

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

- - -

IN THE COURT OF COMMON PLEAS

- - -

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

- - -

DEPOSITION OF TIMOTHY L. GORDON, M.D.

- - -

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. Gordoh, 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>
1	30
<u>Defendant's</u>	
A	4

<u>OBJECTIONS</u>	<u>Pase</u>
By Mr. Madden	17 18 19 20 21 22 23 36
By Mr. Smearman	26 34 35

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  
6449 Wilson Mills Road  
Mayfield Village, Ohio 44143

10 On Behalf of the Defendant:

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

16 Also Present:

17 Keith McGregor, Videographer

18 - - -

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.

a 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 Right.

7 Doctor, what is your profession?

8 I'm an orthopedic surgeon.

9 And is that in any specialty?

10 Yes, my area of specialty is orthopedic surgery.

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

13 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 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 I graduated from the Ohio State University in 1982.

24 And you went through medical school?

25 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,

1 they can apply to be board certified. I've done all  
2 those things, and I'm board certified.

3 Q I imagine that you have membership in a number of  
4 medical societies. Could you give the jury an idea  
5 of which medical societies you belong to,  
6 Sure. I'm a fellow of the American Academy of  
7 Orthopedic Surgeons. I'm also a member of local  
8 medical societies and the American Medical  
9 Association.

10 Q Do you have -- are you on staff or do you have any  
11 privileges at any of the local hospitals?

12 Yes, I have privileges at several area hospitals,  
13 including Hillcrest, Euclid, Mt. Sinai, Lake, also  
14 University Hospital Bedford.

15 Q Do you hold any teaching positions?

16 I've instructed in anatomy at the medical school in  
17 the past.

18 Q Is that at Case Western Reserve?

19 A Yes.

20 Q In your practice here, what types of patients or  
21 injuries do you treat?

22 I treat a wide variety of injuries and problems. I  
23 treat everything from fractures to sprains to  
24 herniated disks to all kinds of problems involving  
25 various parts of the body.

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

3 Yes.

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

6 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 films and X-ray films, correct?

25 Yes.



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

3 Yes.

4 Q And on what date was your examination?

5 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 Yes.

9 Q And what was that information?

10 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 Yes.

23 Q And what was that history?

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

11 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, What  
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 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 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 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~~<sup>to</sup> 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       **Q**   **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       **Q**   **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           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          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 Yes.

6 Q And what is that opinion?

7 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 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 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.

MR. MADDEN:

Objection and move to

strike.

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

That's correct.

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

Yes.

And what is your opinion?

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

And why is that, Doctor?

Well, the reason is is that, based on the records and his report of symptoms, is that as of January of 1996 his condition in regards to the motor vehicle accident had resolved by the diagnosis of his own treating physician.

He subsequently then presented several, two

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 A 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 Yes.

3 Q And what is that opinion?

4 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 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 That is because what I feel is responsible **for** his  
2 complaints at the time I saw him was the underlying  
3 development 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 y Mr. Madden:

14 I 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           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           Yes.

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

10          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 \$900 an hour for this deposition time.

3 Yes.

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

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

11 MR. SMEARMAN: Objection.

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

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

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

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

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

21 I wouldn't bill specifically just for examining him.

22 What are your total charges to this point, Doctor?

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

25 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 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 No, he can't be my patient.

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

18 That's correct.

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

21 No.

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

24 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 1996 Dr. Isakov and his office --

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

1 question.

2 I'm trying to.

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

6 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 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 No.

21 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 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 Well, just to clear up a point, I don't think it's  
2 addressed to Dr. Elghazawi. It's just noted that --  
3 I think if you look right here at the top of the  
4 page.

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

6 Is that Dr. Elghazawi's name?

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

16 Okay, here it is.

17 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 All right. Well --

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

23 That specific phrase is not used in the report.

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

1           telling you is that the loss of disk height at L4-5  
2           and the disk dehydration, that the radiologist  
3           points out also, is indicative of a longstanding  
4           degenerative condition. In other words, that  
5           degenerative condition has been there for a number  
6           of years.

7                       Now, whether that was caused by a car  
8           accident years previously, I don't know the answer  
9           to that, but it wouldn't be related to the car  
10          accident we're talking about.

11        ) Fair enough, Dr. Gordon. Now, let's just make one  
12          other point very clear. You know that Dr. Isakov  
13          and Dr. Elghazawi have been treating Mr. Pirichy for  
14          a combined three and a half years since the  
15          collision. You have all the medical records.  
16          That's the case, true?

17        A Altogether, that would be about the time frame.

18        ) You, on the other hand, saw Mr. Pirichy one time for  
19          a visit that lasted approximately ten minutes, and,  
20          as you testified earlier, you haven't seen him  
21          since, right?

22                       MR. SMEARMAN:           Objection.

23        A Number one, I'm not going to testify to the length  
24          of the visit. The other issue is that in evaluating  
25          him I had the ability to look at the records of

1 Dr. Elghazawi and Dr. Isakov.

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

4 Okay.

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

7 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 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 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:

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.

A 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?

A 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?

A 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 his 5<sup>th</sup> 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.