IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ALBERT BURKHART, a Minor, By NEDRA BURKHART, Guardian Plaintiff	:	**No. 01-00310**
vs.	:	**Civil Action - Law**
PHILLIP BYLER, M.D.; CHARLES LAMADE, M.D. LYCOMING OBSTETRICS & GYNECOLOGY; ASSOCIATES, P.C.; CORNERSTONE FAMILY HEALTH, P.C.; THE WILIAMSPORT HOSPITAL and SUSQUEHANNA HEALTH SYSTEM, Defendants	:	**Defendants' Motion in Limine re: supplemental expert reports**

ORDER

AND NOW, this 12th day of March 2003, the Court DENIES the Defendants' Motion in Limine regarding the supplemental experts reports of Donna Nealon and Warren Cohen. The Court does not believe there is any prejudice to the Defendants as these reports were written in response to issues raised in the defense experts' reports. With respect to Dr. Cohen's statement that the forces that caused the brachial plexus injury would have been exerted by the physicians' pulling upon the head and neck during the attempt to deliver the head and shoulders, the Court notes that the first paragraph on page 2 of his original report alluded to shoulder dystocia developing which required "downward and fundal pressure." Dr. Cohen also refers to traction forces on the

brachial plexus in the first sentence of his third conclusion. Even if the defense believed these forces related to the vacuum extraction given the rest of the language in that conclusion, the Court finds the issue of traction forces was raised by Plaintiff's other expert, Dr. Jones, in his original report, so the defense should not be surprised or unprepared to meet this theory. See Report of J. Stephen Jones, M.D. at p.4.[1]

The Defendants are opposed to Ms. Nealon stating any expert medical opinion when she is not qualified to do so. This Order only covers the timeliness of the expert reports and the lack of prejudice from their late filing. It does not preclude the defense from making trial objections to Ms. Nealon's testimony whether they relate to her qualifications or any other routine trial objections such as leading questions, relevancy, hearsay and the like.

By The Court,

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Kenneth D. Brown, Judge

1 Dr. Jones stated, "Additionally, there is a description of fundal pressure with traction on the fetal head. Fundal pressure combined with traction on the fetal head leads to impaction of the shoulder and greater risks for neck nerve injury. Fundal pressure combined with traction on the head is contraindicated in the setting of a shoulder dystocia."