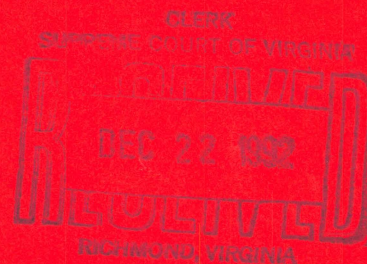


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IN THE
SUPREME COURT OF VIRGINIA
At Richmond

RECORD NO. 92-1175

SANDRA L. RENNER,

Appellant,

v.

JAMES H. STAFFORD, JR., M.D.,
JOHN H. LOWDER, M.D., and
WINCHESTER WOMEN'S SPECIALISTS,

Appellees.

JOINT APPENDIX

APPEAL FROM THE
CIRCUIT COURT FOR THE CITY OF WINCHESTER, VIRGINIA
THE HONORABLE PERRY W. SARVER

Warner F. Young, III, Esq.
HALL, MARKLE, SICKELS & FUDALA, P.C.
4010 University Drive,
Suite 200
Fairfax, VA 22030
(703) 591-8600

COUNSEL FOR APPELLANT

Daniel W. Cotter, Esq.
4117 Chain Bridge Road
Suite 330
Fairfax, VA 22030
(703) 352-0690

COUNSEL FOR APPELLEES

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V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER
145 Featherbed Lane
Winchester, Virginia 22601

vs.

AT LAW NO. 91-2-77

JAMES H. STAFFORD, JR., M.D.,
1870 Amherst Street, Suite 2E
Winchester, Virginia 22601

JOHN H. LOWDER, M.D.,
1870 Amherst Street, Suite 2E
Winchester, Virginia 22601

WINCHESTER WOMEN'S
SPECIALISTS, P.C., formerly known
as Cork Street OB-GYN ASSOCIATES,
INC.

SERVE:

James H. Stafford, Jr.,
Registered Agent
1870 Amherst Street, Suite 2E
Winchester, Virginia 22601

MOTION FOR JUDGMENT

The plaintiff, by counsel, and for her Motion for Judgment against the Defendants states:

1. That at all times relevant to these proceedings, she was a patient of Drs. James Stafford and John H. Lowder for obstetric care.

2. During the course of her treatment, she was prescribed the drug Danocrine for endometriosis.

3. The plaintiff did not have endometriosis and the defendants, jointly and severally, deviated from the accepted standard of medical care in making the diagnosis of endometriosis

and instituting a protracted course of Danocrine therapy.

4. In January 1989, the plaintiff developed pseudotumor cerebri (benign) and intracranial hypertension secondary to the Danocrine.

5. As a direct and proximate result of the deviation from the accepted standard of medical care, the plaintiff was injured and damaged. She has developed intracranial pressure, diplopia, papilledema and headaches as well as other numerous acute and chronic problems. The patient sustained and incurred unnecessary medical expenses, pain and suffering, both physical and mental.

6. The requirements of Virginia Code §8.01-581.2 et seq. have been complied with.

7. Defendant Winchester Women's Specialists, P.C. is liable, respondeat superior, for the negligence of Defendants Stafford and Lowder.

WHEREFORE, plaintiff prays for damages against the defendants, jointly and severally, in the sum of ONE MILLION DOLLARS (\$1,000,000.00), plus pre and post judgment interest.

SANDRA L. RENNER, Plaintiff
By Counsel

HALL, MARKLE, SICKELS & FUDALA, P.C.

By: 

Robert T. Hall
VSB#4826
4010 University Drive
Suite 200
Fairfax, Virginia 22030
Telephone: 703/591-8600
COUNSEL FOR PLAINTIFF

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER

Plaintiff,

v.

JAMES H. STAFFORD, JR., M.D.,

and

JOHN H. LOWDER, M.D.,

and

WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

AT LAW NO. 91-L-77

ANSWER AND GROUNDS OF DEFENSE

COMES NOW the Defendants, James H. Stafford, Jr., M.D., John H. Lowder, M.D. and Winchester Women's Specialists, by Counsel, and in response to the Motion For Judgment filed against them, respectfully respond as follows:

1. These Defendants deny the allegations contained in Paragraphs 1, 2, 3, 5, and 7 of the Motion For Judgment and demand strict proof thereof.

2. These Defendants are without sufficient information and belief to either admit or deny the allegations contained in Paragraphs 4 and 6 of the Motion For Judgment and requests strict proof thereof.

ANY ALLEGATIONS not previously addressed are hereby denied.

THESE DEFENDANTS reserve the right to assert the following defenses should discovery disclose a basis therefore:

FIRST DEFENSE

The Doctrine Of Assumption Of Risk

SECOND DEFENSE

The Doctrine Of Contributory Negligence

THIRD DEFENSE

That the cause of action plead by the Plaintiff in the Motion For Judgment fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

That the Plaintiff was not injured to the extent alleged in the Motion For Judgment.

FIFTH DEFENSE

That these Defendants committed no acts of negligence or other violations of the standard of care.

SIXTH DEFENSE

Any negligence committed by these Defendants is not a proximate cause of the Plaintiff's injuries.

SEVENTH DEFENSE

The Statute of Limitations

THESE DEFENDANTS reserve the right to rely on any other defenses that may become known during the course of this action

as well as reserve the right to delete any defenses previously raised herein should discovery demonstrate that there is no basis for such defense.

WHEREFORE, these Defendants pray that this action be dismissed with prejudice against them, that judgment be entered in their favor against the Plaintiff, that they be awarded their costs and attorney's fees, and for any other further relief that this Court may deem appropriate.

JAMES H. STAFFORD, JR., M.D.,
JOHN H. LOWDER, M.D., and
WINCHESTER WOMEN'S SPECIALISTS
By Counsel

LAW OFFICES OF DANIEL W. COTTER

By: Daniel W. Cotter
Daniel W. Cotter, Esq.
4117 Chain Bridge Road
Suite 330
Fairfax, Virginia 22030
(703) 352-0690
Counsel for Defendants
Va. Bar No. 24834

CERTIFICATE OF SERVICE

I hereby certify a true copy of the foregoing Answer and Grounds of Defense was mailed, postage prepaid, this 15 day of April, 1991 to Robert T. Hall, Esq.

Daniel W. Cotter
Daniel W. Cotter

psh:91-45/Winchest.Ans

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER

Plaintiff,

V.

AT LAW NO. 91-L-77

JAMES H. STAFFORD, JR., M.D.,

and

JOHN H. LOWDER, M.D.,

and

WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

REQUEST FOR ADMISSIONS

COME NOW the Defendants, Dr. James H. Stafford, Jr., Dr. John W. Lowder, and Winchester Women's Specialists, by Counsel, and pursuant to the Rules of the Court, make the following Request for Admissions to the Plaintiff, Sandra L. Renner.

1. The last time you were examined or treated by either Dr. James H. Stafford, Jr., Dr. John H. Lowder or any other agent of Winchester Women's Specialists was on July 11, 1988.

2. The last time you communicated with, either in person, by letter or by telephone with either Dr. James H. Stafford, Jr., Dr. John H. Lowder or any other agent of Winchester Women's Specialists was on July 11, 1988.

3. Your Notice of Claim filed in this matter pursuant to Virginia Code Section 8.01-581.2 et seq. was not mailed until November 30, 1990.

JAMES H. STAFFORD, JR., M.D.,
JOHN H. LOWDER, M.D., and
WINCHESTER WOMEN'S SPECIALISTS
By Counsel

LAW OFFICES OF DANIEL W. COTTER

By: Daniel W. Cotter
Daniel W. Cotter, Esq.
4117 Chain Bridge Road
Suite 330
Fairfax, Virginia 22030
(703) 352-0690
Counsel for Defendants
Va. Bar No. 24834

CERTIFICATE OF SERVICE

I hereby certify a true copy of the foregoing Request For Admissions was mailed, postage prepaid, this 7th day of May, 1991 to Robert T. Hall, Esq.

Daniel W. Cotter
Daniel W. Cotter

psh:91-45/Winchest.RFA

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER,

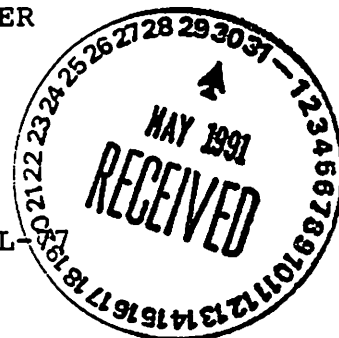
Plaintiff,

vs.

JAMES H. STAFFORD, JR., M.D.,
JOHN H. LOWDER, M.D., and
WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

AT LAW NO. 91-L-



PLAINTIFF'S RESPONSE TO DEFENDANT'S
REQUEST FOR ADMISSIONS

COMES NOW, the plaintiff, Sandra L. Renner, by counsel, and in response to the Requests for Admissions filed by the Defendant herein, states as follows:

1. The last time you were examined or treated by either Dr. James H. Stafford, Jr., Dr. John H. Lowder or any other agent of Winchester Women's Specialists was on July 11, 1988.

RESPONSE: Denied. Ms. Renner received treatment from Winchester Women's Specialists later than July 11, 1988 as Danocrine 200 mg was prescribed by Dr. Stafford on August 4, 1988. As 200 capsules of Danocrine were dispensed to Ms. Renner on August 4, 1988 her treatment was extended until the completion of the Danocrine capsules.

2. The last time you communicated with, either in person, by letter or by telephone with either Dr. James H. Stafford, Jr., Dr. John H. Lowder or any other agent of Winchester Women's Specialists was on July 11, 1988.

RESPONSE: Denied. Ms. Renner's communications with Winchester Women's Specialists similarly continued beyond July 11, 1988 as she received a Danocrine prescription renewal from Dr. Stafford on August 4, 1988.

3. Your Notice of Claim filed in this matter pursuant to Virginia Code Section 8.01-581.2 et seq. was not mailed until November 30, 1990.

RESPONSE: Admitted.

SANDRA L. RENNER, Plaintiff
By Counsel

HALL, MARKLE, SICKLES & FUDALA, P.C.

By: Robert T. Hall / WFLM
Robert T. Hall
VSB No. 4826
4010 University Drive
Suite 200
Fairfax, Virginia 22030
Telephone: 703/591-8600

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Response to Defendant's Request for Admissions was mailed, postage prepaid, on this 29th day of May, 1991, to Daniel W. Cotter, Esq., 4117 Chain Bridge Road, Suite 330, Fairfax, Virginia 22030.

Robert T. Hall / WPH
Robert T. Hall

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER,

Plaintiff,

v.

AT LAW NO. 91-L-77

JAMES H. STAFFORD, JR., M.D.,

and

JOHN H. LOWDER, M.D.,

and

WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

DEFENDANTS' REQUEST FOR ADMISSIONS TO PLAINTIFF

COME NOW the Defendants, Dr. James H. Stafford, Jr., Dr. John W. Lowder and Winchester Women's specialists, by Counsel, and pursuant to the Rules of the Court, make the following Request for Admissions to the Plaintiff, Sandra L. Renner.

1. You were examined by Dr. James H. Stafford, Jr. (hereinafter "Dr. Stafford") in his office on September 30, 1987.

RESPONSE:

2. During this September 30, 1987 office visit, you complained of abdominal cramps.

RESPONSE:

3. During this September 30, 1987 office visit, you complained of heavy menstrual bleeding.

RESPONSE:

4. In the year preceding your September 30, 1987 office visit with Dr. Stafford, you had experienced abdominal cramps.

RESPONSE:

5. In the year preceding your September 30, 1987 office visit with Dr. Stafford, you had experienced heavy menstrual bleeding.

RESPONSE:

6. In the year preceding your September 30, 1987 office visit with Dr. Stafford, you were taking meclomen.

RESPONSE:

7. Meclomen is a medication.

RESPONSE:

8. Meclomen is a medication prescribed for menstrual cramps.

RESPONSE:

9. You took meclomen for menstrual cramps.

RESPONSE:

10. You complained to Dr. Stafford, "all the time" about abdominal cramps while you were under his care.

RESPONSE:

11. You complained to Dr. Stafford, "all the time" about heavy menstrual bleeding while you were under his care.

RESPONSE:

12. During your September 30, 1987 visit to Dr. Stafford, surgery was discussed.

RESPONSE:

13. During your September 30, 1987 visit to Dr. Stafford, the surgery discussed was to remove your uterus.

RESPONSE:

14. Following that visit, you initially planned to have your uterus removed in December 1987.

RESPONSE:

15. In October 1987, you cancelled the surgery to remove your uterus.

RESPONSE:

16. You began taking Danocrine on October 21, 1987.

RESPONSE:

17. You were informed that Danocrine had side effects.

RESPONSE:

18. Dr. Stafford informed you that there were side effects to Danocrine.

RESPONSE:

19. From the time Dr. Stafford prescribed Danocrine, you took the medication according to the prescribed dosage.

RESPONSE:

20. On July 11, 1988, you were examined by Dr. Stafford in his office.

RESPONSE:

21. During this July 11, 1988 office visit with Dr. Stafford, you informed him that you were experiencing "spotting."

RESPONSE:

22. You took Danocrine at the dose of 800 mg per day.

RESPONSE:

23. You took Danocrine at the dose of 800 mg per day following your July 11, 1988 office visit with Dr. Stafford.

RESPONSE:

24. The dose of Danocrine at 800 mg per day was prescribed by Dr. Stafford.

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RESPONSE:

25. During the July 11, 1988 office visit with Dr. Stafford, you discussed the option of stopping Danocrine with Dr. Stafford.

RESPONSE:

26. During the July 11, 1988 office visit to Dr. Stafford, you discussed the option of increasing the dose of Danocrine.

RESPONSE:

27. At that visit, Dr. Stafford instructed you to return to his office in October 1988.

RESPONSE:

28. You did not return to Dr. Stafford's office in October 1988.

RESPONSE:

29. You did not follow Dr. Stafford's instructions to return to his office in October 1988.

RESPONSE:

30. You have never returned to Dr. Stafford's office for medical treatment following your July 11, 1988 office visit.

RESPONSE:

31. You currently have been diagnosed with the disease process known as pseudotumor cerebri.

RESPONSE:

32. You have experienced ear infections in the past five years.

RESPONSE:

33. You have experienced sinus infections in the past five years.

RESPONSE:

34. The pseudotumor cerebra disease process was diagnosed during your January 19, 1989 admission to Winchester Medical Center.

RESPONSE:

35. You continue to suffer headaches.

RESPONSE:

36. You continue to experience the symptoms of what you believe to be pseudotumor cerebri.

RESPONSE:

37. You continue to see physicians for the symptoms of pseudotumor cerebri.

RESPONSE:

38. You stopped taking Danocrine in the early part of November 1988.

RESPONSE:

39. You took the Danocrine until the "first part" of November 1988.

RESPONSE:

40. You decided to stop taking Danocrine.

RESPONSE:

41. You decided to stop taking Danocrine in October 1988.

RESPONSE:

42. You did not consult with a physician before stopping Danocrine.

RESPONSE:

43. You did not consult with a physician with regard to the recommended method for discontinuing Danocrine.

RESPONSE:

44. You did not consult with Dr. Stafford before discontinuing the Danocrine.

RESPONSE:

45. The last prescription you received for Danocrine was dated August 4, 1988.

RESPONSE:

46. The last prescription you received for Danocrine from Dr. Stafford was dated August 4, 1988.

RESPONSE:

47. The August 4, 1988 prescription for Danocrine was for sixty 200 milligram tablets.

RESPONSE:

48. The August 4, 1988 prescription for Danocrine allowed two refills.

RESPONSE:

49. You filled the August 4, 1988 prescription for Danocrine.

RESPONSE:

50. You took the prescribed dose of Danocrine as directed in the August 4, 1988 prescription.

RESPONSE:

51. You refilled the August 4, 1988 prescription for Danocrine once.

RESPONSE:

52. You refilled the August 4, 1988 prescription for Danocrine twice.

RESPONSE:

53. You had completely stopped taking the Danocrine prior to November 30, 1988.

RESPONSE:

54. You began to experience headaches, after you had completed your taper of Danocrine.

RESPONSE:

55. Your headaches got increasingly worse by December 17, 1988.

RESPONSE:

56. You did not seek medical attention for your headaches in December 1988.

RESPONSE:

57. The last office visit you had with Dr. Stafford was on July 11, 1988.

RESPONSE:

58. Your last telephone contact with Dr. Stafford's office to obtain a refill of the Danocrine, was on August 4, 1988.

RESPONSE:

59. After August 4, 1988, you had no further contacts with Dr. Stafford to obtain a refill of Danocrine.

RESPONSE:

60. After August 4, 1988, you had no further contacts with Dr. Stafford's office to obtain a refill of Danocrine.

RESPONSE:

61. During November of 1988 and prior to November 30, 1988, you had decided that you would not return to Dr. Stafford for any medical services.

RESPONSE:

62. During the period of time when you were tapering yourself off the Danocrine, you had decided that you would not return to Dr. Stafford for any medical services.

RESPONSE:

JAMES H. STAFFORD, JR., M.D.
JOHN H. LOWDER, M.D. and
WINCHESTER WOMEN'S SPECIALISTS
By Counsel

LAW OFFICES OF DANIEL W. COTTER

By: *Daniel W. Cotter*

Daniel W. Cotter, Esq.
4117 Chain Bridge Road
Suite 330
Fairfax, Virginia 22030
(703) 352-0690
Counsel for Defendants
Va. Bar No.: 24834

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Request For Admissions was mailed, ^{hand d.} postage prepaid, this 31st day of March, 1992 to Robert T. Hall, Esq.

Daniel W. Cotter
Daniel W. Cotter, Esq.

psh:91-45\Winchest.Rfa



V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER,

Plaintiff,

vs.

AT LAW NO. 91-L-77

JAMES H. STAFFORD, JR., M.D.,
JOHN H. LOWDER, M.D., and
WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

PLAINTIFF'S RESPONSES TO REQUEST FOR ADMISSIONS

The Plaintiff, SANDRA L. RENNER, responds to the Defendants' Request for Admissions as follows:

1. You were examined by Dr. James H. Stafford, Jr. (hereinafter "Dr. Stafford") in his office on September 30, 1987.

RESPONSE: Admitted.

2. During this September 30, 1987 office visit, you complained of abdominal cramps.

RESPONSE: Denied as stated. Plaintiff complained of menstrual cramps.

3. During this September 30, 1987 office visit, you complained of heavy menstrual bleeding.

RESPONSE: Admitted.

4. In the year preceding your September 30, 1987 office visit with Dr. Stafford, you had experienced abdominal cramps.

RESPONSE: Denied as stated. During 1986, Plaintiff experienced either menstrual cramps or heavy bleeding during her menstrual cycles.

5. In the year preceding your September 30, 1987 office visit with Dr. Stafford, you had experienced heavy menstrual bleeding.

RESPONSE: Denied as stated. During 1986, Plaintiff experienced either menstrual cramps or heavy bleeding during her menstrual cycles.

6. In the year preceding your September 30, 1987 office visit with Dr. Stafford, you were taking meclomen.

RESPONSE: Denied as stated. Plaintiff admits that Meclomen 100 mg was prescribed by Dr. Stafford in 1987.

7. Meclomen is a medication.

RESPONSE: Admitted.

8. Meclomen is a medication prescribed for menstrual cramps.

RESPONSE: Plaintiff admits that Meclomen is a medication prescribed for primary dysmenorrhea.

9. You took meclomen for menstrual cramps.

RESPONSE: Denied as stated. Plaintiff admits that Dr. Stafford prescribed Meclomen for dysmenorrhea.

10. You complained to Dr. Stafford, "all the time" about abdominal cramps while you were under his care.

RESPONSE: Denied as stated. Plaintiff admits to complaining "all the time" about menstrual cramps while under Dr. Stafford's care.

11. You complained to Dr. Stafford, "all the time" about heavy menstrual bleeding while you were under his care.

RESPONSE: Admitted.

12. During your September 30, 1987 visit to Dr. Stafford, surgery was discussed.

RESPONSE: Admitted.

13. During your September 30, 1987 visit to Dr. Stafford, the surgery discussed was to remove your uterus.

RESPONSE: Plaintiff admits that the surgery discussed was a hysterectomy.

14. Following that visit, you initially planned to have your uterus removed in December 1987.

RESPONSE: Plaintiff admits that the hysterectomy was initially planned for December 1987.

15. In October 1987, you cancelled the surgery to remove your uterus.

RESPONSE: Denied. Ms. Renner cancelled the hysterectomy in September of 1987.

16. You began taking Danocrine on October 21, 1987.

RESPONSE: Admitted.

17. You were informed that Danocrine had side effects.

RESPONSE: Denied.

18. Dr. Stafford informed you that there were side effects to Danocrine.

RESPONSE: Denied.

19. From the time Dr. Stafford prescribed Danocrine, you took the medication according to the prescribed dosage.

RESPONSE: Admitted.

20. On July 11, 1988, you were examined by Dr. Stafford in his office.

RESPONSE: Admitted.

21. During this July 11, 1988 office visit with Dr. Stafford, you informed him that you were experiencing "spotting."

RESPONSE: Admitted.

22. You took Danocrine at the dose of 800 mg per day.

RESPONSE: Plaintiff admits that she took Danocrine 800 mg per day beginning July 11, 1988 at the direction of Dr. Stafford.

23. You took Danocrine at the dose of 800 mg per day following your July 11, 1988 office visit with Dr. Stafford.

RESPONSE: Admitted.

24. The dose of Danocrine at 800 mg per day was prescribed by Dr. Stafford.

RESPONSE: Admitted.

25. During the July 11, 1988 office visit with Dr. Stafford, you discussed the option of stopping Danocrine with Dr. Stafford.

RESPONSE: Admitted.

26. During the July 11, 1988 office visit to Dr. Stafford, you discussed the option of increasing the dose of Danocrine.

RESPONSE: Admitted.

27. At that visit, Dr. Stafford instructed you to return to his office in October 1988.

RESPONSE: Denied.

28. You did not return to Dr. Stafford's office in October 1988.

RESPONSE: Admitted.

29. You did not follow Dr. Stafford's instructions to return to his office in October 1988.

RESPONSE: Denied. No such instructions were given.

30. You have never returned to Dr. Stafford's office for medical treatment following your July 11, 1988 office visit.

RESPONSE: Admitted.

31. You currently have been diagnosed with the disease process known as pseudotumor cerebri.

RESPONSE: Admitted.

32. You have experienced ear infections in the past five years.

RESPONSE: Admitted.

33. You have experienced sinus infections in the past five years.

RESPONSE: Admitted to the extent that Plaintiff intermittently experienced symptoms of sinobronchitis.

34. The pseudotumor cerebri disease process was diagnosed during your January 19, 1989 admission to Winchester Medical Center.

RESPONSE: The diagnosis of pseudotumor cerebri was confirmed via CAT scan interpreted by Dr. McAllister in the ER of Winchester Medical Center.

35. You continue to suffer headaches.

RESPONSE: Admitted.

36. You continue to experience the symptoms of what you believe to be pseudotumor cerebri.

RESPONSE: Admitted.

37. You continue to see physicians for the symptoms of pseudotumor cerebri.

RESPONSE: Admitted.

38. You stopped taking Danocrine in the early part of November 1988.

RESPONSE: Admitted.

39. You took the Danocrine until the "first part" of November 1988.

RESPONSE: Admitted.

40. You decided to stop taking Danocrine.

RESPONSE: Admitted.

41. You decided to stop taking Danocrine in October 1988.

RESPONSE: Denied. Ms. Renner decided to discontinue the Danocrine in November 1988 after she and her husband decided to pursue the options available to them for conceiving a child.

42. You did not consult with a physician before stopping Danocrine.

RESPONSE: Admitted.

43. You did not consult with a physician with regard to the recommended method for discontinuing Danocrine.

RESPONSE: Admitted.

44. You did not consult with Dr. Stafford before discontinuing Danocrine.

RESPONSE: Admitted.

45. The last prescription you received for Danocrine was dated August 4, 1988.

RESPONSE: Admitted to the extent that the August 4, 1988 prescription was the last written prescription by Dr. Stafford.

46. The last prescription you received for Danocrine from Dr. Stafford was dated August 4, 1988.

RESPONSE: Admitted.

47. The August 4, 1988 prescription for Danocrine was for sixty 200 milligram tablets.

RESPONSE: Admitted to the extent that the aforesaid prescription called for Danocrine capsules.

48. The August 4, 1988 prescription for Danocrine allowed two refills.

RESPONSE: Admitted.

49. You filled the August 4, 1988 prescription for Danocrine.

RESPONSE: Admitted.

50. You took the prescribed dose of Danocrine as directed in the August 4, 1988 prescription.

RESPONSE: Admitted.

51. You refilled the August 4, 1988 prescription for Danocrine once.

RESPONSE: Denied. This prescription was refilled twice to the best of Plaintiff's recollection. This response will be supplemented if necessary upon receipt of the PDS medicals records.

52. You refilled the August 4, 1988 prescription for Danocrine twice.

RESPONSE: Admitted, to the best of Plaintiff's recollection. This response will be supplemented if necessary upon receipt of the PDS medicals records.

53. You had completely stopped taking the Danocrine prior to November 30, 1988.

RESPONSE: Admitted.

54. You began to experience headaches, after you had completed your taper of Danocrine.

RESPONSE: Admitted.

55. Your headaches got increasingly worse by December 17, 1988.

RESPONSE: Admitted.

56. You did not seek medical attention for your headaches in December 1988.

RESPONSE: Admitted.

57. The last office visit you had with Dr. Stafford was on July 11, 1988.

RESPONSE: Admitted.

58. Your last telephone contact with Dr. Stafford's office to obtain a refill of the Danocrine, was on August 4, 1988.

RESPONSE: Denied as stated. Plaintiff admits that PDS contacted Dr. Stafford's office, on her behalf, for verifications prior to dispensing refills subsequent to August 4, 1988.

59. After August 4, 1988, you had no further contacts with Dr. Stafford to obtain a refill of Danocrine.

RESPONSE: Admitted.

60. After August 4, 1988, you had no further contacts with Dr. Stafford's office to obtain a refill of Danocrine.

RESPONSE: Admitted.

61. During November of 1988 and prior to November 30, 1988, you had decided that you would not return to Dr. Stafford for any medical services.

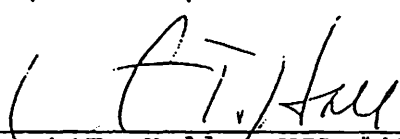
RESPONSE: Denied as stated. Plaintiff decided not to return to Dr. Stafford for further medical services sometime in 1989.

62. During the period of time when you were tapering yourself off the Danocrine, you had decided that you would not return to Dr. Stafford for any medical services.

RESPONSE: Denied.

SANDRA RENNER,
By Counsel,

HALL, MARKLE, SICKELS & FUDALA, P.C.


Robert T. Hall, VSB #4826
4010 University Drive, Suite 200
Fairfax, Virginia 22030
(703) 591-8600

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER,

Plaintiff,

v.

JAMES H. STAFFORD, JR., M.D.,

and

JOHN H. LOWDER, M.D.,

and

WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

AT LAW NO. 91-L-77

MOTION FOR SUMMARY JUDGMENT

COME NOW the Defendants, by Counsel, and pursuant to Rule 3:18 of the Rules of the Supreme Court, move this Court for the entry of an Order dismissing this case, with prejudice, as it violates Virginia Code Section 8.01-243 (Statute of Limitations).

In support of this Motion, these Defendants state as follows:

1. An Answer and Grounds of Defense was filed in this matter. The Statute of Limitations was plead therein as an affirmative defense.

2. This case is a medical malpractice action in which the Plaintiff alleges that the Defendants deviated from the accepted standard of care "in making the diagnosis of endometriosis and instituting a protracted course of Danocrine therapy". As a result, the Plaintiff claims that in January of 1989, she developed a condition known as pseudotumor cerebri.

3. The Notice of Claim required by Virginia Code Section 8.01-581.2 was dated and appropriately filed on November 30, 1990.

4. The last examination or treatment of the Plaintiff by these Defendants was July 11, 1988.

5. On August 4, 1988, the Plaintiff received, by telephone, a renewal of a Danocrine prescription previously made by Dr. Stafford. This particular prescription was for a 15 day supply of Danocrine and was renewable two times.

6. This prescription would have lasted, if renewed two times, not later than September 20, 1988.

7. The Plaintiff stopped taking this drug in the early part of November, 1988.

8. The Plaintiff contends that her alleged injury from the Danocrine was not discovered until early January, 1989 and thus the statute commences to run from the date of the injury, even though the doctor and patient have not seen each other for some time.

9. Under Virginia Code Section 8.01-243, every action for personal injuries, whatever the theory of recovery, shall be brought within two years after the cause of action accrues.

10. Under the case of Farley v. Goode, 219 Va. 969, 252 S.E.2d 594 (1979), it was held that a cause of action for "malpractice accrues, and the statute of limitations commences to run when the improper course of examination, and treatment, if any, for the particular malady terminates".

11. It is unrebutted in this case that the Plaintiff last was treated by these Defendants on July 11, 1988, that a prescription was renewed on August 4, 1988 extending medication through September 20, 1988, that the Plaintiff stated that she stopped taking this medication in early November, 1988 and that an action tolling the statute was not filed until November 30, 1990.

12. The Plaintiff suggests that the statute did not accrue until the condition was

discovered in January of 1989. Such a theory has been traditionally known as a discovery statute and is not the law in Virginia except as set forth in regard to Virginia Code Section 8.01-243(c)(1) and (2) as regards a foreign object and fraud which leads to the prevention of that discovery.

WHEREFORE, these Defendants pray that this action be dismissed with prejudice against them.

JAMES H. STAFFORD, JR., M.D.
JOHN H. LOWDER, M.D. and
WINCHESTER WOMEN'S SPECIALISTS
By Counsel

LAW OFFICES OF DANIEL W. COTTER

By: Daniel W. Cotter

Daniel W. Cotter, Esq.
4117 Chain Bridge Road
Suite 330
Fairfax, Virginia 22030
(703) 352-0690
Counsel for Defendants
Va. Bar No.: 24834

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion For Summary Judgment was mailed, postage prepaid, this 2nd day of March, 1992 to Robert T. Hall, Esq.

Daniel W. Cotter
Daniel W. Cotter, Esq.

LAW OFFICE OF
DANIEL W. COTTER
4117 CHAIN BRIDGE ROAD
SUITE 330
FAIRFAX, VIRGINIA 22030
TEL: (703) 352-0690
FAX: (703) 352-3612

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER,

Plaintiff,

v.

JAMES H. STAFFORD, JR., M.D.,

and

JOHN H. LOWDER, M.D.,

and

WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

AT LAW NO. 91-L-77

MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

COME NOW the Defendants, by Counsel, and in support of their Motion For Summary Judgment which was filed on or about March 2, 1992, respectfully state as follows:

The issue on this Motion For Summary Judgment is simple and clear. *The issue is when did the Statute of Limitations begin to accrue.* In order to fully develop the record and put this case in a posture for summary judgment, these Defendants propounded two sets of Request For Admissions to the Plaintiff. These Admissions have been responded to. They are attached as Exhibit A and Exhibit B.

As can be gleamed from a review of the Motion For Judgment in this case, the gravamen of the complaint against the Defendants is that they deviated from the accepted standard of medical care in making a diagnosis of endometriosis and in instituting a protracted

course of Danocrine therapy in response thereto. The Motion For Judgment, in essence, charges that the Defendants misdiagnosed and mistreated a condition known as endometriosis and that the Danocrine therapy was inappropriate and negligent. We know from the Admissions that the Danocrine was begun on October 21, 1987. A Time Table of Events is set forth in Exhibit C. This Time Table provides an easy reference to the events and relevant time frames in this case.

Factually, it is important to note that the Plaintiff was being treated by the Defendants for gynecological care since 1984. The Plaintiff was experiencing either menstrual cramps or heavy bleeding during her menstrual cycles. In response to that condition, the Plaintiff began taking a drug known as Danocrine on October 21, 1987 at the suggestion of Dr. Stafford. This drug came about as a result of a September 30, 1987 visit with Dr. Stafford at his office in order to discuss a range of options to deal with the condition.

The Plaintiff next saw Dr. Stafford on July 11, 1988, at his office and she was continuing to take the Danocrine which she began taking on October 21, 1987. On July 11, 1988, at that office visit, the Danocrine prescription dosage was increased to 800 mg per day. *The Plaintiff never saw Dr. Stafford again after the July 11, 1988 office visit.* The prescription that was increased on July 11, 1988 was renewed by telephone on August 4, 1988. The prescription called for sixty 200 mg capsules of Danocrine. That prescription allowed for two refills. When totaled, the original and two refills would have allowed 180 total capsules to be taken, four per day. This would have lasted 45 days or until approximately the end of September of 1988. In any event, *Plaintiff admits that she had stopped taking the Danocrine prior to November 30, 1988.* Plaintiff admits that she stopped taking Danocrine in early November, 1988 and did not consult with a physician before so doing. *Plaintiff never returned to Dr. Stafford nor had any further contact with his office after the telephone call on August 4, 1988.* Thus, giving the full benefit of time to the Plaintiff, the furthest that it can be said that

the Plaintiff was under Dr. Stafford's care was when she unilaterally stopped taking the Danocrine medication in early November, 1988.

The Plaintiff has admitted that the Notice of Claim filed in this matter pursuant to Virginia Code Section 8.01-581.2 et seq., was not mailed, and thus not filed, until November 30, 1990. The filing of this Notice of Claim is the act which tolls the applicable Statute of Limitations and the act by which it is measured whether or not this suit was filed in a timely manner.

Thus, a determination must be made as to when the Statute of Limitations began to run or accrue in this particular case. The applicable Statute of Limitations for this cause of action is contained in Virginia Code Section 8.01-243, which provides that such action must be brought within two years after the cause of action *accrues*. The accrual of a cause of action is governed by Virginia Code Section 8.01-230. This section provides that a cause of action shall be deemed to accrue from the date the injury is sustained in the case of injury to the person. In medical malpractice cases, the right to sue begins to run from the time *the wrong is done, not when it is discovered*. Morgan v. Schlanger, 374 F.2d 235 (4th Cir. 1967). In medical malpractice cases such as this, Plaintiff's are given the benefit of what has come to be known as the "continuing treatment doctrine." *Under this doctrine, the accrual of the Statute of Limitations is postponed until the patient ceases treatment with the doctor for the condition in question*, even if such means extending the statute beyond two years after the accrual. The rationale for the doctrine revolves around the inherent problems which would arise if Plaintiffs were compelled to bring suits against a doctor while still being treated by such doctor.

With certain specifically enumerated exceptions not applicable to this case as outlined in Virginia Code Section 8.01-243(c)(1) and (2), Virginia is a continuing treatment jurisdiction. The Supreme Court held in Farley v. Goode, 219 Va. 969, 252 F.2d 594 (1979), that "the cause of action for malpractice accrues and the Statute of Limitations commences to run when the improper course of examination, and treatment, if any, for the particular malady

terminates." The Farley decision has been followed in subsequent cases. *It is important to emphasize that Virginia is not a discovery rule jurisdiction.*

While the Plaintiff has yet to file any opposition to this Motion For Summary Judgment, it is clear that if she opposes this Motion, the theory on which she will do so is that the Statute of Limitations did not begin to accrue until the date her injury was discovered. The Plaintiff will suggest that this matter be viewed in the context of the Locke v. Johns-Manville Corp., 221 Va. 951 (1981), decision. The Locke decision holds that the accrual of a statute is tied to the fact of harm to the Plaintiff and that the statute does not accrue until damage occurs. Locke holds further that the accrual point is when damage occurs even if such is before the onset of symptoms. Locke holds that injury means positive, physical or mental hurt to the Claimant. Here, the Plaintiff will suggest that her pseudo tumor was not discovered until January of 1989 and thus there was no actual injury until that time as well.

Further analysis, however, would suggest that the Locke reasoning would be misapplied in this case. Scarpa v. Malzig, 237 Va. 509 (1989) provides a more appropriate comparison. As is indicated in the head notes, in Scarpa, plaintiff patient was hospitalized for an operation in which one of the defendant doctors erroneously recorded that he had removed the patient's left fallopian tube. Five years later, plaintiff was hospitalized for a complete sterilization by another doctor, who read the first doctor's report and tied only the right fallopian tube, mistakenly noting that the left fallopian tube was not present. Three and a half years later the plaintiff conceived a child because her left fallopian tube had been neither removed nor tied. The plaintiff filed a malpractice action against the doctors. The trial court ruled that the plaintiff's cause of action against both defendants accrued and the statute of limitations commenced running on the date of the second operation. Consequently the court held that the action was untimely. Plaintiff appealed, contending that her cause of action was not time-barred in that she was not injured, under the applicable case law and statute of limitations, until she conceived and became pregnant.

As in Scarpa, in this case, the Plaintiff alleges that she was misdiagnosed in 1987 for endometriosis and on October 21, 1987, started on an inappropriate medication of Danocrine, which in January of 1989, led to a delayed condition known as pseudo tumor. The Plaintiff alleges that she sustained and incurred unnecessary medical expenses, pain and suffering, both physical and mental as a result of the misdiagnosis and the medication. Such expense, pain and suffering all occurred immediately following the alleged misdiagnosis. The fact that the condition itself was not discovered until 1989 is of no relevance. In this case, the cause of action normally would of accrued on the date of misdiagnosis and commencement of the Danocrine therapy. However, under the continuing treatment rule, the accrual date was extended until early November, 1988, the date when the Plaintiff terminated the Danocrine treatment.

Accordingly, these Defendants move for summary judgment on the basis of an untimely filing.

JAMES H. STAFFORD, JR., M.D.
JOHN H. LOWDER, M.D. and
WINCHESTER WOMEN'S SPECIALISTS
By Counsel

LAW OFFICES OF DANIEL W. COTTER

By:



Daniel W. Cotter, Esq.
4117 Chain Bridge Road
Suite 330
Fairfax, Virginia 22030
(703) 352-0690
Counsel for Defendants
Va. Bar No.: 24834

LAW OFFICE OF
DANIEL W. COTTER
4117 CHAIN BRIDGE ROAD
SUITE 330
FAIRFAX, VIRGINIA 22030
TEL: (703) 352-0690
FAX: (703) 352-3612

0035

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Support of Motion For Summary Judgment was hand-delivered, this 6th day of April, 1992 to Robert T. Hall, Esq.

Daniel W. Cotter
Daniel W. Cotter, Esq.

psh:91-45\Winchest.Mem

TIME TABLE OF EVENTS

- September 30, 1987 - Plaintiff meets with Dr. Stafford.
- October 21, 1987 - Plaintiff begins Danocrine therapy.
- July 11, 1988 - Plaintiff meets with Dr. Stafford again and Danocrine increased to 800 mg per day. (Last Visit).
- August 4, 1988 - Danocrine prescription renewed by telephone for sixty 200 mg capsules, renewable 2x (45 day dosage).
- Early November, 1988 - Plaintiff terminates Danocrine usage - *Statute Accrues*.
- January, 1989 - Plaintiff discovers condition allegedly caused by Defendants.
- Early November, 1990 - *Statute Lapses*.
- November 30, 1990 - Plaintiff files Notice of Claim.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER,

Plaintiff,

v.

AT LAW NO. 91-L-77

JAMES H. STAFFORD, JR., M.D.,

and

JOHN H. LOWDER, M.D.,

and

WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

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FINAL ORDER

THIS CAUSE came on to be heard for argument on April 9, 1992, upon the Defendants' Motion For Summary Judgment, and

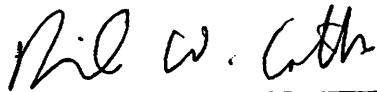
IT APPEARING TO THE COURT that Summary Judgment is appropriate as the Court finds that the applicable Statute of Limitations has lapsed as to these Defendants, therefore, for the reasons stated from the Bench, it is, accordingly,

ADJUDGED, ORDERED AND DECREED that this action is dismissed with prejudice as against these Defendants.

4/28/92


SIGNED: PERRY W SARVER
Judge, Perry H. Sarver
Circuit Court of the City of Winchester

I ASK FOR THIS:



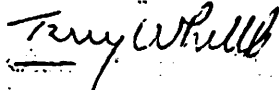
Daniel W. Cotter, Esq.
Counsel For Defendants

SEEN AND OBJECTED TO AS TO THE FINDING
THAT THE STATUTE OF LIMITATIONS HAS LAPSED:



Robert T. Hall, Esq.
Counsel for Plaintiff

psh:91-45\Winchest.Ord\2



V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER,

Plaintiff,

vs.

JAMES H. STAFFORD, JR., M.D.,
JOHN H. LOWDER, M.D., and
WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

AT LAW NO. 91-L-77

NOTICE OF APPEAL

The Plaintiff, SANDRA RENNER, by counsel, hereby gives notice of appeal to the Supreme Court of Virginia from the final judgment order of this Court entered April 28, 1992, and further gives notice that the transcript covering the arguments of counsel and other incidents of the summary judgment hearing will be filed, all in compliance with the Rules of the Supreme Court of Virginia.

SANDRA L. RENNER, Plaintiff
By Counsel

HALL, MARKLE, SICKLES & FUDALA, P.C.

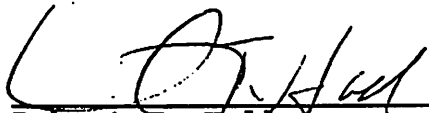
By: 

Robert T. Hall
VSB No. 4826
4010 University Drive
Suite 200
Fairfax, Virginia 22030
Telephone: 703/591-8600

CERTIFICATE

I, Robert T. Hall, counsel of record for Sandra Renner, hereby certify that:

1. Appellant is Sandra Renner.
2. Counsel for Appellant is Robert T. Hall, Esquire, of the firm of Hall, Markle, Sickels & Fudala, P.C., 4010 University Drive, Suite 200, Fairfax, Virginia 22030 (703) 591-8600.
3. Appellees are James H. Stafford, Jr., M.D.; John H. Lowder, M.D., and Winchester Women's Specialists.
4. Counsel for Appellees is Daniel W. Cotter, 4117 Chain Bridge Road, Suite 330, Fairfax, Virginia 22030, (703) 352-0690.
5. A copy of the transcript has been ordered from the court reporter who reported the case.
6. A true copy of the foregoing notice of appeal was mailed to Daniel W. Cotter, Esquire, counsel for defendants at the address above stated on the 5th day of May, 1992, he being the only opposing counsel in this matter.


Robert T. Hall

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

SANDRA L. RENNER,

Plaintiff,

vs.

JAMES H. STAFFORD, JR., M.D.,
JOHN H. LOWDER, M.D., and
WINCHESTER WOMEN'S SPECIALISTS,

Defendants.

AT LAW NO. 91-L-77

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NOTICE OF FILING OF TRANSCRIPT

YOU ARE GIVEN NOTICE that the original transcript of the summary judgment proceedings heard on April 9, 1992 before The Honorable Perry W. Sarver has been filed with the Circuit Court for the City of Winchester on May 8, 1992.

SANDRA L. RENNER
By Counsel

HALL, MARKLE, SICKLES & FUDALA, P.C.

By:


Warner F. Young, III, Esquire
4010 University Drive
Suite 200
Fairfax, Virginia 22030
(703) 591-8600
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Notice of Filing of Transcript was mailed, postage prepaid, this 7th day of May, 1992 to:

Daniel Cotter, Esquire
4117 Chain Bridge Road, Suite 330
Fairfax, Virginia 22030



Warner F. Young, III

91-42

A
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VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF WINCHESTER

COPY

----- x
SANDRA C. RENNER,

Complainant,

vs.

LAW NO. 91L-77

JAMES H. STAFFORD, JR., M.D.,

AND

JOHN H. LOWDER, M.D.,

AND

WINCHESTER WOMEN'S SPECIALISTS,

Defendants.
----- x

Winchester, Virginia

Thursday, April 9, 1992

The motion commenced at 2:00 o'clock, p.m.

BEFORE:

The Honorable Perry W. Sarver, Judge

Reported by: Mindy Belcher

ACCURATE REPORTERS
(703) 273-9367, 691-0480
P.O. BOX 485, FAIRFAX, VIRGINIA 22030

APPEARANCES:FOR THE COMPLAINANT:

WARNER YOUNG, ESQ.
OF: Hall, Markle, Sickles & Fudala PC
4010 University Drive
Suite 200
Fairfax, Virginia 22030

FOR THE DEFENDANT:

DANIEL COTTER, ESQ.
4117 Chain Bridge Road
Suite 330
Fairfax, Virginia 22030

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P R O C E E D I N G S

(Thereupon, the witnesses were sworn.)

(Thereupon, the court reporter was sworn.)

THE COURT: Okay. I had received a memorandum from Mr. Cotter here. I assume that you all did not wish to file one.

MR. YOUNG: Well, Your Honor, we received a copy of Mr. Cotter's memorandum I believe late Monday afternoon and simply did not have time to respond.

I don't believe that it's necessary. I think that we can fairly present our case without the benefit of paper. But if the Court feels that it would aid you in any way I would be happy to file that.

THE COURT: No. I have read your -- if you need a copy of this, you can get one from the clerk after the proceedings are over.

All right. Mr. Cotter, I will let you proceed.

MR. COTTER: Judge, if you've had an opportunity read those documents --

THE COURT: I have gone through the requests for admissions and I have reviewed the entire file. I have gone through the responses and looked at Farley versus Good and I have looked at Lock versus Johns Manville.

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1 MR. COTTER: Okay. Judge, as you know, this is
2 a medical malpractice case. The statute of limitations
3 would typically run from the date of the wrong under the
4 continuing treatment doctrine if there is subsequent
5 treatment for the condition that the wrong is the subject
6 of, then the accrual of the statute would extend until the
7 time that the physician-patient relationship terminated
8 with respect to that particular condition.

9 In this case the -- I really think that after I
10 go through some of this material, we are really talking
11 about a very clear issue.

12 And I appreciate Your Honor taking us in this
13 sort of a forum, because I think it's the sort of issue
14 that lends itself to thoughtful consideration as opposed to
15 a lot of argument.

16 But, in any event, the allegation is that Dr.
17 Stafford and his associates deviated from the accepted
18 standard of care of making a diagnosis of endometriosis and
19 then prescribing Danocrine therapy for that drug -- for
20 that condition.

21 And that diagnosis and the drug therapy -- in
22 any event, the drug therapy began on October 21, 1987.
23 Everything that I am saying with respect to the factual

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1 issues are all based on admissions that have been made in
2 this case.

3 As a result, the plaintiffs are alleging that
4 Ms. Renner sustained and incurred unnecessary medical
5 expenses, pain and suffering, both physical and mental,
6 from the Danocrine therapy from the misdiagnosis of
7 endometriosis.

8 The request for admissions make it clear that
9 -- and I think through the request for admissions that the
10 plaintiff concedes that the end date for her care and
11 treatment by Dr. Stafford would be the time period which
12 she stopped taking the Danocrine.

13 And that, she has conceded in request for
14 admissions, was early November, 1988. And so looking at
15 the outer limit in terms of the statute, in terms of the
16 relationship between Ms. Renner and Dr. Stafford as being
17 early 1988, the time period which she said she stopped
18 taking the drugs.

19 They have also conceded that they did not file
20 their lawsuit, the medical malpractice saying we would be
21 talking about notice of claim initially rather than a
22 lawsuit until November 30, 1990.

23 So that would be the date by which we measure

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1 whether the action was timely filed.

2 I think the key issue -- and I am to some extent
3 anticipating Mr. Young's argument -- but I believe the key
4 issue in this case is whether or not any injury was
5 sustained prior to November 30, 1988.

6 It is my understanding that the position that
7 Ms. Renner and her attorneys are going to take in this case
8 -- that her pseudotumor condition did not occur until
9 January of 1989.

10 THE COURT: Why don't you wait and see if that
11 is what he is going to do --

12 MR. COTTER: All right.

13 THE COURT: -- and then you can come back on
14 rebuttal.

15 MR. COTTER: All right. I want to just briefly
16 go through some of the other requests for admissions,
17 because I think they are important in terms of establishing
18 that there was actual injury prior to November, early
19 November, November 30, 1988.

20 First off, Ms. Renner has admitted in her
21 request for admissions that from the time she saw Dr.
22 Stafford from September 30, 1987 until the time that she
23 last saw him that she was complaining all the time about

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1 heavy menstrual bleeding.

2 In fact, she says right in her request for
3 admissions that the plaintiff admits to complaining --

4 THE COURT: Where are you reading?

5 MR. COTTER: I am reading number ten from
6 exhibit B.

7 THE COURT: Okay.

8 MR. COTTER: From number ten, exhibit B, she
9 states that she admits to complaining all the time about
10 menstrual cramps while under Dr. Stafford's care.

11 Number 11, she admits to complaining to Dr.
12 Stafford all the time about heavy menstrual bleeding while
13 under his care.

14 She admits, in number 16, that she began taking
15 the Danocrine on October 21, 1987. That date would suggest
16 to us that that's the date that the alleged wrongful act
17 occurred in this case.

18 And, of course, the misdiagnosis of
19 endometriosis would precede that, because the Danocrine
20 treatment, as is pointed out in the motion for judgment,
21 was the treatment for the endometriosis which is alleged to
22 be improper.

23 In request number 20, Ms. Renner admits that

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1 during the July 11, 1988 office visit with Dr. Stafford she
2 informed him that she was experiencing spotting, again
3 another medical condition.

4 Under response to our admission number 30, Ms.
5 Renner admits that she never returned to Dr. Stafford's
6 office for medical treatment following the July 11, 1988
7 office visit.

8 That is important, because we know that on
9 August 4th the prescription was renewed a second time. And
10 that prescription is what takes us up to the period of
11 early November, 1988.

12 She admits in number 34 that the diagnosis of
13 pseudotumor was confirmed via CAT scan interpreted by Dr.
14 McAllister in the emergency room of the Winchester Medical
15 Center on January 19, 1988.

16 What is important with respect to that request
17 is that she is only admitting in that request that the
18 diagnosis was made.

19 She is not denying in any way that the condition
20 preceded the diagnosis or, for legal terms, the discovery
21 of that condition.

22 In request number 38 she admits clearly that she
23 stopped taking the Danocrine in the early part of November,

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1 1988.

2 Again, in response to request number 39, she
3 admits clearly that she took the Danocrine until the first
4 part of November, 1988.

5 So there is no question that she stopped taking
6 the Danocrine in early 1988. In response to request number
7 53, again, in terms of locking up that issue, she admits
8 clearly, without any reservation, that she had completely
9 stopped taking the Danocrine prior to November 30, 1988.

10 And she says in number 54, she admits clearly
11 that she began to experience headaches after she had
12 completed her taper of Danocrine, which would be early
13 1988, early November, 1988, again, with the focus being on
14 the injury occurring before November 30, 1988.

15 So, typically, under the continuing treatment
16 rule, if this were a case, for example, that arose out of a
17 negligent surgical procedure that occurred in, say, October
18 of 1987, but the physician continued to treat the patient
19 until -- or was under the physician's care -- until
20 November 1988, under the continuing treatment doctrine,
21 although it was the surgical procedure that gave rise to
22 the alleged wrongful act, the statute would be extended
23 until the treatment for that condition terminated.

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1 It would be extended. And, therefore, the
2 statute would typically begin to run at the conclusion of
3 that last visit.

4 In this case, it would be when she took herself
5 off the Danocrine in early November, 1988, which would mean
6 she would have to file her suit by early November, 1990 not
7 November 30.

8 In this particular case, the allegation is that
9 the condition was not diagnosed, not discovered, until
10 January, 1989.

11 And, therefore, she should be extended that
12 additional two- or three-month period in order to file her
13 suit.

14 And I think it is important to point out that
15 she has said repeatedly that the there were problems
16 associated with the Danocrine during the period of time
17 that she was taking it, not just after she stopped taking
18 it.

19 In her deposition --

20 MR. YOUNG: Your Honor, I have to interpose an
21 objection here. I believe, under Rule 318, the deposition
22 transcripts are not allowable for use on a summary judgment
23 motion.

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1 MR. COTTER: That's true. And I will be
2 happy --

3 THE COURT: Objection sustained.

4 MR. COTTER: I will be happy to go through it in
5 a more formal way with request for admissions if that
6 becomes necessary.

7 But it was my understanding with Mr. Hall that
8 as long as it was clear that the injury -- his position
9 that the injury was not discovered or did not manifest
10 itself until January, 1989, that is what we are going to
11 focus on.

12 In any event, what is clear is that she took the
13 drug from October 21, 1987 until November, early November
14 of 1988, that the allegation in the case is that the
15 diagnosis of endometriosis was wrong, that the treatment of
16 Danocrine was wrong.

17 And that treatment caused her problems from the
18 time that she went on it she had pain, suffering,
19 inconvenience and expense, all the things that she alleged
20 in her motion for judgment.

21 And that would typically -- that wrongful act
22 would typically be the beginning of the statute accrual
23 period.

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1 But since she remained under Dr. Stafford's
2 treatment, arguably, because she remained under the
3 medication until early November, the statute did not accrue
4 until she stopped the treatment, early November 1988.

5 She did not file her suit until November 30,
6 1990. And that is too late under the statute. With
7 respect to what it means for an accrual, it's true that the
8 case law says that there has to be an injury.

9 And in this case there was. And I think for
10 those reasons and based on the reasons I suggested in the
11 motion, in the memorandum that the motion for summary
12 judgment should be granted.

13 MR. YOUNG: Your Honor, I think our position has
14 been well anticipated. And the position is, quite frankly,
15 that this is the Johns Manville case.

16 It is almost exactly similar. The continuing
17 treatment rule really has --

18 THE COURT: What does exactly similar mean?

19 MR. YOUNG: Well, it's exactly on point. And I
20 hate to use legal phraseology, Your Honor. I try to take
21 that out of my speech whenever possible.

22 It is not a continuing treatment issue. This is
23 an issue purely of when the harm occurred or when the cause

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1 -- and that triggers when the cause of action accrues.
2 Johns Manville was the exposure to asbestos as the Court is
3 aware over a long period of time.

4 And the gentleman in that particular case
5 developed a tumor sometime after his exposure to asbestos.
6 The facts of that case are that many people who are exposed
7 to asbestos do not go on and develop the cancerous tumor
8 which he, in fact, developed.

9 And it became a medical issue of when, in fact,
10 the tumor developed. Because the Court ruled that the mere
11 exposure to the agent, although wrongful, did not necessary
12 give to the party a right to pursue any cause of action,
13 because they had not as of yet sustained an injury. This
14 case is exactly the same.

15 Danocrine is a drug that is widely used for the
16 treatment of endometriosis. It does not always result in
17 the development of pseudotumor cerebri, which is the
18 complaint that this plaintiff has.

19 The mere fact that she is on the medication is
20 the wrongful act in this case because we allege that the
21 initial diagnosis was incorrect.

22 But the harm -- it's not clear when it occurred.
23 We certainly know that as of the first part of January it

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1 occurred.

2 And it's our position that given what we know to
3 date from the people who have examined her, the medical
4 testimony will be that that is the date that she developed
5 the condition.

6 And that's the critical issue. Mr. Cotter has
7 told the Court that she began to have pain and difficulty
8 during the course of treatment, but he has offered no
9 medical testimony -- and I think that it is his obligation
10 to do that on a summary judgment motion -- that the
11 spotting, or the heavy menstrual bleeding, or even the
12 headaches, in any way relate to the condition that we are
13 talking about.

14 He may argue to the Court, but I think it is
15 mere supposition at this point that those are related. And
16 he needs competent medical evidence to document when, in
17 fact, this injury occurred.

18 We are here on a summary judgment motion. And I
19 do not think he has met that burden. Obviously, it's going
20 to be an issue at trial.

21 There is going to be -- I'm sure -- a fight as
22 to when this condition developed. But on the record we
23 have before us now, there simply are not enough medical

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1 facts to sustain a summary judgment motion, or certainly
2 material facts in dispute.

3 And that dispute is over when, in fact, this
4 condition developed, because it is for this condition, the
5 pseudotumor, that she is suing.

6 THE COURT: Before you respond I want to look at
7 my book.

8 MR. COTTER: Judge, I would like to respond. I
9 don't think this is the Johns Manville case at all. First
10 of all, that case was a products liability case.

11 But more importantly, there was a finding in
12 that case that it was not the inhalation of the asbestos
13 that immediately resulted in any sort of a medical
14 condition.

15 And the Court went on to say in that case that
16 the cancer, the hurt, the harm, the injury did not spring
17 up at the time of the wrongful act, but really manifested
18 itself in 1978.

19 The wrongful act was between 1947 and 1972. And
20 the manifestation of the wrongful act did not occur until
21 June of 1978 when the condition was diagnosed.

22 So the crucial question in that case was: When
23 did the plaintiff become hurt or when was the plaintiff

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1 hurt?

2 And there was no injury at the time of the
3 wrongful act. And that is what distinguishes this case.

4 The Court went on to say in another case that
5 followed that one that I cited in my brief, the Scarpa
6 versus Melsey (phonetic) case, that the statute would begin
7 to accrue and the limitation period begin to run from the
8 date the injury is sustained in the case of injury to the
9 person and not when the resulting damage is discovered.

10 And the position of the plaintiffs in this case
11 is one that attempts to get through the back door with
12 respect to making this a discovery case what they would not
13 normally be able to be entitled to through the front door
14 by suggesting that the condition did not arise until
15 January 1989.

16 The Scarpa case goes on to say that when the
17 injury is sustained as the consequence of an alleged wrong
18 -- and again Mr. Young has conceded that the alleged wrong
19 in this case was the Danocrine treatment which began in
20 October of 1987 -- the statute begins to accrue from the
21 date of the alleged wrong.

22 And it is immaterial that all of the damages
23 resulting from the wrong may not have been sustained at the

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1 time of the negligent act.

2 So as long as there is some damage, some
3 physical hurt, some harm, some condition as was stated in
4 the Lock case, that we are not going to get into a
5 situation where we compare the harm and say, well, it
6 wasn't more significant until January of 1989.

7 Ms. Renner has conceded on several occasions in
8 evidence that we can use for purposes of this motion,
9 including the motion for judgment, that she sustained and
10 incurred unnecessary medical expense, pain and suffering,
11 because of the Danocrine treatment that began on October
12 21, 1987. She stated that --

13 THE COURT: Has -- excuse me for
14 interrupting --has Lock versus Johns Manville -- I didn't
15 get a chance to look because I just got your memo this
16 morning.

17 Has that ever been applied in any medical
18 malpractice case?

19 MR. COTTER: Your Honor, the reason why I point
20 out that it's products liability is because I have never
21 seen it applied directly in a medical malpractice case.
22 Now, it is talked about significantly in the Scarpa case.

23 THE COURT: I didn't get it. Let me look at

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1 that.

2 MR. COTTER: The Scarpa case is a case that
3 involves a situation where a woman went in for a medical
4 procedure --

5 THE COURT: Oh, yes. That was -- they said they
6 took out one and did not take it out --

7 MR. COTTER: The left fallopian tube, they did
8 not really take it out. And the reason why that case is
9 important is because it says that when the second doctor
10 went in to do the sterilization, he removed the right
11 fallopian tube.

12 Five years later she then became pregnant. And
13 she said that it was her pregnancy that was her actual
14 injury.

15 That was her argument. That is when the statute
16 accrued and began to run. The Supreme Court said no, that
17 it was the actual medical procedure, the removal of the
18 right fallopian tube and the reliance on the physician who
19 did the first procedure, that she had pain and suffering
20 related to that.

21 And it may have been slight, but it was still
22 pain and suffering and injury, legal injury. And from that
23 reasoning we can take and extrapolate to this case, that

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1 she went on this Danocrine in October of 1987 and she had
2 legal injuries.

3 She says so in the request for admissions. She
4 had abdominal cramping. She had heavy menstrual bleeding.
5 She had spotting.

6 She had pain and suffering. We cannot and the
7 Court cannot engage in speculation about comparing the
8 degree of damages, as long as there is some legal injury.

9 Then the statute begins to accrue at the
10 termination of the treatment for that condition, which is
11 early November.

12 That is what that case stands for. And to the
13 extent that it is a medical case and it relies on this Lock
14 case, it really is just for purposes of distinguishing it
15 because the Lock case was a products liability case.

16 And as I pointed out in the request for
17 admissions, she complains about this cramping, this
18 bleeding, this spotting all the time.

19 And that is legal the injury, sufficient to put
20 her on notice for purposes of what the law is in Virginia.
21 And it is my position all along that what is being
22 attempted here by the plaintiff is to try to make this a
23 discovery question.

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1 If that is what their intent is, that is fine,
2 but the Supreme Court said over and over again that we are
3 not a discovery jurisdiction, and that the key issue is not
4 when the condition was discovered but when the injury
5 occurred.

6 And whatever the gap of time between those two
7 moments is not of any relevance.

8 MR. YOUNG: Your Honor, may I respond?

9 THE COURT: Well, we have got to stop somewhere.
10 He has the burden. If I let you respond, then I will have
11 to let him respond. Ordinarily, we just have an open and
12 close.

13 MR. YOUNG: I would ask the Court for its'
14 indulgence. I would like to respond.

15 THE COURT: All right. Then I will let you
16 respond.

17 MR. YOUNG: Thank you.

18 Your Honor, we are not arguing for a discovery
19 rule. And, clearly, the Scarpa case is a medical
20 negligence claim or case which adopts the rationale of
21 Johns Manville.

22 The fact that Johns Manville is a products case
23 is of absolutely no distinguishing relevance, because the

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1 She said in her motion for judgment and in her
2 request for admissions that she had injury prior to
3 November 30, 1988.

4 And that is all that matters. We cannot compare
5 the degree of the injury or we cannot pay attention to the
6 fact that perhaps the condition in January of 1989 was more
7 severe.

8 As long as she had some injury that was related
9 to the medication, that is sufficient for purposes of
10 constituting legal injury.

11 And the statute normally would accrue then, but
12 under the continuing treatment doctrine would have accrued
13 at the termination of the treatment, which again is early
14 November, 1988.

15 THE COURT: It seems to me that the allegation
16 is in the motion for judgment. And to say that this is a
17 case of a wrong as a result of an improper diagnosis and
18 arising during a continued course of treatment -- I think
19 it is a Farley case.

20 And there is a statement by the Court on page
21 976 of Farley -- this is Virginia cite -- talking about a
22 continuous course of treatment situation.

23 We hold under these facts that when malpractice

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1 is claimed to have occurred during a continuous and
2 substantially uninterrupted course of examination and
3 treatment in which a particular illness or condition should
4 have been diagnosed and in exercise of reasonable care, the
5 date of injury occurs because of action for the
6 malpractice, accrues and the statute of limitations
7 commences to run when the improper course of examination
8 and treatment, if any, for the particular malady
9 terminates.

10 And there is no allegation that there was a
11 misdiagnosis from the standpoint that the doctor said it
12 was one thing as opposed to another.

13 And I think that is the way it was in Farley.
14 That was a dental case. And there was a course of
15 treatment for one malady, when, actually, the patient
16 suffered from another.

17 But whether it's a wrong diagnosis, you know,
18 choosing -- saying that it is one illness over another, I
19 think it is the same situation on a failure to diagnose.

20 It's the same situation. If there is a
21 misdiagnosis and it's a continuing misdiagnosis, and
22 prescribing the wrong course of treatment, I think that the
23 Court is bound to apply this proposition that I just read

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1 from Farley.

2 It has to determine -- the cause of action
3 accrues when that course of treatment terminates. And the
4 course of treatment terminated -- you could probably argue
5 an earlier date -- but, most surely, it terminated in
6 November.

7 MR. YOUNG: Your Honor, given --

8 THE COURT: I am not debating this with you all
9 now. I am telling you what my ruling is. I have been
10 listening to you all.

11 And I don't think it's not the same situation as
12 Lock versus Manville. And I will admit that Lock versus
13 Manville casts some confusion on malpractice cases as far
14 as I am concerned.

15 I have some trouble reconciling it. But it
16 would seem to me that I think that is the way they applied
17 it in this other -- where is the other case that we had
18 here -- in the Scarpa case.

19 And the Court was struggling a little, I think,
20 with the proposition of an injury. And in that case, in
21 order to really get away from what they held in Lock versus
22 Manville, when there was clearly -- in Lock there was
23 clearly no injury.

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1 There was a course of events, but there was no
2 injury until later on. But here there was a wrong. There
3 was a wrong done.

4 And I think that the evidence is that there was
5 an injury based on the admissions that we have before us.
6 So that is going to be my ruling.

7 MR. YOUNG: Your Honor, given the somewhat
8 informal setting of this, and you can perhaps give me some
9 guidance, is there any use in me trying to address some of
10 those points?

11 THE COURT: What points?

12 MR. YOUNG: Frankly, that you have just made in
13 your ruling.

14 THE COURT: No. I have already made my ruling.
15 No. I mean, I gave you all a chance to argue the case and
16 I have done that. I mean, we could go back and forth.

17 MR. YOUNG: I understand that, Your Honor. I
18 just think that we are obviously looking at a case that I
19 am going to asking to go up. And perhaps --

20 THE COURT: The thing of it is, I gave you all
21 an opportunity. I think you will look at the
22 correspondence.

23 I gave you all an opportunity to file a

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1 memorandum. And you all did not even show up for the pre-
2 trial conference that we had. And I think I asked Mr.
3 Cotter to convey the information as to pre-trial -- or pre-
4 motion argument or memoranda that I can consider for the
5 argument.

6 Now, I have considered everything that has been
7 given to me. And I have got to make the decision based on
8 what I have.

9 MR. YOUNG: Well, I would like the record to
10 reflect that this memorandum was not received by us until
11 this week, with Mr. Cotter knowing that Mr. Hall was in a
12 trial and unable to respond.

13 MR. COTTER: That is the second time that has
14 been said. And it is not my practice to engage in this
15 sort of bickering. That is a total falsehood.

16 I sent Mr. Hall a letter on March 2. I gave him
17 a copy of the order. That is when my motion was filed in
18 this case on March 2.

19 They have had until March 2 to file some
20 opposition. I did not learn that Mr. Hall was in the trial
21 until Tuesday or Wednesday morning, when I talked to Mr.
22 Young.

23 And so it is a total fabrication. And to rely

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1 question is: When does a cause of action accrue?

2 And it accrues at the time of injury. Mr.
3 Cotter has pointed out many things which he contends are
4 injuries resulting from the complaint of Danocrine.

5 But with all due respect, he is not a physician
6 and has not put before the Court any medical testimony that
7 those particular issues -- and I believe he pointed out to
8 heavy menstrual bleeding, cramping and headaches -- have
9 anything to do with the Danocrine.

10 That is his obligation. It is his burden on
11 this motion for summary judgment and his argument to the
12 contrary.

13 It is not supported by necessary medical
14 testimony. And without that medical testimony we are left
15 in the dark as to when the harm occurred.

16 And when we are in the dark as to when the harm,
17 in fact, occurred, we cannot sustain a motion for summary
18 judgment.

19 MR. COTTER: I would simply say, Judge, that we
20 are not in the dark about when the harm occurred, that
21 while Mr. Young may suggest that he is not arguing for
22 discovery, what he really is, is arguing that the statute
23 should not accrue until the condition was discovered.

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1 on that to suggest that they did not have an opportunity to
2 respond to a case that they have paid no attention to from
3 the time they filed suit -- they missed a deposition.

4 Mr. Hall did not even show up to my office for a
5 deposition that he had notice --

6 MR. YOUNG: Your Honor, at this point, I
7 think --

8 MR. COTTER: It's just ridiculous.

9 MR. YOUNG: I think we are off the record and
10 this is pointless. And I did not fabricate a thing. I
11 said that the memorandum was served this week.

12 MR. COTTER: That is true.

13 MR. YOUNG: I did not say your motion. Thank
14 you.

15 MR. COTTER: The memorandum --

16 MR. YOUNG: Thank you, counsel. I --

17 MR. COTTER: -- was served this week. The
18 motion was filed --

19 MR. YOUNG: -- no fabrication --

20 MR. COTTER: -- in early March. You had all
21 that time to respond --

22 THE COURT: Wait a minute. I want --

23 MR YOUNG: I don't need to respond to counsel,

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1 Your Honor.

2 THE COURT: I have something I want to say. I
3 wrote Mr. Hall and Mr. Cotter a letter on February 24,
4 1992.

5 Do you have a copy of that?

6 MR. YOUNG: I do not.

7 THE COURT: That I received a pre-trial order, I
8 believe, from Mr. Cotter resulting from a pre-trial
9 conference on January 28, 1992.

10 Quite frankly, I do not recall the specifics of
11 the pre-trial conference and thought I had requested Mr.
12 Cotter to submit an order which would encompass those
13 matters set forth in his letter of February 6, 1992
14 directly to Mr. Hall.

15 That was a letter concerning the status
16 conference that I was going to set. I was not going to
17 give him a trial date until I had heard argument on motion
18 for summary judgment.

19 I set that for today. Mr. Cotter advised that
20 he was to submit a brief by March 25. And Mr. Hall was to
21 have 10 days to respond.

22 I have not ever been able to get a pre-trial
23 order until --

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1 MR. YOUNG: I understand that.

2 THE COURT: -- until today. But anyway, as I
3 said, I do not recall the specifics, it would be consistent
4 with my usual practice to rule on a summary judgment motion
5 before setting a matter for trial.

6 And in reviewing the file, I do not see that a
7 motion for summary judgment has been filed, even though I
8 set it down for hearing.

9 So I told Mr. Cotter to prepare an order setting
10 forth those proceedings had January 28 to the best of his
11 recollection, and setting the matter for hearing on April
12 9, filing the memoranda and for him to file his motion for
13 summary judgment by March 4.

14 So, really, I think everybody was pretty well
15 advised of what we were going to do here today. And if
16 they wanted to -- and I wanted memoranda. And as I said, I
17 got one.

18 And I did not see that until this morning. And
19 you all elected -- I would have looked at yours. I had
20 some time to do it, if you wanted to.

21 MR. YOUNG: Your Honor, it's hard to respond to
22 a memorandum that I do not receive until this week.

23 THE COURT: Well, you had a right at any time to

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1 file a memoranda --

2 MR. YOUNG: I just want to point --

3 THE COURT: -- setting forth your position, what
4 is your position and, to wit, the Lock case, if you wanted
5 to argue it in advance.

6 MR. COTTER: I raised the Lock case for them, in
7 case that Your Honor has ruled on -- or relied on -- in
8 deciding the case is the Fenton (phonetic) which was raised
9 in the motion that was filed on March 2. There are no
10 surprises.

11 MR. YOUNG: Your Honor, I am not claiming a
12 surprise. If I may, just so that we do not have all the
13 bickering of counsel needlessly go on, may I ask the Court
14 if you are making any factual determination so that this
15 record is clear?

16 THE COURT: Well, the factual determinations
17 were -- I have decided the -- I ruled on the motion for
18 summary judgment based upon the pleadings, the allegations
19 in the pleadings that the wrong was the misdiagnosis, and
20 then, that was the act of malpractice complained of.

21 And then I made a rule that there was a
22 continuous course of treatment based upon the responses to
23 the admissions and that the course of treatment ended in

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1 November.

2 I think it could have been argued that it ended
3 two prescriptions after, I believe, it was August 4 date,
4 which would have been even earlier.

5 And anyway that terminated under the Farley
6 versus Good. Cause of action arose at that time. And so
7 that is the statute of limitations.

8 But that is when the statute started to run.
9 But, factually, it is on the pleadings and on the
10 admissions.

11 And I think that is what you decide a motion for
12 summary judgment on. And under Rule 318 I do not think
13 there are any facts left in dispute.

14 MR. COTTER: Would you like me to prepare an
15 order, Judge?

16 THE COURT: Yes, sir.

17 MR. COTTER: I will do that and send it over to
18 Mr. Young. Thank you.

19 (Thereupon, in the presence of counsel
20 for the respective parties, the witness
21 waived reading and signature of the
22 deposition.)

23 (Thereupon, at 2:30 o'clock, p.m.,

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1 the taking of the hearing was
2 concluded.)

3
4 CERTIFICATE OF REPORTER

5
6 I, Mindy Belcher, being a court reporter,
7 do hereby certify that I was authorized to and did report
8 the above and foregoing proceedings, and that thereafter it
9 was reduced to typewriting, under my supervision, and I
10 further certify the pages numbered 3 through 31, inclusive,
11 contain a full, true and correct transcription.

12
13
14 _____
15 Mindy Belcher, Court Reporter

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ASSIGNMENT OF ERROR

The trial court erred in granting summary judgment based on a plea of the statute of limitations because (1) the statute of limitations in this case did not accrue until the medical condition of pseudotumor cerebri occurred and it did not occur until it was diagnosable; and (2) there was no evidence at the motion for summary judgment presented by the defendants regarding when the plaintiff's pseudotumor cerebri was diagnosable.