

CONDENSED

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1 IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

2  
3 DOMINIC MORGAN : SEPTEMBER TERM, 2000

4 vs. :

5 HERBERT J. NEVYAS, M.D. :

and :

6 JOANN Y. NEVYAS, M.D. :

and :

7 ANITA NEVYAS-WALLACE, M.D. : NO. 002621

and :

8 IRA B. WALLACE, M.D. :

and :

9 EDWARD A. DEGLIN, M.D. :

and :

10 MITCHELL STEIN, M.D. :

and :

11 NEVYAS EYE ASSOCIATES, P.C. :

and :

12 NEVYAS EYE ASSOCIATES OF :

NEW JERSEY, P.C. :

13  
Friday, December 14, 2001  
14 Philadelphia Pennsylvania

15 Oral deposition of ANITA NEVYAS-WALLACE, M.D.,  
16 taken pursuant to notice at The Widener Building,  
17 Mezzanine Conference Room, One South Penn Square,  
18 Philadelphia, Pennsylvania, at 10:10 o'clock a.m.,  
19 on the above date, before Suzanne M. Feezle-  
20 Gigliotti, Court Reporter and Commissioner.

21  
22 FERGUSON COURT REPORTING  
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1 A. I told him that his vision would not be any  
 2 better than the best correction and that it might  
 3 drop.  
 4 Q. When you told him that his vision might drop,  
 5 did you indicate to him how much it might drop?  
 6 A. Yes. I told him he could lose one or both  
 7 eyes or he could die.  
 8 Q. Where does it indicate that?  
 9 A. I didn't write that here, but that is what I  
 10 told him. Here I wrote, "Discussed in detail that  
 11 visual acuity will not improve and that damage to  
 12 retina from ROP is not going to improve. Also  
 13 discussed that best corrected visual acuity could  
 14 decrease."  
 15 Q. Did you discuss how much the visual acuity  
 16 could decrease?  
 17 MR. LAPAT: She just said she told him  
 18 he could lose both eyes or die.  
 19 DR. FRIEDMAN: Counsel, let me have it  
 20 from the witness.  
 21 A. I told him he can go completely blind.  
 22 Q. In April 1998, what was the visual acuity  
 23 defect beyond which you would not perform LASIK?  
 24 A. What do you mean by "visual acuity defect"?

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1 Q. Well, how bad would a visual acuity have to  
 2 be, how abnormal would a visual acuity have to be in  
 3 1998 beyond which you would not perform LASIK?  
 4 A. How many diopters of myopia?  
 5 Q. Let's do diopters and let's do Snellen's.  
 6 MS. NEWMAN: I'm going to object only  
 7 to the form of the question that it excludes all  
 8 other indications or exclusions, et cetera, for  
 9 LASIK, and with that she can answer your question.  
 10 A. How many diopters of myopia would I have  
 11 operated?  
 12 Q. That's the first part of the question.  
 13 A. Okay. About 11.  
 14 Q. And the second part of the question, visual  
 15 acuity in terms of Snellen's Eye Chart?  
 16 A. Best corrected acuity needed to be the 20/40  
 17 level.  
 18 Q. The 20/40 level?  
 19 A. (Witness nods head.)  
 20 Q. Is the 20/40 level different than the 20/50  
 21 level?  
 22 A. The 20/40 level is different from the 20/50  
 23 level.  
 24 Q. Are you answering yes, it is, or are you

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1 repeating my question?  
 2 A. I was answering.  
 3 Q. I'm sorry. My question was is the 20/40 level  
 4 different from the 20/50 level, and do I understand  
 5 your answer is yes, it is different?  
 6 A. Yes.  
 7 Q. And, Doctor, why would the 20/40 level have  
 8 been your cutoff for performing LASIK in April of  
 9 1998?  
 10 A. It was stipulated in our protocol.  
 11 Q. Was there any other reason?  
 12 A. It seemed appropriate to me.  
 13 Q. It seemed appropriate?  
 14 A. It seemed appropriate.  
 15 Q. And why did it seem appropriate?  
 16 A. Because that was my judgment.  
 17 Q. Doctor, why was it your judgment that it was  
 18 appropriate to have a cutoff in the 20/40 level for  
 19 doing LASIK surgery in April 1998?  
 20 MS. NEWMAN: Is there something that  
 21 you're getting at here? Because I'm not hearing  
 22 it. She is answering your questions and I'm not  
 23 really understanding where you're going. Doctor, do  
 24 you understand?

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1 DR. FRIEDMAN: She hasn't answered  
 2 anything.  
 3 MS. NEWMAN: She has answered.  
 4 DR. FRIEDMAN: No. She said, first of  
 5 all, that it was a protocol and then I said, "Well,  
 6 are there other reasons," and she said, "Well, it  
 7 seemed appropriate," and I'm trying to find out why  
 8 she feels it's appropriate.  
 9 MS. SANDS: She told you.  
 10 DR. FRIEDMAN: Because it's in her  
 11 judgment.  
 12 MS. NEWMAN: Right.  
 13 DR. FRIEDMAN: I'm trying to find out  
 14 why in her judgment it's appropriate.  
 15 MS. NEWMAN: I don't understand that  
 16 question. If the doctor can understand it, she can  
 17 answer it. Go ahead.  
 18 A. I don't understand the question.  
 19 Q. Doctor, did you have any thoughts, opinions or  
 20 feelings as to a cutoff point of the 20/40 level for  
 21 LASIK surgery in April 1998 that were separate from  
 22 what the FDA had put in the protocol?  
 23 MS. NEWMAN: Other than what she had  
 24 already said, that it seemed appropriate and was her