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 [2] IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
 [3] FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
 [4]  
 [5] DOMINIC MORGAN : APRIL TERM, 2000  
 [6] vs. :  
 [7] HERBERT J. NEVYAS, M.D., :  
 JOANN Y. NEVYAS, M.D., :  
 [8] ANITA NEVYAS-WALLACE, M.D., :  
 IRA B. WALLACE, M.D., :  
 [9] EDWARD A. DEGLIN, M.D., :  
 MITCHELL STEIN, M.D., AND :  
 [10] NEVYAS EYE ASSOCIATES OF :  
 NEW JERSEY, P.C. : NO. 002621

[11]  
 [12] Philadelphia, Pennsylvania  
 [13] Wednesday, January 3, 2002

[14]  
 [15] Deposition of HERBERT J. NEVYAS, M.D.,  
 [16] taken pursuant to notice, at the offices of  
 [17] Vincent Varallo Associates, 1835 Market Street,  
 [18] on the above date, beginning at approximately  
 [19] 10:20 a.m., before Cynthia A. Whyte, Registered  
 [20] Professional Reporter and Notary Public.

[21]  
 [22]  
 [23] VINCENT VARALLO ASSOCIATES, INC.  
 Registered Professional Reporters  
 [24] Eleven Penn Center  
 1835 Market Street, Suite 600  
 [25] Philadelphia, PA 19103  
 (215) 561-2220

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 Counsel for Nevyas Eye Associates of New  
 [21] Jersey, P.C.  
 [22] ALSO PRESENT: GAIL FRIEDMAN  
 [23]  
 [24]  
 [25] (INDEX at end of transcript.)

[1] Herbert J. Nevyas, M.D.  
[2] that?  
[3] A: No. The printed material I did. I told him  
[4] what to put in. He may have modified it, but...  
[5] Q: There was an advertisement on KYW.  
[6] MS. NEWMAN: What are you talking about?  
[7] Q: Was that same person involved with that?  
[8] A: No.  
[9] Q: Who was involved with the advertisement for  
[10] KYW?  
[11] A: I and whoever handled things for KYW.  
[12] Q: Did you use the services of an advertising  
[13] agency —  
[14] A: No.  
[15] Q: — at any time?  
[16] MR. LAPAT: Objection. Vague. Go  
[17] ahead.  
[18] A: Not that I can recall. I don't think we did,  
[19] no.  
[20] Q: As far as the KYW information that was  
[21] broadcast on the air, what time frame did that run  
[22] from?  
[23] A: I don't remember. There was very little. We  
[24] had a few — I think we had some advertising on KYW  
[25] to let people know what we were doing as far back as

[1] Herbert J. Nevyas, M.D.  
[2] '93 or '94 and I'm not sure what was done in the  
[3] next couple of years. I really don't recall. I'm  
[4] not even sure there was much around that time, if  
[5] any. I think — if I think back to '94 or '95, we  
[6] had some advertising at that time. I don't think  
[7] there was later.  
[8] Q: How long did advertising continue that you  
[9] can remember?  
[10] A: I don't know for sure. Not very long because  
[11] we did it — you have to remember, '94 specifically,  
[12] '95, I think we stopped because it really wasn't  
[13] producing much benefit.  
[14] Q: Who was in charge of deciding what copy would  
[15] be broadcast by KYW?  
[16] A: I.  
[17] Q: Do you have the originals or copies of any  
[18] informational or promotional or advertising  
[19] materials directed to the public for which the  
[20] subject included LASIK?  
[21] A: No, no, I don't.  
[22] Q: Do you maintain tax returns?  
[23] A: I'm sure we do.  
[24] MS. KRAMER: For the corporation are you  
[25] asking?

[1] Herbert J. Nevyas, M.D.  
[2] MR. FRIEDMAN: For the corporation,  
[3] yes, and for himself individually.  
[4] A: Whatever period of time my accountant or  
[5] bookkeeper suggests they be held, I'm sure we have  
[6] held them. I wouldn't know for sure.  
[7] Q: Who is your accountant or bookkeeper first  
[8] for the corporation?  
[9] MR. LAPAT: Objection.  
[10] A: My accountant has been Mr. Jeffrey Factor,  
[11] F-A-C-T-O-R. And I don't remember exactly how long  
[12] he has been my accountant. I think for probably  
[13] eight or ten years anyhow.  
[14] Q: And how about does he also do your personal  
[15] income tax?  
[16] A: Yes.  
[17] MR. LAPAT: Same objection.  
[18] Q: Where is Mr. Factor located?  
[19] MR. LAPAT: Objection.  
[20] A: I think his office is in Plymouth Meeting or  
[21] some such area around there. I have never been  
[22] there.  
[23] Q: Did you deduct the cost of advertising on KYW  
[24] as either an expense of the corporation or yourself?  
[25] MR. LAPAT: Objection.

[1] Herbert J. Nevyas, M.D.  
[2] A: As far as I know, it would have been an  
[3] expense of the corporation.  
[4] Q: Would your tax records, therefore, reflect  
[5] the years in which you were paying KYW for  
[6] advertisement?  
[7] A: I don't know. I don't know if anything  
[8] specifically was listed in tax records.  
[9] Q: There was a television production done by  
[10] MDTV. Was that paid for by the corporation or by  
[11] you?  
[12] MR. LAPAT: Objection.  
[13] Q: Pardon me. Let me withdraw that question.  
[14] Was there any payment made to MDTV at  
[15] any time?  
[16] MR. LAPAT: Objection. Anything that  
[17] relates to MDTV had no bearing on the plaintiff in  
[18] this action.  
[19] MS. NEWMAN: Join.  
[20] MS. KRAMER: You can answer.  
[21] A: Yes.  
[22] Q: Would your tax returns show the time that the  
[23] payments were made?  
[24] MR. LAPAT: Same objection.  
[25] MS. NEWMAN: Same objection.

[1] Herbert J. Nevyas, M.D.  
[2] **MS. KRAMER:** No. What I'm saying is you  
[3] are suggesting that the document which has the list  
[4] of medical institutions, the hospitals listed, you  
[5] are suggesting that was filled out in 1995 and that  
[6] is not my reading of the document.  
[7] **MR. FRIEDMAN:** No, I wasn't suggesting  
[8] that. I was just saying on the five pages here that  
[9] is the earliest date, November 1, 1995, and the most  
[10] recent date was December 2, 1999, and I was only  
[11] asking if with regard to the list and order of  
[12] clinical activities, if it had remained the same  
[13] during that period of time.  
[14] **MS. KRAMER:** So you are asking from 1995  
[15] to 1999 are these the same four hospitals he was a  
[16] member of the staff and the activity remained the  
[17] same through those four years?  
[18] **MR. FRIEDMAN:** Yes.  
[19] **MS. KRAMER:** Go ahead. You can answer  
[20] that.  
[21] **A:** The question is rather moot. The activity I  
[22] believe during all of that time was zero at all  
[23] four. I am professor at Medical College of  
[24] Pennsylvania and was chief of the department of  
[25] ophthalmology for ten years, but I do all of my

[1] Herbert J. Nevyas, M.D.  
[2] surgery in the surgical center, and I believe, but  
[3] I'm not positive, but I believe I did not do any  
[4] surgery at this time in these hospitals. The  
[5] Graduate Hospital branch that was across the street  
[6] from our office has since closed. Jefferson Park  
[7] Hospital is closed as a hospital although it has a  
[8] surgery center, but I had not worked there at that  
[9] time. And Scheie Institute I'm not working in. It  
[10] is possible that I took a patient or two to Medical  
[11] College of Pennsylvania. I'm not sure. It really  
[12] doesn't mean much because I'm not active clinically  
[13] at those hospitals.  
[14] **Q:** When was the last time you were active  
[15] clinically at any one of those hospitals?  
[16] **A:** Probably '95 or '96 or so. I'm not quite  
[17] sure.  
[18] **Q:** When you say "active clinically," what do you  
[19] mean by "active clinically"?  
[20] **A:** Patients admitted and operated.  
[21] **Q:** Are you on the active staff or inactive staff  
[22] of those hospitals?  
[23] **A:** Medical College of Pennsylvania I'm on the  
[24] active staff. The others inactive or I'm not sure  
[25] what my current status is. I haven't been working

[1] Herbert J. Nevyas, M.D.  
[2] there.  
[3] **Q:** Did you perform refractive eye surgery at any  
[4] of those hospitals?  
[5] **MS. KRAMER:** At what time?  
[6] **MR. FRIEDMAN:** Before he became inactive  
[7] or before he stopped being clinically active.  
[8] **A:** Not to my recollection.  
[9] **Q:** Now, Doctor, have you ever been approved by  
[10] any hospital to perform refractive eye surgery at  
[11] that hospital?  
[12] **A:** I believe so.  
[13] **Q:** What hospital?  
[14] **A:** I believe at Scheie Institute and Medical  
[15] College of Pennsylvania and at Wills Eye Hospital  
[16] there was an approval for radial keratotomy. I had  
[17] taken Excimer laser courses at Penn at some point  
[18] and I believe I was approved, but they never got a  
[19] laser, so...  
[20] **Q:** When you say they never got a laser, which  
[21] one are you referring to?  
[22] **A:** Scheie Institute.  
[23] **Q:** How did you get approved for laser surgery if  
[24] they didn't have a laser?  
[25] **A:** By taking courses that they gave. They may

[1] Herbert J. Nevyas, M.D.  
[2] have been using a laser at a laser center. I'm not  
[3] sure. This was some years ago.  
[4] **Q:** Doctor, just to be certain, I'm referring to  
[5] formal hospital privileges and not —  
[6] **A:** I'm not sure. I don't recall whether it was  
[7] formal hospital privileges or whether it was their  
[8] approval for using the Summit laser at that time. I  
[9] do not recall. I had no intention of using it, so I  
[10] don't remember.  
[11] **Q:** What time are you talking about that you had  
[12] no intention of using it?  
[13] **A:** At that hospital because they didn't have  
[14] one. It may have been '94, '95, '96. I'm not sure.  
[15] **Q:** In addition to the four hospitals that you  
[16] have listed here, you had mentioned Wills, and that  
[17] also would have been added if there was room for a  
[18] fifth hospital?  
[19] **A:** I think so. I think I was on active staff at  
[20] that time. I'm not sure of the dates. I stopped  
[21] working when we opened — for the most part at  
[22] hospitals when we opened our surgery center, which I  
[23] think was back in 1996, and did some work still at  
[24] some of the others, but I tapered off as I found I  
[25] was doing much better operating in the surgery

[1] Herbert J. Nevyas, M.D.  
 [2] center.  
 [3] Q: What do you mean "much better"?  
 [4] A: Better care of my patients.  
 [5] Q: Now, Doctor, have you ever performed LASIK at  
 [6] any hospital?  
 [7] A: No.  
 [8] Q: Were you ever given privileges by any  
 [9] hospital, such privileges saying that you would be  
 [10] allowed to do LASIK surgery at a hospital?  
 [11] MR. LAPAT: Objection. Vague.  
 [12] MS. NEWMAN: Continuing objection to  
 [13] this whole line.  
 [14] A: I don't think so. I don't think I ever  
 [15] applied specifically to do LASIK at a hospital since  
 [16] none of the hospitals that we mentioned had lasers  
 [17] at the time and then I began using my own.  
 [18] Q: Do you know if Dr. Nevyas-Wallace has  
 [19] performed LASIK at any hospital?  
 [20] MS. NEWMAN: Objection to relevancy.  
 [21] MR. LAPAT: Same objection.  
 [22] A: I don't know. Not as far as I know, let's  
 [23] put it that way. Not as far as I know.  
 [24] Q: Do you know if Dr. Nevyas-Wallace has  
 [25] privileges to do LASIK or has ever had privileges to

[1] Herbert J. Nevyas, M.D.  
 [2] do LASIK at any hospital?  
 [3] A: At a hospital —  
 [4] MR. LAPAT: Objection.  
 [5] MS. NEWMAN: Same objection.  
 [6] A: — I do not know.  
 [7] Q: In addition to the four hospitals listed plus  
 [8] Wills Eye, have there been any other hospitals that  
 [9] you have been on a medical staff of?  
 [10] MS. KRAMER: And this is at any time?  
 [11] A: Ever?  
 [12] MS. KRAMER: Is that what you are  
 [13] looking at, at any time?  
 [14] Go ahead. You can answer.  
 [15] A: There was a hospital in West Philadelphia  
 [16] called The Women's Hospital where I was on the staff  
 [17] for several years, but they closed. I have had  
 [18] staff privileges at Hahnemann Hospital in the past a  
 [19] long time ago. Let me think. And that's about it.  
 [20] University of Pennsylvania Hospital, Hospital of the  
 [21] University of Pennsylvania I have had privileges in  
 [22] the past when I was on the teaching staff. I have  
 [23] my CV there. That would I think cover it.  
 [24] Q: I'm just looking at it. I wanted to ask you,  
 [25] when you said Scheie Eye Institute, were you

[1] Herbert J. Nevyas, M.D.  
 [2] including Presbyterian Hospital?  
 [3] A: That is part of Presbyterian Hospital, yes.  
 [4] Q: Doctor, with regard to your CV, I'm going to  
 [5] pass you what was Bates marked No. 1168 through 1174  
 [6] and ask you to identify that.  
 [7] A: I'm sorry. What did you say, Bates marked?  
 [8] Q: It is the number in the lower right-hand  
 [9] corner.  
 [10] A: Oh. 1168 to 74, yes.  
 [11] Q: Can you identify that?  
 [12] A: It is my curriculum vitae, at least as of the  
 [13] last updating, yes.  
 [14] Q: When was that last updating?  
 [15] A: I don't know. It doesn't have a date on it.  
 [16] Q: Is there anything you would add to that  
 [17] curriculum vitae to bring it up to date?  
 [18] A: Well, my secretary, whoever it was at the  
 [19] time, has been bringing things up to date. There  
 [20] were a number of papers that have not gotten on it.  
 [21] Actually it was her idea to start putting papers on  
 [22] it lately. I have given papers many years. Every  
 [23] year I have given papers at certain society  
 [24] meetings. Aside from that, I think it is pretty  
 [25] much up to date as far as I can see. I might have

[1] Herbert J. Nevyas, M.D.  
 [2] to read every bit of it to be sure. There were some  
 [3] changes.  
 [4] Q: Who prepared the curriculum vitae?  
 [5] A: No one person. It has been added to over the  
 [6] years. Whoever was my secretary has been adding to  
 [7] it.  
 [8] Q: You said there were some changes. What  
 [9] changes?  
 [10] A: I would have to look to tell you. This  
 [11] doesn't look like my — I think something has gotten  
 [12] mixed up here. There is some mistake. I guess I  
 [13] did have an appointment at Temple at one point  
 [14] through Wills Eye Hospital. It looks okay. I'm not  
 [15] sure what my current status is at Wills and at  
 [16] Presbyterian because I have not been working there.  
 [17] So I do not think I'm on active staff any more at  
 [18] either of them. So that should be corrected.  
 [19] The rest looks okay.  
 [20] MR. FRIEDMAN: I think we had gotten up  
 [21] to K on the list, counselor. Did you bring the  
 [22] original file material relating to — if there is  
 [23] any file material?  
 [24] MS. KRAMER: There isn't any. There is  
 [25] no material in response to K. There were no

[1] Herbert J. Nevyas, M.D.  
[2] took other courses on that subject as well as LASIK.  
[3] **Q:** Do you maintain certificates from these  
[4] different places to document your training?  
[5] **A:** No. There weren't — the only place where I  
[6] might have certificates were the official  
[7] company-sponsored courses by visits to Summit.  
[8] There were no certificates for attending the  
[9] meetings except CE credits, but not specifically  
[10] stating what I attended.  
[11] **Q:** Except for what?  
[12] **A:** Except for continuing education credits. And  
[13] there were certainly no certificates for the very  
[14] valuable but not formal courses where I spent time  
[15] with leaders in the field.  
[16] **Q:** Did you say formal courses or informal  
[17] courses?  
[18] **A:** They were not formal courses.  
[19] **Q:** Did you obtain certificates of continuing  
[20] medical education?  
[21] **A:** At the time I think so. I'm not sure. I  
[22] usually have far more than the number of credits  
[23] needed for my recertification so that I may not have  
[24] bothered to submit them, but at the time I attend  
[25] the courses, I have them send me certificates. I

[1] Herbert J. Nevyas, M.D.  
[2] often don't retain them.  
[3] I have also attended meetings of the  
[4] Sing Society for Excellence in Ophthalmology which  
[5] had LASIK courses and LASIK-related papers, and I  
[6] have also attended the ISRS, of which I'm a member,  
[7] the International Society for Refractive Surgery,  
[8] and again I have taken specifically LASIK courses  
[9] and attended lectures there. I attend the Sing  
[10] meeting at least every year, and the ISRS has  
[11] meetings twice a year and I usually attend at least  
[12] one and have often attended both.  
[13] **Q:** In all of the meetings and courses that  
[14] you've attended, has there been any mention of any  
[15] patient who had LASIK who had a similar condition to  
[16] Mr. Morgan?  
[17] **MS. KRAMER:** I'm going to object to the  
[18] form and ask if you can define "similar condition."  
[19] **MS. NEWMAN:** Object to form.  
[20] **MR. LAPAT:** Objection.  
[21] **Q:** A similar condition would be a history of  
[22] retinopathy of prematurity with a large positive  
[23] angled kappa.  
[24] **A:** Not to my recollection.  
[25] **Q:** How about in any of these meetings or courses

[1] Herbert J. Nevyas, M.D.  
[2] — I just want to be certain I understand. Some of  
[3] those you got certificates that are on the wall  
[4] possibly?  
[5] **A:** I believe. I would have to check because we  
[6] have a great many certificates on the wall and I'm  
[7] not sure which ones got framed.  
[8] **MR. FRIEDMAN:** Counselor, would you  
[9] agree with me that if the certificates are framed  
[10] and on the wall they are covered by L?  
[11] **MS. KRAMER:** Unless he sends me new  
[12] ones. They originally sent us what is — you mean  
[13] if they are framed and on the wall?  
[14] **MR. FRIEDMAN:** Yes.  
[15] **MS. KRAMER:** If they are framed and on  
[16] the wall, yes, they are covered by L.  
[17] **MR. FRIEDMAN:** If there happens to be  
[18] any other ones —  
[19] **MS. KRAMER:** If there are any more, I  
[20] will send them to you. This is what they sent me.  
[21] I will have them go back and check again.  
[22] **Q:** Would the same apply to Dr. Nevyas-Wallace in  
[23] terms of possibly there being certificates on the  
[24] wall?  
[25] **A:** Possibly, yes.

[1] Herbert J. Nevyas, M.D.  
[2] **MR. FRIEDMAN:** And would you agree to do  
[3] the same thing?  
[4] **MS. KRAMER:** Yes. Put this in the same  
[5] letter so that I know what I'm looking for.  
[6] **Q:** Doctor, if they weren't kept on the wall,  
[7] would there be any other place they would have been  
[8] kept?  
[9] **A:** They could be filed away. That does not mean  
[10] it would be easy to find.  
[11] **Q:** Have you looked for them specifically?  
[12] **A:** No. I assigned it to the secretary to copy,  
[13] and when I looked at this now, I realized she didn't  
[14] copy LASIK specific certificates. She copied other  
[15] things. She didn't understand.  
[16] **MR. FRIEDMAN:** M is the board minutes of  
[17] the meetings of the Delaware Valley Laser Surgery  
[18] Partnership from 1995 to current.  
[19] **MS. KRAMER:** There's no such documents  
[20] to respond to that request. There are no meetings.  
[21] There are no minutes. There is no board.  
[22] **Q:** Doctor, the Delaware Valley Laser Surgery —  
[23] let me ask you this. I know you answered it before.  
[24] You said the Pennsylvania Eye Surgery Institute has  
[25] another name to it?

[1] Herbert J. Nevyas, M.D.  
 [2] **A:** Yes.  
 [3] **Q:** Doctor, I'm not referring to any particular  
 [4] dollar amount, but I want to know what are the  
 [5] assets of the corporation? You could say bank  
 [6] account. You don't have to tell me how much is in  
 [7] it, but I want to know what the corporation —  
 [8] **A:** The net value of the corporation?  
 [9] **MS. NEWMAN:** Objection.  
 [10] **MR. LAPAT:** Objection.  
 [11] **Q:** No, I want to know what the corporation owns  
 [12] that is distinct from you and —  
 [13] **MS. NEWMAN:** Objection.  
 [14] **MR. LAPAT:** Objection.  
 [15] **MS. KRAMER:** I'm going to object. What  
 [16] is the relevance of this?  
 [17] **MR. FRIEDMAN:** I'm trying to get it  
 [18] clear in my mind the difference between Dr. Nevyas  
 [19] and Nevyas Eye Associates. I can ask specifics.  
 [20] **MS. KRAMER:** I don't think at this point  
 [21] in time you are entitled to the assets of the  
 [22] corporation.  
 [23] **MR. FRIEDMAN:** That's why I said I was  
 [24] not interested in dollar amounts. I prefaced my  
 [25] remarks on that.

[1] Herbert J. Nevyas, M.D.  
 [2] Nevyas Eye Associates or Nevyas Eye Associates of  
 [3] New Jersey?  
 [4] **MR. LAPAT:** Objection.  
 [5] **MS. NEWMAN:** Objection.  
 [6] **MS. KRAMER:** You can answer it.  
 [7] **A:** Income earned as an ophthalmologist that  
 [8] comes to me? That is assuming that I have income  
 [9] earned as an ophthalmologist that comes to me from  
 [10] the corporation. The answer is no.  
 [11] **Q:** Doctor, do you have income from the Nevyas  
 [12] Eye Associates or Nevyas Eye Associates of New  
 [13] Jersey?  
 [14] **MR. LAPAT:** Objection. Again, that has  
 [15] no bearing on this litigation.  
 [16] **A:** Probably not, no.  
 [17] **Q:** They don't pay you?  
 [18] **A:** No.  
 [19] **MR. FRIEDMAN:** I wasn't trying to be  
 [20] tricky. I just wanted to know, does he have as a  
 [21] practicing ophthalmologist have an income that comes  
 [22] from anywhere else.  
 [23] **Q:** In your practice — I'm not talking about any  
 [24] other source that comes from anything other than  
 [25] Nevyas —

[1] Herbert J. Nevyas, M.D.  
 [2] **Q:** For example, Doctor —  
 [3] **MS. KRAMER:** How does that clarify for  
 [4] you a distinction between the owners of the  
 [5] corporation and the corporation itself? I don't  
 [6] understand.  
 [7] **MR. FRIEDMAN:** Well, I only have a few  
 [8] questions on this. One question would be, and I  
 [9] think you will see, who owns the building on City  
 [10] Line Avenue.  
 [11] **MS. NEWMAN:** Objection.  
 [12] **MR. LAPAT:** Objection. There is no  
 [13] relevance to that question. It has no bearing on  
 [14] this litigation.  
 [15] **THE WITNESS:** Should I answer it?  
 [16] (Discussion off the record between the  
 [17] witness and his attorney.)  
 [18] **MS. KRAMER:** It is not him or the  
 [19] corporation. They don't own the building.  
 [20] (Discussion off the record between the  
 [21] witness and his attorney.)  
 [22] **Q:** Were you going to say something?  
 [23] **A:** No, I was just talking to my attorney.  
 [24] **Q:** Doctor, do you have any income earned as an  
 [25] ophthalmologist that comes to you other than via

[1] Herbert J. Nevyas, M.D.  
 [2] **MS. KRAMER:** I don't see why you were  
 [3] entitled to the doctor's sources of income.  
 [4] **MR. FRIEDMAN:** It would only point me  
 [5] that he may have another ophthalmology practice  
 [6] somewhere.  
 [7] **MS. KRAMER:** Why don't you ask him that?  
 [8] **MR. LAPAT:** Why don't you ask him?  
 [9] **Q:** Do you have another eye practice that you  
 [10] have other than Nevyas Eye Associates or Nevyas Eye  
 [11] Associates of New Jersey?  
 [12] **MS. KRAMER:** That you are hiding from  
 [13] us?  
 [14] **A:** No, I don't.  
 [15] **MR. FRIEDMAN:** Thank you, counselor.  
 [16] And thank you, Doctor.  
 [17] **Q:** Doctor, there was a video recording made  
 [18] by — Doctor, what is MDTV?  
 [19] **MR. LAPAT:** Objection.  
 [20] **MS. KRAMER:** Go ahead. You can answer.  
 [21] **A:** As far as I know, it is a company run by a  
 [22] man named Paul Argent who makes videos for  
 [23] professional practices in the format of bringing  
 [24] some of the latest developments in various  
 [25] specialties to the fore and makes these videos and

(1) Herbert J. Nevyas, M.D.  
(2) going to be here a week.  
(3) **MR. FRIEDMAN:** I said I'm not going to  
(4) ask him everything, but I am going to ask him some  
(5) things.  
(6) **MS. KRAMER:** Let's see what you have.  
(7) **MR. LAPAT:** I want to state my  
(8) objection. I don't believe that you should be  
(9) asking any of these things because it constitutes  
(10) nothing more than a waste of time.  
(11) **MS. NEWMAN:** I want to place a  
(12) continuing objection on the record so I don't  
(13) continue to interrupt you that I believe that a  
(14) relevancy objection is totally valid. There is no  
(15) evidence that any of this is going to lead to the  
(16) discovery of admissible evidence since it was after  
(17) the surgery was done and your client stated in the  
(18) deposition that he never saw the video, but with  
(19) that objection on the record, please go ahead.  
(20) **BY MR. FRIEDMAN:**  
(21) **Q:** Did you ever work with MDTV prior to March 27  
(22) of 2000?  
(23) **A:** I think so. I don't remember the actual  
(24) dates that we filmed that. I would have to look  
(25) that up, but I believe so.

(1) Herbert J. Nevyas, M.D.  
(2) **Q:** What was the purpose of working with MDTV?  
(3) **A:** They were going to make a video which we  
(4) could use to show our patients, give them some idea  
(5) of the refractive surgery we do, and they were going  
(6) to put it on some public access channels to show  
(7) people what we were doing.  
(8) **Q:** Do you know what public access channels the  
(9) video was shown on?  
(10) **MS. KRAMER:** If any.  
(11) **Q:** If any, yes.  
(12) **A:** There were some. They sent me a list at some  
(13) point, and it was not shown very much because we  
(14) didn't think there was too much point in it and I  
(15) told them not to, but they showed it on a few public  
(16) access channels in this area.  
(17) **Q:** Where else was the video shown?  
(18) **A:** In the Delaware Valley area, in New Jersey,  
(19) and in the Philadelphia area. As far as I know,  
(20) that's it.  
(21) **MS. KRAMER:** You mean aside from public  
(22) access channels?  
(23) **MR. FRIEDMAN:** Yes, aside from public  
(24) access television.  
(25) **A:** Oh, nowhere.

(1) Herbert J. Nevyas, M.D.  
(2) **Q:** You said it was designed to give — I'm  
(3) sorry. I don't want to be putting words in your  
(4) mouth.  
(5) **A:** In our office.  
(6) **Q:** Oh, it was shown in your office?  
(7) **A:** Yes.  
(8) **Q:** How would it be shown in your office?  
(9) **MS. KRAMER:** Wait. Is your client  
(10) saying he saw it in the office?  
(11) **MR. LAPAT:** Your client testified he  
(12) never saw this.  
(13) **MS. KRAMER:** Is he going to come in now  
(14) and say he saw it in the office?  
(15) **MR. FRIEDMAN:** I don't think he will say  
(16) that he saw it in the office. I think he will say  
(17) he saw it on television.  
(18) **MS. KRAMER:** Then he knows where it was  
(19) shown. I don't understand how their showing it to  
(20) people in the office is in any way relevant to  
(21) Mr. Morgan. Tell me how. So they showed it to  
(22) another patient. And is that somehow relevant to  
(23) Mr. Morgan?  
(24) **Q:** When you showed it in the office, Doctor, was  
(25) it shown to patients preoperatively —

(1) Herbert J. Nevyas, M.D.  
(2) **MR. LAPAT:** Objection.  
(3) **Q:** — or postoperatively or both?  
(4) **MS. KRAMER:** I'm going to object and  
(5) instruct him not to answer.  
(6) **THE WITNESS:** Should I answer that?  
(7) **MS. KRAMER:** No, you don't have to  
(8) answer that. If it was shown to Mr. Morgan, that is  
(9) fine. We will talk about it. Unless you can tell  
(10) me that it was shown to him in the office, then he  
(11) is not answering that question.  
(12) **Q:** Doctor, do you know if Mr. Morgan was ever  
(13) shown the MDTV video while he was at Nevyas Eye  
(14) Associates?  
(15) **A:** He couldn't have been because it is only  
(16) recently. We have just shown it a few times to  
(17) people that were bored waiting. We have a  
(18) television with a VCR and it has just been within  
(19) the last few months that the girls put it on a few  
(20) times. So he could not have seen it in the office.  
(21) It was not shown in the office at that time.  
(22) **Q:** So let me be sure I understand. The MDTV  
(23) video is something that has only been shown in the  
(24) past few months in your office; is that right?  
(25) **A:** As far as I know, yes.

[1] Herbert J. Nevyas, M.D.  
 [2] **Q:** Is the purpose of showing the MDTV video to  
 [3] inform patients as to what they can expect from  
 [4] LASIK surgery?  
 [5] **MR. LAPAT:** Objection. He just  
 [6] testified it has only been shown in the last few  
 [7] months, which is after March of 2000. That should  
 [8] be the last possible date it could have any possible  
 [9] relevance to Mr. Morgan.  
 [10] **MS. NEWMAN:** And if it was after the  
 [11] surgery, which the testimony is that it was, it  
 [12] cannot be claimed for lack of consent. I join in  
 [13] the objection.  
 [14] **MS. KRAMER:** I don't know if he can tell  
 [15] you what the purpose is. I don't think you have any  
 [16] foundation that he himself requested that it be  
 [17] shown to anybody.  
 [18] **MR. LAPAT:** These questions can't  
 [19] possibly be calculated to lead to the discovery of  
 [20] evidence.  
 [21] **MS. KRAMER:** If you can show me that  
 [22] this doctor specifically requested a patient to see  
 [23] it, I think he can testify to the purpose of him  
 [24] requesting that patient to see it; otherwise, I  
 [25] don't see it.

[1] Herbert J. Nevyas, M.D.  
 [2] **Q:** All right. Doctor, how do —  
 [3] (Discussion off the record.)  
 [4] (Luncheon recess.)  
 [5] **BY MR. FRIEDMAN:**  
 [6] **Q:** Doctor, I hope we can end the topic that we  
 [7] have been on, the MDTV. I just wanted to ask you  
 [8] was there anything said on the MDTV recording that  
 [9] would not be said to patients that were going to  
 [10] have LASIK surgery?  
 [11] **A:** Sure.  
 [12] **MR. LAPAT:** Objection.  
 [13] **A:** The point of the MDTV was not to have us on  
 [14] it. We didn't say much. It was to have patients  
 [15] talk about their procedure, what they had gone  
 [16] through, to try to allay anxiety and so forth, and  
 [17] patients who would come to see it would get a chance  
 [18] to talk to other patients who have been through the  
 [19] same thing.  
 [20] **Q:** By "same thing" —  
 [21] **A:** Refractive surgery.  
 [22] **Q:** — are you referring to the preoperative and  
 [23] postoperative experiences of the other patients? Is  
 [24] that what you are —  
 [25] **A:** Yes.

[1] Herbert J. Nevyas, M.D.  
 [2] **Q:** Doctor, are you familiar with the  
 [3] requirements for driving a car —  
 [4] **A:** I didn't hear you, sir.  
 [5] **Q:** Are you familiar with the requirements for  
 [6] driving a car, the requirements I am talking as far  
 [7] as vision for driving a car in Pennsylvania, what  
 [8] they are?  
 [9] **A:** Pretty much.  
 [10] **Q:** Or what they were? Are they any different  
 [11] now than they were in 1998?  
 [12] **A:** I don't know if the law has changed. I have  
 [13] a general idea. I keep a list in the office of what  
 [14] the requirements are because they vary. Some people  
 [15] get a license just for daytime. Some people can  
 [16] drive at night. Some people have only one eye. So  
 [17] they have special requirements, et cetera, but I  
 [18] have a pretty good idea of it.  
 [19] **Q:** And I don't want to pin you down to exact  
 [20] law, but what is your understanding of the  
 [21] requirements for driving? You mentioned daytime,  
 [22] nighttime and everything.  
 [23] **A:** I think it's 20/70 or something like that for  
 [24] daytime and possibly more for night. I'm not sure.  
 [25] I would have to look it up. I don't want to guess,

[1] Herbert J. Nevyas, M.D.  
 [2] but they are pretty liberal. And if one wears a  
 [3] telescope, you can have much less vision without the  
 [4] telescope than when you drive with the telescope.  
 [5] **Q:** What's a telescope?  
 [6] **A:** It's a little accessory that is placed on the  
 [7] glass to bring things into a sharp focus such as  
 [8] road signs and speed limits and so on because most  
 [9] driving is done with pretty gross recognition of big  
 [10] things like cars.  
 [11] **Q:** Did you ever tell Mr. Morgan that he should  
 [12] not drive?  
 [13] **A:** I don't think so. I don't recall that.  
 [14] **Q:** Again, I don't want to pin you down on a  
 [15] specific law, but is it your understanding there is  
 [16] any difference in the visual requirements for  
 [17] driving in New Jersey as opposed to Pennsylvania?  
 [18] **A:** I don't know the difference. I'm sure each  
 [19] state has its own laws.  
 [20] **Q:** How about for New York State; if you are  
 [21] aware of any difference?  
 [22] **A:** As I said, I don't know. I think each state  
 [23] has its own rules. I would have to look it up.  
 [24] **Q:** Doctor, you had mentioned earlier about where  
 [25] you had learned about LASIK including the lectures



[1] Herbert J. Nevyas, M.D.  
[2] order.  
[3] **A:** Oh, yes, it was out of order.  
[4] **Q:** Take a moment to make sure they are all  
[5] there, please.  
[6] **A:** They are all here. Okay.  
[7] **Q:** I think where I was is I was asking you the  
[8] first time you developed an impression to explain  
[9] what was wrong with Mr. Morgan that you wrote in the  
[10] chart was on 9/24/98. That's where you put down  
[11] odd.  
[12] **A:** That's where I first had the idea that there  
[13] was possibly something that was completely  
[14] nonphysiologic, yeah. And before that I thought the  
[15] problem was we just needed time for his cornea to  
[16] smooth more. We were puzzled.  
[17] **Q:** To be certain, I want to be sure that I  
[18] understand that. So prior to 9/24/98 you considered  
[19] that he needed time for the cornea to smooth and  
[20] recover from the LASIK?  
[21] **MS. KRAMER:** This is when he saw him?  
[22] **A:** Or I was just plain puzzled. I didn't see  
[23] him that often, but I was a little puzzled, but then  
[24] again I wasn't primarily following him. I figured  
[25] that time would tell.

[1] Herbert J. Nevyas, M.D.  
[2] **Q:** Did you consider the possible diagnoses of  
[3] malingering, hysteria, nuclear sclerosis or a  
[4] physical problem that is retinal as being a  
[5] complication of LASIK surgery?  
[6] **A:** No.  
[7] **Q:** Did you consider malingering, a physical  
[8] problem that is retinal, hysteria or nuclear  
[9] sclerosis as being an adverse event following LASIK  
[10] surgery?  
[11] **MR. LAPAT:** Objection.  
[12] **MS. KRAMER:** Go ahead. You can answer.  
[13] **A:** Absolutely not.  
[14] **Q:** And why did you not consider it as an adverse  
[15] event?  
[16] **MR. LAPAT:** Objection.  
[17] **MS. KRAMER:** You can answer.  
[18] **A:** Because in my experience LASIK surgery does  
[19] not cause nuclear sclerosis, does not cause retinal  
[20] problems that were of this sort, although I thought  
[21] something might be developing, but it does not cause  
[22] hysteria or malingering, and he was getting  
[23] gradually worse. He was pretty good right after.  
[24] Usually a LASIK complication will show up  
[25] immediately and then usually get better, not worse,

[1] Herbert J. Nevyas, M.D.  
[2] so something was going on here and we were very  
[3] puzzled, and that's why we very much encouraged  
[4] other opinions.  
[5] **Q:** When you say it shows up immediately, what  
[6] time frame are you talking about?  
[7] **A:** Within the first few days or months, first  
[8] visit even. If you get a problem with the cornea,  
[9] it is worse on the first day and then it gets  
[10] better. It is common to have poor vision the first  
[11] postoperative day and he had good vision the first  
[12] postoperative day and then gradually got worse,  
[13] 20/50, 20/70, 20/60 minus, 2/60, 20/60 plus. Well,  
[14] that's not too bad. He stayed 20/60 for a good  
[15] while and then 20/80. He came up to 20/50 here  
[16] afterwards. He really didn't do that badly up until  
[17] — we are talking through August of '98. Then he  
[18] dropped to 20/70 by September of '98, 20/100 and  
[19] 20/80 by April of '99. That was April of '99.  
[20] 20/100, 20/80 July of '99. Something is going on  
[21] obviously. It's not something with LASIK a year and  
[22] a half afterwards that he is down to 20/100, 20/200,  
[23] 2400. He is certainly getting worse for whatever  
[24] reason, and it could have been any of these things.  
[25] His responses are getting worse; let's put it that

[1] Herbert J. Nevyas, M.D.  
[2] way.  
[3] **Q:** Under your investigational protocol with the  
[4] Food & Drug Administration, when was something  
[5] considered a complication and when was something  
[6] considered an adverse event? Let's do some  
[7] complications first.  
[8] **A:** We have a whole list of things which would be  
[9] considered either complications or adverse events.  
[10] Microkeratome problems where we have a bad flap, a  
[11] hole in the flap, an irregular flap, irregular lines  
[12] in the cornea from the cutting of the flap, an  
[13] interface, diffuse lamellar keratopathy where you  
[14] have a problem with the interface where you have  
[15] inflammation in it, that's an adverse event. An  
[16] infection is an adverse event. These are specific  
[17] problems which we see which would be due to the  
[18] LASIK, any of these things. It wouldn't have  
[19] happened if he hadn't had LASIK. That's what I can  
[20] think of. Decentration of the ablation,  
[21] irregularity of the ablation, irregularity of the  
[22] cornea, any of these things. These were what is  
[23] considered. We have a list of things that we report  
[24] to the FDA and check off. They do not include  
[25] developing a cataract. They do not include

[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: 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] 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] 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

[1] Herbert J. Nevyas, M.D.  
[2] patient had ghost images and she mentioned that in  
[3] her deposition at some date.  
[4] **MS. KRAMER:** Obviously he didn't have  
[5] her deposition when he was treating this patient, so  
[6] what I'm asking you for is can you find it for me in  
[7] the record so he can read it in context?  
[8] **MR. FRIEDMAN:** If you turn to the day of  
[9] 3/27/2000 —  
[10] **MS. KRAMER:** Are you looking at "No  
[11] change in ghost image with hard contact lenses"?  
[12] (Discussion off the record between the  
[13] witness and his attorney.)  
[14] **MS. KRAMER:** What's the question?  
[15] **Q:** Doctor, do you see that, "No change in ghost  
[16] image with hard contact lenses"?  
[17] **A:** Yes.  
[18] **Q:** Are you able to identify who wrote that note?  
[19] **A:** That is Dr. Anita Wallace. That is the first  
[20] mention I see of a ghost image. There is no  
[21] complaint of a ghost image. She just said that  
[22] there is no change in any. I don't even know that  
[23] there were any.  
[24] **Q:** Now, under "Adverse Events," that third from  
[25] the bottom, the ten lines — the ten letters rather,

[1] Herbert J. Nevyas, M.D.  
[2] you had said that was a loss of two lines?  
[3] **A:** That's what I would presume from the way it  
[4] is described here.  
[5] **Q:** Did Mr. Morgan have a decrease of best —  
[6] what is BSCVA?  
[7] **A:** Oh, I'm sorry. That is best uncorrected  
[8] visual acuity. SC is without correction.  
[9] Uncorrected visual acuity. I'm not sure.  
[10] **Q:** You are not sure of what, Doctor?  
[11] **A:** What his uncorrected visual acuity was. It  
[12] says it has been measured with correction. I've got  
[13] it. I'm sorry. I understand now. That seemed  
[14] strange to me. His uncorrected visual acuity before  
[15] surgery was absolutely awful. He is a minus five  
[16] minus six equivalent myo. So his uncorrected visual  
[17] acuity would have been finger counting in his case.  
[18] They are saying a decrease in best uncorrected  
[19] visual acuity of more than ten letters. I don't —  
[20] I think his uncorrected visual acuity is much better  
[21] now. It has to be. I'm sorry. I was not reading  
[22] that correctly. SCVA means uncorrected visual  
[23] acuity. A decrease in the uncorrected acuity of  
[24] more than ten lines is reported. Well, this is not.  
[25] This is a decrease in best corrected visual acuity.

[1] Herbert J. Nevyas, M.D.  
[2] That would be without the S, BCVA.  
[3] **Q:** Doctor, how —  
[4] **A:** This is not applicable.  
[5] **Q:** How do you determine what BSCVA means?  
[6] **A:** That's what I'm used to reading. If you have  
[7] an SC, it means without correction. All through  
[8] this we have CC, SC and B means best and VA means  
[9] visual acuity.  
[10] **Q:** You say all through this?  
[11] **A:** All through all of our charts. In all of  
[12] ophthalmology CC is with correction and SC is  
[13] without correction. That is the commonly accepted  
[14] shorthand.  
[15] That is best uncorrected visual acuity,  
[16] I think. That's what I would say that means. Maybe  
[17] it means something else, but that's what it looks  
[18] like to me.  
[19] **MS. KRAMER:** Best spectacle.  
[20] **Q:** Yes, your attorney has suggested that it may  
[21] mean best spectacle corrected visual acuity.  
[22] **A:** I don't know.  
[23] **MS. KRAMER:** But what is the difference  
[24] between best spectacle and best corrected?  
[25] **THE WITNESS:** It is the same. Best

[1] Herbert J. Nevyas, M.D.  
[2] corrected is best spectacle corrected. That is what  
[3] you correct with. Your best corrected would mean  
[4] with contact lenses, but I never used that term,  
[5] best spectacle corrected because we are not  
[6] interested in that. We are interested in best  
[7] corrected whether it is spectacle or not, and  
[8] uncorrected is SC. I don't know. Best spectacle?  
[9] It could be. Maybe that's what they meant there,  
[10] but I didn't write that.  
[11] **Q:** Let me understand. Are you saying that you  
[12] are not really sure what BSCVA means?  
[13] **A:** I'm not sure, no.  
[14] (Herbert Nevyas Exhibit 29 was marked  
[15] for identification.)  
[16] **Q:** Let me pass you what's been marked as Nevyas  
[17] 29, which was Bates Nos. 1375 and 1374, and ask you  
[18] to identify that.  
[19] **MS. NEWMAN:** For the record, it is dated  
[20] March 14, 2001.  
[21] **A:** Yes.  
[22] **Q:** My first question is what does PMA mean?  
[23] **A:** Premarket approval.  
[24] **Q:** Now, did Mr. Morgan fit the category of one  
[25] of the 346 at the bottom of the page, 346 eyes