

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

LOGAN SPOLLEN, a minor, by :
his mother and next friend, :
CORY SPOLLEN and CORY :
SPOLLEN, Individually, :
Plaintiffs, :

v. :

CASE NO.
CL09-6555

RHONDA BERTHOLF, CNM, :
et al., :
Defendants. :
_____ :

VIDEOTAPED
DEPOSITION UPON ORAL EXAMINATION
RHONDA BERTHOLF, CNM

March 9, 2010 -- 1:02 p.m.

Virginia Beach, Virginia

Shannon Crittenden-Mann, Court Reporter

Old Dominion Reporting

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APPEARANCES: KOPSTEIN & PERILMAN
By: David M. Kopstein,
Esquire, counsel for the Plaintiffs.

SHAPIRO, COOPER, LEWIS & APPLETON, P.C.
By: James C. Lewis, Esquire,
counsel for the Plaintiffs.

HANCOCK, DANIEL, JOHNSON & NAGLE, P.C.
By: Richard L. Nagle, Esquire, counsel for
the Defendants.

ALSO PRESENT: LEGAL VIDEO SOLUTIONS, INC.
By: Nancy Watters, Videographer.

Shannon Crittenden-Mann, Court Reporter

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EXAMINATION

RHONDA BERTHOLF, CNM PAGE

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EXHIBIT INDEX

BERTHOLF DEPOSITION EXHIBIT PAGE

No. 1 -- Packet of Documents 20

1 Videotaped deposition upon oral examination of
2 Rhonda Bertholf, CNM, Defendant, taken before Shannon A.
3 Crittenden-Mann, a Notary Public for the Commonwealth of
4 Virginia at Large, pursuant to Notice and Agreement,
5 commencing at 1:02 p.m. on March 9, 2010, at the Law Offices
6 of Hancock, Daniel, Johnson & Nagle, P.C., One Columbus
7 Center, Suite 301, Virginia Beach, Virginia, and these in
8 accordance with the Rules of the Supreme Court of Virginia,
9 1950, as Amended.

10
11 THE VIDEOGRAPHER: We're on the record. The
12 time is 1:02 p.m. This is the videotaped
13 deposition of Rhonda Bertholf in the case of
14 Logan Spollen, a minor, by his mother and next
15 friend, Cory Spollen, and Cory Spollen,
16 individually versus Rhonda Bertholf, CNM, et al.,
17 case number CL09-6555, pending in the Circuit
18 Court for the City of Norfolk. This deposition
19 is being taken on behalf of the plaintiffs'
20 counsel.

21 My name is Nancy Watters. I represent the
22 firm of Legal Video Solutions, Incorporated,
23 Norfolk, Virginia. Today's date is March 9,
24 2010. The location is 283 Constitution Drive,
25 Virginia Beach, Virginia. The court reporter is
Shannon Crittenden-Mann, Court Reporter
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1 Shannon Mann of Old Dominion Reporting.

2 Will counsel please introduce themselves for
3 the record and state whom they represent?

4 MR. KOPSTEIN: David Kopstein with Jim
5 Lewis, who is seated to my right, representing
6 the plaintiffs.

7 MR. NAGLE: I'm Rich Nagle. I represent the
8 defendants in this case.

9 THE COURT REPORTER: Would you raise your
10 right hand?

11
12 RHONDA BERTHOLF, CNM, Defendant, called as a
13 witness on discovery, after having been first duly sworn,
14 was examined and testified as follows:

15

16 BY MR. KOPSTEIN:

17 Q Okay. Ms. Bertholf, again, my name is David
18 Kopstein. Together with Jim Lewis here we represent the
19 plaintiffs in this case and I'm -- I've come here to ask you
20 some questions concerning Cory Spollen and Logan Spollen,
21 and I understand you delivered Logan?

22 A Yes.

23 Q Okay. If any of my questions isn't clear to you,
24 please let me know and I'll repeat it or rephrase it as the
25 case may be. You agree to do that?

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1 A Sure.

2 Q Okay. Please state your full name for the record,
3 please.

4 A Rhonda Jean Bertholf.

5 Q And where do you live?

6 A 4716 Woodwind Way, Virginia Beach, Virginia.

7 Q And what is your professional address?

8 A 700 Independence Circle, Suite 3A, Virginia Beach,
9 Virginia.

10 Q And if I may be so indiscreet, your date of birth?

11 A 9/12/55.

12 Q Would you recount for us your educational
13 background, please?

14 A I received a diploma in nursing in Minneapolis,
15 Minnesota. I went on to get my bachelor of science degree.

16 Q Let me just interrupt you. What's the name of the
17 institution that conferred your diploma in nursing?

18 A Abbott Northwestern Hospital School of Nursing.

19 Q And in what year did you receive that diploma?

20 A '78.

21 Q Okay, and please continue. After your nursing
22 diploma in 1978 where did you go next?

23 A I went to Regents University extended degree
24 program. I received that degree of a bachelor's of science
25 degree in nursing in 1996 -- no. I'm sorry, 1988.

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1 Q Okay. And what were you doing during that
2 ten-year period between '78 and '88?

3 A I was a new mother. My husband was overseas in
4 the Navy.

5 Q Okay. Were you working during that time period?

6 A Off and on at various locations.

7 Q Okay. At any point during that ten-year period
8 did you work as a labor and delivery nurse?

9 A No.

10 Q All right. Picking it up then in '88, would you
11 continue with your education, please?

12 A I went to graduate school in 1994 and graduated in
13 1996 with a master's of science degree in nursing with a
14 midwifery certificate.

15 Q And where was that?

16 A East Carolina University.

17 Q Okay. Did you have to take any kind of an
18 examination in order to become an accredited nurse midwife?

19 A Yes.

20 Q And where did -- where and when did you take that
21 examination?

22 A I took that at East Carolina University in 1996
23 through the American College of Nurse-Midwives certifying
24 body.

25 Q Was it a single exam that you had to take?
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1 A Yes.

2 Q And did you pass that exam on your first attempt?

3 A Yes.

4 Q All right. Did you receive any education --
5 formal education subsequent to that?

6 A No.

7 Q Okay. But I take it you've had continuing medical
8 education since then?

9 A Yes. I've always met the -- met the recertifying
10 credentialing continuing education units.

11 Q Have you ever done any teaching in any medical
12 field?

13 A I have been adjunct faculty of nurse practitioner
14 nurse-midwifery students since I've become a nurse-midwife.

15 Q Adjunct faculty at East Carolina or where?

16 A East Carolina University, Old Dominion University,
17 Hampton University, Virginia Commonwealth University, Ohio
18 State University.

19 Q All right. And as a member of the adjunct faculty
20 at those institutions what did you do?

21 A I helped the students finish their clinical
22 requirements to obtain their degrees.

23 Q Okay. Was it all clinical guidance that you gave
24 to the students or did you do any didactic classroom
25 teaching?

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1 A I did not do any didactic. It was all clinical.

2 Q All right. Have you ever served as an expert
3 witness in any kind of civil case?

4 A I was asked to be an expert reader for some other
5 midwifery cases, but I never went to trial.

6 Q Okay. What do you mean by an expert reader?

7 A Well, I had to read the deposition and give my
8 opinion on that particular case.

9 Q Okay. All right. Did -- was it one case or more
10 than one?

11 A Several.

12 Q Okay. Any of those involve brachial plexus
13 injuries?

14 A No.

15 Q Approximately how many babies have you delivered
16 as a nurse-midwife?

17 A Approximately a hundred a year.

18 Q So give me a ball park estimate of the total
19 number of babies you've delivered in your career?

20 A 1,400.

21 Q And in addition to those births that -- where you
22 personally delivered the child how many more births have you
23 been present for?

24 A Too numerous to count.

25 Q More than the -- more than an equal number? In
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1 other words, more than an additional 1,400?

2 A It wouldn't be more.

3 Q Okay. Would it be safe to say that you've either
4 delivered or been present for at least 2,500 births?

5 A Yes.

6 Q All right. Of the 1,400 births that you
7 personally have accomplished how many have involved some
8 degree of shoulder dystocia?

9 A I don't have --

10 Q Approximately?

11 A I don't have those numbers with me.

12 Q More than a dozen?

13 MR. NAGLE: Well, I don't want you to guess.

14

15 BY MR. KOPSTEIN:

16 Q I don't want you to guess either. I just want
17 to --

18 A I -- I have no idea.

19 Q What's the best estimate you can give me?

20 A I don't have a good estimate.

21 Q All right. Are you able to tell me whether it was
22 less than 50?

23 A No.

24 Q Are you able to tell me whether it's less than a
25 hundred?

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1 A No.

2 Q How do you distinguish between mild, moderate and
3 severe shoulder dystocias in your mind?

4 A By how many maneuvers it takes to finally deliver
5 the baby spontaneously.

6 Q Maybe I should back up and ask you what's your
7 definition of a shoulder dystocia?

8 A Shoulder dystocia is where the shoulder, the
9 anterior shoulder, gets caught up on the suprapubic bone
10 during the descent of the delivery.

11 Q Does it have to be the anterior shoulder?

12 A It can be -- it's most commonly the anterior
13 shoulder, but it can be the posterior shoulder.

14 Q Right. You said that what distinguishes mild from
15 moderate from severe is the number of maneuvers that have to
16 be done in -- in order to reduce the dystocia?

17 A Yes.

18 Q Okay. Where is the -- where is the dividing line
19 between mild and moderate? I mean, how many maneuvers would
20 one have to perform and still consider this a -- consider a
21 dystocia to be mild?

22 A When I can reduce the shoulder dystocia with a
23 McRoberts maneuver only I consider that a mild case.

24 Q All right. If it takes anything more than
25 McRoberts or suprapubic pressure it would be at least

1 moderate?

2 A At least moderate.

3 Q Okay. And what distinguishes moderate from
4 severe?

5 A I've never had a severe dystocia.

6 Q Have you ever had a dystocia in which you had to
7 employ what's called the Wood's maneuver in order to reduce
8 the -- the dystocia?

9 A I've never used a Wood's maneuver.

10 Q But you know what it is?

11 A Yes.

12 Q You know how to use it?

13 A Yes.

14 Q You know what a Zavanelli maneuver is?

15 A Yes.

16 Q Have you ever had to do that?

17 A No.

18 Q Have you ever had to fracture a baby's clavicle in
19 order to reduce a -- a shoulder dystocia?

20 A No.

21 Q You mentioned earlier that you couldn't give me
22 even a ball park estimate of the number of times in which
23 you've encountered a shoulder dystocia during a delivery
24 that you were performing. Can you tell me whether you can
25 give me a ball park estimate of the number of children that

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1 you've delivered who suffered brachial plexus injuries?

2 A No.

3 Q Again --

4 A Because -- let me clarify that -- there have been
5 children with very mild plexus injuries that have
6 spontaneously resolved.

7 Q In fact, the vast majority of such injuries do?

8 A Yes.

9 Q Okay. Let's talk then about the number of -- of
10 children you've delivered who have had brachial plexus
11 injuries that to your knowledge were not transient. Can you
12 give me a ball park estimate of the number of children
13 fitting that description?

14 A Two.

15 Q And Logan Spollen was one?

16 A Yes.

17 Q And the Hamilton baby was the other?

18 A Yes.

19 Q And there are none others that you've delivered?

20 A Right.

21 Q All right.

22 A That I'm aware of.

23 Q Okay. Have you ever been present, whether or not
24 you actually laid hands on the baby, for the delivery of any
25 other baby who had a brachial plexus injury that was not

1 transient?

2 A Yes.

3 Q How many occasions?

4 A One.

5 Q And when was that?

6 A As a labor and delivery nurse.

7 Q How about -- about how many years ago?

8 A I don't recall.

9 Q More than ten?

10 A Yes.

11 Q Before you joined Dr. Valentine's practice?

12 A Yes.

13 Q All right. Was it in the State of -- Commonwealth
14 of Virginia?

15 A Yes.

16 Q Was there litigation concerning that delivery?

17 A No.

18 Q Do you know whether that child suffered what's
19 called nerve root avulsion?

20 A I am not sure. The only thing I know that there
21 was some weakness in the arm.

22 Q Okay. Do you know what nerve root avulsion is?

23 A No.

24 Q Other than this case and the case involving the
25 birth of the Hamilton child, have you ever been sued in
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1 connection with a baby that you delivered?

2 A No.

3 Q You recall the -- the Hamilton case?

4 A Slightly.

5 Q Did you give a deposition in this case just as you
6 are here today?

7 A Yes.

8 Q And everything you said during that deposition was
9 true and correct at the time you said it to the best of your
10 knowledge and belief?

11 A To the best of my knowledge and belief.

12 Q Was there anything you said during that deposition
13 that you later believed was not correct?

14 A No.

15 Q What was the -- what was the nature of the
16 allegation made against you in the Hamilton case? What were
17 you alleged to have -- in what way were you alleged to have
18 deviated from the standard of care?

19 A I used too much pressure during the McRoberts
20 maneuver to deliver the baby.

21 Q In the Hamilton case can you tell me approximately
22 how much time elapsed between the -- your realization that
23 there was a shoulder dystocia and your reduction of the
24 dystocia?

25 A I don't recall.

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1 Q What was the nature and severity of the -- of the
2 alleged injury to the Hamilton baby?

3 A I don't recall. I would have to review the notes.

4 Q Do you recall whether during your testimony in the
5 Hamilton case you offered an explanation for the baby's
6 injury other than the application of excessive force by you?

7 A I don't recall.

8 Q In the Hamilton case did you admit to having
9 applied excessive force to the baby?

10 A No.

11 Q Was it your testimony in that case that everything
12 you did in delivering the Hamilton baby was within the
13 standard of care?

14 MR. NAGLE: Let me just note my objection.
15 She's not going to talk about standard of care --

16 MR. KOPSTEIN: All right.

17 MR. NAGLE: -- in the Hamilton case or this
18 case.

19 MR. KOPSTEIN: Okay. Was she offered as
20 a -- do you know if she was offered as a -- a
21 standard of care witness in that case?

22 MR. NAGLE: I don't know if she was. I
23 suspect not, but I can assure you that we don't
24 intend to offer her such in this case. Were that
25 to change I would designate her and you'd be able
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1 to take an expert depo of her.

2 MR. KOPSTEIN: Fine. I accept that.

3

4 BY MR. KOPSTEIN:

5 Q Can you tell me approximately when the Hamilton
6 baby was delivered?

7 A It was approximately 2003.

8 Q Okay. In the interrogatory answers that I was
9 given in this case the date December 2006 appears. Do you
10 know what that refers to?

11 MR. NAGLE: Well, do you have a copy of the
12 interrogatories?

13 MR. KOPSTEIN: Yeah. Let me see if I can
14 get a copy.

15 MR. NAGLE: Because I'm not sure what it
16 refers to.

17 THE WITNESS: I don't know either.

18 MR. KOPSTEIN: Let me show counsel first.

19 MR. NAGLE: Sure. Whose answers are these
20 by the way?

21 MR. KOPSTEIN: These are --

22 MR. NAGLE: Is it Dr. Valentine?

23 MR. KOPSTEIN: I believe the practice's
24 answers.

25 MR. NAGLE: Okay.
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1 MR. KOPSTEIN: And there's a bullet two
2 refers to the Hamilton case right there, and
3 there's a date December 2006.

4 MR. NAGLE: Trial date perhaps.

5 MR. KOPSTEIN: All right.

6 MR. NAGLE: I don't -- I can't tell you for
7 sure.

8 THE WITNESS: I don't recall.

9

10 BY MR. KOPSTEIN:

11 Q Okay. I understand it says here in these
12 interrogatory answers that the claim that was made in the
13 Hamilton case was settled confidentially. Do you know
14 whether that settlement occurred before Logan Spollen was
15 born?

16 A It was not settled before Logan was born.

17 Q But the -- but the litigation commenced before
18 Logan was born?

19 A The case was filed before. The case -- as I
20 recall.

21 Q Do you know whether you had already given a
22 deposition in that case before Logan was born?

23 A I had not given a deposition before Logan was
24 born.

25 Q Do you know if you were aware of the lawsuit
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1 brought by Logan and his mother -- Logan and his parents
2 before -- excuse me -- the lawsuit brought in the Hamilton
3 case before Logan was delivered?

4 A Yes.

5 Q Okay. At the time -- given the fact that the --
6 that the Hamilton litigation was pending when Logan Spollen
7 was born, when Logan was delivered and you noticed he had a
8 weak arm did you believe at that time that you might also be
9 sued in connection with his birth?

10 A I don't recall thinking that at all.

11 Q When was the first time, if ever, that you
12 believed you might be sued in connection with Logan
13 Spollen's birth?

14 A When the case was filed last -- this last year.

15 Q Your testimony is the fact that you might be sued
16 in connection with that birth never crossed your mind until
17 after this case was -- was filed?

18 MR. NAGLE: It's asked and answered. That's
19 what she just said. Go ahead.

20

21 BY MR. KOPSTEIN:

22 Q Is that correct?

23 A That is correct.

24 Q As a result of the brachial plexus injury that the
25 Hamilton child allegedly sustained, were there any changes
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1 in procedure either by you, by Dr. Valentine or by his
2 practice that were intended to reduce the possibility of
3 that occurring again?

4 A I don't recall.

5 Q If such changes were instituted who do you think
6 would be the best source of information about that?

7 A Dr. Valentine.

8 Q At any point in time before Logan was delivered
9 did you or to your knowledge anyone else make his parents
10 aware of the allegations made against you with regard to the
11 Hamilton birth?

12 A No.

13

14 (Packet of Documents was marked Bertholf
15 Deposition Exhibit Number One.)

16

17 BY MR. KOPSTEIN:

18 Q All right. If I can invite your attention to
19 document number one of Exhibit One.

20 MR. KOPSTEIN: She's got her own copy there.

21 MR. NAGLE: Right. I'm going to follow
22 along.

23

24 BY MR. KOPSTEIN:

25 Q Okay. All right. Document number one that's --
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1 the top part of the page was written by you?

2 A No.

3 Q Okay. The signature midway down the page, is that
4 yours?

5 A Yes.

6 Q Okay. Who actually wrote what's above that
7 signature?

8 A Well, I thought you were referring to the name
9 Cory Spollen. Somebody else wrote that. I wrote the entry
10 8/28/06 then on down to my signature.

11 Q Okay. To your knowledge was that the first time
12 that you saw Cory?

13 A To my knowledge.

14 Q Okay. Would you read what you wrote, please?

15 A Complained of odor times two weeks off and on,
16 worse after sex, complained of vaginal discharge.
17 Objective, zero lesions, pasty vaginal discharge noted,
18 negative odor, wet prep, occasional clue, positive hyphae
19 buds. Assessment was candidiasis, a bacterial vaginosis.
20 It was an ER visit. Plan, I gave her prescription for
21 Gynazole with one refill, one sample pack of Tindamax today,
22 return to office as scheduled.

23 Q Did you see her again before she went into labor,
24 Cory's mom?

25 A I don't recall.
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1 Q Okay. In preparing for your deposition today did
2 you review any medical records?

3 A I reviewed the office record, yes.

4 Q Okay. Did you review any hospital record?

5 A No.

6 Q Let me ask you some questions about document
7 number two.

8 MR. NAGLE: So I'm clear for the record,
9 this is all Exhibit One and you're on Page Two?

10 MR. KOPSTEIN: Right. All part of --
11 correct. All part of Exhibit One, and I'm going
12 to be jumping around, but this document I've
13 numbered with a Sharpie in the upper right-hand
14 corner two.

15 MR. NAGLE: Understood.

16

17 BY MR. KOPSTEIN:

18 Q It's called Coding Abstract. It's from Sentara
19 Leigh Hospital dated 12/05/06. Are you with me, ma'am?

20 A Yes.

21 Q Okay. Can you identify this? What is this and
22 what's it used for?

23 A I'm unaware of this sheet. I've never seen it
24 before. I don't know who does this.

25 Q Okay. Do -- do you know where the information
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1 came from that was used to enter these codes?

2 A No.

3 Q All right. Under -- you see where it says in
4 the -- in the second section DRG 373, vaginal delivery
5 without -- looks like complicating or complicated diagnosis?

6 A Yes.

7 Q That's not accurate; is it?

8 MR. NAGLE: Well, let me note my objection.

9 A I have no idea.

10 MR. NAGLE: Hold on one second.

11 MR. KOPSTEIN: Okay.

12 MR. NAGLE: Hold on one second. You're
13 asking her to comment on a form. You've already
14 laid a foundation.

15 MR. KOPSTEIN: Right.

16 MR. NAGLE: She's never seen it before. She
17 has no role in filling it out.

18 MR. KOPSTEIN: Understood, and -- and I hope
19 that's clear for the record.

20

21 BY MR. KOPSTEIN:

22 Q I understand you had no input into this, and I'm
23 not suggesting that you did, but based on what you know
24 about the delivery would it be accurate to say that this was
25 a vaginal delivery without complicating or complicated

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1 diagnosis?

2 MR. NAGLE: Same objection.

3 MR. KOPSTEIN: We can make that a continuing
4 objection.

5 MR. NAGLE: I'll object when I feel like I
6 have to.

7 MR. KOPSTEIN: Okay.

8 MR. NAGLE: But if you can answer it subject
9 to the objection go ahead.

10 A Based on what I know with the outcome I -- I
11 guess -- I -- I don't know how to answer that question
12 because I don't know what these diagnosis codes mean.

13

14 BY MR. KOPSTEIN:

15 Q Okay.

16 A So I can't address the fact if they're accurate or
17 not.

18 Q Okay. Can you tell me -- going down to the part
19 where it says "admitting diagnosis" and it says "normal
20 delivery" --

21 A Yes.

22 Q -- can you tell me whether it would be accurate in
23 your mind to characterize this as a normal delivery?

24 MR. NAGLE: Well, hold on one second. Let's
25 just be clear about where I'm going to draw the
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1 line.

2 MR. KOPSTEIN: Okay.

3 MR. NAGLE: She's not going to give you
4 retrospective opinions of any kind --

5 MR. KOPSTEIN: I understand.

6 MR. NAGLE: -- on this document or
7 generally. So if you want to lay a foundation at
8 a particular point in time when she was involved
9 with the delivery that's fine. You can ask her
10 did she form the opinion at that time it was
11 normal or abnormal.

12 MR. KOPSTEIN: Okay.

13 MR. NAGLE: But she's not going to be
14 involved in the exercise --

15 MR. KOPSTEIN: I understand.

16 MR. NAGLE: -- of looking back now so --

17

18 BY MR. KOPSTEIN:

19 Q As of the time of delivery did you consider this
20 to be a normal delivery?

21 A No.

22 Q All right. Moving down to where it says
23 "procedures," it's got Dr. Valentine's name. Do you know
24 why Dr. Valentine's name appears there instead of yours?

25 A No.

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1 Q Okay. Normally if you're the person who actually
2 delivers the child would it normally, if you know, be your
3 name that appears there?

4 A I'm -- I don't know one way or the other.

5 Q Okay. Dr. Valentine wasn't present for this
6 birth?

7 A No, he wasn't.

8 Q Do you know why his name is there?

9 A I can only speculate, but I'm not going to do
10 that.

11 Q Okay. Well, other than a -- than a totally wild
12 guess, what reason -- what is your reason -- what reason do
13 you have for believing that his name is there? I don't want
14 a guess, but if you have an informed idea of why it might be
15 there I'd like to hear it.

16 MR. NAGLE: Well, let --

17 A I don't have an informed idea.

18

19 BY MR. KOPSTEIN:

20 Q Okay. If you could skip ahead now to the document
21 numbered 13. Now, would you agree that gestational diabetes
22 in a mother is a risk factor for shoulder dystocia?

23 A Yes.

24 MR. NAGLE: Well, let me -- let's just get
25 something straight.

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1 THE WITNESS: Okay.

2 MR. NAGLE: If I put my arm out --

3 THE WITNESS: Yeah, I know. I know.

4 MR. NAGLE: Let me get my objection before
5 you answer, and I'm not clear whether you're
6 asking her is that something she thought in
7 connection with this patient's labor and delivery
8 or you're asking her for retrospective expert
9 opinions.

10 MR. KOPSTEIN: I'm just asking her a general
11 question.

12 MR. NAGLE: Well, it's going to have to be
13 tied to what she did for this patient for her to
14 answer.

15

16 BY MR. KOPSTEIN:

17 Q Okay. All right. As we sit here today, do you
18 agree that maternal gestational diabetes is a risk factor
19 for shoulder dystocia?

20 MR. NAGLE: Right. She's not going to --
21 she's not going to answer that question. What
22 she thinks today is nothing more than asking
23 you -- asking her to give you retrospective
24 opinions. You're entitled to know what she was
25 thinking at the time, what she did, what she knew

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1 so --

2

3 BY MR. KOPSTEIN:

4 Q All right. Is your -- is your opinion today on
5 that subject any different than it was at the time Logan
6 Spollen was born?

7 MR. NAGLE: Same objection. She's not going
8 to give you retrospective opinions no matter how
9 you phrase the question.

10 MR. KOPSTEIN: I understand.

11 MR. NAGLE: So we'll have to agree to
12 disagree on it.

13 MR. KOPSTEIN: I understand. Are you
14 instructing her not to answer?

15 MR. NAGLE: I am.

16 MR. KOPSTEIN: Okay.

17 MR. NAGLE: It's in the nature of expert
18 testimony and there's a privilege in this
19 Commonwealth against providing that unless you
20 have a contract with her to provide expert
21 testimony, which you don't and she doesn't desire
22 to enter into.

23 MR. KOPSTEIN: I disagree with you with all
24 due respect, but that's something for somebody
25 else to rule on at another time.

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1 MR. NAGLE: Agreed. Agreed.

2 MR. KOPSTEIN: As for it being a basis to
3 instruct her not to answer that I definitely
4 disagree with you on.

5

6 BY MR. KOPSTEIN:

7 Q In any event, at the time you delivered Logan
8 Spollen did you believe that maternal diabetes was a risk
9 factor for shoulder dystocia?

10 A Yes.

11 Q All right. So that was something that you would
12 want to know before delivering the child; correct?

13 A Yes.

14 Q Okay. So if I can now invite your attention to
15 the document numbered 13. Are you with me?

16 A Yes.

17 Q All right. First of all, is any of the
18 handwriting on this document yours?

19 A No.

20 Q All right. But you're familiar with documents of
21 this kind that were kept by the practice?

22 A Yes.

23 Q And what was the purpose of this type of document?

24 A Just to summarize and document the lab work and
25 problems and things to look for on the patients.

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1 Q Okay. Before you delivered Logan Spollen had you
2 looked at this particular document?

3 A I had looked at this particular page when I saw
4 her during that one visit we talked about earlier.

5 Q Okay. Did you ever see it again before the
6 delivery?

7 A I saw it with a copy to the hospital.

8 Q Okay. It indicates here toward the bottom of the
9 page that a one-hour glucose tolerance test was done on the
10 mom on September 12th, 2006 with a result being 131?

11 MR. NAGLE: Is that a question?

12

13 BY MR. KOPSTEIN:

14 Q Okay. Are you with me?

15 A Yes.

16 Q Okay. And at that date this baby would have been
17 about 28 weeks gestational age; do you agree with that?

18 A I would have to look at --

19 Q Please, take your time and -- and tell me.

20 A If I have it.

21 Q If you need to see more records than you have in
22 front of you I'd be more than happy to --

23 A Well, the testing is usually done at 28 weeks. I
24 don't have the record in front of me to tell me exactly when
25 that test was done, when September 12th was as far as how

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1 far along she was.

2 Q Okay. I'm going to show you the records that I
3 have and I think you might find what you're looking for
4 under tab one, and the -- and the question pending only is
5 whether the records reflect that at the time of that glucose
6 tolerance test the baby was at 28 weeks gestational age?

7 A Well, her visit was September 6th at 27 and one,
8 so on the 12th one week later she would be 28 weeks.

9 Q Okay. This result of 131, at that time would that
10 have been considered elevated?

11 A No.

12 Q What would that -- as of that time what would that
13 result have had to been before you would have considered it
14 elevated?

15 A By the laboratory ways of measuring the glucose it
16 would have been 140.

17 Q Okay. So something about that -- the way that
18 particular laboratory measured glucose that would -- that
19 increased your threshold for considering a reading elevated?

20 MR. NAGLE: Object to the form. You can
21 answer it if you can.

22 A The lab gives us the result of 131. If it's not
23 at 140 then it's not considered high.

24

25

1 BY MR. KOPSTEIN:

2 Q Okay. And was that 140 threshold something that
3 you determined or was it a written policy instituted either
4 by your practice or by the hospital or what?

5 MR. NAGLE: Well, she's not going to provide
6 you with the substance of any written policies,
7 counsel.

8 MR. KOPSTEIN: Okay.

9 MR. NAGLE: You can ask her the foundational
10 question, was there a policy on that or not, and
11 I'll let her give you a yes or no so we know if
12 we have something to argue about in court,
13 because if it's a no we don't. If it is a yes
14 and there was such a policy on the topic you're
15 not going to get the substance of it absent a
16 court order.

17

18 BY MR. KOPSTEIN:

19 Q Okay. Then let's do it first that way. Was there
20 a policy that discussed the one-hour glucose tolerance
21 result that would be considered elevated in force and effect
22 at that time?

23 A No.

24 Q Okay. From what did you -- what was your basis
25 for believing that a reading under 140 would not be

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1 elevated?

2 MR. NAGLE: It's asked and answered. Tell
3 him again.

4 A The level of 140 or more is considered elevated.

5

6 BY MR. KOPSTEIN:

7 Q I'm sorry. Considered by who?

8 A By -- by a combination of sources.

9 Q List as many of those sources as you can.

10 A We have the source -- written sources, the
11 laboratory sources and -- and what our office policy is.

12 Q Okay. First list by name the written sources to
13 which you just referred, as many of them as you can.

14 A I don't recall all the sources right at this time.

15 Q I'm not asking for all of them. I asked you to
16 list as many of them as you can. Can you list any of them,
17 even one?

18 A I cannot list the sources that I have used at --
19 during this particular year.

20 Q Okay. You said there was an office policy?

21 MR. NAGLE: She did say that. What's your
22 question, because I need to proceed carefully on
23 that?

24 MR. KOPSTEIN: I understand that.

25

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1 BY MR. KOPSTEIN:

2 Q Who developed the office policy?

3 A The office policy was developed before I was
4 there, so I couldn't answer that.

5 Q All right. And how were you made aware of the
6 office policy?

7 A I read the office policy.

8 Q Okay. Did you ever exercise any independent
9 judgment in determining the level of -- the result of a
10 one-hour glucose tolerance -- tolerance test that would be
11 considered elevated or did you go strictly by the policy?

12 MR. NAGLE: Well, let me object to the
13 question. Those are not mutually exclusive
14 options.

15 MR. KOPSTEIN: I understand that. Objection
16 noted.

17

18 BY MR. KOPSTEIN:

19 Q In other words, did you ever exercise any
20 independent judgment in determining whether a -- a reading
21 of 131 or a reading less than 140 would be considered
22 elevated?

23 A I don't recall.

24 Q Are you familiar with a book that I'm holding in
25 my hand, and for the record it's "Varney's Midwifery, Fourth
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1 Edition"?

2 A I am aware of that edition.

3 Q Okay. Are you aware of what Varney's has to say
4 about what level of glucose tolerance test is considered
5 elevated?

6 MR. NAGLE: Well, unless you lay a
7 foundation that you're -- that she --

8

9 BY MR. KOPSTEIN:

10 Q Sorry. Back up. Were you aware of that at the
11 time?

12 MR. NAGLE: Unless you lay a foundation that
13 she considers Varney's to be a reliable authority
14 I'm not going to have you be cross-examining with
15 her, counsel.

16 MR. KOPSTEIN: I understand that.

17

18 BY MR. KOPSTEIN:

19 Q All I want to know is at the time that you
20 delivered this baby were you aware of what Varney's had to
21 say about that subject?

22 MR. NAGLE: Okay. Counsel, that's my exact
23 objection, okay. You're cross-examining her with
24 a source that you haven't established she
25 considers to be a reliable medical authority.

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1 MR. KOPSTEIN: I'm not going to get in to
2 what it says. I'm just asking whether she was
3 aware of what it says. I'm not cross-examining
4 anything.

5 MR. NAGLE: Well, you and I are drawing the
6 line in different places. So you lay the
7 foundation or she's not going to answer it. Wait
8 for the question.

9

10 BY MR. KOPSTEIN:

11 Q All right. Did you have a copy of Varney's in
12 your office at the time?

13 A Yes.

14 Q Did you ever consult Varney's for anything?

15 A Yes.

16 Q Why?

17 A For various information that I needed.

18 Q Why did you consult Varney's as opposed to other
19 textbooks or other sources of information?

20 A Let me clarify. The edition I have in my office
21 is the second edition. I do not have the fourth edition.

22 Q Okay. But the fourth edition existed as of the
23 date of -- of Logan's birth; correct?

24 A I --

25 MR. NAGLE: Objection. Calls for
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1 speculation.

2 A I don't recall.

3

4 BY MR. KOPSTEIN:

5 Q All right. Had you ever looked at what Varney's
6 had to say with respect to a glucose tolerance test results
7 and what would be considered elevated for a one-hour test?

8 A I don't recall. Not recently.

9 Q Do you consider Varney's, at least the edition
10 that you had, to be an authoritative textbook?

11 A No.

12 MR. NAGLE: Object to the form. Go ahead.

13

14 BY MR. KOPSTEIN:

15 Q Why not? What was it about Varney's that made you
16 think it was not authoritative?

17 A Many textbooks are written and they're usually
18 outdated by the time they're written, so many people write
19 on the various levels of what is normal and what is not
20 normal.

21 Q Okay. Why did you continue to keep it in your
22 office and consult it at least with respect to some subjects
23 if you felt it was dated?

24 A It's a good resource.

25 Q Despite the fact that it's dated?
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1 A Yes.

2 Q What is it that makes it a good resource despite
3 the fact that it's dated?

4 A It's a textbook concerning midwifery.

5 Q Okay. Are there other midwifery textbooks?

6 A Yes.

7 Q Are you familiar with a "Myles' Textbook"?

8 A No.

9 Q If a three-hour glucose tolerance test had been
10 given to Cory Spollen would it have been reflected on the
11 line in document number 13 below the -- the one where the
12 result for the one-hour test is shown?

13 A Yes.

14 Q So would it be correct to assume from the fact
15 that the line below this is blank that there was -- she was
16 never given a three-hour test?

17 MR. NAGLE: It calls --

18 A That is correct.

19

20 BY MR. KOPSTEIN:

21 Q Okay. Do you know, and feel free to look at the
22 records, whether sugar was ever found in Cory Spollen's
23 urine?

24 A I would have to look at the record.

25 MR. NAGLE: While she's doing that, counsel,
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1 this may be a good time for you and I to have a
2 discussion about the parameters of this lawsuit
3 and this deposition because you seem to be very
4 focused on what can loosely be characterized as
5 potential risk factors for shoulder dystocia, and
6 I've looked at your complaint and I asked the
7 court to order you to file a Bill of Particulars,
8 which you did, and this case has nothing to do
9 with risk factors for shoulder dystocia. If I'm
10 missing something let me know, but I --

11 MR. KOPSTEIN: You'll see where I'm going
12 with it.

13 MR. NAGLE: Well, I better see right away
14 because right now it looks like lawsuit A was
15 filed and you intend to conduct deposition B. So
16 I'm just putting you on notice. I've let you go
17 here for a little bit, but I'm at the end of
18 where I'm going to let it go because as you know
19 the scope of discovery in a case is set by the
20 parameters of the pleadings, and in this case
21 I've got both the complaint and a Bill of
22 Particulars, which says your entire allegation in
23 this case is that there was too much traction to
24 the head. And so far I've seen an exercise on
25 your part to get this witness to testify about
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1 glucose levels and to testify about what is or
2 isn't a potential risk factor for shoulder
3 dystocia.

4 MR. KOPSTEIN: I understand where you're
5 going, but in any mind the parameters for a
6 deposition are set forth in Rule 4 -- 4:1.

7 MR. NAGLE: What's it say?

8 MR. KOPSTEIN: Which says anything that
9 could lead to the discovery of admissible
10 information, and for the time being I think that
11 it can, but like I said, I'd just as soon not
12 give the witness a preview of why I'm asking the
13 questions that I'm asking.

14 MR. NAGLE: Well, you're going to find
15 yourself at a dead end because I'm not going to
16 let the exercise continue. I think folks are
17 entitled to be put on notice of what's at issue
18 in litigation, and when you have been as clear as
19 you folks have been in these two pleadings about
20 what's at issue it is trial by ambush for you to
21 come in here and start taking a deposition about
22 issues that aren't related. If you want to make
23 a proffer to me with the witness outside the room
24 I'm happy to do that and let you know whether
25 I'll change my position, but the exercise of
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1 taking this deposition inconsistent with the
2 pleadings is over from my perspective.

3 MR. KOPSTEIN: I understand where you're
4 going.

5 MR. NAGLE: So I'll take it question by
6 question or I'll let you make a proffer to me
7 outside the presence of the witness.

8 MR. KOPSTEIN: You want to instruct a
9 witness not to answer a question where no
10 privilege is involved you do that in your peril.

11 MR. NAGLE: I will because I'll tell you
12 this, counsel, I consider it harassment to file
13 litigation against a defendant in this
14 Commonwealth and be perfectly clear in your
15 complaint, which I'll be happy to mark as an
16 exhibit, and then be ordered by the Court to file
17 a Bill of Particulars and be even more specific
18 and then come in and ask a witness about
19 unrelated matters to prop up allegations that are
20 not currently pending in this case it's
21 harassment. I'll stop it and I'll file for a
22 protective order.

23 MR. KOPSTEIN: I understand. You do what
24 you feel is best and if and when we have to
25 resume this deposition we will, but I'm going to
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1 ask what I'm going to ask.

2 MR. NAGLE: Okay. You don't want --

3 MR. KOPSTEIN: What was my last question?

4 I'm sorry.

5

6 (Whereupon the court reporter read the last
7 question, after which, testimony continues as follows:)

8

9 MR. KOPSTEIN: All right. The question
10 pending, are you instructing her not to answer
11 that question?

12 MR. NAGLE: I'll let her answer that
13 question. I will take it question by question.
14 Go ahead.

15 MR. KOPSTEIN: Thank you.

16

17 BY MR. KOPSTEIN:

18 Q Can you tell from -- now that you had a chance to
19 look at the records, are you able to answer my question
20 about whether sugar was found in Cory Spollen's urine?

21 A Twice.

22 Q Okay. And the record on which that is reflected,
23 is that something that you had seen before the delivery?

24 A I don't recall.

25 Q Okay. You don't know whether at the time you
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1 delivered the child you were aware of that fact?

2 A I -- I don't recall if I was aware of that fact.

3 Q Okay. At the time you delivered this child were
4 you aware that the mother had experienced a ten-pound weight
5 gain between November 7th and November 13th?

6 A No.

7 Q At the time you delivered this child were you
8 aware that the mother had gained 70 pounds during this
9 pregnancy?

10 A No.

11 Q What did you consider to be a normal weight gain
12 for a mother?

13 A Thirty-five to 45 pounds.

14 Q Okay. At the time you delivered this child were
15 you aware that at 38 weeks the fundal height was measured at
16 41 centimeters?

17 A I was unaware of it.

18 Q If I can invite your attention now to number 11,
19 document number 11, still Exhibit Number One. Are you with
20 me?

21 A Yes.

22 Q Okay. The second of the two notes on that page,
23 the one that appears to be labeled OB note --

24 A Yes.

25 Q -- recognizing that you're not a handwriting
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1 expert, does that appear to be something that Dr. Valentine
2 wrote?

3 A It appears so, yes.

4 Q Okay. Are you able to read it?

5 A OB note, complained of irregular contractions, for
6 induction 12/04/06.

7 Q Does that mean that this baby was scheduled for
8 induction to take place on December 4th?

9 A Yes.

10 Q Do you -- had you ever discussed with
11 Dr. Valentine the fact that this baby was scheduled for
12 induction?

13 A No.

14 Q Was the fact that this baby was scheduled for
15 induction something you were aware of at the time of
16 delivery?

17 A I don't recall.

18 Q Okay. If this was in the chart at that time would
19 you not have seen it?

20 A The chart is sent over to the hospital when they
21 are approximately 36 or 37 weeks.

22 Q Okay.

23 A So these last few notes would not have been in the
24 chart the day she went in to labor.

25 Q If there was something important in the chart that
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1 you as the delivering nurse-midwife would want to or need to
2 know about, what procedure or process was in effect at that
3 time that would make sure you got that information?

4 A If there was something important they would fax
5 over that information.

6 Q Did you ever subsequently discuss with
7 Dr. Valentine the reason why this baby was scheduled for
8 induction?

9 A I don't recall.

10 Q Okay. If this baby was scheduled for induction is
11 that something that you as the delivering nurse-midwife
12 would have wanted to know at that time?

13 A At that time, no.

14 Q Would it depend on the reason why the baby was
15 scheduled for induction?

16 A The reason for the induction is usually stated in
17 the hospital scheduling book, so that's where I would have
18 gotten the information if I was aware of it.

19 Q Okay. Did you ever find out why this baby was
20 scheduled for induction?

21 MR. NAGLE: Well, she found out through me
22 or in connection with the litigation?

23

24 BY MR. KOPSTEIN:

25 Q Other than through counsel?
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1 A I don't recall. I don't recall.

2 Q Okay. Did you have any input into the decision to
3 schedule this mother for induction?

4 A I had no input.

5 Q Do you know who made that decision?

6 A I don't recall. I was unaware of who made that
7 decision.

8 Q Okay. Let me invite your attention, ma'am,
9 please, to the document numbered 14. Can you identify what
10 this is?

11 A It's a flow sheet, part of her obstetrical records
12 in the office.

13 Q Okay. This is an office record?

14 A Yes.

15 Q And so you would have seen this before the
16 delivery?

17 A Yes.

18 Q Okay. Now, if I can specifically direct your
19 attention to the item numbered 18 toward the bottom of the
20 page.

21 A Yes.

22 Q It says "diagonal conjugate"?

23 A Yes.

24 Q What is diagonal conjugate or a diagonal
25 conjugate?

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1 A It's the angle from behind the suprapubic bone to
2 the -- to the -- to the lower part of the spine, the
3 smallest diagonal -- diagonal of the pelvis crossways.

4 Q Is that -- I'm sorry. I didn't mean to interrupt.

5 A Crossways.

6 Q Okay. Does that assist you in determining the --
7 strike that. Was that information which at that time you
8 would use as a nurse-midwife to determine the adequacy of a
9 mother's pelvis?

10 MR. NAGLE: Well, let me just note my
11 objection. It goes right back to what I was
12 mentioning to you before.

13 MR. KOPSTEIN: Okay.

14 MR. NAGLE: There's no issue in this case as
15 you have filed it and pled it and clarified it
16 for the parties, the court and counsel with
17 regard to the route of delivery.

18 MR. KOPSTEIN: Okay.

19 MR. NAGLE: And witnesses and especially
20 defendants in a case have a right to be put on
21 notice of where you're going. We don't have
22 trial by ambush in this state. So she's not
23 going to answer that question because I know -- I
24 know well where you're going. If you can relate
25 it for me satisfactory -- in a satisfactory
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1 fashion to your early allegation in the case that
2 there was excessive lateral traction placed on
3 the head I'll be more than happy to let her
4 answer it.

5

6 BY MR. KOPSTEIN:

7 Q Was the diagonal conjugate for this particular
8 mother recorded anywhere other than here?

9 MR. NAGLE: It's not even recorded here.

10 Same objection. She's not going to answer the
11 question.

12

13 BY MR. KOPSTEIN:

14 Q Okay. Do you know whether the -- what this
15 mother's diagonal conjugate was?

16 MR. NAGLE: Same objection. She's not going
17 to answer the question.

18 MR. KOPSTEIN: Okay.

19 MR. NAGLE: And if you're going to keep
20 going then I -- I'm probably obligated under the
21 rules to stop the deposition and move for a
22 protective order.

23 MR. KOPSTEIN: Well, let's make a record.

24 Okay.

25 MR. NAGLE: As long as you understand my
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1 proffer at this point is I think I should stop
2 this deposition and move for a protective order.
3 I don't want to inconvenience you-all further
4 than I have to, but I don't want to face an
5 argument down the road that I should have stopped
6 it and moved for a protective order.

7 MR. KOPSTEIN: Well, it seems to me that so
8 far she's not answering the questions on your
9 direction, and so I don't see how your prejudiced
10 by me making a record of the questions that I
11 would want to have answered.

12 MR. NAGLE: I only am if we end up arguing
13 it in court my conduct is called into question
14 and you say, "If counsel really felt it was
15 harassment and improper he should have stopped
16 the deposition and moved for a protective order."
17 So if we have that agreement --

18 MR. KOPSTEIN: We do have that agreement.

19 MR. NAGLE: -- I will let you make your
20 record.

21 MR. KOPSTEIN: No, I'm not trying to provoke
22 you here into doing something which I'm then
23 going to use against you. That's not the point
24 here. I'm trying to get information.

1 BY MR. KOPSTEIN:

2 Q What was the diagonal conjugate information used
3 for?

4 MR. NAGLE: Same objection. She's not going
5 to answer the question.

6

7 BY MR. KOPSTEIN:

8 Q Okay. Would information regarding
9 diagonal conjugate -- a mother's diagonal conjugate allow
10 you to determine at that time whether the mother was at
11 increased risk for a shoulder dystocia?

12 MR. NAGLE: Same objection. She's not going
13 to answer that question.

14

15 BY MR. KOPSTEIN:

16 Q Okay. Is it unusual in your experience for a
17 blank such as the one in -- on this for item number 18 to be
18 left blank?

19 MR. NAGLE: Same objection. She's not going
20 to answer that question.

21

22 BY MR. KOPSTEIN:

23 Q Now, again, feel free to look at the records. Do
24 you agree with me that when Cory Spollen was dilated at six
25 centimeters the baby was still at minus two station? And

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1 again, feel free to look at whatever you need to look at in
2 order to answer that question.

3 A I have no idea where to look.

4 MR. NAGLE: Do you want to direct her,
5 counsel?

6

7 BY MR. KOPSTEIN:

8 Q Here, take a look at number -- here, I'll see if I
9 can help you find it. I would suggest take a look under Tab
10 Two. I think you're most likely to find it under -- under
11 one of the sub tabs of Tab Two, and take your time.

12 MR. NAGLE: I want you to flip through and
13 if you find it bring it to my attention too.

14 THE WITNESS: Okay.

15 MR. KOPSTEIN: Yes, please.

16 MR. NAGLE: What have you got there?

17 A In my progress notes I have it written down. I
18 wrote at 10:00 in the morning she was six centimeters, a
19 hundred percent, minus two station.

20

21 BY MR. KOPSTEIN:

22 Q Okay. And to the best of your knowledge even as
23 you sit here today that was accurate when you recorded it?

24 A Yes.

25 Q Okay. What, if any, significance did you attach
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1 to that at the time?

2 A She was progressing in labor.

3 Q The baby's head was not then engaged?

4 A Not at that point in time, no.

5 Q Okay. Did you consider the fact that the baby's
6 head was not then engaged to be significant at the time?

7 A Not at the time.

8 Q Do you know if you ever made any of the OBs aware
9 of the fact that the mother was at six centimeters and the
10 baby was still at minus two station?

11 A I don't recall.

12 Q Again, and you can look through the -- the records
13 under Tab Two, which is where this would probably be. Am I
14 correct in understanding that this baby was still at zero
15 station when the mother was fully dilated albeit with an
16 anterior lip?

17 A Alls I can say is when she was anterior lip, which
18 is nine-and-a-half centimeters she was zero station.

19 Q Okay. And did you record that?

20 A Yes.

21 Q Okay. And was that accurate at the time you
22 recorded it?

23 A Yes.

24 Q Okay. As you sit here today do you still believe
25 it to have been accurate when you recorded it?

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1 A Yes.

2 Q Okay. Was any OB ever informed of that fact?

3 A I don't recall.

4 Q If I can invite your attention -- here, let me see
5 the records and I'll help you find the relevant tab -- to
6 the fetal monitoring strip. My question is, first of all,
7 were there any prolonged decelerations that you were aware
8 of at the time?

9 A I don't recall. I would have to review the strip.

10 MR. NAGLE: And so we're clear, you're going
11 to need to lay foundation that she can tell you
12 what she thought at the time.

13 MR. KOPSTEIN: Okay. Right.

14 MR. NAGLE: I'm not going to have her give
15 you a retrospective opinion.

16

17 BY MR. KOPSTEIN:

18 Q I'm going to ask you, at the time were you aware
19 of any prolonged decelerations?

20 A I don't recall really.

21 Q Okay. At the time were you looking at the strip?

22 A Off and on during the day.

23 Q Okay. So if, in fact, the strip had shown
24 prolonged decelerations you would have been aware of that?

25 A I believe so.

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1 Q Okay. Now, why don't you go ahead and take a look
2 at the strip.

3 MR. NAGLE: What's your question though,
4 counsel?

5 MR. KOPSTEIN: Okay.

6 MR. NAGLE: So I know whether it makes sense
7 for her to look at it.

8

9 BY MR. KOPSTEIN:

10 Q Looking at the strip does that refresh your
11 recollection as to whether you were aware of any prolonged
12 decelerations during this labor?

13 MR. NAGLE: Do you understand what he's
14 asking you? If looking at it today can you put
15 yourself back into what you were thinking when
16 you saw it in 2006?

17 A I don't believe I can put myself back what I was
18 thinking in 2006.

19

20 BY MR. KOPSTEIN:

21 Q Okay. If a baby had decelerations on a strip,
22 again talking about what was going on at that time period,
23 and you happened to be out of the room at the time what
24 procedure was then in place to make you aware of that?

25 MR. NAGLE: Go ahead.
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1 MR. NAGLE: Let me move this for you.

2 MR. KOPSTEIN: Thank you.

3 MR. NAGLE: You're welcome.

4

5 BY MR. KOPSTEIN:

6 Q Are you with me?

7 A Yes.

8 Q Okay. Have you seen this document before?

9 A Yes.

10 Q Okay. Do you know who provided the information
11 that is reflected in this document?

12 A The labor and delivery nurse fills this form out.

13 Q Okay. Did you provide any input into this
14 document?

15 A No, I don't recall.

16 Q Okay. Did you ever review this document to
17 determine whether it contained any inaccuracies? And I'm
18 talking about before the lawsuit was filed.

19 A I reviewed the form when she came into the office
20 and I saw her at her postpartum checkup.

21 Q Okay. Is there anything in this document -- on
22 this document as you sit here today that you believe was not
23 entered accurately at the time?

24 MR. NAGLE: Well, that's asking for a
25 retrospective opinion, which she's not going to
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1 give you.

2 BY MR. KOPSTEIN:

3 Q Okay. Thinking back on the facts as you recall
4 them at this time, does this document accurately reflect
5 what occurred?

6 MR. NAGLE: Note my objection to the same
7 question asked in a different fashion. It's the
8 same instruction, counsel.

9 MR. KOPSTEIN: Okay.

10 MR. NAGLE: She's not going to give you a
11 retrospective opinion no matter how you phrase
12 it.

13

14 BY MR. KOPSTEIN:

15 Q All right. To the best of your recollection this
16 baby was born at the date and time indicated?

17 A The best of my recollection, yes.

18 Q And to the best of your recollection this baby was
19 born direct occiput anterior?

20 A Yes.

21 Q Okay. Which means -- where was the baby's -- in
22 which direction was the baby's face?

23 A It was facing downward.

24 Q Okay. In which direction -- which shoulder was
25 anterior and which shoulder was posterior?

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1 A Well, the right shoulder was anterior.

2 Q Okay. To the best of your recollection at any
3 point during the delivery of this baby did you make any
4 effort to realign his shoulders?

5 MR. NAGLE: Object to the form. I'm not
6 sure I understand it, but if you do go ahead.

7 A I don't understand the question.

8

9 BY MR. KOPSTEIN:

10 Q Okay. That doesn't mean anything to you?

11 A Well, let's -- let's be clear that you're trying
12 to separate each and individual little thing that happened
13 during the delivery. A delivery happens in a flowing
14 motion. Let me let you -- let me tell you that the whole
15 process really starts when she's in labor when she starts
16 pushing. When she was ten centimeters she started pushing.
17 She was pushing in the semi-Fowler's position, which is
18 halfway sitting up. The head of the bed is elevated. She
19 has pillows underneath her back. She's holding her legs
20 back and she's pushing down. She's making progress as she's
21 pushing down with each time she pushes. The head finally
22 makes progress after some good pushing effort until we see
23 more and more of the head until the head crowns. By
24 crowning that means the vagina is around the baby's head
25 stretching beautifully around the baby's head and you can

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1 see this much head. (Witness indicating.) I knew that
2 imminently we would have a delivery and we did.

3 The baby came out very nicely, but I noticed
4 that she had what we call a turtle sign. The turtle sign is
5 where the head comes out and gets restricted back into mom's
6 perineum. The head was face down in the occiput anterior
7 position, which is facing down towards her butt. I knew
8 that I had a possible shoulder dystocia at the time. So I
9 had mom push one more time with a gentle downward pressure
10 on the head with my right hand on top of the head and my
11 left hand on the bottom of the head with my fingers facing
12 each other seeing if the baby would move. I try that, and
13 the baby did not move. So then I knew I had to go to the
14 next step.

15 I knew then I had a shoulder dystocia, and I
16 had to be very calm and take things step by step. I let the
17 nurse know to put the patient in McRoberts maneuver. We
18 took the pillows out from behind her back. We put the head
19 of the bed down. We instructed the family member, which I
20 believe was the father of the baby, on mom's right leg. The
21 nurse is on mom's left leg to bring the legs as back as
22 possible so that we could open up the pelvic inlet -- the
23 pelvis outlet to allow the baby the most amount of room.
24 The nurse was in position to use suprapubic pressure. We
25 waited for the next contraction, which was imminent there.

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1 She helped with pulling the legs back. Doing the suprapubic
2 pressure I used gentle downward pressure at that time to try
3 to facilitate a spontaneous vaginal delivery. At that time
4 with my hand on the mom's perineum I could feel that there
5 was a slight tearing. So I gently pulled down to see if the
6 baby's head would move. I'm confident that I only used
7 gentle pressure.

8 Q You said -- I'm sorry. Are you finished?

9 MR. NAGLE: I'm not sure she --

10 A A gentle downward pressure. So then I -- during
11 this time I also asked the nurse to call for assistance in
12 case my future maneuvers wouldn't work. Any help at that
13 time is -- is -- is very much appreciated. So they called
14 for Dr. Roberts, which I instructed her to do. Dr. Roberts
15 is sometimes my back-up physician when I'm on call on
16 weekends, and I knew he was on the floor.

17 So then I decided to proceed with the next
18 maneuver, which is to reach inside the vagina and I was
19 trying to reach for the anterior shoulder, which I knew was
20 caught up on the suprapubic bone. By reaching for the
21 vagina -- inside the vagina I was right next to the baby's
22 body going in with my hand. My hand is still underneath the
23 head. My left hand is underneath the head. My right hand
24 is on top. Trying to go in and see if I can reach that
25 shoulder. The purpose of the suprapubic pressure is to try

1 to get the nurse to move that shoulder, and she wasn't able
2 to do that. So I was trying to do that. In the event if I
3 could perform the Wood's maneuver and I wanted to try to
4 move that shoulder counterclockwise. It was with some
5 effort to get my hand in there to try to reach for that, and
6 I couldn't reach it. So then I knew I had to go to the next
7 maneuver. So I pulled my hand out. Then I used my left
8 hand to go inside the vagina and I reached for the posterior
9 shoulder, and by the posterior shoulder I was going to try
10 to move the shoulder again towards the baby's chest, kind of
11 like moving the shoulder this way to allow a little bit more
12 room for that baby to come out.

13 I was able to move that shoulder, and I
14 started to remove the arm out of the vagina when the baby
15 came out spontaneously. So I put the baby on the abdomen
16 quickly, clamped the cord, cut the cord so that the nurse
17 could bring the baby over to the warmer for the nursery
18 evaluation.

19
20 BY MR. KOPSTEIN:

21 Q Is what you just told me your independent
22 recollection of how this birth occurred or is that based on
23 the medical records?

24 A That's based on my recollection.

25 Q Okay. Can you tell me how many other babies you
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1 delivered that week?

2 A No, I cannot.

3 Q Okay. Can you tell me how long after this birth
4 you delivered the -- the next baby that you delivered?

5 A I delivered another baby I believe the next
6 morning.

7 Q All right. And do you have as good a
8 recollection -- recollection of what occurred during that
9 delivery as you do about what occurred during this one?

10 A No, because nothing specific happened with the
11 other deliveries.

12 Q Okay.

13 A I made it a point to remember this delivery.

14 Q Okay. Why is that?

15 A A shoulder dystocia is a medical emergency, and
16 when it's an event you just make it a point to remember it.

17 Q And it wasn't because you anticipated at the time
18 that there would come a day when you'd be sitting across the
19 table from a lawyer like me answering questions about what
20 occurred during this delivery?

21 MR. NAGLE: It's asked and answered twice.

22 She's already told you she didn't think about a

23 lawsuit at that time.

24

25

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Shannon Crittenden-Mann, Court Reporter

1 BY MR. KOPSTEIN:

2 Q You made a similar effort, did you not, to
3 remember what occurred during the Hamilton baby's birth?

4 A I made it a point to not remember it after the
5 trial.

6 Q Okay. You put it out of your mind?

7 A Yes.

8 MR. NAGLE: How you doing on your tape?

9 THE VIDEOGRAPHER: Ten minutes left.

10 MR. NAGLE: Okay? Can you go ten more
11 minutes before we take a break?

12 THE WITNESS: Yes. I'm fine.

13 MR. NAGLE: Okay.

14

15 BY MR. KOPSTEIN:

16 Q You can take -- I meant to mention this. You can
17 take a break, talk to counsel whenever you like. All right.
18 You understand that?

19 A Yes.

20 Q Okay. How much time elapsed between the turtle
21 sign and the application of suprapubic pressure during the
22 McRoberts maneuver?

23 A I recall it as a short period of time. I only
24 know by the records that the nurse documented three minutes.

25 Q Okay. It was three minutes between the time that
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1 A I don't recall any obstacles.

2 Q Okay. Is there any reason you can think of why
3 suprapubic pressure couldn't have begun within thirty
4 seconds?

5 MR. NAGLE: You're asking her for an opinion
6 today, so I'm not going to have you give her
7 that.

8

9 BY MR. KOPSTEIN:

10 Q No, I'm not asking you to speculate. I'm asking
11 if there's any reason you recall why that couldn't have been
12 done?

13 MR. NAGLE: Well, let me just object.
14 Your -- your question implies it wasn't done
15 within thirty seconds.

16 MR. KOPSTEIN: No. It wasn't intended to
17 imply that. She doesn't know.

18 MR. NAGLE: Agreed.

19 A I don't recall my thought process at the time.

20

21 BY MR. KOPSTEIN:

22 Q Okay. I'm not asking about what your thought
23 process was. I'm asking what the circumstances were. Was
24 there any circumstance present at the time that you now
25 recall that would have prevented somebody from beginning
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1 suprapubic pressure within thirty seconds after the turtle
2 sign?

3 MR. NAGLE: Same objection. You can answer
4 it if you can.

5 A I don't believe I can answer that.

6
7 BY MR. KOPSTEIN:

8 Q Okay. You had all the help you needed in the
9 room; correct?

10 A Yes.

11 Q Okay. What was the name of the -- of the person
12 who applied the suprapubic pressure?

13 A I don't recall.

14 Q Okay. Give me the names of as many people as you
15 can who were in the room at the time.

16 A My nurse, but I don't recall her name, the father
17 of the baby. I don't know his name. The -- the patient's
18 mother, and there was a nursery nurse.

19 Q At any point during this delivery did anyone other
20 than you personally ever lay hands on this baby's head?

21 A I was the only person.

22 Q Okay. So nobody applied any traction gentle or
23 otherwise to this baby's head other than you; correct?

24 A That is right.

25 Q Okay. Was there but one nurse in the room with
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 Old Dominion Reporting

1 you at the time you managed this shoulder dystocia?

2 MR. NAGLE: I think it's asked and answered,
3 counsel.

4 MR. KOPSTEIN: Okay.

5 MR. NAGLE: Didn't you just have her take
6 you through?

7 MR. KOPSTEIN: I think she -- she mentioned
8 one nurse.

9

10 BY MR. KOPSTEIN:

11 Q Was she the only nurse in the room?

12 A There was a nursery nurse ready for the baby.

13 Q Okay. But she was there while the suprapubic
14 pressure was being applied or did she come in at some point
15 during the process?

16 A She was there before the baby delivered.

17 Q And where was she standing?

18 A Over by the nursery.

19 Q Okay.

20 A Over by the warmer, I'm sorry.

21 Q As far as you know, and you may not know, was she
22 in a position to observe what you were doing in an attempt
23 to reduce the shoulder dystocia?

24 A I do not know that.

25 Q Okay. At any point in time did you ask anyone
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1 other than the nurse, whose name you don't recall who was
2 applying the suprapubic pressure, and possibly the father to
3 assist you in any way?

4 A I did not ask anyone to help me with the delivery
5 at that time.

6 Q All right.

7 A Other than the maneuvers.

8 Q If I could invite your attention to document
9 number six and seven, please, number seven first. Are you
10 with me?

11 A Yes.

12 Q Okay. The note dated 11/30/06 entitled "delivery
13 note" was that written by you?

14 A Yes.

15 Q And the number that appears in the left margin of
16 that note, 1032194, was that written by you as well?

17 A Yes.

18 Q And what -- to what does that number refer?

19 A At the end of a telephone dictation we're given --
20 we're given a number, and we just write that number on the
21 side of the dictation.

22 Q Was number seven handwritten by you before number
23 six was dictated?

24 A I -- I'm not sure I recall, but I believe I wrote
25 the note first and then dictated it.

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1 Q At the time you wrote the note on document number
2 seven were you aware that there was some problem with one of
3 the baby's arms?

4 A Yes.

5 Q And, likewise, at the time you dictated what
6 appears on number six were you aware that there was some
7 problem with one of the baby's arms?

8 A Yes.

9 Q All right. How severe did you believe the problem
10 with the arm to be at that time?

11 A I was unaware of the severity.

12 Q At that time did you believe the problem to be
13 transient?

14 A Yes.

15 Q Simply because most of them are or was there
16 something about this particular -- your assessment of this
17 particular baby that made you think it was transient?

18 A I did not make any assessment on the baby after
19 delivery.

20 Q Okay. What was your reason for believing that the
21 baby's injury in this case was transient?

22 A They usually are.

23 Q All right. If I could invite your attention to
24 number seven. First read everything you wrote.

25 MR. NAGLE: Not too fast because the court
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1 reporter needs to take it.

2 MR. KOPSTEIN: Exactly.

3 MR. NAGLE: Okay.

4 A Okay. Pushed with good effort times one hour.
5 Turtle sign present at delivery. McRoberts maneuver used
6 with suprapubic pressure. Moderate effort used to deliver
7 anterior shoulder. Unable to move anterior shoulder.
8 Posterior shoulder adducted resulting in easy delivery.
9 Live male infant with Apgars one and seven. Peds and
10 nursery present. Dr. Roberts called and present after
11 delivery occurred. Cord blood gases 7.27 venous, 7.3
12 arterial, placenta Schultz and intact with three vessel
13 cord. Second-degree vaginal tear repaired with 3-0 Vicryl,
14 well approximate -- I'm sorry -- well approximated over
15 Xylocaine anesthesia. Fundus was firm under the umbilicus,
16 scant lochia, Peri-Care with ice pack. Reviewed with
17 patient and significant other events of delivery.
18 Dr. Valentine given report.

19
20 (There was an off-the-record discussion, after
21 which, testimony continues as follows:)

22
23 BY MR. KOPSTEIN:

24 Q Up at the point where you talked about moderate
25 effort being used to deliver the anterior shoulder, what in
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1 your mind at the time distinguished moderate effort from
2 mild effort or severe effort?

3 A Moderate effort at this point referred to my going
4 inside the vagina trying to get at the anterior shoulder.

5 Q Can you tell me for how long the McRoberts
6 maneuver was attempted?

7 A No, I cannot.

8 Q You don't have any recollection at all of how long
9 that took?

10 MR. NAGLE: I don't want you to guess.

11

12 BY MR. KOPSTEIN:

13 Q Okay. All right. If we assume -- strike that.
14 In terms of what percentage of the time it took to reduce
15 this shoulder dystocia from turtle sign through completion
16 of delivery, can you tell me how much of that time
17 percentage wise if you recall was spent in the McRoberts
18 maneuver?

19 MR. NAGLE: Let me object. Based on the
20 foundational questions, testimony you've elicited
21 from her you're asking her to speculate. If you
22 can answer without speculating go ahead, but I
23 don't want you guessing.

24

25

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1 BY MR. KOPSTEIN:

2 Q Right. What I'm getting at is did you spend half
3 the time, a quarter of the time, however long it was, what
4 percentage of the time if you know was spent on that
5 particular maneuver?

6 MR. NAGLE: Same objection. If it calls
7 for --

8 THE WITNESS: But I'm okay with answering
9 it. I recall that the --

10 MR. NAGLE: As long as you're not -- as long
11 as you're not speculating, yes, I'm fine with you
12 answering it.

13 A It's my understanding the whole time while I was
14 trying to deliver that baby was in the McRoberts maneuver.

15 THE VIDEOGRAPHER: Counselor, can we --

16 MR. KOPSTEIN: Okay. Fine. We'll take a
17 break here while she changes the tape.

18 THE VIDEOGRAPHER: This is the end of Tape
19 Number One in the deposition of Rhonda Bertholf.
20 The time is 2:24 p.m. We are off the record.

21

22 (There was a short break, after which, testimony
23 continues as follows:)

24

25 THE VIDEOGRAPHER: This is the beginning of
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1 Tape Number Two in the deposition of Rhonda
2 Bertholf. The time is 2:32 p.m. We are on the
3 record.

4 BY MR. KOPSTEIN:

5 Q Was there any point in time during this delivery
6 when you felt that you needed to apply any more than gentle
7 traction to this baby's head in order to accomplish the
8 delivery?

9 A No, because I was well aware that applying too
10 much traction could easily injure the baby.

11 Q Okay. Specifically you were aware that applying
12 too much traction could result in an injury to the baby's
13 brachial plexus?

14 A I was aware that too much downward pressure could
15 cause injury.

16 Q Okay. What type of injury did you believe that
17 too much downward pressure would cause?

18 A The brachial plexus injury.

19 Q Okay. I'm going to back up a minute. If I could
20 invite your attention to document number three again,
21 please. The person who assisted you in applying suprapubic
22 pressure would have been the circulating nurse?

23 A Yes.

24 Q In this document the circulator is identified as
25 an individual by the name of Shawanda Coleman?

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1 A Yes.

2 Q All right. Does that refresh your recollection
3 regarding the nurse -- the identity of the nurse who
4 assisted you?

5 A I remember Shawanda. I just did not know her last
6 name.

7 Q Okay. In fact, it was Shawanda Coleman?

8 A Yes.

9 Q And where does Shawanda Coleman work now?

10 A I don't know.

11 Q All right. Do you know if she still works at
12 Sentara Leigh?

13 A She does not work in the hospital that I'm aware
14 of.

15 Q Okay. But she was working there at the time?

16 A Yes.

17 Q Okay. After this delivery did you ever have any
18 conversation with her about what had occurred during the
19 delivery or about this baby's arm problem?

20 A I don't recall having a conversation with her.

21 Q Okay. On the left-hand side of the page an
22 individual by the name of Tina Hotaling is mentioned?

23 A Yes.

24 Q Okay. Who is she and what -- what did she do in
25 connection with this labor and delivery, if anything?

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1 A I'm unaware of that particular nurse and what she
2 did in the room.

3 Q Okay. Do you know if, in fact, she did anything
4 in connection with this labor and delivery?

5 A I can only guess, but I'm not going to do that.

6 Q Okay. There is a Caroline Estienne whose name
7 appears below that of Ms. Hotaling?

8 A Yes.

9 Q Do you know what, if anything, Ms. Estienne had to
10 do with this labor and delivery?

11 A She was a nursing care partner. She was there to
12 assist the nurses or me if needed.

13 Q Okay. This Caroline Kersten, is that another
14 individual?

15 A Yes.

16 Q The other person was Lori Estienne. Caroline
17 Kersten is another RN, and what, if anything, did she have
18 to do with this labor and delivery?

19 A She was the nurse manager. She came in as soon as
20 she heard that I called for Dr. Roberts' assistance.

21 Q All right. How soon after you called for
22 Dr. Roberts' assistance was this shoulder dystocia reduced?

23 A It was just a short period of time.

24 Q Less than a minute?

25 A I don't recall.

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1 Q Okay. Did Ms. Kersten arrive before the baby was
2 delivered?

3 A No.

4 Q Okay. The anesthetist is identified here as -- as
5 a D. McCormick?

6 A Yes.

7 Q Okay. Ms. McCormick was not present during the
8 delivery?

9 A No.

10 Q Okay. It is a Mrs. --

11 A I don't know.

12 Q All right. Under stages of labor, still on -- on
13 document number three, to the best of your knowledge is the
14 duration of the stages as listed here, again going on the
15 basis of your recollection, is that accurate?

16 MR. NAGLE: Well, aren't you asking her to
17 give you an opinion today, counsel?

18 MR. KOPSTEIN: No. Just asking her
19 recollection. She seems to remember a great deal
20 about this particular labor and delivery, and so
21 I'm asking if she remembers enough to be able to
22 tell me whether that's accurate.

23 MR. NAGLE: All right.

24 A I can't give an opinion if it's exactly, but my
25 recollection is it's around the same period of time. I

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1 would have no reason to believe that that is inaccurate.

2

3 BY MR. KOPSTEIN:

4 Q That's what I want to know. Who is Dr. Roberts?

5 A He's an OB-GYN.

6 Q Okay. Is -- is he an employee of the same
7 practice?

8 A No.

9 Q All right. By whom was he employed at the time of
10 this delivery?

11 A He's with the practice of Dr. Spruill and
12 Dr. Roberts.

13 Q All right.

14 A My relationship with him is our practices often
15 work together on weekends, so he's my covering physician on
16 some weekends when I'm working.

17 Q Okay. What, if anything, did you do before
18 delivering this child to determine whether help was
19 available if you needed it?

20 A I'm just aware of my surroundings. I knew he was
21 on the floor just in general.

22 Q Okay. At any point in time did you make anyone
23 aware of the fact that you might need assistance with this
24 particular delivery before you called for Dr. Roberts?

25 A I was unaware I would need any assistance.
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1 Q Okay. At no point in time did you anticipate that
2 there would be a shoulder dystocia in connection with this
3 delivery?

4 A At no point in time I anticipated it at all.

5 Q In fact, the first point in time in which you
6 became aware that there was or might be one was when you saw
7 the turtle sign?

8 A That is correct.

9 Q Okay. Nothing that transpired up to that point
10 made you believe that this mother was at risk for -- for
11 shoulder dystocia?

12 A I was unaware of any factors.

13 Q You recorded the baby's blood gases as 7.27 venous
14 and 7.3 arterial?

15 A Yes.

16 Q At that time you believed those to be within
17 normal limits?

18 A Yes.

19 Q For what reason did you call for Dr. Roberts?

20 A I wanted -- I wanted to have somebody there for
21 assistance in case my other maneuvers did not successfully
22 have a spontaneous delivery.

23 Q What did you think that Dr. Roberts would be able
24 to do that you wouldn't be able to do?

25 MR. NAGLE: Object to the form. You can
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1 answer it if you can.

2 A I don't recall what my thought process was at the
3 time. Alls I know is in general having a second opinion
4 when the basic maneuvers do not work is always helpful.

5

6 BY MR. KOPSTEIN:

7 Q Okay. Had the McRoberts maneuver already started
8 at the time you called for Dr. -- Dr. Roberts?

9 A Yes.

10 Q Do you recall about how long into the McRoberts
11 maneuver you were at the time you --

12 A No, I don't recall.

13 Q All right. Was there something in particular --
14 something in particular that occurred that made you decide
15 that that was the appropriate time, whenever that was, to
16 call for Dr. Roberts?

17 A When the baby was not moving.

18 Q Okay. Well, you didn't call for Dr. Roberts as
19 soon as you saw the turtle sign?

20 A No.

21 Q Why not?

22 A Most of the time with shoulder dystocias the basic
23 maneuvers that I instituted reduces the shoulder dystocia in
24 all my experience as a delivery nurse.

25 Q Okay.

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1 A And as a nurse-midwife.

2 Q But you weren't done with the McRoberts maneuver
3 yet when you called for Dr. Roberts?

4 MR. NAGLE: Well, let me object to your
5 question.

6 MR. KOPSTEIN: Okay.

7 MR. NAGLE: I mean, she's told you that the
8 McRoberts maneuver was employed throughout from
9 the turtle sign until delivery.

10 MR. KOPSTEIN: Okay. Well --

11 MR. NAGLE: So I don't know what you mean by
12 "done."

13

14 BY MR. KOPSTEIN:

15 Q The McRoberts maneuver wasn't done yet when you
16 called Dr. Roberts, how did you know the McRoberts maneuver
17 wasn't going to work and that you might need Dr. Roberts?

18 MR. NAGLE: Well, let me just note my
19 objection because when you say -- I'm not sure
20 what you mean by "done." Done as in performed or
21 done as in completed?

22

23 BY MR. KOPSTEIN:

24 Q All right. Let me withdraw the question. At the
25 time you called Dr. Roberts did you know whether the
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1 McRoberts maneuver was going to work?

2 A I was unsure at that time.

3 Q Was there something that had occurred that made
4 you feel that -- made you unsure about whether it was going
5 to work?

6 A The thing that made me unsure that it was going to
7 work was that there was very little progress in the delivery
8 of the baby.

9 Q Okay. You've used the McRoberts maneuver -- you
10 had used the McRoberts maneuver before with -- to reduce
11 other shoulder dystocias, and it had always, with the one
12 exception, been successful?

13 A Yes.

14 Q Okay. Did you have any less belief at the point
15 in time that you called Dr. Roberts that it would be
16 successful in this case -- as successful in this case than
17 you -- than did in prior cases in which it had worked?

18 MR. NAGLE: Objection. I don't understand
19 the question. If you do go ahead.

20 A I don't understand the question.

21

22 BY MR. KOPSTEIN:

23 Q All right. Were you less -- at the time you
24 called Dr. Roberts were you less certain about whether the
25 McRoberts maneuver would work in this case than you had been
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1 when you employed the McRoberts maneuver in other shoulder
2 dystocia cases?

3 A I was not as confident at the time.

4 Q Okay. And what was it about this particular
5 delivery that made you feel less confident that the
6 McRoberts maneuver would work in this case than you had been
7 in prior shoulder dystocia situations that you had managed
8 successfully?

9 A When I first institute -- instituted the McRoberts
10 maneuver and the suprapubic maneuver I was confident at the
11 time that the delivery would occur. It was right after when
12 the baby did not move I was not confident it was going to
13 work.

14 Q You say it was right after when the baby did not
15 move. Right after what?

16 A When I tried to use gentle downward pressure along
17 with the McRoberts and the suprapubic pressure with the
18 contraction.

19 Q So it was right after you started applying gentle
20 downward pressure that you became uncertain about whether it
21 would work? I'm trying to get -- I'm not trying to put
22 words in your mouth. I'm trying to understand what you just
23 said.

24 A I thought I already answered your question.

25 Q Okay.

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1 MR. NAGLE: Yeah, I think she has too.

2 What's your current question?

3 BY MR. KOPSTEIN:

4 Q Okay. My current question is, had you finished
5 applying whatever downward pressure you applied at the time
6 you made the decision to call Dr. Roberts?

7 A As I recall, yes.

8 Q Is that yes?

9 A Yes.

10 Q Okay. You did not apply any more downward
11 pressure after you called Dr. Roberts?

12 A I don't recall that I did.

13 Q Okay. And the attempt -- the successful attempt
14 to free up the posterior shoulder was begun after you called
15 Dr. Roberts?

16 A Yes.

17 Q What was the reason why you elected to proceed by
18 freeing the posterior shoulder instead of employing the
19 Wood's maneuver?

20 A Well, I was going to try to use the Wood's
21 maneuver by moving the anterior shoulder counterclockwise,
22 but I was unable to reach for the anterior shoulder. So I
23 could not use the anterior shoulder Wood's maneuver at that
24 point in time.

25 Q While this was going on, that is while you were
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1 attempting to manage the shoulder dystocia, did you do
2 anything or say anything to the mother, the father or any
3 other family member who was in the room to make them aware
4 that there was a shoulder dystocia or any problem of any
5 kind?

6 A The only thing I recall making a statement to was
7 the nurse.

8 Q And -- and what do you recall saying to the nurse?

9 A I recall that we have a shoulder, please get the
10 patient in McRoberts maneuver. I was instructing her to
11 take the pillows out from the back -- mom's back and
12 lowering the -- the bed and instructing her and the father
13 of the baby to move the legs back accomplishing the
14 McRoberts maneuver.

15 Q Did the nurse and the father of the baby comply
16 with your directions promptly?

17 A Yes.

18 Q Do you recall who held which leg?

19 A The father of the baby held mom's right leg.

20 Q Okay. And did the father do exactly what you
21 wanted him to do?

22 A As I recall, yes.

23 Q And he -- and he did it promptly?

24 A Yes.

25 Q Likewise, did the circulating nurse do exactly
Shannon Crittenden-Mann, Court Reporter
Old Dominion Reporting

1 what you wanted her to do, and did she do it promptly?

2 A As I recall, yes.

3 Q Okay. You called for pediatrics during the
4 delivery?

5 A I do not recall specifically calling for
6 pediatrics.

7 Q Okay. If I can invite your attention to document
8 number six, please. First of all, to the best of your
9 knowledge does this document accurately reflect what you
10 dictated?

11 A As far as I recall, yes.

12 Q Were there any corrections made to any earlier
13 versions of this document, if any existed?

14 A No.

15 Q All right. If you'll -- under where -- under
16 description of the operation about seven lines up --

17 A Uh-huh.

18 Q -- from the bottom of that paragraph --

19 A Yes.

20 Q -- you see a sentence beginning, "Pediatrics were
21 called during the delivery part, nursery was present"?

22 A Yes.

23 Q Okay. Does that refresh -- refresh your
24 recollection with regard to whether or not pediatrics was
25 called?

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1 A Since it was written down there I assume it was.

2 Q And if pediatrics was called would peds -- peds
3 have been called by you?

4 A No. The nursery nurse, Ms. Coleman.

5 Q Okay. And do you know why pediatrics was called?

6 MR. NAGLE: Objection. Calls for
7 speculation. If you can answer without
8 speculating go ahead.

9 A Because I had a shoulder dystocia going on. That
10 would be a good reason to call pediatrics.

11

12 BY MR. KOPSTEIN:

13 Q Is pediatrics always called when there's a
14 shoulder dystocia?

15 A Yes.

16 Q Did you -- did you, your -- your practice or the
17 hospital ever have what's called a -- prior to this -- this
18 delivery have what's called a shoulder dystocia drill?

19 A No.

20 Q You know what a shoulder dystocia drill is?

21 A Yes.

22 Q You wrote here, again referring her to the note
23 you wrote on document number seven, "Reviewed with patient
24 and significant other events of delivery"?

25 A Yes.

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1 Q All right. How soon after the delivery did you do
2 that?

3 A After I was done writing the note and the
4 dictation.

5 Q Was that within an hour after the delivery?

6 A I don't recall, but I assume -- my recollection,
7 it was a short time.

8 Q Do you recall physically where that review of the
9 delivery with the patient and significant other took place?

10 A In the patient's room.

11 Q Okay. Do you recall if anyone other than the --
12 by significant other you're referring to the male who
13 assisted you with the -- in putting the patient in the
14 McRoberts position?

15 A Yes, that's who I'm referring to.

16 Q Person who you now understand to be the patient's
17 husband?

18 A Yes.

19 Q Okay. And I'm sorry if you already mentioned
20 this, but to the best of your recollection at the time this
21 took place was there anyone in the room besides you, the mom
22 and the dad?

23 A I don't recall.

24 Q Do you recall what it is you said to them about
25 the -- the delivery?

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1 A No, I don't recall specifically what I said.

2 Q Do you recall generally?

3 A In -- I just -- in general I briefly tried to go
4 over the events of a delivery and what a shoulder dystocia
5 was.

6 Q Did you talk to them at all about the child's
7 injury?

8 A I don't recall, but I don't think so because at
9 the time I was unaware of the extent of the injury.

10 Q But you were aware that there -- there was an
11 injury?

12 A Yes.

13 Q Even if you didn't know how severe it was?

14 A Yes.

15 Q Okay. Did you do anything to determine how severe
16 that injury was after the delivery?

17 A Not that I recall.

18 Q Okay. Did you ever make any inquiries to
19 pediatrics, anyplace else to find out how the baby was
20 doing?

21 A In general conversation with the staff and the
22 nursery I did, just in general conversation.

23 Q Okay. Who is it you spoke to? What did you ask,
24 and what were you told?

25 A I don't recall.

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1 Q You say here, again referring to document number
2 seven at the end of the note, "Dr. Valentine given report"?

3 A Yes.

4 Q How soon after the delivery did you report to
5 Dr. Valentine?

6 A When I was done with the repair, helped clean mom
7 up, put the bed back together, get the room in order, I went
8 out to the nurse's station and I called him.

9 Q So this report was given by phone?

10 A Yes.

11 Q All right. And where was Dr. Valentine when you
12 spoke to him?

13 A In the office.

14 Q And to the best of your knowledge did -- was
15 anyone else present to overhear either side of that
16 conversation besides you and Dr. Valentine?

17 A I don't recall.

18 Q All right. Can you recount to me in as much
19 detail as possible, and I realize it's been a while, what
20 you said to Dr. Valentine about this delivery and what he
21 said to you, including in particular any questions he might
22 have asked?

23 A During that telephone call?

24 Q Correct.

25 A I just told him what happened factually.
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1 Q Okay. Did you tell him anything that you haven't
2 already told me today?

3 A No.

4 Q Did he ask you anything about the severity of the
5 child's injury?

6 A If he did I don't recall.

7 Q Okay. Did he at any point in time during that
8 conversation make any reference to the Hamilton delivery?

9 A No.

10 Q All right. Did he ever ask you to draw any
11 comparisons between this delivery and the Hamilton delivery?

12 A No.

13 Q Were there any subsequent occasions on which you
14 discussed this delivery with Dr. Valentine? That is at any
15 time and place after you made the report to him that's
16 referred to in this note on document number seven.

17 A Of course we talked about it.

18 Q All right. When was the next time you spoke with
19 him about the delivery after the report -- after giving him
20 the report referred to in this note?

21 A I don't recall.

22 Q Whether or not you recall when it was, what was
23 the reason for it?

24 A It's in general conversation.

25 Q Do you recall how it came up?
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1 A No.

2 Q Do you recall anything about what was said during
3 that subsequent conversation?

4 A We talked about the specifics just as I had done
5 with you.

6 Q Did you ever talk to Dr. Valentine about the fact
7 that you were going to be giving this deposition today?

8 A Of course.

9 Q All right. And what did you and he discuss about
10 that?

11 A We just talked about we're being deposed.

12 Q Did -- did you and Dr. Valentine ever discuss the
13 severity of this baby's injury?

14 A Yes.

15 Q When and why?

16 A I don't recall when, but after the mom was
17 discharged he told me that the baby was being transferred
18 over to Portsmouth Naval Hospital. So he discharged her,
19 but exactly when that conversation occurred I don't recall.

20 Q And what, if anything, did he tell you about the
21 severity of the baby's injury at that time?

22 A I don't recall what exactly he said.

23 Q Even if you don't recall exactly what he said, do
24 you remember anything in general about what he said
25 regarding the baby's injury?

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1 A The right arm was weak.

2 Q Okay. At that point in time was it your belief
3 that the injury probably was not transient?

4 MR. NAGLE: Well, let me just note an
5 objection. I think you're past her care and
6 treatment of this patient. So that would be in
7 the nature of a retrospective opinion, which I do
8 not think you're entitled to. So she's not going
9 to answer that question.

10

11 BY MR. KOPSTEIN:

12 Q Okay. Did there ever come a point in time
13 after -- strike that. Did there ever come a point in time
14 when you no longer believed that this baby's injury was
15 transient?

16 MR. NAGLE: Well, let's get some
17 clarification. The lawsuit was filed alleging
18 that, and I'm obviously not going to let her go
19 in to that with you.

20 MR. KOPSTEIN: Right.

21 MR. NAGLE: So can you --

22 MR. KOPSTEIN: Let me explain what I'm
23 getting at. I want to know if there was ever any
24 further conversation between her and

25 Dr. Valentine about possible causes of -- about
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1 how this delivery occurred, anything that might
2 have occurred during the delivery that could
3 have -- could account for a permanent injury that
4 the two of them discussed at any point in time.
5 I'm not asking --

6 A I don't recall --

7 MR. KOPSTEIN: -- for her to give her
8 opinion on what caused the injury. I want to
9 know if they ever talked about it.

10 A I don't recall specifically mentioning any
11 specific cause of the injury.

12

13 BY MR. KOPSTEIN:

14 Q Did Dr. Valentine ever ask you whether more than
15 gentle traction was ever applied during this delivery?

16 MR. NAGLE: Again, to the extent you're
17 talking about conversations that took place
18 subsequent to the filing of this lawsuit I don't
19 think it's -- I don't think you're entitled to
20 that.

21 MR. KOPSTEIN: Well, if she made admissions
22 during those conversations of course I am.

23 MR. NAGLE: Well, you didn't ask her if she
24 said anything. You asked her --

25 MR. KOPSTEIN: That's why I'm asking first
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1 whether it was asked and then what she said in
2 response if it was.

3 BY MR. KOPSTEIN:

4 Q Did Dr. Valentine ever ask you whether more than
5 gentle traction was applied during this delivery?

6 A He never asked me.

7 Q Okay. Did you ever discuss with him after the
8 report referred to in Dr. -- in document number seven the
9 amount of traction that was applied during the delivery?

10 A I don't recall discussing that with him.

11 Q Other than the conversation with the parents
12 referred to in document number seven, did you ever again
13 discuss with the parents the injury or the shoulder
14 dystocia?

15 A I discussed it with Mrs. Spollen one more time
16 when she came in for her six-week postpartum checkup.

17 Q And recount for me as best you can or as much as
18 you can what was said by each of you during that
19 conversation.

20 A I recall that she told me that the child will be
21 evaluated for future surgery in three months after that
22 visit, that the child still had a weak arm.

23 Q All right. Were you surprised at that point to
24 learn that the child still had a weak arm?

25 A Yes.

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1 Q Did you at any time offer an explanation to
2 Mrs. Spollen as to why that might be the case?

3 A I briefly discussed the situation, but I could not
4 tell you exactly what I said.

5 Q Can you tell me generally what you said? Do you
6 remember anything at all?

7 A I remember talking about the injury, how the
8 shoulder was stuck on the pubic bone. She seemed to
9 understand that.

10 Q At the time you had the conversation with the
11 parents referred to in document number seven, did you tell
12 them at that time that most of these injuries are transient?

13 A I don't recall.

14 Q The handwriting below yours in document number
15 seven, the note dated 12/1/06 --

16 A Yes.

17 Q -- is that Dr. Valentine's?

18 A Yes.

19 Q Can you read what he wrote?

20 A Postpartum day one, afebrile, doing well, male
21 circumcised, patient is aware of shoulder dystocia.

22 Q Do you know if Dr. -- strike that. Were you ever
23 present for any conversations that Dr. Valentine had with
24 either or both of the parents about the child's injury?

25 A No.

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1 Q Did he ever recount to you anything about any
2 conversations that he had with either or both of the parents
3 regarding the child's injury?

4 A I don't recall specifics.

5 Q Okay. If I could invite your attention to
6 document number five, please. It may be of poor quality, so
7 if you need to see a better copy let me know. I may be able
8 to pull something out of the -- out of the file. Do you
9 recognize this document?

10 A No.

11 Q All right. Have you ever seen it before?

12 A No.

13 Q Did you have any input into this document to the
14 extent you can read it?

15 A No.

16 Q Okay. Document number eight, please. Are you
17 with me?

18 A Yes.

19 Q Do you know who wrote this?

20 A No.

21 Q Have you ever seen it before?

22 A No.

23 Q Do you know who provided the information reflected
24 in this document?

25 A No.

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1 Q Document number nine, please. Is any of the
2 handwriting in document number nine yours?

3 A Yes.

4 Q All of it?

5 A Yes.

6 Q Okay. Is the signature in the lower left-hand
7 corner yours?

8 A No. It was Dr. Valentine.

9 Q Okay. But other than the signature, is there --
10 to your knowledge did he write anything else on this
11 document?

12 A He put "positive circumcision."

13 Q Okay. Up near the top of the page the third
14 handwritten line says "variable decels"?

15 A Yes.

16 Q Why did you write that?

17 A Because the baby had variable decels.

18 Q And you were aware of that at the time you
19 delivered the baby?

20 A Yes.

21 Q Okay. And how did you become aware of it?

22 A I was watching the strip.

23 Q Right. And what -- to what did you attribute the
24 variable decels?

25 A The pressure on the baby's head causes a vagal
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1 response and causes the heart rate to decrease.

2 Q Did you believe at the time of those variable
3 decels -- strike that. Were you aware the variable decels
4 at the time they occurred or at least as soon as they
5 appeared on the strip?

6 A Yes.

7 Q Okay. And how long before the delivery was that?

8 A Don't recall.

9 Q Would looking at the strip allow you to refresh
10 your recollection?

11 A No.

12 Q What did you believe to be the significance of the
13 variable decels in terms of what you had to do?

14 A There was no significance in what I had to do.

15 Q Okay. Did they -- did you believe that the -- as
16 a result of the variable decels you had to do anything more
17 or different or faster with regard to delivering this baby?

18 A No.

19 Q Do you know why the variable decels are listed --
20 you listed the variable decels here if they really didn't
21 have any effect on anything that you felt you had to do?

22 A It was just documentation that they were present.

23 Q Okay. Why did you feel it was necessary or
24 appropriate to document the variable decels as being present
25 if they didn't have any -- if you didn't feel they had any

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1 effect on anything you had to do?

2 A They were just there.

3 Q Well, there were decels that weren't variable as
4 well; right?

5 MR. NAGLE: Well, objection.

6

7 BY MR. KOPSTEIN:

8 Q I mean, why did you mention the variable decels as
9 opposed to any other feature on the strip?

10 A I don't recall.

11 Q Document number ten, please. Have you seen this
12 before?

13 A Yes.

14 Q Okay. Is any of the handwriting on there yours?

15 A The top part of it is mine.

16 Q Everything down to "positive circumcision"?

17 A Yes.

18 Q Okay. And the signature again is that of
19 Dr. Valentine?

20 A Yes.

21 Q All right. The Apgars were measured by whom?

22 A The nursery personnel.

23 Q All right. And they informed you as to what they
24 were?

25 A Yes.

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1 Q Okay. Was there any point in time before you
2 finally got the head out that you believed this baby was in
3 emanate danger of anoxic brain injury?

4 A No.

5 MR. NAGLE: Object to the form. That's
6 fine.

7

8 BY MR. KOPSTEIN:

9 Q Give me a couple minutes here, couple minutes.
10 How soon after the delivery did you notice that there was a
11 problem with one of the baby's arms?

12 A I'm -- I don't recall. Alls I remember is what
13 was told to me.

14 Q After the baby came out did you expect there to be
15 a problem, even a transient one, with one of the baby's
16 arms?

17 A Yes.

18 Q And why was that?

19 A Because I had to use several maneuvers to get the
20 shoulder out.

21 Q All right. Was it your prior experience that
22 babies delivered by you after several maneuvers had --
23 usually had at least a transient brachial plexus injury?

24 A No. Many of them did not have any injury.

25 Q What was it about this particular delivery then
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1 that made you think that this baby might have one?

2 A Because I had to use more than several maneuvers
3 to get the baby delivered.

4 Q All the maneuvers you used are documented;
5 correct?

6 A Yes.

7 Q Were there any maneuvers you employed that weren't
8 documented?

9 A Correct.

10 Q There were not any maneuvers that you employed
11 that were -- that were undocumented; correct?

12 A I documented all my maneuvers.

13 Q Okay. Did you ever tell the parents, "I did my
14 best," or words to that effect?

15 A I don't recall.

16 Q At the time you saw -- strike that. Did you see
17 the turtle sign for yourself?

18 A Yes.

19 Q When reported you were right there and saw it?

20 A Yes.

21 Q At that point in time based on your training and
22 experience how much time did you think that you had to
23 reduce the shoulder dystocia before this baby was at
24 unacceptable risk for anoxic brain injury?

25 A Five minutes.

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1 Q And on what did you base that belief?

2 A Written information that I've read.

3 Q Okay. So this baby was delivered after three;
4 correct?

5 A According to the record.

6 Q All right. As you sit here today, do you have any
7 reason to disagree with that?

8 A No.

9 Q All right. So this baby was at least, based on
10 your belief, two minutes away from the -- that critical
11 threshold; correct?

12 A Yes.

13 Q Okay. You mentioned that you had a conversation
14 with Mrs. Spollen about the injury or about the shoulder
15 dystocia at the time of her six-week checkup?

16 A Yes.

17 Q Other than the conversation you had immediately
18 after the birth and that conversation at the six-week
19 checkup, did you ever have any other conversation with any
20 member of Logan's family about this birth or the shoulder
21 dystocia or injury?

22 A I never had any conversation with any of those
23 people.

24 Q Okay. Did you have any -- any more conversations
25 with Logan's mother, Cory Spollen, after the one at the
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1 six-week checkup?

2 A No.

3 Q All right. Have you seen her since then?

4 A Not that I'm aware of.

5 Q Can you give me a physical description of the
6 significant other who was in the room?

7 A Alls I remember is he was thin and had dark hair.

8 Q Can you tell me his approximate height?

9 A No.

10 Q Can you tell me his approximate age?

11 A He was young.

12 Q Do you recall him saying anything to you during
13 the delivery or asking you any questions?

14 A I don't recall him saying anything.

15 Q Do you recall him saying anything to you or asking
16 you any questions later when you were discussing the
17 delivery with the parents as described in document number
18 seven?

19 A I don't recall.

20 MR. KOPSTEIN: Let's take a two-minute
21 break. Let me talk to my learned co-counsel here
22 and then we'll finish up.

23 THE VIDEOGRAPHER: We're going off the
24 record. The time is 3:11 p.m.

25

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1 (There was a short break, after which, testimony
2 continues as follows:)

3

4 THE VIDEOGRAPHER: Back on the record. The
5 time is 3:16 p.m.

6

7 BY MR. KOPSTEIN:

8 Q You mentioned that the fact that Cory Spollen was
9 scheduled for induction would be noted on some schedule kept
10 at the hospital?

11 A As far as I'm aware, yes.

12 Q What is the name of the document at the hospital
13 on which that would be recorded?

14 A The scheduler.

15 Q Okay. And if you know, would the reason why she
16 was scheduled for induction typically be included in that
17 scheduler?

18 A Usually the reason is listed there because they
19 need to prioritize which inductions to bring in based on
20 reason.

21 Q Okay. You mentioned that you had reviewed at
22 least one prior case at somebody's request but never gave a
23 deposition?

24 A Never gave a deposition.

25 Q Okay. For whom did you review that case, what
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1 lawyer?

2 A I don't remember the lawyer.

3 Q Was it a lawyer in Virginia?

4 A Yes.

5 Q Okay. Do you recall what the case was about?

6 A It was a placental abruption and a fetal --

7 Q Fetal demise?

8 A No. Damage.

9 MR. KOPSTEIN: That's it. Thank you.

10 MR. NAGLE: All right. I have no questions.

11 She will read and sign. Thank you.

12 THE VIDEOGRAPHER: This concludes the
13 videotaped deposition of Rhonda Bertholf
14 consisting of two tapes. The time is 3:17 p.m.
15 We are off the record.

16
17 (The witness was excused.)

18

19

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1 COMMONWEALTH OF VIRGINIA AT LARGE, To-Wit:

2

3

4

5 I, Shannon A. Crittenden-Mann, a Notary
6 Public in and for the Commonwealth of Virginia at
7 Large, whose commission expires May 31, 2012, certify
8 that the foregoing videotaped deposition of RHONDA BERTHOLF,
9 CNM, Defendant, was duly taken and sworn to before me at
10 the time and place for the purpose in the caption
11 mentioned, and that the foregoing is a true and
12 correct transcript to the best of my ability of the
13 testimony given by the witness.

14 I further certify that I am not a relative or
15 employee of attorney or counsel of any of the parties
16 or financially interested in the action.

17 Given under my hand this _____ day of
18 _____, _____.

19

20

21

22

23

24

25

Notary Public

Registration No. 217036

Shannon Crittenden-Mann, Court Reporter
Old Dominion Reporting