

2292863

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3

4 DULCE SARA SERNAS, etc., et al., )

5 Plaintiffs, ) Case No.

6 vs. ) BC 204938

7 CALIFORNIA HOSPITAL MEDICAL CENTER, )

8 et al., )

9 Defendants. ) Pages 1 - 18

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16 DEPOSITION OF:

17 MARVIN DALE NELSON, M.D.

18 WEDNESDAY, MAY 16, 2001

19 9:58 A.M. - 10:15 A.M.

20

21

22 File No. 01-301

Dep: Case included  
per inter depen  
effect

Cardiopulm arrest  
low perfusion pressure  
of blood to the  
brain causing  
mying

23 Reported by:

24 MICHAEL W. SIPES

25 CSR No. 3572

SULLIVAN & PORTER 310-787-4499

1 Deposition of MARVIN DALE NELSON, M.D., the witness,  
2 taken on behalf of Plaintiffs, on WEDNESDAY, MAY 16,  
3 2001, at Children's Hospital Los Angeles, 4650 Sunset  
4 Boulevard, Department of Radiology, Los Angeles,  
5 California, before MICHAEL W. SIPES, CSR No. 3572.

6

7

8 APPEARANCES OF COUNSEL:

9

10

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1 INDEX

2 WITNESS EXAMINATION PAGE

3 MARVIN DALE NELSON, M.D.

4 By Mr. Michels 5

5

6

7 QUESTIONS INSTRUCTED NOT TO ANSWER: (None)

8

9 REQUESTED INFORMATION: (None)

10

11 EXHIBITS

12 NO. PAGE DESCRIPTION

13 1 5 Curriculum Vitae of the witness,

14 17 pages

15 2 6 Letters from O'Flaherty, Cross,

16 Martinez & Ovando to the witness,

17 nine pages

18 3 7 Portions of records, 25 pages

19

20

21

22





1           LOS ANGELES, CALIFORNIA  
2           WEDNESDAY, MAY 16, 2001; 9:58 A.M.

3

4           MARVIN DALE NELSON, M.D.,

5           having been first duly sworn,

6           was examined and testified

7           as follows:

8

9           EXAMINATION

10       BY MR. MICHELS:

11       Q.    Doctor, Nelson, do you have a recent

12       C.V.?

13       A.    Yes.

14       Q.    Have that.

15               (The document referred

16       to was marked as Deposition

17       Exhibit 1 for identification,

18       and attached to this deposition.)

19       BY MR. MICHELS:

20       Q.    And do you have any notes on your workup

21       on this case?

22       A.    No.

23 Q. Are these all the letters that you were

24 sent that you gave me here?

25 A. Yes. Everything I could find.

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1 (The documents referred  
2 to were marked as Deposition  
3 Exhibit 2 for identification,  
4 and attached to this deposition.)

5 BY MR. MICHELS:

6 Q. Okay. And it looks like you reviewed  
7 the stack of depositions.

8 A. Yes. The main one that I reviewed was  
9 Roz Dietrich's, obviously my counterpart, and I  
10 glanced through the other ones.

11 Q. So let me just read the list of ones  
12 that you have read here. So you read in some detail  
13 Dr. Dietrich's deposition.

14 A. Yes.

15 Q. You read Dr. Snead's deposition?

16 A. Yes.

17 Q. Dr. Snead is an old colleague of yours.

18 A. Yes.

19 Q. And I'm sure you respect his opinions.

20 A. Yes.

21 Q. You read Dr. Prober's deposition, the  
22 Peds. ID person?

23 A. Yes.

24 Q. Do you know Dr. Prober?

25 A. I know him by name, but I wouldn't

6  
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1 recognize him.

2 Q. You read Dr. Ross, the Peds. ID here?

3 A. Yes.

4 Q. Dr. Oakes, you read his deposition?

5 A. Yes.

6 Q. And you read Dr. Van Muer's, the

7 neonatologist.

8 A. Yes.

9 Q. Any other depositions you read?

10 A. No.

11 Q. And what is this stack of records here?

12 MR. PATIN: These look like portions of

13 the -- different portions like discharge summaries

14 from various hospitalizations.

15 MR. MICHELS: All right.

16 (The document referred

17 to was marked as Deposition

18 Exhibit 3 for identification,

19 and attached to this deposition.)

20 BY MR. MICHELS:

21 Q. Doctor, did you review any of the

22 medical records in the case?

---

23 A. No. I just reviewed the discharge  
24 summaries and some of the reports from the radiology  
25 studies, and that's all.

7  
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1 Q. Is that what's in this little pile here?

2 A. Yes.

3 Q. Okay. Just put these things in order

4 here.

5 MR. PATIN: Let me just ask, Dr. Nelson,

6 since he has appropriated my copy of your C.V., is

7 there another one available?

8 THE WITNESS: Sure. I'll give you one

9 before you leave.

10 MR. PATIN: Okay. That one is going to

11 be attached to the transcript.

12 THE WITNESS: Sure.

13 MR. MICHELS: Okay. Letter-wise it

14 looks like I have letters here June 14th of last

15 year, October 17th last year, February 1st this year,

16 March 12th, March 26th, April 13th, April 16th, April

17 16th, April 19th. They all are from this year. Are

18 these all that you could find?

19 A. Yes.

20 Q. This little package represents all the

21 records that you reviewed?

22 A. Yes.

23 Q. So these -- let me just see. These  
24 records here, which look like about 15 pages or so,  
25 were they selected by you or were they just sent to

8  
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1 you?

2 A. No. They were just sent to me.

3 Q. Okay. And you looked them over?

4 A. Yes.

5 Q. All right. Let me just quickly look at

6 them. I'll attach them.

7 I think you're right. They look like

8 discharge summaries, just a collection of discharge

9 summaries and see -- that's it. These are all

10 discharge summaries here, Doctor, that you have given

11 me. Were there actually any film interpretations

12 that you read?

13 A. Let me see if there's some in the

14 reports. Obviously since I read some of the films --

15 I'll look and see here. I guess there aren't any

16 reports in here.

17 You know where I saw the reports? In

18 the back of Dr. Dietrich's deposition.

19 Q. Okay.

20 A. That's where I saw them.

21 MR. PATIN: That's the bottom one.

22 Phil. The big one.

23 MR. MICHELS: This one here. Right.

24 Okay.

25 Q. And did you pull the Children's Hospital

9

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1 chart or any pieces of it as part of your workup

2 here?

3 A. No.

4 Q. When were you first contacted on this

5 case? Those are in order.

6 A. More than a year ago.

7 Q. Okay. By Mr. Patin's office here?

8 A. Yes.

9 Q. The O'Flaherty office. And what were

10 you asked to do on this case?

11 A. Just to review the imaging studies and

12 render an opinion as to timing of injury and possible

13 etiology of the injury.

14 Q. Okay. And has that always been the task

15 you were asked to perform?

16 A. Yes. I will not be rendering any

17 opinions as to standard of care or length of survival

18 or quality of survival issues, anything like that.

19 Q. Okay. And did you know when you were

20 first contacted more than a year ago that you had

21 actually been a treater on this child?

22 A. Yes. I think they had mentioned that

23 the child had come here and I had done some imaging  
24 studies, and the child had been transferred. But I  
25 understand my role here today as an expert and not as

10  
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1 a percipient witness.

2 Q. Right. Did you then receive these films  
3 from the defense attorneys?

4 A. Yes.

5 Q. You didn't pull your own films that are  
6 here.

7 A. No.

8 Q. And could you just tell us what films  
9 you reviewed?

10 A. Cranial ultrasound dated October 31st at  
11 1330 hours. And this is from California Medical  
12 Center.

13 Skull films that were done at California  
14 Medical Center on November 4, 1994.

15 Q. Um-hmm.

16 A. CT scan of the head that was done -- I  
17 can't -- California Medical Center again, and this is  
18 on November 4th.

19 Q. Fourth or second?

20 A. No. Second. I'm sorry.

21 Q. Okay.

22 A. November 2nd at 1313 hours.

23 MR. PATIN: 13 what?

24 THE WITNESS: 1313. Roughly one o'clock

25 in the afternoon.

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1 A. And there is a CT scan that was done  
2 here at Children's Hospital on 12 April 1995.

3 A second CT scan done at Children's  
4 Hospital on November 16th, 1995.

5 And finally an MRI exam done here at  
6 Children's Hospital on June 22, 1999.

7 BY MR. MICHELS:

8 Q. I just went through that list here. Did  
9 you see a CT done at California on 11-16-94?

10 A. No.

11 Q. Wasn't one you listed. Okay. And did  
12 you see a skull film done on 11-19-94 at California?

13 A. No.

14 Q. And what are your opinions about timing?

15 A. Well, would you like to be more specific  
16 or you just want my overall opinion?

17 Q. Give me your overall opinion.

18 A. Basically I agree with Dr. Dietrich. I  
19 think that there -- the first ultrasound is normal,  
20 and the first CT exam shows diffuse injury to the  
21 brain, which I think in the follow-up exams is  
22 consistent with a pattern of low-perfusion injury to

23 the brain. So it seems that the timing is consistent  
24 with the cardiopulmonary arrest that occurred. I  
25 have no opinions as to the cause of the

12  
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1 cardiopulmonary arrest.

2 And that's about it.

3 Q. Okay. Are those all your opinions in  
4 the case?

5 A. Well, I think that there was a skull  
6 fracture that was present, but I think it's unrelated  
7 to any of the brain injury in the case.

8 Q. That's the linear?

9 A. Yes.

10 Q. Do you have any ideas on how that might  
11 have occurred?

12 A. No. But they are not infrequently seen  
13 following both vaginal and Cesarean sections.

14 Q. Really.

15 A. Vacuum deliveries. Incidental findings.

16 Q. Do you think that they are traumatic in  
17 some nature?

18 A. Well, by nature the forces have to be  
19 there to crack the skull, but I think the forces of  
20 normal delivery can even fracture a skull. So I --  
21 it's not displaced, and there's no direct underlying  
22 injury in the first CT scan to suggest that there's

23 any offsetting or blunt force injury to the brain.

24 So I don't think that that really had any bearing on

25 the case or injury to the -- subsequent injury to the

13  
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1 brain.

2 Q. Um-hmm. So basically you agree with

3 Dr. Dietrich.

4 A. Yes.

5 Q. Her interpretations.

6 A. Yes, I do.

7 Q. And when you say low-perfusion injury,  
8 is that -- well, do you mean to say that the injury  
9 occurred at the time of this cardiopulmonary arrest?

10 A. There was a drop in cardiac output that  
11 resulted in a decrease in the perfusion pressure of  
12 the blood to the brain that resulted in this injury.

13 Q. Right. And that's the event that we  
14 know to have occurred around 11:30 at night on the  
15 day of birth.

16 A. Yes.

17 Q. So there's nothing here congenital or  
18 genetic that you have been able to determine.

19 A. Not that I can determine.

20 Q. All right. And give me an idea how much  
21 medical/legal you are doing these days.

22 A. Not much. Since I have taken over and

23 become the chairman of the department, I in essence

24 am not taking on any new cases, or very few.

25 Q. When did you become chairman?

14

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1 A. Two years ago.

2 Q. How did my colleagues convince you to do  
3 this one?

4 A. Umm -- well, probably because I read the  
5 *films of the child that came here.*

6 Q. Okay. In the past you have told me that  
7 when you do testify, either by deposition or trial,  
8 that it's almost always for the defense.

9 A. I think the way it breaks down in just  
10 overall consultations since I started doing it in  
11 1988, it probably ends up being about 75 percent  
12 defense, 25 percent plaintiff. By the time it gets  
13 to *depositions* it's a little more defense. And at  
14 the time of trial, I think I've testified maybe four  
15 times for plaintiffs in trial. The rest are defense.

16 Q. Okay.

17 A. In medical malpractice cases.

18 Q. Right. Leaving out all the child abuse  
19 cases.

20 A. Leaving out all the children's cases.

21 Q. You are not going to offer any opinions  
22 on whether there this child had been septic or not?

23 A. No.

24 Q. Okay. Or the management of the crash

25 itself.

15  
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1 A. No.

2 Q. Okay. What are you charging these days  
3 for depo?

4 A. 450 an hour.

5 MR. MICHELS: I don't have any other  
6 questions.

7 MR. BRADFORD: No questions.

8 MR. PATIN: No questions.

9 MR. MICHELS: Okay. We will attach all  
10 this stuff here to your deposition. And the usual  
11 stip we have entered into in other depositions.

12 Doctor, do you have one of your business  
13 cards? And I'll send you a check.

14 THE WITNESS: Sure.

15 MR. MICHELS: Does that have your tax ID  
16 or whatever?

17 THE WITNESS: No. We don't put it on  
18 here.

19 MR. PATIN: Where do you want it sent,  
20 Dr. Nelson?

21 THE WITNESS: Send it here to me.

22 (Whereupon, at 10:15 A.M.,

23 the taking of the deposition of  
24 MARVIN DALE NELSON, M.D. was  
25 adjourned.)

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1 STATE OF CALIFORNIA )

2 ) ss

3 COUNTY OF LOS ANGELES )

4

5 I, MARVIN DALE NELSON, M.D., hereby

6 certify under penalty of perjury under the laws of

7 the State of California that the foregoing is true

8 and correct.

9 Executed this day of ,

10 20 , at , California.

11

12

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14 MARVIN DALE NELSON, M.D.

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1 STATE OF CALIFORNIA )

2 )

3 COUNTY OF LOS ANGELES )

4

5 I, Michael W. Sipes, CSR No. 3572 in

6 and for the State of California, do hereby certify:

7 That, prior to being examined, the

8 witness named in the foregoing deposition, to wit,

9 MARVIN DALE NELSON, M.D., was by me duly sworn to

10 testify the truth, the whole truth, and nothing but

11 the truth;

12 That said deposition was taken down by

13 me in shorthand at the time and place therein named,

14 and thereafter reduced to typewriting under my

15 direction, and the same is a true, correct and

16 complete transcript of said proceedings.

17 I further certify that I am not

18 interested in the event of the action.

19 WITNESS MY HAND this 16th day of May,

20 2001.

21

22 Certified Shorthand Reporter

23 for the State of California

24

25

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