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IN THE COURT OF COMMON PLEAS

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LOLITA M. MCDAVID, M.D., ET AL.,

Plaintiffs,

vs.

RENA W. HERNDON,

Defendant.

Case No. 255241
Judge Pat Kelly

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DEPOSITION OF RICHARD S. KAUFMAN, M.D.
Thursday, December 22, 1994

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Deposition of RICHARD S. KAUFMAN, M.D., called by the Defendant for examination under the Ohio Rules of Civil Procedure, taken before me, the undersigned, Cindy Toth, a Notary Public in and for the State of Ohio, at 23250 Mercantile Road, Beachwood, Ohio commencing at 4:45 p.m. the day and date above set forth.

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On Behalf of the Plaintiffs:

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On Behalf of the Defendants:

William Stavole, Esq.
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Cleveland, Ohio 44115

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RICHARD S. **KAUFMAN,** M.D.

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

MR. STAVOLE: Let the record reflect that this is the deposition of Dr. Richard Kaufman in case number **255241** pending in the Cuyahoga County Common Pleas Court.

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EXAMINATION

BY MR. STAVOLE:

Q Doctor, first of all I would like to say good afternoon.

A Good afternoon.

Q Could you please tell the jury your full name?

A Richard S. Raufman, M.D.

Q And what is your profession, Doctor?

A I am a physician and surgeon.

Q And do you have a specialty?

A I specialize in the field of orthopedic surgery.

Q And what is orthopedics?

A Orthopedic surgery is the branch of medicine that deals with the diagnosis and treatment, both medically and surgically, of diseases and injuries to what we might

call the locomotor system, the parts of the body that move you about. That is primarily the bones and joints, but also the muscles, tendons, ligaments, nerves of the spine and the arms and legs.

Q What is your office address, Doctor?

A 23250 Mercantile Road, Beachwood, Ohio.

Q And I take it you are engaged in the private practice of medicine?

A I have been in the private practice of medicine since 1961, which is now 33 years.

Q And are you in practice with other physicians?

A Yes, there are 5 people in the group, that's right. We have a group of 5.

Q Okay. I would like you to tell the jury a little bit about yourself, and why don't you begin with the medical education if you will.

A I received my BA degree summa cum laude, that means with highest honors, from Yale University in 1952, and my MD degree from Columbia University in 1956. I then had 5 years of post graduate training, a year of internship at Mt. Sinai Hospital in Cleveland, a year of surgical residency at University Hospitals in Cleveland, 2 years of orthopedic surgery residency at Mt. Sinai Hospital, and a year of orthopedic surgery residency at Indiana University Medical Center in Indianapolis.

Q And what year then did you finally finish your formal education and residency?

A July of '61. I have been in private practice since then.

Q And are you licensed to practice medicine?

A I am licensed to practice medicine in the State of Ohio since 1956, I am also licensed to practice in Indiana and California.

Q And are you affiliated with any hospitals?

A I am on the active staff at Suburban Community Hospital or Meridia Southpoint as it's now called where I have been the chief of orthopedic surgery for 28 years, Mt. Sinai Hospital, Hillcrest Hospital.

I was the chief of orthopedic surgery at Women's General Hospital for 23 years until it closed. And I am the orthopedic consultant to the Arthritis Clinic at Cleveland Metropolitan General Hospital.

Q Do you hold any teaching positions?

A I am a clinical instructor in orthopedic surgery at Case Western Reserve University Medical School for the last 30 years, and I was a professor the Ohio College of Podiatry for 20 years.

Q And are you board certified in your specialty?

A Board certified by the American Board of Orthopedic Surgery.

Q And what exactly does that mean?
A When I became board certified I had to have 4 years of colleges, 4 years of medical school, 5 years of post graduate training. Following that I took a 3 day series of written and oral examinations which I passed the first time. I then had to be in practice for 2 and a half years and take a second set of written and oral examinations, which I also passed the first time, was certified by the American Board of Orthopedic Surgery as a fully trained and competent specialist.
Q Doctor, do you belong to any professional organizations?
A Yes, I belong to The Cleveland Orthopedic Society, 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.

I am a fellow of The American College of Surgeons, a fellow of The American Academy of Orthopedic Surgeons, and a diplomat of The American Board of Orthopedic Surgery.
Q Now, Dr. Raufman, did you have an opportunity to examine the Plaintiff in this case, Lolita McDavid?
A Yes.
Q And when did you examine the Plaintiff?

A February 24, 1994.
Q And that was at the request of someone from my firm; is that correct?
A Yes.
Q And did you take a history from Dr., or from the Plaintiff in this action?
A Yes.
Q And can you tell the members of the jury what is a history?
A A history is the story as the patient tells it to me. Whatever she says, I put down. I ask her what happened, how she was hurt, how she has been treated, and what her symptoms are now. And whatever she says I put down, it's her story.
Q Now, at the same time that you are talking with the patient, are you observing her or doing anything else?
A I am observing to see how she is reacting, how she holds herself, how she gets up and moves about, and that sort of thing. To see whether, to see if she appears to be in pain or see if anything seems to be bothering her or not.
Q What was the relevant history which you obtained from the Plaintiff when you examined her on February 24 of 1994?
A Dr. McDavid said that she was injured February 13,

1992 when the car in which she was driving was involved in a collision from the rear with another car. She said she was wearing a seat belt, she said the seat came off the mounting and her left side hit the left side molding as well as the front and back doors. She said that she was unconscious for a short while.

Following the accident she developed pain in her neck, mid back, low back, left upper arm and left lower extremity, that is her left leg, that same day. In addition there were bruises of her abdomen. She went to Medina General Hospital the day of the accident and was released after examination and X-rays,

Q And did she give you a history or tell you what happened following the accident as far as her treatment?

A Following the accident she said that she saw Dr. Dorfman who treated her with physical therapy for 3 months and then exercise program at a gym. In addition she took Robaxin which is a muscle relaxant, Relafen which is an anti inflammatory medicine, and Valium which is a tranquilizer with some relief.

She said that she was still taking medications as needed. The last time she took Robaxin and Relafen was 3 weeks before I saw her, so she hadn't had any medicine in 3 weeks.

Q As far as the neck that she, the neck pain that she

relayed that she had a history of, did you talk any further with her about that?

A She said that her neck pain had improved. She said it was located on the left side of her neck, she said it would come and go, and was moderate in degree. She said that she was not having any pain. As it came and went I asked her whether she was having any pain now, and she said that she had no pain at the time of this examination and that she last had had pain 2 days before.

The pain was said to be made worse by lifting her head, and by -- by lifting, I am sorry, not her head, but just by lifting, and by sitting more than 2 hours, and was relieved by stretching exercises and the Relafen.

She said there was spread of the neck pain to her left shoulder. She said that she had constant numbness and tingling, and that the little-finger, the-ring finger, the middle finger, and the index finger, and the thumb side of forearm.

She had had an EMG, that's electromyogram. Myo means muscles and gram means a picture, so it's a picture of the electrical activity of the muscles and of the nerves. And she had an EMG of her arms on March 12, 1992 which was reported as normal.

Q And this is something that she had told you during the history?

A I believe she had told me she had an EMG and then I saw the results of it in the records, but she told me it was normal. She said there was a feeling of what she called "pressure" in her upper arm.

Q And as far as, well, did she relay any other things to you regarding her neck pain?

A No, just that she had, she said that she had this tingling but the EMG was normal.

Q Okay. As far as her mid back pain?

A Her mid back pain she said had gotten better, she said it was located primarily about the left shoulder blade. It was intermittent, it came and went, and was moderate in degree. Again, she said that she had no pain at the time of this examination and that she last had had pain 2 days earlier.

She said the pain was made worse by lifting and by inactivity of more than 2 hours at a sitting, or that sort of thing, and not moving, and was relieved by exercise and moving about. There was no spread of this pain from the left shoulder blade area.

Q And as far as her low back pain, did she give you any further history on that?

A Her low pain back had also improved. She said it was located right in the middle, in the midline, at what we call the dorsal lumbar level, which is right where the

ribs join the lower back, right at the bottom of the rib cage, sort of the flank area. It was, it would come and go and she said it was severe in degree.

She said that she again had no pain at the time of this examination and she last had had pain "sometime in the last 2 weeks" but she couldn't tell me exactly when. The pain was made worse by bending and lifting and was relieved by rest and heat. There was no spread of this pain, it stayed in her back.

She said that she had intermittent tingling in the "sciatic nerve distribution." The sciatic nerve is the big nerve that goes down the back of the leg, from the back and supplies most of the sensation and the muscle power to the leg. And she said, her exact words were, "It was in the sciatic nerve distribution in the left leg," and she indicated the back of the thigh and the calf and she said it went over on to the top of the foot.

The other symptoms in her left lower extremity had subsided.

Q Okay. Was there any EMG as to the sciatic nerve distribution, did she relay any test results from that?

A No, there was no EMG done.

Q Okay. How about her left shoulder, she also complained of that you indicated?

A Symptoms referrable to her left shoulder, she said

had persisted ever since the accident and were unchanged. She said there was diffuse pain on the front, the back, and outer side of the shoulder. It was all over the left shoulder, she really couldn't localize it. The pain would come and go and she said it was moderate in degree. She said that there was no pain at the time of this examination and she last had had pain 2 days ago.

The pain was again made worse by lifting, and was relieved by range of motion exercises. There was no spread of this shoulder pain.

Q Did she relay any other further history to you, Doctor?

A Her occupation was as a pediatrician, she is a physician. She returned to her regular work after 3 to 4 days, and she said there had been periodic loss of time from work because of symptoms arising from the accident. She said a total of 7 to 10 days in the -- it would have been 2 years since the accident -- 7 to ten days.

I asked her, she did not remember the last time that she had lost time from work. She couldn't remember when that was. There had been no previous or subsequent injuries or symptoms in these areas that she now complained about. She said she had been in good health with no serious illnesses or operations, she had taken no medication which would affect her symptoms on the day of

this examination. She had had some illnesses in the past but none which would affect the symptoms arising from this accident.

Q I want to talk a little bit about the physica examination that you conducted. When you are conducting a physical examination, what kinds of things are you looking for?

A Well, there is 2 types of findings. There is what we call subjective findings and objective findings. Subjective findings are those things that the patient tells us are present and there is no way that we can determine for ourselves whether or not they are really there. It's the patient say they are. Such things as tenderness, pain on motion, numbness, that sort of thing, these are things the patient says are there. We have no way of actually knowing without them saying so.

Objective findings are those things which we can tell for ourselves without the patient telling us that they are there, such things as muscle spasm, which is the involuntary contracture of a muscle, when there is underlying pain you can feel the spasm through the skin, swelling, warmth over an area, a skin discoloration, reflex changes, these are all objective findings.

Q Before we run through the specifics of the physical examination, I want to ask you, Doctor, did you find any

objective, were there any objective findings at all --

MR. CHAMBERLAIN: Objection.

Q -- as to the injury, any injury that Plaintiff may have sustained here?

A Well, the only objective finding I found was the left calf was a half inch smaller than the right, but there were no other findings to go along with that, objective findings.

Q Okay. Is that necessarily an objective finding pertaining to an injury?

MR. CHAMBERLAIN: Objection.

A No, no, it's just an objective finding. It's not necessarily -- the cause of it isn't why this is, the case is out of the question, but I did find the one calf is smaller than the other.

Q Okay. When you did your physical examination, what did that reveal?

A On physical examination the patient appeared to be in no discomfort. She was instructed to let me know if anything caused her pain during the examination, the gait was normal, the way she walked was normal, she could move about easily, she could walk on her heels and toes easily indicating good muscle strength in her legs and particularly in her calves. You've got to have good muscle training in your calves in order to be able to

walk on your heels and toes because you are lifting your whole body weight with those muscles.

Examination of her neck showed her to hold her head straight, it wasn't tipped to one side or the other. Neck motion was normal in range without any pain at all. She could put it down and back and side to side and turn it from side to side without any pain.

There was no restriction of motion at all, there was no spasm. That's that involuntary contracture of a muscle when there is underlying pain. There was no spasm in the trapezi muscle which is the big muscles on the side of the neck. They will go into the spasm when there is significant neck pain. There was no tenderness of the muscles or ligaments of the neck.

The neurological examination of her arms revealed the reflexes to be normal. Just as when you tap the knee the leg kicks, there are other tendons that you can tap and the muscles will twitch. Actually there are 3 in the arms and these were all normal. There was no numbness in the arms and there was no weakness in the arms. The examination of the neck and upper extremities was normal, totally normal.

Q Okay.

A I am sorry.

Q I was just going to ask you what about the

examination of her back?

A Examination of her thoracic spine or mid back, that is the part that the ribs are attached to, revealed again no obvious deformity. The thoracic spine motion was normal in range without any pain.

There was no restriction and there was no spasm in the muscles. There was no tenderness anywhere in the muscles or ligaments of her thoracic spine. Moving the shoulder blades across the chest wall like that and up-and-down, this was normal, and there was no pain at all. The examination of the thoracic spine was normal.

Q How about the examination of her left shoulder?

A Examination of her left shoulder showed the contours of the joint to be normal. It looked like a normal shoulder, there was no swelling, there was no fluid in the joint. There was no instability of the ligaments of the joint, there was no redness or heat or other evidence that the joint was inflamed. There was no skin discoloration such as black and blue or redness.

Range of motion in the shoulder was normal and was without any pain. She could bring her arm all the way up-and-down and behind her back and across her body. All of these were normal without any pain.

There was no crepitus felt. Crepitus is a feeling of a grinding when one rough surface moves on another and

you can feel sort of a grinding sensation, and this was not present in her shoulder. There was no tenderness anywhere about her shoulder. So the examination of her left shoulder was totally normal.

Q Okay. Did you perform any further physical exam on her?

A Examination of her lower back, shoulder, to start straight, her low back motion was normal in range without any pain. She could bend down and back and side to side without pain. There was no restriction of the motion and there was no muscle spasm felt in the muscles of her lower back.

There was no tenderness present in the muscles or ligament of her lower back. The Lasegue's sign was negative on both sides. This is a test that we do with a patient lying on her back and with her knee straight the leg is brought up in the air like a periscope, sort of sticks straight up in the air. This puts a stretch on the sciatic nerve as it goes down the back of the leg and will produce pain if that nerve is being irritated. It did not in this case indicating that the sciatic nerve was not being irritated.

The Patrick's sign was also normal on both sides. This is a test that we do with the patient lying on her back and the heel of one foot is placed on the opposite

knee much as if you were going to tie your shoe lace except you are lying on your back, and then the first leg is brought down in sort of a Figure 4 position. This puts a stretch on the muscles and ligaments of the lower back and will produce pain if the muscles or ligaments are inflamed and sore. And it did not in this case it was normal.

Measurements of the lower extremities showed the lengths to be equal, which one would expect, generally they are. Circumference of the thighs were equal. The left calf was one half inch smaller than the right.

Q What could -- why is that, Doctor?

A Well, I don't know why it is. There are some possibilities.

Q What are some?

A The left calf being a half inch smaller than the right would indicate that the, for some reason the nerve supply to the muscles of the right calf was not normal. 2 calves should be, normally should be the same size. Unlike our arms where if we are right handed, our dominant is right arm is larger than the left arm because you we the right arm a lot more.

You use the legs equally because you walk with one after the other. So the 2 legs should be the same size. In this case the left calf was a half inch smaller

indicating for some reason the nerve supply to that muscle, to the muscles of the calf was not normal. And there are various possibilities of that.

The neurological examination of her legs revealed the knee reflexes to be equal, that is where you tap the knee and the leg kicks. There is a similar reflex at the ankle where you tap the heel cord and the foot kicks. And these were also equal.

There was no numbness present, that is, there was no decreased sensation but she said that there was hyperesthesia, increased sensation, a feeling that the area was more sensitive than normal on the back of the left thigh and the left calf.

There was no weakness, motor weakness found in either of her legs. That is in testing the muscle strength I could not determine that there was any weakness. As I said earlier, she could walk on her heels and toes easily which would indicate that there was no, that the half inch atrophy or the half inch difference in the 2 sides was not causing any muscle weakness.

Actually, I said that the left calf was a half inch smaller than the right and quite in fact it really could have been the other way around, the right calf could have been a half inch larger than the left. And sometimes one leg gets a little larger than the other, but that would

be unusual. It's probably more likely that the left calf was smaller than the left, than the right.

Q What are some possible explanations for why one half inch difference in the calves?

A Well, the 2 most common explanations, Dr. McDavid David is in her 40s, which means that she was an infant when we did not have polio vaccine. Anybody less than 35 has pretty well been, everybody has been vaccinated.

But people over 35, there is a very good chance that they were infants or young children before they received polio vaccine. Most adults, even before polio vaccine, by the time you got to adulthood you had antibodies in your blood against polio which would indicate that most people in our society, at least in the United States in our society, have been exposed to the polio vaccine but have not gotten clinical polio.

A lot of patients had a summer cold, a little achy muscles and never really got a clinical case of polio, but as they grow up they find that one leg, particularly the legs are more affected than the arms, one leg is a little bit smaller than the other and it's most likely an unrecognized mild case of poliomyelitis. This is a good possibility in somebody who is over 40.

The other possibility is that it was some injury to the nerve going from her back down to the leg, that's

another possibility, although there are no other signs of that when I examined her.

Q Were X-rays taken at the time of the examination, Doctor?

A Yes, X-rays were taken of her neck and her lower back and her left shoulder and they showed no significant abnormalities.

Q And did you review those X-rays?

A Yes, I reviewed those films. They were taken by my office and reviewed by me.

Q Did you also review any of her medical records?

A I reviewed multiple records which were sent to me. There had been a workup of her neck, that is an EMG and other studies of her neck. But there was very little in the way of a workup for her lower back, which is where she had the only positive finding that I found and that would be the half inch atrophy or the left calf being a half inch smaller than the sight.

Q But as far as the EMG for the upper part of her back?

A That was normal.

Q Okay.

A But there was no other findings. I also note in her records that Dr. Dorfman in his report of October 8th of 1992 indicated that there was "No neurological deficit

as a result of this injury."

Q And do you agree with that statement?

A I think that's probably true but as I said, she's got this half inch of atrophy and the workup her lower extremities has not really, of her lower back has not really been as complete as it could be.

Q Were you able to reach any type of diagnosis after evaluating this patient?

A Yes. What?

Q I was just going to ask you what ask you arrive at?

MR. CHAMBERLAIN: Objection.

A It's my opinion based on reasonable medical certainty that I have found no objective evidence of injury at this time. The diagnosis based entirely on what the patient has told me that is possible, I will say it first in medical terms and then I will translate it, cervical and lumbosacral myofascitis. Cervical means neck, lumbosacral means low back, myofascitis, myo means muscle, fascia means ligament, and itis is an inflammation. So that's a possible inflammation of the muscles and ligaments of her lower back.

This is based entirely on the fact the patient said that she had these symptoms and I found no evidence of it, either objective evidence or subjective evidence of it when I examined her. I found no evidence of injury at

all.

Q All right. Doctor, based upon your training, your education, your experience, your review of the medical records, and the X-rays and your examination, and the history of the Plaintiff, do you have an opinion to a reasonable degree of medical certainty as to the Plaintiff's prognosis in this case?

A Yes.

MR. CHAMBERLAIN: Objection.

A Yes.

Q And what is that opinion?

MR. CHAMBERLAIN: Objection.

A It's my opinion based upon reasonable medical certainty that as far as her neck, and her mid back, and her shoulder, the prognosis is excellent. She had no evidence of any injury at the time I examined her.

As far as her lower back is concerned, I think it's also probably good, but the, as I said earlier the workup of her symptoms or her complaints of sciatic pain or sciatic numbness has really been quite incomplete which is surprising to me. more to shine

Q Why is that, why is that surprising to you?

A Well, Dr. McDavid is a physician and she is a sophisticated person. She is not like an unsophisticated patient who does whatever the doctor says and doesn't ask

anything more than what the doctor said is, should be done. As a sophisticated physician if these symptoms were meaningful to her --

MR. CHAMBERLAIN: Let me object to this testimony. Move to strike.

Go ahead.

A If they were really meaningful to her as a sophisticated physician, she knows that an MRI of the lower back, that's a magnetic resonance imaging, which is a test that's done in a large magnetic field, there is no X-ray involved, there is no invasion involved, it's what we call a non invasive test, could be done to distinguish whether or not she has a herniated disk in her lower back which might be pressing on a nerve.

Although she doesn't have any signs of it when I examined her except for the atrophy, the one calf being smaller than the other. And she could have an EMG, this electromyogram which would also distinguish what was causing what she thought, she described as numbness and why the calf might be smaller than the other.

None of these tests had been done which is surprising for a patient that is sophisticated.

Q With a person as sophisticated as Dr. McDavid, would she be able to describe the symptoms of sciatica without actually having the symptoms?

MR. CHAMBERLAIN: Objection.
THE VIDEOGRAPHER: Off the record.
(Recess taken.)
BY MR. STAVOLE:
A I am sorry, where were we?
Q I was just asking you, Doctor, based as you indicated that the sophistication of Dr. McDavid, would she be able to describe these symptoms of sciatica without actually having the symptoms?
MR. CHAMBERLAIN: Same objection.
A Yes, Dr. McDavid is a trained physician. She would know what sciatica was, she would know the symptoms of sciatica, and she certainly could describe them.
Q Doctor, based upon your training, education, experience, your review of the medical records, and X-rays and your examination and history of the Plaintiff, do you have an opinion as to a reasonable degree of medical certainty as to whether the patient sustained any permanent injuries as a result of the accident?
MR. CHAMBERLAIN: Objection.
A Yes.
Q And what is that?
MR. CHAMBERLAIN: Same objection.
A Is it my opinion based on a reasonable medical certainty that I did not find permanent injuries that

she might have sustained in this accident. I certainly saw no evidence of it. She does have the half inch of calf atrophy but there is no evidence that this was caused by the accident.

MR. STAVOLE: Thank you, Doctor.

MR. CHAMBERLAIN: Is that it? Okay.

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CROSS-EXAMINATION

BY MR. CHAMBERLAIN:

Q Doctor, I am Hank Chamberlain along with Mitch Weisman. How are you?

A Yes, sir.

Q We represent Dr. McDavid. We have met before; correct?

A Yes, sir.

Q Probably the last 6 or 7 times we have gotten together it's after a defense attorney has asked you to examine someone; correct?

A I don't keep track of that, but it's possible.

Q Okay. I want to talk a little bit about your examination of Dr. McDavid. That occurred on February 24, 1994; right?

A Yes, sir.

Q And that was done at the request of the defense in this case?

A Yes, sir.
Q And the purpose of that exam was to report back to the defense about your findings?
A That's correct.
Q You weren't there to provide her with any care or any treatment or any advice from a medical standpoint; correct?
A That's correct,
Q You saw her once?
A That's right.
Q And that was 2 years after the collision?
A That's right.
Q You have never seen her before February 24 of '94?
A Not that I am aware of, no.
Q And you have never seen her after?
A No.
Q Let's talk about Dr. McDavid. Was she cooperative with you?
A I think so. I don't have any indication that she was not. I presume she was.
Q Answered your questions in a straightforward manner?
A Yes.
Q Did not exaggerate her symptoms?
A Not that I am aware of, no.

Q That would have been reported to the defense in this case if you felt that she had exaggerated?
A I certainly would say so if I thought so.
Q But you did not report that and that's not in the report that you produced to the defense; correct?
A That's correct.
Q The records that you reviewed in this case, can you list them for me?
A I will go over, them, yes.
Q I will tell what, why don't we take a moment and go off the record because I would like to see what you reviewed too.
A Sure.
Q And then we can list them.

(Recess taken.)

BY MR. CHAMBERLAIN:

Q Doctor, now that we are back on the record and I have had a chance to look at your chart, I see that the records there aren't broken into office charts or hospitalizations or anything like that. Will you be able to list for me the records that you reviewed?
A I would I have to go through them. I just --
Q Without going page by page can you do it?
A No.
Q Doctor, is it fair to say that the treatment and

the records that you reviewed was for Dr. McDavid's mid and lower back pain as well as treatment for her neck and left shoulder pain?

A Yes, I believe so.

Q Dr. McDavid at the time of her examination gave you a history; right?

A Yes.

Q You explained that a history is what she tells you as to how she has come to have medical problems?

A That's right, it's her story.

Q Right. Did she ever tell you about any prior health problems prior to the collision?

A She said that she had other illnesses but they had no effect on symptoms arising from this accident.

Q She said like she had been sick or maybe gotten the flu, something like that?

A I don't know what the other illnesses were, but I may have actually asked her about them but they seemed to be without any relationship to this accident, so I did not list them.

Q Based upon the information that you have been provided, the patient in this case has no history of lower back pain; correct?

A Apparently.

Q And this would be prior to the collision?

A Yes.
Q And no history of neck pain?
A That's right.
Q No history of left shoulder pain before this?
A Apparently not.
Q And there has been no report to you other from Defense Counsel or any other information that she has had any other trauma or automobile collisions before February 13 of '92 or after February 13 of '92; correct?
A That's correct.
Q Have you reviewed any records in this case that suggests that Dr. McDavid's low back problem, or that suggest that she had a low back problem before the collision?
A No.
Q Have you reviewed any records that suggests that she had a neck problem before the collision?
A Not that I recall, no.
Q Have you reviewed any records that shows that she had a left shoulder problem before the collision?
A Not that I recall.
Q Other than the automobile collision of 2-13-92, do you know of any other cause of Dr. McDavid's medical problems with her back, neck, and left shoulder?
A Well, I didn't find any evidence of medical

problems with her back, neck, and her left shoulder, but I found no other reason for her complaints, no.
Q At the time of your examination you found no evidence?
A That's what I am saying, yes.
Q Certainly the records that you reviewed over the time period that she treated contains evidence of injuries that she sustained; correct?
A Yes.
Q The injuries that she sustained and the records that you read, is there any other cause that you would know of other than the automobile collision of 2-13-92?
A Not that I am aware of. Except of course we are not talking about the calf being smaller than the other side. There are other possibilities for that.
Q I do want to talk to you about that.
A Yes, I know.
Q But first let's talk about your examination. On February 24 of '94 you examined Dr. McDavid. And again we established that this was a one time exam; correct?
A That's right.
Q Your physical examination, your actual hands-on touching and moving the Plaintiff's neck, examining her back, her lower leg, how long did that take?
A I don't know. I go in, actually I am observing the

patient from the moment when I go into the room, but I don't have any idea. I don't keep track of how long the examination takes. I go in, I take as much time as it takes and I leave. It's not it doesn't take as long if there is nothing wrong, but I don't have any idea how long it took.

Q So you don't know exactly how long the physical examination took?

A I don't have any idea how long the physical examination took.

Q It wouldn't surprise you to learn that it took 5 minutes?

A I said, what I testified to this afternoon I am sure of. I don't know how long it took. I can't testify to that.

Q You have no basis to dispute that, that is was a 5 minute examination?

A I don't dispute, that's your department. All I do is testify as to what I found. I have no idea.

Q These exams are called defense medicals; correct?

A I don't know that-- that's one word. Independent medical examination is another word.

Q The defense lawyer in this case requested this examination?

A That's correct.

Q What's the charge for the examination and the report?

A $350.

Q And you do these examinations and report probably 6 to 8 of these per week?

A Well, I think it's about 6 probably It may be 6 to 8 but I am not sure it's as many as 8. Many weeks it probably isn't.

Q What do you charge for testifying, Doctor?

A $850 for a deposition.

Q And if you have to appear live in court?

A Well, I don't do that very often. I think it's $1,200. I don't remember even because it's been so long since I have appeared in court.

Q Okay. And you testify in cases such as these on the order of about 2 times a week; right?

A Well, all types of cases. I mean, most of the people I testify about are patients I treat because 95 percent of the people that I see are patients that I treat. So that most of the depositions are probably requested by Plaintiff's attorneys, not defense attorneys. But for all, I would say that all of the depositions I would say that's probably true.

MR. CHAMBERLAIN: Let's go off the record for a second.

(Recess taken.)

BY MR. CHAMBERLAIN:

Q Doctor, I want to talk to you about the terms exacerbations and remissions, what do those mean?

A An exacerbation is when the symptoms get worse and a remission is when they get better.

Q And the symptoms would be complaints of pain or tenderness, swelling, things like that?

A Or it could be just any symptoms. Symptoms, not necessarily those but those are symptoms that could have exacerbations and remissions but there are other symptoms which can too.

Q Is it fair to say that's medical terminology in your orthopedic community to explain a patient having good days and bad days with problems that are ongoing?

A Well, that's one of the reasons for good days and bad days, yes.

Q And certainly Lolita McDavid, Dr. McDavid has had her good days and bad days in regard to the injuries that she sustained in this collision; correct?

A That's what she said.

Q In your report you outline that Dr. McDavid has some definite signs of neurological problems, do you not?

A Yes.

Q And she has some definite signs of left sciatica;

correct?

MR. STAVOLE: Objection.

A No, I didn't say that.

Q Well, let me ask you then, what are the definite signs of neurological problems that you are finding?

MR. STAVOLE: Objection.

A Well, the only objective finding that I found was that her left calf was a half inch smaller than her right. That's the only objective finding. Subjectively she said that she had hyperesthesia, that is increased sensation on the back of her left thigh and left calf. There are other signs that were not there.

Q Okay. The left calf being smaller than the right calf, you gave 2 reasons for that, the first one something about having a polio vaccine as child?

A No, polio, not the vaccine. Not having had the vaccine.

Q Having polio as a child --

A That's right.

Q -- or injury to the nerve, that can also cause the left calf to be smaller than the right calf; correct?

A That's correct.

Q Certainly automobile collisions of this type can cause injury to the left, or to the sciatic nerve; correct?

MR. STAVOLE: Objection.

A That's possible.

Q And in this situation have you reviewed any records that demonstrate that Dr. McDavid had polio in the past?

A No.

Q Is it, let me ask you straight, is it your opinion that her failure to receive a polio vaccine is the dir. cause of whether, is the direct cause of the fact that her left calf is smaller than her right calf?

A No, that's not what I said. I don't know if she's ever had a polio vaccine. So I don't know, I can't say she did or didn't have a polio vaccine. What I said was that she is old enough that she probably was alive during a period of her life in infancy in which a polio vaccine was not available, and therefore she was at risk to have gotten polio. I don't know if she ever got a polio vaccine, but she certainly was alive in a time when she could have gotten that.

Q Other than being alive, is there any other evidence to explain that polio is the cause for her small left calf?

A No, no. It's a common cause for it, though.

Q Doctor, the left sciatica or the injury to the sciatic nerve on the left side, that is consistent with the finding of a smaller calf on the left side than the

right; correct?

A I didn't find any find any evidence of left sciatica, that's the problem.

Q Well, my question, Doctor, is left sciatica consistent with the neurological finding of a smaller left calf?

A Not in this patient, you mean just generally?

Q In general.

A Because she doesn't have left sciatica. Yes, you can get a smaller left calf as one of the symptoms of sciatica, that's correct.

Q She did not have left sciatica on the day you saw her; correct?

A Absolutely.

Q Doctor, you stated before that since there is no history of these types of problems in her past, that they may be related to the collision, meaning the history of left sciatic complaint, complaints of pain, as well as the definite neurological finding of the left smaller calf?

A That's a possibility.

Q In fact, you state your reports that there is no previous history of sciatica, this may be related to her accident but you don't know?

A That's right.

Q And that you need more diagnostic workup to find that out; right?
A Yes, I said I am surprised that being a sophisticated patient as Dr. McDavid is that if these symptoms were really meaningful to her that she would have had the obviously available non invasive diagnostic technique such as an MRI or EMG to determine what was the cause of her sciatica, if she really has that sciatica, to be able to treat it or alleviate it more appropriately.
Q Was the diagnostic workup ever done?
A Apparently not.
Q So it's fair to say that don't know if her current neurological problems are related to the collision or not?
A Well, what do you mean by her current neurological problems? I don't know if she has got any current neurological problems.
Q Well, you found the definite neurological findings?
A Well, neurological findings is one thing but problems is something else again because her calf, she may have -- as I said, a very good possibility that the cause of her one calf being smaller than the other is a neurological finding, that is that she had poliomyelitis which took place when she was, 40 years ago. That is not a problem today.

Q But you have seen no records of poliomyelitis in this case?
A No, I haven't seen any records of sciatica either.
Q You are throwing that out as a suggestion that that's a possibility?
A That's right, exactly.
Q But other than the collision that we know about and other than a suggestion that poliomyelitis may have occurred, we know of no other cause other than the collision to explain the left calf; correct?
A We don't know that the collision explains the left calf at all. I have seen no connection with that.
Q Well, Doctor, let me ask you, do you know of any other cause other than this collision to explain the size, the fact that her left calf is a half inch smaller than her right calf?
A I don't know that the collision explains it. So when you say other than collision, I have found no connection between the collision and the left calf either.

MR. CHAMBERLAIN: Off the record for a minute.

THE VIDEOGRAPHER: We are still on the record.

MR. CHAMBERLAIN: Off the record.

Off the record.

MR. STAVOLE: For what? Why, why do we need to go off the record?

MR. CHAMBERLAIN: I just want to review my notes. I may have something more.

(Recess taken.)

MR. CHAMBERLAIN: Doctor, I have nothing further. Thanks.

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FURTHER EXAMINATION

BY MR. STAVOLE:

Q Doctor, I have just got a couple questions. In your report you indicated that there were, you used the word findings, and not problems with respect to neurological. Plaintiff's Counsel was using the term neurological problems. I want to make it clear that you were not, that the term that you used was findings; right?

A Yes, because you see there is a difference between findings and problems. I found it and obviously as an independent medical examination I recorded everything that I found. But I don't think they are problems.

The fact that one calf was smaller than the other, she can walk on her toes, she can walk on her heels which takes a tremendous amount of muscle strength so that

functionally she's got a perfectly good use of her legs. It's just these are findings, and I have to put down, anything I find I put down.

Q Okay. As a result of your examination you found no problems or no evidence at all of left sciatica?

A That's correct.

Q And have you seen any records indicating that she has a problem with left sciatica?

A No. As a matter of fact, I couldn't find in the records where anybody else found that she a calf that was a half inch smaller than the other.

Q As far as your testifying on behalf, in cases, you indicated earlier you are primarily testifying on behalf of plaintiffs?

A I don't testify on behalf of anybody.

MR. CHAMBERLAIN: Objection.

A But basically 95 percent of the people that I see are plaintiffs and therefore and generally I am asked to give a deposition more often for people that I have treated than for people that I have just examined in consultation.

Q As a result of this examination you give your independent medical opinion I guess --

A That's correct.

Q -- as a result of that? Thank you, Doctor.

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FURTHER CROSS-EXAMINATION

BY MR. CHAMBERLAIN:

Q Doctor, you stated that functionally she is fine, and that's based upon your one time exam; correct?

A Yes.

Q You haven't seen her since?

A No.

Q The subjective complaints of pain, those are important in diagnosing and treating a patient, aren't they?

A Well, it depends what you mean by subjective complaints. If I find at the time of examination that a patient has pain, subjective findings of pain, which she didn't have, that would be important, yes.

Q That's something that you take into account and you consider in diagnosing and treating your own patients; correct?

A Yes.

Q And again, in your findings and examination of Dr. McDavid here, you found that there are definite neurological findings on her left leg?

A There are.

MR. CHAMBERLAIN: I have nothing further.

THE WITNESS: I will waive viewing on the signing.

MR. STAVOLE: Thank you, Doctor.

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(Deposition concluded at 5:35 p.m.)

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(Signature waived.)

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

I, Cindy Toth, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named RICHARD S. KAUFMAN, M.D. was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her 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 or 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 6th day day of January, 1995,

Cindy Toth, Notary Public
in and for the State of Ohio.

My commission expires 08-30-95.