State of Ohio,)
) SS:
County of Cuyahoga.)

- - -

IN THE COURT OF COMMON PLEAS

- - -

Kimberly Richley,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.: CV03511510
	)	Carolyn B. Friedland, J.
Reichenbach Family Chiropractic Professional Company, et al.,	)	
	)	
	)	
Defendants.	)	

- - -

Deposition of Charles Edward DuVall, Jr., D.C., a witness herein, called by the defendants for cross-examination, pursuant to the Ohio Rules of Civil Procedure, taken before Karen A. Toth, Registered Professional Reporter and Notary Public in and for the State of Ohio at the offices of Mark W. Ruff, 700 West St. Clair Avenue, Hoyt Block Building, Suite 300, Cleveland, Ohio 44113 on Tuesday, August 31, 2004, commencing at 10:59 a.m.

- - -

INDEX

- - -

EXHIBITS

- - -

APPEARANCES:

On behalf of the Plaintiff:

Mark W. Ruf, Esq.
Hoyt Block, Suite 300
700 West St. Clair Avenue
Cleveland, Ohio 44113

On behalf of the Defendants:

Michael W. Regnier, Esq.
Eastman & Smith, Ltd.
One SeaGate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699

- - -

CHARLES EDWARD DuVALL, JR., D.C.

Of lawful age, being first duly sworn, as hereinafter certified, was examined and testified as follows:

CROSS-EXAMINATION

By Mr. Regnier:

Q Good morning. My name is Mike Regnier and I represent the defendants in this case, Dr. Reichenbach and Reichenbach Chiropractic. Could you state your full name for the record, please?

A Charles Edward DuVall, Jr.

Q And could you state your professional address, please?

A My professional address is 23307 East Avenue, Akron Ohio, 44314-1909.

Q And is that where your chiropractic office is?

A Yes, sir.

Q And is that the only location in which you practice chiropractic?

A Yes.

Q I'm going to hand you what has been marked as Defendants' Exhibit A. Could you identify that?

A It's a copy of my CV.

Q Is it current?

A Yes.

Q Take a quick look. Okay. The copy I have is dated -- that I was given earlier was dated October of 2003. And it looks like the one you have has been updated as of August of 2004, this month?

A Yes.

Q Do you know, have there been any changes in the last eight months in your CV?

A No. I found some typos and made it a little more condensed.

Q Education-wise, you attended University of Akron; is that correct?

A Correct.

Q And I understood you studied pre-medicine there?

A Yes.

Q And you attended that institution for four years?

A I attended that institution on and off for a long time.

Q Well, you listed in your CV '69 to 2001. Did you attend consistently throughout that time?

A No, it was intermittent.

Q Were you placed on academic suspension during your time at Akron?

A Yes.

Q Were you asked to leave that institution because you were maintaining a D average at Akron?

A No, but that's why I was -- poor academics and was put on probation.
Q While there did you fail chemistry?
A Yes.
Q While there did you fail physics?
A Yes.
Q While there did you fail trigonometry?
A Yes.
Q While there did you fail any other classes?
A Physics, chemistry, trig. I think I failed an ecology course. I'm not sure.
Q Okay. Did you then go -- no, you did not. You then went where after the University of Akron?
A I went to Texas Chiropractic College and San Jacinto College in Pasadena, Texas.
Q When did you start at Texas Chiropractic?
A August 1973.
Q What did you do from '71 to '73?
A I was still in Akron.
Q Okay. Your CV lists that you stopped attended Akron in -- oh, I see. You have listed on your CV that you attended the University of Akron from 1969 to 2001?
A On and off.
Q Not consistently?

A Not consistently.
Q When did you leave the University of Akron for the first time?
A 1973.
Q Okay. So '69 to '73 would have been your first course of study there?
A Correct.
Q And then you went directly to Texas Chiropractic?
A And San Jacinto College.
Q At the time you started at Texas Chiropractic what were the entrance or basic requirements to get into that institution?
A That's why I was going to San Jacinto. You had to have your prerequisites in English, math, physics, chemistry. And I had to go to San Jacinto at the same time I was going to Texas to get me chemistry and physics, microbiology.
Q There were certain prerequisites at the time?
A Yes. And that's why I was going to two schools at the same time.
Q They allowed you to study at the same time, both courses of study?
A In the morning I went to Texas, in the afternoon I went to San Jacinto and at night I worked.
Q So you were allowed to enter Texas Chiropractic

before completing all the prerequisites?
A In chemistry and physics, yeah.
Q Did that require a special waiver?
A No.
Q You just had to show that you were going to San Jacinto at the same time?
A Correct. And maintain a C average in all courses.
Q Okay. You attended San Jacinto College for four years; is that right?
A From August of '73 until May of '77.
Q And does that college, San Jacinto College, offer a four-year bachelor's degree?
A No. It was a junior college. They might now, I don't know.
Q At the time?
A At the time, no.
Q While attending San Jacinto did you fail two classes there?
A I think I failed physics there once. That's all I remember. Second semester physics.
Q Did you disclose your academic standing at the University of Akron to Texas Chiropractic when you started there?
A Yes.
Q You then went to Texas Chiropractic then for four

years, '73 to '77?
A Yes.
Q How long was the program at that time? How many years of study?
A Four years.
Q Did you fail any courses while at the Texas Chiropractic College?
A Philosophy I think twice. I think I failed EKG once.
Q Anything else?
A Not that I remember.
Q After completing -- I'm sorry. You graduated in good standing from Texas Chiropractic College, correct?
A Yes.
Q You then obtained a master's of professional studies from, is it Lynn University?
A Yes.
Q And you were part of the first class to attend Lynn University; is that right?
A Yes.
Q As of the time you began your study at Lynn University you had not obtained a bachelor degree in any discipline; is that correct?
A Correct.

Q When going to Lynn University, I understand you were living in Ohio but attending classes in Florida; is that right?
A Correct.
Q You would go four times a year to a hotel in Florida; is that right?
A Well, we lived in the hotel. We went to either -- our studies were either at Lynn University. 80 percent of the course studies were done at the University of Miami College of Medicine in Miami.
Q Okay. And four times a year you would go down there. And I understand the session went from Tuesday to Sunday?
A Sunday.
Q Tuesday to Saturday was class work; is that right?
A No. Tuesday through Saturday was 12 hours. Sunday was six hours. A test -- a take-home test, and then you work on your thesis.
Q Okay. The technical title of your degree from that institution is master's of professional studies; is that correct?
A Yes.
Q So would I be correct in saying that you went a total of eight sessions to Lynn University, each session being Tuesday through Sunday over a

two-year period?
A 46 credit hours, if I remember correctly.
Q That's the actual college credit number is 46?
A Correct. It's either 46 or 44. One of those two.
Q Did they offer an emphasis then in your master's of professional studies there?
A The core was biomechanical trauma. That's why we went.
Q That was the whole program was biomechanical trauma?
A Right.
Q What did that consist of?
A Sessions at the University of Miami College of Medicine, going through the various departments in orthopedic, neurology, rehabilitation, trauma, all the areas associated with aspects of biomechanical trauma. In other words, it was a multidisciplinary group. We had M.D's, D.O's, D.C's, Ph.D's, D.E.S's in our classes.
Q Now, I also see you have listed the next thing under your graduate studies is graduate candidate Graduate School & College of Education at Kent State University?
A Yes.
Q Is that right? Are you still a graduate candidate

there or have you obtained that degree?
A No, I'm still a candidate. Started fall semester yesterday.
Q Okay. Let's see. What is that degree program?
A It will be in clinical counseling -- clinical community counseling.
Q What does that mean? What do you do?
A You counsel individuals in various areas from drug rehabilitation, drug abuse, violence, child abuse, PTSD, any number of different areas in counseling.
Q Okay. It says in vocational education; with an eye towards assisting them in getting a career or just a straight counseling where you're helping them through a rough situation?
A You can go into vocational if you want to help people in their -- in getting further education, or you can just do straight counseling. Once you pass your boards, then you can be a counselor in whatever you want, groups, families, adolescence.
Q How long a program is that, if you're --
A 44 hours. I think the quickest you can do it is three years.
Q Okay. What are the requirements to obtain that degree?
A For entrance into the course?

Q I'm sorry. No, the requirements to complete it and obtain that degree.
A Let's see. I know it's 44 hours of which six hours is for a practicum in the university and then you have a one-year internship.
Q What do you want to do with this degree?
A I haven't quite decided. I'm leaning more towards PTSD or chronic pain management.
Q Post-traumatic stress disorder?
A Yes.
Q How many credit hours have you completed toward that 44-hour program?
A Let me think. 18. I'm taking nine this semester.
Q Is it an undergraduate degree or graduate degree?
A Graduate.
Q Master's, doctorate, what is it?
A It's a master doctorate program. I don't know if I want to go for the Ph.D. The Ph.D. is after you get your master's. That's another two years. I don't know if I'm going to do that.
Q So the three-year program you're talking about is a master's program?
A Is a master's program. After you get your master's then you can sit for the boards and get licensed.
Q It's a licensed position in the State of Ohio?

A Correct.
Q So you've completed --
A 18 hours.
Q -- 18 hours. So you're not yet a candidate for graduation in that program?
A No. No. No.
Q So your CV would be inaccurate. You're not yet a graduate candidate for that degree, you are just enrolled in that program; is that right?
A I didn't know that was incorrect to put it that way.
Q It says graduate candidate. You are not yet eligible to graduate, correct?
A No. I thought it was okay to do it like that. I'll change it.
Q So you graduated from Texas Chiropractic in '77. Did you then return to Ohio -- actually strike that.

While you were at Texas Chiropractic did you take the national board exam?

A I didn't have to. No. I -- no, I take it -- I took it but I didn't take it for credit.
Q The board exam is the exam which chiropractors take in order to be licensed to practice chiropractic; is that right?

A Yeah, in 1977 it was not yet national. You could take it. It was not -- I don't remember whether it was recognized in Ohio or not at that time.
Q Okay.
A Since it's mandatory.
Q While in Texas you took it, correct?
A Yeah, I did.
Q And you failed that exam, correct?
A I have no idea what I did on that exam.
Q If you testified in the past that you failed it, would you agree with what you said at the time?
A I might have, yeah.
Q You then returned to Ohio. And at the time you did have to take a board exam to be licensed to practice in the State of Ohio; is that correct?
A Yeah, and I took mine four times.
Q You failed it in August of 1977; is that correct?
A Yes.
Q And you failed it in February of 1978; is that correct?
A Yes.
Q And you failed it in August of 1978; is that correct?
A Yes, I did.
Q And then you passed it in February of 1979?

A Yes. Untenacious.
Q Have you practiced continually in Ohio since that time?
A Yes.
Q Have you attempted to be licensed in any other state?
A No.
Q Do you have privileges anywhere?
A No.
Q If you could take a look at your CV. I'm just going to ask you what some of these other -- under postgraduate studies what some of these other areas that you focused on are.

Fellow in the American College of Forensic Experts, September 1994. What is that?

A The American College of Forensic Experts is the largest international association of forensic experts pulling together literally experts from anatomy to zoology.
Q And is that something you need to take an exam for or is it an organization you belong to?
A First you must be recommended to join. Then you join, then you can take the exam.
Q Have you taken that exam?
A Oh, when I joined, they hadn't started the exam

yet.

Q So grandfathered in at the time?

A Yeah. I started when they just started it.

Q Okay. Then the next thing, what's the Dipolomate/Board Certified American Board of Forensic Medicine; what is that?

A It's part of the -- the American College of Forensic Experts has now about eight or ten different subboards, medicine, psychiatry, psychology, all different. Then you could apply to those different -- to be a part of them too.

Q The same admittance process that you talked about a minute ago?

A Exactly.

Q What's the American Board of Quality Assurance & Utilization Physicians?

A That's the largest organization relative to quality assurance for the medical health care delivery system recognized by both the AMA -- and I would say American College of Forensic Examiners is also recognized by the AMA. But the ABQAUP is above the AMA. National board that certifies all hospitals for overseeing quality assurance and utilization reviews throughout the health care system.

Again, you apply to join, then you have to

take a written test, which I took mine and passed in 1994.

Q Okay. Looks like you obtained three of these types of certifications in '94. Is that when you took a greater interest in utilization review, or is that an interest you always had?

A No, I've been doing the utilization review since '81 and these started to become available to chiropractors and I made myself available to get involved.

Q Okay. What's the American College of Chiropractic Consultants?

A Organization that was founded to help teach chiropractors how to become consultants to do utilization review. It was started in 1979 or '80. I'm not sure which one.

Q Is there a board exam for that?

A Yes.

Q Did you take it?

A Yes.

Q Okay.

A Written and oral.

Q Now, this board certification for chiropractic consultants, that doesn't relate to primary patient care, does it?

A No.
Q Instead it's monitoring how other people are rendering primary care?
A Yeah, utilization review.
Q Reviewing it?
A Correct. But your tests covered orthopedics, neurology, radiology, clinical review.
Q How to assess how someone else is providing that sort of care?
A Right. You have to know what is normal before you can review it.
Q Okay. Is that the only board certification you have that is directly from the chiropractic board, one of the chiropractic boards?
A I think so.
Q I understand you undertook a course of study -- strike that.

You can also become, as a chiropractor, board certified in orthopedics; is that right?
A You can become board certified in orthopedics, neurology, sports medicine, a number of different areas.
Q Okay.
A I started the orthopedics, and then I think I got through 200 hours and then stopped.

Q Okay. So you began that in 1978 at National College; is that right?
A Sounds about right.
Q And stopped sometime in the early '80s?
A I believe so, yeah.
Q And you think you completed about 200 hours toward the degree?
A Roughly.
Q And you failed a portion of that board exam while you were there, did you not?
A I failed the impairment rating part, yeah.
Q On more than one occasion or just once?
A Twice. If I remember, twice.
Q What's the American Academy of Pain Management?
A It's an international association of physicians and practitioners that deals with pain, chronic pain, projected pain, acute and subacute pain. All multidisciplinary.
Q What's the point of that? What do you use that for?
A Get the latest information, like from the journals and the symposiums on what they are looking at in chronic types of pain management, chronic pain syndromes, what they are doing for different types of pain studies.

Q And have you been a member of that organization consistently since 1992?
A Yes.
Q You also have listed a certificate of competency in American Disability Evaluation Research Institute. What is that?
A That was an organization that was started in the '80s in Ann Arbor. We took the first courses in that. It was again evaluation of individuals. It was a three modular course. Then there was a one-week intensive course after that with a written and oral examination.
Q Okay. What's a senior disability analyst?
A Again, we view retrospective or prospective or concurrent reviews relative to disability evaluations.
Q Is that for the government or is that --
A No.
Q Okay. In what context do you find yourself rendering those kinds of opinions; it is Workers' Comp, Social Security?
A Mostly Workmen's Comp.
Q Okay. You have listed that you attended postgraduate symposiums as the U of M College of Medicine. What are those?

A That's the one above it about the American Disability Evaluation. That's what those were about.
Q Oh, the same thing?
A Yeah.
Q So you attended some of those classes from 1982 on; is that --
A Correct.
Q -- what that means?
A Yes.
Q Next you have that you're a certified low speed accident reconstruction?
A Correct.
Q What is that?
A Just that. It was a class taught by biomechanical engineers and biomechanical reconstructionists on evaluation of low speed impacts and what the biomechanics associated with those are, with the background in biomechanical trauma. It's very helpful in understanding the forces associated with a motor vehicle accident or some type of trauma.
Q So when you're saying accident reconstruction, you're dealing with the physical consequences of the accident, not the actual going out and measuring skid marks and figuring out what happened

in the accident itself?
A Well, no, you learned how to do the measuring of the skid marks and that, and how to interpret what those accident reconstructionists have done. What you're looking at, you know, is it plausible based on this data. Unless all the measurements are there, you can't say this is a low speed or this is a high speed. You can presume but you can't say with certainty.
Q Okay. That was administered by Texas A&M it says here, University?
A Yes.
Q And it was given, did you attend it in Atlanta, I believe it was?
A Atlanta.
Q At a hotel there?
A Yes.
Q And --
A Three weekends.
Q Three weekends?
A With an exam.
Q And did you pass that exam?
A Yes.
Q Next, your Impairment Rating & Federal Disability Evaluation. What is that?

A The Fifth Edition guides of the AMA on impairment rating. It was a -- God, that was 20-some hours at National -- well, it's now the National University Health Sciences. It was called National Chiropractic College. They put it on when the Fifth Edition guides came out to become certified in impairment rating using the newest edition.

Q Do you get certified in any way or do you have to just attend the course?

A No, you have to pass the test.

Q And you passed that test in April of 2001?

A Correct.

Q And finally, it says you're a certified fraud examiner?

A Correct.

Q What is that?

A Just that. Certified fraud examiner. American Association of Certified Fraud Examiners out of Dallas, Texas. It's a 1,000 -- or 100 hour course after which you take a written examination. It's terrible. And you become a certified fraud examiner. How to investigate for fraud.

Q You have some professional offices and memberships listed. Are you a member of the Ohio State Chiropractic Association?

A No.
Q Are you a member of the American Chiropractic Association?
A No.
Q Are you a member of the International Chiropractic Association?
A No.
Q I understand you're a founder of the National Association for Chiropractic Medicine; is that correct?
A One of them, yes.
Q One of them. One of how many, three?
A One of the founders, no. There was, I think, five of us initially founded it. Six.
Q And does that organization still exist?
A Yes.
Q And are you still a member?
A Yes.
Q And how big is that organization currently?
A Right off the top of my head, I don't know. Five, 600 members.
Q Are you still the president of that organization?
A Yes.
Q You've listed a few publications here under professional papers. Are there any that you

believe are relevant to the Richley case that we're here on today?

A Not that I can think of.

Q Okay. And you've also listed quite a few presentations that you've given in the past?

A Yes.

Q Have there been any new ones since August of 2003?

A No.

Q And that list is accurate, to the best of your knowledge?

A Yes.

Q Do you have an ownership interest, Doctor, in any other privately held companies other than your chiropractic practice?

A No.

Q Do you hold any teaching positions?

A No.

Q Are you listed with any expert referral services?

A Let's see. The national -- let's see -- forensic -- yeah, the forensic group has a web site, and I'm on that.

Q What's the name of that web site?

A Oh, gosh. Well, it would be the American College of Forensic Examiners.

Q Any others?

A Expert Pages. I think that's what that's called. Expert Pages. I think that's it. I think that's -- or is Expert Pages different? Expert Pages may be different. I'm sorry.

Q Okay. That's fine.

A I know there is only two. And that's Forensic and Expert Pages. Yeah, that is a separate one.

Q And I take from your CV that you've reviewed cases in all 50 states; is that right?

A Yes. Canada, Sweden.

Q Saying all of North America. Did I see Mexico and Canada as well?

A Yes, Puerto Rico.

Q And you have testified in -- as of October 2003, in what, 20 states; is that right?

A I think 18 and Sweden. Sweden was by phone.

Q I've got 20 on mine.

A Oh, really.

Q Okay. If you want to take a look real quick.

A I didn't count them up. Yeah. You're right.

Q You didn't get to go to Sweden?

A No. In fact, they sent me a notice do not come to Sweden.

Q Takes all the fun out of it.

A I know.

Q Ask you a few questions about your practice.
A Okay.
Q Your personal practice. How many patients do you see in a given week?
A Oh, from five to maybe 20 or so.
Q What are your office hours on a normal week?
A Let's see. Monday and Wednesday from 8:00 to 1:00. Thursday and Friday -- Thursday 8:00 to 5:00 or 6:00, and Friday 8:00 to 1:00.
Q Are you open Saturday?
A Not unless somebody needs to. If anybody calls me I can always try to make an arrangement.
Q How many patients did you see yesterday?
A Yesterday I didn't see any patients -- it was Monday. No, I didn't see any patients yesterday.
Q How many are you scheduled to see tomorrow? Or wait a minute. Yeah, tomorrow.
A Tomorrow. Tomorrow I have -- I think three tomorrow in the morning. And then I have school.
Q And how many are you scheduled to see --
A Thursday.
Q -- Thursday of this week?
A I believe three or four. Friday.
Q How many Friday?
A I don't know. I know I have some but I don't know

how many.
Q In a given month, would you estimate it to be the same ratio?
A Probably, yeah.
Q How many active patients would you estimate you have right now?
A Oh, God. I have no idea. See, I discharge people when they are done so I don't keep people coming back forever. So I could not tell you how many active patients I have.
Q More than ten?
A I have no idea.
Q Okay. Do you have a sense as you sit here today how many active patients you had at a given time in the past?
A No.
Q How many new patients did you get this month?
A This month?
Q Yes.
A I don't think I have any new patients this month.
Q How many would you estimate in a given month?
A I have no idea.
Q Do you have any employees at your office?
A One.
Q What's that person do?

A She's the office manager, does all the billing and that.
Q Does she assist in rendering treatment in any way?
A She's present with any female examination, but she doesn't do any of it. I do all the treatment there.
Q She does not do any of the treatment modalities, heat or --
A No. No.
Q How many treatment rooms do you have at your office?
A Two.
Q Actually, how long have you been at this location?
A This location -- this is 2004. This location two years. Two years, I believe. Or is it three? 2001. Yeah, it's going on three years.
Q Where were you before that?
A Right next door.
Q Do you know the address?
A The address was 2311 East Avenue. It was an L-shaped plaza and we had the whole thing. And I just moved my offices over and made them smaller.
Q That was my next question. You made it smaller?
A Correct.
Q So you now have two treatment rooms. How many

other rooms are part of your facility?
A Waiting room, office for the receptionist and two treatment rooms. They are a combination treatment therapy rooms, one open area -- or one private office, one other office with a computer and library.
Q Okay. What sort of chiropractic equipment do you maintain?
A I have a Zenith high/low manipulation table. I have a Cox distraction table. I have a Mettler ultrasound -- muscle stimulator and then I have a Mettler ultrasound -- combination ultrasound muscle stimulator. I have a motorized traction table.
Q How long -- let's start with an initial exam. How long is an initial exam and treatment that you do for a patient?
A In time?
Q In time.
A I tell a new patient to give themselves two hours on the first visit. Depending upon how long it takes to get a comprehensive history and examination.
Q How about subsequent treatment visits?
A There again, it depends upon the complexity of the treatment. It may be from 20 minutes to 45

minutes.
Q I think I asked you, you do not teach, correct?
A No. At a chiropractic school?
Q At any medical institution.
A No.
Q Do you teach other things?
A I've given presentations and taught at various programs, but not at schools.
Q Okay. On an individual seminar sort of basis?
A Right.
Q Okay. Do you perform IMEs?
A Yes.
Q In what arena, Workers' Comp, Social Security, what do you do?
A Workers' Comp, personal injury. Those are the main two, personal injury and Workers' Comp.
Q How many reviews do you do a week?
A Can vary from zero to ten or 20.
Q Do you do that during your Monday, Wednesday, Thursday, Friday office hours or do you work them in on a different day?
A Excuse me. When you say IME are talking about the physical examination of the individual or the review of patient?
Q I meant the exam of the patient. We can do both.

Let's start with the exam of the patient.
A The exam of a patient, I put that in during the time I'm in my office. How long do those take? Anywhere from one to three hours.
Q Okay. And then the paperwork you do outside of office hours?
A Generally, yes.
Q Occasionally you don't?
A Occasionally I will get a request for a pre-certification or concurrent and they'll fax me something and ask me to give an opinion right then.
Q Do you hold any administrative positions that occupy any of your time?
A Administrative positions as to what?
Q In any organization or institution?
A I'm on a committee for the Veteran's Administration that is determining the inclusion of chiropractic into the Veteran's Administration. I've been on that since 2002. That requires a lot of reading, you know, going over all the material. Then we have a meeting quarterly. Then we have to wait for everything to come to us on the computer, read it over, make our changes, send it back. So there is work to do on that too.

Q If I understand it correctly, you're deciding whether or not chiropractic should be included in the VA system or --

A No. By an order of Congress in 2001, chiropractor was mandated to become part of the Veteran's Administration. So in 2002 our committee was formed to determine how the chiropractors were going to be put into the VA system, to do all the planning of credentialing, what they were going to be doing, where they are going to be doing it, procedures, treatment regimens. Everything is going to be entailed in that. And it's a multi-disciplinary panel. There is six chiropractors, two medical doctors, an osteopathic, physical therapist and one representing all the veteran's groups.

Q Okay. When do you anticipate that being done?

A Oh, we've been working on -- when are the chiropractors going to be into the system?

Q When would this project be completed I guess would be the best way to say it?

A This committee is in vogue until December 31, 2004. Chiropractors are as we speak being reviewed to become part of the VA in 26 -- 26 VISNS throughout the system.

Q Did you say VISNS?
A Capital v-i-s-n.
Q What's that?
A A VISN is a geographical location where -- it's called the -- I wish I can remember what the acronym stands for. But Ohio is VISN 10. So all the veterans in the State of Ohio are governed by this VISN 10. There is 26 throughout the United States, Mexico -- or United States, Puerto Rico and Guam.
Q What other committees or administrative positions do you hold?
A That's the one that I've spent the most time on in the past four years.
Q Okay. What percentage of your income comes from direct patient care?
A I have no idea. I have a corporation. I get a salary. Everything goes into that.
Q Is it an S corporation?
A I'm sorry?
Q Is it an S corporation?
A It's an LLC.
Q What's the name of it?
A Charles E. DuVall, D.C., LLC. Became an LLC December 8, 2001. No, I'm sorry, 2000. 2000.

Q Does the income you earn from all of your activities go into that LLC?
A Yes.
Q And that's the reason you wouldn't be able to estimate what the percentage was, because all of the income from all of your various ventures go into that one entity?
A Right. And I just get a salary.
Q Okay. How much are you reimbursed for a typical chiropractic visit by an insurance company?
A My office fee is $50.
Q Is it different for an initial exam?
A Initial examination may be $100 --
Q Okay.
A -- to 125. Depending upon how involved the examination has to be.
Q Okay. And then are there separate charges for -- does that include ultrasound and electrical stimulation?
A Everything.
Q That's everything?
A Everything.
Q Is that the rate at which you are reimbursed by insurance companies or is that the rate you charge?
A That's the rate I charge.

Q What rate are you reimbursed at?
A That depends on the company.
Q What's the range?
A It can range from $50 to 28.50.
Q How about on the initial visit?
A Most of the time they'll pay the initial visit, the examination fee.
Q How would you describe your patient population? By that I mean, are you a typical general practice? Do you tend to have older patients, younger? How would you describe your practice generally?
A I limit my practice to neuromusculoskeletal conditions. And it goes -- I do not treat anybody under the age of 12.
Q Okay.
A But it can run the gamut from 12 to 90.
Q Do you market yourself as specializing in any particular type of injury? By that I mean some people like to specialize in sports medicine or things like that.
A No.
Q Would you characterize it then as a typical general chiropractic practice?
A I guess you could say that.
Q Since you've been practicing since 1979, how many

facet fractures have you diagnosed in the course of your practice?

A Of my own patients?

Q Yes.

A None.

Q In the course of your practice since 1979 how many times have you diagnosed in one of your patients a transverse process fracture?

A Wow. God, I don't know. I couldn't tell you if I had diagnosed, how many I've ever diagnosed of my own patients with a transverse fracture since '79. If it was there it was either post-traumatic, but it wasn't post-treatment.

Q Well, let's put it this way: By the time a patient got to you, had a transverse process fracture already been diagnosed? I'm asking have you ever diagnosed someone with having a transverse process fracture personally?

MR. RUF: You mean the initial diagnosis?

MR. REGNIER: Yes.

A I'm sure I might have. When, who, I can't tell.

Q Do you know how many times?

A No.

Q Under five?

A I have no idea.
Q When was the last time?
A I don't know.
Q I'm going to use the word subluxation. I think there is a couple different definitions so I want to make sure you and I are speaking of it the same way. Would you agree that the medical term for -- the medical term subluxation refers to a partial dislocation or a dislocation?
A The only accepted diagnosis within the medical scientific community for subluxation is Dorland's Medical Dictionary, 28th Edition, Page 1596, a partial dislocation.
Q Okay. That's the way I'm going to use that term while we're talking.
A Correct.
Q Have you ever diagnosed -- been the primary diagnoser of one of your patients having a subluxation?
A No.
Q Now, this is a little different. Have you ever had someone come into your office for treatment with a facet fracture where it's known that they've already have that diagnosis?
A Gosh. I really don't recall off the top of my head

whether I have or not.
Q How about have you ever had someone in your practice since '79 come in with a transverse process fracture where that condition was already diagnosed?
A I'm sure I have. When, how many and the last one, I don't know.
Q Okay. And the same thing then with a subluxation. Have you ever had a patient come in who has already been diagnosed with a subluxation?
A I really -- I really can't say that I can recall where someone has come in and said, you know, I have a subluxation. I know I have reviewed cases where such was present, but a referral to me where the patient says I have a subluxation, I can't recall that.
Q And not even just that person, but, you know, another practitioner sending someone to you. Have you ever treated someone who was suffering from a subluxation?
A By the definition we described?
Q By the definition we described.
A No.
Q The partial dislocation.
A No.

Q And if you prefer, I can say partial dislocation.
A No, I see. I understand it. I know where you're coming from.
Q In the course of your practice, do you perform cervical adjustments or manipulation?
A I do use manipulation of the cervical spine, however I do not use forceful rotatory manipulation.
Q In the last month have you adjusted a patient cervically?
A Yes.
Q Would you agree with me that it is an accepted chiropractic practice to perform cervical adjustments in general?
A Yes.
MR. RUF: Objection. I think that's overbroad.
MR. REGNIER: Well, he just said yes.
A In general is it taught?
Q Yeah, sure.
A Yes, it's taught.
Q It's not accurate to say that the majority of chiropractors don't do cervical adjustments, right?
A No, that's correct.

Q That would be an inaccurate statement?
A True.
Q Now, I understand you still use three or four different types of cervical adjustments in your practice?
A I use a variety of manipulation/mobilization techniques for the cervical spine. I do not use rotatory -- heavy rotatory types of manipulation whatsoever.
Q And by rotatory, so that we're clear on that, you're talking about turning the head from side to side, or if there is a more accurate way to say it, please go ahead.
A As far as the rotatory manipulation or what's called a cervical break, where the patient is either supine on their back, sitting, standing, where you would rotate -- you extend, rotate and torque the head and neck.
Q Okay. And that's because the reason for -- the reason you don't perform those types of adjustments is the risk of what?
A Stroke or fracture or disk herniation.
Q Okay. What are the three or four types -- or what are the cervical adjustments that you do use? Do they have specific names?

A Do they have a specific name? No. Not that I know of.
Q But do you know how many different techniques you use?
A Techniques I use?
Q Yes.
A I never sat down and thought about it. It varies with a patient as to how you may best mobilize the joint. There is a difference between adjustment, mobilization and manipulation.
Q Okay.
A Okay.
Q What's the difference?
A An adjustment is a low -- is a high velocity, low amplitude thrust. A mobilization is taking the joint within the pathophysiological limits of the joint. Manipulation is going beyond the pathophysiological limits of the joint. So I basically do mobilization techniques whenever I'm doing any of the manipulations, some adjustive techniques in the thoracic spine.
Q Okay. What technique do you use with the patient lying supine?
A You can use some, again, very gentile mobilizing techniques. Joints are made to move in a specific

plane. And you don't force a joint. So you generally mobilize the joint to move as it's supposed to. That's where people run into a problem. They use force rather than finesse.

So I use the analogy in explaining it to a patient, you can get real busy and try to screw a joint -- a screw into a wall, and it will go in sideways, or you can either back out and start again or you can hit it with a hammer. But if you slowly go in, it goes in the right way. Same way with a joint. You can rapidly move it and you can cause a problem, or you can gently work with it and it will generally seat its own movement.

Q What school of techniques do you use?

A I don't use any school of technique per se. I've been exposed to many techniques over the years.

Q Okay. So if I want to know what you do for someone cervically am I to understand you don't have a name of any technique that you use?

A No. When you get into chiropractic techniques that are named, it's usually an individual that thinks he's come up with a new way so he names it for himself. There is the Palmer Hole-In-One as it used to be called. HIO, which they only manipulate it axis to axis. There is techniques of --

Gonstead Technique. God, there is hundreds of different techniques. But there is just so many ways you can move a joint.

Q Okay.

A So it all depends upon their possible adaptation, whether they do it sideways, sitting, standing, lying.

Q Okay.

A But, you know, manipulation is manipulation. Mobilization -- that's why they -- now if you look at the text, it's manipulation slash mobilization.

Q Okay. You adjust patients cervically having them lie supine; is that correct?

A I do some gentle work in the manipulation/mobilization of the cervical spine both prone and supine.

Q Do you move the patient's head laterally at all when doing any of your techniques?

A Sometimes.

Q Do you move the patient's -- do you extend or slightly move the patient's head up when you're doing any of your techniques?

A For the mobilization technique I never extend or flex. When you're doing some of the isometrics, you may with a patient supine extend or flex it

forward to the chest.

When you're doing, again, various isometrics for the cervical spine, you may rotate and then have them apply counterlateral pressure. But you're not going to torque and you don't go beyond the pathophysiological range.

Q And no rotation -- I'm not talking about rotation at all here.

A I'm saying, with rotation it's just within the pathophysiological range. Same with lateral bending. You only go with the pathophysiological range of the individual.

Q Okay. Okay. And do you, in any of your cervical techniques when a patient is lying supine, provide an impulse or thrust to the cervical vertebrae?

A No.

Q You do not take your own X-rays in your office; is that correct?

A Not any longer.

Q It's been many years since you have, hasn't it?

A Yeah. I don't think I've had an X-ray machine for about -- probably ten or five years.

Q You send your patients to Akron General still if they need X-rays?

A General, City, Barberton, St. T's. Depending upon

where the patient prefers to go.
Q And then do you have a radiologist interpret those films?
A At the hospital, the radiologist interprets the film. If it's a plane X-ray film I'll ask them to bring it to me, then I can go over it with the patient with the report.
Q You rely on the radiologist's interpretation though?
MR. RUF: Objection.
A That's why I have them bring the plane films to me. We'll go over them. CTs AND MRIs I do not read. I just depend upon the report.
Q How long has it been since you've ordered an X-ray for a patient?
A An X-ray? It's been a couple of years since I've ordered an X-ray for a patient. MRIs, but not X-rays.
Q When was the last time you ordered a cervical film for a patient?
A I couldn't tell you.
Q It's been years, hasn't it?
A Yes.
Q What texts or books do you use or refer to in your office, if any?

A There is a world of literature out there that I may use. I don't cite any one text specifically as, you know, written by Moses in the stone tablets.
Q Okay. Is there any that you find yourself referring to more often than others?
A It depends upon what I'm looking for. You know, what the presentation of the patient is as to where I'll go look.
Q For questions relating to the cervical spine, where would you look first?
A You have the Journal of Spine. You have JMPT, Journal of Manipulative -- Journal of Manipulative Therapeutic Procedures -- Journal of Manipulative Therapy Procedures. Achieves of Medicine. New England Journal of Medicine. But for specific cervical spine, the first one I probably look for is Spine, JMPT. There is various texts just for the cervical spine.
Q In this case, when were you first contacted by counsel?
A February the 5th, 2004.
Q And how were you contacted?
A Initially I was contacted by phone. February 5th is when I received the letter and the information.
Q Okay. Sometime prior to February 5th --

A Yes.
Q -- you were contacted by phone?
A Correct.
Q Was that by Mr. Patno?
A Yes.
Q Have you ever reviewed any cases for Mr. Patno before?
A Not that I remember.
Q How about his firm, Garson & Associates?
A Not that I can remember.
Q How about Mr. Ruf?
A No. This morning was the first time I've ever met Mr. Ruf.
Q Okay. Were you sent things to review in this case?
A Yes.
Q Could you list for me what you were given?
A This notebook, except for the information I received this morning. But this notebook and the video depositions.
Q Okay. Just one video deposition, I believe?
A There were three tapes, I think.
Q It was a long deposition.
A It was very long, yeah. But I think it was just Dr. Reichenbach's video dep I think.
Q Okay.

A I know there were three tapes.
Q Do you have an inventory of what you were sent?
A No, I didn't write it out.
MR. RUF: He's also reviewed the films.
A Oh, yeah.
Q Let's just run through real quickly what you have. Let's start with records. What records were you given?
A The records that I was presented. Dr. Reichenbach's records. Let's see. That's from Metro.
Q That looks like a report or a record?
A This is a report from Metro. Here is records from -- I'm going to spell his name. A-r I'm sorry, A-m-a-r-d-e-e-p. S period. C-h-a-u-h-a-n. D.O. There is his records. There is a report from Metro from Matt J. L-i-k-a-v-e-c, M.D. Preoperative or surgical report. Various Workers' Comp. claim -- filings.
MR. RUF: Looks like discovery.
A Is that discovery. Yeah, discovery attachment for the case. Defendants' responses to interrogatories, which are again his records. And here is more chiropractic records.

Q That's Dr. Reichenbach's?
A Dr. Reichenbach's. And again there is more from Metro Health in here. Metro Health. Path reports. This is all the health records of the lady. And then Deaconess Hospital records.
Q What's the date of the Deaconess?
A 10-22-02. And that's it. Well, no, let's see. Parma Community Hospital. Is that part of Deaconess? I don't know. Parma Community Hospital. 1-21-99. There is more Parma Community Hospital. Yeah, same, '99. That's it.
Q Okay. Mr. Ruf mentioned you also reviewed some films. What films did you review?
A I looked at the cervical X-rays that were done by Dr. Reichenbach, Deaconess and Metro.
Q May I see that?
A Yeah.

(Short recess.)

By Mr. Regnier:
Q Doctor, as I'm looking through your records, are any highlightings yours?
A If there is any highlightings, they are mine.
Q If there is any highlighting, it's yours?
A Yes.
Q Likewise, if there is any writing, it's yours?

A Yes.
Q And were the post-it notes --
A Those are mine.
Q Did you make any separate notes other than what's actually written in the records you have here?
A No.
Q Actually, you know, Doctor, to save time, at my firm's expense may we make a color copy of this chart after we're done here today?
A Sure.
Q I notice one thing you didn't mention. You also received a report from Dr. Tarola --
A Yes.
Q -- the defense expert in the case?
A I said this morning -- except for what I got this morning on my fax, that's what I originally had.
Q Was there anything else that you received this morning?
A There is a report from a -- a medical doctor and one from a chiropractor.
Q Dr. McCormick and Tarola?
A Yes.
Q Any else?
A No, those are the only two.
Q Were you given the records of Kim Richley's August

21st fall at work, her treatment records after that fall?

A They should be in there if they are.

Q Okay. I just wonder if you recall seeing them. Do you recall seeing them?

A I believe I did. I can't point you to which page.

Q You mentioned -- let's see if we can find it here. You mentioned some Parma records from '98 and '99 Looks like April 9, 1999.

A Isn't that Parma Community?

Q Yes. I was just looking at it right here. Take a look at that. Other than your Parma records from 1999, were you given any other medical records of Kimberly Richley which recorded treatment she received prior to August of 2002?

A If it isn't in this book, I did not get it.

Q Okay. Let's see here. Start with pink. This pink one. This is Parma Community, 8-22-02.

MR. RUF: I don't think he was given anything other than the Parma records.

MR. REGNIER: Okay.

A 9-29-99. Chest X-ray. Prescriptions for a chest X-ray. These are X-rays of the cervical and thoracic spine, 1-21-99. This is emergency room 4-9-99 for chronic low back pain. This is '97.

Something 9, '97, oh.
Q That's again the Parma?
A I'm sorry. It didn't come out. It's 4-9-99. This is all Parma.
Q All Parma, okay.
Were you aware that Kimberly Richley filed a Workers' Compensation claim as a result of her August 21, 2002 fall at Panera Bread?
MR. RUF: Objection.
A I believe.
Q Were you given any records from that Workers' Compensation claim?
MR. RUF: Objection to any mention of Workers' Compensation claims.
A I think there is a C9 in here somewhere.
Q I don't mean -- Doctor, incidental documents might be in there. I mean her Workers' Compensation file from that claim and any related records?
A Oh, the file itself?
Q Yes.
A No. No. Not that I'm aware of. I don't think I have seen that at all.
Q Depositions, did you get both the written copy and the video of Dr. Reichenbach?
A Just the video.

Q And did you receive Kimberly Richley's deposition?
A No.
Q Do you need to review Kim Richley's deposition in order to express opinions in this case?
A I have not had a chance to read her deposition or see -- if it was vidoed, I didn't see that either. But based on what I have seen, that's what I made my report on.
Q Okay. If you at some point in the future read her deposition and arrive at any different opinions, will you please tell plaintiff's counsel so that we have the opportunity to ask you what those opinions are?
A Sure.
Q You nonetheless feel you're able to express your opinions today without seeing or reading her deposition?
A Correct.
Q Expert reports, you mentioned Dr. Likavec the neurosurgeon?
A Yes.
Q Dr. Chauhan?
A Correct.
Q And Dr. Tarola and McCormick?
A Correct.

Q Did you review any other reports in this case?
A Dr. Reichenbach's.
Q Dr. Reichenbach's. Did you also receive correspondence from plaintiff's counsel in this case?
A Yeah.
Q Is that everything you've --
A And this, about the deposition.
Q Do you receive any other correspondence in this case?
A If I did, I don't have it.

MR. REGNIER: I'd like to mark this as Defendants' Exhibit B, please.

(Defendants' Exhibit B marked for identification.)

Q Doctor, I'm going to hand you what has been marked as Defendants' Exhibit B. Could you identify that for me, please?
A It's a letter to me from Attorney Chris Patno.
Q Doctor, just below the date on that letter there is a number written. That's 2004-0015. Do you see that?
A Yes.
Q Is that your handwriting?
A Yes.

Q Is that your internal numbering system to keep track of the cases that you review?
A Yes.
Q Does that indicate that as of February 5, 2004 that is the 15th case you have taken for review for 2004?
A Yes.
Q Doctor, what's in the manila envelope?
A I'm sorry.
Q That's okay.
A Nothing.
Q Nothing. Okay.
A You want to keep that, don't you?
Q Yeah.
A Do you need these too, my receipts?
Q No. And then with your permission, the color copies I would like to mark as Defendants' Exhibit C. The color copy of your chart.
A Okay.
(Defendants' Exhibit C marked for identification.)
Q Have you covered all the materials you've received in this case?
A Yes.
Q Did you perform any research in arriving at your

opinions in this case?
A No.
Q Do you ever examine Kimberly Richley?
A No.
Q Have you ever spoken to Kimberly Richley?
A No.
Q Doctor, what were you asked to do in this case?
A I was asked to look at the information and determine whether or not the treatment by Dr. Reichenbach was the direct and proximate cause of the fracture to Kimberly Richley's back.
Q Anything else?
A Did he meet the standard of practice for a chiropractor in the State of Ohio.
Q And did you author a report in this case?
A Yes, I did.
Q Okay. Do you have a copy with you?
MR. REGNIER: I'd like to mark his report as Defendants' Exhibit D, please.
(Defendants' Exhibit D marked for identification.)
Q Doctor, can you identify what has been marked as Defendants' Exhibit D, please?
A It was the report that I wrote on April 16th, 2004.
Q Okay. Is that the only version of that report?

A Yeah.
Q Okay. Were there any drafts?
A I may have written one longhand.
Q Do you still have those notes?
A No.
Q What did you do with them?
A Shredded it.
Q Okay. Did you consult with plaintiff's counsel between when you shredded that report and when you drafted a final?
A No.
Q Does your April 16, 2004 report fairly summarize your opinions in this case?
A Yes.
Q Are there any changes to it or anything before we start or is it ready to go?
A No, it's ready to go.
Q Okay. Doctor, what is your brief understanding of the relevant facts in this case?
A Ms. Richley injured her low back while working at Panera Bread, was treated -- was examined by a Dr. Chauhan who determined that she had a lumbar strain if I remember correctly. Yeah, lumbosacral strain and a contusion of the low back. He referred her to Dr. Reichenbach who is a

chiropractic physician. During the course of treatment by Dr. Reichenbach Ms. Richley's neck was manipulated by Dr. Reichenbach and his manipulation subsequently caused a fracture of C6 and C7 which resulted in her having to have a posterior cervical hemilaminotomy and the remove of the inferior facet, foraminotomy, reduction, intraspinous wiring and the fusion.

Q Doctor, you're not a neurosurgeon, correct?

A That's correct.

Q Will you defer to a neurosurgeon as to the operation that Kimberly Richley underwent and what was found there?

A Absolutely.

Q Will you defer to a neurosurgeon as to the necessity of that operation?

A Absolutely.

Q Will you defer to a neurosurgeon as to her healing from that surgery?

A Yes.

Q You are not a neurologist; is that correct?

A Correct.

Q Will you defer to a neurologist as to Mrs. Richley's recovery from that surgery?

A From the neurological aspects, certainly.

Q Yes. And we've already discussed you're not a radiologist, correct?
A Correct.
Q And you will defer to a radiologist as to the reading of any of the films in this case?
MR. RUF: Objection.
A I'm competent enough to interpret plane film X-rays. I wouldn't say I am a radiologist but part of the education and the licensure of a chiropractor in the State of Ohio is you must be competent to interpret the X-rays.
Q Okay. You have not interpreted a cervical film in years; is that correct?
A That's not correct. I have reviewed X-rays over the years. I haven't ordered any for my own patients.
Q Okay. Okay. So you have had a patient bring to you films that have already been interpreted by a radiologist?
A Correct, and ask me to explain them.
Q You haven't been the primary reader of a radiologic film in years, cervical film; would that be correct?
A First reader?
Q Yes.

A No.
Q I'm correct, you've not been a first reader?
A Correct. Right.
Q Ask questions with those double negatives in them. What is your understanding of the treatment that was rendered to Kimberly Richley on October 21st? I mean, what's your understanding of the manipulation, adjustment, mobilization, whatever Dr. Reichenbach did on that day with Kimberly Richley's neck?
A While standing Dr. Reichenbach forcefully rotated the cervical spine of Ms. Richley in such a manner as to cause the fracture.
Q When you say rotated, what do you mean?
A She -- Ms. Richley stated that he bent her head down, to the side and then rotated it forcefully while she was standing up and he was facing her. Previously he had done the manipulation in a similar manner with her in a sitting position.
Q Where -- was Dr. Reichenbach standing when this occurred?
A Yes.
Q Where was he standing?
A In front of her.
Q Okay. How was he touching or holding her neck?

A She stated that it was -- her head was cradled in his hand and that he bent her head down and rapidly twisted her neck.
Q Where did you get this information?
A That was related to me by Mr. Patno.
Q You never read Kimberly Richley's deposition, correct?
A No.
Q That's the only place in this case where that description is found, correct?
A I have not read her deposition. I don't know if it's --
Q You've got the rest of the file there. Is that in Dr. Reichenbach's records, the description of what you just said?
A Dr. Reichenbach doesn't have much in his records.
Q So it's not in there?
A No.
Q It's no in the ER records?
A No.
Q It's not in anyone else's report?
A No.
Q So the only source you have of that description is what plaintiff's counsel told you, correct?
A Correct.

Q In reading -- -- strike that.
You had an opportunity to review Dr. Reichenbach's deposition, correct?
A Correct.
Q So you're aware there are differing accounts of what happened on the 21st; is that a fair statement?
A That's a fair statement.
Q Can you describe how Dr. Reichenbach said that adjustment, manipulation or treatment occurred on the 21st?
A I don't -- I don't remember that he even -- there was no specificity as to how he manipulated her neck. Let's see. He doesn't have any specifics as to his manipulation on that day and I do not remember if he expressed how he manipulated her on that day on his deposition.
Q You don't recall from his deposition whether he explained what he did?
A No.
Q You don't recall from viewing the deposition whether he demonstrated what he did?
A I believe he might have but, like I said, at this time, having -- I reviewed the videos, then I wrote this report and then I sent it back.

Q And if Mr. Patno's description of what Kimberly Richley said is inaccurate then we have a fundamental problem with your report, don't we?

MR. RUF: Objection.

A I don't even know if her deposition had been taken by the time I received these.

Q I'm just asking. All I'm asking for is if what you've been told about how this manipulation or adjustment occurred is inaccurate, then we have fundamental problem with the causation testimony you've given in your report, correct?

MR. RUF: Objection.

A That would be correct.

Q Do you have any sense of or understanding of when and how Kimberly Richley experienced pain in this case?

A She stated --

MR. RUF: Pain as to what?

A After the manipulation?

MR. RUF: Her neck? Her arms? Low back? What?

MR. REGNIER: Fair enough.

Q Pain in her neck.

A Before or after the treatment?

Q Let's start with before and go with after.

A If I remember -- let's see.
Q I left a confusing record there. Let's start with your understanding of the pain related to her neck prior to her October treatment.
A Okay. In his records, Dr. Reichenbach has on 10-17, "Having bilateral hand pain in right cervical and trap pain. History of carpal tunnel. Had bilateral carpal tunnel surgery about a year. Has history of many falls. Currently seeing for low back injury from fall at work. Landed and caught herself -- bilateral hands."
Q Would that be a W slash, bilateral hands?
A With hands. With bilateral hands. I can't make out that one word. Feels -- "felt swollen." Ache and are sore. Quote, "feels like hands are overworked." End quote. "Fell August '02. Right cervical SH" -- I think that means shoulder pain -- "Can get very intense and goes from right trap down into arm. Surgery did not seem to help with symptoms. Discussed lower cervical spine and affect on nerves into arms and wrists. Also can get bad" -- I can't make out that word.
Q Could that be HAs?
A Oh, headaches. "HAs. No pattern. Patient mentions along history of physical abuse."

Q Okay. So what's your general understanding of her pain complaints coming into October 17, 2002 related to her neck?
A She had a sore neck.
Q Okay. What is your understanding of her pain complaints immediately during and after her treatment on October 21, 2002?
A Her statement immediately when she was treated on the -- what was that, the 21st? Yeah, 21st of October, she said she felt a severe pain in her neck like and heard a cracking like breaking glass. Then had a toothache like pain in her neck and upper shoulder. The next morning she woke in severe pain and went to the hospital. And that's where they found the fracture.
Q The description you were just mentioning, is that from one of the medical records?
A Yes.
Q Okay. Do you know which one offhand?
A I know it's in the one this morning I saw from Dr. Tarlof and I believe it's in the neurosurgeon's report too.
Q Dr. Tarlof?
A Dr. Tarlof.
Q Tarola?

A I'm sorry, Tarola.
Q Sorry.
A And one of the other medical reports there.
Q Did you get it from any primary records? I mean, you're referring to other expert reports. Did you get that description in any other record?
A Here in this one at Metro, Dr. Likavec. He describes the pain like sounded like shattered glass.
Q You're referring to another expert report there?
A Likavec.
Q Yeah.
A Director of neurosurgery. That's where I got it.
Q Okay. That's fine.

Have you been -- since you've not reviewed her deposition, has anyone told you how Mrs. Richley described the pain immediately after and the next morning after her adjustment on October 21st?

A Just that it was severe pain. She couldn't stand it and had to go to the hospital.
Q Do you have any understanding of how she described her pain on the afternoon of October 21st?
A No. Not other than what I just told you.
Q You mentioned to me how you -- how you've been told

Kim Richley described the adjustment that she had that day?
A Correct.
Q I'm sorry. Is adjustment the proper word for what we're talking about?
A Manipulation, adjustment, either way.
Q For our purposes?
A Yeah.
Q Is what she described, which I understand from what you've told me, you're assuming that Dr. Reichenbach was standing -- she was standing and Dr. Reichenbach was standing, correct? He was standing in front of her, correct?
A Correct.
Q He had his hands around her neck with thumbs towards him; is that --
A If -- as I remember it, they said she was standing in front of him. He had his hands on her -- on both side of her head, bent her head to the side, down and then rotated it.
Q Okay. And that was while both of them were standing?
A While they were both standing.
Q Okay. Is that a recognizable chiropractic technique?

A I've seen it done before, yes.
Q Often?
A I've seen it done quite a few times.
Q Okay. Does it have a name?
A It's goes back to the old Palmer Hole-In-One, Atlas Axis cervical break. It could be called all kinds of things. But no, I've seen it done standing, I've seen it done sitting. I don't do it. I don't recommend it to be done because of the possibilities of the injury that can be involved with it.
Q And my only question is whether it's a recognizable chiropractic technique or not.
A Yeah. Does it have a name? If it does, I don't know.
Q Are you familiar with the technique called modified rotary break?
A I've heard it. Now you have to remember when somebody said they used, quote, this technique, that may be their interpretation of that technique.
Q Okay.
A Whether you can go to a textbook -- and there are manipulation textbooks -- and say, show me the rotatory break. What one person says is modified may be another person's rotatory. It's hard to

determine when you say rotatory break or modified rotatory break.

Q Okay. I get the impression from you and I talking both about what you do in your own practice and the adjustments we're talking about here, I'm getting the impression from you that there aren't names necessarily associated with all these techniques and if there are it may mean different things to different people; is that accurate?

A Absolutely.

Q So would the best way to understand what a chiropractor did be listen to their explanation of it?

MR. RUF: Objection.

Q Because you can't say a No. 4 suture and everyone knows what a No. 4 suture is. Or put a plaster cast on. You don't know what that is. Instead you have to listen to their description?

A Yeah, you can listen to the doctor's description of what he did and then you can also listen to the patient's description of what was done to them. Because when a lay person who doesn't have any other idea as to what we're talking about, whether you call it a modified break or a super break or whatever, they tell you, I was here, he did this,

this happened.
Q Okay. And that's what I'm trying to make sure. Whether we listen to how Kim Richley said something was done or Dr. Reichenbach or you, when you're describing your cervical adjustments, the best way for us to understand what happened is to listen to the description as opposed to the term that's put on that adjustment; is that fair?
A That would be fair, yes.
Q Could you explain Kim Richley's injury to me? What did they find on October 22nd?
A You want the operative report? The operative interpretation?
Q Your understanding of the injury is fine because you just told me you're going to testify that Dr. Reichenbach's treatment caused it, so I'd like to know what your understanding of the injury is.
A She had a fracture of the C7 -- C6-C7 posterior, the facet caused by a forceful rotation and torque.
Q Okay. I'd like to talk just specifically about the injury. She didn't fracture the facet on both C6 and on C7, correct, she only fracture one facet?
A Yeah, it was C7 facet.
Q Okay.
A You talk about motor unit C6-7, C7-T1, but it was

the C7 facet.
Q Okay. And would you agree with me that that fracture extended down into the transverse process of C7?
A Correct.
Q And they also found partial dislocation or subluxation --
A Correct.
Q -- of the C6?
A C6 on C7.
Q What's that mean, in layman's terms?
A An anterior subluxation means because of the fracture, the big fat bone you always see on the X-ray, the body moved forward partially dislocating.
Q Okay. The one on the top is over the one on the bottom?
A Correct.
Q Okay. And do you have a sense of how big a dislocation that was? And by that I mean the measurement of the dislocation?
A I didn't measure it. It's millimeters.
Q Okay.
A If it goes beyond millimeters you're in trouble.
Q Have you seen subluxations like that before?

A In texts I have. In radiology presentations I have. I've never seen one on a patient walking into my office.
Q Have you ever talked to anyone? Have any of your professional associates that you're aware of run into this, other than in this case?
A In similar cases, yes.
Q Okay. You're aware of it in other malpractice cases you say, when you say similar cases?
A Yes.
Q Okay. From what you've told me you're going to offer opinions on the chiropractic standard of care in this case; is that right?
A Yes.
Q What criticisms do you have of Dr. Reichenbach? In what ways did he breach the standard of care?
A I think --
Q I just would like a general listing now and then we'll go into --
A I noted on Page 2, "The actions of Dr. Daren E. Reichenbach DC, in his care and treatment of Kimberly Richley, fell below the accepted standard of practice for a chiropractic physician practicing in the State of Ohio by using excessive force and/or improper technique and by causing the

injuries set forth above."
Q Okay.
A No. 4, "The actions of Daren E. Reichenbach, DC were also below the accepted standard of care for a chiropractic physician by treating Ms. Richley's cervical spine, when this was not part of the complaint or her work-related injury."
No. 5, "The actions of Daren E. Reichenbach, DC were below the accepted standard of care for a chiropractic physician in his failure to provide information to Ms. Richley relative to the risks associated with manipulation of the cervical spine and to obtain written and informed consent for such treatment."
Q Is that fairly concise?
A Yes.
Q Does that fairly explain the scope of your criticisms of Dr. Reichenbach?
A Yes.
Q Okay. Let's start with -- I believe your first one was No. 3. It's excessive -- am I fair in summarizing it as saying you believe he used excessive force or an improper technique in adjusting Mrs. Richley?
A Correct.

Q Well, let's start with first off, which one, was it excessive force or improper technique?
A Could be either or both.
Q Do you know which?
A From the outcome, it could be both. The force necessary to cause the fracture that ensued was extensive. Doing the type of procedure he did in a standing position increases the amount of force that was inflicted on the patient resulting in a fracture. So it was both force and technique.
Q All right. Let's start with when you make that criticism; first of all, so we're talking about the same thing, you're talking about the adjustment in the manner that Kimberly Richley described; the way that description was conveyed to you?
A Correct.
Q So let's start with then was the way Mrs. Richley's description was conveyed to you, did that describe an improper technique, first of all? Does that technique in and of itself violate the chiropractic standard of care?
A In and of itself the technique is not forbidden.
Q Okay.
A So I can't say well, the technique is forbidden, he shouldn't have done it. The technique is known to

be injurious when performed standing or sitting.
Q How should you perform it?
A Pardon me?
Q How should you perform it?
A You shouldn't perform one in the standing or sitting position because it may cause severe injury. There are other techniques that you can employ.

You're not precluded from doing it. But at the same time if you should chose to do it, then do it with care and also inform the patient that there is a risk associated with this.
Q Okay. Would I be correct then -- or not correct. Is it fair to say then that the problem you have with the technique is the force with which it was used? That the technique in and of itself is not necessarily improper but the force used would have been improper?
A Well, you really can't say that the technique itself is not in the -- it almost has to go together. Because the force associated with that kind of a technique lends itself to the increased probability of injury. It's like there -- how can I best explain that? If she were simply lying supine and turned her head side to side or standing

turning your head side to side is no big deal. But when you add the fact of the active motion provided by the doctor of the head beyond the pathophysiological limits and the forces associated with it when in a standing or sitting position, then there is no stabilization of the shoulders, you can get more torque. And the doctor may not realize the amount of force that's being used for that particular individual.

Q What evidence do you have that Mrs. Richley's head was turned beyond it rotational limits?

A The fracture. You're not going to get a fracture such as this without going beyond the pathophysiological limits of the joint.

Q Other than the fracture, is there any other evidence that her head was turned beyond the pathophysiological limits? Is that how you described it?

A That's all you need.

Q Okay. So there is no description that necessarily says that, correct?

A Correct.

Q And there is nothing else, it's the fracture? You look at the fracture and say the head must have been turned beyond its limits is what you're

telling me?
A Correct.
Q And with an excessive use of force; is that correct?
A Yes. You're not going to be able to turn your head to the physiological limit and cause that kind of an injury. You have to go beyond the physiological limit with force to get that kind of an injury.
Q What sort of force is necessary to cause a fracture like this?
A A lot.
Q Can you quantify it in any way?
A No, I couldn't.
Q Would you say that a chiropractor would have to use force well beyond any reasonable limit in order to cause this fracture?
A It was beyond the reasonable limit for this patient.
Q I understand. What I'm trying to get a sense of from you though, I mean is this a tricky technique where the slightest bit over can cause a fracture, or is this something that in order to cause a fracture of this nature you've really got to generate a ton of force?
A It's a tricky technique. Have you ever seen a

Arnold Schwarzenegger movie.
Q I have.
A He walks up to the guy looking at him, does that. The guy drops dead. Same thing. It can either be good or it can be bad.
Q They usually drop dead because they cut off his blood supply in his nerves.
A Usually because it breaks his neck and severs the cord.
Q It severs his vertebral artery in the spinal cord, right?
A It can be done.
Q We don't have that?
A I know we don't have it here. I'm just saying you just walk up, poom. It's all in how you do it.
Q It takes Arnold Schwarzenegger Terminator 2 type force to do that?
A To sever the cord and to cause the death, yeah. To get a fracture, it doesn't take that much.
Q That's really -- in fairness, all I'm trying to get at is how -- are you saying that there had to have been an awful lot of force involved here or are you saying this is a tricky procedure where just a little bit too much can cause this sort of injury?
A A little bit to much force can cause the injury.

Q Okay. Assuming that the technique was done as you've been told Kimberly Richley described it?
A Correct.
Q Did you in analyzing this consider the way that Dr. Reichenbach said he manipulated Mrs. Richley's neck at all?
A As I remember viewing the videotapes of Dr. Reichenbach's deposition, he couldn't come up with a clear and concise way of how he treated things. He couldn't remember where records were. He couldn't remember where papers were. So his ability to realize how he treated her, I don't even know if he knows.
Q Okay. So this report is offering opinions solely based on the way Kimberly Richley's description has been conveyed to you of the adjustment; is that right?
MR. RUF: I'm going to object. He just went over the X-rays in addition to her testimony.
MR. REGNIER: That's nice. But what I'm asking, as far as the technique that was used he is only considering the technique that Kimberly Richley described and that was conveyed to him by your office and Chris Patno.

MR. RUF: I'm going to object. That's not true. He just went over the X-ray findings.

MR. REGNIER: That has nothing to do with the manipulation.

MR. RUF: It does.

MR. REGNIER: I'm asking if he considered Dr. Reichenbach's description of the manipulation.

Q What I'm getting from you is you don't believe he did describe a manipulation that let's you make an opinion like that?

A Based on the information that I was informed of as to how the treatment occurred --

Q Yes.

A -- and the findings of the records from the neurosurgeons and what they found after the manipulation --

Q Okay.

A -- it is absolutely in my opinion the way Mrs. Richley's described it. That's -- with what's found there, the medical evidence is there.

Q Okay. Okay. That's what I mean. So you're not considering because -- both because of her description and what you find later in the

X-rays --

A Right.

Q -- you are not considering the way Dr. Reichenbach described the manipulation?

A Correct.

Q Okay. Do you have any other opinions about either the force or technique used by Dr. Reichenbach as concerns the standard of care?

A I think we've covered it.

Q Okay. It is your opinion -- well, let's go back a second.

No. 4 in your report, you state that it was below the standard of care for Dr. Reichenbach to treat Mrs. Richley's cervical spine when this was not part of her complaint or work-related injury. Can you explain that one to me?

A In his deposition he initially was tying the cervical spine into the low back injury from the work-related injury. There was no information to associate that whatsoever.

Q I'm sorry. Could you say that again?

A From his deposition, the way he initially presented it, he was trying to say that part of -- that her cervical spine complaints and her wrist complaints were part of the Workmen's Comp.

Q Okay.
A And that's what he sort of explained to her. That's entirely wrong, because that's not part of the Workmen's Compensation. It was recognized only for the low back. And to lead her to believe that is below the standard of care, in my opinion.
Q You're saying that he led her to believe that her neck and wrist complaints were related to the Workers' Comp claim?
A In his deposition he was explaining how he initially thought it could be tied into it. But then later he decided it wasn't. Well, initially he was going to try to do it with the Workers' Comp the way he explained it on his deposition. And then he said, well, no, it couldn't be part of it. But initially he tried to consider it to be part of the Workers' Comp. That's below the accepted standard.
Q Okay. I want you to -- hypothetically now I'm going to ask you a hypothetical. I want you to assume that Kimberly Richley came to Dr. Reichenbach on October 17th after a week's absence from his practice and had new complaints of neck pain. Okay. Neck and shoulder pain. Is it below the standard of care for him to treat that

neck and shoulder pain?
A No, as long as you let them know that it is not in any way connected to the Workers' Comp injury that you're presently treating.
Q As long as you make it clear that it's separate and distinct, then there is no problem with that?
A Correct.
Q Is there a way that your criticism in No. 4 proximately caused Mrs. Richley harm?
A How do you mean?
Q Well, I understand what you're saying. You're saying that if he was leading her to believe that this was part of her Workers' Comp claim, that breaches the standard of care that her neck complaint were part of it?
A Right.
Q How does that proximately cause her harm?
A He ended up treating her neck and broke it.
Q But if she's -- but its categorization as a Workers' Comp or a non-Workers' Comp claim has nothing to do with the eventual harm she sustained, does it? It doesn't matter. He either did a technique properly or he didn't, correct?
A Right.
Q The way it's characterized or the way it's

submitted for payment doesn't cause her harm, does it?

MR. RUF: Objection.

A Physically, no.

Q Okay. I just want to make sure because I was speaking generally.

As far as a fracture is concerned, it's difficult to describe the forces necessary to cause a facet fracture in this particular way?

A If you're asking can I say X amount of pounds will cause it, I can't.

Q Okay. It's your belief that the rotational in taking the neck beyond the --

A Pathophysiological limit.

Q -- pathophysiological limit is what would cause a facet fracture?

A Correct.

Q Okay. Can that cause a transverse process fracture?

A When the force is sufficient enough to cause the facet to fracture, yes, it can cause a transverse fracture.

Q How?

A As the facet is fractured, as -- depending upon the exact site of the fracture, then it's like you

break glass, it starts here and it runs down. The integrity of the bone at the joint, at the facet itself is broken and then it just splits.

Q Okay. Is that your understanding of the fracture in this case, that it was a continuous fracture down into the transverse process?

A That's what it appears.

Q Is that based on your direct interpretation of the films or based upon your review of the reports?

A Looking at the films themselves.

Q How about the partial dislocation; any sense of the types of forces necessary for that, or is it the same thing?

A That I am aware of there is no data that can say X amount of pounds you're okay, and X plus one is going to cause the fracture or the subluxation. It depends upon force and position.

Q Okay. These type of injuries, when you say depends on force and position, are also common with extreme hyperextension injuries, are they not?

A You can see them in flexion -- in extreme hyperflexion hyperextension. Extreme. You can also see them in minor injuries of lower force velocity.

If a person is looking straight ahead and

they get rear ended, got a three-point restraint and headrest, they get rear ended at ten miles an hour, they go forward, their head stops there.

Q Okay.

A Okay. There is unlikely going to be a facet fracture unless they get creamed at 60 miles an hour.

Q Okay.

A Conversely, with there head turned at ten degrees one direction and getting struck directly in the rear at five miles an hour could be sufficient force to cause that kind of an injury because the rotation and turning of the head, you're opening up the side of the facet and it can -- with the proper angle and force, it may cause a facet fracture or a dislocation, subluxation.

Q It's the combination of the rotation with the impact is what you're saying?

A It can be the rotation and the force.

Q Okay. So depending on the way the person's head is positioned you're saying a minor rear end impact could cause this sort of fracture; that's all the force that is necessary?

A I have seen articles and studies to that effect, yes.

Q Okay. Have you seen any patients that that's happened to?
A No.
Q But you have seen articles and studies regarding that?
A Yeah. And when we did both the biomechanical trauma program and we did the low impact, you're looking straight ahead and you're belted in, that's not a big problem at low velocity. But a slight five to ten degrees can change it altogether. And like you have your head turned and you get hit from the side, that causes even a different directional force that could cause a problem.
Q If you're turned and hit from the side you're saying?
A Yeah.
Q Because of the torsional forces involved?
A Yeah, because of the different forces that are acting on it.
Q You mentioned you'd seen some studies. Do you recall any of them?
A No, I've just -- in the years I have seen studies.
Q Okay.
A When you talk about force there is -- they've had people stroke themselves out turning their own

head. You know, giving their own adjustment. How much force are you going to use on your own neck?

Q Yeah, or leaning back in the beauty salon or turning a car around in a driveway or things like that, right?

A Yeah, right.

Q What other -- you've mentioned auto accidents then as a possible cause for this sort of fracture, ways that you've seen it happen. What are other potential causes of this sort of fracture or injury?

MR. RUF: Objection.

A Well, the type of injury that we're talking about in this case has to do with force. So you have to have some kind of trauma, force to cause it. You know, auto accidents. I mentioned any kind of heavy -- you know, racing. I don't know. Skiing, you could fall on your head and do it. There is a lot of force there.

Q Ways where you fall -- ways where you're struck or fall with a great amount of force? Or that's not fair either. Ways that you fall or are struck with force at the proper angle would be a better way to say it.

A Fall down the steps head over heals 25 steps. You

know, there is any number of ways that people can hurt themselves.

Q And those are all potential ways that this sort of injury can occur?

MR. RUF: Objection.

A There is always that potential.

Q In your work as an accident reconstructionist have you seen this sort of injury occur in an auto accident then?

A I have not had a case where we have had any facet fractures at all.

Q Okay.

A In the classes it was presented but I never have had my own cases.

Q Okay. You do not have, as we sit here, have an understanding of the way Dr. Reichenbach described his adjustment of Kimberly Richley, correct?

A Written, no. I remember him trying to describe it on the video, but I could never come up with any exact way that he could describe. In fact, I think he tried to describe it two or three times in different ways.

Q Okay. So is it fair to say that you cannot say that he breached the standard of care if he performed an adjustment in the manner he described

because you don't have any sense of the way he performed the adjustment?

MR. RUF: Objection.

A Well, by Ms. Richley's description, and the fact that on the 17th when he X-rayed her neck that fracture wasn't there, and on the 22nd after he -- after he manipulated her when she was X-rayed, the fracture is there, I think it's pretty clear.

Q That wasn't my question though. Because the mere fact that a fracture occurred doesn't necessarily mean that the standard of care has been breached, does it, or is that your position?

A It goes to part of it. I mean by his actions the injury resulted, and his actions were a breach of the standard of care.

Q Right. That's not my question. Is it your opinion that the mere fact that a fracture occurs indicates that the standard of care was breached?

A I think I'd have to almost answer yes because the improper technique and force used in the treatment resulted in the fracture.

Q Well, okay. In your opinion is it possible for a fracture to occur such as this without the use of improper technique?

A I don't think so in this -- in an individual of

this age. If you're talking about an 80 year old osteoporotic, I guess it's possible, but not on a person this age.

Q What if there is -- well, certainly they can have a structural defect in their neck, correct?

A Well, then again it would be a breach. If you have a structural defect why are you treating them like that? You shouldn't do that.

Q You don't take cervical X-rays for the most part, correct, in your practice?

A I haven't taken X-rays in my practice in, like I said, I think 15 -- 10 or 15 years.

Q Did you X-ray everyone -- do you have X-rays brought to you for every person you treat before you manipulate their neck?

A No, plane film X-rays are not necessary unless by history and examination there is something there that lends you to believe that you should look at it. Most of the literature within the past 15 years are saying, you know, you really don't need all the plane film X-rays.

Even in the chiropractic literature it says you don't need all the flat plate X-rays if the proper steps are looked at. If you go to the -- even the Mercy guidelines or the ACHRP in Quebec

task force studies, you know, plane films don't give you that much. They can show you fracture, they can show you dislocation, they can show you if there is earlier degenerative changes, but why do you need to know that if there is not anything pertinent from the history that would preclude your manipulation?

Q Is there anything in reviewing Dr. Reichenbach's chart or all these records, was there anything in your mind that said cervical manipulation was contraindicated for Mrs. Richley prior to October 17th?

A Any type of cervical manipulation. I did not see anything in there that would absolutely contraindicate cervical manipulation.

Q Okay. Do you have an opinion or do you intend to offer any opinions as to whether Kimberly Richley had any pre-existing structural problem with her neck prior to October 17, 2002?

A Based on the X-rays that I saw, there was no structural deficit or pre-existing problem of the cervical spine that would contraindicate manipulation.

Q Okay. So your main criticism is that Dr. Reichenbach used to much force and did so

improperly, that he extended the neck too far; is that right?

A And didn't inform her.

Q We will get to the informed consent. As far as his actual treatment goes --

A Right.

Q As far as the mechanism of injury goes, that's what we're talking about, right?

A Correct.

Q Would you agree with me that you are basing your conclusion that Dr. Reichenbach's manipulation caused Kimberly Richley's fracture on Kimberly Richley's testimony that this is the only thing that happened to her neck?

MR. RUF: Objection. We went over that. He's also basing it on the X-rays.

A I would --

MR. REGNIER: Wait a minute. If she got in a car wreck the day before, the X-ray is going to say the same thing, that's not. An accurate characterization.

Q My question is you're basing the history of Kimberly Richley's -- you're saying Dr. Reichenbach had to have caused the fracture because that is the only explanation Kimberly Richley has given us,

correct?
A His own records -- by his own records there, Dr. Reichenbach has no other data in his records to say she had any other injuries prior to this or that she had any other pre-existing problem prior to this. Based on her description of how she was treated and the end result, I believe her.
Q And that's all I'm saying, is you're basing it -- regardless of the reasons to believe her, you're basing it on what she has said?
A Her description of how she was treated and the end result.
Q Okay. Okay. Of course, she did come in though complaining of neck pain on October 17th, correct?
A Vague defuse nondescript.
Q Different pain -- you would characterize that as different neck pain?
A Yeah, generally soft tissue discomfort.
Q Would you agree with me that in all likelihood Kimberly Richley's neck was not partially dislocated when she left the office on October 21st, 2002?
MR. RUF: Objection.
A No. Because the X-rays of the 17th show no dislocation. The X-rays of the 22nd show a

dislocation -- partial dislocation, subluxation. There is no indication or history or data to show that she was involved in any other accident, injury or trauma from the time she left the chiropractor until the time she presented to the ER with the neck pain. And at that time they X-rayed her, so treatment subluxation.

Q Okay. And perhaps I didn't say that as eloquently as I should. A dislocation is extremely painful, right?

A Maybe. A total dislocation is really painful. A partial dislocation or subluxation, not having had one myself, I would presume is painful but may not be as painful.

You also have to remember when you have trauma you will have sometimes afferent pains or discomfort that are not as severe as they will be within 24 hours. The general soft tissue response to trauma many times is an anesthesis of the area, and then it takes a while before there is a flooding and where the tearing of the tissue is before you'll get a spasm and contraction.

Q Once you have a dislocation though or partial dislocation it's pretty hard to move that area; isn't it, it's not in place?

A It is not -- it is not in exact position but it is not totally dislocated. It's partially dislocated.
Q Okay. Would you agree once you partially dislocate a facet it is very difficult to move that area?
A It may be.
Q Okay. Usually wouldn't it be?
A I will not say to the percentage or how, I would say it's possible. I don't know.
Q Okay.
A I wouldn't say yes, a definite.
Q And in your experience fractures are very painful, correct?
A I know long bone fractures are. However, spinal fractures, there again it depends upon the individual. I've seen compression fractures and the person never knew they had one.
Q It's usually in older patients, isn't it?
A No. I've seen them in younger patients that didn't know they had one.
Q Are you critical at all of Mrs. Richley for waiting ten days to have her corrective surgery?
A That is up to her and her surgeons.
Q Are you going to offer any opinions regarding whether that delay caused additional neurological injury or not, or will you defer to a neurosurgeon?

A That's a neurosurgeon's job, not mine.
Q Do you agree with me that Mrs. Richley did not complain of pain to Dr. Reichenbach at the time of treatment on October 21st, 2002?
A Let's see. You're talking the neck now, right?
Q Correct.
A Okay. There is slight wrist pain. Decrease in right arm pain. Right knee PA drop. Anterior superior knee pressure today. EMS right knee and cervical bilateral with heat C5-6. MRB bilaterally. Now that MRB might be modified rotary break in his opinion. So is she having reduced pain? Is she complaining of pain? He does not say anything about cervical pain at that time.
Q I'm sorry.
A But he treated the cervical spine.
Q And I'm sorry, I may have asked the question in a different way. What I meant was do you have any evidence that Mrs. Richley complained of pain to Dr. Reichenbach after his adjustment of her on October 21st, 2002?
A There is no notation on the 21st nor any other time of his asking her how she felt after the treatment nor her giving him a response of how she felt after the treatment.

Q Well, she talked about it at her deposition. Did plaintiff's counsel convey to you what, if any, complaints she had after the October 21st, 2002 treatment?

A Not that I can recall at this time.

Q Has it been conveyed to you how she described the quality of her pain that day on October 21st, 2002?

A No.

Q Has it been described to you what the quality of that pain was like the next morning when she woke up on October 22nd, 2002?

A Just what is in the emergency room records.

Q Okay. Let's talk about No. 5 then. That's informed consent.

A Correct.

Q We're talking about he had a duty to give her and obtain an informed consent, correct?

A Correct.

Q You state in your report that he had a duty -- you state in your report that Dr. Reichenbach had a duty to obtain her written informed consent, correct?

A Correct.

Q That's not the law in Ohio, is it? Ohio does not require a written consent?

A There is not a law that requires anybody to get a written consent. It is recommended to the physicians that they should get an informed consent prior to the treatment of the patient.
Q Right. But there is no duty to obtain it in writing, is there, under Ohio law or under Ohio chiropractic practice?
A To any physician there is not a law mandating it. It is ethically correct. It is prudent as far as your malpractice carrier is concerned. Even MCMIC encourages all the doctors to inform their patients of any problem that may arise from the treatment prior to giving the treatment.
Q This is real simple, Doctor. The standard of care does not require a written consent in Ohio, does it?
A No.
Q And you have testified to that effect in other cases, haven't you?
A Correct.
Q Okay. So this report is not accurate. It does not breach the standard of care for him to not obtain her informed consent in writing, doesn't have to have it in writing, does he?
A By law, no.

Q Okay. Well, that's what we are governed by here. What risks do you believe Dr. Reichenbach should have advised Mrs. Richley of prior to cervical adjustment?
A Fracture, dislocation, disk herniation and stroke.
Q How frequently does fracture occur as a result of cervical manipulation?
A Exact numbers I'm unsure of, but National Mutual Chiropractic Insurance Company from 1991 to 1995, it was the number two for their pay out of malpractice claims for chiropractors.
Q Cervical fractures you're saying?
A Fractures.
Q Okay.
A Cervical fracture has never been delineated. Maybe you can ask them to give you those figures.
Q But they are not testifying here, you are. And you're saying he had a duty to advise her of that risk. I'm asking you the basis of it. What is the risk of getting a facet fracture on cervical manipulation?
A It's possible.
Q That's great. How often does it happen?
A It doesn't have to be. Whether it's one in a million or one in ten million, if it happens to you

it's 100 percent. And an individual has the right to know that the treatment that the doctor wants to perform on them may cause them fracture, dislocation, disk herniation and stroke.

Q Okay.

A If they are informed of that and they say I want it anyway, okay. But the doctor still has the duty to inform them. This can happen. If I have a tooth filled, they got to tell me that the Novocaine can kill me. How often does that happen? Not very. But they got to tell me anyway.

Q Okay. How many facet fractures are you aware of -- how many facet fractures have you ever heard of as a result of cervical manipulation?

A I have no idea. Have I heard of them? Yes. How many? I don't know.

Q Are you aware of any studies on it?

A I'm sure there might have been papers written on it but I can't quote you chapter and verse.

Q Just that you're aware of. Have you ever read one that you can think of?

A Off the top of my head I can't.

Q You've never seen one in your practice, correct?

A Not that I can remember.

Q As far as treating professionals goes, not

necessarily in your review of cases, in your professional contacts, have you ever seen or heard of a facet fracture as a result of cervical manipulation?

A Have I ever caused one? No.

Q Not have you ever caused one. In your immediate professional circle with people you deal with, have you ever talked to someone whose seen it firsthand?

A I know of doctors that have done cases where it has occurred. Having it occur in their office, no.

Q How many cases have you heard of?

A I couldn't tell you whether it's two or 20.

Q Okay. Somewhere between two and 20?

A It could be two and 2,000, I don't know exactly how many I've ever heard of.

Q This isn't something that is written about in the literature very much?

A I'm sure there has been articles written. I cannot tell you chapter and verse which ones, but I'm certain if we did a search we could find some.

Q Do you agree with me it's less common than stroke as a result of cervical manipulation?

A I have never seen statistics relative to the commonality of facet fracture. I know that strokes are at least one in a million.

Q You've never seen statistics as to the commonality of facet fractures?
A Not to the degree that I've seen where they say strokes may be one in a million.
Q You have a very good understanding of stroke, the risk factors for stroke, correct?
A I have a considerable knowledge of it.
Q You've done research and you're aware of that body of literature; is that right?
A Correct.
Q As we sit here today now, you do not have that same sort of awareness of any body of literature that may exist regarding a facet fracture after cervical adjustment?
A Off the top of my head, no.
Q You've read a case study about a facet fracture caused by cervical adjustment?
A Probably.
Q When?
A I have no idea.
Q More than one?
A Maybe.
Q Don't know though?
A Don't know how many. Don't know when.
Q And you don't know the statistical likelihood of

such a thing happening as we sit here today?
A To my knowledge, I don't know of ever seeing it printed.
Q Okay. How about with partial dislocation; are you aware of the risk of partial dislocation upon cervical adjustment?
A As we have defined it here?
Q Yes.
A No.
Q Have you ever seen such a case?
A I have seen it in -- I know I've seen articles relative to subluxation following manipulation or subluxation following trauma.
Q Using our definition of partial dislocation?
A Yeah, partial dislocation. When I saw it and where I saw it and how often I saw it, I don't know.
Q Would you agree with me that that risk is also less likely than stroke or are you unable to give an opinion?
A I'm unable to give an opinion as to the percentage, likelihood or to compare it with stroke.
Q We can agree that Mrs. Richley did not suffer a disk herniation in this case, correct?
A To the best of my knowledge, reading this literature I have seen nothing there that says she

has any disk herniation.
Q And we can agree that she did not sustain a stroke in this case; is that right?
A I have not seen any information to that fact at all.
Q Have you ever heard of a transverse process fracture as a result of the cervical manipulation?
A I have heard of transverse fractures following manipulation, yes. Whether it's cervical, I can't tell you how many I have heard of, read, or when they were.
Q Same as --
A Same --
Q -- the other stuff?
A I mean, the transverse process fracture is not uncommon as the spinous process fracture.
Q Not as common you said? The transverse process fracture is not as common as the spinous fracture; is that --
A I think if you --
Q I'm sorry?
A I think the spinous and the transverse themselves, the little transverse process, those are fractures, probably the most common.
Q Okay. Cervically?

A Probably.
Q Isn't that usually more a lumbar or thoracic injury?
A I know it's quite a lot in thoracic.
Q And that has to do with the manner of how thoracic adjustments differ from cervical adjustments, doesn't it?
A Has to do with force and those are more thrust active. And then if you get off to the side too far.
Q Okay.
A Or if it's say an osteoporotic individual.
Q That's the circumstance where you normally would expect to see a transverse process fracture; is that correct?
A Yeah, or direct blow.
Q Okay. Do you intend to offer any opinions on Kim Richley's prognosis from these injuries?
A No.
Q Okay. Do you intend to offer any opinions on life expectancy?
A Not my area of expertise.
Q Do you intend to offer any opinions regarding the permanency of her injury?
A I have not done an impairment rating on this

individual so I would not render any.
Q Okay. Have we talked about all the ways in which, in your opinion, Dr. Reichenbach breached the standard of care?
A I believe so.
Q And have we discussed in general the opinions you at this point in time intend to offer at trial of this matter?
A Yes.
Q Doctor, if you could look at the fourth paragraph of your report, please.
A Okay.
Q I'd like to talk to you about the last two sentences of that paragraph. It says, "From the data provided I do not believe that, nor do I find the data supports the need for manipulation of Mrs. Richley's cervical spine."

My question is, based on the note that you read from Dr. Reichenbach you find that there was nothing to support the need for manipulation of her cervical spine?
A From her explanation on her deposition as I -- it was related to me was she just had a sore and achy neck. Well, you can tell a person with just a sore and achy neck try some ice, do some exercises, see

how it feels. Doesn't necessarily have to do with manipulation.

Q Again, you didn't read Kim Richley's deposition, correct?

A No.

Q What you've just described is the way it was conveyed to you that she testified?

A Correct.

Q Okay. What about Dr. Reichenbach's note? Isn't there information there that she complained of right cervical pain and shoulder trapezius pain?

A She complained of bilateral hand pain and right cervical trap pain. His explanation of her complaint was different from what was conveyed to me.

Q Okay. Well, you had the records though, right? Did you have his office chart?

A His records, yes.

Q Yes. So it's not accurate to say that the data doesn't support the need for manipulation because you do have data that supports the need for manipulation, you just disagree with it; is that a fair way to say it?

A I -- no. Having bilateral hand pain and cervical and trapezius pain that he notes, he goes very much

into the area of carpal tunnel and failed carpal tunnel surgery. If his presumption on this carpal tunnel is correct and these are all failed, then he tries to tie in her neck pain with the carpal tunnel feelings; that's entirely wrong.

Q Well, doesn't it say right in there, right cervical and shoulder pain can get very intense?

A Yes. And then he has this thing, lower cervical spine, discussed lower cervical spine and affect on nerves into the arms and wrist. Where he's tying in her pain in her hands and that with her neck.

Q Okay.

A With a history of carpal tunnel, that's not going properly on it.

Q But if someone complains to you of right cervical and shoulder pain that can get very intense, isn't that reason to treat cervically? Regardless of what it's manifestations are?

A Look at his exam. His exam is totally benign. She has normal range of motion, she has -- the cervical distraction is positive on the right. That's it. Which means you lift up on their head and they say that feels better. You can give a patient -- tell them to use an ice pack, tell them to do some exercises. That reflects all minor soft tissue

irritation. Has nothing to do with the need for manipulation.

Q Point tenderness is not a need -- is not indicative of a need for manipulation?

A Not necessarily.

Q So that we're clear then, it's your opinion that right cervical and shoulder pain which can get very intense is not data which supports the need for manipulation?

A Not necessarily.

Q Okay. And then this next sentence you say, "This is especially true if one assumes the statement of Kimberly Richley to be true in her deposition concerning this."

You didn't read her deposition, it's just your understanding of what she said in that deposition after plaintiff's counsel talked to you, correct?

A Correct.

Q Any other criticisms of Dr. Reichenbach at all?

A That's it.

Q Okay. How many reviews of cases have you done this year?

A What kind of reviews? All of them?

Q Let's start with malpractice reviews.

A Oh, gosh. This year. I think four or five. I think.
Q Okay. And what other kinds of reviews then do you take in?
A Independent exams and then retrospective, prospective and concurrent written reviews. I've done no criminal this year.
Q How many of those have you taken in this year?
A General reviews, probably I think 100 and some.
Q And your numbering system which shows this is the 15th case that you took in as of February, that includes all reviews in your office?
A Yeah.
Q In malpractice cases, you testify 99 percent of the time for the plaintiff; is that correct?
A Correct.
Q When was the last time you testified for a defendant in court or in a deposition?
A On a malpractice case?
Q Yes.
A It was -- oh, gosh. I mean it was Missouri -- Kansas City, Missouri, and it was in probably nine -- late '90s. I can't remember exactly when.
Q So for at least the last five years, your reviews have been 100 percent for plaintiff, correct?

A On medical negligence?
Q Yes.
A No, I have done --
Q Well, my question was when is the last time you testified for a defendant?
A Well, see, I've done reviews, and after talking to the attorneys, then the case was no longer pursued.
Q Okay. So it would be instead fair to say that within the last five years you have testified in actions 100 percent for the plaintiff?
A Correct.
Q Okay. How many depositions have you given this year?
A This is the first one.
Q Okay. And how many times have you testified at trial this year?
A None. No.
Q You mentioned MCIC earlier. Are they your malpractice insurer?
A Oh, yeah. Since I was in school.
Q Have you been sued for malpractice?
A No.
Q Have you ever been convicted of a crime?
A No.
Q Has any action ever been taken on your professional

license?
A No.
Q Doctor, I think I'm done. If you give me just a minute to look at my notes and wrap up.
Doctor, do you have an opinion as to whether Kimberly Richley's fracture could have been present on October 17th, 2002?
A Yes, I do.
Q And what is that opinion?
A It wasn't there.
Q And the basis for that opinion?
A Review of the X-rays by Dr. Reichenbach.
Q Doctor, I do have a couple things. We talked about written consent. It's your opinion that the consent obtained, if any, by Dr. Reichenbach failed to meet the standard of care; is that correct?
A Correct.
Q Okay. What is your understanding of the consent, if any, that Dr. Reichenbach obtained from Kimberly Richley?
A To my knowledge, when he wrote down that he explained to her the nerves is as much as I was ever able to derive of his explanation as to what was wrong with her, or -- and I never saw anything as to his explanation as to what his treatment

entailed. And he's got here, "Discussed increase in soreness is possible." I mean, that's the only thing that he has down here.

Q Okay. And what do you believe he should have told her?

A He should have told her prior to the manipulation that there -- like any medical procedure, there is an inherent risk associated with manipulation and mobilization, including fracture, dislocation, disk herniation and then the cervical spine stroke.

Q And you believe he had to mention all four of those things in order to meet the standard of care?

A Yes.

Q Do you think most chiropractors do that in the State of Ohio?

A I think --

MR. RUF: Objection.

A -- a lot of them do.

MR. REGNIER: Now I'm done. Thank you very much, Doctor.

MR. RUF: Just so the record is clear, following this deposition I am giving him copies of Reichenbach's depo and Kim Richley's.

Q Doctor, if in reading any of those you change or alter any of your opinions, would you please inform

Mr. Ruf so that we can reconvene another discovery deposition?

A Okay.

Q There is that. And you've got my card.

MR. RUF: Do you want to read or do you want to waive?

THE WITNESS: I'll waive it. Waive reading.

MS. RENGINER: Full, mini and disk.

(Deposition concluded at 1:39 p.m.)

(Signature waived.)

- - -

State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga,)

I, Karen A. Toth, Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, Charles E. DuVall, Jr., D.C., 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/computer in the presence of said witness, afterward transcribed, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

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

I do further certify that I am not a relative, counsel, or attorney of 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 17th day of September, 2004.

Karen A. Toth

Karen A. Toth, RPR and Notary Public
in and for the State of Ohio.
My Commission expires May 6, 2008.