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3
4 December 3, 2002
5 9:43 a.m.
6
7 Deposition of SUZANNE M. SMITH, held at
8 the offices of Esquire Deposition Services,
9 216 East 45th Street, New York, New York,
10 pursuant to Notice, before Penny Economakos, a
11 Shorthand Reporter and Notary Public of the
12 State of New York.
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2 APPEARANCES:
3
4 FRIEDMAN, DOMIANO & SMITH CO., L.P.A.
5 Attorneys for Plaintiff
6 1370 Ontario Street
7 Cleveland, Ohio 94113-1791
8 BY: DONNA TAYLOR-KOLIS, ESQ.
9
10 LANE, ALTON & HORST
11 Attorneys for Defendant
12 175 South Third Street
13 Columbus, Ohio 43215
14 BY: TODD A. COOK, ESQ.
15
16 MATTHEW C. HUFFMAN, ESQ.
17 Attorneys for Women's Care of Mansfield, Inc.
18 127-129 North Pierce Street
19 P.O. Box 546
20 Lima, Ohio 45802
21 BY: MATTHEW C. HUFFMAN, ESQ.
22 (Appearing via telephone)
23
24
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1
2 SUZANNE M. SMITH, called as a
3 witness, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:
6 EXAMINATION BY
7 MR. COOK:
8 Q Could you please state your full name for
9 the record, please?
10 A Suzanne M. Smith.
11 Q Suzanne, my name is Todd Cook. I am here
12 representing midwife Susan Beach in a case that's
13 been filed by the Yates family against her. Have you
14 ever had your deposition taken before?
15 A I have.
16 Q Let me just go through some of the
17 guidelines for this deposition, which applies to all
18 depositions, but I want to make sure you understand
19 every question that I ask.
20 A Yes.
21 Q If for some reason you don't understand a
22 question, please tell me to do so and I will be happy
23 to rephrase.
24 A I will.
25 Q If you don't tell me that you didn't

Page 5

1 Smith
2 understand a question, can we presume that you
3 understood all of my questions?
4 A Yes, you can.
5 Q In addition, feel free to take any break
6 today and don't hesitate to review any of your notes
7 or the records you have before you.
8 A Thank you.
9 Q Did you receive a copy of a notice of
10 deposition duces tecum from the attorney who retained
11 you in this case?
12 A Yes.
13 Q Who is the attorney who retained you in
14 this case?
15 A Donna Taylor-Kolis.
16 Q And is she here today?
17 A She is.
18 Q I see you have many documents before you.
19 You have been kind enough before this deposition to
20 allow me to review your file, for lack of a better
21 word, and to not only review your file but also make
22 some copies, correct?
23 A Correct.
24 Q What I would like to do for the record is
25 just to go through the duces tecum. Number one, you

<p style="text-align: right;">Page 6</p> <p>1 Smith</p> <p>2 were asked to bring all materials and records</p> <p>3 reviewed by you that form the basis of your opinions</p> <p>4 in this case. Did you bring all of the records that</p> <p>5 you have?</p> <p>6 A I brought everything.</p> <p>7 Q You were also asked to bring any and all</p> <p>8 medical literature that you reviewed or upon which</p> <p>9 you intend to rely in this case to form the basis of</p> <p>10 any of your opinions. Did you bring any medical</p> <p>11 literature here today?</p> <p>12 A I did not. I did not review anything</p> <p>13 specific for the case.</p> <p>14 Q And am I correct then that as you sit here</p> <p>15 right now you do not intend to allow any medical</p> <p>16 literature, per se, to form the basis of any of your</p> <p>17 opinions in this case?</p> <p>18 A That's true.</p> <p>19 Q Let me ask just to follow up on that, have</p> <p>20 you conducted any review of any medical literature as</p> <p>21 part of your review in this case?</p> <p>22 A I have not.</p> <p>23 Q You were also asked to bring a full and</p> <p>24 complete curriculum vitae. You have that here?</p> <p>25 A I have done so.</p>	<p style="text-align: right;">Page 8</p> <p>1 Smith</p> <p>2 MS. TAYLOR-KOLIS: You answer the question</p> <p>3 and I will make an objection.</p> <p>4 Q The question is would it be difficult for</p> <p>5 you or a burden to prepare a list of the cases that</p> <p>6 you are presently and actively working on?</p> <p>7 A It would not be impossible to do.</p> <p>8 MS. TAYLOR-KOLIS: Let me interpose this</p> <p>9 because I am going to anticipate you are going</p> <p>10 to ask her to prepare a list. I think you will</p> <p>11 appreciate it from an ethics point of view and</p> <p>12 we will discuss it. She would not want to, nor</p> <p>13 do I think the court would require her, to</p> <p>14 disclose case names where she is currently in</p> <p>15 process, either for the defendant, in the</p> <p>16 process of evaluating data where she has not yet</p> <p>17 issued an opinion or the case has not yet been</p> <p>18 filed. Do you understand what I am saying?</p> <p>19 People retain you presuit to evaluate a case and</p> <p>20 I think it would probably be a breach of some</p> <p>21 ethics for her to disclose those cases. If</p> <p>22 there is a case she is working on, and I don't</p> <p>23 know this to be true, that she already issued an</p> <p>24 expert report, that would not be a problem.</p> <p>25 Q So what I am understanding based on what</p>
<p style="text-align: right;">Page 7</p> <p>1 Smith</p> <p>2 Q You were also asked to bring all working</p> <p>3 notes prepared by you.</p> <p>4 A I have done that.</p> <p>5 Q Number five, you were also asked to bring</p> <p>6 all billing records for this case.</p> <p>7 A I did.</p> <p>8 Q You did that, as well? And then, number</p> <p>9 six, you were asked to bring any records which</p> <p>10 reflect in any way the identity of other cases in</p> <p>11 which Suzanne Smith had served as an expert witness</p> <p>12 on behalf of plaintiffs in which the allegation was</p> <p>13 medical malpractice or negligence. I did not see</p> <p>14 anything related to that, correct?</p> <p>15 A Correct.</p> <p>16 Q And please explain why you were unable to</p> <p>17 bring that information.</p> <p>18 A I do not maintain any records once I have</p> <p>19 been informed by counsel that the case has been</p> <p>20 closed. And the only records that I have in my</p> <p>21 possession are currently active cases.</p> <p>22 Q And can we -- let me put it this way.</p> <p>23 Would it be difficult for you to prepare a list of</p> <p>24 active cases that you are currently working on at</p> <p>25 this time?</p>	<p style="text-align: right;">Page 9</p> <p>1 Smith</p> <p>2 counsel represented, and correct me if I am wrong,</p> <p>3 right now it would not be burdensome for you to</p> <p>4 prepare a list of cases that you are actively working</p> <p>5 on in which you have already provided an opinion to</p> <p>6 the counsel who retained you?</p> <p>7 A I could do that. I am not sure how many</p> <p>8 that would be true for, but I could find that out</p> <p>9 easily.</p> <p>10 Q And what you are telling us here today is</p> <p>11 there are a certain number of files or cases that you</p> <p>12 are presently working on in which you are simply in</p> <p>13 the review stage?</p> <p>14 A Yes.</p> <p>15 Q Which you have not yet rendered a formal</p> <p>16 opinion to the counsel that has retained you and you</p> <p>17 do not feel comfortable in divulging those cases</p> <p>18 since that would breach some confidentiality that you</p> <p>19 have with that attorney?</p> <p>20 A I think that that's true.</p> <p>21 Q Would you be willing to prepare a list of</p> <p>22 those active cases that you are presently working on</p> <p>23 where you have already rendered a formal opinion and</p> <p>24 for us in this case in compliance or partial</p> <p>25 compliance with number six of the duces tecum?</p>

<p style="text-align: right;">Page 10</p> <p>1 Smith</p> <p>2 THE WITNESS: Do I need to consult with</p> <p>3 those attorneys?</p> <p>4 MS. TAYLOR-KOLIS: I think that's the</p> <p>5 issue. Real quick, you are defense counsel.</p> <p>6 You retained her. She has written a report</p> <p>7 that's on your desk that says don't you dare go</p> <p>8 to trial. Plaintiff's counsel does not know</p> <p>9 such a report exists. You see what I'm --</p> <p>10 MR. COOK: Off the record.</p> <p>11 (Discussion off the record.)</p> <p>12 Q We had just a brief discussion off the</p> <p>13 record about the duces tecum, specifically number</p> <p>14 six. My understanding right now is that you are</p> <p>15 going to prepare a list of the active cases that you</p> <p>16 are presently working on which you have rendered a</p> <p>17 formal opinion to counsel who has retained you. You</p> <p>18 will provide that to Donna and Donna will provide</p> <p>19 that to us. Correct?</p> <p>20 A I can do that.</p> <p>21 MR. COOK: Thank you so much. Now what I</p> <p>22 want to turn to briefly is your curriculum</p> <p>23 vitae. And we covered that in the duces tecum.</p> <p>24 I want to mark that for the record.</p> <p>25 MR. HUFFMAN: I am trying not to be</p>	<p style="text-align: right;">Page 12</p> <p>1 Smith</p> <p>2 identification, as of this date.)</p> <p>3 Q I have handed you what's been marked as</p> <p>4 Defendants' Exhibit No. 1. Can you identify that for</p> <p>5 the record, please?</p> <p>6 A It is my CV.</p> <p>7 Q And is that a true, current, accurate and</p> <p>8 up to date curriculum vitae?</p> <p>9 A Yes, it is.</p> <p>10 Q And does that accurately set forth your</p> <p>11 educational background?</p> <p>12 A It does.</p> <p>13 Q Does that accurately set forth your</p> <p>14 professional credentials?</p> <p>15 A It does.</p> <p>16 Q And does it accurately set forth, as well,</p> <p>17 your professional organizations?</p> <p>18 A Yes.</p> <p>19 Q And does it accurately set forth any and</p> <p>20 all publications that you have participated in?</p> <p>21 A Yes, it does.</p> <p>22 Q Are there any changes or modifications or</p> <p>23 additions that need to be made to this curriculum</p> <p>24 vitae as you sit here today that you can recall?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 11</p> <p>1 Smith</p> <p>2 interruptive and to avoid making objections, if</p> <p>3 necessary, as we go along. I would like to make</p> <p>4 a prophylactic objection, if you will, to any</p> <p>5 questions or testimony that would elicit</p> <p>6 testimony from in answering those questions that</p> <p>7 would elicit any opinions from this witness that</p> <p>8 would be critical of the defendant employer in</p> <p>9 this case, as we -- as I understand she is going</p> <p>10 to express no opinions and isn't, we think,</p> <p>11 competent to criticize this employer anyway. So</p> <p>12 that's a general objection</p> <p>13 MS. TAYLOR-KOLIS: Mr. Huffman, just for</p> <p>14 the record since we are doing this, this is</p> <p>15 attorney Taylor-Kolis. I have on four different</p> <p>16 occasions represented to Lawrence Huffman that</p> <p>17 we are not making an independent, substantive</p> <p>18 allegation against anyone in the obstetrical</p> <p>19 group. Your position in this case is simply as</p> <p>20 the employer of Susan Beach. So you are, in</p> <p>21 fact, correct there won't be any answers given</p> <p>22 by this witness in particular that criticize the</p> <p>23 obstetrical care given by the physicians.</p> <p>24 MR. HUFFMAN: Okay, thank you.</p> <p>25 (Defendants' Exhibit 1, CV, marked for</p>	<p style="text-align: right;">Page 13</p> <p>1 Smith</p> <p>2 Q Tell me what you do today on a daily basis</p> <p>3 professionally.</p> <p>4 A I am employed as a staff midwife at State</p> <p>5 University of New York Downstate Medical Center, also</p> <p>6 known as Health Science Center of Brooklyn.</p> <p>7 Q And as part of that position what do you</p> <p>8 do on a day-to-day basis?</p> <p>9 A At the present time and for approximately</p> <p>10 the last 12 months I have been in ambulatory care</p> <p>11 only first. For the first 10 months or 11 months of</p> <p>12 the past year in labor and delivery triage. And for</p> <p>13 the last month to six weeks in antipartum clinic.</p> <p>14 Q And for how long have you been in that</p> <p>15 position?</p> <p>16 A I have been at Downstate for just about</p> <p>17 eight years now.</p> <p>18 Q Do you have a title?</p> <p>19 A Staff -- it's TH Midwife 1. It's the</p> <p>20 staff position 1.</p> <p>21 Q And do you teach?</p> <p>22 A I precept students for clinical rotation</p> <p>23 but I am not currently teaching directly. No</p> <p>24 didactic current responsibilities.</p> <p>25 Q Please explain for the record what you</p>

<p style="text-align: right;">Page 14</p> <p>1 Smith</p> <p>2 mean by you precept students.</p> <p>3 A When midwifery students and also medical</p> <p>4 students are obtaining clinical experience, they need</p> <p>5 a supervisor or preceptor who is responsible for</p> <p>6 their both -- the care that they render and the</p> <p>7 teaching that they need during that care.</p> <p>8 Q Can you tell me specifically the types of</p> <p>9 patients, and give me a breakdown if you can</p> <p>10 percentage wise, the type of patients you will see on</p> <p>11 a day-to-day basis in your position?</p> <p>12 A Downstate is a state university hospital</p> <p>13 but cares for primarily low social economic indigent</p> <p>14 people and the state HMO Medicare Medicaid programs</p> <p>15 from the clinic standpoint. And so we see all of the</p> <p>16 patients in conjunction with both attending</p> <p>17 physicians and resident physicians who are clinic</p> <p>18 patients of Downstate. At the present time there are</p> <p>19 one full-time and one half-time, with me being the</p> <p>20 half-time person, working in the clinic. The</p> <p>21 midwives care for the lowest risk of those patients.</p> <p>22 We see the majority of the initial visits and then we</p> <p>23 make the determination of those that we see that are</p> <p>24 not appropriate to stay with midwifery care.</p> <p>25 Q Do you deliver babies?</p>	<p style="text-align: right;">Page 16</p> <p>1 Smith</p> <p>2 work does not allow additional time for labor and</p> <p>3 delivery coverage.</p> <p>4 Q So presently there is only two midwives on</p> <p>5 staff?</p> <p>6 A Correct.</p> <p>7 Q And when were there 10 to 12 midwives on</p> <p>8 staff?</p> <p>9 A As I said, I joined the practice eight</p> <p>10 years ago so it's been dwindling ever since.</p> <p>11 Q Why has it dwindled?</p> <p>12 A Because there has been nonreplacement by</p> <p>13 the hospital of the lines and that's an institutional</p> <p>14 problem that I have no specific knowledge of.</p> <p>15 Q Is Downstate still delivering relatively</p> <p>16 the same number of babies that they were eight years</p> <p>17 ago?</p> <p>18 A Not as they were eight years ago, no.</p> <p>19 Q Why not?</p> <p>20 A I have no idea.</p> <p>21 Q Is it a significant reduction in the</p> <p>22 number? I mean it seems like to me it would be.</p> <p>23 A That's not something that I can determine.</p> <p>24 I know that part of the factor was the medical</p> <p>25 student and the resident experience and some</p>
<p style="text-align: right;">Page 15</p> <p>1 Smith</p> <p>2 A I am credentialed to deliver babies and</p> <p>3 have privileges at the hospital to do so but because</p> <p>4 of the current staffing situation, other midwives and</p> <p>5 myself are not assigned to labor and delivery and</p> <p>6 have not been for this past year.</p> <p>7 Q Prior to this past year did you deliver</p> <p>8 babies at Downstate?</p> <p>9 A Yes.</p> <p>10 Q For how long did you deliver babies at</p> <p>11 Downstate?</p> <p>12 A For the past seven years. It's strictly a</p> <p>13 function of staff number.</p> <p>14 Q And can you explain to me -- I know you</p> <p>15 said strictly a situation of staff number, but</p> <p>16 explain to me why you are not delivering babies</p> <p>17 presently, why you haven't in the past year.</p> <p>18 A Okay. When I joined the practice</p> <p>19 approximately eight years ago there were, if my</p> <p>20 recollection is correct, somewhere in the vicinity</p> <p>21 of 10 to 12 midwives. And as a combination of</p> <p>22 attrition of one sort or another over the past period</p> <p>23 of time those numbers of positions have now dwindled</p> <p>24 down to only one-and-a-half full-time equivalent</p> <p>25 positions and the service requirements versus time</p>	<p style="text-align: right;">Page 17</p> <p>1 Smith</p> <p>2 scenarios that are going on within resident education</p> <p>3 demanding higher experiences.</p> <p>4 Q Do you have privileges to deliver babies</p> <p>5 at any other facility today?</p> <p>6 A Not at the present time.</p> <p>7 Q In the past eight years have you possessed</p> <p>8 privileges to deliver babies at any other hospital or</p> <p>9 institution?</p> <p>10 A In this eight-year period, no.</p> <p>11 Q Prior to this past year, roughly how many</p> <p>12 babies did you deliver over that seven-year period,</p> <p>13 do you know?</p> <p>14 A Generally around 30 to 40 per year</p> <p>15 personally.</p> <p>16 Q And again that would be 30 to 40 per year</p> <p>17 without the on-site assistance of an obstetrician?</p> <p>18 A Well Downstate is a university hospital.</p> <p>19 There is always attending physicians present on labor</p> <p>20 and delivery.</p> <p>21 Q So they are always present?</p> <p>22 A Yes.</p> <p>23 Q They would be with you --</p> <p>24 A No. They are present on labor and</p> <p>25 delivery.</p>

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1 Smith

2 Q So they are present on the labor and

3 delivery floor?

4 A Right.

5 Q You may be delivering the child yourself,

6 but the obstetrician might be right down the hallway

7 so to speak?

8 A Everybody at Downstate -- there is no call

9 system. If you are on call, you are in the hospital,

10 you are in the facility.

11 Q Again these would be 30 to 40 deliveries

12 per year that you yourself personally delivered?

13 A Yes. And that was -- the number would

14 have been higher eight years ago than it was a year

15 ago. A year ago it may have actually been probably

16 closer to 15 to 20.

17 Q So at its peak 30 to 40?

18 A Yes.

19 Q And at its lowest a year ago 15 to 20?

20 A I would think, maybe. That would take a

21 lot of digging to figure out.

22 Q Have you been sued for medical

23 malpractice?

24 MS. TAYLOR-KOLIS: Objection. But you can

25 answer it.

Page 19

1 Smith

2 A Yes.

3 Q How many times?

4 A Twice.

5 Q And did both of those cases involve

6 deliveries that occurred at Downstate?

7 A No.

8 Q Did any of those cases involve deliveries

9 that occurred at Downstate?

10 A No.

11 Q Tell me the year of your first suit, if

12 you recall.

13 A I have no real idea. It would have been

14 in the mid-1980s.

15 Q And just very briefly tell me what you

16 understood the facts to be in the suit.

17 A I can't tell you which suit was which.

18 They were both within a couple of years of one

19 another so they would have both been in the

20 mid-1980s. One was a suit in which there was a claim

21 of birth injury resulting in mental compromise to the

22 baby. That suit was dismissed when the plaintiff's

23 attorney withdrew from the case and was given

24 permission to do so by the court.

25 The second suit was a case which the baby

Page 20

1 Smith

2 was actually delivered by one of my partners -- both

3 of these cases were when I was in private practice.

4 Delivered by one of my partners and the mother had a

5 subsequent post -- labor postpartum hemorrhage after

6 she had gone home from the hospital several days

7 later and was admitted and cared for at another

8 institution. That case was settled for a very small

9 sum of money, particularly when you consider it's New

10 York City.

11 Q And were both cases filed here in New York

12 City?

13 A Yes. I don't remember which borough but,

14 yes, in New York City.

15 Q And, to the best of your knowledge, there

16 have been no other claims made against you for

17 medical malpractice that have not resulted in a

18 lawsuit?

19 A None that I am aware of.

20 Q Am I correct that you have not settled any

21 other incidents that did not result in lawsuits?

22 A No, not that I am aware of.

23 Q Just again for the record, you are still

24 presently both licensed and registered in the State

25 of New York as a midwife and as a nurse?

Page 21

1 Smith

2 A In New York State they are both licenses

3 but the professions are called registered nurse and

4 midwife. There is no designation before the

5 midwifery license in New York.

6 Q So you are presently certified as a

7 midwife in the State of New York?

8 A No, I am licensed in the State of New York

9 as a midwife. I am certified as a nurse midwife by

10 the American College of Nurse Midwives.

11 Q And does that require recertification?

12 A I was grandmothere because of my

13 certificate being as old as it is. It does for

14 recent graduates.

15 Q Are you licensed as a midwife in any other

16 state?

17 A I am not.

18 Q Again going back to your professional

19 experience, why did you leave Nurse Midwifery

20 Associates to go to your present position at

21 Downstate?

22 A That was a position that overlapped my

23 present position. The years, the starting was just

24 about the same time I actually started it. Midwife

25 Associates slightly ahead of time. That was a small

<p style="text-align: right;">Page 22</p> <p>1 Smith</p> <p>2 private practice that a subgroup -- it was a total of</p> <p>3 three of us at the time -- at Downstate had on the</p> <p>4 side. That was a sideline position.</p> <p>5 Q Just so we are clear for the record, from</p> <p>6 October of '94 through March of 1996 you worked in a</p> <p>7 private capacity for Nurse Midwifery Associates in</p> <p>8 Brooklyn, New York, correct?</p> <p>9 A Correct.</p> <p>10 Q That was during the same period of time</p> <p>11 you were at Downstate?</p> <p>12 A Correct.</p> <p>13 Q Why did you stop operating the private</p> <p>14 practice again? I apologize.</p> <p>15 A The owner of that private practice was at</p> <p>16 the time the director of the midwifery service at</p> <p>17 Downstate and her private practice dwindled and she</p> <p>18 did not need a third midwife. And she was partners</p> <p>19 with the second so the first two were partners and I</p> <p>20 was their employee.</p> <p>21 Q I notice that from January 1982 through</p> <p>22 October of 1992 you were the president and cofounder</p> <p>23 of CBS Midwifery, Incorporated in New York, New York,</p> <p>24 correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 24</p> <p>1 Smith</p> <p>2 A Right.</p> <p>3 Q Why did you take that position?</p> <p>4 A February '93 to December of '94 is about a</p> <p>5 year-and-a-half, almost two years.</p> <p>6 Q You are right. Why did you take that</p> <p>7 position?</p> <p>8 A It was a per diem position. It was</p> <p>9 strictly ambulatory care. It did not involve labor</p> <p>10 and delivery. And part of the personal reasons that</p> <p>11 I left my own practice had to do with the disruption</p> <p>12 the call time was causing to my family life.</p> <p>13 Q When you say per diem, what does that</p> <p>14 mean?</p> <p>15 A On a day by day basis if they needed me at</p> <p>16 a particular clinic and they needed me to work.</p> <p>17 Q So you are paid per patient or per day?</p> <p>18 A Per hour.</p> <p>19 Q I am going to turn now to your legal</p> <p>20 cases, medical malpractice cases you have worked on.</p> <p>21 And we covered a little bit of that at the beginning</p> <p>22 of the depo with the active cases, but let me ask you</p> <p>23 right now, again I don't want you to divulge anything</p> <p>24 confidential but presently how many cases are you</p> <p>25 working on?</p>
<p style="text-align: right;">Page 23</p> <p>1 Smith</p> <p>2 Q Tell me about that.</p> <p>3 A That's the private practice that myself --</p> <p>4 I am the S out of the CBS -- and my partner Carol</p> <p>5 Abrante (phonetic), out of the C, founded. We were</p> <p>6 the first midwives in New York State to get</p> <p>7 autonomous admitting privileges at a hospital for</p> <p>8 midwifery practice. And several years later we</p> <p>9 brought in Barbara Sellers as an employee and then we</p> <p>10 incorporated the three of us as equal partners. And</p> <p>11 I was the first to leave the partnership or the</p> <p>12 incorporation for personal reasons. That had to</p> <p>13 do -- nothing that had to do with business,</p> <p>14 professional.</p> <p>15 Q Is that still an ongoing entity today?</p> <p>16 A It is. Barbara is the only one that still</p> <p>17 owns it. Carol also left.</p> <p>18 Q But you have no income interest in that</p> <p>19 any further?</p> <p>20 A I have not.</p> <p>21 Q I guess I am surprised you would leave</p> <p>22 your own business to go to your position at Medical</p> <p>23 and Health Research Associates of New York,</p> <p>24 Incorporated, where you were there for less than a</p> <p>25 year, correct, from February '93 to December of 1994?</p>	<p style="text-align: right;">Page 25</p> <p>1 Smith</p> <p>2 A Including this one, either four or five.</p> <p>3 I am not sure.</p> <p>4 Q So four or five. And does that include</p> <p>5 all your cases, cases where you have not rendered yet</p> <p>6 a formal opinion on?</p> <p>7 A I think it does.</p> <p>8 Q How many of those cases are for the</p> <p>9 plaintiff and how many for the defense presently?</p> <p>10 A I don't know what the proportion is but I</p> <p>11 do know at the present time I have some on both sides</p> <p>12 of the table.</p> <p>13 Q For how many years have you been reviewing</p> <p>14 cases for attorneys?</p> <p>15 A If I may look at my CV, since 1996.</p> <p>16 Q How did you get into the process of</p> <p>17 reviewing cases for attorneys? How did that begin?</p> <p>18 A My first experience was two consecutive</p> <p>19 years when I was in the navy reserve and my two weeks</p> <p>20 assignment was to the navy Surgeon General's Office</p> <p>21 at Beaumed (phonetic) in Washington D.C. where I read</p> <p>22 charts and assisted in writing the Surgeon General's</p> <p>23 report, which is the military equivalent of doing</p> <p>24 expert witness review.</p> <p>25 Q But then how did you start rendering</p>

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1 Smith

2 reviews for private attorneys?

3 A After that experience some people knew

4 that I had done that and the American College of

5 Nurse Midwives is headquartered in Washington. I was

6 in contact with them because I have always been

7 active in the organization and, to the best of my

8 knowledge, they began to refer people who would call

9 the national office to me.

10 Q Since 1996 how many cases have you

11 reviewed, medical malpractice cases, for private

12 attorneys, approximately?

13 A I would guess that it would be a total of

14 15 to 20. This is at present the largest number I

15 have ever had at one time and the largest year I have

16 ever had.

17 Q And what do you attribute that to, that

18 the work is picking up?

19 A I have no idea. I would be very

20 interested to know.

21 Q Since 1996 out of the 15 or 20 cases that

22 you reviewed, can you give me just a percentage

23 breakdown of those you reviewed on behalf of midwives

24 versus those you reviewed on behalf of patients?

25 A Pretty close to 50/50. It wouldn't be

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1 Smith

2 substantially -- might be a 60/40 split, but pretty

3 close to 50/50.

4 Q Have you reviewed any prior cases

5 specifically for Donna Taylor-Kolis?

6 A Yes.

7 Q You have? She shakes her head no.

8 MS. TAYLOR-KOLIS: I am sorry.

9 A Yes.

10 MS. TAYLOR-KOLIS: Oh, that's because it

11 wasn't a case. That's why I don't remember.

12 THE WITNESS: Well I don't know that. I

13 can't tell what's cases and what's not.

14 MS. TAYLOR-KOLIS: Sorry, we are

15 dialoguing.

16 Q So you have reviewed a prior matter for

17 Ms. Taylor-Kolis, correct?

18 A Yes.

19 Q How many, just one that you recall?

20 A I believe so.

21 Q And that case was for a patient that

22 Ms. Kolis was representing, I presume, correct?

23 A I believe so.

24 Q Tell me about that case. Do you recall at

25 all?

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1 Smith

2 A I have no clue.

3 Q When was that? Do you recall when your

4 review was?

5 A It was concurrent with this but I can't

6 remember whether they came in exactly at the same

7 time or whether one preceded the other.

8 Q So when you say concurrent with this, you

9 are talking about this case here?

10 A The Yates case.

11 Q Have you ever testified at trial in Ohio

12 before?

13 A No.

14 Q How many times have you testified at trial

15 overall?

16 A None.

17 Q Never?

18 A No.

19 Q Have you given any other depositions,

20 discovery depositions, this year, year 2002?

21 A No.

22 Q Out of the 15 or 20 cases that you

23 reviewed, in approximately how many cases did you

24 give a deposition?

25 A Twice.

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1 Smith

2 Q Do you recall the name of the attorney in

3 both of those cases who retained you?

4 A I do not.

5 Q Do you recall where those depositions took

6 place?

7 A Yes.

8 Q Where?

9 A One was in New York City at a court

10 reporter's office, but I don't believe it was this

11 one, and one was in Albany at a hotel near the Albany

12 International Airport.

13 Q Do you recall the year of either

14 deposition?

15 A No. Definitely -- Albany is the more

16 recent and it's three or four years ago and New York

17 City is one or two years before that.

18 Q And do you recall whether or not in both

19 those cases where you gave depositions that you were

20 testifying on behalf of the midwife or the patient?

21 A I believe it was once each. One for each.

22 But I am not positive of that.

23 Q Just so we are clear, you don't recall the

24 names of any attorneys that were involved in either

25 of those cases?

<p style="text-align: right;">Page 30</p> <p>1 Smith</p> <p>2 A Not offhand. Both of those cases are</p> <p>3 closed. I don't have any more documentation on</p> <p>4 either of them. I know that for a fact.</p> <p>5 Q Do you work for a service that helps</p> <p>6 attorneys obtain expert witnesses?</p> <p>7 A Occasionally.</p> <p>8 Q Tell me what service is that?</p> <p>9 A TASA.</p> <p>10 Q For how long have you been affiliated with</p> <p>11 TASA?</p> <p>12 A Maybe three years.</p> <p>13 Q How did you become affiliated with TASA?</p> <p>14 A A friend of mine who happens to be a CPA</p> <p>15 referred them to me or me to them. He has done some</p> <p>16 consulting work for them in his role as a CPA expert.</p> <p>17 Q Do you know how Donna Taylor-Kolis found</p> <p>18 you?</p> <p>19 A Yes, she told me yesterday.</p> <p>20 Q And how did she find you?</p> <p>21 A Referred by another attorney.</p> <p>22 Q Are you affiliated with any other expert</p> <p>23 witness referral agencies or services that again</p> <p>24 helps attorneys find expert witnesses other than</p> <p>25 TASA?</p>	<p style="text-align: right;">Page 32</p> <p>1 Smith</p> <p>2 Q Do you know Ms. Taylor-Kolis on a social</p> <p>3 basis at all?</p> <p>4 A I do not.</p> <p>5 Q When were you first contacted by</p> <p>6 Ms. Taylor-Kolis in this case? Well before I go to</p> <p>7 that, before I do that, we covered the fact that you</p> <p>8 brought everything that you reviewed in this case</p> <p>9 before you here today, correct?</p> <p>10 A True.</p> <p>11 Q What I would like you to do right now is,</p> <p>12 as easily as you can, list for us on the record</p> <p>13 everything that you have been provided with to review</p> <p>14 in this case.</p> <p>15 A Okay. The MedCentral Health System's</p> <p>16 medical records of Lisa Yates. The Ohio Department</p> <p>17 of Health Certificate of Fetal Death. The autopsy</p> <p>18 report. The deposition Exhibit 3, Certified Nurse</p> <p>19 Midwife Guidelines MedCentral Health System and</p> <p>20 portions of the policy and procedure manual.</p> <p>21 Deposition transcript of Lisa Yates. Deposition</p> <p>22 transcript of Susan Morgan. Nurse midwife standard</p> <p>23 care arrangement for Mansfield Obstetrics and</p> <p>24 Gynecology Associates, Incorporated d/b/a Women's</p> <p>25 Care, Inc. And most recently the expert reports of</p>
<p style="text-align: right;">Page 31</p> <p>1 Smith</p> <p>2 A Only insofar as, as I said, when I started</p> <p>3 I am pretty sure it was the American College of</p> <p>4 Midwives that referred the attorneys to me and they</p> <p>5 will continue to refer attorneys that contact the</p> <p>6 national organization to various experts.</p> <p>7 Q Do you advertise at all your services?</p> <p>8 A No.</p> <p>9 Q And again what I mean by services is your</p> <p>10 services to assist attorneys.</p> <p>11 A No.</p> <p>12 Q Have you reviewed cases for other</p> <p>13 attorneys in Ohio?</p> <p>14 A Yes.</p> <p>15 Q Can you tell me some of the attorneys that</p> <p>16 you have reviewed cases for in Ohio?</p> <p>17 A The one that I can recall for sure is</p> <p>18 Michael Becker.</p> <p>19 Q And was Mr. Becker the attorney who</p> <p>20 referred Donna Taylor-Kolis to you?</p> <p>21 A Yes.</p> <p>22 Q How many cases have you reviewed for Mike</p> <p>23 Becker, just roughly?</p> <p>24 A One or two. Remotely possible three but</p> <p>25 it's more likely to be one than even two or three.</p>	<p style="text-align: right;">Page 33</p> <p>1 Smith</p> <p>2 Dr. John P. Elliott, E-I-I-I-o-t-t, and Joyce</p> <p>3 Roberts, Ph.D.</p> <p>4 Q Let me follow up on a couple of things.</p> <p>5 Can you tell me which portions of the policy and</p> <p>6 procedure manual you were provided with?</p> <p>7 MS. TAYLOR-KOLIS: Parenthetically, the</p> <p>8 ones you gave to us.</p> <p>9 MR. COOK: But just for the record I just</p> <p>10 want to make sure.</p> <p>11 A Okay. Two pages that are entitled</p> <p>12 Certified Nurse Midwife Guidelines, pages one and</p> <p>13 two. Nursing personnel admission of patients in</p> <p>14 labor. Nursing personnel care of patient in labor.</p> <p>15 Nursing personnel delivery room procedure. Nursing</p> <p>16 personnel cephalic version nurses role in. Nursing</p> <p>17 personnel use of prostaglandin gel, parenthesis P,</p> <p>18 little G, capital E, hyphen 2, close parenthesis, for</p> <p>19 cervical ripening. Nursing personnel administration</p> <p>20 of oxytocin, parenthesis Pitocin, close parenthesis.</p> <p>21 And then, additionally, nurse midwife standard care</p> <p>22 arrangement Mansfield Obstetrics Gynecology</p> <p>23 Associates, Inc. d/b/a Women's Care, Inc.</p> <p>24 Q You also mentioned that you recently</p> <p>25 received a report from Joyce Roberts, correct?</p>

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1 Smith

2 A Correct.

3 Q I am sorry, we covered the policy and

4 procedures manual?

5 A Yes.

6 Q I just want to make sure.

7 A Yes.

8 Q Do you know Joyce Roberts?

9 A I do.

10 Q Tell me how you know Joyce Roberts.

11 A Joyce Roberts is a certified midwife and a

12 former president of the American College of Nurse

13 Midwives.

14 Q Recognizing that you and Ms. Roberts may

15 have some disagreements about this case, would you

16 agree that generally she is respected?

17 A She is respected.

18 Q And am I correct that in the professional

19 organizations that you are involved in you worked

20 with Ms. Roberts, worked in conjunction with her?

21 A I have never worked directly with her

22 either clinically or within a professional

23 organization, but during her tenure as president of

24 the college I was chair of one of the committees.

25 Q And is she also respected within your

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1 Smith

2 organization, the American College of Nurse Midwives?

3 A She is respected.

4 Q Were you provided any summary of the

5 medical records by Ms. Taylor-Kolis in this case?

6 A No.

7 Q So in essence everything we have here

8 before us with what you just listed off is everything

9 you reviewed in this case?

10 A That is.

11 Q Now you also prepared some notes in this

12 case, correct?

13 A I did.

14 Q And before we get to that, I would like to

15 first go through the sequence in which the materials

16 were provided to you, okay?

17 A Okay.

18 Q What were you initially provided with, if

19 you recall?

20 A As long as I look at the dates on the

21 cover letters I can tell you. On November 28, 2000,

22 I received the medical records.

23 Q Now is that your first written

24 correspondence from Ms. Taylor-Kolis?

25 A I believe so.

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1 Smith

2 Q Did you have any telephone calls with her

3 office before receiving the records?

4 A I believe so.

5 Q And were you told anything about the case

6 at that time?

7 A Not that I can recall.

8 Q So again as of November 28, 2000, you

9 received a copy of the medical records from

10 MedCentral Health System, correct?

11 A Correct.

12 Q And did you formulate any opinions about

13 the case at that time? Again based solely on your

14 review of the medical records.

15 A I don't believe so, but if you will give

16 me a moment to look.

17 Q Sure, go ahead.

18 A The first opinion I rendered was not until

19 July 22, 2002, and it includes not only the original

20 medical records but also depositions and the policy

21 procedure manual and nurse midwife standard care

22 agreement. So, no, I did not render an opinion prior

23 to that based solely on the medical records.

24 Q You were kind enough to allow me to review

25 your notes.

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1 Smith

2 A Preliminary opinion. You are right. I am

3 sorry.

4 Q In reviewing your notes --

5 A You are right.

6 Q -- there was a memorandum dated

7 January 7, 2001, from you --

8 A Now you are right and I just have to find

9 it.

10 Q Again just for the record it was dated

11 January 7, 2001. It was from you, Suzanne M. Smith,

12 to Donna Taylor-Kolis. And the subject entitled is

13 "Preliminary opinion regarding Lisa Yates/Dylon King,

14 deceased."

15 A Correct.

16 MR. COOK: Let me mark that memo just for

17 the record as Defendants' Exhibit No. 2.

18 (Defendants' Exhibit 2, memo, marked for

19 identification, as of this date.)

20 Q Handing you Defendants' Exhibit No. 2, can

21 you please for the record tell me what that is?

22 A It's my memo dated January 7, 2001, with a

23 preliminary opinion regarding Lisa Yates/ Dylon King,

24 deceased.

25 Q The opinions contained in this memo appear

<p style="text-align: right;">Page 38</p> <p>1 Smith</p> <p>2 to be based solely upon your review of the medical</p> <p>3 records only?</p> <p>4 A They were.</p> <p>5 Q Correct?</p> <p>6 A They were.</p> <p>7 Q After preparing this memorandum, did you</p> <p>8 request additional information regarding this case?</p> <p>9 A I did.</p> <p>10 Q What did you request?</p> <p>11 A The clinical practice guidelines or</p> <p>12 management protocols.</p> <p>13 Q Why did you request that information?</p> <p>14 A In order to assist my final determination</p> <p>15 of the care provided by the midwife to Ms. Yates.</p> <p>16 Q And that information subsequently was</p> <p>17 provided to you, correct?</p> <p>18 A It was.</p> <p>19 Q When was that provided to you?</p> <p>20 A April 1st of 2002 I received the</p> <p>21 deposition Exhibit B, which was the Certified Nurse</p> <p>22 Midwife Guidelines two-page document and the portions</p> <p>23 of the policy and procedure manual. And on June 10,</p> <p>24 2002, I received the nurse midwife standard of care</p> <p>25 arrangement for Obstetric and Gynecology Associates.</p>	<p style="text-align: right;">Page 40</p> <p>1 Smith</p> <p>2 did not pretend the outcome did require continued</p> <p>3 vigilance. As discussed by telephone before I could</p> <p>4 render a final opinion, I would need to review the</p> <p>5 midwife's clinical practice guidelines or management</p> <p>6 protocols."</p> <p>7 Q As we pointed out, those were subsequently</p> <p>8 provided to you?</p> <p>9 A They were.</p> <p>10 Q And didn't change the opinion that's</p> <p>11 stated in this?</p> <p>12 A Correct.</p> <p>13 Q In fact, the language in this memo, in the</p> <p>14 January 7, 2001 memo, is exactly the same that's on</p> <p>15 page two of your January 22, 2002 expert witness</p> <p>16 report that was disclosed in this case?</p> <p>17 A Except for my identification of the</p> <p>18 midwife's name in my final and the addition of the</p> <p>19 final sentence.</p> <p>20 Q The final sentence?</p> <p>21 A Which referred to physician consultation</p> <p>22 and collaboration.</p> <p>23 Q What did you think of Ms. Morgan's</p> <p>24 deposition transcript after you reviewed that? Did</p> <p>25 that assist with your review of this case?</p>
<p style="text-align: right;">Page 39</p> <p>1 Smith</p> <p>2 Q And did that information assist you with</p> <p>3 formulating supplemental opinions in this case?</p> <p>4 A My opinion did not change based on what I</p> <p>5 had read.</p> <p>6 Q Tell me why your opinion did not change</p> <p>7 after reviewing the clinical practice guidelines?</p> <p>8 A Because although in my final opinion I did</p> <p>9 state that there was no evidence of physician</p> <p>10 consultation and collaboration, the -- I knew that</p> <p>11 from the records, although I had not written it in</p> <p>12 full detail in that preliminary opinion.</p> <p>13 Q Just again for the record and for benefit</p> <p>14 of Mr. Huffman who is on the phone who has not seen</p> <p>15 the January 7, 2001 memorandum, can you read that for</p> <p>16 us?</p> <p>17 A "pon my review of the medical records</p> <p>18 provided in the case of Lisa Yates/Dylon King,</p> <p>19 deceased, I can state that the midwife mostly like</p> <p>20 failed to meet the standard of care since there is a</p> <p>21 time of approximately 64 minutes of fetal heart</p> <p>22 monitoring immediately prior to the delivering of the</p> <p>23 infant King. Review of the fetal monitor strips</p> <p>24 provided demonstrate a nonreassuring tracing,</p> <p>25 including decelerations, which while in themselves</p>	<p style="text-align: right;">Page 41</p> <p>1 Smith</p> <p>2 A It didn't change my opinion. I was</p> <p>3 concerned by some of her responses regarding her</p> <p>4 understanding of meconium and her description of</p> <p>5 decelerations.</p> <p>6 Q In what way?</p> <p>7 A I didn't feel that they were accurate or</p> <p>8 thorough.</p> <p>9 Q Do you feel that she was just flat out</p> <p>10 wrong in regard to her description of meconium and</p> <p>11 her description of decelerations?</p> <p>12 A I would need to reread them specifically</p> <p>13 to answer that question. I think they just didn't go</p> <p>14 far enough. But do you want me to read?</p> <p>15 Q No, that's okay. Just so we are clear,</p> <p>16 too, for the record -- well let me -- I just want to</p> <p>17 take this in chronological order and it will move</p> <p>18 quicker and we can move along here. You received the</p> <p>19 records first, you then received the clinical</p> <p>20 practice guidelines, then -- and then what did you</p> <p>21 receive next?</p> <p>22 A No, first the records -- yes, then the</p> <p>23 guidelines, then the depositions, then the nurse</p> <p>24 midwife standard care arrangement.</p> <p>25 Q And just so we are clear, I know we may</p>

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1 Smith
2 have covered this, but nothing that you received
3 subsequent to the medical records in any way changed
4 your opinions about what you believe occurred in this
5 case?
6 A The only change, as we mentioned, was that
7 I added the sentence regarding consultation.
8 Q And that was based on your review of what?
9 A That was based on the review of the
10 medical records but I had not specified it until I
11 saw how the consultation was described within the,
12 what do they call them, nurse midwife guidelines and
13 the policy procedure manual and the standard care
14 arrangement.
15 Q Just so we are clear for the record, what
16 you are telling us that you added or that -- well I
17 guess it would be correct -- you added based upon
18 your review of the clinical practice guidelines is
19 the sentence "No evidence of physician
20 consultation/collaboration by Ms. Beach despite the
21 delay in labor progress throughout the night in the
22 prolonged second stage"?
23 A Correct.
24 Q Other than today, did you meet with
25 Ms. Taylor-Kolis at any prior time?

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1 Smith
2 A Not prior to today.
3 Q How much time have you billed for this
4 case to date?
5 A I have billed three-and-a-half hours plus
6 five hours plus one-and-a-quarter hours.
7 Nine-and-a-quarter hours?
8 Q Okay. And how much do you charge per hour
9 for your review?
10 A For the review I charge \$250 an hour.
11 Q And how much do you charge for deposition
12 testimony?
13 A \$350 an hour.
14 Q And how much do you charge for trial
15 testimony, live trial testimony?
16 A Time in the courtroom, \$400 an hour.
17 Q Are you planning on testifying live at
18 trial in this case in January if it goes to trial?
19 A I am.
20 Q Have you marked that off on your schedule?
21 A I have not.
22 Q Now let's turn to your report that you
23 were kind enough to provide to us all in this case.
24 You've got a copy in front of you, correct?
25 A I do.

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1 Smith
2 Q Just for the record it's dated July 22,
3 2002, correct?
4 A Correct.
5 Q Were there any draft copies of this report
6 prepared by you that were edited by Ms. Taylor-Kolis?
7 A No.
8 Q Were there any draft copies of this report
9 prepared that were edited by you at the request of
10 Ms. Taylor-Kolis?
11 A I believe so.
12 Q How many?
13 A I do it on the computer and can overwrite.
14 Q So as we sit here today do you have any
15 copies of those prior drafts?
16 A I do not.
17 Q Do you recall what was edited in the prior
18 drafts?
19 A I believe that my review item number four
20 regarding the previous contact between Ms. Beach and
21 Ms. Yates was more descriptive.
22 Q Okay.
23 A And I believe on one of the sections, must
24 have been either number six or number seven, I either
25 deleted or added a date for clarity purposes. I

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1 Smith
2 think that's all I did.
3 Q And again just to streamline this, you do
4 not intend to elicit any opinions at trial in regard
5 to the cause of death of this child; is that correct?
6 A I am sorry, could you rephrase that?
7 Q Am I correct, based on our review of your
8 report, again the report dated July 22, 2002, you do
9 not intend at trial to elicit any opinions as to the
10 cause of death of this child? Your opinions in this
11 case focus squarely on the standard of care that
12 applies to a midwife under these circumstances; is
13 that correct?
14 A That's true.
15 Q Let me ask you directly just so I -- again
16 the focus or the purpose today is to learn all of
17 your opinions that you intend to testify to at trial.
18 If asked at trial, are you going to be expressing any
19 opinions to a reasonable degree of medical
20 probability as to what caused the death of this
21 child?
22 A I don't believe so.
23 Q And you will be deferring to other medical
24 practitioners on that issue, I would presume?
25 A Yes.

<p style="text-align: right;">Page 46</p> <p>1 Smith</p> <p>2 Q Are you going to be rendering opinions in</p> <p>3 this case regarding any other medical provider other</p> <p>4 than Susan Morgan?</p> <p>5 A I don't intend to.</p> <p>6 Q Or she is now known as Susan Morgan-Beach.</p> <p>7 A I don't intend to.</p> <p>8 Q Have you been asked in this case by</p> <p>9 Ms. Taylor-Kolis to evaluate the medical care and</p> <p>10 treatment of any other medical provider in this case,</p> <p>11 be it a doctor, nurse, hospital, whomever, by</p> <p>12 Ms. Taylor-Kolis other than Susan Morgan-Beach?</p> <p>13 A No.</p> <p>14 Q As you sit here today is there anything</p> <p>15 else that you intend to review in this case that's</p> <p>16 not been provided to you to date?</p> <p>17 A Not that I am aware of.</p> <p>18 Q Again I would presume you are going to</p> <p>19 review the deposition transcript of Ms. Roberts?</p> <p>20 Well I don't want to be presumptive.</p> <p>21 A If I get it.</p> <p>22 Q I know I asked this question. Let me make</p> <p>23 sure it's a little bit more specific. You have not</p> <p>24 reviewed any medical literature, including ACOG</p> <p>25 bulletins, in your review of this case?</p>	<p style="text-align: right;">Page 48</p> <p>1 Smith</p> <p>2 delivery of the baby and, in addition, there was no</p> <p>3 physician consultation or collaboration during the</p> <p>4 time Ms. Beach was caring for Ms. Yates.</p> <p>5 Q What I would like you to do then -- and</p> <p>6 again you are simply --</p> <p>7 A I paraphrased. You want me to read the</p> <p>8 report?</p> <p>9 Q No, we can all read it for ourselves. I</p> <p>10 would like you to tell me specifically in what way</p> <p>11 Ms. Beach, Susan Morgan-Beach, deviated below the</p> <p>12 appropriate standard of care that applies to a nurse</p> <p>13 midwife in this case.</p> <p>14 A Okay. In respect to the care of a</p> <p>15 laboring mother -- I will start with the easy one</p> <p>16 first -- there is no evidence of physician</p> <p>17 consultation or collaboration. Normal labor progress</p> <p>18 is approximately one centimeter per hour and</p> <p>19 Ms. Yates' progress in labor from the time that</p> <p>20 Ms. Beach assumed care and examined Ms. Yates for the</p> <p>21 first time -- it's also written right in my letter.</p> <p>22 Ms. Beach assumed the management and care of</p> <p>23 Ms. Yates at approximately 7:00 p.m. and examined</p> <p>24 Ms. Yates at 7:30, at which time she was six</p> <p>25 centimeters dilated. The progress from six</p>
<p style="text-align: right;">Page 47</p> <p>1 Smith</p> <p>2 A That's true.</p> <p>3 MR. COOK: What I would like to do now is</p> <p>4 I would like to have your July 22, 2002 report</p> <p>5 marked as an exhibit. We will have that marked</p> <p>6 as Defendants' Exhibit No. 3.</p> <p>7 (Defendants' Exhibit 3, July 22, 2002</p> <p>8 report, marked for identification, as of this</p> <p>9 date.)</p> <p>10 Q I am handing you what's been marked as</p> <p>11 Defendants' Exhibit No. 3. Can you describe just</p> <p>12 briefly for the record what that is?</p> <p>13 A It's my letter of opinion regarding the</p> <p>14 care rendered by Susan Diane Morgan-Beach towards</p> <p>15 Lisa Yates.</p> <p>16 Q That's two pages, correct?</p> <p>17 A It is two pages.</p> <p>18 Q That's your signature, I believe, at the</p> <p>19 end of that letter? Maybe there is no signature.</p> <p>20 A On the original I am sure.</p> <p>21 Q What opinions have you formulated in this</p> <p>22 case?</p> <p>23 A In my opinion Ms. Beach failed to meet the</p> <p>24 standard of care. There are 64 minutes of minimal</p> <p>25 fetal heart monitoring immediately prior to the</p>	<p style="text-align: right;">Page 49</p> <p>1 Smith</p> <p>2 centimeters to full dilatation, which is ten</p> <p>3 centimeters, should have been approximately four</p> <p>4 hours. However complete dilatation was not found</p> <p>5 until 4:50 in the morning which is, if my math is</p> <p>6 correct, nine hours and 20 minutes. If my math is</p> <p>7 correct. That's more than double the expected length</p> <p>8 of time. And then the time from full dilatation to</p> <p>9 delivery is generally expected to be less than two</p> <p>10 hours and in this case was two hours and 26 minutes,</p> <p>11 again if my math is correct. There was no, as we</p> <p>12 have said, physician consultation during that time.</p> <p>13 Physician consultation would have been anticipated or</p> <p>14 expected with that much of a prolongation, at least</p> <p>15 during that active phase of labor, the 26 minute</p> <p>16 variance of second stage. Had an earlier</p> <p>17 consultation been raised, a plan of care might be</p> <p>18 covering that and you might not need another one.</p> <p>19 However, in view of the fact that you did not have</p> <p>20 the earlier one, that's again a second missed</p> <p>21 opportunity with an anticipated deviation -- or a</p> <p>22 deviation from the anticipated normal.</p> <p>23 The more important element of failure to</p> <p>24 meet the standard of care is the ability to correctly</p> <p>25 interpret fetal monitoring. And it's my opinion that</p>

<p style="text-align: right;">Page 50</p> <p>1 Smith</p> <p>2 from what they call strip number four, which I would</p> <p>3 need to look up and see what time that started, strip</p> <p>4 number four seems to have started at approximately a</p> <p>5 few minutes before 7:00 p.m. on December 1, 1999, and</p> <p>6 from that point through the rest of the labor there</p> <p>7 is significant amount of fetal heart decelerations.</p> <p>8 Q Can you tell me just to -- I don't mean to</p> <p>9 interrupt you but tell me the number of that strip,</p> <p>10 the beginning strip.</p> <p>11 A Do you want their page number?</p> <p>12 MS. TAYLOR-KOLIS: I don't think he has</p> <p>13 the same record.</p> <p>14 A Because it was confusing the way it's</p> <p>15 paginated.</p> <p>16 MS. TAYLOR-KOLIS: Because these are my</p> <p>17 Bates stamps from the records deposition</p> <p>18 service, not the hospital.</p> <p>19 MR. COOK: Off the record.</p> <p>20 (Discussion off the record.)</p> <p>21 MR. COOK: Back on the record, just to</p> <p>22 discuss identification purposes of her opinion</p> <p>23 on the fetal heart monitor, I think we have</p> <p>24 agreed for purposes of this opinion we will</p> <p>25 refer to the hospital stamping on the fetal</p>	<p style="text-align: right;">Page 52</p> <p>1 Smith</p> <p>2 percent of the contractions were associated with a</p> <p>3 deceleration. And while you don't get concerned when</p> <p>4 the decelerations start, the cumulative effect and</p> <p>5 repetitive effect and number of hours of continuing</p> <p>6 decelerations with some areas where there are other</p> <p>7 fetal heart changes, where there is minimal</p> <p>8 variability from time to time, should have caused</p> <p>9 Ms. Beach to consider that perhaps the condition of</p> <p>10 the baby needed to be evaluated.</p> <p>11 Q And by evaluated you mean consulting an</p> <p>12 obstetrician?</p> <p>13 A In Ms. Beach's deposition there was a</p> <p>14 point where she was asked about fetal scalp sampling</p> <p>15 and, as I recall, she stated that it was available at</p> <p>16 the institution but that she didn't perform the</p> <p>17 procedure herself and that she never considered to</p> <p>18 consult the physician at that point -- at some point</p> <p>19 for that purpose. But that would have been one of</p> <p>20 the ideas or suggestions that could have been made</p> <p>21 when one is looking at differential both diagnoses</p> <p>22 and plans.</p> <p>23 Q What advantage would the midwife have by</p> <p>24 having the scalp monitor sample so to speak?</p> <p>25 A Obviously with a test such as scalp</p>
<p style="text-align: right;">Page 51</p> <p>1 Smith</p> <p>2 heart monitors; is that correct, Donna?</p> <p>3 MS. TAYLOR-KOLIS: That is correct.</p> <p>4 Q Is that helpful to you?</p> <p>5 A I can do that.</p> <p>6 Q Go ahead and do that for us. You were</p> <p>7 referring to strip number four when I interrupted</p> <p>8 you.</p> <p>9 A Strip number four is what the nurse writes</p> <p>10 on it when she changes the paper on the machine. The</p> <p>11 stamp that's on the strip is 65002.</p> <p>12 MS. TAYLOR-KOLIS: Can I take two minutes?</p> <p>13 (Recess taken.)</p> <p>14 Q Just took a brief break. At the time we</p> <p>15 took a break you were referencing for us the strip</p> <p>16 number using the hospital stamp system on the fetal</p> <p>17 heart monitor strips as to when you believe the --</p> <p>18 well you tell me. Tell me what you were telling us</p> <p>19 about. You referred to strip 65002 and tell me why</p> <p>20 you were referencing that strip number again.</p> <p>21 A From that point forward through the rest</p> <p>22 of the labor there were an increased number of fetal</p> <p>23 heart decelerations. There had been an occasional</p> <p>24 one earlier than that but from this point forward</p> <p>25 they became quite frequent. In some cases almost 100</p>	<p style="text-align: right;">Page 53</p> <p>1 Smith</p> <p>2 sampling you could get a good result or a not good</p> <p>3 result. If you had gotten a good result in the face</p> <p>4 of the decelerations, you could have been more</p> <p>5 confident that the baby was not suffering any ill</p> <p>6 effects from these repeating decelerations. If you</p> <p>7 had gotten a below normal result in the scalp sample,</p> <p>8 you would have had the opportunity to change the plan</p> <p>9 and to perhaps effect a delivery by another means.</p> <p>10 Q What is a fetal scalp sampling?</p> <p>11 A It's a method which whereby a small amount</p> <p>12 of blood is taken from the scalp of the baby while</p> <p>13 the baby is still inside the mother's uterus and then</p> <p>14 that sample of blood is sent to the laboratory for</p> <p>15 analysis relating to oxygen levels and the normal</p> <p>16 physiology of the baby.</p> <p>17 Q In your experience, Suzanne, based on the</p> <p>18 number of births that you have participated in, does</p> <p>19 the scalp sample correlate, the results of the scalp</p> <p>20 sample correlate with what's being shown in the fetal</p> <p>21 heart monitor?</p> <p>22 A Not always. It's possible to have a strip</p> <p>23 that looks very worrisome such as this and have a</p> <p>24 very appropriate, good scalp sample. It's also</p> <p>25 possible to have a strip that is as worrisome as this</p>

<p style="text-align: right;">Page 54</p> <p>1 Smith</p> <p>2 to show that the baby is indeed in jeopardy.</p> <p>3 Q Is there any risk associated with</p> <p>4 obtaining a scalp sample?</p> <p>5 A There would be due to the fact that it</p> <p>6 does require drawing blood from the baby. A small</p> <p>7 risk regarding excessive bleeding, potentially even a</p> <p>8 small risk of infection at that site.</p> <p>9 Q Now in this case do you believe</p> <p>10 specifically that the standard of care required that</p> <p>11 a scalp sample be obtained from this child?</p> <p>12 A I believe that the standard of care</p> <p>13 required a physician evaluation to assist in making</p> <p>14 that decision.</p> <p>15 Q So you are not saying that specifically a</p> <p>16 scalp sample needed to be obtained, your point being</p> <p>17 is Ms. Beach should have consulted a physician?</p> <p>18 A I believe so.</p> <p>19 Q Are you telling us that at a few minutes</p> <p>20 before 7:00 is when she should have consulted a</p> <p>21 physician?</p> <p>22 A No.</p> <p>23 Q When do you believe the consultation</p> <p>24 should have taken place?</p> <p>25 A I believe she should have consulted the</p>	<p style="text-align: right;">Page 56</p> <p>1 Smith</p> <p>2 Q Now tell me about the early labor in this</p> <p>3 case. What is your understanding of that?</p> <p>4 A The early labor was managed by the</p> <p>5 physicians. Ms. Yates was admitted at somewhere</p> <p>6 around 8 o'clock in the morning on December 1st of</p> <p>7 1999. She was placed on the fetal monitor at about</p> <p>8 8:20 in the morning. She was examined and the</p> <p>9 amniotic membranes were artificially ruptured at</p> <p>10 8:38. Labor progress remained slow. Pitocin</p> <p>11 augmentation was begun at approximately 11 o'clock in</p> <p>12 the morning. She received an epidural anaesthesia</p> <p>13 starting somewhere around 1 o'clock in the</p> <p>14 afternoon. And in that earlier phase of labor, the</p> <p>15 part of labor from the onset, perhaps zero or one or</p> <p>16 two centimeters, until the active phase of labor</p> <p>17 which is considered to be four to five centimeters,</p> <p>18 there is much more variability of the normal speed of</p> <p>19 labor. So given that when Ms. Beach arrived at</p> <p>20 approximately 7:00 in the evening and examined her at</p> <p>21 about 7:30 and she was at that point, Ms. Yates was</p> <p>22 at that point six centimeters, which is one or two</p> <p>23 centimeters into active phase, it's reasonable to</p> <p>24 assume that most of the day was early labor.</p> <p>25 Q You mentioned that you are aware that</p>
<p style="text-align: right;">Page 55</p> <p>1 Smith</p> <p>2 physician -- I believe that the consultation should</p> <p>3 have been obtained somewhere after midnight and</p> <p>4 prior to the time of full dilatation, which was 4:50</p> <p>5 in the morning.</p> <p>6 Q And why do you believe that the physician</p> <p>7 should have been consulted between that four-hour</p> <p>8 time span?</p> <p>9 A By that stage of the game she had had</p> <p>10 approximately five hours of worrisome fetal heart</p> <p>11 tracing, nonreassuring fetal heart tracing, and her</p> <p>12 progress in labor was clearly diminished. It never</p> <p>13 stopped but it was very slow.</p> <p>14 Q Can you be any more specific as to the</p> <p>15 time you believe the doctor should have been</p> <p>16 consulted?</p> <p>17 A I don't think there is a purpose to that.</p> <p>18 Q Okay.</p> <p>19 A No.</p> <p>20 Q Just so we are clear, your opinion is if</p> <p>21 she had consulted a physician any time between</p> <p>22 midnight and 4:50 a.m., even as late as 4:50 a.m.,</p> <p>23 she would have complied, in your opinion, with the</p> <p>24 standard of care?</p> <p>25 A Probably.</p>	<p style="text-align: right;">Page 57</p> <p>1 Smith</p> <p>2 Pitocin was ordered and administered. Why was</p> <p>3 Pitocin ordered by the physician and administered to</p> <p>4 this patient? Again, just so we are correct for the</p> <p>5 record, as you pointed out, Pitocin was administered</p> <p>6 approximately three hours after her membranes were</p> <p>7 ruptured?</p> <p>8 A Right. At about 10:45 in the morning</p> <p>9 Ms. Yates was still three cent -- only three</p> <p>10 centimeters dilated. And so it's reasonable to</p> <p>11 assume, although the physician note does not specify,</p> <p>12 that it was started to hopefully speed up the</p> <p>13 progress of labor.</p> <p>14 Q So thus we can surmise that the physician</p> <p>15 clearly was aware that labor was not progressing as</p> <p>16 rapidly as they would have liked to have seen early</p> <p>17 on, correct, otherwise Pitocin would not have been</p> <p>18 administered?</p> <p>19 A As I stated, the early phase of labor has</p> <p>20 much more variations in speed. I can't make a</p> <p>21 judgment as to what the physician really thought</p> <p>22 about the speed of labor. However by virtue of the</p> <p>23 fact that the membranes had been ruptured several</p> <p>24 hours earlier, the physician more likely wanted it to</p> <p>25 move faster than it was. Also, we have not mentioned</p>

<p style="text-align: right;">Page 58</p> <p>1 Smith</p> <p>2 this. Ms. Yates' first baby was delivered by</p> <p>3 Cesarean section for some difficulty, as I understand</p> <p>4 it, for the dilatation and the speed of dilatation</p> <p>5 and the failure to reach full dilatation. So it's</p> <p>6 reasonable to assume that they were hoping to</p> <p>7 optimize her likelihood of a vaginal delivery.</p> <p>8 Q In your opinion, I just want to make sure</p> <p>9 we are clear on this, do you believe that the Pitocin</p> <p>10 was most likely administered because the labor was</p> <p>11 not progressing as quickly as you would have liked to</p> <p>12 have seen in this patient, since the membranes had</p> <p>13 been ruptured at approximately 8:30?</p> <p>14 A Would you rephrase that again?</p> <p>15 Q Just to give you a preface, you mentioned</p> <p>16 that at this stage, the very early stages, it's quite</p> <p>17 variable as to how fast things are occurring so to</p> <p>18 speak.</p> <p>19 A Right.</p> <p>20 Q But in this particular instance based on</p> <p>21 the fact that her membranes were ruptured I believe</p> <p>22 you said at 8:30, is that correct?</p> <p>23 A Approximately. 8:38.</p> <p>24 Q 8:38. And that the Pitocin was</p> <p>25 administered approximately three hours later. That</p>	<p style="text-align: right;">Page 60</p> <p>1 Smith</p> <p>2 administered? The record shows 12:50.</p> <p>3 A I have --</p> <p>4 Q I might be wrong.</p> <p>5 A I have 12:50. And the reason I keep</p> <p>6 quibbling on it is the physician, Dr. Elliott, has a</p> <p>7 different time so --</p> <p>8 Q Oh, our expert?</p> <p>9 A That's why I said approximately 1 o'clock.</p> <p>10 Q That's fair. And in this case was the</p> <p>11 epidural ever reinforced?</p> <p>12 A I believe it was.</p> <p>13 Q When was it reinforced?</p> <p>14 A There is an out-of-sequence note which is</p> <p>15 actually the second to last note in the labor and</p> <p>16 delivery nurse's observations at 06:17 saying that to</p> <p>17 top patient off, which is epidural. I can't believe</p> <p>18 that it wasn't also reinforced in between those two</p> <p>19 intervals, but I don't see it.</p> <p>20 Q Just so we are clear, the reason to</p> <p>21 reinforce is the effects of the anaesthesia are</p> <p>22 wearing off, Ms. Yates is experiencing pain and it's</p> <p>23 simply reinstituted, for lack of a better word?</p> <p>24 A Absolutely, which is why I can't believe</p> <p>25 it's 18 hours later.</p>
<p style="text-align: right;">Page 59</p> <p>1 Smith</p> <p>2 does not lead you to the opinion that labor was not</p> <p>3 progressing as quickly as the physicians would have</p> <p>4 liked to have seen? And let me just rephrase it.</p> <p>5 Based on the fact that Pitocin was administered three</p> <p>6 hours after her membranes were ruptured, do you</p> <p>7 believe more likely than not that labor was not</p> <p>8 progressing as quickly or as rapidly as you would</p> <p>9 like to have seen in a patient such as</p> <p>10 Ms. Yates?</p> <p>11 A I think the fairest way to answer your</p> <p>12 question is to say that physicians have a tendency to</p> <p>13 manage labors more actively than midwives do and that</p> <p>14 what is a normal progress of labor, while it's normal</p> <p>15 no matter who is managing the patient, the physician</p> <p>16 tends to be more aggressive in their management and</p> <p>17 wish the progress to be even better than normal.</p> <p>18 Q So again you are not stating in this case</p> <p>19 that her labor was progressing abnormally slow</p> <p>20 between 8:30 and 11:30 a.m.?</p> <p>21 A Absolutely not.</p> <p>22 Q Now an epidural was administered to</p> <p>23 Ms. Yates, correct?</p> <p>24 A Correct.</p> <p>25 Q At what time was the initial epidural</p>	<p style="text-align: right;">Page 61</p> <p>1 Smith</p> <p>2 Q How many prior children did Ms. Yates</p> <p>3 have?</p> <p>4 A One.</p> <p>5 Q So she is what is termed a gravita 2?</p> <p>6 A Gravita refers to the number of</p> <p>7 pregnancies, not just the number of children. But</p> <p>8 she does not have any miscarriages or abortions</p> <p>9 listed so, yes, she is a gravita 2.</p> <p>10 Q And would you agree that it's recognized</p> <p>11 that when you have a patient who is a gravita 2 that</p> <p>12 has been administered an epidural that the second</p> <p>13 stage of labor can take upwards of two-and-a-half to</p> <p>14 two hours and 45 minutes, that that's not outside the</p> <p>15 realm of normal?</p> <p>16 A It's outside the realm of the Friedman</p> <p>17 curve of normal but it can happen, yes.</p> <p>18 Q I guess being more specific, are you aware</p> <p>19 that the ACOG practice bulletins specifically state</p> <p>20 that the second stage under those circumstances,</p> <p>21 again gravita 2, epidural, can routinely take longer</p> <p>22 than two hours?</p> <p>23 MS. TAYLOR-KOLIS: I object to the</p> <p>24 reference to ACOG standards, but if you know the</p> <p>25 answer to that question you can certainly answer</p>

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1 Smith

2 it.

3 A I don't know the answer and I am not --

4 you would also have to know whether that bulletin was

5 before or after the date of this labor and delivery.

6 Q Second stage begins -- well you tell me,

7 when does second stage begin?

8 A At full dilatation.

9 Q When does second stage end?

10 A At birth of the baby.

11 Q Would you agree that if the second stage

12 of labor takes two hours and 26 minutes, in and of

13 itself, in and of itself, that length of time does

14 not mean that anybody did anything negligent?

15 A Correct.

16 Q Correct? At what point in time, just from

17 a time standpoint, would it be quite worrisome to you

18 that the second stage of labor is taking longer than

19 you would like it to? Would you agree that's greater

20 than -- you look confused.

21 A I am not confused.

22 Q Let me take a step back. Your opinion in

23 this case is not that the second stage of labor took

24 too long? Is that your opinion?

25 A No.

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1 Smith

2 Q That's why I want to make sure we are

3 clear. Just so I am clear, the fact that the second

4 stage of labor in this case took two hours and 26

5 minutes does not necessarily mean that Ms. Beach was

6 negligent or deviated from the standard of care,

7 correct?

8 A Correct. The period of time that I am

9 more concerned about is that midnightish to 4:50 in

10 the morning.

11 Q But again just generally speaking, a

12 labor, second stage of labor that takes two hours and

13 26 minutes in a gravita 2 patient who is on an

14 epidural is not necessarily worrisome?

15 A If there was nothing else --

16 Q That's right.

17 A -- of concern, that would not be of a

18 concern by itself.

19 Q Normal fetal tracings, et cetera?

20 A That's right.

21 Q I just want to make sure we are clear.

22 The mere fact that the second stage took two hours

23 and 26 minutes does not mean in your opinion that

24 Ms. Beach was negligent? I realize you have

25 problems --

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1 Smith

2 A Except for the fact that she hadn't

3 consulted earlier and the hard line statement for

4 second stage of labor is two hours. I don't think,

5 however, that a consultation at two hours and some

6 minutes in this case would likely have mediated the

7 event.

8 Q Tell me then where are you getting the

9 hard line basis that second stage should last, I

10 think as you are telling us, roughly two hours?

11 A The traditional Friedman curve.

12 Q What is the Friedman curve?

13 A The Friedman curve is by a physician by

14 the name of Emmanuel Friedman who studied -- and I

15 can't give you the exact year -- many, many, many

16 women's labors and graphed the expected progress in

17 labor. And it's from that graph that we assume labor

18 from the active phase on to be approximately one

19 centimeter per hour plus two hours of second stage.

20 Q And is that published somewhere?

21 A It's published.

22 Q Where is it published?

23 A In just about every obstetric textbook in

24 the world.

25 Q Going back to your opinions in the case --

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1 Smith

2 and again I understand you have got two headline

3 opinions, one is that Ms. Beach failed to consult a

4 physician and, secondly, that the fetal heart

5 tracings in your opinion were nonreassuring between

6 the hours of midnight and 4:50 a.m.?

7 A No, they were not reassuring for longer

8 than that, but that's why in addition at midnight she

9 began to fall behind the normal progress of labor and

10 now you have two points.

11 Q The first reason to consult was she was

12 not proceeding quickly enough?

13 A The first reason to consult was she was

14 having repetitive decelerations and the overall

15 pattern was nonreassuring.

16 Q Do you believe the mere fact that she was

17 not preceding at one centimeter per hour necessitated

18 a call to the physician, that alone?

19 A Yes.

20 Q That alone, okay.

21 A Eventually. Not two hours later

22 necessarily but certainly when she really fell off

23 the curve. When you are taking two-and-a-half times

24 normal to get from six centimeters to full

25 dilatation, and you are taking nine-and-a-half hours

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1 Smith
 2 instead of four, some place in there you had to
 3 consult.
 4 Q And again on that point, that should have
 5 occurred sometime between midnight and 4:50 a.m.?
 6 A If she was six centimeters at 7:30 in the
 7 evening, she should have been fully dilated by 11:30
 8 in the evening. That's why I then said midnight
 9 onward she was well past normal progress. Yeah,
 10 normal progress of labor. I will add to my statement
 11 what I hadn't said before, particularly in the face
 12 of the fact that she has been receiving Pitocin this
 13 whole time, which is designed to speed up the labor
 14 and she is still not at the normal speed.
 15 Q So you would disagree that the fetal heart
 16 tracings demonstrate mild to moderately -- well that
 17 the fetal heart tracings demonstrate good recovery?
 18 A Sometimes they do.
 19 Q How would you describe the decelerations,
 20 were they mild to moderate? I want to talk about the
 21 65002 on.
 22 A Right. There are no -- let me not say no
 23 yet. Most of them are mild to moderate.
 24 Q Just so we are clear, most of them from
 25 65002 on --

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1 Smith
 2 A Are moderate.
 3 Q -- are mild to moderate decelerations?
 4 Are moderate? You don't think any are mild?
 5 A There is a couple that are mild.
 6 Q Do the majority of them show good
 7 recovery? And while you are looking I would ask the
 8 same question. Do most of them or a majority of them
 9 show a good variability, as well?
 10 A Variability is generally acceptable.
 11 Q How about recovery?
 12 A The recovery is maybe 50/50.
 13 Q So does it appear then that the child or
 14 the fetus is tolerating the labor and delivery
 15 process fairly well during that period of time?
 16 A Again the fact that they are nearly 100
 17 percent -- occurring with nearly 100 percent of the
 18 contractions, I think that the length of time
 19 involved means that it would be very -- it's very
 20 difficult to be comfortable with fetal well being.
 21 Q Tell me why.
 22 A Because in my experience babies' fetal
 23 heart rates can look surprisingly reactive relative
 24 to the condition of the baby when he or she is born,
 25 most specifically in instances when you have looked

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1 Smith
 2 at prolonged periods of nonreassuring strip.
 3 Q Those instances in the strip from 65002
 4 that you are thumbing through right now that do
 5 demonstrate some decelerations, could those be
 6 explained by bearing down efforts by Ms. Yates?
 7 A Generally speaking when the mother is
 8 bearing down the contraction section of the strip
 9 looks different.
 10 Q Okay.
 11 A And the majority of the time she is not
 12 bearing down.
 13 Q Could they be explained by a mother who is
 14 pushing forcefully?
 15 A Pushing forcefully and bearing down are
 16 the same thing.
 17 Q So you would disagree with that? And
 18 specifically --
 19 A Ask me the question again.
 20 Q Turn to 64745. What does that show?
 21 A She is pushing at that point.
 22 Q Pushing forcefully?
 23 A Probably. It doesn't -- you can't really
 24 determine force by the way the contraction looks
 25 because the reason it gets that flat line at the top

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1 Smith
 2 is because it runs out the graph so you don't know
 3 what the force is.
 4 Q But that does show a deceleration?
 5 A Oh, yes.
 6 Q How would you describe the deceleration?
 7 A They are actually within the space of the
 8 two contractions that are on the strip center at
 9 64745, there are probably three decelerations. No,
 10 there is four actually. There is one right at the
 11 start of that page which seems to be coming at the
 12 very end of a previous contraction that we only see a
 13 little bit of the return to baseline. There is one
 14 that starts early in the first full contraction
 15 that's on the monitor. Looks like it recovers, like
 16 you got maybe 15 to 30 seconds of baseline and then
 17 definitely drops down to a late -- well, at the end
 18 of the contraction. And there is with the second
 19 contraction another deceleration.
 20 Q Does that end up recovering? You can turn
 21 the page.
 22 A Oh, it's recovered before the end of the
 23 page.
 24 Q Oh, it is? I see, okay.
 25 A Before the end of the page.

1 Smith

2 Q That, I take it, is not one that you would
3 be concerned about?

4 A I would be concerned about both of those
5 because they are late decelerations. Late
6 decelerations are uteroplacental insufficiency.

7 Q Despite the fact that they -- she seems to
8 recover, correct?

9 A Uh-huh. The cause of the deceleration is
10 uteroplacental insufficiency. When the pressure is
11 off, she finally recovers. But for a relatively
12 short window of time before he decelerates again.

13 Q So this would be an example -- and I know
14 we got a lot of strips here, but that would be an
15 example that you believe is clearly nonreassuring?

16 A Clearly nonreassuring.

17 Q If Joyce Roberts, who you have testified
18 is respected, testified this is simply evidence of a
19 mother who is pushing forcefully and she is not
20 overly concerned about this deceleration based on the
21 recoverability and variability, how do you respond?
22 Is she wrong?

23 MS. TAYLOR-KOLIS: I will object but you
24 can answer it if you care to respond to the
25 question phrased that way.

1 Smith

2 A Yes.

3 Q And do you have any problem with Ms. Beach
4 taking over the labor and delivery at that time?

5 A Absolutely not.

6 Q Do you believe it was a deviation from the
7 standard of care for Ms. Beach to use intermittent
8 auscultation?

9 A That late in the second stage?

10 Q Yes.

11 A Yes.

12 Q Why?

13 A Because you have had multiple, multiple
14 hours of nonreassuring strip ahead of time and there
15 is no way to determine whether it will stay at the
16 same level or whether it will worsen.

17 Q Are you familiar with any ACOG practice
18 bulletin concerning the use of intermittent
19 auscultation?

20 A I know that they exist.

21 Q I understand you are critical or you
22 believe that Ms. Beach should not have discontinued
23 the use of the fetal heart monitor in this case.

24 Nonetheless, Ms. Beach did continue to monitor the
25 child every five to ten minutes thereafter, correct?

1 Smith

2 A Would you rephrase the question, please?

3 Q Well the point being I just want to --
4 just on this one example, if Joyce Roberts testifies
5 in this case during her deposition that she believes
6 that's an example of a mother pushing forcefully,
7 based on the fact that it demonstrates -- again I am
8 referring to 64745. And based on the fact that the
9 strips demonstrate good recovery and good
10 variability, that despite the deceleration that is
11 not something that should cause the midwife to be
12 nonreassured, how would you respond to that?

13 A If 64745 were preceded and followed by
14 normal fetal heart tracings I would agree with
15 Dr. Roberts.

16 Q And just take it one step further. You
17 believe 64745 is preceded and followed by --

18 A Nonreassuring tracings.

19 Q So therefore you would strongly disagree
20 with her opinion on that issue, if that's what she
21 testifies?

22 A I would.

23 Q Now at the time Ms. Beach took over the
24 care of Ms. Yates, would you agree that her labor was
25 proceeding normally at that time?

1 Smith

2 A I disagree.

3 Q You disagree. Tell me why you disagree.

4 A Because my reading was they were every
5 nine to 15 minutes.

6 Q And do you believe that is -- again I
7 recognize your initial disagreement with even
8 discontinuing the fetal heart monitor, but assuming
9 it was appropriate, you don't believe that she
10 complied with the standard that applies to
11 intermittent auscultation by only evaluating the
12 child every nine to 15 minutes?

13 A Correct.

14 Q Tell me why.

15 A Because my understanding of the standard,
16 albeit I haven't read it recently, is that the
17 requirement in second stage is at least every five
18 minutes. And I believe it really specifies after
19 each contraction.

20 Q When you say you haven't read it lately,
21 what are you referring to?

22 A The ACOG information.

23 Q That's what I thought. Nonetheless, the
24 readings that Ms. Beach did document did not
25 demonstrate any compromise of the fetus, did they?

<p style="text-align: right;">Page 74</p> <p>1 Smith</p> <p>2 A It's impossible to determine that.</p> <p>3 Q Did they represent or were they abnormal?</p> <p>4 Let me ask you this. What did she record every nine</p> <p>5 to 15 minutes during the intermittent auscultation?</p> <p>6 A Ms. Beach didn't record any of them. I</p> <p>7 believe they were recorded by the nurse.</p> <p>8 Q You are correct.</p> <p>9 A There are two different places to have</p> <p>10 them recorded, one is on the little monitor strip</p> <p>11 that takes up for that period of time. And two of</p> <p>12 the -- one, two, three, four, five places on the</p> <p>13 monitor strip which is number 64767 look abnormal.</p> <p>14 One which is handwritten to be evaluated to be the</p> <p>15 maternal pulse. One which looks like it's probably</p> <p>16 recovering from a deceleration because of the</p> <p>17 shoulder that followed as it came back to baseline.</p> <p>18 One which looks like it's the start or entering into</p> <p>19 the middle of a deceleration and you don't know what</p> <p>20 the relationship to the fetal -- to the contraction</p> <p>21 is. So you can't judge what type of deceleration it</p> <p>22 is. One which is real short. One which is pretty</p> <p>23 short. It's very hard to determine anything based on</p> <p>24 that strip.</p> <p>25 Q So you can't tell what they are recording,</p>	<p style="text-align: right;">Page 76</p> <p>1 Smith</p> <p>2 stillborn, are you?</p> <p>3 A I am saying that based on the strips I</p> <p>4 would not have been surprised to have a low Apgar.</p> <p>5 Q Have we covered all of your opinions that</p> <p>6 you intend to express in this case in regard to our</p> <p>7 client, Ms. Beach?</p> <p>8 A I believe so.</p> <p>9 Q Just a couple of housekeeping things.</p> <p>10 Well let me ask you this real quick. Well this is</p> <p>11 part of the housekeeping. In your notes there was a</p> <p>12 memorandum dated October 3, 2002. Do you have that</p> <p>13 there with you?</p> <p>14 A I have got it.</p> <p>15 MR. COOK: I am going to have this marked</p> <p>16 as Defendants' Exhibit No. 4 I believe we are up</p> <p>17 to.</p> <p>18 (Defendants' Exhibit 4, memorandum, marked</p> <p>19 for identification, as of this date.)</p> <p>20 Q You have got Defendants' Exhibit 4 in</p> <p>21 front of you?</p> <p>22 A Sure.</p> <p>23 Q What is that?</p> <p>24 A It's my memorandum to Ms. Taylor-Kolis</p> <p>25 after I read the defendant's expert opinions.</p>
<p style="text-align: right;">Page 75</p> <p>1 Smith</p> <p>2 what the nurse is recording based on --</p> <p>3 A I don't think it's possible to draw a</p> <p>4 conclusion based on these little pieces of fetal</p> <p>5 heart tracings. There is no -- I was unable to be</p> <p>6 certain that they were doing anything other than</p> <p>7 listening with the fetal heart monitor, whether they</p> <p>8 were actually listening, in addition, with a fetus</p> <p>9 scope.</p> <p>10 Q The decelerations that we have talked</p> <p>11 about from 65002 onward that you told us earlier in</p> <p>12 this deposition which you believe were problematic, I</p> <p>13 guess to use -- that may be the wrong wording, but</p> <p>14 that you believe required physician consultation?</p> <p>15 A At some point, yes.</p> <p>16 Q -- in and of themselves do not portend a</p> <p>17 poor outcome in this case, correct?</p> <p>18 A Again when you are talking about each</p> <p>19 deceleration on its own, no. But when you are</p> <p>20 talking about hours upon hours, the chances are</p> <p>21 increased that the outcome would be negative.</p> <p>22 Q You are not saying in this case that based</p> <p>23 on your review of the fetal monitor strips, without</p> <p>24 knowing what happened at the end, that you would have</p> <p>25 anticipated that this child would have been</p>	<p style="text-align: right;">Page 77</p> <p>1 Smith</p> <p>2 Q And what does this memorandum state? I</p> <p>3 mean just generally speaking, does it state your</p> <p>4 disagreements with --</p> <p>5 A It states where I felt we disagreed on our</p> <p>6 opinions, yes.</p> <p>7 Q And you are referring in this memorandum</p> <p>8 specifically to our obstetrical expert, Dr. Elliott,</p> <p>9 and our nurse midwife expert, Joyce Roberts, correct?</p> <p>10 A Correct.</p> <p>11 Q Now you were also kind enough before the</p> <p>12 deposition started to allow me to review the notes</p> <p>13 you took in this case, correct?</p> <p>14 A Correct.</p> <p>15 Q Specifically there were a set of notes</p> <p>16 that you prepared I guess I would say globally about</p> <p>17 this case, correct? And then you have two separate</p> <p>18 sets of notes that were attached to each deposition?</p> <p>19 A The first set of notes was my review of</p> <p>20 the medical records.</p> <p>21 MR. COOK: So the first set -- and we will</p> <p>22 have this marked here as Defendants' Exhibit No.</p> <p>23 5.</p> <p>24 (Defendants' Exhibit 5, handwritten notes,</p> <p>25 marked for identification, as of this date.)</p>

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1 Smith

2 Q Are these the notes -- again I have handed

3 you Defendants' Exhibit No. 5. Are those the notes

4 that you prepared in conjunction with your review of

5 the medical records only?

6 A Yes.

7 Q How many pages of notes are those?

8 A Seven.

9 Q This is all in your own handwriting,

10 correct?

11 A It is.

12 Q Then, as we mentioned, simultaneous or at

13 the time you read each deposition transcript you

14 prepared notes, as well?

15 A Correct.

16 Q And what I want to turn to first is the

17 deposition of Lisa Yates.

18 (Defendants' Exhibit 6, handwritten notes,

19 marked for identification, as of this date.)

20 Q I am going to hand you what's been marked

21 as Defendants' Exhibit No. 6. Please tell us what

22 that is.

23 A Those are my notes from the deposition of

24 Lisa Yates.

25 Q Two pages, correct?

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1 Smith

2 A Two pages.

3 Q In your own handwriting?

4 A In my handwriting.

5 (Defendants' Exhibit 7, handwritten notes,

6 marked for identification, as of this date.)

7 Q I am going to hand you what's been marked

8 as Defendants' Exhibit No. 7. What is that?

9 A These are three pages of notes in my

10 handwriting of Susan Morgan's deposition.

11 Q As we talked about, contained in your CV

12 are various publications that you participated in,

13 correct?

14 A Correct.

15 Q Are any of those publications relevant to

16 this case?

17 A I don't believe so and none are current.

18 Q Have you ever had any problems with your

19 privileges at any hospital, meaning have they ever

20 been suspended or terminated?

21 A Only by my choice.

22 Q Have you been suspended or terminated from

23 any professional organization?

24 A I have not.

25 Q Did you pass your certification on the

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1 Smith

2 first try?

3 A I did.

4 Q If you intend to offer any additional

5 opinions in this case or supplement or modify your

6 opinions in any way based on any additional

7 information that you have been or will be provided in

8 this case by Donna, will you be kind enough to let

9 Donna know to have her let us know before trial?

10 A I will.

11 MR. COOK: Okay, thank you.

12 Donna, have I covered all of the opinions

13 that you believe you intend to elicit from this

14 witness at trial? Anything else I need to

15 cover? Just from a procedures standpoint.

16 MS. TAYLOR-KOLIS: Let's put it this way.

17 While she has something to say about an event,

18 it only goes, once again, to the same repetitive

19 complaint that she has. Based on the totality

20 of the circumstances there were numerous places

21 where it should have occurred to the certified

22 nurse midwife to get medical consultation and

23 one of those had to do with the meconium, didn't

24 it?

25 THE WITNESS: It does.

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1 Smith

2 Q Let's talk about that. Tell me what other

3 opinion you intend to express at trial that we have

4 not covered regarding the meconium.

5 A Well when you add the meconium to my

6 evaluation of the fetal heart tracing, it just

7 further states that you have got to find out what's

8 going on. There is probably something negative going

9 on.

10 Q When you refer to the meconium, what are

11 you referring to?

12 A The leakage of the amniotic fluid towards

13 the end of the labor was stained with meconium.

14 There is a note in the records in sequence that

15 refers to meconium leaking as the head was actually

16 getting close to the delivery. However there is an

17 out-of-sequence note that identifies the first

18 recognition of meconium several hours earlier.

19 Q Is it uncommon for there to be meconium

20 leakage during a labor and delivery?

21 A It's one of the findings that needs to be

22 evaluated in the total picture. It's possible to

23 have meconium in a perfectly healthy, nonproblematic

24 labor, delivery and baby. However when accompanied

25 or when it accompanies a worrisome fetal heart

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1 Smith
2 tracing, one must rule out a hypoxic episode or
3 repetitive hypoxic episodes.
4 Q So what you are saying then in this case
5 is when the meconium was first identified as leaking
6 that Ms. Beach should have done something further,
7 correct?
8 A That's another one of the opportunities
9 missed to both consult the physician and probably do
10 the scalp pH, if it had not been done prior to that
11 point, or to repeat it most likely if it had been
12 done prior.
13 Q That's what I wanted to follow up on.
14 When the meconium was first leaking, what do you
15 believe the standard of care required Ms. Beach to
16 have done at that time?
17 A At a minimum consult a physician. It was
18 identified as thick meconium.
19 Q And when was the meconium first identified
20 as leaking in the records based on your review?
21 A The first note states 07:12 head showing
22 with leaking thick meconium. Then there is a
23 subsequent, out-of-sequence note that says at 05:15
24 thick meconium was noted in the nurse's notes.
25 Q So when do you believe, based on your

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1 Smith
2 review of the records, that the meconium was first
3 identified as leaking?
4 A No later than 5:15.
5 Q And I appreciate you pointing this out.
6 That's why I want to make sure we understand all of
7 your opinions. That's not something we would have
8 wanted to be surprised with at trial. Anything else
9 that you could think of that we have not covered that
10 you believe Susan Beach deviated below the standard
11 of care by either doing or failing to do in this
12 case?
13 A No.
14 MR. COOK: Donna, is there anything
15 else -- I appreciate you pointing that out. Is
16 there anything else you could think of?
17 MS. TAYLOR-KOLIS: No, there isn't
18 anything else. Bad record keeping. But who
19 cares?
20 MR. COOK: Not to be disrespectful to your
21 witness, but is she correct, as well, you do not
22 anticipate eliciting any opinions on proximate
23 cause?
24 MS. TAYLOR-KOLIS: No, she is not going to
25 testify on proximate causation.

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1 Smith
2 MR. COOK: In the memo that she prepared
3 recently regarding our two experts, there was a
4 comment in there that --
5 MS. TAYLOR-KOLIS: I think what she said
6 about Dr. Elliott's comments --
7 MR. COOK: Right, about the occlusion.
8 THE WITNESS: That I can't.
9 MS. TAYLOR-KOLIS: That she can't.
10 MR. COOK: I want to make sure.
11 (Continued on the following page to
12 include the jurat.)
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1 Smith
2 MS. TAYLOR-KOLIS: If there was continuous
3 monitoring, she might have been able to support
4 or not support that. But because there wasn't,
5 she can't say anything about that based on her
6 training and experience in reading strips.
7 MR. COOK: With that I am done.
8 MR. HUFFMAN: Thank you very much and I
9 have no questions.
10 MS. TAYLOR-KOLIS: The witness is going to
11 read.
12 (Time noted: 11:55 a.m.)
13
14
15 SUZANNE M. SMITH
16 Subscribed and sworn to before me
17 this ____ day of _____, 2002.
18
19
20 Notary Public
21
22
23
24
25

1
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : ss.
5 COUNTY OF KINGS)
6 I, PENNY ECONOMAKOS, a Shorthand
7 Reporter and Notary Public within and for the
8 State of New York, do hereby certify:
9 That SUZANNE M. SMITH, whose deposition
10 was held on December 3, 2002, as hereinbefore
11 set forth, was duly sworn by me, and that this
12 transcript of such deposition is a true record
13 of the testimony given by such witness.
14 I further certify that I am not related
15 to any of the parties to this action by blood or
16 marriage, and that I am in no way interested in
17 the outcome of this matter.
18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 12th day of December 2002.
20
21
22 _____
23 PENNY ECONOMAKOS
24
25

1
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4 Suzanne M. Smith Mr. Cook 4
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