IN THE COMMON PLEAS COURT OF LAWRENCE COUNTY, OFIO	و مسیریند.	
IN THE COMPANY PLEAS COURT OF LARAENCE COUNTY, CARD	cannet	THURSDAY AFTERNOON SESSION.
TERRI NOH, et al.,	- Course	
Plaintiffs, :		July 8, 1999
∇ \$• : case NO . PI-98-401		
RODOLFO CANOS, et al., =		
Defendants.		STIPULATIONS
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Videotaped Deposition of SIEPHEN J. DEVOE,	It is	stipulated by and among counsel
M.D., a witness called by the defendants under the	11 15	stipulated by and among counsel
applicable Ohio Rules of Civil Procedure, taken before	for the respective p	arties that the deposition of
Denise L. Shoemaker, a notary public in and for the	for the respective p	arries that the deposition of
State of Ohic, pursuant to notice and stipulations of	Stanhan J. DeVce M	D., a witness called by the
counsel hereinafter set forth, at the offices of the	stephen V. Deve, m	, a withess called by the
deponent, 3555 Olentangy-River Road, Columbus, Ohio,	defendents under the	applicable Ohio Rules of Civil
commencing on Thursday, July 8, 1999, at 4:18 p.m.		
	Den and den a server has the	
DENISE SHOEMAKER, RFR RENO & ASSOCIATES	Procedure, may be ta	ken at this time in stenotypy by
273 LITTLE THEATRE ROAD WAVERLY, OHIO 45690	the notary: that sai	d deposition may thereafter be
(740) 947–9001	the lotary. that sa	d deposition may thereafter be
	transcribed by the m	otary out of the presence of the
		of the official charactec and
	qualification of the	notary <i>is</i> wal⊽ed.
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Amysue Taylor, Esquire	<u>EXAMINED</u> BY Mr. Bender	PAGE 5
Amysue Taylor, Esquire 501 south High Street	EXAMINED BY	<u>PAGE</u> 5 43
Amysue Taylor, Esquire 501 south High Street	<u>EXAMINED</u> BY Mr. Bender	PAGE 5
Amysue Taylor, Esquire 501 south Eigh Street Columbus. Ohio 43215	EXAMINED BY Mr. Bender Ms. Taylor	<u>PAGE</u> 5 43
Amysue Taylor, Esquire 501 south Eigh Street Columbus. Ohio 43215 on behalf of the Plaintiffs.	EXAMINED BY Mr. Bender Ms. Taylor	PAGE 5 43 64
Amysue Taylor, Esquire 501 south High Street Columbus. Ohio 43215 on behalf of the Plaintiffs. Stanley C. Bender, Esquire	EXAMINED BY Mr. Bender Ms. Taylor Mr. Bender	PAGE 5 43 64
Amysue Taylor, Esquire 501 south High Street Columbus. Ohio 43215 on behalf of the Plaintiffs. Stanley C. Bender, Esquire 707 Sixth Street	EXAMINED BY Mr. Bender Ms. Taylor Mr. Bender	<u>PAG</u> 5 5 43 64
Amysue Taylor, Esquire 501 south High Street Columbus. Ohio 43215 on behalf of the Plaintiffs. Stanley C. Bender, Esquire 707 Sixth Street F.O. Box 950	EXAMINED BY Mr. Bender Ms. Taylor Mr. Bender INDW TO	<u>PAG</u> 5 5 43 64
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Case No. PI-98-401	June 8, 1999
Page 5	Page 7
Thereupon. Defendant's Exhibit A was marked for the purpose of	1 and gynecology who are Riverside residents. I also
was marked for the purpose of identification.	2 teach medical students from Ohio State who rotate
3	3 through Riverside. I'm on the faculty of the Ohio
t Thereupon,	4 State University College of Medicine.
STEPHEN J. DEVOE. M.D.	5 My private practice consists of about
5 being by me first duly sworn, as hereinafter	6 half and half obstetrics and gynecology. Part of the
7 certified, deposes and says as follows:	7 normal function of a gynecologist is annual pap smears
3 DIRECT EXAMINATION	8 or more often than annual. So I spend a good bit of
7 By Mr. Bender:	9 time dealing with the interpretation and management of
3 Q For the record, this is the deposition	0 pap smear problems and treatment of them.
1 of Dr. Stephen DeVoe. It's being taken at Riverside	1 Q You are I'm sure this question seems
2 Hospital in Columbus, Ohio. It is July the 8th of	2 self-evident, but you are board certified?
3 1999, and it's very close to 20 minutes after 4:00.	3 A Yes, I am.
4 Doctor, with that, would you tell the	4 Q And would you tell the jury what you're
5 ladies and gentlemen of the jury your name and your	5 board certified in and what it means to become board
6 profession.	6 certified?
7 A My name is Steve DeV ∞ e, and I'm a	7 A I'm board certified in the special
8 physician specializing in obstetrics and gynecology.	8 field of obstetrics and gynecology. What it means is
9 Q Doctor, what is obstetrics and	9 that you finish an accredited or approved residency
0 gynecology?	¹⁰ program, which I took at Penn. Then you sit for a
1 A Obstetrics and gynecology is the care	1 written examination at the conclusion of the
2 of the obstetrics part first, I guess, is the care	¹ / ₂ residency, two- to three-hour exam. Beginning a year
3 of the pregnant woman, that is, diagnosis and	²³ later you collect all of your cases, that is, all of
4 management of pregnancy, deliver a baby delivery of	24 your clinical experience for a year, and several
5 babies and postpartum problems and problems that may	25 months after that 12-month record is completed, you
Page é	Page 8
1 come up during the pregnancy.	1 sit for an oral exam in our field involving your cases
2 Gynecology is the management, diagnosis	2 or whatever else they want to ask you.
3 and treatment of diseases of the reproductive tract in	3 Q Let me ask you this: You indicated
4 the nonpregnant woman.	4 that you are on the staff at Ohio State University?
5 Q By the time that a jury hears your	5 A Yes, I am.
6 testimony in the course of this trial, the phrase	6 Q In the course of that, do you have the
7 "carcinoma in situ" will have been mentioned many	7 experience of instructing and training other doctors?
8 tunes, I'm sure. But does your practice encompass the	8 A Yes, I do. For years I was a faculty
9 management, diagnosis and treatment of carcinoma or	9 member of the high-risk OB clinic there, that is, the
0 cancer in situ?	10 high-risk pregnancy clinic. We also have medical
1 A Yes, it does.	11 students who are not quite doctors yet but also
2 Q Would you tell us your education and	12 residents who are physicians who are being trained in
3 your training and your experience as a medical doctor	13 obstetrics and gynecology at Riverside, and I'm
4 in general and as an obstetrician-gynecologist in	14 heavily involved with their education in the
5 particular?	15 management of their residency program.
6 A I graduated medical school at Ohio	16 Q Of course we're talking about carcinoma
7 State in 1969. Took a year of surgical internship at	17 or cancer in situ in this case. Is that a topic that
8 the hospital at the University of Pennsylvania in	18 in the course of your teaching and training of other
9 Philadelphia. Then I took a four-year residency at	19 physicians and medical students that you have had
20 the same institution, '70 to '74. I was in the Navy	20 occasion to lecture on?
?1 for two years where I practiced obstetrics and	21 A Yes, I have several times talked to
2 gynecology. Then I came back to Columbus and set up a	22 medical students and residents about management and
13 private practice in OB/GYN at Riverside.	23 diagnosis of this problem.
24 I'm heavily involved with medical	24 Q Let me ask you this: In the course of
25 education. We train residents to practice obstetrics	25 your profession, have you had occasion to be asked by
	Page 5 - Page 8

Multi-Page

Çase No. PI-98-401	June 8, 1999
Page 9	Page 11
1 lawyers to appear in courts or in depositions like	I appropriate relevant medical standards of care.
2 this and express your opinions as to the quality of	2 Q Let me say that in legal terms that we
3 care that physicians may have given to patients?	3 have to do as lawyers. Do you have an opinion as to
4 A Yes, I have over the years. I have	4 whether or not both Drs. Canos in their treatment and
5 been asked a number of times to do that.	5 management of Mrs. Noel acted as physicians of
6 Q You charge for that time, I assume,	6 ordinary skill, care and diligence would have done
7 since it takes away from your practice?	7 under similar circumstances, not only in recommending
8 A I do charge for it, yes.	8 this hysterectomy, but in managing her case in
9 Q I think I have asked you on one other	9 general?
10 occasion, have I not, to do that?	10 A I do have an opinion.
11 A Yes, you have, I think one other case.	1 Q And what is your opinion?
12 Q And has Ms. Taylor, who is representing	2 A My opinion is that they did meet the
13 the plaintiffs in this case, has she asked you to do	3 relevant medical standards in the management of her
14 that in the past'?	4 case recommending that surgery, carrying out the
*	5 surgery and rendering the care they gave her.
16 me earlier, at least two cases, and several informal	6 Q Let me ask you to tell the jury after 7 your review of these records and these depositions
17 meetings where cases are reviewed at her request.	8 what you think the pertinent facts are in trying to
18 Q Do you have any bias to one side or the	9 evaluate this situation.
19 other in this case, doctor, or any of the cases where	
20 you're asked to review the facts?	0 A The pertinent facts are that at a very
A I really don't. We're asked my	1 young age, I believe about 21, Mrs. Noel developed a
22 understanding of our role here is to function as a	2 severely abnormal pap smear and underwent a cone
23 technically supposedly expert person who explains	3 biopsy. A cone biopsy is a procedure in which a
24 technical matters to the court and not function as an	4 cone-shaped piece of tissue is removed from the cervix
25 advocate.	1.5 in order to diagnose why somebody has an abnonnal pap
Page 10	
1 Q Have you had situations in the past	Page 12
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Stephen J. Devoe, M.D. June 8, 1999

Case No. PI-98-401		June 8, 1999	
Page 13		Page 15]
1 uterus is up here like this, the cervix sticks down		time the pap smears will be normal. This is the	
2 into the vagina. We put an instrument into the vagina	1	reason behind getting them every year, to cut down the	1
3 and take a look at the cervix and <i>see</i> this circular		chance of someone having a false-negative pap smear	
4 picture.		every year and having it being missed.	
5 A cone biopsy then, an incision is made	5	Q I've heard pap smears described this	ļ
6 basically where this line is around the cervix, and		way and you tell me if I'm mischaracterizing this. I	
7 I'll make it brighter or bigger. Sort of circular		have heard pap smears described not as something that	
8 piece of tissue is removed from the cervix. In the	1	is necessarily diagnostic of any condition but is	
9 other direction it looks like this. The bottom		something that is useful	
0 picture is the uterus looking at it from the front as	10	MS. TAYLOR. Objection.	OR
1 if looking at the palm of my hand, the uterus or	11	Q I haven't finish the question yet.	
2 cervix is at the bottom and the top of the uterus is	12	something that is useful'as a	
3 my fingertips, and you take out a cone-shaped piece of	13	screening device. Would you agree or disagree with	
4 tissue to get the surface area of the cervix where the	14	that characterization?	
5 abnonnal pap smear cells are coming from. The purpose	15	MS. TAYLOR: Objection; leading the	
6 of this is to diagnose what's wrong with the patient's	16	witness:	
7 cervix or what's wrong with the pap smear is to find	117	A I would agree with that	
8 out what the problem is.	18	characterization. That's definitely true. Pap smears	1
9 Q Let me back up for just a little bit.	19	are screening tests and simply when they work,	
0 I notice that you have some notes here that you've	20	identify the patients who need further evaluation or	
1 taken in the course of reviewing this.	21	treatment.	
2 A I have some notes.	22	Q Now, when this young lady presented in	1
3 Q Feel free to use any whenever you want.	}	November of '94 and had this cervical conization and	
4 A Thank you.	1	you told us that she had an abnonnal pap smear, is a	
5 Q Mrs. Noel presented to Drs. Canos in	25	cone biopsy in your mind an acceptable way for the	
D 14			1
Page 14		Page 16	5
	1	Page 16 Drs. Canos in this case to follow-up on that abnormal	
1 November of '94 and there was something about her that	t 1		
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Case No. PI-98-401

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25 word "circumferential." What does that mean in this 25 A That's exactly right.	-	
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Page 21	Page 23
MS. TAYLOR Objection; move to	I Q Now, in this case, in this pathology
2 strike. Leading the witness. Testifying for the	2 report, was the pathologist able to guarantee or
3 withess.	3 ensure Drs. Canos that all of the bad tissue, all the
4 By Mr. Bender:	4 lesion was removed?
5 Q Now, doctor, is this something that's	5 A No. In fact, there was a specific
6 going to have to be treated?	6 comment that a source of concern.
7 A Absolutely.	7 Q Would you read that comment into the
8 Q Let's assume for a minute that a	8 record, please?
9 carcinoma in situ is not treated or that it is treated	9 A Yes. This is at the conclusion of the
0 in a substandard fashion, and by substandard fashion I	0 report that you started reading a few minutes ago.
1 mean you don't get it all, and it is allowed to invade	1 This is only a problem back up. In the 12:00 to
2 into the body. Does that happen from time to time?	2 3:00 quadrant where the carcinoma in situ appears to
3 A Yes, it does.	3 extend through one of the margins.
4 Q And can you tell the jury what happens	4 Q Now, what does extending through one of
5 if you allow this carcinoma to escape'?	5 the margins mean here medically?
6 A Well, if it escapes and goes through	6 A It means that some of the disease was
7 the cervix, it then becomes an invasive cancer with	7 left behind. Some of the microscopic cancer cells
8 the potential to become a fatal disease. If it's	8 were left behind in the cervix inadvertently by Dr.
9 diagnosed at that late stage, the patient has a chance	9 Canos during the cone.
0 of dying from it and has to have a radical	20 Q Is that malpractice or is that just
1 hysterectomy and/or radiation and still has a chance	21 something that happens in conizations?
2 of dying down the road from recurrent or persistent	2 A It's one of the limits of the
3 cancer.	23 procedure. It happens in conizations. And again, as
4 Q You were telling us earlier when Ms.	24 I said a few minutes ago, this is a microscopic
5 Taylor was asking you some questions about the number	25 process and one can't ten now extensive it is in the
Page 22	Page 24
1 of people who may die each year from this sort of	1 operating room.
 of people who may die each year from this sort of thing. Do you remember that? 	 operating room. Q Can you hold Exhibit A up and show to
 of people who may die each year from this sort of thing. Do you remember that? A There are about 5,000 deaths a year in 	 operating room. Q Can you hold Exhibit A up and show to the jury where this 12:00 to 3:00 area might be?
 of people who may die each year from this sort of thing. Do you remember that? A There are about 5,000 deaths a year in the Unites Stated from cancer of the cervix. 	 operating room. Q Can you hold Exhibit A up and show to the jury where this 12:00 to 3:00 area might be? A I'll make another mark on this thing.
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 of people who may die each year from this sort of thing. Do you remember that? A There are about 5,000 deaths a year in the Unites Stated from cancer of the cervix. Q Is it prudent for any gynecologist who is faced with carcinoma in situ to do everything that he or she can to ensure that this does not escape? 	 operating room. Q Can you hold Exhibit A up and show to the jury where this 12:00 to 3:00 area might be? A I'll make another mark on this thing. Again, we're looking at the cervix and considering it as if it were the face of a clock. This is the picture the doctor sees doing a cone or even for that
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Case No. PI-98-401

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	June 0, 1999
Page 25	Page 27
1 that changes the cells behavior and causes them to	1 thought.
2 become abnormal. In some types in some cases	2 Q That is in '96. I'm back in '94 yet.
3 depending on how aggressive or how destructive the	3 A Oh, I'm sorry.
4 virus is the patient may develop a severe precancerous	4 Q Before she became pregnant. What was
5 condition such as this as the first sign that there's	5 the recommendation from the records in November of '94
6 anything wrong. Those patients have a considerable	6 once the cone biopsy was reported back?
7 risk of developing invasive cancer in the near time	7 A They discussed with her the need for
8 after that.	8 further treatment or at least close follow-up, and I
9 Q Now, there has been some testimony in	9 think that was what was done. And she got pregnant
0 this case by the time we get to your testimony that	0 while all this consideration was going on two or three
1 these cancerous lesion develop at a slow, predictable	1 months later.
2 pace over a number of years. Do you believe that to	2 Q Now, can you explain to the jury the
3 be true?	3 different options of a hysterectomy as opposed to
4 A We used to believe that was the case.	4 referral to a gynecologist for close follow-up?
5 We think now that it's true for a minority of cervical	5 A Well, those are the options. One would
6 cancers. Actually there are a lot of reasons to	6 be close follow-up by a gynecologist. There are
7 support this. One of them is there seems to be two	7 several ways of doing that, but they always involve
8 peak ages for cancer to be diagnosed. One is around	8 frequent pap smears. Because of this danger of
9 52 and the other is much younger than that. And it	9 cervical cancer, I do something called a colposcopy.
0 appears that because of that, that the progression	20 It's where you look at the cervix under a magnifying
1 theory applies to a minority of the patients but a	!1 system along with a pap smear.
2 majority of patients who develop cervical cancer	22 Another option is always hysterectomy
3 develop it rapidly after acquiring this virus that	23 while the disease is a preinvasive cancer rather than
4 damages their cells in their cervix and the lead time	?4 running a risk that it might develop into an invasive
5 can be as short as two years from the first abnormal	25 cancer. That's a total legitimate option. Close
Page 26	Page 28
Page 26 1 pap smear to the development of invasive cancer.	1 follow-up is another option.
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1 pap smear to the development of invasive cancer.	 follow-up is another option. Q Is a hysterectomy a definitive way of treating it'?
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Page 25 - Page 28

"ase No. PI-98-401

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Case No. PI-98-401	June 8, 1999
. Page 29	Page 31
1 normal, really tell you for sure whether or not this	1 A Yes, it is. Fairly unusual.
2 cancer was completely removed?	2 Q Okay. From your review of the records,
3 A They do not. Pap smears do have a	3 did she in fact follow the advice of the Drs. Canos
4 false-negative rate. As I said I think a few minutes	4 and go to a gynecologist for close follow-up?
5 ago, about 5 percent of the cases where actually the	5 A Yes, she did.
6 patient has a life-threatening invasive cancer, the	6 Q And did she in fact become pregnant,
7 pap smear will be negative through a failure to	7 whether intentionally or inadvertently, and have a
8 process. Pap smears are like most medical tests,	8 healthy baby?
9 they're not a hundred percent effective in diagnosing	9 A Yes, she did.
0 or recognizing, I should say, a given condition. So	0 Q From your review of the records, did
1 that someone can have normal pap smears and still have	1 she come back then approximately one year later to the
2 persistent disease buried in the surface of the	2 Drs. Canos'?
3 cervix.	3 A Yes, she did.
4 Q Is there any way that you know of,	4 Q And did she at that point ask them for
5 doctor, to ultimately, definitively remove the chance	5 their opinion or recommendation as to ultimately the
6 of this young lady having either a continuation of the	6 final treatment for the problem she had **had with the
7 existing cancer or a recurrence of new cancer in her	7 carcinoma in situ?
8 cervix other than finally having a hysterectomy'?	8 A Yes, she did.
9 A That's the most definitive way of doing	9 Q Obviously we know by now that their
0 it. Obviously it's a final step in terms of having	0 recommendation to her was a hysterectomy.
1 babies. That is the most definitive way of doing it.	1 A That's right.
2 Q Let me ask you this: If you have had a	2 Q And do you have any quarrel or problem
3 carcinoma in situ or if you have one, just the fact	3 with that recommendation to her at that point?
4 that you have it or have had it, does that in any way	4 A No, I don't.
5 statistically increase your likelihood that you're	5 Q Have you had situations, doctor, where
Page 30 1 going to have it again?	Page 32 1 you have recommended hysterectomies to patients who
	2 have carcinoma in situs?
	3 A Yes, I have.
3 get these things aren't well worked out. But whatever4 influences they are, once we know from a statistic	4 Q Have you had patients come to you and
	5 ask for a hysterectomy after having learned they have
5 a series of statistical studies once you've had a	6 had a carcinoma in situ.
6 carcinoma in situ-or an abnormal pap of any kind,	7 A Yes, I have. That's not infrequent.
7 you're more likely to have a subsequent problem. It's	
8 considered persistent disease or disease that wasn't	8 Q Is that true even though that patient
9 removed that happened within two years but occurs	9 may have had some normal pap smears before the
0 after two years down the road it's new disease, new	0 hysterectomy?
1 problem, starting from scratch over again.	1 A Yes. 2 O And why would that he?
12 Q You said this was viral related?	2 Q And why would that be?
A It appears to be, in almost all cases.	3 A Well, you have to take into
4 Q Can you tell anything in this case	4 consideration the fact that we know there is a
15 about the how virulent or aggressive the virus is in	5 recurrence rate for carcinoma in situ and in some of
16 this lady's case?	6 those cases it's extensive, where the edges of the
17 A Not with certainty. Except the fact	7 cone biopsy showed disease right up to the edge of the
18 that she goes from minor abnormalities and normal pap	8 specimen and presumably off into the remaining cervix,
19 smears to a severely precancerous pap smear. That	9 the patients, I make them aware of that. They want
20 suggested to me that she has one of the types which	20 something done definitively and they choose the
21 are number 16 or 18 of the HPV that are associated	?1 hysterectomy.
22 with a rapid development of malignancy. The	22 Q Can you tell from the records as to
23 progression theory does not apply to her.	23 whether or not she made an excellent recovery from the
24 Q Is it unusual to have somebody as young	24 hysterectomy itself?
25 as she is have something like this?	25 A Yes, she had an uneventful

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Case	No.	PI-98-401

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June 8, 1999

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	June 0, 1999
Page 33	Page 35
1 postoperative course.	1 disease went through the margins of the specimen and
2 Q Doctor, let me ask you this: If this	2 suspicion therefore that there was residual carcinoma
3 young lady had not had this hysterectomy and this	3 in situ.
4 cancer had escaped the margins or she had developed a	4 Q Even if there was not found to have
5 new carcinoma in situ because her increased risk and	5 been in retrospect after the hysterectomy was
6 it became invasive, in other words, it got away from	6 performed any cancer at that point, does that mean
7 the doctors and from her, can you explain to the jury	7 cancer would not have recurred again because of her
8 how that would progress and what could have happened	8 susceptibility due to the virus?
9 to her and the kinds of treatments that she would had	9 A It does not mean that she's going to be
0 to have undergone? What if What if	0 cancer free for a lifetime. It also doesn't mean
1 A Once a cancer of the cervix becomes	1 these she's cancer free at that time. Pathology is
2 invasive and escapes through that basement membrane I	2 not a perfect science either, just like our pap
3 was describing earlier, it requires invasive and/or	3 smears. And once in a blue moon a cancer will be so
4 radical treatment in an attempt to cure it. For young	4 small that it's not detectable even with an
5 people, the situation is usually a radical	5 appropriate thorough exam of the cervix and uterus
6 hysterectomy, which is an extensive operation removing	6 specimen, the cancer will recur later.
7 the cervix and uterus and the tissues around the	7 Q Something else I wanted to ask you
8 cervix in order to get the cancer invaded off the	8 about that I have read about this disease is its
9 cervix.	9 relationship or its seemed occurrence with people who
0 If it's advanced too far to be treated	0 smoke. Can you comment on that for us?
1 surgically, and there are stages for invasive cancer,	A That is what's called an
12 stage 1, 2, 3, 4, if it is past 1B, they have to be	2 epidemiological observation. That is, people sit down
3 treated with radiation. And there is each of these	3 and study large groups of patients and see what
4 stages has a percentage chance of dying within five	²⁴ happens to them. And in several studies, enough so
15 years depending on how aggressive the cancer is and	25 that it's accepted as a fact, the risk of precancerous
D 24	
Page 34	Page 36
1 how indignant it appears under the microscope. There	1 changes is about five or six times higher in smokers
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ase No. PI-98-4

June 8, 1999

Page 371and then 1 think we're done. Let me ask you to2assume kein ti's first dingaroed. She's not3ind then 1 think we're done. Let me ask you to3ind sease wein ti's first dingaroed. She's not4ind then 1's first dingaroed. She's not5her in sinsu're cancer.7Now, the progression theory, which came8and in thei sivise and has really been shelved for a9not in this sivise and has really been shelved for a9angiority of patients wdth procuncrous cerrical1disease, it does affect some people. There are1of certain cerrical cancers which develop over a number1disease, it does affect some people. There are1of statist with any environical nearces develop in4studies that a majority of cervical cancers weich of sit and then to5concert. They jump right in with a severe procencerous6then shortly after that invasive cancer.8This is how a young person like this9ubits and and and de progression theory no longer applies to most patients9you think that's, in your mind, adequate advice for9propel kinc he nyou're talking about it, this had had1not the storoger advice of the cervix, and whild9year. So knows that she has potential for invasive9advanced precancer change1advanced precancer change1advanced precancer change2A That's the strongest comment he made.3He described the carc		June 8, 1999
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Page 41	Page 43
I surgery runs the risk of a surgical complication,	1 CROSS-EXAMINATION
2 hemorrhage, an injury to the ureter or bladder, but	2 By Ms. Taylor:
3 the risk of not having a surgery in this case comes	3 Q Hello, doctor.
4 out of getting invasive cancer and dying from the	4 A Hello, Ms. Taylor.
5 disease.	5 Q It's good to see you. We are familiar
6 It's a series of tradeoffs, risks	6 with each other, aren't we?
7 versus benefits, and the patient in the last analysis	7 A Indeed.
8 gets to analyze and choose among the options available	8 Q In fact, last time I saw you was about
9 to her. Mother nature doesn't always give us great	9 two years ago when you discharged me from the
0 choices.	0 hospital.
1 Q Doctor, thank you very much. Are there	A I remember, with a new baby.
2 any aspects of this case, any medical things that you	2 Q Yes. Your partner delivered me.
3 think that are of significance that you would like to C_{2}	3 A That's right.
4 comment on that perhaps I haven't asked you about?	4 Q Last time, though, we were involved
5 MS. TAYLOR Objection; overbroad.	5 before Kip's birth two years ago is when I was a
A I don't think so. I think I want to	6 defense lawyer, wasn't it?
17 stress that Mrs. Noel should be cured of this disease	7 A That's right.
18 and she should do well and she should have close	8 Q And that was many years ago when I was
19 follow-up. She does have some very small risk of	9 doing defense medical malpractice; correct?
20 recurrent for new disease.	0 A It's been some years. I don't remember
21 Q Doctor in the course of the last half	I how long.
22 hour or so, I've asked you for your medical opinion on	2 Q And at that time when I had you as an
23 various things. Are the opinions that you've given us	3 expert you were a defense expert then, weren't you?
24 to a reasonable degree of medical certainty and	4 A In that particular case, yes.
25 probability?	5 Q And we know from your earlier
Page 42	Page 44
1 A Yes, they are.	1 deposition that was right before this video deposition
 A Yes, they are. Q And this question I'm sure seems 	 deposition that was right before this video deposition you testified that you do about 12 to 18 depositions a
 A Yes, they are. Q And this question I'm sure seems 3 self-evidence. But you do spend 50 percent of your 	 deposition that was right before this video deposition you testified that you do about 12 to 18 depositions a year?
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ase No. F1-98-401	JUNC 0, 1777
Page 45	Page 47
1 hour for the review. It takes time in the evening and	1 reason to believe that the pathologist missed cancer
2 weekends, and I charge \$400 an hour for testimony.	2 on Terri's cervix or her uterus?
Q So today when I did your discovery	3 A We have no reason to believe that,
deposition that would have been S400 an hour for that:	4 that's true.
A That's correct.	5 Q And we know based upon that that at the
Q And only about 5 percent of your	6 time the hysterectomy was done on Terri, she did not
depositions excuse me, 5 percent of your reviews	7 have cancer on the tissue; correct?
have been on behalf of plaintiffs; correct?	8 A That couldn't be known until after the
A That was my estimate, yes.	9 hysterectomy was done.
Q 95 percent for the defense?	0 Q That wasn't my question. We know now
A Right. I don't get asked a lot by	1 when we look at the when the pathologist went
plaintiff's attorneys, quite honesty.	2 through those slides. went through that tissue, that
Q And you've testified how many times in	3 there was no cancer present?
trials, sir'?	4 A Right. In hindsight we know that.
A Well, I guessed 12 earlier, and I think	5 Q Now, here you've reviewed all the
that's a guess over 16 or 17 years of doing this.	6 medical records and the depositions of the parties and
Q You're not a pathologist, are you?	7 Dr. Essig; right?
A No.	8 A That's right.
Q You're not a cytologist?	9 Q Now, have you reviewed any transcript
A No.	0 or heard any tape of a conversation that was done a
Q You do not consider yourself an expert	1 couple of weeks after the hysterectomy between Terri
in the diagnosis and treatment of invasive cervical	2 and Dr. Canos?
cancer, do you?	A No. I was unaware of any taped
A I do consider myself a diagnosis	!4 telephone conversations.
expert. Diagnosis excuse me, an expert in	25 Q You were first made aware of that taped
Page 46	Page 48
diagnosis. I would not consider myself an expert in	1 conversation, I believe it was face-to-face, during
treatment.	2 your discovery deposition; correct?
Q And, in fact, the patients that do have	3 A An hour or so ago, yes.
invasive cervical cancer you refer to other physicians	4 Q And, in fact, I read to you a portion
in this office building?	5 of that; correct?
A That's correct.	
Q You have been practicing medicine for	6 A You did.
how long?	7 Q Now, going back again before we get
C C	7 Q Now, going back again before we get8 into that, about that taped conversation that Terri
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17216262 A 125V

June 8, 1999

Case No. PI-98-401	June 8, 1999
Page 49	Page 51
1 Q Idon'tknow.	1 First off, I think there's a mistake here. Usually
2 A Talk to him himself.	2 the LEEP cone is required for the diagnosis or the 2 heapital song. So that the alternatives are discussed
3 Q I don't know, sir.	3 hospital cone. So that the alternatives are discussed
4 Have you ever met Dr. Canos?	4 after you've done the cone and make the diagnosis.
5 A No, I haven't.	5 The cone you would have to discuss ahead of time and
6 Q Are you familiar with how easy he is to	6 explain why you need it, but the definitive or at
7 understand or not understand?	7 least the definite diagnostic step is the cone however
8 A I'm not.	8 we choose to do it. After that, this conversation
9 Q So you don't know if he's somebody that	9 would take place that you're talking about.
10 would be easy to understand on the phone or not, do 11 you?	0 Q And what would you mean by close I follow-up for a patient such as Terri?
12 A Well, he's been practicing and getting	2 A My case the way I follow these patients
13 along, I assume he's easy enough to understand. He	3 is a pap smear at four months along with a colposcopic
14 has been in this country quite a while.	4 exam because pap smears do have such a high
15 Q That will be something for the jury to	5 false-negative rate. that is, they miss things.
16 know and for you well, you won't have that	6 Q What's the false-negative rate for a
17 opportunity to know that.	7 colposcopic exam?
18 MR. BENDER: Excuse me. I want to \mathcal{WP}	8 A Depends on how good the colposcopist
19 object to the commentary. Ask it be stricken.	9 is.
20 By Ms. Taylor:	0 Q Well, generally what is your
20 By Mis. Taylor. 21 Q Now, in this case. doctor, after	1 false-negative rate?
22 reviewing the records. if Terri had been your patient	2 A That question sounds real simple. It's
	3 not. It depends on false negative for what?
23 and she had gone on and had the cone biopsy performed	4 False-negative for cancer of the cervix, I hope it's
24 had two negative pap smears afterwards, am I correct	5 zero. False negative, that is. do I miss a minor
25 based upon what you told me during your deposition	
Page 50	Page 52
1 before this trial deposition, you would have	I degree abnormality or call something a little more
2 recommended that she have follow-up with a LEEP cone	2 severe than it turns out to be, I think that probably
3 or a hospital cone, but you would also given her the	3 happens. You're considered to be a pretty good
4 option of a hysterectomy.	4 colposcopist if you come within one level on your
5 A That's correct.	5 interpretation by a scope of what you find when you
6 Q Now, why don't you explain would you	6 biopsy. So the whole point of this is you take
7 explain to the jury what is meant by a LEEP cone?	7 biopsies while you're looking.
8 A A LEEP cone is one way of doing a cone	8 You asked me for follow-up on the
9 biopsy of the cervix. LEEP is what we call an	9 carcinoma in situ. how that would be. It would be
10 acronym. It's four letters and each of them is the	0 colposcopy and pap smears four months and then six
11 beginning of a word. It stands for loop electrical	1 months after that and then six months after that would
12 excision procedure, LEEP. Basically it's a little hot	2 be one way of following up after the cone biopsy
13 wire connected to an electrical source and you cut	3 diagnosis of microscopic cancer.
14 through the cervix with the hot wire in the office and	4 Q Can you have this follow-up when you're
15 do the cone that way with local anesthesia.	5 pregnant?
16 Q Now, what is a hospital cone?	6 A Yes. We don't do biopsies when you're
17 A A hospital cone would be one I	7 pregnant unless you're very suspicion of invasive
18 illustrated. The procedure is done in the hospital	8 disease.
19 operating room with a knife or a laser or a LEEP for	9 Q So if Terri would have gotten pregnant
20 that matter with general anesthesia usually.	20 again, there would not have been a problem with
21 Q Doctor, why would you have recommended	21 managing or following up closely on her potential to .
22 to Terri if she had come to you as a patient that she	2 have invasive cervical cancer?
23 have a LEEP cone done or a hospital cone done and	23 A She could have been followed during
24 close follow-up?	?4 pregnancy, yes.
25 A As I said. that's one of the options.	25 Q Now, doctor, when you're talking about
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Case No. PI-98-401

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Case No. PI-98-401	June 8, 1999
Page 53	Page 55
t this cone biopsy that was done on Tem, which was in	1 cervical cancer in February of '96, that was wrong?
2 Defendant's Exhibit A, you identified an area, that	2 A Yes. She either misunderstood it or
3 12:00 to 3:00 range, where it was thought there was a	3 she made a mistake or they told her the wrong thing,
¹ break-through of the lesion through the margin of the	4 yes.
5 cone.	5 Q Now, doctor, if Terri were told that
5 A Right.	6 she had cervical cancer and she based her decision to
7 Q Now, that would be information that Dr.	7 have the hysterectomy on that false statement that she
3 Canos, both Dr. Rudy Canos and Dr. Portia Canos would	8 had cervical cancer, then Terri based her decision
> be aware of that; correct?	9 upon false information; correct?
3 A Yes.	0 A None of us were there. If she was told
1 Q You would agree with me, wouldn't you,	1 that that pap smear in February was abnormal and that
2 that when Dr. Portia Canos went on to do the second	2 it showed cancer, then she did base it on false
3 pap smear on Terri after the cone biopsy, that she	3 information.
4 would have put special emphasis on making sure that	4 Q Now, Dr. DeVoe, you have also told us
5 she got tissue or scrapings from that area?	5 that there is a good success rate with treatment of
6 A I think if you're talking about the	6 Stage 1 invasive carcinoma of the cervix; correct?
	7 A In general. Depends on the
7 December '94, Dr. Rudy took her back to the OR to get 8 a pap got a pap smear and that was abnormal again.	8 aggressiveness of the disease and the stage of the
 9 He did not do a biopsy because he thought there was 	9 lymph nodes.
· · · ·	¹⁰ Q In fact, sir, Stage 1 cervical cancer
0 too much inflammation and healing, but he did do a pap	11 without lymph node involvement has a cure rate
1 smear which was interpreted as abnormal again.	¹¹ without rymph node involvement has a cure rate ¹² survival rate of 5 years of greater than 95 percent,
2 Q I'm not talking about that one. After	¹² survival fate of 5 years of greater than 95 percent, ¹³ doesn't it?
3 that pap smear Terri went on and had a pap smear by	
4 Dr. Laura, correct, that was normal?	A round 05 percent.
5 A That was early '95, yes.	25 Around 95 percent.
Page 54	Page 56
1 Q Correct. She then went on and had a	1 Q Around 95 percent. So if Terri says
2 second pap-smear done; correct?	2 that she was told that if she developed invasive
3 A In early '96.	3 carcinoina of the cervix Stage 1 that she would die, a
4 Q Correct.	4 hundred percent chance that she would die in five
5 A Right.	5 years, that would be wrong; correct'?
6 Q And that was normal too, and that was	6 A If it was treated, that would be wrong.
7 done by Dr. Portia	7 Your data might be right for untreated.
8 A Right.	8 Q But for treated invasive carcinoma that
9 Q Canos.	9 would be wrong?
0 A Right.	10 A I think so.
1 Q And would you agree with me that you	11 Q And we have no indication that
2 would expect Dr. Portia Canos when she did that pap	12 MR. BENDER: Do you think you can
3 smear to put a special emphasis in making sure that	13 turn your phone off while we get this done?
4 she got scrapings from that 12:00 to 3:00 area?	14 Q That's exactly what I am doing. <i>Sorry</i> .
5 A I would assume so, yes, sure.	15 Husband.
6 Q And that pap smear was negative;	16 We have no I'm sorry, sir. I've
7 correct?	17 lost my train of thought for a moment.
8 A Right.	18 MR. BENDER: 95 percent.
9 Q Are you aware from reading the	19 Q Thank you. We have no indication in .
20 deposition of Terri that she says that she was told by	20 this case that Terri was a noncompliant patient?
1 Dr. Portia Canos that the pap smear that Dr. Portia	21 A That's correct.
22 had done in February showed cancer; correct?	22 Q She was a compliant patient, she
23 A She said that she was told that, that's	23 followed up, didn't she, with treatments?
	24 A Yes.
24 right.25 O And if Tem were told that she had	 A Yes. Q In fact, she had a pap smear done

Case	No.	PI-98-401

Page 57	Page 59
I during her pregnancy, and then she followed up with	1 a part of the record. You may answer, sir.
2 another one time wise just when she was supposed to,	2 A If that statement was made referring to
3 three to four months after the other pap smear?	3 Stage 1 cervical cancer, the statement is not true.
4 A Right.	4 Q And if Terri were told that any delay
5 Q And if Terri had not had the	5 in having the hysterectomy increased her rate of
5 hysterectomy performed, am I correct you cannot say	6 having her risk of having invasive carcinoma, even
7 when to a probability she would have gotten recurrent	7 if she had colposcopies and pap smears, that would be
3 disease, can you?	8 incorrect, too?
3 A That's correct	9 A No, that's not true. If you're
3 Q You can't	0 watching and it develops into invasive cancer, then
T 1/2 1	1 you got invasive cancer and you got to deal with that.
	2 That's the whole point of the follow-up.
• •	3 Q Well, hopefully during the follow-up
 3 have had recurrent disease to a probability? 4 A I don't know that for certain that she 	4 you find it pretty evasive again.
5 would have. We never have a crystal ball in medicine.6 We have to make decisions based on the information at	5 A But what are you going to do? You have 6 the same situation you had when you decided to
7 hand.	7 follow-up.
8 Q But we're talking about more likely	8 Q Now, doctor, going back to about the
9 than not. You can't say if she would have had	9 colposcopy you were excuse me. Going and I want
0 recurrent disease; correct?	10 to talk to you about this cone biopsy that was done
1 A No. But if she does, she's in deep	1 A Okay.
2 trouble. And the stakes are pretty high for a person	2 Q by Dr. Canos. He used a laser on
3 that gets recurrent disease.	¹ 3 that case.
4 MS. TAYLOR: Objection; move to	A That's right.
5 strike, nonresponsive.	25 Q What affect does laser have on the
Page 58	Page 60
1 By Ms. Taylor:	I tissue surrounding?
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Page 61 1 Q How frequently does that happen? 1 2 A Depends on which we're talking about. 2 A No. But we know from more 3 Q Let's go with the inflammatory, this 3 sophisticated studies that are not done on a routine 5 A Around 12 percent of the high-grade 5 with this kind of problem. 5 5 A. Kround 12 percent of the high-grade 5 with this kind of problem. 6 6 Str.'s, which is the advanced permailignant stuff, will 7 reasonable charge for a surgeon such as you to perform. 8 the body overwhelming it and eliminating it at least 8 a hysterectomy? 9 for the time being. 0 What we charge and what we get are two 0 Q Now, what did you mean by the laser 1 0 What do you normally charge for a 1 a hysterectomy? 4 Vante charge, and 1 think ours 6 6 from that cut surface the cells are destroyed. Which 6 A Mwhat do you think the hospital 9 going to get them. 0 And what do you think the hospital 9 Q And that's why it's important to do 1 ha thave no idea. Depends	ase No. PI-98-401	June 8, 1999
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Lase No. 11-98-401

June 8, 1999

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		A Well, we don't quite understand it, but
25 of the cervix, the supportive tissue up here, the 25 which is a more formal term for wart virus, a variety	24 pen. This is the cervix down here. If you take a lot	

Page 69	Page 71
1 of influences that allows HPV to change the behavior	1 CERTLFICATE
2 of the cells in the cervix. Whatever influences the	2 STATE OF OHIO SS:
3 cervix is exposed to including the HPV, the upper	3 COUNTY OF MADISON :
4 vagina is exposed to and the remaining areas on the	4 I, Denise L. Shoemaker, RPR. and Notary
5 surface of the cervix are also exposed to it. So down	5 Public in and for the State of Ohio, duly commissioned
6 the road there's a chance of her developing recurrent	6 and qualified, do hereby certify that the within named
7 premalignant disease and theoretically cancer of the	7 Stephen DeVoe, M.D., was by me first duly sworn to
8 vagina due to the same influences.	8 testify to the truth. the whole truth, and nothing but
9 Q And finally, Dr. Essig has told us at	9 the truth in the cause aforesaid; that the deposition
0 this point that he thinks this young lady's chances	0 then given by him was by me reduced to stenotype in
1 now of getting cancer are probably, quote, pretty slim	1 the presence of said witness, afterward transcribed
2 now that the cervix is gone, end quote. Would you	2 upon a computer; that the foregoing is a true and
3 agree with that'?	3 correct transcript of the deposition so given by him;
4 A I do agree with that.	4 that the deposition was taken at the time and place in
5 Q Doctor, would you like I'm sorry.	5 the caption specified and was completed without
6 Do you have any other questions?	6 adjournment; and that I am in no way related to or
7 MR. BENDER No, sir.	7 employed by any attorney or party hereto, or
8 MS. TAYLOR Would you like to read	8 financially interested in the action.
9 and view these depositions, or would you waive those	9 IN WITNESS WHEREOF. I have hereunto set
0 privileges?	0 my hand and affixed my seal of office at London, Ohio.
1 THE WITNESS: I would waive those	1 on this 8th day of June 1999.
2 privileges, I guess, for your convenience. Whatever	2 DENISE L SHOEMAKER, RPR
3 you think I should do.	3 DENISE L SHOEMAKER. RPR 3 NOTARY PUBLIC-STATE OF OHIO
4 MR. BENDER: Thank very much. sir.	4 My Commission Expires: January 20, 1999.
5 MS. TAYLOR I move to strike all	5
Page 70	Page 72
1 the testimony. The doctor's lacking qualifications \mathcal{WP}	1
2 under Ohio law. Thank you.	2
3 MR. BENDER: What qualifications is	3
4 he lacking? We will straighten it up now that we are	4
5 here.	5
6 MS. TAYLOR: Well, I don't think you	6
7 properly set a foundation for him.	7
8 (Signature waived.)	8
9	9
10 Thereupon, at 5:45 p.m., Thursday, June	0
1 8, 1999, the deposition was concluded.	
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15	IS
16	16
17	17 18
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21	22
22	23
23	25 24
24	24 25
25	 Page 69 - Page 72
RENO & ASSOCIATES	

lase No. PI-98-401

0

Stephen J. DeVoe, M.D.

ase No. P1-98-401				phen J. De Voe, M.D.
	45690 [1] 1:25	adequate [2] 39:21.22	answer [4] 40:17.18 59:1	
-\$-	4:00 [1] 5:13	adequately [1] 40:9	65:16	25:2 31:6 37:2 38:9
32,000[1] 63:16	4:18 [1] 1:20	adjournment[1] 71:16	anxious[1] 64:14	becomes [2] 21:17 33:11
3360 [1] 44:25		administrativen	anyway[1] 18:2	beginning [3] 7:22 37:5
	-5-	42:10	appear [1] 9:1	50:11
\$400 [3] 44:24 45:2.4		admission[1] 64:22	APPEARANCES	behalf [5] 2:5.10 10:8
Q _	5 [6] 4:3 14:25 29:5 45:6.7 55:22	advanced [6] 33:20 37:3	2:1	44:16 45:8
-&-	5,000[1] 22:3	37:19.24 38:21 61:6	sppeared [1] 19:14	behavior [2] 25:1 69:1
& [1] 1:23		adverse[1] 10:3	applicable[2] 1:15 3:8	behind [5] 15:2 19:16
	50 [3] 42:3 58:14.15	advice[3] 31:3 39:21.24	spplies[2] 25:21 37:23	23:17.18 60:4
*	501 [1] 2:3	advised [1] 39:8	apply[1] 30:23	Bender [14] 2:6 4:3.5 5:9
70[1] 6:20	52 [1] 25:19	advocate[1] 9:25	sppropriate[4] 10:23	21:4 48:10 49:18 56:12 56:18 58:22 64:9 69:17
74 [1] 6:20	5:45 [1] 70:10	affect [2] 37:10 59:25	11:1 28:11 35:15	69:24 70:3
94 [7] 14:1 15:23 27:2.5		affiliated [1] 68:19	spproved [1] 7:19	benefit [1] 68:5
28:9 34:25 53:17	-6-	affixed[1] 71:20	spproximation[1]	benefits [2] 41:7 66:2
95 [2] 28:17 53:25	6[2] 24:13.13		22:22	
96[5] 27:2 54:3 55:1	64[1] 4:5	aforesaid [1] 71:9	area [8] 13:14 16:22 18:9	benign [3] 38:3.11.14
62:12.1.5		AFTERNOON[1] 3:1	18:22 24:3 53:2.15 54:14	best [2] 44:12 46:17
02.12.15	-7-	afterward [1] 71:11	areas [2] 17:10 69:4	between [4] 19:12 47:21
-1-	1	afterwards[1] 49:24	arising[1] 16:23	58:4 62:20
	707[1] 2:7	again [14] 23:23 24:5 30:1	art [1] 67:6	bias [1] 9:18
[[7] 33:22 55:16.20 56:3	740[1] 1:26	30:11 35:7 48:7 52:20	articles[3] 42:16.19.19	bigger[1] 13:7
58:8.19 59:3		53:18.21 59:14 62:3 66:21 66:22 68:18	aspects[1] 41:12	biopsies [2] 52:7,16
2[6] 24:13.14.16 44:2	-8-		associated[3] 24:23	biopsy [27] 11:23,23
45:15 61:5	8[3] 1:20 3:2 70:11	against[1] 10:7	30:21 63:4	12:20 13:5 15:25 16:5.7
[2-month[1] 7:25	8th [2] 5:12 71:21	age [1] 11:21	ASSOCIATES[1] 1:23	16:10 17:1 22:10.12 27:6 28:22 32:17 34:25 46:15
12:00 [5] 19:12 23:11		ages[1] 25:18		49:23 50:9 52:6.12 53:1
24:3 53:3 54:14	-9-	aggressive[4] 25:3	assume[12] 9:6 21:8 39:2 39:7.17 40:13 48:17 49:13	53:13.19 59:20 60:8 66:13
16[2] 30:21 45:16		30:15 33:25 34:3	54:15 58:7 64:20 67:11	67:7
17 [1] 45:16	9 [1] 24:13	aggressiveness[1]	Assuming[1] 39:20	birth [1] 43:15
18[2] 30:21 44:2	947-9001[1] 1:26	55:18	attachments [1] 61:15	bit [3] 7:8 13:19 24:20
1969 [1] 6:17	95 [7] 42:9 45:10 55:22	ago[7] 23:10.24 29:5 43:9 43:15.18 48:3	attempt [1] 33:14	bladder[1] 41:2
1976[1] 46:9	55:24.25 56:1.18			blood [1] 17:12
1994 [1] 26:15	950[1] 2:8	agree [17] 15:13.17 26:8 36:12.13 53:11 54:11	attending [1] 17:17	blue [1] 35:13
1996[3] 10:23 39:3.4		62:23 64:13 66:12.16 67:8	attorney[1] 71:17	
1999[6] 1:20 3:2 5:13	-A-	67:16 68:20.21 69:13.14	attorneys [1] 45:12	board [5] 7:12.15.15.17 10:8
70:11 71:21.24	abdomen[1] 12:25	ahead [1] 51:5	available[1] 41:8	body [6] 21:12 24:15
1B _[1] 33:22	abdominal [2] 24:16	al [2] 1:3.9	aware [4] 32:19 47:25	60:14.19.24 61:8
	63:25	align[1] 18:15	53:9 54:19	book[1] 42:20
-2-	able [2] 23:2 48:24	allow[3] 21:15 36:15	away[5] 9:7 33:6 60:21	bottom [5] 12:24 13:9.12
	abnormal [22] 11:22.25	68:24	61:7.11	20:15 66:22
2 [1] 33:22	13:15 14:3.16.19.21 15:24	allowed [1] 21:11		Box [1] 2:8
20[2] 5:13 71:24	16:1,4.5 22:15 25:2.25	allows[1] 69:1	<u>-B-</u>	break-through[2] 53:4
21 [2] 11:21 37:19	28:17.25 30:6 53:18.21	almost [4] 24:24 28:5	B [1] 24:13	60:9
25 [2] 46:11.12	55:11 60:24 61:18	30:13 63:4	babies [2] 5:25 29:21	brighter [1] 13:7
273[1] 1:24	abnormalities[3] 16:23	along[4] 27:21 49:13	baby [6] 5:24 31:8 43:11	broached [1] 64:21
	18:21 30:18	51:13 66:23	65:5.6.17	
-3-	abnormality [2] 16:6	alternatives[1] 51:3	bad [5] 22:12.17 23:3	broken [1] 20:13
3 [5] 24:13.13.14.16 33:22	52:1		28:23 68:16	building [1] 46:5
30 [1] 68:3	Absolutely [2] 21:7	always [12] 22:11.16 26: 27:17.22 28:5 38:8 40:17	ball[1] 57:15	buried [1] 29:12
	67:18	40:18 41:9 63:4 64:18	barrel[1] 66:23	bums [1] 61:14
33 [2] 26:12 38:23	acceptable[1] 15:25	among[3] 3:5 26:8 41:8	base [1] 55:12	
3555 [1] 1:19	accepted[2] 26:11 35:25	Amysue [1] 2:2	based [7] 10:19 17:5 47:5	- <i>C</i> -
3:00 [5] 19:13 23:12 24:3	accredited [1] 7:19	analysis[1] 41:7	49:25 55:6.8 57:16	C _[2] 2:6 24:13
53:3 54:14	accuracy [1] 46:23		basement [3] 20:3.13	C.V [1] 42:15
A	acquiring[1] 25:23	analyze[1] 41:8	33:12	canal [1] 18:18
-4-	acronym[1] 50:10	anatomic[1] 17:11	basis [1] 63:4	
4 [1] 33:22	acted[1] 11:5	anesthesia [2] 50:15.20	beam [5] 16:12.13.20 60::	canceled [1] 44:14 .
43[1] 4:4	action[1] 71:18	angle [1] 66:23	60:4	cancer [72] 6:10 8:17
43215[1] 2:4	active[1] 42:4	angles [1] 16:20	bears [1] 36:24	14:25 20:11.20 21:17.23 22:4 23:17 24:24.25 25:7
45662 [1] 2:9	addressed[1] 65:9	annual [2] 7:7.8	became [2] 27:4 33:6	25:18.22 26:1.4.13 27:19
	autresseu[1] 03:9	annually [1] 34:14	occanic [2] 21.4 55:0	27:23.25 29:2.6.17.17
			l	Index Dece 1

RENO & ASSOCIATES (740) 947-9001

Case No. PI-98-401	_		S	phen J. DeVoe, M.D.
33:4.11.18.21.25 34:11		1	consists [1] 7:5	diecisions [1] 57:16
34:19.23 35:6.7.10.11.13	37:11.13.24 38:20 45:22	1 1	consult [3] 39:8.9.9	deep [1] 57:21
35:16 37:6.16.17 38:7.8.8 38:15.20.24 40:3 41:4	46:4 52:22 55:1.6.8.20 58:19 59:3 62:20	163.10.50.10.63.9	consulted[1] 39:13	Defendant's [2] 5:1 53:2
45:23 46:4 47:1.7.13		Columbus or 1,10 2.4	continuation[1] 29:16	lefendants [4] 1:11.14
51:24 52:13.22 54:22 55:1	12:22.23 13:1.3.6.8.12.14	5.126.22	continue _[2] 34:14 67:15 convenience _[1] 69:22	2:10 3:8
55:6.8.12.20 58:19.20 59:3.10.11 60:7 62:7 69:7	13:17 14:9 16:20.21 18:16 19:9.11.21 20:2.12.17.22		conversation [6] 47:20	lefense [5] 43:16.19.23
69:11	20:23 21:17 22:4.22 23:18	coming[3] 13:15 16:23	48:1.8 51:8 58:4.5	44:18 45:10
ancerous [3] 24:22.22	24:5.9 25:24 27:20 28:5	commencing[1] 1:20	conversations [1] 47:24	definite [1] 51:7 definitely [3] 14:20
25:11	29:13.18 32:18 33:11.17 33:18.19 34:7.18 35:15	comment 171 23:67	conviction [1] 37:22	15:18 68:4
ancers [4] 18:21 25:16 37:11.13	36:4 38:7.8 47:2 50:9.14	35:20 36:24 38:2 41:14	copies [1] 12:18	definition [1] 20:11
innot[1] 57:6	51:24 55:16 56:3 62:8.13 66:14.19.24.25 67:1.4		copy _[2] 17:22 18:2	definitive[4] 28:2 29:19
anos [31] 1:910:13.21	69:2.3.5.12		correct[42] 14:17.18 20:18 34:19.20 43:19	29:21 51:6
0:22 11:4 13:25 16:1	chance [9] 15:3 21:19.21	comments [1] 36:19 commission [1] 71:24	44:19.20.22 45:5.8 46:6	definitively[2] 29:15 32:20
23:3.19 26:16 28:15 31:3 11:12 47:22 48:20.22 49:4	29:15 33:24 34:10 36:5 56:4 69:6	ommissioned [1] 71:5	46:21.24 47:7 48:2.5 49:24 50:5 53:9.24 54:1.2	degree[2] 41:24 52:1
53:8.8.8.12 54:9.12.21	chances [2] 34:3 69:10	20MMON[1] 1:1	54:4.17.22 55:9.16 56:5	degrees [1] 34:2
10.9.0 22.44 07.44.42	change [3] 38:21 68:1	ommunity[1] 26:5	56:21 57:6.9.20 58:6.21	delay[1] 59:4
aption[1] 71:15	69:1	ompared[1] 36:2	60:5.19 61:22 62:10.22 67:10 71:13	deliver[1] 5:24
arbon[1] 16:13	changes [4] 25:1 26:6	ompetent [4] 66:14.19	ounsel[2] 1:18 3:5	delivered [2] 28:19
arcinoma _[32] 6:7.9	36:1 37:24	66:20 67:5	ountry[1] 49:14	43:12 dolivorutu 5:24
3:16 18:8 19:5.10.14.20	chapters [2] 42:16.20 character [1] 3:12	ompleted [2] 7:25 71:15	COUNTY [2] 1:1 71:3	delivery[1] 5:24 Denise [4] 1:16.22 71:4
20:9 21:9.15 22:6 23:12 24:17.21 26:7.22 29:23	characterization [3]	ompletely [2] 22:23	:ouple [3] 42:14 47:21	71:23
30:6 31:17 32:2.6.15 33:5	15:14.18 48:11	29:2	64:10	depending [3] 25:3
34:19 35:2 38:3 52:9	charge[10] 9:6.8 44:25	:ompliant[1] 56:22	:OUTSE [12] 6:6 8:6.16.18 8:24 13:21 19:2 22:8 33:1	33:25 34:4
55:16 56:3.8 59:6 are[10] 5:21.22 9:3	45:2 63:7.9.11.13.14.15	complication [2] 41:1	38:16 41:21 62:6	deponent[1] 1:19
10:24 11:1.6.15 42:11.12	charges[3] 44:23 63:13 63:19	67:3 complications [1]	court [6] 1:1 9:24 12:12	deposes [1] 5:7 deposition [22] 1:13 3:6
63:10	chemotherapy[1] 58:1	40:25	44:8.11.12	3:10 5:10 12:6 36:6,17
areer [1] 42:18	child _[1] 66:15	:omputer [1] 71:12	courts[1] 9:1	38:1 40:8 44:1,1 45:4 48:2
arrying [1] 11:14	children [7] 64:15.18.24	:oncern [1] 23:6	cream [1] 16:17 criticism [1] 46:22	48:15 49:25 50:1 54:20 58:2 70:11 71:9,13.14
ase [35] 1:7 8:17 9:11.13 9:19 10:14.18 11:8.14	65:7.11.16 66:6	:oncluded [1] 70:11	DOCC EXAMINATION [1]	depositions [9] 9:1
16:1.12.13 17:15.21 19:1	choice [2] 40:9.21	conclusion [2] 7:21 23:9	43:1	10:12 11:17 44:2 45:7
22:10 23:1 25:10.14 30:14	choices[1] 41:10	condition [5] 15:8 25:5 26:3 29:10 61:4	crystal[1] 57:15	47: 16 62: 18.22 69:19
30:16 34:6 36:24 41:3.12 43:24 44:5.13 46:23 49:21	choose[3] 32:20 41:8 51:8	conditions [1] 36:25	curative[1] 26:21	describe[2] 19:19 24:12 described[5] 14:7 15:5
51:12 56:20 59:23 67:7	chose [3] 39:14 40:3.6	cone [45] 11:22.23 12:20	cure [3] 28:6 33:14 55:21	15:7 19:11 38:3
68:10	circle [2] 16:19 19:3	13:5 15:25 16:7.10.17	cured [3] 34:12.15 41:17	describes[1] 19:20
ases [18] 7:23 8:1 9:16 9:17.19 10:2 24:24 25:2	circular[3] 13:3.7 19:6	17:1 18:23 22:9.11 23:19 24:7 27:6 28:22 32:17	cut [4] 15:2 16:14 50:13 61:16	describing [2] 33:13
26:3 29:5 30:13 32:16	Circumference ^[1] 19:	34:24 46:14 49:23 50:2.3	cuts [2] 60:2 61:12	66:2
44:9.16.18.19.24 46:13	circumferential [4]	50:7.8.8.15.16.17.23.23	cycle[1] 67:21	description[3] 19:4 20:1 24:11
:at [1] 36:16	18:8.25 19:10.20 circumstances [1] 11:'	51:2.3.4.5.7 52:12 53:1.5 53:13 59:20 60:8 66:13	cytologist _[2] 14:12	designed ru 14:16
<pre>:auses[1] 25:1 :avity[1] 18:19</pre>	Civil _[2] 1:15 3:8	67:4.7 68:9	45:19	destroy [1] 60:3
cell [1] 18:14	clearly [1] 66:1	cone-shaped[4] 11:24	-D-	destroyed [4] 60:13.17
cells [24] 13:15 14:8.10	clinic [2] 8:9.10	13:13 16:16.21		60:19 61:16
14:16.20.2 1 18:15.15,17	clinical 121 7:24 42:5	conization [3] 14:2 15:23 16:5	D [1] 24:13	destructive [1] 25:3
18:18.20 20:11,12,21 23:17 25:1.24 38:7 60:3	clock [4] 19:12.23.25	conizations ^[2] 23:21	damages [1] 25:24 danger [1] 27:18	detectable[1] 35:14
60:24 61:14.16.18 69:2	24:6	23:23	data [1] 56:7	deteriorate[2] 14:10
certain [3] 37:11 40:23	close [10] 5:13 27:8.14 27:16.25 31:4 41:18 50:2	connected [1] 50:13	daughter[1] 65:1	develop[12] 18:21 24:23
57:14	51:10 61:22	connective [1] 67:1	deal [1] 59:11	25:4.1 1.22.23 26:3,13
certainly [1] 61:23	closely [1] 52:21	consider[5] 26:20 39:6 45:21.24 46:1	dealing [1] 7:9	27:24 34:13 37:11.13
CERTIFICATE [1]	001000[1] 7.25	considerable[2] 25:6	dealt[1] 9:15	developed [3] 11:21 33:4 56:2
	College [1] 7:4	34:4	deaths [1] 22:3	developing[4] 25:7
certified [5] 5:7 7:12.15	colposcopic[2] 51:13	consideration [2] 27:10		38:23 68:15 69:6
7:16.17	51:17 colposcopies[2] 59:7	32:14	decided[1] 59:16	development [2] 26:1
certify[1] 71:6	62:1	considered [2] 30:8 52: considering [1] 24:5	decision[2] 55:6.8	30:22
cervical 14:2.25	1		l';	Ladar Dass (
RENO & ASSOCIA	лтес			Index Page 2

ase No. PI-98-401			Ste	phen J. DeVoe, M.D.
levelops [1] 59:10	down [11] 13:1 15:2	escaped[1] 33:4	22:21.25 23:25 32:16	followed [4] 28:10 52:23
levice[1] 15:13	16:17 20:5 21:22 30:10 35:22 62:13 65:18 66:24	:scapes [2] 21:16 33:12	33:16 34:3	56:23 57:1
DeVoe [8] 1:13 3:7 5:5	69:5	Esquire ^[2] 2:2.6	extraordinary[1] 64:3	following[2] 52:12.21
5:11.17 55:14 58:2 71:7 liagnose [2] 11:25 13:16	downsides [1] 40:20	Essig [11] 10:13 36:6.15 38:17 47:17 66:8.12 67:8	-F-	follows[1] 5:7 foregoing[1] 71:12
iiagnosed [3] 21:19	dozen [1] 46:13	67:11.14 69:9		formal[1] 68:25
25:18 37:4	Dr [39] 5:11 10:13.21.22	Essig's [2] 36:17 38:1	¹ Face _[3] 19:11.25 24:6 ¹ Face-to-face _[1] 48:1	forth[2] 1:18 34:18
iiagnoses [1] 17:13	23:18 28:16 36:6.14.17 38:1.17 47:17.22 48:20	estimate [2] 45:9 46:17	1Faced [1] 22:6	found[2] 35:4 62:7
iiagnosing [1] 29:9	48:22 49:4 53:7.8.8.12.17	estimated [1] 46:16	iFact [20] 10:6 14:24 23:5	foundation [1] 70:7
iiagnosis [12] 5:23 6:2	53:24 54:7.12.21.21 55:14	estrogen [2] 67:16.20	26:11 28:14 29:23 30:17	four [6] 24:10,12 50:10
6:9 8:23 17:5 45:22.24.25 46:1 51:2.4 52:13	58:2.4.8 59:22 66:8.12.13 67:7.11.13.14 69:9	et[2] 1:3.9	31:3.6 32:14 34:22 35:25 39:10 40:4 43:8 46:3.21	51:13 52:10 57:3
iiagnostic [2] 15:8 51:7	drawing [3] 12:1 18:1 1	evaluate [1] 11:19 evaluated [1] 14:11	48:4 55:20 56:25	four-month-old [2] 65:1.6
iiagram [2] 12:5 66:21	19:8	:valuation [1] 15:20	fFacts [3] 9:20 11:18.20	four-year[1] 6:19
lie [4] 22:1 56:3.4 58:17	Drs [10] 10.13 11:4 13:25	evasive[1] 59:14	Faculty [2] 7:3 8:8	fractions [1] 61:15
lifferent [3] 18:14 27:13	16:1 23:3 28:15 31:3.12 64:22.23	evening[1] 45:1	fFailure[1] 29:7	free [5] 13:23 18:12 35:10
63:10	due[4] 24:25 35:8 68:18	:vent [1] 39:3	Fairly [1] 31:1	35:11 61:14
iigest [1] 18:10 liligence [1] 11:6	69:8	evidence [4] 18:4 48:13	iFall [1] 34:25	frequent[1] 27:18
iimension[1] 20:2	duly[3] 5:6 71:5.7	48:16 58:24	False [5] 51:23.25 55:7.9 55:12	frequently[2] 60:15
lioxide [1] 1613	during [9] 6:1 12:22 23:19 48:1 49:25 52:23	exactly[4] 16:6 17:19 20:25 56:14	False-negative[8]	front[3] 12:9 13:10 24:15
DIRECT [1] 5:8	57:1 58:2 59:13	20:23 30:14 exam [5] 7:22 8:1 35:15	14:24 15:3 29:4 51:15.16	function [4] 7:7 9:22,24
iirection [1] 13:9	dying [5] 21:20.22 33:24	51:14.17	51:21.24 60:11	68:2
lisagree [1] 15:13	34:3 41:4	examination [6] 4:1 5:8	Familiar[2] 43:5 49:6	
iisagreed [2] 36:20 66:8	dysplasia[2] 37:15	7:21 12:23 18:7 64:8	Family[1] 39:10	<u>-G-</u>
iisagreements [1]	68:15 dysplasias [1] 60:24	EXAMINED [1] 4:2	far [3] 33:20 61:18 63:16 Farther [1] 20:21	gather[1] 68:16
38:17	uyspiasias [1] 00.24	Examines[1] 17:14	fashion [4] 21:10,10	general [5] 6:14 11:9
lischarged [1] 43:9	-E-	example _[1] 40:25 excellent _[1] 32:23	66:14 67:9	40:12 50:20 55:17
iiscovery [2] 45:3 48:2 liscuss [1] 51:5	early [4] 37:5 46:13 53:25		fat [1] 58:14	generally [2] 26:11 51:20
discussed [2] 27:7 51:3	54:3	excise [1] 16:15	fatal[1] 21:18	gentlemen[1] 5:15
disease[33] 4:8 19:16	easy [4] 40:17 49:6.10.13	excised [1] 16:18	February [6] 10:23 28:17	girl [2] 48:12 67:25
21:18 22:21.25 23:16	edge[2] 32:17 60:4	excision [1] 50:12	39:4 54:22 55:1.11	given [9] 9:3 17:16 29:10
26:23 27:23 29:12 30:8.8	edges [2] 19:15 32:16	excuse[8] 45:7.25 48:10	fee [1] 63:15 few [5] 23:10.24 29:4	39:16.25 41:23 50:3 71:10 71:13
30:10 32:17 35:1.18 37:4 37:10.20 41:5.17.20 52:18	education [4] 6:12.25	48:15 49:18 58:22 59:19 60:15	42:10 61:15	goes [8] 16:19 19:10.22
55:18 57:8.13.20.23 60:12	8:14 10:20 effective[1] 29:9	Exhibit [4] 5:1 12:9 24:2	field [3] 7:18 8:1 17:10	19:24 21:16 24:17 30:18
60:13.17 62:15 67:23 69:	either [3] 29:16 35:12	53:2	final[2] 29:20 31:16	60:21
diseases [2] 6:3 60:23	55:2	EXHIBITS[1] 4:7	finally [4] 29:18 39:18	gone[2] 49:23 69:12
distance [1] 19:3 . divide [1] 24:9	elected [4] 28:9 39:18.23	existing[1] 29:17	40:10 69:9	good[8] 7:8 14:6 39:16 43:5 51:18 52:3 55:15
doctor[32] 5:14.19 6:13	64: 15	expect[1] 54:12	financially[2] 65:3	68:2
9:19 10:8 12:22 16:25	electrical ^[2] 50:11.13	expense [1] 65:11	finding[1] 37:17	graduated [1] 6:16
21:5 24:7 29:15 31:25	eliminate[1] 34:8	experience [4] 6:13 7:24 8:7 10:21	fingertips [1] 13:13	grammar[1] 38:10
33:2 34:17 41:11.21 42:2 43:3 46:22 48:18 49:21	eliminates ^[1] 34:10 eliminating ^[1] 61:8	expert[10] 9:23 14:11	finish[2] 7:19 15:11	great[1] 41:9
50:21 52:25 55:5 58:23	emphasis [2] 53:14	43:23.23 44:6.8 45:21.25	first [14] 5:6.22 12:21	greater[2] 55:22 68:15
59:18 60:6 62:6.17 63:6	54:13	45:25 46:1	18:10 25:5.25 37:4 46:21 47:25 48:17 51:1 58:9.19	grouped [2] 26:6.9
64:5.10 69:15 doctor's [1] 70:1	employed [1] 71:17	Expires [1] 71:24	71:7	groups [1] 35:23
doctors [6] 8:7.11 10:3	encompass [1] 6:8	explain [14] 16:8.9 18:6 18:10 27:12 33:7 48:19	five [4] 33:24 36:1 56:4	grow [1] 18:20 guarantee [1] 23:2
33:7 36:12 40:7	end [4] 28:6 62:15 65:7	50:6.7 51:6 60:6 66:18	58:17	guess [7] 5:22 39:4 42:9
documents [1] 10:20	69:12	67:19 68:22	five-day [1] 63:24	45:16 46:17 66:20 69:22
doesn't [6] 17:3 35:10	energy [1] 16:14 ensure [5] 22:7.11.16.18	explains [1] 9:23	fix [1] 14:10	guessed[1] 45:15
38:8 41:9 55:23 62:15	23:3	explode[1] 61:14	fixed [1] 17:3 focus [1] 42:18	gynecologist [7] 7:7
done [35] 10:10 11:6 16:5 16:11 17:1,21 20:22 22:10	entire[1] 20:23	exposed[3] 69:3.4.5	folks[1] 20:19	22:5 27:14.16 28:10.14 31:4
27:9 32:20 39:1 40:1	epidemiological[1]	express[1] 9:2	follow [2] 31:3 51:12	gynecologists [1] 40:12
46:14.18 47:6.9.20 48:12	35:22	expressed[1] 10:3 extend[2] 23:13 24:18	follow-up [17] 16:1 27:8	0
48:18 50:18.23.23 51:4 53:1 54:2.7.22 56:13.25	equipment [1] 63:23	extending[3] 23:14	27:14.16 28:1 31:4 40:1	5:21 6:2.22 7:1.6.18 8:13
59:20 62:9 63:3 67:4.8.13	eradicate [1] 60:25	26:23 28:24	41:19 50:2.24 51:11 52:8 52:14 59:12.13.17 61:22	
doubt [1] 46:22	escape[2] 21:1522:7	extensive[8] 19:4 20:6	22.17 27.12,17,17 01.22	-H-
l		J		

Case No. PI-98-401			516	pnen J. Devoe, M.D.
half [3] 7:6.6 41:21	10:22 11:8 21:21 26:21	52:5	59:22.25 60:16.16 61:10	34:17
hand [3] 13:11 57:17	27:13.22 28:2 29:18 31:20	interpreted [1] 53:21	61:12.19	loop [1] 50:11
71:20	32:5.10.21.24 33:3.16 34:8.22 35:5 39:6.19 40:3	interrupted[1] 16:8	last [6] 41:7.21 43:8.14	loss [1] 67:3
handful [2] 42:17 44:10	47:6.9.21 50:4 55:7 57:6	intraepithelial [2] 4:8	44:15 46:19	lost [1] 56:17
harmless[1] 38:14	58:10.12 59:5 61:24 62:5	26:10	late [1] 21:19	low-grade[1] 28:18
healing [2] 53:20 60:14	62:9.16 63:8.12.16 64:1 64:16.18 67:12	invade [1] 21:11	Laura [1] 53:24	lucky [1] 65:3
health [1] 65:12	04.10.10 07.12	invaded [2] 20:21 33:18	law[1] 70:2 LAWRENCE[1] 1:1	lymph [2] 55:19.21
healthy [1] 31:8	-T-	invasive[32] 14:25 20:17 21:17 24:25 25:7	lawyer [1] 43:16	
hear [1] 48:9	·	26:1.3.13 27:24 29:6 33:6	lawyers [3] 9:1 11:3	<u>-M-</u>
heard [5] 14:4 15:5.7 20:7 47:20	idea [3] 38:17 62:12 63:20	33:12.13.21 34:11 37:2.6 37:17 38:9.24 40:2 41:4	36:12	M.D [5] 1:14 3:7 5:5 17:8 71:7
hears [1] 6:5	identification [1] 5:2	45:22 46:4 52:17.22 55:16	llead[1] 25:24	MADISON [1] 71:3
heart [1] 67:23	identified [3] 18:4 20:14	56:2.8 59:6.10.11	lleading[2] 15:15 21:2	magnifying[1] 27:20
heat [1] 60:16	53:2	involve[1] 27:17	leads[1] 28:6	major [1] 38:17
heated [1] 60:3	identify[2] 15:20 16:5	involved [5] 6:24 8:14	lleaps[1] 37:25	majority [4] 25:22 37:9
heats [1] 61:13	illustrated [1] 50:18	10:4 20:5 43:14	llearned[1] 32:5	37:13 44:17
heavily [2] 6:24 8:14	imagine[1] 39:2	involvement [1] 55:21	lleast [8] 9:16 10:6 14:13	makes [2] 40:21 61:13
Hello[2] 43:3.4	immune[1] 60:22	involves[2] 14:8 20:1	24:11 27:8 51:7 61:8 62:11	malignancy [3] 20:16
help[1] 12:1	important[2] 36:23	involving [1] 8:1	leave[1] 66:19	30:22 34:2
hemorrhage[1] 41:2	61:21	issue[4] 64:17.17.20 65:9	leaving[2] 67:14 68:3	malignant [2] 20:11 34:1
hereby [1] 71:6	inadvertently [2] 23:18	issues[1] 64:14	lecture [1] 8:20	malpractice [2] 23:20
hereinafter ^[2] 1:18 5:6	31:7	itself [1] 32:24	led [1] 37:22	43:19
hereto[1] 71:17	incision [1] 13:5 including [3] 18:2126:7		LEEP[8] 50:2,7,8,9,12	man [1] 14:7
hereunto [1] 71:19	69:3	- J-	50:19.23 51:2	managed [1] 63:10
high [4] 2:3 16:14 51:14 57:22	incompetent [1] 67:4	J [3] 1:13 3:7 5:5	left[8] 19:14.16 23:17.18	management [8] 5:24 6:2.9 7:9 8:15.22 11:5.13
high-grade[3] 26:10.12	incorrect[2] 58:18 59:8	January [1] 71:24	24:15 60:4 66:14 67:13	managing [2] 11:8 52:21
61:5	increase [1] 29:25	judgment [1] 39:15	legal [1] 11:2	manner [2] 19:7 67:5
high-risk [2] 8:9.10	increased[2] 33:5 59:5	July [3] 1:20 3:2 5:12	Legitimate [3] 27:25 38:9 61:23	March [3] 39:4 62:12.15
higher [2] 36:1 42:7	Indeed[1] 43:7	jump[1] 37:16	Length [1] 64:12	margin [5] 26:22.24
highly [1] 34:11	INDEX [2] 4:1.7	jumped [1] 37:20	Lesion [7] 22:13,14 23:4	28:24 53:4 61:18
himself [1] 49:2	indicated [2] 8:3 68:11	June [2] 70:10 71:21	25:11 28:24 53:4 68:16	margins [6] 23:13.15
hindsight [1] 47:14	indication [4] 56:11.19	jury [13] 5:15 6:5 7:14 11:16 18:11 21:14 24:3	lesions [4] 24:22.22	24:18.19 33:4 35:1
hold [3] 19:18 24:2 67:2	62:17.24	27:12 33:7 49:15 50:7	26:10.12	mark [1] 24:4
home [2] 65:1.6	infection [1] 24:25	66:18 67:19	less[1] 63:16	marked [6] 4:7 5:2 12:3 12:4.9.13
honesty [1] 45:12	inflammation [1] 53:20		letters[1] 50:10	marking [1] 12:5
hope [1] 51:24	inflammatory [2] 60:22 61:3	-K-	level [1] 52:4	matter[3] 24:8 40:20
hopefully [1] 59:13	influences [5] 30:4	keep [2] 65:2.6	life [1] 68:1	50:20
hormone [2] 67:2168:5	68:24 69:1.2.8	kids[1] 65:2	life-threatening[1]	matters [1] 9:24
hospital [13] 5:12 6:18	informal [1] 9:16	kind [3] 16:10 30:6 63:5	29:6	may [13] 3:9.10 5:25 9:3
43:10 50:3.16.17.18.23	information [4] 53:7	kinds [1] 33:9	lifetime[1] 35:10	22:1 25:4 32:9 36:11 38:4
51:3 63:4.13.18.22	55:9.13 57:16	Kip's [1] 43:15	light[2] 16:12 60:3	48:12 58:12 59:1 68:18
hospital's [1] 63:22	informed [1] 40:9	knew [1] 40:6	likelihood [1] 29:25	mean [13] 14:20.22 18:25
hospitalization [1] 63:24	infrequent [1] 32:7	knife[1] 50:19	likely [6] 30:7 34:15.15 38:19 57:18 68:10	19:21.22 21:11 23:15 35:6 35:9.10 51:10 58:12 61:10
	injury [1] 41:2	knowing [2] 61:18.19	limited [2] 20:12.16	
hospitals [1] 44:21 hot [2] 50:12.14	instance[1] 39:14	known [3] 34:22 36:8	limits[1] 23:22	meaning [2] 38:11 67:16 means [12] 7:15.18 19:3
hour [6] 41:22 44:24 45:1	instantly [1] 38:9	47:8	line [2] 13:6 18:18	19:5.15.24 20:11 22:14
45:2.4 48:3	instead [1] 62:9	knows [3] 39:25 40:2.4	lining[4] 18:16 20:3.14	23:16 58:11 66:5,19
HPV [5] 30:21 63:4 68:24	institution[1] 6:20	_1_	20:15	meant [1] 50:7
69: 1.3	instructing[1] 8:7	-L-	local [1] 50:15	medical [20] 6:13.16.24
Human [1] 68:19	instrument [2] 13:2	L [3] 1:16 71:4.23	localized [1] 19:21	7:2 8:10.19.22 10:7.8.12 10:23 11:1.13 14:23 29:8
hundred [3] 29:9 56:4	16:14	lacking[2] 70:1.4	London [1] 71:20	41:12.22.24 43:19 47:16
58:16	intentionally [1] 31:7	Ladies [1] 5:15	longer [1] 37:23 ·	medically [1] 23:15
husband [10] 26:16.25	interested[3] 18:22.24 71:18	lady [9] 15:22 20:20	look [8] 12:24.25 13:3	medicine [6] 7:4 40:12
39:9 40:5 48:9.19.19.21 48:23 56:15	internal [1] 68:5	29:16 33:3 34:9 38:6.18 66:15 68:15	17:11.23 27:20 44:16	40:22 42:5 46:7 57:15
hysterectomies [2] 32:1		lady's [2] 30:16 69:10	47:11	meet [5] 10:23.25 11:12
46:14	internship [1] 6:17	large[1] 35:23	llooking[6] 12:22 13:10 13:11 24:5 52:7 66:22	18:15.19
hysterectomy[41]	interpretation[2] 7:9	laser [9] 16:12 50:19	looks [3] 13:9 16:17	meetings [1] 9:17
DENO & ASSOCIA			100 mo [0] 100 x011	Inday Daga 4

Case No. PI-98-401	•	******* # # 5 ~		phen J. DeVoe, M.D.
member[1] 8:9	nature [1] 41:9	61:7	osteopathic [1] 17:9	pen [1] 66:24
members [1] 39:10	navy [2] 6:20 46:10	obstetrician-gynecologist	ours [1] 63:15	Penn [1] 7:20
membrane [4] 20:4.13	near[1] 25:7	6:14	outside [2] 18:17 20:21	Pennsylvania [1] 6:18
33:12 36:4	necessarily [3] 15:8	obstetrics[9] 5:18.19 5:21.22 6:21.25 7:6.18	ovarian [1] 68:2	people [12] 22:1 30:2
menopause[1] 64:19	36:13 40:11	8:13	ovaries [5] 58:13 67:13	33:15 35:19.22 37:10.14
mentioned [1] 6:7	necessary[1] 68:10	obvious[1] 40:18	67:14.24 68:3	37:22 38:22 42:13 65:20 67:20
met [1] 49:4	need [4] 15:20 18:11 27:7	obviously [5] 26:14	overbroad [1] 41:15	percent [18] 14:25 26:12
microscope [8] 14:11 16:24 17:6.12 18:23 20:15	negative [8] 29:7 46:15	29:20 31:19 36:3 38:22	overwhelming [1] 61:8	29:5.9 38:23 42:3.9 45:6
22:20 34:1	49:24 51:23.25 54:16 60:7	occasion [3] 8:20.25	own [4] 64:22 65:9,12 68:5	45:7.10 55:22.24.25 56:1
microscopic [6] 18:7	62:10	9:10		56:4.18 58:15 61:5
23: 17.24 24:22.24 52:13	neoplasia [2] 38:4.11	occupying[1] 18:9 occurred[1] 48:16	-P-	percentage [4] 33:24 42:7.8 60:20
microscopically _[1] 22:19	never[1] 57:15	occurrence[1] 35:19	p.m [2] 1:20 70:10	percentages[1] 26:2
middle[1] 16:20	new [7] 18:20 29:17 30:10 30:10 33:5 41:20 43:11	occurs [1] 30:9	P.O [1] 2:8	perfect [1] 35:12
	iext[2] 37:5 44:15	Off [6] 14:8 32:18 33:18	pace [1] 25:12	perform[1] 63:7
24:3 27:24 48:23 56:7	node[1] 55:21	48:24 51:1 56:13	Page [2] 4:2.8	performed[3] 35:6
62:19	nodes [1] 55:19	offer[2] 62:4.4	palm [1] 13:11	49:23 57:6
mild [1] 37:14	Noel [16] 1:3 10:12.13.22	office[3] 46:5 50:14	pap [62] 7:7.10 11:22.25	perhaps [5] 12:1 36:19 41:14 66:8.11
millimeters[1] 61:15	11:5.21 13:25 26:19 37:2	71:20	13:15.17 14:3.4.6.15.15	period [1] 37:1
mind [3] 15:25 39:21 65:5	37:3 39:5 41:17 64:14.21	offices[1] 1:18	14:19.23 15:1.3.5.7.18.24 16:2.3.22 24:8 26:1 27:18	periods [1] 67:25
1minor [2] 30:18 51:25	67:16 68:1 moncompliant [1] 56:20	official[1] 3:12	27:21 28:17.19.25 29:3.7	
iminority [2] 25:15.21	None [1] 55:10	often [3] 7:8 40:12 44:7	29:8.11 30:6.18.19 32:9	persistent[4] 21:22 29:12 30:8 62:15
minute [5] 17:25 21:8 44:15 48:11 58:23	nonpregnant[1] 6:4	Ohio 1181 1:1.15.17.19.25 2:4.9 3.8 5:12 6:16 7:2.3	34:14 35:12 46:15 49:24 51:13.14 52:10 53:13.18	
minutes [4] 5:13 23:10	nonresponsive[1]	8:4 70:2 71:2.5.20.23	53:18.20.23.23 54:2.12	person [3] 9:23 37:18
23:24 29:4	57:25	old [1] 37:19	54:16.21 55:11 56:25 57:3	personnel [1] 63:23
mischaracterizing[1]	monsmokers[1] 36:2	Olentangy-River[1]	59:7 60:7.11.11 61:25	pertinent[2] 11:18.20
15:6	mormal [11] 7:7 14:12	1:19	Papillomavirus [1] 68:20	Pettit [1] 28:16
miss [2] 51:15.25	15:1 28:20 29:1.11 30:18	once [7] 17:14 27:6 28:22	part [5] 5:22 7:6 20:15	Philadelphia[11 6:19
missed [3] 15:4 47:1	32:9 53:24 54:6 60:12	30:4.5 33:11 35:13	28:23 59:1	phone [3] 48:25 49:10
60:10	normally [1] 63:11	one [44] 9:9.11.18 10:6 12:8.12.15 17:10 19:22	particular [4] 6:15 16:11	phrase [3] 6:6 14:4 20:8
mistake ^[2] 51:1 55:3 misunderstood ^[1] 55:2	notary [6] 1:16 3:10.11 3:13 71:4.23	22:9.11 23:13,14.22.25	18:24 43:24	physician [6] 5:1817:9
moderate [1] 37:15	notes [2] 13:20.22	24:11.18 25:17.18 27:15	parties [2] 3:6 47:16	17:17 40:13 65:8.25
moment[1] 56:17	nothing [1] 71:8	29:23 30:20 31:11 36:15 36:23.23 38:22 40:21 44:5	partner [1] 43:12	physicians [8] 8:12.19
month [1] 44:15	motice [2] 1:17 13:20	44:12.14.14.15 50:8.17	parts [1] 24:12	9:3 11:5 39:13 44:18.21 46:4
months [7] 7:25 27:11	November[5] 14:1	50:25 52:4:12 53:22 57:2	party [1] 71:17	PI-98-401 [1] 1:7
51:13 52:10.11,11 57:3	15:23 26:15 27:5 28:9	58:23 64:13 65:18 68:7	past [4] 9:14 10:1 33:22 39:16	picture [6] 12:21.24 13:4
moon [1] 35:13	mow [47] 14:4 15:22 16:25	ongoing[1] 44:10	pathologist [14] 14:12	13:10 24:7 66:22
most [11] 14:23 29:8.19	17:7.14 19:17 20:7 21:5	onto [1] 14:9 operating [4] 16:11	17:4.7.8.14.15 19:19	piece [7] 11:24 13:8.13
29:21 36:23 37:23 38:18 38:20 40:22 65:20 68:10	25:15 26:14 27:12 28:8	22:21 24:1 50:19	22:24 23:2 24:8.17 45:17	16:16.18.21 24:12
mother [4] 26:25 39:9	31:19 36:5 37:7.12 44:10	operation [1] 33:16	47:1.11	pieces [1] 24:11
40:6 41:9	44:24 47:10.15.19 48:7 49:21 50:6.16 52:25 53:7	operator [1] 16:19	pathologist's [1] 19:4	place [2] 51:9 71:14
mouth [1] 12:23	55:5,14 59:18 60:5 61:10	opinion [10] 10:21.25	pathology [15] 17:10.11 17:22 18:4.7 20:19 23:1	placed [1] 40:13
move [4] 21:1 57:24	63:6 64:2 65:8.17 66:7	11:3.10.11.12 31:15 39:5	26:5.14 28:22 34:16 35:11	plaintiff's [5] 44:6.8.9 44:13 45:12
65:22 69:25	67:11.22 69:11.12 70:4 number [9] 9:5 21:25	40:7 41:22 opinions [4] 9:2 10:3.16	46:23 62:7.25	plaintiffs [4] 1:5 2:5
Mrs [14] 10:12.13.22 11:5 11:21 13:25 26:19 37:2	25:12 30:21 37:11 42:19	41:23	pathway [2] 40:24.25	9:13 45:8
39:5 41:17 64:14.21 67:16	40.10.440.00.00	opportunity[2] 40:4	patient [21] 12:25 14:25 17:18 21:19 25:4 28:7	PLEAS [1] 1:1
68:1		49:17	29:6 32:8 41:7 42:11	plus [2] 58:12 67:1
Ms [20] 4:4 9:12 15:10.15	-0-	opposed [2] 27:13 66:19	49:22 50:22 51:11 56:20	point [15] 18:3 20:8.17
20:24 21:1.24 41:15 42:22 43:2.4 49:20 57:24 58:1	oath [1] 36:18	opposite[1] 38:12	56:22 62:2.4.4 63:25 65:15 66:1	26:19 28:9 31:14.23 35:6 37:2 39:12 52:6 59:12
65:14.19.22 69:18.25 70:E	OB[1] 8:9	option [8] 27:22.25 28:1		67:12 68:13 69:10
mucous [1] 18:17	OB/GYN [1] 6:23	50:4 61:23.25 62:3.5	patient's [4] 13:16 17:1 19:14 63:21	pointed [1] 40:5
muscle[1] 58:14	object [3] 48:11 49:19	options [7] 27:13.15 39:25 40:14.19 41:8 50:25		Portia [8] 26:15 39:4 53:8
	58:23	oral [1] 8:1	15:20 25:6.21.22 26:12	53:12 54:7.12.21.21
-N-	Objection [9] 15:10.15 20:24 21:1 41:15 57:24	order[2] 11:25 33:18	32:1.4.19 35:23 37:9.23 40:15.20 44:16 46:3 51:12	Portia's [1] 39:15
mame [2] 5:15.17	65:14.19.22	ordinary [1] 11:6	60:20 65:10	
mamed [2] 14:7 71:6	observation [2] 35:22	orientation [1] 12:21	peak [1] 25:18	portion [2] 48:4 58:3 Portsmouth [1] 2:9
DENO & ASSOCIA		1	1.*	Inday Daga 5

NUCI VS. Canus, CL al	•	******* * **** *	Q.	phen J. DeVoe, M.D
Case No. PI-98-401	0.00.00.00.00.00.00.00			
position [1] 40:14	30:23 37:5.7.21.23 38:18 progressive[1] 36:25	reasonably[2] 65:8.25 reasons[4] 25:1626:8	34:17.25 62:7	samples [2] 17:11.12
positive[1] 26:22 possible[4] 22:11,16,18	proof[1] 3:12	30:2 36:2	reported[1] 27:6 reporter[1] 12:12	satisfactory[1] 39:25
40:24	properly [1] 70:7	recent[1] 37:12	reports[2] 46:23 62:25	saw[3] 28:16 42:15 43:8 says[4] 5:7 54:20 56:1
postoperative[1] 33:1	provided[1] 12:4	Recess [1] 42:24	representing [1] 9:12	68:13
postpartum [1] 5:25	prudent [4] 22:5 65:8.25	recognize [1] 37:12	reproductive [1] 6:3	scheduled [1] 44:15
potential [3] 21:18 40:2	67:8	recognizing [1] 29:10	request [2] 9:17 10:11	school [1] 6:16
52:21	public [2] 1:16 71:5	recommendation[4] 27:5 31:15.20.23	required [1] 51:2	science[1] 35:12
potentially [1] 65:12 practice [7] 6:8.23.25 7:5	PUBLIC-STATE[1] 71:23	recommendations [3]	requires[1] 33:13	scope[1] 52:5
9:7 42:5 46:9	published [1] 42:16	26:19 40:15.19	residency[4] 6:19 7:19 7:22 8:15	scraping[1] 14:8
practiced [1] 6:21	purpose [2] 5:2 13:15	recommended[5] 26:20	residents[4] 6:25 7:1	scrapings[2] 53:15 54:14
practicing [3] 46:7.10	pursuant[1] 1:17	32:1 39:5 50:2.21	8:12.22	scratch[1] 30:11
49:12 procencer(1) 27:24	pursues[1] 64:4	recommending[3] 10:22 11:7.14	residual [2] 35:2 60:17	screening[2] 15:13.19
precancer[1] 37:24 precancerous[8] 25:4	put [3] 13:2 53:14 54:13	record [5] 5:10 7:25 23:8	respective[1] 3:6	seal [1] 71:20
30:19 35:25 37:3.9.16.19	putting [1] 14:9	28:13 59.1	respond[1] 65:21	second [3] 40:7 53:12 54:2
38:21	-0-	recording[1] 48:18	response [1] 60:22	section [3] 17:6 18:5
predictable [1] 25:11		records [14] 10:12.19 11:17 26:18 27:5 31:2.10	responsibilities [1] 42:10	19:12
pregnancy [8] 5:24 6:1 8:10 52:24 57:1 67:2.3.5	quadrant [3] 19:13 23:12 24:10	32:22 39:3 47:16 49:22	result [1] 22:25	sections[3] 17:5 18:8
pregnant [7] 5:23 27:4.9	quadrants[1] 24:9	62:18.21.25	retrospect [1] 35:5	24:10
31:6 52:15.17.19	qualification [1] 3:13	recovers[1] 64:3	reveal [1] 18:8	See [8] 13:3 14:12 18:23 22:20.24 35:23 43:5 62:21
preinvasive [3] 27:23	qualifications [2] 70:1	recovery [2] 32:23 64:4	review [13] 9:20 10:2.1	seem [1] 61:7
60:23 61:4	70:3	recur[1] 35:16 recurred[1] 35:7	10:19 11:17 28:13 31:2 31:10 36:5 39:3 44:10.18	sees [2] 12:22 24:7
premalignant [4] 26:6 60:24 61:6 69:7	qualified [1] 71:6	recurrence [2] 29:17	45:1	segment[2] 24:14.16
preparation [1] 42:12	quality [1] 9:2 quarrel [1] 31:22	32:15	reviewed [4] 9:17 47:15	self-evidence[1] 42:3
presence [3] 3:11 14:16	questions [6] 18:1 21:25	recurrent [8] 21:22 41:20	47:19 62:18	self-evident[1] 7:12
71:11	42:22 58:25 64:5 69:16	57:7.13.20.23 62:14 69:6	reviewing[4] 13:21 36:17 44:23 49:22	send[1] 22:24
present [7] 34:23 40:14 40:19 47:13 60:7.13 64:25	quibble[1] 38:10	REDIRECT [1] 64:8 reduced [1] 71:10	reviews [1] 45:7	series[2] 30:5 41:6 SESSION[1] 3:1
presented [2] 13:25	quick [1] 66:21	reducing [2] 18:18 67:22	right[30] 12:14 20:7.25	set[4] 1:18 6:22 70:7
15:22	quicker[1] 37:14	refer[2] 40:23 46:4	28:16 31:21 32:17 37:16 43:13.17 44:1.25 45:11	71:19
presenting [1] .48:14	quite [4] 8:11 45:12 49:14 68:23	reference[1] 18:6	47:14.17.18 53:6 54:5.8	set-offs[1] 66:2
presumably [1] 32:18	quote [4] 24:19 65:7	referral [1] 27:14	54:10.18.24 56:7 57:4	several [7] 7:24 8:21 9:16
pretty [5] 20:22 52:3 57:22 59:14 69:11	69:11.12	referred [2] 26:15 28:14	59:24 60:4 62:23 64:24 65:5 66:4 68:4	26:6.9 27:17 35:24
primary [1] 44:17		referring [1] 59:2	risk [13] 25:7 27:24 33:5	severe [5] 25:4 26:6 37:15.16 52:2
private [3] 6:23 7:5 46:9	-R-	reflect[1] 39:23	35:25 38:19.23 41:1.3.19	severely[3] 11:22 16:3
privileges [2] 69:20.22	radiation [3] 21:21 33:23	related [3] 30:1240:11 71:16	59:6 62:14 67:23 68:15	30:19
probability [3] 41:25	58:12 radical(5) 21:20 33:14	relationship [2] 35:19	risks [4] 40:20.24 41:6	seventy [1] 16:4
57:7.13	33:15 58:9.10	62:19	Riverside [5] 5:11 6:23	share [1] 36:22 shelved [1] 37:8
problem [i2] 8:23 13:18 23:11 30:7.11 31:16.22	range[1] 53:3	relevant [2] 11:1.13	7:1.3 8:13	Shoemaker[4] 1:16.22
34:12 52:20 61:17 62:20	rapid [1] 30:22	relying [1] 61:17	toad [7] 1:19.24 21:22	71:4.23
63:5	rapidly [1] 25:23	remaining [2] 32:18 69:4		short [2] 25:25 37:20
problems [3] 5:25.25 7:10	rate [11] 14:24 29:4 32:15 51:15.16.21 55:15.21.22	remember[3] 22:2 43:11 43:20	:ole [1] 9:22	shortly [1] 37:17
procedure [6] 1:15 3:9	58:14 59:5	removal [1] 34:7	:00m [4] 16:11 22:21 24:1	show [6] 14:16.19 24:2
11:23 23:23 50:12.18	rather[1] 27:23	remove [3] 16:15.22	50:19	28:13 34:18 48:13 showed [5] 17:6 32:17
process [7] 14:7 22:19	read [7] 18:5 23:7 35:18	29:15	rotate[1] 7:2	34:25 54:22 55:12
² 23:25 28:6 29:8 37:21 60:14	48:4 58:3 64:22 69:18	removed[7] 11:24 13:8	outine[1] 63:3	shows [2] 12:24 28:23
produced [1] 67:24	reading[3] 23:10 42:12 54:19	22:24 23:4 29:2 30:9 34:18	RPR [3] 1:22 71:4.23	side [1] 9:18
production [1] 68:5	real [2] 51:22 66:21	removing [3] 18:22 28:4	Rudy [6] 26:16 39:4.15 53:8.17 66:13	sign [1] 25:5
profession [2] 5:16 8:25	really [7] 9:21 29:1 34:24	33:16	Rules [2] 1:15 3:8	Signature [1] 70:8
professional [2] 42:4	37:8 38:16 42:17 67:6	rendering [1] 11:15	running [1] 27:24	significance[1] 41:13 SIL [1] 28:18
42:11 program m 7:20 8:15	reason [5] 15:2 46:22.25	RENO [1] 1:23	runs [1] 41:1	SIL [1] 28:18 SIL's[1] 61:6
program [2] 7:20 8:15 progress [2] 33:8 37:1	47:1.3 reasonable[2] 41:24	repeated [1] 67:3 report [11] 17:16.22 18:4		similar [1] 11:7
progression [7] 25:20	63:7	18:7 23:2.10 26:14 28:23	-S-	simple [1] 51:22
Pro5ression [1] 20.20				K

RENO & ASSOCIATES (740) 947-9001

Lase No. PI-98-401			Ste	phen J. DeVoe, M.D.
simply [2] 15:19 60:25	specific[1] 23:5	study[1] 35:23	terms [3] 11:2 29:20	too [7] 28:11 33:20 44:16
sit [3] 7:20 8:1 35:22	specifics [1] 10:17	stuff [1] 61:6	38:10	53:20 54:6 59:8 61:11
situ [27] 6:7.10 8:17 18:8 19:5.10.14 20:9 21:9 22:6	specified [1] 71:15 specimen [6] 19:6.6.15	subsequent[2] 28:25 30:7	Ferri [26] 1:3 47:6.21 48:8.18 49:22 50:22 51:11	took[5] 6:17.19 7:20 39:17 53:17
23:12 24:17.21 26:7.22	32:18 35:1.16	subsequently[1] 28:19	52:19 53:1.13.23 54:20	top [3] 12:21 13:12 16:17
29:23 30:6 31:17 32:6.15 33:5 34:19 35:3 37:15	speculating [1] 65:18	substandard[2] 21:10	54:25 55:5.8 56:1.20 57:5 58:4.8.18 59:4 60:6 62:19	topic [1] 8:17
38:3.8 52:9	spend [2] 7:8 42:3	21:10	62:25	total [2] 27:25 63:25
situation [7] 10:7 11:19	3pot [2] 19:22 38:5	success [1] 55:15	Terri's [1] 47:2	toward[3] 16:20 24:15
28:8 33:15 34:8 59:16	squamous [2] 18:15	successful [1] 67:5	testified[10] 10:7 39:11	24:15
65:21 situations 10 1 21 25	26:10	successive [1] 34:5	40:8 44:2.9 45:13 66:12 67:12.14 68:13	tract [1] 6:3 tradeoffs [2] 40:23 41:6
situations [2] 10:1 31:25 situs [1] 32:2	3S [1] 71:2 ;table[1] 65:3	such [9] 10:2 17:15 25:5 37:20 51:11.14 60:23 63:7	testify [1] 71:8	train [2] 6:25 56:17
six [3] 36:1 52:10.11	staff [1] 8:4	66:14	Testifying [1] 21:2	trained [2] 8:12 17:9
Sixth [1] 2:7	stage [14] 21:19 33:22	suggested [2] 26:24	estimony [8] 6:6 25:9	training [5] 6:13 8:7.18
sixties[1] 37:8	34:4.5 37:3.5.21 55:16.18	30.20	25:10 36:18.18 45:2 48:14	10:20 46:11
skill [1] 11:6	55:20 56:3 58:8.19 59:3	supplies [1] 63:22	70:1	transcribed [2] 3:11
skin[2] 18:17 36:16	stages[2] 33:21.24	support [2] 25:17 67:1	tests [3] 14:23 15:19 29:8	71:11
skin-like[1] 18:15	stains[1] 14:9	supportive [1] 66:25 supposed [1] 57:2	iextbook[1] 12:19	transcript [2] 47:19 71:13
skipped [1] 62:16	stakes [1] 57:22	supposedly [1] 9:23	textbooks[1] 42:16 hank[7] 13:24 41:11	transformation [4]
sliced[1] 17:4	standards [3] 10:23 11:1 11:13	surface[18] 13:14 18:16	42:21 56:19 64:6 69:24	18:14.20 22:23 28:5
slide[1] 14:9	stands [1] 50:11	19:9 20:1.2.3.4.5.6.12.15	70:2	transition [3] 18:13.19
slides [1] 47:12	Stanley [1] 2:6	20:16 29:12 36:4 38:7	THEATRE [1] 1:24	22:23
slim[1] 69:11	started [2] 16:8 23:10	61:16 67:1 69:5	themselves[1] 26:8	transitional [1] 18:9
slow[1] 25:11	starting [2] 30:11 67:24	surgeon[1] 63:7 surgery [4] 11:14.15 41:1	theoretically [1] 69:7	treated [8] 21:6.9.9 33:20 33:23 38:23 56:6.8
slowly [1] 37:1	starts [1] 67:25	41:3	theory [4] 25:21 30:23 37:7.23	treating [1] 28:3
small[3] 35:14 41:19 42:19	state [8] 1:17 6:17 7:2.4	surgical [2] 6:17 41:1	thereafter[1] 3:10	treatment [14] 6:3.9 7:10
smart [1] 67:15	8:4 10:8 71:2.5	surgically [1] 33:21	iherefore[1] 35:2	11:4 15:21 17:18 26:21
smear[36] 7:1011:22	statement[5] 55:7 58:3 59:2.3 67:17	surprise[1] 36:11	Thereupon[3] 5:1.4	27:8 31:16 33:14 39:16 45:22 46:2 55:15
12:1 13:15.17 14:3,4.6.15	statistic[1] 30:4	surrounding [1] 60:1	70:10	treatments [2] 33:9
14:19 15:3.24 16:2.3 24:8 26:1 27:21 28:18.19 29:7	statistical [1] 30:5	survival [2] 55:22 58:14	They've [1] 20:13	56:23
30:19 51:13 53:13,18.21	statistically [1] 29:25	survive[1] 58:16	thickness[1] 20:4	trial [6] 6:6 18:3 20:8
53:23.23 54:2.13.16.21	stenotype[1] 71:10	susceptibility[1] 35:8	thinks[2] 68:14 69:10	39:12 48:15 50:1
55:11 56:25 57:3 :60:11 60:12	stenotypy[1] 3:9	suspicion[2] 35:2 52:17 sworn[2] 5:6 71:7	thorough[1] 35:15 thought [5] 27:1 38:5	trials[1] 45:14 trouble[1] 57:22
smears[24] 7:7 14:15.23	step[2] 29:20 51:7	system[1] 27:21	53:3.19 56:17	true[10] 15:18 25:13.15
15:1.5.7.18 16:22 27:18	Stephen [5] 1:13 3:7 5:5		threat [1] 38:9	32:8 39:20 40:16 47:4
28:25 29:3.8.11 30:19 32:9 34:14 35:13 46:15	Steve [1] 5:17	-T-	three [4] 27:10 42:20 57:3	59:3.9 71:12
49:24 51:14 52:10 59:7	sticks[1] 13:1	takes [4] 9:7 16:21.25	58:16	trusted [1] 39:15
60:7 62:1	still [2] 21:21 29:11	45:1	three-hour[1] 7:22	truth [3] 71:8.8.9
smoke[1] 35:20	stimulated[1] 16:13	taking [1] 24:8	through [29] 7:3 16:14 19:15 20:13 21:16 23:13	trying [2] 11:18 22:22 tubes [1] 58:13
smokers [1] 36:1	sting[1] 38:6	tape [3] 47:20 48:18 58:24	23:14 24:17.18 26:23	tumor [2] 60:21 61:11
smoking[2] 36:3 62:20 someone[3] 15:3 29:11	stipulated [1] 3:5	tape-recorded[1] 58:5	28:24 29:7 33:12 34:7	turn [2] 16:16 56:13
64:19	stipulations [2] 1:17 3:4	taped [3] 47:23.25 48:8 Taylor [21] 2:2 4:4 9:12	35:1 37:12.21 42:18 47:12 47:12 50:14 53:4 60:2	turns [1] 52:2
someplace[1] 12:8	stop[1] 19:17	15:10.15 20:24 21:1.25	61:12.18 62:12 64:19	twenties [1] 46:14
sometimes[1] 40:18	straighten [1] 70:4	41:15 42:22 43:2.4 49:20	67:21.25	two[21] 6:21 7:22 9:16
somewhere [1] 12:11	Street [2] 2:3.7	57:24 58:1 65:14,19.22 69:18.25 70:6	Thursday [3] 1:20 3:1 70:10	18:14 25:17.25 26:4 27:10
sophisticated [1] 63:3	stress[1] 41:17 stricken[1] 49:19	teach [1] 7:2	times [8] 6:8 8:21 9:5	30:9.10 38:11.25 39:17 42:19 43:9.15 46:10 49:24
SOFTY [4] 27:3 56:14.16	strike[5] 21:2 57:25 60:5	teaching [3] 8:18 42:5	20:8 36:1 44:11 45:13	58:16 63:9 66:12
69:15 sort [2] 13:7 22:1	65:23 69:25	42:11	65:9	types [3] 18:14 25:2
sound [2] 65:10.25	strip [2] 58:9.11	technical [4] 9:24 20:10	tissue[27] 11:24 13:8.14 16:15.16.18.22 17:1.2.3	30:20
sounds[2] 51:22 66:4	strong[1] 67:2	20:10 26:7	17:11 22:12.17 23:3 28:24	typically [2] 17:16 24:23
source[2] 23:6 50:13	strongest [1] 38:2	technically [1] 9:23	34:17 47:7.12 53:15 60:1	-U-
South [1] 2:3	students[4] 7:2 8:11.19 8:22	technologies [1] 17:13 telephone [1] 47:24	60:2 61:12.13.14 66:25 67:1 68:16	ultimately [2] 29:15
special [4] 7:17 17:9	studied [2] 16:24 17:4	telling [3] 20:19.19 21:24	tissues [2] 17:15 33:17	31:15
53:14 54:13	studies [4] 30:5 35:24	term[2] 20:10 68:25	today [1] 45:3	unaware [1] 47:23
specializing[1] 5:18	37:13 63:3	L-1 -0.10 00.20	:ogether [3] 26:6.9 38:13	under [14] 1:14 3:8 11:7
RENU & VSSUCIA			·	Index Dage 7

Index Page 7

-

.

Case No. PI-98-401

Stephen J. DeVoe, M.D.

Case 140.11 70 401			010	pnen J. De Voe, M.D.
14:11 16:24 17:6,12 18:23 20:14 27:20 34:1 36:18	-W-	young [14] 11:21 15:22 29:16 30:24 33:3.14 34:9		
61:7 70:2		37:18 46:13 66:15 67:25		
undergone [1] 33:10	waive [2] 69:19.21	68:1.14 69:10		
understand [5] 49:7.7	waived [2] 3:13 70:8	younger[1] 25:19		
49:10.13 68:23	wall [1] 24:16	yourself[1] 45:21		
understands [2] 66:1.5	wants [2] 65:11.15			• •
understood [2] 36:3 39:12	warranted [1] 16:4 wart [2] 68:19.25	<u>-Z-</u>		
underwent [1] 11:22	watching [1] 59:10	zero [1] 51:25		
uneventful [1] 32.25	water [1] 61:13	2000e [8] 18:9.13.14.19.20		
unfortunately [2] 14:23	WAVERLY [1] 1:25	22:23.23 28:5		
63:17	ways [1] 27:17			
Unites [1] 22:4	weekends[1] 45:2			
University [3] 6:18 7:4	weeks [2] 39:17 47:21			· · · ·
8:4	weight [1] 67:2			. *
unless [1] 52:17	well-being [1] 65:12			1
unlikely [1] 34:12	WHEREOF [1] 71:19			
untreated [2] 26:13 56:7	whole [6] 20:1.4.4 52:6			
unusual [3] 30:24 31:1 64:2	59:12 71:8			
up [19] 6:1.22 13:1.19	wife [1] 26:16	· ·		
18:18 19:18 23:11 24:2	wire [2] 50:13.14			
32:17 52:12.21 55:24 56:23 57:1 62:11 66:23	wise [1] 57:2 within [6] 26:4 30:9			
66:25 68:2 70:4	33:24 46:18 52:4 71:6		·	
upper [2] 34:13 69:3	without [2] 55:21 71:15			
upset [1] 48:20	witness[11] 1:14 3:7.12			
upside[1] 16:16	15:16 21:2.3 44:6.8 69:21 71:11.19			
ureter[1] 41:2	woman [3] 5:23 6:4	r.		
used [5] 16:12.15 17:17 25:14 59:22	14:13	х 		
useful [2] 15:9.12	womb[1] 12:23			
Using[1] 66:21	women [2] 46:13 67:21			
usual [1] 63:25	women's[1] 67:23 word[2] 18:25 50:11	· · · ·		
usually [5] 14:9 17:8	words [3] 19:8 33:6 38:11			
33:15 50:20 51:1	worked [1] 30:3			
uterine[1] 18:18 uterus[10] 13:1.10.11.12	workman-like[1] 67:9	-		
33:17 35:15 47:2 62:8.14	works [2] 17:20 48:23	· · · ·		
66:5	worse [1] 34:5			
	write [1] 12:14			- -
-V-	written [4] 7:21 17:16			ĩ
vagina [8] 4:9 13:2.2	42:15.18			
18:16 34:13 66:23 69:4.8	wrong [9] 13:16.17 20:18 25:6 55:1.3 56:5.6.9			
variety [2] 68:24.25 various [1] 41:23				
verbatim[1] 64:23	-X-		-	
versus [1] 41:7	x-ray[1] 58:15	4		
video[1] 44:1				
Videotaped [1] 1:13	-Y-			
view [1] 69:19	year[12] 6:17 7:22.24			
vigorously [1] 64:4	14:14 15:2.4 22:1.3 31:11			
viral [1] 30:12	40:2 44:3 46:19			
virulent _[1] 30:15	years [25] 6:21 8:8 9:4 25:12.25 26:4 30:9.10			
virus [8] 24:25 25:4.23 30:15 35:8 63:1 68:19.25	33:25 37:1.12.19 43:9.15			
VS [1] 1:7	43:18.20 45:16 46:10.11			•
$V_{ulva[1]} 4:9$	46:12 55:22 56:5 58:16 58:17 68:3			
	yet [4] 8:11 15:11 20:21]		•
	27:2			
RENO & ASSOCIA	TEC	1	I	Index Page 8

RENO & ASSOCIATES (740) 947-9001



Figure 16.2 The cervix and the transformation zone.

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Figure 16.3 Cross-section of the cervix and the endocervix.

