IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

CHERYL FIORELLI :
vs. :
NEVYAS EYE ASSOCIATES, P.C., :
NEVYAS EYE ASSOCIATES and :
DELAWARE VALLEY LASER SURGERY :
INSTITUTE, HERBERT J. NEVYAS, :
M.D., and ANITA NEVYAS-WALLACE,: :
M.D. :

Oral deposition of HERBERT NEVYAS, M.D., taken at the law offices of Goldfein & Homer, 1600 Market Street, 33rd Floor, Philadelphia, PA, on Wednesday, December 13, 2000, beginning at approximately 10:30 a.m., before Donna M. Simpkins, Registered Professional Reporter, Notary Public.

APPEARANCES:

LAW OFFICES OF SAMUEL F. KAFRISSEN, P.C.
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I-N-D-E-X

(It is stipulated by and among counsel for the respective parties that sealing, certification and filing are waived, and that all objections, except as to the form of the question, are reserved to the time of trial.)

HERBERT NEVYAS, M.D., after having been duly sworn, was examined and testified as follows:

BY MR. KAFRISSEN:

Q. Doctor Nevyas, we have just met a moment ago. My name's Sam Kafrissen and I represent the Plaintiff here, Cheryl Fiorelli, and we're here to take your deposition today. Have you ever had your deposition taken before?

A. Yes.

Q. And on one occasion; more than one occasion?

A. Yes, more.

Q. More than one, okay. I want to, just to begin, just give you a few brief instructions that you've probably heard in the past in other depositions but that will hopefully make things go a little bit faster or smoother today.

Your testimony today is under oath so the court reporter administered the oath, same oath you would swear in a court of law. Everything that everyone says is being taken down by the court reporter so I'm going to ask you to keep your answers verbal because the court reporter can't take nonverbal responses down, and I'm going to ask that you wait until I finish my question until you begin your answer. I will try to wait for you to finish your answer before I begin my next question.

I'm going to ask that we speak one person at a time because the court reporter only takes down one voice at a time.

And you're here with your attorney today so if you have any questions for your attorney, you would like to take a break or take a break for any reason, just say so and we'll take a break.

If you don't understand one of my questions, say so and I will try to clarify it for you. If -- with my questions, if it's a word, a phrase, the whole question, whatever it is that you don't understand, just say so, and especially here because we're dealing with medical terms, sometimes an attorney has a different understanding than the doctor does, and I just want to make sure for the record that we're on the same page when

it comes to that.

Do you understand those instructions?

A. Yes.

Q. Okay.

MS. POST: Make sure you keep your voice up so the court reporter can hear you.

THE WITNESS: Right.

BY MR. KAFRISSEN:

Q. Now, we've been provided with your C.V. today, which I'd like to mark as Nevyas 1, and the C.V. that you've provided, Doctor, is this a current C.V.?

A. I am not sure. I don't know how current it is.

MS. POST: The C.V. would reflect your education and training. It's a question of whether the publications are current.

THE WITNESS: Publications and hospital staff appointments and the academic appointments, I'm not sure that they're all current.

MS. POST: Why don't we first look over -- I don't mean to take over. Why don't we first look at the hospital appointments and go in that order, and if there are any changes to hospital appointments, tell Mr. Kafrissen.

THE WITNESS: Okay. Yes. I'm not sure what my status is -- they've changed the status of people who don't operate there at Wills and I do not believe that I am on -- in the same capacity. I'm not sure what it was. There was some kind of courtesy staff and I'm not sure what my current capacity is because I haven't operated there in many years.

BY MR. KAFRISSEN:

Q. Do you have privileges to operate at Wills Eye at present?

A. I have privileges to operate at the Wills Eye Surgical Center in New Jersey, which I had applied for. I do not know whether my privileges are active or not at Wills right now. I'm pretty sure I do have privileges to operate but I'm not positive because I haven't operated there in many years.

Q. Okay.

A. West Park Hospital is not in existence anymore. Oh, I'm sorry, it does give a limited, the hospital appointments here. Let me look at the open ones. Yeah, I'm not sure what my courtesy staff or what my designation is at Wills presently.

The City Avenue Hospital is no longer

open so I'm not -- that's a moot point, my appointment there. That's all. I have privileges at Presbyterian and Medical College of Pennsylvania.

Q. Okay. And you had also mentioned faculty appointments.

A. Yes. I'm -- I do not know what my current faculty appointment is at the University of Pennsylvania. I may not have one because, again, I haven't been teaching there in a good while, and my faculty appointment is at Medical College of Pennsylvania, where I am a full professor.

Q. Okay.

A. And at Jefferson, again, that was through the Wills affiliation that I had a faculty appointment. I've never been told that I don't have one, but I haven't done teaching there in many years so I'm not sure.

Q. Okay. Is there anything else within the faculty or the hospital appointments that you're aware of?

A. Not that I can think of.

Q. And then I think you said there may be some publications that are more current.

A. I'm not sure. I'd have to check at this point. Let's see. I may have -- there may be some other

publications where my name has been involved where I was not the primary author, and I'm not sure of that right now.

Q. Could you describe for me what your current practice is like.

A. My current practice is basically surgical opthalmology.

Q. Okay. And was your practice any different in 1997?

A. No.

Q. And when you say surgical opthalmology, can you just describe for me what you mean by that.

A. Well, I primarily do anterior segment surgery; that is, surgery of the anterior segment of the eye. That involves cataract surgery, which is most of the surgery that I do that is not nonrefractive; corneal transplantation and other minor procedures, and I do refractive surgery which involves refractive lensectomy, Lasik, laser thermokeratoplasty, astigmatic keratotomy, radial keratotomy and astigmatic -- did I say refractive lensectomy?

Q. Yes.

A. Intac placement, I-N-T-A-C. Any other procedures that might come up that are refractive. There

are others -- I can't think of any -- modifications of what I mentioned but that's the majority.

Q. In 1997, were you practicing full-time?

A. Yes.

Q. Now, do you have your complete file here with you today?

A. Only on the Fiorelli case?

Q. Yes.

A. Yes.

Q. And can I take a look at that.

MS. POST: Off the record.

(Discussion held off the record.)

BY MR. KAFRISSEN:

Q. Let me ask you this, Doctor. The records that you have here, the copy of Cheryl Fiorelli's records, does that include the Laser Institute records as well?

A. Yes.

Q. And are those the records that were produced --

MS. POST: At what point?

MR. KAFRISSEN: Well, during discovery.

MS. POST: Yes. Yes.

MR. KAFRISSEN: What I'm asking is do I have a complete copy of this so I don't have to go through all these pages?

MS. POST: I believe you do. What I have produced to you are the office records from Alternative Nevyas Eye Associates as well as the Delaware Valley Laser Surgery Institute records. They're two separate charts which have been provided to you.

MR. KAFRISSEN: Okay.

MS. POST: Okay?

MR. KAFRISSEN: Okay.

BY MR. KAFRISSEN:

Q. The documents -- is there anything that you're aware of that is missing from the file that you brought with you today?

MS. POST: Meaning are there other records?

MR. KAFRISSEN: Other records.

MS. POST: Other than --

THE WITNESS: I didn't bring her financial records.

BY MR. KAFRISSEN:

Q. And the financial records would be the billing records?

A. The billing records.

Q. Would the billing records be from the practice

or from the surgical institute?

A. Both.

Q. Both, okay.

Have you ever been asked to review a potential medical malpractice case?

A. Yes.

Q. Have you been asked on one occasion or more than one occasion?

A. More.

Q. Have you ever agreed to serve as an expert in a malpractice case?

A. Yes, I have.

Q. Can you estimate for me on how many occasions?

A. Many years, 50, maybe 100 over quite a few years.

Q. Have those cases been inside Philadelphia County or outside of the County?

A. Both.

Q. Within the last, say, five years, have you testified within Philadelphia County?

A. By "testified," do you mean in court?

Q. In court.

A. I haven't -- I've only -- I've never testified in Philadelphia County.

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Q. Okay. Have you ever testified on a videotaped deposition for a Philadelphia County case?
A. I think so. I can't remember specifically where the cases originated but I've been on video depositions on a number of occasions.
Q. Okay. Have the cases that you've served on been -- what side have you worked on?
A. Both.
Q. Okay. And of the cases that you've served on, do you recall the names of any of the attorneys that you've worked with?
MS. POST: Sam, the only reason I want to limit this is there may be situations where Doctor Nevyas has been retained as an expert but not anticipated to testify at trial, which, obviously, would not be discoverable in any situation. I don't know that he knows the difference, so if he knows -- if we can limit it to those cases where he's actually been involved --
MR. KAFRISSEN: Where he's already testified.
MS. POST: -- where he's already testified, then I don't have a problem with

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it.
MR. KAFRISSEN: Okay.
BY MR. KAFRISSEN:
Q. Do you understand the distinction?
A. No.
MS. POST: That's the problem. I just don't want to interfere with his contractural relationship with someone in a situation where he's not called to testify.
MR. KAFRISSEN: I can just change the question.
BY MR. KAFRISSEN:
Q. What I'm looking for are cases that you've actually either testified on videotape or in court live, if you know any of the attorneys that you've worked with in that capacity.
A. In the past, I have -- I don't remember very many of the attorney's names. One was David Shrager I have testified for him, but that's been a long time ago. I'm not very good with remembering the names of attorneys. I happen to know him personally so I remembered his name. I can't tell you others. I don't remember them.
Q. Okay. Have you ever been involved as a

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defendant in a medical negligence case other than this one?
A. Yes.
Q. On how many occasions?
A. I'm not sure what you mean by defendant. I have one other case at present where I am being sued, and I've had three or four, perhaps, in the past where I was sued but they never got so far as to a deposition.
Q. Okay. The case -- there's one other case that's currently active?
A. That's right.
Q. And do you know where that case is pending?
A. In Philadelphia, I think, yes.
Q. Rather than get into that case, because it's probably a lot of other issues involved with it, does that involve anything to do with Lasik or lens replacement surgery?
A. Yes.
Q. Do you know the name of the person bringing that case?
A. Yes.
Q. What's that?
A. Dominic Morgan.
Q. Have you been deposed in that case?

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A. No.
Q. Do you know the name of the firm representing you in that case?
A. I don't remember it. Oh, I'm sorry. Representing me?
Q. Yes.
A. I forget.
Q. Okay. For today's deposition, did you review any materials?
A. Yes.
Q. And can you tell me what you reviewed.
A. I looked over the -- very briefly, I looked over the records. I didn't go through them all on this case.
Q. Did you review any articles, journals or any books that dealt with any of the issues involved in this case?
A. No.
Q. Did you do any research, outside of looking in the records, into any of the issues involved in this case?
A. No.
Q. Did you speak with any colleagues concerning any of the issues involved in this case?

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A. No.
Q. Did you speak with Anita Nevyas-Wallace about this case?
A. No.
Q. And my understanding, from Anita's deposition, is that Anita is your daughter?
A. Anita's my daughter. Other than to say it's a pity that this woman has resorted to lawsuits, that's all. We haven't discussed the facts of the case at all.
Q. Okay. Did you discuss Anita's testimony, Anita's deposition testimony prior to coming here today?
A. Not at all.
MS. POST: With Anita?
MR. KAFRISSEN: With Anita.
THE WITNESS: No.
BY MR. KAFRISSEN:
Q. Did you read Anita's deposition transcript?
A. No.
Q. Okay. Other than your attorney, have you spoken to anyone about this case and your testimony here today?
A. No.
Q. What I'd like to do is get an idea -- and I looked through -- because we had been provided a C.V.

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before about -- if you could describe for me your experience with lens replacement surgery, rather than having me go and say: What's this article about; what's that one about.
MS. POST: You mixed metaphors. Do you want to know if his C.V. contains any articles or anything about lens replacement --
MR. KAFRISSEN: No.
MS. POST: -- or do you want to talk about as of '97, what his experience was with lens replacement?
MR. KAFRISSEN: Right.
MS. POST: Because they were two questions.
MR. KAFRISSEN: Okay. I would like the doctor just to give me, if you can, to kind of summarize for me his experience with lens replacement surgery.
MS. POST: As of 1997?
MR. KAFRISSEN: As of 1997.
THE WITNESS: Well, I've been performing cataract surgery since about 1963 or so, and lens replacement surgery is cataract surgery except it's easier and safer because you don't

have to deal with a hard cataract. You deal with a very soft lens, which can essentially usually just be aspirated without having to break it up by ultrasound, and I've done a great many cataracts over the years. I guess maybe 30,000 or so, probably more than anybody else in the Delaware Valley. I've lectured on cataract. I've devised instrumentation for lens surgery, cataract surgery -- they're the same thing -- and I have been very active in it. That's what most of my work has been over the years.

BY MR. KAFRISSEN:

Q. Okay. Can you describe for me your training in performing the Lasik procedure.

A. The training for the Lasik procedure, I guess, would have to start with training in automated lamellar keratoplasty, or ALK. Since that operation which we began doing -- I'm not sure of the date, I think in the early '90s, '91 or so or '92, perhaps, is the same as Lasik except that a mechanical device is used for removing the portion of the cornea that gives the power change in the cornea rather than a laser, and I took a mini fellowship with Doctor Steven Slade, S-L-A-D-E. I

attended lectures by Doctor Louis Ruiz, R-U-I-Z, and he is essentially the inventor of the procedure, and I attended many medical meetings involving ALK. I trained in Lasik by attending many fellowships with several different doctors. I spent time with Doctor Delaney in Phoenix and with Doctor Hollace in Columbia – Columbus, Georgia, Columbus, Georgia. And I've attended many meetings and worked with my colleagues on it, and I've done a lot of reading and work in the field.

The Lasik procedure and the ALK procedure are the same except for the use of the laser to remove the tissue that makes the power difference. Actually, Lasik is a much easier operation than ALK.

Q. When did you begin doing ALK on your own?

A. I would guess around '91 or '92, but I'm not sure.

Q. Do you have any subspecialty within opthalmology?

A. I would consider my subspecialty cataract and refractive.

Q. Okay. So from the early '90s through -- was there -- when did you start to perform Lasik?

MS. POST: When did he start the training or when did he start to do it on his

own?

MR. KAFRISSEN: No. When did he start to perform it himself?

THE WITNESS: I believe it was in 1996, but I may have that note in my bag, if you want me to review it. I wrote down a few dates to remind myself of dates. If you want, I'll check it.

MR. KAFRISSEN: Okay.

MS. POST: Why don't you do that.

THE WITNESS: December of '95 I started using the laser.

BY MR. KAFRISSEN:

Q. Now, of the Lasik procedures, from my review of the records, it looked like you had assisted in some of the Lasik procedures and the enhancement procedures that were done on Cheryl Fiorelli but had not been the primary surgeon; is that right?

A. Yes.

Q. And is that correct for all -- were there any Lasik procedures where you were the primary surgeon with regard to Cheryl Fiorelli?

A. No.

Q. Okay. With regard to the ALK procedure that

you describe, which is kind of a precursor, it sounded like, to Lasik, was corneal thickness ever a concern in performing an ALK procedure?

A. Sure. Concern, yes.

Q. Can you describe for me what significance, if any, corneal thickness had to the ALK procedure.

A. If the cornea were extremely thin, one might get progressive change and progressive hyperopia after surgery. There were two ALK procedures: one for myopia, which is the same as Lasik, essentially, except that the second cut is made with the microkeratome to remove tissue; and the other procedure was a microkeratome procedure for hyperopia where you make a very deep cut; and the thickness of the cornea is important there because you can only take a certain percentage of the cornea for the deep cut without getting progressive hyperopia. This really doesn't apply to the Lasik procedure, but we have to be careful of that because the principle of the hyperoptic ALK procedure is that of a controlled ectasia of the cornea, and to control it you have to have the right depth.

Q. Now, did ALK continue in use after Lasik came to be?

A. By some people, until they got lasers. I don't

know of anyone who would have continued using ALK if he had the ability to use the laser. It's more accurate.

Q. Now, during the Lasik training, can you tell me what, if anything, you learned about the importance of corneal thickness in the Lasik procedure.

A. Nothing different from ALK. The corneal thickness, again, is measured so that one doesn't remove so much cornea that one could get progressive hyperopia or ectasia.

Q. Okay. When you perform ALK, would you measure corneal thickness prior to performing the procedure?

A. I believe so. I don't remember exactly whether we were measuring it -- or how we were measuring it. We were estimating it, certainly, at the slitlamp. I do not remember when we started using ultrasonic measurements of corneal thickness. We've always had optical measurements of corneal thickness.

Q. When you began performing the Lasik procedure in December of 1995, were you making either ultrasonic or optical measurements of corneal thickness prior to performing a Lasik procedure?

A. I do not recall whether that was being done or whether it was being estimated on a slitlamp examination. I'm not sure. I'd have to check the records. I don't

know.

Q. Okay. The considerations regarding corneal thickness with ALK, would those have been considerations that you were aware of between, say, '92 and '95?

A. I'm sorry. What was that question?

Q. You had mentioned that corneal thickness would be a consideration in performing ALK; correct?

A. Yes.

Q. And what I'm asking you is was the consideration of corneal thickness something that you were aware of between 1992 and 1995 when you were performing those ALK procedures?

A. It's something we became aware of when we learned that corneal thickness was important. When we started doing the procedure, I don't think we were as aware of it, but as cases were reported in some patients who had very thin corneas developing ectasia, we became more aware of it. I really don't remember when ultrasonic pictometry became available, and as soon as it did, we got the instrument and started using it.

Q. Do you know if that was available prior to March of 1997?

MS. NEWMAN: In his office or anyplace?

MR. KAFRISSEN: At all.

THE WITNESS: I'm not sure.
BY MR. KAFRISSEN:
Q. Do you know if it was in your office prior to --
A. As I said, I don't remember exactly when we got the instrument.
Q. Okay. When you say -- you had just mentioned that in certain patients it had been reported, issues of thickness or people with thin corneas, issues that had arisen when they went through this procedure, the ALK procedure. Do you recall when, approximately, those articles started coming out?
A. Not exactly. I couldn't name you a date.
Q. No. Without naming a date, but would it be before the Lasik surgery started or after the Lasik started?
MS. POST: Before he started doing Lasik?
MR. KAFRISSEN: Right.
THE WITNESS: Probably after but, again, I'm not sure. If one searches the literature, one might find articles many years ago that discuss thickness. I'm not sure.
BY MR. KAFRISSEN:

Q. In March of 1997, am I correct that both you and Anita Nevyas-Wallace were employees of -- who was your employer?
A. The corporation, Nevyas Eye Associates.
Q. At the time of the surgeries in 1997 and 1998 on Cheryl Fiorelli, were you continuously employed by Nevyas Eye Associates?
A. Yes.
Q. So that anything you were doing was on behalf of Nevyas Eye Associates?
A. Yes.
Q. With regard to the surgery and the treatment of Cheryl Fiorelli.
A. I'm not sure I understand the question, but, yes, that was the employment situation. It was on behalf of myself and my practice.
Q. Okay.
A. I own Nevyas Eye Associates.
Q. And between 1997 and 1998, was Anita Nevyas-Wallace also an employee continuously for Nevyas Eye Associates?
A. Yes.
Q. Can you tell me about how thick a normal cornea is?

A. About 500 microns. That's half a millimeter.
Q. And how thick is a -- is there a normal thickness of a Lasik flap?
A. Yes.
Q. And how thick is a normal Lasik flap?
A. Usually about 160 microns. That's what we set it for.
Q. And would you agree with me that the Lasik procedure reduces the thickness of the cornea?
A. Sure.
Q. Were you aware, as of 1997, that the Lasik procedure reduced the thickness of the cornea?
A. Yes.
Q. And would you also agree that the ALK procedure, which preceded Lasik, reduced the thickness of the cornea as part of the procedure?
A. The central thickness in the zone that was operated. It reduces only the central thickness, both of them.
Q. Okay. The thickness of the normal cornea, when you say 500 microns, is that what you're talking about, the central thickness?
A. Yes. I'm talking about the center. It gets thicker in the periphery.

Q. To correct nearsightedness, as in Cheryl Fiorelli, would you be flattening or rounding the central cornea?
MS. POST: Objection to form. You can answer.
THE WITNESS: Flattening.
BY MR. KAFRISSEN:
Q. In 1997, was there any way to measure the remaining -- the thickness of the remaining cornea?
A. Yes.
MS. POST: After surgery? Is that what you're asking?
MR. KAFRISSEN: After surgery,
THE WITNESS: Yes.
BY MR. KAFRISSEN:
Q. And can you tell me how that was done.
A. Ultrasonic picometry (ph). I'm sure we had the ultrasonic picometer sometime around there. In '97 I know we had it because I see it on the records now that I've looked.
Q. And can you tell me what significance is there, if any, of the post-surgical corneal thickness.
A. Well, most people feel that one should leave 200 to 250 microns of corneal base beyond the ablation in

order not to run the risk of having ectasia post-operatively, and the postoperative thickness would tell you the full thickness of the cornea. Assuming the flap is 160 microns, if you subtract that from the postoperative thickness, you would have the thickness of the base that was left.
Q. Was corneal thickness a factor in planning the Lasik surgery prior to March of 1997?
A. I really don't know if it was a factor or not. Obviously, the gross appearance of the cornea was. I do not have in the record here -- perhaps you have it; I'm not sure, since I didn't see the patient initially --
Q. Right.
A. -- and I have not gone over the records in great detail, I do not know whether corneal thickness was measured ultrasonically prior, but I do see on this chart, as of July of '97, corneal thickness was measured ultra- sonically, and the corneas were actually thicker than normal and far thicker than needed for the amount of Lasik that she had, if that's what you're asking.
Q. Okay. Well, I did ask that, but I also -- I guess what I was asking is not necessarily with relation to Cheryl Fiorelli, but, in general, as of 1997 -- let's say the beginning of 1997, when a surgeon is planning a

procedure, a Lasik procedure, is corneal thickness -- was corneal thickness a factor to be considered?
MS. POST: The only reason I'm objecting is because you're venturing into the realm of expert opinion, and he's not here to give opinions as to anything that he was not involved in, and what you're leading up to is Doctor Nevyas giving an opinion, basically, about what was done, and I don't want to go in there. If you're talking about his general knowledge as to whether he did it, that's fine, but if you're asking is it done by other people, then that's where I don't think it's an appropriate question.
MR. KAFRISSEN: Well, actually, I am asking about his general knowledge, but I still think it is an appropriate question because he assisted in the Lasik procedure of 3/20/97.
MS. NEWMAN: But that's not doing a pre-operative study.
MS. POST: That's not dealing with the preoperative issues, and he was not involved in the preoperative issues.

MR. KAFRISSEN: Well, we haven't got to that yet.
MS. POST: He just said that, so I think the --
MR. KAFRISSEN: What I'm asking is his general knowledge.
MS. POST: That wasn't your question. Your question was do people or -- I'm paraphrasing, but does one, in evaluating a patient for Lasik, measure corneal thickness, and I think that is venturing into the expert issue. If you want to know whether Doctor Nevyas, in 1997, whether that was his practice to do so, I'll allow him to answer that, but whether it's should someone else do it is not an appropriate question, again, considering the fact that he's already testified that he wasn't involved.
MS. NEWMAN: And I would object to the question was it his practice in 1997 because it's irrelevant to this case.
MR. KAFRISSEN: Okay.
BY MR. KAFRISSEN:
Q. As of January of 1997, when you were planning a

Lasik procedure, how, if at all, did you consider corneal thickness?
MS. NEWMAN: Objection.
MS. POST: You can answer.
THE WITNESS: I don't recall specifically in January of 1997 what we did, but, obviously, we examined the patient and if the cornea looked adequately thick, we weren't overly concerned about it. As soon as we had the means to measure ultrasonically, we did since that's the more accurate way to measure corneal thickness, but optically with a slitlamp beam we could gauge thickness, and we did gauge it always. If a cornea looked quite thin, we would be concerned, but it was only after that time that cases became reported that established one should leave 200 to 250 microns.
BY MR. KAFRISSEN:
Q. Now, when you say it was only after that time, what do you mean?
A. There have been reports over the past few years urging us to leave more than 200 or 250 microns in order to avoid the possibility, not probability but the

possibility of ectasia where one could have iatrogenic keratoconus where the cornea might not have its normal sphericity but rather be somewhat cone-shaped, and there have been a few cases reported of iatrogenic -- that is, physician caused -- keratoconus from leaving too little cornea. These cases I've seen in the literature have been mostly over the past few years, and I cannot remember exactly whether I had seen cases reported or whether there had been editorials on it in '97 or whether it was '98. I'm not sure, '99.
Q. Okay.
MS. NEWMAN: Sam, can I go over something that he just said because I missed the answer.
MR. KAFRISSEN: Sure.
MS. NEWMAN: You said that in looking at the records in July of 1997, the corneas were measured postoperatively, and did you give a number for how many microns they were post-operatively?
THE WITNESS: Yes.
MS. POST: He did not give a number.
THE WITNESS: The record had a number.
MS. NEWMAN: Then I won't interject.

BY MR. KAFRISSEN:
Q. What's the number?
A. The right eye was 447 microns and the left eye was 580 microns. And I might add for clarity that the two eyes are almost always very similar so that we can pretty well assume the right eye prior to any surgery had about 580, and that would just about be what we would expect for the amount of correction.
MS. NEWMAN: Sorry to interrupt.
BY MR. KAFRISSEN:
Q. I want to clarify one thing. That was in July that measurement was made?
A. Of '97.
Q. Of '97. Would the thickness of the measurement change at all by virtue of the fact that she had already had a lens replacement at that point in the left eye?
A. No.
Q. Now, prior to March 20th of 1997, which is, from my review of the records, the first Lasik procedure on Cheryl Fiorelli's right eye, had you ever examined or evaluated Cheryl?
A. I don't recall ever examining her before then, no. According to the records, I have not.
Q. Okay. Do you have any independent recollection

of Cheryl?
A. I remember her, yes.
Q. What do you remember about her?
A. She was a thin, young woman, very anxious.
Q. Okay. When do you first see in the records that you had contact with Cheryl Fiorelli?
A. I'd have to look in the records to tell that.
Q. Okay.
A. According to the record, I first saw her on March 21st of '97, the day after her Lasik procedure.
Q. Okay. Now, the Lasik procedure that was performed, we have the records from the Delaware Valley Laser Surgery Eye Institute, or actually Laser Surgery Institute, and in the records you were listed as the assistant in the March 20, 1997 Lasik procedure, and I'm looking at the operative form.
A. Yes.
Q. Okay.
A. May I look at it. I can't find it in my pile.
MS. NEWMAN: Off the record.
(Discussion held off the record.)
BY MR. KAFRISSEN:
Q. Now, before I get to that, do you have any recollection of ever discussing Cheryl Fiorelli with

Doctor Nevyas-Wallace prior to March 20th of 1997?
A. No.
Q. Do you have any recollection, prior to March 20th of 1997, of having any contact with Cheryl Fiorelli?
A. I have no recollection.
Q. Okay. Is there anything in your records that you've seen that indicates that you had any contact or dis -- any contact with Cheryl Fiorelli or any discussions with anyone about her prior to the surgery in March 20, 1997?
A. No.
Q. Did you ever, prior to the March 20 -- the performance of the procedure on March 20, did you ever make an independent evaluation of Cheryl as a surgical candidate?
A. No.
Q. Did you, prior to the March 20 performance of the procedure, ever aid Doctor Nevyas-Wallace in making an evaluation of Cheryl as a surgical candidate?
A. I have no recollection of such.
Q. Okay.
A. We practice in the same office. I guess, theoretically, it's possible I could have seen her at some point in the office, but I've never actually seen

her as a patient.
Q. Okay. The records that we were given -- just so I'm clear, the records from your office, we have a typed translation of those records. With regard to the entries that you made, have you seen the typed entries?
A. I dictated it.
Q. Oh, okay. Is there anything in your review, in terms of these records getting ready for the case today or in your review of these records after they were dictated, that you feel is inaccurate?
A. No.
MS. POST: Your question, just so I understand, is you want to make sure that what's in the handwritten record has been translated accurately.
MR. KAFRISSEN: Accurately, right.
MS. POST: I just want it right.
THE WITNESS: As far as I know.
MR. KAFRISSEN: Okay. That's the question.
MS. POST: Okay.
BY MR. KAFRISSEN:
Q. Now, do you have any independent recollection of the March 20 Lasik procedure on Cheryl Fiorelli?

A. No.
Q. You are listed in the operative form from the Laser Surgery Institute as assistant. Do you see that?
A. Yes.
Q. And the primary surgeon in that was Anita Nevyas-Wallace; is that right?
A. Yes.
Q. Why did you assist in that procedure?
A. I just wanted to be present to increase my experience and to be of any help which I could. Similarly, she assisted at my procedures.
Q. Okay. Do you have any idea how many Lasik procedures you had performed as of March of 1997?
A. No, but we have a logbook that would list the number exactly. I don't remember.
Q. Okay. Let me ask it this way. Without making a wild guess, is there any way to reasonably estimate how many per month or per six months or per year you had performed?
A. Well, we had just started, as I said, in December of '96 -- was it '96?
MS. POST: Your testimony was December of '95.
THE WITNESS: '95, I'm sorry. I don't

really remember numbers. Maybe a couple of hundred but I'm not sure. I would have to get you the accurate number if you need it.
BY MR. KAFRISSEN:
Q. Can you tell me, as an assistant, do you have any recollection of what you actually did during this specific procedure?
MS. POST: Not generally.
THE WITNESS: Not generally?
BY MR. KAFRISSEN:
Q. Right. Not what you would normally do.
A. I don't recall this specific procedure.
Q. Okay. Now let me ask you generally as an assistant in a Lasik procedure in March of 1997, could you tell me generally what it is that you would be doing.
A. Just standing by, observing; if one needed any help with the operation of the laser, I would perhaps help. I would follow orders. If I were told to do anything to help retract the drape if the patient were having trouble breathing or sometimes I may have operated the foot pedals for the microkeratome, although I don't believe I did in this case, but I just stood by and observed, primarily, see if I was needed.
Q. Okay. Now, prior to the performance of the

March 20 surgery, did you make any evaluation or any recommendations with regard to Cheryl trying to be fitted for contact lenses?
A. Prior to what?
Q. The March 20...
A. Well, I didn't see the patient prior to the surgery.
Q. Okay. Can you tell me what was your understanding as to the purpose for the procedure on March 20.
MS. NEWMAN: Objection. He doesn't remember.
MS. POST: Right.
THE WITNESS: The purpose for the Lasik procedure?
MR. KAFRISSEN: Yeah.
MS. POST: Let me -- since he doesn't remember the procedure, I don't know whether he can say what the purpose was of this particular procedure. Do you want to know what the goal is generally in performing a Lasik procedure?
MR. KAFRISSEN: Well, I think he can say -- I know he doesn't remember the procedure,

but he has looked at the records so he may have -- having looked at the records, it may have refreshed his recollection as to why they were performing this particular procedure on Cheryl as opposed to what they do generally, so I think I can ask him that question: Having looked at the records, do you know what the purpose --
MS. POST: My problem is as opposed to what they do in general?
MR. KAFRISSEN: Well, I don't know if there is a difference or not, but that's why I need -- I'd like to ask the doctor to clarify.
MS. POST: Objection to the form. If you know.
THE WITNESS: The purpose of the procedure was the same as any of myopic Lasik procedure: to relieve the patient of the myopia, which made her dependent upon glasses or contact lenses, and in her case made her absolutely blind and helpless without an optical prosthesis.
BY MR. KAFRISSEN:
Q. Okay. Was there any upper limit to the

nearsightedness as of 1997 in determining whether you would operate on someone or not?
MS. POST: Objection to form. He didn't operate, but I'll allow him to testify as to his considerations.
MS. NEWMAN: Objection. Go ahead. You can answer.
THE WITNESS: At that time Lasik was being done up to about 25 diopters around the world, and, therefore, there was no specific limit, but for the higher ones we tended to do refractive lensectomy and for the lower ones, Lasik, since the results of Lasik were less predictable and dependable the higher you get.
BY MR. KAFRISSEN:
Q. Okay. Were you aware prior to surgery of what Cheryl's preoperative refraction was?
MS. NEWMAN: Objection. He doesn't remember.
MS. POST: Yeah.
MR. KAFRISSEN: Well, it's actually in the records.
MS. NEWMAN: Well, I object. They speak for themselves.

MR. KAFRISSEN: That's right, but what I want to know is he's assisting in -- the doctor is assisting in the surgery so now does he look at the preoperative refraction prior to surgery?
MS. NEWMAN: That's a different question.
MS. POST: Let me just -- in 1997 was it his practice -- since he doesn't remember this surgery, was it his practice, when assisting, to look at the preoperative refraction? I'll let him answer that.
BY MR. KAFRISSEN:
Q. You can answer that.
A. Well, I don't know whether I always did, but I often would look at the notes on the patient to see what the patient's preoperative refraction was.
Q. Okay. If you had a concern about the procedure being performed given the preoperative refraction, is that something that it would be your standard practice and procedure to voice prior to the procedure being performed?
A. Yes.
Q. Okay. Do you know whether you had a concern

about Cheryl Fiorelli having this procedure given her preoperative refraction?
A. I don't think I would have a concern. I don't think I did at that time, certainly, because we had -- I have done considerably higher than that procedure -- than that amount at that time with very good results; however, because of the general reports of some people having problems with very high ones, we're not doing them much higher than that now.
Q. Much higher than what?
A. Fifteen.
Q. Oh, okay. When you're assisting in a procedure, do you do an independent evaluation of the patient prior to the surgery or is it the surgeon who does that?
A. No. The surgeon does that.
Q. When you're assisting -- I'm just trying to figure out exactly what goes on, but, I mean, is it essentially, when you're an assistant, the first time you come into contact with the procedure is when they're prepped and in the room?
A. That's correct.
MS. NEWMAN: Do you mean the person?
MS. POST: The patient.

MS. NEWMAN: You said the procedure.
MR. KAFRISSEN: The patient.
MS. POST: Do you want to rephrase it.
MR. KAFRISSEN: Let me rephrase it so it's clear.
BY MR. KAFRISSEN:
Q. The first time, as an assistant, that you really come into contact with the person is when they are prepped and in the surgical area?
MS. POST: The patient.
MR. KAFRISSEN: The patient.
THE WITNESS: Yes.
BY MR. KAFRISSEN:
Q. Are you aware of any calculation being made prior to surgery with regard to how much corneal tissue was to be remaining following the procedure?
A. I am not.
Q. Is there anything in the records that indicates that any such calculation was made that you've seen?
A. I didn't notice, but, again, I haven't gone through the records very carefully but I didn't notice. I don't recall seeing any.
Q. With regard to the March 20, 1997 procedure, as an assistant, are you involved in the centering of the

laser?
A. Yes. I might have been. I often, as part of my assisting, while the surgeon was doing one thing, I might have been doing something else, and those other things might have included checking the laser beam for the evenness of the beam, the fluence -- that is, the amount of power of the beam, and the centration -- I'm just -- yeah, yeah, the centration of the beam with the reticle of the microscope, yes. That would be part of the preparation of the laser, and other things I might do would be to prepare the regular keratome, and that had to be assembled and inspected carefully. The blades have to be inspected beforehand so I did those things to facilitate the surgery.
Q. Okay. Tell me how you would help with centering of the beam.
A. Well, I would look through the microscrope and make -- and have the laser set to a six millimeter wide ablation, circle six millimeters, which should fall right within one of the designated circles in the reticle in the eyepiece in the microscrope, and then by adjusting the final turning mirror of the laser, sitting at the microscrope, I would make sure that the laser ablation fell exactly within the centration reticle so that by

centering the eye on a given point, the laser beam would be centered.
Q. Okay. Now, would the surgeon recenter the beam or is it a process where both the surgeon and the assistant center the beam?
A. No. It would be centered either for a given setting of the interpupillary distance of the microscrope, and I would leave her interpupillary distance in there and just -- it's a monocular procedure. Using the eyepiece that has the reticle, the left eyepiece, I would see that the beam is centered within.
Q. Okay. There is an eight -- it's actually a nine-page document dated 3/20/97, that page one is the informed decision consent or refusal for laser -- it's basically the laser informed consent for the 3/20 procedure, and on page eight there is a physician's signature. Page nine is actually a true/false quiz. Do you see that?
A. Yes.
Q. Page eight, whose signature is at the physician's signature?
A. That is my signature.
Q. Okay. And can you tell me how your signature came to be on the physician's signature for the informed

consent document.
A. The informed consent documents are presented to the patient and given the patient to take home and read, usually, and after the patient returns, one of the doctors is asked to sign the form. I probably signed it on the day of surgery because there was no signature there so I signed it, meaning that I had approved the fact that the patient had read and initialed everything.
Q. Okay. The fact that you have signed it, does that indicate, as a matter of practice, that you have reviewed the consent form with the patient and explained the risks and alternatives to the procedure?
A. No. It means that some physician has but it could be either of us.
Q. Okay. Do you have any recollection of having gone through the risks of the procedure or alternatives to this procedure with Cheryl Fiorelli?
A. No. I have no recollection. That doesn't mean that I might not have discussed it with her if she had been in the office. I don't recall.
Q. Okay. There is a note on the operative form about the laser keratome stopping on its forward and its backward pass.
A. Yes.

Q. Do you have any recollection of that having happened?
A. No.
Q. Can you tell me what significance, if any, the fact that the keratome is recorded as having stopped three-quarters of the way on forward and one-quarter of the way on the backward pass?
MS. NEWMAN: Objection to form.
MS. POST: You can answer.
THE WITNESS: The significance is that the microkeratome that was in use at that time, and is still in use pretty widely, had a gear system which could sometimes hang up momentarily, and if the laser hesitates, it could create some unevenness in the cut making the corneal flap. The significance here is that it stopped toward -- I don't know -- the three-quarters was recorded either by the nurse or the optomestrist who was assisting, who obviously couldn't be looking in the microscrope, but it looked to them as if it hesitated when it was pretty well through the pass, and, therefore it would have no significance really, except to, you know, we

note everything that happens in the procedure. No clinical significance.
BY MR. KAFRISSEN:
Q. Okay. During the course of your treatment of Cheryl and the course of your follow-up visits for her right eye, did you ever record an irregular astigmatism in her right eye?
MS. POST: On his visits with her?
MR. KAFRISSEN: Right.
THE WITNESS: I don't recall that. I'd have to look through all the records again. I don't recall ever -- I don't recall there being an irregular astigmatism. This would be partly a function of the par topography. That would be the only way we really could tell if there's irregular astigmatism. As I recall, the topography looks wonderful. I don't see anything here that would suggest that.
BY MR. KAFRISSEN:
Q. Okay. Are you reviewing them?
A. Yes, I am. I'm just looking to see whether there's anything that I would have noted with regard to any kind of astigmatism, irregular or otherwise. No, I don't have anything that I can see here.

Q. Okay. Can the keratome stopping and the procedure being continued cause an irregular astigmatism?
MS. NEWMAN: Objection.
MS. POST: Objection to form. At what point during the pass and it's on the forward or backward pass? Are you talking under these circumstances where it's noted to be three-quarters of the way through?
MR. KAFRISSEN: Yes.
MS. NEWMAN: I would object to the form as including three-quarters of the way through measurement because there's been testimony that it was seven-eighths.
MS. POST: With that in mind.
BY MR. KAFRISSEN:
Q. With what is written here.
A. If the keratome would hesitate within the center of the pupil, it could affect the vision, whether it would be irregular astigmatism or not. If it hesitates outside of the pupillary area, it would have no effect at all.
Q. Okay. You had described the different things that you may do as an assistant prior to the procedure in terms of the centering the beam, the power of the beam,

preparing the microkeratome. In terms of the performance of the procedure and the post-op, is there anything that you as an assistant do?
MS. POST: When you say post-op, you mean that day as opposed to a post-op visit?
MR. KAFRISSEN: Right. Meaning in the operating room after the procedure ends.
MS. POST: Okay.
THE WITNESS: The procedure is in the hands of the surgeon and there isn't much the assistant does except observe and be there to be called upon should there be any problems. Mostly, we're concerned about mechanical problems, laser problems, that might need a hand, but, no, during the actual procedure itself, there's nothing the assistant would do but stand by.
BY MR. KAFRISSEN:
Q. Okay.
A. Perhaps pass an instrument to the surgeon if the surgeon needed an instrument.
Q. At any time did you become aware that the March 20 procedure was decentered?
MS. POST: Objection to form. You can

answer.
THE WITNESS: I must say that decentration is a relative thing. Everybody is somewhat decentered and it's a question of whether it's clinically decentered or not. Very seldom are we utterly on zero, but from what I could see looking at the topographies, I would say the centration here was not bad, pretty good, particularly looking at the subtraction topography that shows what Fiorelli's cornea looked like before and after and then subtracting it. From what I can see right here, it looks like a target to me. It's quite centered.
BY MR. KAFRISSEN:
Q. Can you show me which page you're referring to?
A. This was the May 12 topography. There's a subtraction done on that date. The other dates there's no subtraction that I can see but there may be some. There's quite a few topographies.
Q. You were referring to one --
A. This is the page.
Q. Oh, it's a May 12, 1997, number one. There are three...

A. That's before, after and subtracted. The upper one is prior; the lower one is that date, and the one on the left is the computer subtracting them to show exactly what was done. This shows exactly how thick the corneal area taken out was and exactly how much was taken out each position.
Q. Okay. Now, after the March 21st surgery --
MS. POST: March 20th.
BY MR. KAFRISSEN:
Q. -- March 20th surgery, it looked like you had seen Miss Fiorelli on the 21st for her first post-op visit; is that right?
A. Yes.
Q. Okay. And when you saw her on the 21st, can you tell me -- well, tell me what you did first.
A. I examined her under the slitlamp. I put a drop of fluorozene <TPHRAOU-R> seen in to see if the edges of the ablation were staining, the edges of the flap were staining.
Q. And why would you do that?
A. To see if the flap had obtained a good adherence.
Q. And what did you find for that?
A. Everything looked fine.