

**In The Matter Of:**

*Eric Gwynne, etc. v.  
University Hospitals of Cleveland, et al.*

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*Ricardo Rodriguez, M.D.  
February 7, 2003*

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[1] IN THE COURT OF COMMON PLEAS  
[2] CUYAHOGA COUNTY, OHIO  
[3] ERIC GWYNNE, ADMINISTRATOR  
of the ESTATE OF EMILY  
[4] GWYNNE, deceased,  
[5] Plaintiff,  
JUDGE GAUL  
[6] -vs- CASE NO. 468327  
[7] UNIVERSITY HOSPITALS OF  
CLEVELAND, et al.,  
[8] Defendants.  
[9]  
[10] Deposition of RICARDO RODRIGUEZ, M.D., taken  
[11] as if upon cross-examination before Patricia S.  
[12] Greenfield, a Registered Diplomate Reporter,  
[13] Certified Realtime Reporter and Notary Public  
[14] within and for the State of Ohio, at Rainbow  
[15] Babies and Children's Hospital, 11100 Euclid  
[16] Avenue, Cleveland, Ohio, at 10:02 a.m. Friday,  
[17] February 7, 2003, pursuant to notice and/or  
[18] stipulations of counsel, on behalf of the  
[19] Plaintiff in this cause.  
[20]  
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[22] ALSO PRESENT:  
[23] Avroy Fanaroff, M.D.  
[24]  
[25]

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[1] RICARDO RODRIGUEZ, M.D., of lawful age,	
[2] called by the Plaintiff for the purpose of	
[3] cross-examination, as provided by the Rules of	
[4] Civil Procedure, being by me first duly sworn, as	
[5] hereinafter certified, deposed and said as	
[6] follows:	
[7] CROSS-EXAMINATION OF RICARDO RODRIGUEZ, M.D.	
[8] BY MR. CONWAY:	
[9] Q: Doctor, my name is Tom Conway. Myself and Donna	
[10] Kolis represent the Gwynne family in this	
[11] lawsuit. Okay? I'm going to be taking your	
[12] deposition. You've had an opportunity to speak	
[13] with your attorney, I presume, prior to the	
[14] deposition and have it explained to you, what	
[15] takes place?	
[16] A: Yes.	
[17] Q: I'd just like to go over a few ground rules.	
[18] First of all, I'm going to ask you questions	
[19] regarding your knowledge of this case as well as	
[20] some background, training, experience questions	
[21] of you. I don't want you to answer a question	
[22] that you don't understand, okay?	
[23] A: Okay.	
[24] Q: If you don't understand a question, indicate that	
[25] you don't understand it, I'll be glad to repeat	
	Page 5
[1] it, rephrase it, somehow try to make you	
[2] understand it. Is that fair?	
[3] A: Yeah.	
[4] Q: If you answer a question, I'm going to assume and	
[5] rely upon the fact that you understood it. Is	
[6] that fair?	
[7] A: That's fair.	
[8] Q: If at any time you want to put something on the	
[9] record, add, delete, supplement, anything that	
[10] you previously said, feel free to do so. We'll	
[11] go on the record and you can put whatever you	
[12] need to say at the time on the record. All	
[13] right?	
[14] A: Okay.	
[15] Q: You understand this is my only opportunity to	
[16] speak with you prior to trial and find out what	
[17] you know about the case?	
[18] A: I understand.	
[19] Q: You also understand that everything you say is	
[20] being taken down?	
[21] A: Yes.	
[22] Q: You're under oath and this has the same	
[23] significance as if you're in front of a judge and	
[24] jury, you understand that?	
[25] A: Yes.	

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[1] Q: Would you spell your name for the record, please.  
[2] A: Ricardo J. Rodriguez. R-I-C-A-R-D-O, middle  
[3] initial J., Rodriguez. R-O-D-R-I-G-U-E-Z.  
[4] Q: Dr. Rodriguez, whose decision was it to discharge  
[5] Emily Gwynne back on December 27th, 1998 from  
[6] University Hospitals?  
[7] MR. MALONE: Show an objection.  
[8] The child wasn't discharged. The child was  
[9] transferred to another institution. That's  
[10] not the same.  
[11] Q: Okay.  
[12] A: It is my understanding it was Dr. Cynthia Bearer.  
[13] Q: How is it your understanding it was Dr. Cynthia  
[14] Bearer?  
[15] A: From the record.  
[16] Q: Do you have the University Hospital records with  
[17] you today?  
[18] A: I don't.  
[19] Q: Did you have an opportunity to review them prior  
[20] to your deposition?  
[21] A: Yes.  
[22] Q: I'm going to be asking you questions regarding  
[23] your involvement in this case. Would it be  
[24] helpful to you and from a time standpoint  
[25] expedient if you had your attorney's records in

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[1] front of you so you can refer to certain things  
[2] when I'm asking you questions?  
[3] A: It might help at times.  
[4] MR. CONWAY: Jim, do you happen  
[5] to have the records?  
[6] MR. MALONE: I have portions of  
[7] the chart with me. If he needs them for a  
[8] question, we'll get them.  
[9] Q: What portions of the chart did you review prior  
[10] to your deposition, doctor?  
[11] A: The progress notes.  
[12] Q: Any other parts?  
[13] A: No.  
[14] Q: How about order, the order section of the chart?  
[15] A: Not completely, not all the orders. I looked.  
[16] Q: Did you review some of them?  
[17] A: Some of them, yes.  
[18] Q: What about the labs section of the chart?  
[19] A: Just a few records, yes, not all of them.  
[20]  
[21] (Thereupon, Plaintiff's Exhibit 1,  
[22] Rodriguez Deposition, chart, was marked for  
[23] purposes of identification.)  
[24]  
[25] Q: Showing you what's been marked for identification

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[1] as Plaintiff's Exhibit Number I, this was  
[2] provided to the plaintiff by your attorney,  
[3] Mr. Malone, and he's indicated that this is the,  
[4] for lack of a better term, the private chart that  
[5] you and Dr. Fanaroff had regarding Emily Gwynne.  
[6] If you want to take a second and look through it.  
[7] A: Sure. Yes. The only thing is, I wouldn't call  
[8] it the private chart. This is the division's  
[9] record. It's not private to me or exclusively to  
[10] me or Dr. Fanaroff.  
[11] Q: I noticed that none of the items that are in the  
[12] division's chart, none of those items are in the  
[13] hospital chart which we received copies of. Are  
[14] those separate items that are kept by the  
[15] division and don't make their way into the  
[16] hospital chart?  
[17] A: Probably. Some of them, the admission letter is  
[18] not part of the medical record. It's a courtesy  
[19] letter that we send to the pediatricians and some  
[20] of the other information might be also part of  
[21] the medical records, but I don't know.  
[22] Q: Are there any other medical records that the  
[23] division has, to your knowledge, that aren't in  
[24] Plaintiff's Exhibit Number 1 that would  
[25] include —

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[1] A: Not to my knowledge.  
[2] Q: What do you mean by division? Division of?  
[3] A: The division of neonatology.  
[4] Q: That's an entity at University Hospitals?  
[5] A: Yeah. It's a division of the department of  
[6] pediatrics that is encompassed by the  
[7] neonatologists, just like the division of  
[8] cardiology or the division of pulmonology.  
[9] Q: Back in 1999, who was the head of the division of  
[10] neonatology?  
[11] A: Dr. Richard Martin.  
[12] Q: Who is the current head of the division of  
[13] neonatology?  
[14] A: Dr. Richard Martin.  
[15] Q: Do you have or did you prior to reviewing  
[16] whatever documents that Mr. Malone showed you,  
[17] did you have an independent recollection of Emily  
[18] Gwynne?  
[19] A: Yes.  
[20] Q: How did you happen to have an independent  
[21] recollection of Emily Gwynne?  
[22] A: I was the attending physician of Emily Gwynne and  
[23] her family for the first month of her  
[24] hospitalization at Rainbow Babies' & Children's.  
[25] Q: During what periods were you the attending

[1] physician?

[2] **A:** I want to say November 1st, if November 1st was a  
[3] Monday, till the end of the month of November.

[4] **Q:** I noticed there was something in Plaintiff's  
[5] Exhibit Number 1 that had checkmarks?

[6] **A:** Yes.

[7] **Q:** Can you refer to that and give me specific dates  
[8] that you were the attending?

[9] **A:** Sure. I have to correct myself. It's actually,  
[10] my first day on service was October the 30th and  
[11] I'm reviewing billing records and the last —

[12] **Q:** Those are billing records there?

[13] **A:** Yes.

[14] **Q:** That have the different checking on it?

[15] **A:** Yes.

[16] **Q:** Okay.

[17] **A:** And my last day on service was November 30th.

[18] **Q:** What is the significance of being an attending  
[19] physician, doctor?

[20] **A:** Well, primarily you are, during the time you are  
[21] on service, you are the leader of the team that  
[22] is composed by a number of different physicians.

[23] **Q:** Is the attending responsible for bringing in the  
[24] appropriate consults by subspecialists if the  
[25] attending feels they are necessary?

[1] **A:** Yes.

[2] **Q:** Is the attending responsible for following up on  
[3] testing, treatments or recommendations made by  
[4] subspecialists who have been asked to consult on  
[5] a patient?

[6] **MR. MALONE:** Show an objection.

[7] That's a little vague. You've got to know  
[8] the relationship of the consultant, whether  
[9] he's been asked to follow the patient or  
[10] whether it's assumed that he will follow  
[11] the patient or not.

[12] **Q:** Is there — can you repeat my question, please.

[13]

[14] (Thereupon, the requested portion of  
[15] the record was read by the Notary.)

[16]

[17] **A:** Can I answer?

[18] **MR. MALONE:** Go ahead, yes.

[19] **A:** The responsibility of the attending is to oversee  
[20] that the plan is carried on, but that doesn't  
[21] include, you know, many of the activities that  
[22] are relegated to the consultants many times  
[23] because some of those activities may not be part  
[24] of my expertise.

[25] **Q:** And let's go to this particular case.

[1] **A:** Sure.

[2] **Q:** In this particular case, there was a genetics  
[3] consult requested, correct?

[4] **A:** Yes.

[5] **Q:** Who was the attending physician who formally  
[6] requested the genetics consult?

[7] **A:** If my memory doesn't fail me, I think it was  
[8] Dr. Stork.

[9] **Q:** Now, you obviously became an attending physician  
[10] during your rotation through here subsequent to  
[11] Dr. Stork being the attending; is that correct?

[12] **A:** Correct.

[13] **Q:** You obviously would have familiarized yourself  
[14] with the patient's medical history up to the  
[15] point you became involved, correct?

[16] **A:** Yes.

[17] **Q:** And you would be aware of different  
[18] recommendations and different diagnostic steps  
[19] that were recommended by, in this particular  
[20] case, the genetics consult, correct?

[21] **A:** Yes.

[22] **Q:** Now, during the time you're the attending  
[23] physician, your testimony is it's your duty to  
[24] oversee these recommendations and diagnostic  
[25] tests and any treatment that's ordered by the

[1] genetics consult?

[2] **A:** Well, the duty is to oversee the plans and  
[3] recommendations are carried on but my expertise  
[4] doesn't allow me to oversee what the consultant  
[5] decides to do with, you know, certain results or  
[6] certain testing that are beyond my expertise.

[7] **Q:** And that's the reason you brought them in to  
[8] begin with, because they possess knowledge and  
[9] training in a specific area that surpasses yours;  
[10] is that correct?

[1] **A:** Correct.

[2] **MR. MALONE:** Let's take a stop  
[3] for a minute.

[4]

[5] (Thereupon, a discussion was had off  
[6] the record.)

[7]

[8] **Q:** And you as the attending would be prudent and  
[9] reasonable in relying upon the, in this  
[10] particular case, the genetics consult that was  
[11] brought in to follow through on their  
[12] recommendations, their diagnostic tests and/or  
[13] their treatment; would that be correct?

[4] **A:** Yes.

[5]

<p style="text-align: right;">Page 14</p> <p>[1] (Thereupon, Plaintiff's Exhibit 2, [2] Rodriguez Deposition, 399, one-page input/output [3] totals was marked for purposes of [4] identification.) [5] [6] Q: Doctor, I'd like to show you what's been marked [7] for identification as Plaintiff's Exhibit Number [8] 2. At the upper right-hand corner where it says [9] date, and then it's kind of written in in pen, [10] 10/28/99. Do you see at the top right? [11] A: Yes. [12] Q: Then it says — [13] [14] (Interruption.) [15] [16] Q: — right below there, it looks like Rodriguez, [17] Ricardo down there? [18] A: Yes. [19] Q: What's the significance of your name being on [20] this exhibit, on this certain document? [21] A: This is a stamp from the admission card. When [22] the patient is admitted to the hospital, the [23] parents go to admitting, they enter the [24] information into the computer and they put the [25] name of one of the attending physicians or</p>	<p style="text-align: right;">Page 16</p> <p>[1] (Thereupon, Plaintiff's Exhibit 4, [2] Rodriguez Deposition, seven-page CV was marked [3] for purposes of identification.) [4] [5] Q: Let me show you what's been marked for [6] identification as Plaintiff's Exhibit Number 3. [7] MR. MALONE: That's from [8] Aultman. [9] Q: Doctor, in going through both the University [10] Hospital medical chart for Emily Gwynne as well [11] as the division's records which were provided by [12] Mr. Malone, I did not see this particular [13] document. [14] Have you seen this particular document [15] before, doctor? [16] A: No. This is the first time I've seen this [17] document. [18] Q: Do you know what this document is? [19] A: I can read what it is. It's a discharge summary [20] from Aultman Hospital in Canton. [21] Q: And down at the bottom, at least according to [22] this document, it indicates that a cc of this [23] discharge summary was sent to you; is that [24] correct? [25] A: No.</p>
<p style="text-align: right;">Page 15</p> <p>[1] whoever might be admitting the child to the — or [2] whoever might be the attending for that period of [3] time; so this name might, at some point might [4] change because somebody else might become the [5] attending, so at this point it was obviously me [6] and that's why Rodriguez, Ricardo is there. [7] Q: And I don't know your procedure here. Does this [8] mean that you were the attending when the child [9] first became admitted to the NICU? [10] A: No. [11] Q: Just at some point you were the attending and the [12] computer put your name on there? [13] A: Yes. And actually this might have been stamped [14] after the admission because I see that this is [15] dated 10/28/1999 and I was not the attending at [16] that point. I first met the baby on October [17] 30th, I believe. [18] Q: At least according to your billing records; is [19] that correct? [20] A: And my recollection, yes. [21] [22] (Thereupon, Plaintiff's Exhibit 3, [23] Rodriguez Deposition, one-page discharge summary, [24] was marked for purposes of identification.) [25]</p>	<p style="text-align: right;">Page 17</p> <p>[1] Q: It doesn't? [2] A: It says Dr. Rodriguez. I'm not the only [3] Dr. Rodriguez. [4] Q: Are there other Dr. Rodriguezes in the neonatal [5] intensive care unit? [6] A: NO. [7] Q: Are there any other pediatricians by the name of [8] Dr. Rodriguez? [9] A: No. [10] Q: Are there any other neonatologists named [11] Dr. Rodriguez? [12] A: No. [13] Q: Do you know any other Dr. Rodriguez? [14] A: Yes. There's an obstetrician/gynecologist, [15] Michael Rodriguez. There is an obstetrician, [16] obstetrics resident Dr. Rodriguez and sometimes I [17] get their mail and they may, might as well get [18] mine sometimes. [19] Q: Now, the people that, the Rodriguezes that are [20] obstetricians, the building that they would [21] practice at would be MacDonald House; is that [22] correct? [23] A: Yes. [24] Q: Are there any other Dr. Rodriguezes that practice [25] medicine at Rainbow Babies?</p>

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[1] A: Not that I know of.  
[2] Q: And obviously my questions go back to January  
[3] 17th, 2000. Your answers would be the same?  
[4] A: Yes. I have never seen this record before.  
[5] Q: Do we need to take a break, doctor?  
[6] A: No. We're fine.  
[7] Q: But I mean, my questions regarding other  
[8] Rodriguezes and so forth?  
[9] A: I am the only Dr. Rodriguez who practices  
[10] pediatrics at Rainbow.  
[11] Q: And you were the only one back in the year 2000,  
[12] as well?  
[13] A: I think so. I think so.  
[14] Q: Have you ever received a discharge summary from a  
[15] hospital where a former patient of yours was  
[16] transferred?  
[17] A: No.  
[18] Q: Did you ever talk with Dr. Bearer and, for the  
[19] record, how do you spell Cynthia Bearer, her last  
[20] name?  
[21] A: I believe it's B-E-A-R-A-R, I believe.  
[22] Q: E-R?  
[23] A: Am I right?  
[24] Q: I'm right, right?  
[25] A: Right.

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[1] Q: Bearer?  
[2] A: Bearer.  
[3] Q: Did you discuss Dr. Bearer's decision to transfer  
[4] Emily from Rainbow Babies to Aultman?  
[5] A: No. I wasn't even aware that she was transferred  
[6] to Aultman until I went back to the NICU just to  
[7] see patients in January or something like that,  
[8] end of January, probably.  
[9] Q: How did you know at the end of January that Emily  
[10] had been transferred to Aultman?  
[11] A: I think I went to the NICU, as I often do, just  
[12] to see what's happening, and she wasn't there  
[13] anymore.  
[14] Q: Are there written protocols for the, well, first  
[15] of all let me ask you: What is the activity that  
[16] occurred to Emily considered? Is it considered a  
[17] transfer discharge, a transfer, a discharge and  
[18] transfer? I mean, you explain in your own words  
[19] what occurred.  
[20] A: The way I understand it, this is my  
[21] understanding, that she was transferred to  
[22] another institution for a continued care.  
[23] Q: As part of the transfer, obviously, she's  
[24] discharged from Rainbow Babies, correct?  
[25] A: Correct.

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[1] Q: Are there policies or protocols or guidelines  
[2] that govern the transfer of a patient such as  
[3] Emily and the discharge of a patient such as  
[4] Emily?  
[5] A: I'm not aware of any particular guidelines.  
[6] Q: Does the division have, the division doesn't have  
[7] any written guidelines?  
[8] A: I wouldn't know. I have never seen them. There  
[9] may be but I've never seen them in paper that I  
[10] can answer your question.  
[11] Q: And I would take it my question, if I asked you  
[12] if there were any hospital guidelines which  
[13] govern the discharge of a baby such as Emily or  
[14] the transfer of a baby such as Emily, your answer  
[15] would be you're not aware of any?  
[16] A: Yes. That would be my answer.  
[17] Q: Have you ever transferred a baby such as Emily?  
[18] A: Yes.  
[19] Q: Have you ever transferred a baby such as Emily  
[20] for — well, strike that.  
[21] Prior to 1999, had you ever been involved  
[22] with a patient who had LCHAD?  
[23] A: No.  
[24] Q: Are you aware of what LCHAD is?  
[25] A: Yes.

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[1] Q: Let's use your knowledge back in 1999 for the  
[2] questions concerning LCHAD.  
[3] A: Okay.  
[4] Q: Back in 1999, did you know what LCHAD was?  
[5] A: What time in 1999?  
[6] Q: All right. Let's deal with the date you first  
[7] became involved in the care and treatment of  
[8] Emily, which would be October?  
[9] A: 30th.  
[10] Q: 30th.  
[11] A: I was vaguely familiar with the disorder because  
[12] I had been lectured on that or taught about it in  
[13] some conferences.  
[14] Q: Do you know who lectured you or taught you about  
[15] that disorder?  
[16] A: I don't recall. It could have been obstetrics.  
[17] I really don't recall.  
[18] Q: What was your understanding as of October of 1999  
[19] as to what LCHAD was?  
[20] A: That LCHAD was a very rare disorder, an inborn  
[21] error of metabolism, that entailed an inability  
[22] to oxidize fats and use them as a source of  
[23] energy and that it was a serious illness and that  
[24] there had been an association between HELL  
[25] syndrome, H-E-L-L-P, or/and fatty liver of



[1] pregnancy and some cases of LCHAD in the babies  
[2] born to those mothers.

[3] **Q:** In the University Hospitals chart, and I'm using  
[4] University Hospital interchangeably with Rainbow  
[5] Babies, okay? In the hospital chart, there was  
[6] an article on LCHAD written by a number of  
[7] authors, Dr. Ibdah was one of the physicians.

[8] Did you read that article during the time  
[9] period that you were the attending physician?

[10] **MR. MALONE:** Objection. There

[11] has been one witness testified that he put  
[12] such an article in the chart. The article  
[13] has never been seen in the chart by anybody  
[14] other than him. You read Derek Neilson's  
[15] deposition where he said he put it in the  
[16] chart. I don't think that puts it in the  
[17] chart; but having said that, go ahead and  
[18] answer the question, if you can.

[19] **A:** I have read the article.

[20] **Q:** Did you, I assume you would have read the article  
[21] when you were the actual attending physician for  
[22] Emily; is that correct?

[23] **A:** Yes.

[24] **Q:** So in November, you would have been aware of  
[25] pretty much the state of the research on LCHAD.

[1] Would that be correct?

[2] **A:** Well, I wouldn't say I would be aware of the  
[3] state of the research because one article doesn't  
[4] really, it's not enough information to be up to  
[5] date on the state of the research in that  
[6] particular area.

[7] **Q:** I take it you understood, though, what Dr. Ibdah,  
[8] I-B-D-A-H, et al., were saying in their article?

[9] **A:** Yes.

[10] **Q:** There was a discharge summary dictated by  
[11] Dr. Panaroff who, for the record, is present  
[12] during this deposition as well, and it was  
[13] dictated, I believe, in January — excuse me.  
[14] Strike that.

[15] I believe in the record or the chart, the  
[16] hospital chart, there was a dictated discharge  
[17] summary from Dr. Fanaroff that was dictated and  
[18] transcribed in March of 2000.

[19] Did you come across that in your review of  
[20] the chart?

[21] **A:** Yes.

[22] **Q:** Do you have any understanding as to why  
[23] Dr. Fanaroff dictated the discharge summary in  
[24] this particular case?

[25] **A:** Probably just for medical record completion

[1] because he wrote an initial admit note and the  
[2] chart might have gone back to him with an  
[3] incomplete medical record.

[4] **Q:** Whose responsibility is it to dictate the  
[5] discharge summary on a given patient?

[6] **A:** Normally the admitting physician or under some  
[7] circumstances, the transferring physician would  
[8] dictate such a discharge summary.

[9] **Q:** Did you ever speak with anyone from Aultman  
[10] Hospital verbally regarding Emily Gwynne?

[1] **A:** No.

[2] **Q:** Did anyone from Aultman Hospital contact you —

[3] **A:** No.

[4] **Q:** — verbally to discuss Emily Gwynne?

[5] **A:** No. No. I'm sorry to interrupt.

[6] **Q:** I noticed in going through the University  
[7] Hospital chart that, and feel free to refer to  
[8] whatever records you want, that starting from the  
[9] first — well, strike that.

[10] You had an opportunity to go through the  
[11] progress notes?

[12] **A:** Yes.

[13] **Q:** Your understanding was that Emily would have been  
[14] transferred into the NICU on October 28th, 1999;  
[15] is that correct?

[1] **A:** That's my understanding but I didn't meet the  
[2] Gwynnes until the 30th.

[3] **Q:** You had an opportunity to review progress notes  
[4] that had been written prior to you becoming  
[5] involved in her care and treatment, though,  
[6] correct?

[7] **A:** Yes, for the most part.

[8] **Q:** Did you also have an opportunity to read the  
[9] consult note which was generated by Dr. Zinn and  
[10] Dr. Nielson?

[11] **A:** Yes.

[12] **Q:** Were you aware that cord blood had been sent to  
[13] the lab for analysis?

[14] **A:** I was aware that the cord blood was sent to the  
[15] lab for DNA extraction and storage. That's the  
[16] word that I received from, that was passed on to  
[17] me and actually there is a note to that effect, I  
[18] think.

[19] **Q:** Would you point out where there's a note that it  
[20] was, that the cord gas was sent to the lab for  
[21] DNA extraction and storage?

[22] **MR. MALONE:** It's not a cord  
[23] gas. You want to restate the question?

[24] It's cord blood, not gas.

[25] **Q:** I'll just read from the note here again.

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[1] You were aware that there was cord blood,  
[2] from Emily sent to the laboratory, correct?  
[3] **A:** Yes.  
[4] **Q:** What was your understanding as to why that cord  
[5] blood was sent to the laboratory?  
[6] **A:** Well, there are two reasons. One is that we  
[7] normally check blood type on the baby and another  
[8] test is called DAT, is just to look for blood  
[9] grouping compatibilities and I understood that  
[10] there was also a sample that was sent to the lab  
[11] for DNA extraction and storage.  
[12] **Q:** Where is it written anywhere in the chart that  
[13] the cord blood was sent to the lab for DNA  
[14] extraction and storage?  
[15] **A:** I believe there is an order for such a request.  
[16] It should be probably in your orders.  
[17] **Q:** You can, if you need to refer to anything, you  
[18] refer to whatever you need, okay, doctor?  
[19] **A:** Sure.  
[20] **MR. MALONE:** By putting my copy  
[21] in front of him, you don't have access to  
[22] that. You understand that. You didn't  
[23] bring copies to cross-examine him with.  
[24] I'll let him look at that but that doesn't  
[25] make it open to your inspection, because I

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[1] have notes in here.  
[2] **MR. CONWAY:** I'm not going to look  
[3] at your notes if you promise not to look at  
[4] my highlighting.  
[5] **MR. MALONE:** Everything is  
[6] highlighted in your chart. You're looking  
[7] for the order? Tom, it's in the lab report  
[8] itself that it was extracted. Right here.  
[9] DNA extraction/storage. That is the lab  
[10] report from the laboratory. You want to  
[11] see the order, as well?  
[12] **MR. CONWAY:** Yes. That's what I  
[13] was asking for, if he was familiar with  
[14] where —  
[15] **A:** I was familiar with that report that blood was,  
[16] the genetics lab had received cord blood for DNA  
[17] extraction and storage.  
[18] **Q:** Did you have any conversation with Dr. Zinn  
[19] regarding DNA analysis of Emily's cord blood?  
[20] **A:** No, not specifically about DNA analysis, not  
[21] specifically. We discussed, you know, what this  
[22] disease was. He said, he taught us about it in  
[23] rounds and he suggested that we obtain a number  
[24] of tests and so the orders were entered according  
[25] to his instructions and the lab tests that he

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[1] suggested were performed.  
[2] **Q:** At the time, and we're talking about Dr. Zinn,  
[3] correct?  
[4] **A:** Yes. I'm sorry.  
[5] **Q:** Back in 1999, it was your understanding that he  
[6] was the head of what division at University  
[7] Hospitals?  
[8] **A:** My understanding was that he was a geneticist  
[9] with a special interest or specialized in  
[10] metabolism.  
[11] **Q:** Inborn errors of metabolism?  
[12] **A:** Yes.  
[13] **Q:** What was your understanding as to how you would  
[14] conclusively rule in or rule out LCHAD in a  
[15] newborn?  
[16] **A:** Well, I didn't have a very good understanding one  
[17] way or the other and that's why I asked him to  
[18] look at the baby and give us guidance and I would  
[19] have been unable to interpret the lab tests that  
[20] he ordered, so I would have been unable to make  
[21] that diagnosis one way or another all by myself.  
[22] **Q:** So once again, you're relying upon Dr. Zinn's  
[23] experience and knowledge in dealing with that  
[24] issue, correct?  
[25] **A:** Yes.

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[1] **Q:** Starting with the progress notes, in fact  
[2] starting with the, pretty much the first progress  
[3] note on 10/28/99, and going up through a NNP  
[4] monthly summary on November 26th, 1999, did you  
[5] find that the daily progress notes consistently  
[6] mentioned ruling out fatty oxidation disorder or  
[7] ruling out LCHAD?  
[8] **A:** Yes.  
[9] **Q:** Why during that time period was that specific  
[10] item charted on a daily basis?  
[11] **A:** That was one of her potential diagnoses because  
[12] of the maternal history.  
[13] **Q:** After the NNP monthly summary on November 26th,  
[14] 1999, there's no further mention in any of the  
[15] daily progress notes of ruling out fatty  
[16] oxidation disorder or ruling out LCHAD. Did you  
[17] notice that in your review of the records?  
[18] **A:** No, I didn't notice that.  
[19] **Q:** Until fatty oxidation disorder or LCHAD is either  
[20] ruled in or ruled out, it would be important to  
[21] continue to document on a daily basis that that  
[22] was still a condition that had to be ruled out?  
[23] **A:** Well, I can't speak for people who wrote those  
[24] progress notes; but I would have imagined that it  
[25] would have been important. I mean, I know that

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[1] everybody knew that that was still an issue. I  
[2] personally communicated with the attending taking  
[3] over Emily's care that that was still an issue.  
[4] Q: Do you have any documentation that you  
[5] communicated to the attending who took over the  
[6] care from you that that was still an issue?  
[7] A: On my, probably on my last note, there's still a  
[8] note that fatty acid disorder should be ruled  
[9] out.  
[10] Q: And what date was your last note? You can use  
[11] your attorney's chart if you want.  
[12] MR. MALONE: There are other  
[13] mentions in the chart. In your question,  
[14] Tom, you state something as factual that's  
[15] not true. I mean, I just flipped open to a  
[16] note there about pending labs on December  
[17] 23rd.  
[18] A: December 23rd.  
[19] MR. MALONE: There's reference  
[20] to this, the mutation.  
[21] Q: The language that I used, Jim, is the question I  
[22] asked and I don't believe it has, although there  
[23] is reference to —  
[24] A: LCHAD?  
[25] Q: Right. What date was that?

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[1] A: December 23rd.  
[2] Q: Okay.  
[3] A: 1999.  
[4] Q: All right.  
[5] A: So there is still, you know, reference to the  
[6] fact that LCHAD was still —  
[7] Q: So people, the attendings are still aware of the  
[8] fact that that condition has not been ruled in or  
[9] ruled out; is that correct?  
[10] A: I was aware and I'm sure that based on these  
[11] notes, they were aware, as well.  
[12] Q: What was your last neonatology progress note? Do  
[13] you recall what day?  
[14] A: Let me see if I can find it. 1 1/30.  
[15] Q: And are we looking at Bates stamped page 79%  
[16] A: 79.  
[17] Q: And that's obviously your signature as the  
[18] attending?  
[19] A: Yes.  
[20] Q: I don't mean to be, where in here do you mention  
[21] LCHAD?  
[22] A: Well, I didn't mention it on this particular  
[23] note. But the next morning, I actually signed  
[24] out to Dr. Bearer and personally I told her that  
[25] that was one of the major issues and as you can

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[1] see through the chart, that still continued to be  
[2] an issue.  
[3] Q: Whose signature is that on Page 80?  
[4] A: What page, I'm sorry, 80?  
[5] Q: Yes.  
[6] A: I believe it's Dr. Bearer's, Cynthia.  
[7] Q: Is it your testimony, then, your involvement with  
[8] the care and treatment of this patient ended on  
[9] November 30th?  
[10] A: As I recall, yes.  
[11] Q: Was Emily a high-risk neonate by virtue of her  
[12] being a preterm infant?  
[13] A: Yes.  
[14] Q: Would she also be a high risk neonate by virtue  
[15] of her VLBW?  
[16] A: Yes.  
[17] Q: Very low birth weight?  
[18] A: Yes.  
[19] Q: Are you a member of the American Academy of  
[20] Pediatrics?  
[21] A: Yes.  
[22] Q: Do you hold any office?  
[23] A: No.  
[24] Q: Do you find that that organization issues  
[25] reasonable and prudent policies and guidelines?

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[1] A: Yes.  
[2] Q: For pediatricians?  
[3] A: Yes.  
[4] Q: Neonatologists?  
[5] A: Yes.  
[6] Q: Have you ever referred any patient to another  
[7] institution for a DNA analysis?  
[8] A: No.  
[9] Q: Would that be something that a neonatologist  
[10] would do or would that be something that you  
[11] would get a geneticist involved in making the  
[12] determination?  
[13] A: I personally have the geneticists do that because  
[14] they know the field and where to send samples,  
[15] what to look for.  
[16] Q: I'm going to go through and just ask you some  
[17] questions. If you can answer them, fine. If  
[18] not, that's fine.  
[19] Up until the, when you discharged the patient  
[20] on November — excuse me, when you last were the  
[21] attending physician on November 30th, to your  
[22] knowledge were you satisfied that the appropriate  
[23] metabolic screening necessary for determining  
[24] whether or not Emily had LCHAD had been done?  
[25] A: I was relying upon the geneticist's suggestions.

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[1] I wasn't sure that's all, I mean I'm sure they  
[2] did everything that is available, that was  
[3] available.  
[4] Q: So to your knowledge in reliance upon the  
[5] geneticist, who would be Dr. Zinn, correct?  
[6] A: Correct.  
[7] Q: You were of the belief that the appropriate steps  
[8] had been taken?  
[9] A: I was of the belief that everything that was  
[10] possibly, you know, done was done.  
[11] Q: Did you ever discuss with Dr. Zinn whether or not  
[12] DNA analysis of Emily's cord blood could be done  
[13] in order to rule in or rule out LCHAD?  
[14] A: I don't remember specifically having the  
[15] discussion but that's as good as I can answer the  
[16] question. I know we talked about, you know, the  
[17] ECHAD. I was primarily also taking care of a  
[18] sick child who had many, many other, you know,  
[19] needs which were within my expertise, so I was  
[20] relying upon, you know, other people's expertise  
[21] that they were doing, you know, the same thing  
[22] but I don't recall specifically stopping him to  
[23] say, okay, is there anything else we can do or,  
[24] you know, I'm relying upon his knowledge to tell  
[25] me.

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[1] Q: Did you have an awareness back in November of  
[2] 1999 whether, based on seminars you had been to  
[3] or Dr. Ibdah's article, that it was possible to  
[4] rule in or rule out a child's having LCHAD by way  
[5] of doing a DNA analysis?  
[6] A: No. All I had read was his article and I  
[7] couldn't really, you know, critically assess  
[8] whether that's a definite, at that point whether  
[9] that was a definite way of ruling it in or out.  
[10] Q: There were a couple of labs that were ordered  
[11] by — well, what's the procedure for ordering  
[12] labs when a subspecialist recommends to an  
[13] attending that certain labs are indicated?  
[14] A: Well, there are different procedures. It's  
[15] depending on the individual. Some specialists  
[16] will order their own labs. They'll just go into  
[17] the computer or have their residents do it for  
[18] them or they'll just, in rounds, you know, say  
[19] what they need and one of our residents in the  
[20] NICU will order them, basically.  
[21] Q: Obviously at the time that you ceased to be an  
[22] attending, the issue of whether or not Emily had  
[23] LCHAD was not resolved?  
[24] A: To my knowledge, it hasn't.  
[25] Q: It was not resolved as of the time?

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[1] A: To my knowledge, it has not been resolved.  
[2] Q: During the time that you were an attending, did  
[3] you have an opportunity to speak with Emily's  
[4] parents at all?  
[5] A: Yes. Actually, I spoke with them almost every  
[6] day.  
[7] Q: How did they impress you or what was your  
[8] impression of Emily's parents?  
[9] A: They, I felt that they were very appropriate,  
[10] appropriately concerned with Emily. They were,  
[11] actually, I invited them, you know, to round with  
[12] us on a daily basis, which they did pretty much  
[13] and we established a rapport. I basically spent  
[14] a lot of time with them.  
[15] Q: Did you ever, to your recollection, discuss the  
[16] possibility that Emily had LCHAD with them?  
[17] A: I told them that that was a concern that the  
[18] geneticist had because of her condition, because  
[19] of the mom's condition and that the workup was  
[20] being done by genetics.  
[21] Q: So you would have told the parents that genetics  
[22] was dealing with that problem?  
[23] A: Yes.  
[24] Q: Do you know if you explained to the parents what  
[25] the signs and symptoms and presentation of a

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[1] infant would be who was suffering from LCHAD?  
[2] A: Yes. Actually, I mentioned to the father —  
[3] because the mother was still sick. She didn't  
[4] come into the nursery for a few days — that some  
[5] of the symptoms were hypoglycemia and we probably  
[6] wouldn't see too many symptoms because basically  
[7] she was being nourished with, you know,  
[8] parenteral nutrition and I had never seen a case,  
[9] so I couldn't really tell in such a premie baby  
[10] what other symptoms, you know, might represent  
[11] LCHAD.  
[12] Q: Did you document this conversation at all with  
[13] the parents?  
[14] A: Yes. I wrote in the chart for the most part  
[15] family support or spoke with the parents and I'm  
[16] sure if you ask them, they can hopefully  
[17] ascertain that I spoke with them every day pretty  
[18] much.  
[19] Q: But about the signs, symptoms of LCHAD is my  
[20] specific question.  
[21] A: I don't think I documented I spoke with the  
[22] family about the symptoms or, of this or that  
[23] because, you know, she had so many other problems  
[24] that would have taken, you know, another three  
[25] charts like this to tell them all the symptoms of

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[1] all the different problems that she had; but I  
[2] think we discussed LCHAD briefly because I  
[3] wasn't, you know, it's not my area of expertise  
[4] and I just briefly told them what I knew and I  
[5] told them that genetics was looking into it.

[6] **Q:** The diet that Emily was receiving, and we'll just  
[7] deal specifically during the time period when she  
[8] was under your care and treatment, was that the  
[9] type of diet that a child suffering from LCHAD  
[10] should have received?

[11] **A:** Well, she was on TPN. She was on total  
[12] parenteral nutrition while I was in the NICU so  
[13] probably because she was getting glucose and she  
[14] was getting NCT oils, which is what, you know,  
[15] now I know that's what kids with LCHAD, you know,  
[16] should receive. They should have a constant  
[17] source of energy, glucose and so she was.

[18] **Q:** Was she receiving the appropriate amounts of fats  
[19] for a child who was suffering from LCHAD?

[20] **A:** She was receiving the appropriate amount of fat  
[21] that a child who is 25-weeks gestation needs to  
[22] survive and grow and be able to go home,  
[23] Whether, you know — that's as good as I can  
[24] answer your question.

[25] **Q:** And probably what you're trying to say is that

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[1] she had other health problems that had to be  
[2] counterbalanced in her overall treatment; is that  
[3] correct?

[4] **A:** Yes, you might say that.

[5] **Q:** All right. There came a point in time, however,  
[6] when at least in the judgment of neonatologists  
[7] here at Rainbow Babies Hospital, that there was a  
[8] determination made that she could be discharged  
[9] or transferred to a lower level of care; is that  
[10] correct?

[11] **A:** Obviously from the chart, yes.

[12] **Q:** What's your understanding of what type of  
[13] hospital Aultman is?

[14] **A:** I don't have a very good idea. I've never been  
[15] there. I know that they have a neonatal group at  
[16] Aultman but I've never been there

[17] **Q:** Do they send babies up to Rainbow occasionally?

[18] **A:** Occasionally.

[19] **Q:** Critically ill babies?

[20] **A:** Not necessarily. Kids who may require services  
[21] that they don't provide, cardiac patients, for  
[22] example, patients who require, you know, extra  
[23] cardiac, extracorporeal membrane oxygenation,  
[24] ECMO, support.

[25] **Q:** Are you critical of any of the care and treatment

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[1] that Emily received while she was at Aultman  
[2] Hospital?

[3] **A:** I haven't seen their records. I have no way of  
[4] knowing what kind of care she received.

[5] **Q:** Is that something you're interested in looking  
[6] at?

[7] **MR. MALONE:** I'm going to object  
[8] to whether he's interested in looking.  
[9] He's looked at his own involvement in the  
[10] case. Whether — why would you ask that  
[11] question?

[12] **MR. CONWAY:** I don't know, Jim.  
[13] Sometimes I just ask questions because it's  
[14] a discovery depo and I'd like an answer.

[15] **MR. MALONE:** I don't think  
[16] you're going to get an answer to that one.  
[17] Whether he's interested or not interested  
[18] is absolutely irrelevant and doesn't take  
[19] us anywhere. Next question please.

[20] **MR. CONWAY:** so you're telling  
[21] him not to answer?

[22] **MR. MALONE:** I am.

[23] **Q:** Okay Fine. Have you asked to look at the  
[24] Aultman records, doctor?

[25] **A:** No.

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[1] **Q:** Have you asked to look at any of the records from  
[2] Akron Children's Hospital?

[3] **A:** No.

[4] **Q:** Have you looked at the autopsy?

[5] **A:** No.

[6] **Q:** Have you asked to look at any of those?

[7] **A:** I think I wanted to know what the autopsy showed.

[8] **Q:** Why?

[9] **A:** Let me —

[10] **Q:** sure.

[11] **A:** I think actually, I saw the, I think I saw the  
[12] autopsy report, actually. I saw the autopsy  
[13] report, but I didn't see the records from Akron,  
[14] but I did see the autopsy report, yes.

[15] **Q:** You agree, obviously, with the fact that she had  
[16] LCHAD?

[17] **A:** Absolutely.

[18] **Q:** And that she would have had LCHAD from the time  
[19] of her birth, correct?

[20] **A:** Yes.

[21] **Q:** But going back to Akron Children's Hospital  
[22] records, do you recall looking at any Akron  
[23] Children's Hospital records?

[24] **A:** No.

[25] **Q:** Did you ask to?

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[1] A: No.  
[2] Q: Did you ever ask Dr. Zinn for his recommendation  
[3] on how to treat a case of suspected LCHAD prior  
[4] to it being conclusively ruled in or ruled out?  
[5] A: Not specifically but, not specifically. He might  
[6] have mentioned when we were discussing what LCHAD  
[7] was what you'd normally do with these kids but I  
[8] think it was more like, you know, information  
[9] that he provided spontaneously but I didn't ask  
[10] that question.  
[11] Q: Did Dr. Zinn make any recommendations to you as  
[12] to how a child with LCHAD should be treated?  
[13] MR. MALONE: Well, I'm going to  
[14] show an objection. During the time the  
[15] patient was seen by my client, it wasn't  
[16] known that she had LCHAD so why would they  
[17] have that discussion? I mean having — how  
[18] do you treat a child with LCHAD when the  
[19] disease hasn't been established as the  
[20] diagnosis?  
[21] MR. CONWAY: Can you repeat the  
[22] question?  
[23]  
[24] (Thereupon, the requested portion of  
[25] the record was read by the Notary.)

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[1] A: I don't recall.  
[2] Q: I think we requested a billing file for Emily's  
[3] care and treatment from your attorney —  
[4] MR. MALONE: You didn't request a  
[5] billing file. You didn't even request the  
[6] office file. I gave that to Donna without  
[7] her asking for it. I haven't seen a  
[8] request for anything; but the billing  
[9] records are in that file that we provided  
[10] you with his checkmarks.  
[11] Q: I've seen those. I think there were discovery  
[12] requests in which we asked for requests for  
[13] production which would include a billing file as  
[14] well as their whole file, so you're just, to a  
[15] point, complying with the discovery request; but  
[16] regardless, do you know how patients are billed,  
[17] doctor?  
[18] A: No.  
[19] Q: That's not an area of your concern?  
[20] A: No. I just fill out the billing sheet and then  
[21] it goes to billing and what they do is, I don't  
[22] worry about at all.  
[23] Q: Do you have any opinion regarding Emily's life  
[24] expectancy had she received dietary treatment for  
[25]

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[1] her LCHAD —  
[2] MS. DiSILVIO: Objection.  
[3] Q: — within the first two weeks of her life?  
[4] MS. DiSILVIO: Objection.  
[5] MR. MALONE: Go ahead.  
[6] A: No, I don't.  
[7] Q: And if you don't have an opinion, that's fine.  
[8] And I'm asking whether you have an opinion to a  
[9] reasonable degree of medical probability, okay?  
[10] Do you have an opinion regarding Emily's life  
[11] expectancy — and I'm going to give you various  
[12] hypotheticals or dates.  
[13] A: Okay.  
[14] Q: And you just can answer whether you have an  
[15] opinion or not and we'll move to the next thing.  
[16] A: Okay. I understand.  
[17] Q: Do you have an opinion regarding Emily's life  
[18] expectancy if appropriate treatment for her LCHAD  
[19] had been instituted at one month of life?  
[20] MS. DiSILVIO: Objection.  
[21] A: No.  
[22] Q: At two months of life?  
[23] A: No.  
[24] Q: By December 27th, 1999?  
[25] A: No.

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[1] Q: By July 4th, 1999?  
[2] MR. MALONE: July 4th, 1999 the  
[3] child wasn't born.  
[4] A: She wasn't born.  
[5] Q: Good point. I retract the last one. By July  
[6] 4th, 2000. That wasn't a trick question, by the  
[7] way, all right?  
[8] All right. Do you have an opinion regarding  
[9] Emily's life expectancy if treatment for her  
[10] LCHAD had been instituted by July 4th, 2000?  
[11] MS. DiSILVIO: Objection.  
[12] A: No, I don't.  
[13] Q: Did you see the note in the progress notes  
[14] regarding that caution should be used regarding  
[15] Emily's diet clue to the fact that she possibly  
[16] could be suffering from LCHAD?  
[17] A: No.  
[18] Q: I take it based on what you've been able to  
[19] review at this time, you don't have any criticism  
[20] of any of the medical providers from Akron  
[21] Children's Hospital?  
[22] A: I haven't reviewed any of the records, so.  
[23] Q: So?  
[24] A: I don't have any criticisms.  
[25] Q: Was there a neonatology chain of command back in

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[1] 1999, specifically October, November and December  
[2] of 1999?  
[3] **A:** I don't understand that question.  
[4] **Q:** Okay. Well, Dr. Martin was the chairman of the  
[5] division?  
[6] **A:** Yes.  
[7] **Q:** Dr. Fanaroff was the co-chair?  
[8] **A:** Yes.  
[9] **Q:** Who would be under them? Was there a seniority  
[10] or ranking?  
[11] **A:** Dr. Michele Walsh. She's the director of the  
[12] NICU.  
[13] **Q:** What's the difference between being the director  
[14] of the NICU and being the chairman of the  
[15] neonatology division?  
[16] **A:** Well, the chairman is in charge of all the  
[17] different sections of the division, the NICU, the  
[18] fourth floor or step-down nursery, the normal  
[19] nursery and, you know, the operation of the  
[20] division, basically.  
[21] **Q:** Did you review the progress notes in December? at  
[22] all, of 1999?  
[23] **A:** Superficially.  
[24] **Q:** In reviewing the hospital chart, the parts of the  
[25] hospital chart that you reviewed regarding Emily,

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[1] did you see any indication that Emily had  
[2] suffered hypoglycemia prior to her discharge —  
[3] **A:** No.  
[4] **Q:** — or —  
[5] **A:** I'm sorry.  
[6] **Q:** Or prior to her transfer?  
[7] **A:** No.  
[8] **Q:** In looking through the chart, did you see any  
[9] indication that Emily had suffered any physical  
[10] injury from her LCHAD prior to her transfer to  
[11] Aultman Hospital?  
[12] **A:** No.  
[13] **Q:** If you can just bear with me a minute, doctor.  
[14] **A:** Sure.  
[15]  
[16] (Thereupon, a discussion was had off  
[17] the record.)  
[18]  
[19] **Q:** Who is Jonathon Fanaroff? Is there a Jonathon  
[20] Fanaroff?  
[21] **A:** Yes.  
[22] **Q:** Okay. Who is that?  
[23] **A:** That's Dr. Avroy Fanaroff's son.  
[24] **Q:** Is he a physician?  
[25] **A:** He's a physician.

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[1] **Q:** Neonatologist?  
[2] **A:** No.  
[3] **Q:** What type of physician?  
[4] **A:** He's a fellow in neonatology.  
[5] **Q:** I saw his name in the chart. That's why I'm just  
[6] asking.  
[7] **DR. FANAROFF:** He was a pediatric  
[8] resident at the time.  
[9] **Q:** I figured it was a relation.  
[10] After November 30th, did you ever follow up  
[11] with Dr. Zinn regarding any of his efforts at  
[12] ruling in or ruling out LCHAD?  
[13] **A:** Actually, I, I was actually working at another  
[14] hospital during December and January but I think  
[15] we reviewed a result that came to me in January  
[16] and he interpreted those for me.  
[17] **Q:** What result was that that you received in  
[18] January?  
[19] **A:** If I remember correctly, it was a urine and  
[20] plasma carnitine profile.  
[21] **Q:** And obviously you would have had to go to  
[22] Dr. Zinn to have him explain what this lab result  
[23] meant as far as whether or not Emily had LCHAD or  
[24] not?  
[25] **A:** Right, correct.

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[1] **Q:** Did he give you any indication of the  
[2] significance of that lab result to him and his  
[3] diagnosis of whether or not Emily had LCHAD or  
[4] not?  
[5] **A:** I think his interpretation was that those were  
[6] not consistent with LCHAD at that time.  
[7] **Q:** I didn't see any, in my total review of the  
[8] hospital records regarding Emily Gwynne, I see no  
[9] evidence that the LCHAD was either ruled in or  
[10] ruled out definitively by anyone connected with  
[11] University Hospitals; am I correct?  
[12] **A:** You're correct.  
[13] **Q:** Did Dr. Zinn indicate to you in January when you  
[14] discussed that lab result that had gotten sent to  
[15] you, correct?  
[16] **A:** Yes.  
[17] **Q:** Did you discuss with Dr. Zinn whether or not he  
[18] was going to contact the parents with that lab  
[19] result?  
[20] **A:** I don't recall.  
[21] **Q:** Did you feel you had any obligation to contact  
[22] the parents regarding the status of Emily's  
[23] possible LCHAD condition in January?  
[24] **A:** My understanding was that she was going to follow  
[25] up as an outpatient with genetics and I didn't

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[1] feel that I had the knowledge to explain to them  
[2] what those labs meant.  
[3] Q: So once again, you assumed that Dr. Zinn would  
[4] contact the parents?  
[5] MS. DISILVIO: Objection. That's  
[6] not what he said.  
[7] Q: Okay. Well, I'll ask the question.  
[8] Did you assume that Dr. Zinn would contact  
[9] the parents regarding that lab result?  
[10] MS. DISILVIO: Objection.  
[11] A: I don't think I made an assumption. I couldn't  
[12] really answer that question. I don't recall what  
[13] the exchange was; but he reassured me that those  
[14] tests were reassuring to him.  
[15] Q: As of January, it was still your understanding  
[16] that genetics would follow **up** with the issue of  
[17] whether or not Emily had LCHAD; is that correct?  
[18] A: Well, that was my understanding from reading the  
[19] chart.  
[20] Q: And in fact and in speaking with Dr. Zinn in  
[21] January, that still would have been your  
[22] understanding; is that correct?  
[23] MS. DISILVIO: Objection.  
[24] A: Yes.  
[25] Q: What was your understanding in 1999 as to the

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[1] treatment that was medically indicated for a  
[2] newborn infant who had LCHAD?  
[3] A: In 1999?  
[4] Q: At the time Emily was in the hospital.  
[5] A: Well, while the time she was in the hospital, my  
[6] understanding was she should get, you know,  
[7] enough nutrients as she would, you know, for any  
[8] other premie baby but that during the time I was  
[9] taking care of her that she didn't need anything  
[10] special because she was getting IV nutrition, so  
[11] she was pretty much, you know, fulfilling her  
[12] needs without any potential cause for problems.  
[13] Q: So that was your understanding at that time?  
[14] A: Yes.  
[15] Q: Since Emily, have you been involved in the care  
[16] and treatment of any newborn who's had LCHAD?  
[17] A: No.  
[18] Q: So this is the only child that you've ever  
[19] treated that to your knowledge had LCHAD; is that  
[20] correct?  
[21] A: That I treated?  
[22] Q: Yes.  
[23] A: Yes.  
[24] Q: Do you have anything to do with determining what  
[25] children become involved in any of the research

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[1] projects which Rainbow Babies or University  
[2] Hospitals is involved in?  
[3] A: Not necessarily all of them. There may be some  
[4] kids on the studies that I don't know about.  
[5] Q: We'll go into this one here.  
[6] A: Sure.  
[7] Q: Were you aware that, and I don't know what the  
[8] proper terms are, she was enrolled in some type  
[9] of study?  
[10] A: I remember her being part of a study, one study  
[11] at least.  
[12] Q: One study?  
[13] A: Yes.  
[14] Q: And that was a randomized trial of parenteral  
[15] glutamine supplementation for extremely low birth  
[16] weight infants?  
[17] A: Yes.  
[18] Q: Whose decision was it to enroll her in that  
[19] particular study?  
[20] A: Well, she met the eligibility criteria, the  
[21] parents were approached, they made a decision  
[22] that they wanted her to participate, basically.  
[23] Q: But I mean is there a certain neonatologist in  
[24] your division that's kind of in charge of  
[25] coordinating getting patients enrolled in this

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[1] study?  
[2] A: Well, there's a principal investigator.  
[3] Q: Who is the principal investigator?  
[4] A: I don't want to misquote who it is.  
[5] Q: That's fine. You want to —  
[6] A: Sure. Do you mind?  
[7] Q: No. Go ahead. Don't look at Mr. Malone's notes,  
[8] though.  
[9] A: Dr. Fanaroff and Dr. Michele Walsh, Nancy Newman  
[10] and Bonnie Siner and Susan Bergant.  
[11] Q: So they would be the principal investigators or  
[12] is Dr. Fanaroff the principal investigator?  
[13] A: I believe that Dr. Fanaroff and Dr. Walsh are the  
[14] principal investigators but I may be wrong.  
[15] Q: Back in 1999, to your knowledge, was there any  
[16] type of study dealing with LCHAD newborns that  
[17] University Hospitals was associated with?  
[18] A: No. I'm not aware of any studies.  
[19] Q: Were you aware of any studies going on involving  
[20] LCHAD newborns back in October/November of 1999?  
[21] A: No. At this institution?  
[22] Q: No. At any institution in the country?  
[23] A: No.  
[24] Q: Did you ever ask Dr. Zinn if he was aware of any  
[25] research projects or studies that were going on



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[1] in this country regarding newborn infants who  
[2] potentially had LCHAD?  
[3] A: I didn't ask that specific question.  
[4] Q: Emily was, I think, born at 25 weeks; am I  
[5] correct on that?  
[6] A: I think so.  
[7] Q: Do you have an opinion as to her life expectancy  
[8] had she not had LCHAD based upon her condition at  
[9] the time that she was transferred out of Rainbow  
[10] Babies?  
[11] A: Well, our survival rate for a 25-week baby at  
[12] that time was around 75 to 80 percent.  
[13] Q: For a 25 weeker?  
[14] A: Yes, for babies discharged from this hospital.  
[15] She was transferred to another institution which  
[16] may change the results.  
[17] Q: And what are those percentages, again?  
[18] A: Around 75 to 80 percent.  
[19] Q: Do you know why she was transferred from  
[20] University Hospitals or Rainbow Babies to  
[21] Aultman?  
[22] A: No.  
[23] Q: Did Emily have pretty typical problems for a  
[24] 25 —  
[25] A: As far as I recall.

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[1] to treat a patient's ongoing medical concerns  
[2] prior to making the decision to transfer?  
[3] A: Yes.  
[4] Q: Same with a discharging physician, is it a  
[5] discharging physician's duty to make sure  
[6] appropriate medical treatment is available to a  
[7] patient to treat ongoing medical concerns?  
[8] A: Yes.  
[9] Q: Let's go to another area.  
[10] Is it the duty of a transferring physician or  
[11] a discharging physician to make sure that all of  
[12] the different medical issues which a patient had  
[13] been receiving treatment for were resolved at the  
[14] time of transfer or discharge?  
[15] A: No.  
[16] Q: And can you explain your answer?  
[17] A: There are some babies who may be transferred or  
[18] discharged with ongoing medical problems, medical  
[19] problems that have not resolved but don't pose a  
[20] life-threatening situation for those kids to be  
[21] discharged or transferred.  
[22] Q: But for those patients who do have ongoing  
[23] problems that were not definitively resolved such  
[24] as the issue here with Emily's possible LCHAD,  
[25] the discharging or transferring physician would

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[1] Q: — weeker?  
[2] A: As far as I recall, yes, she did.  
[3] Q: And in your opinion those problems were  
[4] adequately dealt with?  
[5] A: Yes.  
[6] Q: Do you have any documentation anywhere of any of  
[7] the conversations — strike that.  
[8] Do you have documented anywhere the contents  
[9] of specific conversations you had with Emily's  
[10] parents regarding Emily?  
[11] A: Not specific but we spoke every day. I mean when  
[12] I didn't talk to them it's because they weren't  
[13] here.  
[14] Q: And anything that you would have talked with them  
[15] about you would have put into your progress note;  
[16] is that correct?  
[17] A: Everything that I knew, they knew.  
[18] Q: You've discharged patients before from the  
[19] hospital, correct?  
[20] A: Yes.  
[21] Q: And you've transferred patients to other  
[22] hospitals?  
[23] A: Yes.  
[24] Q: Is it the transferring physician's duty to make  
[25] sure appropriate medical treatment is available

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[1] have the responsibility to make sure that the  
[2] patient would be in a position to receive ongoing  
[3] treatment or care for those medical concerns?  
[4] MR. MALONE: Objection.  
[5] A: Yes.  
[6] Q: If a condition is not ruled out, then a prudent  
[7] physician has a — excuse me, I can't read my  
[8] writing.  
[9] A: Sure.  
[10] Q: If a condition is not ruled out, does a prudent  
[11] physician have the responsibility to consider the  
[12] possibility that the patient is suffering from  
[13] that condition?  
[14] MR. MALONE: Show an objection.  
[15] It's a little vague.  
[16] A: I couldn't understand that. I don't understand  
[17] the question, but — I couldn't answer it. I'm  
[18] trying to, but I don't.  
[19] Q: That's fine. When we use the term rule out, all  
[20] right, as it's been used throughout Emily's  
[21] chart, that means that there is a suspicion by a  
[22] physician that she could have a certain disease,  
[23] in this particular case, LCHAD, correct?  
[24] A: Correct.  
[25] Q: And LCHAD if untreated will cause death, is that

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[1] correct?

[2] **A:** To my understanding, yeah.

[3] **Q:** So obviously there's a prudent concern by  
[4] different physicians that Emily may have LCHAD  
[5] and the goal is to rule out the possibility that  
[6] she has LCHAD, correct?

[7] **A:** Correct.

[8] **Q:** My question is: Should a physician assume the  
[9] worst; in other words, if the condition has not  
[10] been ruled out, should the physician proceed as  
[11] if Emily had the condition, in this particular  
[12] case, LCHAD?

[13] **MR. MALONE:** Show an objection.

[14] **A:** I really couldn't answer that question because  
[15] it's beyond my scope of knowledge. I mean,  
[16] that's a question for a geneticist.

[17] **Q:** Well, have you ever had a medical condition which  
[18] you had one of your patients facing which was  
[19] life-threatening that was within your specialty?

[20] **A:** Yes.

[21] **Q:** And what would one of those conditions be?

[22] **A:** Respiratory failure.

[23] **Q:** Well, that one is pretty easy to rule in and rule  
[24] out, right?

[25] **A:** Correct.

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[1] **Q:** Is there a medical condition within your area of  
[2] specialization that is very difficult to rule in  
[3] and rule out?

[4] **MR. MALONE:** Just show an  
[5] objection to the word difficult. I mean,  
[6] you're talking to some well trained, highly  
[7] technically sophisticated physicians. What  
[8] might be difficult for you might not be  
[9] difficult for them. I don't understand the  
[10] question, anyway; but go ahead.

[11] **MR. CONWAY:** Do you have any more  
[12] testimony, Jim, at this point?

[13] **MR. MALONE:** If I do, I'll be  
[14] sure to give it to you.

[15] **MR. CONWAY:** Thank you.

[16] **MR. MALONE:** You're welcome.

[17] **A:** I can't think of an example. Your question is a  
[18] little vague.

[19] **Q:** Okay. That's fair. I'm interested if you  
[20] understand my questions. Okay? Me and you are  
[21] the ones having the conversation.

[22] Have you ever treated a patient in which the  
[23] only way of diagnosing a certain condition would  
[24] be by a laboratory test?

[25] **A:** Yes.

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[1] **Q:** And thus you may suspect a patient is suffering  
[2] from a certain medical condition but you won't be  
[3] able to rule that out until you get the  
[4] laboratory tests back. You've dealt with  
[5] patients who have been in that situation, right?

[6] **A:** Well, we deal with that every day with normal  
[7] newborns, when we do a newborn screening. They  
[8] go home and we don't know what they have. They  
[9] could have potentially lethal complications or  
[10] diagnoses and we send them home because we don't  
[11] know. We can't treat them all as if they had all  
[12] the metabolic disorders or all the, so we just  
[13] send them home and follow them up.

[14] **Q:** But in this particular case, there was a pretty  
[15] well reasoned determination that Emily could be  
[16] suffering from LCHAD, correct?

[17] **MR. MALONE:** Well, show an  
[18] objection. There are also pretty well  
[19] reasoned lab studies that said she didn't  
[20] have it. That's what he told you. That's  
[21] the testimony. That's what Dr. Zinn  
[22] testified to. She had normal labs, so  
[23] you're making an argumentative question out  
[24] of a factual statement that you can't  
[25] prove.

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[1] **MR. CONWAY:** Could you please  
[2] read back my question.

[3] (Thereupon, the requested portion of  
[4] the record was read by the Notary.)  
[5]

[6] **A:** No. That's incorrect.

[7] **Q:** How is that incorrect?

[8] **A:** According to my knowledge, according to my, the  
[9] information that I had at that time, the tests  
[10] that had been done were reassuring to the  
[11] geneticist and the metabolists and specialists;  
[12] so at no point was I told that there is good  
[13] evidence that this kid may have LCHAD.

[14] **Q:** What time period are we talking about?

[15] **A:** November, October 30th through November 30th, I  
[16] believe.

[17] **Q:** Okay. Well, let's just go, cut to the chase.

[18] As of the last time you treated Emily, at  
[19] that point in time, all right?

[20] **A:** All right.

[21] **Q:** Did you have — strike that.

[22] As of the last time you treated Emily on  
[23] November 30th, what was your thinking as to the  
[24] possibility that Emily was suffering from LCHAD?

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[1] **MR. MALONE:** Objection. He had a  
[2] consultant in the case. Go ahead.  
[3] **A:** My suspicion was based on what the consultant was  
[4] telling me, that there was a possibility that she  
[5] had a very rare disorder and that's why we  
[6] brought these specialists in and, who were  
[7] working her up for it.  
[8] **Q:** In this particular case, you relied on Dr. Zinn  
[9] to make appropriate decisions on how to test for  
[10] this genetic disease; is that correct?  
[11] **A:** correct.  
[12] **Q:** Just a couple things I need clarification on.  
[13] In the cumulative lab reports, there seems to  
[14] be two entries that I don't understand. One is  
[15] collected physician. Do you want me to show you  
[16] what —  
[17] **A:** Sure.  
[18] **Q:** For instance, right here, just turning to the  
[19] page Bates stamped 228, where it says here, it  
[20] says collected and it has a date and a time,  
[21] correct?  
[22] **A:** Yes.  
[23] **Q:** And then it has the physician and in this  
[24] cumulative lab, we see, for instance, November  
[25] 5th, November 3rd, November 2nd, okay?

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[1] What's the significance of a physician's name  
[2] being underneath the collected entry?  
[3] **A:** That basically means the resident might have  
[4] entered the order and when they ask for a  
[5] physician, they may use any of the names that are  
[6] in the chart available to them.  
[7] Could be the person who admitted the kid the  
[8] first day or it could be my name, even though I  
[9] may not be on service or it could be somebody  
[10] else who was involved, so it varies as you go  
[11] through the chart, you see that the plate, the  
[12] names on the plates also change and I don't know  
[13] what the procedures are for that; so basically  
[14] they need to have the name of a physician to send  
[15] the tests to the labs and I don't know how they  
[16] choose, you know, which physician.  
[17] **Q:** And that's for the resident's benefit?  
[18] **A:** Or the nurse practitioners. This is probably,  
[19] you know, just I would say policy but I'm not  
[20] sure if that's the right word.  
[21] **Q:** Okay. If there is a lab ordered in which the lab  
[22] is being collected for, that order sheet would  
[23] have to have the name of the physician who's  
[24] actually ordering?  
[25] **A:** No.

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[1] **Q:** It doesn't?  
[2] **A:** No.  
[3] **Q:** How does that work?  
[4] **A:** Well, because, see, if a nurse practitioner, for  
[5] example, orders a lab, she may use my name as the  
[6] physician of record and she might enter the  
[7] order.  
[8] **Q:** Do you have to sign off on that?  
[9] **A:** Not necessarily at that time, not necessarily at  
[10] that time. You may go back to medical records  
[11] and find that you have to sign, you know, an  
[12] order that was placed, you know.  
[13] **Q:** Are there certain orders that you do have to sign  
[14] off on?  
[15] **A:** Yes. If I enter an order, I sign off on it  
[16] myself.  
[17] **Q:** And if a nurse practitioner or a resident issues  
[18] an order, doesn't that order still have to be  
[19] signed off on by an attending physician?  
[20] **A:** No, because we have an agreement through the  
[21] board of Ohio with the nurse practitioners, they  
[22] can use, they work under our supervision, so they  
[23] can use our names to enter orders. Then I go to  
[24] medical records and I may find an unsigned order,  
[25] so I sign it.

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[1] **Q:** So eventually those orders do have to be signed  
[2] off on by a physician, correct?  
[3] **A:** Yes, eventually, yes.  
[4] **Q:** And once again, as you go through here, there's  
[5] different, see on Bates stamped Page 228, it has  
[6] the attending physician as Ricardo Rodriguez?  
[7] **A:** Yes,  
[8] **Q:** And you see it for a number of these?  
[9] **A:** Yes.  
[10] **Q:** Does that necessarily, what significance does it  
[11] have as to who is indicated as being the  
[12] attending physician on these different —  
[13] **A:** That I was in the NICU in the month of November,  
[14] so they used, you know, my name on the admitting  
[15] plate or a plate at the time and they keep using  
[16] the same stamp all the time is basically it.  
[17] **Q:** What is a protocol order?  
[18] **A:** It's a number of orders that are used on a daily  
[19] basis to, you know, an admission, for example, on  
[20] every baby, those are routine orders like, you  
[21] know, temperature and vital signs and IV fluids.  
[22] So instead of rewriting them every day for every  
[23] patient, we use a protocol that applies to all  
[24] the patients.  
[25] **Q:** I guess I just need to ask you some questions

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[1] regarding maybe some signatures here that maybe  
[2] you're familiar with.  
[3] **A:** Sure.  
[4] **Q:** And I can't read them.  
[5] Is this Dr. Fanaroff's right here on Bates  
[6] stamped Page 17?  
[7] **A:** Looks like it, yes.  
[8] **Q:** If you're not familiar with it, let me know.  
[9] **A:** Okay.  
[10] **Q:** But I figure reading these people's charts, do  
[11] you know whose signature this is?  
[12] **A:** Dr. Stork, Eileen Stork.  
[13] **Q:** Can you read what she says right there on Bates  
[14] stamped Page 22?  
[15] **A:** Start .0 grams per kilogram Intralipid. Advance  
[16] .5 grams per kilogram per day. Advance, I don't  
[17] know what it says.  
[18] **Q:** Cautiously?  
[19] **A:** I don't know. Advance in view of long chain, I  
[20] don't know what it says at the end.  
[21] **Q:** How do you interpret this note that she wrote on  
[22] I think October 29th?  
[23] **A:** I don't know what she meant.  
[24] **Q:** Whose signature is that?  
[25] **A:** That's me. Sorry.

[1] **Q:** And that's those notes, NNP; is that right?  
[2] **A:** Yes.  
[3] **Q:** And this is, the signature here at 121?  
[4] **A:** I don't know who that is.  
[5] **Q:** Okay. If you give me one second, let me just  
[6] look through here real quick.  
[7] **A:** Sure.  
[8] **MR. CONWAY:** Why don't I mark  
[9] these and we can get copies of these later.  
[10] I don't think I brought extra ones.  
[11]  
[12] (Thereupon, Plaintiff's Exhibit 5,  
[13] Rodriguez Deposition, one-page 11/19/99  
[14] plasma/serum Quantitative Acylcarnitine Profile  
[15] Report was marked for purposes of  
[16] identification.)  
[17]  
[18] (Thereupon, Plaintiff's Exhibit 6,  
[19] Rodriguez Deposition, 00146, one-page 1/8/00  
[20] plasma/serum Quantitative Acylcarnitine Profile  
[21] Report was marked for purposes of  
[22] identification.)  
[23]  
[24] (Thereupon, Plaintiff's Exhibit 7,  
[25] Rodriguez Deposition, 00144, one-page 1/8/00

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Page 69

[1] **MR. MALQNE:** Why don't you  
[2] identify the page that you're looking at.  
[3] **Q:** Bates stamped Page 27.  
[4] **MR. MALQNE:** Thank you.  
[5] **Q:** Who's this?  
[6] **A:** That's me.  
[7] **MR. MALQNE:** Again, can you  
[8] identify it?  
[9] **Q:** Page 28. I'm sorry.  
[10] Page 29, is that you, too?  
[11] **A:** Yes, sir.  
[12] **Q:** All right. Now I think I'm pretty familiar with  
[13] yours.  
[14] **A:** That's me. That's me.  
[15] **Q:** 45?  
[16] **A:** That's me.  
[17] I think that's Dr. Bearer's signature.  
[18] **Q:** What's her first name, Cynthia?  
[19] **A:** Cynthia.  
[20] **MR. MALQNE:** What page number,  
[21] please.  
[22] **Q:** Page, I'm not sure. 87?  
[23] Are the nurse practitioners responsible to  
[24] the neonatology attendings?  
[25] **A:** Yes.

[1] urine Quantitative Acylcarnitine Profile Report  
[2] was marked for purposes of identification.)  
[3]  
[4] (Thereupon, Plaintiff's Exhibit 8,  
[5] Rodriguez Deposition, nine-page Ibdah article was  
[6] marked for purposes of identification.)  
[7]  
[8] **Q:** Showing you what's been marked for identification  
[9] as Plaintiff's Exhibit Number 5, are you familiar  
[10] with that lab report?  
[11] **A:** Yes. This is a quantitative acylcarnitine  
[12] profile report.  
[13] **Q:** Do you recall seeing this report back when you  
[14] were, at or about the time you were treating  
[15] Emily back in 1999?  
[16] **A:** Not specifically.  
[17] **Q:** Would that report have been something you would  
[18] have discussed with Dr. Zinn?  
[19] **A:** Yes.  
[20] **Q:** Showing you what's been marked for identification  
[21] as Plaintiff's Exhibit Number 6?  
[22] **A:** This is a quantitative acylcarnitine profile  
[23] report in plasma and serum. Date collected:  
[24] December 26th, 1999. Test date: January 8th,  
[25] 2000.

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[1] Q: Have you seen that report before, doctor?  
[2] A: Yes.  
[3] Q: When did you first see that report?  
[4] A: Sometime in January, 2000.  
[5] Q: Did that report come to you or how did the report  
[6] come to your attention?  
[7] A: It came through my mailbox.  
[8] Q: The report was addressed to Dr. Fanaroff; is that  
[9] correct?  
[10] A: No.  
[11] Q: Who is that report — I'm sorry, I apologize.  
[12] Who is that report addressed to?  
[13] A: It's addressed to me.  
[14] Q: Okay. Plaintiff's Exhibit Number 5 was addressed  
[15] to Dr. Fanaroff; is that correct?  
[16] A: Yes.  
[17] Q: Did you ever discuss Plaintiff's Exhibit Number  
[18] 5, the report of I guess November 19th, 1999,  
[19] with Dr. Fanaroff?  
[20] A: No, not with Dr. Fanaroff.  
[21] Q: Going back to Plaintiff's Exhibit 6, you **did**  
[22] discuss this with Dr. Zinn?  
[23] A: Yes.  
[24] Q: Showing you Plaintiff's Exhibit Number 7, have  
[25] you seen this before?

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[1] A: Yes. This is a quantitative acylcarnitine  
[2] profile report dated January 8th. This is a  
[3] urine sample. It's addressed to me.  
[4] Q: Did you discuss that with Dr. Zinn?  
[5] A: Yes. Can I see the previous exhibit, please?  
[6] Q: Sure. 6?  
[7] A: Yeah. Thanks. I wanted to make sure they were  
[8] not duplicates.  
[9] Q: Plaintiff's Exhibit Number 8.  
[10] A: This is a, an article from the New England  
[11] Journal of Medicine, 1999 entitled, "A Fetal  
[12] Fatty-Acid Oxidation Disorder as a Cause of Liver  
[13] Disease in Pregnant Women." First author is  
[14] Jamal Ibdah.  
[15] Q: Is that the article that you had an opportunity  
[16] to review during the time period that you were  
[17] treating Emily back in November of 1999?  
[18] A: Yes.  
[19] Q: I've been given a copy of your CV —  
[20] A: Yes, sir, right here.  
[21] Q: — by Mr. Malone.  
[22] Have you ever been sued for medical  
[23] malpractice?  
[24] MR. MALONE: Objection.  
[25] A: No. Sorry.

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[1] MR. MALONE: That's all right.  
[2] Q: What's the name of the group of which you're a  
[3] member? Are you a member of a group, a medical  
[4] group at all or association at University  
[5] Hospitals?  
[6] A: Well, I'm a Case Western Reserve University  
[7] employee and I'm, I work at the division of  
[8] neonatology, department of pediatrics, Rainbow  
[9] Babies' & Children's.  
[10] Q: Is, like some doctors will have a group of  
[11] doctors together that will practice together and  
[12] it will be an organization, whether a partnership  
[13] or some type of corporation.  
[14] Are you a member of any type of medical  
[15] partnership or corporation or group?  
[16] A: I'm a member of the division of neonatology but I  
[17] don't think it's a corporation. I'm not sure.  
[18] Q: Nor is it a formal group, right?  
[19] A: You mean —  
[20] MR. MALONE: He just said he's  
[21] not sure.  
[22] Q: Division of neonatology or Rainbow Babies &  
[23] Children's Hospital?  
[24] A: Yes.  
[25] Q: And in fact, showing you Plaintiff's Exhibit 1,

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[1] as far as you know, the division of which you're  
[2] a member, practice group of which you're a member  
[3] is as stated in the top left-hand corner,  
[4] division of neonatology?  
[5] A: Yes.  
[6] Q: Is this the typical piece of correspondence or  
[7] letterhead that you would send out reports or  
[8] correspondence to other physicians with?  
[9] A: Yes.  
[10] Q: Is it the —  
[11] A: In 1999.  
[12] Q: In 1999?  
[13] A: Yes.  
[14] Q: In 1999 would this letterhead or type of  
[15] correspondence be the typical letterhead or  
[16] correspondence you would send out to patients or  
[17] patients' parents in 1999?  
[18] A: I didn't send any letters to patients' parents.  
[19] Q: Do you ever communicate with parents?  
[20] A: Verbally.  
[21] Q: Do you ever send letters out?  
[22] A: Not to the parents.  
[23] Q: To other physicians, though, this would be the  
[24] letterhead that your letters would be sent out  
[25] under; is that correct?

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[1] **A:** Yes.  
[2] **Q:** Back in 1999?  
[3] **A:** Yes.  
[4] **Q:** Going to your CV, have you ever had any  
[5] disciplinary action taken against you or your  
[6] license by a hospital?  
[7] **MR. MALONE:** Objection.  
[8] **A:** No.  
[9] **Q:** Any type of disciplinary action taken against you  
[10] or your license by any type of licensing  
[11] authority?  
[12] **MR. MALONE:** Objection.  
[13] **A:** No.  
[14] **Q:** Have you written or done, been involved in any  
[15] type of research in an area involving inborn  
[16] errors of metabolism, genetics?  
[17] **A:** No.  
[18] **Q:** Or LCHAD?  
[19] **A:** No. I'm sorry.  
[20] **Q:** In this particular case what was your  
[21] understanding of what subspecialty of pediatric  
[22] medicine would be the subspecialty that would be  
[23] able to diagnose LCHAD if it was diagnosable?  
[24] **A:** Genetics and specialists in inborn errors of the  
[25] metabolism.

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[1] **Q:** And Dr. Zinn is a geneticist, correct?  
[2] **A:** Correct  
[3] **Q:** And he's an expert in inborn errors of  
[4] metabolism, correct?  
[5] **A:** Correct.  
[6] **Q:** So in this particular case, you would be relying  
[7] upon his ability to determine whether or not  
[8] Emily was suffering from LCHAD, correct?  
[9] **A:** Correct.  
[10] **Q:** You're licensed to practice medicine?  
[11] **A:** Yes.  
[12] **Q:** In the State of Ohio?  
[13] **A:** Yes.  
[14] **Q:** And I presume that more than 50 percent of your  
[15] professional time is involved in the clinical  
[16] practice and/or teaching of medicine?  
[17] **A:** 80 percent of my time is, yes.  
[18] **Q:** 80 percent, okay. I have nothing further. Thank  
[19] you, doctor, for your time.  
[20] **A:** You're very welcome.  
[21]  
[22] (Thereupon, a discussion was had off  
[23] the record.)  
[24]  
[25] **MS. DiSILVIO:** I have questions

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[1] for Dr. Rodriguez.  
[2]  
[3] **CROSS-EXAMINATION OF RICARDO RODRIGUEZ, M.D.**  
[4] **BY MS. DiSILVIO:**  
[5] **Q:** Dr. Rodriguez, my name is Marilena DiSilvio. I  
[6] represent Dr. Zinn in this case. I can't gauge  
[7] whether I'm speaking too loudly.  
[8] **A:** No, you're fine.  
[9] **Q:** Mr. Conway asked you several questions about DNA  
[10] testing.  
[11] Do you have any knowledge one way or the  
[12] other as it relates to DNA testing whether it was  
[13] available at University Hospitals in 1999 for  
[14] testing of the LCHAD mutation?  
[15] **A:** I'm not aware one way or another.  
[16] **Q:** Do you have any knowledge, again, one way or the  
[17] other, as to whether or not DNA testing for the  
[18] LCHAD mutation was available at any other  
[19] institution on a clinical basis?  
[20] **A:** I'm not aware that it was available clinically.  
[21] **Q:** And as it relates to what tests Dr. Zinn would  
[22] access in 1999, I take it you would defer that to  
[23] his judgment as a pediatric geneticist evaluating  
[24] a child for the potential for LCHAD?  
[25] **A:** Absolutely.

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[1] **Q:** And I take it you would defer to his knowledge as  
[2] to what testing was available on a clinical basis  
[3] for him to access to properly conduct his  
[4] evaluation?  
[5] **A:** Absolutely.  
[6] **Q:** Mr. Conway asked you several questions about  
[7] Emily's diet.  
[8] Am I correct to understand that the  
[9] appropriate diet for Emily during her confinement  
[10] to the neonatal intensive care unit was a diet  
[11] that provided her with appropriate nutrients for  
[12] her to gain and grow as a 25-week premie?  
[13] **A:** Yes.  
[14] **Q:** If indeed Emily's diet was inappropriate against  
[15] the backdrop of a potential LCHAD, would you not  
[16] expect to see signs and symptoms of adverse  
[17] reaction or intolerance to the diet?  
[18] **A:** I would have thought so but I would have, again,  
[19] relied upon Dr. Zinn's suggestions as to whether  
[20] a change was necessary or not in her diet.  
[21] **Q:** Fair enough. And as it relates to whether or not  
[22] she was clinically demonstrating any  
[23] symptomatology consistent with LCHAD based on the  
[24] diet or anything else, would you defer that, as  
[25] well, to the geneticist?

[1] **A:** Yes. And I would have consulted the nutritional  
 [2] services, as well, if any special diets would  
 [3] have been required.  
 [4] **Q:** And if Dr. Zinn were to testify hypothetically in  
 [5] this case that based upon his evaluation of the  
 [6] child's clinical status, there was no clinical  
 [7] evidence of LCHAD, would you have any basis to  
 [8] disagree with him?  
 [9] **MR. CONWAY:** Objection.  
 [10] **A:** No, I wouldn't.  
 [11] **Q:** Do you have any knowledge about the current Ohio  
 [12] screen, the Ohio newborn screen?  
 [13] **A:** Yes.  
 [14] **Q:** Are you aware that the Current Ohio newborn  
 [15] screen does not include DNA analysis for LCHAD  
 [16] the LCHAD mutation?  
 [17] **MR. CONWAY:** Objection.  
 [18] **A:** Yes.  
 [19] **Q:** Mr. Conway asked you several questions about the  
 [20] diagnosis of LCHAD and ruling in and ruling out.  
 [21] Do you recall that discussion?  
 [22] **A:** Yes.  
 [23] **Q:** Are you aware that Dr. Zinn has testified in this  
 [24] case that the metabolic studies that were  
 [25] conducted, ordered, analyzed, that are received,

[1] that his review of those studies suggested that  
 [2] this child did not have LCHAD, those studies  
 [3] taken in combination with her clinical picture.  
 [4] Are you aware of that testimony?  
 [5] **A:** Yes, I am aware. I read the transcript of his  
 [6] deposition.  
 [7] **Q:** Is that testimony consistent with the discussions  
 [8] that you had with Dr. Zinn?  
 [9] **A:** Yes.  
 [10] **Q:** I want you to assume for me that Mr. Conway's  
 [11] hypothetical is correct, I want you to throw away  
 [12] Dr. Zinn's testimony, throw away the facts as you  
 [13] know them and let's pursue Mr. Conway's  
 [14] hypothetical.  
 [15] If Emily left University Hospitals of  
 [16] Cleveland with LCHAD being neither ruled in nor  
 [17] ruled out, then would it not follow that she  
 [18] would have been a patient at Aultman Hospital  
 [19] with that diagnosis neither ruled in nor ruled  
 [20] out?  
 [21] **A:** Probably.  
 [22] **Q:** Did you ever receive any telephone call from any  
 [23] of the care providers at Aultman Hospital  
 [24] inquiring as to the status of the workup for  
 [25] LCHAD?

[1] **A:** No.  
 [2] **Q:** Let's continue with Mr. Conway's hypothetical.  
 [3] If the diagnosis of LCHAD remained a mystery,  
 [4] neither ruled in nor ruled out, would it not  
 [5] logically follow, then, that the pediatrician  
 [6] would also have a question in his or her mind as  
 [7] to the status of Emily's LCHAD workup?  
 [8] **MR. CONWAY:** Objection.  
 [9] **A:** Yes. One could assume that.  
 [10] **Q:** Did you at any point in time receive a telephone  
 [11] call from Emily's pediatrician requesting as to  
 [12] the status of the LCHAD workup and/or the status  
 [13] of her diagnosis?  
 [14] **A:** No, I did not.  
 [15] **Q:** Let's continue on with Mr. Conway's hypothetical.  
 [16] Assuming that the diagnosis of LCHAD was  
 [17] never ruled in nor ruled out at University  
 [18] Hospitals, then one could also conclude that any  
 [19] subsequent caregiver, including emergency room  
 [20] personnel would question the status of the  
 [21] diagnosis of LCHAD, correct?  
 [22] **MR. CONWAY:** Objection.  
 [23] **A:** Again, you could assume that they might have  
 [24] questioned it  
 [25] **Q:** Did you at any point in time receive any

[1] telephone call from any subsequent care provider  
 [2] at all, any emergency room anywhere inquiring as  
 [3] to the status of Emily's workup for LCHAD?  
 [4] **A:** No, I did not.  
 [5] **Q:** Is hypoglycemia one of the most telling signs and  
 [6] symptoms of LCHAD?  
 [7] **A:** Yes, according to what I've read.  
 [8] **Q:** At any point in time did you receive a telephone  
 [9] call from any caregiver, any care provider  
 [10] advising you that Emily had suffered significant  
 [11] hypoglycemia in the range of 10 to 20?  
 [12] **A:** No, I did not.  
 [13] **Q:** You were asked several questions by Mr. Conway  
 [14] about follow-up and what your understanding was  
 [15] with respect to this patient's follow-up.  
 [16] Based upon the normal course of patients who  
 [17] present to the NICU and who are discharged from  
 [18] the NICU, did you have an understanding that this  
 [19] family would ultimately follow up with the premie  
 [20] clinic at Rainbow Babies & Children's Hospital?  
 [21] **A:** Supposedly, yes, because she was not discharged  
 [22] from, she was transferred, so she was not  
 [23] discharged from this hospital.  
 [24] **Q:** So typically what would happen then is that the  
 [25] Aultman Hospital discharging personnel would

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[1] advise to follow up with the premie clinic?

[2] **MR. CONWAY:** Objection.

[3] **A:** I suppose so.

[4] Q: Is that the way that things usually work?

[5] **MR. CONWAY:** Objection.

[6] **A:** I don't know that that's the way they usually  
[7] work.

[8] Q: Fair enough.

[9] Do you know whether or not the Gwynnes at any  
[10] point in time received any instruction to follow  
[11] up with the premie clinic?

[12] **A:** I don't know.

[13] Q: Do you have any idea as to whether or not the  
[14] Gwynnes had an understanding that they would or  
[15] would not follow up with the premie clinic?

[16] **MR. CONWAY:** Objection.

[17] **A:** I don't know.

[18] Q: And similarly, do you have any understanding as  
[19] to whether or not the Gwynnes thought they should  
[20] or should not follow up with pediatric genetics?

[21] **A:** I don't know.

[22] Q: I don't have any further questions. Thank you.

[23] **A:** Thank you.

[24]  
[25] **CONTINUED CROSS-EXAMINATION OF**

[2] Q: And where would you have come to that  
[3] understanding?

[4] **MR. MALONE:** I'm not sure that's  
[5] an understanding. I think that's a lack of  
[6] understanding. So he didn't know,  
[7] basically. I guess basically that's like I

[13]

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[1] RICARDO RODRIGUEZ, M.D.

[2] **BY MR. CONWAY:**

[3] Q: You had an opportunity to read Dr. Zinn's  
[4] deposition before this?

[5] **A:** Yes, briefly.

[6] Q: And that was provided to you by Mr. Malone; is  
[7] that correct?

[8] **A:** Yes.

[9] Q: Did you have an opportunity to discuss Dr. Zinn's  
[10] deposition with Dr. Zinn?

[11] **A:** No.

[12] Q: Did you have an opportunity to read Dr. Nielson's  
[13] deposition prior to this?

[14] **A:** Yes, I did.

[15] Q: Was that also provided to you by Mr. Malone?

[16] **A:** Yes.

[17] Q: You were asked a question regarding DNA testing  
[18] and one of the questions was were you aware of  
[19] the availability of DNA testing on a clinical  
[20] basis back in 1999. Do you recall that question?

[21] **A:** Yes.

[22] Q: Is your answer you're not aware one way or the  
[23] other of whether or not it was clinically  
[24] available?

[25] **A:** At that time, I don't think I was aware of any



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[1] from Aultman that I have never seen before.

[2] Q: Okay. But you have no idea what it states or  
[3] what's set forth in those records regarding  
[4] discharge instructions for the family?

[5] A: No. I'm not aware of any of that.

[6] Q: And no idea as to what the discharge instructions  
[7] contained as relates to the premie clinic?

[8] A: Correct.

[9] Q: Okay. Thank you. I don't have anything further.

[10] A: Thank you.

[11] MR. CONWAY: I guess the only  
[12] other thing, doctor, is — well, I'll take  
[13] this up with your attorney at a later  
[14] point. I have nothing further. Thank you.

[15] MR. MALONE: Any questions for  
[16] the hospital?

[17] MS. MOSKOWITZ: No.

[18] MR. MALONE: We'll have it read.  
[19] Tell her where you want, the address you  
[20] want it mailed to.

[21] THE WITNESS: I want it to come  
[22] here. 11 100 Euclid Avenue, Cleveland,  
[23] Ohio, 44106.

[24]  
[25] RICARDO RODRIGUEZ, M.D.

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[1]  
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CERTIFICATE

[3]  
[4]  
[5]  
[6]

I, Pamela S. Greenfield, a Notary Public  
[7] within and for the State of Ohio, authorized to  
administer oaths and to take and certify  
[8] depositions, do hereby certify that the  
above-named witness was by me, before the giving  
[9] of their deposition, first duly sworn to testify  
the truth, the whole truth, and nothing but the  
[10] truth; that the deposition as above-set forth was  
reduced to writing by me by means of stenotypy,  
[11] and was later transcribed into typewriting under  
my direction; that this is a true record of the  
[12] testimony given by the witness; that said  
deposition was taken at the aforementioned time,  
[13] date and place, pursuant to notice or  
stipulations of counsel; that I am not a relative  
[14] or employee or attorney of any of the parties, or  
a relative or employee of such attorney or  
[15] financially interested in this action; that I am  
not, nor is the court reporting firm with which I  
[16] am affiliated, under a contract as defined in  
Civil Rule 28(D).

[7]

IN WITNESS WHEREOF, I have hereunto set my  
[8] hand and seal of office, at Cleveland, Ohio, this  
\_\_\_\_ day of \_\_\_\_\_, A.D. 20 \_\_\_\_.

9  
0

[1] Pamela Greenfield, Notary Public, State of Ohio  
6750 Midland Building, Cleveland, Ohio 44115  
[2] My commission expires June 30, 2003

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## Lawyer's Notes

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1                                    IN THE COURT OF COMMON PLEAS

2                                    CUYAHOGA COUNTY, OHIO

3                    ERIC GWYNNE, ADMINISTRATOR  
4                    of the ESTATE OF EMILY  
5                    GWYNNE, deceased,

6                                    Plaintiff,

7                                    -vs-

8                                    JUDGE GAUL  
9                                    CASE NO. 468327

10                   UNIVERSITY HOSPITALS OF  
11                   CLEVELAND, et al.,

12                                   Defendants.  
13                                   - - - -

14                                   Deposition of RICARDO RODRIGUEZ, M.D., taken  
15                   as if upon cross-examination before Pamela S.  
16                   Greenfield, a Registered Diplomate Reporter,  
17                   Certified Realtime Reporter and Notary Public  
18                   within and for the State of Ohio, at Rainbow  
19                   Babies and Children's Hospital, 11100 Euclid  
20                   Avenue, Cleveland, Ohio, at 10:02 a.m. Friday,  
21                   February 7, 2003, pursuant to notice and/or  
22                   stipulations of counsel, on behalf of the  
23                   Plaintiff in this cause.  
24                                   - - - -

25                                   MEHLER & HAGESTROM  
                                 Court Reporters

                                 CLEVELAND  
26                   1750 Midland Building  
27                   Cleveland, Ohio 44115  
28                   216.621.4984  
29                   FAX 621.0050  
30                   800.822.0650

                                 AKRON  
31                   1015 Key Building  
32                   Akron, Ohio 44308  
33                   330.535.7300  
34                   FAX 535.0050  
35                   800.562.7100

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FEB 26 2003



~~Signature of the person~~



1 from Aultman that I have never seen before.

2 Q. Okay. But you have no idea what it states or  
3 what's set forth in those records regarding  
4 discharge instructions for the family?

5 A. No. I'm not aware of any of that.

6 Q. And no idea as to what the discharge instructions  
7 contained as relates to the premie clinic?

8 A. Correct.

9 Q. Okay. Thank you. I don't have anything further.

10 A. Thank you.

11 MR. CONWAY: I guess the only  
12 other thing, doctor, is -- well, I'll take  
13 this up with your attorney at a later  
14 point. I have nothing further. Thank you.

15 MR. MALONE: Any questions for  
16 the hospital?


17 MS. MOSKOWITZ: No.

18 MR. MALONE: We'll have it read.  
19 Tell her where you want, the address you  
20 want it mailed to.

21 THE WITNESS: I want it to come  
22 here. 11100 Euclid Avenue, Cleveland,  
23 Ohio, 44106.

24

25

  
RICARDO RODRIGUEZ, M.D.

