

ENCINO-TARZANA REGIONAL MEDICAL CENTER
JUDICIAL REVIEW HEARING

CERTIFIED COPY

In the Matter of)
)
GIL N. MILEIKOWSKY, M.D.)
)
_____)

VOLUME XIV
(Pages 1649 - 1811)

Encino-Tarzana Regional Medical Center
18321 Clark Street
Tarzana, California 91356

Monday, November 12, 2001

REPORTED BY:
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File No. 11-4-010



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APPEARANCES:

(Continued)

MEMBERS OF THE HEARING PANEL:

Lawrence Fleet, M.D.

Darryl Ballin, M.D.

Jean Miyashita, M.D.

Michael Persky, M.D.

Zahi Nassoura, M.D.

Arthur Fleisher, M.D.

Marlon Brooks, M.D.

Also Present:

Debra Miller, Director of Medical

Staff Services

Layne Hastings

Daniel Wiseman, M.D.

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I N D E X

(Procedural Matters contained in
separate Confidential Volume.)

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE MEC				

Dori DiNapoli, R.N.	1655	1686	1766	1795
			1803	1807

Examination by Dr. Fleisher - pages 1774, 1791

Examination by Dr. Brooks - pages 1777, 1793

Examination by Dr. Miyashita - pages 1782, 1791

Examination by Dr. Nassoura - pages 1784, 1792

Examination by Dr. Pleet - pages 1785, 1794

Examination by Dr. Persky - page 1787

Examination by Dr. Ballin - page 1789

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I N D E X

(Continued)

MEC EXHIBITS REFERENCED

- 123 CQI Typed Summary for 8-30-200 re:
Harassment of Staff and Picture Taking
- 143 12-27-00 Mileikowsky declaration
- 126 Excerpts from MR # 489652

HEARING OFFICER EXHIBITS

- H-2 Witness drawing

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TARZANA, CALIFORNIA

Monday, November 12, 2001, 7:11 p.m.

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P R O C E E D I N G S

THE HEARING OFFICER: Ms. DiNapoli, my name is Dan Willick. I'm the hearing officer in this matter. The matter involves Dr. Mileikowsky, who is seated to my right; pointing there, if it's not too rude. And to Dr. Mileikowsky's right is Dr. Wiseman, who is advising him. To Dr. Wiseman's right is Dr. Wulfsberg, who represents the Medical Executive Committee. He's being assisted by Ms. Debbie Miller, to his right, and Mr. Layne Hastings, to Debbie Miller's right.

MS. DI NAPOLI: Hi.

THE HEARING OFFICER: Next to you is the court reporter, who will be taking down your testimony.

Around me are members of the hearing committee who are going to be hearing the evidence. To your immediate right is Dr. Brooks, then Dr. Persky --

MS. DI NAPOLI: Hi.

THE HEARING OFFICER: -- Dr. Fleisher, Dr. Nassoura, Dr. Pleet, Dr. Miyashita, and Dr. Ballin.

1 I'm going to ask the court reporter to
2 administer the oath to you, and then you'll be asked
3 some questions first by Dr. Wulfsberg, then by
4 Dr. Mileikowsky, and ultimately, perhaps, by the hearing
5 committee or even me.

6 MS. DI NAPOLI: Okay.

7

8 DORI DI NAPOLI, R.N.,
9 called as a witness by and on behalf
10 of the MEC, having been duly sworn,
11 testified as follows:

12

13 THE HEARING OFFICER: State your name for the
14 record, please.

15 THE WITNESS: Dori DiNapoli.

16 THE HEARING OFFICER: Thank you.

17 Dr. Wulfsberg.

18

19 DIRECT EXAMINATION

20 BY DR. WULFSBERG:

21 Q Thank you for coming tonight, Dori. Are you
22 currently employed at this hospital?

23 A Yes.

24 Q And how long have you been employed at this
25 hospital?

1 A I believe around 25 years, 24, 25 years.

2 Q What's your current position?

3 A Charge nurse, night shift, labor and delivery.

4 THE HEARING OFFICER: Speak up, please.

5 THE WITNESS: Charge nurse, night shift, labor
6 and delivery.

7 BY DR. WULFSBERG:

8 Q How long have you been in this position?

9 A 12 or 13 years.

10 Q Have you worked anywhere else in the hospital?

11 A I worked in the emergency room for about 10
12 years and floated between the critical care services,
13 CCU, ICU, DLU.

14 Q Do you have any special training in
15 obstetrics?

16 A I'm RNC certified, which is a special OB
17 training.

18 Q And do you know Dr. Mileikowsky?

19 A Yes, I do.

20 Q Do you have any relationship with
21 Dr. Mileikowsky?

22 A Outside of working, no.

23 Q Professional relationship.

24 A Just professional.

25 Q Okay. I'm going to ask you, if you will, in

1 that big book in front of you, turn to No. 123; it's way
2 in the back. Way, way in the back you see 23 starting
3 all over again.

4 Take a look at this document -- sorry. It's a
5 very unwieldy book.

6 A This one here?

7 Q Yes. Are you familiar with this document?

8 A As I'm reading it, I'm familiar with the
9 incident. I don't think I've ever seen this particular
10 document.

11 Q Does this document refresh your memory on the
12 events of August 30, 2000?

13 A Yes.

14 Q On this evening that that occurred, who
15 informed you that Dr. Mileikowsky was coming to the
16 labor and delivery unit?

17 A Who informed? The nursing supervisor.

18 Q About what time did that happen?

19 A As close as I can recall, it was, like, 9:30 --
20 it was early in the evening. Early in the evening,
21 9:30; 8:30, maybe.

22 Q Approximately what time did Dr. Mileikowsky
23 arrive in the labor and delivery unit?

24 A Around midnight. I don't know the exact time,
25 but it was somewhere around midnight.

1 Q And do you recall what occurred after
2 Dr. Mileikowsky arrived in the labor and delivery unit?

3 A It was brought to my attention that he was
4 there by another nurse. I was in a delivery right
5 across from the nurses' desk. When I came out of the
6 delivery, he was in the nurses' desk area and then had
7 gone into the med room and shut the door in the med
8 room. And that's when I became involved.

9 Q Was he by himself?

10 A No. He was with an assistant; I believe an
11 office nurse.

12 Q It was not a member of the staff.

13 A No.

14 Q Did you say anything to Dr. Mileikowsky at that
15 time?

16 A I tried to get into -- the door locks
17 automatically, the med room door locks. And I tried to
18 open it and asked him what he was doing in there. I
19 could see pictures -- you know, a flash from a light
20 bulb or a camera. And I think he was giggling a little
21 bit, and he was talking to the assistant in there.

22 And I told him he couldn't be in there with the
23 door shut; that it was our med room. And when I tried
24 to open the door, somebody backed up against the door so
25 that I really couldn't open it.

1 And at that time he asked me if I was accusing
2 him of taking drugs, and I said, "No. But you can't be
3 in the med room with the door shut like that." And that
4 was

5 Q Okay. He was with a companion; is that
6 correct?

7 A Yes, sir.

8 Q Had you ever seen her before?

9 A Not that I recall.

10 Q Did Dr. Mileikowsky explain to you why he was
11 at the hospital at that hour?

12 A No. But he did have some prenatal records that
13 he had given to the secretary while he was up there. So
14 my presumption was -- and I was told by the nurse
15 supervisor he was going to be coming by to drop off
16 prenatals.

17 Q Is that pretty common?

18 A In the middle of the night or --

19 Q In the middle of the night.

20 A Not generally in the middle of the night. Some
21 doctors will drop them off by themselves. Usually they
22 are mailed in. Sometimes the office nurses bring them
23 in.

24 Q After Dr. Mileikowsky exited the medication
25 room, did you call anyone?

1 A The nursing supervisor.

2 Q Why did you do that?

3 A Well, when she called me originally and told me
4 he was going to come in to drop off the prenatals, she
5 explained to me that there was a security guard that
6 would be coming up with him, and he did not come up with
7 him at the time. But, of course, this was many hours
8 later.

9 So I called her to tell him he was here and
10 that the security guard was not in attendance.

11 Q When Dr. Mileikowsky called at roughly 9:30,
12 was it your assumption that he would be coming in about
13 that time --

14 A I expected him soon thereafter.

15 Q -- momentarily?

16 There was a three-hour delay or so?

17 A Enough to where I had forgotten that he was
18 even coming in.

19 Q Was there a security guard present when he
20 exited the medication room?

21 A No.

22 Q What did he do when he exited the medication
23 room?

24 A Continued to take pictures of staff members,
25 the department. I understand he went to recovery room

1 and took some pictures there, but I was not there at the
2 time.

3 Q Do you know if he asked anybody's permission to
4 take the pictures?

5 A I do not know. He didn't ask me, but I do not
6 know about anybody else.

7 Q Did he ever explain why he took the pictures?

8 A No.

9 Q What did you think he was taking the pictures
10 for?

11 A I personally felt he was taking the pictures
12 for a lawsuit. That was my guess.

13 Q Why did you feel that?

14 A Maybe his hostile manner. I don't know. I
15 don't know why I felt that; that was just my guess.
16 There was no other reason that I would

17 Q Just kind of something you thought about?

18 A It was just what popped into my head, I guess.

19 Q Could you think of any other reasons why he
20 might take pictures?

21 A No.

22 Q Had he ever come to take pictures during the
23 daytime, that you're aware of?

24 A Not that I'm aware of.

25 Q No person has told you that he had taken any

1 pictures during the daytime?

2 A No. Not that I was aware of, no.

3 Q Do other doctors routinely come at midnight to
4 take pictures on the floor?

5 A No.

6 Q Ever?

7 A Not that I recall.

8 Q If you would turn to Exhibit 143. Again,
9 that's way in the back.

10 A 143?

11 Q It may be in the second book.

12 MS. MILLER: It's in the second book.

13 THE WITNESS: Oh, yeah. Okay.

14 BY DR. WULFSBERG:

15 Q At the bottom of 143-4 -- at the bottom of the
16 page you see they are numbered 1, 2, 3, 4?

17 A Correct.

18 Q No. 14, would you take a moment to read that
19 paragraph and the following paragraph on the top of the
20 next page.

21 A Oh, on 14? I thought you were saying 4. I'm
22 sorry. Okay. Do you want me to read it aloud?

23 Q Yes, read it out loud.

24 A On August 30, 2000, in preparation for the OSC
25 hearing and upon the instructions of my attorney, I

1 went to the hospital to take pictures of a bulletin
2 board located in the heart of the labor and delivery
3 nurses' station on which Mr. Surowitz had posted a
4 very public notice stating that security was to be
5 called whenever I came to the hospital.

6 Q Let me stop you just for a moment.

7 This statement states that there was a very
8 public notice, that it was in a very public area. In
9 your opinion, was this notice published or posted in a
10 very public place?

11 A No. It was inside the med room inside the --
12 it was inside the med room, which is a separate alcove
13 inside the nurses' station itself. So it wouldn't --
14 there would be no public access to that.

15 Q Would you be able to see that sitting at the
16 nurses' station?

17 A Not without going into the room.

18 Q So you would have to get up and physically go
19 into the room and look for this particular --

20 A Yes.

21 Q Would you continue reading, please.

22 A I also took pictures of various locations in
23 the hospital so the court could get a very clear
24 understanding of how obvious the security
25 surveillance was and how damaging it was to my

1 reputation.

2 Q Let me stop you there. Was there security with
3 him when he arrived?

4 A No, they weren't.

5 Q There was no security at all.

6 A No.

7 Q Continue, please.

8 A I purposely went late at night with a witness
9 so that I would not disrupt hospital operations.

10 Q I'm going to stop you again.

11 Did his arrival and picture-taking disrupt
12 hospital operation?

13 A Yes, it did. That night, yes, it did.

14 Q Significantly?

15 A Yes.

16 Q Go ahead, please.

17 A Apparently, when I was taking pictures of a
18 hospital corridor, I inadvertently and unwittingly
19 took a picture of Dr. Perlow at the other end of the
20 corridor about 75 to 100 feet away. I never spoke
21 to Dr. Perlow that night and had no idea she was
22 even in the picture until I read her declaration
23 claiming to have been frightened by me. I have
24 attached prints of these exhibits as Exhibit 1
25 hereto so the Court can easily see the offending

1 bulletin board and how far away Dr. Perlow was when
2 I took the picture of the corridor.

3 Q What type of supplies are kept in the
4 medication room?

5 A IVs, medications, syringes.

6 Q Do patients have access to this room?

7 A No.

8 Q And do visitors have access to this room?

9 A No.

10 Q Why is that?

11 A It's inside the nurses' station. There's
12 sensitive materials in there, medications.

13 We have Assure Med now, so everything is locked
14 up. But prior to that, we didn't have Assure Med; we
15 had a regular med drawer where you could just open it
16 and take what you needed. So there was no public
17 access.

18 Q Do physicians generally go into the medication
19 room?

20 A Generally, no.

21 Q Occasionally?

22 A Occasionally. I have rarely seen a doctor in
23 there, but rarely.

24 Q Do they go in with nonhospital personnel?

25 A No.

1 Q Do they go in the medication room and close the
2 door to outside access?

3 A No.

4 Q Have you ever seen that happen?

5 A No. Prior to that night, no.

6 Q What did you feel while this was going on?

7 A I was a little perturbed, actually, because it
8 was disrupting to me. I think I was more angry than
9 anything at first because it was quite disrupting and
10 bizarre, and I really didn't know how to take it. I
11 really didn't understand what was going on. That's why
12 I called the nursing supervisor to come up to the
13 department.

14 Q After Dr. Mileikowsky and his female companion
15 were escorted out of the hospital, did anything else
16 happen that you're aware of?

17 A Well, many hours later Dr. Perlow called upset
18 and said that as she was leaving the hospital, in the
19 parking lot, that Dr. Mileikowsky was there, as she
20 described, with the same person, and had taken multiple
21 flash pictures of her as she was walking down the
22 corridor to the outside parking lot. And she -- this
23 happened, to my recollection, around 4:00 in the
24 morning, so this was probably four hours later.

25 Q How did you feel when you heard that

1 information?

2 A I was surprised that he was still here because
3 he had been escorted, to my understanding, by security
4 from the department. So to me, I was surprised.

5 Q Why did Dr. Perlow tell you that she felt
6 Dr. Mileikowsky took flash pictures of her?

7 A She was really frightened. She called the
8 department. And then when she got home, she called
9 again, and she was kind of worked up.

10 And she was, like, "Why did he do that? Why
11 was he doing that?" And she wasn't really -- she was a
12 little shook up. I think being the time of night, 4:00
13 in the morning, it was a quiet night in the department,
14 there was not a lot of the activity, and there was not a
15 lot of activity, obviously, in the parking lot at that
16 time. I think she was a little frightened walking out
17 and having that happen.

18 Q How did you feel when you heard about it?

19 A I was surprised. Like I said, I thought he had
20 left hours prior to that, so I was really surprised.

21 And I, again, called the nursing supervisor and
22 relayed to her what happened.

23 Q Did you feel fearful at all?

24 A Initially, no, I wasn't really fearful. I was
25 concerned. Other staff members were fearful. I just

1 thought it was bizarre behavior.

2 Q What do you mean other staff members were
3 fearful?

4 A Some of the other nurses were concerned about
5 him taking pictures, and so forth, and were a little
6 concerned that his behavior was, maybe, irrational.

7 Q Do you recall any patient care issues that
8 occurred in labor and delivery in October of 2000
9 involving Dr. Mileikowsky and a patient that underwent
10 vacuum extraction delivery?

11 A I was semi-involved in a case of that nature.
12 I'm not sure if it's the one you're talking about.

13 Q Okay. Would you be kind enough to turn to
14 Exhibit 126, please.

15 DR. MILEIKOWSKY: Do we have the charts of the
16 patient in question? Is that the charts to the left of
17 Ms. DiNapoli?

18 MS. MILLER: Yes.

19 DR. MILEIKOWSKY: Can we have evidence that
20 Ms. DiNapoli was there that night to establish, first,
21 that she was there, since she stated truthfully she's
22 not sure.

23 BY DR. WULSFBERG:

24 Q Were you present the evening that this
25 particular extraction delivery occurred?

1 A I'm sorry? What number was it that you wanted
2 me to look at?

3 Q 126?

4 DR. MILEIKOWSKY: You have the charts. Why
5 don't you look at the chart.

6 THE HEARING OFFICER: Why don't you take a
7 moment to look at Exhibit 126 and also to look at the
8 medical record that is next to you, please.

9 THE WITNESS: Okay. My sheet here goes from
10 125 to A.

11 DR. WULFSBERG: It's right behind it.

12 DR. MILEIKOWSKY: I don't have 126 either, by
13 the way.

14 DR. WULFSBERG: It's kind of behind there.
15 You have to look --

16 DR. FLEISHER: Behind B. It's there.

17 DR. MILEIKOWSKY: Oh, you're right.

18 MS. MILLER: It's kind of stuck.

19 THE WITNESS: As the names are crossed off in
20 here, I will double-check in the chart, then.

21 THE HEARING OFFICER: Sure.

22 BY DR. WULFSBERG:

23 Q But does this give you a recollection of this
24 evening?

25 A I believe so. I believe this is the same

1 patient in question.

2 MS. MILLER: That's the baby chart. I think
3 you want the one with the monitor strip.

4 DR. MILEIKOWSKY: Can we stipulate the same way
5 we did with the previous chart -- we only have two
6 charts -- that this chart will be fully copied as well
7 as the baby's one? Because we're going to have a lot of
8 questions, so then that we can have that as a full
9 exhibit rather than one page, like we did with the other
10 chart.

11 THE HEARING OFFICER: Dr. Wulfsberg?

12 DR. WULFSBERG: I think this is a much larger,
13 more complicated chart, and I think that we'll answer
14 that question. But at this point, I'm not willing to
15 stipulate that the entire chart should be submitted as
16 evidence.

17 THE HEARING OFFICER: Does the entire chart
18 deal with care of the mother and the infant in addition
19 to the delivery which is in question?

20 DR. WULFSBERG: I'm sorry?

21 THE HEARING OFFICER: Does the chart, the
22 original chart that the witness has, deal with care of
23 the mother and the infant in addition to the delivery
24 which is in question?

25 DR. WULFSBERG: Yes.

1 THE WITNESS: Yes.

2 DR. MILEIKOWSKY: But, you see, that's the
3 whole reason --

4 THE HEARING OFFICER: Well, at a minimum,
5 anything that the witness refers to in terms of
6 answering the question will be admitted as an exhibit.

7 DR. WULSFBERG: That's fine.

8 THE HEARING OFFICER: We will argue, if we have
9 to argue about that, after the testimony.

10 So when you are referring to the chart, if you
11 would identify the portion of the chart that you're
12 referring to. You will be asked questions, and you may
13 have occasion to refer to the chart. When you do, just
14 identify which --

15 THE WITNESS: Would you rather me use the
16 charts than this --

17 THE HEARING OFFICER: You can use either one.
18 But if you're using Exhibit 126, I suggest that you
19 verify in the chart what you're looking at in
20 Exhibit 126.

21 THE WITNESS: All right.

22 My name is not in the chart, but this is the
23 patient that I am -- this is the patient that you're
24 referring to.

25 DR. MILEIKOWSKY: I have a problem. We need to

1 establish that Ms. DiNapoli was there that night. If
2 her name is not in the chart, we need something else to
3 establish that she was there --

4 DR. WULSFBERG: She's already testified that
5 she was there.

6 DR. MILEIKOWSKY: That's not a foundation.

7 THE HEARING OFFICER: Wait. Whoa. Whoa.
8 Whoa, gentlemen. There is an objection that
9 Ms. DiNapoli's testifying about this matter.

10 Q Were you present the evening of the incident
11 that was previously described as a vacuum extraction on
12 October 24, 2000?

13 THE WITNESS: I was present at this delivery,
14 yes.

15 THE HEARING OFFICER: All right. Were you
16 present in labor and delivery?

17 THE WITNESS: Correct.

18 THE HEARING OFFICER: Now, were you present in
19 the labor and delivery room when the attempts at vacuum
20 extraction -- the alleged attempts at vacuum extraction
21 occurred?

22 THE WITNESS: Yes, I was. I was called into
23 the room, yes.

24 THE HEARING OFFICER: All right. So you were
25 present for at least a portion --

1 A Yes.

2 Q -- of the attempts at delivery?

3 A Correct.

4 THE HEARING OFFICER: All right.

5 Dr. Mileikowsky's objection is noted for the record, his
6 point being that since there's no reference to this
7 witness in the record, he has some question as to
8 whether she was present. Her testimony that she recalls
9 being present for my purposes is sufficient foundation
10 to allow her to testify as to what she recalls.

11 So the objection is overruled, but the hearing
12 committee can determine for themselves what weight they
13 will give to her testimony based upon the state of the
14 record and what her testimony is.

15 So continue, please.

16 DR. MILEIKOWSKY: At least can we establish
17 that she was on the schedule, that she was on that
18 night? That schedule may be attached to --

19 THE HEARING OFFICER: You can ask in
20 cross-examination. My questions have already
21 established that she recalls being present that evening
22 and recalls being present in the labor and delivery room
23 for a portion of the delivery.

24 So go ahead, Dr. Wulfsberg.

25 / / /

1 BY DR. WULSFBERG:

2 Q Can you tell us your recollection of the events
3 of that evening.

4 A In regards to this delivery?

5 Q Well --

6 A It was a fairly busy night. There were quite a
7 few patients in labor. I was at the desk when this
8 patient was getting ready to deliver. She delivered in
9 252, which is to the left of the nurses' desk.

10 And there was a commotion in the room.
11 Dr. Mileikowsky and the nurse attending were --
12 Dr. Mileikowsky was raising his voice. The nurse
13 attending was very frustrated and had come out to the
14 desk to get me, and that's how I ended up in the
15 delivery room.

16 He wanted somebody else to attend to the
17 vacuum; he didn't feel that the nurse attending the
18 vacuum was qualified to do so. And that's how I became
19 involved.

20 Q Tell us what you recall of that delivery.

21 A In what portion?

22 Q The portion that you were told by the nurse who
23 was there before you arrived and what you recall after
24 you arrived.

25 A The nurse came out. She said Dr. Mileikowsky

1 wanted her to raise the pressure limit on the vacuum,
2 and she was not willing to do so. And he told her to
3 get somebody in the room who was competent to use the
4 vacuum.

5 I kind of went in there, basically, as a
6 mediator and to kind of calm the situation down a little
7 bit. Tempers were rising in the room.

8 And at that point there was quite a few people
9 in the room, a lot of the family members. He had had
10 one of his office assistants, an office nurse, a young
11 girl, who was also viewing the delivery. We had
12 subsequently called the neonatal team to come in.

13 THE HEARING OFFICER: Can we take a break at
14 this point? Dr. Miyashita got a page.

15 DR. MIYASHITA: Sorry.

16 THE WITNESS: Okay.

17 (Recess from 7:35 p.m. to 7:47 p.m.)

18 THE HEARING OFFICER: Back on the record.

19 Continue.

20 BY DR. WULSFBERG:

21 Q Could you continue with your recollection about
22 the events of that evening.

23 A I don't know where I left off, so I was called
24 in after some commotion over a vacuum attempt.

25 Q What were you told at that point?

1 A I was told -- the primary nurse in the room was
2 concerned. She felt that the vacuum attempt was too
3 early; that the patient was not really ready for
4 delivery. She was only at a plus one station, and the
5 baby was starting to develop some variable
6 decelerations. And, therefore, she felt that was why
7 Dr. Mileikowsky was in a rush to get the delivery taken
8 care of.

9 This may be what caused the problem between the
10 nurse and Dr. Mileikowsky. This may be why there was a
11 lot of friction in the room.

12 When I came into the room, like I said, there
13 was a lot of people in the room. A lot of family
14 members who appeared to be very critical of the nurses
15 because I felt that they were friends of
16 Dr. Mileikowsky's. I could be wrong; it was just my
17 impression.

18 There were a lot of people in the room and
19 there was a lot of stress in the room at the time.

20 Q What transpired then?

21 A There was multiple more attempts with the
22 vacuum, and I do recall twice -- at two separate
23 incidences telling Dr. Mileikowsky that there have been
24 at least three pop-offs. I was trying to elaborate that
25 there were too many pop-offs on the vacuum.

1 Q That was the reason for you --

2 A Without putting anybody in a bad light, without
3 making the family aware that this was inappropriate or
4 without -- or trying to be -- trying not to --

5 Q Embarrass him?

6 A Embarrass anybody.

7 Q But you had the patient in mind and the child
8 in mind.

9 A Uh-huh. The baby continued to have variables,
10 variable decelerations.

11 Q Did you have any personal fears about what
12 might happen to you during this?

13 A Well, I think I felt that the family was
14 viewing the nurses in a negative light, and I was
15 concerned about bad outcome on the baby. I was clearly
16 concerned about a bad outcome on the baby; that's why
17 NICU was called, that's what the neonatal
18 resuscitation team was in the delivery room, because I
19 was anticipating not a good outcome.

20 Q Did you tell Dr. Mileikowsky that his behavior
21 was inappropriate?

22 A No. No, not that I recall.

23 Q How many pulls on the vacuum did
24 Dr. Mileikowsky attempt?

25 A The primary nurse documented 10. I did not

1 count, so I'm only going by what the primary nurse had
2 documented, and she had documented 10 attempts.

3 Q On the bottom of page 126-1 --

4 A Yes.

5 Q -- could you read that area starting where it
6 says 0020.

7 A 0020. Attempted vacuum three times --

8 It's difficult to read.

9 Attempted vacuum externally three times. FSE
10 came off. He applied toco --

11 I can't really read it.

12 Phono applied to check heart tones.

13 The external monitor was applied to check heart
14 tones. Fetal heart tones were, it looks like 90 to 80.

15 Dr. Mileikowsky was informed that according to
16 policy, he can only attempt vacuum extraction times
17 three. In spite of that, he continued to attempt
18 several times, off and on intervals --

19 I'm having a difficult time reading this.

20 Q Read what you can.

21 A This isn't my writing, so

22 Q Okay.

23 A He asked the nurse to apply fundal pressure.

24 Nurse refused to apply fundal pressure. Told him
25 that she's not supposed to apply fundal pressure.

1 It's blacked off in my chart, but somebody
2 applied fundal -- I presume I know who that is, if you
3 want me to --

4 . . . applied fundal pressure. Dr. Mileikowsky
5 attempted vacuum extraction times 10 at 55
6 millimeters of mercury pressure for 50 to 60 seconds
7 each time.

8 Q How did you feel about that?

9 A That's an awful lot of time to apply fundal
10 pressure -- well, fundal pressure doesn't get applied.
11 You can't -- legally, there's no defense in applying
12 fundal pressure.

13 But as far as applying the vacuum 10 times,
14 that's quite a few times. More than I would like to
15 see.

16 Q Would you have applied fundal pressure?

17 A No.

18 Q Do you think it would be appropriate for anyone
19 to apply fundal pressure?

20 A No.

21 Q Is that your opinion, or is that the opinion of
22 others?

23 A There's literature written that there's no
24 defense in fundal pressure. It can cause brachial
25 plexus injuries. If there is a CPD involved --

1 Q What's a CPD?

2 A Cephalopelvic disproportion.

3 -- you're just going to push a bigger head
4 through a smaller area by force, and it's not indicated
5 ever.

6 Q Based on the notes -- and we're talking about
7 some specific times at 0010 and then moving on to a
8 subsequent time I think is in the chart also, 0036 when
9 the delivery occurred, approximately how long --

10 A 26 minutes.

11 Q Okay. Any rules about length of time that
12 vacuum extraction should occur that you're aware of?

13 A I'm vaguely aware of a 15-minute rule. But, to
14 me, the time constraints are not as important, because
15 you're contractions can be spaced apart, as attempts.
16 To me, attempts are more important than the time
17 involved.

18 Q Do you recall if any pop-offs occurred -- could
19 you describe what a pop-off is.

20 A A pop-off is when you have applied the pressure
21 on the vacuum; the vacuum is attached to the baby's
22 head; and sheer force of the pull causes the vacuum to
23 pop off. Pop-offs can occur -- usually occur during the
24 pulling.

25 Q Is there any risk to a pop-off?

1 A Yeah. It can lacerate the baby's head. It can
2 lacerate the vagina. It can cause contusions on the
3 baby.

4 Q Can it cause a hematoma?

5 A Yes.

6 Q And also a subdural hematoma?

7 A I suspect so.

8 DR. MILEIKOWSKY: Can we establish any expert
9 testimony here? What's the foundation?

10 THE HEARING OFFICER: You can ask her -- yes.

11 BY DR. WULFSBERG:

12 Q Are you aware these things can happen?

13 A Yes, I'm aware these things can happen.

14 DR. MILEIKOWSKY: How is she aware?

15 THE HEARING OFFICER: I think you have to
16 establish a foundation.

17 BY DR. WULFSBERG:

18 Q By your training and experience, are you aware
19 of any complications that can occur with pop-offs?

20 A Yes. Through literature and -- basically,
21 through reading literature.

22 Q Thank you.

23 During this time period did you note
24 Dr. Mileikowsky asked others to increase the pressure
25 during the vacuum extraction?

1 A He asked Kamla to increase the pressure. She
2 refused. He did ask me, and I refused. We kept the
3 pressure at -- it's actually 50 centimeters of mercury,
4 but --

5 Q But you refused?

6 A Correct.

7 Q Why?

8 A Because 50 is considered the upper limit of
9 pressure. With more pressure you can actually lacerate
10 the scalp.

11 Q That's why you decided not to?

12 A That, and I just don't ever go above 50.

13 Q On 126 No. 3, do you recognize this sheet?

14 A Yes.

15 Q What is this sheet?

16 A It's a delivery room record.

17 Q And in the middle of this sheet there is
18 something called a score.

19 A Uh-huh.

20 Q What is the score?

21 A It's an Apgar score. It's a score assigned to
22 a baby by the delivery room nurse regarding -- it's
23 really an objective score by viewing the baby; checking
24 color, respirations, pulse, grimace, tone. Then you
25 assign an Apgar score to the baby by your observation.

1 Q Over a certain period of time?

2 A It's done at one minute after birth, five
3 minutes after birth; and sometimes 10 minutes after
4 birth, not always.

5 Q Why would it be done 10 minutes after birth?

6 A It's generally done 10 minutes after birth if
7 your first two scores were not satisfactory.

8 Q Okay. And do you see anything unusual about
9 the Apgar scores on this patient?

10 A They were low.

11 Q Sorry?

12 A They were low.

13 Q What were they?

14 A One minute was Apgar score of one; five minute
15 was an Apgar score of six.

16 Q And you considered that to be a low score?

17 A Yes.

18 Q After this child was born, what subsequently
19 happened to the baby?

20 A The baby went to the intensive care unit. The
21 neonatal team brought the baby to the unit.

22 Q Are most babies sent to the neonatal intensive
23 care unit?

24 A Not most.

25 Q Some?

1 A Some.

2 Q Would it be appropriate to send a baby with a
3 low Apgar?

4 A Yes, for further observation.

5 Q Based on the events leading up to the delivery,
6 were you surprised at these Apgar scores?

7 A No. No. The baby was stressed out during the
8 delivery, and we anticipated this. That's why -- I
9 believe the baby was also meconium-stained, but that's
10 another reason why the neonatal team would be in
11 attendance at delivery. But we anticipated low scores
12 because of the fetal distress, fetal heartbeat.

13 DR. WULFSBERG: I have no further questions.

14 THE HEARING OFFICER: Cross-examination,
15 Dr. Mileikowsky.

16 DR. MILEIKOWSKY: Yes. May I just take a brief
17 recess because Dr. Wiseman wants to consult?

18 THE HEARING OFFICER: All right. Five minutes.

19 DR. MILEIKOWSKY: Maximum. We're not leaving,
20 just --

21 THE HEARING OFFICER: All right. We can take a
22 five-minute break at this point.

23 (Recess from 8:00 p.m. to 8:11 p.m.)

24 THE HEARING OFFICER: Back on the record.

25 Cross-examination.

1 I'm sorry. Dr. Fleisher has a question.

2 DR. FLEISHER: We're talking about the chart.
3 Are there any fetal monitor strips available?

4 MS. MILLER: Yes, there are.

5 THE HEARING OFFICER: Do you want to look at
6 those at this time?

7 DR. FLEISHER: Sometime. I think --

8 THE HEARING OFFICER: Before you ask questions.

9 DR. FLEISHER: -- Dr. Brooks and I would like
10 to look at them.

11 DR. WULSFBERG: We'll have a physician coming
12 to testify regarding those. Anytime you want to is
13 fine, of course, but there will be --

14 THE HEARING OFFICER: I'm inclined to let you
15 look at it before you question the witness, so we'll do
16 that.

17 DR. MILEIKOWSKY: It only reinforces my
18 previous request that I would like everything, including
19 the monitoring strips, to be part of the record.

20 THE HEARING OFFICER: I haven't excluded that.

21 DR. MILEIKOWSKY: No. I know. I just
22 reinforce the request.

23 THE HEARING OFFICER: Okay.

24 DR. MILEIKOWSKY: So I guess we'll start. What
25 do you prefer first, with October 24 or with August 30?

1 DR. WULSFBERG: I believe you're going to ask
2 the questions, Dr. Mileikowsky.

3 THE HEARING OFFICER: It's your choice.
4

5 CROSS-EXAMINATION

6 BY DR. MILEIKOWSKY:

7 Q Good evening. How are you this evening?

8 A Good, thanks.

9 Q How long do we know each other?

10 A Many years.

11 Q Many years.

12 And, to the best of your perception, are you
13 one of my favorites or one of my less favorites?

14 A I don't know. I don't know. I can't
15 speculate.

16 Q Over the years have I solicited your input
17 regarding patient care when I was at home and I needed
18 some --

19 A Yes, you have.

20 Q So if another nurse was giving me a pelvic exam
21 or other status of a patient of mine and I knew you were
22 there, I would ask you to confirm or to have your own
23 input; is that correct?

24 A I don't remember incidences. But, yes,
25 probably.

1 Q So over the years we have learned to sort of,
2 in a medical point of view at least, to trust each
3 other's knowledge and experience; is that right?

4 A Yes.

5 Q So you were not too surprised that night on
6 October 24 that I was not too happy with the nurse that
7 was with me in the room; correct?

8 A Correct.

9 Q Do you recall if this patient was, prior to her
10 delivery, set for a potential Cesarean section?

11 A I don't recall.

12 Q Why don't you look at the chart.

13 A What reference?

14 Q Not the exhibit book, the chart. Look under
15 consent forms. Was she consented for a Cesarean
16 section?

17 A That would be under record of operations or --

18 Q I guess wherever they put the consent.

19 A The consent here is vaginal delivery. I don't
20 see -- I see a vaginal delivery consent. That's the
21 only consent I see.

22 THE HEARING OFFICER: Do you want to look at
23 the chart, Dr. Mileikowsky?

24 THE WITNESS: I only see a vaginal delivery
25 consent.

1 THE HEARING OFFICER: Let Dr. Mileikowsky have
2 a look.

3 BY DR. MILEIKOWSKY:

4 Q She had a Foley at that time, at the time of
5 delivery?

6 A I would have to check the documentation, review
7 the nurses' notes. I would presume so, but I don't
8 know.

9 Q If you look at my note on Exhibit 126-5, do you
10 see any notation regarding an artificial rupture of bag
11 of waters?

12 A Yes, I do.

13 Q Can you please read my entry, please.

14 A Pitocin augmentation of labor led to many
15 decelerations.

16 I can't read this here. Then it says:

17 . . . was temporarily d/c-ed --

18 Oh, Pitocin it must be.

19 . . . was temporarily d/c-ed and then
20 restarted. ARONW --

21 Q AROBW.

22 A Which is artificial rupture of bag of waters.
23 -- and application of scalp clip.

24 I can't read the rest.

25 Showed good BTBV --

1 Q What does that stand for, beat to beat
2 variability?

3 A Yes, that's what that stands for.

4 -- and good tracing with light meconium
5 observed.

6 Q Was this this patient's first delivery, or did
7 she have other deliveries before?

8 A It says gravum 1, para 0. First.

9 Q Now, who else was in the room, to the best of
10 your recollection? And to help yourself, in one of the
11 exhibits half the name is crossed out, but you can read
12 the name of the anesthesiologist.

13 A Dr. Gasway.

14 There were many, many family members -- I don't
15 recall how many, but I would venture to say maybe four
16 or five -- there was your office nurse or assistant;
17 myself; Kamla; the neonatal team; Dr. Gasway.

18 Q What was Dr. Gasway doing?

19 A I don't recall, and I don't recall if he was
20 in there the whole time. I just don't recall.

21 You ask what was he doing?

22 Q Yes.

23 A I don't know. I know he did do fundal
24 pressure. But outside of that, I don't know what else
25 he did in the time that he was in the room.

1 Q Did you just say that he applied fundal
2 pressure?

3 A Yes, he did.

4 Q All right.

5 Did he have any hesitations applying fundal
6 pressure, to the best of your --

7 A Not to the best of my knowledge.

8 Q Do you know which model vacuum was used that
9 night?

10 A I couldn't say offhand. I couldn't say
11 offhand. I don't recall. We have used two different
12 models, and I don't know what model was used that
13 night.

14 Q Do you recall the two models that were in use,
15 provided you had them available that night?

16 A I don't recall the names. I just recall the
17 way the cup is --

18 Q All right.

19 A -- the position of the cup.

20 Q If I gave you a paper, would it help you --
21 with a pen -- to give us a drawing of the difference
22 between the two vacuums?

23 A I'm sorry?

24 Q If I give you a paper, then would you be able
25 to give us a drawing?

1 A Well, I can explain it.

2 Q Some members of the hearing committee are not
3 OB/GYNs.

4 A I'm not good at drawing, but I can explain it
5 better.

6 Q Fine. You can start with that and see if you
7 want to --

8 A Okay.

9 Q -- use a paper and a pen, if you wish.

10 Go ahead.

11 A One was a cone, just a regular cone-shaped cup.
12 And the other was a mushroom shape that actually was
13 rounded on the edges. That is what was used the
14 majority of the time, and that is what we subsequently
15 have changed to completely.

16 Q Do you know which one I was provided that
17 night?

18 A I really can't say. I presume it was the
19 mushroom one because we have been using that pretty
20 exclusively for the last couple of years. But I can't
21 say for sure.

22 Q Do you recall me asking you if you had a
23 different vacuum cup that I could use?

24 A I do not recall.

25 Q Do you remember if I was happy with that vacuum

1 cup?

2 A I know you were not happy with the outcome, but
3 I don't know if you were not happy with the vacuum cup
4 itself.

5 Q I was not happy with what outcome?

6 A Well, the lack of progress by a vacuum.

7 Q Lack of progress by the vacuum. Okay. That's
8 different than outcome.

9 So what do you remember from what I have said
10 that night to you, and that was the reason actually I
11 asked for you in the room? Didn't I even ask you to
12 have a different nurse to assist me?

13 A As I recall, Kamla actually came to get me, not
14 yourself. But there was definitely a lot of tension in
15 the room.

16 Q Do you recall that we considered having maybe a
17 different nurse at one point?

18 A I know you wanted somebody else to apply the
19 vacuum or to hold the vacuum pressure.

20 Q So I expressed relief when I saw you coming
21 since I knew that if you told me that was the pressure
22 that could be used, and since I trust your experience
23 that -- do you remember that your presence was
24 reassuring to me?

25 A I do.

1 Q "I do" sounds like we're getting married here.

2 A I do recall that.

3 Q So try, if you can, to recall when I was not
4 happy with that cup, did I ask you if you had another
5 vacuum cup available that would have a better grasp on
6 the baby's head?

7 A I really don't recall that. You may have; I
8 don't recall.

9 Q Do you recall what I have shared with you was
10 the difficulties regarding the caput, which is the usual
11 word we use, or the cone shape or something or anything
12 of that nature that I may have told you regarding the
13 baby's head?

14 A I don't recall.

15 In this case?

16 Q Yes.

17 A No, I don't recall.

18 Q Do you recall that I had been not happy with
19 the fact that that vacuum would not fit on that head?
20 There was always an area -- let me back up for a second
21 because some members of the hearing committee are not
22 OB/GYNs.

23 In order to apply a suction, the vacuum cup
24 needs to be sealed in all areas; correct?

25 A Correct.

1 Q In other words, if a portion of the cup is up
2 and is not applied on an area of the head of the baby,
3 there is air that can go in.

4 A Correct.

5 Q So you can try as much as you want with your
6 hand, when you apply that --

7 A You won't create a vacuum.

8 Q -- you will not create a vacuum; correct?

9 A Correct.

10 Q So it is very important to be able to have a
11 cup that can be placed in such a way that there will be
12 no gap.

13 A Correct.

14 Q So that all edges of the vacuum cup are
15 supplied in such a way on the baby's head so that you
16 can apply actual vacuum and not just hope you create
17 vacuum by -- what do you call that device?

18 A The pump, the vacuum pump.

19 Q Exactly. Thank you.

20 Do you recall the difficulties of having the
21 needle go up when you were trying to apply --

22 A That's with pop-offs, you lose your vacuum.

23 Q Right.

24 A Then you have to reapply the cup --

25 Q Right.

1 A -- to the scalp and recreate your vacuum.

2 Q Do you recall how fast the pop-off would
3 happen?

4 A I really don't recall.

5 Q In other words, even though we might have
6 believed that the cup was applied in a satisfactory
7 manner, as soon as I would pull even gently on the cup,
8 it would cause a lack of --

9 DR. WULFSBERG: This is argument.

10 DR. MILEIKOWSKY: What argument?

11 DR. WULFSBERG: I object. There's no
12 establishment that he applied gently or otherwise --

13 THE HEARING OFFICER: He's asking her if she
14 recalls that.

15 DR. MILEIKOWSKY: Exactly.

16 THE WITNESS: I'm sorry?

17 DR. MILEIKOWSKY: Can you please reread the --

18 THE HEARING OFFICER: Why don't you just reask
19 the question.

20 DR. MILEIKOWSKY: Okay.

21 Q Do you recall that once we were hoping that the
22 cup was applied, shall we say, hermetically so that
23 there's no gap, once you would give me -- I would first
24 need to have you give me the green light before I would
25 pull; correct?

1 A Correct.

2 Q Because you're the one who controls the pump.

3 A Correct.

4 DR. MILEIKOWSKY: Do you need to go?

5 DR. MIYASHITA: Sorry.

6 THE HEARING OFFICER: Do you have to take that?

7 DR. MIYASHITA: Sorry.

8 DR. MILEIKOWSKY: That's all right.

9 Sorry.

10 THE WITNESS: That's okay.

11 THE HEARING OFFICER: We'll wait.

12 Off the record.

13 (Recess from 8:25 p.m. to 8:29 p.m.)

14 THE HEARING OFFICER: Back on the record.

15 BY DR. MILEIKOWSKY:

16 Q So once we were hoping that the cup was applied
17 hermetically and sealed in such a way that there would
18 be no gaps --

19 THE HEARING OFFICER: Are you asking her if she
20 recalls this?

21 DR. MILEIKOWSKY: Wait. Wait. I'm not
22 finished. Yes.

23 Q -- then I would ask, obviously, for you, once I
24 was saying I was ready -- it's sort of a teamwork;
25 right? You and I do something, but we have to

1 synchronize what we do; correct?

2 A Right.

3 THE HEARING OFFICER: Wait. The question is
4 ambiguous. Are you asking her if she recalls doing that
5 or if that is the way that it's done normally?

6 DR. MILEIKOWSKY: Okay.

7 THE HEARING OFFICER: First of all, do you
8 recall in the case of the delivery of this infant, do
9 you recall that what Dr. Mileikowsky just described
10 occurred?

11 THE WITNESS: Yes, I do.

12 THE HEARING OFFICER: Where he spoke with you
13 about applying the vacuum --

14 THE WITNESS: Yes. In all cases it's the
15 same. In all cases the doctor and nurse have to work
16 together.

17 THE HEARING OFFICER: And you recall that
18 happening in the case when you were in the labor and
19 delivery room?

20 THE WITNESS: Yes, I do. Correct.

21 THE HEARING OFFICER: All right. Next
22 question?

23 DR. MILEIKOWSKY: All right.

24 Q So basically, I first have to give you the
25 green light so that you can start using the pump to get

1 to the appropriate pressure --

2 A Correct.

3 Q -- and then once you reach a satisfactory
4 pressure, you then tell me that I can start pulling on
5 the vacuum cup; correct?

6 A Yes.

7 THE HEARING OFFICER: And were you doing that
8 in this delivery?

9 THE WITNESS: Yes.

10 THE HEARING OFFICER: Okay. Next question.

11 DR. MILEIKOWSKY: Thank you.

12 Q Do you recall how long it took at times for the
13 cup to detach from the surface of the skull of the baby?

14 A I do not recall.

15 Q Now, an average, to the best of your
16 recollection, would it take -- at times, obviously,
17 since there was more than one application -- would there
18 have been seconds, minutes, more than 15 minutes on each
19 application?

20 A No. Probably through one contraction.

21 Q Through one contraction.

22 A But that's to the best of my recollection.

23 Q All right.

24 Here's another important point that we need to
25 bring to the hearing committee for their understanding.

1 The obstetrician does not pull the vacuum until the
2 patient has a contraction. So the first step is for the
3 obstetrician to apply the best he or she can the vacuum
4 cup on the fetal head. The second step -- correct me if
5 I'm wrong -- is you then, or the nurse who was assisting
6 the obstetrician, applied the vacuum until you reach a
7 satisfactory level. Then we both wait until we have a
8 contraction from the patient to then -- for the
9 obstetrician to apply pulling; correct?

10 A I don't always increase the level -- when
11 there's no contraction, generally I release the pressure
12 on the vacuum; and then only increase it when the
13 contraction starts. So that you've only got vacuum
14 going during the time of a contraction.

15 Q Right. So between contractions --

16 A There's a resting period that you bring it down
17 to.

18 Q Exactly. So there is a resting period between
19 contractions.

20 A Yes.

21 Q So it's important to be able to apply the
22 vacuum and be able to try to assist the patient in the
23 delivery during that period of time when she has the
24 contractions; correct? In other words, that's the only
25 time we can pull.

1 A Correct.

2 Q Okay. How long would the contractions last?
3 Do you want to look at the --

4 A I would have to look at the monitor strip for
5 that.

6 Q All right.

7 Could you tell us which one of the strips that
8 you're going to look at is the one that applies to the
9 vacuum extraction.

10 DR. BROOKS: It's this one.

11 THE WITNESS: I don't know if it's on the
12 strip, but generally --

13 BY DR. MILEIKOWSKY:

14 Q Can you tell us how those strips are organized.

15 A Can I tell you how the strips are organized?

16 Q This one, not in general. I see a date, but
17 where is the time?

18 A The time is on the monitor strip in the middle.

19 THE HEARING OFFICER: All right. Let's let her
20 have a chance to look at the strip.

21 DR. MILEIKOWSKY: Sure.

22 THE HEARING OFFICER: Do you have a need to be
23 by the witness, Dr. Mileikowsky?

24 DR. MILEIKOWSKY: Yes. I'm looking at the
25 strip, so just not to go back and forth and save time.

1 THE WITNESS: I have the part that you're
2 asking about.

3 DR. MILEIKOWSKY: So how do we know where that
4 part --

5 DR. WULSFBERG: I ask that he not be next to
6 the witness while this is going on.

7 THE HEARING OFFICER: Do you want to review the
8 strip before she answers?

9 DR. MILEIKOWSKY: I want to look at it while
10 she's looking at it, since we don't have a copy and the
11 MEC has not provided us a copy.

12 THE HEARING OFFICER: Why don't you take the
13 strip back.

14 DR. MILEIKOWSKY: No. She needs to look at it.

15 THE HEARING OFFICER: No. You'll give it back
16 to her after you have had an opportunity to look at it
17 with Dr. Wiseman. Why don't you take it back to
18 Dr. Wiseman and have a look at it so you can formulate
19 your question.

20 DR. MILEIKOWSKY: All right. Excuse me.

21 THE HEARING OFFICER: Then we'll let the
22 witness answer.

23 DR. MILEIKOWSKY: The strip, so you know,
24 Mr. Willick, have numbers on each --

25 THE HEARING OFFICER: I'm aware. It

1 coordinates with the progress.

2 DR. MILEIKOWSKY: Exactly. So in order to
3 refer to a certain point, I need to look over her
4 shoulder, and that's why I --

5 DR. WULSFBERG: I would like to say that this
6 strip has been available in the chart from the
7 beginning. This is another example where this evidence
8 could have been presented by Dr. Mileikowsky at any
9 time, could have been available. It was not done so.
10 It's another reason why this hearing is prolonged
11 unnecessarily.

12 DR. MILEIKOWSKY: This is now a perfect example
13 of how the MEC is trying to distort the fact that they
14 have not provided to the hearing committee the full
15 copy, despite my request. Had they provided the
16 request, we wouldn't be talking right now and wasting
17 our time. All right.

18 Q To the best of your ability --

19 DR. WULSFBERG: Okay. I'm asking him not to
20 walk around the room and have this --

21 DR. MILEIKOWSKY: Would you stop being a child.

22 THE HEARING OFFICER: Gentlemen --

23 DR. WULSFBERG: Okay. I'm going to ask that
24 this hearing be discontinued. I asked him specifically
25 not to be next to the witnesses. The witnesses have

1 already complained that they are intimidated by
2 Dr. Mileikowsky, and this cannot go on.

3 DR. MILEIKOWSKY: This witness has stated she
4 is not intimidated by me.

5 (Simultaneous colloquy.)

6 THE REPORTER: One at a time.

7 THE HEARING OFFICER: Wait. Dr. Mileikowsky
8 will question from his location at the table.

9 DR. MILEIKOWSKY: Thank you very much.

10 THE HEARING OFFICER: And the witness has the
11 strip now.

12 DR. MILEIKOWSKY: And I would like the hearing
13 officer to admonish Dr. Wulfsberg for interrupting and
14 prolonging this much more than necessary and for false
15 accusations.

16 THE HEARING OFFICER: I'm not admonishing him.
17 Go ahead. Ask your question.

18 DR. MILEIKOWSKY: Okay.

19 Q To assist all of us, Ms. DiNapoli, can you tell
20 us -- and there is a number on top of each strip, sheet,
21 so that identifies exactly --

22 A Correct.

23 Q -- so later on when we review the record and
24 the copies will be provided to the hearing committee as
25 I requested, we'll know exactly as we look at the

1 transcript what we're looking at.

2 Can you tell us to the best of your ability,
3 when was the first time a vacuum applied?

4 A To the best of my ability, on the chart it says
5 0010, which is chart No. 77581.

6 Q No. Don't use the word "chart" because it's
7 confusing. You mean the monitoring strip --

8 A Monitor strip 77581, it says: Vacuum
9 attempted.

10 Q Okay. That's the first one?

11 A To the best of my knowledge.

12 DR. FLEISHER: What time was that?

13 THE WITNESS: At 0010.

14 BY DR. MILEIKOWSKY:

15 Q Whose handwriting is it?

16 A That's Kamla Chawla's handwriting, the primary
17 nurse.

18 Q All right.

19 Now, when would she write that, before or after
20 she would attempt to apply a suction?

21 A I can't speak for her.

22 Q The reason I'm asking you the question is
23 because you've stated earlier that the nurse that was in
24 attendance documented very well the number of times that
25 the suction cup was applied on the head, and so my

1 question to you is: How can she document it while she's
2 applying the suction?

3 A Well, if you look at the strip, there's also
4 what's called a mark strip there.

5 Q Can you tell us what it looks like.

6 A It's a blood pressure mark. I don't know if it
7 was in response to the blood pressure or in response to
8 the vacuum.

9 Q Can you lift up the monitoring strip and show
10 us what you're referring to.

11 A These small marks here (indicating).

12 Q When you say "here," you mean the bottom
13 portion of the strip?

14 A I think they are pretty visible.

15 Q You are the only one who can see.

16 May I approach just halfway?

17 THE HEARING OFFICER: What's the issue?

18 THE WITNESS: I don't know if she did or did
19 not push the mark button. I was not in the room at the
20 time.

21 THE HEARING OFFICER: Wait. The marks that
22 you're referring to on the strip, are they on the bottom
23 half of the strip or the top half of the strip?

24 THE WITNESS: They are in the mid-portion of
25 the strip.

1 THE HEARING OFFICER: Between the top and the
2 bottom?

3 THE WITNESS: The black marks in the middle.

4 BY DR. MILEIKOWSKY:

5 Q You mean what looks like arrows? They look
6 like arrows from here.

7 A They are arrows.

8 Q Are those produced by the electronic
9 monitoring?

10 A Correct.

11 Q Okay.

12 A They are produced -- they are per time you hit
13 the mark button, and at that time it marks your strip.

14 Q So you or someone else could have then pushed a
15 little button on the monitor to create that little
16 arrow; correct?

17 A Correct.

18 Q It's not a monitor or the blood pressure of the
19 patient that causes that arrow; correct?

20 A Correct.

21 Q So it's manually produced.

22 A Correct.

23 Q All right.

24 So how many of those do you find over there on
25 that strip?

1 A 10.

2 Q 10. Okay.

3 Now, are those hand-produced after the fact, or
4 are they produced solely and it's only possible to
5 produce by pushing a button on the monitor?

6 A It's only possible to produce.

7 Q By?

8 A By pushing the button on the monitor.

9 Q Pushing a button on the monitor. Okay.

10 Since you were in the room, were you using both
11 of your hands at that time to assist me with the vacuum,
12 and the other nurse in attendance was the one closer to
13 the monitor?

14 A There is as of -- let me get the exact time.
15 As of 0020 to 21, I recognize my handwriting on the
16 chart.

17 Q At what time do you recognize your --

18 A 0020.

19 Q 0020 you recognize your handwriting?

20 A Between 0019 and 0020 I recognize my
21 handwriting saying: On, off; on, off.

22 THE HEARING OFFICER: This is on the monitor
23 strip?

24 THE WITNESS: On the monitor strip itself.

25 THE HEARING OFFICER: All right. Continue.

1 DR. MILEIKOWSKY: Thank you.

2 Q So now you hand-wrote "on, off; on, off"
3 regarding what?

4 A The vacuum application.

5 Q The vacuum.

6 Now, when you entered the room, did I ask you
7 then to take over the pump?

8 A I don't know if you asked me, but I know that I
9 did.

10 Q All right.

11 A I think that it was in response to the friction
12 in the room that I took it over, but you may have asked
13 me. I don't recall.

14 Q How long did it take us to deliver this baby?

15 A It looks like from the time of the first vacuum
16 application to delivery was 26 minutes.

17 Q And what happened -- you mentioned variables
18 earlier. Did you use the word "variables"?

19 A I believe I did.

20 Q Could you tell us -- can you show us on the
21 strip --

22 A Now that I'm seeing the strip, I can see that
23 it's just a -- instead of variables, it was just a very
24 slow brachycardic heart rate.

25 Q On, off?

1 A It started at 005 and continued and got deeper
2 up until 0030 when you have a subsequent elevation up to
3 120s for -- 120, 130 with a loss of long-term
4 variability -- loss of any variability.

5 Q How can you assess variability on an external
6 monitor?

7 A You can assess long-term, but not so much beat
8 to beat.

9 And then to the delivery at 0035 or 36.

10 Q Can you tell us from looking at the monitoring
11 strip when did the fetal scalp clip fall off the fetal
12 head?

13 A It appears to have only been on for maybe 10
14 seconds.

15 Q It was applied at 6:00 p.m.

16 A Oh, I'm sorry. You're right. Then it looks to
17 have been reapplied for a short period. It looks like
18 it came off --

19 Q Can you give us the tracing numbers, please.

20 A Yes. It looks like it came off on
21 tracing 77583 and then subsequently was reapplied for
22 possibly 10 seconds because there's a double tracing, so
23 it looks like the toc -- the ultrasound was applied at
24 the same time for 10 seconds on strip 77584.

25 Q When you say "ultrasound," do you mean the

1 external --

2 A External ultrasound.

3 Q External what?

4 A Ultrasound.

5 Q Why do you call it an ultrasound?

6 A That's just what we call it, an external
7 ultrasound.

8 Q All right.

9 Basically it's the external fetal monitor
10 versus --

11 A Correct.

12 Q -- the electronic one that is applied on the
13 fetal head; correct?

14 A Internal. Correct.

15 Q Now, is that tracing continuous or not?

16 A It is not continuous.

17 Q Not continuous.

18 So to the best of your recollection, what did
19 we do at that time to assess between the contractions
20 the condition of the heartbeat of the baby?

21 A To the best of my knowledge --

22 Q Recollection.

23 A I can only tell you that if I was in this room,
24 which I was, and I was in the room and I couldn't get a
25 monitor strip, I couldn't hear a monitor -- or

1 heartbeat -- I couldn't monitor a heartbeat on this
2 strip, then I would listen with an ultrasound, the
3 external monitor ultrasound.

4 Q Exactly. And that may sometimes not be
5 recorded; correct?

6 A Correct.

7 Q So because we had difficulties getting a good
8 tracing and because we determined we need to get the
9 baby out immediately through a vacuum or potentially a
10 Cesarean section, we then monitored the fetal heart
11 tones by listening to it ourselves.

12 A I think we do have a very good tracing, though.
13 For a delivery tracing, I think this is pretty good
14 tracing of an external monitor.

15 Q Correct. I agree with you. But we need to
16 explain to the committee why it's not as good as
17 previously.

18 That's because the electronic scalp clip fell
19 off; we tried to reapply it; it fell off. Then we were
20 reassured between contractions because we would
21 carefully listen, to the best of your recollection?

22 A Generally, I would listen. But I think, on an
23 average, this is a pretty good external monitor strip.
24 This is very normal, what you would see at the end after
25 delivery.

1 When the patient is pushing, very oftentimes
2 you will not be able to see the heartbeat, and that's
3 very common, as it shows here.

4 Q Now, when you mentioned variables, then, what
5 were you referring to? Was it previous to the
6 application of the vacuum, or was that --

7 A I misspoke by saying "variables." It just
8 looks like it was just a very, very bradycardic strip.
9 I think the variables were earlier. There were
10 variables prior to -- 10 minutes prior to the delivery.
11 But during the delivery, it was just a straight
12 bradycardia.

13 Q Now, the lower portion of the monitoring screen
14 reflects whatever quality we have of the external
15 tocometer; meaning, the pressure anytime the uterus
16 contracts. Is that correct? Or is that an internal
17 one?

18 A This is external.

19 Q Okay. Can you tell the committee how you know
20 it's an external?

21 A Because it says "external toco" on the strip.

22 Q All right.

23 Now, do you see any correlation between the
24 tracing demonstrating a contraction and the fetal heart
25 tone?

1 A I'm sorry? Repeat the question.

2 Q Do you see any correlation --

3 A Very little. It's just continuously low.

4 Q Okay. You mentioned earlier it was 120, 130.

5 Was that during the contraction or --

6 A When did I mention -- oh, at the very end of
7 the strip, it looks to be 130s.

8 What was the question regarding?

9 Q Is 130 a healthy rate for a baby at time of
10 delivery?

11 A It is a healthy rate for the time of delivery.
12 But I think this strip is very suspect in the
13 variability and that this is just a subsequent raise in
14 heart rate after a severe deceleration, just for the
15 baby to compensate.

16 I wouldn't look at the strip here and say this
17 is a healthy strip, if that's what you're asking me.

18 Q That was not the question. Let me try to help
19 you be more specific.

20 If I gave you a paper and pen, can you tell us
21 how a head compression monitoring strip would look like.

22 A Yes.

23 DR. MILEIKOWSKY: May I provide the witness
24 with a paper and pen?

25 THE HEARING OFFICER: Sure.

1 DR. MILEIKOWSKY: Thank you.

2 Q Please provide us on the upper part, like you
3 have on the fetal monitoring, an upper portion that
4 would reflect what the heartbeat would look like. In
5 the lower portion in correspondence and in synchrony
6 with that chart of the heartbeat, where would the
7 contraction be?

8 A The contraction would be here on the bottom.
9 This would be head compression as the variable.

10 DR. MILEIKOWSKY: Do we want to give this
11 exhibit a number with 126?

12 THE HEARING OFFICER: Can you see it,
13 Dr. Wulfsberg?

14 DR. WULSFBERG: I can see it, but I'm not sure
15 it's germane to what we're talking about. It's not the
16 strip of the infant; it is her representation of what
17 happens. I think we have the strip there for whatever
18 we need as a document.

19 THE HEARING OFFICER: I'll accept it as an
20 exhibit based upon her understanding of what she
21 testified.

22 DR. MILEIKOWSKY: Should we give it 126-6,
23 since the last one here is 126-5?

24 DR. WULSFBERG: It's not one of our exhibits.

25 THE HEARING OFFICER: Right. We'll mark it

1 H-2.

2 DR. MILEIKOWSKY: Do you want to make it one
3 of mine?

4 THE HEARING OFFICER: No. H-2.

5 DR. MILEIKOWSKY: Fine, H-2.

6 THE HEARING OFFICER: Would the reporter mark
7 that as H-2, please.

8 (Hearing Officer Exhibit 2 was marked for
9 identification.

10 (A discussion was held off the record.)

11 BY DR. MILEIKOWSKY:

12 Q Now, will you please write down on the curve
13 that reflects the fetal heart tones "FHT." On the
14 drawing you just did, please put "FHT," fetal heart
15 tone, for the tracing that reflects the fetal heart
16 tone. And put "contraction" on the one that reflects
17 contractions. Did you write the word "contraction" any
18 time you had one? Please. Thank you.

19 THE HEARING OFFICER: Could you hold that up so
20 people can see it.

21 Why don't you point to the contraction
22 indication.

23 THE WITNESS: (Witness complies.)

24 THE HEARING OFFICER: Okay. Thank you.

25 / / /

1 BY DR. MILEIKOWSKY:

2 Q So what you show there is the drop, sudden drop
3 of the heart tone when there's a contraction and a
4 similar symmetrical rise of the heartbeat when the
5 contraction dissipates; is that right?

6 A What you asked me to draw is you asked me to
7 draw head compression in relation to contraction.

8 Q So just write down "head compression" so we
9 know exactly what this is about.

10 A Okay.

11 Q Now, what is an average heartbeat of a fetal
12 heart tone at time of labor that we are happy with that
13 we can --

14 A Anywhere from 100 to 150, 160.

15 Q All right.

16 And if it goes above 180, it's tachycardia,
17 beyond the level we are happy with; correct?

18 A Generally, unless there's a fever, maternal
19 fever. Sometimes you'll get that.

20 Q It could be the first sign, actually, of an
21 infection?

22 A True.

23 Q All right.

24 But we did not have that here; correct?

25 A I don't -- I would have to reread the chart. I

1 don't know. I was there strictly for the delivery.

2 Q Well, make yourself comfortable. Do you have a
3 notation with the nurses' notes vital signs?

4 A You have the chart. I don't have it.

5 Q You can look at Exhibit 126 -- that's fine.
6 You can have the chart.

7 DR. WULSFBERG: Is there an issue here of
8 tachycardia?

9 DR. MILEIKOWSKY: We want to establish --

10 THE HEARING OFFICER: Wait.

11 Yes, go ahead.

12 DR. WULFSBERG: If there's an issue of
13 tachycardia, I think we should pursue this. If there's
14 no issue of tachycardia, I'm not sure why we're
15 considering whether there was a fever or not.

16 THE HEARING OFFICER: I'm sorry? Whether there
17 was a fever or not?

18 DR. WULSFBERG: Yes.

19 THE HEARING OFFICER: Is there a contention by
20 the MEC --

21 DR. WULSFBERG: No such contention.

22 THE HEARING OFFICER: -- that she was
23 tachycardic?

24 Is there a contention by Dr. Mileikowsky --

25 DR. MILEIKOWSKY: No. But they mentioned

1 complications. I don't know what kind of complications
2 they are talking about.

3 THE HEARING OFFICER: Well, they're not
4 contending tachycardia was a complication.

5 DR. MILEIKOWSKY: All right. No problem.

6 THE HEARING OFFICER: So continue, please.

7 DR. MILEIKOWSKY: Thank you.

8 Q Now, to the best of your recollection, did I
9 apply a dilee (phonetic) at the time of the fetal head
10 coming out or protruding before delivering the shoulders
11 and the rest of the body of the head?

12 A I do not recall.

13 Q Would the nurses indicate such a thing?

14 A I don't know if they would or not at the time.
15 It would be customary if the baby was meconium-stained
16 for you to do so, but I don't recall that you did. You
17 may very well have done that; I just don't recall.

18 Q Would it be customary for the NICU team to
19 insert a suction tube into the stomach of the baby?

20 A I'm sorry?

21 Q Would it be customary --

22 A Under this circumstance?

23 Q Correct.

24 Would it be one of the first things they would
25 do when --

1 A They would check below the cords or -- yes.
2 Check to see if there was meconium generally.

3 Q Do you want to look at the chart to see if they
4 did or did not and if they found any meconium.

5 A I would have to look on the baby's chart for
6 that.

7 Q Sure.

8 DR. WISEMAN: That's it right there.

9 DR. MILEIKOWSKY: Let's put a sticky.

10 Q I just put a sticky here, if you don't mind
11 keeping it there.

12 Here's the baby's chart I provide you.

13 THE WITNESS: This is the maternal --

14 DR. MILEIKOWSKY: Maternal? Okay.

15 THE HEARING OFFICER: Where are you going,
16 Dr. Mileikowsky?

17 DR. MILEIKOWSKY: To take the chart back.

18 THE HEARING OFFICER: The maternal chart?

19 DR. MILEIKOWSKY: Maternal, correct.

20 THE HEARING OFFICER: Let's let her have the
21 maternal chart as well, please.

22 DR. MILEIKOWSKY: May I approach?

23 THE HEARING OFFICER: Yes.

24 THE WITNESS: I don't know where to find the
25 delivery record on the baby chart.

1 BY DR. MILEIKOWSKY:

2 Q It's probably in the maternal chart.

3 A Under --

4 Q Under neonatal --

5 A If the baby goes to a unit, they usually take
6 that with them.

7 Q Wouldn't they do that in the labor room
8 immediately?

9 A Yes, it would have been done in the labor room.

10 Q Okay. Who was the team that comes --

11 THE HEARING OFFICER: Well, wait.

12 (Simultaneous colloquy.)

13 THE WITNESS: I do have the sheet in front of
14 me, if you'd like to --

15 THE HEARING OFFICER: What do you have in front
16 of you?

17 THE WITNESS: I have the delivery room
18 neonatal resuscitation team record.

19 THE HEARING OFFICER: And there is a pending
20 question --

21 THE WITNESS: I don't know.

22 THE HEARING OFFICER: -- as to whether there
23 was a tube inserted to see if there was meconium in --
24 what? In the stomach?

25 DR. MILEIKOWSKY: Correct.

1 THE WITNESS: It says -- it doesn't say
2 anything about putting the tube in the stomach. It just
3 says that they checked below the cords.

4 THE HEARING OFFICER: Sorry. They checked
5 what?

6 THE WITNESS: They checked below the cords for
7 meconium, below the vocal cords.

8 BY DR. MILEIKOWSKY:

9 Q Did they find any meconium?

10 A No meconium at intubation.

11 Q No meconium at intubation.

12 THE HEARING OFFICER: Wait. Where are you
13 going?

14 DR. MILEIKOWSKY: I'd like to give it,
15 actually, to you to indicate to you that this is another
16 page that is very important to be in the exhibits in the
17 book. That's why I would like to label it somehow.

18 THE HEARING OFFICER: Here. Why don't you let
19 Dr. Wulfsberg put it in, since you have been up there
20 most of the time.

21 DR. MILEIKOWSKY: I'd like to show it to the
22 hearing officer.

23 DR. WULFSBERG: I'm going to start objecting
24 right now. What we're doing now is lack of preparation,
25 going through the charts, picking places out at random,

1 and I think it's taking the hearing committee's time.
2 We're talking about having excessive time in this
3 hearing.

4 THE HEARING OFFICER: I think the hearing
5 committee, at least the OB/GYN members of the committee,
6 wanted to see the chart. Is that --

7 DR. MILEIKOWSKY: Yes, the whole chart.

8 THE HEARING OFFICER: Wait. I'm looking at
9 them.

10 DR. BROOKS: Yes.

11 THE HEARING OFFICER: I'm seeing "yes."

12 DR. BROOKS: We do need to look at the chart.

13 DR. MILEIKOWSKY: I would like this document to
14 be characterized.

15 THE HEARING OFFICER: I see that you have
16 marked a page called "Neonatal Resuscitation Team
17 Delivery Room Record," which appears in a chart which
18 has the name of the mother, whose initials are LB. And
19 let's --

20 DR. MILEIKOWSKY: You may want to put the date
21 of the entry and the hour and the time. It says the
22 Apgar scores on the right.

23 THE HEARING OFFICER: We'll give this to the
24 witness.

25 Here. Let's just pass it down to the witness.

1 I would indicate for the record, though,
2 Dr. Mileikowsky, that during the course of discovery, I
3 was told by the MEC that they had made copies of these
4 medical records available to you.

5 DR. MILEIKOWSKY: That's why I know them so
6 well. But they did not make it available to the hearing
7 committee, which is very different.

8 THE HEARING OFFICER: Well --

9 DR. MILEIKOWSKY: Please, let's not
10 argue.

11 THE HEARING OFFICER: Wait.

12 DR. MILEIKOWSKY: I asked for it right away
13 from the beginning to be available.

14 THE HEARING OFFICER: Well, but,
15 Dr. Mileikowsky, in all fairness, you had an opportunity
16 to prepare exhibits, and you could have included that in
17 the exhibits.

18 DR. MILEIKOWSKY: That would have been the
19 whole chart, and that's exactly what we agreed upon a
20 long time ago. And the Medical Executive Committee
21 violated the agreement.

22 THE HEARING OFFICER: No.

23 DR. MILEIKOWSKY: But let's not argue.

24 THE HEARING OFFICER: No.

25 DR. MILEIKOWSKY: I would like to continue my

1 questions. We're wasting time again.

2 THE HEARING OFFICER: Well, you've made a
3 statement --

4 DR. MILEIKOWSKY: Dr. Wulfsberg is the one
5 that started it.

6 (Simultaneous colloquy.)

7 THE REPORTER: One at a time.

8 (Continued simultaneous colloquy.)

9 THE REPORTER: We're not on the record. We're
10 not on the record.

11 THE HEARING OFFICER: Dr. Mileikowsky, you
12 don't want to allow Dr. Wulfsberg to respond, but I
13 think he should be able to respond to this point.

14 DR. WULFSBERG: I think the record shows that
15 Dr. Mileikowsky was made available all the charts, all
16 the documents that we had. He was also given copies.
17 He walked out of the hearing room rather than look at
18 the charts for whatever reason. I don't know, and I
19 don't pretend to know what his thinking was. He
20 purports tonight that these charts were not made
21 available to him --

22 DR. MILEIKOWSKY: To the hearing committee.

23 DR. WULFSBERG: -- which is simply not true.
24 Excuse me, please.

25 -- on the record. And the record will

1 demonstrate that.

2 Furthermore, if he felt these charts were
3 important for the hearing committee to see in toto, he
4 had every opportunity to present them as evidence. To
5 date, he has presented no evidence to this hearing
6 committee. He's given us no information.

7 So the contention that all of this was
8 available to the hearing committee through us is
9 incorrect. He had an obligation, he had a right, and he
10 chose to do neither. And that's part of the record.

11 THE HEARING OFFICER: You may respond briefly.

12 DR. MILEIKOWSKY: Very briefly.

13 This is typical of the MEC. Four pages out
14 of -- five pages out of the whole records are placed in
15 the exhibit book. It was the duty and responsibility of
16 the MEC --

17 DR. WULFSBERG: To present our case.

18 DR. MILEIKOWSKY: -- to present the whole
19 chart.

20 DR. WULFSBERG: To present our case as we saw
21 it.

22 THE HEARING OFFICER: Well, gentlemen, I think
23 the MEC understands the difference in your positions.

24 Next question.

25 DR. MILEIKOWSKY: You mean the hearing

1 committee.

2 THE HEARING OFFICER: My mistake. Thank you.
3 I meant the hearing committee.

4 DR. MILEIKOWSKY: No problem.

5 THE HEARING OFFICER: The hearing committee
6 understands the difference in your positions.

7 So let's continue.

8 DR. MILEIKOWSKY: Thank you. All right.

9 Q The way you understand the note of the nurse
10 that was in attendance with us that evening or night,
11 there's an entry you read where she indicated 3
12 attempts, and then there's another one where there's 10
13 attempts. Does that mean the 10 includes the 3 , or the
14 10 attempts are in addition to the 3, so it's a total of
15 13?

16 A I would have to read the chart again.

17 Q Okay. Take, please, Exhibit 126-1. You read
18 it to us to the best of your ability earlier.

19 THE HEARING OFFICER: And if you wish to look
20 for it in the chart as well, if it's easier to read
21 there, you may do so.

22 THE WITNESS: 126-1?

23 BY DR. MILEIKOWSKY:

24 Q Yes. 126-1 is the nurses' notes. The entry
25 of 0020 in the nurses' notes. It starts by "attempted

1 vacuum" --

2 A By her notes I cannot distinguish whether that
3 is included or not.

4 Q All right.

5 And I'm sorry. We were interrupted earlier
6 when I asked you to count the number of entries, arrows
7 on the strip. Can you please count them for us.

8 A I believe there was 10. 10.

9 Q 10. All right.

10 So what should we believe, the monitor strip
11 with the arrows, and then interpret the 10 at the bottom
12 of the exhibit page 126-1 as a total number of
13 applications? Or is it possible that the three could
14 have been three that were not recorded with arrows on
15 the fetal monitoring strip?

16 A Well, I know prior to these 10 arrows there's
17 documentation in my handwriting of "on, off; on off"
18 prior to the arrows.

19 Q Meaning vacuum applied on, off?

20 A Uh-huh.

21 Q How many times do you have that entered?

22 A Four. "On, off; on, off." Two total.

23 Q Two applications?

24 A Two applications.

25 Q So when you say it's "four," you meant --

1 A I meant there's four documentations. "On, off;
2 on, off," which is two complete rounds.

3 Q Okay. By "four" you meant four words?

4 A Correct.

5 Q "On, off" being two words, and so you have two
6 times an entry "on, off"; meaning two times, recorded by
7 you in your handwriting, application of vacuum to the
8 fetal head?

9 A Correct.

10 Q Did you at any point in time examine the fetal
11 head station?

12 A No, I did not.

13 Q Did you ever see the nurse do a pelvic exam and
14 assess the station of the head?

15 A On this patient?

16 Q Yes.

17 A Not that I recall.

18 DR. MILEIKOWSKY: For the benefit of the
19 hearing committee members who may not recall med school,
20 the station is where we obstetricians/gynecologists
21 evaluate how far advanced is the tip of the head. And
22 so there's a minus five, zero; and then plus five is
23 when the head is literally ready to -- you can see the
24 head is right on the vulva. All right?

25 Q So do you see anywhere in that nurse's note a

1 station recorded?

2 A The last station recorded says plus one.

3 Q Does it say if at that time the patient were
4 having a contraction or not?

5 A I can read what it says.

6 Q The entry is at 2400. Is that what you're
7 referring to?

8 A 2400. It says:

9 Dr. Mileikowsky asked me to set up for delivery
10 and he's going to do vacuum extraction. Told him
11 that head is a plus one station.

12 Q Now, that doesn't mean she checked the baby at
13 that time. Where do we have a recording that is
14 simultaneous to the time she may or may not have checked
15 the station? Would that be on the fetal monitoring
16 strip or somewhere else in the nurses' notes?

17 A That would be here.

18 Q I'm sorry. Where is "here"?

19 A I'm sorry. That would be on the log, delivery
20 log.

21 Q Are you looking at -- what page? Is that in
22 the exhibit book 126-2?

23 A 126-2.

24 Q What level are you looking at?

25 A It appears that 2340 was the last time that she

1 had documented that she had done an exam, and at that
2 point it was: Complete, complete, plus one.

3 Q Now, could there be a variation between your
4 pelvic exam and her pelvic exam, had you examined her?

5 A Are you asking is it --

6 Q In general.

7 A Yes, in general.

8 Q Could there be a variation between your pelvic
9 exam and mine?

10 A Yes.

11 Q So a pelvic exam is not exactly a
12 mathematical --

13 A Correct.

14 Q -- objective finding, but results from the
15 variation in the experience; the size of the hand; the
16 timing, if the patient has a contraction or not; and
17 whether or not --

18 A I don't think the size of the hand makes a
19 difference. I think, basically, it's your perception of
20 the parietal bone versus my perception of the parietal
21 bone.

22 Q Do you recall once when I was paged stat when I
23 was at home? I was told a patient's cervix was dilated
24 at nine; and when I arrived, it was one.

25 A I don't recall that.

1 Q All right. But that can happen if the cervix
2 so thin --

3 A It hasn't been unheard of. It has happened.

4 Q So there could be a difference of, literally,
5 nine centimeters different between what, at one point,
6 one individual -- it can be a doctor --

7 A That just means that there was an error in the
8 vaginal exam.

9 Q So errors may be more common, maybe, for pelvic
10 exams between different individuals; and even the same
11 individual may correct their own pelvic exam when we are
12 asked to reverify their findings; is that --

13 A I'm unclear about the question.

14 Q That's okay. It's not that important.

15 You said something interesting, among other
16 things, earlier, and I wrote it down. You said that
17 legally it was not allowed to apply fundal pressure.
18 Do you mean to say by that that attorneys determine how
19 we practice medicine?

20 A No. By my -- the way I feel with fundal
21 pressure is that there is no documentation that will
22 protect you and that condones fundal pressure under any
23 circumstances. And we are taught as nurses in legal
24 conferences and by people who give legal conferences
25 that it's undefendable, undefendable if you do use

1 fundal pressure to facilitate a delivery.

2 Q All right. Then educate us. Where was that
3 conference or multiple conferences you went to?

4 A Any fetal monitoring class that I have gone to
5 in the last three or four years -- I would say, really,
6 three years.

7 Prior to the last three or four years, it was
8 used a lot. I shouldn't say "a lot"; it was used
9 frequently. And most legal conferences -- every legal
10 conference I have gone to in the last three years does
11 not advocate it.

12 Q I'm trying to understand what you characterize
13 as a legal conference. Are those conferences led by
14 attorneys?

15 THE HEARING OFFICER: I think she said
16 "fetal."

17 THE WITNESS: Some are fetal monitor
18 conferences. Some are legal conferences.

19 DR. MILEIKOWSKY: She said "legal."

20 THE WITNESS: I have been to both, and it has
21 been discussed in both conferences. They have been
22 given by expert fetal monitor nurses, physicians, and
23 attorneys as well.

24 BY DR. MILEIKOWSKY:

25 Q Do you remember the name of the nurses who

1 gave that class?

2 A I have been to classes by Rhonda Harwell, who
3 is --

4 Q How do you spell that?

5 A H-A-R-W-E-L-L.

6 Q And the first name?

7 A Rhonda, R-H-O-N-D-A.

8 Q Is that Rhonda that used to work with
9 Dr. Schiffman --

10 A Yes.

11 Q -- that works in labor and delivery with us?

12 A Correct.

13 Q Okay.

14 A She doesn't work here any longer. She just
15 does legal conferences. She just educates.

16 Q The one with the pretty smile?

17 A Yes.

18 She in the past has worked here.

19 Q So who gives the series of lectures with her?
20 You said physicians?

21 A I have been to conferences where she's had
22 physicians as well, but she is usually the primary
23 speaker.

24 Q And who are the other speakers? You said
25 physicians and attorneys?

1 A I have been to legal conferences besides that,
2 besides with Rhonda Harwell, that I would have to look
3 in my documentation to give you names. I couldn't give
4 you names without looking.

5 Q All right.

6 Can you tell us who organized those meetings?
7 Was it here in the hospital?

8 A No, I couldn't.

9 They were not here. They were elsewhere.

10 Q Out of the city?

11 A I have been to conferences in Las Vegas. I have
12 been to conferences in California. Different places I
13 have been to conferences. I have been to conferences in
14 Louisiana.

15 Q And then that's where you were exposed to other
16 physicians that are not on staff here and attorneys that
17 were part of that series of lectures?

18 A I'm sorry?

19 Q So you were exposed to those lectures by
20 physicians and attorneys that are not necessarily from
21 Los Angeles?

22 A Correct.

23 Q Is that part of a requirement that you have,
24 like we have as physicians; that you need to have X
25 number of hours of education?

1 A Yes.

2 Q Can you tell us what level or status you have.
3 Is it --

4 DR. WULFSBERG: I object to the relevancy of
5 this.

6 DR. MILEIKOWSKY: It's very important.

7 THE HEARING OFFICER: She's already established
8 she's been to many conferences --

9 THE HEARING OFFICER: Sustained.

10 (Simultaneous colloquy.)

11 DR. MILEIKOWSKY: That's not the issue.

12 THE HEARING OFFICER: What's the issue?

13 DR. MILEIKOWSKY: It's not the issue. He's
14 making the issue.

15 Q Are you an RN?

16 THE HEARING OFFICER: Wait. Wait.

17 DR. MILEIKOWSKY: I just want to know which
18 group -- like I have the American Society of
19 Reproductive Medicine I belong to.

20 THE HEARING OFFICER: Who requires you to have
21 continuing --

22 THE WITNESS: The board of nursing license as
23 well as my RNC certification. I have to maintain a
24 certain amount of continuing education.

25 THE HEARING OFFICER: Next question.

1 DR. MILEIKOWSKY: Thank you.

2 Q What does RNC certification mean?

3 A It's a special certification in OB, in-house
4 obstetrics.

5 Q And is that something that goes to the State of
6 California, or is that a --

7 A It's a national.

8 Q It's a national society?

9 A Yes.

10 Q And how many nurses in labor and delivery here
11 in Tarzana are members of -- is that what it's called,
12 RNC certification?

13 A Yes.

14 Q What does RNC stand for?

15 A It's RN certification -- registered nurse
16 certification, certified in OB.

17 Q Certified in OB?

18 A Yes. In-house OB.

19 Q How many, to the best of your knowledge, are
20 there --

21 (Simultaneous colloquy.)

22 THE WITNESS: I don't know.

23 THE REPORTER: Please let him finish the
24 question.

25 DR. WULSFBERG: May I ask what is the

1 relevance of this question, how many nurses are part
2 of --

3 THE HEARING OFFICER: Sustained. Next
4 question.

5 DR. MILEIKOWSKY: All right.

6 Q How many such courses do you have to take per
7 year?

8 DR. WULSFBERG: I object again. We've gone
9 down this road. She's testified --

10 THE HEARING OFFICER: I think we're going
11 pretty far afield. She's testified she has to take
12 coursework. It sounds to me very similar to the
13 continuing medical education course work that doctors
14 take.

15 Next question.

16 DR. MILEIKOWSKY: All right.

17 Q In what circumstances were you told that
18 fundal pressure is not advisable?

19 DR. WULSFBERG: He's asked this question and
20 she's answered it. She said she's been in many
21 conferences where it's been told that she can't.

22 THE HEARING OFFICER: The testimony was it's
23 never advisable. That's what her testimony is.

24 BY DR. MILEIKOWSKY:

25 Q Is that your testimony --

1 A That's --

2 Q -- never?

3 A Yes. Right.

4 DR. WULSFBERG: She said that on three
5 separate occasions.

6 THE HEARING OFFICER: Next question.

7 BY DR. MILEIKOWSKY:

8 Q Is there a policy at Tarzana Hospital for
9 nurses regarding or anything for physicians in this
10 hospital regarding such a policy?

11 A I'm sorry?

12 THE HEARING OFFICER: The question he's asking
13 is: Is there a policy on fundal pressure at this
14 hospital?

15 THE WITNESS: I believe there is. I don't
16 have it in front of me, but I'm sure there is.

17 BY DR. MILEIKOWSKY:

18 Q Well, we can provide you the rules and
19 regulations. It's right there in Volume 2.

20 A Where?

21 DR. WULSFBERG: I would like to ask if there
22 is a question in Dr. Mileikowsky's mind whether she's
23 incorrect, perhaps he can offer the area where there
24 isn't this information, rather than having each witness
25 demonstrate that Dr. Mileikowsky is not prepared in his

1 questioning again.

2 THE HEARING OFFICER: What are we referring to,
3 the medical staff bylaws rules and regulations?

4 DR. MILEIKOWSKY: We're referring to the fact
5 that Dr. Wulfsberg --

6 THE HEARING OFFICER: Wait. No. Let's not go
7 into this.

8 DR. MILEIKOWSKY: Excuse me.

9 THE HEARING OFFICER: No. You're asking her
10 to look at something --

11 DR. MILEIKOWSKY: I'm asking her to provide us
12 the proof of what she's saying. She claims there's a
13 rule. Please show it to us.

14 That's all. Simple.

15 THE HEARING OFFICER: Well, do you recall
16 reading anywhere where the rule is regarding fundal
17 pressure here at this hospital?

18 THE WITNESS: I don't know that we -- I don't
19 know where the policy is. I'm sure there is a policy.
20 I have been told by management that we are not to do
21 fundal pressure.

22 THE HEARING OFFICER: All right. Next
23 question.

24 BY DR. MILEIKOWSKY:

25 Q When you say "management," who is that?

1 A Nursing supervisors, management, nursing
2 management.

3 Q And are they trained or knowledgeable in
4 obstetrics and gynecology like you are?

5 A Yes, I believe so.

6 Q Who?

7 DR. WULSFBERG: She's answered this question.

8 DR. MILEIKOWSKY: Never asked it before.

9 DR. WULFSBERG: We're going down this road
10 again.

11 THE HEARING OFFICER: If she recalls who told
12 her, she can --

13 DR. MILEIKOWSKY: No.

14 THE HEARING OFFICER: Wait. If she recalls who
15 told her, she may --

16 THE WITNESS: Rhonda Harwell has told me when
17 she was in the capacity of our manager.

18 BY DR. MILEIKOWSKY:

19 Q But she was never higher than you?

20 A Yes, she was. She was my nurse manager.

21 Q But she was never a supervisor, the night
22 supervisor?

23 A She was my nurse manager.

24 Q But manager is not a supervisor.

25 DR. WULSFBERG: All right. This is enough.

1 Come on.

2 THE HEARING OFFICER: Let's not argue.

3 DR. MILEIKOWSKY: I'm not arguing. I'm trying
4 to --

5 (Simultaneous colloquy.)

6 DR. WULSFBERG: He's arguing with the witness
7 and trying to extract the answer to a question that she
8 does not have.

9 THE HEARING OFFICER: Sustained.

10 Next question.

11 BY DR. MILEIKOWSKY:

12 Q Can you explain to us the structure that is
13 above you when you are in labor and delivery, please.

14 DR. WULSFBERG: I object.

15 BY DR. MILEIKOWSKY:

16 Q Are you a charge nurse?

17 DR. WULFSBERG: We're going down the same --

18 THE WITNESS: Yes.

19 (Simultaneous colloquy.)

20 BY DR. MILEIKOWSKY:

21 Q How long have you been a charge nurse?

22 A Between 12 and 13 years.

23 Q What is the name of whoever is above you when
24 you are a charge nurse?

25 A My nurse manager.

1 Q And that nurse manager covers only labor and
2 delivery or other territory in the hospital?

3 A Depends on -- depends on what's going on with
4 the hospital administration. Sometimes they have all of
5 maternal child health; sometimes they have pediatrics as
6 well. Sometimes they have -- it depends. It has
7 changed. It changes with administration.

8 Q But that's not the whole hospital, so there's a
9 supervisor nurse above the manager nurse; correct?

10 A I guess the director of nurses is.

11 Q Director of nurses. Okay.

12 Is there a difference between supervisor and
13 director?

14 A I believe so.

15 Q Can you educate us.

16 DR. WULSFBERG: I'm going to object to this
17 line of questioning. Again, this is going nowhere,
18 leading us in no direction at all.

19 THE HEARING OFFICER: Sustained. Let's get
20 through this. You've spent a great deal of time on the
21 issue of the allegations regarding the vacuum. You
22 haven't gotten to the issue regarding the allegations
23 about the nighttime visit. I assume you want to do so.

24 I'm not going to hold the witness over beyond
25 this evening. I'm just alerting you to that. And at

1 the end of the session tonight, I'm going to give the
2 witness an opportunity to take the hearing committee to
3 the medication room in question with the allegations
4 about the nighttime visit to show the hearing committee
5 where the medication room is and where the bulletin
6 board is.

7 DR. MILEIKOWSKY: I'm sorry, but you have
8 established already on the record we would not do that
9 tonight because I objected. I want first to see where
10 is that board today and which note is on the board. The
11 hearing committee will come back here many times. And I
12 also objected to Ms. DiNapoli giving any statements in
13 that room.

14 THE HEARING OFFICER: I didn't say she would
15 give any statements.

16 DR. MILEIKOWSKY: Then we don't need
17 Ms. DiNapoli at all.

18 THE HEARING OFFICER: Excuse me.

19 DR. MILEIKOWSKY: When I objected earlier, you
20 said you wouldn't do that today.

21 THE HEARING OFFICER: Overruled.

22 DR. MILEIKOWSKY: Okay.

23 THE HEARING OFFICER: Overruled. I said she's
24 going to show the hearing committee the medication room
25 and will point to the bulletin board in question. There

1 will be no statement about the contents of what was on
2 the bulletin board.

3 DR. MILEIKOWSKY: We have no evidence that
4 board is in the same place where it was on August 30.
5 If she's allowed to say anything, I should have the same
6 right to say something --

7 THE HEARING OFFICER: You will have the right
8 when you testify.

9 DR. MILEIKOWSKY: No. It has to be
10 simultaneous. We'll have the court reporter with
11 us --

12 THE HEARING OFFICER: No, Dr. Mileikowsky.
13 You'll have the right when you testify.

14 DR. MILEIKOWSKY: Okay. Mr. Willick --

15 THE HEARING OFFICER: You're not going to argue
16 the point --

17 DR. MILEIKOWSKY: I'm not going to argue. I
18 want something on the record. Thank you.

19 For the record, Mr. Willick is violating,
20 again, my rights --

21 THE HEARING OFFICER: Dr. Mileikowsky --

22 DR. MILEIKOWSKY: I have the right to
23 cross-examine all witnesses that accuse me of whatever
24 it is. He has given full liberty to Dr. Wulfsberg to
25 interrupt me numerous times --

1 THE HEARING OFFICER: Dr. Mileikowsky --

2 DR. MILEIKOWSKY: -- and I'm entitled to the
3 full time of asking as many questions as required to
4 defend myself.

5 THE HEARING OFFICER: Dr. Mileikowsky --

6 DR. MILEIKOWSKY: If Mr. Willick continues to
7 interrupt me and continues to not allow me to exercise
8 my right to defend myself, he is violating the law.
9 This is for the record. I will pursue these questions
10 as long as I need to defend myself.

11 You are violating our bylaws by being the
12 advocate of the medical staff. Our bylaws clearly
13 forbid a hearing officer to be either an advocate of the
14 physician or an advocate of the medical staff.
15 Mr. Willick has persistently violated our own bylaws on
16 this subject.

17 If you would allow me, I'd like to continue my
18 questions. Thank you very much.

19 THE HEARING OFFICER: Dr. Mileikowsky, I will
20 now state what my ruling is. My ruling is you will
21 complete this witness by 9:50, if there's no objection.

22 DR. MILEIKOWSKY: What time is it?

23 THE HEARING OFFICER: Excuse me. It's 9:20.
24 This witness will be completed by 9:50, if there's no
25 objection. We will then proceed to the medication room,

1 which I believe we can get to within five minutes. The
2 witness will point out the medication room, will point
3 out the bulletin board in the medication room that was
4 there when Dr. Mileikowsky visited the medication room.
5 If the bulletin board is in a different position, you
6 will so indicate.

7 THE WITNESS: It is not.

8 THE HEARING OFFICER: It is not. You've
9 examined it?

10 THE WITNESS: It has been in the same position
11 for --

12 THE HEARING OFFICER: All right.

13 And I suggest, Dr. Mileikowsky, that you
14 actually complete your questioning -- I'm going to
15 change that. I want you to complete your questioning by
16 9:40 so that the hearing committee can have an
17 opportunity because I think they have a lot of the
18 questions about this. And I think the amount of time
19 that you are taking here is detracting from the hearing
20 committee asking their questions.

21 So go ahead.

22 DR. MILEIKOWSKY: I also would like for the
23 record to note that we had several interruptions, which
24 were perfectly legitimate, by members of the hearing
25 committee who were paged.

1 And, once again, Mr. Willick -- and I say it in
2 a very calm voice and very determined -- is even worse
3 than before. He has now short-cut my time. Nobody on
4 this hearing committee has been asked if they are not
5 ready to stay until 10:30 to compensate for the time
6 lost. The weather tonight was raining; everybody was,
7 actually, delayed because a member of the committee was
8 delayed due to the traffic. So we actually did not
9 start until 45 minutes after the time we were supposed
10 to.

11 So I am entitled to an extra 45 minutes, at
12 least, since we started 45 minutes late. And this is
13 for the record. And I will determine whether I finish
14 my questions, not the hearing officer.

15 THE HEARING OFFICER: Well --

16 DR. MILEIKOWSKY: The hearing officer does not
17 represent me. And this is for the record.

18 THE HEARING OFFICER: Dr. Mileikowsky, I have
19 the right to control the questioning, and I'm
20 controlling it.

21 DR. MILEIKOWSKY: And you have the right to do
22 errors of law. And, hence, it will be your
23 responsibility.

24 THE HEARING OFFICER: I suggest you use your
25 time.

1 DR. MILEIKOWSKY: I suggest you allow me to use
2 my time rather than waste my time.

3 THE HEARING OFFICER: The direct examination
4 took 38 minutes, and you've had an hour so far.

5 DR. MILEIKOWSKY: I have had no more than half
6 an hour with all the interruptions, including yours.

7 THE HEARING OFFICER: That's not true.

8 DR. MILEIKOWSKY: It is, unfortunately.

9 DR. WULFSBERG: Let the record show that
10 Dr. Mileikowsky had to go to his car on two separate
11 occasions, thereby causing an interruption of this
12 hearing committee's meeting. That was his own problem,
13 not anybody else's.

14 THE HEARING OFFICER: Let's continue, please.

15 BY DR. MILEIKOWSKY:

16 Q Sorry you had to witness all this nonsense,
17 Ms. DiNapoli.

18 Do you know anything about the follow-up
19 condition of this baby?

20 A I'm sorry?

21 Q Did you do anything out of your own initiative
22 to follow up the baby in NICU or elsewhere or the
23 following days?

24 A No, I did not. No.

25 Q Did you ever review the records of the baby at

1 any time in the days after the baby's delivery?

2 A No, not until this -- not until this hearing
3 was conducted.

4 Q How many times have you been asked questions
5 regarding this vacuum delivery since the date of that
6 delivery?

7 A I have no idea.

8 Q How many times have you met with Dr. Wulfsberg
9 regarding this delivery?

10 A I can't say.

11 Q Roughly, over 5 times? 10 times? 20 times?

12 A No. Roughly, under 5.

13 Q Under 5.

14 Was he alone? Was Dr. Wulfsberg alone, or was
15 he in attendance with Ms. Miller or an attorney?

16 A With Ms. Miller, I believe, and with Ann.

17 Q Anna Suda?

18 A Anna Suda.

19 Q Was there any other attorney present at any
20 time?

21 A No.

22 Q On the Apgar results of the baby, which one of
23 the numbers is the most important one and why?

24 A To me? To me, the tone.

25 Q No. We have three numbers; one minute, five

1 minutes, ten minutes.

2 A Oh, to me, the most important is 10 minutes.

3 Q Why?

4 A Because this baby was resuscitated, and it
5 stresses the baby even more during resuscitation,
6 especially during a meconium delivery. So you're not
7 always getting an accurate reading for the first minute,
8 especially. You're getting a better reading for the
9 five-minute, but the ten-minute is a better indication
10 of long term.

11 Q Where is that information you are telling us
12 comes from? From your own experience, or was that from
13 any of the lectures you attended?

14 A What information?

15 Q What you just told us about which number --

16 A Oh, I think probably my own experience, but I'm
17 also sure I've heard that in lectures.

18 Q You heard that in lectures?

19 A I'm sure I have.

20 Q To the best of your recollection -- and you're
21 welcome to check the charts -- was the baby's head in an
22 OA position; OP, like "Paul"; or OT, like "transverse"?

23 A I don't know. I would have to check the
24 delivery record.

25 Q Was there any shoulder dystocia?

1 A Not that I recall.

2 Q What did the NICU team say?

3 A What did they say?

4 Q Say, after they examined the baby.

5 A I have no idea.

6 Q Was there a physician present from the NICU?

7 A Not that I recall.

8 Q What were the qualifications of the team? Were
9 they RNs, RTs?

10 A There was an RT, an RN; and I believe a nurse
11 practitioner showed up as well, but I would have to
12 check the record for that to say for sure.

13 Q Now, is it your understanding that in the
14 courses you took regarding anything regarding obstetrics
15 that the rules that are advised or educated to you apply
16 also to obstetrician/gynecologists?

17 A Not always.

18 Q Who's responsible for the delivery of the
19 patient?

20 A The physician.

21 Q The physician. So who determines what to do?

22 A The physician.

23 Q If the American College of Obstetrics and
24 Gynecology standards of care may be different than the
25 one you have learned from Rhonda Harwell, which one

1 prevails?

2 A For you, your standards. For me, mine.

3 Q What happens if yours, and mine, that you have
4 learned do not fit with each other?

5 A You're the doctor.

6 Q Meaning?

7 A That your standard would prevail.

8 Q So do you then justify the fact that the nurse
9 that was there with me refused to do what I asked her to
10 do?

11 A I'm sorry?

12 Q The reason I asked for you to come over -- I
13 sent her out to look for a different nurse, and I was
14 happy to see you coming -- was due to the fact that that
15 nurse refused to apply the fundal pressure.

16 A That wasn't my understanding at the time.

17 THE HEARING OFFICER: Is there a question?

18 DR. MILEIKOWSKY: Yes.

19 THE WITNESS: My understanding at the time was
20 that you wanted the vacuum pressure increased, which she
21 would not do. That was my understanding of why I was
22 brought in.

23 BY DR. MILEIKOWSKY:

24 Q Okay. And the fundal pressure.

25 A I don't remember that being an issue why I was

1 brought into the room. I know that you did ask me to do
2 it, and I said "no."

3 THE HEARING OFFICER: You said "no" as to the
4 increase in the pressure?

5 THE WITNESS: And to the fundal pressure as
6 well.

7 THE HEARING OFFICER: Okay.

8 THE WITNESS: To both.

9 BY DR. MILEIKOWSKY:

10 Q Now, is that acceptable if the
11 obstetrician/gynecologist is asking for your assistance
12 and asking fundal pressure; and it is, to the best of
13 the judgment of the obstetrician, that that's what he
14 wants and requires to his best of his judgment and
15 understanding -- that that's what he believes he
16 needs -- do you think it's appropriate for you to refuse
17 such assistance?

18 A Yes, I do.

19 Q Why?

20 A Because it's dangerous. My manager has told me
21 not to do it. Literature I have read has told me not to
22 do it. Legal conferences I have gone to have told me
23 not to do it.

24 Q What would have happened if you did it? Whose
25 responsibility is it, yours or mine?

1 A Probably both of us.

2 Q Now, you mentioned earlier in questions of
3 Dr. Wulfsberg the risk of pop-offs, and you mentioned
4 that you read about those. Have you ever seen such a
5 thing like tears of the head, tears of the vagina --

6 A Yes.

7 Q -- subdural hematoma?

8 A I've seen all three.

9 Q You have seen them.

10 How did that happen?

11 A From pop-offs.

12 Q I'm sorry?

13 A From pop-offs.

14 Q From pop-offs.

15 From physicians here in staff?

16 A Yes, I'm sure, because I -- yes.

17 Q Were you called to testify in those cases?

18 A No.

19 Q Did you write --

20 A Not all of them. I have testified in some.

21 Q Have you written incident reports in those
22 cases?

23 A Yes. Some.

24 Q Have you written an incident report regarding
25 the night of my delivery with the vacuum?

1 A I honestly do not recall.

2 Q If there would be, that would not be obviously
3 in the chart because you said there is no note of yours
4 in the chart; right?

5 A Correct.

6 Q Do you remember signing a declaration that was
7 filed in court?

8 A Pardon me?

9 Q Do you remember signing a declaration that was
10 filed in court?

11 A Do I remember signing a declaration that was
12 filed in court? No.

13 In regards to this?

14 Q In regards to anything that has to do with me.

15 A Do I recall signing a declaration that was
16 filed in court? No.

17 I'm not sure I understand the question. That
18 doesn't ring a bell to me.

19 Q Do you understand what the word "declaration"
20 means?

21 A Yes, I do.

22 Q Can you tell us what it means to you?

23 A A declaration is a notification or signature
24 that I'm aware of something.

25 Q It's actually a document that can be

1 handwritten or typed that either starts or ends up by
2 the following: I declare under penalty of perjury that
3 the foregoing -- or the preceding -- is true and correct
4 to the best of my knowledge.

5 A Uh-huh.

6 Q Do you recall signing such a document --

7 A No, I do not.

8 Q -- on or about September of 2000?

9 A I don't recall that.

10 THE HEARING OFFICER: Next question. She's
11 answered it.

12 BY DR. MILEIKOWSKY:

13 Q How did you first -- you mentioned earlier in
14 response to a question about why you would speculate why
15 I would take pictures on the night of August 30 in the
16 hospital that you suspected it could be related to a
17 lawsuit. When did you first hear about a lawsuit
18 involving me and the hospital?

19 A I wasn't even aware of there being a lawsuit
20 between you and the hospital. I just figured that -- I
21 know that in the past there have been problems; you have
22 been unhappy with administration. Just in hearsay,
23 nothing that I have been privy to.

24 And that was just my first impression. I'm not
25 saying that that impression was true. That was just my

1 first impression.

2 Q What were you told was the reason for the
3 notice -- there were two different ones, but the first
4 one was placed in June of last year by the directives of
5 Mr. Surowitz, among other places, on the bulletin board
6 in labor and delivery. Were you told why you had to
7 call security whenever I would come?

8 A I only saw one notice, and it's the same one
9 that's up now. If there was another one prior to that,
10 I did not see it.

11 And I was never told why.

12 Q Did you ever ask anyone?

13 A No, I did not. I just felt it wasn't my
14 business.

15 Q Did you ever hearsay -- or hear people talk
16 about what the reason for that was?

17 A The speculation that there was a problem
18 between you and administration, but I don't think
19 anybody really knew.

20 Q Did you feel comfortable seeing security coming
21 to labor and delivery?

22 A They come to labor and delivery all the time.
23 They make rounds, so yes.

24 Q Earlier you said that you have never felt
25 threatened by me; is that correct?

1 A Correct.

2 Q I'm sorry?

3 A Yes, that's correct.

4 Q Are you a member of the union here in this
5 hospital?

6 A Yes, I am.

7 Q Are you aware at all whether anything was
8 discussed regarding myself by your union?

9 A No.

10 Q Were you ever consulted by your union regarding
11 any steps to be taken regarding myself?

12 A No.

13 Q Was there any meeting that you attended where
14 you had union members discuss any issues of security in
15 the hospital --

16 A No.

17 Q -- regarding myself?

18 What is your rapport with Ms. McDaniels?

19 A She's a coworker.

20 Q Is she the representative of the union?

21 A She's the president of the union.

22 Q She's the president of the union for the whole
23 hospital or just labor and delivery?

24 A For the whole hospital.

25 Q How did you react when you found in your

1 mailbox in labor and delivery a copy of a court order
2 that had my name and the name of the hospital in it?

3 DR. WULSFBERG: I object.

4 THE WITNESS: I don't remember ever getting
5 that.

6 THE HEARING OFFICER: Sustained. There's no
7 foundation --

8 THE WITNESS: I don't --

9 THE HEARING OFFICER: Wait. Wait. Wait.
10 Wait. Wait. Lack of foundation.

11 Did you ever see such a document?

12 THE WITNESS: No.

13 THE HEARING OFFICER: Next question.

14 DR. MILEIKOWSKY: All right.

15 Q Were you ever advised by administration or the
16 medical staff whether or not my privileges were
17 withdrawn at the hospital at any point in time?

18 A No.

19 Q I'm sorry?

20 A No.

21 Q Did you ever hear in hearsay anything of that
22 nature?

23 A No.

24 Q What is your understanding of why we are having
25 a hearing here today, if you have any?

1 A My understanding is that you're going before a
2 board to have your privileges revoked. That's my
3 understanding. That's to my knowledge.

4 Q So is it your understanding, presently as you
5 sit here, my privileges have been revoked or about to be
6 revoked?

7 A Your privileges are not revoked, to my
8 understanding.

9 Q To your understanding and to your knowledge, I
10 still have privileges at this hospital?

11 A Correct.

12 Q Who advised you of anything regarding that
13 subject?

14 A Just the attorney and Dr. Wulfsberg in the
15 questioning as to why I was being questioned.

16 Q And what was the discussion regarding my
17 privileges?

18 A There was no discussion.

19 Q Were you ever provided a copy of the letter of
20 the husband of the patient that I did the vacuum
21 delivery regarding his and his wife's criticism of the
22 nursing staff?

23 A I was made aware of the letter.

24 Q Did you get a copy of it?

25 A Not to my recollection. I know that -- I

1 remember my manager discussing the contents with me, but
2 I don't think I got a copy.

3 Q What was the conclusion? Were you trying to
4 improve on the nursing staff or to advise or educate any
5 nurses that may have done something one way or another
6 that could be improved?

7 What was the whole purpose of communicating
8 with you the letter of complaint?

9 A All letters of complaint are discussed for
10 their validity and to investigate if there was any
11 wrongdoing with any nurse.

12 And since I was the nurse in charge that night
13 and was also in the delivery and aware of the
14 circumstances, my manager asked me if I felt that the
15 letter was -- the comments in the letter were valid.

16 Q And what was your response?

17 A I felt that it was a coached letter, actually.
18 I felt that the family was given a bad impression of the
19 primary nurse because of your and her argument.

20 Q Does a physician -- or anyone, by the way --
21 need permission to take pictures in labor and delivery?

22 A It depends on what they are taking pictures
23 of.

24 Q Well, we have no --

25 A I have had patients sign for permission to have

1 pictures taken, so I would need to know the context.

2 Q Well, we have no limits on the number of video
3 cameras or pictures that families can take pictures of
4 deliveries in the delivery room; correct?

5 A But you're asking about a physician taking
6 pictures.

7 Q I was asking first about nonphysicians and
8 nonpatients; patients' friends, patients' families.
9 There's no policy regarding that; correct?

10 A Patient's families taking pictures, no there's
11 not. But I believe they are going to be instituting
12 one, but I --

13 Q But as of today, and as of August 30 of last
14 year, there was and is no policy regarding --

15 A Family taking pictures, no.

16 Q Is there any policy regarding nurses taking
17 pictures in labor and delivery?

18 A I believe I need permission to take pictures
19 of, like, products of conception and so forth. But the
20 only time a nurse takes a picture is usually in a fetal
21 demise, and that's presented to the patient or kept for
22 patient record. That's the only time a nurse would ever
23 take a picture.

24 Q Or if the physician would ask. But that's for
25 medical purposes; correct?

1 THE HEARING OFFICER: Objection.

2 DR. MILEIKOWSKY: There's nothing to object.

3 Why do you object?

4 THE HEARING OFFICER: Because the question --

5 DR. MILEIKOWSKY: It's a waste of time.

6 THE HEARING OFFICER: There is a lack of
7 foundation.

8 I think you've got to finish up now,

9 Dr. Mileikowsky.

10 BY DR. MILEIKOWSKY:

11 Q Did you ask me that night why I took pictures
12 in labor and delivery?

13 A I don't believe I did.

14 Q Did anyone ask me why I was taking pictures?

15 A I can't speak for anybody else. I don't know.

16 Q Are you aware of the fact that when I came to
17 the hospital, I went and signed in and met with the
18 supervisor nurse that night and was escorted by security
19 wherever I went in the hospital?

20 A Early in the evening the supervisor told me you
21 would be coming up with security, but you were not with
22 security when you came.

23 Q Was security with me at any point in time?

24 A Only after they were called by myself.

25 Q Do you know where they went?

1 A Do I know where they went? No.

2 Q Now, you know me for many years. What time of
3 the day or the night do I usually do rounds?

4 A I don't know what time you usually do rounds.
5 I do see you in the evening.

6 Q You never see --

7 A Because that's the shift I work.

8 Q All right. But you're sometimes in the
9 high-risk OB unit -- or you used to be, probably, before
10 when you covered that when you were a charge nurse;
11 correct?

12 A Right.

13 Q So if I ever do rounds, it's close to midnight,
14 isn't it? Usually, to the best of your recollection.

15 A I really don't recall that.

16 THE HEARING OFFICER: All right. Your time has
17 expired.

18 DR. MILEIKOWSKY: One second. A very
19 important question.

20 Q Who was behind the door when you opened the
21 door where the board is?

22 A You were.

23 Q I was behind the door?

24 A Okay. Repeat the question. I'm sorry.

25 Q When you opened the door in which the room --

1 in which the board --

2 A Inside the medicine room?

3 Q You call it the medicine room, but there's
4 also the keys for the physicians for the call room are
5 in that same room; correct?

6 A Correct.

7 Q And that board is for all the nurses to have
8 their activities on the board; correct?

9 A Some of them are on that board, but there's
10 two separate boards.

11 Q But it's in the same room.

12 A Correct.

13 Q And so all physicians, anesthesiologists,
14 OB/GYNS, and nurses that operate and live in the labor
15 and delivery room circulate through that room.

16 A Well, the keys for the rooms -- using that
17 reference that they would go in there for the sleep
18 rooms -- they are right at the entrance of the door. So
19 really, they just grab it; they don't really need to go
20 into the room.

21 THE HEARING OFFICER: All right. Your time is
22 concluded.

23 Any recross?

24 DR. WULFSBERG: I do have some.

25 First a procedural question. Am I to

1 understand that we are going to accept the chart in
2 total as an exhibit based on the ruling that you will
3 have?

4 THE HEARING OFFICER: The chart in total?
5 Let's hear what the questions of the hearing committee
6 are, and then I will decide that.

7 DR. WULFSBERG: All right.

8

9 RE-CROSS-EXAMINATION

10 BY DR. WULFSBERG:

11 Q Then I will go to the chart, and the issue was
12 raised about consent. And this is the consent page.

13 Do you see anything on that consent page that
14 says anything about a Cesarean section?

15 A No. Vaginal delivery, episiotomy.

16 Q Then on Dr. Mileikowsky's note that you read
17 earlier which is a summary of the labor and delivery --

18 A Progress note, yeah.

19 Q The progress note. Do you see anything on that
20 page where Dr. Mileikowsky talked about the possibility
21 of needing a Cesarean section at any time during that
22 delivery?

23 A No.

24 Q When you were assisting Dr. Mileikowsky and
25 establishing pressure during the vacuum extraction --

1 DR. MILEIKOWSKY: Pressure on what?

2 DR. WULFSBERG: With the --

3 DR. MILEIKOWSKY: Fundal?

4 DR. WULFSBERG: -- suction on the vacuum
5 extraction, a negative pressure vacuum extraction.

6 Q -- was there a period when you felt that there
7 was difficulty establishing that pressure?

8 A I felt the pop-offs were becoming an issue.

9 Q That's not my question. My question is --

10 DR. MILEIKOWSKY: She answered your question.
11 It's answered.

12 THE HEARING OFFICER: Whoa. Hey --

13 DR. MILEIKOWSKY: That's exactly what he's
14 doing is --

15 THE HEARING OFFICER: Out of order.

16 DR. MILEIKOWSKY: You are out of order.

17 THE HEARING OFFICER: Ask your question.

18 DR. MILEIKOWSKY: He asked, and she answered.

19 THE HEARING OFFICER: Ask the question,
20 please.

21 DR. MILEIKOWSKY: No.

22 Please read the question and answer.

23 THE HEARING OFFICER: No. Dr. Mileikowsky --

24 DR. MILEIKOWSKY: You are both basically in bad
25 faith.

1 THE HEARING OFFICER: Dr. Mileikowsky,
2 you're --

3 DR. MILEIKOWSKY: You are in bad faith. He
4 asked a question, and she answered it, and I would like
5 the record to reflect that.

6 THE HEARING OFFICER: No. Dr. Mileikowsky,
7 you're out of order. Don't interrupt --

8 DR. MILEIKOWSKY: And you are of bad faith,
9 F-A-I-T-H --

10 THE HEARING OFFICER: Don't interrupt.
11 Go ahead with the question.

12 DR. MILEIKOWSKY: -- as you have been all
13 along.

14 DR. WULFSBERG: Let me ask another question.

15 Q During the time that you were helping
16 Dr. Mileikowsky and that you were responsible for
17 creating a negative pressure during the vacuum
18 extraction, did you sense there was difficulty in
19 achieving that negative pressure?

20 DR. MILEIKOWSKY: That was answered and asked.

21 THE HEARING OFFICER: Dr. Mileikowsky --

22 DR. MILEIKOWSKY: Please read the record,
23 please. It's the same question, and she answered it.

24 THE HEARING OFFICER: Dr. Mileikowsky --

25 DR. MILEIKOWSKY: He is trying to coach the

1 answer.

2 THE HEARING OFFICER: Overruled.

3 DR. MILEIKOWSKY: All right. Then you are in
4 violation again.

5 THE HEARING OFFICER: Overruled.

6 DR. MILEIKOWSKY: Please read the question and
7 the answer.

8 THE HEARING OFFICER: No. No. Overruled.

9 DR. MILEIKOWSKY: Why "no"?

10 THE HEARING OFFICER: Quit interrupting.

11 DR. MILEIKOWSKY: Why "no"?

12 THE HEARING OFFICER: Quit interrupting.

13 DR. MILEIKOWSKY: Why do you let him ask six
14 times the same question --

15 THE HEARING OFFICER: Quit interrupting.

16 DR. MILEIKOWSKY: -- and get the same answer?

17 THE HEARING OFFICER: Quit interrupting.

18 DR. MILEIKOWSKY: I get it from you and
19 Dr. Wulfsberg.

20 THE HEARING OFFICER: Dr. Mileikowsky, quit
21 interrupting.

22 DR. MILEIKOWSKY: The purpose is why are we
23 asking the same question again?

24 THE HEARING OFFICER: Quit interrupting.

25 DR. MILEIKOWSKY: Why are we asking the same

1 question?

2 THE HEARING OFFICER: Quit interrupting.

3 Ask the question.

4 BY DR. WULFSBERG:

5 Q When Dr. Mileikowsky asked you to take the
6 position of the initial nurse -- I think it's Kamla; is
7 that correct?

8 A Correct.

9 Q -- was it your impression that he did so
10 because she was incompetent, or that he did so because
11 she would not agree to do things that she felt was not
12 hospital policy or in the best interest of the mother
13 and the infant?

14 A Because she was asked to do things that were
15 not in the best interests --

16 DR. MILEIKOWSKY: Speculation. How does she
17 know what is in my mind?

18 THE HEARING OFFICER: Quit interrupting the
19 witness.

20 DR. MILEIKOWSKY: No. No. No. No. No. No.
21 No. This question requires not only an objection, but
22 it requires to be stricken.

23 THE HEARING OFFICER: Dr. Mileikowsky --

24 DR. MILEIKOWSKY: He is asking her what's in
25 my mind.

1 THE HEARING OFFICER: Dr. Mileikowsky --

2 DR. MILEIKOWSKY: No. No. No. No. No. No.

3 No. No.

4 THE HEARING OFFICER: -- you are interrupting
5 the witness --

6 DR. MILEIKOWSKY: Because I have the right to
7 object --

8 THE HEARING OFFICER: No.

9 DR. MILEIKOWSKY: -- and you have the duty to
10 accept this and also to strike.

11 THE HEARING OFFICER: No. No.

12 DR. MILEIKOWSKY: He's asking her what's in my
13 mind?

14 THE HEARING OFFICER: No.

15 DR. MILEIKOWSKY: What do you mean "no"?

16 THE HEARING OFFICER: No.

17 DR. MILEIKOWSKY: Wait a second.

18 THE HEARING OFFICER: No. Stop.

19 DR. MILEIKOWSKY: Ms. DiNapoli knows what's in
20 my mind?

21 THE HEARING OFFICER: Stop. Or I will excuse
22 you from the hearing room.

23 DR. MILEIKOWSKY: Oh, then you violate the law
24 again.

25 THE HEARING OFFICER: Dr. Mileikowsky, any

1 violation here is your attempt, which is quite obvious
2 now, to interrupt the witness.

3 DR. MILEIKOWSKY: Not at all. The duty is --

4 THE HEARING OFFICER: Dr. Mileikowsky, be
5 quiet.

6 Go ahead.

7 THE WITNESS: I'm sorry. Can you repeat that.

8 BY DR. WULFSBERG:

9 Q In your opinion, was the reason that
10 Dr. Mileikowsky asked you to take the place of the
11 initial nurse because --

12 A I recall.

13 Q Okay.

14 A In my opinion --

15 Q Yes.

16 A -- Dr. Mileikowsky asked me to take the place
17 of Kamla because Kamla would not increase the pressure
18 or do fundal pressure.

19 Q Is Kamla an argumentative person?

20 A No, not at all.

21 Q How would you characterize her?

22 A Kamla's of Middle Eastern descent; very meek
23 and quiet.

24 Q Is she competent?

25 A Quite.

1 Q Are there a lot of doctors who find her
2 incompetent?

3 A No. But there are doctors who find her
4 difficult to work with because she speaks with an
5 Eastern Indian accent.

6 Q Do you think Dr. Mileikowsky had too many
7 attempts at vacuum extraction?

8 DR. MILEIKOWSKY: Based on what?

9 THE WITNESS: Yes.

10 BY DR. WULFSBERG:

11 Q In your opinion, do you think he had too many
12 attempts at vacuum extraction?

13 A Yes.

14 Q Do you think those attempts --

15 DR. MILEIKOWSKY: How do you define "too
16 many"?

17 THE HEARING OFFICER: Out of order.

18 Next question.

19 DR. WULFSBERG: Thank you.

20 Q Is there any doubt in your mind at all under
21 any circumstances that fundal pressure is inappropriate?

22 A There's no doubt.

23 Q And if there were no policy at this hospital,
24 any written policy, would you still feel comfortable in
25 applying fundal pressure?

1 A No.

2 Q Why?

3 A Because I feel by the lectures I have attended,
4 the literature I've read, and literature research that
5 it is not advocated.

6 Q At any time did you feel that by applying
7 fundal pressure, it might jeopardize your license to
8 practice nursing?

9 A Yes.

10 Q Do you think that Dr. Mileikowsky's behavior
11 in taking pictures at midnight and then again at 5:00 in
12 the morning was appropriate?

13 A No.

14 Q Thank you.

15 THE HEARING OFFICER: Let's let the hearing
16 committee ask questions. If there is not enough time,
17 we'll see what we can do.

18 I will look to Dr. Brooks and Dr. Fleisher
19 first.

20

21 EXAMINATION

22 BY DR. FLEISHER:

23 Q I heard mention there was a policy about the
24 number of vacuum attempts. Is there a hospital policy,
25 and is there a hospital policy about fundal pressure?

1 I've heard it bandied about.

2 DR. BROOKS: There's policy in the book.

3 DR. MILEIKOWSKY: Exhibit 127 is the policy for
4 vacuums, but no exhibit was offered for policy regarding
5 fundal pressure.

6 THE HEARING OFFICER: All right. So your
7 question can be of the witness as to whether the witness
8 is aware of any policy other than what she's testified
9 to.

10 THE WITNESS: There is a policy in the nursing
11 manual in regards to vacuum extraction.

12 BY DR. FLEISHER:

13 Q No. Is there a policy about --

14 A I'm not sure whether there is or is not one in
15 relation to fundal pressure. There may be -- my
16 understanding is there is, but I can't say for sure.

17 DR. MILEIKOWSKY: Where would that be?

18 DR. BROOKS: I would just request that if you
19 could possibly make that available to us, if that's
20 possible.

21 THE HEARING OFFICER: All right. The request
22 is made to both parties if they have any information for
23 any policy and procedures in place at the time of this
24 alleged incident, this delivery -- any policies in place
25 at that time regarding fundal pressure or vacuum

1 extraction.

2 Exhibit 127 appears to be a policy regarding
3 vacuum extraction, although I can't -- well, there is a
4 date, but I can't tell --

5 DR. MILEIKOWSKY: Is Exhibit 127 part of the
6 rules and regulations? Or is that part of a manual of
7 nurses? Can you look --

8 THE WITNESS: I'm sorry?

9 DR. MILEIKOWSKY: Exhibit 127.

10 THE HEARING OFFICER: Do you recognize
11 Exhibit 127?

12 THE WITNESS: This is the policy for vacuum
13 extraction.

14 DR. MILEIKOWSKY: Is that part of rules and
15 regulations --

16 THE HEARING OFFICER: Wait. Wait.

17 DR. MILEIKOWSKY: -- of the hospital? Or is
18 that part of a separate book that you have --

19 THE WITNESS: This is my policy and procedure
20 in my policy and procedure manual.

21 DR. MILEIKOWSKY: So that manual is part solely
22 of labor and delivery?

23 THE WITNESS: Correct.

24 DR. MILEIKOWSKY: So it's not part of the rules
25 and regulations of the hospital?

1 THE WITNESS: I wouldn't imagine they would
2 use it anywhere else.

3 DR. MILEIKOWSKY: So we would need a copy of
4 that manual.

5 THE HEARING OFFICER: Well, go ahead,
6 Dr. Fleisher.

7 BY DR. FLEISHER:

8 Q I'm confused by the words. Was the vacuum cup
9 placed while the electrode was in place?

10 A It couldn't have been; otherwise, you wouldn't
11 have gotten that -- that's why I said it had to have
12 been removed prior to the application of the vacuum.

13 Q The testimony is somewhat confusing.

14 A Yeah. It had to have been removed prior to
15 that, or that explains the pop-offs.

16 Q Yeah.

17 DR. BROOKS: I have a couple of questions.

18

19 EXAMINATION

20 BY DR. BROOKS:

21 Q You said that you were called into the room.
22 But at any time was there any mention of a C-section or
23 a double setup? Or when someone --

24 A To my recollection, there was no discussion of
25 a section. There was not a double setup at the time.

1 But I do remember becoming concerned when the heart rate
2 never came -- did not come up.

3 Q Where do you guys do the C-sections?

4 A We do our C-sections in labor and delivery.
5 We do our own sections.

6 Q Okay. She had an epidural in place; is that
7 correct?

8 A I would have to check. I really don't know. I
9 would have to read the chart.

10 Q Was this patient --

11 A I would imagine, but I don't know.

12 Q Was this patient still on Pitocin during this
13 time?

14 A I would have to check the chart. I wasn't the
15 primary nurse, and I really haven't checked the chart.

16 Q Because it's confusing from the note. I can't
17 tell -- it's very difficult to tell what's going on.

18 A I could look at the labor record and tell you,
19 actually.

20 Q I don't think it was marked on here.

21 A The part that would show me, the other half of
22 my --

23 Q Is gone.

24 A Is not here. That would tell me my Pitocin
25 augmentation. Without that, I couldn't tell --

1 DR. WULFSBERG: The chart is right there.

2 THE WITNESS: The log here opens up.

3 DR. WULFSBERG: But there's the chart there.

4 DR. MILEIKOWSKY: You have the chart.

5 THE WITNESS: Oh, I'm sorry.

6 BY DR. BROOKS:

7 Q While you're looking for that, you mentioned
8 that the maximum pressure that you use is 50 millimeters
9 of mercury.

10 A The vacuum is --

11 Q Has colors.

12 A The vacuum has colors. It has inches of
13 mercury on one side, and it has centimeters of mercury
14 numbers on the bottom side. 20 inches of mercury is the
15 same as 50 centimeters of mercury on the vacuum itself,
16 which is in the green portion.

17 Q Just to clarify, yours has colors; yellow,
18 green, and red.

19 A Correct.

20 Q And --

21 A Yellow is the resting area that you go down to.
22 Green is the maximum area. And red is too much
23 pressure.

24 Q And so when you say -- you said 50 milligrams,
25 but when I'm reading the note, someone talks about 55 --

1 A 55 is still in the green area.

2 Q I mean, I use it all the time, but I don't
3 remember. Do you remember what the top of the green is?

4 A I don't know. I would have to look at the
5 vacuum itself. I don't know. I would guess maybe 70 --
6 60.

7 To me, I have always used it in inches of
8 mercury, so I have always documented -- when I document
9 myself, I document it 20 because I've just -- that's how
10 I was started.

11 Q And if you just take -- you have seen lots of
12 deliveries. What is the average pop-offs or number of
13 pop-offs that you would say the average OB uses -- I
14 mean, that happens? You know, you're going to have
15 pop-offs. How many --

16 A Rarely will you go above three, three pop-offs.
17 Because our policy states that it's not recommended
18 after three, I will always -- if it gets to that point,
19 I will remind the doctor that there's been three
20 pop-offs. But rarely will it go above three.

21 Q In your time -- obviously, you're saying that
22 most people don't go over the three. How many
23 cephalhematomas, how many lacerations have you seen,
24 would you say?

25 A I've seen one hematoma. I have seen two

1 lacerations, that I recall; superficial scalp
2 lacerations.

3 Q And I know it's difficult to recall, but do you
4 know if they stayed under the three pop-offs or they
5 were over?

6 A I can't recall.

7 Q It didn't stand out in your mind?

8 A Sometimes the vacuum extraction is a little
9 more vigorous than others. Some doctors use the rocking
10 motion, which is not advocated. But the rocking motion,
11 I think, tends to contribute to a laceration as well.

12 Q I just wanted to know: Was that patient on
13 Pitocin?

14 A I'm looking at the chart, and here it says that
15 the Pitocin was at 2145. I don't see a record that the
16 Pit was turned off, and I would have to look at the
17 fetal monitor -- most nurses will write on the fetal
18 monitor strip when it is turned off.

19 Q Because I couldn't see that in there.

20 A This was the last strip.

21 I will tell you that if I was in the room
22 myself and a baby was having decelerations, the first
23 thing I would probably do is turn the Pit off.

24 It says right here that Pit is off, and that
25 was at 2340.

1 Q Okay.

2 A 2340.

3 DR. MIYASHITA: May I ask a question?

4 DR. PLEET: Are you finished?

5 DR. BROOKS: Yes. I'm sorry.

6 THE HEARING OFFICER: All right. Dr. Miyashita
7 and Dr. Nassoura.

8

9

EXAMINATION

10 BY DR. MIYASHITA:

11 Q Did I misunderstand you saying that Dr. Gasway
12 was present?

13 A Was present.

14 Q Is that standard in preparation for regular --

15 A That shows me the patient probably did have an
16 epidural in place. And it is pretty much -- most
17 anesthesiologists will attend the delivery if the
18 epidural is in place.

19 Q So it doesn't imply he was getting ready for a
20 C-section --

21 A No. No. No.

22 Q -- if he was --

23 A If he was, we would have done that in the back.
24 We would have prepared in the operating room.

25 Q Did I understand you correctly in saying that

1 he stepped in and applied fundal pressure without
2 hesitation?

3 A That's what it says on the chart. And, yes, I
4 do recall that.

5 Q Do other anesthesiologists --

6 A No. He's the only one that does it, to my
7 knowledge.

8 Q Okay. Is it possible with a properly fitting
9 vacuum to achieve a negative 55 millimeters of mercury?

10 A It is necessary to have the vacuum flush. I
11 don't know if a vacuum --

12 Q Could it pop off with negative 55 millimeters?
13 I have no idea.

14 A It could pop off under any circumstances.
15 There's a lot -- if the baby has a lot of hair, it will
16 pop off. If there's a lot of blood, if there's a lot
17 of -- there's a lot of reasons why you would have
18 pop-offs. It's not just because of an incorrect fit.

19 Q But can you achieve a negative 55 millimeters
20 of pressure with an improper seal?

21 A No. It would be difficult.

22 DR. MIYASHITA: Thank you.

23 THE HEARING OFFICER: Dr. Nassoura.

24 / / /

25 / / /

EXAMINATION

1
2 BY DR. NASSOURA:

3 Q I have a few questions.

4 First, over the last 12 years that you have
5 been at the delivery suite, he's been on staff for 15
6 years, Dr. Mileikowsky. Have you ever either witnessed
7 or heard of any previous problems with his deliveries
8 prior to that incident?

9 A Not any that I can recall. Not any that I can
10 recall.

11 Q The second question relates to the consent, and
12 probably you might have to educate me here. You said
13 there was no consent for a C-section.

14 A Not that I can find.

15 Q And there was nothing mentioned in his note.
16 But let's assume for a second the baby couldn't be, you
17 know --

18 A There was an emergency?

19 Q Yes. And you had to take the mother for a -- I
20 mean, you can't do a vaginal delivery. What do you do
21 in this condition? Just because there's no consent, you
22 wouldn't --

23 A No. We would do the C-section in an emergency.

24 Q So the consent issue is no issue?

25 A It's not -- to me, it's not a big issue. We

1 have taken plenty of patients back for emergency -- you
2 know, verbal consent and then had them sign, you know,
3 later saying verbal consent obtained earlier.

4 But we're not going to not do a crash section
5 because a patient didn't sign a consent.

6 Q And my last question is relating to the number
7 of family members in that room. You mentioned, if I
8 understood correctly, that there was more than one --

9 A Yes.

10 Q -- family member.

11 Is this acceptable policy of the hospital?

12 A The actual policy reads four members, but it
13 can be overruled by the physician. It has become a very
14 vague policy and is getting vaguer by the day. Doctors
15 can overrule that and bring as many in as they like or
16 as few as they like.

17 THE HEARING OFFICER: Dr. Pleet.

18

19

EXAMINATION

20 BY DR. PLEET:

21 Q I have two questions.

22 When was the last time that you can recall
23 witnessing fundal pressure during a vacuum extraction?

24 A Wow. It would have to be years.

25 Q More than three or four years?

1 A It would be at least three years, I would say;
2 maybe four.

3 Q Three or four years.

4 Second question is: Do you keep narcotics or
5 other mood-modifying drugs in the medication room under
6 question here?

7 A Yes. All our drugs were kept in the med room
8 at the time. We now have Assure Med, which dispenses
9 medicines automatically by code. But at the time it was
10 just a regular medicine box --

11 Q And at that --

12 A -- that you pulled out.

13 Q At that time, then, those types of drugs
14 could -- were easily obtainable without a key or without
15 a combination?

16 A Narcotics were in a lockup.

17 Q Were in lockup.

18 A Were in lockup within the box.

19 Q What about other mood-modifying drugs?

20 A Everything we use in labor and delivery besides
21 that was in the medicine cart, but I don't -- I mean,
22 hundreds of medicines are inside the cart. I think
23 anything of -- any controlled drugs would have been
24 locked up.

25 Q The last question is Dr. Wulfsberg had asked

1 you a question that you didn't get a chance to answer,
2 and that is: After you began applying the vacuum, did
3 it take a long time to reach the appropriate level? Did
4 it take more than --

5 A I don't recall it taking any longer or any --
6 I don't recall the amount of time it took to create the
7 vacuum, if that's what you're asking.

8 Q Yes.

9 A I don't recall that it took -- I don't recall
10 the amount of time. I remember there was a lot of
11 applications, but I don't recall how long it took to get
12 to the correct pressure.

13 THE HEARING OFFICER: Any other questions?

14 Dr. Persky and then Dr. Ballin.

15

16

EXAMINATION

17 BY DR. PERSKY:

18 Q In medicine oftentimes we are faced with
19 difficult situations, and this seems like it was a
20 difficult, distressed baby --

21 A Correct.

22 Q -- and premature, and the baby was having
23 decelerations and was in some distress. Oftentimes in
24 those situations we struggle, as physicians and nurses,
25 to do the right thing for the patient, the baby, and the

1 mother.

2 Do you feel in this trying situation that over
3 the period of the delivery to the time the baby came out
4 to the time the baby went to the NICU -- do you feel
5 that what Dr. Mileikowsky did -- ultimately cutting
6 through all the chase -- affected this child's status
7 and the outcome?

8 A At the time that the vacuum was continuously
9 applied and the fundal pressure was discussed and
10 ultimately used by Dr. Gasway, I was uncomfortable with
11 what was going on. I was very uncomfortable with what
12 was going on.

13 Honestly, I don't know -- I know the baby went
14 to the unit. I don't know after that how the outcome
15 was. I mean, when I'm talking outcome, to me, outcome
16 means how is this baby going to do on the outside. My
17 concern is long-term.

18 I don't know the ultimate outcome of this baby
19 after it went to the unit. I don't know. But at the
20 time I was very concerned. I was very concerned what
21 was going on. I do recall that.

22 Q Okay. I guess that's it.

23 THE HEARING OFFICER: Dr. Ballin and then
24 Dr. Fleisher.

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EXAMINATION

BY DR. BALLIN:

Q Three quick questions.

In vacuum deliveries, is it true that the overall Apgar scores are lower?

A I don't know that. I don't know that that's a rule of thumb. I can't say that's a rule of thumb. Not always, no.

Q So to the best of your knowledge, having a vacuum extraction doesn't mean automatically you would have lower Apgar scores?

A No.

Q The second question is that you alluded -- you stated, rather, that you went to conferences, legal or nursing conferences for continuing education, and fundal pressure was discussed. Did you speak to any of your colleagues from other institutions, hospitals regarding fundal pressure? That is, did other nurses mention that fundal pressure is typical or can be applied at their institutions without --

A No. It's pretty much something that was used in the past and found to be increased litigation and has been identified as an issue in litigation and has been pretty much discontinued everywhere that I know of.

Q To the best of your knowledge, was it

1 discontinued just for litigation? Or to the best of
2 your knowledge, was --

3 A Well, I think there's also some question of
4 brachial plexus injuries and -- not just for litigation,
5 no. I think there is danger to the baby as well.

6 Q The third question is -- you stated that there
7 may be instances where the vacuum does not stay
8 appropriately. You gave an example, for example, if the
9 fetus had too much hair.

10 A Uh-huh.

11 Q To the best of your recollection, was that true
12 in this situation?

13 A I don't recall. I really don't recall.

14 Q To the best of your recollection, do you
15 recall Dr. Mileikowsky mentioning any other examples of
16 reasons why the suction may not be maintained?

17 A I don't know of any reason why it would not
18 have been in this case. I don't recall any reason.

19 THE HEARING OFFICER: Do you recall
20 Dr. Mileikowsky stating any reason at the time?

21 THE WITNESS: No, I do not.

22 THE HEARING OFFICER: Dr. Fleisher and then
23 Dr. Miyashita.

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FURTHER EXAMINATION

BY DR. FLEISHER:

Q Do you do cord gases at all in this hospital?

A Yes. We do when it's ordered by the physician.

Q Were they ordered in this case?

A I do not -- I don't remember seeing any.

THE HEARING OFFICER: Dr. Miyashita.

FURTHER EXAMINATION

BY DR. MIYASHITA:

Q How long does it take to set up for a C-section? Say you noticed the heart rate -- this heart rate is--

A It doesn't take long at all. By the time a patient gets back to the operating room, the scrub nurse could be opened and ready to go. It takes as long as it takes to get the patient on the operating table, really.

Is that what you're asking, how long --

Q Right. I'm just saying was there a judgment call here? At 20 after 12:00 the rate looks slow, and Gasway comes in and applies fundal pressure. Was that more expeditious in getting the child out versus setting up for a C-section?

A Oh, no. I see what you're saying.

No. The section could have been done

1 instantaneously as well. It can be done within five
2 minutes.

3 Q You don't need to gather your assistants and
4 set up the --

5 A No. No. It can be done pretty much -- some
6 doctors get -- most physicians in a C-section get an
7 assistant. In the case of a crash C-section, many
8 doctors will start on their own with the help of the
9 scrub nurse.

10 Q I see. So like, a 16-minute -- you can get set
11 up and start a C-section --

12 A Oh, 16 minutes? The baby should be out by
13 then.

14 DR. MIYASHITA: Thank you.

15 THE HEARING OFFICER: Any other questions?

16 Dr. Nassoura.

17

18 FURTHER EXAMINATION

19 BY DR. NASSOURA:

20 Q Why, in your mind -- and I know you cannot
21 speculate about what's in Dr. Mileikowsky's mind, but
22 why, in your mind, do you believe or did you think he
23 was persistent on the vacuum?

24 A I don't know. Maybe to avoid a C-section.

25 I'm speculating. I don't know why he continued

1 with it. I don't know.

2 THE HEARING OFFICER: Dr. Brooks.

3

4 FURTHER EXAMINATION

5 BY DR BROOKS:

6 Q In your opinion what do you attribute the
7 bradycardia to? I mean, do you have -- have you
8 formulated an opinion on why the bradycardia?

9 A Well --

10 Q That's part one -- well, I'll let you answer
11 that. Go ahead.

12 A That could be cord compression. That could be
13 head compression. That could be just fetal distress for
14 any reason. I mean, the baby -- of course there's fetal
15 distress during a delivery; the compression of the head
16 causes a distress. But it could be any of the above.

17 Q And did you formulate any opinion on other
18 reasons for the low Apgar scores? Did you notice a
19 mucal cord, anything that was --

20 A No, I didn't.

21 Q An abruptio placentae --

22 A No.

23 Q You didn't see anything?

24 A No. Not at that time, no.

25 I anticipated low Apgar scores after a severe

1 bradycardic episode.

2 THE HEARING OFFICER: Dr. Pleet.

3

4 FURTHER EXAMINATION

5 BY DR. PLEET:

6 Q From the time that a decision is made to do a
7 C-section in this case until the time that the doctor
8 puts in the last suture in the skin closure, what would
9 be the average time, in your opinion?

10 A It depends on who's doing it. Dr. Pine and
11 Kimelman are very quick. You know, they notoriously can
12 open and close in 20 minutes. But some doctors take --
13 Dr. Mileikowsky takes a little longer. Dr. Lichtman
14 takes a little longer. It's their own comfort level.

15 Q So it is no more than an hour, in most cases?

16 A Some doctors take longer than an hour, but I
17 think it's at their leisure. There's different -- some
18 doctors take longer than others. That's just -- but
19 some doctors are very quick.

20 Q Thank you.

21 THE HEARING OFFICER: Any other questions by
22 the hearing committee?

23 All right. At this point --

24 DR. MILEIKOWSKY: Excuse me.

25 THE HEARING OFFICER: Yes?

1 DR. MILEIKOWSKY: I'm entitled to cross after
2 him.

3 THE HEARING OFFICER: Is the hearing committee
4 willing to stay for five more minutes before we go on
5 our field trip?

6 Yes. Go ahead.

7 DR. MILEIKOWSKY: Thank you.

8

9 RE-CROSS-EXAMINATION

10 BY DR. MILEIKOWSKY:

11 Q Would you kindly look at Exhibit 127, please.

12 (A discussion was held off the record.)

13 THE HEARING OFFICER: Let's not lose the fetal
14 strips.

15 THE WITNESS: I'm at 127.

16 BY DR. MILEIKOWSKY:

17 Q Good. Would you please read to us
18 Procedure IV, subparagraph E.

19 A Most deliveries should be accomplished with in
20 three pulls and no more than eight.

21 Q And the following one.

22 A No more than three pop-offs are recommended.

23 Q What's the definition of a pop-off?

24 A A pop-off is when you have pulled through the
25 contraction; and prior to the finish of the contraction,

1 the vacuum pops off and you get a lack of pressure --
2 your pressure is gone.

3 Q How does your policy distinguish a legitimate
4 application from a pop-off?

5 A A legitimate application is that the pressure
6 is released manually rather than pops off because of
7 pop-off.

8 Q Now, what, if anything, exists for
9 obstetrician/gynecologists on staff at Tarzana to be
10 even aware of the fact that the nurses have policies
11 like these?

12 A I don't know. I don't know that doctors are
13 aware of our policies.

14 Q Have you ever had a meeting with any OB/GYN on
15 staff? Have you ever had any combined nursing and
16 OB/GYN physicians?

17 A Personally, I have not. I believe that's done
18 in OB committee meetings and policy procedure meetings,
19 but I personally have not been involved in those.

20 Q Who writes those policies?

21 A The manager.

22 Q Nurse?

23 A Nurse manager.

24 Q You don't know if she or he does it alone

25 or --

1 A I do not know.

2 Q -- who has input in that?

3 A I don't know.

4 Q You earlier commented that you sensed that I
5 was more relaxed when you were in the room assisting me
6 and I asked you to take over the position.

7 A I don't recall testifying to that.

8 Q But you remember that, for whatever reason, you
9 ended up taking over her position.

10 A Yes, I did.

11 Q And we had no problem working together at that
12 time.

13 A No.

14 Q Have you ever had any problem working with me?

15 A You and I have had our disagreements, but I
16 think we've got along okay.

17 Q We could have respectfully disagreed, you mean?

18 A Correct.

19 Q That shows we have our own minds, but we had no
20 disrespect for each other; correct?

21 A Correct.

22 Q And I don't believe either one of us ever
23 threatened or felt necessary to threaten anyone.

24 A No.

25 Q All right. So you wouldn't have any problems

1 if tonight or tomorrow night I came and had a delivery
2 and asked you to help me?

3 A No.

4 Q Now, the night of August 30 you mentioned
5 earlier it was a quiet night with very little activity.
6 How do you envision that my presence taking pictures in
7 labor and delivery could have or did disrupt or
8 interrupt any activity?

9 A I was pulled out of a delivery at the time that
10 you were there, and the nurses were disrupted. The
11 activity in the department was disrupted. People became
12 uncomfortable. I was called out of delivery to come get
13 you out of the med room.

14 Q Did you see me actually attempting to take any
15 medication from --

16 A No, I did not.

17 Q Did you suspect that I would?

18 A No, I did not.

19 Q And, now, to the best of your recollection,
20 when you opened the door, did you see me, or did you see
21 the other person? Or did you see both of us, and what
22 positions were we in?

23 A When I opened the door, the door -- when I
24 tried to open the door, I got counterpressure, so I
25 couldn't see anything except some flashes. That's all I

1 saw.

2 Q But once you opened the door, who was holding
3 the camera?

4 A I really don't recall.

5 Q Was the lady with me ever holding the camera?

6 A I don't know. I don't know.

7 Q All right.

8 A When you took the pictures, you were holding
9 it. I don't know who took the pictures inside the room;
10 the door was closed.

11 Q Once you opened the door, where was I standing?

12 A Inside the room. I couldn't say where.

13 Q Was I facing you?

14 A I don't recall.

15 Q Now, you mentioned earlier that the letter of
16 the husband of the patient was coached, yet you said you
17 never saw the letter. Did you ever see the envelope?

18 A I never saw the envelope. I saw the letter.
19 The letter was relayed to me, what was the content of
20 the letter. And I said it appeared to be coached; that
21 I sensed that -- I sensed in my mind that you had asked
22 this patient to write that. I had sensed that. I
23 felt -- that's my impression.

24 Q Now, I'm not clear because you may have not
25 been, in my mind, clear.

1 Have you actually seen the letter, or were you
2 told --

3 A I don't know if I saw the letter or if the
4 contents were relayed to me. I can't recall. It was
5 awhile ago, but I do recall that the contents of the
6 letter were explained -- discussed with me.

7 Q If I showed you the envelope and the envelope
8 has an address of an office of mine that doesn't exist
9 or is closed at the date of the time that that envelope
10 is sent, would you still believe that letter was
11 coached?

12 A Yeah, I would. The envelope, I don't think,
13 would have any bearing to me. It was the contents that
14 led me to believe that.

15 Q Did this particular baby have a hematoma?

16 A I don't recall.

17 Q Did the mother have any laceration?

18 A I do not recall. I don't know if you cut an
19 episiotomy or not. I do not know.

20 Q Did you ever read my note which is on
21 Exhibit 126-4?

22 THE HEARING OFFICER: Finish up, please.

23 DR. MILEIKOWSKY: Just three more questions --
24 or four. Three -- one, two, three -- four.

25 THE WITNESS: Which one?

1 BY DR. MILEIKOWSKY:

2 Q In the middle of the --

3 A It says a second degree episiotomy with repair.

4 Q Right. There's no mention of any laceration,
5 is there?

6 A No.

7 Q Just above that you see under the word
8 "deceleration," it says "caput"?

9 A Yes.

10 Q Can you read my handwriting.

11 A Uh-huh.

12 Q Can you please read us just that one sentence.

13 A It says:

14 Caput markedly cone-shaped --

15 Q One second. I would like the members of the
16 hearing committee to see where we are.

17 A Caput markedly cone-shaped with edema.

18 Q Can you explain to the hearing committee what
19 that means, cone-shaped with edema.

20 A Well, the caput was cone-shaped. It could be
21 from the position of the baby. It could be from the
22 vacuum. Some babies just from the descent in the pelvis
23 get caput that is cone-shaped.

24 Q Now, earlier we spoke about the variations
25 between pelvic exams of same individuals and other

1 individuals compared to other ones.

2 A Uh-huh.

3 Q Have you over the years noticed difference of
4 Apgars as they were -- and as they are -- actually
5 evaluated by obstetrician/gynecologists versus
6 pediatricians or nurses?

7 A No. Because the nurses -- as long as I have
8 been a nurse, the nurses have always documented the
9 Apgar scores.

10 Q Who documented these Apgars? Which nurses?

11 A Probably the neonatal nurses.

12 Q What's the policy that you have regarding
13 members of the staff of a doctor's office attending a
14 delivery?

15 A I don't know of any policies.

16 Q Do you see in this chart anywhere a consent
17 form signed by the patient to allow a member of my staff
18 to be in the delivery?

19 A I did not see it in the consent portion.

20 THE HEARING OFFICER: Okay. That's it.

21 BY DR. MILEIKOWSKY:

22 Q Is that a violation of any policy?

23 THE HEARING OFFICER: That's the four
24 questions.

25 THE WITNESS: Not that I'm aware of.

1 THE HEARING OFFICER: That's the four
2 questions. I think we need to --

3 DR. MILEIKOWSKY: That's not the four
4 questions. The fourth question is the next one, and
5 that's the last one.

6 THE HEARING OFFICER: Go ahead. Finish.

7 DR. MILEIKOWSKY: Okay.

8 Q What is your recollection regarding an incident
9 where allegedly I passed gas in my patient's face?

10 A I was not there. It was just hearsay.

11 Q And what did you hear?

12 THE HEARING OFFICER: Wait. That's beyond the
13 scope of any examination. We don't need the hearsay on
14 that.

15 Dr. Wulfsberg, do you have a couple of
16 questions?

17 DR. WULFSBERG: I do. And please forgive me,
18 but I believe I need to set the record straight on a
19 couple of issues.

20

21 FURTHER RECROSS-EXAMINATION

22 BY DR. WULFSBERG:

23 Q Are you aware that all hospital policies must
24 be approved by the Medical Executive Committee and the
25 Board of Trustees at this hospital?

1 A Yes.

2 Q Would you ask Dr. Mileikowsky to deliver your
3 child?

4 A No.

5 Q Do you recall Dr. Mileikowsky's note describing
6 the child's head?

7 A Yes.

8 Q What did it say?

9 A Caput markedly cone-shaped with edema.

10 Q Edema.

11 A It says with edema with application.

12 Q Does it say anything besides edema?

13 DR. MILEIKOWSKY: Excuse me. Why do you
14 approach the witness?

15 DR. WULSFBERG: Because I'm going to give her
16 a chart.

17 DR. MILEIKOWSKY: Can I have a look at what
18 you're showing first, please.

19 THE HEARING OFFICER: Well, wait. Stop.

20 DR. MILEIKOWSKY: Excuse me. I'm entitled to
21 see what he's --

22 THE HEARING OFFICER: Excuse me. I'm going to
23 set the rules here.

24 DR. WULSFBERG: I am going to ask her just to
25 read --

1 THE HEARING OFFICER: Fine. Whenever the
2 participant wishes to approach the witness, they should
3 ask for consent. And if you're going to show the
4 witness something, show it to the opposite party
5 beforehand.

6 DR. MILEIKOWSKY: Thank you.

7 THE HEARING OFFICER: That applies to both
8 sides.

9 DR. MILEIKOWSKY: And this, for the record, is
10 a typed note of Dr. Jim Banks, which is a neonatologist.
11 It is not my note, not my progress note. And it's
12 dated -- excuse me. It's dated October 24, 2000,
13 printed at 0215.

14 THE HEARING OFFICER: All right. Just to move
15 things along, there's a notation about the shape on
16 126-4.

17 BY DR. WULFSBERG:

18 Q It's a lengthy note. It's a description --
19 it's a history and physical by Dr. Banks. I really
20 don't want you to read the whole paragraph --

21 THE HEARING OFFICER: All right.

22 BY DR. WULFSBERG:

23 Q Under HEENT -- which stands for head, eyes,
24 ears, nose, and throat exam -- would you read that
25 entire line, please.

1 A Soft and flat fontanelle, patent nares, intact
2 palate, red reflex bilaterally, cephalohematoma,
3 moderate molding --

4 Q Could you stop there. Would you read that
5 line again, please.

6 A Cephalohematoma, moderate --

7 Q Do you believe that cephalohematoma occurred in
8 the NICU?

9 A Do I think it occurred in the NICU?

10 Q Yes.

11 A No.

12 Q Where do you think it occurred?

13 A Probably delivery.

14 Q Do you see that note in Dr. -- that
15 characterization in Dr. Mileikowsky's note?

16 A It says "caput markedly."

17 Q Thank you.

18 No future questions.

19 DR. MILEIKOWSKY: May I please --

20 THE HEARING OFFICER: Yeah. What are we
21 looking at, 126 dash what?

22 DR. WULSFBERG: One last question.

23 Q Is this a known complication of excessive
24 pop-offs during vacuum extraction?

25 A It's a known complication of vacuum extraction.

1 I think excessive pop-offs contribute to that.

2 Q Thank you.

3

4 FURTHER RECROSS-EXAMINATION

5 BY DR. MILEIKOWSKY:

6 Q Ms. DiNapoli --

7 I'm sorry. May I?

8 THE HEARING OFFICER: Please.

9 BY DR. MILEIKOWSKY:

10 Q Can an electronic scalp fetal monitor cause a
11 hematoma?

12 A Not that I've ever seen.

13 Q You have never seen one?

14 A Not from a scalp electro --

15 Q Does the note of Dr. Banks indicate whether
16 that hematoma is at the site of where the electronic
17 scalp fetal monitor was?

18 A No, it does not.

19 Q Are you aware of whether or not Dr. Banks has
20 any hostility against me?

21 A No, I'm not.

22 Q What does that note tell you about what caused
23 a subdural hematoma? Could a subdural hematoma occur
24 without a vacuum, without a fetal scalp monitoring
25 simply by the fact that the patient is pushing for many

1 hours?

2 A Hematoma? I can't say. I could speculate,
3 but --

4 Q Have you ever seen it?

5 A I have never seen a hematoma from just
6 pushing.

7 Q When do you see a hematoma?

8 A Vacuum extraction. You can see it as well with
9 forceps extraction.

10 Q My question is more specific. How do you
11 evaluate a baby and how do you know that baby has a
12 hematoma on the head?

13 A Because there's bleeding outside of the scalp
14 and a hematoma pocket that actually -- it actually is
15 palatable and moveable.

16 Q Did you see such bleeding from the baby's head
17 after the delivery?

18 A Speaking of this baby?

19 Q Yes.

20 A No, I did not.

21 Q You did not see any blood.

22 A I don't recall. I really wasn't -- once the
23 baby was delivered, the neonatal team took over right
24 away. I don't recall being at the bedside of the baby.

25 Q Yes. But you certainly looked -- I mean, you

1 were next to me; right?

2 A I do not recall.

3 Q Okay. But you were next to me to my right-hand
4 side while I was delivering the baby; correct?

5 A I was to your left.

6 Q To my left. You're sure?

7 A Oh, she was. I was left of the patient.

8 Correct.

9 Q To your left, my right.

10 A Correct.

11 Q All right. And that's because, obviously, the
12 length of the tube that connects between you holding the
13 pump and me, obviously, holding the vacuum cup is such
14 that we have to be close to each other.

15 A Right.

16 Q So as soon as the cup was removed, you could
17 see right away the head of the baby; correct?

18 A I don't recall that. I don't recall seeing the
19 baby at delivery.

20 Q But you've seen --

21 THE HEARING OFFICER: Let's try to finish it
22 up.

23 DR. MILEIKOWSKY: Okay. Fine.

24 THE HEARING OFFICER: She doesn't recall.

25 DR. MILEIKOWSKY: Okay.

1 THE HEARING OFFICER: All right. Anything from
2 the hearing committee?

3 DR. WULSEBERG: One issue.

4 THE HEARING OFFICER: Yes.

5 DR. WULFSBERG: You might ask the hearing
6 committee after this testimony, because it would be
7 perfectly acceptable with me, if they feel they need to
8 see this medicine room.

9 DR. MIYASHITA: I'd like to see it.

10 DR. MILEIKOWSKY: Okay.

11 THE HEARING OFFICER: All right. We'll take a
12 quick trip down to the medicine room.

13 Before you go, the hearing committee is allowed
14 to take their own notes, if they wish, rather than
15 leaving them. You're also allowed to take exhibits at
16 this point, if you wish. Just do not -- you can look at
17 them, but don't discuss it with anybody. So you're free
18 to take your notes or any parts of the exhibits. Do not
19 discuss it with anyone.

20 We'll take a quick trip down to the medication
21 room.

22

23 (At 10:22 p.m. the proceedings were adjourned.)

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STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Theresa A. Crowley, CSR No. 5513, a
Certified Shorthand Reporter in and for the State of
California, do hereby certify:

That the foregoing proceedings were taken
before me at the place therein set forth;

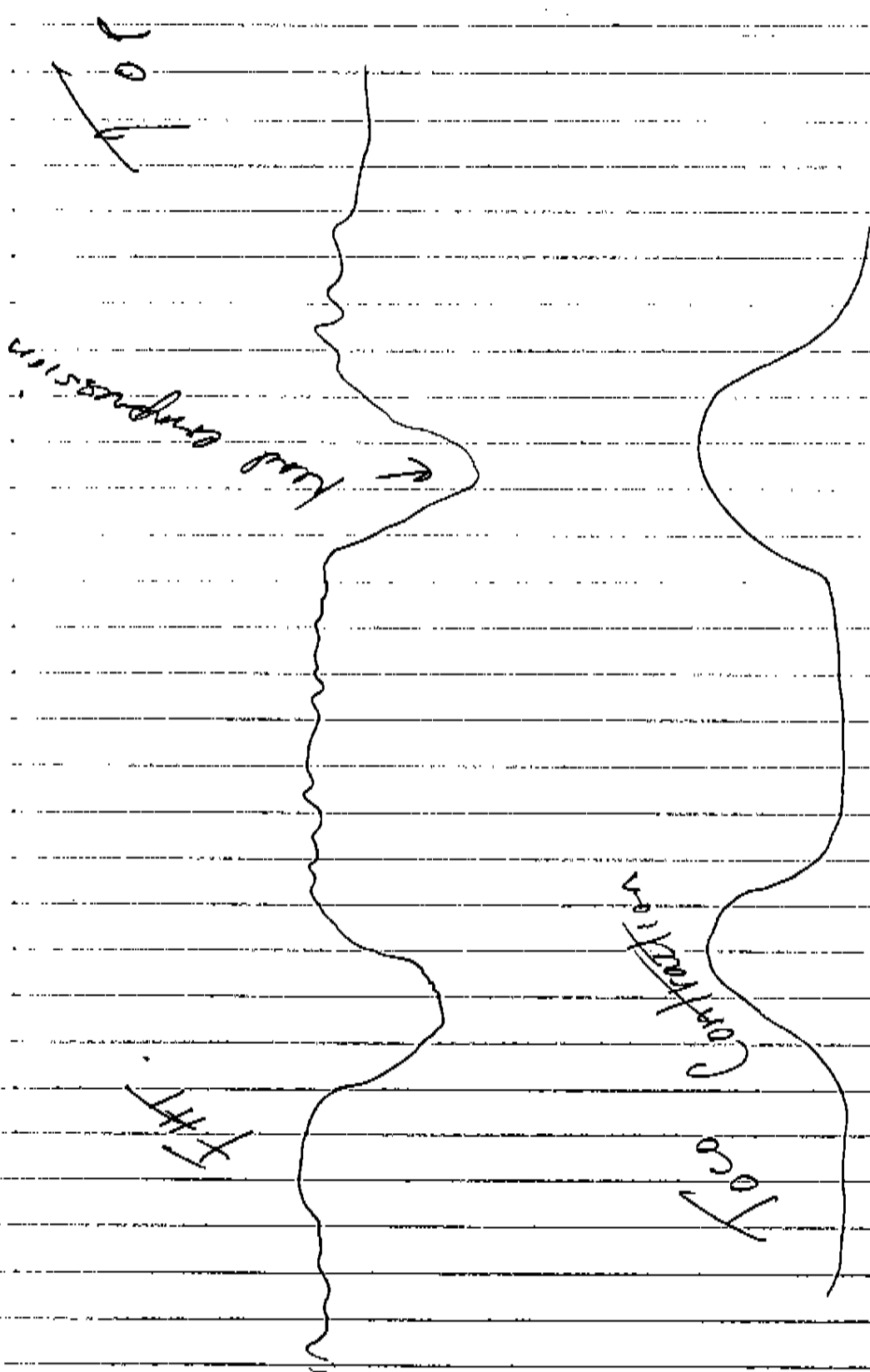
That the foregoing pages comprise a true
and correct transcript of the proceedings had;

That said transcript contains all the
evidence, acts, and statements of the parties made
during the progress of said proceedings.

In witness whereof, I have subscribed my
name this 28th day of November, 2001.

Theresa A Crowley
Certified Shorthand Reporter
No. 5513

Exhibit - H-2



H-2

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