

1 IN THE COURT OF COMMON PLEAS
2 OF CUYAHOGA COUNTY, OHIO

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4 JACOB A. FIKTUS, a minor
5 by and thru his next of
6 friend and natural mother,
7 KELLY FIKTUS, et al.,

8 Plaintiffs,

9 vs Case No. 430662

10 UNIVERSITY HOSPITALS
11 of CLEVELAND, et al.,
12 Defendants.

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14 DEPOSITION OF JOSEPHINE S. WANG, M.D.
15 MONDAY, MARCH 11, 2002

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17 Deposition of JOSEPHINE S. WANG, M.D., a
18 Witness herein, called by counsel on behalf of
19 the Plaintiff for examination under the statute,
20 taken before me, Vivian L. Gordon, a Registered
21 Diplomate Reporter and Notary Public in and for
22 the State of Ohio, pursuant to agreement of
23 counsel, at the offices of W. O. Walker Center,
24 10524 Euclid Avenue, Cleveland, Ohio, commencing
25 at 9:30 o'clock a.m. on the day and date above
26 set forth.

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1 APPEARANCES:

2 On behalf of the Plaintiff

3 Becker & Mishkind

4 HOWARD D. MISHKIND, ESQ.

5 Skylight Office Tower Suite 660

6 Cleveland, Ohio 44113

7 216-241-2600

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10 On behalf of the Defendant University Hospitals

11 Davis & Young

12 JAN L. ROLLER, ESQ.

13 1700 Midland Building

14 Cleveland, Ohio 44115

15 216-348-1700

16

17

18 On behalf of the Defendants University OB/GYN

19 Specialties and Dr. Kiwi

20 Sutter, O'Connell, Mannion & Farchione

21 JOSEPH A. FARCHIONE, ESQ.

22 3600 Erieview Tower

23 Cleveland, Ohio 44114

24 216-928-4501

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1 JOSEPHINE S. WANG, M.D., a witness herein,
2 called for examination, as provided by the Ohio
3 Rules of Civil Procedure, being by me first duly
4 sworn, as hereinafter certified, was deposed and
5 said as follows:

6 EXAMINATION OF JOSEPHINE S. WANG, M.D.

7 BY MR. MISHKIND:

8 Q. Would you please state your name for
9 the record.

10 A. Josephine Wang.

11 Q. Are you a physician?

12 A. Yes.

13 Q. Dr. Wang, my name is Howard Mishkind
14 and we were introduced before the deposition
15 started. I'm going to be asking you some
16 questions this morning. I will start out by
17 asking you some background questions, then I'm
18 going to ask you questions about your
19 involvement in the Fiktus delivery or the labor
20 and delivery aspects of the Fiktus delivery,
21 okay?

22 A. Yes.

23 Q. Have you had your deposition taken
24 before?

25 A. Yes.

1 Q. Then you know, at least from whatever
2 experience you have had, that I'll ask you
3 questions and you will provide me answers. The
4 court reporter will take down both the question
5 and the answer.

6 A. Yes.

7 Q. And I'll wait until you are done with
8 giving an answer and you wait until I am done
9 with the question so that Vivian's job is a
10 little easier than it otherwise is.

11 A. Okay.

12 Q. If you don't understand what I'm
13 asking you -- it never happens because my
14 questions are always very clear -- but if for
15 some reason I ask you something that you have no
16 idea about, ask me to repeat it, and I'll try,
17 or I will have Vivian read it back to you. Fair
18 enough?

19 A. Yes.

20 Q. Now, you said to me a moment ago that
21 you have had your deposition taken before. Have
22 you had your deposition taken on more than one
23 occasion or just once?

24 A. More than one occasion.

25 Q. Tell me how many times, please.

1 A. Three.

2 Q. The deposition I am taking this
3 morning is now the fourth?

4 A. Correct.

5 Q. Can you tell me just in sort of a
6 narrative fashion what the other three
7 situations were, so that I don't have to ask you
8 a lot of questions.

9 MS. ROLLER: Let me ask you, what is
10 it you want to know?

11 MR. MISHKIND: I want her to tell me
12 when the depositions were, what the case was
13 about, and as much as she can in terms of what
14 her involvement was.

15 I don't want you to go on and on, but
16 basically tell me, perhaps, the earliest,
17 Dr. Wang, when your deposition was first taken,
18 what that was about, and then move up in
19 chronology to the present. And if that's too
20 cumbersome, then I will ask you specific
21 questions, but I'm trying to speed things along.

22 MS. ROLLER: Take them in order;
23 first one first, and tell them what your
24 involvement was in that case.

25 MR. MISHKIND: That's fine. I can

1 ask you specific questions.

2 A. The first case was in 1996. It
3 involved a vaginal delivery, retained placenta.
4 She had a postpartum D&C, and it was a fertility
5 case.

6 Q. Were you at University Hospitals at
7 the time?

8 A. Yes.

9 Q. What year in your training were you
10 at the time?

11 A. First year.

12 Q. Do you remember the name of the
13 patient? Now it would be called the plaintiff.

14 A. No. I can tell you my lawyer's name.

15 Q. Do you remember the name of the
16 lawyer that took your deposition, by chance?

17 A. I just can tell you my lawyer's name.

18 Q. What was your lawyer's name?

19 A. Kevin Norchi.

20 Q. I guess it's most important to
21 remember the person that represents you as
22 opposed to the person that asks you questions;
23 right?

24 A. Yes.

25 Q. Did that matter involving the

1 retained placenta go to trial?

2 A. Yes.

3 Q. And you testified at trial also, I
4 take it?

5 A. Yes.

6 Q. Do you remember what the outcome of
7 that case was?

8 A. It returned in our favor.

9 Q. It was a defense verdict then?

10 A. Yes.

11 Q. You have learned a little bit of
12 lingo.

13 Were you involved in the delivery in
14 that case?

15 A. Yes.

16 Q. Moving past '96, when was the next
17 time that your deposition was taken, ma'am?

18 A. '99.

19 Q. And again, the same format, tell me
20 about that case.

21 A. That was a labor management.

22 Q. What was the outcome of the delivery?

23 A. It was a forceps.

24 Q. A forceps delivery?

25 A. Yes.

1 Q. Was there an issue of brain damage to
2 the baby or claim of brain damage to the baby?

3 A. Yes.

4 Q. Was there any type of a claim for any
5 type of an injury physically to the baby as a
6 consequence of the delivery process itself?

7 A. I wasn't involved in the delivery, so
8 I don't remember.

9 Q. So when you say labor management, you
10 clearly were involved --

11 A. Early.

12 Q. -- early. You were not there at the
13 time of the delivery?

14 A. No.

15 Q. When I hear forceps delivery, a
16 number of things come to mind, including a
17 potential injury to the brain, the baby leading
18 to brain damage or potentially some type of
19 trauma, as well.

20 A. I don't remember any.

21 MS. ROLLER: Let him put a question
22 to you.

23 MR. MISHKIND: That was the end of
24 it. A hanging question.

25 Q. You don't remember anything about the

1 particulars of that case?

2 A. Not of the delivery.

3 Q. What about the name of the patient in
4 that case?

5 A. I can tell you my lawyer's name.

6 Q. And that was?

7 A. Bob Tucker.

8 Q. Do you remember who the doctor was
9 that did the delivery in that case?

10 A. Jeff Siegel.

11 Q. That was also a University Hospital
12 delivery?

13 A. Yes.

14 Q. Did that matter go to trial?

15 A. No.

16 Q. Do you know what the outcome of that
17 case was?

18 A. I believe it was settled.

19 Q. Were you named as a party in either
20 of the two cases that we have talked about?

21 A. Just the first one.

22 Q. The other one was against University
23 Hospital and your deposition was taken as an
24 employee at the hospital; is that a fair
25 characterization?

1 A. I wasn't named.

2 Q. Your name didn't appear on any
3 pleadings as a defendant?

4 A. Right.

5 Q. The third case, tell me about that.

6 A. That was in -- it was just this year.

7 MS. ROLLER: 2002?

8 THE WITNESS: Yes. It was originally
9 supposed to be September 13th, but I think it
10 was January of this year.

11 Q. Let's start in reverse order. Who
12 was your attorney for that deposition?

13 A. Kevin Norchi.

14 Q. So thus far as we sit here this
15 morning at a quarter of 10:00, Mr. Norchi has
16 defended you in two previous cases that your
17 deposition has been taken; true?

18 A. Yes.

19 Q. And tell me what that case involved.

20 A. That was, I managed her overnight.

21 Q. This was a labor --

22 A. It was an induction.

23 Q. Were you present at the time of the
24 delivery?

25 A. No, I wasn't.

1 Q. Was this a cesarean delivery?

2 A. Yes.

3 Q. And do you know what the injury or
4 the claimed injury was to the baby?

5 A. The baby had seizures.

6 Q. That case in all likelihood has not
7 gone to trial as of yet?

8 A. Not yet, no.

9 Q. Do you know what aspect of your care
10 was called into question?

11 MS. ROLLER: Objection. If it was.

12 A. No.

13 Q. Do you remember the name of that
14 lawyer that took your deposition?

15 A. No.

16 Q. Okay.

17 A. It was a video.

18 (Discussion off the record.)

19 Q. It was a video in person or one of
20 the video teleconferencing type of depositions?

21 A. Video teleconferencing.

22 Q. Thus far, I understand that you have
23 testified one time at trial?

24 A. Yes.

25 Q. And from what you have told me in

1 these three cases that your deposition was taken
2 before, one of those three cases you were named
3 as a defendant?

4 A. Yes.

5 Q. Bringing us up to current now, are
6 you named as a defendant in any other medical
7 negligence cases?

8 A. No.

9 Q. You are not named as a defendant in
10 the Fiktus case, but the reason we are here is
11 because you were working at University Hospitals
12 at the time and were involved in a certain
13 aspect of the labor and the management of the
14 labor. You understand that; correct?

15 A. Yes.

16 Q. You were an employee of University
17 Hospitals at the time that Kelly Fiktus was
18 laboring; is that true?

19 A. Yes.

20 Q. Tell me, doctor, I know that you were
21 kind enough to come into Cleveland for purposes
22 of your deposition. Where did you come in from?

23 A. Seattle, through a wind storm.

24 Q. And what do you do in Seattle,
25 Washington?

1 A. I'm an OB/GYN.
2 Q. Where do you practice in Seattle?
3 A. Kirkland, Washington, just outside of
4 Seattle.
5 Q. What type of practice are you in?
6 A. OB/GYN practice.
7 Q. Is it a high risk practice? Is it a
8 general OB/GYN practice?
9 A. A general OB/GYN practice.
10 Q. You are not a perinatologist, are
11 you?
12 A. No.
13 Q. Are you board certified?
14 A. Yes.
15 Q. When did you become board certified?
16 A. January.
17 Q. Congratulations.
18 A. Thank you.
19 Q. Was January of 2002 the first time
20 that you were eligible to become board
21 certified?
22 A. Yes.
23 Q. So the first time through, you were
24 successful?
25 A. Yes.

1 Q. When did you finish your residency?

2 A. '99.

3 Q. Where did you complete your residency
4 at?

5 A. University Hospitals of Cleveland.

6 Q. When in '99 was your residency
7 finished?

8 A. June.

9 Q. Did you do a four year residency?

10 A. Yes.

11 Q. All in OB/GYN?

12 A. Yes.

13 Q. Where did you go to medical school?

14 A. State University of New York at
15 Stonybrook.

16 Q. Graduated in '94?

17 A. '95.

18 Q. So all of your training after medical
19 school then was at University Hospitals of
20 Cleveland?

21 A. Yes.

22 Q. Did you work at any other hospitals
23 while you were in your residency in Cleveland?

24 A. No.

25 Q. Who was your residency supervisor?

1 A. The residency director was --

2 Q. That's what I meant.

3 A. Dr. Zogor.

4 Q. And did he hold that position with
5 regard to your residency throughout?

6 A. Yes.

7 Q. He wasn't involved in any aspect of
8 the Fiktus case, was he?

9 A. Not that I could see.

10 Q. He had some responsibility in terms
11 of just supervising you as a resident; is that
12 your understanding?

13 MS. ROLLER: If you know. If you
14 don't understand the question, tell him you
15 don't understand.

16 Q. One of the things I should tell you,
17 even though you had your deposition taken,
18 remember when I said if you don't know the
19 answer, Jan can't answer the question for you.
20 So if you don't understand the question, tell me
21 you don't.

22 A. I don't understand the question.

23 Q. As a director of your residency
24 program, what kind of duties and
25 responsibilities did he have as it relates to

1 your functioning as a doctor at University
2 Hospitals?

3 MR. FARCHIONE: Objection. Go ahead.

4 A. I believe he made sure that we were
5 trained -- he oversaw our training.

6 Q. How frequently did you have direct
7 contact with him during your residency?

8 A. We had educational conferences every
9 Friday and we had yearly evaluations. I think
10 yearly. I can't remember if it was yearly or
11 twice a year.

12 Q. How were your evaluations?

13 A. I believe they were great.

14 Q. Did you receive some type of written
15 input back concerning your evaluations from
16 Dr. Zogor or from anyone else that was involved
17 in your residency program?

18 MR. FARCHIONE: Objection.

19 A. I'm not quite sure I understand the
20 question.

21 Q. You said that you think that your
22 evaluations were good. Was it just verbal
23 evaluations or did you receive something in
24 writing?

25 A. We have written evaluations.

1 Q. Was there ever a time that you were,
2 for lack of better terminology, written up or
3 someone indicated that you weren't meeting
4 expectations in any particular area of your
5 training?

6 A. Not that I can recall.

7 Q. The practice -- and I don't mean to
8 jump around with you. I want to cover your
9 background before we move to the Fiktus matter.
10 The practice in Kirkland, Washington
11 is a general OB/GYN practice. And I take it
12 there are other OB/GYN's in the group?

13 A. Yes.

14 Q. How many?

15 A. Four others.

16 Q. And just for completeness, will you
17 tell me their names.

18 A. David Asmussen A-S-M-U-S-S-E-N; Maura
19 Cardwell C-A-R-D-W-E-L-L; Kathryn Arendt,
20 A-R-E-N-D-T; Mary Brumfiel, B-R-U-M-F-I-E-L.

21 Q. Dr. Wang, when you left UH after
22 completing your residency, did you establish
23 yourself in Seattle, Washington?

24 A. In Kirkland, yes.

25 Q. With this group?

1 A. Yes.

2 Q. So since finishing your residency,
3 this is where you have been doing your OB/GYN
4 since?

5 A. Yes. After vacation.

6 Q. Fair enough. You are entitled to do
7 that.

8 You haven't entered into or
9 participated in any type of a fellowship
10 program; is that true?

11 A. That's correct.

12 Q. Do you have plans to do that?

13 A. No.

14 Q. What hospitals are you currently
15 affiliated with?

16 A. Evergreen Hospital.

17 Q. Are you originally from the New York
18 area?

19 A. Yes.

20 Q. I take it you have never had your
21 privileges at Evergreen or at University
22 Hospitals suspended or revoked or called into
23 question?

24 A. Never.

25 Q. Have you ever applied for privileges

1 to Evergreen, to University Hospitals, or to any
2 other hospital and been denied privileges?

3 A. No.

4 Q. Have you ever served as an expert
5 witness in any medical negligence cases?

6 A. No.

7 Q. I understand your deposition is going
8 to be taken this afternoon, as well; true?

9 A. Yes.

10 Q. Do you have any other depositions
11 scheduled in any other matters, to your
12 knowledge, other than the ones you have told me
13 about that you have completed, the one that we
14 are involved in, and the one that you are going
15 to have this afternoon?

16 A. No.

17 Q. You wouldn't happen to have a
18 professional resume or a CV, would you?

19 MS. ROLLER: I haven't seen it.

20 MR. MISHKIND: If she has it --

21 MS. ROLLER: If you have it, let me
22 see it, doctor.

23 MR. MISHKIND: That's fine.

24 (Discussion off the record.)

25 Q. Just for the record, you believe you

1 have one, not physically on your person, but in
2 your car, in perhaps the parking lot here;
3 correct?

4 A. I believe so. I know I brought one
5 here with me, but it's not on my body, so the
6 only place it can be is in the car.

7 Q. Ms. Roller wants to take a look at it
8 to make sure that there is not some privilege or
9 issue that I would not be entitled to see, and
10 I'm not sure there would be any, but if you
11 would at the completion of the deposition, if
12 you provide it to Ms. Roller, even perhaps
13 before you and she depart, then she can provide
14 me with a copy of it. Okay?

15 A. If it's not here, I can mail it or
16 fax it to you.

17 Q. That's fine. Have you written or
18 published anything in the medical literature?

19 A. I have been co-authors on journal
20 articles, prior to medical school.

21 Q. Did you go directly from college to
22 medical school?

23 A. No.

24 Q. How many years between college and
25 medical school?

1 A. Three years.

2 Q. You told me you went to SUNY. Did
3 you also go there for undergraduate?

4 A. No.

5 Q. Where did you go to undergraduate?

6 A. Cornell University.

7 Q. And was it while you were at Cornell
8 that you were co-author?

9 A. No.

10 Q. In between Cornell and SUNY?

11 A. Yes.

12 Q. What was your undergraduate degree?

13 A. Biology.

14 Q. And what year did you graduate from
15 Cornell?

16 A. '88.

17 Q. So you took off a number of years
18 between?

19 A. Three years.

20 Q. And what did you do during those
21 three years?

22 A. I worked in a research lab at
23 Rockefeller University in molecular biology.

24 Q. Forgive me, but where is Rockefeller?

25 A. In New York City.

1 Q. I suspected that, but I didn't want
2 to assume.

3 And it's during those three years
4 working in the lab that you co-authored?

5 A. Yes.

6 Q. Tell me what the topics were.

7 A. Regulation of DNA synthesis,
8 specifically with transcription factor 2A.

9 Q. Were all the articles that you
10 co-authored dealing with this DNA issue?

11 A. Yes.

12 Q. Have you co-authored, authored or
13 participated in the publication of any other
14 scientific or medical literature, other than
15 these three on DNA?

16 A. No.

17 Q. And where were the three published?

18 A. One was in Nature.

19 Q. That's the name of the journal?

20 A. It's a big journal.

21 Q. Is it called Journal of Nature or
22 just Nature?

23 A. Nature. It only needs one word. I
24 think Proceedings of the National Academy of
25 Sciences. There were two there. And I believe

1 there was one in the Journal of Biochemistry.

2 Q. Aside from your undergraduate degree
3 and your medical degree, do you hold any other
4 degrees?

5 A. No. It feels like it.

6 Q. I'm sorry?

7 A. No.

8 Q. You are licensed, I take it, to
9 practice medicine in the State of Washington?

10 A. Yes.

11 Q. Are you licensed in any other states?

12 A. I was licensed in Ohio and I think it
13 lapsed this year.

14 Q. I take it when you left to go to
15 Washington to establish the practice, your
16 intent was to stay out west and not to come back
17 to Cleveland?

18 A. That's correct.

19 Q. You have in front of you portions or
20 perhaps an entire copy of the Fiktus records; is
21 that true?

22 A. Yes.

23 Q. I think I also saw a deposition
24 transcript. Is that Dr. McHugh's deposition
25 transcript?

1 A. Yes.

2 Q. Did you read that over?

3 A. I reviewed it briefly in the half
4 hour I was here.

5 Q. Prior to this say 9:00 o'clock this
6 morning, had you seen Dr. McHugh's deposition at
7 any time in the past?

8 A. It was mailed to me. I didn't open
9 it and I lost it.

10 Q. Fair enough. So even though it was
11 physically sent to you by Ms. Roller, for
12 reasons you have just stated, you had not seen
13 it before this morning; true?

14 A. I saw the envelope.

15 Q. Is there anything else by way of
16 testimony or medical records, in other words,
17 deposition testimony or medical records
18 pertaining to Jacob Fiktus or Kelly Fiktus that
19 you have reviewed prior to the deposition this
20 morning?

21 A. No.

22 Q. Your half hour review of the
23 deposition of Dr. McHugh, did you make any notes
24 or note anything in your mind about anything
25 that was of significance to you in reading

1 Dr. McHugh's deposition?

2 MS. ROLLER: Objection. Go ahead.

3 A. That she moved to Philadelphia.

4 Nothing else stood out.

5 Q. The deposition was about a hundred
6 pages. I take it you have not had a chance to
7 read through the entire transcript?

8 A. No.

9 Q. Did you review anything in the
10 medical literature prior to today's deposition?

11 A. No.

12 Q. I understand that you were in
13 attendance for Dr. McHugh's residency,
14 graduation?

15 A. Yes.

16 Q. Did you come in specifically for the
17 party or were you in town?

18 A. I came in to see -- I met another
19 friend of mine, another resident, a friend of
20 mine was having a baby, so we just made it all
21 into one party. There were also other -- I was
22 good friends with other people in her class.

23 Q. Do you remember the Fiktus baby?

24 A. No.

25 Q. Do you remember Kelly Fiktus?

1 A. No.

2 Q. Do you remember anything at all about
3 your involvement, either directly or in a
4 supervisory capacity as being a senior resident
5 over Dr. McHugh? Anything at all other than
6 what you can derive from the records? Anything
7 stand out in your mind?

8 A. No.

9 Q. So when we talk about the Fiktus
10 case, you are going to be relying entirely on
11 the record; is that a fair statement?

12 A. That's correct.

13 Q. Let me ask you this. In looking at
14 the record -- and we are going to talk about
15 your specific entries and perhaps some
16 communications or orders that may have been
17 given during the course of your involvement --
18 but as you look at the records and reviewed
19 them, did anything come back to you that you
20 could recall about this case in any respect?

21 A. Nothing.

22 Q. You know, obviously, that at the time
23 of delivery there was a Bandl's ring that was
24 encountered or at least a Bandl's ring that was
25 discovered in the uterus, correct, from what you

1 can see from the delivery record?

2 A. From the charts, yes.

3 Q. Did you ever have any discussion with
4 Dr. Loret deMola or Dr. McHugh about the nature
5 of the delivery itself; in other words, what was
6 encountered at the time of the C-section?

7 A. Not that I recall.

8 Q. Personally, have you ever been
9 involved in labor and delivery where a
10 retraction ring or a Bandl's ring of the uterus
11 was encountered?

12 A. I have never seen one before.

13 Q. Have you done any reading at all in
14 the literature as it relates to the incidence of
15 Bandl's ring?

16 A. No.

17 Q. Do you recall studying at all in
18 medical school or in residency any issues about
19 the frequency or incidence of Bandl's ring?

20 A. Say that again.

21 Q. Let's break it down. In medical
22 school, do you recall any areas of study where
23 you read about or had lectures concerning
24 Bandl's ring?

25 A. Somewhere along my education I've

1 learned that they are extremely rare and they
2 are retraction rings in the uterus.

3 Q. You are just not certain where along
4 your educational process that understanding came
5 into your mind?

6 A. I have picked up a lot of knowledge.

7 Q. I'm glad to hear that. You just
8 don't know where along that line it came into?

9 A. Lots of definitions. Yes.

10 Q. Do you know whether Bandl's ring is
11 more or less common in an underdeveloped or a
12 premature uterus as opposed to a full-term
13 uterus?

14 A. No.

15 Q. Do you know from your training what
16 are considered to be the causes of a Bandl's
17 ring?

18 A. No.

19 Q. Can you cite me to any literature
20 that you are aware of that speaks to the
21 management of a labor and delivery that involves
22 a premature baby where there are issues of
23 hyperstimulation of the uterus?

24 A. Start from the beginning again.

25 Q. Sure. Let me ask you first, when one

1 refers to hyperstimulation of the uterus during
2 labor and delivery, what does that mean?

3 A. Hyperstimulation has increased tone
4 usually resulting in more than one contraction
5 every minute or contractions that last more than
6 two minutes at a time.

7 Q. Do you know whether that presents a
8 set of potential concerns to the obstetrician in
9 managing the labor and delivery of a mom who is
10 about to deliver a premature baby, where there
11 is hyperstimulation of the uterus?

12 A. Any time hyperstimulation of the
13 uterus occurs, be it premature or normal labor,
14 you worry about if the baby is getting oxygen.

15 Q. Do you know whether hyperstimulation
16 of the uterus is of greater concern in
17 situations where there is a premature uterus as
18 opposed to a full-term uterus?

19 A. Say that again.

20 Q. Is hyperstimulation during labor and
21 delivery more of a greater concern to you in a
22 preterm uterus as opposed to a full-term uterus?

23 A. I'm not aware of anything referring
24 to the uterus itself. Usually we are concerned
25 with the baby in its response to

1 hyperstimulation.

2 Q. Well, let me rephrase that, because
3 perhaps I'm being overly simplistic, but when I
4 refer to a preterm or premature -- obviously
5 this baby was not a full-term baby; correct?

6 A. This baby was 34 weeks. It was
7 premature.

8 Q. And in a premature baby, typically is
9 the uterus also considered to be underdeveloped?

10 A. No.

11 Q. So that the one doesn't go
12 hand-in-hand with each other?

13 A. No.

14 Q. Do you know whether a retraction ring
15 in a premature baby is more or less common?

16 A. No, I don't know.

17 Q. Do you know whether hyperstimulation
18 of a premature baby is more or less of a concern
19 than a full-term baby?

20 A. I think hyperstimulation is
21 hyperstimulation, premature or mature. You
22 worry about the same things in a mature baby as
23 a premature baby.

24 Q. Is there a greater incidence of
25 injury, whether from hypoxia or anoxia or

1 trauma, when you are dealing with
2 hyperstimulation of the uterus in a preterm, a
3 premature baby as opposed to a full-term baby?

4 A. I don't think I can answer the
5 question the way it's phrased.

6 Q. Is it because it was poorly phrased
7 or --

8 A. I can't give you an answer to your
9 question.

10 Q. Why is that?

11 MS. ROLLER: If you have a reason.

12 A. Because I think premature babies are
13 more prone to issues, be it from anything,
14 compared to mature babies, not just to one.

15 Q. One of the events that I want to talk
16 about is hyperstimulation of the uterus. Is a
17 premature baby more likely to sustain some type
18 of an injury as a consequence of
19 hyperstimulation of the uterus as opposed to a
20 full-term baby?

21 MS. ROLLER: Well, if you have an
22 answer, tell him. If you don't know, tell him
23 you don't know.

24 A. I don't know.

25 Q. That's something that you are just

1 not familiar with enough in terms of your own
2 experience; true?

3 A. Well, I don't think if you say A
4 equals B, B equals C, you can say A equals C.

5 Q. As you sit here right now, you are
6 not aware of any studies that have talked about
7 whether hyperstimulation of the uterus creates
8 more potential for injury to a premature baby as
9 opposed to a full-term baby; is that true?

10 A. I'm not aware of any literature.

11 Q. Are there certain journals that you
12 subscribe to, certain OB/GYN journals that you
13 subscribe to?

14 A. I have them at the library that I
15 have. I'm a member of ACOG, so I get the
16 Journal, but I read a whole bunch of different
17 journals.

18 Q. I take it you probably own Williams?

19 A. I have that and many other textbooks,
20 yes.

21 Q. Which ones do you refer to on a
22 regular basis for general information in the
23 area of obstetrics?

24 A. I can't say that I refer to one or
25 two. I refer to a bunch of different things.

1 Q. If you were going to research an
2 issue on the incidence of a retraction ring or
3 Bandl's ring and what kind of scenarios are
4 encountered when a Bandl's ring or retraction
5 ring occurs, where would you likely look to do
6 your research?

7 A. First, I would go on PubMed and the
8 Cochran Library, which are on-line engine
9 searches for articles, most current.

10 Q. And you have not done that at this
11 particular point; true?

12 A. No.

13 Q. Would you look to Williams also to
14 see what is contained in Williams on the issue
15 of retraction ring or Bandl's ring?

16 A. I would look in a number of places.

17 Q. Would Williams be one of them?

18 A. I would go to journal articles more,
19 because any information in a textbook is already
20 five to ten years old. So if you want current
21 literature, you do a literature search.

22 Q. Do you consider Williams to be a
23 generally reliable treatise in the area of
24 obstetrics?

25 A. What do you mean by treatise?

1 Q. Well, a publication, a book that
2 contains generally reliable information on
3 different topics in the area of obstetrics.

4 A. It's a good source, but there are
5 other good sources too. I don't just look at
6 one.

7 Q. I'm not suggesting that there aren't
8 other good sources, nor am I suggesting you
9 don't look to others. I'm talking about
10 Williams, and you consider Williams to be one of
11 a number of generally reliable sources of
12 information in the area of obstetrics?

13 A. That and conferences, journal
14 articles. I can't say just textbooks.

15 Q. I understand.

16 A. Textbooks are old news. They are
17 good for summaries.

18 Q. And again, I understand that journal
19 articles are out there. I understand that there
20 are other publications. But in medical school,
21 did you use Williams from time to time to
22 supplement your educational process?

23 A. Yes, and other books too.

24 Q. Again, let's not add on, because I
25 know there are others. I'm not suggesting that

1 Williams --

2 A. I just can't say yes to Williams,
3 because it's everything. I can't sum up my
4 education in one textbook or any of my research
5 in one textbook because you can't do that.

6 Q. I'm not suggesting that you would nor
7 did I suggest that. I'm asking whether Williams
8 is one of a number?

9 A. Yes, one of a number.

10 Q. In that regard, it's one of a number
11 of generally reliable sources of information in
12 the area of obstetrics and gynecology; true?

13 A. One of a number, yes.

14 Q. What else, by way of books in the
15 area of obstetrics and gynecology, do you
16 consider to be perhaps right up there with
17 Williams as being a generally reliable source of
18 information in the area of obstetrics and
19 gynecology?

20 A. I don't think you can just name a few
21 textbooks, because there are textbooks that go
22 right to obstetrics, and then if you want to
23 look into obstetrics, then you can look at the
24 medical problems in obstetrics, and if you want,
25 you can look at ultrasound obstetrics. So it's

1 hard for me to say. Yes, there is a library
2 full.

3 Q. And I guess what I'm just trying to
4 do is give you an opportunity to tell me whether
5 there are any that rank up there.

6 A. I have no bibles in obstetrics. I
7 look at, depending on what the situation is, I
8 might look at this, but then I always compare
9 things too, and then you want to look up what is
10 current, and you go to conferences and find what
11 is current.

12 Q. Do you have any written information
13 at all in any of your files from any conferences
14 or lectures on the issue of Bandl's ring or
15 retraction ring?

16 A. No.

17 Q. Do you have any information on the
18 issue of the potential complications associated
19 with hyperstimulation of the uterus in a
20 premature baby?

21 MS. ROLLER: Does she have any what?

22 MR. MISHKIND: Lecture material or
23 any printed material from conferences or --

24 MS. ROLLER: That she has kept?

25 Q. That you have kept.

1 A. No.

2 Q. I finished talking with you about
3 your background. I finished talking with you
4 about the material that you have reviewed,
5 unless there is something else that you have
6 reviewed by way of records, in which event I
7 want you to tell me about that.

8 I'm going to move on now to talking
9 about the Fiktus case, but is there anything
10 else that you have reviewed to prepare yourself
11 for today's deposition, other than what we have
12 talked about?

13 A. No.

14 Q. In terms of literature, sources, and
15 things that you can cite me to that you consider
16 to be generally reliable, is there anything else
17 that you would want to say on the record before
18 we move on to talking about the Fiktus case?

19 A. No.

20 Q. Have you talked with Dr. McHugh since
21 her deposition?

22 A. I haven't spoken to her since that
23 graduation party.

24 Q. Have you talked to Dr. Loret deMola
25 at any time since this delivery about the Fiktus

1 case?

2 A. I have never, that I can recollect,
3 spoken to anybody but Jan about the Fiktus case.
4 The last time I spoke with Dr. Loret deMola was
5 sometime in June of '99.

6 Q. And even though you have just
7 answered that, I'm going to place another
8 question to see whether this prompts anything.
9 But given the fact that a Bandl's ring is not
10 something that's encountered on a regular basis,
11 do you recall at any time after the delivery of
12 Jacob Fiktus there being any type of an
13 educational conference or informational type of
14 gathering where Dr. Loret deMola or Dr. Kiwi or
15 Dr. McHugh and you talked about this delivery
16 from an educational standpoint?

17 MS. ROLLER: Objection to the extent
18 it asks for any peer review, formal peer review
19 on this case, but other than that, you can
20 answer.

21 A. I don't remember anything about this
22 case.

23 Q. You understand just because it's an
24 unusual situation, sometimes the attending or
25 people that are present may sit down and talk

1 about what they encounter to help you in your
2 knowledge base. That may have happened, you
3 just don't remember one way or the other?

4 A. I don't remember anything about this
5 case afterwards.

6 Q. Fair enough. Every once in a while I
7 may prod to see if I can ask you something that
8 might evoke a memory, and it's not to be
9 repetitive or obnoxious, it's just to see
10 whether it brings back anything.

11 A. Even reviewing this case, I don't
12 remember anything.

13 Q. Okay. Thank you.

14 Your involvement in this case began
15 at what time?

16 A. 1740. I have a note here. The
17 nurse's note says that I was in the room at
18 1730.

19 Q. Have you been able to determine what
20 time you were on in labor and delivery on
21 November 24?

22 A. It appears that J. Pinkerton was here
23 in the daytime, so that means that I was
24 probably on call and probably took over at 5:00
25 o'clock, give or take around that time.

1 Q. Who is Dr. Pinkerton?

2 A. He is a resident.

3 Q. So you believe you took over call at
4 about what time?

5 A. 5:00-ish.

6 Q. I have in front of me a note written
7 by you at 1740. Is that the first note that you
8 wrote in the chart?

9 A. That I could find, yes.

10 Q. Just to try to get a framework on my
11 question, when were you last involved directly
12 or indirectly?

13 A. It looks to be about 2200.

14 Q. How many notes in the progress notes
15 did you write? And when you answer that, tell
16 me what time your notes are.

17 A. I have two notes in the progress note
18 section. One at 1740 and one at 2130.

19 Q. No other notes after 2130?

20 A. Not that I saw.

21 Q. Could you show me your 2130 note for
22 one second.

23 A. On your copy or my copy?

24 (Discussion off the record.)

25 Q. I asked you to show me on the 2130

1 note what was your note. And the reason I did
2 that, it appeared as if there was a signature
3 that had been written perhaps on top of your
4 signature and I just wanted to make sure that I
5 was not reading someone else's note. Okay?

6 A. It looks to me like it's on the side.

7 Q. Close to it.

8 A. Yes.

9 Q. Dr. Loret deMola was the attending
10 during the evening; is that true?

11 A. Correct.

12 Q. And Dr. Kiwi apparently had been the
13 attending at some time during the day; is that
14 your understanding?

15 A. From these notes, it appears so.

16 Q. From the notes, what can you gather
17 as to the time that Dr. Kiwi left and
18 Dr. Loret deMola took over?

19 A. I don't know. I know the last note
20 from Dr. Kiwi is at 1430, and the first time
21 that Dr. Loret deMola has a notation in the
22 chart is at 1940. I don't know when Dr. Kiwi
23 left work and Dr. Loret deMola took over.

24 Q. What year were you?

25 A. I was a third year resident.

1 Q. So you had one more year or was this
2 your final year?

3 A. This is my third out of four years.

4 Q. Was there a resident then that would
5 have been a senior to you?

6 A. That's true, but this is a private
7 patient, so I would answer to Dr. Loret deMola.

8 Q. Under what circumstances would there
9 be a senior or a fourth year that would be in
10 the chain of communication?

11 A. If it was a patient from our clinic,
12 but ultimately it would still be
13 Dr. Loret deMola. There would be an extra step.

14 Q. Was there a fourth year resident that
15 was physically present that evening, that you
16 can gather from the records, available to
17 communicate with had you felt a need to?

18 A. In a call night there is always a
19 first year and a second -- for labor and
20 delivery, there is always a first year and then
21 either a second or third year managing labor and
22 delivery, there is always a chief resident
23 in-house, also another second or third year for
24 gynecology. So those people are always
25 physically present in the hospital.

1 Q. Who would have been the chief
2 resident that would have been physically present
3 in the hospital?

4 A. I have no idea. There is
5 documentation in this chart of that.

6 Q. Because this was a private patient,
7 the line of communication would have gone from
8 you as the third year resident to the attending;
9 is that true?

10 A. That's correct.

11 Q. And below you would have been second
12 year and first year residents?

13 A. No. First year. Second and thirds
14 are considered the same on labor and delivery.

15 Q. Was there anyone else that was
16 working with you that was responsible for Kelly
17 Fiktus during the evening that was at the same
18 level, the second and third year?

19 A. I just want to clarify.

20 Q. Sure, go right ahead.

21 A. At this point, with private patients,
22 Mary was not responsible to me. She can also
23 call the attending directly. She doesn't have
24 to go through me to go to the attending.

25 Q. Okay. And that's Mary McHugh?

1 A. That's correct. And also, sometimes
2 on labor and delivery, there is a midwife, as
3 well, and they are responsible, as well.

4 Q. Was there a midwife involved in this
5 case?

6 A. Not that I could see.

7 Q. Was there a second year resident
8 involved during the labor management during the
9 evening?

10 A. Not that I could see.

11 Q. Mary McHugh was present at the time
12 of delivery?

13 A. That is correct.

14 Q. And Dr. Loret deMola is the attending
15 that delivered the baby; true?

16 A. Dr. Loret deMola is the attending and
17 Mary McHugh is the assistant.

18 Q. Why weren't you present for the
19 delivery?

20 A. It was not my responsibility to do a
21 primary cesarean section. There is also not
22 enough room to have two residents in the
23 operating room, and if you put two residents in
24 the operating room, you have no one on the floor
25 for other things.

1 Q. Fair enough. Why weren't you as a
2 senior, senior to Mary McHugh, why weren't you
3 involved in assisting Dr. Loret deMola?

4 A. The breakdown, the kind of informal
5 breakdown of responsibilities, first year
6 residents were responsible for primary cesarean
7 sections. Senior residents are involved in
8 repeat cesarean sections. As time progresses,
9 first years can also go into the repeat ones
10 later in the year.

11 Q. I'm now looking at your 1740 note,
12 okay?

13 A. Okay.

14 Q. Who was it that called you -- just to
15 be complete, am I reading this correctly where
16 it said called secondary to hyperstimulation of
17 uterus?

18 A. Yes.

19 Q. Obviously, there is additional notes,
20 but that first line I read correctly?

21 A. That's correct.

22 Q. Who was it that called you?

23 A. It would have been the nurse taking
24 care of her.

25 Q. And are you able to tell me at that

1 time, which would be 5:40 p.m. -- I like to
2 translate into nonmilitary time -- who that
3 nurse would have been?

4 A. No idea.

5 Q. Nurse No Idea?

6 A. I have no idea who this person is. I
7 can't tell from the signatures.

8 Q. In any event, it would have been a
9 nurse as opposed to Dr. McHugh?

10 A. It could have been, but Mary would
11 have written a note too if she was involved at
12 that point.

13 Q. What did you do based upon the record
14 when you received the call?

15 A. Usually I go into the room, evaluate
16 what is going on, and when I write a note at
17 1940, that's usually at the end of the time that
18 I was in the room. So sometime before 5:40 I
19 was there.

20 I got called in. I see how the
21 patient is doing. Everything is happening all
22 at once. I look at the tracing and I saw that
23 something was -- you know, I looked at the
24 tracing and I have them turn off the pitocin,
25 from the note.

1 Q. Is it likely you would have been
2 there at 1700 or is it more likely that you
3 would have been present at 1730?

4 A. I don't have an individual
5 recollection of what time I walked into the
6 room. But looking at the note from the nurse's
7 notes, I see Wang present.

8 Q. Would that be 1730 Wang present?

9 A. Correct, 1730 Wang present.

10 Q. In the MD present column, it says
11 Wang present. What else does that say? Are you
12 able to decipher that?

13 A. I'm trying to figure that out too.

14 Q. Don't worry about it. If you can't
15 decipher it, we will eventually speak to someone
16 that can.

17 A. I can't decipher it.

18 Q. You would have then had the benefit,
19 at the very least, of the 1700 labor flowsheet
20 notes from the nurses at the time; correct?

21 A. You mean these notes?

22 Q. Right.

23 A. I generally didn't look at these
24 notes. I looked at the tracing. The nurses had
25 that. I looked at it for the vital signs,

1 maybe, and I would look at the tracing.

2 Q. Okay.

3 A. You know, at the time you are called
4 into a room, you are doing a lot of things. I
5 see here what is going on, I see the chart, the
6 progress notes a little bit beforehand, and also
7 the tracings. Depending on what they called me
8 for.

9 Q. Now, there are some notes that there
10 was hyperstimulation with pitocin. Let me just
11 ask this of you, whether --

12 MS. ROLLER: Objection. What are you
13 referring to?

14 MR. MISHKIND: In the nurse's notes
15 under the nursing assessment, in the 1600 to
16 1630 time frame, it says hyperstimulation with
17 pit.

18 MS. ROLLER: Right here. Wait for a
19 question. He is just referring to that.

20 Q. Do you see that?

21 A. What time frame do you mean?

22 Q. On the labor flowsheet I'm looking at
23 the 1600.

24 A. Yes, okay.

25 Q. There is a reference to

1 hyperstimulation with pit. Do you see that?

2 A. Yes, I see that.

3 Q. I recognize that was before you had
4 seen the patient; true?

5 A. That's correct.

6 Q. This is a note made by a nurse, not
7 by you; true?

8 A. That's correct.

9 Q. When you were contacted sometime
10 before 1740, you were called secondary to
11 hyperstimulation of the uterus, but I take it
12 you were not told what was causing the
13 hyperstimulation of the uterus?

14 A. Correct.

15 Q. Did you determine, based upon your
16 assessment, what most likely was causing the
17 hyperstimulation of the uterus?

18 A. I can't recall.

19 Q. You DC'd the pitocin; true?

20 A. That's correct.

21 Q. And is it fair to say that in your
22 mind you were concerned as to whether or not the
23 pitocin was contributing to the
24 hyperstimulation?

25 A. I DC'd it to see if it would stop it,

1 yes.

2 Q. Pitocin can cause hyperstimulation of
3 the uterus; true?

4 A. True.

5 Q. Dr. Wang, there is a note in the
6 labor flowsheet --

7 A. The nurse's note?

8 Q. Right.

9 A. Okay.

10 Q. At --

11 A. These notes are not available to us
12 in -- I mean, they are available, but the nurse
13 has them.

14 Q. I understand that. I'm not
15 suggesting that you --

16 A. This is what I look at.

17 Q. The progress notes?

18 A. The progress notes, yes.

19 Q. I'm not suggesting or implying
20 anything other than that. I'm trying to put the
21 pieces of the puzzle together. That's what
22 lawyers do.

23 A. Okay.

24 Q. There is a note on the nurses
25 flowsheet that says 1640, which would be 4:40,

1 spoke with NICU fellow. Will try to consult
2 with, and I can't decipher that.

3 MS. ROLLER: Howard, under what
4 column are you looking?

5 MR. FARCHIONE: It says consult with
6 patient at delivery.

7 Q. Do you see that note?

8 MS. ROLLER: 1640 spoke with NICU
9 fellow. Will try to consult with patient at
10 delivery.

11 A. Yes, I see that.

12 Q. And right below that there is a note
13 at 5:10 p.m., 1710 p.m., and it has Dr. McHugh's
14 name. Do you see that also?

15 A. Yes.

16 Q. Are you able to decipher what that
17 says?

18 A. Dr. McHugh aware of contraction
19 tracing, 1715, 10 something, Nuvain IV.

20 Q. And what is that?

21 A. Nuvain is a drug to help with pain.

22 Q. Your order then was to DC the pitocin
23 for 30 minutes?

24 A. That is correct.

25 Q. And the reason you DC'd the pitocin

1 was what?

2 A. To see if it would decrease the tone
3 in the uterus.

4 Q. When you saw Kelly, you looked at the
5 fetal heart tracings?

6 A. That's correct.

7 Q. And you have a note in your progress
8 notes as to what your assessment was?

9 A. What I believe I saw, yes.

10 Q. If you could read from the progress
11 note in the objective section under FHR what it
12 is you wrote, please.

13 A. 150's, good, long-term variability.
14 Positive accels to 190. No decels.

15 Q. Were you at all concerned about the
16 pattern that you saw on the strips, given the
17 statement by the nurses that there was
18 hyperstimulation of the uterus?

19 A. I was not concerned about the fetal
20 heart tracing because it looked reassuring. I
21 was alerted to the fact that there was increased
22 tone in the uterus, possibly being
23 hyperstimulation.

24 Q. Now, Kelly had been in labor and
25 delivery, at least according to your review of

1 the record, since when?

2 A. It looks like somewhere between 12:30
3 and 1:00 o'clock.

4 Q. And at that time, how far was she
5 dilated?

6 A. At 1300, Dr. Bagi wrote a note that
7 said she was, per his exam, two centimeters, 80
8 to 90 percent.

9 Q. You did not do a vaginal exam when
10 you saw her; correct?

11 A. That is correct.

12 Q. Under your assessment and plan,
13 Dr. Wang, if you could read to me what you have
14 written there.

15 A. 22-year-old G-II P-0I0I at 34 and 6/7
16 weeks with spontaneous ruptured membranes in
17 latent labor with dysfunctional contraction
18 pattern, but reassuring tracing throughout. DC
19 pitocin times 30 minutes and restart at 18
20 milliunit. Continue penicillin for questionable
21 GBS status.

22 Q. What was causing the dysfunctional
23 contraction pattern?

24 A. I don't know.

25 Q. Did you have in your mind at that

1 time potential causes for the dysfunctional
2 contraction pattern?

3 A. I can't recall.

4 Q. Based upon your training and
5 experience at that time, what likely would have
6 been going through your mind as possible
7 etiologies for the dysfunctional contraction
8 pattern?

9 A. Well, for some reason on a review of
10 her chart, she had been in and out of the
11 hospital since 31 weeks complaining of
12 contractions. It seemed like she never dilated
13 her cervix, so she was sent home a number of
14 times, through her triage notes, and then she
15 was admitted overnight on the 23rd because she
16 had some spotting and had persistent
17 contractions. And then in the morning of the
18 24th, she was noted to have ruptured, so already
19 she has got an abnormal or a different labor
20 pattern. She doesn't fit into normal.

21 So, you know, I don't know what
22 caused her premature ruptured membranes, but
23 it's hard for me to say. And then, you know,
24 she was having contractions. Premature ruptured
25 membranes with contractions, we worry about.

1 MS. ROLLER: Let's make sure what the
2 question is.

3 MR. MISHKIND: She is explaining.

4 MS. ROLLER: She is, but I want to
5 make sure I understand what the question is.

6 Q. What was going through your mind in
7 terms of potential etiologies? And I think you
8 are answering that.

9 A. You wonder about the premature
10 rupture of membranes.

11 Q. She had gone, I think, almost a full
12 day with ruptured membranes before the actual
13 delivery, maybe 22 hours or so?

14 A. 11-24 at 9:45, I believe -- wait.
15 11-23 at -- 11-24, 0500, she felt a gushing of
16 fluid.

17 Q. At the time of the C-section, she had
18 progressed, and, again, I realize you were not
19 there, but she had progressed from four to five
20 centimeters?

21 A. That's correct.

22 Q. Based upon the labor curve that she
23 followed, would she fit the definition of a
24 failure to progress?

25 MS. ROLLER: As of what time?

1 Q. Well, just along the entire labor
2 curve, during the 22 hours, I mean, with the
3 progression of the labor, this was a failure to
4 progress case; true?

5 MR. FARCHIONE: Objection.

6 A. Can I review something?

7 MS. ROLLER: Objection. Well, if you
8 can answer it. And at what time?

9 A. Zero to 4 is latent labor. For a
10 multi it can take 12 hours.

11 So in my head -- she finally had four
12 to five. Four to five centimeters you hit
13 active labor and from there it takes one to two
14 hours with an adequate contraction pattern for
15 me to say, with no change in her cervix, for me
16 to say that she is, what did you say --

17 Q. Failure to progress.

18 A. -- failure to progress. Arrested
19 active phase, it needs in a multi roughly about
20 an hour and a half, two hours in a premie for
21 arrest of labor.

22 Q. You have to have one centimeter per
23 hour to hour and a half?

24 A. In a multiple it's like 1.5.

25 Q. All right.

1 A. In an hour, with an adequate
2 contraction pattern.

3 Q. Based upon the definition that you
4 understand to qualify for a failure to progress,
5 in a mom with the same characteristics as Kelly,
6 is it your testimony that she did not meet the
7 definition of an arrest of labor or failure to
8 progress?

9 A. Let me just look.

10 Q. Take your time. You are looking at
11 the strips now; right?

12 (Pause.)

13 A. Could I have the question again?

14 MS. GORDON: QUESTION: Based upon
15 the definition that you understand to qualify
16 for a failure to progress, in a mom with the
17 same characteristics as Kelly, is it your
18 testimony that she did not meet the definition
19 of an arrest of labor or failure to progress?

20 A. That is correct.

21 Q. There were episodes of fetal
22 bradycardia that you saw, both on the monitoring
23 strips, as well as documented in the nurse's
24 notes; true?

25 A. There were -- yes.

1 Q. And again, I don't want to
2 necessarily go through all of the periods of
3 time, but we know that at least it looks like
4 7:23 to 7:35 there is some fetal bradycardia?

5 A. There is prolonged deceleration, yes.

6 Q. And would you agree that that period
7 between 7:23 and 7:35, the baby was bradycardic?

8 A. Yes.

9 Q. During that period of time, was
10 hyperstimulation of the uterus occurring?

11 A. I see an episode between 1925 where
12 there is increased tone. But I believe the
13 patient was also up to the bathroom. I'm not
14 sure. And if she were up and walking around or
15 moving around, it could have also been a reason
16 for increased tone.

17 Q. Do you know or do you have an opinion
18 as to whether or not the hyperstimulation during
19 that period was due to her being up or do you
20 not know what the hyperstimulation was due to
21 during that period of time?

22 MR. FARCHIONE: Objection. She said
23 increased tone. She didn't say
24 hyperstimulation. Those are two different
25 things.

1 MR. MISHKIND: That's fine.

2 Q. Is it your testimony that there was
3 not hyperstimulation of the uterus at that time?

4 A. At this point, I can't say with
5 certainty, because the pattern at 1925 to 1926
6 doesn't look like a contraction, it looks like
7 she sat up or got up, because it's a sharp rise
8 there instead of a gradual increase, but then at
9 1927 to 1928 you see it coming down, so I can't
10 say with certainty that it's hypertonus
11 versus -- hyperstimulation versus movement.

12 Q. There is a pitocin protocol at
13 University Hospital; correct?

14 A. Correct.

15 Q. Doctors and nurses are to be aware of
16 the pitocin protocol in situations such as this;
17 true?

18 MR. FARCHIONE: Objection as to
19 physicians.

20 A. I think it's a nursing protocol.

21 MR. MISHKIND: I requested that from
22 you.

23 MS. ROLLER: You have. And this
24 morning I have a copy of it here. And I don't
25 know, somebody -- it may have been you, Joe --

1 asked for the amnio infusion protocol. Did one
2 of you?

3 MR. MISHKIND: I think I did.

4 MS. ROLLER: When I was here this
5 morning I had it with me and I asked them to
6 copy it for me, so let me give it to you. The
7 record can reflect that I'm giving both of you
8 the protocols.

9 MR. MISHKIND: Has the doctor had a
10 chance to look at this?

11 MS. ROLLER: Just briefly as she
12 indicated. It's nursing protocols.

13 Q. Just to try to save some time,
14 because I realize you have not looked at it, I
15 have not studied it, and I don't want to take a
16 lot of time right now, but are you able to tell
17 me whether or not the nursing protocol in terms
18 of pitocin augmentation was complied with during
19 the labor of Kelly Fiktus?

20 MS. ROLLER: Let me just say I don't
21 think she has had an opportunity to evaluate
22 that, nor did I ask her to do that.

23 MR. MISHKIND: I take it then she is
24 not in a position?

25 MS. ROLLER: No.

1 MR. MISHKIND: Obviously to the
2 extent that -- although we can deal with it with
3 Dr. Loret deMola, but to the extent that you are
4 going to have her comment on that, I would just
5 reserve the right to question her. I don't want
6 to take the time now. I realize there is a
7 number of things that need to be accomplished
8 today.

9 MS. ROLLER: All right.

10 Q. In terms of restarting the pitocin
11 after 30 minutes, what were you basing your
12 order on?

13 A. At this point, from my notes, I can
14 only say maybe the pitocin was the possible
15 cause of the increased tone in the uterus. So I
16 wanted it turned off to see if it would come
17 back, okay? And then also, to also further look
18 at the tracing to see how the baby responds to
19 decrease in tone back to baseline, give some
20 time for the pitocin to clear out, and then
21 start it back at a lower rate instead of putting
22 it on top of the amount of pitocin she had.

23 Q. In reviewing the tracings, were you
24 able to arrive at an opinion as to whether after
25 cessation or stopping of the pitocin that the

1 contraction, that the baby responded in such a
2 manner that the pitocin was likely contributing
3 to the hyperstimulation?

4 MS. ROLLER: Are you asking whether
5 she made that determination then or looking at
6 the records now?

7 Q. Obviously we are looking at the
8 records now. I don't know whether you remember
9 what your determination was back then. I
10 guess --

11 A. I can only tell you from the notes
12 and looking at the tracing now.

13 Q. From the notes, what did you
14 determine as to whether the pitocin was or was
15 not causing the hyperstimulation?

16 A. From the note, I made no indication
17 after the pitocin was DC'd if it was a result of
18 pitocin.

19 Q. So you made no note one way or
20 another whether it was or wasn't?

21 A. Correct.

22 Q. Now, looking at the tracings, tell me
23 what you can glean from how the baby's heart
24 rate and the contraction pattern, how it
25 responded, as to what your opinion is.

1 A. Well, first, dealing with the
2 contraction pattern, you know, there is the
3 variable that the patient did go to the
4 bathroom. So there is an increase in tone
5 there.

6 Pitocin was turned off at 1930, I
7 believe -- right -- but you already see at 1928
8 that there is a decrease in baseline, even prior
9 to the pitocin being turned off. And then at
10 1931 you see a return to baseline immediately
11 with small contractions.

12 I guess from the notes I can only
13 assume that the pit was turned off at 1930, and
14 then, from the notes, what usually happens, I go
15 into the room -- seems like I was called in at
16 2130 -- and then I watch the tracing. I saw the
17 tone had come back down at 1936, the baseline
18 was back up into the 115's to 120, on its way
19 up. At 1941, 1940, I see variable with
20 accelerations, so that tells me that the baby,
21 as a result, the baby has recovered from its
22 bradycardia with what appears to be good
23 oxygenation and no evidence of what I can infer
24 as hypoxia.

25 Q. And of what significance were you

1 able to determine as to the relationship between
2 the pitocin and the hyperstimulation?

3 A. Because she got up, I can't make
4 any --

5 Q. There is evidence of bradycardia at
6 9:02 until it looks like 9:13?

7 A. So 2102.

8 Q. Right.

9 A. Just so I can find it on the form.

10 Q. 2102 to 2113.

11 A. Okay.

12 Q. Is that true?

13 A. That is correct.

14 Q. What was causing the bradycardia at
15 that time?

16 A. I don't know.

17 Q. Was the pitocin on or off at that
18 time?

19 A. From Mary's note, 2130, Mary stopped
20 the pitocin at 1940 for 30 minutes -- or I'm
21 sorry. I don't know. I need to look closer at
22 the nursing notes.

23 Q. Take your time.

24 A. Usually they have it written on
25 there. So you are looking at, pitocin was on at

1 2000, pit off at 2100.

2 Q. So is it your testimony that at 2102
3 through 2113, or in my vernacular 9:02 to 9:13,
4 that the pitocin was off?

5 A. From the notes, that would appear so.

6 Q. If the pitocin was off, assuming
7 that's correct, at this point now, what would be
8 within your differential, if you will, as to the
9 explanation for the bradycardia?

10 A. All comers or this case in
11 particular?

12 Q. In this case.

13 A. I can't say. You know, looking at
14 this tracing, 2058, she had excellent
15 variability. The tracing before it, excellent
16 variability. With accelerations, even in the
17 face of mild contractions, I can't say, I can't
18 speculate the causes of the bradycardia.

19 Q. At 2130, your note, you placed a
20 fetal scalp electrode; is that correct?

21 A. That is correct.

22 Q. Why did you do that?

23 A. When there is evidence of a
24 bradycardia or evidence of an abnormal tracing,
25 with an external fetal heart monitor, you want a

1 more accurate reading. Also, when you walk into
2 a room and you see this tracing, you want to do
3 a vaginal exam, and she hasn't had one yet, and
4 given the fact that she has been ruptured
5 without an exam, I did an exam. I checked for
6 cord prolapse. That's one of the automatic
7 things, part of your exam, and then you put on
8 the scalp electrode for a more accurate
9 reading,.

10 Q. Did you check the baby's pH at that
11 time?

12 A. No, I did not.

13 Q. Why not?

14 A. Because I am thinking that on
15 examining this tracing -- I got called into the
16 room, and at 2113 to 2114, there is a little
17 break in the tracing, so I'm assuming that's
18 where I put the scalp electrode on. There is an
19 increase up to 120 from that change, and if baby
20 responds to fetal scalp stimulation with vaginal
21 exam or a scalp electrode placement, that's a
22 good indication they are not acidotic.

23 Q. Do you have an opinion as to what the
24 scalp pH would have shown had it been checked at
25 that time?

1 MS. ROLLER: Objection. Go ahead.

2 A. With the response to scalp
3 stimulation, probably greater than 7.20. And I
4 think it should be 7.4.

5 Q. At the time that you did your vaginal
6 exam, where was she?

7 A. Four to five centimeters, 100
8 percent.

9 Q. Was Dr. Loret deMola present at the
10 hospital at this time?

11 A. If he is the house attending on call,
12 they are there, they are physically present in
13 the hospital.

14 Q. And he co-signed your note; true?

15 A. Yes.

16 Q. Now, he didn't co-sign your note at
17 1740, did he?

18 A. That's correct.

19 Q. Do you know why he co-signed the one
20 at 2130 and not the one at 1740?

21 A. I have no idea.

22 Q. Is the normal procedure for the
23 attending to co-sign the resident's note?

24 A. No. But -- no.

25 Q. Under what circumstance does the

1 attending co-sign a resident's note?

2 A. I have no individual recollection in
3 this case, but sometimes if we call them, if we
4 are concerned, they come down and they evaluate
5 and then they can just co-sign or write agree or
6 something like that.

7 Q. Does he note anything other than just
8 signing his name?

9 A. No.

10 Q. What was the plan then based upon
11 your exam at 2130?

12 A. From what I saw here, she was
13 uncomfortable, so I wanted to get her an
14 epidural. At this point, I saw that after I put
15 on the scalp electrode that there was some
16 return to baseline.

17 My note was finished at 2130, so that
18 usually means I'm present in the room until
19 2130, at least, because I'm writing the note,
20 probably a few minutes later so I could finish
21 it, and so I watched the heart tracing here and
22 I see it's come back up with great
23 accelerations, good variability, a baseline of
24 120, even in the face of mild contractions. So
25 at this point, the baby has recovered from its

1 bradycardic event. I was to give her an
2 epidural and carefully watch her now that she
3 has two internals in, the scalp electrode and
4 the IUCP. And also here I also thought about
5 the amnio infusion.

6 Q. Now, tell me about the amnio
7 infusion, why did you think about that?

8 A. Sometimes with decelerations you can
9 put it in, replace some of the fluid that's
10 lost. The feeling is to try and buffer the cord
11 so that there is a cushion around the cord.

12 Q. And was amnio infusion done?

13 A. It doesn't appear to be.

14 Q. Was it your intent to order amnio
15 infusion at that time?

16 A. Probably. It came across my mind, so
17 it's there. These aren't necessarily orders.
18 So I think the order was, if this is it, to get
19 her comfortable before instilling fluid in
20 there. So first they have to get her epidural
21 ready, it looks like probably get her amnio
22 infusion ready.

23 Q. If the retraction ring had already
24 established itself at this point in time, at
25 four to five centimeters, do you know what

1 significance, if any, amnio infusion would have
2 had on the continued labor and delivery of
3 Jacob?

4 MS. ROLLER: Objection. Go ahead.

5 A. I have no idea.

6 Q. What happened next from your
7 standpoint?

8 A. I probably left the room; probably
9 like 2130, however long it took me to write the
10 note; 2135 or 2130. She had no pitocin on.
11 They watched her. And then at 2150, 20 minutes
12 later, it looks like they called Mary.

13 Q. And again, why did they call Mary as
14 opposed to you?

15 A. Sometimes it's whoever is there.
16 Sometimes it's overhead, house officer needed,
17 and the first person gets to the room.

18 Q. Do you have any reason to believe
19 that you physically weren't present on labor and
20 delivery after your 2130 note?

21 A. I have no reason to believe that.
22 It's a big floor.

23 Q. Sure. Let me ask you sort of the
24 flip side. Is it likely that you were still
25 present on labor and delivery well after 2130?

1 A. Oh, absolutely.

2 Q. Is it likely that you were present at
3 the time that the delivery of Jacob took place?

4 A. Yes.

5 Q. And again, as we have been having
6 this conversation, there is nothing that comes
7 back to your mind about hearing what occurred at
8 the time of labor and delivery, even though you
9 weren't present; is that true?

10 A. That's correct.

11 Q. Okay.

12 A. She was two hours of my life in 1997.

13 Q. And I understand that. I'm not
14 criticizing or suggesting that you should
15 remember. I just need to find out whether there
16 is anything that has been prompted. I need to
17 know, especially if you testify at trial, I need
18 to know what it is that you are or are not going
19 to say, so that's why I belabor the issue,
20 sometimes perhaps ad nauseam.

21 A. Okay.

22 Q. Are there any notes that you have in
23 the chart after 2130?

24 A. No.

25 Q. It looks like at 2150 a note by

1 Dr. McHugh is co-signed by Dr. Loret deMola.

2 A. That's correct.

3 Q. And it looks like -- the 2200 and
4 2210 note, does that appear to be Dr. Loret
5 deMola's note?

6 A. Those are his notes.

7 Q. Got it. And then continuing on, the
8 pre-op diagnosis, and his brief note following
9 the C-section, those are Dr. Loret deMola's
10 notes, as well; correct?

11 A. The pre-op note was written by
12 Dr. Mary McHugh and it looks like he read it and
13 co-signed it and wrote his note underneath.

14 Q. I take it you don't have any opinion
15 in this case as to when Jacob's head became
16 trapped, if you will, in the uterine wall?

17 A. I have no opinion.

18 Q. Do you have an opinion as to whether
19 the retraction ring or the Bandl's ring would
20 have prevented the delivery of Jacob without any
21 type of injury if Jacob had been delivered
22 earlier, say, 5:00, 6:00, 7:00 p.m. that day?

23 A. Looking at the notes, it appears the
24 baby couldn't have been delivered via the
25 Bandl's ring.

1 Q. Why is that?

2 A. Because it says -- I didn't see it --
3 they saw it and said it would make it impossible
4 to deliver.

5 Q. Impossible when mom was four to five
6 centimeters contracted --

7 A. Four to five centimeters dilated.

8 Q. Dilated?

9 A. Dr. Loret deMola's note at 2357, ring
10 was very tight and prevented a vaginal delivery.

11 Q. But are you able to tell me whether
12 the vaginal delivery would have been easier to
13 accomplish had the delivery taken place earlier
14 than when the attempted delivery took place?

15 MR. FARCHIONE: You can't deliver at
16 four centimeters.

17 A. She was four centimeters dilated.
18 She couldn't have been.

19 Q. Do you know whether a cesarean
20 delivery would have been more difficult or less
21 difficult? More difficult or easier had
22 delivery been attempted earlier than what it
23 was?

24 A. I have no idea when the ring
25 occurred, so I can't give you an opinion as to

1 if her section took place at 5:00 o'clock if it
2 would have been different.

3 Q. Just so I understand, you are not
4 going to testify that at 5:00 o'clock, based
5 upon what you know, that the same problems with
6 regard to the Bandl's ring would have been
7 encountered?

8 A. I can't say.

9 Q. So basically, doctor, just to try to
10 tie things up and finish, after 2130, your
11 assessment and plan was written. You wanted the
12 baby to be monitored, mom and baby to be
13 monitored carefully. The epidural, amnio
14 infusion, possibly, but does not appear
15 necessarily to have been given in this case?

16 A. It seems like too many things
17 happened.

18 Q. But just so I am correct, even though
19 you marked down plan of amnio infusion, it
20 wasn't given, whether it was --

21 A. I can't see any evidence that it was
22 given.

23 Q. And as to what impact that would or
24 would not have had on the ultimate outcome, do
25 you have an opinion?

1 A. No.

2 Q. After 2130, up until the time,
3 including the cesarean delivery, that's outside
4 of your personal knowledge?

5 A. From the notes here, it says here --
6 yes.

7 Q. Does it say that you were involved in
8 any aspect after 2130?

9 A. At 2200 there is a note here that
10 says I was in the room with Riccardo, on the
11 nurse's notes. I don't remember that.

12 Q. And we are looking at the nursing
13 labor flowsheet, baseline, FHR variable,
14 Dr. Wang and Loret deMola --

15 And I take it Dr. Loret deMola's
16 first name is Riccardo?

17 A. Yes, I'm sorry.

18 Q. I want to make sure we are not
19 looking for a Dr. Riccardo.

20 -- present to evaluate, and then what
21 does it say?

22 A. .225 subcu dura given at 2155.

23 Q. What's that given for?

24 A. To relieve contractions.

25 Q. C-section was not called at that

1 time, was it?

2 A. It looks like 2200, yes, it was. No.
3 Scalp pH was done.

4 Q. C-section was called at what time?

5 A. 2210. That's when he wrote the note,
6 so sometime in between there.

7 Q. You have no recollection of being in
8 with Dr. Loret deMola at 2200?

9 A. No. I have no individual
10 recollection of the case.

11 Q. In looking at the labor flowsheet and
12 seeing your name as being there and also the one
13 that was notified at 2200, both you and
14 Dr. Loret deMola --

15 A. It doesn't say that I was notified.
16 Oh, notification, okay.

17 Q. You see Wang and Loret deMola?

18 A. Sorry. It says notification or
19 present. So either I was in the room or they
20 notified me. Usually it means I was there.

21 Q. Looking at this note, what likely did
22 you do at 2200?

23 A. Looking at this note, if I'm standing
24 next to him, probably nothing.

25 Q. And then after 2200, not only do you

1 not recall anything, but the record doesn't
2 reflect your involvement thereafter?

3 A. That's correct.

4 Q. After the baby was delivered, you
5 weren't involved in any aspect of seeing mom or
6 baby, true, according to the record?

7 A. According to the record, our routine
8 is that Mary is operating on her, Mary rounds on
9 her.

10 Q. So you have no reason to believe in
11 this case that you would have rounded or had any
12 contact?

13 A. That's correct.

14 Q. And if Mr. and Mrs. Fiktus were to
15 walk in the room right now and sat down at the
16 table, you wouldn't have any memory at all of
17 them?

18 A. No.

19 Q. Have you told me everything that you
20 can recall concerning your involvement in this
21 case?

22 A. From the charts, yes. And no
23 individual recollection of it.

24 Q. As far as any opinions concerning
25 what caused the hyperstimulation in this case of

1 the uterus, do you have an opinion to a
2 reasonable degree of probability?

3 A. No.

4 Q. And as to whether earlier delivery by
5 cesarean section would have avoided the injury
6 to Jacob, you have no opinion one way or another
7 on that either?

8 A. No.

9 MR. MISHKIND: Nothing further.

10 EXAMINATION OF JOSEPHINE S. WANG, M.D.

11 BY MR. FARCHIONE:

12 Q. Just a technical question.

13 You have already indicated you are
14 licensed to practice medicine in Washington. I
15 take it the majority of your time is spent
16 caring for patients?

17 A. Yes.

18 MS. ROLLER: She will read it.

19 - - - - -

20 (Deposition concluded at 11:20 a.m.)

21 (Signature not waived.)

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AFFIDAVIT

I have read the foregoing transcript from
page 1 through 78 and note the following
corrections:

PAGE LINE	REQUESTED CHANGE
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JOSEPHINE S. WANG, M.D.

Subscribed and sworn to before me this
day of , 2002.

Notary Public

My commission expires .

CERTIFICATE

State of Ohio,

SS:

County of Cuyahoga.

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named JOSEPHINE S. WANG, 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 testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of 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 affixed my seal of office at Cleveland, Ohio, on this 15th day of March, 2002.



Vivian L. Gordon, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

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