

1 IN THE COURT OF COMMON PLEAS

2 SUMMIT COUNTY, OHIO

3 LYNN GMEREK, et al.,

4 Plaintiffs,

JUDGE WILLIAMS

5 -vs-

CASE NO. 2002-03-1482

6 EMERY LEUCHTAG, et al.,

7 Defendants.

8
9 - - - -

10 Deposition of SUSAN M. VARGO, M.D., taken as
11 if upon cross-examination before Kristin L.
12 Wegryn, a Notary Public within and for the
13 State of Ohio, at the offices of Susan M.
14 Vargo, M.D., 370 East Market Street, Akron,
15 Ohio, at 9:30 a.m. on Wednesday, July 16, 2003,
16 pursuant to notice and/or stipulations of
17 counsel, on behalf of the Defendants in this
18 cause.

19 - - - -
20
21
22
23
24
25

SCANNED
11/9/09

1 APPEARANCES:

2 Robert C. Meeker, Esq.
3 19 North High Street
4 Akron, Ohio 44308
5 (330) 253-3337,

6 On behalf of the Plaintiffs;

7 Thomas S. Mazanec, Esq.
8 Mazanec, Raskin & Ryder
9 100 Franklin's Row
10 34305 Solon Road
11 Solon, Ohio 44139
12 (440) 248-7906,

13 On behalf of the Defendants.

14 ALSO PRESENT:

15 Beverly Mayle
16
17
18
19
20
21
22
23
24
25

1 SUSAN M. VARGO, M.D., of lawful age,
2 called by the Defendants for the purpose of
3 cross-examination, as provided by the Rules of
4 Civil Procedure, being by me first duly sworn,
5 as hereinafter certified, deposed and said as
6 follows:

7 CROSS-EXAMINATION OF SUSAN M. VARGO, M.D.

8 BY MR. MAZANEC:

9 Q. Hi, Dr. Vargo. I'm Tom Mazanec. I'm
10 going to ask you some questions today, and if
11 you need to look at records to answer any
12 questions, feel free to do it. If you need
13 clarification, if my question's unclear, feel
14 free to ask me to clarify it. Okay?

15 A. Yes.

16 Q. Thanks.

17 Dr. Vargo, what's your legal name?

18 A. Susan M. Vargo.

19 Q. And what type of physician are you?

20 A. Pediatric.

21 Q. How long have you been a physician?

22 A. Since '84, so almost 20 years.

23 Q. In connection with this case we're here
24 with, what records have you reviewed?

25 I know you have some documents in front of

1 you. What records have you been provided or
2 reviewed?

3 A. We have our chart, just our office notes,
4 then I have hospital records from her
5 cardiologist, the surgeons in Michigan,
6 physical therapy. Those kind of records.

7 Q. Have you reviewed reports from any experts
8 that have been obtained in this case?

9 A. You mean legal experts?

10 Q. Medical experts.

11 A. Just Dr. Zakha is the only one I'm aware
12 of.

13 Q. What have you reviewed from Dr. Zakha?

14 A. Now, he just sends me the notes after he
15 sees Allison. Nothing in regard to this issue
16 here, no. I'm sorry. I didn't understand
17 that.

18 Q. Okay. How long has Allison been a patient
19 of yours?

20 A. I first saw Allison, I believe she was
21 about six weeks old. I can tell you the date.
22 I'm sure she was three-and-a-half months. It
23 was September 5th of '95.

24 Q. At that time, what was the diagnosis of
25 her condition? What was her medical condition?

1 A. She has a hypoplastic left heart
2 ventricle.

3 Q. In layman's terms that I can understand,
4 what is that?

5 A. The left side of her heart was
6 underdeveloped.

7 Q. Were you treating her for anything in
8 regard to her hyperplastic left heart?

9 A. No. She was seeing a cardiologist and a
10 cardiovascular surgeon for that, so I would
11 just follow her for her healthy visits. You
12 know, for her immunizations.

13 Q. Her well-baby care type stuff?

14 A. Well-baby care. Then if she became ill, I
15 would have seen her first-line, then either
16 send her to the cardiologist or at least
17 consult with them.

18 Q. Now, the cardiology, are you talking about
19 Dr. Jacobstein?

20 A. Correct.

21 Q. He was following her for her hypoplastic
22 left heart?

23 A. Right.

24 Q. You were taking care of the routine colds
25 and things like that?

1 A. Right. Her shots.

2 Q. Immunizations, things of that nature.

3 In general, I want to just -- this is not
4 going to take long, but we're really here for
5 ultimately events that took place on December
6 4th, 1997.

7 What I want to ask you is between when you
8 started seeing her in September of '95 up to
9 say December, November of 1997, in general, how
10 did Allison's medical condition progress for
11 that two-year period of time?

12 A. She was not well. She always had a blue
13 color. She was always short of breath. Her
14 developmental milestones were delayed, and we
15 attributed it to her weakness because her heart
16 function was poor. So she was not, you know,
17 doing things at the usual rate.

18 Q. So for that two-year period of time, she
19 still had this hypoplastic left heart syndrome?

20 A. Correct.

21 Q. Did any new problems develop in a two-year
22 period of time? Did other things develop with
23 her?

24 A. I don't believe so. I think she had a
25 few, you know, just viral illnesses, but I

1 don't think she had anything dramatic until
2 that moment in time.

3 Q. Now, the blue color, is that part of the
4 symptoms of hypoplastic left heart?

5 A. Correct, because that part of your heart
6 helps circulate your blood, you know, through
7 your body. It comes, you know, from the lungs,
8 through the body.

9 Q. They give you your color?

10 A. Right. It helps. Her heart function just
11 overall is not that great, so they knew she was
12 going to have to have, you know, surgeries
13 forthcoming.

14 Q. So I understand it, her heart's not
15 pumping like yours or mine, a normal heart
16 would be, so there's an inadequate blood flow?

17 A. Correct, everywhere.

18 Q. And creates numerous problems, which among
19 them the color?

20 A. She was not getting enough oxygen, you
21 know, as much as you and I would have, so she
22 always had a bluish color. She was a little
23 bit short of breath. Her liver and spleen were
24 enlarged. That was her baseline.

25 Q. And also you said developmentally she was

1 delayed because of this?

2 A. Right.

3 Q. In what ways was she behind?

4 A. She was slow in walking. I'd have to look
5 it up to see when exactly she started walking.

6 I know some of her speech and fine motor
7 milestones were a little bit slow. If you need
8 that exact information, I can find it for you.

9 Q. No. I'm just trying to get a handle on
10 generally how she stood in December '97.

11 So she was slow in walking. She's behind
12 the normal, you told me behind in speech behind
13 in fine motor skills. Anything else you can
14 recall -- or if you want to look at the
15 records -- that she was behind in?

16 A. If I can find a checkup before she got
17 sick.

18 Q. Before December? Let me see if I can find
19 something.

20 A. I have it all written down for you. This
21 kind of condition, most kids don't survive very
22 long at all, so we all thought she was doing
23 pretty well for her heart function.

24 Q. Let me ask you about what you just said,
25 this condition. When someone's born with a

1 hypoplastic left heart, in '95, that's a
2 condition that could be terminal?

3 A. I never have seen anyone live as long as
4 Allison has.

5 Q. So at the time in '95, in general, the
6 prognosis for someone who is born with a
7 hypoplastic heart wasn't good?

8 A. It was very poor. I had never seen, you
9 know, a baby live this long that had it, so we
10 were all thrilled that she was doing as well as
11 she did.

12 Q. Just so I understand that, what would be
13 the typical, back in '95, the typical life
14 span? Is it six months? A year?

15 A. I'm a pediatrician. I'm not a
16 cardiologist. But most kids died within the
17 first week or two of life that I had seen that
18 were born with this. She really did pretty
19 well, you know, for just --

20 Q. Just to make it?

21 A. I attribute it to her parents. That's my
22 personal opinion. They were very good parents.

23 Q. Have you worked with Dr. Jacobstein, Mark
24 Jacobstein, before in other matters?

25 A. Yes.

1 Q. Can you give me a handle on how many cases
2 you've been a pediatrician and worked with him?

3 A. I can't remember when he came. He came
4 from Cleveland. About 20, 30. You know, no
5 one as ill as Allison, but I've had a lot of
6 patients that have seen him.

7 Q. Do you still work with him?

8 A. Yes.

9 Q. Okay. In general, what's your opinion of
10 his medical abilities?

11 A. I think he's a good doctor.

12 MR. MEEKER: Objection.

13 A. I'm not privy to what exactly -- you know,
14 I've heard the parents' side, but I don't know
15 what happened that day, you know, why he
16 didn't --

17 Q. Okay.

18 A. I don't think she had her two-year checkup
19 because she was kind of -- that was right
20 around at the time she was a little bit sicker.
21 She was in for some ear infections and sinus
22 infection, croup, different things.

23 Q. My understanding is you got toward the end
24 of '97, she was due to have some other heart
25 procedures coming up?

1 A. Right.

2 Q. What was your understanding of what was
3 going to be happening?

4 A. I know she had her tricuspid valve
5 replaced. I believe that's what the plan was.

6 Q. I think you're looking at the same letter
7 I am, a letter dated December 16th, 1997 from
8 Dr. Jacobstein?

9 A. Right. That was after this episode.

10 Q. But the letter talks about his visit of
11 November 26th, which is before the events of
12 December 4th?

13 A. Okay. It refers to a visit of November
14 26th. Just take a second. It said I wonder if
15 Allison would not be better off having a
16 tricuspid valve replaced. This is a
17 significant surgical undertaking.

18 Q. Is that what Dr. Bove ultimately did in
19 Michigan later on?

20 A. Yes.

21 Q. Okay. So, once again, so I understand as
22 a layman, what is that surgery?

23 A. The valve between your atrium and your
24 ventricle, her whole, you know, left ventricle
25 was underdeveloped. Well, that valve is

1 really -- it wasn't working very well at all,
2 so, you know, a surgical procedure to put in an
3 artificial valve there was a risky thing. And
4 they were trying to decide, you know, when was
5 it good timing for her to have that. And so --

6 Q. Okay.

7 A. I think that's what the whole thought was.
8 You know, she was going to have to have that
9 replaced sooner or later, and when was the best
10 time to do it was what he was contemplating I
11 guess.

12 Q. Okay. And that was done in December of
13 1997 by Dr. Bove in Michigan?

14 A. Correct.

15 Q. Now, there were some events that occurred
16 on December 4th, 1997. Have you seen any
17 records with regard to those events?

18 A. I have just some of the hospital data from
19 there, but I was not -- I didn't see her at all
20 at that time because I wasn't -- she was so
21 sick in the Intensive Care that they, you know,
22 had the expert.

23 Q. You didn't see her on that date?

24 A. No, I didn't see her. And I didn't see
25 her even in the hospital at all.

1 Q. Prior to that date, December 4th, when was
2 the most recent time prior to that that you've
3 seen her that you recall, or if you can see it
4 from your records?

5 A. Let's see, I saw her October 6th of '97.
6 Let me see if -- October 16th. Dr. D'Avello
7 saw her November 24th.

8 Q. Is he someone from your office?

9 A. Yes.

10 Q. Okay.

11 A. She's one of my partners. I believe
12 that's the last time I would have seen her.

13 Q. Okay. Was her condition then essentially
14 unchanged from when you started seeing her, her
15 heart problems?

16 A. I would say not significantly different as
17 far as her -- she was just having some
18 respiratory, some sinusitis. We had checked a
19 couple chest x-rays in the room because we were
20 always worried, you know, she could develop
21 pneumonia easily. And she had been on
22 antibiotics for some ear and sinus problems,
23 but not acutely ill like as I, from my records
24 and from what I recall.

25 Q. Okay. Allison was subject to developing

1 pneumonia easily because of her heart problems?

2 A. Now, I don't know how many -- we checked
3 for pneumonia at different periods. I don't
4 recall that she actually had it, but she always
5 had -- when you listened to her lungs, it
6 sounded like fluid in her lungs. It was just
7 mainly because she was in heart failure. Her
8 heart wasn't working properly. So we checked
9 x-rays just to make sure she hadn't developed
10 pneumonia on top of it. But I don't think she
11 ever had an acute case. It was more upper
12 respiratory.

13 Q. Okay. I imagine with regard to the events
14 of December 4th, you being a pediatrician are
15 not going to offer opinions critical of what
16 Dr. Jacobstein did; is that correct? You're
17 not a physician --

18 A. Correct.

19 Q. -- to criticize his medical care?

20 A. Correct, I am not. My skills are not at
21 that level.

22 Q. Okay. You're just here to comment on
23 Allison's condition?

24 A. Uh-huh.

25 Q. Okay. What happened to Allison on

1 December 4th?

2 In other words, we knew about her heart
3 problems. You kind of told me about them and
4 the surgery that took place later in December.
5 Looking at the records, did any new problems
6 develop on December 4th, 1997?

7 A. When we were downstairs, I did not see her
8 after that until February. I believe it was
9 February 11th.

10 Q. February '98 --

11 A. Correct.

12 Q. -- would be the next visit?

13 A. After they got home from Michigan. She
14 had been up there for quite awhile and I think
15 had to go back.

16 Q. Let's go through. Take a look at your
17 February --

18 A. Okay. February 11th.

19 Q. What was her condition at the time,
20 February 11th?

21 A. She actually looks so much better to me
22 because she was pink. That's the first time
23 I'd seen her with a pink color. So I remember
24 that she was, you know, overall looked better.
25 The mom brought her in because she had had some

1 cough congestion, more like cold symptoms, but
2 because of what she'd been through, she
3 wanted -- you know, she was obviously
4 concerned, so we -- I remember she had a little
5 bit of sounded like fluid in her lungs, which
6 actually was better than she'd ever been
7 before. But we checked her chest x-ray, which
8 was normal, and did some blood work, which was
9 normal.

10 Q. Her chest condition was better than
11 October?

12 A. Right. Right. But mom was worried
13 because she'd had some cold symptoms, so we
14 just didn't want to take any chances of her
15 getting sick.

16 Q. Okay.

17 A. But the only thing I recall just from
18 looking through is her leg. She'd had the
19 interosseous line and she had some problems
20 with healing. She was very weak because she
21 had been bedridden for so long.

22 Q. Once again, I'm a layman. To make sure,
23 interosseous linus, that's like an IV?

24 A. In the bone.

25 Q. Into the bone itself?

1 A. In the bone marrow.

2 Q. Not just in the vein.

3 In other words, like I put an IV in my arm
4 following my surgery, this goes right in the
5 bone for bone marrow?

6 A. Correct. It's kind of an emergency access
7 to get fluids and that kind of thing.

8 Q. There were still some -- which leg was
9 this in, if you recall? Feel free to look at
10 the records.

11 A. I'd have to look back and see. I don't
12 remember. I'm sure it's written in my notes
13 somewhere here.

14 Q. If you don't recall, that's okay.

15 A. Yeah.

16 Q. Do you recall where in the leg it was put,
17 it would have been put?

18 A. It was in the lower leg.

19 Q. Okay. Down between the knee and the
20 ankle?

21 A. Correct.

22 Q. And she was still having some residual
23 problems as a result of the line being put in?

24 A. I think it just caused some weakness. She
25 had some problems with -- I'm going to look at

1 Q. Let's go back to the IV in the leg that
2 you said there was some weakness she had in her
3 leg, in the muscle because of that?

4 A. Well, I'm not sure it's because of that or
5 it's just, you know, because she was so ill.
6 She was.

7 Q. Okay.

8 A. You know, after the surgery, she, you
9 know, was in bed for quite a long time.

10 Q. Can you state within medical certainty
11 that the weakness in the leg was related solely
12 to the interosseous -- did I say that right?

13 A. Right.

14 Q. IV?

15 A. I cannot say that, no.

16 Q. Okay. Let's follow up on that anyway.
17 With the leg, did that leg ever get better
18 equal to the other leg at some point in time?

19 A. Functionally, I think yes.

20 Q. Okay.

21 A. If a neurologist or an orthopedic doctor
22 saw her, he may say it's not exactly the same,
23 but, you know, she's quite active now.

24 Q. The weakness that she had that you noticed
25 in February of '98, at what point in time did

1 it reach functionability equal to the other
2 leg?

3 A. It took a long time.

4 Q. It did?

5 A. She had physical therapy, you know, for
6 quite a long time. Let me see.

7 Q. I just want to get a ballpark, once again,
8 if you don't have the exact date. I'm just
9 trying to understand if it was the summer of
10 '98, the fall. It was the next year?

11 A. No. It was a while. She was in physical
12 therapy -- she must still be getting a little
13 bit of physical therapy just from the
14 coordination standpoint. I don't have that
15 written down from her last checkup. She
16 doesn't come in that often anymore because
17 she's doing great.

18 Q. Okay.

19 A. No. Even as of May of '02 she was, she
20 was not in physical therapy. Now, I mean, I
21 would say just from my recollection it probably
22 was a year, you know, that she really was
23 starting to be more active.

24 Q. As a ballpark, after a year, the weakness
25 in the leg problems, she'd caught up to her

1 other leg and now she was becoming active
2 again?

3 A. She was weak in both legs, honestly. I
4 think the one was a little more severe because
5 of that tissue. You know, there was a little
6 bit of tissue damage from the --

7 Q. Because of the --

8 A. -- line.

9 Q. Because of the bone marrow line? But she
10 was weak in both legs?

11 A. Oh, yes.

12 Q. Did she get physical therapy for both
13 legs?

14 A. Oh, yes. Yes. And her upper arms. She
15 was just kind of weak overall.

16 Q. When was the last time you saw her?

17 A. I saw her in May of --

18 Q. This year of '03?

19 A. Yeah. It was for just a healthy checkup.

20 Q. How is she doing?

21 A. She's doing well.

22 Q. Were there heart problems that still
23 exist? Does she still have the hypoplastic
24 heart?

25 A. Yeah.

1 Q. Is that something that's a lifetime
2 problem?

3 A. Unless you have a heart transplant.

4 Q. In other words, that heart, you can put
5 valves in, but it's always going to be a weaker
6 heart until a heart transplant comes along?

7 A. Her heart function is nowhere near normal,
8 but it's -- you know, she's leading a pretty
9 good life right now.

10 Q. Okay. Does she have restrictions on what
11 she can do?

12 A. No.

13 Q. She can live like any -- how old is she
14 now?

15 A. She's eight.

16 Q. She can live like a normal eight-year-old?

17 A. Uh-huh.

18 Q. Do sports?

19 A. Yes. The only thing she does, when she
20 goes to the dentist, she has to take
21 antibiotics. Anybody with any kind of
22 structural problem in their heart, they have to
23 have antibiotics before they go to the dentist.

24 Q. She's running around on her legs playing
25 soccer or whatever eight-years-olds do?

1 A. Yes.

2 Q. Do you know if she does any sports?

3 A. I wrote down she exercises, but I don't
4 know if it's anything structured. I didn't
5 write that down. But she was running around
6 the room. She's active.

7 Q. Do you have any knowledge as to whether or
8 not in December 4th, 1997 Allison suffered any
9 kind of respiratory arrest?

10 A. I believe she had. She was compromised.
11 You know, I don't know if she actually
12 arrested.

13 Q. What I want to ask --

14 A. Or a cardiac arrest.

15 Q. What I want to ask you, as a result of
16 that event, the respiratory event, did you
17 notice any residual problems from that event in
18 February of 1998?

19 A. No.

20 Q. Okay.

21 A. I really, to me she seemed better as far
22 as --

23 Q. Okay.

24 A. -- just her color. You know, she was
25 still -- she was weaker than I had last seen

1 her, but she had gone through, you know, major
2 surgery, so I was, you know, attributing that
3 to more just all the surgical procedure. And
4 she had kind of been --

5 Q. Her respiratory condition, at some point
6 in time, did it improve and get better than it
7 was in October, September?

8 A. It was better when I saw her in February.

9 Q. February 1998?

10 A. Even though her mom brought her in for a
11 cold, she sounded -- she was not having the
12 problem breathing that she had had before.

13 Q. So her respiratory condition in February
14 1998 was better than it was in October? It had
15 been improved?

16 A. Yes.

17 Q. Has it continued to improve?

18 A. Yes.

19 Q. How is her respiratory system now?

20 A. I'd say normal.

21 Q. Normal?

22 A. We haven't had her pulmonary function
23 tested, but she seems normal. She has a hoarse
24 voice.

25 Q. Okay. Do you -- once again, the question

1 is going to be do you have any idea when she
2 became normal, her respiratory system? Do you
3 have any estimate, month, year, that you can
4 give me?

5 A. We did an oxygenation test on her actually
6 in our office on that date, and the reading --
7 it's called a pulse oximetry, and it was 90.
8 94 to 100 is considered normal. She was never
9 close to 90 before. So I know just from the
10 cardiac and respiratory standpoint she was
11 better then. But normal, I don't know if I can
12 answer that question. She never really had
13 significant respiratory problems after that. I
14 think it just gradually got better and better.

15 Q. Who gave her the physical therapy to her
16 legs, if you recall?

17 A. I think Children's Hospital. I don't -- I
18 have the letters from them if you need a name.

19 Q. No, that's okay. And I apologize if I
20 repeat myself. I might do that.

21 A. That's okay.

22 Q. Was the physical therapy, as far as you
23 recall, the same in both legs that was given?

24 A. I just went through one letter. They
25 mentioned that the right was a little worse

1 than the left, so I imagine that's where the
2 line was. But let's see if I can find it. She
3 has a lot of paperwork in here.

4 Oh, yeah. She broke her leg at one point,
5 which is normal.

6 Q. What year did that happen, she broke her
7 leg?

8 A. It wasn't too long ago.

9 Q. Of course, I'm going to ask you which leg?

10 A. Of course.

11 Q. Of course.

12 A. Let's see. She must not have had physical
13 therapy since she was six.

14 Q. I'm sorry. She had physical therapy until
15 she was six?

16 A. No, no. I'm -- where I am in her chart,
17 she's six. Let's see. I wrote a prescription
18 for physical therapy in February of 2002. She
19 might have gotten that through school. I don't
20 have any record from that.

21 Q. That's fine.

22 A. And her leg, let me just tell you that in
23 a second here. She saw Dr. Bill Schrader and
24 -- I'm sorry.

25 Q. It's okay.

1 A. I'll find it in here. It's been within
2 the past couple years.

3 Q. Let me ask you a couple other questions.

4 You were interacting with her parents
5 quite a bit I imagine?

6 A. Oh, yes.

7 Q. Did they come to take her to all her
8 well-baby care visits?

9 A. Yes.

10 Q. Does one parent come more often than the
11 other, or both come?

12 A. Lynn usually comes, but he comes along.

13 Q. She's the mom, Lynn?

14 A. Right. I'm sorry. She broke her arm. I
15 have to take that back. It was not her leg.

16 Q. Okay. And --

17 A. And it was in February of '03.

18 Q. How have they both been through all of
19 this emotionally?

20 A. I think understandably, you know, the
21 mother was quite upset. And she was always
22 vigilant with Allison from the time I first saw
23 her. And I think after the whole surgical, you
24 know, procedure up in Michigan, she was, you
25 know, she was -- that was very stressful for

1 her. But they seem now like they, you know, do
2 the usual things kids do. She's, you know,
3 enjoying life. I don't think it's -- from what
4 I can see, I don't think she suffered any
5 long-term, you know, problems psychologically
6 from -- this is Lynn. The mother I'm talking
7 about.

8 Q. Right.

9 A. I know she was very stressed, you know.

10 Q. So I understand, what you perceive to be
11 the nature of her stress was the problems of
12 her daughter's hypoplastic heart, the problems
13 that this little girl has undergone from birth?

14 A. Right. And then, you know, having her get
15 so ill and, you know, having them tell her at
16 Children's that you should let her go. And she
17 wasn't ready to do that, so she -- you know,
18 that's why I said before I give them the credit
19 for her being here today.

20 Q. How about when you saw her in February of
21 '98, the visits in that spring? How was Lynn
22 at those visits as opposed to in the fall of
23 '97? Was she about the same?

24 A. I think she was tired, you know, because
25 of everything she had been through. But she

1 seemed a little happier because Allison looked
2 better. She looked a lot healthier.

3 Q. Would you say, from what you could see,
4 Lynn was in better spirits in the spring of '98
5 than she was in the fall of '97?

6 A. I would say yes.

7 Q. Because her daughter was getting her color
8 back, as you mentioned?

9 A. She look healthier.

10 Q. The surgery in December was successful.
11 It sounds like that worked?

12 A. Yes. Yes.

13 Q. Did she ever express any anger to you or
14 frustration with anything Dr. Jacobstein did?

15 A. Yes.

16 Q. And when did that -- when did she express
17 that?

18 A. She told me about that, I'm sure it was
19 that first visit that he had told her, you
20 know, she wasn't going to live. They should --
21 she probably wasn't going to live and she had
22 been through a lot and they should think about
23 letting her go. And she just wasn't going to
24 do that. Not that mother.

25 Q. I'm confused. When did that occur? When

1 did -- this is Dr. Jacobstein supposedly told
2 Lynn that?

3 A. That's what she told me.

4 Q. Right. But when did she tell you that
5 Dr. Jacobstein said this? I'm trying --

6 A. The first time I saw her was February
7 11th.

8 Q. Of '98?

9 A. Yes. So I hadn't seen her because they
10 were over in Michigan.

11 Q. Okay. So she told you Dr. Jacobstein at
12 some time, is it in December of '97 told her?

13 A. When they were in Intensive Care.

14 Q. When they were in Intensive Care on
15 December 4th that she wasn't going to make it?
16 They're better off just letting her go?

17 A. That he didn't think she would make it and
18 have a meaningful life. That's what -- I did
19 not record that in my notes, but I remember it
20 clearly.

21 Q. And it was upsetting to her?

22 A. Oh, very.

23 Q. Okay.

24 A. Yes. You know, she said we worked so hard
25 with Allison all this time. I wasn't going to

1 let her go at this time. So they arranged to
2 get her up to Michigan. And she didn't want to
3 take her back to Children's Hospital, so any
4 time we've had to have some things done, she's
5 better with it now, but initially it was just a
6 bad memory for her to have to go back there for
7 x-rays or whatever.

8 Q. And as you said you notice that that was
9 upsetting to Lynn when she told you that in
10 February what Dr. Jacobstein apparently told
11 her?

12 A. Very upsetting.

13 Q. Okay. Did you see her get beyond that and
14 get over that at some point in time, once Lynn
15 got -- I'm sorry. Once Allison got better?

16 A. Yes. She didn't mention it to me again.
17 She had told me that they were going to bring a
18 lawsuit. And I can't remember when she told me
19 that, but she did not dwell on it when I would
20 see her.

21 Q. Other than that, she's been in good
22 spirits when you've seen her?

23 A. I think so. From what I've seen, you
24 know, she's got a lot to deal with. She's got
25 other children, too.

1 MR. MAZANEC: Okay. Thank you very
2 much. Those are all the questions I have. I
3 appreciate it.

4 THE WITNESS: Okay.

5 MR. MEEKER: Doctor, you can either
6 read this deposition and tell this young lady
7 that you waive it, or you can read it.

8 THE WITNESS: Oh, right now?

9 MR. MAZANEC: No. You can put it on
10 the record whether you want to read it in case
11 she's asked to type this.

12 THE WITNESS: Did you write this
13 okay?

14 THE NOTARY: Yes.

15 THE WITNESS: Yes, I don't have to
16 read it.

17 (Signature waived.)

18

19

20

21

22

23

24

25

C E R T I F I C A T E

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

I, Kristin L. Wegryn, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named SUSAN M. VARGO, M.D. was by me, before the giving of her deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and the reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action. I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 2nd day of July A.D. 2003.

Kristin Wegryn
Kristin L. Wegryn, Notary Public, State of Ohio
My commission expires June 29, 2008