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

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IN THE COURT OF COMMON PLEAS

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Iwona Valdivieso, etc.,)
)
 Plaintiff,)
) Case No. 443978
 vs.)
) Judge Mannen
University Hospitals of)
Cleveland, et al.,)
)
 Defendants.)

- - -

DEPOSITION OF KEVIN TURNER, M.D.

THURSDAY, APRIL 25, 2002

- - -

The deposition of Kevin Turner, M.D., called by the
Plaintiff for examination under the Ohio Rules of Civil
Procedure, taken before me, Ivy J. Gantverg, Registered
Professional Reporter and Notary Public in and for the
State of Ohio, by agreement of counsel and without
further notice or other legal formalities, at University
Hospitals of Cleveland, W. O. Walker Center, 10524 Euclid
Avenue, Suite 1100, Cleveland, Ohio, commencing at 1:00
p.m., on the day and date above set forth.

1 APPEARANCES:

2 On Behalf of the Plaintiff:

3 Ronald A. Margolis, Esq.
4 Daniel M. Finelli, Esq.
5 Finelli & Margolis
730 Leader Building
Cleveland, Ohio 44114

6 On Behalf of Defendant University Hospitals of Cleveland:

7 Kevin M. Norchi, Esq.
8 Moscarino & Treu
630 Hanna Building
Cleveland, Ohio 44115

9 On Behalf of Defendant Dr. Shina:

10 Lynette E. Kiss, Esq.
11 Bonezzi, Switzer, Murphy & Polito
12 1400 Leader Building
Cleveland, Ohio 44114

13 On Behalf of Defendant Case Western Reserve University:

14 Stephen D. Walters, Esq.
15 Weston, Hurd, Fallon, Paisley & Howley
2500 Terminal Tower
Cleveland, Ohio 44113

16 On Behalf of Defendants Dr. Wiersma and Dr. Kinsella:

17 Gary H. Goldwasser, Esq. (By Telephone)
18 Reminger & Reminger
113 St. Clair Building
19 Cleveland, Ohio 44114

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1 (Thereupon, Plaintiff's Exhibits 1, 2, 2-A
2 through 2-G, 3, 3-A and 3-B were marked for
3 identification.)

4 KEVIN TURNER, M.D.
5 called by the plaintiff for examination under the Rules,
6 having been first duly sworn, as hereinafter certified,
7 was deposed and said as follows:

8 CROSS EXAMINATION

9 BY MR. MARGOLIS:

10 Q. Dr. Turner, my name is Ron Margolis. The
11 gentleman sitting to my left is my partner, Dan Finelli.
12 Jointly, we represent the Estate of Joshua Valdivieso.

13 I am going to be asking you some questions here
14 today. If you don't understand my question, tell me,
15 because it is important that you understand what I am
16 asking you.

17 Myself, as well as the other lawyers involved in
18 this lawsuit, want to be able to rely on the information
19 you are giving me today at a later point in time.

20 Exhibit 1, sir, I believe is a copy of your CV?

21 A. Correct.

22 Q. Is it current to date?

23 A. Yes.

24 Q. You will be completing your pediatric residency
25 this year?

1 A. Correct.

2 Q. Is that a four year residency, sir?

3 A. Three years.

4 Q. Three years.

5 And you started your residency when?

6 A. In June of 1999.

7 Q. And it is a general pediatric residency?

8 A. Correct.

9 Q. In that residency, how much time is spent in
10 taking care of pediatric oncology patients?

11 A. We spend a total of two months, in general, most
12 people, two separate one month blocks in the internship
13 year dedicated to the care of hematology/oncology
14 patients. There are some residents in their senior year
15 who spend another month as the supervising or senior
16 resident on that service.

17 Q. What has your involvement with pediatric oncology
18 been?

19 A. I spent two months as an intern, and then --
20 excuse me -- on occasion, as a resident who would cover
21 the service -- there is a team -- there are different
22 teams at Rainbow. And there are team groups where a
23 senior who would be on at an overnight time might care
24 for hematology/oncology patients on a cross cover -- that
25 is what we call it -- a cross cover basis.

1 And I have been -- I have cross covered on
2 patients in my senior year, which is the year I am in
3 currently, my current academic year.

4 Q. What are your plans after the completion of your
5 residency?

6 A. I am going to be a general pediatrician in Lorain,
7 Ohio.

8 Q. All right.

9 Doctor, what if any documents have you reviewed in
10 preparation for your deposition to be taken today?

11 A. The documents that we have in front of us on the
12 table, myself and Mr. Norchi looked through to --
13 specifically myself -- to determine what documents I
14 might have authored, and I reviewed the documents
15 relating to the admission where I authored documents.

16 Q. Would documents Exhibits 2, 2-A, 2-B, 2-C, 2-D,
17 2-E, 2-F and 2-G be all of the medical records that you
18 authored relative to the care that you were involved in
19 of Joshua Valdivieso?

20 A. I believe 2-E --

21 Q. Yes.

22 A. If you could show me your 2-E.

23 Q. Yes (indicating).

24 A. I did not author.

25 Q. All right.

1 Everything else is yours?

2 A. Correct.

3 Q. Have you ever had the occasion during your
4 residency to attend tumor board meetings?

5 A. No.

6 Q. Do you know what tumor board meetings are?

7 A. Yes.

8 Q. Tell me what your knowledge of that is?

9 A. Tumor board meetings are normally meetings where a
10 number of different people who are experts in
11 hematology/oncology, or physicians, or not necessarily
12 physicians, but other people may also attend, get
13 together to discuss particular cases, particular
14 patients.

15 Q. And in the totality of your residency, you have
16 never sat in on one of those meetings?

17 A. Never.

18 Q. Do you have any independent memory of Joshua
19 Valdivieso or his family?

20 A. I don't completely understand. Do I have any
21 independent?

22 Q. Independent of the medical records.

23 There are certain people who I have represented
24 over 21 years, and they kind of stand out in your mind
25 for one reason or another.

1 A. No.

2 Q. I don't know if that is the same with patients.

3 A. The only recollection that I had of Joshua after
4 receiving the request for contacting the law department
5 of UH was that -- my only recollection was that I thought
6 he was a hematology/oncology patient. But other than
7 that, I could not tell you -- I couldn't tell you what he
8 looked like.

9 Q. Fair enough.

10 A. And I couldn't tell you -- until I reviewed these
11 documents, I could not recollect my involvement in the
12 case.

13 Q. Would it be fair to say that your only involvement
14 with Joshua would have been in October of 1999?

15 A. Yes.

16 Q. Do you have any knowledge of what the facts are of
17 this underlying lawsuit that was filed?

18 MR. NORCHI: You mean, other than from me,
19 I am presuming?

20 MR. MARGOLIS: Yes.

21 A. No. No, not at all.

22 Q. Handing you Exhibit 3 -- gentlemen, this is the
23 May 31st letter.

24 MR. NORCHI: Okay.

25 Q. (Continuing) Have you ever seen this prior to

1 today, Doctor?

2 A. No.

3 Q. And fair enough, you flipped through several
4 documents. I want to focus on Exhibit 3.

5 A. Okay.

6 I have not seen 3, 3-A or 3-B.

7 Q. Let's focus if we can for a moment, sir, on 3.

8 A. 3, okay.

9 Q. Is the first time that you have seen Exhibit 3
10 when I have given it to you to review?

11 A. Yes.

12 Q. What about 3-A?

13 A. Yes -- yes, this is the first time I have seen
14 this.

15 Q. And 3-B?

16 A. This is the first time I have seen 3-B.

17 Q. Do you know a Dr. Susan Wiersma?

18 A. I do.

19 Q. And how do you know Dr. Wiersma?

20 A. Dr. Wiersma is one of the attending
21 hematology/oncology patients -- physicians, excuse me --
22 that I have had contact with during my residency.

23 Q. And on how often of a basis have you been able to
24 interface with Dr. Wiersma, as a resident?

25 A. That is a difficult question to answer. I would

1 say -- I would be conjecturing -- my limitation of my
2 contact with her has probably been a total of two weeks
3 time. I mean, it has been -- I don't have a recollection
4 of specifically that information, to be honest.

5 Q. What about Dr. Timothy Kinsella?

6 A. I have never had contact with Dr. Timothy
7 Kinsella.

8 Q. Do you know of the reputation that Dr. Kinsella
9 has at UH?

10 MR. NORCHI: Objection.

11 Q. (Continuing) By what you know?

12 MR. NORCHI: Objection.

13 Go ahead, if you have an answer.

14 A. No, I don't.

15 Q. I have asked you if you have ever seen Exhibit 3
16 before today, and you said no. Do you have any idea who
17 authored Exhibit 3?

18 MR. NORCHI: That would mean he would have
19 to read it. I presume you want him to read it?

20 MR. MARGOLIS: Yes.

21 THE WITNESS: Yes?

22 MR. MARGOLIS: Yes.

23 MR. NORCHI: Do you know who authored it?

24 A. No.

25 Q. Have you ever heard of the facts which are set

1 forth in Exhibit 3 --

2 A. No.

3 Q. -- prior to today?

4 A. No.

5 Q. Have you spoken with anyone other than Mr. Norchi
6 about this lawsuit?

7 A. About the facts of this lawsuit?

8 Q. Yes.

9 A. No.

10 Q. During the year 1999 through June of 2000, did you
11 have any relationships with any other medical providers
12 in the department of pediatric oncology, in other words,
13 did you have possibly a resident or a Fellow in the
14 department who was a friend of yours, or a professional
15 colleague that you knew?

16 A. In a friendly manner? In a manner other than --

17 Q. Let's talk about anybody who you knew from July of
18 '99 through June of 2000 in the department of pediatric
19 oncology, other than Dr. Wiersma.

20 A. The other attending physicians and --

21 Q. Who would those be?

22 A. Without review -- I am not absolutely able to say
23 for certain during that time frame what hematology/oncology
24 attendings I had come in contact with. My sincere belief
25 is that I probably had contact with all of them at one

1 point in time or the other.

2 Q. Who would all of them be, can you give me names?

3 A. I can give you a list of, you know, my memory.

4 This is in no certain order. Michael Nieder, Brenda

5 Kitchen, Robin Miller, Eric Kodish, Susan Wiersma. Those

6 are the ones that I can remember.

7 Q. Okay, Doctor, what about, same question as it

8 applies to the department of pediatric oncology/radiology?

9 MR. NORCHI: Radiology oncology?

10 Q. (Continuing) Radiology oncology, I am sorry.

11 A. No, I have never had contact with anyone from

12 radiation oncology.

13 Q. Getting back to pediatric oncology, you shared

14 with me the name of the attending you have probably had

15 contact with?

16 A. Right.

17 Q. What about anybody, either a resident or a Fellow?

18 A. In the department of hematology/oncology?

19 Q. Yes.

20 A. That would be limited to Fellows, and I can't say

21 for certain in that year who a Fellow might have been.

22 If I had recollection, I might say that Jeffery Auletta

23 was a Fellow in that year, but I don't know that he was.

24 Q. Doctor, I want to discuss with you the charting

25 principles that you have been taught as a resident at UH.

1 Would you agree with me -- you started your
2 internship at UH, as well, correct?

3 A. Correct.

4 Q. Would you agree with me that when you come into
5 the program, although you have a lot of substantive
6 knowledge, there is certainly a lot of information you
7 need to learn through your internship and your residency?

8 A. Correct.

9 Q. And you look to the institution that you are
10 serving your internship and residency at to help provide
11 you with the opportunity to gain that information?

12 A. Correct.

13 Q. Is there any general principle that you would be
14 aware of, or protocol or policy, let's say from July of
15 '99 through June of 2000, about what you would do when it
16 comes to charting if you learned that you had a -- you
17 needed to change the chart because there was an error
18 that existed in the chart, and you wanted to let
19 everybody know that, you know, this may have been
20 charted, but in fact it was wrong, and so I want to
21 correct it, how would you go about doing that?

22 A. In your question, you asked me if there was any, I
23 believe it was general principle, protocol or -- what was
24 the other one?

25 Q. Policy, procedure, that you, as a resident, would

1 have been --

2 A. Well, I am not aware of any policy -- I am not
3 aware of a policy, I never read it. The only thing I can
4 say is what I have been taught --

5 Q. Okay.

6 A. -- and probably -- certainly this started before
7 residency, that this was a policy that I developed and
8 was taught before I even came to residency at UH.

9 Q. As far back as medical school, your clinical time
10 in medical school?

11 A. Correct.

12 Q. Okay.

13 A. And that was any error that is made in the chart,
14 I have been taught, and this is what I would do, just
15 cross a single line through it, place some type of
16 notation, I personally use void, and sign my initials.

17 Q. And that would have been information that you
18 would have known back in your days as a medical student?

19 A. Correct.

20 Q. Doctor, I want to discuss with you a little bit
21 about the duties that physicians owe to patients and
22 their families.

23 A. Okay.

24 Q. Does a physician owe a duty to the patient and the
25 family to be honest and forthright?

1 A. Yes.

2 Q. If a physician makes a mistake in the treatment of
3 a patient, does the physician have a duty to disclose
4 that mistake to the family?

5 A. I believe they do, yes.

6 Q. And in the context of your practice, have you ever
7 had an occasion where a mistake was made, and you advised
8 others that in fact a mistake had been made, whether it
9 is a more senior resident, or -- I don't want to put you
10 on the hook.

11 Let me do it this way --

12 MR. NORCHI: Thank you.

13 Q. -- hypothetically --

14 A. Okay.

15 Q. -- hypothetically, I want you to assume in the
16 context of your medical career, a mistake may or may not
17 have been made relative to patient care.

18 Hypothetically, if that occurred --

19 A. Okay.

20 Q. -- and you had knowledge of it, would you advise
21 the patient?

22 MR. NORCHI: Objection.

23 You may answer.

24 MR. MARGOLIS: And this is hypothetical.

25 MR. NORCHI: Sure.

1 A. Would I personally advise the patient?

2 Q. Yes.

3 A. Possibly.

4 Q. All right.

5 Would you advise --

6 A. Although I may not -- possibly, but I may not be
7 the best person to advise the patient.

8 Q. Would you bring this to the attention of a more
9 senior doctor?

10 A. If a mistake had been made?

11 Q. Yes.

12 A. Yes.

13 Q. All right.

14 At no point would you intentionally withhold or
15 conceal information of a mistake, would you?

16 A. No.

17 Q. And at no point would you alter medical records in
18 an attempt to conceal that a mistake had occurred?

19 A. I would not.

20 Q. Do you know of any ethical physician who would?

21 MR. NORCHI: Objection.

22 If you have an answer, provide it.

23 Q. (Continuing) Let me ask the question this way:

24 Would it be ethical for a physician to do that?

25 MR. WALTERS: Objection.

1 MR. NORCHI: Objection.

2 Q. (Continuing) You know what? I don't want to put
3 you on the hot spot.

4 A. I would say I am not an expert in ethics.

5 Q. Okay.

6 As a resident -- and these are hypothetical
7 questions --

8 A. Okay.

9 Q. -- in no way do they mean to infer that anything
10 like this happened during your medical career, or that
11 you were knowledgeable of it. Hypothetical questions.

12 At University Hospital, if you, as a resident,
13 knew that an attending physician had made a dosing
14 mistake in treatment rendered to a patient, and had
15 knowledge of this mistake, but chose not to bring it to
16 the attention of the patient, what if anything as a
17 resident would you do?

18 I notice on your CV that you had some
19 administrative capacities in resident relations, where
20 you were a resident rep.

21 A. Correct.

22 I guess -- that is a very difficult question.

23 Q. Why? Isn't right right and wrong wrong?

24 MR. NORCHI: Objection.

25 Go ahead.

1 Q. (Continuing) What makes it difficult, Doctor?

2 A. I guess normal -- I guess to answer the question,
3 if that was something I was aware of, I would likely --
4 and this has never come up, is the reason I guess it is
5 difficult --

6 Q. This is hypothetical.

7 A. -- this is the first time I would have considered
8 this, because if that was to be the case, I would bring
9 it to the attention of another more senior physician,
10 very likely either one of my chief residents or my
11 residency director or associate director.

12 Q. And what would be the purpose, hypothetically, of
13 bringing it to the attention of a more senior doctor?

14 A. To have someone to assist me with, you know -- to
15 make someone more -- you know, to make someone more
16 senior than I aware.

17 Q. And what would be the purpose of making them
18 aware? So that appropriate steps could be taken?

19 A. That is a reason -- yes, I think that is a
20 reasonable answer to the question.

21 Yes, I think in that case, I would want someone to
22 know that this was occurring. My role and my ability to,
23 you know, handle or deal with such an instance, being a
24 resident, would be limited such that someone more senior
25 than me would more adequately be able to take steps that

1 might need to be taken.

2 Q. Based upon your period of time with University --
3 strike that.

4 Doctor, can you just give me your date of birth
5 and Social?

6 A. July 8th, 1972, and 221-46-9360.

7 Q. And other than your October of '99 contact with
8 Joshua, you had no contact with him after that date?

9 A. No.

10 Q. Have you ever had patients that you treated that
11 were diagnosed with neuroblastoma?

12 A. Other than Joshua?

13 Q. Yes.

14 A. I am not -- I don't know.

15 Q. All right.

16 A. Not to my recollection currently.

17 Q. Based upon your interaction with Dr. Susan
18 Wiersma, do you believe her to be competent as a
19 practicing pediatric oncologist?

20 A. Yes.

21 MR. MARGOLIS: Thank you, sir. I have
22 nothing further.

23 MR. WALTERS: No questions.

24 MS. KISS: No questions.

25 MR. NORCHI: Gary, do you have any

1 questions?

2 MR. GOLDWASSER: No questions. Thank you
3 very much.

4 MR. NORCHI: The doctor will not waive
5 signature, and I will explain it to him.

6 - - -

7 (DEPOSITION CONCLUDED)

8 - - -

9
10 Kevin Turner, M.D.

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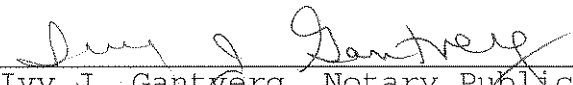
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CERTIFICATE

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

I, Ivy J. Gantverg, Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above-named KEVIN TURNER, M.D., was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition as above set forth was reduced to writing by me, by means of stenotype, and was later transcribed into typewriting under my direction by computer-aided transcription; that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Cleveland, Ohio, this 25th day of April, 2002.


Ivy J. Gantverg, Notary Public
in and for the State of Ohio.
Registered Professional Reporter.
My commission expires November 5, 2003.

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