 whether you realized it or not, by the time she applied

1 fundal pressure, the shoulder was already stuck; right? 51
 2 A Probably. I don't know.
 3 Q In assessing fetal weight or trying to
 4 find out how big the baby is before the mother delivers
 5 the baby, have you ever been off by 3 or 4 pounds before
 6 in your estimation?
 7 A Yeah, once in a while I do see.
 8 Q Okay. Now, do you remember having any
 9 conversations with the mother during the delivery process?
 10 Do you remember anything you would have said to her, aside
 11 from stop pushing? I know you told us that.
 12 A When she was -- I'm sorry, I didn't get
 13 you.
 14 Q Sure. Do you remember anything you said
 15 to the mother or anything the mother said back to you
 16 during the labor and delivery process? Do you have any
 17 recollection of that?
 18 A I don't remember that.
 19 Q Okay. Do you have any recollection of
 20 any conversations you had with the mother after the
 21 delivery process, after the baby delivered?
 22 A Oh, after baby delivered?
 23 Q Yeah.
 24 A I talked about baby, but I told her this
 25 one could be brachial plexus, and most of time -- I do

1 remember most of times, I would say about 80, 90 percent 52
 2 people, that it's going to be all right.
 3 Q Doctor, if you would, could we take a
 4 look at these? I had marked this page. Our copy we can't
 5 read, and perhaps I can see the copy you have from the
 6 chart?
 7 MR. COMSTOCK: I'll make you a
 8 better copy if we can get one.
 9 MR. BURNETT: Off the record.
 10 (Discussion off the record)
 11 Q Doctor, there appears to be on a portion
 12 of the prenatal record three supplements, beginning with
 13 the date of 11/13/98. Would you please identify for me,
 14 sir, the entries you made on this page and on what dates,
 15 and please read them for me, if you would?
 16 MR. COMSTOCK: Which is your
 17 handwriting here, can you tell?
 18 THE WITNESS: From here?
 19 MR. COMSTOCK: Yes. Okay. I got a
 20 much better copy here from your office records. Take a
 21 look at that.
 22 THE WITNESS: Somebody wrote down
 23 here --
 24 MR. COMSTOCK: No, I want to know,
 25 Doctor, first, which of these items on here are in your

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1 handwriting?
 2 THE WITNESS: My handwriting.
 3 MR. COMSTOCK: Okay. Beginning on
 4 November 3. This is -- part of this is yours?
 5 THE WITNESS: Right.
 6 A Denies uterine contractions.
 7 MR. COMSTOCK: Okay. Denies uterine
 8 contractions.
 9 A Or cramps. The pelvic examination,
 10 there is no vaginal spotting or bleeding seen. Cervix is
 11 clean and closed and vertex and high. The uterus not
 12 tender. And plan, reassurance given.
 13 Q Okay.
 14 MR. COMSTOCK: Speak up, because she
 15 has to take this down.
 16 THE WITNESS: I've got a sore
 17 throat.
 18 MR. COMSTOCK: Do you? Okay.
 19 Q And your next entry?
 20 A Next entry is November 24. And somebody
 21 wrote down here --
 22 MR. COMSTOCK: Just your writing.
 23 A The plan, to see chlamydia and Group B
 24 strep culture done.
 25 Q Next, please?

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1 A And then December 1, '98, complaining of
 2 vaginal itching on and off for a while.
 3 Q Okay. Let's go to the next page,
 4 which --
 5 MR. COMSTOCK: There's more there.
 6 MR. BURNETT: Oh, there is?
 7 A Wet smear shows some Candida seen.
 8 That's sign of yeast infection, so I gave her some vaginal
 9 cream, seven days.
 10 Q And is that it?
 11 A Yes.
 12 Q What is this?
 13 MR. COMSTOCK: Oh, yeah, December
 14 15.
 15 Q Yeah, and here's what I can't read on
 16 that page, is this portion. I'm wondering --
 17 MR. COMSTOCK: I'll give you a copy.
 18 MR. BURNETT: Would you?
 19 MR. COMSTOCK: I'll give you a copy
 20 of this.
 21 MR. BURNETT: Did he author any of
 22 this?
 23 MR. COMSTOCK: Yes, and he's read
 24 those entries from the 3rd and down through the 24th and
 25 December 1.

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1 Q Let me show you what I've got, Doctor.
 2 I've got what appear to be maybe three different versions
 3 of this page, because I don't have the 12/5 entry on two
 4 of them or even the 12/7 entry.
 5 MR. BURNETT: And we'll make this
 6 sheet we're all talking about as an exhibit here shortly.
 7 MR. COMSTOCK: Let me just go and
 8 make a copy of it now.
 9 MR. BURNETT: Let's go off the
 10 record.
 11 (Discussion off the record)
 12 (Whereupon Plaintiff's Exhibits 3 and 4 were marked.)
 13 MR. BURNETT: We've had a discussion
 14 off the record, and we're marking as Plaintiff's Exhibit 3
 15 what corresponds with what the Doctor just read a few
 16 moments ago.
 17 Q Doctor, I'm going to hand you
 18 Plaintiff's Exhibit 4, which appears to be the same
 19 document, but part of a -- what looks like a carbon copy,
 20 and then we have another entry at the bottom for 12/15/98.
 21 Do you see that, sir?
 22 A Yes.
 23 Q Doctor, would you please read me that
 24 entry for 12/15/98?
 25 A Height of fundus, 39 centimeters. Fetus

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1 appeared to be large gestational age.
 2 Q Okay.
 3 A And the plan, pelvic sonogram, rule out
 4 macrosomia.
 5 Q How do you define macrosomic in your
 6 practice, how many grams?
 7 A In general, macrosomic, some people say
 8 more than 4,000, but in general, the baby's weight less
 9 than -- excuse me, 4,500, still look at that baby, but
 10 still macrosomic infant.
 11 Q I'm sorry, did you say if the baby's
 12 between 4,000 and 4,500, they're still considered
 13 macrosomic?
 14 A In general, more than 4,000, which is we
 15 consider macrosomic.
 16 Q Okay. What led you to suspect that this
 17 child was large for gestational age?
 18 A Because, first of all, this lady really
 19 difficult to evaluate, because she's overweight,
 20 particularly her stomach is really huge. Number two, I
 21 think that day she got 6 pounds gaining weight in a week.
 22 That day, that's why I was thinking about to make sure
 23 about how much baby weigh with the sonogram.
 24 Q Okay. And this would have been on the
 25 15th of December; correct?

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1 A Right, 15th.

2 Q When you say large for gestational age,

3 are you using that interchangeably with macrosomic?

4 A That's a good question. I have to tell

5 you honest. The practice of medicine is not easy.

6 Whenever you do order a sonogram, we have to write down

7 the reason. Ruling out macrosomia, that's the not way.

8 They wouldn't accept that. I have to write down why you

9 get the sonogram, so that's why I wrote down here large

10 gestational age. That's good reason to get sonogram.

11 Q But you suspected the child was

12 macrosomic?

13 A This case, really, I didn't know how

14 much baby weigh.

15 Q What was the significance to you of the

16 fact that she had gained 6 pounds in a week?

17 A It's good question. I don't know.

18 MR. COMSTOCK: Excuse me. You're

19 talking about between the ultrasound and the date of

20 delivery? Is that what you're referring to?

21 MR. BURNETT: I don't think so. I

22 think he said --

23 Q I don't want to misquote you, Doctor. I

24 think you said that you ordered the ultrasound because she

25 had gained 6 pounds in the last week?

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1 MR. COMSTOCK: Okay. I missed that.

2 A I was just going to make sure how far

3 that baby weigh before she's going to have a baby.

4 Q By the way --

5 A Preparing my mind.

6 Q Okay. If the ultrasound had revealed

7 that the child was likely in the 10-, 11-, or 12-pound

8 class, would you have likely counseled this woman on her

9 options?

10 A Ten, 11 pounds, of course, yes.

11 Q You would have counseled her regarding a

12 Cesarean?

13 A Sure, yes.

14 Q In fact, you would have recommended one;

15 right?

16 A If there's some margin of error, still I

17 had to talk about this matter. Even this baby, say by

18 sonogram even 10 pounds, see, I had to talk about with

19 this kind of margin of error. Still some people, they

20 still want to have a vaginal, but still we have to think

21 about.

22 Q What if the sonogram had shown the baby

23 to be 12 pounds?

24 A Oh, of course, has to be done. There's

25 no question about it.

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1 Q Were you involved in this mother's first

2 birth in which she had a Cesarean section?

3 A No.

4 Q Were you aware that she had had a

5 Cesarean section?

6 A Yes.

7 Q And were you aware that the reason was

8 there was cephalopelvic disproportion?

9 A Right.

10 Q Doctor, you told me that the reason you

11 ordered the sonogram was because she had gained 6 pounds

12 in a week as of December 15, 1998. My next question to

13 you is, let's talk about her weight gain between December

14 15 and December 22, when you next saw her. Can you tell

15 me what that was, please, sir?

16 A December 15, 317 she weighed. And then

17 week later we weighed again, 312.

18 Q Let me make sure I understand that.

19 December 15 she weighed how much?

20 A 317.

21 Q And one week later, on the 22nd --

22 A 312, 312 1/2.

23 MR. TREADON: I'm sorry, how much?

24 THE WITNESS: 312, 312 1/2.

25 Q She lost weight?

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1 A Yes, according to this.

2 Q Okay.

3 A Could be different scale.

4 Q Okay. What about on the date of

5 delivery when she presented, is it recorded?

6 A We don't weigh.

7 Q You didn't weigh?

8 A I don't think we do weigh.

9 Q What would your expectation be with

10 regard to a woman who's at -- well, let me back up.

11 What's the -- how far along -- how many weeks is she on

12 the 15th? What's the -- how many weeks is she?

13 A She was -- by sonogram, her due date

14 should be December 25.

15 Q So she would have been 39 weeks on the

16 15th?

17 A Yes, almost 39 weeks.

18 Q What is your experience with regard to

19 weight gain of the mother on a week-to-week basis once

20 they hit 38 or 39 weeks?

21 A Having some gaining weight. Unless

22 there is significant, I wouldn't worry about. Anyhow, I

23 don't know what happened this one. I think could be

24 scale, different scale.

25 Q What would a significant weight gain be

1 to you from the, for instance, the 15th of December to the
2 23rd of December, what would be a significant weight gain
3 to you?

4 MR. COMSTOCK: I just want to object
5 to the term significant. I think it is so vague. If you
6 want to ask him what a normal weight is, what's an
7 excessive weight, but significant, it doesn't convey
8 anything.

9 MR. BURNETT: And the reason I
10 phrased it like that is because he used that term in his
11 answer.

12 MR. COMSTOCK: Then let him define
13 it.

14 Q Why don't you tell me what significant
15 means to you, then, Doctor.

16 A Sometimes a patient, they may have some
17 preeclampsia. Preeclampsia means toxemia. They may have
18 excessive weight, water retention. Those we have to think
19 about.

20 Q Okay. Again, would there be an alarm
21 bell ringing in your head if a woman presented on the 15th
22 of December at a certain weight, and then you saw her
23 weight on the 22nd of December, and the change was such
24 that you were concerned that perhaps it was signifying a
25 macrosomic infant?

1 MR. COMSTOCK: I would object to the
2 question, because I'm not sure it's a question. Want to
3 read it back?

4 MR. BURNETT: It's probably not the
5 best question I ever asked.

6 MR. COMSTOCK: Ask it again.
7 Q In terms of being concerned about a
8 macrosomic infant, Doctor, does the mother's weight gain
9 in the last few weeks or last month of pregnancy give you
10 any indication that that's occurring?

11 A I don't think, with one week, I don't
12 think so. Most of times, people in between 35 or 40 weeks
13 of gestation, they may have some gaining weight, maybe
14 five ounces in a week.

15 Q Okay. You were concerned on the 15th of
16 December that the infant might be macrosomic?

17 A I didn't say macrosomic. That's why I
18 said that insurance company, they keep bugging us, really,
19 honestly, so I have to right down reason why we getting
20 sonogram. And then if I do write down for the how much
21 baby weigh, they know what I'm looking for.

22 Q Okay. Maybe I can clear my
23 understanding of this up with a couple of questions. Did
24 you think the fetus might be large for gestational age on
25 the 15th of December?

1 A As I told you, it was really difficult
2 to evaluate this lady.

3 Q Okay. Then why did you order a
4 sonogram?

5 A To make sure -- she's going to have a
6 baby pretty soon. I was just going to make sure how much
7 baby weigh.

8 Q Okay. And so I understand your
9 testimony, the notation to rule out macrosomia was
10 something the insurance company would accept; correct?

11 A That's correct.

12 Q But you didn't necessarily suspect that
13 there was macrosomia?

14 A No, not I didn't suspect it. I didn't
15 have no idea at all, 'cause she was so heavy.

16 MR. BURNETT: Let's go off the
17 record.

18 (Discussion off the record)

19 MR. COMSTOCK: Doctor, you have told
20 us about your definition of macrosomia. Does the
21 definition of whether a fetus is macrosomatic, does it
22 depend on whether the mother is a diabetic or not?

23 THE WITNESS: Right. That's
24 different story.

25 MR. COMSTOCK: All right. But was

1 Mrs. Heasley a diabetic?

2 THE WITNESS: No.

3 MR. COMSTOCK: All right. For a
4 nondiabetic mother, what is the weight at which it is felt
5 that the baby is macrosomatic?

6 THE WITNESS: It means more than
7 4,500, nondiabetic. Most of time we do talk about
8 possibly C-sections if it's a diabetic, but in general,
9 4,200, 5,000, we do suggest C-section too.

10 MR. COMSTOCK: Okay. That's all.

11 MR. BURNETT: I've got a couple more
12 questions.

13 BY MR. BURNETT:

14 Q Doctor, with regard to Dr. Brennan, had
15 you worked with Dr. Brennan in the past, as far as him
16 reading sonograms for your patients?

17 A Yes.

18 Q Okay. Of course, his conclusion was the
19 estimated fetal weight was 8 pounds, 3 ounces; right?

20 A Right.

21 Q And what was the birth weight in this
22 case, 12 pounds what?

23 A Twelve pounds, 2 ounces.

24 Q Has he ever been off nearly 4 pounds
25 before?

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1 A This is the first case made aware on a
2 couple different pounds, yes, but not this kind of.
3 Q Did you, following the birth of the
4 child, when you realized how large the child was, did you
5 ever have a conversation with Dr. Brennan about his
6 estimate based on his ultrasound?
7 A I think I talked to him just once, what
8 happened.
9 Q Tell me about the conversation.
10 A I don't remember. I don't know.
11 Probably I did.
12 Q Would you have made a note of the
13 conversation somewhere?
14 A Probably I just remind him. I don't
15 know what happened. I don't remember at all.
16 MR. COMSTOCK: His question is, did
17 you make a note of your conversation with him?
18 A No, no.
19 Q And you haven't kept a note or a diary
20 or log or anything that discusses this birth that's
21 anywhere else but what's in the chart; right?
22 A No.
23 Q Okay. Prior to the birth, after the
24 sonogram was performed, did you ever have a discussion
25 with Dr. Brennan about the results?

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1 A No.
2 Q You would have just seen the test
3 result; correct?
4 A Right.
5 Q Is there anything in existence that
6 you're aware of that could refresh your memory about what
7 you and Dr. Brennan discussed after the birth when you
8 spoke with him about this sonogram?
9 A I don't remember.
10 Q Okay. But is there anything that you
11 think would refresh your memory anywhere, any writings,
12 any recordings, anything like that?
13 A No.
14 Q No?
15 A No.
16 Q Doctor, that's all I have. I'm sorry,
17 go ahead.
18 A I don't remember I talk about that
19 matter with him or not.
20 Q Okay.
21 A But I don't remember.
22 MR. BURNETT: That's fair enough.
23 MR. TREADON: I have a couple
24 questions, Doctor. Are you done?
25 MR. BURNETT: Please go ahead.

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1 CROSS EXAMINATION:
2 By Mr. Treadon
3 Q You indicated, Doctor -- first, my
4 name's Tom Treadon. We met just before the beginning of
5 this deposition, and I do represent Dr. Brennan. You were
6 asked if you made an estimate of the fetal weight on the
7 day of admission?
8 A Day of admission?
9 Q Right, when she had the baby, when she
10 was admitted to the hospital to have the baby. Did you
11 make an estimate on the day of admission?
12 A How much baby weigh?
13 Q Yes.
14 A What I thought? I think it was more
15 than 9, 9-and-a-half, I didn't think so.
16 Q And you did that based upon what's
17 called a Leopold maneuver, correct, Leopold's maneuver?
18 A As I told you, it was really difficult.
19 Even Leopold's maneuver is not easy for this particular
20 lady.
21 Q And that's because she was morbidly
22 obese; correct?
23 A Right.
24 Q Aside from the ultrasound that was done
25 by Dr. Brennan and the Leopold's maneuver that you did on

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1 the day she was admitted to the hospital, is there any
2 other way that you doctors can determine the weight or
3 size of a baby?
4 A It was very difficult case, this one.
5 Most of time, in general, we could tell, at least we have
6 some -- I could just -- I could guess, but this case, even
7 I couldn't guess at all. I'm sorry.
8 Q Is there any way that you can tell me
9 the relative accuracy of the ultrasound versus doing the
10 actual palpation, touching of the mother's abdomen?
11 A I'm sorry?
12 Q Which is more accurate?
13 A Even clinically, I can't say anything
14 about this matter. She was so heavy.
15 Q Okay.
16 MR. COMSTOCK: He's asking in
17 general, however, if you don't have a very obese mother,
18 is it easier to forecast or to tell the weight of the baby
19 clinically examining the mother or by ultrasound?
20 MR. TREADON: That's what I'm
21 asking. Thank you, Dave.
22 A That good question. I cannot say yes or
23 no.
24 Q Okay. It's difficult to determine the
25 weight of a baby even if the mother is not morbidly obese,

1 isn't it?

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2 A Yes, sometimes it is.

3 Q And you also recognize, although you

4 relied -- I think you relied on the results of the

5 sonogram, you recognize the shortcomings of an ultrasound?

6 A That's right.

7 Q And there is a margin of error with

8 ultrasound?

9 A Yeah, about 10 to 15 percent, just in
10 general.

11 Q In general. And with a morbidly obese
12 mom, it's even greater?

13 A A little bit more than, yes.

14 MR. TREADON: Thank you. That's all
15 I have.

16 RE-CROSS EXAMINATION:

17 By Mr. Burnett

18 Q You know, I may have asked you this, and

19 if I did, I apologize. Sometimes I repeat myself. In

20 assessing the fetal weight on the day of delivery, you

21 considered both your own assessment, your hands-on

22 touching of the mother, the Leopold maneuver, as well as

23 the sonogram performed by Dr. Brennan; correct?

24 A Right.

25 MR. BURNETT: Okay. I don't have

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1 any more questions.

2 MR. COMSTOCK: Okay. Are you done?

3 MR. TREADON: I'd like the Doctor to

4 read this.

5 MR. COMSTOCK: Yes, I would too.

6 SIGNATURE NOT WAIVED

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Young K. Lee, M.D.
 Woman's Care Center
 627 Eastland Avenue S.E.
 Warren, OH 44484

RE: Ja Mirra heasley, a Minor vs. St. Joseph Health
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 Deposition of Young K. Lee, taken February 23, 2001

Dear Dr. Lee:

Enclosed please find the finished transcript of your
 deposition which was taken on February 23. As requested,
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 Make any corrections you wish to make on Page 73 only.

When you are finished reviewing your deposition, you are
 required to sign the full-sized versions of both Pages 72
 and 73, and your signature to Page 72 must be witnessed by
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The attorneys have agreed you have 30 days in which you
 must read and sign your deposition; otherwise, your
 signature is waived.

After your deposition has been signed and notarized,
 please mail it to me at the above address.

Thank you for your time and consideration in this matter.

Sincerely,

Debra M. Moore

Enclosure

cc: Atty. John Burnett
 Atty. David Comstock
 Atty. Thomas Treadon

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I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of all the testimony introduced and proceedings had in the taking of the testimony in the above-entitled matter, as shown by my stenotype notes taken by me at the time said testimony was taken.

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