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

DOC. 192

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IN THE COURT OF COMMON PLEAS

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Rosemary Koch,)
)
Plaintiff,)
) Case No. 213303
vs.)
) Judge McMonagle
Jeffrey A. Runyon, et al.,)
Defendants.)

- - -

DEPOSITION OF BYRON H. HOFFMAN, M.D.

Tuesday, November 17, 1992

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The deposition of BYRON K. HOFFMAN, M.D., a witness, called by Defendant Runyon for examination under the Ohio Rules of Civil Procedure, taken before me, Devonna H. Tucker, Notary Public in and for the State of Ohio, by agreement of counsel and without further notice o,r other legal formalities, at Meridia Huron Hospital, Room 305, East Cleveland, Ohio, commencing at 1:30 p.m., on the day and date above set forth.

APPEARANCES:

On behalf of the Plaintiff:

Mark Barbour, Esq.
Jeffries, Rube & Monteleone
1650 Midland Building
Cleveland, Ohio 44115

On behalf of Defendant Runyon:

Walter Krohngold, Esq.
Keller, Scully, Williams & Curtin
330 Hanna Building
Cleveland, Ohio 44115

Also present:

John Simon, Videographer

MR. BARBOUR: Just for the record, I want to object to the use of Dr. Hoffman's testimony at trial in this matter, because pursuant to the local rule of Court, I did not receive a copy of his medical report until yesterday, November 16th. It was faxed to me by Mr. Krohngold, and I didn't have it until that time, in violation of the rule, and for that reason, I'm objecting for the use of his testimony at trial.

MR. HROHNGOLD: Under the rules, plaintiff is obligated to send me his expert's report first. As soon as I received his expert report, from Mr. Barbour, which was Friday, I had Dr. Hoffman's record faxed back to him. I believe Monday was just under the rules. I wanted to wait, as I should, until I got his expert report from Dr. Elghazawi first.

BYRON K. HOFFMAN, M.D.

a witness, called by Defendant Runyon for examination under the Rules, having been first duly sworn, as hereinafter certified, was deposed and said as follows:

MR. RROHNGOLD: Let the record reflect

that this is the deposition of Dr. Byron R. Hoffman, which is being taken pursuant to notice, and it is my understanding that the statutory and procedural formalities of notice, service, and filing of this deposition will be waived; is that correct?

MR. BARBOUR: Yes.

DIRECT EXAMINATION

BY MR. HROHNGOLD:

Q. My name is Walter Krohngold. This is the deposition being taken upon direct examination in order to preserve the doctor's testimony for use at the time of the trial of this action brought by Rosemary Koch against my client, Jeffrey Runyon, and against David McCallum.

This action has case Number 213303, and it is before the Honorable Judge Timothy McMonagle in the Court of Common Pleas Cuyahoga County Ohio.

Q. Doctor, would you please state your full name for the record? ,

A. Byron Hoffman.

Q. What is your current professional address, and are we at that address today?

A. Meridia Huron Hospital, East: Cleveland, Ohio, and you're at that address today.

Q. Doctor, what is your profession?
A. Orthopedic surgery.
Q. And when were you first licensed to practice medicine in the State of Ohio?
A. 1953.
Q. And are you currently licensed to practice in the State of Ohio?
A. Yes.
Q. Doctor, would you please explain to the ladies and gentlemen of the jury what is involved with the specialty of orthopedic surgery?
A. It's that branch of surgery that specializes in the treatment and prevention of diseases and injury to what we call a skeletomuscular system, that is bones, joints, ligaments, tendons, muscles, blood vessels, nerves, et cetera.
Q. Doctor, are you board certified in orthopedic surgery?
A. 1963.
Q. And can you please explain what is involved in board certification?
A. Satisfying the training prerequisites. At the end of that training, taking a written and oral examination and then two years later taking another written and oral examination. If you pass both of

them, then you're board certified.

Q. Is board certification one of if not the highest achievement obtainable in your specialty?

A. Yes.

Q. Doctor, would you please give the ladies and gentlemen of the jury a little of your background including college through medical school and your internships and residencies up until the present, please?

A. Ohio State Undergraduate School; Western Reserve Medical School; five years postgraduate training in orthopedic surgery at University Hospitals here in Cleveland, and two years as chief of surgery in an Air Force hospital.

Q. Doctor, have you had any teaching positions in the past?

A. Yes.

Q. Could you detail some of those?

A. Well, I taught orthopedics at University HospitaIS, St. Luke's Hospital, Veterans Administration Hospital, and here at Meridia HUrOn Hospital.

I was orthopedic director of the arthritis clinics at university Hospitals for te'n years, and taught anatomy in the Medical school of Reserve.

Q. And what about any past staff and courtesy privileges in any of the area hospitals?

A. Well, I've been on the staff of University Hospitals and its affiliated hospitals; St. Luke's; Hillcrest; Euclid General; Medina and Geauga; Lake County. Here at Huron Road I've been chief of orthopedics; director of quality assurance, and medical affairs director.

Q. Are you presently, or in the past, a member of any medical organizations or societies? Could you list some of those?

A. Well, the usual local and national general medical societies -- The American College of Surgeons; The American Board of Orthopedic Surgery; The American Academy of Orthopedic Surgery; American Association for Hand Surgery.

Q. Doctor, as part of your professional practice, do you on occasion examine individuals who are not your patients for the purposes of evaluation including consultations or second opinions involving legal matters or .Workers' Compensation proceedings?

A, Yes.

Q. And Doctor, did you have an occasion to talk to and examine Rosemary Koch at the request of the attorney for Mr. McCallum in this action?

A. We examined Mrs. Koch on October the 26th, 1992 in the office where we are now.

Q. Thank you.

And as part of your records, you have a copy of the report prepared in connection with that examination, Doctor?

A. Yes.

Q. Please feel free to refer to that report in responding to some of the questions,

When you first met Ms. Koch, did you take a history from her?

A. Yes.

Q. And could you please detail some of that?

A. We asked her where she hurt as a result of whatever we were about to consider, and she said, and I quote, "I have pain here." She indicated the superior gluteal fold of the buttock, "And I get pain in here. Greater on the right than on the left," and she indicated the posterior aspects of the thighs bilaterally, from the inferior gluteal folds to the popliteal spaces and --

Q. Could you explain what areas you're talking about?

A. To make that graphically, (indicating) she complained of gain in the areas in black, that is,

over the superior gluteal fold and the Sacks of both thighs, as far as the back of the knees.

Anatomically, where those areas are, if this is the back of your pelvis (indicating), this is your hip joint and your pelvis and your hip joint and the low back -- oh, let's see -- wherever she was complaining of pain was over the back of the sacrum, not over the low back, but over the back of the sacrum, (indicating) this area, and that's the crack in your fanny. That's the superior gluteal fold.

Q. Okay.

A. Then we had a history relative to that -- those complaints, and that history consisted of a combination of responses from the patient as well as a review of records that were available at the time of the exam, and those two cumulative sources of information revealed the following: On 1-12-90 she was involved in a vehicular accident, She was the driver of her vehicle, which was in motion, It received an impact on its right side. She was not unconscious. She walked away from the accident, so to speak, and that is in counterdistinction to having to be carried away on a stretcher,

She first received medical attention for this

problem, or for cornplaints relative to this accident, on 1-23-90, about 11 days following the accident.

Following the accident of 1-12-90 she was seen several times between 1-12-90 and 1-23-90 at Kaiser, and there was no mention of complaints or of this accident, but when seen on 1-23-90 at the Cleveland Clinic, that is 11 days following the accident, complaints relative to the accident were the neck, the low back, the left foot, and both legs.

X-rays on 1-23-90 -- or a report of them show -- indicated that the cervical spine -- that is the neck portion of the spine -- was normal. X-rays of 1-28-90 of the thoracic spine -- that.s the portion of the your spine between your shoulder blades -- were reported as being normal. An MRI of the -- which is an x-ray examination -- of the low back on 2-8-90 didn't show a herniated disk.

On 3 -- correction -- between 3-14-90 and 4-6-90 she received physical therapy on an outpatient basis at Southwest General Hospital for complaints in the low back, the neck, both lower extremities, and the right shoulder.

Q. Doctor, with respect to that physical

therapy, I believe you had a chance to review some of thoss records and notes on the patient by the physical therapist that she had a passive/aggressive personality. I don't know whether that was significant, but it was mentioned in the records, and I don't know whether you have any comments on that, with respect to her complaints to you, or'what that can mean in terms of a medical diagnosis, or in terms of treatment,

MR. BARBOUR: Objection.

A. I can only testify to the patient's condition at that time I saw her, so what they were implying at the time that they saw her, with a passive/ aggressive personality diagnosis, I don't know specifically to what they were alluding. A passive/ progress -- a passive/aggressive personality would indicate that subjective complaints on the part of an individual would be magnified, so to speak.

MR. BARBOUR: I'm sorry, Doctor, 1 didn't hear you.

THE WITNESS: Would be magnified, so to speak.

Q. So in your report you had mentioned that the evaluation around the end of her physical therapy suggested histrionic traits; is that consistent with

the same sort of finding?

A. Well, the records I reviewed -- there was a physical therapy note covering -- during that period that we're talking about dated 4-19-90 that indicated "Her reports of pain appear exaggerated. Her main areas of pain in the same area as previous injuries," so apparently she -- and we'll take that up a little bit later -- had previous pain prior to the accident that we're considering in those areas, in the same areas that she was complaining about when I saw her.

She also had on 4-19-90 a Pain Management Evaluation, which is a part of physical therapy and it indicated, "Has histrionic traits,"

Q. What does that mean, Doctor?

A. That -- we don't use the word hysteria any more. It's called personality disorder. Hysteria was kind of eliminated from the psychiatric lexicon -- well -- maybe 15, 20 years ago, but it indicates that the patient had a tendency on an emotional basis to have subjective complaints.

Q. Would those be subjective complaints without any objective basis?

A. Yes. They're on an emotional basis.

Q. All right.

A. That is -- that's what means histrionic traits.

Q. While you're on that subject -- I don't mean to go off that too much, but could you explain what is meant about the subjective versus objective complaints by a patient?

A, An objective -- well, all complaints are subjective.

Q. Okay.

A. An objective finding is one that you can appreciate by your modalities of perception, That is you can hear it, smell it, see it, touch it, feel it.

A subjective complaint is one that you can't appreciate by your modalities of preception.

Q. So an objective one could be -- is a complaint that can be measured in some way?

A. An objective finding is one that can be measured, seen, heard, touched.

Q. Otherwise, subjective would be just the person's vocal complaints of pain?

A. All complaints are subjective, yes.

Q. All right. But would it be fair to say that you oftentimes attempt to match an objective finding in other words, a test or a procedure -- to verify

or give some credence to a person's complaints?

A. Yes.

MR. BARBOUR: Objection.

Q. I'm sorry, Doctor, you were, I think, talking about her physical therapy.

A. Well, we've concluded that.

Q. Were there some notations in the records about how often she treated in the spring of '90, and why she stopped treating physical therapy?

A. I didn't count up the number of visits she had in physical therapy, but there was a note on 4-6-90 from physical therapy. It was a discharge note on that date. It indicated, "Has not shown times three" -- that is missed appointments -- "and is not interested in treatment."

Q. Doctor, if you wanted to continue with the history given by the patient --

A. Well, she was last seen at the Cleveland Clinic, according to the records I have, on 6-13-90, prior to a subsequent vehicular accident that occurred on 7-4-90, approximately three weeks later.

On that 7-4-90 vehicular accident it was indicated that she was involved in the accident. She was a passenger in the right front seat of a stopped vehicle. The vehicle in which she was

riding first received an impact in its rear end, then in its front end, so it was one of these accordion type accidents. She was not unconscious. She walked away from the accident, so to speak, and she first had medical attention following that accident two days later on 7-6-90.

A progress note from the Cleveland Clinic on 7-6-90 indicates that x-rays of the lumbar spine were unchanged from previous x-rays which were done on 1-23-90. X-rays --

Q. What --

A. Pardon me?

Q. -- what part of the back is the lumbar spine?

A. The low back.

-- x-rays of the thoracic spine on that day, that is 7-6-90 -- and the thoracic spine is that section of the spine between the shoulder blades -- again did not show any change since the x-rays of 1-23-90.

Complaints at the time she was seen on 7-6-90 at the Cleveland Clinic were in the neck and back, and that was the last record I had of that 7-4-90 accident.

Following the visit to the Cleveland Clinic on 7-6-90 -- the information relative to that

subsequent period was obtained from the patient, and she indicates -- she indicated she continued being treated at the Cleveland Clinic from 7-6-90 to either August or September of '90, and she said that during that period treatment consisted of "a little bit of therapy." Then she switched treatment to Kaiser Foundation, and had been treated at the Kaiser Foundation up until approximately one month prior to the time that I saw her.

She indicated that during that period at Kaiser treatment consisted of shots in the spine and oral medication, that is pills,

She indicated that about a month before I saw her -- and as you remember, I saw her on October 26th of '92 -- she switched to a Dr. Elghazawi --

Q. Elghazawi.

A. -- and this doctor was her treating doctor at the Cleveland Clinic but in the interim had gone into private practice, and treatment during the month prior to the time that I saw her by Dr. Elghazawi she indicated consisted of pills.

Q. Doctor, did she give you any information about her employment history at the time of or subsequent to the accident?

A. Well, let's see. At the time of the accident

of 1-12-90 she indicated she was employed in sales and that she did not engage in gainful employment following that accident for about eight months, so therefore, she must have been unemployed at the time of the second accident, which occurred on 7-4-90.

Q. What about the time of your examination?

A. She lost about eight months from work, she said. At the time of my examination, she indicated she was employed in office type work without any restrictions being imposed by a doctor due to either the episode of 1-12-90,or the one OR 7-4-90,

Q. Doctor, you have mentioned that the information obtained from Ms. Koch regarding the two accidents was a result of your interviews with her as well as review of some records that were provided to you, Did your review of those records provide you with any additional history of Ms. Koch prior to either of these motor vehicle accidents, which is significant with respect to her injuries after?

A. We had her fill out a past history form, and (indicating) this is the past history form that she filled out and signed, and according to what she volunteered, she had had the usual childhood diseases. She had a Caesarean Section twice and an appendectomy, a partial hysteree -- hysterectomy, and

that being followed by a total hysterectomy. She had asthma. She indicated she was on Premarin and asthma medication, That was for -- that's a steroid cortisone.

Previous accidents and fractures -- she indicated she fractured her right arm times three as a child, and she fractured her coccyx in the past, and previous hospitalizations which -- just for the above surgery that I've already outlined.

Q. Where is the coccyx, Doctor?

A, (Indicating) It's at the -- the coccyx doesn't show on here, but it's a segment of about three bones, little tiny bones, that hang from the end of your sacrum right here, and again this is above your rectum and in the crack of your fanny,

Q. Okay.

A. Then we found past history from the records that we reviewed --

MR. BARBOUR: Objection.

A. -- and they consisted of -- that review indicated the following: Fairveiw General Hospital, we had records extending from 5-13-78 to 3-30-88, a total of 14 emergency room visits and three admissions to that hospital.

In June of '82 she had female surgery. She

was in the hospital from 9-17-83 to 9-22-33 [sic] with a diagnosis of fractured coccyx, tail bone; contusion of the right sciatic nerve. That is the nerve that runs down the back of your leg.

In October of '83 she was admitted for rectal bleeding. In December of '83 she was admitted for a hysterectomy . On 2-10-83 she had an emergency room visit, "Patient seeking psychiatric help. Hit by a car last summer,"

On 12-21-83 she had an emergency room visit. The patient was involved in a vehicular accident. She had cornplaints of pain in the abdomen -- that is the stomach -- the dorsal spine -- that is the section of the spine between the shoulder blades. X-rays of that section of the spine were reported as being normal.

MR. BARBOUR: Objection. Move to strike,

A. Then we had some records from the Cleveland Clinic Foundation extending from 9-21-83 to 8-9-91.

MR. BARBOUR: Objection.

A. On 9-23-93 [sic] she was seen for low back pain. On 10-3-83 she was seen for low back pain. On 1-19-84 she was seen for complaints in the coccyx, the right leg, and it's indicated -- it was

indicatad in those notes, "Problems she has are magnified. Are functional basically in natura."

Q. What does that functional -- what does that phrase mean, functional basically in nature?

A. It means that they were on an emotional basis rather than a physica'l basis.

11-10-86 she was seen at Northeast Ohio Neurosurgical. It is indicated that she was assaulted on 10-4-86 with complaints in the face and head. On 1-17-87 she was seen in the Osteoporosis Clinic, that's the soft bone clinic, so to speak, and on 1-19-87 she was seen for complaints in the low back and right shoulder. Then we had additional past history than what she had had fractured, a broken bone of the right shoulder blade, broken ribs, migraine. There was a mention of rheumatoid arthritis in 1976, and a fracture of the left ankle on 4-27-88,

Q. Doctor, did you have an opportunity to perform a physical examination upon Miss Koch?

A. Yes.

Q. Could you please detail what was done in that examination as well as your findings upon the examination?

A. In orthopedics you are interested in the

patient's body mechanics, so your examination on the patient is divided into two equally important parts. The first part of the examination is done while you're taking your history. That is, you watch the patient walk from the hall into your consulting room; how she walks; how she sits down in a chair; her posture in the chair during history taking; how she gets up out of the chair and walks to the treatment room, so during that portion, the first portion of the physical examination, there were no abnormal findings in her body mechanics.

The second portion of the physical examination done in the treatment room, in her case - let's see -- consisted of examining her low back; her sacrum. That is her pelvis; her flanks. That is the upper parts; her sacroiliac joints; her buttocks and her hips, and her lower extremities from a bone, joint, ligament, tendon, muscle, blood vessel, and nerve standpoint, and in that exam, in the second part ,of the exam, she was examined in the standing, sitting, and lying down positions. She was undressed wearing her bra, panties, and an examination gown in the presence of a female medical assistant.

The culmination of the first and second

portions of the physical exam was normal. There were no abnormal findings in either portion of the physical examination I've just alluded to.

Q. Were your observations of her before you actually began to conduct your examination,. in other words while she is giving you the history and while she is walking between offices, would that in your opinion carry as much wait as far as her problems in the sense that she may not be aware that you're observing her for medical purposes?

A. I'm not quite sure I understand your question, but both portions of the physical examination are equally important, are equally valid. I guess that's the best I can answer you.

Q. When you discussed your examination as far as the neurologic and the sensory and the motor portions, could you explain what was done to test some of these -- to perform some of these tests?

A. I can run through the examination OR you if you like to', or if you just want me to discuss --

Q. If you can just describe it, please, Doctor?

A. Well, we already described the first part of the examination. The second part of the examination, that's done in the treatment room -- is in the mode of dress that I've already outlined of

the patient. You start out in a standing position. You have them walk normally; walk on heels; walk on toes; squat; rise from the squatting position. You check for the levelness of the pelvis, the configuration of the back, the motion of the low back in four directions.

Then you have the patient sit down on the edge of the examining table, You test the various reflexes in the lower extremities, vibratory sense, straight leg raising,. Lasegue sign; you check for the pulses, the muscle development, et cetera, then you have the patient lie down on their back on the examining table; you again test for straight leg raising; leg length; Lasegue sign, motion of the knees and hips, then you have the patient roll over on their face. You check the configuration of the various curves in the back, Palpate -- that is feel the back for muscle spasm in that position, then you have the patient stand up, so that's basically the exam that you do,.

Q. And this will allow you to test all of these different things that you discussed?

A. Yes.

Q. You note in your report that all the maneuvers that were done by Ms. Koch were performed

actively by the patient, there being no passive manipulation by the examiner.

What is the difference between that, and what is the significance of that?

A. She did the twisting, turning, and bending. I didn't push her, or manipulate her. She did it OR her own,

Q. And did she have adequate or normal ranges of motions of the various maneuvers that she did?

A. Yes.

Q. I think your report also indicated that there was no evidence of spasm or tenderness over the various parts of her body that she complained about. Could you explain what the significance of that is, Doctor?

A. Well, she had no muscle spasms in the area that she complained about, and she had no tenderness in those areas when you touched them.

Q. What does muscle spasm indicate?

A. Well, muscle spasm is the involuntary contraction of a muscle, and it's indicative of an abnormality causing that muscle spasm, and there are a thousand things that can cause muscle spasm.

Q. But is the finding of muscle spasm indicative of severity of the problem, or whether there is a

touch the patient and they say it hurts, so on this particular case she didn't have either objective or subjective findings in the area in which she complained of pain.

Q. Okay, she just complained of pain, but when you touched it there was no complaint of pain?

A, That's correct.

Q. Doctor, were there any other findings or lack of findings in your examination which you consider significant?

A. No. I found nothing objectively or subjectively, for that matter.

Q. Doctor, I would like to ask you a couple other questions based upon a reasonable degree of medical certainty.

Doctor, from your review of the medical records as well as your discussions with the patient and your examination of her, at the time of your exam was there any evidence of any type of neurological or ,orthopedic abnormality with Ms. Koch?

A. No.

MR. **BARBOUR:** Objection,

A. No.

Q. Doctor, did you make any diagnosis at the

time of your exam? And again, I ask that you answer to a reasonable degree of medical certainty.

MR. BARBOUR: Objection.

A. Well, I guess no, we didn't make a diagnosis, but I guess that we made an absence of a diagnosis. We found no orthopedic abnormality at the time of my exam that we could attribute to either the episode of 1-12-90, or the one on 7-4-90,

Q. Were there any evidence of any kind of chronic symptoms which she had at that time, long -- long standing or ongoing symptoms?

A. Well, as I've already alluded to when we discussed past history that she had symptoms in the low back going back to 1983.

Q. But there was no indication of any ongoing problems at the time you examined her?

A, I don't know what you mean by ongoing problems.

Q. Of any kind of ongoing chronic ailments or illnesses with her low back at that time?

A. At the time I examined her I found nothing abnormal in the back either of a current or a past nature.

Q. Okay, Doctor, let me ask you to assume something for a moment. Let's assume that she got

in -- Mrs. Koch got into an accident in January of 1990; had some treatment primarily at the Cleveland Clinic, and then was involved in a second accident in July of 1990, which also caused her neck and back pain, and at the time she was asked some questions regarding the impact of this second accident upon her, and again, assume that she stated the following: At the time of the second accident she had finished some cortisone shots in her back for injuries suffered in the earlier accident, and after the second accident the pain returned worse than ever. She had tremendous pain in her back and legs, as well as numbness, and she has lost feelings in her toes and feet to the point where she has fallen on occasion, and I'm reading from her responses to questions put to her regarding the second accident of July of 1990.

Assuming all of this, Doctor, she continued to have problems or pain after the second accident -- is there any medical way to differentiate what percent or to what extent these problems were caused by the second accident versus the first accident?

A. Based on the information that I had at the time of my examination, no.

Q. Doctor, do you have any opinion as to a

prognosis for Ms. Koch, again with a reasonable degree of medical certainty?

A. At the time I examined her I found no evidence of orthopedic abnormality of an objective nature that would cause a continuing difficulty due to these two accidents.

Q. And Doctor, did you have adequate time in which to conduct your examination of Ms. Koch?

A, Yes.

Q. And were the tests that you performed -- were they tests that are typically performed by orthopedic surgeons and acceptable among practitioners in the field?

A. Yes.

Q. Doctor, have all the opinions you've given us today been to a reasonable degree of medical certainty?

A. Yes.

Q. Doctor, I don't think I have any further questions. Thank you very much.

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CROSS-EXAMINATION

BY MR. BARBOUR:

Q. Hello, Doctor, how are you today?

A. Now do you do?

Q. Good.

My name is Mark Barbour. I represent Rose, If I could just take one second and look at whatever records you might have regarding your examination of Rose, I would like to do that.

THE VIDEOGRAPHER: We are off the record.

(Attorney reviews records.)

THE VIREOGRAPHER: We are on the record.

Q. Thank you, Doctor.

Doctor, I notice looking in this folder that there appears to be a copy of your report, which I have, and some handwritten notes, which I'm going to assume are yours; is that correct?

A. Right.

Q. Okay, in there I don't see any of the records that are from Kaiser or the Cleveland Clinic. Have you returned those?

A. Well, I threw them away after I did the review -- wrote the report.

Q. Okay. After you wrote the report you discarded the records you had seen --

A. Right.

Q. -- and relied upon your handwritten notes?

A. No. I have a dictaphone here (indicating) In the drawer --

Q. Okay.

A. -- and we dictate the report right as we do it, at the time the patient is in the office.

Q. All right.

MR. KROHNGOLD: Just for the record, I think all the records that he reviewed were copies that either myself or the other attorney representing Mr. McCallum had obtained, and I believe they were all sent off to your office, Mark.

BY MR. BARBOUR:

Q. Doctor, you only saw Rose one time, that's true?

A. Yes.

Q. That one visit was not at my request?

A. No.

Q. And it was certainly not at the request of the Court?

A. No.

Q. And Rose didn't request that you examine her?

A. No.

Q. All right. It was at the request of the Defendant; is that --

A* It was the request --
Q. -- fair?
A* -- of an attorney, yes, for the Defendant.
Q. Okay, and you've indicated you examined her and you wrote a report. Was that correct?
A. Yes.
Q. Now, you spent a good deal of time talking about the history that you took. I assume you took a lengthy history from Rose?
A. Well, you have a copy of the report --
Q. Yes.
A. -- it is about three pages long.
Q. Yes, but it seems that you spent a little bit of time with her, taking down her history: is that a fair statement?
A. I don't know how much time. Under paragraph Present Illness, which is history --
Q. Right.
My question is just -- do you know how much time you spent taking the history?
A. In obtaining the paragraph Present Illness, I don't know how much time we spent, because I --
Q. Okay.
A. -- you know, I don't run a stop watch.
Q. All right, and then you conducted your

physical examination after you took the history?
A. No, We conducted part one of the physical examination during the time we were taking the history. We conducted part two after we had taken the history.
Q. Part one being the -- her gait; her appearance, and those items that you previously testified to?
A. Yes. The entire time I was with her prior to going into the treatment room.
Q. All right, Do you know how much time you spent with her in the treatment room? Do you recall that?
A. Oh, an examination like this is -- if it's normal -- probably takes maybe five, ten minutes, something like that.
Q. All right. Now, I believe that the Defendant has paid you for this examination and the report; is that true?
A. Yes. As a matter of fact, I got a check today.
Q. All right. And you were also paid for your time in testifying today?
A. Not yet.
Q. All right.

A. It depends on how long you talk.

Q. Well, I will try to be brief, but you anticipate being paid for your time in testifying today?

A. Hopefully, yes.

Q. What is your rate that you charge for all of these things?

A. For all of what things?

Q. Well, for example, what was the charge for the examination and preparing the report?

MR. KROHNGOLD: Objection.

A, Let's see. On 10-19-92 we spent three and a quarter hours reviewing records, and the charge for that was $450.

On 10-26-92 we did the examination that I've already alluded to, and a report, and the charge for that was $100.

Q. All right. May I see the card that you're referring to, please?

A. (Witness ,hands document to attorney.)

Q. This card shows a balance of $850 for those two things; would that be correct, or am I misreading that?

A. No, It shows a balance of zero. We were paid today.

Q. How much were you paid today?
A. $850. We received the check, so the balance is zero.
Q. I'm sorry.
Q. And what is your normal rate for your time in testifying today?
A. I like to keep my court cost -- or my court fee slightly below those of attorneys, so I charge 500 bucks an hour or any part of an hour.
Q. $500 per hour?
A. Or part of an hour.
Q. Okay.
So if we only use 45 minutes you charge for the full hour?
A. Correct.
Q. I take it then that you have testified before in Court or legal matters related to injury lawsuits?
MR. KROHNGOLD: Objection.
A. Yes.
Q. And you have testified before for the defense in this matter; is that correct?
A. I never testify for anybody. I testify at the request of.
Q. I'm sorry. I didn't mean to imply that. You

had testified before at the request of the defense in injury lawsuits?

A, Yes.

Q. And you've also examined others at the request of defendants in injury lawsuits?

MR. KROHNGOLD: Objection.

A. Yes.

Q. How often do you do this type of work, Doctor?

A. I have no idea. I don't keep those kind of records.

Q. Would you be able to estimate the amount of time per week or per month that you devote to these type of matters?

MR. KROHNGOLD: Objection.

A. Time, no, but number -- you mean on just personal injury cases?

Q. Yes.

A. Maybe three or four a month, five a month -- something like that over the last 35 years.

Q. And do you have patients that you're presently treating now, also?

A. Yes.

Q. But you have no intention of treating Rose, do you?

MR. KROHNGOLD: Objection. I don't think he's permitted to.

A. No.

Q. And you made no recommendations regarding treatment to Rose at the time you examined her?

MR. KROHNGOLD: Objection.

A. No.

Q. Now, we talked about -- you talked about -- I'm sorry -- objective findings. You found no objective findings on the day of your exam?

A. Correct.

Q. That means there was nothing you could feel with your hands or observe with your eyes?

A. Correct.

Q. No results of diagnostic tests that you observed on that day?

A. There were no objective diagnostic tests on the day I examined her --

Q. Yes?

A. -- relative to her complaints.

Q. That's what I meant. All right.

Then x-rays, in other words, were negative?

A. I didn't take x-rays on the day I examined her. She had been x-rayed enough up until that point.

Q. But you reviewed those x-rays or x-ray reports from those prior x-rays?

A. I reviewed the reports, not the x-ray films.

Q. Ail right, but you are aware that the x-rays were negative?

A. According to the reports, yes.

Q. Okay, that means no fractures of bones?

A. Among other things, yes.

Q. All right. The x-rays do not show muscles, do they --

A. No.

Q. All right.

-- or the tendons or soft tissues that connect the muscles to bony structures?

A. X-rays can show them, depending upon the quality of the x-rays, but those structures are not amenable to diagnostic -- diagnosis by just x-ray alone.

Q. All right.

So you wouldn't expect x-rays to be useful in diagnosing strains to muscles or ligaments or other soft tissues alone?

A. That is correct, yes.

Q. Now, the physical examination that you performed, Rose could move normally; that's what you

observed?

A. Yes.

Q. And you were looking -- during your examination in October of '92 -- for objective findings, as we indicated, correct?

A. Relative to the episode that we are considering, yes.

Q. Yes, And one of the objective findings that you would have looked for on this day would have been muscle spasms over areas of her body?

A. Yes. We indicated that we had her lie down on the table on her face, and we felt those areas of the body that she was complaining about to see if there was muscle spasm and there wasn't.

Q. On that particular day?

A, Right.

Q. All right. It is possible though that muscle spasms may be present on other days; is it not?

A, Yes. We call that exacerbations in remissions.

Q. All right.

For example, could someone's activities induce muscle spasms on a given day?

A. Yes.

Q. All right. So it is possible that she didn't

have muscle spasms on the day you examined her but had them on days preceding and days subsequent to your examination?

A. Anything is possible under the sun. As far as probability goes, since she was having pain in the areas that we showed on the pain diagram, the muscles would have been in spasm on the day I examined her, had that pain been an objective finding.

Q. But it is possible that she could have had muscle spasms on days preceding and days subsequent to your examination?

A, Yes.

MR. KROHNGOLD: Objection.

Q. And I believe you testified that you don't remember whether the prior physicians who examined Rose before you did noted that there were muscle spasms in their notes?

A. No.

Q. You don't,remember that?

A. I don't remember it, because I don't think it was germane from the frame of reference that I was examining the patient.

Q. All right.

So the prior comments of the doctors who

treated her weren't important for what you were doing that particular day?

A. No, because I can't go on the reliability of those doctors. All I can do is testify to her condition at the time I saw her,

Q. All right.

Now, we talked about subjective findings or statements and you indicated that all pain is a subjective matter; is that correct?

A. The complaint of pain is a subjective finding, yes.

Q. All right.

And generally, as a doctor, you would look for objective findings such as fracture on a x-ray to explain that subjective finding; is that right?

A. Yes, I think that's the thrust of medicine, that the patient gives you complaints and you try to objectify them through --

Q. All right.

A. -- various diagnostic techniques.

Q. But there are not always objective findings to explain the pain, yet the patients in some cases still have that complaint; is that fair?

A. That is correct.

Q. And that is one of the reasons why a history

is taken, to hear what the patient's complaints are; is that fair?

A. The history is always taken.

Q. But one of the reasons a history is taken is so the patient can tell you what the complaints are -

A. Correct.

Q. -- is that fair?

Now, would it be fair to say that you have provided treatment to your own patients over the course of your career based upon their subjective complaints?

A. Yes.

Q. Now, Rose has been involved in two motor vehicle collisions in 1990, which you are aware of. Are you also aware that the first collision she went to the Cleveland Clinic; you've reviewed the notes; you know that to be the case, correct --

A. Yes.

Q. -- and physical therapy was prescribed, correct?

A. Yes.

Q. I also assume you're aware from the review of the records that she received caudal epidural blocks?

A. No, I wasn't aware of that. She told me she

had received shots, but she didn't say where.

Q. Okay. Did you review the records to review that matter?

A. I had no records of her having had caudal blocks on the records that I reviewed.

Q. All right. If they were contained in the Cleveland Clinic notes, would it be possible that you either missed them, or did not have that section of the notes?

A. Either one is a possibility.

Q. All right.

But for whatever reason, you were not aware of exactly the shots that she had received?

A, That's correct, other than what she told me.

Q. Right, I meant from the records, though.

Have *you* ever prescribed caudal epidural blocks for the treatment of pain?

A. **No.**

Q. But you are aware of them?

A. Yes.

Q. And you were aware that she was seen at the Pain Management Clinic at the Cleveland Clinic?

A. ***Yes.***

Q. And that was contained in the records, correct?

A. Yes.

Q. You apparently, according to your report, did not have records after -- I want to say July of 1990 or thereabouts?

A. Let's see when the records ended. I had no further records following the visit at the Cleveland Clinic of 7-6-90,

Q. All right. So you don't really -- or you cannot really comment on the treatment that she received after that time, if any, other than what she told you during her history?

A. That is correct.

Q. So if 1 were to tell you that she had the majority of her medical treatment in 1990 before the second accident, you would have no reason to agree or disagree with that, or no basis to agree or disagree with that statement, would you?

MR. KROHNGOLD: Objection.

A. I would have no reason to disagree with it, no.

Q. All right.

Would the records after July of 1990 influence your opinions that are contained in your report and your testimony today?

A. I have no idea, because I don't know what

they would show.

Q. Okay.

As an experienced physician, if the -- if an injury was sustained in the second accident, would you expect a patient such as Rose to have had additional treatment?

A. Well, that's too general a question. First of all, what injury did she sustain in the second accident? I don't know.

Q. In other words, it would depend on -- you would need more information to make that kind of -- to answer that question --

A. To answer --

Q. -- as put to you?

A. -- to answer your question, yes.

Q. All right.

So your testimony today is really based upon what you observed on the day that you examined her; is that a fair statement?

A. Yes.

Q. Doctor, are you aware that there is no dispute that a collision took place on January of 1990?

A. Am I aware of what?

Q. Are you aware that there is no dispute that a

collision did occur in January of 1990?

A. I never really considered it.

Q. Okay. Well my question -- in fairness to you again, Doctor -- my question is really -- the accident did occur and there is no dispute that the accident occurred in January of 1990. Does that change any of your reasoning one way or another?

A, No.

Q. Okay.

Now, can a motor vehicle collision produce injuries to the low back muscles and other tissues that are present there?

A, Yes.

Q. All right. Can these injuries produce pain and restrict activities?

A. Yes.

Q. Doctor, assuming even if Rose had a problem with her low back before the collision of January of 1990, could that collision possibly aggravate those problems causing, her to experience pain and limited activities?

MR. KROHNGOLD: Objection.

A. Anything under the sun is possible. It's -- whether it's probable or not in this case, 1 don't know.

Q. You can't say one way or another?
A. No. I wasn't there.
Q. Doctor, I believe In your report you -- I'm sorry -- during your testimony you indicated that the Kaiser records made no mention of a motor vehicle accident in January of 1990.
A. Well, let's see here,
Q. I think that's in your last paragraph on your first page,
A. Well, let's see, the accident was on 1-12-90. I have a notation -- her records indicate that she was seen on 1-15-90, three days later.
Q. With the respiratory complaint,
A. And those are respiratory complaints. There is no mention of the 1-12-90 vehicular accident.
Q. Okay.
A. And then Kaiser records 12-9-88 to 9-7-91 --
Q. All right.
A. -- there is no mention of the vehicular accident.
Q. All right.
Doctor, if I told you that in the Kaiser records that we've obtained, and that all the parties in this lawsuit have obtained, that these is mention of the motor vehicle accident on both Page

34 and 37 of the records, would you be able to explain your finding in your report?

A. Yes, either I missed it, or I didn't have it.

Q. Okay.

Q. That's fair enough,

Doctor, I don't have any other questions for you. Thank you very much for your time,

- - -

REDIRECT EXAMINATION

BY MR. KRQHNGQLD:

Q. Doctor, just one last question.

There was a notation in the Kaiser records of 1-12-90, but if you could, please, was there an indication in that notation regarding the accident of a call to Kaiser, or the visit, of any low back pain?

A. Well, this is not a visit. This is a telephone memorandum, In other words, this is memorandum completed by -- probably a secretary based on a phone call from the patient on -- it looks like to me like the date is 1-12-90 -- and it says in motor vehicular accident 12:00 noon. Now complaints of headache. Doesn't remember striking head; no complaints -- no. It says no complaints of neck pain, but that's not a visit, That's a

telephone message.

Q. Is there any mention in there of low back pain?

A. No.

Q. Doctor, I don't think I have anything further.

- - -

RECROSS-EXAMINATION

BY MR. BARBOUR:

Q. Doctor, just very briefly. Page 37 of the Kaiser records which are dated 2-26-90, can you look at those right in that area?

A. (Witness complies.)

MR. RROHNGOLD: What page is that?

MR. BARBOUR: 37.

A. And again this is a telephone call, not a visit.

Q. Excuse me, Doctor, I believe that's a progress note from Kaiser,

A. No, It's a telephone call,

Q. I'm sorry.

MR. KROHNGOLD: No, it's not.

A. It says, "Medical message chart request caller's name,"

Q. I'm sorry, You're correct, Doctor, that is a

medical message.

A. And it says "Needs an EMG from Cleveland Clinic referral." The next three letters, I can't read. Then it gives Dr. El --

Q. Elghazawi.

A. -- Elghazawi's phone number. Kaiser did now x-ray patient. MVA, that is motor vehicle accident; was in Kaiser ER; neck and back pain, so I had no records of her visiting Kaiser's emergency room.

Q. All right. Thank you, Doctor. I don't have anything else. Thank you very much.

MR. KROHNGOLD: Nothing further, Doctor.

THE VIDEOGRAPHER: Doctor, is you right to review the videotape in its entirety, or do you wish to waive what right?

THE WITNESS: I waive it.

THE VIDEOGRAPHER: We are off the record.

THE WITNESS: Do you want me to waive reading of the transcript?

MR. KROHNGOLD: Yes, if you want to.

THE WITNESS: I waive.

— — —

(SIGNATURE WAIVED)
(DEPOSITION CONCLUDED)

— — —

CERTIFICATE

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

I, Devonna H. Tucker, a Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above-named BYRON K. HOFFMAN, M.D., was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition as above set forth was reduced to writing by me, by means of stenotype, and was later transcribed into typewriting under my direction by computer-aided transcription; that I am not a relative or attorney of either party or otherwise interested in the event of this action,

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Cleveland, Ohio, this 23rd day of November, 1992.

Devonna H. Tucker

Devonna H. Tucker, Notary Public
in and for the State of Ohio.
My commission expires November 18, 1996.