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

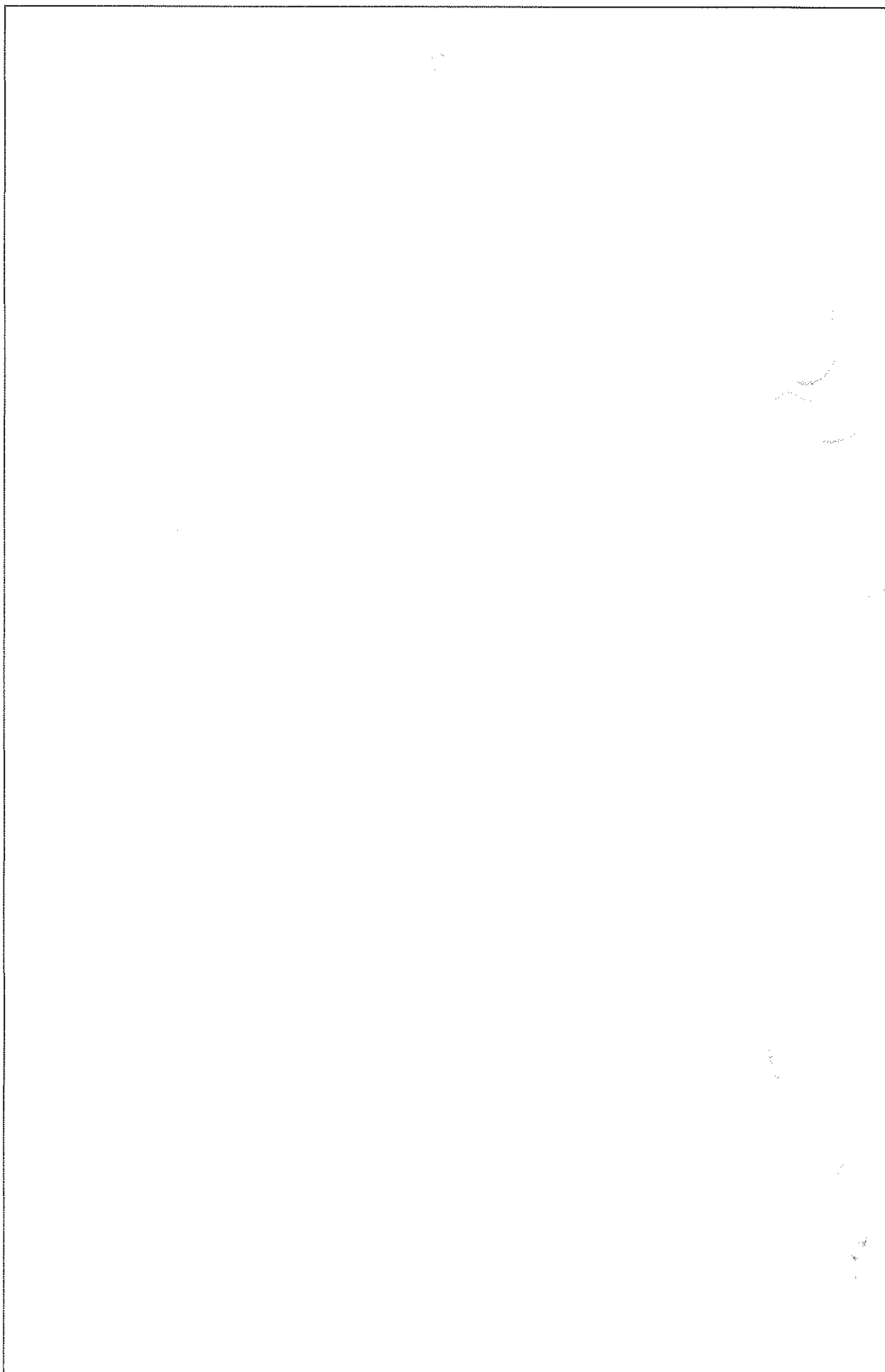
IN THE COURT OF COMMON PLEAS

DOROTHY SKEBE,)
Plaintiff,)
vs.) Case No. 127,673
RICHMOND HEIGHTS GENERAL)
HOSPITAL, et al.,) Judge James Kilbane
Defendants.)

DEPOSITION OF CREIGHTON G. HEYL, D.O.

Friday, September 9, 1988

Deposition of CREIGHTON G. HEYL, D.O., a
Defendant herein, called by the Plaintiff for
examination, under the Ohio Rules of Civil Procedure,
taken before me, Robert A. Cangemi, a Notary Public
within and for the State of Ohio, pursuant to notice
and agreement of counsel, at the offices of Richmond
Heights Orthopaedics, 26971 Chardon Road, Richmond
Heights, Ohio, commencing at 1:30 o'clock p.m., on
the day and date above set forth.



1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Weisman, Goldberg, Weisman & Kaufman
4 Mitchell Weisman, Esq.
540 Leader Building
Cleveland, Ohio 44114

5 On behalf of the Defendants:

6 Reminger & Reminger
7 John Irwin, Esq.
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Cleveland, Ohio 44113

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1 CREIGHTON G. HEYL, D.O.
2 a Defendant herein, called for examination by the
3 Plaintiff pursuant to the Ohio Rules of Civil
4 Procedure, having been first duly sworn, as
5 hereinafter certified, was examined and deposed as
6 follows:

7 MR. WEISMAN: Let the record
8 reflect that this deposition has been set up
9 by agreement of counsel.

10 I take it there is a waiver as to any
11 defects in any service or notice?

12 MR. IRWIN: Yes, of course.

13 MR. WEISMAN: Thank you.

14 This is the deposition of Defendant Dr.
15 Heyl.

16 CROSS-EXAMINATION

17 BY MR. WEISMAN:

18 Q. Please state your full name for the record.

19 A. Creighton Gregory Heyl.

20 Q. I have just been handed your curriculum vitae,
21 and I want to ask you a few questions about your
22 background.

23 Which hospitals are you presently affiliated
24 with?

25 A. Richmond Heights General. Lake Hospital

1 System. Northeastern Ohio Hospital in Madison.

2 Q. How long have you been affiliated with those
3 three hospitals?

4 A. I have been affiliated with Richmond Heights
5 since 1980. I have been affiliated with Lake
6 Hospital System for two and a half years. I have
7 been affiliated with Northeastern Ohio Hospital for
8 about six years.

9 Q. Have you ever been terminated from any
10 hospital affiliation? In other words, not
11 voluntarily, when you were asked to leave the staff
12 of a hospital?

13 A. No, I haven't.

14 Q. ✓ Are you Board certified?

15 A. ✓ Yes, I am.

16 Q. Okay. I might be missing -- is that on the
17 CV?

18 A. Yes.

19 Q. Where?

20 A. Right above hospital affiliations.

21 Q. I am sorry.

22 ✓ And you obtained that in 1984, right?

23 A. Correct.

24 Q. Have you ever been convicted of a crime?

25 A. No, I have not.

1 Q. Are you married?

2 A. Yes, I am.

3 Q. When were you married?

4 A. I was married in 1980.

5 Q. Okay. Is that your only marriage?

6 A. Yes.

7 Q. Have you ever had any significant medical
8 problems?

9 A. No, I haven't.

10 Q. When I say significant, I mean medical,
11 psychiatric or physical, mental or physical.

12 A. No, I haven't.

13 Q. Have you ever published any articles?

14 A. No, I haven't.

15 Q. Now, this lawsuit involves a procedure that
16 you did back in, I believe, 1984, and if I use the
17 expression carpal tunnel release, is that fairly
18 accurate to describe that procedure?

19 A. ✓ Yes.

20 Q. Okay. Do you know of any textbooks or
21 publications of any kind that you feel are sound and
22 reliable and authoritative in discussing carpal
23 tunnel release?

24 A. No, I do not.

25 Q. And do you know why it would be that you

1 would not be familiar?

2 In other words, is it not discussed in
3 textbooks, it is something you learn clinically, as
4 an orthopedic surgeon, or is it just you haven't
5 happened to read up on the subject?

6 A. No. The subject is written up in journals and
7 textbooks.

8 I do not feel that any particular textbook is
9 authoritative on the subject.

10 Q. What textbooks or publications do you consider
11 to be authoritative, generally, in the area of
12 orthopedics, not that you agree with every word, but
13 if you had a particular question and you said, I feel
14 like reading up on something, and if you pulled a
15 textbook out of the medical library, do you have one
16 or two that you feel are good in orthopedics?

17 A. I don't believe that what is written in the
18 textbooks is gospel, but I use Campbell's Operative
19 Orthopedics as a major book to refresh myself on
20 matters.

21 Q. Any other textbooks in particular?

22 A. There is a fracture textbook, Rockwood and
23 Green. It is a good textbook on fractures.

24 Turek's, which is a general text, is good.

25 None of these is the final word.

1 Q. All right.

2 If there is a Bible on orthopedics, it
3 probably is Campbell's?

4 A. For surgical procedures.

5 Q. To your knowledge, does Campbell's or Turek's
6 discuss carpal tunnel release?

7 A. Campbell's discusses it, yes.

8 Q. Now, as far as the procedure in question, I
9 believe it was April 23, 1984, I think is the date,
10 and instead of using my words, what exactly -- what
11 procedure or procedures did you perform that day?

12 I think it is Page 42 of the hospital chart,
13 as far as the hospital chart.

14 MR. IRWIN: I have a copy
15 here, Doctor.

16 A. ✓ April 23, 1984 is the surgery in question,
17 correct.

18 Q. Right.

19 A. ✓ Okay. The surgery was a neurolysis of the
20 median nerve and partial resection of the deep volar
21 transverse carpal ligament, left wrist.

22 Q. And in layman's terms, can you tell us what
23 that means?

24 A. This means that the surgical area -- this was
25 a repeat surgery.

1 Q. Okay.

2 A. And the area of previous surgery was explored,
3 and it was to evaluate, to make sure that the
4 ligament had not reformed and was not causing
5 compression of the nerve or pinching of the median
6 nerve.

7 Q. And was it causing compression of the median
8 nerve?

9 A. There was scar tissue, and this was connecting
10 the cut ends of the ligament that had been resected
11 before or transected before.

12 Q. What are the known complications of this
13 procedure that you did on April 23rd, 1984?

14 A. Several complications can occur.

15 One is --

16 Q. By the way, just to let your answer be a
17 little shorter, I am not talking about anesthesia
18 related complications, but as far as orthopedic
19 complications.

20 A. ✓ Infection.

21 Q. Okay.

22 A. ✓ Blood loss.

23 Q. All right.

24 A. ✓ Damage to the nerve.

25 Q. Those are the most important?

1 A. Yes.

2 Q. Are there any others that come to mind?

3 A. Not at this time.

4 Q. When you say damage to the nerve, are you
5 saying that that is something that is avoidable -- I
6 mean, unavoidable?

7 A. It is a complication that can occur.

8 Q. It can occur?

9 A. Yes.

10 Q. And as you know, in lawsuits we talk about
11 standards of care, the way a procedure is supposed to
12 be done.

13 ✓ As far as the standard of care of doing this
14 procedure, is it accepted that you can have nerve
15 damage as a -- in other words, is it an acceptable
16 complication, or is that considered to be
17 substandard?

18 A. ✓ It is a complication that can occur.

19 Q. That's considered to be standard?

20 In other words, if you were teaching a medical
21 student at Richmond Heights or someplace, and that
22 happened, in other words, you would give them a
23 passing grade and say that's fine, or would you say
24 you failed because that's something that is not
25 supposed to happen with this procedure?

1 A. Complications can occur with any surgery, with
2 any surgeon.

3 Q. Anything can happen, we understand that.

4 What I am trying to say is, would you consider
5 this to be reasonable, prudent and acceptable medical
6 care to have damage to the median nerve while doing
7 this procedure, or is it unacceptable?

8 A. You try to avoid that. You never try to cause
9 damage to a nerve.

10 Q. Okay. Do you have any idea about -- idea
11 about how many patients you see per day or per week
12 on the average, a ballpark figure?

13 A. Patients in the office and hospital combined?

14 Q. Combined.

15 A. Well, in my office usually I see about 30
16 patients. I am in this office two days a week, and
17 in my Madison office I am there one day a week. I
18 see about 15 out there.

19 So new patients in the office, I would say
20 that comes out to about 75 a week.

21 Q. Okay.

22 A. And that's not counting the hospital patients
23 I see in regard to consultations and people I do
24 surgery on.

25 Q. Is the procedure that you did on Dorothy Skebe

1 common or uncommon, on April 23rd of 1984?

2 A. I would say it is uncommon.

3 Q. Uncommon?

4 A. Yes.

5 Q. Why do you say that?

6 A. Well, it is rare for carpal tunnel to recur,
7 carpal tunnel syndrome to recur.

8 Q. ✓ The fact that it recurred was uncommon?

9 A. ✓ Yes.

10 Q. ✓ Carpal tunnel is uncommon, though?

11 A. ✓ Yes.

12 Q. Do you have any idea as to how many carpal
13 tunnels -- withdraw that.

14 How long have you been in private practice,
15 since 1980?

16 A. I graduated from my residency in orthopedic
17 surgery in October of 1980 -- or December of 1979, I
18 am sorry, December of 1979.

19 I started private practice in December of
20 1979.

21 Q. Okay.

22 A. Of course, during my residency, I also did
23 carpal tunnel surgeries.

24 Q. In graduate school, Michigan State, you would
25 not do that?

1 A. Right.

2 Q. You started in your residency doing that?

3 A. Yes.

4 Q. In 1975 you started doing carpal tunnel
5 surgeries, probably?

6 A. My residency in orthopedic surgery started in
7 September of 1976.

8 Q. During general surgery you would not have done
9 that?

10 A. No.

11 Q. Since 1976 you have done those procedures?

12 A. That is correct.

13 Q. And do you have any idea -- I know it is
14 probably tough to estimate, but if you can think in
15 terms of a number per week, per month, and we are
16 figuring about 12 years, do you have any idea how
17 many you would do per month, per week or per year?

18 A. ✓ Per week, it would probably average about two
19 per week.

20 ✓ It is very common for me to do carpal tunnels.

21 Q. ✓ You might do 100 in a year?

22 A. ✓ Yes. It is one of the most common surgeries
23 that I do.

24 Q. Is this injury common to people who use their
25 hands a lot?

1 A. Carpal tunnel syndrome?

2 Q. Yes.

3 A. They are not exactly sure why, but it is a lot
4 more common in people that do use their hands a lot.

5 Q. *Real* So, just ballpark, not to hold you to it, you
6 have done 1200 carpal tunnel surgeries, if you figure
7 12 years?

8 A. No. ✓ My ballpark would be around 300.

9 Q. It has been more recently than prior?

10 A. Yes. You, of course, during the residency,
11 you are not doing them as frequently as when you are
12 out in practice.

13 I really don't count my residency.

14 Q. So you have done a few hundred?

15 A. Yes.

16 Q. Have you ever experienced -- withdraw that.

17 You know that Dorothy Skebe is claiming that
18 ✓ she has a loss of feeling in her left hand, middle
19 finger and ring finger.

20 A. ✓ That's what I understand.

21 Q. ✓ Have you seen that complication, in terms of
22 the patients you have treated, after you have done
23 carpal tunnel surgery?

24 A. ✓ No, I have not.

25 Q. ✓ In your experience in working with and

1 observing other orthopedic surgeons, have you ever
2 seen this particular problem after carpal tunnel
3 surgery?

4 ✓A. During my residency would be the only time I
5 work with other surgeons, and unless I followed them
6 in their office, I would not know about the patients,
7 so I can't say.

8 ✓ A lot of times as a resident we just primarily
9 work in the hospital and don't see the patients who
10 follow up in their office.

11 Q. ✓ So to your knowledge you have not?

12 A. ✓ To my knowledge.

13 Q. ✓ You have not experienced this problem before?

14 A. ✓ To my knowledge I have not seen anyone have
15 that complication.

16 Q. So you would call it highly unusual?

17 A. I would say it is not common, correct.

18 Q. If you want to refer to your records, it would
19 probably be the easiest way to answer the next few
20 questions.

21 ✓ What was your first contact with Dorothy
22 Skebe?

23 A. My first contact was 4/6/82.

24 No, I am sorry. That's not the first contact.

25 Q. That's the first note in the office chart,

1 right?

2 A. Right. The first time I saw her was at the
3 request of Dr. Pogorelec, P-o-g-o-r-e-l-e-c.

4 It would be on -- I will get the exact date
5 for you here, if I can find it.

6 ✓ That was in March of 1982.

7 Q. Okay. And you say Dr. Pogorelec asked you to
8 examine Dorothy?

9 A. That's correct.

10 Q. For what purpose?

11 A. ✓ Regarding complaints for both of her wrists.

12 Q. Okay. And you diagnosed carpal tunnel
13 problems with both wrists?

14 A. Correct.

15 Q. ✓ And then you proceeded to do surgery on both
16 wrists?

17 A. ✓ Yes.

18 Q. When were those surgeries?

19 A. The bilateral carpal tunnel release was
20 3/36/82.

21 Q. Okay. And those were successful, in your
22 opinion?

23 A. The right carpal tunnel, she did not have any
24 complaints regarding that until follow-up.

25 With the left one she continued to have some

1 complaints.

2 Q. When you performed the surgery, going back to
3 April 23rd of 1984, the second carpal tunnel surgery
4 on the left wrist, it is your practice, I take it, to
5 explain the risks of a procedure to a patient?

6 A. ✓ Well, sure. We tell them the complications
7 that can occur.

8 Q. And the only thing I have on that -- and when
9 I say on that, I am referring to -- your explanation
10 to Dorothy would be -- the hospital record has a one
11 page consent form. She signed a consent form for you
12 to do the procedure.

13 ✓ Do you have an actual memory of discussing the
14 complications with Dorothy, or do you have --

15 A. ✓ I would say that I do routinely tell all of my
16 patients with carpal tunnel, who are going to have
17 carpal tunnel surgery, of other complications that
18 are potential, and to say that I exactly remember
19 talking to her about it, I can't.

20 Q. You would have given her the identical
21 explanation you gave to all your patients?

22 A. ✓ Yes, and they would be what you asked me
23 before in the previous question, about potential
24 risks, and they would be blood loss, infection and
25 potential nerve damage.

1 Q. And when you say potential nerve damage, do
2 you end there or do you explain that you could have
3 trouble moving your hands, loss of feeling?

4 Do you go into detail?

5 A. If they have any questions regarding what do
6 you mean by nerve damage, what would happen, I would
7 explain it to them exactly.

8 Q. You don't have any memory of talking to
9 Dorothy about the risks of the procedure, correct?

10 A. In neither 1982 or 1984 do I remember exactly
11 what I said to her.

12 Q. ✓ This procedure on April 23rd of 1984 was
13 elective, correct?

14 A. ✓ Yes.

15 Q. What do doctors mean when they refer to an
16 operation as being elective?

17 A. ✓ It is not an emergency.

18 Q. You suggested to her that she have the
19 procedure, I take it?

20 A. No. She wanted the procedure.

21 Q. But when a patient comes to you, they don't
22 dictate the medical care, you recommend what should
23 be done, correct?

24 A. I give them the option of what can be done.

25 Q. Do you recall what the options were for her?

1 A. ✓ Number one, to wait and see how the nerve
2 heals with time.

3 Number two, if it is bothering her
4 significantly, where she is uncomfortable, and the
5 other option would be to go in and explore and make
6 sure that the ligament cannot reconnect it or that
7 scar tissue was not causing nerve compression.

8 Q. Okay. And based on those options, Dorothy
9 chose to have surgery?

10 A. Yes.

11 Q. Do you happen to recall her reasons?

12 A. Not exactly, no.

13 Q. I take it she had symptoms?

14 A. I can look through my chart and tell you.

15 Let me see. On the admit note she was
16 complaining of persistent left wrist pain and
17 weakness, and she had a repeat nerve study test which
18 showed that she had residual carpal tunnel syndrome
19 which slightly improved on the EMG before that
20 surgery.

21 Q. Okay.

22 A. And she still had, upon clinical examination,
23 positive Tinel's sign.

24 Q. What does that mean?

25 A. Tinel's sign is where you tap the nerve and it

1 elicits tingling going out in the fingers, along the
2 nerve distribution.

3 Q. Okay. When you say your admit note, I am
4 looking at Page 4 of my records.

5 A. This may have been the consult dictated by
6 myself on 4/22/84 at 12:00 p.m.

7 MR. IRWIN: Here.

8 Q. Page 26 of my record, okay.

9 On the first sentence of that note it says,
10 this 29 year old white female was seen by myself at
11 the request of Dr. Pogorelec for persistent left
12 wrist pain and weakness in the grip.

13 Then it says, and numbness, which was in
14 somebody's writing. Do you have that in there?

15 A. No.

16 MR. IRWIN: I will show you.

17 A. That's not my writing.

18 Let me check my chart.

19 Q. Okay.

20 A. No, that is not my writing.

21 Q. Can you identify that writing?

22 MR. IRWIN: We got those
23 records directly from the hospital, rather
24 than from you.

25 MR. WEISMAN: I did not write

1 that.

2 MR. IRWIN: Neither did I.

3 A. It doesn't look like my writing.

4 Q. Okay. If it is not yours, do you think it was
5 a doctor or a nurse that wrote that, do you have any
6 idea?

7 A. I made a note on 6/25/82 in my office notes
8 that she had no numbness into her fingers.

9 Q. Which?

10 A. My office chart note.

11 Q. Which date?

12 A. 6/24/82.

13 Q. 6/24 --

14 A. '82.

15 Q. I am sorry, okay.

16 A. My chart note.

17 Q. All right.

18 By the way, when Dorothy indicted she wanted
19 to have the procedure, you are saying that was one of
20 the options that you gave her, you had no problem
21 with that, I take it?

22 A. I don't recall if I opted to go ahead with the
23 surgery. If I had any problems with it, I think I
24 would have told her.

25 Q. Since you did the procedure, you thought it

1 was good medical care, obviously?

2 A. I felt that it might be something that could
3 help her.

4 ✓ She was constantly coming in and complaining
5 she was having physical therapy and she wasn't
6 getting any better.

7 Q. When you say that she was coming in constantly
8 complaining --

9 A. ✓ I saw her on a monthly basis.

10 Q. Okay. The chart I have from your records is a
11 three-page chart with typed notes going from April 6,
12 1982 to April 29, 1985.

13 Is that a fairly complete chart on Dorothy?

14 This is what I have.

15 A. Yes.

16 Q. I mean, as far as office notes, not hospital
17 records.

18 A. Yes, that's my office notes on her.

19 Q. ✓ Okay. Now, when you say she came in every
20 month, it looks like there is a gap between July 15,
21 1982 through April 26, 1984.

22 Now, is that -- sometimes she would come in
23 and you would just see her as a courtesy and not make
24 a note?

25 A. ✓ She worked in the hospital. I think I saw her

1 there.

2 Q. ✓ Would you bump into her?

3 A. ✓ Yes.

4 Q. ✓ Or she might call you on the phone and have a
5 complaint, anything like that?

6 A. ✓ I don't recall phone conversations.

7 Q. Okay. There is no place in your chart, am I
8 correct, that it indicates near April 23rd of 1984,
9 near and before, that she had numbness or loss of
10 feeling in her middle and ring fingers on the left
11 hand, is that accurate?

12 A. Numbness in what?

13 Q. Numbness or --

14 A. Loss of feeling, is that what you said?

15 Q. Right.

16 A. ✓ No, she did not have that.

17 Q. What I am trying to figure out is, it says in
18 the second sentence of your April 26, 1984 note, she
19 complains of persistent numbness in her index and
20 middle fingers, which was present prior to her
21 surgery.

22 How do you -- I could have overlooked some
23 things in the hospital records, but I didn't see, I
24 don't think, complaints prior to surgery.

25 A. Even prior to the first surgery she was

1 complaining of numbness.

2 I might have meant that to be prior to the
3 first carpal tunnel release.

4 Q. She had a lot of problems with her --

5 A. They get numbness in the median nerve, and it
6 wakes them at night, and they can't feel anything.

7 That could have been what I meant at that
8 point.

9 Q. If Dorothy represented that before the 1984
10 surgery her fingers were essentially fine, with
11 exception of the problems she is experiencing now, if
12 she represented that she did not have those problems
13 immediately prior to the surgery of April 23, 1984,
14 would you have any reason to disbelieve that, say
15 that's false?

16 A. No, I wouldn't.

17 Q. Was the surgery itself -- if I don't keep
18 saying April 23, 1984, I am talking about the second
19 one.

20 A. Okay.

21 Q. Was the surgery itself uneventful?

22 A. I felt so, yes.

23 Q. Based on our conclusion we just drew, that you
24 would have no problem with Dorothy representing she
25 did not have problems with numbness and loss of

1 feeling in those two fingers prior to surgery, and
2 her representing that immediately afterwards she did
3 have those problems within hours or a day or two,
4 this type of statement that she's making now, would
5 it be fair to conclude that the surgery caused the
6 problem, and let me clarify to say I am not saying
7 anything was wrong with the surgery, but this
8 question just goes to the cause of numbness; [do you
9 feel it happened at surgery, or do you know of any
10 other cause?

11 A. ✓ I don't know what caused the numbness. [Shw]

12 Q. ✓ Okay. Let me give you a hypothetical
13 question.

14 Let's assume, as we said, she didn't have the
15 numbness and the loss of feeling prior to -- days and
16 months prior to the surgery--

17 A. Okay.

18 Q. -- and several hours afterwards the problems
19 started, and she represents that she still has that,
20 and assume that she still has it today --

21 A. Okay.

22 Q. -- and assume that there are no other causes
23 anybody knows about, like she fell down on her wrist
24 or anything like that, would it not be fair to
25 conclude, to a probability, that something during the

1 surgery caused her to have that problem?

2 A. ✓ I can't imagine, if she didn't notice for
3 several hours or even for several days afterwards
4 that it was due to the surgery, it would be something
5 that would be immediate.

6 Q. Did she receive general anesthesia?

7 A. Yes, she did.

8 Q. When you say several hours, doesn't it take a
9 while to come out of general anesthesia?

10 A. They are awake and talking to you in several
11 minutes.

12 Sometimes they are talking to you as they get
13 off the operating table.

14 It is a short procedure, and the anesthesia is
15 very light.

16 Q. How long was the procedure, approximately?

17 A. I don't have the exact time.

18 Q. Based on your experience, how long does it
19 usually take?

20 A. Usually with carpal tunnels I am done within a
21 half hour to 45 minutes. Hers was a little longer, I
22 imagine, because of the scar tissue.

23 Q. ✓ And you say you think it is significant that
24 when she said she noticed it a couple or three hours
25 afterwards, that you cannot draw a conclusion as to

1 causation, because she didn't feel that immediately
2 afterwards?

3 A. ✓ Sometimes you have numbness in your fingers
4 from swelling about the surgical area.

5 Q. Okay. I guess I am trying to get a little bit
6 from the medicine and talk in terms of common sense
7 with you.

8 If we don't know of any other cause for --

9 A. She did not cut her hand at any other time.

10 Q. Right. And assuming the last couple of years
11 -- it has been four years since she hasn't had an
12 accident, hasn't had extensive use to her hands,
13 assuming that --

14 A. She also had a thoracic outlet syndrome on
15 that side.

16 Q. ✓ When surgery was done for that, that was
17 successful?

18 A. ✓ If I am correct, the EMG showed still some
19 residual thoracic outlet problems.

20 Q. What were the symptoms from that?

21 A. What were the symptoms?

22 It is a long syndrome, and it creates numbness
23 into the arm and hands, too, and she has had several
24 EMG's which documented the thoracic outlet syndrome.

25 Q. I thought we agreed that about the time of

1 surgery, and immediately before, days and weeks, as
2 far as these exact symptoms, those two fingers we are
3 talking about, she did not have that, I thought we
4 agreed, prior to the surgery; is there something to
5 refute that, or do you basically agree with that, the
6 loss of feeling in the middle and ring finger on the
7 left hand? *Start*

8 ☒ Did she say she did not have any loss of
9 feeling?

10 A. ☒ I don't have it in my records that I stated
11 that she did or did not have that before.

12 Q. You can look at the hospital records or any
13 other information that you have.

14 A. There's nowhere where it was written down.

15 Q. ☒ Not that I am aware.

16 A. ☒ I also know that she's had additional surgery,
17 so since my surgery, right, I am aware of that.

18 Q. ☒ That could be a cause of a problem since 1986,
19 when she had surgery at the Clinic?

20 A. ☒ No. I am saying, as far as the fact that --
21 what they found at the time of surgery, so that helps
22 to make a diagnosis that a nerve was injured.

23 Q. ☒ You are saying that Dr. Fleegler at the Clinic
24 who did the surgery has a better vantage point to
25 answer my question, because he looked at the wrist

1

2 nd did the surgery?

3 A. ✓ He saw a nerve that was transected.

4 Q. ✓ And let's assume he is accurate on that, when
5 do you think that would have happened?6 A. ✓ I presume it would have to happen during the
7 second surgery.* 8 Q. ✓ You feel that that does not constitute
9 substandard care, that's an acceptable mishap?10 A. I don't know how that happened during
11 surgery. My dissection was not in that area.12 I did my dissection in the area where the
13 flexor retinaculum lies, which is not out where that
14 nerve was lacerated or transected or whatever.15 I cannot say that I know how that nerve was
16 cut.17 Q. ✓ I am not -- I have not brushed up on my
18 anatomy.19 When you talk about those two different
20 places, how far apart are we talking about?21 A. ✓ I think about an inch. stop22 Q. Are there any other instruments used during
23 the surgery, where that injury could take place, a
24 doctor or a nurse doing something to help, that could
25 cause a problem with the nerve?

A. Not that I know of.

1 Q. What other instruments are used when the
2 nurses are assisting?

3 A. The nurse doesn't assist. Usually we have a
4 resident or an intern in training assists.

5 Q. Do you happen to recall who was in the
6 operating room?

7 A. I should have it.

8 Karen Sees. Dr. Sees was an intern who
9 assisted me.

10 Q. Any other person?

11 A. Who the scrub nurses were, I don't know.

12 Q. What mechanically happened during the 45
13 minutes or hour, besides you doing the procedure?

14 By the way, did you do the procedure or did
15 Dr. Sees do it?

16 A. I did the procedure.

17 Q. ✓ Who is touching the operative site besides you
18 during this procedure?

19 A. ✓ Just the intern.

20 Q. ✓ What would the intern be doing?

21 A. ✓ Holding the retractors.

22 Q. Retractors are instruments that hold back?

23 A. The soft tissue and the skin, yes, and exposes
24 the surgical area.

25 A. Would that be a possible explanation of the

1 injury to the nerve, that a retractor could come in
2 contact with that?

3 A. ✓ I don't carry my incision that far, where a
4 retractor could get to that location.

5 The retractors are all blunt. They don't have
6 sharp edges.

7 Q. ✓ You are using a scalpel?

8 A. ✓ No, scissors with dull points.

9 Q. Don't you use a scalpel to open up?

10 A. Just to make the skin incision.

11 Q. Now, there seems to be a lot being made of the
12 fact that there was a second procedure.

13 I notice you mentioned it. It has been
14 mentioned before in the case.

15 ✓ What is the significance of the fact that
16 there is scar tissue created by the first surgery?

17 A. In other words, what is the significance?

18 Q. Yes, in terms of your ability to do the
19 procedure.

20 ✓ Does it make it more difficult that there is
21 scar tissue?

22 A. ✓ The scar tissue adheres to the nerve, so there
23 is a greater chance of having problems with
24 dissecting the scar tissue. You make the surgery a
25 little longer.

1 Q. When you say dissecting, that's what you are
2 doing with the scissors?

3 A. Right.

4 Q. You cut away?

5 A. Just gently. You peel it.

6 Q. If I understood you before, the main thing
7 that you are trying to do is see if the ligament is
8 compressing the nerve, correct?

9 A. Correct. She had a nerve study test which
10 showed residual compression of the median nerve,
11 which is caused by the flexor retinaculum, which I
12 had transected initially, and sometimes they can
13 reattach, if they get scar tissue that bridges
14 between the cut surfaces, and with her having the
15 complaints that she was, I wanted to explore that
16 area.

17 ✓ I did not explore out into the palm of the
18 hand, where the digital nerves are.

19 Q. I would like to refer you to the operative
20 report, which is Page 42.

21 A. Okay.

22 Q. Do you have that in front of you?

23 A. Yes, I do.

24 Q. Now, this whole lawsuit focuses on this
25 surgery. I would like to go over this page. It is

1 not a long operative report.

2 A. Okay.

3 Q. First of all, at the top it indicates that you
4 were the surgeon, correct?

5 A. That is correct.

6 Q. This took place April 23, 1984, right?

7 A. Correct.

8 Q. And you mentioned Dr. Sees assisted you, which
9 is also indicated, correct?

10 A. Yes.

11 Q. ✓ Now, Dr. Sees, in your opinion, did nothing
12 which resulted in substandard care, I take it,
13 correct?

14 A. ✓ No.

15 Q. ✓ And did any of the personnel at Richmond
16 Heights Hospital, the nurses or anybody else
17 involved, do anything which occurred to be
18 substandard or poor medical practice?

19 A. ✓ No.

20 Q. While we are on that, have you had an
21 opportunity to review any of the Cleveland Clinic
22 records?

23 A. No.

24 Q. Has your attorney discussed with you the
25 follow-up procedures which Dorothy underwent at the

1 Clinic?

2 A. Not in detail, just what the operative
3 findings were.

4 Q. Based on your sketchy information that you
5 had, do you have any criticism of Dr. Wilbourn or Dr.
6 Fleegler, in terms of their care at the Cleveland
7 Clinic?

8 A. I would have to evaluate the operative report
9 and evaluate their care, just as you are doing mine.

10 Q. You don't have enough information to make that
11 determination, correct?

12 A. That's correct.

13 Q. When you say in the postoperative diagnosis,
14 perineural adhesions of the median nerve, perineural
15 refers to around the nerve, correct?

16 A. That's correct.

17 Q. Where does the median nerve run to and from?

18 A. The median nerve, at the location of surgery,
19 goes down the center of the forearm, through what we
20 call the carpal tunnel of the wrist, and then it
21 branches out in the palm of the hand, into the
22 digital nerves.

23 Q. Okay. Where does it -- how far up the arm
24 does it go?

25 A. The median nerve originates all the way up

1 from the brachial plexus.

2 Q. Okay. According to -- I think it is about the
3 third or fourth sentence, under the section called
4 procedure, it says, incision is made on the volar
5 surface of the wrist over the previous scar, does
6 that indicate that you opened up her arm exactly
7 where it was opened previously, is that the idea?

8 A. ✓ I can't say if I opened it up a little bit
9 further or a little less.

10 It was in the area of the scar. I don't have
11 an exact recollection of it. I can tell you where my
12 usual scar is for doing a carpal tunnel.

13 Q. Then it says, and dissection is carried
14 subcutaneously, very cautiously.

15 First let me ask you this, was this report
16 dictated on April 24th, is that what that indicates
17 at the bottom?

18 A. It was dictated April 23rd, 1984.

19 It was typed on April 23rd, 1984.

20 Q. ✓ When you used the words "very cautiously," is
21 that just referring to the fact that you were worried
22 about touching the nerve?

23 A. ✓ The nerve, after a previous surgery, can be
24 more vulnerable to injury, because it is closer to
25 the surface of the skin.

1 So you have to be cautious that you don't cut
2 the nerve.

3 Q. The nerve is closer to the surface after her
4 first surgery?

5 A. Yes.

6 Q. Why is that?

7 A. What I mean is that there is not the same
8 tissues overlining the nerve as on a virgin wrist,
9 because you have already gone in there and dissected
10 that normal tissue. You now just have scar tissue.

11 Q. Now, a couple of sentences later you mentioned
12 there was no compression noted on the median nerve
13 following this procedure.

14 A. Following, right.

15 In other words, I felt I released any
16 compression on the nerve.

17 Q. ✓ Okay. And in your opinion has that been borne
18 out by the nature of Dorothy's follow-up complaints
19 and the procedures she's had?

20 A. ✓ Yes, and the nerve study reports have
21 documented that she had complete resolution of the
22 carpal tunnel syndrome.

23 Q. ✓ That aspect of the surgery was successful?

24 A. ✓ Yes.

25 Q. Underneath it says case: Clean. That refers

1 to what, it was a clean procedure?

2 A. No infection present.

3 Q. When it says postoperative condition:

4 Satisfactory, is that immediately after surgery, is
5 that what that refers to?

6 A. That's correct, recovering from the anesthetic
7 well.

8 They are recovering from the anesthetic well.

9 Q. Now, apparently part of the carpal ligament
10 was involved for biopsy or pathology.

11 A. It was removed to help prevent it from
12 reattaching again.

13 Q. The pathology report says normal carpal
14 ligament.

15 A. Right.

16 Q. What was the purpose of that going to
17 pathology?

18 A. Anything that comes out of a patient's body
19 goes to pathology.

20 Q. What problems would be anticipated?

21 A. They just do. That's a part of their standard
22 protocol.

23 Q. What would pathology be looking for?

24 A. What would they be looking for?

25 Q. If there is absolutely no possible problem

1 they wouldn't waste 15 minutes or a half hour to do
2 that?

3 A. Even pieces of metal that we take out of
4 bodies go down to pathology.

5 Any piece of tissue they put under a
6 microscope to look at and see if it is normal tissue.

7 Q. I don't mean to harp on this, but I want to
8 clarify.

9 ✓ Your position seems to be that you don't think
10 during the surgery that you would have been in the
11 area where the damage was done to the median nerve,
12 is that correct?

13 A. ✓ That's correct.

14 Q. I want you to assume -- let's assume that's
15 wrong, okay?

16 Let's assume that during the procedure,
17 hypothetically, I am not saying it happened, but
18 hypothetically let's say that you did do this, that
19 this injury did occur during the April 23, 1984
20 procedure, where you don't think you were operating
21 again; if that happened, would you consider that
22 substandard or poor medical care, or would you just
23 say that's an acceptable risk of this procedure?

24 A. I would say it was a risk of the procedure.

25 MR. IRWIN: That's not the

1 question.

2 Is it an acceptable risk of the
3 procedure or not an acceptable risk of the
4 procedure?

5 A. I would say it is an acceptable risk. If it
6 was identified at a later time, then the neurosurgeon
7 would go in and repair it, because it was not
8 identified at the time of the surgery.

9 I did not even know I was in that area.

10 Q. Again, using my kind of silly example, let's
11 say -- are you teaching now, by the way?

12 A. We have interns and residents at Richmond
13 Heights Hospital.

14 Q. To some extent you do?

15 A. Well, I do not instruct, but no one does my
16 surgery. I do not -- orthopedic residents do not do
17 my surgeries, if that's your question.

18 Q. I was just getting to -- again my question
19 that I alluded to before, but if one of these folks
20 you are instructing is doing a procedure, say it is
21 not your patient and this happens --

22 A. Yes.

23 Q. -- and you are reviewing it afterwards with
24 them, are you telling me that you would not be
25 critical of that result at all, you would say one

1 out of 20 times it happens, let's say?

2 A. One out of a thousand it happens, and it is an
3 acceptable risk.

4 It is not a common occurrence to happen at
5 all.

6 Q. Okay. So obviously, if Dr. Fleegler at the
7 Clinic took the position that it was ~~not~~ poor medical
8 care, you are obviously in disagreement with that?

9 A. For what my intentions were and where I felt I
10 was operating, I felt that I was giving Dorothy the
11 best possible care and was not below standards.

12 Q. Do you know Dr. Gilreath?

13 A. I know Dr. Gilreath, yes.

14 Q. Is he on staff at Richmond Heights?

15 A. Not any longer.

16 Q. He was?

17 A. Yes.

18 Q. When did he leave Richmond Heights?

19 A. It has been several years. Now he is in
20 Michigan.

21 Q. Did you ever talk to him about this case?

22 A. I think Dr. Hassan saw the patient in
23 consultation, Noor Hassan.

24 Q. Are you familiar with Dr. Hassan?

25 A. You have the letter from him, right?

1 Q. From Dr. Hassan?

2 A. He did a consult on Dorothy.

3 Q. Algesia, does that refer to loss of feeling?

4 A. Correct.

5 MR. IRVIN: Off the record.

6 (Thereupon, a discussion was had

7 off the record.)

8 MR. WEISMAN: Back on the

9 record.

10 BY MR. WEISMAN:

11 Q. What type of doctor is Dr. Gilreath?

12 A. Dr. Gilreath is a neurosurgeon.

13 Q. Did he ever, in talking to you, criticize the

14 procedure of April 23rd, 1984?

15 A. I don't believe I ever talked to him about

16 this case, not to my recollection.

17 Q. And what he may have told Dorothy Skebe, you

18 are not familiar with?

19 A. Dorothy works at the hospital. She may have

20 talked to him in the hallway. I have no idea.

21 Q. What was the nature of your relationship with

22 him, in terms of good or bad? How did you get along?

23 A. I felt we got along, as he was at a hospital

24 that I interned at.

25 He was a resident in general surgery at the

1 time.

2 Q. ✓ Now, Dorothy has also represented that she
3 made a number of complaints to you after the
4 procedure, and that you had indicated you thought her
5 problem would go away, the numbness and loss of
6 feeling in the two fingers; is that fairly accurate
7 or not?

8 A. ✓ Well, initially I felt that maybe it was due
9 to the swelling, like I mentioned to you before, and
10 that post-op swelling can cause compression of
11 nerves.

12 As the swelling subsides it should go away.
13 When it wasn't, that's when I decided it was time for
14 her to see a neurosurgeon.

15 Q. And what procedure could a neurosurgeon do
16 that apparently you are saying you could not do?

17 A. He would -- first of all the nerve EMG and NCT
18 was not picking up any problems with a nerve out in
19 the hand, but since it did look like it was going to
20 certain fingers, I felt that exploration of the
21 nerves out there would be probably what would be
22 next, and neurosurgeons are adept to that with
23 microscopes and whatever.

24 Q. And neurosurgeons do that with -- on March
25 20th of 1985, in your office chart, the second last

1 sentence says, she just at this time complains of
2 numbness in the ring and middle finger.

3 Now by that are you taking the position that
4 she never had that problem, because it says just at
5 this time?

6 I am not sure what you mean.

7 A. Which date?

8 Q. March 20, 1985. It is the second last
9 sentence of the paragraph.

10 A. No. We mention up here on March 5 she was
11 having persistent problems with numbness in her
12 middle and ring fingers.

13 Q. Do you know what you meant by that?

14 I don't think that it meant that she never had
15 it before. It sounds like it.

16 MR. IRWIN: She only had it --
17 that was her only complaint?

18 THE WITNESS: Yes.

19 MR. IRWIN: Just her now
20 complaint?

21 THE WITNESS: It should be at
22 this time she just complains of, only
23 complains of --

24 Q. I just wanted to clarify that.

25 Again, back on the informed consent idea --

1 A. Yes.

2 Q. -- Dr. Medina on his procedure happened to
3 have a written out consent form, which is Page 79 of
4 my hospital chart.

5 A. Yes.

6 Q. I take it you do not do something like that,
7 and you did not relative to the April, 1984
8 procedure?

9 A. No.

10 I understand that he does that.

11 I understand there is a very good reason why
12 you do that.

13 Q. I just wanted to make sure there was no record
14 like that that you had floating around.

15 A. My explanation to the patients of potential
16 complications is verbal, and we have them sign the
17 hospital permit which states that these complications
18 have been explained to the patient.

19 Some hospitals aren't even giving out any
20 surgical permits now.

21 Q. Let me see if I can summarize.

22 What we found out today is essentially your
23 position that, and your attorney is certainly free to
24 agree later or bring out certain points in the record
25 which are not consistent with this, but from your

1 knowledge of things, are you essentially saying you
2 have no particular ^{dis}agreement with Dorothy's
3 representations as to when she had her problems with
4 her fingers, and that the main disagreement you have
5 with our position essentially in this case is that
6 you were not involved operatively with the area of
7 the median nerve that was injured, is that
8 essentially what you were saying?

9 A. ✓ At that time I felt that I was not in that
10 area of injury.

11 Q. Okay. And I think from reviewing the records
12 and talking to your attorney, and from the questions
13 I asked you today, you understand essentially what
14 our position is, is that fair?

15 A. Yes.

16 Q. Have you seen the -- actually there have not
17 been technical expert reports in our case.

18 Dr. Irwin is familiar with the positions of
19 Dr. Wilbourn and Fleegler. Has he told you what they
20 said?

21 A. Other than what they found, I have not heard
22 what their position is.

23 Q. In terms of their basis of criticism for the
24 surgery, you are not familiar with that?

25 A. No.

1 MR. IRWIN: And he has not
2 seen their depositions.

3 MR. WEISMAN: I think that's all
4 that I have.

5 MR. IRWIN: Thank you, my
6 friend.

7 Would you like to write it up and
8 submit it to the doctor for his signature?

9 - - -

10 (DEPOSITION CONCLUDED

11 - - -

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Creighton G. Heyl, D.O.

CERTIFICATE

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

3 I, Robert A. Cangemi, a Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that the within-named
6 witness, CREIGHTON G. HEYL, D.O., was by me first
7 duly sworn to testify the truth, the whole truth and
8 nothing but the truth in the cause aforesaid; that
9 the testimony then given by him was by me reduced to
10 stenotypy in the presence of said witness, afterwards
11 transcribed upon a typewriter, and that the foregoing
12 is a true and correct transcript of the testimony so
13 given by him as aforesaid.

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

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

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office at Cleveland,
22 Ohio, on this 24th day of October, 1988.

23 

24 Robert A. Cangemi, Notary Public
25 in and for the State of Ohio.

My commission expires March 5, 1991.