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In The Matter Of:

Cindy Bryant, et al. v.
Lake Obstetrics & Gynecology, et al.

Steven M. Klein, M.D.
Vol. 1, May 22, 1996

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IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

CINDY BRYANT, et al.,)
Plaintiffs,)
) JUDGE MITROVICH
-vs-) CASE NO. 95CV000419
LAKE OBSTETRICS &)
GYNECOLOGY, et al.,)
Defendants.)

Videotaped deposition of STEVEN M. KLEIN, M.D., taken as if upon direct examination before Susan M. Cebron, a Registered Professional Reporter and Notary Public within and for the State of Ohio, at the offices of Ulmer & Berne, 900 Bond Court Building, Cleveland, Ohio, at 4:20 p.m. on Wednesday, May 22, 1996, pursuant to notice and/or stipulations of counsel, on behalf of the Defendants, Drs. Hill & Chapnick, Inc., in this cause.

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STEVEN M. KLEIN, M.D., of lawful age, called by the Defendants Drs. Hill & Chapnick, Inc., Ronald Chapnick, M.D. and Carla M. Stallworth, M.D. for the purpose of direct examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION OF STEVEN M. KLEIN, M.D.

BY MR. LENSON:

(Thereupon, Defendants' Exhibit A, Klein, Curriculum Vitae of Steven M. Klein, M.D., was marked for purposes of identification.)

(Thereupon, Defendants' Exhibit B, Klein, Pap Smear Cytology Report for Cindy Bryant dated July 2, 1990 was marked for purposes of identification.)

(Thereupon, Defendants' Exhibit C, Klein, Pap Smear Cytology Report for Cindy Bryant dated March 27, 1991, was marked for purposes of identification.)

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(Thereupon, Defendants' Exhibit D, Klein, Pap Smear Cytology Report for Cindy Bryant dated July 23, 1991, was marked for purposes of identification.)

(Thereupon, Defendants' Exhibit E, Klein, Pap Smear Cytology Report for Cindy Bryant dated April 30, 1992, was marked for purposes of identification.)

(Thereupon, Defendants' Exhibit F, Klein, Ashtabula County Medical Center records concerning Cindy Bryant, was marked for purposes of identification.)

MR. LENSON: This is the videotape deposition of Dr. Steven Klein, an expert called on behalf of Drs. Hill & Chapnick, Dr. Ronald Chapnick and Dr. Carla Stallworth in Case Number 95 CV 000419.

The doctor's deposition testimony is being utilized in lieu of his personal appearance at the trial of this matter scheduled to proceed on June 10, 1996

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before Judge Mitrovich.

Will all parties stipulate that they received Notice and waive any defects in Notice?

MR. TIRA: Certainly.

MR. HIRSHMAN: Yes.

MR. FULTON: Yes.

MS. SANDACZ: Yes.

MR. LENSON: All parties have agreed to the stipulation and we will proceed to depose Dr. Klein.

Q: Would you state your full name for the record, sir?

A: Yes. It's Steven, S-t-e-v-e-n, Michael Klein, K-l-e-i-n.

Q: Your profession?

A: I'm a physician, M.D., and obstetrician gynecologist.

Q: Dr. Klein, can you tell us your professional address?

A: 29001 Cedar Road, Suite 518, and that's in Lyndhurst, Ohio, 44124.

Q: Do you practice alone or with a group?

A: I practice with a group, all of us are doing obstetrics and gynecology.

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Q: And what is the name of the group practice?

A: Beachwood OB/GYN, Incorporated.

Q: Can you tell us your age, sir?

A: 52.

Q: Date of birth?

A: 10/12/43.

Q: Are you married?

A: Yes, I am.

Q: Do you have any children?

A: Yes, I do.

Q: Let's start next with your education and I have here curriculum vitae which I have marked as Exhibit A.

MR. LENSON: Counsel of record have received it, is that correct?

MR. TIRA: I have it.

Q: All right. I am going to hand you your curriculum vitae just to shorten it a little bit, and we are going to mark that as Exhibit A and produce it at the time of trial, but would you put us through your education background starting after high school?

A: Yes. I did a four year college training at the Washington Jefferson College in Washington, Pennsylvania, and finished there in 1965.

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I then went to the Ohio State University School of Medicine from 1965 to 1969, graduating and passed my Ohio State boards, and then I did a year of medical internship from 1969 to 1970 at University Hospitals at the Ohio State University.

Following that I went to Philadelphia at the University of Pennsylvania where I did a residency in obstetrics and gynecology from 1970 to 1974. That was my formal training.

Q: And what year did you enter active medical practice?

A: I came back to Cleveland in 1974, in July.

Q: Are you licensed to practice medicine in the State of Ohio?

A: Yes, I am.

Q: And when were you so licensed?

A: In 1970 –

Q: 1970?

A: 1969.

Q: '69. Have you ever been licensed to practice in any other state other than Ohio?

A: Yes. In Pennsylvania while I was a resident I had a license, but that lapsed because I no longer am in

Pennsylvania.

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[1] **Q:** And you are still in good standing with the [2] State of Ohio Medical Board?

[3] **A:** Yes.

[4] **Q:** Are you board certified in any areas of [5] medicine, doctor?

[6] **A:** I am board certified in obstetrics and [7] gynecology.

[8] **Q:** And can you tell the ladies and gentlemen of the [9] jury what board certification constitutes?

[10] **A:** Yes. After residency, formal training in [11] obstetrics and gynecology we are then examined [12] by the American College of OB/GYN with a written [13] examination.

[14] Upon passing that examination we become [15] board eligible. We practice obstetrics and [16] gynecology for approximately 18 months after [17] which we are then reexamined with an oral [18] examination, and once we pass that, we then [19] receive a certification, board certification in [20] our specialty.

[21] **Q:** And do you have maintained that board [22] certification since when, doctor?

[23] **A:** Since 1976. Maintenance includes continuing [24] medical education and good standing within [25] obstetrics and gynecology and your state medical

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[1] board.

[2] **Q:** Are you presently affiliated with any hospitals?

[3] **A:** Yes.

[4] **Q:** And which hospitals are you so affiliated?

[5] **A:** University Hospitals of Cleveland, the Mount [6] Sinai Medical Center, Meridia Hillcrest Hospital [7] and Meridia Southpointe.

[8] **Q:** And when you say you are affiliated with those [9] hospitals, what does that actually mean?

[10] **A:** Also, in addition, I guess, Richmond Heights [11] Hospital, now that they have been procured.

[12] What does that mean? That means that I [13] have applied for privileges and through the [14] hospital's review of my background they allow me [15] then to practice in my profession, obstetrics [16] and gynecology, at the respective institutions.

[17] **Q:** Does that mean essentially that you have [18] admitting privileges to those particular [19] hospitals?

[20] **A:** That's correct.

[21] **Q:** And you can perform, if necessary, surgical [22] procedures at those hospitals?

[23] **A:** That's correct.

[24] **Q:** Are you a member of any professional societies?

[25] **A:** Yes, I am.

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[1] **Q:** And can you give us a run down of those? And if [2] you have to use your curriculum vitae, that's [3] fair.

[4] **A:** I am a fellow in the American Association of [5] Gynecologic Laparoscopists. A fellow in the [6] American College of Obstetricians and [7] Gynecologists. A fellow of the American [8] Fertility Society, which has now been [9] redesignated as the Society of Reproductive [10] Endocrinology.

[11] A diplomat of the American Board of [12] Obstetrics and Gynecology. A fellow of the [13] American College of Obstetricians and [14] Gynecologists.

[15] I belong to the American Medical [16] Association, the Ohio State Medical Association, [17] the Cleveland Academy of Medicine.

[18] I am a charter member of the Fallopius [19] International Society, that is an investigative [20] society for infertility investigation. A [21] charter member of the Society of Reproductive [22] Surgeons, and currently I am chairman of the [23] quality assurance committee of the department of [24] gynecology at the Mount Sinai Medical Center.

[25] **Q:** Have you in your career been an instructor or a

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[1] professor of medical students?

[2] **A:** Yes. Mount Sinai is an affiliate of University [3] Hospitals in obstetrics and as such has a [4] residency program ever since I came back to [5] Cleveland. Medical students also from the [6] university come to Mount Sinai where the bulk of [7] my practice has been, and by virtue of the [8] affiliation I am an assistant clinical [9] instructor from the university, and I teach [10] medical students and residents in obstetrics and [11] gynecology.

[12] **Q:** And how long have you been doing that?

[13] **A:** Since 1974.

[14] **Q:** And you are still on active staff there?

[15] **A:** Yes.

[16] **Q:** Have you published any articles in your field of [17] medical specialty?

[18] **A:** Yes, but they have dealt with infertility.

[19] **Q:** Infertility?

[20] **A:** Uh-huh.

[21] **Q:** Doctor, can you tell the ladies and gentlemen of [22] the jury essentially what the scope and extent [23] of the practice of an OB/GYN is?

[24] **A:** We are involved with the health care of women [25] when they become adolescent, generally from the

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[1] time that they begin to have menstrual periods [2] through menopause. We try to keep them healthy, [3] performing those tests that are indicated in [4] order to ascertain whether disease exists, and [5] we act on the findings.

[6] So not only are we clinically seeing women [7] in the office, but we also do procedures, [8] surgical procedures when necessary. Of course, [9] obstetrics is the care and delivery of gestation [10] of pregnancy.

[11] **Q:** All right. So you deliver babies, you take care [12] of women once they reached puberty, is it?

[13] **A:** Yes. Until then they are generally under the [14] purview of a pediatrician.

[15] **Q:** And then you also provide when necessary [16] diagnostic studies and then surgical [17] intervention, if that's necessary?

[18] **A:** That's correct.

[19] **Q:** So I gather then by what you are suggesting is [20] that you are also a surgeon?

[21] **A:** Yes.

[22] **Q:** And you also perform surgical procedures upon [23] your patients?

[24] **A:** That's correct.

[25] **Q:** And you continue to perform those surgical

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[1] procedures today?

[2] **A:** Yes.

[3] **Q:** For the purpose of your testimony I would like [4] to ask you for your definition of terms which we [5] mentioned throughout the course of this trial, [6] and so that the jury can get it firsthand from a [7] practitioner.

[8] What is a Pap, P-a-p, smear?

[9] **A:** That is a scraping of tissue in order to obtain [10] exfoliated cells, just superficial cells or [11] layers of cells. The term originated by a [12] gentleman by the name of Dr. Papanicolaou. So [13] it's termed Pap, and he discovered that by [14] scraping the cervixes, cervixes of women, that [15] diseases such as cancer of the cervix could [16] sometimes be diagnosed.

[17] Today we use that as a screening method to [18] enable us to tell whether the cervix is [19] healthy. Sometimes, however, depending on our [20] suspicion, that may be not enough and we have to [21] act upon that with other diagnostic tools.

[22] But the Pap smear is a smear of any

tissue, [23] it doesn't necessarily have to be the cervix, [24] it's a type of preparation that is – tries to [25] diagnose whether cancer of the cervix exists.

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[1] **Q:** Based upon your experience, training and [2] education, are there limitations in respect to a [3] Pap smear?

[4] **A:** Oh, yes.

[5] **Q:** And what are those limitations?

[6] **A:** Well, sometimes a cancer can exist and the cells [7] are not exfoliated, so that the Pap smear misses [8] the cancer that does exist.

[9] Sometimes during the preparation or [10] preservation of the cells on the slide cells may [11] be lost, cancer cells may be lost.

[12] So again, it's used as a screening [13] methodology and not an absolute.

[14] **Q:** Logistically how is a Pap smear undertaken? Is [15] it done, first of all, in the clinician's [16] office?

[17] **A:** Yes. A woman comes in, routinely we do Pap [18] smears on sexually active women once a year, [19] unless there is a history of abnormality in [20] which case we may wish to do Pap smears more [21] frequently.

[22] We examine a patient. We place a speculum [23] into the vagina.

[24] **Q:** What is a speculum, doctor?

[25] **A:** Speculum is a device that is used to keep the

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[1] vagina open so that we can actually visualize [2] the cervix or the neck of the womb, at which [3] point in time we use spatula, which are either [4] plastic or wooden, to scrape the cervix and to [5] put it on a slide.

[6] We then preserve the cells and then make [7] certain notations as to when menstrual periods [8] occurred, whether there is a pregnancy or no [9] pregnancy, whether the patient is on birth [10] control pills, patient is on estrogen [11] replacement therapy, what we see, whether there [12] is inflammation, whether there is additional [13] infection.

[14] We send that information along with the [15] slide to the pathologist or pathologic [16] laboratory where cytologists, people who are [17] trained to look at these slides and interpret [18] them, look at them and interpret them with our [19] data that we send along and then they issue us a [20] report.

[21] **Q:** Thank you, doctor. What is a biopsy?

[22] **A:** A biopsy is the procuring of tissue, a piece of [23] tissue, not just the exfoliated cells that come [24] off, but tissue itself that is also preserved [25] and then sectioned into fine, little microscopic

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[1] sections, placed on slides and looked at [2] serially by a pathologist to determine whether [3] there is pathology there.

[4] **Q:** Who actually performs the biopsy under the [5] situation of an OB/GYN?

[6] **A:** The gynecologist or the obstetrician performs [7] the biopsy and the pathologist then interprets [8] that biopsy.

[9] **Q:** And what is a colposcopy?

[10] **A:** A colposcope is simply a magnifying device, much [11] like a microscope except it's mounted [12] horizontally or parallel to the floor, which [13] enables us to visualize the cervix under a very [14] high magnification to allow us to then be able [15] to identify areas of pathology or that we feel [16] may be suspicions for pathology.

[17] **Q:** And is that done also in the office?

[18] **A:** Yes, that is an office procedure.

[19] **Q:** All right. So as I understand what you are [20] saying, forgive me for my layman approach to it, [21] but it sounds like it is a giant microscope in [22] which the practitioner, the clinician can look [23] inside and observe areas of suspicion?

[24] **A:** That's correct.

[25] **Q:** What is a cone, c-o-n-e, biopsy?

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[1] **A:** Well, it is a biopsy of the cervix that entails [2] removing a conical piece of tissue. It's a [3] significant biopsy. It is not just a small [4] piece of tissue. It is shaped like a cone, in [5] solid geometry, like an ice cream cone, if you [6] will.

[7] The base or the large part of the cone [8] should entail what's called a transformation [9] zone. That's where the cells of the lining of [10] the cervix meet the cells of the vaginal portion [11] of the cervix because this is an area where [12] pathology most commonly exists, if it exists at [13] all.

[14] So this tissue has to be removed and the [15] apex or the thinning out of that cone then goes [16] deeper into the cervical canal so that we can [17] ascertain whether disease or whether pathology [18] extends into the canal and how deeply.

[19] **Q:** Is that a procedure that occurs in the office or [20] does that require hospitalization?

[21] **A:** There is a technique where a wire electrode, a [22] wire loop electrode allows us to excise a cone [23] piece of tissue from the cervix and we can do [24] that in the office.

[25] There are other techniques, however, such

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[1] as using a knife or using a laser where the [2] discomfort is too great, we cannot anesthetize [3] adequately, bleeding can be rather – needs to [4] be controlled and we need a controlled [5] environment and so that is performed in a [6] hospital situation, but as an outpatient.

[7] **Q:** All right. Just so I understand, the Pap smear, [8] the biopsy, the colposcopy and the cone biopsy [9] are all what are called diagnostic studies?

[10] **A:** That's correct.

[11] **Q:** And the Pap smear being what, the first step, [12] perhaps, in the various diagnostic studies that [13] can take place in the event of a suspicion of an [14] illness or a disease with a patient?

[15] **A:** That's correct.

[16] **Q:** All right. What is a hysterectomy?

[17] **A:** Removal of the uterus.

[18] **Q:** And is that done because of some type of disease [19] or illness?

[20] **A:** Yes.

[21] **Q:** All right. And is that a surgical procedure?

[22] **A:** Yes, it is.

[23] **Q:** Does that require hospitalization?

[24] **A:** Yes, it does.

[25] **Q:** Is that something that you have performed during

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[1] your career?

[2] **A:** Yes, I have.

[3] **Q:** Do you still perform those?

[4] **A:** Yes.

[5] **Q:** And are there various types of hysterectomies?

[6] **A:** The uterus can be removed either vaginally or [7] abdominally, technically speaking. But a [8] hysterectomy is a hysterectomy, it is just the [9] removal of the uterus.

[10] There are modifications of hysterectomy [11] that include removal of lymphatic tissue, wider [12] margins going a little bit more lateral to take [13] more tissue when one suspects or one has a [14] diagnosis of, for instance, invasive carcinoma [15] of the cervix, and that would be a called a [16] radical hysterectomy.

[17] **Q:** Otherwise it is known as a simple or abdominal [18] hysterectomy?

[19] **A:** That's correct.

[20] **Q:** All right. I want to make sure my terms are [21] correct.

[22] **A:** That's correct.

[23] **Q:** Thank you.

[24] Do you perform the procedures that we just [25] went over, the Pap smears, the

biopsy, the

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[1] colposcopy, the cone biopsy and the [2] hysterectomies?

[3] **A:** Yes.

[4] **Q:** Do you perform all types of hysterectomies?

[5] **A:** No. I refer my patients who need radical [6] hysterectomy to a gynecologist oncologist.

[7] **Q:** What is a gynecologist oncologist?

[8] **A:** Well, a gynecologic oncologist is, has been [9] trained in obstetrics and gynecology, but has [10] further training in cancer of the female genital [11] track and deals with these lesions frequently, [12] and in my opinion the patient is better served [13] being under the purview of that doctor.

[14] **Q:** Doctor, at my request did you review certain [15] medical records and other documents relating to [16] plaintiff, Cindy Bryant?

[17] **A:** Yes.

[18] **Q:** Did these medical records include four Pap smear [19] reports prepared by Drs. Hill & Chapnick, [20] pathologists, and specifically Drs. Ronald [21] Chapnick and Carla Stallworth?

[22] **A:** Yes.

[23] **Q:** In your practice do you routinely send the Pap [24] smear slides to pathologists or laboratories?

[25] **A:** Yes.

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[1] **Q:** And logistically how do you accomplish the [2] conveyance of the Pap smear slides?

[3] **A:** I perform the smear, place it on the slide, [4] prepare the slide, preserve the cells with [5] solution, cell preservative, write on a [6] standardized form that we have to convey to the [7] cytologist or pathologic laboratory which would [8] do the interpreting my suspicions or the [9] patient's condition, and then send the slide off [10] to the pathologic laboratory or cytology [11] laboratory.

[12] **Q:** All right. Is that what's called a requisition [13] slip?

[14] **A:** Yes.

[15] **Q:** Which you send over to the pathologist?

[16] **A:** That's correct.

[17] **Q:** Once the pathologist has reviewed the slide, is [18] it the general practice of the pathologist to [19] provide you with a written report?

[20] **A:** Yes.

[21] **Q:** Do you receive the slides back at all?

[22] **A:** No.

[23] **Q:** You don't interpret the slides?

[24] **A:** That is correct.

[25] **Q:** So what you receive is a report, is that

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[1] correct?

[2] **A:** That's right.

[3] **Q:** And is it a fact that the report can indicate to [4] you as the practitioner or the clinician that [5] the Pap smear interpretation was normal, [6] abnormal or the pathologist was unable to [7] interpret the Pap smear because of some problem [8] with the actual smear?

[9] **A:** That's correct.

[10] **Q:** So in other words, there could be three [11] essential findings, normal, abnormal or they [12] couldn't interpret it?

[13] **A:** Right. The abnormal, of course, is the degree [14] of abnormality can sometimes be found at Pap [15] smear. Sometimes additional procedures such as [16] a biopsy or a larger biopsy, the cone biopsy is [17] needed to ascertain the extent of abnormality, [18] and as you say, sometimes the Pap smear cannot [19] be interpreted.

[20] **Q:** Within the purview of your practice, the [21] clinician, which is the OB/GYN, has to make a [22] decision as to whether or not a follow-up care [23] and attention is required based upon the report [24] from the pathologist, is that accurate?

[25] **A:** Well, not only on the report, but based on the

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[1] patient, the doctor's knowledge of the patient, [2] the compliance of the patient, the disease [3] process that the doctor suspects might be there [4] will all determine how frequent follow-up or [5] what other follow-up procedures might be [6] indicated.

[7] **Q:** What do you mean by compliance by the patient?

[8] **A:** Some patients do not when they are requested [9] return to the office for additional testing on [10] time, and the gynecologist may at that time, [11] knowing he is dealing with this kind of a [12] patient, elect to be somewhat more aggressive at [13] the present time rather than allowing more time [14] to go by.

[15] **Q:** Before doing something aggressive?

[16] **A:** He just doesn't want her to harm herself by [17] delaying diagnosis.

[18] **Q:** Once you receive a Pap smear which is abnormal, [19] what procedures can you undertake, if any? Were [20] those the procedures we went over before?

[21] **A:** Yes. We can elect to observe, repeat a Pap [22] smear, do a biopsy with the use of a colposcope [23] or to do a cone biopsy, if indicated.

[24] **Q:** I am going to hand you now what have been marked [25] for identification purposes as Defendants'

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[1] Exhibits B, C, D and E, and I would like you to [2] look at those for a moment and, counsel, you [3] have all received those obviously before, those [4] are the Pap smear interpretations.

[5] You have looked at them, doctor?

[6] **A:** Yes.

[7] **Q:** Are those the Pap smear interpretations that you [8] reviewed prior, obviously, to coming here today?

[9] **A:** Yes.

[10] **Q:** That were – that were provided by Drs. Hill & [11] Chapnick, specifically Dr. Ronald Chapnick and [12] Dr. Carla Stallworth?

[13] **A:** Yes.

[14] **Q:** To the Lake OB/GYN group?

[15] **A:** Yes.

[16] **Q:** I would like you to look first at Exhibit B. [17] Tell us the date and then tell us who the [18] patient is and essentially what the report [19] indicates.

[20] **A:** The Exhibit B is a Pap smear report given by Dr. [21] Chapnick on Cindy Bryant. The receipt of the [22] Pap smear to Dr. Chapnick was 6/26/90 and then [23] he issued a report 6/23/90.

[24] The diagnosis was that the cell study was [25] negative, that there were clue cells present,

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[1] exudate interferes with cell study. Recommend [2] repeat in one year.

[3] **Q:** Okay. First of all, as an OB/GYN, what does [4] this mean to you having reviewed it?

[5] **A:** It means that Dr. Chapnick did not see cancer [6] cells. It doesn't mean that they didn't exist, [7] but that he didn't see them.

[8] Clue cells indicate a condition called a [9] bacterial vaginosis, which is a bacterial [10] infection. The exudate interfered with the cell [11] study, according to Dr. Chapnick, and my [12] interpretation of this is is that I have to [13] treat the infection, the bacterial vaginosis, [14] and if I want to make sure that there aren't any [15] cancer cells present, then I have to repeat this [16] study as soon as the bacterial vaginosis is [17] cleared.

[18] **Q:** Okay. So in your terms that we used before of a [19] normal, abnormal or really unclear diagnosis, [20] what is this, in your experience, training and [21] education?

[22] **A:** This is neither normal nor abnor-

mal. It falls [23] into that category of unable to be interpreted.

[24] **Q:** Would you look now at Exhibit C and is that also [25] a Pap smear report?

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[1] **A:** This is another Pap smear report generated by [2] Dr. Chapnick on Cindy Bryant. The date of [3] receipt was 3/15/91.

[4] **Q:** All right. In relationship to Exhibit B, what [5] is the time period in-between the two Pap [6] smears?

[7] **A:** This is nine months.

[8] **Q:** Okay.

[9] **A:** And the report was 3/27/91. The diagnosis was [10] low grade squamous intraepithelial lesion, [11] parentheses, CIN I, end parentheses. Recommend [12] colposcopy. Statement of specimen adequacy, [13] satisfactory for interpretation.

[14] **Q:** Doctor, if I might, by looking at that report, [15] to whom is that report being sent? I know it [16] relates to –

[17] **A:** To Dr. Basquinez.

[18] **Q:** So you assume by that that Dr. Basquinez has [19] requested the report?

[20] **A:** Yes.

[21] **Q:** All right. Would you tell us now what this [22] means to you as a practicing OB/GYN?

[23] **A:** This means to me that there is pathology present [24] in the cervix, the extent to which that [25] pathology is able to be interpreted by cytology

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[1] shows that it is a low grade squamous [2] intraepithelial lesion, meaning that the [3] superficial layers of cells of the cervix are [4] being infiltrated by abnormal cells, cells that [5] have a slightly increased nuclear-cytoplasmic [6] ratio. These are abnormal cells.

[7] The cytology here or the report here only [8] sees cells of a superficial nature, but as the [9] gynecologist I cannot assume that it's not more [10] pathologic than reported.

[11] **Q:** So pathologic means that there is – there is a [12] clinical finding, is that what you are [13] suggesting, a disease?

[14] **A:** Yes.

[15] **Q:** All right. So that the report is telling you as [16] an OB/GYN that there is pathology existing in [17] respect to the plaintiff, Cindy Bryant, as [18] determined by the Pap smear?

[19] **A:** That's correct.

[20] **Q:** You indicated that the specimen adequacy was [21] okay?

[22] **A:** The cytologist felt that it was okay as far as [23] his ability to report.

[24] **Q:** And that's different now than the first Pap [25] smear?

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[1] **A:** This clearly falls into an abnormal Pap smear.

[2] **Q:** And what is the requirement for a colposcopy [3] now, the suggestion for a colposcopy?

[4] **A:** Well, this, in order to ascertain the degree of [5] pathology, the next step or the next stage would [6] be for the gynecologist to do a – use the [7] colposcope to visualize the cervix, to see if he [8] or she can visualize the area of abnormality in [9] question, and if so, then perhaps doing a biopsy [10] of that area might be indicated, depending again [11] on the visualization at colposcopy in order to [12] ascertain the degree of pathology that's [13] present.

[14] **Q:** Now, you are aware having reviewed the [15] deposition transcript of Dr. Basquinez that, in [16] fact, Dr. Basquinez did do a colposcopy upon [17] Cindy Bryant, is that correct?

[18] **A:** Following this report, yes.

[19] **Q:** That's correct, I mean as a result of this [20] report she did a colposcopy?

[21] **A:** Yes. Right.

[22] **Q:** Which as you indicated before is done in the [23] office?

[24] **A:** Yes.

[25] **Q:** Are you aware from review of her transcript as

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[1] to what she observed?

[2] **A:** Yes. The first, Cindy Bryant was pregnant at [3] the time and she observed a condition called [4] acetowhite epithelium. That means that acetic [5] acid is used to prepare the cervix –

[6] **Q:** What is acetic acid vinegar?

[7] **A:** Vinegar, so in other words, in various [8] strengths, and the acetic acid is used to [9] highlight abnormal areas in the cervix, areas of [10] increased nuclear activity, cellular [11] proliferative activity, it looks white [12] underneath a green filter on the colposcope.

[13] Dr. Basquinez saw this area and noted it.

[14] **Q:** And what is the significance of a finding of [15] those white cells?

[16] **A:** It corroborates that, indeed, pathology is [17] present and Dr. Basquinez had located what she [18] felt to be where the pathology was.

[19] **Q:** All right. Now, what is the next step in [20] confirming or ruling out the scope and extent of [21] that particular pathology?

[22] **A:** The finding of white epithelium can mean a [23] pathologic process that is mild or moderate or [24] severe. One looks for other things as well, [25] terms such as punctation, which connotes certain

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[1] atypical areas of vasculature, mosaicism, which [2] is another term to describe pathology or [3] abnormal vessels, themselves, but apparently Dr. [4] Basquinez saw none of those and just saw the [5] white epithelium, and at this point in time, [6] again, depending on the clinician, depending on [7] previous history of the patient, previous [8] abnormal Pap smears, if there were any, [9] compliance of the patient and so forth, one [10] might elect to biopsy or one might elect, [11] depending on the aggressiveness, to delay biopsy [12] until after the pregnancy or repeat a Pap smear [13] to see that the low grade squamous [14] intraepithelial legion didn't progress while the [15] pregnancy was progressing.

[16] **Q:** I see. So in respect to the decision by Dr. [17] Basquinez, as we know, not to perform a biopsy, [18] but to go ahead and perform the colposcopy and [19] notwithstanding the finding of pathology, you [20] have no criticism of the fact that she decided [21] to wait until the pregnancy ended before [22] proceeding with more aggressive diagnostic [23] studies?

[24] **A:** Well, she did the colposcope, which was fine, [25] didn't do the biopsy, which I don't quibble

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[1] with, and she elected to proceed with a [2] follow-up Pap smear, which I thought was [3] appropriate. I have no criticism of that.

[4] **Q:** And was, in fact, a follow-up Pap smear [5] undertaken?

[6] **A:** Yes.

[7] **Q:** And when was the next Pap smear, would that be [8] Exhibit D?

[9] **A:** That is Exhibit D.

[10] **Q:** And the date, sir?

[11] **A:** The submission of the Pap smear to Hill & [12] Chapnick, this time it was Dr. Stallworth, the [13] receipt of the Pap smear was 7/12/91. The [14] report was generated on 7/23/91.

[15] The diagnosis was atypical glandular cells [16] of undetermined significance, and then there is [17] a note, typical and atypical parakeratosis. The [18] atypical glandular cells have a high N colon C, [19] which stands for nuclear-cytoplasmic ratio, [20] occasionally vacuolated cytoplasm and [21] neutrophils permeating some of the cell groups. [22] These may be reactive endocervicals; however, [23] close continued follow-up is recommended.

[24] **Q:** First of all, to whom was that

report sent?

[25] **A:** To Dr. Basquinez.

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[1] **Q:** So it's the same doctor who had received the [2] report, the previous report showing the low [3] grade squamous intraepithelial legion, is that [4] correct?

[5] **A:** That's correct.

[6] **Q:** And it's the same doctor who did the colposcopy?

[7] **A:** That's correct.

[8] **Q:** Now, based upon your experience, training and [9] education as an OB/GYN, what does that report [10] mean to you, which is Exhibit D?

[11] **A:** It means that the pathology is extending into an [12] area of the cervix called the endocervix, which [13] are glandular cells, and starting to involve the [14] glandular cells. That's dangerous because [15] spread of disease or worsening of the disease [16] can exist to a greater degree in the endocervix [17] or the inside of the cervix, and when one sees [18] atypical glandular cells, this no longer, it [19] tells me that the next step is not a Pap smear, [20] but the next step has to be a tissue diagnosis [21] or a biopsy.

[22] **Q:** Well, doctor, are you suggesting, therefore, [23] that this is not a normal Pap smear [24] interpretation?

[25] **A:** That's correct.

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[1] **Q:** It is abnormal?

[2] **A:** Abnormal, it fits into that category of [3] abnormality.

[4] **Q:** So that we now have Exhibit B, which you [5] indicated was neither here nor there because of [6] the problem in interpreting or in seeing the [7] cells because of the, was it infection, [8] infectious process?

[9] **A:** Exactly.

[10] **Q:** And now we have Exhibit C, which was the one [11] prior to D, which shows a low grade squamous [12] intraepithelial legion, which you indicate is [13] abnormal, and now D, which again is the second [14] abnormal Pap?

[15] **A:** Definitely abnormal Pap, yes.

[16] **Q:** Now, do you know based upon your review of the [17] information as to whether or not the plaintiff [18] Cindy Bryant was still pregnant at the time that [19] Exhibit D was generated?

[20] **A:** Yes, she was still pregnant.

[21] **Q:** And do you believe that it would have required, [22] based upon your experience, training and [23] education that Dr. Basquinez or any of her [24] colleagues should have undertaken a follow-up [25] aggressive diagnostic study at that time?

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[1] **A:** I have an opinion and that is that a clinician [2] given all the parameters of previous [3] abnormalities, the patient's condition and so [4] forth, can elect to be aggressive and do a [5] biopsy at this point in time, but can also elect [6] to defer that biopsy until after the pregnancy [7] is over.

[8] The reason for deferral is that there can [9] be a lot of bleeding with a biopsy, even a small [10] one, and I do not quibble with Dr. Basquinez for [11] delaying the biopsy until after delivery.

[12] **Q:** All right. Now, you have had an opportunity to [13] read Dr. Basquinez' chart, is that correct?

[14] **A:** Yes.

[15] **Q:** And in Dr. Basquinez' chart does she make [16] reference to doing any follow-up diagnostic [17] studies after the pregnancy has come to a [18] conclusion?

[19] **A:** Not to my knowledge.

[20] **Q:** All right. Based upon your experience, training [21] and education, do you have an opinion based upon [22] a reasonable medical probability as to when the [23] aggressive diagnostic studies should have been [24] undertaken after receipt of Exhibit D?

[25] **A:** I do.

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[1] **Q:** And what is that opinion?

[2] **A:** That at the latest six weeks after the time the [3] baby was born a biopsy should have been taken.

[4] **Q:** All right. Now, when you say a biopsy, we [5] already now that Dr. Basquinez has performed a [6] colposcopy.

[7] **A:** Yes.

[8] **Q:** What would be the situation or the procedure for [9] the biopsy?

[10] **A:** The patient would come into the office, would [11] have a repeat colposcopy to locate the [12] abnormality once again or to locate any [13] additional abnormalities that may exist, and [14] then biopsy or biopsies of those abnormal areas [15] would be undertaken.

[16] **Q:** And to your knowledge, based upon your review of [17] the records concerning plaintiff Cindy Bryant [18] which you have reviewed from Dr. Basquinez and [19] the Lake OB/GYN group, did you find that that [20] was accomplished?

[21] **A:** No.

[22] **Q:** What is the next Pap smear interpretation, [23] doctor, that would be Exhibit E?

[24] **A:** Exhibit E is also a Pap smear generated by Dr. [25] Hill Chapnick, this was Dr. Stallworth again.

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[1] The receipt - this is on Cindy Bryant. The [2] receipt is on April 25, 1992, and the report was [3] April 30, 1992.

[4] **Q:** How many months after the last Pap smear was [5] that undertaken, doctor?

[6] **A:** Nine months.

[7] **Q:** Okay.

[8] **A:** The diagnosis was reactive and reparative [9] changes associated with effects of inflammation, [10] especially in endocervical glandulars. [11] Statement of specimen adequacy, less than [12] optimal due to partially obscuring inflammation.

[13] **Q:** All right. Now, based upon your interpretation [14] before of what is normal and abnormal, what is [15] your opinion as to this particular report?

[16] **A:** This fits neither into the normal nor abnormal [17] category, but goes into that intermediate stage [18] where an interpretation cannot be made. So this [19] is not normal, and it's not abnormal, but based [20] on the two previous abnormalities something [21] needs to be done.

[22] **Q:** All right. But your testimony and your opinion, [23] doctor, is that something should have been done [24] after that third Pap smear report or Exhibit D, [25] is that correct?

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[1] **MR. FULTON:** Objection. Already [2] asked and answered.

[3] **Q:** Is that correct, doctor?

[4] **A:** Yes.

[5] **Q:** The four Pap smear reports which have been [6] marked respectively B, C, D and E, how many of [7] those reports set forth a normal Pap smear?

[8] **A:** None of them.

[9] **Q:** Which set forth abnormal Pap smears?

[10] **A:** C and D.

[11] **Q:** Okay. And the other two would be -

[12] **A:** Unable to be interpreted.

[13] **Q:** All right. Dr. Klein, assuming in that the time [14] period between July, 1990 through April, 1992, [15] which I believe is the date of the last Pap [16] smear that we have before you?

[17] **A:** Yes. Yes.

[18] **Q:** If, in fact, plaintiff Cindy Bryant did suffer [19] from a noninvasive carcinoma of the cervix, do [20] you have an opinion based upon reasonable [21] medical certainty as to whether or not a biopsy [22] performed by a clinician would have revealed [23] this cancer?

[24] A: Yes, I do.

[25] MR. HIRSHMAN: Objection.

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[1] Q: And what is that opinion?

[2] A: That it would have revealed it. It would have [3] revealed it.

[4] Q: Based upon your education, training and [5] experience, do you have an opinion based upon [6] reasonable medical certainty as to whether or [7] not the standard of care of an OB/GYN who has [8] similar training of you and education, would [9] have been required to perform a biopsy after [10] receiving Exhibit Number D – Exhibit D?

[11] A: Yes, I do.

[12] Q: And what is that opinion, doctor?

[13] A: That in this instance the standard of care was [14] not met because a biopsy was never performed.

[15] Q: So that the only diagnostic study that was [16] performed at all following these Pap smears was [17] the colposcopy, which was accomplished after [18] receipt of Exhibit C, is that correct?

[19] A: Yes, and additional Pap smears.

[20] Q: I understand that. But I am talking about [21] aggressive diagnostic studies were not performed [22] other than the one colposcopy, is that correct?

[23] A: Well, the colposcopy is not necessarily a [24] diagnostic study. It's a tool to help us to [25] obtain or to find where the pathology exists.

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[1] Then we have to biopsy that area, if we can find [2] it.

[3] If we can't find it, then we need to take a [4] cone biopsy, because we have to remove the [5] entire lesion since we couldn't locate it with [6] the colposcope.

[7] Q: So would it be fair to say that once observing [8] the white epithelium cells, that now at least [9] the clinician knows where the area to be [10] biopsied is?

[11] A: Yes.

[12] Q: Okay. Based upon your education, training and [13] experience, do you have an opinion based upon a [14] reasonable degree of medical certainty as to [15] whether or not the information provided by the [16] Pap smear reports prepared by Drs. Chapnick and [17] Stallworth and thereafter provided to the Lake [18] OB/GYN group were sufficient to allow the [19] clinicians to proceed with aggressive diagnostic [20] studies, including biopsies of plaintiff, Cindy [21] Bryant?

[22] MR. FULTON: Objection.

[23] Q: And what is that opinion?

[24] MR. FULTON: Objection.

[25] A: I believe that a biopsy should have been

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[1] performed.

[2] Q: Based upon the information provided?

[3] A: Based on the two abnormal Pap smear results was [4] enough information to me as a gynecologist to [5] warrant biopsying the cervix of Cindy Bryant.

[6] Q: You have also had the opportunity, have you not, [7] doctor, to review the care and attention [8] provided by – to plaintiff, Cindy Bryant, by [9] Dr. Huang when she moved to Ashtabula County?

[10] A: Yes.

[11] Q: I am going to hand you what has been marked for [12] identification purposes as Exhibit F, and would [13] you please review that for a moment and tell us [14] if those are essentially the records that you [15] have reviewed concerning Dr. Huang's care and [16] attention?

[17] A: Yes, these are the same records that I reviewed.

[18] Q: What did you determine with respect to the [19] diagnostic studies that were undertaken by Dr. [20] Huang prior to his performing an abdominal [21] hysterectomy?

[22] A: I am sorry. Would you –

[23] Q: Sure. What did you determine led Dr. Huang to [24] perform an abdominal hysterectomy, what [25] information?

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[1] A: The report of Dr. Huhn of the cone biopsy that [2] was performed by Dr. Huang led Dr. Huang to do [3] an abdominal hysterectomy.

[4] Q: And you have had the opportunity to review the [5] results of the cone biopsy?

[6] A: Yes. The results of the cone biopsy report.

[7] Q: That's what I am saying. In other words, you [8] didn't review the pathological slides?

[9] A: That's right.

[10] Q: What you reviewed was the report that was [11] provided to Dr. Huang by Dr. Huhn, is that [12] correct?

[13] A: Yes.

[14] Q: And assuming that you were in Ashtabula County [15] and you would get that report, you wouldn't get [16] the slides either, you would just simply get the [17] report, is that correct?

[18] A: That's correct.

[19] Q: Now, based upon the report that you reviewed, [20] which is in the exhibit marked F, based upon [21] your education, training and experience, would [22] you have proceeded to perform an abdominal [23] hysterectomy upon plaintiff, Cindy Bryant?

[24] MR. TIRA: Objection.

[25] A: No.

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[1] Q: What would you have done?

[2] MR. TIRA: Objection.

[3] A: I would have referred the patient to a [4] gynecologic oncologist.

[5] Q: And why is that, sir?

[6] A: Because the margins of the specimen were not [7] entirely free of disease, according to the [8] report, and my concern is, therefore, of [9] additional disease being present, the extent of [10] which could not be determined with the specimen [11] at hand.

[12] Moreover, the report indicated to me that [13] enough of the surface of the cervix was involved [14] to lead me to suspect that the condition was an [15] invasive carcinoma of the cervix and I, [16] therefore, would have referred the patient to a [17] gynecologic oncologist.

[18] Q: If your inclination when obtaining a report from [19] the pathologist concerning a cone biopsy is such [20] that there is a possibility of an invasive [21] carcinoma as opposed to noninvasive or [22] microinvasive, what is the reason why you refer [23] these type of patients to an OB/GYN oncologist?

[24] MR. TIRA: Objection.

[25] A: One would be to obtain a consultation regarding

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[1] their interpretation of the cone biopsy [2] specimen, their interpretation of the extent of [3] the disease process, and their suggestions and [4] consultation regarding how that disease process [5] should be handled for the proper care of the [6] patient in order to try and cure the patient of [7] this disease process, if possible.

[8] Q: Now, you mentioned before that you do not [9] perform radial hysterectomies, is that correct?

[10] A: That's correct.

[11] Q: And if there is an invasive cancer, is that the [12] appropriate treatment that should be rendered to [13] the patient, is a radical hysterectomy?

[14] A: Not necessarily. A radical hysterectomy would [15] be done if the disease process was invasive, but [16] not too invasive. Beyond a certain point [17] surgery is not indicated, but radiation therapy [18] might be.

[19] Q: Are their situations when a patient will receive [20] both a radial hysterectomy and follow-up therapy [21] such as radiation?

[22] A: Yes.

[23] **Q:** Okay. Therefore, based upon your training, [24] education and experience, is it your – do you [25] have an opinion based upon reasonable medical

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[1] certainty as to whether or not Dr. Huang [2] breached the standard of care in not referring [3] plaintiff Cindy Bryant to an OB/GYN oncologist?

[4] **MR. TIRA:** Objection.

[5] **A:** Yes, I do.

[6] **Q:** And what is that opinion?

[7] **MR. TIRA:** Objection.

[8] **A:** I believe that performing the abdominal [9] hysterectomy after having received the report of [10] the cone biopsy fell below the standard of care.

[11] **Q:** Finally, Dr. Klein, based upon your review of [12] the medical records, did you determine whether [13] or not plaintiff, Cindy Bryant, was considered a [14] compliant patient?

[15] **A:** Throughout the records she missed several [16] appointments for follow-up and I would have to [17] consider her not the most reliable of patients [18] as far as follow-up.

[19] **Q:** Specifically, when she underwent the [20] hysterectomy that was performed by Dr. Huang, do [21] you recall in the records as to whether or not [22] she was supposed to return for post-operative [23] examinations?

[24] **A:** Yes, it's common to have patients return three [25] or four month intervals for a period of time in

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[1] order to ascertain that the vaginal cuff is free [2] of disease.

[3] **Q:** And how is this accomplished, with Pap smear?

[4] **A:** Pelvic examinations and Pap smears.

[5] **Q:** And do you know based upon your reading of the [6] records whether or not she was compliant in that [7] regard?

[8] **A:** Well, she was compliant one time and then a [9] significant amount of time went by.

[10] **Q:** Do you recall how long it was?

[11] **A:** She had a Pap smear at three months after the [12] hysterectomy, but then another one wasn't [13] performed by Dr. Huang. Dr. Huang wasn't given [14] the opportunity to perform either a pelvic or [15] Pap smear for 15 months after that.

[16] **Q:** And based upon your experience, training and [17] education, do you have an opinion as to – based [18] upon reasonable medical certainty as to whether [19] or not that 15 month interval demonstrated that [20] the patient was compliant?

[21] **A:** Well, I think it demonstrated that the patient [22] was not compliant and I think that it, that [23] certainly she didn't help herself by not coming [24] back, although I can't be sure that Dr. Huang [25] would have found any pathology had she returned,

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[1] and I find that in instances when a patient, [2] with a diagnosis of a cancer doesn't return it [3] behooves the gynecologist to try to get that [4] patient to return either by phone calls, [5] registered letters, but there is some [6] responsibility here on both parties, I believe.

[7] **MR. LENSON:** Okay. Doctor, thank [8] you very much. I appreciate your [9] indulgence.

[10] **VIDEOTAPE OPERATOR:** Off the [11] record.

[13] (Thereupon, a recess was had.)

[15] **VIDEOTAPE OPERATOR:** On the [16] record.

[18] CROSS-EXAMINATION OF STEVEN M. KLEIN, M.D.

[19] **BY MR. HIRSHMAN:**

[20] **Q:** Dr. Klein, I am Toby Hirshman and I represent [21] Cindy Bryant. I am going to be asking you a few [22] questions here. [23] The first one is I have sitting to my right [24] a gentleman by the name of Klein, Larry Klein. [25] You are not related to him in any fashion, are

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[1] you?

[2] **A:** Not to my knowledge.

[3] **Q:** All right. You have been retained in this [4] matter by Mr. Lenson, is that correct?

[5] **A:** Yes.

[6] **Q:** And Mr. Lenson, you understand, represents Drs. [7] Hill & Chapnick?

[8] **A:** Yes.

[9] **Q:** Drs. Hill & Chapnick are the pathologists who [10] reviewed the initial Pap smears from 1990 to [11] 1992, is that your understanding?

[12] **A:** That's correct.

[13] **Q:** And Drs. Hill & Chapnick employed Dr. Stallworth [14] and Dr. Chapnick as pathologists, is that your [15] understanding?

[16] **A:** Yes.

[17] **Q:** I noticed that you are not a pathologist?

[18] **A:** That's correct.

[19] **Q:** And I notice that you do not read, if I [20] understood your testimony correctly, you do not [21] read cytology or pathology slides?

[22] **A:** That's right.

[23] **Q:** And, therefore, I am correct in concluding that [24] you were not given an opportunity to review the [25] actual cytology slides that were interpreted by

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[1] Drs. Hill & Chapnick, Dr. Stallworth and Dr. [2] Chapnick?

[3] **A:** That's correct.

[4] **Q:** So you don't know whether they were read [5] correctly or not?

[6] **A:** That's correct.

[7] **Q:** And to the extent that you're the only witness [8] as an expert that's going to present testimony [9] on behalf of those pathologists, if that is, in [10] fact, true, then we are going to hear no [11] testimony that supports those readings of those [12] Pap smears, correct?

[13] **MR. LENSON:** Other than the [14] doctors themselves?

[15] **Q:** Other than the doctors themselves.

[16] **MR. LENSON:** Who are experts?

[17] **A:** I am confused a little bit.

[18] **Q:** Is it your understanding that you're the only [19] expert witness who is going to testify –

[20] **A:** I have no idea.

[21] **Q:** – on behalf of Drs. Hill & Chapnick?

[22] **A:** I –

[23] **MR. LENSON:** Objection. I don't [24] think Dr. Klein is aware of any of that.

[25] **MR. HIRSHMAN:** Well, he can answer

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[1] the question by saying he is unaware of [2] it.

[3] **A:** I am not aware that I am the only expert [4] testifying on behalf of Drs. Hill & Chapnick.

[5] **Q:** All right. Suffice it to say, you are in no [6] position to offer any opinions as to whether or [7] not their interpretations were within acceptable [8] standards of care or not?

[9] **A:** That's correct.

[10] **Q:** All right. Let's talk a moment about Drs. Hill [11] & Chapnick, then.

[12] The first interpretation that you made [13] reference to was Exhibit B, which was a Pap from [14] June 23, 1990, am I correct?

[15] **A:** That's correct.

[16] **Q:** And you indicated that it recognized a cell [17] abnormality?

[18] **A:** No, I did not.

[19] **Q:** Well, it did mention – it mentioned the [20] existence of clue cells?

[21] **A:** Yes.

[22] **Q:** Okay. And you would include with me that the [23] existence, when a

pathologist or a [24] cytopathologist describes the existence of clue [25] cells, c-l-u-e, he is not describing a cancerous

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[1] condition?

[2] **A:** That's correct.

[3] **Q:** And he is not describing a precancerous [4] condition?

[5] **A:** That's correct.

[6] **Q:** All right. Now, I want you to assume for a [7] moment that there are, in fact, cells present on [8] the slides which gave rise to the Pap report of [9] June 23, 1990 that would show HSIL.

[10] First of all, tell the jury, if you would, [11] what HSIL is?

[12] **A:** That is a squamous intraepithelial lesion. The [13] cervix has pathology in it that is high grade or [14] rather deep in penetration of the tissue [15] substance, cells that are abnormal clearly with [16] a high nuclear cytoplasmic ratio, which is [17] totally abnormal, are extending deep within the [18] substance of the cervix. This is a high grade [19] squamous intraepithelial lesion.

[20] **Q:** When that type of report comes back from a [21] pathologist to a gynecologist it's a red flag to [22] do something more to investigate, is it not?

[23] **A:** Yes, it is.

[24] **Q:** If, in fact, those slides have cells which are [25] HSIL, it's fair to say that Dr. Chapnick missed

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[1] the diagnosis, correct?

[2] **MR. LENSON:** Objection.

[3] **Q:** Correct?

[4] **MR. LENSON:** Objection. Dr. Klein [5] is not a pathologist. He is not here to [6] testify about the standard of care of a [7] pathologist. He is here merely to render [8] opinions regarding the standard of care of [9] an OB/GYN.

[10] **MR. HIRSHMAN:** He is here to [11] answer questions that I ask of him at this [12] point.

[13] **MR. LENSON:** That's not correct, [14] counsellor.

[15] **MR. HIRSHMAN:** He is here to [16] answer questions that I ask of him and if [17] the judge deems them inappropriate he will [18] rule accordingly.

[19] **MR. LENSON:** That is correct.

[20] **Q:** So my question to you is, I want you to assume [21] for a moment that there are cells in the [22] slides –

[23] **A:** So this is a hypothetical?

[24] **Q:** I am asking you to assume a hypothetical.

[25] **A:** Okay.

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[1] **Q:** Since you haven't read them and you can't [2] testify as to what those slides show –

[3] **A:** Absolutely.

[4] **Q:** – that's the only way I can address the subject [5] with you.

[6] **A:** Certainly.

[7] **Q:** I want you to assume that the slides that gave [8] rise to the June 23, 1990 Pap report, in fact, [9] show high grade squamous intraepithelial lesion, [10] HSIL, can you make that assumption?

[11] **A:** Right.

[12] **Q:** If you make that assumption, it's fair to say [13] that Dr. Chapnick missed the diagnosis, correct?

[14] **MR. LENSON:** Objection.

[15] **A:** Yes.

[16] **MR. LENSON:** Ask that the answer [17] be stricken.

[18] **Q:** Would that be –

[19] **A:** Well, let me qualify the yes. Insofar as that [20] there are inflammatory cells present, clue [21] cells, indicating the bacteria vaginosis that I [22] described before, I don't know that Drs. Hill & [23] Chapnick may not have been able to have noted [24] cancer cells – not cancer cells, but the high [25] grade squamous intraepithelial lesion until

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[1] after this inflammatory response was cleared.

[2] So I don't know that they missed the [3] diagnosis.

[4] **Q:** I am asking you to assume that HSIL is [5] present –

[6] **A:** Was present on the slides.

[7] **Q:** – is apparent on the slides, all right? If you [8] take that assumption, it's clear that Dr. [9] Chapnick missed that diagnosis, correct?

[10] **A:** Not being a cytologist or a cytopathologist I [11] don't know if the cytopathologist can venture a [12] diagnosis of a high grade squamous [13] intraepithelial legion with inflammation such as [14] a bacterial vaginosis present. You will have to [15] ask a cytopathologist.

[16] **Q:** That's why I am asking the question the way I [17] did. I am not asking you whether or not Dr. [18] Chapnick departed from acceptable standards of [19] care.

[20] **A:** You are not listening to what I am saying. What [21] I am saying is, is that cells that appear to be [22] high grade squamous intraepithelial legion type [23] cells, I don't know if a cytopathologist with [24] inflammation present might misinterpret those [25] cells. So I can't answer your question by

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[1] saying simply that if they were there, then they [2] missed the diagnosis, I don't know that they [3] could even venture a diagnosis.

[4] Cells can sometimes appear to be what they [5] are not, and I was led to believe that [6] inflammations obscure an ability to make a [7] diagnosis. The inflammation has to be cleared [8] and then one can then make a diagnosis.

[9] **Q:** So you don't know one way or the other whether [10] the diagnosis could have been made on that [11] slide?

[12] **A:** I don't know that.

[13] **Q:** All right. Assuming it could have been made, [14] it's clear that it wasn't, correct?

[15] **A:** That's correct, no diagnosis of HSIL was made.

[16] **Q:** And assuming it was made and appropriate [17] treatment was given, what would that treatment [18] have been?

[19] **A:** Well, I don't know that – treatment would have [20] been for bacterial vaginosis or are you talking [21] about treatment of HSIL?

[22] **Q:** HSIL. Let's assume it was HSIL.

[23] **A:** Well, it wouldn't have been treated at that [24] point. Further diagnostic procedures would have [25] been indicated.

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[1] **Q:** And assuming those further diagnostic [2] procedures, in fact, concluded that there was an [3] HSIL present, it would have been treated, [4] correct?

[5] **A:** That's correct.

[6] **Q:** And the treatment for it is essentially one [7] hundred percent curative, am I not correct?

[8] **A:** I don't know that to be true.

[9] **Q:** Let me ask this question then. Assuming [10] treatment had been rendered for an HSIL around [11] or shortly after June 23, 1990, you can state to [12] a reasonable medical probability that the [13] condition would have been alleviated?

[14] **A:** No, I really can't. Simply because [15] abnormalities of the cervix are notoriously [16] multi-focal. They don't exist necessarily in [17] only one location.

[18] Had additional procedures been performed [19] such as colposcopy, biopsy, even a cone biopsy, [20] there could have been skip areas or areas that [21] were not noted. So to have cured the HSIL, the [22] cells could have been exfoliated from other [23] areas that weren't even noticed at these [24] additional procedures.

[25] So I can't agree with you that it would

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[1] have been cured a hundred percent.

[2] **Q:** Okay. My next question was to a reasonable [3] medical probability most patients that you treat [4] for HSIL are successfully treated, isn't that a [5] fair statement?

[6] **A:** For a period of time. HSIL notoriously – I [7] will strike the word notoriously – can return.

[8] **Q:** It can return?

[9] **A:** Yes.

[10] **Q:** And with proper surveillance it will be [11] discovered and treated again, correct?

[12] **A:** Yes. That's correct.

[13] **Q:** So we can state to a reasonable medical [14] probability that if HSIL had been discovered at [15] that time it would have been – it would never [16] have progressed to cancer?

[17] **MR. LENSON:** Objection.

[18] **Q:** Correct?

[19] **A:** We can assume that if, in fact, it was that area [20] that was removed that was the area that was the [21] one that progressed to the cancer in question, [22] but, yes, I agree to all medical probability it [23] would have been taken care of.

[24] **Q:** And that's true for each occasion where a Pap [25] was done, in other words, a Pap was done on this

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[1] patient on June 23, 1990, a Pap was done on [2] March 14, 1991, a Pap was done on July 11, '91, [3] and then another one was done on April 24, [4] 1992. Are you aware of that?

[5] **A:** Yes, I am.

[6] **Q:** I want you to assume that for each one of those [7] Paps a diagnosis of HSIL was – I want you to [8] assume a diagnosis of HSIL for each one of those [9] Paps.

[10] **A:** Okay.

[11] **Q:** Assume that one was read, we know it wasn't by [12] Drs. Chapnick and Stallworth. I want you to [13] assume that such a diagnosis had been made on [14] each one of those Paps, all right?

[15] **A:** All right.

[16] **Q:** If you assume that to be the case, and if you [17] further assume that, in fact, this patient did [18] have HSIL, to a reasonable medical probability, [19] that HSIL could have been treated?

[20] **MR. LENSON:** Before you answer, [21] Dr. Klein, I would like to object because [22] the hypothetical question is erroneous [23] based upon the information which is before [24] the court, and, therefore, the answer that [25] is being given is not responsive to actual

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[1] evidence, the evidence before the court.

[2] So I am going to ask that the [3] question and the answer be stricken from [4] the record.

[5] **Q:** The bottom line is, doctor, that HSIL is a [6] treatable entity, correct?

[7] **A:** That's correct.

[8] **Q:** And if properly followed with surveillance will [9] be treated to a reasonable medical probability [10] before it goes on to become cancer?

[11] **A:** That's true.

[12] **Q:** All right. You would also agree that cervical [13] cancer is one of the few cancers that with [14] competent care can be stopped before it even is [15] cancer at all?

[16] **A:** In a great majority of cases by virtue of the [17] Pap smears your first line of defense, as the [18] first line of suspicion, yes, that's true, [19] screening.

[20] **Q:** Let's talk for a moment about Lake OB/GYN. You [21] have rendered some opinions that are critical of [22] the care that was rendered by that group and by [23] the doctors who are part of that group, is that [24] correct?

[25] **A:** Yes.

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[1] **Q:** You have rendered opinions that are critical of [2] Dr. Basquinez, Dr. Quinn -- and Dr. Quinn, [3] correct?

[4] **A:** That's correct.

[5] **Q:** And as I understand it, the essence of your [6] criticism is that they had opportunities at [7] least with two Pap smears, those being the Pap [8] smears of March 14, 1991, which was reported to [9] them as LSIL, correct?

[10] **A:** That's correct.

[11] **Q:** And then with the Pap smear of July 11, 1991, [12] which was reported to them as atypical glandular [13] cells. With those two interpretations they had [14] an opportunity to treat a precancerous condition [15] before it became cancerous?

[16] **A:** Theoretically.

[17] **Q:** Well, they had an opportunity to render a [18] diagnosis by doing a biopsy, correct?

[19] **A:** That's true.

[20] **Q:** And they did not take advantage of that [21] opportunity?

[22] **A:** That's true.

[23] **Q:** And by virtue of that failure to take advantage [24] of that opportunity, a window of opportunity was [25] missed?

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[1] **A:** They were given that opportunity. However, in [2] defense of Hill and Chapnick, by virtue of the [3] two abnormal Pap smears.

[4] **Q:** All right.

[5] **A:** That may not have been correctly interpreted, [6] high grade versus the reports that they did [7] make, but nonetheless, they demonstrated [8] significant pathology.

[9] **Q:** It may not have been a bright red flag, but at [10] least it was pink?

[11] **A:** That's correct.

[12] **Q:** And those pink flags should have been followed [13] by an aggressive diagnostic workup, including a [14] biopsy?

[15] **A:** That's correct.

[16] **Q:** And having failed to do so they failed to take [17] advantage of an opportunity?

[18] **A:** That's correct.

[19] **Q:** To prevent a cancer from forming?

[20] **A:** Theoretically.

[21] **Q:** Well, more than theoretical.

[22] **A:** Because we don't know that a cancer may not have [23] existed at that time.

[24] **Q:** So a cancer may have already existed at that [25] time?

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[1] **A:** Indeed.

[2] **Q:** In which case they deprived Cindy of the [3] opportunity to treat that cancer at an early [4] stage?

[5] **A:** Correct.

[6] **Q:** All right.

[7] **MR. HIRSHMAN:** Off the record a [8] second.

[9] **VIDEOTAPE OPERATOR:** Off the [10] record.

[12] (Off the record.)

[14] **MR. HIRSHMAN:** Let's go back on [15] the record.

[16] **VIDEOTAPE OPERATOR:** On the [17] record.

[18] **Q:** Doctor, you're not suggesting that Cindy Bryant [19] is responsible for the dilemma she now finds [20] herself and that all of these doctors have no [21] blame, are you?

[22] **MR. FULTON:** I didn't –

[23] **Q:** Doctor, I will repeat the question. It sounds [24] like one of the attorneys sitting here didn't [25] hear it or would like me to repeat it.

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[1] You are not suggesting that Cindy Bryant is [2] responsible for the predicament she now finds [3] herself in, are you?

A: Not solely.

Q: You are of the opinion that she is in some part responsible?

A: Yes.

Q: All right. I want you to go through with me some of the records that you have as it relates to Cindy and her care and treatment.

She came for a prenatal visit on March 14, 1990 as scheduled, did she not?

A: Yes.

Q: She then returned and came for a prenatal visit as scheduled on March 22nd of 1990, did she not?

A: Yes.

Q: She then came for yet another prenatal visit as scheduled on March 26, 1990, did she not?

A: Yes.

Q: She then appeared for yet another one on April 6, 1990 as scheduled, did she not?

A: Yes.

Q: And she then appeared once again for a prenatal visit on April 13, 1990 as scheduled, did she not?

A: Yes.

Q: And she then appeared for yet another prenatal visit on May 2, 1990 as scheduled, did she not?

A: Yes.

Q: And then she came on June 23, 1990 for a postpartum visit as scheduled, did she not?

A: Yes.

Q: And at that time a Pap was taken, correct?

A: Yes.

Q: And that Pap –

A: Well, I am sorry. June –

Q: June 23, 1990.

A: Oh, okay.

Q: And at that time the Pap came back showing clue cells and suggested that treatment occur and that a re-Pap be done?

A: Yes.

Q: No treatment ensued, am I correct?

A: I only have to assume that no treatment ensued. I didn't see any in the record.

Q: And no re-Pap was done?

A: That's correct.

Q: A doctor missed that opportunity to make the diagnosis, correct, not Cindy?

A: That's true.

Q: All right. Then she came in for yet another visit on March 14, 1991 as scheduled, did she not?

A: Yes.

Q: And a Pap was done at that time by Dr. Basquinez?

A: Yes.

Q: And, again, at that time as you have already indicated, LSIL was the diagnosis that came back on that screen, correct?

A: Yes.

Q: And it's your testimony that something should have been done to pursue that diagnosis on cytology?

A: Well, if not at that time –

Q: After the pregnancy?

A: Well, even before then, three to four months she still would have been pregnant.

Q: Something should have been done?

A: Something should have been done, yes.

Q: We have a pink flag, if not a red flag?

A: That's true.

Q: And, again, that wasn't Cindy's responsibility to know what LSIL meant, it was the doctor's responsibility?

A: Correct.

Q: Not Cindy's fault?

A: Right.

Q: On April 16, 1991 she was asked to undergo a colposcopy. That much they did?

A: Yes.

Q: And she, in fact, went ahead and submitted to the colposcopy as suggested?

A: Yes.

Q: No fault there?

A: No.

Q: But after having that colposcopy done Dr. Basquinez, if I understand your opinions correctly, failed to take biopsies and missed yet another opportunity to make a diagnosis, correct?

A: Yes, although a biopsy might not necessarily have fallen – not taking a biopsy doesn't necessarily fall below any standard of care as long as a close follow up and biopsy eventually soon after the pregnancy.

Q: Is done?

A: Is done.

Q: And it wasn't done?

A: Correct.

Q: That's not Cindy's fault?

A: No.

Q: The doctors have responsibility there, not Cindy?

A: That's true.

Q: All right. And then she came in for a prenatal visit as scheduled on May 23, 1991, am I correct?

A: Uh-huh.

Q: And then she came back as scheduled for a prenatal visit on June 13, 1991, correct?

A: Correct.

Q: And then she came in for a visit July 11, 1991, correct?

A: Correct.

Q: And at that point she submitted to yet another Pap, correct?

A: Correct.

Q: The Pap results were findings of atypical parakeratosis and atypical glandular cells?

A: That's correct.

Q: And as you have already testified, another pink flag was raised?

A: Correct.

Q: Not withstanding that pink flag, proper

follow-up was not taken by Drs. Basquinez and Quinn, correct?

A: That's true.

Q: And, again, it was the doctors, not Cindy, who failed to take advantage of an opportunity, correct?

MR. FULTON: Well, objection. She had already left by then.

MR. HIRSHMAN: She was there.

MR. FULTON: No, she wasn't.

Q: July 11th.

A: July 11th, right, when she had the repeat Pap smear.

Q: Okay. You don't blame Cindy for that, do you?

A: No.

Q: And then she came in for a prenatal visit on August 30, 1991 as scheduled, correct?

A: Yes.

Q: She came in on October 7, 1991 as scheduled, correct?

A: Yes.

Q: And she came in to see these doctors again on October 21, 1991 as scheduled, correct?

A: Yes.

[25] **Q:** And then she delivered a baby on October 22,

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[1] 1991, correct?

[2] **A:** Yes. That's correct.

[3] **Q:** And then she had a delay in her postpartum visit [4] and did not come until April 24, 1992, correct?

[5] **A:** That's correct.

[6] **Q:** And that didn't cause her present predicament, [7] did it?

[8] **A:** I don't know that.

[9] **Q:** It didn't cause it?

[10] **A:** No, it didn't cause it, but you were so good [11] about pointing out all the appointments that she [12] did keep and here is clearly one that she did [13] not return, and we have no way of knowing [14] whether Dr. Basquinez or Dr. Quinn might have [15] done something in the postpartum visit to have [16] made a diagnosis earlier, but she didn't allow [17] them to be able to do that.

[18] **Q:** Well, she did show up on April 24, 1992, [19] correct?

[20] **A:** That was nine months later.

[21] I am sorry.

[22] **Q:** No, it wasn't.

[23] **A:** No. Yes, that was nine months later.

[24] No, right.

[25] **Q:** Well, she was supposed to come back presumedly

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[1] in November, doctor.

[2] **A:** Six months later.

[3] **Q:** She was supposed to come back in November, [4] that's when she had a follow-up visit. She came [5] in April, correct?

[6] **A:** Yes.

[7] **Q:** Well, she came back in April and she had a Pap [8] done, correct?

[9] **A:** Yes.

[10] **Q:** The doctors didn't elect to do anything more [11] than a Pap, they just did a Pap?

[12] **A:** That's correct.

[13] **Q:** And it came back what?

[14] **A:** It was unable to be interpreted.

[15] **Q:** And it did nothing, and based on that Pap [16] nothing further was done?

[17] **A:** That's correct.

[18] **Q:** With the history of the Paps that preceded that, [19] doing nothing in the face of an uninterpretive [20] Pap was insufficient, was it not?

[21] **A:** Yes, it was.

[22] **Q:** So, again, it was the OB/GYNs who failed to take [23] advantage of an opportunity, not Cindy, correct?

[24] **A:** That's correct.

[25] **Q:** All right. And it was at that point in time

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[1] that she switched doctors, is that not true?

[2] **A:** I don't know exactly when she moved, but –

[3] **Q:** Well, I will represent to you that it was [4] sometime within the few months thereafter that [5] she, in fact, switched doctors.

[6] **A:** That's correct.

[7] **Q:** And, in fact, that she moved and became a [8] patient of Dr. Huang?

[9] **A:** That's correct.

[10] **Q:** There is nothing wrong with making that type of [11] a switch?

[12] **A:** No.

[13] **Q:** All right. And you are not suggesting that her [14] changing to Dr. Huang was inappropriate, or are [15] you?

[16] **A:** Oh, no. I am also assuming that Miss Bryant, [17] although I have never met her, nor do I know her [18] testimony in this, certainly must have been [19] advised of abnormal Pap smears, a reason for [20] colposcopy, yet she, as you say, moved, went to [21] a different physician, only after she again [22] became pregnant and he had to take care of a bad [23] pregnancy situation.

[24] I must say that being aware of abnormal Pap [25] smears, it might have behooved her to have

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[1] sought the care, if she moved, of a Dr. Huang a [2] little bit earlier than she did.

[3] So I think that she, although she is [4] certainly not to blame, certainly didn't help [5] matters any by delaying going to Dr. Huang.

[6] **Q:** Well, she went to doctor – she went to Dr. [7] Basquinez and Quinn in April. As I understand [8] it she was at Dr. Huang's office by I think it's [9] June. Is that your understanding?

[10] **A:** Is that right? I don't dispute that.

[11] **Q:** You wouldn't have any criticism for that period [12] of time?

[13] **A:** No.

[14] **Q:** Now, she then went to Dr. Huang who saw her and [15] in January did a cone biopsy as the result of a [16] Pap smear that came back showing HSIL, am I [17] correct?

[18] **A:** That's correct.

[19] **Q:** And as a result of that cone biopsy he decided [20] to perform a simple hysterectomy, correct?

[21] **A:** Yes.

[22] **Q:** You have already testified that his decision to [23] do a simple hysterectomy was a departure from [24] acceptable standards of care, correct?

[25] **MR. TIRA:** Objection.

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[1] **A:** Based on the Pap smear report, yes. Based on [2] the cone biopsy report.

[3] **Q:** Based on the cone biopsy report, the thing for a [4] reasonably prudent gynecologist to do would have [5] been to seek the advice of somebody who knows [6] what he is talking about when dealing with this [7] particular disease entity, which would have been [8] a gynecologic oncologist, correct?

[9] **A:** Yes.

[10] **Q:** Is that Cindy's fault that Dr. Huang decided to [11] take this on his own?

[12] **A:** No.

[13] **Q:** The fact that Dr. Huang did the wrong surgery [14] for her, is that Cindy's fault?

[15] **A:** No.

[16] **Q:** All right. As a result of Dr. Huang's care and [17] treatment in this case Cindy now has recurrent [18] disease, doesn't she?

[19] **A:** I don't know that that's true. I don't know [20] that a radical hysterectomy performed instead of [21] a simple hysterectomy could have prevented [22] recurrent disease, as recurrent disease does [23] occur with invasive carcinoma of the cervix.

[24] **Q:** And you would defer to a gynecologic oncologist [25] on those issues, would you not?

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[1] **A:** I would.

[2] **Q:** As you read Dr. Huang's deposition – have you [3] read his deposition, by the way?

[4] **A:** Yes.

[5] **Q:** He says that he told Cindy that she had a 99 [6] percent chance of a cure after he did his simple [7] hysterectomy, are you aware of that testimony?

[8] **A:** Yes.

[9] **Q:** That's not an accurate statement, is it?

[10] **A:** It's an accurate statement in that he said it.

[11] **Q:** It is not an accurate thing to tell a patient [12] given her disease process and the procedure that [13] he did?

[14] **MR. TIRA:** Objection.

[15] **A:** Had he known that it was – had he believed that [16] it was invasive carcinoma, then that's a [17] misstatement. I believe that he felt that he [18] was dealing with microinvasive carcinoma of the [19] cervix, and that statement then

does reflect to [20] a great degree the probability that there would [21] have been a significant chance of cure.

[22] **Q:** Well, I am not asking you whether he [23] intentionally misrepresented anything to her.

[24] **A:** I am not saying he misrepresented anything [25] either.

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[1] **Q:** Assuming that she has invasive carcinoma and she [2] was given a simple hysterectomy, to tell her [3] that she had a 99 percent cure rate was [4] inaccurate, correct?

[5] **MR. TIRA:** Objection.

[6] **Q:** If you know.

[7] **A:** Dr. Huang did not interpret the cone biopsy. [8] Dr. Huhn did. Dr. Huang didn't interpret the [9] specimen after the hysterectomy. Dr. Huhn did.

[10] Dr. Huang, I believe, felt that he was [11] dealing with microinvasive carcinoma of the [12] cervix and, therefore, made that statement.

[13] It turns out that it was erroneous.

[14] **Q:** Understood, understood. My question to you is [15] assuming, I am not asking you to – let's just [16] rephrase the question, if we can.

[17] It's – assuming that Dr. Huang was [18] treating an invasive carcinoma and further [19] assuming that he did a simple hysterectomy on [20] Cindy, it's fair to say her chances of [21] recurrence were greater than one percent?

[22] **A:** Absolutely.

[23] **Q:** All right. And for him to tell her that her [24] chance of recurrence was only one percent would [25] have been an inaccurate statement?

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[1] **MR. TIRA:** Objection.

[2] **A:** Assuming that he knew that he was dealing with [3] invasive carcinoma, that's true.

[4] **Q:** I am not asking you whether or not he [5] intentionally told her a lie. If you assume [6] that she had invasive carcinoma and if you [7] assume he did a simple hysterectomy, the simple [8] fact is she had a greater rate of recurrence [9] than one percent?

[10] **A:** But I don't believe that he believed that he was [11] dealing with invasive carcinoma.

[12] **Q:** So whether intentionally or unintentionally he [13] provided her with inaccurate information, is [14] that correct?

[15] **MR. TIRA:** Objection.

[16] **A:** Correct.

[17] **Q:** All right. And by giving her that information, [18] whether doing so intentionally or [19] unintentionally, he misled her as to the [20] significance of or likelihood of recurrence, [21] correct?

[22] **MR. TIRA:** Objection.

[23] **A:** Yes.

[24] **Q:** All right. Now, as it relates to Dr. Huang, he [25] was provided with a report, as I understand it,

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[1] which indicated from the cone biopsy –

[2] **A:** Yes.

[3] **Q:** – that there were margins of the biopsy [4] specimen that were involved with cancer, [5] correct?

[6] **A:** Yes.

[7] **Q:** And it's your testimony that when confronted [8] with that type of a report, the thing for a [9] reasonably prudent gynecologist to do is to seek [10] the assistance of a gynecologic oncologist, [11] correct?

[12] **A:** Yes.

[13] **Q:** Dr. Huang did not do so and the failure to do so [14] constituted a departure from acceptable [15] standards of care, correct?

[16] **MR. TIRA:** Objection.

[17] **A:** Yes.

[18] **Q:** Okay.

[19] **MR. HIRSHMAN:** Off the record, [20] please.

[21] **VIDEOTAPE OPERATOR:** Off the [22] record.

[24] (Off the record.)

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[1] **VIDEOTAPE OPERATOR:** On the [2] record.

[3] **Q:** One additional line of questioning, doctor.

[4] You indicated that you are licensed to [5] practice medicine in the State of Ohio, correct?

[6] **A:** Yes. That's correct.

[7] **Q:** And it would be fair to say that greater than 50 [8] percent of your professional time is engaged in [9] the active practice of medicine?

[10] **A:** Yes.

[11] **MR. HIRSHMAN:** Thank you. I have [12] no further questions.

[13] **VIDEOTAPE OPERATOR:** Off the record

[15] (Off the record.)

[17] **VIDEOTAPE OPERATOR:** On the record

[19] CROSS-EXAMINATION OF STEVEN M. KLEIN, M.D.

[20] **BY MR. FULTON:**

[21] **Q:** Yes, doctor. Good evening. My name is Burt [22] Fulton and I represent Lake OB/GYN. I am going [23] to ask you some questions here in which I [24] probably will mispronounce some terms. I don't [25] know quite as much medicine as some of these

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[1] people, but just for my information and the [2] jury, how do you get this cancer of the cervix, [3] what's the primary cause of it?

[4] **MR. HIRSHMAN:** Objection.

[5] **A:** I suppose that it is a combination of various [6] elements. One might be a genetic [7] predisposition. Another might be smoking. A [8] third may be sexually transmitted diseases such [9] as the human papilloma virus or Herpes, but in [10] conjunction with a predisposition constitution, [11] other factors may lead to cancer of the cervix.

[12] **Q:** Well, what does the literature show with respect [13] to what is the most prominent cause of it?

[14] **MR. HIRSHMAN:** Objection.

[15] **A:** The papilloma virus seems to be the most [16] prominent culprit today, along with smoking.

[17] **Q:** What is that virus? I don't understand that.

[18] **A:** It is a virus that is sexually transmitted and [19] it has a tendency to cause venereal warts in [20] some people, and in others other strains of that [21] virus can cause cervical abnormalities under the [22] right conditions, which can lead to a cancer of [23] the cervix. That's the current thought.

[24] **Q:** Well, if you as an OB/GYN feel that it's in some [25] way related to activity of that nature, do you

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[1] try to advise the patient that perhaps they [2] ought to take a new course in life or what do [3] you say?

[4] **MR. HIRSHMAN:** Objection.

[5] **A:** Well, I suggest to my patients to be careful to [6] try to avoid sexually transmitted diseases. [7] Sometimes that's unavoidable.

[8] **Q:** Has that been shown to be more prevalent, if a [9] person has a number of partners or –

[10] **MR. HIRSHMAN:** I am going to [11] object again and, Burt, I am going to ask [12] whether I can have a continuing line of [13] objection to this line of questioning?

[14] **MR. FULTON:** Well, whatever you [15] wish to do.

[16] **MR. HIRSHMAN:** It is all right [17] with me. I just don't want to be held to [18] not having objected.

[19] **MR. FULTON:** I am just trying to [20] find out something, doctor. I will agree

[21] to anything. I am doing the best I can, [22] doctor.

[23] **MR. HIRSHMAN:** That's fine.

[24] **A:** I think that it's generally accepted that [25] multiple sexual partners do increase the risk of

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[1] the development of cancer of the cervix.

[2] **Q:** What does smoking have to do with it or what do [3] they believe it has to do with it?

[4] **A:** Nicotine tars and other constituents within [5] cigarette smoke somehow along with the virus and [6] a genetic predisposition has been shown [7] overwhelmingly to increase a woman's chances of [8] developing a cancer of the cervix when other [9] conditions are present, such as the human [10] papilloma virus.

[11] **Q:** Now, as I understand it, this case apparently [12] there were some path reports that were given to [13] my clients, four of them, is that right?

[14] **A:** These were the Pap smear reports.

[15] **Q:** Pap smear?

[16] **A:** Right.

[17] **Q:** Now, were these read at least as you see it as [18] low grade Pap smears?

[19] **A:** Only one was read as a low grade intraepithelial [20] lesion. Another was read as atypical glandular [21] cells, which does connote pathology the extent [22] of which couldn't be determined from just that [23] particular Pap smear. The other two were in my [24] mind uninterpretable, they couldn't be [25] interpreted because of inflammation.

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[1] **Q:** Well, as I understand it, at least with respect [2] to – well, they use these words those HSIL and [3] what's the other one they use?

[4] **A:** LSIL.

[5] **Q:** And with LSIL –

[6] **A:** That's the low grade.

[7] **Q:** That's the low grade. In those type of [8] abnormalities, at least from what I have heard, [9] that maybe only what, 10 to 20 percent ever go [10] on into something else, is that so, that go on [11] to something more serious?

[12] **A:** If it's a low grade intraepithelial legion truly [13] it's accepted that approximately 60 percent may [14] revert to normalcy, which means that 40 percent [15] probably the abnormality sticks around or [16] becomes worse in time.

[17] **Q:** And, of course, you give the clinical advice, [18] you talked about previously in my questions as [19] to what to do to try to help this return to [20] normalcy, I take it, like let's cut out the [21] smoking and with respect to the other advice we [22] spoke about?

[23] **A:** That's correct, but if it's among the 40 percent [24] that is going to progress, it probably has been [25] predestined at that point in time and cutting

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[1] out smoking or decreasing sexual partners at [2] that point in time probably won't make much of a [3] difference.

[4] **Q:** Aren't their some physicians back then, I am [5] talking back and this occurred at least with [6] respect to Lake OB/GYN, some felt that when you [7] have a problem with particularly a low grade Pap [8] smear, that maybe an infection, that this is [9] what you followed up by just Pap smears alone [10] and some didn't even believe in colposcopy, [11] weren't there some OB/GYNs?

[12] **A:** There was a time when colposcopes were not [13] available. There was a time when doctors did [14] rely heavily on Pap smears, but persistence of [15] abnormalities always led gynecologists to do [16] biopsies, whether they were colposcopically [17] aided or whether they were random biopsies, [18] gynecologists, in my teaching, have always [19] biopsied persistent abnormalities.

[20] **Q:** I take it that in your experience you [21] experienced once in a while even to have a [22] biopsy that may be read incorrectly, right?

[23] **A:** Yes.

[24] **Q:** I take it you have seen that happen?

[25] **A:** Yes.

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[1] **Q:** I suppose you have seen it happen where a biopsy [2] was read incorrectly that it may even have shown [3] the presence of cancer and read incorrectly, [4] have you ever seen that?

[5] **A:** I never seen that.

[6] **Q:** You never seen that?

[7] **A:** I never seen that.

[8] **Q:** Never seen that. All right. You do know that a [9] Pap smear can be abnormal because of a viral [10] infection, right?

[11] **A:** Yes.

[12] **Q:** It also –

[13] **A:** Well, let me reanswer that. If infections or [14] inflammations occur, it's my belief that an [15] abnormality can't be stated with accuracy. So [16] to say its abnormal, possibly. More probably it [17] can't really properly be interpreted.

[18] **Q:** Well, I take it Pap smears are given to you, are [19] they not? I mean, in your practice you have to [20] review Pap smears? You have to review the [21] report?

[22] **A:** Well, I review the report, certainly.

[23] **Q:** And hasn't it been your experience that the [24] reports that you review either use the word [25] abnormal or normal?

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[1] **A:** And many say that we have to repeat the Pap [2] after we treat the infection or inflammation, [3] that they can't make that statement, normal or [4] abnormal.

[5] **Q:** But the standard of care actually requires if [6] the individual pathologist can read something [7] that it comes to you either normal or abnormal, [8] isn't that so?

[9] **A:** No.

[10] **Q:** You don't agree with that?

[11] **A:** I don't agree with that.

[12] **Q:** Well, let me ask you this. Do you have anything [13] that you ever reviewed here that indicated when [14] she first had actual cancer? When did that [15] happen? When was the first time that anybody [16] said she has cancer of the cervix?

[17] **A:** The cone biopsy of the cervix, to my knowledge, [18] was the first diagnosis that she had had cancer.

[19] **Q:** And that was done when?

[20] **A:** That was done in March of –

[21] **MR. HIRSHMAN:** January.

[22] **A:** January of 1993.

[23] **Q:** 1993. And as far as the Pap smears that were [24] given to Lake OB/GYN, to the various doctors [25] over there, did you ever have a chance to review

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[1] any of the readings of these Pap smears by a Dr. [2] Rosenthal? Were you ever given that?

[3] **A:** I believe that I looked at the report of Dr. [4] Rosenthal, but must admit as I sit here I would [5] have to review it to see what Dr. Rosenthal had [6] to say.

[7] **Q:** Well, I underlined some things in it and I guess [8] we will kind of wind up with that here.

[9] The first Pap smear, what does it show, see [10] where I have underlined?

[11] **A:** Yes.

[12] **Q:** What does it say?

[13] **A:** This is Dr. Rosenthal, Dorothy Rosenthal from [14] John Hopkins, and this is her report of October [15] 31, 1995. She –

[16] **Q:** Well, the words I underlined.

[17] **A:** Well, according to – well, the words you [18] underlined?

[19] **Q:** Yes.

[20] **A:** The Pap smear of 6/23/1990, she says is [21] decidedly below the standard of care.

[22] **Q:** Decidedly below the standard?

[23] **A:** That's what she put in her report.

[24] **Q:** How about the next one, what does she say?

[25] **A:** She said the Pap smear report of 3/14/91, after

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[1] she reviewed those slides or that slide of that [2] Pap smear was below the standard of care.

[3] **Q:** All right. How about in the next report, would [4] you give us the date?

[5] **A:** The next Pap smear was of 7/11/91, and Dr. [6] Rosenthal said that Dr. Stallworth's [7] interpretation of that Pap smear was definitely [8] below the standard of care.

[9] **Q:** Definitely below the standard?

[10] **A:** That's the term that Dr. Rosenthal is using.

[11] **Q:** All right. Now, and the last report which is [12] dated when, that's that April one?

[13] **A:** April 24, 1992.

[14] **Q:** Did she say it was decidedly below?

[15] **A:** Interpreted by Dr. Stallworth is way below the [16] standard of care.

[17] **Q:** Way below. You understand what that means in [18] the English language, don't you?

[19] **A:** Yes.

[20] **Q:** You have no reason to dispute any of those [21] findings, do you?

[22] **A:** Nor to support them. Dr. Rosenthal reviewed [23] slides of another pathologist and it's beyond my [24] expertise to comment.

[25] **Q:** Well, another couple of things I just wanted to

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[1] cover and then I will go off in the wild blue [2] yonder, I guess.

[3] She describes those, I wasn't at her [4] deposition, but she described something about, [5] what's that word, parakeratosis, it didn't seem [6] to mean much to her. Does that word mean [7] anything to you? Does that word mean anything [8] to you?

[9] **MS. HIRSHMAN:** Object.

[10] **A:** When I see that I suspect that there is a [11] significant thickness of cells, the superficial [12] layers of which are devoid of nuclei making an [13] interpretation of what lies below difficult, if [14] not impossible.

[15] So parakeratosis is seemingly a response of [16] cells, kind of a callus, if you will, and one [17] has to kind of get rid of that callus to find [18] out what's underneath.

[19] **Q:** Kind of what you call sort of a wastepaper [20] basket type of classification?

[21] **A:** No, I wouldn't call it a classification. I [22] think that the pathocytologist or [23] cytopathologist was just describing what they [24] saw.

[25] **Q:** Well, I thought that this Dr. Rosenthal said she

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[1] would not expect a gynecologist to recognize the [2] significance of an atypical parakeratosis? [3] Would you agree with that? Maybe you disagree.

[4] **A:** The significance has to be put into perspective [5] of what had transpired prior to this, previous [6] Pap smears, if there were any previous [7] biopsies. I have no problem understanding what [8] atypical parakeratosis is.

[9] **Q:** All right. By the way, we do know that at least [10] there came a point in time when the plaintiff [11] came back and was seen by Dr. Quinn the last [12] visit. She was going to go in – she was [13] pregnant again by that time, wasn't she? This [14] was after she delivered?

[15] **A:** I believe he was going to see her for a [16] sterilization procedure and it turned out that [17] she was pregnant at that time.

[18] **Q:** Somewhere in there she had something about [19] having problems with her husband or something, [20] something in the medical record?

[21] **A:** I don't remember exactly when that occurred, [22] but, yes, she was having some problems, but I [23] think that that was prior to this particular [24] pregnancy.

[25] **Q:** And she never then returned to see Dr. Quinn,

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[1] isn't that true?

[2] **A:** That's correct. She went –

[3] **Q:** She went on to another physician?

[4] **A:** Went on to another physician.

[5] **Q:** All right. By the way, do you know Dr. Burkons?

[6] **A:** I know Dr. Burkons.

[7] **Q:** I take it that you know him as an active [8] practicing OB/GYN?

[9] **A:** I see him at meetings and see him over at the [10] university when I go over there for rounds and [11] so forth.

[12] **Q:** He is out on the east side with –

[13] **A:** He is associated with University Hospitals.

[14] **Q:** And incidentally, you being in your practice of [15] fertility, I take it – do you have very many [16] patients that are on welfare in your practice?

[17] **MR. HIRSHMAN:** Objection.

[18] **A:** We have several patients that are on welfare.

[19] **Q:** Several, out of how many?

[20] **A:** I can't give you –

[21] **Q:** About 400?

[22] **A:** 400 patients on welfare?

[23] **Q:** You must have at least 300, 320 a year, wouldn't [24] you say, babies and people who have come in for [25] consults?

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[1] **MR. HIRSHMAN:** Objection.

[2] **A:** On welfare?

[3] **MR. LENSON:** No, no.

[4] **Q:** No. Altogether you have that many patients?

[5] **A:** I would think so, yes.

[6] **Q:** Now, just winding up, and I don't want to [7] belabor this, I take it you have testified in [8] the past on cases involving medical malpractice?

[9] **A:** Yes.

[10] **Q:** And have you testified for the same attorney who [11] has retained you in this case ever before?

[12] **A:** Never.

[13] **Q:** And I take it when you have testified before you [14] always – I mean, you came in as an OB/GYN about [15] other OB/GYNs or in favor of what they did? You [16] look at it and make a determination with respect [17] to OB/GYNs medical treatment?

[18] **A:** I was asked to render an opinion as to whether [19] that treatment was appropriate or inappropriate.

[20] **Q:** Well, you seem like a pretty intelligent guy, a [21] lot more so than me, but were you curious about [22] the fact that knowing that the attorney who [23] wrote you, that they were representing [24] pathologists were going to ask you to testify [25] regarding gynecologists or OB/GYN, did that

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[1] puzzle you at all why you were asked to take on [2] that role?

[3] **A:** This case apparently touches on various aspects [4] of health care, and I was asked to render an [5] opinion as to the care given or not given to [6] Cindy Bryant, to the best of my ability, and [7] that, you know, that's all I can do is –

[8] **Q:** I understand that, but my question is a little [9] broader. I mean, weren't you kind of curious [10] that here is somebody, Murray Lenson, a very [11] good lawyer representing a pathology group [12] asking you to testify regarding some

[13] gynecologist, didn't that sort of say gee, this [14] is sort of curious?

[15] **MR. LENSON:** Objection.

[16] **Q:** You found nothing curious about that?

[17] **A:** I think that he needed to find out whether the [18] obstetricians and gynecologists did or did not [19] do a good job in taking care of Cindy Bryant and [20] asked me to comment on that.

[21] **Q:** Did you ever hear in your experience of [22] testifying as an expert the word damage control?

[23] **A:** No.

[24] **Q:** You don't know what that means?

[25] **A:** Damage control in my mind is to –

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[1] **Q:** Control the damages?

[2] **A:** Stop the bleeding.

[3] **MR. FULTON:** Thank you. No [4] further questions.

[5] **VIDEOTAPE OPERATOR:** Off the [6] record.

[8] (Off the record.)

[10] **VIDEOTAPE OPERATOR:** On the record.

[12] CROSS-EXAMINATION OF STEVEN M. KLEIN, M.D.

[13] **BY MR. TIRA:**

[14] **Q:** Doctor, I represent Dr. Huang and Lake – I am [15] sorry, Ashtabula OB/GYN. I got a few questions [16] for you.

[17] Doctor, in your practice it's not standard [18] procedure for you to review pathology slides, is [19] it?

[20] **A:** That's correct, I do not.

[21] **Q:** You rely upon pathologists to interpret those [22] slides for you and to render an accurate [23] pathology report, correct?

[24] **A:** Yes.

[25] **Q:** Do you expect, do you not, for the pathologists

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[1] to use non-confusing language when writing those [2] reports, correct?

[3] **A:** That's correct.

[4] **Q:** Relative to a cone biopsy pathology report where [5] cancer is present based upon review of the [6] slides, you expect the pathologist to state in [7] the report whether the cancer observed is [8] microinvasive cancer versus invasive cancer, [9] correct?

[10] **A:** The pathologist – yes, that's correct. The [11] pathologist is given two opportunities to do [12] that. One of which is just the diagnosis [13] itself, and the other is that he describes what [14] he sees and it's up to the clinician who is [15] eventually going to treat this illness or [16] disease to take that information and either get [17] additional information, clarify the information [18] so that he can treat appropriately.

[19] **Q:** Simply stated, if the pathologist observes [20] invasive cancer on a pathology slide, you would [21] expect that pathologist to report invasive [22] cancer in his report or her report?

[23] **A:** I would hope that that would happen, yes.

[24] **Q:** You would also expect the pathologist to [25] accurately measure and report the depth of

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[1] invasion, correct?

[2] **A:** Yes.

[3] **Q:** It would be of assistance to you as a [4] gynecologist to have in a cone biopsy pathology [5] report the measurement of the lateral spread if [6] a tumor or legion is present, correct?

[7] **A:** Yes.

[8] **Q:** It would also be of assistance to you, would it [9] not, if the pathologist reviewing the slides of [10] a cone biopsy found a tumor that was present to [11] be poorly differentiated to report that in the [12] pathology report?

[13] **A:** Yes.

[14] **Q:** From your deposition testimony right before this [15] trial testimony I am correct in my [16] understanding, am I not, that you don't know [17] whether the terms microinvasive carcinoma and [18] the term carcinoma in situ with microinvasion [19] are synonymous?

[20] **A:** Correct.

[21] **Q:** Now, invasive carcinoma and microinvasive [22] carcinoma are two different terms?

[23] **A:** Yes.

[24] **Q:** If a patient, a woman has microinvasive [25] carcinoma of the cervix, the proper course of

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[1] treatment for that microinvasive cancer is a [2] simple or abdominal hysterectomy?

[3] **A:** In many instances depending on a woman's wish [4] for childbearing in the future, a cone biopsy [5] may be adequate as well.

[6] **Q:** But –

[7] **A:** If the margins are free.

[8] **Q:** All right. But a simple or abdominal [9] hysterectomy is in keeping with proper treating [10] for microinvasive cancer?

[11] **A:** That's correct.

[12] **Q:** In 1993, doctor, you subscribed to the [13] proposition that if a lateral spread of a tumor [14] in a cone biopsy report of the cervix exceeded [15] seven millimeters, that told you it was invasive [16] cancer, correct?

[17] **A:** That's correct.

[18] **Q:** Relative to the hysterectomy performed by [19] Dr. Huang in March of 1993, the manner in which [20] he performed that specific procedure, you cannot [21] testify that he performed it in anything but in [22] keeping with the standards of acceptable care, [23] correct?

[24] **A:** That's correct.

[25] **Q:** If I understand your testimony earlier

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[1] correctly, it is your opinion that if Dr. Huang [2] had referred the plaintiff to a gynecologist [3] oncologist following the January, 1993 cone [4] biopsy, you would be of the opinion that he met [5] the acceptable standards of care and you would [6] have no criticism of him in this case?

[7] **A:** That's correct.

[8] **MR. TIRA:** Thank you. I have no [9] further questions.

[10] **VIDEOTAPE OPERATOR:** Off the [11] record.

[13] (Off the record.)

[15] **VIDEOTAPE OPERATOR:** On the [16] record.

[18] CROSS-EXAMINATION OF STEVEN M. KLEIN, M.D.

[19] **BY MS. SANDACZ:**

[20] **Q:** Hi, Dr. Klein, I introduced myself early, my [21] name is Beverly Sandacz and I represent Dr. Huhn [22] in this case.

[23] As an OB/GYN you would agree with me that [24] when an obstetrician or gynecologist gets a [25] biopsy or pathology report they must understand

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[1] – it is imperative that they understand the [2] significance of the information that is [3] contained in that report, is that correct?

[4] **A:** Yes.

[5] **Q:** And you would agree with me that if an [6] obstetrician or gynecologist receives a [7] pathology report and he does not understand or [8] there is some confusion as to the information [9] contained in that report, he should get some- - [10] he should either seek consultation with a [11] pathologist or seek information to clarify any [12] miscommunication or anything that is confusing [13] in that report, is that correct?

[14] **A:** Right. There are various options open to the [15] gynecologist, to take the slides themselves and [16] have them reviewed by another expert, like a [17] gynecologic oncologist, or as you say, review [18] the situation with the pa-

thologist who rendered [19] the original report so that the gynecologists [20] gets a handle on things, an appropriate handle.

[21] **Q:** If you turn your attention to the revised [22] pathology report done by Dr. Huhn on January [23] 27th of 1993, there is an indication of [24] malignant cells present at vaginal margins of [25] resection, is that correct?

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[1] **A:** That's correct.

[2] **Q:** And you would agree with me that that is a [3] significant findings on that report, is that [4] correct?

[5] **A:** That's correct.

[6] **Q:** And I think it's your opinion that based upon [7] that significant finding that Dr. Huang should [8] have either sought a gynecologic oncologist or [9] done some additional testings based upon those [10] findings, is that correct?

[11] **A:** That's correct.

[12] **MS. SANDACZ:** Thank you. That's [13] all I have.

[14] **VIDEOTAPE OPERATOR:** Off the [15] record.

[17] (Off the record.)

[19] **VIDEOTAPE OPERATOR:** On the [20] record.

[22] REDIRECT EXAMINATION OF STEVEN M. KLEIN, M.D.

[23] **BY MR. LENSON:**

[24] **Q:** Dr. Klein, Murray Lenson again.

[25] Just very briefly. Plaintiff's counsel

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[1] suggested to you that the two abnormal pathology [2] reports that were provided to the Lake OB/GYN [3] group were in his terminology pink flags, is [4] that correct?

[5] **A:** That's correct.

[6] **Q:** And he didn't say red flags, he said pink flags, [7] meaning that you agree as your original [8] testimony that they were – they did demonstrate [9] pathology, correct?

[10] **A:** Pathology, enough on which to additionally act, [11] get more information.

[12] **Q:** And that would be as you indicated way at the [13] beginning of this deposition further diagnostic [14] studies?

[15] **A:** That's correct.

[16] **Q:** Now, Mr. Fulton asked you the reason why I would [17] retain you when we do represent pathologists. [18] Pathologists do not, in your profession – in [19] your experience, do not generally set forth to [20] clinicians what follow-up attention should be [21] undertaken, is that accurate?

[22] **A:** Some pathologists will recommend certain [23] follow-up procedures to be done. I believe if [24] their interpretation is good and their [25] association with the gynecologist with whom they

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[1] are dealing is adequate, then that gynecologist [2] knows from the report what to do or should know [3] from the report what to do and, but some [4] pathologists do render opinions and some [5] pathologists just make the diagnosis and allow [6] the gynecologist to make his own opinion as to [7] follow-up care.

[8] **Q:** In your professional experience, is it your [9] choice for the pathologist to recommend a [10] certain procedure or would you rather that a [11] pathologist not do that?

[12] **A:** I would rather that the pathologist not do [13] that.

[14] **MR. LENSON:** Okay. Thank you, Dr. [15] Klein. I have no further questions.

[16] **VIDEOTAPE OPERATOR:** Off the [17] record.

[18] **MR. HIRSHMAN:** On the record. I [19] have nothing further.

[21] (Off the record.)

[23] **VIDEOTAPE OPERATOR:** On the [24] record. Doctor, you have a right to review [25] this videotape in its entirety or you can

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[1] waive that right.

[2] **THE WITNESS:** I will waive it.

[3] **MR. HIRSHMAN:** You have a right to [4] review the written transcript or you can [5] waive that right, also.

[6] **THE WITNESS:** I will waive that.

[7] **MR. LENSON:** Let the record show [8] that we will make Exhibits A through E part [9] of the record with Dr. Klein's deposition.

[10] We will also be filing the [11] transcript, which is required by court [12] rule, and the signature has been waived. [13] The videotape, also.

[14] I'm sorry, A through F will be [15] filed with the court. Thank you.

[16] **VIDEOTAPE OPERATOR:** Off the [17] record.

[18] (Signature waived.)

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CERTIFICATE

The State of Ohio, } SS:
County of Cuyahoga.)

I, Susan M. Cebron, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named STEVEN M. KLEIN, M.D. Was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and the reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this _____ day of _____ A.D. 19 ____.

Susan M. Cebron, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires August 17, 1998

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