#539

IN THE COURT OF COMMON PLEAS

OF LAKE COUNTY, OHIO

RICKIE BENTLEY,

Plaintiff,

vs. Case No.

LYNDA FALLENBERG, 89 CIV 560

Defendant.

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Deposition of DENNIS B. BROOKS, M.D., a witness, called by the Plaintiff for examination under the statute, taken before me, Heidi L. Geizer, a Registered Professional Reporter and Notary Public in and for the State of Ohio, pursuant to notice and stipulations of counsel, at the offices of Dennis B. Brooks, M.D., 26900 Cedar Road, Beachwood, Ohio, on Wednesday, April 4, 1990 at 4:10 o'clock p.m.

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ORIGINAL

APPEARANCES:

On behalf of the Plaintiff:

Greene & Hennenberg Co., L.P.A., by

WILLIAM M. CREENE, ESQ.

JEAN McQUILLAN, ESQ.

801 Bond Court Building

Cleveland, Ohio 44114

687-0900

On behalf of the Defendant:

Wiles & Richards, by

DANIEL F. RICHARDS, ESQ.

35000 Kaiser Court

Willoughby, Ohio 44094

942-6262

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. GREENE:

Q. Doctor, you have been listed as a witness in this case. Is that correct?

A. I don't know, sir.

Q. Well, you are planning on being a witness in this case, aren't you?

A. Yes.

Q. You did write a medical report, did you not?

A. Yes.

Q. You wrote two, did you not?

A. Yes.

Q. Do you have them with you?

A. Yes.

Q. Okay. Reading your report of March 14, 1990, you wrote that after you had examined Mr. Rickie Bentley, did you not?

A. I'm sorry, sir, I didn't hear your question.

Q. You wrote that after you had had a chance to examine Mr. Bentley in your office?

A. Yes, sir.

Q. As a matter of fact, you had examined him some 12 or 13 months before writing this report, correct, a report of March 14, 1990?

A. Yes.

Q. And you also had an opportunity to review certain records that Mr. Richards had forwarded to you?

A. Yes.

Q. And among those were the records of Mr. Bentley's hospitalizations?

A. Yes.

Q. And a number of his radiographs, CT scans, and myelograms, correct?

A. Yes.

Q. And you wrote in your correspondence on page 5 of your March 14 correspondence that -- I reference you to the last paragraph, doctor -- that his physical and radiographic examinations demonstrated findings which resulted from his two lumbosacral laminectomies rather than the accident under

discussion?

A. Yes.

Q. Does that indicate, doctor, that you found that Mr. Bentley was symptomatic for back and leg pain when you examined him?

A. Yes.

Q. And then you looked at radiographic examinations, and you found on those radiographic examinations, including CAT scans and myelograms, findings that would suggest reasons for his problems, although you found that they were postoperative findings rather than findings connected. with an automobile accident?

A. I am sorry, I don't understand your question.

Q. Is that too long a question? I'll start over again.

You say here that the radiographic examinations demonstrated findings which resulted from his two lumbosacral laminectomies rather than the accident?

A. That's what I wrote, yes.

Q. Is that correct? What findings were those?

A. I was referring, sir, to the radiographic examination that was performed on January 5, 1989. That radiographic examination indicated narrowing of the L5-S1 interspace, a grade one spondylolisthesis at the L5-S1 interspace, with no discernable pars interarticularis defect.

Q. Were you also referring to, doctor, additional studies of the lumbar spine with water-soluble contrast dated 8-10-89 which showed scar formation secondary to previous surgical procedures?

A. No, sir, I was not.

Q. Okay. Did you have an opportunity to look at that particular CAT scan?

A. May I have the date again, please?

Q. Yes. The CT scan of the lumbar spine dated 4-17-89.

A. Yes. I believe that I did look at the CT scan of 4-1.7-89.

Q. Okay. Did that CT scan show you, doctor, probable scar formation secondary to the previous surgical procedures?

A. I don't have a recollection of that.' I did not comment on that in my March

14, 1990 operative report.

Strike the word operative.

Q. Well, doctor, is it fair to say that the symptoms that Mr. Bentley demonstrated to you, the pain that he had, was probably secondary to scarring that developed as the result of the initial procedure which he had? Is that fair to say?

A. I need to refer to my report of January 5 before I can answer your question.

Q. Please do.

A. No.

Q. Okay. And why is that, doctor?

A. When I examined Mr. Bentley on January 5th, 1989, he told me that in addition to what he referred to as a dull numb kind of ache in his low back and left buttock, his symptoms also radiated inside, and I quote him, inside his left thigh as far as his knee.

Pain radiating inside the left thigh as far as the knee is not indicative of scar formation of either the S1 or the L5 nerve root.

Q. What would that be indicative of, doctor?

A. That could be indicative of muscular low back pain or low back instability.

Q. And do you find that the low back instability could be resulting from the three surgeries he had or the two surgeries that he had had at that time?

A. Yes.

Q. Okay. Doctor, is it fair to say, as I read your note, I don't want to put words in your mouth, but as I read this, what you are saying in substance is that Mr. Bentley's current problems, at least the problems that you saw him for in January, 1989, were the type of problems one might see postsurgically from multiple laminectomies and diskectomies but had nothing to do with the automobile accident?

A. That's correct.

Q. All right. And did the patient that you saw in the office on January 5, 1989 upon your examination of Rickie Bentley, including your review of the radiographic studies, did it indicate to you that that patient was in need of further lumbar surgery at that time?

A. I could not make that determination just based on my examination and the radiographs I reviewed on January 5, 1989.

Q. What more would you have needed to make a determination?

A. If Rickie Bentley had been a patient of mine, given the physical and radiographic examinations that were performed, I believe that I would have treated him in a nonoperative fashion for a period of time with anti-inflammatory --

Q. I am talking about 1989 when you examined him, not 1987 when he first came in. I want to make sure we are talking about the same thing.

A. If I understand your question correctly, I am referring to my examination of January 5, 1989. And as I understood your question, you asked me if I thought he was in need of further surgical treatment at that time.

Q. Yes.

A. And I said, based on my examination at that time I could not make a determination. And you asked me what else would you need, and

I was trying to tell you what else I need.

Q. I just wanted to make sure we were talking about: 89 and not 87.

A. No, sir.

Q. Go ahead. I didn't mean to interrupt.

A. I would like to treat him for a while nonoperatively with exercises and anti-inflammatory medication. If he continued to have complaints then I believe that I might have ordered some additional testing, which might have included EMGs, nerve conduction studies, CT scan or an MRI, and psychological testing.

Q. You are aware that he did undergo surgery again in 1989, are you not, sir?

A. Yes.

Q. At the time that you saw Rickie, doctor, would you have sent him back to work doing hard physical labor, bending, hauling, and lifting heavy weights?

A. No.

Q. Have you had an opportunity to look at his hospital records for 1989 and that surgery?

A. Yes.

Q. And I take it you haven't examined Rick since that surgery, so you don't know exactly what condition he is in today?

A. That's correct.

Q. Based upon that operative note, upon his operative record and hospitalization, assuming that Rick is still having pain of a similar nature as when you saw him in January of 1989, would you consider him to be a candidate for a spinal fusion?

A. I'm sorry, I don't have enough information to make that judgment.

Q. What further information would you need to make that judgement?

A. I would like to examine him myself after his 1989 operation. I would like to obtain some new radiographs, and I believe I would still like to obtain some psychological Lesting.

Q. Okay. In the radiographs, CAT scans, and myelograms you saw, did you note scar formation around the dura matter?

A. I don't have a specific recollection of noting that.

Q. You don't recall either way?

A. That's correct. I don't. recall either way.

Q. Do you recall seeing scar formation around but not compressing the nerve roots?

A. I don't recall seeing that. Either. I don't recall ever having seen scar formation on a CT scan. If there is a particular study that you are referring to I'd be happy to look at it today.

Q. What would be the indications that you would be looking for for spinal fusion for Mr. Bentley'? What would be your criteria?

A. If I could demonstrate that the cause for Mr. Bentley's complaints was spinal instability or abnormal motion, then it would be appropriate to perform a spinal fusion.

Q. That would be the most important criteria, spinal instability?

A. Yes.

Q. Do I take it from your prior answer that, you suspect there may be spinal instability?

A. There may be, yes.

Q. Doctor, you also write in your

correspondence of March 14, 1990 that you believe that Mr. Rentley as a result of the accident of February 26, 1987 sustained a cervical and lumbosacral strain. Is that correct?

A. That's what I wrote, yes, sir.

Q. Arid you also wrote that you believe that his hospitalization from March 5, 1987, between March 5, 1987 and March 19, 1987 was causally related to the accident?

A. Yes.

Q. Is that correct? And in talking about the lumbosacral strain, that's a pretty catchall phrase that means torn muscles and ligaments? Is that- a fair definition of it?

A. That's one end of the spectrum. It can also mean stretched muscles and ligaments.

Q. Stretched or torn?

A. Yes. It is a muscular injury.

a. Do you know in this case whether he had stretched or torn muscles, in your opinion?

A. I don't know, and I don't think it makes a difference.

Q. Okay. Now, but you do find that that hospitalization was causally related to

the accident, March 5 to March 19th --

A. Yes.

Q. -- according to your correspondence?

A. If I didn't think it was I wouldn't have said it in my letter.

Q. Okay. Doctor, on that first hospitalization -- by the way, are you aware of how this accident happened or what was involved?

A. Just from Mr. Bentley's history.

Q. Okay. You don't know, for example, how fast the car was going that hit him?

A. No. He just told me -- as a matter of fact, I do not know how fast the car was going that hit him.

Q. Okay. Doctor, he was treated in the hospital by Dr. Anschuetz, among others, was he not?

A. Yes.

Q. The first hospitalization?

A. Yes.

Q. And before he went in the hospital he saw a rheumatologist'?

A. Yes.

Q. Are you familiar with the doctor he saw?

A. Yes.

Q. Do you know him7

A. Yes.

Q. Okay. And you consider him to be a eompetent physician?

A. I have had limited experience with Dr. Goodwin, and my experience has not been unfavorable.

Q. Okay. Now, when Goodwin saw him in his office, I think that was approximately three or four days after the accident; is that correct?

A. March 2, 1987, four days after the aceident.

Q. Four days after the accident. And at that time, according to Goodwin's records, Mr. Bentley was complaining of pain in his back7

A. Yes.

Q. Correct7

A. Yes.

Q. And he was complaining of the pain, he gave a history of that pain radiating down

into his leg; is that correct?

A. Gave a history of radiating pain in his right lower extremity, that's correct.

Q. Did you have a chance to read the deposition of Dr. Goodwin?

A. No, sir.

Q. You did have a chance to read Dr. Goodwin's notes?

A. Yes, sir.

Q. Now, Dr. Goodwin noted that he observed paraspinal lumbar spasms, correct?

A. May I get out Dr. Goodwin's records?

Q. Oh, please do.

A. I am sorry, you must be better at reading Dr. Goodwin's handwriting than I.

Q. I am probably not. I am reading from his deposition, and he stated on page 14 of his deposition, interpreting his records, that he was able to demonstrate -- and I guess I am going to have to ask you to assume this as being correct -- paraspinal lumbar spasms, positive straight leg raising test on the right, pin sensation diminished in right leg and foot, decreased strength of dorsal function

of both feet. The patient was unable to walk on his toes or his heels.

A. There is either a typo in his deposition or something, or 1 am not understanding you correctly. Decrease in dorsal function or dorsiflexion?

Q. It must be dorsiflexion.

A. He's got decreased pin sensation, he's got decreased dorsiflexion, and lie's unable to walk on his toes.

Q. And he has a positive straight --

A. Straight leg raising on the right.

Q. -- test.

A. And paraspinal spasm.

Q. And paraspinal spasms.

Is it fair to say that those findings in total would not be inconsistent with a muscle strain but would be more consistent with a disk injury?

A. No.

Q. Okay. That wouldn't be fair to say.

Doctor, what kind of muscle strain causes decreased sensation in the foot? I am talking about lumbar muscle strain.

A. Yes, sir. I don't know, because you haven't told me where the decreased sensation in his foot is.

Q. Well., do you know of any lumbar muscle strain that will cause decreased sensation anywhere in the foot?

A. No, sir.

Q. And there is certainly no lumbar muscle strain that is going to cause leg pain radiating all the way down the side of the foot to the toes; is that correct?

A. That is correct, but there is no disk injury that will cause similar symptoms.

Q. But those findings, a positive straight ley raising test and radiating leg pain past the knee down into the foot, are symptoms that are more consistent with a disk injury than they are of a lumbar strain. Is that correct?

THE WITNESS: Would you read back the question, please?

(Record read.)

A. I don't understand the question.

Q. Okay. Fine.

Doctor, regardless of whether you

understand the question or I understand the question, the fact of the matter is that the records are very clear, are they not, that Dr. Goodwin after performing his examination of the patient, including doing a neurological examination, straight leg raising test, pinprick test, taking a history from the patient, diagnosed the patient as having a herniated lumbar disk.

MR. RICHARDS: Are you suggesting that that's a fact?

MR. GREENE: Yes. That was the diagnosis.

MR. RICHARDS: Wait, Excuse me. First of all, this is a discovery deposition. The doctor is not on cross-examination except with respect to the opinions that he's advancing, and you can ask him and you can discover all you want about his opinions and explanations of his report, okay?

That having been said, if you want to quote some section out of his report that says exactly what you just said, I would like to know where that is.

Q. I am quoting you from page 26 of

Goodwin's testimony, okay, and actually on page 27, line 17 to 19, when he felt, quote, "because a strain of the back does not cause sensory abnormalities, it does not cause weakness of the foot."

Dr. Goodwin's notes, you have reviewed the notes, correct?

MR. RICHARDS: Excuse me, Mr. Green. I don't mean to .interrupt you, but I think this is an important point. You indicated to Dr. Brooks here, you indicated that he should assume that Dr. Goodwin in fact diagnosed a herniated disk as a consequence of his examination. You are drawing a conclusion from the deposition transcript?

MR. GREENE: I am stating, sir, that Dr. Goodwin's records that have been reviewed by this doctor, including his consult, including his analysis, reveals that he diagnosed this patient as having a herniated disk.

MR. RICHARDS: I don't think that doctor -- excuse me --

THE WITNESS: I will point out to you, sir --

MR. RICHARDS: Excuse me, Dr. Brooks.

I don't think there is anywhere -- I will stand to be corrected on this -- I don't think there is anywhere in this deposition that Dr. Goodwin diagnosed a herniated disk. He referred the matter to Dr. Anschuetz, who would be more properly qualified to do that.

Q. I am reading to you from page 8, sir, line 7, in which he says, "My final diagnosis was disk protrusion at L5-S1 level. It was probably central, but it definitely was a disk protrusion at tlie L5-S1 level which was documented by CAT scan and myelography."

MR. RICHARDS: And that's why you conclude it is herniated; is that right?

MR. GREENE: No. That's what Campbell's Orthopedics says is herniated, sir. I am not a doctor.

MR. RICIIARDS: I don't want to quibble on this, and I don't want to interfere with your deposition.

MR. GREENE: But you are. If you have an objection -- if you have an objection, say it.

MR. RICHARDS: Look --

MR. GREENE: Put it on the record, and let's go.

MR. RICHARDS: We are all interested in getting to the truth. It is an important case for your client, it is an important case for mine.

If you have something of that nature you should show it to him, show it to me.

MR. GREENE: You took his deposition. You know what he said.

MR. RICHARDS: Well, you haven't found it yet, and you have been looking for the last five minutes.

I know what he said. Dr. Brooks wasn't at his deposition, and he hasn't read it either. I'm just asking that you extend some courtesy. Don't tell him that things are in there that aren't in there.

MR. GREENE: I am telling him that the man testified that there was a protruding disk at L5.

MR. RICHARDS: You are using the word herniated disk. Okay?

MR. GREENE: Now you want me to look through it, and I'll show you.

MR. RICHARDS: No, I don't want you to do that.

MR. GREENE: You are challenging me. Let's do it.

Q. Doctor, you wouldn't object to the fact that Dr. Anschuetz' records that you have read indicate that his final diagnosis of this patient at that hospitalization, subsequent hospitalization was herniated lumbar disk. Is that correct?

A. Just so I understand the question, please --

Q. That's the question.

A. We are now talking about Dr. Anschuetz? We are no longer talking about Goodwin, right?

Q. We'll talk about all of them.

A. Look. I am trying to cooperate with you.

Q. I just asked a simple question.

A. You are talking about Anschuetz?

Q. You have reviewed the records. Let's go to the first and second

hospitalizations. We are talking about the 3-6-87 hospitalization.

You have read, did you not, the notes made in the chart by the various doctors who were treating --

A. Yes.

Q. -- Mr. Bentley; is that correct?

A. You said 3-6-87? Okay.

Q. Yes. 3-6-87.

A. Okay.

Q. Now, there are notes made in that chart by Dr. Goodwin, correct?

A. Yes.

Q. Okay. There is also notes made in that chart by Dr. Halpern? H A L P E R N?

MR. **RICHARDS:** Helper.

Q. Helper. By Dr. Helper. Is that correct?

A. I have no recollection. Dr. Helper was a resident at that time.

Q. Okay. You have no recollection of reading any of his notes in this record?

A. I don't, no.

Q. Arid there are also notes made there by Dr. Anschuetz?

A. Yes.

Q. Are there not?

A. Yes.

Q. Okay. Isn't it a fact that Dr. Anschuetz' discharge summary finds that the patient had a diagnosis of herniated lumbar disk?

MR. RICHARDS: The discharge summary for- the --

MR. GREENE: The first hospitalization.

MR. RICHARDS: -- the first hospitalization? Okay. Before the surgery. All right.

MR. GREENE: Yes. Final diagnosis --

MR. RCCIIARDS: All right.

Q. The final diagnosis, L5-S1 herniated disk.

A. Yes. That's what Dr. Anschuetz wrote.

Q. Okay. Is it also a fact that Goodwin found that his problems were due not to a lumbar strain but to a disk injury?

A. Tn the hospital records in March of

87?

Q. Yes.

A. I don't have a recollection of that right now, but I'd be happy to look through the record.

Q. Okay. Dr. Craciun, do you know him?

A. No, sir.

Q. He is a neurologist. Were you aware of that?

A. I believe so.

Q. Dr. Craciun, you read his consultation of March 8, 1987?

A. I believe so.

Q. He also gave Mr. Bentley a neurological examination, did he not?

A. Yes, if he's a neurologist he did.

Q. Okay. And his impression was right L5 radiculopathy; is that correct?

A. Yes.

Q. Now, right L5 radiculopathy would be radiating leg pain from a lesion of the L5 disk; is that correct?

A. Right L5 radiculopathy --

Q. Right.

A. -- would be radiating pain from a lesion of the fifth nerve root.

Q. Okay.

A. Whatever the cause.

Q. Whatever tlie cause?

A. Whatever the cause.

Q. If that was a correct impression, then the cause would not be a lumbar strain, it would be some defect within the disk which caused nerve root involvement. Is that correct?

A. That's not entirely correct. The first part of the question is correct. If the diagnosis of right L5 radiculopathy is correct, that is not caused by a lumbar strain. There are a variety of reasons, one of which may be an injury to the disk, that can cause L5 radiculopathy.

Q. You would have a differential, and that differential would include tumor and all sorts of other things, correct?

A. Right.

Q. But one of them would be a defect of the disk, whether you call it a bulge, a protrusion, or herniation?

A. Could be.

Q. Are you aware that Dr. Helper upon his examination suggested that this was an L5 disk?

A. No, I am not, and part of the problem may be that if you are referring -- are you referring to the initial history and physical examination?

Q. No.

A. No? Do you want to refer me to the record, please?

Q. Does the statement discogenic back pain mean anything to you, doctor?

A. So we have left that.

Q. I'm asking, does discogenic pain mean anything to you?

A. Yes.

Q. Does that mean back pain that has something to do with a disk?

A. Yes.

Q. Okay. Dr. Helper's note of 3-17-87, the diagnosis was discogenic back pain, continue conservative measures. If no response, consider surgery.

A. Mr. Green, is that Dr. Helper's

signature? Is that the note you are referring to?

Q. 3-17-87. That is my note. Does that help you out --

A. Continues to have --

Q. -- if I show you this?

A. Here, I found it. It is the next page.

Q. Right.

A. 115.

Q. Correct.

A. Yes. I can't read the handwriting, but we now know that that's Dr. Helper, and that's what he wrote, yes,

Q. I take it that that's actually what he had. He did have a conservative treatment in the hospital during his first hospitalization, did he not?

A. Yes.

Q. And they tried a TENS Unit?

A. I don't recall, but if that's what you say, I believe you.

Q. Well, he did have -- he had two weeks of conservative bed rest and conservative treatment for that back condition, whatever it

was caused by?

A. Yes.

Q. And I take it from your letters, from your answers, from your analysis, that you don't believe that Anschuetz and Helper and Goodwin were correct, and Craciun, in their analysis that this patient was suffering from a disk injury. You feel he was suffering from a muscle strain?

A. Yes.

Q. Did Rickie Bentley have a right to rely on the opinions of his doctors, Dr. Craciun and Dr. Anschuetz, Dr. Helper, and Goodwin, did he have a right to rely on what they were telling him was wrong with him?

MR. RICHARDS: Excuse me. Are you asking --

Q. In your opinion?

MR. RICHARDS: -- a legal right?

A. Did he have a right -- in your experience, don't patients usually rely on what their doctor and multiple consultants tell them? Don't you want them to rely on you?

A. There are three questions.

Q. All right. Take them one at a

time. Don't you expect them to rely on your opinion and the opinion of any consultants that you may bring in? Isn't that why you are there?

MR. RICHARDS: I'm going to object and will let the doctor answer, but I want to object on the record inasmuch as his opinions as to the individual patient's right to rely on individual patients' physicians is not in issue here, and it is not actually subject to anything that he has made in his report or any subject matter of his expected testimony.

If you want to question him on that and the doctor wants to answer about that, that's fine.

Q. It is a simple question, doctor.

A. Yes.

MR. RICHARDS: It is a simple question?

A. I will answer. Yes.

Q. And for better or for worse, doctor, Mr. Rentley didn't have you there by his side saying at that point, no, no, you don't have a disk, you have a muscular strain. There was nobody in this record as far as you

can see who was diagnosing Mr. Bentley any differently than Dr. Craciun, Dr. Goodwin, Dr. Anschuetz, and Dr. Helper. They were all diagnosing him as having a disk injury. Is that correct?

A. It is not correct. You just said to me there is nobody in that record that is diagnosing Mr. Bentley different than -- arid you named some doctors. There is somebody in that record.

Q. And you are talking about the radiologist?

A. That's correct.

Q. We'll get to the radiographs in a second. But radiologists don't treat patients, do they, doctor? They don't diagnose patients clinically; is that correct?

A. Radiologists do treat patients, you know, depending on what they do.

Q. But they don't diagnose patients clinically?

A. That's not true, either. But in the limited area that we are talking about, the radiologist at St. Luke's Hospital probably did not examine Rickie Bentley and probably did riot

treat him. There are a lot of invasive radiologists these days who do treat people.

Q. Do you know if the radiologist ever came up and spoke with Rickie Bentley and gave Rickie his impressions?

A. I don't know whether the radiologist spoke to Rickie. Oftentimes after a myelogram a radiologist will go up and speak to a patient and may or may not give them his impressions. I don't know from the record.

Q. Assuming that Rickie Bentley never talked to the radiologist and does not have expertise in analyzing myelograms, CAT scans, and radiographs, is it fair to say that the only information he was receiving was the information he was getting from his treating physicians?

A. Yes.

Q. Okay. And do you know that Rickie then went home, he was discharged from the hospital on 3-19?

A. Yes.

Q. And tlie final discharge summary, as we went over earlier, listed his final diagnosis as L5-S1 herniated disk.

A. Yes.

Q. And he went home still in pain, did he not?

A. Yes.

Q. And he came back approximately 17 days later on the 9th of April?

A. It is 21 days later, but -- or 22 days later.

Q. Three weeks later? Approximately three weeks later?

A. Yes.

Q. So now we are some six weeks from the accident, maybe a little bit longer?

A. Yes.

Q. Is it fair to say that they had tried conservative treatment for six or seven weeks postaccident and he had not gotten better?

A. Because words are so important, that's all the record reflects is words, okay, you are right. In the vernacular, they tried conservative treatment.

Let me just make something perfectly clear to you. I differentiate between operative and nonoperative treatment.

I treat everybody conservatively. Sometimes the most conservative thing to do is to operate on somebody. So as .Long as we have that understanding --

Q. I understand. They tried nonoperative treatment?

A. Right.

Q. And the patient was still symptomatic, having pain?

A. He still had symptoms, yes.

Q. And for better or for worse, he came hack with the same symptoms, the leg pain and the back pain that he had when he was hospitalized in the first hospitalization?

A. I believe so.

Q. Okay. And it is fair to say, doctor, that had he not been in that automobile accident and suffered the injuries that he received he would not have been in the hospital on the first occasion?

A. That's correct.

Q. And you elicited in your history of him that he had no prior history of having any lumbar back problems?

A. I am sure if I didn't you wouldn't

have asked me the question, but let me check.

Q. Please check your notes.

A. Let me check in my report.

Okay. That's not exactly what he said to me. He said to me that he, and I quote, "nothing really major with respect to his low back." That's on page two of my January --

Q. He had no prior -- you have no indication from any of these records and from Mr. Richards or anybody else that he ever saw a doctor or had treatment for any lumbar back problems?

A. At this time I do not.

Q. Doctor, if he hadn't had the accident then it is reasonable to assume that he would have not been treated by Dr. Anschuetz for back problems in the hospital on his first hospitalization; he would not have been in the hospital, correct?

A. There are a million things that could have happened, but I think the answer that; you are -- my opinion is and the answer you are looking for is that I believe that the first hospitalization was causally related to

the accident.

Q. Okay.

A. And he could have not had the accident and fallen down a flight of stairs and been in the hospital at the same time.

Q. But the first- hospitalization was causally related?

A. Right.

Q. Prior to the accident, as far as you know, he was asymptomatic in his low back and after the accident he had torn or he had a back strain, according to you, which led to his hospitalization, right'?

A. Correct.

Q. He came back €or the second hospitalization -- strike that.

And because of his first hospitalization he came into contact with Dr. Anschuetz, correct?

A. Yes.

Q. Dr. Craciun?

A. Yes.

Q. Correct? And Dr. Goodwin?

A. Yes.

Q. Okay. Now, when he comes back for

his second hospitalization he's still in pain?

A. Yes.

Q. Correct? And his doctors have diagnosed him as having a herniated lumbar disk? Flight or wrong, that's what they diagnosed?

A. Yes.

Q. And they gave him the option of surgical treatment for that herniated lumbar disk as one of their recommendations. Isn't that Correct?

A. Must have been.

Q. And --

A. Otherwise you would have a second cause of action, no informed consent.

Q. And in he went for surgery on that second occasion that he was in the hospital?

A. Yes.

Q. And it is fair to say, is it not, doctor, that had he not had the traffic accident and not had the back injury he would not have been in the hospital receiving the advice of these doctors that he should undergo a lumbar laminectomy. Is that correct? Is that fair to say?

MR. RICHARDS: Again, objection as far as it doesn't go to his report, his opinions that he's holding with respect to the diagnosis. And his opinions as to what prompted or motivated the plaintiff to do or go where he went is not something, again, which is within --

MR. GREENE: I am not asking him that.

MR. RICHARDS: Yes, you are.

MR. GREENE: I am asking about his opinion as to causation, which he has commented on in his report.

And all I am asking him, if he hadn't been in the car accident and hadn't had the back injury and hadn't been there for the first hospitalization, he would not have been in the hospital the second time receiving the advice of these doctors that he had a lumbar disk problem that required surgery.

Q. Is that correct? Is that fair to say?

MR. RICHARDS: And of course, this is assuming that all that has been given in the way of history, and so forth, by the plaintiff

was in fact true.

MR. GREENE: And when it comes time for you to ask questions, go ahead and ask. This is my deposition.

Q. All I am saying, doctor, is causally he wouldn't have been there for that operation had he not been in the accident. Correct?

A. I can't answer that yes or no. Okay?

Q. You can't?

A. No. And I'll tell you -- may I tell you why?

Q. No, I don't want to know why.

A. But I can't answer it yes or no.

Q. Go ahead and tell me why.

A. Thanks very much. I said that the first hospitalization was causally related to the accident because in my opinion I believe that it was reasonable to admit him to the hospital in an attempt to determine the cause of his continuing pain.

Now, the problem then comes from the fact, how is the second hospitalization causally related. Had he been treated by a

different group of physicians he might not have been hospitalized the second time. Okay? If you want me --

Q. I understand that, doctor, and I agree with you. He might not have been. But he was treated by these physicians, and that's what actually happened. And because he was treated by these physicians and had those diagnoses, when he continued to have pain they admitted him again and recommended surgery. Is that fair to say?

A. That's correct.

Q. Okay. And he underwent surgery for that disk, and that surgery did not help him, did it?

A. That's correct.

Q. And I believe that you find in your letter -- I don't want to put words in your mouth, doctor, I would never do that -- I believe that you found that that surgery was essentially a negative exploration. Is that correct?

A. That's correct.

Q. Okay. And that surgery led him to a number of the problems which you found when

you saw him on your examination and looked at his X-rays and looked at his myelograms, correct?

A. Partially correct.

Q. Okay. Thank you.

In your correspondence, doctor, and yes, we are going back to your correspondence now, in your correspondence of March 14, 1990 -- strike that.

One of the reasons you believe that Rickie Bentley did not have a herniated lumbar disk has to do with your definition of what a herniated lumbar disk is, Is that correct? You don't believe, for example, a bulging disk is a herniated disk?

A. That's correct.

Q. Okay. And you would also agree that that definition of what is a herniated disk and what is not a herniated disk is subject to multiple interpretations in the medical literature?

A. Having not read the entire medical literature, I agree with your statement.

Q. There are orthopedic surgeons, for example, that would find that a bulging lumbar

disk is, in fact, a herniated disk. Isn't that correct?

A. It is not as simple as that.

Q. Okay. You have never heard orthopedic surgeons refer to a bulging lumbar disk as a herniation?

A. It depends on a lot of things. Okay. So yes, I have, I have heard of orthopedic surgeons refer to a bulging disk as a herniated disk, but there is usually some other explanation.

Q. Okay. Do you believe that any of his diagnostic tests -- I'm sorry, any of his radiological tests from his first or second hospitalization indicated a herniated disk?

A. No, sir.

Q. Okay. And, doctor, I think I asked you this a long time ago, many years ago, but I will ask you again.

Campbell's Operative Orthopedics, that's one source of informative literature that orthopedic surgeons look to?

A. That's one source, yes.

Q. And the journal Trauma -- I'm sorry, the journal Spine, is that another

source of material that orthopedic surgeons look to, authoritative material?

A. It is another orthopedic journal, yes.

Q. Do you read that journal?

A. Not on a regular basis.

Q. Arid Surgery of the Musculoskeletal System by Evarts, are you familiar with that book?

A. I have not read it.

Q. Is that generally accepted as one source of authoritative material among others?

MR. RICHARDS: Are you asking him if he recognizes it?

Q. Yes. I'm saying, is it a generally-recognized --

MR. **RICHARDS**: **As** opposed **to** his recognition of it?

Q. Yes, as opposed to your recognition. Is it generally authoritative?

A. It is a recognized orthopedic textbook. I have not read it.

Q. But you would recognize it as being one source of authoritative material?

MR. RICHARDS: Excuse me. You are

asking him if he recognizes that text as an authority?

MR. GREENE: I am going to ask you, Dan, really, on the record, this doctor is a real experienced witness. He knows how to defend himself.

MR. RICHARDS: And you are an even more experienced lawyer.

MR. GREENE: I don't think so. I don't think so.

MR. RICHARDS: And I want to make sure you and I don't mislead the doctor, or any witness.

MR. GREENE: What I am concerned about --

MR. RICHARDS: Excuse me.

MR. GREENE: -- is that through your objections you lead the witness. I think that is not proper. It is poor procedure, and I am surprised at you.

MR. RICHARDS: That is the last thing I want to do. If you want him to recognize a text as authoritative, just ask him that. Don't ask him if other people recognize it. There may be a lot of other people that

recognize it. That isn't the question, and you know that. So don't ask him that question. Ask him does he recognize it.

MR. GREENE: Thank you for the speech.

Q. Is this generally recognized by orthopedic surgeons as being one source of authoritative material in the area of orthopedic surgery?

A. It is a well-recognized orthopedic text. It is not a single authority.

Arid for the record, you know, I am not here defending myself, okay. I am trying to answer your questions.

Q. I understand that, doctor. But you are an experienced witness. You have testified hundreds of times, have you not?

A. I am an experienced witness. I am also an experienced orthopedic surgeon.

Q. I understand that. Rut you have testified hundreds of times, have you not?

A. Hundreds of times? I don't keep track.

Q. Okay. I do, and we will go over that at another time.

This journal, this book, Musculoskeletal Disorders by Robert D. Ambrosia, have you ever seen it?

A. No.

Q. Are you familiar with Russell Hardy, Dr. Hardy from the Cleveland Clinic?

A. I have heard his name, but I have never met him, nor have I read anything that he's published.

Q. And Maurice Victor, who is the Professor of Neurology at Case Western, do you know Dr. Victor?

A. I have heard of Dr. Victor. I have never met him or read anything that he wrote.

Q. And he is a well-known authority in the area of neurology, is he not?

A. I don't know.

Q. Aren't you on the faculty of the medical school? Aren't you an adjunct professor?

A. Assistant clinical professor, yes.

Q. Rut you aren't a faculty member?

A. I don't know the difference. I have a clinical appointment. I don't, you know, go over there every day.

Q. Okay. But you don't know who Dr. Victor is?

A. I just said, I have never met him. I know that he is a neurologist. I don't know his position at the university.

Q. Principles of Neurology, is that a book you have ever read, Dr. Victor's book?

A. No.

Q. You never heard of the book?

A. I am under oath. I never heard of the book.

Q. Okay.

A. Well., I just did.

Q. Okay. Fine. Doctor, after what you have characterized as essentially a negative exploration, Dr. Anschuetz reported, did he not, in his operative report that he found a herniated lumbar disk? Isn't that his postoperative diagnosis?

MR. RICHARDS: Those are two questions.

Q. Yes. Do you want me to separate it? I'll separate it. It is a discovery deposition.

He did enter in his operative note,

postoperative diagnosis, a herniated lumbar disk.

MR. RICHARDS: When you say he entered that --

Q. Entered that as his post-op diagnosis.

A. No, sir. Look what his post-op diagnosis is.

Q. Same?

A. Same.

Q. His pre-op is L5-S1 disk herniation?

A. Right.

Q. His post-op is same?

A. Right. Most commonly the post-op diagnosis is same.

Q. Same. And you are saying --

A. Wait. Excuse me. One second. May I see the operative report?

Q. Don't you have a copy of it?

A. It will save time. I can look through it.

Q. Save time. Go ahead.

A. Save lime, your money.

Okay. Dr. Anschuetz did not

indicate in this operative note postoperative diagnosis of same. Dr. Helper did. Dr. Helper dictated this operative note.

Q. Okay. Dr. Anschuetz --

A. Co-signed it.

Q. -- co-signed it.

A. Okay.

Q. So the two orthopedic surgeons who did the operation reported at the end of the operation that their postoperative diagnosis after doing the operation was an L5-S1 disk herniation?

A. Yes.

Q. Correct? Arid you are saying, doctor, that your reading of this note indicates that they didn't find that at all?

A. That's correct.

Q. Is that correct?

A. Yes, sir.

Q. And it is fair to say that that is a serious charge to make against an orthopedic surgeon, is it not, against any surgeon, that they say that they did something in an operation, that they made a major finding that in fact they did not find?

A. I am not making a charge. I am giving you my interpretation of the record, and I am saying to you that the postoperative diagnosis, which is the same as the preoperative diagnosis, is inconsistent with, not the same as the information presented in the record.

Q. What you are saying, doctor, is that they reported a finding, an L5-S1 disk herniation, after the operation was over they reported finding that; and they in fact did not, according to your interpretation of their operative note?

A. That's correct.

Q. That is what you are saying?

A. Yes, sir,

Q. And that is, is it not, doctor, a deviation from acceptable practice, to report on a post-op a diagnosis that you did not find?

A. That is a deviation from the standard, yes.

Q. Besides being a deviation from the standard, doctor., .it is as per my reading of the rules and regulations of the state medical board an action by a surgeon that you are

required to report or risk losing your license. Would you agree with that?

A. No, sir. I wouldn't agree with it, because I have not. read the rules and regulations of the state board. There is, I think, pending legislation, but I am not sure that legislation has been passed.

Q. You are not familiar with the fact that you are obligated to report a surgeon who does surgery, reports pathological findings that he did not, in fact, find at surgery? You don't think you are under an obligation to report a surgeon who does what you say Dr. Anschuetz has done here?

A. That's correct. I am not aware that I am under that --

Q. That obligation?

A. -- that obligation.

Q. I would ask you, sir, between now and your trial testimony to read the rules and regulations currently of the state medical board and ascertain whether or not you have such an obligation, because I will ask you about that again. I think you do.

A. Can you provide me with those rules

and regulations?

Q. Doctor, if you don't know -- you don't know where to find them?

A. I don't know where to find them.

Q. You don't Icnow where the rules and regulations of your own state medical board are?

A. No.

Q. You are on the staff of Hillcrest Hospital, are you not.?

A. Yes.

Q. Dr. Anschuetz is on the staff of Hillcrest Hospital, is he not?

A. Yes.

Q. Does he hold any position at Hilllcrest Hospital?

A. I believe he is presently the Chief of Orthopedics at Hillcrest Hospital.

Q. Have you reported the fact that you have discovered surgery that Dr. Anschuetz did at Hillcrest Hospital -- at St. Luke's Hospital, a member of your staff at Hillcrest, that, wherein he reported that he found a herniated lumbar disk which was the object of his surgery but in fact he never did?

MR. RICHARDS: You don't have to answer that question. This is a discovery deposition, and it is totally beyond the scope of a discovery deposition, discovering your opinions and conclusions in this case.

Q. Have you reported that, sir?

He doesn't represent you. He's got no right to tell you what to answer and what to not answer.

MR. RICHARDS: I have a right to interrupt and make certain that he doesn't answer questions that are not germane or prudent to this lawsuit, and that is --

MR. GREENE: I think it is very germane.

Q. Have you reported them?

MR. RICHARDS: I'm going to instruct you not to answer that question.

Q. You consider, sir -- are you not going to answer the question, doctor?

A. I am just the poor physician. I don't understand what's going on. HE! just instructed me --

Q. There is a question pending, and you are under oath.

He's riot your attorney, is he, sir?

A. No, sir.

Q. He doesn't represent you?

A. No.

Q. Okay. So we could all instruct you, but you are under oath.

The question is, have you reported Dr. Anschuetz, based upon your review and your criticism of this record, have you reported him to any of the responsible authorities at Hillcrest Hospital based on what you see in this record?

A. I made no criticism. I made a simple review, and no, I have not reported him.

Q. But your opinion would be the same with Dr. Helper, also, that he deviated from acceptable medical practice by writing a discharge summary claiming postoperatively they found a herniated disk when, in fact, there is no evidence in this record they ever found a herniated disk, in your opinion?

A. I am sorry, sir, you used the word discharge summary.

Q. I'm sorry. Let's change it to operative report, note.

A. Yes. I believe that's a deviation from the standard.

Q. As a matter of fact, it is your opinion that Dr. Anschuetz did the same thing on all three of his surgeries each time he went in and said he found a herniated lumbar disk, and I believe in your correspondence you say there was no evidence that this patient ever had a herniated lumbar disk. Is that correct?

A. No, sir, I don't believe that last statement is correct.

Q. Okay. Because on the second surgery and on the third surgery, Dr. Anschuetz was in fact operating on a herniated lumbar disk, was he not?

A. I need to review things, please.

Q. Well, doctor, before you look at it, is it true that once you have opened up a disk and excised nuclear material, as a physician you have, in fact, herniated it? You have now extruded material from it, and that disk is not the same as it was prior to you going in; is that, correct?

A. I don't agree with the first part of your question. I do agree with the second

part of your question.

Q. What do you agree with?

A. What I agree with is that once you have operated on a disk it is not the same as it was before you operated on it, just like I am not the same as I was before you came in today.

Q. Okay. I haven't operated on your disk, have I?

A. No, but you are trying to beat me up. Off --

Q. I am only here to ask you questions.

A. I know.

Q. You may check. In the second

Q. Anschuetz and Skelly.

A. At the time of the second operation

they noted that further disk material had extruded slightly distally, so at that second operation they did find a herniated disk.

Q. I note that I have underlined that. 3 was going to ask you that, but you have anticipated my last question.

A. No, sir. I didn't anticipate your question.

Q. So he didn't -- you just answered nty previous question. Thank you.

A. Okay.

Q. So actually his preoperative diagnosis was bilateral recurrent disk herniation. Would you agree with that as the preoperative --

A. That's what his preoperative is.

Q. Would you agree with that, that that is what, in fact, Mr. Bentley had, an L5-S1 bilateral recurrent disk herniation?

A. No. I can't agree with that, because recurrent. implies that it was there before.

It wasn't there the first time. I would agree that at; the second operation he had a dink herniation, an extruded fragment, but I

don't. agree that it was recurrent.

Q. Okay, You would agree, however, that the disk herniation found on the second operation was related to the first operation?

A. Yes.

Q. And I would assume that the disk findings in the third operation were related to the first two operations?

A. Assuming no other intervening trauma.

Q. Right. And you don't have any history of any other intervening trauma, do you, doctor?

A. I don't have a recollection right now of when the third operation was.

Q. 89.

A. 89.

Q. Yes, after you saw him.

A. Right. April of 891

Q. Yes. After you saw him.

A. Yes. I was just informed today that prior to his third operation he did sustain an injury to his back at work and, in fact, filed a Workers' Compensation claim for that.

Q. But the third operation was on the same disk operated on the first two times; is that correct?

A. That's correct.

Q. Okay. A lot of the finding on the third operation was scarring, was it not? There was extensive scarring found. At least according to Dr. Pearlstein, there was extensive scarring found.

A. Dr. Pearlstein?

Q. Do you know who Dr. Pearlstein is?

A. I haven't read anything from Dr. Pearlstein.

Q. You know who he is, though?

A. Certainly.

Q. Do you respect him as being an authority .in the area of radiology?

A. Yes.

Q. Is he someone who you use?

A. I don't use anybody, but I work with him.

Q. You don't use a radiologist?

A. Dr. Pearlstein and I work together.

Q. You work together?

A. Yes, right. Okay.

Q. You work together on many cases, correct?

A. Yes.

Q. Did you have anything to do with him becoming an expert witness in this case?

A. No.

Q. Never suggested him at all?

A. I did not suggest him.

Q. Do you know a Dr. Charms at Hillcrest Hospital, a radiologist? Matthew Charms?

A. Okay. I was thinking of -- the reason I hesitated, Bernie Charms is a cardiologist, Stephen Charms is an attorney.

Q. Bernie Charms' son.

A. Okay.

Q. Matthew Charms.

A. I have spoken to him on the phone. I have never met him personally.

Q. Do you know anything about him, his reputation?

A. No. No.

Q. The third operation.

A. The third operation.

Q. The third operation they found

scarring. In fact, it says there is a large amount of scar tissue between the two nerve roots, a substantial amount of disk material was removed from the disk space, and there was also disk material proximal to the disk space. So from that I have to assume there was further extruded disk material or herniated disk material in the third operation. He did have a herniated disk?

A. Yes.

Q. And he also had scarring that would be the result of the previous surgeries?

A. Yes.

Q. And that scarring was significant, was it not?

A. The operative note seemed to indicate yes.

Q. And that is a problem when you do multiple disk operations, scarring?

A. Yes.

Q. That is one of the things that takes away from a good result, scarring?

A. Yes.

Q. Okay. Arid would you agree that scar formation about the dura matter and nerve

roots after lumbar disk surgery is one of the most common and troublesome complications and is an important cause of poor results, speaking about lumbar disk surgery?

A. It sounds like you are quoting somebody.

Q. Nah.

A. You wouldn't do that,

Q. Nah.

A. You made that up yourself?

Q. This is Greene on the spine. I am actually quoting the journal Spine, volume 9, number 3, page 305, prevention of post3aminectomy scar formation. It is an article, but that's what it says. Would you generally agree with that?

A. Never read it, but having said it, could you please read me the sentence again?

Q. Scar formation about the dura matter and nerve roots after lumbar disk surgery is one of the most common and troublesome complications and is an important cause of poor results.

A. 1 would agree that it is a cause of poor results. I don't think -- I don't believe

that today scar formation is a common complication. We have refined our techniques, and it is much less common than it used to be.

Q. But Rickie Bentley had that complication, he had a lot of postoperative scarring, did he not?

A. Yes, he did.

Q. And that caused him problems as far as you are concerned, based upon your examination and your review? That would be one of the causes of his problems?

A. That could be one of the causes of his problems, yes.

Q. Based upon what you know of Rickie Bentley's operative report, all the way through 89, you would not send him back now to doing heavy physical labor, bending and lifting on a daily basis after his three laminectomy procedures, as far as you can see, if he was your patient?

A. With the understanding that I have not; reexamined Mr. Bentley and I have only reviewed the records --

Q. Yes, sir,

A. Given what knowledge I know about

Mr. Bentley, no, I would not send him back to work, doing heavy labor and all those things.

Q. All right. You would advise him to have a job that requires less strenuous activity?

A. 1 wouldn't give Mr. Bentley any advice without first examining him.

Q. Okay. But you wouldn't send him back to heavy physical labor?

A. I would not send him back to heavy physical labor.

Q. You do laminectomies, don't you?

A. Yes.

Q. You don't do fusions, do you?

A. I have not done a fusion since I have returned to practice, that's correct.

Q. I mean since you were a resident; is that correct?

A. Which depo did you read? I want to think. Pomerantz?

No, I haven't.

Q. Okay.

A. Not that I wouldn't if it. was indicated. Okay?

Q. You know how to do it? If you had

to do it you would do it?

A. Yes, right.

Q. But the results from relaminectomies aren't anywhere as -- when you have to go back a second time the results are much poorer than the first time, correct?

A. That's correct.

Q. And I assume when you have to go back a third time, as in this case, the results are much poorer than if you have to go back a second time?

I've got a study on it if you want to see it, but it's bad.

A. In general that is true. I mean, you know, in general, okay, there are certainly situations where I have done second operations, you find definite distinct pathology, and you know, thank goodness, people get better. But in general, there is nothing like a virgin back to operate on with a good herniated disk. Okay?

Q. After a third operation, though, you don't expect to get good results if there is a lot of scarring left?

A. That's correct.

Q. Okay. So your only criticism, if I can put words in your mouth, of Dr. Anschuetz is that he shouldn't have gone in, in your opinion, to do the first surgery because he didn't have adequate radiographic studies or clinical indications to go in and operate. Is that correct?

A. I am not here to criticize Dr. Anschuetz. Okay? I was here to review the records and determine what injuries Mr. Bentley sustained.

Q. I understand that, doctor. But either knowingly or unknowingly you have thrust yourself into a legal area which I have a right to question about, because it is legally pertinent.

If, for example, you are here today retained by Mr. Richards' office -- is that correct?

A. Yes.

Q. And you have done work for Mr. Richards' office in the past, have you not?

A. Yes.

Q. This is not the first case that you have worked for them?

A. No.

Q. Okay. And Rickie Bentley wasn't tlie first patient that you were scheduled to see -- I know that, you saw him in 89, but your first'scheduling to see Rickie Bentley was in July of 88, was it not?

A. Correct.

Q. And is it fair to say that in 1988 you handled four or five different cases for Mr. Richards' office?

A. I have no recollection.

Q. Okay. Now, that wouldn't surprise you, though, if I told you that you had four or five appointments with Mr. Richards' office for defense medicals in 1988?

A. How would you know how many times I examined for Mr. Richards?

Q. I'm asking you. Do you know?

A. I don't know. I'm asking you. How do you know?

Q. Well, doctor, when you take my deposition you'll find out.

A. Okay.

Q. And you have been doing defense medicals since Norm Rosenberg passed away when,

in 1976? 78?

MR. RICHARDS: You are referring to defense medicals as opposed to a medical evaluation?

Q. I am talking about medical/legal work where you examine a patient and report your results for a client, someone who retains you to do that, whether it be for Workers' Compensation or whether it be for litigation, for civil litigation outside the compensation system.

You have been doing that since approximately, what, 78?

MR. RICHARDS: I'm going to object to your characterization that he's doing it for me. He's not doing it for me. He's called upon to act as witness in this case.

MR. GREENE: He was retained by you as an expert witness.

Q. You aren't the fact witness in this case because you were not there, correct? You are an expert witness.

A. That's correct. I am not a fact witness. I am -- yes. I am just trying to think of when Norm Rosenberg died. It was in

1977, okay? And so I started doing -- well, the day I came into practice I got involved in medical/legal work, as every orthopedist does, okay?

I believe that I did my first examination on behalf of the defendant, okay, when Dr. Roseriberg developed his brain tumor, which was in 1976 or 1977.

9. Okay. Mr. Richards' office retains you and you get. paid. Are you paid by Mr. Richards' office directly or do you get a check from an insurance company?

A. I don't know. I don't see the check.

Q. You don't see the check?

A. I don't see the checks.

Q. But you have done work for Allstate Insurance Company in the past, served as an evaluator and expert witness for Allstate?

MR. RICHARDS: Objection. Again, in terms of who is serving anyone, he is called as a medical expert to testify, not for or against anyone.

MR. GREENE: He is retained to give opinion testimony.

MR. RICHARDS: Fine.

MR. GREENE: I am not implying that he is retained to give any particular opinion testimony.

MR. RICHARDS: It sounds like you are.

MR. GREENE: He is retained to give a his opinion. Whether his opinion is objective or not objective, it is not up to me, it is up to a jury.

MR. RICHARDS: Right.

Q. But you are retained by various insurance entities to give expert opinion testimony, whatever your opinion happens to be. Correct?

A. Yes.

Q. Now, are you aware that'you are on a list that the Allstate Insurance Company has of approved orthopedic surgeons that their attorneys are allowed to send plaintiffs to to have examined? Are you aware of being on that list?

A. No, I am not, and after this deposition remind me to tell you a story which is not related to your question, but I just

happened to think of it.

Q. Okay. Thank you.

Doctor, Rita Videctic, does that name ring a bell to you?

A. No.

62. Do you have any recollection of Rickie Bentley?

A. No.

Q. Okay. So other than your notes, you don't remember the fellow at all?

A. No.

Q. You have no specific notation in your examination that you felt that Rickie Bentley was being dishonest with you in any way, do you?

A. No.

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

A. Yes. Yes.

Q. I took your deposition back on December 13, 1982.

A. 1982?

Q. 1982.

A. Here in this office?

Q. No. I don't think so. I don't think so.

A. No, because we moved. That's what confuses me, because we moved here in --

Q. I knew you had me mixed up with somebody else. We had a contraversy, but it wasn't about money. I am going to remind you what it was about though.

A. All right.

Q. I pay my bills. Okay?

A. Then I apologize.

Q. Let's start again.

A. Okay.

Q. Mrs. Videctic, I want you to assume this, had an auto accident, and --

A. That would have the address on the front of the deposition where it was taken. First page, cover page.

MS. McQUILLAN: It was here.

Q. Mt. Sinai Medical Center. I knew that wasn't me.

A. There is another William Greene.

a. Yes, there is, who is retiring

now. Make my life easier, but there is another William Greene, and he is oftentimes referred to -- strike that.

A. Can we yo off the record for a minute?

Q. Go ahead.

(Discussion off the record.)

Q. You examined Mrs. Videctic. I want you to assume that she was in a vehicular accideht, had back pain immediately but did not have radiating leg pain, and a year and a half later the woman had to go in for a herniated disk that you found was, in fact, a herniated disk.

Do you remember that?

A. Just for the record, I found from

accident has a back injury, does not have radiating leg pain -- at one point you said 72 hours, another point you said 96 hours -- after

the accident you can rule out that that patient had a disk injury from the accident.

Do you recall testifying to that?

A. I don't believe that that's what I said.

Q. Okay.

A. Because that's not what I believe.

Q. You felt that she would have to have -- and I am going to quote you -- leg pain which was typical of sciatic type of pain within 72 hours of the accident. Correct?

A. You are reading from my deposition, so that's what I said. Okay. All right.

Q. And you have not only testified to that in the Videctic case, but you also testified to that over the years. In many other cases you have given similar testimony. Is that correct?

A. Not only have I given similar testimony, that's what I believe. That's what I say in orthopedic conference. It has nothing to do with legal work.

Q. That's what you believe?

A. Believe. Yes.

Q. And as a matter of fact, you also

testified that leg pain typical of sciatic pain is pathognomonic of a disk injury.

A. I am only hesitating because of your use of the word disk injury.

Q. Herniated disk make it better?

A. Big difference. Sure.

Q. Herniated disk. Pathognomonic for herniated disk. Haven't you so testified?

A. I don't have a recollect-ion that I have. Pathognomonic means that -- I don't really know what it means anymore.

A herniated disk can cause sciatic pain, and a cause of sciatic pain can be a herniated disk. A herniated disk can cause other kinds of symptoms and other things can cause sciatic pain besides a herniated disk. okay.

Q. I am only asking you, doctor, haven't you testified ---

A. I don't recall, Mr. Greene.

Q. Doesn't pathognomonic mean, in fact, almost definitely caused by?

A. That's what I would think, and so that's why ---

Q. You don't remember saying that in

your testimony?

A. Nonestly.

Q. Okay. Arid you don't believe that today?

A. No.

Q. But --

A. I am older,

Q. But it is your opinion, it is your opinion that a patient who is in a vehicular accident who suffered a .lumbar back injury who has sciatic type of pain within three or four days of the accident most probably has a disk herniation; isn't that your opinion?

A. No. You want to know what my opinion is?

Q. Yes.

A. My opinion is that if an individual is involved in an accident and sustains enough trauma in that single isolated event to cause a herniated disk, then within three or four days, 72 to 96 hours later, he should have pain not only in the sciatic distribution, but in the distribution indicative of the particular nerve root which is being affected by the herniated disk.

Q. Doctor, the exact question that I asked you, "Is pain radiation along the course of the sciatic nerve pathognomonic of intervertebral disk injury," and your answer was, "I would agree with that statement, although it. makes no mention of the time interval between the injury and the pathognomonic symptomatology."

A. That was in 1982. I am eight, years older, and hopefully a lot wiser.

Q. Okay. So you don't agree with that statement anymore?

A. No.

Q. Arid you would agree that trauma in a person of Rick Bentley's age is the most common cause of disk injury?

A. Not only do I not remember Rick Bentley, I don't remember -- he's 29 years old.

Q. Yes, 29 years old.

A. By trauma, you mean a single isolated event?

Q. How about a car accident where a person is thrown forward in a twisting fashion? Single isolated event, yes.

A. I don't know that that's borne out

by the literature. I have operated on a 1-5-year old, for example, who had no single isolated event.

Q. Given the history of Mr. Bentley of a single isolated event, being hit by a car going 45 miles per hour, having a forward twisting motion, would it be reasonable to assume given the absence of any other history that that would be a proximate cause of a disk injury?

A. It could be the proximate cause of the disk injury,

Q. Okay. Now, when you are talking about having sciatica within three or four days of A herniated disk, you are talking about an acute herniated disk?

A. Yes.

Q. Okay. And, doctor, I believe I asked you this at the time of the last deposition. I don't expect you to recall it now, but I do firmly expect your answer will be the same.

You believe that Robert Zaas has expertise in orthopedic surgery?

A. Yes.

Q. And he is someone whose expertise that you would respect?

A. Yes, but not always agree with.

Q. He is your partner?

A. That's right. And we don't agree on everything.

Q. He's been your partner for years, hasn't he?

A. Right.

Q. Excuse me a second.

A. Pardon me?

Q. Excuse me one second.

A. You have to find the statement that says, "it is true, the effects of herniated disk" --

Q. Do you agree or disagree with the following quote: It may take days, weeks, months, and sometimes even years before a back injury which affects an intervertebral disk causes sciatic pain?

A. No, I don't agree with Dr. Zaas' statement.

Q. In this case, Rickie Bentley suffered a severe enough -- had an accident and suffered severe enough trauma to cause him, in

your opinion, a back injury?

A. Yes.

Q. I am not talking about what kind it is. It is a back injury.

A. Baek injury.

Q. And you would agree that competent observers, including Dr. Goodwin, Dr. Anschuetz, and Dr. Craciun all diagnosed him as having a sciatic type leg pain?

A. No, I don't agree with that.

Q. But you would agree that that was their impression? You might not agree with it, but that's what they concluded?

A. No. I answered your question, and I said, I don't recall that any of those three people used the words, sciatic type leg pain.

Q. They did say L5 radiculopathy, did they not?

A. Somebody did, yes. Craciun.

Q. All right.

A. Right.

Q. Craciun, and I believe Helper.

A. You didn't mention Helper in the other group. Helper was just a resident.

Q. What I am saying, it is fair to say

that the doctors there on the scene observing him, rightly or wrongly, related his leg pain to an injured intervertebral disk?

A. I agree with that.

Q. Right..

A" That's what the doctor said.

Q. And if they were right, then that would place them in the category of people that you feel under your criteria suffers herniated disks from trauma'?

A. Yes.

Q. Okay. Now, as far as the interpretation of the radiographs and the myelograms and the CAT scans, 1 understand that you looked at them and that you have certain impressions of them; but you would agree, you are not a board-certified radiologist?

A. Yes.

Q. And you didn't do a radiological residency?

A. That's correct.

Q. Correct? And when you have patients you do rely, although you read them yourself, you are always sure that you have a radiologist interpret them, also?

You don't.. *go* .into an operation upon doing a myelogram and a CAT scan based upon your own interpretation, you have a radiologist look at it, also, don't you?

A. Also, yes.

Q. And Dr. Pearlstein is with Krause Lubert, is he not?

A. Yes.

Q. Arid Krause Lubert, are they the firm that- you use, your office uses?

A. Yes.

Q. And is it pretty customary when you do medical- examinations for defendants in lawsuits or for insurance companies that you usually have X-rays taken of the person that comes in to *see* you?

A. Yes.

Q. And you send them over to Krause Lubert?

A. Yes.

Q. Have you been doing that since 1978?

A. 1971.

Q. Okay. You send them all your business, don't you?

A. Not all.
Q. 95 percent:?
A. I send them the business that needs to he done immediately because they are right next door.
Q. Okay.
A. I mean, I know where your question is going. Dr. Pearl-stein does not work in this building, Dr. Pearlstein is at Mt. Sinai Hospital,
Q. But he is a partner in Hill & Thomas?
A. Right.
MR. RICHARDS: Hill & Thomas?
A. Hill & Thomas?
Q. He is a partner with Krause Lubert?
A. Yes.
Q. Do you ever use Hill & Thomas?
A. Yes.
Q. I only have a few more questions.
A. Let the record reflect *that* I get no kickbacks from Dr. Pearlstein for any of the radiographs.
Q. That wasn't where my question was going, but your office is a major referer of

business to Krause Lubert? They like you guys, don't they?

A. Yes, I would hope so.

Q. Okay. The CAT scan and myelogram in 1987 that you say does not demonstrate either a herniated disk or nerve root compression, can I refer you to those, please?

A. Yes.

Q. Okay. What position is the patient in when those CAT scans and myelograms are done?

A. Okay. There were two CAT scans, a minimum of two CAT scans done.

Q. Two CAT scans?

A, Done in 87, and one myelogram.

Q. One without contrast and one with contrast, and one myelogram. What position is the patient in in those tests?

A. For the CAT scan the patient is lying on his back, so he is supine.

For the myelogram the patient is lying on his abdomen, is on either side, and is standing up.

Q. For tlie myelogram?

A. Yes.

Q. Now, what does it mean to you when a disk effaces a spinal nerve, if anything?

A. Yes. I don't know. My best guess is that it must be in very close proximity to the nerve root, if not causing some distortion of the nerve root.

Q. How about touching the nerve root but not compressing? Would that be a fair definition of effacing?

A. I don't know. I would have to look it up in a dictionary.

Q. Do you have any indication from your reading of the CAT scan taken at the hospital in the admission for surgery in 1987 that there was a central protrusion seen?

A. Only because words are So important --

Q. I understand.

A. Okay. You misspoke. You said the admission for surgery the CAT scan showed.

Q. I'm sorry. It was the first admission prior to surgery.

A. Right.

Q. The CAT scan showed a protrusion, did it not?

A. Dr. Anschuetz' impression was that the CAT scan revealed, and I quote, primarily a central protrusion at the L5-S1 interspace. The radiologist. said, no definite evidence of protrusion at L4-5, and there was a mild bulge at L5-S1.

Q. Okay. Now, the difference between a bulge and a protrusion is one of measurement, is it not? Protrusion is bigger than a bulge?

A. A protrusion is bigger than a bulge, but with today's imaging modalities, I can show you the difference between a bulge and a protrusion.

Q. And you would find that a 5-millimeter bulye is clinically significant, in your opinion? Is that correct?

A. Depending on its location. Depending on its location.

Q. Central?

A. Central?

Q. Yes. Central.

A. You are misquoting me.

What I probably said then or --

Q. I am just asking you what you feel now. I am not quoting you any testimony.

A. What I feel now is that a bulge under 5 millimeters is probably in the legal sense riot clinically significant. Any bulge over 5 millimeters may be clinically significant depending on its location and depending upon the correlative physical findings.

Q. These physicians treating felt that bulge was clinically significant, correct, the L5-S1 bulge?

A. If they didn't feel it was significant they wouldn't have operated on him.

Q. And Eurthermore, do you recall in your reading of that CAT scan whether you noted that the bulge WRS effacing a nerve root?

A. I don't recall whether it was effacing, i.e., touching but not compressing.

Q. But if it's touching a nerve root on a patient in a CAT scan who is in a lying down position, you would as an orthopedic surgeon be concerned that there actually was nerve root.. compression going on when the patient was not lying down but was moving or walking around?

In other words, doctor, if it's close enough to touch it's close enough to actually compress at various times upon movement. Isn't that correct?

A. I never really thought about it. It sounds logical. I don't know whether it's correct or not., but it sounds logical..

Q. So in a patient showing having back pain, leg pain, radicular symptoms, not responding to conservative therapy, if you saw a CAT scan which demonstrated a bulging disk that was effacing a nerve root, you would have reason to believe that perhaps that's the cause of the problem, correct?

A. I would need some more information.

Q. But it sounds like a logical progression of thinking, does it not, doctor? I am not saying that's what happened here, but I'm saying if you did, in fact, find it was effacing the nerve root'?

A. What I said was I would need some more clinical information.

Q. Okay.

A. Okay.

Q. But that, would get your suspicions

up that perhaps you have something of significance?

A. Perhaps, yes.

Q. Okay. And in a patient that's riot responding to conservative therapy, you don't have any quarrel with a doctor who has tried conservative therapy who goes in and operates if he feels in his clinical judgment that the patient is suffering from a herniated disk?

A. That's correct.

a. Okay. And have you ever been sued for medical negligence? I'm not saying actual medical -- I am saying alleged medical negligence. Have you ever been sued?

A. I understand that. I have certain rights, too.

Yes, I have been named as a defendant in a malpractice suit, both of which I was dismissed from. One suit -- yes.

Q. So you don't have any pending litigation going right now against you?

A. Not that I am aware of.

Q. Okay. And your recollection is you were only named twice as a defendant?

A. Something happened when I was a

resident that I can't remember whether I was named or not, but since I have been in private practice I can only think of twice.

Q. Okay. Have you ever served as an expert witness for a defendant in a malpractice case?

A. Yes.

Q. Okay. Local doctors? Local doctors?

A. Yes.

Q. And when you were an expert witness one of the things that you were critical of was retrospeculative thinking on behalf of the plaintiff's expert, were you not, that the plaintiff's expert was thinking retrospectively?

Didn't you say it's easy to come in years afterwards and criticize someone who is on the firing line? Does that sound like something you might have said?

A. J don't, recall saying that, but if you could find the book and verse and read it to me --

Q. Okay. Have you ever been a plaintiff's expert in a medical malpractice

case?

A. Yes.

Q. Against a local doctor in Cleveland?

A. Yes.

Q. Was that Dr. Katz? It involved Dr. Gary Katz?

A. No. I was a defense expert in Gary's case. I have been a plaintiff's expert against local orthopedists.

Q. Which local orthopedists?

A. Well, actually it was -- well, it was against Kaiser, and the operating surgeon was Herb Jacob, who was a general surgeon, but. Hidvegi, H I D, whatever, was also involved, and I testified on behalf of the plaintiff.

Q. All right, Any other times you testified on behalf of the plaintiff in a malpractice case against a local doctor?

A. Local being in the Cleveland area?

Q. Yes. Greater Cleveland area,

A. Greater Cleveland extends to Youngstown?

Q. No, it doesn't extend all the way over there. That doesn't extend all the way to

Youngstown.

A. I don't have a recollection, but then I have done so many I can't recall all the names.

Q. Okay. Over the years your deposition has been taken a number of times.

A. Yes.

Q. Correct? Arid you have been involved in a lot of cases --

A. Yes.

Q. -- as an expert. And a number of those times you have read X-rays --

A. Yes.

Q. -- differently than the treating radiologist did, the actual radiologist who was on the scene?

A. We agreed before, radiologists don't; treat.

Q. Right. The radiologist who was involved contemporaneously interpreting the films.

A. I have had disagreements with radiologic interpretations, yes.

Q. And you disagreed, for example, with Dr. Jim Zelch's interpretations of X-rays,

correct?

You Icnow who Jim Zelch is, don't you?

A. Is he --

Q. He was with Hillcrest Hospital. He is now with the Cleveland Clinic in Florida.

A. Was he a defendant in Martha Green? is that what you are talking about?

Q. Didn't you state that he was negligent in his interpretation of the X-rays in the Martha Green case?

A. Okay. Then I disagreed with Jim Zelch, yes.

Q. And you have disagreed with other radiologists, I assume?

A. Yes.

Q. And you would agree, you do consider yourself to have some expertise in radiology or you wouldn't be going around disagreeing with board-certified radiologists. Is that correct?

A. That should be obvious.

Q. Although you don't hold yourself out to the public as being an expert in radiology?

A. No. That would be illegal.

Wait a minute. Wait just one second.

Q. Yes, sir.

A. I don't hold myself out to the public as being a board-certified radiologist. When I treat my patients, okay, I do hold myself out as having expertise in radiology so that I can interpret radiographs and explain them to my patients.

Q. You consider yourself of sufficient expertise in radiology to be critical of board-certified radiological findings if you don't agree with them?

A. That's correct, Even doctors Krause and Lubert.

Q. Even Krause and Lubert. Okay.

And you would agree that radiological interpretation is not an exact science?

A. Yes.

Q. And you may see something when you look at an X-ray or a myelogram or a CAT scan that someone else may riot see, a competent trained observer may not see and may not agree

with yon; is that correct?

A. That's correct.

Q. Thank you.

A. It was a pleasure. I don't waive signature.

(Deposition concluded at 6:00 p.m.)

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CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Heidi L. Geizer, 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 adjourriment.

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 10th day of April, 1990.

Heidi L. Geizer, Notary Public
within and for the State of Ohio

My commission expires January 22, 1995.

ROBERT D. ZAAS, M.D.
DENNIS B. BROOKS, M.D.
INC.
ROBERT C. CORN, M.D.

ORTHOPAEDIC SURGERY

26900 CEDAR ROAD
BLACKWOOD, OHIO 44122
TELEPHONE 216/464-4414

#541

July 16, 1981

RE: Melinda Weinberger

TO WHOM IT MAY CONCERN:

The above named claimant was examined by me on July 13, 1981, regarding alleged disability as a result of an accident which occurred on October 12, 1980. This 27 year old female informed me, in the presence of her counsel, that she was injured on October 12, 1980, when she was driving an automobile which was moving when it was struck on the left front end by a second car. The claimant was not wearing seatbelts at the time of the accident and was "thrown around" inside the car striking the driver's side door with her left elbow. She noted that she was "dazed" and the left side of her body was "tingling". She was taken to Lake County West Hospital where she was examined, treated and released.

The day after the accident, she called her physician, Dr. Bauer, and medication was prescribed. She was examined by him within a week of her accident and further medication and bed rest were prescribed. She then contacted Dr. Bauer by telephone because of: conrinuing symptoms, and on approximately November 3, 1980, she was admitted to Euclid General Hospital for approximately three weeks. She was treated with pelvic traction, ice packs and physical therapy with ice. While in the hospital, she was also treated by Dr. Derello, "a back specialist". By the time of her discharge, she was "no better", for she continued to have pain in her low back and numbness in her right hand which had begun several days following the accident.

She continued her treatment with Dr. Bauer, and electrodiagnostic studies were performed. Further bed rest and restriction of activity was recommended. She has been examined by Dr. Bauer approximately every six to twelve weeks. She has not again been hospitalized.

At the time of this examination, the claimant stated that she was still having "a great deal of pain". She described pain in the mid portion of the thoracic area which radiated into the lumbosacral area where it was mostly tense, The pain also radiated down the outer aspect of the left thigh, into the posterior calf and bottom of the foot. With walking, she had pain in both legs,,,, Activities such as standing for more than 15 minutes and walking for more than 30 minutes increased her symptoms, A Valsalva maneuver produced mid thoracic pain. General housework also increased her symptoms, and when she attempted to cut meat, she would develop "shocks" throughout her right hand.

TO WHOM IT MAY CONCERN July 16, 1981
RE: Melinda Weinberger

The past medical history indicated that in approximately March of 1978, the claimant developed low back and left leg pain following a D&C. She was treated by a therapist and in June of 1978 was admitted to Lake County West for traction and physical therapy by Dr. Cop. She was then examined by Dr. Bauer in July of 1978 at which time electrodiagnostic studies were performed and medication was prescribed. She was adnitted to Richmond General Hospital in September of 1978 for physical therapy and traction. She continued under Dr. Bauer's care. In June of 1979, she was involved in a vehicular accident when she was struck from behind. She sustained injuries to her neck and low back. At that time, she was eight months pregnant and was admitted to Lake County West Hospital. The claimant stated that prior to her accident of October 12, 1980, she was "getting considerably better". She had "less bad days and more good days", although she still had low back and left leg pain. She had had no prior right hand symptoms and had sustained no new injuries. Prior to her accident, she was working as a driving instructor and now was working for "short periods at a license bureau".

Physical examination revealed a female of approximately her stated who was of short stature and considerably over-nourished. She stated that she was five feet, three inches tall and weighed 160 pounds. She arose from the sitting position with the aid of her hands but ambulated without limp and was able to ascend and descend the examining table in a normal fashion.

Examination of her cervical spine revealed normal cervical lordosis without evidence of paracervical or trapezius spasm. There were no areas of localized tenderness to palpation. There was a full range of cervical flexion, extension, lateral bending and lateral rotation. Examination of the thoracic spine revealed increase in the thoracic kyphosis. There was no evidence of spasm or localized tenderness. There was a full range of shoulder motion bilaterally, and tests for thoracic outlet syndrome were negative. The neurologic examination of the upper extremities revealed normal deep tendon reflexes, motor power and sensory perception. Tinel's test over the carpal tunnel was negative bilaterally.

Examination of the lumbar spine revealed increase in the lumbar lordosis without evidence of paraspinous spssm. There was tenderness to the slightest of palpation extending from the thoracolumbar area to the sacrum. There was no sciatic notch or sacroiliac tenderness. Forward flexion was restricted such that the fingertips reached the knees, and there was mild restriction of extension and lateral bending. Burns' test was markedly positive. Heel walking and toe walking were performed without evidence of weakness but were accompanied by complaints of low back pain.

Further examination revealed that sitting straight leg raising could Le accomplished to the horizontal bilaterally. Paradoxically, supine straight leg raising was restricted to 10 degrees bilaterally and accompanied by low back pain. Lasegue's maneuver decreased this symptom. Further neurologic examination of the lower extremities revealed no rneasureable calf atrophy, normal deep tendon reflexes and sensory perception, There was a giving way type of weakness of the extensor hallucis longus bilaterally.

TO WHOM T MAY 'CONCERN
RE: Mel nda Weinberger

July 16, 1981

Page three.

The claimant requested that no *x-rays* be obtained,

The paucity of information forwarded to me includes a discharge summary from Euclid General Hospital which indicates that the claimant was treated at that facility between November 2, 1980 arid November 21, 1380. The discharge summary includes a history of "prior back injury" but does not specify it's nature. The physical examination is summarized and does not describe specific neurological findings. There is nothing to indicate that the claimant had symptoms or physical findings referable to her *right* hand.

Based on the information presently available to me, I believe that the claimant was involved in a vehicular accident on October 12, 1980. According *to* her history, she sustained some injury to her lumbar spine which intensified pre-existing symptoms in this area and her left leg. Accordingly, it would appear that the hospitalization at Euclid General Hospital was necessitated by the accident.

At the time of this examination, the claimant continues to be symptomatic with her right hand, low back and left leg. There is nothing on physical examination to substantiate her complaints in her upper extremity. The complaints which she has in her back and left leg apparently are similar to those which she had prior to her accident, and although these symptoms are suggestive of nerve root compression, there is nothing on physical examination to substantiate these complaints. In fact, the many paradoxical physical findings noted on examination indicates that *the* claimant is exaggerating. Therefore, I do not believe that "future disc surgery" is indicated. I am unable to "determine the major extent of her pre-existing back problems as it relates to her accident of October 12, 1980."

Very truly yours,

DBBrooks m.D.

Dennis 6. Brooks, M.D.

DBB/gr