

1 P. Moynahan - by Defendant - Cross (Pirrotti)
2 the witness stand.)

3 THE COURT OFFICER: Jury entering.

4 (The jury entered the courtroom and
5 the following occurred:)

6 THE COURT: Please sit down.

7 We are missing a couple. There you go.

8 Mr. Pirrotti, cross-examination.

9 MR. PIRROTTI: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. PIRROTTI:

12 Q. Just some preliminary matters.

13 The first time we met was outside in the hall when
14 I introduced myself. I am Anthony Pirrotti.

15 A. Yes.

16 Q. Thank you.

17 I represent Mara [REDACTED], okay (indicating)?

18 A. Yes.

19 Q. Sorry. You have to respond verbally.

20 A. Okay. Yes.

21 Q. You gave your address to this jury. It was one of
22 the first questions out of the gate. You gave your address
23 in New York, correct?

24 A. I did.

25 Q. Okay. But actually where your voter address is,
26 is in Connecticut, right?

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2 A. Yes.

3 Q. So really your address is in Connecticut, that's
4 like New Haven County, right?

5 MR. HABIAN: Objection.

6 Q. Right?

7 THE COURT: Overruled.

8 A. That's correct.

9 Q. So your address -- you have two office addresses.
10 One of your office addresses is in New York City, right?

11 A. Yes.

12 Q. And another office address is in Connecticut,
13 correct?

14 A. Yes.

15 Q. But you chose to only give to this jury when asked
16 what your address was, was your New York City address; is
17 that correct, Doctor?

18 A. Yes.

19 Q. So now with respect to what you reviewed, your
20 testimony before this jury is predicated upon the records
21 that were generated during the course and the care of Mara
22 [REDACTED], correct?

23 A. Yes.

24 Q. Now, the person who is in control of creating that
25 record with respect to Mara [REDACTED] is the individual
26 physician that's writing about that patient, correct?

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2 A. Yes.

3 Q. So then, therefore, you are relying upon the
4 truth, the veracity, the completeness and the fairness of
5 the record that is created by Dr. Wu, correct?

6 A. Yes.

7 Q. Okay. And same question, so I don't have to ask
8 them of every physician, the same thing with the other
9 physicians, right?

10 A. Yes.

11 Q. So, therefore, when you're giving your opinion,
12 you are relying upon what was written in her office notes,
13 correct?

14 A. Yes.

15 Q. You're relying upon what was written in her
16 operative note, correct?

17 A. Yes.

18 Q. You are assuming also that everything written
19 therein is contemporaneous, as stated by Mr. Habian, by Dr.
20 Wu of Dr. Wu's treatment of Mara?

21 A. Right. Yes.

22 Q. You also are assuming that what was dictated or
23 was typewritten was fully done by the physician, correct?

24 A. Yes.

25 Q. Not some prescribed formula, right?

26 A. Right.

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2 Q. It's not some template of what happened before,
3 right?

4 A. Correct.

5 Q. Well, you know by virtue of reading everything
6 that a template was used with respect to office notes,
7 right; you understand that?

8 A. Yes.

9 Q. And you also know that -- do you know what else,
10 what other templates were used in this case?

11 A. No.

12 Q. I thought that Mr. Habian, when he was leading you
13 originally in the questions --

14 MS. NUNN: Objection.

15 Q. -- he asked you, you reviewed X, you reviewed Y,
16 and you said you reviewed the trial testimony of Dr. Wu?

17 A. I did.

18 Q. So, therefore, when you read the testimony of Dr.
19 Wu, then you know for a fact that she was using templates in
20 her operative report then, right?

21 A. Well --

22 Q. Right, Doctor?

23 A. Well, she would use a template as a basic
24 beginning of the operative report.

25 MR. HABIAN: Is that --

26 MR. PIRROTTI: I am sorry?

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2 MR. HABIAN: Let her finish.

3 THE COURT: Let her finish. Otherwise, you
4 don't get a proper record.

5 A. Templates are very, very commonly used, but they
6 are adjusted as the operative report is completed to
7 specifically address what happened to that patient, what
8 sutures were used, how much blood loss occurred, the end of
9 the surgery, what transpired from the anesthesia, to the
10 discharge, to the recovery room. So the template includes
11 the name of the patient, date of surgery, date of birth,
12 type of anesthesia, it depends if it's general anesthesia,
13 if it's monitored anesthesia care. Those are things that
14 are changed. Blood loss is changed, sutures are changed
15 from patient to patient. The amount of tissue removed is
16 altered from patient to patient.

17 So a template means that it's a guide. You don't
18 have to retype or redictate what questions are being asked.
19 The template defines that.

20 MR. PIRROTTI: I move to strike.

21 THE COURT: Overruled. I'll let it stand.

22 Q. So you use templates?

23 A. I do.

24 Q. So with regard to this though, you weren't aware,
25 you just said before in your testimony to this jury that you
26 weren't aware that Dr. Wu used templates outside of the

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2 patient record that she writes, the progress note? You
3 weren't aware that what she did was use a template in her
4 operative report, right? Right? It's a yes or no.

5 A. I don't know what you are asking me.

6 Q. Okay. What I am asking, you said before in your
7 sworn testimony that outside the progress note, you were not
8 aware of any other templates that were used, right?

9 A. Well, if I answered that that way, I know that she
10 used a template for the operative report.

11 Q. It's a yes or no, Doctor.

12 A. It's not a yes or no.

13 Q. Yes, it is.

14 MR. HABIAN: Objection.

15 THE COURT: If she can't answer it yes or
16 no, she can't answer it yes or no.

17 Q. If you can't answer anything yes or no, would you
18 mind letting me know?

19 A. Not at all.

20 Q. This is not the first time you have testified,
21 correct?

22 A. Correct.

23 Q. I mean, in court over the years since the early,
24 what is it, 19 -- late 1980s you have been testifying; is
25 that right?

26 A. Yes.

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2 Q. And as a matter of fact, you've been testifying
3 each and every year almost since then. That's correct
4 statement, is it not?

5 A. No.

6 Q. So with regard to your -- you gave testimony on
7 April 19, 1996 in the matter of Gorlich v. Rosenfeld. Do
8 you recall that case?

9 A. No.

10 Q. Do you recall that case being in the Superior
11 Court of New Jersey?

12 A. No.

13 Q. So you've testified in the Superior Court of New
14 Jersey, you've testified in Connecticut, and you've
15 testified in New York, have you not?

16 A. Yes.

17 Q. You not only have testified in court, but you have
18 also testified with respect to the Department of
19 Professional Medical Conduct, haven't you?

20 A. No.

21 Q. Did you ever give an affidavit to the Department
22 of Professional Medical Conduct on behalf of someone?

23 A. I did, yes.

24 Q. Okay. So you're saying that you didn't testify
25 before the Department of Medical Conduct, but you gave an
26 affidavit in support of a doctor who was being charged with

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2 misconduct, right?

3 A. I don't recall.

4 MR. HABIAN: Could you please advise the
5 witness to speak louder? He is blocking her and I
6 can't hear. I don't mind the blocking --

7 THE COURT: If you would, speak up.

8 THE WITNESS: Sure.

9 MR. PIRROTTI: I am not trying to block him.

10 THE COURT: All right, gentlemen. If the
11 witness speaks up, it will satisfy everybody.

12 MR. HABIAN: Thank you.

13 Q. In the matter of Dr. Pankaj, P-A-N-K-A-J, T.
14 Desai, D-E-S-A-I; do you recall that?

15 A. No.

16 Q. Do you recall that that was in the State of New
17 York, Department of Health, State Board for Professional
18 Medical Conduct?

19 A. I don't recall.

20 Q. Do you recall that in that case you testified or
21 gave an affidavit on behalf of a doctor in which it
22 concerned mammoplasty reduction?

23 A. I don't recall.

24 Q. Do you recall that in that case --

25 MR. HABIAN: This is objected to in light --

26 THE COURT: Sustained.

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2 Q. Do you recall at all -- tell me if this refreshes
3 your recollection or not, in that case also templates were
4 used?

5 A. I don't recall the case.

6 Q. Lastly, to see if this can refresh your
7 recollection --

8 MR. HABIAN: This is objected to.

9 THE COURT: Sustain.

10 Q. So now with respect to this case, you not only
11 testify in court on behalf of defendants, but you mostly do
12 defendant work, right?

13 A. Yes.

14 Q. The percentage is what? I am talking about
15 medical malpractice cases. What is the percentage?

16 A. It's a low percentage.

17 Q. Sorry?

18 A. It's a low percentage for the plaintiff.

19 Q. Is it 99.9 percent that you testify in medical
20 malpractice cases in court on behalf of a defendant doctor;
21 is that a correct statement?

22 A. No.

23 Q. Well, in looking at your -- you've testified in
24 1994, do you recall, the case of Rojas v. Rosenfeld? That
25 was in New Jersey, Hudson County.

26 A. No.

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2 Q. Do you recall that was for the defendant?

3 A. I don't recall the case.

4 Q. How about Gorlich v. Rosenfeld, New Jersey, Bergen
5 County; do you recall that?

6 A. No.

7 Q. Do you recall answering certain questions under
8 oath in that case with interrogatories?

9 A. I don't recall the case.

10 Q. I will get there.

11 Van Alphen, A-L-P-H-E-N, v. Urbanek,
12 U-R-B-A-N-E-K, New York, Richmond County, you testified on
13 behalf of the defendant in that case in the medical
14 malpractice case; do you recall that?

15 A. No.

16 Q. That was with regard to, see if it refreshes your
17 recollection, removal of a cyst from the right cheek?

18 A. I don't recall.

19 Q. Okay. And the other case, the Rojas case, does it
20 refresh your recollection that it was nasal surgery?

21 A. I don't recall.

22 Q. What about the case of Agenziano,
23 A-G-E-N-Z-I-A-N-O, v. Romita, New York County, in 2000? You
24 testified on behalf of the defendant in a medical
25 malpractice case.

26 A. I don't recall.

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2 Q. And the negligent use of staples to close a wound,
3 does that refresh your recollection at all?

4 A. Not at all.

5 Q. Berkowitz v. Gillen, New York County, a medical
6 malpractice case on behalf of the defendant?

7 A. I don't recall.

8 Q. It was a negligent performance of a breast
9 reduction case. Does that in any way refresh your
10 recollection?

11 A. No, it doesn't.

12 Q. What about Murphy v. Staten Island Hospital? You
13 testified on behalf of the defense in 2001 in Richmond
14 County. Do you remember that?

15 A. No.

16 Q. Improper circumcision on an infant.
17 Does that refresh your recollection?

18 A. No.

19 Q. And how about, maybe this one rings a bell for
20 you, please, 2001, the case is Shleiwet, S-H-L-E-I-W-E-T, v.
21 Schoenbach, New York County, Bronx. Do you remember that
22 one?

23 A. No.

24 Q. It was a medical malpractice. You were noticed as
25 a witness in this case. Do you know if you ever took the
26 stand in that case?

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2 A. I don't remember.

3 Q. Do you know that you were retained by Martin
4 Clearwate & Bell in that case? Does that refresh your
5 recollection?

6 A. It doesn't.

7 Q. Can you tell me, please, 2001, the Macaluso v.
8 Reed case, New York State, Richmond County, 2001, you
9 testified for the defense in a medical malpractice case; do
10 you recall that?

11 A. No.

12 Q. What about the fact that McAloon & Friedman was
13 the defense counsel? Does that refresh your recollection
14 now?

15 A. No.

16 Q. Now, I know you may not recognize Ms. Nunn. Do
17 you recognize her?

18 A. Who?

19 Q. Ms. Nunn.

20 A. No.

21 Q. I'm sorry?

22 A. I mean, I met her outside, but --

23 Q. But the partners from her firm, you know, McAloon
24 & Friedman?

25 A. Yes.

26 Q. And you review many cases for them, do you not?

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2 A. Not many.

3 Q. Well, what do you say?

4 A. I have no idea.

5 Q. Oh, it's not that it's not many, you just don't
6 have any idea?

7 A. I don't.

8 Q. So you realize that's two different things, right?
9 How can you say not many if you don't have an idea?

10 MR. HABIAN: Objection. Argumentative.

11 MS. NUNN: Objection.

12 THE COURT: Sustained.

13 Q. Now, with regard to the case of Besson v.
14 Weintraub, New York County, New York, 2002, that was a
15 medical malpractice case regarding a facelift and eye
16 surgery. Do you recall testifying in that case?

17 A. No.

18 Q. How about the Ordon v. Karpie case, Federal
19 District Court? Do you recall testifying in federal
20 District Court?

21 A. No.

22 MR. HABIAN: May I ask Mr. Pirrotti a
23 private question on this? It may save me some trouble.

24 THE COURT: Sure.

25 Do you want to go into the hallway or --

26 MR. HABIAN: No, I will chat with him here.

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2 THE COURT: Great.

3 (Discussion off the record.)

4 THE COURT: Gentlemen, remember that there
5 is a jury sitting right there. If I can hear you --

6 MR. HABIAN: You will clarify that?

7 MR. PIRROTTI: I did.

8 MR. HABIAN: Thank you, Judge.

9 Q. With regard to the Ordon v. Karpie case, do you
10 recall -- let's say it this way so that -- whether you
11 testified in any of these cases or you gave an affidavit or
12 you were retained to be consulted, in any of them, in any
13 way, in anything I read before, do any of those ring a bell?

14 A. No.

15 Q. Either way, whether you testified, you gave an
16 affidavit or were consulted, in any way?

17 A. No.

18 Q. Okay. Now, the Ordon v. Karpie case, that federal
19 case, do you recall whether you gave testimony on behalf of
20 the defense or you wrote an affidavit or what you did?

21 A. I don't recall.

22 Q. The O'Donnell v. Montefiore case, that was in
23 2006. Was that with MCB?

24 A. I don't know.

25 Q. And that was a Labor Law case. That's unusual.
26 You were called as a witness on a Labor Law case on behalf

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2 of the defense?

3 MR. HABIAN: Judge, these comments --

4 THE COURT: Sustained.

5 Q. With regard to this Labor Law case -- in other
6 words, you testify also not in just medical malpractice
7 cases, but some law firms retain you to do an examination of
8 an injured plaintiff, right, and then you render a report,
9 right?

10 A. I have examined injured patients and rendered
11 reports.

12 Q. And then you're called sometimes to testify in
13 court contradictory to the treating plaintiff's testimony,
14 right?

15 MR. HABIAN: Objection.

16 A. I don't recall.

17 THE COURT: She doesn't recall. That was
18 the answer. I will let that answer stand.

19 I will ask you to speak as loudly as you can
20 because I am just not sure our jurors are all hearing
21 you.

22 MR. PIRROTTI: I am almost done on this
23 line.

24 Q. In the Malitz v. Spero case, New York County, do
25 you remember in that case being retained by Martin
26 Clearwater & Bell?

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2 A. No.

3 Q. So I don't know whether you testified in that. I
4 am asking, do you recall whether or not you testified in
5 that case?

6 A. I don't recall the case.

7 Q. And was that, let's see if this refreshes your
8 recollection, excessive administration of propofol and
9 fentanyl prior to facial anesthetic [sic.] surgery.

10 Do you recall testifying in that kind of case or
11 giving a report or an affirmation?

12 A. No, no.

13 Q. And the Jacobs v. Madison case, that was also for
14 a defendant, do you recall that case in 2011?

15 A. No.

16 Q. All right. Do you recall it being a bilateral
17 breast reconstruction leading to some nipple asymmetry; do
18 you recall that?

19 A. No.

20 Q. Do you recall whether or not you gave an affidavit
21 or a report or anything like that?

22 A. I don't.

23 Q. Let's finish it up with the Edell case versus
24 Dechiara. Do you recall being asked to give an affirmation
25 in that case?

26 A. I don't recall.

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2 Q. Do you remember Dechiara happened to be at that
3 time the partner of Dr. Petro; do you remember that?

4 A. No.

5 MR. HABIAN: This is objected to.

6 THE COURT: She said no. I will let that
7 answer stand, but let's move along.

8 Q. The last one is 2016, Siegman v. Brewer in New
9 York, Nassau County; do you recall that case?

10 A. No.

11 Q. And that was a -- does it refresh your
12 recollection that you also testified as to the failure to
13 properly perform breast reconstruction in that case?

14 A. No.

15 Q. So with respect to these matters, you have
16 testified approximately how many times in a medical
17 malpractice case?

18 A. I don't know.

19 Q. All right. And so is it more than 50?

20 A. I doubt it, but I can't say yes or no to that.

21 Q. All right.

22 So you earn a certain percentage of money doing
23 these defense cases for medical malpractice case defendants,
24 correct?

25 A. Yes.

26 Q. Now, you read Dr. Petro's daily copy, did you not?

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2 A. Yes.

3 Q. And did you read that basically she does, you
4 know, when she reviews cases, it's 50 percent for the
5 plaintiff, 50 percent for the defendant?

6 MR. HABIAN: Objection. I can't hear.

7 THE COURT: You are speaking so fast. I try
8 to sometimes take notes on what you are saying. If I
9 can't get it, how are they getting it? I am not trying
10 to get word for word. I am trying to get generally.
11 So, please, slow down.

12 MR. PIRROTTI: Yes, your Honor. I
13 apologize. I apologize to the jury.

14 Q. Can you tell me, please, you read Dr. Petro's
15 record. You read Dr. Petro's record, and you read that she
16 reviews cases, and sometimes it's about a 50/50 split; do
17 you recall that?

18 A. No.

19 Q. So, with regard to the amount of money you earn
20 per year with respect to testifying in these cases for these
21 defendant doctors and these law firms or all defense law
22 firms, how much do you earn per year?

23 A. Some years nothing. Some years maybe 20, \$25,000.

24 Q. In this case you're paid -- you heard Mr. Habian
25 say that you spent time, you met with each other over the
26 course of this trial, right?

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2 A. Yes.

3 Q. And how much time did you spend with him over the
4 course of the week or two weeks?

5 A. Well, last night I met with him for an hour.

6 MR. HABIAN: Please, a little slower.

7 THE COURT: Last night she met with him for
8 an hour.

9 A. And when I reviewed the medical records, it was
10 seven to eight hours.

11 Q. You charge how much an hour?

12 A. 350.

13 (Continued on next page.)

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2 CROSS-EXAMINATION

3 BY MR. PIRROTTI:

4 Q. You said 350?

5 A. Yes.

6 Q. And what else -- for today you're charging how
7 much?

8 A. 5,000.

9 Q. So -- and when were you first retained?

10 A. Several years ago.

11 Q. When you say several years ago, when?

12 A. Three, two.

13 Q. Do you have your notes when you were retained and
14 when you reviewed the records?

15 A. I don't have any notes with me today regarding the
16 case.

17 Q. You did not bring any notes?

18 A. No.

19 Q. Do you have your record so we can see what records
20 you reviewed?

21 A. Well, I testified initially as to what records I
22 reviewed.

23 Q. I know that but I'm asking do you have them here
24 in court, the records that you reviewed?

25 A. Do I have a copy of the records I reviewed?

26 Q. Here in court, outside or with your lawyer?

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2 A. No.

3 Q. When you reviewed the records, did you highlight
4 anything, make any Post-its, take any notes, write something
5 on the computer?

6 A. No.

7 Q. So with all of these records that you reviewed,
8 the bill of particulars, thousands of pages of transcript
9 with regard to the medical records, no notes whatsoever?

10 A. No.

11 Q. No highlighting, no tabbing, no nothing?

12 A. Right.

13 Q. Let me ask this: With regard to texts that
14 concern the Hall-Findlay technique prior to August 25, 2010,
15 do you -- have you reviewed any texts with respect to the
16 Hall-Findlay technique?

17 A. No.

18 Q. Are there any journals or articles that you rely
19 upon or did rely upon on or before August 25, 2010, in order
20 to learn how to do the technique?

21 A. No.

22 Q. Did you attend any lectures at any point or at any
23 time prior to August 25, 2010, in order to see how the
24 Hall-Findlay technique is done?

25 A. I go to medical meetings.

26 Q. So back in August 25, 2010, would you say that you

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2 were experienced in doing the Hall-Findlay technique?

3 A. That's seven years ago. You're saying 2005 --
4 2010?

5 Q. Yes, Doctor.

6 A. Well, I was familiar with the superior vertical
7 lollypop incision which was pioneered by Dr. Lejour, so I
8 don't know exactly when there was a modification made by
9 Dr. Hall-Findlay, but the basic principles of the
10 development of the medial superior flap is very familiar.

11 Q. Wait a second. I asked you if back on August 25,
12 2010, if you were familiar with doing the Hall-Findlay
13 technique. Is the answer yes or no?

14 A. I don't know.

15 Q. But you're here giving testimony about what the
16 standard of care is at that time in doing a Hall-Findlay
17 technique. Do you realize that?

18 A. Yes.

19 Q. Do you know when the Hall-Findlay technique was
20 introduced to the community?

21 A. It was several years ago. Exactly what year, I
22 don't recall.

23 Q. So you don't know as you sit here today whether it
24 was 1999?

25 A. It's a modification of the Lejour and I don't know
26 when the modification --

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2 MR. HABIAN: I didn't hear. Modification of?

3 THE WITNESS: Dr. Lejour, who pioneered this
4 particular flap and modifications come in. There are
5 several modifications that keep appearing, some have
6 credibility, some don't, but exactly the date when I
7 was familiar with Hall-Findlay I don't recall.

8 Q. Doctor, you understand that Dr. Wu testified that
9 she did the Hall-Findlay technique here?

10 A. Yes.

11 Q. And you understand --

12 MR. PIRROTTI: Withdrawn.

13 Q. When was the first time that Dr. Wu met
14 Dr. Hall-Findlay and heard her lecture?

15 MR. HABIAN: Objection.

16 MS. NUNN: Objection.

17 THE COURT: Overruled.

18 A. I don't recall.

19 Q. You read her testimony?

20 A. I did.

21 Q. Doctor, there is sworn testimony here that in
22 1999, during her residency, Dr. Wu heard a lecture of
23 Dr. Hall-Findlay. Can you please assume that.

24 A. I recall it now that you stated it. I recall
25 reading that in Dr. Wu's testimony.

26 Q. Very good.

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2 So some 11 years before August 25, 2010,
3 physicians like yourself were doing the Hall-Findlay
4 technique, right?

5 A. Yes.

6 Q. But you're saying here to this jury that you don't
7 even know if you were doing it at that time August 25, 2010.
8 That's your testimony, right?

9 A. I'm not sure when I began doing it but pedicle
10 flaps are something that form the foundation of
11 reconstructive surgery. So whether it's the Hall-Findlay,
12 the Lejour, the scoop, the Wise, this is a work in progress,
13 so I am familiar with pedicles, I am familiar with the
14 anatomy and I am very comfortable doing procedures based
15 upon fundamental principles.

16 Q. Are you saying on August 25, 2010, that the
17 Hall-Findlay technique was evolving?

18 MR. HABIAN: Objection.

19 THE COURT: Overruled.

20 A. I'm saying pedicle flaps are constantly evolving.

21 Q. That's not my question. My question is are you
22 saying to this jury that the Hall-Findlay technique on
23 August 25, 2010 was evolving?

24 A. Yes. According to Dr. Hall-Findlay it has
25 evolved, she has perfected her method, she has changed her
26 methodology, she has refined the technique. That's part of

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2 the process.

3 Q. Doctor, not in August 25, 2010, she introduced it
4 in the late '90s, right?

5 MR. HABIAN: I object to this. Is he
6 testifying?

7 THE COURT: It's fine on cross examination,
8 I'll allow it, but let's move along.

9 You can answer that last question, or not.

10 Are you withdrawing it?

11 MR. PIRROTTI: I am, your Honor.

12 THE COURT: All right.

13 MR. PIRROTTI: I think I've established the
14 point.

15 Q. Now, with respect to the healing issue here, it is
16 your opinion, as you said to this jury, that when someone
17 makes an incision using the scalpel and using the bovie
18 cautery that the natural tissue of a human body immediately
19 starts to form scar tissue, during the surgery in fact.
20 That's your point?

21 A. No.

22 Q. No?

23 A. No.

24 Q. So -- I'm sorry. Right after the surgery and
25 there's a closing, are you saying that scar tissue and bands
26 are forming right then and there at that point?

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2 A. I'm saying that during the surgery, the body
3 reacts by pouring healing factors into the area injured, but
4 as the process is ongoing there's no formation of scar. The
5 wound is approximated, and usually within six hours the
6 wound is closed. And that's an acceleration of the healing
7 process, but the completion of the healing process is
8 ongoing. It usually takes six to 12 months before it's
9 stable.

10 Q. Six to 12 months before these bands form?

11 A. Six to 12 months before the scar tissue is stable.

12 Q. So now --

13 A. And I'm saying not that the bands form, I'm saying
14 there's contracture of the fibrous tissue of the breast.

15 Q. You're saying the contracture of the fibrous
16 tissue and --

17 MR. PIRROTTI: Withdrawn.

18 Q. You're saying that six days later that these
19 fibrous tissue or these bands are what is pulling down and
20 retracting these nipples?

21 MR. HABIAN: Objection.

22 THE COURT: Overruled.

23 A. I didn't say six days later, I said at six hours,
24 at the completion of the surgery, generally the wound edges
25 are bridging, they've sealed. That's not always the case.
26 But I'm not saying six days.

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 Q. You're not saying that -- if the nipples were
3 retracted six days later, you're not saying bands in these
4 fibrous tissue are what is pulling down on these nipples,
5 right?

6 A. I don't know. I don't know when the bands start
7 pulling down on the nipple.

8 Q. You read the testimony of Dr. Wu, as you said
9 before, didn't you?

10 A. I didn't read it completely. It was given to me
11 late last night, but I did read a significant part of it,
12 but I didn't read all of it.

13 Q. When Mr. Habian asked you did you review X and
14 review Y, did you just say -- you said you reviewed it, you
15 didn't say you reviewed it partially or skimmed it,
16 whatever?

17 A. I reviewed her examination before trial. But I
18 was not given her trial testimony until late yesterday
19 evening.

20 Q. Would you agree with me that trial testimony is
21 important to you?

22 MR. HABIAN: Judge, what day? I can only get
23 it at a certain -- what day?

24 THE COURT: The question was --

25 Read it back.

26

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 BY MR. PIRROTTI:

3 Q. Do you agree, Dr. Wu's trial testimony is
4 important to you, yes or no?

5 A. Yes.

6 Q. Now, you met with Mr. Habian, right?

7 A. Yes.

8 Q. Did he and you speak?

9 A. Yes.

10 Q. Did he and you speak about the trial testimony?

11 A. Yes.

12 Q. Did he impart to you what you thought was
13 important?

14 A. Yes.

15 Q. So really what happened here with regard to the
16 trial testimony with Dr. Wu is that you didn't actually
17 review her testimony because you got it late last night, you
18 heard her trial testimony as summarized by Mr. Habian?

19 A. Both.

20 Q. You only skimmed it?

21 A. Depends what you say by skew -- I skimmed it. I
22 spent a couple hours, but by 11, 11:30 at night I felt it
23 was wise to sleep.

24 Q. With regard to this meeting from Mr.-- with
25 Mr. Habian, did Mr. Habian tell you what Dr. Wu testified to
26 as to the healing process and when the scars and bands

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 formed, yes or no?

3 A. I don't recall that.

4 Q. I'm asking you did he tell you that, what she
5 said?

6 A. No. Not specifically with what bands formed. I
7 don't recall that.

8 Q. How about was Ms. Nunn there in that meeting?

9 A. No.

10 Q. Was Dr. Wu there in that meeting?

11 A. No.

12 Q. Have you ever spoken to Dr. Wu?

13 A. No.

14 Q. You said you were retained some several years ago,
15 right?

16 A. A couple of years.

17 Q. A couple to you is two?

18 A. Two or three.

19 Q. Fair enough. During that two or three year period
20 of time, did you ever meet Dr. Wu?

21 A. No.

22 Q. Did you ever talk to her about it?

23 A. I do not know Dr. Wu.

24 Q. That's not my question. My question is did you
25 ever have a meeting between yourself, Mr. Habian, Dr. Wu to
26 talk about what you did?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 (Reporter requested clarification.)

3 THE COURT: Read me back the last thing you
4 have.

5 (Record read.)

6 THE COURT: Finish your question.

7 MR. PIRROTTI: I'll rephrase it.

8 Q. During the meeting, did you ever ask for a meeting
9 between yourself, Mr. Habian, Dr. Wu to discuss what
10 happened with regard to the care of Mara [REDACTED]?

11 A. No.

12 Q. Now, I'm going to read to you what Dr. Wu
13 testified to, then I'm going to ask you some questions,
14 okay?

15 MR. HABIAN: Is this Tuesday or yesterday? I
16 need to know.

17 MR. PIRROTTI: I'm going to tell you the
18 page.

19 MR. HABIAN: Please.

20 MR. PIRROTTI: It's July 13, 2017.

21 MR. HABIAN: Yesterday.

22 MR. PIRROTTI: Page 704.

23 Q. That was yesterday's testimony.

24 Again, you may not have had an opportunity to
25 review the entire thing, but you and Mr. Habian spoke and he
26 told you what he thought about the day's testimony, right?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 MR. HABIAN: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: What was the question?

5 MR. PIRROTTI: Can I have it read back?

6 THE COURT: Yes.

7 (Record read.)

8 A. Yes.

9 Q. Let's go to page 704, starting line 21.

10 "Q Now, you're saying with regard to healing and
11 the formation of fibrous tissue bands, things like
12 that, are you saying those things form before six
13 weeks?

14 "A No."

15 Going on to the next page.

16 "Q They don't, right?

17 "A I don't know. I don't know."

18 Going to line ten.

19 "Q Doctor, you agree with me like as you -- with
20 your experience, education, training, background, you
21 know that bands do not form before six weeks, right?

22 "A Probably not.

23 "Q So bands would not explain why six days later
24 her nipples are retracted, right?

25 "A Correct."

26 Did you hear that testimony that I just read?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. Yes.

3 Q. Do you agree with Dr. Wu?

4 A. In six days bands have not developed, is that the
5 question?

6 Q. I read to you multiple things. Here's the
7 question. I asked her -- I'll repeat it again, Doctor.

8 "Q Now, you are saying with regard to healing
9 and formation of fibrous tissue, bands, things like
10 that, are you saying those things form before six
11 weeks?

12 "A No."

13 Do you agree with Dr. Wu?

14 A. Before six weeks or six days? Because I thought
15 you mixed the days with the weeks. Do they form within six
16 weeks? That's the healing process, and it's well
17 established at that time fibrosis is occurring.

18 Q. Before six weeks is the question?

19 A. Before six weeks?

20 Q. Not at six weeks before six weeks?

21 A. How much before the healing process begins
22 immediately.

23 Q. So in other words, you disagree with what Dr. Wu
24 testified under oath?

25 MR. HABIAN: Objection.

26 THE COURT: Overruled.

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. I don't really grab a concept of what you're
3 trying to explain to me.

4 Q. Doctor, would you agree that you are a top class
5 plastic surgeon?

6 A. I don't like that term.

7 Q. How about top flight plastic surgeon?

8 A. I just don't like that terminology.

9 Q. Okay. How about first class?

10 A. Again, I don't like that terminology.

11 Q. How about the degree of your education, training
12 and background, would you agree that you are a very
13 competent plastic surgeon?

14 A. Yes.

15 Q. Would you agree that you have nearly a 100 percent
16 success rate in the things that you do?

17 A. No.

18 Q. Would you agree that your success rate approaches
19 100 percent?

20 A. No. I don't know anyone who approaches
21 100 percent.

22 MR. PIRROTTI: May I take the opportunity now
23 to do that?

24 THE COURT: Yes.

25 (Pause.)

26 Q. Before I begin asking you some questions, we --

1 Moynahan - by Defendant Wu - Cross/Pirrotti
2 outside the presence of the jury we watched these videos,
3 did we not?

4 A. Yes.

5 Q. There's two videos, are there not?

6 A. Yes.

7 Q. They are part of your website, are they not?

8 A. Yes.

9 Q. This is, like, something where somebody clicks on
10 your website, they can click on it and listen to it and
11 that's one segment, right?

12 A. Yes.

13 Q. There's another segment, which if they want to
14 they can click on and listen to it too, right?

15 A. Yes.

16 Q. It's a two stage process?

17 A. Yes.

18 Q. What you said in this promotional -- whatever you
19 want to call it, this video, is it full, fair, accurate and
20 complete?

21 A. In this particular video? It's a video that was
22 edited so it was --

23 Q. It wasn't edited by me, right?

24 A. No.

25 MR. HABIAN: Objection.

26 THE WITNESS: It wasn't edited by me, it was

1 Moynahan - by Defendant Wu - Cross/Pirrotti
2 by the person who did the video.

3 Q. But you approved to it being on your website,
4 right?

5 A. Yes.

6 Q. It's what if anybody wants to they can go on your
7 website and look at it and listen to it, right?

8 A. Yes.

9 MR. PIRROTTI: For the record, on the bottom
10 right-hand corner it says: Dell update. I don't know
11 how to get rid of it. It's on my laptop.

12 THE COURT: It has nothing to do with the
13 video?

14 MR. PIRROTTI: Right. I didn't want to start
15 doing anything wrong.

16 (Video played for the jury.)

17 Q. Did I play that clip in full, to your best
18 recollection?

19 A. Yes.

20 Q. It's not that anybody, including myself, edited.
21 That's a full version, is it not?

22 A. To the best of my knowledge, yes.

23 (Second video played for the jury.)

24 BY MR. PIRROTTI:

25 Q. That was the second portion of the video, correct?

26 A. Yes.

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 Q. This is the video that we watched together with
3 all counsel and the Judge, outside the presence of the jury;
4 isn't that right?

5 A. Yes.

6 Q. So if we can, you fortunately have a success rate
7 that is very, very high and it approaches 100 percent,
8 right?

9 A. In some instances.

10 Q. You don't say in some instances in the video,
11 right?

12 A. I didn't say in some instances, correct.

13 Q. So are you saying to this jury that you left that
14 out?

15 A. No. This is a summary.

16 Q. It's a yes or no.

17 MR. HABIAN: It wasn't a yes or no. May she
18 answer it?

19 THE COURT: Let's read back the question,
20 please.

21 (Record read.)

22 THE COURT: Yes or no?

23 A. I left what out?

24 THE COURT: Apparently she doesn't understand
25 the question.

26 Q. You said to this jury that it's a hundred percent

1 Moynahan - by Defendant Wu - Cross/Pirrotti
2 in some instances. So you're saying that people watching
3 your video, you left out a hundred percent in some instances
4 on your video, right?

5 A. Yes.

6 Q. You did that on purpose?

7 A. What did I do on purpose?

8 Q. To take out that it's a hundred percent in some
9 instances?

10 MR. HABIAN: Objection to form.

11 THE COURT: Overruled.

12 A. The success rate approaches a hundred percent.

13 Q. I know that's what I said, but you said in some
14 instances. You didn't say that on your video, but you said
15 that here to this jury.

16 A. I didn't say it on the video.

17 Q. So are you saying that your video is misleading?

18 MR. HABIAN: Objection.

19 THE COURT: Overruled.

20 A. It's a video. It's a marketing tool. It's been
21 edited. It's not a consultation. It's information for the
22 patient. Each patient is unique. This is not serving as my
23 consultation with the patient.

24 So the goal of cosmetic surgery, the goal of
25 all surgery is to improve the patient. So that's what this
26 implies. If there was a failure rate of a portion or a

1 Moynahan - by Defendant Wu - Cross/Pirrotti
2 significant complication rate, then it would not be
3 acceptable.

4 Q. So you're telling this jury, then, that actually
5 you have many, many, many times where you have to have
6 revisions of your patient?

7 A. No, I don't.

8 Q. You laughed?

9 A. Because you're putting words in my mouth that are
10 contrary to fact.

11 Q. So you don't have many, many, many times where you
12 have to redo your surgery?

13 A. Correct.

14 Q. I mean to say that would kind of be a little
15 silly, right?

16 A. I didn't use the word silly.

17 Q. It wouldn't be right?

18 A. It would be inappropriate.

19 Q. So if Mr. Habian told this jury that many, many,
20 many times that revisions have to be done after a surgery,
21 that would be inappropriate, right?

22 MR. HABIAN: Respectfully object. I said
23 many surgeons, not many times.

24 THE COURT: Thank you, thank you, thank you.

25 Again, what the attorneys say is not
26 evidence.

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 Q. Right?

3 THE COURT: There is no question.

4 MR. PIRROTTI: May I rephrase the question?

5 THE COURT: Yes.

6 Q. So if Mr. Habian had indicated during his opening
7 words to the effect that many, many, many times, you know
8 revisions have to be done after surgery, that would be
9 inappropriate, right?

10 MR. HABIAN: Objection.

11 THE COURT: Overruled.

12 A. I have no idea.

13 Q. You just said when I said many, many, many that it
14 would be inappropriate, so if Mr. Habian says it it doesn't
15 matter, does it?

16 MR. HABIAN: Judge, objection.

17 THE COURT: Let me just give this
18 instruction. I have repeatedly said what the attorneys
19 say is not evidence in the case. What the attorneys
20 say in their opening statements is not evidence in the
21 case. What the attorneys say in their summations is
22 not evidence in the case.

23 Ask a question based on the evidence, please.

24 MR. PIRROTTI: Yes.

25 Q. So with regard to your patients, when you talk to
26 them about the risks -- let's say it this way -- do you tell

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 them many, many, many times there's a risk that you're going
3 to need other surgeries; do you tell them that?

4 A. I don't use adjectives, I say there are risks and
5 I describe the risks.

6 Q. But do you -- what I'm asking you is, do you tell
7 them the percentage of your revision rate?

8 A. I don't know anyone who talks about percentages to
9 a patient.

10 Q. That's not my question. I'm asking you what you
11 do. I don't care what anybody else does.

12 MR. HABIAN: I object to that.

13 THE COURT: Sustained.

14 Ask a question, please.

15 Q. Can you tell us, when you're talking to a patient,
16 you talked about how important the consultation is in your
17 video, right?

18 A. Yes.

19 Q. And to educate your patient, right?

20 A. Yes.

21 Q. And for you to have the degree of education,
22 right?

23 A. I have the what?

24 Q. The degree of your education, you and your
25 colleagues, you spoke about how you keep up-to-date on all
26 this information as being a medical physician, right?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. Yes.

3 Q. So in this situation you're talking to the
4 patient, do you tell the patient, at all, anything other
5 than what's in your video, which says that your success rate
6 is nearly or reaches a hundred percent?

7 A. The consultation with the patient is not a film
8 clip. It's an intense dialogue. The medical history is
9 obtained, the patient's goals are reviewed, the patient is
10 examined, the consultation allows the patient time to ask
11 and have all of their questions asked and answered; the
12 risks, the benefits, the alternatives, the possible
13 complications are explained. So it's not a few minutes of a
14 video clip.

15 (Continued on next page.)

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1 P. Moynahan - by Defendant - Cross (Pirrotti)

2 MR. PIRROTTI: I move to strike as not being
3 responsive.

4 Can I have it read back?

5 THE COURT: Overruled. I'll allow it to
6 stand.

7 Q. Doctor, all I'm asking you is, when you sit down
8 with the patient, your patients see your video, it says your
9 success rate reaches nearly 100 percent. Do you tell them
10 anything else other than that?

11 A. Oh, I tell them a lot of things other than that.

12 Q. I mean, about your success rate.

13 A. I tell them what the risks are, and if they're at
14 greater risk or lesser risk, and the care is taken preparing
15 the patient for minimizing risk, but risks exist. So I
16 don't minimize the risk which means the possible
17 complication and complications can happen. That is
18 explained to the patient.

19 Q. My question to you is, do you tell the patient
20 that the complication rate is nearly in your experience less
21 than, because you're almost at nearly 100 percent success
22 rate, do you tell them it's less than one percent with me?

23 A. You are taking everything out of context.

24 Q. No, I'm sorry, I don't think I am.

25 MR. HABIAN: I object to this.

26 THE COURT: Sustained.

1 P. Moynahan - by Defendant - Cross (Pirrotti)

2 MR. PIRROTTI: Withdrawn. Withdrawn.

3 Withdrawn.

4 Q. With respect to the discussion that you have about
5 the risk, you're saying that you tell your patients then
6 that there's a risk of nipple retraction when you are doing
7 a breast reduction, right?

8 MR. HABIAN: Objection.

9 THE COURT: Overruled.

10 A. I discuss the possible complications, and I
11 address the nipple, particularly in a younger woman, and the
12 variations can be anywhere from an inverted nipple, which is
13 unusual, it's not a common event, to necrosis of the nipple
14 where the entire nipple could be lost, where there could be
15 an open wound and excessive scarring can happen. That is
16 explained thoroughly to the patient.

17 Q. Do you know that in this case Dr. Wu didn't tell
18 Mara about retraction or inverted nipples?

19 A. Well, not everybody does. They discuss the
20 nipple.

21 MR. HABIAN: Excuse me.

22 Q. So with respect --

23 MR. HABIAN: Excuse me.

24 THE COURT: We will break here for lunch.

25 Don't talk about the case among yourselves or
26 with anybody else. Don't do any independent research.

1 Proceedings

2 Mr. Pirrotti.

3 MR. PIRROTTI: Thank you, your Honor.

4 With your permission.

5 Q. Doctor, I left off with the question, and the
6 question was, you know from the testimony that you reviewed,
7 and what you were told by Mr. Habian, and the testimony
8 specifically of Dr. Wu that she never told Mara or her
9 mother specifically that retracted nipples could happen as a
10 result of this surgery; you know that, right?

11 A. Yes.

12 Q. Okay.

13 THE COURT: I just want to tell the jury
14 that there is no claim in this action for failure to
15 obtain informed consent.

16 MR. PIRROTTI: Correct.

17 Thank you, your Honor.

18 THE COURT: Let's continue.

19 Q. Now, you said this was a meticulous surgery,
20 correct?

21 A. Yes.

22 Q. So meticulous, you said it takes sometimes
23 three-and-a-half to four hours, right?

24 A. Or longer.

25 Q. Or longer, right, that's what you said.

26 Sometimes it could take five or six hours, you

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said?

A. Yes.

Q. And I assume by virtue of that because this is a meticulous surgery, as you testified to, right?

A. Yes.

Q. It's complex, it's difficult, correct?

A. Well, it's complex, but it's a standard approach to a breast reduction.

Q. Okay. It's a complex surgery?

A. Right. It's not a difficult surgery.

Q. But, again, you read Dr. Wu's testimony.

Going to page 114, line six:

"Question: Do you recall it being complex?

"Answer: No, I don't specifically recall it being complex."

Do you recall reading that question and answer?

A. I don't believe I read that portion.

Q. So your opinion then differs from Dr. Wu's opinion who did this surgery, right?

A. I'm talking about the surgery in general, that it is a complex operation, in my opinion.

Q. So your opinion differs from Dr. Wu's opinion then?

A. Apparently.

Q. Now, with respect to taking two, two-and-a-half

Proceedings

hours, you read a lot of testimony about that aspect to do this surgery, right?

A. Yes.

Q. And you are aware that Dr. Petro, Jane Petro, testified in this case about the length of time that it would take to do that type of surgery like that was done on Mara, right?

A. Yes.

Q. And it would be fair to say that your recollection of the testimony is that you said it would take two-and-a-half, three hours something like that?

MR. HABIAN: Objection.

THE WITNESS: She said two-and-a-half.

THE COURT: Overruled.

Q. Two-and-a-half. Thank you so much.

Do you also recall the testimony of Davida

██████████?

A. I don't recall that case at all.

Q. What case?

A. Rita ██████████.

I thought -- I misunderstood. The way you phrased the question, I thought it was somebody else entirely.

Q. Do you know who Davida ██████████ is?

A. Davito?

Q. Davida ██████████, do you know who that is?

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A. I believe it's her mother.

Q. Yes.

So did you read her testimony?

A. I did, but not recently.

Q. How about her daily copy testimony from trial?

A. I did not read that.

Q. But you did read what she stated in her testimony at her deposition, you're saying?

A. Yes.

Q. So did Mr. Habian tell you what Dr. Wu told her and Mara as to how long it would take to do this surgery?

A. I don't recall him telling me.

Q. Okay. So, you're not aware that Dr. Wu told Mara and her mom that it would take about two-and-a-half to three hours?

MS. NUNN: Objection.

THE COURT: Overruled.

A. I'm not -- could you repeat that, please?

MR. PIRROTTI: Sure. Can we read it back?

THE COURT: Read it back, please.

(The testimony as requested was read by the reporter.)

A. No.

Q. So you said you don't anybody who can do this surgery in two-and-a-half, three hours, but now you have two

1 Proceedings

2 people that can; do you understand that?

3 MR. HABIAN: Objection.

4 THE COURT: Overruled.

5 A. Yes.

6 Q. Do you understand that?

7 A. Yes.

8 Q. So you are saying to you that's something new that
9 you just learned from this trial?10 A. No, I know that some people do reductions in two,
11 two-and-a-half hours, but it's a different operation than
12 the one that Dr. Wu performed.13 Q. But you're not really familiar with the
14 Hall-Findlay technique as of August 25, 2010?

15 A. I am familiar --

16 MR. HABIAN: Objection.

17 THE COURT: Overruled.

18 A. I am familiar with that procedure as to when it
19 was introduced, and I don't know the exact date that Dr.
20 Findlay introduced her take on the superior pedicle, but I
21 am very familiar with the procedure since its inception.22 Q. But you don't know when it was incepted, is that
23 the word?

24 A. I don't know. I never heard it.

25 Q. You don't know the date of inception. So you
26 don't know if it was 1995, '99, 2000, 2011, 2012; you don't

1 Proceedings

2 know --

3 MR. HABIAN: Objection.

4 Q. -- right?

5 THE COURT: Overruled.

6 A. I don't -- I don't know when it was introduced,
7 but I am very familiar with it. I am extremely familiar
8 with it.

9 Q. You said in your video that you have there on your
10 web that it's incumbent upon you and your colleagues to
11 remain current with the medical education that's necessary
12 to perform your job, did you not?

13 A. I did.

14 Q. And would you agree that it's not only incumbent
15 upon you, it's incumbent upon all physicians who were doing
16 breast reduction on or about August 25, 2010; would you
17 agree with me?

18 A. I don't know about the date because I am still not
19 familiar with the date, but taking your word for it, if 2010
20 was the beginning of Dr. Hall's education and her refining
21 over the course of the years, then that's when I was
22 introduced to it. But do I remember the exact date? No, I
23 don't.

24 (Continued on next page.)

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 BY MR. PIRROTTI:

3 Q. Do you understand --

4 MR. PIRROTTI: Withdrawn.

5 Q. What is the date of the surgery here?

6 A. The date of the surgery goes back to when the
7 patient was 16 years old. So today I think she's 20, 21
8 years old.

9 Q. That's not my question. I'm asking you the date
10 of the surgery?

11 A. August 15. I have to do the arithmetic to go back
12 seven years, so that would be about 2010, August 25, 2010.

13 Q. So you understand when I'm asking about August 25,
14 2010, I'm not asking you about Hall-Findlay and when she
15 developed her procedure, I'm talking about the date of the
16 surgery. Do you understand that?

17 A. Well, you're jumping around, which I understand
18 you're not focused on each item. One minute it's the
19 surgery, the next is the technique.

20 Q. So you're testifying you're getting confused about
21 the dates?

22 A. I'm not confused at all.

23 Q. My questions to you have been on or before
24 August 25, 2010, whether or not you were familiar with the
25 Hall-Findlay technique, and your answer was I don't know
26 about that at that time?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 MR. HABIAN: Objection.

3 Q. And the time that I'm --

4 THE COURT: Sustained as to form.

5 Q. In the beginning of my cross-examination of you we
6 talked about your testimony is in reliance upon the medical
7 record. Do you have Dr. Wu's medical record in front of
8 you, Doctor?

9 A. Yes, I do.

10 Q. Would you mind going -- we have the Bates stamp in
11 the right corner, it kind of makes it easy. It's at page
12 8/14. It's a fax imprint. Do you see that?

13 A. Page eight of 14.

14 MR. PIRROTTI: May I approach, please, your
15 Honor?

16 THE COURT: Yes.

17 (Pause.)

18 Q. We're talking about this page in the right-hand
19 corner?

20 A. Yes.

21 Q. Doctor, I want to ask you, can you take a look at
22 this, take your time. You've seen this before haven't you?

23 A. I've seen the record before.

24 Q. That's what I mean. As a matter of fact, you've
25 seen it several times?

26 A. Yes.

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 Q. Can you tell me where on this page -- and this is
3 the first postoperative visit some six days later, after the
4 surgery, August 31, 2010, right?

5 A. Yes.

6 Q. Where does it say on this page there were
7 retracted nipples?

8 A. It says nipples viable with sensation, and it does
9 not say retracted nipples.

10 MR. PIRROTTI: Move to strike the beginning
11 part and ask if the rest of the answer stand, please.

12 THE COURT: Yes.

13 Q. Now, Doctor, now what I'd like to do is, you see
14 you're relying upon the medical record that says positive
15 sensation, left greater than right. Right?

16 A. Yes.

17 Q. Now, do you know if any part of this record used
18 by Dr. Wu is a template?

19 A. I don't know.

20 Q. You never consulted her daily copy about that,
21 right? Right, Doctor?

22 A. Yes.

23 Q. And you never spoke to Dr. Wu about that, right,
24 Doctor?

25 A. Yes.

26 Q. So therefore, you're relying upon a medical record

1 Moynahan - by Defendant Wu - Cross/Pirrotti
2 that's generated by Dr. Wu. Would that be a correct
3 statement?

4 A. Yes.

5 Q. And just so you know, Dr. Wu testified that she
6 typed everything here and that she used her template. I'd
7 like you to please assume those facts. Can you do that?

8 A. Sure.

9 Q. Now, with positive sensation, do you know from
10 Mara's testimony, whether it's daily copy from this trial or
11 from EBT testimony, whether or not she ever had nipple
12 sensation; do you know?

13 A. That was variable.

14 Q. You're saying from Mara's testimony that you read,
15 our daily copy from this trial --

16 A. I didn't see the daily copy from Mara's trial
17 testimony.

18 Q. You weren't supplied that?

19 A. No.

20 Q. So did Mr. Habian tell you what she said about
21 that?

22 A. Said my -- yes.

23 Q. So he told you that -- let me finish, Doctor,
24 please, the question.

25 Mr. Habian told you that Mara's testimony
26 before this jury was that her nipple sensation was variable?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. No. Her -- she did not have nipple sensation.

3 Q. Oh. So with regard to this fact, you know then --
4 do you have any reason to disagree with what Mara testified
5 to and what Mr. Habian told you? Do you have any reason to
6 disagree with that?

7 A. No.

8 Q. So again, you, as an expert physician -- and you
9 have to go by the truth and veracity of what you read,
10 correct?

11 A. Yes.

12 Q. So your understanding when you're reviewing this
13 case, so to speak, the glasses that you're looking through
14 or the prism that you're looking through, are these records
15 generated by Dr. Wu?

16 A. Yes.

17 Q. Now, you're saying complications are from surgery,
18 that happens, right?

19 A. Yes.

20 Q. You agree with me that you, as a physician, if
21 there's a complication -- I'm going to use your word,
22 complication, but if there's a complication you want to
23 learn from it, do you not?

24 A. Yes.

25 Q. You want to become better, correct?

26 A. I want to do my best to avoid a complication.

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 Q. Correct, and that's by virtue of your planning,
3 your education, training and background and experience,
4 right?

5 A. Yes.

6 Q. So that before you start a procedure, you want to
7 make sure you have all those components in place, would you
8 agree?

9 A. Yes.

10 Q. We go to the next date, October 12, which is page
11 9 of 2014, right?

12 A. Yes.

13 Q. Now, you have an understanding as to why this is
14 handwritten, right?

15 A. Yes.

16 Q. Crown is down, the computer is down so she hand
17 wrote her note, correct?

18 A. Yes.

19 Q. Now, we have here a complaint about the Crown in
20 the first two lines. Then it talks about nipple still
21 retracted?

22 A. Yes.

23 Q. Now, still to you means still -- meaning it's
24 present on this day, right?

25 A. Yes.

26 Q. But it's still means that it was from before,

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 right?

3 A. Yes.

4 Q. And you're aware of an e-mail that was sent from
5 Mara to Dr. June Wu about that, right?

6 A. Yes.

7 Q. You've read that e-mail, correct?

8 A. Yes.

9 Q. Now, when a patient of yours makes an inquiry to
10 you, would you agree that you try as best as you can to
11 respond to that inquiry, correct?

12 A. Yes.

13 Q. Would it be correct to say if a question is asked
14 of you that you give a reply which is thoughtful, would you
15 agree?

16 A. Yes.

17 Q. That you try to make sure that you give that
18 patient enough information so as to satisfy that patient.
19 Would you agree?

20 A. Yes.

21 Q. And with respect to that e-mail, you saw that a
22 request was made, there were two questions, one about
23 Steristrips, you know, do they fall off or not, what should
24 I do with them? There is a second question about the fact
25 that I can't still see the nipples, is that normal? You
26 read that, right?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. Yes.

3 Q. And you also read that the second part was never
4 responded to by Dr. June Wu, right?

5 A. Yes.

6 Q. So in that respect, would you agree with me that
7 the -- Dr. June Wu was not thoughtful in her response to the
8 patient's inquiry; would you agree with that?

9 A. No.

10 Q. For you, the fact that Dr. June Wu decided to
11 respond to the Steristrips but not respond to something
12 about retracted nipples is acceptable to you, would you
13 agree? That's your point of view?

14 A. I can't say yes or no to that.

15 Q. So let's put this in your shoes. Patient makes an
16 inquiry to you, something about retracted nipples.
17 Retracted nipples, that's something that's important, would
18 you agree?

19 A. Yes.

20 Q. Something that should not happen, right?

21 A. Right.

22 Q. And you say, right, it shouldn't happen because
23 it's not supposed to happen, right?

24 A. Yes.

25 Q. Has it ever happened to you in the Hall-Findlay
26 technique?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. No.

3 Q. That goes to -- would you agree with me, tell me
4 if I'm wrong, that goes to because of your experience in how
5 to do it, would you agree?

6 A. Yes.

7 Q. Would it go for your planning in how you do it,
8 would you agree?

9 A. Yes.

10 Q. Would you also agree that you have made sure that
11 you were educated in how to do that procedure properly,
12 would you agree?

13 A. Yes.

14 Q. Now, you said you can't respond to me yes or no
15 with respect to the fact that Dr. June Wu did not reply.
16 Let me follow through with that a little bit.

17 On that point, if a patient has a concern
18 about something that's important, like retracted nipples,
19 you agree with me that that should be a concern to the
20 physician, would you agree?

21 A. Yes.

22 Q. And you, I think, reiterated very articulately in
23 your video that how a patient feels is important, right?

24 A. Yes.

25 Q. And you talked about the trust between you and
26 your patient, did you not?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. I did.

3 Q. That is a critical component to the
4 physician/patient relationship, correct?

5 A. Yes.

6 Q. And if someone has a question, you want to try the
7 best you can to answer that question because then that's
8 going to make the patient feel better, would you agree?

9 A. Yes.

10 Q. And that the goal is that you don't want to keep
11 the information to yourself, you want to impart your
12 education, training and experience to that patient when that
13 patient has a question?

14 A. Yes.

15 Q. And you saw that that was not done in that e-mail
16 by Dr. June Wu, right?

17 A. Yes.

18 Q. So now, would you agree with me that if
19 somebody -- if a patient has a question about something
20 that's very important, and it's something of a concern,
21 would you agree that not responding to that patient and
22 answering that question is a departure from acceptable
23 medical practice?

24 A. No.

25 Q. You're just saying it's not good but not a
26 departure from accepted medical practice, right?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. Yes.

3 Q. Because by not responding, you're depriving
4 information to the patient, right?

5 A. Not necessarily.

6 Q. Now, complications, the best way -- you know that
7 when you --

8 MR. PIRROTTI: Withdrawn.

9 Q. You know that when you generate a medical record
10 that maybe one of your patients may go see somebody else for
11 a second opinion, right?

12 A. Yes.

13 Q. And that the other doctor may rely upon your
14 medical record, right?

15 A. Yes.

16 Q. What you saw, right?

17 A. Yes.

18 Q. What your opinion is, correct?

19 A. Yes.

20 Q. And so you try to create a medical record that,
21 let's say you're not even there that day. You have
22 partners?

23 A. No.

24 Q. You're by yourself?

25 A. Yes.

26 Q. So it is impossible for you to remember every

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 patient; isn't that right?

3 A. Yes.

4 Q. You have a lot of patients, do you not?

5 A. Yes.

6 Q. You're a very successful plastic surgeon, are you
7 not?

8 A. Yes.

9 Q. So how many patients do you see in a given day,
10 would you say?

11 A. It's variable.

12 Q. Between what and what?

13 A. Fifteen to 20.

14 Q. You see patients how many days a week?

15 A. A couple.

16 Q. Again, I apologize, is a couple two or three?

17 A. Again, it's variable. Depends on the surgical
18 schedule, depends on morning or afternoon, so it's a
19 variable.

20 Q. So you have a surgery day, right?

21 A. I have surgery days. So sometimes it's a Monday,
22 sometimes it's a Friday. It's variable.

23 Q. It depends upon what your surgical suite can give
24 you or what the hospital can give you, right?

25 A. Both, yes.

26 Q. So it is impossible for you to remember each and

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 every patient, so that's why you want to create a detailed
3 record, so that you can refer back to it yourself, don't
4 you?

5 A. Yes.

6 Q. So what you see on day six versus what you see on
7 six weeks later, or three and a half months later, you will
8 then have a picture, so to speak, by the virtue of your
9 written word, would you agree?

10 A. Yes.

11 Q. So therefore, with regard to just the written
12 word, let's take the written word. Now, we established that
13 let's put that aside. Let's go to photographic evidence.

14 One of the things that is important for you
15 as a plastic surgeon is to document postoperative results,
16 would you agree?

17 A. Yes.

18 Q. Let's say if you have a complication, you're going
19 to want to document that complication, are you not?

20 A. Yes.

21 Q. You do that not only for yourself so that you can
22 learn from the complication, but you also do it because you
23 want to document it for the chart; you agree?

24 A. Yes.

25 Q. In addition to that, in the event that you want to
26 do a revision sometimes, there's been testimony about

1 Moynahan - by Defendant Wu - Cross/Pirrotti
2 this, that you need photographic evidence for the health
3 insurance company; you know that, right?

4 A. Yes.

5 Q. Because they don't want to pay for something if
6 it's not necessary. Fair statement?

7 A. Yes.

8 Q. So therefore, there's two methodologies for you to
9 document what happens to your patient. There's the written
10 document and then there is the photographic document, right?

11 A. Yes.

12 Q. So on August 31, 2010, six days after, you do not
13 have anything written with respect to -- by Dr. Wu
14 concerning what she visualized concerning the nipples, other
15 than her saying no positive sensation left greater than
16 right. Is that a fair statement?

17 A. Yes.

18 Q. Now, the second day it says nipples still
19 retracted. I think it's inversion --

20 MR. HABIAN: Incision.

21 MR. PIRROTTI: I'm sorry, wait a second.

22 Thank you.

23 Q. Nipple still retracted. Do you know what that
24 says after that, Doctor?

25 A. Incisions -- I think it's clean.

26 Q. Okay. Now, where it says left slightly greater

1 Moynahan - by Defendant Wu - Cross/Pirrotti
2 than right, what is that talking about? It's talking about
3 symmetry, right?

4 A. Left slightly smaller. Right, something quite
5 balanced. Right -- but -- left slightly larger but quite
6 balanced. Left slightly greater than right but quite
7 balanced.

8 Q. Is that talking about symmetry of the breast?

9 A. Yes.

10 Q. The ones you talked about that you say are
11 beautiful postoperatively, right?

12 A. Yes.

13 Q. Can we go back up here, nipple still retracted.
14 What's the word after?

15 A. I cannot make that word out.

16 Q. Did you ever ask Mr. Habian to ask Dr. Wu to tell
17 you what that word is?

18 MR. HABIAN: Objection. It's -- object to
19 this.

20 THE COURT: Sustained.

21 Q. Which nipple is more retracted, do you know?

22 A. From this note I don't.

23 Q. How deep is the retraction?

24 A. It just says retracted, it doesn't give any
25 measurement as to depth.

26 Was that the question?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 Q. Well, I was going to ask that and thank you for
3 anticipating my question. So where are the measurements?

4 A. I've never heard of measuring a nipple retraction.

5 Q. You just said measurement?

6 MR. HABIAN: Objection.

7 THE WITNESS: I said I don't see any evidence
8 of measurement, if that was your question.

9 Q. Why did you say that?

10 A. Because that was your question.

11 Q. Doctor, if you could listen to my question.

12 Again, if you can't answer my question please
13 tell me to rephrase it, I absolutely will.

14 Can you tell me, please, what about the
15 areola complex, is that described here?

16 A. The areola is not mentioned.

17 Q. Is there any description whatsoever of the areola
18 complex?

19 A. No, but as I mentioned before --

20 Q. The answer is no. Thank you.

21 So now with respect to the visual picture of
22 what we've got here from this October 1, 2010 handwritten
23 statement, you don't have much other than nipple still
24 retracted, right?

25 A. Yes.

26 Q. That's not the way you would do it, right?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 MR. HABIAN: Objection.

3 THE COURT: Sustained.

4 Q. So now, let's go -- oh, also it says here on the
5 bottom -- what does it say on the bottom?

6 A. The bottom of what?

7 Q. The bottom of the page, starting the two lines
8 down on the bottom before the signature, do you know what
9 that says?

10 A. I will. Revision of nipple. Return to office
11 February 2011.

12 Q. Do you think that it says I will?

13 A. I thought that's what the writing is. That's my
14 impression.

15 Q. Do you recall me asking Dr. Wu at her deposition
16 what it says, and then she told us what it says?

17 A. I don't recall that.

18 Q. Do you think that you being able to know what this
19 says is important in order for you to give testimony to this
20 jury?

21 A. Well, I think my -- yes.

22 Q. And you don't know all the words?

23 A. It's revision of nipple. She's recommending the
24 revision of a nipple.

25 Q. Are you saying that she recommended the revision
26 of the nipple to Mara or her mother?

1 Moynahan - by Defendant Wu - Cross/Pirrotti

2 A. That's what this note indicates.

3 Q. Good to you?

4 A. Yes.

5 Q. Could you be wrong?

6 MR. HABIAN: Objection.

7 MS. NUNN: Objection.

8 THE COURT: Sustained.

9 (Continued on next page.)

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1 P. Moynahan - by Defendant - Cross

2 Q. The nipple being one, right?

3 A. Yes.

4 Q. What about the other nipple?

5 MS. NUNN: Objection.

6 THE COURT: Overruled.

7 Q. What about the other nipple, Doctor?

8 A. It could be just the way she documents her record.

9 Q. You mean faulty?

10 MR. HABIAN: Objection.

11 MS. NUNN: Objection.

12 A. I am not saying faulty.

13 THE COURT: Sustained.

14 Q. You mean she made an error because she said it in
15 the singular?

16 A. No.

17 Q. You said that the nipple issue of retraction was
18 important, right?

19 A. Yes.

20 Q. You said it was concerning, right?

21 A. Yes.

22 Q. Did you know that Dr. Wu didn't think much of the
23 nipple retraction?

24 A. Well, she was observing the patient.

25 Q. It's a yes or no; do you know?

26 A. I can't answer that.

1 P. Moynahan - by Defendant - Cross

2 Q. Doctor, --

3 A. I cannot answer that question.

4 Q. Okay. So let's read it. Let's go to page 221.

5 MR. HABIAN: Can you identify what you are
6 reading from?

7 MR. PIRROTTI: Wu's deposition, please.

8 Q. Okay.

9 "Question: Is it correct to say that you
10 did not answer the question of Mara as set forth in the
11 September 30 2010 e-mail concerning, also I can't see
12 any nipple, is that normal?

13 "Answer: I did not specifically address
14 that, but she was telling me that the Steri-strips were
15 still on her, so I didn't think much of the fact that
16 she couldn't see her nipples at that time, and I
17 thought that, you know, if she thought I didn't
18 adequately answer her questions, she would e-mail me
19 back."

20 So, did you hear me read that question and that
21 answer?

22 A. Now?

23 Q. Yes.

24 A. Yes.

25 Q. Do you understand that that is the testimony of
26 Dr. June Wu?

1 P. Moynahan - by Defendant - Cross

2 A. Yes.

3 Q. Okay. So now it's important to you and it's
4 concerning to you, as you just testified, correct?

5 A. Yes.

6 Q. But with regard to Dr. June Wu, she didn't think
7 much of it?

8 A. Well, she explains it in her answer that she had
9 Steri-strips applied to the nipple areola complex, and it
10 was, as I interpret this, her sense that the Steri-strips
11 were camouflaging the inversion if it was four days later.

12 Q. Can you please assume the following: That Dr.
13 June Wu testified to this jury that the Steri-strips were
14 only on the incision, not over the nipple; can you please
15 assume that? Can you assume that, please?

16 A. Yes.

17 Q. So with regards to that, whether she pulls them
18 off and maybe she bleeds or not, or the nipples are
19 inverted, you agree with me that the nipple inversion,
20 retraction, is much more significantly important than
21 Steri-strips? Would you agree with me?

22 A. No, because --

23 Q. Would you agree with me? That's all I want to
24 know; yes or no?

25 A. No. No. No.

26 Q. To you the fact that whether or not the

1 P. Moynahan - by Defendant - Cross

2 Steri-strips fall off or not or should fall off or not is
3 more important than retracted nipples; that's your
4 testimony?

5 A. No.

6 Q. Okay. Do you agree that it's not your intent as a
7 plastic surgeon to have the nipples above a bra line?

8 A. Correct.

9 Q. Okay. And if that -- when you were asked that
10 question --

11 MR. HABIAN: The photos are right in front
12 of her.

13 MR. PIRROTTI: Thank you so much.

14 Q. With regard to the height of the nipples, would
15 you agree with me that there's a rule of thumb that you
16 plastic surgeons follow which is if your nipples are just a
17 little lower, it's better than being a little higher; would
18 you agree?

19 A. Not necessarily.

20 Q. Well, Doctor, would you agree with me that in
21 order to lower the nipples then you are going to have scars
22 that are going to be seen above the nipple areola complex,
23 and that's why it's easier to move them up because then the
24 scars would be underneath the breast rather than moving them
25 down; would you agree with me?

26 MR. HABIAN: Form.

1 P. Moynahan - by Defendant - Cross

2 A. No.

3 THE COURT: I'll allow it.

4 Q. With regard to the height of the nipple areola,
5 and you can see from the photographs there are two different
6 bras that are being used; you see that, right?

7 A. I have to find that picture.

8 Q. One pink, one black. There are two pictures.

9 A. Yes.

10 Q. You have those two pictures in front of you?

11 A. Yes, yes.

12 Q. Would you agree with me that that is not the way
13 the nipples are supposed to be on a human being? Would you
14 agree with that?

15 A. No.

16 Q. So what I heard you say though when Mr. Habian
17 asked you was it could be because of the bra?

18 A. Yes.

19 Q. So, in other words, is it your testimony that what
20 Mara [REDACTED] did was like put on a smaller sized bra to
21 push up her breasts in order to shove the nipple out so we
22 can take a picture of that to show to the jury; is that what
23 you are saying?

24 MR. HABIAN: Objection.

25 THE COURT: Sustained.

26 Q. When you are saying that the bra could do it, you

1 P. Moynahan - by Defendant - Cross

2 have two separate bras there, okay.

3 A. Yes.

4 Q. Let me ask you, Doctor, if we came into court, if
5 I had three bras, different bras, would that make a
6 difference to you?

7 A. No.

8 Q. If I had five different bras, would that make a
9 difference to you?

10 A. That doesn't matter.

11 Q. How about this, how about if I came in here, into
12 court, and gave you 100 different pictures of a bra showing
13 the nipples above it, would that satisfy you?

14 MR. HABIAN: Objection.

15 THE COURT: Sustained.

16 Q. Would that satisfy you?

17 THE COURT: Sustained.

18 Q. If I had 100 pictures of 100 different bras with
19 her nipple above the bra line, would that satisfy you that
20 the height of the nipples are wrong?

21 MR. HABIAN: ATTY objection.

22 THE COURT: Sustained.

23 MR. PIRROTTI: I didn't hear that.

24 THE COURT: Sustained.

25 MR. PIRROTTI: I am sorry, Judge.

26 Q. Now, so with regard to Mara, you are saying the

1 P. Moynahan - by Defendant - Cross

2 height of the nipples are fine?

3 A. In Dr. Sultan's post-op picture they are
4 beautiful.

5 Q. That's not my question.

6 A. I am saying they are fine.

7 Q. I am asking you about -- the height of her nipples
8 are fine?

9 MR. HABIAN: Objection. Asked and answered.

10 Q. I didn't ask you about Dr. Sultan.

11 THE COURT: Enough, please.

12 Ask your question.

13 Q. Is it your testimony to this jury that the height
14 of Mara's nipples are fine?

15 A. Yes.

16 Q. So you've had then other patients come to you with
17 their bra where their nipples are above the bra line?

18 MR. HABIAN: Objection.

19 THE COURT: Overruled.

20 A. The bra is not part of the physical examination.

21 Q. That's not my question.

22 THE COURT: But that's the answer that you
23 got. Let's ask another question.

24 Q. I am not asking you if the bra is part of the
25 physical examination.

26 THE COURT: Ask another question, please.

1 P. Moynahan - by Defendant - Cross

2 Q. What I am asking you is, please, your patients,
3 when they come in to see you, do they tell you, hey, Dr.
4 Moynahan, my nipples are above the bra line?

5 MR. HABIAN: Objection.

6 THE COURT: Sustained.

7 Q. With regard to this particular procedure, would
8 you agree with me that there was a retraction of the nipple
9 areola complex on the right breast?

10 A. Which picture are you referring to?

11 Q. I am not referring to any picture.

12 A. Yes.

13 Q. Would you also agree that there is an indentation
14 laterally along the inframammary fold of the left breast?

15 A. Yes.

16 Q. Would you agree with me that there was also
17 retraction of the nipple areola complex of the left breast
18 with depression of the whole nipple areola complex?

19 A. Yes.

20 Q. Would you also agree with me that there is an
21 indentation inferolateral of the left breast?

22 A. Yes.

23 Q. Would you also agree with me that there was
24 irregular contour inferiorly of the right breast and the
25 left breast?

26 A. Yes.

1 P. Moynahan - by Defendant - Cross

2 Q. Would you also agree with me that you have learned
3 that the outer side of both breasts are numb?

4 A. I remember hearing that, reading that, yes.

5 Q. That's not supposed to happen, right?

6 A. Well, it could happen.

7 Q. Okay.

8 A. That's one of the risks of surgery.

9 MR. HABIAN: I can't hear an answer.

10 THE COURT: That's one of the risks of
11 surgery.

12 A. Loss of sensation.

13 Q. You are saying that's what you tell your patients?

14 A. That sensation is part of the discussion.

15 Q. Sensation of the nipple?

16 A. And the entire operative site.

17 Q. Okay. So that's what you tell your patients?

18 A. Yes.

19 Q. Because you know that can happen?

20 A. Yes.

21 Q. So, you understand though that Mara has no
22 sensation in her nipples?

23 THE COURT: Since.

24 A. Yes.

25 Q. From the date of the surgery until today's date,
26 you understand that?

1 P. Moynahan - by Defendant - Cross

2 A. Yes.

3 Q. You also understand that one of her complaints,
4 you may disagree, but one of her complaints is that her
5 nipples are too high?

6 A. Yes.

7 Q. Now, that's nine separate things, would you agree
8 with me, that I just read to you?

9 A. I wasn't counting.

10 Q. I did. It's nine separate things that you agreed
11 to that happened, and you agreed that they happened as a
12 result of this surgery, right?

13 A. Yes.

14 Q. I mean, these things, these nine things that I
15 have just mentioned, she didn't have before the surgery,
16 right?

17 A. Yes.

18 Q. And you understand, like what you said in your
19 video, that a woman and her breasts, it's not just the fact
20 that you want to make them smaller, and you want to make
21 sure that she feels good about herself; would you agree?

22 A. It's one of the goals, but this was a
23 reconstructive surgery so that --

24 Q. Did you say reconstructive surgery?

25 A. Yes, breast reduction is a reconstructive surgery.
26 The patient had the surgery done because of significant

1 P. Moynahan - by Defendant - Cross

2 physical complaints.

3 Q. So reconstructive, not reduction, reconstruction,
4 you are saying?

5 A. Reduction is reconstruction.

6 Q. So you use the words synonymously?

7 A. In this instance, yes.

8 Q. Do you know if Dr. Wu did?

9 MR. HABIAN: Objection.

10 A. I don't know.

11 THE COURT: She doesn't know. I will let
12 that answer stand.

13 Q. So with regard to this undertaking, would you
14 agree that when you take, undertake to operate on a woman's
15 breasts, that that is something that is very important, and,
16 you know, it's important to the patient, correct?

17 A. Yes.

18 Q. Especially to a 16 year old, correct?

19 A. Yes.

20 Q. Right. And you make sure that each and every time
21 that you, when you take this undertaking, that you make sure
22 that you do it right; would you agree?

23 A. Well, my goal --

24 Q. To the best of your ability?

25 A. My goal is to do it to the best of my ability.

26 Q. With your education, training and experience at

1 P. Moynahan - by Defendant - Direct (Habian)

2 the time that you do it, correct; Doctor?

3 A. Yes.

4 MR. PIRROTTI: Thank you for your time, your
5 Honor.

6 MR. HABIAN: Very, very short, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. HABIAN:

9 Q. When you got the records several years ago, and
10 then you and I had been speaking about the breast surgery,
11 and the standard of care, and the questions that I asked
12 you, as well as Mr. Pirrotti, did you assume that this was a
13 memory contest on your part as far as the particulars of the
14 visits and the ins and outs of the notations?

15 MR. PIRROTTI: Objection.

16 THE COURT: Sustained. Leading.

17 Q. When you review a case like this in relationship
18 to retaining all the, let me say, particulars or nuances of
19 things, how do you review a case with that focus on the
20 particulars, I don't mean the surgery, I mean the incidental
21 things he is asking you about?

22 A. Well, I had to pay attention to what the
23 complaints are of the patient and focus on that.

24 Q. Let me ask you, the nine things, the last one was
25 the height of the nipples, the numbness, the nipple
26 retraction, for all the time it lasted, from August 25th,