IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHELLE KASCHAK, et al.,

Plaintiffs,

vs

UHHS BEDFORD MEDICAL CENTER, et al.,

Defendants.

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DEPOSITION OF MARTHA MILLER, M.D.

WEDNESDAY, DECEMBER 15, 1999

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The deposition of MARTHA MILLER, M.D., the Witness herein, called by counsel on behalf of the Plaintiff for examination under the statute, taken before me, Vivian L. Gordon, a Registered Diplomate Reporter and Notary Public in and for the State of Ohio, pursuant to agreement of counsel, at the offices of University Hospitals, Learning Center, Cleveland, Ohio, commencing at 9:00 o'clock a.m. on the day and date above set forth.

APPEARANCES:

On behalf of the Plaintiffs
Becker & Mishkind
BY: HOWARD D. MISHKIND, ESQ.
Skylight Office Tower Suite 660
Cleveland, Ohio 44113

On behalf of the Defendant University Hospitals
Moscarino & Treu
BY: KEVIN M. NORCHI, ESQ.
630 Hanna Building
Cleveland, Ohio 44115

On behalf of the Witness
Reminger & Reminger
BY: PATTIJO MOONEY, ESQ.
The 113 St. Clair Building
Cleveland, Ohio 44114

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(Thereupon, MILLER Deposition Exhibit 1 was marked for purposes of identification.)

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MARTHA MILLER, M.D., a witness herein, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, was deposed and said as follows:

EXAMINATION OF MARTHA MILLER, M.D.

BY-MR. MISHKIND:

Q. Would you please state your name for the record.

A. Martha Jane Miller.

MR. MISHKIND: Dr. Miller, before we begin the questioning, let me indicate on the record who I am and why we are here and some of the procedural issues that surround your deposition.

First, my name is Howard Mishkind and I represent the Kaschak family in connection with a lawsuit that has been filed against Bedford Hospital and certain entities, and a nurse that was involved in the care of the baby in the

nursery on the first day of the baby's life. Kevin Norchi represents the defendants in this case.

This deposition is being taken today by agreement, recognizing that the case has been voluntarily dismissed with one year to refile, and will be refiled, but we are doing some of our discovery without an actual lawsuit filed.

But on behalf of the Kaschak family, I have authority and consent to ask you questions followed by Mr. Norchi, to the extent that he has any questions of you, and your transcript, the answers will be taken down and we may use the testimony in whatever manner, as if this was in litigation, because the case will be refiled.

MS. MOONEY: My understanding, for the record, is that the privilege, any potential physician/patient privilege has been waived by virtue of the filing of the lawsuit and also that you do have your client's permission and are representing to us that you have obtained their permission to discuss the care that Dr. Miller rendered to Baby Kaschak.

And it's our understanding, and we are here today understanding that that is the

situation and also that Mr. Norchi doesn't have an objection and that he will be permitted to ask questions if he so chooses.

MR. NORCHI: I have no objection.

BY MR. MISHKIND:

Q. You are a physician; is that correct?

A. Yes.

Q. You are a specialist, as I understand it, in neonatology?

A. Correct.

Q. While I had asked you off the record before Mr. Norchi arrived, we don't have a CV here, but you are going to favor me with one; correct?

A. Yes.

Q. Have you had your deposition taken before, ma'am?

A. Yes.

Q. Just give me an idea of the number of times that you have had this kind of a get together.

A. I think this might be the fourth time.

Q. Have any of those occasions been as an expert witness?

A. No.

Q. So it's involved situations where a baby that you were treating in some way or another, there was litigation over that?

A. Yes.

Q. Okay. Very briefly, if you would, trace for me your educational background, if you would, beginning with medical school and tell me a little bit about your postgraduate training up through your board certification.

A. Okay. I went to medical school at USC. And from there I went to residency in pediatrics at UCLA. I did a pediatric cardiology fellowship at UCLA. I came here and did a neonatology fellowship, became a faculty member here, passed my boards, oh, that would be -- that's a subboard in neonatology -- probably around 1984. You will see that in my CV when you get the copy.

Since then I have been a faculty member in the department of pediatrics, division of neonatology, and my current title is associate professor of pediatrics.

Q. You are board certified in pediatrics?

A. Yes.

Q. And board certified in the

subspecialty of neonatology?

A. Correct.

Q. Any other board certifications?

A. No.

Q. As I understand it, you have done some writing; correct? Published some articles?

A. Yes, as part of my academic position, I do publish, correct.

Q. And some of the articles that you have published have pertained to issues of neonatal apnea?

A. Oh, yes.

Q. Is that an area of interest that you have, neonatal apnea or issues surrounding apparent life-threatening events or SIDS, things of that nature?

A. Not SIDS particularly, but apnea, yes, that is correct, yes.

Q. Okay. And are the articles that you have written set forth in your CV, ma'am?

A. Yes.

Q. Again, before the deposition started, I asked you -- before Mr. Norchi arrived, I asked you a couple questions, one of which was were you involved in any aspect of the care of the baby

once the baby was transferred and admitted to the neonatal intensive care unit.

Was that one of the questions I asked you off the record?

A. Yes, it was.

Q. And I provided you a copy of the records for you to see whether you were or weren't; correct?

A. Correct. I did not find my name as attending on any of the days in which the child was hospitalized here.

Q. Now, I also presented to you and had marked as an exhibit Plaintiff's Exhibit 1 and asked you off the record whether this was a copy of your consult note from Bedford Medical Center.

Did I ask you that, as well?

A. Yes, you did.

Q. Is Plaintiff's Exhibit 1 the consult note?

A. Yes, it is.

Q. And with the exception of asking you whether I could have coffee, did you and I discuss anything else before we began the deposition today?

A. No.

Q. Now, you had called after a subpoena had been issued to you some time ago and I sent you a copy of the Bedford records; correct?

A. Correct.

Q. We didn't discuss any aspect of the care that you had provided, did we?

A. No.

Q. Okay. So presumably I am going to be asking you some questions about the baby's care or at least what you were involved in. This will be the first time that you and I have talked about that; correct?

A. This is correct.

Q. All right. Before the deposition started, you were introduced to Mr. Norchi and you indicated to him, nice to see you again.

You have met Mr. Norchi before?

A. Yes, on previous matters regarding previous cases.

Q. Okay. Have you ever had occasion to talk to Mr. Norchi about Baby Kaschak, Megan Kaschak?

A. I do not recall.

THE WITNESS: Is that correct?

Q. He can't answer for you.

A. I don't recall that we did, no, not certainly about the substantive issues in this.

MR. NORCHI: I will represent to you that we did not, Howard.

MR. MISHKIND: All right.

Q. In glancing at the record, once the baby was admitted to RB&C, who were you able to derive from the record was the attending neonatologist upon admission to Rainbow Babies and Childrens?

A. The first day's note was written by Dr. Izatt. There are a number of different names in the chart on subsequent days. I do not know who the attending was of record on admission.

That would be, if you look on the chart, in the chart, at the top where the stamp is, here, that name will be the attending of record.

Q. Okay.

A. But there were a number of different people.

Q. Okay. But suffice it to say, based upon your recollection and your review of the records, you weren't the attending, nor do you

believe you were involved in any aspect of her care at RB&C; correct?

A. Correct.

Q. Now, it's my understanding that you were the on call neonatologist the night and early morning of the day in question, which is January 25, 1997; is that correct?

A. Yes. Isn't that the 26th? Was that not the morning of the 26th? Am I incorrect?

Q. The morning of the 25th.

A. Okay. That's correct, yes.

Q. Okay. Where were you physically located when you were first contacted relative to a situation in the nursery at Bedford?

A. At home.

Q. Were you awakened by a telephone call from someone?

A. Yes, that's correct.

Q. And who procedurally or technically would that have been who would have been calling you?

A. A nurse from the nursery at Bedford.

Q. Do you recall who he or she was?

A. No.

Q. Do you recall the substance of any

conversation that you had with him or her?

A. Not at this time.

Q. Okay. Suffice it to say, though, they called you for a specific reason; correct?

A. Correct.

Q. And why you as opposed to someone else?

A. Because my responsibility in that role is to respond to emergencies. And I don't remember the substance of what I was told that morning, but that the baby was very sick and was being resuscitated by the house officer and I should come right away. So that's my job.

Q. Home is located where?

A. Lyndhurst. Do you want the street address?

Q. Might as well.

A. Countryside Road in Lyndhurst.

Q. When you were contacted, recognizing that you don't remember the specifics of the conversation, is there a routine that you normally follow, if and when you get these type of telephone calls?

A. Yes.

Q. Tell me what is the routine that you

normally follow under those circumstances.

A. I put my clothes on, find my keys and get in my car and drive to the hospital.

Q. Is there anyone else that you contact as part of the neonatal team to participate or assist you in whatever it is that you are about to do?

A. No.

Q. Is it reasonable to conclude that once you got whatever information you got from the nurse that you did exactly what you just said, got dressed, got in your car and drove to the hospital?

A. Correct.

Q. Do you have a recollection of driving to the hospital in this situation?

A. Yes.

Q. Okay. From Countryside to Bedford, how long did it take you or how long approximately would it take you?

A. I don't know how long it took me that night. I have no idea. Approximately it takes me 30 to 40 minutes, depending upon the traffic.

Q. Were you in communication with the hospital at all en route to the hospital?

A. No.

Q. Are there situations where you will be on a cell phone talking with the hospital?

A. No. That service is not provided to us.

Q. What service?

A. A cell phone for professional use is not provided to us.

Q. ***So*** in other words, if any orders or suggestions were needed from you as a neonatologist, they would have to wait until you physically arrived, unless someone else could do what it was that you would otherwise do? In other words, there wasn't any on board communication between you and the hospital?

A. No.

Q. And as far as recollecting anything that was told to you during the conversation between the nurse and when you were awakened, you don't remember anything other than there was a sick baby --

A. No, **I** don't.

Q. -- that was being resuscitated?

A. That's correct.

Q. Okay. Have you at any time seen the

autopsy on this baby?

A. No.

Q. While you were the neonatologist that arrived at the hospital and then involved in the neonatal transfer from Bedford to RB&C, did there ever come a time before I issued a subpoena to you that you became aware of the fact that the baby had died?

A. Yes.

Q. When was that?

A. Shortly after the baby died.

Q. Were there discussions that you had with other of your colleagues about the circumstances surrounding the baby's death?

A. We discussed the evaluation of the baby. I mean the evaluation at Rainbow.

Q. And who is "we"?

A. One of the attendings and myself. It might have been Dr. Izatt, but being two and a half years ago, I can't be absolutely sure who it was.

Q. Was there some type of a formal meeting or was this an informal get together that you had with someone?

A. This was a discussion in the hallway.

There was no meeting.

Q. Okay. Was an opinion expressed by anyone to you as to the cause of the baby's death?

A. No.

Q. Was an opinion expressed to you by anyone as to the cause of the baby's cardiac arrest?

A. No.

Q. Who is Dr. Arthur Zinn?

A. Dr. Zinn is a member of the genetics faculty here.

Q. Are you aware of the fact that at the time of the autopsy that he did a number of metabolic tests to determine whether or not there was any type of inborn error of metabolism that caused the baby's arrest?

A. No, I'm not aware that he completed that evaluation.

Q. Are you aware that he had done some evaluation?

A. How should I put it? It might have been Dr. Izatt that spoke to me regarding the fact that they were going to do the evaluation.

If you look in my note, it says must

consider metabolic disorders in the differential. So that would have been expected to be part of the evaluation of the baby.

Q. And as to whether or not inborn errors of metabolism or metabolic disorders were ruled out as a likely cause of the baby's cardiac arrest, do you know whether it was or whether they were or were not?

A. No, I do not.

MS. MOONEY: Let him finish his question before you start your answer. It makes it easier to follow along, so I know what you are talking about.

(Thereupon, a discussion was had off the record.)

Q. Do you specifically have any recollection of ever talking with Dr. Zinn at any time during the preliminary analysis that he was doing of any of the metabolic testing as to why he was doing it or what he was finding in the metabolic tests?

A. No.

Q. There is also a pediatric neurologist that came over from The Cleveland Clinic, Dr. Bruce Cohn. Do you know Bruce?

A. No.

Q. Did you know that he was brought over from The Cleveland Clinic to sort of provide an outsider's view of what were some of the possible explanations for the cardiac arrest and what some of the possible explanations were for why the child had suffered the severe encephalopathy that the child had suffered?

A. No, I didn't know he was consulted.

Q. Okay. The record suggested Dr. Berenson was actively involved in the care of the baby upon admission. Is Dr. Frank Berenson still here at RB&C?

A. I believe so.

Q. Is he?

A. I believe so. We have a rapid turnover of faculty. I expect so.

Q. And Dr. Fanaroff's name is on the record, as well. Is Dr. Fanaroff still here?

A. Yes.

Q. Would you just for purposes of my edification tell me what apnea is.

A. Apnea is a cessation of respiration.

Q. And in an otherwise healthy neonate, what are some of the possible causes of apnea?

A. Infants may have apnea as a normal part of their respiration during sleep and sometimes during waking. So apnea may be a normal phenomenon, even prolonged apnea, more than 20 seconds, may occur.

Apnea may occur as a manifestation of immaturity of the brain in a premature baby. It may occur as a manifestation of a number of disorders, including infection, seizures, respiratory disorders. The list is quite long.

Q. Okay. And I know that there was some consideration of infection being an etiology for the baby's cardiac arrest. Do you know whether infection was ultimately ruled out in this case?

A. No. I have not seen the complete medical record. I don't know what the final results were.

Q. Certainly you would expect in a careful workup that evaluation of infection as well as evaluation of potential inborn errors of metabolism would be considered; correct?

MR. NORCHI: Objection.

A. Yes.

Q. Is apnea more or less common in a premature infant than in a full-term infant?

A. It's more common in premature infants.
Q. Is it common in premature infants to have some type of cardiorespiratory monitoring of the neonate during the newborn period?
MS. MOONEY: You are talking about generally speaking, Howard?
MR. MISHKIND: Yes.
A. I can't answer yes or no to that, because you have to define prematurity in order to answer that. For children less than 35 weeks, it is common. You may choose to monitor.
Q. Okay.
A. For children over 34 to 35 weeks, a monitor may or may not be necessary.
Q. And in this case, you know that Baby Megan was less than 35 weeks at the time of delivery; correct?
A. Correct.
Q. And also that there had been an order for continuous cardiorespiratory monitoring?
A. Yes. I saw that the order had been written by Dr. Abu-Shaweesh.
Q. Is cardiorespiratory or cardiopulmonary monitoring of some clinical value in monitoring a child for potential episodes of

apnea?

A. Yes.

Q. What does cardiopulmonary monitoring tell the clinician in a situation where there is an apneic event?

A. That depends on the configuration of the monitoring. It depends on, in other words, on the monitor that's used. It can tell you if the heart rate lowers, it can alarm for particular settings.

In other words, if the heart rate goes less than 100, a bell, a monitor alarm will go off. If configured with oxygen saturation, it tells you what the baby's oxygen saturation is and what it was during an apnea event.

Q. When monitors are used, including monitoring of pulse oximetry, should the clinician be able to recognize central obstructive, as well as mixed apnea, as they occur?

A. The word recognize is not applicable. You cannot distinguish those three classes with standard cardiopulmonary monitoring. You can recognize that an apnea of some form occurred, but you cannot distinguish which of those three

it was, with the standard configurations.

Q. Okay. Are there any more sophisticated or sensitive measures that can differentiate between those?

A. There are, but they are not in common practice in nurseries. They are more research tools than common practice tools.

Q. Is it fair to say then that the key from a clinical perspective is if cardiorespiratory monitoring is used, along with pulse oximetry, from a clinical standpoint, the early recognition of the apneic event is what is important?

A. Yes.

Q. And what measures from a clinical standpoint need to be taken if alarms sound indicating that there is an apneic event occurring?

A. You examine the baby.

Q. Okay. And then what do you do?

A. You do what is appropriate. Initiate resuscitation if necessary, or treat whatever condition might have resulted in the apnea.

Alarms may occur on monitors due to other events than apneas.

Q. Such as?

A. A lead coming off, a movement may trigger an alarm.

Q. Assuming it's not a false alarm, if you will, in terms of the lead coming off, but a true concerning event, heralding an apneic event, is it important that timely ventilation be provided to the neonate?

A. Yes.

Q. You were not present when Megan arrested, I understand that.

A. That's correct.

Q. You were at home. If Megan was on cardiopulmonary alarms when she arrested, and the leads didn't come loose, should the alarms have sounded at the time of the event when her heart rate dropped and she went into cardiac arrest?

MS. MOONEY: Objection.

MR. NORCHI: Objection.

MS. MOONEY: Are you going to define the settings for her?

Q. Assuming the settings were properly set in accordance with whatever the order was at the time that the baby was on the cardiopulmonary monitors, with the leads connected, and the baby

experienced the cardiac arrest with the heart rate dropping down, under normal circumstances, should the alarms sound?

MS. MOONEY: Doctor, don't guess. If you know, you can tell him.

A. I do not know what happened to this child at all. And so I can't guess as to whether the alarm would have -- whether that configuration would have effectively picked up the beginning of this event. That's why I can't answer your question substantively because I don't know what happened to her. I wasn't there.

Q. Well, under what circumstances might there be something that caused the baby to stop breathing, to become hypotensive, such that if the baby was on the alarms, under normal circumstances, the alarms wouldn't sound? Does that make sense that the alarms wouldn't sound under that kind of a scenario?

MS. MOONEY: I'm going to object. Are you talking in this infant or generally speaking?

MR. MISHKIND: Start with generally speaking.

Q. If a neonate, a premature baby that's

on monitors that's pursuant to orders, supposed to be on continuous CP monitoring, if the baby stops breathing, becomes hypotensive and is on the monitors at the time, do you know of any reason under normal circumstances that the alarms wouldn't sound?

A. Yes.

Q. Okay. And what would be the circumstance?

A. If with the photo sensitive pulse oximeter, if a light, a strong light is shining on it, it may register a normal saturation even though it's not even attached to the child.

Q. Okay.

A. Some monitors, some monitoring equipment will give a heart rate even when the leads have fallen off.

Q. Okay. You say a photo, some type of a light shining?

A. Yes. Like a light or a bed lamp. A bedside lamp.

Q. Absent that, do you know of any other circumstances under normal procedures, normal circumstances, where the alarms would not sound with that type of scenario?

A. No.

Q. Okay. Now, when you arrived at the hospital, I presume you asked a lot of questions?

A. Yes.

Q. Did you ask questions of the nurse, the neonatal nurse in terms of what happened to this baby?

A. Yes.

Q. Okay. Do you remember having the conversation with the neonatal nurse?

A. Yes.

Q. Okay.

A. Yes, I remember speaking to her. I don't remember all of what we said, being two and a half years ago.

Q. Fair enough. And I understand that. But some of the things -- let me help you perhaps with the nature of my questions so you can then carry it through to the balance of my questions.

I recognize you have a note that you have written --

A. Correct.

Q. -- that at least in part you are relying on?

A. Correct.

Q. There may be things that you have a recollection of independent of this note that maybe the note triggers or you just remember anyway; correct?

A. Yes.

Q. All right. And there may be things that because of the passage of time, you just would be guessing at?

A. Correct.

Q. When I ask you questions, if you remember something that's not reflected in the record, but for some reason something that stuck in your mind, tell me that. If on the other hand you have no recollection of it, then tell me that, as well.

A. Sure, that's fine.

Q. Okay. Let's start with an easy one. Do you remember the name of the nurse that you spoke with?

A. No.

Q. Are you able to describe her in any way?

A. Not at all.

Q. Okay. So if PJ happened to be the nurse other than --

A. I would know if it was PJ, but it was not PJ. I recall three people in the room, but I do not know the names of the two nurses who were there.

Q. You recall two nurses and who was the third?

A. The third was, I believe, the gentleman who did the resuscitation, whose name we were attempting to spell.

MS. MOONEY: Abu-Shaweesh?

THE WITNESS: No.

A. I know where it is. It's on the front page here. It was D-A-W-0-U-D. I believe that's correct. That's who is attributed to the resuscitation by the Bedford record.

Q. And he is, to your knowledge, or was to your knowledge the house staff doctor?

A. That's what I know.

Q. Now, Dr. Dawoud wrote a note indicating that chest compressions were in progress, as well as bagging, which he described as inefficient.

Do you recall seeing that note from the doctor?

A. Yes. It's somewhere here, yes.

Q. It's right there.

A. Thanks.

Q. What does that mean to you when one describes the bagging as being inefficient?

MS. **MOONEY:** Objection.

A. **I** don't know the specific problem he is referring to. I can't say.

Q. Do you use the term inefficient in describing any type of ventilatory or perfusion attempts?

A. I would be more specific.

Q. If you were having difficulty ventilating and oxygenating a baby, what terminology would you use?

A. Poor chest rise, or lack of change in color. Those are specific aspects of the change in physiology that occur when unventilating a patient.

Q. Okay. I asked you what apnea was before. Would you also tell me what apparent life-threatening event or events in a newborn, what is that syndrome or what is that condition?

A. The term ALTE as used in **SIDS** vernacular is not applied to newborns. It's applied to children generally over a month of

age. If that's the context of your question.

Q. You would not apply apparent life-threatening event to a neonate?

A. Correct.

Q. Apparent life-threatening events used to be referred to as near SIDS death?

A. Correct.

Q. But that is sort of shunned now in terms of the terminology; is that correct?

A. The two terms are, as far as I am concerned, interchangeable.

Q. But it's more commonly now referred to as apparent life-threatening event than as a near SIDS?

A. Correct.

Q. Michelle Kaschak's deposition was taken, and she indicated that she recalled having a conversation with you and her husband Michael where you came in and talked with them about the events that you were aware of within the limited context of your involvement.

A. Correct.

Q. Do you remember having a conversation with the mom and the dad or the mom or the dad?

A. Yes.

Q. Do you recall which hospital that would have been at?

A. Bedford.

Q. Okay. Tell me as best as you can recall, either generally speaking or with specificity, what it is that you remember saying to mom and dad.

A. I absolutely don't remember any of the context of my conversation, not at all. Not one word.

Q. Do you recall telling them that you had a special interest in how babies breathe?

A. I don't recall that.

Q. Would that possibly have been something that you would have said to them?

A. It's possible.

Q. So if that's Michelle's recollection of that, that certainly would not be inconsistent with something you might have said?

A. It is possible.

Q. Okay. Do you recall telling Michelle or the dad that you do not know how long the baby had experienced this hypoxic event before the baby was provided with resuscitation?

MR. NORCHI: Objection.

A. I don't remember the conversation well enough to answer that.

Q. Okay. In a neonate, can you tell me how long in a premature neonate, otherwise healthy, but less than 35 weeks, that experiences cardiorespiratory arrest, how long does it take before a baby can experience severe hypoxic ischemic encephalopathy without being appropriately ventilated and oxygenated?

A. I cannot answer that. Just by 20 years of work, I can't give you a specific number, at all.

Q. When a neonate is deprived of oxygen, is the metabolic process greater than in an older child?

A. The term metabolic process is too vague. I can't answer it because that's not specific enough.

Q. When a neonate becomes hypoxic, is there a greater likelihood of injury than in an older child?

A. To my knowledge, that is not the case. I cannot -- that's as far as I can go with that.

Q. Do you know how long the baby had been

-- how long the arrest had occurred before the baby received appropriate cardiorespiratory resuscitation?

A. No.

Q. In the newborn period, are babies, do they breathe through their nose or do they breathe through their mouths?

A. They can do either or both.

Q. During the newborn period, aren't neonates obligate breathers?

A. There are three groups of physician physiologists in the world who have shown that newborns are able to breathe through their nose as well as their mouth. Not all can, but there are newborn infants who are able to contribute through their mouth, as well as their nose.

Q. Okay. When you came on the scene, was the baby already experiencing seizures?

A. When I came on the scene, the baby was experiencing clonic movements of the upper and lower extremities, which I interpreted as possible seizures. It is not, without an EEG, possible to be sure they are.

Those were the movements I observed, and which I wrote in my note I was concerned were

seizures.

Q. Do you know whether the EEG confirmed the clinical picture of the seizures?

A. No. I have not seen the record, the whole record from Rainbow, so I don't know.

Q. From a physiological standpoint, if, in fact, what you saw were seizures, what in a neonate that has experienced cardiac arrest would precipitate seizure activity?

A. In a child who had an arrest, ischemic brain injury would, could.

Q. Do all babies that experience cardiac arrest experience ischemic brain injury?

MS. MOONEY: Cardiac arrest or cardiopulmonary arrest?

MR. MISHKIND: Cardiopulmonary arrest.

A. No.

Q. How do you determine, what factors do you look at in terms of evaluating a child that has experienced a cardiopulmonary arrest in evaluating whether the child has experienced -- strike that.

What factors influence which neonates will experience an ischemic encephalopathy that

have experienced cardiopulmonary arrest and which ones will not?

A. The word factors is too vague. Be more specific and then I can get to the point.

Q. I would be happy to.

You told me that not all neonates that have experienced a cardiopulmonary arrest experience ischemic encephalopathy; correct?

A. Correct.

Q. Some do and some don't?

A. Correct.

Q. What are the variables that influence the likelihood of a child that has experienced a cardiopulmonary arrest of having some ischemic encephalopathy?

A. The underlying cause of the arrest.

Q. Okay.

A. The duration of the arrest.

Q. Now, just so that we are not dealing with hypotheticals, is it your opinion, based upon the review of the records, that Megan Kaschak suffered a cardiopulmonary arrest?

MS. MOONEY: Based on her review of the Bedford medical records only?

MR. MISHKIND: Based on the review of

whatever information she has.

MS. MOONEY: Which I think we established is only the medical records from Bedford.

MR. MISHKIND: And any kind of curbside conversation she may have had with doctors at Rainbow Babies and Childrens.

A. The answer is yes.

Q. Okay. There wasn't anything magical about the question. I just wanted to make sure.

A. No, just be careful and thoughtful and the answer is yes.

Q. Okay. I appreciate that.

The record seems to suggest that you arrived around 7:00 a.m.

Does that --

A. Well, let's see. The note at 7:00 a.m. by Dr. Dawoud says that I arrived. So there we are.

Q. Okay. And would you then have taken over the care of the baby at that point?

A. Yes.

Q. Do you remember physically taking charge?

A. Yes.

Q. Tell me what you did at that point when you took charge.

MS. **MOONEY:** Do you want to look at your notes here?

Q. Doctor, let me interrupt you for one second. As you are answering this, tell me whether you are recalling what you did independently or whether you are exclusively relying on your note.

A. Okay.

Q. **Go** ahead.

A. I will tell you what **I** recall. **I** recall walking in the room, seeing the baby on the warming table, seeing that the child, I believe, had been intubated. Dr. Dawoud was there. I believe there were two nurses. Now, that's not in the record, but **I** am recalling three people in the room.

I asked them to tell me what had happened and what they had done, and **I** wrote in my note what information they gave me regarding the events that had occurred prior to my telephone call, the telephone call **to** me. And **I** examined the baby.

Now, **I** am going to refer to my note

because I wrote the physical exam. That was my first point of effort there.

She was flaccid, not breathing, with no withdrawal to pain. Blinking, had no pupillary reflexes and she had agonal respirations.

Q. Okay. And what therapy or interventions did you then administer?

A. We did an arterial blood gas, culture and chest X-ray, which I reviewed myself. I do not recall who was bagging her, but we adjusted the pressure on the monitor to which she was bagged, as well as the respiratory rate to confirm what would give you an appropriate chest rise.

We evaluated her glucose status, her arterial pressure. We gave her normal saline because her mean arterial pressure was lower than I would have expected for a 35 week old infant. We looked at her white count. I sent a CBC on her.

We gave her -- she had a metabolic acidosis and I gave her two milligrams of bicarb. I am reading that from my note.

Q. That's fine.

A. I called -- let's see, she exhibited clonic movements of extremities and was loaded with phenobarbital for presumed seizures.

The transport team was called from Rainbow Babies and Childrens Hospital. I discussed the transport with her family and also notified her pediatrician. Dr. Emery had been the pediatrician of record for this child at Bedford Hospital. And the transport team arrived. And the baby was successfully placed in the transport vehicle and transported to Rainbow.

Q. Were you in the vehicle during the transport?

A. No.

Q. What would you have done while the baby was being transported? Did you then go to your car and drive to the hospital or go home?

A. I don't remember where I went. Responsibility for the infant is transferred to the transport team at the time the baby is put in the ambulance, so that child would then be cared for by the attending physician at Rainbow. I don't remember what I was doing that day, other than this.

Q. Would a physician have been on board

in the ambulance en route to the hospital?

A. I don't remember who was on the transport team. This was two and a half years ago, and the composition of our team has changed during that time, so I don't recall who was there.

There could have been, or it might have been a paramedic, a nurse specialist, respiratory therapist. I don't remember who was on the team.

Q. You say the composition of the team has changed. Just so I can try to get a parameter as to when the change occurred and what type of change and composition occurred, can you explain that to me?

A. Oh, we had residents -- years ago we had res dents on our transport service and those no longer go on the service. A number of changes have occurred. I can't tell you what date the resident stopped going on transports. I don't know if it was before or after this date. I just don't remember.

Q. Fair enough. So the composition of the team may or may not have included a resident?

A. Yes. That's my point.

Q. Fair enough.

A. It may or may not have included a fellow also, I don't know, I don't remember.

Q. What was the cause of the metabolic acidosis?

A. I cannot tell you.

Q. What factors did you consider?

A. I considered she might have an infection. She was on appropriate antibiotics. I considered that this might have been due to a cardiopulmonary arrest. I considered also a rare metabolic disorder, and those are the things that I considered at the time.

Q. And in terms of the cause of the cardiopulmonary arrest, what factors did you consider at that time as potential etiologies?

A. They would encompass the things that we just mentioned. Those would include infection; metabolic disorder can cause an arrest. Also reflux could cause a respiratory arrest.

There was no evidence of that in the history from the nurse on the examination of the baby. An arrest may be caused by a large, large list of events.

Q. Okay. A baby can experience an arrest due to a number of factors. The more critical issue, and correct me if I am wrong, is timely recognizing the arrest and providing appropriate ventilation and oxygenation once the arrest occurs?

A. This is correct.

Q. There was some reference, and I may be wrong, but there was some reference to -- strike that.

Did you have any conversations with one or both of the nurses as to the timing of the discovery of this baby's cessation of breathing?

A. Yes. I recall asking them when she was found to be ill, what were the circumstances. And I wrote down what I could discover. That was at 6:30 in the morning, after trying breast feeding, she became pale and apneic. That's all the timing that I was able to find out and put in my note.

Q. Do you recall independently or do your notes reflect at the time that the baby was breast feeding whether the baby was on or off the CP monitors?

A. I remember asking about that. I don't

remember finding a specific answer. And my reading of the chart record doesn't give me that information either.

Q. Okay. Do you recollect who you were asking for that information? Would it have been one or either of those nurses?

A. I suspect so, but I don't recollect who it was among the people that were there.

Q. Dr. Dawoud, is this an individual that you knew previously?

A. I had met him, yes.

Q. Have you ever talked to Dr. Dawoud since the arrest of Megan Kaschak about the events that occurred that evening?

A. No.

Q. Do you remember any conversation that you had with him at the scene, including but not limited to any aspects about his note about the bagging being inefficient or anything along those lines?

A. I don't recollect specific conversations with him there. It is possible I did have a conversation, but I don't recollect the content.

Q. Okay. Are you able to picture in your

mind Mrs. Kaschak?

A. Yes.

Q. Is it true that when you talked to her, she was back in her room, as opposed to in the nursery where all of the events were occurring when you arrived?

A. I recall a lady sitting in a chair in the nursery. I could be incorrect in that. I certainly spoke to the mother and father in the room, but I also recall a lady in a chair. This has been two and a half years ago. I am not sure that was Mrs. Kaschak, but I do believe that she might have been in there.

Q. At the time that you arrived?

A. I could be incorrect, but I remember a lady in a chair.

Q. But you do specifically remember having a conversation with Mrs. Kaschak back in the room?

A. Yes.

Q. Okay. You don't remember any of the specifics of that conversation?

A. No. It's been more than two years.

Q. That's fine.

Do you recall anything that mom or dad

might have said to you during the course of that conversation?

A. No. I would have written, if it was apropos to the case of this baby, I would have written it in my note. I wrote what information I got from both the family and the nurses.

Q. Did you ever have any communication with Mrs. Kaschak that you can recall at any other time after that evening at Bedford Medical Center?

A. No, I don't remember her speaking to me after that.

Q. It's conceivable that you did, just that you don't remember?

A. I just don't recall that, no.

Q. We talked a moment ago about seizures and you indicated that you certainly would want to have an **EEG** to correlate with your clinical findings; correct?

A. Correct.

Q. The **EEG** showed -- and this is something that you may or may not be aware of -- but it showed severe diffuse cerebral dysfunction. Would that be consistent with the seizures that you witnessed?

A. Severe diffuse cerebral dysfunction are not seizures, they are separate entities.

Q. Would that be consistent with some form of hypoxic ischemic encephalopathy?

A. The description?

Q. Yes.

A. The written description?

Q. Yes.

A. Yes.

Q. What would **you** expect to see on an EEG in terms of a description that would be the heralding description of the clinical seizures disorder?

A. I do not read EEGs. **I** am not trained to read them and **I** can't even begin to describe them to you.

Q. **I** won't even ask you any further then.

There was some reference -- and if you can help me with this fine; if not, we will move on -- but there was some reference to lactate pyruvate ratio of 35. Do you know of what significance that ratio is?

A. I am not **a** metabolic -- I am not a specialist in metabolic disorders. **I** would refer

you to someone who is in regard to interpretation of that.

Q. One of the docs referenced in the records would be Dr. Michelle Walsh-Suyks.

She is a neonatologist?

A. Yes, she is.

Q. Is she still here at RB&C?

A. Yes.

Q. There is also Dr. Rosemary Robbins. Is she a neonatologist?

A. No, no. She might have been one of the residents.

Q. Do you have any recollection of talking with Dr. Walsh-Suyks about Baby Kaschak?

A. I do not know if I did. I might have. I just don't remember.

Q. The nurse that was caring for this baby, her name is Cheryl Davenport. That may or may not mean anything to you. But let me ask you, having said that name, does that ring a bell at all?

A. It reminds me of her, but I can't say that that makes me recall that she was, in fact, there.

Q. Did you know Cheryl Davenport?

A. I have met her during my work at Bedford, correct, in the past, yes.

Q. How frequently would you cover or would you be the on call neonatologist for Bedford Medical Center?

A. Once or twice a month.

Q. Cheryl Davenport's deposition was taken and she talked about her discovery of the baby as well as her attempts to ventilate and oxygenate the baby and her attempts to sound an alarm to get help.

Do you have any recollection, first, of her telling you about what she tried to do in terms of calling out for help and what happened or didn't happen?

A. No, I don't.

Q. Do you have any recollection of her telling you anything about her attempts to establish or to provide ventilation and oxygenation to the baby and whether she was encountering any mechanical or equipment difficulties?

A. No. I am looking at my note to see if there is something here that will trigger my memory or be an answer to your question. You

just asked about mechanical difficulties. No, I don't recall that.

Q. Okay. Is there anything from your conversation with Cheryl Davenport, now having mentioned her name, that you recall that she may have told you when you were at the hospital concerning the baby that we haven't already talked about?

MS. MOONEY: Assuming it was Cheryl Davenport she talked to.

MR. MISHKIND: Correct.

A. Well, no. That's a very broad question.

Q. You told me different things that you asked and information that you were provided.

A. Correct.

Q. And I am just wondering now that I mentioned Cheryl Davenport's name, does that cause you to remember anything more relative to any conversations?

A. No.

Q. There is another nurse, Terri Urban. Do you know Terri Urban?

A. The name is familiar, but I can't place a face to the name.

Q. Does that help in any way in terms of causing you to remember any additional conversations with the nurses other than what you have told me about?

A. No.

Q. As you sit here today, do you have an opinion to a reasonable degree of medical probability as to the cause of the cardiopulmonary arrest?

A. No.

Q. As you sit here today, do you have an opinion as to the cause of the severe hypoxic ischemic encephalopathy that the baby experienced secondary to this cardiopulmonary arrest?

MR. NORCHI: Objection. Go ahead. If you know that to be true, the fact that the patient did have all these things.

A. No.

Q. As you sit here today, do you have an opinion to a reasonable degree of medical probability as to the cause of the baby's death?

A. No.

Q. Have any doctors given you or expressed any opinions to you on the cause of the cardiopulmonary arrest, the cause of the hypoxic

ischemic encephalopathy and/or the cause of the baby's death?

A. To my knowledge, no one has told me what caused this child's death.

Q. Okay. And you weren't involved in the clinical care at the hospital upon transferring and then leading up to the time of the death; correct?

A. Correct.

MR. MISHKIND: I don't believe I have any further questions for you. I thank you for taking the time to talk to me, ma'am.

THE WITNESS: That's not a problem.

EXAMINATION OF MARTHA MILLER, M.D.

BY-MR. NORCHI:

Q. Doctor, I just have a few questions.

A. All right.

Q. Turning to your consultation report, you recorded a little bit of information regarding the pregnancy history; correct?

A. Yes.

Q. Okay. And you have some other additional information regarding the delivery; correct?

A. Correct.

Q. And, in fact, I think those, let's see, that's all the information contained in your note right before it begins the sentence with at 6:30 a.m.?

A. Correct.

Q. Up until that point.

Did you have any other information other than this available to you when you first got in to examine this child?

A. No.

Q. Okay. Is there anything contained in that history that you received regarding the pregnancy and the baby's delivery that would lead you to believe that the baby was at risk for an arrest of some sort; whether it's respiratory or cardiac?

A. No.

Q. Did you examine the child for dysmorphic features?

A. Yes.

Q. Did you find any?

A. Not that I recall.

Q. The medical records from Rainbow Babies and Childrens reveal that there was an examination by a physician who identified some

minor dysmorphic features. Were you aware of those findings at any time?

A. No.

MR. NORCHI: I think that's about it. Thank you.

EXAMINATION OF MARTHA MILLER, M.D.

BY-MR. MISHKIND:

Q. One and a half additional questions for you.

A. Sure.

Q. I don't say only one question because inevitably there is something more, so I leave myself sort of a catch-all.

MS. MOONEY: I am already formulating my objection to the half question.

A. Go ahead.

Q. Can you tell me why a baby would be placed on cardiopulmonary monitors in the newborn period that is less than 35 weeks gestation if, in fact, the baby is not at increased risk of cardiopulmonary arrest?

A. They use the word cardiopulmonary arrest. Monitors most commonly are used for other purposes in addition to monitoring of oxygen content. And you notice that was the case

for this child -- and the nursing notes clearly indicate that -- as well as for tachypnea or hypopnea.

So the use of a monitor is for diverse clinical conditions. A cardiopulmonary arrest is the most rare event that might occur.

Q. So that the cardiopulmonary monitoring, including pulse oximetry, would be used to monitor for untoward, potential untoward events that a premature baby of less than 35 weeks is at an increased risk of?

A. Correct.

Q. So that in the event that one or more of those items, one or more of those events that occurs -- if one of those events occur, the purpose of the monitoring is so that prompt clinical intervention can be provided at the time that those events take place; correct?

A. Yes.

Q. Okay. And cessation of breathing, prolonged hypoxia, can lead to cardiopulmonary arrest; correct?

A. Yes.

MR. MISHKIND: Thank you.

MR. NORCHI: Thank you.

MS. MOONEY: We will read it.

- - - -

(Deposition concluded at 10:25 a.m.; signature not waived.)

AFFIDAVIT

I have read the foregoing transcript from page 1 through 55 and note the following corrections:

PAGE	LINE	REQUESTED CHANGE

_____
MARTHA MILLER, M.D.

Subscribed and sworn to before me this_____ day of _____, 1999.

_____
Notary Public

My commission expires_____

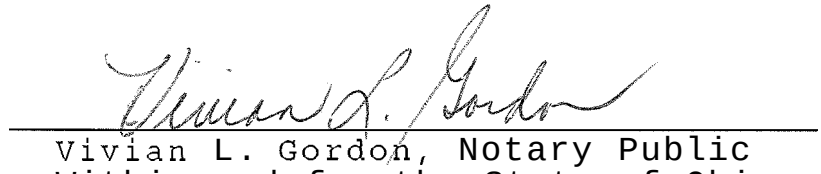
CERTIFICATE

State of Ohio,)
) ss:
County of Cuyahoga.)

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

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 28th day of December, **1999**.



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

My commission expires June 8, **2004**.

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