

0263

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CIVIL TERM : PART 19

2 -----X

PLAINTIFF

3

Plaintiff,

4

-against-

INDEX NUMBER:

5

Trial

6

BIO-REFERENCE LABORATORIES, INC.

7 and CLAUDIA RAVINS, M.D.,

8

Defendants.

9 -----X

10

Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435

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13

B E F O R E:

14 THE HONORABLE PATRICIA P. SATTERFIELD
Justice, Supreme Court

15

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

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Attorneys for the Plaintiff

18 600 Old Country Road

Mineola, New York 11501

19 BY: JOSEPH P. AWAD and JENNIFER SPINA, ESQS.

20

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Attorney for the Defendant CLAUDIA RAVINS, M.D.

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23

24 Lorraine Marinazzo &

Laura Hutzel,

25 Senior Court Reporters

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6 MR. AWAD: Thank you, your Honor. At this
7 point the plaintiff calls the defendant gynecologist Dr.

8 Claudia Ravins to the witness stand.

9 D R. C L A U D I A R A V I N S, the
10 Defendant herein, after having been first duly sworn,
11 was examined and testified as follows:.

12 COURT CLERK: In a loud and clear voice, state
13 your name for the record, spelling your name, please.

14 THE WITNESS: Claudia Ravins, R-A-V-I-N-S

15 COURT CLERK: Business address.

16 THE WITNESS: 70-10 Austin Street, Forest Hills
17 New York 11375.

18 COURT CLERK: Thank you. You may be seated.

19 THE COURT: Speak loudly, please.

20 DIRECT EXAMINATION

21 BY MR. AWAD:

22 THE COURT: You may inquire.

23 MR. AWAD: Thank you, your Honor.

24 Good morning, jurors.

25 Q Dr. Ravins, you are the doctor that's the defendant
0270

1 in this case as the gynecologist who provided gynecologic
2 evaluation of PLAINTIFF; is that correct?

3 A Yes.

4 Q You are here today by reason of a subpoena that my
5 office served upon you and your offices asking for your
6 appearance during the plaintiff's presentation of the case,
7 correct?

8 A Yes.

9 Q Doctor, today I'm going to be asking you some
10 questions that may call for a yes or no answer. If I ask the
11 question that way, if it is possible for you to answer it yes
12 or no, I would appreciate it if you could. If you can't,
13 just let me know and we'll proceed forward from that, okay?

14 A Yes.

15 Q Now, Doctor, did you -- had you an opportunity
16 before coming today to review your medical records?

17 A Yes.

18 Q And have you had an opportunity to review the
19 deposition that was taken of you in this case by Jennifer
20 Spina, among other counsel, a year or two ago?

21 A Yes.

22 Q And what else have you reviewed in preparation for
23 your testimony here today, please?

24 A Nothing.

25 Q Have you looked at any of the trial testimony, the
0271

1 transcription of which would show a number of physicians have
2 testified here last week?

3 A No.

4 Q Have you at all reviewed the testimony of Miss
5 PLAINTIFF when she was deposed on three occasions a few
6 years ago?

7 A No.

8 Q Doctor, last Thursday and Friday were in your
9 medical office?

10 MS. KENNEY: Objection. Relevance.

11 THE COURT: Sustained.

12 Q Have you had an opportunity to consult with your
13 attorney?

14 MS. KENNEY: Objection.

15 THE COURT: Sustained.

16 Q Doctor were you the gynecologist responsible for
17 the gynecologic evaluation of PLAINTIFF beginning
18 March 22, 1999?

19 A Yes.

20 Q And was March 22, 1999 the first time that Miss
21 PLAINTIFF was presented to you for gynecologic evaluation and
22 testing?

23 A Yes.

24 Q And did you choose as of that date to undertake her
25 gynecological care, treatment and evaluation as her
0272

1 gynecologist?

2 A Yes.

3 Q And would I be correct to say that Miss PLAINTIFF
4 presented herself to you for gynecologic evaluation twice in
5 the year 1999, then again in June of 2000?

6 A Yes.

7 Q And during those three first office visits, would
8 it be correct to say that you were the sole gynecologist
9 responsible for evaluating and managing her gynecologic
10 medical care?

11 A Yes.

12 Q And at that time, Doctor, would it be fair to say,
13 would it not, that if PLAINTIFF was relying on you
14 directly to inform her of any possible decisions concerning
15 her medical evaluation, care and treatment, that her reliance
16 on you would be properly placed?

17 MS. KENNEY: Objection to the form.

18 THE COURT: Rephrase.

19 Q Would you agree that you were the physician that

20 was responsible for involving PLAINTIFF in the
21 decision-making as to what to do about her health care as it
22 related to her, as it related to gynecology?

23 A Yes.

24 Q You didn't expect her under any circumstances to
25 receive information from any other person during that period
0273

1 of time, 1999 and 2000, regarding decisions that could be
2 made regarding her gynecological care and evaluation?

3 A No.

4 Q Were there other doctors involved in that
5 decision-making with her in 1999 and 2000 other than
6 yourself?

7 A No.

8 Q So it would be yourself and yourself solely that
9 she would be dependent upon you to receive information that
10 would help her participate in her gynecological care and
11 treatment?

12 MS. KENNEY: Objection to the form.

13 THE COURT: Sustained.

14 Q Other than -- was Miss PLAINTIFF, to your knowledge,
15 relying on you for the information concerning her -- the
16 state of her gynecologic health?

17 A Yes.

18 Q Did the standard of medical care in March of 1999,
19 May of 1999, I'm sorry, May of 1999.

20 Withdrawn.

21 Did the standard of good and accepted gynecologic
22 care and treatment in May of 1999 require that Miss PLAINTIFF
23 receive a pelvic examination on her office visit with you in
24 May of 1999?

25 A Yes.

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1 Q Did the standard of good and accepted gynecologic
2 medical care also require that she receive a Pap Smear while
3 at your offices in May of 1999?

4 A Yes.

5 Q Would you agree, Doctor, if she was not offered a
6 Pap Smear in May of 1999, that that would be a deviation from
7 reasonable care and standards of gynecological practice?

8 A Yes.

9 Q Would you agree, Doctor, those standards of care,
10 both regarding the pelvic examination, as well as the Pap
11 Smear, that those same standards were still applicable in the
12 year 2000?

13 A Yes.

14 Q In June of 2000 Miss PLAINTIFF presented herself
15 again for a gynecologic evaluation and for a Pap Smear,
16 correct?

17 A Yes.

18 Q And would you agree, Doctor, under the standards of
19 good and accepted gynecologic care, Miss PLAINTIFF was entitled
20 to have a Pap Smear performed?

21 A Yes.

22 Q Would you agree that if a Pap Smear was not
23 properly and timely performed in June of 2000, that that
24 could represent a deviation from the standard of care?

25 A Yes.

0275

1 Q And the same regarding the pelvic examination which
2 we'll discuss in detail soon, but the pelvic examination
3 would require, at the very least, a bimanual examination of
4 her in June of 2000, correct?

5 A Yes.

6 Q And would you agree that if you did not perform a
7 proper and adequate bimanual examination on the office visit
8 of June 2000, that that would represent a departure from the
9 usual standards of medical and gynecologic care?

10 A Yes.

11 Q You continued to see Miss PLAINTIFF through the year
12 2001, correct?

13 A Yes.

14 Q In 2001 there came a time, did there not, when a
15 biopsy was reported to you showing that she had cervical
16 cancer?

17 A Yes.

18 Q And at that time, Doctor, there are a number of
19 further steps taken, one of which was a CT or CAT scan
20 evaluation of Miss PLAINTIFF in May of 2001, correct?

21 A Yes.

22 Q And you received a copy of the report of the
23 radiologist regarding the CAT scan, correct?

24 A Yes.

25 Q And at the time that you received that you were

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1 informed that the mass that was inside her cervical canal and
2 vagina was really quite large?

3 A Yes.

4 Q There came a further time in May when you were
5 advised she was diagnosed as having Stage 3B cervical cancer?

6 A Yes.

7 Q Now, would you agree, Doctor, that as of the date
8 of her first office examination with you in May of 1999 there
9 was no evidence whatsoever of Stage 3B cervical cancer?

10 A Yes.

11 Q And would you agree, Doctor, knowing what you now
12 know regarding the biopsy and knowing what you now know
13 regarding the CAT scan, that as of the May 1999 examination
14 in your office, it is more likely than not that Miss PLAINTIFF
15 was Stage 0 or precancerous regarding her cervix?

16 MS. KENNEY: Objection.

17 THE COURT: Overruled. You may answer.

18 A Could you repeat that?

19 MR. AWAD: Could we try to have it read?

20 THE COURT: Could you read back the question,
21 please?

22 (Whereupon, the reporter read back the
23 previous question.)

24 A Yes.

25 Q So on a timeline from May of 1999 to May of 2001,
0277

1 as far as science and medicine can determine, Miss PLAINTIFF
2 went from precancer to very advanced stage cancer while under
3 your care and evaluation?

4 MS. KENNEY: Objection. Speculation.

5 THE COURT: Overruled. You may answer.

6 A Yes.

7 Q Now, did there come a time in --
8 Withdrawn.

9 You received further information concerning Miss
10 PLAINTIFF's need for medical intervention from a variety of
11 physicians as she undertook more and more treatment for her
12 Stage 3B cancer, correct?

13 MS. KENNEY: Objection to form.

14 THE COURT: Read back the question.

15 (Whereupon, the reporter read back the
16 previous question.)

17 THE COURT: Rephrase, counsel.

18 Q Doctor, there came a point and time when a Dr.
19 Lipstein, did he not -- that he had provided a whole regimen
20 of radiation and chemotherapy?

21 A Yes.

22 Q And he's the first physician that staged this as a
23 Stage 3B cancer, correct?

24 A Yes.

25 Q And you personally had a discussion, did you not,
0278

1 with a pathologist from Bio-Reference Laboratory in May of
2 2001 regarding the biopsy that was performed, correct?

3 A Yes.

4 Q And at that time were you aware that her cancer, by
5 virtue of this biopsy and what had been preceded in terms of
6 her bleeding and your examination, you were aware she was at
7 an advanced stage of cancer, true?

8 A Yes.

9 Q Now, at that time that you spoke to the pathologist
10 at Bio-Reference some time in late April or early May of
11 2001, did you and that pathologist speak about how it was
12 that her cancer went from no cancer to Stage 2B, 3B cancer
13 while you were taking Pap Smears and submitting them to the
14 laboratory?

15 A No.

16 Q Did you at any time ask --

17 Withdrawn.

18 Just to talk about Pap Smears for a moment. Dr.
19 Ravins, would it be correct to say that this screening test
20 known as a Pap test is a way that examines cells that can be
21 collected from the cervix?

22 A Yes.

23 Q And that the main purpose of a Pap test is to
24 detect cancer or abnormal cells that may lead to cancer?

25 A Yes.

0279

1 Q As a general matter, would you agree that most
2 invasive cancer of the cervix can be prevented if women have
3 Pap tests regularly?

4 A Yes.

5 Q And would you also agree that as with other types
6 of cancer, cancer of the cervix is more likely to be treated
7 successfully and less invasively if it is detected early?

8 A Yes.

9 Q And the whole purpose of Pap Smears, is it not, is
10 to try to obtain microscopic evidence of something that may
11 be abnormal, but precancerous in the cervix?

12 A Yes.

13 Q Now -- would you care for some water, Doctor?

14 A No, thank you.

15 Q Regarding the gynecologic examination of a patient
16 such as Miss PLAINTIFF, would you agree that the gynecologic
17 examination that focuses on the pelvic exam is also an

18 important test or evaluation to try to find evidence of
19 cervical cancer at its earliest stages?

20 A Yes.

21 Q Is it correct, Doctor, to say --

22 Withdrawn.

23 Is it true that in the year 2000 the laboratory
24 report from Bio-Reference regarding the Pap Smear was not
25 read by you at the time that it was delivered to your offices
0280

1 in 2000?

2 A Yes.

3 Q Is it true, Doctor, that laboratory report from
4 Bio-Reference was not read by you, but was instead put into a
5 file by one of the five assistants in your office?

6 MS. KENNEY: Objection to form.

7 THE COURT: Overruled. You may answer.

8 THE WITNESS: Would you repeat the question?

9 (Whereupon, the reporter read back the
10 previous question.)

11 A Yes.

12 Q You cannot even determine which person touched that
13 report when it came back from the pathology lab because in
14 the year 2000 your office was, as you describe it, a very
15 high volume practice?

16 MS. KENNEY: Objection as to form.

17 THE COURT: Sustained.

18 Q In the year 1999, am I correct, Doctor, that there
19 is evidence as to who actually looked at the 1999 lab report,
20 correct, from Miss PLAINTIFF?

21 A Yes.

22 Q Because there are specific initials on that report,
23 correct?

24 A Yes.

25 Q Okay.

0281

1 In the year 2000 there were no initials on the
2 report and as you describe it you don't know which one of
3 five assistants did it in the year 2000?

4 A Yes.

5 Q And the reason why you don't know that and it is
6 not noted is because of your description of the practice at
7 that time as having gotten very busy, high volume?

8 MS. KENNEY: Objection to form.

9 THE COURT: Overruled. You may answer.

10 A Yes.

11 Q Now, and the reason why in part you didn't read the
12 report of June of 2000 is that you yourself had designed a
13 way of sorting pathology reports when they come back to your
14 office regarding Pap Smears, true?

15 A Yes.

16 Q You're the physician in your office that determined
17 that you would not read the Pap Smear reports of your
18 patients unless they were sorted into a pile, one designated
19 as abnormal and one designated as normal?

20 MS. KENNEY: Objection to form.

21 THE COURT: Overruled.

22 Q Is that correct?

23 A Yes.

24 Q Now, in the year -- am I correct, Doctor, that the
25 subject matter of Pap Smears is something that you studied
0282

1 not only in medical school, but through your residency in
2 gynecology; correct?

3 A Yes.

4 Q And Pap Smears themselves have been the subjects of
5 very intense national medical investigation in terms of how
6 they're classified, what language is to be used, how they are
7 to be reported; and that came out of a collaborative study
8 involving a variety of major organizations?

9 THE COURT: Sustained as to form.

10 Q Many physicians themselves determined in 1988, did
11 they not, that for the betterment of the patient care and
12 treatment, physicians needed to see reports that contained
13 information in certain structure and form; correct?

14 MS. KENNEY: Objection to form.

15 THE COURT: Sustained.

16 Q Are you familiar with that classification that came
17 out of the National Cancer Institute and the American Cancer
18 Society in 1988?

19 A Yes.

20 Q Could you just tell us, Doctor, is that something
21 that is studied by all gynecology residents during their
22 residency?

23 A Yes.

24 Q It came to be known as the Bethesda classification
25 and reporting system?

0283

1 A Yes.

2 Q And Bethesda refers to Bethesda, Maryland, where
3 the American Cancer Society and American College of

4 Gynecologists and Obstetricians and American Institute all
5 convened in 1988 and determined for the betterment of women's
6 health Pap reports have to contain certain language and
7 reported in a certain way?

8 MS. KENNEY: Objection to form.

9 THE COURT: Overruled.

10 A Yes.

11 Q Now, the persons who are filing the reports in your
12 office in the year 2000 were -- are not doctors, correct?

13 A Correct.

14 Q And are there not times when laboratory reports can
15 contain information beyond just a simple conclusion that may
16 be interpreted by a non-doctor?

17 A I'm sorry, rephrase that.

18 Q Sure, Doctor. Feel free to do that with me.

19 THE COURT: If there is any question that you
20 do not understand, don't answer it, ask for
21 clarification.

22 Counsel, rephrase the question.

23 Q One of the functions of the Pap Smear is to
24 determine whether or not on a cellular level there is
25 evidence of precancer or cancer, correct?

0284

1 A Correct.

2 Q One of the things that the Pap Smear report talks
3 about is whether or not there is such a thing known as a high
4 grade intraepithelial lesion, correct?

5 A Yes.

6 Q And in addition to which Pap Smear reports also
7 provide other information that may or may not be medically
8 significant in the evaluation of a patient, true?

9 A Yes.

10 Q One of the bits of information in addition to just
11 whether or not there is a high grade intraepithelial lesion
12 is whether or not the sampling is an adequate sampling in the
13 first place?

14 A Yes.

15 Q And in science in 2000, as well as long before the
16 Bethesda meeting, medicine and science knew that the
17 presence of endocervical cells had to be considered to be a
18 very important indicator of the quality of the cervical
19 smear?

20 MS. KENNEY: Objection to form.

21 THE COURT: Do you understand the question?

22 Would you restate your question, please?

23 Q Doctor, you would agree before 2000 medicine had
24 determined that the presence of endocervical cells should be
25 considered a very important indicator of the quality of the
0285

1 cervical smear?

2 MS. KENNEY: Objection to form.

3 A Yes.

4 THE COURT: Overruled.

5 Let me say to you when there is an objection,
6 don't offer any addition testimony until I rule on the
7 objection and give you some direction. You understand
8 what I just said?

9 THE WITNESS: Yes.

10 THE COURT: It may be helpful if you stand so
11 she's aware you are making the objection.

12 MS. KENNEY: Yes, your Honor.

13 THE COURT: All right. Now, where are we?
14 You answered the question that was asked of you,
15 whatever that was, so we know where we are.

16 Will you read back the question and the answer
17 from that point forward?

18 (Whereupon, the reporter read back the
19 requested testimony.)

20 Q Would you agree the reason why medicine and science
21 considered endocervical cells to be a very important part of
22 the Pap Smear is that the chance of missing an abnormal
23 epithelial change has increased in smears that don't have
24 endocervical cells on them?

25 MS. KENNEY: Objection to form.

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1 THE COURT: Overruled. She may answer it.

2 A Yes.

3 Q That is because of this area that is sometimes
4 called the transformation zone, correct?

5 A Yes.

6 Q The transformation zone is synonymous with that
7 area of a woman's anatomy called the endocervical portion of
8 the cervix, correct?

9 A Yes.

10 Q And it is in this area, without getting into the
11 science of it, but it is this area where you have the best
12 opportunity to find the greatest quantity, if any, of
13 abnormal cells that could indicate a precancerous state,
14 true?

15 A Yes.

16 Q So in doing a Pap Smear, you, yourself had stated
17 that the absence of an endocervical borings on the Pap Smear
18 would make it unreliable for an adequate Pap Smear?

19 MS. KENNEY: Objection.

20 THE COURT: Overruled. You may answer.

21 A Yes.

22 Q Whereas an inadequate Pap Smear, because there is
23 an absence of endocervical cells on it, the laboratory has a
24 duty to report that to the physician, correct?

25 A Yes.

0287

1 Q The laboratory does that, then it is the
2 physician's determination of what the next step is to do,
3 correct?

4 A Yes.

5 Q The Bethesada system, standards of good and
6 accepted gynecologic care, the guidelines of the American
7 College of Obstetricians and Gynecologists all hold that a
8 laboratory must report the absence of endocervical tissue to
9 a physician who does the Pap Smear, true?

10 A Yes.

11 Q And then it is the physician in the clinical
12 setting that has the responsibility to do whatever is
13 necessary in conjunction with the patient to follow-up on
14 that inadequate Pap Smear, true?

15 A Yes.

16 Q And if there is an inadequate Pap Smear, Dr.
17 Ravins, wouldn't you say that is synonymous with not doing a
18 Pap Smear in the first place?

19 A No.

20 Q Do you think that a patient such as Miss PLAINTIFF
21 should be advised by the physician after she has taken a Pap
22 Smear and a study, that the laboratory finds the Pap Smear to
23 be without endocervical tissue, does she have a right -- does
24 she or any patient have a right to know that?

25 MS. KENNEY: Objection to form.

0288

1 THE COURT: Overruled. You may answer.

2 A Yes.

3 Q In this --

4 MR. AWAD: Could we please put up on the
5 screen the report of Bio-Reference Laboratory for
6 June 2000?

7 Your Honor, I'm presenting to Dr. Ravins with
8 what had been marked into evidence last week as

9 Exhibit 14A, which is the report that we're going
10 to show on the screen now regarding the June 2000
11 Pap Smear.

12 Q Doctor, have you that in front of you so you could
13 refer to that?

14 (Handing)

15 MR. AWAD: Because of the distance could we
16 start with just the information in all the boxes at the
17 top? Let's start there first. Thank you.

18 Q Doctor, is this the top portion of the
19 Bio-Reference report to you in June of 2000?

20 A Yes.

21 Q And just to state some of the obvious, but
22 nonetheless to state it, it states that you're the doctor
23 that is requesting there Pap Smear evaluation, correct? It
24 is Claudia Ravins on the left?

25 A Yes.

0289

1 Q Okay. And on the right is PLAINTIFF. This
2 is your patient, true?

3 A Yes.

4 Q Okay. Now, and again, it lists you again as the
5 doctor under the name Dr. Claudia Ravins, correct?

6 A Yes.

7 Q Now, of some interest is there, to the laboratory
8 is that when this smear that was taken --

9 Withdrawn.

10 This is the first smear, Pap Smear that was taken
11 by you in June of 2000, true?

12 A Yes.

13 Q Okay.

14 And of interest to the laboratory, at least, is
15 that it was not provided any information regarding the
16 patient's last menstrual period; correct?

17 MS. KENNEY: Objection.

18 THE COURT: Overruled.

19 A Yes.

20 Q Who's in charge of telling the laboratory the
21 patient's last menstrual period in your office, in your
22 office in June of 2000?

23 A It is written by the medical assistant.

24 Q Okay. When you say medical assistant, that is not
25 a doctor, correct?

0290

1 A Correct.

2 Q When you say medical assistant, is that a
3 registered nurse?

4 A No, assistant.

5 Q So a medical assistant, does that imply to someone
6 who has a four-year college degree in the field of biology or
7 science?

8 MS. KENNEY: Objection.

9 THE COURT: Overruled.

10 A No.

11 Q Does it imply anyone that has a background in
12 nursing or medicine at all by virtue of study?

13 A Could you rephrase that?

14 Q When you use the term medical assistant, does that
15 imply at all someone who has studied formally in any -- to
16 any extent medicine or nursing before working at your
17 offices?

18 A Yes.

19 Q And does it imply a community college?

20 MS. KENNEY: Objection.

21 THE COURT: Overruled.

22 Q Degree?

23 A Medical assistant certification is its own
24 certification. It requires a certain amount of study time
25 and course curriculum, as well as clinical experience.

0291

1 Q If the medical assistant, whomever sent this smear,
2 okay, could he or she look at the patient's medical records?

3 A Yes.

4 Q If they had any question, they could speak to you?

5 A Yes.

6 Q Because ultimately they're operating under your
7 supervision and direction, true?

8 A Yes.

9 Q And in this case for some reason the last menstrual
10 period was, no information was provided by, under your
11 supervision and direction, regarding the last menstrual
12 period, correct?

13 MS. KENNEY: Objection to form.

14 THE COURT: Overruled. You may answer.

15 A I'm sorry.

16 THE COURT: Would you read back the question,
17 please?

18 (Whereupon, the reporter read back the
19 previous question.)

20 A Correct.

21 THE COURT: LPM that appears on this stands
22 for -- LMP stands for --

23 THE WITNESS: Last menstrual period.

24 THE COURT: Thank you.

25 Q In your office records, on the June visit, did you
0292

1 note in the office records on the June visit her last
2 menstrual period? I'm providing you, Doctor, with your
3 medical records that we marked for identification only as
4 Exhibit 6. You may refer to them to determine answers to
5 questions you want to give today.

6 (Short pause)

7 A Would you restate the date?

8 Q Sure.

9 Doctor, without -- before we look, let me ask you
10 this question: It is true, is it not, that Miss PLAINTIFF's
11 last menstrual period was some time in early 1999 or perhaps
12 February of 1999?

13 A Yes.

14 Q Okay. Is it true, Doctor, that from February of
15 1999 to June of 2000, from the reports that she gave you, we
16 know that she did not have a menstrual period, correct?

17 A Correct.

18 Q When she first came to you you noted her to be by a
19 label called perimenopausal, correct?

20 A Yes.

21 Q That is to say that given what she was complaining
22 about in terms of her symptoms, given her age in life, and
23 given the fact she had missed her menstrual period for a
24 couple of months, it was likely that she was going into
25 menopause, true?

0293

1 A True.

2 Q By definition, by definition a woman is not in
3 menopause until such time as she doesn't have a period for a
4 whole year, correct?

5 A Correct.

6 Q So by this time of this examination, it is clear,
7 at least from the information that you knew that day, that
8 she was in menopause, correct?

9 A Correct.

10 Q Now, is there anything in your medical records for
11 the June 2000 visit in which you or anyone else notes what
12 her last menstrual period was as of that day?

13 A June 24, 2000?

14 Q Yes, Doctor.

15 A The last menstrual period 2/99.

16 Q It was actually written in the records that day,
17 correct?

18 A Yes.

19 Q So whomever this medical assistant was that is
20 responsible for the last menstrual period information,
21 apparently didn't look, read or report what was in the
22 medical records when they sent the smear out?

23 MS. KENNEY: Objection.

24 THE COURT: Overruled.

25 A Correct.

0294

1 Q You would agree, Doctor, that had you directly seen
2 this smear going out, that you would have listed that the
3 last menstrual period was February of 1999 for the
4 laboratory, true?

5 A Yes.

6 Q Now, Doctor, did this report contain some
7 information regarding a number of evaluations by the lab
8 report? Would you agree, Doctor, that this report needs to
9 be read from beginning to end in order to provide a
10 reasonably careful evaluation of the significance of the Pap
11 Smear?

12 A Yes.

13 Q As I understand it, Doctor, this report was never
14 reviewed by you or any physician because, as I understand it,
15 of the words within normal limits; is that correct?

16 A Yes.

17 Q Now, when for the first time did you find out that
18 this 2000 report did not contain specifically reported by the
19 lab no endocervical component in a menopausal patient? When
20 did you find that out for the first time, was it in the year
21 2001?

22 A I don't recall.

23 Q Well, let's see if we could pursue that for a
24 moment.

25 MR. AWAD: Could we go to the bottom of the
0295

1 report? Okay.

2 Q Could you please tell us what the stamped words are
3 over to the right?

4 A File.

5 Q Do you know whose names those are on the report?

6 A The laboratory's Ph.d's.

7 Q Those are not names from your office, correct?

8 A Correct.

9 Q Now, the term file here is the reference to that
10 procedure that you had put into place which says that the
11 report goes directly to the patient's file without you
12 looking at it because it does not contain the words abnormal
13 on it, correct?

14 MS. KENNEY: Objection to form.

15 THE COURT: Overruled.

16 A Correct.

17 Q So knowing that this went directly to the patient's
18 file in June of 2000, when is the next time that you saw the
19 patient, Miss PLAINTIFF?

20 A March -- hold on.

21 (Short pause).

22 A March '01, March 17, '01.

23 Q Is there any indication that the file was pulled at
24 any time between June of 2000 and March of '01 for your
25 review?

0296

1 A No.

2 Q So would it be a fair deduction to say that the
3 earliest opportunity that you had to know there was no
4 endocervical component was after the passage of approximately
5 ten months of time from the time that you took the Pap Smear?

6 A Yes.

7 Q Okay.

8 (Whereupon, reporter Lorraine Marinazzo was
9 relieved by reporter Laura Hutzel.)

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0297

1 Q Now, in March of 2001, on the day of PLAINTIFF
2 PLAINTIFF's presentation to you for further evaluation, did you
3 tell PLAINTIFF that day that her Pap smear, ten months
4 earlier had contained no endocervical tissue.

5 A No.

6 Q Would it be correct to say, doctor, that when a Pap
7 smear contains no endocervical component there are available
8 certain steps and actions that can be taken?

9 A Yes.

10 Q One of which is to do a repeat Pap smear; correct?

11 A Yes.

12 Q You would agree, doctor, that at no time between
13 June of 2000 and March of 2001 was there any repeat Pap smear
14 offered to Ms. PLAINTIFF?

15 A Yes.

16 Q There wasn't?

17 A There was not.

18 Q And she did not know about it because she would not
19 be contacted in any way, shape or form unless by your
20 protocol it was it had been reported as abnormal?

21 MS. KENNEY: Objection to the form.

22 THE COURT: Overruled.

23 A Yes.

24 Q Now just as a general idea or thinking, would you
25 agree that a patient does have the right to participate in

0298

1 her medical evaluation and care if there is either
2 incompleteness or abnormalities?

3 A Yes.

4 Q Would you agree that that right was never offered
5 PLAINTIFF regarding this Pap smear report through March
6 of 2001?

7 MS. KENNEY: Objection as to form.

8 THE COURT: Overruled.

9 A Yes.

10 Q If there was difficulty in obtaining a Pap smear or
11 even a repeat Pap smear, are there other procedures that are
12 available to gynecologists throughout the country in the year
13 2000 to determine whether or not there is a malignancy
14 existing in the cervical area?

15 A Yes.

16 Q Colposcopy is one of them?

17 A Correct.

18 Q In fact, after she had this episode of hemorrhaging

19 at home in April of 2001, that is what she did the next time
20 at the office?

21 A Correct.

22 Q At no time until she bled profusely at home on
23 Saturday evening and called you in at an emergency number and
24 reached you, did you ever consider performing colposcopy for
25 Ms. PLAINTIFF?

0299

1 A Correct.

2 Q Now, could we please go to the body of the report,
3 and could I please ask you to highlight from "statement of
4 specimen" to "hormonal evaluation".

5 Is the finding of "red blood cells present," is
6 that a normal finding or an abnormal finding?

7 A It can be both.

8 Q It is questionable; correct?

9 A Yes.

10 Q If it is, it can be questionable because the red
11 blood cells could actually be coming from the lesion that
12 could be affecting the cervix in the first place; correct?

13 MS. KENNEY: Objection to the form.

14 THE COURT: Overruled.

15 A Yes.

16 Q It could also be just from the trauma or the usual
17 trauma of the procedure itself; correct?

18 A Correct.

19 Q In a post -- withdrawn.

20 In a menopausal patient, we know for certain that
21 the blood is not coming because of her period; true?

22 A Correct.

23 Q So in PLAINTIFF's situation, as of June of
24 2000, the report of red blood cells presented a question of
25 whether or not there might be a malignancy present as of that

0300

1 time; true?

2 A Could you repeat that question?

3 THE COURT: Please read back the question.

4 (Whereupon, the requested portion of the
5 record was read back.)

6 A True.

7 Q The only way to rule out that possibility is to
8 discuss it with the patient and then discuss with the patient
9 the possibility of doing a biopsy; true?

10 A False.

11 Q False.

12 The only way of ruling that out once there is a
13 possibility a malignancy present, what is the usual practice
14 and procedure to determine it, whether it is a cervical
15 cancer or not, isn't it to get a biopsy of it?

16 A Yes.

17 Q In this particular case, I take it you never knew
18 for ten months because you didn't read the report that not
19 only was there no endocervical tissue, but there was, in
20 fact, red blood cells; true?

21 A True.

22 Q You would agree everything that you know now that
23 during that ten-month period of time, this cancer was growing
24 and progressing; correct?

25 A Yes.

0301

1 Q Do you belong to the American College of
2 Obstetricians & Gynecologists?

3 A Yes.

4 Q Would you agree that the American College of
5 Obstetricians & Gynecologists is the organization in the
6 United States that gathers together all physicians who are
7 board certified in gynecology and obstetrics; correct?

8 A Yes.

9 Q And in order to enter that college, you have to be
10 board certified; correct?

11 A Yes.

12 Q And that College of Obstetricians & Gynecologists
13 produces, from time to time, many informative hand-outs
14 regarding the subject matter of gynecology and obstetrics to
15 its members; true?

16 A Yes.

17 Q There are things called technical bulletins, which
18 are designed to be guidelines offered to gynecologists across
19 the country on what to do, how to do it, involving the
20 evaluation of patients, women, in certain obstretical and
21 gynecological settings; true?

22 A Yes.

23 Q Are you familiar with the technical bulletin that
24 was produced by the American College of Obstetricians &
25 Gynecologists in 1993, regarding the evaluation of Pap smears

0302

1 in determining a precancerous or cancerous state in the
2 cervix?

3 A Could you rephrase that?

4 Q Yes.

5 As of the year 2000, were you familiar with the
6 guidelines produced by the American College of Obstetricians
7 & Gynecologists regarding Pap smears?

8 A Yes.

9 Q Would you agree, doctor, nowhere in those
10 guidelines does the American College of Obstetricians &
11 Gynecologists suggest at all that women who are menopausal
12 don't have as great of a need for a Pap smear as women who
13 are not menopausal?

14 A Yes.

15 Q In fact, women past their menstrual period, past
16 menopause go on to have Pap smears throughout their life, do
17 they not?

18 A Correct.

19 Q Women who go into menopause or are menopausal
20 sometimes experience with life changes, something called
21 atrophy of the cervix in the vagina; true?

22 A Yes.

23 Q They experience other changes in addition to the
24 hot flashes and all of the other stuff that goes along with
25 this change of life, they experience, at times, a closing or
0303

1 a regression of the cervical canal up towards the uterus;
2 true?

3 MS. KENNEY: Objection to the form.

4 Q True?

5 A Yes.

6 Q And nowhere does any authoritative body ever
7 suggest whether it is Bethesda Classification System or
8 whether it is the American College of Obstetricians &
9 Gynecologists that because it can be difficult in a
10 menopausal patient to get endocervical components that that
11 would relieve a physician of the obligation to get them in
12 the first place?

13 MS. KENNEY: Objection.

14 THE COURT: Sustained.

15 Q Would you agree, doctor, that two different
16 standards of care don't apply to women in the United States
17 regarding Pap smears, right, whether you are menopausal or
18 not menopausal, women get the same standards of medical care
19 and the same evaluation, regarding Pap smears regardless of
20 the status of their menses; true?

21 MS. KENNEY: Objection to the form.

22 THE COURT: Overruled.

23 A Yes.

24 Q Sometimes some patients can be more difficult to
25 get a Pap smear on than other patients?

0304

1 A Correct.

2 Q You have to take some time then to determine how it
3 is that you can get a better Pap smear; correct?

4 A Yes.

5 Q And in this case, the idea that there is this
6 report of atrophic smear, hormonal evaluation, this part of
7 the report, that may indicate the reason why there was no
8 endocervical cells in the first place, that is to say that
9 because of menopause, Ms. PLAINTIFF was experiencing what many
10 women experience which is a closing of the cervix or a
11 regression of it?

12 MS. KENNEY: Objection as to form.

13 THE COURT: Rephrase the question.

14 Q Would you agree, doctor, that atrophic smear
15 indicates, is something that indicates the presence at least
16 by the technologist who read it, who reported it, at least
17 that he or she saw evidence of atrophy taking place?

18 A Yes.

19 Q And that atrophy taking place is not unusual for a
20 woman who is in menopause; correct?

21 A Correct.

22 Q And a woman in menopause who is experiencing
23 atrophy still is entitled to have evaluated the endocervical
24 components; correct?

25 A Correct.

0305

1 Q If it is not evaluated, the greatest opportunity
2 for early intervention can be missed?

3 MS. KENNEY: Objection to the form.

4 THE COURT: Overruled.

5 A Yes.

6 Q I take it, doctor, that in terms of that part of
7 the report, that part of the report atrophic smear, the part
8 of the report of {red blood cells present" and the part of
9 the report that says "no endocervical component present," all
10 three of those did nothing to get it on the desk for you to
11 look at because you say you told your staff to only put on
12 your desk when it uses the word "abnormal"?

13 MS. KENNEY: Objection.

14 THE COURT: Overruled.

15 A Yes.

16 Q Could we please turn our attention to the

17 Bio-Reference Laboratories report of 2001?

18 A (Witness complies.)

19 Q May I ask that we do the same thing again and
20 highlight just the top boxes first.

21 Doctor, do you have this report in front of you as
22 well, PLAINTIFF presented herself for a Pap smear and
23 evaluation in March of 2001; correct?

24 A Correct.

25 Q You took a Pap smear in March of 2001; correct?

0306

1 A Correct.

2 Q This Pap smear report never was shown to you after
3 it was received by you; correct?

4 A Correct.

5 Q In fact, had PLAINTIFF not hemorrhaged
6 profusely as of April of 2001, she would have never been
7 evaluated until the cancer was probably stage four or she was
8 dead; correct?

9 MS. KENNEY: Objection.

10 THE COURT: Sustained.

11 Q As of the completion of the office visit of March
12 of 2001, when was PLAINTIFF told by you to come back to
13 your office; was it a six month follow-up?

14 A She had a three-month follow-up.

15 Q I am sorry, doctor?

16 A Three months.

17 Q Three-month follow-up.

18 Once again, this report was not shown to you
19 because a medical assistant was asked to look at it and not
20 finding the word "abnormal," the assistant filed it?

21 A Incorrect.

22 Q Let's open it up. Could we please highlight from
23 "stage" all the way down to "comments," and all the way over.

24 Who is writing that on the side there of 3/27/01?

25 A Beth Seinfeld, OGNP.

0307

1 Q Who is that?

2 A That is the obstretical/gynecologic-specialized
3 nurse practitioner who signed the report.

4 Q So a nurse signed this report on 3/27, did she
5 discuss this with you?

6 A No.

7 Q This particular report, by the way, indicates that
8 in 2001, the endocervix had been touched, correct and cells
9 had been gotten; correct?

10 A Correct.

11 Q There is something new on this report, is there
12 not, it is called "inflammation present"?

13 A Correct.

14 Q And it also says "squamous cell changes associated
15 with inflammation"?

16 A Correct.

17 Q And it also says "estrogen evaluation not reliable
18 in the presence of infection or inflammation"; correct?

19 A Correct.

20 Q Would I be correct in stating that your office
21 records at the time that you took this Pap smear did not
22 reveal any evidence of an infection?

23 A Correct.

24 Q Of course, the laboratory wouldn't have those
25 records nor would any laboratory under any circumstances have
0308

1 the records that would show that when you examined, you found
2 no evidence of infection on the bimanual pelvic examination?

3 MS. KENNEY: Objection.

4 THE COURT: You may answer; overruled.

5 Q When the lab reports inflammation and infection, we
6 didn't know the results of your office exam; true?

7 A Correct.

8 Q So it is provided in the evaluation that says it
9 might be infection or it might be inflammation; correct?

10 A Correct.

11 Q Now, if it is not infection then, if that is a
12 logical deduction because you would have seen the patient,
13 Ms. PLAINTIFF was complaining of any discharge, vaginal
14 discharge or anything like that; right?

15 A Correct.

16 Q There is no urinary tract infection?

17 A Correct.

18 Q So logical analysis of the report by a physician
19 would turn her attention to the term "inflammation"; correct?

20 MS. KENNEY: Objection as to form.

21 THE COURT: Overruled. You may answer.

22 Q The term "inflammation"?

23 A Yes.

24 Q A malignancy can cause inflammation; correct?

25 A Correct.

0309

1 Q An inflammation can also affect how and to what
2 degree a cytotechnologist could read the smear in the first

3 place, because inflammation can mask or screen over the
4 abnormalities that may be present; true?

5 MS. KENNEY: Objection.

6 THE COURT: Sustained. Rephrase it.

7 Q Does inflammation have under certain circumstances
8 an affect in how one can read and interpret a Pap smear?

9 MS. KENNEY: Objection.

10 THE COURT: Overruled.

11 MS. KENNEY: As to reading a Pap smear.

12 THE COURT: Overruled.

13 Q Right?

14 A Yes.

15 Q That is no secret the Bethesda Classification
16 System says that inflammation can interfere with an accurate
17 reading of a Pap smear; true?

18 A Correct.

19 Q Board certified gynecologists know that; true?

20 A Correct.

21 Q Inflammation here is mentioned twice, in fact, it
22 is mentioned three times, three times inflammation present,
23 with inflammation, or inflammation.

24 Now, for the cytotechnologist Bio-Reference, would
25 you say that cytotechnologist is trying to send you a message
0310

1 about this smear?

2 MS. KENNEY: Objection.

3 THE COURT: Sustained.

4 Q Would you say that the cytotechnologist in those
5 words is reporting significant presence of inflammation on
6 the Pap smear?

7 MS. KENNEY: Objection.

8 THE COURT: Overruled.

9 A Yes.

10 Q You didn't know that as of -- at any time before
11 the telephone call by Ms. PLAINTIFF; true?

12 A Correct.

13 Q Now, if inflammation is being caused by a lesion in
14 the cervix, that is something that has to get evaluated
15 immediately; right?

16 A Yes.

17 Q The word "exophytic" is a word that was used by a
18 couple of doctors that followed you to describe what was
19 found in Ms. PLAINTIFF's cervix in April and May.

20 Exophytic; do you recall that?

21 A No, I don't recall that.

22 Q Do you recall what Dr. Lipstein described on his
23 pelvic examination when she was presented to him for
24 radiation oncology, in May of 2001?

25 THE COURT: Time frame, counselor?

0311

1 Q Doctor, if you would look --

2 THE COURT: Counsel, give me a time frame.

3 MR. AWAD: 20 minutes, maybe 15.

4 THE COURT: How are you doing members of the
5 jury?

6 THE JURY: Good.

7 THE COURT: Everybody still okay?

8 THE JURY: Yes.

9 Q Doctor, if you would refer to your records for the
10 May 14th, 2001 letter to you from Dr. Lipstein regarding
11 PLAINTIFF's evaluation?

12 A Yes.

13 Q Doctor, could you turn to the second page of his
14 report to the place in which he describes physical
15 examination.

16 Did you read this report when it was presented to
17 you in May of 2001?

18 A Yes.

19 Q At that time, did you see, am I correct the word
20 should be exophytic mass?

21 A Yes.

22 Q Dr. Lipstein uses an adjective to describe the
23 exophytic mass, he calls it a fungating exophytic mass?

24 A Yes.

25 Q Would you tell the jury what the definition of

0312

1 "exophytic" means?

2 A It basically rises above the level at which it is
3 supposed to be sustained, so almost like a mushroom
4 blossoming.

5 Q In this particular case, Dr. Lipstein, I should
6 say, actually says that when he examines her in mid-May of
7 2000, that the mass completely obliterates the cervix;
8 correct?

9 A Yes.

10 Q Obliterates, without saying the obvious, means it
11 is completely covers it, engulfs it, wipes it out so to
12 speak?

13 MS. KENNEY: Objection.

14 THE COURT: Overruled.

15 A Yes.

16 Q The standard of good and accepted medical care,
17 could you just highlight, the standards of good and accepted
18 gynecological care in June of 2000 and in March of 2001,
19 require a physician, such as you, in the presentation of a
20 patient such as Ms. PLAINTIFF to do a complete gynecological
21 exam including an internal exam of the pelvic area; correct?

22 A Correct.

23 Q There are words that are used to describe that, one
24 of those -- some of those words are called bimanual
25 examination; correct?

0313

1 A Yes.

2 Q Would you agree, doctor, that the standard of good
3 and accepted medical practice in March of 2001 and in June of
4 2000, would require you to perform a bimanual examination of
5 Ms. PLAINTIFF?

6 A Correct.

7 Q And if your bimanual examination was not
8 comprehensive or complete, that that would represent a
9 departure from standards of good and accepted gynecological
10 care, both in 2000 and in 2001; true?

11 A Correct.

12 Q Now, on your office records for the March exam of
13 2001, would I be correct to say that nowhere did you write
14 down mass and cervix, nowhere did you write down anywhere
15 abnormality in the cervix and nowhere did you write down
16 anything about the possibility of an exophytic mass
17 obliterating the entire cervix of Ms. PLAINTIFF?

18 A Correct.

19 Q A CAT scan was performed prior to Ms. PLAINTIFF going
20 to see Dr. Lipstein; correct?

21 A Correct.

22 Q That is also in your medical records?

23 A Yes.

24 Q Do you have that in front of you at this point, Dr.
25 Ravins?

0314

1 A Yes.

2 Q I am going to ask you to turn your attention to the
3 sentence that starts "the uterus is normal in size" we are
4 going to work our way down, from there.

5 A (Witness complies.)

6 Q You can start Mr. Rojas at the beginning of that
7 sentence with "adenopathy," go all the way down to the bottom

8 of the page.

9 This physician reported to you that, I don't know
10 if it is a he or she, found the uterus to be normal in size
11 when CAT scanning the uterus on, I think this is May 2, 2001?

12 A Yes.

13 Q By the way, what was the date of Ms. PLAINTIFF's
14 office visit to you when she was bleeding profusely at home
15 on Saturday night, what was the date of the follow-up exam,
16 please?

17 A 4/28/01.

18 Q So that was the date of the exam; correct?

19 A Yes.

20 Q And the biopsy was done that day; correct?

21 A Correct.

22 Q And by -- and so within four days, the CAT scan is
23 now done, four days of your biopsy, the CAT scan is done, the
24 4/28, so the 29th, the 30th and the 1st and now on the 2nd,
25 the CAT scan is performed; correct?

0315

1 A Correct.

2 Q Now, the CAT scan itself is able to provide
3 information and it provides information that the lesion that
4 it says is 5 by 6 centimeters in diameter; correct?

5 A Correct.

6 Q That is a big lesion to have in the cervix, is it
7 not?

8 A Yes.

9 Q That would be consistent with Dr. Lipstein saying
10 two weeks later that what he sees obliterates the cervix;
11 correct?

12 MS. KENNEY: Objection to the form.

13 THE COURT: Restate it, counsel.

14 Q Would the CT finding of a 5 by 6 centimeter mass
15 involving the cervix and the upper end of the vagina be
16 consistent with Dr. Lipstein's description when he actually
17 does an internal exam and describes it as an exophytic
18 fungating mass obliterating the cervix?

19 A Yes.

20 Q And a bimanual examination, doctor, could you just
21 tell the jury what is involved in a bimanual examination of a
22 woman during the internal part of the pelvic exam.

23 A Two fingers are placed in the vagina and the
24 contralateral hand is used to bear down on the lower pelvis,
25 so that is how you can assess the size of the uterus, which

0316

1 should be pretty much like a small pear, and you can annex
2 the adnexal masses on the ovaries and to see if they are
3 small as they should be, you can see the cervix and you
4 should be able to feel the three organs and that is basically
5 the bimanual.

6 Q Is it part of your office practice to also do a
7 rectal exam?

8 A Yes.

9 Q Is a rectal exam considered to be a standard
10 operating part of the pelvic internal examination?

11 A Is it standard, yes.

12 Q Would you agree, doctor, I want you to assume,
13 doctor, that a Dr. John Lovecchio, a board certified
14 gynecological surgeon was here last Tuesday, and he drew for
15 the benefit of the jury and the Court some discussions about
16 what he found a year later, but he specifically talked about
17 the area of the vagina and the area of the anus is being in
18 very close proximity and the overall area of a women's
19 anatomy in the genital area?

20 A Correct.

21 Q Now, the wall between the rectum or the anus and
22 the vagina is a very thin wall, is it not?

23 A Yes.

24 Q It would be less than how many millimeters in
25 thickness would that be?

0317

1 A It is at most through the rectal mucosa, about
2 seven millimeters.

3 Q Seven millimeters is, we will say three-quarters of
4 a centimeter which is something, what, about a quarter to a
5 half-inch at the most thick, probably less than a
6 quarter-inch thick?

7 A Yes.

8 Q One of the functions you do a rectal in connection
9 with the bimanual is to determine whether or not there is any
10 abnormality that could be affecting the wall between the
11 vagina and the anus; correct?

12 A Correct.

13 Q Because that is one of the ways that gynecologists
14 get specially trained to evaluate, for lack of a better
15 phrase, you know, illnesses of the women's genital and
16 genital area; correct?

17 A Correct.

18 Q That is part of the specialty is to be able to do
19 that, to evaluate and to see, for instance, if there is a

20 cervical mass present; true?

21 MS. KENNEY: Objection to the form.

22 THE COURT: Overruled.

23 A Yes.

24 Q So if -- if a bimanual and a rectal are being done
25 comprehensively and safely, those are two means by which in
0318

1 the absence of CAT scans from long before CAT scans could
2 pick up cervical cancer being in an advanced stage; true?

3 A Yes.

4 Q Now, do you have your record of March 17, 2001
5 there, St. Patrick's Day exam?

6 A Yes.

7 Q Could we please highlight that up on the screen.
8 Now, if am correct when I say what we are showing
9 the jury is every piece of writing that you made on March 17,
10 2001 regarding your examination of Ms. PLAINTIFF.

11 A Yes.

12 Q Now, this is, just to keep it in perspective, this
13 is the exam that is also, when the Pap smear is done, that
14 turns out to show all of the inflammation that is being
15 reported; right?

16 A Yes.

17 Q That is, a Pap smear that comes in on March 27,
18 which is about ten days later and has the word "inflammation"
19 written on it three times; right?

20 MS. KENNEY: Objection.

21 THE COURT: Overruled.

22 A Yes.

23 Q Now, in your notes, is that your handwriting "hot
24 flashes"?

25 A No.

0319

1 Q That is not your handwriting; right?

2 A No.

3 Q That is somebody else's handwriting; right?

4 A Yes.

5 Q How about this routine exam pap; is that your
6 handwriting?

7 A No.

8 Q You would agree, doctor, that none of the
9 handwriting on the top part of the form that goes from
10 progress note down to the end of all of those lines for
11 notes, none of that is in your handwriting; true?

12 A Correct.

13 Q There are no notes here by you that indicate any
14 evaluation of her, any questions or answers given by Ms.
15 PLAINTIFF on this date, March 17; correct?
16 A Correct.
17 Q Now, March 17, about 45 days before the CT scans
18 and before the exam by Dr. Lipstein, I see that you have
19 made, is this your marking regarding your examination of Ms.
20 PLAINTIFF, this circle of everything?
21 A Yes.
22 Q Now, you actually circled, as I understand it, from
23 reading your record, you actually circled all at once
24 everything to be normal; right?
25 A Yes.

0320

1 Q Looking at your medical records, whether it is a
2 layperson or another doctor, looking at these medical records
3 that you wrote, this doesn't seem to be any indication here
4 that there could be any problem with a mass or a mass that is
5 producing inflammation or a mass that is going to be found to
6 have absolutely obliterated the cervix; it is all normal
7 according to you; correct?

8 A Correct.

9 Q Are you sure you wrote that at the time after
10 completing a thorough recto and a thorough bimanual?

11 MS. KENNEY: Objection.

12 A Yes.

13 Q Where is it here, doctor, by the way, where is it
14 here, what is this word here?

15 A Atrophic.

16 Q What are these little symbols here?

17 A Breast soft, the breast exam is soft.

18 Q What is this word here?

19 A Menopausal.

20 Q When Ms. PLAINTIFF left your office on March 17,
21 2001, on the basis of what you said to her, should she have
22 any reason to suspect any problem with her cervix or vagina
23 that day?

24 A No.

25 Q What caused her to have the hemorrhaging of the

0321

1 profuse bleeding at home on Saturday evening five weeks
2 later?

3 A The cervical mass.

4 Q Is it that the cervical mass was bleeding or is it
5 that the cervical mass had grown so big that it actually had

6 split open inside of her?

7 MS. KENNEY: Objection.

8 THE COURT: Overruled.

9 MS. KENNEY: It is speculative.

10 THE COURT: Overruled, if you can answer.

11 Q She wasn't having sexual intercourse; right, as far
12 as you know?

13 A No.

14 Q She wasn't romantically engaged at the time?

15 A No.

16 Q She had had no other problems in her history
17 regarding her cervix that would lend an explanation to the
18 bleeding other than perhaps an estrogen cream that had been
19 prescribed or the presence of a mass; correct?

20 A Correct.

21 Q This mass bled because, in your words, it looked
22 like it had lacerated inside her vagina; right?

23 A Yes.

24 Q And it had gotten so big, that it actually broke
25 open --

0322

1 MS. KENNEY: Objection.

2 Q -- on its own?

3 MS. KENNEY: Objection.

4 THE COURT: Overruled.

5 Q Correct?

6 A Yes.

7 Q Could we please turn to the doctor's record for the
8 return of Ms. PLAINTIFF to the --

9 THE COURT: Are we going to mark this
10 separately?

11 MR. AWAD: Yes, we will, it is the March 17th
12 date.

13 Q By the way, doctor, I just -- let me inquire of
14 this for a moment, there came a time regarding your medical
15 records of patient PLAINTIFF in which the original
16 chart that you had for her happened to be shredded; correct?

17 A Yes.

18 Q And that shredding of her original medical records
19 took place, as I understand, at a time in which you were
20 moving your practice away from whomever you were practicing
21 with to a different office; correct?

22 A Correct.

23 Q And there had been some scanning of all of the
24 records involved?

25 A Yes.

0323

1 Q Now, in Ms. PLAINTIFF's case, as I understand it, the
2 shredding of her record took place sometime in like in June
3 of 2002, I think you told us, or July of 2002?

4 A July.

5 Q Was it July of 2002?

6 A Yes.

7 Q And it was by your direction that a company came in
8 and shredded the records, which they may have to have done if
9 you were leaving them behind; correct -- withdrawn.

10 In July of 2002, when Ms. PLAINTIFF's medical record
11 was shredded, you already knew two things, right, you knew
12 that her stage 3B cancer had reoccurred despite all of the
13 radiation treatment and all of the oncology treatment; right?

14 MS. KENNEY: Objection.

15 THE COURT: Overruled.

16 A No.

17 Q Did you know as of July 2002, that she was stage 3B
18 cancer?

19 A Yes.

20 Q You knew she had undergone a variety of tests;
21 correct?

22 A Yes.

23 Q And did you receive some reports, from time to
24 time, and I don't want to beg the issue, from like a Dr. John
25 Curtain or a Dr. Wallace that we are talking about now the

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1 reoccurrence of a tumor?

2 A Yes, I received those letters.

3 Q In addition to that, is it not true, doctor, that
4 you knew as of the time that her records were being shredded
5 that lawyers had requested, had written to your offices on
6 her behalf, lawyers, not my firm, but another firm before
7 ours, had written to your offices and asked for medical
8 records in February, asked for the medical records in March,
9 and asked for the medical records in April?

10 MS. KENNEY: Objection.

11 THE COURT: Overruled.

12 A No.

13 Q Is that something somebody else at the office takes
14 care of in addition to the Pap smears and everything else?

15 MS. KENNEY: Objection.

16 THE COURT: Sustained.

17 Q No one at your office brought that to your

18 attention that a lawyer with the authorization, something
19 called a HIPAA form, had been asking for the medical records?

20 MS. KENNEY: Asked and answered.

21 THE COURT: Overruled.

22 A No.

23 Q No one ever told you that?

24 A No.

25 Q Could we please go to the medical record for Ms.

0325

1 PLAINTIFF's evaluation by Dr. Ravins of April 28, I believe it
2 is, 2001.

3 (Whereupon, Official Court Reporter Laura
4 Hutzel was relieved by Official Court Reporter Lorraine
5 Marinazzo.)

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1 Q Do you have that in front of you now, Doctor?

2 A Yes.

3 Q Okay, could we do the same thing again, please?

4 Could we highlight the first part to the notes so we can all
5 look at that?

6 Whose handwriting is it about the complaint? Is
7 that your handwriting?

8 A No.

9 Q Okay.

10 Would you agree, Doctor, that the initials DUB

11 might be a reference to dysfunctional uterine bleeding?

12 A Yes.

13 Q Would you agree that in a patient that is in
14 menopause, the use of the word dysfunctional uterine bleeding
15 really is not too scientific or medical?

16 MS. KENNEY: Objection.

17 THE COURT: Overruled.

18 A Yes.

19 Q Dysfunctional uterine bleeding applies to
20 situations in which a woman is having her menstrual period,
21 continuing to have regular cycles, but for unexplained
22 reasons is experiencing bleeding that is not consistent with
23 the menstrual cycle, correct?

24 A Correct.

25 MS. KENNEY: Objection to form.

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1 Q Which of all of these medical assistants, okay,
2 that you are using, thought it would be a good idea just to
3 call dysfunctional uterine bleeding when it would have
4 absolutely, absolutely no application to Miss PLAINTIFF?

5 MS. KENNEY: Objection.

6 THE COURT: Overruled.

7 A The medical assistant's name is Mosse Guerra.

8 Q Now, did you -- was that written there, on the
9 chart when you came in to examine her that day?

10 A Yes.

11 Q This is the day after she called you on Saturday
12 night and said she's bleeding profusely out of her vagina,
13 right?

14 A Yes.

15 Q Okay. Did you have the time to at least correct
16 the inaccuracy of what was written by your medical assistant
17 that day or is this too high, the volume of a practice?

18 THE COURT: Just a moment.

19 MS. KENNEY: Objection.

20 THE COURT: Just limit it to one question at a
21 time.

22 MR. AWAD: Okay.

23 Q Did you read this that day, dysfunctional uterine
24 bleeding?

25 A Yes.

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1 Q And knowing that it is in your medical records, did
2 you do anything to cross it out?

3 A No.

4 Q What is the purpose of a medical record other than
5 to provide an accurate reflection of what is being done for a
6 patient in the evaluation of the patient in the clinical
7 setting? It is inaccurate, right?

8 A Yes.

9 Q The whole reason why there are so many entities
10 that require physicians to make these entries is not because
11 of billing purposes, it is because there has to be a record
12 in order for the patient to receive the best of health care
13 over a period of time, true?

14 MS. KENNEY: Objection.

15 THE COURT: Overruled.

16 A True.

17 MR. AWAD: May I see this for a moment?

18 (Short pause)

19 Q Now, any physician seeing this record and not
20 having any other part of it except this paper, okay, would
21 not know when the last menstrual period was, correct?

22 A Correct.

23 Q Did this medical assistant know when the last
24 menstrual period was?

25 MS. KENNEY: Objection.

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1 Q Under your supervision?

2 MS. KENNEY: Objection.

3 THE COURT: Sustained.

4 Q Did you call in this medical assistant and explain
5 to him or her that number one, you need to put down that
6 she's menopausal and number two, dysfunctional uterine
7 bleeding is idiotic for this patient?

8 MS. KENNEY: Objection.

9 THE COURT: Sustained. Disregard the
10 question.

11 Q By the way, was it bleeding on or off? Was it
12 bleeding on or off that Miss PLAINTIFF called you about, or was
13 it about a particularly troubling episode on a Saturday
14 evening? She's hasn't been bleeding on and off, she had
15 frank hemorrhaging, right?

16 MS. KENNEY: Objection.

17 Q Frank hemorrhaging.

18 THE COURT: Overruled.

19 MS. KENNEY: Objection.

20 A She was bleeding.

21 Q She was bleeding?

22 A Yes.

23 Q Was it a little bit or a lot?

24 A Moderate.

25 Q Moderate. So that if PLAINTIFF came here on
0330

1 Friday and said that she was in a relative pool of blood that
2 she had, whether she made it to the bathroom she was still
3 passing it and when you took globs out of her she said that
4 is exactly what I was passing, she would be probably
5 inaccurate in her memory?

6 MS. KENNEY: Objection.

7 THE COURT: Overruled. You may answer.

8 Q Moderate.

9 MS. KENNEY: Objection.

10 THE COURT: What is the question? You want an
11 answer to it?

12 MR. AWAD: I'm sorry, your Honor.

13 Could we open up the second half of this
14 report? Okay, good. Leave it there.

15 Q So, Dr. Lipstein specifically describes the
16 location of the mass, the particular walls that it is
17 affecting, where it extends; talks all about the pelvic wall,
18 the fact that the uterus is present. Tell us, Doctor, what
19 did you record regarding Miss PLAINTIFF on April 28th in your
20 evaluation that day? Tell us what is recorded there.

21 A Rule out primary vaginal cancer, carcinoma.

22 Q No real findings noted as to where, location, size,
23 place, appearance. There is not a thing on here.

24 MS. KENNEY: Objection as to form.

25 MR. AWAD: Withdrawn.

0331

1 Q Is this how they taught you in medical school to
2 make a record regarding cancer of a patient?

3 MS. KENNEY: Objection.

4 THE COURT: Sustained. We have no idea what
5 "this" is.

6 Q Doctor, would this medical record of yours of
7 April 28th in a patient that is menopausal, has frank
8 hemorrhaging at home, and that day when you looked you
9 thought that there was cancer, right?

10 A Yes.

11 Q That is why you wrote down what the next step was,
12 rule out vaginal cancer, correct? You wrote that?

13 A Yes.

14 THE COURT: R/O.

15 Q R/O vaginal cancer primary. You wrote that that

16 day, true?

17 THE COURT: One degree.

18 Q One degree. You wrote that down that day, right?

19 A Yes.

20 Q Did you have the time that day to write any

21 description of what you saw?

22 MS. KENNEY: Objection.

23 THE COURT: Overruled. You may answer.

24 A No.

25 THE COURT: Your answer.

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1 THE WITNESS: My answer was no.

2 MR. AWAD: Your Honor, if I could have a very

3 brief recess to collect my thoughts, I may be able to

4 complete in about five minutes, but, or I could stand.

5 THE COURT: Five minutes, members of the jury.

6 Don't talk about the case.

7 (Whereupon, the jury exited the courtroom and

8 the following occurred:)

9 (Whereupon, a brief recess took place.)

10 COURT OFFICER: Jurors entering.

11 (Whereupon, the jury entered the courtroom and

12 the following occurred:)

13 COURT CLERK: Both sides stipulate jurors are

14 present and properly seated?

15 MR. AWAD: Yes.

16 MS. KENNEY: Yes.

17 Q Dr. Ravins, when you did the biopsy on April 28th

18 of 2001 and you found the mass and you had this history of

19 hemorrhaging, did you look at the Pap Smear report and at all

20 reflect on the idea that the inflammation that had been

21 reported three times by the laboratory was related to the

22 cancer that was present in Miss PLAINTIFF's cervix?

23 A Could you rephrase that?

24 Q Did you have any discussion with the pathologist

25 that first read the biopsy of April 28th -- did you have any

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1 discussion with that pathologist as to whether or not the

2 three times that laboratory had said inflammation, that

3 inflammation may have been related to the presence of this

4 exophytic mass that obliterated Miss PLAINTIFF's cervix?

5 A No.

6 Q In Lenox Hill Hospital you also looked at the

7 pathology slides, as well, correct, and they sent you a copy

8 of their evaluation?

9 A Yes.

10 MR. AWAD: I withdraw the question.

11 Q Lenox Hill Hospital looked at the biopsy specimen
12 and also sent you their evaluation of what they saw, correct?

13 A Correct.

14 Q Now, when you received that did you speak to
15 anybody at Lenox Hill Hospital about your patient, PLAINTIFF
16 PLAINTIFF, in terms of the fact that she went from no cancer to
17 cancer 3B?

18 MS. KENNEY: Objection.

19 THE COURT: Overruled.

20 A No.

21 Q Since Miss PLAINTIFF's issue has presented
22 itself in your offices, have you found out that Dr. Lovecchio
23 did certain surgery for her?

24 MS. KENNEY: Objection to the form.

25 THE COURT: Rephrase, counsel.

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1 Q Do you know -- did you find out from a clinical
2 setting that Dr. Lovecchio did certain surgery involving
3 PLAINTIFF a year later?

4 A Yes.

5 Q At any time between the date that you found out
6 about Dr. Lovecchio's surgery going backward to the day that
7 you biopsied, did you at all change your office protocol
8 regarding endocervical components and how they had to be
9 dealt with on a Pap Smear?

10 MS. KENNEY: Objection.

11 THE COURT: Sustained.

12 Q Doctor, do you accept any responsibility at all for
13 the delay in the diagnosis and treatment of Miss PLAINTIFF's
14 cervical cancer?

15 MS. KENNEY: Objection.

16 THE COURT: Overruled.

17 A Yes.

18 MR. AWAD: No further questions.

19 THE COURT: Maybe we'll go into the luncheon
20 recess at this point.

21 Members of the jury, enjoy your lunch and we
22 will in all probability be interrupting the witness
23 of -- testimony of this witness to accommodate another
24 expert at 2 o'clock. Please be here at 2. Enjoy your
25 lunch. Stay warm.

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