

1 MURRIETA, CALIFORNIA; WEDNESDAY, JANUARY 6, 2010

2 DEPARTMENT NO. S304

HON. F. PAUL DICKERSON, JUDGE

3 THE COURT: All right. Let's go on the record in  
4 SWF 015286. The parties are present before the Court. We are  
5 in the presence of the jury.

6 Good morning, everyone.

7 THE JURY: Good morning.

8 THE COURT: Mr. Walsh.

9 MR. WALSH: Good morning, your Honor. Thank you.

10 Your Honor, at this time the People would call  
11 Dr. Kathleen Hurwitz to the stand.

12 THE CLERK: Please remain standing and raise your  
13 right hand. You do solemnly state that the evidence you shall  
14 give in this matter shall be the truth, the whole truth, and  
15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Please have a seat.

18 Will you please state your full name and spell it for  
19 the record.

20 THE WITNESS: It's Kathleen Hurwitz. Kathleen,  
21 K-a-t-h-l-e-e-n, Hurwitz, H-u-r-w-i-t-z.

22 THE COURT: Mr. Walsh, you may proceed.

23 MR. WALSH: Thank you, your Honor.

24 KATHLEEN HURWITZ,

25 called as a witness by the People,  
26 was examined and testified as follows:

27 DIRECT EXAMINATION

28 BY MR. WALSH:

1 Q Good morning, Doctor.

2 A Good morning.

3 Q What do you do for a living?

4 A I'm a pediatrician.

5 Q How long have you been a pediatrician?

6 A Since 1990.

7 Q And did you do any sort of other medical work before  
8 1990 becoming a pediatrician?

9 A Um, no. I went through medical school and then I had  
10 some previous jobs as a secretary in a hospital.

11 Q Okay.

12 MR. BROWN: Your Honor, if it will help assist the  
13 Court, we're happy to stipulate that she is a physician, that  
14 she's qualified to testify here today, and she's a treating  
15 physician of Kerianne Bradley.

16 THE COURT: All right. That's fine.

17 But, Mr. Walsh, do you want to go through her  
18 background nonetheless?

19 MR. WALSH: Briefly. That's fine.

20 THE COURT: Okay. Go ahead.

21 Q BY MR. WALSH: I just was going to ask you where you  
22 went to medical school.

23 A The University of California at Irvine.

24 Q Okay. And during your time as a pediatrician -- well,  
25 do you have an office here in Temecula, Murrieta?

26 A Yes, I do.

27 Q And how long have you had that office? Is it in  
28 Murrieta or Temecula?

1 A It's in Murrieta --

2 Q How long?

3 A -- for six years.

4 Q Okay. And did you have an office of your own before

5 that?

6 A I practiced for a group in Orange County previously.

7 Q I'm going to direct your attention to a patient of

8 yours named Kerianne Bradley. Do you recall having a patient

9 named Kerianne Bradley?

10 A I do.

11 Q And at your medical office, I guess, are there a

12 couple different types of visits? In other words, for

13 children, let's say between the ages of birth and two years

14 old, are there something called well visits?

15 A Correct.

16 Q What are well visits?

17 A Well visits are a time where I see the patient because

18 the child is not ill and I'm looking at growth, the

19 development, behavior, and providing preventive care such as

20 immunizations.

21 Q Are there also visits called ill visits, I guess?

22 A That is correct.

23 Q Is that the right term for them?

24 A Correct.

25 Q And what are those?

26 A Those are visits that are specifically requested by a

27 parent because they believe the child is ill.

28 Q And now for the -- you mentioned for the well visits,

1 you just said you see the child. Do you see the child on every  
2 well visit?

3 A Um, no, that's not always correct. I have a nurse  
4 practitioner who occasionally sees the child, but predominantly  
5 I see the children for well visits.

6 Q And on ill visits, do you always see the child or does  
7 the nurse practitioner sometimes see the patient as well?

8 A It varies.

9 Q Is there sort of a guideline for a nurse practitioner  
10 seeing the patient? Is there a time when the nurse  
11 practitioner would then come to you and ask you to also see the  
12 patient for, I guess, a second opinion?

13 A I think that happens probably 10 to 20 times a day.  
14 That is correct.

15 Q Is it -- I think we heard -- Ms. Miracle was here  
16 earlier in the trial and she talked about when she'd see a  
17 patient and if they're within normal limits or something like  
18 that. And if the patient went outside the normal limits, she  
19 would consult you. Does that sound kind of like the practice  
20 at your office?

21 A Very much so.

22 Q And so I just want to go kind of briefly through  
23 Kerianne's time with you. Were you her doctor when she was  
24 born?

25 A I was.

26 Q And did you continue to see her -- without going into  
27 detail, did she continue -- well, before you testified today,  
28 albeit briefly, did you have an opportunity to review a copy of

1 your medical records regarding Kerianne Bradley?

2 A I did not review them until just outside the  
3 courtroom.

4 Q Okay. Now, you run a pretty busy office, right?

5 A That is correct.

6 Q Okay. Do patients come in to you -- I mean, when I  
7 think of my doctor, I think about 9:00 to 5:00. Do your hours  
8 extend a little beyond that?

9 A Um, I'm in the office, um, usually from 8:00 to 5:30  
10 and I'm in the hospital before 8:00 in the morning, usually  
11 after 5:30, and I carry, um, a cell phone so the patients have  
12 access to me 24 hours a day.

13 Q Okay. So I want to talk to you for just a minute  
14 about some of Kerianne's medical history at your office and if  
15 it's something you haven't had a chance to look at, just let us  
16 know, please. According to your review of your medical  
17 records, did Kerianne come to your office and attend her well  
18 visits?

19 A Yes.

20 Q Receive her immunizations as they were prescribed?

21 A Yes.

22 Q And now I want to show you what's been marked as  
23 People's No. 21. I'm just going to show this document to you  
24 and ask you if it looks familiar to you.

25 A It does look familiar.

26 Q Does that appear to be a photocopy of a medical record  
27 indicating a visit by Kerianne Bradley to your office --

28 A That is correct.

1 Q -- on February 2d, 2006?

2 A Correct.

3 Q And based on the signature in the lower right-hand  
4 corner, was that a visit where she was seen by your nurse  
5 practitioner, Angelin Miracle?

6 A Correct.

7 Q And as far as a patient diagnosed with AGE -- and I  
8 know I'm going to butcher this -- acute gastroenteritis (sic);  
9 is that right?

10 A Acute gastroenteritis.

11 Q Okay. I was close. A patient who's about 14, 15  
12 months old who's diagnosed with this as, I guess, the illness,  
13 what would you prescribe that the parent do for that child?

14 A What I would prescribe would depend on the child's  
15 history and physical exam. And in a child who is 16 months old  
16 who presents with vomiting and a fever, I would be looking for  
17 signs and symptoms of dehydration and if none were present, the  
18 correct treatment would be observation and fluid hydration.

19 Q Okay. And is it your normal practice in your office  
20 for a child of 14 or 15 months old that comes in with a  
21 diagnosis of AGE to be referred out for blood work?

22 A It would not be our custom and practice to do that  
23 unless we suspected some other illness or some other  
24 accompanying infectious process.

25 Q Okay. And with the symptoms of a fever and vomiting,  
26 would that be sort of within the range for what AGE presents  
27 with?

28 A Correct.

1 Q Now, I want to talk to you a little bit about some of  
2 Kerianne's history with you and that is according to your  
3 medical records. And again if you need to see them to refer to  
4 them, I can show them to you. Do you recall if Kerianne  
5 Bradley visited your office on April 11th of '05, with a  
6 complaint of cough or sickness?

7 A Um, I don't recall that but in the medical record I  
8 reviewed I did see that.

9 Q Okay. And during that particular appointment, was she  
10 prescribed any sort of medication for that sickness?

11 A I would have to see the record in order to answer that  
12 question.

13 Q Okay. Are you familiar with a drug called Albuterol?

14 A Yes, I am.

15 Q And what is Albuterol given for?

16 A Albuterol is a smooth muscle relaxer that is a  
17 bronchodilator as well and is used in children and adults for  
18 symptoms of airway closure.

19 Q Can it be given for someone who has, I guess, a cold  
20 or some temporary respiratory distress?

21 A It can be used for a child who has physical findings  
22 of airway closure which is either cough or wheezing.

23 Q Is there a -- how does Albuterol come? What forms  
24 does it come in?

25 A It comes in an inhaled form, a liquid form, and a  
26 nebulized form, which is another version of an inhaled form.

27 Q I'm trying to find the medical record for you of April  
28 of '05.

1 MR. WALSH: May I approach, your Honor?

2 THE COURT: Of course.

3 MR. WALSH: And I don't know that we need to have this  
4 marked, but I can have the witness identify what it is, if  
5 that's okay with the Court and counsel.

6 THE COURT: That's fine. Go ahead.

7 Q BY MR. WALSH: Doctor, I'm showing you what looks like  
8 another kind of printout from -- it has your name at the top of  
9 it. Does that look like a visit for Kerianne Bradley  
10 April 11th of '05?

11 A It does.

12 Q And does that record indicate that she came with a --  
13 well, what does it say she came -- was her complaint?

14 A A cough.

15 Q According to that record, did you see her?

16 A Yes, I did.

17 Q And did you prescribe Albuterol for her during that  
18 visit?

19 A It appears that I did.

20 Q Does it say what type?

21 A It can be inferred from the sig- -- that it was a  
22 quarter teaspoon three times a day for ten days and that would  
23 be the liquid form.

24 Q All right. And I'm going to show you a picture real  
25 quick here, People's 106. It's been identified as a bottle  
26 from a prescription. Does that look like a bottle that would  
27 contain the liquid form of Albuterol?

28 A It does.



1 Q And in your review of medical records, do you recall  
2 if Kerianne Bradley visited your office on November 21st of  
3 2005, with a complaint of a cough or cold? Do you remember?

4 A When I reviewed the records, I do remember writing  
5 that.

6 Q Okay. I'm going to show you again another chart here,  
7 I guess, from your office. Does that reflect a visit by  
8 Kerianne Bradley on November 21st of '05?

9 A It does.

10 Q Okay. And what was her complaint that brought her to  
11 your office on that date? Do you recall?

12 A Vomiting, diarrhea, pulling at her ear, and a cough.

13 Q And did you prescribe Albuterol on that date?

14 A I did.

15 Q And did you actually see her on that date?

16 A I did.

17 Q And was that also, I guess, the liquid form of  
18 Albuterol you prescribed?

19 A It appears to be so.

20 Q Okay. Did you ever make some sort of official  
21 diagnosis that Kerianne Bradley had a habitual asthma problem?

22 A No.

23 Q And are you aware of any other doctors -- based on  
24 your medical records and your recollection of Kerianne Bradley  
25 as a patient, do you know anything about any other doctors  
26 prescribing any sort of breathing remedy for Kerianne Bradley?

27 A Not that I recall.

28 Q Okay. Thank you very much.

1 MR. WALSH: I have no other questions, your Honor.

2 THE COURT: Thank you, Mr. Walsh.

3 Mr. Brown.

4 MR. BROWN: Thank you, sir.

5 CROSS-EXAMINATION

6 BY MR. BROWN:

7 Q Good morning, Doctor.

8 A Good morning.

9 Q I'll try to make this fast. It sounds like you've got  
10 to go. Nice meeting you this morning, by the way.

11 Do you have any knowledge of any other doctor  
12 prescribing Albuterol for Kerianne Bradley?

13 A Not that I recall.

14 Q Do you have any knowledge of any other physician  
15 prescribing a mask, a breathing mask for Kerianne Bradley?

16 A Not that I recall.

17 Q Do you have any knowledge of Kerianne Bradley --  
18 people being around her indicating that the child had been  
19 wheezing in December of '05?

20 A Not that I recall.

21 Q Okay. Do you have any information relating to any  
22 other physician having the child undergo breathing tests?

23 A Not that I recall.

24 Q Do you have any information as to who was around this  
25 child on February 2d, 2006?

26 A No.

27 Q You were not present during the examination of  
28 Kerianne Bradley on February 2, 2006, were you?

1 A I would have to ask you what you're referring to  
2 specifically.

3 Q Thank you. There's a -- you just referenced an  
4 Exhibit 21, and I can share this with you again.

5 A No.

6 Q You were not -- let me -- excuse me. You were not  
7 present during this examination, were you?

8 A I was not present in the room; I was present in the  
9 office.

10 Q Well, right. But you weren't involved in this  
11 examination, were you?

12 A Not that I recall.

13 Q Okay. Down here on discharge, it's got your  
14 signature, that little circle thing?

15 A That is not my signature.

16 Q All right. Let me make sure that we're talking about  
17 the same thing here. I'm referencing this.

18 A That is not my signature.

19 Q All right. Let me put this on the overhead.

20 MR. BROWN: Is it ready to go?

21 THE DEPUTY: Yes, sir.

22 MR. BROWN: Thank you.

23 Q Now, Doctor, this is a little awkward because you have  
24 to turn around. But we were previously advised that under the  
25 word discharge where you have the circular --

26 A Uh-huh.

27 Q -- we were told that that was your signature. Is that  
28 not your signature?

1           A     I think it looks a lot like my signature, but I would  
2 have no reason and it would not be my custom and practice to  
3 sign that paper if I had not seen the patient.

4           Q     All right. So you just got done telling me when I was  
5 at the witness table there with you that that is not your  
6 signature, correct?

7           A     As far as I know, that is not my signature. I don't  
8 recall signing it and I would not see any reason why I would do  
9 that.

10          Q     Do you know if there's any kind of regulation that  
11 requires you to sign off on a medical evaluation that's  
12 performed by your physician's assistant or nurse practitioner?

13          A     That is a very good question and I'm not required to  
14 sign them on a routine basis.

15          Q     I don't know what you mean by routine basis then, I  
16 guess. I'm glad -- thanks for saying I asked a good question.

17          A     You're welcome. Um, I am not required, um, from any  
18 regulatory standpoint that I know of when I have had a nurse  
19 practitioner for a certain period of time to sign off on each  
20 and every one of her charts. They get reviewed periodically  
21 and I do co-sign them if I see the patient with her, but I do  
22 not routinely sign them.

23          Q     All right. But we're clear this is not your  
24 signature, correct?

25          A     Not that I can recall.

26          Q     Who would have authority to sign your name to a  
27 medical chart without your knowledge?

28          A     No one.

1 Q Now, you don't know anything about what was presented  
2 by way of -- well, let me -- that's not going to be a good  
3 question and I don't want you to tell me it's not. Let me  
4 withdraw that and see if I can figure out another way to ask  
5 it.

6 You don't know who was around that child on  
7 February 2d of 2006, do you?

8 A No.

9 Q Okay. Or February 1st?

10 A Well, let me ask you, I'm not sure what you mean who  
11 was around that child.

12 Q Well, who was caretaking the child on February 2d of  
13 2006?

14 A Like did the mother bring the child in? Did the  
15 grandmother bring the child in? I don't know.

16 Q Okay. You don't know any of those things --

17 A My nurse practitioner was around the child.

18 Q Okay. Now, on this note -- and, again, I apologize.  
19 It's awkward because you have to turn around -- there's a  
20 couple -- and I can point these out right here and here. Can  
21 you read those from there or --

22 A Um, it's a reference to whether she has a cough or a  
23 runny nose and I can't tell if those are minuses or pluses.  
24 Those look like minuses now.

25 Q And what would a minus be?

26 A No rhinorrhea, no cough.

27 Q So there's no runny nose?

28 A And no cough.

1 Q And no cough on February 2d of 2006, correct?

2 A Correct.

3 Q Okay. And do you know whether or not a fever is a  
4 symptom of a head injury?

5 A A fever can be a symptom of a head injury.

6 Q And can vomiting be a symptom of a head injury?

7 A Correct.

8 Q Lethargy can be a symptom of a head injury?

9 A Yes.

10 Q Excessive sleeping can be symptoms of a head injury?

11 A Yes.

12 Q I think that's all that I had for you.

13 MR. BROWN: May I check one second, your Honor,  
14 please?

15 THE COURT: Of course.

16 MR. BROWN: Thank you.

17 (Pause in the proceedings.)

18 MR. BROWN: Okay. That's all. Thank you, Doctor. I  
19 appreciate it.

20 THE COURT: Thank you, Mr. Brown.

21 Mr. Walsh.

22 MR. WALSH: Thank you, your Honor. I don't have any  
23 additional questions.

24 THE COURT: Doctor --

25 THE WITNESS: Oh, I have to sit down?

26 MR. WALSH: That's fine. I don't have anymore  
27 questions. You're fine.

28 THE WITNESS: I get to go?

1 MR. WALSH: Yeah. I know you want to get back to the  
2 office.

3 THE WITNESS: Nothing personal.

4 THE COURT: I think I didn't have anymore questions.  
5 Thank you, Doctor.

6 THE WITNESS: Thank you.

7 MR. WALSH: Your Honor, can we talk to you real quick  
8 at sidebar about scheduling?

9 THE COURT: Of course.

10 MR. WALSH: Thank you.

11 (Discussion held at sidebar, not reported.)

12 THE COURT: Mr. Walsh.

13 MR. WALSH: Thank you, your Honor. At this time the  
14 People call -- your Honor, at this time the People call  
15 Detective Reece Burchett.

16 THE COURT: Okay.

17 THE CLERK: Please remain standing and raise your  
18 right hand. You do solemnly state that the evidence you shall  
19 give in this matter shall be the truth, the whole truth, and  
20 nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. Please have a seat.

23 Will you please state your name and spell it for the  
24 record.

25 THE WITNESS: Reece Burchett, R-e-e-c-e,  
26 B-u-r-c-h-e-t-t.

27 THE COURT: Mr. Walsh, you may proceed.

28 MR. WALSH: Thank you, your Honor.