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| <p style="text-align: right;">1</p> <p>The State of Ohio,<br/>County of Cuyahoga.<br/>IN THE COURT OF COMMON PLEAS<br/>Holly Hutchinson,<br/>Plaintiff,<br/>-vs- Case No. 05-553884<br/>Fairview General Judge Ann T. Mannen<br/>Hospital, et al.,<br/><br/>Defendants.<br/><br/>- - -<br/><br/>Videotaped Deposition of SHARON MIKOL,<br/>M.D., the Witness herein, being called by the<br/>Plaintiffs as if upon cross-examination under<br/>the statute, and taken before Kristin A.<br/>Beutler, RPR and Notary Public for the State<br/>of Ohio, pursuant to the further stipulations<br/>of counsel herein contained, on Tuesday, the<br/>29th of November, 2005, at 8:00 a.m. at<br/>Lakewood Hospital, Detroit Road, City of<br/>Lakewood, County of Cuyahoga, and State, of<br/>Ohio.<br/><br/>- - -</p> | <p style="text-align: right;">3</p> <p>1 SHARON MIKOL, M.D., of lawful age,<br/>2 having been first duly sworn, as hereinafter<br/>3 certified, deposes and says as follows:<br/>4 CROSS-EXAMINATION<br/>5 BY MR. BECKER:<br/>6 Q. Good morning, Doctor.<br/>7 A. Good morning.<br/>8 Q. Would you tell me your full name,<br/>9 please.<br/>10 A. Sharon J. Mikol.<br/>11 Q. And what is your professional or<br/>12 business address?<br/>13 A. 1450 Belle Avenue, Suite 300,<br/>14 Lakewood.<br/>15 Q. Are you a solo practitioner, or are<br/>16 you a member of a group?<br/>17 A. I'm solo.<br/>18 Q. How long have you been solo?<br/>19 A. Fourteen-and-a-half years.<br/>20 Q. What hospitals do you have privileges<br/>21 at?<br/>22 A. Currently, at Lakewood and Fairview.<br/>23 Q. I know you've had your deposition<br/>24 taken before, I just want to review the<br/>25 ground rules with you. This is a question</p>   |
| <p style="text-align: right;">2</p> <p>1 APPEARANCES:<br/>2 On behalf of the Plaintiff:<br/>3 Michael F. Becker, Esq.<br/>4 Becker &amp; Mishkind Co., L.P.A.<br/>5 134 Middle Avenue<br/>6 Elyria, Ohio 44035<br/>7 440-323-7070<br/>8 On behalf of the Defendants:<br/>9 Julie Callsen, Esq.<br/>10 Tucker, Ellis &amp; West, LLP<br/>11 1100 Huntington Building<br/>12 925 Euclid Avenue<br/>13 Cleveland, Ohio 44115<br/>14 216-592-5000<br/>15<br/>16 ALSO PRESENT:<br/>17 David Tackla, Videographer<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>   | <p style="text-align: right;">4</p> <p>1 and answer session under oath. It's very<br/>2 important you understand the question that<br/>3 I ask; if the question doesn't make sense<br/>4 or is unartfully phrased, I want you to<br/>5 stop me, tell me so, and I'd be more than<br/>6 pleased to attempt to rephrase or restate<br/>7 the question. Fair enough?<br/>8 A. Yes.<br/>9 Q. However, unless you indicate<br/>10 otherwise to me, I'm going to assume that<br/>11 you have fully understood the question that<br/>12 I posed and you have given me your best and<br/>13 most complete answer today. Fair enough?<br/>14 A. Yes.<br/>15 Q. What have you reviewed in preparation<br/>16 for today's deposition?<br/>17 A. The patient's chart, as provided by<br/>18 my attorneys.<br/>19 Q. Anything else?<br/>20 A. No.<br/>21 Q. Have you done any research in<br/>22 preparation for today's deposition?<br/>23 A. No, I haven't.<br/>24 Q. Pursuant to a subpoena duces tecum or<br/>25 a notice duces tecum, did you bring a copy</p> |

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| <p style="text-align: right;">5</p> <p>1 of the collaborative agreement with<br/>2 midwives?</p> <p>3 MR. BECKER: Is this my copy?<br/>4 MS. CALLSEN: Yes.<br/>5 MR. BECKER: Okay, thanks. Why<br/>6 don't we just mark that.<br/>7 (Plaintiff's Exhibit 1 marked.)</p> <p>8 Q. Doctor, for the record, I'm going to<br/>9 hand you what's been marked as Plaintiff's<br/>10 Exhibit 1. Would you identify it for me<br/>11 and tell me how many pages it consists of.<br/>12 A. It's a Standard Care Arrangement, and<br/>13 it has seven pages.<br/>14 Q. Backing up a moment relative to your<br/>15 education and training, where did you go to<br/>16 medical school?<br/>17 A. I went to Ohio State.<br/>18 Q. And then your residency?<br/>19 A. Riverside in Columbus.<br/>20 Q. And was that a four year program?<br/>21 A. Yes, it was.<br/>22 Q. Did you do a fellowship?<br/>23 A. No.<br/>24 Q. So you would be considered a general<br/>25 obstetrician/gynecologist?</p> | <p style="text-align: right;">7</p> <p>1 Q. Okay. What hospital were you<br/>2 associated with over there?<br/>3 A. Torbenson Medical Associates was<br/>4 based mainly at Booth Hospital.<br/>5 Q. Okay.<br/>6 (A short break was taken.)<br/>7 (Record read.)<br/>8 BY MR. BECKER:<br/>9 Q. Doctor, will you describe for me your<br/>10 current obstetrical practice.<br/>11 A. Currently, I personally do about 10<br/>12 to 15 deliveries a month.<br/>13 Q. And are there any type of patients<br/>14 that you refer out to other obstetricians,<br/>15 whether maternal-fetal or otherwise?<br/>16 A. I frequently refer patients for<br/>17 consultation with fetomaternal specialists.<br/>18 Q. Okay. Could you give me some<br/>19 examples?<br/>20 A. For example, an insulin-dependent<br/>21 diabetic who is pregnant; a patient who is<br/>22 over 35 or who has an abnormal quad<br/>23 screening and wants to have an<br/>24 amniocentesis or wants to be counseled as<br/>25 to her options; a patient who has an</p>         |
| <p style="text-align: right;">6</p> <p>1 A. Yes.<br/>2 Q. As compared to a maternal-fetal<br/>3 specialist, correct?<br/>4 A. Correct.<br/>5 Q. When you finished your training, did<br/>6 you come back to Cleveland?<br/>7 A. Yes, I did.<br/>8 Q. Were you originally from the<br/>9 Cleveland area?<br/>10 A. Yes.<br/>11 Q. All right. And then you started in a<br/>12 group, or did you start solo?<br/>13 A. I was in a group initially.<br/>14 Q. What was the name of the group?<br/>15 A. It was called Torbenson Medical<br/>16 Associates.<br/>17 Q. Okay. And that group is dissolved?<br/>18 A. Yes.<br/>19 Q. How long were you with that group?<br/>20 A. About three years.<br/>21 Q. As I recall, you've generally been<br/>22 based around the Lakewood or Fairview area<br/>23 for your care; is that accurate?<br/>24 A. Initially, no, I was on the east side<br/>25 the first five years I practiced.</p>   | <p style="text-align: right;">8</p> <p>1 ultrasound that shows twins or other<br/>2 multiples; a patient who on ultrasound has<br/>3 some abnormality of the fetus detected and<br/>4 needs further evaluation; patients in<br/>5 preterm labor; patients with preterm<br/>6 ruptured membranes.<br/>7 Q. Do you deliver twins yourself?<br/>8 A. Oh, yes.<br/>9 Q. And do you manage gestational<br/>10 diabetics yourself?<br/>11 A. Yes, I do.<br/>12 Q. What causes one to place a<br/>13 gestational diabetic on insulin, what's the<br/>14 criteria?<br/>15 A. If the sugars are not properly<br/>16 managed with diet alone.<br/>17 Q. Do you look for just high sugars at<br/>18 one event, two events of high sugar?<br/>19 A. I generally look for a consistent<br/>20 pattern; one or two isolated incidents is<br/>21 not enough.<br/>22 Q. I want to understand the relationship<br/>23 between you and the Lakewood Midwifery<br/>24 Services. If you could kind of give me an<br/>25 overview of that history, first of all,</p> |

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1 between that group and yourself.

2 A. Currently, I have been the consultant  
3 for this group for about three years.

4 Q. Okay.

5 A. I'm called Clinical Director of  
6 Midwifery, I think, is my title.

7 Q. And what does that mean?

8 A. It means I'm handling the clinical  
9 issues in the practice. They have a  
10 business-type manager who directs that sort  
11 of stuff, who is a hospital administrator.

12 Q. Are you an employee?

13 A. I have a contract, I am not  
14 specifically a hospital employee. I have a  
15 service contract and am paid a stipend for  
16 it.

17 Q. You have a service contract with the  
18 midwifery group?

19 A. To provide -- not with the midwifery  
20 group, with the Cleveland Clinic System to  
21 provide consultation and services to the  
22 midwives.

23 Q. So the contract is between you and  
24 the hospital --

25 A. Right.

10

1 Q. -- association --

2 A. Correct.

3 Q. -- whether it's Lakewood or the  
4 Cleveland Clinic?

5 A. I believe it's Cleveland Clinic,  
6 Western Region, specifically.

7 Q. Okay.

8 A. That's what it says on the contract,  
9 and it is for this and for other services.

10 Q. So as the consultant, what are your  
11 duties and responsibilities?

12 A. My -- I -- we have a weekly session  
13 where the midwives bring questions or  
14 problems with patients. We have a clinical  
15 meeting, in other words, every week, where  
16 we discuss individual patients and their  
17 problems. During the day I am available  
18 for consultation with the midwife, while  
19 she -- either while she's seeing a patient  
20 or about a phone call or other issues. In  
21 addition, when a patient is in labor, if  
22 I'm on call for them, then I am also  
23 present and/or can be called to for any  
24 issues that might arise.

25 Q. Is there a set day and time for this

11

1 weekly meeting?

2 A. Fridays at 8:00, currently.

3 Q. Now, what does the midwifery group do  
4 when you're unavailable?

5 A. There are other physicians that  
6 provide backup.

7 Q. So they also have a similar contract?

8 A. We have a -- I don't know what their  
9 contracts say, I have never seen them.

10 Q. Okay.

11 A. We have a call schedule and they call  
12 the physician who is scheduled to be their  
13 backup on any given day.

14 Q. And how does the -- so it would  
15 simply be if you are unavailable they would  
16 call your backup, the midwives?

17 A. It's their backup, it's the physician  
18 that the hospital has designated as their  
19 backup. I don't hire these people, they  
20 were hired by Cleveland Clinic to provide  
21 backup services. There are three of us and  
22 we split the call.

23 Q. But they're hired to provide backup  
24 service for obstetrical patients or for the  
25 midwives?

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1 A. For midwives specifically.

2 Q. Okay. And just give me a couple  
3 names of obstetricians that might be  
4 potentially backups.

5 A. Currently, it's Dr. Gitiforooz and  
6 Dr. Miller, however, neither one of them  
7 were working here three years ago, two  
8 years ago.

9 Q. At the time of this particular birth,  
10 who was the backup?

11 A. I don't even remember. We used  
12 multiple house doctors and I can't even  
13 remember who it all was. It was  
14 Dr. Christian, Dr. Light, Dr. Arora, there  
15 was some, multiple doctors.

16 Q. Doctor, do you have any idea why this  
17 patient, Holly Hutchinson, was sent over to  
18 Fairview for an NST rather than have it  
19 done at Lakewood?

20 MS. CALSEN: Objection to the  
21 extent that any of the information  
22 comes from me.

23 A. Yeah, I was not involved in that  
24 decision at the time, so no, I don't know  
25 specifically.

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| <p style="text-align: right;">13</p> <p>1 Q. So you have no knowledge?</p> <p>2 A. I know what the midwife told me.</p> <p>3 Q. Other than -- I'm not interested in</p> <p>4 what your counsel told you, but if your</p> <p>5 midwife told you something --</p> <p>6 A. The midwife the next day told me why</p> <p>7 the patient was sent to Fairview.</p> <p>8 Q. That's what I want to hear.</p> <p>9 A. The reason was because there was no</p> <p>10 house pediatrician in Lakewood that night,</p> <p>11 I don't know the reason. Normally there is</p> <p>12 a pediatrician in Lakewood 24 hours, but</p> <p>13 there was some emergent issue occurred, the</p> <p>14 house doctor was not there. And so her</p> <p>15 concern was if the patient needed delivered</p> <p>16 that there wasn't a pediatrician at</p> <p>17 Lakewood, and so she sent her to Fairview,</p> <p>18 so that if the baby needed delivered</p> <p>19 emergently there would be a pediatrician</p> <p>20 present.</p> <p>21 Q. Then which midwife would that have</p> <p>22 been?</p> <p>23 A. That was Joy Naughton.</p> <p>24 Q. Showing you what's been marked as</p> <p>25 Plaintiff's Exhibit 1, did I have you</p> | <p style="text-align: right;">15</p> <p>1 Q. Is it fair for me to conclude that</p> <p>2 you were never aware that this mom, Holly</p> <p>3 Hutchinson, was diagnosed by the midwives</p> <p>4 as having gestational diabetes?</p> <p>5 A. I believe we did discuss her at a</p> <p>6 meeting, because she had declined to do the</p> <p>7 three-hour GTT. I recall that there was a</p> <p>8 patient who had declined at that point that</p> <p>9 we talked about. I cannot specifically say</p> <p>10 for certain it was Holly, however, I don't</p> <p>11 know of any other patient who had declined</p> <p>12 to do a three-hour test, so I think it was</p> <p>13 probably her.</p> <p>14 Q. Why do you think it was probably?</p> <p>15 A. Because I don't know of any other</p> <p>16 patient of the midwives in the last three</p> <p>17 years who's refused to do the three-hour</p> <p>18 test other than Holly, so I think it was</p> <p>19 probably her we talked about.</p> <p>20 Q. Well, is there any indication in</p> <p>21 Holly's chart that she refused a three-hour</p> <p>22 GTT?</p> <p>23 A. Well, the only indication is that it</p> <p>24 wasn't done, that it was -- there's a</p> <p>25 midwifery note that it was, she should have</p> |
| <p style="text-align: right;">14</p> <p>1 identify this yet?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And did I ask you whether or</p> <p>4 not this was in existence at the time of</p> <p>5 the Hutchinson child's birth?</p> <p>6 A. I don't think you did, but I think it</p> <p>7 was.</p> <p>8 Q. It was?</p> <p>9 A. It's dated March of 2003.</p> <p>10 Q. Okay. Does this document spell out</p> <p>11 under what circumstances you are to be</p> <p>12 consulted?</p> <p>13 A. Some of them, yes.</p> <p>14 Q. Okay. And as I skim through this,</p> <p>15 what do you recall about this particular</p> <p>16 pregnancy or delivery?</p> <p>17 A. I don't really recall anything about</p> <p>18 Mrs. Hutchinson's pregnancy, I never saw</p> <p>19 her during the pregnancy except for a bad</p> <p>20 Pap smear, which I vaguely recall</p> <p>21 performing a colposcopy on her for. And as</p> <p>22 far as the delivery, I was never called, so</p> <p>23 I don't recall anything about the delivery,</p> <p>24 and I didn't hear about it until the next</p> <p>25 day.</p>  | <p style="text-align: right;">16</p> <p>1 one, but yet it wasn't done.</p> <p>2 Q. You're presuming she refused it</p> <p>3 versus it wasn't ordered?</p> <p>4 A. The midwife has a note that she was</p> <p>5 going to order it, so I have to presume</p> <p>6 that she was intending to order it, but I</p> <p>7 don't specific -- I was not present at any</p> <p>8 of these conversations, I do not know any</p> <p>9 of the details of this.</p> <p>10 Q. In your experience with these</p> <p>11 midwives, if there is ever a circumstance</p> <p>12 where a patient refuses a recommendation,</p> <p>13 isn't that generally charted?</p> <p>14 MS. CALLSEN: Objection.</p> <p>15 A. Not always, no.</p> <p>16 Q. Generally?</p> <p>17 A. I wouldn't say generally even.</p> <p>18 Q. Do you have a recollection that the</p> <p>19 midwife said she refused a three-hour GTT?</p> <p>20 A. I have a recollection of discussing a</p> <p>21 patient at conference, I do not recall the</p> <p>22 name. The patient, I was told the patient</p> <p>23 did a one-hour Glucola, it was abnormal.</p> <p>24 The patient wanted to repeat the test,</p> <p>25 which I told them I didn't think was</p>  |

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1 necessary, but it was repeated and was  
 2 still abnormal. And I was told that the  
 3 patient did not want to do the three-hour  
 4 test and therefore we talked about how that  
 5 would be managed, and I suggested she  
 6 simply be treated as though she was  
 7 diabetic without the test, that, if  
 8 anything, we should do then more than we  
 9 would normally do, which is to get her  
 10 diabetic counseling and have her test her  
 11 sugars, to err on the side of caution.  
 12 Q. Absolutely. And when you -- we can  
 13 agree that once you make a, the midwives  
 14 and you, make a diagnosis of gestational  
 15 diabetes, then she should be treated as if  
 16 she has gestational diabetes?  
 17 A. Well, in this case, the diagnosis  
 18 couldn't be made because the test wasn't  
 19 done, but yes, she was treated as if she  
 20 had gestational diabetes.  
 21 Q. And how is the care to a gestational  
 22 diabetic different than a nongestational  
 23 diabetic?  
 24 A. She is put on a diet --  
 25 Q. Okay.

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1 A. -- counseled usually by a dietitian,  
 2 and is also taught to test her own blood  
 3 sugars.  
 4 Q. And which dietitian is generally  
 5 used?  
 6 A. It would be the hospital's dietitian,  
 7 and they've got multiple, whoever is  
 8 available for the counseling.  
 9 Q. Is the surveillance, fetal  
 10 surveillance, increased --  
 11 A. No.  
 12 Q. -- in any way with gestational  
 13 diabetes?  
 14 A. Not routinely in a gestational  
 15 diabetic who does not need, who does not  
 16 need insulin, no.  
 17 Q. What are the concerns about  
 18 gestational diabetic from risk factors?  
 19 A. The Major risk factor that can occur  
 20 in a diabetic is that her baby may be  
 21 unusually large, over nine pounds at birth.  
 22 Q. Macrosomia?  
 23 A. Exactly.  
 24 Q. Now, is there a risk, is there a  
 25 greater risk of sudden fetal death in

19

1 gestational diabetes?  
 2 A. No, I don't think there is.  
 3 Q. You're not familiar with any  
 4 literature to that effect?  
 5 A. Not in a non-insulin-dependent  
 6 gestational diabetic, no.  
 7 Q. Do you know whether or not the  
 8 placenta is impacted by gestational  
 9 diabetic -- gestational diabetes in a  
 10 negative way?  
 11 A. They can have a larger than typical  
 12 placenta, they could have a larger than  
 13 average baby.  
 14 Q. Do you know whether or not a  
 15 gestational diabetic's placenta is  
 16 generally considered not as functional as a  
 17 nongestational diabetic?  
 18 A. No, that would not usually be the  
 19 case, they would usually be not -- they  
 20 would usually be treated as a normal  
 21 placenta.  
 22 Q. On the issue of surveillance, then,  
 23 unless there is an insulin-dependent  
 24 gestational diabetic, the surveillance  
 25 level would not change?

20

1 A. Correct.  
 2 Q. Okay. We can agree that if a woman  
 3 fails a one-hour GTT, the standard of care  
 4 for obstetrical care is to proceed to a  
 5 three-hour GTT?  
 6 A. Absolutely.  
 7 Q. And we can agree that once the  
 8 obstetrical care giver makes a diagnosis of  
 9 gestational diabetes, he or she is then  
 10 bound to treat the patient as if she has  
 11 gestational diabetes?  
 12 A. Correct.  
 13 Q. On the issue of when to place someone  
 14 on insulin, it's when they have greater  
 15 than, I guess, multiple high sugars?  
 16 A. Correct.  
 17 Q. After --  
 18 A. A consistent pattern of high sugars.  
 19 Q. After consultation with a dietitian?  
 20 A. Well, the patient, yeah, after the  
 21 patient's been placed on the diet, is that  
 22 what you mean?  
 23 Q. Yes.  
 24 A. Yes, yes, she would be placed on the  
 25 diet first, unless her three-hour GTT was

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| <p style="text-align: right;">21</p> <p>1 so completely out of whack that it was</p> <p>2 obvious a diet wasn't going to be enough.</p> <p>3 Q. Now, is it your general practice to</p> <p>4 try to deliver gestational diabetics at</p> <p>5 term?</p> <p>6 A. Generally, yes.</p> <p>7 Q. Why?</p> <p>8 A. Because the large baby risk.</p> <p>9 Q. Can we agree that when a gestational</p> <p>10 diabetic is at or near term and has</p> <p>11 complaints of decreased fetal movement and</p> <p>12 her cervix is ripe, standard of care is to</p> <p>13 get her delivered?</p> <p>14 A. Not in all cases, no.</p> <p>15 Q. In some cases?</p> <p>16 A. In some cases, yes.</p> <p>17 Q. What cases?</p> <p>18 A. In some cases where the patient is</p> <p>19 agreeable to doing it, where -- I'm sorry,</p> <p>20 could you repeat the specifics?</p> <p>21 Q. Yeah, we have a gestational diabetic</p> <p>22 that's at or near term, has complaints of</p> <p>23 decreased fetal movement, she has a ripe</p> <p>24 cervix.</p> <p>25 A. If the movement remains decreased,</p>  | <p style="text-align: right;">23</p> <p>1 A. No.</p> <p>2 MS. CALLSEN: Objection.</p> <p>3 Q. Can we agree that a midwife who</p> <p>4 doesn't have privileges at a hospital</p> <p>5 should not be calling in orders to that</p> <p>6 hospital?</p> <p>7 MS. CALLSEN: Objection.</p> <p>8 A. No.</p> <p>9 Q. Do you think nurses should accept</p> <p>10 orders from midwives or physicians who</p> <p>11 don't have privileges at a particular</p> <p>12 hospital?</p> <p>13 MS. CALLSEN: Objection.</p> <p>14 A. I don't work at Fairview Hospital, I</p> <p>15 don't know as a nurse, and I don't know</p> <p>16 what their rules are for or against</p> <p>17 receiving orders from outside physicians, I</p> <p>18 really don't. I couldn't speak to what</p> <p>19 their standards are for their employees.</p> <p>20 Q. Relative to an induction, if there's</p> <p>21 a nonreassuring fetal heart tone, or heart</p> <p>22 strips, can we agree that it is not prudent</p> <p>23 to begin Pitocin?</p> <p>24 A. If a strip is nonreassuring, I would</p> <p>25 be reluctant to begin Pitocin.</p> |
| <p style="text-align: right;">22</p> <p>1 yes, you could do that. If in fact she</p> <p>2 then has normal movement and a reactive</p> <p>3 strip and she prefers to wait for the onset</p> <p>4 of labor, I don't see anything wrong with</p> <p>5 that.</p> <p>6 Q. Well, if the movement doesn't change</p> <p>7 and she has decreased movement, then</p> <p>8 prudent is to get her delivered?</p> <p>9 A. Then, yes, I would recommend to that</p> <p>10 patient that she consider being induced.</p> <p>11 Q. Do you know whether or not the</p> <p>12 midwifery group has privileges at Lakewood</p> <p>13 Hospital?</p> <p>14 A. They all have privileges at Lakewood,</p> <p>15 yes.</p> <p>16 Q. Do you know whether or not they have</p> <p>17 privileges at Fairview General Hospital?</p> <p>18 A. None of them have privileges at</p> <p>19 Fairview.</p> <p>20 Q. Can we agree that a patient who is</p> <p>21 managed by a midwife and arrives at a</p> <p>22 hospital for which the midwife does not</p> <p>23 have privileges, that patient should be</p> <p>24 seen by an attending or the collaborative</p> <p>25 physician?</p> | <p style="text-align: right;">24</p> <p>1 Q. And, in fact, if someone is started,</p> <p>2 induced with Pitocin, and the strips become</p> <p>3 nonreassuring, the appropriate prudent care</p> <p>4 would be then to discontinue the Pitocin?</p> <p>5 MS. CALLSEN: Objection. Can</p> <p>6 you repeat that?</p> <p>7 MR. BECKER: Sure.</p> <p>8 Q. We have an induction with Pitocin</p> <p>9 starting off with reassuring strips and</p> <p>10 they become nonreassuring, the standard of</p> <p>11 care is then to discontinue the Pitocin?</p> <p>12 A. Not always.</p> <p>13 Q. Or minimally to cut down, back off</p> <p>14 the Pitocin?</p> <p>15 A. Not always.</p> <p>16 Q. Because a woman has been diagnosed as</p> <p>17 gestational diabetic, is she considered a</p> <p>18 high-risk patient compared to the average</p> <p>19 obstetrical patient?</p> <p>20 A. She's at risk for fetal macrosomia.</p> <p>21 Q. Now, when an NST is done for</p> <p>22 decreased fetal movement, are there</p> <p>23 guidelines that a nurse should be</p> <p>24 assessing?</p> <p>25 A. Yes.</p>         |

25

1 Q. Okay. And that guideline applies to  
2 you as well as midwives when interpreting  
3 the NST?

4 A. Yes, as well as to labor and delivery  
5 nurses.

6 Q. Now, have you heard the phrase  
7 equivocal, where an NST is equivocal?

8 A. Yes.

9 Q. What does that mean?

10 A. It means that there are, the NST  
11 technically meets the criteria, but there  
12 may be something on there that is not  
13 standard, for example, a variable  
14 deceleration that makes one think that  
15 perhaps further assessment might be needed.

16 Q. Okay. And when in fact an NST is  
17 equivocal, prudent care is to continue the  
18 NST to get a further evaluation of the mom  
19 at that time?

20 A. That would certainly be one option.

21 Q. Well, and what other options are  
22 there?

23 A. Well, you might want to do an  
24 ultrasound, for example, if you see a  
25 variable. You could look to see how much

26

1 fluid is around the baby. If there's  
2 decreased fluid, then that might be a  
3 better test than continuing the nonstress.

4 Q. Would that be, are we speaking about  
5 a BPP, a biophysical profile, when you say  
6 ultrasound, or just not complete  
7 biophysical profile?

8 A. It depends on the circumstances.  
9 Certainly, you can do a BPP, but in some  
10 cases fluid volume might be enough to know  
11 that coupled with the nonstress.

12 Q. Now, some obstetricians do their own  
13 ultrasounds, do you do your own ultrasound?

14 A. I do some of my own. I don't do  
15 scanning for anomalies or birth defects.

16 Q. Is that in the Level 2 business, is  
17 that what that means, you don't do Level 2?

18 A. I don't think anybody is calling it  
19 Level 2 anymore, but yeah, I don't do  
20 anatomic surveys.

21 Q. Okay.

22 A. I would look for fluid volume, I  
23 would look for position of the baby,  
24 position of the placenta. I could  
25 certainly do a biophysical profile looking

27

1 for breathing and muscle tone and things  
2 like that.

3 Q. You said that you currently deliver,  
4 I think you said, 10 to 15 a month?

5 A. Roughly, yeah.

6 Q. And was that the same back at the  
7 time of Holly Hutchinson's delivery?

8 A. It was probably about the same, yeah.

9 Q. And between the two hospitals,  
10 Lakewood and Fairview, where were you  
11 delivering most of your babies?

12 A. Lakewood, by far.

13 Q. If you had a choice, you would prefer  
14 to deliver at Lakewood?

15 MS. CALLSEN: Objection.

16 A. What do you mean by "a choice"?

17 Q. Well, let's assume one of your  
18 patients for whatever reason ended up at  
19 Fairview?

20 A. If a patient ended up at Fairview for  
21 some reason, then certainly I would have to  
22 deliver her there, it's not an option.

23 Q. Okay. Well, what if it -- what if it  
24 wasn't an urgent delivery but you wanted to  
25 start an induction, would you start the

28

1 induction at Fairview, or would you  
2 transfer the patient to Lakewood?

3 A. I have been doing this for 14 years  
4 and that's never ever happened. We're  
5 talking about things that don't happen, I  
6 can't talk about things that never happen.

7 Q. So if in fact you're faced with a  
8 situation where you are at Fairview and an  
9 induction is indicated, you would have no  
10 hesitation to proceed with an induction  
11 right at Fairview?

12 A. I have done it many times.

13 Q. So when midwives diagnose a mom as  
14 gestational diabetic, what kind of contact  
15 would you expect them to have with you?

16 A. I would expect for them to tell me  
17 that she has been referred for counseling;  
18 I would expect that they would let me know  
19 how her sugars are; and certainly when the,  
20 if and when the sugars are abnormal, should  
21 that occur, they would let me know that  
22 too.

23 Q. So they're supposed to contact you  
24 when they have abnormal sugars after the  
25 diagnosis of gestational diabetes?

|   |   |
|---|---|
| <p style="text-align: right;">29</p> <p>1 A. A patient who is consistently<br/>2 abnormal sugars, yes, I should be notified.<br/>3 Q. And do you know what the routine is,<br/>4 whether or not the, I call it the GD<br/>5 patient, gestational diabetic patient, is<br/>6 given like a form to track her sugars and<br/>7 then drop a copy off at the office, or<br/>8 what's, what's --<br/>9 A. Generally, they bring it in with them<br/>10 at each visit.<br/>11 Q. And what's the office's, to your<br/>12 knowledge, the group's practice relative to<br/>13 that form, do they make a copy of it, or<br/>14 do--<br/>15 A. I believe they usually make a copy<br/>16 and put it in the chart.<br/>17 Q. Okay. That would be a good thing,<br/>18 because that would give you an opportunity<br/>19 to look at it at a later time if you're not<br/>20 there, in the event they consult you on<br/>21 this mom's sugars, correct?<br/>22 A. Of course.<br/>23 Q. Doctor, to your knowledge, did you<br/>24 have occasion to look at the NST strips<br/>25 from Fairview as well as the, and/or, the</p> | <p style="text-align: right;">31</p> <p>1 A. Not that I recall.<br/>2 Q. Doctor, what I'd like to do now is go<br/>3 through your entries in the prenatal chart,<br/>4 Fairview records, and then the ultimate<br/>5 labor and delivery chart, okay.<br/>6 A. Alrighty.<br/>7 Q. I don't know if I brought enough<br/>8 copies with me. Do you have a copy of the<br/>9 chart right there? I want you to know that<br/>10 anytime, I probably should have said this<br/>11 when we started, anytime during this<br/>12 deposition you're more than free to look at<br/>13 the records before responding to any<br/>14 questions I ask.<br/>15 When did you first meet Holly?<br/>16 A. I believe I met her when she had a<br/>17 colposcopy, which I think was in January,<br/>18 maybe, of that year. I have to look at the<br/>19 chart.<br/>20 MS. CALLEN: Don't guess.<br/>21 A. Let me look at the chart.<br/>22 Q. Feel free to look at the chart.<br/>23 A. And that is the only time I met Holly<br/>24 before she delivered. I met her on January<br/>25 22nd, 2003. January 22nd, 2003, she had a</p> |
| <p style="text-align: right;">30</p> <p>1 strips from the labor and delivery at any<br/>2 time with any other person other than<br/>3 counsel?<br/>4 A. I have never looked at those strips<br/>5 with anyone else, except I may have looked<br/>6 with Kathy after the baby was born at the<br/>7 fetal monitoring done at the time of the<br/>8 labor.<br/>9 Q. Can you tell me that one more time?<br/>10 A. Okay. After the baby was born and I<br/>11 was told that there was, the baby was not<br/>12 doing well, I believe that Kathy and I went<br/>13 to labor and delivery and looked at the<br/>14 monitor strips briefly and went over them,<br/>15 and that is the only time I have ever.<br/>16 Q. Would it have been the next day,<br/>17 likely, been 24 hours?<br/>18 A. It would have been within a day or<br/>19 two, I don't remember the exact date. I<br/>20 vaguely recall doing it, going over those<br/>21 strips with her.<br/>22 Q. Was there anybody else present when<br/>23 you went over those strips --<br/>24 A. Not that I recall.<br/>25 Q. -- besides her?</p>              | <p style="text-align: right;">32</p> <p>1 colposcopy done by me, and that is the only<br/>2 time I believe I ever met her during this<br/>3 pregnancy.<br/>4 Q. All right. Can you tell based on the<br/>5 chart what her, what the gestational age<br/>6 was of the child?<br/>7 A. Just a second, I'll look back. On<br/>8 January 22nd she would have been about nine<br/>9 weeks pregnant.<br/>10 Q. And so she had an abnormal Pap and<br/>11 then you did a colposcopy?<br/>12 A. Correct.<br/>13 Q. And is there any dangers of doing a<br/>14 colposcopy to a pregnant lady?<br/>15 A. No, not particularly, we do them all<br/>16 the time.<br/>17 Q. Okay. Clearly at that time she had<br/>18 not been diagnosed yet by the midwives as<br/>19 gestational diabetic, correct?<br/>20 A. No, that would have been too early.<br/>21 Q. Too --<br/>22 A. It would have been too early to have<br/>23 tested her.<br/>24 Q. And that's the only time you saw this<br/>25 mom during the pregnancy?</p>  |



33

1 A. Yes.  
 2 Q. That's the only time you had hands-on  
 3 care to this mother during this pregnancy?  
 4 A. Yes.  
 5 Q. And that includes the induction,  
 6 labor and delivery?  
 7 MS. CALLSEN: Objection. I  
 8 don't think there was an induction.  
 9 Q. Excuse me. That includes labor and  
 10 delivery?  
 11 A. I did not see her in labor and  
 12 delivery, no.  
 13 Q. In fact, based on the chart, was  
 14 there ever a plan for an induction of the  
 15 gestational diabetic mom?  
 16 MS. CALLSEN: Objection.  
 17 A. I don't see it on the chart, but I  
 18 don't know what the plan was.  
 19 Q. Does one --  
 20 A. I don't recall.  
 21 Q. Does one engage in estimating fetal  
 22 weight for gestational diabetic?  
 23 A. Certainly.  
 24 Q. And how is that done?  
 25 A. Well, it can be done a couple of

34

1 different ways. In a thin person like  
 2 Holly, you can pretty well tell how big the  
 3 baby is going to be simply by doing  
 4 Leopold's maneuvers, palpating her abdomen.  
 5 Q. So there's not, with a gestational  
 6 diabetic mom, there's no requirement for an  
 7 ultrasound in the last trimester to  
 8 determine or estimate fetal weight?  
 9 A. Not at all.  
 10 Q. And you don't have a goal when  
 11 dealing with a gestational diabetic mom to  
 12 have her delivered by term?  
 13 A. Unless I am concerned that the baby  
 14 is extremely large, not necessarily, no.  
 15 Q. So going back to your contact with  
 16 this patient, one time, and that was  
 17 performing a colposcopy at, I think you  
 18 said ten weeks --  
 19 A. Nine, I think, it was. Close enough.  
 20 Q. Nine weeks, correct?  
 21 A. Mm-hmm.  
 22 Q. Now, you had some other contact with  
 23 her and that's relative to an NST that was  
 24 done at Fairview, didn't you?  
 25 A. The nonstress test was done at

35

1 Fairview and I recall getting a phone call  
 2 from the nurse that it looked great and she  
 3 was sent home and I did not see her there,  
 4 no.  
 5 Q. So you never went to Fairview to  
 6 assess her?  
 7 A. There would be no reason to if the  
 8 strip was normal and the baby was active.  
 9 Q. The answer would be no, you never saw  
 10 her at Fairview?  
 11 A. No, I did not.  
 12 Q. Okay. Now, did you ever call in any  
 13 orders to Fairview?  
 14 A. I -- this is all vague recollection.  
 15 I believe that I was called by a nurse from  
 16 Fairview and told that Joy had sent this  
 17 patient there for a nonstress test, and  
 18 that because Joy was not on staff there,  
 19 she wanted to let me know what the details  
 20 were, that the strip was reactive, and  
 21 could she send the patient home.  
 22 Q. And what was that nurse, do you  
 23 remember the name of that nurse?  
 24 A. Oh, gosh, no. I don't even know  
 25 three-quarters of the nurses at Fairview.

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1 Q. Okay. And did you ever sign off in  
 2 any orders at Fairview?  
 3 A. I signed them off afterwards, yeah.  
 4 They were to go to medical records.  
 5 Q. Can you tell me approximately how  
 6 many days after the orders were created  
 7 that you actually signed them off at  
 8 Fairview?  
 9 A. Do you have the chart and I'll tell  
 10 you?  
 11 MS. CALLSEN: I've got it.  
 12 A. It's generally a goodly period of  
 13 time.  
 14 MS. CALLSEN: Goodly?  
 15 A. Somewhere there is a date where I  
 16 signed. It appears that she was seen there  
 17 on August 25th and I finally signed off on  
 18 it on October 14th.  
 19 Q. So when did you create this note that  
 20 says "NST reactive per nurse"?  
 21 A. On October 14th, my signature is  
 22 dated October 14th.  
 23 Q. And is that, did you actually look at  
 24 the NST at that time or you just made an  
 25 entry?

|  |  |
|--|--|
| <p style="text-align: right;">37</p> <p>1 A. Since I wrote "Per verbal report of<br/>2 R.N.," my guess is that the nonstress test<br/>3 was not with the chart at the time, so I<br/>4 could not look at it.</p> <p>5 Q. Based on your experience at Fairview,<br/>6 why wouldn't the NST be with the chart?</p> <p>7 A. You'd to ask medical records there, I<br/>8 don't know. This hospital, often, the<br/>9 medical records separates the monitor<br/>10 strips from the charts.</p> <p>11 Q. You certainly were capable of coming<br/>12 to the hospital on the night of the NST at<br/>13 Fairview?</p> <p>14 A. Absolutely. And if the nurse had any<br/>15 concerns at all, I would have.</p> <p>16 Q. You didn't have any concern for this<br/>17 mom or you would have made a personal<br/>18 appearance; is that what you're saying?</p> <p>19 MS. CALLEN: Objection.</p> <p>20 Q. Based on what you were told, you<br/>21 didn't have any concern for this mom and<br/>22 that's why you didn't appear at Fairview?</p> <p>23 A. I was told by the nurse that the<br/>24 strip was completely reassuring, and, yes,<br/>25 I was not worried that there was a problem</p> | <p style="text-align: right;">39</p> <p>1 back-check their work, they're very good<br/>2 nurses.</p> <p>3 Q. So in your mind you don't have an<br/>4 independent responsibility to review that<br/>5 NST on a patient of yours that comes in<br/>6 with complaints of decreased fetal<br/>7 movement?</p> <p>8 A. No, not if there's no concern on the<br/>9 part of the staff who are present.</p> <p>10 Q. Now, what did -- did you know the<br/>11 nurse, were you comfortable with her<br/>12 capability or competency?</p> <p>13 A. I don't recall the name of the nurse,<br/>14 I don't know if I knew her or not.</p> <p>15 However, I have -- generally the nurses at<br/>16 Fairview are excellent, and they certainly<br/>17 can interpret a monitor strip. They also<br/>18 have a house physician and a nurse manager<br/>19 present on the unit at all times who can<br/>20 help them if there's any concerns at all<br/>21 about a monitor strip. I feel very<br/>22 comfortable that they are very capable,<br/>23 they handle high-risk patients all the time<br/>24 there.</p> <p>25 Q. Doctor, you told me that within a day</p> |
| <p style="text-align: right;">38</p> <p>1 that I needed to address that evening.<br/>2 Otherwise, yes, I would have come to the<br/>3 hospital had she had any concerns at all.</p> <p>4 Q. Do you feel that you have a<br/>5 responsibility to review strips? First of<br/>6 all, did you feel that she was your<br/>7 patient?</p> <p>8 A. She is my patient, sure, when she's<br/>9 at Fairview and I'm signing off on her<br/>10 record, of course, she's my patient at that<br/>11 moment, yes.</p> <p>12 Q. Do you feel that you have<br/>13 responsibility to look at the NST within a<br/>14 day or two after it's taken on this mom who<br/>15 comes in, near term, with complaints of<br/>16 decreased fetal movement?</p> <p>17 A. No, I don't, because the nurses there<br/>18 are quite capable of assessing nonstress<br/>19 tests, and if they tell me that the strip<br/>20 is completely reactive and normal, I<br/>21 completely believe them. They are<br/>22 perfectly capable of making that<br/>23 determination. They have a house doctor<br/>24 there who can also confirm that the strip<br/>25 looks good, and I don't feel that I need to</p>               | <p style="text-align: right;">40</p> <p>1 or so after delivery of this child you had<br/>2 a conversation or an opportunity to review<br/>3 the L &amp; D strips with Kathleen?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And do you recall what<br/>6 Kathleen may have said to you that led up<br/>7 to you reviewing the strips about this<br/>8 particular labor and delivery?</p> <p>9 A. The only thing she told me was that<br/>10 the baby had problems and was transferred<br/>11 to Fairview, and that's all I needed to<br/>12 hear. We needed them to review because<br/>13 that is what we do.</p> <p>14 Q. Okay. Did you ever ask Kathleen if<br/>15 she was ever concerned about the fetal<br/>16 monitoring strips during labor and<br/>17 delivery?</p> <p>18 A. We talked about whether she was or<br/>19 not.</p> <p>20 Q. What did she say?</p> <p>21 A. She said she felt that the strip was<br/>22 reassuring.</p> <p>23 Q. Did you agree with her?</p> <p>24 A. I felt that it was not completely<br/>25 reassuring, and I explained that to her..</p>   |

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1 Q. Have we covered all your contact with  
2 Holly Hutchinson, either directly or  
3 indirectly, through the time of delivery of  
4 her child?

5 A. Yes, that's it.

6 Q. Is it safe for me to assume that you  
7 were not apprised that she came in to  
8 Lakewood for delivery?

9 A. I did not know anything about her  
10 delivery until the next day.

11 Q. And just for the record, you were not  
12 contacted at any time by Kathleen Philbin  
13 during the labor and delivery?

14 A. No, I was not.

15 Q. And to your knowledge did Kathleen  
16 Philbin contact any other physician during  
17 her labor and delivery?

18 A. Based on reviewing the chart, it does  
19 not appear that she did.

20 Q. Have you had an opportunity to  
21 discuss the strips or what you saw on the  
22 strips that was concerning to you with, at  
23 a later date with Megan or Joy? That's the  
24 strips of the L & D.

25 A. Not that I recall.

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1 Q. For example, just to educate them  
2 about something you disagreed with Kathleen  
3 about so that they can learn from it?

4 MS. CALLSEN: Objection.

5 THE WITNESS: Can I answer  
6 that?

7 MS. CALLSEN: To the extent it  
8 is not peer review or it's not based  
9 on discussion with you and I.

10 A. There was a peer review process that  
11 went on because there was an outcome that  
12 was not favorable.

13 Q. Sure.

14 A. And only in the context of peer  
15 review did I ever discuss any of this with  
16 them.

17 Q. You say "them"?

18 A. With the midwives. We have a peer  
19 review process where we all sit down when  
20 there has been a bad outcome and we discuss  
21 what might have been done differently.

22 Q. Well, is this -- is this -- explain  
23 to me this peer review process that you're  
24 talking about. It's something different  
25 than a hospital peer review?

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1 MS. CALLSEN: Objection,  
2 objection to the extent that you can  
3 explain that there is a process in  
4 place, but no specifics.

5 A. Yes. Whenever there --

6 Q. Excuse me for interrupting you,  
7 because I'm confused.

8 A. Me too.

9 Q. So what I want to do is get  
10 clarified, first of all. In general, when  
11 there is a peer review process, there's  
12 proceedings with representatives -- we're  
13 talking generally now, not specifically,  
14 okay.

15 A. Right.

16 Q. In general, there's proceedings  
17 before hospital representatives, an  
18 investigation, an opportunity for one to  
19 provide input, sometimes there's, there are  
20 physicians that are involved --

21 A. I am not speaking to any of that.

22 MS. CALLSEN: Sharon, just  
23 wait.

24 Q. Okay?

25 A. Okay. When I use the phrase "peer

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1 review," that's what I mean.

2 A. All right.

3 Q. And you earlier, ten minutes ago,  
4 referenced that there was a discussion with  
5 the midwives in a general peer review?

6 A. Right.

7 Q. That's not what you were referring  
8 to?

9 A. No, it was a general discussion.

10 Q. Okay. I need to hear, I want to know  
11 which of those --

12 A. We did not have this chart, we were  
13 not speaking specifically about this  
14 patient.

15 Q. Right, but I need to know who was  
16 present --

17 MS. CALLSEN: Objection. Mike,  
18 if that is part of a peer review or a  
19 quality assurance discussion, that is  
20 privileged, and she is instructed not  
21 to answer.

22 MR. BECKER: Okay, we're going  
23 to have a fight over this.

24 MS. CALLSEN: Then we'll have a  
25 fight over it.

|  |   |
|--|---|
| <p style="text-align: right;">45</p> <p>1 Q. But you have to -- I'm not going to<br/>2 ask what was said, then, we'll talk about<br/>3 this later, but I want to know when it<br/>4 occurred, who was present, and where it<br/>5 occurred?<br/>6 A. It would have occurred in our<br/>7 offices.<br/>8 Q. Which location?<br/>9 A. The Belle Avenue, across the street.<br/>10 And the only people that would have been<br/>11 present would have been the midwives.<br/>12 Q. Okay, but --<br/>13 A. A private meeting.<br/>14 Q. -- would it have been all the<br/>15 midwives?<br/>16 A. I believe that all three midwives<br/>17 were there when I spoke to fetal<br/>18 monitoring, yes.<br/>19 Q. Did you ever have an opportunity to<br/>20 discuss the Fairview General Hospital<br/>21 nurses' interpretation of the NST on Holly<br/>22 Hutchinson with anyone?<br/>23 MS. CALLEN: Objection to the<br/>24 extent it was with me.<br/>25 A. I have only discussed it with Julie,</p>  | <p style="text-align: right;">47</p> <p>1 it says, "Nonstress test for decreased<br/>2 fetal movement," and it's a telephone order<br/>3 from me and I cosigned that.<br/>4 Q. When -- excuse me, I didn't mean to<br/>5 interrupt you.<br/>6 A. It's got a nurse's name on it, but I<br/>7 can't read it.<br/>8 Q. When did you cosign it?<br/>9 A. I don't know. It would not have been<br/>10 that night, it would have been probably<br/>11 when I cosigned off on the nonstress test.<br/>12 Q. Which is that October date we already<br/>13 talked about?<br/>14 A. Probably.<br/>15 Q. Okay. Next entry?<br/>16 A. The next entry is, oddly enough,<br/>17 another order for a nonstress test for<br/>18 decreased fetal movement, but this one is<br/>19 from Joy Naughton, and I also cosigned<br/>20 that, and that's written by a different<br/>21 nurse.<br/>22 Q. Can you explain that?<br/>23 A. No, I don't know. The only thing I<br/>24 could think of is two different nurses, one<br/>25 called me and one called Joy and both got</p> |
| <p style="text-align: right;">46</p> <p>1 I've never talked to anyone else about it,<br/>2 no. I agree with the Fairview Hospital<br/>3 nurses' interpretation of that nonstress<br/>4 test.<br/>5 Q. Okay.<br/>6 A. I did see the strip eventually.<br/>7 Q. And that's what I was going to ask<br/>8 you is what your interpretation is, and you<br/>9 felt it was perfectly normal?<br/>10 A. Normal and reassuring, yes.<br/>11 (Plaintiff's Exhibit 2 marked.)<br/>12 Q. Showing you what's been marked as<br/>13 Plaintiff's Exhibit 2, would you identify<br/>14 that document for me.<br/>15 A. It appears to be the records from<br/>16 Fairview Hospital from the nonstress test.<br/>17 Q. Are there any electronic orders or<br/>18 entries or handwritten orders or entries or<br/>19 signatures by you within that document?<br/>20 A. There are handwritten signatures by<br/>21 me on the orders.<br/>22 Q. Okay. What I'd like to do, if you<br/>23 can in a chronological fashion, is tell me<br/>24 what you cosigned or ordered?<br/>25 A. Yes. On August 24th, 2003, at 2355,</p> | <p style="text-align: right;">48</p> <p>1 the same order.<br/>2 Q. And, again, you cosigned off on that<br/>3 sometime in October?<br/>4 A. Right.<br/>5 Q. Okay.<br/>6 A. And the next page, this is electronic<br/>7 charting from the nursing staff.<br/>8 Q. Nothing by you on the electronic<br/>9 charting?<br/>10 A. I don't sign these, no.<br/>11 Q. Nor did you create that, any entry on<br/>12 that document?<br/>13 A. Oh, gosh, no, no, that's all nursing.<br/>14 Q. Okay.<br/>15 A. Same thing on this page, these are<br/>16 all nursing-type charting. Actually,<br/>17 there's like four pages of nursing<br/>18 charting. And then the final page is the<br/>19 Nonstress Test Assessment Form, and this is<br/>20 signed off by a care giver after the<br/>21 nonstress test is completed, and this is<br/>22 the one that I signed on October 14th. It<br/>23 said that verbal report of the nurse was<br/>24 that it was reactive.<br/>25 Q. What's the purpose of signing off on</p>  |

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1 an NST like that, why are you required to  
 2 sign off on it, to your knowledge?  
 3 A. To make sure that I'm aware of what  
 4 the results were.  
 5 Q. Okay. May I see that? What does  
 6 this mean, "R.N." underneath "Per verbal  
 7 report," does that mean from the R.N.?  
 8 A. From the R.N., from a nurse.  
 9 Q. And that is your initial under the --  
 10 A. Yeah.  
 11 Q. -- the R.N.?  
 12 A. Correct.  
 13 Q. And then under "Recommendations" it  
 14 says -- what does it say there?  
 15 A. It says, "Routine, keep appointment."  
 16 Q. And so, "keep appointment," by the  
 17 time that you -- did you write this in  
 18 October?  
 19 A. I probably it in October, because  
 20 that would have been what my orders were at  
 21 that time, which was that the patient  
 22 should continue on with her usual routine  
 23 and keep her next appointment.  
 24 Q. What do you mean that probably was  
 25 what your orders were, did you have other

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1 orders to someone?  
 2 A. No, that's the typical discharge  
 3 order given after a reactive nonstress  
 4 test.  
 5 Q. But actually, this is after the fact?  
 6 A. Of course.  
 7 Q. And this is after her child was born?  
 8 A. Yes.  
 9 Q. In retrospect, would you have liked  
 10 to have been contacted by the midwife  
 11 during this labor?  
 12 MS. CALLSEN: Objection. You  
 13 can answer, but that's not a fair  
 14 question.  
 15 A. Of course.  
 16 Q. At what point would you have expected  
 17 to be contacted, and why?  
 18 MS. CALLSEN: Objection.  
 19 Again, retrospective review.  
 20 A. As the strip persisted in being not  
 21 completely reassuring, maybe 45 minutes or  
 22 an hour after she had arrived.  
 23 Q. To your knowledge, on this day did  
 24 they have in-house, did Lakewood have a  
 25 house OB?

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1 A. They always have a house OB.  
 2 Q. 24-hour house OB?  
 3 A. Yes, 24/7.  
 4 MR. BECKER: Off the record.  
 5 (Plaintiff's Exhibit 3 marked.)  
 6 Q. Doctor, I think you indicated earlier  
 7 that you would have expected to be  
 8 contacted within 45 minutes or so after  
 9 seeing nonreassuring strips once Holly  
 10 arrived at Lakewood, correct?  
 11 MS. CALLSEN: Objection.  
 12 A. Yes.  
 13 Q. Handing you what's been marked as  
 14 Plaintiff's Exhibit 3, I want you to tell  
 15 me what it is about those strips,  
 16 particularly the first 45 minutes, that you  
 17 find to be nonreassuring?  
 18 A. Let me make sure I have them in the  
 19 right order first.  
 20 It is not completely reassuring in  
 21 that there is decent long-term variability,  
 22 but what we do not see are accelerations in  
 23 the fetal heart rate. There are no  
 24 decelerations, either, so it's really more  
 25 of a not completely reassuring strip than a

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1 nonreassuring one.  
 2 Q. Besides an absence of accelerations,  
 3 anything else? How is the variability?  
 4 A. Well, all you can tell, this is an  
 5 external tracing, so all you can tell is  
 6 long-term variability, and average  
 7 long-term variability is 3 to 5 cycles a  
 8 minute, and you've got that, mostly that,  
 9 here, so it looks average.  
 10 Q. So it was simply a, and I don't mean  
 11 to use the word "simply," it was solely the  
 12 absence of accelerations that causes you to  
 13 say that this was nonreassuring and you  
 14 expected to be called?  
 15 MS. CALLSEN: Objection. She  
 16 said it was not --  
 17 A. I said it was not completely  
 18 reassuring, and I would have expected to be  
 19 called or for the midwife at least to  
 20 update me to as to what she was doing to  
 21 try and get reactivity on this strip.  
 22 Q. And as the strip proceeds, did  
 23 anything else appear that was  
 24 nonreassuring? And take your time, go  
 25 through it.

|  |  |
|--|--|
| <p style="text-align: right;">53</p> <p>1 A. Sure. No, we just mostly have a<br/>2 pretty flat strip except for one<br/>3 acceleration, which was at about 2140,<br/>4 time-wise, and it was one acceleration, but<br/>5 otherwise a fairly flat strip. And, once<br/>6 again, it's all external tracings, so you<br/>7 can't really talk about beat-to-beat<br/>8 variability.<br/>9 Q. Well, do you recommend to the<br/>10 midwives that they rupture membranes to put<br/>11 an internal on when you see an absence of<br/>12 accelerations?<br/>13 A. That is certainly one option, yes.<br/>14 Q. To your knowledge, do midwives have<br/>15 training and authority to place internal --<br/>16 A. Yes, they do.<br/>17 Q. -- monitoring or electrodes<br/>18 themselves?<br/>19 A. Yes, they do.<br/>20 Q. Okay. Anything else as it developed<br/>21 during the balance of that labor and<br/>22 delivery?<br/>23 A. There's some areas here where her<br/>24 long-term variability is somewhat<br/>25 decreased, but that can happen if the</p> | <p style="text-align: right;">55</p> <p>1 there. So there is a decrease in long-term<br/>2 variability, at least in the middle part<br/>3 here. Still not seeing persistent<br/>4 decelerations or late decels, except for<br/>5 occasional possible late decelerations, but<br/>6 they're not persistent, so they're not<br/>7 clinically significant.<br/>8 Q. What can decreased variability mean<br/>9 as to what's going on with the fetus?<br/>10 A. Most of the time it's because the<br/>11 baby's asleep or because it's been<br/>12 medicated.<br/>13 Q. It's also consistent with developing<br/>14 acidosis?<br/>15 A. It could be, however, towards the end<br/>16 here her long-term variability improves.<br/>17 When she was in anterior lip at 1230 she<br/>18 has good long-term variability, so if the<br/>19 baby was acidotic it apparently recovered,<br/>20 because it was improved.<br/>21 Q. Did you look at the baby's chart in<br/>22 preparation for today's deposition?<br/>23 A. Briefly.<br/>24 Q. Was the baby acidotic at birth?<br/>25 MS. CALLSEN: Objection.</p> |
| <p style="text-align: right;">54</p> <p>1 baby's asleep or with medications and such.<br/>2 I'm not seeing any decelerations that are<br/>3 persistent or anything else that is...<br/>4 Q. Take your time, don't rush through<br/>5 it.<br/>6 A. Yes, I won't, I won't. She possibly<br/>7 has a couple of late decelerations, but<br/>8 they are not persistent, they are not<br/>9 recurrent. And her long-term variability<br/>10 does become decreased.<br/>11 Q. At what point?<br/>12 A. Oh, gosh, see where I first noticed<br/>13 that. You should see 3 to 5 cycles a<br/>14 minute and we stop getting that at about...<br/>15 probably around...I'm trying to find the<br/>16 time stamp on this.<br/>17 MS. CALLSEN: Where are you<br/>18 looking?<br/>19 A. It's 27167-ish or so. Once again,<br/>20 this is all a gradual process, there's not<br/>21 an exact moment you can say yes, this is<br/>22 okay.<br/>23 MS. CALLSEN: Can you see the<br/>24 time on there better?<br/>25 A. Okay, you have a time stamp of 2150</p>            | <p style="text-align: right;">56</p> <p>1 A. I don't recall.<br/>2 MS. CALLSEN: To the extent she<br/>3 just reviewed the chart from<br/>4 Lakewood.<br/>5 A. I was going to say --<br/>6 MS. CALLSEN: Let's clarify.<br/>7 A. Yeah, I don't recall the specifics of<br/>8 the baby's lab work, I'd have to look. If<br/>9 you want, I will.<br/>10 Q. When is an epidural indicated?<br/>11 A. It's indicated for pain relief and<br/>12 labor. Many people feel it's indicated<br/>13 when the patient feels she needs it.<br/>14 Q. Are there any contraindications for<br/>15 an epidural?<br/>16 A. Certainly patients with spinal<br/>17 deformities or other neurologic issues<br/>18 might not be good candidates for epidurals.<br/>19 Q. Do you want a reassuring strip before<br/>20 you place an epidural?<br/>21 A. You want a reassuring strip on<br/>22 everybody. There's no reason that a<br/>23 patient whose strip is not completely<br/>24 reassuring could not have an epidural, in<br/>25 my opinion, as long as she's properly</p>  |

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1 prepared for it. They, certainly, they  
2 have done them in cases where the patient  
3 was ultimately going to end up with a  
4 cesarean for nonreassuring heart rate, and,  
5 as I said, the strip is not completely  
6 reassuring.

7 Q. So what you're saying is that  
8 notwithstanding a nonreassuring strip, it's  
9 okay to proceed to give the patient an  
10 epidural?

11 A. Yes.

12 MR. BECKER: Let's take a break  
13 and change tape. I think I'm just  
14 wrapping up, Doctor.

15 (A short break was taken.)

16 BY MR. BECKER:

17 Q. Doctor, we were talking earlier about  
18 your Friday morning meetings with the  
19 midwives. Is there any type of notes that  
20 are taken at those meetings?

21 A. The midwives would put notes on the  
22 patient charts as to the plan, but, no,  
23 there would not be separate formal notes.

24 Q. There wouldn't be an agenda, which  
25 cases we're going to talk about or anything

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1 like that?

2 A. No, we don't do any of that.

3 Q. So if in fact -- a way to tell  
4 whether or not a patient's condition or  
5 patient's care was discussed at that Friday  
6 morning meeting, one would have to look at  
7 the patient's chart, and what would they  
8 look for in the patient's chart?

9 A. They would probably look for a note.

10 Q. Saying what?

11 A. That sets out a plan.

12 Q. A change in plan or any plan?

13 A. It might be either.

14 Q. Based on your review of this prenatal  
15 chart, is there any indication that Holly's  
16 case was discussed with you on that Friday  
17 morning meeting?

18 A. Can I take a look at the chart,  
19 please?

20 There is nothing that specifically  
21 states it was discussed at the meeting.

22 Q. We were talking earlier about high  
23 sugars. Once a mom is told watch her  
24 sugars, is consulted, you need more than  
25 one high sugar after she's put on a diet to

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1 recommend insulin, correct?

2 A. Yes.

3 Q. And midwives don't have authority to  
4 prescribe insulin, correct?

5 A. I believe they do have authority to  
6 prescribe it.

7 Q. They do?

8 A. They have prescriptive authority,  
9 yes.

10 Q. They don't have to consult with you  
11 before?

12 A. They would -- I would say that most  
13 of the midwives here are pretty  
14 inexperienced at it and they would not  
15 write it, but technically, yes, they could  
16 write for insulin.

17 Q. You're saying based --

18 A. However, in this practice they don't  
19 do that.

20 Q. All right, now you really confused  
21 me. I'm interested in this practice --

22 A. Okay.

23 Q. -- whether or not these midwives have  
24 authority and routinely write a script for  
25 insulin.

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1 MS. CALLSEN: Objection, that  
2 is compound, and I think that she  
3 said that they do have authority  
4 under the law.

5 A. Correct, legal authority,  
6 prescriptive authority, and they could  
7 write for insulin if they chose to do so.

8 Q. Okay.

9 A. In this practice they do not  
10 prescribe insulin.

11 Q. Okay. And how is a patient, a GD,  
12 gestationally diabetic mom, how does she  
13 get to receiving insulin? I'm assuming  
14 that the midwives then consult with you and  
15 you write the order?

16 A. Correct, or I would refer her on to a  
17 high risk specialist who would write the  
18 order, one way or the other.

19 Q. Would you, have you written orders  
20 for insulin for their patients in the past?

21 A. Yes.

22 Q. And sometimes you feel a need to even  
23 send a GD mom to an endocrinologist or a  
24 maternal-fetal doc, correct?

25 A. Usually a maternal-fetal medicine

|  |   |
|--|---|
| <p style="text-align: right;">61</p> <p>1 person, and I do have routinely -- I might</p> <p>2 start the insulin, but I usually would</p> <p>3 refer her to a maternal-fetal physician too</p> <p>4 for further consultation.</p> <p>5 Q. But you would expect to be notified</p> <p>6 by the midwife who's managing gestational</p> <p>7 diabetic mom if they had multiple instances</p> <p>8 of high sugar, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And was there any evidence in</p> <p>11 the chart of multiple evidences of high</p> <p>12 sugar in Holly?</p> <p>13 A. No, she does not have a need for</p> <p>14 insulin, based on the sugars in this chart,</p> <p>15 no.</p> <p>16 Q. So there's not evidence of multiple</p> <p>17 instances of high sugar with her?</p> <p>18 A. Over the course of several months,</p> <p>19 might she have had several high sugars, of</p> <p>20 course, but that is not significant.</p> <p>21 Q. I thought we agreed that you needed</p> <p>22 something more than one or two high sugars</p> <p>23 prior to recommending someone receive</p> <p>24 insulin?</p> <p>25 A. We did.</p> | <p style="text-align: right;">63</p> <p>1 (Signature not waived.)</p> <p>2 - - -</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 SHARON MIKOL, M.D.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</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 style="text-align: right;">62</p> <p>1 Q. Okay. Are you saying that they have</p> <p>2 to be persistent?</p> <p>3 A. Correct.</p> <p>4 Q. And I'm assuming that normal sugar is</p> <p>5 anything up to 100 or 110?</p> <p>6 A. It depends on whether you're looking</p> <p>7 at fasting or postprandial sugars or what</p> <p>8 kind of sugars you're looking at.</p> <p>9 Q. And just to recap, Doctor, it's your</p> <p>10 belief that unless a mom is insulin-</p> <p>11 dependent, gestationally diabetic, and</p> <p>12 reaches term or near term and has</p> <p>13 complaints of decreased fetal movement and</p> <p>14 also has a ripe cervix, there's no</p> <p>15 indication to deliver?</p> <p>16 A. Delivery is not indicated, no, it's</p> <p>17 not required.</p> <p>18 MR. BECKER: Okay, that's all I</p> <p>19 have.</p> <p>20 MS. CALLSEN: You have the</p> <p>21 option to review the transcript to</p> <p>22 make sure Kristin got it right.</p> <p>23 THE WITNESS: Of course.</p> <p>24 - - -</p> <p>25 (Deposition concluded at 9:35 a.m.)</p>   | <p style="text-align: right;">64</p> <p>1 CERTIFICATE</p> <p>2 The State of Ohio,</p> <p>3 County of Cuyahoga.</p> <p>4</p> <p>5 I, Kristin a. Beutler, RPR a Notary</p> <p>6 Public within and for the State of Ohio, duly</p> <p>7 commissioned and qualified, do hereby certify</p> <p>8 that the within-named witness, SHARON MIKOL,</p> <p>9 M.D., was by me first duly sworn to testify to</p> <p>10 the truth, the whole truth, and nothing but</p> <p>11 the truth in the cause aforesaid; that the</p> <p>12 testimony then given by the above-referenced</p> <p>13 witness was by me reduced to stenotype in the</p> <p>14 presence of said witness, afterwards</p> <p>15 transcribed, and that the foregoing is a true</p> <p>16 and correct transcription of the testimony so</p> <p>17 given by the above referenced witness.</p> <p>18</p> <p>19 I do further certify that this</p> <p>20 deposition was taken at the time and place in</p> <p>21 the foregoing caption specified and was</p> <p>22 completed without adjournment.</p> <p>23</p> <p>24</p> <p>25 I do further certify that I am not a</p> |



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1 relative, counsel or attorney for either  
2 party, or otherwise interested in the event of  
3 this action.

4  
5 IN WITNESS WHEREOF, I have hereunto set  
6 my hand and affixed my seal of office at  
7 Cleveland, Ohio this 4th day of December,  
8 A.D., 2005.

9  
10  
11  
12  
13 Kristin Beutler, RPR, Notary Public  
within and for the State of Ohio.  
My Commission expires October 8, 2006  
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