Kaufman Deposition CAT A

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THE STATE OF OHIO,)
) ss:
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

MARY T. ORAHOSKE, et al.,
Plaintiffs,
vs. Case No. 189,640
ALLSTATE INSURANCE COMPANY, Timothy McMonagle
Defendant.

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DEPOSITION OF RICHARD S. KAUFMAN, M.D.

FRIDAY, SEPTEMBER 27, 1991

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Deposition of Richard S. Kaufman, M.D., a witness called for examination by the Plaintiff under the Ohio Rules of Civil Procedure, taken before me, Richard G. DelMonico, a Professional Reporter and Notary Public within and for the State of Ohio, pursuant to notice at 23250 Mercantile Road, Beachwood, Ohio, commencing at 4:20 p.m., the day and date above set forth.

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APPEARANCES:

On behalf of the Plaintiffs:

MITCHELL A. WEISMAN, ESQ.
Weisman, Goldberg, Weisman & Kaufman
1600 Midland Building
Cleveland, Ohio 44115

On behalf of the Defendant:

BRADFORD R. CARVER, ESQ.
Hermann, Cahn & Schneider
1301 East Ninth Street
Suite 500
Cleveland, Ohio 44114-1876

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RICHARD S. KAUFMAN, M.D.

of lawful age, called as a witness by the Plaintiff, pursuant to the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS EXAMINATION

BY MR. WEISMAN:

Q. Please state your full name?

A. Richard S. Kaufman.

Q. And we are at your office, right Dr. Kaufman?

A. Yes, we certainly are.

Q. Did you write a report about Mary Orahoske?

A. Yes.

Q. Now Mary Orahoske is my client, right?

A. Am I to testify to that?

Q. Is that your understanding?

A. Yes.

Q. That I'm representing her?

A. That's my understanding.

Q. Now you conducted an examination of Mary Orahoske on what day?

A. December 24, 1990.
Q. And that was requested by the defense counsel in this case, correct?
A. By Donna Singerman.
Q. Right, who's with the law firm which is representing the defendant in the case?
A. I presume so, yes.
Q. And the purpose of your exam was to report to the defense or testify in behalf of the defense, is that correct?
A. I don't testify on behalf of anybody. But the purpose was to report to Ms. Singerman about the condition of Hrs. Orahoske.
Q. But your purpose in this case is not to treat Mary Orahoske?
A. That's correct.
Q. And you performed one single exam on Mary Orahoske?
A. That's correct.
Q. And that was December 24th of 1990, right?
A. Yes.
Q. You never met her or saw her before that time, correct?
A. No.
Q. And you have never seen her since that time?

A. Not that I'm aware of.
Q. When you are the treating physician for a patient you ordinarily examine and treat the patient over a period of time?
A. Not necessarily.
Q. Not necessarily?
A. It may only be once.
Q. It might be?
A. Yes.
Q. Typically you are treating over a period of months, weeks or years, isn't that true?
A. No, certainly not years, as a general rule.
Q. Weeks or months?
A. Weeks. Most of them don't take that long to heal. Sometimes if there is nothing particularly wrong, I see them only once.
Q. In this particular case, Dr. Polish was the treating physician?
A. I believe that's true, yes.
Q. And he treated Mary over a period of time?
A. Apparently a couple of months. Whatever she said it was, about two months.
Q. And *you* are certainly not suggesting in this case that Dr. Polish provided any care that was not necessary? Are you taking that

opinion?

A. No, I don't have that opinion.

Q. Do you have any criticism by the way of anything Dr. Polish did in treating Mary Orahoske?

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

Q. Are you familiar with Dr. Polish?

A. No.

Q. You have not heard of him?

A. I'm not familiar with him. I don't know who he is.

Q. Now, with the type of injuries that Mary Orahoske sustained -- and by the way, what is your diagnosis, if I can use that word? Did you come to a diagnosis?

A. Yes.

Q. And by the way, let me backtrack.

What have you reviewed as far as Mary Orahoske? What records or reports?

A. There is an emergency room record from Community Hospital of Bedford. There is a report from Dr. Polish dated September -- looks like 9th, 1989.

Q. You might have a second report. Did you see one there?

I haven't got there yet.

A.
Q. No.

A. There is, looks like an x-ray report which is badly copied, almost unreadable from Brentwood. There is a Brentwood Physical Therapy record. And that's all.

Q. Your report from Dr. Polish was which date, please, 9/9/89?

A. 9/9/89, right.

Q. Did you receive a report of Dr. Polish from March 7th, 1990?

A. No.

Q. I have a report of October 6th of '88. Have you not seen that either?

A. No.

Q. I take it you would agree that, in forming opinions about a patient, you would want to have all the necessary information, in case -- I guess we have to define what's necessary. But you would want to have as much information as possible?

A. Depends what the information is.

Q. Would you want all the treating reports from the doctors?

A. It depended if it had anything more on the

history of the patient than the material I already had.

Q. What is your understanding of the injuries that Mary sustained as a result of the collision?

Or first of all, do you agree she was hurt in this collision or do you not think she was hurt?

A. Neither one.

Q. Okay.

A. You only gave me two choices, I can't pick either one of them.

Q. Well, is it your opinion she was not injured in the automobile collision?

A. According to her history, she was injured.

Q. Okay. What were the injuries she sustained, according to her history?

A. What she told me was that her head hit the mirror, her right thigh hit the gear shift, her chest hit the steering wheel, she bruised her right arm, and her whole left side of her body was thrown against the car door.

She said following the accident she developed pain in her head and her dorsal

spine on the right side, as well as pain in the contused areas.

Q. Okay. These types of injuries that you are talking about, do they typically have what you doctors call remissions and exacerbations? In other words, get better and worse?

A. No, contusions just generally get better.

Q. Okay.

A. They bruise and the bruise area is tender and sore for a while and goes away.

Q. As far as Mary Orahoske, was she cooperative when you examined her?

A. I don't remember anything at all, but I have no indication that she was not. So I presume she was.

Q. Do you have any recollection of her not answering the questions in a straightforward manner?

A. No.

Q. Would you note that in your report if there was a problem with a patient?

A. Yes. And I have it not noted, so I presume it was not a problem.

Q. As far as an exaggeration, anything in your

report indicating she was exaggerating her complaint?

A. No.

Q. Or attempting to fool you in some manner?

A. Except for the fact her history, as she gave it to me, was not in keeping with the physical examination as I found her.

That is to say, she told me she had pain when, in point in fact, on examination I found no evidence of it.

Q. When you say you found no evidence?

A. Exactly.

Q. You can't obviously feel a patient's pain, right, doctor?

A. No. But when I examined her I found no objective or subjective evidence of it.

Q. No subjective, meaning when you felt her --

A. She had no tenderness. She had no pain on motion in any of the areas which she said in her history was painful, but I could find nothing.

Q. Did she say she was still experiencing pain at the time?

A. Yes. I asked her specifically if she was having pain at the time of her examination.

She said in the history she was, but when I examined her I found no evidence of it.

Q. By the way, do you know the cause of any of her injuries except for the collision which is the subject of this lawsuit?

A. I asked her at the time of the history if she had any other injuries, and she said she had not.

Q. So as far as --

A. I'm not aware of any.

Q. By the history she gave and the records you reviewed, she had no prior collisions or work injuries prior to this collision, that you know of?

A. Or subsequent to, as far as I know.

Q. Now, one point you said Dr. Polish indicates -- this is in the middle of the first paragraph -- indicates quote, "cervical injury," unquote but the patient had no complaints of her neck.

Are you talking at the time you saw her?

A. No. I asked her whether she was hurt and she said she was hurt in her dorsal spine,

midback. And she indicated where that was.

In reviewing Dr. Polish's report, he spoke of a cervical injury, which means her neck. And I asked her if she had any problems with her neck and she said she didn't.

Q. You say here that her headaches persist unchanged.

Does that mean she was claiming she still had some headaches?

A. That's what she said.

Q. And apparently in that paragraph you don't normally diagnose that kind of thing?

A. I handle people from the neck down.

Q. You leave that to a neurologist?

A. Or some other person whoever is the cause of her headaches. But I don't take care of headaches.

Q. She said that her midback pain still remained?

A. Was unchanged she said.

Q. Unchanged from the time of the collision?

A. I asked her if it was better, worse or pretty much the same. And she said it was the same.

Q. Apparently she claims she would be in good health generally with no serious illnesses or surgeries.

Is that what your records reflect?

A. Yes.

Q. You have been provided nothing from the defense that indicates any other health problems, outside of the collision?

A. No, not that I know of.

Q. Now Dr. Kaufman, you would agree that as a doctor you certainly rely on the client's -- excuse me -- the patient's complaints to make your diagnosis when you treat a patient?

A. It's one of the factors to take into consideration when we make a diagnosis.

Q. You take a detailed history from all of your patients?

A. Yes.

Q. Now, do you happen to recall who was with Mary Orahoske when you examined her?

A. No.

Q. Do you recall that somebody from our office was there?

A. No, I don't. I sometimes note it, but.

Q. You didn't happen to in this case?
A. I didn't happen to in this case.
It certainly wouldn't make any difference; anybody is welcome but I don't have any record of it.
Q. If our records indicate that the history you took began at ten minutes after 10:00 in the morning would you have any basis to dispute that?
A. I don't dispute anything.
Q. Did you mark down any times?
A. No.
Q. And if our records indicate that you had to step outside to consult with, I think it was, one of your fellow doctors but you had to step outside at 10:15, that is after taking the history for 10, 15 minutes, you don't dispute that?
A. I don't dispute anything. I don't dispute anything, that is your department not mine.
Q. Let me tell you what we found and see if you have any disputes with these conclusions.
A. Let me tell you right now, I have no record of the times involved. I cannot agree with them or disagree with them, but I will not

testify as to what times I spent with the patient in any way, unless you are going to testify about them, because I don't have any record of them. I go in and I spend as much time as is necessary to take the history. I examine the patient and I leave.

Q. Right.

A. And I have no record of the time I spent. And I cannot agree or disagree with whatever you're representing, might have noted.

Q. I'm just going to give you our two conclusions and then if you want to say no basis, that's fine.

Our records indicate that the history you took took approximately six minutes.

So you have no basis, you say, to agree or disagree with that?

MR. CARVER: He's already answered that. I'll just interpose an objection.

Basically you are making a statement for the record as opposed to asking a question.

HR. WEISHAN: Right, that's our statement.

A. If you want to testify, fine. I can't testify as to the amount of time I spent with this patient; as much as was necessary. I can testify I spent as much time as was necessary to do a complete and thorough job; and whatever you are going to testify, I have no record about that.

Q. I'm just asking you from Mary Orhowski's testimony, it was approximately six minutes -- ye. took a history from her.

Just so we have it straight on the record, you have no basis to agree or disagree because you didn't time it?

A. That's correct.

Q. And as far as the examination, if we take the position and Mary testifies it took from 10:25 to 10:28, which is three or four minutes, you didn't time it so you have no basis to agree or disagree, is that right?

A. That's correct.

Q. Now, when we set up the deposition for today, I was told by your office -- and tell me if this is the usual routine -- to send a check for $700.

Is that how it works?

A. That's right. All depositions are one flat rate for any deposition, regardless of who wants it or how long it takes.
Q. Now, is that how you do it for all depositions?
A. All depositions, same price.
Q. For trial it's $700?
A. Same price.
Q. And how long, typically like in an automobile situation like this, how long typically does a deposition take?
A. I have no idea. Sometimes it takes an hour and a half, sometimes it takes three hours. It doesn't -- we don't charge by the hour, we charge a flat rate fee.
Q. Now, the examination of Mary Orahoske, sometimes they call that an independent examination, sometimes a defense medical. Is there something you call that?
A. I think it's an independent medical exam.
Q. How long have you been licensed to practice orthopedic surgery?
A. In the State of Ohio?
Q. Yes.
A. 35 years.

Q. And when did you first start doing independent medical examinations?
A. I don't remember, maybe 15, 20 years ago. It's hard to remember, time goes by.
Q. Now, when you do an independent medical examination, what is your hourly rate?
A. I don't have an hourly rate. Again, it's a flat rate fee for an examination and report.
Q. How much do you charge for the examination?
A. I believe it's three hundred dollars. Again, it's the same price for an examination report regardless of who sends the patient in, whether it's a defense attorney or plaintiff's attorney or third party, or whatever.
Q. Now, are there particular days that you do independent medical exams?
A. No.
Q. It could be any of Monday through Friday?
A. Well, whatever day I'm here. I'm not here every day Monday through Friday, but any time I have office hours is a potential time to do this type of examination.
Q. Do you have office hours on the weekend?
A. Saturdays, some Saturdays.

Q. And how many hours per week do you have office hours, approximately?

A. Let's see. I would say about on the average 24, something like that.

Q. Okay. And how much time do you block off for an independent medical examination? In other words, a half hour, hour?

A. Yeah, about that; usually about a half hour.

Q. And when you say you charge three hundred dollars for examining and writing a report, does that also include reviewing all the records?

A. It depends. If there aren't a lot of records, it does; if there are only a few, in this particular case I did not charge for reviewing the records because there weren't that many. If there were a big stack of records it would take me more time to review, I would probably charge extra for that.

In this particular case I didn't.

Q. And you do approximately how many independent medical exams per week?

A. Six or seven. That's total examinations, I would say. That is just exam and report,

not necessarily independent medical examinations. Some of those may be for plaintiff's attorneys as well. We usually book out between six and eight slots a week for just examination and report, some of which are independent medical examinations, some which are for plaintiff's attorney.

Q. If somebody is hurt in an automobile collision?

A. I'm talking about an examination for a plaintiff's attorney, not someone I was going to treat.

Q. If someone came to you in an automobile accident and you were the treating doctor, you don't block out any time, you just treat them like any other patient?

A. Just like any other patient.

Q. You wouldn't have to block off a time, you would just schedule a normal appointment?

A. Yes. But I limit the number of examinations and reports that I do only for examination and report to about six or eight a week, for everybody.

Q. Okay. But I'm saying, why would you have occasion to block off time for a patient

that's --
A. Not for a patient.
Q. -- that's who's making a claim as a plaintiff?
A. Because sometimes the plaintiff's attorney wants me -- I had one today, the plaintiff's attorney only wants an examination and report. They don't want treatment, they just wanted the patient examined and a report made.
Q. That's an exceptional examination?
A. Most of the patients the plaintiff's attorneys would refer here would be for treatment. There is occasionally one which is only for examination and report.
Q. But when you talk about blocking out six or eight slots per week, you are talking the vast majority of those are when defense lawyers ask you to examine for an independent medical examination?
A. A number of them are, some are for third parties, second opinions. We lump them all together.
Q. And have you in the past done any review regarding Workers Comp claims?

A. Yes.
Q. And I'm talking again not for the claimant but for the person who they are claiming against the employer, the State of Ohio?
A. I have also done them for the State of Ohio. I thought that's what you meant, for the State of Ohio.
Q. No, the person.
A. No, for the Industrial Commission of Ohio, not for anybody as an entity in itself, as an expert opinion.
Q. Do you continue to have involvement with Workers Comp claims like that?
A. I have.
Q. Where you examined for the State of Ohio?
A. I have in the past. I haven't in the recent past. We still pick up a lot of Workmens Comp cases, but I don't remember anyone in the recent past I did strictly for the state.
Q. In the last year have you done any for the state?
A. Oh yes, I have. I take it back, not for the state but --
Q. For a company?

A. No, for -- I'm trying to think who it was for. I guess it was a federal -- or it wasn't industrial comp it was for federal something or other. But anyway, not for the State of Ohio.

Q. So for the last year or so you were not involved in Workers Comp examinations for employers or the State of Ohio?

A. Well, I have seen patients, I have seen occasional patients sent in either by a plaintiff's attorney for a permanent partial disability evaluation or by the employer for permanent partial disability evaluation; either one in the last year.

Q. If I understand your testimony, you said you have maybe been involved in independent medical examinations, 15, 20 years, maybe two-thirds of your practice?

A. I don't know.

Q. Was that your ballpark estimate?

A. Yes, as a guess.

Q. Now when you testify for trial, approximately how many times per month, whether it's by videotape or live, would you estimate you do that?

A. I don't have any idea. I don't keep track of it.

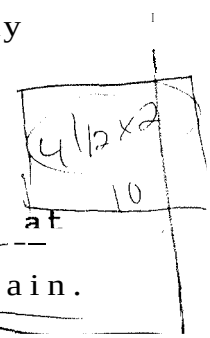
Q. Can you give me a typical month? For example, let me give you an example. I have a case -- strike that.

If you said a half a dozen times per month, would that be in the ballpark that could include video and going to court?

A. Oh, I think at least that, yes. At least that. It's hard to keep track of them.

Quite often they are scheduled and then cancelled, so I just dan't -- I know many more are scheduled then cancelled, or cancelled than actually go forward.

I would guess a couple times a week at least, both plaintiffs and defendants again.



Q. Okay, both. And if you broke down percentage wise?

A. I wouldn't know. I don't keep track of it.

Q. Now, you say for deposition for trial it is still $700?

A. Yes.

Q. And how do you work that if you come to trial? If you have to go to court?

A. In court, I think it's a thousand dollars to

actually testify in court.

Q. And time doesn't matter either?

A. No, it's a half a day.

Q. I see. So the only way you would charge more is if the judge delayed it and you had to wait for the second half of the day or something?

A. Or if the questioning ran over.

Q. Into the following --

A. After lunch and I had to spend the afternoon as well, which doesn't happen very often. It has in the past, it happened with your dad, as I recall. I had to spend the whole day in court.

Q. Does that thousand also include preparation with counsel?

A. Which? I'm sorry.

Q. Like if you testify whether it's by videotape?

A. If I testify by videotape it includes a discussion ahead of time with whatever counsel is involved. If I testify in court it usually means that we have to sit down at a different time because you can't do it in court, and there is an extra charge for

that.

Q. And that's at what rate?

A. I think that's $125, I think. Again, not an hourly rate, whatever time it takes.

Q. Did you ever refer anybody to a chiropractor?

A. No.

Q. Do you think chiropractors serve a certain purpose in the medical community?

A. Yes.

Q. Do they do a lot of things that a physical therapy group might do?

A. Yes.

Q. For example, let me ask you this. You have a physical therapy center here, don't you, sir?

A. Yes.

Q. And does your professional group own the physical therapy center here?

A. Yes.

Q. And they provide things like, of course, physical therapy?

A. They are licensed physical therapists.

Q. Do they do traction there?

A. Yes.

Q. And that's something you prescribe on occasion?
A. On occasion.
Q. And heat treatment, is that something they do?
A. Depends on what kind of heat. There are certain types of heat that are ineffective which we don't do, and some types of heat we feel are important that we do-, are effective that we do, yes.
Q. Is ultrasound effective?
A. Yes.
Q. And that is something you use here?
A. Yes.
Q. Are your doctors the only ones here that use that particular group?
A. Essentially. There are some patients who are referred to that group by other physicians but not very many, primarily ours.
Q. Do they use electrical stimulation at all?
A. Some types of electrical stimulation.
Q. So you do prescribe that from time to time?
A. Again, it's like the heat. It's a broad description and there were certain types of

electrostimulations we feel are effective, other types which we feel are not.

Q. As an orthopedic surgeon, you are obviously trained to do surgery, correct?

A. Yes.

Q. Outside of examining patients and doing surgery, would you say, as far as the treatment itself, most of that would be with your physical therapy group?

A. Oh, no.

Q. Aside from surgery?

A. No, much of it is exercise, bracing, anti-inflammatory medications, that's it.

Q. When you say exercises you mean telling people?

A. Therapy exercise or whatever they need. But I would say that most of our patients are not being treated by physical therapy. And they may have been treated for short periods of time, but many of the patients we treat are not constantly undergoing physical therapy.

Q. This may or may not apply here, but degenerative changes of the spine, very common as people age, right?

A. Yes, that's correct.
Q. And as far as the disk inbetween the vertebrae, over time it's common for people to have a narrowing of the disk, is that correct?
A. It's common, particularly the lower back, yes.
Q. And that certainly is possible for people to have narrowing of a disk if it's not impinging on a nerve, for example, to not have a lot of symptoms?
A. They may have no symptoms at all.
Q. Right. If you took an x-ray, typical 50 year old person who's never been traumatized --
A. Well, that's pretty hard for us decide. We all have a certain amount of trauma.
Q. I'm not saying there has been no automobile collision or anything like that. What I'm asking you, if you just took an x-ray of a 50 year old, pulled him right off the street, would you expect to see degenerative changes?

MR. CARVER: We'll object to that. This woman's not 50 years

old. Unless there are some records indicating degenerative changes, I don't think it has any bearing.

A. Yes, most 50 year old people show some mild degenerative changes.

Q. Would you say if someone had a -- if you took a section of their spine and the only thing you saw is between two vertebrae, one of the disk was narrowed to some extent, would you call that a mild degenerative change?

MR. CARVER: Let me just object again.

Are we talking about this case or are you trying to talk to Dr. Kaufman about some other case that's before him? Because there is no suggestion of degeneration in this case and the woman is not 50 years old. I think it's really quite improper.

MR. WEISMAN: Well, your objection is noted.

HR. CARVER: I'm just wondering if there is some other motive here

you are asking the doctor about changes in a 50 year old person. And perhaps you are asking about some other case he hasn't reviewed the records on. I don't understand the question.

MR. WEISMAN: Well, we can stay away from a 50 year old.

MR. CARVER: Any person dealing with degenerative changes. I don't think there is any evidence that there is in this case. If there is, we would certainly like to know about it.

A. What's the question?

Q. The question is basically if there is a narrowing of one of the disks?

A. Depends which one.

Q. Okay.

A. Depends how much narrowing.

What's the questioning about the narrowing of the disk?

Q. If that's all there is and the rest of the spine is normal, would you consider that a mild degenerative change?

A. Again, it depends on which disk it is, and depends how much the narrowing was, and the age of the patient. There are a lot of factors involved.

Q. Okay.

A. If it were a seven year old child, I would be surprised.

Q. In a 50 year old you would not be surprised?

A. It all depends on which disk it is.

Q. How about cervical?

A. Well, that's got nothing to do with this case.

Q. I'm just asking you the question.

A. Well, it all depends.

Q. Okay. I think we agreed the complaints by the patients are an important part of making a diagnosis, right?

A. No, not necessarily.

Q. No?

A. I didn't agree to that at all. They may be. That's one of the factors you take into consideration. It may or may not be an important part in making a diagnosis. It certainly is one of the factors you take into consideration in making a diagnosis.

Q. Mary Orhowski's injuries are what you would call soft tissue injuries?
A. I couldn't find any evidence of injury.
Q. I'm saying the ones she had by history?
A. As I say, my findings on this particular person, I didn't find any evidence of injury so I can't -- I can't tell you whether they are soft tissue or not soft tissue, because they are non-existent.
Q. I thought you said based on you reviewed she appeared to be hurt from the automobile collision. I'm not saying the day you saw her, I'm saying the injuries she sustained as a result of the collision, were those soft tissue injuries?
A. Apparently.
Q. And could you explain for us what are the soft tissues of the body? In other words, what are we talking about? What parts of an anatomy?
A. Skin, muscle, fat, blood vessels, nerves, anything which is soft; liver, kidney.
Q. Basically anything besides bone?
A. Anything besides bone or cartilage.
Q. And you certainly agree that soft tissue

injuries can come about from trauma?
A. It's possible.
Q. An automobile collision is an example of trauma that can cause soft tissue injuries?
A. That's possible.
Q. Did you just testify she had no ~~suggestive~~ subjective complaints when you examined her?
A. When I examined her she had no subjective findings, that's right.
Q. And subjective findings are that she would complain to you and you would note that she would complain of pain?
A. Of tenderness or pain on motion, this is subjective findings at the time of the examination, that's correct.
Q. What did your physical examination consist of?
A. I examined her thoracic spine, that's the only part of her body she said she had hurt.
Q. That's the upper back below the neck?
A. That's the part of the back the ribs are attached to, between the neck and the low back.
Q. And can you tell us what you physically did as far as that examination? When you say

examined the upper back, what does that consist of?

A. Well, examination of the thoracic spine involved putting the patient through a range of motion, flexion, extension and rotation; examining and palpating the musculature over the back to see if there was any tenderness; looking at the back to see if there was any swelling or redness or evidence of inflammation; moving the shoulder blades across the back and bringing them together, bringing them forward, bringing them up and bringing them down and seeing if that produced any pain.

Q. Okay.

A. In this particular case, the patient indicated that she was -- she told me that she was having pain along the border of the scapula, about the middle of the border of the scapula, that is the shoulder blade. But on specifically examining this area, I again found no subjective or objective evidence of any injury at the time I examined her.

Q. You typically, I take it, don't make a

diagnosis over the telephone, is that an accurate statement?

A. It's possible in some cases, but I prefer not to.

Q. You prefer to see the patient?

A. Yes.

Q. And why is that?

A. Because quite often the report of the patient over the telephone is not accurate, and therefore it might be misleading.

Q. In any event, you would agree it's helpful to see the patient when you are trying to evaluate the injuries?

A. Generally. As a general rule I would say that's so.

Q. What kind of information do you elicit when you see the patient that you would not have if you did not have the opportunity to see the patient?

A. Well, I examine the patient, obviously. And I have the opportunity of having them indicate where specifically they are hurting. They say they are hurting and I ask them to indicate exactly where that is. It may be at variance with what they are

saying.

Q. Have you had occasions in your career to make a diagnosis and then later change your diagnosis?

A. Yes.

Q. Probably every doctor has had that experience, I take it?

A. Yes, I presume so.

Q. Yes. And you certainly would agree with me that you are not infallible, right doctor?

A. No.

Q. Would you further agree that one examination is generally not as good as a complete series of examinations over time?

A. No, I would not agree with you.

Q. Okay.

A. I think that my examination on December 24, 1990 was as good as if I had done a dozen on December 24, 1990. It was a complete and thorough examination and the series would not have changed what I found that day at all.

Q. But you would agree that on occasion with your own patients you may, after a number of examinations, change your opinion?

A. It's possible. It all depends.
Q. You are not taking the position that Mary Orahoske intentionly was faking an injury, but just that you could not clinically find anything to back up her complaint?
A. That's your suggestion, no.
No, all I can say is in spite of the fact she told me she was hawing pain at the time I saw her, I found no evidence of it.
Q. And what was her main complaint? I'm not talking about examination, but by history what was she saying chiefly was bothering her?
A. Her only complaint was they told me she was hawing pain in her midback and her headaches, which are not part of my specialty.
Q. Now, Dr. Kaufman, I want you to assume for the purpose of this question, hypothetically, that Mary Orahoske has had continuous pain in her thoracic back from the date of the collision until the present time, okay? Can you assume that for the purpose of the question?
A. I suppose so.

Q. Okay. Assuming that, would you agree that her injury, assuming that's truthful -- and it's been some, what, about three years? Do you have the date of the injury there?

A. Almost three years.

Q. Okay. Assuming that to be the case, would you think that she has some permanent residual problem?

MR. CARVER: Objection.

Q. Assuming that fact.

A. Well, if you assume that a patient has pain for three years.

Q. Continuously.

A. Continuously.

Q. And I don't mean excruciating every second, but she's having regular continuous pain for three years?

A. Regular continuous pain for three years.

I would say she has a chronic problem. That's what the definition of the word means. By definition, chronic means over a period of time. Three years is certainly over a period of time.

So if she's having pain for three years, she has a chronic problem.

Q. When I say permanent, you would expect her to have problems with that for the rest of her life?

A. On the basis on what you gave me, I can't make an opinion on that. I mean, just the facts that you gave me, she may or may not.

Q. Okay. Let me see if I can fill in the facts a little further.

If you assume this collision that was the subject of this case, the injury that she initially complained about at the emergency room, you reviewed those records and that she treated with Dr. Polish for assuming her exact injury, but assuming she was truthful for the purpose of the question, from the date of collision until now she has had pain in that part of her back?

A. As far as --

Q. So with this injury would you expect it would ever go away if it's been that way for three years? To a degree of probability.

A. Again, I would have to say it all depends.

I would also have to assume that she has been adequately treated.

Q. Right.
A. And that she's had maximum amount of conservative therapy or adequate, appropriate conservative therapy. And she still has -- and you are assuming that she still has pain, none of which, of course, we found.
Q. Assuming those things.
A. Just based on that assumption, then I would say she probably would continue to have pain.
Q. Indefinitely?
A. Yes. But with the other proviso, which I put on as well.

MR. WEISMAN: That's all I have. Are you going to waive signature?

THE WITNESS: I'll waive signature. No problem with me.

MR. CARVER: Okay.

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(Deposition Concluded.)

(Signature Waived.)

THE STATE OF OHIO,)
) CERTIFICATE
COUNTY OF CUYAHOGA.)

I, Richard G. DelMonico, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above-named RICHARD S. KAUFMAN, M.D. was by me, before the giving of his deposition, first duly sworn to testify to the truth, the whole truth and nothing but the truth; 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 the said deposition was taken pursuant to agreement at the time and place aforesaid; that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I hereunto set my hand and seal of office at Cleveland, Ohio, this 30th day of September, 1991.

Richard G. DelMonico

Richard G. DelMonico, Notary Public
Within and for the State of Ohio

My Commission Expires April 18, 1993.

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