I. **Testimonial Competence**

A. Are you currently on any medications or sleep deprived or anything that may make it difficult for you to understand and respond to my questions accurately and truthfully today?

II. **Background**

A. You're a medical doctor with a specialty in surgery, correct?

1. Any other specialties? Sub-specialties?

2. Licensures

B. Demographics

1. Current address

2. Address at time of care for [patient]

3. County?

4. SS#

C. Admit/Attach CV

D. Board Certifications? Re-certification?

1. Pass first time?

E. Owned Publications

1. What surgery text books do you own/use?

a. Competent sources of medical information? Reasonably reliable? Authoritative?

2. What surgery journals do you subscribe to?

a. Competent sources of medical information? Reasonably reliable? Authoritative?

F. Member of any medical societies or organizations?

1. Do they publish guidelines?

G. Are you a member of the Society of American Gastrointestinal Endoscopic Surgeons? (SAGES)

1. Do you get their publications?

2. Are you familiar with their published guidelines for safe laparoscopic cholecystectomies?

3. Would you agree those guidelines are authoritative?

4. Is there a portion of the guidelines which you personally believe to be wrong?

H. Local chapters?

I. Any teaching positions?

J. Publications

1. Any articles related to issues in this case

K. Continuing Medical Education

1. Courses taken in the three years prior to surgery up to today in laparoscopic procedures?

2. Courses taken in the three years prior to surgery up to today in laparoscopic cholecystectomy?

3. Ever taken a course dealing with complications from lap/chole?

L. Board Certifications?

1. Re-certification

2. Pass the first time?

III. **Practice History and Agency**

A. Character of practice at time of incident; details

1. Do any work outside of medicine?

B. Discipline

1. State, hospital, other

2. Ever barred from participation in Medicare/Public Aid

C. Controlled substance license - state, federal

1. Any lapses, discipline

D. Ever been convicted of a felony or misdemeanor

E. Agency

IV. **Prior Malpractice**

V. **Prior Testimony**

A. As treating physician

B. As expert

VI. **Materials Reviewed**

A. Chart, other documents, texts, literature, depositions

B. Persons spoken to *after* patient's care

C. Preparation for this case

D. Discussions with anyone regarding case?

VII. **Qualifications for Procedure**

A. When did you first get privileges to do laparoscopic cholecystectomies at [hospital]?

B. Describe the credentialing procedure

C. Were there a set number of procedures per year needed for proficiency at [hospital]?

1. Need for refresher after lapse?

2. Number of procedures needed for upkeep of proficiency

D. Up until [patient=s] surgery, how many laparoscopic procedures had you done?

1. When was the first one?

2. Any supervision?

3. How many have you done per year since then?

4. How many did you do in the year before her surgery?

5. How did you learn to do this procedure?

VIII. **Treatment of Patient B Part I**

A. Doctor, you had an opportunity to care for a patient named [patient], correct?

B. Let me show you exhibit [medical records]. Do you know of any *other* records marking your involvement in this case?

C. Condition of Records

1. Any changed?

2. Any missing?

D. Were you involved other beyond what is reflected in those records?

E. Do you have an independent memory of the care and treatment you rendered to this patient?

1. Any independent memory at all?

F. Is it fair to say that your testimony today will be based solely on what is contained in the medical records?

G. Did you have any contact with [patient] before [relevant date]?

IX. **Cholecystectomy B No Anomaly/Abnormality**

A. A cholecystectomy is the surgical removal of the gallbladder, right?

B. When is cholecystectomy indicated?

C. Was one indicated in [patient]?

1. Why? (Bases)

D. What signs and symptoms did she have?

E. And when a patient such as [plaintiff] presents to you with those symptoms, to determine whether she has gallstones, you perform an ultrasound and physical examination, right?

F. And you did these tests on [patient] correct?

1. And neither the ultrasound or the physical exam revealed any anatomical anomaly or abnormality, right?

G. And you informed her that she needed a cholecystectomy, right?

X. **Laparoscopic Cholecystectomy B Informed consent**

A. Did you recommend that her cholecystectomy be laparoscopic? Why?

B. In [year] was there any controversy in the medical community over doing laparoscopic cholecystectomies?

1. Would you agree they were well-known to be safe?

2. You=d agree that the advantage of laparoscopic cholecystectomies is that they were much less invasive than open procedures, right?

3. And they would have less scarring than open procedures, right?

4. What did you tell [patient] about laparoscopic cholecystectomy procedures?

C. But laparoscopic cholecystectomies are not risk free, are they?

D. Did you discuss the possible complications of a laparoscopic cholecystectomy?

1. Tell me everything you told her.

2. Did you give any figures regarding complication rates?

3. Where did you get those figures?

E. Did you discuss the amount of experience you had in doing this type of procedure?

1. Did you ever have complications in any other cases of laparoscopic cholecystectomy?

2. Describe

3. Do you keep complication records on your cases?

F. Did you ever offer to refer her to a more experienced doctor?

1. Did you ever tell her that the data says that more experienced surgeons have better results?

XI. **Laparoscopic Cholecystectomy B Standards of Care B Clipping and Dividing**

A. Let me show you what I have marked a Plaintiff=s Exhibit [diagram of anatomy]

B. Does this exhibit reasonably fairly and accurately represent the anatomy of the gallbladder, cystic duct, and common bile duct?

1. And it fairly and accurately represent the positioning of the instruments used in a laparoscopic procedure, right?

C. In the human anatomy, the gallbladder is connected to the common bile duct by something called the cystic duct, correct?

1. And blood supply to the gallbladder is supplied by the cystic artery, correct?

D. You=d agree that the diagram illustrates the presence of surgical clips on both the cystic duct and cystic artery, correct?

1. The clips are put there by the surgeon, correct?

E. The diagram also illustrates an instrument used to cut through the cystic duct, right?

1. Can we agree to use the term@dividing@ to describe cutting through something?

F. What we don=t see in this illustration is all the tissue under which the gallbladder is normally buried, right?

1. In order to see the cystic duct and the things we see there, the surgeon has to clear the tissue out of the way, correct?

2. And the tern for that is dissection, right?

3. Dissection is a basic skill of surgery that you learned in medical school, right?

4. Same for clipping and dividing, those are basic skills you learned in medical school, right?

G. You=d agree that the clipping and dividing for a cholecystectomy is the same whether it be an open or laparoscopic procedure, right?

1. In fact you=d agree with the exception of the how the gallbladder is accessed and the anatomy identified, there is no difference between open and laparoscopic cholecystectomies, correct?

H. And you=d agree that the standard of care for removing gallbladders requires dividing the cystic duct, correct?

1. It would be below the standard of care for a surgeon to remove the gallbladder by dividing the common bile duct, correct?

I. You=d agree that the standard of care for gallbladder removal requires putting surgical clips on the cystic duct before dividing it, right?

1. Under the standard of care one or more clips would be put on the part of the cystic duct near the gallbladder, and one or more clips would be put on the cystic duct away from that clip, toward, but not at, the juncture where the cystic meets the common, right?

And in fact that is what we see in the diagram, right?

1. You=d agree that when a surgeon is removing a gallbladder it would be a breach of the standard of care for a surgeon to put surgical clips on the common bile duct, correct?

2. You=d agree that when a surgeon is removing a gallbladder it would be a breach of the standard of care for a surgeon to dissect the area near the cystic/common bile duct juncture, correct?

J. Once the clips are put in the proper place on the cystic duct, you=d agree that the standard of care requires the surgeon to divide the duct by cutting between the two clips, right?

1. And in fact that is what we see happening in the diagram, right?

2. You=d agree that it would be a breach of the standard of care for a surgeon to divide in any spot outside the two clips, right?

K. You=d agree that the standard of care requires the same procedure be used to divide the cystic artery, correct?

XII. Laparoscopic Cholecystectomy B Standards of Care B Identify Anatomy

A. *Identification*

1. You=d agree that before clipping or dividing anything, the standard of care requires the surgeon to clearly identify the cystic duct at its junction with the gallbladder, right?

2. You=d agree no clip should be placed on, and no incision should be made in, any structure until the transition between cystic duct and gallbladder is definitively identified, right?

3. You=d agree that the rule of cholecystectomy surgery is that if you can=t identify it, you can=t cut it, right?

4. You=d agree that careful identification of the anatomy, specifically the cystic duct and cystic artery is the single most important step in preventing injury to the common bile duct?

5. You=d agree that to properly identify the anatomical structures requires their careful and meticulous dissection, right?

6. Which method did you use to make this identification (critical view or infundibular)?

B. *Anatomical Variants*

1. The careful identification of the anatomy also allows the surgeon to identify anatomical anomalies, like a missing or short cystic duct, right?

2. In those cases, you=d agree the standard of care requires the to convert to an open procedure, right?

3. Standard of care of care requires a surgeon to convert to an open operation for technical difficulties, anatomic uncertainties, or anatomic anomalies, especially in cases of acute cholecystitis, right?

C. ***Two Cuts***

1. In a laparoscopic cholecystectomy on a patient with a normal anatomy there would be only one division of a *duct* involved, right?

2. During a laparoscopic cholecystectomy, if the surgeon made two cuts, or needed two cuts of a *duct*, in order to remove the gallbladder, that would tell the surgeon he was not cutting the cystic duct, correct?

D. ***Cholangiogram***

1. You know what a cholangiogram is, don=t you?

2. It is a procedure that can be done intra-operatively, that is, during surgery, right?

3. It is a procedure that allows you to check the anatomy of a patient=s biliary system, right?

4. It is frequently used to confirm the parts of the anatomy, right?

5. You=d agree that the standard of care requires a surgeon to use operative cholangiography liberally to discover surgically important anomalies or clarify difficult anatomy, right?

E. ***Working Near Common***

1. You=d agree that it would be a breach of the standard of care for the surgeon to identify the cystic duct at its junction with the common bile duct?

2. In fact, you=d agree that it would be a breach of the standard of care for the surgeon to working in the area of the common bile, right?

3. You=d agree that if events require the surgeon to work near the common bile duct, the standard of care requires her to limit use of all energy sources, right?

XIII. Treatment of Patient B Part II B The Operative Facts

A. Let=s take a look at the operative report.

B. Who did the surgery?

C. Who dictated report?

D. When was this report dictated?

E. Go through report in detail . . .

F. What did you do with the gallbladder?

1. There is no mention in this report of any missing hemoclips, correct?

2. And there is no mention in this report of a missing cystic duct, correct?

3. In fact there is no mention at all of any kind of anatomic anomalies, right?

G. Finally, you mention that there were no leaks or bleeding or other complications, right?

1. And you=d agree that once the gallbladder is removed, surgeons are required under the standard of care to review the area of the surgery to irrigate and check for complications, right?

XIV. **Treatment of Patient B Part III B Post-Operative Course**

A. Did you review [patient=s] post-operative course?

B. You=d agree that after the cholecystectomy you performed she was found to have an obstruction/severance of the common bile duct, right?

C. You=d agree that an obstruction the common bile duct is an emergency situation, correct?

1. If left untreated, it could be fatal, right?

D. You=d agree that [patient] was first discovered to have an obstruction in the common bile duct after undergoing a procedure called an ERCP, right?

1. ERCP is an endoscopic procedure, right?

2. Meaning it is a procedure that uses a special instrument that is passed through the mouth and down through the anatomy of biliary system, right?

3. And it involves the injection of contrast material that is then x-rayed, right?

4. And this would reveal if there is an obstruction, right?

5. It is done under anesthesia, right?

E. [patient] underwent an ERCP, correct?

1. And this test showed that there was, indeed, an obstruction, correct?

2. In fact the test revealed a total or complete obstruction, right?

3. But this test could not tell the doctor what was causing the obstruction correct?

4. How did they initially treat the obstruction?

XV. **Treatment of Patient B Part IV B Exploratory Surgery**

A. You=d agree that after several attempts to deal with obstruction non-surgically, [patient] ultimately underwent an exploratory surgery to determine the cause of her obstruction, right?

B. This exploratory surgery took place on [date], right?

1. The lead surgeon was [name], right?

C. Let me show you the operative report. Do you have any reason to think that anything in [surgeon=s name] description of what he did and discovered is erroneous in any way?

D. Did you have anything to do with this surgery??

E. During this surgery, Dr. [blank] discovered that the common bile duct had been completely divided/clipped, right?

F. And during this surgery, Dr. [blank] discovered that the blockage seen on the ERCP was the hemoclips put on during the cholecystectomy you performed, right?

G. Doctor [blank] then went on to rebuild and repair the common bile duct, correct?

H. Based on what was discovered by Dr. [blank] you=d agree that the common bile duct was divided during the cholecystectomy you performed, right?

1. Why not?

I. Based on what was discovered by Dr. [blank] you=d agree that hemoclips were put on the common bile duct during the cholecystectomy you performed, right?

1. Why not B all reasons

XVI. **Cross Examination B Standard of Care Questions**

A. You=d agree it would be a breach of the standard of care if you divided [patient=s] common bile duct during the cholecystectomy?

B. Would you agree that it was a breach of the standard of care if you clipped [patient=s] common bile duct during the cholecystectomy?

C. You=d agree the standard of care requires you to check for obstructions in the common bile duct after the gallbladder has been removed but before surgery is over?

D. Would you agree that it was a breach of the standard of care in not discovering the clips on the common bile duct?

1. Why not?

E. Any explanation for the presence of the clips on the common bile?

1. Any explanation for how the common got divided?

F. Would you agree that had you checked for an obstruction in [patient] after her gallbladder was removed you would have discovered one?

XVII. **Causation**

A. Would you agree that without the obstruction and damage to her common bile duct [patient] would not have needed the ERCP or subsequent surgeries?

XVIII. **Conversations**

A. Family

1. who/what/where/when

B. Other Medical care givers

1. All conversations with subsequent surgeon who did repair

2. who/what/where/when

C. Others

1. who/what/where/when

XIX. Was patient negligent in any way?

XX. Bias

A. Relationship with other doctors in case (especially subsequent surgeon)

Prior to incident

Subsequent to incident

Social, personal

Previous cases, subsequent cases with _____

Referrals to or from _____

Number

I. Any criticisms of other care givers

Anyone fail to contact you

Anyone fail to give you correct information

Any records, x-rays, lab data misplaced or lost or not provided at the appropriate time?

Anyone fail to treat the patient properly

Anything you would do differently, if you could do it over again?

Anything else that you would like to say in defense of the allegations against you?