IN THE CIRCUIT COURT OF RUTHERFORD COUNTY
MURFREESBORO, TENNESSEE

NANCY GORMAN and Husband, GERALD GORMAN,

Plaintiffs,

vs.

ELIZABETH CAROLE, M.D.,

Defendant.

DOC 336

No. 21219

The Deposition of: DR. H. CLAY NEWSOME III
September 29, 1994

EXHIBITS

RESHA * BLACK
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The deposition of DR. H. CLAY NEWSOME III was taken by consent at 222 22nd Avenue, North, Nashville, Tennessee, beginning at 4:00 p.m., on September 29, 1994.

All formalities as to notice, caption, and certificate are waived. All objections, except as to the form of the questions, are reserved to the hearing.

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

For the Plaintiffs:

Mr. Douglas S. Johnston, Jr.
Attorney at Law
217 Second Avenue, North
Nashville, Tennessee 37201

For the Defendant:

Mr. Thomas Lawrence
Attorney at Law
5th Floor
200 Fourth Avenue, North
Nashville, Tennessee 37219

DR. H. CLAY NEWSOME 111,

called as a witness, having first been duly sworn, was deposed as follows:

EXAMINATION BY MR. JOHNSTON:

Q. Dr. Newsome, my name is Doug Johnston. I represent the Gormans in this matter that's been brought against Dr. LaRoche and we're here in your office at 222 22nd Avenue North, I believe, to take your deposition in regard to certain proposed testimony that you may give in this case.

Let me start by asking you to state your full name for the record, please, sir.

A. My name is Henry Clay Newsome 111.

Q. What's your social security number, sir?

A. 242-76-0883.

Q. All right. Do you have a current CV?

A. Yes, I do.

Q. Do you have one available?

A. (Witness indicating.)

MR. JOHNSTON: Let's make this Exhibit Number 1.

(Curriculum vitae marked as

Exhibit Number 1 and filed as a part of this deposition.)

Q. In addition to this CV that we've just made as Exhibit Number 1, Doctor, do you have a fist anywhere of any publications, pamphlets, articles, et cetera, which you have either authored or coauthored?

A. I have not published any articles, with one exception. As a second-year medical student, I did a research project in physiology, which was published in the Biochemistry Journal, but nothing clinical.

Q. All right. Do you know Dr. LaRoche?

A. I have not met Dr. LaRoche nor have I spoken to her.

Q. Prior to this case, Gorman versus LaRoche, have you ever provided expert testimony in any medical negligence case?

A. Yes, I have.

Q. On how many occasions have you provided expert testimony?

A. I have provided expert testimony for, I think, three other cases prior to this one.

Q. In those three cases, did you provide expert testimony on behalf of the plaintiff or the

defendant?

A. I provided expert testimony on behalf of the plaintiff in one case and on the defendant in two cases.

Q. In that case in which you provided expert testimony for the plaintiff, was that a local case?

A. That was in Murfreesboro, Tennessee.

Q. What was the name of the plaintiff's attorney?

A. I do not remember the plaintiff's attorney.

Q. What was the name --

A It migh possibly have been Sam Jones. I believe it was Sam Jones and Bob Shockley from Chattanooga. It was in 1978. It's been sometime back. The defendant s attorney was McGugin, Dan McGugin.

Q. Can you state in a sentence or two what the allegation was --

A. It was a failed tubal ligation with complications

Q. Of the two in which you've provided expert testimony on behalf of the defendant, when were those two?

A. One case was in about 1985, and another case was about 1989 or '90.

Q. Who was the plaintiff's attorney, if you recall, in the one in 1985?

A. Plaintiff's attorney was Mr. C. J. Gideon.

Q. And who was the defendant's attorney?

A. I'm sorry, I do not remember. It was an attorney provided by State Volunteer Mutual -- not State Volunteer Mutual, excuse me, by St. Paul Insurance Company.

Q. Who was the defendant in that case?

A. Again, I don't remember his name. It was a physician in Lebanon, Tennessee, and the gist of that case was that there was a pregnant patient admitted to the hospital with severe viral pneumonia who subsequently had multiple complications.

Q. In the case in 1989 or '90, who was the plaintiff's attorney?

A. Plaintiff's attorney was Bob Shockey..

Q. And the defense attorney?

A. I'm going to have to review here. I

recently just in -- like in the fall of 1993, I testified in a case which involved Dr. Bob Satterfield in Donelson, Tennessee. The plaintiff's attorney was Mr. Bob Shockey. The defense attorney was Hayes Cooney. And I gave a deposition two or three years maybe before the case came to trial in the fall of 1990, and then I testified also in the trial.

Q. And that was in 19931

A. I'm sorry, I guess I'm getting old and everything, but it was within the past 12 months.

Q. Okay. What was the allegation in that case?

A. The allegation in that case was a birth injury.

Q. At any time have you provided expert testimony or been asked to provide expert testimony in a case involving misdiagnosis in breast cancer or failure to diagnose or untimely diagnosis?

A. I have not previously testified nor been asked to testify about failure to diagnose breast cancer.

Q. Now, I prefaced these questions I was asking you by asking about prior testimony. Are

there other cases in which you've been asked to provide expert testimony but you have not had to do so?

A. Yes.

Q. On how many occasions has that occurred?

A. I have currently, in addition to this case, am reviewing three additional cases.

Q. For plaintiffs or defendants?

A. All of these cases are for defendants.

Q. Do you in any way advertise a service of reviewing records, either for plaintiffs or defendants, in medical negligence cases?

A. No, I do not.

Q. Do you know whether or not your name appears on any list that is used by anyone to make referrals for such expert testimony?

A. I do not know whether it is or not. It is my feeling that it is not on any list.

Q. Do you know how it is that you have been retained in the three other cases other than this one?

A. I think that initially I got started doing this because my roommate in college was Sam

Jones who's an attorney who does plaintiffs' work in Chattanooga. He initially went into law practice with Mr. Bob Shockey, who is a plaintiffs' malpractice attorney. And Mr. Jones during the early days of practice would call me just to discuss a situation with me and ask my advice or ask me to recommend someone that he could get to testify for a plaintiff. And I developed an interest in this and I think word has gotten around that I will review these cases.

Q. Okay. Have you ever been a defendant in a medical negligence case?

A. I have been a defendant in two malpractice cases.

Q. The most recent one was when, sir?

A. 1978.

Q. And what was the allegation there?

A. The allegation was that I left a surgical clamp inside a patient after a cesarean section.

Q. And when was the other case?

A. The other case was in 1977.

Q. What was the allegation there?

A. The allegation was that as an intern I participated in the care of a patient who

subsequently developed a wound infection.

Q. All right.

A. The case occurred in 1973, but by the time the lawsuit worked its way through it was '77, '75, something like that, '77.

Q. Do you have a file in this case?

A. I have not maintained a file. I have copies of the patient's medical record. I also have depositions from Nancy Gorman, Gerald Gorman, Elizabeth LaRoche, and I think a Dr. Cohen, maybe. But this is all I have right here (indicating). In other words, I'm not maintaining a separate file with my notes and so on in it in the office.

Q. Do you maintain it anywhere?

A. No.

Q. I mean, have *you* made any notes on this case?

A. No, I have not.

Q. You say -- I think you were making reference to a black spiral notebook sitting in front of you as containing Mrs. Gorman's medical records.

A. Yes.

Q. Specifically what medical records are contained in that notebook?

A. These are the medical records -- we have several headings here. Dr. LaRoche office notes, the pathology reports from the original cervical biopsies, Dr. LaRoche blood work, Dr. LaRoche pap test, mammogram reports, office visit with Dr. Westmoreland, breast biopsy, 12/26/91, Dr. Corlew, mastectomy, 1/17/92, Dr. Wertz, and then miscellaneous, which includes insurance forms, some laboratory work and release of medical information permission.

Q. May I take a look at that, please?

A. (Witness indicating.)

Q. The spiral notebook that I've just been looking at that you've made reference to already, as you indicated, is tabbed and divided into various sections and you've already read those, Did you do that yourself or was that created by someone else?

A. No, sir, that arrived at my office that way.

Q. And it arrived from the law office of Mr. Lawrence?

A. Yes, it did.

Q. Have you been provided any medical records or any other information that is not

contained in the spiral notebook that you've made reference to or the four depositions that you have stated?

A. No, I have not.

Q. No other letters from anyone, no notes provided to you?

A. Mr. Lawrence has communicated with me on a couple of occasions with letters saying to review so and so, or enclosed is a deposition, please review it, but there's not been any from anyone else.

Q. All right. Other than asking you to review the documents that were contained with whatever letter, was there any other information included with those letters?

A. No, there was not.

Q. When was the first time that you were contacted by anyone in regard to this case?

A. I don't recall specifically, but it's been over a year ago. I would say -- I would say spring of 1993.

Q. So nearly a year and a half ago?

A. Yes.

Q. And who was it that first contacted you?

A. Mr. Lawrence called me and asked me if I would review the case for him.

Q. At the time that Mr. Lawrence first contacted you and asked you if you would review this case, did he give you any particular information about it?

A. I do not recall the substance of that initial conversation, however, shortly after that I believe this spiral notebook arrived.

Q. All right. So her then the initial contact, so how many occasions have you spoken with Mr. Lawrence about this case, specifically Mr. Lawrence?

A. I would say that we spoke initially for him to ask me to review the c se, we then probably spoke a week later after I had reviewed the case. Then I would estimate that we probably spoke in the fall of 1993 with him giving me some idea of the progress of the case, and then more recently in the spring and summer of 1994, he has talked to me on the phone, I would say, on one or two other occasions And then on Monday of this week he came and I talked some for approximately two hours. And then on Wednesday we talked some. It was last Friday, and then Wednesday we talked

some.

Q. Okay. In any of those conversations, specifically the most recent ones, did Mr. Lawrence provide you any information that you did not already know?

A. No, he did not.

Q. Can you give me a brief, I don't want a a blow by blow, but a brief description of what you all discussed on the last occasion that you spoke?

A. We reviewed the medical record together. We also reviewed my answer, which was filed, or I believe it's called a Rule 26 answer, that was filed sometime back. And he again asked my opinion about things and asked me to point out in the medical record to him the points on which I based my opinion.

Q. Okay. Presumably I'm going to be doing the same thing with you in just a few minutes. Now, other than these conversations with Mr. Lawrence, have you discussed the case with anyone else in Mr. Lawrence's law firm?

A. I have two -- one other case with their law firm, but I have not discussed this case with anyone else in their law firm.

Q. All right.

A. Unless Mr. Lawrence had someone come with him one time --

MR. LAWRENCE: I did, a paralegal who's been over here.

Q. I mean other than with Mr. Lawrence?

A. No, no other attorney besides Mr. Lawrence.

Q. Other than the conversations that you've had with Nr. Lawrence or with anyone in his law firm about this case, have you had discussions with anyone else?

A. No, I have not.

Q. You've not bounced off ideas with any other doctor or done anything of that type?

A, No, I haven't.

Q. At any point since your introduction to this case, have you discussed it with anyone who felt that Dr. LaRoche was in any way negligent in her care of Mrs. Gorman?

A. No, I have not.

Q. What is the financial arrangement that you have with Mr. Lawrence for providing any expert review or testimony in this case?

A. I generally charge a fee of $500 to review the case, and after that time I generally

charge $175 an hour for work on the case,

Q. Whatever the work may be, depositions or --

A. I don't have any differential charge. For depositions I would also charge $500 for the deposition with a two-hour minimum, and then $175 an hour if we went beyond two hours.

Q. By whom are you being paid?

A, I think I'm being paid by State Volunteer Mutual Insurance Company.

Q. Do you have malpractice insurance, too?

A, Yes, I do.

Q. Who is your carrier?

A, State Volunteer Mutual Insurance Company.

Q. The same carrier?

A, Yes.

Q. A few moments ago you made reference to the Rule 26 interrogatory responses naming you among others as potential experts in this case. So -- and I see a copy of that sitting in front of you. I take it from that that you have seen that document prior to today.

A. Yes.

MR. JOHNSTON: Why don't we make -- Doctor, I've got a copy of that. You might want to just compare that and make sure that's an accurate copy of what you've again provided.

THE WITNESS: We did have some drafts here, so I think -- is this the correct one?

MR. LAWRENCE: I haven't looked at them. I'm sure they are but take a look and satisfy yourself on that.

THE WITNESS: Yes, I believe these documents are similar.

MR. JOHNSTON: Let's make that Exhibit Number 2.

(Supplemental Answers to Plaintiff's First Set of Interrogatories marked as Exhibit Number 2 and filed as a part of this deposition.)

Q. Who was it that prepared the portions of this interrogatory response regarding your proposed testimony?

A. Mr. Lawrence and I had a conference at some point after reviewing the medical record, and he and I discussed the general gist of my reply. He then phoned me a draft of that reply,

which I essentially agreed to, and he then sent me a copy of that draft.

Q. At any time have you provided Mr. Lawrence a written report of any kind regarding any aspect of this case other than a bill?

A. . No, I have not.

Q. When you were originally presented with the draft of this response, you've indicated that you essentially agreed with it, Did you make any changes at all that you can recall?

A. No, I do not recall making any changes. I asked for some explanation on some points, but I do not recall making any changes.

Q. Do you remember which points *you* asked for clarification on?

A. It's been sometime back and I must tell you that I do not remember specifically what we talked about at that time. I have, however, read it within the past 24 hours and do not find -- and do find that I agree with my response.

Q. All right, In formulating any of the opinions that *you* hold in this case, included here or not, did *you* rely in whole'or in part on any particular medical text?

A. No, I did not.

Q. Did you make reference to any medical texts?

A. No, I did not.

Q. Regardless of what you referred to or relied upon, are you familiar with any medical texts which you believe support any of the opinions which you hold in this case expressed in this interrogatory response or not?

A. I am not familiar with any medical text that would say substantially what I said.

Q. You're not aware of any?

A. Would you rephrase the question, please? Maybe I'm not understanding what you said.

Q. Well, let me make a statement to you. Some doctors who provide medical testimony sometimes are worried if they make a statement on the record that some particular text is authoritative, that they're going to get locked into something. Let me state to you that I'm not asking you to provide me an opinion about any particular work being authoritative or not. I'm simply asking you whether or not in the universe of medical texts with which I'm sure you must be familiar, there are books out there that you

believe would support the general propositions included in your interrogatory response.

A. It is my general opinion that the way I practice medicine and my opinions about this case would be generally supported by textbooks, yes.

Q. All right. Can you tell me what any of those textbooks might be?

A. In general, since I have left my residency, I do not get information from textbooks. In general, information that I have about how to manage breast examination and breast masses and fibrocystic breast disease is based upon a body of knowledge I acquired as an intern back in the early '70s, which has been added to by clinical practice, attendance at meetings about breast disease, and reading of monthly medical journals and attending grand rounds on the subject at which time professors from other departments in other cities discuss these things. So I would say that that's how I have obtained my knowledge in order to hold forth an expert opinion on this subject.

Q. All right. Let me turn that around just a little bit and ask you, are you familiar with any medical texts which might support the proposition that Dr. LaRoche was negligent in some

aspect of her care or treatment of Nancy Gorman in early 1991?

A. I would not be familiar with any texts that say that Dr. LaRoche was negligent in her treatment of Mrs. Gorman.

Q. Are you generally familiar with a work by Donovan and Spratt entitled "Cancer of the Breast"?

A. I am generally familiar with that work, although I have not ever read the book.

Q. Let me make a statement to you and then you tell me if you agree or disagree with that statement, Breast cancer survival rates could be increased if cancers were diagnosed at an early stage.

A. I would agree with the statement that earlier stage breast cancers have a longer survival rate than longer stage breast cancers.

Q. And what is the basis for your agreement with the statement that you made?

A. Well, I would think that that would just -- that would be true for any cancer.

Q. Let me make anot'her statement and ask you if you agree or disagree with it. A mass in the breast of a woman of any age is suspect until

its nature can be established.

A. I would generally agree with that statement with some reservations.

Q. Can you articulate those reservations?

A. Well, I think that, again, as with so many things, you have to take into account the patient, as you said the patient of any age, but the age certainly has to be taken into account, the patient's previous history, the size. You know, there are many other factors that enter into that. But certainly each breast mass has to be worked up appropriately.

Q. All right. I really don't want to split hairs on that point but I want to be sure that I'm clear on what -- I'm not -- I thought that what I made was a real general statement and I was trying to keep it as general as possible, and maybe as we go through this process things will get narrowed down a little bit more. At this point I'm just interested in knowing whether or not when a patient presents to a primary care giver, such as an OB/GYN, and she presents with a new mass in her breast, regardless of what other -- anything else, age, history, whatever else, the mass is going to

be considered suspicious until its nature is established. Is that not true?

A. I would generally agree with that statement as I would generally agree with any clinical pearl. A clinical pearl is a saying that helps us to teach medical students or other people to practice medicine. And so we have these sayings. In the legal, that might be the criminal always returns to the scene of the crime, and that is generally a true thing. But again, one has to take a specific case.

Q. Okay. I think you're telling me the answer to my next question, but I'm going to ask it because I want to be sure that I understand it. If a primary care giver, and specifically an OB/GYN, failed to take steps to establish the nature of a new breast mass in his or her patient, would that failure deviate from the recognized standard of accepted professional practice for OB/GYNs as you understand it?

A. I would say yes, if you mean by failed, ignore, or failed to follow up something. I would need to know your definition of failed. I think I can say that if you had a patient who came in with a new breast mass and you ignored it, that

would be a violation of the standard of care.

Q. Okay. I want to come back to that, but let's -- I'm going to move on and maybe we can get some clarification without having to come back to it. In the situation where a patient presents to an OB/GYN with a new breast mass, does the recognized standard of acceptable professional practice require the OB/GYN to take some steps, the purpose of which is to rule out the existence of cancer in that mass?

A. I would say it requires the OB/GYN to take some steps to rule out -- to see if a mass is of any importance. I don't know that -- again, most breast masses are not cancer. Therefore, again, you're going to deal with lots of breast masses before you have any cancer. So that certainly any new breast mass has to be examined and then followed up on.

Q. Okay. You didn't really answer my question yes and you didn't really answer my question no, and I think what I heard you say in response is that you maybe disagree with the statement that I made about ruling out the existence of cancer. Is that -- is that a fair restatement of your reason for your answer just a

moment ago?

A. Well, I guess what I feel is that you've -- we're getting into clinical pearls again and I'm uncomfortable with that. I think that each patient has to be taken as an individual patient and that each condition, whether it's a breast lump or pneumonia or headache or any other thing, has to be treated with respect and follow-up. And that I would agree that that needs to be done, that anytime a patient has a new symptom or complaint, that needs to be investigated.

Q. All right. Let's take what you've said then and let me ask you whether or not in the situation where the patient presents to an OB/GYN with a new breast mass, does the follow-up that you are talking about, that you have in your mind, does that follow-up need to be done in a timely manner?

A. Yes, I would say it does.

Q. What is your definition of a timely manner?

A. For what condition?

Q. For the generalized situation, which we've not narrowed down in any way, shape or form, yet where a patient presents to her OB/GYN with a new breast mass.

A. Well, I can tell you the way that I would treat that, which I feel is within the standard of care, and I would also need some information about whether this was a new patient to me and what history that patient had with me in terms of previous follow-up and what kind of a compliant patient that was, but in general, I would say that if I have a patient who comes in with a new breast mass that she has discovered, that I would -- let's say someone -- again, what age would you be talking about?

Q. I'm really trying to stay away from that at this point.

A. But I think that my management varies according to the patient's age and how long I've known her and what her previous history is, and so again., to distill all of this into a single answer for all patients is very difficult.

Q. All right. Let me try to paraphrase some of that. Are you suggesting then that if a patient, aged 50, comes to see you -- and I want to focus on these things one at a time. A patient comes to you who is aged 50 and presents with a new breast mass that she has found. Are you saying that --

A. May I interrupt you there and ask you, is this patient a patient who has been in my practice for many years and has been instructed in breast self-examination and has a history of reporting to me on a yearly basis that she has done her breast self-examinations on a monthly basis and this is something new to her, or would this be a patient who doesn't like to examine her breasts and is very afraid of having cancer and has found a place in her breast?

Q. Why does that make any difference?

A. Well, I think it would be -- it would be more significant to me if a patient were a long-time patient of mine who I had examined her breast and she comes in and says I have found something versus someone who had -- I had not seen before or who I had seen before with numerous other complaints of breast masses. I would treat those two differently.

Q. Why?

A. Well, if you have a patient who has no previous history of breast masses and who has been a good examiner of hersel'f, has experience examining the breast, then that would be a very significant finding to me. If I have another

patient who I've seen over years who has had multiple breast masses or multiple sore spots which have turned out not to be breast masses with negative mammograms, then that patient I would be less worried about.

Q. All right. Let's take that situation, all right, the one that you would be less worried about, and tell me what steps you would take and in what time period you believe they must be taken in order to comply with the accepted level of professional practice for OB/GYNs.

A. In a 50-year-old?

Q. In a 50-year-old,

A. Pre- or post-menopausal?

Q. Let's say pre-menopausal.

A. 50-year-old pre-menopausal woman. Then I would have that woman come back after a couple of menstrual cycles and reexamine her breast, after obtaining mammograms at the initial time.

Q. All right. So we're talking roughly -- let me make sure I'm -- the first thing you would do is have a mammogram done, correct?

A. Yes.

Q. All right.

A. The first thing I'd do is examine the breast.

Q. First thing you would do is examine the breast yourself.

A. Uh-huh.

Q. Second thing you would do is you would order a mammogram?

A. That's correct.

Q. All right. And presumably the mammogram in your scenario is coming back negative?

A. Negative.

Q. All right. Assuming that it does come back negative, then you would have her return after two menstrual cycles?

A. Yes. And I would try to pick a time right after her period, because the influence of the hormones of the menstrual cycle are at the lowest ebb at that time.

Q. I understand. So approximately -- I understand that this varies, but approximately 60 days to --

A. Somewhere in tha't neighborhood.

Q. 65 to 701

A. According to when her period was,

sure.

Q. Then on the return, if the mass is still present, what do you do and in what time period?

A. Well, in general what I do is I ask the patient to continue examining her breast and if she continues to note that the mass is there, I have her call me and tell me it's still there and I send her to a surgeon.

Q. Why?

A. Well, because I feel like that's the best way to do it. I feel like a surgeon is better able to judge whether a mass should be biopsied than I am.

Q. This is within the 60-day period we're talking about?

A. Right, plus or minus.

Q. And this is the scenario in which you would be less concerned on the front end, correct?

A. Well, I think I would -- I mean, I would be less concerned, I think I would handle the patients, if they both were having periods and they both had sore spots -- now, in the second patient we talked about someone I didn't know as well. If I could not feel anything and had

negative mammograms, I would still have them come back in two months, even if I felt nothing.

Q. Why would you do that?

A. Just to have another exam on the breast, in case I missed something the first time.

Q. All right. Now, let's go to the situation with a woman who is, say 35, all right, everything else is the same. What is it that you would do different with that?

A. Would this 35-year-old have any previous history of breast biopsies or fibrocystic breast disease?

Q. Well, I'm trying to keep this -- we didn't really talk about that in the 50-year-old. I'm trying to keep this the same. You indicated that age might be different to you.

A. It might be different in terms of my concern.

Q. That's all I'm trying to get you to tell me, is what difference does it make.

A. That would be in terms of my concern.

Q. Why?

A. And also in a 50-year-old, even if I felt nothing I might even have her come back

again. So if I examine her the first time and the mammograms were negative and I had her come back in eight weeks or so and reexamined and still felt nothing, I might even have her come back a third time in six months and examine again, because again, a 50-year-old, her likelihood of breast cancer is going to be higher than a 35-year-old. In a 35-year-old if a patient had a previous history of fibrocystic disease, I would probably manage it very similar. I would see her, do mammograms, repeat an examination after a couple of menstrual cycles.

Q. Now, would that be the same whether or not -- would your treatment of her be the same whether or not you felt the breast mass yourself?

A. If I felt the breast mass initially, even if the mammogram were negative, if I could feel a breast mass or the patient reported to me that she felt a breast mass after 60 to 90 days, I would send her to a surgeon.

Q. Okay. In the various scenarios that we have discussed you have not mentioned ultrasound.

A. Right.

Q. Do you use ultrasound in your

practice?

A* I use -- where I get my mammograms, they do ultrasound on all masses. They do an ultrasound if they find a mass. My radiologist will also palpate. And so I don't really have to think about that.

Q. I see,

A. If I refer someone for a mammogram and they find something, they automatically do an ultrasound by the time I get my mammogram report back.

Q. They find something, you mean a mass, whether or not they can determine --

A. Or if the mammogram is negative and they can palpate a mass, if they can feel something that doesn't show up they will automatically do an ultrasound at the same visit.

Q. Now, I take it that what we've been discussing so far relative to either a 50-year-old or a 35-year-old with the few modifiers that we've added to it, the steps and the times that you have provided me are within the accepted level of professional practice for OB/GYNs?

A. In my opinion they are, yes, sir.

Q. Okay. And do you have any opinion as

to whether or not there is a difference in the accepted level of professional practice for OB/GYNs between Nashville and Murfreesboro?

A. 1 would assume it would be substantially similar.

Q. All right. To the best of your knowledge, would that standard be the same or different somewhere else?

A. Only in that probably in some areas of the country there may be some OB/GYNs who are actually treating breast masses, doing breast surgery or aspirations of cysts, which we do not do much of in this area.

Q. But in terms of the steps we've been talking about and the timeliness of those steps, that's more or less a universal standard, is it not?

A. Yes, perhaps with one change in that if I were an OB/GYN who treated breast masses and we had a cyst, I might possibly aspirate a cyst in my office at the first visit. So that might be perhaps the difference in care in some other areas of the country, whether the cyst or mass were taken care of at the first visit.

Q. That's a good point and brings me to

something else I want to ask you about. Would you agree or disagree that the only way to determine absolutely if a suspicious mass -- if a mass, excuse me, let me leave out that word -- a mass is or is not cancer, is through histological examination?

A. Or disappearance of the lesion, or disappearance of the mass. I would say those are the two ways.

Q. But then it's not a mass anymore so --

A. Right.

Q. And your answer to that, then, I guess, leads me to the next question that I want to ask you. You, I think, have provided us one. Under what circumstances would histological exam not be required when a patient presents with a new mass?

A. Well, if it disappeared, if it went away after the observation period, or if -- or if the mass seemed to change position or breast. In other words, if I had a patient who had a mass or a cyst in the left breast and I had her come back in two months and that was gone but there had now been a new one appearing in the right breast, I might

then watch the right breast for two additional months, Or if in my opinion the cyst had changed from -- changed position in the breast, if when she initially saw me it was at the 11:00 o'clock position and when she came back it was at the 6:00 o'clock position, that would imply to me two' different things, so I might watch that an additional two months.

Q. Other than those circumstances, can you think of any others which would not require histological exam?

A. I have had other patients I have sent to surgeons who have decided not to biopsy patients, but I would not feel comfortable making that decision myself.

Q. In your opinion what are the indications for biopsy?

A. I would say that a mass which persists after two examinations or a mass which shows up on mammography, or a lesion that shows up on mammography that cannot be palpated, or felt.

Q. All right. From your recollection of the medical records in this case, were any of those indications present when Mrs. Gorman presented to Dr. LaRoche on February the 20th of 1991?

A. Again, to clarify, as I understand she did not present to Dr. LaRoche on February 20th, as I understand she saw a nurse clinician or a nurse practitioner or physician's assistant. so -- now, what was the question?

Q. Whether or not any of the indications that you have provided us for biopsy were present when Mrs. Gorman appeared on February 20th, 1991, at Dr. LaRoche's office.

A. I do not feel that at that visit there was an indication for a biopsy.

Q. Why is that?

A. Because that was the initial time she was seen for the mass.

Q. Okay. You agree that on February 20th of 1991 she presented with a new mass?

A. She presented with, I believe three new masses. Weren't there two masses -- two masses in the left breast and one mass in the right breast?

Q. All right. However we want to put it, she presented in February with at least a new mass.

A. Yes, with some changes in her breasts from prior examination.

Q. All right. And would you agree or disagree that there were aspects of the mass in her right breast on February the 20th of 1991 which could be indicative of the presence of cancer?

A. From my examination of the medical record, I think that the masses were essentially similar to other masses she had had and, in fact, had had previous biopsy of her breast back in '86, so that I would say that those were substantially similar to that mass.

Q. All right. Your reading of the medical records indicates to you that the mass with which she presented on February 20th, 1991, in her right breast was similar to that which had been biopsied some years prior?

A. I don't have a complete medical record on that subject in that I don't have the pathology report on the fibroadenoma from 1986, so I don't know the size of that mass, It was given a description as pea sized or something like that, but I don't know that I have a measurement of the mass.

Q. In hindsight would you agree that biopsy should have been indicated at some time prior to July the 26th of 1991 in the case of

Mrs. Gorman?

A. To speculate, had Mrs. Gorman returned for an examination and the mass found to be there, still be there, then in my opinion probably she should have undergone a referral to a surgeon.

Q. Let me go back to what I was asking you about just a moment ago, and that is whether or not there were indications that might lead an OB/GYN to at least a preliminary -- I don't want to say conclusion -- preliminary guess that this mass could be cancerous. From your reading of these records, were there any particular aspects about the mass which might have led you to the suspicion of cancer?

A. There's nothing from my reading of the medical record that would reassure me that this was not cancer nor tell me that it is cancer, based upon the examination by the PA or nurse practitioner in February.

Q. All right. As a general proposition where a mass has smooth borders, does that indicate to you .that it is more or less' likely that the mass is cancerous?

A. I would have to say that I do not

believe that has much to do with whether or not the mass is cancerous. And I believe from my reading of the examination of the breast in December of '92, that the general surgeon said that the mass had smooth borders. In December, six months later.

Q. What about mobility?

A. Again, in my practice I have not been impressed with -- I have had some lesions that were very immobile with irregular borders that have been benign and I've had various masses that have been very smooth and mobile that have been malignant. So in my own practice I cannot use those characteristics as -- they're not helpful to me. Both of those masses have to be treated the same.

Q. So it really doesn't make any difference whether there may be aspects which one person would determine as suspicious, all masses should be treated as suspicious.

A. All masses have to be treated equally, that's right.

Q. What is the purpose of mammography once palpation has revealed the existence of a mass?

A. Well, very often mammography can

confirm or rule out cancer,

Q. How is it that mammography can rule out the existence of cancer in a mass?

A. Well, it cannot rule it out absolutely, but it can -- again, percentage-wise, it can give you an idea that something is benign. What I mean by that is that mammography would miss approximately 15 percent of cancerous lesions.

Q. So if you rely on mammography, then in approximately 15 percent of your casees, you are going to miss the presence of cancer?

A. If you rely solely on mammography, yes.

Q. So if an OB/GYN relied on a negative mammogram to rule out cancer, would that reliance deviate from the recognized standard of acceptable professional practice of OB/GYNs as you understand it?

MR. LAWRENCE: I'm going to object to the form of the question, because I think it leaves out some factors, but --

A. Well, I think if your question is if an OB/GYN simply uses mammography as a way of evaluating a breast mass, that would not be a good medical way of handling things and in my opinion it

would probably violate the standard of care.

Q. Okay. Let's go back to Exhibit Number 2. Now, to the best of your knowledge, as we sit here today are all of the opinions that you hold in this case contained in this interrogatory response?.

A. I would say that this substantially in a few words conveys my opinion in this case.

Q. All right. Well, I'm going to go through these and I'm going to ask you to elaborate on them as we go through them, and also I'm going to ask you when this is over if we have discussed all of your opinions. So at any point if there is an opinion that we've not discussed or I've not asked you about, I want you to alert me, because this is my one and only opportunity to determine what those opinions are.

A. Sure.

Q. Let me follow that by asking you a slightly different question, and your answer may be the same. If it is, we'll just go on. Are all of the opinions about which you expect to testify in this case contained in this interrogatory response?

A. There are a couple of things -- I'm

sitting here thinking of one thing in the medical record I have some questions about, which I have not seen in any of the depositions or any of the -- I don't recall reading in any of the depositions from Dr. LaRoche or Mrs. Gorman that came out to me last night as I was reading the medical record, which in my mind may have influenced Dr. LaRoche in her treatment of this patient. But I don't have any confirmation of that. That has to do with her patient's previous diagnosis of herpes and condyloma in 1987. Do you have a copy of the medical records?

MR. JOHNSTON: Yes.

(Brief interruption.)

THE WITNESS: Read back my last answer.

(Requested portion of record read.)

THE WITNESS: What I'm specifically referring to is a letter from Dr. Andrews to Dr. LaRoche after having diagnosed herpes on Mrs. Gorman in 1986, and at the bottom of that letter there's a sentence which says she has been very upset about having herpes' diagnosed to the point it has disrupted her life somewhat, so I have not mentioned to her the possibility of the

condyloma and felt that that would be appropriate if it -- and felt that it would be appropriate if it were confirmed by colposcopy.

Q. All right. In what way does this raise some sort of a question in your mind.?

A. Well, in review of the patient's history after this and during this time, she was apparently under a lot of stress, and then later on during the medical record had a new marriage and apparently the doctors, because they knew her very well, were tempering their -- the way they handled her because they didn't want to upset her with certain diagnoses. And they were able to do that because the patient had a long history of frequent returns to the doctor.

And so I think that based upon that letter two or three years prior to the breast mass that we're talking about here, that gives me a pattern of learning how these physicians were dealing with this patient, that they were very sensitive about her mental state and felt that they needed to handle her very carefully. They had the ability to do that because they had a patient who had demonstrated over the years a very good ability to return for follow-up appointments and checkups.

That's the only other thing I've thought about in review of this medical record.

Q. And I'm not following exactly why that impacts in any way, shape or form what was or was not done in 1991.

A. It implies to me that you have a physician, even two physicians, Dr. Andrews and Dr. LaRoche here, who know this patient very well. They have a long-term relationship with her in this medical record going back over five years prior to the diagnosis of this, and that this gives me some insight into possibly the patient's psychological makeup, and how as a physician they might be trying to best manage her case based upon their knowledge of the patient.

And so if you go forward to 1992, or in the winter of '91 with the fibrocystic breast disease and the appearance of the mass, certainly you can in a case like this, with knowledge that the patient's long history of returning on a six-month basis for routine things without any question, you can know that she'll be back for a checkup in a very short interval for a repeat examination, and maybe not try to scare her with a diagnosis, which implies to me that they felt that

it would be detrimental to her in 1986.

Q. Okay. Let's go straight to this interrogatory response. Specifically I'm looking on Page 2 under Subsection Number 1, and I'm looking at the second sentence. "In coming to this conclusion Dr. Newsome is of the opinion that in view of the patient's well-established fibrocystic breast disease, the follow-up care provided by Dr. LaRoche following the patient's visit with the lump in her right breast on February 20th, 1991, was appropriate."

Now, what is it that you see as being Dr. LaRoche's follow-up care?

A. Dr. LaRoche, in my opinion, reasonably expected the patient to return for a follow-up examination in the early part of May 1992.

Q. And is that -- have you formulated that opinion because of something you read in the medical records or something --

A. Yes.

Q. -- you read somewhere else?

A. From two things.' One, from the office note of November of 1991 which said return in six months, and two --

Q. Excuse me. Is that exactly what it said, Doctor?

A. In my opinion, it is. Let me review the chart here. On November the 7th, 1990, the office note says she will return in six months time for repeat pap test, unless she has any problems.

Q. Okay. Unless she has any problems. And would you characterize the situation in which she presented in February of 1991 as being problems?

A. Yes, I would. However, unless she has any problems has been at the end of every office note since 1986.

Q. Precisely. And this is the first time since those office -- those specific instructions were provided her where she actually felt the need to come in prior to her regularly scheduled appointment, isn't it, sir?

A. I would have to review the medical records. I had thought that I had seen her come in between those six-month visits on some other occasions.

Q. I think you may have seen where she called in on occasion.

A. Well, she was at the office for a

colposcopy on February -- middle of February 1987, then back four months later in June of 1987.

Q. Let me ask you, Doctor. You've read Dr. LaRoche's deposition, correct?

A. Yes, I have.

Q. Do you recall in that deposition how Dr. LaRoche described her office procedure for setting up subsequent appointments?

A. I'm sorry, I do not recall that, I do recall that she said that the patient had an appointment in May, early May.

Q. Let me refresh your recollection, and you're free if you disagree or if Mr. Lawrence disagrees to locate that, but I think basically what she testified to was that at the conclusion of each of these appointments, that she would prepare something in writing indicating what she wanted to have done and she would hand that to Mrs. Gorman.

Mrs. Gorman would then take that to the receptionist at the front desk who would take the written statement of instructions and look at the calendar and determine what dates would be open that were as close to what Dr. LaRoche was attempting to -- to reschedule, and would write that down on the calendar and then would provide

Mrs. Gorman the date and time on a card which she then handed to Mrs. Gorman, and then Mrs. Gorman would make this appearance.

And that occurred over at least a four-year period up to this -- four-and-a-half-year period up to this time in February of 1991. Does any of that refresh your recollection?

A. Yes. Now, that would be substantially the way every office works.

Q. Sure.

A. And it also appears then that after the visit, that Dr. LaRoche would then dictate her office note, and it appears to me from reading this that she would return in four months' time or earlier if there was any problem. It looks to me like Dr. LaRoche says that as an afterthought, like sincerely yours after a letter, that it's sort of a postscript that she adds to every office note. It says in November '87 she will return in four months' time or earlier if there are any problems, and November of '88 she will return in six months' time or earlier if she's having problems,

Q. In fact, beginning sometime in 1987 that -- words to that effect are at the conclusion of every office note, correct?

A. Right. And I would consider that in reading and having participated in dictating notes and things that you sort of do that as an afterthought, just sort of the end of the sentence. But she still needed to come back for a pap test in six months from November.

Q. And whether or not Dr. LaRoche did that as sort of a postscript or an afterthought, there is no indication anywhere that you know of that Nancy Gorman looked upon that as an afterthought or a postscript, is there?

A. Well, I don't think Nancy Gorman read this note.

Q. Is it your opinion that Nancy Gorrnan did not know that she had the instruction on each of these occasions that she was to return in the four- to six-month period or earlier if she had a problem?

A. I don't have any way to judge what she heard.

Q. Okay.

A. But it would be my judgment that Nancy Gorman did not read this'note.

Q. We started all of this by my question to you asking you to tell me what you find as the

follow-up care, and the one and only thing you've told me at this point is that it was reasonable for her to assume that Mrs. Gorman would return in May. Now, is that the extent of the follow-up care that you see was provided by Dr. LaRoche or is there something more?

A. I think it was reasonable for her to assume that Nancy Gorman would return for a pap test in May, yes, or soon after May. And the other follow-up care was that she had a repeat mammogram ordered for -- .

Q. All right. I don't want to trick you and I'm certainly not trying to do this, I want to be sure that we're both clear. We know from the record that Dr. LaRoche did not see Mrs. Gorman on the 20th, that she read the note prepared by the physician's assistant and concurred with that note, correct?

A. Yes, that would appear to be correct, because she initialed the note that the physician's assistant made.

Q. Okay. The first follow-up thing after February the 20th was that she told Mrs. Gorman that she wanted to set an appointment for a mammogram earlier than the one that

Mrs. Gorman had already set for herself, correct?

A. There's a note on the 5th of March where Dr. LaRoche, which was a dictated summary of that phone conversation that said I called Nancy regarding the mammogram. Her mammogram 'showed marked bilateral --

Q. Wait, we're getting a little bit ahead. You're after the mammogram. I'm trying to go through this step-by-step. The first thing she did was that she ordered a mammogram.

A. Yes.

Q. Okay. And she told Mrs. Gorman that she wanted her to have this mammogram taken, correct?

A. Yes.

Q. You recall that Mrs. Gorman had said that she already had a mammogram set up through this mobile unit or whatever but that was for sometime in March or even after that, I don't remember the date, and Dr. LaRoche said she wanted it earlier than that. Do you recall that?

A. I do recall now after reviewing the medical record. In the note from February 20th, it says she does have a mammogram scheduled with a mobile mammography unit from St. Thomas which will

be coming in April,

Q. All right. Now, then following the mammogram she made the phone call to give her the results, correct?

A. That's correct.

Q. And in addition to that she also relayed word that it was requested by the radiologist that Mrs. Gorman go and get a set of earlier mammograms so that the radiologist could compare those, correct?

A. Yes, of the left breast.

Q. Right. And Mrs. Gorman did that, didn't she?

A. Yes, she did,

Q. Okay. So the record reflects that Mrs. Gorman did exactly what Dr. LaRoche requested in terms of going to the earlier mammogram and that she did exactly what she was requested in terms of obtaining the prior films, and the record reflects then that Dr. LaRoche told Mrs. Gorman that she was setting up a repeat mammogram in four to six months, correct?

A. Yes.

Q. And Nancy Gorman did that, according to the record, didn't she?

A. According to the record she did do that, yes.

Q. Okay. And so the actual follow-up date that is reflected by the record. And I'm not asking you to assume things. I'm asking you to look at the record and tell me what is there, shows the follow-up date during the ordering of a mammogram, the request for additional films for the radiologist, and the ordering of a subsequent follow-up mammogram, those three things, correct?

A. It does show that, yes, sir.

Q. And nowhere in the record from February the 20th on is there an indication that Dr LaRoche in any way communicated to Mrs. German that she did need to still keep the May appointment, is there?

A. Well, again -- but I would assume that the patient would understand --

Q I understand. I'm not asking you to make assumptions about this. I'm just asking you in your reading of this record, there's nothing in the record itself that would indicate that, is there?

A. There's nothing in the record after November that states that Dr LaRoche said anything

to the patient at all about her pap test.

Q. And that is -- well, aside from the pap test, there's nothing in there to indicate that Dr. LaRoche in any way, shape or form told Mrs. Gorman that she needed to come back in May relative to the breast mass, is there?

A. There's nothing relative to the breast mass but we do know that the patient did not keep the return appointment -- we do know that the record documents that the patient was requested to return for a pap test in May, which she didn't return for.

Q. Not after February the 20th, though, isn't that true?

A. Well, now, the February 20th had nothing to do with the pap test.

Q. There is nothing in that record to reflect that anyone at any point from February the 20th on ever told Mrs. Gorman we still want you to keep this May meeting, is there?

A. There is not, nor is there anything that said they did -- it doesn't say whether she did or didn't.

Q. I understand that. There's nothing in there that indicates that they gave her that

specific instruction that she needed to keep the May meeting regardless.

A. That's correct.

Q. Okay. The rest of this sentence says that in view of the patient's well-established fibrocystic breast disease, that the follow-up care was appropriate. Now, what is it about the patient's well-established fibrocystic breast disease which has any impact on Dr. LaRoche's care as reflected by the records?

A. That would be reassuring to a physician knowing that a patient had had a previous lump in the breast which had been biopsied and had been benign, and that she had lesions in both breasts at the examination in February. But again, it would not substantially influence the way the follow-up occurred.

Q. I want to be sure we're clear on one point. Is it your recollection from the record that the mass -- masses that you recall in the left breast were also new masses?

A. Her chief complaint at the time of the visit on 2/20/91 stated that she has noticed a new lump in her right breast. The physical examination at that time revealed lumps in both

breasts.

Q. Okay. So the fact that she had a history of fibrocystic breast disease would be something that -- I think your words were would be reassuring to the physician.

A. That's correct,

Q. The next sentence, "It was appropriate for Dr. LaRoche to order a mammogram of the patient." I don't think anybody has any argument that, in fact, there was a mammogram that was ordered and that this was in a relatively short period of time. Then it goes on to say, "After learning of the negative findings from the mammogram and comparing the results with an earlier study to follow up at the patient's next regularly scheduled office appointment on May 7th to reevaluate any changes in the right breast."

Now, is there an indication somewhere in the record that it was Dr. LaRoche's intention to do that, or is that something that you are assuming from the November note?

A. I would assume that from the November note, and also based upon, again, the patient's history of excellent communication with her physician.

Q. The next sentence here says, "Due to her longstanding fibrocystic breast disease, Mrs. Gorman had developed numerous breast masses of a cystic nature in the past and in such patients it is appropriate to monitor the fluctuation in size of new lumps for a reasonable period of time." Is the reasonable period of time that is referenced in that sentence the two menstrual cycles that we discussed earlier?

A. Yes, I would think that in this case we were right on the edge of that. If you use February the 20th and May 7th, you have March and April which are two months and seven days -- or 10 days in February and seven days, so an additional 17 days, but I would say that would be within the standard of care if she had returned for the appointment on May 7th.

Q. Is it your opinion that Dr. LaRoche had no responsibility to do any follow-up whatsoever once Mrs. Gorman missed this so-called May 7th appointment?

A. In view of the fact that the patient had a well-established relationship with the physician and had been very capable and had demonstrated on numerous occasions the ability to

very easily voice her complaints and her physical condition over the years, and in view of the fact that she had a negative mammogram, at the February appointment, I do not feel Dr. LaRoche violated the standard of care in not following up on the appointment at that time. I can testify as to what I assume her feelings were, but I don't know that that would be useful.

Q. But if I'm not mistaken, you do intend to testify, do you not, that Nancy Gorman is at fault here in part in this failure to timely diagnose cancer because she did not appear in May of 1991; is that correct?

A. Yes, I feel like Nancy Gorman has some responsibility there.

Q. All right. Now, why is it that Mrs. Gorman has responsibility in not appearing but Dr. LaRoche has no responsibility in not following up on that failure to show up?

A. Well, 1 don't know that I would testify that Dr. Gorman has no responsibility for not following up, however, Dr. Gorman -- Dr. LaRoche had another test done after May 7th, in terms of follow-up mammogram, with no further communication from the patient that the mass in the

other breast was enlarging.

Q. Right. Now, that is also true, but is it not also true that on two occasions Mrs. Gorman was assured by this doctor that she -- that I think you've testified to, she had a good relationship with, that there was nothing there, that this was negative?

A. She was assured that the left breast mammogram was okay.

Q. Well, in March she was assured that the right breast was okay, was she not?

A. She was assured that the mammogram was negative in March.

Q. Okay. Do you know that she has an understanding that there is a false negative rate in mammography?

A. I do not know that she has an understanding of a false negative rate but I do know that she knows the mass was in the other breast.

Q. We're talking about now -- right now I'm talking about in March.

A. In March I do not know what Mrs. Gorman knew about the negative findings on mammograms.

Q. The record reflects that she was assured that it was negative.

A. That's correct.

Q. Okay. You would assume, would you not, that Dr. LaRoche is aware of the false negative rate?

A. 1 would assume so, yes.

Q. And, in fact, in younger women less than 40, that false negative rate can be even higher than the 15 percent you quoted us earlier.

A. That's correct. Mammograms are often less useful in younger women.

Q. If you leave out assumptions about what is in people's minds and you look solely to the record, Dr. **LaRoche's** own record, would you agree that the record reflects that Nancy Gorman did exactly what she was told to do by her physicians?

A. Yes, except for return for the pap test on May the 7th.

Q. Aside from standard of care or anything else, I want to ask you how you would handle something. Let's take 'the chart that we have here of Mrs. Gorman and assume that everything that was done was actually done by you and not by

Dr. LaRoche. In July of 1991, when following the second mammogram and the follow-up call from Dr. LaRoche to Mrs. Gorman to tell her the results, if that telephone call had been made by you, would you have made reference to the missed appointment of May?

A. I think during that conversation I would try to feel out the patient and find out what her thoughts were about things. It would seem to me somewhat unusual that a patient that had seen me so frequently so many times for so many years suddenly had not seen me for a while. I would be worried if the patient were seeking medical care elsewhere or something like that. So I would be trying to feel out in my conversation with her what --

Q. Okay. And if in that conversation Mrs. Gorman said to you well, Dr. Newsome, I didn't know I was supposed to do that. I thought I had done everything you asked me to do. In your opinion would that be a reasonable thing for her to think from your reading of this chart?

MR. LAWRENCE: I'm going to object to the form of the question.

A. Forgetting this case and if

ask you. What I have tried to do is to go through this interrogatory response and ask you questions about everything I can think of regarding your opinions. Now, are there any opinions that you have that you hold regarding this case that I have not asked you about so far?

A. No, there are not.

Q. You have made several references in your testimony today to the biopsy that was done in 1987 on the prior cyst. In that instance, if I remember the record correctly, Dr. LaRoche referred Mrs. Gorman to a surgeon even without a mammogram, and in 1991 -- well, let me stop there and ask you if you agree with that part first.

A. Do you recall what the date was of the office visit in 1986 which had the comments about the --

Q. I thought it was '87.

A. Maybe it's '87. Yes, June of '87. It says she was encouraged to see a general surgeon, yes.

Q. Do you have an opinion as to why it is that Dr. LaRoche felt it necessary in 1987 to refer her patient to a surgeon for evaluation of this new breast mass, but in 1991 she did not?

Mrs. Gorman were my patient and she said to me I thought I did everything you said to do, then my reply would be except for return for your pap test in May.

Q. And I guess what I'm getting at is given the fact that everything they asked her to do, that they specifically asked her to do she did, would that not be --

A. As reflected in the record,

Q. Right. Would that not be a reasonable position for her?

A. For Dr. LaRoche or for the patient?

Q. For the patient.

A. And what would the position be?

Q. That she did not appear on the May 7th appointment date because she did not realize she was supposed to appear because she had not been told after her February the 20th appointment to do so.

A. I guess, but the February -- the May visit was for a pap test which was unrelated to the breast mass.

Q. Okay.

A. And I would assume that she would be aware that she didn't have a pap test in February.

Q. The next sentence in this says that you are expected to testify that the fact that this patient had a family history of breast cancer in paternal aunts did not make her more susceptible to breast cancer since this history did not appear on the patient's maternal side. Is that an accurate statement of your opinion, sir?

A. It is a substantially accurate statement of my opinion. Let me clarify what I mean by that. Is that breast cancer in a first-degree female relative, which is a mother or sister, would increase her risks from one in eight or one in nine, which every woman has, to one in four. If you add in paternal history, it might increase her risks one-tenth so that in actual reality, there is a very small statistically insignificant increase.

Q. So it's not --

A. It's not zero but it's insignificant.

(Brief recess.)

Q. The remainder of this response relative to you in this particular paragraph -- excuse me, the next paragraph, deals, I think, with what you may testify to as -- in regard to Nancy

Gorman's responsibility to make this May 7th appointment. Am I right about that?

A. To make the May 7th appointment and to communicate to Dr. LaRoche at times that they communicated after that that the mass was continuing to be there, and I believe I read in her deposition she stated that it was enlarging at that time.

Q. Specifically tell me what you think Mrs. Gorman did that makes her either wholly or partly responsible for her own delay in diagnosis?

A. Well, certainly this is a terrible situation for Mrs. Gorman, but what I would say is that the -- you have a patient who has a long history with a physician who apparently has been well-documented that is easy to communicate with Dr. LaRoche. Dr. LaRoche appears to me, after comparison with other physicians, to be excellent in her keeping of medical records based upon many years prior to this incident, and I believe Mrs. Gorman had a responsibility to communicate her concerns to Dr. LaRoche after May that her mass was enlarging and that the mammogr'am was on the left breast and it was the right side that was enlarging. I believe she had a responsibility to

tell Dr. LaRoche that.

Q. What responsibility did Dr. LaRoche have to insist on a follow-up mammogram of the right breast?

A. Well, I don't see that Dr. LaRoche after her discussion with the patient on July 31st was aware that there was a right breast mass.

Q. Well, let's go prior to that. In March she was certainly aware that there was a right breast mass, and she communicated to the patient, Mrs. Gorman, that the initial mammogram was negative. And she received the recommendation from the radiologist that there be a follow-up on the left breast alone. And my question really deals with her responsibility in March of 1991 to request or order a follow-up mammogram.

A. To request a follow-up mammogram?

Q. Yes. Of the right breast,

A. Of the right breast, I believe her responsibility in March was to be there for the pap test in May and to further discuss the right breast mass with Mrs. Gorman in May.

Q. What indication do you have that May the 7th, 1991, was at or about the week following Mrs. Gorman's menstrual cycle?

A. Mrs. Gorman had had a hysterectomy, so she was not having menstrual cycles,

Q. Okay. And so what would be the purpose in waiting from February the 20th to May the 7th to do follow-up?

A, Well, even though she was not having menstrual cycles, she was having hormonal cycles. Her ovaries were cycling as if she were going through hormonal cycles during the month as if she were menstruating, but because she didn't have a uterus she wasn't bleeding. So it would be difficult to tell where in her cycle she was. But one would reasonably expect after a period of 60 days or so that she would have been through two of these cycles.

Q. So in the scenario involving Mrs. Gorman then, are you suggestioning that it makes no difference when she is seen for follow-up vis-a-vis her hormonal cycle?

A. It's not that it doesn't make any difference, it's that it's difficult to tell where she is in her cycle. I think the patient would have a general idea of this because in general the breasts sort of get sore around the time when she would normally have had a period and then they get

away. And so it's true that when you're examining and screening people, the week after the period is the best time to screen people and do mammograms and do breast exams. But if you're following a mass, the only advantage -- the advantage is just giving it some time to go away.

Q. Is there anything else in your opinion that Mrs. Gorman did wrong?

A. Again, mainly to say that by her -- I believe from her deposition she stated that she was becoming increasingly worried about this breast mass on some trip that they were taking to the Caribbean or something, but still didn't communicate this to Dr. LaRoche,

Q. The last paragraph of this statement regarding you and your proposed testimony is that you are expected to testify that any alleged delay in diagnosing the right breast mass as carcinoma could not be construed to be the cause of her right modified radical mastectomy and resulting chemotherapy nor of the resulting cancer, surgery and chemotherapy regarding the left breast. Let's take the last part of that sentence first.

A. I think I can answer this pretty simply. I feel that we're right at the edge of my

better afterwards. So many patients who have hysterectomies are aware of where they are in their cycle.

Q. And there's no indication anywhere in the record that Dr. LaRoche discussed that with Mrs. Gorman in February or in March of 3991, is there?

A. I have no indication that that occurred in the record.

Q. As a general proposition, would it be more helpful for the treating physician, the examining physician, to try to examine the breast in a follow-up examination at or about the first week following the cycle?

A. Yes, that would be the best time to examine the breast, however, in someone who's had a hysterectomy --

Q. I mean that. In a situation where the patient has had a hysterectomy, regardless of how difficult it is, I'm trying to determine whether you think that that's still the best time to make the follow-up examination.

A. That probably doesn't make any difference in this case. In other words, what you're trying to do is give the mass time to go

knowledge on this subject with this sentence. It is my opinion that there are generally some surgeons, a substantial number of surgeons, who would recommend a modified radical mastectomy with any size breast cancer with no dissection. So I've even heard of them recommending it on nonpalpable lesions. So that what I'm saying is that because of the alleged delay between February and December, the treatment was substantially the same -- could have been substantially the same in February or December. And I don't believe that the cancer in the other breast had anything to do with the original cancer in the right breast.

Q. The subsequent cancer in the left breast in your opinion was a second primary mass, correct?

A. In my opinion from reading the medical record. However, a general surgeon or an oncologist would be better to comment on that than myself.

Q. I understand that. I'm trying to get beyond that one. Let me go back to the other part, Are you generally familiar with the staging of breast cancers?

A. Generally familiar.

Q. Are you generally familiar with the method of staging cancerous masses by size, node involvement and metastases?

A. Yes.

Q. All right. And using that method f staging, do you have an opinion as to whether or not with a Stage I cancer, modified radical mastectomy is the treatment of choice?

A. Certainly I would say that within the past five to ten years they have been leaning more toward lumpectomy, no dissection, with Stage I tumors.

Q. All right. Do you know whether or not or do you have any opinion as to whether or not the mass in Nancy Gorman's right breast in February of 1991 was a Stage I?

A. I don't have an opinion about that.

Q. You don't expect to testify as to the staging at that point?

A. No, I don't.

Q. Would you agree that when the mass was biopsied, that it was a Stage II-B?

A. Yes, from my reading of the medical record.

Q. All right. Now, let me go back and

A. Again, to be picky here, it doesn't say she was referred to a general surgeon, it says she was encouraged to see a general surgeon. I would consider a referral to be when Dr. LaRoche would call a specific physician or give her the name of a specific physician. So I would interpret this as saying that there was a general conversation about that you have a lump in your breast and it would probably be good for you to see a general surgeon at that time.

There's also a second sentence in that same plan or follow-up that says we will wait and see how the cysts feel in the next week or two but she will contact me after that time. So it also looks like Dr. LaRoche was just going to follow it up and examine the breast again after a while.

Q. And certainly she was not going to wait for the next regularly scheduled appointment to do that follow-up palpation, was she?

A. That appears to be so from her note there.

Q. And, in fact, she indicates that it's important, at least to her in 1987, that she do a follow-up palpation in two weeks, doesn't she?

A. Two weeks, that's correct. That's what it says in the note.

Q. And that certainly is within the standard of care, isn't it?

A. Yes, it is. I think it's important to note, however, that she spoke to the patient two weeks after that visit and the patient reported by telephone that the breast cyst had gotten smaller and less tender, and she then saw her again four months later in November for a repeat examination. I'm referring to the note of 6/23/87.

Q. Is it indicated in that note, Doctor, who initiated that telephone call?

A. It's not indicated there. But I would assume Dr. LaRoche initiated it because she was calling her about her abnormal pap test. I would also say this is another example of physician and patient communicating well.

Q. And included in that June the 23rd, 1987, note, it also -- she also reiterates, does she not, the previously scheduled follow-up pap smear?

A. Yes, she does.

Q. And that is unlike what she did in 1991, isn't it?

A. The notes are different, yes.

Q. Let me go back to the question I was asking you about how you would do something in your practice, and again, I'm going to ask *you* to just make the assumptions about Nancy Gorman that are included in the chart here. You would agree, would you not, regardless of whose fault it was at all, that as of May of 1991, the existence of cancer in the right breast had not been ruled out?

A. I would agree with that, yes.

Q. And in a similar situation -- in an identical situation where this patient with her history presented to you with a new mass, and in almost three months cancer had not been ruled out, and the patient missed what you thought was a previously scheduled appointment subsequent to the initial finding of this mass, would you have made an attempt to contact her and find out why?

A. Is this in 1991 or 1994?

Q. 1991.

A. In 1994, I'd say that there would be a very good chance I would have handled this just like Dr. LaRoche did.

Q. Are you saying that in 1991 you might not have?

A. 1991, I would have handled this just like Dr. LaRoche did.

Q. In 1994, that would be different?

A. I think because of my work in medical-legal cases and because of my reading about failure to diagnose as being a very up and coming topic for malpractice, I tend to be more tight about my follow-up than I would -- than three years ago.

Q. If you put aside the May the 7th meeting and what you or I presume Dr. LaRoche will characterize as Nancy Gorman's failure to show up, if you put that aside, is there any indication in the record anywhere that you have found to show that Nancy Gorman was not either compliant or responsible for her own care?

A. I find no evidence that she was not compliant. Again, from my recollection of reading her deposition and her husband's deposition, they talk of an increasing uneasiness in the spring and summer of 1992 about this breast mass, and she did not voice that to anyone.

Q. Getting back to'the staging of breast cancers, one of the things that differentiates a Stage II-B from a Stage II-A and in turn a Stage I

is the incidence of involvement with the lymph nodes, correct?

A. Yes.

Q. Do you know whether or not there is any relation between the size of a tumor and the incidence of positive axillary lymph node --

A. I will answer that to the best of my ability but I'm certainly no expert in that area --

Q. If you're not an expert -- let me ask you this --

A. -- in the treatment of breast cancer.

Q. Do you intend to offer any testimony relating to that subject in this case?

A. The only thing I would say there is that I have a general opinion that the larger the lesion in general with any tumor, the more likely it is to metastasize. 1 have a general feeling about that, I also have a general feeling, especially with breast cancer, lesions can metastasize at a very early stage so that you can have a lesion that you can't even feel which can already be a Stage II.

Q. Sure.

A. And so that -- but those are just general feelings and I couldn't specifically

testify other than just general.

Q. In an appropriate diagnosis of a new breast mass, is breast exam by the examining physician important?

A. Yes.

Q. Why?

A. Well, because a physician does a good breast examination.

Q. Is it important for the examining physician -- scratch that. In this case, of course, when Mrs. Gorman presented in February of 1991, she was not examined by Dr. LaRoche, she was examined by a physician's assistant by the name of Kim Baker. Do you know whether or not Ms. Baker had ever given Mrs. Gorman a breast exam prior to February the 20th of 1991?

A. I do not know the answer to that question.

Q. Would that make a difference in anyone's bility to properly diagnose, properly go through the appropriate steps in making or leading to a diagnosis?

A. I don't know generally what you're saying, but I would say that this person did a wonderful examination, did a very adequate

examination of the breast and well-documented the examination in the medical record,

Q. Do you know Dr. John Hainsworth?

A. No, I do not.

Q. Do you know Dr. James Boerner?

A. No, I do not.

Q. Have you had discussions regarding this case with either one of those persons?

A. No, I have not.

Q. Have you had an opportunity to look over the proposed testimony of either Dr. Boerner or Dr. Hainsworth?

A, I have read the Rule 26 document. I have not read Dr. Boerner's deposition.

Q. Regarding Dr. Hainsworth, I realize that these are two completely separate and distinct areas of expertise, are you intending to offer any testimony supporting in any way, shape or form any of the proposed testimony of Dr. Hainsworth?

A. No, I'm not.

MR. JOHNSTON: That's all the questions I have.

FURTHER THIS DEPONENT SAITH NOT.

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, Cindi C. Resha, Notary Public in and for the State of Tennessee at Large,

DO HEREBY CERTIFY that the foregoing deposition was taken at the time and place set forth in the caption thereof; that the witness therein was duly sworn on oath to testify the truth; that the proceedings were reported by me in shorthand; and that the foregoing pages constitute a true and correct transcription of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties hereto; nor a relative or employee of such attorney or counsel, nor do I have any interest in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 13th day of October, 1994, at Nashville, Davidson County, Tennessee.

Cindi C. Resha
Notary at Large
State of Tennessee

My Commission Expires: April 14, 1998

IN THE CIRCUIT COURT RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

NANCY GORMAN and husband, GERALD GORMAN,

Plaintiffs,

v.

ELIZABETH LaROCHE, M.D.,

Defendant.

NO. 31218

SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES BY DEFENDANT ELIZABETH LAROCHE, M.D.

The Defendant, Elizabeth LaRoche, M.D., hereby supplements her previous answers to Plaintiffs' First Interrogatories, pursuant to Rule 26, Tennessee Rules of Civil Procedure:

4. With respect to each person you anticipate calling as an expert witness at trial, please state:

(a) the name, current business and residential address and telephone numbers;

(b) the subject matter of said expert witness testimony;

(c) the substance of the facts and opinions to which the expert is expected to testify; and

(d) a summary of the grounds for each opinion.

RESPONSE:

(a) (i) Dr. Clay Newsome
222 22nd Avenue North
Nashville, Tennessee 37203
Telephone (615) 284-2500

(ii) Dr. James Boerner
507 Highland Terrace
Murfreesboro, Tennessee 37130
Telephone (615) 890-2442

(iii) Dr. John Hainsworth
Sarah Cannon Cancer Center
250 25th Avenue, North
Suite 412
Nashville, Tennessee 37203
Telephone (615) 320-5090

(b) Dr. Newsome and Dr. Boerner, as board-certified OB/GYNs, are expected to testify regarding the recognized standard of acceptable professional practice applicable to Dr. LaRoche in this case, as well as issues of causation, pursuant to T.C.A. S 29-26-

115. Dr. Hainsworth is expected to testify regarding medical oncology issues in this case.

(c) The opinions of these experts are based upon review of relevant portions of numerous medical records and other discovery documents in this case, including but not limited to the office records of various physicians who have treated Nancy Gorman, including Dr. Elizabeth LaRoche, Dr. Wayne Westmoreland, Dr. Kenneth Wurtz, Dr. Charles Penley, Dr. Jeanne Ballinger, Dr. Lois Wagstrom, and Dr. Stephen Dudley; the hospital records regarding both of Ms. Gorman's admissions for breast surgery and follow-up care; the depositions of both Plaintiffs and of Dr. LaRoche; and the testimony summaries of the Plaintiffs' proposed expert witnesses.

(1) Dr. Newsome and is expected to testify that, in his opinion, Dr. Elizabeth LaRoche did not deviate from the recognized standard of acceptable practice in treating the patient, Nancy Gorman. In coming to this conclusion, Dr. Newsome is of the opinion that, in view of the patient's well-established fibrocystic breast disease, the followup care provided by Dr. LaRoche following the patient's visit with a lump in her right breast on February 20, 1991, was appropriate. It was appropriate for Dr. LaRoche to order a mammogram of the patient, and after learning of the negative findings from the mammogram and comparing the results with an earlier study, to follow-up at the patient's next regularly-scheduled office appointment on May 7, 1991, to re-evaluate any changes in the right breast, Due to her long-standing fibrocystic breast disease, Ms. Gorman had developed numerous breast masses of a cystic nature in the past and in such patients, it is appropriate to monitor the fluctuation in size of new lumps for a reasonable period of time. Dr. Newsome is expected to testify that the fact that this patient had a family history of breast cancer in paternal aunts did not make her more susceptible to breast cancer, since this history did not appear on the patient's maternal side.

Further, Dr. Newsome is expected to testify that physicians are entitled to rely upon the duty of patients to be reasonably

responsible for their own health and well-being; that the standard of care did not hold Dr. LaRoche nor any other physician responsible for a patient missing an appointment and/or failing to contact either Dr. LaRoche or some other physician or other health care provider for a period of ten months to inform them of her continuing concern, that the mass continued to be present in her right breast, and/or that the mass was enlarging.

In addition, Dr. Newsome is expected to testify that any alleged delay in diagnosing the right breast mass' as carcinoma could not be construed to be the cause of her right modified radical mastectomy and resulting chemotherapy, nor of the resulting cancer, surgery and chemotherapy regarding the left breast.

(2) Dr. Boerner is also expected to testify that Dr. Elizabeth LaRoche did not deviate from the recognized standard of acceptable practice in treating Nancy Gorman. Dr. Boerner is of the opinion that the followup care provided by Dr. LaRoche following the patient's visit with a lump in her right breast on February 20, 1991, was appropriate, considering the fact that the patient had a well-established history of fibrocystic breast disease, underwent a new mammogram which was negative for any sign of carcinoma in the right breast, and that she was scheduled to return for an office visit in early May, 1991.

Further, Dr. Boerner is expected to testify that the standard of care applicable to physicians practicing OB/GYN medicine in Murfreesboro permits them to expect patients to be compliant and responsible in order to give physicians the opportunity to render appropriate care. This is particularly true for a physician in this case, where the Dr. LaRoche knew that the patient was well-educated regarding the presence of breast masses due to her long-standing fibrocystic breast disease, and that the patient knew the importance of breast lumps which did not change in size or lumps which increased in size. The standard of care did not hold Dr. LaRoche responsible for a patient missing an appointment and/or failing to contact either Dr. LaRoche or any other physician for a

period of ten months while, in accordance with deposition testimony, the lump in her right breast continued to enlarge.

In addition, Dr. Boerner is expected to testify that any alleged delay in diagnosing the right breast mass as carcinoma could not be construed to be the cause of her right modified radical mastectomy and resulting chemotherapy, or of the resulting cancer, surgery and chemotherapy regarding the left breast.

(3) Dr. John Hainsworth is expected to testify that, considering this patient's age, estrogen level, pre-menopausal status, and other factors, it is his opinion that had this patient been diagnosed with cancer as early as February, 1991, the treatment would have been essentially the same as that which she received in December of 1991. It is impossible to say whether Ms. Gorman's lymph nodes were involved in February of 1991. Since the staging of breast cancer is dependant upon knowing whether the lymph nodes were involved or when they became involved, it is not possible to say that her ten-year survivability rate was adversely affected by the alleged ten month delay in diagnosis. Further, it is Dr. Hainsworth's opinion that the cancer contracted by this patient in the left breast in 1993 was a new, primary lesion which was not caused by, nor exacerbated by, the alleged delay in diagnosing the cancer of the right breast.

In addition, pursuant to Alessio v. Crook, 663 S.W.2d 770, 779 (Tenn.App. 1982), Defendant reserves to right to call any of the Plaintiff Nancy Gorman's physicians who provided care, treatment or consultation to her related to the matters set forth in the Complaint in this cause of action.

Respectfully submitted,

PARKER, LAWRENCE, CANTRELL & DEAN

Thomas W. Lawrence, Jr. - 3611
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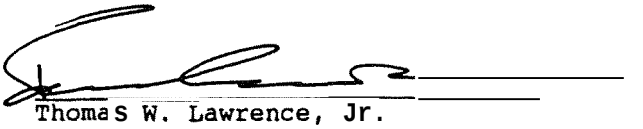
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed to Douglas S. Johnston, Jr., Esq., 217 Second Avenue, North, Nashville, Tennessee 37201 on this 10th day of June, 1994.



Thomas W. Lawrence, Jr.

CURRICULUM VITAE

HENRY CLAY NEWSOME, 111, M.D., F.A.C.O.G.

DATE OF BIRTH: July 8, 1947

UNDERGRADUATE EDUCATION:
University of North Carolina, Bachelor of Arts, 1969

MEDICAL EDUCATION:
University of North Carolina Medical School
M.D. Degree, 1973

RESIDENCY TRAINING AND OBSTETRICS AND GYNECOLOGY
Vanderbilt University, 1973-1977

CHIEF RESIDENT, OBSTETRICS AND GYNECOLOGY
Vanderbilt University Medical Center, 1976-77

CERTIFIED BY THE AMERICAN BOARD OF OBSTETRICS AND GYNECOLOGY, 1981

FELLOW OF THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, 1982

MEMBER OF NASHVILLE OBSTETRICIANS AND GYNECOLOGIST , 1993

CHIEF OF OBSTETRICS AND GYNECOLOGY, BAPTIST HOSPITAL, 1993

SEC. NASHVILLE OB-GYN SOCIETY 1994-95

Member LONNIE BURNETT SOCIETY

DEPOSITION EXHIBIT
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NEWSOME 4-14-94