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Doc. 224

STATE; OF OHIO,)
) SS :
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

LILLIAN GILLIAM,)
)
Plaintiff,)
)
- vs -) Case No. 122942
) Judge James D. Sweeney
PROGRESSIVE BAPTIST)
DISTRICT ASSOCIATION,)
)
Defendants.)

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THE DEPOSITION OF RICHARD S. KAUFMAN, M.D.
TAKEN WEDNESDAY, MARCH 16, 1988

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The deposition of Richard S. Kaufman, M.D., called by the Defendant for examination pursuant to the Ohio Rules of Civil Procedure, taken before me, the undersigned, Judith Ann Trebus, a Registered Professional Reporter and Notary Public within and for the State of Ohio, taken at the offices of Beachwood Orthopedic Associates, 23250 Mercantile Road, Beachwood, Ohio, commencing at 9:35 a.m., the day and date above sot forth,

APPEARANCES:

On behalf of the Plaintiff:

David I. Pomerantz, Esq.
Pomerantz and Cichocki Co., LPA
Suite 910 - The Statler Office Tower
1127 Euclid Avenue
Cleveland, Ohio 44115

On behalf of the Defendant:

Thomas O'Donnell, Esq.
McNeal, Schick, Archibald & Biro
The Illuminating Building
Suite 1021
Cleveland, Ohio 44113

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(Defendant's Exhibits A throush H, inclusive, were marked for identification)

RICHARD S. KAUFMAN, M.D.

of lawful age, called by the Defendant for examination pursuant to the Ohio Rules of Civil Procedure, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MR. O'DONNELL:

O Doctor, my name is Tam O'Donnell, and I'm an attorney representing Progressive Baptist District Association in the case of Lillian Gilliam versus Progressive Baptist District Association.

Woula you please tell the jury your full name?

A Richard S. Raufman.

MR. POMERANTZ: For the record, I just want to note my objection to the use of the videotape at trial in this matter.

MR. O'DONNELL; May I ask your -- the reason for your objections?

MR. POMERANTZ: No compliance with the civil rulings and rules of

superintendence with the use of videotaped depositions.

MR. O'DONNELL: Were you noticed that there was to be a videotaped deposition today?

MR. POMERANTZ: Yes. I am waiving any objections to notice.

MR. O'DONNELL: What is specifically the non-compliance that you're complaining of?

MR, POMERANTZ: I'm just going to leave the objection at that and let the Judge rule on it.

MR. O'DONNELL: Do you realize you are to bring written objections to thin deposition?

MR. POMERANTZ: Yes.

MR. O'DONNELL: Did *you* bring any written objections today?

MR, POMERANTZ: Tom, I don't want to have a legal arqument,

MR. O'DONNELL: That's fine, You didn't bring any written objections.

MR, PONERAWTZ: I made my objection. You can continue,

BY MR. O'DONNELL:

Q Doctor, would you explain to the jury -- I'm sorry.

Are you a licensed physician?

A Yes, I'm a physician and surgeon and M.D. licensed to practice in the State of Ohio since 1956.

Q Would you explain to the jury your education and bnckqround?

A I received my RA deqree from Yale University summa cum laude in 1952. I received my M.D. deqree from Columbia University in New York City in 1956. I then had five years of post-araduate training, a year of internship at Mt. Sinai Hospital in Cleveland, a year of residency at University Hospitals in Cleveland, two years of orthopedic surqery at Mt. Sinai Hospital, and a year of orthopedic surqery at Indiana University Medical Center in Indianapolis.

Q Okay. What areas was your internship and residency concerned with?

A Well, the internship was a rotatinq internship which was a -- covered all fields. My first year of residency wae a general surgery residency, and my last three years of training

were exclusively orthopedic surgery.

Q All right. Now, are you a practicing physician today?

A Yes, I'm in the private Practice of medicine since 1961, which is now 27 years,

Q Okay, What specialty are vou limiting vour practice to?

A Orthopedic surgery since I went into practice.

Q All right, And is there such a thins as beinq "board certified"?

A Yes.

Q And would you explain that to the jury?

A Well, when I was board certified, you had to -- I had to have, of course, the four years of medical school and the five years of post-graduate training. I then took a series of written and oral examinations which I passed the first time.

I then had to be in practice a minimum of two and a half years and took a second set of written and oral examinations which I also passed the first time and was certified by the American Board of Orthopedic Surqety as a specialist and fully-trained orthopedist in 1963.

Q Okay, What states are you licensed to practice medicine in?

A Besides Ohio, I'm licensed to Practice in Indiana and in California.

Q what specific hospitals are *you* affiliated with?

A I'm on the active staff at Suburban Community Hospital where I'm the chief of orthopedic surgery; Mt. Sinai Hospital, Hillcrest Hospital.

I was the chief of orthopedic surgery at Women's General Hospital for about: 23 years until *it* recently closed, and I'm the orthopedic consultant to the Arthritis Clinic at the Cleveland Metropolitan General Hospital.

Q Outside of your practice, do you also teach?

A Yes, I am a clinical instructor at the Case Western Reserve University Medical School in orthopedic surgery, and I was a professor at the Ohio College of Podiatry for about 20 years.

Q Have you published any papers?

A Yes, I've published several papers dealing primarily with the healing of broken bones, with fractures, and I have given innumerable papers.

Mast recently, I was invited to give a paper at the Orthopedic Surgery Grand Rounds at Harvard University Medical School in Boston; I

gave the Harold Cummins Lectureship at Tulane University in New Orleans; I was invited to participate in a panel on fracture healing at the Mid-America Orthopedic Meeting at Colorado Springs, Colorado; and just a few months ago I gave the Dr. Russell Rizzo Memorial Lectureship at St. John's Hospital here in Cleveland.

Q Are you affiliated with any professional associations?

A I'm a member of the Cleveland Academy of Medicine, the Ohio State Medical Association, and the American Medical Association, the Cleveland Orthopedic Club, the Ohio State Orthopedic Society, the Great Lakes Orthopedic Club, the Mid-America Orthopedic Society, the Clinical Orthopedic Society, the Bioelectric Repair and Growth Society, the American College of Thermography.

I'm a fellow of the American College of Surgeons and a fellow of the American Academy of Orthopedic Surgeons and I'm a diplomate of the American Board of Orthopedic Surgery.

Q Now, as far as your board certification is concerned, do you have any other qualifications such as a diplomate of it?

A Well, that is -- "diplomate' means that I have been accepted by the board as a fully-trained specialist in orthopedic surgery.

Q All riqht. Will you explain *to* the jury what orthopedic surgery consists of?

A Orthopedic surgery is the branch of medicine that deals with the diaqnosis and treatment of diseases and injuries to what we call the locomotor system, that *is,* the parts of the body that move you about, the bones and joints and muscles and tendons and liqaments of the back and the arms and leqs.

Q And what is the specialty *of* podiatry?

A Podiatry *is* a -- not really a medical specialty. It's a -- it's A separate field by itself. It's not part of reqular medicine and deals only with the foot.

Q Okay: Can a podiatrist treat other areas beyond just the foot, and if so, what areas?

A Umm, well, I don't know of any hospitals in Cleveland where they can treat anythinq beyond the foot. They -- they claim expertise in the ankle, but not above the ankle, But the -- I don't know of any hospitals where they're allowed to do eurgery of the ankle,

Q Are podiatrists licensed the same as an M.D., for example?

A Well, they are licensed by the state but not the same. I mean when I was licensed, I had to take a medical examination for my licensure. They certainly didn't take that, They take same sort of exam for podiatry, but it's not the same exam.

Q Have you had accanion to treat persona with ankle injuries?

A Oh, my, yes. As an orthopedist, I treat a lot of ankle and foot injuries,

Q Does that include fractures and sprains of ankles3

A Absolutely.

Q Have you had occasions to treat persons with foot injuries?

A Many ,

Q Such AB injuries sustained by and alleqed by Lillian Gflliam in this case?

A Yes.

Q Are there different types of fractures of bone, and can you explain these to the jury?

A Well, you can -- yes. There are many different kinds of fractures. Sometimes they, fractures,

are divided into a complete fracture through the bone a8 opposed to a chip fracture. A chip fracture is just a small piece of bone which is pulled off with a liqament when the joint is sprained. Instead of tearinq the liqament, you tear the bone where the liqament is attached, and a piece of bone comes off with the liqament.

Then, of course, there's open fractures and closed fractures and comminuted fractures, but basically I think that what vour question was interested in mostly is what is a chip frecture, which is a small sliver of bone that's pulled off when a joint is sprained and instead of tearinq the ligament, it just pulls off a little piece of bone.

Q Will this type of fracture show up on an x-ray?

A *Yes.*

Q Now, are you familiar with bunions?

A Oh, *yes.*

Q Can you explain to the jury what a bunion io and where it's located?

A A bunion is a deformity of the first -- what we call metatarsal phalanqeal joint, which is the big toe joint at the foot. At the base of the large toe, the big toe goes aut toward the outer

side of the foot. It goes into what we call valgus. Instead of being this way, it goes across the *toe* and the base of the bone sticks out and the deformity of the toe going across and the bump is called a bunion.

Q All right. Now, in this case did you have occasion to examine Lillian Gilliam?

A Yes, sir.

Q All right. And when was your examination?

A I examined Ms. Gilliam on March 3rd, 1988.

Q All right. How did she come to be referred to you for examination?

A I believe you sent her here. Yes, sir.

Q Okay. Do *you* charge for your services for examining Mrs. Gilliam?

A For my time, of course.

Q Okay. And for your time for being here today?

A Yes.

Q And did you charge me for your time?

A Well, *yes.*

Q Okay. Just so the jury understands --

A Certainly.

Q -- that you're testifying on behalf of the defendant in this case.

A Well, I'm testifying on the request of the

defendant, I'm not testifying on behalf of anybody.

Q All right.

Now, during the course of your examination of Mrs. Gilliam, did you receive any records from our office?

A I believe I did. I have -- I believe the only record which I have here is a report from Dr. Arnold on Miss Gilliam dated October 10th, '86.

Q Do you recall receiving any records from our office from Complete Foot Care, the actual records?

A Uh --- no.

Q Did you receive the records from Huron Road Hospital?

A NO.

Q Is it necessary to review records such as that in order to examine Mrs. Gilliam?

MR. POMERANTZ: Objection.

A Well, at times it is. In this particular case, it was not,

Q Okay. Now, during the course of your examination of Mrs. Gilliam -- well, what does your examination consist of?

A Well, I first took a history of the patient and then took -- did a physical examination and took x-rays.

Q All rfqht. Would you explain to the jury what the history is?

A A history is a series of questions which are asked sort of -- they're not leading questions. They're what we call open-ended questions in which I try to find out from the patient what's wronq with her, how it happened, hots it was treated, what's still going on at the time that I examined her.

Q Okay,

A It all depends on what she tells me. I'm just sitting there asking her questions and she -- it's up to her to give me the answers.

Q A13 right. Now, did you obtain a history from Mrs. Gilliam?

A Yes, I did.

Q And what was the history related to *you?*

A The patient stated that she was injured on October 5th, 1985, when, as she stated -- this is a quote -- "I accidentally stepped into a small hole and twisted my right ankle", unquote, She said that she *was* wearing what she

called nurse's oxford shoes, which are those so-called "sensible shoes", lace-up, sensible shoes at the time. She was asked what kind of shoes she wore, and she said nurses oxford shoes.

She said that all of the pain and the swelling was around the ankle at the time of her injury. She said there was no swelling in the foot or the metacarpal phalangeal joint, that is, the joints at the base of the tone. She was asked that specifically, and her answer was that there was no swelling or pain in those joints at the time of the accident.

She stated that she had been told that she bad, quote, "a fracture of the little bone shown on x-ray", unquote, in the first metacarpal phalangeal joint, but this was later on, not at tho time,

Q All riqht.

A Prior -- or than she had seen -- since the accident, she had been tinder the care of Dr. -- she said Dr. Marvin Arnold, whom she saw two months after the accident.

She said the treatment consisted of whirlpool, heat treatments, and injections into

the first metacarpal -- metatarsal phalangeal joint. Again, that's the base of the big toe.

She said that she'd had -- subsequently had surgery of the large toe and removal of a piece of bone, this little piece of bone she said she had,

She said that prior to the operation -- prior to seeing Dr. Arnold, she said she only had ankle pain, she never had toe pain, she said.

At the present time, the patient stated that her right ankle pain had improved, she stated she still had some pain located on the inner side of the ankle, the pain was said to be intermittent, that is, it came and went, and was mild in degree. She said it was made worse by cold and damp weather and it was relieved after a while just going away by itself.

And she said it came on at intervals of about once every one to four weeks and lasted one to two hours. That is about -- sometime between one and four weeks she only had one to twa hours of pain.

There was no spread of the pain from the ankle, it stayed tight there. She said that the

symptoms in her riqht first metatarsal - -- metatarsal phalanqeal joint, that io, the biq toe joint, had persisted and consisted of what she called stiffness but no pain,

The patient stated that she worked in a baby day care center part-time, and she had returned to regular work one month after her -- one month after accident -- one month after the surgery -- I'm sorry -- and worked for two months, but that she had to leave due to ankle swellinq if she was on her feat too lonq.

She said there had been no previous or subsequent injuries or symptoms in the above areas, that is, her foot and ankle. She said that she had sustained a bruise of the heel six years previously, with symptoms for one to two weeks, She said she had been in good health with no serious illnesses or operations,

Q Doctor, as a result of obtaining the history, did you conduct an examination?

A Yes, I did, The examination was limited only, of course, to the right ankle and riqht foot because that was the only part that she complained about, The rfqht ankle joint revealed no swellinq, There was no fluid in the

joint, there was no inatability of the joint.

Range of motion in the joint was normal in all directions and was pain-free, that was to say that the patient could bring her foot up normally, she could bring it down normally, she could twist it side to side normally, and all of these motions were totally pain-free.

There was some stiffness in the first metatarsal phalangeal joint in the large toe, particularly bringing the toe down from the horizontal position, bending it towards the sole of the foot, but the motion was painless and there was no tenderness about the joint.

Q As a result of your examination, was it necessary to conduct any tests?

A Yes, I took -- had some x-rays taken.

Q Do you have those x-rays with you today?

A Yes, I do.

Q All right. Would you pull out the x-rays that ate numbered Defendant's Exhibits A throuqh G and identify the x-rays and show them to the jury, please?

A Certainly.

Q The first x-ray, Defendant's Exhibit A.

A The first x-ray? A, is an x-ray taken by the

Cleveland Foot Surqeons on Auqust 27th, 1982, and it shows the x-ray of the -- of the ankle.

This is the ankle here (indicating) and that's a perfectly -- this is the tibia, the shin bone. This is the fibula, the little bone on the side, This is the foot down here,

That's a perfectly normal ankle, and this is a side view of tho foot and shows an essentially normal ankle here. There's a heel spur back here, but that has nothinq to do with this case and apparently had no symptoms.

Q All right, Doctor, if I might stop you now, This was in 1982 that this x-ray was obtained?

A Yes. That's what it says so -- these are the ones that were sent to me,

Q And this x-ray was sent to you by my office?

A Yes, sir,

Q Is a bunion shown there or is there any chip --

A You can't see the bunion on that one, no,

Q -- shown on the toe?

A No, there's no chip shown.

a Now, Defendant's Exhibit B, can you identify that?

n This is an x-ray taken March 19th, 1987. It's a very poor quality x-ray.

Q Who obtained that x-ray?

A Oh, this is from Cleveland Foot Surgeons, again, on 16 March '87. And it's an x-ray of the side of the foot. Here's the ankle, but it's a very poor x-ray, and you can't really see very much on thin x-ray.

This is an x-ray --

Q Is this x-ray marked here?

A I'm sorry. Yeah, this one Is Auqust 27th, '82 aqain.

Q What is the exhibit number?

A This is C, and this shows x-ray of the foot. This is '82 and this is a normal-appearins foot. There's a very slight bump here, but that's normal ,

Q All right, Now, that --

A This is '82 again.

Q If I may stop you at that point, the hump on the first MP joint --

A This is the first MP joint. nerds the large toe, this is the metatarsal, and these are the lesser toes, Here's the ankle back here,

Q Okay, Now, the bump -- is there any chip shown on the bump there --

A No.

Q -- on that x-ray?

A No, there's not,

Q Okay, what is the next --

A This is D. Now, this is an x-ray taken December 9th '85, and it shows A little thing circled here which is an -- it's A very small chip on that joint there, and there's an arrow drawn to one here which shows a little chip fracture on the top of the first metatarsal phalangeal joint of the foot,

Q All right. Now, if we can focus on this exhibit for a moment, Doctor --

A This is D.

Q This is Defendant's Exhibit D, and who obtained this x-ray?

A It doesn't say.

Q All right,

A But it shows the same patient number, 4614, as the previous films from the Foot Clinic,

Q Now, this was an x-ray provided to you but not one taken by you?

A That's correct,

Q Now, can you focus an the, top part of that x-ray where the circle is shown,

A Let's turn the film so you can see it better.

Q Now, did you draw that circle on the x-ray there?

A No, the x-ray came with that circle drawn on it.

Q Okay. This is a copy of the original, is that true?

A Yes, these are copies.

Q All right. Now, what is depicted in that circular area on the x-ray?

A There is a very minute little chip of bone.

Q All right, Is there anything wronq with the MP joint other than that chip?

A No. Actually -- actually, you can see -- aqain here's the -- here's the joint, and it's -- the toe is angled sliqhtly this way, but that's essentially normal. And if you compare it to x-rays taken in 1982 --

Q All right, And whiah exhibit: is that?

A This is C -- the toe is essentially the same. The amount of bunion is really essentially unchanged.

Q Okay. Mould you point to the area of the bunion?

A Well, this is where a bunion would be, but it's -- it really *is* hardly there. I don't really think that's a significant amount of

bunion, actually.

Q All right, Now, bunion --

A You would expect. to see the large toe angled in this direction and a big bump out hers,

Q Okay,

A But she really doesn't: have it,

Q Rut on the x-ray shown in Exhibit D, it's beginning to form.

A Well, I think it's really about the same as it was three years previously,

Q Okay, Now, in x-ray D on the left side of that x-ray, would you focus on the point where the arrow is and tell the jury what that depicts?

A That shows a very small chip fracture, that is, a very small sliver of bone that is rounded off. There are no sharp edges. This indicates that it's at least five or six months old, that it's been there, and that the healing process has rounded it off so it no longer has any -- any sharp surfaces.

Q If I can focus on your comment there, how can you -- can you explain *to* the jury how you determine the age of a chip fracture again?

A Well, you can't determine exactly how old it is. You can determine that it's older than fresh and

that is, when you first pull a piece of bone off, it's got sharp edges, just as when you chip a piece of glass, the edge of the chip is sharp and then if you let it -- put it in an stream of water, let it bang around far awhile, the glass wears down and rounds off and that's exactly what happens with the little piece of chip here.

It's lying in the body. The body rounds off the -- absorbs the sharp edges and rounds it off and after about five or six months, it begins to look like that. That could be two or three years old, but it's at least five or six months to be nice and smooth like that.

Q All right. Now, is that chip lying in the joint?

A No, it's lying on top of the joint. The joint is really here, and this is really lying in the soft tissues above the joint.

Q Okay. Now, did you have any other x-rays?

A Then I have the x-rays that were taken here.

This is Exhibit E, which is again an x-ray of the ankle, the right ankle, taken in my office on March 3rd of '88. And this is a perfectly normal ankle. This is the shin bone, this is the fibula, the small bone, There's the,

bone from the foot that goes in the ankle joint. This is the heel. The foot is qoinq off this way (indicatinq) and that's perfectly normal.

Q All right.

A Except for a little -- I say she's qot a heel spur, but that's not part of this at all. She had no trouble from that.

Q Did you obtain -- and what other x-rays did *you* obtain?

A This is F, which is an x-ray of the riqht ankle from the front, Again, the shin bone and the fibula, the little bone on the outer side, the ankle. This *io* an oblique view, turninq the foot sliqhtly so you qet an angle view, and these are all normal x-rays.

Ankle x-rays are perfectly normal.

Q All right Exhibit F, aqain, was obtained in your office.

A These were taken also March 3rd, 1988 in my office.

Exhibit G is also an x-ray taken in my office March 3rd. Thin is the foot itself, taken from the side. Again, the leg and the ankle, the foot, and now right here where you had a -- let me draw it where you can see it.

We'll draw an arrow here, draw a circle around it.

The chip fracture which she had before, there's still a piece of bone there, which she had had before.

Q Is the bone still there in this x-ray?

A Yes.

Q Okay,

A Still there.

Q In other words, so I can clarify that, the chip part that was supposed to be removed is still present?

A Yes.

MR. POMERANTZ: Objection; leading.

A Yes, the chip of bane that was present on the previous x-rays is still there.

Q Okay, Let me rephrase the question in light of the objection.

Explain to the jury again what is depicted in that circular area.

A The pntt that I've circled with the wax pencil indicates the small chip of bone that was present prior, on the prior x-ray, and is still present today.

Q Did you obtain any other x-rays?
A And this is another x-ray of the foot taken Auqust -- or taken March 3rd, 1988 in my office. This is the view from the top of the foot lookinq down. Now we see that the base of the bone has been removed and the side of this hone has been removed. I think it can be seen best by comparinq it to the previous x-ray --
Q Before we compare it, Doctor, which x-ray exhibit is this?
A This is H.
Q Okay. And this x-ray was taken in your office?
A In my office on -- at the time of the examination, March 3rd.
? Now, which exhibit x-ray will you compare it to to?
A Compare it to the one taken December 9th, 1985.
Q And who took that x-ray?
A The Foot Clinic.
Q All right. And which exhibit is it?
A This is D.
Q Okay, Now, explain to the jury the comparison of those two x-rays,
A You can see that the base of this bone has been removed, You see this bone is shorter and

doesn't have that big base, and the side of this bone has been removed like that,

Q Okay.

A That's a -- what we call a Keller bunionectomy, was described by Dr. Kellar many years ago, and this is the standard operation for a bunion.

Q Now, if you know, is the chips that was previously removed, is that still present in the x-ray H OR the riqht?

A Well, you can't really see it because the chip is on the top of the joint. So you're looking through it, and you actually have to have a view from the side in order to see it, and you can't see it on this x-ray.

Q All riqht, But it was shown by the previous x-ray?

A It was shown by the one I took in the office hers,

Q NOW, do you have any other x-rays?

A No.

Q Now, the x-rays that you've just shown us those taken in your office, which I believe are Exhibits E, F, G, and A --

A That's correct.

Q -- do those fairly and accurately depict the

condition of Lillian Gilliam on March 3rd, 1988?

A Yes, they do.

Q Have you performed treatments or surgery on patients in your experience who have, a bunion problem?

A Oh, yes. I've taken care of many of them.

Q After you have reviewed these x-raye and examined Mrs. Gilliam, do you have an opinion within a reasonable medical certainty as to whether or not the surgery was necessary in her case?

MR. POMERANTZ: Objection.

A Well, I did not see her at the time of her original -- the time of her surgery, but based on her x-rays, it does not appear that the -- that the bunion deformity was significant enough to have warranted surgery.

Q Doctor, in your experience have you treated patients who have suffered from pain from similar injuries as suffered or complained of by Mrs. Gilliam?

A The sprained ankle?

Q Yes.

A Yes.

a And have you treated patients with injuries to

the first MP joint who have experienced pain?

A Yes.

Q Can you tell the jury what kind of pain they might -- might complain of?

MR. POMERANTZ: Objection.

A Well, in my experience as a practicing orthopedist, patients who have a sprained ankle have immediate pain and swelling in the ankle. They sometimes have some black and blue area, and this subsides and goes away as the sprain heals.

As far as injury to the first metatarsal phalangeal joint, particularly as Par as a chip fracture of that joint, they would have immediate pain and swelling and black and blue area from the fracture. And this, as well, would generally subside by itself and 90 away.

Q All right. In yaur experience, would you expect a person with this type of injury to seek medical attention immediately?

A Yes.

MR. POMRRANTZ: Objection,

A I think in my experience that people who have significant sprains of the ankle or who have a' chip fracture of the metatarsal phalanqeal joint

would seek medical care very shortly because it would be painful.

Q Ate you -- Doctor, are you familiar from your experience, trainiq, and treatinq of other patients as to the nature of causes for chip fracture such as that complained of by Mrs. Gilliam?

A Yes.

Q Can you explain to the jury what can cause this type of injury?

A A chip fracture is, as I mentioned earlier, basically a sprain. What it is, the joint is put throuqh a ranqe of motion in a particular direction beyond that which it normally can qo, and instead of tearinq the liqament, you tear off a little piece of bone, much as if you had a pole that was being held up by a quy wire and you push the pole in a particular direction, instead of breaking the quy wire, you may pull up the stake that's holding the guy wire down. And that's -- the stake would be the chip fracture? the part where the ligament would attach to the bone.

Now, a chip fracture will occur, obviously, on the side of the joint from which

you are pushing. That is, if you're pushing on the pole, it's the guy wire on your side of the pole that's going to be pulled UP as you push the pole away from you.

Similarly, if you have a chip fracture on the top of the metatarsal phalangeal joint on the big toe, if it's on the top of the joint, then it's because the toe has been bent down too far and it pulls the liqament on the top of the joint and pulls a piece of bone off, And so that this type of a chip fracture which we see in Mrs. Gilliam, Ms. Gilliam, is due to pushing the toe down towards the sole of the foot too far and tearing the piece of bone off tha top of that metatarsal,

Q Doctor, I'm going to ask you to assume the following facts are true.

Assume that Lillian Gilliam was 75 years old at the time of the incident she is complaining of. Assume that she was standing at a table and that she turned away from the table, and as she turned away from the table, she stepped into a hole.

Assume that the hale was sliqhtly larger than her foot, and as her foot went into the

hole, her right foot, assume that she twisted her ankle inward toward the inside of her riqht foot so that the left side of her riqht foot. and ankle went down in the hole, and the riqht side of her riqht foot and ankle bent. Assume further that ehe did not fall.

Assume that she was wearinq a pair of nurse's white shoes laced up, And assume that she did not seek treatment for about 60 davs.

Based upon these facts, your education, training, your residency, your practice of medicine, your teaching at the school of podiatry, and your examination of Mrs. Gilliam and her records, do you have an opinion beyond a reasonable medical certainty as to the cause of the injury alleqed by Mrs. Gilliam?

A Yes, I have an opinion.

Q Would you explain that opinion to the jury?

A Well, it's my opinion that based on all of the facts as you gave them and on what she told me, that she possibly sprained her ankle on one side as she twisted it. It is totally improbable, I would say impossible, for her to have sustained a chip fracture of the large toe or any way injure the large toe in this type of an injury,

particularly since she was wearinq sensible lace-up oxford nurse's shoes.

Q Would you explain to the jury why she could not sustain a chip fracture wearinq these shoes?

A Well, as T mentioned a moment ago, a chip fracture is due to moving the joint beyond its normal range of motion, and in this particular case, it would have to be downwards towards the sole of the foot, Well, if you've sot a solid sole of a shoe underneath your toe, You simply can't move the toe throuuh a range of motion that would cause such a chip fracture. It would be totally impossible.

MR. O'DONNELL: Okay, Thank you, Doctor.

EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MR. POMERANTZ?

Q Doctor, can I see your notes?

A Certainly. (Handing).

MR. POMERANTZ: Thank you,

VIDEO TECHNICIAN: We're off the record,

BY MR. POMERANTZ:

Q Doctor, you examined my client, Lillian Gilliam, on March 3rd, 1988, is that correct?

A That's correct,

Q And that was the first time you had ever seen her?

A Yes, sir.

Q You were hired by Mr. O'Donnell to conduct that examination, am I correct?

A That's correct.

Q You did not render any treatment to Mrs. Gilliam at that time, did you?

A No.

Q And you've not seen Mrs. Gilliam since that time, have you?

A No.

Q And you're not scheduled to see her in the future, are you?

A Not that I'm aware of, no, sir.

Q The purpose of your examination was not to render treatment to Mrs. Gilliam, was it?

A NO.

Q Rather, the purpose of that single examination was to write a report for Mr. O'Donnell and to testify if necessary?

A The purpose of the examination was to qfve an independent medical evaluation of Mrs. Gilliam and send a report of that independent medical

evaluation to Mr. O'Donnell, that's correct.

Q Doctor, how lonq did that examination of Mrs. Gilliam last?

A I don't. have any idea, I don't time ita I ao in the examining room, I take a history, I examine the patient, and I leave. I spend as much time as is necessary to do a good, thorouqh, complete examination of the patient's problems. Of course, it doesn't take much time if there's nothing wronq, but I'd have no idea how lonq it took.

Q And so then you would aqree that a thorouqh examination is important before you can make an evaluation of a patient such as this?

A Of the part that is a problem, yes, sir.

Q Did you -- can you tell me how tall Mrs. Gilliam is?

A Her heiqht was not -- was not one of the problems in her -- that she complained of, so I did not examine her height.

Q All right, Doctor, I'm going to ask you certain questions that can be answered with a yes or no answer.

A I will answer them the way --

Q If you can not answer --

A I will answer them completely. I will not -- I will not be dictated as to how I will answer the qusetion. I will answer as completely and as truthfully as I possibly can. Now, ask all the questions you like.

Q Doctor, if you cannot answer a yes or no answer, just tall me that and then we'll 90 from there, okay?

MR, O'DONNELL: Objection.

A Certainly.

Q Did you measure her weight on that examination?

A Her weight was not problem in this exam. No, I did not,

Q Doctor, please. A yes or no answer.

A I said --

MR. O'DONNELL: Objection.

A 1 just answered your question,

Q Doctor, did you take her temperature?

A She didn't have a fever so I didn't take her temperature.

a Did you take her blood pressure?

A Her blood pressure was not part of her complaints in this examination. I'm an orthopedic surgeon, and I generally don't take patients blood pressure, so I did not.

Q So the answer is no?
A That's correct.
Q Can you tell me what medications she was takinq at the time of your examination?
A As far as I know, she have not takinq any, but I don't know.
Q Did you observe her gait as she walked?
A Yes, sir.
Q Okay. Is that noted in your report?
A No.
Q Now, when this examination was over, you wrote a report on the same day, I believe, io that correct?
A That's correct.
Q And you sent a copy of that report to Mr. O'Donnell?
A That's correct,
Q You did not send a copy of that report to my offices, did you?
A No.
Q Prior to appearinq hare --
A I didn't know I should.
Q Prior to appearing here today, did you have the opportunity to review records of the Complete Foot Care Center, the offices which treated

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Mrs. Gilliam?

A No, sir.

Q Did you have an opportunity to review a report of Dr, Arnold's from Complete Foot Care?

A Yes, sir,

Q Can you tell me how many times Mrs. Gilliam has been seen by the foot doctors at Complete Foot Care since the fall of 1985?

A No, sir.

Q If I represented to you that she had been seen in their offices some 15 times, would you accept that?

A I wouldn't doubt it. I think podiatrists would do something like that, yes, sir.

Q I take it that you're familiar with the discipline of podiatric medicine?

A I taught there for 20 years, I was a professor at the college, Yes, sir.

Q All right. Would you agree with me that the discipline involves the treatment of diseases and injuries to the muscles, tissues, and bones of the foot?

A Yes, sir.

Q And would you agree that a licensed doctor of podiatric medicine is qualified to treat

injuries to the foot?

A He's supposed to be, yes, sir.

Q And would you agree further that a doctor of podiatric medicine is qualified to read x-rays and other diagnostic tests?

A Of the foot?

Q Yes.

A He's supposed to, That doesn't mean he does, but he's supposed to.

Q And a doctor of podiatric medicine is qualified to perform certain types of surgeries to the foot, Is that correct also?

A He's supposed to be able to, yes, sir. Doesn't mean that he can, but he's supposed to be able.

Q Doctor, you said that you did not review the office notes of the Complete Foot Care Center,

Did you review the medical records from Huron Road Hospital relative to Mrs. Gilliam?

A No, sir.

Q Did you review any other medical records for Plrs. Gilliam other than Dr. Arnold's report?

A NO.

Q Doctor, you work with other doctors in your offices, is that: correct?

A That's correct.

Q And I take it that it's not unusual for one doctor in the office to confer with another doctor regarding a particular patient?

A Well, if there's a question about it, that's true.

Q By the same token, I assume that on occasion a patient of one doctor is seen by another doctor in the office?

A We try to follow our own patients, but sometimes we're not available. That sometimes happens.

Q I take it that's not an uncommon occurrence in many medical offices.

MR. O'DONNELL: Objection.

A I don't really know about many medical offices. I just know about ours.

Q On the occasion when you saw Mrs. Gilliam, you took an x -- I'm sorry -- you took a history from her, is that correct?

A That's correct.

Q And would you agree with me that a thorouqh history is an important element of a complete examination?

A A good history is, yes, sir.

Q In fact, the history taken from the patient is an aid in reaching a diagnosis, is that correct?

A It should be, uh-huh.

Q And the history qiven by the patient to the doctor is often instrumental in determining the cause of an injury as well?

A It should be, yes.

Q Therefore, there's nothfnq improper if the doctors at Complete Foot Care used the history qiven by them -- by Mrs. Gilliam in determininq the cause of her injuries.

MR. O'DONNELL: Objection.

A Well. I don't know what: the history was that she gave them, of course. So I don't know whether it was improper or not.

Q Now, you testified that you took a history from Mrs. Gilliam when she came into your office?

A That's correct.

Q And again, a thorough history is an important tool in evaluating the patient?

A I think you've asked that. My answer is still yea.

Q And in that history Mrs. Gflliam told you that she had injured her right foot when she accidentally stepped into a small hole on October 5th, 1985, correct?

A No, that's absolutely incorrect. As a matter of

fact, Mrs. Gilliam told me specifically that she injured only her ankle and that she did not injure her foot when she stepped in the hole,

Q Did she give you a history of having accidentally stepped into a small hole on October Sth, 1985, Doctor?

A That: she did, yes.

Q And did she also tell you that she bad never injured her riqht foot before October 5th, 1985?

A That's what she said.

Q And she told you that she had not injured her right foot since that time?

A That's what she said.

Q Doctor, you noted in your history that Mrs. Gilliam suffered a bruise or a contusion to her heel some six years ago, is that correct?

A That's what she told me,

Q Would *you* agree that that injury did not involve the first toe of the right: foot, by hiotory?

A I -- the heel didn't involve any mote than the ankle did, that's riqht.

Q When you saw Mrs. Gilliam on March 3rd, you also conducted an examination of her, correct?

A Yes, air,

Q And you also took -- had x-rays taken on that

day, is that correct?

A That's correct,

Q Doctor, you showed us x-rays in Direct Examination that you took when Mrs. Gilliam came into your office, Am I correct that it is your opinion, upon reading those x-rays, that Plrs. Gilliam still has the fractured piece of bone in her right foot?

A There is still a chip of bone on the top *of* her large toe, yes, sir.

Q All right. And for point of reference, those x-rays were taken on March 3rd of 1988?

A That's correct,

Q So then she still suffers from the same problem she ha6 had since -- since October 5th, 1985?

A The answer to your question is no, First of all, on October 5th, 1985 she didn't suffer anything in her large toe. Specifically, she told me she had not,

Number two, when I saw her on -- on March 3rd of 1988, she didn't suffer from her large toe at all. So that I can't -- I can't -- the answer to your question was no, she was not suffering either fram something she didn't have in October of 1985 nor something which she

didn't have in March of 1988.

Q Doctor, you reviewed x-rays taken on December 9th, 1985 --

A Yes, sir.

Q -- from Mrs. Gilliam, is that correct?

A That's correct.

Q At that time she suffered from a chip fracture over the first metatarsal phalangeal joint of the riqht foot, is that correct?

A No, that's not correct. The x-rays on whatever it is --

Q December 9the

A -- December 9th show an old chip fracture on the dorsum *of* the top of the first MP joint of her right foot. Number one, it does not show that she's suffering from it at all.

And two --

Q But she --

A Let me finish my question, You know, I'm answering your last question first.

It does not show that she is sufferinq anything, It just shows an old chip fracture and it doesn't show any swellinq or anythinq like that and --

Q But she had a chipped fracture, of the right

first metatarsal phalanqeal joint of the riqht foot on that day?

A She had an old chip fracture on that date, that's correct.

Q And, in your opinion, she still has that chip on March 3rd, 19881

A She still has a chip there, That's correct.

Q Now, what are the various possible courses of treatment which can he followed for a chip fracture of this nature?

A Well, I would say in 99 and 99/100ths of the cases, nothing, The little chip fracture qets better by itself. It's acutely painful, it hurts for awhile, and the pain qoes away, and the little chip of bone just stays there imbedded in the scar tissue from the sprain of the joint which occurred and nothinq is done and nothing should be done.

Q In the cases in which that course of treatment is not used, what other course of treatment can be followed?

A Well, I don't really know if there's anything else that needs to be done. I don't -- in 26 years of orthopedic surgery, I've never had to do anything else except just leave it alone,

And I think that that would be the case,
I think that if the patient still had pain in that area? I think the first thins that you would look for is some other cause of the pain. I don't think the chip fracture would be it.

Q Doctor, your offices are equipped with thermogram equipment? is that correct?

A That's correct.

Q Would you explain for us exactly what a thermoqram is?

MR, O'DONNELL: Objection; relevance,

A A thermoqram *is* a -- an infrared picture taken of the patient's skin which indicates the skin temperature in that area and the infrared picture *is* then translated by a computer into a colored television picture, each color representing one degree difference in temperature of the skin.

Q And what is the purpose of the thermoqram?

A Well, it's a diagnostic --

MR. O'DONNELL: Objection. I'm going to note a continuing objection on the relevance of this line of questioning.

A Thermogram is used as a diagnostic tool

to indicate inflammation, to indicate nerve root irritation, to indicate vascular, that is, blood supply problems, that sort of thing.

Q And would you expect an abnormality on the thermogram to indicate an area of pain?

A No. It might indicate what the cause of the pain in that area. It might indicate -- it doesn't actually show pain. It shown the causes of the pain.

Q All right. Even though you have these machines at your disposal to take a thermogram, you did not take a thermogram of Mrs. Gilliam, did you?

A There was no indication to take a thermogram --

Q Okay. Thank you, Doctor.

A -- of Mrs. Gilliam because --

Q Doctor, in relation to this case --

MR. O'DONNELL: Objection. Let him answer the question.

MR. POMERANTZ: This question --

MR. O'DONNELL: We're not going forward until he answers the question.

MR. POMERANTZ: Tom.

Motion to strike Tom's comments.

Tom, I have the right to ask for a yea or

no answer, and if he can't give a yes or no answer, he should so Indicate, and I am going to hold him to that,

A Mrs. -- I did not take a thetmoqram of Mrs. --

Q Thank you, Doctor.

Now, Doctor, in relation to this case --

A -- because when I saw her --

Q Doctor, please. Doctor, please. I have the right to --

A I have a right to finish -- I have a riqht to finish the question.

Q Please, if you can not give me a yes or no answer --

A when you get done screaming at ma, I will finish the question.

Q Doctor, in relation to this case you reviewed.

MR. O'DONNELL: Objection.

Q -- the x-rays taken by Complete Foot Care --

MR. O'DONNELL: Objection.

Q -- prior to her surgery, is that correct?

MR. O'DONNELL: Objection.

A When I saw Mrs. Gilliam, I did not take a thermogram because there was none indicated because she didn't have any pain in her joint; and secondly, the previous surgery would have

caused the thermogram to be abnormal in any case.

MR, POMRRANTZ: Motion to strike as unresponsive to my question,

MR. O'DONNELL: Objection.

Q Doctor, in relation to this case you reviewed --

MR. O'DONNELL: Objection.

Q -- the x-rays taken --

MR. O'DONNELL: Objection.

Motion to --

Q -- by Complete Foot Care Center prior to her surgery, Is that correct?

MR. O'DONNELL: Objection, Motion to strike any testimony regarding a thermogram as not being relevant because it didn't involve in this case.

A Now, I'm sorry, What was your question?

Q Did you review the x-rays taken by Complete Foot Care Center prior to her surgery in relation to this case?

A Yes, sit.

Q And those x-rays revealed a piece of bone which had broken away from the bone over the first: metatarsal phalangeal joint from the tight foot, is that correct?

A It showed an old chip fracture, that's correct.
Q Then I take it your diagnosis for Mrs. Gilliam at that time would be a chip type fracture of the first metatarnal phalangeal joint of the right foot?
A My diagnosis of firs. Gilliam from those x-rays would be a remote, that is, old, chip fracture overlying the first metatarsal joint of the right foot, that's correct.
Q Now, is this type of chip fracture normally the result of some sort of trauma?
A Yes, sir,
Q And tripping in a hole would be one type of trauma?
A Only if she were barefoot.
Q In other words, tripping in a hale is not a trauma?
A Tripping in a hole would cause this only if she didn't have any shoes on.
Q That's not my question, Doctor,
A Oh, I'm sorry. There's a new question.
Q Tripping in a hole would be one type of trauma, is that correct?
A You mean -- I'm sorry, I don't follow the other question. All right. The question is, is

tripping in a hole a trauma?

Q That's correct.

A Tripping in a hole is a trauma, *You* can break an arm that way.

Q In the history *you* took from Mrs. Gilliam, she did not relate to you any other trauma other than stepping in the hole on October 5th, 1985, is that correct?

A She denied any other trauma, that's correct.

Q Does a bone chip normally elicit pain in a patient?

A Yes, when it's acute. Not when it's old like this, But normally when it's acute, it does. When it's a fresh chip fracture, it would, *yes*, sir.

MR. POMERANTZ: Motion to strike the last part of the answer as not being responsive to my question,

Q And is surgical removal of the bane chip one proper method of treatment in such a case?

A NO.

Q You would never remove a chip fracture by surgery.

A Of any joint?

Q Of any joint.

A Oh, now we're not talking about this joint?

MR. O'DONNELL: Objection; relevance.

A Oh, come on, If A chip fracture -- if a chipped piece of bone were free and moving in the joint and was caught in the joint surfaces, then it should be removed, That's the only -- that's the only indication for removal of a chip fracture.

That's not this case you're talking about, tight, because this case was not so.

Q Now, your single examination of Mrs. Gilliam was on March 3rd, 1988, That's some 26 months after the surgery was performed on her foot?

A I know it was March 3rd. Whatever her surgery was, I presume it was in December. It's about that; sounds about right.

Q Yet on that date you found stiffnesss on the first metatarsal phalanqeal joint especially with plantar flexion or flexion downwards, is that correct?

A That's correct, uh-huh.

Q Now, when you identified the chip type fracture in the x-rays taken of December 9th, 1985, would it be your opinion that that bone chip must have

broken away from the bone at some time before that x-ray?

A A long time before that x-ray? yes, sir.

Q Now, you're of the opinion that the acuteness of the bone chip cannot be determined by the x-ray?

A What I meant was that you couldn't say whether it was more than -- how much more than six months old. It was not a fresh fracture? that's obvious. But what I meant in my report was that the exact age of it cannot be determined. It's at least six months old.

Q In other words, from the x-ray you can not tell when the bone broke away prior to the taking of that x-ray?

A I can -- the answer to your question is I can tell when it did not, and that is, it did not break away within the last five or six months. It was older than that.

Q Doctor, you're being paid by Mr. O'Donnell to testify here today, fa that correct?

A Being paid for my time, that's correct,

Q And you're being paid by Mr. O'Donnell?

A Yes, sir.

Q And this is not the first time you have testified on behalf of a defendant in a civil

case either by deposition or in court, is it?

A No, it's not the first time.

Q In fact, you previously testified on behalf of the defendant against an injured person In a trial in which I represented that: person, is that correct?

A I don't remember, T don't remember that sort: of thing. The last --

Q I understand. There are a lot of them.

A The last time I testified was on -- I was asked to testify by the plaintiff. So I don't: remember what -- I see the patient, I testify, I don't remember who asked me.

Q So if I told you that in that case you also testified on behalf of a defendant against an Injured person, you would have to accept that.

MR, O'DONNELL: Objection; relevance,

A I don't have to accept anything. I certainly would accept your word if you told me that was so. I think you're an honorable person,

Q And you would also agree with that you testified that that person's injuries were not related to her accident.

MR. O'DONNELL: Objaction;

relevance,

A I don't have the foggiest idea what was wrong. It may very well be that the other case the patient didn't have anythinq related to her accident either, I don't know, I don't remember.

Q Doctor, in your career, how many times have you given paid testimony either by deposition or in court on behalf of a defendant against an injured person?

A I don't have any idea, I don't keep track of that sort of thinq and --

Q Would it be over --

A -- €or the most part I just give my testimony. 1 don't remember, actually, if I was testifying, who I was asked to testify by.

Q Would you say that you've testified on behalf of the defendant against an injured person at least a dozen tinea, either by deposition or in court?

A In the last 26 years, yes, I think that's fair to say,

Q Would it be over 50 times?

A I don't know. I don't: keep track. More than a dozen, but: other than that I can't tell you. Tn 26 years I just don't keep track.

Q But it could be over 50 then?
A I don't keep track.
Q So you have no way of knowing?
A I don't keep track. I'm trying to tell you that. What I have testified to thio morning, I know, for a fact, I know Is true. I am certain of what I have said thio morning. When you asked me how many times I have testified, I'm not certain, and when I don't know, I say so.
Q In the past 12 months how many times have you given paid testimony?
A I don't know. I don't keep track of them.
Q Too many to count?
A I don't keep track of them.
Q More than you can count on one hand then, I take it?
A Simply do not keep track of them. What I have testified to I am sure ofe What I am not sure of, I will not testify to.
a But you would agree --
A That's all I can tell you. My answer would stand. I don't know.
Q Would it be over a dozen times in the past year?
MR. O'DONNELL: Objection,
A I don't know.

Q So you can not say you have testified less than a dozen times?

A I don't know.

MR. O'DONNELL: Objection; asked and answered.

Q Have you ever been retained by Mr. O'Donnell's law firm before, McNeal, Schick, Archibald, to testify on behalf of a defendant against an injured person?

MR. O'DONNELL: Objection.

A I don't testify on behalf of anybody. I may have testified about a plaintiff and been asked to examine thorn. I believe I have by their firm, but I don't remember how often, I don't remember the last time.

I know I've never seen Mr. O'Donnell before.

Q You've also baan retained by the defendants to examine an injured person and written a report, is that correct?

A Yes, in the past, correct.

a In your career how many times have you been eo retained?

MR. O'DONNELL: Objection; relevance; asked and answered.

A I examine patients and write reports for lots of people: For plaintiffs, for third parties, For second opinions, for other doctors, as well as for the defense. I don't -- doesn't make any difference to me who has asked me to do it. I examine the patient and I write the report, and I certainly do not keep track of how many of each I do, And I can not possibly answer your question.

Q So then *you* would have no idea of how many times in the past 12 months you have been hired by defendants to evaluate injured persons and to write a report.

MR, O'DONNELL: Objection; asked and answered.

A That's exactly what I finished saying.

Q Doctor, how much ate you being paid to testify here today?

A For my time, $650.

Q And that's being paid by Mr, O'Donnell?

A Yes, sir. I hope so.

Q And how much were you paid to examine Mrs. Gilliam and to write a report?

A Two hundred, I think maybe it was two fifty. I don't remember, Two hundred, I think.

Q That was also paid by Mr. O'Donnell?
A I believe it was. I don't know. I hope it will be, if it hasn't been.
Q So in total you have or are being paid approximately $900 by Mr, O'Donnell in relation to this case?
A I suppose. Eight fifty or nine hundred. T don't know.

MR. POMERANTZ: I have nothing further.

EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MR. O'DONNELL:

Q Doctor, you paid -- you're paid by patients who come to you for treatments, correct?
A Oh, absolutely. I'm paid by patients, I'm paid by plaintiff's attorneys, I'm paid by third parties who want another opinion, and the fee is always the same for all *of* them, exactly the same amounts,
Q Do you consider your time to be valuable?
A Yes, sir, I do,
Q Do you consider the charges to be reasonable?
A Yes, sir.
Q Now, Doctor, whether you're paid by defense counsel or plaintiff's counsel, doe8 that affect

your opinion in a particular case?

A Oh, not at all, There are some times I don't even know whether it's a plaintiff ox a defendant attorney who is paying me, number one. And number two, I have, on occasion, examined a patient and sent the report to the wrong attornoy, But it doesn't. make any difference because the only way we find out, we send the bill to the wrong attorney. Rut the report is always the same in any case.

Q Doctor, your report and your testimony today on Lillian Gilliam, has that been chanqed just because you've been paid by the defense?

MR. POMERANTZ: Objection.

A No, not at all; has no relation to that at all.

Q And as you testified, Doctor, the x-rays which are exhibits in this case shot? a chip above the first MP joint?

A Yes, sir.

Q Is that chip floating in the joint?

A Oh, no. It's in the soft tissue, in the scar tissue, the joint capsule. It's pulled off by the ligament and the ligament is still attached to it. That's how it got pulled off in the first place.

Q And in the x-rays shown on December 9th, 1985, is that chip floating in the joint?

A No, it's not even -- it's not in the joint at all. It's above the joint and it's not floating in the joint at all, The x-rays clearly show it outside the joint surfaces. As I say, a chip fracture is pulled off by the ligament and it's still attached to the ligament. It's not floating in the joint.

Q And in the x-rays taken by your office in March of 1988, that chip is still above the joint and not in the joint?

A Exactly.

Q Doctor, is it necessary when you exam ne a patient such as Lillian Gilliam to know her height, weight, or her blood pressure or medication?

A No, it really isn't, It's -- I'm examining her foot and ankle and so that's all I do examine. If it were of some significance, I would have -- have done the other as well,

Q All right. And in reference to questions on Cross-Examination regarding the patient-physician relationehip, sometimes is it necessary for you to confer with another doctor

in your office?

A Yes.

Q When you do confer with one of the doctors in your office regarding a particular case, do you consider that other doctor to be part of the patient-physician relationship?

MR. POMERANTZ: Objection; relevance.

A Well, depends on his relationship to the patient. I think it would be if he helped treat the patient, if he talked to the patient, examined the patient with me. If we just sit down and talk about the patient without the patient's being there, without seeing the patient, that is, something in -- in abstract, than I don't think it's a doctor-patient relationship at all.

Q And in your opinion, Doctor, this chip fracture of the plaintiff's first MP joint is older than five to six months from the date of December 9th, 1985?

A Absolutely.

MR. O'DONNELL: Thank you, Doctor,

EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MR. POMERANTZ:

a Doctor, just a couple more questions,

A Certainly,

a X-ray, that's the equivalent to a snapshot in that it freezes a single moment and reflects a -- what's inside a person's body for a single moment, is that correct?

A At that time, yes, sir.

Q And you can not see movement of structures in that single x-ray,

n That's correct.

Q Now, would you aqrea with me that when you examine a patient, the -- one of the thinqs that you try and accomplish is to determine whether certain movements elicit pain.

MR. O'DONNELL: Objection; beyond the scope,

A Yes, sir.

a Would you agree with me that if a person was taking certain types of medication, that the ability to elicit pain would be impaired?

n Well, if they're unconscious, of course it would be.

Q But certain medication would also deaden pain,

THE: STATE OF OHIO,) SS: CERTIFXCATR
COUNTY OF CUYAHOGA.)

I, Judith Ann Trebus, a Notary Public within end for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness, Richard S. Kaufman, M.D., was by me duly sworn to testify to the truth, the whole truth and nothinq but the truth in the cause aforesaid; that the testimony then qiven by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a typewriter, and that the foregoinq is a true and correct transcript of the testimony so qiven by him as aforesaid.

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

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

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

Judith Ann Trebus, RPR, Notary Public
within and for the State of Ohio