#489

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STATE OF OHIO, )
) SS:
COUNTY OF CUYAHOGA. )

IN THE COURT OF COMMON PLEAS

Manju Taneja, et al., )
Plaintiffs, )
vs. ) No, 204573
Neil S. Angerman, )
Defendant. )

Videotaped deposition of MALCOLM A. BRAHMS, M.D. taken as if under direct examination before Ellen A. Hancik, a Notary Public within and for the State of Ohio, at the offices of Malcolm A. Brahms, M.D., 26900 Cedar Road, Suite 228, Beachwood, Ohio on Thursday, September 19, 1991 at 6:00 p.m., pursuant to notice and stipulations of counsel, on behalf of the Defendant.

APPEARANCES:

Fred Wendel, III, Esq.,

on behalf of the Plaintiffs;

Kuepper, Walker, Hawkins & Chulick, by:
Mark R. Chulick, Esq.,

on behalf of the Defendant.

S T I P U L A T I O N S

It was stipulated by and between counsel for Plaintiffs and Defendant that this deposition may be taken in stenotype by Ellen A. Hancik, that said stenotype notes may be subsequently transcribed into typewriting in the absence of the witness; that the reading and signing of the deposition by the witness are waived; and that all requirements of the Ohio Rules of Civil Procedure with regard to notice of time and place of taking this deposition are waived.

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MALCOLM A. BRAHMS, M.D., of lawful age herein, called by the Defendant for the purpose of direct examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

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MR. CHULICK: Let the record reflect that this is the videotaped deposition of Dr. Malcolm Brahms intended for use at trial in lieu of Dr. Brahms appearing live.

DIRECT EXAMINATION OF MALCOLM A. BRAHMS, M.D.

BY MR. CHULICK:

Q Doctor, would you state your full name for the record?

A Dr. Malcolm A. Brahms.

Q Doctor, what is your occupation?

A Physician/orthopedic surgeon.

Q Where is your office located, Doctor?

A 26900 Cedar Road, Beachwood, Ohio.

Q And are we at your office this afternoon?

A Yes, that's correct.

Q Doctor, are you presently licensed to practice

your profession in the State of Ohio?

A I am.

Q And if so, the year in which you were licensed?

A 1950.

Q Doctor, are you licensed to practice medicine in any other state?

A I had licensure in Indiana which I have not maintained since I left my residency there.

Q Doctor, for the jury, would you provide us with an educational background?

A Yes. I'm a graduate of Western Reserve University Medical School, served a year of rotating internship at Cleveland City Hospital now known as Cleveland Metropolitan General Hospital, followed by four more years of orthopedic surgical training, another year at Cleveland City Hospital, a year at Mt. Sinai Medical Center in Cleveland, Ohio, and two years at Indiana University Medical Center in Indianapolis, Indiana.

Q Doctor, do you have a medical specialty?

A I do.

Q What is tnat?

A Orthopedic surgery.

Q And are you board certified in orthopedic surgery?

A I am. I am.

Q Could you explain to the jury what it means to be board certified?

A The requirements for board certification is to complete an AMA approved residency in orthopedic surgery, followed by a written and an oral examination, followed by the mandatory practice of orthopedic surgery for two years, followed again by a written and an oral examination.

Successful completion of those requirements entitles one to become certified.

Q Doctor, for the jury's benefit, can you explain what an orthopedic surgeon is?

A Orthopedic surgery is that branch of medicine that deals with the investigation, preservation and the restoration of the form and function of the musculoskeletal system by medical, surgical, or rehabilitative means.

Q Doctor, when did you become board certified in orthopedic surgery?

A 1958.

Q Doctor, have you written or caused any

articles to be written in your field of expertise?

A I have articles in the major and the minor orthopedic journals and a chapter in two of the current orthopedic textbooks on the market.

Q Doctor, are you a member of any professional association or medical society?

A Yes, I am.

Q And could you tell the jury which associations and societies you're a member of?

A Sure. I'm a member of the Cleveland Academy of Medicine, the Ohio State Medical Association, and the American Medical Association.

I'm a fellow of the American College of Surgeons, I'm a diplomat of the American Academy of Orthopedic Surgeons.

I'm a member of the Cleveland Orthopedic Society, the Ohio State Orthopedic Society, the Mid America Orthopedic Society, the Clinical Orthopedic Society.

I'm a member of the American Academy of Orthopedic Surgeons for Sports Medicine. I'm a member of the American Academy of Orthopedic

Surgeons for the Foot and the Ankle, one of the founding members of that organization.

I belong to the International Society for Orthopedists and Traumatologists, to the Austrailian American Orthopedic Society and some other minor groups as well.

Q Doctor, you mentioned that you've had some experience in the field of sports medicine.

Have you had occasion to become involved with any professional sports organizations during your practice?

A Both professional and otherwise. I was a treating physician for local high schools in sports endeavors.

I was the consultant orthopedic surgeon for the Cleveland Indians, Cleveland Bulldogs and the Cleveland Browns.

Q Doctor, at the present time, are you affiliated with any hospital?

A I am.

Q Which hospital?

A Mt. Sinai Medical Center and Suburban Community Hospital.

Q Doctor, in your practice, do you have occasion to treat patients who have been involved in

automobile accidents?

A Yes, I do.

Q Doctor, have you had occasion to examine a patient by the name of Manju Taneja?

A Yes.

Q And Doctor, when did that examination occur?

A I examined her on the 13th of August of 1991.

Q And Doctor, what was the purpose of your examination?

A To examine the patient and to render a report concerning that examination.

Q Doctor, can you explain to the jury what your examination consisted of?

A Sure. A history and a physical examination.

Q For the jury's benefit, Doctor, can you explain what a history is?

A Yes. History is that which the patient tells the doctor. The reasons for coming to the doctor's office, the hows, the whys, the whens and the wherefores of the nature of their visit.

Q And the significance of the history?

A History is extremely significant to any physician.

Q And the other part of your examination

consisted of what?

A A physical examination.

Q Doctor, can you explain to the jury, from beginning to end, how you conducted your examination of Mrs. Taneja?

A Certainly. After taking a history, the patient is given a complete orthopedic examination focusing principally on the areas of the chief complaint.

Q And did you obtain a history from Mrs. Taneja?

A I did.

Q And what did she tell you about regarding her history?

A Yes. She told me that on the 7th of April of 1989, she was a driver of her automobile. She was wearing a seatbelt, she was involved in an automobile accident. This occurred on Interstate 480 near the Warrensville Center Road exit.

She said that she was proceeding in traffic and her automobile was struck from the rear. She said that she was not aware that she struck any part of the interior of the automobile.

She said that the impact caused her to

have a forward and backward movement of her torso. She did not seek any immediate emergency room treatment that same day, but because of the progressive pain in her neck and her back, she was seen by Dr. Robert Corn on the 17th of April, 1989.

She said that his examination included a review of the x-rays, a prescription for physical therapy, and medicines, and that the patient is not aware that she had any other examinations, for example, which included a CT scan or an MRI examination.

Q Doctor, did you elicit any further information from Mrs. Taneja?

A Yes. She told me that she's the owner of a children's clothing store, that she was unable to work for one week. She said she's not been able to return to her full work duties since the accident. She said she works approximately three or four hours a day.

At the time of the examination that I performed on the 13th of August, she said that she has neck and back pain which radiates into both of her arms as far as her elbows.

She said she has a sensation of stiffness

in her neck. She has difficulty bending her neck. She has pain in her shoulders and pain radiates down to her elbows. Pain never radiates below the elbow joints.

She has not had an EMG examination. She's able to reach overhead, she's able to hook her bra in the back, and she's able to dress herself.

Q Doctor, you mentioned that she did not have an EMG examination. Can you explain what an EMG examination is for the jury?

A Yes. An EMG examination is a form of a test that is done to investigate the speed in which a nerve transmits an impulse, as well as to determine whether there's any muscle damage to the involved areas of that examination.

Q And you also mentioned that she did not have a CT scan or an MRI. Again for the jury's sake, can you define to them what those tests are?

A Yes. Those are two sophisticated tests that are used by physicians in focusing in on a three dimensional spectroscopic examination of a part.

It -- CTs and MRIs are able to determine the differences of various kinds of body

parts. The difference between soft tissues and bone, the difference between fluid and fat as it differs from muscles, tendons, ligaments, etc., and that's the reason for those examinations.

Q Doctor, when would a CT scan, an MRI or an EMG examination be indicated?

A Oh, I think it's a test that the doctors would feel necessary when there is suspicion that there has been nerve damage. When there's been an involvement of the part, that part which is examined which may, for example, indicate ruptures of discs, or whether or not there's any abnormal shadows, such as cysts, tumors, etc.

Q And those tests were not performed in Mrs. Taneja's case?

A Apparently, these were not indicated or thought necessary by Dr. Corn.

Q Doctor, did you elicit any further information from Mrs. Taneja --

A Yes.

Q -- in the history you obtained from her?

A She told me that the pain in her back extends from the base of her neck to a part just above

the waist area, the upper lumbar region. She did not have any pain in her legs.

She said that occasionally, coughing, sneezing and intercourse aggravates her symptoms. She's not troubled by bowel movements. Walking for long periods of time or standing aggravates her symptoms. She's able to lift five to ten pounds,

The pain occasionally awakens her. She has morning stiffness. When she drives, she has pains in her arms.

She told me that her household duties include cooking and light cleaning. She does not use the vacuum sweeper, she has help in her home for the heavy cleaning duties.

At work, she occasionally does some of the sales on the floor. Most of her job is administrative and is done in a sitting position.

She doesn't play any sports, and she said she formerly, however, was able to play tennis. That was the history that she gave me.

Q And after you obtained the history, you then proceeded to conduct your physical

examination?

A That is correct.

Q And could you describe for the jury what that consisted of, Doctor?

A Sure. We're dealing with a forty-one year old, a hundred seventy pound, 5'2" female.

The examination of the cervical spine which is the neck revealed that she was able to bend her head forward. She was able to look up towards the ceiling which we call extension.

She was able to turn her head to either side and to tilt her head to either side within a normal range of movement.

The shoulder motions which included the ability to turn her arm inward and outward as well as to elevate her arm was normal. Her elbow joints and her wrist joint motions were normal.

There's no evidence of any muscle spasm in the muscles of her neck. Her reflexes were found to be physiological. They reacted in a normal fashion.

She complained of trapezius muscle soreness. The trapezius muscle is that muscle

Q Doctor, at this point, you would make a distinction, would you not, between what are termed subjective complaints of the patient and objective findings of injury?

A Yes, that's correct.

Q And could you explain to the jury what are meant by those terms?

A Subjective is that which the patient tells the doctor. Objective findings are those that the doctor is able to see, feel, measure and record.

Q For example, an objective finding regarding Mrs. Taneja would be her weight, is that correct?

A Objective, yes. A hundred seventy pounds, a scale would say a hundred seventy pounds.

Q And you can determine that despite what she would tell you, is that correct?

A Yes, that's correct.

Q And her complaints to you about her pain then are subjective in nature?

A Those are all subjective, yes.

Q Doctor, when you examined Mrs. Taneja's neck or her cervical spine, did you make any objective findings of injury?

A Absolutely none. Her range of motion, the sensory, the motor, all was completely within normal limits, including her grip strength, the ability to squeeze a dynamometer all were equal.

Q Now you mentioned earlier in the history you took that she complained of pain in her upper arms.

A Yes.

Q Did you find any medical reason why she would be experiencing pain in her upper arms?

A I did not.

Q Doctor, you continued your physical examination with the lumbar or low back area,

is that correct?

A That's correct.

Q And could you describe for the jury what that part of the examination consisted of?

A The examination of her low back region was within normal limits. It was also determined that she had some flexibility in her dorsal spine. That's the part from the base of the neck to the waist. The dorsal spine is that part of the anatomy where the ribs are attached to the back. That test to determine whether there's flexibility revealed that she did have that flexibility in that portion of her back.

The straight leg raising sign is done by the patient lying on the examining table and raising her leg without bending her knee and measuring that arc of motion and that measured eighty degrees. That is a normal range of motion.

She had no evidence of any muscle spasm in the back. She had no deficit in sensory perception using a pin prick.

She demonstrated no motor weakness, her reflexes again were normal. She had no

measurable atrophy, her pulses were palpable. She was able to bend forward ninety degrees. Her side bending was within normal limits, and the patient demonstrated difficulty moving on and off the examining table.

Q Doctor, you used the term muscle spasm. Could you explain what that is?

A Sure. Muscle spasm is an involuntary condition that occurs in muscles when injured. The muscles become shorter, and in their shortening are tighter, firmer. That explains a muscle spasm.

Q Would a muscle spasm be an objective finding of injury?

A Yes.

Did you make any findings of muscle spasm when you examined Mrs. Taneja?

A No muscle spasm in the cervical or in the lumbar region.

Q Doctor, did your examination of Mrs. Taneja consist of anything else?

A No, that was principally the examination.

Q And did you review any records of Mrs. Taneja regarding her past history?

A I did.

Q And what records were those, Doctor?
A Principally, the records of her examination by Dr. Corn.
Q Doctor, if Dr. Corn made a finding that her range of motion in her neck to chin, which is I believe called flexion?
A Yes.
Q Had a reduction of ten percent, do you attach any particular significance to that?
A Oh, I think that when he examined her initially, one would expect that she would have that degree of limitation of motion. Ten percent of limitation of motion is somewhere in the neighborhood of four and a half to five degrees, a very minimal functional factor.
Q Can you demonstrate for the jury what that would be like if you were conducting a range of motion test?
A Well, we're dealing with a 5'2", a hundred seventy pound, short, obese individual.

And the body type itself in those individuals is different from a tall, lanky thin person. It represents her ability to move her head forward, and big people don't have a lot of room to move their head forward,

especially men or women who are of that habitat.

Be that as it may, ten percent is such an infinite decimal amount of loss, that it isn't worth talking about.

Q Doctor, do you have an opinion based upon a reasonable degree of medical certainty regarding Mrs. Taneja's condition when you examined her?

A I have an opinion.

Q And Doctor, what is your opinion?

A Oh, I think she sustained some soft tissue injuries at the time that she was involved in her accident.

At the time that I examined her, I found that her physical examination was completely within normal limits.

Q So Doctor, based upon a reasonable degree of medical certainty, and is it your opinion that she completely recovered from any injuries she may have sustained from the accident?

MR. WENDEL: Objection.

A I have an opinion.

Q What is your opinion, Doctor?

A Obviously, when the examination is normal, she

recovered completely.

Q Doctor, normally, how long does a soft tissue injury take to resolve itself?

A That depends upon age and whether or not the patient has any superimposed medical conditions.

In a person of forty-one years of age, I would think that soft tissue injuries should respond reasonably well within a period of six to eight weeks.

Q And Doctor, if Mrs. Taneja was exhibiting upon examination a normal range of motion in both her cervical and lumbar areas within six to eight weeks, would that surprise you?

A It would not.

Q Doctor, do you have an opinion based upon reasonable -- a reasonable degree of medical certainty whether or not Mrs. Taneja suffered any kind of permanent injury as a result of the automobile accident?

A I have an opinion.

Q What is your opinion, Doctor?

A There's obviously no evidence to support any continuing residual manifestation of the injuries.

Q And Doctor, do you have an opinion based upo
a reasonable degree of medical certainty
whether or not Mrs. Taneja requires any
continuing treatment?

A I have an opini

Doctor, what is your opinion?

I think that if she re-injures herself, or in any overuse phenomena, for example, in a gym or a spa, she might have recurring symptoms, but there's no evidence to support any other reason for any residual manifestations of injury.

Q Doctor, in your opinion, would there be any reason for Mrs. Taneja to have whirlpool treatment or join an exercise spa as a result of any injuries she may have sustained in the automobile accident?

A I have an opinion.

Q What is your opinion, Doctor?

A I think all of us benefit from going to any exercise class from a cardiovascular standpoint, and I would say that it would do no harm but there would be no specific indications to send her to a spa for the injuries she sustained in the automobile

accident.

MR. CHULICK: Thank you, Doctor. I have nothing further at this time.

MR. WENDEL: Go off the record.

VIDEO TECHNICIAN: Off the record.

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(Discussion off the record.)

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VIDEO TECHNICIAN: Back on the record.

MR. WENDEL: Doctor, my name is Fred Wendel. I represent Manju and Jay Taneja in this action, as I'm sure you're aware of.

THE WITNESS: Sure.

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

BY MR. WENDEL:

Q When giving your credentials, you had mentioned quite a number of groups and associations to which you belong. What percentage of your professional time is spent actively engaged in those activities with those groups?

A I certainly don't understand your question, but I'll try to answer it.

Those of us who are in orthopedic surgery attend orthopedic meetings, and most of those groups that were mentioned, or some of those that are mentioned are orthopedic organizations to which we go to those meetings when they're held most frequently, sometimes annually, sometimes maybe semi-annually -- I mean bi-annually.

Sometimes we miss a year or two but frequently.

Would you say that you are actively engaged in all of those organizations?

I know I am.

Doctor, does it take anything other than the payment of dues to be involved in one of those organizations?

Those organizations that I mentioned, some of them require dues, a lot of them don't require dues.

One becomes a fellow of the College of Surgeons, one becomes a member of the American Orthopedic Society. There are no dues. We pay for the journals when we get them.

But you don't nave to be actively involved to be a member, do you, Doctor?

A Those -- those societies that I mentioned are principal societies. They're not phony societies.

Q I didn't ask that though, Doctor.

A Therefore, if I mention them, I'm actively engaged in them.

Q Each and every one of them every year?

A Each and every one of them and as I said, perhaps -- and the American Academy of Orthopedic Surgery, I haven't missed a meeting since 1955 and most of the other associations are done annually. If not annually, every second year.

Q Doctor, just for the benefit of the ladies and gentlemen of the jury, isn't it true that you were hired by Mr. Chulick to do this examination?

A I'm never hired by anyone to do anything.

Q You were paid by Mr. Chulick or his office to do this examination, were you nor, Doctor?

A I do get paid for examining and writing the report but I'm not hired.

Q And also for testifying, is that not true?

A That is correct.

Q You were not hired by the Court to do this

function, were you?

A I'm not hired. I hate that word hired. That's a verb that I think you I ought to quit using. I'm not hired. I'm asked to examine and I do examine and do make a report.

Q You were not asked by the court to do this examination, prepare a report and testify, were you, Doctor?

A Not by the court. I'm asked by the attorney who refers a patient to this office, to examine the patient and render a report and if requested, to perform a deposition of this nature. I will comply with that.

Doctor, you're familiar with Dr. Corn, are you not?

Yes.

Is he a respected member of the Orthopedic Society here in this area?

A Dr. Corn is a very excellent doctor.

Q Thank you. Doctor, part of your report that was not read to the members of the jury is the fact that past history as given to you of Mrs. Taneja's medical care is, as you put it, non-contributory.

Is that accurate?

That's correct.

Q What does that mean?

A Means that nothing preceded this event that influenced her medical condition.

Q You mean there was no prior neck problems, no prior back problems?

A Yes.

Q Of which she complained before this collision?

A That is correct.

Q Now as part of your examination, you said, and correct me if I'm wrong, "The patient demonstrated difficulty moving on and off the examining table?"

A Yes.

Q You watch a patient do that, to get on and off to see if there are problems?

A Sure.

Q That's part, in fact, of your examination, isn't it?

A Sure. That's right.

Q The patient, in most cases, would not be aware that they're being observed for examination purposes at that time?

A Sure. That's right.

Q But she had some difficulty, at least

demonstrated difficulty doing that, didn't she?

A Yes. That's correct.

Q Now Doctor, do you have any qualms or disputes with the treatment regimen rendered by Dr. Corn for this type of injury?

A None whatsoever.

Q Thank you. You would find that the treatment rendered by him is reasonable, necessary and appropriate?

A Reasonable. I don't know that I would find it necessary, but the treatment is appropriate if recommended by him.

Q For soft tissue injuries, you treat some of your patients with medication, do you not?

A Absolutely.

Q You recommend exercises for some of your patients, do you not?

A Sure.

Q And also don't you refer patients at times for physical therapy?

A For a limited period, yes.

Q And of those physical therapy treatments, there would be different types of modalities or different types of therapy?

A Certainly.
Q And each type of therapy has its own particular benefit, does it not, Doctor?
A Certainly. That's right.
Q Now Doctor, you saw Manju on one occasion and one occasion only?
A That is correct.
Q How long did your actual physical examination take?
A Well, since you sent somebody to time me, I timed myself as well, and the examination -- history began at 3:07 and ended at 3:18. The physical examination began at 4:44, and ended at 4:53.
Q So the physical examination itself was, if my math is correct, nine minutes?
A That's correct.
Q And there was a history taken totaling eleven minutes?
A Yes. That's correct.
Q So a total of twenty minutes of time spent with Mrs. Taneja?
A Sure. That's right.
Q And Doctor, you saw her, if I'm correct, on August 13th, 1991?

A That's correct.
Q Which is, if my math is correct, about two years, four months after the injury?
A That's right.
Q You didn't see her before that, did you, Doctor?
A I did not.
Q You did not see her on a monthly basis like Dr. Corn had in the beginning?
A I think the statement was made I saw her on one occasion.
Q Okay. You would agree with that then?
A Sure.
Q Doctor, you're not sitting here denying that Mrs. Taneja had an injury of some nature, are you?
A I think you heard me say that the patient sustained soft tissue injuries at the time of her accident.
Q Okay. Doctor, a lack of objective findings at the time of your one examination two years and four months following the collision establishes only that fact that at that time, she had no objective findings. Would you agree with that?

A Yes, certainly.

Q That does not mean that she was never injured though?

A That's correct.

Q Doctor, you'll treat patients of your own based upon subjective complaints of the patient, won't you?

A Absolutely. That's the chief complaint. When the patient comes in, that's what they tell you.

Q Okay. And it's important to you to hear the subjective complaints of a patient?

A Sure. History is important.

Q And certainly you can't ignore those?

A We don't.

Q Now if a patient came in to you with subjective complaints, you'd treat them, would you not?

A When the patient comes to me on the initial examination, yes.

Q Don't you in your treatment and care of your own patients rely upon those subjective complaints to see how the patient's doing?

A Absolutely.

Q Now in soft tissue injuries which we might

call here muscles and non-bony injuries, patients will at times experience flare-ups, or exacerbations, will they not?

A I don't think so, no.

Q Will they have periods of remission or periods where they feel better?

A No. We're not treating a medical problem where there's waxing and waning of symptoms. The symptoms continue to gradually improve and only reoccur with repeated trauma.

Q Are you saying then that your patients, without recurring trauma, will not have good days and bad days?

A Yes. That's what I'm saying. When it's soft tissue injuries, yes.

Q And that they're only going to have a constant continuum of pain till they resolve?

A For soft tissue injuries, that's right.

Q Now when you talk about recurring trauma, would you agree with me, Doctor, that activities of daily living, the things that we do every day, can constitute that kind of trauma?

A Absolutely not.

Q Not?

A That's right.

Q Your patients don't have good days and bad days based upon their activities that they would normally do, do they, Doctor?

A Mr. Wendel, when you go to work every day, y31 don't suffer from the day before from anything that you did on a routine basis.

If you changed a tire, you might have pain the next day but you don't have any lingering pains because of the work that you're doing.

Q Are you then telling me based upon those -- that statement, that doing things that we normally do cannot make a condition worse?

A No. Things that we do every day without adding anything new or superimposed upon our daily activities would not institute or cause any added symptoms.

Q Do you have patients who you have treated for longer than six to eight weeks with soft tissue injuries only?

A I expect my patients of this age who have soft tissue injuries to be well at the end of six or eight weeks.

Q Let me ask it another way if that wasn't understood well.

Do you have patients who you have treated longer than six to eight weeks who have nothing more than soft tissue injuries?

MR. CHULICK: Objection.

A The same answer applies.

MR. WENDEL: I'm not sure I understood your answer.

MR. CHULICK: Objection.

The answer is if a patient forty-one years of age has a soft tissue injury and doesn't respond within six or eight weeks, we'd have to find a reason for that patient having continuing symptoms.

It would not be on the basis of that soft tissue injury.

Q So in other words, you do have patients then that you've treated longer than six to eight weeks with soft tissue injuries coming to you initially, correct?

A That's not what I said.

Q Is that correct though?

A That's not correct. That's not what I said.

Q What do you do with a patient who comes in with a soft tissue injury where their

complaints, their subjective complaints of pain and discomfort last longer than six to eight weeks?

A I ask them to find out from themselves if the soft tissue injury is really bothering them or if they are continuing to harbor reasons for having those symptoms continue on. I can't believe that a forty-one year old person with a soft tissue injury wouldn't be well within that period of time.

Q That's your opinion, Doctor --

A That's my opinion.

Q -- is it not?

A That's right.

Q Are you saying then to some extent then that patients who continue to have pains thereafter, it's in their head?

A No, I didn't say that.

Q Doctor, do you know whether she was on any medication at the time of your examination?

A I asked her if she had any medicines. That's part of the past history, and she gave me no -- she said to me as a past history that she had a motor vehicle accident -- no motor vehicle accident, that she had a cholecystectomy in

1983, that she is not taking any medicines but she did have Naprosyn and that she no longer is taking physical therapy and that she does take some medicines for pain. That was the past history that she gave.

Q So in other words, she does take medication for pain?

A Sure.

Q Do you know whether she was taking medication for pain that day?

A I don't know that.

Q You didn't ask her?

A It wouldn't be important for me to know that.

Q I see. Doctor, the fact that a patient, including one of your own, would demonstrate no objective signs to you during the course of an examination, that would not in itself mean that the patient was not experiencing pain or discomfort, would it?

A No. A patient could have pain and have a normal examination.

Q You'd give pain medication to your patients without seeing objective signs if they had subjective complaints of pain?

A No way, no way.

Q So you feel it's important for a doctor to make sure that there's some injury or some problem before they give medication, would you not?

A Absolutely correct.

Q You're aware of the fact that Dr. Corn gave Mrs. Taneja medication throughout the course of his care and treatment?

A Sure. I'm aware of that.

Q Doctor, would an injury to a patient's soft tissues make them more susceptible to re-injury due to the nature of the healing process of the soft tissue injury?

A Soft tissue injuries, no. Ligamentous injuries, yes.

Q Do you have an opinion as to whether there was any ligamentous injury involved in this particular matter?

A I have no reason to believe that there was any ligamentous injuries.

Q Would sprained muscles result in muscles that are less elastic than non-injured muscles?

A There is no such thing as a sprained muscle.

Q How about a strained muscle?

A There is no such thing as a strained muscle.

Q There is no such thing as a sprain or strain of a muscle?

A f a muscle, no.

Q Doctor, if Manju Taneja had presented herself you at the date of your examination wit the history as given to you, with the past objective signs but without objective signs at the time of your examination, but with the subjective complaints that she did have, would you accept her as a patient?

A At the time that she was injured?

Q No, at the time that you saw her in August of '91.

A Would I accept her as a patient?

Q Yeah.

A If she came to me with complaints of her nature, the answer is yes, I would accept her as a patient but I wouldn't necessarily provide her with any medication.

Q You wouldn't reject her then?

A I don't reject no one that comes in this office.

Q Doctor, what does the term significant mean to you?

A The same thing it means to everybody else.

Something over and above the average.

Q It means that there's something there, not an absence, correct?

A That's correct.

Q It's a matter of degree, correct?

A Sure. That's right.

Q But there is something there as opposed to nothing being there?

A Sure. That's right.

Q In your conclusion in your report states, if I read it correctly, the first six words, "On the date of this examination", correct, Doctor?

A What page are you looking at?

Q The last page, number three.

A Sure. Yes, yes.

Q Doctor, do you have any evidence anywhere that Manju Taneja had this overuse phenomena that you talk about?

A I didn't make the diagnosis. I said in that, if you read the complete sentence and I'll take the liberty to read that sentence, "On the date of this examination -- ", which was the 13 of August, 1991, "-- the patient does not demonstrate any significant residual

manifestations of injury either to the cervical or to the lumbar spine;

"It is conceivable that with further insult or with repetitive overuse phenomena, that the patient may well experience recurrent symptoms of muscle and ligamentous strains in the lumbar and cervical spine. One would anticipate that symptoms of this nature would respond favorably with the benefit of time, the medications prescribed and the natural as well as the physical therapy that was utilize in her treatment."

Q Doctor, do you have any evidence of further insult in Mrs. Taneja's case?

A That's not what that sentence says.

Q I'm asking you --

A The sentence only says that this patient may get symptoms similar to that which she experienced after her automobile accident, if she has another automobile accident or an insult of some nature, or if she does something over and above her normal activities of daily living.

Q Let me ask my question again.

Do you have any evidence in her case that

there was further insult following the collision in April of 1989?

A None whatsoever.

Q Thank you. Do you have any evidence that there's a repetitive overuse phenomenon in Mrs. Taneja's case following the automobile collision in April of 1989?

A Obviously, I can't answer that because I don't know whether this patient decided to wash her floors, to scrub her bathroom down, to paint her house, to change a tire, to shovel snow, to dig in her garden. Those are overuse situations.

I have no reason to know that specifically so I can't answer that question.

Q You didn't ask her?

A There is no reason for my asking that.

Q But you didn't ask her, Doctor, correct?

A There is no reason for my asking that.

Q Is it correct, Doctor, you did not, in fact, ask her?

A There is no reason for my asking that. We can go on now till about 8:00 tonight. I'm going to answer it the same way. There is no reason in the world for my asking that question.

Q Doctor, isn't part of your function here to make a determination as to a cause of continuing problems of which she complained?

A Not mine, no.

Q That's not what you consider your function to be here?

A That has nothing to do with my function. My function was to examine the patient and make a report of my physical examination on the date that I examined her.

Q However complete it might be, correct?

A It was complete.

Q Doctor, what does recurrent mean?

A Something that happens over and over again.

Q Or repeat, reappear?

A Yes, sure.

MR. WENDEL: I have nothing further.

MR. CHULICK: Doctor --

THE WITNESS: I need to make one qualified statement. I said before --

MR. WENDEL: Objection.

THE WITNESS: -- that there was no you might like this so you might not object -- that I said that there was no

evidence of any ligamentous damage.

I must retract that and state that at the time that her soft tissue injury occurred, she may well have had Ligamentous injury of the cervical and/or the lumbar spine.

I don't want that to be a mistaken answer, okay?

REDIRECT EXAMINATION OF MALCOLM A. BRAHMS, M.D.

BY MR. CHULICK:

Q Doctor, you -- or you answered Mr. Wendel's question earlier stating that there is no such thing as a muscle strain or muscle sprain.

A Sure.

Q Can you explain to the jury what happens to a muscle when it's injured in a phenomenon such as an automobile accident?

A There is no such thing as a muscle strain. It's a common colloquial way of explaining symptoms of this nature, but strains and sprains occur to ligamentous tissues, not to muscle tissues.

Muscles are damaged by a blow, a contusion, or a laceration or a loss of blood supply. But there is no strain to a muscle.

Muscle -- the muscle tenderness junction is the term used for strains and sprains, not muscle tissue.

Q Doctor, is there any medical reason which would preclude such an injury from healing within six to eight weeks?

A None whatsoever. Soft tissue in nature. A significant ligament injury, for example, of the knee, perhaps even of the ankle, may take a longer time but not a soft tissue muscle injury.

Q Doctor, you mentioned earlier that if after six to eight weeks, the patient continued to complain of subjective complaints, that there would have to be another reason for that.

A Sure.

Q And the physician then should look elsewhere to find the reason?

A Or to find out whether or not there's been another superimposed injury or a phenomenon which caused muscle pain.

Q Is that the time when a doctor may decide to use a test like an EMG, an MRI or a CT scan?

A No. I think that the CT scan or the MRI would depend on more localizing neurological reasons

to obtain that kind of an exam.

After all, an MRI is about eight hundred dollars, a CT scan is about four hundred dollars.

So the use of those as a diagnostic tool would need better indications.

Q In Mrs. Taneja's case, as far as you saw, would there be any indication for that type of test?

A I think Dr. Corn is an astute orthopedic surgeon.

Had he thought that it was a necessary consideration, he would have ordered a CT scan or an MRI.

Q Doctor, you mentioned that as one of the modalities of treatment for a person who complained of soft tissue injuries that you would recommend a limited amount of physical therapy?

A Sure.

3 in your opinion, how would *you* define a limited amount of physical therapy?

A Well, it's my experience that a patient will receive three weeks of physical therapy for any acute injury, and the patient needs to be

re-evaluated thereafter to see wnether or not more therapy is indicated.

Q Should a patient continue on and off over tne course of approximately a year and a half to two years with physical therapy?

MR. WENDEL: Objection.

A I think that that's excessive, unnecessary and certainly not indicated.

Q Doctor, in conducting an orthopedic examination, are there any standards or criteria the profession follows when you conduct one of these examinations?

A I don't understand your question.

Q In other words, are there certain criteria? Is there certain things that you do as an orthopedic surgeon to conduct a physical examination of a patient in order to formulate an opinion regarding that patient's condition?

A Well, I think it's like being a housewife. Everybody doesn't cook the same and everybody doesn't clean the same. I think all of us have our own methods of examination that we've used over a period of years, and I can't tell you how another orthopedic surgeon would do it but I assume it would be pretty similar.

MR. CHULICK: Doctor, I have nothing further at this time. Thank you.

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

BY MR. WENDEL:

Q Doctor, you were telling us that there's no such thing as a sprain or a strain of a muscle, that a muscle can be injured by a blow or a contusion, a laceration or loss of a blood supply?

A Sure.

Q Can an overstretch of a muscle result in a laceration or the loss of blood supply?

A Not a loss of blood supply, no; can cause disruption of muscle fibers, yes.

Q So I mean if someone's neck is snapped or their back is snapped too far forward and back, that could result in a tearing of the muscle fibers, couldn't it?

A Absolutely not.

Q No. Doctor, you're saying then that if after six to eight weeks, a patient of forty-one years continues to have complaints and the initial diagnosis is that of a soft tissue or a muscle injury, it must be some other injury.

Did I understand you correctly to say that?

A There must be a reason. It doesn't have to be another injury but there has to be a reason and that reason might well be not only injury but metabolic as well.

Q Could it be a physical reason?

A If there's re-injury, yes.

Q Without re-injury?

A Not that I would --

Q Could it be something that possibly was not recognized right away by the doctor?

A Like what?

Q I don't know.

A Well, if you can tell that answer yes or no. I don't know what you're intimating.

Q Unfortunately, I'm not a doctor.

A I appreciate that in our discussion.

Q Yeah, and I'm asking you from your medical background if there's anything that could be of a physiologic nature that could cause continued problems after six to eight weeks.

A Well, if we found something on a CT scan or an MRI that would explain that, the answer is yes. If not, I wouldn't know.

Q Now Doctor, here in this particular matter

again, I believe *you* would agree that there was no evidence of any prior injury to the neck or back of Manju Taneja?

MR. CHULICK: Objection.

A She did not tell me of any prior injury.

Q And you are not aware of any either, are you, Doctor?

MR. CHULICK: Objection.

A I have no idea that there was any other injury.

Q You have been provided no information by Mr. Chulick or anyone of any prior injury to Mrs. Taneja, correct?

MR. CHULICK: Objection.

A I have not.

Q Doctor, you said that orthopedic surgeons have their own methods of examination --

A Sure.

Q -- of a patient?

A Sure.

Q Would you agree that orthopedists also may have differences in the way in which they treat a patient?

Sure.

That it's pretty much individual, correct?

A Sure.

Q And that all orthopedic surgeons looking at the patient wouldn't necessarily agree on the patient's condition. Would you agree with that?

A Absolutely.

Q And that wouldn't make one particularly wrong if they treated it differently than another?

A No, I find no reason to say it's wrong.

Q Doctor, how would a muscle be injured in a flexion/extension type trauma if a head is thrown forward and then back?

A I think that would be ligamentous injury and not muscle injury.

Q So if there was a snapping of the neck forward and backward, that would be a ligamentous injury?

A Sure, right.

Q Is the healing of a ligament of any longer duration than the healing of a muscle?

A Yes, but I think that within that period of frame work of six to eight weeks would be adequate.

Q Will physical therapy treat ligamentous injuries?

A Sure.

Q And it would be appropriate to submit a patient to physical therapy to treat a ligamentous injury, wouldn't it?

A For a recommended period of time, yes. Not an excessive amount of time.

MR. WENDEL: Nothing further. Thank you.

MR. CECLICK: I have nothing further.

THE WITNESS: I waive the right to review and sign, okay?

(Videotaped deposition concluded. Signature waived.)

STATE OF OHIO, )
) SS: CERTIFICATE
COUNTY OF CUYAHOGA. )

I, Ellen A. Hancik, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-named MALCOLM A. BRAHMS, M.D., was by me before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above set forth was reduced to writing by me by means of stenotype, and was later transcribed into typewriting under my direction; that the reading and signing of the deposition by the witness were expressly waived by stipulation of counsel and the witness; that the said deposition was taken pursuant to stipulations of counsel herein contained, and was completed without adjournment; that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I hereunto set my hand and seal of office, at Cleveland, Ohio, this 23rd day of September, A.D. 1991.

Ellen A. Hancik
Ellen A. Hancik, Notary Public
My commission expires: 2/10/93.