

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JACQUELINE FRANKLIN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 273817
)	
METROHEALTH MEDICAL)	
CENTER, et al.)	
)	
Defendant.)	

The deposition of NAWAR HATOUM, M.D., called by the plaintiff for examination, pursuant to notice and pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court of the State of Illinois, for the purpose of discovery, taken before Daniel M. Priscu, CSR and Notary Public in and for the County of Cook and State of Illinois, at 3000 North Halsted Street, Suite 209, Chicago, Illinois, on June 13, 1996, at 10:12 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PRESENT:

BECKER & MISHKIND
BY MS. JEANNE M. TOSTI
Skylight Office Tower
1660 West 2nd Street, Suite 660
Cleveland, Ohio 44113

appeared on behalf of the plaintiff
via telephone;

REMINGER & REMINGER
BY MS. CHRISTINE S. REID
The 113 St. Clair Building
Cleveland, Ohio 44114

appeared on behalf of the defendant.

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

WITNESS

NAWAR HATOUM, M.D.

EXAMINED BY

PAGE

Ms. Tosti

4

NO EXHIBITS WERE MARKED

1 MS. TOSTI: This is a discovery deposition.
2 It's taken on cross-examination by agreement of
3 counsel and pursuant to Ohio Rules of Civil
4 Procedure.

5 NAWAR HATOUM, M.D.,
6 having been first duly sworn, was examined and
7 testified as follows:

8 EXAMINATION

9 BY MS. TOSTI:

10 Q Doctor, do you understand that during this
11 deposition Ms. Reid is not allowed to help you with
12 your answers?

13 A I do.

14 Q Now, she may enter an objection to my
15 questions for the record, but you still must answer
16 the questions, unless she instructs you not to.
17 Okay?

18 A Okay.

19 Q Now, Ms. Reid has explained to you that
20 this is a question and answer session under oath,
21 correct?

22 A Correct.

23 Q And it's important that you understand my
24 questions, so if you don't understand the questions,

1 please tell me, and I'll be happy to repeat them or
2 to rephrase them. Otherwise, I'm going to assume
3 that you understood the question and that you can
4 answer them. All right?

5 A All right.

6 Q I would also ask that you give all of your
7 answers verbally because our court reporter can't
8 take down any head nods or hand motions.

9 Doctor, would you please state your name
10 and spell your last name for us?

11 A My first name is Nawar, and my last name is
12 Hatoum, H-a-t-o-u-m.

13 Q And your home address?

14 A 2010 North Sedgwick, S-e-d-g-w-i-c-k,
15 Street, Chicago, 60614.

16 Q And your business address?

17 A Illinois Masonic Medical Center, 836 North
18 Wellington Street, Chicago, 60657, Department of
19 OB/GYN.

20 Q Have you ever been named as a defendant in
21 a medical negligence suit?

22 A No.

23 Q Have you ever had your deposition taken
24 before?

1 A No.

2 Q Doctor, since I don't have a curriculum
3 vitae, I'm going to go a little bit through your
4 background.

5 Could you tell us what your age is and your
6 date of birth?

7 A Thirty-nine, October 20, 1956.

8 Q And where did you go to college for your
9 undergraduate?

10 A Damascus, Syria.

11 Q And what year did you graduate?

12 A 1983.

13 Q And what was your undergraduate degree?

14 A I'm sorry. I take it back, 1982.

15 Q And what was your undergraduate major?

16 A Basic science.

17 Q And medical school, where did you attend
18 medical school?

19 A Damascus University.

20 Q And the year that you finished that?

21 A The same year, in 1982.

22 Q So your education then, you don't have an
23 undergraduate degree as such? Your medical
24 education was both a basic science as well as a

1 medical degree?

2 A It's combined, yes.

3 Q How many years long is that?

4 A Seven years.

5 Q Following medical school, did you serve an
6 internship?

7 A In the United States.

8 Q And where was that?

9 A This was at Monsour Medical Center in
10 Jeannette, Pennsylvania.

11 MS. REID: Jeanne, just so the record is
12 clear, did you also serve an internship in
13 Damascus?

14 THE WITNESS: No.

15 MS. REID: Go ahead.

16 BY MS. TOSTI:

17 Q When did you serve that internship at
18 Monsour Medical Center?

19 A Between July '86 and December '87.

20 MS. REID: So the record is clear, Jeanne,
21 the doctor is referring to his curriculum vitae,
22 and I'll bring you back a copy.

23 MS. TOSTI: Okay.

24 Q And was that a general internship or was it

1 in a specific area of medicine?

2 A This was a year and a half of family
3 practice residency.

4 Q And after you completed that family
5 practice internship residency in December of '87 did
6 you serve any further residency?

7 A I completed a residency in OB/GYN in
8 Pittsburgh at Western Pennsylvania Hospital.

9 Q And when did you do that?

10 A Between January '88 and December 1990.

11 Q Are you licensed in the state of Ohio
12 currently?

13 A Yes.

14 Q And did you pass that licensure on the
15 first try?

16 A My licensure was a reciprocity from passing
17 the FLEX examination in California.

18 Q And did you pass that exam on the first
19 try?

20 A On the second try.

21 Q Are you currently licensed in the state of
22 Illinois?

23 A Yes, I am.

24 Q Any other states?

1 A I have an inactive licensure in
2 Pennsylvania.

3 Q Is your Ohio license currently active?

4 A I think it's going to expire shortly. I
5 can't specifically recall when. It may have already
6 expired recently.

7 Q Has your license ever been suspended or
8 revoked in any state?

9 MS. REID: Objection. You may answer.

10 A No.

11 BY MS. TOSTI:

12 Q Doctor, are you board certified in any
13 particular area?

14 A Yes, I am.

15 Q What specialty area?

16 A Obstetrics and gynecology.

17 Q And when did you receive that board
18 certification?

19 A December of '94.

20 Q And did you pass that board certification
21 on your first try?

22 A Yes.

23 Q Doctor, what is the current professional
24 position that you hold?

1 A I'm a maternal-fetal medicine specialist in
2 the Department of Obstetrics and Gynecology at
3 Illinois Masonic Medical Center.

4 Q And relative to that position that you
5 currently hold, what are your duties and
6 responsibilities?

7 A My duties and responsibilities include
8 teaching residents in obstetrics and gynecology and
9 performing obstetrical ultrasounds and taking care
10 of patients with medical complications in pregnancy.

11 Q Are you an employee of the hospital there?

12 A Yes.

13 Q And where do you have hospital privileges,
14 Doctor?

15 A At Illinois Masonic Medical Center.

16 Q Anywhere else?

17 A No.

18 Q And are those admitting privileges?

19 A Yes.

20 Q And how long have you been associated with
21 that hospital?

22 A Almost three years.

23 Q Now, in January of 1993 who was your
24 employer? Let me ask that a little differently.

1 In January of 1993 were you an employee of
2 Metrohealth Medical Center?

3 A I was, yes. I was a fellow in
4 maternal-fetal medicine.

5 Q And was that your official title, fellow in
6 maternal-fetal medicine?

7 A Yes.

8 Q In January of 1993 were you providing
9 medical services for any other entity other than
10 Metro?

11 A No.

12 Q Doctor, when did you leave Metro Hospital?

13 A June of 1993, the end of June 1993.

14 Q And what was the reason that you left?

15 A Completion of the fellowship program.

16 Q And how long were you associated with
17 Metro?

18 A Two and a half years.

19 Q Now, have you authored or co-authored any
20 medical journals, articles or textbook chapters?

21 A No.

22 Q Have you lectured or taught on the subject
23 of tubal ligation, reversal of tubal ligation or
24 informed consent?

1 A No.

2 Q Have you ever had your hospital privileges
3 called into question, suspended or revoked?

4 MS. REID: Objection. You may answer,

5 A No.

6 BY MS. TOSTI:

7 Q And have you ever acted as an expert in a
8 medical legal matter?

9 A No.

10 Q Have you ever given testimony in any case
11 of a similar subject matter as this case?

12 A What subject?

13 Q Allegations of a lack of informed consent
14 for tubal ligation?

15 A No.

16 Q Have you ever testified at trial?

17 A Yes.

18 Q And under what circumstances were you
19 called as a witness at trial?

20 A I was called in a trial where I examined a
21 patient when I was a resident in obstetrics and
22 gynecology. It was a rape case, and they asked me
23 for my findings.

24 Q So you were called as a treating physician?

1 A Yes.

2 Q Tell me what you reviewed for this
3 deposition today.

4 A I've reviewed the patient's hospital chart,
5 and I have reviewed previously the deposition of
6 Dr. Emery and Dr. Reinhold.

7 Q Anything else?

8 A No.

9 MS. REID: To be clear, just so the record
10 is clear, Jeanne, I think he also looked at the
11 prenatal records.

12 BY MS. TOSTI:

13 Q Let me clarify as far as the records.
14 Doctor, did you have a set of prenatal records to
15 look at?

16 A Yes.

17 Q And did you look at the in-hospital labor
18 and delivery records?

19 A Yes.

20 Q What about the outpatient records after
21 delivery?

22 A There are records pertaining to the
23 colposcopy results and the two other surgical
24 procedures the patient had, and I looked at those.

1 MS. TOSTI: Chris, let me just clarify.

2 Did he get a complete set of records or was he
3 just given portions of the record?

4 MS. REID: I believe he got a complete set.
5 We don't have them here today, but that's my
6 recollection, Jeanne.

7 BY MS. TOSTI:

8 Q Have you referred to any textbooks or
9 articles in preparation for this deposition?

10 A No.

11 Q Have you consulted with any other
12 physicians in preparation for this deposition?

13 A No.

14 Q Have you since the time that you left Metro
15 spoken with or had any contact with Dr. Reinhold?

16 A No.

17 Q Dr. Emery?

18 A Yes.

19 Q Tell me when you were in contact with
20 Dr. Emery.

21 A Multiple times. Dr. Emery is a friend of
22 mine, and he's still my friend, so we occasionally
23 call each other. I send him Christmas cards, that
24 kind of contact.

1 Q And over the course of time that you have
2 spoken with Dr. Emery, have you ever discussed this
3 case with him?

4 A No.

5 Q When is the last time you spoke with
6 Dr. Emery, just approximately?

7 A Maybe eight months ago.

8 Q Have you spoken with Dr. Chen (phonetic)
9 since the time that you left Metro?

10 A No.

11 Q How about Dr. Mann?

12 A No.

13 Q And other than with counsel, have you
14 discussed this case with anyone else at any time?

15 A No.

16 Q When did you first become aware that a
17 lawsuit had been filed in this case?

18 A I can't recall the exact date, but this was
19 when I received a letter from Ms. Reid.

20 Q And approximately when was that?

21 A A year ago, maybe.

22 Q And what were you told about the case?

23 MS. REID: Objection. Don't answer that.

24 Jeanne, I'm not going to allow him to answer

1 that question, so go ahead and move on.

2 BY MS. TOSTI:

3 Q How may times have you spoken to Ms. Reid?

4 MS. REID: Objection.

5 BY MS. TOSTI:

6 Q You may answer, unless she instructs you

7 not to.

8 MS. REID: Do you recall how many times

9 we've spoken?

10 A I don't recall.

11 BY MS. TOSTI:

12 Q Approximately how many times?

13 A Twice.

14 Q And prior to today, have you ever met

15 Ms. Reid before?

16 MS. REID: Objection. What does this have

17 to do with anything, Jeanne? I'm representing

18 him in this case. I don't ask you how many

19 times you've talked to your clients.

20 MS. TOSTI: Are you instructing him not to

21 answer?

22 MS. REID: Go ahead and answer.

23 A No.

24

1 BY MS. TOSTI:

2 Q You have not seen her prior to today?

3 A No.

4 Q Have you been asked by defense counsel to
5 appear as a witness at trial?

6 MS. REID: Objection. Go ahead and
7 answer.

8 A Yes.

9 BY MS. TOSTI:

10 Q And have you been asked to render any
11 opinions in this case?

12 A No.

13 Q Do you have any personal notes or personal
14 file on this case?

15 A Only the prenatal care and the hospital
16 records I was provided from Ms. Reid.

17 Q No, my question was whether you had
18 generated any personal notes, notes that you
19 yourself made out on the case.

20 A No.

21 Q Have you ever put together any notes on
22 this case?

23 A No.

24 Q Doctor, what medical journals do you

1 personally subscribe to?

2 A Do I have to list them all?

3 Q The ones that you personally receive, not
4 ones that just may be available at the medical
5 center.

6 A American Journal of Obstetrics and
7 Gynecology, Obstetrics and Gynecology, The New
8 England Journal of Medicine.

9 Q Any others?

10 A Survey in Obstetrics and Gynecology,
11 Clinics of Perinatology of North America, The
12 Journal of Maternal-Fetal Medicine and Seminars in
13 Perinatology.

14 MS. REID: Is that it?

15 A Clinics of Obstetrics and Gynecology of
16 North America. I receive the monthly bulletin by
17 The American College of Obstetrics and Gynecology,
18 British Journal of Obstetrics and Gynecology, The
19 Lancet, Archives of Internal Medicine, The American
20 Journal of Public Health, Pediatrics.

21 BY MS. TOSTI:

22 Q Doctor, these are all subscriptions that
23 you have coming to you directly?

24 A No.

1 Q Pardon me?

2 A No.

3 Q I asked for the journals that you
4 personally subscribe to.

5 A I'm not personally subscribed, but I
6 receive a monthly index from the library, so I'm
7 aware of every article published in those.

8 Q Doctor, my question was those journals that
9 you personally subscribe to. Do they send you an
10 issue directly to you?

11 A Okay. The Obstetrics and Gynecology, The
12 American Journal of Obstetrics and Gynecology,
13 Survey in Obstetrics and Gynecology and the New
14 England Journal of Medicine.

15 Q Are there any textbooks or journals that
16 *you* regularly refer to in your practice?

17 MS. REID: Objection. Go ahead.

18 A Not specifically.

19 BY MS. TOSTI:

20 Q Is there a textbook in your field of
21 obstetrics or gynecology that you consider to be the
22 best or the most reliable?

23 A No.

24 Q Is there any that you consider to be

1 authoritative?

2 A No.

3 Q Doctor, what's your understanding of the
4 term "informed consent"?

5 A My understanding of informed consent is a
6 mutual understanding and agreement between a patient
7 and a health provider regarding a service.

8 Q Just give me a minute. Does it require
9 that the risks and the benefits of the procedure be
10 explained to the patient?

11 A Yes.

12 Q And would you agree that to obtain an
13 informed consent a patient should be told about
14 appropriate alternative procedures or courses of
15 treatment that are available?

16 A Yes.

17 Q And at a minimum would you agree that an
18 informed consent requires that the patient
19 acknowledge that she understands the information and
20 then gives her consent to the procedure?

21 A Yes.

22 Q Would you like me to repeat that, Doctor?

23 MS. REID: He answered yes, Jeanne.

24 MS. TOSTI: I'm sorry. I didn't hear his

1 answer.

2 Q Doctor, would you agree that informed
3 consent has not been obtained if a patient merely
4 expresses an interest in having a procedure done and
5 has not been provided with all the information that
6 we just discussed?

7 A Could you repeat that, please?

8 Q Yes. Would you agree that informed consent
9 has not been obtained if a patient merely expresses
10 an interest in having a procedure done but has not
11 been provided with all of the information that we
12 just outlined, including the risks, the benefits and
13 the alternative treatments and the fact that they
14 acknowledged that they understand that information
15 and then consent to it?

16 A I agree.

17 Q And you would agree that even if consent is
18 given by a patient, a patient still has a right to
19 change her mind at any time prior to the procedure,
20 correct?

21 A Correct.

22 Q Would you agree that it's below the
23 standard of care for a physician to proceed with an
24 elective tubal ligation without obtaining an

1 informed consent from the patient?

2 A Yes.

3 Q And would you agree that for a nonemergency
4 elective tubal ligation it is standard practice to
5 obtain a written informed consent from the patient?

6 A I agree.

7 Q Do you do elective tubal ligations, Doctor?

8 A I do.

9 Q Could you tell me just approximately how
10 many you do in a month's time?

11 MS. REID: Currently, Jeanne?

12 MS. TOSTI: Yes.

13 A Well, you have to understand the type of
14 practice I'm in now is primarily a consultative
15 practice. I have a limited private practice, and I
16 don't perform this procedure on a regular basis.

17 Q In the last month have you performed any?

18 A No.

19 Q And typically in a month's time, do you do
20 tubal ligations or are there several months where
21 you won't do any?

22 A Well, part of my duties is resident
23 supervision where we perform tubal ligation, so I
24 must say I've been in a tubal ligation procedure in

1 the last month, yes.

2 Q So you're in a supervising capacity with
3 the residents?

4 A Most of the times, yes.

5 Q And in that capacity, although you may not
6 be physically doing the actual tubal ligation, how
7 many times a month are you in the surgical suite
8 supervising residents doing tubal ligation?

9 A Roughly, three times.

10 Q Okay. Doctor, what percentage of those
11 patients that undergo elective tubal ligations in
12 which you're supervising residents is there a
13 written informed consent prior to the procedure?

14 A The majority.

15 Q Doctor, would you agree that if a patient
16 verbally consents to a surgical procedure several
17 months before the surgery is scheduled to take place
18 that a reasonably prudent physician should confirm
19 before the surgery is undertaken that the patient
20 still consents to the procedure?

21 A Yes.

22 Q Doctor, when is the last time that you
23 actually did a tubal ligation procedure?

24 A The last six months.

1 Q About six months ago? I'm sorry. I didn't
2 quite hear what you said. Did you say you did one
3 six months ago?

4 A Maybe on my private patient. I may have
5 done a tubal ligation with the residents myself,
6 teaching them.

7 Q No, Doctor, I'm asking you when is the last
8 time you actually performed a tubal ligation, not in
9 a supervising capacity, but when you actually did
10 one.

11 A Like I said, I may have actually performed
12 a procedure with the residents in order to teach
13 them or describing and teaching a specific
14 technique, for example, in the last three months or
15 so.

16 Q Now, Doctor, when you have been involved in
17 doing tubal ligations, over the course of your
18 clinical experience how many times do you think you
19 performed tubal ligations?

20 A I don't recall the number, many.

21 Q So you've done this procedure quite a few
22 times?

23 A Yes.

24 Q And in those instances where you actually

1 performed the procedure, did you tell your patients
2 that the procedure would result in permanent
3 sterilization?

4 A Yes.

5 Q And do you advise the patient that the
6 procedure probably can be reversed if they want it
7 to be reversed?

8 A I explain to them that it is possible, that
9 the technology is available to make a revision.

10 Q Do you tell them as to what the success
11 rate is for being able to achieve an intrauterine
12 pregnancy after reversal?

13 A I don't know the answer to that question.
14 I don't know the real percentage.

15 Q Do you know if it's above or below 50
16 percent?

17 MS. REID: Objection. Jeanne, he just said
18 he doesn't know the percentage.

19 MS. TOSTI: Well, I'm asking him if he
20 doesn't know the specific percentage, I'm asking
21 him if he knows if it's more or less than 50
22 percent. He can say yes or no.

23 MS. REID: If you know, Doctor.

24 A I don't.

1 BY MS. TOSTI:

2 Q Doctor, would you agree that a woman should
3 consider a Pomeroy tubal ligation to be a permanent
4 sterilization?

5 A Yes.

6 Q In January of 1993 what was the usual
7 procedure for gaining informed consent for a patient
8 that was to have an elective tubal ligation with a
9 C-section at Metro Hospital?

10 A Could you repeat the question again,
11 please?

12 Q Yes. In January of 1993 what was the usual
13 procedure for obtaining informed consent from a
14 patient that was to have an elective tubal ligation
15 with Cesarean section at Metro Hospital?

16 A Are you referring to Metro Hospital's
17 procedure manual or what's the usual counseling
18 between physicians and patients?

19 Q I just would like to know if the physician
20 is responsible for obtaining an informed consent.
21 And I want to know what the usual procedure for
22 obtaining that informed consent was, what your
23 understanding was at to the procedure for obtaining
24 informed consent for a patient in those

1 circumstances.

2 A My understanding, and the way I practice,
3 is discussion of the procedure before that surgery
4 and preferably during prenatal care, if the patient
5 is pregnant.

6 Q Now, we are speaking of January of 1993 at
7 Metro, and that's what I want you to address your
8 answer to, not what you do now, but how it was done
9 back then, your understanding.

10 MS. REID: Well, Jeanne, are you talking
11 about a clinic patient, a private patient?

12 MS. TOSTI: Let's say this is a clinic
13 patient.

14 MS. REID: Well, let's establish, number
15 one, that he worked in the clinics. I mean, his
16 role at Metro was a little bit different than
17 the other people.

18 BY MS. TOSTI:

19 Q Let's take a mother that is a clinic
20 patient receiving care through the clinics.

21 What is your understanding of the usual
22 procedure for obtaining informed consent from that
23 type of patient for an elective tubal ligation that
24 is to be performed with Cesarean section?

1 MS. REID: Are you aware of the typical
2 procedure, Doctor?

3 A No.

4 BY MS. TOSTI:

5 Q So you don't know what Metro's policies,
6 procedures or the usual procedure for obtaining
7 informed consent was back in 1993 at Metro?

8 MS. REID: Objection. I don't think that's
9 what he said. I mean, you're asking him about
10 specific policies and procedures in the clinics.
11 I don't know that it has been established that
12 he worked in the clinics, Jeanne, and that's the
13 confusion.

14 If you want to ask him what he did in
15 January of 1993 as an employee of Metro, fine,
16 but that's where the confusion is.

17 BY MS. TOSTI:

18 Q Doctor, in January of 1993 as an employee
19 of Metrohealth Hospital, what did you do in order to
20 obtain informed consent for a patient that was to
21 have an elective tubal ligation with C-section? And
22 we're speaking of a patient that received care
23 through the clinics.

24 MS. REID: Do you understand that question?

1 A Yes. Well, I made sure that the patient
2 wants the procedure, definitely wants the procedure,
3 understands what is the procedure, understands that
4 the procedure is permanent, understands that there
5 may be complications arising from the procedure, and
6 that after having discussed that that she wants the
7 procedure done.

8 BY MS. TOSTI:

9 Q Would you also discuss alternative
10 treatments?

11 A Well, you mentioned to me tubal ligation at
12 the time of Cesarean section.

13 Q Correct.

14 A That's the answer to that specific
15 question.

16 Q I don't understand, Doctor. If a woman
17 says, "I would like to have a tubal ligation," do
18 you feel that a physician has the responsibility to
19 tell that mother about other options for
20 contraception that may be available to her?

21 A Yes.

22 Q Doctor, the informed consent that you just
23 described, which is your understanding of how you
24 went about obtaining informed consent at Metro in

1 1993, when would that informed consent be obtained
2 from the patient?

3 A When?

4 Q Yes.

5 A Probably during prenatal care and before
6 performing the actual procedure.

7 Q Now, if a patient had not signed the state
8 consent forms -- do you understand what I'm saying
9 when I talk about the state consent forms?

10 A Yes.

11 Q If a patient had not signed the state's
12 consent forms for tubal ligation prior to coming to
13 the hospital for Cesarean section, how would
14 informed consent for tubal ligation be obtained at
15 Metro in January of 1993?

16 MS. REID: Well, are you assuming that
17 Medicaid forms equal informed consent?

18 MS. TOSTI: No, I'm not assuming anything.
19 I'm saying those forms, I want him to assume
20 they have not been signed. How does the doctor
21 obtain informed consent for the tubal ligation?

22 MS. REID: Assuming informed consent hadn't
23 been obtained before? That question doesn't
24 seem clear to me, Jeanne.

1 Do you want him to tell what he would do if
2 a patient came in without those forms?

3 MS. TOSTI: Let me clarify the question,
4 Chris.

5 MS. REID: Okay.

6 BY MS. TOSTI:

7 Q I want you to assume that a patient had not
8 signed the state consent forms for tubal ligation
9 prior to her hospitalization.

10 How would informed consent for tubal
11 ligation be obtained at Metro in January of '93?

12 MS. REID: I'm going to object to that
13 question for the reasons I stated before. I
14 don't think it's clear, but, Doctor, if you
15 understand it, go ahead and answer it.

16 A Again, the answer to that question is
17 making sure that the patient understands the
18 procedure, understands its complication, understands
19 that it's permanent.

20 BY MS. TOSTI:

21 Q Okay. Would you agree that the standard
22 procedure at Metro in January of 1993 was to obtain
23 a written consent from a woman before she underwent
24 elective tubal ligation?

1 A That's why the majority of cases have the
2 written consent.

3 Q So is your answer to that question yes?

4 A Yes.

5 Q Doctor, what's the purpose of having
6 hospital policies and procedures related to patient
7 care?

8 Does the doctor have an answer?

9 MS. REID: He's thinking, Jeanne.

10 MS. TOSTI: All right. Thank you.

11 A Policies and procedures for hospitals are
12 made to ascertain that those procedures are done the
13 correct way and to a certain safety to the patients.

14 Q Have you ever participated in the
15 development of any hospital policies or procedures?

16 A No.

17 Q And would you agree that an important
18 purpose of the hospital's policies and procedure is
19 to ensure consistent standard of care for patients
20 that are served by the hospital?

21 MS. REID: Objection.

22 MS. TOSTI: You may answer, Doctor.

23 A I don't know what you mean by "standard of
24 care."

1 MS. REID: Are you asking whether they
2 equate to a standard of care, Jeanne?

3 MS. TOSTI: I asked him if an important
4 purpose of a hospital policy and procedure is to
5 ensure a consistent standard of care for the
6 patients served by the hospital.

7 MS. REID: Define to him what you mean by
8 standard of care. That's what he doesn't
9 understand.

10 BY MS. TOSTI:

11 Q Doctor, do you understand what standard of
12 care is?

13 MS. REID: He just asked you what you meant
14 by that, Jeanne.

15 MS. TOSTI: Chris, would you let the
16 doctor answer the question, please? If he has a
17 question for me, I'll be happy to rephrase it.

18 THE WITNESS: Could you explain to me what
19 standard of care means?

20 MS. TOSTI: Yes.

21 Q Standard of care is what a reasonably
22 prudent physician would do in like or similar
23 circumstances. And would you agree that hospital
24 policies and procedures are in place to ensure that

1 a consistent standard of care is there for the
2 patients served by that hospital?

3 MS. REID: Objection. Go ahead and answer,
4 if you understand the question.

5 A I don't know if you're aware that the
6 standard of care in hospitals may change by time.
7 The standard of care 50 years ago or 70 years ago
8 may be significantly different than the standard of
9 care at the present time.

10 BY MS. TOSTI:

11 Q And I agree with that, Doctor. My
12 question, though, was when the hospital puts forth a
13 policy of procedure, aren't they trying to make sure
14 that the people that are working for them that are
15 delivering the care are all doing things according
16 to the same set of rules so that they are consistent
17 in the services that they provide to patients?

18 MS. REID: Well, that's a different
19 question. Go ahead and answer.

20 A I agree.

21 BY MS. TOSTI:

22 Q Now, Doctor, in your experience you've had
23 an opportunity to supervise resident physicians
24 employed by hospitals, correct?

1 A Correct.

2 Q Is it your understanding that a resident
3 physician is required to follow the hospital's
4 policies and procedures where they work?

5 A Yes.

6 Q Would you agree that physicians employed at
7 Metro Hospital were required to follow the policies
8 and procedures of Metro as they relate to informed
9 consent?

10 MS. REID: Objection to the word
11 "requirement."

12 MS. TOSTI: Chris, I would prefer if you
13 didn't add or subtract from the questions that I
14 ask.

15 MS. REID: I stated an objection for the
16 record, Jeanne.

17 MS. TOSTI: I'm sorry. I didn't hear the
18 word "objection."

19 Q Let me rephrase my question again, Doctor.
20 Would you agree that physicians employed at Metro
21 Hospital were required to follow the policies and
22 procedures of Metro as they relate to obtaining
23 informed consent?

24 MS. TOSTI: Now you can enter your

1 objection, Chris.

2 MS. REID: State my objection to the term
3 "requirement," but go ahead and answer, Doctor.

4 A Yes.

5 BY MS. TOSTI:

6 Q Would you agree that surgical consents for
7 nonemergency procedures, and in this case an
8 elective tubal ligation at Metro, were to be in
9 writing and on appropriate consent forms?

10 A Could you repeat the question, please?

11 Q Would you agree that surgical consents for
12 nonemergency procedures at Metro were to be in
13 writing and on appropriate consent forms?

14 A Yes.

15 Q Doctor, in 1993 at Metro, if a patient
16 reported to hospital personnel that they were
17 injured by care that they had received, how was a
18 complaint like that handled?

19 MS. REID: Objection. If you know, Doctor?

20 A I don't know.

21 BY MS. TOSTI:

22 Q Are you aware of any Metro policy or
23 procedure for handling complaints from a patient
24 about their care?

1 A No.

2 Q Doctor, if you received a complaint about
3 care, a patient said that they had been injured,
4 would that cause you to fill out any type of
5 paperwork for the hospital?

6 MS. REID: Objection. Jeanne, can you be a
7 little more specific?

8 MS. TOSTI: Well, let me see if he can
9 answer the question the way that it is.

10 A I don't know the answer.

11 Q Were you required to fill out any type of
12 an incident report if a patient reported to you that
13 they had been injured by care at the hospital?

14 A Yes.

15 Q And where would that information be sent
16 to? Who would receive it at the hospital?

17 MS. REID: I'm going to object to the line
18 of questioning regarding incident reports. I'll
19 allow him to answer the general questions,
20 Jeanne.

21 MS. TOSTI: Okay.

22 Q Once you filled out an incident report,
23 where would that be sent, Doctor?

24 A I don't know.

1 Q Did you ever fill out an incident report
2 when you were at Metro?

3 MS. REID: Objection, Jeanne.

4 MS. TOSTI: You may answer, Doctor.

5 A I don't recall.

6 Q Now, in January of 1993, would you describe
7 your duties and responsibilities at Metro?

8 A I was the maternal-fetal medicine fellow at
9 Metro.

10 Q And what does that entail as far as
11 responsibilities?

12 A That entails providing consultation in high
13 risk obstetrical patients, supervising the residents
14 and attending the high risk OB clinic, doing and
15 supervising obstetrical ultrasounds in the fetal
16 diagnostic center, doing fetal procedures, genetic
17 testing in the fetal diagnostic center.

18 Q How were patients assigned to your care as
19 an attending physician? And I'm speaking about
20 obstetrical patients.

21 A Labor and delivery responsibilities were
22 part of the fellowship program.

23 Q But I want to know how a specific patient
24 happened to be assigned to you, what the process

1 was.

2 Did you receive a name? Was it that you
3 happened to be assigned labor and delivery that day
4 and you took all the patients that came in on that
5 day? How did you happen to be assigned to a
6 particular patient or a particular patient assigned
7 to you?

8 A Labor and delivery has an attending
9 physician covering or supervising the residents on a
10 daily basis.

11 Q And if you happened to be that particular
12 individual, then you were assigned as attending for
13 the patients that came in?

14 A Yes.

15 Q Now, if a mother was coming into the
16 hospital for a scheduled C-section, and you happened
17 to be assigned to be the attending in labor and
18 delivery that day, would you see the patient prior
19 to the time that she went for her C-section? Would
20 you go down to the floor and see the mother before
21 the C-section?

22 A Not necessarily.

23 Q Was it usual to see them or not usual to
24 see them prior to the C-section?

1 A Again, it depends on the situation.

2 Q Okay. But, Doctor, in most cases did you
3 see the patients before they came up to the surgical
4 suite or in most cases did you not?

5 A What do you mean by seeing the patients?

6 Q I mean going down to the room and speaking
7 with the mother.

8 A Again, it depends on the situation.

9 Q And in most cases did you go down and talk
10 with the mother before she went up to the surgical
11 suite for her C-section, or in most cases was the
12 first time you saw them when they arrived in the
13 surgical suite for the C-section?

14 MS. REID: Can you quantify that, Doctor?

15 A I probably would see cases that the
16 decision for Cesarean section has been made during
17 the intrapartum period of the hospital stay. I
18 don't necessarily have to see patients who are
19 already scheduled for routine repeat C-section, for
20 example.

21 BY MS. TOSTI:

22 Q So if there was a decision, a late decision
23 for a C-section, those patients might be the ones
24 you would go down and see?

1 A Yes.

2 Q After the mothers had Cesarean section, if
3 there were no complications, did you continue to
4 follow these mothers after delivery?

5 A No. That would be the responsibility of a
6 different team.

7 Q So generally in an uncomplicated Cesarean
8 section or Cesarean section with tubal ligation,
9 your responsibilities as an attending, at least as
10 far as clinical follow up, ended when the Cesarean
11 section was finished?

12 A Yes.

13 Q Now, when you were attending in the
14 surgical suite for the Cesarean sections, what
15 supervision did you provide to the residents? What
16 were your responsibilities?

17 MS. REID: Actually in the OR, Jeanne?

18 MS. TOSTI: Yes.

19 A I was physically present during the
20 procedure, making sure that the procedure is being
21 performed the correct way, and if a complication
22 occurs and the chief resident or the first surgeon
23 asks for assistance, then I would be his assistance.

24 Q Was it a requirement of Metro Hospital to

1 have an attending physician present in the operating
2 room during Cesarean sections on clinic patients?

3 A I don't know the answer to that question.

4 Q Could the residents perform a scheduled
5 Cesarean section without having an attending
6 present, if you know?

7 A In the operating room?

8 Q Yes, for a nonemergency scheduled Cesarean
9 section, were they required to have an attending
10 present?

11 MS. REID: Objection, asked and answered.

12 If you know what the requirement is, Doctor.

13 A I don't know.

14 BY MS. TOSTI:

15 Q Doctor, as an attending physician in the OR
16 at Metro in 1993, did you have authority to direct
17 the residents in the surgical technique or the care
18 of the patient while they were in surgery?

19 A Yes.

20 Q And did you have authority to cancel
21 a surgical procedure if you felt it was
22 inappropriate?

23 A Yes.

24 Q And would you agree that as the attending

1 physician you were ultimately responsible for
2 supervising the resident physicians when they were
3 in attendance at a C-section?

4 A Yes.

5 Q Now, as an attending physician on a
6 nonemergency C-section delivery at Metro, did you
7 repeatedly review the mother's prenatal chart prior
8 to delivery? And I'm speaking about you personally.

9 A Not routinely.

10 Q Do you have any independent recall of
11 Jackie Franklin? Other than what you have seen in
12 the chart, do you remember Jackie Franklin?

13 A No.

14 Q To your recollection or based on anything
15 you've seen in the chart, did you have any
16 conversations with Jackie Franklin -- I'm sorry, did
17 you have any conversations about Jackie Franklin
18 with any Metro physicians prior to Jackie Franklin's
19 admission to the hospital?

20 A Could you repeat the question, please?

21 Q Yes. Let me rephrase that. Did you have
22 any conversations about Jackie Franklin with any
23 Metro physicians prior to the time that she was
24 admitted to the hospital on January 29, 1993?

1 A No.

2 Q And based on your review of the records or
3 your recollection, when was the first time that you
4 had contact with Jackie Franklin?

5 A When I was present in the operating room
6 during her repeat Cesarean section.

7 Q And based on your recollection or the
8 medical record, did you have any discussions with
9 Jackie Franklin herself at the time of your first
10 contact?

11 A I don't recall.

12 Q Do you have any independent recollection of
13 a conversation with Dr. Reinhold regarding tubal
14 ligation on Jackie Franklin, independent of what's
15 in the record?

16 A No.

17 Q Now, Doctor, you would agree that as
18 attending physician you were the person that had
19 final authority in determining whether or not
20 Jackie Franklin was to undergo tubal ligation,
21 correct?

22 A Correct.

23 Q Doctor, would you agree that as attending
24 physician at Jackie Franklin's C-section you were

1 ultimately responsible for ensuring that Jackie had
2 given informed consent for her tubal ligation?

3 A Yes.

4 Q And you would agree that that informed
5 consent would include all of the things that we
6 previously discussed, the risks, the benefits, the
7 alternative treatments, should have been explained
8 to her and that she then should have acknowledged
9 that she understood the information and consented to
10 the procedure, correct?

11 A Correct.

12 Q Now, Doctor, based on anything that you
13 recall or anything that you have reviewed in the
14 record, can you tell me specifically how you were
15 certain that Jackie Franklin gave informed consent
16 for tubal ligation?

17 A It was mentioned in the record on more than
18 one occasion that the patient received information
19 regarding tubal ligation by her providers and prior
20 to her repeat Cesarean section and that she was in
21 agreement to performing this procedure.

22 Q Okay, Doctor, but we said that informed
23 consent required some specific information to be
24 given, including risks, benefits, alternatives and

1 the fact that she understands the procedure and
2 consent.

3 I'd like you to show me or tell me where in
4 the record you found that that specific information
5 was all given to Jackie Franklin.

6 MS. REID: I'm going to object, Jeanne,
7 because he's answered the question and told you
8 what his basis is that this patient consented to
9 the procedure. I mean, he wasn't present for
10 any of these discussions.

11 MS. TOSTI: I'm asking him if he has told
12 me that he had a responsibility to a certain
13 that she had given informed consent, and he has
14 identified specific information that has to be
15 given to the patient in order to obtain informed
16 consent.

17 And I want to know what he is relying upon
18 as far as his review of the records that that
19 information was given to the patient, if he
20 would direct me to the part of the record that
21 he is indicating that that information was given
22 to the patient.

23 MS. REID: Are you asking him if there's a
24 note that specifically says risks were

1 discussed, benefits were discussed? I mean, you
2 know as well as I know that there's not a note.

3 MS. TOSTI: Well, I would prefer that the
4 doctor testify here, Chris.

5 MS. REID: All right. I'm just trying to
6 clarify here.

7 MS. TOSTI: And if the doctor is aware of
8 anyplace in this record that shows that that
9 information specifically was given to
10 Jackie Franklin, I would like him to direct my
11 attention to it.

12 MS. REID: Do you understand what she's
13 asking, Doctor?

14 THE WITNESS: Yes. I don't see any
15 specific words in the records pertaining to
16 complications and other aspects of the procedure
17 you mentioned.

18 BY MS. TOSTI:

19 Q Okay. Would it be correct to say that in
20 this instance, based at least on what you can see in
21 the record, that you relied on the accuracy of what
22 Dr. Reinhold has recorded in her progress note as to
23 Jackie Franklin?

24 MS. REID: As we sit here today or when he

talked to Dr. Reinhold?

2 MS. TOSTI: Well, he had said he had no
3 recollection of Dr. Reinhold, and I'm assuming
4 that he has to rely solely on the records.

5 MS. REID: As we sit here today, yes, he
6 did. But obviously at the time he talked to
7 Dr. Reinhold, he talked to her, so you want to
8 know as we sit here today does he have to rely
9 on Dr. Reinhold's note to refresh his
10 recollection, right?

11 BY MS. TOSTI:

12 Q Doctor, would it be correct to say -- let
13 me ask you this. In this instance, is it your
14 opinion that Jackie Franklin gave informed consent
15 prior to her tubal ligation?

16 A Yes.

17 Q What do you base that opinion on?

18 A On Dr. Reinhold's documentation in the
19 record and her discussion with me.

20 Q But you have no recollection of that
21 discussion, correct?

22 A No, but I know how I practice medicine.

23 Q Okay. And how would that be?

24 A What I usually do in such a case, I ask the

chief resident. Although I don't recollect this specifically with Dr. Reinhold, this is what I usually do. My routine is making sure that the patient understands that this is a permanent
5 procedure and understands that there may be
6 complications from the procedure and from the
7 beginning, to begin with, that the patient wants the
8 procedure done.

9 Q Okay, Doctor. Do you do that with every
10 patient that comes up for a scheduled C-section and
11 tubal ligation? Do you discuss that with every
12 patient that comes up to you personally?

13 MS. REID: I think he said it was his
14 routine when a resident has a question --

15 MS. TOSTI: Chris, I would appreciate it if
16 you would let the doctor answer the question,
17 and if he doesn't understand it, he will be
18 happy to ask me a question and I will clarify
19 it.

20 MS. REID: Jeanne, I'm not here just to sit
21 here. I'm here to make sure the record is
22 clear. You know how these depositions work, and
23 that's what my job is.

24 MS. TOSTI: If you have an objection,

1 please enter it. Otherwise, allow the doctor to
2 answer the question, instead of redirecting his
3 attention to things that I am not asking.

4 MS. REID: All right, then answer the
5 question, Doctor.

6 MS. TOSTI: If you have an objection,
7 please enter it.

8 MS. REID: Go ahead and answer, Doctor.

9 A Could you repeat the question again,
10 please?

11 BY MS. TOSTI:

12 Q Yes, Doctor. Was it your routine in every
13 scheduled Cesarean section with tubal ligation to
14 you personally approaching the patient and asking
15 them whether or not they had given an informed
16 consent by reviewing those things that we have just
17 discussed previously that are involved in informed
18 consent? Did you do that with every patient?

19 A I do that with every private patient of
20 mine.

21 Q No. I'm asking you in 1993 for a clinic
22 patient coming in for a scheduled C-section and
23 tubal ligation, was it your routine, for every
24 patient, to discuss the specifics of informed

1 consent with that patient while they were in the
2 surgical suite?

3 A No.

4 Q Okay. Now, if one of the residents
5 approached you and said that there was a problem
6 with the papers not being signed appropriately, in
7 those instances would it be your routine then to
8 approach the patient to discuss informed consent?

9 A Not necessarily.

10 Q Would you rely upon the resident physician
11 to take care of the informed consent prior to the
12 surgery? And we're talking about a scheduled
13 Cesarean section with tubal ligation for a clinic
14 patient.

15 A Yes.

16 Q And in this instance you don't have a
17 specific recollection of what went on in
18 Jackie Franklin's case as far as any conversations
19 that went on, correct?

20 MS. REID: Objection, asked and answered.
21 Go ahead and answer it again.

22 A I don't.

23 BY MS. TOSTI:

24 Q But, Doctor, as far as your opinions as to

1 whether appropriate informed consent was obtained in
2 Jackie Franklin's case, you're relying on the
3 progress note that Dr. Reinhold wrote and the
4 information contained in that progress note,
5 correct?

6 MS. REID: Objection. You're not fairly
7 characterizing his testimony, but go ahead and
8 answer.

9 A I relied on the conversation that took
10 place between me and Dr. Reinhold.

11 BY MS. TOSTI:

12 Q But, Doctor, you said you have no
13 recollection of that conversation, correct?

14 A But I previously mentioned to you the
15 routine practice of mine in such circumstances.

16 Q Doctor, the only evidence that you are
17 aware of, at least as far as your testimony is
18 concerned, that I can see that any conversation took
19 place is based on Dr. Reinhold's progress note,
20 correct?

21 A Correct.

22 Q So you're relying on the accuracy of that
23 progress note when you say that you believe
24 Jackie Franklin gave informed consent, correct?

1 MS. REID: Objection.

2 MS. TOSTI: You may answer.

3 A Repeat the question, please.

4 Q I said when you give the opinion that
5 Jackie Franklin gave an informed consent, you're
6 relying on the information and the accuracy of
7 Dr. Reinhold's progress note written at 14:30 hours,
8 correct?

9 A That's not correct.

10 Q Well, what are you relying upon then?

11 MS. REID: Objection. We've answered this
12 a couple times, Jeanne. This is the last time.

13 BY MS. TOSTI:

14 Q Doctor, I'm getting several answers from
15 you. You're telling me that you have no
16 recollection of a conversation. I'm asking you what
17 are you relying upon to say that Jackie Franklin
18 gave informed consent, and then you're telling me
19 you're relying on this conversation that took place,
20 and I need to discern very carefully what the basis
21 of your opinion is that Jackie Franklin gave an
22 informed consent.

23 Since you have no recollection, I have to
24 assume that it's coming out of these medical

1 records, and if it's not the progress note written
2 by Dr. Reinhold, then I need to know what the basis
3 of your opinion is.

4 MS. REID: Jeanne, I'm going to object
5 because you're trying to get him to say, "Yes, I
6 relied on only one thing." He's told you he
7 relied on the notes, the way he practices
8 medicine, the conversation. I mean, it's a
9 variety of things. You can't pigeonhole.
10 That's the problem.

11 MS. TOSTI: If he's relying on a
12 conversation that he can't remember, I think I
13 would like to know the content of the
14 conversation then.

15 MS. REID: Doctor, go ahead and repeat what
16 you've already stated.

17 A Well, I relied on the routine practice that
18 I believe was appropriate and on Dr. Reinhold's
19 clinical judgment.

20 BY MS. TOSTI:

21 Q Do you know when Dr. Reinhold wrote that
22 progress note, whether it was before or after the
23 procedure was done?

24 A Probably before the procedure.

1 Q Why do you think it was before the
2 procedure?

3 MS. REID: Go ahead and look at the chart.

4 A Because usually, again, we write our notes
5 before the procedure.

6 BY MS. TOSTI:

7 Q Now, Doctor, in regard to operative notes
8 that are put in the progress notes, are those
9 usually written after the surgery?

10 A Yes.

11 Q Now, are you looking at the progress notes
12 right now?

13 A No.

14 Q Would you open the progress notes up to
15 Dr. Reinhold's progress note, the first one that's
16 written at 14:30 hours, because I'm going to direct
17 your attention to that note and a couple other
18 items.

19 MS. REID: We're there, Jeanne.

20 BY MS. TOSTI:

21 Q Now, Doctor, do you see the note that
22 begins "PG" and then a plus sign with a circle
23 around it?

24 A Yes.

1 Q And in the margin is written the time of
2 14:30, correct?

3 A Correct.

4 Q Is this the progress note that you are
5 indicating to me that you believe was written before
6 the Cesarean section?

7 A Yes.

8 Q And you're relying on the time that
9 Dr. Reinhold recorded there when you say that,
10 correct?

11 A I'm relying on the conversation that
12 preceded the actual repeat Cesarean section, between
13 me and Dr. Reinhold.

14 Q Doctor, I'm only asking you about the time
15 on this note. You said you thought it was written
16 before the procedure, and I'm asking if you are
17 saying that you believe it was written before the
18 procedure because of the time that's written on it?

19 A Yes.

20 Q Doctor, I would like to direct you to the
21 intraoperative documentation, and I would like you
22 to take a look at the operating room report.

23 MS. REID: Do you want the dictated
24 operative report?

1 MS. TOSTI: No, the one that is handwritten
2 that's done by the operating personnel. It
3 should be someplace close to the anesthesia
4 sheet. The title at the top is Operating Room
5 Report.

6 MS. REID: We're there.

7 BY MS. TOSTI:

8 Q Okay. Doctor, at the top of the page there
9 are some boxes that indicate the time that the
10 patient entered surgery, the time that the patient
11 exited surgery and also the start time and the
12 surgery stop time, correct?

13 A Correct.

14 Q Do you see where the surgery start time is
15 listed?

16 A Yes.

17 Q And would you agree that that time
18 indicates that the start time for surgery was at
19 15:19 hours?

20 A Yes.

21 Q Now, Doctor, I would like you to turn back
22 to the progress notes, and immediately after
23 Dr. Reinhold's note at 14:30 hours, the first
24 progress note at 14:30 hours, I would like you to

1 take a look at the operative note she wrote.

2 MS. REID: We're there, Jeanne.

3 BY MS. TOSTI:

4 Q And do you see the time that Dr. Reinhold
5 wrote in the margin on that operative note?

6 A Yes.

7 Q You would agree that that says 14:30 hours,
8 correct?

9 A Correct.

10 Q And would you also agree that that time
11 cannot be correct, given the fact that her actual
12 surgery didn't even start until 15:19 hours?

13 A Well, surgery start time, I don't know what
14 they mean by that, the time of incision, the time
15 the patient arrived to the operating room, the time
16 the operating room was ready to receive the patient?

17 Q Doctor?

18 A Yes.

19 Q You've seen a number of these operative
20 reports, I'm sure, and if you look at the boxes on
21 the operating room report, they have one box that
22 says "patient's enter time," and they have another
23 box that says "surgery start time," and you're
24 telling me that you don't understand what those

1 particular titles mean?

2 A I do.

3 Q Okay. And would you agree that surgery
4 start time is an indication of when the actual
5 surgical procedure starts?

6 A Yes.

7 Q Okay. And would you agree that surgical
8 stop time is when the actual surgical procedure
9 stops?

10 A Yes.

11 Q And if Jackie Franklin's surgery didn't
12 even start until 15:19 hours, you would have to
13 agree that Dr. Reinhold's note, which is an
14 operative note that's timed at 14:30 hours, that
15 time has to be incorrect, wouldn't you agree?

16 MS. REID: I'm going to object, Jeanne.

17 It's not his note. But to the best he knows, go
18 ahead and answer it.

19 A I really don't have any explanation for
20 this.

21 BY MS. TOSTI:

22 Q Well, Doctor, you'd agree that given the
23 fact if you look down at the bottom of the operative
24 note, we have findings in regard to the baby, that

1 obviously no one could know until the baby was born
2 that this had to have been written after the
3 procedure?

4 A Yes.

5 MS. TOSTI: Just give me a minute, Chris.

6 MS. REID: Sure, Jeanne.

7 BY MS. TOSTI:

8 Q Doctor, what factors affect the success
9 rate for reversing a tubal ligation if we say
10 success is measured by the ability to achieve an
11 intrauterine pregnancy and carry to term?

12 A Could you repeat the question, please?

13 Q Yes. What factors affect the success rate
14 for reversing a tubal ligation procedure if we say
15 that the success rate is measured by a person's
16 ability to become pregnant and then carry to term?

17 A Number one, the experience and the surgical
18 skills of the operator who is performing the
19 revision, number two, the type of tubal ligation
20 procedure that the patient has received, number 3,
21 the quality of the fallopian tubes of the patient
22 and probably other factors that I'm not aware of.

23 Q Doctor, would you agree that the success
24 rate may also be dependent on whether or not the

1 mother had adhesions inside the abdomen around the
2 area of the tubes?

3 A As a secondary cause, yes, but primarily
4 it's the condition of the tubes themselves.

5 Q And do you have an opinion as to whether
6 Jackie had any adhesions at the time of her
7 C-section?

8 A I have no recollection of this.

9 Q Doctor, I would like you to take a look at
10 that operative note that is dated 1/29 at 14:30
11 hours again, the one written by Dr. Reinhold.

12 MS. REID: Yes, we're there.

13 BY MS. TOSTI:

14 Q Take a look at the end of her note, and
15 would you agree that she has indicated that
16 Jackie Franklin had some adhesions?

17 A Yes.

18 Q Doctor, in 1993 at Metro, if you as the
19 attending determined that consent forms for tubal
20 ligation -- and I'm speaking of the state consent
21 form -- could be waived, were you required to notify
22 the hospital in any manner?

23 A I don't recall.

24 Q After Jackie Franklin delivered, did you

1 have any other contact with her?

2 A No.

3 Q Doctor, would you agree that carcinoma
4 insitu of the cervix is a noninvasive type of
5 cancer?

6 A Yes.

7 Q Would you agree that it's a treatable
8 condition?

9 A Yes.

10 Q And would you agree that carcinoma insitu
11 of the cervix is not an absolute bar to future
12 pregnancies?

13 A Yes.

14 Q And, Doctor, what are the treatment options
15 available to a woman that has carcinoma insitu of
16 the cervix?

17 A Cone biopsy, hysterectomy and possibly a
18 laser surgery to the cervix.

19 Q On January 29, 1993, when you saw
20 Jackie Franklin in the surgical suite for her
21 Cesarean section, were you aware of her two previous
22 cervical biopsies and what it showed?

23 A I don't recall.

24 Q Doctor, would you agree that tubal ligation

1 is absolutely no treatment benefit for carcinoma
2 insitu?

3 MS. REID: I object to the word
4 "absolutely." Go ahead and answer.

5 A These are two different entities.

6 BY MS. TOSTI:

7 Q So is the answer no, it does not have any
8 treatment benefit?

9 A Indirectly, it doesn't.

10 Q Would you agree that following
11 Jackie Franklin's tubal ligation there was no
12 medical indication for giving Jackie the drug
13 Depo-Provera for contraceptive purposes?

14 A Yes.

15 Q And would you agree that it was substandard
16 care for Dr. Emery to order the drug Depo-Provera
17 for Jackie Franklin after she had undergone tubal
18 ligation?

19 A The medication was not clinically
20 indicated.

21 Q Was it substandard care to order that drug
22 for Jackie Franklin?

23 A I don't know what you mean by "substandard
24 care."

1 Q Doctor, would a reasonably prudent
2 physician in like or similar circumstances have
3 ordered Depo-Provera for Jackie Franklin after she
4 had undergone tubal ligation?

5 A No.

6 MS. TOSTI: We're just about done, Chris
7 I just need to check over my notes.

8 MS. REID: Take your time.

9 BY MS. TOSTI:

10 Q Doctor, do you have any other opinions that
11 we have not covered that you intend on expressing at
12 trial in this case?

13 A No.

14 Q Should you arrive at any new opinions
15 between now and the trial, I would trust that you
16 inform counsel and that she will inform me so that
17 we can continue your deposition.

18 At this time do you intend to do any
19 further research or work or review of materials on
20 this case?

21 A No.

22 MS. TOSTI: I think we're finished. I
23 thank you for your time today, Doctor.

24 THE WITNESS: Thank you.

1 MS. REID: Thanks, Jeanne.

2 MS. TOSTI: I'm all done from this end, and
3 I've told the court reporter I'm ordering this
4 expedited, Chris.

5 MS. REID: Okay. We'll probably want to
6 review it, but go ahead and send copies out and then
7 we'll just take a look at it. I would like to have
8 him read and sign it.

9 (WITNESS EXCUSED)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS)
) S.S.
2 COUNTY OF C O O K)

3 I, DANIEL M. PRISCU, CSR and Notary Public
4 in and for the County of Cook and State of Illinois,
5 do hereby certify that on June 13, 1996, at
6 10:12 a.m., at 3000 North Halsted Street, Suite 209,
7 Chicago, Illinois, the deponent NAWAR HATOUM, M.D.
8 personally appeared before me.

9 I further certify that the said
10 NAWAR HATOUM, M.D. was by me first duly sworn to
11 testify and that the foregoing is a true record of
12 the testimony given by the witness.

13 I further certify that the deposition
14 terminated at 11:42 a.m.

15 I further certify that I am not counsel for
16 nor related to any of the parties herein, nor am I
17 interested in the outcome hereof.

18 In witness whereof, I have hereunto set my
19 hand and seal of office this 17th day of June,
20 1996.



Daniel M. Priscu

Notary Public

24 CSR No. 084-003982 - Expiration Date: May 31, 1997