**In The Matter Of:**

*Tina Pribulsky v.*
*The Cleveland Clinic Foundation, et al.*

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*J. Gordon McComb, M.D.*
*July 25, 1997*

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*Original File 971737, 113 Pages*
*Min-U-Script® File ID: 1421028441*

**Word Index included with this Min-U-Script®**

STATE OF OHIO
COUNTY OF CUYAHOGA
IN THE COURT OF COMMON PLEAS
TINA PRIBULSKY, )
Plaintiff, )
vs. ) No. 286223
THE CLEVELAND CLINIC )
FOUNDATION, et al.,)
Defendants. )
DEPOSITION OF J. GORDON McCOMB, M.D.
Los Angeles, California
Friday, July 25, 1997
Reported by:
PAMELA A. STITT
CSR No. 6027
JOB No. 971737

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Deposition of J. GORDON McCOMB, M.D., taken on behalf of Defendants, at 1300 North Vermont Avenue, Suite 906, Los Angeles, California, commencing at 9:15 a.m., on Friday, July 25, 1997, taken before PAMELA A. STITT, Certified Shorthand Reporter No. 6027.



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EXHIBITS



INFORMATION REQUESTED
(None)
INSTRUCTION NOT TO ANSWER
(None)



Los Angeles, California, Friday, July 25, 1997 9:15 a.m. - 11:50 a.m.

J. GORDON McCOMB, M.D., having been first duly sworn, was examined and testified as follows:

**EXAMINATION**

**BY MR. JACKSON:**

**Q:** Good morning, Dr. McComb. My name is John Jackson, and I represent the Cleveland Clinic Foundation in the Pribulsky versus Cleveland Clinic Foundation case.

You have been identified as an expert for Mr. Becker in this case, and my understanding is that you are going to render opinions critical of the care that Tina Pribulsky received at the Cleveland Clinic. Is that a fair understanding?

**A:** That is correct.

**Q:** Have you ever been deposed before, Doctor?

**A:** Yes, I have.

**Q:** On how many occasions?

**A:** A couple dozen.

**Q:** In what capacity? As an expert or as a



defendant? How?

**A:** Most of the times as a treating physician.

**Q:** Okay. Would that be a treating physician of where you were testifying in a medical malpractice case or in other cases?

**A:** Other cases.

**Q:** Have you ever been sued?

**A:** Yes.

**Q:** How many times?

**A:** Four or five.

**Q:** Over what period of time?

**A:** Twenty-two years.

**Q:** We will come back to that in a moment, but just so that it is clear on the record, I am going to ask you a variety of questions. You have to obviously respond orally - especially since I am on the telephone here and I cannot see any head nods - so that your answers can be recorded.

If you do not understand a question that I ask you for any reason, please do not respond to it until you have asked me to clarify it for you. Fair enough?

**A:** Correct.

**Q:** If you answer a question for me, I will



assume that you have understood it and since you are under oath that you are answering it honestly and completely.

**A:** Correct.

**Q:** Also fair?

**A:** Correct.

**Q:** Doctor, what is your understanding of what happened in this case?

**A:** Could you be more specific, please.

**Q:** Sure. What is your understanding, first of all, of the procedure that Dr. - Let me ask you this first: The only person that you are critical of, as I understand it, is Dr. Barnett; correct?

**A:** Correct.

**Q:** You have no other opinions that you are going to register or provide relative to any other care she received at the Cleveland Clinic Foundation?

**A:** That is correct.

**Q:** And my understanding is that the criticism will limit itself to the surgical procedure itself; is that also correct?

**A:** That is correct.

**Q:** And further, it is my understanding that you are critical of only the manner in which Dr. Barnett responded to the bleeding situation; is



that also correct?

**A:** Not completely correct.

**Q:** Okay. Clarify that for me, then, please.

**A:** There was the matter of obtaining the biopsy.

**Q:** Okay. We will talk about that then, sir. So your criticisms involve the obtaining of the biopsy and response to the bleeding?

**A:** Correct.

**Q:** Is that a fair statement?

**A:** Yes.

**Q:** With that in mind, please explain for me what your understanding is of what it was that happened as it related to the obtaining of the biopsy and the bleeding.

**A:** From reading the records and the deposition, it is my understanding that the cyst was fenestrated, and then after the fenestration had taken place there was no biopsy material from the site of fenestration so that a decision was made to obtain a biopsy from the cyst wall at another site, and following that biopsy attempt bleeding occurred. And then once the bleeding occurred attempts were made to control the bleeding by pushing the endoscope into the brain.



**Q:** The procedure that was being employed here by Dr. Barnett, how would you classify - what would you call it?

**A:** I don't know what you are asking.

**Q:** What was the surgical procedure

that he [6] was performing on Miss Pribulsky?

[7] **A:** He was fenestrating an arachnoid cyst.

[8] **Q:** The term stereotactic has been used. Is [9] that something with which you are familiar?

[10] **A:** Yes.

[11] **Q:** There has been a phrase stereotactic [12] endoscopic marsupialization. Would you say that that [13] is what was done in this case with Miss Pribulsky?

[14] **A:** No, it was not.

[15] **Q:** Why not?

[16] **A:** One, the cyst wasn't marsupialized. [17] Marsupialized is a much more extensive type of opening [18] of a cystic cavity. What he did was make a window [19] into the cyst or fenestrate it. And he did not do it [20] endoscopically. I believe he did it freehand after [21] there was problems with the stereotactic equipment, [22] wasn't it? Let me just clarify this.

[23] **Q:** Okay.

[24] **A:** Now, I know he had problems with the MRI [25] study and the braces and the degradation of the image



[1] that was done and then he went to the CT scan. Now, I [2] know he used the endoscope, and I wasn't quite clear [3] whether or not – Was this endoscope used freehand or [4] was it actually attached to a stereotactic frame? [5] That I did not quite understand.

[6] I thought he had abandoned that, and I [7] thought he had gone to a freehand technique using the [8] endoscope is my understanding of the case. If he were [9] using the endoscope freehand in a freehand manner, [10] then that would not be a stereotactic approach. But [11] he had tried the stereotactic approach previously and [12] was not successful.

[13] **Q:** You are not critical of that, I [14] understand?

[15] **A:** Correct.

[16] **Q:** You don't feel that that fell below [17] standard of care; correct?

[18] **A:** Well, I think that there was no harm done [19] with that procedure, so the harm came after that, so I [20] think that is a separate issue.

[21] **Q:** I understand that, but I need to know [22] that you are not saying that that was a deviation from [23] standard of care – "that" being the – Strike that [24] question.

[25] Are you intending to render an opinion



[1] that anything other than the response to the bleeding [2] or the decision and the obtaining of the biopsy were [3] deviations or fell below standard of care?

[4] **A:** No.

[5] **Q:** Okay. My understanding of that answer is [6] no, you are not going to state any opinions other than [7] those two areas; correct?

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

[9] **Q:** Okay. Let's assume, Doctor – Let me go [10] back for a moment. What significance is it in your [11] opinions as to whether this was a freehand approach or [12] stereotactic approach?

[13] **A:** I think it doesn't necessarily make any [14] difference. You just brought up the fact – you said [15] it was stereotactic, and I was – thought that the [16] original attempt was stereotactic, and I thought that [17] the use of the endoscope was done freehand. Most [18] people use the endoscope in a freehand manner rather [19] than stereotactically. It sounded like – I was under [20] the impression this was done freehand, but [21] irrespective, I was just raising a question about the [22] issue of the use of the word stereotactic endoscopic [23] procedure. That was all.

[24] **Q:** What I am trying to understand is: If it [25] was done stereotactically as opposed to freehand, does



[1] that have any impact upon your opinions here?

[2] **A:** No.

[3] **Q:** Okay. So your opinions would be the same [4] whether it was done freehand or done stereotactically?

[5] **A:** Correct.

[6] **Q:** Okay. Do you happen to have a file here [7] with you, Doctor?

[8] **A:** Yes.

[9] **Q:** And is it in front of you? Is it handy?

[10] **A:** Yes.

[11] **Q:** Is it your complete file?

[12] **A:** Yes.

[13] **Q:** Is there anything that has been removed [14] from that file before the deposition?

[15] **MR. BECKER:** I removed my correspondence to [16] him.

[17] **MR. JACKSON:** How many letters were removed?

[18] **MR. BECKER:** Multiple.

[19] **MR. JACKSON:** How many?

[20] **MR. BECKER:** I don't know. I didn't count [21] them, John.

[22] **MR. JACKSON:** Would you take a moment and count [23] them.

[24] **MR. BECKER:** This is not my deposition.

[25] **MR. JACKSON:** I understand that, but you have



[1] removed materials from his file. I would like to know [2] what you removed.

[3] **MR. BECKER:** I answered the question. I am not [4] the deponent here, John.

[5] **MR. JACKSON:** I understand that, Mike, then [6] give them back to him and he will count them for me, [7] but I want to know how many documents were removed [8] from his file.

[9] **MR. BECKER:** John, I will count them at the end [10] of the deposition and let your associate know how [11] many.

[12] **BY MR. JACKSON:**

[13] **Q:** Doctor, other than his letters to you, [14] were any other documents removed?

[15] **A:** No.

[16] **Q:** I have a report here, a letter from you [17] to Mr. Becker dated June 28 of 1996, a two-page [18] document.

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

[20] **Q:** Is that the only correspondence that you [21] generated?

[22] **A:** Yes, that is true.

[23] **Q:** Okay. Was there any draft of this sent [24] to Mr. Becker?

[25] **A:** Mr. Becker sent me a draft, which I



[1] completely revised. What I sent is my own work; it is [2] not Mr. Becker's.

[3] **Q:** Okay. So let me understand. Mr. Becker [4] sent to you a draft of a report?

[5] **A:** Correct.

[6] **Q:** For your signature?

[7] **A:** Right.

[8] **Q:** And you revised his draft?

[9] **MR. BECKER:** I think he used the word [10] "completely."

[11] **BY MR. JACKSON:**

[12] **Q:** You revised his draft –

[13] **A:** Well, I did not use his draft at all.

[14] **Q:** Okay.

[15] **A:** I made my own statement.

[16] **Q:** Do I understand from this, Doctor, that [17] one of the documents that was removed from your file [18] today was a proposed draft of a report for you to sign [19] that was written by Mr. Becker?

[20] **A:** No. That was not one of the things that [21] was removed.

[22] **Q:** You did receive such a document?

[23] **A:** I did, yes.

[24] **Q:** And I am trying to understand. What [25] happened to that document?

A: I believe I sent it back to Mr. Becker. I don't have any copy of it here.

Q: Who wrote that document, Mr. Becker?

MR. BECKER: Who wrote which document?

MR. JACKSON: The document that he was referring to just a moment ago that he sent back to you.

THE WITNESS: I presume it was Mr. Becker. I don't recall. This was over a year ago.

BY MR. JACKSON:

Q: Have you ever had that happen before, Doctor?

A: Once.

Q: Where an attorney writes a report and asks you to sign it?

A: Once before.

Q: You say you did not make –

A: Just to clarify things. Mr. Becker did not ask me to sign the document as is. He sent a document with some areas of –

MR. BECKER: John, to help him with form because he is not – does not do a lot of medical/ legal work and does not know what should be contained in a report. But you will make of it what you will.

To answer your earlier question, it looks



like four letters that I sent him were removed.

MR. JACKSON: Does that include the one that we are talking about now?

THE WITNESS: No.

MR. BECKER: No.

BY MR. JACKSON:

Q: When were those removed, Doctor?

A: This morning.

Q: And who was it that decided what documents would be removed from your file?

A: Mr. Becker took his correspondence to me.

Q: I understand. But was anything else removed other than that correspondence?

A: No.

Q: Let me go back for a moment to the draft that he sent to you. Do I understand this to be a document wherein there were opinions stated as to the facts in this case?

A: Mr. Becker made some suggestions regarding the opinions of the case. I formed my own opinions and wrote my own letter regarding my opinions on this case.

Q: Tell me what areas were suggested. What opinions were suggested to you by Mr. Becker?

MR. BECKER: Wait a minute. Doctor, don't



answer any more of these questions. Let's go on, John.

MR. JACKSON: No, Mike, we are not going on. This is a very appropriate area of inquiry.

MR. BECKER: It certainly is not. It is – It is your style of inquiry, but it is certainly inappropriate.

MR. JACKSON: It is certainly appropriate for me to know under these circumstances – Apparently you wrote a document for this doctor suggesting certain opinions. I am entitled to know what you suggested to him.

MR. BECKER: It is the same opinions that he has in his letter, John.

MR. JACKSON: I don't know that, Mike.

MR. BECKER: Well –

MR. JACKSON: You said a moment ago that I can't question you, so I am questioning the doctor.

MR. BECKER: Fine. But the doctor has already indicated that he has drafted his own report after he saw a routine form and put his own letter, his own language, and that's the end of it. So you can make more of it with the court, but I would ask you not to waste the doctor's time this morning.

MR. JACKSON: I am not wasting his time, Mike.



Q: Doctor, what opinions were suggested to you by Mr. Becker?

A: This was over a year ago. I don't have a copy of it. I have not seen it for over a year ago. I don't recall much of the specifics. It had more to do with the stereotactic procedure, the problem with the braces and the image distortion and whether or not that should have been a factor. And also I believe it had something to do with the inexperience of Dr. Barnett in doing these types of procedures.

Q: Any other opinions he suggested to you?

A: I don't recall anything else.

Q: Have you ever worked with Mr. Becker before?

A: No.

Q: Any of the letters that he removed from the file, Doctor, other than that document that you just described for us –

A: He did not remove that document from the file today.

Q: Understood. But any of the other documents that he did remove today, did those contain summaries of facts in this case?

A: Some of them did, yes. It is his work product.



Q: Why do you say that?

A: Why do I say that?

Q: Yes.

A: Because he told me it was.

Q: Okay. What were the summaries? What facts were presented to you by Mr. Becker?

A: It was just a summary of the deposition of Dr. Barnett.

Q: When you say "a summary," was it some kind of a word line summary? In other words – Strike that.

Are you saying that it was some kind of a digest of Dr. Barnett's deposition?

A: Correct.

Q: Did you rely upon that digest in preparing your report of June 28?

A: No, I did not. In fact, I don't think – I don't know whether I even had that digest at that time. I formulated my opinion from reviewing the records of Dr. Barnett's testimony, the imaging studies, and the hospital record.

Q: What was the purpose of the summary of Dr. Barnett's deposition for you?

A: I don't know.

Q: Did you review it?



A: Yes. There was no opinion stated. It was just a highlight of the various areas of testimony, and it made it easier to just find things in the deposition, but other than that, it didn't do anything else.

Q: Was it pages from the actual deposition that were highlighted or were there –

A: No. It was just a summary of the deposition.

Q: That someone had prepared?

A: Correct. So that you didn't have to wade through a number of areas that were nonrelevant to the – It was just – Strike that. It was a summary highlighting the areas that seemed to be the points of interest.

Q: Okay. The materials that you have in front of you, Doctor, do those include the six areas of materials that are listed in your report of June 28, 1996?

A: Correct.

[21] **Q:** And I may have asked you this: That is [22] your entire file with the exception of the documents [23] that you told me have been removed today?

[24] **A:** Correct.

[25] **Q:** In addition to the items listed in your

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[1] report of June 28, have you reviewed any additional [2] items between the issuance of your report and today?

[3] **A:** No.

[4] **Q:** Did you do any research in this case?

[5] **A:** No.

[6] **Q:** Did you review any articles, text, any [7] writings regarding the medicine or surgery involved in [8] this case?

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

[10] **Q:** Would you mind handing your file to [11] Mr. Kelley so that he can review it.

[12] **A:** So done.

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

[14] **MR. BECKER:** John, we have an updated vitae.

[15] **MR. JACKSON:** I will get to that in a minute. [16] Thanks. If you could give a copy of that to Jay, I [17] would appreciate it.

[18] **MR. BECKER:** Of the updated vitae?

[19] **MR. JACKSON:** Please.

[20] **Q:** The one I have, Doctor, is May 31, 1996, [21] and apparently you have a more current one; correct?

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

[23] **Q:** It is a rather extensive document. Mine [24] here goes some 53 pages. What is the current one?

[25] **A:** I don't know.

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[1] **Q:** Do you have a copy of it there so you [2] could tell me how many pages.

[3] **MR. KELLEY:** The last page is 55. There are a [4] few articles on there it looks like.

[5] **BY MR. JACKSON:**

[6] **Q:** So the upgrading has been more [7] presentations, more writings?

[8] **A:** Correct.

[9] **Q:** Let me use this one because I have it in [10] front of me. Under "PUBLICATIONS," Doctor – and [11] these are from peer review documents; that is your [12] first category – the last publication I have is [13] listed as No. 71 with a Dr. Chen, "Cellular uptake and [14] transport of methyprednisolone at the blood-brain [15] barrier." Is there a more current peer review article [16] than that?

[17] **A:** Yes, there are.

[18] **Q:** And how many more are there?

[19] **A:** On this there are seven more here, and I [20] think we have a couple more that I haven't put on the [21] CV.

[22] **Q:** First of all, let me ask this: Do any [23] of those articles, the ones that are on your CV and [24] the ones that need to be added to your CV, address [25] issues that would be relevant to this lawsuit in your

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[1] opinion?

[2] **A:** No.

[3] **Q:** Okay. What are the titles, if you know [4] or if you can tell me of the articles that are not on [5] your most current CV that have to be added?

[6] **A:** Actually, there is one dealing with [7] treatment of arachnoid cysts, but it is looking more [8] at fenestration versus shunting and complications [9] involved with fenestration and shunting, but it does [10] not specifically address the – whether the [11] fenestration is done via an open procedure or an [12] endoscopic procedure or stereotactic procedure.

[13] **Q:** Okay. Where is that published? Do you [14] have a citation that you can give us?

[15] **A:** It is going to be – It is in press for [16] Pediatric Neurosurgery. That is our own experience. [17] And then we have a review article coming out in a book [18] being published by the American Association of [19] Neurologic Surgeons with Howard, H-o-w-a-r-d, Kaufman, [20] K-a-u-f-m-a-n, as the editor.

[21] **Q:** Okay. Do you have either copies of those [22] articles in your office, or can you give us a [23] citation – Are we able to obtain copies of them?

[24] **A:** Sure. I have them right here. I can [25] give them to you, but there is nothing in it that is

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[1] relevant to the case at hand.

[2] **Q:** I understand. Would you mind giving [3] copies of those to Mr. Kelley before he leaves.

[4] **A:** Sure.

[5] **Q:** Let me go on to the non-peer review [6] publications. The CV I have lists 16, the last one [7] being a 1993 article with a Dr. Zlokovic, [8] Z-l-o-k-o-v-i-c, as the first author, "Blood-brain [9] transport of vasopressin," Drewes L.R., Betz, B-e-t-z, [10] A.L., and then it goes on to some more, but that [11] should be sufficient to identify it for you. Anything [12] more current than that?

[13] **A:** Which section is that now?

[14] **Q:** It is under "PUBLICATIONS."

[15] **A:** Non-peer review?

[16] **Q:** Non-peer review publications.

[17] **A:** I don't think so. I think that's – I [18] don't recall any other non-peer review.

[19] **Q:** All right. Thank you. The next section [20] of the CV I have is chapters of books.

[21] **A:** Right.

[22] **Q:** And this lists 34, the last being a [23] chapter with Dr. Chen as No. 34, on –

[24] **A:** Right.

[25] **Q:** – brain tumors and that indicates that

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[1] this was in press. I assume that has been published [2] now?

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

[4] **Q:** Is there any more current book chapters?

[5] **A:** Yes. We are up to 37, and we have also [6] sent off, I don't know, we have another five or six in [7] press at the moment, but none of it is relevant to the [8] case at hand.

[9] **Q:** Okay. The next category in this CV is [10] "Abstracts and Miscellaneous," and there are 65 on [11] this CV. Is there anything more current than that? [12] The last one on this one is "Comments on article by [13] Chicoine M.R., Park T.S."

[14] **A:** Right. I have that. We are up to 77, [15] and I think that there are probably a few more that [16] probably have been added since then that we have not [17] put on the CV.

[18] **Q:** Any of the additional ones past 65 that [19] are applicable to this case in your opinion?

[20] **A:** No.

[21] **Q:** There are a number of international and [22] national presentations. "PRESENTATIONS" is the next [23] category, by the way. The last international [24] presentation was one in September of 1994 which was [25] the International Society for Pediatric Neurosurgery

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[1] in Birmingham, UK. Any more current presentations?

[2] **A:** Yes.

[3] **Q:** Are those listed on your CV?

[4] **A:** Yes, they are.

[5] **Q:** Do any of those relate to topics which [6] you would consider pertinent to this lawsuit?

[7] **A:** No.

[8] **Q:** Okay. Then the next category is national [9] presentations. That last one is for a symposium for [10] the American Association of Neurologic Surgeons, [11] "diagnosis and management of occipital plagiocephaly." [12] Any more current?

[13] **A:** Yes.

[14] **Q:** Are those listed on your CV?

[15] **A:** Yes.

[16] **Q:** Do any of those relate to this particular [17] case or pertinent to it in your opinion?

[18] **A:** No.

[19] **Q:** Next category is regional presentations, [20] and the last one that I see here is a presentation [21] apparently on June 5 of '96 in San Marino, [22] California. The annual neurosurgical symposium, [23] advance neurosurgery update, "use of endoscope in [24] treating hydrocephalus."

[25] **A:** Yes.

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[1] **Q:** Do you have more current presentations [2] regionally than that?

[3] **A:** I don't think so.

[4] **Q:** Then you have "Local and Miscellaneous [5] Lectures" as the next category on your CV. The last [6] one being apparently at Stanford University on May 9 [7] of 1996, "surgical approach to pineal, p-i-n-e-a-l, [8] location tumors." Anything more current?

[9] **A:** Yes.

[10] **Q:** Of the ones that are more current, are [11] they all listed on your present CV?

[12] **A:** I think we have some more to add to it.

[13] **Q:** Okay. Any of the ones that are in [14] addition to this on your CV or yet to be added that [15] apply to this case in your opinion?

[16] **A:** No.

[17] **Q:** Perhaps I should have done this when I [18] was going through this, Doctor, but in terms of [19] your – Let me go back to the beginning of your [20] publications. It starts on page 6 of the CV that I [21] have.

[22] **A:** Yes.

[23] **Q:** Would you take a moment and – First of [24] all, in terms of your publication, do you believe that [25] any of your publications are pertinent to the issues

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[1] in this lawsuit?

[2] **A:** No.

[3] **Q:** That would include not only your peer [4] review publications but your non-peer review [5] publications and your chapters in books?

[6] **A:** To the best of my knowledge there is [7] nothing there that is relevant to this particular [8] case.

[9] **Q:** That would also apply to your "Abstracts [10] and Miscellaneous" in your CV, anything in there [11] applicable to this case?

[12] **A:** I don't think so.

[13] **Q:** Okay. How about as it relates to any of [14] your presentations, either international, national, [15] regional, or local?

[16] **A:** The one that you cited in San Marino [17] would have application.

[18] **Q:** Let me see if I can find that again. [19] June 5, 1996, the use of endoscope in treating [20] hydrocephalus.

[21] **A:** Correct.

[22] **Q:** Presentation review on a Dr. Levy.

[23] **A:** Correct.

[24] **Q:** Tell me about that presentation. How [25] would that be applicable to this case?

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[1] **A:** In terms of managing bleeding when one [2] encounters it in treating hydrocephalus. In other [3] words, this was more talking about the use of [4] endoscope in treating hydrocephalus such as doing a [5] third ventriculostomy which is a fenestration [6] procedure which would be similar to what was done in [7] this particular case.

[8] **Q:** Did you make a slide presentation?

[9] **A:** Yes, I did.

[10] **Q:** Do you have those slides?

[11] **A:** Yes.

[12] **Q:** Was there a written presentation also in [13] addition to your slides?

[14] **A:** No.

[15] **Q:** Did you maintain any notes –

[16] **A:** No.

[17] **Q:** – relative to the presentation?

[18] **A:** No, I don't have any notes.

[19] **Q:** Would your presentation or an outline of [20] your presentation be perhaps on a computer somewhere [21] or a disk or anything of that nature?

[22] **A:** No.

[23] **Q:** Was there a handout for that [24] presentation, any type of a –

[25] **A:** No, there wasn't.

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[1] **Q:** No documentation handed out to the [2] participants?

[3] **A:** No. There were slides, and there was a [4] videotape of doing an endoscopic fenestration of a [5] third ventricular cyst.

[6] **Q:** Does the videotape still exist?

[7] **A:** I presume so.

[8] **Q:** Would you be willing to provide us with [9] copies of your slides?

[10] **A:** I have no problem with that. The only [11] trouble is that I think I have disassembled that and [12] used various pieces of that talk in other areas so [13] that I don't think it is together anymore.

[14] **Q:** Well, what I am interested in, and maybe [15] you can help me figure out how we can obtain the [16] information insofar as it is possible to get copies of [17] the slides that were presented there or that fall [18] within that talk, we would like to obtain copies of [19] those obviously at our expense. How would we go about [20] doing that with you, Doctor?

[21] **A:** I would have to just go through my files [22] of slides and pick out the ones that would be [23] appropriate.

[24] **Q:** Would you do that?

[25] **A:** I can, sure.

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[1] **Q:** Okay.

[2] **MR. BECKER:** Well, it sounds like –

[3] **BY MR. JACKSON:**

[4] **Q:** Have you ever given a similar talk other [5] than the San Marino presentation on June 5 of 1996?

[6] **A:** I have talked about endoscopic treatment [7] of hydrocephalus but it is variations on the same [8] talk.

[9] **Q:** How about the video, you said there was a [10] videotape. Can we obtain a copy of the videotape?

[11] **A:** If I can find it.

[12] **Q:** Okay. Is there a title or a name for [13] that?

[14] **A:** I don't recall.

[15] **Q:** What did the videotape depict?

[16] **A:** Just doing an endoscopic fenestration [17] procedure.

[18] **Q:** Okay. Was there a complication [19] encountered in the video?

[20] **A:** No, there was not.

[21] **Q:** Do the slides represent – I don't know [22] how to word this exactly – but do they show [23] complications encountered in endoscopic procedures, [24] any of the slides?

[25] **A:** I would have to – They may. I don't

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[1] recall. I would have to review it. I'm not [2] withholding anything. I just don't recall.

[3] **Q:** That's fine, Doctor. I'm just trying to [4] obtain the information. Please don't think that I am [5] suggesting that you are holding things back on me. I [6] am not doing that. I am just trying to be as complete [7] in my inquiry as I can.

[8] Other than that presentation, any other [9] presentations in your CV that you believe would be [10] applicable to this case?

[11] **A:** No.

[12] **Q:** So if I understand correctly, the only [13] portion of your CV, the only article, presentation, [14] chapter, et cetera, is that one presentation that we [15]

just talked about; is that a correct understanding?

A: That is correct.

Q: The first six pages of your CV outline your personal data, education, honors, licensure, professional background, et cetera. Are there any additions, deletions, corrections to those?

A: Nothing – I don't think so.

Q: How would you characterize your area of expertise, Doctor?

A: I practice pediatric neurosurgery.

MR. BECKER: Doctor, since we have left the

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vitae and your publications, you have handed me your most original paper, and it looks like it is the original manuscript and it has not been published yet. I have had physicians tell me that that is not subject to distribution, and I just want to make sure that you have no problem with that.

MR. JACKSON: That was my question before. Is there a problem? If there is a problem, tell us.

MR. BECKER: I have never seen anything in this rough or raw form, and I have had physician experts tell me, "I can't give you that until it has been published," and I am just telling you for whatever it is worth and it is your call on that. I'm not going to withhold it, but I would ask you to reconsider that based on my experience in seeing something as rough as that. It is your call.

BY MR. JACKSON:

Q: Do you have a problem with giving us a copy of that, Doctor?

A: One is galley proofs. It should be coming out within the next month or so, so that is not rough. Then there is a chapter that has been edited which is quite rough which Mr. Becker is referring to. I don't have any problems giving that to you. That should be out in publication in a couple of

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months.

Q: Okay. Thank you.

A: But once again, there is nothing in that that is pertinent to the case at hand.

Q: Okay. Your expertise is in pediatric neurosurgery?

A: That is correct.

Q: Any special area of pediatric neurosurgery in which you have special expertise?

A: Hydrocephalus, arachnoid cysts, neurotube defects, brain tumors, cranial synostosis. Those are some areas that I have concentrated on.

Q: Do you do stereotactic endoscopic procedures?

A: No, I do not.

Q: Have you ever done them?

A: No. I do endoscopic procedures, and I do stereotactic procedures, but I do not do stereotactic endoscopic procedures.

Q: So that I am not confused here, is there a stereotactic endoscopic procedure in neurosurgery?

A: There can be. There is no reason why you cannot hook an endoscope onto a stereotactic frame and insert it that way.

Q: Is your understanding that this was – I

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know that you believe that this was done freehand, but was this originally a stereotactic endoscopic procedure?

A: I know that this procedure started out as a stereotactic procedure. I don't – I'm not sure exactly whether or not an attempt was made to use an endoscope with the original MR study, so I'm not – I'm a little uncertain on that. I didn't quite put that together, so I would –

Can you tell me, the first procedure, was that done with an endoscope or was that just done with a probe to try and fenestrate the cyst?

Q: What is your understanding?

A: I don't know.

Q: Okay.

A: I'm asking you.

Q: You're the expert, Doctor. I get to ask you questions.

Based on your review of these materials, what is your answer to that question?

A: I don't know.

Q: Okay. And I think we explored a moment ago that the answer to that question is insignificant as it relates to your conclusions in any event; correct?

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A: As far as what happened and the end result, yes.

Q: Okay. Let me go back to your report of June 28, 1996. You reviewed the depositions of Dr. Barnett of February 12 and March 25?

A: That is correct.

Q: You reviewed the outpatient records from the Cleveland Clinic?

A: I did, yes.

Q: Was that a complete set of outpatient records?

A: I presume so. I don't know for certain.

Q: No. 3 was the inpatient records from the Cleveland Clinic. Was that a complete copy of those records?

A: Mr. Kelley has been looking at it. Maybe he can attest to whether or not it was complete or not.

Q: Was it your understanding that you were reviewing a complete copy of the records?

A: It says inpatient records, outpatient records. It does not state whether they are complete or not.

Q: I am just trying to understand – I am not suggesting one way or the other that they should

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or should not have been, but I want to know was it your belief that you had a complete copy or was there some indication that you did not have a complete copy?

A: I don't know whether they are complete or not complete.

Q: No. 4 was the Cleveland Clinic lab reports?

A: Correct.

Q: And what do you mean by "lab reports"?

A: I believe that was things such as radiology reports, various blood work, and that sort of thing.

Q: Okay. Was there anything in the lab report information that was important to you as it relates to the opinions that you are going to state here?

A: No.

Q: How about in the inpatient records, other than the operative report – Strike that. I won't even exclude that. In the inpatient records was there anything significant for your opinions in this case?

A: Other than the operative report?

Q: Okay. Well, I assume the operative report was significant to you, that's why I excluded that. So anything other than the operative report

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that would be significant to you?

A: No.

Q: And that was a correct assumption, that the operative report would have been important to you; correct?

A: Yes.

Q: How about in the outpatient records, was there anything in the outpatient records from the Cleveland Clinic that was significant to you?

[10] **A:** I don't believe so.

[11] **Q:** Okay. What from Dr. Barnett's deposition [12] was significant to you?

[13] **A:** His comments about the biopsy and [14] management of the bleeding.

[15] **Q:** Anything else?

[16] **A:** No.

[17] **Q:** No. 5 on your list of things you [18] reviewed was CT scans, MRI scans related to the [19] patient, those being of November 2, 1988. Those were [20] of the head. Were those significant to you in [21] formulating your opinions?

[22] **A:** The imaging studies, yes.

[23] **Q:** Okay. How did they assist you in [24] formulating opinions in this case, the ones that you [25] are going to state?



[1] **A:** Just seeing the hemorrhage and then the [2] results subsequently after the hemorrhage had [3] resolved, and one could see the track in the brain [4] from the instrumentation.

[5] **Q:** Okay. Of what significance was the [6] track to you?

[7] **A:** You could see that the – that there was [8] an area of encephalomalacia in the region of the [9] thalamus on a later MRI study.

[10] **Q:** How was that significant to you?

[11] **A:** It relates to the fact that there was [12] damage caused in that area as a result of the [13] procedure.

[14] **Q:** What is your opinion as to what caused [15] that damage?

[16] **A:** Primarily the probing of the site of [17] hemorrhage with the endoscope.

[18] **Q:** When you say "primarily," that suggests [19] to me that there is another cause in your mind. What [20] would that be?

[21] **A:** No. It is from the endoscope.

[22] **Q:** Is there any other mechanism that could [23] have caused that damage other than the probing in your [24] opinion?

[25] **A:** No.



[1] **Q:** Could the bleeding have caused it?

[2] **A:** The bleeding would not have, you know, [3] caused that type of picture on the MRI study, no.

[4] **Q:** What would you have seen if it was damage [5] from bleeding as opposed to what you actually saw?

[6] **A:** Most of the vessels in that region really [7] are not big vessels, they are usually small vessels so [8] that if you do get hemorrhage from one of those small [9] vessels, it produces a very small area of loss of [10] brain substance, and this is – it looks – it follows [11] the trajectory of the endoscope from the surface [12] through the cortex through the ventricle and into the [13] thalamic internal capsule region.

[14] **Q:** Do you believe that that damage is a [15] result of a deviation from standard of care?

[16] **A:** Yes.

[17] **Q:** Can that damage occur in this type of [18] procedure absent a deviation from standard of care?

[19] **A:** Not like this, no.

[20] **Q:** Explain that.

[21] **A:** When a bleeding develops and you can't [22] see what you are doing, the only thing you can do is [23] irrigate and hope the bleeding stops. And if you [24] cannot see, you cannot work with the endoscope because [25] it is like being in a can of tomatoe soup; you cannot



[1] see anything; you are blind.

[2] An endoscopic procedure is one in which [3] you use visualization. If you cannot visualize [4] anything, then you cannot work. Probing, all it did [5] was cause damage. It didn't do anything to help the [6] situation. In fact, it just made the situation a lot [7] worse. You are not going to stop the bleeding with [8] pushing the endoscope into the brain. I mean, that is [9] not the appropriate thing to do. You have bleeding; [10] you irrigate; and if you can't see anything, you pull [11] the scope out. You do not push the scope into the [12] brain if you cannot see.

[13] **Q:** As it relates to the damage in the brain [14] that you saw on this imaging, can that type of damage [15] occur absent negligence or substandard medical care in [16] your opinion?

[17] **MR. BECKER:** John, I am going to object. I [18] would ask you to just –

[19] **MR. JACKSON:** Then just object, please.

[20] **MR. BECKER:** Would you clarify "that type of [21] damage." Do you mean that type of picture on imaging?

[22] **BY MR. JACKSON:**

[23] **Q:** Did you understand my question, Doctor? [24] And if you didn't, I will restate it for you.

[25] **A:** Would you please restate it.



[1] **Q:** Sure. You have told me that you saw a [2] certain type of damage on the imaging studies after [3] the surgery; am I correct in that?

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

[5] **Q:** You conclude that that type of damage is [6] caused by probing, it is not damage which could be [7] caused by a mechanism other than the probing?

[8] **A:** Correct. And Dr. Barnett so states in [9] his deposition as well.

[10] **Q:** My question to you is: Can the type of [11] damage that you saw on the imaging study occur during [12] this type of surgery absent medical malpractice, [13] absent substandard care or negligence in your opinion?

[14] **A:** No. There was no reason for him to be [15] down in the thalamus anyway. I mean, he had – the [16] cyst was not located primarily in that region, and [17] there is no reason to try to fenestrate the cyst in [18] that region at all, so there is no reason why he [19] should be passing an endoscope down there to treat [20] this condition.

[21] **Q:** I just want to be clear, then. So that [22] type of damage in your opinion is evidence of [23] substandard care in this procedure?

[24] **A:** Yes.

[25] **Q:** Back to your report, Doctor. No. 6 is a



[1] listing of all the different imaging studies that you [2] reviewed in addition to those listed in No. 5; am I [3] correct?

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

[5] **Q:** And am I also correct that before you [6] wrote your report you did not review any other [7] materials other than what is listed here?

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

[9] **MR. KELLEY:** John, there is something else in [10] the packet of records he has. There is a time line in [11] the front of it.

[12] **MR. JACKSON:** Okay.

[13] **Q:** Was that sent to you before your report, [14] Doctor?

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

[16] **MR. KELLEY:** Jay, could you show him what you [17] are referring to and maybe that will refresh your [18] memory, Doctor.

[19] **MR. KELLEY:** (Proffers document.)

[20] **THE WITNESS:** I presume it was here when I [21] rendered my report.

[22] **BY MR. JACKSON:**

[23] **Q:** Of what significance is that to you?

[24] **A:** Nothing as far as my report goes.

[25] **Q:** Anything regarding your opinions? Does



[1] it have any significance to your opinions?

[2] **A:** No.

[3] **Q:** May we have a copy of that.

[4] **A:** Sure.

[5] **Q:** Other than that time line, anything

else[6] that you reviewed before your report that is not [7] listed in your letter?

[8] **A:** No.

[9] **Q:** I understand your answer to that to be [10] no?

[11] **A:** Correct.

[12] **Q:** Now, you have not reviewed any additional [13] documents or materials since the time you wrote this [14] letter and today; correct?

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

[16] **Q:** I assume you have re-reviewed these [17] materials before the deposition?

[18] **A:** Some of them, yes.

[19] **Q:** What did you review before the [20] deposition?

[21] **A:** Mainly Dr. Barnett's depositions.

[22] **Q:** Okay. Have you reviewed any of the [23] reports of experts that we have retained?

[24] **A:** Mr. Becker sent me something about that [25] months ago.



[1] **Q:** What did he send you?

[2] **A:** I believe it was a copy of two people [3] that you had review the case.

[4] **Q:** Do you remember what you saw, what you [5] read?

[6] **A:** Not specifically. I just glanced at it, [7] and I can't find it.

[8] **Q:** So you have reviewed the reports of our [9] experts?

[10] **A:** I saw them. I did not read them word by [11] word. I was busy at the time. I saw them come in. I [12] just glanced at them. I put them in a pile someplace, [13] and I have never seen them since.

[14] **Q:** Do you remember when you received those?

[15] **A:** Months ago.

[16] **Q:** You cannot be any more specific than [17] that?

[18] **A:** No, I can't. If you want to provide me [19] copies, I will be glad to look at them again.

[20] **Q:** I am sure he has some right there in his [21] file. Did you review them today with him?

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

[23] **Q:** In terms of –

[24] **MR. KELLEY:** John, I do have them.

[25] **MR. JACKSON:** Pardon me?



[1] **MR. KELLEY:** I have them if you want me to give [2] them to him.

[3] **MR. JACKSON:** That's all right. I was just [4] curious as to whether he had reviewed them or not, [5] that's all.

[6] **MR. KELLEY:** Okay.

[7] **BY MR. JACKSON:**

[8] **Q:** Doctor, what textbooks do you consider [9] reliable in the area of pediatric neurosurgery?

[10] **A:** Most textbooks are written by multiple [11] authors. Some of the chapters are very good, some of [12] them are less than spectacular. One could certainly [13] agree or disagree with some of the things that are [14] said in various textbooks.

[15] Why is that relevant to what we are [16] discussing today?

[17] **Q:** Well, that is a question that I am [18] curious about, and I would like to know what text you [19] considerable reliable as it relates to this field of [20] medicine. Are there any?

[21] **A:** Yes. There is one called Pediatric [22] Neurosurgery.

[23] **Q:** Who is the author?

[24] **A:** It is multiple authors.

[25] **Q:** Who is the main author?



[1] **A:** There isn't a main author. There is an [2] editor.

[3] **Q:** Who is the editor?

[4] **A:** There is a first, second, and third [5] edition. Do you want me to have all three editions or [6] just the third edition?

[7] **Q:** When is the third edition, when was it [8] published?

[9] **A:** 1994.

[10] **Q:** When is the first edition?

[11] **A:** I don't have the first edition here. I [12] just have the second edition.

[13] **Q:** Tell me when that was published.

[14] **A:** 1989, and it looks like the first one was [15] probably published in 1982.

[16] **Q:** Okay. Thank you. Any other textbooks [17] that you have there in your office on pediatric [18] neurosurgery?

[19] **MR. BECKER:** John, his whole wall is covered [20] with textbooks.

[21] **BY MR. JACKSON:**

[22] **Q:** Then let me go specifically to ones which [23] you would refer to.

[24] **A:** There are textbooks which have sections [25] in them dealing with pediatric neurosurgery.



[1] **Q:** Okay. Doctor, if you were going to go to [2] a textbook in this area, what we are talking about in [3] this case, what would you go to other than this [4] Pediatric Neurosurgery you have just described?

[5] **A:** I would probably go to the peer review [6] literature if I were going to do any specific research [7] on this. There is – What I would do is I would pick [8] and choose among peer reviews. You can look at all of [9] these – There is a whole number of textbooks that you [10] can go through. I mean, there isn't just one textbook [11] that is head and shoulders above all others.

[12] **Q:** Who is the editor of the Pediatric [13] Neurosurgery that we were talking about?

[14] **A:** Which edition?

[15] **Q:** There are different editors?

[16] **A:** Yes. The editor of the first is the [17] pediatric section of the American Association of [18] Neurologic Surgery.

[19] The editors of the second edition are [20] Robert McLaurin, M-c-L-a-u-r-i-n, Luis Shut, L-u-i-s [21] S-h-u-t, Joan, J-o-a-n, L. Denes, D-e-n-e-s, and Fred, [22] F-r-e-d, Epstein, E-p-s-t-e-i-n.

[23] The editors of the third edition are [24] William R. Cheek, C-h-e-e-k, Arthur, A-r-t-h-u-r, E. [25] Marlin, M-a-r-l-i-n, David G. McLone, M-c-L-o-n-e,



[1] Donald H. Reigel, R-e-i-g-e-l, and Marion, [2] M-a-r-i-o-n, L. Walker W-a-l-k-e-r.

[3] **Q:** Okay. Thank you. So other than what you [4] have just described for me, you could not cite any [5] specific textbooks that you would go to if you were [6] looking up this particular procedure or were going to [7] do research on this case; that is correct?

[8] **A:** As we sit here now, I would have to go to [9] the various texts that I have, I would look through [10] them and find articles that I thought to be [11] appropriate and take bits and pieces of them –

[12] **Q:** Okay.

[13] **A:** – and I would go to the peer review [14] literature and get articles from there as well.

[15] **Q:** What would you look for? What would you [16] research? What topic?

[17] **A:** You can look at complications of [18] endoscopic procedures, I suppose, would be one. [19] That's what we are talking about, so if you were going [20] to do research in this particular area, then I would [21] look for what the reported complications are with the [22] use of endoscopy, if that is what you are asking me.

[23] **Q:** That is what I am asking. Any other [24] topics or areas that you would research?

[25] **A:** No. Because to the best of my knowledge



[1] I think that is what we are talking about in this [2] particular case, is it not?

[3] **Q:** Okay. How many times have you acted as [4] an expert before, Doctor, in a

medical malpractice [5] setting?

[6] **A:** When I am a treating physician or [7] nontreating physician?

[8] **Q:** Okay. I take it your distinction is when [9] you are a treating physician, it would be a case where [10] you were actually named as a defendant?

[11] **A:** No. The vast majority of times it has [12] been – I have not been named as a defendant.

[13] **Q:** Okay.

[14] **A:** Most of the times it is child abuse. I [15] have to go to court and talk about how a child [16] received injuries and whether or not the injuries [17] reflected what the history has been. That is the [18] major amount of times that I have gone to court.

[19] **Q:** I understand. Maybe you did not [20] understand my question or I didn't state it correctly.

[21] I was asking you in the context of a case [22] involving medical malpractice.

[23] **A:** I have been involved in a number of those [24] cases where I have been involved in the care of the [25] child involved, but I have not been named as a party



[1] to the malpractice suit.

[2] **Q:** You were a fact witness as it relates to [3] your care of the child but the case involved a medical [4] malpractice situation, and you were not personally [5] named in a number of them; correct?

[6] **A:** Yes.

[7] **Q:** Have you acted as an expert retained by [8] either the plaintiff or the defendant in any medical [9] malpractice cases?

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

[11] **Q:** How many of those?

[12] **A:** I don't know the total number. It is a [13] couple a years maybe.

[14] **Q:** How long have you been doing that?

[15] **A:** I don't know. Ten or fifteen years.

[16] **Q:** Has your involvement in those cases been [17] for defendant doctors or for plaintiffs?

[18] **A:** Both.

[19] **Q:** Are you presently acting as an expert in [20] any cases other than this one that are pending?

[21] **A:** There is one other case that I was [22] involved in that was supposed to be settled in an [23] arbitration case that was supposed to have been [24] settled.

[25] **Q:** Where was that case venued?



[1] **A:** Arizona.

[2] **Q:** Were you acting on behalf of the [3] plaintiff or the defendant?

[4] **A:** Plaintiff.

[5] **Q:** What was the name of the case?

[6] **A:** I would have to get the name out.

[7] **MR. BECKER:** If you don't know, Doctor, that's [8] fine.

[9] **THE WITNESS:** I would have to look it up. I [10] don't recall that.

[11] **BY MR. JACKSON:**

[12] **Q:** Do you remember the name of the city that [13] it was venued in?

[14] **A:** Phoenix. Excuse me. I take that back. [15] It is Las Vegas, Nevada.

[16] **Q:** Do you remember the name of the doctor or [17] hospital involved?

[18] **A:** Yes.

[19] **Q:** What was that?

[20] **A:** The hospital was Sunrise Hospital. The [21] doctor I would have to think about.

[22] **Q:** Were you deposed in that case?

[23] **A:** Yes, I was.

[24] **Q:** How recently?

[25] **A:** A couple of months ago.



[1] **Q:** Do you remember the name of either of the [2] attorneys involved?

[3] **A:** I'd have to get my records. I don't [4] recall specifically.

[5] **Q:** What was the nature of the case?

[6] **A:** It was a fenestration of an arachnoid [7] cyst which didn't exist.

[8] **Q:** The cyst did not exist?

[9] **A:** It was a mistake in diagnosis, and I can [10] remember the details of the case much better than the [11] names of the people involved. This was a child who [12] had a large cisterna magna and it was interpreted as [13] being a possible arachnoid cyst, which it was not. [14] The cyst was fenestrated or the cisterna magna was [15] fenestrated and they got a C.S.F. leak afterwards, and [16] in an attempt to repair the C.S.F. leak some weeks [17] after the original procedure the transfer sinus was [18] entered, the patient had a major loss of blood and had [19] a significant period of hypotension on the operative [20] table because the blood loss was greater than that [21] which was being replaced, and as a result the child [22] was left with a major neurologic deficit.

[23] **Q:** Who was the expert acting on behalf of [24] the hospital and/or doctor, if you know?

[25] **A:** No, I don't know.



[1] **Q:** Was there an expert on the other side of [2] the case?

[3] **A:** I never saw any information from experts [4] on the other side.

[5] **Q:** Okay. Any other cases pending other than [6] the one in Las Vegas, Neveda?

[7] **A:** No.

[8] **Q:** Between plaintiffs and defendants in [9] medical malpractice cases, Doctor, how does it break [10] down? Are you able to give me a number or percentage [11] of –

[12] **A:** Yes. It is about half and half.

[13] **Q:** Have you ever testified in court?

[14] **A:** A few times.

[15] **Q:** How many?

[16] **A:** Three, four.

[17] **Q:** Where?

[18] **A:** You are talking about as an expert [19] witness?

[20] **Q:** Yes, I am. In a medical malpractice [21] case. Let me rephrase the question for you, because [22] maybe it wasn't specific enough.

[23] How many times have you testified in [24] court as an expert in a medical malpractice case?

[25] **A:** A few times.



[1] **Q:** Are you able to be more specific than [2] that?

[3] **A:** I can remember just two times offhand.

[4] **Q:** Okay. Where?

[5] **A:** Here in Los Angeles.

[6] **Q:** Acting on behalf of whom, plaintiff or [7] defendant?

[8] **A:** One plaintiff, one defendant.

[9] **Q:** When did that happen? When did you [10] testify?

[11] **A:** Years ago.

[12] **Q:** How many?

[13] **A:** Four, five, six.

[14] **Q:** Did either of those cases have anything [15] to do with surgery similar to what we are dealing with [16] in this case?

[17] **A:** No.

[18] **Q:** When is the last time you represented or [19] were retained by a defendant in a medical malpractice [20] case?

[21] **A:** Just recently.

[22] **Q:** How recently?

[23] **A:** In the last couple of weeks.

[24] **Q:** It is a matter that you are reviewing [25] now?



[1] **A:** Yes.

[2] **Q:** Where is it venued?

[3] **A:** Los Angeles.

[4] **Q:** Other than Los Angeles and Las Vegas, [5] where else have the cases been venued where you have [6] been an expert in medical malpractice?

[7] **A:** I can't recall.

[8] **Q:** Ever in Ohio?

[9] **A:** I don't believe so.

[10] **Q:** Did you ever work for Mr. Becker before?

[11] **A:** No.

[12] **Q:** Did you ever work for any attorney in [13] Cleveland before?

[14] **A:** No.

[15] **Q:** And your best memory is no other cases in [16] Ohio at all?

[17] **A:** Correct.

[18] **Q:** Other than what you have already told me [19] you cannot tell me what other states or cities you [20] have been retained as an expert in, what other venues?

[21] **A:** Correct.

[22] **Q:** What is your fee arrangement for these [23] matters, Doctor?

[24] **A:** Strictly an hourly basis.

[25] **Q:** How much per hour?



[1] **A:** $350.

[2] **Q:** Is that for all aspects of your [3] involvement?

[4] **A:** Correct.

[5] **Q:** So for review, deposition, trial it is [6] all $350 per hour?

[7] **A:** Correct.

[8] **Q:** How much time have you spent to date on [9] this case?

[10] **A:** I spent one hour last night, and I spent [11] an hour with Mr. Becker this morning, and I put a [12] couple of hours in a year ago, and I don't know [13] exactly how much time.

[14] **Q:** Would you describe for me the nature of [15] your current practice.

[16] **A:** I do pediatric neurosurgery.

[17] **Q:** Describe a typical week for me. You are [18] in surgery how many days a week and see patients how [19] many days a week?

[20] **A:** Usually surgery four or five days a week, [21] and I see patients four or five days a week.

[22] **Q:** Are there any special procedures that you [23] limit yourself to or is it – How would you describe [24] your practice?

[25] **A:** The gamut of pediatric neurosurgery.



[1] **Q:** Okay. How many surgeries do you do a [2] week?

[3] **A:** We – There is two of us, and we do about [4] a little over 50 cases a month, and I probably do [5] about 60 percent of the cases.

[6] **Q:** When you say two of you, you are in a [7] partnership?

[8] **A:** We have a medical group.

[9] **Q:** When you say "medical group," is it just [10] you and one other or is there –

[11] **A:** There is 150 in the medical group, but [12] there is just two neurosurgeons in the medical group.

[13] **Q:** A multi-specialty medical group?

[14] **A:** Correct.

[15] **Q:** Your privileges are at all of the [16] hospitals listed – I have page 3 of your CV, and [17] apparently this is current. Do you still maintain [18] current privileges in all of those hospitals?

[19] **A:** Yes.

[20] **Q:** Where is most of your work done?

[21] **A:** Children's Hospital.

[22] **Q:** What percentage would be at Children's [23] Hospital?

[24] **A:** 95.

[25] **Q:** Do you know Dr. Barnett?



[1] **A:** No, I do not.

[2] **Q:** Have you ever read any of his writings?

[3] **A:** I don't believe so.

[4] **Q:** Do you know 'Dr. Zamora'?

[5] **A:** I know a pediatrician here in Los Angeles [6] by the name of 'Zamora.'

[7] **Q:** I pronounced that incorrectly. How [8] about Zamorano, do you know Dr. Zamorano?

[9] **A:** No, I don't believe so.

[10] **Q:** From Detroit?

[11] **A:** No, I don't.

[12] **Q:** Doctor, who do you recognize as [13] authorities in the field of pediatric neurosurgery?

[14] **MR. BECKER:** Objection to the word [15] "authorities."

[16] **THE WITNESS:** What aspects of pediatric [17] neurosurgery?

[18] **BY MR. JACKSON:**

[19] **Q:** The aspects that are involved in this [20] case.

[21] **A:** Endoscopy in particular?

[22] **Q:** Okay. Let's talk about endoscopy, the [23] authority in pediatric neurosurgery involving [24] endoscopy.

[25] **A:** All right. There are several people



[1] that have taken a particular interest in this. One is [2] Marion Walker in Salt Lake. Another is Allen Cohen in [3] Cleveland. A third person is Kim Manwaring, [4] M-a-n-w-a-r-i-n-g, in Phoenix. They have presented [5] and published on the use of the endoscope in pediatric [6] neurosurgical cases.

[7] **Q:** Is there anyone that you would recognize [8] in addition to those people as authorities in dealing [9] with complications of endoscopic surgery in pediatric [10] neurosurgery?

[11] **MR. BECKER:** Same objection. You can answer.

[12] **THE WITNESS:** I am sure that there are many [13] other very good people. I can't think of anybody at [14] the moment, but there are a number of people that are [15] quite knowledgeable.

[16] **BY MR. JACKSON:**

[17] **Q:** Where did you say Dr. Walker was located [18] again?

[19] **A:** Salt Lake City.

[20] **Q:** Are you able to tell me when you were [21] first contacted in this case, Doctor?

[22] **A:** Over a year ago.

[23] **Q:** Is that the best you can do?

[24] **A:** Yes. I don't have any of the letters in [25] front of me.



[1] **Q:** How long before your report of June 28 do [2] you believe that you were contacted?

[3] **A:** A month or two.

[4] **Q:** How were you first contacted? Was it by [5] letter or was it by telephone?

[6] **A:** I believe Mr. Becker spoke with my [7] secretary.

[8] **Q:** How did he come to you?

[9] **A:** I don't know.

[10] **Q:** Do you know where he got your name from?

[11] **A:** No, I don't.

[12] **Q:** Define for me, if you would, "standard of [13] care."

[14] **A:** You are asking for a legal definition. I [15] don't claim any expertise in the legal definition of [16] standard of care.

[17] **Q:** Well, let's use the definition that was [18] in your mind when you wrote your letter.

[19] **A:** Something that was done that was [20] inappropriate to be done or wasn't handled in the [21] appropriate fashion, did not – was not prudent in its [22] exercise.

[23] **Q:** That is your definition of standard of [24] care?

[25] **A:** I probably am not articulating it as well



[1] as I should. Obviously, one can get into

many [2] ramifications of standard of care. If you would like [3] to ask a more specific question, I would be glad to [4] try and answer it.

[5] **Q:** You say there was a deviation from the [6] standard of care in this case.

[7] **A:** In that Dr. Barnett admitted in two [8] places in his deposition that he tried to control the [9] bleeding by pushing the endoscope into the brain, and [10] when you get massive – when you get bleeding of any [11] sort that obscures one's vision, you cannot do [12] anything with the endoscope. Once you can't see, you [13] can't work, and you should stop at that point.

[14] If you try to push the endoscope into the [15] brain to stop the bleeding, then I think that that is [16] a deviation from the standard of care, in that people [17] doing endoscopy make the point that when you cannot [18] see, you cannot work. The only thing that you can do [19] is irrigate, and if you can't see, you have to stop [20] and back out. That's all.

[21] **Q:** I understand what you say he did as being [22] a deviation from the standard of care, Doctor. What I [23] was trying to understand is what your understanding of [24] that term is, the standard of care. What is the [25] standard of care? Who sets it?

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[1] **MR. BECKER:** Let me object, because that has [2] been asked, and I think he has given the best answer [3] that he can.

[4] **THE WITNESS:** You can say what a prudent [5] neurosurgeon would be doing in practice that – You [6] know, if you get 100 neurosurgeons, everyone would [7] agree or most would agree that an approach to a [8] procedure problem should have been done one way, and [9] it was done in such a way that was – Like, for [10] instance, if you operated on the wrong side of – you [11] amputated the wrong leg, I mean, the standard of care [12] is you operate on the appropriate side, you don't [13] operate on the other side, that type of thing.

[14] **BY MR. JACKSON:**

[15] **Q:** In this case it is clear that the surgery [16] that was undertaken was appropriate surgery?

[17] **A:** Yes.

[18] **Q:** It was clearly indicated; correct?

[19] **A:** Yes.

[20] **Q:** The approach to the surgery was [21] appropriate; is that also correct?

[22] **A:** There are different ways in which one [23] could handle the fenestration of this type of an [24] arachnoid cyst, and one could do it endoscopically or [25] one could do it with an open procedure, so that either

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[1] would be appropriate.

[2] **Q:** The choice by Dr. Barnett of doing it [3] endoscopically was an appropriate choice; correct?

[4] **A:** The choice by someone who is very [5] experienced in doing it this way, that would be [6] appropriate. The thing that I have been impressed [7] with, too, is that there has been this huge wave of [8] enthusiasm for endoscopic procedures and everybody [9] presents their results and they get beautiful results [10] and they have minimal or no complications and make it [11] seem very easy. It is not as easy as it seems, and it [12] takes some experience in order to be able to be [13] proficient at using the endoscope for fenestration.

[14] **Q:** You do endoscopic fenestrations?

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

[16] **Q:** How frequently?

[17] **A:** Of arachnoid cysts?

[18] **Q:** Yes.

[19] **A:** I usually do those – I do most of those [20] as an open procedure because I feel that I can do a [21] better job as an open procedure rather than [22] endoscopically. The only ones that we have [23] fenestrated endoscopically are third ventricular cysts [24] because that is a more appropriate approach; but for [25] most of the others, you can have more visualization,

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[1] you can have control of bleeding, you can make more [2] holes, and thereby are more sure that you get the cyst [3] treated. So that is my own particular approach, but [4] there are others that claim that they get a good [5] result with doing it endoscopically, and I don't have [6] any argument with that.

[7] **Q:** When you said "arachnoid cysts," would [8] that include intraventricular cysts?

[9] **A:** That is just one location for an [10] arachnoid cyst.

[11] **Q:** Okay.

[12] **A:** And I have no objection at all to trying [13] to fenestrate that endoscopically.

[14] **Q:** That was my question before. So the [15] plan to use endoscopy to approach this [16] intraventricular cyst was an appropriate choice; [17] correct?

[18] **A:** Yes.

[19] **Q:** Okay. Your understanding is that [20] initially there was – when the fenestration was [21] performed that it was performed appropriately; is that [22] correct or not?

[23] **A:** I presume so.

[24] **Q:** Okay.

[25] **A:** I mean, there is no way of telling.

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[1] **Q:** Why do you say that?

[2] **A:** We don't have – All we have is the [3] operative report. The only way of knowing that it was [4] performed is if you get a follow-up MR or CT scan and [5] you show that the cyst is diminished in size and then [6] you know it would be appropriate.

[7] **Q:** So that I am clear, maybe I am confused [8] here. Is there some criticism in your mind of the [9] initial fenestration attempt?

[10] **MR. BECKER:** Stereotactic. He is talking about [11] the first stereotactic attempt.

[12] **THE WITNESS:** The first stereotactic attempt [13] was not successful.

[14] **BY MR. JACKSON:**

[15] **Q:** Why do you say that?

[16] **A:** Because Dr. Barnett said so.

[17] **Q:** What about the fenestration itself, do [18] you have any criticism of that?

[19] **A:** No.

[20] **Q:** You talk in your report of it being [21] unclear as to why a biopsy sample was not gained [22] initially. What do you mean by that?

[23] **A:** Well, when one makes a fenestration, you [24] can take small-cupped forceps and obtain tissue at the [25] site of fenestration and in the process of

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[1] fenestrating get tissue. Now, apparently no tissue [2] was obtained at that time.

[3] **Q:** How long have you been doing endoscopic [4] surgery for fenestration of arachnoid cysts, Doctor?

[5] **A:** More than five years.

[6] **Q:** We are now in 1997 so you would have [7] started that in –

[8] **A:** Around 1990, something like that.

[9] **Q:** Around 1990?

[10] **A:** Roughly. I don't know specifically.

[11] **Q:** Prior to that you were not using [12] endoscopic procedures for fenestration of arachnoid [13] cysts?

[14] **A:** I still rarely use them for arachnoid [15] cysts.

[16] **Q:** Were you using endoscopic procedures at [17] all before 1990 for brain surgery?

[18] **A:** No.

[19] **Q:** When did endoscopic procedures for brain [20] surgery start being used?

[21] **A:** Around the turn of the century.

[22] **Q:** Why did you not start until 1990 to use [23] endoscopic procedures?

[24] **A:** You have to look at risk/benefit ratio, [25] and the equipment has become much better now than ever

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[1] before, so that with the development of new equipment [2] the technique has become more efficient and safer, and [3] as a result people have gone back to trying endoscopic [4] procedures.

[5] **Q:** What percentage of your procedures are [6] endoscopic?

[7] **A:** A small percentage.

[8] **Q:** Are you able to quantify it for me?

[9] **A:** If you include putting shunt catheters [10] in, we frequently use an endoscope to put our shunts [11] in; so I did one last night with an endoscope and I [12] did one yesterday – the day before with an endoscope [13] to put a catheter in, so we are using that all the [14] time, which is endoscopy, so that is something that we [15] do day in and day out.

[16] **Q:** Okay. How about exclusive of that, [17] excluding the use of endoscopy for a shunt catheter –

[18] **A:** Infrequent –

[19] **Q:** – what percentage of your –

[20] **A:** Infrequently. Maybe one or two cases a [21] month I think we do together.

[22] **Q:** When were you first trained to do [23] endoscopic procedures?

[24] **A:** First probably around 1990, something [25] like that.

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[1] **Q:** Where did you receive your training?

[2] **A:** I went to several courses and watched [3] other people do them, you know, in a similar manner to [4] Dr. Barnett.

[5] **Q:** Are you able to tell me where you got [6] that training, what courses you took?

[7] **A:** Yes. There were a couple of courses put [8] on by the pediatric section of the American [9] Association of Neurologic Surgeons. I was in one in [10] Boston.

[11] **Q:** Was that in '90?

[12] **A:** I don't recall. It was – It could have [13] been in the late '80s. Also there was a course in [14] Phoenix.

[15] **Q:** Excuse me for a moment. The first one [16] that you talked about in Boston, who was the [17] instructor?

[18] **A:** I don't recall.

[19] **Q:** Was it an actual – Did you actually [20] observe the procedure, participate? I mean, what was [21] the training involved that you took in Boston?

[22] **A:** It was a two-day course that was put on [23] with lectures, visual material, and then simulated [24] type of procedures that one performs.

[25] **Q:** Explain that part for me, if you would.

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[1] **A:** You had models and you practiced doing [2] endoscopic procedures on models.

[3] **Q:** Okay. And I'm sorry. You were telling [4] me about a second course.

[5] **A:** Correct.

[6] **Q:** Where was that again, please? Salt Lake [7] City?

[8] **A:** Phoenix.

[9] **Q:** Phoenix. Okay. When was that course, do [10] you recall?

[11] **A:** It was a year or two after the Boston [12] course.

[13] **Q:** Who taught that course?

[14] **A:** Kim Manwaring was one of the people [15] there.

[16] **Q:** And how long was that course?

[17] **A:** I believe it was a two-day course.

[18] **Q:** What was the format of the course?

[19] **A:** It was similar to the first, but also one [20] had animals, pigs that we actually did the endoscopic [21] procedures on.

[22] **Q:** Did you actually perform procedures, you [23] personally on these animals?

[24] **A:** Yes, I did.

[25] **Q:** How many procedures?

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[1] **A:** A whole day's worth.

[2] **Q:** I don't know – Can you quantify that? [3] Was it one pig? Two pigs? How many?

[4] **A:** Several pigs, and we just took turns [5] doing a procedure on the pigs.

[6] **Q:** Any other training that you received [7] other than these two courses for endoscopic [8] procedures?

[9] **A:** At meetings there have been many [10] presentations regarding endoscopy.

[11] **Q:** Since 1990?

[12] **A:** Yes.

[13] **Q:** The –

[14] **A:** Some might have even been before. I am [15] just using that as a rough time. It may have been [16] mid-'80s. I don't recall specifically, but it is [17] roughly – It has been about 10 years now that people [18] have shown a renewed enthusiasm for endoscopic [19] techniques.

[20] **Q:** Did you have to be certified before you [21] started doing endoscopic procedures?

[22] **A:** Yes.

[23] **Q:** How did you go about certification? What [24] is the process that is required?

[25] **A:** You had to show that you had gone to

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[1] courses to become familiar with doing the procedures.

[2] **Q:** By whom were you certified?

[3] **A:** By our hospital. I mean, I was given a [4] certificate that showed I had successfully completed [5] the courses, and then I brought that to our hospital [6] and was allowed to do endoscopic procedures.

[7] **Q:** So you had to make an application with [8] your hospital for privileges to perform these [9] procedures?

[10] **A:** I believe so.

[11] **Q:** And –

[12] **A:** I think you had to show proof of [13] training.

[14] **Q:** What is your morbidity for endoscopic [15] procedures, Doctor?

[16] **A:** Which kind?

[17] **Q:** Fenestration of cysts.

[18] **A:** So far we haven't had any significant [19] morbidity. We have had some – I remember a case of [20] transient diabetes insipidus that resolved in a couple [21] of days, and we have had a couple of cases where there [22] has been some bleeding, one in which we couldn't see [23] so we had to stop.

[24] **Q:** Bleeding is a recognized complication of [25] endoscopic neurosurgery?

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[1] **A:** Yes.

[2] **Q:** Specifically relative to the fenestration [3] of cysts?

[4] **A:** Yes.

[5] **Q:** Are you able to tell me your morbidity [6] rate for bleeding related to endoscopic fenestration [7] of cysts?

[8] **A:** What degree of bleeding? You will always [9] get some bleeding. Are you talking about 1 red cell, [10] or are you talking about a hematoma that is 5 [11] centimeters in diameter?

[12] **Q:** Certainly you can't tell when you have 1 [13] red blood cell. I mean, I am talking about a [14] complication that you would consider a morbidity – [15] that would go into your morbidity statistics. It [16] would be something more than 1 cell, I take it?

[17] **A:** Fortunately I have not had any major [18] bleeding with doing an endoscopic procedure. And if [19] we can't

see, we stop.

[20] **Q:** Do I take it from your answer that you [21] cannot give me a quantification of your –

[22] **A:** I have had – I can remember one case of [23] transient diabetes insipidus and that is it.

[24] **Q:** And you mentioned bleeding, you have had [25] that experience also?

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[1] **A:** Correct.

[2] **Q:** How many occasions?

[3] **A:** A few times.

[4] **Q:** How many is "a few"?

[5] **A:** Two or three times.

[6] **Q:** Out of how many procedures?

[7] **A:** Dozens.

[8] **Q:** How many dozens?

[9] **A:** Oh, let's say, incidents of under, say, [10] around 5 percent maybe.

[11] **Q:** So that I understand it, your bleeding [12] incidents for endoscopic fenestration of cysts has [13] been approximately 5 percent?

[14] **A:** Something like that, yes.

[15] **Q:** What is your overall complication rate [16] for endoscopic fenestration of cysts?

[17] **A:** I don't do most of the cysts [18] endoscopically. I use an operating microscope to do [19] the fenestration in most cases.

[20] **Q:** Okay. So for you to do endoscopic [21] fenestration of cysts is an infrequent thing?

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

[23] **Q:** Even since 1990?

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

[25] **Q:** Now, Doctor, are you judging Dr. Barnett

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[1] by the standard of care that is applicable since 1990?

[2] **A:** The procedure was done in, what, 1988?

[3] **Q:** It was.

[4] **A:** I don't think that the standards have [5] changed from 1988 to 1990 or to 1997.

[6] **Q:** You yourself were not doing this [7] procedure in 1988, were you?

[8] **A:** I may have been. I gave you 1990 as a [9] rough time frame. I could have been doing it in 1986, [10] '87. I don't know offhand.

[11] **Q:** Were you?

[12] **A:** I could have been. You are asking me to [13] be very specific on something that I would have to go [14] and check the records, so I really don't know, but we [15] were doing procedures around that time.

[16] **Q:** Prior to – Well, you used the term 1990, [17] Doctor.

[18] **A:** That was an arbitrary time point. It [19] certainly wasn't 1950. It wasn't 1960. It wasn't [20] 1970. It wasn't 1980. It was sometime after 1980. [21] Can we use that term now?

[22] **Q:** Well, I asked you initially when you [23] started doing these, and you told me 1990.

[24] **A:** I said roughly. That wasn't an absolute [25] time line.

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[1] **Q:** How many had you done before 1990?

[2] **A:** I don't know.

[3] **Q:** How many had you done by 1988?

[4] **A:** I don't know.

[5] **Q:** Had you done more than one?

[6] **A:** By 19- – I have absolutely no idea.

[7] **Q:** Do you feel it is appropriate to be [8] critical of a doctor and render opinions against him [9] on standard of care for a procedure that you were not [10] doing?

[11] **MR. BECKER:** Objection. He –

[12] **BY MR. JACKSON:**

[13] **Q:** You said you weren't doing it. Do you [14] feel that that is appropriate?

[15] **MR. BECKER:** Objection. He didn't say that, [16] but you can go ahead and answer.

[17] **MR. JACKSON:** I'm asking him.

[18] **MR. BECKER:** You can answer the question.

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

[20] **Q:** Assuming that this is a procedure that [21] you yourself did not do before 1990, Doctor – Assume [22] that.

[23] **A:** Okay. Assume that I had not done it. [24] There are certain basic tenets that one follows in [25] medicine and – For instance, if you are supposed to

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[1] amputate the right leg and you amputate the left leg [2] by mistake, whether or not you had done any [3] amputations on legs doesn't mean that you can't say [4] that removing the wrong leg is – there is no reason [5] why you cannot judge that removing the wrong leg is [6] the wrong thing.

[7] **Q:** Okay. Understood. But as it relates to [8] the approach to a complication in a surgical procedure [9] that you don't perform, do you think it is fair and [10] appropriate to judge another doctor's standard of care [11] relative to –

[12] **A:** Well, whenever the topic was presented, [13] it has always been emphasized that if you have [14] bleeding, you can't see, you can't work, and that [15] there is no way that one can stop bleeding [16] endoscopically to push the endoscope into the brain to [17] try to stop the bleeding. I don't think anybody would [18] advocate that before 1988 or afterwards.

[19] **Q:** Well, then, my question – I guess the [20] answer to my question is that you do feel comfortable [21] rendering standard of care opinions on the approach to [22] complications whether you were doing the procedure or [23] not at the time?

[24] **A:** As far as this one particular issue goes, [25] yes.

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[1] **Q:** What happens or what is the risk if the [2] bleeding doesn't stop?

[3] **A:** It is rare that it doesn't stop, but if [4] it continues, then you have to do an open craniotomy [5] to find the source of bleeding and stop it.

[6] **Q:** Is death a possible end point?

[7] **A:** If the bleeding continues and you don't [8] stop it, yes.

[9] **Q:** Are you critical of the fenestration [10] itself, the first procedure, the first attempt as was [11] discussed here?

[12] **A:** The first attempt was unsuccessful, I [13] believe.

[14] **Q:** Okay. And then it is your understanding [15] that he went to a freehand passage; correct?

[16] **A:** That's my understanding.

[17] **Q:** You are not critical of the fenestration [18] that was actually accomplished; correct?

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

[20] **Q:** You make comment in your report relative [21] to a further biopsy, and I understand that to mean [22] that after the fenestration was accomplished, you [23] believe that some biopsy sample was taken or should [24] have been taken, is that –

[25] Would you clarify that for me. Let me

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[1] ask it that way.

[2] **A:** Well, after the fenestration was done, [3] one would think that that was – since that was the [4] goal of surgery that you would stop at that point. [5] There seemed to be little reason to do a biopsy after [6] completing the fenestration.

[7] Now, the source of biopsy and bleeding [8] was obviously in the thalamus and you are not trying [9] to fenestrate the arachnoid cyst into the thalamus, so [10] there was very little reason to have tried to take a [11] biopsy in that location

knowing that this was, as [12] Dr. Barnett said, he thought it was either an [13] appendable or arachnoid cyst, and it wouldn't make any [14] difference on how you treated one versus the other. [15] So the need to take a biopsy was very marginal at [16] best, and you always have to look at the risks versus [17] the benefits of doing something, and if the benefits [18] do not exceed the risks, then you shouldn't be doing [19] it.

[20] So it didn't seem prudent to take a [21] biopsy at another location from where the cyst was [22] fenestrated, and there was no benefit in taking this [23] biopsy. There was obviously risk as demonstrated by [24] the complication that occurred.

[25] **Q:** When you fenestrate cysts, do you biopsy



[1] them?

[2] **A:** Sometimes.

[3] **Q:** What is the determinative factor in your [4] practice?

[5] **A:** Well, if I am doing an open procedure and [6] there is some tissue there and it is very easy to [7] visualize and take a piece of it, then I take a [8] sample. I would be excising tissue anyway, and rather [9] than just throwing it away, I usually give some of it [10] to go to pathology. When we are doing endoscopic [11] techniques, then most of the time we do not take a [12] biopsy.

[13] **Q:** Why not?

[14] **A:** There is no reason to, and plus there is [15] a certain amount of risk involved in it and there is [16] no benefit.

[17] **Q:** What is your understanding of why [18] Dr. Barnett took a biopsy?

[19] **A:** I have no knowledge of why he took a [20] biopsy.

[21] **Q:** Okay. Do you believe that it was [22] inappropriate for him to take the biopsy?

[23] **A:** It wasn't prudent.

[24] **Q:** Was it below the standard of care?

[25] **A:** It depends on how you define things. I



[1] mean, you have to look at risk versus benefits. And [2] if the risk of doing something exceeds the benefit, [3] then there is no reason to do it, it wasn't prudent.

[4] **Q:** In this case, Doctor, was his decision to [5] obtain a biopsy in your opinion a deviation from the [6] standard of care?

[7] **A:** It depends on how one defines standard of [8] care.

[9] **Q:** Your definition.

[10] **A:** It wasn't prudent to do a biopsy because [11] the risk exceeded the benefit, and there was no reason [12] to do a biopsy, particularly in another location from [13] the site of fenestration. He had accomplished what he [14] had set out to do, and there was – he was over the [15] thalamic region, and why he would want to take a [16] biopsy from there is, you know – there is no reason [17] why he should have taken a biopsy there.

[18] **Q:** I need to be clear here, Doctor, because [19] this is the one chance I have to explore your opinions [20] before this goes to trial. So are you saying that [21] Dr. Barnett's decision to obtain a biopsy was a [22] deviation from the standard of care?

[23] **A:** I think most neurosurgeons having [24] fenestrated the cyst would not attempt to biopsy over [25] the thalamus.



[1] **Q:** But there are neurosurgeons who would do [2] that; correct?

[3] **A:** I would hope not.

[4] **Q:** Well, you said "most," and I am trying to [5] clarify it.

[6] **A:** Well, I can't speak for every [7] neurosurgeon, and just because – I mean, there are [8] some neurosurgeons that do things that are not [9] necessarily appropriate.

[10] **Q:** I am having a hard time getting a [11] definitive answer from you here, Doctor. I am trying [12] to understand –

[13] **MR. BECKER:** Well, he has answered it, John.

[14] **MR. JACKSON:** No, he hasn't answered it, Mike.

[15] **Q:** Are you saying in this case – are you [16] going to give testimony that the decision by [17] Dr. Barnett to obtain a biopsy was below the standard [18] of care?

[19] **A:** I will say that it was an imprudent [20] decision to do this, that there was no reason to do [21] it, and that there was no benefit in doing it, and [22] there was risk to doing it; and therefore, since there [23] was more risk than benefit, it should not have been [24] done.

[25] **Q:** Okay. Doctor, I don't understand why you



[1] are having difficulty just saying "yes" or "no" to my [2] question. I mean, it was or it was not a deviation [3] from the standard of care.

[4] **MR. BECKER:** Based on your definition, Doctor, [5] if you can answer.

[6] **MR. JACKSON:** Well, yes, using your [7] definition.

[8] **THE WITNESS:** If a resident had done that, I [9] would have told him that that was an inappropriate [10] thing to do. It should not have been done. There was [11] no reason to do it.

[12] **BY MR. JACKSON:**

[13] **Q:** Was that decision or was it not a [14] deviation from standard of care?

[15] **A:** Taking a biopsy is not a deviation from [16] the standard of care. Doing it under these [17] circumstances, after having successfully fenestrated [18] the cyst and doing it over the thalamus – you know, [19] you are looking for black and white answers. This was [20] not prudent to have done.

[21] But then you are going to turn around and [22] say, "Well, isn't it appropriate to get a biopsy of [23] material," and I think most neurosurgeons would agree [24] that taking a biopsy of the cyst is reasonable to do [25] and nobody would say that that is a deviation of



[1] standard of care. So biopsy of the cyst in and of [2] itself is not a deviation, so I don't have any [3] problems with doing a biopsy.

[4] **Q:** Okay.

[5] **A:** Doing it after the cyst had been [6] fenestrated and doing it over the thalamus, there was [7] no reason to do it, there was no benefit beyond the [8] risk of doing it and so it, you know, wasn't a wise [9] thing to do.

[10] **Q:** I understand that, Doctor. But the [11] standard that exists here is whether or not your [12] opinion is that his decision to do that in this case [13] under these circumstances was a deviation from [14] standard of care, and I am trying to get an answer [15] from you as to whether you say it is or it isn't. We [16] have not still concluded that.

[17] **A:** You are going to come back to me and say [18] that I said that taking a biopsy was a deviation of [19] standard of care. Taking a biopsy is not a deviation [20] of standard of care.

[21] **Q:** Okay.

[22] **A:** Doing it under these circumstances was [23] inappropriate because you had already fenestrated the [24] cyst. There was nothing to suggest any other type of [25] diagnosis. And then why are you taking a biopsy over



[1] the thalamus?

[2] **Q:** That is what I am trying to understand. [3] Under these circumstances in this case are you going [4] to say that Dr. Barnett's decision to take the biopsy [5] was a deviation from standard of care?

[6] **A:** It was a very unwise thing to do. You [7] get into a bit of a gray area. It was not a prudent [8] thing to do, and if something has more risk than [9] benefit,

you should not be doing it. And I don't see [10] the risk here being less than the benefit. In fact, [11] the risk was more than the benefit under these set of [12] circumstances.

[13] **Q:** Is that a "yes" or a "no," Doctor?

[14] **MR. BECKER:** Do you want to take a break and [15] talk to me?

[16] **THE WITNESS:** Yes.

[17] **MR. JACKSON:** No. Not until he answers that [18] question, Mike.

[19] **MR. BECKER:** No. We can take a break. Come [20] on, Doctor.

[21] **MR. JACKSON:** No, Doctor, don't take a break. [22] He cannot tell you to do that. That is not [23] appropriate. I want an answer to the question –

[24] **MR. BECKER:** Doctor, you can break any –

[25] **MR. JACKSON:** – and then you can take a break.



[1] **MR. BECKER:** – time you want to. You can [2] take a break any time you want to.

[3] **MR. JACKSON:** No.

[4] There is a question before you. It is [5] inappropriate for you to take a break –

[6] **MR. BECKER:** You can break.

[7] **MR. JACKSON:** – before you answer that [8] question. Now, he is not your lawyer. He knows [9] better, so please answer the question and then take a [10] break.

[11] **THE WITNESS:** I will not go any further than [12] what I have said.

[13] **MR. BECKER:** Okay, Doctor. Let's take a break.

[14] **MR. JACKSON:** Take a break, if you would like.

[15] Doctor, I will ask you not to discuss [16] your testimony with Mr. Becker on the break.

[17] (Recess.)

[18] **MR. JACKSON:** I understand that there is a [19] seven-page time line that you are going to mark as [20] Exhibit 1.

[21] There is an article that we referred to [22] earlier that will be Exhibit 2.

[23] The first portion of Dr. Barnett's [24] deposition will be Exhibit 3. And the second portion [25] will be Exhibit 4.



[1] (Discussion held off the record.)

[2] (Defendants' Exhibits 1 through 4 [3] were marked.)

[4] **MR. JACKSON:** Pam, would you do me the favor [5] of reading the last question that was asked. Can you [6] locate that.

[7] (Record read as follows:

[8] "**Question:** That is what I am trying [9] to understand. Under these circumstances [10] in this case are you going to say that [11] Dr. Barnett's decision to take the biopsy [12] was a deviation from standard of care?")

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

[14] **Q:** Doctor, what is your answer to that [15] question?

[16] **A:** To do a biopsy is not below standard of [17] care.

[18] To take a biopsy in this set of [19] circumstances, which was not part of the fenestration [20] procedure, over the thalamus after successfully [21] fenestrating the cyst, most prudent neurosurgeons [22] would not do a biopsy in this circumstance because the [23] benefits of doing the biopsy would be equal to or [24] greater than the risk – The risks would be greater [25] than the benefits of doing such a biopsy.



[1] And if you wish to define standard of [2] care in those terms, then that would be below the [3] standard of care in that context. Once again, the [4] standard of care issue to me is – You are trying to [5] make something black and white which sometimes is not [6] always so well defined.

[7] **Q:** Doctor, I am not trying to make it black [8] and white. I am trying to understand what opinions [9] you are going to render at trial and that's –

[10] **MR. BECKER:** Well, John, let me just say this [11] to help you. I think the doctor was concerned [12] about –

[13] **MR. JACKSON:** No, Mike, I don't need your help. [14] I appreciate that but –

[15] **MR. BECKER:** You sure do. The doctor was [16] concerned about taking a general statement and turning [17] it around to very specific facts of the case, that's [18] all.

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

[20] **Q:** Doctor, when you took the break, did you [21] discuss this with Mr. Becker?

[22] **A:** Very briefly.

[23] **Q:** What was the discussion?

[24] **A:** Just what we said. Just what he said, [25] what Mr. Becker just said.



[1] **Q:** What Mr. Becker just said?

[2] **A:** What Mr. Becker just said.

[3] **Q:** Was there any other discussion with him [4] on the break?

[5] **A:** No. Just about going to the bathroom.

[6] **Q:** Did that work out okay?

[7] **A:** I'm fine.

[8] **Q:** How about him, is he okay?

[9] **A:** He will have to answer for himself.

[10] **Q:** Okay. Very good. [11] We have marked some exhibits here, [12] Doctor. Just so that the record is clear, No. 1 was [13] the time line, the seven-page time line that you [14] received from Mr. Becker; correct?

[15] **A:** Yes.

[16] **Q:** No. 2 was the article, the manuscript [17] that you described for us?

[18] **A:** Yes.

[19] **Q:** No. 3 and 4 were portions of [20] Dr. Barnett's depo, 3 being the first portion, and 4 [21] being the continuation; correct?

[22] **A:** Correct.

[23] **MR. KELLEY:** Did you give both articles to be [24] copied?

[25] **MR. BECKER:** Yes. He has only marked one.



[1] **MR. KELLEY:** John, you might want to mark No. 2 [2] 2-A and 2-B.

[3] **MR. JACKSON:** Okay. Fine. Just make that [4] clear on the record. Your being there, why don't you [5] just clarify it for me because I am not sitting there [6] looking at it, and it will make it easier if you just [7] do it.

[8] **MR. KELLEY:** I will do it when we get them [9] back.

[10] **MR. JACKSON:** Okay. Good.

[11] **Q:** So 2-A and 2-B will be your articles, [12] Doctor, okay?

[13] **A:** Okay. Correct.

[14] **Q:** Are the depos there with you now?

[15] **A:** Yes, they are.

[16] **Q:** I understand that you made some markings [17] or tabs at page 50 and page 82?

[18] **A:** Correct.

[19] **Q:** Can you go to the one on page 50. [20] What was it on page 50 that you found [21] significant or that you marked?

[22] **A:** Line No. 7:

[23] "So you were looking to see what –

[24] "Answer: I was looking to see what [25] was bleeding. I was attempting to control



[1] it."

[2] **Q:** All right. What significance is that to [3] you?

[4] **A:** And then it goes on to say: [5] "Question: And you –

[6] "Answer: In the process I believe I [7] injured – directly injured that part of the [8] brain with the endoscope."

[9] **Q:** Okay.

[10] **A:** It says:

[11] "You passed the endoscope into [12] the brain and into the area of the [13] parenchymal where the brain bleed occurred?

[14] "Answer: Either the endoscope or an [15] instrument in the endoscope, yes."

[16] **Q:** That portion of it, that goes back to [17] your comments that you believe Dr. Barnett –

[18] **A:** If you can't see, you can't work, and [19] pushing the endoscope into the brain to stop bleeding [20] is not appropriate.

[21] **Q:** Okay. Let's go to page 82. What was it [22] on page 82?

[23] **A:** On line 8:

[24] "Question: Doctor, is it your opinion [25] that it was that action of probing in the



[1] injury to Tina's parenchymal area that is [2] responsible for the plegia that she has [3] Today?

[4] "Answer: It was responsible for the [5] plegia she had last time I saw her."

[6] **Q:** Were those the only two pages that you [7] had marked?

[8] **A:** Yes.

[9] **Q:** I understand that there is some writing [10] and notes in the deposition; is that true?

[11] **A:** They are not mine.

[12] **Q:** That was going to be my question. Any [13] writing that is in the deposition was writing from [14] someone else?

[15] **A:** Correct.

[16] **Q:** Did it come to you in that form?

[17] **A:** Yes.

[18] **Q:** Okay. It was not done by you or an [19] assistant or someone in your employ?

[20] **A:** Correct.

[21] **Q:** You have talked some about this risk/ [22] benefit analysis, Doctor. Do you believe that [23] Dr. Barnett engaged in a risk/benefit analysis before [24] taking the biopsy?

[25] **A:** Could you be a little bit more specific?



[1] I'm not sure what you are asking.

[2] **Q:** Okay. I will try. Let me refer you to [3] your report, page 2.

[4] **A:** Yes.

[5] **Q:** At the end of the first paragraph on page [6] 2 you make a comment, and I quote:

[7] "Before further biopsy of the cyst [8] wall is made, the physician must engage in [9] a risk/benefit analysis to determine if such [10] is warranted, and it appears that the [11] potential benefit of biopsy did not exceed [12] the risk."

[13] Are you with me?

[14] **A:** Correct. Yes, I am.

[15] **Q:** Is it your belief that before obtaining [16] the further biopsy Dr. Barnett engaged in a risk/ [17] benefit analysis?

[18] **A:** I was not inside his head at the time [19] that he was doing it so I cannot state.

[20] **Q:** What do you believe? Do you believe that [21] he did or did not, or do you have any opinion in that [22] regard?

[23] **A:** I don't have an opinion.

[24] **Q:** If he did engage in a risk/benefit [25] analysis prior to doing the biopsy, would that have



[1] been appropriate?

[2] **A:** It is always appropriate to do such [3] analysis any time you do a surgical procedure.

[4] **Q:** Okay. And if in his analysis he [5] concluded that he should proceed with a biopsy, you [6] would find that inappropriate in this case?

[7] **A:** It is not inappropriate to biopsy the [8] walls of arachnoid cysts.

[9] **Q:** I understand, Doctor. I am talking [10] about – So we have a clear understanding, I am [11] talking about in this particular case. And my [12] question is – I am trying to be very specific, I hope [13] I am being specific for you: In this case, if [14] Dr. Barnett engaged in a risk/benefit analysis which [15] was appropriate – You agree we me that if he did it, [16] that was an appropriate thing to do – correct? – [17] engage in a risk/benefit analysis?

[18] **A:** As one does everything in life as well as [19] in medicine or neurosurgically one always thinks of [20] the risks versus the benefits.

[21] **Q:** And that is the right thing to do, isn't [22] it?

[23] **A:** Right. Every time you decide to cross [24] the street you make a risk/benefit analysis, don't [25] you?



[1] **Q:** I try to. [2] Now, let's assume that he did that, and [3] let's assume in this case that he, as we know he did, [4] concluded that the biopsy would be appropriate to [5] take. You disagree with that? You think it was [6] inappropriate in this case for him to go forward with [7] a biopsy; correct?

[8] **MR. BECKER:** Objection. Asked and answered [9] three times. You can answer it one more time, and [10] then we are going to move on.

[11] **THE WITNESS:** In this set of circumstances, he [12] had already fenestrated the cyst, he had accomplished [13] what he had set out to do, by his own testimony the [14] two choices were that of an appendable versus the [15] arachnoid cyst, the treatment would not vary, and [16] there was little need or benefit to try to take a [17] section of the cyst wall over the thalamic region.

[18] **BY MR. JACKSON:**

[19] **Q:** Doctor, why is it so difficult to say [20] "yes" or "no" to that question?

[21] **A:** Because you are trying to turn my [22] testimony into something that I am not saying and [23] applying it in a manner in which I am not intending [24] it.

[25] **Q:** All right. I am simply trying to find



[1] out whether you say it is a deviation from standard of [2] care or not.

[3] **MR. BECKER:** John, he has answered that three [4] times.

[5] **MR. JACKSON:** Well, he hasn't answered it yet, [6] but we will move on.

[7] **Q:** Your next sentence, Doctor, you say:

[8] "The clear deviation from the standard [9] of care" – and I am in your report again going [10] to the next paragraph on page 2 – "occurred at [11] the time bleeding was encountered." Okay?

[12] **A:** Yes.

[13] **Q:** Are you with me?

[14] **A:** Yes.

[15] **Q:** Why do you use the adjective "clear [16] deviation"? Does that suggest that the other [17] deviation is not a clear deviation?

[18] **A:** Some things are obviously more – stand [19] out more than others. Some can be in a gray zone and [20] some are definitely in the black zone, if you are [21] using black as being the wrong zone.

[22] If you can't see, you can't work, and to [23] push the instrument into the brain to stop the [24] bleeding when you cannot see anything is not [25] appropriate, and that is one of the things that



[1] everybody makes clear when you are talking about doing [2] endoscopic procedures.

[3] **Q:** Okay. That is clearly in your mind a [4] deviation of standard of care, how he approached the [5] bleeding; correct?

[6] **A:** Yes.

[7] **Q:** The other criticism you have is less [8] clear in your mind as a deviation from standard of [9] care?

[10] **A:** There was no reason to get the biopsy. I [11] don't think that a prudent neurosurgeon would have [12] done a biopsy under those circumstances at that site, [13] but once again, to obtain a

biopsy in and of itself [14] from an arachnoid cyst is not below the standard of [15] care.

[16] **Q:** You go on to say in your report after [17] that first sentence:

[18] "Endoscopically when bleeding occurs [19] the appropriate thing to do is to irrigate."

[20] Did he irrigate?

[21] **A:** Yes, he did.

[22] **Q:** Okay. You say:

[23] "Bleeding eventually will stop on its [24] own and if the bleeding does not, then one [25] must proceed to a craniotomy." Correct?



[1] **A:** Correct.

[2] **Q:** That would be an open procedure?

[3] **A:** Yes.

[4] **Q:** What are the risks of a craniotomy under [5] these circumstances?

[6] **A:** Well, if the patient continues to bleed [7] and the patient will go on to die, then obviously the [8] risk of doing the craniotomy is less than not doing [9] the craniotomy. If you are doing a craniotomy on [10] someone who doesn't need to have an operation, then [11] the risk of doing the craniotomy exceeds that of the [12] benefit.

[13] **Q:** What are the complications of a [14] craniotomy under these circumstances or potential [15] complications?

[16] **A:** Complications from a craniotomy is you [17] can lacerate one of the major dural vena sinuses and [18] not gain control, the patient can bleed to death. You [19] can lacerate the cortex. You can get an air embolism [20] under certain circumstances if you enter a large [21] venous sinus and the head is elevated well above the [22] heart. You can get infection of either the brain, [23] C.S.F. spaces, the bone. Those are things that [24] readily come to mind.

[25] **Q:** Your strong opinion in this case



[1] apparently is that Dr. Barnett's approach to the [2] bleeding circumstance was inappropriate; correct?

[3] **A:** Correct.

[4] **Q:** Are you of the opinion that he was [5] inexperienced in this procedure and that that played a [6] role?

[7] **A:** That could definitely have played a role.

[8] **Q:** Are you saying that it did?

[9] **A:** I don't know.

[10] **Q:** Okay. Are you of the opinion that he [11] panicked?

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

[13] **Q:** So you are not going to render an opinion [14] that he panicked in these circumstances?

[15] **A:** I have nothing upon which to base a [16] statement either positive or negative.

[17] **Q:** And you are not going to state an opinion [18] that his approach to this was a result of some lack of [19] experience in this procedure; is that also correct?

[20] **A:** That may be the case, but I have not [21] rendered an opinion in that regard.

[22] **Q:** Are you going to?

[23] **A:** I wasn't necessarily planning to.

[24] **Q:** That still is a little equivocal for me. [25] I need to know whether that is or is not your opinion.



[1] **A:** I was not going to give an opinion on [2] experience.

[3] **Q:** Okay. How would you characterize [4] Dr. Barnett's training for this procedure that he [5] described in his deposition that you read?

[6] **A:** Like other people, when something new is [7] introduced, there is always a learning curve and you [8] try to get as much training as you can and then you [9] have to cautiously apply that training, and I think [10] what he did was appropriate.

[11] **Q:** Okay. He had good training for this [12] procedure?

[13] **A:** By the description, he availed himself of [14] what training was possible, yes.

[15] **Q:** And his experience in actually performing [16] the procedure itself, you are not critical of that, [17] are you?

[18] **A:** Could you be more specific, please?

[19] **Q:** I will try. He had performed this [20] procedure before, at least I believe he said at least [21] twice was in his deposition, so his decision to [22] perform this procedure in terms of his experience is [23] not a subject of criticism by you; correct?

[24] **A:** No.

[25] **Q:** No, I am not correct; or no, it is not a



[1] subject of criticism?

[2] **A:** It is not a subject of criticism. It [3] sounds – Once again we get into this business – we [4] get technology and sometimes we get enamored with the [5] technology and focus on the technology, and this is a [6] simple straightforward problem that could easily be [7] addressed by – without all of the high technology. I [8] mean, this procedure could have easily been done other [9] ways.

[10] **Q:** But you are not critical of the fact that [11] he chose to perform it this way is what I understand [12] you to say. That was not a deviation in your opinion?

[13] **A:** For a problem like this to be approached [14] that way is reasonable, yes.

[15] **Q:** Okay. Thank you. As it relates to the [16] cyst that was being fenestrated, Doctor, how would you [17] characterize the cyst in terms of whether it was [18] benign or not?

[19] **A:** It was an arachnoid cyst, and an [20] arachnoid cyst is benign. It is not a malignant [21] process.

[22] **Q:** Is that known to you as a neurosurgeon [23] before you go in?

[24] **A:** Yes.

[25] **Q:** Definitively known?



[1] **A:** In this set of circumstances I would say [2] yes.

[3] **Q:** So you believe that before the procedure [4] was done it was definitive that this was a benign [5] cyst?

[6] **A:** Yes.

[7] **Q:** Based upon what?

[8] **A:** Based upon its imaging characteristics.

[9] **Q:** Describe that for me. What do you mean [10] by that is what I am asking.

[11] **A:** The way in which it – It's a thin [12] membrane that is filled with a fluid that has the same [13] CT or MR characteristics of C.S.F. without any [14] enhancement, without any degree of nodularity. It has [15] all of the typical characteristics of an arachnoid [16] cyst. It just doesn't look like anything else.

[17] **Q:** Does this go to your criticism of taking [18] the biopsy?

[19] **A:** You have to think about the risk/benefit [20] ratio which –

[21] (Brief interruption.)

[22] **THE WITNESS:** Off the record.

[23] **MR. JACKSON:** Okay.

[24] (Discussion held off the record.)

[25] **THE WITNESS:** If you are sure that this is an



[1] arachnoid cyst, then the reason to do the biopsy [2] becomes marginal or nonexistent unless you are trying [3] to do a study looking at arachnoid cysts. If you are [4] trying to get 50 cases of arachnoid cysts to do some [5] sort of a staining on them, a special study for [6] something or other, then that is one thing; but as far [7] as the diagnosis and treatment under this particular [8] case, doing a biopsy was of no benefit because

it was [9] a clear-cut arachnoid cyst.

[10] **BY MR. JACKSON:**

[11] **Q:** What if you are wrong in that, that is as [12] a neurosurgeon?

[13] **A:** Then you get follow-up imaging studies [14] and you see that there are other changes that occurred [15] that are not typical of an arachnoid cyst, and then [16] you would have to rethink what the diagnosis might be [17] and what you need to do about it.

[18] **Q:** The imaging study that you are talking [19] about, is it the MRI?

[20] **A:** Correct.

[21] **Q:** So you believe that you can rule out the [22] fact that it is not a benign cyst on the basis of the [23] MRI?

[24] **A:** Yes.

[25] **Q:** Is that the only study that you rely



[1] upon?

[2] **A:** In this case the MRI findings are [3] conclusive enough that you do not have to do any other [4] studies.

[5] **Q:** Okay. In terms of your risk/benefit [6] analysis, again, Doctor, what are the risks of [7] obtaining the biopsy other than bleeding?

[8] **A:** Well, you could damage the adjacent neuro [9] structure.

[10] **Q:** Any others?

[11] **A:** No.

[12] **Q:** And I didn't ask you, and maybe you don't [13] believe there are any, but what are the benefits of [14] going forward with the biopsy?

[15] **A:** If you are – In this case I don't think [16] there are any benefits.

[17] **Q:** Okay. Doctor, I believe I have covered [18] the opinions that you set forth in your letter of June [19] 28, 1996.

[20] Am I correct in that belief?

[21] **A:** Yes, you are correct.

[22] **Q:** Are there any other opinions which you [23] intend to express in this case which are not contained [24] in your letter of June 28, 1996?

[25] **A:** No.



[1] **Q:** Okay. If you formulate new opinions, [2] Doctor, or if you review new materials before trial, [3] would you agree with me to let me know through [4] Mr. Becker about any new materials and/or any new [5] opinions you hold –

[6] **A:** Yes.

[7] **Q:** – or any change of opinions?

[8] **A:** Yes.

[9] **Q:** Give me a moment and we might be done [10] here.

[11] Doctor, you said you had been sued, I [12] believe, on four or five different occasions?

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

[14] **Q:** Did any of those involve fenestration of [15] cysts?

[16] **A:** No.

[17] **Q:** Did any of them involve endoscopic [18] surgery?

[19] **A:** No.

[20] **Q:** For what were you sued?

[21] **A:** One case was a patient died of a [22] malignant brain tumor. We operated on the child and [23] he didn't respond to therapy and went on to die.

[24] **Q:** What happened with that case?

[25] **A:** It was dropped.



[1] **Q:** Okay. Tell me about the others, please.

[2] **A:** Another case was a child had multiple [3] congenital malformations, had Crouzon's disease, [4] hydrocephalus, had cardiac problems, came in with [5] sepsis and died.

[6] **Q:** What happened with that case?

[7] **A:** Dropped.

[8] **Q:** Okay.

[9] **A:** There is another case where a patient –

[10] **Q:** When you say "dropped," were these cases [11] that were settled or they were dismissed with no [12] payment?

[13] **A:** Dismissed with no payment.

[14] **Q:** Okay. Sorry. Go ahead.

[15] **A:** There was another case where a patient [16] had a shunt malfunction and was seen in an outside [17] emergency room and was dead on arrival.

[18] **Q:** What happened with that case?

[19] **A:** Dismissed without settlement or payment.

[20] **Q:** Any others?

[21] **A:** There was another case where we revised [22] the shunt and the patient died after the shunt [23] revision.

[24] **Q:** What happened with that case?

[25] **A:** It's pending.



[1] **Q:** Have you been deposed in that case?

[2] **A:** No. And it will probably be dropped.

[3] **Q:** Why do you say that?

[4] **A:** Because we have extensively reviewed [5] everything, and there is no basis for any malpractice.

[6] **Q:** Has plaintiff presented an expert's [7] report on that case?

[8] **A:** No.

[9] **Q:** Any others?

[10] **A:** There is another one in which we removed [11] a dermoid cyst from the posterior fossa and the [12] patient developed hydrocephalus and required [13] shunting.

[14] **Q:** What happened with that case?

[15] **A:** It's – It was filed three years ago and [16] it has been totally inactive.

[17] **Q:** Was there an expert report against you in [18] that case?

[19] **A:** No.

[20] **Q:** Any others?

[21] **A:** There is one other regarding treatment of [22] spasticity.

[23] **Q:** What has happened with that case?

[24] **A:** It was – The case – There were a number [25] of people involved, and there is an agreement to make



[1] a staged settlement in that case.

[2] **Q:** I'm sorry. I lost the last part of your [3] answer.

[4] **A:** Making a staged settlement.

[5] **Q:** Structured in the sense of –

[6] **A:** Periodic payments.

[7] **Q:** Okay. So that case was settled?

[8] **A:** Correct.

[9] **Q:** Were you the only neurosurgeon named in [10] that case?

[11] **A:** No.

[12] **Q:** Who else was named?

[13] **A:** One of the other – one of our residents, [14] a neurologist from the hospital.

[15] **Q:** Was your care below the standard of care [16] in that case?

[17] **A:** No.

[18] **Q:** But it was settled on your behalf?

[19] **A:** Yes.

[20] (Brief interruption.)

[21] **THE WITNESS:** I was officially dropped from the [22] case.

[23] **BY MR. JACKSON:**

[24] **Q:** You were not a party to the settlement?

[25] **A:** Correct.



[1] **Q:** Any other cases?

[2] **A:** No.

[3] **Q:** Tell me what publications you subscribe [4] to, Doctor. What do you receive on a periodic [5] basis – on a regular basis, I should say?

[6] **A:** Medical or nonmedical?

[7] **Q:** Medical. I'm not concerned about

Time or [8] Newsweek, but thank you for clarifying that.

[9] What medical publications do you [10] subscribe to and receive?

[11] **A:** The Journal of Neurosurgery, Pediatric [12] Neurosurgery, Pediatric Neurology, Surgical Neurology, [13] New England Journal of Medicine, Journal of The [14] American Medical Association, Pediatrics. That's all [15] that I can think of at the moment.

[16] **Q:** Have you ever belonged to a medical/legal [17] referral service?

[18] **A:** No.

[19] **Q:** Have cases ever been sent to you through [20] such a service?

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

[22] **Q:** Okay. I may have asked you this [23] earlier – forgive me if I did – you say you review [24] one to two cases per year; was that correct or not?

[25] **A:** I get asked to review a number of cases.



[1] Many – My approach is that I will say that I will [2] give you an hour of time, and I don't agree to [3] anything more than that initially. Most people aren't [4] interested in that and do not pursue things further.

[5] I probably see maybe twice that number [6] that go to that stage, and probably anything further [7] than that is one to two cases a year, something like [8] that.

[9] **Q:** In terms of Miss Pribulsky's present [10] condition, do I understand that you are not going to [11] render opinions regarding that?

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

[13] **Q:** Okay. [14] Are you going to render opinions [15] regarding any of her neurological deficits?

[16] **A:** No.

[17] **MR. JACKSON:** Doctor, I don't think I have [18] anything further.

[19] Jay, is there anything else you want to [20] ask or that you think I should ask?

[21] **MR. KELLEY:** No.

[22] **MR. JACKSON:** Okay.

[23] (Discussion held off the record.)

[24] **MR. BECKER:** No waiver; we will read it; I will [25] be happy to receive a copy, and I will take the



[1] responsibility of sending the doctor a copy for his [2] review.

[3] And normally we don't give each other a [4] hard time on the seven-day rule.

[5] **MR. JACKSON:** Great.

[6] (Discussion held off the record.)

[7] **MR. JACKSON:** The original should come to me.



[9] I, J. GORDON McCOMB, M.D., do hereby declare [10] under penalty of perjury that I have read the [11] foregoing transcript; that I have made any corrections [12] as appear noted, in ink, initialed by me; that my [13] testimony as contained herein, as corrected, is true [14] and correct.

[15] EXECUTED this __ day of __, [16] 19___, at _____, ____.

(City) (State)

[19] J. GORDON McCOMB, M.D.



STATE OF CALIFORNIA )
: SS
COUNTY OF LOS ANGELES )

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcript thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: August 9, 1997

PAMELA A. STITT
CSR No. 6027

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