

[1] Herbert J. Nevyas, M.D.
 [2] developing malingering or hysteria, as the case may
 [3] be. They do not include optic nerve problems,
 [4] although I guess if something had happened the day
 [5] after, we might be concerned, but actually he went
 [6] through a bunch of different retinal people, and
 [7] everybody said his retina was fine. So they are not
 [8] considered adverse events and they are not listed
 [9] under — I believe in our protocol we have a list of
 [10] things that we check off. It is either present or
 [11] not present or zero or whatever percentage, and that
 [12] is presented to the FDA. None of these things were
 [13] within the range that we report to the FDA because
 [14] none of the things we have mentioned have anything
 [15] to do with having LASIK surgery.
 [16] Q: The four things that you mentioned that we
 [17] have been talking about, did you anticipate that any
 [18] of them were going to happen post LASIK?
 [19] MS. KRAMER: I'm going to object.
 [20] MR. LAPAT: Objection.
 [21] MS. KRAMER: How do we make that when he
 [22] didn't see him beforehand? So just hypothetically?
 [23] Q: Hypothetically for LASIK patients in general,
 [24] was there any way to anticipate that any one of
 [25] those four things would happen?

[1] Herbert J. Nevyas, M.D.
 [2] A: No, we would anticipate it by examining him,
 [3] and if we saw it developing, not operate him.
 [4] Q: I take it since he was operated that it
 [5] wasn't seen?
 [6] A: It was not. It seemed to be developing now
 [7] afterwards. It has been several years.
 [8] Q: And was there any way that you could have
 [9] anticipated any of these things?
 [10] A: The four things you mentioned?
 [11] MS. KRAMER: Wait. Object. He has
 [12] already given you in general and he didn't see him
 [13] before so he couldn't have anticipated any of them.
 [14] MS. NEWMAN: I object as asked and
 [15] answered.
 [16] Q: From when you examined Mr. Morgan afterwards,
 [17] after his LASIK surgery, did you note when — are
 [18] you the one that made these four different diagnoses
 [19] as you went along?
 [20] MS. KRAMER: Object to the form. They
 [21] were impressions. He didn't say they were
 [22] diagnoses. They were possibilities.
 [23] MR. FRIEDMAN: Possibilities.
 [24] Q: Doctor, you made mention of these four
 [25] possibilities. At the time that you noted these

[1] Herbert J. Nevyas, M.D.
 [2] A: Yes.
 [3] MR. LAPAT: Objection.
 [4] Q: And how would you be able to anticipate?
 [5] A: I would anticipate the development of a
 [6] cataract because I dilate the patient well and
 [7] examine to be sure we don't have a cataract
 [8] developing, and if that is the case, we do not do
 [9] LASIK. We do LED surgery. I cannot anticipate
 [10] malingering. That's where a patient plans ahead to
 [11] try to bankroll his future upon us or our insurance.
 [12] Q: Can you anticipate hysteria?
 [13] A: No, not unless the patient's responses are
 [14] very odd. Some patients will present with a strange
 [15] affect and I am not a psychiatrist as I say, but if
 [16] the patient doesn't seem to be reasonable, I might
 [17] be concerned.
 [18] Q: Can you anticipate a physical problem that is
 [19] retinal?
 [20] A: Not if it is not there at the time I examine
 [21] him, no.
 [22] Q: If the patient, when examined preoperatively,
 [23] doesn't show any evidence of nuclear sclerosis —
 [24] I'm not sure I understood your answer. Does that
 [25] mean you could anticipate nuclear sclerosis?

[1] Herbert J. Nevyas, M.D.
 [2] four possibilities, did you feel that there was any
 [3] way that they could have been anticipated in
 [4] advance?
 [5] MS. KRAMER: I'm going to object.
 [6] MS. NEWMAN: Objection.
 [7] MR. LAPAT: Objection.
 [8] MS. KRAMER: Does he feel — he made one
 [9] at one time. He made one at another time. Does he
 [10] feel they should have been made in advance of what?
 [11] MR. FRIEDMAN: In advance of the LASIK
 [12] surgery.
 [13] MR. LAPAT: Objection.
 [14] MS. NEWMAN: I'm going to object.
 [15] MS. KRAMER: He's not answering that.
 [16] MR. FRIEDMAN: Why not?
 [17] MS. KRAMER: He's not answering that
 [18] because, first of all, what you are trying to do is
 [19] have him act as an expert against a codefendant and
 [20] I think he has already answered the question in
 [21] stating that they were not things to be predictable
 [22] in general, which he went through. Unless there is
 [23] something I'm missing, I don't see why the answer
 [24] would be any different.
 [25] MS. NEWMAN: I would like to add from