

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

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

ORDER

AND NOW, this 12th day of March 2003, upon consideration of the Defendants' Motions in Limine regarding a shoulder dystocia animation videotape and a shoulder dystocia drill videotape, it is ORDERED and DIRECTED as follows:

1. The Court DENIES the Defendants' motion with respect to the animation videotape.

2. With respect to the dystocia drill videotape, the Court GRANTS the Defendants' Motion in part and DENIES the motion in part. The Court is concerned with the words on the screen on several occasions being more testimonial than demonstrative. The Court would allow the tape to be used as demonstrative evidence. As long as the Plaintiff's witnesses can testify that the tape accurately depicts the

various maneuvers, the Court does not believe there is an authentication problem with either tape as they are not being admitted as substantive evidence, but merely to illustrate how shoulder dystocia and nerve injury occur, and the various maneuvers that can be used to alleviate shoulder dystocia. Specifically, the Court would not allow the Plaintiffs to show the beginning of the tape until it reaches the diagram-type illustration of shoulder dystocia (the baby getting stuck and red areas on his shoulders). The Court notes that its VCR counter would not go down to zero and the tape began around 0082. The shoulder dystocia depiction occurred from counter numbers 0269 through 0298. The Court would not permit the scenes of the doctor talking or the lists of the maneuvers, which seem to imply an order in which the maneuvers should be conducted. The Plaintiffs could resume showing the tape at the point where the McRoberts maneuver begins, which was at approximately 0366 on our counter. At approximately 0383, an article appeared on the screen. The Court would not permit this portion of the tape to be played. At approximately 0400, the tape depicts an episiotomy. The Plaintiffs may resume showing the tape at this point, even though there are words on the screen. The Plaintiffs may show the suprapubic pressure and

intravaginal pressure maneuvers. The Plaintiffs cannot show the list of primary maneuvers and the doctor talking that occurs after these maneuvers and before the delivery of the posterior arm. This occurred around number 0450 on the counter. The Plaintiffs may show the delivery of the posterior arm and the Woods screw maneuver (through approximately counter number 590).¹ The scene with the words to the effect that shoving scapulas saves shoulders to the end of the video would not be permitted.

By The Court,

Kenneth D. Brown, Judge

cc: John Kusturiss, Esquire
David Bahl, Esquire
Darryl Wishard, Esquire
Mark Perry, Esquire
Work File

¹ The Court will leave the decision regarding whether to show birth footage as opposed to diagram-type animations of the maneuvers up to the Plaintiffs. The Court would permit the Plaintiffs to show both if they wish; however, the Plaintiffs may wish to consider removing the birth footage when there is a diagram-type illustration as the birth footage may make some jurors uncomfortable.