

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

GLORIA MASLANKA, Individually
and as Parent and Natural
Guardian of Shane Maslanka,

Plaintiff,

CASE NO. CV-05-552424

JUDGE McDONNELL

versus

METROHEALTH MEDICAL CENTER,

Defendant.

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Deposition of **JOSEPH SCIARROTTA, M.D.,**

a Witness herein, called by the Plaintiff for

Cross-Examination pursuant to the Ohio Rules of Civil

Procedure, taken before the undersigned, Christine

Leisure, a Notary Public in and for the State of Ohio,

at MetroHealth Medical Center, 2500 MetroHealth Drive,

Legal Department, Cleveland, Ohio, on Wednesday,

January 11, 2006, at 10:15 a.m.

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1 APPEARANCES:

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I N D E XEXAMINATION BYPAGE

Mr. Kulwicki

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PLAINTIFF'S EXHIBITS

None Marked

DEFENDANT'S EXHIBITS

None Marked

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1 WHEREUPON,

2 JOSEPH SCIARROTTA, M.D.,

3 after being first duly sworn, as hereinafter
4 certified, testified as follows:

5 CROSS-EXAMINATION

6 BY MR. KULWICKI:

7 Q. Doctor, if you would kindly state your full name
8 and spell your last name.

9 A. Joseph Sciarrotta, S-c-i-a-r-r-o-t-t-a.

10 Q. And, Doctor, we're here in a case of Maslanka
11 versus MetroHealth Medical Center. It's my one
12 and only opportunity to take your deposition and
13 find out what you recall about your involvement in
14 the care of Gloria Maslanka. I'm going to ask you
15 a series of questions and we'll get a chance to
16 look at your notes in the record and ask you about
17 those as well.

18 During the course of the deposition
19 please tell me if you need to take a break for any
20 reason. I think it might take as long as two
21 hours. I'm hoping it won't, but it may take that
22 long. So just tell us --

23 A. At my age I may need a couple of body breaks.

24 Q. We will certainly accommodate that.

25 A. Thank you.

1 Q. Likewise, as you're doing, speak up, speak
2 verbally in answer to my questions rather than an
3 uh-huh or an uh-uh or a nod of the head, because
4 our court reporter can't take those down.

5 A. Right.

6 Q. And we'll remind you if you forget so don't worry
7 about that.

8 A. Thank you.

9 Q. And, finally, if I ask you a question that you
10 don't understand or you can't hear, tell me that
11 and I'll restate it so that you understand me. I
12 don't want to try to trick you. I want to just
13 make sure you and I are communicating fairly here.
14 Okay?

15 A. Okay.

16 Q. Why don't I start by asking you if you're
17 currently employed by MetroHealth?

18 A. No, I'm not.

19 Q. Are you retired?

20 A. I'm retired.

21 Q. Tell me when you retired.

22 A. I retired in June of 2003.

23 Q. Tell me how long you had been employed by
24 MetroHealth from June of 2003 going back in time.

25 A. I started in November of 1991.

1 Q. Are you currently involved in any medical practice
2 or professional activities?

3 A. No.

4 Q. Before joining MetroHealth in 1991 where did you
5 work at?

6 A. I retired from my private practice in 1988, I was
7 a medical director for Park Davis for almost two
8 years, and then I worked one year as a staff
9 physician at one of the local hospitals as on-call
10 physician, and then I started here in '91.

11 Q. The care that you provided to Gloria Maslanka took
12 place in July of 2001, so I'm going to ask you
13 some questions about that time frame. Were you
14 board certified in obstetrics at the time?

15 A. Yes.

16 Q. And were you board certified in any other
17 specialty at that time?

18 A. No.

19 Q. Tell me -- I know that at least from my review of
20 the records you saw her at the McCafferty Clinic
21 at least once. Is that the one and only time that
22 you saw this particular lady?

23 MR. MALONE: With respect to this pregnancy?
24 He may again have been involved in priors.

25 MR. KULWICKI: Fair enough.

1 A. With this pregnancy, as far as I know, yes.

2 Q. And have you had the opportunity to review your
3 notes from that particular visit?

4 A. I have gone over them with him.

5 Q. Good. Thank you. Let me ask you a little more
6 about your background and then we'll look at those
7 notes. Have you had your deposition taken before?
8 And that's what we're doing right here where
9 there's a court reporter taking down your
10 testimony.

11 A. For this?

12 Q. No, in any other case.

13 A. Not related to obstetrics.

14 Q. All right. Fair enough. Have you ever acted as
15 an expert witness in a medical malpractice case?

16 A. No. Excuse me. I do take it back. I'm sorry.

17 Q. Okay.

18 A. It was a case in my practice, there was a serious
19 auto accident and we had to go ahead and do
20 emergency surgery on the patient. She had
21 fractures and all kinds of things. I was asked to
22 testify in that as her attending physician. I'm
23 sorry, I forgot that.

24 Q. Thank you. Although you're not active, do you
25 have a Curriculum Vitae or would you have one on

1 disc that you could print up?

2 A. I have one but not on me.

3 Q. If I ask Mr. Malone could you get that for me at
4 some point in time?

5 A. I'll send it to him.

6 Q. That would save us some time. Now, I had the
7 pleasure of deposing Dr. Ashmead yesterday, I
8 think it was, and he was telling me a little bit
9 about subspecialties within the area of OB and he
10 used the term a "generalist". Hopefully I'm using
11 those terms correctly. But would you consider
12 yourself a generalist in the field of obstetrics?

13 A. In this organization, yes, because we have so many
14 subspecialties.

15 Q. All right. Did you have any particular area of
16 interest in obstetrics?

17 A. No, just general obstetrics.

18 Q. And I may have asked you - I know you were board
19 certified in obstetrics - have you been board
20 certified in anything else?

21 A. No.

22 Q. One of the things I learned from Dr. Ashmead is
23 that he has a particular interest or
24 specialization in reading ultrasounds and I'm
25 wondering if you can compare your ability to read

1 ultrasounds with Dr. Ashmead. In other words,
2 would you defer to him on a reading based on his
3 subspecialization?

4 A. Without hesitation.

5 Q. Okay. And tell me, just so I can understand that,
6 why is that? What is the difference in his
7 training or experience from yours?

8 A. Well, he's had extensive training in
9 ultrasonography, he's a fetal-maternal specialist,
10 he leads the program here in ultrasonography and
11 the training of our fellows and residents. I've
12 known him a long time and respect his ability and
13 I have no hesitation to call him any time I have a
14 question, either on the phone, or when I was
15 teaching here I would stop by and go over some
16 case with him.

17 Q. I just had the opportunity to take Nurse Rhodes'
18 deposition just before yours today and we were
19 talking about the use of ultrasound to estimate
20 fetal age and gestational age and she made a
21 statement to me that it is more difficult to
22 determine gestational age via ultrasound in the
23 third trimester. Would you agree with that?

24 A. In general that's correct. The further into the
25 pregnancy the less accurate is the estimated fetal

1 age.

2 Q. In terms of Dr. Ashmead's abilities, however, is
3 he better able to utilize ultrasound to determine
4 gestational age in the third trimester than, say,
5 a generalist like yourself?

6 A. I would say yes, within the parameters of how
7 difficult it is reading it, but certainly if -- I
8 would say yes.

9 Q. In this case we're going to turn and look at some
10 issue with respect to gestational age, but do you
11 have any recollection of having reviewed the
12 actual ultrasound films with respect to this
13 particular patient?

14 A. No, I don't recall.

15 Q. And do you recall this patient at all, Gloria
16 Maslanka?

17 A. The name seems to be familiar the one time I saw
18 her and it's possible that I have taken care of
19 her in the past.

20 Q. Okay. With respect to sitting here today and what
21 you recall - that's what is important to me - in
22 your mind's eye do you have a picture of what she
23 looks like?

24 A. No.

25 Q. Okay.

1 A. I can't really say.

2 Q. And with regard to your recollection of her, other
3 than what you've charted here do you have any
4 recollection of any conversations that you had
5 with her?

6 A. No, nothing specific. I would have -- at the end
7 of the exam would have told her about ordering
8 another ultrasound and I presume she asked me why,
9 but I can't -- and I would have told her why,
10 because of the discrepancy.

11 Q. Okay. And here you're telling me what your normal
12 practice would be under the circumstances as
13 opposed to what you specifically recall having
14 happened?

15 A. Well, my practice would be to follow the
16 recommendation of the ultrasonographer, which was
17 to repeat the ultrasound.

18 Q. Sure. All right. Why don't we turn to the record
19 and let's ask you some more questions about what
20 happened here. The first record that I wanted to
21 ask you about is this ACOG flow sheet.

22 MR. KULWICKI: And, Jim, do you mind sharing
23 your copy?

24 MR. MALONE: No, I'm happy to do that. I've
25 got marks on this. By showing it to the witness I

1 don't mean to surrender it as an exhibit. I
2 assume that's all right.

3 MR. KULWICKI: That's fine.

4 MR. MALONE: I just want to make it clear.

5 MR. KULWICKI: Appreciate it.

6 Q. And, Doctor, as I look at this ACOG flow sheet
7 there's an entry under the date July 26th. Does
8 that appear to be your handwriting?

9 MR. MALONE: We're on a different page of
10 it.

11 A. July 26th?

12 Q. Yes. Do you see that there?

13 MR. MALONE: Right here (indicating).

14 A. It's not initialed but that -- it may be my
15 handwriting, I'm not sure.

16 Q. Fair enough. Let me ask you about how the
17 McCafferty Clinic was run back in 2001. I've
18 determined already that the two preceding visits
19 were handled by nurse practitioners, a Kathy
20 Poland and a Cathy Rhodes, and obviously you're an
21 obstetrician. How is it that on prenatal visits
22 sometimes the patients are seen by nurse
23 practitioners and sometimes seen by an
24 obstetrician?

25 A. If the obstetrician is there at each visit, unless

1 there's some reason that he's away, he would see
2 the patient. We try to provide continuity of
3 care. So we would try to see the patient at each
4 visit if we could. If the patient comes in and
5 we're not there or comes in for a visit that's not
6 scheduled, she could be seen by either Kathy
7 Poland, I believe was a Nurse Midwife --

8 Q. Oh, that's right.

9 A. -- and Rhodes is a Certified Nurse Practitioner.

10 Q. Correct. And in 2001, besides working at the
11 McCafferty Clinic, did you work anywhere else in
12 the hospital?

13 A. I taught. I taught medical students.

14 Q. Okay.

15 A. And I had residents, but I had no direct patient
16 responsibility.

17 Q. When you taught residents, was that a didactic,
18 like a classroom setting?

19 A. Yes, it was in the clinic, we discussed cases.
20 And the students were first-year students, we
21 introduced them to obstetrics.

22 Q. Did you deliver babies back in 2001?

23 A. No.

24 Q. With regard to this ACOG flow sheet, what was the
25 purpose of this flow sheet?

1 A. Well, it's first to establish obstetrical history
2 and then to begin prenatal care and provide
3 prenatal testing and to follow the progress of the
4 pregnancy.

5 Q. And in terms of prenatal care, I think you've
6 pretty much covered it with that, but with respect
7 to prenatal care what are the goals of prenatal
8 care? Why do we do it or why do obstetricians
9 schedule that?

10 A. First of all, to ascertain the status of the
11 pregnancy, to ascertain the gestational age since
12 that's important, obviously to establish the
13 health of the mother, her previous prenatal
14 history is very important, previous delivery
15 history, and then to provide her with -- to
16 provide the necessary prenatal testing, to
17 eliminate any possibility of problems and to give
18 her prenatal vitamins and other medication she may
19 need.

20 Q. And why is it important to determine the
21 gestational age during the prenatal period?

22 A. Well, it's important for two reasons. First of
23 all, the patient will ask when the baby is due and
24 you would like to give her a good estimation of
25 that - before ultrasound we used to estimate size

1 and dates and correlate that with the last
2 menstrual period - and obviously to determine if
3 the patient is as far as she thinks she is.

4 Q. In speaking with Nurse Rhodes about half an hour
5 ago, I understood that when a patient came in to
6 the McCafferty Clinic and then presented at the
7 hospital in labor at the L & D unit, that the
8 McCafferty Clinic as a matter of course would send
9 over portions of the chart to the hospital so that
10 they could use all the prenatal information in the
11 course of managing the labor and delivery. Is
12 that --

13 A. I believe that's correct.

14 Q. Now, can you tell me what documents were sent from
15 the McCafferty Clinic as a matter of course to the
16 L & D unit when that happened back in 2001?

17 A. As far as I know the -- all of these pages would
18 be sent in.

19 MR. MALONE: You have to tell him what pages
20 you're indicating because the record will --

21 A. I'm sorry, well, the prenatal history, the
22 physical examination and the flow sheet.

23 Q. Okay. Now, in this case we've got obviously
24 Dr. Ashmead's July 12 ultrasound. Would that
25 normally be sent from the McCafferty Clinic if it

1 was in their chart to L & D?

2 THE WITNESS: Is that the one I looked at?

3 MR. MALONE: Yes.

4 A. I'm not -- I'm not certain of the mechanics of how
5 that ultrasound goes from our record to labor and
6 delivery. I'm really not certain of the mechanics
7 of that.

8 Q. Let me ask you a different question. Do you have
9 any knowledge or recollection sitting here today
10 as to whether or not in fact Dr. Ashmead's July 12
11 ultrasound report made its way to the L & D unit
12 when Gloria presented -- or when Gloria was there
13 in labor?

14 A. I honestly have no opinion on that.

15 Q. Now, looking again at the ACOG flow sheet under
16 July 26, I appreciate you told us that you're not
17 sure if that's your handwriting or not, but let me
18 clarify. Can you rule out that that's your
19 handwriting? In other words, can you say that
20 that --

21 A. Let me see where my progress note would be.
22 Sometimes I make a progress note and forget to
23 sign the flow sheets.

24 Q. That's it right there (indicating).

25 A. That's it right there.

1 Q. Okay. Now, the fact that there's a progress note
2 dated July 26, 2001, does that suggest to you that
3 in fact you also filled out this column on the
4 flow sheet?

5 A. I think that would be -- sometimes I put down the
6 progress note and may forget to sign the flow
7 sheet.

8 Q. Well, let's do this. Why don't we go through that
9 column under July 26 on the flow sheet and just
10 tell me what is charted there. Interpret it as
11 best you can. If you don't know what something is
12 or what it means, then tell me that as well.

13 The first entry under the fundus
14 height, 31 centimeters --

15 A. Yes.

16 Q. -- what is the significance of that, Doctor?

17 A. Usually after 20 weeks of pregnancy the
18 gestational age and the fundal height are
19 sometimes correlated, so one would measure the
20 fundus and get an idea of the gestational age.
21 It's not a true measurement but it gives you
22 roughly an idea.

23 Q. Can you tell me, assuming an estimated gestational
24 age based on last menstrual period of, in this
25 case it would be -- I note you didn't chart it

1 down here, that box is empty.

2 A. For some reason I did not write the fundal height.

3 Q. And do you know why you wouldn't write that down?

4 MR. MALONE: You wrote fundal height, you
5 didn't write gestational age.

6 A. For some reason I may -- in talking to the
7 patient, I can't remember, but normally I would
8 put it in.

9 Q. All right. And then going down it looks like you
10 charted the presentation as being vertex, correct?

11 A. Yes, sir.

12 Q. And then the fetal heart rate, is that Doptone?

13 A. Doptone, yes.

14 Q. And then the X there is the --

15 A. Is positive fetal movements.

16 Q. Got it. I'm sorry, I'm still on the fetal heart
17 rate. You've got this cross there and in the
18 lower right --

19 A. We divide the abdomen into quadrants, two upper
20 quadrants, two lower quadrants, and this would
21 have been in the left lower quadrant.

22 Q. And what did you chart in the left lower quadrant?

23 A. The presence of the heartbeat. I did not put the
24 rate down. Sometimes I do. I don't usually do
25 that unless I hear something unusual.

1 Q. So that's just a plus sign indicating that there
2 is a fetal heart rate?

3 A. X, yes.

4 Q. I think the fetal movement is self-explanatory.
5 Under the next box below that you've got a 0 with
6 a line down and it looks like 0 at the bottom
7 there.

8 A. Right, and those indicate -- I ask her questions
9 about vaginal bleeding, any discharge, any
10 cramping, any burning on urination, any increased
11 pressure and to those she would have answered no.

12 Q. Okay. No charting under the box for a cervix
13 exam. Does that mean that one was not done?

14 A. One was not done because it was probably not
15 indicated.

16 Q. Blood pressure you've charted 93/53. Is that
17 within normal limits?

18 A. Yes, in pregnancy it tends to be lower than normal
19 parameters.

20 Q. You've got her weight at 151.6. Would that be a
21 normal weight gain based on the July 12 entry of
22 147.6?

23 A. Let's see. That was what, two weeks before? A
24 little generous, but a pound and a half a week we
25 estimate. It depends on the patient.

1 Q. Is it enough to be a matter of concern or --

2 A. In the absence of normal -- in the absence of
3 hypertension or -- it would not be of concern, no.

4 Q. And I think you were going to say in the absence
5 of sugar in the urine?

6 A. Oh, yeah, the usual parameters.

7 Q. Which appears to be your next notation, you've got
8 negative so you tested her urine to see if --

9 A. Yes, we test for usually glucose and albumin.

10 Q. Okay. Now, I don't see any further notes on that
11 or signature. Why don't we turn to your progress
12 note on the next page there, July 26, '01. It
13 looks like the word "plan" is there; is that
14 right?

15 A. Yes, I always write a plan for -- well, I usually
16 write a plan, yes.

17 Q. And that appears to be your signature. Then the
18 number down there, what does that reflect?

19 A. That's our hospital number, our physician number.

20 Q. And then, Doctor, if you would, just take me
21 through the plan and tell me what those three
22 items refer to.

23 A. Okay. On the basis of Dr. Ashmead's
24 recommendation he ordered a repeat ultrasound I
25 think in four to six weeks, so I did that,

1 scheduled it for the 20th, we had her sign tubal
2 ligation papers and, because everything seemed to
3 be normal, I had her come back in two weeks.

4 Q. Besides what we've looked at here, the ACOG flow
5 sheet and this progress note, do you have any
6 other notes that you're aware of that you charted
7 with respect to this particular patient in this
8 pregnancy?

9 A. No, sir.

10 Q. All right. Now, let's turn to Dr. Ashmead's
11 ultrasound note and I can just show you mine for
12 purposes of looking at this. I'm looking at the
13 July 12, 2001 ultrasound by Dr. Ashmead and in the
14 lower right-hand corner there's an initial there.
15 Does that appear to be your initial?

16 A. Yes, sir.

17 Q. And would that signify that you saw that
18 ultrasound report and reviewed it?

19 A. I saw it and reviewed it, yes, sir.

20 Q. And it appears based on your progress note that
21 you were aware of it as of July 26th because you
22 made a note that we need to get another
23 ultrasound, right?

24 A. Based on his recommendation, yes.

25 Q. Okay. Now, Doctor, I was talking to Nurse Rhodes

1 just before your deposition and she told me that
2 in her practice it's routine that if she gets an
3 ultrasound that she would chart the results of
4 that ultrasound in the ACOG flow sheet up here
5 where it says ultrasound. Do you see that there?

6 A. Yes, uh-huh.

7 Q. Was that your practice back in 2001 as well?

8 A. I did not since I had the hard copy of the
9 ultrasound. I used that as opposed to putting it
10 in there.

11 Q. But what I'm getting at here is that in that
12 ultrasound there's a discrepancy between the
13 gestational age, as you know, and the gestational
14 age based on periods that's charted in the ACOG
15 flow sheet. And if you don't chart the results of
16 the ultrasound or chart the discrepancy here, how
17 does that information get sent to L & D when she
18 presents for labor and delivery?

19 A. I think the ultrasound is available to labor and
20 delivery when a patient comes in.

21 Q. Okay.

22 A. I believe.

23 Q. In 2001?

24 A. Again, the mechanics of how all this gets
25 transferred to labor and delivery I cannot state

1 for certain.

2 Q. Okay.

3 A. There is a way of getting it altogether there
4 because they have a chart that they start on labor
5 and delivery.

6 Q. And let me just ask you back in 2001 when there
7 would be a discrepancy between gestational age
8 based on periods and an ultrasound like the one
9 Dr. Ashmead performed, is that a significant fact
10 or a significant development in the course of the
11 prenatal evaluation?

12 A. I don't understand.

13 Q. Well, the last estimated date is 31 weeks and she
14 comes back two weeks later for the visit that
15 you're involved with and at that time it's
16 reported that it wasn't 31 and 5/7 weeks per
17 periods, but per ultrasound it's noted as being 24
18 and 1/7 weeks. Is that a substantial discrepancy?

19 A. A discrepancy and that occurs oftentimes when a
20 patient registers late for her first prenatal
21 visit.

22 Q. How do you resolve that or how would you resolve
23 that as an OB who is handling a patient's prenatal
24 care back in 2001, that difference?

25 A. One would get a follow-up ultrasound and compare

1 the growth between the 12th of July and then the
2 next ultrasound.

3 Q. In 2001 presented with this conflict in
4 information a difference of roughly seven weeks
5 based -- over seven weeks, would you normally go
6 by the ultrasound or the periods as a working sort
7 of parameter or a working benchmark for care of
8 the patient?

9 A. Ultrasound done on the third trimester of
10 pregnancy is not terribly accurate, it gives you
11 an indication. The last menstrual period of a
12 patient sometimes is the most inaccurate part of
13 her history although you like to use that as a
14 beginning point. When a discrepancy occurs then
15 you also would check the fundal height to see if
16 that was reasonable. So we use a lot of
17 parameters, the fundal height, the last menstrual
18 period, the ultrasound.

19 Q. Let me make sure I heard you correctly. I think
20 you said that the last menstrual period is often
21 the most inaccurate part of a patient's history?

22 A. In some patients' history, correct. We use that a
23 lot and some patients are of course very good
24 about it. The problem is, of course, depending if
25 the patient was on oral contraceptives, which

1 would sometimes make a difference.

2 Q. And there could be other factors too?

3 A. Many factors, right, irregular periods.

4 Q. Light period after pregnancy?

5 A. Right. So we start there and from that calculate
6 the estimated date of confinement by subtracting
7 three months and adding seven days.

8 Q. Now, you know, since you didn't chart on the flow
9 sheet what you considered her gestational age to
10 be, based on the information that you have here
11 today, in other words, what the last menstrual
12 period was believed to be and what Dr. Ashmead
13 found on July 12 by ultrasound, can you for us
14 today figure out what you would have likely put in
15 there if you had filled it out?

16 A. I can't possibly remember. I did not record that
17 even though I probably considered it, but I just
18 didn't have it in there.

19 Q. Would you -- Go ahead.

20 A. And a lot of times I may not put it in possibly
21 because there's some discrepancy on the date and I
22 don't want to put something down because we're
23 going to go ahead and get a follow-up ultrasound.
24 That may be the reason rather than just going in
25 and following 30, 31, 32 weeks.

1 Q. Do you think that an obstetrician at the L & D
2 unit at MetroHealth in 2001 who looked at this
3 sheet would determine based on that being not
4 filled out that the date was uncertain? Do you
5 think that would be something that they should
6 know?

7 MR. MALONE: Well, objection. I guess
8 you're asking him to read somebody else's mind.

9 MR. KULWICKI: I'm trying to ask him in
10 terms of practices.

11 MR. MALONE: You can ask the question. I'm
12 just trying to make a record.

13 A. Not necessarily. Because they go ahead and
14 examine the patient and do measurements and
15 whatnot. So that would -- may or may not be
16 helpful. I don't think so. I mean not
17 necessarily.

18 Q. Would you agree that knowing what we know here,
19 that we've got these dates by periods and then
20 we've got the dates by ultrasound, would you agree
21 that the date of her -- the gestational age and
22 estimated date of delivery were both uncertain as
23 of July 26th?

24 A. I would think so because there's such a
25 discrepancy in that, the dates and the ultrasound.

1 Q. Would that be important information to convey via
2 the record to the obstetrician who is going to
3 deliver the baby that the dates are uncertain?

4 A. I would think they would have access to the
5 ultrasound to go ahead and make the determination.
6 I would think. I don't know.

7 Q. But just a different question, which is would it
8 be important to convey the estimated gestational
9 age as determined during the prenatal period to
10 the obstetrician that's going to manage the labor?

11 A. Not if one is not certain of the date.

12 Q. Okay. Well, and that raises a better point, which
13 is would it be important to convey to the
14 obstetrician who is managing labor that the
15 gestational age is uncertain or unknown?

16 A. I don't know how to answer that since I would have
17 no direct contact with labor and delivery unless I
18 called them or discussed it with them.

19 Q. Well, but you would communicate with them via the
20 prenatal record, correct?

21 A. Yes.

22 Q. And you didn't specifically chart down here that
23 the gestational age was unknown, correct?

24 A. I didn't specifically chart that, no, because I
25 ordered a follow-up ultrasound based on the July

1 12th ultrasound. So I may not have felt
2 comfortable putting down an estimated gestational
3 age. It may have been -- well, I just wasn't
4 certain of it perhaps. When was her last period?

5 Q. I think it's over here actually.

6 MR. MALONE: It's at the top of that page.

7 A. November 30th, so she would have been due
8 September 7th, I think, if we go by that, minus
9 three months plus seven days. I don't have a
10 gestational wheel. But supposedly --

11 Q. Here you go.

12 A. Okay. Last menstrual period November 30th. It's
13 been a while since I looked at this wheel.
14 November 30th --

15 MR. MALONE: I think the 9-7 date would
16 relate to the 12-25 period, not the 11-30 period.

17 A. Right. Let's see. So that's scratched out?

18 MR. MALONE: Yes. What was the question
19 again?

20 Q. Let me ask you, Doctor, I mean based on -- based
21 on the last period of 11-30-2000, what would be
22 the estimated date of delivery?

23 A. September 6th or 7th.

24 Q. Okay. And that's what they wrote here.

25 A. Okay.

1 Q. I don't know if you saw that.

2 A. I didn't -- I saw it but I didn't remember it. I
3 wanted to calculate it myself.

4 Q. And based on your progress note of July 26th,
5 you've got her coming back August 20th for another
6 ultrasound, right?

7 A. We scheduled it for that date, I believe. I think
8 it said six weeks after the initial one.

9 Q. Now, on July 26th certainly it's possible that a
10 patient will come back before that scheduled
11 ultrasound, the August 20th ultrasound in labor?
12 I mean women go into early labor frequently, don't
13 they?

14 A. Well, they go in. Supposedly not frequently but
15 10 percent of the time.

16 Q. 10 percent, okay.

17 A. They can go in early, let's say, depending on the
18 patient's history and everything.

19 Q. I mean don't you think it would have been the
20 careful thing to do to report that you could not
21 determine gestational age and chart the ultrasound
22 findings up here? Don't you think that should
23 have been done?

24 MR. MALONE: Objection. You're asking him
25 two questions. Go ahead.

1 A. Many times I'll put stuff in my progress note
2 which I don't put in my flow sheet. I'm presuming
3 I didn't put it in because I was uncertain of what
4 to put down as the -- what does it say, estimated?
5 Weeks of gestation best estimate, yeah, I perhaps
6 did not feel comfortable putting down a date, a
7 best estimate because of the discrepancy.

8 Q. Well, let me ask did you not feel comfortable
9 writing down the results of the ultrasound?

10 A. I usually don't put it there because I have the
11 hard copy in the chart.

12 Q. But did you know in 2001 that the McCafferty
13 Clinic did not send over the hard copy of the
14 ultrasound reports to the L & D unit when a
15 patient presented in labor?

16 A. That I'm not sure. I presume that's all -- you
17 know, I'm not sure of that. I can't answer that.

18 Q. Sure. Fair enough. Now, Doctor, there's another
19 copy of this ultrasound report, the July 12
20 ultrasound report, and this one shows that you
21 pulled it up to review it in March of 2002, so
22 roughly not quite a full year later, but six,
23 seven, nine months after this baby was born it
24 looks like you pulled up a copy of this ultrasound
25 to look at it. Do you remember why you did that?

1 A. No.

2 Q. And let me make sure I'm reading that correctly.
3 It says reviewed by and then it's got your name
4 and then it says reviewed on and it says March 1
5 of 2002. Does that tell me that you pulled this
6 up in some fashion to look at it?

7 A. That's what it looks like but I don't know why I
8 would have done that. March of 2002.

9 Q. You weren't caring for the patient at the time,
10 were you, in March of 2002?

11 A. Unless I was seeing her as a GYN patient.

12 Q. We've got the McCafferty record. I don't see any
13 record of it.

14 A. No, there would be no reason. I don't know the
15 answer to that.

16 Q. Do you remember this case in the sense that
17 something bad happened, obviously the child was
18 substantially younger than was understood at the
19 time of labor and delivery? Do you remember that
20 happening, that the baby was born prematurely?

21 A. No.

22 Q. Okay. Well, stepping back for a second from your
23 responsibilities but looking at the picture as a
24 whole, you've got a young lady who comes in, she's
25 getting prenatal care, albeit late, and there's a

1 discrepancy in her dates, her gestational age. Do
2 you think that as a whole MetroHealth should have
3 in place a system for making sure that that
4 information in 2001 was available in the event
5 that patient presents for labor and delivery?

6 A. I can't answer that because I don't know the
7 mechanics involved.

8 Q. Well, but just in terms of care of the patient
9 would you agree that it's -- that accepted
10 standards of medical care in 2001 dictated that a
11 patient whose dates are unknown, that that
12 information is conveyed to the folks that are
13 managing her delivery or her labor?

14 MR. MALONE: I'll state my objection again.
15 He's answered the question that he can't answer.
16 He doesn't know the mechanics.

17 Q. You can answer.

18 A. I don't know the mechanics of how information -- I
19 know information is transferred from our clinic to
20 labor and delivery, at certain times the lab work
21 also is available, but I don't know the mechanics
22 of it.

23 Q. All right. Well, let me jump ahead to labor and
24 delivery. Was there a time after 1991 when you
25 actually did deliver babies here at MetroHealth?

1 A. No.

2 Q. Okay. Prior to coming to MetroHealth where did
3 you deliver babies at?

4 A. In Lorain, Ohio.

5 Q. At --

6 A. Saint Joseph Hospital.

7 Q. Saint Joseph's. When a patient there of yours
8 presented for labor and delivery, did you make an
9 effort to determine the estimated gestational age
10 of the baby at the time of labor?

11 A. My patient?

12 Q. Yes.

13 A. All the information was already in her chart and
14 all of her labs, all of her ultrasounds. Since it
15 was all done at Saint Joseph Hospital it was
16 incorporated into her chart or sent from my office
17 to the hospital.

18 Q. On page two of Dr. Ashmead's ultrasound report,
19 his comment section, he recommends that another
20 ultrasound be performed and there's some circling
21 around that. Does that appear or can you tell me
22 that in all likelihood since your initials are on
23 the front page, is that likely you circling that
24 information to highlight the fact that she needs
25 to come back in six to eight weeks for another

1 ultrasound?

2 A. Since I did not initial this, I --

3 Q. And if you don't know, that's okay.

4 A. I don't know for sure. I would say that that
5 would -- I did that to emphasize the fact that I
6 wanted to get it done for two reasons, the dates
7 and also to follow the kidney. So I presume
8 that's my circling.

9 Q. All right. But at least in your private practice
10 before you came to MetroHealth, practicing within
11 accepted standards of medical care, you made sure
12 before you delivered a baby that you knew the
13 gestational age of the baby, right?

14 A. It's my patient and I would follow it, certainly.

15 Q. Okay. And that would be something that would be
16 an important thing to know for the obstetrician
17 delivering a baby, right?

18 A. In a private practice you know your patients
19 because we've been following them for a long time,
20 so the information when she comes to labor and
21 delivery is pretty current, it's in our mind, it's
22 recorded so you know the patient a lot better.

23 Q. But setting aside the -- setting aside the nature
24 of a private practice versus the type of practice
25 that there is in the clinic setting with

1 MetroHealth, focusing on the quality of care,
2 would you agree that in terms of quality of care
3 it was important for the obstetrician and you
4 while you were in private practice to know the
5 gestational age of the baby when a mom presented
6 in labor?

7 A. I would say yes.

8 Q. And in terms of your training residents here at
9 MetroHealth, would that be something that you
10 would convey to them; in other words, convey to
11 them that when a mom presents in labor you have to
12 go through a checklist of things and one of those
13 things you want to determine is what is the
14 gestational age of the baby to determine whether
15 this is a baby that's ready to be delivered or
16 this is early labor that needs to try to be
17 prevented?

18 A. Based on the information that's available, the
19 examination of the patient becomes an important
20 part of that, to correlate the examination with
21 the information, the dates, and one of the things
22 we try to stress or my chief always stressed is to
23 measure the fundal height when the patient comes
24 in.

25 Q. But also to review the ACOG flow sheet to look --

1 A. Oh, if it's available, absolutely.

2 Q. And part of the reason that you trained residents
3 here at MetroHealth to look at the ACOG flow sheet
4 was to determine the gestational age of the baby,
5 right?

6 A. (Witness nodded head up and down.)

7 Q. Yes?

8 A. Yes, I'm sorry.

9 Q. Because that would be part of the standard of care
10 that you're teaching them to practice within;
11 true?

12 A. Yeah, because of the system the patients are
13 followed in the various clinics and when they come
14 in they're being followed by the in-house staff.

15 Q. Would you agree that it would be below accepted
16 standards of medical care for someone, an
17 obstetrician to deliver a baby when a mom presents
18 in labor without first making an effort to
19 determine the gestational age?

20 MR. MALONE: Objection.

21 A. I don't --

22 MR. MALONE: You know he's retired.

23 MR. KULWICKI: I know that.

24 MR. MALONE: He can't testify to these
25 things.

1 MR. KULWICKI: I'm not sure about that.

2 MR. MALONE: Well, I am, but I'll let him
3 answer the question for you. But you guys like to
4 use that so we're going to use it. Do you
5 understand his question?

6 THE WITNESS: No.

7 MR. MALONE: Why don't you ask it again or
8 re-read it to him.

9 MR. KULWICKI: I'll re-ask it.

10 Q. Let's talk about Gloria Maslanka. Gloria shows up
11 in August of 2001 at the L & D unit, she's in
12 labor.

13 MR. MALONE: That's not true, David. She
14 came July 31st.

15 MR. KULWICKI: I'm sorry. Thank you.

16 Q. She arrives at the L & D unit July 31st of 2001.
17 Would you agree that it would be below accepted
18 standards of care for obstetricians at MetroHealth
19 to induce labor -- or to augment labor and attempt
20 to deliver the infant without attempting to
21 resolve the uncertainty of the baby's gestational
22 age?

23 MR. MALONE: Well, show an objection. Labor
24 was not induced in this case.

25 MR. KULWICKI: I corrected myself.

1 MR. MALONE: Well, I don't know how it will
2 read. That's all.

3 MR. KULWICKI: Okay.

4 A. I can't answer that the way you asked it.

5 Q. Okay. All right. When does a multip typically
6 feel movement of the baby?

7 A. Multip of course is usually more aware of
8 movements because of previous pregnancies.
9 Somewhere between 18 and 20 weeks. It could be a
10 little earlier. Other factors of course depends
11 on the apprehension or anxiety of the patient to
12 feel movement because once they feel movement they
13 feel more sure about it. We say 20 weeks, halfway
14 through the gestational age, but it could be as
15 early as 18.

16 Q. And how does that compare with a primip?

17 A. Primigravida, probably closer to 20 weeks.
18 Because of the various changes going on in the
19 body they may not always be aware of movement, and
20 of course again a lot of them anticipate it
21 because they're anxious for movement realizing
22 that that's the health of the baby. But 20 weeks,
23 plus or minus, is thought to be the time that one
24 would probably anticipate feeling it.

25 Q. When you have a patient where the gestational age

1 of the baby is unknown in a prenatal setting, do
2 you typically go through sort of a detailed
3 history to try to get a better idea about the
4 period, the last menstrual period?

5 A. Try to.

6 Q. Okay. And what kind of things do you want to
7 know?

8 A. Well, you ask them are they sure about the last
9 menstrual period, have your periods been regular,
10 have you been missing periods, was it a normal
11 duration of the period, were you on birth control
12 pills or had you stopped birth control pills.
13 There are many factors.

14 Q. Now, in your practice when you would go through
15 this detailed history with respect to last
16 menstrual period, did you typically chart that
17 down, what your discussion was? Is that something
18 you would usually write out?

19 A. I usually have a -- I can't think of the word, but
20 a list of things that I ask because some people
21 are very certain of their period, which is fine,
22 and you go through. Others are not certain and
23 you want to find out what's not certain. So I
24 don't record every little detail but I do know
25 that I go over that.

1 Q. But do you usually chart something to reflect that
2 you went through that with the patient, that
3 history of last menstrual date?

4 A. Once I marked down -- once I go through that then
5 I would mark down what the last period was.

6 Q. Doctor, we went through your progress note and
7 your plan, those three items listed there.
8 Besides those three items, do you recall
9 discussing anything else with Gloria Maslanka?

10 A. To sign the tubal papers, I'm sure we discussed
11 the discrepancy in the dates because of the
12 ultrasound and my reason I ordered the repeat
13 ultrasound.

14 Q. Do you have a recollection of discussing that?

15 A. No, I can't give you the exact wording but I'm
16 sure it was discussed because I would not have
17 ordered another ultrasound without explaining to
18 her why I was doing that.

19 Q. In 2001 did the hospital typically call you to
20 report that one of your prenatal patients was
21 presenting for labor and delivery?

22 A. Not unless I had sent a patient in for evaluation
23 and they would give you a feedback. But if a
24 patient came in I would not know about it.

25 Q. And I assume you didn't have any involvement in

1 the labor and delivery, management of labor and
2 delivery here, correct?

3 A. No, sir.

4 Q. Now, we were talking about mechanics of getting
5 information regarding prenatal testing and
6 assessment to the L & D unit and you, I think,
7 told us that you weren't aware of what those
8 mechanics were?

9 A. Exact mechanics, no.

10 Q. I understand that. But was it your expectation
11 that the results of that ultrasound in July of
12 2001 would be available or somehow communicated to
13 the L & D unit so they had that information when
14 she presented?

15 A. I can't answer that specifically, no.

16 Q. Well, do you think it would be important for the
17 folks managing her labor to know what the results
18 of that ultrasound were?

19 A. It would be and that record should be available to
20 someone by accessing -- since it was on Epic.

21 Q. This is pre-Epic.

22 MR. MALONE: This is not on Epic, Doctor.
23 This predates Epic. This is four and a half years
24 ago.

25 THE WITNESS: I was going to ask you about

1 that. Excuse me.

2 MR. MALONE: That's all right.

3 A. Epic came in -- it must have been '02 then because
4 I had --

5 Q. Right.

6 A. Well, then, no, I don't know how to answer that
7 except to ask if there was an ultrasound
8 available, they would then access it in the
9 ultrasound department unless they sent -- I don't
10 know. I can't answer that because I don't know
11 the mechanics of whether they send stuff only to
12 us and then we transmit it to them. I can't
13 answer that.

14 Q. The fundal height measured on July 12 is 30
15 centimeters and the gestational age by ultrasound
16 was 24 and 1/7 weeks. Are those numbers
17 consistent with each other, 30 centimeters and --

18 A. Fundal height of course can be -- can vary
19 depending on the patient's habitus, if she's
20 obese, which she was not. If it's measured --
21 according to how we're taught to measure it from
22 the top of the symphysis to the top of the fundus,
23 but one has to be careful because the fundus many
24 times will rotate to one side or the other, so one
25 may not be measuring it correctly. If it's bigger

1 than the dates one would think about the size of
2 the patient, but she's only 151 pounds. Of course
3 there would be other factors, of course, the baby,
4 there could be excessive fluid which would give
5 you --

6 Q. Let me ask you, is that 30 centimeters bigger than
7 that date, 24 and 1/7 weeks?

8 A. I'm sorry, would that be bigger?

9 Q. Yes.

10 A. Yes, 30 centimeters, and she was how many weeks?

11 Q. 24 and 1/7 weeks.

12 A. 1 or 2 centimeters probably would be in the range.
13 Again, we try to consistently measure the fundal
14 height consistently, we do the same thing, we try
15 to do the same thing each time. There is some
16 variation between what we call inter-observer
17 observation, two different people measuring it.
18 One would depend on the skill of the examiner, the
19 fundal height could change because of other
20 reasons.

21 Q. Doctor, do you still reside in Cleveland?

22 A. No, I live in Avon Lake.

23 Q. Okay. And any plans to move in the next year or
24 so?

25 A. No, sir.

1 MR. MALONE: I'm only laughing because he
2 was talking about going to Phoenix in retirement.

3 THE WITNESS: That was last year.

4 MR. KULWICKI: Off the record.

5 (Discussion was had off the record.)

6 A. No, as far as I know I do not plan to move.

7 Q. Ms. Maslanka was being treated prenatally for
8 Group B strep colonization, I believe. As of your
9 visit July 26th, did that problem appear to be
10 resolved based on what we have here in the record?

11 A. Usually the treatment for Group B strep is one
12 hundred percent effective, so we don't retest.

13 Q. In terms of your visit with her, did you see any
14 signs of infection or any other abnormalities?

15 A. I can't state for sure. Whatever I have listed
16 there, I would have made a note of it.

17 MR. KULWICKI: Okay. Well, Doctor, that's
18 all I have. Thank you for your patience with me
19 and appreciate your time here. Thanks.

20 MR. MALONE: Tell this young lady where you
21 would like your transcript sent, because you get
22 to read it and make any corrections that you think
23 need to be made. She'll send you an explanatory
24 note. Give her the address so that she has the
25 mailing address.

1 THE WITNESS: 324 Champions Court, Avon
2 Lake, Ohio 44012.

3 (Whereupon, signature was not waived by the
4 witness.)

5 - - - -
6 (The deposition was concluded at 11:15 a.m.)

7 - - - -

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W I T N E S S C E R T I F I C A T E

I, Joseph Sciarrotta, M.D., hereby certify that I have read my deposition taken on January 11, 2006, in the case of Gloria Maslanka, Individually and as Parent and Natural Guardian of Shane Maslanka versus MetroHealth Medical Center, consisting of forty-five pages, and that said deposition is a true and correct transcription of my testimony.

Joseph Sciarrotta, M.D.

Dated this _____ day of _____, 2006.

Sworn to and subscribed before me this _____
day of _____, 2006.

Notary Public

My commission expires _____.

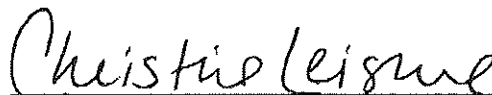
1 STATE OF OHIO,)
2 SUMMIT COUNTY.)

3 I, Christine Leisure, a Notary Public in and
4 for the State of Ohio, duly commissioned and qualified,
5 do hereby certify that the within-named Witness, Joseph
6 Sciarrotta, M.D., was first duly sworn to testify the
7 truth, the whole truth and nothing but the truth in the
8 cause aforesaid; that the testimony so given by him was
9 by me reduced to Stenotype in the presence of the
10 witness, and that the foregoing is a true and correct
11 transcription of the testimony so given by him as
12 aforesaid.

13 I certify that this deposition was taken at the
14 time and place in the foregoing caption specified.

15 I certify that I am not a relative of, employee
16 of or attorney for any of the parties in the
17 above-captioned action, that I am not a relative of or
18 employee of an attorney of any of the parties in the
19 above-captioned action, that I am not financially
20 interested in this action, and that I am not, nor is
21 the court reporting firm with which I am affiliated,
22 under a contract as defined in Civil Rule 28(D).

23 IN WITNESS WHEREOF, I have hereunto set my hand
24 and affixed my seal of office at Fairlawn, Ohio, on
25 this 17th day of January, 2006.



Christine Leisure, Notary Public
My commission expires April 22, 2007.

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