

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, on behalf of)
and as parent and natural guardian of)
LAMARIYA REDFORD, a minor,)
)
Plaintiffs,)
)
v.)
)
THE UNITED STATES OF AMERICA,)
)
Defendant.)
_____)

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

The United States of America, by and through its undersigned Assistant United States Attorney, hereby files its motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure. As grounds, therefor, the defendant submits the following:

UNCONTROVERTED FACTS

A. Substantive Facts

1. On August 20, 2004, at 8:30 a.m., the plaintiff Markeisha Jenkins was admitted into the North Shore Hospital, Miami-Dade County, Florida for delivery of her baby. She progressed normally during the first stage of labor as her cervix continued to dilate.

2. By approximately 2:45 a.m. on August 21, 2004, the plaintiff had progressed normally through the second stage of labor and was fully dilated. Christ-Ann Magloire, M.D., a specialist in obstetrics and gynecology with the Economic Opportunity Family Health Center, attended to the

plaintiff's delivery.

3. During the second course of the delivery which included intervals with the vacuum, Lamaryia Redford was born on August 21, 2004 at 5:45 a.m.

B. Procedural Facts

4. On March 22, 2007, the plaintiff filed an action against the United States pursuant to the Federal Tort Claims Act since the Economic Opportunity Family Health Center is deemed to be "employees of the government" to the extent provided in 28 U.S.C. Section 2671 (DE 1). Plaintiff asserted a claim of medical malpractice related to the delivery of her baby, Lamariya Redford.

5. On May 16, 2007, the plaintiff effected service on the United States (DE 28). The United States filed its answer on July 13, 2007 (DE 36).

6. Enclosed with a cover letter dated September 18, 2008, the defendant propounded the plaintiff with interrogatories and a request for production. Questions regarding the identity and substance of expert witness testimony and calculation of any damages were included among the interrogatories.

7. At the time the complaint was filed, the plaintiff was represented by Jeffrey Hirsh. On October 26, 2007, the plaintiff's counsel filed a motion to withdraw (DE 44), and by order entered October 29, 2007, the court denied the motion with leave to renew on November 19, 2007 (DE 45).

8. In an effort to prevail upon plaintiff's counsel to provide responses to outstanding discovery, defense counsel engaged the plaintiff's counsel during several telephone conversations and letter(s) regarding same. Finally, in a response dated November 2, 2007, plaintiff's counsel provided answers to the interrogatories.

9. In interrogatory number 12 with sub-parts, the defendant inquired of the plaintiff

information regarding the identity, qualifications, and opinion(s) of the plaintiff's expert(s). The plaintiff responded, "Not yet determined."

10. In interrogatory number 16, the defendant inquired about whether the plaintiff was claiming past earning and/or loss of future earnings capacity, and for the calculation used to arrive at any such amount. The plaintiff responded, "Yes. I have not calculated this." As well, in interrogatory 18, the defendant inquired of the plaintiff to state with specificity any amount sought for medical care, loss of earnings and all other elements of your damages. Again, the plaintiff responded, "I have not calculated this. The court will decide my daughter's serious neurological injuries."

11. The additional time plaintiff consumed to provide answers to the interrogatories did not produce pertinent information essential for the maintenance of any claim of medical malpractice. On November 7, 2007, the defendant filed a motion to compel answers to interrogatories (DE 47, with attachments). A copy of the defendant's motion with attachments is included as Exhibit 1.

12. On November 19, 2007, the plaintiff's counsel renewed his motion to withdraw as counsel (DE 50), and by order entered November 21, 2007, the court granted the plaintiff's motion (DE 51). Plaintiff has been proceeding pro se since her counsel withdrew from the case.

13. The plaintiff never filed any response to the motion to compel. As well, the plaintiff never communicated in any way to defendant about any proposed response to the defendant's motion to compel. On December 11, 2007, the magistrate judge granted the defendant's motion to compel (DE 53) and provided that the plaintiff shall respond to the subject discovery requests on or before December 24, 2007.

14. To date, the plaintiff has never responded to the interrogatories as ordered by the court

on December 11, 2007. Discovery ended on January 25, 2008.

15. The defendant has retained as its medical expert, Harold E. Fox, M.D., Chief of Obstetrics and Gynecology at Johns Hopkins Medical Institution, to review the case. After completing a comprehensive review of the medical records, and other pertinent data he enumerates in his declaration, he concluded without reservation that he found no evidence of any deviation from the standard of care in the medical treatment the defendant rendered to the plaintiff. A copy of Dr. Fox's eight page declaration and curriculum vitae are attached as Exhibit 2.

MEMORANDUM OF LAW

In the instant motion, defendant, as the moving party, bears "the initial responsibility of informing the ... court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Where the nonmoving party bears the burden of proof at trial, the moving party may discharge this "initial responsibility" by showing that there is an absence of evidence to support the nonmoving party's case by showing that the nonmoving party will be unable to prove its case at trial. United States v. Four Parcels of Real Property, 941 F.2d 1428, 1437-38 (11th Cir. 1991).

In Celotex, the Supreme Court observed that, "[i]n our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." 477

U.S. at 322-23. The plaintiff has not established that she has the evidence to prove the elements of her case.

This action arises under the Federal Tort claims Act, which provides that the law of the state in which the allegedly negligent act or omission occurred governs. See, 28 U.S.C. Section 2672 -2674. Since the alleged medical malpractice in this case occurred in Miami, Florida law applies. In Florida, a plaintiff in a medical malpractice action has the burden of proving by the greater weight of the evidence that the alleged actions of the health care providers represented a breach of the prevailing professional standard of care for those health care providers. See, Fla. Stat. Section 766.102. A plaintiff must establish by a preponderance of the evidence that the health care providers breached the prevailing professional standard of care and that said breach was the proximate cause of the damages claimed. Gooding v. University Hospital Building, Inc., 445 So. 2d 1015, 1018 (Fla. 1984).

Allegations of medical malpractice during the delivery of a baby and the cause (or existence) of any purported malady to the infant is outside the scope of a layman's knowledge. "A plaintiff must put on expert testimony to establish what the standard of care is if the subject in question is so distinctly related to some science, profession or occupation as to be beyond the ken of the average layperson." Briggs v. Washington Metropolitan Area Transit Authority, 481 F.3d 839, 845 (D.C. Cir. 2007). "The expert must proffer a specific, articulable (and articulated) standard of care. The expert must testify as to specific standards and must relate them directly to the defendant's conduct. Absent such testimony, the jury will be forced to engage in idle speculation which is prohibited. And articulation of a specific standard is essential especially in circumstances in which the defendant is alleged to have failed to protect the plaintiff from harm." Briggs, 481 F.3d at 846 - 7

(internal citations omitted). “To prevail in a medical malpractice action, a plaintiff must identify the standard of care owed by the physician, produce evidence that the physician breached the duty to render medical care in accordance with the requisite standard of care, and establish that the breach proximately caused the injury alleged.” Torres v. Sullivan, 903 So. 2d 1064, 1068 (2nd D.C.A. 2005).

That the plaintiff has delayed and then failed to retain any experts, as confirmed by her November 2, 2007 answers to the interrogatories, and her oral admissions, undermines the vitality of her case. The plaintiff’s failure to comply with the court order directing the production of discovery only highlights that the plaintiff is without evidence to prove the elements of her case. Plaintiff has not produced evidence to establish the standard of care, that the standard was breached, that any breach proximately caused an injury, or the economic value of any claim. Conversely, the defendant has retained Dr. Fox, a prominent expert in the field of obstetrics and gynecology at John Hopkins Medical Institution. Dr. Fox has opined that the medical care rendered to the plaintiff was appropriate and well within the standards of care. Dr. Fox’s medical opinion is both compelling and unrefuted.

WHEREFORE, based upon the foregoing, the defendant requests that summary judgment be granted as the plaintiff does not have evidence to establish that the defendant breached the standard of care, and that any breach proximately caused an alleged injury.

Respectfully submitted,

Date: February 29, 2008
Miami, Florida

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: s/ Karin D. Wherry
Karin D. Wherry
Assistant United States Attorney
Fla. Bar No. 509530
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CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

s/Karin D. Wherry
KARIN D. WHERRY
ASSISTANT U.S. ATTORNEY

SERVICE LIST

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 07-20759-CIV-UNGARO

Markeisha Jenkins, Pro Se
1848 NW 42nd Street
Miami, Florida 33142
Notice via First Class U.S. Mail

Karin D. Wherry
Assistant United States Attorney
Florida Bar No. 509530
United States Attorney's Office
99 NE 4th Street, 3rd Floor
Miami, Florida 33132
Tele: 305-961-9016
Fax: 305-530-7139
Attorney for Defendant
Notice via CM/ECF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, et al.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendants.

DEFENDANT'S MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND ANSWERS TO INTERROGATORIES

The defendant, United States of America, by and through the undersigned Assistant United States Attorney, hereby submits its motion to compel the plaintiff to provide responses to the defendant's request for production propounded on September 18, 2007. As grounds, therefor, the defendant submits the following:

1. In the instant case, the plaintiff has filed a claim of medical malpractice against the Economic Family Health Center, a federally funded facility for which a defense is provided by the United States under the Federal Tort Claims Act. The plaintiff seeks \$20 million. The defendant intends to vigorously defend this case.

2. On September 18, 2007, the defendant propounded to the plaintiff interrogatories and requests for production with a cover letter. A copy of the defendant's First Request for Production, defendant's First Set of Interrogatories, Authorization to Furnish Medical and Insurance

Information, Authorization to Furnish Medicaid, Medicare and Social Security Information and Records and cover letter are attached, Exhibit 1. To date, despite several telephone conversations between the defense and plaintiff's counsel and the assurance that the response would be forthcoming, and letters from the defense requesting same, the plaintiff has not posted any response to the request for production. On Friday afternoon, November 2, 2007, the defense received via facsimile a letter dated November 2, 2007 with the plaintiff's answers to defendant's First Set of Interrogatories, though not signed by the plaintiff. A copy of the plaintiff's cover letter and Answers to defendant's First Set of Interrogatories, is attached as Exhibit 2. The plaintiff's answers to the defendant's First Set of Interrogatories are incomplete and do not provide sufficient information.

3. As set forth in the plaintiff's cover letter dated November 2, 2007, plaintiff's counsel advised that "As to the Request for Production, we have requested materials, upon receipt, we will forward same to you."

4. On October 26, 2007, the plaintiff's counsel filed a motion to withdraw, and on October 29, 2007, the court denied the motion, but afforded the plaintiff's counsel the opportunity to renew his motion after November 19, 2007.

5. In its order dated August 24, 2007, the court set the discovery cut-off at January 25, 2008. With the impending holiday season and a case that is destined to be dependent upon experts, the defense has requested the information about the plaintiff's experts, in both the interrogatories and request for production. In addition, the defendant sought releases to be signed by the plaintiff so that the defendant may obtain records about the plaintiff from non-parties, all of which has been denied the defendant. To be sure, the defendant is prejudiced by the plaintiff's continued delay.

6. Federal Rule of Civil Procedure 37 provides that an application for an order directing a

party to respond to discovery requests may be made to the court in which the action is pending. In the instant case, the request for production has remained outstanding since it was served on September 18, 2007, with responses due on or before October 18, 2007, with plaintiff providing no definitive time for any production.

7. Federal Rule of Civil Procedure 37(a)(3) states that an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer or respond. In the interrogatories, the defendant asked at question 12, page 14, as follows:

12. With respect to all witnesses whom you will call or may call as experts to give opinion testimony in the trial of this matter, state the following:
 - a. name and address;
 - b. name and address of his/her employer or the organization with which he is associated in any professional capacity;
 - c. the field in which he/she is offered as an expert;
 - d. a summary of his/her qualifications within the field in which he/she is expected to testify;
 - e. the substance of the opinions to which he/she is expected to testify and a summary of the grounds for each opinion;
 - f. state the names and addresses of experts who have been retained or specially employed by the claimant in anticipation of this litigation or preparation for trial but who are not expected to be called as a witness for trial.

The plaintiff's response was "Not yet determined."

Further, at question 16, page 18, the defendant inquired,

16. If you are claiming loss of past earnings and/or loss of future earnings capacity, state the exact amount of each that you are claiming and the method used to calculate each claim.

In response, the plaintiff simply stated, “Yes. I have not calculated this.”

Again at question 18, page 20, the defendant propounded the following question:

18. State with specificity the amount you are seeking to recover for medical care, loss of earnings (past and future) and all other elements of your damages.

The plaintiff ‘s response: “I have not calculated this. The court will decide my daughter’s serious neurological injuries.”

The defendant should not be prejudiced in its ability to defend the plaintiff’s serious allegations. The plaintiff has not provided any reason to justify her delay. Neither the spirit nor the substance of The Federal Rules of Civil Procedure condone such dilatory conduct by a party to a federal civil suit. Plaintiff has stalled and stymied the defendant’s ability to develop its case, which is patently unfair. Incomplete or evasive answers can support sanctions, including the expenses necessary to file the motion to compel if the plaintiff’s position is not substantially justified. See Stallworth v. The Harford Insurance Co., No. 3L:06CV89/MCR/EMT, Feb. 16, 2007 (not reported in Fed. Supp. 2nd) (copy Attached, Ex. 3); Pensacola Beach Community United Church v. National Union Fire Insurance Co. of Pittsburgh, 2007 WL 737499 (N.D. Fla.). In the instant case, the plaintiff has posited no justifiable reason for her failure to comply. In the meantime, the defendant seeks complete compliance with its discovery requests to the plaintiff. Defendant requests an order

compelling plaintiff to comply with defendant's First Request for Production, and to provide full and complete answers, under oath, to Interrogatories 12, 16 and 18 of defendant's First Set of Interrogatories.

Respectfully submitted,

Date: November 7, 2007
Miami, Florida

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

s/Karin D. Wherry
KARIN D. WHERRY
ASSISTANT U.S. ATTORNEY

SERVICES LIST

CASE NO. 07-20759-CIV-UNGARO

Jeffrey S. Hirsh, Esquire
Goldberg & Hirsh, P.A.
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Attorney for Plaintiff
Notice via CM/ECF

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United States Attorney's Office
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Attorney for Defendant
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United States Attorney
Southern District of Florida

99 N.E. 4 Street
Miami, FL 33132
(305) 961-9016

September 18, 2007

Jeffrey S. Hirsch, Esquire
SunTrust International Center, Suite 1280
One Southeast Third Avenue
Miami, Florida 33131

Re: Jenkins v. United States
Case No. 07-20759-CIV-UNGARO

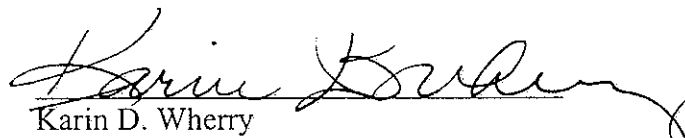
Dear Mr. Hirsh,

Enclosed are a notice of production and interrogatories for the above referenced case. An Authorization to Furnish Medical and Insurance Information and Authorization to Furnish Medicaid, Medicare and Social Security Information and Records are also included. Although you certainly have thirty days to provide the information and documents (and more if necessary), since the court has shortened our preference for the discovery and trial schedule, would you be able to advance the medical and Social Security releases within the next two weeks? I will then send them on for production of medical records, including North Shore Medical Center, and of course for income tax returns and earnings records. If you are able to provide them within the next few weeks, please advise my assistant Karen Snider, at 305-961-9372 and advise her that you will be sending them. She will send out the subpoenas with the signed releases. As well, if you need any additional information in my absence, please contact Ms. Snider. I will return to the office on October 3, 2007

Thank you for your consideration.

Very truly yours,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: 
Karin D. Wherry
Assistant United States Attorney

Enclosures



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, on behalf of
and as parent and natural guardian of
LAMARIYA REDFORD, a minor,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

**DEFENDANT'S FIRST
REQUEST FOR PRODUCTION**

The Defendant, United States of America, pursuant to Rule 34, Federal Rules of Civil Procedure, hereby requests that the Plaintiffs, MARKEISHA JENKINS, produce for inspection and/or copying the following designated records and documents within their possession, custody or control (including those in the possession, custody or control of their attorneys, agents and representatives) within thirty (30) days of the date of service at the offices of the United States Attorney, 99 N.E. 4th Street, Third Floor, Miami, Florida.

DOCUMENTS TO BE PRODUCED

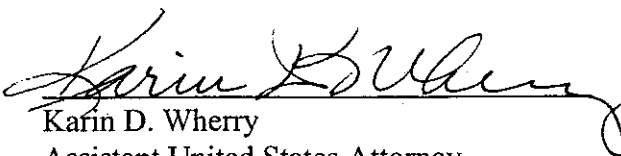
1. Copies of all federal income tax returns and all attachments thereto including, but not limited to, schedules, forms, statements, W-2 forms, 1099 forms, filed by Markeisha Jenkins from 2000 to the present.
2. Copies of all exhibits intended to be used at trial.
3. Copies of all medical, dental and hospital records and reports relating to the medical care and treatment Lamariya Redford has received during her life.

4. Copies of any and all documents containing statements or observations of persons who have knowledge of the facts and circumstances giving rise to this lawsuit.
5. Copies of any and all documents or records reflecting any income or benefits, including but not limited to SSI, Social Security, Veterans or Military benefits, received by Markeisha Jenkins and/or Lamariya Redford from 2000 to the present.
6. Copies of any and all documents reflecting the economic damages incurred by Markeisha Jenkins as a result of the care and treatment received by Markeisha Jenkins and/or Lamariya Redford.
7. Attached hereto are releases for Markeisha Jenkins to sign in order for the United States to obtain Social Security records, an earnings history, income tax records and medical records. Please complete the forms and return to the undersigned.
8. Any and all releases, covenants not to sue, Mary Carter or Mary Carter- type agreements to withhold execution and/or execute against one Defendant first entered into between the Plaintiffs and any other person, individual, insurance company, firm or corporation, who you contend may be responsible for Markeisha Jenkins injuries.
9. All statements obtained by you, your attorneys or investigators of independent witnesses having knowledge of facts relevant and material to the claims and defenses in the instant litigation.
10. All reports written and/or prepared by your experts concerning the subject matter of the instant lawsuit.
11. All documents which support your claim that the United States is liable for the injuries to Lamariya Redford.
12. Copies of all documents, other than medical records, which support or establish your alleged damages in this case.
13. All medical bills, nursing bills, doctor bills, hospital bills, drug bills, dental bills, and all other bills supporting Lamariya Redford's claims for damages in this case.
14. Any and all documents or records reflecting the income or benefits received by Markeisha Jenkins and Lamariya Redford from the government from 2000 to the present including but not limited, SSI, Social Security, Veterans and military benefits.
15. Any and all insurance records, including policy and payment records, for medical, life or disability insurance for which Markeisha Jenkins was the policy holder from January 2000 to the present.

16. All records in your possession, custody or control which relate to any civil or criminal action in which Markeisha Jenkins was a party since January 1, 1995.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

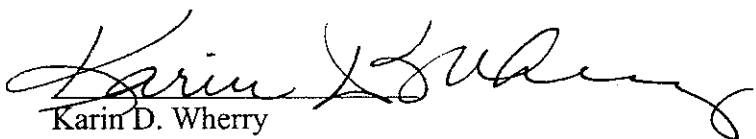
By: 
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Tel.: (305) 961-9016
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

U.S. mail this 18th day of September, 2007, to:

Jeffrey S. Hirsh, Esquire
SunTrust International Center, Suite 1280
One Southeast Third Avenue
Miami, Florida 33131


Karin D. Wherry
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, et al.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendants.

DEFENDANT'S FIRST SET OF INTERROGATORIES

The Defendant, United States of America, pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby requests that the Plaintiff Markeisha Jenkins, respond under oath to the following interrogatories within thirty (30) days from the date of service hereof.

The number of interrogatories served herewith is 20. Each interrogatory shall be answered separately and fully, in writing, in the space provided, or, if the space provided is insufficient, on additional papers which may be attached to the answer. These interrogatories are continuing in nature so as to mandate the filing of supplementary answers upon the acquisition of further or contrary information prior to trial.

DEFINITIONS

1. "You" or "your" shall mean the plaintiff Markeisha Jenkins.
2. "Identify" or "identity" when used in connection with a document, shall mean to state the title of the document, its author, the date on which it was prepared or written and its current location.
3. "Identify" or "identity" when used in connection with a person shall mean to state that person's name, his last known address, and his occupation.
4. "Documents" shall mean any writing, drawing, chart, photograph, tape or other data compilation from which information can be obtained, translated, or extracted.
5. "Person" shall mean any nature person, and shall also mean any corporation, partnership, unincorporated association, or any other entity.

INTERROGATORIES

1. State your full name (include your current name and all former names by which you have been known, including nicknames, maiden name, names from prior marriages, etc.) residence address, work or business name and address, date of birth, place of birth and Social Security number.

2. State whether you are a naturalized United states citizen, and if so, identify your alien registration number and date of United States citizenship.

3. State whether you have ever been married. If so, state the names of your spouses, their current addresses and the dates on which you were married and the marriage ended.

4. Describe your educational background including the names and addresses of all educational institutions attended and all degrees received.

5. Identify by name, date of birth and current residential address, all of your natural born or adopted children. For each child, identify the natural (biological) parents of that child.

- 6 Identify (by name and address) each of your employers for the past 10 years; your job title, the length of time you were employed by each employer; and your starting and ending salary.

7. Identify by name and address all health care providers (including but not limited to physicians, physical therapists, nurses, psychologists and psychiatrists) who conducted, examined, treated, or rendered any medical service to Markeisha Jenkins in the past 10 years. Please include in your answer the dates when such services were rendered.

8. Identify by name and address all hospitals, clinics, mental care facilities, or medical facilities that rendered any medical or psychological services to Markeisha Jenkins in the past 10 years. Please include in your answer the dates when such services were rendered.

9. List the names and addresses of all persons who are believed or known by you, your agents or attorneys to have any knowledge concerning the issues in this lawsuit and specify the subject matter on which the witness has knowledge.

10. Please state, in detail, each and every item of economic loss or damage sustained by you as a result of the care and treatment you received at the Economic Opportunity Family Health Center.

11. Identify the source and amount of any and all payments your presently receive from the Social Security Administration, CHAMPUS, the Department of Veterans Affairs, the military, or any other state or federal entity as a benefit or pension.

12. With respect to all witnesses whom you will call or may call as experts to give opinion testimony in the trial of this matter, state the following:
 - A. name and address;
 - B. name and address of his/her employer or the organization with which he is associated in any professional capacity;
 - C. the field in which he/she is offered as an expert;
 - D. a summary of his/her qualifications within the field in which he/she is expected to testify;
 - E. the substance of the opinions to which he/she is expected to testify and a summary of the grounds for each opinion;
 - F. state the names and addresses of experts who have been retained or specially employed by the claimant in anticipation of this litigation or preparation for trial but who are not expected to be called as a witness for trial.

13. Please state the name and address of each person you expect to call as a fact witness at trial and, for each person, state his relationship to you and the subject matter on which such witness is expected to testify.

14. Please identify by name all medical personnel who discussed with you or a member of your family the care and treatment Markeisha Jenkins and Lamariya Redford received at the Economic Opportunity Family Health Center.

15. State the names and addresses of every health care provider (including doctors, osteopaths, chiropractors, clinics, nurse practitioners, physical therapists, etc.), hospitals (as an inpatient and outpatient), emergency care facilities, etc., who, or which, treated or examined you and/or Lamariya Redford as a result of the injuries you allegedly sustained in this case, and state the amount of the bills for each.

16. If you are claiming loss of past earnings and/or loss of future earnings capacity, state the exact amount of each that you are claiming and the method used to calculate each claim.

17. Identify all medications that you and/or Lamariya Redford are currently taking, including the dosages and frequencies of each medication, the condition for which each medication was diagnosed, and the name and address of the physician who prescribed each medication.

18. State with specificity the amount you are seeking to recover for medical care, loss of earnings (past and future) and all other elements of your damages.

19. Please provide a list of all monies received into your household on a monthly basis and on a lump sum basis from all sources, including, but not limited to, Social Security, Department of Veterans Affairs, insurance disability, etc. Please specify the name and address of the source of the funds, the amount of the monies received monthly or on a lump sum basis and the time period for the payments.

VERIFICATION

STATE OF FLORIDA)
 S.S.:
COUNTY OF DADE)

I, Markeisha Jenkins, being first duly sworn, depose and say that the attached Answers to Defendant's First Set of Interrogatories are true and correct to the best of my knowledge, information and belief.

Markeisha Jenkins

The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by _____, who is personally known to me.

Notary

Name of Acknowledger

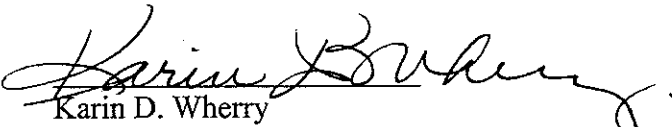
Social Security Number

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

U.S. mail this 18th day of September, 2007, to:

Jeffrey S. Hirsh, Esquire
SunTrust International Center, Suite 1280
One Southeast Third Avenue
Miami, Florida 33131


Karin D. Wherry
Assistant U.S. Attorney

AUTHORIZATION TO FURNISH
MEDICAL AND INSURANCE INFORMATION

TO WHOM IT MAY CONCERN:

I hereby authorize any physician, nurse or other medical personnel; any hospital, medical facility and other organization providing medical care, treatment, services and/or supplies; and any insurance organization to furnish to any representative of the United States any and all records, information and evidence in their possession, custody or control concerning Markeisha Jenkins and Lamariya Redford.

“Records” for purpose of this authorization shall include but are not limited to, medical charts, physician’s office records, handwritten notes, correspondence to or from any person, entity, organization, all hospital records regularly maintained concerning patients, all laboratory reports, all x-rays, all medical reports furnished routinely or specially to any person, organization or entity including a representative of the patient, and all records generated or maintained by any insurance company.

Upon presentation of this authorization or an exact reproduction thereof, you are directed to permit the personal review or reproduction of such records, information and evidence by any representative of the United States of America or to have you copy such records, information and evidence and transmit them to the United States at the cost of the United States. You are also authorized to transmit any slides or tissue specimens or biopsy information or pathology slides pertaining to the medical condition of Markeisha Jenkins and Lamariya Redford to a representative of the United States for examination purposes.

A photocopy of this authorization shall be considered as effective and valid as the original.

MARKEISHA JENKINS

DOB: _____

SSN: _____

MARKEISHA JENKINS, on behalf of and as
parent and natural guardian of LAMARIYA
REDFORD, a minor

SSN of Lamariya Redford

Date this release was executed: _____

AUTHORIZATION TO FURNISH MEDICAID, MEDICARE
AND SOCIAL SECURITY INFORMATION AND RECORDS

TO WHOM IT MAY CONCERN:

I hereby authorize any representative of Medicaid and/or Medicare, and/or the Health Care Financing Administration and/or the Social Security Administration to provide to any representative of the United States Attorney's Office any and all records, information, and reports in their possession, custody or control including but not limited to all medical records, claims, reports, billing records, pay-out information, correspondence, etc., concerning Markeisha Jenkins.

"Records" for purpose of this authorization shall include but are not limited to, copies of medical records, claim forms, requests or applications for benefits, correspondence, handwritten notes, earnings history information on Markeisha Jenkins, insurance records, and all records generated by Medicaid, Medicare, the Health Care Financing Administration and/or the Social Security Administration concerning Markeisha Jenkins.

Upon presentation of this authorization or an exact reproduction thereof, you are directed to permit the personal review or reproduction of such records, information and evidence by any representative of the United States or to respond by copying such records, information and evidence and transmitting the records to the United States at the cost of the United States.

A photocopy of this authorization shall be considered as effective and valid as the original. This authorization shall remain in effect until the case is tried in U.S. District Court.

MARKEISHA JENKINS

DOB: _____

SSN: _____

MARKEISHA JENKINS, on behalf of and as
parent and natural guardian of LAMARIYA
REDFORD, a minor

SSN of Lamariya Redford

Date this release was executed: _____

GOLDBERG & HIRSH, P.A.

ATTORNEYS AT LAW
SUNTRUST INTERNATIONAL CENTER
SUITE 1280
ONE SOUTHEAST THIRD AVENUE
MIAMI, FLORIDA 33131

SIDNEY A. GOLDBERG
JEFFREY S. HIRSH
BOARD CERTIFIED CIVIL TRIAL ATTORNEY

TELEPHONE (305) 372-9601
TELEFAX (305) 372-2323
E-MAIL: info@goldberghirshpa.com

November 2, 2007

VIA FACSIMILE (305) 530-7139

Karin Wherry, Esquire
Assistant U.S. Attorney
Federal Justice Building
99 N.E. 4th Street
Suite 300/Civil Division
Miami, FL 33132

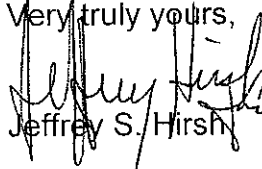
Re: Markeisha Jenkins, on behalf of and as parent and natural guardian of
Lamariya Redford, a minor vs. United States of America, et al.,

Dear Ms. Wherry:

Enclosed is our client's answers to interrogatories which were propounded by you on September 18, 2007. Upon receipt of the jurat page, we will forward same to you. As to the Request for Production, we have requested materials, upon receipt, we will forward same to you.

Thank you for your cooperation in this matter.

Very truly yours,


Jeffrey S. Hirsh

JSH:amg

Enclosures



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 07-20759-CIV-UNGARO

MARKEISHA JENKINS, on behalf of
and as parent and natural guardian of
LAMARIYA REDFORD, a minor,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

PLAINTIFF'S ANSWERS TO INTERROGATORIES
PROPOUNDED BY DEFENDANT, UNITED STATES OF AMERICA
ON SEPTEMBER 18, 2007

The Plaintiff, MARKEISHA JENKINS, on behalf of and as parent and natural guardian of LAMARIYA REDFORD, a minor, file her Answer to Interrogatories propounded by Defendant, UNITED STATES OF AMERICA on or about September 18, 2007.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the forgoing was mailed this 2nd day of November, 2007 and by via facsimile to: Karin D. Wherry, Esquire, Assistant United States Attorney, 99 N.E. 4th Street, Suite 300, Miami, FL 33132-2111 .

Respectfully submitted,

GOLDBERG & HIRSH, P.A.
Counsel for Plaintiffs

By: s/Jeffrey S. Hirsh
Jeffrey S. Hirsh
Attorney for Plaintiffs
Florida Bar Number: 207810
Email: jhirsh@goldberghirshpa.com
SunTrust International Center
Suite 1280
One Southeast Third Avenue
Miami, Florida 33131
Telephone (305) 372-9601
Telefax (305) 372-2323

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 2, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

By: s/Jeffrey S. Hirsh
Jeffrey S. Hirsh
Attorney for Plaintiffs

PLAINTIFF'S ANSWERS TO INTERROGATORIES

1. Markeisha Jenkins
1848 N.W. 42nd Street
Miami, FL 33142

Unemployed

D.O.B.: 3/6/1985
Place of Birth: Miami, Florida
S.S.#: 591-34-7785
2. U.S. Citizen
3. Yes. Demetrius Batts
Married on January 29, 2007 presently separated.
4. Attended school through 12th grade but failed FCAT I don't have a High School Degree. Miami Northwestern High School.
5. Lamariya Redford
D.O.B.: 8/21/04
1848 N.W. 42nd Street
Miami, FL 33142
Father: Earl Redford
6. PRC Precision Response Corporation
Title: Direct T.V. Representative
worked there for 2 months \$9.00 an hour full time job.

Walmart
5851 N.W. 177th Street
Miami Gardens, FL
Title: Cashier
worked there approximately 8 months. Starting pay \$6.35 an hour part-time and ending pay \$7.30 an hour part-time.

Target
Title: Cashier
worked there approximately 5 months. Starting pay \$6.25 an hour part-time.

Wendy's Restaurant
Title: Cashier
worked there about 6 months. Starting pay \$6.25 an hour part-time.

7. 1997 treated at Camallius House Clinic
2002 Jackson North
2002 Economic Opportunity Family Health Center
8. See answer to number 7.
2003 North Shore Hospital
9. Wanda Phillips, mother
1848 N.W. 42nd Street
Miami, FL

Jamisha Carter, friend
Derricka Johnson, baby's aunt
Earl Redford, father of baby
10. I have not been able to hold a full time job because I have to take my daughter to a doctor's appointment almost every week.
11. Medicaid, Social Security Benfits \$623.00, food stamps.
12. Not yet determined
13. See answer to number 9. They will testify as to what happened at labor and delivery and my daughter's injuries.
14. Dr. Christ-Ann A.E. Magloire
15. I was treated by Economic Opportunity Family Health Center, Dr. Christ-Ann A.E. Magloire.

My daughter, Lamariya Redford has treated with the following:

Physical therapist, Isabel and Lynette, Jackson Memorial Hospital.
Dr. Magloirem 54 N.W. 22nd Avenue, Miami, FL
Dr. Bridges (Primary Peditrician)
Dr. Moody, Physical therapist and OT at Jackson Memorial Hospital.
Silva Fagardo-Hiriartna
Mailman Clinic Jackson Memorial
Jaquess Toussaint, 1601 N.W. 12th Avenue, Miami, FL
Dr. Robert Lopez 1001 N.W. 12th Avenue, Neurologist
Alexis Diaz, (ITDS) 1601 N.W. 12th Avenue
Silva Fagardo-Hiriartna, 1601 N.W. 12th Avenue, Miami, FL
Bascom Palmer (Jackson Memorial Hospital)
Jackson Memorial MRI Center
North Shore Hospital
Miami Children's Hospital

16. Yes. I have not calculated this.
17. None
18. I have not calculated this. The court will decide my daughter's serious neurological injuries.
19. Social Security Benefits \$623.00
Food Stamps: \$298.00

INTERROGATORIES

1. State your full name (include your current name and all former names by which you have been known, including nicknames, maiden name, names from prior marriages, etc.) residence address, work or business name and address, date of birth, place of birth and Social Security number.

2. State whether you are a naturalized United states citizen, and if so, identify your alien registration number and date of United States citizenship.

3. State whether you have ever been married. If so, state the names of your spouses, their current addresses and the dates on which you were married and the marriage ended.

4. Describe your educational background including the names and addresses of all educational institutions attended and all degrees received.

5. Identify by name, date of birth and current residential address, all of your natural born or adopted children. For each child, identify the natural (biological) parents of that child.

- 6 Identify (by name and address) each of your employers for the past 10 years; your job title, the length of time you were employed by each employer; and your starting and ending salary.

7. Identify by name and address all health care providers (including but not limited to physicians, physical therapists, nurses, psychologists and psychiatrists) who conducted, examined, treated, or rendered any medical service to Markeisha Jenkins in the past 10 years. Please include in your answer the dates when such services were rendered.

8. Identify by name and address all hospitals, clinics, mental care facilities, or medical facilities that rendered any medical or psychological services to Markeisha Jenkins in the past 10 years. Please include in your answer the dates when such services were rendered.

9. List the names and addresses of all persons who are believed or known by you, your agents or attorneys to have any knowledge concerning the issues in this lawsuit and specify the subject matter on which the witness has knowledge.

10. Please state, in detail, each and every item of economic loss or damage sustained by you as a result of the care and treatment you received at the Economic Opportunity Family Health Center.

11. Identify the source and amount of any and all payments your presently receive from the Social Security Administration, CHAMPUS, the Department of Veterans Affairs, the military, or any other state or federal entity as a benefit or pension.

12. With respect to all witnesses whom you will call or may call as experts to give opinion testimony in the trial of this matter, state the following:
 - A. name and address;
 - B. name and address of his/her employer or the organization with which he is associated in any professional capacity;
 - C. the field in which he/she is offered as an expert;
 - D. a summary of his/her qualifications within the field in which he/she is expected to testify;
 - E. the substance of the opinions to which he/she is expected to testify and a summary of the grounds for each opinion;
 - F. state the names and addresses of experts who have been retained or specially employed by the claimant in anticipation of this litigation or preparation for trial but who are not expected to be called as a witness for trial.

13. Please state the name and address of each person you expect to call as a fact witness at trial and, for each person, state his relationship to you and the subject matter on which such witness is expected to testify.

14. Please identify by name all medical personnel who discussed with you or a member of your family the care and treatment Markeisha Jenkins and Lamariya Redford received at the Economic Opportunity Family Health Center.

15. State the names and addresses of every health care provider (including doctors, osteopaths, chiropractors, clinics, nurse practitioners, physical therapists, etc.), hospitals (as an inpatient and outpatient), emergency care facilities, etc., who, or which, treated or examined you and/or Lamariya Redford as a result of the injuries you allegedly sustained in this case, and state the amount of the bills for each.

16. If you are claiming loss of past earnings and/or loss of future earnings capacity, state the exact amount of each that you are claiming and the method used to calculate each claim.

17. Identify all medications that you and/or Lamariya Redford are currently taking, including the dosages and frequencies of each medication, the condition for which each medication was diagnosed, and the name and address of the physician who prescribed each medication.

18. State with specificity the amount you are seeking to recover for medical care, loss of earnings (past and future) and all other elements of your damages.

19. Please provide a list of all monies received into your household on a monthly basis and on a lump sum basis from all sources, including, but not limited to, Social Security, Department of Veterans Affairs, insurance disability, etc. Please specify the name and address of the source of the funds, the amount of the monies received monthly or on a lump sum basis and the time period for the payments.

Westlaw.

Not Reported in F.Supp.2d
Not Reported in F.Supp.2d, 2007 WL 522009 (N.D.Fla.)
(Cite as: Not Reported in F.Supp.2d)

H

Stallworth v. Hartford Ins. Co.
N.D.Fla., 2007.

Only the Westlaw citation is currently available.

United States District Court, N.D. Florida,
Pensacola Division.

Thomas STALLWORTH and Willie Mae Stall-
worth, Plaintiffs,

v.

The HARTFORD INSURANCE COMPANY, et
al., Defendants.

No. 3:06cv89/MCR/EMT.

Feb. 16, 2007.

Thomas Stallworth, Houston, TX, pro se.

Willie Mae Stallworth, Houston, TX, pro se.

Joseph T. Kissane, Geoffrey David Sessions, Hin-
shaw & Culbertson, Jacksonville, FL, for Defend-
ants.

ELIZABETH M. TIMOTHY, United States Magis-
trate Judge.

*1 This cause is before the court on Defendant
Hartford Insurance Company's motion to compel
Plaintiffs' responses to requests for production
(Doc. 53) and Plaintiffs' response thereto (Doc. 65).

This is an action alleging breach of contract and
breach of the implied warranty of good faith and
fair dealing. Generally, Plaintiffs allege Defendants
breached their contract for automobile insurance
coverage by failing to pay benefits for injuries
Plaintiffs incurred during an automobile accident in
May of 1999, and failing to reasonably perform
their duties under the contract (see Doc. 30).
Plaintiffs seek compensatory and punitive damages
(*id.*).

On December 27, 2006, Defendant Hartford pro-
pounded, among other discovery requests, a request
for production of documents (consisting of fourteen
requests) upon each Plaintiff (see Doc. 53 ¶ 1, Ex.
A). In Defendant's motion to compel, counsel al-
leges that Plaintiffs objected to request number 7,
which requests copies of all medical, psychiatric

and hospital records relating to an accident in-
volving Plaintiffs that occurred on March 10, 2005
(*id.* at 2-3). Defendant asserts that Plaintiffs objec-
ted to the request on the ground that the informa-
tion is irrelevant (*id.*). Counsel for Defendant fur-
ther states that prior to the filing of the motion to
compel, he made a good faith effort to obtain the
discovery without court action but was unsuccess-
ful (*id.* at 4).

Plaintiffs have responded to Defendant's motion to
compel by stating that they submitted "copies of re-
quest for production" to Defendant on January 5,
2007 (Doc. 65 ¶ 2). Plaintiffs refer the court to Ex-
hibit A in support of this assertion. Additionally,
Plaintiffs state that on January 1, 2006, prior to ini-
tiation of his lawsuit, both of them signed medical
authorizations and supplied them to Mr. Sean Man-
ley and Nate F. Matthews, employees of Defend-
ants, to enable Defendants to obtain "whatever
medical documentation was needed by defendant
from 1997 to present," and Plaintiffs refer the court
to Exhibit D (*id.* ¶ 5).

The Federal Rules of Civil Procedure provide that a
party may serve requests for production of docu-
ments which are "in the possession, custody or con-
trol of the party upon whom the request is
served." Fed.R.Civ.P. 34(a). "Control is defined not
only as possession, but as the legal right to obtain
the documents requested upon demand." Searock v.
Stripling, 736 F.2d 650, 653 (11 th Cir.1984). The
response shall state that inspection and related
activities will be permitted as requested, unless the
request is objected to, in which case the reasons for
objection shall be stated. Fed.R.Civ.P. 34(b). If the
documents for production are not in existence, the
objecting party should so state under oath. See
Cairnes v. Chicago Exp., Inc., 25 F.R.D. 169, 170
(N.D. Ohio 1960). An evasive or incomplete answer
to an interrogatory or request for production is to be
treated as a failure to answer. Fed.R.Civ.P.
37(a)(3).

*2 Upon review of Plaintiffs' response to the mo-



Not Reported in F.Supp.2d
 Not Reported in F.Supp.2d, 2007 WL 522009 (N.D.Fla.)
 (Cite as: Not Reported in F.Supp.2d)

Page 2

tion to compel, the court concludes that Plaintiffs have not responded to the discovery request and should be required to do so. As discussed *supra*, this action involves a claim for personal injury benefits; therefore, evidence relating to accidents and injuries that occurred after the accident in May of 1999 are relevant to the issue of whether Plaintiffs' presently claimed injuries resulted from the accident in May of 1999 or a subsequent accident. See *Holmes v. Redland Const. Co.*, 557 So.2d 911, 912 (Fla.3d Dist.Ct.App.1990) (evidence relating to personal injury claim brought by plaintiff five years after accident for which he was currently suing was relevant because it tended to prove that plaintiff's presently claimed injuries resulted from subsequent accident); *State Farm Fire and Cas. Co. v. Pettigrew*, 884 So.2d 191, 197 (Fla.2d Dist.Ct.App.2004 (citing *Holmes*)). Additionally, to the extent Plaintiffs contend that they complied with the request for production because they supplied Defendants with medical authorizations in January of 2006 (see Doc. 65 ¶ 5, Ex. D), this does not constitute compliance with Defendant's discovery request. Plaintiffs do not allege that they informed Defendant in their response to the request for production that they had executed the authorizations one year earlier, nor do they assert that they supplied the one-year-old authorizations in response to Defendant's request. Furthermore, the authorizations enable Defendant to obtain medical records only for the period of time from 1997 to January 1, 2006, thus the authorizations do not cover the period subsequent to January 1, 2006. Moreover, the authorizations attached to Plaintiffs' response to the motion to compel enable Defendant to obtain records of only one Plaintiff, Thomas Stallworth (Doc. 65, Ex. D). Because the documents requested by Defendant are discoverable and Plaintiffs did not provide them, Plaintiffs shall be required to provide them.

The remaining issue is whether Defendant Hartford is entitled to an award of expenses. Rule 37(a)(4) provides, in relevant part:

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an oppor-

tunity to be heard, require the party ... whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Fed. R. Civ. Pro. 37(a)(4). There exists a rebuttable presumption that the court will impose sanctions against the party whose conduct necessitated the motion to compel. The party who necessitated the motion may rebut this presumption by showing that his or her failure to comply with a discovery request was either "substantially justified" or "that other circumstances make an award of expenses unjust." Fed.R.Civ.P. 37(a)(4)(A). A party's objection to a discovery request is substantially justified if the objection raises an issue about which there is a genuine dispute, or if reasonable people could differ as to the appropriateness of the discovery request. See *Doe v. Lexington-Fayette Urban County Gov't*, 407 F.3d 755, 766 (6th Cir.2005) (citing *Pierce v. Underwood*, 487 U.S. 522, 565 (1988)).

*3 In this case, the court cannot conclude that Plaintiffs' objection to the request for records related to the 2005 accident was "substantially justified." Furthermore, Defendant Hartford states that even after he advised Plaintiffs of the holding in *Holmes*, Plaintiffs refused to provide the requested documents. Therefore, the court cannot conclude that an award of expenses is unjust. Accordingly, Defendant Hartford is entitled to fees and expenses incurred in bringing the motion to compel.

Accordingly, it is **ORDERED**:

1. Defendant's Hartford's motion to compel (Doc. 53) is **GRANTED**.

Plaintiffs shall respond to Defendant's requests for production within **TWENTY (20) DAYS** of the date of docketing of this order.

Not Reported in F.Supp.2d

Page 3

Not Reported in F.Supp.2d, 2007 WL 522009 (N.D.Fla.)

(Cite as: Not Reported in F.Supp.2d)

3. Within **TWENTY (20) DAYS** of the date of docketing this order, Defendant Hartford shall submit documentation of fees and expenses incurred in making the motion to compel. Within **TWENTY (20) DAYS** thereafter, Plaintiffs will be permitted to address the issue of sanctions and the reasonableness of the fees and expenses submitted by Defendant Hartford's counsel.

DONE AND ORDERED.

N.D.Fla.,2007.

Stallworth v. Hartford Ins. Co.

Not Reported in F.Supp.2d, 2007 WL 522009

(N.D.Fla.)

END OF DOCUMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, on behalf of)
and as parent and natural guardian of)
LAMARIYA REDFORD, a minor,)
)
Plaintiffs,)
)
v.)
)
THE UNITED STATES OF AMERICA,)
)
Defendant.)
_____)

DECLARATION OF HAROLD E. FOX, M.D.,
PURSUANT TO 28 U.S.C. §1746

I, Harold E. Fox, M.D., declare as follows:

I am a board certified obstetrician gynecologist and sub-specialist in maternal and fetal medicine and am chairman of the Department of Gynecology and Obstetrics at John Hopkins Medical Institution. A copy of my curriculum vitae is attached. I have participated in the birth of over 12,000 infants, am an examiner of the American Board of Obstetrics and Gynecology and direct the education programs for trainees in general obstetrics and gynecology and the sub-specialities of the field including maternal and fetal medicine. In my role as an obstetrician-gynecologist, specialist in maternal-fetal medicine (board- certified and with current re-certification in both fields), I am aware of the standards of practice that apply to the care of obstetric patients. I have cared for many patients with clinical presentations similar to Ms.

Jenkins'. I have diligently reviewed the records that have been forwarded to me and have been listed below. The opinions that I will express are expressed with a reasonable degree of medical certainty.

In November, 2007, Karin D. Wherry, Assistant United States Attorney, forwarded medical records and deposition testimony regarding the case styled, **Jenkins v. United States, Case Number 07-20759-CIV-Ungaro**, for my review and asked that I express my opinion regarding the care rendered to Markeisha Jenkins and her child, Lamariya Redford. The records that I have reviewed include:

1. Records from the Economic Opportunity Family Health Center, Inc., for Markeisha Jenkins;
2. Medical records from the Economic Opportunity Family Health Center, Inc., for Lamariya Redford;
3. Medical records of the North Shore Medical Center, Miami, Florida for Markeisha Jenkins including fetal monitoring strips;
4. Medical records of Mail Man Center, University of Miami Pediatric Neurology Department for Lamariya Redford.
5. Florida Department of Health Children's Medical Services records for Lamariya Redford;
6. North Shore Medical Records of Lamariya Redford;
7. Jackson Memorial Hospital MRI reports for Lamariya Redford;
8. Deposition transcript of plaintiff Markeisha Jenkins;
9. Affidavit of Martin Gubernick, M.D.

BRIEF SUMMARY

On August 20, 2004, Ms. Jenkins was admitted at approximately 8:30 in the morning as a gravida 1, para 0 for post-dates induction of labor. It is my opinion that the prenatal care was appropriate and that admission for induction of labor was appropriate. The patient was noted to be contracting approximately every 3 to 6 minutes and vaginal examination by her caregiver, Dr. Magloire, revealed the cervix to be 1 centimeter dilated, completely effaced with the vertex presenting at -2 station. Pitocin was infused beginning at 2 milliunits per minute. Review of the appropriately maintained labor monitoring records reveals the administration of an epidural for pain relief and a normal progress of labor. Specifically, there was no evidence of uterine hyperstimulation or non-reassuring fetal status.

The patient progressed normally through her labor and was found to be completely dilated with the vertex presenting at +2 station at approximately 2:45 in the morning of August 21, 2004. Ms. Jenkins was attended by the labor and delivery nurses as well as Dr. Magloire during her second stage of labor. After a normal second stage of labor, vacuum assistance for vaginal delivery was discussed with the patient and her family and the record indicates that consent was verbalized and that there was understanding of the offer for assistance with delivery. Consent was acknowledged in the medical record.

At 04:36, the vacuum was applied by her attending physician and with one pull resulting in some descent, there was a pop-off of the vacuum. The patient was encouraged to push with contractions and at 04:46, a second application of the vacuum was carried out. With one pull, a pop-off resulted after descent was again noted. At 04:55, the medical record indicates that the attending physician repaired a bleeding peri-urethral laceration under local anesthesia. A Foley catheter was placed to expedite the repair and at 05:10, the Foley catheter was removed after the

attending physician completed the repair of the peri-urethral laceration. At 05:10, the neonatal intensive care unit staff were notified of the impending delivery and at 05:12 (2 hours and 30 minutes of full dilatation which is normal), the vacuum was reapplied. There was noted to be descent of the vertex and, again, a pop-off was experienced. Appropriately, the vacuum was not reapplied and at 05:30, the patient was noted to be pushing effectively with descent of the presenting part and at 05:45 (3 hours of the second stage of labor which is normal with an epidural anesthesia in a nuliparous patient), spontaneous delivery occurred. A loose umbilical cord around the neck and meconium stained amniotic fluid (present in 20-30% of all deliveries) was also noted. The infant was given to the neonatal intensive care unit staff and received Apgar scores of 9 and 9 at one and five minutes (perfectly normal). The placenta was delivered at 05:55 and due to an acute post-partum hemorrhage, the patient was appropriately managed with agents to control maternal bleeding including Methergin, Pitocin, and Cytotec. Aggressive management led to resolution of the post-partum bleeding.

The infant had an uncomplicated neonatal course with no signs of hypoxic ischemic encephalopathy.

The baby had normal physical examinations as well as neurological assessment. General neurological assessment was normal in early childhood and ultimately Lamariya was diagnosed with a hemiparesis felt to be the result of an intracranial event involving basal ganglia. In short, there was no birth trauma and no hypoxic ischemic encephalopathy and the prenatal course was completely uncomplicated and the developmental parameters of head circumference were normal.

OPINION

It is my opinion with a reasonable degree of medical certainty that the care that was rendered by the Family Health Center staff and physicians and the staff and physicians of North Shore Hospital and Dr. Magloire was appropriate and met the standard of care.

Careful review of the continuous fetal heart-rate monitoring record demonstrates a reassuring fetal heart-rate pattern with activity state changes indicative of central nervous system activity state cycling (very reassuring) was recorded throughout the labor. In the second stage of labor, the fetal heart-rate is very reassuring with normal activity state changes persisting and moderate variability of the fetal heart-rate throughout. It is my opinion with a reasonable degree of medical certainty that in its entirety, the fetal heart-rate record was reassuring and that there was no indication for intervention by cesarean section due to fetal intolerance of labor or for any other reason.

Dr. Martin Gubernick alleges numerous departures from the standard of care. Specifically, on or about August 21, 2004, he alleges the vacuum assisted delivery with three vacuum pulls in total were negligently performed. My review of the material which I have referenced demonstrates appropriate use of the vacuum with abandoning the procedure after three pulls with the result fifteen minutes later of a spontaneous vaginal delivery. Descent was noted with each pull. It is my opinion that the application and utilization of the vacuum assistance was appropriate and met the standard of care.

It is Dr. Gubernick's opinion that on or about August 21, 2004, the fetal monitoring traces revealed abnormalities consistent with fetal hypoxia resulting in fetal encephalopathy indicating an emergency STAT cesarean section. My review of the fetal monitoring tracings fails to identify any such indication. Further, the outcome for the child with Apgars of 9 and 9 and no

sequelae of hypoxic ischemic encephalopathy indicates that there is no such event. Further, the focal lesion that occurred in this child is not a lesion that is of hypoxic ischemic nature. In my opinion, the most likely etiology was a spontaneous untoward event. It should be noted that hemorrhage associated with the use of a vacuum extraction is subarachnoid in nature and presents with signs early in the neonatal period. There is no evidence of an early presentation of a neurological deficit and no evidence of a subarachnoid bleed.

It is alleged by Dr. Gubernick that on or about August 21, delivery was negligently delayed with two additional vacuum pulls in that after the first pull the standard of care indicates performance of a STAT cesarean section. I am aware of no standard that indicates moving to a cesarean section after one pull for a vacuum assisted vaginal birth. Further, descent was noted with each vacuum application and pull, an observation which justifies continued attempts at vacuum assisted vaginal delivery. It is my opinion that the selection and use of the vacuum and the technique applied was appropriate and met the standard of care.

It is Dr. Gubernick's opinion that on August 21, there was a negligent delay in the delivery with two additional vacuum pulls and that this directly and proximately caused fetal hypoxia that caused fetal encephalopathy. As I have mentioned before, the medical record clearly demonstrates that there was no fetal hypoxia with Apgar scores of 9 and 9 and no evidence of hypoxic encephalopathy in the newborn. Furthermore, as I have already indicated, the use of the vacuum was appropriate and completely met the standard of care. I state this opinion with medical certainty.

Dr. Gubernick goes on to indicate that the Tenet Health System North Shore, Dr. Christ-Ann Magloire and Economic Opportunity Family Health Care Center, Incorporated negligently failed to timely and appropriately monitor the fetal monitoring tracings of Markeisha Jenkins.

The medical records clearly document attentive assessment of fetal well-being by the nursing staff and by the physician staff caring for Ms. Jenkins during her labor. In addition, the medical records document appropriate prenatal care. It is my opinion with a reasonable degree of medical certainty that this care was completely appropriate and met the standard of care.

Dr. Gubernick goes on to cite the above referenced providers for failure to note abnormalities in the fetal heart tracing of Markeisha Jenkins. Again, it is my opinion with a reasonable degree of medical certainty that the monitoring records were reflective of a perfectly normal heart-rate pattern with reassuring characteristics throughout labor. It is my opinion that there were no abnormalities in the fetal monitoring tracings indicating lack of fetal well-being.

Dr. Gubernick goes on to repeat most of the allegations that I have already mentioned and, in short, I respectfully disagree with each and every opinion expressed by Dr. Gubernick. It is further my opinion that the medical records indicate absolutely no basis for the conclusions drawn by Dr. Gubernick.

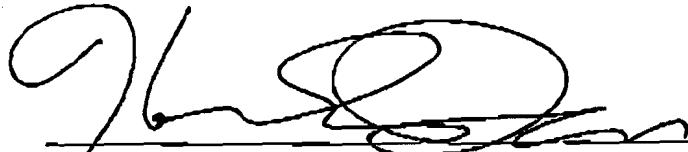
Having read the deposition of Ms. Jenkins, I realize that she is very concerned about the peri-urethral laceration and the bleeding that required a suture during the delivery process (not a frequent but a known occurrence). It is my opinion with a reasonable degree of medical certainty that the recognition of the bleeding and cessation of interventions (completely reassuring fetal heart-rate and normal duration of the second stage of labor) in order to take the time to control the bleeding with a suture ligation of the peri-urethral laceration was appropriate and met the standard of care. In fact, I believe this was exceptionally good judgment. The patient experienced a post-partum hemorrhage which was immediately recognized and appropriately managed after delivery of Lamariya. Had the patient experienced continuing blood loss from this known complication of vaginal birth and the ensuing post-partum hemorrhage that was

appropriately recognized and managed, her blood loss would have been much more extensive and possibly led to the requirement of transfusion or further interventions. The complication of the peri-urethral laceration is a known complication of vaginal birth associated either with spontaneous delivery or assisted vaginal delivery and it is my opinion that the judgment utilized by the delivering obstetrician to take the time to control the bleeding prior to moving ahead with delivery was good judgment and met the standard of care.

The opinions that I express in this report are based on my education, training, and experience in the practice of obstetrics. Markeisha Jenkins reported, during her deposition, that Lamariya was developing and progressing exceptionally well. Any diagnosis of Lamariya is an untoward outcome and not the result of actions or inactions by those caring for Ms. Jenkins during her labor and delivery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of February, 2008, at Gibson Island, Maryland.



Harold E. Fox, M.D.

1

Revised 09/10/07

HAROLD EDWARD FOX, M.D., M.Sc.

Gynecologist and Obstetrician In Chief
Johns Hopkins Health Systems
Dr. Dorothy Edwards Professor and
Director, Department of Gynecology & Obstetrics
Johns Hopkins Medical Institutions

CURRICULUM VITAE

OFFICE: Johns Hopkins University
600 North Wolfe Street
Phipps Rm: 264
Baltimore, Maryland 21287

PHONE: (410) 614-0178
FAX: (410) 614-9607

HOME: 802 Rackham Rd
Box 5
Gibson Island, MD 21056

PHONE: (410) 439-9939
FAX: (410) 439-9121

BIRTHPLACE: East Orange, New Jersey

SPOUSE: Rhea L. Keller Fox, B.S., M.S., R.N., C.S. Psychotherapist

CHILDREN: Harold H. Fox, J.D., Ph.D.
Andrhea A. Fox, B.A., M.S.W.

EDUCATION

1963-1967 University of Rochester B.A. - 1967
Rochester, New York

1967-1972 University of Rochester M.D. - 1972
School of Medicine With Honor &
Rochester, New York Distinction
in Research

1969-1970	Oxford University Nuffield Institute of Medical Research Fetal Physiology Research (Prof. G. Dawes) Oxford, England	
	Degree Awarded through University of Rochester	M.Sc. - 1972
1972-1975	University of Rochester Strong Memorial Hospital Rochester, New York	Internship OB/GYN Residency OB/GYN Henry Thiede, M.D. Program Director
1975-1977	University of Rochester University of Southern California	Fellowship Maternal Fetal Medicine Henry Thiede, M.D. Program Director
1994	Management Course APGO and The Crimson Group Boston, Massachusetts	OB/GYN Dept. Chairs
1995	Advanced Management Course APGO and The Crimson Group Boston, Massachusetts	Negotiations

LICENSURE

New York State 116557 Inactive Status
California - G35059 - Retired Status
District of Columbia - 21171
Virginia - 0101055419
Maryland - 511499

CERTIFICATION

SPECIALTY

1977 American Board of Obstetrics and Gynecology
Diplomate #14940

1989 American Board of Obstetrics and Gynecology
Recertification

1994 ABOG Recertification #14940

2004 ABOG Recertification # 14940

2005 ABOG Recertification #14940

Current General Ob/Gyn Oral Board Examiner ABOG

SUBSPECIALTY

1981 American Board of OB/GYN
Certification in Maternal/Fetal Medicine

1994 Recertification # 14940

2003 - 2005 Recertification #14940

APPOINTMENTS

10/26/96- Present **CURRENT**
Johns Hopkins University
Dorothy Edwards Professor of Gynecology & Obstetrics
Director, Department of Gynecology and Obstetrics
Gynecologist and Obstetrician in Chief
Johns Hopkins Medical Institutions

4/1/97- Present Joint Appointment as Professor in the Department of
Population and Family Health Sciences, Johns Hopkins Bloomberg
School of Public Health

7/01/02-6/30/05 Member Committee on Faculty Development and Gender

7/01/99- 6/30/2002 Chair - Administrative Committee of the Medical Board of the Johns
Hopkins Hospital

7/01/99- 6/30/2002 Vice Chair - Medical Board of The Johns Hopkins Hospital

Leadership Responsibilities - Johns Hopkins Medical Institutions

11/06 - Present	Member - Discipline Committee – Johns Hopkins Medicine
2004 – Present	Trustee Johns Hopkins Healthcare
2005 - Present	Executive Champion Efficiency Discharge Program
2005 - Present	Member Claims Review Committee – Johns Hopkins Medicine
2004 – Present	Trustee Johns Hopkins Healthcare
2004 - 6/30/2005	Chairman of Johns Hopkins Hospital Medical Board
2003 -2005	Advisor - Leadership Development Program - Johns Hopkins Medicine
2002 – Present	Chair Credentials Committee JHHC & JHC
2002- Present	Corporate Advisor -United Premier Medical Group/Johns Hopkins Medicine Collaboration
2002 - Present	Co-Chair Access Improvement Task Force - Johns Hopkins Hospital
2001- Present	Co-Chair Innovations in Quality Care, Johns Hopkins Medical Institutions
2001- Present	Member, Joint Committee on Risk Management
11/08/01-Present	Member - Advisory Committee for the Office of Funded Programs, Johns Hopkins Medicine
3/2000 - Present	Budget Oversight Group - Johns Hopkins Hospital
1999 - 2005	Elected Governor, Board of Governors, CPA, Johns Hopkins Medicine
9/99-2006	Chair Government Relations Committee, CPA

9/99-Present Administrative SWAT Team JHH

1/1/98 - 1/1/2001 Agenda Committee to Advisory Board of Medical Faculty

6/10/97 - Present Board of Trustees of the Johns Hopkins Medical Services Corporation (JHMSC) (Community Physicians)

11/96 - Present Advisory Board of the Medical Faculty

7/01/96-Present Member Advisory Board of the Medical Faculty, Johns Hopkins Medicine

9/4/97 - Present Member of Disciple Committee, Johns Hopkins Medical Institutions

9/4/97- 8/2000 Joint Committee on House Staff and Postdoctoral Programs Johns Hopkins University School of Medicine

9/4/97- Present Board of Trustees Johns Hopkins Home Health Care

9/4/97 - Present Clinical Practice Association Co-Chair of Operations Committee

12/97 - Present Chair of Organizing Committee for Comprehensive Women's Health Center - Johns Hopkins Medical Institutions

1996 - Present Trustee - Johns Hopkins Home Care Group

Search Committees - Anesthesiologist Chair
Medicine Chair
Bayview Chair Ob/Gyn (Committee Chairman)
Otolaryngology Head and Neck Surgery Chair (Committee Chairman)

PAST

3/15/95-10/26/96 George Washington University Medical Center
Oscar I. and Mildred S. Dodek Professor (endowed with tenure)
Chairman of Obstetrics & Gynecology
Executive Director, Center of Excellence for

Women's Health
Obstetrician/Gynecologist in Chief
College of Physicians & Surgeons of Columbia
University and the Presbyterian Hospital in the City of NY

9/1/91-3/14/95 Professor and Acting Chairman, Department of Obstetrics & Gynecology -Columbia University College of Physicians and Surgeons and Director - Sloane Hospital for Women, The Presbyterian Hospital

1988-3/14/95 Professor of Clinical Obstetrics & Gynecology and of Clinical Pediatrics with Tenure of Title
Columbia College of Physicians & Surgeons

1988-3/14/95 Attending Physician, The Presbyterian Hospital

1988-1992 Vice Chairman, Obstetrics & Gynecology, Columbia College of Physicians and Surgeons Columbia Presbyterian Medical Center, New York, New York

1988-1992 Associate Director, The Sloane Hospital for Women, The Presbyterian Hospital, New York

1985-3/14/95 Medical Director, Midwifery Program, The Sloane Hospital for Women, N.Y., N.Y

1980 -1988 Associate Professor of Clinical Pediatrics, College of Physicians and Surgeons

1979 - 1988 Associate Professor of Clinical Obstetrics & Gynecology, College Of Physicians & Surgeons

1976-1979 Assistant Professor of Pediatrics, University of Rochester School of Medicine

1975-1979 Assistant Professor of Obstetrics & Gynecology
University of Rochester School of Medicine

1975-1979 Assistant Attending Physician, Obstetrics & Gynecology, Strong Memorial Hospital

OTHER APPOINTMENTS AND LEADERSHIP POSITIONS

The George Washington University, Washington, D.C.

1995-1996 Executive Director- Center of Excellence for Women's Health

1996 Chairman - formation group for Primary Care Center
Activity completed.

1995-1996 Chairman - Committee of Chairs, GWU Med. Center

1996 Elected Chair of Chairman's Group - Executive Committee of
Medical Staff, GWU Hospital

1996 APT Committee

Columbia Presbyterian Medical Center, N.Y.

Past

1987-3/14/95 Director AIDS Program, Obstetrics & Gynecology
Columbia Presbyterian Medical Center

1984 - 1988 Director Obstetrics, Columbia Presbyterian Medical Center

1984-1988 Director, Regional Center for Tertiary Perinatal Care, The
Presbyterian Hospital in the City of New York

1979 -3/14/95 Director Maternal/Fetal Medicine Fellowship Program
Columbia University College of Physicians and Surgeons

1979-1984 Medical Director Western and Upper Manhattan Perinatal Network

CONSULTANT

1996- Present Howard County General Hospital, Maryland

1996 - Present Johns Hopkins Bayview Medical Center

1982-1995 Northern Westchester Hospital

1976-1979 Rochester General Hospital
1975-1979 St. Mary's Hospital
Rochester, New York

REVIEWER

Obstetrics and Gynecology
American Journal of Obstetrics & Gynecology
Journal of Pediatrics
Fertility & Sterility
American Journal of Diseases in Children
Journal of Maternal - Fetal Medicine
New England Journal of Medicine

EDITORIAL BOARD

Pediatric AIDS and HIV Infection
Administrative Editor and Course Director - Oakstone Medical
Publishing
Precis B An update in Obstetrics and Gynecology-Obstetrics Third
Edition

HONORS

1971 Alpha Omega Alpha
1972 MD with Honor and Distinction in Research
University of Rochester
1972 Student Marshall (Graduation)
1975 EKAS Award - Leadership and Teaching
University of Rochester
1975 LUND Award - Research
University of Rochester
1976 Sigma Xi
1979 Faculty Teaching Award
University of Rochester

- 1993 Selected Participant as Acting Chairman
APGO Chairman Management Services
- 1995 Group Leader APGO Management Course
- 1995 Sloane Hospital for Women Distinguished Service Award
- 1995-1996 Honorary President: Kane King Dodek Society
GWU, Washington, D.C.
- 1996-2000 Phi Beta Delta International Scholars Honor Society
- 2005 ACOG District IV B David A. Nagey Foundation for Perinatal
Outreach Education and Research for Outstanding Contributions
and Support

The George Washington University

- 1996 Chairman (appointed) Formation Committee for Primary Care
Center GWUMC
- 1995-1996 Chairman (elected) Committee of Chairs
- 1996 Chair (elected) of Chairman=s Group, Medical Staff
- 1995-1996 Executive Committee, GWU Hospital
- 1995-1996 Member, Physician Advisory Committee to Hunter Group
- 1995- 1996 Perinatal Mortality Committee
- 1995-1996 MFA Representative to Medical Center Risk Management
Committee

Presbyterian Hospital in the City of New York

- 1992-1995 Joint Conference Committee
- 1992-1995 Directors of Service

1992-1995	Executive Committee, Medical Board
1992-1995	Co-Chair, Vendor Selection Committee Columbia-Presbyterian Medical Center Managed Care Committee
1992-1994	Member, Managed Care Committee
1989-1991	Co-Chairman OB/GYN, Operations Improvement Committee Founded Sloane Stork Club
1988-1995	Medical Board of The Presbyterian Hospital
1988-1991	Chairman Quality Assurance - OB State Survey
1983-1987	Capital Budget Committee Presbyterian Hospital in The City of New York
1981-1988	Patient Care Committee - OB/GYN
1984-1987	Appropriateness Review Neonatal Care New York State Health Department
1983-1995	Education Committee
1994-1995	Board of Directors, Columbia-Presbyterian Physician Network Co- Chair, Vendor Selection Committee, CPPN

Columbia University College of Physicians & Surgeons

1993-1995	Family Medicine Formation Committee
1992-1994	Co-Chair Search Committee for Director, OB/GYN, at Harlem Hospital Center
1990-	Member, Search Committee for Chairman of Rehabilitation Medicine
1992-1995	Member, Harlem Hospital Liaison Committee

1992-1995 Member Affiliations Committee

REGIONAL

1993-1994 OB Section, New York Academy of Medicine - Chairman

1992-1995 Member, ACNC Board of Directors

1987-1995 Obstetrics Advisory Committee to the
Commissioner of Health, NYC AIDS Subcommittee

1987-1995 New York City Department of Health Special Advisory
Committee on AIDS

1987-1989 Maternal Child Welfare Committee
New York County Medical Society

STATE

1993-1995 Folic Acid Advisory Committee to DOH - ACOG
Representative

1993-1995 Midwifery Advisory Committee to DOH

1993-1995 State Board of Midwifery appointed by the Regents of The
University of the State of New York

NATIONAL

1995 - Present ACOG, Presidential Appointee to Standards Committee

1991-1995 Member, Women's Committee ACTG-NIAID

1988-1993 Chairman Executive Committee
NIAID - Epidemiology Branch
WITS Program (collaborative Perinatal HIV Transmission Study)

1988-Present Antiretroviral Registry Advisory Committee- Member Emeritus and
Senior Advisor
Burroughs Wellcome, NIH, CDC

1988-1991 Pediatric Core Committee, OB Representative
ACTG (AIDS Clinical Trial Group)
NIAID Treatment Branch

1986-1988 Steering Committee, Alternate
NIH Maternal Fetal Medicine Network
NICHD, CDC

INTERNATIONAL

1995-1996 Chairman, Women's Health Initiative
AIHA, USAID Program for Estonia

July 1996 GWU Representative for visit and press conference with First Lady
Hillary Rodham Clinton in Tallinn Estonia

December 1984 World Health Organization Professor at Chungdu, Sechuan PRC
Training Center Prenatal Education

Inaugural Rounds at Sechuan Medical College, Chungdu, Peoples
Republic of China

2003 - Present United Premier Medical Group Chairman- Medical Advisory Board

GRANT SUPPORT

1994-1997 Women and Infants (HIV) Transmission Study (WITS II)
(Resigned Principal Investigator
3/14/95) \$ 750,000 - NIAID, NICHD, NIDA

1988-1995 Women & Infants (HIV) Transmission Study
Principal Investigator
\$8.2 million - NIAID, NICHD, NIH

1990-1995 Women in Need of Services (OSAP)
Principal Investigator
\$1.7 Million (5 years)

- 1990-3/14/95 Treatment of Pediatric HIV Infection - ACTU, NIAID
Co-Investigator
\$899,952
- 1991-1992 Acupuncture Service for Pregnant Cocaine & Crack
Addicted Abusers - Principal Investigator
\$50,000 - March of Dimes
- 1988-1996 Northern Manhattan Women & Children HIV Demonstration
Project - HRSA
Project Director, The Presbyterian Hospital
\$122,467.00 / \$25,002.00, supplementary annual
- 1988-1995 Obstetrical Initiative Director, \$70,000 per year. Co-Director
Maternal Child HIV Program Presbyterian Hospital AIDS Center
- 1993-1995 Adult ACTU-CPMC. Co-Investigator; Women=s Program Director,
NIAID, NIH
- 1986-1990 Maternal Fetal Medicine Collaborative Network Grant
Co-Investigator
- Other Multiple Funded Grants from March of Dimes
And the NIH in the past years.

MAJOR PROGRAM DEVELOPMENT

- 1996 Center of Excellence for Women's Health, Executive Director,
GWU
- 1988-1995 Women and Children Care Center
The Presbyterian Hospital
Developed a Multi-Department Collaborative Research Center with
total funding of \$3,000,000 per year.
- 1987-1995 Perinatal Counseling Service
The Presbyterian Hospital (150,000)

- 1980-1982 Development of Certificate of Need for Regional Center for Tertiary Perinatal Care (Ph 12- East) (First in the State of N.Y.) State approval and implementation of program- \$1.5 million (Transition from Robert Wood Johnson program)
- 1975-1979 Developed Program and Obtained Funding for Regionalization Program for Perinatal Care
Finger Lakes Region
Strong Memorial Hospital
University of Rochester School of Medicine
Rochester, New York
March of Dimes. Funded \$70,000 per year.

ACADEMIC AND PROFESSIONAL ORGANIZATIONS

- 1997 – Present Maryland Ob Gyn Society Board of Directors
- 1996 – Present American Gynecological and Obstetrical Society
- 1996-Present Washington Academy of Medicine
- 1996-Present American Gynecological and Obstetrical Society
- 1995-Present Washington Gynecological Society
- 1993-Present American College of Physician Executives
- 1988-Present New York Academy of Medicine, Chairman, Obstetrical Section
1993-94
- 1983-Present Perinatal Research Society
- 1982-1995 New York State Association of Regional Perinatal Programs
(Founding member)
President - 1984
Treasurer - 1982-1983
- 1992-1994 Centers for Disease Control, National
Center for Infectious Diseases, Hospital
Infections Program Investigation and Prevention - Consultant

1991	Special Study Section Member HIV-Perinatal NIAID
1990	Site Visit Team - GCRC
1986-1995	New York State Perinatal Association
1980-1995	New York Obstetrical Society-Fellow
1995-Present	Corresponding Fellow N.Y. Obstetrical Society
1980-Present	New York Academy of Science
1979-1995	New York Perinatal Society
1978-Present	Society of Perinatal Obstetricians-Fellow
1977-1996	Medical Society of New York State
1977-Present	Society for Gynecological Investigation (Member)
1977-Present	American College of Obstetricians and Gynecologists
1973-Present	American Institute of Ultrasound in Medicine
1987-Present	International AIDS Society
1982-Present	Association of Professors of Gynecology and Obstetrics

PUBLICATIONS

1. Dawes GS, Fox HE, Leduc BM, Liggins GC, Richards RT. Respiratory movements and rapid eye movement sleep in the fetal lamb, J Physiol 1972;220:119.
2. Dawes GS, Fox HE, Richards RT. Variations in asphyxial gasping with fetal age in lambs and guinea pigs. J Exp Physiol 1972;57:131.

3. Scibetta J, Fox HE, Chik , Rosen MG. On correlating the fetal heart and brain in the sheep Am J Obstet Gynecol 1973;1 15:946.
4. Fox HE, Fetal breathing movements and ultrasound. Am J Dis Child 1976;130:127-9.
5. Fox HE, Steinbrecher M, Ripton B. Antepartum fetal heart and uterine activity studies: I. Preliminary report of acceleration and the oxytocin challenge test. Am J Obstet Gynecol 1976;126:61-9.
6. Hohler CE, Fox HE. Real-time gray-scale B-scan Ultrasound recording of human fetal breathing movements in utero. Ultrasound Med 1976;2.
7. Fox HE, Hohler CW. Fetal evaluation by real-time imaging. Clin Obstet Gynecol 1977;20:339-49.
8. Fox HE, Hohler CW, In JH, Steinbrecher M. 24-hour continuous observation of human fetal breathing using real-time B-scan. Ultrasound Med 1977;24.
9. Sokol RJ, D=Angelo LJ, Dilts PV, Pitkin RM, Fox HE. Education in maternal-fetal medicine: an early appraisal. Contemp Obstet Gynecol 1979;11:85-8.
10. Angel E, Fox HE, Inglis J, Logghe S, Pessel D, Steinbrecher M. Computer analysis of fetal breathing movements recorded by realtime ultrasound imaging. Ultrasound Med 1978;4:217-20.
11. Neuman MR, Roux JF, Patrick JE, Monro MG, Cudmore D, Owens S, Angel E, Fox HE, Pessel D. Evaluation of fetal monitoring by telemetry. Obstet Gynecol 1979;54:249-54.
12. Fox HE, Steinbrecher M, Pessel D, In J, Medvid L, Angel E. Maternal ethanol ingestion and the occurrence of human fetal breathing movements. Am J Obstet Gynecol 1978;132:354-8.
13. Angel ES, Fox HE, Titlebaum EL. Digital filtering and fetal heart rate variability. Computers Biomedical Research 1979;12:167-180.
14. Fox HE, Inglis J, Steinbrecher M. Fetal breathing movements in uncomplicated pregnancies: I. Relationship to gestational age. Am J Obstet Gynecol 1979;134:544-6.

15. Hess HM, Dickson J, Fox HE. Hyperfunctioning parathyroid carcinoma presenting as acute pancreatitis in pregnancy. J Rep Med 1980;25:83-7.
16. Mootabar H, Fox HE. Outcome of very low birth weight infants in a level 2 perinatal facility. Robert Wood Johnson Foundation, 1981.
17. Fox HE, Hohler CW, Steinbrecher M. Human fetal breathing movements after carbohydrate ingestion in fasting and nonfasting subjects. Am J Obstet Gynecol 1982;144:213-7.
18. Tropper RJ, Fox HE. Evaluation of antepartum fetal well being by measuring growth. Clin perinat Med 1982;9:271-83.
19. Hutson JM, Fox HE. Real time ultrasonography for the differential diagnosis of intrapartum fetal death. Am J Obstet Gynecol 1982;144:985-7.
20. Reece EA, Fox HE, Rapoport F. Factor VIII inhibitor: A cause of severe postpartum hemorrhage. Am J Obstet Gynecol 1982;144:985-7.
21. Paneth N, Fox HE. The relationship of Apgar score to neurological handicap. A survey of clinicians. Obstet Gynecol 1983;61:547-50.
22. Daniel SS, Stark RI, Zubrow AB, Fox HE, Husain MD, James LS. Factors in the release of vasopressin by the hypoxin fetus. Endocrinology 1983;113:1623-8.
23. Fox HE. Renovations of an obstetrical suite. Clin Perinat 1983;10:167-73.
24. Fox HE, Moessinger A. Fetal breathing movements and lung hypoplasia: Preliminary observations. Am J Obstet Gynecol 1985;151:531-533.
25. Bierman F, Yeh M-N, Swersky S, Martin E, Yochin H, Wigger H, Fox HE. Absence of the aortic valve: Antenatal and postnatal two-dimensional and doppler echocardiographic features. J Am Col Cardiology 1984;3:833-7.
26. Cholst I, Steinberg SF, Tropper PJ, Fox HE, Segre GV, Bilezikian JP. The influence of hypermagnesemia on serum calcium and parathyroid hormone levels in human subjects. N Eng J Med 1984;310:1221-5.
27. Rey HR, James LS, Fox HE, Driscoll JM, Shamsi H. A computer weighted scoring system for the prediction of fetal and neonatal outcome. Engineering Med Bio 1984;9:14-21.

28. Rey HR, Lee KI, Fox HE, Soulos T, James LS. A microcomputer controlled large character display system for intrapartum monitoring. *Engineering Med Bio* 1984;9:25-30.
29. Follen M, Fox HE, Levine RU. Cervical vascular malformation as a cause of antepartum and intrapartum bleeding in three DES progeny. *Am J Obstet Gynecol* 1985;153:890-1.
30. Schneider E, Fox HE. Fluorescent polarization values of amniotic fluid collected from the vagina after ruptured membranes. *Am J Obstet Gynecol* 1985;152:572-3.
31. Strobino R, Fox HE, Kline J, Stein Z, Susser M, Warburton D. Characteristics of women with recurrent spontaneous abortions and women with favorable reproductive histories. *AJPH* 1986;76:986-91.
32. Hutson JM, Driscoll JM, Fox HE, Driscoll YT, Steir ME, The effect of obstetric management on neonatal mortality and morbidity for infants weighing 700-1000 grams. *Am J Perinatol* 1986;2:255-61.
33. Tropper PJ, Goland RS, Wardlaw SL, Fox HE, Frantz AG. Effects of betamethasone on maternal plasma corticotropin releasing factor, ACTH and cortisol during pregnancy. *J Perinat Med* 1987;15:221-5.
34. Moessinger AC, Fox HE, Higgins A, Rey HR, Haideri MA. The presence of fetal breathing movements is not a reliable predictor of continued lung development in pregnancies complicated by oligohydramnios. *Lancet* 1987 (i) 1297-1300.
35. Buyon JP, Swersky S, Fox HE, Bierman FZ, Winchester RJ. Intrauterine therapy for presumptive fetal myocarditis with acquired heart block due to systemic Lupus Erythematosus: Experience in a mother with a predominance of SS-B (La. Antibodies) Arthritis and Rheumatism 1987;30:44-9.
36. Gonzalez FA, Fox HE. On line obstetrical record. *J Perinat Med* 1987;15:12 (Supplement).
37. Friedman SM, DeSilva LP, Fox HE. Hepatitis B screening in a New York obstetrics service. *Am J Public Health* 1988;78:308-10.

38. Farine D, Jackson U, Portale A, Baxi L, Fox HE. Pregnancy complicated by maternal spina bifida - Presentation of literature review and two cases. *J Rep Med* 1988;33:323-6.
39. Farine D, Fox HE, Jakobson S, Timor-Tritschl. Vaginal ultrasound for diagnosis of placenta previa. *Am J Obstet Gynecol* 1988;159:566-9.
40. Farine D, Fox HE, Timor-Tritsch I. Vaginal ultrasound for ruling out placenta previa. *Brit J Obstet Gynecol* 1989;96:117-9.
41. Gonzalez FA, Fox HE. The development and implementation of a computerized on-line obstetric record. *Brit J Obstet Gynecol* 1989;96:1323-7.
42. Berkowitz K, Stampf K, Fox HE, Baxi L. False negative syphilis screening during pregnancy. *N Eng J Med* 1990;322:270-1.
43. Lewis SH, Reynolds-Kohler C, Fox HE, Nelson JA. Detection of HIV Type I in Trophoblast, villous Hofbauer Cells and Hematologic Precursors in Eight Week Embryos. *Lancet* 1990;335:565-8.
44. Warren W, Golland R, Wardlaw D, Stark R, Fox HE, Conwell I. Elevated maternal plasma corticotropin releasing hormones in twin gestation. *J Perinat Med* 1990;18:39.
45. Farine D, Newhouse J, Owen J, Fox HE. Magnetic resonance imaging and computed tomography scan for the diagnosis of acute fatty liver pregnancy. *Am J of Perinatol* 1990;7:316-8.
46. Matera C, Warren WB, Moomjy M, Fink DJ, Fox HE. Prevalence of use of cocaine and other substances in an obstetric population. *Am J Obstet Gynecol* 1990;163:797-801.
47. Patrick SL, Fox HE. Pregnancies in human immunodeficiency virus-infected sex partners of hemophilic men. *Ped AIDS HIV Infection* 1991;2:95-6.
48. Brown GM, Fox HE. Pharmacokinetic disposition of zidovudine during pregnancy. *Peds AIDS HIV Infection* 1992;3:32-4.
49. Sperling RS, Stratton P, O'Sullivan MJ, Boyer P, Watts DH, Lambert JS, Hammill H, Livingston EG, Gloeb DJ, Minkoff H, Fox HE. A survey of Zidovudine

use in pregnant women with human immunodeficiency virus infection. N Eng J Med 1992;336:857-61.

50. Fox HE, Badalia SS. Fetal movement in response to vibro-acoustic stimulation. A review. Obstet Gynecol Survey 1993;48:707-13.
51. Fox HE, Badalian SS. Ultrasound prediction of fetal pulmonary hypoplasia in pregnancies complicated by oligohydramnios and in cases of congenital diaphragmatic hernia: A review. Am J of Peratology 1994;11:12 104-107.
52. Badalian SS, Chao CR, Fox HE, Timor-Tritsch IE. Fetal breathing related nasal fluid flow velocity in uncomplicated pregnancies. Am J Obstet Gynecol 1993;169:563-7.
53. Fox HE, Badalian SS, Timor-Tritsch IE, Marks F, Stolar CJH. Fetal upper respiratory function in cases on antenatally diagnosed congenital diaphragmatic hernia: Preliminary observations. Ultrasound in Obstet Gynecol 1993; 3:164-7.
54. Jackson UC, Fox HE, Owen J, Friedman KD. The Administration of Antithrombin III in the Management of Severe Pre-eclampsia: A Pilot Study. The Journal of Maternal/Fetal Medicine 1992; 1:308-312.
55. Kennedy WA, Hensle TW, Reiley EA, Fox HE, Haus T. Pregnancy After Orthotopic Continent Urinary Diversion. Surgery, GYN & OBS, October, 1993; Vol 177, 405-409.
56. Patrick S, Wight TC, Fox HE, Ginsberg HS. Human Immunodeficiency Virus Infection on Early Passage Cervical Epithelial Cultures. International Journal of STD & AIDS 1993; 4: 341-345.
57. Badalian SS, Fox HE, Chao CR, Timor-Tritsch IE, Stolar CJH. Fetal Breathing Characteristics & Postnatal Outcome in Cases of Congenital Diaphragmatic Hernia. Am J Obstet Gynecol 1994;181:930-6.
58. White A, Andrews E, Fox HE, et al. Birth outcomes following zidovudine therapy in pregnant women. MMWR 1994;43 (no.22): 409-416.
59. Fox HE. Apgar: A Commentary. P&S Medical Reivew. 1994; 1:26-7.

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- April 30, 1998 Kardash Lecture, Managed Care in High Risk Obstetrics - Outcomes
- May 11, 1998 Epilepsy in Women: Obstetric and Gynecologic Concerns
ACOG Meeting, New Orleans, Louisiana
- Sept 9, 1998 International Congress of Gynecology and Obstetrics
Cesarean in the New Millennium and HIV Infection in Pregnancy
- May 23, 2005 VHA Central Captive Insurance and Risk Management Symposium
Innovations in Ob/Gyn and Case Reviews, Bloomington Indiana
- October 30, 2005 David A. Nagey Lecture, ACOG District IV Meeting, Cabo San Lucas