

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

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IN THE COURT OF COMMON PLEAS

- - -

David Pirichy,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 340311
)	Judge Judith
Ella N. Fields,)	Kilbane-Koch
)	
Defendant.)	

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DEPOSITION OF TIMOTHY L. GORDON, M.D.

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Deposition of TIMOTHY L. GORDON, M.D., called by the Defendant for examination pursuant to the Ohio Rules of Civil Procedure, by videotape and stenotype, taken before Phyllis L. Englehart, RMR and Notary Public in and for the State of Ohio, at 850 Brainard Road, Highland Heights, Ohio, on Thursday, April 1, 1999 commencing at 9:55 a.m.

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
Timothy L. Gordon', M.D.			
by Mr. Smearman	4		36
by Mr. Madden		24	

- - -

E X H I B I T S

<u>Plaintiff's</u>	<u>Marked</u>
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<u>Defendant's</u>	
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<u>OBJECTIONS</u>	<u>Page</u>
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By Mr. Smearman	26
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1 APPEARANCES :

2 On Behalf of the Plaintiff:

3 Justin F. Madden
4 Spangenberg, Shibley & Liber
5 2400 National City Center
6 1900 East 9th Street
7 Cleveland, Ohio 44114

8 George J. Argie
9 Argie, D'Amico & Vitantonio
10 6449 Wilson Mills Road
11 Mayfield Village, Ohio 44143

12 On Behalf of the Defendant:

13 R. Eric Smearman
14 Smith, Marshall, Weaver & Vergon
15 500 National City East 6th Building
16 1965 East 6th Street
17 Cleveland, Ohio 44114

18 Also Present:

19 Keith McGregor, Videographer

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22
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24
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TIMOTHY L. GORDON

having been first duly sworn, as hereinafter certified,
was examined and testified as follows:

(Defendant's Exhibit A
marked for
identification)

MR. SMEARMAN: Good morning, ladies
and gentlemen. We're here to take the video
deposition of Dr. Timothy Gordon in the matter of
David Pirichy versus Ella Fields, Case No. 340311
before Judge Kilbane-Koch. We are here by agreement
of counsel. I suspect all defects in notice and
service being waived?

MR. MADDEN: Correct.

MR. SMEARMAN: Thank you.

DIRECT EXAMINATION

By Mr. Smearman:

Q Dr. Gordon, my name is Eric Smearman. I represent
the defendant in this case, Ella Fields.

Would you state your full name for the
record, please.

A Timothy L. Gordon.

Q And your business address, Dr. Gordon?

A The office we're located at today is 850 Brainard
Road in Highland Heights, Ohio.

Q Okay. We are here to take your deposition for trial

1 purposes. It's my understanding there's some
2 construction going on, but that may have ceased for
3 the moment.' If there is some noise, the jury will
4 understand that there is some construction going on,
5 correct?

6 A Right.

7 Q Doctor, what is your profession?

8 A I'm an orthopedic surgeon.

9 Q And is that in any specialty?

10 A Yes, my area of specialty is orthopedic surgery.

11 Q And could you explain that specialty, that field of
12 medicine for the jury.

13 A All right. Orthopedic surgeons are trained in the
14 operative and nonoperative treatment of various
15 conditions, injuries, problems with the
16 musculoskeletal system, and the musculoskeletal
17 system would include the parts of the body of the
18 spine, the joints, the ligaments, nerves, muscles,
19 tendons, those kind of things.

20 I Thank you. Doctor, I'd like to talk a little bit
21 about your educational background. What year did
22 you graduate from college and what college was that?

23 A I graduated from the Ohio State University in 1982.

24 I And you went through medical school?

25 A Yes, I went to Case Western Reserve University

1 School of Medicine.

2 Q And what degree did you receive?

3 A Doctor of Medicine.

4 Q Okay. Did you have further training following your
5 years at Case Western?

6 A Yes. I then went on to do a five-year residency in
7 orthopedic surgery.

8 Q And where was that done?

9 A At Mt. Sinai Medical Center.

10 Q And you entered into private practice following that
11 residency?

12 A Yes.

13 Q And what year was that?

14 A 1991.

15 Q Okay. Are you board certified in any areas?

16 A Yes, I am board certified in orthopedic surgery.

17 Q Could you explain to the jury what board
18 certification is.

19 A All right. In orthopedic surgery it entails an
20 extensive testing program in which the individual
21 sits for an extensive written examination once they
22 finish their residency. Then when that is passed,
23 they have to wait two years while they're in
24 practice, and then they sit through an extensive
25 oral examination. And then when that is passed,

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1 Q In your practice, do you also review and interpret
2 X-ray and MRI's?

3 A Yes.

4 Q Could you explain to the jury the difference between
5 an X-ray and an MRI?

6 A Sure. An X-ray is what we often refer to as a plane
7 film. An X-ray is basically taking an image of a
8 part of the body through essentially a shadow that
9 the X-ray beam is projected through the part of the
10 body onto a piece of developing film, and that makes
11 essentially a shadow which shows us typically bone
12 and some soft tissue structures.

13 An MRI scan is a magnetic resonance imaging
14 study, and this is a study that's performed through
15 a high-tech procedure of applying a magnetic field
16 to the body and its response to positively charged
17 ions and how they respond to an electric radio
18 frequency field, so it's kind of a high tech
19 computer-run system of generating images of various
20 parts of the body. And one of the things we can
21 image are joints and also the spine and those kind
22 of things.

23 Q Part of your training and experience is in reading
24 MRI film and X-ray film, correct?

25 A Yes.

1 Q At my request did you examine the plaintiff, David
2 Pirichy?

3 A Yes.

4 Q And on what date was your examination?

5 A I examined him September 8th of 1998.

6 Q Okay. And in conjunction with my request, did I
7 supply you with certain information?

8 A Yes.

9 Q And what was that information?

10 A You provided various medical records from
11 Dr. Isakov, also some physical therapy records and
12 also records from Dr. Elghazawi in addition to some
13 radiographic studies or MRI films.

14 Q There was also some records from his -- the initial
15 emergency room at Hillcrest Hospital, too?

16 A Yes, there was,

17 Q When you examine a patient, is their history
18 important in your examination?

19 A Yes, it's one of the things we consider.

20 Q All right. Did you take the plaintiff's history in
21 this case?

22 A Yes.

23 Q And what was that history?

24 A At the time I saw him he was 28 years old, and he
25 indicated to me that he'd been in a motor vehicle

1 accident September 15th of 1995. He reports he was
2 wearing a seat belt and was going through an
3 intersection and apparently was hit or collided with
4 another car. He indicates that he thought the seat
5 belt restrained him and that he subsequently
6 reported he had some discomfort in the neck and back
7 areas. He indicated he was able to walk around at
8 the scene.

9 He went to work, he apparently worked as a
10 manager at a bagel store, and then subsequently got
11 a ride to the emergency room. After that he
12 followed up with his family doctor, Dr. Isakov, and
13 received some treatment. He indicates it included
14 some electrostimulation type treatment, also some
15 exercises.

16 He indicates that his neck and upper left
17 back complaints resolved and that his low back got a
18 little better. He subsequently saw Dr. Isakov
19 apparently again and then later was apparently
20 referred to Dr. Elghazawi, had an MRI scan and
21 basically hadn't been treated for about two years
22 from the time I saw him.

23 Q You also examined Mr. Pirichy on September 8th,
24 correct?

25 A Yes.

1 Q What type of examination did you perform?

2 A The examination I performed would be an orthopedic
3 examination; 'which would include a neurologic
4 examination of his body, various areas of concern,
5 of complaint. Also this would include looking at
6 the individual, palpating various areas, meaning
7 feeling various areas, and doing some various type
8 of exam tests.

9 Q On plaintiff, what areas did you examine of his
10 body?

11 A Well, I examined him in general and just observed
12 him and he was -- reported he was 6 foot 1, weighed
13 about 210 pounds, what his report was, and that he
14 walked normally. He appeared well developed. He
15 could walk on his heels and walk on his toes.

16 Q What are you looking for there, Doctor, excuse me,
17 in walking on heels and toes?

18 A That indicates to me that he has good strength and
19 good balance essentially.

20 Q Okay, continue, Doctor. I'm sorry.

21 A I examined his neck. His neck was nontender. He
22 had been told if it hurt when I palpated, to tell me
23 so. He did not report any tenderness. Had good
24 range of motion in the neck.

25 I examined his upper extremities, and the

1 reflexes sensation was normal, basically normal exam
2 of the upper extremities. I examined his back, and
3 when I examined his back I observed his spine and
4 felt his spine and revealed that he had what we
5 refer to as a thoracolumbar scoliosis. What that
6 means is that's a curvature of the spine that
7 involves the upper and lower back, and that's a
8 developmental type of change that occurs in some
9 people as they grow. Their spine curves abnormally,
10 and his did do that.

11 He was able to bend forward and touch his
12 ankles, and I examined his lower extremities. The
13 reflexes, sensation, strength all seemed to be
14 intact.

15 Q Doctor, when you were examining his lower
16 extremities, you mentioned reflexes sensation, hat
17 are you looking for when you're doing those tests on
18 the lower extremity?

19 A Well, what we're looking for is abnormalities of
20 neurologic function, abnormalities in how nerves
21 supply the muscle groups in the legs and sensation.
22 There was no indication of any abnormality.

23 Q And when you're looking for abnormalities of
24 neurological function, what does that generally
25 indicate in a person if they do become inducing

1 abnormality?

2 A Really depends on what the problem is that's causing
3 the abnormality, but one might see an altered reflex
4 or a change in sensory pattern or muscle wasting or
5 atrophy or something like that. And none of that
6 was present.

7 Q When you mentioned sensory patterns, Doctor, explain
8 for the jury in layman's terms, is that the sense of
9 what they can feel in the various parts of their
10 legs, their lower extremities?

11 A Yes. We're referring to the sensation of the skin,
12 the ability of the skin to send back to the brain
13 that that part of the skin is being touched or some
14 sensation is going on there.

15 Q You also in your report mentioned that you performed
16 a straight leg test. Would you explain for the jury
17 what a straight leg test is.

18 A Yes. A straight leg raise test is essentially a
19 test that is trying to assess if there's any
20 impingement upon the sciatic nerve up in the low
21 back, and there is no indication that that was going
22 on at the time.

23 Q What is the sciatic nerve, Doctor?

24 A Well, the sciatic nerve is a nerve that is made up
25 of a group of nerves that come out of the lumbar

1 spine, and the spinal cord ends around the L1
2 vertebral body level, and then it becomes nerve
3 roots.

4 And then those nerve roots exit the spinal
5 column and supply the lower extremity with motor
6 function, motor function being that there's
7 electrical activity to the muscles to tell the
8 muscles when to fire and work. And then the sensory
9 return through the same nerve pathways, tells the
10 body about sensation, touch and feel, those kind of
11 things.

12 Q And what was the result of the straight leg test
13 that you performed on Mr. Pirichy?

14 A It was normal.

15 Q Okay. Following your examination, did you review
16 the X-ray reports, MRI reports and MRI's?

17 A Yes.

18 Q And what did you find on those?

19 A When I reviewed the MRI films, what we found was
20 that at the L4-5 level there was degenerative disk
21 disease, there were some degenerative disk
22 osteophyte formations and that these would go along
23 with findings that had been there for some time.

24 Also noted on the MRI scan were the already
25 noted findings of the spinal curvature that could be

1 seen also on the MRI.

2 Q Doctor, that's a lot for the jury to digest. Could
3 you explain to them just as you did by use of -- I
4 see you have a model of a spine there on the desk.
5 Explain the various -- what you meant by --

6 A Sure.

7 Q -- the lumbar spine.

8 A Right. This is the lumbar spine, and this is
9 looking at it from the front. And this would be the
10 head up above. The legs would be down below.

11 When we look at the lumbar spine there are
12 typically five lumbar vertebral bodies. The
13 vertebral bodies are the bony structures, and the
14 bony structures make up the vertebral body in the
15 anterior front. Then if we look at it from the
16 side, you can see that the vertebral bodies have
17 posterior elements that form up the actual spinal
18 canal, and then they also form joints with each
19 other called the facet joints.

20 And you can see that the green rubber here
21 represents the spinal contents, and these are nerve
22 roots that come out through bony tunnels that then
23 exit down into the lower extremities. The sciatic
24 nerve is represented by these configuration of
25 nerves.

1 And this is the view from the back, and you
2 can see here that again the posterior processes and
3 that the spinal nerves are coming out either side.
4 Spinal nerves come out the right side go down the
5 right leg; spinal nerves that come out the left side
6 go down the left leg.

7 Okay, Doctor. I've already labeled Defendant's
8 Exhibit A, and we've placed that on a view board.
9 If you could, I think now would be a good time to
10 maybe -- unless you have something else?

11 One more thing on the model. We didn't mention the
12 disks. Between the vertebral bodies are the
13 intervertebral disks, and that's these structures.
14 These are the disk structures, and they perform a
15 somewhat cushioning and also stabilization
16 performance in the lumbar spine.

17 So now we can look at the MRI.

18 MR. SMEARMAN: Should we go off the
19 record one second?

20 MR. MCGREGOR: Off the record.

21 (Discussion off the record)

22 MR. MCGREGOR: On the record.

23 Okay, Doctor. You have in front of you now what
24 we've labeled Defendant's Exhibit A. Can you
25 identify that for the jury?

1 Yes. This is an MRI of the lumbar spine that was
2 performed in July of 1996 on Mr. Pirichy. And what
3 we see here are several views of the lumbar spine.

4 MR. MADDEN: Excuse me one second,
5 Doctor. I'm going to enter a continuing objection
6 to any interpretation he gives of the MRI as being
7 outside his specialty. Go ahead.

8 Continue on.

9 That when we look at the lumbar spine MRI, what we
10 see are that the vertebral bodies are stacked up on
11 each other here, and in between the vertebral bodies
12 are the intervertebral disks.

13 What's important to note is this is the
14 L4-5 level, this is the L4-5 disk. You can see that
15 the disk above that level is nice and white and
16 bright, and that's a normal looking disk, meaning it
17 has an adequate amount of water content and is not
18 degenerated.

19 Now we look at the L4-5 disk, and what we
20 see is that there is a loss of water content,
21 meaning this darkened signal, and that indicates
22 there is degeneration of the disk material itself.
23 And the other important issue is that when we look
24 at the posterior aspect of the L4 vertebral body, we
25 see that it's moved posteriorly a bit, which has

1 formed what we call retrolisthesis, and that means
2 the vertebral body above, in this case it's L4 and
3 L5, has slipped back just a bit, and that goes along
4 with the degenerative disk disease.

5 **MR. MADDEN:** Objection and move to
6 strike as being outside his report. Thank you.

7 A The issue is that the MRI findings show that there
8 are degenerative disk osteophyte complex right here.
9 You can see this is the most posterior aspect of the
10 disk, but it's also accompanied by this osteophyte
11 that comes right out to the edge of it, and that's
12 been there for some time, so that's what we refer to
13 as a degenerative disk osteophyte complex.

14 This is the sagittal view, or sometimes
15 called the side view of the spine. The other thing
16 we see here is that there is what we call a
17 rudimentary disk at L5-S1, and that's a
18 developmental variation that goes along with the
19 scoliosis.

20 **MR. MADDEN:** Objection and move to
21 strike.

22 A In regards to the cross sections or the axial cuts
23 that we look at, this is the disk, the cut is made
24 right through the L4-5 disk space, and what we see
25 is that the disk itself -- this was interpreted,

1 apparently, as a herniation by someone else -- but
2 the area of reference is right in here, and we can
3 see that ~~this~~ is more of a little bone spur that is
4 sticking out on the left side, very small, in the
5 posterior lateral aspect.

6 The disk itself accompanies the spur, so
7 there's no actual soft disk herniation. There's a
8 disk osteophyte complex.

9 MR. MADDEN: Objection and move to
10 strike.

11 A The other thing we see in the MRI is that there is
12 some rotation of the posterior elements, which is a
13 part of the scoliosis that we mentioned before.

14 MR. MADDEN: Objection and move to
15 strike.

16 Q Doctor, the MRI report that you reviewed, that was a
17 portion -- a part of the records I gave you
18 mentioned there was a -- that was consistent, I'm
19 speaking of the L5-S1 level, that is, there is no
20 herniation at that level, and that's confirmed both
21 on your review and on the MRI report, correct?

22 A Yes, that is correct.

23 Q Okay. Doctor, based upon the history that you took
24 of the plaintiff, your examination, your review of
25 the records and films, the tests you performed and

1 based upon your education, training and experience,
2 do you have an opinion within a reasonable degree of
3 medical certainty **as** to what injury plaintiff
4 sustained in this accident?

5 A Yes.

6 Q And what is that opinion?

7 A It's my opinion that he sustained a soft tissue
8 strain of the neck and back area.

9 Q And again, Doctor, based upon the history, your
10 examination and review of the records and films,
11 tests you performed and based upon your education,
12 training and experience, do you have an opinion
13 within a reasonable degree of medical certainty as
14 to the length of time that those conditions existed?

15 A Yes.

16 Q And what is that opinion?

17 A It's my opinion that that condition was resolved by
18 January of 1996.

19 MR. MADDEN: Objection and move to
20 strike. Outside the report.

21 Q And is that confirmed anywhere in the records that
22 you reviewed?

23 A Yes. It's noted in the records, in the report that
24 Dr. Isakov diagnosed in January of 1996 that he had
25 a resolved cervical and lumbar strain.

1 MR. MADDEN: Objection and to
2 strike.

3 Q And at that time he was discharged from Dr. Isakov's
4 care, correct?

5 A That's correct.

6 Q Based upon the history, your examination, your
7 review of the records and films, the tests you've
8 performed and based upon your education, training
9 and experience, do you have an opinion within a
10 reasonable degree of medical certainty as to the
11 present complaints of the plaintiff being causally
12 related to the accident in question here on
13 September 15, 1995?

14 A Yes.

15 Q And what is your opinion?

16 A It's my opinion that his complaints at the time I
17 saw him were not causally related to that motor
18 vehicle accident.

19 Q And why is that, Doctor?

20 A Well, the reason is is that based on the records
21 and his report of symptoms is that as of January of
22 1996 his condition in regard to the motor vehicle
23 accident had resolved by the diagnosis of his own
24 treating physician.

25 He subsequently then resented several o

1 to three months later with what appeared to be a new
2 onset of different symptoms. He subsequently had
3 diagnostic studies done consistent with degenerative
4 changes and also the already mentioned scoliosis
5 that easily explain his symptoms, these not being
6 related to the motor vehicle accident.

7 MR. MADDEN: Objection and move to
8 strike as outside the report.

9 Q Doctor, he did return to Dr. Elghazawi at some
10 point, he meaning the plaintiff?

11 A Yes.

12 Q And his complaints at that time, were they the same
13 as when he initially treated with Dr. Isakov?

14 A No. He had reported to Dr. Elghazawi that he was
15 having pain down his right leg also.

16 Q Is that referenced anywhere in the records prior to
17 that mention by Dr. Elghazawi?

18 No, it's not.

19 MR. MADDEN: Objection and move to
20 strike.

21 Q Doctor, based upon the history, your examination,
22 your review of the records and films, the tests you
23 performed and based upon your education, training
24 and experience, do you have an opinion within a
25 reasonable degree of medical certainty as to the

1 current condition of the plaintiff?

2 A Yes.

3 Q And what is that opinion?

4 A It's my opinion that he has an underlying condition
5 of a developmental scoliosis and also degenerative
6 disk disease at the L4-5 level.

7 Q Did those pre-exist the automobile accident of
8 September 1995?

9 A Yes.

10 MR. MADDEN: Objection and move to
11 strike.

12 Q Doctor, finally, based upon the history, your
13 examination, your review of the records and films,
14 the tests you've performed and based upon your
15 education, training and experience, do you have an
16 opinion within a reasonable degree of medical
17 certainty as to whether the plaintiff needs any
18 further treatment, either surgery or otherwise?
19 Yes, I have an opinion.

20 Q And what is that opinion?

21 It's my opinion that he does not require any future
22 surgery, and it's also my opinion that he will not
23 require any future treatment in regards to the motor
24 vehicle accident in question.

25 Q And that is because why, Doctor?

1 A That is because what I feel is responsible for his
2 complaints at the time I saw him was the underlying
3 developmental and degenerative condition, which was
4 not related to the motor vehicle accident.

5 MR. SMEARMAN: Thank you very much,
6 Doctor. I have no further questions.

7 THE WITNESS: You're welcome.

8 MR. MADDEN: Off the record, please.

9 MR. MCGREGOR: Off the record.

10 (Brief recess)

11 MR. MCGREGOR: We're on the record.

12 CROSS-EXAMINATION

13 By Mr. Madden:

14 Q Dr. Gordon, I'm Justin Madden. George Argie and I
15 have the privilege to represent Mr. Pirichy in this
16 action.

17 Let me just clarify a few things that you
18 testified to earlier. You have conceded in response
19 to Mr. Smearman's questions that Mr. Pirichy was
20 injured in this car collision that Mrs. Fields
21 caused. You just disagree with the severity and
22 extent of his injuries; is that correct?

23 A I think that's fair.

24 Q No question in your mind that he did suffer neck and
25 back injuries as a result of the car collision as

1 you've described earlier, correct?

2 A As I've already indicated, the extent of those would
3 be soft tissue strains.

4 Q Specifically you're saying that Mr. Pirichy did not
5 suffer a herniated disk at **L4-L5** as a result of the
6 car crash?

7 A Yes.

8 Q Otherwise, we're essentially in agreement in terms
9 of his neck and back injuries, fair?

10 A As I understand it, as I've already indicated, I
11 think he had neck and back strain, soft tissue
12 injuries.

13 Q Now, of course in disputing the herniated disk
14 claim, let's make sure the jury understands your
15 role in this case. You have been hired and you are
16 being paid by the law firm representing Mrs. Fields
17 for your testimony in this case; is that right?
18 I have been asked to evaluate the case and give
19 opinions based on my findings.

20 Q And that request is from the law firm defending
21 Mrs. Fields, true?

22 That is true.

23 Q How much are you being paid for your time in this
24 matter, Doctor?

25 For the deposition time today I'm billing \$900 an

1 hour

2 Q \$900 an hour for this deposition time

3 A Yes.

4 Q And how much are you billing for the time that you
5 spent reviewing the medical records and the MRI's
6 that Mr. Smearman sent you?

7 A I don't recall the amount that was billed for the
8 report and evaluation.

9 Q Well, what's your practice been on that point?
10 Doctor? What do you usually bill?

11 MR. SMEARMAN: Objection.

12 A Well, there isn't really a usual bill. Depends on
13 many factors.

14 Q Okay. How much did you pay for your time in
15 examining Mr. Pirichy?

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

17 Q How much did you bill Mr. Smearman's law firm for
18 examining Mr. Pirichy?

19 MR. SMEARMAN: Objection, asked and
20 answered.

21 A I wouldn't bill specifically just for examining him
22 What are your total charges to this point, Doctor?

23 A I'm not aware of what the total charges are at this
24 point.

25 Q Okay. So at least we know that as of this

1 deposition you're being billed out at a rate of \$900
2 an hour, plus you can't remember how much you've
3 charged to review the medical records and the MRI
4 and to examine Mr. Pirichy, but it's an additional
5 sum, fair?

6 A Yeah, I already told you I can't remember the
7 specific amount, but that would be in addition.

8 Q So we're looking at more than a thousand dollars for
9 your role in this case thus far?

10 A I think that's fair.

11 Q Now, when you saw Mr. Pirichy back in September of
12 '98 in an exam that lasted about ten minutes, he was
13 not your patient, was he?

14 MR. SMEARMAN: Objection.

15 A No, he can't be my patient.

16 A And you haven't seen Mr. Pirichy since that
17 examination, have you?

18 A That's correct.

19 Q You haven't discussed Mr. Pirichy's injuries with
20 either Dr. Isakov or Dr. Elghazawi, correct?

21 A No.

22 Q You haven't discussed this case with the radiologist
23 who performed the MRI, Dr. Zelch, true?

24 A No.

25 Q I was looking through your file earlier, Doctor.

1 You have not read the deposition of Dave Pirichy.
2 have you?

3 A No.

4 Q So you don't know what therapy Mr Pirichy was going
5 through in the two-year period that you mentioned
6 prior to the time that he saw you?

7 A I believe there are some records from physical
8 therapy that I have that are in the area of 1996 or
9 so

10 Q But within the two-year period between that point
11 and the time that you saw him where you earlier
12 claimed he was not seeking treatment, you don't have
13 any idea what therapy he was going through because
14 haven't read his deposition, isn't that right?

15 A I think I was going on that based on what he told me
16 at the time I saw him.

17 Q Now, you also stated earlier that Dr Isakov
18 discharged the plaintiff in 1996 That's not
19 exactly accurate. You know that Dr. Isakov
20 transferred the care of Mr. Pirichy to
21 Dr. Elghazawi, who is a spine specialist, isn't that
22 right?

23 A Well, my understanding of the records is that in
24 January of 1990 Dr Isakov and his office --

25 Q Doctor, wait, excuse me. I'd like you to answer my

1 question.

2 A I'm trying to.

3 Q Dr. Isakov transferred the care of this patient to a
4 spine specialist named Dr. Elghazawi; isn't that
5 true?

6 A We need to clear up the question because your
7 question isn't clear to me. He was already
8 discharged from treatment prior to being
9 transferred. He came back two to three months after
10 being discharged from care with what appears to be a
11 new type of complaints. At that time he was
12 referred to Dr. Elghazawi.

13 Q And who was he referred to Dr. Elghazawi by,
14 Dr. Isakov?

15 A That's my understanding, yes.

16 Q Thank you, Doctor. Now, I'm sure that you have no
17 criticisms of the care and treatment that
18 Drs. Isakov and Elghazawi provided to this patient,
19 do you?

20 A No.

21 Q And the MRI that was taken and interpreted by
22 Dr. Zelch, a board certified radiologist, you have
23 no quarrel with his qualifications either, I assume?

24 A I'm not familiar with his qualifications.

25 Q For the benefit of the jury, Doctor, a radiologist

1 is a medical specialist who performs X-rays and
2 MRI's of patients and then writes a report to the
3 patient's doctor telling him what he feels the
4 X-rays or MRI's show. Is that fairly stated?

5 A I'm not so sure the part about writing a report to
6 the patient's doctor is accurate, An interpretation
7 of the radiographic study is then made by a
8 radiologist. It's not actually addressed to anybody
9 usually, but they interpret X-rays. That's what
10 radiologists do.

11 (Plaintiff's Exhibit 1
12 marked for
identification)

13 Q Now I'm going to pass to you Plaintiff's Exhibit 1,
14 which as you've referred to is the report that the
15 radiologist in this case, Dr. Zelch, wrote and
16 addressed to Dr. Elghazawi, Mr. Pirichy's treating
17 physician, in July of 1996. I'm going to pass it to
18 you now.

19 A Uh-huh.

20 Q And you've seen Plaintiff's Exhibit 1 before, have
21 you not?

22 A Yes.

23 Q That's the report that Dr. Zelch wrote giving
24 Dr. Elghazawi his opinions as to what the MRI showed
25 concerning Mr. Pirichy, true?

1 A Well, just to clear up a point, I don't think it's
2 addressed to Dr. Elghazawi. It's just noted that --

3 Q I think if you look right here at the top of the
4 page.

5 A Let me finish. I'm trying to clear this up for you.

6 Q Is that Dr. Elghazawi's name?

7 A It's called a referring physician, and that's
8 typical of the physician that referred him for the
9 study, but it's not really a report addressed to
10 that physician. It's just the referring physician.
11 That's what I'm trying to clear up.

12 But yes, this is the radiologist's
13 interpretation of the MRI study.

14 Q Now, if you'd hold that report up for the jury, not
15 that we need to focus on it.

16 A Okay, here it is.

17 Q Would you just point to me anywhere in Plaintiff's
18 Exhibit 1 where the term degenerative disk disease
19 appears, the specific term, Doctor.

20 A All right. Well --

21 Q Just point to the specific term degenerative disk
22 disease in Plaintiff's Exhibit 1.

23 A That specific phrase is not used in the report.

24 Q Thank you. Instead, Dr. Zelch specifically
25 identified as part of his impression that

1 Mr. Pirichy's spine showed a herniated disk at the
2 L4-L5 region, correct?

3 A It indicates that there is a posterior lateral disk
4 herniation on the left at L4-5. That's what he
5 indicates,

6 Q Okay. Now, you talked earlier, as you had the MRI
7 film up on the screen, Defendant's Exhibit A, that
8 the space, the disk cushion as you described it at
9 L4-L5, showed a **loss** of, I think you said, water
10 content; is that correct?

11 A Yes.

12 Q When a disk is dehydrated, is it part of your
13 practice and experience that a disk can be
14 dehydrated due to an acute traumatic incident such
15 as a car collision?

16 No.

17 Q And that's your sworn testimony to this jury as a
18 board certified orthopedic surgeon?

19 Yes. My understanding of disk dehydration is that
20 it reflects a degenerative condition, especially
21 when that's accompanied by loss of disk height,
22 which the radiologist does note. He notes both loss
23 of disk height at L4-5 and disk dehydration, and
24 based on my training and experience, that's a
25 degenerative disk problem.

1 Q Doctor, your sworn testimony to this jury is that
2 disk dehydration cannot be caused by a traumatic
3 incident such as a car collision; is that correct?

4 A What I'm telling you is that it's findings
5 consistent with a degenerative condition that has
6 been present for a long time. Now, whether that was
7 caused by a car accident years before, I don't know,
8 but the point is is that it's a degenerative
9 condition that has been there for a number of years
10 and clearly was not caused by the car accident in
11 question.

12 Q Okay. Now, you've kind of answered my question, you
13 kind of haven't, so I'm going to try it one more
14 time.

15 Is it your sworn testimony as a board
16 certified orthopedic surgeon that a disk dehydration
17 cannot be caused by a traumatic incident such as a
18 car collision, yes or no?

19 A Again, I've tried to answer that in the question --
20 in the answer I just gave you, and I thought I did.

21 Q Okay. So you told me that it may have been caused
22 by an earlier car accident but not this car
23 accident; is that your testimony?

24 A Well, you're paraphrasing what I'm saying and I'm
25 not comfortable with that, is that -- what I'm

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1 Dr. Elghazawi and Dr. Isakov.

2 Q Doctor, I'd like you to answer the question that I
3 asked you, is

4 A Okay.

5 Q You saw Mr. Pirichy one time and you haven't seen
6 him since?

7 A I've already answered that question. I told you
8 that's the case.

9 Q So are you telling this jury you know more about
10 Mr. Pirichy's injuries based on that one examination
11 you performed than two doctors who have been
12 treating him for a combined three and a half years?

13 A What I'm telling you --

14 Q Doctor, it's a yes or no question. Are you telling
15 this jury that you know more about Mr. Pirichy's
16 injuries based on that one examination than two
17 doctors who have been treating him for a combined
18 three and a half years, yes or no?

19 MR. SMEARMAN: Objection.

20 A I'm telling you that I'm in as good a position as
21 they are because I have the records and I've had the
22 ability to examine him and also review the
23 diagnostic study.

24 MR. MADDEN: Thank you, Doctor. I
25 have nothing further for you.

REDIRECT EXAMINATION

By Mr. Smearman:

Q Doctor, I have just one quick follow-up question. Mr. Madden had asked you about some -- the findings of Dr. Zelch, the radiologist. Dr. Zelch's report does indicate, just to clarify, that there are degenerative changes in Mr. Pirichy's spine, correct?

MR. MADDEN: Objection.

Yes, they do. They're degenerative changes by definition as we know as clinicians.

Q And what are the specific words on Dr. Zelch's report that indicate that?

The specific words are, "At the L4-5 level there is loss of disk height and disk signal due to disk dehydration."

Q And disk dehydration is the degenerative changes? Yes. As a result of the degenerative process the intervertebral disk loses its water content and becomes dehydrated.

MR. SMEARMAN: Thank you very much, Doctor.

MR. MADDEN: I have nothing further.

MR. SMEARMAN: Thank you.

THE WITNESS: You're welcome.

(Deposition concluded at 10:35 a.m.)

(Signature waived)

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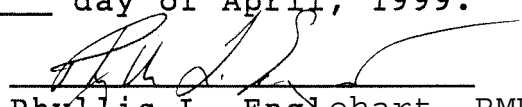
1 State of Ohio,)
 2 County of Cuyahoga,) SS: CERTIFICATE

3 I, Phyllis L. Englehart, RMR and Notary Public in
 4 and for the State of Ohio, duly commissioned and
 5 qualified, do hereby certify that the within named
 6 witness, Timothy L. Gordon, M.D., was by me first duly
 7 sworn to testify the truth, the whole truth, and nothing
 8 but the truth in the cause aforesaid; that the testimony
 9 then given by him was by me reduced to computerized
 10 stenotypy in the presence of said witness, afterward
 11 transcribed, and that the foregoing is a true and correct
 12 transcript of the testimony so given by him as aforesaid.

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

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

19 IN WITNESS WHEREOF, I have hereunto set my hand
 20 and affixed my seal of office at Cleveland, Ohio, on
 21 this 5th day of April, 1999.

22 
 23 Phyllis L. Englehart, RMR and Notary Public
 24 in and for the State of Ohio.
 25 My commission expires June 23, 2001.