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THE STATE of OHIO,  
COUNTY of SUMMIT.

: SS:

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IN THE COURT OF COMMON PLEAS

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DOROTHY S. MA'NARD, et al., :  
plaintiffs, :

vs. : Case No.97 CV 01 0228  
:

AKRON GENERAL MEDICAL  
CENTER, et al.,  
defendants.

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Deposition of SCOTT SHORTEN, M.D.,

a defendant herein, called by the plaintiffs for the  
purpose of cross-examination pursuant to the Ohio Rules  
of civil Procedure, taken before Constance Campbell, a  
Notary Public within and for the State of Ohio, at 224  
Exchange Street, Akron, Ohio, on THURSDAY,  
SEPTEMBER 16TH, 1999, commencing at 8:00 a.m. pursuant  
to agreement of counsel.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

Donna Taylor Kolis, Esq  
Donna Taylor Kolis Co., LPA  
330 Standard Building  
Cleveland, Ohio 44113  
(216) 861-4300.

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ON BEHALF OF THE DEFENDANT DIANE MUCITELLI, M.D and  
AKRON PATHOLOGY ASSOCIATES:

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ON BEHALF OF DIANE MUCITELLI, M.D.:

Linda Gorczynski, Esq.  
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I N D E X

WITNESS:

SCOTT SHORTEN, M.D.

PAGE

Cross-examination by Miss Kolis

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(NO EXHIBITS MARKED)

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(FOR COMPLETE INDEX, SEE APPENDIX)

(IF ASCII DISK ORDERED, SEE BACK COVER)

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SCOTT SHORTEN, M.D.

of lawful age, a defendant herein, called by the  
plaintiffs for the purpose of cross-examination pursuant  
to the Ohio Rules of civil Procedure, being first duly  
sworn, as hereinafter certified, was examined and  
testified as follows:

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MISS KOLIS: By way of  
introduction for the record, Dr. shorten, my name is  
Donna Kolis, as you know, we met earlier this morning.  
I'm the attorney who represents Dorothy Maynard in an  
action which she filed against Dr. Mucitelli and your  
group.

My purpose today is to ask you several  
questions that hopefully will shed some light on the  
sequence of events to ask you facts which you know  
opinions which you might hold regarding the reading of  
slides.

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CROSS-EXAMINATION

BY MISS KOLIS:

Q. For the record can you state your name and your  
business address?

A. My name is Scott shorten, My address is Akron  
General Medical Center, 400 Wabash Avenue, Akron, Ohio.

Q. In conjunction with arranging for your deposition today I had requested that your counsel provide me with a CV this morning; did you bring one?

A. No.

MISS HEIDLOFF: I'm sorry, that is my fault, we'll get one for you.

Q. I don't want to waste a lot of your time this morning, Doctor, could you please run me through your background and training that led to your occupation as what I would understand as a pathologist?

A. I graduated from medical school from Northeastern Ohio Universities College of Medicine in 1981. Then underwent four years of postgraduate training at the Cleveland clinic in pathology.

Q. So you did your internship, residency at Cleveland clinic in pathology?

A. Correct.

Q. Who was the director of the program during the four years you were there, if you remember?

A. Sure I do. The director of the program was Dr. George Hoffman for most of the time.

Q. Did you go on to do a Fellowship in pathology?

A. No, I did not.

Q. So in 1985 you concluded your educational training and I gather became certified in some specialty?

1 A. Board certified in anatomic and clinical  
2 pathology.

3 Q. When did you obtain that Board?

4 A. Fall of the 1985.

5 Q. Subsequent to your experience at the Cleveland  
6 clinic, where did you first find employment as a  
7 pathologist?

8 A. I worked as a pathologist for a group in Cleveland  
9 out of Hillcrest and Saint Luke's Hospital for two  
10 years.

11 Q. which group was that?

12 A. Baylis group. In 1987 I came down here as an  
13 employee of Akron General Medical Center.

14 Q. When you say you became an employee of Akron  
15 General Medical Center, were you actually an employee of  
16 the hospital itself or of a group?

17 A. of the hospital.

18 Q. Are you now an employee of a group practice?

19 A. Yes.

20 Q. How long did you remain an employee of Akron  
21 General Medical Center?

22 A. Approximately five years.

23 Q. My math is not the best, about 1992?

24 A. I think that's correct.

25 Q. During your five year tenure as an employee of

1 Akron General, what services did you perform?

2 A. Same as I perform now. I'm a pathologist, I do  
3 anatomic pathology primarily. I also have some  
4 responsibility on the clinical side, particularly  
5 hematology and blood bank.

6 Q. what kind of things did you do in hematology, if I  
7 can ask?

8 A. Sure. Evaluate bone marrows, peripheral smears,  
9 body fluids. Also the director of hematology for a  
10 while in which I was responsible for procedures and  
11 policies.

12 Q. In 1982 tell me what happened in terms of why you  
13 were no longer an employee of Akron General?

14 A. The pathologists formed a corporation, Akron  
15 Pathology Associates.

16 Q. That corporation is the one in which you are still  
17 a member?

18 A. That is correct.

19 Q. Do you hold an office within that corporation?

20 A. vice-president.

21 Q. These are not very important details, by way of  
22 background so I understand the operation, at the time  
23 that the pathologists formed a professional corporation  
24 did you negotiate a contract then with Akron General to  
25 provide pathology services to the hospital?

1 A. Correct.

2 Q. An exclusive contract with Akron General?

3 A. I think so.

4 Q. To your knowledge do you provide services to any  
5 other medical institution?

6 A. No.

7 Q. Doctor, I gather this may not be the first time  
8 you've ever been deposed?

9 A. That's correct.

10 Q. I usually do that up front. Sort of stream of  
11 consciousness this morning.

12 Just parenthetically let me add for  
13 purposes of the deposition obviously you are certainly  
14 aware that you need to answer each and every question  
15 verbally; you do understand that, correct?

16 A Yes

17 Q. Additionally, the way that I like to conduct  
18 depositions, or at least in terms of the instructions,  
19 if I ask a question that you don't understand, you may  
20 feel free without conferring with your counsel to tell  
21 me you don't understand what I'm asking you; is that  
22 acceptable to you?

23 A. Yes.

24 Q. In addition, if there any objection posed by your  
25 counsel or personal counsel for Dr. Mucitelli, you can



1 wait until we resolve the difference and the court  
2 reporter, based on what our problem is, will instruct  
3 you to answer; that's also acceptable to you?

4 A. Yes.

5 Q. In anticipation of this morning's deposition, can  
6 you tell me, Dr. shorten, what documents you have  
7 reviewed?

8 A. I reviewed the past surgical pathology reports.

9 Q. of Dorothy Maynard?

10 A. Correct.

11 Q. Doctor, at any time since I initiated this  
12 litigation, before today, have you had an opportunity to  
13 review the pathology slides that are the subject matter  
14 of this litigation?

15 A. No.

16 Q. Do you feel -- that would be asking you to guess,  
17 I'm going to ask anyway -- do you feel you need to  
18 review the slides in order to render opinion testimony  
19 this morning about what your conclusions were about  
20 those slides?

21 A. No.

22 Q. You feel fairly confident based upon reports you  
23 wrote you can answer my questions?

24 A. Yes.

25 Q. During your time here at Akron General Hospital

1 from 1987 through 1992 when you were an employee, then  
2 from '92 through the present, have you had an  
3 opportunity to become familiar on a professional level  
4 with Dr. Rehmus?

5 A. Yes.

6 Q. And Dr. Fromm?

7 A. Yes.

8 Q. It's my understanding, Dr. Shorten, your pathology  
9 group discharged Dr. Mucitelli?

10 MISS HEIDLOFF: objection. You can  
11 answer that. I'm not sure of your characterization.  
12 You can answer.

13 Q. Go ahead, you may answer in whatever fashion you  
14 can. ■ may have to explore it further.

15 A. Dr. Mucitelli ceased employment with the group in  
16 early July, 1996.

17 If I may just, since we will be in here  
18 a while, her name is pronounced Mucitelli.

19 Q. ■ know I'm not good with the pronunciation, the  
20 court reporter can spell it.

21 ~~Is~~ it your understanding she voluntarily  
22 terminated her employment with this group?

23 A. No, she did not.

24 Q. she was asked to leave in fact, is that an  
25 accurate statement?

1 A. I would not characterize it as such. That's  
2 probably close to the truth.

3 Q. Were you involved as a partner or officer of the  
4 corporation in the decision to ask for her resignation  
5 or to indicate to her she was no longer employed by the  
6 group?

7 A. Yes.

8 Q. Can you tell me the basis upon which it was  
9 decided she should no longer participate as a  
10 pathologist in your group?

11 A. Well, officially there was no stated cause. I  
12 would say unofficially Dr. Mucitelli wasn't entirely  
13 happy with the practice. She had stated a number of  
14 times, although not to me, of her intent to resign.

15 At that time her unhappiness and  
16 ~~discomfort~~ with the group came to a head, it was decided  
17 that probably the best course of action was to just  
18 sever the knot and move on.

19 Q. Asking you a more direct question: Was any part  
20 of the decision making process based upon the deficient  
21 performance by Dr. Mucitelli as a pathologist?

22 A. At the time of her dismissal there was a case we  
23 disagreed about. It was less to do with the  
24 disagreement but in how she reacted to it.

25 Q. when you say there was a case you disagreed about,

1 I gather it's not the interpretation *of* Dorothy  
2 Maynard's slides that were at issue?

3 A. That's correct. Let me expound on that.

4 Q. Okay.

5 A. Every pathologist makes a mistake. Every  
6 pathologist will have their slides reviewed by members  
7 of the department in some form or fashion. Leading up  
8 to Diane's leaving the group **it** was how she responded to  
9 our disagreement. So **it** was less to do with the  
10 interpretation but rather in her response to **it**.

11 Q. Her response to being challenged perhaps in the  
12 way she interpreted a slide, is that what you are  
13 indicating?

14 A. Approximately so.

15 Q. In 1996 to the best of your recollection, I know  
16 that has been a couple of years, did your group, Akron  
17 Pathology Associates, have in place written standards  
18 and procedures for the -- **I** like to use the word  
19 systematic review of slides, by someone other than the  
20 original reader?

21 A. Yes.

22 Q. Is that policy and procedure locatable in writing?

23 A. Yes.

24 Q. would **it** be kept by the secretary *of* your group  
25 perhaps in their records?

1 A. It's in the department records, it's our quality  
2 assurance program.

3 Q. I would ask that post haste, given the relative  
4 proximity to the trial date, that you produce for me  
5 that portion of the Akron Pathology -- ■ it policy and  
6 procedures manual, is that what you call it?

7 A. Um-hum.

8 MISS KOLIS: You need confine  
9 yourself only to that section of their polities,  
10 procedures that deal specifically with internal quality  
11 assurance. ■ don't need to know the inner workings of  
12 Akron Pathology other than that issue.

13 MISS HEIDLOFF: I'll look at it. I  
14 don't presume there will be any reason why it's  
15 privileged, until I see it I can't make that  
16 determination. I guess I'll withhold, ■ should say I'm  
17 reserving the right to look at it first.

18 MISS KOLIS: ■ would appreciate  
19 that you could promptly let me know, we could bring it  
20 to the judge's attention. ■ can't imagine there will be  
21 privileged material in it.

22 MISS HEIDLOFF: I haven't seen it, I  
23 want to make sure I reserve that right.

24 Q. Dr. shorten, regarding let's first of all talk  
25 about intraoperative pathology reads in general, was it

1 the policy and procedure of your group to have frozen  
2 sections overread by a second pathologist for quality  
3 assurance purposes in 1996?

4 A. No.

5 Q. In this instance, are you aware from your review  
6 of the records, and the circumstances of Mrs. Maynard's  
7 intraoperative section, frozen section, that another  
8 member of your group did in fact overread  
9 Dr. Mucitelli's interpretation of the pathology slide?

10 A. I have seen that in the written report.

11 Q. Do you know how that came about, if it was not a  
12 policy, procedure Dr. -- I'm sorry, I'm blanking on her  
13 name, Cavany?

14 A. Cavany.

15 Q. Do you know how that would have come about  
16 Dr. Cavany would have overread the intraoperative frozen  
17 section for Mrs. Maynard?

18 A. I don't know that Dr. Cavany did that.  
19 Nevertheless, it is not infrequent for a pathologist who  
20 is looking at the different frozen sections or frozen  
21 section that is difficult to seek an opinion from  
22 another pathologist.

23 Q. When you say you don't know she did, that is  
24 because you have not personally asked her whether the  
25 statement contained in Dr. Mucitelli's pathology summary

1 is accurate?

2 A. That's correct.

3 Q. Do you have any reason to believe that it was a  
4 false statement?

5 A. I don't know of the time sequence, if that frozen  
6 section was reviewed as it was actually happening, or  
7 reviewed two hours later or five hours later.

8 Q. Your fair testimony is you don't have any  
9 personal knowledge as to whether or not the-e truly was  
10 an intraoperative overread, meaning that Dr. Mucitelli  
11 didn't call someone in at the time to interpret it?

12 A. That is correct. I also might say overread is not  
13 a term we use. To me it implies some kind of  
14 hierarchial standing where you get somebody else to pass  
15 judgment on what you looked at.

16 Q. what word would you prefer that I use?

17 A. Seek a second consult.

18 Q. Seek a second consult. Is fine with me.

19 You indicated I think, I'm paraphrasing  
20 what I heard you say in your answer, it's not unusual  
21 for a pathologist, although not required to do so, to  
22 seek a second opinion or second consult on a difficult  
23 read?

24 A. That is correct.

25 Q. To the best of your recollection, since you

1 obviously became the person who looked at the slides at  
2 a later time, did you consider the frozen section  
3 interpretation a difficult read in this case?

4 A. Yes.

5 Q. Then you also indicated, I'm just following  
6 through to tie up some of the loops, within your group  
7 it would not be unusual on occasion for the pathologist  
8 to have someone come in to do a second opinion, consult  
9 on something that was not so difficult to read, correct?

10 A. Yes.

11 Q. Doctor, to the best of your ability, can you state  
12 for me why the intraoperative frozen section read in  
13 this case was a difficult one?

14 A. Frozen sections of the pancreas when you are  
15 evaluating for malignancy are almost always difficult.  
16 The reason for that is that some -- there are similar  
17 reaction patterns between an inflammatory process and  
18 neoplastic process. Frozen Section what you are trying  
19 to determine is whether this represents an inflammatory  
20 process or truly does it represent malignancy. Since  
21 they are overlapping histologic features, it's very  
22 difficult.

23 Q. From your perspective as a pathologist, you  
24 probably are going to think it's a silly question, try  
25 and see if we can get an answer.



1                   why would **it** be important to distinguish  
2 an inflammatory process and neoplastic process in the  
3 pancreas?

4                   MISS HEIDLOFF:           objection. You can  
5 answer.

6 A.       **It** may influence as to what surgery the surgeon  
7 decides to perform. On a longer term basis you are  
8 giving a patient a diagnosis of malignancy.

9 Q.       In 1996 however you would have been aware that  
10 making a read in the area of the pancreas, being able to  
11 determine whether **it** was an inflammatory process versus  
12 neoplastic process may ultimately affect what surgery  
13 may be performed on the person, correct?

14 A.       **It** can.

15 Q.       Are you involved with doing intraoperative frozen  
16 section readings of the pancreas?

17 A.       Yes.

18 Q.       Worked with Dr. Guyton before?

19 A.       Yes.

20 Q.       Doctor, to the best of your ability based upon the  
21 record that you have in front of you, your recollection,  
22 did you consider that the read of the final nonfrozen  
23 section pathology in this case was a difficult read?

24 A.       Yes.

25 Q.       Once again, why was **it** a difficult read?

1 A. Same reasons as before.

2 Q. what overlapping histological features are you  
3 referring to that mimic one another in terms of  
4 inflammatory process and neoplastic process?

5 A. There may be active inflammation associated with  
6 both, disruption of glands, there is prominent fibrotic  
7 response, there is effacement of normal architecture.

8 Q. The features which you've outlined are consistent  
9 with either inflammatory process or a neoplastic  
10 process?

11 A. Yes.

12 Q. What is the definitive determination feature or  
13 factor in interpreting whether or not tissue taken from  
14 the pancreas is inflammatory or neoplastic?

15 A. You need to see malignant cells, usually you see  
16 malignant glands as well.

17 Q. could you describe for me, knowing I'm not a  
18 pathologist, as neither anyone on the injury will be,  
19 what a malignant cell would look like, I know that is  
20 difficult?

21 MISS HEIDLOFF: Again I'll object to  
22 this. It's a rather broad question.

23 MISS KOLIS: In this instance we  
24 can confine -- I think the record speaks for itself.

25 Dr. Shorten was able to look at these slides at a later

1 time, have a different interpretation than  
2 Dr. Mucitelli, therefore ■ would like to know what he  
3 believes he would have needed to see to determine that  
4 there were malignant cells contained within both the  
5 frozen section and the final section.

6 MISS HEIDLOFF: You want that  
7 answered as two separate questions?

8 MISS KOLIS: ■ don't remember how  
9 I asked it.

10 MISS HEIDLOFF: You said the frozen  
11 and final.

12 MISS KOLIS: I thought I asked  
13 him a general question in terms of -- let me withdraw,  
14 we'll go backwards.

15 Q. Doctor, in terms of the frozen section in this  
16 case, what would you have expected to see that would  
17 have definitively indicated to you that there was the  
18 presence of a malignant cell or cells?

19 A. ■ take it by your question you are looking at this  
20 as a black and white issue, in fact it isn't. It is  
21 somewhat subjective, it's accordation in the frozen  
22 section on this case. For example, there were cytologic  
23 features, the features of the individual cells that are  
24 very atypical, very worrisome. From there you branch.

25 The point is do I think this is atypical

1     because they are malignant, do I think this is atypical  
2     because they are reactive, or can I not tell.

3     Q.     That is actually the question I'm asking you. I  
4     assure you I don't think it's black and white but go  
5     ahead.

6     A.     I'm not sure what one feature I would see that  
7     would push me over the edge from calling this reactive  
8     to malignant.

9                     In some ways it's the overall picture,  
10    the gestalt of what you are looking at. I can tell you  
11    the features of malignancy, that doesn't necessarily  
12    make the diagnosis any easier because a lot of those  
13    features you see in this case and you see with reactive  
14    atypia as well.

15    Q.     Once again you are in the area of describing  
16    things that could be neoplastic, but could be merely  
17    reactive atypical cells; is that right?

18    A.     You are expected to see mitosis, you can see  
19    mitosis, reactive atypia, you expect to see large cells,  
20    you see those with either. Prominent nuclei, you can  
21    see that with both as well.

22    Q.     Given your testimony that the reason that it's  
23    important to be able to distinguish between an  
24    inflammatory process and neoplasm, how then do we come  
25    as pathologists now, you, how do you come as a

1 pathologist to make a definitive intra-operative frozen  
2 section read that something is in fact a carcinoma?

3 A. I'm not sure I understand your question.

4 Q. I think that I've heard what you said. You've  
5 given us that there are a lot of similarities between an  
6 inflammatory process and a malignant process. You just  
7 mentioned several things, mitosis, large cells,  
8 prominent nuclei you are saying could exist in both  
9 situations; did I understand that testimony' correctly?

10 A. Yes.

11 Q. If everything is similar between an inflammatory  
12 process and a carcinoma, how do you with confidence on  
13 an intra-operative frozen section call something a  
14 carcinoma?

15 A. Sometimes you don't.

16 Q. Doctor, I'm curious as to whether or not you've  
17 been supplied with a report of my expert, Dr. Sydney  
18 Finkelstein, University of Pittsburgh Medical Center?

19 A. I have not.

20 Q. If Dr. Finkelstein hypothetically wrote in his  
21 report and testifies at trial that the frozen section  
22 had variable components to it, should have been referred  
23 to defer and wait for final section, would you disagree  
24 with that?

25 MISS HEIDLOFF: objection. You can

1 answer that.

2 A. No, ■ would not.

3 Q. Dr. Shorten, you came to have an opportunity to  
4 read Mrs. Maynard's slides in this case prior to the  
5 time of there being any litigation; is that also an  
6 accurate statement?

7 A. Yes.

8 Q. Can you please enlighten me how you came to review  
9 Mrs. Maynard's slide?

10 A. As part of our quality assurance program we review  
11 slides *of* old cases. These slides are re-reviewed as  
12 part *of* that process.

13 Q. ■ that also just an ongoing established policy  
14 and procedure that you on a periodic basis take old  
15 slides to -- should ■ use reread, that's the word you  
16 would like me to use?

17 A. That **is** fine.

18 Q. Candidly I have to ask since I have a client to  
19 represent, did you select Dr. Mucitelli to review the  
20 quality of her work?

21 MISS HEIDLOFF: I'm going to object,  
22 this is part of the privileged quality assurance area.  
23 ■ believe that the peer review policies and hospital  
24 policies protect this type of information.

25 MISS KOLIS: Go ahead, say

1 anything else on the record.

2 MISS HEIDLOFF: Depends on your  
3 questions, we need to take it question by question.

4 MISS KOLIS: So that I can profer  
5 my response to it in the record in the event the court  
6 would need to resolve this issue, I absolutely recognize  
7 and respect and almost all the time stay away from peer  
8 review issues, that is customarily a hospital peer  
9 review.

10 I do not believe that the law supports  
11 that if an organization such as Dr. shorten's group  
12 takes it upon itself to be vigorous and aggressive on a  
13 periodic basis, review slides to insure the quality of  
14 their group, that would necessarily be protected.

15 MISS HEIDLOFF: I think if you ask  
16 the doctor about the general process you will find this  
17 is reported to the hospital as part of the hospital's  
18 program; am I correct?

19 THE WITNESS: That is correct.

20 MISS HEIDLOFF: It's not something  
21 his group alone has done, it's a report as part of the  
22 hospital process, in that sense I feel it's privileged.

23 MISS KOLIS: Thank you for  
24 prompting me, that will help me ask better foundational  
25 questions.

1 MISS CZERWINSKI: ■ would like my  
2 objection to be noted on the record as well.

3 Q. Do you do your periodic quality assurance reread  
4 of the slides at the request of the hospital?

5 A. No.

6 Q. This is something that your group has determined  
7 is in the best interest of your practice of medicine to  
8 do?

9 A. Yes. It is something we are obliged to do by the  
10 College of American Pathology standards, it's part of  
11 JCHO as well,

12 Q. Do they advise you to do it or do you need to do  
13 it to retain certification?

14 A. The later.

15 Q. So it's a standard within the certification of the  
16 specialty?

17 A. That is correct.

18 Q. Thank you, I appreciate that answer.

19 Back to my question: You're indicating,  
20 ■ assume I'm going to find out when ■ look at the  
21 documents provided by Miss Heidloff, you periodically do  
22 reread slides?

23 A. That is correct.

24 Q. Do you select them randomly?

25 A. Yes, we do.



1 Q. In this instance, just so I'm absolutely crystal  
2 clear, did you pull the slides of Dorothy Maynard on  
3 random review of slides, or was her selection due to the  
4 fact that Dr. Mucitelli had done the reads?

5 MISS HEIDLOFF: objection.

6 MISS CZERWINSKI: objection.

7 MISS HEIDLOFF: This gets to the  
8 heart of the privilege matter. ■ would instruct the  
9 witness not to answer.

10 MISS KOLIS: We will so certify  
11 the question to the court.

12 Doctor, at this time you do not have to  
13 answer that question, okay.

14 Q. So as part of your periodic and random, or  
15 periodic at this point at least process, the slides of  
16 Mrs. Maynard were read, is that a correct statement,  
17 late sometime in July of 1996?

18 A. Yes.

19 Q. Were you the reader of that slide originally -- in  
20 the late summer of 1996 when rereads were occurring were  
21 you the pathologist who initially reread Mrs. Maynard's  
22 slides?

23 A. Yes.

24 Q. Did you upon your examination of those slides  
25 disagree with the reading that had been submitted by

1 Dr. Mucitelli in this matter?

2 A. Yes.

3 MISS HEIDLOFF: Objection as to  
4 which reread you are talking about. There were two sets  
5 of slides, are you speaking of frozen slides, or the  
6 permanent slides?

7 Q. Did you disagree with her reading both on  
8 permanent and frozen section in this matter in terms of  
9 the existence of carcinoma, to clarify the question?

10 A. I would characterize my review of the frozen  
11 section as follows: I looked at this, said geez, this  
12 is really difficult. I looked at it, I can see myself  
13 calling this malignant. I said I'm glad I didn't have  
14 this case because I can see myself calling this  
15 malignant. Looking at the permanents, looking at the  
16 total picture, I don't think it was malignant. I think  
17 it's very atypical, but reactive. I can see myself  
18 making the same interpretation on the frozen section.

19 Q. could you see yourself making the same  
20 interpretation on the permanent section?

21 A. well apparently not since I looked at the  
22 permanent section and made a different interpretation.

23 Q. You also added, I want to make sure it wasn't  
24 extraneous language when you said looking at the frozen,  
25 permanent and whole picture, was there additional

1 medical information that persuaded you that it was not a  
2 carcinoma?

3 A. I overstated.

4 Q. I just wanted to be sure. Sometimes we do that,  
5 we say things, they have a meaning, sometimes they just  
6 don't.

7 It was solely based upon the evaluation  
8 of the frozen and permanent sections you were able to  
9 come to your opinion?

10 A. That is correct.

11 Q. In response to -- what is the process when you  
12 reread the slide or slides, come to a different  
13 conclusion than that of the original pathologist?

14 A. The slides are then shown around to other members  
15 of the department to see if there is a consensus. If  
16 there is a strong consensus one way or the other, that  
17 is generally the diagnosis that is adhered to. If there  
18 is not a consensus, or depending on the nature of the  
19 diagnosis, that may be changed. It is usually almost  
20 always sent out to an outside expert.

21 Q. Was there no consensus in the department about the  
22 read of these slides?

23 A. There was a consensus.

24 Q. You elected to send it to the Cleveland Clinic in  
25 any event, even though there was already consensus?

1 A. That is correct.

2 Q. Can you tell me why you do that?

3 A. We wanted to go the extra mile before we changed a  
4 diagnosis such as this, for obvious reasons.

5 Q. The obvious reasons being there would become the  
6 necessity to inform a patient that had not had cancer,  
7 had to undergo chemotherapy and radiation and perhaps a  
8 surgery that wasn't necessary?

9 MISS HEIDLOFF: objection.

10 MISS CZERWINSKI: objection.

11 A. The reason being that doing the honest and ethical  
12 thing at least by standard can initiate a cascade such  
13 as we're seeing here that is terrible for many people,  
14 including the patient.

15 Q. Did you know Dr. Petrus when you were at the  
16 clinic?

17 A. I know him well.

18 Q. You felt sending the slides to him you would get  
19 as you called it at this time the extra mile?

20 A. Yes, I do.

21 Q. I gather that before the patient was informed that  
22 you had in your possession Dr. Petrus' report?

23 A. Well, I didn't inform the patient. ■ would assume  
24 that was the sequence.

25 Q. Doctor, you've candidly, and ■ do appreciate it,

1     advised me you know Dr. Petrus quite well. along those  
2     lines, in addition to the formal report which he  
3     prepared and submitted on Cleveland clinic Foundation --  
4     I don't want to call **it** stationery -- their forms out of  
5     the pathology department, did you have a personal  
6     conversation with Dr. Petrus about this particular read?

7     a.     **I** don't recall.

8     Q.     Do you recall any indication **in** the final record  
9     that was submitted by Dr. Petrus that he **felt** that the  
10    intraoperative frozen section was difficult to read?  
11    would you like to see the report **if** you've not seen **it**  
12    for a while?

13    A.     I have seen **it**. You know in speaking to Bob after  
14    he made this diagnosis, I think **it** is my recollection  
15    that he also felt this was a very difficult frozen  
16    section,

17    Q.     So that I didn't mishear you, I originally asked  
18    you **if** you had a conversation with him, you couldn't  
19    recall. Now you are actually recalling you did have a  
20    conversation with him?

21    a.     **It** was my understanding you asked me **if** I had a  
22    conversation with him prior to reading the slides.

23    Q.     The question I asked was in addition to this  
24    report were you able to have a conversation with him  
25    after he completed his read?

1     A.     If that is your questions, yes, I did.

2     Q.     It's your recollection that he said it was a  
3     difficult read?

4     A.     I'm sure he did. It was a difficult read.

5     Q.     Nonetheless, on his evaluation he would not have  
6     called it a malignancy; would you agree with that?

7     A.     That's his interpretation.

8     Q.     As well as yours?

9     A.     That is correct.

10    Q.     Once again, simply to establish this for the  
11    record so hopefully I don't have to bother Dr. Petrus,  
12    his reading of the final permanent section was that it  
13    was not consistent with malignancy; would you agree with  
14    that?

15    A.     I would.

16    Q.     There is no indication in his report that he felt  
17    that the reading of the final permanent section was a  
18    difficult read; would you agree with that?

19    A.     Yes.

20    Q.     In addition to that, above and beyond it would  
21    appear, I may be misstating that, you initiated yet  
22    another review vis-a-vis the Mayo clinic; is that right?

23    A.     That's right.

24    Q.     Dr. Bahts, am I pronouncing that name too?

25    A.     Dr. Petrus and Dr. Bahts.

1 Q. Is Dr. Bahts someone who you trained with at the  
2 Cleveland Clinic?

3 A. No.

4 Q. Someone you know collegially through your  
5 professional organization?

6 A. I never met him.

7 Q. Why did you select him to do another review in  
8 this case?

9 A. You know, after I got the diagnosis from Bob  
10 Petrus, I asked him, I said I would like to have this  
11 seen by someone else, who could you recommend. We  
12 talked about different pathologists, he volunteered he  
13 thought Ken Bahts was a good pathologist, a good guy,  
14 would do a good job.

15 Q. So you sent the slides one more place for  
16 evaluation; that's accurate?

17 A. (Indicating affirmatively.)

18 Q. Unless I'm missing a document there is something I  
19 want to clarify. The only document that I've obtained  
20 through discovery is this letter dated August 28, 1996,  
21 sort of a conversational letter, not an actual read from  
22 the pathologist.

23 A. There is an official pathology report from the  
24 Mayo Clinic.

25 Q. Do you have it?

1 A. Sure.

2 Q. ■ for some reason have never seen a copy of it.

3 MISS HEIDLOFF: I haven't either.

4 MISS KOLIS: ■ would like to have  
5 one. I would ask perhaps we can borrow the copy machine  
6 of the Risk Management department so ■ could take the  
7 reading and forward it to my expert.

8 THE WITNESS: You can read it, I  
9 have another one.

10 MISS KOLIS: Thank you. To save  
11 time, you have this one while ■ read from this one for  
12 the moment, ■'■■ give you it back.

13 THE WITNESS: Sure.

14 Q. In the official pathology report from the Mayo  
15 clinic, for the record today is the first time I have  
16 seen it, would you agree with me that in the official  
17 interpretation that Dr. Bahts does not indicate that  
18 there is a malignancy?

19 A. Yes.

20 Q. However he did submit to you a letter where he  
21 indicates that ■ must admit there is a very good chance  
22 at the time of frozen section I would have also called  
23 the FS biopsy malignant. He did send you that letter,  
24 correct? why would he tell you in the letter, if you  
25 know -- let me back up.



1                               Did you have a conversation with  
2     Dr. Bahts?

3     A.       Read the last sentence.

4     Q.       So you did get to talk with him about this. In  
5     his letter he's telling you he might have called **it** a  
6     malignancy on frozen section, with benefit of final  
7     section it's clear that **it** is not?

8                               MISS HEIDLOFF:       objection.

9     Q.       That's your interpretation of your conversation  
10    with him?

11                              MISS HEIDLOFF:       objection.

12    A.       Yes.

13    Q.       Fair enough.

14                              Dr. shorten, I think you already  
15    indicated you did not attend the meeting where  
16    Mrs. Maynard was advised she did not have a cancer; is  
17    that correct?

18    A.       Correct.

19    Q.       Did you talk with Dr. Ramos and Dr. Fromm after  
20    you came to a definite conclusion that there was no  
21    cancer?

22    A.       ■ spoke with Dr. Ramos, ■ don't recall if ■ spoke  
23    with Dr. Fromm, although ■ very well might have.

24    Q.       Have you talked to Dr. Mucitelli at any time  
25    regarding this case, before today?

1       A.       No.

2                       MISS KOLIS:               Doctor, I don't have  
3 any further question for you. I'm going to have your  
4 testimony transcribed. You have the right to waive the  
5 reading or you may read your testimony, as you prefer.

6                       THE WITNESS:               I will read the  
7 testimony.

8                       MISS KOLIS:               In light of the fact  
9 the doctor indicated he will read it, I will waive the  
10 seven day reading requirement if I can secure a promise,  
11 maybe won't make a promise, admonition if you could  
12 please return it to me within 30 days, would that be  
13 humanly possible?

14                      THE WITNESS:               Yes.

15                               -----

16               (Deposition concluded; signature not waived.)

17                               -----

18

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# ERRATA SHEET

NOTATION

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I have read the foregoing transcript and  
the same is true and accurate.

CAROLYN CACHO, M.D.

1 The State of Ohio,

2 County of Cuyahoga. : CERTIFICATE:

3 ■ Constance campbell, Notary Public within and for  
4 the State of Ohio, do hereby certify that the within  
5 named witness, CAROLYN CACHO, M.D. was by me first duly  
6 sworn to testify the truth in the cause aforesaid; that  
7 the testimony then given was reduced by me to stenotypy  
8 in the presence of said witness, subsequently  
9 transcribed onto a computer under my direction, and that  
10 the foregoing is a true and correct transcript of the  
11 testimony so given as aforesaid.

12 I do further certify that this deposition was taken  
13 at the time and place as specified in the foregoing  
14 caption, and that I am not a relative, counsel or  
15 attorney of either party, or otherwise interested in the  
16 outcome of this action.

17 IN WITNESS WHEREOF, ■ have hereunto set my hand and  
18 affixed my seal of office at Cleveland, Ohio,  
19 this 24th day of September, 1999.

20

21

22 Constance Campbell, Stenographic Reporter,  
23 Notary Public/State of Ohio.

24 Commission expiration: January 14, 2003.

25

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