## Morgan v. Nevyas, M.D.

## Herbert J. Nevyas, M.D. January 3, 2002

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	Page 1	[1]		Page 2
[2] IN THE COURT OF COMMON PLEAS C		[2]	APPEARANCES:	[ 1]
[3] FIRST JUDICIAL DISTRICT OF PEN	INSYLVANIA	[3]	STEVEN A. FRIEDMAN, M.D., ESQUIRE	1/10
			Law Offices of Steven A. Friedman	1.0
	APRIL TERM, 2000	[4]	850 West Chester Pike, 1st Floor	L
[6] VS. :			Havertown, PA 19083	
[7] HERBERT J. NEVYAS, M.D., JOANN Y. NEVYAS, M.D.,		[5]		A STREET BOOM
(B) ANITA NEVYAS-WALLACE, M.D.,:			Counsel for Plaintiff Dominic Morgan	
IRA B. WALLACE, M.D., :		[6]		
[9] EDWARD A. DEGLIN, M.D.,			WILLIAM H. LEVAY, ESQUIRE	
MITCHELL STEIN, M.D., AND		[7]	Kane, Pugh, Knoell & Driscoll, LLP	
(10) NEWAS EVE ACCOOLATED OF			510 Swede Street	
[10] NEVYAS EYE ASSOCIATES OF : NEW JERSEY, P.C. :		[8]	Norristown, PA 19401	
[11] :	NO. 002621	[9]	Counsel for Defendant Edward A. Deglin,	
			M.D.	
[12]		[10]		
Philadelphia, Pennsylvania			KATHLEEN M. KRAMER, ESQUIRE	
[13] Wednesday, January 3, 2002		[11]	Marshall, Dennehey, Warner, Coleman & Goggin	
[14]			1845 Walnut Street	
[15] Deposition of HERBERT J. NEVYAS	5, M.D.,	[12]	Philadelphia, PA 19103	
[16] taken pursuant to notice, at the offices of		[13]	Counsel for Defendant Herbert Nevyas, M.D.	all the second
[17] Vincent Varallo Associates, 1835 Market S	Street,	[14]	ABBIE R. NEWMAN, ESQUIRE	
[18] on the above date, beginning at approxima	ately		Post & Schell	
[19] 10:20 a.m., before Cynthia A. Whyte, Regi	stered	[15]	1800 JFK Boulevard	
[20] Professional Reporter and Notary Public.			Philadelphia, PA 19103	
[21]		[16]		
[22]			Counsel for Defendant Anita	Succession in the succession of the succession o
[23] VINCENT VARALLO ASSOCIATES, I	INC.	[17]	Nevyas-Wallace, M.D.	
Registered Professional Reporters		[18]	ANDREW LAPAT, ESQUIRE	
[24] Eleven Penn Center		-	Stein & Silverman	
1835 Market Street, Suite 600		[19]	230 South Broad Street, 18th Floor	The second second
[25] Philadelphia, PA 19103			Philadelphia, PA 19102	
(215) 561-2220		[20]		
	the second s		Counsel for Nevyas Eye Associates of New	
		[21]	Jersey, P.C.	
			LSO PRESENT: GAIL FRIEDMAN	a state to state
		[23]		
		[24]		
		[25]	(INDEX at end of transcript.)	
			(	

Herbert J. Nevyas, M.D. Morgan v January 3, 2002 Nevyas, M.D. Page 19 Page 21 [1] Herbert J. Nevyas, M.D. [1] Herbert J. Nevyas, M.D. [2] that? MR. FRIEDMAN: For the corporation, [2] A: No. The printed material I did. I told him [3] yes, and for himself individually. [3]

[4]

[6]

[7]

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[20]

[23]

[24]

[25]

(22) there.

[15] income tax?

A: Yes.

A: Whatever period of time my accountant or

[5] bookkeeper suggests they be held, I'm sure we have

Q: Who is your accountant or bookkeeper first

A: My accountant has been Mr. Jeffrey Factor,

Q: And how about does he also do your personal

A: I think his office is in Plymouth Meeting or

Q: Did you deduct the cost of advertising on KYW

as either an expense of the corporation or yourself?

1211 some such area around there. I have never been

[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

held them. I wouldn't know for sure.

[8] for the corporation?

MR. LAPAT: Objection.

[13] eight or ten years anyhow.

MR. LAPAT: Same objection.

MR. LAPAT: Objection.

MR. LAPAT: Objection.

Q: Where is Mr. Factor located?

[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

Page 20 Page 22 [1] Herbert J. Nevyas, M.D. Herbert J. Nevyas, M.D. [1] [2] '93 or '94 and I'm not sure what was done in the A: As far as I know, it would have been an [2] [3] next couple of years. I really don't recall. I'm [3] expense of the corporation. [4] not even sure there was much around that time, if Q: Would your tax records, therefore, reflect [4] [5] any. I think — if I think back to '94 or '95, we [5] the years in which you were paying KYW for [6] had some advertising at that time. I don't think advertisement? [6] [7] there was later. A: I don't know. I don't know if anything [7] Q: How long did advertising continue that you [8] [8] specifically was listed in tax records. [9] can remember? Q: There was a television production done by [9] A: I don't know for sure. Not very long because [10] [10] MDTV. Was that paid for by the corporation or by [11] we did it - you have to remember, '94 specifically, [11] you? [12] '95, I think we stopped because it really wasn't MR. LAPAT: Objection. [12] [13] producing much benefit. Q: Pardon me. Let me withdraw that question. [13] [14] Q: Who was in charge of deciding what copy would Was there any payment made to MDTV at [14] [15] be broadcast by KYW? [15] any time? A: I. [16] [16] MR. LAPAT: Objection. Anything that Q: Do you have the originals or copies of any [17] [17] relates to MDTV had no bearing on the plaintiff in [18] informational or promotional or advertising [18] this action. [19] materials directed to the public for which the [19] MS. NEWMAN: Join. [20] subject included LASIK? MS. KRAMER: You can answer. [20] A: No, no, I don't. [21] A: Yes. [21] Q: Do you maintain tax returns? [22] Q: Would your tax returns show the time that the [22] A: I'm sure we do. [23] [23] payments were made? MS. KRAMER: For the corporation are you [24] MR. LAPAT: Same objection. [24]

[25] asking?

[25] MS. NEWMAN: Same objection.

<ul> <li>[1] Herbert J. Nevyas, M.D.</li> <li>[2] surgery in the surgical center, and I believe, but</li> <li>[3] I'm not positive, but I believe I did not do any</li> <li>[4] I'm not positive, but I believe I did not do any</li> <li>[5] I'm not positive, but I believe I did not do any</li> <li>[6] I'm not positive, but I believe I did not do any</li> <li>[7] Hospital branch that was across the street</li> <li>[8] Graduate Hospital branch that was across the street</li> <li>[9] from our office has since closed. Jefferson Park</li> <li>[9] Hospital is closed as a hospital although it has a</li> <li>[9] time. And Scheie Institute I'm not worked there at that</li> <li>[9] time. And Scheie Institute I'm not working in. It</li> <li>[9] do not recall. I had no intention of using it, so I</li> <li>[9] do not recall. I had no intention of using it, so I</li> <li>[9] do not recall. I had no intention of using it, so I</li> <li>[9] do not recall. I had no intention of using it?</li> <li>[10] don't remember.</li> <li>[11] Q: What time are you talking about that you had</li> <li>[12] no intention of using it?</li> <li>[13] A: At that hospital because they didn't have</li> <li>[14] Ocean was the last time you were active</li> <li>[15] clinically at any one of those hospitals?</li> <li>[16] A: Probably '95 or '96 or so. I'm not quite</li> <li>[17] sure.</li> <li>[18] Q: When you say "active clinically," what do you</li> <li>[19] mean by "active clinically."</li> <li>[19] A: Protoably '95 or '96 or so. I'm not quite</li> <li>[19] A: Probably '95 or '96 or so. I'm not quite</li> <li>[19] A: Probably '95 or '96 or so. I'm not quite</li> <li>[10] and that we useen added if there was room for a</li> <li>[19] A: I think so. I think I was on active staff at</li> <li>[20] that time. I'm not sure of the dates. I stopped</li> <li>[21] working when we opened our surgery center, which I</li> </ul>	_				
10       Interbert J. Nevyas, M.D.         11       Interbert J. Nevyas, M.D.         12       Ams. KRAMER: No. Which has the list of machinal institutions, the hospitals listed, you         13       are suggesting that was filled out in 1995 and that         14       is not my reading of the document.         15       MR. FRIEDMAN: Before the became inactive         16       MR. FRIEDMAN: Before the some inactive         17       or the soft and the most is the carlies date. November J. 1995, and the most is the carlies date. November J. 1995, and the most is charling that period of time.         17       or the soft and the attrim mained the same in momber of the saff and the activity remained the is member of the saff and the activity remained the is member of the saff and the activity remained the is member of soft fue question is rather moot. The activity I mo four Lam professor at Media: Clogeg of in Pernsylvania and was chief of the department of is supgery in the sungical center, and I believe, but is possible that I took a patient or two to Medical is possible that I took a patient or two to Medical is spossible that I took a patient or two to Medical is possible that I took a patient or two to Medical is possible that I took a patient or two to Medical is possible that I took a patient or two to Medical is docin trans admitted and operated. is A: The bospital brick is has the im on sure.         10       A: The bospital brick is mas the if at time. I man by 'active clinically?         13       A: The bospital brick is mas the if and on the saff at is postower, but I believe I did not do any is more of these hospitals.		Page 59	-		Page 61
Pione         Pione           Pione <td>[1]</td> <td></td> <td>1 (11</td> <td>Herbert I. Nevvas M D</td> <td>rageor</td>	[1]		1 (11	Herbert I. Nevvas M D	rageor
iiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiii	[2]	MS. KRAMER: No. What I'm saying is you	1		
<ul> <li>(a) Of medical institutions, the hospitals listed, you</li> <li>(a) of those hospitals?</li> <li>(b) MR, FRIEDMAN: No, I wasn't suggesting</li> <li>(c) MR, FRIEDMAN: Yes.</li> <li>(c) MR, TRIEDMAN: Yes.</li></ul>	[3]	are suggesting that the document which has the list			
(a) are suggesting that was filled out in 1995 and that         (b) is not my recollection.           (c) MR, FRIEDMAN: No, I wasn't suggesting         (c) MR, FRIEDMAN: Before the scope of the commentative.           (c) MR, FRIEDMAN: No, I wasn't suggesting         (c) Are the staff and the first suggesting that was only           (c) acking if with regard to the first and order of         (c) or before he stopped being clinically active.           (c) acking if with regard to the first and order of         (c) or before he stopped being clinically active.           (c) d) acking if with regard to the first and order of         (c) or before he stopped being clinically active.           (c) d) acking if with regard to the first and order of         (c) Or before he stopped being clinically active.           (c) d) acking if with regard to the first and was order of time.         (c) Or before he stopped being clinically active.           (c) d) acking if with regard to the same         (c) Or before he stopped being clinically active.           (c) d) acking if with regard to the same         (c) Or before he stopped being clinically active.           (c) d) mouth active same four hospitals he was a         (c) Or before he stopped being clinically active.           (c) MS, RFAMER: Go antead. You can answer         (c) MS, RFAMER: Go antead. You can answer           (c) MR, FRIEDMAN: Yes.         (c) MR, FRIEDMAN: Secore here approved for taser surgery if           (c) MR, FRIEDMAN: Secore here approved for taser surgery if <td< td=""><td>[4]</td><td>of medical institutions, the hospitals listed, you</td><td>1</td><td></td><td></td></td<>	[4]	of medical institutions, the hospitals listed, you	1		
is in or my reading of the document.       is in the sufficient of the document.         in MR. FRIEDMAN: No, I wasn't suggesting       is in the carliest date, November 1, 1995, and the most of the carliest date, November 1, 1995, and the most of the staff and the first and order of       is in the carliest date, November 1, 1995, and the most of the sufficient of the suff and the activity escale the suff and the activity remained the suff and the activity remained the sum entrough those four years?       is A: I believe as an optical for addill be reations. I had the activity is the suff and the activity is that.         in MS. KRAMER: Go ahead, You can answer       is that.       is the question is rather moot. The activity I is below during all of that time was zero at all is four. I am professor at Medical College of pennsylvania and was chief of the department of the suff and the activity is approved. Jut they never got a laser, which is no portessor at Medical College of pennsylvania and was chief of the department of the moters, but I do all of my         Page 60         I more possibial Medical College of ferm J. Nevyas, M.D.       is the suff and the activity is approved for laser surgery if is approval, four is approved for laser surgery if is approval, four is approval, foure moter, but I do all or my			1		
9       MR. FRIEDMAN: No.1 wasn't suggesting         9       Ather of the start and the mass         90       rescand at wasn't period of time.         90       acting it with repart to the list and order of of time.         90       dim member of the staff and the activity remained the staff and the activity remained the firs ame through those four years?         90       A: Not on my recollection.         91       A: The question is rather moot. The activity I main the submit period of the staff and the activity remained the firs ame through those four years?         91       A: The question is rather moot. The activity I main pofessor at Medical College of Pennsylvania and at Wills Eye Hospital         92       Pennsylvania and was chief of the department of firs ophtalmology for ten years, but I do all of my         94       Page form on positive, but I believe I did not do any         95       M: The support the support of the safe and though it has a time motower bear at that time. I mot sure.         91       C: There you say factive clinically: attime these hospitals. The form on positive, but I believe I did not do any         91       Surgery caret, but I had not worked there at that time. I mot sure.         91       C: When you say factive clinically: wat					
a) that. I was just saying on the five pages here that       b) 50 bottom precollection.         b) 50 bottom precollection.       c) Construction active to the stand order of         c) constructions aff and the remained the same       c) Constructions aff that period of time.         c) constructions aff and the activity remained the       c) Constructions aff that period of time.         c) member of the staff and the activity remained the       c) Constructions aff and the activity remained the         c) member of the staff and the activity remained the       c) Constructions aff and the activity remained the         c) member of the staff and the activity remained the       c) Constructions aff and the activity remained the         c) most from those four years?       c) Constructions aff and the activity remained the         c) most professor at McGical College of       c) Pennsylvania and was chief of the department of         c) most porties, but I believe I did not do any       c) Went you say they never got a laser, which         c) most positive, but I believe I did not do any       c) Went you say that that was across the street         c) formal hospital privileges and not —         c) College of Pennsylvania, I'm not sure.       c) South of the spital shough i has a         c) when you say "active clinically."       c) South addition to the four hospital shary ou         c) most positial sclosed as a hospital shough i has a       c) Forbably '95 or '96 or so. T'm not quite <td></td> <td></td> <td>1</td> <td></td> <td></td>			1		
9       is the cardiest date, November 1, 1995, and the most 109 recent date was December 2, 1999, and I was only 109 recent date was December 2, 1999, and I was only 109 axhing if with regard to the list and order of 109 clinical activities, if it had remained the same 109 during that period of time.       In With Anospital?         10       MS. KRAMER: So you are asking from 1995 101 to 1999 are these the same four hospitals he was a 109 member of the staff and the activity remained the 109 same through those four years?       In A: I believe a Scheie Institute and Medical 109 College of Pennsylvania and at Wills Eye Hospital 100 the activity remained the 101 taken Excimer laser courses at Penn at some point 101 taken Excimer laser courses at Penn at some point 101 taken Excimer laser courses at Penn at some point 101 taken Excimer laser courses at Penn at some point 101 taken four. I am professor at Medical College of 101 Herbert J. Nevyas, M.D.         101       Now Doctor, have you ever been approved for 101 taken sopital?         103       A: The question is rather moot. The activity I 109 one are you referring to?         103       G. When you say they never got a laser, which 109 one are you referring to?         104       Page 40         105       Page 40         109       Page 40         101       Herbert J. Nevyas, M.D.         102       Nevyas, M.D.         103       I have a laser or a laser center. I'm not 104         104       Nover the saff of the department of 104         105       Graduate Hospital althought is has 105	[8]				
<ul> <li>Part Recent date was December 2, 1999, and I was only</li> <li>Pasking if with regard to the list and order of</li> <li>Pathon Stranger 1, 1999, and I was only</li> <li>Pathon I, 1999, and I was only</li> <li>Pathon Stranger 1, 1999, and I was only</li> <li>Pathon Stranger 1, 1999, and I was only</li> <li>Pathon I, 1999, and I was only if an incrive suff on in</li></ul>					
191       aking if with regard to the list and order of         191       aking if with regard to the list and order of         192       clinical activities, if i had remained the same         193       aking if with regard to the list and order of         194       aking if with regard to the list and order of         195       aking if with regard to the list and order of         196       aking if with regard to the list and order of         196       aking if with regard to the list and order of         196       aking if with regard to the list and order of         196       aking if with regard to the list and order of         197       aking if with regard to the list and order of         198       during that period of time.         199       Ar. The question is rather moot. The activity I         199       believe during all of that time was zero at all         199       period of the activity rearment of         199       her the surgical center, and I believe, but         191       her bis list in in the surgical center, and I believe, but         191       her bis list in che she obspital.         192       her bis list ince in the surgical center, and I believe, but         191       her bis list on the surgical center, and I believe, but         191       her bis list on			1		
<ul> <li>[19] edinical activities, if it had remained the same</li> <li>[19] dinical activities, if it had remained the same</li> <li>[19] dinical activities, if it had remained the same</li> <li>[19] Mark MER: Soy our are asking from 1995</li> <li>[10] MS. KRAMER: Soy our are asking from 1995</li> <li>[10] MS. KRAMER: Soy are asking from 1995</li> <li>[11] College of Pennsylvania and at Wills Eye Hospital</li> <li>[12] College of Pennsylvania and at Wills Eye Hospital</li> <li>[13] College of Pennsylvania and at Wills Eye Hospital</li> <li>[14] At that hospital is and the activity remained the</li> <li>[15] MS. KRAMER: Go ahead. You can answer</li> <li>[16] MS. KRAMER: Go ahead. You can answer</li> <li>[17] MS. KRAMER: Go ahead. You can answer</li> <li>[18] MS. KRAMER: Go ahead. You can answer</li> <li>[19] MS. KRAMER: Go ahead. You can answer</li> <li>[10] MS. KRAMER: Go ahead. You can answer</li> <li>[10] MS. KRAMER: Go ahead. You can answer</li> <li>[11] MS. KRAMER: Go ahead. You can answer</li> <li>[12] MS. KRAMER: Go ahead. You can answer</li> <li>[13] MS. KRAMER: So you sy they never got a laser, which</li> <li>[14] MS. Exercise Institute.</li> <li>[15] One are you referring to?</li> <li>[16] there was approved for laser surgery if</li> <li>[17] At Scheie Institute.</li> <li>[18] One are you referring to?</li> <li>[19] At Scheie Institute.</li> <li>[19] One are you referring to?</li> <li>[10] Herbert J. Nevyas, M.D.</li> <li>[11] Herbert J. Nevyas, M.D.</li> <li>[12] Mark Bospital Strue If mot worked there at that</li> <li>[13] The ethers is an abaptical athough it has a</li> <li>[14] Surgery enter, but I had not worked there at that</li> <li>[15] The solution of two set as their and interval to a soy out a laser of two set as a set form on or two to Medical</li> <li>[16] Gone are you of those hospital?</li> <li>[17] At Scheie Institute I' mot working in. It mot sure. It really</li> <li>[18] At Mach Sopial privileges and not —</li> <li>[19] At that hospial privileges and not —</li> <li>[10] Gon t reall.</li></ul>			1		
193       during that period of time.         193       Million S, KRAMER: So you are asking from 1995         194       Million S, KRAMER: So you are asking from 1995         195       Million S, KRAMER: So you are asking from 1995         196       Million S, KRAMER: So you are asking from 1995         197       A: The question is rather moot. The activity 1         198       Jam Professor at Medical College of         199       A: The question is rather moot. The activity 1         192       Delieve during all of that time was zero at all         198       ophthalmology for ten years, but I do all of my         199       Parenstylvania and was chie's of the department of         199       Burgery at this time in these hospitals. The         191       Graduate Hospital Sant Laws cores the street         191       Million to do any         193       surgery at this time in these hospitals. The         194       Graduate Hospital Is atther you the department of         195       surgery at this time in these hospitals. The         195       Graduate Hospital Is atther on the was accoss the street         195       Bospital is Closed as a hospital atthough it has a         195       surgery catter, but I had no tworked there at that         196       Cornal hospital Privileges on Whethe			1		机复动
149       MS. KRAMER: So you are asking from 1995         118       11999 are these the same four hospitals he was a         118       11999 are these the same four hospitals he was a         118       11999 are these the same four hospitals he was a         119       MS. KRAMER: Go the staff and the activity remained the         119       MS. KRAMER: Go ahead. You can answer         120       MS. KRAMER: Go ahead. You can answer         121       MA. The question is rather moot. The activity I         129       believe during all of that time was zeros at all         129       believe during all of that time was zeros at all         129       one are you referring to?         120       one are you referring to?         121       Herbert J. Nevyas, M.D.         121       mot positive, but I believe I did not do any         121       mon office has since closed. Jefferson Park         121       College of Pennsylvania and was abrid although it has a         122       Ge When you say "active clinically."         123       A: Probably '95 or '96 or so. I'm not quite         124       they have been '94, 95, '96. 'Tm not sure.         129       a: When you say "active clinically."         129       a: Probably '95 or '96 or so. I'm not quite         129			[12]		40.00
<ul> <li>199 our chess the same four hospitals he was a transmer of the staff and the activity remained the try same through those four years?</li> <li>19 MR. FRIEDMAN: Yes.</li> <li>19 MS. KRAMER: Go ahead. You can answer (and the department of the try that time professor at Medical College of Pennsylvania and was chief of the department of par four. It am professor at Medical College of Pennsylvania and was chief of the department of part this time in these hospitals. The graggery in the surgical center, and I believe, but if Herbert J. Nevyas, M.D.</li> <li>10 Herbert J. Nevyas, M.D.</li> <li>11 Herbert J. Nevyas, M.D.</li> <li>12 Surgery in the surgical center, and I believe, but if and those closed as a hospital although it has a issurgery center, but I believe I did not do any if surgery center, but I believe I did not do any if surgery center, but I had not working in. It is its ins into the solutical if the these hospitals. The is possible that I took a patient or two to Medical college of Pennsylvania. I'm not sure. It really the defact College of Pennsylvania and was cross the street if surgery in the surgical center, and I believe, but is find the these hospitals. The is possible that I took a patient or two to Medical in the sensopitals. The is possible that I took a patient or two to Medical in the sensopitals.</li> <li>10 College of Pennsylvania i'm not sure. It really the department of its as a interve staff at mot sure i treating in these hospitals?</li> <li>11 Ac Meh was the last time you were active is clinically?</li> <li>12 A: Probably '95 or '96 or so. I'm not quite it's sure.</li> <li>13 A: Medical College of Pennsylvania i'm on tsure?</li> <li>14 A: this dia clickal college of Pennsylvania i'm on tsure?</li> <li>15 A: Medical College of Pennsylvania i'm on tsure?</li> <li>16 A: twe clickal College of Pennsylvania i'm on tsure?</li> <li>17 A: an ot sure? of the detse. I stopped at working all at this is a mot werk staff at mot sure of the others, but I tapered off at I found I</li> </ul>			[13]		
<ul> <li>In member of the staff and the activity remained the first state through those four years?</li> <li>In MR. KRAMER: Go ahead. You can answer</li> <li>In A. You say they never got a laser, which</li> <li>In MR at WR Was anser?</li> <li>In MR at WR Was anser?</li> <li>In MR at WR Was anser?</li> <li>In Herbert J. Nevyas, M.D.</li> <li>In In the suncil of the department of go ophthalmologity for unice of the department of go ophthalmologity for unice of the department of go ophthalmologity for unice of the department of go the others in the set wast for t</li></ul>			1.		
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	[25]	what my current status is. I haven't been working			all shares

Page 63	Page 6
1] Herbert J. Nevyas, M.D.	(1] Herbert J. Nevyas, M.D.
2] center.	[2] including Presbyterian Hospital?
Q: What do you mean "much better"?	[3] A: That is part of Presbyterian Hospital, yes.
A: Better care of my patients.	[4] Q: Doctor, with regard to your CV, I'm going to
Q: Now, Doctor, have you ever performed LASIK at	[5] pass you what was Bates marked No. 1168 through 1174
sj any hospital?	[6] and ask you to identify that.
7] <b>A:</b> No.	[7] A: I'm sorry. What did you say, Bates marked?
Q: Were you ever given privileges by any	[8] Q: It is the number in the lower right-hand
n hospital, such privileges saying that you would be	[9] corner.
of allowed to do LASIK surgery at a hospital?	[10] A: Oh. 1168 to 74, yes.
MR. LAPAT: Objection. Vague.	[11] Q: Can you identify that?
2] MS. NEWMAN: Continuing objection to	[12] A: It is my curriculum vitae, at least as of the
3] this whole line.	[13] last updating, yes.
4] A: I don't think so. I don't think I ever	[14] Q: When was that last updating?
5 applied specifically to do LASIK at a hospital since	[15] A: I don't know. It doesn't have a date on it.
16] none of the hospitals that we mentioned had lasers	[16] Q: Is there anything you would add to that
7) at the time and then I began using my own.	[17] curriculum vitae to bring it up to date?
8] Q: Do you know if Dr. Nevyas-Wallace has	[18] A: Well, my secretary, whoever it was at the
9] performed LASIK at any hospital?	[19] time, has been bringing things up to date. There
MS. NEWMAN: Objection to relevancy.	[20] were a number of papers that have not gotten on it.
MR. LAPAT: Same objection.	[21] Actually it was her idea to start putting papers on
A: I don't know. Not as far as I know, let's	[22] it lately. I have given papers many years. Every
23] put it that way. Not as far as I know.	[23] year I have given papers at certain society
Q: Do you know if Dr. Nevyas-Wallace has	[24] meetings. Aside from that, I think it is pretty
25] privileges to do LASIK or has ever had privileges to	[25] much up to date as far as I can see. I might have
Page 64	1 Page
[1] Herbert J. Nevyas, M.D.	(1) Herbert J. Nevyas, M.D.
[2] do LASIK at any hospital?	[2] to read every bit of it to be sure. There were some
[3] A: At a hospital —	131 changes.
[4] MR. LAPAT: Objection.	[4] Q: Who prepared the curriculum vitae?
[5] MS. NEWMAN: Same objection.	[5] A: No one person. It has been added to over the
[6] A: — I do not know.	[6] years. Whoever was my secretary has been adding to
[7] <b>Q:</b> In addition to the four hospitals listed plus	[7] it.
[8] Wills Eye, have there been any other hospitals that	[8] Q: You said there were some changes. What
19) you have been on a medical staff of?	(9) changes?
10] MS. KRAMER: And this is at any time?	[10] A: I would have to look to tell you. This
11] A: Ever?	[11] doesn't look like my — I think something has gotten
12] MS. KRAMER: Is that what you are	[12] mixed up here. There is some mistake. I guess I
13] looking at, at any time?	[13] did have an appointment at Temple at one point
14] Go ahead. You can answer.	[14] through Wills Eye Hospital. It looks okay. I'm not
A: There was a hospital in West Philadelphia	[15] sure what my current status is at Wills and at
16] called The Women's Hospital where I was on the staff	[16] Presbyterian because I have not been working there.
17] for several years, but they closed. I have had	[17] So I do not think I'm on active staff any more at
18] staff privileges at Hahnemann Hospital in the past a	[18] either of them. So that should be corrected.
19] long time ago. Let me think. And that's about it.	[19] The rest looks okay.
20] University of Pennsylvania Hospital, Hospital of the	[20] MR. FRIEDMAN: I think we had gotten up
[21] University of Pennsylvania I have had privileges in	[21] to K on the list, counselor. Did you bring the
(22) the past when I was on the teaching staff. I have	[22] original file material relating to — if there is
[23] my CV there. That would I think cover it.	[23] any file material?
[24] Q: I'm just looking at it. I wanted to ask you,	[24] MS. KRAMER: There isn't any. There is

Vincent Varallo Associates, Inc.

[25] when you said Scheie Eye Institute, were you

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[25] no material in response to K. There were no

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	Herbert J. Nevyas, M.D.	[1	Herbert J. Nevyas, M.D.	
[2]	took other courses on that subject as well as LASIK.	[2	g – I just want to be certain I understand. Some of	
[3]	Q: Do you maintain certificates from these	[3	n those you got certificates that are on the wall	
[4]	different places to document your training?	[4	a possibly?	
[5]	A: No. There weren't — the only place where I	[5	A: I believe. I would have to check because we	
	might have certificates were the official	[6	have a great many certificates on the wall and I'm	
Contraction of the second s	company-sponsored courses by visits to Summit.	1	n not sure which ones got framed.	
	There were no certificates for attending the	[8	MR. FRIEDMAN: Counselor, would you	
- Departures	meetings except CE credits, but not specifically	15	agree with me that if the certificates are framed	
[10]	stating what I attended.	(10	n and on the wall they are covered by L?	
[11]	Q: Except for what?	[1	MS. KRAMER: Unless he sends me new	
[12]	A: Except for continuing education credits.And	[1:	2] ones. They originally sent us what is — you mean	
1000	there were certainly no certificates for the very	[1:	if they are framed and on the wall?	
	valuable but not formal courses where I spent time	[14	MR. FRIEDMAN: Yes.	
[15]	with leaders in the field.	[11	MS. KRAMER: If they are framed and on	
[16]	Q: Did you say formal courses or informal	[10	of the wall, yes, they are covered by L.	
1000	courses?	[1]	MR. FRIEDMAN: If there happens to be	
[18]	A: They were not formal courses.	[11	any other ones —	
[19]	Q: Did you obtain certificates of continuing	[19		
	medical education?		will send them to you. This is what they sent me.	
[21]	A: At the time I think so. I'm not sure. I	[2	1] I will have them go back and check again.	
	usually have far more than the number of credits	[2:		
40 03	needed for my recertification so that I may not have		3] terms of possibly there being certificates on the	
	bothered to submit them, but at the time I attend	[2	4] wall?	
[25]	the courses, I have them send me certificates. I	[2	5] A: Possibly, yes.	
-		ge 72	Page	74
	Herbert J. Nevyas, M.D. often don't retain them.	1	1] Herbert J. Nevyas, M.D.	
	I have also attended meetings of the		2] MR. FRIEDMAN: And would you agree to do	
[3]	Sing Society for Excellence in Ophthalmology which		9) the same thing?	
10000	had LASIK courses and LASIK-related papers, and I		4) MS. KRAMER: Yes. Put this in the same	
	have also attended the ISRS, of which I'm a member,		5] letter so that I know what I'm looking for.	
	the International Society for Refractive Surgery,	10.00	G Q: Doctor, if they weren't kept on the wall,	
520.50	and again I have taken specifically LASIK courses	10.5	7 would there be any other place they would have been	
	and attended lectures there. I attend the Sing		a kept?	
	meeting at least every year, and the ISRS has		9 A: They could be filed away. That does not mean	
CALCOLOGY .	meetings twice a year and I usually attend at least		<ul> <li>it would be easy to find.</li> <li>Q: Have you looked for them specifically?</li> </ul>	
	one and have often attended both.			
[13]		[1]	and when I looked at this now, I realized she didn't	
	you've attended, has there been any mention of any			
124 125	patient who had LASIK who had a similar condition to		4) copy LASIK specific certificates. She copied other 5) things. She didn't understand.	
1071 VC07	Mr. Morgan?	11		
[17]			7) the meetings of the Delaware Valley Laser Surgery	
100 000	form and ask if you can define "similar condition."		<ul> <li>Partnership from 1995 to current.</li> </ul>	
[19]			9 MS. KRAMER: There's no such documents	
[20]	UD LADAT OLI		of to respond to that request. There are no meetings.	
[21]	- · · · · · · · · · · · · · · · · · · ·		There are no minutes. There is no board.	
	retinopathy of prematurity with a large positive		2] Q: Doctor, the Delaware Valley Laser Surgery —	
1000	angled kappa.		3] let me ask you this. I know you answered it before.	
[24]			4) You said the Pennsylvania Eye Surgery Institute has	
[25]			s another name to it?	
-				

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[1]	Herbert J. Nevyas, M.D.	[1]	Herbert J. Nevyas, M.D.
[2]	A: Yes.	1000	Nevyas Eye Associates or Nevyas Eye Associates of
[3]	Q: Doctor, I'm not referring to any particular	-	New Jersey?
		[3]	MR. LAPAT: Objection.
	C.1	[4] [5]	MS. NEWMAN: Objection.
	account. You don't have to tell me how much is in		MS. KRAMER: You can answer it.
	it, but I want to know what the corporation —	[6]	A: Income earned as an ophthalmologist that
[8]	A: The net value of the corporation?	[7]	
[9]	MS. NEWMAN: Objection.	[8]	
[10]	MR. LAPAT: Objection.	1000	earned as an ophthalmologist that comes to me from
[11]	Q: No, I want to know what the corporation owns	and the second	the corporation. The answer is no.
		[11]	<b>Q:</b> Doctor, do you have income from the Nevyas
	MS. NEWMAN: Objection.	and the second	Eye Associates or Nevyas Eye Associates of New
[13]	MR. LAPAT: Objection.		Jersey?
[14]	MS. KRAMER: I'm going to object. What	[14]	MR. LAPAT: Objection. Again, that has
[15]	is the relevance of this?		no bearing on this litigation.
	MR. FRIEDMAN: I'm trying to get it	[16]	A: Probably not, no.
[17]	clear in my mind the difference between Dr. Nevyas	[17]	Q: They don't pay you?
	and Nevyas Eye Associates. I can ask specifics.	[18]	A: No.
[20]	MS. KRAMER: I don't think at this point	[19]	MR. FRIEDMAN: I wasn't trying to be
	in time you are entitled to the assets of the		tricky. I just wanted to know, does he have as a
	corporation.	120 60	practicing ophthalmologist have an income that comes
[23]	MR. FRIEDMAN: That's why I said I was		from anywhere else.
	not interested in dollar amounts. I prefaced my	[23]	Q: In your practice — I'm not talking about any
	remarks on that.	10.00	other source that comes from anything other than
[20]		[25]	Nevyas —
10000	Page 92		Page 94
[1]		[1]	
[2]	Q: For example, Doctor — MS. KRAMER: How does that clarify for	[2]	
[3]			entitled to the doctor's sources of income.
	you a distinction between the owners of the	[4]	
	corporation and the corporation itself? I don't understand.	1	that he may have another ophthalmology practice
		[6]	somewhere.
[7]	questions on this. One question would be, and I	[7]	
		[8]	
[9]	Line Avenue.	[9]	
[11]	MS. NEWMAN: Objection.		have other than Nevyas Eye Associates or Nevyas Eye
	MR. LAPAT: Objection. There is no		Associates of New Jersey?
[12]		[12]	
[13]		1	us?
[15]	THE WITNESS: Should I answer it?	[14]	
[16]		[15]	
	witness and his attorney.)		And thank you, Doctor.
[18]	MS. KRAMER: It is not him or the	[17]	
			by — Doctor, what is MDTV?
[19]		[19]	
	witness and his attorney.)	[20]	
		[21]	
[22]		1	man named Paul Argent who makes videos for
[23]		[23]	
	ophthalmologist that comes to you other than via	1	some of the latest developments in various
[20]	opinitianitologiot that conics to you other than via	[25]	specialties to the fore and makes these videos and

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[1]	Herbert J. Nevyas, M.D.	[1]	
[2]	going to be here a week.	[2]	Q: You said it was designed to give $-$ I'm
[3]	MR. FRIEDMAN: I said I'm not going to	1	sorry. I don't want to be putting words in your
[4]	ask him everything, but I am going to ask him some	1	mouth.
[5]	things.	[5]	A: In our office.
[6]	MS. KRAMER: Let's see what you have.	[6]	Q: Oh, it was shown in your office?
[7]	MR. LAPAT: I want to state my	[7]	A: Yes.
[8]	objection. I don't believe that you should be		Q: How would it be shown in your office?
	asking any of these things because it constitutes	[8]	MS. KRAMER: Wait. Is your client
	nothing more than a waste of time.	1	saying he saw it in the office?
[11]	MS. NEWMAN: I want to place a	[11]	MR. LAPAT: Your client testified he
[12]	continuing objection on the record so I don't	1000	never saw this.
	continue to interrupt you that I believe that a		
	relevancy objection is totally valid. There is no	[13]	MS. KRAMER: Is he going to come in now and say he saw it in the office?
	evidence that any of this is going to lead to the		
	discovery of admissible evidence since it was after	[15]	MR. FRIEDMAN: I don't think he will say
	the surgery was done and your client stated in the		that he saw it in the office. I think he will say he saw it on television.
	deposition that he never saw the video, but with	[18]	MS. KRAMER: Then he knows where it was
	that objection on the record, please go ahead.		shown. I don't understand how their showing it to
20]	BY MR. FRIEDMAN:		people in the office is in any way relevant to
21]	Q: Did you ever work with MDTV prior to March 27	1000	Mr. Morgan. Tell me how. So they showed it to
22]	of 2000?		another patient. And is that somehow relevant to
23]	A: I think so. I don't remember the actual		Mr. Morgan?
24]	dates that we filmed that. I would have to look	[24]	Q: When you showed it in the office, Doctor, was
25]	that up, but I believe so.	-	it shown to patients preoperatively —
	Page 100		Page 102
[1]	Herbert J. Nevyas, M.D.	[1]	Herbert J. Nevyas, M.D.
[2]	Q: What was the purpose of working with MDTV?	[2]	MR. LAPAT: Objection.
[3]	A: They were going to make a video which we	[3]	Q: — or postoperatively or both?
	could use to show our patients, give them some idea	[4]	MS. KRAMER: I'm going to object and
	of the refractive surgery we do, and they were going	100.00	instruct him not to answer.
[6]	to put it on some public access channels to show	[6]	THE WITNESS: Should I answer that?
[7]	people what we were doing.		MS. KRAMER: No, you don't have to
[8]	Q: Do you know what public access channels the	10000	answer that. If it was shown to Mr. Morgan, that is
[9]	video was shown on?		fine. We will talk about it. Unless you can tell
10]	MS. KRAMER: If any.		me that it was shown to him in the office, then he
11]	Q: If any, yes.		is not answering that question.
12]	A: There were some. They sent me a list at some	[12]	Q: Doctor, do you know if Mr. Morgan was ever
	point, and it was not shown very much because we	[13]	shown the MDTV video while he was at Nevyas Eye
	didn't think there was too much point in it and I		Associates?
	told them not to, but they showed it on a few public	[15]	A: He couldn't have been because it is only
16]	access channels in this area.	[16]	recently. We have just shown it a few times to
17]	Q: Where else was the video shown?	1.	people that were bored waiting. We have a
[8]	A: In the Delaware Valley area, in New Jersey,		television with a VCR and it has just been within
	and in the Philadelphia area. As far as I know,		the last few months that the girls put it on a few
20]	that's it.	1	times. So he could not have seen it in the office.
:1]	MS. KRAMER: You mean aside from public	[21]	It was not shown in the office at that time.
!2]	access channels?	[22]	Q: So let me be sure I understand. The MDTV
:3]	MR. FRIEDMAN: Yes, aside from public	[23]	video is something that has only been shown in the
:4]	access television.	[24]	past few months in your office; is that right?
!5]	A: Oh, nowhere.	[25]	A: As far as I know, yes.
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	Page 103	-		Page 105
[1]	Herbert J. Nevyas, M.D.	[1]	Herbert J. Nevyas, M.D.	
[2]	Q: Is the purpose of showing the MDTV video to	[2]		
[3]	inform patients as to what they can expect from	1	requirements for driving a car —	
[4]	LASIK surgery?	[4]		
[5]	MR. LAPAT: Objection. He just	[5]		
[6]	testified it has only been shown in the last few	[6]		
	months, which is after March of 2000. That should	1	as vision for driving a car in Pennsylvania, what	
[8]	be the last possible date it could have any possible	1	they are?	
	relevance to Mr. Morgan.	[9]		
[10]	MS. NEWMAN: And if it was after the	[10]		24
[11]	surgery, which the testimony is that it was, it	1.	now than they were in 1998?	
	cannot be claimed for lack of consent. I join in	[12]		
	the objection.	10.00	a general idea. I keep a list in the office of what	
[14]	MS. KRAMER: I don't know if he can tell	1	the requirements are because they vary. Some peop	ala
[15]	you what the purpose is. I don't think you have any	1	get a license just for daytime. Some people can	pie
	foundation that he himself requested that it be	1	drive at night. Some people have only one eye. So	
	shown to anybody.	1	they have special requirements, et cetera, but I	
[18]	MR. LAPAT: These questions can't	1	have a pretty good idea of it.	
[19]	possibly be calculated to lead to the discovery of	[19]		
	evidence.	1	law, but what is your understanding of the	
[21]	MS. KRAMER: If you can show me that	100.00	requirements for driving? You mentioned daytime,	
[22]			i nighttime and everything.	*
	it, I think he can testify to the purpose of him	[23]		
[24]	requesting that patient to see it; otherwise, I	1	daytime and possibly more for night. I'm not sure.	
[25]	don't see it.	1	I would have to look it up. I don't want to guess,	
	Page 104	-		Page 106
[1]	** * * **	11	Herbert J. Nevyas, M.D.	1 498 100
[2]	Q: All right. Doctor, how do —	1	but they are pretty liberal. And if one wears a	
[3]	(Discussion off the record.)		telescope, you can have much less vision without t	he
[4]	(Luncheon recess.)		telescope than when you drive with the telescope.	CT CT CASE
[5]	BY MR. FRIEDMAN:	[5]		
[6]	Q: Doctor, I hope we can end the topic that we	[6]		
[7]	have been on, the MDTV. I just wanted to ask you	07492	glass to bring things into a sharp focus such as	
	was there anything said on the MDTV recording that	1	road signs and speed limits and so on because mos	t
[9]	would not be said to patients that were going to	1	driving is done with pretty gross recognition of big	
[10]	have LASIK surgery?	1	things like cars.	
[11]	A: Sure.	[11]		
[12]	MR. LAPAT: Objection.	100.00	not drive?	
[13]	A: The point of the MDTV was not to have us on	[13]		
	it. We didn't say much. It was to have patients	[14]	Q: Again, I don't want to pin you down on a	
	talk about their procedure, what they had gone	[15]	specific law, but is it your understanding there is	
	through, to try to allay anxiety and so forth, and	[16]		
	patients who would come to see it would get a chance	[17]	driving in New Jersey as opposed to Pennsylvania?	
	to talk to other patients who have been through the	[18]		
[19]	same thing.	[19]	state has its own laws.	
[20]	Q: By "same thing" —	[20]	Q: How about for New York State; if you are	
[21]	A: Refractive surgery.	[21]	aware of any difference?	
[22]	Q: — are you referring to the preoperative and	[22]	A: As I said, I don't know. I think each state	
	postoperative experiences of the other patients? Is	[23]	has its own rules. I would have to look it up.	
[24]	that what you are —	[24]	Q: Doctor, you had mentioned earlier about whe	ere
[25]	A: Yes.	[25]	you had learned about LASIK including the lecture	S

January 3, 2002	Nevyas, M.D.
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[1] Herbert J. Nevyas, M.D.	[1] Herbert J. Nevyas, M.D.
[2] order.	[2] so something was going on here and we were very
[3] A: Oh, yes, it was out of order.	<sup>[2]</sup> bo something was going on here and we were recry
[4] Q: Take a moment to make sure they are all	[4] other opinions.
[5] there, please.	[5] <b>Q</b> : When you say it shows up immediately, what
[6] A: They are all here. Okay.	[6] time frame are you talking about?
[7] Q: I think where I was is I was asking you the	A: Within the first few days or months, first
[8] first time you developed an impression to explain	[8] visit even. If you get a problem with the cornea,
[9] what was wrong with Mr. Morgan that you wrote in the	[9] it is worse on the first day and then it gets
[10] chart was on 9/24/98. That's where you put down	[10] better. It is common to have poor vision the first
(11) odd.	[11] postoperative day and he had good vision the first
[12] A: That's where I first had the idea that there	[12] postoperative day and then gradually got worse,
[13] was possibly something that was completely	[13] 20/50, 20/70, 20/60 minus, 2/60, 20/60 plus. Well,
[14] nonphysiologic, yeah. And before that I thought the	[14] that's not too bad. He stayed 20/60 for a good
[15] problem was we just needed time for his cornea to	[15] while and then 20/80. He came up to 20/50 here
[16] smooth more. We were puzzled.	[16] afterwards. He really didn't do that badly up until
[17] <b>Q</b> : To be certain, I want to be sure that I	[17] — we are talking through August of '98. Then he
[18] understand that. So prior to 9/24/98 you considered	[18] dropped to 20/70 by September of '98, 20/100 and
[19] that he needed time for the cornea to smooth and	[19] 20/80 by April of '99. That was April of '99.
[20] recover from the LASIK?	[20] 20/100, 20/80 July of '99. Something is going on
[21] MS. KRAMER: This is when he saw him?	[21] obviously. It's not something with LASIK a year and
[22] A: Or I was just plain puzzled. I didn't see	[22] a half afterwards that he is down to 20/100, 20/200,
[23] him that often, but I was a little puzzled, but then	[23] 2400. He is certainly getting worse for whatever
[24] again I wasn't primarily following him. I figured	[24] reason, and it could have been any of these things.
[25] that time would tell.	[25] His responses are getting worse; let's put it that
Page 140	Page 142
[1] Herbert J. Nevyas, M.D.	[1] Herbert J. Nevyas, M.D.
[2] <b>Q</b> : Did you consider the possible diagnoses of	[2] way.
[3] malingering, hysteria, nuclear sclerosis or a	[3] <b>Q</b> : Under your investigational protocol with the
[4] physical problem that is retinal as being a	[4] Food & Drug Administration, when was something
[5] complication of LASIK surgery?	[5] considered a complication and when was something
[6] A: No.	[6] considered an adverse event? Let's do some
<ul> <li>[7] Q: Did you consider malingering, a physical</li> <li>[8] problem that is retinal, hysteria or nuclear</li> </ul>	[7] complications first.
<ul> <li>[8] problem that is retnal, hysteria of nuclear</li> <li>[9] sclerosis as being an adverse event following LASIK</li> </ul>	[8] A: We have a whole list of things which would be
[10] surgery?	<ul><li>(9) considered either complications or adverse events.</li><li>(10) Microkeratome problems where we have a bad flap, a</li></ul>
[11] MR. LAPAT: Objection.	[10] Microkeratome problems where we have a bad hap, a [11] hole in the flap, an irregular flap, irregular lines
[12] MS. KRAMER: Go ahead. You can answer.	[12] in the cornea from the cutting of the flap, an
[13] A: Absolutely not.	[13] interface, diffuse lamellar keratopathy where you
[14] Q: And why did you not consider it as an adverse	[14] have a problem with the interface where you have
[15] event?	[15] inflammation in it, that's an adverse event. An
[16] MR. LAPAT: Objection.	[16] infection is an adverse event. These are specific
[17] MS. KRAMER: You can answer.	[17] problems which we see which would be due to the
[18] A: Because in my experience LASIK surgery does	[18] LASIK, any of these things. It wouldn't have
[19] not cause nuclear sclerosis, does not cause retinal	[19] happened if he hadn't had LASIK. That's what I can
[20] problems that were of this sort, although I thought	[20] think of. Decentration of the ablation,
[21] something might be developing, but it does not cause	[21] irregularity of the ablation, irregularity of the
[22] hysteria or malingering, and he was getting	[22] cornea, any of these things. These were what is
[23] gradually worse. He was pretty good right after.	[23] considered. We have a list of things that we report
[24] Usually a LASIK complication will show up	[24] to the FDA and check off. They do not include
[25] immediately and then usually get better, not worse,	[25] developing a cataract. They do not include

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F	Page 143 Page 145
[1] Herbert J. Nevyas, M.D.	[1] Herbert J. Nevyas, M.D.
[2] developing malingering or hysteria, as the case may	[2] A: No, we would anticipate it by examining him,
[3] be. They do not include optic nerve problems,	[3] and if we saw it developing, not operate him.
[4] although I guess if something had happened the day	Q: I take it since he was operated that it
[5] after, we might be concerned, but actually he went	[5] wasn't seen?
[6] through a bunch of different retinal people, and	[6] A: It was not. It seemed to be developing now
[7] everybody said his retina was fine. So they are not	[7] afterwards. It has been several years.
[8] considered adverse events and they are not listed	[8] Q: And was there any way that you could have
[9] under — I believe in our protocol we have a list of	(9) anticipated any of these things?
[10] things that we check off. It is either present or	[10] A: The four things you mentioned?
[11] not present or zero or whatever percentage, and that	
[12] is presented to the FDA. None of these things were	[12] already given you in general and he didn't see him
[13] within the range that we report to the FDA because	
[14] none of the things we have mentioned have anythir	
[15] to do with having LASIK surgery.	
[16] Q: The four things that you mentioned that we	[15] answered.
[17] have been talking about, did you anticipate that any	[16] <b>Q</b> : From when you examined Mr. Morgan afterwards, [17] after his LASIK surgery, did you note when — are
[18] of them were going to happen post LASIK?	[19] you the one that made these four different diagnoses
[19] MS. KRAMER: I'm going to object.	[18] you the one that made these four unrefert diagnoses
[20] MR. LAPAT: Objection.	
[21] MS. KRAMER: How do we make that when he	[20] MS. KHAMER: Object to the form. They [21] were impressions. He didn't say they were
[22] didn't see him beforehand? So just hypothetically?	[22] diagnoses. They were possibilities.
[23] Q: Hypothetically for LASIK patients in general,	[23] MR. FRIEDMAN: Possibilities.
[24] was there any way to anticipate that any one of	[24] <b>Q</b> : Doctor, you made mention of these four
[25] those four things would happen?	[25] possibilities. At the time that you noted these
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	[1] Herbert J. Nevyas, M.D.
NE LIBER OLI I	[2] four possibilities, did you feel that there was any
<ul> <li>[3] MR. LAPA1: Objection.</li> <li>[4] Q: And how would you be able to anticipate?</li> </ul>	[9] way that they could have been anticipated in
<ul> <li>[5] A: I would anticipate the development of a</li> </ul>	[4] advance?
[6] cataract because I dilate the patient well and	[5] MS. KRAMER: I'm going to object.
[7] examine to be sure we don't have a cataract	[6] MS. NEWMAN: Objection.
[8] developing, and if that is the case, we do not do	MR. LAPAT: Objection.
[9] LASIK. We do LED surgery. I cannot anticipate	<ul> <li>MS. KRAMER: Does he feel — he made one</li> <li>at one time. He made one at another time. Does he</li> </ul>
[10] malingering. That's where a patient plans ahead to	
[11] try to bankroll his future upon us or our insurance.	<ul><li>[10] feel they should have been made in advance of what?</li><li>[11] MR. FRIEDMAN: In advance of the LASIK</li></ul>
[12] Q: Can you anticipate hysteria?	
[13] A: No, not unless the patient's responses are	[12] surgery.
[14] very odd. Some patients will present with a strange	<ul> <li>[13] MR. LAPAT: Objection.</li> <li>[14] MS. NEWMAN: I'm going to object.</li> </ul>
[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	[17] MS. KHAMEH: He's not answering that [18] because, first of all, what you are trying to do is
[19] retinal?	[19] have him act as an expert against a codefendant and
[20] A: Not if it is not there at the time I examine	[20] I think he has already answered the question in
[21] him, no.	[20] I think he has already answered the question in [21] stating that they were not things to be predictible
[22] Q: If the patient, when examined preoperatively,	
[23] doesn't show any evidence of nuclear sclerosis —	[23] something I'm missing, I don't see why the answer
[24] I'm not sure I understood your answer. Does that	[24] would be any different.
[25] mean you could anticipate nuclear sclerosis?	[25] MS. NEWMAN: I would like to add from

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	Herbert J. Nevyas, M.D.	[1]	Herbert J. Nevyas, M.D.
[2]	patient had ghost images and she mentioned that in	[2]	That would be without the S, BCVA.
[3]	her deposition at some date.	[3]	Q: Doctor, how —
[4]	MS. KRAMER: Obviously he didn't have	[4]	A: This is not applicable.
[5]	her deposition when he was treating this patient, so	[5]	Q: How do you determine what BSCVA means?
[6]	what I'm asking you for is can you find it for me in	[6]	A: That's what I'm used to reading. If you have
[7]	the record so he can read it in context?	[7]	an SC, it means without correction. All through
[8]	MR. FRIEDMAN: If you turn to the day of	[8]	this we have CC, SC and B means best and VA means
[9]	3/27/2000 —	[9]	visual acuity.
[10]	MS. KRAMER: Are you looking at "No	[10]	Q: You say all through this?
[11]	change in ghost image with hard contact lenses"?	[11]	A: All through all of our charts. In all of
[12]	(Discussion off the record between the	[12]	ophthalmology CC is with correction and SC is
[13]	witness and his attorney.)		without correction. That is the commonly accepted
[14]	MS. KRAMER: What's the question?		shorthand.
[15]	Q: Doctor, do you see that, "No change in ghost	[15]	That is best uncorrected visual acuity,
[16]	image with hard contact lenses"?	[16]	I think. That's what I would say that means. Maybe
[17]	A: Yes.	12.	it means something else, but that's what it looks
[18]	Q: Are you able to identify who wrote that note?		like to me.
[19]	A: That is Dr. Anita Wallace. That is the first	[19]	MS. KRAMER: Best spectacle.
[20]	mention I see of a ghost image. There is no	[20]	Q: Yes, your attorney has suggested that it may
[21]	complaint of a ghost image. She just said that	[21]	mean best spectacle corrected visual acuity.
[22]	there is no change in any. I don't even know that	[22]	A: I don't know.
[23]	there were any.	[23]	MS. KRAMER: But what is the difference
[24]	Q: Now, under "Adverse Events," that third from	[24]	between best spectacle and best corrected?
[25]	the bottom, the ten lines — the ten letters rather,	[25]	THE WITNESS: It is the same. Best
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	Herbert J. Nevyas, M.D.	(1)	Herbert J. Nevyas, M.D.
[2]	you had said that was a loss of two lines?	[2]	corrected is best spectacle corrected. That is what
[3]	A: That's what I would presume from the way it	[3]	you correct with. Your best corrected would mean
[4]	is described here.	[4]	with contact lenses, but I never used that term,
[5]	Q: Did Mr. Morgan have a decrease of best —	[5]	best spectacle corrected because we are not
[6]	what is BSCVA?	[6]	interested in that. We are interested in best
[7]	A: Oh, I'm sorry. That is best uncorrected	[7]	corrected whether it is spectacle or not, and
	visual acuity. SC is without correction.	[8]	uncorrected is SC. I don't know. Best spectacle?
	Uncorrected visual acuity. I'm not sure.		It could be. Maybe that's what they meant there,
[10]		[10]	but I didn't write that.
[11]		[11]	Q: Let me understand. Are you saying that you
	says it has been measured with correction. I've got	[12]	are not really sure what BSCVA means?
	it. I'm sorry. I understand now. That seemed	[13]	
	strange to me. His uncorrected visual acuity before	[14]	(Herbert Nevyas Exhibit 29 was marked
	surgery was absolutely awful. He is a minus five	[15]	for identification.)
	minus six equivalent myo. So his uncorrected visual	[16]	
	acuity would have been finger counting in his case.	[17]	29, which was Bates Nos. 1375 and 1374, and ask you
	They are saying a decrease in best uncorrected	[18]	to identify that.
	visual acuity of more than ten letters. I don't —	[19]	
		[20]	March 14, 2001.
	now. It has to be. I'm sorry. I was not reading	[21]	
	that correctly. SCVA means uncorrected visual	[22]	
	acuity. A decrease in the uncorrected acuity of	[23]	
	more than ten lines is reported. Well, this is not.	[24]	
[25]	This is a decrease in best corrected visual acuity.	[25	of the 346 at the bottom of the page, 346 eyes