In The Matter Of:

Angel Robbins   v.

Anthony P. Tizzano, M.D.

Joanne Zelton

August 20, 2001

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[1] STATE OF ILLINOIS)

[2]) SS:

[3] COUNTY OF C O O K)

[4]   IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

[5]   COUNTY DEPARTMENT - LAW DIVISION

[6] ANGEL ROBBINS, etc., et al.,)

[7]   Plaintiffs,)

[8]   vs.) No. 00 CV 0227

[9] ANTHONY P. TIZZANO, M.D..)

[io] et al.,)

[11]   Defendants.)

[12]

[13]   The discovery deposition of JOANNE ZELTON,

[14] taken in the above-entitled cause, before Laura

[15] Locascio, a notary public of Cook County, Illinois.

[IS] on the 20th day of August, 2001 at 200 North

[17] LaSalle Street, Chicago, Illinois, pursuant to

[18] Notice.

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[1] APPEARANCES:

[2]   BECKER & MISHKIND CO., L.P.A., by

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[8]

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[14]   Representing the Defendant,

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[22]   Representing the Defendants,

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[24]   Wooster Clinic.

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[1] (Witness sworn.)

[2]   JOANNE ZELTON,

[3] called as a witness herein, having been first duly

[4] sworn, was examined and testified as follows:

[5]   EXAMINATION

[6]   BY MR. ROSSI:

[7]   **Q:** Good afternoon. My name is Greg Rossi. I

[8] represent Wooster Community Hospital in this case.

[9] You and I just met, Ms. Zelton. I'm going to be

[10] asking you some questions today. And I take it you

[11] have given a deposition before.

[12]   **A:** Yes, I have.

[13]   **Q:** The rules I'd like to follow are probably

[14] very similar to the rules that you probably

[15] followed in those other depositions, beginning with

[16] if I ask you a question and you don't understand

[17] it, please let me know it and I'll rephrase it so

[18] it makes sense to you. All right?

[19]   **A:** That's fine.

[20]   **Q:** And if you answer my questions, I'd like

[21] to assume that you understand them. Is that fair?

[22]   **A:** That's fair.

[23]   **Q:** Why don't you begin by telling us your

[24] full name.

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[1] A: 'Joanne Zelton.

[2] Q: And what is your home address, ma'am?

[3] A: 601 North 1st Avenue in Maywood, Illinois,
[4] 60153.

[5] Q: And what is an address that you would
[6] consider to be a work or professional address?

[7] A: Rush Presbyterian-St. Luke's Medical
[8] Center, 1753 West Harrison, Chicago, Illinois.

[9] Q: And do you have any other addresses that
[10] you would consider to be work or professional
[11] addresses?

[12] A: No, I don't.

[13] Q: Your Social Security number, please.

[14] A: 343-46-1353.

[15] Q: Are you presently employed?

[16] A: Yes, I am.

[17] Q: By whom?

[18] A: Rush Presbyterian-St. Luke's Medical
[19] Center.

[20] Q: And what is your position there?

[21] A: I'm a staff nurse in labor and delivery.

[22] Q: And you've been kind enough to provide us
[23] a copy of your curriculum vitae, and I will try not
[24] to repeat everything here, but I will ask some

[1] questions to try to understand your education,
[2] training and experience.

[3] How long have you been employed by
[4] Rush Presbyterian-St. Luke's Medical Center?

[5] A: Twenty-six years.

[6] Q: Presently are you affiliated with any sort
[7] of professional companies of any kind, such as a
[8] consulting firm or anything t i e that?

[9] A: No. I'm a member of the
[10] American Association of Legal Nurse Consultants.
[11] But that's the only professional type organization
[12] related to legal issues.

[13] Q: So any work that you do in this vein —
[14] that is as a medical/legal consultant — is
[15] independent work that you do on your own?

[16] A: That's correct.

[17] Q: I can certainly refer to your curriculum
[18] vitae again for some of your educational
[19] information, but I would like to ask you some
[20] things about why is it that you obtained a master's
[21] in health law?

[22] A: Because I enjoyed the law. And when that
[23] program became available, I thought it was a nice
[24] accent to what I do as an expert witness, as well

[1] as my nursing.

[2] Q: And in studying health law, what sorts of
[3] areas of the law do you look at?

[4] A: When I took the program back in 1991,
[5] there were several courses — it was offered
[6] through the law school, first of all. And several
[7] of the courses were the same courses the law
[8] students took. We took torts and contracts with
[9] the students at the time. Additionally you had the
[10] option of taking any health-related law courses;
[11] public health, mental health, abuse, courses such
[12] as that.

[13] Q: Could you have taken some of the courses
[14] that you had there and gone on to obtain a juris
[15] doctorate?

[16] A: I believe technically I could have because
[17] I did take the contracts and the torts along with
[18] the students, although they did not recommend you
[19] do that. They wanted that to be specifically a
[20] master's program.

[21] Q: It looks as though it took you
[22] approximately three years to complete that program.

[23] A: Two years I think it is. Unless my dates
[24] are wrong there, I think it's a two-year program.

[1] Q: Was that a full-time program that you
[2] attended or was that part time?

[3] A: Part time in the evening.

[4] Q: Why is it in 1987 you decided to get a
[5] bachelor of science in nursing?

[6] A: Basically just to continue my education.
[7] And prior to that I had been the head nurse, and
[8] that was a requirement to maintain that nurse
[9] position.

[10] Q: Does your curriculum vitae summarize all
[11] of your education then?

[12] A: Yes, it does.

[13] Q: Do you presently hold any sort of academic
[14] positions?

[15] A: No.

[16] Q: I'd like to ask about your experiences
[17] now. It looks as though you began your career in
[18] nursing in **1975** after receiving a diploma from St.
[19] Francis Hospital, is that correct?

[20] A: That's correct.

[21] Q: In summary fashion, what have you been
[22] doing in the past **26** years in nursing?

[23] A: Working in labor and delivery, either as a
[24] staff nurse or at some point in time I was in

[1] management and back to staff nursing.

[2]   Q: Has your whole experience been dedicated

[3] to labor and delivery?

[4]   A: Yes, it has.

[5]   Q: Have you always worked as a full-time

[6] nurse?

[7]   A: Yes, I have.

[8]   Q: Was there ever any time when you were not

[9] working as a full-time nurse?

[10]   A: I believe when I was going for my

[11] master's, there was one or two semesters that I

[12] went part time during this time.

[13]   Q: In your career, can you estimate for us

[14] how many VBAC patients you've been involved with?

[15]   A: Probably too numerous to mention. I would

[16] say anywhere from, perhaps, 20 a year, and maybe

[17] for the last ten years a 100. Somewhere in that

[18] range.

[19]   Q: So the number would be somewhere in the

[20] thousands?

[21]   A: Well, prior to the **1990s** there was not

[22] very many VBACs. Most cesarian sections were

[23] always repeats. But from somewhere in the early

[24] 1990s is when VBACs became popular.

[1]   Q: Do they continue to do VBAC deliveries at

[2] Rush Presbyterian?

[3]   A: Yes, they do.

[4]   Q: I noticed in your CV that at one point

[5] while you were at Rush Presbyterian you went from a

[6] head nurse to a staff nurse. I believe that **was** in

[7] 1987?

[8]   A: That's correct.

[9]   Q: Why **is** that?

[10]   A: Basically the requirement became not just

[11] for bachelor's but for a master's in nursing, and I

[12] didn't have that.

[13]   Q: So did someone else then replace you as

[14] the head nurse for labor and delivery?

[15]   A: Yes, they did.

[16]   Q: And it looks like you had been the head

[17] nurse for about four or five years at that time.

[18]   A: Correct.

[19]   Q: What do your duties involve as a staff

[20] nurse in the labor and delivery at Rush

[21] Presbyterian?

[22]   A: To care for the patient from the moment

[23] she enters the unit until the moment she leaves the

[24] unit, whether that be as a labor patient, an

[1] operative patient, preterm labor. I also have

[2] responsibilities in the operating room if the

[3] patient would be brought to the operating room.

[4] It's pretty inclusive.

[5]   Q: Would your responsibilities include the

[6] nursery, or do you not get involved on the

[7] pediatric side?

[8]   A: No, just as the baby is born for the first

[9] hour or so after birth, and then that's it.

[10]   Q: And then different nurses take care of the

[11] baby in the nursery?

[12]   A: That's correct.

[13]   Q: As part of your responsibilities it sounds

[14] as though you would be involved in C-section

[15] deliveries.

[16]   A: Yes.

[17]   Q: How does that work at your hospital?

[18]   A: In terms of what?

[19]   Q: How is it determined whether or not you

[20] will be involved in a C-section? Are you on call

[21] for doing C-sections, or is it just patient by

[22] patient? In other words, if you're caring for a

[23] patient and that patient ultimately requires a

[24] C-section, do you remain her nurse through labor

[1] and then into the delivery room with the C-section?

[2]   A: Yes.

[3]   Q: The latter?

[4]   A: The latter of the two. Additionally,

[5] there may be another patient who is having a

[6] cesarian. And if I am not busy at the time, I may

[7] assist for that case as well.

[8]   Q: How long have you been involved in

[9] C-section deliveries?

[10]   A: Since the beginning of my career, 1975.

[11]   Q: Earlier I asked you how many patients you

[12] had been involved in who had vaginal birth after

[13] cesarian. Would the number be the same if the

[14] question **was** how many cesarian — how many vaginal

[15] births itself you've been involved with in patients

[16] who have previously had a cesarian?

[17]   **MR. MISHKIND:** That does not make sense.

[18]   BY **MR. ROSSI:**

[19]   Q: Let me try this question. Have you ever

[20] been involved with a VBAC patient who had a uterine

[21] rupture?

[22]   A: Yes.

[23]   Q: How many times has that occurred?

[24]   A: Fifteen, 20, somewhere in that range.

[1] Maybe more than that.

[2]   Q: Over how many years?

[3]   A: Since the time they started doing VBACs,
[4] which again has probably been 10, 12 years,
[5] somewhere in that range.

[6]   Q: Were any of those 15 or 20 patients your
[7] patients?

[8]   A: I believe I had one or two patients of my
[9] own that had, yes.

[10]   Q: In any of those cases, the **15** or 20 that
[11] you witnessed or were involved with, did any of the
[12] infants die as a result of the uterine rupture?

[13]   A: Not to my knowledge.

[14]   Q: Did any of them end up with permanent
[15] neurologic injuries, if you know?

[16]   A: Not to my knowledge. But that's not to
[17] say they didn't. I just don't have the awareness
[18] of that.

[19]   Q: Were there any mother fatalities,
[20] mortalities as a result of any of those uterine
[21] ruptures you were involved in?

[22]   A: I don't believe so.

[23]   Q: You would agree, though, that with any
[24] VBAC delivery, there is a risk of injury to mom

[1] and/or baby?

[2]   **MR. MISHKIND:** Objection.

[3]   **THE WITNESS:** There is definitely a risk for a
[4] VBAC to have a potential risk, yes.

[5]   **BY MR. ROSSI:**

[6]   **Q:** What is the mortality rate associated with
[7] VBAC deliveries for mom or baby or both, however
[8] you want to do it?

[9]   **A:** I can't answer that.

[10]   **MR. MISHKIND:** And let me just interject. Are
[11] you talking about a state of mortality rate today,
[12] or the state of mortality rate back as the
[13] literature indicated back in '99?

[14]   **BY MR. ROSSI:**

[15]   Q: Well, I guess if there's a difference in
[16] your opinion, I would like to know what it is.

[17]   **MR. MISHKIND:** I'm not even sure she has an
[18] opinion. My objection may have been hyper
[19] technical.

[20]   **THE WITNESS:** I'm not aware of what the
[21] percentages are.

[22]   **MR. MISHKIND:** And my objection was hyper
[23] technical.

[24]

[1]   **BY MR. ROSSI:**

[2]   Q: Would the same be true for the morbidity
[3] rate then as well?

[4]   **A:** Yes, that is correct.

[5]   Q: Would you agree with me that a bad result
[6] does not necessarily mean negligence or
[7] malpractice?

[8]   **A:** I would agree with that statement, yes.

[9]   Q: In other words, a patient can have a bad
[10] outcome and that result in and of itself does not
[11] mean that a doctor or a nurse did something wrong,
[12] does it?

[13]   **A:** That may mean that, correct.

[14]   *Q:* Would you agree with me that there's
[15] nothing presently in the literature to establish
[16] that there's any greater mortality or morbidity
[17] rate established with relation to VBAC delivery
[18] versus C-section following C-section? Does that
[19] make sense?

[20]   **A:** Not the last part, no.

[21]   **MR. MISHKIND:** Let me object to the question.
[22] I have different reasons for it. But since she
[23] didn't understand it, I'll just leave it at that.

[24]

[1]   **BY MR. ROSSI:**

[2]   **Q:** Would you agree there are no randomized
[3] trials in the literature which establish that
[4] maternal and neonatal outcomes are better with VBAC
[5] than with repeat cesarian section?

[6]   **MR. MISHKIND:** Objection.

[7]   **THE WITNESS:** I'm not aware of any literature
[8] either way.

[9]   **BY MR. ROSSI:**

[10]   **Q:** Would you agree that VBAC always carries
[11] with it the **risk** of uterine rupture?

[12]   **A:** Yes, I would agree with that.

[13]   Q: And you would agree that with uterine
[14] rupture there is risk of injury to mother and
[15] child?

[16]   **A:** Yes.

[17]   Q: And among the potential injuries resulting
[18] from uterine rupture are death to mom and/or baby?

[19]   **A:** That's correct.

[20]   Q: And would you agree with me that in any
[21] case, a VBAC just because mom has a uterine
[22] rupture, that doesn't mean that anyone did
[23] something wrong, does it?

[24]   **A:** Not necessarily, no.

[1]   Q: We have to look at the facts of the case
[2] before making that conclusion, don't we?
[3]   A: That's correct.
[4]   Q: Would you agree with me that poor outcomes
[5] can and do occur with VBAC patients, even when
[6] those patients are appropriate candidates for VBAC
[7] delivery?
[8]   A: They can.
[9]   Q: What have you reviewed in this case?
[10]   A: I have reviewed the maternal chart. I
[11] have reviewed very briefly the infant records, the
[12] fetal monitor strips, deposition testimony of
[13] Nurse Gwin, Nurse Moats, Dr. Tizzano.
[14]   Q: Have you reviewed any of the deposition
[15] testimony of Angel Robbins?
[16]   A: I'm sorry, Angel Robbins, yes.
[17]   Q: How about any of the other fact witnesses?
[18]   A: No.
[19]   MR. MISHKIND: When you say fact witness.
[20]   BY MR. ROSSI:
[21]   Q: Danny Robbins, did you review his
[22] deposition?
[23]   A: No.
[24]   MR. ROSSI: And, Howard, if you can help me

[1] with the name of the grandmother.
[2]   MR. MISHKIND: Betty Thompson.
[3]   BY MR. ROSSI:
[4]   Q: Betty Thompson, have you reviewed that
[5] deposition?
[6]   A: No, I have not.
[7]   Q: Can I take a look at your file.
[8]   A: Sure.
[9]   Q: There's no correspondence on top of your
[10] file from Mr. Mishkind, right?
[11]   A: Yes.
[12]   Q: Are these all of the letters that you have
[13] received from him?
[14]   A: Yes.
[15]   Q: Have you received any sort of case
[16] summaries from Mr. Mishkind or anyone in his
[17] office?
[18]   A: No, I have not.
[19]   MR. ROSSI: Howard, for efficiency's sake, can
[20] we get copies of these letters.
[21]   MR. MISHKIND: Sure. Do you want to just
[22] identify on the record the dates of the letters.
[23] And then when I get back to Cleveland, I'll just
[24] send you copies. Does that make sense.

[1]   MR. ROSSI: Sure.
[2]   BY MR. ROSSI:
[3]   Q: Back through your file then, I've seen the
[4] three depositions that you reviewed — actually
[5] four depositions that you've reviewed. In terms of
[6] medical records, it looks like you've reviewed the
[7] prenatal records, is that correct?
[8]   A: That's correct.
[9]   Q: And it looks like you've reviewed all the
[10] Wooster Community medical records for mom?
[11]   A: Correct.
[2]   Q: Have you reviewed any of baby's records
[3] from Wooster Community Hospital?
[4]   A: There are records there. I just briefly
[5] reviewed them.
[6]   Q: And we've just gotten copies of the
[7] letters. Have we now covered everything that
[8] you've reviewed in this case?
[9]   A: To date, yes.
[20]   Q: Have you reviewed any medical literature
[21] in preparation for your deposition today?
[22]   A: No, I have not.
[23]   Q: Has any medical literature been provided
[24] to you by Mr. Mishkind or anyone in his office?

[1]   A: No.
[2]   Q: We'll talk about some of your
[3] presentations and other things a little bit later
[4] in the deposition.
[5]   Have you published anything in the
[6] medical literature or given any presentations to
[7] anyone at any time dealing with VBAC delivery
[8] specifically?
[9]   A: Not specific to VBACs, no.
[10]   Q: Have you lectured on that subject as part
[11] of another topic?
[12]   A: I don't recall offhand. I don't believe
[13] so.
[14]   Q: In your review of this case, have you
[15] written any reports of any kind?
[16]   A: I have some generic notes here basically
[17] from the deposition transcripts.
[18]   Q: And we'll get into your notes in a minute.
[19] But have you written any reports at all?
[20]   A: No, I have not.
[21]   Q: Have you corresponded with Mr. Mishkind in
[22] anyway?
[23]   A: Only by phone.
[24]   Q: Do you have anything on a computer?

[1] **A:** No.

[2] Q: All the notes that you've made in this

[3] case, any writing that you've done at all is

[4] sitting in front of you right now, is that correct?

[5] **A:** That's correct.

[6] Q: Can I take a look at that, please.

[7] **A:** Yes, you may.

[8] MR. ROSSI: Mark this Exhibit A.

[9] (Whereupon, Zelton Deposition

[10] Exhibit No. A was marked for

[11] identification.)

[12]   BY MR. ROSSI:

[13] Q: Handing you, **Ms.** Zelton, what's been

[14] marked as Deposition Exhibit **A,** is this then a copy

[15] of all the notes that you've made in this case?

[16] **A:** Yes, it is.

[17] Q: And as I go through that, it looks as

[18] though what that represents is your note-taking and

[19] your review of the records, the deposition of

[20] Mary **Gwin,** the deposition of Sarah Moats, the

[21] deposition of Angel Robbins and the deposition of

[22] Dr. Tizzano.

[23] **A:** That's correct.

[24] *Q:* Just so we're clear, all the writing that

[1] you've done in this case, Ms. Zelton, and your

[2] review is contained within what we've marked as

[3] Exhibit A, is that correct?

[4] **A:** That's correct.

[5] **Q:** After having conducted your review of this

[6] file, would you agree with me that Angel Robbins

[7] **was** an appropriate candidate for a trial of labor?

[8] **A** I believe that's probably technically

[9] outside of my realm to state that she was an

[10] appropriate candidate. She ended **up** being a

[11] candidate. But I think it's more of a medical

[12] opinion.

[13] **Q:** And when you say that, you mean it is an

[14] opinion that should be stated by a physician?

[15] **A:** That's correct.

[16] **Q:** So as I understand it, you will not be

[17] rendering opinions on that issue one way or the

[18] other at the time of trial, fair?

[19] **A:** Fair.

[20] *Q:* I take it you will not be rendering any

[21] criticisms of Dr. Tizzano in this case because you

[22] are not qualified to do that?

[23] **A:** Not any expert opinions. I may have

[24] something to say about things that he has done or

[1] not done on this case, but I would not categorize

[2] them as criticisms or as not in term of being an

[3] expert.

[4] *Q:* You would agree with me that you are not

[5] qualified to render opinions on whether or not

[6] physician care is appropriate?

[7] **A:** That's correct.

[8] Q: Based on the fact that you've been

[9] identified by Mr. Mishkind as an expert witness in

[10] the case and the fact that we're sitting in this

[11] room today, I take it you are going to have some

[12] criticisms of the nurses from Wooster Community

[13] Hospital, is that true?

[14] **A:** That's correct.

[15] Q: I want you to list out for me each and

[16] every criticism you have of the nurses at

[17] Wooster Community Hospital.

[18] **A:** The first and perhaps the foremost

[19] criticism I have against the nurses are having to

[20] do with their failure to communicate with

[21] Dr. Tizzano. Do you want me to elaborate?

[22] **Q:** I want you to list out for me every

[23] criticism you have. We will explore those

[24] criticisms. But I want to make sure I know what

[1] they all are, and then we'll discuss each of them.

[2] Fair enough?

[3] **A:** The first criticism again we can elaborate

[4] on. And the next criticism has to do with failure

[5] to administer oxygen in a more timely manner;

[6] specifically at 7:59, rather than the stated 8:06.

[7] Q: The times that you've just given me, 7:59

[8] and 8:06, those are 7:59 —

[9] **A:** A.m.

[10] Q: 8:06 a.m., right?

[11] **A:** Correct.

[12] Q: Anything else?

[13] **A:** Not at this time.

[14] **Q:** So understanding we're going to explore

[15] these criticisms in greater detail, we can

[16] summarize by saying that you in effect have two

[17] criticisms of the nurses; one, the failure to

[18] communicate with Dr. Tizzano; and two, their

[19] failure to administer oxygen at which you feel to

[20] be a more appropriate time than they did?

[21] **A:** Can I just elaborate a little bit on the

[22] communication? Communication and documentation.

[23] **Q:** But is it fair of me to categorize them

[24] basically into two areas?

[1]   A: Yes, it **is.**

[2]   Q: Tell me what you mean when you say that

[3] there was a failure to communicate with Dr. Tizzano

[4] and to properly document in this case.

[5]   A: Starting basically from the moment of her

[6] admission, there **is** obviously some discrepancy

[7] between the nursing testimony and Dr. Tizzano's

[8] testimony regarding when he was contacted. Based

[9] on his testimony, he was not contacted at all

[10] throughout the entire labor until 6:00 when he

[11] called in.

[12]   If in fact that were to be true, then

[13] obviously I criticize the nurses throughout the

[14] entire course of this patient's admission that

[15] there was no communication whatsoever.

[16]   If on the other hand you believe the

[17] testimony of the nurses, that he was contacted,

[18] then my criticism is a little bit more specific

[19] because there are certain times throughout the

[20] course of this labor that he should have been

[21] contacted that he was not.

[22]   Q: So why don't we then split that up into

[23] two areas. First we'll assume that he was not

[24] contacted as he has testified. I take it your

[1] criticism is a very global one in that he should

[2] have been contacted before 6:00 a.m.?

[3]   A: Contacted, right. But there are numerous

[4] points that they should have contacted him and

[5] numerous things they should have contacted him

[6] about.

[7]   Q: Your opinion on the numerous times and the

[8] numerous points, will we cover those if we talk

[9] about what happens if we believe what the nurses

[10] are saying?

[11]   A: We will cover them pretty much either way.

[12]   Q: That's what I thought. Let's go then to

[13] the other way to look at it.

[14]   I want you to assume for a moment

[15] that Nurse Moats is correct in her testimony — and

[16] before we even get to that, let me ask you this

[17] question. You are not here to decide who is

[18] telling the truth or who may be accurate in their

[19] testimony, are you?

[20]   A: I can't address that, no.

[pi1]   Q: You're just evaluating the testimony based

[22] on what's in front of you, right?

[23]   A: Exactly.

[24]   Q: I want you to assume for a moment, though,

[1] that Nurse Moats is accurate and that she did in

[2] fact telephone Dr. Tizzano at midnight, all right?

[3]   A: Okay.

[4]   Q: Or thereabouts, sometime around midnight.

[5]   A: Okay.

[6]   Q: Assuming that she's accurate in her

[7] testimony, would you agree that she complied with

[8] the standard of care in terms of what she did at

[9] that time in contacting Dr. Tizzano?

[10]   A: Yes, I would.

[11]   Q: And you saw the verbal order that is

[12] contained within the chart, right?

[13]   A: That's correct.

[14]   Q: And you saw that that verbal order was

[15] signed off by Dr. Tizzano?

[16]   A: Yes.

[17]   Q: And I think in his deposition he said that

[18] was indeed his signature which appears under that

[19] order?

[20]   A: That's correct.

[21]   Q: So I'm clear, assuming that Nurse Moats is

[22] accurate about that then, you have no criticisms

[23] for her actions up and until the time of that phone

[24] call, assuming it happened?

[1]   A: That's correct.

[2]   Q: Do you have criticisms of her, though, for

[3] events that transpire after that phone call?

[4]   A: Yes.

[5]   Q: Tell me about those.

[6]   A: At the time there is some question as to

[7] whether or not he should, have been contacted at the

[8] time of the epidural. And he, of course, states

[9] that he was not contacted. She states that she did

[10] contact him, but there's no documentation to that

[11] effect. There's no evidence that she in fact did

[12] contact him. I think that he needed to be

[13] contacted at that point prior to the administration

[14] of the epidural.

[15]   Q: And when you say that point, can you be

[16] more specific for me in terms of the times that we

[17] have in this case.

[18]   A: The epidural was at 3:00 a.m. So

[19] approximately 3:00 a.m. or shortly prior to

[20] 3:00 a.m.

[21]   Q: Did you see in her testimony — I'm going

[22] to paraphrase what she's saying. But if your

[23] memory is different than mine of what she said, let

[24] me know.

[1] Do you remember in her testimony when
[2] she indicated that she informed him of this
[3] patient's desire for an epidural during that first
[4] telephone call at or about midnight?
[5] **A:** I don't recall that. That may be in the
[6] testimony. I don't recall that.
[7] Q: If indeed that happened — that is that
[8] Nurse Moats made Dr. Tizzano aware during the phone
[9] call that this patient wanted an epidural — would
[10] you agree with me that it would not be necessary
[11] for her to follow up with an additional phone call
[12] at or about 3:00 a.m. at the time of the epidural?
[13] **A:** Yes, I would agree.
[14] Q: And assuming she is accurate and that she
[15] discussed the epidural with him at an earlier time,
[16] you would agree again that she complied with the
[17] standard of care when the epidural went forward?
[18] **A:** Yes.
[19] Q: What's your next criticism of her?
[20] **A:** My next criticism has to do with the fact
[21] that Angel supposedly on repeated occasions had
[22] mentioned that she wanted a C-section; that she was
[23] tired of this; or that she just had chosen not to
[24] continue along with the vaginal birth.

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[1] And I believe in Nurse Moats'
[2] testimony, she even states that she did discuss
[3] this with her, although that was never relayed to
[4] Dr. Tizzano, nor was it ever documented in the
[5] chart. And I think that's very important
[6] information.
[7] I think this patient was a VBAC
[8] candidate. And being as such at any point in her
[9] labor, she could have chosen and apparently did
[10] choose to proceed with the abdominal delivery; and
[11] that was not relayed.
[12] Q: Do you see in Angel Robbins' deposition
[13] where she said that she in fact made Dr. Tizzano
[14] aware of that when he arrived at the hospital that
[15] morning?
[16] **A:** I did.
[17] Q: So would you agree with me that even
[18] though from Angel's perspective she may not have —
[19] the nurse may not have let Dr. Tizzano know,
[20] certainly Angel Robbins at some point made him
[21] aware of her desire to undergo a C-section?
[22] MR. MISHKIND: Before she answers, let me just
[23] object. When you say at some point, you're talking
[24] at 7:40 when he arrived?

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[2] Q: I think 7:44 a.m. is his time of approval,
[3] right?
[4] **A:** That's correct.
[5] Q: And I think it was her testimony that when
[6] he got there or shortly thereafter she told him she
[7] wanted to have a C-section, right?
[8] **A:** That's correct.
[9] Q: So would you agree with me then that the
[10] end result is the same — that is the information
[11] got to Dr. Tizzano through some channel that this
[12] patient was desirous of a C-section?
[13] MR. MISHKIND: Objection.
[14] THE WITNESS: The information got to
[15] Dr. Tizzano. But the fact remains had he been
[16] aware of that information much sooner, he would
[17] have come to the hospital and evaluated this
[18] patient.
[19] I would assume if she decided she wanted
[20] to have a cesarian section and had he been informed
[21] of that any time after 3:00 or 4:00 when she
[22] started talking about the fact that she wanted a
[23] cesarian, he in fact would have come to the
[24] hospital, evaluated her and probably would have

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[1] performed a cesarian section much sooner than the
[2] time frame where he was notified at 7:44.
[3] BY MR. ROSSI:
[4] Q: But you don't know that for certain, do
[5] you?
[6] MR. MISHKIND: Objection.
[7] THE **WITNESS:** I don't know that for certain.
[8] But I think it's very reasonable to assume that
[9] that would be the case based on the fact that this
[10] patient said on numerous occasions that she did not
[11] want to proceed with the vaginal delivery.
[12] BY MR. ROSSI:
[13] Q: Well, I mean, in truth you're speculating
[14] as to what Dr. Tizzano would have done had he been
[15] provided that information, agreed?
[16] MR. MISHKIND: Objection for several reasons.
[17] Number one, she's not speculating. Number two,
[18] ultimately the decision is not for Dr. Tizzano to
[19] make patients to make.
[20] MR. **ROSSI:** I understand it's her decision,
[21] Howard. But whether or not he would have come to
[22] the hospital I guess is my question.
[23] BY MR. ROSSI:
[24] Q: And you don't know for certain that he

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[1] would have come to the hospital, do you, ma'am?

[2] **MR. MISHKIND:** Objection.

[3] Go ahead.

[4] THE **WITNESS:** I don't know for certain that he

[5] would have come to the hospital. But I think it

[6] **was** the nurse's obligation to inform him of that

[7] fact. And if this patient repeatedly continued to

[8] state that she wanted a cesarian section, then the

[9] nurse would have had a higher responsibility to

[10] continue to inform him.

[11] And if in fact he still did not come, then

[12] the nurse would have had a responsibility to have

[13] somebody else evaluate this patient.

[14] **BY MR. ROSSI:**

[15] **Q:** What's your next criticism? I think we're

[is] still under the category of failure to communicate

[17] and document.

[18] **A:** Right. That's pretty much all inclusive

[19] of the lack of communication from the point that

[20] she then became completely dilated or thereabouts

[21] around 4:00 in the morning. Again, she needed to

[22] contact — Nurse Moats needed to contact

[23] Dr. Tizzano.

[24] At that point in time she did not

[1] contact him, and he was not made aware of this fact

[2] until he called in at 6:00. So from 4:00 on, not

[3] only was this patient requesting a cesarian

[4] section, but this woman was fully dilated, and he

[5] was not aware of that.

[6] **BY MR. ROSSI:**

[7] **Q:** Well, you keep saying that she **was**

[8] desirous of a cesarian section. But you would

[9] agree with me that you're relying on Angel Robbins'

[10] testimony on that fact, right?

[11] **A:** No. I believe it also is in Nurse Moats'

[12] deposition testimony, that she stated that she was

[13] in fact aware that she had requested a cesarian

[14] section. But if I remember correctly, the

[15] testimony goes on to state that she did not put

[16] that in her charting because some workshop told her

[17] that was not appropriate documentation to be placed

[18] on the patient's chart. So she does in fact state

[19] that she did have that conversation.

[20] **Q:** Any other criticisms under the category of

[21] failure to communicate and document?

[22] **A:** No, I believe that's pretty inclusive.

[23] **Q:** One of the criticisms that you've said was

[24] that at or about 4:00 or thereabouts when this

[1] patient, was noted to be completely dilated,

[2] Dr. Tizzano was not contacted and you feel he

[3] should have been?

[4] **A:** That's correct.

[5] **Q:** I take it, though, you will not be

[6] rendering an opinion as to whether or not he would

[7] have come to the hospital even if he had known that

[8] information?

[9] **MR. MISHKIND:** Objection.

[0] **THE WITNESS:** I certainly cannot state whether

[1] he would or would not have come, no. But I can

[2] state that if she contacted him at 4:00, it is

[3] reasonable to assume that he would come with a

[4] patient who is fully dilated and additionally in a

[5] VBAC patient.

[6] **BY MR. ROSSI:**

[7] **Q:** Well, he was in informed of that at

[8] 6:00 a.m., correct?

[9] **A:** That's correct.

[0] **Q:** And he arrived at the hospital at

[1] 7:44 a.m., correct?

[2] **A:** Correct. And that is an extremely long

[3] period of time for a patient who is complete and a

[4] WAC patient.

[1] **Q:** You listed earlier when I was asking you

[2] about your criticisms under that category, you

[3] specifically pointed out to me that part of it had

[4] to do with documentation. What is it about the

[5] documentation?

[6] **A:** Based on what I was stafing before about

[7] Nurse Moats stating that she did have that

[8] conversation with Angel regarding a cesarian

[9] section, she stated she did not document it because

[10] she did not feel that that **was** appropriate to be

[11] placed on a patient's chart. Had she documented

[12] that information, that would have been supportive

[13] of her testimony.

[14] **Q:** Other than that area, do you have any

[15] other criticisms of the documentation from the

[16] nurses at Wooster Community Hospital for this

[17] patient?

[18] **A:** Not the documentation, no.

[19] **Q:** So that testimony, would you agree with me

[20] that the documentation complies with the standard

[21] of care?

[22] **A:** Yes.

[23] **Q:** And just so I'm clear, you feel that they

[24] should have documented — Nurse Moats should have

[1] documented one way or the other whether or not this
[2] patient was desirous of a C-section, is that
[3] correct?

[4]   **A:** Yes, I do.

[5]   Q: Have we covered everything under failure
[6] to communicate and document?

[7]   **A:** At this point in time, yes.

[8]   Q: I'm sure Mr. Leak is going to ask you, but
[9] do you have any criticisms of any of the nurses in
[10] Dr. Tizzano' office?

[11]   **A:** No. Well, I shouldn't say that. I can't
[12] address that because I do not deal with antepartum
[13] patients, so I really would prefer not to say that.

[14]   Q: From a nursing perspective, **Ms.** Zelton, do
[15] you have any criticisms of the informed consent
[16] that was given to this patient?

[17]   **A:** Only in the sense that the evidence from
[18] Angel's deposition stated that she was given a
[19] piece of literature regarding VBAC, and she states
[20] that she read that. She also states that there was
[21] no further discussion regarding potential risks.
[22] If in fact that were true, I do believe that there
[23] should have been some mention made to her of the
[24] greater risk with a **VBAC** as compared to a cesarian

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[1] section.

[2]   Q: Did you see Dr. Tizzano's testimony on the
[3] informed consent discussion?

[4]   **A:** I did.

[5]   Q: And would you agree with me that if what
[6] he is saying actually took place, then there was
[7] absolute compliance with the standard of care about
[8] any informed consent issue in this case?

[9]   **MR. MISHKIND:** Let me object because you're
[10] assuming that Dr. Tizzano in his deposition
[11] testimony said anything about discussion of risks.
[12] And I'm not sure, Greg, that you're accurately
[13] stating that to him. In fact, I think it's just
[14] the opposite.

[15]   **THE WITNESS:** And actually that was going to be
[16] my response, that I don't recall testimony that he
[17] actually specifically stated the risk or the risks
[18] involved with a VBAC patient.

[19]   **MR. ROSSI:** Maybe my memory is different from
[20] everybody else. On page *73* of the transcript, he
[21] was asked what he would have told her. If she were
[22] going into labor, I would tell her that she has the
[23] risk of uterine rupture as the single most
[24] important risk of pursuing a trial of labor after a

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[1] cesarian section.

[2]   **MR. MISHKIND:** Greg, read that again and you'll
[3] see that question was what would he have told her.
[4] The question to this witness was concerning any
[5] discussions that he had with her during the
[6] antepartum period. And there is no testimony at
[7] all that he had any discussion with Angel about any
[8] risks during the antepartum period. That's a
[9] completely different question and answer than the
[10] question that you posed to this witness, and you
[11] know that.

[12]   **MR. ROSSI:** Page 71, Howard. We can take time
[13] out and have everybody read it.

[14]   "Question, so your testimony is that your
[15] custom and practice would have been to discuss the
[16] risks of proceeding with a **VBAC**, true?

[17]   **Answer:** Yes."

[18]   **MR. MISHKIND:** Look, I'm not going to debate
[19] you on the testimony. If you want me to pull out
[20] the deposition, I can. But Dr. Tizzano never
[21] testified that he specifically had a discussion
[22] with Angel during the antepartum period. In fact,
[23] his testimony was that Nancy Morgan was the one
[24] that went over the risks and provided the VBAC

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[1] brochure.

[2]   **MR. ROSSI:** Well, I think what he said, Howard,
[3] was he specifically doesn't recall it. But as a
[4] matter of course, he absolutely would have done it.

[5]   **MR. MISHKIND:** Well, we'll deal with that.

[6]   **MR. LEAK:** I was going to say for thk record
[7] I'm going to join Greg on that because I believe
[8] your correct with the thing about Nancy Morgan.
[9] But I'm also going on what Greg is reading right
[10] now. I think that might have been with the January
[11] 16th office visit. And that's what I remember from
[12] reading the deposition, that that was his custom
[13] and practice and he didn't have a specific
[14] recollection. So I'm going to join Greg on that
[15] representation.

[16]   **BY MR. ROSSI:**

[17]   Q: But you would agree with me, ma'am, that
[18] if Dr. Tizzano and the people in his office
[19] followed their custom and practice and discussed
[20] with this patient the risk of uterine rupture,
[21] including the fact that it's very unpredictable and
[22] that serious harm can come to babies when that
[23] happens, they would have complied with the standard
[24] of care in any informed consent discussion, agreed?

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[1] **A:** If in fact he did follow the standard of
[2] care of practice, he did that, yes. Angel's
[3] testimony was that she never heard anything about
[4] risks until that day.
[5] **Q:** But would you agree with me that if we
[6] followed Dr. Tizzano's deposition and that those
[7] things happened, that they complied with the
[8] standard of care on that issue, agree?
[9] **MR. MISHKIND:** Objection, asked and answered.
[10] Plus again. I think you're taking things out of
[11] context and you're assuming and inferring things
[12] from the testimony which are not in evidence. But
[13] she can answer it again. I think she already has.
[14] **THE WITNESS:** If he followed his custom and
[15] practice, yes, he met his obligation.
[16]   **BY MR.** ROSSI:
[17] **Q:** Going back to the criticisms that you
[18] have, I think we've already covered your testimony
[19] on failure to communicate and document, correct?
[20] **A:** Yes.
[21] **Q:** Tell me about this next criticism then,
[22] the failure to administer oxygen.
[23] **A:** What would you like to know?
[24] **Q:** You said I believe in your opinion that

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[1] the oxygen should have been administered at
[2] 7:59 a.m.?
[3] **A:** Correct.
[4] **Q:** What is the basis for that opinion?
[5] **A:** That this fetus was having bradycardia.
[6] And based on that, oxygen needs to be administered.
[7] **Q:** What is the basis for your opinion the
[8] baby was experiencing bradycardia at 7:59 a.m.,
[9] your review of the strips?
[10] **A:** Correct.
[11] **Q:** Is there anything else that is supportive
[12] of that?
[13] **A:** The nursing documentation states that.
[14] But basically it's the review of the strips, yes.
[15] **Q:** Whose decision would it be under those
[16] circumstances to administer oxygen?
[17] **A:** Nursing.
[18] **Q:** Solely nursing?
[19] **A** Certainly a physician can ask for oxygen
[20] to be administered. But nursing has an independent
[21] duty to provide intrauterine resuscitation, one of
[22] those being the administration of oxygen.
[23] **Q:** You would agree with me that Dr. Tizzano
[24] was at the hospital at that time?

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[1] **A:** He was at the hospital at that time, yes.
[2] **Q:** And it would appear that he was even in
[3] labor and delivery at that time?
[4] **A:** I believe he was.
[5] **Q:** You said that in your review of the chart,
[6] the patient was administered oxygen at 8:06 a.m.?
[7] **A:** That's correct.
[8] **Q:** What **was** the reason as you understand it
[9] in your review of the chart for the administration
[10] of oxygen at 8:06 a.m.?
[11] **A:** Fetal bradycardia.
[12] **Q:** In reviewing the strips, was it your
[13] impression — or I guess I'll ask you, is it your
[14] opinion that this baby was experiencing bradycardia
[15] from about 7:59 a.m. to 8:06 a.m. on a continuous
[16] basis?
[17] **A:** This baby **was** stressed on a continuous
[18] basis, yes. And perhaps prior to that, it's just
[19] the tracing is not registering.
[20] **Q:** But I think the strips reflect that the
[21] baby was bradycardic for approximately seven
[22] minutes?
[23] **A:** The baby was compromised. It wasn't a
[24] continuous bradycardia, but the baby was

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[1] compromised. Whether it was bradycardia or whether
[2] it was no variability, this baby was stressed.
[3] **Q:** I take it, however, you will not be
[4] rendering any opinions as to whether or not that
[5] seven-minute delay as you believe it in any way
[6] affected this baby?
[7] **A:** I can't state that with certainty, but I
[8] can state this is reasonable to assume that that
[9] would have affected this baby. The administration
[10] of oxygen, the sooner its given, obviously the
[11] greater benefit it's going to have. And in terms
[12] of a percentage, no, I cannot state that with any
[13] more accuracy.
[14] **Q:** So you would agree with me that you cannot
[15] state to a reasonable degree of medical probability
[16] that this seven-minute delay proximately caused
[17] injury to this baby?
[18] **A:** Based on your question of a medical
[19] probability, because of that I cannot agree to
[20] that.
[21] **Q:** You can't state one way or the other,
[22] agreed?
[23] **A:** I can't state that because I believe
[24] that's a medical opinion.

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[1] Q: An opinion that should be provided by an
[2] obstetrician or perinatologist, someone who is a
[3] physician, true?
[4] A: Correct. I can state that oxygen serves
[5] to improve fetal circulation and fetal oxygenation,
[6] And the sooner that it's given, the better the
[7] outcome would be. In terms of the extent of that
[8] outcome, no, I can't address that. But I can state
[9] the sooner it's done, the better the child will be.
[10] Q: As a general proposition?
[11] A: Correct.
[12] Q: Any other opinions related to this failure
[13] to administer oxygen at 7:59 a.m.?
[14] A: No.
[15] Q: Since you've read the testimony, we'll see
[16] if we can be specific by name. Under the areas of
[17] failure to communicate and document, I would take
[18] it that your opinions are all related to
[19] Nurse Moats' care and treatment, is that fair?
[20] A: Not totally. I think the majority of it
[21] is Nurse Moats up until she went home at 7:00 a.m.
[22] Following 7:00 a.m. when Nurse Gwin took over, I
[23] believe she again had the responsibility to attempt
[24] to contact Dr. Tizzano. So she also falls within

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[1] that category of communication.
[2] Q: When do you think Nurse Gwin should have
[3] attempted to contact Dr. Tizzano?
[4] A: When she assumed duty of this patient,
[5] which I believe was at 7:00 or shortly thereafter.
[6] Q: Would you agree with me, though, that the
[7] nurses were under the impression that Dr. Tizzano
[8] was coming down to the hospital as soon as he could
[9] to see this patient?
[10] MR. MISHKIND: Objection to the form as soon as
[11] he could. If you want to be more specific.
[12] BY MR. ROSSI:
[13] Q: Would you agree with me that their
[14] understanding was that his arrival was soon
[15] forthcoming?
[16] MR. MISHKIND: Same objection.
[17] Go ahead.
[18] THE WITNESS: I would agree with that to an
[19] extent. However, he contacted the hospital at
[20] 6:00 a.m. By this time you have a change of shift,
[21] and it's now 7:00 or thereafter. That is not a
[22] short time. That is an extremely long period of
[23] time in a woman who is ten centimeters and has been
[24] ten centimeters since 4:00 a.m. in the morning and

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[1] on top of that is a VBAC. I do not consider that a
[2] short time. And I do not consider the fact that
[3] it's 7:00.
[4] If the day nurse comes in and he still
[5] isn't there, I believe she has an obligation to
[6] attempt to contact him again.
[7] BY MR. ROSSI:
[8] Q: Did anything change between 6:00 a.m. when
[9] Nurse Moats spoke with Dr. Tizzano and this time
[10] when Nurse Gwin arrives that you feel was
[11] significant?
[12] A: No, nothing changed based on the evidence
[13] that we have. However, the earlier Dr. Tizzano
[14] gets to the hospital to evaluate this patient or to
[15] communicate with this patient to have her express
[16] her desires for cesarian section or solely just for
[17] him to attempt delivery at an earlier time, I think
[18] the better this child would fair by and large.
[19] I mean, as it is, this baby is not
[20] delivered until I believe it's 8:37. And despite
[21] the fact that there is no change in the fetal
[22] monitor strip, had he been there sooner, then I
[23] believe this delivery would have occurred in a much
[24] shorter time frame.

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[1] Q: Well, you would agree with me that at
[2] 6:00 a.m., Dr. Tizzano was fully informed of the
[3] significant information related to this patient?
[4] MR. MISHKIND: Objection.
[5] THE WITNESS: I don't know that I can state he
[6] was fully informed based on the records, the
[7] nurses' document that they told him that she was
[8] complete.
[9] BY MR. ROSSI:
[10] Q: Well, after that point, then, isn't it his
[11] decision as to when he comes to see this patient?
[12] A: It is his decision. However, if he does
[13] not arrive in a timely fashion — and 7:44 is
[14] certainly not a timely fashion — then the nurses
[15] have a responsibility to attempt to contact him
[16] again. Maybe he fell back asleep. They don't
[17] know.
[18] MR. LEAK: Objection, move to strike.
[19] BY MR. ROSSI:
[20] Q: Let's be fair.
[21] MR. MISHKIND: Objection. Don't suggest that
[22] she's not being fair. If you want to ask a
[23] question, but don't categorize.
[24]

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[1]   BY MR. ROSSI:

[2]   *Q:* We're assuming he fell back asleep?

[3]   **A:** No, I didn't say that he fell back asleep.

[4] I said perhaps he fell back asleep. What I'm

[5] trying to state is if he does not arrive in a

[6] timely fashion, then it's their responsibility to

[7] contact him again. Something may have happened

[8] that prevented him from coming to the hospital and

[9] may not. But they do have a duty to re-contact him

[10] on a patient who has been complete for over two

[11] hours and is a VBAC candidate.

[12]   *Q:* Any other criticisms that you have of

[13] Nurse Gwin other than that?

[14]   **A:** No, that's it.

[15]   *Q:* Any other criticisms you have of

[16] Nurse Moats other than those that we've discussed

[17] already?

[18]   **A:** No.

[19]   **Q:** Any other criticisms you have of any nurse

[20] or employee of Wooster Community Hospital other

[21] than those that you have discussed already?

[22]   **A:** No.

[23]   *Q:* In your opinion, what are the signs of

[24] uterine rupture?

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[1]   **A:** There may not be any signs of uterine

[2] rupture. Or there could be signs such as pain,

[3] change in shape of the uterus, fetal compromise,

[4] bradycardia, vaginal bleeding, change in maternal

[5] vital signs.

[6]   *Q:* I'm *sorry?*

[7]   **A:** Change in maternal vital signs. The fetal

[8] head may rise up in the pelvis or the presenting

[9] part, whatever that **is.**

[10]   *Q:* Anything else?

[11]   **A:** I think those would be the main points.

[12]   *Q:* When you discuss fetal compromise, are you

[13] talking about what we would see on the strips?

[14]   **A:** Yes.

[15]   *Q:* As you review this case, are you able to

[16] point out for us any **signs** in the chart of uterine

[17] rupture?

[18]   **A:** I cannot state specifically when this

[19] uterus ruptured. As a matter of fact, nobody can

[20] state that specifically until there is a pathology.

[21] However, based on the monitor strip, it appears

[22] that this infant was subject to severe distress at

[23] approximately 7:59 or shortly before that.

[24]   *Q:* And as you review the chart, in your

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[1] opinion, **is** that the first sign of a uterine

[2] rupture in this case?

[3]   **A:** As far as I can tell, yes.

[4]   **Q:** Any criticisms of the hospital or the

[5] hospital policy?

[6]   **MR. MISHKIND:** Let me just state before she

[7] answers — and in fairness to her since we've used

[8] that term before — you did provide me with

[9] policies. And in looking at the material that I

[10] have provided the witness, I have failed to provide

[11] her with those policies.

[12]   I don't know quite frankly off the top of

[13] my head what those policies show and whether or not

[14] they will or will not cause any additional

[15] opinions. But right now, she has not seen the

[16] policies.

[17]   **MR. ROSSI:** Let **me** ask you this, Howard. **Is** it

[18] your intention to show her the hospital policies

[19] before the trial?

[20]   **MR. MISHKIND:** It is.

[21]   BY MR. ROSSI:

[22]   **Q:** I would ask if you review those policies

[23] and you have any criticisms of those policies, that

[24] you let Mr. Mishkind know.

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[1]   **A:** Yes, I will.

[2]   **MR. ROSSI:** And, Howard, I would request then

[3] that if indeed **Ms.** Zelton has some criticisms of

[4] the hospital policy, that I be notified of that and

[5] I be permitted to take a follow-up deposition which

[6] we could probably accompli& by telephone.

[7]   **MR. MISHKIND:** Agreed.

[8]   BY **MR. ROSSI:**

[9]   **Q:** Have we now covered all your opinions in

[10] this case?

[11]   **A:** At this point in time, yes.

[12]   *Q:* And I say that with the assumption that

[13] you will not be rendering any opinions on what I

[14] call proximate cause type issues?

[15]   **A:** That's correct.

[16]   **Q:** You've had torts in law school, so you

[17] know what proximate cause is, right?

[18]   **A:** I know what proximate cause is.

[19]   *Q:* You would agree with me that you're not

[20] qualified to render opinions as to fetal outcome?

[21]   **A:** That's correct.

[22]   *Q:* Any criticisms of the care and treatment

[23] provided to the infant Alexis?

[24]   **A:** No.

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[1]   Q: I'd like to ask you about your work as an
[2] expert. When did you first begin reviewing cases
[3] for lawyers?
[4]   A: I believe it was in 1983.
[5]   Q: Was there some event that prompted your
[6] first review?
[7]   A: No. I was asked by somebody if I wanted
[8] to look at a case and give an opinion, and I said
[9] sure. And that's it.
[10]   Q: How many cases have you reviewed since
[11] that time?
[12]   A: I have probably reviewed a total of **six** to
[13] eight per year. And that's been the same for about
[14] the last 10, 15 years. Prior to that it was
[15] probably a little bit less than that. So I don't
[16] know mathematically what that comes out to.
[17]   MR. **MISHKIND:** We can do the tabulation.
[18]   BY MR. ROSSI:
[19]   Q: As an estimate would you say you've
[20] reviewed over 100 cases?
[21]   A: Approximately, yes.
[22]   Q: Can you split those up for us in terms of
[23] plaintiff versus defendant?
[24]   A: Probably about approximately 80 percent

[1] plaintiff, 20 percent defense.
[2]   **Q:** Have you ever done any work for
[3] Mr. Mishkind before?
[4]   A: I did review one case for him previously.
[5]   **Q:** Do you recall the name of that case?
[6]   A: No, I don't.
[7]   **Q:** How long ago was it?
[8]   A: Four or five years ago.
[9]   Q: Did you give a deposition in that case?
[10]   A: No, I did not.
[11]   Q: And I take it you did not testify at trial
[12] or on videotape for Mr. Mishkind for use at trial?
[13]   A: That's correct.
[14]   **Q:** Have you ever reviewed cases for anyone
[15] else in his office, Mike Becker, David Colwicki?
[16]   A: No.
[17]   **Q:** How many depositions have you given in
[18] your career?
[19]   A: Fifty, 60, somewhere in that range.
[20]   Q: And would the percentage be the same that
[21] we've discussed, 80 percent plaintiff, 20 percent
[22] defendant?
[23]   A: Actually it would probably be higher
[24] plaintiff in terms of actual depositions.

[1]   Q: What would the percentage be for
[2] depositions?
[3]   **A:** 90/10.
[4]   **Q:** Have you ever testified at trial for
[5] anyone?
[6]   **A:** One time.
[7]   Q: Plaintiff?
[8]   **A:** Yes.
[9]   Q: And where was that trial?
[10]   **A:** Chicago.
[11]   Q: How long ago was that?
[12]   **A:** Approximately two, three years ago. Three
[13] years probably.
[14]   Q: Have you ever reviewed cases for anyone
[15] other than Mr. Mishkind in the state of Ohio?
[16]   **A:** I may have. I don't recall offhand. But
[17] I may have had another firm.
[18]   Q: From how many different states have you
[19] reviewed cases?
[20]   **A:** Probably **20** or so.
[21]   **Q:** Can you list for us some of the states in
[22] which you've reviewed cases?
[23]   **A:** Illinois, Wisconsin, Ohio, Indiana, Utah,
[24] Nevada, Florida, South Dakota. I'm certain there's

[1] other ones. I don't recall the rest offhand.
[2]   Q: Are you available through any kind of I
[3] call them brokerage services? They're like these
[4] firms that offer expert assistance and then they'll
[5] take a case from a lawyer and then assign it.
[6]   **A:** No, I'm not.
[7]   Q: And what are your fees?
[8]   **A:** For review, $150. And testimony, either
[9] trial or dep, $200 per hour.
[10]   Q: How much of your professional time is
[11] spent doing this?
[12]   **A:** Perhaps **20** percent, 25 percent.
[13]   Q: And can you state for us what percentage
[14] of your income *is* derived from your work **as** an
[15] expert witness?
[16]   *A.* Again, maybe 20 percent.
[17]   Q: Earlier you mentioned the
[18] American Association of Legal Nurse Consultants.
[19] What is that?
[20]   **A:** An organization comprised mostly of nurses
[21] who in some form or fashion work with the law and
[22] lawyers, whether it be to do expert work or whether
[23] they work in law firms, provide testimony, work up
[24] cases, things of that nature.

[1]   Q: It looks like in reviewing your curriculum
[2] vitae that you've given some presentations to this
[3] group or affiliations of this group, is that
[4] correct?
[5]   A: That's correct.
[6]   Q: In 1996, you gave a presentation called
[7] Anatomy of a Lawsuit, Introduction to Legal Nurse
[8] Consulting. Do you still have any notes or any
[9] formal writings from that?
[10]   A: I don't think so.
[11]   Q: How about the one Liability Issues for the
[12] Obstetrical and Neonatal Clinician?
[13]   A: I doubt it. The majority of those talks
[14] were pretty much off the cuff.
[15]   Q: You've also spoken to lawyers?
[16]   A: Yes.
[17]   Q: You gave a speech entitled The Nurse as an
[18] Expert Witness?
[19]   A: Yes.
[20]   Q: How frequently do you make these kinds of
[21] appearances? Are they all documented here in your
[22] curriculum vitae?
[23]   A: Yes. As you can see I haven't done it for
[24] a while.

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[1]   Q: Why is that?
[2]   A: I've actually just been to busy.
[3]   Q: I noticed in your stack of materials that
[4] Mr. Mishkind gave you directions to the Wayne
[5] County Courthouse. I take it if this case does
[6] proceed to trial in January of 2002, is it your
[7] intention to appear live?
[8]   A: Yes, unless something were to happen where
[9] I'm unavailable to do so.
[10]   Q: And I'll ask you one more time before we
[11] conclude. Have you now covered all your opinions
[12] in case?
[13]   A: At this point in time.
[14]   Q: And if that changes, you'll let
[15] Mr. Mishkind know?
[16]   A: Yes, I will.
[17]   MR. ROSSI: That's all I have.
[18]   MR. LEAK: I do have some questions.
[19]   EXAMINATION
[20]   BY MR. LEAK
[21]   Q: My name is Doug Leak. I'm here for
[22] Dr. Tizzano.
[23]   I think you've already said at the
[24] outset you will not be rendering any expert

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[1] opinions related to Dr. Tizzano, correct?
[2]   A: Correct.
[3]   Q: You did make comment about some thoughts
[4] about Dr. Tizzano. But they don't rise to the
[5] level of expert opinions, correct?
[6]   A: Correct.
[7]   Q: Even though you're not going to be
[8] providing expert opinion, I am interested in
[9] knowing what your thoughts are about Dr. Tizzano's
[10] care in this case. So what are those thoughts that
[11] you have about Dr. Tizzano?
[12]   A: Basically my concern has to do with the
[13] fact that if in fact he contacted the hospital at
[14] 6:00, what took him so long to get to the hospital
[15] in a patient such as this.
[16]   Q: And we're talking about that 6:00 to
[17] 7:44 a.m. time?
[18]   A: That's correct.
[19]   Q: And why do you have some thoughts or
[20] concerns about that time frame?
[21]   A: Because again, this is a patient who is
[22] ten centimeters and who has been ten centimeters
[23] for several hours, is a VBAC patient with intact
[24] bag of water with the head floating. And I think

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[1] that those issues lend some concern. And he stated
[2] that he lives five minutes away, so I don't know
[3] why it took him so long to come and evaluate this
[4] patient.
[5]   Q: And what is your understanding as to why
[6] it took that period of time? Have you ever come to
[7] any understanding?
[8]   A: No, I have not.
[9]   Q: Is that the only point with regard to
[10] Dr. Tizzano that you've had concerns or thoughts
[11] about?
[12]   A: The other point has to do with the actual
[13] attempt at delivery. When he ruptured her bag of
[14] water at 7:44, he stated she was plus 1 station.
[15] Then his deposition testimony states that with
[16] pushing she — this baby advanced to a plus 2 to
[17] plus 3. And he said that he had made attempts or
[18] that they were attempting to make attempts at an
[19] operative vaginal delivery.
[20]   If that's true, there was
[21] approximately a ten-minute window in there where he
[22] could have attempted a vaginal delivery, not with
[23] pushing, but with forceps or a vacuum. And if the
[24] head was really at a plus 3 station, he certainly

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[1] would have been able to use either one of those
[2] techniques to affect a vaginal delivery.
[3]   Yet at that point in time, 8:12 — I
[4] believe it was 8:12 when they called — 8:22 or
[5] 8:12 when they called for the cesarian. So it
[6] doesn't appear that he did make any attempts toward
[7] a vaginal delivery, operative vaginal delivery.
[8]   *Q:* And you're talking about the period of
[9] time when he detected it at plus 3?
[10]   A: By his testimony, yes. That's not
[11] documented in the record, but his testimony was
[12] that he pushed down to a plus 3.
[13]   Q: But of course, your thoughts or concerns
[14] don't rise to any expert opinion because he's a
[15] physician and you're not qualified to render such
[16] an opinion, correct?
[17]   A: That's correct.
[18]   Q: Anything else with Dr. Tizzano?
[19]   A: I believe that covers it.
[20]   Q: You agree that a lot of these issues —
[21] and I know you've addressed them all with
[22] Mr. Rossi — are factual issues between Dr. Tizzano
[23] and sign the nurse and also Angel, correct?
[24]   A: Yes.

[1]   MR. LEAK That's all I have. Thank you.
[P]   MR. MISHKIND: We will have the witness read
[3] and the transcript. We have a seven-day
[4] requirement in Ohio, but we normally stipulate and
[5] agree at 28 days. And I presume it's okay.
[6]   MR. ROSSI: That's fine.
[7]   (FURTHER DEPONENT SAITH NOT.)
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[9]   Defendants.   )
[10]
[1]   This is *to* certify that I have read the
[4] transcript of **my** deposition taken in the
[3] above-entitled cause by Laura Locascio, Certified
[4] Shorthand Reporter, on August 20, 2001, and that
[5] the foregoing transcript accurately stales the
[6] questions asked and the answers given by me as they
[7] now appear.
[8]
[9]   JOANNE ZELTON
[0] SUBSCRIBED AND SWORN TO
[1] before me this _____ day
[2] of _____ 2001.
[3]
[4]   Notary Public

[1]   STATE OF ILLINOIS)
[2]   ) **SS:**
[3]   COUNTY OF C O O K)
[4]   I, Laura Locascio, a notary public within and
[5] for the County of Cook County and State of
[6] Illinois, do hereby certify that heretofore,
[7] to-wit, on the 20th day of August, 2001, personally
[8] appeared before me, at 200 North LaSalle Street,
[9] Chicago, Illinois, JOANNE ZELTON, in a cause now
[10] pending and undetermined in the Circuit Court of
[11] Cook County, Illinois, wherein ANGEL ROBBINS, etc.,
[12] et al. is the Plaintiff, and ANTHONY P. TIZZANO,
[13] M.D., et al. **is** the Defendant.
[14]   I further certify that the said witness was
[15] first duly sworn to testify the truth, the whole
[16] truth and nothing but the truth in the cause
[17] aforesaid; that the testimony then given by said
[18] witness was reported stenographically by me in the
[19] presence of the said witness, and afterwards
[20] reduced to typewriting by Computer-Aided
[21] Transcription, and the foregoing is a true and
[22] correct transcript of the testimony so given by
[23] said witness as aforesaid.
[24]   I further certify that the signature to the

[1] foregoing deposition was reserved by counsel for
[2] the respective parties.
[3]   I further certify that the taking of this
[4] deposition was pursuant to Notice, and that there
[5] were present at the deposition the attorneys
[6] hereinbefore mentioned.
[7]   I further certify that I am not counsel for nor
[e] in any way related to the parties to this suit, nor
[9] am I in any way Interested in the outcome thereof.
[io]   IN TESTIMONY WHEREOF: I have hereunto set my
[ii] hand and affixed my notarial seal this 28th day of
[12] August, 2001.
[13]
[14]
[15]

[17]
[18]   NOTARY PUBLIC, COOK COUNTY, ILLINOIS
[19]
[20]
[21]
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[1]   McCorkle Court Reporters, Inc.
            200 N. LaSalle Street Suite 300
[2]   Chicago, Illinois 60601-1014
[3]
    DATE: August 28, 2001
[4]
    BECKER & MISHKIND CO., L P.A.
[5] MR. HOWARD D. MISHKIND
    1600 W. 2nd Street, Ste. 660
[6] Cleveland. Ohio 44113
[7] IN RE: Robbins vs. Tizzano
    COURT NUMBER: 00 CV 0227
[8] DATE TAKEN: August 20, 2001
    DEPONENT: Joanne Zelton
[9]
    Dear Mr. Mishkind
10]
    Enclosed is the deposition transcript for the
11] aforementioned deponent in the above-entitled
    cause. Also enclosed are additional signature
12] pages, if applicable, and errata sheets.
13] Per your agreement to secure signature, please
    submit the transcript to the deponent for review
14] and signature. All changes or corrections must be
    made on the errata sheets, not on the transcript
15] itself. All errata sheets should be signed and ail
    signature pages need to be signed and notarized.
16]
    After the deponent has completed the above, please
17] return all signature pages and errata sheets to me
    at the above address, and I will handle
1e] distribution to the respective parties.
19] If you have any questions, please call me at the
    phone number below.
20]
21] Sincerely,
22] Margaret Setina   Laura Locascio
    Signature Department   Court Reporter
?3]
    cc: All attorneys present
24]

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