

**DE-IDENTIFIED DEPOSITION OF AN EYE DOCTOR IN  
A CATARACT SURGERY MEDICAL MALPRACTICE CASE  
PART 2**

2 SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

3 Index No.  
4 - - - - - x

5  
6 Plaintiffs,

7 - against -

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9  
10 Defendants.

11  
12 - - - - - x  
13 June 5,  
1:13 p.m.

14  
15  
16 CONTINUED DEPOSITION of DR. , a  
17 Defendant herein, taken by the Plaintiff, pursuant to  
18 Order, held at Street,  
19 before , a Notary Public of the State of  
20 New York.

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0174

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A P P E A R A N C E S :

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5 THE LAW OFFICE OF GERALD M. OGINSKI, LLC  
25 Great Neck Road  
Great Neck, NY 11021  
6 Attorney for Plaintiffs

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10 Attorneys for Defendant,

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14 Attorneys for Defendant,

15 BY:

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Attorneys for Defendant,

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(Appearances continued on next page.)

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0175

2 A P P E A R A N C E S : (continued)

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Attorneys for Defendant,

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BY:

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0176

2 , after having

3 first been duly sworn by a Notary Public of the State of

4 New York, was examined and testified as follows:

5 EXAMINATION BY

6 MR. OGINSKI:

7 Q. Good afternoon, Doctor. Do

8 you still perform surgical procedures at

9 the Center?

10 A. Yes.

11 Q. And in which facility?

12 A.

13 Q. Is that considered an

14 ambulatory surgery center?  
15 A. I'm not sure what the  
16 designation is.  
17 Q. Since the last time we met on  
18 April 24, , have you had a chance to  
19 review your testimony you gave?  
20 A. Just very briefly.  
21 Q. Did you review any textbooks  
22 or literatures from that time up until now  
23 relating to this case?  
24 A. No.  
25 Q. You had told me earlier on

0177

1 DR.  
2 April 24th, that the second procedure  
3 you performed on was a  
4 complex procedure. Can you explain what  
5 you mean by that?  
6 A. Is that what I said?  
7 Q. Page 127, Doctor.  
8 A. Where?  
9 Q. Line 19. Let me start at 12:  
10 Question: Did you form any  
11 opinion as to why she had only that visual  
12 acuity in the right eye at that time?  
13 Answer: Did I? Yes.  
14 Question: What was your  
15 opinion?  
16 Answer: It's the typical  
17 course or frequent course after surgery,  
18 after complex surgery.  
19 A. Yes.  
20 Q. Tell me what you meant by  
21 that.  
22 A. By the term "complex surgery?"  
23 Q. Yes.  
24 A. 's surgery was  
25 complex. It was complicated. It was

0178

1 DR.  
2 difficult.  
3 Q. Now, we are talking about the  
4 original cataract surgery or the second  
5 surgery where you had the lens replacement,  
6 because here we talked about -- if you go  
7 up one page to 126, line 7, we are talking  
8 about the date of November 19, which is  
9 after the second procedure.  
10 A. So I assume you're asking me  
11 about the lens exchange.  
12 Q. Correct. What is it about  
13 that procedure that made it complex?  
14 MR. : Are you talking  
15 about the procedure in general or what  
16 happened during this particular  
17 procedure?  
18 MR. OGINSKI: During this  
19 procedure.

20 A. I believe we discussed this in  
21 the prior EBT. I'm not sure, but I think I  
22 gave an answer to this question.

23 : Okay, but you can  
24 answer it.

25 A. I would like to find what I  
0179

1 DR.  
2 said the last time.

3 Q. I will rephrase it, Doctor.  
4 My question only asked what is it about  
5 that procedure that you considered to be  
6 complex?

7 A. Because there were  
8 difficulties during the procedure. There  
9 were, you know, it didn't -- that's it.

10 Q. Were those technical  
11 difficulties?

12 A. Yes.

13 Q. Were those difficulties in any  
14 way affected by the level of experience  
15 that you had in performing this procedure?

16 A. No.

17 Q. Where did you go to medical  
18 school?

19 A.

20  
21 Q. When did you graduate?

22 A. .

23 Q. Where did you go to college?

24 A. .

25 Q. And when did you graduate?

0180  
1 DR.

2 A. .

3 Q. And after completing medical  
4 school in , what did you do after that?

5 A. I did my internship.

6 Q. Where?

7 A.

8  
9 Q. One year?

10 A. One year.

11 Q. And then?

12 A. I did a year of emergency  
13 medical -- emergency medicine training at

14

15 Q. And then?

16 A. I did a residency in

17

18  
19 Q. How many year program was

20 that?

21 A. Three.

22 Q. When did you complete that?

23 A. In the summer of .

24 Q. And the internship, the ER

25 year and the , were

0181

1 DR.  
2 those all continuous?  
3 A. Yes.  
4 Q. One after the other?  
5 A. Yes.  
6 Q. After completing your  
7 residency at what, if anything,  
8 did you do after that?  
9 A. I started work.  
10 Q. Where did you begin to work?  
11 A. At my current place of  
12 practice.  
13 Q. That was with Dr. ,  
14 before Dr. ?  
15 A. With Dr. .  
16 Q. You told me initially you were  
17 an employee.  
18 A. Yes.  
19 Q. How many different offices do  
20 you practice out of currently?  
21 A. Two.  
22 Q. And what is the second office  
23 that you practice out of?  
24 A.  
25 Q. Where is that?

0182

1 DR.  
2 A.  
3 Q. Are you affiliated with any  
4 hospitals?  
5 A. Yes.  
6 Q. Which ones?  
7 A. Two hospitals;  
8 and  
9  
10 Q. What is your affiliation at  
11 ?  
12 A. I am a voluntary attending.  
13 Q. And in ?  
14 A. Same. Voluntary attending.  
15 Q. In the Department of  
16 Ophthalmology?  
17 A. Yes.  
18 Q. When were you licensed to  
19 practice medicine in New York?  
20 A. I do not recall.  
21 Q. Approximately.  
22 A. I would imagine .  
23 Q. Are you licensed in any other  
24 state?  
25 A. No.

0183

1 DR.  
2 Q. Have you ever been licensed in  
3 any other state?  
4 A. I was licensed in .  
5 Q. When to when?

6 A. I do not recall. Somewhere in  
7 the middle of my current career.

8 Q. And is there any particular  
9 reason why you are no longer licensed in  
10 ?

11 A. I never pursued a practice in  
12 . I thought I would.

13 Q. Has your license to practice  
14 medicine in the State of New York ever been  
15 suspended?

16 A. No.

17 Q. Has it ever been revoked?

18 A. No.

19 Q. Are you board certified?

20 A. Yes.

21 Q. When did you become board  
22 certified?

23 A. In .

24 Q. Is that with the  
25 ?

0184

1 DR.

2 A. Yes.

3 Q. In order to become board  
4 certified you needed to take a written exam  
5 and also an oral exam, correct?

6 A. Yes.

7 Q. Did you have to take the  
8 written exam more than once?

9 A. No.

10 Q. Did you have to take the oral  
11 exam more than once?

12 A. No.

13 Q. You mentioned when we met last  
14 on April 24th, that the patient had a  
15 refractive surprise. Do you remember that  
16 term?

17 A. Yes.

18 Q. Tell me what you meant by  
19 that.

20 A. What is meant by that is that  
21 the final refraction was not predicted by  
22 the formulas.

23 Q. Can you explain that? Can you  
24 explain why that occurred or why that  
25 happened?

0185

1 DR.

2 A. No.

3 Q. We discussed Dr.  
4 as someone you had referred the patient to.

5 In Dr. report that you  
6 have in your chart, he indicated that the  
7 anterior chamber shows a difficult view.

8 What is your understanding of  
9 what that means?

10 A. The difficulty was because of  
11 corneal edema in the right eye.

12 Q. That means he was unable to  
13 visualize the cornea fully?

14 A. He had difficulty visualizing  
15 past the cornea, through the cornea.

16 Q. In preparation for either  
17 today's deposition or when we met last in  
18 April, did you review an examination report  
19 by Dr. ?

20 A. No.

21 Q. Did you review any medical  
22 records from Hospital  
23 regarding this patient?

24 A. No.

25 Q. Did you ever learn from any

0186

1 DR.

2 physician that the patient was diagnosed at  
3 Hospital with  
4 persistent corneal edema?

5 A. No.

6 Q. Did you ever learn from any  
7 physician that the patient was diagnosed at  
8 Hospital with a  
9 macular defect?

10 A. No.

11 Q. At any time while you were  
12 treating this patient, did you ever come to  
13 the conclusion that the patient had a  
14 macular defect after either the first or  
15 second surgeries?

16 A. No.

17 Q. If a patient does have a  
18 macular defect, can it contribute to vision  
19 loss?

20 A. Macular defect is a  
21 nonspecific term. It's very broad.

22 Q. How would you describe it or  
23 explain it?

24 A. Macular defect?

25 Q. Yes.

0187

1 DR.

2 A. A defect in the macular region  
3 of the retina.

4 Q. What is the purpose of the  
5 macular region of the retina?

6 A. It is the area of the retina  
7 that produces central vision.

8 Q. When performing a cataract,  
9 would it be correct to say that there would  
10 be no -- withdrawn.

11 Is injury to the macular area  
12 of the retina a known, recognized risk of  
13 cataract surgery?

14 A. Yes.

15 Q. In the course of your career  
16 up until the time you treated  
17 , did you ever encounter an

18 injury to the macular area of the region  
19 following a cataract surgery?  
20 A. Can you clarify "injury?"  
21 Q. Anything that was unexpected.  
22 A. That's not injury to me.  
23 That's not the definition the word injury.  
24 Anything unexpected, is that --  
25 Q. I will rephrase it.

0188

1 DR.  
2 If you perform a cataract  
3 surgery correctly, would you expect to  
4 obtain or expect to get an injury to the  
5 macular area of the retina?  
6 MR. : Objection. You can  
7 answer.  
8 A. There's a large percentage of  
9 patients who after uneventful cataract  
10 surgery experience what is probably  
11 classified as injury to the retina.  
12 Q. How does that occur?  
13 A. How does that occur?  
14 Q. Yes.  
15 A. I'm not exactly -- I don't  
16 think anybody is exactly sure as to its  
17 exact mechanism.  
18 Q. Can you quantify, when you  
19 said large percentages of patients, or give  
20 me a range you are referring to?  
21 A. In the double digits,  
22 depending on how you define injury.  
23 Q. Can you be any more specific?  
24 Because double digits range anywhere from  
25 10 to 99 percent.

0189

1 DR.  
2 A. You gave me a very nonspecific  
3 request, and I am giving you an equally  
4 nonspecific answer.  
5 Q. As of the last time you saw  
6 , will corrective lenses allow  
7 her to be able to see clearly?  
8 A. As of the last visit?  
9 Q. Yes, that you saw her.  
10 A. That I saw her, which was  
11 January 2, , it did not appear that  
12 corrective lenses would have allowed her to  
13 see clearly.  
14 Q. Why not?  
15 A. She had corneal edema. That  
16 was the main reason.  
17 Q. And at the time that you saw  
18 her on January 2nd, were you able to  
19 determine why she still had the corneal  
20 edema?  
21 A. She had corneal edema as --  
22 she developed corneal edema after surgery  
23 or during surgery.



24 Q. Can you just be specific? We  
25 are talking about both surgeries or --

0190

1 DR.

2 A. Mostly the second surgery, the  
3 lens exchange.

4 Q. Now, Doctor, looking at the  
5 January 2nd, note --

6 A. Actually, on January 2nd, my  
7 partner examined her.

8 Q. That was my question. At the  
9 bottom of the note it's checked off  
10 Dr. , correct?

11 A. Yes. I made a mistake.

12 Q. Just to be clear, the last  
13 time you saw her was December --

14 A. 18, .

15 Q. As of that visit, would  
16 corrective lenses have helped her improve  
17 her vision?

18 A. Not to a -- no. No.

19 Q. Do you have a memory as to why  
20 the patient saw Dr. for the first  
21 time on January 2nd, ?

22 A. She was anxious and wanted to  
23 get a second opinion.

24 Q. When she saw Dr. our

0191

1 DR.

2 presence?

3 A. No.

4 Q. On January 2nd, what was the  
5 patient's visual acuity, corrected and  
6 uncorrected?

7 A. Uncorrected, count fingers.

8 Best corrected, 21/50.

9 Q. Doctor, I understand that you  
10 have not -- that this is not your note, but  
11 I am going to ask you nevertheless to read  
12 the note as best you can.

13 A. The date, patient's name --  
14 it's page 6 -- status post-fascial, IOL  
15 exchange on 11/19/. It says not using  
16 drops for one week.

17 Gives visual acuity of count  
18 fingers in the right eye. It gives the  
19 manifest refraction. It says with minus  
20 2.75 lens the patient saw 21/50, minus the  
21 pressure in the right eye was 19 --

22 Q. That's normal?

23 A. Within normal range.

24 It says droopy lid, conjunctive  
25 was injected, anterior corneal is hazy.

0192

1 DR.

2 Then there's a note by Dr. , it says  
3 decreasing epithelial edema, one plus SK  
4 which stands for stria keratitis.

5 Q. What is that, Doctor?  
6 A. Inflammation of the cornea.  
7 Keratitis, cornea.  
8 Plus thickness, which means  
9 increased thickness, also in parentheses  
10 (stromal edema.)  
11 Plus endothelial changes.  
12 Something about the lens.  
13 Q. Does that say definitely less  
14 edema than previously?  
15 A. Oh, definitely less edema than  
16 previously.  
17 ECIOL is the lens. Pupil, it  
18 says irregular. Under the impression --  
19 Q. I'm sorry, Doctor, that would  
20 be irregular for the left eye?  
21 A. Right eye.  
22 Under impression it says, right  
23 corneal edema, resume Pred Forte to get  
24 corneal consult.  
25 Q. Did you speak to Dr.  
0193  
1 DR.  
2 after he examined ?  
3 A. I may have. I probably have.  
4 Q. Do you have any memory as you  
5 sit here now as to what the two of you  
6 discussed following the January 2nd visit?  
7 A. We discussed  
8 situation.  
9 Q. Can you be specific as to what  
10 you talked about?  
11 A. I asked him how she was doing  
12 and I asked him which corneal specialist he  
13 sent her to.  
14 Q. What was the response?  
15 A. He sent her to Dr.  
16 He tried to make arrangements for  
17 Dr. to see her.  
18 Q. Did you know Dr. ?  
19 A. Not personally.  
20 Q. To your knowledge, did the  
21 patient go to Dr.?  
22 A. I am unaware of that.  
23 Q. Did Dr. say anything  
24 else to you about this patient as of the  
25 January 2nd visit?  
0194  
1 DR.  
2 A. He said we will have to wait  
3 and see how she heals.  
4 Q. Did he offer any opinion as to  
5 why she was in this particular condition?  
6 A. No.  
7 Q. Did you tell him what you had  
8 done in the past as far as the cataract  
9 procedure and the subsequent treatment?  
10 A. Yes.

11 Q. Did you offer any explanation  
12 as to why there was a refractive surprise  
13 that you told me about earlier?

14 A. Did I offer him any  
15 explanation?

16 Q. Yes.

17 A. No.

18 Q. Did Dr. offer any  
19 explanation or rationale as to why this  
20 patient might have a refractive surprise?

21 A. No, other than the fact that  
22 both of us discussed that after Lasik  
23 surgery picking an intraocular lens is  
24 difficult.

25 Q. Did Dr. , to your

0195

1 DR.

2 knowledge, reevaluate the numbers as far as  
3 the power of the lens that was used?

4 A. No.

5 Q. Let's go, please, to the  
6 January 9th visit. Dr. also saw the  
7 patient at this time, correct?

8 A. Yes.

9 Q. And what was the visual acuity  
10 at that time?

11 A. Uncorrected visual acuity was  
12 2200NJ7.

13 Q. And how did that compare to  
14 the acuity observed six days earlier?

15 A. It appears there's some  
16 improvement in the uncorrected visual  
17 acuity.

18 Q. Am I correct that an acuity of  
19 2200 is still markedly abnormal?

20 A. It's poor.

21 Q. And what does Dr. record  
22 in his note about his exam?

23 A. He records -- you want me to  
24 go through the whole note?

25 Q. Beginning with his handwritten

0196

1 DR.

2 stuff on the left side.

3 A. He notes decreasing edema on  
4 the corneal examination, and then  
5 assessment is right corneal edema, corneal  
6 consult pending Dr. Monday at  
7 , and the phone number.

8 Q. Were you aware if  
9 had reviewed Dr. report?

10 A. The report was probably in the  
11 chart, and I assume he had access to it. I  
12 can't tell you if he reviewed it.

13 Q. Other than making that  
14 assumption, do you have any knowledge as  
15 you sit here now as to whether or not he  
16 actually did read it at some point between

17 January 2nd and January 9?  
18 A. I do not have direct  
19 knowledge.  
20 Q. What is secondary ocular  
21 hypertension?  
22 A. It's, in my mind, ocular  
23 hypertension that's caused by something.  
24 Q. Did that patient have  
25 secondary ocular hypertension prior to  
0197

1 DR.  
2 having cataract surgery?  
3 A. No.  
4 Q. Did she have it after the  
5 first cataract surgery?  
6 A. No.  
7 Q. Did she have it after the  
8 second cataract surgery?  
9 A. Not during the course of  
10 treatment in our office.  
11 Q. Are you aware as to whether  
12 the Hospital records  
13 confirm that the patient was diagnosed with  
14 secondary ocular hypertension?  
15 A. I don't have access to those  
16 records.  
17 Q. During the course of cataract  
18 surgery, Doctor, assuming that the  
19 procedure is done properly and there are no  
20 complications, do you expect to see damage  
21 to the endothelial cells?  
22 A. There is some damage to the  
23 endothelial cells after any ocular surgery.  
24 Q. How does that occur?  
25 A. I don't understand the

0198  
1 DR.  
2 question.  
3 Q. I will rephrase it.  
4 If I understand your statement,  
5 you are saying that even if cataract surgery  
6 is done properly that you can still get some  
7 damage to the endothelial cells, correct?  
8 A. Yes.  
9 Q. How do you recognize whether  
10 or not there is damage to the endothelial  
11 cells?  
12 A. There are different types of  
13 damage, I suppose, there's clinically  
14 significant damage and there's clinically  
15 insignificant damage. Clinically  
16 significant damage you do by physical  
17 examination.  
18 Q. What instruments would you use  
19 to diagnose that condition?  
20 A. Slit lamp examination.  
21 Q. And if there was clinically  
22 significant damage to the endothelial cells

23 during a cataract procedure, what effect  
24 would it likely have on a patient?

25 A. Most of the time the effects  
0199

1 DR.

2 are transient.

3 Q. What would they be?

4 A. Corneal edema.

5 Q. Is damage to endothelial cells  
6 during a cataract procedure avoidable?

7 A. No.

8 Q. Now, during a cataract  
9 surgery, Doctor, is it correct to say that  
10 if the procedure is done properly and  
11 correctly, assuming no complications, that  
12 the cornea should not become injured during  
13 the procedure?

14 A. No.

15 Q. Tell me why.

16 A. The cornea always gets, I  
17 guess, quote, unquote, "injured."

18 Q. How?

19 A. Well, we make an incision in  
20 the cornea. That's an injury in itself.  
21 That's one of the ways.

22 Q. Did you ever learn from any  
23 physician that doctors at  
24 Hospital -- withdrawn.

25 Did you ever speak to any  
0200

1 DR.

2 doctor at Hospital  
3 about ?

4 A. No.

5 Q. Did you ever speak to a doctor  
6 named about Mrs. ?

7 A. No.

8 Q. Did you ever learn that  
9 Dr. had treated this patient for her  
10 original PRK surgery years earlier?

11 A. No.

12 Q. Did you ever learn from any  
13 physician at Hospital  
14 that there was a miscalculation in the lens  
15 that was used during the cataract surgery?

16 MR. : Objection.

17 He said that he never spoke to  
18 anybody, so how could he learn that?

19 He's never reviewed those records.

20 Q. Doctor, if you had been  
21 advised that there was a miscalculation by  
22 a subsequent treating doctor that the lens  
23 that was implanted during the cataract  
24 surgery, that there was a miscalculation,  
25 would you agree or disagree with that

0201

1 DR.

2 statement?

3 A. I would disagree and I would  
4 report that doctor to the American Academy  
5 of Ophthalmology.

6 Q. As of the last time that you  
7 saw Mrs. in December of , did  
8 you ever tell the patient that her vision  
9 would improve if she gave it some  
10 additional time?

11 A. Can you repeat the question?

12 Q. In December of did you  
13 tell Mrs. in substance that her  
14 vision would improve if she gave it some  
15 additional time?

16 A. I asked her to wait and see  
17 how her cornea heals to see what the final  
18 acuity would be.

19 Q. Do you have an opinion within  
20 a reasonable degree of medial probability  
21 as to whether the treatment, the cataract  
22 surgery that you performed initially on the  
23 patient on November 5, was medically  
24 necessary?

25 A. Yes.

0202

1 DR.

2 Q. What is your opinion?

3 A. It was medically necessary.

4 Well, actually, withdrawn.

5 THE WITNESS: Can I withdraw  
6 that?

7 MR. : Yes.

8 A. I don't understand what  
9 "medically necessary" means. It is  
10 elective surgery. It's not cardiac  
11 surgery. It's elective surgery.

12 Q. Did Mrs. bully you or  
13 force you into performing corrective  
14 surgery on November 17?

15 MR. : Objection. You can  
16 answer.

17 A. We performed cataract surgery  
18 on November 17, if I remember correctly,  
19 and she did not bully me.

20 Q. Did you form --

21 A. Oh, wait, November 17th?

22 Q. The date of the corrective  
23 procedure, Doctor, was the 17th, 19th?

24 A. That's the cataract --

25 Q. The exchange?

0203

1 DR.

2 A. That's the exchange, so let's  
3 start again because you're misnaming dates  
4 and terms.

5 Q. The date of the lens exchange,  
6 what date was that?

7 A. November 19th.

8 Q. In your opinion, was it

9 premature to do a lens exchange only two  
10 weeks after the original cataract surgery?

11 A. It could have been done at the  
12 time it was done, it could have been done  
13 at a later time.

14 Q. Did you have an opinion at  
15 that time as to whether it was premature to  
16 perform the procedure at that time?

17 A. I asked Mrs. to delay  
18 the surgery as long as possible. She had  
19 wanted to have it done as early as  
20 possible. This was the earliest I felt  
21 comfortable doing it.

22 Q. When you arrived at the  
23 ambulatory surgery center where you  
24 performed the surgical procedure on  
25 November 5 and also November 19th, how did

0204

1 DR.  
2 you know that the intraocular lens was the  
3 same power that you had requested?

4 MS. : Note my  
5 objection.

6 A. The only way I know is by  
7 looking at the packaging of the lens and  
8 correlating with my order.

9 Q. And there was nothing in any  
10 of the packaging to suggest that the  
11 material was mislabeled, correct?

12 A. There never is.

13 Q. In this case there wasn't?

14 A. No.

15 Q. Was there any equipment that  
16 you were using at the ambulatory surgery  
17 center that was not working properly?

18 MS. : Note my  
19 objection.

20 A. Everything was working  
21 properly.

22 Q. Did you have a conversation  
23 with Dr. at any time in January of  
24 2008 as to whether this patient was an  
25 appropriate candidate for cataract surgery

0205

1 DR.  
2 originally?

3 A. In January of ?

4 Q. Yes.

5 A. No.

6 Q. Did Dr. question you as  
7 to why you performed cataract surgery on  
8 this patient given her presenting symptoms  
9 and her initial findings?

10 A. No.

11 Q. Did Dr. ever tell you in  
12 substance that the original cataract that  
13 the patient presented with was not severe  
14 enough to warrant surgery?

15 A. No.  
16 Q. Now, you told me previously  
17 that you had told Mrs. that you  
18 wanted her to have more time to allow the  
19 eye to heal from the original surgery,  
20 correct?  
21 A. I told Mrs. that I  
22 needed more time to figure out the  
23 refractive -- the final refractive power of  
24 her eye.  
25 Q. This refractive surprise you

0206

1 DR.  
2 told me about, how do you correct that?  
3 A. You have different options.  
4 One of them is lens exchange, one of them  
5 was glasses, one of them is laser vision  
6 correction.  
7 Q. After the lens exchange on  
8 November 19th, when she still did not  
9 have good visual acuity, what options were  
10 available to you in order to treat that  
11 condition, aside from medication?  
12 A. What condition?  
13 Q. The fact that she still did  
14 not have good visual acuity.  
15 A. Mostly we wanted to give it  
16 time.  
17 Q. What would that do?  
18 A. A lot of times it resolves the  
19 corneal edema and lets us see what is going  
20 on.  
21 Q. And what happens if over that  
22 time the corneal edema does not resolve?  
23 What do you do at that point?  
24 A. She would require additional  
25 treatment for corneal edema.

0207

1 DR.  
2 Q. And what is your understanding  
3 as to what other types of treatment would  
4 be available in that case?  
5 A. There are surgical options  
6 available to treat corneal edema.  
7 Q. Can you give me an idea of  
8 what they are?  
9 A. They are endothelial cell  
10 transplants or a corneal transplant.  
11 Q. Did you ever speak with  
12 Mrs. after December of ?  
13 A. No.  
14 Q. Did you ever learn from any  
15 family member anything that was going on  
16 with her with any other doctor?  
17 A. No.  
18 Q. Do you have any knowledge as  
19 to why the patient did not return to your  
20 office or to Dr after January 9,



21 ?  
22 A. She wanted to sue me.  
23 Q. Do you know or did you learn  
24 where she had gone or what other physicians  
25 she had seen after leaving your office

0208

1 DR.  
2 after January 9, ?  
3 A. No.  
4 Q. How did you learn that she  
5 wanted to sue you?  
6 A. Common sense.  
7 Q. Tell me why. Tell me what you  
8 mean.

9 A. Her demeanor during the last  
10 few visits to the office.

11 Q. What specifically was it about  
12 her demeanor that gave you that impression?

13 A. What specifically?

14 Q. Yes.

15 A. Her behavior, her attitude --  
16 well, those two things.

17 Q. Did you have a conversation  
18 with her about your impression?

19 A. No. I did not confront her  
20 with my suspicions.

21 Q. Is it your opinion, Doctor,  
22 that the treatment you rendered to  
23 Mrs. -- withdrawn.

24 Is it your opinion within a  
25 reasonable degree of medical probability

0209

1 DR.  
2 that it was acceptable to perform the  
3 cataract surgery that you did on November 5,  
4 ?

5 A. Yes.

6 Q. And is it your opinion that  
7 the cataract surgery was performed  
8 appropriately?

9 A. Yes.

10 Q. And is it your opinion that  
11 the lens exchange was done in a timely  
12 fashion on November 19, ?

13 A. Yes.

14 Q. At any time while you treated  
15 Mrs. , did you ever come to the  
16 conclusion that the calculations that you  
17 used to determine the lens power were  
18 inaccurate?

19 MR. : Objection. I think  
20 we went over this.

21 MR. OGINSKI: I will withdraw  
22 that.

23 Q. In the second surgical  
24 procedure done on November 19, , is  
25 there anything that was done during that

0210

1 DR.  
2 procedure that caused the corneal edema  
3 that you observed in the postoperative  
4 period?  
5 MR. : Objection to form.  
6 You can answer.  
7 A. The surgical procedure itself  
8 contributed to the corneal edema.  
9 Q. Was there anything else that  
10 contributed to it?  
11 A. Like what?  
12 Q. I'm just asking. Is there  
13 anything else?  
14 A. I don't think so.  
15 Q. Did this patient have any  
16 co-morbid condition that contributed to the  
17 continued corneal edema that was seen after  
18 the second surgical procedure?  
19 A. No.  
20 Q. Is there anything that the  
21 patient did or did not do that contributed  
22 to the corneal edema that you observed  
23 after November 19th that you observed?  
24 A. No.  
25 MR. OGINSKI: Thank you,

0211

1 DR.  
2 Doctor.  
3 MR. : Nothing from me.  
4 EXAMINATION BY  
5 MS. :  
6 Q. Good afternoon, Dr. .  
7 My name is . I am an attorney  
8 from . We  
9 represent in this matter.  
10 Are you employed by ?  
11 A. No.  
12 Q. Do you receive any salary from  
13 ?  
14 A. No.  
15 Q. Do you receive any health  
16 benefits from ?  
17 A. No.  
18 Q. Do you receive any other  
19 fringe benefits from ?  
20 A. No.  
21 Q. Can you describe the nature of  
22 your association, if any, with ?  
23 A. I use the laser to perform  
24 laser vision correction and I pay a fee, I  
25 guess I rent the laser. I'm not sure

0212

1 DR.  
2 exactly.  
3 Q. Is it fair to say that you use  
4 the facility and their equipment to  
5 perform laser vision correction surgery?  
6 A. Yes.

7 Q. That would be on your private  
8 patients?

9 A. Yes.

10 Q. To your knowledge, is the  
11 facility equipped for cataract procedures?

12 A. No.

13 Q. That would be no, it's not  
14 equipped, correct?

15 A. No, it's not, to my knowledge,  
16 equipped to perform cataract surgery.

17 Q. If you could just look at your  
18 new patient information form.

19 A. Yes.

20 Q. It's two pages, correct?

21 A. Double-sided, yes.

22 Q. Okay. Is this a form your  
23 office provides to the patient prior to an  
24 examination?

25 A. Yes.

0213

1 DR.

2 Q. Do you review this form with  
3 the patient?

4 A. One part. The medical history  
5 part.

6 Q. Do you review the first page  
7 at all?

8 A. The address, the demographic,  
9 I don't typically go over it with the  
10 patient.

11 Q. On the first page where it  
12 says Center, do you see that?

13 A. Yes.

14 Q. Do you recognize that  
15 handwriting to be yours?

16 A. It's not my handwriting.

17 Q. Do you recognize that  
18 handwriting to be that of anyone in your  
19 office?

20 A. It could be, but I can't tell  
21 you for sure.

22 Q. If you look at your first  
23 medical entry of September 27, .

24 A. Yes.

25 Q. And look under CC/HPI,

0214

1 DR.  
2 58-year-old female complaining of --

3 A. Yes.

4 Q. It says referred by  
5 Dr. . Do you see that?

6 A. Yes.

7 Q. Can you tell me who wrote that  
8 sentence?

9 A. My physician assistant --  
10 technician.

11 Q. Physician technician?

12 A. It's a technician. Like a

13 physician's assistant, but in our office.

14 Q. Are you familiar with

15 Dr.?

16 A. No. I have never met her.

17 Q. Never met her, never heard of  
18 her?

19 A. She's a primary care doctor  
20 who refers some patients, but I have never  
21 met her.

22 Q. Does Dr. refer  
23 patients to your office?

24 A. Sometimes she does.

25 Q. Was she referring patients to

0215

1 DR.

2 your office back in September of ?

3 A. Yes.

4 Q. Is she still referring  
5 patients to your office at this time?

6 A. Yes.

7 Q. Do you know, if you know, the  
8 source of the statement that Mrs.  
9 was referred by Dr. as reflected  
10 in your note of December 26, ?

11 A. It was written down by, like I  
12 said, by the technician in our office who  
13 is the first to speak to the patient. I'm  
14 not sure where exactly the statement came  
15 from, but it probably came from  
16 Mrs. .

17 Q. Did you ever have any  
18 conversation with Mrs. with  
19 respect to who she was referred by to your  
20 office?

21 A. I do not recall. I don't  
22 think so.

23 Q. On average, can you tell me  
24 how many cases approximately Dr.  
25 refers to your practice?

0216

1 DR.

2 A. I would say -- I couldn't  
3 answer that. Between five and ten patients  
4 every month.

5 Q. Is that the same as it was in  
6 September of -- or the year ?

7 A. I assume it is, but I do not  
8 keep track of individual --

9 Q. I understand. Just a general  
10 estimate.

11 A. Yes, I think so. It's about  
12 the same.

13 Q. Can you tell me how often  
14 refers patients to your practice for  
15 cataract evaluation?

16 A. If you consider this a  
17 referral, this would be the first and only  
18 time.

19 Q. Going to your entry of  
20 September 26, , again the section where  
21 it says CC/HPI, it says cataract evaluation  
22 OD. Do you see that?

23 A. Yes.

24 Q. What does cataract evaluation  
25 mean?

0217

1 DR.

2 A. It means that the patient  
3 is -- typically what it means is that the  
4 patient is aware she has a cataract and  
5 stated that to the technician.

6 Q. When a patient comes to you  
7 for cataract evaluation what, if anything,  
8 do you do?

9 A. I do a full examination.

10 Q. What does the full examination  
11 consist of?

12 A. History and physical and  
13 certain measurements to prepare for  
14 cataract surgery, discussion with the  
15 patient of risks and benefits and options.

16 Q. If the patient is referred to  
17 you for a cataract evaluation and you do  
18 not believe her to be indicated for a  
19 cataract surgery, is that within your  
20 discretion not to perform the surgery?

21 A. Absolutely. Yes.

22 Q. Is it fair to say that  
23 Mrs. came to you for purposes of  
24 determining whether she is indicated for  
25 cataract surgery?

0218

1 DR.

2 A. Mrs. -- yes.

3 Q. When Mrs. presented  
4 to you on that visit of September 26, ,  
5 did you have any discussions with her  
6 concerning her appointment with ?

7 A. Did I have any discussions  
8 with her concerning her appointment with  
9 ? Yes. She told me she was seen at  
10 and was told that she has a cataract.

11 Q. Did she tell you who she saw  
12 at ?

13 A. No.

14 Q. Do you recall anything else  
15 about the conversation that you had with  
16 her about her appointment with other  
17 than what you have already testified to?

18 A. No.

19 Q. Did Mrs. come with  
20 any written information that was pertinent  
21 to her medical condition?

22 A. No.

23 Q. If she had brought some papers  
24 that were pertinent to her medical

25 condition, is that something that would be  
0219

1 DR.

2 contained in the medical chart?

3 A. I typically make a copy and  
4 put it in the medical file.

5 Q. Did she indicate what type of  
6 doctor she saw at ?

7 A. No.

8 Q. Did she discuss what  
9 recommendations, if any, had been made by  
10 ?

11 A. She told me she went to to  
12 see if they could improve the vision in the  
13 right eye and they told her they couldn't  
14 because she has a cataract.

15 Q. That was the extent of the  
16 conversation?

17 A. I think that's what she told  
18 me.

19 Q. Now, prior to Mrs.  
20 first appointment with you on September 26,  
21 , did you have any discussions with  
22 anyone at ?

23 A. About what?

24 Q. Did anyone call you or did you  
25 call about a patient coming?

0220

1 DR.

2 A. No.

3 Q. After your first appointment  
4 with Mrs. , did you have any  
5 discussions with anyone at ?

6 A. I called to get her  
7 pre-PRK procedure measurements.

8 Q. By "measurements," what  
9 specific measurements are you referring to?

10 A. The corneal curvature and the  
11 prescription.

12 Q. Do you recall when you called  
13 for that information?

14 A. I do not recall exactly, but  
15 it was within days of the initial visit.

16 Q. Can you tell me who you spoke  
17 with at ?

18 A. I do not recall.

19 Q. Do you know the title of the  
20 individual you spoke with at ?

21 A. It was a patient consultant.

22 Q. Did the patient consultant  
23 give you the pre-PRK measurements?

24 A. Yes.

25 Q. Did you record those pre-PRK

0221

1 DR. E

2 measurements in your medical chart?

3 A. I recorded them on a post-it  
4 note.

5 MR. : Is that what you  
6 have there on the right side?  
7 THE WITNESS: Yes.  
8 MR. : He was just  
9 referring to Plaintiff's Exhibit 1  
10 marked on 4/24/. There's a post-it  
11 note that is on the front of something  
12 that's labeled diagnostic, and it says  
13 on it from with the patient's  
14 name, , and then some  
15 numbers.  
16 Q. Can you tell me what the  
17 numbers are, please.  
18 A. 40.5 by 42.25, and then 40.5  
19 by 42.25, and then I have minus 3, minus 1,  
20 access 180, and minus 2, minus 175, access  
21 175.  
22 Q. Did you press any additional  
23 information from in that conversation?  
24 A. No.  
25 Q. Did you require any additional  
0222

1 DR.  
2 information from ?  
3 A. No.  
4 Q. Did you ever talk to anyone  
5 else at TLC in between your first visit and  
6 the surgery of November 5, other than  
7 the patient consultant we talked about?  
8 A. No.  
9 Q. Did play any role in your  
10 determination that the plaintiff was  
11 indicated for the initial cataract  
12 procedure of 11/5/?  
13 A. No.  
14 Q. Did play any role in your  
15 performance of the initial cataract  
16 procedure which was performed on  
17 November 5, ?  
18 A. No.  
19 Q. Did play any role in the  
20 selection of the IOL power for the initial  
21 cataract procedure?  
22 A. No.  
23 Q. Did play any role in  
24 determining whether the plaintiff was  
25 indicated for the IOL exchange?

0223  
1 DR.  
2 A. No.  
3 Q. Did play any role in  
4 performing the IOL exchange on November 19,  
5 ?  
6 A. No.  
7 Q. Did play any role in  
8 selecting the IOL power for the IOL  
9 exchange?  
10 A. No.

11 MS. : I have nothing  
12 further. Thank you.

13 EXAMINATION BY

14 MS. :

15 Q. Good afternoon. My name is

16 . I am with

17 . I represent

18 Center in this action.

19 I just have a few follow-up

20 questions for you. When did you first

21 commence your relationship with ?

22 A. About .

23 Q. Describe your relationship

24 with them.

25 A. I operate at .

0224

1 DR.

2 Q. Do you pay them a fee for  
3 using their facilities?

4 A. No.

5 Q. Do you receive any benefits  
6 from them?

7 A. No.

8 Q. Do you still perform surgeries  
9 at?

10 A. Yes.

11 Q. How are they paid?

12 A. Insurance company.

13 Q. Did anyone assist you with the  
14 surgery on November 5, other than an  
15 anaesthesiologist?

16 A. There's staff. There's a  
17 scrub nurse. Yes, there's staff members  
18 that assist.

19 Q. Any physicians?

20 A. No.

21 Q. And did they act under your  
22 direction?

23 A. The staff?

24 Q. Yes.

25 A. Yes.

0225

1 DR.

2 Q. What was their affiliation?

3 A. They are employees of

4

5 Q. Did you have any assistants  
6 with you at the second surgery on  
7 November 19th?

8 A. Just -- the first, yes, from  
9 staff members at .

10 Q. They too acted under your  
11 direction?

12 A. Yes.

13 MS. : I have no  
14 further questions.

15 MR. OGINSKI: I just have a  
16 few follow-up questions.



17 CONTINUED EXAMINATION BY

18 MR. OGINSKI:

19 Q. Doctor, at any time while you  
20 were treating Mrs. , did she have  
21 evidence of corneal scarring?

22 A. No.

23 Q. Did you ever form an opinion  
24 as to whether Mrs. would require a  
25 corneal transplant?

0226

1

2 A. No.

3 Q. When you spoke to Dr.

4 after he examined her on, I believe,  
5 November 20th, did he ever say to you in  
6 words or substance or question you as to  
7 why the original cataract surgery was  
8 performed for this particular patient?

9 A. No.

10 Q. Did you learn from  
11 Mrs. that she saw Dr.

12 on November 27, ?

13 A. No.

14 Q. Did you ever see any notes or  
15 records from Dr. confirming that the  
16 patient saw him on November 27, ?

17 (Continued on next page to include jurat.)

18

19

20

21

22

23

24

25

0227

1 DR.

2 A. No.

3 MR. OGINSKI: Thank you.

4

5 (Time noted: 2:09 p.m.)

6

7

8

9

10

Subscribed and sworn to

11

before me on this \_\_\_\_\_ day

12

of \_\_\_\_\_, 20.

13

14

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\_\_\_\_\_  
NOTARY PUBLIC

19  
20  
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0228

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2

I N D E X

4

5 WITNESS  
6 DR.

7

8 EXAMINATION BY	PAGE
9 MR. OGINSKI	176, 225
10 MS.	211
11 MS.	223

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0229

1

C E R T I F I C A T I O N

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I, , a Court Reporter  
and a Notary Public within and for the State  
of New York, do hereby certify:  
That the foregoing witness, DR. ,  
was duly sworn by me on the date indicated, and that the  
foregoing is a true record of the testimony given by  
said witness.  
I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no way  
interested in the outcome of this matter.  
IN WITNESS WHEREOF, I have hereunto  
set my hand this 5th day of June, .

---

25  
0230

1  
2

ERRATA SHEET

3 CASE NAME:  
DATE OF DEPOSITION: June 5 ,  
4 WITNESS' NAME: DR.

5	PAGE/LINE(S) /	CHANGE	REASON
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-----  
 DR.  
 SUBSCRIBED AND SWORN TO  
 21 BEFORE ME THIS \_\_\_\_\_ DAY  
 22 OF \_\_\_\_\_, .

23  
24  
25

\_\_\_\_\_  
 NOTARY PUBLIC  
 MY COMMISSION EXPIRES \_\_\_\_\_