

MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFFS:

3 John G. Lancione, Esq.
4 Spangenberg, Shibley, Traci, Lancione & Liber
5 1900 East Ninth Street
6 Suite 2400
7 Cleveland, Ohio 44114
8 (216) 696-3232

9 ON BEHALF OF THE DEFENDANTS:

10 Gayle E. Arnold, Esq.
11 Jacobson, Maynard, Tuschman & Kalur Co., LPW
12 NBD Bank Building
13 175 South Third Street, Suite 880
14 Columbus, Ohio 43215-5142
15 (614) 224-1323

16 Also Present:

17 Leslie Frye
18 Bret Frye
19 Albert Burr Churchill Flemming II, MD

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MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

Monday, July 31, 1995

Afternoon Session

- - -

STIPULATIONS

It is stipulated by and between counsel for the respective parties herein. that the deposition of Curtis D. White, MD, a Defendant herein, called by the Plaintiffs for cross-examination under the statute, may be taken at this time and reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the witness may sign the transcript of his deposition before a Notary other than the Notary taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the Notary taking it.

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1 CURTIS D. WHITE, M.D.

2 of lawful age, being by me first duly sworn to testify
3 to the truth, the whole truth, and nothing but the
4 truth, as hereinafter certified, deposed and testified
5 as follows:

6 CROSS-EXAMINATION

7 BY MR. LANCIONE:

8 Q. Would you state your full name for the record,
9 please?

10 A. Curtis D. White, MD.

11 Q. Where do you presently reside?

12 A. Route 1, Box 31-1, Williamstown, West
13 Virginia.

14 Q. Dr. White, I'm going to ask you some
15 questions. **And** if any of my questions are confusing or
16 unclear to you, please let me know and I'll try to
17 clarify them. Is that okay?

18 A. Yes.

19 Q. Okay. Have you ever given a deposition
20 before?

21 A. Yes,

22 Q. On how many occasions?

23 A. I don't recall.

24 Q. More than once?

25 A. Yes.

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1 Q. On any of those occasions, were you testifying
2 in a medical malpractice case?

3 A, Yes.

4 Q. On any of those occasions, were you a
5 defendant in a medical malpractice case?

6 MR. ARNOLD: Objection.

7 THE WITNESS: Yes.

8 MR. ARNOLD:, Continuing objection.

9 BY MR. LANCIONE:

10 Q. On how many occasions?

11 A, Two,

12 Q. Were those here in Washington County?

13 A. I may have to rephrase an answer. I testified
14 in one as a defendant, not two; and it was not in
15 Washington County.

16 Q. Where was it?

17 A. It was in Wood County, West Virginia, as a
18 codefendant.

19 Q. Is that the only malpractice case that you've
20 personally been involved in?

21 MR. ARNOLD: Objection.

22 THE WITNESS: No.

23 BY MR. LANCIONE:

24 Q. Can you tell me the total number of
25 malpractice cases where you have been a defendant?

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1 MR. ARNOLD: Objection.

2 THE WITNESS: Two.

3 BY MR. LANCIONE:

4 Q. Did either of them involve the diagnosis and
5 treatment of cancer?

6 A, No,

7 Q. Tell me where you graduated from undergraduate
8 school and when,

9 A, West Virginia State College, Institute, West
10 Virginia, 1971.

11 Q. And after that, where did you continue with
12 your education?

13 A. West Virginia University Medical School.

14 Q. Years?

15 A. Graduated 1975, MD.

16 Q. After that, did you have further training?

17 A. Yes, I did.

18 Q. Where was that?

19 A. Charleston Area Medical Center, Charleston,
20 West Virginia, in the Department of Obstetrics and
21 Gynecology.

22 Q. When did that begin.?

23 A. 1975.

24 Q. And how long did that program last?

25 A, Until 1978.

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1 Q. Did you complete the program?
2 A. Yes, I did,
3 Q. Did you have any further training after that?
4 A. Yes, I did,
5 Q. Where was that?
6 A. University of Michigan.
7 Q. When did that begin?
8 A. 1982.
9 Q. What did you do between '78 and '82?
10 A. Private practice in obstetrics and gynecology.
11 Q. Where?
12 A. Charleston, West Virginia.
13 Q. Were you associated with anyone there?
14 A. Yes, I was.
15 Q. Who was that?
16 A. Patrick Williams, Doug Curnutte, Rodney
17 Williams, Bruce Barry.
18 Q. Was there a name of their practice other than
19 just the names of the physicians?
20 A. Yes. Gynecologic Associates, Incorporated,
21 Q. At what hospitals did you have privileges?
22 A. Charleston Area Medical Center and Thomas
23 Memorial Hospital.
24 Q. Did you practice general obstetrics and
25 gynecology?

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9 A. Yes, I did,

2 Q.. Did you remain there during that entire period
3 before you went to the University of Michigan?

4 A, From 1978 to 1982, yes.

5 Q. All right, And what was your program at
6 Michigan?

7 A, Gynecologic oncology.

8 Q. Who was in charge of that program?

9 A. George Morley, MD.

10 Q. And how long did that last?

91 A. Two years.

12 Q. Did you complete the program?

13 A. Yes, I did.

14 Q. And after that time, what did you do?

15 A. Came to Marietta, Ohio.

16 Q. And you have been practicing here ever since?

17 A. Since 1984, yes.

18 Q. And what hospitals do you have privileges at?

19 A. Marietta Memorial Hospital, Camden-Clark
20 Memorial, Saint Joseph Hospital. That's all.

21 Q. Have your hospital privileges ever been
22 limited, revoked or suspended?

23 A. Except for medical records, no. No, actually,
24 I have to retract that; I've never been suspended with
25 the medical records, either.

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1 Q. You've just been told that you had to get them
2 completed?

3 A. But I always got them done on time, yes,

4 Q. Okay. When did you first have occasion to see
5 Mrs. Leslie Frye as a patient?

6 A. June 30th, 1993.

7 Q. And do you happen to know how that happened,
8 that you saw her as a patient?

9 A. Yes, She was referred to me by Dr. Clark.

10 Q. Did you have any conversation with Dr. Clark
11 before seeing Mrs. Frye?

12 A. Not that I recall,

13 Q. Have you got your office records in front of
14 you, Doctor?

15 A. I do.

16 Q. Okay. Do you know whose writing appears in
17 the upper, left-hand margin where it says, "Complains
18 of lump left breast times four months"?

19 A. I don't know who that is, but I would assume
20 it's one of the medical assistants or nurses. It's not
21 mine.

22 Q. Is any of the writing on that page yours?

23 A. Yes, it is.

24 Q. Would that be all of the writing that appears
25 below the line, "Dr. Clark attempted aspiration"?

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1 A. Yes.

2 Q. Okay. Except for maybe the date?

3 A, Correct.

4 Q. 6-2-93.

5 A, Yes.

6 Q. Okay. I assume that when you saw the patient,
7 you had the history as it appears in that upper
8 left-hand corner,

9 A. Yes.

10 Q. Do you remember whether you received any
a1 information from anyone about the attempted aspiration
12 of this lump on the left breast?

13 A. Not that I recall.

14 Q. Did that carry any significance in connection
15 with your examination and arrival at a differential
16 diagnosis of this patient?

17 A. The information was important, if I'm
18 answering -- if I'm understanding your question
19 correctly, in making an overall judgment about the
20 patient.

21 Q. Why was it important?

22 A. I like to have as much information as possible
23 about any patient that I see.

24 Q. I assume that you've attempted and performed
25 aspirations of masses on patients' breasts, and you had

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1 before June 30th, 1993; is that a correct assumption?

2 A, Yes,

3 Q. And under what clinical circumstances would
4 you have done that?

5 A. Sometimes if I -- if I suspect that the lesion
6 is a cyst, I might attempt to aspirate it. Sometimes
7 we aspirate hematomas,

8 Q. And if you suspect something's a cyst and you
9 aspirate, are you able to tell whether or not it's a
10 cyst?

11 A. Sometimes, yes.

12 Q. And on occasions when you attempt to aspirate
13 a mass, are there circumstances where you don't get any
14 fluid out of there?

15 A. Yes,

16 Q. Is that ever helpful **in** determining a
17 diagnosis or a suspected diagnosis?

18 **A.** Yes.

19 Q. In what regard?

20 A, If you don't get fluid, it could mean that
21 there isn't any fluid or that you could have missed it,
22 that the fluid could be there but maybe it was missed.

23 Q. And if you determine that you did aspirate the
24 mass and you don't get fluid, what significance would
25 that be?

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1 A, You could have missed it, or else there's no
2 fluid there, I'm not tryng to be argumentative,
3 If -- If there's a mass there, it doesn't necessarily
4 mean that the fluid is in just one area, And so even
5 if you're right if the center of the mass, there can be
6 fluid there, but you may not get the fluid; if there
7 are several little small pockets of fluid, you may not
8 get any even though it's there.

9 Q. If you can't determine whether there is or is
10 not fluid **by** the aspiration procedure itself, is there
11 some way that you can make that determination by
12 further examinations or tests?

13 A. Yes.

14 Q. And what are they?

15 A, Sometimes if we don't get fluid back on a
16 young person, we'll follow the lesion to see if it goes
17 away.

18 Q. Anything else?

19 A. Sometimes, if you don't get fluid, you elect
20 to evaluate the mass with some type of imaging, or even
21 biopsy,

22 Q. And at the time you saw this patient in June
23 of 1993, you had no way of knowing, did you, whether or
24 not Dr. Clark was in the cyst, or whether or not
25 failure to obtain any fluid was an indication that

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1 there was or was not any fluid in this mass?

2 A. Correct.

3 Q. In addition to a palpation of the patient's
4 breast and identification of the mass, did you perform
5 any other studies or tests or diagnostic maneuvers?

6 A, Not on this visit, no.

7 Q. You determined that this was fibrocystic
8 disease?

9 A, It was my opinion at the time that it was
10 fibrocystie disease.

11 Q. And you elected to have her come back in two
12 months?

13 A. Yes.

14 Q. In your discussion with the patient, did you
15 offer her any alternative treatments or examinations or
16 evaluations?

17 A. Not that I recall.

18 Q. Would you turn to the next office visit,
19 Doctor.

20 Excuse me. Before we get back to that, did
21 any other doctor see and examine the patient during
22 that first visit?

23 A. To my knowledge, no.

24 Q. Did you discuss that visit with any other
25 physician?

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1 MR. ARNOLD: At what point in
2 time?

3 MR. LANCIONE: At the time of the
4 first visit.

5 THE WITNESS: Not to my knowledge.
6 BY MR. LANCIONE:

7 Q. Okay. On my page of your records from
8 September 1st, 1993 it appears to say, "breast exam",
9 and then scratched out and replaced with "annual exam."
10 Did you do that?

11 A. No,

12 Q. This was a follow-up for the breast mass that
13 you had identified on June 30th, wasn't it, as well as
14 an annual exam?

15 A. Again, I don't -- I don't mean to be
16 argumentative. All I can say, this is the visit dated
17 September the 1st following the visit on September the
18 30th -- I'm sorry, June the 30th. Excuse me.

19 And I apologize if I haven't answered your
20 question correctly. I'll be happy to try again if
21 you --

22 Q. Well, my point is that this was an examination
23 that had as at least one of its purposes the follow-up
24 to the mass that you had examined and that had been
25 identified by Dr. Clark when the patient was referred

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1 to you?

2 A, I'm sorry, Did you ask a question?

3 Q. Yes,

4 MR. LANCIONE: Would you read the
5 question back, please?

6 THE WITNESS: I believe you made a
a statement. My point is --

8 MR. LANCIONE: It's a question,
9 (Question read back as requested.)

10 THE WITNESS: If I understand what
11 you're asking, I'll try best to answer.

12 To the best of my recollection, I was not
13 present on this visit, September the 1st. It is the
14 follow-up visit following the June 30th exam. If I'm
15 answering that correctly.

16 BY MR. LANCIONE:

17 Q. Well, what I'm trying to get at is you
18 intended to follow this mass, did you not?

19 A. That's correct,

20 Q. Okay. And you do not recall seeing the
21 patient at the time of this visit; is that correct?

22 A. On September the 1st.

23 Q. September 1st.

24 A. That's correct.

25 Q. Were you told about this visit?

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1 A, I don't --

2 Q. And Which --

3 A. I feel certain that this visit has been
4 discussed, but I don't recall when,

5 Q. On the basis of what is reported in this
6 patient record, there was a change in the condition of
7 the left breast; is that correct?

8 MR. ARNOLD: Objection, Go ahead,

9 THE WITNESS: I don't know,

10 BY MR. LANCIONE:

11 Q. Well, now there are two distinct nodules at
12 2:00 o'clock. You don't know whether that's different
13 from one?

14 A. Well --

15 MR. ARNOLD: Objection. Go ahead.

16 THE WITNESS: Again, having not
17 been there, I can't say with certainty the difference.
18 There are two different people making two different
19 statements. In my note of June the 30th I don't -- I
20 don't refer to one lump, I refer to an area; and -- and
21 I think therein is just a difference in description.

22 BY MR. LANCIONE:

23 Q. Well, you did not describe two distinct
24 nodules and identify their size on June the 30th, did
25 you?

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1 A. Correct,

2 Q. So if I understand what your answer means,
3 you're saying that perhaps your examination was not
4 different than -- the condition which you found was not
5 different than the condition that the later examiner
6 found, but just two different physicians describing
7 what they believe to be the condition as they see it?

8 A. Well, it's difficult to say with certainty
9 what each person individually means. When I refer to a
10 small area, I don't imply to say that there's one
11 nodule; but, regretfully, I don't spell out in there
12 the details that is spelled out in the September 1st
13 exam by not giving a measurement. But I don't mean to
14 imply, when I say, "small area", that that suggests one
15 nodule, I don't mean to imply that.

16 Q. But you don't know what that implies, really,
17 because there's nothing to clarify it --

18 MR. ARNOLD: Objection.

19 BY MR. LANCIONE:

20 Q. -- is that right?

21 A. It's not as distinct as the September 1st
22 description.

23 Q. Do you know whether or not this patient was
24 discussed with you, and with particular reference to
25 the September 1st examination, at any time prior to

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1 January the 10th, 1994?

2 A, I don't recall,

3 Q. When is your next recollection ~~of~~ any contact
4 or discussion regarding this patient?

5 A. January 10th, 1994.

6 Q. And did you take a history from the patient at
7 that time?

8 A. I don't recall taking a history at that time,
9 It may have been done, I just don't recall,

10 Q. It's not recorded, in any event; is that
11 right?

12 A. Not that I see,

13 Q. And at that time was there a change in the
14 condition of the patient's left breast?

15 A. Let me make a correction here because there is
16 a history recorded on this particular sheet, "Patient
17 Health Update" and then "Since Your Last Visit Here",
18 dated 1-10-94.

19 Q. Okay. Can I take a look at that, please?

20 (Witness complies.)

21 - - -

22 Thereupon, White Deposition
23 Exhibit No. 1 was marked for
24 purposes of identification.

25 - - -

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4 BY MR. LANCIONE:

2 Q. Exhibit 4 for identification, Dr. White, is a
3 Patient Health Update dated 1-10-94. And was this some
4 form that was given to the patient to fill out by one
5 of your office personnel?

6 A. Yes.

7 Q. Okay. Is there any other history that you
8 have in your file that relates to that visit?

9 A. Not that I'm aware of. None that I see. I'll
10 leaf through here, but I don't see anything else,

11 Q. Okay, Well, maybe we can take a look at it
12 when we're finished, see if there's anything that we're
13 missing.

14 And on that date, January 10th, 1993 -- 1994,
15 you examined her left breast.

16 A. Yes.

17 Q. And found a 3.8-by-5-centimeter mass; is that
18 correct?

19 A. Yes.

20 Q. And you wrote down here "suspicious"; is that
21 true?

22 A. Yes.

23 Q. This was a change from the last examination
24 you performed on June 30th, 1993?

25 A. Yes.

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1 Q. And do you have any further description of the
2 notation on the axillary node? Was it just one node,
3 or a general enlargement in the area?

4 A, My writing -- It is my writing, says, "Has
5 suspicious enlarged nonfixed left axillary nodes",
6 looks plural.

7 Q. Okay. And what was your plan or your
8 recommendation to the patient at that time?

9 A. To do a needle aspirate of the suspicious
10 mass.

11 Q. Did you do that?

12 A, Yes, we did,

13 Q. What were the results?

14 A, It was read as atypical.

15 Q. And did those results come back on the 14th of
16 January, or before?

17 A. I'll have to look. My note is written on the
18 4th -- 14th, I'm sorry. But actual date of the
19 report -- You may have it more quickly available than
20 me. I can't find it at the moment.

21 Q. Would that have been done in a laboratory?

22 A. It would have been done at the Marietta
23 Memorial Hospital laboratory, yes.

24 Here it is. This is date of collection
25 January 10th, date reported January 13th, and it's a

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1 cytology report. I probably have it here, too, I just
2 haven't found it,

3 Do you have a copy of that?

4 Q. I'm sure I do, I just don't have it in front
5 of me here,

6 A. I've got the original right here,

7 Q. Did you reach, at some point in time, a
8 diagnosis of the nature and histology of the mass?

9 A. Yes, The patient had a -- Mrs. Frye had a
10 biopsy on the 17th of January.

11 Q. What was the diagnosis?

12 A. Carcinoma of the breast, specifically
13 mucin-producing, infiltrating, ductile carcinoma.

14 Q. In your examination on the 30th of June 1993,
15 did you note that the patient had an inverted left
16 nipple?

17 A. I did not.

18 Q. Is that a significant finding in the
19 examination of a patient who has a mass on her breast?

20 MR. ARNOLD: Note an objection.
21 Go ahead.

22 THE WITNESS: It's a finding worth
23 noting if it -- if it exists, yes.

24 BY MR. LANCIONE:

25 Q. Do you know whether it existed or not?

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1 A, I don't,

2 Q. Are you suggesting that because you didn't
3 note it, it was not a clinical finding that was
4 observable?

5 A. No.

6 Q. Do you believe that the patient, on June the
7 30th, 1993, had a cancer in that mass that was
8 palpated?

9 MR. ARNOLD: Objection.

10 THE WITNESS: This is a difficult
11 question to answer. I think that knowing what we
12 eventually knew in January, that the patient -- January
13 of '94, that Mrs. Frye ultimately did have a cancer in
14 that area of the breast, one can speculate that it was
15 there prior to January. The lesion that I felt in
E6 June, I can't tell you what it was, except that to me
17 at the time, it felt not suspicious.

18 BY MR. LANCIONE:

19 Q. Do you believe that, based upon reasonable
20 medical probability, that she had cancer of the left
21 breast on June on 30th, 1993?

22 MR. ARNOLD: Objection.

23 THE WITNESS: Yes.

24 BY MR. LANCIONE:

25 Q. Do cancers such as Mrs. Frye had grow at a

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1 constant rate, or does their growth and aggressiveness
2 and virulence change?

3 MR. ARNOLD: Note an objection,

4 THE WITNESS: They change,

5 I'm sorry, Did you hear the answer?

6 THE NOTARY: Yes. "They change."

7 BY MR. LANCIONE:

8 Q. In your records on the 10th of January, you
9 made an addendum -- I think it was on the 18th, wasn't
10 it?

11 A. Yes.

12 Q. -- that the patient had reported that the mass
13 seemed to grow in the most recent past, or some
14 language to that effect; is that right?

15 A. Yes.

16 Q. Did you learn that on the 10th and write it
17 down on the 14th because you remembered it then, or did
18 you find it out later and make an addendum to the
19 records? It doesn't tell me which of those two things
20 or some other thing happened there.

21 A. I can say with certainty I made the addendum
22 on the 14th of January. As to when I became aware of
23 that knowledge, I may not be certain. It could have
24 been on the January 10th visit, or it could have been
25 in my conversation with Mrs. Frye about the results of

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1 the needle biopsy and then suggesting a biopsy.

2 Q. When there is a clinical change in a breast
3 mass that rapidly begins to grow, is that a sign that
4 the disease is becoming more aggressive?

5 MR. ARNOLD: Objection, Go ahead,

6 THE WITNESS: Probably so.

7 (Mrs. Frye exits the conference room.)

8 BY MR. LANCIONE:

9 Q. Did your differential diagnosis ever contain
10 the feature of ruling out a malignancy prior to January
11 10th, 1994?

12 A. Yes,

13 Q. And would that be -- Well, it would have to be
14 on the 30th of June when you decided to follow the
15 mass; is that it?

16 A. Yes.

17 Q. And the reason for that was to rule out a
18 malignancy?

19 A. Yes.

20 MR. LANCIONE: Okay. That's all I
21 have.

22 MR. ARNOLD: He'll read if it's
23 transcribed.

24 (Signature not waived.)

25 - - -

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1 (Thereupon, the deposition was
2 concluded at 3:00 o'clock p.m.
3 on Monday, July 31, 1995.)
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A F F I D A V I T

- - -

STATE GF _____,)
COUNTY OF _____,) SS:

Curtis D. White, MD, having been duly sworn
and cautioned, deposes and says that:

I have read the transcript **of** my deposition
taken on Monday, **July** 31, 1995, and made all necessary
changes and/or corrections as noted on the attached
correction sheet, if any,

Curtis D. White, MD

Sworn to before me and subscribed in **my**
presence this _____ day of _____, 19____.

Notary Public

My Commission Expires: _____

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I N D E X

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| WITNESS | PAGE |
|-----------------------------------|------|
| Curtis D. White, MD | |
| Cross-examination by Mr. Lancione | 4 |

- - -

| EXHIBITS | MARRED |
|--------------------------------------|--------|
| White Deposition Exhibit No. 1 - | |
| 1-10-94 Patient Health Update | 18 |
| Since Your Last Visit Here | |

- - -

C E R T I F I C A T E

- - -

The State of Ohio,)
County of Licking,) SS:

I, Linda D. Riffle, RMR, and Notary Public
within and for the State of Ohio, hereby certify that
the foregoing is a true and accurate transcript of the
deposition testimony, taken under oath on the date
hereinbefore set forth, of

Curtis D. White, MD

I further certify that I am neither attorney or
counsel for, nor related to or employed by any of the
parties to the action in which the deposition **was**
taken, and further that I am not a relative or employee
of any attorney or counsel employed in this case, nor
am I financially interested in the action.

Linda D. Riffle
Linda D. Riffle, RMR, and
Notary Public in and for
the State of Ohio.

My Commission expires:
July 25, 1996.

- - -