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IN THE COURT OF COMMON PLEAS

OF CUYAHOGA COUNTY, OHIO

RICHARD A. LENPKE,

et al.,

Plaintiffs,

vs.

DONALD LAMBERTSON,

et al.,

Defendants.

Case No.

225892

DOC-191

- - - - -

Videotape deposition of BYRON K.
HOFFMAN, M.D., a witness herein, called by the
Defendants for examination under the statute,
taken before me, Heidi L. Geizer, a Registered
Professional Reporter and Notary Public in and
for the State of Ohio, pursuant to notice and
stipulations of counsel, at Meridia Huron
Hospital, 13951 Terrace Road, East Cleveland,
Ohio, on Monday, October 19, 1992, at 2:40
o'clock p.m.

- - - - -

COPY

1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Dennis Seaman & Associates, lby

4 ANN H. MANDEL GARSON, ESQ.

5 1600 Rockefeller Building

6 614 Superior Avenue, N.W.

7 Cleveland, Ohio 44113

8 696-1080

9

10 On behalf of the Defendants:

11 Gallagher, Sharp, Fulton & Norman, by

12 MICHAEL E. RITCH, ESQ.

13 Sixth Floor Bulkley Building

14 1501 Euclid Avenue

15 Cleveland, Ohio 44115

16 241-5310

17 - - - -

18 ALSO PRESENT:

19 Paul McGuire,

20 ,Legal Technical Video

21 - - - -

22

23

24

25

PG LN [Ngl] LEMPKE-HOFFMAN 10-19-92 HLG ---COMPUTER INDEX

PG LN BY-M*

4	5	BYRON K. HOFFMAN, M.D.	BY-MR. RITCH: Q.	Dr.
26	13	BYRON K. HOFFMAN, M.D.	BY-MS. GARSON: Q.	
49	10	BYRON K. HOFFMAN, M.D.	BY-MR. RITCH: Q.	
58	2	BYRON K. HOFFMAN, M.D.	BY-MS GARSON: Q.	

PG LN MARK'D

PG LN AFTERNOON-SESSION

PG LN ---THIS INDEX IS RESEARCHED BY COMPUTER---

PG	LN	[Ngl] LEMPKE-HOFFMAN 10-19-92 HLG	OBJECT!
3	4	RITCH: Counsel has no	objections or no
3	15	Therefore, the only	objections that I have
14	4	MS. GARSON:	Objection. A. There
14	7	MS. GARSON:	Objection. A. -- from
16	13	normal, There were no	objective abnormal
16	16	Doctor, when you say	
16	19	difference is between	
16	21	complaints. A. An	
17	7	neck, would that be	
17	17	his neck, can you make	
17	20	the neck, there may be	
18	11	I take it, looking for	
21	15	MS. GARSON:	
25	11	MS. GARSON:	
33	18	MR. RITCH:	
36	5	MR. RITCH:	
37	5	Q. It is an	
41	1	spasm a symptom or an	
42	20	MR. RITCH:	
43	2	MR. RITCH:	
44	25	MR. RITCH:	
45	7	would be considered an	
49	4	MR. RITCH:	
53	9	GARSON: I am going to	
54	2	no basis in organic	
54	24	MS. GARSON:	

1 (The following was had off the videotape
2 record:)

3 MR. RITCH: Counsel has no
4 objections or no problems with the usual
5 stipulations as far as the form and the place,
6 time, manner, and the notice pertaining to this
7 deposition?

8 MS. GARSON: I think that there is
9 a motion with the Court though with regard to
10 this deposition that has not been ruled upon.

11 MR. RITCH: Which one?

12 MS. GARSON: Off the record.

13 (Discussion off the record.)

14 MS. GARSON: Therefore, the only
15 objections that I have to this have been stated
16 with the Court, and it is unclear whether any
17 motions are currently pending with the Court,
18 but I will abide by whatever judgments the
19 Court makes.

20 (The following was had on the videotape
21 record:)

22 MR. MCGUIRE: The time is 2:42:30.
23 We are on the record.

24 BYRON K. HOFFMAN, M.D., of lawful age,
25 called for examination, as provided by the Ohio

1 Rules of Civil Procedure, being by me first
2 duly sworn, as hereinafter certified, deposed
3 and said as follows:

4 EXAMINATION OF BYRON K. HOFFMAN, M.D.
5 BY-MR. RITCH:

6 Q. Dr. Hoffman, as you know, my name
7 is Michael Ritch, and I represent the
8 Defendants in this lawsuit, a Mr. Donald
9 Lambertson, and also the company that he was
10 driving a truck for at the time that the
11 accident occurred on June 20, 1990.

12 We are here today to take your
13 deposition for purposes of trial, and
14 therefore, I would like you to state your full
15 name for the record, please.

16 A. Byron Hoffman.

17 Q. And what is your current business
18 address, doctor?

19 A. Where you are now, Meridia Huron
20 Hospital.

21 Q. That is here in Cleveland?

22 A. Yes.

23 Q. Doctor, if you would, could you
24 briefly give me your educational background?

25 A. Ohio State University undergraduate

1 school, Western Reserve University Medical
2 School, five years postgraduate training at the
3 University Hospitals in Cleveland in
4 orthopedics, and two years as chief of surgery
5 in an Air Force hospital.

6 Q. When were you licensed to practice
7 law in the State of Ohio?

8 A. When I was licensed to practice
9 medicine?

10 Q. Medicine. I'm sorry. Wrong
11 profession.

12 A. 1953.

13 Q. And you have been practicing
14 medicine ever since 1953?

15 A. No. Since 1959,

16 Q. 59. Okay. Thank you, doctor,
17 And I believe you indicated that
18 you have specialized in some certain field?

19 A. Orthopedic surgery.

20 Q. What do you have to do to become
21 certified in orthopedic surgery?

22 A, We have to satisfy the training
23 prerequisites that I have already alluded to.
24 Excuse me.

25 At the end of that training you

1 take a written and oral examination, and then
2 two years after that you take another written
3 and oral examination.

4 If you pass both of them or all
5 four of them, then you become board certified.

6 Q. And you have been board certified
7 in orthopedic surgery for numerous years; is
8 that right?

9 A. 1963.

10 Q. Since 1963. Okay.

11 Doctor, have you been affiliated
12 with any hospitals in the Cleveland area?

13 A, Let's see. University and its
14 associated hospitals. Here at Huron Road I
15 have been chief of orthopedics, director of
16 quality assurance, and medical affairs
17 coordinator, St. Luke's Hospital, Hillcrest
18 Hospital, Euclid General Hospital, Medina,
19 Geauga, Lake County. And I think that's
20 enough.

21 Q. Doctor, concerning these hospitals
22 with which you have been affiliated with, have
23 you had any teaching responsibilities?

24 A, I taught orthopedics at University
25 and its affiliated hospitals, St. Luke's

1 Hospital, here at Meridia Huron Hospital, and I
2 taught anatomy in the medical school at
3 Reserve.. And I was orthopedic head of the
4 arthritis clinics at University Hospitals for
5 about ten years.

6 Q. Doctor, I asked you to review some
7 medical records pertaining to Mr. Lempke, the
8 plaintiff in this matter. Do you recall that?

9 A. Yes.

10 Q. Do you recall generally what
11 records you reviewed pertaining to Mr. Lempke?

12 A, Generally, yes, but I think they
13 will come out as we record the history that we
14 obtained.

15 Q. Okay. I also asked that you
16 examine Mr. Lempke, and in fact you did do
17 that, right?

18 A. Yes.

19 Q. And as a result of reviewing the
20 medical records, as well as examining Mr.
21 Lempke, you prepared a report; is that correct?

22 A. Yes.

23 Q. Is that your report in front of
24 you?

25 A. Yes.

1 Q. Now, I know you probably have a
2 recollection of some of the examination or some
3 of the medical records, but if you don't and
4 that report will refresh your memory, please
5 feel free to look at your report, Is that
6 okay?

7 A. Yes.

8 Q. Doctor, what date did you examine
9 Mr. Lempke?

10 A. October 6 of this year, 92,

11 Q. And did you take a history from Mr.
12 Lempke?

13 A. Yes.

14 Q. Could you tell the Jury basically
15 what you were told by Mr. Lempke as you took
16 your history?

17 A. I asked him where he hurt at the
18 time I saw him as a result of whatever we were
19 about to consider, and he said, and I quote, I
20 have pain here, he indicated the posterior
21 aspect cervical spine generally, the entire
22 right pectoralis girdle, which is the shoulder,
23 the bilateral posterior crests of the ilium,
24 the bilateral buttocks, the medial parapatellar
25 area of the right knee.

1 Let me have a copy of your report.

2 Q. Sure. Doctor, in layman's terms,
3 what areas were hurting according to Mr.
4 Lempke?

5 A. Can I have the original?

6 Q. Certainly. Here is the original.

7 A. These are the areas that we are
-8 talking about. He was complaining about pain
9 in the red areas; the shoulder, the inner
10 aspect of the right knee next to the kneecap,
11 the low back, and upper buttock areas,

12 At that juncture in the examination
13 there was a male attorney that accompanied the
14 patient, and the male attorney indicated,
15 quote, what about here, pointing to his neck,
16 **and** the patient then indicated he was also
17 having pain in the cervical portion of the
18 right trapezius muscle, which is this area in
19 red up here.

20 Q. So doctor, when we refer or when
21 the cervical area is referred to, that is the
22 neck area; is that correct?

23 A, The back of the neck, right.

24 Q. And if the lumbar area is referred
25 to, that **is** the **lower** back; **is** that right?

1 A. Right.

2 Q. Okay.

3 A. Then we took a history relative to
4 those complaints, which was a combination of
5 responses from the patient as well as
6 information gleaned in a review of records that
7 were available. And those two sources of
-8 information revealed that on 6-20-90 the
9 patient was in a vehicular accident. He
10 received multiple impacts in the front and the
11 back of his vehicle. He didn't remember
12 whether or not he was unconscious, but the EMS
13 record dated 6-20-90 indicated that there was
14 no loss of consciousness.

15 He was taken from the scene of the
16 accident on a stretcher by the EMS squad.
17 Let's see, he was taken to St. John's West
18 Shore Hospital, where he was seen on 6-20-90 in
19 their emergency room.

20 Complaints in the emergency room
21 were slight headache. They took X-rays of the
22 neck, right shoulder, skull, low back, the
23 mid-back. All these areas were reported as
24 being normal.

25 Then treatment consisted of pills

1 and the advice to rest.

2 He indicates that his first
3 treatment after the emergency room was with a
4 dentist. I had no records of that. But that
5 falls outside my realm of expertise anyway.

6 His next -- after being seen in the
7 emergency room he was next seen by an M.D., a
-8 doctor, on 6-22-90. That was Dr. Hertz.

9 Q. Doctor, I believe that's Hritz.

10 A. Hritz, is it pronounced?

11 Q. Yes, We have deposed him
12 previously.

13 A. I guess it is Hritz.

14 He **was** seen by Dr. Hritz from
15 6-22-90 to 10-24-90, at least in the records I
16 have. On the first visit of 6-22-90, that is
17 two days following the accident, complaints
18 were in the right shoulder, the neck, and the
19 back.

20 The doctor indicated under physical
21 examination on that visit that there was right
22 knee showed a two-plus effusion, that is he had
23 fluid on the right knee, yet Dr. Hritz didn't
24 indicate any complaints in the right knee.

25 The cumulative treatment **during**

1 from 6-90 to 10-90 consisted of an exercise
2 program, cold, pills, physical therapy, and
3 probably an injection of cortisone into the
4 right scapular area, that is the right shoulder
5 blade area,,

6 On the visit of 9-5-90, during that
7 period Dr. Hritz indicated there were no
8 serious problems on that date.

9 Now, there was a gap in the
10 progress notes, The last progress note that I
11 had from Dr. Hritz was dated 10-24-90, but the
12 patient indicated he continued to be seen by
13 Dr. Hritz following that date up until a couple
14 of months prior to the date of my examination,
15 which was October the 6th of 92.

16 Q. Okay. Do you know what Dr. Hritz
17 concluded as far as what his diagnosis was
18 pertaining to Mr. Lempke?

19 A. No, I didn't really pay attention
20 to that.,

21 Q. We' have deposed Dr. Hritz, and from
22 what I gathered, he diagnosed a sprain, sprain
23 of the neck, sprain of the lower back. And I
24 was wondering if you could tell the Jury what a
25 sprain is.

1 A. Unfortunately, the term sprain and
2 strain are used interchangeably and rather
3 loosely.

4 To **be** specific, a strain is a
5 stretching of a tissue without disruption of
6 its microscopic architecture which you see
7 under the microscope.

8 A sprain **is** a disruption of the
9 microscopic architecture of the tissue, but to
10 look at it with the naked eye the tissue, the
11 tendon, the ligament, appears normal.

12 The next step beyond that is a
13 rupture, in which you destroy the gross
14 architecture, which you can actually see with
15 the naked eye.

16 So those are the differences.

17 Q. So are you saying that a strain, **as**
18 **Dr. Hritz** has diagnosed in the neck and lower
19 back, a strain, you can't even see under the
20 microscope any disruption; **is** that correct?

21 A. That's correct.

22 Q. What is the prognosis -- I mean,
23 you have treated thousands of patients; isn't
24 that true?

25 A. **Yes.**

1 Q. What is the general prognosis if
2 you have a strain, let's say, of the lower
3 back?

4 MS. GARSON: Objection.

5 A. There is no long-term disability
6 from it or permanent partial disability --

7 MS. GARSON: Objection.

8 A. -- from it.

9 MS. GARSON: Motion to strike.

10 Q. If I understand correctly, a strain
11 involves the muscles, it doesn't involve any of
12 the bones or joints directly. Is that correct?

13 A. A strain, by context, involves soft
14 tissue, so it can involve muscle, ligaments,
15 tendons, capsules, et cetera.

16 Q. Okay. Other than reviewing the
17 notes and seeing Mr. Lempke, did you have any
18 tests performed? I want to get into your
19 actual examination and any of the tests that
20 were performed.

21 A. Well, the next step was -- we
22 haven't concluded the whole history I got, but
23 in any event, if you would like to skip
24 forward, the next step was the physical
25 examination. In orthopedics, it being a

1 mechanical specialty, your physical examination
2 is divided into two equally important parts.

3 The first part of the physical
4 examination is done while you are actually
5 taking the history from the patient and talking
6 to him. You watch how he walks into your
7 consulting room, how he sits in the chair, sits
8 down in the chair, his posture and movements in
9 the chair during the time you are talking, how
10 he gets up out of the chair and walks from the
11 consulting room to the examining room.

12 So in his case, his body mechanics
13 all through that period were normal.

14 Then in the examining room, we had
15 the patient -- let's see, what did we do. We
16 had him undress down to his shorts; shoes,
17 socks, and everything, just retaining his
18 shorts.

19 We examined him in the standing,
20 the sitting, and the lying down positions. We
21 examined his back from the back of his head to
22 his buttock. We examined his shoulder blades,
23 his flanks, his rib cage, his low back, the
24 sacroiliac joints, his shoulders, hips, and his
25 upper and his lower extremities from a

1 bone-joint-ligament-tendon-muscle-blood vessel
2 and nerve standpoint.

3 Q. Okay. And what were your findings
4 as a result of this examination?

5 A. Well, there were several
6 well-healed nontender stable surgical scars
7 above the right elbow or, excuse me, the right
8 deltoid muscle, which is up here in the
9 shoulder, and apparently he had had some right
10 shoulder surgery in the past.

11 But relative to his complaints
12 which I have already discussed, the examination
13 was normal. There were no objective abnormal
14 findings on that portion of the physical
15 examination.

16 Q. Doctor, when you say objective, I
17 know there is a difference, and I'd like you to
18 explain to the Jury what the difference is
19 between objective findings versus subjective
20 findings or subjective complaints.

21 A. An objective finding is one that
22 you can appreciate with your modalities of
23 perception. That is you can hear it, smell it,
24 feel it, see it, touch it, et cetera.

25 A subjective finding is one that

1 you can't appreciate with your modalities of
2 perception. In other words, a complaint is a
3 subjective finding.

4 Q. Well, let me -- so we have this
5 clear for the Jury, if someone comes in and
6 says they have a pain in their neck, would that
7 be objective or subjective?

8 A. Well, that's a complaint, so it
9 would be a subjective finding.

10 Q. And that is because you really
11 can't see, feel, or touch that pain as the
12 patient complains to you; is that right?

13 A. That's correct.

14 Q. But if you feel around in his neck
15 or do an examination of his neck -- sorry,
16 doctor -- if you examine his neck, can you make
17 objective findings pertaining to whether or not
18 there may be a problem?

19 A. In association with pain in the
20 neck, there may be objective findings, yes.

21 Q. What would that be, what type of
22 things would you find if there were something
23 in the neck?

24 A. I think that is too general.

25 Q. Would you find spasms possibly?

1 A. Well, you might find some
2 involuntary limitation **of** motion, you might
3 find some palpable, that is muscle spasm that
4 you can feel. You might find an involuntary
5 torticollis, which is a cocking of the head to
6 one side and pointing the chin to the other,
7 that kind of thing.

8 Q. Now, you went through all these
9 types of examinations concerning Mr. Lempke's
10 neck and lower back and shoulder, I take it,
11 looking for objective findings of any
12 pathology. **Is** that right?

13 A. We examined his entire spinal
14 column from the back of his -- excuse me --
15 from the back of his head to his buttock, both
16 of his shoulders, both of his hips, and both **of**
17 his upper and lower extremities.

18 Q. And what were your conclusions,
19 would you tell the Jury?

20 A.. As a result of that?

21 Q. Yes.

22 A. Well, we also got some X-rays that
23 influenced our conclusions.

24 Q. All right. Maybe we should discuss
25 those first then. You did take X-rays?

1 A. We took X-rays of his low back,
2 both of his knees, and both of his shoulders,
3 and those were normal.

4 And then I was provided with films
5 of an MRI of his neck bone, the neck portion of
6 his spine, and that was normal with the
7 exception that he had some aging changes at the
8 C5-C6 level.

9 Q. Okay.

10 A. We also got X-rays of both of his
11 shoulders, and they were normal.

12 Q. Is there anything else you did
13 before we get into what your opinions or
14 conclusions were? You have taken a history,
15 you performed an examination, you had X-rays
16 taken and reviewed. Is there anything else
17 that you did that would be the basis for any
18 conclusions or opinions you have?

19 A. Oh, we had a lot of past history on
20 him from the records, but based on the -- but
21 the results of my examination were based on the
22 findings at the time of my exam plus the
23 records referable to the date of injury
24 6-20-90.

25 Q. All right. I think we will talk

1 about his past history in a few minutes here,
2 but what I need to know is what you found, what
3 were your conclusions pertaining to any
4 complaints Mr. Lempke had on the day of the
5 examination?

6 A. My conclusion with regard to the
7 complaints he voiced which he attributed to the
8 accident of 6-20-90 was that at the time of my
9 exam I found no evidence of orthopedic
10 abnormality due to the accident of 6-20-90.

11 Q. Now, we have deposed, as I
12 indicated earlier, we have deposed Dr. Hritz
13 for trial, and there is a couple of things I'd
14 like to ask you that arose from that
15 deposition.

16 On October 24, 1990, Mr. Lempke
17 went to Dr. Hritz with complaint of medial
18 scapular pain in his right shoulder. Dr. Hritz
19 told us that he gave him an injection of
20 cortisone, and --

21 A. October -- what was that?

22 Q. October 24, 1990.

23 A. Okay.

24 Q. And there really weren't any
25 complaints, as far as I can see, from that date

1 until, let's see here, July 29, 1992, about two
2 years later there is another complaint.

3 What I am getting at is this: On
4 October 24, 1990, Dr. Hritz found medial
5 scapular bursitis and gave the patient an
6 injection.

7 A. The diagnosis was scapular bursitis
8 on the right; is that correct?

9 Q. That's correct.

10 A. Okay.

11 Q. Then on July 29, 1992, about two
12 years later, Mr. Lempke comes back, he hadn't
13 been complaining about his shoulder, but he
14 comes back on that date and says --

15 MS. GARSON: Objection. Is there a
16 question?

17 MR. RITCH: Yes. I'm getting to
18 it.

19 A. He comes back and he tells the
20 doctor, my right shoulder is hurting, and the
21 doctor diagnoses a rotator cuff strain and
22 tendonitis.

23 Are those two the same thing, those
24 two diagnoses?

25 A. No.

1 Q. Are they in any way related as far
2 as bursitis versus tendonitis?

3 A. I don't know what you mean y
4 related

5 Q. What I am getting at, I guess, is
6 this. Medial - bursitis wouldn't turn into
7 rotator cuff strain two years later, would it?

8 A. No.

9 Q. They are basically two unrelated
10 problems?

11 A. Well, there is two different
12 anatomic structures involved.

13 Q. Take a look at your history.
14 doctor, that you gleaned from the records I
15 want to look at Mr. Lempke's right knee. Did
16 you find anything in the past history that was
17 significant pertaining to the right knee?

18 A. Let's see.

19 Q. I believe there is an indication
20 from the progress notes, number four, that you
21 have noted in your report from Dr. Hritz, page
22 three.

23 A. Let's see. Fairview General
24 Hospital, I had some records from an admission
25 at that institution from 4-27-89 to 5-2-89.

1 And it indicates, among other things, injury
2 right knee as a teenager.

3 Q. Okay. And was there any indication
4 from the Fairview Hospital records of any back
5 problems, as far as the records you reviewed?

6 A. It says, quote, hospitalized due to
7 back injury form a vehicular accident
-8 approximately 1983.

9 Q. And as far as the past history is
10 concerned, were there any injuries more recent,
11 closer to the date of this accident that you
12 reviewed and might be significant?

13 A. Why don't I read the whole section
14 for.a review.

15 Fairview General Hospital admission
16 4-27-89 to 5-2-89 revealed the following:
17 Hospitalized due to back injury, vehicular
18 accident of 1983 approximately, gunshot wound
19 right arm 1969, injury to the right shoulder
20 1980, injury to the right knee as a teenager,
21 fractured toes of the left foot, bilateral
22 carpal tunnel surgery, right 1981 and left
23 1984. That is on the wrists.

24 Right shoulder surgery 1981,
25 vasectomy 1972, tonsillectomy.

1 Then under the section of that
2 hospital chart called review of systems it was
3 quoted, arthritis, yes, shoulder and right
4 knee; back problem; has occasionally low back
5 pain, especially left side.

6 Leg cramps lower legs often at
7 times, and then 8-9 he had a medial humeral
8 epicondylectomy and an ulnar nerve
9 decompression of the right elbow, so they
10 operated on the inner aspect of his right
11 elbow.

12 Q. Okay. And were you aware that
13 prior to the accident we are discussing,
14 the June 80, 1990 accident, that Mr. Lempke had
15 been involved in an accident in May of 1989?

16 A. He told me when he filled out the
17 past history slip that he had had previous
18 vehicular accidents in 76, 88, and 89.

19 Q. Did he give you any indication of
20 any of his injuries concerning the 1989
21 accident?

22 A. No, he just listed those. We had
23 some information with regard to some other
24 accidents as well as the 1989 accident for
25 which he saw Dr. Hritz.

1 structures, and that includes bones, joints,
2 ligaments, tendons, muscles, blood vessels,
3 nerves; that kind of thing.

4 Q. And in all of those things you just
5 listed, joints, muscles, blood vessels, et
6 cetera, you found no abnormalities. Is that
7 correct?

8 A. Yes.

9 MR. RITCH: I believe that's all
10 the questions I have for you at this time,
11 doctor,

12 EXAMINATION OF BYRON K. HOFFMAN, M.D.

13 BY-MS. GARSON:

14 Q. Hello, doctor. My name is Ann
15 Garson. I am the attorney representing Rick
16 Lempke in this matter, and I'd like to ask you
17 a few questions on cross-examination.

18 A. How do you do.

19 Q. Lawyers always ask only a few
20 questions.

21 Doctor, who first contacted you
22 about this case?

23 A. Mr. Ritch.

24 Q. The defense counsel?

25 A. Yes.

1 Q. And when did he first contact you?

2 A. The examination was booked

3 9-22-92,

4 Q. So the counsel for the defendant,
5 Mr. Ritch, hired you to examine Rick Lempke?

6 A. That's correct, yes.

7 Q. Were you paid by defense counsel's
- 8 law firm for that exam?

9 A. **No**, I haven't been paid yet,

10 Q. Will you be submitting a bill?

11 A. Yes, ma'am.

12 Q. And how much will that bill be for
13 the exam of Mr. Lempke?.

14 A. The total charges to date are
15 10-5-92, we spent about two and a half, three
16 hours reviewing records for \$400; on **10-6-92** we
17 did the exam and prepared the report, that was
18 \$400; and there was a **\$100** booking charge for
19 this deposition today.

20 Q. Will you be charging for your time
21 during this deposition, as well?

22 A. Yes.

23 Q. And at what rate?

24 A. Well, I like to keep my fees
25 slightly below those of attorneys, **so** I charge

1 \$500 an hour.

2 Q. Attorneys don't charge \$500 an
3 hour.

4 A. I have been dealing with
5 attorneys --

6 Q. I wish.

7 A. I have been dealing with attorneys
8 for roughly 35 years on a personal basis.

9 Q. Well, then you are with the wrong
10 law firm, doctor. They are a lot cheaper than
11 that.

12 So it is \$500 an hour for your
13 deposition --

14 A. Yes.

15 Q. .. today?

16 A. That's right.

17 Q. So let's assume that the deposition
18 today is one hour, That would be \$1,400 that
19 you have charged the defense counsel's firm for
20 this case?

21 A. If your supposition is correct,
22 yes.

23 Q. Okay. Doctor, did Mr. Lempke come
24 to your office voluntarily, of his own free
25 will?

1 A. I have no idea,

2 Q. Okay. As far as you know, he
3 showed up in your office --

4 A. Yes.

5 Q. -- alone; is that correct?

6 A. No. He was with a male attorney.

7 Q. Oh, okay. Is it your understanding
8 that that attorney was from my office?

9 A. I don't know where the attorney was
10 from, I didn't ask,

11 Q. You didn't exchange any words?
12 Okay.

13 Was Mr. Lempke cooperative with
14 you --

15 A. Yes.

16 Q. -- during the exam?

17 Did he cooperate with all of your
18 requests of him?

19 A. Yes.

20 Q. How many times did you actually see
21 Mr. Lempke?

22 A. Just on the one occasion on October
23 the 6th.

24 Q. October 6, 1992?

25 A. Yes.

1 Q. And doctor, you did not see Mr.
2 Lempke for purposes of treatment; is that
3 correct?

4 A. That's correct.

5 Q. And there, in fact, is no
6 doctor-patient relationship existing between
7 you and Mr. Lempke?

8 A. I don't know what you mean by that
9 in a legal sense. I think every patient I see
10 there is a doctor-patient relationship.
11 Whether there is legally or not, I don't know.

12 Q. Well, you weren't there to give him
13 advice about anything or to treat him in any
14 way?

15 A. That's correct.

16 Q. In fact, the only relationship
17 here -- in fact, you wouldn't **have** seen Mr.
18 Lempke unless you had been hired by the defense
19 counsel's law firm to see him; is that
20 correct?

21 A. I have no idea. He might have
22 walked in some day on his own.

23 Q. That's optimistic.

24 Doctor, excluding the time that you
25 took in taking a history from Mr. Lempke, and

1 excluding the time that you took to dictate
2 parts of your report as my client was in your
3 office, isn't it true that your actual physical
4 exam of Mr. Lempke was approximately five to
5 ten minutes?

6 A. No.

7 Q. That's not true?

8 A. No, not according to your question.

9 Q. And, well, doctor let me ask you,
10 excluding the time you took taking a history
11 from my client and the time you took dictating
12 your report while he was sitting in front of
13 you, how many minutes did you actually take to
14 physically examine him after he had removed his
15 clothes and put on an examining robe?

16 A. As I indicated before, you can't
17 exclude the time that I was with him for taking
18 the history.

19 Q. But I am not asking you that
20 question.

21 A. Because that is part of the
22 physical examination, so you are excluding
23 one-half --

24 Q. Okay.

25 A. -- and a major portion of the

1 physical examination by your question.

2 Q. That's all right. My question
3 is --

4 A. Maybe it is all right for you, but
5 it is not all right for me.

6 Q. Well, doctor, my question to you
7 is, how much time did you physically examine
8 Mr. Lempke after he had removed his clothes and
9 put on the examining robe?

10 A. Part two of the physical
11 examination -- part one of the physical
12 examination which you want to --

13 Q. We have already gone through that.

14 My question, doctor, is how much
15 time you spent with Mr. Lempke after he removed
16 his clothes and put on the examining robe.

17 A. Excluding part one of the physical
18 examination, which takes approximately 15
19 minutes --

20 Q. Doctor, I have already -- we have
21 already talked about that,

22 A. Why don't you let me finish my
23 answer? I don't interrupt your questions. Why
24 don't you let me finish my answers?

25 Q. Go ahead.

1 A. That excluding the part of the
2 physical examination, the first part, which you
3 wish to do, which takes approximately, oh, 15,
4 20 minutes. the second part of the physical
5 examination, if it is a normal, takes about 10
6 to 15 minutes.

7 Q. Thank you, doctor.

8 Please state for the record which
9 active hospital privileges you have as of
10 1992.

11 A. I **am** on the staff, active staff of
12 no hospitals effective that date, but there is
13 a reason for that.

14 Q. Isn't it **a** fact that the bulk of
15 your practice lies not in treating patients but
16 in examining trauma victims at the request of
17 insurance companies and defense firms?

18 MR. RITCH: Objection,

19 Q. Yes or no, doctor?

20 A. Well, as an expert witness, I don't
21 think I am limited to yes or no answers.

22 Q. Well, if the question calls for a
23 yes or no, then you are.

24 A. Well, then whether it calls for a
25 yes **or** no has to **be** my determination, not

1 yours. 90 --

2 Q. Is that true or not true?

3 MR. RITCH: Let him answer,
4 please.

5 A. I would say currently, roughly a
6 hundred percent of independent medical
7 examinations that I do are at the request of
8 the defense, but there is a reason for that.

9 Q. Well, doctor, I **am** not interested
10 in your reasons for choosing --

11 A. I didn't think you would be.

12 Q. -- to make your livelihood in that
13 manner.

14 But in fact, you are not affiliated
15 or do not have any active hospital privileges
16 in 1992; is that true?

17 A. That's correct. I am on the
18 consulting staff.

19 Q. Thank you, doctor.

20 A. Not the active staff.

21 Q. You stated in your report that Mr.
22 Lempke's history to you was that on June 22 of
23 1990, two days after the accident, that he went
24 to see Dr. Hritz, his treating physician,
25 correct?

1 MR. RITCH: Off the record,
2 please.

3 MR. MCGUIRE: It is 3:17, we are
4 going off the record,

5 (Discussion off the record,)

6 MR. MCGUIRE: It is 3:18:28. We
7 are back on the record.

8 A. Do you want her to repeat her
9 question?

10 Q. That's okay. Did Mr. Lempke
11 indicate to you that he had seen his -- Dr.
12 Hritz on June 22 of 1990?

13 A. No, I learned that from reviewing
14 the records,

15 Q. Okay. Those are Dr. Hritz'
16 records?

17 A. Yes.

18 Q. And in those records, Dr. Hritz'
19 records, you saw that Mr. Lempke had complaints
20 of pain ,in his right shoulder, neck, and back,
21 and effusion in his right knee on June 22 of
22 1990; is that correct?

23 A. That's what I stated in my report,
24 yes.

25 Q. Doctor, are complaints of pain in

1 the neck consistent with a history of being
2 rear-ended by a semi tractor-trailer where the
3 driver's head snaps back and breaks the rear
4 window of the cab on the pick-up truck?

5 NR. RITCH: Objection.

6 A. Well, what are you asking me? You
7 are describing an accident.

8 Q. I am asking if complaints of pain
9 in the neck are consistent with a history of
10 having -- of being rear-ended by a truck and
11 having your head snapped backwards to the
12 extent that it would break a window,

13 A. At what point in time?

14 Q. On June 22 of 1990.

15 A. Yes, that's consistent.

16 Q. Okay. And are complaints of pain
17 in a knee or effusion consistent with history,
18 with a history of being rear-ended and having a
19 knee impact on a dashboard in an accident?

20 A.. At what point in time?

21 Q. Well, I guess the records indicate
22 June 22 of 1990. Is that consistent?

23 A. Well, we had no complaints of,
24 according to Dr. Hritz' notes, there was no
25 cornplaints of pain in the right knee.

1 Q. He noted effusion and a swelling;
2 is that correct?

3 A. Yes. That is a physical finding,
4 that is not a complaint.

5 Q. It is an objective finding,
6 correct?

7 A. Yes.

-8 Q. Doctor, on page five of the report
9 that you've provided --

10 A. Page five?

11 Q. Page five, yes -- you indicate that
12 -- I think it was page five -- you indicate in
13 your report that Mr. Lempke exhibited marked
14 distress and stiffness during the exam, your
15 examination of him on October 6 of 1992; is
16 that correct?

17 A. Yes. Under item eight, on the
18 physical examination, I indicated that there
19 were multiple discrepancies --

20 Q. Well, that's not --

21 A. -- in his examination.

22 Q. Doctor, I am asking -- I am
23 referring to your statement in your report
24 where, let's see, it is under item number eight
25 where you indicate -- did you in fact **state**

1 that during direct examination for various
2 motions of his body he exhibited marked
3 distress and generalized somatic stiffness? **Is**
4 that what you have in your report?

5 A. That's part of it, but go on and
6 read further,

7 Q. Okay. Well, that's what I wanted
8 to confirm, whether that was in your report.

9 A. Don't you want to confirm the rest
10 of it?

11 Q. No. I'd like to ask you a question
12 about that part.

13 A. Okay.

14 Q. You indicate that the client
15 exhibited marked distress and stiffness, and my
16 question to you **is**, did that marked distress
17 and stiffness include his complaints of pain
18 when he was turning his head to the left and to
19 the right? **Is** that -- was that included in
20 your mention of marked distress?

21 A. Yes, during direct examination --

22 Q. Okay.

23 A. -- with the patient's attention
24 directed to those maneuvers, that was the case,

25 Q. Okay. And, doctor, did the marked

1 distress that you noticed include the groans of
2 pain or the wincing when you conducted the
3 straight leg raising test?

4 A. Yes and no.

5 Q. Did the marked distress that you
6 noticed and documented in your report include
7 the moans of pain and wincing when you forced
8 his right shoulder through a range of motion
9 test?

10 A. At one point, yes, when the
11 attention was directed to those maneuvers on
12 the part of the patient.

13 Q. And isn't it true, doctor, that the
14 male attorney who was present pointed out on
15 that drawing an area of the body that Mr.
16 Lempke had already told you was hurting him?

17 A. No.

18 Q. Okay. I have a general question
19 I'd like to ask you, doctor. There's been some
20 small mention of arthritis that we haven't
21 specified what kind it is or its extent or its
22 relationship to this case at all. But I would
23 like to ask you, does the presence of arthritis
24 or a finding of arthritis necessarily mean that
25 a patient will experience pain caused by that

1 arthritis?

2 A. Your question is too general,
3 because according to the American Rheumatology
4 Association, there are 57 kinds of arthritis
5 currently, **so** which kind do you have in mind?

6 Q. Okay. Well, it hasn't been -- some
7 of the records indicate that -- you mentioned
8 that Mr. Lempke had arthritis in his right
9 knee.

10 A. No, I didn't mention that, the
11 records mentioned it.

12 Q. Okay. And is it your understanding
13 what kind of arthritis that was?

14 A. No, it wasn't alluded to.

15 Q. Okay. If it were -- let's assume
16 that it was degenerative arthritis. Would that
17 necessarily cause pain in a patient if it was
18 simply present?

19 A. It is too general a question,
20 because it depends on degree --

21 Q. All right.

22 A. -- age of the patient, et cetera,
23 So it is really too general a question for me
24 to answer accurately;

25 Q. Okay. Doctor, is a muscle spasm a

1 symptom or an objective finding related to a
2 strain or a sprain?

3 A. It can be both. A patient can say
4 that I have got a muscle spasm and/or you can
5 pick it up by physical examination if the
6 muscle is in a position where you can examine
7 it.

8 Q. Okay. But what is the relationship
9 between a muscle spasm and a sprain or a
10 strain?

11 A. Well, a sprain or a strain can
12 result in muscle spasm,

13 Q. Okay. Is it a fact that muscle
14 spasms can vary in degree?

15 A. Yes.

16 Q. And would that depend on the degree
17 of the sprain or the strain?

18 A. Not necessarily,

19 Q. It wouldn't have any bearing?

20 A. No, You said would it depend on
21 the degree, and I said not necessarily.

22 Q. Can you expound on that?

23 A, Nothing other than what I just
24 said,

25 Q. All right. Well, muscle spasms can

1 curve?

2 MR. RITCH: Objection to the form.

3 A. Plain X-rays, which I think is what
4 you are asking now --

5 Q. Right.

6 A. -- are an inappropriate, inaccurate
7 way of evaluating the presence of muscle spasm.

8 The second part of your question
9 was as exhibited by a loss of the lordotic
10 curve, and I assume you mean in the neck or in
11 the low back.

12 Q. I'm talking about the neck.

13 A. All right. That loss of the
14 lordotic curve on plain X-rays of the neck does
15 not necessarily indicate muscle spasm,

16 Q. Okay.

17 A. Also, plain X-rays are an
18 inappropriate way of evaluating the loss of the
19 lordotic curve in the neck due to muscle
20 spasm.

21 Q. It has to be clinically correlated;
22 isn't that correct, doctor?

23 A. That most of the loss of the
24 lordotic curve --

25 Q. Doctor?

1 A. -- on plain X-ray --

2 Q. Doctor, there is no question before
3 you.

4 A. There is a question before me
5 because I haven't completed my answer to your
6 question. And **as** I reiterate, I will pay you
7 the courtesy of not interrupting your questions
8 if you pay me the courtesy of not interrupting
9 my answers.

10 That the loss of the lordotic curve
11 by X-ray about 99 to a hundred percent of the
12 time is due to the way the X-ray technician
13 positions the patient's neck for the X-ray. So
14 loss of the lordotic curve is an inappropriate
15 method **by** X-ray of evaluating the presence of
16 muscle spasm in the neck.

17 Q. Is it better to clinically
18 correlate those X-ray findings, doctor?

19 A. It **is** necessary to, yes.

20 Q. Can a trained orthopedic surgeon or
21 physician see and feel or palpate muscle spasm?

22 A. It depends on where the muscle is.

23 Q. Okay. But it is possible to feel
24 and see muscle spasm; is that correct, doctor?

25 NR. RITCH: Objection.

1 A. Well, there are thousands of
2 muscles in the body; some of them yes, some of
3 them no. It depends on which ones you are
4 talking about.

5 Q. And if you could feel or see a
6 muscle spasm, if a physician could feel or see
7 it, that would be considered an objective
8 finding, wouldn't it?

9 A. Yes.

10 Q. Okay. Doctor, on page four of your
11 report, on the top of the page I'd like for you
12 to read beginning with the word note, the
13 remainder of that first paragraph, if you
14 would.

15 A. Note that the accident currently
16 under consideration occurred one month
17 following this episode of 5-25-89.

18 Q. Following the last visit of --

19 A. The last visit of 5-25-89.
20 Therefore, he was having neck pain secondary to
21 a previous automobile accident up to one month
22 prior to the episode currently under
23 consideration in this report.

24 Q. Okay. You are aware that he was
25 involved in an automobile accident on May 17 of

1 1989, correct?

2 A. Well, he's had a bunch of
3 automobile accidents.

4 Q. I am talking about the May 17 --

5 A. Which one?

6 Q. May 17 of 1989. Are you aware that
7 he was in an accident on that date?

-8 A. Yes. That was in Dr. Hritz'
9 records.

10 Q. And *you* by looking at Dr. Hritz'
11 records, you noted that his last visit with Dr.
12 Hritz for that accident was on May 25 of 90,
13 which is approximately one month before the
14 June 20th of 90 accident?

15 A. That's correct.

16 Q. And *you* have reviewed the notes
17 from Dr. Hritz carefully; is that correct,
18 doctor?

19 A. That's correct, yes.

20 Q. And *you* concluded, in quotes,
21 therefore, he was having neck pain secondary to
22 a previous automobile accident up to one month
23 prior to the episode currently under
24 consideration in this report,

25 A. That's --

1 Q. Correct?

2 A. That's correct, yes.

3 Q. Doctor, I am now going to show you
4 the office note of Dr. Hritz that's dated May
5 25 of 1990, which is the one you are referring
6 to.

7 A. I have a copy of it.

-8 Q. Okay. Well, maybe I should find my
9 own then. Here we go.

10 Doctor, looking strictly at the
11 note from May 25 of 1990, I simply want to know
12 whether there is any mention in that office
13 note whatsoever of any pain in Mr. Lempke's
14 neck.

15 A. There is not a note but -- there is
16 not a note, but there is an indication that
17 there was.

18 Q. Of pain in the neck?

19 A. Yes,

20 Q. And where is that?

21 A. Under addendum.

22 Q. Uh-huh?

23 A. It says 5-25-90, X-rays, Now, Dr.
24 Hritz doesn't say what he X-rayed.

25 Q. It seems, doctor, does the visit

1 for May 25 of 1990 mention any other body part
2 other than right elbow? That is my only
3 question before you.

4 A. It mentions no other body part, but
5 there is an indication --

6 Q. Does it mention anything other than
7 right elbow?

8 A. When you stop interrupting my
9 question -- answers, I will stop interrupting
10 your questions.

11 Q. Would you like to talk about the
12 addendum?

13 A. Well, I started to, and you
14 interrupted. Would you like me to complete my
15 answer or do you want an incomplete answer?

16 Q. I guess my real question, doctor,
17 is does that -- is there any mention whatsoever
18 in the May 25, 1990 office note of pain or of
19 any body part other than right elbow? That is
20 my only simple question.

21 A, NO.

22 Q. So in fact, doctor, there is no
23 documented evidence of neck pain on May 25 of
24 1990. When you stated in your report that Mr.
25 Lempke was having neck pain one month before

1 the June 20th of 1990 accident, that was in
2 fact an incorrect assumption on your part?

3 A. It was not.

4 MR. RITCH: Objection.

5 MS. GARSON: I have no further
6 questions.

7 MR. RITCH: I have a few redirect
8 questions, doctor.

9 EXAMINATION OF BYRON K. HOFFMAN, M.D.

10 BY-MR. RITCH:

11 Q. Let's go right to this May 25, 1990
12 entry. Mr. Lempke's counsel has been going
13 through this saying that there is only an
14 indication about an elbow. Where did you come
15 up with an indication that he was having
16 problems other than with the elbow on May 25,
17 1990?

18 A. There is an addendum to that note
19 by Dr. Hritz, and he indicates that X-rays, he
20 doesn't indicate what the X-rays -- what part
21 of the body the X-rays were taken of, but he
22 indicates an AP, lateral, and oblique views
23 showed no acute changes, things are stable.

24 You don't take oblique views of the
25 elbow, you take oblique views of the cervical

1

2

3

4

5

date.

6

Q

7

visit was part of a follow-up from the May 1989

8

9

A. Yes.

10

Q. Okay. And do you know what Mr.

11

Lempke's complaints were as a result of the

12

1989 accident?

13

A. Let's see.

14

Q. I believe that was May --

15

A. May of -- what was the date of

16

that? May what?

17

Q. May 24, 1989. That was the

18

original visit after the accident.

19

A. Let's see here. Was that May the

20

24th --

21

Q. d a g.

22

A. -- or May the 17th?

23

Q. The accident occurred on the 17th.

24

A. Yes.

25

Q. But the entry is the 24th.

1 A. Now, at what point in time -- the
2 accident was on May 17th of 89, and at what
3 point in time do you want to know his
4 complaints?

5 Q.

6 A. On that date?

7 Q. When he came in,, yes,, when he came
8 in to the doctor after this accident, which I
9 believe was on May 24, 1989.

10 A. Well, he was seen at Fairview
11 General Hospital on 5-17-89 following this
12 automobile accident, and it states, having pain
13 -- let's see -- patient states his elbow is now
14 extremely painful, chief complaint in back of
15 head and neck. So that **was** on the day of that
16 accident.

17 Then he saw Dr. Hritz on 5-24 --

18 Q. 1989?

19 A. -- 89 for that 5-17-89 accident,
20 and Dr. Hritz indicates that -- well, I'll read
21 it. Apparently he was hit in the back, his
22 right elbow which he had surgery, and also had
23 pain in his neck. He is coming in for
24 evaluation.

25 So those were the complaints **on**

5 X-rays on 5-24-89?

6 Plaintiff's counsel has indicated
7 that -- seems to indicate as a result of this
8 accident in June of 90 that there is a loss of
9 the lordosis of the cervical spine. Is there
10 any indication concerning the 1989 accident
11 that there was a problem with the lordosis?

12 A. Dr. Hritz indicates in his -- on
13 the visit of 5-24-89, previous X-rays taken of
14 Fairview General Hospital did not show any new
15 injuries to his neck, although some slight
16 reversal of the lordosis.

17 Q. And these X-rays --

18 A. Now, let's see here.

19 Q. -- according to this report, were
20 before the accident we are here to discuss; is
21 that your understanding?

22 A. Yes, it is.

23 Q. Doctor, if you would follow up,
24 there is another entry from Dr. Hritz of August
25 23, 1989.

1 A, August 23?

2 Q. Yes.

3 A. All right.

4 Q. And the doctor, Dr. Hritz puts in
5 there that Mr. Lempke is still having some neck
6 pain with grinding and crepitus.

7 Could you tell the Jury what
-8 crepitus is?

9 MS. GARSON: I am going to object.
10 This is beyond the scope of cross.

11 A. Crepitus is something you can feel,
12 and sometimes you can hear it, and it is a
13 grating. It is a rubbing sensation.

14 Q. Is it bone on bone or can it be?

15 A. No. You can have soft tissue
16 crepitus, as well,

17 Q. Now, doctor, if you take a look at
18 your report again, plaintiff's counsel has
19 earlier referred you to page five, note number
20 eight, and I'd **like** to have you discuss that a
21 little further, exactly what was going on to
22 cause you to make the notes that you did in
23 item number eight.

24 A. Well, there were multiple
25 discrepancies in his physical examination which

1 have no basis, which had no basis, has no basis
2 in organic objective orthopedic pathology.

3 For example, during history taking
4 and indirect observation, watching the patient
5 indirectly, he exhibited no evidence of
6 guarding, distress, his body mechanics were
7 perfectly normal. Then during the direct
8 examination of various body parts, including
9 his spine, his shoulders, et cetera, he
10 exhibited marked stiffness, marked distress, et
11 cetera.

12 So this discrepancy has no basis in
13 organic pathology, that is abnormalities with
14 his body.

15 Q. I am not clear on what you are
16 saying there, doctor. Are you saying that when
17 you weren't directly examining him he seemed
18 fine and then when you did an examination he
19 indicated pain?

20 A. Yes.

21 Q. And you are saying that you can
22 find nothing wrong that would indicate he
23 should be having that pain?

24 MS. GARSON: Objection.

25 Q. Is that what **you** are telling the

1 Jury?

2 A. No. What I am saying is that in
3 the space of, as opposing counsel has
4 indicated, in the space of our physical
5 examination which occupied roughly 30 minutes,
6 you don't change from being perfectly free of
7 pain and moving normally to being in dire
8 distress and moving stiffly and guardedly due
9 to abnormalities of the skeletal muscular
10 system of a pathologic, that is, an abnormal
11 nature. Let's see --

12 Q. If you would, tell the Jury what
13 else you found concerning any distress.

14 A. Well, during the examination he
15 told me not to test the reflexes in his right
16 knee because it was very painful and would hurt
17 him **all** day, and he indicated this area of the
18 right knee where you normally strike the knee
19 with a reflex hammer.

20 But in the process of testing him
21 for what we call the sign of the four, that is
22 Patrick's test, in which the patient is lying
23 on the **back**, and you push down on the knee this
24 way, **in** the process of doing so I put pressure
25 around his knee at that time; and he had **no**

1 pain. So there was no tenderness in the knee
2 at that point in time.

3 In testing for the range of motion
4 to his right shoulder I indicate he voluntarily
5 limited the range of the motion to the right
6 shoulder, that is when I asked him to bring it
7 up and move it back and turn it down he
8 exhibited limitation of the ability to do that.

9 But in testing his deep tendon
10 reflexes, that is testing the reflexes in his
11 arms now, I put the arm -- I asked him to raise
12 the arm up like this and tested this reflex and
13 he was able to do it, and then we tested the
14 reflexes in the back, and he was able to rotate
15 the arm, so that in the process of testing,
16 directing his attention to testing deep tendon
17 reflexes, he put the shoulder through a normal
18 range of motion without any limitation or
19 without the complaint of pain.

20 So those are just a few of the
21 discrepancies 'that I recorded.

22 Q. Okay, doctor. Plaintiff's counsel
23 questioned you about your active status with
24 any hospitals, and I believe you told us that
25 you -- you are not actually on active status

1 with any hospital, right?

2 A. Hospitals have varying staffs.
3 There is the active staff, the courtesy staff,
4 the retired staff, the consulting staff. So
5 there are various classifications of staff.

6 Yes, I am on the staff of the
7 hospital here at Meridia Huron, but I am on
8 what we call the courtesy and the consulting
9 staff, but not the active staff.

10 Q. And **as** a -- being on the consulting
11 staff, what are **your** general duties?

12 A. Well, currently I am director of
13 medical affairs here in the hospital. I teach
14 our residents orthopedics in our residency
15 program. And I see consultations from other
16 orthopedic -- I am requested to see patients
17 from other orthopedic surgeons and other
18 physicians for orthopedic consultations, but I
19 don't admit directly under my own name.

20 Q. So other doctors will call you in
21 for your expertise to --

22 A. Yes.

23 Q. -- review patients?

24 MR. RITCH: I don't believe I have
25 any further questions at this time.

1 EXAMINATION OF BYRON K. HOFFMAN, M.D.

2 BY-MS. GARSON:

3 Q. Doctor, back to that office note of
4 Dr. Hritz' from May 24 of 1989. If you put it
5 away, I can give it to you again.

6 A. I know what it says.

7 Q. Okay. Well, what does it indicate
8 under the X-ray portion of that note, the first
9 sentence?

10 A. May the 24th, the first sentence?

11 Q. The first sentence under the X-ray
12 note. Could *you* read that into the record,
13 please?

14 A. X-rays only of the elbow taken
15 today. AP, lateral, oblique views show no
16 definite fractures or other abnormalities.

17 MS. GARSON: Thank you, doctor.

18 A. What X-rays --

19 MS. GARSON: I have no further
20 questions.

21 A. What X-rays were obtained on the
22 date that you --

23 MR. RITCH: Counsel, could you show
24 me what *you* just -- I don't know where *you* are
25 talking about.

1 MS. GARSON: May 24, 1989, the note
2 that indicates X-rays.

3 MR. RITCH: May -- okay.

4 MS. GARSON: I believe it is
5 included in your certified records from Dr.
6 Hritz' office.

7 MR. RITCH: I just didn't know
-8 where you were at.

9 MS. GARSON: Thank you, doctor, for
10 your time.

11 MR. RITCH: I don't have any
12 further questions, doctor.

13 MR. McGUIRE: It is 3:46:51. We
14 are going off the record. We are off the
15 record.

16 (The following was had off the videotape
17 record:)

18 THE WITNESS: Do you want me to
19 waive signature?

20 MR. RITCH: Yes, if you don't
21 mind. You can just tell the court reporter
22 here that you will go ahead and waive.

23 THE WITNESS: I'll waive.

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1 CERTIFICATE

2 The State of Ohio,)

3 SS:

4 County of Cuyahoga.)

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I, Heidi L. Geizer, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, BYRON K. HOFFMAN, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

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

1 I do further certify that I am not
2 a relative, counsel or attorney for either
3 party, or otherwise interested in the event of
4 this action.

5 IN WITNESS WHEREOF', I have hereunto
6 set my hand and affixed my seal of office at
7 Cleveland, Ohio, on this 20th day of
8 October, 1992.

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17 My commission expires January 22, 1995.

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Heidi L. Geizer

Heidi L. Geizer, Notary Public

within and for the State of Ohio