IN THE COURT OF COMMON PLEAS

OF ERIE COUNTY, OHIO

CANDACE J. HATCH, et al.,

Plaintiffs,

vs. Case No.

LESTER J. TIMAR, et al., 91-CV-477

Defendants.

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Videotape deposition of DENNIS B. BROOKS, M.D., a Witness herein, called by the Defendant Timar for examination under the statute, taken before me, Wendy L. Klauss, a Notary Public in and for the State of Ohio, pursuant to notice and stipulations, at the offices of Dennis B. Brooks, M.D., 26900 Cedar Road, Beachwood, Ohio, on Wednesday, February 14, 1996, at 3:44 o'clock p.m.

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APPEARANCES:

On behalf of the Plaintiffs:

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On behalf of the Defendant Timar:

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On behalf of the Defendant Stout:

Savoy, Bilancini,

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ALSO PRESENT:

Kurt Henschel, Video Technician

MR. HENSCHEL: The time is 3:44, we are on the record. Would the notary, please swear in the witness;

DENNIS B. BROOKS, M.D., of lawful age, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF DENNIS B. BROOKS, M.D.

BY MR. PY:

Q. Good afternoon, doctor. Would you state your name for the record, please?

A. Good afternoon. My name is Dennis Bruce Brooks.

Q. And what is your profession?

A. I'm an orthopedic surgeon.

Q. What is your professional address?

A. 26900 Cedar Road in Beachwood, Ohio.

Q. And how long have you been a physician?

A. I have been a physician since graduating from medical school in 1963, 33 years.

Q. Can you tell me and the ladies and gentlemen of the jury your educational

background?

A. Yes. I graduated from Harvard University in 1959 with a Bachelor of Arts degree. I then attended Western Reserve University School of Medicine and graduated from there with a degree of Doctor of Medicine in 1963.

Following that I served as a rotating intern at the Mt. Sinai Hospital of Cleveland for one year, and then as a general surgery resident also at Mt. Sinai for one year. My third and fourth years of postgraduate training was as an orthopedic resident at Mt. Sinai Hospital.

During my fifth postgraduate year, I was a National Institute of Health research associate in the biomechanics laboratory of Case Western Reserve University.

And my sixth and final year of postgraduate training was in children's orthopedics at the Indiana University Medical Center.

Q. Have you had -- you have been licensed in the State of Ohio; is that correct?

A. Yes.

Q. And you indicated that you are an

orthopedic physician?

A. Yes.

Q. And have you been certified in that area?

A. Yes.

Q. And can you tell the ladies and gentlemen of the jury what that is.. Is that something other than licensure?

A. Yes. Board certification is very different from state licensure. In order to become board certified, I had to complete a postgraduate training program much like I outlined, I had to practice orthopedic surgery to the exclusion of other branches of medicine for one year in one location, I had to submit letters of recommendation from my peers, and then had to take an examination which in my case was a full day written examination and a half day oral examination.

Q. That examination is given by whom?

A. That examination is given by the American Board of Orthopedic Surgery.

Q. And did you pass?

A. Yes.

Q. What is orthopedics?

which allow me to admit patients to a particular hospital, to use the facilities of that hospital, if you will.

Q. And what hospital or hospitals do you have staff privileges at?

A. Mt. Sinai Medical Center of Cleveland.

Q. With respect to associations or societies, are you a member of any?

A. Yes.

Q. Can you give us a representative sampling of the ones that you belong to?

A. Yes. I'm a member of The American Academy of Orthopedic Surgeons, The International Society of Orthopedics and Traumatology, The Clinical Orthopedic Society and the state and local orthopedic societies.

Q. Have you had any teaching in your background?

A. Yes.

Q. And what teaching have you done?

A. I'm presently an assistant clinical professor of orthopedic surgery at Case Western Reserve University, I'm active in the orthopedic residency teaching program at the Mt. Sinai Medical Center, and I lecture in the field of biomechanics.

Q. Sometime ago you mentioned your certification process and that you are certified. Have you recently had to be recertified?

A. Yes.

Q. And will you explain to me again what is meant by recertification?

A. Recertification merely means going through the process again. In order to become recertified, I had to take another examination and then had to submit what seemed like a ton of paperwork that attested to my practice as an orthopedic surgeon since I returned to the Cleveland area in 1971.

Q. Was there some other reason for you to be recertified?

A. One of the other reasons was that I am an examiner for the American Board of Orthopedic Surgery, and although my particular certificate was not time limited, because I'm an examiner, I was asked to take the certification examination so that I could give that same examination to candidates.

Q. Dr. Brooks, I'm not sure I quite understand. You are an examiner of what?

A. I apologize. I'm not being very clear.

I have the privilege of being an examiner for The American Board of Orthopedic Surgery.

Q. And are these candidates to become board certified?

A. Yes. If somebody wants to be certified by the American Board of Orthopedic Surgery, they have to pass two examinations: One is a written examination and one is an oral examination, and I help to conduct the oral examination.

Q. I see. Have you had an opportunity to do consults for other fellow physicians?

A. Yes.

Q. And what is a consult?

A. A consult, or a consultation really, is an examination where a patient is referred to me by another physician, and both the patient and the physician want my opinion as to what the nature of their present problem is and what the cause of that problem might be and what possible suggestions that I have for treating that particular problem.

Q. At my request, did you perform an independent medical examination on a Mrs. Hatch?

A. Yes.

Q. What is an IME or independent medical examination?

A. An independent medical examination is an examination that is performed by a physician who has not treated the individual previously, who has no intention of treating the patient in the future, and as I understand my role in performing an independent medical evaluation, it is to determine what injuries, if any, the individual sustained as a result of a specific event and what residuals of those injuries they have at the time I examine them.:

Q. When you say residuals, what do you mean?

A. What is left over.

Q. Okay. Are there any similarities in your way of thinking to a consultation and an IME?

A. Yes.

Q. And what are those similarities?

A. Well, the similarities are that there are certain consultations where I will only see a patient on a onetime basis, as I do during an independent medical examination, obtain a history, which I do for both, perform a physical examination, review records if they are available, and formulate an opinion.

Q. With respect to the procedure that you have set out for yourself when conducting a consult or an IME, do you have a standard procedure that you follow?

A. Yes.

Q. And what is that procedure?

A. I introduce myself to the patient, obtain the patient's history, examine that part of the body about which they are making complaints, order radiographs of the part of the body about which they are complaining and review any records that might be available, and then write a letter to either the referring doctor, in terms of a consultation, or the referring attorney, in terms of an independent medical examination.

Q. With respect to your involvement wit Mrs. Hatch, did you write such a letter?

A. Yes.

Q. And its date is?

A. December -- I'm sorry, November 16, 1993.

Q. With respect to the date of the IME, what was its date?

A. November 16, 1993.

Q. For the ladies and gentlemen of the jury, would you outline for them the records that you reviewed in preparation of that IME?

A. None.

Q. Did you review any records after your physical examination of Mrs. Hatch?

A. Yes.

Q. And would you outline for the jury what records you did have an opportunity to review after your examination?

A. The emergency room record of St. Joseph's Hospital for December 20, 1989; Dr. Eren's office records for the examination of December 27, 1989 and an office record entry for January 15, 1990; Dr. Patterson's office records for the period between January 26th, 1990 and October 22, 1990; Dr. Elghazawi's records for the period between August 24, 1990 and April 30, 1991; Dr. Elghazawi's letters of February 20, 1991 and March 4, 1991; the MRI of the cervical spine that was obtained on September 14, 1990.

Q. Doctor, in response to one of my earlier questions, you indicated that you did not review any records prior to actually meeting Mrs. Hatch and conducting a physical examination.

What is your thinking or reasoning for that?

A My reasoning for that is to treat Mrs. Hatch as I do any other patient, go in and obtain a history from her, examine her, and then review her records so that when I go in, I have, if you will, an open mind. I listen to her story, she tells me what her problems are and then I review her records.

Q. What history did Mrs. Hatch give to you?

A. She told me that she had been involved in an accident on approximately December 19, 1989 when she was driving an automobile which was moving when it was involved in an accident with the second car. She indicated that the left front end and driver's side of her car was damaged.

She was wearing seat belts at the time of accident, and went, as she described it, forward and to the left. I jerked and flew back, she said. She told me that she struck her head on the driver's side door but was not rendered unconscious.

Following the accident, her neck and the area from, as she described it, just below

the scapula and up was stiff.

The following day she was examined in the emergency room at St. Joseph's Hospital. She was released with a prescription for medication.

Within two days of the accident, she was examined by Dr. Blanford at St. Joseph's Hospital. He suggested that she be evaluated by her family physician.

She was then examined by Dr. Eren who suggested that she continue with medication. Mrs. Hatch told me that she contacted Dr. Eren again and that she seek treatment by either what she referred to as an ortho or neuro man.

Mrs. Hatch spoke to Dr. Blanford, and Dr. Blanford referred her to Dr. Patterson.

She went on to tell me that in approximately January of **1990**, she did come under the care of Dr. Patterson. **He** suggested, quote, a couple **of** different treatments and physical therapy, sleep drugs and muscle relaxants, unquote. She was reexamined by Dr. Patterson at varying intervals during the remainder of the year. He also suggested jogging and weight loss.

She went on **to** tell me that during

the latter part of 1990, she was evaluated by Dr. Elghazawi at the Cleveland Clinic. He obtained an MRI, which she indicated to me revealed mostly soft tissue damage.

She received treatment from Dr. Patterson during the early part of 1991. During the remainder of 1991, as well as during 1992, she continued under Dr. Elghazawi's care. During 1993, she was examined by Dr. Elghazawi approximately every month.

So that concluded the first part of her history: What she told me had happened between the time of her accident and December of 1989 and the time that I saw her in November of 1994.

Q. You say that was the first part of her history. Is there a second part?

A. Yes.

Q. And what would that be, doctor?

A. I asked her what her complaints were at the time that I examined her.

Q. And what were those complaints?

A. She told me, quote, I go to work every day regardless. I don't do housework. She went on to explain that she had symptoms

referable to her neck and upper back. She experienced what she described as stiffness, pain and decreased joint mobility. She told me the stiffness and pain were present all the time. They were most pronounced in the morning and following cessation of activity.

Her symptoms were decreased by exercising and by taking medication. She alternated Toradol with Motrin. She was presently taking Toradol and had taken two on the day that I examined her.

She also noted a decrease in her activities and indicated, quote, I don't do them as well or as long. For example, while holding a retractor in surgery with her right hand, she told me, she did not have the strength which she had had previously. She would also develop pain in the superior aspect of her right shoulder. She had difficulty with bending and lifting.

Previously she was able to lift up a lamp, dust under the lamp and replace the lamp. She told me that at the time that I examined her, she would now have to lift the lamp with both hands.

She had no associated arm radiation.

She told me that when she laughed, she would experience pain in the back of her neck which radiated into her head.

And so that completed the second part of the history.

Q. Given the presenting complaints that she gave you, then what did you do next?

A. I inquired about her past medical history.

Q. And what did you learn?

A. I learned that she had not had any symptoms referable to her neck before --

Q. Excuse me.. When you say past medical, you mean the pre the December 89 accident?

A. Yes.

Q. Okay.

A. Sorry. She had not had any symptoms referable to her neck before the December, 89 accident. She had been involved in an accident approximately 25 years before that accident when she was struck from behind. She told me that she did not sustain any injuries.

After the December, 1989 accident, she was involved in an accident on approximately

October 24, 1993.

Q. Was that just a month before you happened to examine her?

A. Yes.

Q. Okay.

A. At that time she was driving an automobile which was moving. A second vehicle struck the back driver's side door. She indicated, quote, I really didn't do too much of anything. She told me she did not experience any increasing pain in her upper back. She talked to Dr. Elghazawi and was reexamined by him approximately four to five days after the October 24th accident.

She indicated that the most recent accident, the one in October of 93, quote, caused some low back pain, unquote.

And that completed her history.

Q. Okay. Is it fair to say that her presenting complaints were of the neck and upper back areas?

A. Yes.

Q. What did you do next then in light of those presenting complaints?

A. I examined her neck, upper back and

upper extremities,.

Q. And what did your examination -- what is the purpose of a physical examination?

A. I'm sorry. Sometimes the easiest questions, are. the hardest to answer.

The purpose of a physical examination is to attempt to determine the basis for the patient's symptoms, to find if there are any things on physical examination that substantiate their symptoms or explain their symptoms.

Q. You are familiar, I'm sure, with objective signs and subjective symptoms?

A. Yes.

Q. And can you tell the ladies and gentlemen the difference between objective and subjective?

A. Yes. Something that is objective, an objective finding, is something that I can observe or I can measure without the input of the subject. A subjective symptom is what the patient complains of in the history portion, and a subjective finding is a finding that necessitates their input.

To say it more simply: You are wearing a blue shirt. That's an objective

finding. I don't know if your collar is too tight or not. If it is, you would have to tell me. So that would be a subjective complaint.

Q. I see.

A. Now, if I asked you to move your head back and forth, that would be a subjective finding, because you are doing it, I'm not doing it.

Q. With respect to the physical examination then that you embarked on, can you tell us what your findings were, what you did and what your findings were?

A. Yes. I began the examination with observation, and I noticed that Mrs. Hatch was a female of approximately her stated age, who was of short stature and considerably overweight. She told me that her height was 5 feet 4 inches and her weight approximately 215 pounds. I noted that she got out of the chair without difficulty, that she walked without limping, and that she was able to climb onto and off of the examining table in a normal fashion.

Q. What do you mean by that?

A. I don't understand your question.

Q. That she was able to get out of a

chair and climb onto the examining table in a normal fashion, what did you mean by that?

A. I said that she was able to get out of the chair without difficulty. She didn't need the assistance of her hands.. She just stood up in a normal fashion.

I'm tall, I'm 6 foot 2. My examining tables are higher than'the normal examining table. In order to get onto the examining table and come down from the examining table, she had to step on to a step stool, and then to get onto the examining table, reverse the process. She was able to do that normally.

So those are general overall observations of normal muscle strength, normal mobility.

Q. Then after she was on the examining table, what did your examination consist of?

A. When she was on the examining table, I performed a neurological examination of the upper extremities, and noted that she had normal deep tendon reflexes, motor power and sensory perception.

Q. Can you explain to us what deep tendon reflexes are?

A. Yes. The deep tendon reflexes are the things that we elicit with the little red rubber hammer, your biceps jerks. I didn't test them in this particular person because it wasn't relevant, but I think you all know what a knee jerk is or a ankle jerk.

Q. Then you mentioned something about muscle testing?

A. Yes.

Q. What was that?

A. I tested each of the muscle groups in her arms, her upper extremities, and found that the strength of those groups was normal.

Q. Earlier I believe in the history you indicated that Mrs. Hatch told you that she had some difficulty and gave an example, at least, of having difficulty holding a retractor in surgery; is that correct?

A. That's what she told me, yes.

Q. As a consequence of that, did you pay particular attention to her strength of her right arm and grip?

A. I did test her strength in both arms and the grip in both upper extremities, because that's part of a normal examination or a routine

examination. She did have complaints referable to that area, and her strength was normal.

Q. Staying with the shoulders then at this moment, did you find any other findings related to the shoulders?

A. No. She had no evidence of atrophy, no evidence of deformity, no evidence of tenderness, and a complete range of motion.

Q. Now, by complete range of motion, what do you mean?

A. Gee, I thought I was going to be able to shorten something. Okay.

She had normal abduction, which is the ability to raise her arm from the side, forward flexion, which is raising it this way, external rotation, which is turning it out that way, horizontal flexion, which is bringing your arm in front, and internal rotation, which was symmetrical.

Q. And Mrs. Hatch was able to do that without any problems?

A. Yes.

Q. Did your examination include anything else with respect to the shoulders?

A. No.

Q. What was the next area that you examined?

A. Well, there were other areas I examined, not in the particular order that we are discussing.

The first area that I examined was her cervical spine, her neck.

Q. And what did you find with respect to the cervical spine?

A. I noted that she had normal curvature of her cervical spine, that there was no evidence of spasm, there were no areas of localized tenderness with palpation of the cervical spine, pericervical muscles or trapezius muscles. There was normal cervical flexion and extension.

Before she performed the right lateral rotation, she rotated her body. She then performed right lateral rotation and left lateral rotation completely.

There was approximately 25 percent reduction in lateral bending bilaterally.

Q. You mentioned some terms there in discussing the cervical spine of spasm and tenderness. Is there a distinction between those two terms?

A. Yes.

Q. And what is spasm, what ,is tenderness, and what is the distinction?

A. Spasm is a sustained contraction of a muscle, much like a charley horse. Tenderness is a subjective complaint that the patient indicates when I touch her, palpate a particular area, they will tell me that it hurts. That is translated into tenderness.

So there is a great distinction between the two.

Q. So in an examination of the cervical spine, you found no spasm or tenderness; is that correct?

A. Correct.

Q. Okay. And then you mentioned something about the lordotic curvature of the cervical spine, correct?

A. Yes.

Q. Is that something that can be affected by trauma?

A. Yes.

Q. What was the finding with respect to Mrs. Hatch's lordotic curvature?

A. It was normal.

Q. How do you determine if the lordotic curvature is normal?

A. By looking.

Q. Okay. Is there any other way of doing it?

A. I don't have a lordotic measurer. You know, after 26 years in practice, you look at somebody's neck, and, you know, the curvature is either normal, there is a normal C-shaped configuration, or it is flattened or it is reversed.

Q. Would any adverse effect on the lordotic curvature be shown on x-rays?

A. There are things that cause changes in the cervical lordosis. Anything from patient's voluntary or involuntary positioning to fracture dislocations.

Q. Did you take any x-rays or have x-rays taken of the cervical spine?

A. Yes.

Q. In the history that you had, was there any indication that x-rays of the cervical spine had been taken from the time of the December, 89 accident until the time she saw you?

A. No.

Q. When are x-rays recommended?

A. They are recommended when -- I'm not trying to be a wise guy, but they are recommended when the patient's symptoms and patient's history warrant it.

For example, if someone comes into emergency room and they have been involved in a traumatic event, the emergency room physician will obtain a history as to the degree of trauma. Certainly if there has been significant trauma, the patient nowadays is brought in on a board with their head immobilized, and one of the first things they do is obtain screening. radiographs of the cervical spine.

If on the other hand the patient walks into the emergency room on the day after an accident and has minimal, if any, complaints referable to a certain part of their body and there are no physical findings, then radiographs aren't necessary.

Q. With respect to the pericervical area, where is that?

A. On either side of the cervical spine.

Q. And did you examine that area of Mrs.

Hatch?

A. Yes.

Q. And the findings of that examination?

A. There was no tenderness with palpation of those areas, and there was no spasm.

Q. With respect to the trapezius area, where is that located?

A. The trapezius is the large muscle that extends from the side of your neck over the top of your shoulder down to the area adjacent to your scapula. It is much like a shawl.

Q. And what were your findings with respect to your physical examination of that area?

A. It was normal.

Q. By that, there is no tenderness nor spasm?

A. That's correct.

Q. You mentioned your findings with respect to the cervical range of motion.

A. Yes.

Q. What would be the significance, if any, of the limitation that you noted in Mrs. Hatch's ability to bend her neck?

A. She demonstrated approximately 25 percent reduction in lateral bending bilaterally.

Generally no one finding is of such great significance that you can make a diagnosis. Obviously if someone comes in and tells me they have fallen down and they'have a deformed forearm and I can see that they have a fracture, I don't need to do much else besides that, but we are talking about range of motion.

So of all the planes in which she could move her neck, ther'e was a minor degree of limitation of bending. Given the lack of spasm, the lack of tenderness, the normal motion in the other planes and the normal radiographs, that finding was of no significance.

Q. Could you find any objective signs to substantiate why she could not bend her neck in a normal fashion?

A. No.

Q. Did you examine another area of Mrs. Hatch's spine?

A. Yes, her thoracic spine or her mid back.

Q. And what were your findings with

respect to that, doctor?

A. There was no evidence of deformity or spasm, there was tenderness with the lightest of palpation in the upper and lower thoracic spine. There was no parascapular tenderness, and really that's all that you can do with respect to the thoracic spine.

Q. Earlier you indicated that tenderness is a subjective finding.

A. Yes.

Q. Were you able to find any objective explanation for this subjective complaint of tenderness when you palpated Mrs. Hatch's thoracic spine?

A. No.

Q. And is there any significance to this subjective complaint as it would affect Mrs. Hatch?

A. Well, actually in Mrs. Hatch's case, the complaints of tenderness with the lightest of palpation represents what is referred to as an inappropriate response.

Q. What do you mean by that?

A. If someone has an injury and that injury causes some structural damage to a muscle,

that muscle is going to be sore, or the individual is going to complaint of tenderness with palpation, but that muscle is deep. That muscle, especially in someone of Mrs. Hatch's body habitus, is below the skin, below the subcutaneous or fatty layer, and below the fascia or the covering over the muscle.

Merely stroking the skin, which is the lightest of palpation, you can't palpate any lighter than that, should not cause any subjective complaints of pain.

So that's an 'inappropriate 'response. When I lightly palpated her thoracic spine, she told me that it hurt.

Q. Doctor, with respect to x-rays, we already established that you had some cervical x-rays done. In your review of the records, was there any indication of x-rays being done of the cervical or thoracic areas?

A. No.

Q. You did not examine the lumbar spine, did you?

A. That's correct, I did not.

Q. And is there any particular reason why, doctor?

A. Yes. Mrs. Hatch had no complaints referable to her lumbar spine.

Q. In the history that Mrs. Hatch gave you, she indicated that she bumped her head, did she?

A. Yes.

Q. The day of the accident was December the 19th; Was it the following day that she went to the emergency room?

A. Yes.

Q. And have you had an opportunity to review the emergency room record?

A. Yes.

Q. Was there any indication on that record that Mrs. Hatch had an objective finding consistent with a bump on the head?

A. There was not.

Q. With respect to the emergency room record. then, what was reflected thereon as to Mrs. Hatch's appearance?

A. She appeared in no acute distress.

Q. And what does acute mean?

A. Like right now as opposed to or of sudden onset or recent onset. As opposed to somebody who appears chronically ill, like they

have been that way for a long time.

Q. The neck was examined by the emergency room staff; was it not?

A. Yes.

Q. And the term is in the record neck is 'supple.' What does that mean?

A. It means that there was no spasm and that it moved freely.

Q. Was any tenderness noted of the neck?

A. No.

Q. Any spasm noted of the neck or thoracic areas?

A. No.

Q. There was a diagnosis made by the emergency room staff; is that correct?

A. Yes.

Q. And what was that diagnosis?

A. Thoracic back strain.

Q. What would you expect to be the normal course for a strain of that nature?

A. Well, given the emergency room record at that time and given my review of Dr. Eren's records, I would say four to six weeks.

Q. And you say Dr. Eren. In your review

of his records, what about those records would -- did you find of importance?

A. He examined Mrs. Hatch eight days after the accident, and by that time, she was, quote, better now.' She had mild/spine back tenderness. His impression was generalized 'aching secondary to a motor vehicle accident.

He prescribed some very mild analgesics, pain medication, did not order any radiographs, and then on January 15 was when he received the phone call that she had, quote, severe back spasms.

Q. In his examination of her though in December, did he find any spasm?

A. No.

Q. There is a notation on his records, the capital letters F R O M. What is that acronym for?

A. That stands for full range of motion. It means that a joint moves freely.

Q. Did Mrs. Hatch report to either the emergency room doctors or Dr. Eren any low back involvement as a consequence of the December, 19, 1989 accident?

A. No.

Q. With respect to Dr. Patterson's records, have you had an opportunity to review them also?

A. Yes.

Q. And in the history given to Dr. Patterson, was there any neck symptoms related?

A. When she saw Dr. Patterson five weeks after the accident, she did not have any neck symptoms per se.

Q. Ultimately was Mrs. Hatch discharged by Dr. Patterson?

A. Ultimately, yes.

Q. And at what time was that?

A. He released her from his treatment on October 22, 1990, which was approximately nine months after he started treating her.

Q. And by the time that Mrs. Hatch was discharged by Dr. Patterson, had she shown improvement?

A. Yes, she had.

Q. With respect to the physical examination at that time, what did it show as to the range of motion of the cervical thoracic and lumbar spines?

A. She had, quote, a good range of

motion.

Q. Doctor, what does the term prognosis mean?

A. That's our best guesstimate of what is going to occur in the future.

Q. With respect to Dr. Patterson's records, do they reflect a prognosis of good?

A. Yes.

MR. MURRAY: Objection. Move to strike. Hearsay.

Q. At that time, doctor, was there any reason to foresee significant sequela in the future for Mrs. Hatch?

A. No.

Q. What is sequela?

MR. MURRAY: Objection. Again move to strike.

A. Sequela is what results from, what is left over or what results from.

Q. Okay. I believe sometime ago you mentioned that there was an MRI study done?

A. You keep saying sometime ago. Has this been going on that long?

Q. I'm sorry. I'm sorry, no.

A. Yes. I did mention that there was an

MRI performed.

Q. Was there anything shown on that MRI study that would suggest a traumatic injury?

A. No.

Q. Doctor, do you have an opinion to a reasonable degree of medical certainty as to the injury sustained by Mrs. Hatch as a direct and proximate result of the December 19, 1989 accident in which she was involved?

A. Yes, I have an opinion.

Q. And what is that opinion?

A. I believe that she sustained a mild thoracic strain:

Q. When you say mild, what do you mean?

A. Again I'm not trying to sound like a wise guy, but it was not very severe. It was there, you could grade things into mild, moderate and severe, so she had an injury that was present, but it was a mild injury.

Q. You indicated that one of the purposes of an IME is to determine what, if anything, is, quote, unquote, left over.

With respect to your examination of Mrs. Hatch, do you have an opinion to a reasonable degree of medical certainty as to any

residuals that Mrs. Hatch still has as of the date of your examination of her as a direct and proximate result of the December 19, 1989 accident?

A. Yes, I have an opinion.

Q. And what is that opinion, doctor?

A. She had no residuals of the December 19th, 1989 accident when I examined her on November 16, 1993."

Q. Doctor, she had subjective complaints. Are you saying that you couldn't find anything objectively wrong with her?

A. That's correct.

Q. Is it your opinion then that she had fully recovered by the time you saw her?

A. Yes.

Q. Doctor, do you have an opinion to a reasonable degree of medical certainty whether or not Mrs. Hatch sustained a permanent disabling injury as a consequence of the December 19, 1989 accident?

A. Yes, I have an opinion.

Q. And what is that?

A. She did not sustain any permanent disabling injuries as a result of that accident.

MR. PY: Thank you, doctor.

MR. MURRAY: Objection. Move to strike the last two questions and answers as repetitive.

MR. PY: I have nothing else.

THE WITNESS:: Can we take a break for two minutes.

MR. MURRAY: Sure.

MR. HENSCHEL: Off the record.

(Recess taken.).

MR. HENSCHEL: We are on the record at 4:33.

EXAMINATION OF DENNIS B. BROOKS, M.D.

BY MR. MURRAY:

Q. Doctor, good afternoon. My name is Charlie Murray, and I represent Mrs. Hatch along with Nancy Ogen in this matter.

A. Good afternoon.

Q. In this matter, you conducted one examination, correct?

A. Yes.

Q. And that was back in 1993; am I correct?

A. Yes.

Q. And I take it you have not examined

Candace Hatch since November 6, 1993, so that you do not know the condition of her today?

A. It was November 16, but, that's correct, I have not examined her since, and I do not know what her condition is today.

Q. You have a different relationship with this woman as opposed to your regular patients; is that correct?

A. Different physician-patient relationship, yes.

Q. In other words --

A. I don't have a relationship with this woman.

Q. In other words, you did not have a 'physician-patient privilege relationship with her, 'correct?

A. I don't have a treating physician-patient relationship with her, that's correct.

Q. And you have no responsibility for follow-up treatment?

A. No.

Q. She was a cooperative witness -- or cooperative plaintiff; was she not?

A. Yes.

Q. Was she accurate?

A. In terms of -- I'm sorry, I guess I don't understand your question.

Q. In terms of her history, did she accurately relate it to you?

A. The only way that I could verify her history was by referring to her medical records. For example, she told me that she struck her head on the driver's side door. I didn't find anything in the records to substantiate that or to corroborate that.

Other than that, she also told me she had been treated by a Dr. Blanford. I have no record that she had been treated by Dr. Blanford.

Q. That doesn't mean that she is being inaccurate, does it?

A. Well, if she is not being accurate, then I guess maybe she is being inaccurate.

Q. Doctor, in all fairness, just because you didn't have the records of Dr. Blanford doesn't mean she was inaccurate?

A. Oh, with respect to that one item, no, absolutely not.

Q. And with respect to hitting her head on the window, not having that in the emergency

room record does not mean that she didn't hit her head, it's simply that the emergency room record did not reflect what she was telling you; is that correct?

A. That's 'correct.'

Q. In her situation, you went through with Mr. Py that she had a normal muscle strength in her arms; is that correct?

A. Yes.

Q. And when you say normal, you mean in comparison to the average person who you examine for her age; is that correct?

A: There are five gradations of muscle strength. This lady's strength was five out of five or was normal. It is not with respect to the average population, but it is with respect to this grading scale.

Q. Do you have any way to compare Mrs. Hatch's strength prior to the automobile collision?

A. With?

Q. The measurements that you obtained during your examination?

A. No, I didn't examine her before the automobile collision.

Q. And you never examined her low back or lumbar spine, correct?

A. Correct.

Q. And she told you, as you noted in your report on page two, that after the most recent accident, she had some low back pain; did she not?

A. That's what she told me, yes.

Q. Do you believe that people whom you conduct medical examinations for defense attorneys try to accurately depict their history to you?

A. The majority of them.

Q. Do you believe that Mrs. Hatch's weight is the cause of any of her complaints?

A. Not of any of the complaints that she made to me.

Q. You indicated on your direct examination that you felt her injury was real, and you indicated that it was mild, correct?

A. Yes.

Q. And this would be mild to you; would it not?

A. I'm sorry. I don't understand your question.

Q. The term that you used, mild thoracic strain, is mild to you; is it not?

A. Let me try to answer the question as I perceive it. I don't think you mean were I involved in a similar situation, I would consider myself to be mildly injured, because that's one interpretation of what your question is when you say to you.

I think that there are ways of grading injuries, and I firmly believe that if a number of orthopedic surgeons reviewed the same records, they would all say that she had a mild injury, There is a severity scale.

Q. All right, fair enough. And that is in relation to orthopedic surgeons?

A. Yes.

Q. Mild is in relation to orthopedic surgeons, correct?

A. Yes.

Q. Now, in talking about the thoracic strain that you diagnosed, that's a fairly catchall phrase; is it not?

A. No. I think it is a pretty specific phrase.

Q. Strain can include, as an example, in

thoracic strain, that could include muscles and ligaments; could it not?

A. I'm not trying to be argumentative, but to prevent it from being a catchall phrase, we differentiate between a strain and a sprain. For example, when you have an ankle sprain, that's when you injure ligaments. When you have a strain, you injury muscles. So I specifically chose the term thoracic strain to indicate that she had a soft tissue muscle non-ligamentous injury;.

Q. And when you say strain, that can be stretched muscles; can it not?

A. Yes.

Q. And it can also mean torn muscles?

A. Yes.

Q. And you would agree, doctor, that the complaint of Mrs. Hatch referable to her thoracic spine is consistent with cervical, thoracic strain; would you not?

A. The complaints at the time that I saw her?

Q. Yes.

A. At the time that I saw her, actually her complaints were not consistent with a

cervical and thoracic strain at the time that I saw her.

Q. And why is that not consistent, doctor?

A: Because if somebody has an injured muscle -- I'm sorry, let me state it differently.

If somebody has injured a muscle, stretched, torn, and that muscle is still injured, activity doesn't make them feel better, activity should make them feel worse. So they get better with rest and worse with activity.

That was just the opposite of what her history was. She said that she was worse after she stopped activity and was better with activity.

Q. Doctor, she even indicated to you that she worked continuously, correct?

A. Yes.

Q. And would you agree that a person who works may use work to distract themselves from the pain, wouldn't you?

A. I have had no personal experience with people who work to distract themselves, so I can't give you an answer about that.

Q. Wouldn't it be fairly logical, doctor, that a person who has pain and then engages themselves in something such as being a surgical nurse, someone who might work with you, they would be very distracted by their work and, therefore, not thinking about their injury?

A. I don't know if it is logical or not, but it certainly speaks to the severity of their injury; If working in the operating room can distract them from their pain, then their pain can't be very significant:.

Q. Okay; We can agree that Mrs. Hatch did not have at the time she saw you a surgical condition, right?

A. Yes, we can certainly agree about that.

Q. How do you define the term fibromyalgia?

A. It is not a term that I use. You want me to define it, algia means pain, myo refers to muscle, fibro is the fibrous tissue, so it is painful fibrous and muscular tissue.

Q. And would a 25 percent reduction in lateral bending bilateral be consistent with fibromyalgia?

A. No.

Q. How do you define chronic, doctor?

A. Something that has gone on for a long time, like this deposition.

Q. You would agree, doctor, that Candace had conservative treatment during the times she was under the care of Drs. Eren, Patterson and Elghazawi; would you not?

A. It is going to seem like I'm trying to give you a hard time, I'm not. She had nonoperative treatment. Sometimes the most conservative thing that you can do, that I can do as an orthopedic surgeon, is operate on someone. So I don't like to use that term.

She certainly had nonoperative treatment.

Q. And I take it from your letter to Mr. Py, your answers from his examination that lasted most of this deposition, 45 minutes of the last hour, your analysis you do not believe that Dr. Elghazawi is correct in his analysis that the patient suffers from fibromyalgia?

A. That's correct. At the time that I examined Mrs. Hatch, I believe that she did not have fibromyalgia.

Q. Does Candace Hatch have the right to rely upon the opinion of her doctors in telling her what is wrong with her?

A. That's every patient's right.

Q. Don't patients usually rely upon their doctors, as they rely upon you?

A. Do patients rely upon their doctors, in general they do, certainly.

Q. Is it fair to say, doctor, that Candace Hatch had not been -- had she not been in an automobile accident on December 19, 1989, she would not have suffered the thoracic strain which you diagnosed?

A. That's correct.

Q. And you elicited from her in your history that she had no prior history of having back problems; did you not?

A. That's what she told me, yes.

Q. And in your opinion, you can tell when someone is faking and when they are not, right?

A. In my opinion, 1 can tell when somebody is faking on a physical examination, yes.

Q. And you have no specific notation in

your examination that you felt Candace Hatch was being dishonest with you in any way,,correct?

A. With respect to her history, correct.

Q. And it is your practice that if you feel a patient is shirking or exaggerating symptoms and not being truthful with you, you will put that right in your report, won't you?

A. Sometimes, sometimes not.

Q. Have you reviewed Dr. Elghazawi's records subsequent to your examination of November 16, 1993?

A. No.

Q. And for better or for worse, she came back to Dr. Elghazawi, and I'll ask you to assume that she continued treatment with Dr. Elghazawi, you are not critical of her choice to continue with treatment with Dr. Elghazawi, are you?

A. I'm only critical -- yes, I am critical in that at the time that I examined her, there was no need for her to have any additional treatment.

Q. You are critical of Dr. Elghazawi, not Mrs. Hatch; isn't that correct?

A. I think your question was were you

critical of Mrs. Hatch in going back to Dr. Elghazawi. My answer was yes, there was no need for her to seek any further treatment.

Q. Did you send your report and your opinion to her?

A. No.

Q. Are you familiar with Dr. Manzec at the Cleveland Clinic?

A. At the Cleveland Clinic, I know that there is a Dr. Mazanec at the Cleveland Clinic.

Q. It is Manzec?

A. Manzec, I never met him.

Q. And you are familiar with Dr. Elghazawi?

A. Again it is somebody whose name I have seen from time to time. I have never met him.

Q. He has a different specialization than you; isn't that correct?

A. Yes.

Q. And you would agree that he is entitled to his own opinion, wouldn't you?

MR. PY: Who are we talking about?

MR. MURRAY: Elghazawi.

A. Yes.

Q. Treating doctors not only diagnose, but they also treat, don't they?

A. Treating doctors not only diagnose, but they also treat; otherwise, they would be called diagnosing doctors:

Q. And that's all you did in this case was give your opinion on diagnosis, correct?

A. My opinion as to causation and diagnosis, that's correct.

Q. You have no responsibility for follow up?

A. No.

Q. You have no responsibility for Mrs. Hatch's treatment or medication?

A. Correct.

Q. And you have been doing medical examinations for defense attorneys since 1976 or 77; isn't that correct?

A. That's correct.

Q. You were not selected by the Court in this case, right?

A. Not that I'm aware of.

Q. And you have served as an evaluator and expert witness in many cases for the defense attorneys during the last 19 or 20 years,

correct?

A. It depends upon your definition of many, but I have done some over the years, correct.

Q. Let me ask you to define that then. You conduct approximately three to four defense medical examinations per week, ,don't you?

A. Wrong.

Q. How many do you do now?

A. Three.

Q. And during the last year, as in every year since 1977, you have conducted approximately 150 medical examinations for defense attorneys; isn't that correct?

A. No.

Q. Did you take a year off?

A. Three times -- I'm sorry. 150 divided by three, if my math is still correct, would be 50. I don't work 50 weeks out of the year.

Q. How many weeks do you work a year now?

A. I take some vacation, probably three or four weeks, I go to meetings, so, you know, we are going to end up splitting hairs over 20, 30

exams a year or something.

Q. You would say that fairly in excess of 120 examinations during the last year; is that correct?

A. 40 times three, I would say 120 is a fair number, yes.

Q. And you are paid to examine the plaintiff; are you not?

A. I'm paid for all my medical services, so I'm also paid to perform this examination, yes.

Q. And you are paid to consult with the defense attorney; are you not?.

A. Yes.

Q. And you are paid on an hourly basis?

A. Yes.

Q. And you are paid for your time to testify in this as in all depositions; is that correct?

A. Yes.

Q. And you testify on average one a month?

A. I don't know how often I testify.

Q. Have you testified on a previous occasion during the month of February?

A. Today is Wednesday. Yes, I have.

Q. Did you testify in January?

A. Yes.

Q. Is it your understanding when you accept the request to conduct a defense examination, that if the case should go to trial, you will testify?

A. Yes.

Q. And if you are asked to examine a person, you will render your testimony freely, will you not, as opposed to for free?

A. I will render my opinion honestly and objectively, and there will be a charge for my services, yes.

Q. In your experience in the practice, have you ever had a patient who over a period of time eventually is diagnosed by you, but for whom a first impression or first care of this patient you did not find all the things which you later found and which led to your eventual diagnosis?

A. Everybody understands that question, the answer is yes.

Q. If Candace Hatch were to testify that your physical examination took less than ten minutes, would you have any reason to disagree

with that?

A. I don't time my examinations, so I wouldn't say yes or no. I did a comprehensive examination of the parts of the body about which she complained. There was nothing else to do, and so I was through.

Q. Doctor, in your own practice, you make a diagnosis of a patient's condition after examination of him or her; is that correct?

A. Correct.

Q. And on at least one occasion, you have later changed your diagnosis; have you not?

A. I'm sure that has occurred.

Q. Doctor, you would agree that as much as 15 percent of what you do in your practice in terms of income is on behalf of defendants in personal injury cases or medical malpractice cases; wouldn't you?

A. No, I wouldn't. If you are getting your information from Mitchell Weisman, you ought to forget about that.

Q. I have reviewed many of your depositions, doctor, and you have testified on previous occasions, have you not, that you did get as much as 15 percent of your --

A. No, sir. I don't keep track of that, I can't tell you what percentage of my income is based on defense evaluations, so I don't know where that number came from.

Q. Do you think it is less than that?

A. I don't know.

Q. Do you think it is more than that?

A. I don't know.

Q. All right..

A. .It is not important to me.

Q. Money is not important to you?

A. Money is important to me. Where it comes from is not important to me. You know, my patients don't walk in and say, gee, Dr. Brooks, how much do you earn doing defense medicals as opposed to treating patients. They come in to see me because hopefully they respect me as a physician.

Q. Mrs. Hatch didn't come to you because she respects you as a physician, did she?

A. She came to me because Mr. Py respects me as a physician and asked her to come see me.

Q. Do you know if Mr. Py respects you as a physician or respects the outcome of your

testimony?

MR. PY: Objection.

A. I would hope that he respects me as a physician and not as so'meone whose testimony he can buy.

Q. Doctor,' you have gone to one year of law school; have you not?

A. Correct.

Q. And you understand that you are also engaging in speculation if you tell the jury what you think Mr. Py knows, aren't you?

A. I didn't take the rules of evidence, so I don't know what you are talking about.

MR. SAVOY: Objection.

Q. You just went to one year of law school?

A. Right.

MR. PY: Objection.'

Q. Does the degree of impact to you, the fact that the car is hit from whatever angle, would that have an effect on the person?

A. Certainly the degree of impact can have an effect on a person.

Q. Okay. Doctor, you do not deny that Candace Hatch sustained injuries to her spine,

and particularly relative to her thoracic spine, right?

A. Asked and answered. I do not deny that.

Q. And you don't have any diagnosis for Candace Hatch as of today which reflects her reasons or reflects the reasons for her complaints to you, do you?

A. Would you either ask the question again or have the court reporter read it back. I had a momentary lapse.

Q. I'll rephrase the question or ask it again.

You do not have a diagnosis today for Candace Hatch's complaints at the time she saw you in November of 1993, do you?

A. That's correct.

Q. And you have no diagnosis as to why Mrs. Hatch has a 25 percent reduction in lateral bending bilaterally, correct?

A. I don't have a diagnosis because there is no anatomic reason for her to have that reduction in lateral bending bilaterally.

Q. In your opinion?

A. That's what this deposition is all

about, my opinion.

Q. Fair enough. If there were no findings except for 25 percent decrease in lateral bending, and if everything else was subjective complaints, nonetheless, there has been at least one instance where you have referred the patient for rehabilitative exercises and medication, haven't you?

A. Yes.

Q. And you would agree that one can have pain and disability of a chronic nature from injuries to the muscles and soft tissues of the neck and low back?

A. Say it again.

Q. You would agree that one can have pain and disability of a chronic nature from injuries to the muscles and soft tissue of the neck and low back?

A. Yes.

Q. A physician can be in a position after two or three years after an accident of an injury of a soft tissue to say whether that condition has become chronic or not; wouldn't you agree?

A. Yes.

Q. And you are retained by various entities or defense lawyers to give expert opinion testimony, whatever your opinion happens to be, correct?

A. Yes.

Q. And you have been doing this in the Cleveland area, and Mr. Py is from outside of that Cleveland area; is that correct?

A. Yes.

Q. And it is pretty customary when you conduct medical examinations for defense attorneys that you usually have x-rays taken of the person; isn't that true?

A. Yes.

Q. And it may have been on the previous address which you had prior to January, but at the time you would send your immediate business, such as a defense examination, directly to your next door neighbor in that building, which would have been Krause & Lubert?

A. I don't know what the implications of all those subtle adjectives are, but I send them to the closest facility, which happens to be Krause, Lubert, that's right, and I continue to send them to the radiologist in this building.

Q. And you had x-rays taken of Candace Hatch; did you not?

A. I believe we discussed that a long time ago, yes.

Q. And you did not have any x-rays done of the lower spine, correct?

A. Correct.

Q. Doctor, your objectives in conducting a medical examination for the defense counsel, as you testified,,were to determine what injuries were caused by the accident and whether there was any residual affects from the accident, correct?

A. Correct.

Q. And you prepare a report based upon your examination, your findings and the material you have reviewed; is that correct?

A. Yes.

Q. And isn't it a fact, doctor, that in almost all of your reports -- strike that.

In many of your reports, if not most of your reports, you will conclude your opinion letter to the defense attorney by the statement, as did you in Candace Hatch's case, "The plaintiff will have no permanent disability directly attributable the accident"?

A. That's not true.

Q. You have used that line on many occasions; have you not?

A. First of all, it is not a line. I don't recall ever saying plaintiff has, okay, and certainly when I feel that someone has recovered, I will state that they will have no permanent disability directly attributable to an accident, without a doubt.

Q. Okay. And you don't deny having said that on many occasions?

A. I have said that in the past, yes, when that's the case.

Q. If denied -- strike that.

The only responsibility that you have is to write a report and testify if you are paid, correct?

A. I think you have asked me that same question about 16 different ways. I saw her on one occasion, I'm not her treating physician, I have no obligation to her for treatment in the future. As a physician, if I uncover something that requires treatment, I am obligated to tell her because of the Hippocratic oath, and I am obligated to provide a report and testify if

necessary.

Q. Do you require payment up front?

A. For what?

Q. For your testimony.'

A. Not from people .I trust.

Q. Okay. And so I take it you trust John Py?

A. Yes.

Q. Candace works every day, according to your report, right?

A. According to her history, yes:

Q. You do not criticize her for that, do you?

A. No.

Q. Do you believe that work affects her condition?

A. She doesn't have any condition, so, I mean, I don't believe that work affects her condition,

Q. She didn't have any condition at the time you evaluated her in your opinion, correct?

A. In my opinion, right.

Q. All right. We are talking about at the present day.

A. I don't know what she is like today.

We already discussed that. I haven't seen her for, you know, a couple years.

Q. So you have no opinion as to whether the work affects her present condition, do you?

A. Correct.

Q. All right. And she told you she was pain free before the accident; did she not?

A. Correct.

Q. And she told you that when she laughed, she would experience pain in her neck which radiated into her head, didn't she?

A. Right.

Q. The last issue I want to ask you is in regard to fibromyalgia again or myofascitis. Is that correctly pronounced?

A. No, but that's okay.

Q. How do you pronounce it?

A. Myofascitis.

Q. All right. Is that a process by definition?

A. I don't know what a process by definition is honestly. I don't know what you mean.

MR. MURRAY: No further questions.

EXAMINATION OF DENNIS B. BROOKS, M.D.

BY MR. SAVOY:

Q. Dr. Brooks, may name is Jerry Savoy. I represent Tasha Stout. She is the young lady that was involved with Candace Hatch in the accident of October 24, 1993.

A. Good evening.

Q. Good evening. I did not retain you for your examination of Mrs. Hatch, did I?

A; No.

Q. And I'm not retaining you for your testimony today, am I?

A. No.

Q. Your exam on November 16, 1993 was approximately 22 days after the accident of October 24; 1993; would that be about right?

A. Correct.

Q. And being the -- and it is evident that you take a thorough history; would that be correct?

A. Yes.

MR. MURRAY: Objection. Move to strike. That's Mr. Savoy's opinion.

MR. SAVOY: Pardon me?

MR. MURRAY: I said objection, move to strike, because that's your opinion as to

whether it is thorough.

Q. Would you consider that you take yourself to be a thorough person with regard to taking history of the parties that you are going to examine?

A. Yes.

Q. And you have told us about some of that history taking today, haven't you?

A. Yes.

Q. And being the patient person you are, you do listen to all of the party's discussion with you, don't you?

A. Party's being the patient?

Q. Party's being the patient.

A. Right.

Q. And you notate the significant parts of the information they give you, don't you?

A. Yes.

Q. Okay. And most importantly, in addition to notating significant information, you listen to their present complaints, don't you?

A. Yes.

Q. Because quite honestly, Dr. Brooks, that's the purpose of that person being there for you to examine them?

A. Right.

Q. Now, when you examined Candace Hatch, and this was as we discussed approximately 22 days after an accident that she had with my client, was there any complaint whatsoever by Mrs. Hatch to you regarding her low back?

A. No. She had -- when I asked her what her complaints were or what her problems were on the day that I examined her, she did not make any complaints about low back pain.

Q. Did you give her an opportunity to tell her about -- for her to tell you about all of her ailments?

A. Yes.

Q. Okay. So it is safe to say she didn't relate that in addition to my neck, my back also hurts, my low back; is that right?

A. Correct.

MR. MURRAY: Objection. Move to strike as leading.

Q. Now, you also reviewed notes from Dr. Patterson?

A. Yes.

Q. And that detailed his times with -- the time that he spent with her from January of

1990 through October 22 of 1990?

A. Correct.

Q. And he saw her approximately six times during that period of time?

A. I believe so.

Q. And as you testified, she has gotten better, and in fact then on October 22, 1990, he released her from all care and treatment; is that correct?

A. Yes.

Q. As Mr. Murray asked you, would a person's excess weight have an effect on low back problems?

A. Yes.

Q. Could that be a problem with Mrs. Hatch in this matter?

A. I don't have an opinion about that, because all I can tell you about Mrs. Hatch is that she is overweight. When I saw her, she had no low back problems, so I didn't inquire about any low back symptoms she had and didn't examine her low back.

Q. Okay. That's fair. As of the time of your examination, and we are talking November 16, 1993, she did have subjective complaints

referable to her cervical and thoracic spine?

A. Yes.

Q. But you didn't have any evidence, and there was nothing in the physical or radiological examination to substantiate her complaints, was there, Dr. Brooks?

A. That's correct.

MR. MURRAY: Objection. Again leading. Move to strike.

Q. I'll rephrase it.

Dr. Brooks, was there anything to indicate either physically or through radiographic examination that Mrs. Hatch had any substantiated complaints that she was talking to you about?

A. No.

MR. SAVOY: Thank you very much. No further questions.

THE WITNESS: You are welcome.

CONTINUED EXAMINATION OF DENNIS B. BROOKS, M.D.

BY MR. MURRAY:

Q. Just two questions, doctor. Was Mrs. Hatch on medication the day you examined her? Page two, paragraph three, last sentence.

A. On the day that I examined her, she

had taken two Toradol on that day.

Q. And the last question, she indicated to you, and you noted in your report, that, and you put in quotes, that the most recent accident caused some low back pain; did you not?

A. When I took her past history, she told me about the recent accident, and she at that point said it caused some low back pain, correct.

Q. And that's what you put in your report, correct?

A. Absolutely, black and white.

MR. MURRAY: No further questions.

CONTINUED EXAMINATION OF DENNIS B. BROOKS, M.D.

BY MR. PY:

Q. Doctor, I have just a few questions in light of Mr. Murray's examination.

He established on various occasions that you have a different relationship with respect to patients for whom you do an IME as opposed to patients that you are responsible for their continued care and treatment; is that correct?

A. Yes.

Q. With respect to that fact, that there

is a slightly different relationship, are you any less thorough when performing an IME than you are a consultation or examining a patient for whom you are responsible?

A. No.

Q. You mentioned that there is a severity scale when Mr. Murray and you were talking about mild; do you recall that?

A. Yes.

Q. In Dr. Patterson's note when he discharged Mrs. Hatch, did Mrs. Hatch give a quantitative evaluation as to her discomfort level?

A. Yes.

Q. And what was that?

A. She said that on a scale from zero to ten, with zero being no pain or no symptoms and ten being the most severe that she had ever experienced, she was in the range of two.

Q. With respect to torn and stretched muscles that Mr. Murray asked about, if, in fact, there was a significant tearing or stretching of those muscles, would there have been objective findings?

A. Yes.

Q. In your examination of Mrs. Hatch, did you find any objective findings on which to premise the conclusion that she, in fact, had stretched muscles or torn muscles?

A. No.

Q. With respect to fibromyalgia, you are familiar with that diagnosis; are you not?

A. Yes.

Q. According to the American College of Rhuematology criteria, fibromyalgia is diagnosed when an individual has a history of widespread pain and distinct painful tender points; do you agree with that?

A. I agree with that being the definition of fibromyalgia as set forth by the, what is it, the American College of Rhuematology.

Q. Right. They in that definition indicate that the discomfort needs to be wide spread; do they not?

A. Yes.

Q. And they also indicates that there needs to be tender points; is that correct?

A. Yes.

Q. In your examination of Mrs. Hatch,

did you find any nodules or tender points?

A. No nodules.

Q. And the tenderness was the subjective finding that she elicited to you, gave to you?

A. Yes.

Q. But they were not nodules?

A. Correct.

Q. Okay. And the location of the area of tenderness was only in one area, and that was in the thoracic spine?

A. Yes.

Q. It was not wide spread from shoulder to below the waistline?

A. Correct.

Q. And it was not bilateral?

A. Correct.

Q. Now, you have indicated that today as we sit here videotaping your testimony, you do not know how Mrs. Hatch is presently, correct?

A. Correct.

Q. Knowing what you know, based on your examination back in November of 1993, if, in fact, Mrs. Hatch has any symptoms or findings today, do you have an opinion to a reasonable degree of medical certainty whether or not those

current problems are proximately related to the December, 1989 accident?

A. Yes, I have an opinion.

Q. And what is that opinion?

A. If, in fact, she does have any current symptoms or physical findings, I believe that they are not proximately related -- see, it is with a good think I went to law school, because I wouldn't have understood what they meant -- they are not proximately related to the accident of December 19, $989.

Q. And how can you make that determination?

A. Because there wasn't anything wrong with her when I examined her on November 16, 1993 as it related to that accident. So, therefore, there is no reason to believe that anything is wrong with her today as it relates to that accident.

MR. PY: Thank. You, I have nothing else.

CONTINUED EXAMINATION OF DENNIS B. BROOKS, M.D.

BY MR. MURRAY:

Q. Doctor, a few more follow up.

In your experience in examining more

than a thousand patients or a thousand individuals for defense attorneys, has it been your experience or can you conclude that the people you are examining on those occasions are more sensitive to your touch?

A. No. They are not any more sensitive than anybody else is.

Q. Do you believe that litigation has any psychological effects on the individuals you are examining in those specific examinations?

A. I believe that litigation has psychological effects on people, yes, but I don't understand the rest of the question.

Q. Do you believe that it has any effects on their own physical symptomatology as they perceive it? Their subjective complaints, in other words?

A. It varies from patient to patient.

Q. You believe that's a real element, don't you?

A. What's that?

Q. That they will have psychological effects and, therefore, subjective complaints almost based upon litigation?

A. I believe that there are patients who

have symptoms for which there are no -- or for which there is no physical explanation, and that these symptoms are subjective, they are on a psychological basis. There are a certain percentage of people whose symptoms are related to secondary gain to the litigation, yes.

Q. Do you believe that that's Mrs. Hatch's cause?

A. I don't believe that that was the case in this situation.

Q. And is it consistent with your experience with your own patients that their pain levels will fluctuate?

A. Yes.

MR. MURRAY: No further questions.

MR. SAVOY: No further questions,

MR. HENSCHEL: 5:15 we are off the record.

MR. PY: Do you want to waive, doctor, or do you want to read?

THE WITNESS: No, I'll waive.

(Deposition concluded at 5:17 p.m.)

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CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Wendy L. Klauss, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, DENNIS B. BROOKS, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this ____ day of _____, 1996.

Wendy L. Klauss, Notary Public
within and for the State of Ohio

My commission expires July 13, 1999.