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COURT OF COMMON PLEAS
CUYAHOGA COUNTY
- - -

KAREN A. DIVIS, et al.,

Plaintiffs,

vs. Case No. 317137
Judge Aurelius

JOAN MARIE CHABEK, et al.,

Defendants.

- - -

Transcript of videotaped deposition of DENNIS B. BROOKS, M.D., Expert Witness herein, called by the Plaintiffs as upon cross-examination, pursuant to Notice and Agreement of Counsel, pursuant to the Ohio Rules of Civil Procedure, before Denise C. Winter, a Registered Merit Reporter and Notary Public within and for the State of Ohio on Wednesday, November 25, 1998, at the offices of Dennis B. Brooks, M.D., 26900 Cedar Avenue, Beachwood, Ohio, commencing at 4:05 p.m. and concluding at 5:00 p.m.

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APPEARANCES:

Law Offices of Debra J. Dixon
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on behalf of the Plaintiffs;

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on behalf of the Defendant,
Joan Marie Chabek;

Law Offices of Les A. Chambers
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on behalf of the Defendants,
Celina Mutual and National Mutual.

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Also present: Randall Buckosh, Litigaide, Inc.

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I N D E X

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(Signature Waived)

PROCEEDINGS

DENNIS B. BROOKS, M.D.

Expert Witness herein, called by the Plaintiffs as upon cross-examination, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

CROSS-EXAMINATION DENNIS B. BROOKS, M.D.

BY MS. DIXON:

Q. Good afternoon, Dr. Brooks.

A. Good afternoon.

Q. As I informed you off the record, my name is Debra Dixon. I'm one of the attorneys representing Karen Divis and her family in a lawsuit styled Divis versus Chabek in the Common Pleas Court for Cuyahoga County, Ohio.

Can I first ask you to explain what your role is in the context of this piece of litigation?

A. Yes. As I understood my role, it was to determine what injuries, if any, that Miss Divis sustained as a result of whatever accident she was in and to determine whether she had any residuals, if any, at the time that I examined her.

Q. And by whom have you been retained to provide those services?

A. By Mr. Chambers.

Q. And is it your understanding that you represent Mr. Chambers' client's interests alone or all of the Defendants in this matter?

A. It is my understanding as of today that Mr. Volsky represents a co-Defendant.

MR. CHAMBERS: I'm going to object as to the implication or supposition that he's representing anyone in this matter.

BY MS. DIXON:

Q. You have been retained by Mr. Chambers; correct?

A. Yes.

Q. Is it your understanding that Mr. Chambers represents one of the Defendants in this matter?

A. Yes.

Q. Is it likewise your understanding that Mr. Volsky represents one or more of the Defendants in this matter?

A. Yes.

Q. And this role in litigation is generally referred to either as an independent medical examiner or a defense medical examination; correct?

A. The one that I perform?

Q. Yes.

A. Yes.

Q. And can you describe for me in terms of

percentages, if you could, what percentage of your practice constitutes performing these defense medical examinations?

A. I don't know. I don't keep track of that.

Q. In the course of a week, can you tell me how many defense medicals you may perform?

A. Yes. On the average, three per week.

Q. And as I understood it, by virtue of reviewing the report you ultimately rendered in this case, that would consist of a review of past medical records; correct?

A. I'm sorry, what the examination consists of?

Q. The project, if you will, of performing a defense medical examination.

A. Some of them do become projects. No doubt about it.

Q. I'm certain they do. My question is, I'm assuming by virtue of reviewing your report that there are several components to this examination; correct?

A. Yes.

Q. Part of that would be reviewing the patient's past medical record; correct?

A. Yes.

Q. Potentially reviewing some x-ray films or MRIs; correct?

A. Yes.
Q. Also, an interview with the patient?
A. Yes.
Q. To a greater or lesser extent depending on the case; correct?
A. Well, we call it taking a history, but that's okay.
Q. A physical examination; correct?
A. Yes.
Q. And at some point in time you culminate the totality of that information and prepare a narrative report; is that fair?
A. Yes.
Q. And when you accept an assignment to conduct a defense medical examination, can you tell me how you charge in the ordinary course for that? Is that a flat rate fee, or is it an hourly fee?

MR. CHAMBERS: I'm going to object at this point. The purpose of a Discovery deposition is to inquire as to the opinions and conclusions he has provided to me. I've given you a little bit of latitude. **Now** your questions are far afield at this point.

MS. DIXON: Your objection is noted.

BY MS. DIXON:

Q. Doctor, can you answer?

A. How do I charge? Okay. I charge on an hourly basis.

Q. And what is your hourly fee?

A. My hourly fee?

MR. CHAMBERS: I'm going to object to this entire line of questioning.

MS. DIXON: It's noted.

A. My hourly fee at the present time is $400 an hour.

Q. And based on your best recollection, was the $400 an hour fee that you're currently charging the same in January of 1998?

A. No. I think I started charging $400 an hour in February of '98.

Q. This report was generated on April 17th, 1998 based on my review of the notes. Do you know what the hourly rate was for the Divis examination and report preparation?

A. I have one standard fee for the history, physical exam, review of records, preparation of report, so I would suspect that because the majority of this, well, the initial part of it at least, was done in January, it was $350 an hour.

Q. Can you tell me how many hours you spent reviewing Karen Divis' medical records and x-rays?
A. No.
Q. Do you keep any records that would identify the number of hours you spent in conducting those tasks?
A. No.
Q. Do you have any billing records that reflect the dollar value of your services charged for that task?
A. No.
Q. Have you, in fact, bills on Miss Divis' account?
A. Yes.
Q. Who prepares your billing statements?
A. The secretary sends a billing statement to the party that's responsible at the time that the report is finished.
Q. And who is that billing person?
A. Who is the billing person?
Q. Yes.
A. Her name is Sandra.
Q. And is Sandra an employee of yours or a third-party agent?
A. No. She's an employee of mine.
Q. So is Sandra the individual who would have the billing information as it relates to Miss Divis' defense medical?

A. No, because after she sends the statement, then we send a charge slip to the person who keeps track of all of these things and they would really be the only ones that would have that information, or Mr. Chambers would have the information.

Q. Who is the person that keeps track of that information that you have identified?

A. His name is William Proper and Company.

Q. Is that your office accountant?

A. Yes.

Q. Or the account you use personally?

A. Yes.

Q. Where is Mr. Proper's office?

A. It's on Chagrin and Richmond.

Q. And with respect to this particular deposition or this matter as it relates not only to you but any medical depositions that are taken in this case, the court has ordered a reduction in fees?

MR. CHAMBERS: Objection.

BY MS. DIXON:

Q. You understand that, correct, Dr. Brooks?

MR. CHAMBERS: I object. That is part of the record.

MS. DIXON: You have made your objection.

MR. CHAMBERS: Debbie, you're far afield.

MS. DIXON: Take it up with the judge.

MR. CHAMBERS: You get an order to compel.

BY MS. DIXON:

Q. Doctor, you have an understanding that there is a reduction in your fee as well as other medical experts that testify?

MR. CHAMBERS: That is subject to a motion to reconsider and it will be addressed by the Court of Appeals if necessary

BY MS. DIXON:

Q. Doctor?

A. Okay. I'll answer your second question because I don't remember your first question. I only understand that there has been a reduction in my fee with respect to this Discovery deposition vis-a-vis my hourly rate.

Q. Have any of the attorneys for the Defense or their clients reimbursed your office the difference?

A. No.

Q. Prior to the Divis matter -- and are you comfortable with me referring to it as the Divis matter for purposes of this deposition?

A. Sure.
Q. Have you worked for Mr. Chambers in the past?
A. Yes.
Q. On how many separate occasions, approximately?
A. I only recall one.
Q. And do you understand that Mr. Chambers is Counsel for both Celina and National Mutual?
A. No. I only understand that Mr. Chambers is counsel for Celina.
Q. And you have worked for Mr. Volsky in the past; correct?
A. Yes.
Q. Have you also worked on behalf of Farmers Insurance company in the past?
MR. CHAMBERS: Objection. Motion to strike the reference to the insurance company.
MR. VOLSKY: I join in that motion. They are not a party to this case. It's totally improper to ask Dr. Brooks that type of question.
A. Generally I don't know what insurance company the defense attorney represents, so I don't know if I have ever done any work for Farmers or not.
Q. Dr. Brooks, separate from any conferences you may or may not have had with either of the Defense Counsel

in this case, can you describe the preparation you have undertaken in anticipation of today's deposition?

A. Yes.

Q. Please do.

A. None.

Q. And have you had an opportunity prior to today to review Dr. Leach's report? He's the psychologist that was hired for a defense medical examination.

MR. CHAMBERS: Objection. Motion to strike.

A. I don't have any recollection whether I did or not.

Q. You have your file related to Karen Divis in front of you; correct?

A. Yes.

Q. And based on your review of that file, would you agree that your standard procedure that we talked about earlier, review of the medical records, patient history, a physical examination, review of x-rays, MRIs and ultimately preparation of the report, is consistent with what you did related to Karen Divis?

MR. CHAMBERS: I'm going to object. He testified -- you conditioned that whole question on your review of the file. He just testified two minutes ago he has not reviewed the file.

BY MS. DIXON:

Q. Doctor, you can feel free to review or refer to your notes if that will assist you. My question is --

A. I remember your question. Okay. So it looks like I took a history; I performed a physical examination, reviewed radiographs that were obtained at the time of her examination; I reviewed medical records; I reviewed an MRI, actually, several MRIs; and I wrote a report; yes. So it was no different than my standard method of doing this type of examination.

Q. And generally, Dr. Brooks, what disciplines do you hold yourself out either as a specialist or a medical expert in?

A. By a "discipline" you mean a specialty, for example?

Q. Yes.

A. I'm an orthopedic surgeon.

Q. The reason I specifically used the term "discipline" is it's my understanding that you have more knowledge than the average bear, so to speak, on biomechanical issues.

A. More than the average?

Q. Bear.

A. So you saw my picture on the wall. Yes; I believe I do.

Q. Can you describe for me the training that you received to bring you to the conclusion that you have a certain expertise in the area of biomechanics?

MR. CHAMBERS: Objection. Debbie --

MS. DIXON: First of all, my name is Debra.

MR. CHAMBERS: I have a sister named Debra. Everyone I know always calls her Debbie. This never caused a problem with her, so I'm sorry if it offended you.

Miss Dixon, Debra Dixon, your line of questioning is beyond the scope of the Discovery permitted for a Discovery deposition.

MS. DIXON: You know, Les, we're in Discovery, so why don't you just note your objection, stop the speaking objections and we'll move on. You can take anything of that vein up with the judge.

The doctor already testified that he has a certain area of expertise in the area of biomechanics. I'm asking him to expound on what education, training and experience leads him to that conclusion.

MR. CHAMBERS: I'm simply saying that initial area is beyond the scope of this Discovery

deposition.

MS. DIXON: His CV is . with information about biomechanics.

MR. CHAMBERS: You have the CV. There's no point in examining him on that line of --

MS. DIXON: It's my dime, Les.

MR. CHAMBERS: You're bound to the Rules of Civil Procedure as well as I am, and I'm objecting because this line of inquiry is outside the scope of Discovery that's permitted at this juncture.

MS. DIXON: Your objection is noted.

BY MS. DIXON:

Q. Doctor?

A. In my fifth year of post-graduate training I was a National Institute of Health research associate in the biomechanical laboratory of Case Western Reserve and during that period, which was probably from July to June, 12-month period of time, I did certain independent projects that dealt with biomechanics.

I remember during the summertime I was tutored along with another orthopedic surgeon about calculus and advanced mathematics, and then during the first semester, I actually attended what -- well, it was part of Case Western Reserve University engineering school,

and after that we may even have had some lectures from the other people at the lab.

Q. Dr. Brooks, in your practice as an orthopedic surgeon, both treating and evaluating people who have been injured or claim to have been injured in motor vehicle accidents, has that education that you have just described in the area of biomechanics assisted you?

A. Yes; it has assisted me.

Q. Getting back *to* Karen Divis specifically, do you have an independent recollection of Miss Divis, or are you relying exclusively upon your notes?

A. I have no independent recollection of Ms. Divis.

Q. And in the ordinary course, are your reports that you ultimately generate at the conclusion of your evaluation, are those done contemporaneously with your physical examination and records review, or do you wait until that is specifically requested?

A. The answer is no. I'll be happy to explain.

Q. Please do.

A. I examined Miss Divis on June 22nd, **1998** and took notes during that examination of which you have a copy. On January 23rd, **1998**, the next day, using those notes **I** dictated the initial history and physical examination. Sometime thereafter I began this project

of reviewing her records and that project was completed on April 17th, 1998.

I have no recollection whether the review of records and conclusions were all dictated on the 17th or I dictated part of the record review one day, but the bottom line is that it was all completed on the 17th.

Q. As I reviewed your report, one of the ultimate conclusions that you came to was that Karen did, in fact, sustain a cervical strain as a result of the February 5, 1996 motor vehicle accident, and I believe that that is on page 7 of your report?

A. Yes; it is.

Q. Can you describe for me what you consider a cervical strain?

A. Cervical strain is a soft tissue injury that involves a stretching of the muscles of the neck.

Q. And you consider a cervical strain a real injury; correct?

A. Yes. Yes; I do.

Q. And would you agree for that injury -- are you aware for that injury, a cervical strain, any test that provides objective evidence of cervical strain?

A. I'm not sure what you mean by "test."

Q. Any diagnostic tool.

A. Well, yes, I am aware of diagnostic tools that demonstrate a cervical strain.

Q. What tools are those?

A. The history that the physician obtains, the physical examination that he performs.

Q. Other than -- let me back up. Would you agree that the history that the physician obtains is subjective in nature in that the physician is relying upon what the patient communicates; correct?

A. I just wanted to understand on whose part it was subjective. Certainly everything that the patient tells me is subjective; that's true.

Q. Both in terms of what the patient communicates and how you understand that; correct?

A. Well, that's true, too. My understanding entails my input, as well, so it would be subjective on both of our parts.

Q. Are there any diagnostic tools you're aware of that would provide objective evidence? What I mean by that, perhaps I'm not articulating it properly. We know if somebody breaks their wrist, you can have a static x-ray film done of that wrist and if the wrist is fractured, you will see a fracture on the film. Are you aware of any objective evidence for this cervical strain that you concluded Karen did sustain in this

accident?

A. The only objective test that I'm aware of that could be used, and it really is not used, would be an MRI.

Q. Do you know what percentage of -- strike that.

Getting back to the cervical strain, can you explain to me what the mechanism of injury is?

A. Yes. Specifically with respect to Miss Divis?

Q. Yes, please.

A. As I understood from Miss Divis, her automobile was stopped and it was struck on both the rear and the left side by another vehicle. She was turned to the right sitting on the edge of her seat, so basically she sustained an extension-flexion injury to her cervical spine.

Q. Based on both your training as an orthopedist as well as the biomechanical background you described earlier, are you familiar with the type of vector forces that are placed on a cervical spine during a hyperflexion-hyperextension injury?

A. Type of vector forces? No. I'm not aware of the type of vector forces that are placed on the cervical spine during a hyperflexion-hyperextension injury.

Q. Now, as part of your report, you noted some of your physical findings on physical examination. I'll

direct you to page 4, the second full paragraph beginning, "Examination of her cervical spine."

A. Yes.

Q. The first sentence says, "Examination of her cervical spine revealed normal cervical lordosis without evidence of paracervical or trapezius spasm"; correct?

A. Correct.

Q. Is that a finding that is significant at all to you as a defense medical examiner?

A. It's significant to me as an orthopedic surgeon.

MR. CHAMBERS: I'm going to object to this. He's called a physician. At least call him a physician. He's earned that right.

A. It's significant to me as an orthopedic surgeon regardless whether it's my own patient, whether it's your client that I'm examining on your behalf or whether it's your client that I'm examining on Mr. Chambers' behalf.

Q. And what is the significance?

A. The significance is that it's a normal finding. She has normal curvature of her spine and she has no spasm of the muscles surrounding her spine.

Q. You also indicated that there was tenderness with the lightest of palpation of the right trapezius?

A. Yes.
Q. Is that a significant finding?
A. Yes.
Q. Can you describe for me the significance of that finding?
A. Yes.
Q. Please do.
A. That's what is called or known as an inappropriate response. It is a response for which there is no anatomic explanation and does not, is not, noted in people who have real injuries.
Q. And, actually, if we can jump ahead because it may deal with that issue in its totality, then if you look on page 7 of your report, the third paragraph from the bottom that begins, "At the time of my January 22nd," the final sentence of that paragraph says, "In fact, the physical examination demonstrated several inappropriate responses."
A. Yes.
Q. Is that one of the inappropriate responses that you are referring to?
A. Yes.
Q. Just so that I understand, you're saying that your definition of an inappropriate response is one that there is not an organic basis for?

A. Yes.

Q. Were there other inappropriate responses you noted that relate to Mrs. Divis' examination of January 22, '96? I'm sorry, '98.

MR. CHAMBERS: Miss Dixon, would you mind --

BY MS. DIXON:

Q. Do you want time to review your records at this point?

A. Thank you very much. I'm going to answer her question. I'm going to go through my report at this time. It will just take me a short period of time and I will try to answer the questions.

In addition to the tenderness with the lightest of palpation, the other inappropriate responses included her complaints of pain in her right clavicle with horizontal flexion, her saying to me that shoulder motion was, quote, aggravating my head and neck, the muscles are tight and swelling when, in fact, there was no muscle spasm, tightness or swelling noted at the time that I examined her, the increase in her complaints of numbness in her entire hand with the Phalen's maneuver and her complaint of right shoulder pain while using the Jamar dynamometer.

Q. That's the totality that you were referring to;

correct?

A. Yes.

Q. Can you describe for me what the purpose of a range of motion test is, a range of motion examination?

A. No. I understand. Sometimes, and I'm sure it happens to you, the things you do on a daily basis are hard to explain to somebody who doesn't do them.

The purpose of the range of motion test, if you will, is just that, to determine what her active range of motion is of her cervical spine at the time I examined her.

Q. Would you agree that there are some injuries that people sustain in which they do not suffer pain in a static position but they do, in fact, when they are in motion?

A. I could only answer to that very broad question that anything is possible.

Q. Are there any symptoms that you're aware of that are the sequelae of hyperextension-hyperflexion injuries that only manifest themselves or become more significant with motion?

A. Are there any symptoms of that type of injury that only become -- that only manifest themselves with motion?

Q. Or become more significant.

A. Or become more significant. People who have -- no. People who have sustained a hyperextension hyperflexion injury at the time that their injury is in progress, if you will, have pain both at rest and with motion.

Q. And it's been your experience that that pain does not increase with motion?

A. No. It's true that the pain can increase with motion.

Q. Might spasming increase with motion, as well?

A. Initially, yes.

Q. And when you say, "initially," are you saying that that will decrease over time?

A. Absolutely.

Q. Are there any or is there any -- in the course of your practice, what is the longest period you have experienced a patient or observed a patient who experiences pain from a hyperflexion-hyperextension injury?

MR. CHAMBERS: Objection. Relevancy, scope of inquiry.

A. I don't have any recollection.

Q. Is there a baseline you look to that you would expect the patient to cease having pain, as of three months after the injury, six months after the injury,

nine months after the injury?
A. Each injury is different and as a result of that, the pace line will shift depending upon the actual injury that patient sustains.
Q. So you're saying that it could vary patient to patient; correct?
A. You said it better than I did.
Q. And in your practice, I'm assuming that you see private patients that are not associated with litigation; correct?
A. Absolutely.
Q. Do you treat patients in your standard practice that suffer hyperextension-hyperflexion injuries?
A. Yes.
MR. CHAMBERS: Note an objection.
BY MS. DIXON:
Q. As a physician, at what point in time do you become concerned that the patient is still experiencing pain and that's from the date of injury?
A. Well, again, that varies upon several things.
MR. CHAMBERS: Just let me -- I'm objecting to this entire line of inquiry.
MS. DIXON: Maybe there's a chance you could just edit the ones out that you didn't object to at the end.

A. So it varies upon a number of things and those things really do not include the nature of the injury to the vehicle in which the patient is sitting, but they do depend upon the patient's complaints and physical findings at the time that I examine them if it's in close proximity to the accident.

So, in essence, what I'm saying is that I get worried when somebody is still complaining of pain at a point that is beyond the time I would expect the injury that I believe the patient to have sustained.

Q. Do I understand that to mean, and this is for my own clarification, that's based on your initial evaluation of the severity of the injury as opposed to the facts of the accident?

A. Yes.

Q. I noticed in your report you alluded to reviewing Karen's -- not only Karen's radiologist reports but the films, themselves.

A. I did; yes.

Q. Can you describe for me the training that you have received that enables you to read x-rays and MRIs?

A. Yes.

Q. Please do.

MR. CHAMBERS: As you wish, but I'm still objecting.

A. Beginning in medical school, we began our education on how to read plain films. It was so long ago, they didn't have MRIs. During my residency as an orthopedic surgeon, I certainly had additional training. In my practice, as I went into private practice, I review myself every radiograph that I order and on occasion if I get a report from the radiologist that differs with my interpretation, I will go down and talk to the radiologist to try to see why there's some discrepancy. ***So*** it's an ongoing educational process being in contact with the radiologists.

With respect to MRIs, I have attended several courses on the interpretation of MRIs and have been very fortunate that in this building there were several radiologists who were specifically trained in the interpretation of MRIs and whenever I had a question -- I had a lot of questions when I first started -- I would take the films downstairs and go over them with the radiologists.

Q. Do I understand that in your own practice you do, at least on a primary level, rely upon a radiologist to read these films?

A. **No.**

Q. Do they prepare reports for you?

A. **I do** not. They do.

Q. And then you read their reports in conjunction with your review of the films; correct?

A. Not exactly. What happens is that I'll send a patient down to the radiology department. They will bring the films back. I will review the films. If it's a private patient, I will dictate a report that day. If it's an evaluation, maybe the next day.

Then when the radiologist's report comes several days later, I will review the report and compare it with my interpretation. But I do not rely on the radiologists. I don't prepare my own interpretation after I have seen the radiologist's interpretation.

Q. Are there radiographic techniques other than MRI and x-ray that you feel competent to read, as well?

A. Yes.

Q. And what are those?

A. CT scans, myelograms, post-myelograms, CTs. What other radiographic techniques are there? Bone scans. I don't have any training in reading ultrasounds. I can't think of any more radiographic techniques.

Q. In your practice, do you treat patients with ligament damage?

A. Yes.

Q. Would you agree that ligament damage is potentially a permanent injury?

A. Anything is possible.

Q. Would you agree that a torn ligament is a permanent injury?

A. No.

Q. I'm assuming you are aware of the fact that the AMA permanency guidelines provide a permanency rating in the face of a ligament that is torn?

A. I'm not aware of that.

Q. In the event that you were or there was objective evidence provided to you by way of a radiographic study that indicated that Karen Divis had sustained an injury which was permanent in nature in this motor vehicle accident, would that change any of the opinions that you or the conclusions that you drew at the end of your examination?

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

Q. If you were provided documentation which provided objective evidence that, for example, Karen Divis had sustained ligament damage to her cervical spine which had not properly healed, would that change or alter any of the conclusions that you drew in your April of 1998 report?

MR. CHAMBERS: Objection, Question assumes facts not in evidence.

A. I'm only smiling so that the camera knows. I was

going to say, assuming the facts that you just stated that I am unaware of I would review those facts and if in fact, they were true, yes, it would alter my opinion, but I'm not aware that there are such facts

Q Dr Sykes, are you aware or are you familiar with the condition known as somatoform pain disorder associated with both psychological factors and a general medical condition chronic?

A Somatoform pain disorder? Read that again

Q Certainly Somatoform pain disorder associated with both psychological factors and a general medical condition chronic

A Well, I know what a somatoform pain disorder is By definition it's associated with psychological factors I don't understand the term being associated with a medical condition because that's very broad, and I do know what the word 'chronic' means, so about 60 percent of it

Q If you could turn to page 7 of your report, you concluded that Karen, as we stated earlier, did sustain a cervical strain in this accident; correct?

A Yes

Q Did you do any evaluation as to the degree or severity of that cervical strain?

A Yes; I did

Q. And what were the conclusions that you drew?
A. Well, it's really the absence of the wording, but if I thought that she had sustained a moderately severe cervical strain, that's what I would have said, much if I thought she had sustained a severe cervical strain, that's what I would have said. If I thought that she sustained a mild cervical strain, that's what I would have said.

So the absence of all those adjectives indicates that she sustained what I would define to be the meaning of, I guess, an average cervical strain.
Q. And you did conclude that some of the more immediate care and treatment she received was appropriate; correct?
A. Absolutely.
Q. And conversely, you concluded that there was treatment and some diagnostic intervention that was not appropriate or necessary; correct?
A. That's correct, as well.
Q. Are you able to articulate for me the portion of her treatment that you found was appropriate versus inappropriate?
A. Well, certainly the initial evaluation at Southwest General Hospital on the day of the accident was necessary and appropriate. The evaluation at

Kaiser Permanente on February 7th, 1996 was necessary and appropriate. I don't remember whether she had any other treatment between February 7th and March lst, but certainly there was a second injury that occurred on March 1st of 1996 in which she injured, re-injured, her neck.

In between February 16th, 1996 or starting on February 16th, 1996, she came under the care of Dr. Kaufman, so I believe that his evaluation and treatment on February 16th, which was eleven days after the accident, was necessary and appropriate. I do not believe that his ordering an MRI was appropriate. So I can't put a definite date on it as I sit here reviewing her records.

Q. Doctor, if I could ask for clarification, did you believe that any of the physical therapy that was ordered for Karen was appropriate?

A. I don't have any recollection of what physical therapy she had. I don't believe I referred to it in my records, so, I'm sorry, I can't answer your question.

Q. Doctor, did you **come** to any conclusions at the end of your examination and evaluation of Karen as to whether **or** not she was answering the questions you asked her honestly?

A. Yes. As a matter of fact, I did come to some conclusions after I obtained her history and performed a physical examination.

Q. And what was that conclusion?

A. My conclusion was that as she gave her history, she did so in a very dramatic fashion. She tended to use -- Alzheimer's is terrible when you lose words. She tended to use the most extensive -- and that doesn't sound right. She didn't describe things in a simple manner. She dramatized. You know, everything was at the far end of the scale that it could have been.

Q. Is it fair to say that you concluded that Karen was not in chronic pain?

A. I don't know what that means.

Q. Let me ask this differently. Did you come to the conclusion that Karen was a malingerer?

A. No. I did not believe that she was consciously malingering.

Q. Did you believe that Karen was experiencing real pain during your examination?

A. The only thing I can say with respect to that is that she complained of pain. The fact that I found no objective evidence on the examination to substantiate her complaints of pain is one factor, but I have no way

of measuring pain.

She certainly didn't demonstrate any behaviors or appear as somebody who was in acute distress which often goes with somebody who is experiencing pain. On the other hand, as I said, there's no way to measure pain, so if she tells me she has pain, I listen to her. If there is nothing on the examination or the radiographs that would explain her pain, then I have to conclude that this is a non-organic type of pain.

Q. Are you aware of certain psychological conditions that cause an individual to experience -- intensify the experience of pain, or is that beyond the scope of your expertise?

A. No; it's not beyond the scope of my expertise. But before I answer the question, I'd like to know, you know, what conditions you're talking about and I will tell you whether I'm familiar with them or not.

Q. Okay. I think we addressed that earlier. Are you aware of the fact that the Defense in this case has requested that a psychological IME be performed on Miss Divis?

A. Well --

MR. CHAMBERS: Objection.

A. At the beginning of this deposition, you asked me if I had read a report by a Dr. Leach who had performed

an examination on Miss Divis at the request of the Defense, so that's, I think, the first time that I was aware of that.

Q. My telling you was the first time that you had been made aware of that?

A. I think so. Let me just check my report.

Q. Separate from your report, was it brought to your attention by Counsel?

A. No. I mean, if it's in my report, I was aware of it. If it's not in my report, I'm not aware of it.

Q. I will represent to you the psychological report was prepared after your report was completed.

Do you know Dr. Leach, a psychologist that practices here in Beachwood?

A. No.

Q. And you are not, as you sit here today, familiar with any psychological conditions that have the ability or have the effect of intensifying the experience of pain on an individual?

A. I'm sorry, I don't understand the question.

Q. Are you aware of any psychological conditions that the end game or result is to intensify the pain experience on the patient?

A. That intensifies the pain that the patient experiences; right?

Q. For example, that person may be touched softly but for them it feels like they were punched.

A. No; I'm not aware of that particular factor.

Q. And if this -- if there was a condition that was identified in the DMS-IV(sic) that outlined those criteria that I just described, you wouldn't have any information that would cut against or discredit that theory, correct, or that condition?

MR. CHAMBERS: Objection.

A. I can't really answer that question yes or no. I don't know what the DMS-IV(sic) is. You know, I know that it's one of the codes or diagnoses that psychiatrists use and/or psychologists use, but as I sit here today at 5 p.m., one hour after we started --

Q. Actually, we started at five past.

A. Right. That was still your time. At any rate, I don't know what DMS-IV(sic) is.

Q. Doctor, I have two quick questions, then I'm through.

The first is, in your role as a defense medical examiner, would you agree that a patient you're examining and interviewing **or** taking a history of is entitled to the same care and respect as one **of** your private patients?

A. Absolutely.

Q. And would you agree that at no time would it be appropriate for a physician, whether it be you or someone else conducting a defense medical examination, to laugh or mock at a patient when they're taking their information or performing an examination when they are communicating their symptoms?

MR. CHAMBERS: Objection.

A. Yes. I would agree that it would be inappropriate for any physician, be it a defense examiner or a treating physician, to laugh at or mock. I will also tell you that that is a subjective observation on the patient's part and they may misinterpret my question.

MS. DIXON: Okay. Thank you very much.

THE WITNESS: It was a pleasure. I'll waive the reading of the transcript and the viewing of the video deposition.

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(Thereupon the deposition was concluded at 5:00 p.m. and signature was waived.)

State of Ohio) ss.
County of Cuyahoga)

CERTIFICATE

I, Denise C. Winter, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-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 him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid, and that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee or attorney of any of the parties hereto, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of December, 1998.

Denise C. Winter
Notary Public

My commission expires March 3, 2001.

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LAWYER'S NOTES

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