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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2014-CP-42-0508

Patricia Craig, Appellant,

v.

E. Earl Jenkins, Jr., M.D., also known as
Everett Earl Jenkins, Jr., M.D., Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center, and York Pathology
Associates, LLC, Respondents.

RECORD ON APPEAL

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York Pathology Associates, LLC

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SC Court of Appeals

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MD and York Pathology Associates, LLC

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STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-00508

Patricia Craig

E. Earl Jenkins, Jr., M.D., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: William U. Gunn and J. Hollis Inabinet

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☒ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

Per the attached order, summary judgment is granted in favor of the Defendants.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Spec Circuit Court Judge

3063

Judge Code

Date

9/17/15

This judgment was entered on **September 17, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **September 17, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Glenn Walters Sr. PO Box 1346 Orangeburg, SC 29116-1346

ATTORNEY(S) FOR THE PLAINTIFF(S)

Julius W. McKay II PO Box 7217 Columbia, SC 29202
William U. Gunn PO Box 1897 Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO: 2014-CP-46-00508

Patricia Craig,)

Plaintiff,)

v.)

E. Earl Jenkins, Jr., M.D.,)

also known as Everett Earl Jenkins,)

Jr., M.D., Amisub of South)

Carolina, Inc. d/b/a Piedmont)

Medical Center, and York Pathology)

Associates, LLC,)

Defendants.)

ORDER FOR SUMMARY JUDGMENT

FILED-RECEIVED
2015 SEP 17 PM 2:23
DAVID B. STEIN
CLERK OF COURT
YORK COUNTY, SC

This matter came before me on August 13, 2015, upon the motion of the Defendant Jenkins ("Jenkins") and his medical practice, York Pathology Associates, LLC, ("York") for summary judgment. Representing Dr. Jenkins and York was Kelli L. Sullivan. Plaintiff was represented by Glenn Walters. Defendant Amisub of South Carolina d/b/a/ Piedmont Medical Center ("Amisub") also filed a motion for summary judgment. Amisub was represented by J. Hollis Inabinet.

Based on the briefs of the parties, deposition testimony and exhibits presented, and the arguments of counsel, I find and conclude as follows.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004).

A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. *Anthony v. Padmar, Inc.*, 307 S.C. 503, 415 S.E.2d 828 (Ct. App. 1992). The party seeking summary judgment has the burden of clearly establishing by the record properly before the court, the absence of a triable issue of fact. *Owens v. Magill*, 308 S.C. 556, 419 S.E.2d 786 (1992).

The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment,

smk
#)

after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party bears the burden of proof at trial. *Etheredge v. Richland School Dist. I*, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998); *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). In such a situation, there can be no genuine as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Etheredge, supra*.

DISCUSSION

At the outset, the only allegations of negligence made against Amisub are vicarious in nature. Plaintiff attempts to impute the alleged negligence of Jenkins to Amisub, based upon a theory of either apparent agency, or a non-delegable duty. Plaintiff makes no allegations of independent negligence against Amisub. Accordingly, if summary judgment is granted as to Jenkins and York, it must also be granted to Amisub.

This case involves the reading and interpretation by Jenkins of fine needle aspirate cells from a biopsy of Plaintiff's thyroid gland. Jenkins is a board certified pathologist. Jenkins categorized the specimen he analyzed as suspicious for papillary cancer, rating it a "4" on the "Bethesda Scale." A rating of "4" on the Bethesda Scale, according to the affidavit of Jenkins, means that a specimen has a 65-75% chance of being malignant. Based on Jenkins' report, Plaintiff's entire thyroid gland was removed by the operating surgeon. Upon full pathological examination, the thyroid was determined to be benign.

Plaintiff asserts that Jenkins' reading and interpretation of the specimen was incorrect, resulting in the unnecessary removal of Plaintiff's entire thyroid gland. Jenkins' and York's motion asserts that Plaintiff has failed to provide any evidence that Jenkins violated the applicable standard of care in his reading and interpretation of the fine needle aspirate cells from the thyroid biopsy, or that he erroneously interpreted the biopsy.

Plaintiff's claim is based entirely on an affidavit and deposition of Dr. Gabor Kovacs ("Kovacs"), a general surgeon, who is named as Plaintiff's only expert. Kovacs opines that Jenkins must have violated the standard of care because his classification of the lesion as cancerous was not confirmed by the ultimate pathology examination of the entire thyroid gland after removal.

However, in his deposition, Kovacs admitted that he had not reviewed the pathology slides in the case, and that he was unable to disagree with Jenkins' conclusion that the specimen

was suspicious for cancer. Kovacs was not familiar with the Bethesda Scale by which Jenkins classified the biopsy, and could not disagree that the specimen rated a "4" on the scale. He further agrees that the safest course of action for this patient was the removal of her thyroid. Kovacs bases his opinion of negligence on the fact that the pathology examination of the whole thyroid was found it to be benign. He seemingly asserts that since the entire thyroid was benign, then Jenkins' classification that there was a 65-75% chance of cancer must have been incorrect, and that Jenkins' interpretation of the biopsy was in error.

Plaintiffs in medical malpractice actions must provide evidence showing the following: (1) the generally recognized and accepted practices and procedures that would be followed by the average, competent physician in the defendant's field of medicine under the same or similar circumstances; (2) that the defendant departed from the recognized and generally accepted standards; and, (3) that the departure from the recognized practices and procedures proximately cause the Plaintiff's alleged injuries and damages. *Jones v. Doe* 372 S.C. 53, 61, 640 S.E.2d 514, 518 (Ct. App. 2006); and, *David v. McLeod Regl. Med. Ctr.*, 367 S.C. 242, 248, 626 S.E.2d 1, 4 (2006).

Even if it is assumed for the purposes of this motion that Kovacs is a qualified expert to testify as to the standard of care for pathologists, he did not testify with any specificity as to how, or in what way, Jenkins violated a standard of care, or that he misread the biopsy. He assumes that just because the ultimate pathology examination proved the thyroid to be benign, Jenkins must have been incorrect in his original opinion, based on the aspirate cell biopsy, of a 65-75% chance of cancer. Obviously, if there is a 65-75% chance of cancer, there is, conversely, a 25-35% chance that the lesion is benign. The fact that the removed gland proved to be benign was within the parameters of the rating that Jenkins gave to the specimen he reviewed. Further, Plaintiff has presented no evidence through expert testimony that Jenkins was in error in his reading and interpretation of the cells gathered from the fine needle aspiration.

After reviewing the pleadings, and by admission of Plaintiff's counsel at the hearing, Plaintiff's only cause of action against Amisub is premised on vicarious liability for the actions of Jenkins. A failure of proof as to Jenkins and York Pathology eliminates the basis of any claim against Amisub. Thus, to the extent Defendants Jenkins and York are entitled to summary judgment, Defendant Amisub is as well.

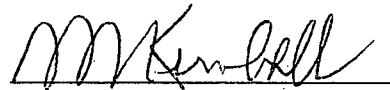
In summary, based on the record presented, there is no genuine issue of fact for trial on the issue of Jenkins' negligence, and all Defendants are entitled to summary judgment.

AC
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Therefore, it is ordered as follows:

1. The motion of Defendants York Pathology and Earl Jenkins for summary judgment is granted.
 2. Defendant Amisub d/b/a/Piedmont Medical Center's motion for summary judgment is granted.
 3. Plaintiff's Complaint is dismissed with prejudice.
- AND IT IS SO ORDERED.

September 16, 2015


S. Jackson Kimball
Special Circuit Court Judge
York County

#4

STATE OF SOUTH CAROLINA

COUNTY OF YORK

PATRICIA A. CRAIG

Plaintiff(s)

vs.

E. EARL JENKINS, MD, et al

Defendant(s)

Submitted By: Glenn Walters, Sr., Esquire

Address: PO Box 1346

Orangeburg, SC 29116

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 46-

SC Bar #:

13198

Telephone #:

(803) 531-8844

Fax #:

(803) 531-3628

Other:

E-mail: glennwaltersp@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☒ Medical Malpractice (220)
Previous Notice of Intent Case #
2013-CP-46-3370
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstatement Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date:

2/21/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PATRICIA A. CRAIG,)
)
Plaintiff,)
)

vs.)
)

E. EARL JENKINS, JR., MD)
also known as EVERETT EARL)
JENKINS, JR., MD, AMISUB)
OF SOUTH CAROLINA, INC.)
d/b/a Piedmont Medical Center,)
and YORK PATHOLOGY)
ASSOCIATES, LLC,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-46-00508

SUMMONS
(Jury Trial Requested)

FILED-RECEIVED
2014 FEB 21 PM 3:05
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

TO: THE ABOVE - NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the undersigned Attorney for the Plaintiff, at Post Office Box 1346, Orangeburg, SC 29116, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint

[Only the Signature is contained on this page]

At Orangeburg, SC

Dated: February 21, 2014



GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Ph: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13198
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

PATRICIA A. CRAIG,)
)
Plaintiff,)
)
)

Case No. 2014-CP-46-00508

vs.)

COMPLAINT
(Jury Trial Requested)

E. EARL JENKINS, JR., MD)
also known as EVERETT EARL)
JENKINS, JR., MD, AMISUB)
OF SOUTH CAROLINA, INC.)
d/b/a Piedmont Medical Center,)
and YORK PATHOLOGY)
ASSOCIATES, LLC,)
)
Defendants.)

FILED-RECEIVED
2014 FEB 25 PM 3:05
DAVID HAMILTON
C.O.C.P. & G.S.
YORK COUNTY, SC

NOW COMES PATRICIA A. CRAIG (hereinafter "Plaintiff" or "Craig"), by and through the undersigned attorney, complaining of the Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Craig is a citizen and resident of the County of Chester, State of South Carolina, now and at all times relevant to this lawsuit.
2. Upon information and belief, Defendant E. Earl Jenkins, Jr., M.D., also known as Everett Earl, Jr., M.D. (hereinafter "Jenkins") is a citizen and resident of the County of York, State of South Carolina, now and at all times relevant to this law.
3. Defendant Tenet Healthcare Corporation is a for-profit corporation, chartered

under the laws of Nevada, doing business as a healthcare provider within the State of South Carolina and the nation, with its principal place of business been located at 1445 Ross Avenue, Suite 1400, Dallas, Texas 75202. At all times relevant to this lawsuit, Defendant Tenet was doing business as Piedmont Medical Central, located at 222 South Herlong Avenue, Rock Hill, SC 29732. Defendant Tenet is a publicly traded entity, and it does not appear that Defendant Tenet has a designated service of process agent in the State of South Carolina. The Plaintiff and Defendant have agreed that Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center shall be substituted as a party Defendant for Tenet Healthcare Corporation d/b/a Piedmont.

4. Defendant York Pathology Associates, LLC (hereinafter “York Pathology”) is a South Carolina limited liability company, doing business throughout the State of South Carolina. During the relevant time of this lawsuit, Defendant York Pathology also did business as York Pathology Associates, P.A., whose name was changed to M & J Farms of Chester, Inc. The registered agent for Defendant York Pathology is Robert E. Thomas, Jr., located at 222 South Herlong Ave, Rock Hill, South Carolina 29732.
5. At all times relevant to this lawsuit, Defendant York Pathology was the exclusive pathology service provider for Defendant’s Amisub’s Piedmont Medical Center.
6. Venue is proper in this matter at because at least one or more of the Defendants is a resident of the County of York, State of South Carolina, and

the principal place of business for the Defendant York Pathology is the County of York, State of South Carolina, and the statutory conditions precedent to filing this lawsuit has been met.

FOR A FIRST CAUSE OF ACTION
(Negligence—Medical Malpractice)
(Against All Defendants)

7. Plaintiff repeats and re-alleges each and every allegation of paragraphs one through six as if restated verbatim herein.
8. On or about August 18, 2013, Plaintiff consulted Dr. Christopher T. Jones for medical services and advice because a PETSCAN had discovered a nodule in her throat, on the right side. Before the discovery of the PETSCAN, Plaintiff was not having presenting any clinical signs of problems with her throat.
9. The medical consultation occurred in the County of York, State of South Carolina. As a result of this consultation, Dr. Jones ordered a fine needle aspiration (“FNA”) and ultrasound of the nodule that he found in the Plaintiff’s neck on August 18, 2010.
10. The thyroid ultrasound was done on August 26, 2010, and the fine need aspiration (“FNA”) was performed on September 30, 2010.
11. Defendant Jenkins performed the FNA pathologic diagnosis and issued a report dated October 1, 2010 (hereinafter referred to as the “FNA Report”).
12. The FNA Report stated, in part, that Plaintiff had a “[c]ategory 4 lesion, suspicious for malignancy, excision is indicated.”
13. The FNA Report bears the heading “Piedmont Healthcare”, which indicates that the FNA Report was being issued under the authority of Piedmont

Medical Center.

14. Upon information and believe, Dr. Jenkins issued the FNA Report in his capacity and scope of his employment and member of Defendant York Pathology, and in his capacity as the sole provider of pathological services for Defendant Amisub's hospital known as Piedmont Medical Center.
15. On October 12, 2010, Plaintiff returned to Dr. Jones' office for a follow-up consultation concerning the nodule in her throat. During this visit, Dr. Jones specifically advised the Plaintiff that she had papillary carcinoma (hereinafter referred to as "thyroid cancer"). Based upon his medical conclusion that Plaintiff had thyroid cancer, Dr. Jones recommended that Plaintiff undergo a total thyroidectomy.
16. Plaintiff, based upon the information she received from Dr. Jones, consented to the total thyroidectomy because she thought she had thyroid cancer.
17. Dr. Jones recommended a total thyroidectomy to the Plaintiff based upon, in part, the FNA Report that was prepared by Defendant Jenkins.
18. On November 2, 2010, Dr. Jones, with others within his medical team, performed a total thyroidectomy on the Plaintiff, with the medical opinion that the Plaintiff had thyroid cancer.
19. During the November 22, 2010 surgery, Dr. Jones prepared a sample of the thyroid known as a "frozen section" and submitted it to Defendant Amisub's Piedmont Medical Center for pathologic evaluation. Upon information and belief, the frozen section was analyzed pathologically by Defendant York Pathology for Piedmont Medical Center.

20. As a result of analyzing the frozen section, Defendant York Pathology failed to provide Dr. Jones a definitive diagnosis concerning Plaintiff's thyroid. Therefore, Dr. Jones proceeded to complete a total thyroidectomy on the Plaintiff.
21. The FNA Report, as issued by Defendant Jenkins, caused Dr. Jones to conclude that Plaintiff had a suspicion of thyroid cancer and Defendant's York Pathology's failure to provide a definitive diagnosis of the frozen section of Plaintiff's thyroid caused Dr. Jones to perform a total thyroidectomy on the Plaintiff.
22. The specimen from thyroidectomy surgery was sent to a lab for evaluation.
23. Sometimes after November 10, 2010, Plaintiff returned to Dr. Jones' office for a medical consultation, and she learned that the post-surgery reports established that she did not have thyroid cancer. In other words, Dr. Jones had erroneously concluded that Plaintiff had thyroid cancer, in substantial part, based upon the incorrect FNA Report and the misinterpretation of the frozen section as performed by Defendants.
24. During all relevant times in this lawsuit, the Defendant medical providers owed Plaintiff a duty to competently evaluate, diagnose and treat the Plaintiff for the nodule in her throat, to include a duty to properly diagnose whether the nodule was cancerous or benign, and all medical treatment and evaluations were required to be done within the acceptable standard of medical care within the community.
25. Defendant Jenkins and Defendant York Pathology breached the duty of care

owed to the Plaintiff in one or more of the following particulars, but not all inclusive:

- a. By failing to use reasonable and competent skills in pathologically analyzing the FNA results and the frozen section;
- b. By misinterpreting the results from the FNA and the frozen section and falsely concluding that Plaintiff's thyroid was suspicion for malign thyroid cancer.
- c. By failing to order a second fine needle aspiration test to confirm the second test;
- d. By failing to order additional medical tests once the first fine needle aspiration test was not definitive.
- e. By unreasonably relying on the fine needle aspiration findings as a definitive conclusion that a total thyroidectomy was indicated.

Defendant's reliance on the fine needle aspiration result was unreasonable because as of 2009, the medical literature was advising the medical community that of the following warning:

"In every circumstance, FNA [fine needle aspiration] is a test and should be interpreted with the entire clinical circumstances. False-negative and false-positive FNA results are reported in almost every series. Therefore, reliance upon FNA findings at the expense of clinical, radiographic, or other findings is unsafe." *Salgarelli AC, Cappare P, Bellini P, Collini M. Usefulness of fine-needle aspiration in parotid diagnostics. Oral Maxillofac Surg. Dec 2009;13(4):185-90.*

- f. By improperly concluding that Plaintiff's nodule was cancerous.
26. That as a direct and proximate result of the breach of the applicable standard of medical care by Defendants, as heretofore alleged, Plaintiff suffered

substantial damages, in the form of conscious pain and suffering in the past and will suffer conscious pain and suffering into the future; loss the ability to sing in the church choir to level she could before surgery; incurred medical bills in the past, present, and future; suffered permanent damages to her voice; emotional distress; loss of sleep; among other intangible damages, to include mental anguish and permanent disfigurement to her voice, all in an amount to be proved at the trial of this case.

27. That all of the injuries and damages sustained by the Plaintiff were the direct and proximate result of the negligent actions of Defendant Jenkins and York Pathology, without any act or omission on the part of the Plaintiff directly thereunto contributing.

FOR A SECOND CAUSE OF ACTION
(Negligence—Medical Malpractice via agency)
(Against All Defendants, except Jenkins)

28. Plaintiff repeats and re-alleges each and every allegation of paragraphs one through twenty-seven as if restated verbatim herein.
29. That at the time of Defendant Jenkins rendered medical services to the Plaintiff and committed malpractice as alleged, he was acting within the scope of his employment and agency and partner with Defendant York Pathology. Therefore, the other Defendant York Pathology is vicariously liable for the damages suffered by the Plaintiff.
30. That at the time of Defendant Jenkins rendered medical services to the Plaintiff and committed malpractice as alleged, he was acting within the scope of his employment agency contract with Defendant Amisub, doing business as

Piedmont Medical Center, which provided that Defendant York Pathology was the sole provider of pathologic services to Defendant Amisub. Therefore, Defendant Amisub is vicariously liable for the damages suffered by the Plaintiff.

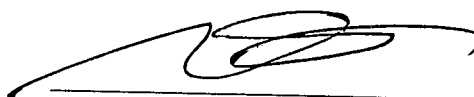
PRAYER FOR RELIEF

WHEREFORE, Plaintiff Craig respectfully prays for judgment against the Defendants, jointly and severally, for actual damages in an amount to be determined by the jury at the trial of this action, for the costs and expenses associated with bringing this action, and for any other relief the Court deems just and proper.

Plaintiff demands a trial by jury.

At Orangeburg, SC

Dated: February 21, 2014



GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13198
Attorney for Plaintiff

EXHIBIT "A" –EXPERT AFFIDAVIT

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)
Plaintiff,)

Case No. 2013-CP-46-_____

vs.)

AFFIDAVIT OF
Gabor Kovacs, M.D., F.A.C.S.

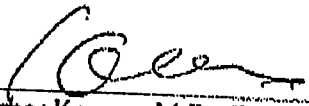
E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., TENET HEALTHCARE)
CORPORATION d/b/a Piedmont)
Medical Center, and YORK)
PATHOLOGY ASSOCIATES,)
LLC,)
Defendants.)

I, Gabor Kovacs, M.D., F.A.C.S., first duly sworn according to law, do hereby depose and state as follows:

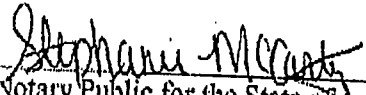
1. My name is Gabor Kovacs, M.D., F.A.C.S., and I am of sound mind, lawful age, and in all other respects competent to make this Affidavit.
2. I am licensed to practice medicine by the State Medical Boards of New Jersey, Georgia, and Florida. I am Board Certified by the American College of Surgeons. Currently, I am a surgeon practicing medicine in a private surgical practice, and I have been in such capacity since 1985. My Curriculum Vitae is attached to this affidavit, and it is incorporated herein by reference. I am not a Pathologist but I work closely with pathologists who are instrumental to my surgical practice.
3. I devote the majority of my professional time to the active clinical practice of medicine in my field of licensure as a medical doctor.
4. In preparation of this opinion, I have reviewed the following, excluding any medical literature that may have been consulted:

- a. The draft complaint in the above-captioned matter. The complaint was reviewed to ascertain the Plaintiff's attorney theory of the case and to ascertain any relevant facts. For the purpose of this affidavit, I assume the alleged facts in the complaint to be true.
 - b. Medical records consisting of approximately 25 pages, including the Operative/Procedural Notes of Dr. Christopher T. Jones and the Pathological Report of Dr. E. Earl Jenkins, Jr., signed October 1, 2010.
5. I am familiar with the applicable standard of care relative to the allegations contained in the Complaint.
6. It is my opinion, to a reasonable degree of medical certainty, that Dr. E. Earl Jenkins, Jr., named in the Complaint, breached the standard of medical care owed to Patricia Craig by failing to properly analyze and interpret the fine needle aspiration results that was taken of the Plaintiff and submitted to him for evaluation on September 30, 2010. The facts to support my conclusion are as follows: (a) a fine needle aspiration sample was taken from Patricia Craig and presented for evaluation; (b) in a Pathologic Report dated October 1, 2010, Dr. Jenkins stated that the Plaintiff's fine needle aspiration was a "category 4 lesion, suspicion for malignancy, excision is indicated"; (c) Dr. Christopher T. Jones, a surgeon, used Dr. Jenkins Pathologic Report to recommend surgery for the Plaintiff; (d) Dr. Jones, during surgeon on Plaintiff's thyroid on 11/2/2010 did a frozen section which was presented for pathologic diagnosis. At the point of the frozen section, Mrs. Craig's had not undergone a total thyroidectomy. According to Dr. Jones Operative Notes, not definitive diagnosis concerning malignancy or non-malignancy could be made; therefore, he proceeded to perform a total thyroidectomy on the Plaintiff; (e) according to the complaint, the Defendants are the were the sole provider of pathological services to Piedmont Medical/Healthcare where Dr. Jones was performing the surgery. From this fact, I conclude that Defendant performed the pathologic diagnosis on the frozen section which was not definitive; (f) post-surgery it was determined that Ms. Craig did not have papillary carcinoma.
7. In my opinion, to a reasonable degree of medical certainty as a surgeon, the only way Mrs. Craig could have received a false-positive for papillary carcinoma is that the fine needle aspiration results were not probably interpreted and that the frozen section was also misinterpreted. To a reasonable degree of medical certainty, Dr. Jenkins breached the standard of care by failing to properly interpret the fine needle aspiration results, and whoever interpreted the frozen section likewise breached the standard of care by failing to properly interpret the frozen section.
8. The aforementioned breaches of the standard of care caused severe injury to the Plaintiff, including having her to undergo an unnecessary surgery and total thyroidectomy.

Further Affiant sayeth not.


Garbor Kovacs, M.D., F.A.C.S.

Sworn to before me and subscribed in my presence this 4th day of November, 2013


Notary Public for the State of
Georgia

My commission expires: 1-17-16

(Seal)



CURRICULUM VITAE

NAME:

Gabor Kovacs, M.D., F.A.C.S.

ADDRESS:

204 E. 15th Street
Alma, GA 31510
(912)632-0314

DATE OF BIRTH:

[REDACTED]
Hungary

PLACE OF BIRTH:

U.S.A.

CITIZENSHIP:

New Jersey, Georgia, Florida

LICENSURE:

English, French, Hungarian, Hebrew

LANGUAGES:

EDUCATION:

UNDERGRADUATE

Queens College, Flushing, New York
BA Degree- 1969

MEDICAL SCHOOL:

The Catholic University of Louvain, Belgium
M.D.-1976

POST-GRADUATE TRAINING: 1976-1976

Rotating sub-internship at the Jewish Hospital
and Medical Center of Brooklyn

1976-1977

Straight surgical internship at the Jewish Hospital
and Medical Center of Brooklyn

1977-1981

Surgical resident and chief resident in surgery at
the Brookdale Medical Center, Brooklyn New York

1981-1982

Fellow in Thoracic and Cardiovascular Surgery
(chief resident) at Nassau Hospital in Mineola,
New York

204 E. 15th Street Alma, GA 31510

Office 912-632-0314 Fax 912-632-8682

1982-1985

**Major in U.S. Army Medical Corp-Received
Airborne Wings-Served with the U.S. Army in
Honduras**

1985-Present

**Private surgical practice. General Laparoscopic
and vascular surgery**

HOSPITAL AFFILIATIONS:

**ContraState Medical Center, Freehold, New Jersey
Raritan Bay Medical Center, Old Bridge, New Jersey
Bacon County Hospital, Alma, Georgia**

CERTIFICATIONS:

Board Certified by the American College of Surgeons

Certified in stereotactic breast biopsy

Certified in Laparoscopic surgery

MEDICAL SOCIETIES:

Fellow of the American College of Surgeons

Member of the New Jersey Vascular Society

South Georgia Physicians Association

POSITIONS HELD:

**Clinical Assistant Professor at the Uniformed
Services of Health Sciences**

Assistant Chief of Surgery 1990-1994

Secretary-Treasurer of Medical Staff 1992-1993

**Assistant Chief of Staff, ContraState Medical Center
1993-1995**

Chief of Staff, ContraState Medical Center 1995-1997

**Member of the Board of Trustees, ContraState Medical
Center 1992-1998**

**Co-Director Hernia Center, Freehold, New Jersey
2004-2010**

204 E. 15th Street Alma, GA 31510

Office 912-632-0314 Fax 912-632-8682

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)
Plaintiff,)

Case No. 2014-CP-46-00508

vs.)

AMENDED COMPLAINT
(Jury Trial Requested)

E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., AMISUB OF SOUTH)
CAROLINA, INC., d/b/a)
Piedmont Medical Center, and)
YORK PATHOLOGY)
ASSOCIATES, LLC,)
Defendants.)

FILED-RECEIVED
2014 MAY 30 PM 2:52
DAVID P. HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

NOW COMES PATRICIA A. CRAIG (hereinafter "Plaintiff" or "Craig"), by and through the undersigned attorney, complaining of the Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Craig is a citizen and resident of the County of Chester, State of South Carolina, now and at all times relevant to this lawsuit.
2. Upon information and belief, Defendant E. Earl Jenkins, Jr., M.D., also known as Everett Earl, Jr., M.D. (hereinafter "Jenkins") is a citizen and resident of the County of York, State of South Carolina, now and at all times relevant to this law.
3. Defendant Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center is (hereinafter "Amisub") is a for-profit corporation, chartered under the laws of the State of South Carolina, during business as a healthcare provider within the State of

South Carolina and the nation. At all times relevant to this lawsuit, Defendant Amisub was doing business as Piedmont Medical Central, located at 222 South Herlong Avenue, Rock Hill, SC 29732.

4. Defendant York Pathology Associates, LLC (hereinafter "York Pathology") is a South Carolina limited liability company, during business throughout the State of South Carolina. During the relevant time of this lawsuit, Defendant York Pathology also did business as York Pathology Associates, P.A., whose name was changed to M & J Farms of Chester, Inc. The registered agent for Defendant York Pathology is Robert E. Thomas, Jr., located at 222 South Herlong Ave, Rock Hill, South Carolina 29732.
5. At all times relevant to this lawsuit, Defendant York Pathology was the exclusive pathology service provider for Defendant Amisub's Piedmont Medical Center.
6. Venue is proper in this matter at because at least one or more of the Defendants is a resident of the County of York, State of South Carolina, and the principal place of business for the Defendant York Pathology is the County of York, State of South Carolina, and the statutory conditions precedent to filing this lawsuit has been met. Additionally, all pre-litigation statutory requirement have been met, including filing the pre-litigation notice and completing pre-litigation mediation.

FOR A FIRST CAUSE OF ACTION
(Negligence—Medical Malpractice)
(Against All Defendants)

7. Plaintiff repeats and re-alleges each and every allegation of paragraphs one through six as if restated verbatim herein.
8. On or about August 18, 2013, Plaintiff consulted Dr. Christopher T. Jones for medical

services and advice because a PETSCAN had discovered a nodule in her throat, on the right side. Before the discovery of the PETSCAN, Plaintiff was not having presenting any clinical signs of problems with her throat.

9. The medical consultation occurred in the County of York, State of South Carolina. As a result of this consultation, Dr. Jones ordered a fine needle aspiration ("FNA") and ultrasound of the nodule that he found in the Plaintiff's neck on August 18, 2010.
10. The thyroid ultrasound was done on August 26, 2010, and the fine need aspiration ("FNA") was performed on September 30, 2010.
11. Defendant Jenkins performed the FNA pathologic diagnosis and issued a report dated October 1, 2010 (hereinafter referred to as the "FNA Report").
12. The FNA Report stated, in part, that Plaintiff had a "[c]ategory 4 lesion, suspicious for malignancy, excision is indicated."
13. The FNA Report bears the heading "Piedmont Healthcare", which indicates that the FNA Report was being issued under the authority of Piedmont Medical Center.
14. Upon information and believe, Dr. Jenkins issued the FNA Report in his capacity and scope of his employment and member of Defendant York Pathology, and in his capacity as the sole provider of pathological services for Defendant Amisub's hospital known as Piedmont Medical Center.
15. On October 12, 2010, Plaintiff returned to Dr. Jones' office for a follow-up consultation concerning the nodule in her throat. During this visit, Dr. Jones specifically advised the Plaintiff that she had papillary carcinoma (hereinafter referred to as "thyroid cancer"). Based upon his medical conclusion that Plaintiff had thyroid cancer, Dr. Jones recommended that Plaintiff undergo a total thyroidectomy.

16. Plaintiff, based upon the information she received from Dr. Jones, consented to the total thyroidectomy because she thought she had thyroid cancer.
17. Dr. Jones recommended a total thyroidectomy to the Plaintiff based upon, in part, the FNA Report that was prepared by Defendant Jenkins.
18. On November 2, 2010, Dr. Jones, with others within his medical team, performed a total thyroidectomy on the Plaintiff, with the medical opinion that the Plaintiff had thyroid cancer.
19. During the November 22, 2010 surgery, Dr. Jones prepared a sample of the thyroid known as a "frozen section" and submitted it to Defendant Amisub's Piedmont Medical Center for pathologic evaluation. Upon information and belief, the frozen section was analyzed pathologically by Defendant York Pathology for Piedmont Medical Center.
20. As a result of analyzing the frozen section, Defendant York Pathology failed to provide Dr. Jones a definitive diagnosis concerning Plaintiff's thyroid. Therefore, Dr. Jones proceeded to complete a total thyroidectomy on the Plaintiff.
21. The FNA Report, as issued by Defendant Jenkins, caused Dr. Jones to conclude that Plaintiff had a suspicion of thyroid cancer and Defendant's York Pathology's failure to provide a definitive diagnosis of the frozen section of Plaintiff's thyroid caused Dr. Jones to perform a total thyroidectomy on the Plaintiff.
22. The specimen from thyroidectomy surgery was sent to a lab for evaluation.
23. Sometimes after November 10, 2010, Plaintiff returned to Dr. Jones' office for a medical consultation, and she learned that the post-surgery reports established that she did not have thyroid cancer. In other words, Dr. Jones had erroneously concluded

that Plaintiff had thyroid cancer, in substantial part, based upon the incorrect FNA Report and the misinterpretation of the frozen section as performed by Defendants.

24. During all relevant times in this lawsuit, the Defendant medical providers owed Plaintiff a duty to competently evaluate, diagnose and treat the Plaintiff for the nodule in her throat, to include a duty to properly diagnose whether the nodule was cancerous or benign, and all medical treatment and evaluations were required to be done within the acceptable standard of medical care within the community.

25. Defendant Jenkins and Defendant York Pathology breached the duty of care owed to the Plaintiff in one or more of the following particulars, but not all inclusive:

- a. By failing to use reasonable and competent skills in pathologically analyzing the FNA results and the frozen section;
- b. By misinterpreting the results from the FNA and the frozen section and falsely concluding that Plaintiff's thyroid was suspicion for malign thyroid cancer.
- c. By failing to order a second fine needle aspiration test to confirm the second test;
- d. By failing to order additional medical tests once the first fine needle aspiration test was not definitive.
- e. By unreasonably relying on the fine need aspiration findings as a definitive conclusion that a total thyroidectomy was indicated. Defendant's reliance on the fine needle aspiration result was unreasonable because as of 2009, the medical literature was advising the medical community that of the following warning:

"In every circumstance, FNA [fine needle aspiration] is a test and should be interpreted with the entire clinical circumstances. False-negative and false-positive FNA results are reported in almost every series. Therefore, reliance upon FNA findings at the expense of clinical, radiographic, or other findings is unsafe." *Salgarelli AC, Cappare P, Bellini P, Collini M. Usefulness of fine-needle aspiration in parotid diagnostics. Oral*

- f. By improperly concluding that Plaintiff's nodule was cancerous.
26. That as a direct and proximate result of the breach of the applicable standard of medical care by Defendants, as heretofore alleged, Plaintiff suffered substantial damages, in the form of conscious pain and suffering in the past and will suffer conscious pain and suffering into the future; loss the ability to sing in the church choir to level she could before surgery; incurred medical bills in the past, present, and future; suffered permanent damages to her voice; emotional distress; loss of sleep; among other intangible damages, to include mental anguish and permanent disfigurement to her voice, all in an amount to be proved at the trial of this case.
27. That all of the injuries and damages sustained by the Plaintiff were the direct and proximate result of the negligent actions of Defendant Jenkins and York Pathology, without any act or omission on the part of the Plaintiff directly thereunto contributing.

FOR A SECOND CAUSE OF ACTION

(Negligence—Medical Malpractice via agency)
(Against All Defendants, except Jenkins

28. Plaintiff repeats and re-alleges each and every allegation of paragraphs one through twenty-seven as if restated verbatim herein.
29. That at the time of Defendant Jenkins rendered medical services to the Plaintiff and committed malpractice as alleged, he was acting within the scope of his employment and agency and partner with Defendant York Pathology. Therefore, the other Defendant York Pathology is vicariously liable for the damages suffered by the Plaintiff.
30. Defendant Amisub and York Pathology held itself out to the public by offering to

provide services to the Plaintiff.

31. As to the pathology services, Plaintiff looked to Piedmont Medical Center and York Pathology to provide pathology services during her surgery.
32. A similarly situated person reasonably would have believed the Defendant E. Earl Jenkins, Jr., the pathology rendering services during the surgery, was a hospital employee.
33. That at the time of Defendant Jenkins rendered medical services to the Plaintiff and committed malpractice as alleged, he was acting within the scope of his employment agency contract with Defendant Amisub, doing business as Piedmont Medical Center, which provided that Defendant York Pathology was the sole provider of pathologic services to Defendant Amisub. Therefore, Defendant Amisub is vicariously liable for the damages suffered by the Plaintiff.
34. Defendant York Pathology is vicariously liable due to its actual agency relationship with Defendant Jenkins.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Craig respectfully prays for judgment against the Defendants, jointly and severally, for actual damages in an amount to be determined by the jury at the trial of this action, for the costs and expenses associated with bringing this action, and for any other relief the Court deems just and proper.

Plaintiff demands a trial by jury.

At Orangeburg, SC

Dated: May 14, 2014


GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13198
Attorney for Plaintiff

PROOF OF SERVICE

I, Glenn Walter, certify that I have served or caused to be served the foregoing pleadings (Amended Summons and Complaint) on the Defendants' attorneys, as listed below, on May 14, 2014, by depositing a copy of the same in an envelope in the United States postal service, with the return address clearly visible, addressed as follows:

William U. Gunn, Esquire
Post Office Box 1897
Spartanburg, SC 29304

Julius McKay, II, Esquire
Post Office Box 7217
Columbia, SC 29202

At Orangeburg, SC

Dated: May 18, 2014


GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13198
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Patricia Craig,)
)
 Plaintiff,)
)
 v.)
)
 E. Earl Jenkins, Jr., M.D.,)
 also known as Everett Earl Jenkins,)
 Jr., M.D., Amisub of South)
 Carolina, Inc. d/b/a Piedmont)
 Medical Center, and York Pathology)
 Associates, LLC,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

CASE NO: 2014-CP-46-00508

**ANSWER OF DEFENDANTS E. EARL
 JENKINS, JR., M.D. a/k/a EVERETT
 EARL JENKINS, JR., M.D. AND YORK
 PATHOLOGY ASSOCIATES, LLC**

TO: GLENN WALTERS, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendants, E. Earl Jenkins, Jr., M.D., a/k/a Everett Earl Jenkins, Jr., M.D. and York Pathology Associates, LLC, reserving all rights to file Rule 12 Motions, hereby answer the Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants admit on information and belief the allegations of paragraph 1 of the Amended Complaint.
2. Defendants admit the allegations of paragraph 2 of the Amended Complaint.
3. Defendants have no information sufficient to formulate a belief as to the allegations of paragraph 3 of the Amended Complaint except Defendants are informed and believe that Defendant Amisub of South Carolina, Inc. is a corporation and does business as Piedmont Medical Center.

4. Defendants admit so much of paragraph 4 of the Amended Complaint as alleges that York Pathology Associates, LLC is South Carolina limited liability company but currently is an inactive corporation and deny the remainder of the allegations as stated.

5. Defendants admit the allegations of paragraph 5 of the Amended Complaint.

6. Defendants admit the allegations of paragraph 6 of the Amended Complaint.

7. Defendants deny the allegations of paragraph 7 of the Amended Complaint except as previously admitted herein.

8. Defendants admit so much of paragraph 8 of the Amended Complaint as alleges Plaintiff sought medical services and advice from Dr. Jones but has no information sufficient to formulate a belief as to the remainder of the allegations and deny same.

9. Defendants admit so much of paragraph 9 of the Amended Complaint as alleges Dr. Jones ordered an FNA of Plaintiff's neck but has no information sufficient to formulate a belief as to the remainder of the allegations and deny same.

10. Defendants admit the allegations of paragraphs 10, 11 and 12 of the Amended Complaint.

11. Defendants deny the allegations of paragraph 13 of the Amended Complaint.

12. Defendants admit the allegations of paragraph 14 of the Amended Complaint.

13. Defendants have no information to admit or deny the allegations of paragraphs 15, 16, 17 and 18 of the Amended Complaint.

14. Defendants admit so much of paragraph 19 of the Amended Complaint which alleges as a frozen section was performed and read by York Pathology and Dr. Jones, but deny the remainder of the allegations as stated.

15. Defendants deny the allegations of paragraph 20 of the Amended Complaint as stated, but admit the frozen section was unable to provide a definitive diagnosis of Plaintiff's thyroid.

16. Defendants deny the allegations of paragraph 21 of the Amended Complaint.

17. Defendants admit the allegations of paragraph 22 of the Amended Complaint.

18. Defendants have no information sufficient to formulate a belief as to the allegations of paragraph 23 of the Amended Complaint and deny same.

19. Defendants admit so much of paragraph 24 of the Amended Complaint as they are required to evaluate pathology specimens within acceptable standards of medical care within the community.

20. Defendants deny the allegations of paragraphs 25, 26 and 27 of the Amended Complaint.

21. Defendants deny the allegations of paragraph 28 of the Amended Complaint except as previously admitted herein.

22. Defendants deny the allegations of paragraphs 29, 30, 31, 32, 33 and 34 of the Amended Complaint.

FOR A SECOND DEFENSE

23. In their care and treatment of the Plaintiff, Defendants acted in accordance with accepted standards of medical care, exercised sound medical judgment, and bear no liability to Plaintiff for an unfortunate result of properly employed medical care. Defendants are not insurers of a cure or guarantors of results.

FOR A THIRD DEFENSE

24. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Amended Complaint were caused and occasioned by events over which these Defendants had no control or right of control, thereby relieving Defendants of any liability or responsibility herein, and Defendants plead unavoidable acts as a complete bar to this action.

FOR A FOURTH DEFENSE

25. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Amended Complaint were the proximate result of one or more independent, efficient and intervening causes which these Defendants affirmatively plead as a complete bar to this action.

FOR A FIFTH DEFENSE

26. Defendants aver that punitive damages are unconstitutional, have no meaningful standard by which they can be ascertained, subject Defendants to a double recovery and violate equal protection and due process of law.

FOR A SIXTH DEFENSE

27. Defendants plead the statutory caps on damages and all other defenses set forth in the South Carolina Medical Malpractice Tort Reform Act.

FOR A SEVENTH DEFENSE

28. The injuries and damages suffered by Plaintiff were caused by her own acts and Defendants plead the sole and comparative negligence of Plaintiff as a bar or setoff, or, in the alternative, an unavoidable accident as a complete defense and bar to this action.

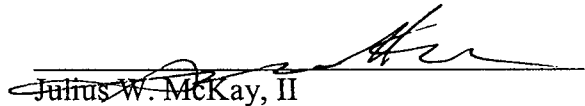
FOR AN EIGHTH DEFENSE

29. Any injury or damage sustained by Plaintiff as a result of the matters alleged in the Amended Complaint were a proximate result of one or more independent, efficient, and intervening causes which Defendants affirmatively plead as a complete bar to this action.

FOR A NINTH DEFENSE

30. The injuries and damages to Plaintiff are the result of natural or other conditions or causes of disease over which Defendants have no control, right or ability to control, thereby relieving Defendants from liability.

WHEREFORE, having fully answered the Amended Complaint, Defendants pray that it be dismissed, with prejudice, and for their costs and for such other relief as the Court deems just and proper.


Julius W. McKay, II

Kelli L. Sullivan

McKay, Cauthen, Settana & Stublely, P.A.

1303 Blanding Street

P.O. Drawer 7217

Columbia, SC 29202

(803) 256-4645 - Phone

(803) 765-1839 - Fax

jmckay@mckayfirm.com

ksullivan@mckayfirm.com

Attorneys for Defendants E. Earl Jenkins, M.D.

a/k/a Everett Earl Jenkins, Jr., M.D. and

York Pathology Associates, LLC

Columbia, South Carolina

July 8, 2014.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

CASE NO: 2014-CP-46-00508

Patricia Craig,)

Plaintiff,)

v.)

CERTIFICATE OF SERVICE

E. Earl Jenkins, Jr., M.D.,)

also known as Everett Earl Jenkins,)

Jr., M.D., Amisub of South)

Carolina, Inc. d/b/a Piedmont)

Medical Center, and York Pathology)

Associates, LLC,)

Defendants.)

The undersigned hereby certifies that on July 8, 2014 a copy of the foregoing ***ANSWER OF DEFENDANTS E. EARL JENKINS, JR., M.D. a/k/a EVERETT EARL JENKINS, JR., M.D. AND YORK PATHOLOGY ASSOCIATES, LLC*** was duly served on opposing counsel by depositing same in the United States Mail, first-class, postage prepaid, addressed as follows:

Glenn Walters, Esquire
Post Office Box 1346
Orangeburg, SC 29116

William U Gunn, Esquire
Holcombe Bomar, P.A.
P.O. Box 1897
Spartanburg SC 29304



Catherine Adan, for
Julius W. McKay, II
Kelli L. Sullivan
McKay, Cauthen, Settana & Stublely, P.A.
P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645 - Phone
Attorney for Defendants
Dr. Jenkins, Jr. and York Pathology Associates, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Patricia Craig,)

Plaintiff,)

vs.)

E. Earl Jenkins, Jr., MD, also)
known as Everett Earl Jenkins,)
Jr., MD, Amisub of South)
Carolina, Inc., d/b/a Piedmont)
Medical Center, and York)
Pathology Associates, LLC,)

Defendants.)

ANSWER OF DEFENDANT AMISUB OF
SOUTH CAROLINA, INC. d/b/a PIEDMONT
MEDICAL CENTER TO AMENDED COMPLAINT

C. A. No. 2014-CP-46-00508

Defendant Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center
("Amisub"), answering the Amended Complaint of Plaintiff, alleges:

FIRST DEFENSE

1. It denies each and every allegation of the Amended Complaint not hereinafter admitted, qualified, or explained.
2. Paragraph 1 is admitted on information and belief.
3. Paragraphs 2 and 3 are admitted.
4. This Defendant is without sufficient information to form a true and accurate belief as to the allegations of paragraph 4 of the Amended Complaint, therefore the allegations are denied, and strict proof thereof demanded.
5. Paragraphs 5 and 6 are admitted.

6. In answer to paragraph 7, it is admitted that the Plaintiff realleges each and every allegation of paragraph 1 through 6 as if restated verbatim, however the various allegations of this Answer are realleged in response thereto.

7. By way of answer to paragraph 8 of the Amended Complaint, Amisub admits on information and belief that on the date alleged, Plaintiff consulted Dr. Jones for medical services. This Defendant is without sufficient information to form a true, accurate and precise belief as to all remaining allegations of paragraph 8, therefore the allegations are denied and strict proof thereof demanded.

8. Paragraphs 9 through 11 of the Amended Complaint are admitted.

9. Paragraph 12 is admitted, however it is denied that paragraph 12 of the Amended Complaint fully sets forth all pertinent language in the report referred to therein.

10. By way of answer to paragraph 13 of the Amended Complaint, this Defendant admits the report had "Piedmont Healthcare" inscribed thereon. All remaining allegations of paragraph 13 are denied.

11. In answer to paragraph 14, it is admitted on information and belief that Dr. Jenkins issued the report in his capacity as a member of York Pathology. All remaining allegations of paragraph 14 are denied.

12. In answer to paragraph 15, this Defendant admits that on the date alleged, Plaintiff returned to Dr. Jones' office for consultation about the nodule in her throat. It is further admitted that Dr. Jones performed a total thyroidectomy on Plaintiff. All remaining allegations of paragraph 15 are denied.

13. In answer to paragraph 16, it is admitted that Plaintiff consented to the total thyroidectomy performed by Dr. Jones. This Defendant is without sufficient information to

form a true and accurate belief as to the remaining allegations of paragraph 16, therefore the allegations are denied and strict proof thereof demanded.

14. In answer to paragraph 17, this Defendant admits Dr. Jones recommended a total thyroidectomy to Plaintiff. This Defendant is without sufficient information to form a true and accurate belief as to the remaining allegations of paragraph 17, therefore the allegations are denied, and strict proof thereof demanded.

15. In answer to paragraph 18, it is admitted that on the date alleged Dr. Jones performed a total thyroidectomy on Plaintiff. This Defendant is without sufficient information to form a true and accurate belief as to the remaining allegations of paragraph 18, therefore the allegations are denied and strict proof thereof demanded.

16. In answer to paragraph 19, it is admitted that during the surgery on the date alleged, Dr. Jones prepared a sample of thyroid tissue known as a "frozen section" and submitted this to the laboratory for evaluation. Further, it is admitted the frozen section was analyzed by a representative of York Pathology. All remaining allegations of paragraph 19 are denied.

17. In answer to paragraph 20 of the Amended Complaint, this Defendant admits on information and belief the laboratory was unable to provide a definitive diagnosis on the frozen section. It is also admitted that Dr. Jones completed a total thyroidectomy on the Plaintiff. All remaining allegations of paragraph 20 are denied.

18. In answer to paragraph 21, this Defendant admits Dr. Jones appeared to conclude that Plaintiff was suspicious for thyroid cancer. It is also admitted that Dr. Jones performed a total thyroidectomy on Plaintiff. All remaining allegations of paragraph 21 are denied.

19. Paragraph 22 is admitted.

20. This Defendant is without sufficient information to form a true and accurate belief as to the allegations of paragraph 23, therefore the allegations are denied and strict proof thereof demanded.

21. Paragraph 24 states conclusions of law, and this Defendant neither admits nor denies same, but craves reference to rulings and instructions of the Court.

22. Paragraph 25 through 27 of the Amended Complaint are denied.

23. In answer to paragraph 28, this Defendant admits that Plaintiff repeats and realleges all prior allegations, however the various allegations of this Answer are realleged in response thereto.

24. In answer to paragraph 29 of the Amended Complaint, this Defendant admits on information and belief that Dr. Jenkins, at the time he made interpretations of the laboratory specimens of Plaintiff was working within the course and scope of his employment with York Pathology. All remaining allegations of paragraph 29 are denied, including the allegation that Dr. Jenkins committed medical malpractice.

25. This Defendant is without sufficient information to form a true and accurate belief as to the allegations of paragraphs 30 and 31 of the Amended Complaint, therefore the allegations are denied and strict proof thereof demanded.

26. Paragraphs 32 through 34 are denied.

SECOND DEFENSE

1. Each and every allegation of the First Defense is realleged as if set forth fully herein, except for so much thereof as may be inconsistent with the allegations of this Defense.

2. Plaintiff's non-economic damages , if any, are limited to amounts set forth in Sections 15-32-220 et. seq. of the Code of Laws of South Carolina (1976 as amended), which is pled as a partial bar to this action.

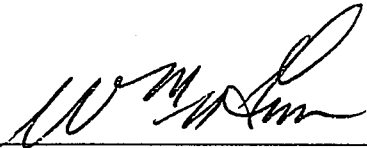
THIRD DEFENSE

1. Each and every allegation of all prior defenses is realleged as if set forth fully herein, except for so much thereof as may be inconsistent with the allegations of this Defense.

2. Plaintiff's punitive damages, if any , are limited by the provisions of Sections 15- 32 – 510 et. seq. of the Code of Laws of South Carolina (1976 as amended), which is pled as a partial bar to this action.

WHEREFORE, Defendant Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center prays that the complaint herein be dismissed, or in the alternative any recovery of Plaintiff be reduced in accordance with law, and that this Defendant be awarded the costs of this action.

HOLCOMBE BOMAR, P.A.

By: 

William U. Gunn
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
bgunn@holcombebomar.com

Attorneys for Defendant
Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center

Spartanburg, SC

July 15, 2014

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Patricia A. Craig,

Plaintiff,

vs.

E. Earl Jenkins, Jr., MD, also
known as Everett Earl Jenkins,
Jr., MD, Amisub of South
Carolina, Inc., d/b/a Piedmont
Medical Center, and York
Pathology Associates, LLC,

Defendants.

CERTIFICATE OF SERVICE

C. A. No. 2014-CP-46-00508

I, the undersigned legal assistant in the law offices of Holcombe Bomar, P.A., attorneys for Defendant Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, certify that I have mailed by United States Mail a copy of the hereinbelow listed pleadings to counsel in this matter on the 15th day of July, 2014 as follows:

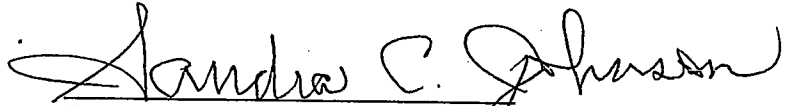
PLEADING: Answer of Defendant Amisub of South Carolina Inc., d/b/a Piedmont Medical Center to Amended Complaint

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Centers' First Written Interrogatories to Plaintiff

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center's First Requests for Production to Plaintiff

COUNSEL SERVED: Glenn Walters, Sr., Esquire
P.O. Box 1346
Orangeburg, SC 29116

Julius W. McKay, II, Esquire
McKay, Cauthen, Settana & Stubley, P.A.
P.O. Box 7217
Columbia, SC 29202-7217


Sandra C. Johnson

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Patricia Craig,
☐ Plaintiff

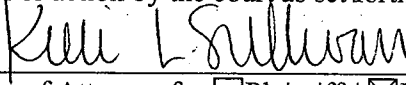
v.

E. Earl Jenkins, Jr., M.D., Et Al
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
14-CP-46-00508

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Glenn Walters, Bar No. Address: P.O. Box 1346, Orangeburg, SC 29116 phone: 803-531-8844 fax: e-mail: other:	Defendant's Attorney: Kelli L. Sullivan, Bar No. Address: P.O. Drawer 7217, Columbia, SC 29202 phone: 803-256-4645 fax: 803-765-1839 e-mail: ksullivan@mckayfirm.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for ☐ Plaintiff / ☒ Defendant June 30, 2015 _____ Date submitted	
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

CASE NO: 2014-CP-46-00508

Patricia Craig,)

Plaintiff,)

v.)

**DEFENDANTS JENKINS AND YORK
PATHOLOGY ASSOCIATES' NOTICE
OF MOTION AND MOTION FOR
SUMMARY JUDGMENT**

E. Earl Jenkins, Jr., M.D.,)

also known as Everett Earl Jenkins,)

Jr., M.D., Amisub of South)

Carolina, Inc. d/b/a Piedmont)

Medical Center, and York Pathology)

Associates, LLC,)

Defendants.)

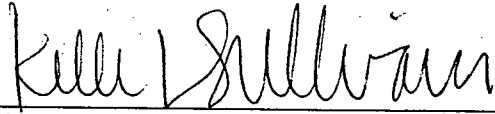
TO: GLENN WALTERS, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendants Jenkins and York Pathology, will move before the Judge of the Court of Common Pleas at chambers, immediately or as soon thereafter as counsel may be heard, for an Order for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there is no genuine issue of material fact as to whether Dr. Jenkins violated the standard of care in his care and treatment of the Plaintiff.

This motion will be based on the pleadings, affidavits, depositions, and any other evidence that may be received by the Court hereinafter to be served

Counsel certifies that she communicated orally or in writing, with opposing counsel or has attempted in good faith to resolve the matter contained in the Motion or that consultation

would serve no useful purpose or could not be timely held.



Julius W. McKay, II

Kelli L. Sullivan

McKay, Cauthen, Settana & Stubley, P.A.

1303 Blanding Street

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Attorneys for Defendants E. Earl Jenkins, M.D.

a/k/a Everett Earl Jenkins, Jr., M.D. and

York Pathology Associates, LLC

Columbia, South Carolina

June 30, 2015.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

CASE NO: 2014-CP-46-00508

Patricia Craig,)

Plaintiff,)

v.)

CERTIFICATE OF SERVICE

E. Earl Jenkins, Jr., M.D.,)

also known as Everett Earl Jenkins,)

Jr., M.D., Amisub of South)

Carolina, Inc. d/b/a Piedmont)

Medical Center, and York Pathology)

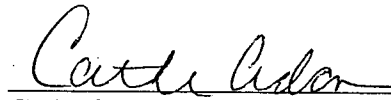
Associates, LLC,)

Defendants.)

The undersigned hereby certifies that on June 30, 2015, a copy of the foregoing **DEFENDANTS JENKINS AND YORK PATHOLOGY ASSOCIATES' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** and **MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT** was duly served on opposing counsel by depositing same in the United States Mail, first-class, postage prepaid, addressed as follows:

Glenn Walters, Esquire
Post Office Box 1346
Orangeburg, SC 29116

William U Gunn, Esquire
Holcombe Bomar, P.A.
P.O. Box 1897
Spartanburg SC 29304



Catherine Adan, for
Julius W. McKay, II
Kelli L. Sullivan
McKay, Cauthen, Settana & Stublely, P.A.
P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645 - Phone
Attorney for Defendants E. Earl Jenkins, M.D.
a/k/a Everett Earl Jenkins, Jr., M.D. and
York Pathology Associates, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Patricia Craig,)
)
Plaintiff,)
)
v.)
)
E. Earl Jenkins, Jr., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., Amisub of South)
Carolina, Inc. d/b/a Piedmont)
Medical Center, and York Pathology)
Associates, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO: 2014-CP-46-00508

**DEFENDANTS' JENKINS AND
YORK PATHOLOGY'S
MEMORANDUM IN SUPPORT
OF SUMMARY JUDGMENT**

FACTS

The following facts are undisputed.

This is a medical malpractice case. The Plaintiff, Patricia Craig, was diagnosed with a nodule on her thyroid, and sought treatment from Dr. Christopher Jones, a surgeon on August 18, 2010.¹ As a result of the consultation and her previous radiological studies, Dr. Jones ordered a fine needle aspiration of the nodule, which was performed on September 30, 2010.² In a fine needle aspiration, the physician inserts a small needle into the nodule on the thyroid and draws out fluid from the nodule to be examined microscopically.

Defendant Earl Jenkins, a Board certified pathologist, examined the specimen drawn from Ms. Craig's thyroid and issued a report on October 1, 2010.³ Dr. Jenkins, in examining the specimen, found cells that were consistent with papillary carcinoma.⁴ The report categorizes the

¹ Amended Complaint, paragraph 8, attached as Exhibit 1.

² Amended Complaint, paragraph 10

³ A copy of the report is attached as Exhibit 2.

⁴ Affidavit of Dr. Jenkins, paragraph 5, attached as Exhibit 3.

specimen as a category 4 lesion and recommends excision. Lesions of the thyroid and specimens are categorized using a scale referred to as the Bethesda scale. A “4” on the Bethesda scale means that a lesion has a 65% to 75% chance to being malignant.⁵ The standard of care for pathologists is to recommend excision of the thyroid lesion in category 4.⁶ The report was transmitted to Dr. Jones, Ms. Craig’s treating physician. Dr. Jones recommended excision of the thyroid gland.⁷ Dr. Jenkins never met Ms. Craig, and did not counsel her in any way regarding her treatment options.⁸

On November 2, 2010, Ms. Craig had her thyroid removed by Dr. Jones.⁹ During the surgery, Dr. Jones sent a specimen from the thyroid gland for an intraoperative reading by a pathologist.¹⁰ The pathology report on the intraoperative specimen was inconclusive in terms of a cancer diagnosis.¹¹ Nevertheless, Dr. Jones removed Ms. Craig’s entire thyroid.¹² Ultimately, the entire thyroid was sent for pathological examination.¹³ The evaluation of the entire thyroid removed by Dr. Jones found the thyroid to be benign.¹⁴

On or about February 21, 2014, Plaintiff filed a summons and complaint against Dr. Jenkins, his practice, and the hospital where he performs his pathology work, claiming that Defendant Jenkins and his practice:

- (a) failed to use reasonable and competent skills in pathologically analyzing the FNA results and the frozen section;

⁵ Affidavit of Dr. Jenkins, paragraph 6 and deposition of Dr. Jones, page 17, attached as Exhibit 4.

⁶ Affidavit of Dr. Jenkins, paragraph 7

⁷ Amended Complaint, paragraph 15

⁸ Affidavit of Dr. Jenkins, paragraph 3

⁹ Amended Complaint, paragraph 18.

¹⁰ Amended Complaint, paragraph 19.

¹¹ A copy of the intraoperative pathology report is attached as Exhibit 5. Dr. Jones operative report, attached as Exhibit 6, also notes that no definitive cancer diagnosis could be made on the frozen section examined intraoperatively.

¹² Deposition of Dr. Jones, page 23

¹³ Amended Complaint, paragraph 22

¹⁴ Deposition of Dr. Jones page 24

- (b) misinterpreted the results of the FNA and falsely concluded that the Plaintiff's thyroid was "suspicion for malign thyroid cancer" (sic)
- (c) failed to order a second fine needle aspiration to confirm the first FNA test;
- (d) failed to order additional medical tests once the FNA test was not definitive;
- (e) unreasonably relied on the FNA findings as a definitive conclusion that a thyroidectomy was indicated;
- (f) improperly concluding that the Plaintiff's nodule was cancerous.¹⁵

Plaintiff claims that as a result of the alleged failures, she incurred medical expenses, suffered permanent damage to her voice, and has suffered emotional damage. Notably, Plaintiff did not file suit against Dr. Jones or his practice. Plaintiff has offered as her expert Dr. Gabor Kovacs, a general surgeon who resides in Alma, Georgia.¹⁶

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004).

A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. *Anthony v. Padmar, Inc.*, 307 S.C. 503, 415 S.E.2d 828 (Ct. App. 1992). The party seeking summary judgment has the burden of clearly establishing by the record properly before the court, the absence of a triable issue of fact. *Owens v. Magill*, 308 S.C. 556, 419 S.E.2d 786 (1992). However, with respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing the trial court there is an absence of

¹⁵ Amended complaint, paragraph 25

¹⁶ Plaintiff's answers to Interrogatories, dated October 2014, attached as Exhibit 7.

evidence supporting the nonmoving party's case. *Prescott v. Farmers Telephone Co-op., Inc.*, 328 S.C. 379, 491 S.E.2d 698 (Ct. App. 1997). The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party bears the burden of proof at trial. *Etheredge v. Richland School Dist. I*, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998); *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). In such a situation, there can be no genuine as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Etheredge, supra*.

Furthermore, under Rule 56(e), SCRCP, once a party has made a motion for summary judgment, and properly supported that motion as required under Rule 56, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." If the adverse party fails to respond in such a way, "summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP.

ELEMENTS OF MEDICAL MALPRACTICE

Plaintiffs in medical malpractice actions must provide evidence showing (1) the generally recognized and accepted practices and procedures that would be followed by the average, competent physician in the defendant's field of medicine under the same or similar circumstances; (2) that the defendant departed from the recognized and generally accepted standards; and (3) that the departure from the recognized practices and procedures proximately cause the Plaintiff's alleged injuries and damages. *Jones v. Doe* 372 S.C. 53, 61, 640 S.E.2d 514,

518 (Ct. App. 2006) and *David v. McLeod Regl. Med. Ctr.*, 367 S.C. 242, 248, 626 S.E.2d 1,4 (2006).

ARGUMENT

Plaintiff has failed to show any evidence as to what the generally recognized and accepted practices and procedures are that would be followed by the average competent pathologist in the same or similar circumstances.

Plaintiff's only expert witness is Dr. Gabor Kovacs, a general surgeon, whose deposition was conducted on May 9, 2015. Dr. Kovacs also provided an affidavit with the Notice of Intent filed by the Plaintiff.¹⁷ Dr. Kovacs has never practiced as a pathologist and other than in his medical school training in the early 1980's, has not had any training in pathology.¹⁸ Dr. Kovacs does about two or three thyroid removal cases per year on people who have suspicious biopsies. In those cases, he never reviews the pathology slides.¹⁹ The privileges that he has at Bacon County hospital in Georgia do not allow him to read pathology slides or specimens, and he relies on pathologists for pathological interpretations.²⁰ Dr. Kovacs, in his deposition, was unable to explain what a "category 4" lesion was, and was not familiar with the Bethesda scale, the scale system for grading lesions of the thyroid.²¹

Dr. Kovacs, neither in his deposition nor in his affidavit was able to set forth the standards followed by pathologists in interpreting fine needle aspirate specimens, and in fact admitted that he has to rely on pathologists to give him their opinion on the sample that is submitted.²²

¹⁷ Affidavit of Dr. Kovacs, attached as Exhibit 8.

¹⁸ Deposition of Dr. Kovacs, pages 6-7, attached as Exhibit 9.

¹⁹ Deposition of Dr. Kovacs, pages 17 and 20.

²⁰ Deposition of Dr. Kovacs page 20.

²¹ Deposition of Dr. Kovacs, page 24

²² Deposition of Dr. Kovacs, page 21.

Plaintiff has failed to show any evidence that Dr. Jenkins violated generally accepted standards of care in the reading of Ms. Craig's fine needle aspirate sample

Dr. Kovacs has not had any training in reading pathology slides since his medical school training in the 1980s.²³ He has not read the slides that Dr. Jenkins read in this case to come to the diagnosis of a category 4 lesion.²⁴ In his deposition, Dr. Kovacs was asked:

Q: Where did Dr. Jenkins go wrong in his read of the slides?

A: By calling it potentially malignant.

Q: No, I understand that. What I am saying is: Did he look for a certain shape of cell that wasn't there, did he look for a certain color of cell that wasn't there, did he find. . . can you tell me that ?

*A: No ma'am, you would have to ask a pathologist that.*²⁵

By his own admission, Dr. Kovacs is unable to testify as to what actions or inactions of Dr. Jenkins were in violation of the standard of care, or what the specimen should look like on the slide for Dr. Jenkins to have arrived at his opinion. Dr. Kovacs cannot say that Dr. Jenkins saw a certain shape of cell that is not on the slide, or that he failed to recognize hallmarks of another type of cell, for example. He is simply incapable of telling what actions by Dr. Jenkins were in violation of the standard of care, and instead claims that a pathologist would have to be the one to provide that information.

Further, Dr. Kovacs even testified that he cannot disagree with Dr. Jenkins' read of the slides. In his deposition, the following exchange occurred:

²³ Deposition of Dr. Kovacs, Page 7.

²⁴ Deposition of Dr. Kovacs, page 21.

²⁵ Deposition of Dr. Kovacs, page 43

Q: Now, do you have any way to disagree with Dr. Jenkins rating of this as a category 4 lesion?

A: Like I said, I am not familiar with the categories so there is no way for me to disagree with him.

Q: So you have no disagreement with the fact that this sample that was submitted to him was suspicious for malignancy?

A: No, I have no reason to disagree with him. ²⁶

The case of *Fletcher v. MUSC* 390 S.C. 458, 702 S.E.2d 372 (Ct. App. 2010) is instructive on the point of establishing violations of the standard of care. In that case, Ms. Fletcher sued a physician who performed a subclavian bypass on her, alleging that the injury to her phrenic nerve and thoracic duct were the result of the physician's negligence. Dr. Thomas Wood, Plaintiff's expert, testified that the Defendant doctor was negligent, but then went on to say that he could not point to any technique in the procedure that was deficient. The Court in dismissing Plaintiff's claim, held that Plaintiff was responsible for showing how the physician deviated from the standard of care, and that the occurrence of a complication is not evidence of negligence.

In the case at hand, Dr. Kovacs seems to base his entire opinion that Dr. Jenkins was in error on the pathology report of the whole thyroid once it was removed by Dr. Jones. In his deposition Dr. Kovacs testified:

Q: ...If the specimen was suspicious, not definitive, and then later on we learn that the entire thyroid, once the exam was done, was benign, are you saying that kind of the end result forms your opinion on the first read?

²⁶ Deposition of Dr. Kovacs, page 27

A: *Well, the end result forms my opinion on the whole case because the fine needle aspiration as well as the frozen section that was done intraoperatively, both were interpreted as leaning towards a malignant lesion, which resulted in doing a total thyroidectomy, which is the appropriate treatment for a malignant thyroid lesion.*²⁷

Dr. Kovacs' testimony in this case is akin to the testimony of the Plaintiff's expert in the *Fletcher* case, who opines that since the complication resulted after the surgery, the physician must have been negligent. Dr. Kovacs was unable to point to any error by Dr. Jenkins in the reading of the slides or in the reporting of the results. As Dr. Kovacs is the only expert offered by the Plaintiff, the Plaintiff has failed to show any evidence that Dr. Jenkins violated the standard of care in the reading and reporting of the FNA specimen.

Plaintiff has failed to show any evidence that the Plaintiff's alleged injuries and damage were the proximate cause of the Plaintiff's alleged injuries and damages.

"It is incumbent on the plaintiff to establish proximate cause as well as the negligence of the physician." *Ellis v. Oliver*, 323, S.C. 121, 125, 473 S.E.2d 793,796 (1996). Assuming for the purposes of this motion that Plaintiff can show that Dr. Jenkins was negligent in his reading of the FNA specimen, Plaintiff has still not produced any evidence that Dr. Jenkins' reading of the slides was the proximate cause of her injuries, as the decision to remove the thyroid was not made by Dr. Jenkins. Dr. Jones, Ms. Craig's surgeon, examined her and her radiological tests prior to ordering the fine needle aspiration.²⁸ Dr. Jones knew that the report of the fine needle aspiration was "suspicious" for carcinoma, and that a category 4 lesion has a 65-75% chance of being malignant.²⁹ He met with Ms. Craig on October 12, 2010 and informed her that the pathology results were suspicious for cancer.³⁰ He knew, before doing any operation, that there

²⁷ Deposition of Dr. Kovacs, page 29

²⁸ Deposition of Dr. Jones, pages 11-14

²⁹ Deposition of Dr. Jones, pages 16 and 17

³⁰ Deposition of Dr. Jones, page 18. While Ms. Craig seems to claim in her deposition that she was told she had cancer, that fact is irrelevant since Dr. Jenkins was not the physician who counseled her about the procedure.

was at least a 25% chance that the lesion was not malignant.³¹ Nevertheless, Dr. Jones recommended a total thyroidectomy.³²

During the operation, Dr. Jones sent a specimen from Ms. Craig's thyroid for inspection by a pathologist. That specimen was read by one of Dr. Jenkins' colleagues, and that the results were similar to those in the original FNA. Dr. Jones knew *even in the middle of his operation*, that there was no definitive diagnosis of cancer in Ms. Craig's thyroid.³³ Dr. Jones ultimately made the decision to remove Ms. Craig's thyroid, and testified that in the fact of her clinical picture and the inconclusive results of the intraoperative sample, it was the safest course of action for the patient.³⁴

The ultimate decision to remove Ms. Craig's thyroid was Dr. Jones'.³⁵ Assuming, *arguendo*, that Dr. Jenkins incorrectly read the fine needle aspiration specimen and categorized it improperly, Dr. Jones still made the decision to remove the thyroid gland in the face of a second inconclusive report from the intraoperative specimen. Dr. Jenkins was not involved in the reading of the intraoperative specimen, and Dr. Jones admits that he made the decision on his own to remove the thyroid.³⁶ Even Dr. Kovacs, Plaintiff's expert, agreed that the ultimate decision to remove the thyroid belonged to the surgeon, and that decision was the safest course of action for the patient³⁷

³¹ Deposition of Dr. Jones, page 19

³² Deposition of Dr. Jones, page 20

³³ Deposition of Dr. Jones, page 23

³⁴ Deposition of Dr. Jones, page 23.

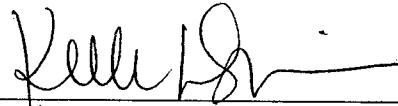
³⁵ Deposition of Dr. Jones, page 23, Deposition of Dr. Kovacs, page 50.

³⁶ Deposition of Dr. Jones, page 23.

³⁷ Deposition of Dr. Kovacs, page 33 and 34

CONCLUSION

In order to survive a motion for summary judgment, Plaintiff must be able to show a genuine issue of material fact as to each element in her cause of action. Plaintiff has not produced any expert evidence that shows what the generally recognized standard of care is for pathologists, and has failed to produce any expert testimony that shows that Dr. Jenkins violated the standard of care for a pathologist analyzing a FNA specimen. Further, Plaintiff has failed to show that any actions or inactions of Dr. Jenkins were the proximate cause of Plaintiff's damages. Therefore, Defendant Jenkins asks this honorable Court to rule in favor of his motion for summary judgment and dismiss Plaintiff's claims against him and his practice.



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a/k/a Everett Earl Jenkins, Jr., M.D. and
York Pathology Associates, LLC

Columbia, South Carolina
June 30, 2015.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)

Case No. 2014-CP-46-00508

Plaintiff,)

vs.)

AMENDED SUMMONS
(Jury Trial Requested)

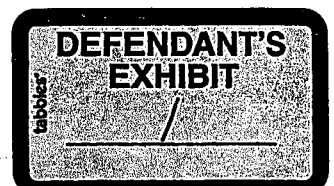
E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., AMISUB OF SOUTH)
CAROLINA, INC., d/b/a)
Piedmont Medical Center, and)
YORK PATHOLOGY)
ASSOCIATES, LLC,)

Defendants.)

FILED-RECEIVED
2014 MAY 30 PM 2:52
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

TO: THE ABOVE - NAMED DEFENDANTS:

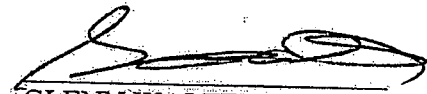
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the undersigned Attorney for the Plaintiff, at Post Office Box 1346, Orangeburg, SC 29116, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint



[Only the Signature is contained on this page]

At Orangeburg, SC

Dated: May 18, 2014



GLENN WALTERS, Esquire
1910 Russell Street (29115)

Post Office Box 1346

Orangeburg, SC 29116

Ph: 803 531-8844

Fax: 803 531-3628

SC Bar No.: 13188

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)

Case No. 2014-CP-46-00508

Plaintiff,)

vs.)

AMENDED COMPLAINT
(Jury Trial Requested)

E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., AMISUB OF SOUTH)
CAROLINA, INC., d/b/a)
Piedmont Medical Center, and)
YORK PATHOLOGY)
ASSOCIATES, LLC,)
Defendants.)

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NOW COMES PATRICIA A. CRAIG (hereinafter "Plaintiff" or "Craig"), by and through the undersigned attorney, complaining of the Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Craig is a citizen and resident of the County of Chester, State of South Carolina, now and at all times relevant to this lawsuit.
2. Upon information and belief, Defendant E. Earl Jenkins, Jr., M.D., also known as Everett Earl, Jr., M.D. (hereinafter "Jenkins") is a citizen and resident of the County of York, State of South Carolina, now and at all times relevant to this law.
3. Defendant Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center is (hereinafter "Amisub") is a for-profit corporation, chartered under the laws of the State of South Carolina, during business as a healthcare provider within the State of

South Carolina and the nation. At all times relevant to this lawsuit, Defendant Amisub was doing business as Piedmont Medical Central, located at 222 South Herlong Avenue, Rock Hill, SC 29732.

4. Defendant York Pathology Associates, LLC (hereinafter "York Pathology") is a South Carolina limited liability company, during business throughout the State of South Carolina. During the relevant time of this lawsuit, Defendant York Pathology also did business as York Pathology Associates, P.A., whose name was changed to M & J Farms of Chester, Inc. The registered agent for Defendant York Pathology is Robert E. Thomas, Jr., located at 222 South Herlong Ave, Rock Hill, South Carolina 29732.
5. At all times relevant to this lawsuit, Defendant York Pathology was the exclusive pathology service provider for Defendant Amisub's Piedmont Medical Center.
6. Venue is proper in this matter at because at least one or more of the Defendants is a resident of the County of York, State of South Carolina, and the principal place of business for the Defendant York Pathology is the County of York, State of South Carolina, and the statutory conditions precedent to filing this lawsuit has been met. Additionally, all pre-litigation statutory requirement have been met, including filing the pre-litigation notice and completing pre-litigation mediation.

FOR A FIRST CAUSE OF ACTION
(Negligence—Medical Malpractice)
(Against All Defendants)

7. Plaintiff repeats and re-alleges each and every allegation of paragraphs one through six as if restated verbatim herein.
8. On or about August 18, 2013, Plaintiff consulted Dr. Christopher T. Jones for medical

services and advice because a PETSCAN had discovered a nodule in her throat, on the right side. Before the discovery of the PETSCAN, Plaintiff was not having presenting any clinical signs of problems with her throat.

9. The medical consultation occurred in the County of York, State of South Carolina. As a result of this consultation, Dr. Jones ordered a fine needle aspiration ("FNA") and ultrasound of the nodule that he found in the Plaintiff's neck on August 18, 2010.
10. The thyroid ultrasound was done on August 26, 2010, and the fine need aspiration ("FNA") was performed on September 30, 2010.
11. Defendant Jenkins performed the FNA pathologic diagnosis and issued a report dated October 1, 2010 (hereinafter referred to as the "FNA Report").
12. The FNA Report stated, in part, that Plaintiff had a "[c]ategory 4 lesion, suspicious for malignancy, excision is indicated."
13. The FNA Report bears the heading "Piedmont Healthcare", which indicates that the FNA Report was being issued under the authority of Piedmont Medical Center.
14. Upon information and believe, Dr. Jenkins issued the FNA Report in his capacity and scope of his employment and member of Defendant York Pathology, and in his capacity as the sole provider of pathological services for Defendant Amisub's hospital known as Piedmont Medical Center.
15. On October 12, 2010, Plaintiff returned to Dr. Jones' office for a follow-up consultation concerning the nodule in her throat. During this visit, Dr. Jones specifically advised the Plaintiff that she had papillary carcinoma (hereinafter referred to as "thyroid cancer"). Based upon his medical conclusion that Plaintiff had thyroid cancer, Dr. Jones recommended that Plaintiff undergo a total thyroidectomy.

16. Plaintiff, based upon the information she received from Dr. Jones, consented to the total thyroidectomy because she thought she had thyroid cancer.
17. Dr. Jones recommended a total thyroidectomy to the Plaintiff based upon, in part, the FNA Report that was prepared by Defendant Jenkins.
18. On November 2, 2010, Dr. Jones, with others within his medical team, performed a total thyroidectomy on the Plaintiff, with the medical opinion that the Plaintiff had thyroid cancer.
19. During the November 22, 2010 surgery, Dr. Jones prepared a sample of the thyroid known as a "frozen section" and submitted it to Defendant Amisub's Piedmont Medical Center for pathologic evaluation. Upon information and belief, the frozen section was analyzed pathologically by Defendant York Pathology for Piedmont Medical Center.
20. As a result of analyzing the frozen section, Defendant York Pathology failed to provide Dr. Jones a definitive diagnosis concerning Plaintiff's thyroid. Therefore, Dr. Jones proceeded to complete a total thyroidectomy on the Plaintiff.
21. The FNA Report, as issued by Defendant Jenkins, caused Dr. Jones to conclude that Plaintiff had a suspicion of thyroid cancer and Defendant's York Pathology's failure to provide a definitive diagnosis of the frozen section of Plaintiff's thyroid caused Dr. Jones to perform a total thyroidectomy on the Plaintiff.
22. The specimen from thyroidectomy surgery was sent to a lab for evaluation.
23. Sometimes after November 10, 2010, Plaintiff returned to Dr. Jones' office for a medical consultation, and she learned that the post-surgery reports established that she did not have thyroid cancer. In other words, Dr. Jones had erroneously concluded

that Plaintiff had thyroid cancer, in substantial part, based upon the incorrect FNA Report and the misinterpretation of the frozen section as performed by Defendants.

24. During all relevant times in this lawsuit, the Defendant medical providers owed Plaintiff a duty to competently evaluate, diagnose and treat the Plaintiff for the nodule in her throat, to include a duty to properly diagnose whether the nodule was cancerous or benign, and all medical treatment and evaluations were required to be done within the acceptable standard of medical care within the community.

25. Defendant Jenkins and Defendant York Pathology breached the duty of care owed to the Plaintiff in one or more of the following particulars, but not all inclusive:

- a. By failing to use reasonable and competent skills in pathologically analyzing the FNA results and the frozen section;
- b. By misinterpreting the results from the FNA and the frozen section and falsely concluding that Plaintiff's thyroid was suspicion for malign thyroid cancer.
- c. By failing to order a second fine needle aspiration test to confirm the second test;
- d. By failing to order additional medical tests once the first fine needle aspiration test was not definitive.
- e. By unreasonably relying on the fine need aspiration findings as a definitive conclusion that a total thyroidectomy was indicated. Defendant's reliance on the fine needle aspiration result was unreasonable because as of 2009, the medical literature was advising the medical community that of the following warning:

"In every circumstance, FNA [fine needle aspiration] is a test and should be interpreted with the entire clinical circumstances. False-negative and false-positive FNA results are reported in almost every series. Therefore, reliance upon FNA findings at the expense of clinical, radiographic, or other findings is unsafe." *Salgarelli AC, Cappare P, Bellini P, Collini M. Usefulness of fine-needle aspiration in parotid diagnostics. Oral*

- f. By improperly concluding that Plaintiff's nodule was cancerous.
26. That as a direct and proximate result of the breach of the applicable standard of medical care by Defendants, as heretofore alleged, Plaintiff suffered substantial damages, in the form of conscious pain and suffering in the past and will suffer conscious pain and suffering into the future; loss the ability to sing in the church choir to level she could before surgery; incurred medical bills in the past, present, and future; suffered permanent damages to her voice; emotional distress; loss of sleep; among other intangible damages, to include mental anguish and permanent disfigurement to her voice, all in an amount to be proved at the trial of this case.
27. That all of the injuries and damages sustained by the Plaintiff were the direct and proximate result of the negligent actions of Defendant Jenkins and York Pathology, without any act or omission on the part of the Plaintiff directly thereunto contributing.

FOR A SECOND CAUSE OF ACTION
(Negligence—Medical Malpractice via agency)
(Against All Defendants, except Jenkins)

28. Plaintiff repeats and re-alleges each and every allegation of paragraphs one through twenty-seven as if restated verbatim herein.
29. That at the time of Defendant Jenkins rendered medical services to the Plaintiff and committed malpractice as alleged, he was acting within the scope of his employment and agency and partner with Defendant York Pathology. Therefore, the other Defendant York Pathology is vicariously liable for the damages suffered by the Plaintiff.
30. Defendant Amisub and York Pathology held itself out to the public by offering to

provide services to the Plaintiff.

31. As to the pathology services, Plaintiff looked to Piedmont Medical Center and York Pathology to provide pathology services during her surgery.
32. A similarly situated person reasonably would have believed the Defendant E. Earl Jenkins, Jr., the pathology rendering services during the surgery, was a hospital employee.
33. That at the time of Defendant Jenkins rendered medical services to the Plaintiff and committed malpractice as alleged, he was acting within the scope of his employment agency contract with Defendant Amisub, doing business as Piedmont Medical Center, which provided that Defendant York Pathology was the sole provider of pathologic services to Defendant Amisub. Therefore, Defendant Amisub is vicariously liable for the damages suffered by the Plaintiff.
34. Defendant York Pathology is vicariously liable due to its actual agency relationship with Defendant Jenkins.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Craig respectfully prays for judgment against the Defendants, jointly and severally, for actual damages in an amount to be determined by the jury at the trial of this action, for the costs and expenses associated with bringing this action, and for any other relief the Court deems just and proper.

Plaintiff demands a trial by jury.

At Orangeburg, SC

Dated: May 14, 2014


GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13198
Attorney for Plaintiff

PROOF OF SERVICE

I, Glenn Walter, certify that I have served or caused to be served the foregoing pleadings (Amended Summons and Complaint) on the Defendants' attorneys, as listed below, on May 14, 2014, by depositing a copy of the same in an envelope in the United States postal service, with the return address clearly visible, addressed as follows:

William U. Gunn, Esquire
Post Office Box 1897
Spartanburg, SC 29304

Julius McKay, II, Esquire
Post Office Box 7217
Columbia, SC 29202

At Orangeburg, SC

Dated: May 14, 2014


GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 15698
Attorney for Plaintiff

Patient: CRAIG, PATRICIA A
Acct Num: E71569958
Unit Num: M000039639

DOB: 02/27/1955 (55/F)
Phys: Jones, Christopher T MD
Loc: US

Specimen: 10:NG1061

Received: 09/30/10 - 1119
Spec Type: NON-GYN

TISSUES

M. Thyroid gland, NOS - FNA Right Thyroid

PATHOLOGIC DIAGNOSIS

FINE NEEDLE ASPIRATION FROM RIGHT THYROID NODULE
--CELLULAR LESION SUSPICIOUS FOR PAPILLARY CARCINOMA
--FOLlicular EPITHELIAL CELLS ARE ACCOMPANIED BY THOSE WITH NUCLEAR
FOLDS AND NUCLEAR INCLUSIONS WHICH ARE CHARACTERISTIC OF PAPILLARY
CARCINOMA
--CATEGORY 4 LESION, SUSPICIOUS FOR MALIGNANCY, EXCISION IS INDICATED

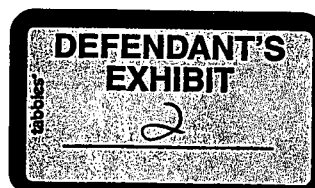
EEJtc

CLINICAL INFORMATION

Right Thyroid Nodule

GROSS DESCRIPTION

Received for cytologic evaluation is a fine needle aspiration from one site of the right thyroid. Five aspiration samples are obtained under ultrasound guidance to yield two air dried and two alcohol fixed smears. The air dried smears are Diff-Quik stained and the alcohol fixed smears are Papanicolaou stained. Also collected is a needle rinse in Cytolyt preservative. One ThinPrep slide is prepared and Papanicolaou stained.



Craig, PMC 0109

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

CASE NO: 2014-CP-46-00508

Patricia Craig,)

Plaintiff,)

v.)

**AFFIDAVIT OF EVERETT EARL
JENKINS, M.D.**

E. Earl Jenkins, Jr., M.D.,)

also known as Everett Earl Jenkins,)

Jr., M.D., Amisub of South)

Carolina, Inc. d/b/a Piedmont)

Medical Center, and York Pathology)

Associates, LLC,)

Defendants.)

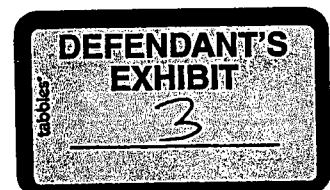
PERSONALLY APPEARED BEFORE me, Everett Earl Jenkins, M.D., who first being duly sworn, deposes and avers the following:

1. My name is Everett Earl Jenkins. I am a board certified pathologist. A copy of my CV is attached to this Affidavit as Exhibit 1.

2. Ms. Patricia Craig underwent a procedure on her thyroid called a fine needle aspiration. This procedure was done on or about September 30, 2010.

3. I was the pathologist that examined the specimen that was aspirated from Ms. Craig's thyroid. My report is attached as Exhibit 2. This report was transmitted to Dr. Jones. I never met or spoke with Ms. Craig about the results of the aspiration. I did not counsel her in any way regarding her treatment options.

4. As a pathologist, it is not within my purview to order additional tests for a patient. That is the responsibility of her treating physician when considering her completely clinical



picture.

5. The cells that I observed in the FNA specimen had characteristics consistent with thyroid cancer, also known as papillary carcinoma. I wrote in my report that the specimen was "suspicious" for cancer.

6. The system used for categorizing specimens is called the Bethesda scale. A "4" on the Bethesda scale means that there is a 65% to 75% chance that the specimen is malignant. Conversely, there is a 25% to 35% chance that there is no malignancy.

7. The standard of care for pathologists who find a sample to be category 4 is to recommend excision.

8. At no point did I suggest to Ms. Craig or to Dr. Jones that Ms. Craig's specimen was definitively cancerous.

9. On November 2, 2010, Dr. Jones performed an operation on Ms. Craig's thyroid. During the procedure, Dr. Jones removed a section of Ms. Craig's thyroid, and asked for it to be analyzed intra-operatively.

10. One of my colleagues examined the specimen and found the results to be inconclusive. Dr. Jones chose to remove Ms. Craig's thyroid at that time. Subsequent to the operation, a pathological examination of the thyroid revealed it not to be cancerous.

11. At no time during my reading of the FNA specimen did I advise Dr. Jones or anyone else that the specimen was definitely malignant; in fact, my rating of this as a category 4 lesion presupposes that there is at least a 25% likelihood that the specimen is benign. I did not violate any accepted standards of care for pathologists in my reading of the FNA specimen.

FURTHER THE AFFIANT SAYETH NOT

Everett Earl Jenkins MD
Everett Earl Jenkins, M.D.

Sworn to before me this 27 day
of June, 2015.

Beth Stinebaugh
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: December 14, 2022

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF YORK CASE NO: 2014-CP-46-00508

3 PATRICIA CRAIG,)
4)
5 Plaintiff,)
6 -vs-)
7 E. EARL JENKINS, JR., M.D.,)
8 also known as EVERETT EARL)
9 JENKINS, JR., M.D., AMISUB OF)
10 SOUTH CAROLINA, INC. d/b/a)
11 PIEDMONT MEDICAL CENTER, and)
12 YORK PATHOLOGY ASSOCIATES, LLC,)
13 Defendants.)

14 Deposition of CHRISTOPHER T. JONES,
15 M.D., taken on behalf of the defendants, pursuant to
16 the stipulations agreed to herein, before SANDRA
17 BERKELAND, Certified Court Reporter and Notary
18 Public, at the Hilton Garden Inn, 650 Tinsley Way,
19 Rock Hill, South Carolina, on the 28th day of
20 January, 2015 commencing at the hour of 5:16 p.m.
21
22
23
24
25

PATRICIA CRAIG -vs- E. EARL JENKINS, JR., M.D., ET AL.
Christopher T. Jones on 01/28/2015

Pages 2..5

Page 2 1 APPEARANCES OF COUNSEL 2 On behalf of the Defendants, 3 Dr. Jenkins & York Pathology 4 Associates: 5 MCKAY, CAUTHEN, SETTANA & 6 STUBLEY, P.A. 7 BY: JULIUS W. MCKAY, II, ESQ. 8 1303 Blanding Street 9 Columbia, South Carolina 29202 10 803-256-4645 11 jmkay@mckayfirm.com 12 On behalf of the Defendant, 13 Piedmont Medical Center: 14 15 HOLCOMBE BOMAR, P.A. 16 BY: JOSHUA T. THOMPSON, ESQ. 17 100 Dunbar Street 18 Suite 200 19 Spartanburg, South Carolina 29306 20 864-594-5307 21 jthompson@holcombebomar.com 22 23 On behalf of the witness: 24 25 RICHARDSON PLOWDEN & ROBINSON, P.A. BY: GEORGE C. BEIGHLEY, ESQ. 1900 Barnwell Street Columbia, South Carolina 29201 803-771-4400 gbeighley@rpcrlaw.com By Phone: On behalf of the Plaintiff: GLENN WALTERS ATTORNEY AT LAW, P.A. BY: GLENN WALTERS, ESQ. P.O. Box 1346 1910 Russell Street Orangeburg, South Carolina 29116 803-531-8844 glennwaltersp@gmail.com		Page 4 1 CHRISTOPHER T. JONES, M.D., having been duly sworn, 2 testified as follows: 3 (Court Reporter marks Patient Records 4 Exhibit No. 1.) 5 EXAMINATION BY MR. MCKAY: 6 Q. Dr. Jones, my name is Jay McKay. I'm an 7 attorney from Columbia. I represent Dr. Earl Jenkins 8 and his practice in a lawsuit filed by a patient of 9 yours by the name of Patricia Craig. 10 Before we get going to the 11 question-and-answer part of the deposition, have you 12 ever been deposed before? 13 A. I have. 14 Q. Okay. Well, the court requires me to go 15 through a few simple rules, and, basically, the rules 16 are to just listen to the question, be sure you 17 understand it and hear it. If you don't hear it or 18 understand it, please don't answer it. Just ask 19 whoever has questioned you for clarification or to 20 repeat it. Do you understand that? 21 A. I do. 22 Q. And you've got the right to read 23 and sign your deposition, and I don't know if 24 Mr. Beighley has talked to you about that or not, but 25 you can decide whether you want to do that after the	
Page 3 1 I N D E X 2 3 WITNESS: CHRISTOPHER T. JONES, M.D. 4 5 Examination Page 6 BY MR. MCKAY 4 7 8 EXHIBITS 9 Number Description Page 10 Exhibit 1 Patient Records 4 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25		Page 5 1 deposition. 2 A. Okay. 3 Q. Okay. Would you give me your full name, 4 please? 5 A. Christopher T. Jones. 6 Q. And what is your medical business 7 address, Dr. Jones? 8 A. Medical business address is 200 South 9 Herlong Avenue, Rock Hill 29732. 10 Q. What's the name of your practice? 11 A. Currently it's Charlotte Eye Ear Nose & 12 Throat Associates, P.A. 13 Q. Okay. And before that, was your 14 practice named Central Carolina Ear Nose & Throat? 15 A. It was. 16 Q. Now, you're an otolaryngologist. Isn't 17 that correct? 18 A. Yes, it is. 19 Q. That's what people basically call an 20 ENT? 21 A. Correct. 22 Q. Would you briefly give me your medical 23 education -- 24 A. Sure. 25 Q. -- background?	

Page 6	Page 8
1 A. I went to medical school at Indiana 2 University, Indianapolis, Indiana, and I completed a 3 general surgery internship, also at Indiana 4 University School of Medicine, and then a four-year 5 otolaryngology residency also at Indiana University. 6 Q. And what brought you to Rock Hill? 7 A. I practiced in Indianapolis for a while, 8 and I've always loved the Carolinas and decided to 9 make a change. I moved somewhere that I knew I would 10 like. 11 Q. When did you finish your residency? 12 A. 2002. 13 Q. And are you board certified? 14 A. I am. 15 Q. When did you become board certified? 16 A. I became board certified in 2003, and I 17 recertified three years ago, 2013, I believe. 18 Q. All right, sir. 19 A. Which is a mandatory thing every ten 20 years. 21 Q. And in your practice as an ear, nose and 22 throat surgeon, you perform thyroidectomies. Is that 23 correct? 24 A. I do, yes. Thyroid surgery is part of 25 the scope of our practice.	1 or former partners, did a tonsillectomy on her, I 2 believe? 3 A. That's correct. 4 Q. And then after that, she came in -- it's 5 different times -- complaining of some hoarseness; 6 did she not? 7 A. She did. 8 Q. I'm just looking at her records. Looks 9 like we have August 18, 1998, she complained of a 10 hoarse voice. Does that appear in the records? 11 A. Yes. 12 Q. And then September 11, 1998, again, she 13 was seen for some laryngitis and some hoarseness by 14 your practice? 15 A. Yes. 16 Q. And she's got some additional complaints 17 of hoarseness; does she not, I believe November 9, 18 2011, then came in again April 29th -- excuse me, 19 2001, my apologies, and April 29, 2002, and July 10, 20 2002, she came in with some complaints of hoarseness. 21 Is that correct? 22 A. Yes, it is. 23 Q. Do you know when you would have first 24 seen her as a patient? 25 A. Yes, sir. I first saw her on
Page 7	Page 9
1 Q. Does that overlap general surgeons or -- 2 A. It does, yes. 3 Q. Now, I have shown you a document that 4 I've marked as Defendant's Exhibit 1 and asked you if 5 that appears to be a true and correct copy of your 6 chart? 7 A. It does, yes. 8 Q. And I believe I mentioned before the 9 deposition started that there was a letter from my 10 law firm sending a check which was stamped as page 11 one, and I just took that out because that's really 12 not a medical record. 13 A. That's fine. 14 Q. Now, from looking at your chart, it 15 appears that Patricia Craig has been a patient of 16 your practice for many years. Is that correct? 17 A. That is correct. I believe she saw Dr. 18 Parsons and Drago prior to my arrival here in Rock 19 Hill. 20 Q. So you would have -- from my looking at 21 the records, it looks like -- looks like the first 22 time she went to your practice was 1998. Does that 23 appear correct? 24 A. Yeah. Yes. That would be correct. 25 Q. And then I think one of your partners,	1 September 28, 2010. 2 Q. Because it looks like in looking at your 3 records that she had had a prior fine needle 4 aspiration of her thyroid; is that correct, or did I 5 misread that? Possibly October 4th of 2007? 6 A. I don't see that. 7 Q. Let me find it. It's possible that 8 could have been done somewhere else. I'm not going 9 to worry about it because you wouldn't have done it 10 anyway. 11 A. I wasn't aware of that if it happened. 12 Q. All right. So what kind of -- you said 13 you first saw her in, was it, 2010? 14 A. Yes, sir. 15 Q. What was the date of that? 16 A. September 28th. 17 Q. Okay. It looks like, if you back up a 18 little bit, she had a PET scan and CT scan that I 19 believe was ordered by a pulmonologist to evaluate a 20 mass -- potential mass or lump in her lungs? 21 A. That's correct. 22 Q. And did that -- was there an incidental 23 finding of the thyroid being enlarged and appearing 24 slightly lobulated? 25 A. Yes, sir.

Page 10 1 Q. What do those words mean? 2 A. So the PET/CT scan measures -- it images 3 the thyroid and it also measures metabolic activity, 4 hypermetabolic activity, meaning more activity can be 5 something that is suspicious for malignancy and, in 6 fact -- 7 Q. All right. 8 A. -- on the 8/18/2010 PET/CT, the 9 impression says that there's an enlarged thyroid 10 which demonstrates increased metabolic activity. 11 Q. Is that what you would call an 12 abnormality or abnormal thyroid? 13 A. Yes. 14 Q. Is that worrisome that it could be a 15 cancer? 16 A. Yes. 17 Q. Now, was she referred to you by someone 18 else? 19 A. Yes, sir. She was referred by her 20 primary care physician, Dr. Dorenda Truesdale. 21 Q. All right. There is a letter. It's 22 actually page 44. I think it's the last page of that 23 stack of documents, that -- it's your letter back to 24 Dr. Dorenda Truesdale. Is that correct? 25 A. That's correct, yes.	Page 12 1 office or was it something that a radiologist would 2 have done? 3 A. No, sir. I believe it was probably 4 ordered -- it looks like it was ordered by her 5 pulmonologist, Dr. Creagh, C-R-E-A-G-H, and was done 6 before she saw me. It was done on 8/26/2010. 7 Q. Okay. Now, in the history that you got 8 from her, did she also indicate that she had had a 9 benign lesion sometime in the past in her voice box? 10 A. Yes. 11 Q. And I believe you noted in your record 12 that she had a long history of hoarseness. Is that 13 correct? 14 A. Yes. 15 Q. Then your record states, "She reportedly 16 had a TSH drawn recently which was normal." What is 17 a TSH? 18 A. TSH is a global lab test of thyroid 19 function. 20 Q. And -- okay. That's not going to 21 diagnose or not diagnose whether someone has cancer? 22 A. No. It simply tells you whether the 23 thyroid gland is making the appropriate amount of 24 thyroid hormone. 25 Q. All right, sir. What does your physical
Page 11 1 Q. And what -- in that letter, you told 2 Dr. Truesdale what your pertinent findings were with 3 regards to Ms. Jones (sic) and your evaluation of 4 her. 5 A. Okay. 6 Q. Not Ms. Jones, I apologize. 7 A. Ms. Craig, yes. 8 Q. Now, in the -- in your records, first 9 record of her September 28th, you indicated that she 10 underwent a CT/PET scan to evaluate a lung nodule 11 that revealed a diffuse enlargement of her thyroid 12 gland with increased metabolic activity. Is that 13 correct? 14 A. Actually, my record here is -- there's a 15 typo. It should say increased metabolic activity is 16 what the PET/CT report says and it was evidently 17 transcribed -- it says "decreased." 18 Q. Okay. 19 A. Should have been increased metabolic 20 activity which is what the PET/CT report says. 21 Q. Then someone sent her for an ultrasound 22 also of her thyroid. Is that correct? She had a 23 follow-up with an ultrasound? 24 A. She did. 25 Q. Is that something that was done in your	Page 13 1 examination indicate that you found? 2 A. That with regard to her thyroid gland, 3 that it was diffusely enlarged, more so on the right. 4 Q. Is that something you get by feeling it? 5 A. Yes, sir. 6 Q. And then you also noted in there that 7 your examination revealed that her voice is somewhat 8 gravelly. Is that correct? 9 A. Yes. 10 Q. And what do you mean by that when you 11 say "gravelly"? 12 A. Gravelly is basically when patients are 13 hoarse or their voice doesn't sound normal, but it's 14 not particularly breathy. It's kind of more rough in 15 character than it normally would be. 16 Q. Okay. So then you also looked at her 17 vocal cords. Is that correct? 18 A. Yes, sir. 19 Q. And did they appear to be normal? 20 A. The -- the false vocal cord on the right 21 had a small polypoid lesion, and the true vocal cords 22 appeared to be normal and with normal mobility. 23 Q. Okay. And then when you examined her 24 right thyroid gland, you noted that she had an 25 enlarged multinodular thyroid. Is that correct?

Page 14 1 A. Are we still -- are you still referring 2 to that same appointment? 3 Q. September 28th appointment, yes, sir. 4 A. Yes. That's actually what the 5 ultrasound showed, not my exam. 6 Q. Okay. You reported the ultrasound 7 showed -- 8 A. Right. 9 Q. -- that she had an enlarged multinodular 10 thyroid with a dominant nodule in the right lobe 11 measuring 2.1 by 1.9 by 1.8 centimeters? 12 A. That's correct. 13 Q. When you say "multinodular," does that 14 mean that she had more than one nodule in her right 15 thyroid? 16 A. Yes, sir. That's what that usually 17 means. 18 Q. Okay. And then -- so at that point in 19 time, your assessment and your plan with the patient 20 were what? 21 A. That she had a right thyroid nodule and 22 that we would proceed with an ultrasound-guided fine 23 needle aspiration biopsy with follow-up thereafter. 24 Q. All right, sir. And then you sent her, 25 I assume, to Piedmont Medical Center to get the fine	Page 16 1 page 31 of that document, I believe that's the fine 2 needle aspiration. Is it not? 3 A. That is correct. 4 Q. Now, that pathologic diagnosis of the 5 fine needle aspiration from the right thyroid nodule 6 is a cellular lesion suspicious for papillary 7 carcinoma. Is that correct? 8 A. That is correct. 9 Q. That doesn't diagnose whether she's -- 10 doesn't say she's got papillary carcinoma or doesn't; 11 does it? 12 A. It does not. 13 Q. And it says -- what is papillary 14 carcinoma? 15 A. Papillary carcinoma is the most common 16 type of thyroid cancer. It's a well-differentiated 17 cancer of the thyroid gland. 18 Q. All right, sir. And then it says she 19 has follicular epithelial cells which are accompanied 20 by those with nuclear folds and nuclear inclusions 21 which are characteristic of papillary carcinoma. 22 Do you know what he means with that or 23 by that? 24 A. I'm not a pathologist so I couldn't draw 25 them for you, but I know basically what they are.
Page 15 1 needle aspiration. Is that correct? 2 A. Yes, sir. 3 Q. And that would have been actually 4 performed by Dr. Peter Stangas. Is that correct? 5 A. Yes, sir. 6 Q. I believe he's a radiologist. Is that 7 correct? 8 A. That is correct. 9 Q. So the mechanics of this is that you 10 order the test, and then a radiologist, I assume with 11 some assistance with some type of anesthetic, goes in 12 with the needle and an ultrasound and takes -- 13 pushes the needle into the thyroid gland to get a 14 sliver of tissue. Is that correct? 15 A. Yes. More or less, yes, to get cells 16 basically in the needle. 17 Q. All right, sir. Then, you received -- 18 then that is sent onto the pathology lab. Is that 19 correct? 20 A. That is correct. 21 Q. And then you subsequently, in your 22 practice, would have received a report from -- of a 23 fine needle aspiration. Is that correct? 24 A. That's correct. 25 Q. I believe your record, if you look at	Page 17 1 Q. Okay. Then it says it's a Category 4 2 lesion suspicious for malignancy. Excision is 3 indicated. Are you familiar with the staging system 4 of these lesions? 5 A. I am. 6 Q. Okay. What -- what are the numbers or 7 where does a Category 4 fit? 8 A. So, this is referring to the Bethesda 9 criteria for thyroid, finding the aspiration 10 biopsies, and the lowest is Category 1. There is 11 about a zero to three percent risk of cancer. 12 On a spectrum, the Category 5, which is 13 felt to be most certainly cancer, and from my 14 research and learning, a Category 4 lesion, as this 15 is interpreted, has about a 65 to 75 percent chance 16 of being malignant. 17 Q. All right, sir. Those are accepted 18 ranges within the medical community? 19 A. Yes. That's from -- the American 20 Journal of Clinical Pathology has a publication that 21 discusses the Bethesda criteria. 22 Q. All right, sir. So after that, would 23 you have met with her again to talk about the results 24 of her -- 25 A. I would.

Page 18 1 Q. And do you recall when that was? 2 A. That was October 12th of 2010. 3 Q. All right. The history says, "Patricia 4 followed up for right-sided thyroid nodule." She is 5 undergoing fine needle biopsy as directed and her 6 report was reviewed. Does that mean you reviewed it 7 or you reviewed it and you reviewed it with her? 8 A. That means that I reviewed it with her. 9 Q. And then it states, "This reveals a 10 cellular lesion suspicious for papillary carcinoma," 11 and then it talks about the -- is that correct? 12 A. Yes. 13 Q. When you say "suspicious," it doesn't 14 mean that it's definitely cancer; does it? 15 A. No. 16 Q. So then you -- then it says, "This is 17 suspicious for malignancy and excision is indicated." 18 Is that correct? 19 A. Yes. 20 Q. Is that the recommendation if you have a 21 read of a Category 4 on this Bethesda scale? 22 A. Yes. 23 Q. So if the -- did you say that the -- it 24 has a false negative or false positive rate of around 25 35 or 40 percent? Is that --	Page 20 1 Q. Okay. And then you had a note that you 2 found that her antithyroid globulin in her thyroid 3 peroxidase antibodies were both positive. What does 4 that mean? 5 A. Those are antibodies that are usually 6 positive in people that have Hashimoto's thyroiditis. 7 Q. In fact, she had Hashimoto's 8 thyroiditis; didn't she? 9 A. She did. 10 Q. And that's another thing that was wrong 11 with her thyroid. Is that correct? 12 A. Yes. 13 Q. So let me see -- and with that, you 14 recommended a total thyroidectomy. Is that correct? 15 A. I did. 16 Q. Let me ask you, from your examinations 17 and the tests that you reviewed, what all was wrong 18 with her thyroid, the one that you ultimately 19 removed, from a clinical standpoint? 20 A. She had a dominant nodule in the right 21 lobe which was just over two centimeters in the 22 greatest diameter. The same -- the same area was 23 hypermetabolic on a PET scan, and the needle biopsy 24 was suspicious for malignancy, and she -- we knew she 25 had Hashimoto's thyroiditis based on antibody titers.
Page 19 1 A. It was -- I guess it would be 25 to 35 2 percent. 3 Q. Okay. 4 A. Because the lesions are found to be 5 cancerous 65 to 75 percent of the time. 6 Q. Twenty-five to 35 percent of the time. 7 So you know before you do the surgery there is a 25 8 or 35 percent chance that this may not be cancer. Is 9 that correct? 10 A. True. 11 Q. Okay. These would be things that you 12 would have talked with Ms. Craig about. Is that 13 correct? 14 A. Right. I would -- I would have told her 15 that myself and the pathologist are concerned that 16 she could have thyroid cancer and that the most 17 definitive way to make sure that she did not would be 18 to excise the area of concern. 19 Q. Now, you also -- your records indicate 20 that when you examined her thyroid, it remained full 21 to palpation. Is that correct? 22 A. Yes. 23 Q. What do you mean by that? Does it feel 24 hard or feel like it got lumps in it or something? 25 A. Just feels larger than normal.	Page 21 1 Q. And she had, I believe, the one large 2 nodule but she had some other smaller nodules. Is 3 that correct? 4 A. She did. She did. But they were -- the 5 sizes were never mentioned in a -- in the ultrasound 6 report or the CT scan that she had. 7 Q. Okay. Now -- so, do you have any 8 criticisms of the read of the fine needle aspiration? 9 A. Again, I'm not a pathologist. That 10 would be beyond the scope of my knowledge. 11 Q. Now, you would have discussed with her 12 the risk and benefits of the proposed surgery. Is 13 that correct? 14 A. Yes, sir. 15 Q. What would you have told her? 16 A. The two most common complications from 17 thyroid surgery are problems with the recurrent 18 laryngeal nerve which innervates the vocal cord and 19 problems with the parathyroid glands which control 20 calcium metabolism. 21 So, injury to those structures are 22 well-known complications of thyroid surgery. I would 23 have gone over those with her. 24 Q. All right, sir. And then you indicated 25 she could also have hoarseness from this procedure?

PATRICIA CRAIG -vs- E. EARL JENKINS, JR., M.D., ET AL.
Christopher T. Jones on 01/28/2015

Pages 22..25

Page 22		Page 24	
1	A. I did.	1	cancer?
2	Q. All right, sir. Did she -- I know this	2	A. It did not, although that report was not
3	is a discussion with the physician and the patient.	3	included in my packet here.
4	Did she appreciate an understanding of the risks and	4	Q. Okay.
5	benefits of the surgery?	5	A. As I recall, it did not.
6	A. She seemed to at the time, yes.	6	Q. All right, sir. Do you remember -- did
7	Q. And so you -- looks like there might	7	you see -- excuse me. Did you see Ms. Craig again in
8	have been a few-week delay in performing the surgery.	8	follow-up?
9	Is that correct?	9	A. Yes, sir.
10	A. Yes, sir.	10	Q. And how did she do in follow-up?
11	Q. She had some event she wanted to go to	11	A. I saw her a week after surgery. She had
12	or -- is that correct?	12	the expected amount of pain in her neck. She said
13	A. Yes.	13	that she had been intermittently hoarse and was
14	Q. And you would have done the surgery in	14	complaining of hot flashes.
15	November of 2012. Is that correct?	15	Q. Would hot flashes have anything to do
16	A. Yes, sir.	16	with your thyroid?
17	Q. Excuse me, I think I said 2012. I meant	17	A. They could, yes.
18	to say 2010.	18	Q. Okay. Now, it says on that
19	A. 2010.	19	November 17th visit -- excuse me. You saw her on
20	Q. My apologies. Did the surgery go fairly	20	November 10th. And then you went -- I guess you
21	smoothly?	21	looked -- you went down and looked at the site with a
22	A. Yes, sir.	22	scope. Is that correct?
23	Q. Do you remember having any complications	23	A. I looked at her vocal cords with a
24	with it?	24	scope, yes.
25	A. I do not.	25	Q. Did you see anything abnormal with her
Page 23		Page 25	
1	Q. When you do the surgery, do you send	1	vocal cords?
2	tissue down to the pathology lab to try to get an	2	A. Yes. The left vocal cord was not moving
3	initial read on what you're doing?	3	as well as it had preoperatively.
4	A. Yes.	4	Q. And did you think that was a temporary
5	Q. And do you recall what happened with	5	thing?
6	that?	6	A. I did.
7	A. I do. I received word back in the	7	Q. Why would it not be moving well?
8	operating room that the findings on the frozen	8	A. It might not be moving well from trauma
9	section were similar to the fine needle aspiration	9	to the recurrent laryngeal nerve during thyroid
10	specimen and that there was not definite evidence of	10	surgery.
11	malignancy in the right lobe which would have been	11	Q. Now, you also adjusted her thyroid
12	the one that we sent first.	12	medication?
13	Q. All right, sir. What did you decide to	13	A. I did.
14	do from there?	14	Q. All right, sir. Then you saw her again
15	A. I decided, based on the original fine	15	on November 17th. Is that correct?
16	needle aspiration and the other preoperative	16	A. Yes, sir.
17	findings, to go ahead and complete her thyroidectomy	17	Q. How was she doing at that visit?
18	at that time.	18	A. She continued with the similar complaint
19	Q. Is that the safest thing to do with this	19	of feeling generally poorly and having hot flashes.
20	25 to 35 percent chance that it might not be cancer?	20	Q. And did you see her in December -- on
21	A. Yes.	21	December 7th, 2010?
22	Q. All right. And then you ultimately got	22	A. I did.
23	a final pathology report. Is that correct?	23	Q. How was she doing on that visit?
24	A. That is.	24	A. She was complaining of some continued
25	Q. Did that indicate that they found	25	sharp pain at her incision intermittently and was

Page 26 1 complaining of difficulty speaking at work. 2 Q. All right, sir. Then you saw her again 3 on January 18th of 2011. Is that correct? 4 A. Yes. 5 Q. And the history that you wrote is that, 6 "Patricia follows up after total thyroidectomy done 7 for Hashimoto's thyroiditis." Is that correct? 8 A. Yes. 9 Q. Would that have been a reason to do a 10 thyroidectomy? 11 A. Yeah, it could be, yes. 12 Q. And it says, "She reports that her voice 13 is better with baseline speaking and at work." But 14 she also indicates she's having some trouble with 15 long sentences and is having quite a bit of 16 difficulty singing. Is that an unusual type 17 complaint after this? 18 A. No. 19 Q. And did you take a look at her vocal 20 cords? 21 A. Yes. 22 Q. But that found that the left vocal cord 23 that you indicated had some paralysis earlier was 24 working again? 25 A. Yes, sir.	Page 28 1 A. No. I just -- I documented that she was 2 able to change pitch of her voice, and when she -- 3 she had, evidently, displayed emotion. I felt like 4 she was able to change the tone of her voice and that 5 it was significantly better, to my ear. 6 Q. All right, sir. And was that the last 7 visit that you saw her? 8 A. I believe so. 9 Q. Do you have any idea if her condition is 10 any better or any worse now than it was then? 11 A. I do not. 12 Q. Thank you. That's all I've got. 13 MR. THOMPSON: I don't have anything, 14 Doctor. 15 Glenn, do you have anything? 16 MR. MCKAY: Glenn, do you have any 17 questions? 18 MR. WALTERS: No, sir. I have no 19 questions. 20 (Deposition concluded at 5:53 p.m.) 21 22 23 24 25
Page 27 1 Q. The word "adducting," I assume, means 2 moving or flexing? 3 A. Means moving towards the mid-line. 4 Q. Okay. And then your assessment plan 5 was, "Improved left vocal cord paresis." Is that 6 correct? 7 A. Yes. 8 Q. And you told her that you felt this 9 would improve over time and mentioned and offered her 10 some speech therapy if she wanted. Is that correct? 11 A. Yes. 12 Q. Then the last record I have is 13 February 22, 2011. Do you know if that's the last 14 time you saw her? 15 A. I believe it is. 16 Q. Okay. How was she doing then? 17 A. She felt like her baseline voice and her 18 voice at work was back to its -- to its normal 19 status, but she continued to complain of difficulty 20 singing in church. 21 Q. Okay. And your exam indicated that her 22 voice has improved. Is that correct? 23 A. Yes. 24 Q. She was able to sing some but it was a 25 deeper voice?	Page 29 1 REPORTER'S CERTIFICATE 2 I, SANDRA BERKELAND, CCR No. XI01666, Certified 3 Court Reporter, certify; 4 That the foregoing proceedings were taken 5 before me at the time and place therein set forth, at 6 which time the witness was put under oath by me; 7 That the testimony of the witness, the 8 questions propounded, and all objections and 9 statements made at the time of the examination were 10 recorded stenographically by me and were thereafter 11 transcribed; 12 That the foregoing is a true and correct 13 transcript of my shorthand notes as taken. I further 14 certify that I am not a relative or employee of any 15 attorney or the parties, nor financially interested 16 in the action. 17 I declare under penalty of perjury under the 18 laws of South Carolina that the foregoing is true and 19 correct. 20 Dated this 11th day of February, 2015 21 <i>Sandra Berkeland</i> 22 23 SANDRA BERKELAND, CSR No. XI01666 24 25

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MEDICAL CODES

T08000 - LYMPH
T96000 - THYROI

PATIENT: CRAIG, PATRICIA A
E71878366

Page 3 of 3

10:SU13376

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Surgical Pathology Report**Patient Name: CRAIG, PATRICIA A****DOB: 02/27/1955 55 / F****SS#: 248-88-9954****Date Collected: 11/02/10****Date Received: 11/02/10****Medical Rec #: M000039639****Hospital #: E71676365****Physician(s): Loc: WPEDS W418-A****Jones, Christopher T MD**

ADM IN

Accession #: 10:SU13376**PATHOLOGIC DIAGNOSIS****A- PRETRACHEAL LYMPH NODE****--BENIGN LYMPH NODE****B- RIGHT LOBE OF THYROID****--FOLLICULAR ADENOMA****--1.5 CM. ADENOMA****--NUCLEAR VIABILITY FOCALLY PRESENT****--VARIABLE SIZED FOLLICLES PRESENT****--FIBROUS CAPSULE PRESENT****--REMAINDER OF THYROID HAS MARKED CHRONIC THYROIDITIS CONSISTENT WITH
HASHIMOTO'S THYROIDITIS****--FIBROSIS PRESENT****--NO ATYPICAL FEATURES IDENTIFIED****--NO PARATHYROIDS PRESENT****--MARGINS OF RESECTION CLEAR****--WEIGHT, 16 GRAMS****C- LEFT LOBE OF THYROID****--CHRONIC THYROIDITIS CONSISTENT WITH HASHIMOTO'S THYROIDITIS****--NUMEROUS VARIABLE SIZED FOLLICLES PRESENT****--DENSE LYMPHOID INFILTRATE WITH LYMPHOID FOLLICLE FORMATION****--NO ATYPIA IDENTIFIED****--NO PARATHYROIDS PRESENT****--WEIGHT, 17 GRAMS**

COMMENT: The material is reviewed with Dr. Thomas and Dr. Hart. The fine needle aspirate (10NG1061) is reviewed. There are areas suspicious for neoplasia in the aspirate, however, this all appears to be part of the Hashimoto's thyroiditis and the follicular adenoma.

James L. Maynard, MD 11/03/10
*** Report Electronically Signed ***

CLIA #: 42D0253490

CAP LAB ACCREDITATION #: 1432201

FROZEN SECTION DIAGNOSIS**PATIENT: CRAIG, PATRICIA A**
E71676365

Page 1 of 3

10:SU13376

**DEFENDANT'S
EXHIBIT**

tabbles

S

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FSA - PRETRACHEAL LYMPH NODE:
--BENIGN PRETRACHEAL LYMPH NODE

FSB - THYROID
--ATYPICAL THYROID NODULE WITH BACKGROUND OF HASHIMOTO'S THYROIDITIS,
MARGINS OF RESECTION CLEAR, DIAGNOSIS DEFERRED
--REVIEWED WITH DR. THOMAS

JLM:tc

TISSUES

A. Lymph node, NOS - Pretracheal Lymph Node, B. Thyroid gland, NOS - Right lobe,
C. Thyroid gland, NOS - Left Lobe

CLINICAL INFORMATION

Right Thyroid Nodule

GROSS DESCRIPTION

A - Tissue identified as pretracheal lymph node is a 1.2 x 0.8 x 0.8 cm. lymph node. The cut surface reveal a homogeneous lymph node. Specimen is bisected and frozen in entirety.

B - Subsequently received and identified as the right lobe of the thyroid weighing 15 grams. The specimen measures 5.5 x 2 x 1.5 cm. The surface is smooth to slightly nodular. Palpation reveals firmness toward one end. The external surface is inked and the specimen is sectioned. The cut surface reveals a 1.5 x 1.3 x 1 cm. nodule at the firmer end. The nodule is surrounded by a discrete fibrous band. The remainder of the gland reveals diffusely firm tissue. Margins of resection are clear. Two freezes are performed. FSB1 is of the nodule and FSB2 is of the opposite aspect of the thyroid. Additional sections submitted in Blocks B3 through B8.

C - Separately received identified as left lobe of thyroid are two portions of tissue. One is a 1 x 0.6 x 0.4 cm. The other is the thyroid lobe 4.5 x 3 x 1.8 cm. These weigh a total of 17 grams. The surface of the smaller is smooth. The surface of the larger is somewhat nodular. The external surfaces are both inked and the tissue is sectioned. The cut surface of the smaller reveals diffusely firm tissue. No atypia is identified. The cut surface of the larger reveals diffusely firm roughly homogenous parenchyma. No nodules, masses or atypia is identified. Multiple sections are submitted.

BLOCK SUMMARY:

C1 - Smaller portion

C2 thru C6 - Sections of the remainder of the gland

JLM:lb

PATIENT: CRAIG, PATRICIA A
E71676365

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10:50/13376

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803) 329-1234

PATIENT NAME: CRAIG, PATRICIA A
MEDICAL REC#: M000039639
ACCT #: E71676365

BIRTHDATE: 02/27/1955
ADM/SVC DATE: 11/02/10
DISCHARGE DATE:

OPERATIVE/PROCEDURE NOTE

DATE OF OPERATION: 11/2/10

PREOPERATIVE DIAGNOSIS: Right thyroid nodule and Hashimoto's thyroiditis.

POSTOPERATIVE DIAGNOSIS: Right thyroid nodule and Hashimoto's thyroiditis.

PROCEDURE: Total thyroidectomy.

SURGEON: Christopher Jones, MD

ASSISTANT: Timothy Kelly, MD

ANESTHESIA: General by endotracheal tube; nerve integrity monitoring tube utilized.

INDICATIONS: Patricia is a 55-year-old who underwent a PET CT scan to investigate an incidentally discovered lung nodule. This revealed diffuse enlargement of her thyroid gland with increased metabolic activity. She underwent followup ultrasound, which revealed a dominant nodule in the right lobe. Fine needle aspiration was performed revealing a cellular lesion suspicious for papillary carcinoma. Excision was indicated.

DESCRIPTION OF OPERATION: After obtaining appropriate informed consent, the patient was taken to the operating room, placed on the operating table. General anesthesia was induced and ventilation was maintained through a nerve integrity monitoring endotracheal tube. Standard grounding electrodes were placed subdermally on the patient's chest. There appeared to be good EMC signal from the tube.

She was positioned with shoulders on a shoulder roll and neck slightly extended. The anterior neck was prepped and draped in usual fashion. A 5-cm incision was made 2 fingerbreadths above the clavicle horizontally. Dissection was carried into a subplatysmal plane. Superior and inferior based subplatysmal skin flaps were elevated. The strap muscles were identified and divided in the midline from the thyroid notch to the sternal notch. There were multiple branchings of the anterior jugular veins over the midline. These were identified, divided between hemostats and 2-0 silk ties.

Dissection was begun on the right as it was the side with the suspicious nodule. The strap muscles were bluntly and sharply dissected off of the thyroid lobe as it was retracted medially. The strap muscles were retracted laterally. Middle thyroid vein was identified and divided between hemostats and 2-0 silk ties.

PATIENT NAME: CRAIG, PATRICIA A
MEDICAL REC#: M000039639
LOCATION: WPEDS W418-A
PHYSICIAN: Christopher T Jones MD

OPERATIVE/PROCEDURE NO

Page 1 of 2

CCENT 000016



PIEDMONT MEDICAL CENTER
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Dissection was begun at the superior pole. The superior pole vessels were identified and divided adjacent to the thyroid capsule between hemostats and 2-0 silk ties. Capsular dissection was then done inferiorly until the recurrent laryngeal nerve was identified as it traced from the tracheoesophageal groove superiorly towards the cricothyroid joint. The nerve was kept in view and preserved during the remaining dissection. Inferior vessels were identified and divided. The thyroid was carefully rotated medially. The superior and inferior parathyroid glands were noted and dissected off of the capsule. Berry's ligament was divided and the gland was further mobilized medially until it was attached only to the isthmus. The isthmus was clamped and the right lobe was removed and sent for frozen section. Frozen section revealed similar atypia to the needle biopsy. No definitive diagnosis could be made, but total excision was recommended.

Prior to beginning the dissection on the left side, the right recurrent laryngeal nerve was stimulated at 1 mA. There was a brisk EMG signal indicating integrity of the nerve.

Dissection was then begun on the left. Again, the strap muscles were bluntly and sharply dissected off of the thyroid lobe, which was retracted medially. The strap muscles were retracted laterally with Army-Navy retractors. The middle thyroid vein was identified and divided. The superior vascular pedicle was identified and divided between hemostats and 2-0 silk ties. The recurrent laryngeal nerve was identified superiorly in the tracheoesophageal groove. Again, it was dissected superiorly until its entry point into the larynx. The superior and inferior parathyroid glands were carefully dissected laterally and preserved. Capsular dissection was continued until the gland was pedicled to Berry's ligament. Berry's ligament was carefully divided with bipolar cautery, keeping the recurrent laryngeal nerve in view and preserved. The gland was then removed completely. A small remnant of the pyramidal lobe was removed from the midline superiorly towards the hyoid.

The left recurrent laryngeal nerve was then stimulated with the nerve integrity monitoring system. There was a brisk ipsilateral EMG response indicating integrity of the nerve.

The wound was copiously irrigated with normal saline. Small bleeding areas were controlled with bipolar cautery. A 10 Blake drain was placed in the dissection bed bilaterally and brought out through a separate stab incision in the left side of the neck. This was secured with a 2-0 silk suture.

The strap muscles were reapproximated in the midline with interrupted 4-0 Vicryl. Platysmal layer was similarly closed with 4-0 Vicryl. The deep dermis was reapproximated with interrupted 5-0 Monocryl. The skin was closed with Dermabond. Horizontal Steri-Strips were placed over the Dermabond and the procedure was concluded.

The patient was turned over to anesthesia. She was awakened in the operating room and discharged to recovery room in stable condition. There were no complications. She tolerated the procedure well. Blood loss was less than 50 mL. All sponge and needle counts were correct at the conclusion of the procedure.

PATIENT NAME: CRAIG, PATRICIA A
MEDICAL REC#: M000039639
LOCATION: WPEDS W418-A
PHYSICIAN: Christopher T Jones MD

OPERATIVE/PROCEDURE NO

Page 2 of 2

CCENT 000017

PIEDMONT MEDICAL CENTER
222 South Harlong Avenue
Rock Hill, South Carolina 29732
(803) 329-1234

Dictated by: CHRISTOPHER T. JONES, MD

TR:CTJ/1F
DD:11/02/2010 12:56 EDT
DT:11/02/2010 13:14 EDT
Dictation ID: 2121923/Confirmation #: 839307

Copies to: JONECH
Jones, Christopher T MD

Christopher T Jones MD
Electronically Signed by:

PATIENT NAME: CRAIG, PATRICIA A
MEDICAL REC#: M000039639
LOCATION: WEEDS W418-A
PHYSICIAN: Christopher T Jones MD

OPERATIVE/PROCEDURE NO

Page 3 of 2

CCENT 000018

MEDICAL CODES

CODES: T96000|M69760 - Thyroid gland, [Atypia, suspici

COPIES TO

Jones, Christopher T MD
1565 Ebenezer Road
Rock Hill, SC 29732
(803)327-4000

Stangas, Peter A MD
218 South Herlong Avenue
Rock Hill, SC 29732
(803)328-2727

Signed _____ E Earl Jenkins, Jr, MD 10/01/10
<signature on file>

CRAIG, PATRICIA A Acct: E71569958 DOB: 02/27/1955

Craig, PMC 0110

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

PATRICIA A. CRAIG,)
Plaintiff,)

Civil Action No.: 2014-CP-46-00508

v.)

**PLAINTIFF'S RESPONSE TO FIRST
SET OF INTERROGATORIES TO
DEFENDANT**

E. Earl Jenkins, Jr., M.D.,)
Also known as Everett Earl Jenkins, Jr.,)
M.D., Amisub of South Carolina, Inc. d/b/a)
Piedmont Medical Center, and York)
Pathology Associates, LLC,)
Defendants.)

TO: JULIUS W. MCKAY, II, ESQUIRE, ATTORNEY FOR DEFENDANT:

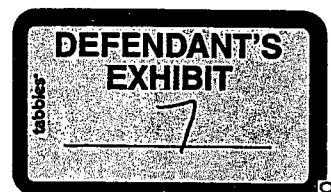
NOW COMES PLAINTIFF, pursuant to S.C. § 15-79-125(A), submitting the following
responses to the Interrogatories outlined in Rule 33 of the South Carolina Rules of civil
Procedure:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses
concerning the facts of the case and indicate whether or not written or recorded statements have
been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

Patricia Craig
Post Office Box 43
1149 Durham Road
Blackstock, SC 29014
No written or recorded statement

Peter A. Stangas, MD
222 South Herlong Avenue
Rock Hill, SC 29732
No written or recorded statement



Dr. Mark R. Matthews, MD
222 South Herlong Avenue
Rock Hill, SC 29732
No written or recorded statement

Dr. Edward Creagh, Jr., MD
222 South Herlong Avenue
Rock Hill, SC 29732
No written or recorded statement

Dr. Everett Earl Jenkins, MD
222 South Herlong Avenue
Rock Hill, SC 29732
No written or recorded statement

Dr. Christopher Jones, MD
1565 Ebenezer Road
Rock Hill, SC 29732
No written or recorded statement

Plaintiff reserves the right to call witnesses identified by Defendant.
Plaintiff has the right to call any and all additional witnesses that are identified through the discovery process, including those identified by way of supplemental discovery.

2. Set forth a list of documents, drawings, maps, diagrams, models or other documentary materials or tangible objects that you intend to rely on to support your allegations in this action, regardless of whether you intend to offer the same into evidence or merely use as a demonstrative aid at the trial of this action.

RESPONSE: See Attached

3. List and describe each and every document and other tangible object, not listed above, that relate to this action regardless of its potential admissibility at trial in this matter.

RESPONSE: See answer to Interrogatory #2

Rock Hill, SC 29732

Dr. Earl Jenkins, Jr., MD and
York Pathology Associates

Piedmont Medical Center (Hospital)
222 South Herlong Avenue
Rock Hill, SC 29732

Medical Cost:

Piedmont Medical Center – Surgery 11-2-10 thru 11/3/10 \$18,134.22 (see attached)
Charlotte Eye Ear Nose and Throat Associates visits & cost \$9,613.98 (see attached)
Dr. Villaret – Charlotte Eye, Ear, Nose and Throat \$6,352.16 (see attached)
The Speech and Hearing Center of York and Chester Counties \$655.00 (see attached)
Emory University Hospital, Atlanta, Georgia \$2,118.00 (see attached)
Mayo Clinic, Jacksonville, Florida, \$92.49 (see attached)

Total all Medical bills \$36,965.85

Plaintiff reserves the right to supplement this information

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

RESPONSE:

Non-Economic

a) Mental and emotional distress	To be determined by a jury
b) Loss of enjoyment of life	To be determined by a jury
c) Emotional trauma and fear	To be determined by a jury
d) Embarrassment	To be determined by a jury
e) Wounded feelings	To be determined by a jury

Economic

a) Medical Bills	\$36,965.85
b) Loss of income	\$2,585.70
c) Medication (Levothyroxine) is prescribed monthly due to thyroid being removed and Plaintiff has to take for the rest of her life. Plaintiff pays \$9.00 monthly for this medication.	
d) Medical appointments with doctor for periodic evaluations for thyroid condition and Plaintiff will be taking time off from work to attend these appointments	

Plaintiff has requested this information from the above provider and will supplement said request.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

**Patricia Craig, Plaintiff
Post Office Box 43
1149 Durham Road
Blackstock, SC 29014**

Plaintiff will testify to about her operation and aftermath of her procedure, economic damages and non-economic damages

**Peter A. Stangas, MD
222 South Herlong Avenue
Rock Hill, SC 29732**

Dr. Stangas, Radiologist, has knowledge of the Plaintiff's medical procedure

**Dr. Mark R. Matthews, MD
222 South Herlong Avenue
Rock Hill, SC 29732**

Dr. Matthews, Radiologist, has knowledge of the Plaintiff's medical procedure

**Dr. Edward Creagh, Jr., MD
222 South Herlong Avenue
Rock Hill, SC 29732**

**Dr. Creagh, Pulmonologist, has knowledge of the Plaintiff's medical procedure.
See attached medical records**

**Dr. Everett Earl Jenkins, MD
222 South Herlong Avenue
Rock Hill, SC 29732**

Dr. Jenkins, Pathologist, has knowledge of the Plaintiff's medical procedure. Medical records are in the possession of Piedmont Medical Center

Dr. Christopher Jones, MD

1565 Ebenezer Road

Rock Hill, SC 29732

Dr. Jones, Surgeon, has knowledge of the Plaintiff's medical procedure

See attached copies of medical records.

8. State with specificity each act wherein the Plaintiff submits that Defendants failed to adhere to accepted medical practices or standards of care and in connection with each alleged deviation from the standard of care state the following:

- (a) When did said deviation occur?
- (b) What should have been done to comply with accepted medical practices?
- (c) What supports your position that a violation of the standard of care occurred; and
- (d) What damages did the Plaintiff sustain as a result of said deviation of the standard of care?

RESPONSE: Plaintiff references her Complaint in regard to the questions A-D

9. Identify by date, author, location and citation, where appropriate, any code, regulation, statute, custom or standard which you contend the Defendants violated and state with particularity the facts upon which you rely to allege such violations.

RESPONSE: Plaintiff references her Complaint with regards to this question

10. Give the title, author, date, volume and page, where appropriate, of any periodical, journal, text, paper or other publication or any kind, to which the Plaintiff intends to refer, or about which the Plaintiff intends to ask any questions, during the examination or cross-examination of any witness at trial or during any deposition.

RESPONSE: Plaintiff is researching and will supplement this response

11. Describe the work or occupation Plaintiff performed in each occupation in which she was engaged during the last five (5) years, and for each such employment, provide the following:

- (a) The name and address of each employer;
- (b) Dates of employment;
- (c) The type of work or services performed;

RESPONSE: 1. (a) Cinderella Knitting Mill,
(b) June 1976 to October 1993
(c) Sewing Machine operator during entire time of employment

2. (a) York County Board and Disability, 7900 Park Place Road, York,
SC 29745
(b) June 3, 2006 to Present
(c) Administrative Assistant while employed with agency

12. Provide all addresses where Plaintiff has resided since January 1, 2005.

RESPONSE: 1149 Durham Road, Blackstock, SC 29014

13. Has the Plaintiff ever been involved in any other lawsuit or ever filed a worker's compensation claim? If so, please describe the case or workers' compensation claim in detail, including the name of the attorney or attorneys who handled the case on behalf of the Plaintiff, the jurisdiction in which said claim or suit was filed, and the date of resolution of such claim.

RESPONSE: NONE

14. Provide the names of all physicians, psychiatrists, psychologist, mental health counselors and other health care providers with whom Plaintiff has consulted for mental or emotional problems.

RESPONSE: Plaintiff consulted with her Pastor, Rosalyn Wilson, Rock Hill, SC for her spiritual and emotional problems/support.

15. Please name all relatives by blood or marriage over the age of eighteen (18) who reside in York County, South Carolina

RESPONSE: Spouse, Arthur Craig; Daughter, Kendra Craig

16. If Plaintiff is asserting a claim for lost wages or loss of earnings, please state the amount of lost wages Plaintiff alleges were due to the wrongful acts of Defendants.

RESPONSE: 1. Plaintiff missed 152 hours from work after she had the surgery at Piedmont Medical Center;

2. Plaintiff missed 50 hours from work for appointments at CEENTA

3. Emory University, Atlanta, Georgia— missed 24 hours from work

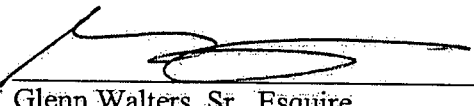
4. Mayo Clinic, Jacksonville, Florida – missed 8 hours of work

Plaintiff earned around \$11.05 an hour in 2010. $254 \text{ hours} \times 11.05 = \$2,585.70$ in lost wages. Plaintiff continues to take time off from work for her medical condition and reserves the right to supplement this information

17. Has Plaintiff made any claims for disability insurance benefits or social security disability benefits? If so, please describe the nature of the claim and provide the dates of application for benefits.

RESPONSE: NONE

Dated: 10/13, 2014
Orangeburg South Carolina


Glenn Walters, Sr., Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Ph: 803-531-8844
Fax: 803-531-3628
SC Bar No.: 13198
Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF YORK

PATRICIA A. CRAIG,
Plaintiff,

v.

E. Earl Jenkins, Jr., M.D.,
Also known as Everett Earl Jenkins, Jr.,
M.D., Amisub of South Carolina, Inc. d/b/a
Piedmont Medical Center, and York
Pathology Associates, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-46-00508

**PLAINTIFF'S RESPONSE TO FIRST
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT**

TO: JULIUS W. MCKAY, II, ESQUIRE, ATTORNEY FOR DEFENDANT:

NOW COMES PLAINTIFF, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure submitting the responses to Requests for Production of Documents to the Defendant.

1. All documents you contend will establish your claims of medical malpractice against these Defendants.

RESPONSE: Medical records and Affidavit of Gabor Kovacs, M.D., F.A.C.S. see attached documents

2. All documents which the Plaintiff contends will establish Plaintiff's entitlement to actual damages.

RESPONSE: Medical records and Affidavit of Gabor Kovacs, M.D., F.A.C.S. see attached documents

3. All documents, articles, texts and treatises which you contend establish the Plaintiff's allegations of medical malpractice.

RESPONSE: None at this time, will supplement response

4. Statements of all witnesses.

RESPONSE: None

5. Statements, reports and other documents prepared by all expert witnesses with whom you have retained.

RESPONSE: See attached Affidavit of Gabor Kovacs, M.D., F.A.C.S.

6. All documents and other items which the Plaintiff intends to offer into evidence at the trial of this case.

RESPONSE: Medical records and affidavit of Gabor Kovacs, M.D., F.A.C.S. See attached documents

7. Current curriculum vitae for all expert witnesses identified in Plaintiff's Answers to Defendants' Interrogatories.

RESPONSE: See attached documents

8. Copies of all regulations, standards, manuals, texts, journals, or other documents or publications which the Plaintiff may use in direct examination or cross-examination of any witness or offer into evidence at any deposition or at trial.

RESPONSE: Plaintiff is in the process of gathering said information and will supplement said request.

9. Copies of all medical literature relied upon by plaintiff's expert witnesses.

RESPONSE: Plaintiff is in the process of gathering said information and will supplement said request.

10. Records of all Plaintiffs' physicians, psychiatrists, psychologist, mental health counselors and other health care providers with whom Plaintiff has consulted or obtained treatment from January 1, 2005 through the present time.

RESPONSE: See attached medical records

11. Medical records of all physicians, psychiatrists, psychologists, mental health counselors and other health care providers with whom Plaintiff has consulted, visited, conferred or been treated for any injuries Plaintiff alleges were caused by the wrongful acts of the Defendants.

RESPONSE: Plaintiff received treatment from the following:

Dr. Dorenda Truesdale

Emory Hospital In Atlanta Teorgia

Mayo Clinic in Jacksonville, Florida

Charlotte Eye Ear Nose and throat Associates

Plaintiff has requested this information from the above providers and will supplement said request.

12. All documents identified in Plaintiff's Answers to Defendants' Interrogatories.

RESPONSE: See Attached

13. If Plaintiff is claiming lost wages or loss of earning capacity, copies of all tax returns for the years 2007 through the present.

RESPONSE: See copies of tax documents from 2010 thru 2013 (Please note that Plaintiff filed joint tax returns with her husband. Plaintiff annual gross wages are as follows:

2010 \$22,996.52

2011 \$23,786.45

2012 \$24,643.51

2013 \$25,001.71

14. Copies of any applications for any disability insurance benefits of any type, including but not limited to social security disability, short-term disability, long-term disability or other such policies.

RESPONSE: NONE

Dated: 10/13, 2014
Orangeburg South Carolina


Glenn Walters, Sr., Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Ph: 803-531-8844
Fax: 803-531-3628
SC Bar No.: 13198
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)
Plaintiff,)

Case No. 2013-CP-46-_____

vs.)

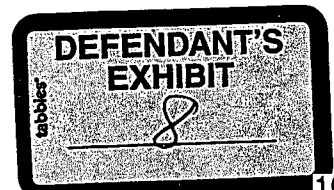
AFFIDAVIT OF
Gabor Kovacs, M.D., F.A.C.S.

E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., TENET HEALTHCARE)
CORPORATION d/b/a Piedmont)
Medical Center, and YORK)
PATHOLOGY ASSOCIATES,)
LLC,)

Defendants.)

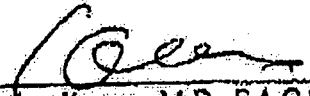
I, Gabor Kovacs, M.D., F.A.C.S., first duly sworn according to law, do hereby depose and state as follows:

1. My name is Gabor Kovacs, M.D., F.A.C.S., and I am of sound mind, lawful age, and in all other respects competent to make this Affidavit.
2. I am licensed to practice medicine by the State Medical Boards of New Jersey, Georgia, and Florida. I am Board Certified by the American College of Surgeons. Currently, I am a surgeon practicing medicine in a private surgical practice, and I have been in such capacity since 1985. My Curriculum Vitae is attached to this affidavit, and it is incorporated herein by reference. I am not a Pathologist but I work closely with pathologists who are instrumental to my surgical practice.
3. I devote the majority of my professional time to the active clinical practice of medicine in my field of licensure as a medical doctor.
4. In preparation of this opinion, I have reviewed the following, excluding any medical literature that may have been consulted:

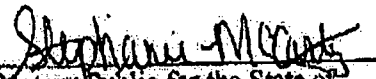


- a. The draft complaint in the above-captioned matter. The complaint was reviewed to ascertain the Plaintiff's attorney theory of the case and to ascertain any relevant facts. For the purpose of this affidavit, I assume the alleged facts in the complaint to be true.
 - b. Medical records consisting of approximately 25 pages, including the Operative/Procedural Notes of Dr. Christopher T. Jones and the Pathological Report of Dr. B. Earl Jenkins, Jr., signed October 1, 2010.
5. I am familiar with the applicable standard of care relative to the allegations contained in the Complaint.
 6. It is my opinion, to a reasonable degree of medical certainty, that Dr. B. Earl Jenkins, Jr., named in the Complaint, breached the standard of medical care owed to Patricia Craig by failing to properly analyze and interpret the fine needle aspiration results that was taken of the Plaintiff and submitted to him for evaluation on September 30, 30, 2010. The facts to support my conclusion are as follows: (a) a fine needle aspiration sample was taken from Patricia Craig and presented for evaluation; (b) in a Pathologic Report dated October 1, 2010, Dr. Jenkins stated that the Plaintiff's fine needle aspiration was a "category 4 lesion, suspicion for malignancy, excision is indicated"; (c) Dr. Christopher T. Jones, a surgeon, used Dr. Jenkins Pathologic Report to recommend surgery for the Plaintiff; (d) Dr. Jones, during surgeon on Plaintiff's thyroid on 11/2/2010 did a frozen section which was presented for pathologic diagnosis. At the point of the frozen section, Mrs. Craig's had not undergone a total thyroidectomy. According to Dr. Jones Operative Notes, not definitive diagnosis concerning malignancy or non-malignancy could be made; therefore, he proceeded to perform a total thyroidectomy on the Plaintiff; (e) according to the complaint, the Defendants are the were the sole provider of pathological services to Piedmont Medical/Healthcare where Dr. Jones was performing the surgery. From this fact, I conclude that Defendant performed the pathologic diagnosis on the frozen section which was not definitive; (f) post-surgery it was determined that Ms. Craig did not have papillary carcinoma.
 7. In my opinion, to a reasonable degree of medical certainty as a surgeon, the only way Mrs. Craig could have received a false-positive for papillary carcinoma is that the fine needle aspiration results were not properly interpreted and that the frozen section was also misinterpreted. To a reasonable degree of medical certainty, Dr. Jenkins breached the standard of care by failing to properly interpret the fine needle aspiration results, and whoever interpreted the frozen section likewise breached the standard of care by failing to properly interpret the frozen section.
 8. The aforementioned breaches of the standard of care caused severe injury to the Plaintiff, including having her to undergo an unnecessary surgery and total thyroidectomy.

Further Affiant sayeth not.

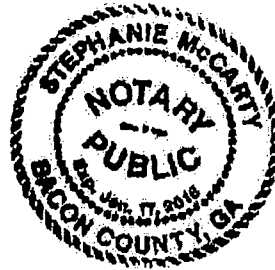

Garbor Kovacs, M.D., F.A.C.S.

Sworn to before me and subscribed in my presence this 4th day of November, 2013


Notary Public for the State of
Georgia

My commission expires: 1-17-16

(Seal)



1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMONS PLEAS
2 COUNTY OF YORK

3 PATRICIA CRAIG,)
4)
5 Plaintiff,)
6)
7 vs.)
8)
9 E. EARL JENKINS, JR. MD,)
10 also known as EVERETT EARL)
11 JENKINS, JR. MD, ET AL,)
12)
13 Defendants.)

CASE NO:
2014-CP-46-00508

14 DEPOSITION OF GABOR KOVACS, MD

15 May 6, 2015

16 1:08 p.m.

17 204 E. 15th Street
18 Alma, Georgia

19 Erin B. Poepping, Certified Court Reporter, 2661
20
21
22
23
24
25

Pages 2..5

Page 2

1 APPEARANCES OF COUNSEL

2

3 On behalf of the Plaintiff:

4 GLENN WALTERS, SR., Esq. (By telephone)

5 Glenn Walters & Associates, PA

6 1910 Russell Street (29115)

7 PO Box 1346

8 Orangeburg, South Carolina 29116

9 (803) 531-8844

10 glennwaltersp@gmail.com

11

12 On behalf of the Defendants E. Earl Jenkins, MD a/k/a

13 Everett Earl Jenkins, Jr., MD and York Pathology

14 Associates, LLC:

15 KELLI L. SULLIVAN, Esq.

16 McKay, Cauthen, Settana & Stubbley, PA

17 1303 Blanding Street

18 PO Drawer 7217

19 Columbia, South Carolina 29202

20 (803) 256-4645

21 ksullivan@mckayfirm.com

22

23 On behalf of the Defendant Amisub of South Carolina,

24 Inc., d/b/a Piedmont Medical Center:

25 WILLIAM U. GUNN, Esq.

Holcombe Bomar, PA

100 Dunbar Street (29306)

Suite 200

PO Box 1897

Spartanburg, South Carolina 29304

(864) 594-5301

bgunn@holcombebomar.com

- - -

Page 3

1 INDEX TO EXAMINATIONS

2

3

4 EXAMINATION OF GABOR KOVACS, MD

5 By Ms. Sullivan 4

6 By Mr. Gunn 48

7

8 INDEX TO EXHIBITS

9

Exhibit	Description	Page
Exhibit 1	Dr. Kovacs' CV	4
Exhibit 2	Affidavit	4
Exhibit 3	Amended Summons & Complaint	4
Exhibit 4	Pathologic Diagnosis	23
Exhibit 5	Op/Procedure Note	32

15 (Original Defendants' Exhibits 1 through 5

16 have been attached to the original transcript.)

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1 (Reporter disclosure made pursuant to

2 Article 8.B. of the Rules and Regulations of the

3 Board of Court Reporting of the Judicial Council of

4 Georgia.)

5 (Defendants' Exhibits No. 1 through 3

6 marked for identification.)

7 GABOR KOVACS, MD,

8 having been first duly sworn or affirmed, was

9 examined and testified as follows:

10 EXAMINATION

11 BY MS. SULLIVAN:

12 Q. Dr. Kovacs, you have been sworn. My name

13 is Kelli Sullivan. I represent Dr. Jenkins in this

14 matter. We are here to take your deposition today,

15 is that your understanding?

16 A. Yes, ma'am.

17 Q. Great.

18 And I believe you probably have had your

19 deposition taken before, correct?

20 A. Yes, ma'am.

21 Q. Well, I realize that you have had your

22 deposition in the past, but I need to give you a

23 couple of ground rules. The State of South Carolina

24 has a few things that I need to mention to you.

25 First of all, if you don't understand any

Page 5

1 question that I ask or it is not clear, please let me

2 know, I will be happy to rephrase it, all right?

3 A. Yes, ma'am.

4 Q. Secondly, this is not an endurance contest.

5 If you need to take a break, answer a call, you just

6 let us know and we will be happy to do that, okay?

7 A. Yes, ma'am.

8 Q. And you are doing a great job of this so

9 far, but please -- especially for Mr. Walters' sake,

10 try to give me a verbal answer to my questions rather

11 than a nod or a shake; that is very difficult for the

12 court reporter, all right?

13 A. Yes, ma'am.

14 Q. And if I ask you at some point is that a

15 yes, is that a no, I am not trying to be rude. I am

16 trying to make sure I can figure it out six months

17 from now when I read the transcript, okay?

18 A. Yes, ma'am.

19 Q. Super.

20 You have given me your CV that we have

21 marked as Exhibit 1, and we are here today at 204

22 East 15th Street, Alma, Georgia, is that your current

23 business address?

24 A. Yes, ma'am.

25 Q. And I see from looking at your CV that you

Page 6 1 were educated, it looks like, in New York, and your 2 MD is from Catholic University in Belgium? 3 A. Yes, ma'am. 4 Q. Can you just give me a brief summary, 5 because we have your CV, of your educational history 6 after your MD in 1976? 7 A. After my MD I did an internship at the 8 Brooklyn Jewish Hospital, followed by a residency in 9 general surgery at the Brookdale Medical Center in 10 Brooklyn, New York. After that I did a fellowship in 11 thoracic and cardiovascular surgery at Nassau 12 Hospital in Mineola. 13 Q. And you are a general surgeon? 14 A. Yes, ma'am. 15 Q. You have been since when? 16 A. I have been a general surgeon since I 17 finished my residency in 1981. 18 (A discussion was held off the record.) 19 Q. (By Ms. Sullivan) Doctor, we had just 20 talked about your educational history. Are you board 21 certified in general surgery? 22 A. Yes, ma'am. 23 Q. And are you board certified in anything 24 else? 25 A. No, ma'am. Page 7 1 Q. Have you ever been board certified in 2 anything else? 3 A. No, ma'am. 4 Q. Doctor, we are here to talk about a case 5 today that involves a fine needle aspiration of a 6 thyroid and a thyroidectomy. Have you ever published 7 anything that you would consider to be relevant to 8 the issues we are going to talk about today? 9 A. No, ma'am. 10 Q. Outside of any training that you did in 11 medical school, have you had any other training in 12 pathology? 13 A. No, ma'am. 14 Q. Is it fair to say that since before 1980 or 15 around 1980 was probably your last training or 16 education in pathology? 17 A. Yes, ma'am. 18 Q. Doctor, when were you first contacted about 19 this case? 20 A. I guess somewhere around the time when the 21 affidavit was submitted. 22 Q. That would have been in November -- October 23 or November of 2013? 24 A. It must have been somewhere around that 25 time, yes, ma'am.	Page 8 1 Q. And did that contact come from Mr. Walters? 2 A. If I remember right, that came through an 3 organization called Healthcare Auditors. 4 Q. Now, what kind of organization is 5 Healthcare Auditors? 6 A. It is a company, I believe, that reviews 7 medical records and then sends them out to different 8 specialties, depending on what the case is involved 9 in, and sends it out to different specialists in the 10 medical field for further review. 11 Q. Essentially, an expert witness search 12 service? 13 A. Yes, ma'am. 14 Q. And how did you come to be affiliated with 15 Healthcare Auditors? 16 A. I think many years ago I was sitting in a 17 lawyer's office and I was looking through their 18 journals, and there was an advertisement from them 19 and I called the number. 20 Q. So you approached them? 21 A. Yes, ma'am. 22 Q. And so about how long have you been doing 23 expert witness work? 24 A. I have been doing it for them 25 intermittently since 1996. Page 9 1 Q. So close to 20 years? 2 A. Close to it, yes, ma'am. 3 Q. How do you bill for your services as an 4 expert witness? 5 A. I usually -- initially-when-they-send-me-a 6 case they attach a check along with it. How they 7 calculate the amount I really am not sure. They 8 usually send the check along with the medical records 9 to cover the review and submitting a report on it. 10 Q. Do you know how much your check was in this 11 case? 12 A. I don't remember, no. 13 Q. Can you give me a ballpark? Is it usually 14 in the hundreds, in the thousands? 15 A. It varies anywhere from 500 to 1,200 16 depending on the complexity of the case. 17 Q. That initial check, however much it is, 18 that is to cover your initial review and your 19 affidavit or report, correct? 20 A. Yes, ma'am. 21 Q. What about work beyond the initial review 22 and the affidavit or report, how do you charge for 23 that? 24 A. Beyond that, usually for like when I do a 25 deposition, I usually charge 450 an hour for a
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Page 10 1 minimum of six hours, and that includes the 2 deposition and preparing for the deposition. 3 Q. What about for trial? 4 A. For trial I usually charge 4,500 for the 5 day since most of the time it takes up my whole day 6 plus expenses. 7 Q. Other than whatever initial check it was 8 that you have received in this case, have you 9 invoiced Mr. Walters or Healthcare Auditors for any 10 additional monies? 11 A. I invoiced for the deposition. I don't 12 remember anything else at this point. 13 Q. Aside from the deposition today and getting 14 prepared for the deposition today, about how much 15 time do you think that you spent reviewing the 16 records in formulating your opinions? 17 A. Initially, probably I spent reviewing the 18 records and formulating the opinion somewhere between 19 two to three hours. 20 Q. And then fair to say that you haven't 21 really done any other work on it other than getting 22 ready for this deposition? 23 A. Yes, ma'am. 24 Q. Now, I understand that you have some kind 25 of relationship with Healthcare Auditors. Are you	Page 12 1 A. Maybe three-quarters of it would be through 2 Healthcare Auditors and about a quarter of it comes 3 directly. 4 Q. Now, to your knowledge, have you ever 5 reviewed anything for Mr. Walters before? 6 A. I don't believe so. No, ma'am. 7 Q. Have you ever opined or done work for other 8 South Carolina attorneys before? 9 A. Yes, ma'am. 10 Q. My research seems to indicate about seven 11 times, do you think that is ballpark correct? 12 A. I believe so. Yes, ma'am. 13 Q. Now, of the cases that you do for 14 Healthcare Auditors, which represents roughly 75 15 percent of the cases that you do, are those primarily 16 for plaintiffs or is it a mix? 17 A. It is primarily for plaintiffs. 18 Q. What about the additional 25 percent that 19 come to you direct? 20 A. Some of it is for the defendants, some of 21 it is for the plaintiffs. 22 Q. Have you ever testified at trial on behalf 23 of a defendant? 24 A. Yes, ma'am. 25 Q. When was that?
Page 11 1 listed with any other expert witness search services? 2 A. No, ma'am. 3 Q. Do you maintain any kind of website or 4 on-line presence to solicit others to use your 5 services as an expert? 6 A. No, ma'am. 7 Q. Now, you have been doing this for close to 8 20 years, about how many cases annually do you 9 review? 10 A. Roughly -- the last couple of years it's 11 been kind of less, but maybe eight to ten a year, 12 approximately. The last couple of years it has been 13 maybe two or three. 14 Q. So it fluctuates to some degree? 15 A. Yes, ma'am. 16 Q. Have you had any other expert witness work 17 or inquiries apart from Healthcare Auditors, or do 18 all of your cases come through Healthcare Auditors? 19 A. No. Sometimes I will get cases from 20 attorneys that I have worked with previously. 21 Instead of going through Healthcare Auditors, they 22 would contact me directly if they have a case. 23 Q. Can you give me a rough estimate of how 24 much comes through Healthcare Auditors versus how 25 much is direct in a percentage basis?	Page 13 1 A. It must have been, I don't know, six or 2 seven years ago. 3 Q. Have you testified at trial on behalf of a 4 defendant more than once? 5 A. I am not sure. I don't remember exactly. 6 I am definite about one, but I don't know if I did 7 more or not. 8 Q. Now, do you testify outside of the 9 Georgia-South Carolina general area, geographic area? 10 A. Yes, ma'am. 11 Q. Can you give me an estimate of how many 12 states you believe you have testified in over the 13 course of your expert witness work? 14 A. It must be about at least maybe a half 15 dozen. 16 Q. Doctor, have you ever been personally sued 17 for malpractice? 18 A. Yes, ma'am. 19 Q. How many times? 20 A. About, I would say, probably around seven 21 times. 22 Q. When was the most recent case? 23 A. The most recent case must be at least six 24 or seven years ago. 25 Q. Was it here in Georgia?

Page 14 1 A. No, ma'am. 2 Q. Let me ask the question a different way. 3 Have you ever been sued for malpractice in 4 the State of Georgia? 5 A. No, ma'am. 6 Q. Where were the other malpractice suits that 7 you had? 8 A. In New Jersey. 9 Q. New Jersey is the only other state? 10 A. Yes, ma'am. 11 Q. Now, I am sure that you have a license to 12 practice medicine in Georgia. Do you still maintain 13 a license anywhere else? 14 A. I have a license, although it is inactive, 15 in New Jersey and in Florida. 16 Q. Is your Florida license active? 17 A. Since I didn't pay the dues, I doubt it. 18 Q. They tend to not like it when you don't pay 19 the dues. 20 A. No, they don't. 21 Q. Now, of those seven times that you were 22 sued, was any money ever paid out on your behalf to 23 settle any of those cases? 24 A. Yes, ma'am. There was a settlement. 25 Q. One?	Page 16 1 A. I believe I have. I am pretty sure I have, 2 but that was a good number of years ago. 3 Q. Do you remember anything about the case? 4 A. No, ma'am. Nothing at all. 5 Q. Have you ever testified at trial anywhere 6 involving a thyroid or the pathology of a fine needle 7 aspiration? 8 A. Not to the best of my recollection, no, 9 ma'am. 10 Q. Has any court ever recognized you as an 11 expert in pathology? 12 A. No, ma'am. 13 Q. Have you ever attempted to be recognized as 14 an expert in pathology? 15 A. No, ma'am. 16 Q. Are you holding yourself out as an expert 17 in pathology? 18 A. No, ma'am. 19 Q. What hospital do you currently have 20 privileges in? 21 A. I still have privileges at the hospital 22 where I worked previously. Well, where I was on 23 staff previously, which is CentraState Medical Center 24 in Freehold, New Jersey, and I currently practice at 25 Bacon County Hospital here in Alma, Georgia.
Page 15 1 A. Yes, ma'am. 2 Q. What happened to the other six? 3 A. They got dismissed or I got dropped from 4 the case. 5 Q. Tell me about the one that you settled. 6 A. The one that I settled was actually not 7 even -- it was my partner's patient, actually, that 8 had peripheral vascular disease. We were on staff in 9 two separate hospitals, but the hospital this patient 10 was admitted to I had vascular privileges and he 11 didn't so he was admitted under my care. We did a 12 femoropopliteal bypass on him and it failed. Then we 13 went in to revise it, that didn't stay open. To make 14 a long story short, he was transferred to another 15 institution, but they still tried again to 16 revascularize his leg, but ultimately he wound up 17 with an amputation. 18 Q. And I won't hold you to a date exactly, but 19 when was that? 20 A. I don't know. It was around 2004, 2006, 21 something around there. 22 Q. In the early-to-mid 2000s? 23 A. Yes, ma'am. 24 Q. Have you ever testified at trial in South 25 Carolina?	Page 17 1 Q. Is that the one kind of across the parking 2 lot? 3 A. Yes, ma'am. 4 Q. Actually, that is where I went looking for 5 you earlier. 6 Tell me about your surgical practice. I 7 know that you're a general surgeon. Do you do more 8 of one kind of thing than another? 9 A. Yes. 10 Q. Tell me about that. 11 A. I do hundreds of gallbladders down South. 12 Q. Is it mostly laparoscopic or open, or... 13 A. No, it is mostly laparoscopic. 14 Q. You said gallbladders and associated 15 surgeries are the bulk of your practice? 16 A. Well, gallbladders, hernias, I do thyroid 17 surgery, I do breast surgery, occasionally I will do 18 some vascular surgery, exploratory laparotomies, 19 bowel surgery, colon resections. 20 Q. You mentioned you will do a thyroid 21 surgery, and, again, ballpark, I am not going to hold 22 you to this exactly, but about how many thyroid 23 surgeries do you reckon you do in a year? 24 A. In a year, probably two or three. 25 Q. Are those ones where someone has had a

Page 18 1 suspicious biopsy of some sort? 2 A. Yes, ma'am. 3 Q. Have you at any hospital where you have 4 ever had privileges had your privileges revoked or 5 suspended? 6 A. No, ma'am. 7 Q. Have you ever had any trouble with a state 8 licensing board in any state in which you have been 9 licensed? 10 A. No, ma'am. 11 Q. I think we said that you are licensed in 12 Georgia, maybe New Jersey and maybe Florida? 13 A. Well, I have licenses, I just haven't -- I 14 have not kept them active. 15 Q. I see. 16 Now, in order to prepare for today did you 17 review any journals or literature? 18 A. No, ma'am. 19 Q. Did you in preparation for your affidavit 20 or while you were getting ready to write your 21 affidavit? 22 A. No, ma'am. 23 Q. Can you tell me what all you have reviewed 24 either to prepare for today or to write your 25 affidavit?	Page 20 1 ma'am. 2 Q. Well, if you think of something as we go, I 3 want you to let me know, okay? 4 A. Yes, ma'am. 5 Q. Have you reviewed the summons and complaint 6 that has been filed in this case? 7 A. I am not sure. 8 Q. Well, I may have some questions on that 9 later. I will show you a copy if indeed I ask 10 anything about that. 11 I believe that you said that you had 12 surgical privileges at Bacon County? 13 A. Bacon County, yes, ma'am. 14 Q. Now, are those general surgery privileges? 15 A. General surgery and vascular surgery 16 privileges. 17 Q. Do you have any privileges at Bacon that 18 would allow you to read pathology slides or specimens 19 for patients other than your own? 20 A. No, ma'am. 21 Q. When you do have a patient who has had, 22 let's say, a biopsy of some sort or a fine needle 23 aspiration, something that requires pathological 24 review, do you personally review those slides? 25 A. No, ma'am.
Page 19 1 A. I reviewed medical records from Piedmont 2 Medical Center, I believe I reviewed some office 3 notes from some ear, nose and throat specialists and 4 office notes from the office of Dr. Jones. 5 Q. Have you reviewed any depositions? 6 A. No, ma'am. 7 Q. No depositions of Dr. Jones? 8 A. No, ma'am. 9 Q. Or of the plaintiff? 10 A. No, ma'am. 11 Q. Have you ever met Ms. Craig or spoken with 12 her? 13 A. No, ma'am. 14 Q. I don't know if you have a copy of your 15 affidavit handy, but we have one here marked as an 16 exhibit if you need it. 17 A. Actually, I do have a copy of it. 18 Q. Great. 19 I will just ask you to review that really 20 quickly. I mean, take as much time as you need. 21 What I am wanting to know is if your affidavit 22 contains all of the opinions that you have reached so 23 far in this case or if there are others that we will 24 need to talk about. 25 A. That pretty much sums up my opinions, yes,	Page 21 1 Q. Now, in this case that we are talking about 2 for Ms. Craig, there were essentially two -- 3 actually, three specimens that a pathologist looked 4 at. The first was the fine needle aspiration. The 5 second was the specimen that was taken 6 intraoperatively, and then the third, obviously, was 7 the thyroid that was taken out. Did you review any 8 of the slides of any of those specimens? 9 A. No, ma'am. 10 Q. I notice that your affidavit in the second 11 paragraph says that you are not a pathologist but 12 that you work closely with pathologists who are 13 instrumental to your surgical practice. Other than 14 working with pathologists who read biopsies or slides 15 for you, what other contacts do you have with 16 pathologists? 17 A. Well, that's basically my main contact, 18 that I rely on them for pathological interpretations 19 of specimens that I would wind up removing, whether 20 it is a thyroid or colon cancer or any other -- 21 whether it is an appendix, anything else that needs 22 pathological interpretation. I usually interact with 23 them to get the appropriate diagnosis. 24 Q. Have you ever had an experience in your 25 surgical career where you will have sent something

Page 22 1 off for pathology and gotten an inconclusive result 2 from a pathologist? 3 A. Yes, it has happened. Yes, ma'am. 4 Q. And does that necessarily mean that the 5 pathologist was in error? 6 A. Well, if he reads it is inconclusive, then 7 the assumption is he has not made a decision about 8 it, so it is not an error until you get a final 9 diagnosis. 10 Q. What does it mean when a pathologist sends 11 you a report that says that something is suspicious 12 for cancer, for example? 13 A. That means that he is seeing certain 14 histological features that makes him think that the 15 tissue that he is reviewing is likely to be 16 malignant. 17 Q. But that is not a definitive diagnosis of 18 cancer? 19 A. It's not definitive, not until you get more 20 tissue, until he gets more tissue submitted to him. 21 Q. Now, when we are talking about Mrs. Craig 22 in this case -- I will kind of narrow my focus to 23 this case, we're talking about, as I said, three 24 different specimens, the first being the fine needle 25 aspiration that was done. Are you familiar with any	Page 24 1 little bullet point there that says, "Category 4 2 lesion, suspicious for malignancy, excision is 3 indicated." 4 Tell me what a category 4 lesion is. 5 A. I don't know. It is some kind of 6 pathological evaluation. I am not sure. I don't 7 know what a category 4 lesion is. 8 Q. Are you familiar with the Bethesda criteria 9 for evaluation of fine needle aspirations? 10 A. Yes, I have seen it, but don't ask me to 11 repeat it. 12 Q. Okay. 13 A. I cannot remember it. 14 Q. So you're unfamiliar with what a category 4 15 is in the range of how likely something is to be 16 cancerous? 17 A. As I said, I am not familiar with that 18 classification. 19 Q. Okay. 20 A. I mean, I have seen it, but they give you a 21 list that you would have to sit there for -- you 22 know, make a really intense effort to memorize it. 23 Q. Let me ask you this: Do you know where in 24 the range of suspicious 4 would fall? 25 A. No. Again, as a surgeon, we look at the
Page 23 1 statistics, journal articles or publications that 2 suggests what a false-positive or false-negative rate 3 is for cancer on fine needle aspirations? 4 A. If you are talking specifically about 5 thyroid cancer, fine needle aspiration -- 6 Q. I am. 7 A. -- usually the specificity and the 8 sensitivity of a fine needle aspiration is -- the 9 accuracy is about 95 to 97 percent on a fine needle 10 aspiration. 11 MS. SULLIVAN: Glenn, I am marking the 12 pathology report for the fine needle aspiration 13 as the next exhibit. 14 (Defendants' Exhibit No. 4 marked for 15 identification.) 16 MR. WALTERS: Okay. 17 Q. (By Ms. Sullivan) Doctor, I will hand this 18 to you just for ease of our reference. 19 A. Yes. 20 Q. Doctor, I have handed you what has been 21 marked as Exhibit 4, which is the pathology results 22 from the fine needle aspiration from Ms. Craig's 23 thyroid nodule, have you reviewed this before? 24 A. Yes, ma'am. 25 Q. I want to draw your attention to that last	Page 25 1 words. I mean, when a pathologist tells us that the 2 tissue that we removed is suspicious for carcinoma, 3 whether it is papillary carcinoma, and then they tell 4 you that the cells are characteristic of papillary 5 carcinoma, that's what gets our attention. Category 6 4 or category 3, that is pathological 7 classifications. I mean, we really look for the 8 diagnosis in the sense of is it benign or malignant, 9 that is what we want to know. 10 Q. Do you take this report as saying this 11 specimen was benign or malignant? 12 A. It was malignant according to the report. 13 Q. Well, the report say "suspicious for 14 malignancy." 15 A. Yes, it is suspicious for papillary 16 carcinoma, but then it goes on to make it sound even 17 more malignant by saying, "follicular epithelial 18 cells are accompanied by those with nuclear folds and 19 nuclear inclusions which are characteristic of 20 papillary carcinoma." That puts a little extra 21 emphasis on the malignant portion of the report. 22 Q. Does this report in any way give a 23 definitive diagnosis of cancer? 24 A. That's very close to definitive. I mean, 25 the pathologist seems to be pretty much saying that

Page 26 1 he is leaning towards the diagnosis of this patient 2 having papillary carcinoma. 3 Q. For the purposes of this question, let's 4 assume -- or I would like for you to assume that a 5 category 4 lesion on the Bethesda Scale means that 6 there is a 65 to 75 percent chance that the lesion is 7 malignant. If that is the case, would not the 8 converse be true, that then there is a 25 to 35 9 percent chance that the lesion is not malignant? 10 A. Well, plain math, yes, ma'am. 11 Q. Well, math is not my strong suit. I just 12 wanted to make sure I interpreted that correctly. 13 Now, once you have a patient, when you have 14 this pathologic diagnosis back that says something is 15 suspicious for malignancy, what then should be the 16 surgeon's next step? 17 A. To go in and remove the nodule and submit 18 it to the pathologist and then get a definite 19 diagnosis based on the further specimen. 20 Q. When you say "remove the nodule," do you 21 mean remove the whole thyroid or whatever little area 22 there is? 23 A. Well, when you go in you remove more of the 24 tissue. If the diagnosis submitted by the 25 pathologist is not 100 percent, you submit more	Page 28 1 incorrectly or came to an incorrect collusion? 2 A. Well, having known the whole case, 3 obviously he came to an incorrect conclusion since 4 the thyroid turned out to be benign. 5 Q. Let me ask you -- let me kind of understand 6 that then: This report says that the lesion is 7 suspicious for malignancy. Now, "suspicious" is not 8 definitive, correct? 9 A. Yes, ma'am. 10 Q. Obviously, when you take out the whole 11 thyroid and can look at it you can come to a 12 definitive diagnosis. 13 A. Yes, ma'am. 14 Q. So how is it that he is incorrect in saying 15 that this specimen was suspicious for a malignancy? 16 A. Well, he is incorrect because the specimen 17 or the nodule, I guess the dominant nodule where the 18 fine needle aspiration was done, turned out to be 19 benign, so obviously he made the incorrect diagnosis. 20 Q. I guess what I am trying to figure out is 21 if someone is inconclusive with their first opinion, 22 which it sounds to be this is, it is suspicious. It 23 is not guaranteed, it is suspicious. 24 A. But it is also characteristic. That is 25 saying that -- when you say it is characteristic of
Page 27 1 tissue to him. Then if that comes back as malignant, 2 then you go ahead and do a total thyroidectomy. 3 Q. Now, would you agree with me that Ms. Craig 4 had more than one nodule in her thyroid? 5 A. Yes, ma'am. 6 Q. Does the fact that she has more than one 7 nodule have any bearing on the likelihood of whether 8 or not she had thyroid cancer? 9 A. Minimally. Slightly. It slightly 10 increases the chance of her having a malignant 11 nodule. 12 Q. Now, do you have any way to disagree with 13 Dr. Jenkins' rating of this as a category 4 lesion? 14 A. Like I said, I am not familiar with the 15 categories so there is no way for me to disagree with 16 him. 17 Q. Okay. 18 A. No, ma'am. 19 Q. So you have no disagreement with the fact 20 that this sample that was submitted to him was 21 suspicious for malignancy? 22 A. No, I have no reason to disagree with him. 23 Q. You haven't reviewed the slides? 24 A. No, ma'am. 25 Q. So you cannot say that he reviewed them	Page 29 1 papillary carcinoma, that means you're seeing certain 2 cells or you believe that you are seeing certain 3 cells that appear to be cancerous papillary carcinoma 4 of the thyroid. 5 Q. Let me go back to my question because I did 6 not quite finish it. 7 If the specimen is suspicious, not 8 definitive, and then later on we learn that the 9 entire thyroid, once the exam was done, was benign, 10 are you saying that kind of the end result forms your 11 opinion as to the first read? 12 A. Well, the end results form my opinion on 13 the whole case because the fine needle aspiration as 14 well as the frozen section that was done 15 intraoperatively, both were interpreted as leaning 16 towards a malignant lesion. 17 Q. Right. 18 A. Both of them were leaning towards that. 19 Each one may not have been 100 percent, but it was 20 certainly leading the surgeon in the direction that 21 he believed he was dealing with a malignant lesion, 22 which resulted in doing a total thyroidectomy, which 23 is the appropriate treatment for a malignant thyroid 24 lesion. 25 Q. I will take this outside of the medical

Page 30 1 realm just for a minute. If the weatherman tells you 2 that he is 75 percent sure it is going to rain 3 tomorrow and it doesn't rain, does that mean that the 4 weatherman was wrong? 5 A. It certainly does. 6 Q. All right. Why? Because there is a 25 7 percent -- he is telling you there is a 25 percent 8 chance it is not going to rain. 9 A. Well, but he is leaning -- he is still 10 making you believe -- when he tells you 75 percent 11 chance, that means he is making you lean towards the 12 idea that it is probably going to rain. 13 Q. If he tells you there is a 25 percent 14 chance it is not going to rain, which is the 15 converse, and it does rain, is he wrong? 16 A. I don't know. I really don't know. 17 Q. Well, I am trying to figure out if someone 18 gives you a percentage chance of something and the 19 smaller percent chance is what actually happens, does 20 that necessarily mean they are wrong. 21 A. Well, this is different from the weather. 22 I mean, this involves doing something based on 23 somebody's report. I mean, you are committing 24 yourself to a procedure based on the pathologist's 25 report. Yeah, you are committing yourself to taking	Page 32 1 mastectomy and it came back as benign, that's a 2 problem. 3 Q. Well, whose ultimate decision was it to 4 take out Ms. Craig's thyroid? 5 A. The ultimate decision is the surgeon's, but 6 he bases that decision on -- he relies on the 7 pathologist to make that decision. 8 Q. Now, you don't have any evidence that 9 Dr. Jenkins, the pathologist, in any way spoke with 10 Ms. Craig about his results? 11 A. I don't know, but I doubt it. Usually, 12 pathologists don't talk directly with the patients, 13 no, ma'am. 14 MS. SULLIVAN: I will mark one more. 15 (Defendants' Exhibit No. 5 marked for 16 identification.) 17 MS. SULLIVAN: Glenn, I am marking the 18 operative report by Dr. Jones as Exhibit 5. It 19 is a three-page document. 20 MR. WALTERS: That's Exhibit 5? 21 MS. SULLIVAN: Yes. 22 MR. WALTERS: Thanks. 23 Q. (By Ms. Sullivan) Doctor, I have marked 24 the operative report by Dr. Jones as Exhibit 5. I 25 assume that you're familiar with this.
Page 31 1 an umbrella maybe when you think it might rain, but 2 the consequence of it is not the same as having your 3 thyroid taken out - you just bring your umbrella home 4 and leave it there. 5 Q. Or if you are like me, you leave it in the 6 car and then when it does rain you will be inside and 7 not be able to get it. 8 A. Right. 9 Q. I understand where you are going with this 10 being more serious, and I am certainly not trying to 11 make light. What I am trying to understand is -- and 12 just for the purposes of argument, let's say that 13 category 4 is a 75-25 because that is easy numbers to 14 work with. Let's say a category 4 lesion means there 15 is a 75 percent chance it is cancer, there is a 25 16 percent chance it is not, okay? 17 A. Yes, ma'am. 18 Q. Then later on we find out, guess what, not 19 cancer. Are you saying that because we later find 20 out it is not cancer that the initial read had to be 21 wrong? 22 A. Yes, the initial read was still wrong, 23 because the other doctor, the surgeon, is dependent 24 on that read. If you had a breast biopsy and it came 25 back as suspicious for malignancy and you underwent a	Page 33 1 A. Yes, ma'am. 2 Q. I will draw your attention to the second 3 page, the first paragraph. The last sentence or two 4 of the first paragraph of the second page says, "The 5 isthmus was clamped and the right lobe was removed 6 and sent for frozen section. Frozen section revealed 7 similar atypia to the needle biopsy. No definitive 8 diagnosis could be made but total excision was 9 recommended." 10 Did I read that correctly? 11 A. Yes, ma'am. 12 Q. Okay. You agree with me then that even the 13 frozen section that was done intraoperatively was 14 inconclusive? 15 A. It was inconclusive but still leaning 16 towards malignancy. 17 Q. Well, ultimately the surgeon makes that 18 decision, correct? 19 A. Yes, but it is heavily based on -- matter 20 of fact, it is totally based on the pathologist's 21 report. It is pretty much based on that. We rely on 22 the pathologist to tell us whether we are dealing 23 with something benign or malignant. When the 24 pathologist is leaning towards malignancy, then you 25 have to go ahead and proceed with the procedure.

Page 34 1 Especially when excision is recommended, you have to 2 take out whatever tissue that -- whatever organ that 3 you're dealing with because on the converse, if you 4 leave it in and it turns out to be definitely 5 malignant, then you have to go back and bring the 6 patient in, put them under anesthesia again and get 7 sued for that. 8 Q. So, is it fair to say it's a 9 better-safe-than-sorry approach? 10 A. Yes. Definitely. You want to be safe, 11 yes, ma'am. 12 Q. So in your opinion, the safest thing to do 13 for Ms. Craig was to take out her thyroid, if you 14 were in Dr. Jones' shoes? 15 A. Yes, because the pathologist is sort of 16 telling you, is leaning towards the diagnosis of a 17 malignancy or a malignant nodule. 18 Q. Now, is it your opinion that a biopsy needs 19 to be completely definitive to be within the standard 20 of care? 21 A. I mean, you like to have it definitive, but 22 sometimes the pathologist will tell you that he is 23 not totally definite, he may want to do different 24 cuts or different staining of the tissue. Again, I 25 mean, these things, whether it's definitive or not,	Page 36 1 diagnosis is. When he relays that to the surgeon, 2 the surgeon has to act on that. 3 Q. Take this out of the thyroid. For example, 4 you told me a minute ago you do a good many 5 gallbladder surgeries. 6 A. Yes, ma'am. 7 Q. And the majority of them are laparoscopic? 8 A. Almost all of them. Yeah, 99 percent are. 9 Q. Do you have an occasion where you have to 10 do one open? 11 A. Very rarely, yes, ma'am. 12 Q. Okay. 13 A. Yes, ma'am, rarely. 14 Q. One percent of the time? 15 A. Yeah, maybe. 16 Q. So 1 or 2 percent maybe? 17 A. Even less than 1 percent, but yeah. 18 Q. For round numbers can we say 1 percent? 19 A. Yeah, we can say 1 percent. Yes, ma'am. 20 Q. And I assume that you tell your patients, 21 Ms. Patient, I am planning on doing this 22 laproscopically for you, and 99 percent of the time I 23 can do it laparoscopically, but every now and then, 24 you know, I have to do it open, right? 25 A. Yes, ma'am.
Page 35 1 we are dependent on the pathologist's decision as to 2 how definite he is or whether he wants any further 3 testing done on the tissue that has been submitted to 4 him. 5 Q. But when a pathologist tells you that 6 something is not definitive one way or the other, 7 obviously it is going to come out one way or another 8 if the organ comes out. You will know eventually, 9 right? 10 A. Yes, ma'am. 11 Q. So if a pathologist say, gosh, Dr. Kovacs, 12 I don't know about this, you know, I am leaning 13 towards cancer but, you know, I just don't know. I 14 am about 60 percent, 40 percent, I can't tell you, 15 and you take out the thyroid and it is not cancerous, 16 does that by definition mean that the pathologist was 17 wrong? 18 A. Well, yes and no. I mean, he is wrong in 19 the sense that he told you that this is more likely 20 -- it is leaning towards a papillary carcinoma. I 21 mean, that seems to be the way he is going. He seems 22 to be believing -- based on the tissue that he 23 reviewed, he seems to be seeing histologically, cells 24 that make him think that he is dealing with a 25 papillary carcinoma, so he believes that is what the	Page 37 1 Q. And let's say that you're operating on 2 Mrs. Smith and you tell her that, and you get in 3 there and you go, well, crud, I need to do this open 4 for whatever reason, it doesn't mean that you were 5 wrong. 6 A. No. It doesn't mean I am wrong, no. 7 Q. So if a pathologist tells you this is 60 8 percent likely to be cancer and 40 percent unlikely 9 to be cancer, it doesn't mean he is wrong if it turns 10 out not to be cancer. 11 A. Well, it's not quite the same thing. Well, 12 he is wrong because his diagnosis or his leaning 13 towards the malignancy has consequences to it - it 14 makes you do an operation that would not have to have 15 been done. I mean, when I remove the gallbladder, 16 that gallbladder has to come out. Whether I use one 17 technique or another, that gallbladder either way has 18 to come out. The open or laparoscopic is not going 19 to end in a different result. The patient it still 20 going to wind up without a gallbladder. In the case 21 of a tissue diagnosis, if the tissue is benign, the 22 patient will keep their organ. If it is malignant, 23 that organ is going to come out. 24 Q. Now, would you agree with me that -- let's, 25 again, take the assumption that I have been giving

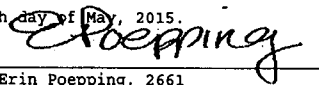
Page 38	Page 40
1 you so far, the 75-25 assumption for a category 4. 2 Would you agree with me that it is not Dr. Jenkins' 3 obligation to inform Ms. Craig of the 75-25 number? 4 A. I agree with you, yes, ma'am. 5 Q. Whose obligation would that be? 6 A. Well, I mean, it is the obligation of the 7 surgeon or the patient's primary care physician to 8 discuss the biopsy results with the patient and to 9 make the recommendation based on those results. 10 Q. And so therefore it would have been 11 Dr. Jones' responsibility to counsel Ms. Craig about 12 the likelihood of the malignancy of this sample? 13 A. Well, not the likelihood. He is going to 14 basically tell her that this appears to be a 15 malignant lesion based on the pathologist's report 16 and the treatment -- the recommendation is for 17 excision, to excise the tissue, and the 18 recommendation is to go ahead with the thyroidectomy. 19 Q. I will hand you what we have already marked 20 as No. 3, that's the complaint in this case. Have 21 you had a moment -- have you looked at that before, 22 do you think? 23 A. I am not sure. 24 Q. I am happy to give you a few minutes. I 25 was going to look at one or two specific paragraphs,	1 Q. And then this seems to indicate here that 2 Dr. Jones made the conclusion that plaintiff had 3 thyroid cancer, is that the way that you understand 4 it in this case? 5 A. That's what it states in the complaint, 6 yes, ma'am. 7 Q. Then Paragraph 20 of the complaint says, 8 "As a result of analyzing the frozen section, 9 Defendant York Pathology failed to provide Dr. Jones 10 a definitive diagnosis concerning the plaintiff's 11 thyroid. Therefore, Dr. Jones proceeded to complete 12 a total thyroidectomy of the plaintiff." 13 That's correct in your understanding? 14 A. Yes, ma'am. 15 Q. So it is Dr. Jones' decision to take this 16 thyroid out even in the absence of a definitive 17 diagnosis? 18 A. Yes, ma'am. 19 Q. And would you agree with me that it is the 20 responsibility of Dr. Jones, the surgeon, to have 21 counseled Ms. Craig about the potential for side 22 effects or complications resulting from the removal 23 of her thyroid? 24 A. Yes, ma'am. 25 Q. Is one of the potential side effects or
Page 39	Page 41
1 but if you want to take a few minutes and look over 2 the whole thing you just let me know. 3 A. Let me just take a look at it for a minute. 4 MS. SULLIVAN: Sure. Let's go off the 5 record for a second. 6 (Recess taken from 1:54 p.m. until 1:59 7 p.m.) 8 Q. (By Ms. Sullivan) The first one I would 9 like to ask you about is Paragraph 15 of the 10 complaint. May I see that just a second? I handed 11 you my only copy. I will read it into the record and 12 hand it back to you. 13 A. All right. 14 Q. Paragraph 15 says, "On October 12, 2010, 15 plaintiff returned to Dr. Jones' office for a 16 follow-up consultation concerning the nodule in her 17 throat. During this visit, Dr. Jones specifically 18 advised the plaintiff that she had papillary 19 carcinoma, hereinafter referred to as "thyroid 20 cancer." Based upon his medical conclusion that 21 plaintiff had thyroid cancer, Dr. Jones recommended 22 that plaintiff undergo a total thyroidectomy." 23 Is that your understanding of what happened 24 in this case? 25 A. Yes, ma'am.	1 complications vocal hoarseness? 2 A. Yes, ma'am. 3 Q. And that is a commonly known complication 4 from a thyroidectomy? 5 A. Yes, ma'am. 6 Q. Doesn't mean that somebody did the surgery 7 incorrectly, it just means sometimes it happens? 8 A. Sometimes it happens, yes, ma'am. 9 Q. Even in the absence of negligence? 10 A. Yes, ma'am. 11 Q. Now, do you have any knowledge of whether 12 or not Ms. Craig was properly informed that this 13 surgery may indeed impact her voice? 14 A. I have no knowledge of that. I am not 15 sure. I don't know. 16 Q. Did you review any of Ms. Craig's treatment 17 records prior to this event, the ones that go back to 18 the early 2000s? 19 A. Very superficially. I was really mainly 20 focused from the time period that she was found to 21 have a nodule in her thyroid based on her CT-PET scan 22 up to postoperatively. I mean, I saw some medical 23 records previous to that, but she had sinusitis and a 24 tonsillectomy, but I wasn't really focused to that. 25 Q. Do you recall any records from the late 90s

Page 42	Page 44
1 and early 2000s where Ms. Craig was complaining of 2 vocal hoarseness? 3 A. I don't specifically remember that, no, 4 ma'am. 5 Q. You don't dispute that they may exist? 6 A. No, I don't dispute that. No, ma'am. 7 Q. I think I asked you this earlier, but I 8 will try to circle back around. You haven't reviewed 9 any of the slides in this case? 10 A. No, ma'am. 11 Q. And you can't say to a reasonable degree of 12 medical certainty that Dr. Jenkins calling this a 13 category 4 was in error? 14 A. I can only say that based on the overall 15 medical records, the fact that it turned out to be 16 benign, it was an error. 17 Q. Right. 18 A. Calling it suspicious or calling it 19 papillary carcinoma was an error. 20 Q. That is using a retrospective approach, 21 correct? 22 A. Well, this is really a little bit more 23 concrete because we are dealing with actual tissues 24 that were misdiagnosed initially, and then when the 25 totality of the specimen was out, it turned out to be	1 be benign, but there was no way for him to know that. 2 The only thing he knew was that this is leaning -- 3 there is a likelihood of malignancy, excision was 4 recommended, and that's taking a real big chance to 5 say, well, I think he is wrong in reading it 6 malignant, I am going to leave that thyroid in. 7 That's not likely to happen. 8 Q. When you say, "excision is recommended," 9 who is it that you understand recommended the 10 excision? 11 A. The pathologist will say that usually. 12 They will include that in their report. 13 Q. Do you always do what the pathologist tells 14 you to do as a surgeon? 15 A. Well, they don't tell you very much to do 16 most of the time. I mean, you really rely on the 17 pathologist to guide you as to what needs to be done. 18 You look to them for the answer is it benign or 19 malignant, that is what you are usually looking for 20 from a pathologist, that is the answer that you need 21 for you to proceed with your operation. 22 Q. Turning to the complaint one more time, 23 doctor, looking at Paragraph 25(e), it says that, 24 "Dr. Jenkins and York Pathology breached the duty of 25 care owed to the plaintiff, including the following:"
Page 43	Page 45
1 benign; there was a misdiagnosis here. 2 Q. Where did Dr. Jenkins go wrong in his read 3 of the slides? 4 A. By calling it potentially malignant. 5 Q. No, no. I understand that. That's kind of 6 the broad picture. 7 What I am saying is: Did he look for a 8 certain shape of cell that wasn't there, did he look 9 for a certain color of cell that wasn't there, did he 10 find -- can you tell me that? 11 A. No, ma'am. You would have to ask a 12 pathologist that. 13 Q. So you're basing your opinion that he is 14 wrong on the aspiration diagnosis because of the 15 ultimate conclusion once the thyroid was removed? 16 A. Well, yes, I am basing it on pathological 17 readings. I mean, the whole case is based on 18 pathological readings, whether the reading was 19 initially leaning towards malignancy and then it 20 turns out to be benign. 21 Q. When Dr. Jones got the intraoperative 22 diagnosis of no definitive answer, would he have been 23 wrong to leave the thyroid in? 24 A. Well, if it turns out to be malignant, then 25 he would have been wrong. I mean, it turned out to	1 and then there is multiple paragraphs. 2 Then (e) says, "By unreasonably relying on 3 fine needle aspiration findings as a definitive 4 conclusion, that a total thyroidectomy was 5 indicated." 6 How did Dr. Jenkins unreasonably rely on 7 something? 8 A. I don't know. I did not write that 9 paragraph. 10 Q. The paragraph goes on to say -- to quote an 11 article or a part of a journal from Oral & 12 Maxillofacial Surgery in December of '09 that says 13 that there are false-negative and false-positive fine 14 needle aspirates that occur, and I will let you look 15 at that. I will not read it all into the record, but 16 you will agree with me that there are some number of 17 false-positives or false-negatives in fine needle 18 aspirates, correct? 19 A. Yes, ma'am. 20 Q. If a surgeon relies on a sample that turns 21 out to be a false-positive or turns out to be a 22 false-negative, does that mean that the surgeon was 23 wrong? 24 A. The surgeon is never wrong. 25 Q. You know, funny, every surgeon I have ever

Page 46 1 met tells me that. 2 A. Well, it must be true. 3 Q. All joking aside, let's use the number that 4 you used earlier, which I think was 90-some-odd 5 percent. 6 A. The accuracy of FNA? 7 Q. Right. You said 97 percent. 8 A. Well, it is about 95 for papillary 9 carcinoma of the thyroid. 10 Q. So 95 percent of the time they are right. 11 That means 5 percent of the time you get a 12 false-negative or false-positive, right? 13 A. Yes. Yes, ma'am. 14 Q. So if I am a surgeon, and I have a 15 pathology report in front of me that says it is 16 positive for carcinoma, and I go take the thyroid out 17 and it turns out, you know what, it is one of those 18 false-positives, does that make me as a surgeon 19 wrong? 20 A. No, it doesn't. As a surgeon, you are 21 really relying on the pathologist's report. 22 Q. Does it make the pathologist wrong? 23 A. Well, if he told the surgeon there was 24 malignant or most likely to be malignant and it turns 25 out to be benign, it does make him wrong.	Page 48 1 under those circumstances would go ahead and proceed 2 with the thyroidectomy. 3 MS. SULLIVAN: Doctor, I don't think I have 4 any other questions. Mr. Gunn may have a few 5 and then I may have to circle back around. 6 EXAMINATION 7 BY MR. GUNN: 8 Q. Doctor, we met. My name is Billy Gunn, and 9 I am a lawyer from Spartanburg, South Carolina. 10 A. You look familiar. 11 Q. I think I have been down here probably 12 before to take your deposition. 13 A. Okay. 14 MS. SULLIVAN: Billy just has one of those 15 faces. 16 Q. (By Mr. Gunn) I represent the hospital in 17 the case. Let me ask you this, sir: A surgeon -- 18 and I am assuming that you do this in your practice, 19 too, a surgeon, like Dr. Jones, under normal 20 circumstances will initially meet with a patient 21 before surgery, will he not? 22 A. Yes, sir. 23 Q. And the surgeon, the competent surgeon, 24 will gather a medical history, correct? 25 A. Yes, sir.
Page 47 1 Q. So it sounds like to me in the absence of a 2 definitive diagnosis -- it sounds like to me what you 3 are saying is in the absence of a definitive 4 diagnosis, the pathologist is always wrong or -- 5 A. No. 6 Q. -- likely to be wrong. 7 A. He can say, look, I cannot give you any 8 definitive idea. I mean, he can say that I really 9 can't come to any conclusion, I will need to do 10 further stains, further cuts, you know -- 11 Q. Right. 12 A. -- he can say that, I really can't come to 13 any conclusion. 14 Q. And that is actually what happened here in 15 the intraoperative specimen, isn't it? 16 A. I don't know. All I know is what happened 17 in the intraoperative specimen is that the report was 18 that the pathologist is seeing the same type of 19 atypical cells that he saw previously on the fine 20 needle aspiration, and he is recommending excision of 21 the organ. 22 Q. But Dr. Jones even says in his operative 23 report that no definitive diagnosis could be made. 24 A. That's correct. It is not definitive, but 25 it is leaning towards malignancy. Every surgeon	Page 49 1 Q. And will conduct an examination? 2 A. Yes, sir. 3 Q. If need be, will gather records from other 4 providers who may have seen the patient? 5 A. Yes, sir. 6 Q. And will gather all of this information 7 prior to making a decision to operate? 8 A. Yes, sir. 9 Q. One of the pieces of information that is 10 gathered is whatever laboratory data is available, 11 including interpretations of pathology slides, such 12 as we have in this case? 13 A. Yes, sir. 14 Q. And in this one it was a fine needle 15 aspiration biopsy? 16 A. Yes, sir. 17 Q. And so what the surgeon would then do prior 18 to scheduling the operation -- and we are not talking 19 about an emergency surgery here but just a surgery, 20 nonurgent. 21 A. Elective, yes, sir. 22 Q. Elective surgery. 23 Take that pathological data, which in this 24 instance was the interpretation of Dr. Jenkins, and 25 put that together with the other data that the

Page 50 1 surgeon may have gathered, and put all of that 2 together with the knowledge and background and 3 experience as a surgeon and the clinical experience 4 of the surgeon, and based upon all of that myriad of 5 information make a decision on whether or not to 6 operate -- 7 A. Yes, sir. 8 Q. -- is that a fair statement? 9 A. Yes, sir. 10 Q. And if the decision is made to operate, 11 then the nature of how the operation will be done, is 12 that correct, sir? 13 A. Yes, sir. 14 Q. In other words -- my point is: The surgeon 15 does not just put on a set of blinders, look at that 16 laboratory data and say, bingo, I am operating. The 17 surgeon gathers all of this data and uses his or her 18 clinical experience and judgment and makes a decision 19 whether to operate? 20 A. Yes, sir. 21 Q. Are you familiar with Hashimoto's disease? 22 A. Yes, sir. 23 Q. Do you from time to time see patients with 24 Hashimoto's? 25 A. Occasionally, yes, sir.	Page 52 1 A. Yes, sir. 2 Q. I saw that you were Airborne qualified, did 3 you do that at Fort Benning? 4 A. Yes, sir. 5 Q. And then you went -- did you go straight 6 from Fort Benning or Fort Sam to Honduras? 7 A. Well, after Fort Benning I went to 8 Honduras. 9 Q. What kind of outfit were you in? 10 A. I was with, I guess, an infantry unit. We 11 were based on a Honduran air force base, but I was 12 with an infantry unit. 13 Q. You were with an infantry battalion or 14 what? 15 A. The Medical Corps. We really didn't know 16 all of that. 17 Q. Okay. 18 A. All I know is I was down there. 19 Q. You were at a U.S. air force base in -- 20 A. No. It was a Honduran air force base. 21 Q. A Honduran air force base. 22 And this U.S. infantry outfit was providing 23 security or something of that nature? 24 A. At that time there was the insurgency from 25 El Salvador so they were gathering -- I guess, doing
Page 51 1 Q. How many would you see, let's say, in 2014? 2 A. Maybe one. 3 Q. It is something that you don't see with any 4 great degree of frequency? 5 A. An internist or an endocrinologist is more 6 likely to see it than I am. Only if it becomes a 7 surgical issue would I wind up seeing that kind of a 8 patient. 9 Q. And who makes a decision as to whether or 10 not Hashimoto's is a surgical issue? 11 A. Well, I guess it is based on the findings 12 of the endocrinologist or the internist based on the 13 symptoms of the patient, that is what usually decides 14 it. 15 Q. The clinical data plus, in fairness, any 16 laboratory data that you have? 17 A. Yes, sir. 18 Q. You finished your surgical training in 19 1982, as I saw on your vitae, is that correct, sir? 20 A. Yes, sir. 21 Q. And then you went in the Army? 22 A. Yes, sir. 23 Q. And then you went to the Medical Corps? 24 A. Yes, sir. 25 Q. And I assume you went to Fort Sam Houston?	Page 53 1 counterinsurgency, gathering some intelligence 2 information by going out into the villages. 3 Q. Did you make any jumps besides the ones 4 that you made at Fort Benning? 5 A. No, sir. 6 Q. Then in 1985 you went into practice? 7 A. Yes, sir. 8 Q. And that was in New Jersey? 9 A. Yes, sir. 10 Q. And you practiced primarily in Freehold, 11 New Jersey? 12 A. Yes, sir. 13 Q. And that was until 2010? 14 A. Yes, sir. 15 Q. If my math is correct, in 2010 you would 16 have been 63 or 64 years of age? 17 A. I was 63, yes, sir. 18 Q. What caused you at that point in your 19 professional life to want to move to Alma, Georgia? 20 A. Well, as you know -- 21 MS. SULLIVAN: It's not New Jersey. 22 THE WITNESS: That's a good point. 23 As you know, health care has been changing 24 quite a bit, and the hospital where I was in 25 practice, I had a partner that actually both of

Page 54 1 us were in the Army together, and we were in 2 practice together for 25 years, but the hospital 3 was recruiting and subsidizing more surgeons to 4 come to practice there, and the more surgeons 5 you have, the more little slices you cut the pie 6 into. 7 Q. (By Mr. Gunn) Sure, sure. 8 A. The pie doesn't get bigger, even though 9 administration thinks that the more surgeons you 10 bring in you will have more cases, it just doesn't 11 work that way. You will only have X number of cases, 12 and if you have five surgeons, you have a bigger 13 piece of the pie. If you have 10 surgeons, you get a 14 smaller slice of the pie. After a while it was just 15 too much of a financial struggle to meet your 16 overhead between malpractice insurance and everything 17 else, the cost of being in practice, so I figured -- 18 I said I had enough of this, I am going to look for 19 another opportunity. 20 Q. And how did you -- I am just wondering how 21 you located South Central Georgia. 22 A. Through a recruiter. 23 Q. Okay. You were engaged by a recruiter and 24 they brought you here to Alma? 25 A. Yes, sir.	Page 56 1 Q. Did you say that you had testified in a 2 South Carolina case? 3 A. Yes, sir. 4 Q. And where was that, what city? 5 A. I think it was in Columbia or Columbus. 6 Q. Columbia? 7 A. Yes, sir. 8 Q. In the capitol city? 9 A. Yes, sir. 10 Q. And you don't remember who that attorney 11 was? 12 A. This goes back I think -- I think this was 13 pretty much in the beginning when I started doing 14 medical reviews. It goes back into the late 90s, I 15 think. 16 Q. Okay. 17 A. I do remember he was a black attorney, I do 18 remember that, but I don't remember the name. 19 Q. The 95 to 97 percent accuracy on fine 20 needle aspiration biopsies for cancer versus benign 21 or malignancy versus benign, what source did you get 22 that from? 23 A. That I got from -- I just completed 24 recertifying for my boards a month ago, and part of 25 it was reviewing thyroid surgery and diagnostic and
Page 55 1 Q. Are you strictly in private practice, or 2 are you employed by a health care district or what? 3 A. No. Like I said, private practice is 4 becoming almost impossible to stay in. I am employed 5 by the hospital. 6 Q. The entire time that you have been here 7 since 2010, have you been employed by the hospital? 8 A. No, sir. No. Initially I came down with 9 an income guarantee for the first two years. 10 Q. All right. 11 A. Then when the income guarantee ended, I 12 realized without an income guarantee you can't make 13 it in private practice with reimbursement nowadays so 14 I opted to be salaried by the hospital. 15 Q. Are you the only general surgeon here in 16 Bacon County? 17 A. Yes, sir. 18 Q. So you see Medicare, Medicaid patients, 19 whoever comes in? 20 A. Yes, sir. 21 Q. All right, sir. Who are some of the South 22 Carolina lawyers besides Mr. Walters that you have 23 done work for? 24 A. I really can't give you any names. I don't 25 know.	Page 57 1 that was based on that. 2 Q. You just remember it from your preparation 3 -- 4 A. Yes, sir. 5 Q. -- for the board -- 6 A. Right, for the recertification. 7 Q. -- certification? 8 A. Yes, sir. 9 MR. GUNN: Thank you, sir. That's all I 10 have. 11 MS. SULLIVAN: I don't have any further 12 questions. 13 Glenn? 14 MR. WALTERS: I have no questions. 15 MS. SULLIVAN: All right. Great. Thank 16 you. 17 (Deposition concluded at 2:22 p.m.) 18 (Pursuant to Rule 30(e) of the Federal 19 Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e), 20 signature of the witness has been waived.) 21 22 23 24 25

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 58 CERTIFICATE OF COURT REPORTER State of Georgia: County of Glynn: I hereby certify that the foregoing transcript was reported as stated in the caption and the questions and answers thereto were reduced to writing by me; that the foregoing pages 1 through 57 represent a true, correct, and complete transcript of the evidence given on May 6, 2015, by the witness, GABOR KOVACS, MD, who was first duly sworn by me. I certify that I am not disqualified for a relationship of interest under O.C.G.A. 9-11-28(c); I am a Georgia Certified Court Reporter here as a representative of Gilbert & Jones, Inc. who was contacted by Huseby Global Litigation Support to provide court reporting services for the proceedings; I will not be taking these proceedings under any contract that is prohibited by O.C.G.A. 15-14-37(a) and (b) or Article 7.C. of the Rules and Regulations of the Board; and by the attached disclosure form I confirm that neither I nor Gilbert & Jones, Inc. are a party to a contract prohibited by O.C.G.A. 15-14-37(a) and (b) or Article 7.C. of the Rules and Regulations of the Board. This 17th day of May, 2015.  Erin Poepping, 2661	
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 59 DISCLOSURE OF NO CONTRACT I, Debbie Gilbert, do hereby disclose pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia that Gilbert & Jones, Inc. was contacted by Huseby Global Litigation Support to provide court reporting services for these proceedings and there is no contract that is prohibited by O.C.G.A. 15-14-37(a) and (b) or Article 7.C. of the Rules and Regulations of the Board for the taking of these proceedings. There is no contract to provide reporting services between Gilbert & Jones, Inc. or any person with whom Gilbert & Jones, Inc. has a principal and agency relationship nor any attorney at law in this action, party to this action, party having a financial interest in this action, or agent for an attorney at law in this action, party to this action, or party having a financial interest in this action. Any and all financial arrangements beyond our usual and customary rates have been disclosed and offered to all parties. This 17th day of May, 2015 Debbie Gilbert, Firm Representative Gilbert & Jones, Inc.	

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Patricia Craig,

Plaintiff,

v.

E. Earl Jenkins, Jr., MD., also
known as Everett Earl Jenkins,
Jr., M.D., Amisub of South
Carolina, Inc., d/b/a Piedmont
Medical Center, and York
Pathology Associates, LLC,

Defendants.

NOTICE OF MOTION OF SUMMARY
JUDGMENT OF DEFENDANT
AMISUB OF SOUTH CAROLINA, INC.,
d/b/a PIEDMONT MEDICAL CENTER

C. A. No. 2014-CP-46-00508

TO: GLENN WALTERS, ESQUIRE, ATTORNEY FOR PLAINTIFF

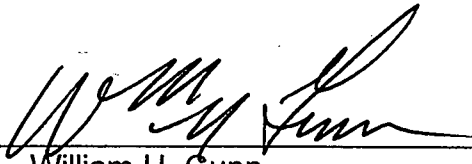
YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendant Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center ("Amisub"), will move, on the tenth day after service hereof, at 10:00 a.m. or as soon thereafter as counsel can be heard, before the Presiding Judge of the Court of Common Pleas for York County, at such place as shall be established by the Court, for an Order granting Summary Judgment to this Defendant.

The said Motion will be made pursuant to Rule 56, SCRCP, and upon the grounds there is no genuine issue as to any material fact and that Amisub is entitled to judgment as a matter of law. The Motion will be supported by such affidavits and other materials as shall be filed, and the entire record herein, including but not being limited to the Motion for Summary Judgment and supporting materials served and filed by Co-

Defendants E. Earl Jenkins, Jr., MD, and York Pathology Associates LLC, said Motion and materials being incorporated herein and made a part hereof.

More particularly, the claims made by Plaintiff against Amisub are purely vicarious, with no independent negligence being pled or alleged. In the event summary judgment is granted as to Co-Defendants, then as a matter of law the Court should grant summary judgment to Amisub inasmuch as the liability of Amisub would rest solely upon negligence of Co-Defendants and in absence thereof, there would be no liability as to Amisub.

HOLCOMBE BOMAR, P.A.

By: 

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Spartanburg, SC

July 7, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Patricia A. Craig,

Plaintiff,

vs.

E. Earl Jenkins, Jr., MD, also
known as Everett Earl Jenkins,
Jr., MD, Amisub of South
Carolina, Inc., d/b/a Piedmont
Medical Center, and York
Pathology Associates, LLC,

Defendants.

CERTIFICATE OF SERVICE

C. A. No. 2014-CP-46-00508

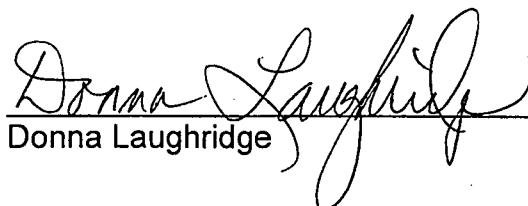
I, the undersigned paralegal in the law offices of Holcombe Bomar, P.A., attorneys
for Defendant Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, certify that
I have mailed by United States Mail a copy of the hereinbelow listed pleading to counsel
in this matter on the 7th day of July, 2015 as follows:

PLEADING:

Notice of Motion of Summary Judgment of Defendant
Amisub of South Carolina, Inc., d/b/a Piedmont
Medical Center

COUNSEL SERVED:

Glenn Walters, Sr., Esquire
P.O. Box 1346
Orangeburg, SC 29116


Donna Laughridge

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)
)
Plaintiff,)

Case No. 2014-CP-46-00508

vs.)

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., AMISUB OF SOUTH)
CAROLINA, INC., d/b/a)
Piedmont Medical Center, and)
YORK PATHOLOGY)
ASSOCIATES, LLC,)
Defendants.)

NOW COMES PATRICIA A. CRAIG (hereinafter "Plaintiff" or "Craig"), by and through the undersigned attorney, submitting this Memorandum in opposition to Defendants' Motion for Summary Judgment.

STATEMENT OF THE CASE

This is a complex medical malpractice case. Plaintiff filed the statutorily required Notice of Intent to File Suit, with supporting affidavit, on November 8, 2013. After the parties were unable to resolve the case during the mediation period, Plaintiff filed the Summons and Complaint on February 21, 2014. The parties have engaged in discovery; however, discovery is not yet completed. For example, Defendants served responses to Plaintiff's interrogatories and request for production of documents on June 24, 2015 and June 29, 2015. In the discovery

responses. Dated June 29, 2015, Defendants assert that Dr. James Maynard, a pathologist with Defendant York Pathologist Associates, LLC actually performed the interpretation of the frozen section slides.¹ In sufficient time has expired in order to allow Plaintiff to take the deposition of Dr. Maynard.

Despite the fact that discovery has not been completed, the Defendants filed separate Motions for Summary Judgment on June 30, 2015. These Motions are now before the Court for resolution.

FACTS IN LIGHT MOST FAVORABLE TO THE PLAINTIFF²

General Facts

Plaintiff Craig is a citizen and resident of the County of Chester, State of South Carolina, now and at all times relevant to this lawsuit. Defendant E. Earl Jenkins, Jr., M.D., also known as Everett Earl, Jr., M.D. (hereinafter “Jenkins”) is a citizen and resident of the County of York, State of South Carolina, now and at all times relevant to this law. Defendant Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center is (hereinafter “Amisub”) is a for-profit corporation, chartered under the laws of the State of South Carolina, doing business as a healthcare provider within the State of South Carolina and the nation. At all times relevant to this lawsuit, Defendant Amisub was doing business as Piedmont Medical Central, located at 222 South Herlong Avenue, Rock Hill, SC 29732. Defendant York Pathology Associates, LLC (hereinafter “York Pathology”) is a South Carolina limited liability company, during business throughout the State of South Carolina.

At all times relevant to this lawsuit, Defendant York Pathology was the exclusive

¹ A central issue in this medical malpractice case is whether or not the Defendants properly interpreted the frozen slides.

²For the most part, it does not appear that the core/general facts alleged in the Complaint are in dispute. What is in dispute is whether or not the pathologists deviated from the standard of care and committed negligence. For this reason, the bulk of the facts stated herein are taken directly from the Amended Complaint without cites.

pathology service provider for Defendant Amisub's Piedmont Medical Center.

On or about August 18, 2010, Plaintiff consulted Dr. Christopher T. Jones for medical services and advice after a PETSCAN had discovered a nodule in her throat, on the right side. Before the discovery of the PETSCAN, Plaintiff was not having presenting any clinical signs of problems with her throat. The medical consultation occurred in the County of York, State of South Carolina. As a result of this consultation with the Plaintiff, Dr. Jones ordered a fine needle aspiration ("FNA") and ultrasound of the nodule that he found in the Plaintiff's neck on August 18, 2010. The thyroid ultrasound was done on August 26, 2010, and the fine needle aspiration ("FNA") was performed on September 30, 2010. Defendant Jenkins performed the FNA pathologic diagnosis and issued a report dated October 1, 2010 (hereinafter referred to as the "FNA Report"). The FNA Report stated, in part, that Plaintiff had a "[c]ategory 4 lesion, suspicious for malignancy, excision is indicated." The FNA Report bears the heading "Piedmont Healthcare".

On October 12, 2010, Plaintiff returned to Dr. Jones' office for a follow-up consultation concerning the nodule in her throat. During this visit, Dr. Jones specifically advised the Plaintiff that she had papillary carcinoma (hereinafter referred to as "thyroid cancer"). Based upon his medical conclusion that Plaintiff had thyroid cancer, Dr. Jones recommended that Plaintiff undergo a total thyroidectomy. Plaintiff, based upon the information she received from Dr. Jones, consented to the total thyroidectomy because she thought she had thyroid cancer. Dr. Jones recommended a total thyroidectomy to the Plaintiff based upon, in part, the FNA Report that was prepared by Defendant Jenkins. On November 2, 2010, Dr. Jones, along with his medical team, performed a total thyroidectomy on the Plaintiff; this procedure was based on the medical opinion that the Plaintiff had thyroid cancer. During the November 2, 2010 surgery, Dr.

Jones prepared a sample of the thyroid known as a “frozen section” and submitted it to Defendant Amisub’s Piedmont Medical Center for pathologic evaluation. Upon information and belief, the frozen section was analyzed pathologically by Defendant York Pathology for Piedmont Medical Center. Dr. James Maynard, on behalf of York Pathology actually performed the analysis. Although Defendant Hospital claims that its relationship with the pathologists is based upon an independent contract, Defendant Hospital claims ownership of the frozen slides. As a result of analyzing the frozen section, Defendant York Pathology failed to provide Dr. Jones a definitive diagnosis concerning Plaintiff’s thyroid. Therefore, Dr. Jones proceeded to complete a total thyroidectomy on the Plaintiff. The FNA Report, as issued by Defendant Jenkins, caused Dr. Jones to conclude that Plaintiff had a suspicion of thyroid cancer and Defendant’s York Pathology’s failure to provide a definitive diagnosis of the frozen section of Plaintiff’s thyroid caused Dr. Jones to perform a total thyroidectomy on the Plaintiff. The specimen from thyroidectomy surgery was sent to a lab for evaluation. Sometimes after November 10, 2010, Plaintiff returned to Dr. Jones’ office for a medical consultation, and she learned that the post-surgery reports established that she did not have thyroid cancer. In other words, Dr. Jones had erroneously concluded that Plaintiff had thyroid cancer, in substantial part, based upon the incorrect FNA Report and the misinterpretation of the frozen section as performed by Defendants.

Facts Supported by Expert Testimony

Plaintiff’s has retained the services of Garbor Kovacs, M.D. Dr. Kovacs in introduced within the case in two forms: (a) by Affidavit dated November 4, 2013, filed in the matter with the Summons and Complaint on February 21, 2014 [the affidavit is also Exhibit 2 to Dr. Kovacs deposition (b) by his deposition taken by Defendant Jenkins on May 6, 2015, a copy of which

was filed in the matter using the United States Postal Service on or about August 10, 2015. Dr. Kovacs is a board certified surgeon with almost 40 years of experience as a surgeon. His extensive vitae is attached as Exhibit 1 to his deposition. Dr. Kovacs sworn in his affidavit or testified at his deposition as follows:

1. "It is my opinion, to a reasonable degree of medical certainty, that Dr. E. Earl Jenkins, Jr, named in the Complaint, breached the standard of medical care owed to Patricia Craig by failing to properly analyze and interpret the fine needle aspiration results (sic) that was taken . . .and submitted to him for evaluation on September 30, 2010. . ." [Dr. Kovacs' Affidavit, paragraph 6];
2. "In my opinion, to a reasonable degree of medical certainty, the only way Mrs. Craig could have received a false-positive for papillary carcinoma is that the fine need aspiration results were not probably (sic)("properly") interpreted and that the frozen section was also misinterpreted. To a reasonable degree of medical certainty, Dr. Jenkins breached the standard of care by failing to properly interpret the fine need aspiration results, and whoever interpreted the frozen section likewise breached the standard of care by failing to properly interpret the frozen section." [Dr. Kovacs' Affidavit, paragraph 7];
3. "The aforementioned breaches of the standard of care cause serve injury to the Plaintiff, including having her to undergo an unnecessary surgery and total thyroidectomy." [Dr. Kovacs' Affidavit, paragraph 8];
4. "I am not a Pathologist but I work closely with pathologists who are instrumental to my surgical practice." [Dr. Kovacs' Affidavit, paragraph 2];
5. "I a familiar with the applicable standard of care relative to the allegations

contained in the Complaint.” [Dr. Kovacs’ Affidavit, paragraph 5];

Further, Dr. Kovacs testified as follows at his deposition:

Q. Let me ask you this: Do you know where in the range of suspicious 4 would fall?

A. No. Again as a surgeon, we look at the words. I mean when a pathologist tells us that the tissue removed is suspicious for carcinoma, whether it is papillary carcinoma, and then they tell you that the cells are characteristic of papillary carcinoma, that’s what gets our attention. Category 4 or category 3, that is pathological classifications. I mean, we really look for the diagnosis in the sense of is it benign or malignant, that is what we want to know.

Q. Do you take this report as saying this specimen was benign or malignant?

A. It was malignant according to the report.

Q. Well, the report say “suspicious for malignancy.”

A. Yes, it is suspicious for papillary carcinoma, but then it goes on to make it sound even more malignant by saying, “follicular epithelial cells are accompanied by those with nuclear folds and nuclear inclusions which are characteristic of papillary carcinoma.” That puts a little extra emphasis on the malignant portion of the report.

Dr. Kovacs Deposition, p. 24, Lines 23-25; p. 25, Lines 1-21. Dr. Kovacs also testified as follows:

Q. Okay. You agree that with me that even the frozen section that was intraoperatively was inclusive.

A. It was inconclusive but still leaning towards malignancy.

Q. Well, ultimately the surgeon makes that decision, correct?

A. Yes, but it is heavily based on—matter of fact, it is totally based on the pathologist’s report. It is pretty much based on that. We rely on the pathologist to tell us whether we are dealing with something benign or malignant. When the pathologist is leaning toward malignancy, then you have to go ahead and proceed with the procedure. Especially when excision is recommended. . .

Dr. Kovacs Deposition, p. 33, Lines 12-25; p. 34, Line 1. According to the index to Dr. Kovacs deposition, opposing counsel only used the phrase “standard of care” one time. Dr. Kovacs responded to the “standard of care” question as follows:

Q. Now, is it your opinion that a biopsy needs to be completely definitive to be within the standard of care?

A. I mean, you like to have it definitive, but sometimes a pathologist will tell you that he is not totally definite, he may want to do different cuts or different staining on the tissue. Again, I mean, these things, whether it’s definitive or not, we are dependent on the pathologist’s decision as to how definite he is or whether he wants any further testing done on the tissue that has been

submitted to him.

Dr. Kovacs Deposition, p. 34, Lines 18-25; p. 35, Lines 1-4. Dr. Kovacs also testified as follows:

Q. So if I am a surgeon, and I have a pathology report in front of me that says it is positive for carcinoma, and I go take the thyroid out and it turns out, you know what, it is one of those false-positives, does that make me as a surgeon wrong?

A. No, it doesn't. As a surgeon, you are really relying on the pathologist's report.

Q. Does it make the pathologist wrong?

A. Well, if he told the surgeon there was malignant (sic) or most likely to be malignant and it turns out to be benign, it does make him wrong.

Q. So it sounds like to me in the absence of a definitive diagnosis—it sounds like to me what you are saying is in the absence of a definitive diagnosis, the pathologist is always wrong or—

A. No.

Q. -- likely to be wrong.

A. He can say, look, I cannot give you any definitive idea. I mean, he can say that I really can't come to any conclusion, I will need to do further stains, further cuts, you know --

Dr. Kovacs Deposition, p. 46, Lines 14-25; p. 47, Lines 1-10.

In light of Dr. Kovacs' deposition testimony and as further factual support, Plaintiff will encourage to the Court to take judicial notice of the following information which

"Surgical pathologists have the definitive role in tumor diagnosis. No matter how high the index of clinical suspicion, the diagnosis of cancer is not conclusively established nor safely assumed in the absence of a tissue diagnosis . . . It is the task of the surgical pathologist to provide an accurate, specific, and sufficiently comprehensive diagnosis to enable the clinician to develop an optimal plan of treatment and, to the extent possible, estimate prognosis. There was a time not many years ago when the simple designation 'benign' or 'malignant' provided the clinician with all of the information necessary to provide appropriate care for the patient. This is no longer the case."

Excerpt taken from Cancer Medicine, Vol 2, 6th Edition, Holland, Frei et. al., (2003).³

Facts Supported by Answer to Pleadings and Discovery Requests

Plaintiff tenders the following facts from the answer the pleadings and the discovery

³A link to the portion of the book can be found at the following link:
<http://www.ncbi.nlm.nih.gov/books/NBK13237/>

requests in opposition to Defendants' Motions for Summary Judgment:

1. Defendant Jenkins stated in the October 1, 2010 Fine Needle Aspiration ("FNA") report that the Plaintiff has a "category 4 lesion, suspicious for malignancy" and recommended excision because "[t]here were cells present that were suspicious for malignancy. . . ." Defendant Jenkins' Answer to Plaintiff's First Set of Interrogatories to Defendant Jenkins, Question and Answer No. 7.
2. The FNA Report was issued by Defendant Jenkins under the authority of the Defendant Hospital because "York Pathology was at that time, the sole provider of pathology services for Piedmont Medical Center." Defendant Jenkins' Answer to Plaintiff's First Set of Interrogatories to Defendant Jenkins, Question and Answer No. 9.
3. Dr. James Maynard analyzed the frozen section slides on November 2, 2010, and Dr. Maynard is a member of Defendant York Pathology Associates, LLC. Defendant Jenkins' Answer to Plaintiff's First Set of Interrogatories to Defendant Jenkins, Question and Answer No. 13; see also Defendant York Pathology Answer to Plaintiff's First Set of Interrogatories, Question and Answer No. 7.
4. Defendant Amisub "is the owner of the frozen section done during the procedure that is that is the subject of the lawsuit. However, care and custody and control of the physical slides remains with York Pathology as part of their responsibilities as the provider of pathology services to the hospital. Defendant York Pathology Answer to Plaintiff's First Set of Interrogatories, Question and Answer No. 11.
5. Jenkins was working within the scope of his employment for Defendant York Pathology. Answer, Defendant Amisub, paragraph 24.

Facts Supported by Deposition Testimony of the Plaintiff, Patricia Craig

Plaintiff Patricia Craig's deposition was taken on November 25, 2014. The following excerpts are taken from her deposition:

Q. And then you went back to Dr. Jones' office, it looks like October 12th of 2010, to follow up with him on that biopsy that had been done; is that correct?

A. I'm not sure of the date, but that's correct, I did follow up with him.

Q. And what do you remember him telling you about the results of the biopsy?

A. That the biopsy was - - it showed suspicions - - papillary carcinoma, and that it needed to come out. And that we didn't need to wait. We didn't have a whole lot of time.

And as I stated before with the carcinoma, all I heard was cancer. So I asked him: Are you saying I have cancer?

And he said: Yes, and that we needed to proceed.

Q: What did he recommend on proceeding? What - - did he recommend surgery?

A. Remove it.

Patricia Craig's Deposition, page 30, Lines 5-24. Mrs. Craig testified that that she learned after her thyroid was completely removed that she did not have thyroid cancer. Patricia Craig's Deposition, page 36, Lines 22-25; p. 37, Lines 1-10.

STANDARDS FOR SUMMARY JUDGMENT

In the interest of brevity, Plaintiff asserts that the Memorandum filed in the support of Defendants' Jenkins and York Pathology correctly delineates the standards governing their Motions for Summary. Therefore, Plaintiff incorporates these standards within this Memorandum by reference as if fully set out herein. Additionally, Plaintiff asserts that the following standards apply to the Motion now before the Court: In determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn

therefrom, must be viewed in the light most favorable to the nonmoving party. *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002). "If triable issues exist, those issues must go to the jury." *Young v. S.C. Dep't of Corr.*, 333 S.C. 714, 717, 511 S.E.2d 413, 415 (Ct. App. 1999). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Vermeer Carolina's Inc. v. Wool/Chuck Chipper Corp.*, 336 S.C. 53, 59, 518 S.E.2d 301, 305 (Ct. App. 1999). Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Id.

ARGUMENTS

A. SUMMARY JUDGMENT IS PREMATURE AT THIS TIME AND SHOULD BE DISMISSED WITHOUT PREJUDICE.

The case before the Court for consideration is a complex medical malpractice case. The Summons and Complaint were filed on February 21, 2014, almost eighteen months. The undersigned counsel represents to the Court that the parties have mediation, have participated in discovery, to include answering each other's interrogatories and request for production of documents and taking of depositions by the Defendant. Plaintiff's expert was deposed just recently on May 6, 2015. Moreover, on June 24, 2015 and June 29, 2015, Defendants served their discovery responses on the Plaintiff. To date, Plaintiff's counsel has participated in three depositions notice by the Defendants, and he has not had the opportunity to notice important depositions. One day after serving their responses to discovery requests on the Plaintiff, Defendants moved this Court for

summary judgment. As previously stated, our state appellate courts have held that “summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Baughman v. American Tel. & Tel. Co.*, 306 S.C. at 113. As a first response to Defendants’ Motions for Summary Judgment, Plaintiff asserts and contends that Defendants’ Motion for Summary Judgment should be dismissed without prejudice in order to give her a full and fair opportunity to conduct discovery. Undisputedly, Defendants served the Motion for Summary Judgment just one day after they answered Plaintiff’s discovery. Plaintiff submits that this fact is a prima facie showing that she has not had a fair and full opportunity to complete discovery in this case. For example, Plaintiff learned the name of the person who conducted the interpretation on the frozen slides that were done intraoperatively in this case from the Defendants’ discovery responses dated June 24, 2015 and June 29, 2015. Unreadable paper copies of the pathology slides were provided in the discovery materials by the Defendants. Plaintiff deserves the full and fair opportunity to have her an expert examine the pathology slides that are in possession by the Defendants. Plaintiff reasonably believes that the retention of an additional expert to review the pathological slides will produce additional evidence for this court to consider in any subsequent motion for summary judgment.

Plaintiff is aware that his case has been pending almost 18 months. However, Plaintiff contends that 18 months, given the nature of this case, is not an exorbitant amount of time and that the record will not show that that Plaintiff has not been dilatory in pursuing discovery. Moreover, Plaintiff reminds the court that in the *Baughman v. American Tel. & Tel. Co.*, *supra*, the case had been pending for over three years, and our

State Supreme Court still reversed the lower court, in part, on the grounds that summary judgment was prematurely granted without giving the party opposing the summary judgment a full and fair opportunity to conduct discovery. Admittedly, additional complexities existed in the *Baughman* case; however, in the case now before the Court, Plaintiff should not be forced to answer a Motion for Summary Judgment in less than 60 days after receiving her responses to discovery requests from the Defendants. Therefore, pursuant to *Baughman*, this Court should dismiss the Defendants' Motion for Summary Judgment without prejudice and establish a definitive timetable in order for the parties to complete discovery.

B. THERE IS A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER DR. JENKINS AND PATHOLOGY ASSOCIATES, LLC VIOLATED THE STANDARD OF CARE OF THE PLAINTIFF.

The gravamen of the Motion for Summary Judgment filed by Dr. Jenkins and Defendant Pathology Associates, LLC is that "there is no genuine issue of material fact as to whether Dr. Jenkins violated the standard of care in his treatment of the Plaintiff."⁴ *Defendants Jenkins and York Pathology Associates Notice of Motion and Motion for Summary Judgment*, p. 1. Even under the current discovery posture, Plaintiff submits that the evidence overwhelming creates a genuine issue of material fact concerning whether Dr. Jenkins and Defendant Pathology Associates, LLC⁵. However, before addressing the genuine issue of material facts that exist in this case, Plaintiff must first address the issue of whether the Plaintiff's expert is qualified to render an expert opinion in this case—indirectly Defendant's Memorandum creates this elephant

⁴As a point of clarification, Plaintiff notes that Dr. Jenkins role in treating her was limited to providing the pathological support to her treating physician, Dr. Jones.

⁵Dr. Jenkins and Dr. James Maynard are member and agents for Defendant York Pathology Associates, LLC. Liability against the limited liability company is alleged to vicarious liability.

in the room that must be addressed as a threshold issue.

a. Plaintiff's Expert is qualified to render an expert opinion against the pathologists.

Plaintiff's expert is Garbor Kovacs, M.D. Dr. Kovacs is a board certified surgeon with almost 40 years of experience as a surgeon. His extensive vitae is attached as Exhibit 1 to his deposition. Dr. Kovacs is not a pathologist. However, this fact is not an impediment to him serving as an expert witness in this cases that involves the specialty field of pathology.

The qualifications of an expert is governed by Rule 702, SCRE. A person may be qualified as an expert in a particular area based upon knowledge, skill, experience, training or education. Rule 702, SCRE. In determining a witness's qualifications as an expert, the trial court should not have a solitary focus, but rather, should make an inquiry broad in scope. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008). The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject. *Wilson v. Rivers*, 357 S.C. 447, 452, 593 S.E.2d 603, 605 (2004). The qualification of a witness as an expert is within the trial court's discretion *Fields*, 376 at 555, 658 S.E.2d at 85.

As to medical experts, our appellate courts have expressly held that a medical practitioner's experience interacting with persons in the applicable specialty are sufficient to support his qualification as an expert. Qualification depends on the particular witness' reference to the subject. *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344 (1995). A doctor need not practice in the particular area of medicine as the defendant doctor to be qualified to testify as an expert. *Creed v. City of Columbia*, 310 S.C. 342, 345, 426 S.E.2d 785, 786. (1993).

Our appellate courts have further held that "[a]n expert is not limited to any class of persons acting professionally." *Botlicio v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 64 (Ct.

App. 1984); see also, *McGee v. Bruce Hospital System, supra* (although the physician was not a surgeon, he could testify as an expert on the standard of care in the placement of a catheter by a surgeon); *Howle v. PYA Monarch, Inc.*, 288 S.C. 586, 344 S.E.2d 157 (Ct. App. 1986)(a psychologist was qualified as an expert witness to testify as to diagnosis, prognosis, and causation of mental and emotional disturbance in a personal injury action); *Daniels v. Bernard*, 270 S.C. 51, 240 S.E.2d 518 (1978)(in a personal injury action, a chiropractor was competent to testify as a medical expert to the extent of his knowledge and experience); *Sanford v. Howard*, 161 Ga. App. 495, 288 S.E.2d 739 (1982)(an orthopedist was competent to testify against a podiatrist where the orthopedic and pediatric methods of treatment were the same and the witness had knowledge of the procedure used by the podiatrist); *Avret v. McCormick*, 246 Ga. 401, 271 S.E.2d 832 (1980)(a nurse was competent to testify in a medical malpractice action against a physician as to the standard of care in keeping sterile a needle used to draw blood). Defects in an expert witness' education and experience go to the weight, rather than the admissibility, of the expert's testimony. *Lee v. Suess, supra*

Applying the above-stated principles of law to the facts in this case should lead to one inescapable conclusion: Dr. Kovacs is qualified to render opinions concerning the standard of care a pathologist must following in performing the tasks of the profession. To support this conclusion, Dr. Kovacs testified sworn in his affidavit to the following: "I am not a Pathologist but I work closely with pathologists who are instrumental to my surgical practice." [Dr. Kovacs' Affidavit, paragraph 2]; "I a familiar with the applicable standard of care relative to the allegations contained in the Complaint." [Dr. Kovacs' Affidavit, paragraph 5]. Additionally, throughout his depositions, Dr. Kovacs consistently testified that his works and interacts with pathologists as a surgeon. Defendants have offered absolutely no evidence to rebut the

announced qualifications of Dr. Kovacs. As a matter of fact, neither Defendant has retained an expert in order to counter the opinions of Dr. Kovacs, the Defendants have taken a calculated risk of attacking Dr. Kovacs qualifications and opinion—an attack that must fail as a matter of law at this procedural stage because the law clearly supports that Dr. Kovacs is qualified to render the necessary opinions in this matter, and Plaintiff asks the Court to find accordingly in order to remove the elephant from the room.

b. Dr. Kovacs' opinions creates a genuine issue of material fact as to whether Dr. Jenkins and Pathology Associates violated the standard of care owed to the Plaintiff.

In this medical malpractice case, Plaintiff's evidentiary burden is very well established under the common law of this state. In this case, Plaintiff must establish "(1) 'the generally recognized practices and procedures which would be exercised by competent practitioners in a defendant doctor's field of medicine under the same or similar circumstances,' and (2) a departure by the defendant 'from the recognized and generally accepted standards, practices and procedures'" *Jones v. Doe*, 372 S.C. 53, 61, 640 S.E.2d 514, 518 (Ct. App. 2006) (quoting *Cox v. Lund*, 286 S.C. 410, 414, 334 S.E.2d 116, 118 (1985)). Additionally, the plaintiff must present evidence that the Defendant's failure to adhere to the standard of care proximately caused the complained of injury. *Id.* At this procedural juncture, the Plaintiff must produce enough evidence to establish at that a genuine of material fact exists on the above-stated essential elements.

Dr. Kovacs testimony, standing alone, creates a genuine issue of material fact as to whether Dr. Jenkins and Pathology Associates violated the standard of care owed to the Plaintiff. As to the first requirement concerning the applicable standard, Dr. Kovacs testified at his deposition that it is the standard for a surgeon to rely upon the pathologist to tell him, the

surgeon, whether a sample is benign or malignant. Dr. Kovacs Deposition, p. 33, Lines 12-25; p. 34, Line 1. He further stated that the surgeon relies totally on the pathologist report. *Id.* The reasonable inference from Dr. Kovacs testimony is that the pathologist must interpret the slides to a reasonable degree of accuracy and that such information must be communicated to the surgeon in a reasonably clear manner. Reasonably inferred from his affidavit and deposition testimony, Dr. Kovacs establishes that the standard of care requires the pathologist to provide the surgeon accurate, specific, and sufficiently comprehensive diagnosis in order to allow the surgeon to make informed decisions concerning surgery. This standard of care for the pathologist is supported by the following treatise entitled Cancer Medicine. In this text, it is stated as follows:

Surgical pathologists have the definitive role in tumor diagnosis. No matter how high the index of clinical suspicion, the diagnosis of cancer is not conclusively established nor safely assumed in the absence of a tissue diagnosis . . . It is the task of the surgical pathologist to provide an accurate, specific, and sufficiently comprehensive diagnosis to enable the clinician to develop an optimal plan of treatment and, to the extent possible, estimate prognosis. There was a time not many years ago when the simple designation 'benign' or 'malignant' provided the clinician with all of the information necessary to provide appropriate care for the patient. This is no longer the case.

Excerpt taken from Cancer Medicine, Vol 2, 6th Edition, Holland, Frei et. al., (2003).⁶ In sum, the standard of care and generally recognized practices and procedures which would be exercised by competent pathologist under same or similar circumstances required Dr. Jenkins and all pathologists working for Defendant York Pathology Associates to provide Dr. Jones, the surgeon, with accurate, specific, and sufficiently comprehensive diagnosis in order to allow Dr. Jones to make an informed decision concerning surgery.

Having established the standard of care, Dr. Kovacs opined in his affidavit and in his deposition testimony that Dr. Jenkins and the other pathologist who interpreted the frozen slides

⁶ A link to the portion of the book can be found at the following link:
<http://www.ncbi.nlm.nih.gov/books/NBK13237/>

for Dr. Jones departed from the recognized and generally accepted standards, practices and procedures for pathologists by “failing to properly analyze and interpret the fine needle aspiration results (sic) that was taken . . . and submitted to him for evaluation on September 30, 2010. . .” and by failing to accurately interpret the frozen slides that were submitted intraoperatively. [Dr. Kovacs’ Affidavit, paragraph 6 and 7]. The excerpts from Dr. Kovacs deposition as referenced in the Facts above articulates in clear terms that it is the standard and duty of the pathologist to make an accurate interpretation.

Based upon the above analytical assessment of Dr. Kovacs affidavit and deposition testimony, a genuine issue of material fact exists as to whether Dr. Jenkins and Pathology Associates violated the standard of care owed to the Plaintiff.

c. This not a res ipsa loquitur case.

Defendants Jenkins and Pathology Associates [“Defendants”] asserts that this case is controlled by *Fletcher v. MUSC*, 390 S.C. 458 (Ct. App. 2010). *Fletcher* basically recognizes that a malpractice plaintiff cannot use a *res ipsa loquitur* argument in order to prove the causation element of his/her claim. “*Res ipsa loquitur* (hereinafter referred to as “res ipsa”) is a rebuttable presumption that the defendant was negligent where an accident is one which ordinarily does not occur in the absence of negligence.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 453 n.7, 699 S.E.2d 169, 179 n.7 (2010). “Res ipsa loquitur means ‘the thing speaks for itself.’ *O’Leary-Payne v. R.R. Hilton Head, II, Inc.*, 371 S.C. 340, 349, 638 S.E.2d 96, 101 (Ct. App. 2006)(citing W. Page Keeton et al., Prosser and Keeton on Torts §39, at 243 (5th ed. 1984). “According to the doctrine of res ipsa loquitur:

There must be reasonable evidence of negligence; but where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that

the accident arose from lack of care.

Id. In other words, a malpractice Plaintiff cannot ask the court to conclude that the occurrence of a complication, i.e. the injury, is itself evidence of negligence.

For several reasons, *res ipsa* does not apply to Dr. Kovacs conclusions nor this case. First, in the ordinary course of things a total thyroidectomy does occur when a pathologist inaccurately communicates to a surgeon that one has cancer. Second, in order for *res ipsa* to apply there must be an absence of explanation concerning the injury. In other words, there must be an absence of explanation as to why Dr. Jones performed a total thyroidectomy on the Plaintiff. This requirement for *res ipsa* is present in this case because we know why Dr. Jones performed the total thyroidectomy: because of the faulty information communicated to him by the pathologist. There is not an absence of explanation in this case.

The *O'Leary Case, supra*, is instructive in when not to apply *res ipsa*. In *O'Leary*, the plaintiff slipped and fell on a metal that was protruding from the side walk. *Id.* She sued the Defendant for negligence. The jury returned a substantial verdict for O'Leary. On appeal, the defendant argued "the trial court erred in failing to grant its directed verdict motion because O'Leary-Payne relied on the doctrine of res ipsa loquitur. The Court disagree. *Id.* Of great significance, in rejecting the defendant's *res ipsa* argument, the Court noted that "Charter [the defendant] mischaracterizes O'Leary-Payne's argument as being 'the rod speaks for itself.'"

Why is this simple sentence so significant? It is significant because the Court concluded that in a *res ipsa* argument the "thing" that speaks for itself is the thing that produced the injury—in the O'Leary case it was the rod.

In the case before this Court, the "thing" that did the injury was Dr. Jones' surgery that completed a total thyroidectomy, which was proximately caused by the pathologist deviation

from the standard of care in accurately interpreting and communicating his findings to the doctor. Contrary to Defendants' contention, Plaintiff is not relying upon *res ipsa loquitur* to argue that the pathologists were negligence. Dr. Kovacs is stating that the standard of care requires the pathologist to communicate with the surgeon with accurate, specific, and sufficiently comprehensive diagnosis, and that a failure to do so is a deviation from the standard of care. Defendants may not agree with the standard of care articulated by Dr. Kovacs, but at this point, no other expert has established a standard of care in this care. Therefore, at this juncture, Dr. Kovacs' articulation of the standard of care should prevail.

d. Defendant Amisub's Motion for Summary Judgment is contingent upon the outcome of the Motions for Summary Judgment filed by its co-defendants.

Defendant Amisub filed a separated Motion for Summary Judgment. Defendant Amisub basically asserts that it is entitled to a judgment as a matter of law if the co-defendants Motions are granted. In that Defendant Amisub is "piggy backing" off the Motions filed by its co-defendants, Plaintiff asserts that Amisub is not entitled to a summary judgment for the same reasons advanced against its co-defendants. Therefore, the arguments articulated against the co-defendants are hereby incorporated by reference against Amisub.

CONCLUSIONS

For the reasons stated within, Plaintiff asserts that the Defendants Motions for Summary Judgment should be denied.

At Orangeburg, SC

Dated: August 13, 2015



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STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

PATRICIA CRAIG)

Plaintiff,)

vs.)

E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
and et. al.)

Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

Case No. 2014-CP-46-00508

PROOF OF SERVICE

I, Glenn Walter, certify that I have served or caused to be served the foregoing Memorandum by giving them a copy in open court or by giving a copy of their representative s in open court on August ¹³~~12~~, 2015. Persons served:

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At Orangeburg, SC

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Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of York	)	2014-CP-46-00508
	)	
Patricia A. Craig,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
E. Earl Jenkins, et al.	)	
	)	
Defendants.	)	
	)	

August 13th, 2015
York, South Carolina

BEFORE:

THE HONORABLE S. JACKSON KIMBALL, JUDGE.

APPEARANCES:

GLENN WALTERS, ESQ.
Attorney for the Plaintiff

KELLI L. SULLIVAN, ESQ.
Attorney for the Defendant E. Earl Jenkins, M.D.

HOLLIS INABINET, ESQ.
Attorney for the Defendant Amisub

AMINAH R. HARDY, CM
Official Court Reporter

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EXHIBITS

No.	Description	Page
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(No exhibits were marked.)

P R O C E E D I N G S

THE COURT: This is defendant motion's for summary judgment. Now, Ms. Sullivan, your client, I think, was first on the list?

MS. SULLIVAN: Yes, sir. And basically, Your Honor, Amisub's motions kind of piggyback off of mine.

THE COURT: It says that. Says if you win, they win.

MS. SULLIVAN: Yes, sir, Your Honor. They let me do the heavy lifting. Unfortunately, this has nothing to do with property disputes, property lines, or flood lines.

THE COURT: I probably do as much medical malpractice as I do property stuff.

MS. SULLIVAN: I don't know which one is better or worse.

Your Honor, I represent Dr. Earl Jenkins and his practice, which is York Pathology Associates. Dr. Jenkins and York Pathology have the exclusive contract to handle pathology services for Piedmont Medical Center. So that's kind of how the parties work here. And I did file a brief; I'm sure you probably had a chance to take a look at it. I don't want to give you too much of the facts, but I'll tell you enough to give a flavor of what we're talking about here.

Ms. Craig is a -- is a lady and she came to a Dr. Jones. He is a surgeon. She came to him because she

:38:40 1 had a nodule on her thyroid. He ordered what's called a
:38:45 2 fine-needle aspirate. They basically stick a little
:38:46 3 needle in your thyroid, take some cells out, and send them
:38:50 4 off to pathology. That was done in September 2010.
:38:54 5 Dr. Jenkins, my client, reads the pathologist -- reads the
:38:58 6 cells on the slide and comes back with a report. And his
:39:02 7 report calls this -- the cells suspicious for papillary
:39:09 8 carcinoma. In other words, we suspect that there's cancer
:39:11 9 going on.

:39:11 10 THE COURT: Thyroid cancer.

:39:11 11 MS. SULLIVAN: And he calls them a category four
:39:15 12 lesion. And we've come to learn throughout this case that
:39:15 13 there's a scale called the Bethesda scale, which runs from
:39:19 14 one to five, that kind of ranks how suspicious something
:39:24 15 is for cancer. And a four means that it's a 65 to
:39:28 16 75 percent chance of cancer. Obvious the converse is true
:39:31 17 that it's a 25 to 35 percent chance that it's not cancer.
:39:35 18 Based on that finding by Dr. Jenkins, Dr. Jones and
:39:40 19 Ms. Craig decided, okay, let's take out her thyroid.

:39:42 20 THE COURT: He also said incision indicated.

:39:45 21 MS. SULLIVAN: Yes, sir. That is standard of care as
:39:47 22 Dr. Jenkins' affidavit says when you have a category -- I
:39:52 23 think it's three, four, or five lesions, I know it's for
:39:55 24 four. It may be for three. I'm not sure. But he did say
:39:58 25 incision indicated. Dr. Jones and Ms. Jenkins -- I mean

:40:03 1 Ms. Craig decided, Let's take out the thyroid. Dr. Jones
:40:07 2 takes Ms. Craig to surgery. In the middle of the surgery,
:40:10 3 he sends a little frozen section to pathology. It's read
:40:14 4 by a different pathologist. This pathologist says it's
:40:18 5 inconclusive; I can't really tell you. Because the first
:40:21 6 time you just get the cells out of wherever the nodule is.
:40:24 7 Second time you have to slice. So the second pathologist
:40:27 8 says, "Gosh, I don't know. It's a little inconclusive.
:40:29 9 Good luck," essentially. And Dr. Jones then goes forward
:40:34 10 takes out the entire thyroid and then sends the whole
:40:37 11 she-bang for pathology.

:40:39 12 Fortunately for Ms. Craig, it came back it was
:44 13 benign. There was no cancer. So this lawsuit followed
:40:47 14 essentially arguing that this surgery and its subsequent
:40:52 15 sequelae were unnecessary and that Dr. Jenkins was somehow
:40:59 16 incorrect in his reading of the original fine needle
:41:06 17 aspirate. Dr. Jones has not been sued, the surgeon.
:41:10 18 Dr. Craig's (sic) partner has not been sued.

:41:10 19 THE COURT: Let me stop you and ask you this. You
:41:11 20 too, Mr. Walters. As I read the material, the plaintiff's
:41:19 21 expert, the basis of his conclusion was that
:41:29 22 essentially -- it's not word-for-word that Dr. Jenkins had
:41:34 23 to have misread the --

:41:40 24 MS. SULLIVAN: Original aspirate.

:41:42 25 THE COURT: -- the result of the needle aspiration.

:41:45 1 Is that fair statement?

:41:47 2 MS. SULLIVAN: Yes, sir. It's our position that
:41:48 3 he -- I'm sorry.

:41:48 4 THE COURT: Hold on a minute.

:41:49 5 MR. WALTERS: May it please the Court. Your Honor,
:41:50 6 in addition to misreading it, he said he failed to
:41:54 7 communicate properly. There were two readings that were
:41:57 8 done by Pathology Associates. The first --

:42:00 9 THE COURT: There's no allegation that he failed --
:42:05 10 there's no -- where is the basis for failure to
:42:06 11 communicate properly in the record?

:42:09 12 MR. WALTERS: I believe in the affidavit that was
:42:10 13 submitted by Dr. Kovacs goes on to state that in
:42:13 14 communicating with the surgeon -- and I could simply go
:42:16 15 through the pages in my argument and go forward with that.

:42:19 16 THE COURT: All right. That's fine. Have a seat.
:42:19 17 We'll just go on.

:42:21 18 MS. SULLIVAN: Your Honor, I took the deposition of
:42:23 19 Dr. Kovacs quite some time ago back in May.

:42:26 20 THE COURT: That's the expert, right?

:42:28 21 MS. SULLIVAN: He's a surgeon. He's not a
:42:29 22 pathologist. I took his deposition back in May, in Alma,
:42:34 23 Georgia. It's a town about that big. Dr. Kovacs gave a
:42:38 24 deposition -- and it's the plaintiff's burden here, Your
:42:40 25 Honor, and I'm sure you're familiar with the standards.

1 They need to prove what the standard of care is; that
2 Dr. Jenkins somehow violated the standard of care; and
3 that that violation led to the ultimate result and the
4 damages, proximate cause.

5 THE COURT: Unnecessary removal of her thyroid.

6 MS. SULLIVAN: Yes, sir, Your Honor. And it's our
7 position that they can't do that on any the three points
8 that they need to prove. I listed all this in my
9 memorandum, but Dr. Kovacs has had no pathology training
10 since medical school. He doesn't read slides. He doesn't
11 even read them on his own patients where he takes out
12 thyroids. He rely solely on pathologists, and he did not
13 view the slides in this case. He can't -- he didn't look
14 at these slides. He doesn't know what these cells look
15 like. I asked him in his deposition, I said, "Where did
16 Dr. Jenkins go wrong? Did he call something that was
17 green, blue? Did he look for a circular cell when he
18 should have looked for a square cell?" He said, "I can't
19 tell you. I did not look at them. I don't know."

20 So he can't even establish what the standard of care
21 is for reading a slide. He's not familiar with it. I
22 asked him about the Bethesda scale. I said, "Do you
23 disagree with Dr. Jenkins that this was a four?" He said,
24 "I'm not familiar with the Bethesda scale. I don't even
25 know what a four means on the Bethesda scale. I can't

:43:59 1 tell you what a number four is on the Bethesda scale, or
:44:03 2 whether 25 or 35 percent benign rate is accurate or not."
:44:08 3 So he doesn't know. Not only that, he admits he has to
:44:15 4 rely on pathologists in his own practice.

:44:19 5 In terms of establishing a violation, again, he can't
:44:22 6 testify as to what actions or inactions by Dr. Jenkins
:44:25 7 were incorrect. And this is a very salient point. On
:44:30 8 page 27 of Dr. Kovacs' deposition, he does not disagree
:44:33 9 the sample was suspicious for malignancy, and he does not
:44:38 10 disagree with Dr. Jenkins that this rating is a category
:44:41 11 four. So if he can't disagree that the reading was
:44:46 12 correct, he can't disagree it's suspicious for malignancy,
:44:49 13 he can't disagree that it's a four, and he can't tell you
:44:55 14 what Dr. Jenkins did wrong, where is the violation of the
:44:59 15 standard of care?

:45:00 16 And finally, Your Honor, we have to have proximate
:45:02 17 cause here, obviously. There is a second reading that
:45:07 18 took place here intraoperatively. We have the first
:45:11 19 finding last week. Then we have the frozen section in the
:45:14 20 operation. Dr. Jones knew at the time -- it's in his
:45:17 21 deposition -- hey, wait a minute, this is still
:45:19 22 inconclusive. We're still squishy here. We don't know if
:45:20 23 this is cancer or not, but Dr. Jones made the decision to
:45:27 24 take out the thyroid. To the extent you want to say this
:45:29 25 is Dr. Jenkins' problem, we've got an intervening act

:45:33 1 here. Because if Dr. Jenkins is wrong, Dr. Jones knew.
:45:39 2 He had the last opportunity to say, "Wait a minute. Back
:45:41 3 up. This is inconclusive. Maybe we'd better not do this.
:45:46 4 He testified in his deposition, "No, I wanted to go ahead
:45:47 5 and do it anyway. I did it knowing that it was
:45:50 6 inconclusive."

:45:52 7 I asked Dr. Kovacs about that. He agrees that the
:45:54 8 ultimate decision to remove the thyroid belongs to
:45:57 9 Dr. Jones. And further, he agreed that that's the
:46:00 10 surgeon's decision. And actually in the case on page 33
:46:04 11 or 34 I think, of Dr. Kovacs' deposition, he agreed that
:46:07 12 the safest course of action for the plaintiff in this case
:46:10 13 was to go ahead and remove it. Because here's what -- you
:46:13 14 know, I don't represent Dr. Jones, but I can see his
:46:17 15 logic. Because in this case, you have a 25 to 30 percent
:46:19 16 chance of benign and a 65 to 75 percent chance of
:46:23 17 malignancy. Even if you want to call it 50/50 because we
:46:26 18 have an inconclusive mid-surgical read, if he left it and
:46:32 19 Ms. Craig did have cancer, that would have been bad. We
:46:36 20 would have had to go back and take it out again. If he
:46:40 21 takes it out and it turns out to benign, we end up where
:46:43 22 we are now.

:46:45 23 Obviously, pathology is not an exact science. That's
:46:49 24 why we have these scales and these percentage chances of
:46:54 25 different things. These are all communicated to the

:46:56 1 surgeon in this case. Dr. Jenkins never had any contact
:47:00 2 with Ms. Craig. Pathologists don't treat patients. They
:47:04 3 look at slides, and they look at specimens and they look
:47:08 4 at moles and sections of colon. They don't treat
:47:12 5 patients, they don't order tests, they don't suggest
:47:15 6 additional tests, unless, of course, they can't read
:47:19 7 what's there, for -- it's adulterated for some reason.

:47:21 8 Your Honor, it's our position that Dr. Kovacs can't
:47:25 9 even say what the standard of care is; that he can't say
:47:29 10 that Dr. Jenkins violated the standard of care; and he
:47:32 11 can't come to a conclusion that Dr. Jenkins' alleged
:47:38 12 violation actually ended up causing whatever Ms. Craig's
:47:41 13 harm was.

:47:43 14 Now, to answer your point just a moment ago that you
:47:45 15 raised to Mr. Walters, it's our position that Dr. Kovacs
:47:48 16 is essentially making a res ipsa argument. It's because
:47:53 17 it came out to have benign, it must have been negligent.

:47:56 18 It's almost like the Fletcher versus MUSC case, where
:47:58 19 the lady had the subclavian bypass and she had
:48:00 20 complication, a known complication, and she sued. And the
:48:06 21 Court said, "Wait a minute." And the expert had a similar
:48:09 22 opinion, which was because she had this known
:48:11 23 complication, the doctor doing the subclavian bypass must
:48:16 24 have done something wrong. That's essentially what you're
:48:17 25 hearing here is because this ultimately turned out to be

:48:20 1 benign, Dr. Jenkins must have misread something. I can't
:48:24 2 tell you how he misread it; I can't tell you when he
:48:25 3 misread it; I can't tell you in what manner he misread it
:48:28 4 or mischaracterized it, but it must be wrong because it
:48:31 5 turned out to be benign.

:48:33 6 So for all those reasons, Your Honor, Dr. Jenkins and
:48:35 7 his practice have asked for a grant of summary judgment.

:48:39 8 THE COURT: All right. Mr. Walters?

:48:41 9 MR. WALTERS: May it please the Court. Your Honor,
:48:42 10 the first issue I believe this is court of equity. The
:48:47 11 summons and complaint --

:48:47 12 THE COURT: This is -- I'm sitting as a special
:49:50 13 circuit court judge to hear this motion for summary
:48:52 14 judgment.

:48:53 15 MR. WALTERS: I understand, Your Honor. In February
:48:55 16 of 2014, we filed notice of intent to file a medical
:49:02 17 malpractice suit. We -- later on, after we couldn't
:49:03 18 resolve the case, we filed the summons and complaint.
:49:05 19 After filing the summons and complaint, we served
:49:10 20 discovery requests and they responded to our request for
:49:14 21 production of documents and interrogatories on June 24th
:49:18 22 of 2015 and June 29th of 2015. I bring your attention to
:49:23 23 the case that they cite in their memorandum that's before
:49:28 24 the Court, and that's the Baughman case. The Baughman
:49:30 25 case simply says summary judgment or a motion for summary

:49:34 1 judgment is inappropriate if there is inadequate time for
:49:37 2 discovery. In fact, in the Baughman case, the Supreme
:49:41 3 Court after --

:49:42 4 THE COURT: You telling me there hadn't been adequate
:49:45 5 time for discovery?

:49:46 6 MR. WALTERS: No, sir. In the Baughman case they
:49:48 7 were before the Supreme Court and 36 months had gone by,
:49:52 8 and the Court said that's not adequate time for discovery.

:49:56 9 THE COURT: What's that got to do with this problem?

:49:58 10 MR. WALTERS: This is a complex medical malpractice
:50:01 11 case. And in the process of obtaining expert for a
:50:03 12 layperson and hiring that expert to review the information
:50:06 13 as provided, under this particular case, we have been
:50:12 14 dilatory in our actions. In fact, the defendants in this
:50:14 15 case --

:50:15 16 THE COURT: Are you trying to tell me you have other
:50:17 17 experts you want to depose?

:50:19 18 MR. WALTERS: Your Honor, what I'm saying is we're in
:50:20 19 the process of attempting to get other experts. We
:50:22 20 received this discovery. After we received the discovery,
:50:26 21 one day after we received the discovery, we received a
:50:30 22 motion for summary judgment. I think that's inequitable
:50:32 23 and it's simply unfair, and doesn't give the plaintiff an
:50:36 24 opportunity to adequately work the case. That's a prima
:50:39 25 facie showing that there hadn't been adequate time.

:50:44 1 THE COURT: Let me stop you, Mr. Walters. I don't
:50:45 2 view this -- that as what this motion is about. Not only
:50:51 3 is it based on discovery, it's based on a lot of
:50:56 4 discovery, including your only designated expert's
:51:01 5 deposition.

:51:03 6 MR. WALTERS: May it please the Court? Your Honor I
:51:05 7 believe that in their memorandum, they allege that the
:51:09 8 plain language of Rule 56 requires, mandates the entry of
:51:14 9 summary after adequate time for discovery. And they cite
:51:17 10 my case, which is Baughman versus American Telegraph and
:51:20 11 Telephone.

:51:21 12 THE COURT: Let me -- I'm going to shorten this.

:51:24 13 MR. WALTERS: Yes, sir.

:51:25 14 THE COURT: There has been adequate time for
:51:27 15 discovery. This case was commenced -- the lawsuit, let
:51:28 16 alone the filing of the notice of intent, was filed when?

:51:31 17 MR. WALTERS: The notice of intent was filed probably
:51:34 18 in November of 2013. Summons and complaint was filed
:51:39 19 February of 2014, I believe.

:51:41 20 THE COURT: So there's been a year and a half.

:51:42 21 MR. WALTERS: Yes, sir, that is correct.

:51:44 22 THE COURT: And in that year and a half, you're
:51:48 23 designated an expert.

:51:49 24 MR. WALTERS: Yes, sir, that is correct.

:51:50 25 THE COURT: They've deposed your expert.

:51:51 1 MR. WALTERS: Yes, sir.

:51:52 2 THE COURT: There's obviously been other discovery.

:51:53 3 Did you take the deposition of Dr. Jenkins?

:51:57 4 MR. WALTERS: The defendants took the deposition of
:52:00 5 Dr. Kovacs. They've taken three depositions; we haven't
:52:03 6 taken any.

:52:05 7 THE COURT: Isn't -- didn't I see something from
:52:06 8 Dr. Jenkins?

:52:06 9 MS. SULLIVAN: Yes, sir, Your Honor. We did an
:52:07 10 affidavit from Dr. Jenkins because they haven't taken his
:52:10 11 deposition. There was no testimony in the record. I
:52:12 12 wanted to make sure Dr. Jenkins had a --

:52:16 13 THE COURT: Mr. Walters, I'm not going to rule in
:52:18 14 this case based on the claim of inadequate time for
:52:19 15 discovery. So let's move on to the merits of the motion.

:52:26 16 MR. WALTERS: Yes, sir. Your Honor, I think the big
:52:27 17 elephant in the room that number one, they argue that
:52:29 18 Dr. Kovacs is not qualified as an expert, first of all, to
:52:31 19 render this opinion.

:52:32 20 THE COURT: No, they don't.

:52:33 21 MR. WALTERS: I believe in this particular case and
:52:35 22 in their memorandum --

:52:36 23 THE COURT: Let me tell you what I -- let me just ask
:52:39 24 these questions. Maybe this will help. As I read through
:52:42 25 the material, what concerned me about Dr. Kovacs'

:52:49 1 opinion -- assuming him to be an expert -- is that he says
:53:01 2 that Dr. Jenkins must have -- and I'm summarizing -- must
:53:09 3 have misread the slides based on the needle biopsy. And
:53:16 4 in order to -- for him to have arrived at the medical
:53:22 5 conclusion he stated in his report that led to the
:53:28 6 surgery. Yet he's never seen the slides, he doesn't know
:53:35 7 what the slides look like, he doesn't know the standard by
:53:39 8 which Dr. Jenkins reported his results, which is in
:53:46 9 medical terminology, which shouldn't surprise anybody.
:53:49 10 It's just going between doctors. So how can he say that
:53:55 11 Dr. Jenkins has done anything wrong?

:53:58 12 MR. WALTERS: Your Honor, discovery has been served
:58 13 but --

:53:59 14 THE COURT: That isn't my -- answer my question. I'm
:54:02 15 not interested in discovery.

:54:03 16 MR. WALTERS: Well, Your Honor, we did not receive
:54:04 17 the frozen slide.

:54:09 18 THE COURT: You're telling me your -- then you're
:54:10 19 telling me your expert rendered an expert opinion without
:54:14 20 seeing the evidence?

:54:15 21 MR. WALTERS: I'm saying that my expert, in filing
:54:18 22 this particular notice of intent --

:54:21 23 THE COURT: No, I'm talking about his deposition.

:54:23 24 MR. WALTERS: His deposition was given, but we have
:54:24 25 never received -- we've only received copies of the

:54:26 1 slides. We did not receive the frozen section.

:54:29 2 MS. SULLIVAN: Your Honor, I don't know that they
:54:30 3 ever asked for it. I honestly don't remember.

:54:33 4 THE COURT: Have a seat.

:54:35 5 You have submitted the only expert you've
:54:38 6 designated --

:54:40 7 MR. WALTERS: Yes, sir.

:54:40 8 THE COURT: -- is a doctor, whom, for the moment, we
:54:41 9 will assume minimal qualification to testify. He says in
:54:48 10 so many words he must have made mistake in reading the
:54:52 11 slides -- that is, Dr. Jenkins -- must have made a mistake
:54:55 12 in reading the slides.

:54:56 13 MR. WALTERS: Yes, sir.

:54:57 14 THE COURT: Yet he has never seen the slides.

:55:06 15 MR. WALTERS: He has never seen the frozen sections.

:55:07 16 THE COURT: There's no evidence -- go ahead. I'm
:55:07 17 listening.

:55:08 18 MR. WALTERS: The frozen sections were not provided
:55:09 19 and I believe we requested them under the requests for
:55:11 20 production and interrogatories. If I'm wrong, Counsel
:55:15 21 could correct me.

:55:16 22 MS. SULLIVAN: Your Honor, I did not bring my entire
:55:18 23 pleadings today. I don't want to represent that they did
:55:19 24 or didn't. I don't recall.

:55:20 25 THE COURT: The motion is based on what it's based

:55:22 1 on.

:55:22 2 MR. WALTERS: Yes, sir, and as far as his testimony

:55:24 3 with the affidavit and the other information he's

:55:27 4 provided, I believe he stated the standard of care as

:55:30 5 required under the three segments that we have.

:55:34 6 THE COURT: Where is that in his deposition?

:55:36 7 MR. WALTERS: Your Honor, I can carefully go through

:55:39 8 it now. I'll cite each of the parts. The deposition was

:55:51 9 overnighted to the Court so Your Honor would have it for

:55:54 10 today, and I'll start the at beginning, sir.

:55:56 11 THE COURT: The only deposition I have is what was

:55:58 12 attached to the plaintiff's memorandum.

:00 13 MR. WALTERS: It was overnighted to the Court.

:56:02 14 THE COURT: The Court does not have it.

:56:05 15 MR. WALTERS: Your Honor, I didn't know your facility

:56:06 16 would be away from the courthouse, but I'll cite the

:56:10 17 sections for Your Honor.

:56:11 18 THE COURT: All right.

:56:11 19 MR. WALTERS: Dr. Kovacs testified at his deposition

:56:14 20 as to the question by counsel: "Let me ask you this" --

:56:17 21 THE COURT: Page and line.

:56:18 22 MR. WALTERS: Page and line, sir? Just one moment.

:56:24 23 This is page 24, lines 23 through 25, and I'll first start

:56:29 24 with the affidavit, paragraph 5. Affidavit paragraph 5

:56:33 25 should be before the Court.

:56:35 1 THE COURT: It is.

:56:37 2 MR. WALTERS: "Let me ask you this. Do you know the
:56:38 3 range of suspicious forward fault (phonetic)?

:56:40 4 "No. Again, as a surgeon, we look at the words. I
:56:43 5 mean, when a pathologist tells us the tissue removed is
:56:43 6 suspicious for carcinoma, whether it is papillary
:56:50 7 carcinoma, and then they tell you the cells are
:56:53 8 characteristic of papillary carcinoma, that's what gets
:56:57 9 our attention. Category four or category three, that is
:57:00 10 pathological classifications. I mean, we look for the
:57:03 11 diagnosis in the sense of it being benign or malignant.
:57:07 12 This is what we want to know."

:57:08 13 Next question. "Do you take the report as saying the
:57:10 14 specimen was benign or malignant?"

:57:16 15 THE COURT: Now, where you reading from now?

:57:17 16 MR. WALTERS: This is page 24, lines 23 through 25.
:57:21 17 Lines 1 through 21 also. It says here --

:57:24 18 THE COURT: Page 24 of his deposition?

:57:26 19 MR. WALTERS: Yes, sir. Goes on to state: "Do you
:57:29 20 take this report as saying the specimen was benign or
:57:31 21 malignant?

:57:33 22 "It was malignant according the report.

:57:35 23 "Well, the report says suspicious for malignancy?

:57:36 24 Answer: "Yes, it is suspicious for papillary
:57:41 25 carcinoma, but then it goes on to make it sound even more

:57:45 1 malignant by saying focular epithelial cells are
:57:48 2 accompanied by those with nuclear folds and nuclear
:57:49 3 inclusions, which are characteristic of papillary
:57:53 4 carcinoma."

:57:54 5 THE COURT: Well, suppose that's true.

:57:56 6 MR. WALTERS: Yes, sir. Suppose it is true. But the
:57:59 7 point he's making is the communication as far as the
:58:02 8 reading of these slides is incorrect and it went through
:58:05 9 two different pathologists.

:58:09 10 THE COURT: No, no, let's back up a second. Look at
:58:10 11 line 4 of the same page, page 24.

:58:12 12 "Tell me what a category four lesion is.

:58:14 13 "I don't know. It's some kind of pathological
:58:14 14 evaluation. I don't know. I'm not sure. I don't know
:58:19 15 what a category four lesion is.

:58:21 16 "Are you familiar with the Bethesda criteria for
:58:23 17 evaluation of fine-needle aspirations?

:58:27 18 "Yes, I've seen it, but don't ask me to repeat it.

:58:30 19 "Okay.

:58:30 20 "I cannot remember it.

:58:31 21 "So you're unfamiliar with a category four is in the
:58:35 22 range of how likely something is to be cancerous?

:58:38 23 "As I said, I'm not familiar with that
:58:40 24 classification."

:58:42 25 MR. WALTERS: May it please the Court.

:58:42 1 THE COURT: He didn't know the medical terminology.

:58:45 2 MR. WALTERS: May it please the Court? Your Honor,
:58:45 3 they have presented no expert to substantiate the Bethesda
:58:50 4 standard. They've presented no one that has submitted an
:58:53 5 affidavit. As it stand now, the testimony of this doctor
:58:56 6 is the only testimony before the Court that's been offered
:59:00 7 by an expert. They've inserted --

:59:02 8 THE COURT: I think it's deficient. That's my -- why
:59:05 9 I'm asking the question.

:59:06 10 MR. WALTERS: I don't believe it's deficient, with
:59:09 11 all due respect. We've submitted an expert before the
:59:11 12 Court with an affidavit. They've failed to present any
:59:14 13 evidence, any affidavit from any expert with regard to the
:59:18 14 Bethesda or that the procedure was conducted properly.
:59:21 15 What they've presented before this Court was a deposition
:59:24 16 taken of their own doctor. He can't serve as an expert
:59:28 17 and a witness in his particular case and be the defendant.

:59:32 18 THE COURT: Certainly he can.

:59:33 19 MR. WALTERS: In this particular case, I think he's
:59:34 20 biased if he serves as an expert under the standards.

:59:36 21 THE COURT: That's for the jury to decide.

:59:38 22 MR. WALTERS: I think that would go towards his
:59:40 23 qualification to serve as an expert, Your Honor. He can
:59:42 24 certainly testify about what he did --

:59:42 25 THE COURT: He can be qualified as an expert in

:59:45 1 pathology. I'm not saying he is or he was, but he could
:59:49 2 be.

:59:50 3 MR. WALTERS: But he was not. In fact, in answers to
:59:52 4 our interrogatories and our request for production of
:59:53 5 documents, they did not designate him as an expert on his
:59:57 6 own behalf. So the case itself, what's before the Court
:00:00 7 is a doctor that they're saying is unqualified and we do
:00:04 8 not believe his testimony should be taken into
:00:07 9 consideration, but they've presented no expert to rebut
:00:10 10 the testimony of an expert that's qualified under our law.

:00:14 11 Now, the cases that we cite in our argument, they
:00:17 12 simply go to what type of person should be allowed to
:00:19 13 testify. We cite Rule 702. And I'd also cite the rules
:00:24 14 of the appellate court. As to medical experts, our
:00:27 15 appellate courts have expressly held that a medical
:00:30 16 practitioner's experience interacting with persons in the
:00:33 17 applicable specialty are sufficient to support his
:00:37 18 qualification as an expert.

:00:39 19 THE COURT: I don't disagree with that.

:00:40 20 MR. WALTERS: In their deposition -- and this is the
:00:41 21 information they obtained -- he does three thyroidectomies
:00:47 22 a year, and he's been practicing this particular medicine
:00:51 23 as a surgeon. If he does three a year and he's been
:00:53 24 practicing over 35 years, I believe he falls under Creed
:00:57 25 versus the City of Columbia.

:00:59 1 THE COURT: I'll tell you -- I promise you I'm not
:01:00 2 questioning the possibility he could be qualified as an
:01:00 3 expert.

:01:08 4 MR. WALTERS: And I would go further and argue, Your
:01:08 5 Honor, they have presented no one before this Court. In
:01:09 6 addition to that, they also cite the Fletcher case. What
:01:12 7 is the distinction between the res ipsa that they put
:01:12 8 before the Court and the court case we have before the
:01:17 9 Court? In Fletcher, number one, everybody obtained
:01:21 10 experts. Number two, when they make the res ipsa
:01:25 11 argument, this is the question that was asked of the
:01:27 12 expert on the stand with regard to the Fletcher case.

:01:30 13 "Do you have an opinion, Doctor, as to whether or not
:01:33 14 Dr. Brothers and Dr. Royce, the agents of MUSC in
:01:36 15 performing the surgery, deviated from the standard of
:01:39 16 care?" He simply said, "I think so. I think they did."
:01:42 17 However, Dr. Wood testified on cross-examination that
:01:46 18 complications such as trauma, or phrenic nerve and damage
:01:48 19 to the thoracic duct could have occurred during this
:01:51 20 procedure even in the absence of any surgical negligence.

:01:56 21 Question: "Do you see anything in the operative
:01:58 22 notes and records that indicates that Dr. Brothers used
:02:00 23 any improper technique to do this operation?"

:02:04 24 Answer. "No."

:02:20 25 So in the Fletcher case, what the expert testified to

1 was is that this could have happened to this woman whether
2 she had the surgery or not. That is totally different
3 from the case that's before Your Honor, and they're
4 attempting to take Fletcher and somehow make it a part of
5 this case.

6 THE COURT: Well, I'm not -- let me ask you -- let's
7 be specific here. You said a minute ago that another
8 specification of professional negligence was failure to
9 properly communicate with Dr. Jones?

10 MR. WALTERS: What I'm saying is the testimony from
11 Dr. Kovacs, it goes further into that. And I'll read it
12 to Your Honor and I'll state the pages. Dr. Kovacs'
13 deposition on page 46, lines 14 through 25. Page 47,
14 lines one through ten. Here are the questions.

15 Question: "So if I'm a surgeon and I have a pathology
16 report in front of me that says it is positive for
17 carcinoma and I go take the thyroid out and it turns out,
18 you know what, it -- I -- one of those false positives,
19 does that make me, as a surgeon, wrong?

20 Answer: "No, it doesn't. As a surgeon, you're
21 relying, really relying on the pathologist's report.

22 "Does it make the pathologist wrong?

23 "Well, if he told the surgeon that it was malignant
24 or most likely to be malignant and it turns out to be
25 benign, it does make him wrong.

:03:34 1 "So it sounds like to me in the absence of definitive
:03:36 2 diagnosis, it sounds like to me what you're saying is the
:03:39 3 absence of definitive diagnose, the pathologist is always
:03:44 4 wrong.

:03:45 5 Answer. "No.

:03:45 6 Answer -- question: "Likely to be wrong?

:03:47 7 And here's where he explains the negligence. He can
:03:50 8 say, "Look I cannot give you any definitive idea. I mean,
:03:54 9 he can say that I really can't come to any conclusions.
:03:57 10 He will need to do further stains, further cuts, you
:04:03 11 know."

:04:03 12 So our expert is saying if it's inconclusive and
:04:05 13 you're not exactly sure, based on his years of experience
:04:08 14 of working with pathologists, you can go further. Get
:04:11 15 tissues. Get stains. And you can go through that process
:04:15 16 to determine definitively what you do have. He failed to
:04:17 17 do that here. And under the circumstances, this is the
:04:22 18 only expert that's before the Court that's offered an
:04:24 19 opinion, that signed an affidavit, and testified under
:04:27 20 oath. There's no one that's been presented by the defense
:04:31 21 to refute or rebut what exactly he said.

:04:34 22 THE COURT: Well, I can tell you what Dr. Jenkins
:04:37 23 said. He said the system used for categorizing specimens
:04:39 24 is called the Bethesda scale. A quote, four, end quote,
:04:43 25 on the Bethesda scale means there's a 65 to 75 percent

:04:47 1 chance that the specimen is malignant. Conversely,
:04:51 2 there's a 25 to 35 percent chance that there is no
:04:55 3 malignancy. The standard of care for pathologists who
:04:58 4 find a sample to be category four is to recommend
:05:00 5 excision.

:05:02 6 MR. WALTERS: May it please the Court? He's not
:05:05 7 designated as their expert. I believe the jury should be
:05:08 8 allowed to hear all the parties testify, weigh the
:05:10 9 evidence, and make a decision. But they have failed to
:05:12 10 name an expert to rebut Dr. Kovacs. And under the
:05:14 11 circumstances, they haven't designated anyone. After 18
:05:19 12 months, they still haven't named an expert. The expert we
:05:23 13 have before the Court, as it stands now, he's not been
:05:25 14 rebutted in what he has to say.

:05:28 15 THE COURT: He just hasn't said enough.

:05:36 16 MR. WALTERS: Your Honor, that's why under the
:05:36 17 circumstances with the Baughman case. And I know your
:05:36 18 ruling. We received this summary judgment motion the day
:05:39 19 after we received the discovery. And of course, under the
:05:43 20 circumstances, a trial is a search for the truth. How can
:05:46 21 we adequately represent a client who doesn't have
:05:49 22 sufficient funds to hire expert after expert, but is
:05:52 23 trying and putting things together, and we get served with
:05:56 24 a summary judgment the day after we received the
:05:58 25 discovery. Under the circumstances, we should be allowed

:06:01 1 to work this case. We should be allowed to --

:06:04 2 THE COURT: You've had a year and a half.

:06:05 3 MR. WALTERS: Yes, sir, and each expert may cost four
:06:09 4 to \$6,000 just for one expert. We're not this hospital.
:06:12 5 We're not Piedmont Medical Center. And when we're hit
:06:15 6 with summary judgment one day after you give us the
:06:18 7 answers to our interrogatories and requests for production
:06:21 8 of documents, it compromises our case. And in their own
:06:24 9 brief, they say it must be a full and fair opportunity
:06:27 10 to --

:06:28 11 THE COURT: You have never asked this court or any
:06:29 12 other court to continue this motion in order that you
:06:34 13 could engage in further discovery.

:06:38 14 MR. WALTERS: We had a status conference with regard
:06:38 15 to this particular case and we were supposed to get
:06:38 16 together sometime later this year.

:06:43 17 THE COURT: When did you have that status conference?

:06:45 18 MR. WALTERS: I don't have the date.

:06:47 19 THE COURT: January or February?

:06:48 20 MS. SULLIVAN: Your Honor, my partner did that, so I
:06:50 21 can't tell you the exact date. Maybe cocounsel can help
:06:55 22 me out, but --

:06:55 23 THE COURT: It wasn't January or February?

:06:56 24 MS. SULLIVAN: -- but I believe it was earlier this
:06:57 25 year, Your Honor. It was probably spring.

1 THE COURT: Well, the administrative judge usually
2 does them in January or February. I don't know what it?

3 MR. WALTERS: I don't think we had it -- it was after
4 January, Your Honor, if memory serves me correctly.

5 THE COURT: Well, I've heard enough and your record
6 is protected. I grant the plaintiff -- the defendant's
7 motion. I find that fundamentally the plaintiff has not
8 presented evidence to create a genuine issue of fact
9 concerning the violation of the standard of care. The
10 fact -- the defendant's case does not contain any
11 indication that the evidence that it claims was misread
12 has even been read by them -- by the plaintiff or any
13 expert of the plaintiff. And there's been ample time to
14 do that. There's never been a motion to -- could have
15 taken that up with the administrative judge to extend
16 discovery. I'm -- that's about it. So you need to e-mail
17 me an order please, ma'am.

18 MS. SULLIVAN: You like Word?

19 THE COURT: Yes, Word format. I will look at it, and
20 I think I need to change it, I will.

21 MS. SULLIVAN: Yes, sir.

22 MR. WALTERS: Thank you, Your Honor.

23 THE COURT: You want to put yours on the record?

24 MR. INABINET: Yes, sir, I would like to comment very
25 briefly so we can have our argument on the record. I'm

:08:49 1 Hollis Inabinet. I'm here for Billy Gunn on behalf of
:08:51 2 Amisub of South Carolina doing business as Piedmont
:08:53 3 Medical Center. As you eloquently stated at the beginning
:08:55 4 of the hearing --

:08:56 5 THE COURT: Wasn't eloquent, but I did state it.

:08:57 6 MR. INABINET: Clearly stated, how about that? If
:08:58 7 she wins, then we win. After looking at the complaint,
:09:00 8 the only allegations of negligence against Piedmont
:09:03 9 Medical Center are for vicarious liability for the action
:09:06 10 of Dr. Jenkins, so we would contend and argue that if, as
:09:09 11 you have, granted summary judgment for Dr. Jenkins and his
:09:11 12 group, then there's no basis for liability for Piedmont
:09:15 13 Medical Center and we believe we're also entitled to
:09:17 14 summary judgment.

:09:18 15 THE COURT: Mr. Walters, is there any basis in the
:09:21 16 plaintiff's complaint -- claim for negligence on the part
:09:26 17 Amisub that doesn't derive -- isn't derived from the acts
:09:37 18 or failure to act of Dr. Jenkins?

:09:41 19 MR. WALTERS: May it please the Court.

:09:41 20 THE COURT: Yes, sir.

:09:42 21 MR. WALTERS: Your Honor, the report that was
:09:43 22 submitted by Dr. Jenkins, one of them has Piedmont Medical
:09:47 23 Center on it.

:09:50 24 THE COURT: Right. That the same -- Piedmont Medical
:09:52 25 Center, Amisub of South Carolina, Inc., is the --

:09:56 1 MR. WALTERS: Right, but that was submitted from
:09:57 2 Dr. Jenkins' office, and as far as the ownership of the --

:10:05 3 THE COURT: No, my question is: Is there any
:10:07 4 specification of negligence against Piedmont Medical
:10:15 5 Center, Amisub, whatever you want to call it that is not
:10:19 6 derive from the acts or failure to act of Dr. Jenkins?

:10:27 7 MR. WALTERS: Our argument is the vicarious
:10:29 8 liability --

:10:30 9 THE COURT: That's what I'm after. It's all
:10:31 10 vicarious liability?

:10:33 11 MR. WALTERS: Right, because I believe they argued
:10:33 12 they were independent contractors. And, of course, from
:10:33 13 the information we received, it's unclear as to who own
:10:38 14 the slides and the names that have been placed on the
:10:39 15 reports as to whether are -- it's not an independent
:10:42 16 relationship. Because Dr. Jenkins submitted a report, I
:10:51 17 believe -- and I walked off without addressing it. The
:10:54 18 name on it was for the Piedmont Medical Center, and I
:10:57 19 believe that Jenkins was working for Pathology Associates.

:11:05 20 THE COURT: Do you assert -- said another way, is
:11:06 21 there any assertion of negligence on the part of Piedmont
:11:10 22 Medical Center or Amisub that is posited on any negligence
:11:17 23 of its own?

:11:18 24 MR. WALTERS: No. We just argue the vicarious
:11:21 25 liability.

:11:21 1 THE COURT: Okay. All right. I grant your motion.

:11:23 2 MR. INABINET: Thank you, Your Honor.

:11:24 3 MS. SULLIVAN: Should I do -- one order is fine,

:11:25 4 or...

:11:26 5 THE COURT: That will be fine. If it's all right
:11:27 6 with y'all, it is.

:11:28 7 MR. INABINET: As she said, she's doing the heavy
:11:30 8 lifting.

:11:31 9 THE COURT: Send those to Mr. Walters.

:11:31 10 (Whereupon, the proceedings were concluded.)

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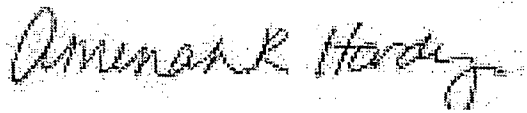
CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

I, Aminah R. Hardy, CM, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the hearing of
the captioned case, relative to appeal, in the Court of
Common Pleas for York County, South Carolina, on the 13th
day of August, 2015.

January 6th, 2016



Aminah R. Hardy, CM

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMONS PLEAS
2 COUNTY OF YORK

3 PATRICIA CRAIG,)
4)
5 Plaintiff,)
6)
7 vs.) CASE NO:
8) 2014-CP-46-00508
9 E. EARL JENKINS, JR. MD,)
10 also known as EVERETT EARL)
11 JENKINS, JR. MD, ET AL,)
12)
13 Defendants.)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

DEPOSITION OF GABOR KOVACS, MD

May 6, 2015

1:08 p.m.

204 E. 15th Street
Alma, Georgia

Erin B. Poepping, Certified Court Reporter, 2661

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14

Exhibit 5 Op/Procedure Note 32

15

16 (Original Defendants' Exhibits 1 through 5
have been attached to the original transcript.)

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1 (Reporter disclosure made pursuant to
2 Article 8.B. of the Rules and Regulations of the
3 Board of Court Reporting of the Judicial Council of
4 Georgia.)

5 (Defendants' Exhibits No. 1 through 3
6 marked for identification.)

7 GABOR KOVACS, MD,
8 having been first duly sworn or affirmed, was
9 examined and testified as follows:

10 EXAMINATION

11 BY MS. SULLIVAN:

12 Q. Dr. Kovacs, you have been sworn. My name
13 is Kelli Sullivan. I represent Dr. Jenkins in this
14 matter. We are here to take your deposition today,
15 is that your understanding?

16 A. Yes, ma'am.

17 Q. Great.

18 And I believe you probably have had your
19 deposition taken before, correct?

20 A. Yes, ma'am.

21 Q. Well, I realize that you have had your
22 deposition in the past, but I need to give you a
23 couple of ground rules. The State of South Carolina
24 has a few things that I need to mention to you.

25 First of all, if you don't understand any

1 question that I ask or it is not clear, please let me
2 know, I will be happy to rephrase it, all right?

3 A. Yes, ma'am.

4 Q. Secondly, this is not an endurance contest.
5 If you need to take a break, answer a call, you just
6 let us know and we will be happy to do that, okay?

7 A. Yes, ma'am.

8 Q. And you are doing a great job of this so
9 far, but please -- especially for Mr. Walters' sake,
10 try to give me a verbal answer to my questions rather
11 than a nod or a shake; that is very difficult for the
12 court reporter, all right?

13 A. Yes, ma'am.

14 Q. And if I ask you at some point is that a
15 yes, is that a no, I am not trying to be rude. I am
16 trying to make sure I can figure it out six months
17 from now when I read the transcript, okay?

18 A. Yes, ma'am.

19 Q. Super.

20 You have given me your CV that we have
21 marked as Exhibit 1, and we are here today at 204
22 East 15th Street, Alma, Georgia, is that your current
23 business address?

24 A. Yes, ma'am.

25 Q. And I see from looking at your CV that you

1 were educated, it looks like, in New York, and your
2 MD is from Catholic University in Belgium?

3 A. Yes, ma'am.

4 Q. Can you just give me a brief summary,
5 because we have your CV, of your educational history
6 after your MD in 1976?

7 A. After my MD I did an internship at the
8 Brooklyn Jewish Hospital, followed by a residency in
9 general surgery at the Brookdale Medical Center in
10 Brooklyn, New York. After that I did a fellowship in
11 thoracic and cardiovascular surgery at Nassau
12 Hospital in Mineola.

13 Q. And you are a general surgeon?

14 A. Yes, ma'am.

15 Q. You have been since when?

16 A. I have been a general surgeon since I
17 finished my residency in 1981.

18 (A discussion was held off the record.)

19 Q. (By Ms. Sullivan) Doctor, we had just
20 talked about your educational history. Are you board
21 certified in general surgery?

22 A. Yes, ma'am.

23 Q. And are you board certified in anything
24 else?

25 A. No, ma'am.

1 Q. Have you ever been board certified in
2 anything else?

3 A. No, ma'am.

4 Q. Doctor, we are here to talk about a case
5 today that involves a fine needle aspiration of a
6 thyroid and a thyroidectomy. Have you ever published
7 anything that you would consider to be relevant to
8 the issues we are going to talk about today?

9 A. No, ma'am.

10 Q. Outside of any training that you did in
11 medical school, have you had any other training in
12 pathology?

13 A. No, ma'am.

14 Q. Is it fair to say that since before 1980 or
15 around 1980 was probably your last training or
16 education in pathology?

17 A. Yes, ma'am.

18 Q. Doctor, when were you first contacted about
19 this case?

20 A. I guess somewhere around the time when the
21 affidavit was submitted.

22 Q. That would have been in November -- October
23 or November of 2013?

24 A. It must have been somewhere around that
25 time, yes, ma'am.

1 Q. And did that contact come from Mr. Walters?

2 A. If I remember right, that came through an
3 organization called Healthcare Auditors.

4 Q. Now, what kind of organization is
5 Healthcare Auditors?

6 A. It is a company, I believe, that reviews
7 medical records and then sends them out to different
8 specialties, depending on what the case is involved
9 in, and sends it out to different specialists in the
10 medical field for further review.

11 Q. Essentially, an expert witness search
12 service?

13 A. Yes, ma'am.

14 Q. And how did you come to be affiliated with
15 Healthcare Auditors?

16 A. I think many years ago I was sitting in a
17 lawyer's office and I was looking through their
18 journals, and there was an advertisement from them
19 and I called the number.

20 Q. So you approached them?

21 A. Yes, ma'am.

22 Q. And so about how long have you been doing
23 expert witness work?

24 A. I have been doing it for them
25 intermittently since 1996.

1 Q. So close to 20 years?

2 A. Close to it, yes, ma'am.

3 Q. How do you bill for your services as an
4 expert witness?

5 A. I usually -- initially when they send me a
6 case they attach a check along with it. How they
7 calculate the amount I really am not sure. They
8 usually send the check along with the medical records
9 to cover the review and submitting a report on it.

10 Q. Do you know how much your check was in this
11 case?

12 A. I don't remember, no.

13 Q. Can you give me a ballpark? Is it usually
14 in the hundreds, in the thousands?

15 A. It varies anywhere from 500 to 1,200
16 depending on the complexity of the case.

17 Q. That initial check, however much it is,
18 that is to cover your initial review and your
19 affidavit or report, correct?

20 A. Yes, ma'am.

21 Q. What about work beyond the initial review
22 and the affidavit or report, how do you charge for
23 that?

24 A. Beyond that, usually for like when I do a
25 deposition, I usually charge 450 an hour for a

1 minimum of six hours, and that includes the
2 deposition and preparing for the deposition.

3 Q. What about for trial?

4 A. For trial I usually charge 4,500 for the
5 day since most of the time it takes up my whole day
6 plus expenses.

7 Q. Other than whatever initial check it was
8 that you have received in this case, have you
9 invoiced Mr. Walters or Healthcare Auditors for any
10 additional monies?

11 A. I invoiced for the deposition. I don't
12 remember anything else at this point.

13 Q. Aside from the deposition today and getting
14 prepared for the deposition today, about how much
15 time do you think that you spent reviewing the
16 records in formulating your opinions?

17 A. Initially, probably I spent reviewing the
18 records and formulating the opinion somewhere between
19 two to three hours.

20 Q. And then fair to say that you haven't
21 really done any other work on it other than getting
22 ready for this deposition?

23 A. Yes, ma'am.

24 Q. Now, I understand that you have some kind
25 of relationship with Healthcare Auditors. Are you

1 listed with any other expert witness search services?

2 A. No, ma'am.

3 Q. Do you maintain any kind of website or
4 on-line presence to solicit others to use your
5 services as an expert?

6 A. No, ma'am.

7 Q. Now, you have been doing this for close to
8 20 years, about how many cases annually do you
9 review?

10 A. Roughly -- the last couple of years it's
11 been kind of less, but maybe eight to ten a year,
12 approximately. The last couple of years it has been
13 maybe two or three.

14 Q. So it fluctuates to some degree?

15 A. Yes, ma'am.

16 Q. Have you had any other expert witness work
17 or inquiries apart from Healthcare Auditors, or do
18 all of your cases come through Healthcare Auditors?

19 A. No. Sometimes I will get cases from
20 attorneys that I have worked with previously.
21 Instead of going through Healthcare Auditors, they
22 would contact me directly if they have a case.

23 Q. Can you give me a rough estimate of how
24 much comes through Healthcare Auditors versus how
25 much is direct in a percentage basis?

1 A. Maybe three-quarters of it would be through
2 Healthcare Auditors and about a quarter of it comes
3 directly.

4 Q. Now, to your knowledge, have you ever
5 reviewed anything for Mr. Walters before?

6 A. I don't believe so. No, ma'am.

7 Q. Have you ever opined or done work for other
8 South Carolina attorneys before?

9 A. Yes, ma'am.

10 Q. My research seems to indicate about seven
11 times, do you think that is ballpark correct?

12 A. I believe so. Yes, ma'am.

13 Q. Now, of the cases that you do for
14 Healthcare Auditors, which represents roughly 75
15 percent of the cases that you do, are those primarily
16 for plaintiffs or is it a mix?

17 A. It is primarily for plaintiffs.

18 Q. What about the additional 25 percent that
19 come to you direct?

20 A. Some of it is for the defendants, some of
21 it is for the plaintiffs.

22 Q. Have you ever testified at trial on behalf
23 of a defendant?

24 A. Yes, ma'am.

25 Q. When was that?

1 A. It must have been, I don't know, six or
2 seven years ago.

3 Q. Have you testified at trial on behalf of a
4 defendant more than once?

5 A. I am not sure. I don't remember exactly.
6 I am definite about one, but I don't know if I did
7 more or not.

8 Q. Now, do you testify outside of the
9 Georgia-South Carolina general area, geographic area?

10 A. Yes, ma'am.

11 Q. Can you give me an estimate of how many
12 states you believe you have testified in over the
13 course of your expert witness work?

14 A. It must be about at least maybe a half
15 dozen.

16 Q. Doctor, have you ever been personally sued
17 for malpractice?

18 A. Yes, ma'am.

19 Q. How many times?

20 A. About, I would say, probably around seven
21 times.

22 Q. When was the most recent case?

23 A. The most recent case must be at least six
24 or seven years ago.

25 Q. Was it here in Georgia?

1 A. No, ma'am.

2 Q. Let me ask the question a different way.

3 Have you ever been sued for malpractice in
4 the State of Georgia?

5 A. No, ma'am.

6 Q. Where were the other malpractice suits that
7 you had?

8 A. In New Jersey.

9 Q. New Jersey is the only other state?

10 A. Yes, ma'am.

11 Q. Now, I am sure that you have a license to
12 practice medicine in Georgia. Do you still maintain
13 a license anywhere else?

14 A. I have a license, although it is inactive,
15 in New Jersey and in Florida.

16 Q. Is your Florida license active?

17 A. Since I didn't pay the dues, I doubt it.

18 Q. They tend to not like it when you don't pay
19 the dues.

20 A. No, they don't.

21 Q. Now, of those seven times that you were
22 sued, was any money ever paid out on your behalf to
23 settle any of those cases?

24 A. Yes, ma'am. There was a settlement.

25 Q. One?

1 A. Yes, ma'am.

2 Q. What happened to the other six?

3 A. They got dismissed or I got dropped from
4 the case.

5 Q. Tell me about the one that you settled.

6 A. The one that I settled was actually not
7 even -- it was my partner's patient, actually, that
8 had peripheral vascular disease. We were on staff in
9 two separate hospitals, but the hospital this patient
10 was admitted to I had vascular privileges and he
11 didn't so he was admitted under my care. We did a
12 femoropopliteal bypass on him and it failed. Then we
13 went in to revise it, that didn't stay open. To make
14 a long story short, he was transferred to another
15 institution, but they still tried again to
16 revascularize his leg, but ultimately he wound up
17 with an amputation.

18 Q. And I won't hold you to a date exactly, but
19 when was that?

20 A. I don't know. It was around 2004, 2006,
21 something around there.

22 Q. In the early-to-mid 2000s?

23 A. Yes, ma'am.

24 Q. Have you ever testified at trial in South
25 Carolina?

1 A. I believe I have. I am pretty sure I have,
2 but that was a good number of years ago.

3 Q. Do you remember anything about the case?

4 A. No, ma'am. Nothing at all.

5 Q. Have you ever testified at trial anywhere
6 involving a thyroid or the pathology of a fine needle
7 aspiration?

8 A. Not to the best of my recollection, no,
9 ma'am.

10 Q. Has any court ever recognized you as an
11 expert in pathology?

12 A. No, ma'am.

13 Q. Have you ever attempted to be recognized as
14 an expert in pathology?

15 A. No, ma'am.

16 Q. Are you holding yourself out as an expert
17 in pathology?

18 A. No, ma'am.

19 Q. What hospital do you currently have
20 privileges in?

21 A. I still have privileges at the hospital
22 where I worked previously. Well, where I was on
23 staff previously, which is CentraState Medical Center
24 in Freehold, New Jersey, and I currently practice at
25 Bacon County Hospital here in Alma, Georgia.

1 Q. Is that the one kind of across the parking
2 lot?

3 A. Yes, ma'am.

4 Q. Actually, that is where I went looking for
5 you earlier.

6 Tell me about your surgical practice. I
7 know that you're a general surgeon. Do you do more
8 of one kind of thing than another?

9 A. Yes.

10 Q. Tell me about that.

11 A. I do hundreds of gallbladders down South.

12 Q. Is it mostly laparoscopic or open, or...

13 A. No, it is mostly laparoscopic.

14 Q. You said gallbladders and associated
15 surgeries are the bulk of your practice?

16 A. Well, gallbladders, hernias, I do thyroid
17 surgery, I do breast surgery, occasionally I will do
18 some vascular surgery, exploratory laparotomies,
19 bowel surgery, colon resections.

20 Q. You mentioned you will do a thyroid
21 surgery, and, again, ballpark, I am not going to hold
22 you to this exactly, but about how many thyroid
23 surgeries do you reckon you do in a year?

24 A. In a year, probably two or three.

25 Q. Are those ones where someone has had a

1 suspicious biopsy of some sort?

2 A. Yes, ma'am.

3 Q. Have you at any hospital where you have
4 ever had privileges had your privileges revoked or
5 suspended?

6 A. No, ma'am.

7 Q. Have you ever had any trouble with a state
8 licensing board in any state in which you have been
9 licensed?

10 A. No, ma'am.

11 Q. I think we said that you are licensed in
12 Georgia, maybe New Jersey and maybe Florida?

13 A. Well, I have licenses, I just haven't -- I
14 have not kept them active.

15 Q. I see.

16 Now, in order to prepare for today did you
17 review any journals or literature?

18 A. No, ma'am.

19 Q. Did you in preparation for your affidavit
20 or while you were getting ready to write your
21 affidavit?

22 A. No, ma'am.

23 Q. Can you tell me what all you have reviewed
24 either to prepare for today or to write your
25 affidavit?

1 A. I reviewed medical records from Piedmont
2 Medical Center, I believe I reviewed some office
3 notes from some ear, nose and throat specialists and
4 office notes from the office of Dr. Jones.

5 Q. Have you reviewed any depositions?

6 A. No, ma'am.

7 Q. No depositions of Dr. Jones?

8 A. No, ma'am.

9 Q. Or of the plaintiff?

10 A. No, ma'am.

11 Q. Have you ever met Ms. Craig or spoken with
12 her?

13 A. No, ma'am.

14 Q. I don't know if you have a copy of your
15 affidavit handy, but we have one here marked as an
16 exhibit if you need it.

17 A. Actually, I do have a copy of it.

18 Q. Great.

19 I will just ask you to review that really
20 quickly. I mean, take as much time as you need.
21 What I am wanting to know is if your affidavit
22 contains all of the opinions that you have reached so
23 far in this case or if there are others that we will
24 need to talk about.

25 A. That pretty much sums up my opinions, yes,

1 ma'am.

2 Q. Well, if you think of something as we go, I
3 want you to let me know, okay?

4 A. Yes, ma'am.

5 Q. Have you reviewed the summons and complaint
6 that has been filed in this case?

7 A. I am not sure.

8 Q. Well, I may have some questions on that
9 later. I will show you a copy if indeed I ask
10 anything about that.

11 I believe that you said that you had
12 surgical privileges at Bacon County?

13 A. Bacon County, yes, ma'am.

14 Q. Now, are those general surgery privileges?

15 A. General surgery and vascular surgery
16 privileges.

17 Q. Do you have any privileges at Bacon that
18 would allow you to read pathology slides or specimens
19 for patients other than your own?

20 A. No, ma'am.

21 Q. When you do have a patient who has had,
22 let's say, a biopsy of some sort or a fine needle
23 aspiration, something that requires pathological
24 review, do you personally review those slides?

25 A. No, ma'am.

1 Q. Now, in this case that we are talking about
2 for Ms. Craig, there were essentially two --
3 actually, three specimens that a pathologist looked
4 at. The first was the fine needle aspiration. The
5 second was the specimen that was taken
6 intraoperatively, and then the third, obviously, was
7 the thyroid that was taken out. Did you review any
8 of the slides of any of those specimens?

9 A. No, ma'am.

10 Q. I notice that your affidavit in the second
11 paragraph says that you are not a pathologist but
12 that you work closely with pathologists who are
13 instrumental to your surgical practice. Other than
14 working with pathologists who read biopsies or slides
15 for you, what other contacts do you have with
16 pathologists?

17 A. Well, that's basically my main contact,
18 that I rely on them for pathological interpretations
19 of specimens that I would wind up removing, whether
20 it is a thyroid or colon cancer or any other --
21 whether it is an appendix, anything else that needs
22 pathological interpretation. I usually interact with
23 them to get the appropriate diagnosis.

24 Q. Have you ever had an experience in your
25 surgical career where you will have sent something

1 off for pathology and gotten an inconclusive result
2 from a pathologist?

3 A. Yes, it has happened. Yes, ma'am.

4 Q. And does that necessarily mean that the
5 pathologist was in error?

6 A. Well, if he reads it is inconclusive, then
7 the assumption is he has not made a decision about
8 it, so it is not an error until you get a final
9 diagnosis.

10 Q. What does it mean when a pathologist sends
11 you a report that says that something is suspicious
12 for cancer, for example?

13 A. That means that he is seeing certain
14 histological features that makes him think that the
15 tissue that he is reviewing is likely to be
16 malignant.

17 Q. But that is not a definitive diagnosis of
18 cancer?

19 A. It's not definitive, not until you get more
20 tissue, until he gets more tissue submitted to him.

21 Q. Now, when we are talking about Mrs. Craig
22 in this case -- I will kind of narrow my focus to
23 this case, we're talking about, as I said, three
24 different specimens, the first being the fine needle
25 aspiration that was done. Are you familiar with any

1 statistics, journal articles or publications that
2 suggests what a false-positive or false-negative rate
3 is for cancer on fine needle aspirations?

4 A. If you are talking specifically about
5 thyroid cancer, fine needle aspiration --

6 Q. I am.

7 A. -- usually the specificity and the
8 sensitivity of a fine needle aspiration is -- the
9 accuracy is about 95 to 97 percent on a fine needle
10 aspiration.

11 MS. SULLIVAN: Glenn, I am marking the
12 pathology report for the fine needle aspiration
13 as the next exhibit.

14 (Defendants' Exhibit No. 4 marked for
15 identification.)

16 MR. WALTERS: Okay.

17 Q. (By Ms. Sullivan) Doctor, I will hand this
18 to you just for ease of our reference.

19 A. Yes.

20 Q. Doctor, I have handed you what has been
21 marked as Exhibit 4, which is the pathology results
22 from the fine needle aspiration from Ms. Craig's
23 thyroid nodule, have you reviewed this before?

24 A. Yes, ma'am.

25 Q. I want to draw your attention to that last

1 little bullet point there that says, "Category 4
2 lesion, suspicious for malignancy, excision is
3 indicated."

4 Tell me what a category 4 lesion is.

5 A. I don't know. It is some kind of
6 pathological evaluation. I am not sure. I don't
7 know what a category 4 lesion is.

8 Q. Are you familiar with the Bethesda criteria
9 for evaluation of fine needle aspirations?

10 A. Yes, I have seen it, but don't ask me to
11 repeat it.

12 Q. Okay.

13 A. I cannot remember it.

14 Q. So you're unfamiliar with what a category 4
15 is in the range of how likely something is to be
16 cancerous?

17 A. As I said, I am not familiar with that
18 classification.

19 Q. Okay.

20 A. I mean, I have seen it, but they give you a
21 list that you would have to sit there for -- you
22 know, make a really intense effort to memorize it.

23 Q. Let me ask you this: Do you know where in
24 the range of suspicious 4 would fall?

25 A. No. Again, as a surgeon, we look at the

1 words. I mean, when a pathologist tells us that the
2 tissue that we removed is suspicious for carcinoma,
3 whether it is papillary carcinoma, and then they tell
4 you that the cells are characteristic of papillary
5 carcinoma, that's what gets our attention. Category
6 4 or category 3, that is pathological
7 classifications. I mean, we really look for the
8 diagnosis in the sense of is it benign or malignant,
9 that is what we want to know.

10 Q. Do you take this report as saying this
11 specimen was benign or malignant?

12 A. It was malignant according to the report.

13 Q. Well, the report say "suspicious for
14 malignancy."

15 A. Yes, it is suspicious for papillary
16 carcinoma, but then it goes on to make it sound even
17 more malignant by saying, "follicular epithelial
18 cells are accompanied by those with nuclear folds and
19 nuclear inclusions which are characteristic of
20 papillary carcinoma." That puts a little extra
21 emphasis on the malignant portion of the report.

22 Q. Does this report in any way give a
23 definitive diagnosis of cancer?

24 A. That's very close to definitive. I mean,
25 the pathologist seems to be pretty much saying that

1 he is leaning towards the diagnosis of this patient
2 having papillary carcinoma.

3 Q. For the purposes of this question, let's
4 assume -- or I would like for you to assume that a
5 category 4 lesion on the Bethesda Scale means that
6 there is a 65 to 75 percent chance that the lesion is
7 malignant. If that is the case, would not the
8 converse be true, that then there is a 25 to 35
9 percent chance that the lesion is not malignant?

10 A. Well, plain math, yes, ma'am.

11 Q. Well, math is not my strong suit. I just
12 wanted to make sure I interpreted that correctly.

13 Now, once you have a patient, when you have
14 this pathologic diagnosis back that says something is
15 suspicious for malignancy, what then should be the
16 surgeon's next step?

17 A. To go in and remove the nodule and submit
18 it to the pathologist and then get a definite
19 diagnosis based on the further specimen.

20 Q. When you say "remove the nodule," do you
21 mean remove the whole thyroid or whatever little area
22 there is?

23 A. Well, when you go in you remove more of the
24 tissue. If the diagnosis submitted by the
25 pathologist is not 100 percent, you submit more

1 tissue to him. Then if that comes back as malignant,
2 then you go ahead and do a total thyroidectomy.

3 Q. Now, would you agree with me that Ms. Craig
4 had more than one nodule in her thyroid?

5 A. Yes, ma'am.

6 Q. Does the fact that she has more than one
7 nodule have any bearing on the likelihood of whether
8 or not she had thyroid cancer?

9 A. Minimally. Slightly. It slightly
10 increases the chance of her having a malignant
11 nodule.

12 Q. Now, do you have any way to disagree with
13 Dr. Jenkins' rating of this as a category 4 lesion?

14 A. Like I said, I am not familiar with the
15 categories so there is no way for me to disagree with
16 him.

17 Q. Okay.

18 A. No, ma'am.

19 Q. So you have no disagreement with the fact
20 that this sample that was submitted to him was
21 suspicious for malignancy?

22 A. No, I have no reason to disagree with him.

23 Q. You haven't reviewed the slides?

24 A. No, ma'am.

25 Q. So you cannot say that he reviewed them

1 incorrectly or came to an incorrect collusion?

2 A. Well, having known the whole case,
3 obviously he came to an incorrect conclusion since
4 the thyroid turned out to be benign.

5 Q. Let me ask you -- let me kind of understand
6 that then. This report says that the lesion is
7 suspicious for malignancy. Now, "suspicious" is not
8 definitive, correct?

9 A. Yes, ma'am.

10 Q. Obviously, when you take out the whole
11 thyroid and can look at it you can come to a
12 definitive diagnosis.

13 A. Yes, ma'am.

14 Q. So how is it that he is incorrect in saying
15 that this specimen was suspicious for a malignancy?

16 A. Well, he is incorrect because the specimen
17 or the nodule, I guess the dominant nodule where the
18 fine needle aspiration was done, turned out to be
19 benign, so obviously he made the incorrect diagnosis.

20 Q. I guess what I am trying to figure out is
21 if someone is inconclusive with their first opinion,
22 which it sounds to be this is, it is suspicious. It
23 is not guaranteed, it is suspicious.

24 A. But it is also characteristic. That is
25 saying that -- when you say it is characteristic of

1 papillary carcinoma, that means you're seeing certain
2 cells or you believe that you are seeing certain
3 cells that appear to be cancerous papillary carcinoma
4 of the thyroid.

5 Q. Let me go back to my question because I did
6 not quite finish it.

7 If the specimen is suspicious, not
8 definitive, and then later on we learn that the
9 entire thyroid, once the exam was done, was benign,
10 are you saying that kind of the end result forms your
11 opinion as to the first read?

12 A. Well, the end results form my opinion on
13 the whole case because the fine needle aspiration as
14 well as the frozen section that was done
15 intraoperatively, both were interpreted as leaning
16 towards a malignant lesion.

17 Q. Right.

18 A. Both of them were leaning towards that.
19 Each one may not have been 100 percent, but it was
20 certainly leading the surgeon in the direction that
21 he believed he was dealing with a malignant lesion,
22 which resulted in doing a total thyroidectomy, which
23 is the appropriate treatment for a malignant thyroid
24 lesion.

25 Q. I will take this outside of the medical

1 realm just for a minute. If the weatherman tells you
2 that he is 75 percent sures it is going to rain
3 tomorrow and it doesn't rain, does that mean that the
4 weatherman was wrong?

5 A. It certainly does.

6 Q. All right. Why? Because there is a 25
7 percent -- he is telling you there is a 25 percent
8 chance it is not going to rain.

9 A. Well, but he is leaning -- he is still
10 making you believe -- when he tells you 75 percent
11 chance, that means he is making you lean towards the
12 idea that it is probably going to rain.

13 Q. If he tells you there is a 25 percent
14 chance it is not going to rain, which is the
15 converse, and it does rain, is he wrong?

16 A. I don't know. I really don't know.

17 Q. Well, I am trying to figure out if someone
18 gives you a percentage chance of something and the
19 smaller percent chance is what actually happens, does
20 that necessarily mean they are wrong.

21 A. Well, this is different from the weather.
22 I mean, this involves doing something based on
23 somebody's report. I mean, you are committing
24 yourself to a procedure based on the pathologist's
25 report. Yeah, you are committing yourself to taking

1 an umbrella maybe when you think it might rain, but
2 the consequence of it is not the same as having your
3 thyroid taken out - you just bring your umbrella home
4 and leave it there.

5 Q. Or if you are like me, you leave it in the
6 car and then when it does rain you will be inside and
7 not be able to get it.

8 A. Right.

9 Q. I understand where you are going with this
10 being more serious, and I am certainly not trying to
11 make light. What I am trying to understand is -- and
12 just for the purposes of argument, let's say that
13 category 4 is a 75-25 because that is easy numbers to
14 work with. Let's say a category 4 lesion means there
15 is a 75 percent chance it is cancer, there is a 25
16 percent chance it is not, okay?

17 A. Yes, ma'am.

18 Q. Then later on we find out, guess what, not
19 cancer. Are you saying that because we later find
20 out it is not cancer that the initial read had to be
21 wrong?

22 A. Yes, the initial read was still wrong,
23 because the other doctor, the surgeon, is dependent
24 on that read. If you had a breast biopsy and it came
25 back as suspicious for malignancy and you underwent a

1 mastectomy and it came back as benign, that's a
2 problem.

3 Q. Well, whose ultimate decision was it to
4 take out Ms. Craig's thyroid?

5 A. The ultimate decision is the surgeon's, but
6 he bases that decision on -- he relies on the
7 pathologist to make that decision.

8 Q. Now, you don't have any evidence that
9 Dr. Jenkins, the pathologist, in any way spoke with
10 Ms. Craig about his results?

11 A. I don't know, but I doubt it. Usually,
12 pathologists don't talk directly with the patients,
13 no, ma'am.

14 MS. SULLIVAN: I will mark one more.

15 (Defendants' Exhibit No. 5 marked for
16 identification.)

17 MS. SULLIVAN: Glenn, I am marking the
18 operative report by Dr. Jones as Exhibit 5. It
19 is a three-page document.

20 MR. WALTERS: That's Exhibit 5?

21 MS. SULLIVAN: Yes.

22 MR. WALTERS: Thanks.

23 Q. (By Ms. Sullivan) Doctor, I have marked
24 the operative report by Dr. Jones as Exhibit 5. I
25 assume that you're familiar with this.

1 A. Yes, ma'am.

2 Q. I will draw your attention to the second
3 page, the first paragraph. The last sentence or two
4 of the first paragraph of the second page says, "The
5 isthmus was clamped and the right lobe was removed
6 and sent for frozen section. Frozen section revealed
7 similar atypia to the needle biopsy. No definitive
8 diagnosis could be made but total excision was
9 recommended."

10 Did I read that correctly?

11 A. Yes, ma'am.

12 Q. Okay. You agree with me then that even the
13 frozen section that was done intraoperatively was
14 inconclusive?

15 A. It was inconclusive but still leaning
16 towards malignancy.

17 Q. Well, ultimately the surgeon makes that
18 decision, correct?

19 A. Yes, but it is heavily based on -- matter
20 of fact, it is totally based on the pathologist's
21 report. It is pretty much based on that. We rely on
22 the pathologist to tell us whether we are dealing
23 with something benign or malignant. When the
24 pathologist is leaning towards malignancy, then you
25 have to go ahead and proceed with the procedure.

1 Especially when excision is recommended, you have to
2 take out whatever tissue that -- whatever organ that
3 you're dealing with because on the converse, if you
4 leave it in and it turns out to be definitely
5 malignant, then you have to go back and bring the
6 patient in, put them under anesthesia again and get
7 sued for that.

8 Q. So, is it fair to say it's a
9 better-safe-than-sorry approach?

10 A. Yes. Definitely. You want to be safe,
11 yes, ma'am.

12 Q. So in your opinion, the safest thing to do
13 for Ms. Craig was to take out her thyroid, if you
14 were in Dr. Jones' shoes?

15 A. Yes, because the pathologist is sort of
16 telling you, is leaning towards the diagnosis of a
17 malignancy or a malignant nodule.

18 Q. Now, is it your opinion that a biopsy needs
19 to be completely definitive to be within the standard
20 of care?

21 A. I mean, you like to have it definitive, but
22 sometimes the pathologist will tell you that he is
23 not totally definite, he may want to do different
24 cuts or different staining of the tissue. Again, I
25 mean, these things, whether it's definitive or not,

1 we are dependent on the pathologist's decision as to
2 how definite he is or whether he wants any further
3 testing done on the tissue that has been submitted to
4 him.

5 Q. But when a pathologist tells you that
6 something is not definitive one way or the other,
7 obviously it is going to come out one way or another
8 if the organ comes out. You will know eventually,
9 right?

10 A. Yes, ma'am.

11 Q. So if a pathologist say, gosh, Dr. Kovacs,
12 I don't know about this, you know, I am leaning
13 towards cancer but, you know, I just don't know. I
14 am about 60 percent, 40 percent, I can't tell you,
15 and you take out the thyroid and it is not cancerous,
16 does that by definition mean that the pathologist was
17 wrong?

18 A. Well, yes and no. I mean, he is wrong in
19 the sense that he told you that this is more likely
20 -- it is leaning towards a papillary carcinoma. I
21 mean, that seems to be the way he is going. He seems
22 to be believing -- based on the tissue that he
23 reviewed, he seems to be seeing histologically, cells
24 that make him think that he is dealing with a
25 papillary carcinoma, so he believes that is what the

1 diagnosis is. When he relays that to the surgeon,
2 the surgeon has to act on that.

3 Q. Take this out of the thyroid. For example,
4 you told me a minute ago you do a good many
5 gallbladder surgeries.

6 A. Yes, ma'am.

7 Q. And the majority of them are laparoscopic?

8 A. Almost all of them. Yeah, 99 percent are.

9 Q. Do you have an occasion where you have to
10 do one open?

11 A. Very rarely, yes, ma'am.

12 Q. Okay.

13 A. Yes, ma'am, rarely.

14 Q. One percent of the time?

15 A. Yeah, maybe.

16 Q. So 1 or 2 percent maybe?

17 A. Even less than 1 percent, but yeah.

18 Q. For round numbers can we say 1 percent?

19 A. Yeah, we can say 1 percent. Yes, ma'am.

20 Q. And I assume that you tell your patients,
21 Ms. Patient, I am planning on doing this
22 laproscopically for you, and 99 percent of the time I
23 can do it laparoscopically, but every now and then,
24 you know, I have to do it open, right?

25 A. Yes, ma'am.

1 Q. And let's say that you're operating on
2 Mrs. Smith and you tell her that, and you get in
3 there and you go, well, crud, I need to do this open
4 for whatever reason, it doesn't mean that you were
5 wrong.

6 A. No. It doesn't mean I am wrong, no.

7 Q. So if a pathologist tells you this is 60
8 percent likely to be cancer and 40 percent unlikely
9 to be cancer, it doesn't mean he is wrong if it turns
10 out not to be cancer.

11 A. Well, it's not quite the same thing. Well,
12 he is wrong because his diagnosis or his leaning
13 towards the malignancy has consequences to it - it
14 makes you do an operation that would not have to have
15 been done. I mean, when I remove the gallbladder,
16 that gallbladder has to come out. Whether I use one
17 technique or another, that gallbladder either way has
18 to come out. The open or laparoscopic is not going
19 to end in a different result. The patient it still
20 going to wind up without a gallbladder. In the case
21 of a tissue diagnosis, if the tissue is benign, the
22 patient will keep their organ. If it is malignant,
23 that organ is going to come out.

24 Q. Now, would you agree with me that -- let's,
25 again, take the assumption that I have been giving

1 you so far, the 75-25 assumption for a category 4.
2 Would you agree with me that it is not Dr. Jenkins'
3 obligation to inform Ms. Craig of the 75-25 number?

4 A. I agree with you, yes, ma'am.

5 Q. Whose obligation would that be?

6 A. Well, I mean, it is the obligation of the
7 surgeon or the patient's primary care physician to
8 discuss the biopsy results with the patient and to
9 make the recommendation based on those results.

10 Q. And so therefore it would have been
11 Dr. Jones' responsibility to counsel Ms. Craig about
12 the likelihood of the malignancy of this sample?

13 A. Well, not the likelihood. He is going to
14 basically tell her that this appears to be a
15 malignant lesion based on the pathologist's report
16 and the treatment -- the recommendation is for
17 excision, to excise the tissue, and the
18 recommendation is to go ahead with the thyroidectomy.

19 Q. I will hand you what we have already marked
20 as No. 3, that's the complaint in this case. Have
21 you had a moment -- have you looked at that before,
22 do you think?

23 A. I am not sure.

24 Q. I am happy to give you a few minutes. I
25 was going to look at one or two specific paragraphs,

1 but if you want to take a few minutes and look over
2 the whole thing you just let me know.

3 A. Let me just take a look at it for a minute.

4 MS. SULLIVAN: Sure. Let's go off the
5 record for a second.

6 (Recess taken from 1:54 p.m. until 1:59
7 p.m.)

8 Q. (By Ms. Sullivan) The first one I would
9 like to ask you about is Paragraph 15 of the
10 complaint. May I see that just a second? I handed
11 you my only copy. I will read it into the record and
12 hand it back to you.

13 A. All right.

14 Q. Paragraph 15 says, "On October 12, 2010,
15 plaintiff returned to Dr. Jones' office for a
16 follow-up consultation concerning the nodule in her
17 throat. During this visit, Dr. Jones specifically
18 advised the plaintiff that she had papillary
19 carcinoma, hereinafter referred to as "thyroid
20 cancer." Based upon his medical conclusion that
21 plaintiff had thyroid cancer, Dr. Jones recommended
22 that plaintiff undergo a total thyroidectomy."

23 Is that your understanding of what happened
24 in this case?

25 A. Yes, ma'am.

1 Q. And then this seems to indicate here that
2 Dr. Jones made the conclusion that plaintiff had
3 thyroid cancer, is that the way that you understand
4 it in this case?

5 A. That's what it states in the complaint,
6 yes, ma'am.

7 Q. Then Paragraph 20 of the complaint says,
8 "As a result of analyzing the frozen section,
9 Defendant York Pathology failed to provide Dr. Jones
10 a definitive diagnosis concerning the plaintiff's
11 thyroid. Therefore, Dr. Jones proceeded to complete
12 a total thyroidectomy of the plaintiff."

13 That's correct in your understanding?

14 A. Yes, ma'am.

15 Q. So it is Dr. Jones' decision to take this
16 thyroid out even in the absence of a definitive
17 diagnosis?

18 A. Yes, ma'am.

19 Q. And would you agree with me that it is the
20 responsibility of Dr. Jones, the surgeon, to have
21 counseled Ms. Craig about the potential for side
22 effects or complications resulting from the removal
23 of her thyroid?

24 A. Yes, ma'am.

25 Q. Is one of the potential side effects or

1 complications vocal hoarseness?

2 A. Yes, ma'am.

3 Q. And that is a commonly known complication
4 from a thyroidectomy?

5 A. Yes, ma'am.

6 Q. Doesn't mean that somebody did the surgery
7 incorrectly, it just means sometimes it happens?

8 A. Sometimes it happens, yes, ma'am.

9 Q. Even in the absence of negligence?

10 A. Yes, ma'am.

11 Q. Now, do you have any knowledge of whether
12 or not Ms. Craig was properly informed that this
13 surgery may indeed impact her voice?

14 A. I have no knowledge of that. I am not
15 sure. I don't know.

16 Q. Did you review any of Ms. Craig's treatment
17 records prior to this event, the ones that go back to
18 the early 2000s?

19 A. Very superficially. I was really mainly
20 focused from the time period that she was found to
21 have a nodule in her thyroid based on her CT-PET scan
22 up to postoperatively. I mean, I saw some medical
23 records previous to that, but she had sinusitis and a
24 tonsillectomy, but I wasn't really focused to that.

25 Q. Do you recall any records from the late 90s

1 and early 2000s where Ms. Craig was complaining of
2 vocal hoarseness?

3 A. I don't specifically remember that, no,
4 ma'am.

5 Q. You don't dispute that they may exist?

6 A. No, I don't dispute that. No, ma'am.

7 Q. I think I asked you this earlier, but I
8 will try to circle back around. You haven't reviewed
9 any of the slides in this case?

10 A. No, ma'am.

11 Q. And you can't say to a reasonable degree of
12 medical certainty that Dr. Jenkins calling this a
13 category 4 was in error?

14 A. I can only say that based on the overall
15 medical records, the fact that it turned out to be
16 benign, it was an error.

17 Q. Right.

18 A. Calling it suspicious or calling it
19 papillary carcinoma was an error.

20 Q. That is using a retrospective approach,
21 correct?

22 A. Well, this is really a little bit more
23 concrete because we are dealing with actual tissues
24 that were misdiagnosed initially, and then when the
25 totality of the specimen was out, it turned out to be

1 benign; there was a misdiagnosis here.

2 Q. Where did Dr. Jenkins go wrong in his read
3 of the slides?

4 A. By calling it potentially malignant.

5 Q. No, no. I understand that. That's kind of
6 the broad picture.

7 What I am saying is: Did he look for a
8 certain shape of cell that wasn't there, did he look
9 for a certain color of cell that wasn't there, did he
10 find -- can you tell me that?

11 A. No, ma'am. You would have to ask a
12 pathologist that.

13 Q. So you're basing your opinion that he is
14 wrong on the aspiration diagnosis because of the
15 ultimate conclusion once the thyroid was removed?

16 A. Well, yes, I am basing it on pathological
17 readings. I mean, the whole case is based on
18 pathological readings, whether the reading was
19 initially leaning towards malignancy and then it
20 turns out to be benign.

21 Q. When Dr. Jones got the intraoperative
22 diagnosis of no definitive answer, would he have been
23 wrong to leave the thyroid in?

24 A. Well, if it turns out to be malignant, then
25 he would have been wrong. I mean, it turned out to

1 be benign, but there was no way for him to know that.
2 The only thing he knew was that this is leaning --
3 there is a likelihood of malignancy, excision was
4 recommended, and that's taking a real big chance to
5 say, well, I think he is wrong in reading it
6 malignant, I am going to leave that thyroid in.
7 That's not likely to happen.

8 Q. When you say, "excision is recommended,"
9 who is it that you understand recommended the
10 excision?

11 A. The pathologist will say that usually.
12 They will include that in their report.

13 Q. Do you always do what the pathologist tells
14 you to do as a surgeon?

15 A. Well, they don't tell you very much to do
16 most of the time. I mean, you really rely on the
17 pathologist to guide you as to what needs to be done.
18 You look to them for the answer is it benign or
19 malignant, that is what you are usually looking for
20 from a pathologist, that is the answer that you need
21 for you to proceed with your operation.

22 Q. Turning to the complaint one more time,
23 doctor, looking at Paragraph 25(e), it says that,
24 "Dr. Jenkins and York Pathology breached the duty of
25 care owed to the plaintiff, including the following:"

1 and then there is multiple paragraphs.

2 Then (e) says, "By unreasonably relying on
3 fine needle aspiration findings as a definitive
4 conclusion, that a total thyroidectomy was
5 indicated."

6 How did Dr. Jenkins unreasonably rely on
7 something?

8 A. I don't know. I did not write that
9 paragraph.

10 Q. The paragraph goes on to say -- to quote an
11 article or a part of a journal from Oral &
12 Maxillofacial Surgery in December of '09 that says
13 that there are false-negative and false-positive fine
14 needle aspirates that occur, and I will let you look
15 at that. I will not read it all into the record, but
16 you will agree with me that there are some number of
17 false-positives or false-negatives in fine needle
18 aspirates, correct?

19 A. Yes, ma'am.

20 Q. If a surgeon relies on a sample that turns
21 out to be a false-positive or turns out to be a
22 false-negative, does that mean that the surgeon was
23 wrong?

24 A. The surgeon is never wrong.

25 Q. You know, funny, every surgeon I have ever

1 met tells me that.

2 A. Well, it must be true.

3 Q. All joking aside, let's use the number that
4 you used earlier, which I think was 90-some-odd
5 percent.

6 A. The accuracy of FNA?

7 Q. Right. You said 97 percent.

8 A. Well, it is about 95 for papillary
9 carcinoma of the thyroid.

10 Q. So 95 percent of the time they are right.
11 That means 5 percent of the time you get a
12 false-negative or false-positive, right?

13 A. Yes. Yes, ma'am.

14 Q. So if I am a surgeon, and I have a
15 pathology report in front of me that says it is
16 positive for carcinoma, and I go take the thyroid out
17 and it turns out, you know what, it is one of those
18 false-positives, does that make me as a surgeon
19 wrong?

20 A. No, it doesn't. As a surgeon, you are
21 really relying on the pathologist's report.

22 Q. Does it make the pathologist wrong?

23 A. Well, if he told the surgeon there was
24 malignant or most likely to be malignant and it turns
25 out to be benign, it does make him wrong.

1 Q. So it sounds like to me in the absence of a
2 definitive diagnosis -- it sounds like to me what you
3 are saying is in the absence of a definitive
4 diagnosis, the pathologist is always wrong or --

5 A. No.

6 Q. -- likely to be wrong.

7 A. He can say, look, I cannot give you any
8 definitive idea. I mean, he can say that I really
9 can't come to any conclusion, I will need to do
10 further stains, further cuts, you know --

11 Q. Right.

12 A. -- he can say that, I really can't come to
13 any conclusion.

14 Q. And that is actually what happened here in
15 the intraoperative specimen, isn't it?

16 A. I don't know. All I know is what happened
17 in the intraoperative specimen is that the report was
18 that the pathologist is seeing the same type of
19 atypical cells that he saw previously on the fine
20 needle aspiration, and he is recommending excision of
21 the organ.

22 Q. But Dr. Jones even says in his operative
23 report that no definitive diagnosis could be made.

24 A. That's correct. It is not definitive, but
25 it is leaning towards malignancy. Every surgeon

1 under those circumstances would go ahead and proceed
2 with the thyroidectomy.

3 MS. SULLIVAN: Doctor, I don't think I have
4 any other questions. Mr. Gunn may have a few
5 and then I may have to circle back around.

6 EXAMINATION

7 BY MR. GUNN:

8 Q. Doctor, we met. My name is Billy Gunn, and
9 I am a lawyer from Spartanburg, South Carolina.

10 A. You look familiar.

11 Q. I think I have been down here probably
12 before to take your deposition.

13 A. Okay.

14 MS. SULLIVAN: Billy just has one of those
15 faces.

16 Q. (By Mr. Gunn) I represent the hospital in
17 the case. Let me ask you this, sir: A surgeon --
18 and I am assuming that you do this in your practice,
19 too, a surgeon, like Dr. Jones, under normal
20 circumstances will initially meet with a patient
21 before surgery, will he not?

22 A. Yes, sir.

23 Q. And the surgeon, the competent surgeon,
24 will gather a medical history, correct?

25 A. Yes, sir.

1 Q. And will conduct an examination?

2 A. Yes, sir.

3 Q. If need be, will gather records from other
4 providers who may have seen the patient?

5 A. Yes, sir.

6 Q. And will gather all of this information
7 prior to making a decision to operate?

8 A. Yes, sir.

9 Q. One of the pieces of information that is
10 gathered is whatever laboratory data is available,
11 including interpretations of pathology slides, such
12 as we have in this case?

13 A. Yes, sir.

14 Q. And in this one it was a fine needle
15 aspiration biopsy?

16 A. Yes, sir.

17 Q. And so what the surgeon would then do prior
18 to scheduling the operation -- and we are not talking
19 about an emergency surgery here but just a surgery,
20 nonurgent.

21 A. Elective, yes, sir.

22 Q. Elective surgery.

23 Take that pathological data, which in this
24 instance was the interpretation of Dr. Jenkins, and
25 put that together with the other data that the

1 surgeon may have gathered, and put all of that
2 together with the knowledge and background and
3 experience as a surgeon and the clinical experience
4 of the surgeon, and based upon all of that myriad of
5 information make a decision on whether or not to
6 operate --

7 A. Yes, sir.

8 Q. -- is that a fair statement?

9 A. Yes, sir.

10 Q. And if the decision is made to operate,
11 then the nature of how the operation will be done, is
12 that correct, sir?

13 A. Yes, sir.

14 Q. In other words -- my point is: The surgeon
15 does not just put on a set of blinders, look at that
16 laboratory data and say, bingo, I am operating. The
17 surgeon gathers all of this data and uses his or her
18 clinical experience and judgment and makes a decision
19 whether to operate?

20 A. Yes, sir.

21 Q. Are you familiar with Hashimoto's disease?

22 A. Yes, sir.

23 Q. Do you from time to time see patients with
24 Hashimoto's?

25 A. Occasionally, yes, sir.

1 Q. How many would you see, let's say, in 2014?

2 A. Maybe one.

3 Q. It is something that you don't see with any
4 great degree of frequency?

5 A. An internist or an endocrinologist is more
6 likely to see it than I am. Only if it becomes a
7 surgical issue would I wind up seeing that kind of a
8 patient.

9 Q. And who makes a decision as to whether or
10 not Hashimoto's is a surgical issue?

11 A. Well, I guess it is based on the findings
12 of the endocrinologist or the internist based on the
13 symptoms of the patient, that is what usually decides
14 it.

15 Q. The clinical data plus, in fairness, any
16 laboratory data that you have?

17 A. Yes, sir.

18 Q. You finished your surgical training in
19 1982, as I saw on your vitae, is that correct, sir?

20 A. Yes, sir.

21 Q. And then you went in the Army?

22 A. Yes, sir.

23 Q. And then you went to the Medical Corps?

24 A. Yes, sir.

25 Q. And I assume you went to Fort Sam Houston?

1 A. Yes, sir.

2 Q. I saw that you were Airborne qualified, did
3 you do that at Fort Benning?

4 A. Yes, sir.

5 Q. And then you went -- did you go straight
6 from Fort Benning or Fort Sam to Honduras?

7 A. Well, after Fort Benning I went to
8 Honduras.

9 Q. What kind of outfit were you in?

10 A. I was with, I guess, an infantry unit. We
11 were based on a Honduran air force base, but I was
12 with an infantry unit.

13 Q. You were with an infantry battalion or
14 what?

15 A. The Medical Corps. We really didn't know
16 all of that.

17 Q. Okay.

18 A. All I know is I was down there.

19 Q. You were at a U.S. air force base in --

20 A. No. It was a Honduran air force base.

21 Q. A Honduran air force base.

22 And this U.S. infantry outfit was providing
23 security or something of that nature?

24 A. At that time there was the insurgency from
25 El Salvador so they were gathering -- I guess, doing

1 counterinsurgency, gathering some intelligence
2 information by going out into the villages.

3 Q. Did you make any jumps besides the ones
4 that you made at Fort Benning?

5 A. No, sir.

6 Q. Then in 1985 you went into practice?

7 A. Yes, sir.

8 Q. And that was in New Jersey?

9 A. Yes, sir.

10 Q. And you practiced primarily in Freehold,
11 New Jersey?

12 A. Yes, sir.

13 Q. And that was until 2010?

14 A. Yes, sir.

15 Q. If my math is correct, in 2010 you would
16 have been 63 or 64 years of age?

17 A. I was 63, yes, sir.

18 Q. What caused you at that point in your
19 professional life to want to move to Alma, Georgia?

20 A. Well, as you know --

21 MS. SULLIVAN: It's not New Jersey.

22 THE WITNESS: That's a good point.

23 As you know, health care has been changing
24 quite a bit, and the hospital where I was in
25 practice, I had a partner that actually both of

1 us were in the Army together, and we were in
2 practice together for 25 years, but the hospital
3 was recruiting and subsidizing more surgeons to
4 come to practice there, and the more surgeons
5 you have, the more little slices you cut the pie
6 into.

7 Q. (By Mr. Gunn) Sure, sure.

8 A. The pie doesn't get bigger, even though
9 administration thinks that the more surgeons you
10 bring in you will have more cases, it just doesn't
11 work that way. You will only have X number of cases,
12 and if you have five surgeons, you have a bigger
13 piece of the pie. If you have 10 surgeons, you get a
14 smaller slice of the pie. After a while it was just
15 too much of a financial struggle to meet your
16 overhead between malpractice insurance and everything
17 else, the cost of being in practice, so I figured --
18 I said I had enough of this, I am going to look for
19 another opportunity.

20 Q. And how did you -- I am just wondering how
21 you located South Central Georgia.

22 A. Through a recruiter.

23 Q. Okay. You were engaged by a recruiter and
24 they brought you here to Alma?

25 A. Yes, sir.

1 Q. Are you strictly in private practice, or
2 are you employed by a health care district or what?

3 A. No. Like I said, private practice is
4 becoming almost impossible to stay in. I am employed
5 by the hospital.

6 Q. The entire time that you have been here
7 since 2010, have you been employed by the hospital?

8 A. No, sir. No. Initially I came down with
9 an income guarantee for the first two years.

10 Q. All right.

11 A. Then when the income guarantee ended, I
12 realized without an income guarantee you can't make
13 it in private practice with reimbursement nowadays so
14 I opted to be salaried by the hospital.

15 Q. Are you the only general surgeon here in
16 Bacon County?

17 A. Yes, sir.

18 Q. So you see Medicare, Medicaid patients,
19 whoever comes in?

20 A. Yes, sir.

21 Q. All right, sir. Who are some of the South
22 Carolina lawyers besides Mr. Walters that you have
23 done work for?

24 A. I really can't give you any names. I don't
25 know.

1 Q. Did you say that you had testified in a
2 South Carolina case?

3 A. Yes, sir.

4 Q. And where was that, what city?

5 A. I think it was in Columbia or Columbus.

6 Q. Columbia?

7 A. Yes, sir.

8 Q. In the capitol city?

9 A. Yes, sir.

10 Q. And you don't remember who that attorney
11 was?

12 A. This goes back I think -- I think this was
13 pretty much in the beginning when I started doing
14 medical reviews. It goes back into the late 90s, I
15 think.

16 Q. Okay.

17 A. I do remember he was a black attorney, I do
18 remember that, but I don't remember the name.

19 Q. The 95 to 97 percent accuracy on fine
20 needle aspiration biopsies for cancer versus benign
21 or malignancy versus benign, what source did you get
22 that from?

23 A. That I got from -- I just completed
24 recertifying for my boards a month ago, and part of
25 it was reviewing thyroid surgery and diagnostic and

1 that was based on that.

2 Q. You just remember it from your preparation

3 --

4 A. Yes, sir.

5 Q. -- for the board --

6 A. Right, for the recertification.

7 Q. -- certification?

8 A. Yes, sir.

9 MR. GUNN: Thank you, sir. That's all I
10 have.

11 MS. SULLIVAN: I don't have any further
12 questions.

13 Glenn?

14 MR. WALTERS: I have no questions.

15 MS. SULLIVAN: All right. Great. Thank
16 you.

17 (Deposition concluded at 2:22 p.m.)

18 (Pursuant to Rule 30(e) of the Federal
19 Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e),
20 signature of the witness has been waived.)

21

22

23

24

25

1 CERTIFICATE OF COURT REPORTER

2 State of Georgia:

3 County of Glynn:

4

5 I hereby certify that the foregoing
6 transcript was reported as stated in the caption
7 and the questions and answers thereto were
8 reduced to writing by me; that the foregoing
9 pages 1 through 57 represent a true, correct,
10 and complete transcript of the evidence given on
11 May 6, 2015, by the witness, GABOR KOVACS, MD,
12 who was first duly sworn by me.

13 I certify that I am not disqualified for a
14 relationship of interest under O.C.G.A.
15 9-11-28(c); I am a Georgia Certified Court
16 Reporter here as a representative of Gilbert &
17 Jones, Inc. who was contacted by Huseby Global
18 Litigation Support to provide court reporting
19 services for the proceedings; I will not be
20 taking these proceedings under any contract that
21 is prohibited by O.C.G.A. 15-14-37(a) and (b) or
22 Article 7.C. of the Rules and Regulations of the
23 Board; and by the attached disclosure form I
24 confirm that neither I nor Gilbert & Jones, Inc.
25 are a party to a contract prohibited by O.C.G.A.
15-14-37(a) and (b) or Article 7.C. of the Rules
and Regulations of the Board.

17

18 This 17th day of May, 2015.

19

20

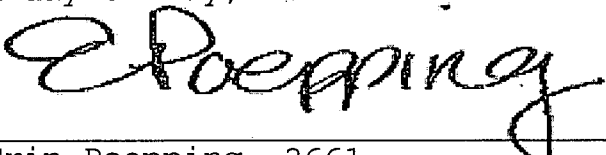
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Erin Poepping, 2661

1 DISCLOSURE OF NO CONTRACT

2 I, Debbie Gilbert, do hereby disclose
3 pursuant to Article 10.B of the Rules and
4 Regulations of the Board of Court Reporting of
5 the Judicial Council of Georgia that Gilbert &
6 Jones, Inc. was contacted by Huseby Global
7 Litigation Support to provide court reporting
8 services for these proceedings and there is no
9 contract that is prohibited by O.C.G.A.
10 15-14-37(a) and (b) or Article 7.C. of the Rules
11 and Regulations of the Board for the taking of
12 these proceedings.

13 There is no contract to provide reporting
14 services between Gilbert & Jones, Inc. or any
15 person with whom Gilbert & Jones, Inc. has a
16 principal and agency relationship nor any
17 attorney at law in this action, party to this
18 action, party having a financial interest in
19 this action, or agent for an attorney at law in
20 this action, party to this action, or party
21 having a financial interest in this action. Any
22 and all financial arrangements beyond our usual
23 and customary rates have been disclosed and
24 offered to all parties.

25 This 17th day of May, 2015



Debbie Gilbert,
Firm Representative
Gilbert & Jones, Inc.

PATRICIA CRAIG vs. E. EARL JENKINS, JR. MD, ET AL.

Gabor Kovacs, MD on 05/06/2015

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Gabor Kovacs, MD on 05/06/2015 Index: accompanied..background

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GABOR KOVACS, M.D., F.A.C.S.

Curriculum Vitae

Name: Gabor Kovacs, M.D., F.A.C.S.

Practice Address: 204 E 15th Street
Alma, Georgia 31510
912-632-0314

Date of Birth: January 24, 1947

Place of Birth: Hungary

Citizenship: United States

Licensure: New Jersey, Georgia, Florida

Languages: English, French, Hungarian, Hebrew

Education: 1976 – M.D. - The Catholic University of Louvain, Belgium
1969 – BA – Queens College, Flushing, New York

Post Graduate Training: 1975-1976: Rotating sub-internship
Jewish Hospital and Medical Center of Brooklyn

1976-1977: Surgical internship
Jewish Hospital and Medical Center of Brooklyn

1977-1981: Surgical Resident/Chief Resident
Brookdale Medical Center, Brooklyn, New York

1981-1982: Fellow – Thoracic and Cardiovascular Surgery
Nassau Hospital, Mineola, New York

1982-1985: Major in U.S. Army Medical Corp
Received Airborne Wings
Served in Honduras



1985 – 2014: Private Practice
General Laparoscopic and Vascular Surgery

2014 – Present: Staff Physician
Bacon County Hospital, Alma, Georgia

Hospital Affiliations: CentraState Medical Center, Freehold, New Jersey
Raritan Bay Medical Center, Old Bridge, New Jersey
Bacon County Hospital, Alma, Georgia

Certifications: Board Certified by the American College of Surgeons
Certified in Stereotactic Breast Biopsy
Certified in Laparoscopic Surgery

Medical Societies: Fellow of the American College of Surgeons
Member of the New Jersey Vascular Society
South Georgia Physicians Association

Positions Held: Clinical Assistant Professor at the Uniformed Services of Health
Sciences
Assistant Chief of Surgery: 1990-1994
Secretary-Treasurer of Medical Staff: 1992-1993
Assistant Chief of Staff, CentraState Medical Center: 1993-1995
Chief of Staff, CentraState Medical Center: 1995-1997
Member of the Board of Trustees, CentraState Medical Center:
1992-1998
Co-Director Hernia Center, Freehold, New Jersey: 2004-2010
Physician, Private Practice, Alma, GA: 2010-2014
Chief of Surgery, Bacon County Hospital, Alma, GA: 2010-Present
Staff Physician, Bacon County Hospital, Alma, GA: 2014 - Present

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
 SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)

Case No. 2013-CP-46-_____

Plaintiff,)

vs.)

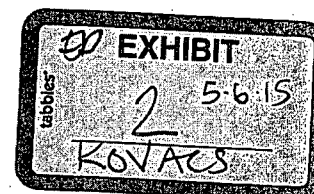
AFFIDAVIT OF
Gabor Kovacs, M.D., F.A.C.S.

E. EARL JENKINS, JR., M.D.,)
 also known as Everett Earl Jenkins,)
 Jr., M.D., TENET HEALTHCARE)
 CORPORATION d/b/a Piedmont)
 Medical Center, and YORK)
 PATHOLOGY ASSOCIATES,)
 LLC,)

Defendants.)

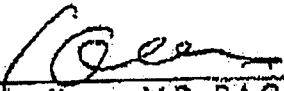
I, Gabor Kovacs, M.D., F.A.C.S., first duly sworn according to law, do hereby depose and state as follows:

1. My name is Gabor Kovacs, M.D., F.A.C.S., and I am of sound mind, lawful age, and in all other respects competent to make this Affidavit.
2. I am licensed to practice medicine by the State Medical Boards of New Jersey, Georgia, and Florida. I am Board Certified by the American College of Surgeons. Currently, I am a surgeon practicing medicine in a private surgical practice, and I have been in such capacity since 1985. My Curriculum Vitae is attached to this affidavit, and it is incorporated herein by reference. I am not a Pathologist but I work closely with pathologists who are instrumental to my surgical practice.
3. I devote the majority of my professional time to the active clinical practice of medicine in my field of licensure as a medical doctor.
4. In preparation of this opinion, I have reviewed the following, excluding any medical literature that may have been consulted:

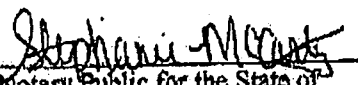


- a. The draft complaint in the above-captioned matter. The complaint was reviewed to ascertain the Plaintiff's attorney theory of the case and to ascertain any relevant facts. For the purpose of this affidavit, I assume the alleged facts in the complaint to be true.
 - b. Medical records consisting of approximately 25 pages, including the Operative/Procedural Notes of Dr. Christopher T. Jones and the Pathological Report of Dr. B. Earl Jenkins, Jr., signed October 1, 2010.
5. I am familiar with the applicable standard of care relative to the allegations contained in the Complaint.
 6. It is my opinion, to a reasonable degree of medical certainty, that Dr. B. Earl Jenkins, Jr., named in the Complaint, breached the standard of medical care owed to Patricia Craig by failing to properly analyze and interpret the fine needle aspiration results that was taken of the Plaintiff and submitted to him for evaluation on September 30, 30, 2010. The facts to support my conclusion are as follows: (a) a fine needle aspiration sample was taken from Patricia Craig and presented for evaluation; (b) in a Pathologic Report dated October 1, 2010, Dr. Jenkins stated that the Plaintiff's fine needle aspiration was a "category 4 lesion, suspicion for malignancy, excision is indicated"; (c) Dr. Christopher T. Jones, a surgeon, used Dr. Jenkins Pathologic Report to recommend surgery for the Plaintiff; (d) Dr. Jones, during surgeon on Plaintiff's thyroid on 11/2/2010 did a frozen section which was presented for pathologic diagnosis. At the point of the frozen section, Mrs. Craig's had not undergone a total thyroidectomy. According to Dr. Jones Operative Notes, not definitive diagnosis concerning malignancy or non-malignancy could be made; therefore, he proceeded to perform a total thyroidectomy on the Plaintiff; (e) according to the complaint, the Defendants are the were the sole provider of pathological services to Piedmont Medical/Healthcare where Dr. Jones was performing the surgery. From this fact, I conclude that Defendant performed the pathologic diagnosis on the frozen section which was not definitive; (f) post-surgery it was determined that Ms. Craig did not have papillary carcinoma.
 7. In my opinion, to a reasonable degree of medical certainty as a surgeon, the only way Mrs. Craig could have received a false-positive for papillary carcinoma is that the fine needle aspiration results were not probably interpreted and that the frozen section was also misinterpreted. To a reasonable degree of medical certainty, Dr. Jenkins breached the standard of care by failing to properly interpret the fine needle aspiration results, and whoever interpreted the frozen section likewise breached the standard of care by failing to properly interpret the frozen section.
 8. The aforementioned breaches of the standard of care caused severe injury to the Plaintiff, including having her to undergo an unnecessary surgery and total thyroidectomy.

Further Affiant sayeth not.

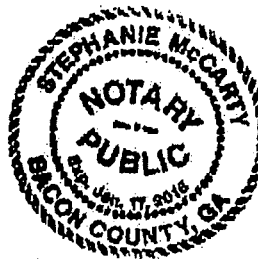

Garbor Kovacs, M.D., F.A.C.S.

Sworn to before me and subscribed in my presence this 4th day of November, 2013


Notary Public for the State of
Georgia

My commission expires: 1-17-16

(Seal)



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)

Case No. 2014-CP-46-00508

Plaintiff,)

vs.)

AMENDED SUMMONS
(Jury Trial Requested)

E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., AMISUB OF SOUTH)
CAROLINA, INC., d/b/a)
Piedmont Medical Center, and)
YORK PATHOLOGY)
ASSOCIATES, LLC,)
Defendants.)

FILED-RECEIVED
2014 MAY 30 PM 2:52
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

TO: THE ABOVE - NAMED DEFENDANTS:

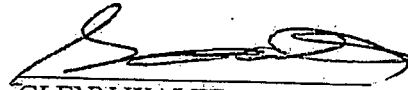
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the undersigned Attorney for the Plaintiff, at Post Office Box 1346, Orangeburg, SC 29116, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint



[Only the Signature is contained on this page]

At Orangeburg, SC

Dated: May 11, 2014



GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Ph: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13188
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEEN JUDICIAL CIRCUIT

PATRICIA CRAIG)
Plaintiff,)

Case No. 2014-CP-46-00508

vs.)

AMENDED COMPLAINT
(Jury Trial Requested)

E. EARL JENKINS, JR., M.D.,)
also known as Everett Earl Jenkins,)
Jr., M.D., AMISUB OF SOUTH)
CAROLINA, INC., d/b/a)
Piedmont Medical Center, and)
YORK PATHOLOGY)
ASSOCIATES, LLC,)
Defendants.)

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DAVID HARRISON
C.C.P. & GS
YORK COUNTY, SC

NOW COMES PATRICIA A. CRAIG (hereinafter "Plaintiff" or "Craig"), by and through the undersigned attorney, complaining of the Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Craig is a citizen and resident of the County of Chester, State of South Carolina, now and at all times relevant to this lawsuit.
2. Upon information and belief, Defendant E. Earl Jenkins, Jr., M.D., also known as Everett Earl, Jr., M.D. (hereinafter "Jenkins") is a citizen and resident of the County of York, State of South Carolina, now and at all times relevant to this law.
3. Defendant Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center is (hereinafter "Amisub") is a for-profit corporation, chartered under the laws of the State of South Carolina, during business as a healthcare provider within the State of

South Carolina and the nation. At all times relevant to this lawsuit, Defendant Amisub was doing business as Piedmont Medical Central, located at 222 South Herlong Avenue, Rock Hill, SC 29732.

4. Defendant York Pathology Associates, LLC (hereinafter "York Pathology") is a South Carolina limited liability company, during business throughout the State of South Carolina. During the relevant time of this lawsuit, Defendant York Pathology also did business as York Pathology Associates, P.A., whose name was changed to M & J Farms of Chester, Inc. The registered agent for Defendant York Pathology is Robert E. Thomas, Jr., located at 222 South Herlong Ave, Rock Hill, South Carolina 29732.
5. At all times relevant to this lawsuit, Defendant York Pathology was the exclusive pathology service provider for Defendant Amisub's Piedmont Medical Center.
6. Venue is proper in this matter at because at least one or more of the Defendants is a resident of the County of York, State of South Carolina, and the principal place of business for the Defendant York Pathology is the County of York, State of South Carolina, and the statutory conditions precedent to filing this lawsuit has been met. Additionally, all pre-litigation statutory requirement have been met, including filing the pre-litigation notice and completing pre-litigation mediation.

FOR A FIRST CAUSE OF ACTION
(Negligence—Medical Malpractice)
(Against All Defendants)

7. Plaintiff repeats and re-alleges each and every allegation of paragraphs one through six as if restated verbatim herein.
8. On or about August 18, 2013, Plaintiff consulted Dr. Christopher T. Jones for medical

services and advice because a PETSCAN had discovered a nodule in her throat, on the right side. Before the discovery of the PETSCAN, Plaintiff was not having presenting any clinical signs of problems with her throat.

9. The medical consultation occurred in the County of York, State of South Carolina. As a result of this consultation, Dr. Jones ordered a fine needle aspiration ("FNA") and ultrasound of the nodule that he found in the Plaintiff's neck on August 18, 2010.
10. The thyroid ultrasound was done on August 26, 2010, and the fine need aspiration ("FNA") was performed on September 30, 2010.
11. Defendant Jenkins performed the FNA pathologic diagnosis and issued a report dated October 1, 2010 (hereinafter referred to as the "FNA Report").
12. The FNA Report stated, in part, that Plaintiff had a "[c]ategory 4 lesion, suspicious for malignancy, excision is indicated."
13. The FNA Report bears the heading "Piedmont Healthcare", which indicates that the FNA Report was being issued under the authority of Piedmont Medical Center.
14. Upon information and believe, Dr. Jenkins issued the FNA Report in his capacity and scope of his employment and member of Defendant York Pathology, and in his capacity as the sole provider of pathological services for Defendant Amisub's hospital known as Piedmont Medical Center.
15. On October 12, 2010, Plaintiff returned to Dr. Jones' office for a follow-up consultation concerning the nodule in her throat. During this visit, Dr. Jones specifically advised the Plaintiff that she had papillary carcinoma (hereinafter referred to as "thyroid cancer"). Based upon his medical conclusion that Plaintiff had thyroid cancer, Dr. Jones recommended that Plaintiff undergo a total thyroidectomy.

16. Plaintiff, based upon the information she received from Dr. Jones, consented to the total thyroidectomy because she thought she had thyroid cancer.
17. Dr. Jones recommended a total thyroidectomy to the Plaintiff based upon, in part, the FNA Report that was prepared by Defendant Jenkins.
18. On November 2, 2010, Dr. Jones, with others within his medical team, performed a total thyroidectomy on the Plaintiff, with the medical opinion that the Plaintiff had thyroid cancer.
19. During the November 22, 2010 surgery, Dr. Jones prepared a sample of the thyroid known as a "frozen section" and submitted it to Defendant Amisub's Piedmont Medical Center for pathologic evaluation. Upon information and belief, the frozen section was analyzed pathologically by Defendant York Pathology for Piedmont Medical Center.
20. As a result of analyzing the frozen section, Defendant York Pathology failed to provide Dr. Jones a definitive diagnosis concerning Plaintiff's thyroid. Therefore, Dr. Jones proceeded to complete a total thyroidectomy on the Plaintiff.
21. The FNA Report, as issued by Defendant Jenkins, caused Dr. Jones to conclude that Plaintiff had a suspicion of thyroid cancer and Defendant's York Pathology's failure to provide a definitive diagnosis of the frozen section of Plaintiff's thyroid caused Dr. Jones to perform a total thyroidectomy on the Plaintiff.
22. The specimen from thyroidectomy surgery was sent to a lab for evaluation.
23. Sometimes after November 10, 2010, Plaintiff returned to Dr. Jones' office for a medical consultation, and she learned that the post-surgery reports established that she did not have thyroid cancer. In other words, Dr. Jones had erroneously concluded

that Plaintiff had thyroid cancer, in substantial part, based upon the incorrect FNA Report and the misinterpretation of the frozen section as performed by Defendants.

24. During all relevant times in this lawsuit, the Defendant medical providers owed Plaintiff a duty to competently evaluate, diagnose and treat the Plaintiff for the nodule in her throat, to include a duty to properly diagnose whether the nodule was cancerous or benign, and all medical treatment and evaluations were required to be done within the acceptable standard of medical care within the community.

25. Defendant Jenkins and Defendant York Pathology breached the duty of care owed to the Plaintiff in one or more of the following particulars, but not all inclusive:

- a. By failing to use reasonable and competent skills in pathologically analyzing the FNA results and the frozen section;
- b. By misinterpreting the results from the FNA and the frozen section and falsely concluding that Plaintiff's thyroid was suspicion for malign thyroid cancer.
- c. By failing to order a second fine needle aspiration test to confirm the second test;
- d. By failing to order additional medical tests once the first fine needle aspiration test was not definitive.
- e. By unreasonably relying on the fine need aspiration findings as a definitive conclusion that a total thyroidectomy was indicated. Defendant's reliance on the fine needle aspiration result was unreasonable because as of 2009, the medical literature was advising the medical community that of the following warning:

"In every circumstance, FNA [fine needle aspiration] is a test and should be interpreted with the entire clinical circumstances. False-negative and false-positive FNA results are reported in almost every series. Therefore, reliance upon FNA findings at the expense of clinical, radiographic, or other findings is unsafe." *Salgarelli AC, Cappare P, Bellini P, Collini M. Usefulness of fine-needle aspiration in parotid diagnostics. Oral*

- f. By improperly concluding that Plaintiff's nodule was cancerous.
26. That as a direct and proximate result of the breach of the applicable standard of medical care by Defendants, as heretofore alleged, Plaintiff suffered substantial damages, in the form of conscious pain and suffering in the past and will suffer conscious pain and suffering into the future; loss the ability to sing in the church choir to level she could before surgery; incurred medical bills in the past, present, and future; suffered permanent damages to her voice; emotional distress; loss of sleep; among other intangible damages, to include mental anguish and permanent disfigurement to her voice, all in an amount to be proved at the trial of this case.
27. That all of the injuries and damages sustained by the Plaintiff were the direct and proximate result of the negligent actions of Defendant Jenkins and York Pathology, without any act or omission on the part of the Plaintiff directly thereunto contributing.

FOR A SECOND CAUSE OF ACTION
(Negligence—Medical Malpractice via agency)
(Against All Defendants, except Jenkins)

28. Plaintiff repeats and re-alleges each and every allegation of paragraphs one through twenty-seven as if restated verbatim herein.
29. That at the time of Defendant Jenkins rendered medical services to the Plaintiff and committed malpractice as alleged, he was acting within the scope of his employment and agency and partner with Defendant York Pathology. Therefore, the other Defendant York Pathology is vicariously liable for the damages suffered by the Plaintiff.
30. Defendant Amisub and York Pathology held itself out to the public by offering to

provide services to the Plaintiff.

31. As to the pathology services, Plaintiff looked to Piedmont Medical Center and York Pathology to provide pathology services during her surgery.
32. A similarly situated person reasonably would have believed the Defendant B. Earl Jenkins, Jr., the pathology rendering services during the surgery, was a hospital employee.
33. That at the time of Defendant Jenkins rendered medical services to the Plaintiff and committed malpractice as alleged, he was acting within the scope of his employment agency contract with Defendant Amisub, doing business as Piedmont Medical Center, which provided that Defendant York Pathology was the sole provider of pathologic services to Defendant Amisub. Therefore, Defendant Amisub is vicariously liable for the damages suffered by the Plaintiff.
34. Defendant York Pathology is vicariously liable due to its actual agency relationship with Defendant Jenkins.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Craig respectfully prays for judgment against the Defendants, jointly and severally, for actual damages in an amount to be determined by the jury at the trial of this action, for the costs and expenses associated with bringing this action, and for any other relief the Court deems just and proper.

Plaintiff demands a trial by jury.

At Orangeburg, SC

Dated: May 18, 2014


GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13198
Attorney for Plaintiff

PROOF OF SERVICE

I, Glenn Walter, certify that I have served or caused to be served the foregoing pleadings (Amended Summons and Complaint) on the Defendants' attorneys, as listed below, on May 18, 2014, by depositing a copy of the same in an envelope in the United States postal service, with the return address clearly visible, addressed as follows:

William U. Gunn, Esquire
Post Office Box 1897
Spartanburg, SC 29304

Julius McKay, II, Esquire
Post Office Box 7217
Columbia, SC 29202

At Orangeburg, SC

Dated: May 18, 2014


GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13198
Attorney for Plaintiff

Patient: CRAIG, PATRICIA A
Acct Num: E71569958
Unit Num: M000039639

DOB: 02/27/1955 (55/F)
Phys: Jones, Christopher T MD
Loc: US

Specimen: 10:NG1061

Received: 09/30/10 - 1119
Spec Type: NON-GYN

TISSUES

M. Thyroid gland, NOS - FNA Right Thyroid

PATHOLOGIC DIAGNOSIS

FINE NEEDLE ASPIRATION FROM RIGHT THYROID NODULE:
--CELLULAR LESION SUSPICIOUS FOR PAPILLARY CARCINOMA
--FOLLICULAR EPITHELIAL CELLS ARE ACCOMPANIED BY THOSE WITH NUCLEAR
FOLDS AND NUCLEAR INCLUSIONS WHICH ARE CHARACTERISTIC OF PAPILLARY
CARCINOMA
--CATEGORY 4 LESION, SUSPICIOUS FOR MALIGNANCY, EXCISION IS INDICATED

EEJ:tc

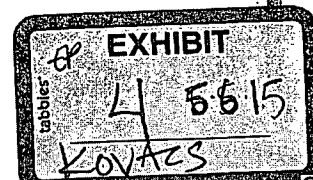
CLINICAL INFORMATION

Right Thyroid Nodule

GROSS DESCRIPTION

Received for cytologic evaluation is a fine needle aspiration from one site of the right thyroid. Five aspiration samples are obtained under ultrasound guidance to yield two air dried and two alcohol fixed smears. The air dried smears are Diff-Quik stained and the alcohol fixed smears are Papanicolaou stained. Also collected is a needle rinse in CytoLyt preservative. One ThinPrep slide is prepared and Papanicolaou stained.

CCENT 000031



MEDICAL CODES

CODES: T96000|M69760 - Thyroid gland, [Atypia, suspci]

COPIES TO

Jones, Christopher T MD
1565 Ebenezer Road
Rock Hill, SC 29732
(803)327-4000

Stangas, Peter A MD
218 South Harlong Avenue
Rock Hill, SC 29732
(803)328-2727

Signed _____ E Earl Jenkins, Jr, MD 10/01/10
<signature on file>

CRAIG, PATRICIA A Acct: E71569958 DOB: 02/27/1955

CCENT 000032

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803) 329-1234

PATIENT NAME: CRAIG, PATRICIA A
MEDICAL REC#: M000039639
ACCT #: E71676365

BIRTHDATE: 02/27/1955
ADM/SVC DATE: 11/02/10
DISCHARGE DATE:

OPERATIVE/PROCEDURE NOTE

DATE OF OPERATION: 11/2/10

PREOPERATIVE DIAGNOSIS: Right thyroid nodule and Hashimoto's thyroiditis.

POSTOPERATIVE DIAGNOSIS: Right thyroid nodule and Hashimoto's thyroiditis.

PROCEDURE: Total thyroidectomy.

SURGEON: Christopher Jones, MD

ASSISTANT: Timothy Kelly, MD

ANESTHESIA: General by endotracheal tube; nerve integrity monitoring tube utilized.

INDICATIONS: Patricia is a 55-year-old who underwent a PET CT scan to investigate an incidentally discovered lung nodule. This revealed diffuse enlargement of her thyroid gland with increased metabolic activity. She underwent followup ultrasound, which revealed a dominant nodule in the right lobe. Fine needle aspiration was performed revealing a cellular lesion suspicious for papillary carcinoma. Excision was indicated.

DESCRIPTION OF OPERATION: After obtaining appropriate informed consent, the patient was taken to the operating room, placed on the operating table. General anesthesia was induced and ventilation was maintained through a nerve integrity monitoring endotracheal tube. Standard grounding electrodes were placed subdermally on the patient's chest. There appeared to be good EMG signal from the tube.

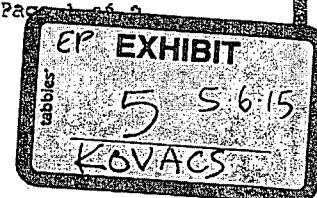
She was positioned with shoulders on a shoulder roll and neck slightly extended. The anterior neck was prepped and draped in usual fashion. A 5-cm incision was made 2 fingerbreadths above the clavicle horizontally. Dissection was carried into a subplatysmal plane. Superior and inferiorly based subplatysmal skin flaps were elevated. The strap muscles were identified and divided in the midline from the thyroid notch to the sternal notch. There were multiple branchings of the anterior jugular veins over the midline. These were identified, divided between hemostats and 2-0 silk ties.

Dissection was begun on the right as it was the side with the suspicious nodule. The strap muscles were bluntly and sharply dissected off of the thyroid lobe as it was retracted medially. The strap muscles were retracted laterally. Middle thyroid vein was identified and divided between hemostats and 2-0 silk ties.

PATIENT NAME: CRAIG, PATRICIA A
MEDICAL REC#: M000039639
LOCATION: WPEDS W418-A
PHYSICIAN: Christopher T Jones MD

OPERATIVE/PROCEDURE NO

CCENT 000016



PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803) 329-1234

Dissection was begun at the superior pole. The superior pole vessels were identified and divided adjacent to the thyroid capsule between hemostats and 2-0 silk ties. Capsular dissection was then done inferiorly until the recurrent laryngeal nerve was identified as it traced from the tracheoesophageal groove superiorly towards the cricothyroid joint. The nerve was kept in view and preserved during the remaining dissection. Inferior vessels were identified and divided. The thyroid was carefully rotated medially. The superior and inferior parathyroid glands were noted and dissected off of the capsule. Berry's ligament was divided and the gland was further mobilized medially until it was attached only to the isthmus. The isthmus was clamped and the right lobe was removed and sent for frozen section. Frozen section revealed similar atypia to the needle biopsy. No definitive diagnosis could be made, but total excision was recommended.

Prior to beginning the dissection on the left side, the right recurrent laryngeal nerve was stimulated at 1 mA. There was a brisk EMG signal indicating integrity of the nerve.

Dissection was then begun on the left. Again, the strap muscles were bluntly and sharply dissected off of the thyroid lobe, which was retracted medially. The strap muscles were retracted laterally with Army-Navy retractors. The middle thyroid vein was identified and divided. The superior vascular pedicle was identified and divided between hemostats and 2-0 silk ties. The recurrent laryngeal nerve was identified superiorly in the tracheoesophageal groove. Again, it was dissected superiorly until its entry point into the larynx. The superior and inferior parathyroid glands were carefully dissected laterally and preserved. Capsular dissection was continued until the gland was pedicled to Berry's ligament. Berry's ligament was carefully divided with bipolar cautery, keeping the recurrent laryngeal nerve in view and preserved. The gland was then removed completely. A small remnant of the pyramidal lobe was removed from the midline superiorly towards the hyoid.

The left recurrent laryngeal nerve was then stimulated with the nerve integrity monitoring system. There was a brisk ipsilateral EMG response indicating integrity of the nerve.

The wound was copiously irrigated with normal saline. Small bleeding areas were controlled with bipolar cautery. A 10 Blake drain was placed in the dissection bed bilaterally and brought out through a separate stab incision in the left side of the neck. This was secured with a 2-0 silk suture.

The strap muscles were reapproximated in the midline with interrupted 4-0 Vicryl. Platysmal layer was similarly closed with 4-0 Vicryl. The deep dermis was reapproximated with interrupted 5-0 Monocryl. The skin was closed with Dermabond. Horizontal Steri-Strips were placed over the Dermabond and the procedure was concluded.

The patient was turned over to anesthesia. She was awakened in the operating room and discharged to recovery room in stable condition. There were no complications. She tolerated the procedure well. Blood loss was less than 50 mL. All sponge and needle counts were correct at the conclusion of the procedure.

PATIENT NAME: CRAIG, PATRICIA A
MEDICAL REC#: M000039639
LOCATION: WPEDS W418-A
PHYSICIAN: Christopher T Jones MD

OPERATIVE/PROCEDURE NO

Page 2 of 2

CCENT 000017

PIEDMONT MEDICAL CENTER
222 South Harlong Avenue
Rock Hill, South Carolina 29732
(803) 329-1234

Dictated by: CHRISTOPHER T. JONES, MD

TR:CTJ/1F
DD:11/02/2010 12:56 EDT
DT:11/02/2010 13:14 EDT
Dictation ID: 2121923/Confirmation #: 839307

Copies to: JONECH
Jones, Christopher T MD

Christopher T Jones MD
Electronically Signed by:

PATIENT NAME: CRAIG, PATRICIA A
MEDICAL REC#: M000039639
LOCATION: WPEDS W418-A
PHYSICIAN: Christopher T Jones MD

OPERATIVE/PROCEDURE NO

Page 3 of 2

CCENT 000018

Created on: 10/01/10 0750

riedmont Healthcare

Page 1

Patient: CRAIG,PATRICIA A
Acct Num: E71569958
Unit Num: M000039639

DOB: [REDACTED]
Phys: Jones,Christopher T MD
Loc: US

Specimen: 10:NG1061

Received: 09/30/10 - 1119
Spec Type: NON-GYN

TISSUES

M. Thyroid gland, NOS - FNA Right Thyroid

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FINE NEEDLE ASPIRATION FROM RIGHT THYROID NODULE:
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FOLDS AND NUCLEAR INCLUSIONS WHICH ARE CHARACTERISTIC OF PAPILLARY
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EEJ:tc

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13

MEDICAL CODES

CODES:	T96000 M69760 - Thyroid gland, Atypia, suspici
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(803)328-2727

Signed _____ E Earl Jenkins, Jr, MD 10/01/10
<signature on file>

CRAIG, PATRICIA A Acct: E71569958 DOB: 02/27/1955

The undersigned hereby certifies the Record on Appeal contains all materials proposed to be included by any of the parties and no other material.

Respectfully submitted this the 19th day of January, 2017.

Glenn Walters, Attorney at Law, PA

A handwritten signature in black ink, appearing to read "R. Bentz Kirby", written over a horizontal line.

Glenn Walters

R. Bentz Kirby

PO Box 1346

Orangeburg, SC 29116

803-531-8844

Attorneys for Appellants

RECEIVED

JAN 24 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2014-CP-42-0508

Patricia Craig, Appellant,

v.

E. Earl Jenkins, Jr., M.D., also known as
Everett Earl Jenkins, Jr., M.D., Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center, and York Pathology
Associates, LLC, Respondents.

RECEIVED

JAN 24 2017

SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 24th, 2017, he served the Record on Appeal on counsel for the Respondents by placing a copy in the United States Mail, postage fully paid and addressed to the following:

Andrew F Lindemann
Post Office Box 8568
Columbia, SC 29202-8568

J. Hollis Inabinet
Post Office Box 1897
Spartanburg, SC 29304


R. Bentz Kirby
Attorney for Appellant