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VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

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4	CASSANDRA M. AGARD,	: AT LAW NO.: 09-00233-DP
5		:
6	Plaintiff	:
7		:
8	vs.	:
9		:
10	CHARLIE M. FAULK, M.D.,	:
11		:
12	Defendant	:

VIDEOTAPED DEPOSITION OF
HARRY REICH, M.D.

Taken at The Woodlands Inn,
1073 Highway 315, Wilkes-Barre, Pennsylvania 18702,
on Tuesday, March 23, 2010, commencing at 4:28 p.m.,
before Trisha Sims, Certified Shorthand Reporter and
Notary Public, and Frank Jason, Videographer.

* * *

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2

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13 ALSO PRESENT:

14 Frank Jason, Videographer

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2 THE VIDEOGRAPHER: This is tape

3 number one of the videotaped deposition of Dr. Harry

4 Reich in the matter of Agard versus Faulk. This

5 deposition is being held at The Woodlands, 1073

6 Highway 315, Wilkes-Barre, Pennsylvania, on

7 March 23, 2010. The approximate time is 4:28 p.m.

8 My name is Frank Jason, and I am the videographer.

9 The court reporter is Trisha Sims. Counsel, will

10 you please introduce yourself and affiliation, and

11 the witness will be sworn.

12 MR. LEWIS: My name is Jim Lewis. I

13 represent Sandy Agard.

14 MR. FAVALORO: My name is Mark

15 Favaloro, and I represent the defendant, Dr. Charlie

16 M. Faulk, M.D.

17
18
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20

21 * * *

22 HARRY REICH, M.D., having been duly

23 sworn or affirmed, was examined and testified as

follows:

EXAMINATION

BY MR. FAVALORO:

Q. Good afternoon, again, Dr. Reich. We just

24 met. My name is Mark Favaloro. Again, I'm
25 representing Dr. Faulk in this deposition, and I
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1 have reviewed some past deposition of yours. So I
2 am aware that you have been deposed in the past; and
3 you are familiar with the procedure of a deposition
4 and the purpose of it, I assume.

5 A. Yes.

6 Q. Can you tell me how many deposition you
7 have given in your career as an expert witness?

8 A. Approximately 20.

9 Q. Okay. And do you remember the date of
10 your first expert witness deposition?

11 A. It would probably have been around 1980.

12 Q. Okay. And before today, the date of your
13 last?

14 A. I'm not sure of the date. It was probably
15 about two months ago.

16 Q. And what kind of case was that?

17 A. That was a case involving a bowel injury.

18 Q. Bowel injury? Have you ever given a
19 deposition in connection with a ureteral injury?

20 A. Yes.

21 Q. And how many, if you recall?

22 A. Approximately five. I mean, I could look
23 through the records and send them to you, if that
24 would be helpful, but I don't remember exactly.

25 Q. Do you have records that would indicate
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1 when those occurred and the actual transcripts of
2 those depositions?

3 A. I don't have any transcripts; but I do
4 have, I think, the last one. Actually, the last one
5 was October or November; and that would have been in
6 Stroudsburg, Pennsylvania, at a trial.

7 Q. You said October or November of 2009?

8 A. 2009, yes.

9 Q. Okay. Who were the attorneys involved in
10 that case?

11 A. The attorney -- the firm was Dougherty,
12 and I'm trying to think of the case exactly. I
13 don't recall.

14 Q. Dougherty represented the plaintiff?

15 A. Dougherty's firm, which is a local firm
16 here, represented the plaintiff, yes.

17 Q. Okay. And do you recall the years or any
18 specifics about the other four cases in which you
19 gave testimony regarding a ureteral injury?

20 A. No.

21 Q. Do you remember the years?

22 A. No.

23 Q. Do you remember whether you gave testimony
24 on behalf of the plaintiff or the defendant?

25 A. It probably was for the defendant -- well,
0007

1 I'm not sure. I would have to look up -- I'm not
2 even sure of the exact number of ureter cases.

3 Q. But you think it was approximately five?

4 A. Approximately. That may even be less.

5 Q. Okay. You've indicated that you have
6 given 20 depositions as a -- as an expert witness.
7 Can you give me a breakdown of those depositions,
8 whether you were testifying on behalf of the
9 plaintiff or the defendant, in a percentage manner?
10 A. Yes, because I looked it up this afternoon
11 and anticipated the question; and I've done
12 approximately 10 cases for the plaintiff and
13 approximately 20 for the doctor.
14 Q. Okay. So that's 30 cases that you've been
15 involved in?
16 A. Yes.
17 Q. And of those 30 cases, it's your memory
18 that you gave 20 depositions?
19 A. Again, approximately. I'm not sure of the
20 exact number. I just looked through the cases in my
21 computer.
22 Q. Do you remember how many cases you
23 testified at trial?
24 A. I believe approximately 10.
25 Q. And what about the percentage breakdown of
0008 those cases?
1 A. I would think it's 50/50.
2 Q. Okay. And, again, your memory is the last
3 trial testimony you gave was October of last year in
4 a uretal case?
5 A. October or November in Stroudsburg; court.
6 Q. Was that Superior or Circuit Court? Do
7 you know?
8 A. I'm not sure.
9 Q. I don't know what it is in Pennsylvania.
10 A. I mean, again, like I said, I could easily
11 give Attorney Lewis --
12 Q. If you would, please, I would appreciate
13 that.
14 A. Okay.
15 MR. LEWIS: What exactly do you want?
16 MR. FAVALORO: Just the style.
17 MR. LEWIS: Whatever identifying data
18 he can come up with?
19 MR. FAVALORO: Yes.
20 MR. LEWIS: Okay. Sure. That's
21 fine.
22 BY MR. FAVALORO:
23 Q. Can you give me your present professional
24 address and your professional address prior to that?
0009
1 A. Currently it's 3 Crestview Drive, Dallas,
2 Pennsylvania.
3 Q. Okay. And that's your home as well?
4 A. And my office, yes.
5 Q. And where was your office before you had a
6 home office?
7 A. Office was on Memorial Highway in
8 Shavertown.
9 Q. Okay. And when did you last conduct
10 office hours at that office?
11 A. Approximately two years ago.

12 Q. Okay. Did that office close?
13 A. I closed that office, yes.
14 Q. Why did you close that office?
15 A. Because I was -- I'm -- I'm sorry. I also
16 have an office in New York that I didn't say, and
17 that's on Fifth Avenue and 68th Street.
18 Q. Okay. And how long have you had that
19 address?
20 A. For the last 10 years.
21 Q. Okay. And can you tell me a percentage
22 breakdown of time spent between your New York office
23 and your -- I'm sorry. I didn't jot down the
24 address of your office prior to your home address.
25 What was that address?

0010

1 A. Fifth Avenue and 68th Street.
2 Q. And your Pennsylvania address before you
3 had your office in your home?
4 A. On Memorial Highway, Shavertown,
5 S-H-A-V-E-R-T-O-W-N.
6 Q. And can you give me a percentage breakdown
7 of time spent between the New York office and the
8 Shavertown office?
9 A. Most of my time seeing patients was in the
10 New York office, and the Shavertown office was
11 mainly for administration and billing.
12 Q. And how long did you have the Shavertown
13 office?
14 A. Approximately 10 years.
15 Q. And how long have you had the New York
16 office?
17 A. Ten years.
18 Q. Okay. So if you could be a little more
19 specific in terms of time spent in New York and
20 Pennsylvania at your Shavertown office.
21 A. I practiced in New York City for 10 years,
22 starting in the city in 1995 at Columbia
23 Presbyterian Medical Center; and in 2000, I began
24 practicing with Dr. Seckin at Fifth Avenue.
25 Q. Okay. And give me a typical month, if you

0011

1 would, from 2005 to 2008 in terms of time spent in
2 New York and Pennsylvania.
3 A. Almost all of my time was spent in New
4 York, as far as seeing patients, and that -- I say
5 New York, but I have a very strange practice. I
6 have an Internet practice, a very active Internet
7 practice. Because, again, it's very topical, but
8 most operations I do are not -- the patients
9 oftentimes have preexisting conditions, and they
10 don't have insurance.
11 So we have to make arrangements. And
12 since 2005, I've also done surgery in the Cayman
13 Islands on a regular basis. So, as I said, it's a
14 strange practice.
15 But the patients contact me over the
16 Internet usually for endometriosis-related problems
17 or large uterus problems for hysterectomy or for
18 extensive adhesions. That pretty much sums it up.

19 Q. Okay. In the last two years, Doctor, how
20 many hysterectomies have you performed?

21 A. Approximately 50.

22 Q. Okay. And what type of hysterectomies?

23 A. Most of them would be total laparoscopic
24 hysterectomy.

25 Q. Would that be supracervical?

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1 A. There were maybe two or three
2 supracervicals.

3 Q. Okay. And of those two or three
4 supracervical hysterectomies, again laparoscopic,
5 were any of those involving a bilateral
6 salpingo-oophorectomy?

7 A. I believe so.

8 Q. Would you be able to determine that by
9 checking your records?

10 A. I'm not sure.

11 Q. Do you have records of those procedures in
12 the last two years?

13 A. I have records of most of them; but,
14 again, I operate in many different places and many
15 different countries, in fact. To give you an idea,
16 last month I did hysterectomies in Mexico and in
17 Turkey.

18 Q. Okay. When was the last time you did a
19 hysterectomy in the United States?

20 A. The last time I did a hysterectomy in the
21 United States was in 2004.

22 Q. Okay. And what type of hysterectomy was
23 that?

24 A. Total laparoscopic hysterectomy.

25 Q. And if I were to ask you that question in

0013

1 the last 10 years, what would your answer be?

2 A. As far as?

3 Q. How many hysterectomies you've performed
4 in the United States.

5 A. In the last 10 years, approximately 150.

6 Q. But none in the last six years?

7 A. Since 2004 in the United States.

8 Q. Okay. Why the drop-off?

9 A. Because 2005, I decided not to take
10 malpractice insurance to do hysterectomies.

11 Q. And why did you make that decision?

12 A. I felt it was too expensive.

13 Q. And you were performing those
14 hysterectomies outside of the country from 2004
15 forward?

16 A. Until present.

17 Q. Okay. And do you have insurance,
18 malpractice insurance, covering you when you perform
19 hysterectomies outside of the country?

20 A. No.

21 Q. Do you presently have malpractice
22 insurance in place today?

23 A. No.

24 Q. For any procedure?

25 A. Correct. No.

0014

- 1 Q. Okay. Can you give me a summary of your
2 educational background, starting with undergraduate?
3 A. I went to Lehigh University for
4 undergraduate. I then went to the Royal College of
5 Surgeons in Dublin, Ireland, for medical school. I
6 interned in Honolulu. I did a year of general
7 surgical residency at Boston, followed by three
8 years of OB-GYN training in Boston, followed by six
9 months of a gynecological cancer surgery fellowship
10 in Hershey, Pennsylvania.
11 Q. Okay. How did you like your time in
12 Boston?
13 A. It was good.
14 Q. Okay. Where do you have admitting
15 privileges today, Doctor?
16 A. I have admitting privileges today at
17 Wilkes-Barre General Hospital and at two hospital in
18 the Cayman Islands.
19 Q. What are the names of those hospitals?
20 A. Chrissie Tomlinson Hospital -- that's
21 T-O-M-L-I-N-S-O-N Hospital -- and Grand Cayman
22 Hospital.
23 Q. Okay. And what procedures are you
24 performing at Wilkes-Barre?
25 A. At Wilkes-Barre, I haven't been.

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- 1 Q. Okay.
2 A. But I do have admitting privileges, and I
3 am a staff member at that hospital.
4 Q. And those are current?
5 A. Current? Most likely by September-October
6 of this year I will start doing some cases there
7 again.
8 Q. And will you be able -- will you be able
9 to do those cases without malpractice insurance?
10 A. No. I'll have malpractice insurance.
11 Q. So you will --
12 A. I will have it.
13 Q. It is your intention to obtain malpractice
14 insurance in the future?
15 A. It is, yes.
16 Q. And what is leading to that decision to
17 obtain malpractice insurance again?
18 A. Well, I have time now. I mean, over the
19 last five years, I was running International Society
20 of Gynecological Endoscopy. That's ISGE. And I was
21 doing a lot of lecturing and surgical demonstrations
22 around the world.
23 Q. Okay. Can you give me a breakdown in the
24 last year between your clinical practice and
25 academic or lecturing responsibilities, we'll say,

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- 1 just to make it easy, from 2009, January 1, forward?
2 A. Of the places I've been?
3 Q. I'm looking for a percentage of your time
4 as a physician spent clinically and academically.
5 A. By -- I think they both mold in together.
6 I mean, most -- most of the lecturing I do is

7 combined with surgery where I do a day of surgery.
8 So from 2009, I did 10 days of surgery in
9 Guadalajara, Mexico; and I did approximately 10 days
10 in the Grand Cayman Islands of surgery. And these
11 were completely surgery, not lectures.

12 Q. When you say completely surgeries --

13 A. That means --

14 Q. -- that's all you did?

15 A. From morning to evening, I do
16 hysterectomies and similar type operations.

17 Q. And if I were to ask you how many surgical
18 days you had from January 1st, 2009, to date, what
19 would your answer be to that question?

20 A. Approximately 30.

21 Q. Thirty days?

22 A. Yes.

23 Q. And were you seeing patients during that
24 time period, from January 1, 2009, forward?

25 A. I was consulting with patients.

0017

1 Q. Okay. And can you describe, a little more
2 detailed, to me what your consulting arrangement
3 was?

4 A. Most of my consulting was Internet
5 discussions on e-mail and telephone calls.

6 Q. Okay.

7 A. I wasn't seeing the patients actively in
8 the United States. But if they desired surgery in
9 some cases or they were old patients of mine, I
10 would take them to the Cayman Islands.

11 Q. So if I understand your clinical component
12 of practice then from January 1st, 2009, you've had
13 30 days of surgery and Internet or telephone
14 consults with patients?

15 A. Yes.

16 Q. Is that accurate?

17 A. That's accurate.

18 Q. And why were you doing the surgeries in
19 the Grand Cayman Islands?

20 A. Because I had malpractice there.

21 Q. You had coverage there?

22 A. Yes. I'm sorry if I didn't make that
23 clear, but I do have malpractice insurance there.

24 Q. Okay. And any other countries that you
25 have malpractice insurance?

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1 A. No. Many other countries you don't need
2 it. Mexico you don't need it. That is true.

3 Q. Okay.

4 MR. LEWIS: That's tort reform for
5 you.

6 MR. FAVALORO: There you go.

7 MR. LEWIS: There aren't any.

8 BY MR. FAVALORO:

9 Q. Okay. Doctor, I want to ask you some
10 questions now about this case, the Agard or Agard,
11 whatever the --

12 MR. LEWIS: Agard.

13 BY MR. FAVALORO:

14 Q. -- pronunciation du jour is. Agard.
15 What have you reviewed in connection with
16 the Agard case?

17 A. I have reviewed two depositions; a
18 deposition of Dr. Faulk and the deposition of
19 Ms. Agard.

20 Q. Okay.

21 A. And I have reviewed the op notes of the
22 various procedures that Ms. Agard underwent at Mary
23 Immaculate Hospital, and that included the
24 consultations of other doctors. And I reviewed the
25 records of a procedure that was done, I think, at

0019
1 Norfolk Hospital afterwards.

2 Q. Okay. Do you have a summary of what you
3 have reviewed in detail, or are you just telling me
4 from your memory your best memory of what you
5 reviewed?

6 A. I have a -- I had an original letter
7 saying -- you know, sending me a file, like the file
8 that you have, that listed all of the different
9 things that I reviewed. That would have been sent
10 to the attorney.

11 Q. Do you have any documents with you today
12 in connection with this case?

13 A. No.

14 Q. Okay.

15 A. I didn't make any outline after reviewing
16 the records.

17 Q. Do you remember how many hospitalizations
18 of Ms. Agard you reviewed?

19 A. Let's see. I reviewed the first
20 hospitalization where she had her supracervical
21 hysterectomy.

22 She was then readmitted for about a
23 five-day stay, and then she was readmitted again for
24 major -- I think that was February 9. So I reviewed
25 that.

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1 Then there were a couple of
2 hospitalizations after her March procedure; her
3 hospitalizations, I think, in April and in May.
4 Then I think she had a hospitalization in June for
5 major surgery.

6 Q. Do you remember the date of her first
7 hysterectomy?

8 A. Yes.

9 Q. What was that date?

10 A. That was February 11, 2008.

11 Q. Okay. How many hours would you say you've
12 spent reviewing materials for this case?

13 A. Approximately 20 to 25.

14 Q. Okay. And have you billed for your
15 services provided?

16 A. I've billed for, I think, the first time
17 that I reviewed it, yes.

18 Q. And how many hours have you billed?

19 A. I don't have it right here, but I believe
20 it was probably five or six hours.

21 Q. Okay. And can you tell me about your
22 billing practices in medical malpractice cases?

23 A. I usually bill \$500 an hour.

24 Q. Is that across the board?

25 A. Yes.

0021

1 Q. So \$500 for review, \$500 for deposition
2 and \$500 for trial per hour?

3 A. Yes.

4 Q. And are you prepared to testify in this
5 case if this case proceeds to trial?

6 A. Yes.

7 Q. And do you know when the trial is?

8 A. Yes. It's, let's see, May 19, I think;
9 18th or 19th.

10 Q. But you've made arrangements to be
11 available for that trial?

12 A. Yes.

13 Q. Have you reviewed any of the legal
14 pleadings in this case?

15 A. Legal pleadings?

16 Q. Like a complaint or a designation, a
17 summary of your testimony.

18 A. I don't believe so.

19 Q. Okay. Have you ever testified in Virginia
20 before?

21 A. No.

22 Q. Have you ever practiced in Virginia
23 before?

24 A. No.

25 Q. Have you ever lectured in Virginia?

0022

1 A. Yes.

2 Q. And where have you lectured?

3 A. I lectured in Riverside Hospital, Newport
4 News, a lecture on laparoscopic hysterectomy. That
5 was in 1992.

6 MR. LEWIS: Was Dr. Faulk there?

7 THE WITNESS: I don't know. I
8 lectured there, and I lectured at American College,
9 an OB-GYN meeting, at the Armed Forces in -- was
10 it -- it's not Portsmouth. I think where the --
11 wherever the Navy is in -- Norfolk.

12 BY MR. FAVALORO:

13 Q. I was going to say it could be anywhere in
14 the southeast Virginia.

15 A. I think it was in Norfolk, Virginia, I did
16 lectures. That was also 1992. And I believe I
17 lectured sometime after 1992 because we went down to
18 Williamsburg around holiday time.

19 Q. But you've never performed any procedures
20 in a Virginia hospital?

21 A. No.

22 Q. Okay. Have you ever been sued, Doctor?

23 A. Yes.

24 Q. -- for malpractice?

25 How many times?

0023

1 A. Four.

2 Q. Okay. Can you tell me about the first
3 time?
4 A. The first time was in 1994.
5 Q. Okay. What were the circumstances of that
6 suit?
7 A. Necrosis of the small intestine.
8 Q. Okay. Was the allegation that you
9 misdiagnosed?
10 A. The allegation was that I -- I'm not sure
11 of the exact allegation. But it was a small bowel
12 case where the patient developed necrotic changes in
13 the small bowel from the superior mesenteric artery.
14 Q. And what was the outcome of that suit?
15 A. That was settled.
16 Q. Do you know how much was paid?
17 A. I'm not sure. I think it was around 200,
18 but it would be in the data bank.
19 Q. And who was your attorney in that case?
20 A. The attorney who was -- filed the suit was
21 the law firm of Arlen Specter's son. I'm not sure
22 what his name is. He's our State Senator.
23 Q. And is that in Philly?
24 A. Philly. In those days, they could take
25 cases from Wilkes-Barre and try them in
0024
1 Philadelphia. I believe they finally did away with
2 that in the last few years.
3 Q. And do you know the law firm or lawyer who
4 represented you in that case?
5 A. His first name was Bart. I'm blanking on
6 his full name.
7 Q. Where was the firm?
8 A. In Philly.
9 Q. And what was the plaintiff's name in that
10 case?
11 A. Mary Willliver.
12 Q. Wilber?
13 A. Willliver, W-I-L-L-I-V-E-R.
14 Q. What about the next one?
15 A. The next one was Cathy Anselmi.
16 Q. Would you spell that, please?
17 A. A-N-S-E-L-M-I.
18 Q. And the year?
19 A. 1998.
20 Q. Okay. The circumstances?
21 A. That was an operation where the patient
22 had a bowel problem postoperatively, but not a
23 perforation, but it just lingered for around three
24 weeks, and then she had an operation to resect some
25 intestine.
0025
1 Q. Was there a perforation?
2 A. No perforation.
3 Q. But there was necrosis?
4 A. She just -- it was -- no necrosis, as
5 strange as it seems; but it was -- basically, she
6 just was having problems passing gas. We call it
7 like hypotonic small intestine.
8 Q. Okay. And what was the outcome of that

9 case?
10 A. That was also settled by the same lawyer,
11 Specter.
12 Q. Okay. And do you remember how much?
13 A. I think it was settled for 500.
14 Q. Okay.
15 A. I believe. I haven't checked.
16 Q. Okay. And the next one?
17 A. And there was -- the next one was -- I'm
18 trying to think of the name, but the next one was
19 Westchester County. It was a ureteral injury, and
20 that was in -- the case occurred in nineteen --
21 yeah, 1995.
22 Q. Okay.
23 A. It was settled in 2000 for 25,000.
24 Q. Okay. And who was plaintiff's counsel in
25 that case?
0026
1 A. My lawyer was Jay Gebauer, G-E-B-A-U-E-R.
2 Q. G-E-B --
3 A. G-E-B-A-U-E-R.
4 Q. Okay. Do you remember plaintiff's
5 counsel?
6 A. No.
7 Q. Plaintiff's name?
8 A. Let's see. No, I don't remember.
9 Q. And if I could ask you just a few
10 questions about the case in that it was a uretal
11 injury.
12 A. Yes.
13 Q. What was the allegation against you in
14 that case?
15 A. The allegation was that there was a
16 ureteral injury.
17 Q. Was a transection alleged?
18 A. There was a ureteral injury that was
19 repaired at laparoscopy, and the patient had no
20 ill-effects afterwards, but the suit was filed just
21 because there was a ureteral injury.
22 Q. Was the allegation -- was there a
23 hysterectomy involved in the case?
24 A. No.
25 Q. And what was the procedure by which the
0027
1 uretal injury could have occurred?
2 A. The injury occurred because, to be honest,
3 it was -- it looked like a pretty easy case, and I
4 went very fast. So I was probably negligent in that
5 case, but I noticed the injury. I had to excise
6 endometriosis during the operation, noticed the
7 injury. I fixed it by laparoscopic surgery.
8 Q. And what was the procedure you were
9 performing when the injury occurred?
10 A. Oophorectomy --
11 Q. Okay.
12 A. With -- an excision of endometriosis.
13 Q. And it's your memory that you recognized
14 the injury intraoperatively?
15 A. Yes, very quickly.

16 Q. Okay. And did the repair occur
17 intraoperatively or within several days?
18 A. Repair occurred immediately.
19 Q. Okay.
20 A. In fact, I show that video at many
21 conferences.
22 Q. And is it your understanding that you
23 transected the ureter when you were performing the
24 oophorectomy?
25 A. No, not at all. It was just a small hole
0028
1 that I could see in the ureter. So I was able to
2 fix that small hole.
3 Q. What was your opinion as to what created
4 the hole?
5 A. The hole was created by cutting current
6 electrosurgery. The current that I was using to
7 dissect in the area, I could see the spark go in the
8 direction -- it was an active spark. I could see
9 it, and immediately I saw a hole in the ureter. I
10 dissected out the ureter to be sure, and then I
11 repaired the ureter after putting a stent in the
12 ureter.
13 Q. And what complications did the patient
14 suffer?
15 A. Absolutely none.
16 Q. Do you have an opinion as to why the suit
17 was filed against you?
18 A. I really don't.
19 Q. But the case settled, as far as you know,
20 for 25,000?
21 A. I do know it was -- I did not want to
22 settle the case, but you know how insurance
23 companies can get. They tend to think that's the
24 less expensive way out.
25 Q. Okay. And, again, I'm sorry if I'm
0029
1 repeating myself; but your attorney in that case was
2 Jay Gebauer?
3 A. Gebauer.
4 Q. And he's out of what city?
5 A. I think somewhere in New York.
6 Westchester County.
7 Q. Okay. And the plaintiff's name in that
8 case?
9 A. I could send you that. I'm blanking out
10 on that. I should know it, but I'm blanking out on
11 that.
12 Q. If you would, please, get that to Attorney
13 Lewis. Thank you. And the last case?
14 A. The last one is -- was -- occurred in the
15 year 2000, went to trial in Brooklyn in 2003; and it
16 was an extensive adhesion operation with a pelvic
17 mass. And the pelvic mass turned out to be a
18 kidney, and I removed it.
19 Q. What was the allegation against you?
20 A. That I had removed the kidney.
21 Q. In error?
22 A. Well, it was an abnormal kidney. The

23 patient had a normal kidney. The question is
24 whether it functioned or not, but they still sued
25 me, and it went to trial in Brooklyn.

0030

1 Q. And what was the result?
2 A. We lost.
3 Q. And what was the verdict?
4 A. Just that I had taken out the kidney.
5 Q. The amounts? The amount of the --
6 A. I'm not sure. But, again -- I'm not sure
7 what they finally settled on.
8 Q. Was there a verdict and then a
9 post-verdict settlement or --
10 A. There was a verdict.
11 Q. -- was there a settlement prior to
12 verdict?
13 A. I think the verdict was like two million.
14 Q. And who was your attorney in that case?
15 A. Dwyer; Jerry Dwyer. Jerry or Gary. It's
16 Dwyer, though, D-W-Y-E-R.
17 Q. Was he from New York City?
18 A. Yes.
19 Q. Could you get that information to Attorney
20 Lewis as well?
21 A. Sure.
22 Q. Okay. Thanks. Have you ever had your
23 privileges revoked?
24 A. No.
25 Q. Okay. Have you ever been reported to a

0031

1 medical review board within a hospital in which you
2 had privileges or were performing surgery?
3 A. No.
4 Q. I'm going to show you a document, Doctor,
5 and ask you if you've ever seen it before.
6 MR. LEWIS: And we'll mark this as
7 Exhibit 1:
8 (Reich Exhibit No. 1, written
9 designation, was marked for identification.)
10 (Pause in proceedings.)
11 THE WITNESS: Who is Dr. Soffer?
12 BY MR. FAVALORO:
13 Q. That's another expert. Let me just ask
14 you to start reading below your name. I'm sorry. I
15 should have told you that when I gave it to you.
16 A. Okay.
17 (Pause in proceedings.)
18 A. These would be the records that I
19 reviewed. Yes, I've seen this.
20 Q. Okay. When was the first time you saw
21 that document? And, again, we're just stopping on
22 the last page where it ends with your name.
23 A. I'm not sure of the date.
24 Q. Did you prepare this document or have a
25 hand in preparing it?

0032

1 A. Yes. I gave some of my opinions, and
2 maybe they were -- I believe they were incorporated
3 in the document.

4 Q. I'm just going to -- because I am going to
5 ask you questions about it, I'm going to ask you to
6 read it; and after reading it, tell me if there's
7 anything that you disagree that's set forth in this
8 designation.

9 MR. LEWIS: Do you want to go off?

10 MR. FAVALORO: Yeah. Why don't we go
11 off.

12 THE VIDEOGRAPHER: The time is 5:05.
13 We're off the video record.

14 (A brief recess was taken.)

15 THE VIDEOGRAPHER: The time is 5:07.
16 We're back on the video record.

17 BY MR. FAVALORO:

18 Q. Doctor, you've had a chance to review what
19 we've marked in this case as Deposition Exhibit 1.
20 Is there anything in that document that you disagree
21 with in terms of your opinion?

22 A. No.

23 Q. Doctor, this designation indicates that
24 you have reviewed specifically certain medical
25 records, and you've had a chance to look at those

0033
1 records or that summary of those records, correct?

2 A. Yes.

3 Q. And that accurately reflects the documents
4 and records that you have reviewed in this case,
5 correct?

6 A. I believe so.

7 Q. What do you mean you believe so?

8 A. I -- looking at the records, I have --
9 it's my opinion or my recollection that I reviewed
10 them.

11 Q. Okay. Well, it wasn't meant as a trick
12 question. Again, it's a very particular and
13 detailed list of documents and records that you've
14 looked at. I'm just asking you now to confirm that
15 that list is accurate.

16 A. Yes, it is.

17 Q. Okay. Doctor, can you tell me why you
18 believe Dr. Faulk breached the standard of care on
19 February 11, 2008?

20 A. Yes. Okay. Dr. Faulk was -- on that date
21 was doing a laparoscopic supracervical hysterectomy.
22 And the beginning of the operation, he put a sponge
23 in the vagina -- again, this is from his operative
24 report, from what I could understand -- put a sponge
25 in the vagina, and he put nothing in the uterus.

0034
1 I believe that was a breach of the
2 standard of care because with a sponge in the
3 vagina, you can't manipulate the uterus away from
4 the ureters.

5 The proper way to do this operation is to
6 put something in the vagina -- or I'm sorry -- put
7 something in the uterus so you can push the uterus
8 upward and away from the ureters when you do the
9 operation.

10 I mean, that's like basic laparoscopic

11 hysterectomy or supracervical hysterectomy
12 technique.

13 Q. Okay. On that issue then, let me ask you,
14 given that the sponge was in the vagina, what would
15 have been the appropriate procedure or action by
16 Dr. Faulk regarding the uterus?

17 A. On the market today, really, since the mid
18 '80s, there are multiple devices. We call them
19 uterine mobilizers or uterine manipulators.

20 There are many devices to be able to
21 insert into the uterus that stick out of the vagina
22 so the surgeon could use them as a lever to push the
23 uterus upwards and push the uterus from side to side
24 to be able to identify structures.

25 And, again, this is extremely important,

0035

1 especially if you have a large uterus, which was
2 present in this case, slightly enlarged uterus, and
3 this wasn't done.

4 Q. Okay. Any other violations of the
5 standard of care on February 11?

6 A. Yes. He then does laparoscopy; and going
7 by his operative report, the first thing he does --
8 the first part of the operation is to bipolar
9 desiccate the uterine vessels.

10 What he does is, he grasps probably the
11 Fallopian tube or the ovary and pulls it toward the
12 midline; and then he uses bipolar coagulation.

13 Okay. When you use bipolar coagulation,
14 it makes -- it stops the blood supply to the uterine
15 vessels; but it also causes blanching, or whitening,
16 in the area.

17 So then he takes a harmonic scalpel, and
18 he coagulates again to cut. And I believe -- well,
19 I'm sorry. I don't believe -- from the op note,
20 that is my opinion, that that's when the ureter was
21 cut and divided and semisealed at that time.

22 It's -- it's totally against the standard
23 of care to coagulate with one instrument and then
24 try to coagulate with another instrument in the same
25 place, especially after you have, as I said, the

0036

1 blanching and the whitening around the area that one
2 coagulation would cause.

3 The correct method would have been to cut
4 with the scissors on the same white line that was
5 just coagulated.

6 And usually if one does open the
7 peritoneum in that place, the ureter falls away from
8 the area to be dissected. But Dr. Faulk continues
9 with this procedure. He coagulates and then -- with
10 two different instruments.

11 So it makes sense that the first
12 coagulation will shrink the blood vessel as it stops
13 the blood flow from going through; and that, in
14 itself, will move the ureter closer to the tube and
15 ovary on the pelvic side wall. Then he takes the
16 harmonic scalpel and coagulates again and cuts with
17 the harmonic scalpel, probably cutting the ureter.

18 Q. So you believe that the -- there was a
19 transection of the ureter by virtue of using the
20 harmonic scalpel?

21 A. I do believe that in the beginning of the
22 operation that's what occurred.

23 Q. Okay. And what leads you to that
24 conclusion as opposed to the transection occurring
25 later or perhaps the existence of a thermal injury?

0037

1 A. A thermal injury certainly did not occur
2 in this case because, with a thermal injury around
3 the ureter, the ureter would just narrow over time.
4 Most -- if you look, even in the literature, some of
5 the thermal injuries with this operation,
6 supracervical hysterectomy, you'll see that in most
7 of them, even if they're diagnosed late, they -- the
8 ureter is intact. It's not like broken in a spot or
9 separated, like it was in this case.

10 So I think it's obvious that the ureter
11 was severed with the harmonic scalpel in the
12 beginning.

13 The surgeon then continues dissecting
14 downward. If he had a uterine manipulator in at
15 that point, he would have been able to push the
16 uterus up and away from the ureter, but he didn't do
17 it because there's nothing in the uterus. It's like
18 a floppy thing there.

19 From the beginning of doing these
20 operations in the '80s, it's always important to be
21 able to push the uterus upward and away from the
22 area being dissected and to, in most cases or many
23 cases, dissect off the ureter itself to see exactly
24 where it is.

25 Q. Okay. Any other violations of the

0038

1 standard of care?

2 A. I think that's enough.

3 Q. So that's it? It's failure to do a
4 uterine manipulation --

5 A. Yes.

6 Q. -- and the use of a harmonic scalpel in
7 light of the bipolar cauterization?

8 A. Using two methods to coagulate when one
9 would suffice. In effect, by using the second one
10 after the area had been distorted, it's -- it was a
11 setup for him to then come across the ureter.

12 Q. Okay. And those two actions form the
13 basis of your conclusion that Dr. --

14 A. I --

15 Q. Let me just finish the question for the
16 record.

17 -- that Dr. Faulk violated the standard of
18 care during this procedure?

19 A. Those were the major things that I could
20 see. I mean, the case itself, I believe, was done
21 in a bizarre fashion.

22 Here's a woman with -- who presents to
23 this doctor with a cervical problem, and he's doing
24 an operation to preserve the cervix. That doesn't

25 make much sense to me.

0039

1 Q. What should he have done at that point?

2 A. And then at the end of the operation, he
3 does a procedure to take out the affected portion of
4 the cervix -- he called it a LEEP -- at the end of
5 the procedure, a cone biopsy. And the pathology
6 from that document says he didn't take out the area
7 that he was supposed to. He didn't get the
8 transformation zone.

9 So he's leaving this patient who presented
10 to him with an abnormal pap test and -- so he's
11 leaving -- whatever caused that abnormal pap test,
12 there's a good chance he's leaving that lesion in
13 there at the end of the procedure.

14 But, again, that's not what caused the
15 ureteral injury. That just was bizarre. I just
16 have never seen that kind of procedure done.

17 Q. If the ureter was transected upon the use
18 of the harmonic scalpel, in your opinion, and based
19 upon your review of the operative report, was there
20 evidence of that transection on February 11, 2008?

21 A. I believe there was not evidence because
22 the harmonic scalpel will seal -- just like
23 bipolar -- will seal the edges that it coagulates.
24 The difference between bipolar and harmonic is that
25 harmonic device divides the tissue. Bipolar just

0040

1 coagulates it. Harmonic coagulates it and cuts it.

2 Q. So is it your opinion that, subsequent to
3 the use of the harmonic scalpel, there was nothing
4 to indicate to Dr. Faulk that he transected the
5 ureter?

6 A. Nothing, unless he looked. I mean, most
7 surgeons would then look at the area because it's
8 opened up. And if they looked at the area, they
9 would see that there's no ureter, because the ureter
10 would have been coagulated and then would, quite
11 possibly, retract a little bit.

12 I think the main point is that you're
13 right there. The ureter is very easy to see on the
14 right side, much easier than on the left side,
15 because it comes into the pelvis over the iliac
16 vessels. So it's right there where the ovarian
17 vessels are.

18 So if you divide that ligament, the
19 infundibulopelvic ligament, you would see the
20 ureter. So I would think at that time, most
21 surgeons would look to see that the ureter was fine;
22 and if he did look there, he wouldn't have seen the
23 ureter because it had already been separated.
24 That's my opinion.

25 Q. And was it possible, in your opinion, to

0041

1 visualize the ureter at the conclusion of this
2 procedure?

3 A. If he looked at any point during the
4 procedure, he would have been able to find the
5 ureter, even if it had been divided.

6 Q. And is it your opinion that Ms. Agard was
7 at risk for injury during this procedure?
8 A. It's my opinion that she's at minimal
9 risk. She didn't have adhesions. She didn't have
10 endometriosis. She had fibroids. So I think it was
11 a basic standard, pretty straightforward
12 hysterectomy.
13 Q. So there was minimal risk for Ms. Agard
14 during this procedure?
15 A. I believe minimal risk, if the surgeon
16 does the right procedure with the right instruments.
17 Q. Okay. So it's not as if Dr. Faulk looked
18 at this patient and said this is a high-risk patient
19 in terms of this procedure?
20 A. I agree, yes.
21 Q. Okay. Would you look at your first
22 sentence on -- the first paragraph on page 16? The
23 first paragraph, just let me read it to you,
24 "Dr. Reich is expected to testify that Mrs. Agard's
25 ureters were at risk for injury during the

0042

1 February 11 laparoscopic supracervical hysterectomy
2 bilateral salpingo-oophorectomy performed by
3 Dr. Faulk, and this fact was well-known to him."
4 That seems to contradict what you just
5 told me.
6 A. Well, anyone who has a ureter could be at
7 minimal risk of being injured.
8 Q. But that's not what this sentence says.
9 A. No? What does -- I would think it does.
10 Q. Doesn't the sentence say that your
11 expected testimony is that Ms. Agard's ureters were
12 at risk for injury, and this fact was well-known to
13 Dr. Faulk?
14 A. Well, everyone who has a hysterectomy we
15 could say that the ureter is at risk. I mean, it's
16 just the same as everybody who has a
17 cholecystectomy. We would say that the common bile
18 duct is at risk. But if it occurs, it's not right.
19 Even though it's at risk, I believe that it
20 shouldn't happen.
21 Q. So you believe that the risk was a minimal
22 or low risk for injury?
23 A. Yes.
24 Q. And "this fact was well-known to
25 Dr. Faulk" refers to what?

0043

1 A. Well, I believe anyone who does
2 gynecological surgery would believe that you could
3 injure various, different organs in the pelvis;
4 ureter and bile being the primary suspects.
5 Q. And I know we talked a little bit about
6 this, Doctor; but your designation indicates that
7 "he needed to make sure he had properly visualized,
8 identified and protected the plaintiff's ureters
9 during the procedure."
10 Again, what do you believe that Dr. Faulk
11 should have done to visualize, identify and protect
12 plaintiff's ureters?

13 A. Like I said, at the beginning of the
14 operation, if he pulled, like he said he did in the
15 operative report -- if he pulled the tube and ovary
16 over towards the midline, like he said he did in the
17 operative report, he would see the ureter because
18 the ureter is coming into the pelvis right there.

19 And I remember reading his deposition. He
20 states that's what he should have done, but
21 obviously he didn't do it. I think it was on page
22 41 of his deposition.

23 Q. Okay. Was a cystoscopy indicated on
24 February 11?

25 A. It's been my belief for many years that

0044

1 cystoscopy following indigo carmine dye should be
2 done at the end of all hysterectomies if the ureter
3 has not been dissected.

4 Q. And is that your practice?

5 A. Yes.

6 Q. Is it your practice to dissect the
7 ureters?

8 A. For many years, it was; and then in some
9 cases, I decided not to do it if I was going to do a
10 cysto [sic] at the end and if I had ligated the
11 ureter with a suture because if -- if you move
12 quickly and ligate the ureter with a suture and you
13 find out it was ligated, you can always remove the
14 suture.

15 So for ureteral safety, we look in. We
16 make sure there's blue dye coming out of both
17 ureters.

18 If there isn't and you've cut off the
19 blood supply with suturing instead of bipolar or a
20 harmonic scalpel, you can always go back and take
21 off a suture and place it in the right place.

22 Q. Other than visualization of the ureters,
23 was there any other indicators to Dr. Faulk on
24 February 11 that a transection might have occurred?

25 A. He didn't look to find out or do anything

0045

1 to see if it had occurred.

2 Q. Were there any conditions that the patient
3 experienced postoperatively on February 11 that
4 could have or should have indicated to Dr. Faulk in
5 your opinion that a transection may have occurred?

6 A. Not on February 11.

7 Q. What about on February 12?

8 A. I'd be a little concerned then, because
9 she went like with a lot of pain postoperatively,
10 according to her deposition. Even Dr. Faulk felt
11 that she had a lot -- more pain than was usual at
12 the time of discharge.

13 Most laparoscopic surgeons, especially
14 with supracervical hysterectomy, the patient should
15 be in fantastic shape the next day; and if they're
16 not, we should be thinking there could be something
17 going on. And the most obvious things are the bowel
18 and ureter. And if found about it at that time,
19 most of them can be corrected by laparoscopic

20 surgery, especially bowel.
21 Q. And do you believe there was indication
22 that there was either a bowel or a ureter problem on
23 February 12, 2008?
24 A. Well, she was having pain. So if the
25 patient is not having the typical course that you
0046
1 believe most people having this type of surgery
2 should have, you should think about bowel or ureter
3 complications.
4 Q. And in your opinion, what should Dr. Faulk
5 have done on February 12?
6 A. I believe he should have done an IVP,
7 which is an injection of dye in the veins, and that
8 is concentrated in the kidneys, so one can be sure
9 that the ureters are okay.
10 Q. Anything else?
11 A. I think that's the standard. Although,
12 you could consider a CAT scan or an MRI to see if
13 the kidney is swollen; but that doesn't make that
14 much sense. An IVP you see right away, and you
15 could do it with very minimal radiation. We call it
16 a single shot IVP.
17 Q. What was the urinary output on
18 February 12? Do you know?
19 A. I believe it was fine.
20 Q. And would that indicate or contraindicate
21 a ureteral transection?
22 A. It makes absolutely no difference. If you
23 have one kidney that's working, the output would be
24 the same.
25 Q. Okay. So urinary output is not
0047
1 indicative, in your opinion, of a ureteral injury?
2 A. No, unless bilateral.
3 Q. Do you find fault with any other action or
4 inaction of Dr. Faulk on February 11 or February 12
5 other than what you've testified to?
6 A. No.
7 Q. Okay.
8 A. I'm sorry. Could I go back there?
9 Q. Sure.
10 A. On February 11 or 12, no, at that point,
11 but I mean -- then she was readmitted. But, again,
12 that's another story.
13 Q. In your opinion, was it a violation of the
14 standard of care to discharge Ms. Agard after her
15 hysterectomy the first time?
16 A. Honestly, I don't have an opinion on that
17 because I wasn't there. I can't tell you how much
18 pain that she was having at that time. So I would
19 have to defer on that.
20 Q. Okay. So you do not find the discharge of
21 Ms. Agard to be a violation of the standard of care
22 based upon your review of the records?
23 A. No.
24 Q. Do you find any further fault with
25 Dr. Faulk regarding his treatment of this patient?
0048

1 By "fault," I mean a violation of the standard of
2 care.

3 A. No.

4 Q. Do you intend to offer opinions on
5 causation at the time of trial in this case?

6 A. Yes.

7 Q. And what are those opinions?

8 A. My opinion is that the procedure of
9 supracervical hysterectomy with a fibroid uterus
10 without a uterine manipulator is a deviation of the
11 standard of care, and that the use of two different
12 energy sources to coagulate the blood supply of the
13 uterus is a violation of the standard of care.

14 Q. Okay. I understand that. I'm asking you
15 about causation testimony. In other words -- do you
16 know what causation testimony is?

17 A. I thought that was the cause of her
18 ureteral injury.

19 Q. The standard of care relates to whether
20 the doctor, in essence, did something wrong in his
21 care and treatment of the patient.

22 Causation relates to what was the
23 consequence of any violation of the standard of care
24 and injury, any negative results. So let me put the
25 question to you again. Are you looking to and

0049

1 intending to offer any testimony as to causation at
2 this trial?

3 MR. LEWIS: I don't mean to be
4 interrupting, but I will. I'm going to ask you him
5 causation questions, as I think I have indicated in
6 the expert witness disclosure.

7 So if you're trying to find out
8 whether you need to go down that path with him here
9 today so you understand what his opinions are, I
10 would suggest you go down that path because I'm
11 going to do it at trial.

12 MR. FAVALORO: I am expecting -- I am
13 expecting that question based upon the designation.

14 MR. LEWIS: Okay. Fair enough.

15 BY MR. FAVALORO:

16 Q. But I'm just trying to make sure you
17 understand what causation is.

18 A. I'm still confused. You're saying -- I
19 would have thought causation means the cause of the
20 injury to the ureter, but you're saying it means
21 something postoperative?

22 Q. It means, did the -- let me give you a
23 generic description, and counsel can certainly pipe
24 in if he disagrees.

25 MR. LEWIS: Okay.

0050

1 BY MR. FAVALORO:

2 Q. Causation means that because a doctor did
3 something wrong, there were negative consequences.
4 To give an easy example, you cut my hand off. I
5 can't write, and it cost me \$50,000 to get a
6 prosthetic.

7 A. Yes.

8 Q. So --
9 A. I understand now.
10 Q. Okay. So with that example, what do you
11 see causation damages to be to this plaintiff?
12 A. Causation damages? Well, I mean, this
13 patient had a ureter that was severed, and the
14 severed ureter caused urine to collect in her
15 peritoneal cavity.
16 She then was admitted to the hospital
17 where the doctor felt it was a bowel problem or --
18 it's hard to understand what he could have thought
19 then because she didn't have ovaries to have an
20 ovarian cyst leaking.
21 But, somehow, he did a drainage of the
22 vagina, which is just drainage of all the urine that
23 was in that place.
24 Then she went back home and had to suffer
25 with urine pouring out of her vagina for a few days;
0051
1 and following that, she had to come back into the
2 hospital and have a nephrostomy tube placed in her
3 back to help the inflammation around the ureter to
4 go away. And to prevent loss of her kidney, it was
5 done.
6 She didn't lose her kidney, but she went
7 through many months with this problem. I imagine
8 that would affect somebody pretty badly, to have
9 urine leaking out of your vagina for -- really,
10 until she had the reimplantation.
11 Then after the reimplantation, I believe
12 she still was having some problems with the area
13 where the ureter came into the bladder.
14 Q. Do you know when that reimplantation
15 occurred?
16 A. The implantation was -- I think it was
17 June; May or June. And about a year later --
18 Q. May or June of 2009?
19 A. Of 2008, May or June. So four months
20 later.
21 Q. Uh-huh.
22 A. But I believe I did read some notes that
23 in 2009 she was still having some question that --
24 whether that was open or not, and the surgeon had a
25 problem finding it with cystoscopy.
0052
1 Q. Okay. Any other damages or consequence of
2 what you believe to be a transection of the uterus
3 to the plaintiff?
4 A. Yes. Just going that length of time with
5 all that urine in the peritoneal cavity would cause
6 a lot of irritation to the surfaces of the
7 peritoneal cavity, which could lead to lots of
8 adhesions in that area. That could affect future
9 bowel mobility and motility.
10 Q. Do you know if any adhesions have formed
11 since this procedure?
12 A. Honestly, no, because when she had the
13 implantation, they did it retroperitoneal. So they
14 didn't go into the peritoneal cavity. I think they

15 did it retroperitoneal so they wouldn't have that
16 mess to deal with, to find the ureter.

17 Q. Okay. Anything else?

18 A. No.

19 Q. So the damages you see then, Doctor, was
20 the collection of urine, the urine pouring out of
21 the vagina, the nephrostomy tube and the
22 reimplantation --

23 MR. LEWIS: And pain.

24 BY MR. FAVALORO:

25 Q. -- and pain?

0053

1 A. Yes. This patient, from what I could tell
2 from her deposition, has ongoing pain and bladder
3 pressure and now has the feeling that she always has
4 to go to the bathroom, like she can't hold her
5 water.

6 Q. And how old is this patient now?

7 A. 58, 59.

8 Q. Is that condition common in patients that
9 age, irrespective of whether they've had ureteral
10 damage?

11 A. That condition is a totally new condition.
12 I mean, we call it a spastic bladder. A spastic
13 bladder is something she didn't present with when
14 she had her original surgery.

15 Q. Isn't lack of bladder control a condition
16 that presents more frequently as we all get older?

17 A. It can.

18 Q. Okay. Is there any literature that you
19 believe is reliable authority in this case?

20 A. I mean, there are case reports and
21 textbook chapters that I'm familiar with that tell
22 how to do this operation.

23 This operation was first done around 1990
24 by Dr. Tom Lyons. So I've read his work in his
25 chapters. So I know his incidence of complications.

0054

1 I have an idea of the incidence of complications of
2 Cleveland Clinic and of some other centers in the
3 world who have done large numbers of supracervical
4 hysterectomies.

5 Q. Are you aware of any literature that
6 stands for the proposition that to place a sponge in
7 the vagina in connection with a laparoscopic
8 hysterectomy, absent uterine manipulation, is a
9 breach of the standard of care?

10 A. I've never heard of that technique in
11 benign gynecology. I don't know of anyone who would
12 ever consider doing that.

13 Q. You're talking about putting the sponge in
14 the vagina without --

15 A. Without a uterine -- without something to
16 manipulate the uterus and move it around.

17 Q. My question to you is whether you know of
18 any literature that stands for that proposition or
19 indicates that uterine manipulation is the way to do
20 it?

21 A. There's much literature. Almost any

22 literature that you read about the technique of how
23 to do this operation would include using a uterine
24 manipulator.

25 Q. Is there ever a situation where a uterine
0055

1 manipulator would not be indicated?

2 A. Yes.

3 Q. What would that situation be?

4 A. Cancer.

5 Q. Absent cancer.

6 A. Pardon?

7 Q. Absent cancer.

8 A. Absent?

9 Q. In other words, in cases other than
10 those --

11 A. Cancer is -- surgeons immediately, at the
12 beginning of the operation, duct tape [sic] up the
13 ureters; and they don't want to disturb whatever is
14 inside.

15 So in those situations, they don't put a
16 manipulator in. But absent cancer, I don't know of
17 any other situation.

18 Q. Okay. Doctor, let me just show you your
19 CV, which is not a short one. This a copy that I
20 think Attorney Lewis had. I just want to ask you if
21 that is the most current. It would probably take
22 you three hours to read through it.

23 A. It probably isn't the most current.

24 Q. Is it something you update regularly?

25 A. I updated it recently, I think, yes.

0056

1 Q. Okay. Can you get me an updated copy, to
2 the extent that is not the updated copy?

3 A. Sure.

4 MR. LEWIS: Okay. Let's just go off
5 the record for a few more minutes. We're almost
6 done.

7 THE VIDEOGRAPHER: The time is 5:42.
8 We're off the video record.

9 (Discussion held off the record.)

10 THE VIDEOGRAPHER: The time is 5:45.
11 We're back on the video record.

12 BY MR. FAVALORO:

13 Q. Doctor, do you believe that the original
14 laparoscopic hysterectomy was indicated in this
15 occasion?

16 A. Probably, yes. I'd say that because the
17 patient wanted it and she -- it's post-menopausal
18 with a large uterus.

19 Q. Okay. Is there anything else you need to
20 review in terms of documents, medical records,
21 absent any other discovery, depositions that may be
22 happening, to solidify your opinions for trial?

23 A. No.

24 Q. Okay. Is there anything question I didn't
25 ask you today that you thought I would?

0057

1 MR. LEWIS: I'll object to the form.
2 Go ahead and answer it, Doctor. Go ahead and answer

3 it, if you can.
 4 THE WITNESS: No.
 5 BY MR. FAVALORO:
 6 Q. The questions that I asked you today
 7 relate to the testimony you're intending to give at
 8 trial?
 9 A. Yes.
 10 Q. Were there any topics that you intend to
 11 testify at trial that we did not cover today?
 12 A. I don't believe so.
 13 MR. FAVALORO: Okay. Thank you,
 14 Doctor. No further questions.
 15 MR. LEWIS: No questions.
 16 THE VIDEOGRAPHER: The time is 5:46.
 17 This completes the deposition.
 18 (Witness excused.)
 19 (Videotaped deposition concluded at
 5:46 p.m.)

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 0058

INSTRUCTIONS TO WITNESS

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 4 Please read your deposition over
 5 carefully and make any necessary corrections. You
 6 should state the reason in the appropriate space on
 7 the errata sheet for any corrections that are made.
 8 After doing so, please sign the
 9 errata sheet and date it.
 10 You are signing same subject to the
 11 changes you have noted on the errata sheet, which
 12 will be attached to your videotaped deposition.
 13 It is imperative that you return the
 14 original errata sheet to the deposing attorney
 15 within thirty (30) days of receipt of the videotaped
 16 deposition transcript by you. If you fail to do so,
 17 the videotaped deposition transcript may be deemed
 18 to be accurate and may be used in court.
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0059

ERRATA SHEET

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0060

SIGNATURE PAGE
OF
HARRY REICH, M.D.

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I hereby acknowledge that I have read the foregoing videotaped deposition, dated March 23, 2010, and that the same is a true and correct transcription of the answers given by me to the questions propounded, except for the changes, if any, noted on the attached errata sheet.

SIGNATURE: _____

DATE: _____

WITNESSED BY: _____

DATE: _____

0061

C E R T I F I C A T E

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I hereby certify that the evidence and proceedings are contained fully and accurately in the notes taken by me of the testimony of the witness who was duly sworn by me and that this is a correct transcript of the same.

Trisha Sims, CSR

Dated: _____

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(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)