

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

GLORIA MASLANKA, as
parent and guardian for
Shane Maslanka,

Plaintiff,

JUDGE NANCY McDONNELL
CASE NO. 552424

-vs-

METROHEALTH MEDICAL CENTER,

Defendant.

- - - - -

Deposition of JUDETTE LOUIS, M.D., taken as
if upon cross-examination before Kelli Rae Page,
a Notary Public within and for the State of Ohio,
at MetroHealth Medical Center, Legal Department,
2500 MetroHealth Drive, Cleveland, Ohio, at 9:26
a.m. on Monday, May 1, 2006, pursuant to notice
and/or stipulations of counsel, on behalf of the
Plaintiff in this cause.

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Maslanka vs. MetroHealth Medical Center
Deposition of Judette Louis, M.D.

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1 APPEARANCES:

2 David A. Kulwicki, Esq.
3 Becker & Mishkind Co., L.P.A.
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5 1660 West 2nd Street, Suite 600
6 Cleveland, Ohio 44113
7 (216) 241-2600,

8 On behalf of the Plaintiff;

9 Christine S. Reid, Esq.
10 James L. Malone, Esq.
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12 1400 Midland Building
13 101 Prospect Avenue, West
14 Cleveland, Ohio 44115
15 (216) 687-1311,

16 On behalf of the Defendant.

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1 A. Yes.

2 Q. And when did your residency start at
3 MetroHealth?

4 A. In the middle of June of 2000.

5 Q. At the time that you cared for Mrs. Maslanka, it
6 looks like it was in July 2001, so you would have
7 been just finishing up your first year of
8 residency, is that right?

9 A. Yes.

10 Q. And prior to your residency did you do an
11 internship here at MetroHealth?

12 A. No.

13 Q. Do you remember, in other words, in your mind's
14 eye do you have a picture of Mrs. Maslanka?

15 A. No.

16 Q. With regard to your recollection of events that
17 took place and involved your care is it limited
18 to what's in the medical chart?

19 A. I'm not sure what you are asking.

20 Q. Sure. Let me thank you for stopping me and tell
21 you that throughout this deposition if I do ask
22 you any questions that you don't understand, go
23 ahead and stop me and tell me that.

24 A. Okay.

25 Q. I want to make sure that you understand what I'm

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

7 CROSS-EXAMINATION OF JUDETTE LOUIS, M.D.

8 BY MR. KULWICKI:

9 Q. Dr. Louis, would you please state your name and
10 we'll have you spell your first and last names
11 for an accurate record here.

12 A. Yes. It is Judette Louis, M.D. First name is
13 J-U-D-E-T-T-E. Louis is L-O-U-I-S.

14 Q. Thank you.

15 And, Doctor, where do you currently practice
16 medicine?

17 A. I am a fellow in maternal fetal medicine at Wayne
18 State University in Detroit, Michigan.

19 Q. And how long -- when did your fellowship start?

20 A. I started in July of 2004.

21 Q. Is that a two-year fellowship?

22 A. Three years.

23 Q. Three years?

24 And prior to that you were a resident here
25 at MetroHealth, is that correct?

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1 asking and that your answers are clear. So that
2 was very good.

3 A. Okay.

4 Q. What I'm trying to understand is do you have any
5 recollection of any conversation, conversations
6 with Mrs. Maslanka or any of the other caregivers
7 or any information about this case that is
8 outside of what's contained in the medical
9 records, or on the other hand, is your
10 recollection limited to what's actually charted
11 in Mrs. Maslanka's medical chart?

12 A. No. I do recall the clinical scenario.

13 Q. Okay. Good. Well, I'm going to ask you about
14 that. Have you had a chance to review the record
15 before today's deposition?

16 A. Yes.

17 Q. And tell me, maybe give me an overview of your
18 care of Mrs. Maslanka. I know it was Dr. Rezaee
19 that delivered her. Can you tell me what your
20 involvement was from the admission to the time of
21 delivery?

22 A. At the time I was the resident on call that
23 night, so I was involved in her care from the
24 time that she came in through triage until I
25 left, which was around 6:00 in the morning.

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<p>1 Q. Okay. And then when she first comes in there is 2 an admit note done. Is that the first note that 3 appears in the labor and delivery record? 4 MS. REID: Go ahead and refer to the 5 record. Do you want to use that set or -- 6 THE WITNESS: Okay. 7 MR. MALONE: You referred to her as 8 Mrs. Maslanka I think three or four times. 9 I don't believe that's true. I think she 10 was married twice but never to anybody named 11 Maslanka. She was married to a fellow named 12 O'Connor and a fellow named Oneida, so 13 objection for the record as to 14 Mrs. Maslanka. 15 MR. KULWICKI: Fine. 16 Q. We are looking at the admit July 31? 17 A. Yes. 18 Q. Do you recognize the signature in the lower 19 right-hand corner? 20 A. I believe it is the emergency resident rotator. 21 Q. Is that an OB resident or ER resident? 22 A. An ER resident. 23 Q. So this patient would have come in to the 24 emergency room and the admit note would have been 25 done by the ER resident, correct?</p>	<p>1 handwriting. 2 Q. Screening visits equal 4 on file. Last menstrual 3 period November 30, 2000. That's your 4 handwriting? 5 A. No. Actually -- I'm sorry. If you look where it 6 says antenatal course, crossed out, OB history, 7 that is my handwriting. 8 Q. Why don't you just read that for us so I 9 understand what you wrote. 10 MS. REID: Slowly. 11 Q. To make it easier for all of us where you have 12 abbreviations tell us what those mean. 13 A. Okay. 1994 LTCS, low transverse cesarean section 14 for fetal distress at 42 weeks. 1996, SVD, 15 spontaneous vaginal delivery, at 34 weeks. 1998, 16 spontaneous vaginal delivery at 35 weeks. 2000, 17 spontaneous vaginal delivery at full term. 18 Q. And then besides the OB history that you have 19 just read for us is there anything else on this 20 page that you wrote? 21 A. No. 22 Q. Do you know where you would have gotten the 23 information for the OB history? 24 A. When we do a history and physical exam we rely on 25 the medical records and also the patient's report</p>
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<p>1 A. No, incorrect. 2 Q. Okay. 3 A. This patient came through on labor and delivery, 4 however we have emergency room residents who 5 rotate through so this was on labor and delivery 6 but he just happened to be an emergency room 7 resident who was part of the OB care team that 8 night. 9 Q. Thank you for clarifying that. 10 Do you know his name? 11 A. Matthew Evanhouse. 12 Q. Do you have any idea where Matthew is at today? 13 A. I believe somewhere on the west coast. Maybe 14 Oregon or Washington state. I'm not sure. 15 Q. Were you involved at all in the care of this 16 patient at admission? 17 A. Yes. 18 Q. And tell me where is your first note, or were you 19 there with Dr. Evanhouse? 20 A. Yes. 21 Q. As I look at the admit note I don't see any notes 22 that would appear to be from you. Am I wrong? 23 Are there things you wrote down in the admit 24 note? 25 A. That is correct. Her OB history, that's my</p>	<p>1 of facts. 2 Q. Okay. And in this case do you know if you had 3 medical records available from the '94, '96, '98 4 and 2000 deliveries? 5 A. No. I would not have had records, but if it's on 6 the A.C.O.G. antenatal care sheet then I would 7 use that, and anything that wasn't clear I would 8 ask the patient. 9 Q. And let me understand that a little bit better. 10 I assume you know sitting here today that Gloria 11 had her prenatal care at, I believe, the 12 McCafferty Clinic, is that correct? 13 A. Yes. 14 Q. When she showed up for L and D I understand it's 15 the usual policy or procedure for the folks in 16 L and D to obtain the A.C.O.G. flow sheet from 17 the McCafferty Clinic, is that correct? 18 A. Yes. 19 Q. Besides the A.C.O.G. flow sheet is there anything 20 else that the folks in L and D would request from 21 the Clinic? 22 A. No. 23 Q. And how did the A.C.O.G. flow sheet physically 24 get from the Clinic to the L and D unit? 25 A. I'm not sure how each clinic individually does</p>

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<p>1 it. I would imagine either mode of faxing or</p> <p>2 mailing, but I'm not privy to which centers do it</p> <p>3 which way.</p> <p>4 Q. Okay. Suffice it to say, in preparing this OB</p> <p>5 history that you have just reviewed for us, is it</p> <p>6 safe for me to understand that the only thing</p> <p>7 that you would have at the time you prepared this</p> <p>8 would be the A.C.O.G. flow sheet from the</p> <p>9 McCafferty Clinic and Mrs. Maslanka?</p> <p>10 A. Correct.</p> <p>11 Q. Now the next page that I have looks like a</p> <p>12 continuation of the admit note. Is there</p> <p>13 anything on that page that you wrote?</p> <p>14 A. No.</p> <p>15 Q. Okay. Now you continued to follow the labor, is</p> <p>16 that correct?</p> <p>17 A. Yes.</p> <p>18 Q. What happened to Dr. Evanhouse? Did he go away</p> <p>19 or did he continue to follow the patient as</p> <p>20 well?</p> <p>21 A. He was still there, but from the notes it would</p> <p>22 appear that night I was the one who was managing</p> <p>23 the patient.</p> <p>24 Q. Let me just try and understand this a little bit</p> <p>25 better. This is the first time I heard of this</p>	<p>1 would just interpret your abbreviations as you go</p> <p>2 forward.</p> <p>3 A. Okay. OB progress note. S, subjective, patient</p> <p>4 is without complaints. Under objective, pulse of</p> <p>5 83, blood pressure 98 over 63. Fetal heart rate</p> <p>6 150's with accels to 160. No decels. Moderate</p> <p>7 long-term variability. TOCO, Q1 to 3. Vaginal</p> <p>8 exam, one long and high. Fetal scalp electrode</p> <p>9 and IUPC placed.</p> <p>10 Assessment and plan, 27-year-old gravida 7,</p> <p>11 para 2224, at 36 and 3/7 weeks with spontaneous</p> <p>12 rupture of membranes times two hours. Continue</p> <p>13 Pitocin augmentation. No signs or symptoms of</p> <p>14 infection. Continue to monitor. Fetal status</p> <p>15 reassuring. GBS negative. And my signature.</p> <p>16 Q. The estimate of fetal age is based upon last</p> <p>17 menstrual period, is that correct?</p> <p>18 A. That is correct.</p> <p>19 Q. And, Doctor, I don't see anywhere in this note</p> <p>20 where you mention the ultrasound that was done on</p> <p>21 July 12th by Dr. Ashmead.</p> <p>22 A. That would be in the history and physical exam.</p> <p>23 Q. Let me go back to that. Let me just make sure.</p> <p>24 As I look at this note I don't see any reference</p> <p>25 to the estimated gestational age based on that</p>
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<p>1 kind of situation where there is an ER physician</p> <p>2 that's rotating through. Would Dr. Evanhouse be</p> <p>3 considered a senior attending to you in this</p> <p>4 scenario?</p> <p>5 A. No, not at all. He's my junior.</p> <p>6 MS. REID: He was a resident she said.</p> <p>7 Q. Oh, well, you were a resident as well, right?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know who your senior attending resident or</p> <p>10 residents were during the course of this labor?</p> <p>11 A. No.</p> <p>12 Q. Maybe we'll come across that information as we go</p> <p>13 forward. Just tell me when we do.</p> <p>14 The first progress note that I see is dated</p> <p>15 July 31, 2001 at 11:20, do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And I'm sorry, 10:20?</p> <p>18 A. 10:20, yes.</p> <p>19 Q. Is that your note?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And that would be your signature down</p> <p>22 about 15 lines down?</p> <p>23 A. Yes.</p> <p>24 Q. And, Doctor, if you would read for us what you</p> <p>25 wrote at 10:20 p.m. on July 31, and again, if you</p>	<p>1 ultrasound, is that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And let me just ask you on a going forward basis</p> <p>4 from this note until the time of delivery at any</p> <p>5 time did you take into consideration the fact</p> <p>6 that there was this ultrasound out there?</p> <p>7 A. During the triage visit I did.</p> <p>8 Q. Okay. Do you know whether anyone, including</p> <p>9 yourself, obtained a copy of that ultrasound at</p> <p>10 any time during the time from which Miss Maslanka</p> <p>11 arrived at L and D until her delivery?</p> <p>12 A. No, we did not have access to it.</p> <p>13 Q. Did you try to get it or did someone try to get</p> <p>14 it to your knowledge?</p> <p>15 A. Yes, we did try to get it. We tried to get it</p> <p>16 from the standpoint of going through her records</p> <p>17 to see if we had that report.</p> <p>18 Q. Who would have tried to get that ultrasound?</p> <p>19 A. I did.</p> <p>20 Q. Okay. And tell me what -- is this written</p> <p>21 anywhere, first of all, your efforts to get that</p> <p>22 ultrasound?</p> <p>23 A. No.</p> <p>24 Q. Tell me what you recall of your efforts to obtain</p> <p>25 the ultrasound, where you looked, who you called,</p>

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1 where you tried to go to get it?
2 A. To backtrack, my first knowledge that the
3 ultrasound existed came from the patient. And if
4 you go back to the history and physical portion
5 you will see there is a date as to when the
6 ultrasound was done, that came from the patient.
7 We would have no way of knowing when it was
8 done. At that time we then went back into her
9 chart to look for the record of that ultrasound
10 and it was not there. We did not have computer
11 access.
12 Q. Go ahead.
13 A. And it was the middle of the night therefore we
14 would not be able to call McCafferty Clinic and
15 obtain records. To obtain the information we did
16 ask the patient about the ultrasound.
17 Q. And what did she say?
18 A. She stated to me on the original ultrasound the
19 fetus was noted to be breach and there was a
20 problem with the kidney. I specifically asked
21 her did they change her due date to which she
22 said no. And I asked her what discussion took
23 place at McCafferty with Dr. Sciarrotta because
24 she informed us she had a recent visit with him
25 and she said he did discuss the ultrasound with

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1 her.
2 Q. Anything else that you recall?
3 A. Not regarding the ultrasound.
4 Q. You gave me a lot of information here. Let's go
5 through some of that. With regard to the
6 McCafferty Clinic did it maintain, back in 2001,
7 set hours, like from 8:00 in the morning until
8 5:00 or something like that?
9 A. I'm not sure.
10 Q. Did you actually call the McCafferty Clinic and
11 find out they were closed or did you make the
12 assumption they were closed because it was at
13 night?
14 A. I made the assumption based on previous
15 experience. It is an outpatient, it's not a
16 hospital.
17 Q. Right. And your previous experience you had
18 called for records after hours and no one
19 answered, is that correct?
20 A. That is correct.
21 Q. Okay. Now you also said, if I say this wrong
22 please correct me, I don't want to misquote you,
23 that you checked in her chart and it was not in
24 her chart, is that correct?
25 A. That is correct.

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1 Q. Tell me what chart you are talking about.
2 A. Every patient that has A.C.O.G. records sent over
3 has a manila envelope that includes the copies of
4 the A.C.O.G., the A.C.O.G. work sheets and also
5 any ultrasound or any other information that we
6 may have received from their provider.
7 Q. Tell me where does this manila envelope come
8 from?
9 A. It's filed in the labor and delivery conference
10 area.
11 Q. Let me try to understand that a little bit
12 better. So there is this chart at the McCafferty
13 Clinic, correct?
14 A. Correct.
15 Q. And then there is this chart in the labor and
16 delivery conference center?
17 A. Conference area.
18 Q. Conference area?
19 A. Yes.
20 Q. Is that chart in the labor and delivery
21 conference area, is that maintained by the
22 L and D staff or is that maintained by the Clinic
23 staff?
24 A. I'm not sure.
25 MR. MALONE: When you say clinic do you

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1 mean the McCafferty Clinic staff?
2 MR. KULWICKI: Yes. Yes.
3 Q. Did you understand that?
4 A. No.
5 Q. Let me clarify that.
6 A. Okay.
7 Q. Here's what I'm trying to understand, is it just
8 -- it's unclear to me why there would be this
9 chart over at McCafferty Clinic and then a chart
10 over at the L and D conference area.
11 MS. REID: Is it actually a chart or is
12 it a manila envelope with some --
13 A. It's a manila envelope with information that has
14 been provided to us by the providers of prenatal
15 care. So it would be a copy of whatever A.C.O.G.
16 work sheet they send over which has relevant
17 information as a form of communication to those
18 who will be delivering the woman.
19 Q. And let me talk to you a little bit more about
20 that. Is this the same thing as what we talked
21 about earlier as the thing that McCafferty Clinic
22 folks send over at the time the patient shows up
23 in L and D either by facsimile or some other
24 method?
25 A. Correct.

<p style="text-align: right;">Page 18</p> <p>1 Q. I understand now. All right.</p> <p>2 And did you tell us that normally when a</p> <p>3 patient has undergone an ultrasound prenatally</p> <p>4 that that is made part of that manila envelope?</p> <p>5 A. At the time back in 2001, no.</p> <p>6 Q. So when you said earlier that you checked the --</p> <p>7 checked her chart you were referring to this</p> <p>8 manila envelope, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you were looking specifically for the</p> <p>11 ultrasound?</p> <p>12 A. I was looking specifically for any information</p> <p>13 regarding the ultrasound which would be on the</p> <p>14 A.C.O.G. sheets. Once the provider receives the</p> <p>15 ultrasound and they have discussed it with the</p> <p>16 patient they make reference to it or they update</p> <p>17 the information on the A.C.O.G. sheets.</p> <p>18 Q. Do you know Dr. Ashmead?</p> <p>19 A. Yes.</p> <p>20 Q. My understanding is that he does the ultrasound</p> <p>21 in an area that's not part of the OB clinic and</p> <p>22 is not part of the L and D unit, is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. And what's that area called where he does</p> <p>25 obstetrical ultrasounds at?</p>	<p style="text-align: right;">Page 20</p> <p>1 she said yes. Based on that we had a calculated</p> <p>2 due date. I asked her if that had been changed</p> <p>3 based on the ultrasound, because she had</p> <p>4 recollection of her ultrasound and the discussion</p> <p>5 that occurred, and she said it had not been</p> <p>6 changed.</p> <p>7 Along with that I did examine what A.C.O.G.</p> <p>8 prenatal records we did have and her fundal</p> <p>9 height at that point had been consistent with</p> <p>10 around what we would expect in terms of</p> <p>11 gestational age. At that point I did not think</p> <p>12 there was a problem. If I had had any</p> <p>13 inclination it was inaccurate and the patient was</p> <p>14 -- did not remember then I certainly would have</p> <p>15 taken further steps.</p> <p>16 Q. And let me ask you about that. Let's say</p> <p>17 Dr. Sciarrotta had written on the A.C.O.G. flow</p> <p>18 sheet an ultrasound had been done and the</p> <p>19 assigned date had been changed from 36 weeks or</p> <p>20 so to closer to 24 or 26 weeks, what would you</p> <p>21 have done differently in managing this particular</p> <p>22 patient's labor?</p> <p>23 MS. REID: Objection. If that</p> <p>24 information was available to her do you</p> <p>25 mean?</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Fetal Diagnostic Center.</p> <p>2 Q. Is that open 24 hours?</p> <p>3 A. No.</p> <p>4 Q. What were its hours in 2001?</p> <p>5 A. I'm not certain what time they open, but they</p> <p>6 usually closed at 5:00 p.m.</p> <p>7 Q. In the past before this particular event had you</p> <p>8 ever had to go to hospital administration and ask</p> <p>9 them to open the Fetal Diagnostic Center so you</p> <p>10 could get records of an ultrasound?</p> <p>11 A. No.</p> <p>12 Q. After this point in July 31, 2001 had you ever</p> <p>13 done that?</p> <p>14 MS. REID: Objection.</p> <p>15 A. No.</p> <p>16 Q. Tell me why did you do that in this case? In</p> <p>17 other words, you knew there was an ultrasound.</p> <p>18 The patient made you aware of the ultrasound.</p> <p>19 You wanted to get a copy of the ultrasound</p> <p>20 report. Why would it be that you wouldn't try to</p> <p>21 get someone to get a copy of that record from the</p> <p>22 Fetal Diagnostic Center?</p> <p>23 A. At the time when I evaluated the patient I asked</p> <p>24 her when was her last menstrual period and</p> <p>25 whether it was regular and was she certain, and</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. KULWICKI: Yes.</p> <p>2 A. I would not have augmented her labor that evening</p> <p>3 and I would have approached it with expectant</p> <p>4 management.</p> <p>5 Q. Why is it that you would not have augmented?</p> <p>6 A. I would want to have time to administer</p> <p>7 steroids.</p> <p>8 Q. Anything else?</p> <p>9 A. And also to see if we can wait and see how much</p> <p>10 longer we can have in terms of prolonging the</p> <p>11 gestation.</p> <p>12 Q. In addition to all that would it have been the</p> <p>13 case with premature rupture of membranes, again</p> <p>14 if your understanding was that the assigned</p> <p>15 gestational age was as reported in the ultrasound</p> <p>16 rather than based on last menstrual period, would</p> <p>17 it have been the case that you would have, in all</p> <p>18 likelihood, consulted with an attending? In</p> <p>19 other words, you would have gone to an attending</p> <p>20 and advised them of this particular situation?</p> <p>21 A. Correct.</p> <p>22 Q. So thinking through this and going back and</p> <p>23 putting on your hat and shoes from July 31, 2001</p> <p>24 if you had known about the assigned data signed</p> <p>25 by Dr. Ashmead, as I understand it, you would</p>

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<p>1 have done two things -- well, three things. You 2 wouldn't have augmented, you would have gotten 3 steroids started and you would have advised the 4 attending physician, is that true? 5 A. Correct. 6 Q. Anything else that you would have done? 7 A. No. 8 Q. Now with respect to the baby's or the mom's 9 condition from this point until the point of 10 delivery, I see a lot of notes from you here -- 11 well, not that many. Why don't we go through 12 them. 13 The next one I see here, and I don't think 14 this is yours, it's July 31 at 11:30. Is that 15 your note? 16 A. No. 17 Q. Do you know whose that is? 18 A. No. 19 Q. I don't even really see a signature. Maybe it's 20 on the next page. Yeah. On the next page in the 21 -- about midway down on the right-hand side, do 22 you see that signature there? 23 MS. REID: That's her signature. 24 MR. KULWICKI: Okay. 25 A. That's mine.</p>	<p>1 currently. 2 Q. In retrospect, looking back at these events of 3 July 31 at 11:30 where fetal heart rate becomes 4 nonreassuring and then recovers would you agree 5 that was due to the patient -- the baby being 6 premature and stressed in the face of 7 augmentation, in all likelihood? 8 A. Not at all. 9 Q. Tell me what you think was causing the fetal 10 heart rate to decelerate here. 11 A. Actually when you have someone who has no fluid 12 around the fetus it's a common occurrence during 13 contractions that the umbilical cord can get 14 compressed. The fact that it recovered 15 spontaneously without any intervention is 16 actually reassuring. 17 Q. Okay. Did you or anyone else while you were 18 there perform an ultrasound between the time of 19 admission to L and D and the time of delivery? 20 A. No. The ultrasound I did was in triage. 21 Q. Let me ask you about that. I'm sorry, I knew 22 there was one and I wasn't sure where. 23 MS. REID: I was looking for that, 24 too. 25 MR. KULWICKI: Thank you for</p>
Page 23	Page 25
<p>1 MS. REID: That note ends with a pager 2 number at the end. 3 MR. KULWICKI: Thank you. Thank you. 4 Got it. 5 Q. The next note would be at the same date and time 6 and that one is signed by you? 7 A. Correct. 8 Q. When it says OB -- 9 A. Progress note. 10 Q. -- PN? 11 A. Yes. 12 Q. Doctor, kindly read your note and interpret your 13 abbreviations as you go forward. 14 A. Okay. Called to evaluate. Fetal heart tones in 15 the 50's. No recovery times two minutes. At 16 that point the patient was transferred to the 17 operating room Number 4 and anesthesia, Dr. Stepp 18 and Ehrenberg notified. On arrival to operating 19 room 4 fetal heart rate recovered to the 140's 20 with accelerations to 150's. No deceleration. 21 Moderate long-term variability. The TOCO appears 22 Q1 minute contractions. Vaginal exam, her cervix 23 was 2 long and high. Will allow recovery in 24 operating room 4 if further decelerations. 25 Considering scalp PH. Fetal status reassuring</p>	<p>1 clarifying. 2 - - - - - 3 (Thereupon, a discussion was had off 4 the record.) 5 - - - - - 6 MR. KULWICKI: Where is the note of the 7 ultrasound that was done? 8 MS. REID: It's in the nurse's notes or 9 labor flow sheets. 10 MR. KULWICKI: Thank you. 11 Q. So we are looking at a note in the nurse's notes 12 at 10:03, is that correct? 13 A. Correct. 14 Q. And do you know which nurse that is that charted 15 that? 16 A. No, I do not. 17 Q. Besides this note of the ultrasound that you 18 performed are there any other notes or reports 19 with respect to this particular ultrasound? 20 A. I believe no. 21 Q. All right. Read this as best you can. If there 22 is something that you don't understand or can't 23 interpret for us, go ahead and tell us that. 24 A. Ultrasound of baby positioning is vertex by 25 Dr. Louis. Patient states fetus was breach about</p>

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<p>1 a month ago in Clinic by ultrasound.</p> <p>2 Q. Does this comport with your recollection of that</p> <p>3 ultrasound?</p> <p>4 A. Absolutely.</p> <p>5 Q. Was there anything else about this ultrasound</p> <p>6 that you remember?</p> <p>7 A. No. It was a very limited ultrasound. I had</p> <p>8 already examined the patient vaginally and felt</p> <p>9 sutures and felt she was vertex. However,</p> <p>10 because as I was walking out of the room she</p> <p>11 reemphasized she had been breach on the previous</p> <p>12 ultrasound and I went back and did a limited</p> <p>13 ultrasound looking at the lower abdomen to see if</p> <p>14 I saw a fetal head.</p> <p>15 Q. If I understand you correctly then, the purpose</p> <p>16 of this ultrasound was really to determine the</p> <p>17 baby's position as opposed to trying to determine</p> <p>18 a gestational age, true?</p> <p>19 A. Correct.</p> <p>20 Q. Did you try to determine the baby's gestational</p> <p>21 age with this particular ultrasound?</p> <p>22 A. No.</p> <p>23 Q. Now let's go back to the progress notes, if we</p> <p>24 could, and continue with the exercises that we</p> <p>25 were engaged with, that is having you interpret</p>	<p>1 a.m., is that it?</p> <p>2 A. Yes.</p> <p>3 Q. Please read that for us.</p> <p>4 A. OB progress note. Subjective, patient complained</p> <p>5 of increased discomfort. Objective, temperature</p> <p>6 is 37.4, pulse 90. Respiratory rate 18, blood</p> <p>7 pressure 115 over 65. Fetal heart rate 130's</p> <p>8 with accelerations to 150's. Positive severe</p> <p>9 variable decels. Moderate long-term</p> <p>10 variability. Tocometer Q3 minutes. Vaginal exam</p> <p>11 2 to 3 centimeters, long and high.</p> <p>12 Assessment and plan, 27-year-old gravida 7,</p> <p>13 para 2224, at 36 and 4/7 weeks with spontaneous</p> <p>14 rupture of membranes times six hours. Continue</p> <p>15 to monitor. Continue Pitocin. Fetal status</p> <p>16 reassuring. GBS negative.</p> <p>17 Q. Let's go to your next note. Is that yours at</p> <p>18 5:10 a.m.?</p> <p>19 A. Correct.</p> <p>20 Q. Is that your signature? Mine is kind of cut off</p> <p>21 here.</p> <p>22 A. Yes.</p> <p>23 Q. And then to the left of that on the same line</p> <p>24 there is something else cut off. What does that</p> <p>25 read?</p>
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<p>1 the notes that you yourself recorded.</p> <p>2 I think the last one we looked at was</p> <p>3 11:30. The next one is 1:40 a.m. on August 1.</p> <p>4 A. Correct.</p> <p>5 Q. Again, let's do the same thing. Please read for</p> <p>6 us --</p> <p>7 A. OB progress note. Subjective, patient is without</p> <p>8 complaints. Objective, blood pressure 107 over</p> <p>9 50. Fetal heart rate 150's with accelerations to</p> <p>10 160's. Mild variable decels, moderate long-term</p> <p>11 variable. Tocometer Q4 to 7 minutes. Vaginal,</p> <p>12 no exam, deferred.</p> <p>13 Assessment plan, 27-year-old gravida 7, para</p> <p>14 2224, at 36 and 4/7 weeks with spontaneous</p> <p>15 rupture of membranes times four hours. Continue</p> <p>16 to monitor. Restart Pitocin. Fetal status</p> <p>17 reassuring, and the GBS negative.</p> <p>18 Q. What's the significance of GBS negative?</p> <p>19 A. We routinely document. If she was GBS positive</p> <p>20 we would have administered penicillin.</p> <p>21 Q. At that point in time, August 1 at 1:40 a.m. were</p> <p>22 there any other signs or symptoms of infection in</p> <p>23 either the mom or the fetus?</p> <p>24 A. At this point, no.</p> <p>25 Q. Let's go to your next note, August 1 at 3:00</p>	<p>1 A. I can't -- I can't read it.</p> <p>2 Q. Okay. But the rest of the note appears to be</p> <p>3 intact?</p> <p>4 A. Correct.</p> <p>5 Q. It does say continued, and as I flip my page I</p> <p>6 don't see the continuation, instead I see</p> <p>7 Dr. Rezaee.</p> <p>8 MR. MALONE: Rezaee.</p> <p>9 Q. Rezaee -- Rezaee.</p> <p>10 Do you know where the continuation of your</p> <p>11 note is from August 1 or whether, in fact, it was</p> <p>12 continued?</p> <p>13 A. No, I do not know.</p> <p>14 Q. Okay.</p> <p>15 A. Although reading from this note I can't see what</p> <p>16 that last line was, but I don't see anything else</p> <p>17 that I would have added in my assessment and</p> <p>18 plan.</p> <p>19 Q. All right. If you would, Doctor, read for us</p> <p>20 what you can of the note on August 1 at 5:10 a.m.</p> <p>21 A. Subjective, patient is without complaints.</p> <p>22 Objective, pulse 78, blood pressure 98 over 59.</p> <p>23 Fetal heart rate 130's with accelerations to</p> <p>24 140's. Positive early decelerations and severe</p> <p>25 variable decels. Moderate long-term</p>

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<p>1 variability. Tocometer 180 montevideo [phonetic] 2 units. Vaginal exam 3 to 4, 50 percent minus 3. 3 Assessment and plan, 27 gravida 7, para 4 2224, at 36 and 4/7 weeks with spontaneous 5 ruptures of membranes times eight hours. 6 Continue Pitocin, augmentation, not yet 7 adequate. Fetal status reassuring given good 8 variability. 9 Q. It says continued, right? 10 A. Correct. It does. 11 Q. Then the next note some time between 5:10 and 12 6:40 a.m. the baby was delivered, correct? 13 A. Correct. 14 Q. Were you present at delivery? 15 A. No. 16 Q. Do you know why you weren't available at the time 17 of delivery? 18 A. My shift ended at 6 a.m. 19 Q. Did you learn later that the baby was actually 20 significantly younger than by last menstrual 21 period? 22 A. Yes. 23 Q. How did you learn that information? 24 A. After delivery I was paged and given that 25 information.</p>	<p>1 A. No. That would be inappropriate. 2 Q. Inappropriate? 3 A. Yes. 4 Q. Why would that be inappropriate? 5 A. If it wasn't entered at the time adding more 6 information later we felt would be 7 inappropriate. 8 Q. Well, you have done late entries or addendum 9 notes, haven't you? 10 A. Yes, but usually in the same night. I don't come 11 back the next day and do a late entry. 12 Q. And certainly there is no rule or law that says 13 that you can't come back either a day later or 14 some other time and write down late entry, the 15 time that you are putting the entry in and then 16 putting the information down? 17 MS. REID: I object to law. I don't 18 know that she knows the law. 19 A. I would -- you would have had a field day with 20 it. 21 Q. I'm testing your understanding at the time. Did 22 you have an understanding that there was anything 23 that prevented you from writing an addendum note? 24 A. No. 25 Q. Did you relate your conversation with</p>
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<p>1 Q. Who was it that gave you that information? 2 A. Dr. Goodwin, now Merleno [phonetic]. 3 Q. Amy Goodwin? 4 A. Yes. 5 Q. I recognize that name. It may be from another 6 case. 7 Do you know where Dr. Goodwin is today? 8 A. Yes, she is here at MetroHealth. 9 Q. What did Dr. Goodwin tell you, as best you 10 recall, after you answered her page? 11 A. She told me that the neonate at the time of 12 delivery looked either very growth restricted or 13 premature. 14 Q. Anything else? 15 A. No. 16 Q. Did you prepare any notes after the August 1 at 17 5:10 a.m. note that we have here in the progress 18 notes? 19 A. No. 20 Q. Did you do any kind of addendum or other note to 21 signify the conversation that you had with 22 Ms. Maslanka wherein as you tell us here today 23 she related to you that the dates by ultrasound 24 were consistent with the dates by last menstrual 25 period?</p>	<p>1 Miss Maslanka that we've been talking about to 2 any of your superiors? 3 A. I do not recall. 4 Q. As part of the training process did you have a 5 conversation with any attending or any of your 6 superiors about this particular labor and 7 delivery? 8 MS. REID: I'm going to object if it 9 has anything to do with quality assurance or 10 an M and M conference or anything along 11 those lines. 12 You can answer. 13 A. Yes. 14 Q. Tell me in the context where this meeting took 15 place or where this conversation took place. 16 A. On labor and delivery. 17 Q. Who were the superiors that you spoke to? 18 MS. REID: Let me -- let me ask her 19 what the context is off the record, Dave, 20 just to make sure it's not quality 21 assurance. If it's not she can answer. If 22 it is we'll go forward. Let's take a 23 break. 24 MR. KULWICKI: Okay. 25 - - - -</p>

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<p>1 (Thereupon, a discussion was had off 2 the record.) 3 - - - - - 4 MS. REID: I will allow her to answer 5 who she spoke to, but the person she spoke 6 with was Dr. LeRoy Dierker who was director 7 of labor and delivery at the time and it was 8 a conversation for the purposes of quality 9 assurance, so any of the contents of that 10 information at this point I'm not going to 11 have her discuss. 12 MR. KULWICKI: Just so the record is 13 clear so I'm not wasting my wind, are you 14 instructing the witness not to answer under 15 the claim of privilege with respect to all 16 conversations between Dr. Louis and 17 Dr. Dierker with respect to this labor and 18 delivery? 19 MS. REID: Yes, I am. 20 MR. KULWICKI: All right. 21 Q. Doctor, as of your last note, 5:10 a.m. on the 22 morning of August 1, were there any signs or 23 symptoms of infection in either the mom or the 24 baby based on your observations? 25 A. Not at that time. Earlier in the labor course</p>	<p>1 deemed to be error? 2 A. No. 3 Q. Do you know who wrote, "hold, error," on there? 4 A. No. 5 Q. At any time during the labor up until the time of 6 delivery were antibiotics started? 7 A. I don't recall. 8 Q. Now with respect to the things we talked about, 9 had you known that this baby was closer to 24, 26 10 weeks as opposed to 36 weeks we talked about the 11 things that you would have done differently. 12 Would you also have started or would IV 13 antibiotics have been indicated with this 14 particular baby while cortical steroids were 15 being attempted? 16 MS. REID: Objection for the record 17 based on the retrospect and the 18 hypothetical, but you can answer. 19 A. Yes. 20 Q. And why would that be? 21 A. I'm not sure what you are asking. 22 Q. Why would it be that antibiotics would have been 23 indicated if you had known the assigned date as 24 set forth in Dr. Ashmead's July 12th, ultrasound? 25 A. Because we would have administered ampicillin and</p>
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<p>1 there was a fetal heart rate of 170's, which is 2 fetal tachycardia, and so at that point I had 3 been notified in the nurse's notes about the 4 170's and it was decided to just continue the 5 course. 6 Q. Now with regard to the orders, let's go to that, 7 if we could. Well, let me ask you about that 8 before we go on. With regard to this bout of 9 fetal tachycardia, did that come and go? 10 A. I don't recall the duration of it, but it did 11 resolve. 12 Q. Okay. And obviously there are lots of other 13 things that can cause fetal tachycardia other 14 than infection, true? 15 A. Correct. 16 Q. Looking at the orders, if you would, there is an 17 order at 2116 on July 31 to start penicillin. It 18 looks like it's Dr. Evanhouse's signature. I may 19 be wrong. And then there is a note to hold and 20 an error note, do you see that? 21 A. Yes. 22 Q. Is that Dr. Evanhouse? 23 A. I believe so. I'm not certain. 24 Q. Do you know the circumstances underlying him 25 putting this order on and then it being held and</p>	<p>1 erythromycin to try to lengthen the time between 2 rupture and delivery. 3 Q. When there is a premature rupture of membranes 4 the mom and baby are at risk for infection? 5 A. Or may already be infected. 6 Q. So you treat with the hope of prolonging the 7 period in which you can administer cortical 8 steroids, true? 9 A. Correct. 10 Q. With respect to managing a patient, a pregnant 11 patient who's had premature rupture of membranes 12 are there also ways with respect to positioning 13 the patient and other interventions that can be 14 done to try to maintain the fluid barrier around 15 the baby? 16 A. None that are effective. 17 Q. Okay. The term amniotomies I came across, 18 what does that mean? Is that used in this 19 context? 20 A. An amniotomy is basically a procedure where 21 you insert an intrauterine pressure catheter and 22 administered fluid back into the uterus. 23 Q. Is that used in the context of premature rupture 24 of membranes? 25 A. No.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. What is that used for?</p> <p>2 A. There are two described indications, one of which</p> <p>3 is to dilute meconium or if you have severe</p> <p>4 variable decelerations which are due to cord</p> <p>5 compression amnioinfusion can decrease that.</p> <p>6 Q. So you sort of float the baby off the cord?</p> <p>7 A. Or float the cord off the baby.</p> <p>8 Q. Is that the plan?</p> <p>9 A. Correct.</p> <p>10 Q. With respect to the positioning it was my</p> <p>11 understanding, maybe I'm dead wrong on this, and</p> <p>12 this is actually from a personal experience, that</p> <p>13 they can position the mother in a way to get the</p> <p>14 baby towards a pocket of fluid or towards where</p> <p>15 the fluid is at? Is that anything that you all</p> <p>16 did --</p> <p>17 A. No.</p> <p>18 Q. -- in 2001?</p> <p>19 A. No.</p> <p>20 Q. With respect to the orders are any of these notes</p> <p>21 your handwriting?</p> <p>22 A. The amnioinfusion at 2:10, I believe, or 2110. I</p> <p>23 think it's 2:10. Other than that, no.</p> <p>24 Q. Besides the triage notes, the progress notes and</p> <p>25 the orders that we have gone through is there</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. REID: Assuming those two facts.</p> <p>2 A. Actually taking them one by one, the standard of</p> <p>3 care would be to notify the attending that at</p> <p>4 that time an administration of steroids would be</p> <p>5 appropriate, but at the time not necessarily an</p> <p>6 administration of antibiotics.</p> <p>7 Q. But holding off the augmentation would be</p> <p>8 indicated by the standard of care under that</p> <p>9 scenario?</p> <p>10 A. Not necessarily.</p> <p>11 Q. When would augmentation be appropriate?</p> <p>12 A. If there was underlying infection.</p> <p>13 Q. Okay. Which we don't have here, correct?</p> <p>14 A. I disagree. We don't know.</p> <p>15 Q. If there is a question of infection would that be</p> <p>16 something that should be charted?</p> <p>17 A. Yes.</p> <p>18 Q. Is it something that should be brought to the</p> <p>19 attention of an attending physician?</p> <p>20 A. Not necessarily.</p> <p>21 Q. Is it something that requires a consult from</p> <p>22 another specialty of medicine, whether infectious</p> <p>23 disease or neonatology?</p> <p>24 A. No. In the case of chorioamnionitis the case is</p> <p>25 to deliver.</p>
<p style="text-align: right;">Page 39</p> <p>1 anything else in this chart that you yourself</p> <p>2 authored?</p> <p>3 A. No.</p> <p>4 Q. With regard to the various interventions we</p> <p>5 talked about that would be indicated if the</p> <p>6 child's true gestational age or assigned age by</p> <p>7 Dr. Ashmead's ultrasound had been taken into</p> <p>8 consideration can we agree those interpretations,</p> <p>9 stopping augmentation or withholding</p> <p>10 augmentation, administering cortical steroids,</p> <p>11 administering antibiotics and advising the</p> <p>12 attending, that all of those interventions were</p> <p>13 required by the standard of care in the face of</p> <p>14 premature rupture of membranes and a premature</p> <p>15 infant in the age frame that we're talking about</p> <p>16 here?</p> <p>17 MS. REID: I'm going to object for the</p> <p>18 record. And also I don't know if you need</p> <p>19 to take them one at a time --</p> <p>20 MR. KULWICKI: Sure.</p> <p>21 MS. REID: Also, the assumption -- make</p> <p>22 sure the assumption is clear that we have</p> <p>23 premature rupture membranes and knowledge of</p> <p>24 a premature infant.</p> <p>25 MR. KULWICKI: That's correct.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Besides this transient bound of fetal tachycardia</p> <p>2 what were the other signs of symptoms of</p> <p>3 infection?</p> <p>4 A. Either clinical or subclinical in instances of</p> <p>5 premature ruptured membranes there is a high risk</p> <p>6 of underlying infection as part of the etiology</p> <p>7 of it. The question is whether or not the</p> <p>8 patient has clinical infection that would require</p> <p>9 antibiotic treatment. At that time we did not</p> <p>10 think she had clinical infection.</p> <p>11 Q. And with subclinical was the standard of care in</p> <p>12 2001 to withhold augmentation while cortical</p> <p>13 steroids were given?</p> <p>14 A. If they were of a gestational age between 24 to</p> <p>15 32 weeks, yes.</p> <p>16 Q. Let me ask a little bit more about yourself. In</p> <p>17 the course of your residency did you begin and</p> <p>18 end that in the routine time frame?</p> <p>19 A. Yes.</p> <p>20 Q. Your privileges and your status as a resident</p> <p>21 here at MetroHealth, I assume, were never subject</p> <p>22 of any disciplinary proceedings, never called</p> <p>23 into question? Your privileges were never</p> <p>24 restricted or suspended, correct?</p> <p>25 MS. REID: Objection.</p>

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<p>1 You can answer.</p> <p>2 A. Never.</p> <p>3 Q. Same scenario with your current fellowship,</p> <p>4 everything is going according to schedule and</p> <p>5 your privileges at Henry Ford up there --</p> <p>6 A. No, Hutzel Hospital.</p> <p>7 Q. -- haven't been restricted, called into question,</p> <p>8 suspended or subject to any disciplinary</p> <p>9 proceedings?</p> <p>10 MS. REID: Objection.</p> <p>11 A. No.</p> <p>12 Q. That's true?</p> <p>13 A. Correct.</p> <p>14 Q. Did you have any conversations with Miss Maslanka</p> <p>15 after the delivery?</p> <p>16 A. No.</p> <p>17 Q. Are you aware of any conversations that she had</p> <p>18 with any other physicians here?</p> <p>19 A. No.</p> <p>20 Q. Have you spoken with any of the other treating</p> <p>21 physicians or caregivers, including nurses,</p> <p>22 regarding Miss Maslanka's case after you heard</p> <p>23 about the lawsuit, other than the conversation</p> <p>24 you had with Dr. Goodwin and Dr. Dierker?</p> <p>25 A. No.</p>	<p>1</p> <p>2</p> <p>3 CERTIFICATE</p> <p>4</p> <p>5 The State of Ohio,) SS:</p> <p>6 County of Cuyahoga.)</p> <p>7</p> <p>8</p> <p>9 I, Kelli Rae Page, a Notary Public within</p> <p>10 and for the State of Ohio, and authorized to</p> <p>11 administer oaths and to take and certify</p> <p>12 depositions, do hereby certify that the</p> <p>13 above-named JUDETTE LOUIS, M.D., was by me,</p> <p>14 before the giving of her deposition, first duly</p> <p>15 sworn to testify the truth, the whole truth, and</p> <p>16 nothing but the truth; that the deposition as</p> <p>17 above-set forth was reduced to writing by me by</p> <p>18 means of stenotypy, and was later transcribed</p> <p>19 into typewriting under my direction; that this is</p> <p>20 a true record of the testimony given by the</p> <p>21 witness, and was subscribed by said witness in my</p> <p>22 presence; that said deposition was taken at the</p> <p>23 aforementioned time, date and place, pursuant to</p> <p>24 notice or stipulations of counsel; that I am not</p> <p>25 a relative or employee or attorney of any of the</p> <p>parties, or a relative or employee of such</p> <p>attorney or financially interested in this</p> <p>action. I am not, nor is the court reporting</p> <p>firm with which I am affiliated, under a contract</p> <p>as defined in Civil Rule 28 (D).</p> <p>IN WITNESS WHEREOF, I have hereunto set my</p> <p>hand and seal of office, at Cleveland, Ohio, this</p> <p>____ day of _____, A.D. 20 ____.</p> <p>_____ Kelli Rae Page, Notary Public, State of Ohio My commission expires October 30, 2010.</p>
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<p>1 MR. KULWICKI: Okay. That's all the</p> <p>2 questions I have.</p> <p>3 MR. MALONE: Judette, give your address</p> <p>4 to the court reporter who will send the</p> <p>5 transcript to you for you to proofread and</p> <p>6 she will send you the letter about what to</p> <p>7 do.</p> <p>8 THE WITNESS: It's 2155 Somerset,</p> <p>9 S-O-M-E-R-S-E-T, Boulevard, Troy, T-R-O-Y,</p> <p>10 Michigan 48084.</p> <p>11 MR. MALONE: Send it to her, not me,</p> <p>12 and we will buy copy.</p> <p>13 - - - - -</p> <p>14 (Whereupon, the deposition was</p> <p>15 concluded at 10:25 a.m.)</p> <p>16 - - - - -</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>_____ JUDETTE LOUIS, M.D.</p>	<p>1</p> <p>2</p> <p>3 WITNESS INDEX</p> <p>4</p> <p>5 PAGE</p> <p>6 CROSS-EXAMINATION</p> <p>7 JUDETTE LOUIS, M.D.</p> <p>8 BY MR. KULWICKI 3</p> <p>9</p> <p>10 OBJECTION INDEX</p> <p>11</p> <p>12 OBJECTION BY PAGE</p> <p>13 MR. MALONE: 6</p> <p>14 MS. REID: 19</p> <p>15 MS. REID: 20</p> <p>16 MS. REID: 32</p> <p>17 MS. REID: 33</p> <p>18 MS. REID: 36</p> <p>19 MS. REID: 39</p> <p>20 MS. REID: 41</p> <p>21 MS. REID: 42</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>