

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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PHYLLIS DAHN,)

Plaintiff;)

vs.) Case No. 129676

BRIAN TEEPLE,)

Defendant.)

- - -

Deposition of Malcolm A. Brahms, M.D., taken by
Plaintiff as upon cross-examination under the
Statute, as provided by the Ohio Rules of Civil
Procedure, pursuant to notice, before Jeniffer L.
Tokar, a Registered Professional Reporter and
Notary Public within and for the State of Ohio, on
Wednesday, August 10, 1988, at the offices of
Malcolm A. Brahms, M.D., 26900 Cedar Road,
Beachwood, Ohio.

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1 APPEARANCES:

2 David I. Pomerantz, Esq.

3 Pomerantz and Cichocki Co., L.P.A.

4 910 Statler Office Tower

5 Cleveland, Ohio 44115

6 On behalf of the Plaintiff;

8 David G. Borland, Esq.

9 Meyers, Hentemann, Schneider & Rea Co., L.P.A.

10 2121 Superior Building

11 Cleveland, Ohio 44114

12 On behalf of the Defendant.

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14 ALSO PRESENT:

15 Kathleen Hopkins

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1 MR. POMERANTZ: Let the record
2 reflect that this is the deposition of Dr. Malcolm
3 Brahms in the case styled Phyllis Dahn versus Brian
4 Teeple, T-e-e-p-l-e, Case Number 129676 in the
5 Court of Common Pleas, Cuyahoga County, Ohio.

6 Mr. Borland, I take it that any defects
7 as to notice are waived?

8 MR. BORLAND: That's correct.

9 MR. POMERANTZ: This is a
10 deposition of Dr. Brahms being taken by agreement.

11 Doctor Brahms, I know you've had your
12 deposition taken in the past. The general ground
13 rules apply. If you don't understand any question
14 that I ask you or you don't hear any question,
15 please stop me and I'll restate the question.

16 If you do respond to it, I'll assume
17 that the answer is responsive to the question.
18 Fair enough?

19 THE WITNESS: Right.

20 CROSS-EXAMINATION OF MALCOLM A. BRAHMS, M.D.

21 By Mr. Pomerantz:

22 Q. First of all, could you state your full name?

23 A. Doctor Malcolm A. Brahms.

24 Q. What's your office address?

25 A. 26900 Cedar Road, Beachwood, Ohio.

1 Q. Doctor, we're here regarding my client,
2 Phyllis Dahn, who I represent regarding an
3 automobile accident which occurred on November 25,
4 1985. First of all, do you have office notes in
5 reference to Miss Dahn?

6 A. I do.

7 Q. Can I have an opportunity to take a look at
8 those?

9 A. Sure.

10 MR. POMERANTZ: Mr. Borland and
11 Doctor, if you don't have any objections, I'll ask
12 at a later date if I could just get a copy of his
13 office notes. Would that be okay?

14 MR. BORLAND: Sure.

15 Q. Can I ask you what records you've had an
16 opportunity to review regarding Miss Dahn?

17 A. Yes. I saw the report of emergency room. I
18 saw the report from the Parma Hospital, referable
19 to the x-rays; a report from Dr. Deogracias, a
20 report from Dr. Farner and from Dr. Ortega. And, I
21 had the opportunity to review Dr. Gabelman's
22 report, the CT scan reports and Dr. Mars' report.

23 Q. Did you have an opportunity to examine Mrs.
24 Dahn?

25 A. I did.

1 Q. And when was that?

2 A. I saw her on the 10th of August of 1987.

3 Q. A year ago today?

4 A. Correct.

5 Q. And that examination was in your office, I
6 take it?

7 A. That's correct.

8 Q. Had you ever examined her before that day?

9 A. I had not.

10 Q. Have you ever seen her since then?

11 A. No I've not.

12 Q. Do you have any plans to see her again?

13 A. Not unless she likes me, wants to come back.

14 Q. Fair enough. Can you tell me the history
15 with which she presented?

16 A. Yes, sure. She told me that on the 25th of
17 November of 1985, that she was a driver of her
18 automobile. She was involved in a motor vehicle
19 accident on Snow Road near Broadview in Parma,
20 Ohio.

21 She said that as a result of this impact, her
22 head struck the windshield. She was thrown against
23 the passenger door. She said the car crossed the
24 road, striking in the embankment. She denied
25 unconsciousness. She was not wearing a seat belt?

1 MR. POMERANTZ: Motion to strike
2 that comment. Go ahead, Doctor.

3 A. She was taken to Parma Community Hospital by
4 her husband. In the emergency room, she was
5 examined, x-rays were taken, medication prescribed
6 and she was referred to her family doctor.

7 Doctor Deogracias examined her on the second
8 of December of 1985. He obtained x-rays; he
9 prescribed some medicine and physical therapy and
10 she was subsequently referred to Doctor Farner who
11 saw her in consultation and by Doctor Ortega who is
12 a neurosurgeon and who, in so many words, told her,
13 "learn to live with it".

14 She told me that when she talked to her
15 attorney stating, "nobody tells me what is wrong,
16 only possibilities, probabilities and could be's",
17 he referred her to Doctor Gabelman who examined her
18 on the 24th of July of 1987.

19 CT scan was obtained on the 4th of August,
20 1987. She reports that she's not yet had a
21 myelogram, which has been discussed. She'd been
22 told that an MRI examination might be necessary but
23 that it was too expensive and these tests were
24 deferred.

25 "Do it when you can't stand it any longer."

1 Doctor Gabelman, after his examination, referred
2 her to Doctor Mars, who prescribed medication which
3 was beneficial for her headaches.

4 Patient also related that her knees struck
5 the dash of the car and that they were "black and
6 blue."

7 She's no longer symptomatic referable to her
8 knees or her neck.

9 Q. Now Doctor, I have a copy of your report.
10 You made a report subsequent to examining her,
11 correct?

12 A. That's correct.

13 Q. I have a copy of that. Would you agree with
14 me that the report -- I'll tell you, why don't we
15 mark the report as Plaintiff's Exhibit 1.

16 Doctor, I'm showing you what has been marked
17 as Plaintiff's Exhibit 1. Just for the record, is
18 that a true and accurate copy of your report?

19 A. Yes, it is.

20 Q. Fair enough. I see at the bottom of the
21 first page, continuing on the second page, those
22 are the, you've listed therein what her complaints
23 were at the time of her examination; would that be
24 correct?

25 A. That's correct.

2 1 Q. Were there any other complaints that were not
2 put into that report?

3 A. No, all the complaints she told me about are
4 in the report.

5 Q. Did you have an opportunity to examine her?

6 A. Yes, I did.

7 Q. Can you tell me what tests were conducted?

8 A. General physical examination, an orthopedic
9 examination.

10 Q. All right. And what were your findings upon
11 examination?

12 A. Well, you want me to read my examination
13 report?

14 Q. Are your findings set forth on the second
15 page of your report?

16 A. They are.

17 Q. Were there any other findings other than the
18 ones you've listed there?

19 A. My examination is reported in this report.

20 Q. Were there x-rays taken?

21 A. No, didn't need to because she's already had
22 the appropriate number of x-rays to include CT
23 scans.

24 Q. Were there any other diagnostic tests taken,
25 cat scan, anything like that?

1 A. No.

2 Q. Now, did you have an opportunity to review
3 any x-ray films or anything like that, prior to
4 writing your report?

5 A. No, just the x-ray reports.

6 Q. All right. I had a couple questions
7 regarding your report. In the second paragraph you
8 noted that she was examined by Doctor Deogracias on
9 December 2nd. The delay in the examination was
10 because of Thanksgiving. In your opinion did that
11 have any impact upon her treatment or her recovery?

12 A. None at all.

13 Q. On the second page you mentioned that the
14 patient has, excuse my pronunciation, genu varum
15 deformity?

16 A. Um-hmm.

17 Q. Can you tell me what that is?

18 A. Yes, that's a bowlegged type of deformity.
19 It's a mild deformity in this particular woman.

20 Q. In that same paragraph you mentioned that her
21 glenohumeral motions are within normal limits.
22 What are those?

23 A. Those are shoulder motions.

24 Q. Were there any positive findings, whatsoever,
25 regarding her shoulders?

1 A. Nothing in her neck or her shoulders.

2 Q. Now, you also mentioned that, apparently
3 there is evidence of reversal of the curve. I
4 assume you mean the lordotic curve?

5 A. That was a report made by Doctor Farner.

6 Q. So, in other words, when you say in your
7 report there was evidence of reversal of the curve,
8 is that suggestive of a muscle spasm at the time
9 those x-rays were taken?

10 A. Yes, sir.

11 Q. That would be at the time of the ER x-rays?

12 A. That's correct.

13 Q. So to you, then, that reversal of the curve
14 was indicative that she was experiencing muscle
15 spasm at that time?

16 A. Certainly, that's correct.

17 Q. All right. Based on seeing that reversed
18 curve, can you give an opinion as to how long she
19 was experiencing muscle spasm prior to the taking
20 of the x-rays? Could that have happened over a
21 short period of time or would it necessarily have
22 been a longer period of time?

23 A. No, that's an acute entity, usually follows
24 trauma and probably in a person of this age, could
25 last anywhere from one to six weeks.

1 Q. You also noted that the neurological
2 examination performed by Doctor Ortega was non-
3 specific. What did that mean?

4 A. He found nothing wrong.

5 Q. No positive findings?

6 A. Not according to his report.

7 Q. In the final paragraph you mentioned that a
8 cat scan which was recently obtained without the
9 benefit of dye -- I'm a little ignorant as to
10 exactly what the difference is between a cat scan
11 with dye or without dye. Could you explain that to
12 me?

13 A. CT scans of the cervical spine are not as,
14 don't have the same diagnostic value as a CT scan
15 of the lumbar spine. The diagnostic acumen of that
16 test is improved with the injection of dye into
17 subarachnoid space.

18 Most radiologists who perform and read CT
19 scans of the cervical spine find that this is an
20 enhanced method of interpreting those x-rays.

21 Q. And, you say that that is specific to the cat
22 scan of the cervical spine as opposed to the
23 lumbosacral area?

24 A. That's correct.

25 Q. In your own practice you order cat scans, I

1 take it?

2 A. Everyday.

3 Q. And, are they performed in your office or
4 elsewhere?

5 A. No, we don't have a radiology department in
6 this office. We send our x-ray requests to the
7 radiology concern in this building or in the
8 hospital, to perform those x-rays.

9 Q. And, do you order all your cervical spine
10 x-rays to be done with dye or is that left to the
11 discretion of the radiologist?

12 A. Not infrequently. If we were concerned about
13 a significant injury of the cervical spine, an
14 x-ray of the cervical spine, plain x-ray would be
15 our recommendation. And, if we thought that we
16 needed a more specific, sophisticated test, we
17 would ask for an MRI rather than a CT scan of the
18 cervical spine.

19 Q. So, your answer would be that you do not
20 necessarily order it with a dye for the cervical
21 spine?

22 A. We would rather have an MRI examination than
23 a CT scan of the cervical spine.

24 Q. Do you have any idea what a cat scan costs,
25 what the cost of the cat scans are?

1 A. No, I don't.

2 Q. So then you could not give an opinion as to
3 the reasonableness of a charge for a cat scan?

4 A. Since we don't do them in our office, I have
5 no idea what the charges are.

6 Q. Based on your examination and the history
7 taken of Mrs. Dahn, what are your opinions as to
8 your diagnoses as to what injuries she suffered as
9 a result of the motor vehicle accident of November
10 25, 1985?

11 A. I think that she had some soft tissue
12 injuries and I suggested that it may well have been
13 in the realm of a cervical sprain. And, in my
14 opinion, patients of this age group who have
15 injuries of this nature, respond favorably in a
16 period of time, plus the help of medications
17 prescribed by the doctors, along with the physical
18 therapy that was prescribed.

19 Q. Now, you mentioned diagnosis of the cervical
20 sprain. In your opinion was the cervical sprain
21 proximately caused by the motor vehicle accident of
22 November 25, 1985?

23 A. Yes, I would think so.

24 Q. Now, you said you had the opportunity to look
25 over Doctor Deogracias' report. You did have the

1 opportunity to review that prior?

2 A. I read it; I didn't study it, I did read it.

3 Q. All right. Was there anything in that report
4 that you disagreed with?

5 A. Doctor Deogracias examined her shortly after
6 the accident and many of his findings allude to
7 acute findings. My examination was done in August
8 of 1987 and my findings are referable to the
9 examination that I made. And, there is no reason
10 for my questioning Doctor Deogracias' report.

11 Q. Now, you mentioned, I think what you were
12 referring to was several diagnoses which she was
13 experiencing acutely which have since resolved
14 themselves; would that be correct?

15 A. Yes.

16 Q. He mentioned a contusion of the head, a
17 contusion of the nose and anterior chest wall.
18 Setting aside the cervical sprain, he had mentioned
19 dorsal lumbosacral bilateral myofascitis and
20 contusion with ecchymosis of the right and left
21 knees.

22 You have, am I correct in saying that you
23 have no reason to disagree with those diagnoses
24 that Doctor Deogracias --

25 A. No, I don't.

1 Q. Did you feel that the treatment that Doctor
2 Deogracias rendered was proper treatment in lieu of
3 the problems she was having at that time?

4 A. Certainly.

5 Q. And that the services he rendered were
6 necessary services?

7 A. I don't know that -- if he examined her with
8 relative frequency, they weren't. I don't know how
9 frequently he examined her. I don't disagree with
10 his initial examination.

11 Q. So if I understand, you may have some
12 question with how frequently he saw her?

13 A. Doctor Farner and Doctor Ortega, who were
14 both consultants, didn't find much in the way of
15 their physical findings, from an orthopedic or
16 neurologic standpoint. And, I doubt that she
17 really required much treatment after the first six
18 weeks.

19 Q. Why don't we talk about Doctor Ortega's
20 report for a second. You also had the opportunity
21 to read his report?

22 A. Yes.

23 Q. Was there anything in his report that you did
24 not agree with?

25 A. No, I agree with him, but I don't -- he made

1 a diagnosis of, question of a possible ruptured
2 disk at C5-6 which proved to be not a diagnosis
3 established by the CT scans.

4 Q. So in other words, in this instance you are
5 relying on the CT scans even though they were not
6 done with the benefit of the dye; would that be
7 correct?

8 A. His neurological examination was normal. I
9 rely more on his physical examination than the CT
10 scan. One would guess that the CT scan would be
11 normal in view of the fact that both Doctor Farner
12 and Doctor Ortega found her to be within normal
13 limits.

14 Q. Based on the complaints that she was having
15 at that time, do you think it was, in your opinion,
16 was it proper for her to be referred to a
17 neurologist, neurosurgeon?

18 A. Sure.

19 MR. BORLAND: I'm sorry, based
20 on her complaints at what time?

21 MR. POMERANTZ: At the time that
22 she was referred by Dr. Deogracias.

23 Q. Now, if I can turn your attention to Doctor
24 Gabelman's report. Had you had the benefit of
25 reviewing Doctor Gabelman's report at the time that

1 you wrote your report.

2 A. I had not.

3 Q. You've had a chance to read it now?

4 A. Yes.

5 Q. Have your opinions changed?

6 A. Not one bit.

7 Q. Is there anything in Doctor Gabelman's report
8 that you disagree with, in terms of his findings?

9 A. Certainly I disagree with them. I disagree
10 with his diagnosis.

11 Q. How so?

12 A. Because I don't think that at the time that
13 he saw her, which was the 24th of July of 1987,
14 that her physical findings dictated any diagnosis
15 other than the fact that the patient was normal.

16 Q. So then you disagree with the diagnosis of
17 sprain at the cervicothoracic and lumbosacral
18 spine?

19 A. Absolutely.

20 Q. In terms of his prognosis, he stated, on the
21 second page of his report, her prognosis must
22 remain guarded. You disagree with that also?

23 A. I totally disagree with that. You can put
24 exclamation marks behind it.

25 Q. Did you feel that cat scans were indicated at

1 that time?

2 A. In 1987?

3 Q. When they were taken, correct, which I
4 believe was August of 1987.

5 A. I didn't think that they were necessary.

6 Q. Why is that?

7 A. Physical examination was within normal
8 limits.

9 Q. What about, would your opinions be altered at
10 all on the fact that she had continued pain at the
11 base, the chronicity of the complaints of her pain?

12 A. I think they were subjective and I thought
13 that it was somewhat of an overreaction.

14 Q. An overreaction in terms of the doctor or --

15 A. No, the patient's subjective. The patient's
16 the one complaining, not the doctor.

17 Q. Do you agree with me that she did, according
18 to Doctor Gabelman's report, she did complain of
19 pain in the neck and back at the time that she was
20 examined by the doctor; is that correct?

21 A. I agree with that, yes.

22 Q. Do you believe her?

23 A. I believe anybody who gives me a history that
24 they have pain, because pain is subjective and pain
25 is not an objective finding. So, if the patient

1 comes to a doctors' office, says she has pain, one
2 would have to believe they have pain.

3 I don't think the significance of the pain is
4 of great interest. But, I think that she might
5 continue to complain.

6 Q. And, if she continued to complain of pain at
7 present, for example, you would still believe her?

8 A. I believe her, but I don't think I would
9 treat her.

10 Q. Now, Doctor Mars also examined Mrs. Dahn and
11 conducted an electroencephalogram. Do you believe
12 that test was indicated, based on her complaints
13 and medical picture at that time?

14 A. Doctor Mars is a neurologist and that's out
15 of my field. If he thought it was indicated; I
16 wouldn't disagree with it. Doctor Ortega didn't
17 think it was necessary and I wondered why Doctor
18 Ortega didn't think about it and Doctor Mars did a
19 year later.

20 So, I don't know. That's something for
21 Doctor Ortega to defend, not me.

22 Q. Do you think that the chronicity of her pain
23 or complaints of pain at that time may have
24 indicated that an electroencephalogram was
25 necessary?

1 A. Sometimes exams are done for reasons to rule
2 out complaints. Sometimes they're done for
3 pecuniary reasons. And so, I don't really know why
4 an EEG was necessary at this point in time.

5 Again, if Doctor Ortega who saw her shortly
6 after the accident didn't think it was necessary, I
7 wonder why it was necessary a year later.

8 Q. Now, you mentioned that tests such as an
9 electroencephalogram must be necessary to rule out
10 certain problems. Would that also be the same case
11 as a cat scan?

12 A. I don't think the cat scan is in the same
13 category at that point in time.

14 Q. In your practice, when somebody presents with
15 pain of long-standing nature, is that one
16 indication to perform a cat scan?

17 A. No, that's not the only reason to do a cat
18 scan.

19 Q. Is it a reason, though?

20 A. I don't believe the cat scans are as good as
21 MRI's. I couldn't use cat scans in the cervical
22 spine.

23 Q. What advantages does an MRI have over a cat
24 scan in the spinal area?

25 A. Great many reasons. It delineates soft

1 tissues as well as the bony structures. One has
2 the ability to spectroscopically see things in
3 perspective, in a clearer fashion than a CT scan
4 does.

5 Q. Now, I noticed in Doctor Deogracias' report,
6 apparently, Mrs. Dahn was involved in a 1975 fall
7 and had an injury of her left shoulder. Are you of
8 the opinion that that injury, in any way, was a
9 cause of her current complaints or complaints from
10 the time of her accident, onward?

11 A. None whatsoever.

12 Q. Would you agree, from the history that was
13 given and the materials that you've had an
14 opportunity to review, that Mrs. Dahn suffered from
15 post-traumatic headaches following the accident of
16 1985.

17 A. Sure.

18 Q. Did she complain of these when you examined
19 her?

20 A. She did.

21 Q. I notice in your report that you mention the
22 headaches may be "postural and job related". Can
23 you tell me what kind of work she does?

24 A. She's a secretary.

25 Q. And on what do you base your opinion that

1 these headaches might be postural or job related?

2 A. People who sit at a desk -- this court
3 reporter now, in this particular position, with her
4 arms always in front of her, working, head bent
5 forward, it's not uncommon for people of that
6 occupation, of those occupations, to have postural
7 headaches.

8 Q. Now, would you also agree that by history and
9 in light of the materials that you reviewed, that
10 Mrs. Dahn has had muscle spasms as a result of this
11 accident, in the cervical spine area?

12 A. Not any longer, no.

13 Q. But, she did at one time?

14 A. She did initially in the acute phase,
15 absolutely.

16 Q. And, this would be supported by the reverse
17 of the lordotic curve that she experienced?

18 A. Yes, that's correct.

19 Q. Did the types of neck and back injuries that
20 Mrs. Dahn has had, do they normally go through
21 periods of remissions and exacerbations?

22 A. If it's associated with an overuse phenomena,
23 no. If she went out to change a tire or a lot of
24 gardening, she may have had an exacerbation of
25 those muscle spasms. But, just not on an everyday

1 basis. It would have to be incited by some kind of
2 activity.

3 Q. What about changes in the weather, that sort
4 of thing; could that also?

5 A. Not in this age group, no.

6 Q. So then you would agree, though, that if her
7 activities changed or she sat in a different
8 position or something of that nature, that she may
9 experience exacerbations of types of problems she's
10 had in her neck and back?

11 A. Only with overuse or in posture in her
12 job-related work.

13 Q. Are you of the opinion that Mrs. Dahn would
14 have suffered neck pain while at work or doing
15 daily activities, considering her age group and
16 other facts, if she had not been involved in this
17 accident?

18 A. I think that if one has any kind of trauma,
19 be it an accident, be it a fall or be it a shove or
20 anything, anyone who has had an insult is more
21 likely to have reasons for neckache. But
22 ordinarily, without trauma, the answer is no.

23 Q. Now, you stated in your report that when you
24 examined her on that day, she had no muscle spasm?

25 A. That's correct.

1 Q. Is that correct?

2 A. Yes.

3 Q. Are you of the opinion that she know longer
4 has any muscle spasms as a result of this accident?

5 A. I am.

6 Q. I take it that you don't know whether she's
7 had any muscle spasms subsequent to your
8 examination one year ago?

9 A. I don't know.

10 Q. So, it's certainly possible that she walked
11 out of your door and experienced muscle spasms
12 shortly thereafter?

13 A. Highly unlikely.

14 Q. How do you know that?

15 A. Because I know that can't happen without some
16 incident to incite that kind of reaction.

17 Q. All right. Could you explain,
18 physiologically, what happens to the body to cause
19 a muscle spasm?

20 A. Sure. In the, if we just relate ourselves to
21 the cervical spine, the reason for muscle spasms is
22 that there must be injuries to the soft tissues,
23 the ligaments, the facet joints in the neck. And,
24 with time, this revolves itself, goes back in a
25 normal homeostatic state.

1 Any incident which aggravates or reproduces
2 those factors can cause muscle spasm. No other
3 reason for muscle spasms.

4 Q. Can a person experience pain in the cervical
5 area without a muscle spasm?

6 A. Certainly.

7 Q. And, you'd agree with me, Doctor, that
8 different people recover from similar injuries at
9 different rates?

10 A. Depends upon their age.

11 Q. All right. Can two people in the same age
12 group that suffer similar injuries, recover at
13 different speeds?

14 A. Certainly. Depends on whether they have
15 metabolic diseases or the state of their obesity,
16 their problems, their work, things of that nature.

17 Q. Are you of the opinion that Mrs. Dahn no
18 longer is having any pain as a result of this
19 accident?

20 A. I am of that opinion, yes.

21 Q. And, why is that?

22 A. Because I think she's recovered to her normal
23 state.

24 Q. Based -- I mean, she still complains of pain,
25 you agree with that?

1 A. Again, I said that's subjective. And, her
2 pains might really be something of significance,
3 they might be rather insignificant, they might be
4 transient, I don't really know. But, on the basis
5 of my examination, on the basis of her x-rays, on
6 the basis of the CT scan, on the basis of a
7 neurological examination by Doctor Ortega shortly
8 after the accident, the answer is, I don't think
9 she has any residual manifestations of injury now.

10 Q. Where is the pain coming from?

11 A. I don't know.

12 Q. Is it possible for someone to continue to
13 have pain from this type of neck injury, two and a
14 half years post-accident?

15 A. Highly unlikely, again, with exclamation
16 marks and exclamation points.

17 Q. But, it is possible?

18 A. Very unlikely.

19 Q. Well --

20 A. I won't answer it possible because I don't
21 really think so. But, the word possible is such an
22 effervescent kind of adjective, I don't want to use
23 it. I'm just saying it's highly unlikely in a
24 person of this age group to have any persistent
25 problems, other than with reinjury, overuse.

1 Q. When you examined Mrs. Dahn, did she give you
2 any history of any other injuries subsequent to any
3 other trauma whatsoever, subsequent?

4 A. After the automobile accident?

5 Q. Correct.

6 A. She couldn't have given me any. She gave me
7 all the history about herself, but in her past
8 history, let's see what she said in her past
9 history. Absolutely non-contributory.

10 Q. And, you know of no other injuries?

11 A. That's correct, right, I know of nothing else
12 about the lady.

13 Q. And as far as you know, she's not been
14 involved in any trauma subsequent to the time that
15 you examined her?

16 A. I don't know that. She doesn't live with me.
17 I don't know that.

18 Q. To your knowledge, there have been no
19 subsequent injuries?

20 A. I wouldn't know. I only examined her one
21 time in August of 1987. I haven't heard from her
22 since.

23 Q. I'm trying to put this together, Doctor. You
24 said that she suffered trauma. She did have
25 injuries as a result of that. She had muscle

1 spasm -- she continues. Was complaining of pain.
2 At the time you examined her, you believe that in
3 fact she was in pain and --

4 A. I believe what she told me. I didn't think
5 she was in pain. I believe what she told me but I
6 don't believe she was in pain.

7 Q. In other words, you don't believe her?

8 A. I believe what she told me, but I don't
9 believe she was in pain.

10 Q. But, did she tell you she was in pain?

11 A. She told me she was in pain.

12 Q. And either you believe that or you don't.

13 A. I believe what she told me. I don't believe
14 she was in pain.

15 Q. It doesn't make sense, Doctor.

16 A. It doesn't make sense to me either because I
17 really believe what she said. But, I have no
18 reason on the basis of my physical examination, to
19 believe that there is any neurological or
20 orthopedic reason for discomfort.

21 Q. All right. If I understand you correctly,
22 you're, in a polite way, saying you really don't
23 believe that she was experiencing pain.

24 A. If you want to say it that way, we'll accept
25 it. I didn't say it, you did.

1 Q. Do you agree with that or not?

2 A. I don't agree with it. I'm going to say it
3 again, Mr. Pomerantz. She told me she has pain. I
4 see no prudent reason for her discomfort, based on
5 my examination.

6 Q. If you do believe that there is pain, can you
7 tell me where this pain is coming from?

8 A. I said I don't think she has pain.

9 Q. You don't believe her when she said she's in
10 pain?

11 A. I believe what she told me. I find know
12 reason for her pain.

13 Q. In examining your own patients, have you ever
14 given a patient a guarded prognosis?

15 A. If they were seriously injured, absolutely.

16 Q. What does the term guarded mean?

17 A. Guarded means that one doesn't know if
18 they're going to get better or worse.

19 Q. Speaking hypothetically, when you are giving
20 a patient a guarded prognosis, that means there's a
21 possibility that that person will never recover
22 from those injuries, fully recover from those
23 injuries; is that correct?

24 A. No, it doesn't mean that at all. It doesn't
25 mean never. It means we continue to observe them

1 over a period of time, for a length of time that
2 we think they should recover. And, if they don't,
3 then we should find other reasons that they haven't
4 recovered.

5 Q. Any other meaning that guarded can have?

6 A. It may be to other people. That's my
7 definition.

8 Q. Now several of her treating doctors have
9 found her prognosis to be a guarded one. Do you
10 have any reason -- you apparently disagree with
11 that?

12 A. I do, yes.

13 Q. And, why is that?

14 A. Because I don't believe that she has anything
15 to have a guarded prognosis for.

16 Q. Do you feel that there are any other tests
17 that could be or should be performed on Mrs. Dahn
18 to find out the source of the pain that she claims
19 that she's experiencing?

20 A. The insurance company and everybody else has
21 spent more money than they should have to
22 investigate her injuries. And, the answer is
23 absolutely no.

24 MR. BORLAND: Move to strike
25 reference to insurance.

1 Q. Can you tell me what a TENS unit is, how it
2 works?

3 A. Sure. A TENS unit is a device which sends
4 impulses to the areas in which the electrodes are
5 placed, in order to bombard the sensory impulses
6 with a confusing discharge to attempt to decrease
7 the discomfort that the patient's experiencing.

8 Q. Would you agree with me that a TENS unit then
9 either interrupts or confuses the signal from the
10 area of pain, to the brain, would that be fair?

11 A. I think that's what I said.

12 Q. Okay. If a patient is treated with a TENS
13 unit and does not experience any relief of the pain
14 that they're experiencing, what does that suggest
15 to you from a diagnostic standpoint?

16 A. I'm not much of a favorite for the use of
17 TENS units. It doesn't mean anything to me. I
18 don't think TENS units are much value at any time.

19 Q. In your own practice, you do not --

20 A. I do not use them.

21 Q. Why don't you like them as a method of
22 treatment?

23 A. Because I don't find them to be of any value.
24 I don't think that it's a good unit. It's a waste
25 of money and doesn't do anything that a good warm

1 shower wouldn't benefit.

2 Q. So then if a patient were to use a TENS unit
3 to find relief from that, you don't put any stock
4 in that, from a diagnostic point?

5 A. I think on a percentage basis, like anything
6 else, it follows a curve. Some people get better;
7 some people don't get better; some people are worse
8 with it. So, you say your prayers and you find out
9 what happens. I just think it's a waste of money.

10 Q. Do you feel that there's a psychological
11 aspect to Mrs. Dahn's symptoms?

12 A. Yes, I do.

13 Q. And, would you explain that a little more
14 fully?

15 A. I think both of us know what we're talking
16 about. I just think there's a somatic overreaction
17 to her symptoms which mean a lot more to her than
18 to the treating physicians.

19 Q. Can you medically give me a diagnosis for
20 this?

21 A. No I'm not a psychologist.

22 Q. Would you agree with me that, would it be
23 your opinion that she believes she's in pain but
24 you don't think she really is in pain?

25 A. I wouldn't say that, but I'll say yes to

1 that. But, I don't agree with it in total.

2 Q. What don't you agree with?

3 A. I just think there are a lot of people who
4 continue to have some symptoms which mean a great
5 deal to them until there is someone, as she said,
6 who can give her an answer and not probabilities
7 and possibilities and that business.

8 That's what she told me. And, until she
9 finds that this whole matter is over, then her
10 symptoms may then be less significant to her.

11 Q. When you say this whole matter is over, are
12 you suggesting --

13 A. I think that she's gone through this, it's
14 lingering, it's hovering over her head. Until this
15 whole thing is cleared up, satisfactorily, then I
16 think she -- some of those symptoms might not have
17 the same degree of discomfort that she is
18 experiencing.

19 Q. Doctor, I think you may be, you're being
20 polite again. Are you saying you feel once the
21 lawsuit is over, she will experience relief from
22 her pain?

23 A. I think once she gets this matter settled in
24 one way or another -- and I have nothing to do with
25 lawsuits -- once this matter is out, when she's no

1 longer bombarded by a lot of extraneous things and
2 physical examinations, that her symptoms, as Doctor
3 Ortega said, she's going to have to learn to live
4 with it.

5 Q. So, you do not feel then that her symptoms
6 have been prolonged by the lawsuit?

7 A. Are you asking me or telling me?

8 Q. I'm asking. I just want to know your
9 opinions, Doctor.

10 A. Yes, I do think her symptoms are partly a
11 product of the length in which this matter has
12 dragged on.

13 Q. So there is no confusion, when you say
14 matter, you mean the lawsuit?

15 A. The fact that she has not completely been
16 satisfied by her doctors, by her lawyers, by her
17 lawsuit, by everything. She's not completely
18 satisfied with everything yet.

19 Q. Do you feel that this condition that she
20 suffers from now, the pain or discomfort, from
21 whatever the cause, the psychological aspect, that
22 was caused by the automobile accident, you would
23 agree with that?

24 A. I think that's part of it. I think she had
25 some before the accident, too.

1 Q. Some what?

2 A. Psychological aspects before the accident.

3 Q. But, you don't have any history of her
4 complaining of any pain or discomfort?

5 A. I don't know anything about the woman before
6 the 10th of August, 1987.

7 Q. But, you did take a history from her?

8 A. I did.

9 Q. The history that you got, you did not, there
10 was no indication that she was experiencing any
11 pain, whatsoever, in her neck or back areas prior
12 to the automobile accident; is that correct?

13 A. That's what she told me.

14 Q. You're familiar with Doctor Edward Gabelman;
15 are you not?

16 A. I am.

17 Q. To your knowledge, is he a competent
18 orthopedic doctor?

19 A. Yes.

20 Q. He enjoys a good reputation in the medical
21 community?

22 A. Yes.

23 Q. Doctor, in regards to this matter with
24 Phyllis Dahn, is there anything else which you wish
25 to add, concerning your examination or diagnoses or

1 your opinions?

2 A. Nothing else.

3 MR. POMERANTZ: I have no further
4 questions, Doctor. Do you want to read over your
5 deposition; do you want to waive signature?

6 THE WITNESS: No, I waive it.

7 MR. POMERANTZ: Okay, thank you,
8 very much.

9 MR. BORLAND: Thank you, Doctor.

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(Signature waived.)

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1 State of Ohio,) SS:

2 County of Cuyahoga.)

3
4 C E R T I F I C A T E

5 I, Jeniffer L. Tokar, a Registered Professional
6 Reporter and Notary Public within and for the State
7 of Ohio, duly commissioned and qualified, do hereby
8 certify that the above-named witness, MALCOLM A.
9 BRAHMS, M.D., was by me first duly sworn to testify
10 the truth, the whole truth and nothing but the
11 truth; that the deposition as above set forth was
12 taken at the time and place specified and that the
13 deposition was reduced to stenotypy by me in the
14 presence of the witness and counsel and afterwards
15 transcribed into typewritten manuscript hereto
16 attached.

17 I do further certify that I am not a relative
18 nor an attorney of either party, nor otherwise
19 interested in the event of this action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 25th day of August, 1988.

22
23 

24 Jeniffer L. Tokar, RPR,

25 Notary Public. My commission expires 2-9-93.