*DE-IDENTIFIED DEPOSITION OF A GYNECOLOGIST
IN AN UNNECESSARY HYSTERECTOMY CASE*

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2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF BRONX
-- X
4
and ,
5
Plaintiffs,
6
-against-
7
, M.D. , M.D. and
8 HOSPITAL,

9 Defendants.

10 -- X

11
202 Mamaroneck Avenue
12 White Plains, New York

13 August 8, 2002
11:15 a.m.
14

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16 EXAMINATION BEFORE TRIAL of one of the

17 Defendants, , M.D.

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2 A P P E A R A N C E S:

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2 S T I P U L A T I O N S

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4 It is hereby stipulated and agreed

5 by and between counsel for the respective

6 parties hereto that all rights provided by the

7 C.P.L.R., including the right to object to

8 all questions except as to form, or to move to

9 strike any testimony at this examination, are

10 reserved, and, in addition, the failure to

11 object to any question or to move to strike any

12 testimony at this examination shall not

13 be a bar or a waiver to doing so at, and is

14 reserved for, the trial of this action;

15 It is further stipulated and agreed by

16 and between counsel for the respective parties

17 hereto that this examination may be sworn to by

18 the witness being examined before a Notary

19 Public other than the Notary Public before whom

20 this examination was begun, but the failure to

21 do so, or to return the original

22 of this examination to counsel, shall not be

23 deemed a waiver of the rights provided by Rules

24 3116 and 3117 of the C.P.L.R., and shall be

25 controlled thereby;

1

2 It is further stipulated and agreed by

3 and between counsel for the respective parties

4 hereto that this examination may be utilized

5 for all purposes as provided by the C.P.L.R.;

6 It is further stipulated and agreed by

7 and between counsel for the respective parties

8 hereto that the filing and certification of the

9 original of this examination shall be and the

10 same hereby are waived;

11 It is further stipulated and agreed by

12 and between counsel for the respective parties

13 hereto that a copy of the within examination

14 shall be furnished to counsel representing the

15 witness testifying without charge.

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18 ** ** **

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2 (Thereupon, the office chart was

3 marked as Plaintiff's Exhibit 1 for

4 identification)

5 (Thereupon, the original

6 hospital record was marked as

7 Plaintiff's Exhibit 2 for

8 identification)

9 , M.D.,

10 called as a witness, having been first

11 duly sworn, was examined and testified

12 as follows:

13 EXAMINATION BY

14 MR. OGINSKI:

15 Q State your name for the record,

16 please.

17 A , M.D.

18 Q State your address for the record,

19 please.

20 A , ,

21 New York .

22 MR. OGINSKI: By Counsel, just for

23 the record, Mr. has indicated

24 they will accept service for Dr. .

25 MR. : Yes, absolutely.

1 , M.D.

2 Q Good morning, Doctor.

3 What is a cone biopsy?

4 A A cone biopsy means removing part

5 of the cervix which contains cancer.

6 Q What is a LEEP?

7 A LEEP is a loop electrical excision

8 procedure which is the modern way of a cone

9 biopsy. It contain less invasive way of

10 removing cancer part of the cervix.

11 Q Less invasive than a cone?

12 A Yes.

13 Q Is that done in the office?

14 A Yes, most of the time.

15 Q What is a Pap smear?

16 A Pap smear is the most common way to

17 screen cancer cell of the cervix. Usually we

18 use the brush and wooden spatula to scrape the

19 squamous cell off the superficial part of the

20 cervix. We put it on a slide so we look at the

21 cells to see if they contain any malignant

22 cell.

23 Q Is it customary for you in the

24 office to review the cells before sending them

25 out to the pathologist for review?

1 , M.D.

2 A No.

3 Q When you obtain the cone biopsy

4 specimen, do you send that out to a pathologist

5 for review?

6 A Yes.

7 Q Do you do the same with any

8 specimens you've obtained during a LEEP

9 procedure?

10 A You grossly look at the specimen.

11 You do not look under them under microscope, is

12 that what you meant?

13 Q I'll rephrase the question.

14 When you do a LEEP procedure, are

15 there times when you actually withdraw and

16 obtain a specimen from the area that you are

17 LEEPing?

18 A Right.

19 Q When you obtain that specimen, do

20 you then send it off to pathology for

21 evaluation?

22 MR. : And your question is in

23 general?

24 MR. OGINSKI: In general.

25 A Yes.

8

1 , M.D.

2 Q What is an ECC?

3 A Endocervical curettage.

4 Q What is that?

5 A The cervix has a canal which the

6 canal connecting into the uterus that's called

7 a endocervical. Usually we scrape the canal

8 cell because sometimes the cancer can be hidden

9 inside of a canal.

10 Q You came here today with your

11 original office chart for , correct?

12 A Correct.

13 Q Did you bring any other records

14 with you relating to ?

15 A Besides the gift she gave me for

16 appreciation after surgery, no.

17 Q What did she give you?

18 A She gave me -- I just had a baby at

19 that time. She gave me sweater and socks.

20 Q Congratulations.

21 A Thank you.

22 Q Are your billing statements

23 contained within the patient's office chart?

24 A Only for her chart because usually

25 for other patients, no, because...

1 , M.D.

2 Q I'm only concerned about

3 . All of my questions will either relate

4 to specifically or your general

5 custom and practice.

6 In this instance did you bring

7 's billing records with you?

8 A Yes.

9 Q Are they contained within your

10 records?

11 A Yes.

12 Q Do you have any other records in

13 any other location other than what you brought

14 with you today regarding ?

15 MR. : By Counsel, I have

16 removed from the file any

17 correspondence between my office and

18 the doctor.

19 MR. OGINSKI: Fine.

20 Q Separate from that do you have

21 any other documents or records relating to any

22 treatment you may have rendered to

23 other than what's contained in the records you

24 brought with you?

25 A Can you rephrase that question?

1 , M.D.

2 Q Sure.

3 A Because they also contain some

4 records from other doctors which provide...

5 Q Fair enough.

6 A Is that what you meant?

7 Q At some point in time you received

8 certain records from 's prior

9 treating doctors, correct?

10 A Right, exactly.

11 Q Other than what you already have in

12 this office chart, do you have any other

13 records regarding anywhere else?

14 A No.

15 Q Do you have an independent memory

16 of ?

17 A Very well.

18 Q Can you describe for me what she

19 looks like and what you recall her physical

20 characteristics were?

21 A She appeared to be about 5'6",

22 skinny, petite, short hair. At that time she

23 dyed her hair blonde, brown eyes. She speaks

24 perfect English.

25 Q Did you meet her husband?

2 A Yes, I met her mother too.

3 Q Did you offer a cone

4 biopsy at any time before you performed the

5 hysterectomy?

6 A Yes.

7 Q When?

8 A July 1st in my office I remember

9 vividly I offer -- after I reviewed pathology

10 with her from the LEEP procedure and I offer

11 her because the margin was not clear so I offer

12 her another deeper surgery, more invasive, in

13 the hospital.

14 And I still remember vividly she

15 was sitting. She jumped out her chair. She

16 was jumping on her feet. She said, "No, no,

17 no, you don't understand. My mother has a

18 gynecological problem. I have a family history

19 of GYN problems. I want you to take everything

20 out. I want to come back every year. You tell

21 me my Pap smear is normal every year."

22 MR. OGINSKI: Read it back.

23 (Record read)

24 Q This deeper surgery, more

25 invasive as you've mentioned, is that what you

1 , M.D.

2 considered a cone biopsy?

3 A Yes.

4 Q Who was present during this

5 conversation?

6 A Just herself. I couldn't remember

7 but I just remember herself at this time.

8 Q You had already done a LEEP

9 procedure the week before, correct?

10 A Right.

11 Q That was done on June 24, 2000?

12 A That's right.

13 Q Did you use the words "cone biopsy"

14 when you spoke to on July 1st?

15 A I believe so because these two

16 terms are sometimes interchangeable in medical

17 textbooks.

18 Q What terms are interchangeable?

19 A LEEP cone biopsy. LEEP and cone

20 biopsy. Sometimes we call them LEEP cone

21 biopsy.

22 Q Do you consider the cone biopsy and

23 the LEEP procedure to be one and the same?

24 A Not technically.

25 Q Are you board certified in

2 obstetrics and gynecology?

3 A Yes.

4 Q When were you board certified?

5 A 1999.

6 Q Are you board certified in any

7 other field of medicine?

8 A No.

9 Q Are you licensed to practice

10 medicine in the State of New York?

11 A Yes.

12 Q When were you licensed?

13 A 1993, I believe.

14 Q Has your license to practice

15 medicine in the State of New York ever been

16 revoked or suspended?

17 A No.

18 Q Are you licensed in any other

19 state?

20 A No.

21 Q What else did you tell her about

22 the procedure that you mentioned you talked to

23 her about on July 1st?

24 MR. : Which procedure?

25 Note my objection.

1 , M.D.

2 MR. OGINSKI: I'll withdraw the

3 question.

4 Q When you told about

5 another deeper, more invasive procedure, what

6 else did you tell her, if anything?

7 MR. : You're talking about

8 the conversation on July 1, 2000?

9 MR. OGINSKI: Yes.

10 A Because her margin was not

11 clear following the LEEP, I offered her another

12 cone biopsy in the hospital. Hopefully, I

13 would be able to get out a margin.

14 But I did explain to her that her

15 Pathology Report showed there are glandular

16 involvement from the carcinoma in situ which is

17 more dangerous than just a regular carcinoma in

18 situ.

19 So I did offer her the cone biopsy.

20 Hopefully, we would be able to get the margin

21 clear.

22 But that still does not encompass

23 that the problem is cured. We still need to

24 follow you every year for Pap smear. So then

25 she said, "No, no, no, her mother had a

1 , M.D.

2 hysterectomy," I believe. She said that, "My

3 mother had hysterectomy. I would like you to

4 take them out."

5 Q Did you suggest to her that she

6 have a hysterectomy?

7 A No.

8 Q Why?

9 A She insisted that she have

10 hysterectomy.

11 Q Is there any particular reason why

12 you did not suggest or recommend a hysterectomy

13 at that time?

14 A I want to follow the steps. I want

15 to offer her a cone biopsy. I said to her if

16 the cone biopsy still showed margin not clear,

17 then we probably will go for the next step for

18 hysterectomy.

19 Q If the cone biopsy did show that

20 the margins were clear, what steps would you

21 have done at that point, if any?

22 A I would advise her her pathology

23 was with glandular involvement from the

24 carcinoma in situ. You probably need to have

25 very close follow-up every six months to a year

1 , M.D.

2 for Pap smear.

3 Q Doctor, was it customary back in

4 July and June of 2000 in your practice that

5 when you saw and evaluated a patient in your

6 office that you made notes about that visit in

7 the patient's records?

8 A Yes.

9 Q Why was that important to do?

10 A We always write the records.

11 Q For what reasoning?

12 MR. : Well, note my objection

13 to form.

14 You can answer.

15 Q For what reason do you maintain

16 office records for a patient who comes in to

17 see you and treat with you?

18 A To help us take care of her better

19 in the future. We have so many patients

20 sometimes we don't remember individual

21 recollection of patients.

22 Q In addition to yourself back in

23 June and July of 2000, did you have any other

24 associates or other physicians working in your

25 office?

1 , M.D.

2 A I wouldn't call that as associate.

3 I rent office from.

4 Q Do any other physicians in the

5 office in which you practice see and treat your

6 patients?

7 A No.

8 Q Keeping good office records are

9 important because you may not recall the next

10 time a patient returns what findings you had on

11 your examination the last time they had been

12 there, correct?

13 MR. : Note my objection to

14 form.

15 You can answer.

16 A Yes.

17 Q In addition to any examination

18 finding that you make from time to time you

19 will also record conversations or make notes

20 about conversations that you've had with the

21 patient, correct?

22 A Yes.

23 Q In addition you also record the

24 patient history?

25 A Yes.

18

1 , M.D.

2 Q And that's also important for you

3 as the treating physician to know what has

4 occurred to this patient in the past, correct?

5 A Yes.

6 Q I'd like you to turn, please, to

7 your July 1, 2000 office visit note. I'd like

8 you to read the entire note into the record.

9 If there are abbreviations too tell me what

10 they mean. When you're done with your note

11 I'll have some questions for you.

12 MR. : July 1st entry?

13 MR. OGINSKI: Correct.

14 A "Pathology error carcinoma in

15 situ with margin not clear on interior piece.

16 Glandular involvement in endocervix piece.

17 Plan number one, all risks and benefits

18 explained with patient. Patient choice to have

19 laparoscopic assisted vaginal hysterectomy for

20 definite treatment."

21 Q Is that your signature that appears

22 afterwards?

23 A Right.

24 Q On pathology you were referring to

25 the Pathology Report concerning the LEEP

1 , M.D.

2 procedure you had done the week earlier?

3 A Right.

4 Q Did you have any conversation with

5 the pathologist who interpreted those

6 specimens?

7 A Yes.

8 Q When did you have a conversation

9 with that pathologist?

10 A I believe it was a couple of days

11 after. That was June 27th, 28th. I can't

12 remember exactly the date.

13 Q What is the date of the Pathology

14 Report you're referring to?

15 A June 24th.

16 Q That's the date that this specimen

17 was sent to the lab?

18 A Correct.

19 Q Can you tell the date the report is

20 actually generated?

21 A June 27th of 2000.

22 Q Why did you have a conversation

23 with the pathologist who interpreted this

24 specimen?

25 A It's my customary practice.

20

1 , M.D.

2 Q On every case, every patient?

3 A Yes.

4 Q Every pathology specimen that you

5 submit do you speak to the pathologist

6 subsequently?

7 A To Hospital.

8 Q In the office in which you saw and

9 examined Mrs. , was it customary for you to

10 speak to the pathologist in every situation

11 where you submitted a specimen?

12 A Yes.

13 Q Who was it who you spoke to?

14 A This doctor, Dr. . He was

15 the covering physician for that time and I

16 spoke with him. I reviewed the slides together

17 with him.

18 Q Where?

19 A In Hospital.

20 Q What was the reason for reviewing

21 the slides with him?

22 A Just felt my learning purpose is

23 always good practice to see what the real

24 pathology shows on the slide instead of just

25 taking the words.

1 , M.D.

2 Q When was it that you personally

3 examined this patient's slides?

4 A I believe that I examined the

5 slides with him June 27th.

6 But when the other director came

7 back from vacation, Dr. , I also reviewed

8 the slides again. I couldn't remember the

9 date.

10 Q You're now referring to another

11 Pathology Report which has a different date

12 than that specimen for the hysterectomy,

13 correct?

14 A Right, but before that. Before the

15 hysterectomy I believe I examined slides

16 together with Dr. . This doctor was just

17 covering doctor.

18 Q When you spoke with Dr. --

19 and you spoke to him when you were at the

20 hospital, correct?

21 A Right.

22 Q Did you make a special trip to the

23 hospital solely for the purposes of reviewing

24 slides?

25 A Exactly.

1 , M.D.

2 Q Or had you been there for other

3 reasons?

4 A I made a special trip to see the

5 slides.

6 Q What did you personally observe on

7 the slides?

8 MR. : Note my objection. The

9 slides speak for themselves.

10 Over objection you can answer.

11 Q Well, based upon your personal

12 observations of these slides what did you see?

13 A He explained to me these malignant

14 cells are touching the base membrane which

15 consists of carcinoma in situ. There are some

16 endocervical glandular cells that are involved.

17 Q Did you form an opinion after

18 looking at these slides whether or not the

19 opinion generated by Dr. was correct?

20 A Did I generate an opinion with the

21 doctor or did I generate an opinion for myself?

22 Q For yourself.

23 A I think I was going to do a deeper

24 cone biopsy and possibly hysterectomy.

25 Q Let me rephrase the question. I

1 , M.D.

2 don't think I was clear.

3 Did you agree with the conclusions

4 that Dr. reached in his Pathology Report

5 after you had reviewed the slides yourself?

6 MR. : Which conclusion are

7 you referring to?

8 MR. OGINSKI: Whatever Dr.

9 concluded in his report dated

10 June 27th.

11 MR. : Are you talking

12 about the diagnosis?

13 MR. OGINSKI: Whatever Dr.

14 concluded under diagnosis,

15 yes.

16 MR. : Read over the

17 diagnosis.

18 Q Did you agree with those

19 conclusions?

20 A Yes.

21 Q After having reviewed the slides

22 yourself?

23 A Yes. Yes, I did.

24 Q For what reason did you consult

25 with Dr. after you had spoken with Dr.

24

1 , M.D.

2 about these slides?

3 A I knew Dr. was a very good

4 pathologist. He's a director and was my

5 customary practice to consult with him before

6 with the other pathology which was my customary

7 practice to consult with him because I trust

8 him more than the other covering physician Dr.

9 .

10 Q Do you recall when that

11 conversation was?

12 A I believe he was away for a week

13 and he went to Myrtle Beach in South Carolina

14 and came back a week after that and I talked to

15 him again.

16 Q Where did you talk to him on the

17 phone, in person or somewhere else?

18 A No, in person. He showed me the

19 slides again in the hospital in his office.

20 Q What did Dr. say to you and

21 what did you say to him?

22 A He also agreed with the conclusions

23 from Dr. which was glandular involvement

24 and it's also carcinoma in situ in a lot of

25 sections of the LEEP biopsy.

1 , M.D.

2 Q Did Dr. in your conversation

3 on or about June 27th suggest to you any course

4 of treatment that the patient would require

5 based upon his findings?

6 A Yes.

7 Q What did he say?

8 A I'm sorry, did Dr. suggest to

9 me?

10 MR. : No.

11 Q Going back now to the first

12 conversation you had with Dr. when you

13 first reviewed the slides?

14 A Right.

15 Q Based upon what his interpretation

16 of the slides was, did Dr. personally

17 suggest to you any course of treatment for this

18 patient based upon his findings?

19 A No, he's a pathologist.

20 Q Did Dr. make any

21 recommendations to you or suggest to you any

22 course of treatment for this patient based upon

23 his review of the slides?

24 A Indirectly.

25 Q What did you interpret his

2 conversation to be or his suggestions to you?

3 A I interpreted that this pathology

4 is much more invasive than just the carcinoma

5 in situ which has a glandular involvement once

6 again and I emphasized that glandular

7 involvement which Dr. in -- emphasized I

8 think glandular involvement, as you look

9 through the oncology book which clearly

10 indicates to you that there is more chance of

11 metastatic than just high grade carcinoma or

12 carcinoma in situ.

13 MS. : Read it back.

14 (Record read)

15 MR. : Off the record.

16 (Informal discussion held off

17 the record)

18 Q Doctor, I'd like you to turn

19 back to your July 1st note, please.

20 A Sure.

21 Q Can you point out to me where in

22 your note you recommended to the patient that

23 she have a cone biopsy?

24 A July 1st.

25 Q I'm only referring to your July 1st

2 note.

3 MR. : Well, just note my

4 objection.

5 The witness has already read

6 the entry in its entirety and he has

7 read it verbatim.

8 So I'll let him answer over

9 objection.

10 A There's no words mentioned of

11 the cone biopsy document on July 1st.

12 Q When Mrs. first came to your

13 office -- by the way, what date was that, June

14 24th?

15 A Yes.

16 Q For the very first time you had

17 learned she had been to a prior physician named

18 Dr. , correct?

19 A That's correct.

20 Q And you had learned she informed

21 you that she had had a colposcopy with Dr.

22 , correct?

23 A Correct.

24 Q She was coming to you for a second

25 opinion, correct?

1 , M.D.

2 A Correct.

3 Q She also informed you that Dr.

4 had recommended that she undergo a cone

5 biopsy, correct?

6 A Correct.

7 Q At the time that she informed you

8 that Dr. had recommended that she have

9 cone biopsy, what, if anything, did you say in

10 response to that?

11 A I looked at her Pathology Report.

12 Q I'm sorry, I withdraw the question,

13 I a gize.

14 Did you ever tell on

15 the first visit that she did not need a cone

16 biopsy?

17 A No.

18 Q Did you ever tell that

19 a cone biopsy was a waste of time?

20 A No.

21 Q Did you ever suggest to

22 a cone biopsy in the presence of her mother?

23 A I'm sorry, did I?

24 MR. : Note my objection.

25 You didn't complete the

1 , M.D.

2 question.

3 MR. OGINSKI: It was complete.

4 I'll rephrase it.

5 MR. : Nonetheless note my

6 objection.

7 MR. OGINSKI: Okay.

8 Q Did you speak to Dr. at

9 any time before performing the hysterectomy on

10 ?

11 A No.

12 Q Why did you perform a LEEP in the

13 office on on June 24th?

14 A Because Dr. pathology show

15 there is carcinoma in situ and from my

16 colposcopy exam there's a discrepancy between a

17 Pap smear and the colposcopy results. There is

18 no gross lesion I see from the colposcopy.

19 Q At the time that first

20 came to you on June 24, 2000, did she bring

21 with her a copy of any records from Dr. ?

22 A Yes.

23 Q What did she bring with her?

24 A She brought two pieces of that

25 Pathology Report. One is a Pap smear, I

2 believe, yes.

3 Q For the record, Doctor, what is the

4 date of that Pap smear?

5 A April 3rd of 2000.

6 Q The other one?

7 A The other one is her pathology

8 colposcopy biopsy results on June 12th of 2000.

9 Q The information contained within

10 those two pathology reports that was consistent

11 with what had told you that Dr.

12 had confirmed, correct?

13 A Right.

14 MR. : That they were

15 cancerous cells?

16 MR. OGINSKI: Yes, that they

17 were abnormal.

18 A Right.

19 Q Did you review and read those two

20 pathology reports that she brought in?

21 A Yes, I did.

22 MR. : At any time?

23 MR. OGINSKI: On the first

24 visit, thank you.

25 A Yes.

1 , M.D.

2 Q Did you have any comments to

3 about what was contained within those two

4 pathology reports?

5 A Yes.

6 Q What did you say to her?

7 A I explained to her there are at

8 least two to three grade difference between the

9 Pap smear and the Pathology Report.

10 Q Did you say grade, Doctor?

11 A Two grade, yes.

12 Q Okay.

13 A Yes, that's how we use them in

14 medical term.

15 Q Continue.

16 A Usually we break it down -- we

17 don't use that term any more -- but usually we

18 break them down as whether they show here for

19 's case called typical squamous cell

20 of undetermined significance. That usually is

21 the most beginning part of the abnormal cell.

22 Then we progress to CIN1 and progress to CIN2

23 then progress to CIN3.

24 Q I don't need you to explain that

25 right now, Doctor.

32

1 , M.D.

2 What did you tell about what

3 you read in the pathology reports?

4 A I explained to her in detail about

5 at least there are big discrepancy between the

6 Pap smear and the colposcopy results. I said,

7 "I would like to -- and re-do my colposcopy, my

8 own colposcopy results. Then advise you about

9 the cone biopsy or LEEP."

10 Q Did she agree to have that done?

11 A Yes.

12 Q Do you have a recollection that

13 June 24th was on a weekend?

14 MR. : Do you know?

15 A My office is opened on

16 Saturday.

17 Q Did you perform the LEEP procedure

18 on the day that she first came to see you?

19 A I believe so, yes.

20 Q That was June 24th, correct?

21 A Yes.

22 Q Who came with on that first

23 visit?

24 A Her mother. I am not sure her

25 husband was there or not. But I know her

2 mother was holding her hand during the

3 procedure.

4 Q So she was in the examining room

5 during the time you were conducting the LEEP?

6 A Yes.

7 Q Do you also recall that

8 mother was also present during the time

9 that you were talking to her about the need for

10 the LEEP?

11 A Yes.

12 Q At any time after you completed

13 your LEEP but while she was still present in

14 your office on June 24th, did you tell her and

15 have a discussion with about what your

16 findings were at that point?

17 A Yes.

18 MR. : What did you tell her

19 on June 24th?

20 MR. OGINSKI: Yes.

21 A June 24th I explained to her

22 about the colposcopy findings and I told her

23 that I don't see any gross abnormal -- I mean

24 gross cancer lesion. Usually they are very

25 cauliflower-type of presentations but I took --

1 , M.D.

2 I explained that to her. I said that there's

3 no gross abnormal lesions and there's a big

4 discrepancy between the Pap smear and your

5 colposcopy results, that it will be safer to

6 perform the deep cone biopsy.

7 Q Doctor, I just want to clarify.

8 You mentioned LEEP cone biopsy. Again, in your

9 practice, do you consider the LEEP to be the

10 same as a cone biopsy?

11 MR. : Well, note my

12 objection. That's been asked and

13 answered.

14 He did say they are technically

15 different. That's been asked and

16 answered.

17 Don't answer.

18 Q Did you tell at

19 that time that she needed a cone biopsy?

20 A No, she need to have a LEEP

21 procedure.

22 Q You performed the LEEP, correct?

23 A Right.

24 Q That again was done during this

25 first office visit?

2 A Right.

3 Q How is a LEEP less invasive than a

4 cone biopsy?

5 A LEEP you excise only the

6 transformation scene. Only the epithelium cell

7 of the cervix. You do not need to go into

8 stroma part of cell of cervix.

9 Cone biopsy actually you create a

10 big cone deep down into the endocervical canal

11 which in a laymen term probably you would

12 remove about half the size of the cervix.

13 Q Do you perform a cone biopsy in

14 your office?

15 A No.

16 Q That's done in a hospital setting?

17 A Right.

18 Q In the course of your career, have

19 you performed a cone biopsy?

20 A Yes.

21 Q Have you done LEEP procedures?

22 A Yes.

23 Q Have you done endocervical

24 curettages?

25 A All the time.

1 , M.D.

2 Q Where did you go to medical school,

3 Doctor?

4 A Medical College, .

5 Q When did you graduate?

6 A 1991.

7 Q You became licensed to practice,

8 you mentioned, in '93?

9 A Yes.

10 Q What did you do after graduating

11 medical school?

12 A I did two years of general surgery

13 training in Hospital.

14 Then four more years of OB/GYN

15 training in Hospital.

16 Q That was a four-year residency?

17 A Six years total.

18 Q The four years in OB/GYN?

19 A Right.

20 Q Was the first out of those four

21 years an internship?

22 A No.

23 Q What was it?

24 A First year OB/GYN training. My

25 internship was considered as Hospital

1 , M.D.

2 general surgery.

3 Q Any particular reason why you

4 trained from general surgery to OB?

5 A My mother was sick from

6 gynecological problems. I decided to change my

7 career to commit myself to my mother.

8 Q When did you complete your training

9 in residency?

10 A 1997.

11 Q After completing your residency did

12 you go on for any specialized training?

13 A No.

14 Q Have you completed any fellowships?

15 A No.

16 Q Do you have any publications to

17 your name?

18 A No.

19 Q Where did you go to college?

20 A University.

21 Q When did you graduate?

22 A 1987.

23 Q Have you contributed to any

24 portions of any textbooks in the field of

25 OB/GYN?

1 , M.D.

2 A No.

3 Q Have you presented any lectures to

4 any national OB/GYN committees?

5 A No.

6 Q Are you familiar with the clinical

7 practice guidelines for OB/GYN's?

8 A Yes.

9 Q Is that something you subscribe to

10 on a regular basis?

11 A Yes.

12 Q What exactly are the clinical

13 practice guidelines, to your knowledge?

14 MR. : Well, note my

15 objection.

16 You can answer over objection.

17 A I believe it was monthly

18 magazine publications.

19 Q To your knowledge, do they provide

20 certain guidelines for certain medical

21 situations that occur in the field of

22 obstetrics and gynecology?

23 A Guidelines, yes.

24 Q In June and July of 2000 what

25 hospitals were you affiliated with?

39

1 , M.D.

2 A June of 2000?

3 Q Yes.

4 A Mount Vernon Hospital, Lawrence

5 Hospital, Our Lady of Mercy Hospital and Albert

6 Einstein.

7 Q What was your affiliation with each

8 of those hospitals?

9 A Attending.

10 Q You had privileges to admit

11 patients in those hospitals?

12 A Yes.

13 Q Did your practice consist of both

14 obstetrics and gynecology in the year 2000?

15 A Yes.

16 Q From the time you completed your

17 residency up until the year 2000 where did you

18 practice?

19 A I practiced in Bronx and Mount

20 Vernon.

21 Q The Bronx office, what address is

22 that?

23 A I was an independent contractor.

24 So I don't really have an address. I was

25 hired.

1 , M.D.

2 Q By different offices?

3 A Right.

4 Q For how long did you do that?

5 A A year.

6 Q After that?

7 A A year.

8 Then I moved over to rent office

9 from this place from this Dr. who intends

10 to retire.

11 Q What title, if any, did Dr.

12 have at Hospital?

13 A He was Director of OB/GYN.

14 Q Did Dr. assist you during the

15 course of the hysterectomy that you performed

16 on ?

17 A Yes.

18 Q How was it that he came to assist

19 you?

20 A I asked him.

21 Q Was that something that the two of

22 you did on a frequent basis for patients that

23 you would operate on?

24 A Right, as a friend.

25 Q Prior to performing the

1 , M.D.

2 hysterectomy in July of 2000, to your

3 knowledge, did Dr. ever see or examine

4 ?

5 A No.

6 Q Postoperatively, did Dr. see or

7 examine ?

8 A No.

9 Q Did you ever have any conversations

10 with Dr. about the pathology results of the

11 June 24th specimen or the pathology results

12 from the hysterectomy?

13 A No.

14 Q What is the legal name of your

15 office if you have one?

16 A " , M.D., P.C."

17 Q You're part of a professional

18 corporation?

19 A Yes.

20 Q What is your title within that

21 professional corporation?

22 A Owner.

23 MR. : Well, note my

24 objection. He can't be an owner of a

25 corporation. He could be

2 shareholder.

3 But nonetheless over objection

4 he's answered.

5 Q As far as you know, did Dr. Lee

6 also participate within his own professional

7 corporation?

8 A Yes.

9 Q Has the legal status of your

10 business entity changed since June of 2000 up

11 until the present time?

12 A No.

13 Q Now, getting back to the June 24th

14 findings that we were discussing a moment ago.

15 After you told that she needed a

16 LEEP based upon your clinical evaluation of

17 her, did you have another conversation with her

18 after you completed the LEEP?

19 A Yes.

20 Q What did you tell her?

21 A On June 24th?

22 Q Yes.

23 A I told her, "I did the LEEP biopsy.

24 I'm going to send it to that pathology in

25 Hospital. I should have the results in

2 a few days and I would explain to you about the

3 results."

4 Q When you got the results back, how

5 did you first communicate those results to

6 ?

7 A I asked her to come in to the

8 office to explain to her in detail.

9 Q Was that by telephone that you told

10 her to come into the office or sent a letter or

11 some other means?

12 A I believe it was by telephone. She

13 keep calling.

14 Q To find out the results?

15 A Right.

16 Q Did you tell her on the telephone

17 that the results that you had received back

18 from Hospital for the Pathology

19 Report revealed that there was an abnormal

20 finding?

21 A I am not sure that over the

22 conversation what kind of conversation took

23 place over the phone but I did tell her to come

24 in more sympathetic way in detail.

25 Q As you sit here now, do you have a

1 , M.D.

2 specific memory of what you said to her and

3 what she said to you during that conversation

4 that occurred on the telephone asking her to

5 come in to the office to discuss the results?

6 MR. : Other than asking her

7 to come in to the office to discuss

8 the results?

9 MR. OGINSKI: Yes.

10 A I am not sure.

11 Q Did you review 's

12 deposition transcript?

13 A No.

14 What deposition transcript?

15 Q Have you learned that

16 has given testimony in this case?

17 A No.

18 Q Have you learned the substance from

19 anyone other than your attorney about what

20 has testified to about the claims

21 being made in this case?

22 A No.

23 Q Would it surprise to you to learn

24 that has testified that during your

25 phone conversation asking her to come in to the

2 office that you did, in fact, tell her that she

3 had an abnormal finding on the Pathology

4 Report?

5 MR. : Objection.

6 Don't answer that.

7 Q Were you aware that

8 has testified that was her recollection that

9 when you called her home to tell her about the

10 Pathology Report you told her that she had

11 cancer?

12 MR. : Objection.

13 Don't answer.

14 MR. OGINSKI: What's the basis?

15 MR. : What's the basis?

16 He's first of all testified that he

17 has not reviewed her deposition

18 transcript and has not discussed it

19 with anyone and what his reaction is

20 to her testimony, whether it may or

21 may not be in no way relevant.

22 MR. OGINSKI: I'm asking

23 whether he was aware.

24 MR. : He's already

25 answered he is not aware of her

1 , M.D.

2 testimony.

3 MR. OGINSKI: Okay.

4 Q Did you tell on the

5 telephone when you were asking her to come in

6 to the office to discuss the Pathology Report

7 that she had a finding of cancer?

8 A I cannot recollect that.

9 Q You performed a vaginal

10 hysterectomy on on July 17th,

11 correct?

12 A That is correct.

13 Q That was done at

14 Hospital?

15 A Correct.

16 Q As a result of the specimens that

17 you submitted to pathology, the pathologist

18 reviewed and evaluated those specimens,

19 correct?

20 A That's right.

21 Q As part of their review they

22 generated a report which discusses their

23 findings and their conclusions, correct?

24 A That's correct.

25 Q What is the name of the physician

47

1 , M.D.

2 who conducted that pathology examination?

3 A Dr. .

4 Q I notice, Doctor, you have that

5 report in front of you. That is a copy that

6 you were provided by the hospital?

7 A Yes.

8 Q Am I correct, Doctor, that the

9 pathologist Dr. made certain conclusions

10 in his diagnosis on the second page -- I'm

11 sorry, made certain conclusions in his report,

12 correct?

13 A I'm sorry, say that again.

14 Q I'll rephrase it.

15 Dr. generated a two-page

16 report, correct?

17 A Right.

18 Q Within that report he lists his

19 opinions as to his examination of the specimen

20 that you submitted?

21 A Right.

22 MR. : Are you referring to

23 the diagnosis?

24 MR. OGINSKI: Yes.

25 A Yes.

1 , M.D.

2 Q Doctor, under the diagnosis is the

3 word "cervix," correct?

4 A Right.

5 Q He writes, "Moderate dysplasia

6 (CIN2)," correct?

7 A Correct.

8 Q What does that mean to you?

9 A That means they are still precancer

10 cells remained in the cervix.

11 Q Underneath that he writes, "Status

12 post LEEP with focal acute and chronic

13 inflammation and granulation tissue formation,"

14 correct?

15 A Correct.

16 Q What does that mean to you?

17 A LEEP procedure involve electricity.

18 So all the tissue, all the muscle which has

19 been cut by the LEEP usually involves

20 granulation tissue.

21 But other than that it doesn't

22 really mean anything significant.

23 Q The next line he writes, "No

24 residual squamous cell carcinoma in situ

25 present," correct?

1 , M.D.

2 A Correct.

3 Q What does that mean to you?

4 A It means no residual squamous cell

5 carcinoma in situ present.

6 Q It means no cancer?

7 A No, it doesn't mean no cancer. It

8 means we have CIN2. Before we still have

9 precancer cell involved.

10 Q Well, correct me if I am incorrect,

11 Doctor, but the original Pathology Report from

12 June 24th revealed a pathology of CIN3,

13 correct?

14 A Right.

15 Q Here this doctor is noting a CIN2.

16 That is a lower grade CIN finding; is that

17 correct?

18 A Right.

19 Q The fact that there is a lower

20 grade finding, does that have any medical

21 significance to you?

22 A Yes, we not sure at June 24th, the

23 margin was not clear at that time and at this

24 time we want to confirm if the margin is clear

25 and see if any more invasion was involved.

1 , M.D.

2 Q According to Dr. pathology

3 evaluation there is no invasive cancer,

4 correct?

5 A Right.

6 Q He goes on in his diagnosis to

7 state, "Refer to previous specimen," and he

8 lists the number and that refers back to the

9 June 24th specimen evaluation, correct?

10 A Correct.

11 Q He continues by stating "Which

12 revealed in the prior specimen squamous

13 carcinoma in situ with glandular involvement

14 and inadequate margins," correct?

15 A Right.

16 Q Am I reading that right that that

17 last part of the statement refers to the prior

18 specimen that had been evaluated?

19 MR. : Note my objection to

20 the extent that he didn't generate

21 this report.

22 But over objection I'll let him

23 answer.

24 Q Do you understand those two

25 lines to mean that the prior specimen showed

51

1 , M.D.

2 exactly what he has listed here?

3 MR. : Which is?

4 Q Squamous carcinoma in situ with

5 glandular involvement and in adequate margins?

6 A Correct.

7 Q Did have cervical

8 cancer based upon the Pathology Report

9 generated by Dr. ?

10 MR. : Note my objection.

11 A Yes.

12 Q Where is that cervical cancer

13 observed according to Dr. 's Pathology

14 Report?

15 A CIN2 moderate dysplasia.

16 Q There's no invasion that he

17 observed, correct?

18 A No invasion.

19 Q There was no invasion.

20 When you say no invasion, no

21 invasion into what?

22 A Invasion pass through base membrane

23 of epithelial cell which is a very fine line

24 about 1 milliliter involved.

25 Q After you performed the

1 , M.D.

2 hysterectomy on , did you ever tell

3 her that she didn't have cervical cancer?

4 A No, I'm sorry. After July 17th did

5 I tell her there's no cervical cancer?

6 Q I'll rephrase it.

7 After you had performed her

8 hysterectomy on July 17th, did you discuss with

9 her at some point your findings?

10 A Yes.

11 Q Did you ever tell her during your

12 discussion or discussions about your findings

13 that she never had cervical cancer?

14 A No.

15 Q What did you tell her after the

16 surgery had been done?

17 A I told her after I reviewed the

18 pathology I told her cancer cell has been

19 removed from the vaginal hysterectomy. There

20 are still some remaining of CIN2 involved in

21 the cervix.

22 Q I just want to be clear, Doctor,

23 you told her that the cancer cell you

24 mentioned, I think you used the single form as

25 opposed to plural?

2 A Right.

3 Q That the cancer cells had been

4 removed from the vaginal hysterectomy?

5 A Right.

6 Q Did you get any more specific as to

7 where the cancer was?

8 A Cervix, right. Is that what you're

9 referring to?

10 Q Yes, I'm asking whether you told

11 where the cervix was and whether it's

12 there or no longer there or something along

13 those lines?

14 A Right, cervix.

15 Q Where did this conversation take

16 place?

17 A In her hospital room the next day.

18 Q Now, the Pathology Report --

19 A I'm sorry, not the next day.

20 Pathology usually takes about a couple of days.

21 Q In fact, this report was generated

22 -- the date is July 20th, correct?

23 A Yes, I'm sorry, I believe it was in

24 her room. I don't know. I couldn't remember

25 which date she was discharged home.

1 , M.D.

2 Q You do have a copy of the discharge

3 report in your record, correct?

4 A Yes.

5 Q That reveals she was discharged

6 from Hospital on July 19th,

7 correct?

8 A Yes.

9 Q The Pathology Report is dated July

10 20th, correct?

11 A Yes.

12 Q So can we agree, Doctor, it would

13 have been difficult for to you have that

14 conversation on the 19th?

15 A That's right.

16 Q Can you tell me, as you sit here

17 now, when it was that you had a conversation

18 with concerning your findings and

19 the Pathology Report based upon the fact that

20 the Pathology Report is dated July 20th?

21 A I could not. I do not have a

22 recollection of that.

23 Q Did you have a phone conversation

24 with after she was discharged but

25 before she came back to your office for

2 follow-up?

3 A I could not recollect that.

4 Q Was it customary back in July of

5 2000 for you to make entries in the patient's

6 chart about any phone conversations that you

7 had with the patient?

8 A No.

9 Q If the patient called your office

10 with certain complaints postoperatively, was it

11 customary for you to make a record of such a

12 call and a complaint back in July of 2000?

13 A No.

14 Q Did call your office

15 after July 19th with any postoperative

16 complaints but prior to her return to your

17 office for her first follow-up visit?

18 A I couldn't recollect that.

19 Q If you were present during office

20 hours, a call came in from , you

21 were busy, would you receive a message from

22 your secretary, receptionist or someone else in

23 the office?

24 A Yes.

25 Q Would that message be written down

1 , M.D.

2 so that you would know to call this particular

3 patient back at a later time?

4 A No.

5 Q How would you know if a particular

6 patient called with a complaint that needed to

7 be addressed while you were busy seeing other

8 patients?

9 A Can you rephrase that question?

10 Q Sure.

11 If you're busy seeing patients in

12 office hours, another patient calls to ask you

13 questions or has a particular concern or

14 question or complaint, how do you know that

15 they've called?

16 A Usually the secretary transfers the

17 phone to me.

18 Q While you're in with another

19 patient?

20 A Yes, I will decide to take or not

21 to take.

22 Q If you choose for whatever reason

23 not to take it, does the secretary or someone

24 else then make a written note to give to you

25 saying, "This patient called. Please call them

57

1 , M.D.

2 back. Here is a phone number"?

3 A Sometimes or I sometimes ask them

4 to come in to speak to me personally.

5 Q Do you maintain records and keep

6 records of any phone calls by patients that are

7 made who want to speak to you that you're busy

8 at any given time and can't speak to at a

9 moment?

10 A No.

11 Q Did you tell that your

12 surgery caused her cervical cancer to be

13 totally removed?

14 A Yes, but still need to have

15 follow-up.

16 Q Did you tell that it

17 was the surgery itself that permitted the

18 cancer to be removed as opposed to the fact as

19 opposed to any other reason?

20 MR. : Note my objection.

21 A Could you rephrase that?

22 Q Sure.

23 Prior to performing surgery on July

24 17th, was it your opinion that had

25 cervical cancer?

1 , M.D.

2 A Yes, from pathology, yes.

3 Q Was it the surgery in your opinion

4 that caused the cancer to be eradicated?

5 MR. : Note my objection.

6 You can answer.

7 A Not completely. Still needed

8 to be follow-up.

9 Q For the precursor cancer cells that

10 we discussed, right?

11 A Not precancer. She did have cancer

12 cell.

13 Q CIN2 you considered to be

14 cancerous?

15 A She had CIN3 in LEEP biopsy which

16 we're not sure she was completely cured from

17 that.

18 Q I'm talking about after surgery is

19 performed and after you received the Pathology

20 Report back?

21 MR. : Which surgery, I'm

22 sorry?

23 A Vaginal hysterectomy.

24 Q Thank you.

25 The vaginal hysterectomy?

59

1 , M.D.

2 A Microscopically we still do not

3 know there any other metastatic after the

4 vaginal hysterectomy which only God knows is

5 not going to recur.

6 Q For all intents and purposes from a

7 gross standpoint you appeared to have removed

8 or eradicated all cancer?

9 A Yes.

10 Q Did you tell what her

11 chances were for reoccurrence?

12 A Yes.

13 Q What were they?

14 A I cannot point out percentage from

15 -- I do not know percentage that it would recur

16 but yes, there is a chance of recurring which

17 you need to have follow-up with Pap smear every

18 year.

19 Q Did you use any percentages when

20 you spoke to --

21 A No.

22 Q -- in discussing the possibility of

23 recurrence?

24 A No.

25 Q How do you define cervical cancer,

1 , M.D.

2 Doctor?

3 MR. : Note my objection.

4 You can answer over objection.

5 A How do I define cervical

6 cancer? Cancer invade into the cervix which

7 subsequently would invade into the vagina,

8 subsequently invade to uterus and lymph nodes,

9 blood vessels and lungs and bone. Is that what

10 you meant?

11 Q Yes.

12 If you knew before doing the

13 hysterectomy that did not have

14 cervical cancer you would not have done a

15 hysterectomy?

16 MR. : Note my objection.

17 You're asking a hypothetical

18 question here.

19 Q Do you have an opinion with a

20 reasonable degree of medical probability if you

21 had known prior to the surgery that she did not

22 have cervical cancer doing a hysterectomy would

23 have been contraindicated?

24 MR. : Objection, don't

25 answer.

1 , M.D.

2 You're asking him hypothetical

3 questions.

4 Q Before doing the hysterectomy

5 on July 14th, what led you to conclude that she

6 had some form of cervical cancer?

7 MR. : Note my objection.

8 He's already answered it and

9 testified about the Pathology Report

10 generated from the LEEP procedure.

11 Q Is there anything else that you

12 have in your notes or records for this patient

13 other than the pathology reports that led you

14 to conclude that had some form of

15 cervical cancer?

16 MR. : Other than what he's

17 already testified to?

18 MR. OGINSKI: Yes.

19 A No.

20 Q When you told back on

21 June 24, 2000 that she needed a LEEP, did you

22 give her any other options that were available

23 to her prior to performing a LEEP?

24 A No.

25 Q After you performed the LEEP and

62

1 , M.D.

2 had received the results back of the pathology

3 specimen, did you have another conversation

4 with her as to what treatment she needed in

5 your opinion?

6 MR. : Read it back.

7 (Record read)

8 A Yes, July 1st.

9 Q That was July 1st conversation,

10 right?

11 A Right.

12 Q Was there anyone else in the office

13 during your conversation with Mrs. and her

14 mother and yourself during this July 1st visit?

15 A My secretaries.

16 Q I'm sorry, when I say in the

17 office, I mean present during your conversation

18 about what you were telling her and what she

19 was telling you?

20 A My secretary.

21 Q What is her name?

22 A Linda .

23 Q For what reason was she present

24 within the office during your discussion of

25 's condition?

63

1 , M.D.

2 A She was assisting me during the

3 procedure.

4 Q What procedure was done on July

5 1st?

6 A No, I'm sorry.

7 Q Let's clarify.

8 On July 1st when

9 returned to your office with her mother, was

10 anyone else in the office with you during your

11 conversation with her?

12 A Yes.

13 Q Who?

14 A Linda .

15 Q Why was she present in the office

16 during your conversation with and

17 her mom?

18 A She is there every day and I still

19 remember she was very upset -- was

20 very upset. She was -- the office door was

21 open so my secretary was right --

22 Q I'll rephrase the question.

23 A My consultation room door was open

24 so she was right there.

25 MR. : He will ask you another

1 , M.D.

2 question to try to narrow it down.

3 MR. OGINSKI: Thank you.

4 Q When and her mom came in

5 on July 1st to talk to you, you spoke to them

6 in a consultation room, correct?

7 A Right.

8 Q You just mentioned that the door

9 happened to be opened?

10 A Right.

11 Q Where was your secretary's office

12 or desk in relation to the consult room that

13 you were speaking to in?

14 A Ten yards away.

15 Q How long did your consultation last

16 with Mrs. on July 1st?

17 A About 20 to 30 minutes.

18 Q From your consult room are you able

19 to actually see your secretary?

20 MR. : Note my objection.

21 You've categorized Mrs. as

22 being with her mother on July 1st and

23 that's your question here.

24 I don't know that the witness

25 has testified that the mother was

1 , M.D.

2 there.

3 He did testify that he has a

4 clear recollection of her mother

5 being there on June 24th.

6 So to the extent that you've

7 asked that question and included the

8 mother there, note my objection.

9 Q Doctor, am I correct, you

10 didn't recall whether her mother was present on

11 July 1st?

12 A I do not recall her mother was

13 there.

14 Q In any event, from the consult

15 office, are you able to physically see your

16 secretary?

17 A No, but I believe that she came in

18 to comfort her because she was very upset.

19 Q Do you know why she came in or do

20 you know how is it she knew to come in?

21 A As I said, she was very upset. She

22 jumped out of the chair. How do you call it?

23 She was tapping on the floor. I still remember

24 vividly that's what she did. The secretary

25 came in to comfort her.

1 , M.D.

2 MR. : When you say she was

3 tapping on the floor, you're

4 referring to the plaintiff,

5 ?

6 THE WITNESS: Yes, exactly.

7 Q Did you ever have a

8 conversation with your secretary Linda Adao

9 about what it was that led up to her being in

10 that condition or that she needed to be

11 comforted?

12 MR. : Note my objection.

13 You can answer over objection

14 if you understand.

15 A Yes.

16 Q When did you speak to her about

17 that?

18 A July 1st. I couldn't remember

19 exactly but I do remember it was that day I

20 need to speak to her.

21 Q To her?

22 A To .

23 Q I'm sorry, let me rephrase it

24 again.

25 After Mrs. left your office on

67

1 , M.D.

2 July 1st?

3 A After, yes.

4 Q Did you have a conversation with

5 your secretary about the events that had just

6 transpired with Mrs. ?

7 A Yes.

8 Q What did you say to Linda and what

9 did she say to you?

10 A I explained to her her pathology is

11 not clear -- that what we have testified

12 before. That she chose to have hysterectomy

13 and because her family history and she was very

14 upset about it.

15 Q What, if anything --

16 A She was very upset she had a

17 remaining cancer cell in her body. She needed

18 to have further surgery.

19 Q What, if anything, did Linda say in

20 response?

21 A Usual very sympathetic way. "Oh,

22 really, she needs to have surgery." That was

23 it.

24 Q You're talking about just your

25 conversation you had with Linda after Mrs.

1 , M.D.

2 had left?

3 A Right, it was a short conversation.

4 I didn't think it was any kind of lengthy

5 conversation. Casual way.

6 Q Did Linda tell you that she had

7 heard your conversation with Mrs. before

8 she entered the office to comfort Mrs. ?

9 A Yes.

10 Q What did she tell you she heard?

11 A No, has many phone

12 calls about obtaining results.

13 Q I'm not asking about phone calls,

14 Doctor.

15 MR. : Just answer his

16 question.

17 His question is did Linda tell

18 you that she heard the conversation

19 that you had with on July

20 1st before she entered the room?

21 A On July 1st?

22 Q Yes.

23 A No, she didn't tell me that but she

24 knew what the story --

25 Q I'm not asking about the story.

1 , M.D.

2 MR. : Just answer his

3 question, okay.

4 Q Did you ever learn from Linda

5 after Mrs. left on July 1st that she had

6 overheard your conversation to Mrs. ?

7 A No.

8 MR. : One moment.

9 Off the record.

10 (Informal discussion held off

11 the record)

12 Q Other than your office records,

13 Doctor, did you have anything in your chart for

14 in writing that confirms that you

15 offered her a cone biopsy?

16 A Indirectly.

17 Q What specifically are you referring

18 to?

19 A She chose to have LAVH,

20 laparoscopic assisted vaginal hysterectomy.

21 Q You're pointing now to your written

22 office note on July 1st, correct?

23 A Right.

24 Q You mentioned previously there's no

25 specific words referring to your offering her

1 , M.D.

2 cone biopsy, correct?

3 MR. : Well, note my

4 objection.

5 He read the entire entry. He's

6 spoken about the discussions he had

7 with her.

8 So note my objection to the

9 question.

10 Q Let's talk a little more about

11 the July 1st note.

12 On the fourth line down under your

13 plan under number one you wrote "All risks and

14 benefits explained with patient."

15 What risks and benefits were you

16 referring to?

17 A Risks about not doing another cone

18 biopsy or risks of leaving this cervix alone

19 and waiting and repeat a Pap smear next year or

20 three months or six months and the benefits

21 included removing a cancer cell with the

22 patient and also explaining about a cone biopsy

23 to her and I made a short note that she chose

24 -- which is a key word -- she chose to have

25 LAVH. She insisted to me that she wanted to

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1 , M.D.

2 have a hysterectomy.

3 Q What exactly did you tell

4 about the cone biopsy on July 1st?

5 A I explained to her about the

6 margin's not clear on the LEEP which we can do

7 another deeper part and with deeper cone biopsy

8 in the hospital we might be able to get the

9 margin but that still is not a very conclusive

10 treatment.

11 And she said that she do not want

12 to go through another uncertain procedure. She

13 wanted to have a cure for this disease.

14 Once again she mentioned that her

15 mother -- I believe she said her mother had a

16 hysterectomy done. She wanted it done. Her

17 mother had a hysterectomy done for fibroid

18 uterus. I still remember something like that.

19 Q Would you agree, Doctor, that the

20 standard of care at that point in time required

21 you to perform a cone biopsy as the next step

22 in evaluating and treating the findings that

23 you observed?

24 MR. : Note my objection.

25 Don't answer.

1 , M.D.

2 Q Did you have an opinion at that

3 time with a reasonable degree of medical

4 probability whether performance of a cone

5 biopsy was the standard of care in evaluation

6 and treatment of 's condition at

7 that time?

8 MR. : Note my objection.

9 Don't answer.

10 MR. OGINSKI: What's the basis
11 for the objection?
12 MR. : He's here to
13 testify about his treatment not as an
14 expert.
15 MR. OGINSKI: That's absolutely
16 incorrect.
17 There's clear case law which
18 allows this defendant physician to
19 testify as an expert and to render
20 opinions about the treatment that he
21 himself rendered.
22 If you're going to direct him
23 not to answer or not permit him to
24 answer my question about his opinions
25 and his expertise, I will call the

1 , M.D.

2 court. We'll get rulings and do what

3 I need to.

4 But I have to have an answer to

5 the opinion questions. It's

6 appropriate.

7 MR. : I'll need a minute

8 to think about this.

9 Take a break.

10 (Recess)

11 MR. OGINSKI: Read back the

12 last question and answer.

13 (Record read)

14 MR. : Over objection I'll

15 let him answer.

16 A No, it's not a standard.

17 Q Can you tell me why not?

18 A Medicine is art. It's nothing

19 standard, for every individual case has to be

20 evaluated.

21 Q In 's case, was it

22 appropriate for you to recommend a cone biopsy

23 in light of the findings that you observed on

24 July 1st?

25 MR. : Note my objection.

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1 , M.D.

2 You can answer.

3 A No, she has much more glandular

4 involvement in just cervical cancer which I

5 explained the options and treatment and

6 alternatives and she chose to have a

7 hysterectomy.

8 Q You recommended that

9 have a cone biopsy on July 1st, correct?

10 A I suggested.

11 Q Based upon what you just said, you

12 suggested she have a cone biopsy?

13 A I suggested she could have used all

14 the options.

15 Q Would you agree there's a big

16 distinction between having a cone biopsy and

17 hysterectomy?

18 MR. : They are different

19 procedures.

20 Note my objection to the form

21 of the question.

22 A Yes.

23 Q You agree that a hysterectomy is

24 much more invasive than performing a cone

25 biopsy?

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1 , M.D.

2 A Yes.

3 Q Hysterectomy involves certain

4 morbidity associated with the procedure in

5 comparison to a cone biopsy, correct?

6 A Correct.

7 Q And further a hysterectomy also

8 involves hospitalization?

9 A Correct.

10 Q After you had examined the

11 Pathology Report for your LEEP procedure and

12 had examined on June 24th and had

13 reviewed Dr. 's pathology reports you came

14 in your own mind to some conclusion as to what

15 type of treatment plan she needed, correct?

16 MR. : Well, note my

17 objection.

18 I think you're misstating what

19 the testimony has already been here.

20 MR. OGINSKI: Okay.

21 MR. : He's indicated --

22 MR. OGINSKI: I'll rephrase it.

23 MR. : -- he reviewed

24 various documents. He presented her

25 with options.

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1 , M.D.

2 To say he came to a conclusion

3 implies that he dictated the course

4 of treatment and the testimony has

5 been totally contrary to that.

6 So note my objection.

7 Q On July 1st before you told

8 your suggestion you came to some

9 opinion in your own mind as to what course of

10 treatment you were going to suggest or

11 recommend to her, correct?

12 A Correct.

13 Q Your first suggestion, am I

14 correct, would be the cone biopsy?

15 A That was one of them, yes.

16 Q That was the first one, correct?

17 A I wouldn't say the first one. That

18 was one of them.

19 Q One of how many?

20 A One of the two.

21 Q The second one would be

22 hysterectomy, correct?

23 A Right.

24 Q With regard to the cone biopsy as

25 being a potential course of treatment if

1 , M.D.

2 had agreed to such a cone biopsy, would it

3 be good and accepted medical practice to refer

4 her back to her original physician in order to

5 perform the cone biopsy?

6 MR. : When you say her

7 original physician, who are you

8 referring to?

9 MR. OGINSKI: Dr. .

10 A Rephrase that question.

11 Q Sure.

12 A Let me see if I understand.

13 Q As of June 24th had

14 informed you that Dr. had recommended she

15 have a cone biopsy, correct?

16 A Right.

17 Q Now comes one week later July 1st

18 you have in your mind that needed

19 either a cone biopsy or a hysterectomy,

20 correct?

21 A Okay.

22 Q If she accepts and agrees to have a

23 cone biopsy, isn't it prudent medical practice

24 to send the patient back to the original

25 physician so that he can go ahead and do

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1 , M.D.

2 whatever procedure is necessary?

3 MR. : Are you speaking in

4 general or in this case?

5 MR. OGINSKI: In general.

6 MR. : In general.

7 A Not all the time you don't have

8 to send. If she wanted to go back, she could

9 go.

10 Q When you discussed with

11 as you claim to have done on July 1st that she

12 needed a cone biopsy, did you tell her that she

13 should go back to Dr. for treatment?

14 MR. : Note my objection,

15 don't answer that.

16 You're mischaracterizing facts

17 here.

18 Q When you suggested to

19 that she have a cone biopsy, did you also

20 suggest to her that she should go back to Dr.

21 for that treatment?

22 A I don't recall I suggested to her

23 to go back. But she volunteered that

24 information that she did not like Dr. .

25 She did not trust him.

1 , M.D.

2 Q Did she say why?

3 A She told me that Dr. did not

4 tell her the Pap smear results in a timely

5 fashion and he told her the results in a very

6 casual way. "By the way, you have a normal Pap

7 smear."

8 Q Was there any particular time

9 urgency associated with performing the

10 hysterectomy in relation to when you performed

11 the LEEP procedure?

12 MR. : Note my objection.

13 You can answer that.

14 A No, there is no timely...

15 Q Is it not good practice to wait a

16 certain period of time after performing the

17 LEEP procedure prior to performing a

18 hysterectomy?

19 MR. : Note my objection.

20 A No.

21 Q Is it good medical practice to

22 allow the cervix to heal after a LEEP procedure

23 prior to performing a hysterectomy?

24 A No, it doesn't mean it's good

25 practice.

1 , M.D.

2 MS. : Off the record.

3 (Informal discussion held off the

4 record)

5 Q Did you advise of any

6 other treatment options that were available to

7 her during the July 1st visit other than what

8 you have told me about other than the possible

9 cone biopsy or the possible hysterectomy?

10 A I explained the potential risks of.

11 Q I'm not asking about risks. I'm

12 only asking about options available to treat

13 her condition other than the cone biopsy and

14 the hysterectomy.

15 A I don't think there's any other

16 options besides these two appropriate options I

17 think.

18 Q Were there any diagnostic tests

19 available to you in June or July of 2000 to

20 further evaluate 's condition prior

21 to performing a hysterectomy?

22 MR. : What do you mean by

23 diagnostic tests?

24 Q Were there any tests or

25 procedures available to you that would have

81

1 , M.D.

2 assisted you in evaluating whether or not she

3 had invasive cervical cancer prior to

4 performing a hysterectomy?

5 MR. : Other than the

6 diagnostic tests and procedure that

7 were done that he's already testified

8 to?

9 MR. OGINSKI: Yes.

10 A No.

11 Q Were you aware that had

12 two children as of June of 2000?

13 A Yes.

14 Q Were you aware that at some point

15 afterwards or after the year 2000 she intended

16 to have more children?

17 A No, she insisted that she did not

18 want any more children. She had two beautiful

19 girls. I still remember that. "I do not want

20 any more children. I'm done."

21 Q Did you tell in

22 substance, "What do you need more children for.

23 You have two healthy kids?"

24 A I did not say that. I learn

25 afterwards what --

1 , M.D.

2 Q I'm not asking what you learned

3 afterwards, Doctor, I'm only asking if you said

4 that to her.

5 A Okay.

6 Q Before July and June of 2000, had

7 you performed cone biopsies at Mount Vernon

8 Hospital?

9 A No.

10 Q Had you performed cone biopsies at

11 any time in your practice from the time you

12 went into private practice until July of 2000?

13 A Yes.

14 Q That would be in a hospital

15 setting, correct?

16 A Yes.

17 Q How many cone biopsies have you

18 done within the last year?

19 A 2001, 2002?

20 Q No, within this last year?

21 MR. : Last 12 months you

22 mean?

23 MR. OGINSKI: Yes.

24 MR. : Approximately how

25 many have you done.

1 , M.D.

2 A Ten.

3 Q Can you estimate how many you've

4 done in the last five years?

5 A Fifty I would say.

6 Q Doctor, I'd like you to turn,

7 please, to your Pathology Report dated June

8 24th -- I'm sorry, the specimen was taken June

9 24th from the LEEP. It's reported as June

10 27th.

11 MR. : You called it "his."

12 You said, "Your Pathology Report."

13 You're referring to his copy of the

14 Pathology Report?.

15 MR. OGINSKI: Yes.

16 MR. : Maintained in his

17 file?

18 MR. OGINSKI: Yes.

19 Q In that report specimen A was

20 the anterior lip, correct?

21 A Correct.

22 Q Specimen B was the posterior lip?

23 A Right.

24 Q Specimen C was the endocervix?

25 A Yes.

2 Q In fact, according to that

3 Pathology Report specimen C came back abnormal,

4 correct?

5 A Right.

6 Q Came back stating, "Squamous

7 carcinoma in situ with glandular involvement,"

8 correct?

9 A Correct.

10 Q Would you agree that from that

11 statement alone that you cannot tell whether

12 that represents a microinvasion of cancer,

13 correct?

14 A Correct.

15 Q Would you also agree that from that

16 statement you don't yet know whether there is a

17 frank invasion of cancer in the cervix?

18 A Correct.

19 Q Based upon the findings that you

20 see from the endocervix, would you agree that

21 that finding is somewhat troublesome or

22 worrisome to you as a physician?

23 A Correct.

24 Q You are aware that two months

25 earlier in April of 2000 that endocervix was

1 , M.D.

2 reported as normal?

3 A Correct.

4 MR. : By Pap smear?

5 MR. OGINSKI: Yes.

6 Q I'm referring to the April 2000

7 Pap smear results?

8 A Dr. .

9 Q Yes.

10 Now, would you agree that carcinoma

11 in situ is not invasive cancer?

12 A No, it could be invasive. You

13 never know until you open up.

14 Q But by definition the words

15 "carcinoma in situ," is that considered to be

16 invasive?

17 A It could be invasive. You never

18 know.

19 Q In situ means what, Doctor?

20 A In situ means it hasn't crossed the

21 border.

22 Q Of what?

23 A Of the base membrane of epithelial

24 cell.

25 Q If it had crossed at that point,

1 , M.D.

2 you would consider it to then be invasive,

3 correct?

4 A Correct.

5 Q So by technical definition in situ

6 means that there is no invasion at that point?

7 A Right.

8 Q Just to be clear, carcinoma in situ

9 would not invade the base membrane that you

10 just mentioned, correct?

11 A It will in the future.

12 Q But at the moment that it's being

13 evaluated on pathology and the specimen that's

14 submitted, it had not yet invaded the base

15 membrane, correct?

16 A Correct.

17 Q That would be classified as

18 carcinoma in situ?

19 A Right.

20 Q Because if it had invaded then by

21 definition the term that would be used would be

22 different for carcinoma in situ, correct?

23 A Correct.

24 Q They would call it incarcinoma or

25 some other invasive term, correct?

1 , M.D.

2 A Correct.

3 Q Would you agree that it is

4 important for you as treating physician to know

5 a distinction between carcinoma in situ and

6 invasive incarcinoma?

7 A Yes.

8 Q What is an intraepithelial

9 neoplasm?

10 A That's carcinoma. A precancerous

11 cell.

12 Q That term I just mentioned

13 intraepithelial neoplasm suggests whether that

14 is invasive or not?

15 A No.

16 Q Is carcinoma in situ synonymous

17 with an intraepithelial neoplasm?

18 A No.

19 Q How is it different?

20 A If you use that term

21 intraepithelial neoplasm I have to give a grade

22 CIN1, 2, 3. That's why it's call

23 intraepithelial cervix 2, 3.

24 Q Back in the year 2000 you mentioned

25 you no longer used these gradations but back in

1 , M.D.

2 the year 2000, CIN3, was that the highest CIN

3 grade or were there higher ones?

4 A No, that's the highest.

5 Q The lowest one would be CIN1 at

6 that time, correct?

7 A Or a typical squamous cell.

8 Q Did you learn from either

9 or some other records that you have in

10 your file that Dr. had performed yearly

11 Pap smears on ?

12 A No.

13 Q Did you learn that before April

14 2000 's prior Pap smear was reported

15 as normal?

16 A No.

17 Q Did you learn at any time before

18 this lawsuit was started that 's Pap

19 smears for the years '98 and '99 were normal?

20 A No, I did not know.

21 Q Would it have been of importance to

22 you medically for purposes of treatment and

23 evaluation of the patient to know that

24 information prior to rendering a treatment

25 plan?

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1 , M.D.

2 A No.

3 Q Were you also aware that

4 had undergone a colposcopy by Dr. on

5 June 12, 2000?

6 A Yes, you asked me that before.

7 Q The results of the Pathology Report

8 is what you have in your chart, correct?

9 A Right.

10 Q Just for clarification, Doctor,

11 based upon the abnormal Pap smear in April of

12 2000, it was appropriate to then go onto the

13 next level and perform a colposcopy, correct?

14 A Correct.

15 Q Now, if you can please look at the

16 June 12, 2000 Pathology Report under diagnosis

17 this pathologist indicates two diagnoses. The

18 first was high grade squamous intraepithelial

19 lesions (CIN3)", correct?

20 A Correct.

21 Q In the ECC part that was negative,

22 correct?

23 A Right.

24 Q Let me jump back for a minute,

25 Doctor, and ask you how you go about actually

2 performing a cone biopsy?

3 A How would I do it?

4 Q How is it done?

5 MR. : Generally speaking how

6 is it performed?

7 MR. OGINSKI: Yes.

8 A You're talking about cone

9 biopsy not the LEEP, right?

10 Q Cone.

11 A You would go --

12 Q Don't draw anything or write

13 anything, Doctor.

14 A Cervix would present as a circular

15 object.

16 Q I'm sorry, let me clarify and try

17 to make it a little easier.

18 Cone biopsy you mentioned is done

19 generally in the hospital, correct?

20 A Right.

21 Q Is it done under some type of

22 sedation?

23 A Yes.

24 Q Is it something that you can do by

25 yourself or do you need assistance to perform

91

1 , M.D.

2 the procedure?

3 A No, you could do it by yourself.

4 Q How long does the procedure,

5 assuming there are no complications, generally

6 take?

7 A Twenty, 30 minutes.

8 Q Are there certain instruments that

9 you use which will allow you to actually

10 withdraw a cone shaped piece of tissue from the

11 cervix?

12 A Knife.

13 Q After such a procedure is the

14 patient hospitalized for any period of time or

15 do you customarily send them home the same day?

16 A Send them home.

17 Q Again, assuming there are no

18 complications?

19 A Right.

20 Q What type of complications, if any,

21 are generally associated with performing a cone

22 biopsy?

23 A Bleeding, infection, severe pain

24 and margin again not clear from the epithelial

25 cell, from the cancer cell.

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1 , M.D.

2 Q Well, that wouldn't necessarily be

3 a complication. That would be a finding?

4 A Okay.

5 Q Did you tell during the

6 July 1st conversation that she could experience

7 bleeding during the cone biopsy?

8 A She didn't give me a chance.

9 Q Did you tell that she

10 could have some sort of infection as a

11 complication of the cone biopsy?

12 A She didn't give me a chance.

13 Q Did you have any discussions with

14 about the benefits of a cone biopsy

15 on July 1st?

16 A No.

17 Q Did you discuss with

18 anything about the fact that she could

19 experience pain or severe pain, as you

20 mentioned, following a cone biopsy?

21 A Yes, every procedure.

22 Q That would be any surgical

23 procedure, correct?

24 A Right.

25 Q What risks did you discuss with

93

1 , M.D.

2 about hysterectomy?

3 A First of all, no more children.

4 Second of all would be damaging a ureter,

5 damaging the bladder, damaging the bowel which

6 she had couple surgeries before and would make

7 the procedure even harder.

8 Q Did you have any discussions with

9 her about adhesions?

10 A Yes.

11 Q Did you use the word "adhesions"?

12 A Yes, that's what the reason for the

13 bowel injury.

14 Q What did she say -- I'm sorry, go

15 ahead, Doctor.

16 A I'm sorry, that's why we chose to

17 do laparoscopic assisted way to help her.

18 However, when we put her under

19 anesthesia we accommodated her. We try to be

20 less as -- less invasive for her as possible.

21 So we put her under anesthesia with epidural.

22 Her uterus and cervix were relaxed. It was

23 prolapsed into the vagina a little bit. So I

24 chose not to do a laparoscopic way and

25 proceeded with an even less invasive way with

94

1 , M.D.

2 just a vaginal hysterectomy.

3 Q Is it your opinion that a vaginal

4 hysterectomy is less invasive than a

5 laparoscopic assisted vaginal hysterectomy?

6 A Of course.

7 Q Was it customary back in the year

8 2000 that after you performed surgery to a

9 patient that you generated or dictated an

10 Operative Report to reflect what you did?

11 A Yes.

12 Q You did that in this case, correct?

13 A Yes.

14 Q Was it also customary that after

15 you generated such a report that at some point

16 after it is prepared that you get a copy of it,

17 you review it and you sign it?

18 A Right.

19 Q That becomes part of the patient's

20 chart, correct?

21 A Right.

22 Q You did that in this case?

23 A Yes.

24 Q Did any resident assist you during

25 the course of hysterectomy?

1 , M.D.

2 A No.

3 Q Were there residents in the

4 Department of Obstetrics and Gynecology at

5 Hospital in the year 2000?

6 A No.

7 Q In fact, it was Dr. Lee who

8 assisted you during the procedure?

9 A Right.

10 Q Did you state anywhere in your

11 Operative Report your observations that you

12 just told me about a moment ago that under

13 anesthesia her uterus was prolapsing through

14 the vagina?

15 MR. : He is asking about the

16 Operative Report. Why don't we find

17 the Operative Report because that's

18 what these particular questions seem

19 to be addressing.

20 A I'm sorry, I'll rephrase what I

21 said. After the anesthesia after I grasped it

22 with the forceps and her uterus was falling

23 down a little bit I chose easier to just do a

24 vaginal hysterectomy instead of laparoscopic

25 way.

96

1 , M.D.

2 Q That was why you chose not to do an

3 LAVH but rather vaginal hysterectomy?

4 A Right.

5 I'm sorry, refer to Operative

6 Report cervix was grasped with tenaculum after

7 grasping with the tenaculum the cervix and the

8 uterus was falling down a little bit I

9 observed.

10 Q Can you show me where in your

11 Operative Report you indicated why you chose to

12 go from a LAVH which was originally discussed

13 with to a vaginal hysterectomy?

14 A I don't see that in the Operative

15 Report that I made that decision at that time.

16 Q Am I correct that when you spoke to

17 on July 1st in your office you discussed

18 with her the risks and benefits of an LAVH,

19 correct, that would be a laparoscopic assisted

20 vaginal hysterectomy?

21 A Right.

22 Q You did not have any direct

23 conversation with her about performing a

24 vaginal hysterectomy as opposed to an LAVH,

25 correct?

97

1 , M.D.

2 A No, I did explain to her about the

3 vaginal hysterectomy part. About removing the

4 uterus from below the cervix.

5 Q Specifically with regard to the

6 consent that you obtained from her when you

7 were going to perform the surgery, it was your

8 impression at least initially that you were

9 going to perform an LAVH, correct?

10 A Yes.

11 Q You had the consent from her for an

12 LAVH?

13 A Possible vaginal hysterectomy,

14 depended on the situation.

15 (Recess)

16 Q Doctor, what information will a

17 cone biopsy tell you that a LEEP cannot?

18 A Nothing more.

19 Q Did you ever tell at

20 any time before performing her hysterectomy

21 that she had only three years to live if she

22 did not have a hysterectomy?

23 A No.

24 Q Did you ever tell to

25 bring her family into the office to discuss the

98

1 , M.D.

2 results of the pathology from the LEEP?

3 A She voluntarily did that. I did

4 not ask her.

5 Q Was it customary for you to tell

6 your patient to bring in their significant

7 other or family member to be with them during

8 the time that they received the results of the

9 pathology of the LEEP?

10 A No.

11 Q In cases where you find

12 abnormalities on LEEP's, do you customarily ask

13 the patient to bring in their family to discuss

14 the results?

15 A No, not all the time.

16 MR. : Just wait for him to

17 complete his question before you

18 answer.

19 Thank you.

20 Q Do you recall any occasion

21 before July 17th when you performed the

22 hysterectomy when came to your office

23 with both her husband and her mother?

24 A Yes, twice, I believe.

25 Q During those occasions, as far as

99

1 , M.D.

2 you recall, both of them were present in the

3 room during the time that you spoke to

4 about her medical condition, correct?

5 A No, I believe the husband sometimes

6 walked in. Sometimes was in the waiting room.

7 I couldn't remember which occasion both of them

8 are in the room per se.

9 Q You had mentioned earlier that you

10 believed that 's mom had had a

11 hysterectomy in the past, correct?

12 A Right.

13 Q Can you take a look, please, at

14 your office record and to see what information

15 you have contained within that that would lead

16 you to conclude that her mother had had a

17 hysterectomy previously?

18 A No, I didn't write it down.

19 Q What is it that led you to believe

20 that her mother had had a hysterectomy?

21 A Her conversation. July 1st

22 conversation.

23 Q On the day that came to you

24 on June 24th, before examining her did you take

25 a history of her?

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1 , M.D.

2 A Yes.

3 Q And you recorded that history,

4 correct?

5 A Right.

6 Q On the right side of your note of

7 June 24th you record past medical history,

8 correct?

9 A Right.

10 Q You have noted there that there is

11 no past medical history?

12 A Right.

13 Q You have same noted for past

14 surgery call history, correct?

15 A Yes.

16 Q What is "SH"?

17 A Social history.

18 Q That would be like drinking,

19 smoking, things of that nature?

20 A Right.

21 Q That's also recorded as negative,

22 correct?

23 A Right.

24 Q Did you ever come to learn between

25 June 24th and July 17th that had

1 , M.D.

2 had gallbladder surgery in the past?

3 A She told me that, yes.

4 Q Is that recorded in your first

5 note?

6 A No.

7 Q Did you ever come to learn between

8 June 24th and July 17th that she had undergone

9 another surgery in the past?

10 A That I didn't know.

11 Q How was it -- go ahead.

12 A I looked at her abdominal scar. I

13 recognized she had a scar. So I asked her the

14 question. She told me she had her gallbladder

15 removed.

16 Q Do you have that recorded in your

17 note?

18 A No.

19 Q Did you ask her when she had her

20 gallbladder removed?

21 A Yes, I believe she said two years

22 ago before the surgery.

23 Q Two years before the year 2000?

24 A Right, I believe.

25 Q Did she tell you where she had that

2 done?

3 A I believe she had it at Mount

4 Sinai.

5 Q Did you learn whether had

6 undergone any type of gynecologic procedure

7 prior to her arrival in your office?

8 A Yes, I learned but there's negative

9 gynecological procedure surgery.

10 Q Did you learn that from her or

11 someone else?

12 A From her.

13 Q Based on your exam of June 24th,

14 what led you to believe that you might

15 encounter adhesions during your hysterectomy?

16 A On experience anybody who had

17 previous surgery then you would suspect that

18 she might have adhesions.

19 Q The procedure that you performed

20 was confined solely to the pelvic area,

21 correct?

22 A Right.

23 Q The gallbladder surgery is an

24 entirely different area of the anatomy, right?

25 A Correct.

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1 , M.D.

2 Q Were there any other surgical

3 procedures that you were aware of that

4 had undergone before June 2000 that would lead

5 you to conclude that she might have adhesions?

6 A No, I don't recall.

7 Q Is it possible for a woman who is

8 28 years old to have adhesions in the absence

9 of surgery?

10 A Yes, infection.

11 Q Is there anything to suggest in

12 your records that had a past history of

13 pelvic infections?

14 A No.

15 Q So other than pelvic infections, is

16 there anything else to lead you to conclude

17 that would have or could likely have had

18 adhesions in your proposed hysterectomy?

19 MR. : Objection to form.

20 You can answer.

21 A Even gallbladder surgery

22 sometimes you could still have adhesion down in

23 the pelvic area.

24 Q How is that possible?

25 A Because she had a laparoscopically.

1 , M.D.

2 They have to introduce the trocar through the

3 abdominal cavity on the abdomen. So if any

4 kind of foreign body goes into the abdomen it

5 can trigger an infection anywhere in the

6 abdomen like the pelvis.

7 Q During the course of the

8 hysterectomy you did on on July 17th,

9 did you encounter any adhesions?

10 A Not in my area, pelvic area.

11 Q I'm only asking in what you did.

12 A No adhesions when I operated on

13 her. I didn't encounter any adhesions.

14 Q Before the surgery during one of

15 your conversations with , did you

16 tell her that she had a very aggressive form of

17 cancer?

18 A No, we had answered that before. I

19 told her that she did have cancer. I do not

20 know what you mean by aggressive.

21 Q Did you tell her in substance, not

22 the exact words but in substance, that the type

23 of cancer she had was very aggressive?

24 A No. I told her that she had

25 glandular involved.

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1 , M.D.

2 Q Doctor, wait. I'm just asking you

3 specific questions. If you can answer that,

4 I'd appreciate it.

5 A Okay.

6 Q Did you tell her that the only way

7 to get rid of the cancer that she had is with a

8 hysterectomy?

9 A No.

10 Q Did you tell that the LEEP

11 results were borderline?

12 A Right.

13 Q And that the hysterectomy had to be

14 done as soon as possible?

15 A No.

16 Q Did you give her any timeline in

17 which you wanted to perform the hysterectomy?

18 A No.

19 Q Did you tell that she would

20 die of cervical cancer if she did not have the

21 hysterectomy?

22 A No.

23 Q Did you tell that as of July

24 2000 before the hysterectomy was done that the

25 cancer that was observed in the pathology has

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1 , M.D.

2 spread already to the uterus?

3 A No.

4 Q Doctor, was there any way for you

5 to definitively confirm that the cancer had

6 spread to the uterus without doing a

7 hysterectomy?

8 A Rephrase that question one more

9 time.

10 Q Sure.

11 Before doing a hysterectomy in July

12 of 2000, is there any way for you to

13 definitively tell whether or not cancer had

14 already invaded the uterus?

15 A No.

16 Q During the course of the vaginal

17 hysterectomy that you performed on July 17th,

18 did you reconstruct 's vaginal area?

19 A No.

20 Q Were you aware that postoperatively

21 had complained of pain in and around the

22 vagina?

23 A Yes, post-op check, yes.

24 Q Did you ever conclude or reach any

25 decision as to why she was experiencing pain

1 , M.D.

2 postoperatively?

3 A From the suture site, yes.

4 Q As part of the surgery that you

5 performed again on July 17th, did you make the

6 vaginal opening smaller than it originally was?

7 A No.

8 Q Did you ever learn from

9 herself that she was having difficulty with

10 intercourse after having had the hysterectomy?

11 A No.

12 Q What is the term that you doctors

13 use to describe pain on intercourse?

14 A Dyspareunia.

15 Q Did ever express that type

16 of complaint to you while she remained under

17 your care?

18 A No.

19 Q You had told me earlier that you

20 had personally reviewed the June 24th slides at

21 Hospital with Dr. Sandhu, correct?

22 A Yes.

23 Q Did you also review the pathology

24 slides from the hysterectomy specimen that was

25 done on July 17th?

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1 , M.D.

2 A Yes.

3 Q With whom did you review those

4 slides?

5 A Dr. .

6 Q When did you review those slides?

7 A I believe it was a couple of days

8 after the pathology but I couldn't remember

9 exactly which date.

10 Q When you say after the pathology,

11 you mean after the report has been generated?

12 A Right.

13 Q You received a copy of that?

14 A Right.

15 Q Did you review the slides at Mount

16 Vernon Hospital?

17 A Yes.

18 Q Okay.

19 A Sorry, rephrase that.

20 I wouldn't say a couple of days

21 after the completion. It might have been that

22 day. I can't remember exactly which day.

23 Q When you refer to that day, what do

24 you mean?

25 A July 20th which was done. I mean

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1 , M.D.

2 it could be just around that time. I couldn't

3 remember which day.

4 Q Is there any specific reason that

5 you recall as you sit here now as to why you

6 reviewed those pathology slides at that time?

7 A It was customary practice of mine

8 to review pathology in the hospital.

9 Q How many slides did you actually

10 review?

11 A There are many slides. I couldn't

12 remember how many.

13 Q Did you review all of them?

14 A I remember whatever Dr.

15 showed me, yes.

16 Q Can you estimate how many it was

17 that you actually did review?

18 A At least between five to ten I

19 believe at least.

20 Q When you personally reviewed those

21 slides, were you in agreement with Dr. 's

22 assessment of what those slides contained?

23 A Yes.

24 Q Did you have any reason to disagree

25 with Dr. 's assessment of the pathology

1 , M.D.

2 evaluation of the hysterectomy specimen?

3 MR. : Note my objection.

4 This witness is not a

5 pathologist but over objection I'll

6 let him answer.

7 A No, he's a pathologist.

8 Q Okay.

9 A I'm sorry, he's a pathologist. He

10 showed me whatever I need to look at.

11 Q What did Dr. tell you during

12 the course of your conversation when you were

13 reviewing the slides?

14 A They are still precancer cells

15 remained and which also had glandular

16 involvement and I believe he said it was lucky

17 that this patient was done.

18 Q What do you mean?

19 A Was lucky that we removed the

20 uterus and cervix.

21 Q Did he say why?

22 A I couldn't remember offhand. I

23 just remember that there are precancer cells

24 still remained.

25 Q If the cervix is no longer present,

111

1 , M.D.

2 where do the cancer cells remain?

3 A It could still remain in the

4 vagina.

5 You mean subsequently?

6 Q Well, I want to be clear on this.

7 You just told me that Dr. told you that

8 this patient is lucky that you removed her

9 uterus and cervix. You had also mentioned that

10 she still had precancerous cells remaining?

11 A I'm sorry, remaining in the cervix

12 after the LEEP biopsy. In a specimen still

13 remains -- the specimen -- in the vaginal

14 hysterectomy specimen, is that what you mean?

15 MR. : Off the record.

16 (Informal discussion held off

17 the record)

18 Q Did you have any discussion

19 with Dr. about what you would have

20 expected to see if you had done a cone biopsy

21 instead of a hysterectomy?

22 A No.

23 Q We had discussed a little earlier

24 the fact that Dr. 's colposcopy done in

25 the middle of June of 2000 showed a negative

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1 , M.D.

2 ECC, correct?

3 A Right.

4 Q That your LEEP however revealed an

5 abnormal endocervix, correct?

6 A Right.

7 Q And that at that point you then had

8 two conflicting results for the similar area,

9 correct?

10 A Right.

11 Q The clinical practice guidelines,

12 do you know what entity publishes that?

13 A No, which book publishes that?

14 Q No, whether it's the American

15 College of OB/GYN, whether it's some other

16 OB/GYN society or organization?

17 A No, I couldn't recall.

18 Q Do you know what the clinical

19 practice guidelines require a physician such as

20 yourself to do in the circumstances where you

21 have two conflicting results in between the

22 negative ECC and an abnormal endocervix in

23 terms of evaluation and treatment. Are you

24 aware of what is contained in the guidelines?

25 A I don't believe there's a guideline

1 , M.D.

2 for it. It's kind of a discrepancy.

3 Q Are you familiar with the general

4 terms "standard of care"?

5 A Standard of care is a guideline,

6 yes.

7 Q Would you agree again with a

8 reasonable degree of medical probability that

9 the standard of care in the instance where you

10 have conflicting results between the negative

11 ECC and a positive endocervical result require

12 you as the next step for an evaluation to then

13 proceed to a cone biopsy?

14 A No, that's not a standard of care.

15 Q What was the standard of care as it

16 existed in June and July of 2000 at that point?

17 A There is no standard of care. I

18 mean individual cases are different.

19 Now as you're pointing out that the

20 endocervical cell was involved from the ECC

21 from the LEEP biopsy which tells me that there

22 is more involvement than just a carcinoma in

23 situ which even with that I -- even with that

24 result you tell me there's much more than just

25 carcinoma in situ. That's why there are

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1 , M.D.

2 options, either cone biopsy or vaginal

3 hysterectomy.

4 Q Without performing a cone biopsy,

5 how can you tell what, if anything, is further

6 up the cervical canal in terms of whether

7 there's any cancer cells there?

8 A Without performing a cone biopsy?

9 Q I'll rephrase the question.

10 You now have two conflicting

11 results concerning the cervix, correct, okay,

12 in June of 2000?

13 A Okay.

14 Q Putting aside the options of a

15 hysterectomy and before you chose to do a cone

16 biopsy, is there any way for you to definitely

17 confirm whether there is cancerous cells

18 present further up the cervical canal above the

19 area where you performed your LEEP?

20 A There's no need for me to confirm

21 any more even with the simple LEEP biopsy there

22 is endocervical cells involved. What should I

23 do more to get more information to finding out

24 some information that I don't need to know.

25 Q Why don't you need to know whether

1 , M.D.

2 there are cervical cancerous cells up higher in

3 the cervical canal at that point?

4 A Because the superficial part is

5 already involved. The deeper part probably is

6 involved too.

7 Q How do you know that?

8 A Because cell travel in deeper

9 fashion. It can penetrate deeper. They

10 involve the superficial ones first.

11 Q Do you have an opinion within a

12 reasonable degree of medical probability

13 whether a cone biopsy will tell you

14 definitively whether there's a cancer further

15 up past the endocervix?

16 A No.

17 Q No, you don't have an opinion or is

18 your opinion that no, it will not?

19 A No, a cone biopsy will not tell you

20 more that there are cells deeper than the

21 endocervix. Is that what you mean?

22 Q I'm not talking about deeper. I'm

23 talking about higher up?

24 A Past?

25 Q Past the endocervix?

1 , M.D.

2 A No, the cone biopsy is not the

3 right tool for that.

4 Q What is, if there is one, a tool

5 that will tell you that?

6 A Probably be hysterectomy to tell.

7 Q Can we agree that a cone biopsy

8 goes further up the canal in terms of removing

9 tissue than a LEEP?

10 A Further, yes.

11 Q Would it be of use to you in the

12 purposes of evaluation and treatment of a

13 patient with a condition that presented

14 with to know whether there was any cancerous

15 cells above or higher up into the endocervical

16 -- further up past the endocervical area as to

17 whether there was anything lurking there?

18 MR. : In addition to

19 cancerous cells that he was already

20 aware of through the various tests

21 that were conducted and the results

22 that he had from them?

23 MR. OGINSKI: I'll rephrase the

24 question.

25 Q Would a cone biopsy had been

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1 , M.D.

2 useful for you in purposes of diagnosis and

3 treatment prior to performing a hysterectomy?

4 A No.

5 Q Why?

6 A From the LEEP biopsy we already

7 show that the margins are not clear and that

8 all the superficial area's involved and by

9 doing a deeper cone biopsy might not be the

10 cure -- might not be the answer to treat her

11 problem.

12 Q How do you know whether it would be

13 the answer if the procedure is not performed?

14 A It's a guideline. It's a

15 suggestion. It's experience. It does not mean

16 you always have to know the answer for.

17 Q Is a cone biopsy preferable to

18 performing a hysterectomy on a 28-year-old

19 otherwise healthy woman?

20 MR. : When you say otherwise,

21 now you're taking into account there

22 are cancerous cells there and that

23 perhaps if nothing is done and time

24 is not utilized properly that the

25 cancer can't spread and become more

118

1 , M.D.

2 aggressive and more difficult to

3 treat, is that encompassed in your

4 question?

5 MR. OGINSKI: I'll rephrase the

6 question.

7 Q Is a cone biopsy preferable to

8 performing a hysterectomy on a 28-year-old

9 woman?

10 A Depends on the situation.

11 Q In 's case, putting aside her

12 own desires or her own desires as you've

13 already told me about, based solely on the

14 medicine alone, would it be preferable to have

15 performed a cone biopsy rather than a

16 hysterectomy for the purposes of diagnosis and

17 treatment?

18 A No.

19 Q Is it your opinion that a

20 hysterectomy is the procedure of choice in

21 's case, again putting aside what she may

22 or may not have wanted?

23 A Yes.

24 Q Are there instances in your

25 practice where you have performed a cone biopsy

1 , M.D.

2 prior to performing a hysterectomy?

3 A No, usually from experience that I

4 have the cone biopsy was -- even with just LEEP

5 biopsy was the margin was pretty much clear.

6 Q When you do a LEEP procedure you

7 cut through the lesions, correct?

8 A Right.

9 Q How do you know that higher up

10 there's no cancer?

11 A That's why we don't know.

12 Q And --

13 A We don't know how high it will go

14 up.

15 Q Right.

16 So all I'm asking is when you do a

17 cone biopsy, that tells you further up than

18 what you've obtained with the LEEP whether

19 there's any cancerous cells higher up, correct?

20 A Still not conclusive.

21 Q I understand that but it still

22 gives you additional information to assist you

23 in making a diagnosis and treatment?

24 A It could provide more additional

25 information.

1 , M.D.

2 Q You performed an endocervical LEEP,

3 correct?

4 A Right.

5 Q In your endocervical specimen that

6 you obtained with your LEEP procedures you did

7 not obtain any ectocervix in the specimen,

8 correct?

9 A No, no, I did. I did obtain ecto.

10 Q Is the ectocervix lower down in the

11 cervical area or is it above the endocervical

12 canal or somewhere else?

13 A Outside, yes.

14 Q From the LEEP alone is there any

15 way for you to determine whether there is any

16 type of cancer lurking up past the endocervix?

17 MR. : In addition to the

18 cancer that was detected?

19 MR. OGINSKI: I'll withdraw the

20 question.

21 Q When you performed the LEEP on

22 June 24th, did you know how far the cancerous

23 cells extended into the endocervical canal?

24 A No.

25 Q When you performed the LEEP

2 procedure and received the results of the

3 pathology back from the LEEP, were you able to

4 determine how far up into the cervical canal

5 the cancerous cells went?

6 A No.

7 Q Would a cone biopsy have assisted

8 you in determining how far up the cancerous

9 cells went into the cervical canal?

10 A No.

11 Q If a cone had been performed before

12 the hysterectomy in 's case, based upon

13 what you know from the results of the

14 hysterectomy, can you say with a reasonable

15 degree of medical probability that her margins

16 would have been clear if you had performed a

17 cone biopsy?

18 MR. : Note my objection.

19 That's a hypothetical question.

20 MR. OGINSKI: But it's an

21 appropriate one in light of the

22 findings in this case.

23 THE WITNESS: Answer that?

24 MR. : No.

25 MR. OGINSKI: The basis again

1 , M.D.

2 is?

3 MR. : You're asking

4 hypothetical questions. Asking him

5 to comment on what may have happened

6 if some other course may have been

7 done or something else may have been

8 done what might possibly be observed.

9 Q Based upon the findings of the

10 Pathology Report from the July 17th surgery,

11 can you tell from that report that if a cone

12 biopsy had been done the margins in the

13 cervical canal would have been clean?

14 THE WITNESS: Answer that?

15 MR. : Over objection you can

16 answer.

17 A No, you couldn't tell.

18 Q Why not?

19 A Now, the cone biopsy going deep

20 into the canal. The cancerous cell doesn't

21 just spread into the canal. It goes through

22 the base membrane. Once again it doesn't

23 matter how deep you cut. You could get cell.

24 You could get margin clear. Cells travel in

25 many different directions. It doesn't have to

1 , M.D.

2 go to a birth canal. Go into the uterus. It

3 doesn't travel that way. It travels in many

4 different directions. So no matter how deep

5 you cut with the cone biopsy it wouldn't

6 guarantee you that.

7 Q I'm not asking for guaranties,

8 Doctor. I'm asking based upon your expertise

9 and your knowledge and with a reasonable degree

10 of medical probability that based upon Dr.

11 Chung's pathology findings on July 17th whether

12 you could determine that if a cone had been

13 performed before that time whether it would

14 have revealed that there was no cancerous cells

15 and the margins would have been clear higher up

16 in the canal?

17 A No.

18 Q Would you agree that where you have

19 ambiguous margins on the test that you

20 performed the LEEP and also the prior

21 colposcopy that the procedure of choice is to

22 perform a cone biopsy prior to performing a

23 hysterectomy?

24 MR. : Note my objection.

25 This has been asked and

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1 , M.D.

2 answered several times.

3 MR. OGINSKI: It's a different

4 question.

5 MR. : I don't believe it

6 is. You've asked that question about

7 several times.

8 MR. OGINSKI: It's a different

9 form and there's a reason for it.

10 I'm not belaboring the point.

11 MR. : I think you are, to

12 be honest with you.

13 MR. OGINSKI: I really don't

14 mean to.

15 Before I asked him about his

16 standard of care. Now I'm talking

17 about procedure of choice which may

18 or may not be synonymous and I need

19 to get an opinion from him as to

20 whether or not that's the case, if

21 that's the procedure of choice.

22 MR. : You're asking the

23 same questions over and over again

24 and I don't mean to be difficult but

25 I don't want to stay here all day.

1 , M.D.

2 MR. OGINSKI: I don't either.

3 MR. : You ask the same

4 questions continuously.

5 MR. OGINSKI: I don't have that

6 much more to go.

7 MR. : Asked and answered.

8 MR. OGINSKI: I think you could

9 get through another half hour, 40

10 minutes. I don't think it's too much

11 to ask just that question since it's

12 a different question than what I

13 asked before.

14 MR. : Read it back.

15 (Record read)

16 MR. : Note my objection.

17 You can answer over objection.

18 A I wouldn't say that's a

19 preferable choice of a procedure. It's one of

20 the options.

21 Q Customarily, Doctor, in your

22 practice when you receive abnormal test results

23 you give the patient various options as part of

24 your treatment plan, correct?

25 A Correct.

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1 , M.D.

2 Q Often times the patient does not

3 have the same medical knowledge and training

4 and background as you do, correct?

5 A Okay.

6 Q They will often times turn to you

7 for advice in asking what you think should be

8 done to treat a particular condition, correct?

9 A Okay.

10 Q As part of your assessment you at

11 times make certain recommendations to the

12 patient as to what you feel should be done,

13 correct?

14 MR. : You're speaking in

15 general?

16 MR. OGINSKI: Generally.

17 MR. : You can answer.

18 A Yes.

19 Q Do you consider a recommendation to

20 be the same as the suggestion to a patient?

21 A No, I wouldn't say I would use

22 those two words differently, recommendation and

23 suggestion.

24 Q Are there times when you will be

25 somewhat forceful with a patient in

127

1 , M.D.

2 recommending a particular procedure?

3 A Sometimes.

4 Q Are there other times while you

5 will present the patient with all the various

6 options, you will allow them to choose among

7 the various options?

8 A Right.

9 Q Can you turn, please, to your June

10 24th handwritten note, please, in that note --

11 on June 24th, how long was the patient in your

12 office that day?

13 A About an hour.

14 Q How long did the LEEP procedure

15 take?

16 A Takes about 30 to 40 minutes

17 including anesthesia, numbing process.

18 Q Before you addressed your

19 assessment you had already completed the LEEP,

20 correct?

21 A Right.

22 Q Tell me what your assessment was?

23 A CIN3.

24 Q No, I'm sorry, read from "because

25 of discrepancy"?

1 , M.D.

2 A "Because of a discrepancy between

3 Pap and colposcopy results LEEP done, arrow

4 under sterile procedure; A for anterior

5 cervix; B for posterior cervix; C for

6 endocervix and all removed by LEEP."

7 Q Your assessment after that?

8 A Assessment is CIN3.

9 Q After that your plan was?

10 A "Number one, pathology sent.

11 Number two, return in two weeks for post-op

12 check."

13 Q Why did the patient return to your

14 office within one week in light of your

15 instruction to return in two weeks?

16 A Because I got results already and

17 she was nervous about her results so she come

18 back.

19 Q Okay.

20 A Usually I expect about two weeks

21 but the results came back early.

22 Q Did call your office between

23 June 21st and July 1st?

24 A I believe she did.

25 Q How do you know that?

129

1 , M.D.

2 A The secretary asked me, "Did you

3 get the results yet, did you get the results

4 yet".

5 Q Other than calling up to find out

6 the results of the LEEP, did she call at any

7 time during those six or seven days to make any

8 complaints about any complications she was

9 experiencing from the LEEP procedure?

10 A No.

11 Q None that you recall or no, she did

12 not?

13 A She never complained to me she had

14 complications after the LEEP procedure.

15 Q Did she ever tell you that she had

16 experienced excessive bleeding during the days

17 following the LEEP procedure?

18 A No.

19 Q Can you turn please to your July

20 29th note. Is that her first post-op visit in

21 your office since the hysterectomy?

22 A Yes.

23 Q Can you read your note, please?

24 A "Status post vaginal hysterectomy

25 for carcinoma in situ of cervix on July 17/00."

1 , M.D.

2 "Pathology: All margins cleared."

3 "Physical examination: Vaginal

4 cuff clear. Positive discharge. No bleeding."

5 "Assessment: Post-op check."

6 "Plan: Return in six months for

7 follow-up."

8 Q In fact, returned within

9 about two and a half weeks to your office,

10 correct?

11 A Right.

12 Q Was this a scheduled visit or did

13 she call to schedule this visit and come in?

14 A I believe she either walked in or

15 she called in.

16 Q Can you read your note, please?

17 A "Complains of lump in vaginal cuff.

18 Granulation tissue seen. Sutures intact.

19 Still in process of dissolving."

20 "Plan: Return in six months.

21 Second, Percocet," which is pain medication.

22 Q Where was she experiencing pain?

23 A I believe -- I remember she always

24 complained about pain in the abdomen area, not

25 specifically in the vagina area.

131

1 , M.D.

2 Q Did you make an assessment as to

3 the cause of her complaints of abdominal pain

4 on August 17th?

5 A Yes, we examined the abdomen.

6 Q What were your findings?

7 A Nothing specific.

8 Q In your opinion was this normal

9 postoperative healing pain that she was

10 experiencing?

11 A Yes.

12 Q Was there anything unusual in your

13 mind as to the cause of this pain?

14 A No.

15 Q Was this the first time you had

16 prescribed Percocet for her?

17 A No, she had Percocet from the

18 hospital.

19 Q She again returned to your office

20 on September 2nd?

21 A Yes.

22 Q Again was there an appointment she

23 made because of the complaints she had?

24 A Yes.

25 Q Can you read that note, please?

1 , M.D.

2 A "Complains of gap in vaginal cuff.

3 Sutures dissolved."

4 Q I'm sorry, what does that say

5 before suture?

6 A "Physical examination."

7 Q Go ahead.

8 A "Sutures dissolved now.

9 Granulation tissue seen. Silver nitrate

10 applied. No bleeding."

11 "Plan: Percocet. Second one,

12 return in six months."

13 Q Why did you apply silver nitrate?

14 A Granulation tissue means when --

15 engineering-wise, structural-wise, when you

16 remove the cervix and uterus you have to close

17 the top part of the pelvis part vaginally. You

18 have to close it. Once you close those two

19 vaginal cuffs above together, some dissolve,

20 those two new vaginal tissues have to go back

21 together. They form granulation tissue.

22 Sometimes those granulation tissues are very

23 raw, very fresh and they could cause bleeding,

24 it could cause pain. So silver nitrate is a

25 chemical solution that you could make those raw

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1 , M.D.

2 tissues go away.

3 Q Where was silver nitrate applied?

4 A To the vaginal cuff. To the

5 granulation tissue.

6 Q Did you observe any opening?

7 A No.

8 Q Is silver nitrate applied when you

9 do not observe any opening?

10 A Yes, silver nitrate's applied to

11 any kind of granulation tissue seen.

12 Q Was Mrs. still complaining of

13 pain on the September 2nd visit?

14 A I believe she did. That's why I

15 gave her Percocet again.

16 Q Where was the pain she was

17 complaining of?

18 A Nothing specific. Just lower

19 abdomen pelvis area.

20 Q On your examination were you able

21 to determine the etiology of that pain?

22 A From physical examination, no.

23 Q Did you elicit from Mrs. how

24 often she would experience the pain?

25 A That's a very subjective term.

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1 , M.D.

2 Everybody takes pain differently.

3 Q I'll ask it a different way.

4 MR. : Just let him answer the

5 question. You did put a question

6 out. He is answering. I would ask

7 you to at least wait until he

8 completes his answer.

9 MR. OGINSKI: Sure. But it was

10 not responsive.

11 MR. : But nonetheless I

12 would appreciate you letting him

13 answer and he's letting you ask your

14 question in its entirety.

15 MR. OGINSKI: Fair enough.

16 Fine.

17 Q Did you ask Mrs. how often

18 she got her abdominal pain?

19 A No.

20 Q Did you ask her whether she was

21 able to sleep through the pain at night?

22 A No.

23 Q Did you ask her whether she was

24 taking any over-the-counter medications in

25 response to her pain?

1 , M.D.

2 A I believe so.

3 Q What was her response?

4 A She said she has low tolerance for

5 pain. Extra Strength Tylenol would not help

6 her at all.

7 Q Did she indicate she had tried to

8 take Tylenol?

9 A I believe so.

10 Percocet, you need a special type

11 of prescription than just a simple

12 prescription.

13 Q Did you ask her whether Percocet

14 provided the relief?

15 A Yes.

16 Q What did she say?

17 A She said, "Yes, that's the only

18 medication can help her." Usually, I do not

19 give people Percocet because once again it's a

20 special type of prescription, you need a

21 government...

22 Q Is that a narcotic?

23 A A narcotic, yes.

24 Q Am I correct that you prescribed

25 Percocet in the hospital postoperatively?

136

1 , M.D.

2 A Yes.

3 Q That was in response to her

4 complaints of pain, correct?

5 A Yes.

6 Q Doctor, I'd like you to turn,

7 please, to the hospital record, to your history

8 and physical prior to the performance of the

9 surgery. Before we get to that can you turn to

10 the Discharge Summary. Under the section where

11 it says, "Hospital course," under the second

12 line it says, "Postoperative course was

13 uneventful except for a lot of severe pain,"

14 correct?

15 A Correct.

16 Q "The patient has low tolerance for

17 pain," correct?

18 A Correct.

19 Q Did you ever determine the cause or

20 the nature of her severe pain?

21 A I mean she told me she had a

22 gallbladder removed. She was in the hospital

23 about seven days. The doctor told her

24 "nothing's wrong." She told me herself she had

25 low tolerance for pain.

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1 , M.D.

2 Q But did you ever make an assessment

3 as to the cause of her pain she was

4 experiencing in the hospital?

5 A Yes.

6 Q What was the cause?

7 A Abdomen, I examined the pelvis to

8 make sure there's no --

9 Q I'm not asking you what you did.

10 A -- complications.

11 Q I'm asking you what it was that you

12 concluded was causing her severe pain?

13 A Many reasons cause pain so there's

14 not one specific reason that can cause pain.

15 Q In your opinion what were the

16 different reasons that were causing her the

17 severe pain she was experiencing?

18 A Surgery. Any kind of cut from a

19 knife you would expect to have pain. I assume

20 so.

21 Q The severe pain that you described

22 in the Discharge Summary, where within her body

23 was she experiencing the severe pain?

24 A Abdomen, pelvis.

25 Q Is that reflected in your Discharge

138

1 , M.D.

2 Summary?

3 A No, not really.

4 Q Is that something that you recall

5 as you sit here now?

6 A Yes.

7 Recall where is the pain, is that

8 what you mean?

9 Q Yes.

10 A Yes.

11 Q You continue by saying, "So, the

12 patient was given a lot of pain medication,"

13 correct?

14 A Correct.

15 Q That would be the Percocet that you

16 described earlier?

17 A Right.

18 Q Continue.

19 A I might have given -- accommodated

20 her and given her Demerol IM injection. I

21 couldn't recall but if we look through the

22 chart maybe she did.

23 Q I saw the Demerol IM.

24 A Okay.

25 Q Was it customary for you to

139

1 , M.D.

2 prescribe antibiotics postoperatively to a

3 patient who just had a hysterectomy?

4 A Yes.

5 Q You had also given her prescription

6 for when she would be discharged for Percocet,

7 correct?

8 A Correct.

9 Q Can you turn, please, to your

10 Progress Record starting with July the 17th

11 note. Can you read that please in its

12 entirely?

13 A "BORN."

14 Q What does that stand for?

15 A Brief Operating Room Notes. Pre-op

16 diagnosis: Carcinoma in situ of cervix.

17 Post-op diagnosis: Same. Procedure: Vaginal

18 hysterectomy. Surgeon: Dr. . Assistant:

19 Dr. . Anesthesiology: Epidural by Dr.

20 . Input: 1,500 cc's. Output: 600

21 cc's. Estimated blood loss: 200 cc's."

22 "Findings: No adhesions. Uterus

23 within normal limit. Cervix intact removed.

24 No complications."

25 Q The following day you wrote a note,

140

1 , M.D.

2 correct?

3 A Yes.

4 Q That's July 18, 2000. Can you read

5 that, please?

6 A "Post-op day number one.

7 Subjective: Patient is doing well. Objective:

8 Vital signs stable. Temperature maximum

9 100.6."

10 Q Was that febrile?

11 A No, above 101 we call that febrile.

12 It's low grade temperature.

13 Q Continue.

14 A "Number two is physical

15 examination: Lungs clear to auscultation.

16 Abdomen: Soft and nontender. Pelvis: No

17 bleeding, packing removed. No bleeding now.

18 And there's a number there. It's 34.0/".

19 Q That would be her hematocrit?

20 A Yes.

21 Q That was within normal limits,

22 correct?

23 A Within normal limits.

24 Q Continue?

25 A "Assessment: Carcinoma in situ of

1 , M.D.

2 cervix."

3 "Plan: Number one, DC IV fluids."

4 Q That would be discontinue?

5 A Discontinue IV fluids.

6 Q Continue.

7 A And the unasyn 3 grams.

8 Q To give unasyn 3 grams?

9 A "To discontinue unasyn," which is

10 an antibiotic. "Number two, regular diet.

11 Number three, discharge patient home in a.m. of

12 July 19, '00."

13 Q On the day of discharge July 19th?

14 A "Post-op day number two. Patient

15 doing well. Vital signs stable. Afebrile."

16 "Plan: Discharge patient home

17 today."

18 Q Prior to having her

19 surgery, did she ever complain to you of pelvic

20 pain?

21 A Yes.

22 Q Is that reflected anywhere in your

23 office notes?

24 A No, I was more concentrating on the

25 cervical cancer part.

2 Q How is it you recall that she had

3 complained of pelvic pain from the time you had

4 seen her initially in June up until the time of

5 her hysterectomy?

6 A I believe I obtained another

7 history and physical before the surgery.

8 Q That was the day of surgery?

9 A That was the day she also told me,

10 yes.

11 Q Can you turn please to the history

12 and physical. You performed that, correct?

13 A Yes.

14 Q You write in the middle of the page

15 under "History of present illness" among some

16 other findings that she complained of pelvic

17 pain and menometorrhagia, correct?

18 A Right.

19 Q That is another term for abnormal

20 bleeding?

21 A Yes.

22 Q Or irregular bleeding, right?

23 A Right.

24 Q "None responding to oral

25 contraceptive pills"?

143

1 , M.D.

2 A Right.

3 Q Had you made any attempt to try and

4 treat Mrs. conservatively with medication

5 prior to offering a hysterectomy?

6 MR. : Note my objection.

7 What do you mean by

8 conservative?

9 MR. OGINSKI: I'll rephrase it.

10 Q Doctor, did you attempt to

11 treat Mrs. with any type of medications in

12 an attempt to treat her condition prior to

13 performing the hysterectomy?

14 MR. : What condition?

15 MR. OGINSKI: The abnormal

16 finding that he saw on pathology.

17 MR. : You mean cancerous

18 cell?

19 MR. OGINSKI: Yes.

20 A That was not the issue here of

21 bleeding. The issue of surgery was about

22 removing the cancer cell.

23 Q Turn to the second page of your

24 physical examination.

25 A Yes.

1 , M.D.

2 Q Under genitourinary section can you

3 read that?

4 A "Uterine size within normal limits.

5 No adnexal mass. Positive bleeding. Status

6 post LEEP. Positive tender upon palpation."

7 Q To what, if anything, did you

8 attribute the tenderness that you observed at

9 that time?

10 A From the LEEP two weeks ago.

11 Q Is that customary that you would

12 see tenderness in the abdomen after a LEEP?

13 A Yes, upon the incision site of a

14 LEEP of the cervix when you touch the cervix

15 from the previous two weeks ago surgery, of

16 course, it would hurt.

17 Q Palpation you referred to is that

18 external or internal?

19 A Intravaginally, is that what you

20 mean?

21 Q Yes.

22 A Yes.

23 Q Under "Lab data" I'd like you to

24 read what you have written there, please?

25 A I did not review this chart before.

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1 , M.D.

2 So whatever I said before I didn't know. Now I

3 look at this now "All the risks, benefits,

4 alternatives explained."

5 Q Let me stop you for a second. I'll

6 ask you to continue.

7 MR. : You asked him to read

8 it and you cut him off before he gets

9 a chance to read through.

10 Q Finish your note, Doctor.

11 A "All risks, benefits, alternatives

12 explained. Patient understood. Including no

13 more future pregnancy. She is a young patient

14 who chose to have LAVH for definite treatment."

15 Once again to answer your question

16 two, three hours ago from this morning, did she

17 ask me, she had two kids, she did not want any

18 more and this was clearly explained to her

19 during that interview, during that pre-op time.

20 Q Did you have another conversation

21 with while she was in the hospital

22 but before you performed the surgery on July

23 17th about the risks and benefits of having a

24 hysterectomy?

25 A Yes.

146

1 , M.D.

2 Q Who was present in the room during

3 the time you had this conversation?

4 A I believe the time when we signed

5 the consent there was a witness.

6 Q Who was present?

7 MR. : Find the consent. See

8 if the consent indicates who the

9 witness may have been.

10 A Kristy Aguiles. I don't know

11 her last name.

12 MR. : I would ask that

13 counsel for Hospital

14 provide us with a complete identity

15 of the person who signed the consent

16 as a witness in the event that they

17 are employed with Mount Vernon

18 Hospital or were employed with Mount

19 Vernon Hospital on July 17, 2000

20 when that document was generated.

21 MS. : Take it under

22 advisement.

23 You realize unless the name is

24 clearly printed; it's going to be

25 very difficult for me to find out who

1 , M.D.

2 it is.

3 MR. : I understand that

4 at times it can be difficult but --

5 MS. : If it's somebody

6 had a note in the chart or something

7 like that it's not a problem unless

8 the doctor knows who it is.

9 A I believe she still works

10 there. I believe her name is Kris. I believe

11 that's Kris's handwriting.

12 Q Is she a nurse?

13 A Yes.

14 MS. : Okay.

15 Q You were referring to the Consent

16 Form that Mrs. signed for the procedure,

17 correct?

18 A Yes.

19 Q Do you have any independent memory

20 as to whether anyone else was present with you

21 during the time you had such conversation about

22 the risks and benefits of the hysterectomy

23 while in the hospital?

24 A I clearly remember both her mother

25 and the husband was in the hospital at the time

148

1 , M.D.

2 and I believe that they were there but I

3 couldn't be 100 percent sure they were there

4 right next to me when I explained to her but I

5 know they were in the hospital. I seen them

6 that morning.

7 Q Generally, Doctor, prior to coming

8 here today, did you review any medical

9 literature or textbooks in preparation for

10 today's deposition?

11 A No.

12 Q Do you have any handwritten notes

13 that exist outside of your office chart and

14 hospital records for this patient?

15 A No.

16 Q In a situation -- I'm talking

17 generally -- where you have conflicting

18 pathology reports as we had here -- but now I'm

19 asking a general question -- if a cone biopsy

20 is performed and the margins are clear at that

21 point, what treatment is necessary, if any, to

22 observe and to see what's going on with this

23 patient in the future?

24 A To observe.

25 Q How do you observe?

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1 , M.D.

2 A Every three months, six months

3 maybe. Depends.

4 Q Would you perform a colposcopy as

5 part of your observation process on a somewhat

6 regular basis?

7 A Yes.

8 Q Would you also perform an ECC every

9 three months or so for a year in order to

10 continue to observe?

11 A You might. Might be a guideline.

12 Might not be necessary all the time.

13 Q If the cervix remained clear after

14 a year period would there be any need for

15 further follow-up in light of your negative

16 findings?

17 A Yes, you need to.

18 Q For how long would the patient be

19 required to return to the office for follow-up

20 for routine care as a general question?

21 MR. : You're asking this

22 hypothetical general question?

23 MR. OGINSKI: Yes.

24 A Indefinitely until she turned

25 90 or something.

1 , M.D.

2 Q Is there any literature that you

3 are aware of that supports your position that a

4 cone biopsy is not necessarily the procedure of

5 choice in light of the conditions when faced

6 with two conflicting results as you had here?

7 MR. : You've been talking

8 about conditions throughout the

9 course of your questioning.

10 What condition are we talking

11 about, just so we're clear?

12 MR. OGINSKI: Right.

13 The condition of a negative

14 endocervical component on colposcopy.

15 A It was a positive colposcopy.

16 Q Thank you.

17 MR. OGINSKI: I'll withdraw the

18 question.

19 Q In light of Dr. 's

20 pathology findings and in light of your

21 findings on your LEEP procedure where we agree

22 that there are two conflicting results, is

23 there any literature that you are aware of to

24 support the position that a cone biopsy would

25 not be the appropriate step to take in order to

1 , M.D.

2 treat that particular patient?

3 MR. : Note my objection.

4 Over objection you can answer.

5 A I don't think there's any

6 literature to suppor that management.

7 Q If Mrs. had invasive cancer --

8 again this is a hypothetical question -- if she

9 had invasive cancer to the cervix, would you

10 agree that the procedure of choice would have

11 been a radical hysterectomy rather than a

12 vaginal hysterectomy?

13 A Depends how deeply it was invaded.

14 Q How would you know how deeply it

15 had invaded if a cone biopsy had not been

16 performed?

17 A By LEEP procedure you would already

18 know. It's almost the same thing as a cone

19 biopsy.

20 Q What are the parameters that you

21 would use when determining whether or not --

22 when you mentioned it depends how deep the

23 cancer was, what do you mean by that?

24 A You mean how far it penetrates

25 through the base membrane.

152

1 , M.D.

2 Q Are there certain sizes, if you can

3 tell me, or parameters that you would use in

4 determining whether or not the patient required

5 a radical hysterectomy as opposed to a regular

6 hysterectomy?

7 MR. : In general?

8 MR. OGINSKI: Yes.

9 A If you need a radical

10 hysterectomy you definitely would know that

11 from the LEEP procedure.

12 Q What would you see in the Pathology

13 Report that would suggest to you if the patient

14 needed a radical hysterectomy?

15 MR. : Would a cancer be more

16 serious than the plaintiff had here.

17 A Invasion more than 5

18 millimeters depth and 7 millimeters wide.

19 We're talking about milliliter off the base

20 membrane which is a superficial which can

21 encompass the whole surface area of cervix. It

22 doesn't have to be just one on the birth canal

23 on the endocervical area.

24 Q Before you performed the

25 hysterectomy on July 17th you did not know

1 , M.D.

2 whether or not this patient had invasive

3 cancer, correct?

4 A Most likely, not.

5 Q If it turned out that she did have

6 invasive cancer the procedure of choice at that

7 point would be a radical hysterectomy, correct?

8 A No, if there's invasion less than 5

9 millimeters, a vaginal hysterectomy still would

10 be the appropriate management for invasive

11 cancer of cervix.

12 Q But the only way for you to

13 determine whether or not there was invasion of

14 the cervical canal would have been to do a

15 hysterectomy, correct?

16 MR. : Note my objection.

17 A Not really.

18 Q You had mentioned earlier that the

19 LEEP would tell you whether or not there was

20 invasion in the cervix, correct?

21 A Yes, the depth of the cervix, yes.

22 Not the canal. Just the depth on the

23 superficial.

24 Q Depth of the cervix.

25 You also mentioned that you would

154

1 , M.D.

2 be unable to tell whether there was any

3 cancerous cells above the area where the LEEP

4 had ended?

5 A Right.

6 Q Is there any way for you to

7 determine whether there was any invasion in

8 that area of the cervix higher up than where

9 the LEEP ended without doing a hysterectomy?

10 A No.

11 Q If you proceeded forward to do a

12 hysterectomy and it then turned out that there

13 was invasion higher up in the canal above where

14 the cervix ended, would you agree that the

15 procedure that would have been done would have

16 been a radical hysterectomy as opposed to a

17 regular hysterectomy?

18 MR. : Note my objection.

19 You're asking hypothetical

20 questions here of this witness which

21 really don't bear on this case.

22 But nonetheless I'm not going

23 to be obstructionist here but I mean

24 we're asking hypothetical after

25 hypothetical on things that are not

155

1 , M.D.

2 related here.

3 You're describing your

4 questions as being conditions.

5 Conditions -- what we're not getting

6 in these questions is the presence of
7 cancer. I mean let's get to what
8 this case is about.
9 MR. OGINSKI: The problem is
10 that it is related because it's our
11 claim that the doctor performed the
12 wrong procedure in light of the
13 findings that he had and had he done
14 -- if this patient turned out to have
15 invasive cancer the procedure would
16 have been the wrong one. That's what
17 our position is. And that a radical
18 hysterectomy would have been entered
19 and not a vaginal hysterectomy as it
20 relates specifically to this. I
21 don't have many more questions on
22 this topic.
23 MR. : You said that half
24 hour ago.
25 MR. OGINSKI: Different topic.

1 , M.D.

2 MR. : Still, a year

3 post-op she is still cancer-free to

4 the best of my knowledge of the --

5 she is cancer-free at this point

6 which I think is something that, if

7 you want to comment on, her condition

8 is something that's obviously

9 relevant.

10 But nonetheless why don't you

11 ask the question if you have

12 something relevant.

13 MR. OGINSKI: It goes to the

14 doctor's knowledge and his

15 decision-making at the time.

16 Q Doctor, what is a radical

17 hysterectomy?

18 A Radical hysterectomy you would do

19 abdominally. You would remove more tissue from

20 the vagina. You probably dissect down to the

21 bladder, we call perimetrium, means also

22 dissecting down to the pelvic wall. And part

23 of, almost half of the vagina would be removed.

24 Q How is that different from a

25 regular hysterectomy?

157

1 , M.D.

2 A Regular hysterectomy we don't go

3 that far. We just remove paracervical type of

4 tissue right next to the cervix area.

5 Q In patients who have invasive

6 cervical cancer is the recommended procedure to

7 perform a radical hysterectomy?

8 MR. : Note my objection to

9 form.

10 You're asking hypothetical

11 questions.

12 MR. OGINSKI: No, I'm asking

13 his general medical knowledge now.

14 A Hypothetically, yes, if it was

15 invasive more than 5 millimeters and 7

16 millimeters deep.

17 Q How would you know before

18 performing surgery whether it had invaded to

19 any particular depth?

20 A LEEP procedure would have told me.

21 Q Is it possible that you would not

22 get an accurate measurement of how deep the

23 invasion was on LEEP but higher up in the canal

24 there would be invasion; is that possible?

25 MR. : LEEP procedure would

2 only show where the samples were

3 taken if that's what you're driving

4 at.

5 MR. OGINSKI: Yes.

6 MR. : For the past hour

7 or so.

8 MR. OGINSKI: Correct.

9 A No.

10 Q Doctor, when you performed the LEEP

11 on June 24th how far into the cervix did you

12 go?

13 A I believe the Pathology Report show

14 -- can I read this?

15 Q Sure.

16 A The first part was part A, which

17 went 2 X 1 X .5 centimeters.

18 The second piece I took out 2 X 1 X

19 .3 centimeters.

20 C, the third part which is

21 endocervix I took out 2.5 X 1 X .2 centimeters.

22 Q What's the dimension of the cervix?

23 A 6 X 4 X 6 X 4 cubic centimeters. 6

24 X 4, about that. 6 X 4 X 4, probably around

25 that range. I'm sorry, 4 X 4 X 4, probably

1 , M.D.

2 around that range.

3 Q What does good medical practice

4 require you to do in terms of the amount of

5 tissue removed for LEEP procedure specifically

6 related to the endocervix?

7 MR. : Note my objection.

8 What are you getting there?

9 Narrow that down.

10 MR. OGINSKI: Sure.

11 Q Is there a particular parameter

12 in which you as a physician remove a particular

13 amount of endocervical tissue for a specimen to

14 evaluate on a LEEP procedure?

15 A Customary clinical experience is

16 they always told us just peeling off the orange

17 skin. That's how think you're supposed to peel

18 off. That's all contained with epithelial cell

19 of the cervix.

20 Q In terms of the dimensions are you

21 aware of?

22 A In terms of dimensions, orange

23 skin, it's about 1 centimeter deep. And that's

24 all you need to know if base membrane or

25 invasion is involved, which is about 1

1 , M.D.

2 centimeter.

3 Q Is cervical cancer hereditary?

4 A Could be.

5 Q Under what circumstances could it

6 be?

7 A If a patient is a smoker. I do not

8 recall under what circumstances it could be.

9 But under research I think it could be

10 hereditive in the family history.

11 Q If cervical cancer is hereditary

12 that means there would be some genetic

13 predisposition to this particular cancer,

14 correct?

15 A It could be.

16 Q Okay.

17 A May not be conclusive of genetic

18 factor. There are some signs, risk factors

19 shown it could be genetic. But still some

20 research going on. So I couldn't give you the

21 definitive answer that it could be or couldn't

22 be.

23 Q Did you tell that

24 cervical cancer is hereditary?

25 A No, she told me her mother has GYN

161

1 , M.D.

2 problems.

3 Q I want you to assume her mother

4 never had a hysterectomy.

5 Assuming that fact to be true for

6 the moment, is there any other reason you can

7 recall as to any comments may have made

8 to you about being hereditary?

9 A I couldn't remember. I couldn't

10 recall she told me.

11 Q Is there anything in your office

12 note to reflect the patient's family history of

13 any type of cancer?

14 MR. : I think that's been

15 asked and answered.

16 MR. OGINSKI: I didn't ask

17 specifically about family history to

18 cancer.

19 A No, I didn't write it down. It

20 doesn't reflect.

21 Q The fact you did not record it,

22 does that mean either that you didn't ask it or

23 asked it and did not record it or something

24 else?

25 A It does not reflect. I couldn't

1 , M.D.

2 remember; either I asked or didn't ask.

3 Q Would you agree that cervical

4 cancer is caused by virus?

5 A Yes, it could be some type, yes.

6 Q When Mrs. returned to your

7 office after the June 24th LEEP procedure, did

8 she have any complaints of bleeding?

9 A No.

10 Q Did you tell her during the July

11 1st office visit of a 20-year-old patient of

12 yours who had died because she did not get a

13 hysterectomy?

14 A No.

15 Q In your experience or in your

16 medical career and training, had you ever

17 learned of a 20-year-old patient who died

18 because she did not receive a hysterectomy and

19 relayed that information to Mrs. ?

20 A No, I seen a patient who died, a

21 26-year-old with cervical cancer. But I did

22 not say that she didn't have a hysterectomy.

23 She was too late already. She came into the

24 ER. She was found with full blown cervical

25 cancer. I do not remember if I told her that

163

1 , M.D.

2 or not but I would never say she needed to have

3 a hysterectomy in order to survive.

4 Q Did you tell that you

5 were going to speak with another pathologist to

6 review the pathology findings from the LEEP

7 procedure?

8 A Yes, that was Dr. .

9 Q Did you tell on either

10 the telephone or in person when you informed

11 her that you were going to have another

12 pathologist review the findings that this was a

13 very aggressive type of cancer?

14 A I wouldn't use that word

15 "aggressive."

16 Q What word would you use in

17 describing the type of cancer?

18 MR. : Note my objection.

19 Is your question what word

20 would you use or what word did you

21 use? He said he did not use these

22 words.

23 Now you're creating a

24 hypothetical.

25 MR. OGINSKI: Fine.

164

1 , M.D.

2 Q What word did you use in

3 describing the type of cancer to Mrs. ?

4 A I used the word that the

5 pathologist show -- that the pathologist told

6 me. That there are glandular involvements of

7 cervical cancer here and there is more chance

8 of a metastatic to different -- of near side

9 organs.

10 I do not recall I used aggressive

11 type of cancer as a quote unquote.

12 Q Have you in the past used the term

13 "aggressive cancer" when describing certain

14 types of cancers?

15 A Hypothetically, yes. If you tell

16 me adenocarcinoma, instead of squamous cell

17 carcinoma it's more aggressive, yes.

18 Q This particular type of CIN3 that

19 was observed on that pathology --

20 MR. : Cancer you mean.

21 MR. OGINSKI: As described in

22 the Pathology Report which says CIN3.

23 Q Can you tell me what the

24 doubling time for that cancer is?

25 A I do not know. I think it's about

1 , M.D.

2 ten years, I believe. From experience, if you

3 leave it alone, it's about ten years it will

4 turn into invasive. I wouldn't say double in

5 time.

6 Q Did you tell that she

7 needed a hysterectomy within a month otherwise

8 it will spread and she'll die?

9 A No. I believe I answered that

10 question this morning.

11 Q Did you draw a diagram for Mrs.

12 showing where the abnormal cells were

13 located?

14 A Yes.

15 Q Is that the diagram that you have

16 in your office record?

17 A Right.

18 MR. : Let the record reflect

19 it's contained in the June 24, 2000

20 portion of the record.

21 Q Did you tell how

22 quickly this particular type of cancer grows or

23 spreads?

24 MR. : Note my objection.

25 This has been asked and

166

1 , M.D.

2 answered several times.

3 Q Did you tell that

4 she must've had the cervical cancer when she

5 was pregnant with her daughter Jasmine three

6 years earlier?

7 A No.

8 I'm sorry, how old is her baby? I

9 don't even know that part.

10 Q Did you tell that when

11 she asked you how long she had this condition

12 for that you told her in substance -- not the

13 exact words but in substance -- she must've had

14 this cancerous cells three years earlier when

15 she was pregnant with her daughter Jasmine?

16 A No, I wouldn't use that-- I

17 wouldn't use that specific term, three years.

18 I would use that she probably had this for --

19 before she came to see me at least a couple of

20 months. At least 6 months.

21 Q How do you know that she would've

22 had this type of cancer for at least six months

23 prior?

24 A From experience we know cervical

25 carcinoma doesn't progress that fast.

1 , M.D.

2 Q At what stage in terms of the

3 growth of this type of cancer does it show up

4 as an abnormal result on either Pap smear or a

5 colposcopy?

6 A Usually this typical finding,

7 typical squamous cell of a carcinoma which

8 appeared on her Pap smear result, usually

9 that's the first abnormal sign that would be

10 picked up by Pap smear.

11 Sometimes we pick up low grade

12 which is CIN1 but these are typical

13 presentations.

14 Q Do you recall a time when

15 called you in the middle of the night

16 after she had been discharged from the hospital

17 after July 19th but before she appeared in your

18 office for the first post-op visit where she

19 called complaining of pain in the middle of the

20 night?

21 A I don't recall.

22 Q Was there ever an instance where

23 called requesting pain relief, you

24 yelled at her calling you in the middle of the

25 night for such a request?

1 , M.D.

2 A No, I don't recall.

3 Q Is Dr. Lee an employee of yours?

4 A No.

5 Q Are you an employee of Dr. Lee's?

6 A No.

7 Q Are you familiar with a committee

8 at the hospital known as a Tissue Review

9 Committee?

10 A Tissue, what does that mean?

11 MR. : Are you familiar with

12 the committee by that name, yes or

13 no.

14 A No.

15 Q Is there a committee at the

16 hospital that reviews pathology to evaluate

17 whether or not -- just to evaluate pathology

18 after the fact?

19 MR. : Do you know of one, yes

20 or no.

21 A No.

22 Q What was the bill for performing

23 the hysterectomy that you submitted to

24 's insurance company?

25 A $6,500 and I didn't get paid for

2 it.

3 Q That was submitted to MAGNA Care,

4 her insurance company?

5 A Right.

6 Q The reason you know of why you were

7 not paid?

8 A They never got it.

9 Q Who never got it?

10 A The insurance company keep saying

11 they never got it.

12 Q You sent them a bill, I assume?

13 A I sent them a bill, yes. And the

14 lawsuit came so fast, so I didn't pursue that.

15 To chase after this bill.

16 Q Before going ahead with the

17 procedure, the hysterectomy done on July 17th,

18 was it necessary for you to give a

19 precertification letter to her insurance

20 company to get preapproval?

21 A Yes, it's clearly documented here,

22 "Note need certificate."

23 Q Read that please with the date you

24 have on this?

25 A July 17th we -- I gave this note to

170

1 , M.D.

2 my secretary, " Hospital inpatient

3 for two to three days laparoscopic vaginal

4 hysterectomy carcinoma of cervix. CPT code

5 would be 58260."

6 Q What does that code represent?

7 A Laparoscopic vaginal hysterectomy.

8 ICD code which is diagnosis code

9 233.1.

10 On July 13th we spoke with a

11 representative called Veronica. She told us no

12 precertificate was needed.

13 Q Did you submit to the insurance

14 company any letter stating what the condition

15 was and why the procedure was indicated?

16 A No, it was never really necessary

17 for any other insurance company.

18 Q When you submitted the bill that

19 you have in front of you, did you submit it

20 with a coding for the LAVH?

21 A Yes, I believe so. I believe

22 that's a code for LAVH.

23 Q As far as you know, is your bill

24 for LAVH the same as in a vaginal hysterectomy?

25 A Yes.

1 , M.D.

2 Q When you wrote in your Operative

3 Note of July 17th you wrote the words, "margins

4 not clear."

5 What did you mean by that?

6 MR. : Let's find the report.

7 Q In the first paragraph, Doctor,

8 where it says, "Indication," second to last

9 line where it says, "So, the risks and benefits

10 were explained to the patient about margins not

11 being clear."

12 What did you mean by that?

13 A Meaning still some cancers involved

14 left behind after the LEEP procedure.

15 Q Did you note to what extent they

16 were not clear or how far in they extended?

17 A No.

18 Q Were there any other tests that

19 were available to you to evaluate the margins

20 of the cervix without doing a hysterectomy?

21 A There are options but doesn't mean

22 it's the right option.

23 Q What options are available?

24 MR. : Note my objection.

25 This has been asked several

172

1 , M.D.

2 times. I believe this has been asked

3 four or five times.

4 Q Were there any other options

5 other than what you've already told me, cone

6 biopsy or hysterectomy?

7 A No.

8 Q Is it your opinion that the failure

9 to do a cone biopsy before conducting a

10 hysterectomy on was not a departure

11 from good practice?

12 A No, it's not departure. What I

13 meant -- say that again or rephrase.

14 Q Sure.

15 (Record read)

16 A It's not departure of practice

17 that's what I'm trying to say.

18 Q Thank you.

19 You also wrote in your Operative

20 Report, "Patient agreed"?

21 MR. : Wait, you're reading

22 from it.

23 Q "Indication" paragraph last

24 line. "The patient agreed to have a vaginal

25 hysterectomy," correct?

1 , M.D.

2 A Right.

3 Q Isn't it a fact that you told

4 that she needed to have a

5 hysterectomy?

6 A No, I did not tell her she needed

7 to have. I gave her the options. She chose to

8 have this and she agreed to have this.

9 MR. : Note my objection.

10 That's a question you've asked

11 about four or five times.

12 Q Did you ever have a further

13 conversation with Dr. Sandhu after the July

14 17th hysterectomy about the evaluation of the

15 July 17th slides?

16 A No, he was there only once.

17 Q Doctor, I'm going to show you a

18 letter that's on your letterhead. I don't know

19 if you have a copy of that in your file.

20 First of all, do you have a copy of

21 that letter in your file?

22 A No.

23 MR. OGINSKI: Mark this as

24 Plaintiff's 3.

25 (Thereupon, a letter was marked

1 , M.D.

2 as Plaintiff's Exhibit 3 for

3 identification)

4 Q Doctor, what's the date of that

5 letter?

6 A July 29th.

7 Q Is that letter on your letterhead?

8 A Yes.

9 Q Does your signature appear at the

10 bottom?

11 A Yes.

12 Q How did it come to be that you

13 generated that letter?

14 A I don't really recall. I don't

15 know what this was for.

16 Q That's my next question.

17 Do you know for what purpose the

18 letter was written?

19 A I don't know. She probably asked

20 me.

21 Q No, Doctor, I don't want to you

22 guess.

23 MR. : Let him answer his

24 question. You can ask your question.

25 Let him answer.

1 , M.D.

2 MR. OGINSKI: I don't want him

3 to just --

4 MR. : You can move

5 afterwards and say, "It's not

6 responsive."

7 Don't cut him off in the middle

8 of his answer.

9 MR. OGINSKI: He said he

10 guessed or probably --

11 MR. : Don't cut him off

12 in the middle of his answer. If he's

13 answering a question you can say

14 afterwards, "I move to strike as

15 nonresponsive."

16 Don't interrupt him and prevent

17 him from answering a question by

18 speaking over him. I'll ask you the

19 courtesy of that.

20 MR. OGINSKI: I will certainly

21 comply with your request.

22 MR. : Thank you.

23 MR. OGINSKI: I didn't mean to

24 cut you off but I didn't think you

25 had specific knowledge about this.

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1 , M.D.

2 Q I'm going to ask you

3 specifically, Doctor, do you know why you wrote

4 this letter?

5 A I did not know.

6 Q Okay.

7 A It was very general.

8 Q Doctor, I didn't ask you anything

9 else.

10 MR. : Yes, there no question

11 pending.

12 Q In this letter which starts off

13 by saying, "This statement is confirmed that my

14 patient has undergone various procedures."

15 Beginning with the second line it

16 says, "She had had a LEEP on June 24, 2000 and

17 her pathology results came out as malignant."

18 Did I read that correctly?

19 A Right.

20 Q Is that an accurate statement?

21 A Yes, carcinoma in situ is

22 malignant. Cancer is the same word as

23 malignant. Carcinoma is the same word as

24 malignant.

25 MR. : Off the record.

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1 , M.D.

2 (Informal discussion held off

3 the record)

4 Q When you use the word

5 "malignant" in this letter what do you refer to

6 as being malignant?

7 MR. : Can he see the letter?

8 A As a carcinoma. That's what I

9 imply during that letter.

10 Q Is there any other reason for you

11 to believe that the findings on pathology

12 represented a malignancy as opposed to any

13 other type of finding?

14 A No.

15 Q Is there any way for you to

16 determine whether this was a benign condition

17 as of June 24th?

18 A No, it was never benign. Even now

19 today she is not benign.

20 Q Doctor, I'd like you to turn,

21 please, to the Order Sheets in the hospital

22 chart.

23 Do you have that?

24 A Yes.

25 Q While she was in the hospital after

178

1 , M.D.

2 the hysterectomy you prescribed her Demerol and

3 Percocet, correct?

4 A Right.

5 Q Also Percocet for home?

6 A Yes.

7 Q If I can jump back, please, to your

8 office records; am I correct that on June 29,

9 2000, you prescribed Oxycodone for ?

10 A Yes.

11 MR. : Wait, look at the date.

12 A No, it was not documented but

13 just a prescription.

14 Q Are there occasions when you have

15 called in a prescription to the pharmacy in

16 response to a patient's complaint?

17 A Sometimes I do, yes.

18 Q On those occasions do you

19 customarily make a note in the chart indicating

20 you have called in a particular prescription?

21 A No.

22 Q Is there any reason for you to

23 believe that you did not submit or call in to

24 the pharmacy a prescription for Oxycodone on

25 June 29th?

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1 , M.D.

2 A I couldn't recall I called in or

3 not.

4 Q I want you to assume that

5 's pharmacy record indicates that an

6 Oxycodone prescription was filled on June 29th

7 with your name on it.

8 A Okay.

9 Q I want you to assume that a

10 prescription for Oxycodone was filled on June

11 29th by with your name on it.

12 Do you have any records in the

13 patient's chart to confirm that you filled such

14 a prescription?

15 A No, I do not have records.

16 Q Is Percocet the same thing as

17 Oxycodone?

18 A No, Percocet has Oxycodone inside

19 but they are different strengths.

20 Q Is it a different medication?

21 A Yes.

22 Q Is there anything in your records

23 to confirm that you prescribed Oxycodone for

24 on July 29th and also on August

25 1st?

180

1 , M.D.

2 A No.

3 Q Can you turn please to the

4 Pathology Report of July 17th.

5 Based on the Pathology Report was

6 there any cancer observed in the cervical canal

7 above the ECC?

8 MR. : Note my objection.

9 I think this has been asked and

10 answered.

11 Answer over objection.

12 MR. OGINSKI: I did not ask

13 this question.

14 A No.

15 Q Would you agree that based upon the

16 July 17th Pathology Report that a hysterectomy

17 was not medically necessary for ?

18 A No, I wouldn't agree. I think

19 still necessary.

20 Q How do you rule out a lesion up

21 higher into the cervical canal if you do not

22 perform a cone biopsy, other than a

23 hysterectomy?

24 A I think we answered that question

25 before.

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1 , M.D.

2 MR. : I think I agree with

3 you.

4 Q Do you know Dr. ?

5 A Yes, I know him.

6 Q How do you know him?

7 A I know he is an attending in Our

8 Lady of Mercy. I'm one of the attendings at

9 Our Lady of Mercy. So we bump into each other

10 all the time.

11 Q During the course of your

12 residency, have you had occasion to work with

13 Dr. ?

14 A Yes.

15 Q During the course of your private

16 practice, have you ever had occasion to talk or

17 run into Dr. during whatever meetings

18 that you may have had at Our Lady of Mercy?

19 A Yes.

20 Q Did you ever discuss 's

21 case with Dr. at any time after you

22 performed the LEEP procedure but prior to the

23 hysterectomy?

24 A No.

25 Q Did you ever speak with Dr.

182

1 , M.D.

2 about after you performed the

3 hysterectomy but before this lawsuit was

4 started?

5 A No.

6 Q When was the last time you spoke to

7 ?

8 A I can't remember. After the

9 lawsuit I never spoke to her.

10 Q The last time she was in your

11 office, did you ever have any further

12 conversations with her either in person or by

13 telephone?

14 A No, that was the last time I saw

15 her, September.

16 MR. : Wait.

17 Is the question, "The last time

18 she was in the office did you have a

19 conversation with her?"

20 MR. OGINSKI: No.

21 MR. : Maybe I didn't

22 hear. I'm sorry.

23 Q After September 2, 2000, did

24 you ever have a conversation with

25 again?

1 , M.D.

2 A No.

3 Q Did you ever learn from any of the

4 doctors she treated with afterwards what her

5 medical condition was at any point after

6 September 2nd?

7 A No.

8 Q Did you ever learn or speak to any

9 of her treating doctors what was going on with

10 her medically up until the point that this

11 lawsuit was started?

12 A No.

13 Q Did anyone ever suggest to you or

14 question why you were performing a hysterectomy

15 as opposed to a cone biopsy?

16 When I say, "anyone," I'm referring

17 to any health care professional.

18 A No.

19 Q Was 's case brought up

20 or presented to any Mortality or Morbidity

21 Conferences at Mount Vernon Hospital?

22 A No.

23 Q Did you present Mrs. 's case to

24 any committee or residency program as part of

25 any learning program or educational program?

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1 , M.D.

2 A No.

3 MR. OGINSKI: Thank you.

4 EXAMINATION BY

5 MS. :

6 Q Dr. , my name is

7 . I'm with

8 . I represent Hospital

9 on the case. I have a few more questions for

10 you.

11 As the patient's OB/GYN you were

12 making decisions and recommendations about the

13 patient's treatment?

14 A Yes.

15 MR. : Note my objection.

16 There's been testimony

17 throughout that the patient made some

18 decisions in reference to her

19 treatment.

20 MS. : I'll rephrase.

21 Q Just so I'm clear, is it your

22 testimony that decisions and judgments

23 regarding the patient's treatments and

24 procedures were made by you and the patient?

25 A Yes, provided with enough data.

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1 , M.D.

2 Q You're aware Dr. is a

3 pathologist. So he would not be making any

4 recommendations as to surgical or GYN

5 treatment?

6 A No, he would imply how severe the

7 disease is from a pathologist's point of view.

8 Q But it would have been outside of

9 Dr. 's specialty to recommend whether you

10 perform a cone biopsy or a hysterectomy or any

11 other surgical procedure?

12 A Right.

13 Q What is your date of birth?

14 A July 9, 1964.

15 Q What have you reviewed before

16 testifying here today?

17 A My office records and that's the

18 only thing I have.

19 MS. : Thank you.

20 EXAMINATION BY

21 MR. OGINSKI:

22 Q Doctor, on July 1st when you

23 had your conversation with her about your plan

24 of treatment, did you ask her to sign anything

25 in the office on this day about the plan of

186

1 , M.D.

2 treatment that you were proposing?

3 A No, it's not standard of care.

4 Usually you sign the consent before the

5 operation.

6 Q Is there anything in the hospital

7 record that you have seen to confirm any

8 statement that you have made that you spoke to

9 -- that you gave the option of

10 having a cone biopsy prior to the hysterectomy?

11 A Alternatives which we mentioned in

12 Operative Report and in our office chart,

13 alternatives explained which encompassed cone

14 biopsy or vaginal hysterectomy were explained.

15 Q Anything specifically that spells

16 out that a cone biopsy was offered and refused,

17 those specific things?

18 A Refuse?

19 Q Yes.

20 A Yes, she chose to have a vaginal

21 hysterectomy from the last part of my office

22 notes. As I vividly still remember I mean she

23 did choose. She was tapping her feet. She

24 chose to have a vaginal hysterectomy when other

25 options were given.

1 , M.D.

2 Q Are you aware that has

3 testified she was never given any options of a

4 cone biopsy?

5 MR. : Don't even answer that.

6 Q I want you to assume that

7 has testified that you never gave

8 her the option of a cone biopsy, do you

9 disagree with that statement?

10 MR. : Note my objection.

11 He is not here to comment on

12 the truthfulness of your client's

13 testimony.

14 MR. OGINSKI: I can ask him the

15 question at trial. I'm entitled to

16 know it now.

17 MR. : You want him to

18 comment on whether your client was

19 lying or not at her deposition?

20 That's not natural.

21 MR. OGINSKI: Absolutely not.

22 MR. : He's testified what

23 the discussions were. He is not going

24 to comment on the veracity of your

25 witness's testimony at the deposition,

1 , M.D.

2 especially in light of the fact that

3 you've asked him previously if he's

4 reviewed the deposition transcript or

5 not. He hadn't.

6 I'm not going to let him

7 comment on what hypothetical the

8 testimony may or may not be.

9 MR. OGINSKI: It doesn't limit

10 me from probing into whether or not

11 he agrees or disagrees with things

12 that my client may have said.

13 I could ask him the same

14 question about expert testimony as to

15 whether he agrees or disagrees with

16 it.

17 The client has testified and I

18 mean the testimony is there. Either

19 he does or he doesn't. You can't

20 direct him not to answer.

21 MR. : I just did.

22 MR. OGINSKI: You can't legally.

23 MR. : I did.

24 MR. OGINSKI: You cannot.

25 You're subjecting yourself to

189

1 , M.D.

2 sanctions for doing that. I don't

3 know why you're doing it. It's a

4 simple question.

5 MR. : It's a ridiculous

6 question.

7 MR. OGINSKI: Nothing

8 ridiculous about it.

9 MR. : It is.

10 MR. OGINSKI: The only thing

11 you could object to are privileged

12 questions or questions that are

13 palpably improper and this is not a

14 palpably improper question.

15 I'm simply presenting a

16 question to which my client has

17 already testified to.

18 MR. : Do you have a

19 transcript here?

20 MR. OGINSKI: No.

21 I'm asking him to assume that

22 has testified that she

23 was never given the option of cone

24 biopsy, do you agree with that

25 statement.

1 , M.D.

2 I know what he's going to say

3 based upon what he testified to but I

4 need him to testify to it. That's

5 all.

6 MR. : Ask him. Did he

7 offer a cone biopsy.

8 A Of course, I offer. I mean, of

9 course, that was a lie she testified that she

10 was not given the option. I mean I gave all

11 the options.

12 Q How much did you charge Mrs.

13 for the LEEP procedure?

14 A I couldn't remember that. Maybe

15 about $2,000.

16 Q Do you have those billing records

17 with you?

18 A I don't have this billing record

19 with me.

20 Q Where would that be?

21 A We could get that out from the

22 computer. No, we could find that off the

23 computer.

24 Q For the follow-up visits on July

25 1st, July 29, August 16th and the September 2nd

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1 , M.D.

2 visit, did you charge her for any of these

3 visits?

4 A No, that would be counted as a

5 global package. We expect to get paid but we

6 did not get paid.

7 Q Did you get paid anything from the

8 LEEP procedure?

9 A I believe we did, $200, $300.

10 MR. OGINSKI: I would just ask

11 that you provide whatever information

12 about that to your attorney.

13 MR. : I would ask that

14 you submit any requests in writing.

15 MR. OGINSKI: That will be in

16 writing. The transcript is going to

17 be reduced to writing. I don't know

18 why you're asking for a separate

19 letter.

20 MR. : If there's not a

21 letter sent I will guarantee you that

22 it will be buried in this transcript.

23 It will not be responded to.

24 MR. OGINSKI: Thank you, Doctor.

25 (Time noted: 3:45 p.m.)

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1

2 A C K N O W L E D G E M E N T

3

4 STATE OF NEW YORK)

5 :Ss

6 COUNTY OF)

7

8 I, , M.D., hereby certify that I

9 have read the transcript of my testimony taken

10 under oath in my deposition of August 8, 2002;

11 that the transcript is a true, complete and

12 correct record of what was asked, answered and

13 said during this deposition, and that the

14 answers on the record as given by me are true

15 and correct.

16

17 ___________________________

18 , M.D.

19

20 Signed and subscribed to

21 before me, this day

22 of , 2002.

23

24 ___________________________

25 Notary Public

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1

2 I N D E X

3

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1

2 C E R T I F I C A T E

3

4 I, KAREN VIGGIANO, hereby certify that

5 the Examination Before Trial of , M.D.

6 was held before me on August 8, 2002;

7 That said witness was duly sworn before

8 the commencement of the testimony;

9 The within testimony was stenographically

10 recorded by myself and is a true and accurate

11 record of the Examination Before Trial of said

12 witness;

13 That the parties herein were represented

14 by counsel as stated herein;

15 That I am not connected by blood or

16 marriage with any of the parties. I am not

17 interested directly or indirectly in the matter

18 in controversy, nor am I in the employ of any

19 of the counsel.

20

21 IN WITNESS WHEREOF, I have hereunto set my hand

22 this 8th day of August, 2002.

23

24 ______________________________

25 KAREN VIGGIANO