

1 The State of Ohio,     )  
 2 County of Cuyahoga.   )  SS:

3                     - - - - -  
 4                     IN THE COURT OF COMMON PLEAS  
                      - - - - -

5	VERONICA FERRETTE, ET AL.,	)	
		)	
6	Plaintiffs,	)	
		)	
7	-v-	)	Case Number
		)	370938
8	THERESA KOWALCYK, ET AL.,	)	Judge William
		)	J. Coyne
9	Defendants.	)	

10                     - - - - -  
 11                     DEPOSITION OF SUZANNE E. KIMBALL, D.O.  
                      Wednesday, September 20, 2000  
                      - - - - -

12  
 13 Deposition of SUZANNE E. KIMBALL, D.O.,  
 14 called by the Plaintiffs for direct  
 15 examination under the Ohio Rules of Civil  
 16 Procedure, taken before me, the undersigned,  
 17 Gerald Abbadini, Registered Professional  
 18 Reporter, a Notary Public in and for the  
 19 State of Ohio, at the office of the deponent,  
 20 6803 Mayfield Road, Suite 309, Mayfield  
 21 Heights, Ohio 44124, commencing at 11:32  
 22 a.m. the day and date above set forth.

23                     - - - - -  
 24                     CORSILLO & GRANDILLO COURT REPORTERS  
                      950 City Club Building  
                      Cleveland, Ohio 44114  
 25                     216-523-1700

## 1 APPEARANCES:

2 On Behalf of the Plaintiffs:

3 William Hawal, Esquire  
4 Spangenberg; Shibley & Liber  
5 2400 National City Center  
6 Cleveland, Ohio 441147 George J. Argie, Esquire  
8 Argie, D'Amico & Vitantonio  
9 6449 Wilson Mills Road  
10 Mayfield Village, Ohio 4414311 On Behalf of Defendant Theresa  
12 Kowalczyk:13 Walter H. Krohngold, Esquire  
14 Keller & Curtin  
15 The Hanna Building  
16 Cleveland, Ohio 4411517 On Behalf of Defendant Fireman's Fund  
18 Insurance Company:19 Henry A. Hentemann, Esquire  
20 Davis & Young  
21 1700 Midland Building  
22 Cleveland, Ohio 44115

23 - - - - -

## 24 ALSO PRESENT:

25 John Stringer, Videographer

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1 THE VIDEOGRAPHER: It is  
2 Wednesday, September 20, 2000, 11:32  
3 a.m. We are now on the record.

4 - - - - -

5 SUZANNE E. KIMBALL, D.O.  
6 called by the Plaintiffs for direct  
7 examination under the Ohio Rules of Civil  
8 Procedure, after having been first duly  
9 sworn, as hereinafter certified, was examined  
10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HAWAL:

13 Q Doctor, would you please tell us your  
14 full name and your business address?

15 A Suzanne Evelyn Kimball. Business  
16 address is 6803 Mayfield Road, Suite 309.

17 Q Doctor, what kind of physician are you?

18 A I am a general internist.

19 Q And the reason we are here today in  
20 your office this morning is to ask you some  
21 questions about your care and treatment of  
22 Veronica Ferrette. Before I do that, I would  
23 like to ask you some questions about your  
24 medical education and training.

25 Would you briefly tell the ladies and

1 gentlemen of the jury where it was that you  
2 obtained your medical education and your  
3 training in internal medicine?

4 A I completed the first four years of  
5 medical school at Ohio University College of  
6 Osteopathic Medicine. I had a rotating  
7 internship at Richmond Heights General  
8 Hospital here in Cleveland, followed by three  
9 years of internal medicine residency at St.  
10 Luke's Hospital, also here in Cleveland.

11 Q Did you have any additional  
12 postgraduate training since the training you  
13 described here in Cleveland?

14 A Yes, I had a year of non-invasive  
15 cardiology fellowship at Spaulding  
16 Rehabilitation Hospital which is part of Mass  
17 General in Boston.

18 Q Are you board certified in internal  
19 medicine?

20 A Yes, I am.

21 Q When did you pass your board  
22 examination?

23 A 1988.

24 Q When were you licensed to practice  
25 medicine in Ohio?

1 A 1980.

2 Q Doctor, what hospitals in the Cleveland  
3 area are you affiliated with, where you see  
4 patients?

5 A I'm on the active staff at Hillcrest  
6 Hospital, associate staff at Euclid, courtesy  
7 at University Richmond Heights I believe is  
8 what it's called right now, and I am on the  
9 active staff at Lake County West.

10 Q Doctor, during the course of this  
11 deposition, it may become necessary for you  
12 to express your professional medical  
13 opinions. Will you agree to restrict your  
14 opinions to those which you can state to a  
15 reasonable degree of medical probability?

16 A Yes.

17 Q And if at any time you need to refer to  
18 your medical records or your medical chart on  
19 Veronica, please feel free to do so. Defense  
20 counsel is looking through it as we speak,  
21 but if you need it, you can ask for it.

22 When did you first see Veronica as a  
23 patient?

24 A I first saw her on the 22nd of May in  
25 1998. I'm having to do this from memory

1 because he has the chart.

2 MR. KROHNGOLD: Here, Doctor.

3 A As a follow-up visit from her visit to  
4 the emergency department at Hillcrest across  
5 the street.

6 Q Do you continue to see her presently as  
7 a patient?

8 A Yes.

9 Q How was it that she became your patient  
10 back in May of 1998?

11 A After she was seen in the emergency  
12 department and treated, then she was referred  
13 to my office by the emergency room physician  
14 there.

15 Q When you first saw Veronica, did you  
16 obtain information about her medical  
17 condition and problems, I guess we commonly  
18 refer to them in your profession as a  
19 history?

20 A Yes.

21 Q What information were you provided at  
22 that time?

23 A At that time we had a copy of the  
24 emergency room report, at least the initial  
25 report, stating that she had been brought by

1 rescue squad. Had been unconscious prior to  
2 transport. Had been given oxygen and had a  
3 very high level of blood carbon monoxide.  
4 She had also had such an elevated level that  
5 they felt it necessary to transport her to  
6 St. Vincent Charity Hospital for hyperbaric  
7 oxygen treatment, which she did receive prior  
8 to discharge from the hospital.

9 Q Is that something that is not available  
10 at Hillcrest Hospital?

11 A We don't have that here, no.

12 Q Is that treatment that is commonly  
13 utilized if someone is exposed to high levels  
14 of carbon monoxide?

15 A It can be used as one attempt to try to  
16 minimize the damage.

17 Q What were Veronica's initial complaints  
18 when you saw her the first time?

19 A When I first saw her, she was  
20 complaining of headaches, difficulty walking,  
21 difficulty concentrating, memory  
22 difficulties, difficulty seeing, pain in her  
23 lower back, shortness of breath, fatigue and  
24 chest pains.

25 Q Did you conduct a physical examination

1 at the time of the first visit?

2 A Yes, I did.

3 Q Did you note any abnormalities during  
4 the course of that physical examination?

5 A I noted that she was having difficulty  
6 ambulating and she was ataxic.

7 Q What does that mean?

8 A Staggering. The kind of thing you  
9 would see in someone who was intoxicated with  
10 alcohol.

11 Q As a result of your initial visit with  
12 Veronica, did you have any recommendations or  
13 treatment that you discussed with her or  
14 initiated at that point?

15 A Yes. I recommended that she undergo  
16 full laboratory work-up. I also recommended  
17 that she see Dr. Harold Mars, who is a  
18 neurologist colleague of mine, in  
19 consultation.

20 Q And did that consultation take place?

21 A Yes, it did.

22 Q Did Veronica continue to see Dr. Mars  
23 on more than a one-time basis?

24 A Yes, she did.

25 Q During the course of your treatment of



1 Veronica, have you and Dr. Mars continued to  
2 communicate about Veronica's progress and her  
3 treatment?

4 A Yes, we have.

5 Q Did you continue to see Veronica on a  
6 regular basis after the initial visit in May  
7 of 1998?

8 A Yes.

9 MR. HENTEMANN: May I just, for  
10 the record, I think she said her  
11 first visit was May 22. I think it's  
12 May 18, was it not?

13 Q You didn't have your records in front  
14 of you at the time?

15 A No, I did not. Let me see what the  
16 date on the physical is, then I can tell you.

17 MR. HAWAL: I think the record  
18 indicates that it was May 18.

19 MR. HENTEMANN: She didn't have  
20 the records in front of her at the  
21 time.

22 A Thank you.

23 Q You indicated that you have continued  
24 to see Veronica on a regular basis since that  
25 time?

1 A Yes.

2 Q Can you give us a sense of how  
3 frequently you would see her over this period  
4 of time between then and now?

5 A Initially I was seeing her more  
6 frequently because it was unclear what was  
7 evolving, what process was evolving, and she  
8 needed to go for additional studies. And her  
9 symptoms continued to be a problem.

10 So I was seeing her, I saw her about  
11 two, three weeks after the initial visit for  
12 her follow-up at that time. She continued to  
13 complain of headaches and fatigue and  
14 difficulty ambulating. She was referred for  
15 an MRI scan and had not seen Dr. Mars  
16 initially in her first visit with him.

17 She was seen a week after that  
18 complaining of pains in the chest. Was  
19 brought in by her father. She was to get her  
20 MRI done. In fact, she was scheduled for  
21 that on the 18th, then was followed up with  
22 me about 10 days after that time.

23 Again, she had continuing problems with  
24 her memory, difficulty remembering how to  
25 perform simple acts like tying her shoes or

1 getting dressed. She apparently had what  
2 sounded to me like a gran mal seizure, it was  
3 reported on that visit on the 29th.

4 MR. KROHNGOLD: Objection.

5 Q Doctor, in addition to these complaints  
6 and symptoms that you have just described as  
7 being evident during the early part of your  
8 involvement with Veronica's care, has she  
9 developed any further problems or  
10 difficulties that you needed to direct your  
11 attention to over the intervening time  
12 period?

13 A Oh, she's had irregularities with  
14 autonomic symptoms. She's had some  
15 difficulty with night sweats. Her periods  
16 are no longer regular. Inappropriate  
17 sensations or paresthesias that she's  
18 developed. I believe those are the  
19 additional ones.

20 Q What have you observed to be her most  
21 persistent and Troubling difficulties over  
22 the time that you have been treating her as  
23 her physician?

24 A Difficulty concentrating. Inability to  
25 remember how to perform simple tasks. She's

1 had a lot of difficulty with short-term  
2 memory. She has difficulty reading. She  
3 requires other people to help her with her  
4 activities of daily living. She can't do her  
5 own laundry, has trouble cooking. Difficulty  
6 living by herself, taking care of herself.

7 Q Has there been any appreciable change  
8 or improvement in Veronica's condition over  
9 the period of time that you have been seeing  
10 her?

11 A I don't believe that she's improved  
12 significantly since she first started coming  
13 to see me.

14 Q Have these problems that you have  
15 discussed been disabling to Veronica as a  
16 consequence of what you have described as the  
17 difficulty she's been having?

18 MR. KROHNGOLD: Objection.

19 Q You may answer.

20 A Yes, I believe they have been. She  
21 hasn't been able to hold down a job or find  
22 employment.

23 Q Have you or any of her other doctors  
24 been able to do anything or offer any  
25 recommendations as to any medical treatment

1 that you believe will offer her any  
2 improvement?

3 MR. KROHNGOLD: Objection.

4 A She has been placed on anti-seizure  
5 medication by Dr. Mars, which has been  
6 adjusted. We feel it may be decreasing the  
7 incidence of these seizures, but her  
8 abilities to function really haven't improved  
9 even with the medication.

10 She's also seeing a Dr. Iahn for  
11 psychiatry and has had her medications  
12 adjusted there. The mood seems slightly  
13 improved, but her underlying problems with  
14 trying to concentrate and to perform tasks  
15 have not really improved.

16 Q Have you noticed in your interactions  
17 with Veronica an effect of these underlying  
18 problems upon her mood and personality?

19 A Yes.

20 Q Is there any question in your mind,  
21 Doctor, that these complaints and  
22 difficulties that you have described Veronica  
23 as having, that she's exhibited are in fact  
24 real?

25 A There is no doubt in my mind these are

1 real.

2 Q You mentioned that Veronica has had an  
3 MRI of her head. Has she had any other  
4 diagnostic studies in terms of any  
5 radiographic tests such as an MRI?

6 A She's had a CAT scan.

7 Q Are you aware of the results of those  
8 two studies?

9 A Right. The CAT scan did not show any  
10 anatomic abnormalities. The MRI also did not  
11 show anatomic abnormalities.

12 Q Was that in any way surprising to you  
13 based upon the history that you obtained as  
14 to the circumstances of her carbon monoxide  
15 poisoning and the problems that you described  
16 that she was having?

17 A No.

18 Q Have you referred Veronica for any  
19 neuropsychological testing?

20 A Yes, actually with the assistance of  
21 Dr. Mars, she was referred to the unit at  
22 Metro General.

23 Q Why did you do that?

24 A They are the best unit in town for head  
25 injury, brain injury, and we wanted someone

1 who had a lot of experience in working with  
2 these people.

3 Q Have you seen those results?

4 A Yes, I have.

5 Q Has that provided you with any  
6 objective confirmation of Veronica's  
7 injuries?

8 MR. KROHNGOLD: Objection.

9 A Yes, it does.

10 Q Doctor, what has been your working  
11 diagnosis as far as the various medical  
12 problems that you have described Veronica as  
13 having that you diagnosed?

14 MR. KROHNGOLD: Objection.

15 A The working diagnosis is carbon  
16 monoxide encephalopathy.

17 Q What is encephalopathy?

18 A Encephalopathy means that there is  
19 damage to the brain, that it's not  
20 functioning appropriately.

21 Q And Doctor, have you come to a  
22 conclusion as to the cause of these medical  
23 problems that you have described, including  
24 the encephalopathy?

25 MR. KROHNGOLD: Objection.

1 A well, the conclusion is that she had  
2 significant carbon monoxide poisoning with  
3 microscopic damage that appears to be pretty  
4 much global. There are specific areas  
5 functionally that are impaired.

6 Q Your records reflect a carbon monoxide  
7 blood level of 39.9 when you were seeing  
8 Veronica early on in the course of your  
9 treatment. What is the significance of that  
10 blood level of carbon monoxide?

11 MR. KROHNGOLD: Objection.

12 A A level that high indicates that the  
13 patient had a significant exposure to carbon  
14 monoxide and she had suffered decreased  
15 oxygenation to parts of the brain. It would  
16 be classified technically as a moderate to  
17 severe poisoning.

18 MR. KROHNGOLD: Objection.

19 Q Does this level of 39.9 reflect what  
20 her carbon monoxide blood level was  
21 immediately after her exposure?

22 A The one immediately after would have  
23 been higher.

24 Q Doctor, do you have an opinion as to  
25 whether her encephalopathy and her resulting



1 medical problems and disabilities that you  
2 have described are permanent?

3 MR. KROHNGOLD: Objection.

4 MR. HAWAL: Can I have a basis  
5 for your objection in case I can  
6 correct it, cure it?

7 MR. KROHNGOLD: I don't think  
8 there is any indication in the  
9 medical report on the issue of  
10 permanency.

11 Q You can answer, Doctor.

12 A Could you restate the question?

13 Q Sure. Do you have an opinion as to  
14 whether or not her encephalopathy and  
15 resulting medical problems and disabilities  
16 are permanent?

17 MR. KROHNGOLD: Objection.

18 A I believe that they are. She's failed  
19 to improve over the preceding two years. We  
20 usually can see some improvement, if we see  
21 anything in two years following an incident  
22 like this.

23 Q Have you arrived at any conclusion  
24 about Veronica returning to any form of  
25 meaningful employment in the future?

1 MR. KROHNGOLD: Objection.

2 A It would be extremely difficult for her  
3 to be employed. She has difficulty carrying  
4 out physical tasks. With the impaired  
5 concentration, difficulties with reading and  
6 mathematics that were well documented in the  
7 neuropsychology report, it would make it very  
8 difficult for her to do much of anything.

9 MR. KROHNGOLD: Move to strike.

10 MR. HAWAL: Basis?

11 MR. KROHNGOLD: Same.

12 Q Doctor, do you expect to see Veronica  
13 in the future relating to the injuries that  
14 she sustained as a result of her carbon  
15 monoxide poisoning?

16 A Yes.

17 Q What is the frequency with which you  
18 believe you will need to follow with  
19 Veronica?

20 MR. KROHNGOLD: Objection.

21 A The frequency is difficult to set.  
22 Usually with seizure patients, we see them  
23 about every six months. However, if she  
24 develops other problems, she's been informed  
25 by my office that she is to come in whenever

1 she has a difficulty so that we can try and  
2 prevent her from having further difficulties.

3 Q Doctor, the billing statements that you  
4 have provided for medical treatment between  
5 May of 1998 until the present time for  
6 Veronica Ferrette, are those medical bills  
7 which were incurred as a direct and proximate  
8 result of her carbon monoxide exposure in May  
9 of 1998?

10 A Yes.

11 Q Doctor, at the conclusion of this  
12 deposition, what I'm going to ask is the  
13 court reporter make arrangements to mark your  
14 medical file on Veronica as Exhibit A for  
15 purposes of your deposition and make a copy  
16 of it and append it to the deposition.

17 Is the record that you have in front of  
18 you that consists of your file on this  
19 patient a true and accurate copy of the  
20 medical record that you have generated as a  
21 result of your care and treatment of Veronica  
22 Ferrette?

23 A Yes.

24 MR. HAWAL: Thank you, Doctor.

25 I have no further questions.

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

3                   (Discussion off the record.)

4                   - - - - -

5                   CROSS-EXAMINATION

6 BY MR. KROHNGOLD:

7 Q           Good morning, Doctor, at least it's  
8 morning for another couple minutes. My name  
9 is Walter Krohngold. I represent the  
10 defendant in this case, Theresa Kowalczyk. I  
11 would like to ask you some questions today  
12 based on the information you gave to opposing  
13 counsel, as well as some of the information  
14 contained in your chart.

15           You indicated you were an internist by  
16 training, correct?

17 A           Um-hum.

18 Q           Now, that's not -- that is different  
19 than a neurologist or a psychologist,  
20 correct?

21 A           Correct.

22 Q           And different certainly than a  
23 neuropsychologist, right?

24 A           Um-hum.

25 Q           For her neurological treatment, you

1 referred her over to Dr. Mars who monitored  
2 that aspect of her condition, correct?

3 A Correct.

4 Q And did he also make all the changes in  
5 her medication levels regarding her seizure  
6 medication?

7 A Yes.

8 Q And for her neuropsychological  
9 assessment, you sent her over to Metro  
10 Hospital and let them handle that, correct?

11 A Correct.

12 Q Let me just go through some of the  
13 information in your chart if I could. The  
14 first day you saw her, I believe we agreed,  
15 is May 18 of '98, correct?

16 A Correct.

17 Q At that time, you had given her it  
18 looks like a patient medical history  
19 questionnaire?

20 A Um-hum.

21 Q I think I might have put a little tag  
22 there in the file. And that is a  
23 questionnaire you give to all of your  
24 patients, asking about pertinent medical  
25 history and their current condition?

- 1 A Yes.
- 2 Q Was this filled out by Ms. Ferrette
- 3 herself?
- 4 A Some of it has been filled out by Ms.
- 5 Ferrette and then I added some other
- 6 notations to it.
- 7 Q Is there a way to tell what she filled
- 8 out and what you filled out?
- 9 A By the handwriting.
- 10 Q If I were to look at the first page,
- 11 and perhaps we can have this marked as a
- 12 defense exhibit after the deposition is over,
- 13 it appears to be four pages long, Doctor?
- 14 A The history portion?
- 15 Q Yes, the questionnaire itself?
- 16 A Yes.
- 17 Q And it's dated 5-18-98?
- 18 A Um-hum.
- 19 Q The first page with the name, the
- 20 address, the complaints, and the past medical
- 21 history, was that all in her handwriting?
- 22 A All except for several items in the
- 23 past medical history.
- 24 Q Just so I know if I look at it, can you
- 25 tell me what your handwriting -- is it the

1 cursive handwriting?

2 A I can tell you what items I added.

3 February of '96, she had a submucous

4 resection. March of '97 she had left sinus

5 surgery, and 1996, was seen by a Dr. Iahn for

6 depression.

7 Q Was the information you added based on

8 your conversations with her at that time?

9 A Yes.

10 Q Was all of the information obtained in

11 this questionnaire either filled in by Ms.

12 Ferrette or done by you on the first visit

13 based on information provided by her?

14 A Right.

15 Q And she was able to describe exactly

16 what was going on with her and what

17 conditions gave her problems and what

18 conditions did not give her problems by that

19 checklist, correct?

20 A Right.

21 Q I assume you sat down and interviewed

22 her at that time, as well?

23 A Yes.

24 Q Before we go on, you indicated to

25 opposing counsel that her CO2 level of 39.9

1 was sometime after the actual exposure?

2 A Yes.

3 Q I think the actual blood test was run  
4 about 3 or 4 in the morning that evening,  
5 correct?

6 A Um-hum.

7 Q Is there any way to tell how much  
8 higher than that it would have been upon  
9 initial exposure? Are you talking a point or  
10 two? If you have the knowledge to say.

11 A It would be very difficult to say what  
12 her initial level was.

13 Q At least that test was relatively close  
14 to the exposure time, correct?

15 A Yes, but it's the nature of that test  
16 to be -- those levels can change very  
17 quickly.

18 Q All right. On your initial  
19 examination, you did conduct a physical  
20 examination of her?

21 A Yes.

22 Q And I see that pretty much your entire  
23 physical examination was normal at least  
24 until we get down to the last element, the  
25 psychiatric aspect, would that be a fair



- 1 assessment?
- 2 A There is some minor things, but it
- 3 would be neuropsychiatric, yes.
- 4 Q But it looks like most -- by and large,
- 5 the exam was normal until we get to the
- 6 psychiatric portion of it?
- 7 A To the last portion.
- 8 Q And the psychiatric, it appears to be
- 9 four different categories which you assessed,
- 10 correct?
- 11 A Um-hum.
- 12 Q The first one, if I am reading it right
- 13 because my copy is relatively poor, is
- 14 description of patient's judgment and
- 15 insight?
- 16 A Um-hum.
- 17 Q You indicated was normal?
- 18 A Um-hum.
- 19 Q What did you mean by that, Doctor? How
- 20 did you assess that?
- 21 A She knew where she was. She was
- 22 oriented to person, place and time. It's a
- 23 very superficial assessment. I don't do a
- 24 detailed assessment. That's more the
- 25 province of a neurologist or psychiatrist or

- 1 psychologist.
- 2 Q I understand, it's more of an overview?
- 3 A Right.
- 4 Q The next line which says orientation to
- 5 time, place and person which you have just
- 6 described to us?
- 7 A Right, she's there.
- 8 Q And recent and remote memory, you
- 9 indicated that was normal?
- 10 A At that time.
- 11 Q Was that at least substantiated in part
- 12 by her ability to recall her medical history
- 13 and what was going on with her over the past
- 14 couple weeks and describe her complaints?
- 15 A Yes.
- 16 Q And the mood and affect, you indicated
- 17 there was some ataxia which you described as
- 18 some staggered walking?
- 19 A Right.
- 20 Q And you said cephalgic, is that
- 21 headaches?
- 22 A Headaches.
- 23 Q And chest pain?
- 24 A Right.
- 25 Q Those were her descriptions of her

1 problems to you, correct?

2 A Well, the ataxia is an objective  
3 finding. This is the impression that you are  
4 reading off the bottom. The difficulty with  
5 this form, and I'm no longer using it, is it  
6 didn't give me any room to put my impressions  
7 down and my plans. So I had to jam them in  
8 underneath the psychiatric section.

9 Q But at least the only objective finding  
10 you had in that category was just the ataxia?

11 A She was ataxic. She complained of  
12 cephalgia. She complained of chest pains and  
13 she had moderate to severe carbon monoxide  
14 poisoning as a history which was confirmed by  
15 the blood levels, and the emergency room  
16 reports.

17 Q There is a note down in the lower  
18 left-hand corner which I can't read very  
19 well. Could you tell me what that says?

20 A She had quit working in the sleep lab.

21 Q Did she say when that was?

22 A No.

23 Q Then under that there is something  
24 else?

25 A "Sleep lab at Hillcrest, burnout - now

1 waitress at Charley's Crab."

2 Q From your recollection, did she  
3 indicate she got too burned out working at  
4 the sleep lab, she quit there and was working  
5 as a waitress? It seems suggested by your  
6 note. I'm wondering if you have any further  
7 recollection of that?

8 MR. HAWAL: Objection to  
9 counsel's commentary on what the note  
10 may seem to suggest.

11 A Well, also if you read the rest of it,  
12 it also says wants to start her own business.

13 Q But at least at the time she came to  
14 see you, she indicated something to the  
15 effect that she had stopped working at the  
16 sleep lab because she just got too tired or  
17 burned out doing it?

18 A She was unable to do it. She couldn't  
19 concentrate. Couldn't do the job.

20 Q Did she say when she quit the sleep  
21 lab?

22 A No.

23 Q But there is the suggestion of burnout  
24 there, right?

25 A Um-hum. The word is there.

1 Q I don't want to go through each and  
2 every visit, Doctor, because you have seen  
3 her a number of times. But just to review  
4 your records, there were a number of visits  
5 you had seen her for problems she was having  
6 with her sinuses, correct?

7 A Um-hum.

8 Q You had treated that aspect of her  
9 condition, right?

10 A Right.

11 Q That was a condition she had even  
12 before this incident happened, right?

13 A Um-hum.

14 Q You were medicating that and I note  
15 that certainly on a few visits, they were  
16 related to treatment for a sinusitis, sinus  
17 infection, you even had some tests run for  
18 her sinus problems?

19 A Yes.

20 Q Those visits would not be related to  
21 this incident, would it?

22 A No, they wouldn't be.

23 Q You also indicated that she had a  
24 normal CT of the brain, I think there were  
25 actually two of them. One you ordered fairly

1 early on, I think you told us, and that was  
2 done in August of '98?

3 A Um-hum.

4 Q Was that to see if there was any  
5 organic condition going on with her brain at  
6 that time?

7 A Correct.

8 Q Then there was a subsequent one that  
9 was ordered I believe in January of '99,  
10 another CT?

11 A Um-hum.

12 Q That was also negative?

13 A Yes.

14 Q You also mention an MRI. Do you know  
15 when that was taken, Doctor?

16 A That would have been in June of '98 and  
17 that report is in the correspondence section.

18 Q Was that ordered by you or was that  
19 ordered by Dr. Mars?

20 A That was Dr. Mars.

21 Q That was likewise normal?

22 A Did not show anatomic abnormality.

23 Q One of the notes that I saw was an  
24 incident that happened back in January of  
25 1999. She was apparently assaulted by her

- 1    boyfriend?
- 2    A            Um-hum.
- 3    Q            As far as I can read your notes, it
- 4    looks like on January 12 it said hit, is it
- 5    occiput? Am I reading it right? I'm looking
- 6    at the January 12 notes.
- 7    A            Yes.
- 8    Q            The occiput is a part of the head,
- 9    correct?
- 10   A           Um-hum.
- 11   Q           What part of the head would that be?
- 12   A           Back here.
- 13   Q           She said she was struck by her
- 14   boyfriend there?
- 15   A           She was pushed against the wall.
- 16   Q           She was complaining at that time of
- 17   pain in her shoulders and soreness?
- 18   A           Um-hum.
- 19   Q           You diagnosed a concussion, correct?
- 20   A           Um-hum.
- 21   Q           What is a concussion?
- 22   A           A concussion is when the head has been
- 23   struck and the force of the blow is
- 24   transmitted through to the brain.
- 25   Q           Can that have an effect on the brain?

1 A It can.

2 Q I believe you also had written a note  
3 in the chart, which I put a little tag by,  
4 regarding that incident. I'm not sure who  
5 the note was written to, if you could please  
6 refer to it. It's a typewritten note. I  
7 might have stuck a little piece of paper in  
8 the corner there. If you want, I can go and  
9 look for it off the record, Doctor. It may  
10 not have made it over by the time I handed  
11 the file back to you.

12 A Things have migrated around,  
13 unfortunately.

14 MR. KROHNGOLD: Let me go off  
15 the record for just a moment. I can  
16 try to locate it for you.

17 (Discussion off the record.)

18 Q Do you have that letter now, Doctor?

19 A Yes, I do.

20 Q I believe that was written on January  
21 12 of '99, the same date as the examination?

22 A Um-hum.

23 Q You indicated that she was thrown  
24 against the wall I think and struck her head,  
25 something to that effect?



1 A Her boyfriend struck her, threw her  
2 against the wall and threw a vacuum cleaner  
3 at her.

4 Q And you indicated in I believe the  
5 second paragraph that she was a little more,  
6 was it lightheaded than usual? I forgot the  
7 exact wording and please feel free to read  
8 it.

9 A She complained of headaches,  
10 lightheaded, dizzy and pain when moving her  
11 eyes up and to the left. She had bruises  
12 over the posterior aspect of her right  
13 shoulder. A little more slowed than usual in  
14 her thinking, but was still oriented to  
15 person, place and time. CAT scan that day  
16 that was done was normal. Facial bones in  
17 the left orbit X-ray showed no apparent  
18 fracture. An incidental finding with some  
19 mucosal thickening consistent with chronic  
20 maxillary sinusitis.

21 Q When you said she was a little more  
22 slow than normal in her thinking, do you  
23 recall how you made that assessment?

24 A It took her longer to answer questions  
25 than usual.

1 Q Do you have any recollection as to how  
2 long that condition lasted, where her  
3 thinking was a little more slowed down, or  
4 whether it continued to last for even up  
5 until now?

6 A She was seen more than once for this.

7 Q I think she was seen a couple days  
8 later on the 14th.

9 A Right. As I recall -- when I saw her  
10 on the 14th, she was better. My biggest  
11 concern was the bruising -- the difficulty  
12 around her eye and that's when I ordered  
13 orbital X-rays, to be sure since he had hit  
14 her in the eye, to be sure she didn't have  
15 what is called a blowout fracture.

16 Q You sent her out for some more X-rays?

17 A Plain films of the eye, facial bones.

18 Q At least on the 14th, she was still  
19 complaining of lightheadedness and dizziness,  
20 right?

21 A Um-hum.

22 Q Just by way of example, if you will  
23 turn to the next page, February 2, that  
24 appears to be a visit regarding her sinus  
25 problems, correct?

1 A Um-hum.

2 Q And the 11th, as well?

3 A Yes.

4 Q And March 11th, as well? Would that  
5 visit be primarily for other conditions,  
6 colds, sore throats and the like?

7 A Yes.

8 Q There was a note from January of this  
9 year, January 4. She indicated she was  
10 feeling better. Do you recall what exactly  
11 you meant by that? Because you put it in  
12 quotes.

13 A That's not my note. That's my  
14 assistant's note. The patient called and  
15 canceled her appointment and told the  
16 assistant that she couldn't afford to pay for  
17 the visit, and then the assistant put down  
18 exactly what the patient said.

19 Q So you don't know exactly what's meant  
20 by that from the patient?

21 A No.

22 MR. KROHNGOLD: Let's go off  
23 the record for just a minute, please.

24 (Discussion off the record.)

25 MR. KROHNGOLD: Doctor, at this

1           time I don't have any further  
2           questions. Mr. Hentemann may want to  
3           ask you something further.

4                       - - - - -

5                       CROSS-EXAMINATION

6 BY MR. HENTEMANN:

7 Q           Dr. Kimball, my name is Hank Hentemann,  
8 Henry Hentemann. I represent the intervening  
9 defendant, Fireman's Fund Insurance Company  
10 in this particular case. I have got a couple  
11 questions I would like to ask you to clarify  
12 some matters.

13           You mentioned that your records reflect  
14 that she quit her job in the sleep lab over  
15 at one of the hospitals. Was that  
16 University?

17 A           No, it was Hillcrest.

18 Q           Hillcrest, because one of the problems  
19 she has was she couldn't concentrate well, is  
20 that correct?

21 A           Um-hum.

22 Q           You don't know when she quit the job  
23 over at Hillcrest Hospital?

24 A           She didn't share that with me.

25 Q           But at that particular time, however,

1 she was having trouble concentrating?

2 A Yes.

3 Q You rendered a diagnosis of carbon  
4 monoxide encephalopathy, is that correct?

5 A Yes.

6 Q The carbon monoxide encephalopathy is  
7 damage to the brain, is that correct?

8 A Yes.

9 Q The question is whether the carbon  
10 monoxide caused the problem with the brain,  
11 as far as I'm concerned, maybe you don't, but  
12 the question I have is on what facts did you  
13 rely upon in rendering your opinion that it  
14 was carbon monoxide encephalopathy?

15 A The carbon monoxide level, the history  
16 from the emergency department, the findings,  
17 the neurological findings that Dr. Mars  
18 found.

19 Q Those were not findings that you found,  
20 but findings --

21 A Findings that he was able to find.  
22 Also the psychology report, the negative MRI  
23 initially and the negative CT initially would  
24 support CO2 encephalopathy.

25 Q With carbon monoxide, doesn't -- if

1   there is an encephalopathy from the carbon  
2   monoxide, that there is some damage shown on  
3   the MRI or the EEG or the CT scan?

4   A       CT scan doesn't have sufficient  
5   resolution to show much.  MRI, you are  
6   looking at anatomic findings.  She may have  
7   small vessel damage or cellular damage  
8   without abnormality on MRI, and I defer to  
9   Dr. Mars on that matter.

10  Q       with respect to the encephalopathy,  
11  there was no objective evidence on any test  
12  you performed to indicate there was any  
13  organic damage to the brain, is that a fair  
14  statement?

15  A       Repeat the statement again, please.

16                               (Last question read.)

17  A       I would have to disagree with it,  
18  because the patient was ataxic on physical  
19  exam, on presentation.

20  Q       That's what, staggering?

21  A       That's staggering.  That's a physical  
22  finding.  That's an objective finding.

23  Q       Did you ever consult with Dr. Iahn, I  
24  believe his name is, the psychiatrist that  
25  the plaintiff, Mrs. Ferrette, had been going

1 to before this incident occurred?

2 A No.

3 Q Did you ever consult with any other  
4 doctors? I'm not sure whether Dr. DeJoseph  
5 saw her or not. Did you ever discuss her  
6 condition prior to this incident with Dr.  
7 DeJoseph?

8 A No.

9 Q With respect to comments in the record  
10 about seizures, there is no evidence of any  
11 seizure, was there?

12 A There is a description of behavior that  
13 would be consistent with a seizure.

14 Q By her?

15 A By her and by family members.

16 Q Do you know of any witness to any of  
17 her so-called seizures?

18 A I would have to review the record, but  
19 I believe there had been family members  
20 present --

21 Q As you sit here right now, you cannot  
22 recall any witness to any seizure that she  
23 claims she had?

24 A I have not witnessed any seizures.  
25 That doesn't mean to say someone else hasn't.

1 Q If you have a seizure, wouldn't that  
2 have caused damage to the brain?

3 A If they are uncontrolled.

4 Q And if she says they were uncontrolled  
5 seizures that she had, wouldn't that have had  
6 a residual effect on the brain in the sense  
7 of showing some organic damage?

8 A You would expect to see abnormalities  
9 on the electroencephalogram.

10 Q And there were no abnormalities found  
11 on any electroencephalogram that was  
12 performed on her?

13 A That I am aware of.

14 Q Did she ever tell you that she was  
15 under the care of a Dr. Iahn, the  
16 psychiatrist, before this incident occurred?

17 A Yes.

18 Q Did she tell you that she had suffered  
19 from I believe chronic depression?

20 A Yes.

21 Q Does chronic depression have symptoms  
22 similar to those symptoms that she was having  
23 or she related to you when she saw you in  
24 your office?

25 A Only to some of them.



1 Q Some of them are the same as you have  
2 experienced?

3 A They could be the same.

4 Q And she was suffering from chronic  
5 depression, I believe, did she tell you, from  
6 1987?

7 A According to her history and physical  
8 examination and her initial past medical and  
9 surgical history, the information that she  
10 gave me on her initial visit, she clearly  
11 stated she had seen Dr. Iahn in 1996 for  
12 depression.

13 Q You didn't check with Dr. Iahn,  
14 however, did you?

15 A No.

16 Q She was also suffering from and was  
117 treated by Dr. Iahn before this incident for  
18 generalized anxiety disorder, is that  
19 correct?

20 A Yes.

21 Q Were some of the symptoms from a  
22 generalized anxiety disorder similar to the  
23 symptoms that she expressed to you when she  
24 came to your office?

25 A They could be, but generalized anxiety

1 does not cause ataxia.

2 Q But as far as other symptoms, they  
3 could be related to --

4 A Some of the other symptoms could be.

5 Q And the memory loss which caused her to  
6 stop working as a -- in the sleep lab at  
7 Hillcrest Hospital, that was something she  
8 was suffering from before this incident, too?

9 A No.

10 Q If she was suffering at the time she  
11 lost her job or at the time she left her job  
12 at the sleep lab at Hillcrest Hospital, the  
13 reasons she gave to you were the loss of  
14 short-term memory?

15 A Yes.

16 MR. HAWAL: Objection.

17 Q And loss of concentration, is that  
18 correct?

19 MR. HAWAL: Objection.

20 A Could you read back the last, please.

21 (Record read on page 42, lines  
22 10 through 18.)

23 A Yes.

24 Q At the time of this incident, she was  
25 taking medications for the generalized

1 anxiety disorder, was she not, as well as the  
2 chronic depression?

3 A When she presented to me, she was  
4 taking one medication.

5 Q What was that?

6 A Pamelor, nortriptyline, 75 milligrams.

7 Q Did she tell you she was also taking  
8 Ativan, A-t-i-v-a-n?

9 A It's not listed in the record here.

10 Q Are you familiar with -- if she were  
11 taking Ativan -- you are looking at a  
12 different record right now?

13 A I'm seeing what I prescribed. In her  
14 initial sign-in sheet, she mentioned she was  
15 taking Norlestrin, which is a birth control  
16 pill. Which is not uncommon for people to  
17 forget that that's a medication.

18 Q She was taking Pamelor?

19 A Yes.

20 Q She admitted that for what, the anxiety  
21 or the depression?

22 A Um-hum.

23 Q Is that correct?

24 A For depression.

25 Q Are you familiar with the adverse

1 effects of Pamelor on patients who take that  
2 medication?

3 A Yes.

4 Q Isn't one of those ataxia?

5 A It would be a very high dose to become  
6 ataxic. 75 milligrams isn't very high.

7 Q Is it one of the adverse effects that  
8 one can experience from taking Pamelor?

9 A If you are taking enough, but at 75  
10 milligrams, I would not expect to see  
11 somebody become ataxic.

12 Q She was taking Pamelor before you saw  
13 her?

14 A According to what she told me.

15 Q I just would like to touch on the  
16 seizure history that she gave. You know of  
17 no witness to the seizures, but did you  
18 review the EMS records, the people that  
19 picked her up from her home?

20 A The run sheet.

21 Q Is that what they call it, the run  
22 sheet?

23 A It's called the run sheet. I have an  
24 emergency room sheet. I don't know that they  
25 gave me a run sheet, That's not always

1 included in the ER record.

2 I don't believe I have that document.

3 Q Did you review it, though, I believe,  
4 before you testified here today?

5 A I reviewed the emergency room record.  
6 I don't have the squad run sheet. They don't  
7 always routinely include that as part of the  
8 record. We have the nursing notes from the  
9 emergency department.

10 Q Doctor, is it fair to state that the  
11 emergency run people that go to the house  
12 when there is a crisis like this, that  
13 especially with CO2 or carbon monoxide  
14 involved, that if there were comments made or  
15 if anyone were experiencing seizures, that  
16 certainly would be a significant matter that  
17 they would include on their report?

18 MR. HAWAL: Objection.

19 A I would hope they would put it on  
20 there.

21 Q Do you have the report there?

22 A No, I have the nurses notes and I have  
23 the emergency room report, that's what I  
24 have.

25 a When she arrived at the emergency room,

1 being brought there by the EMS people, she  
2 was awake and alert, is that correct, and  
3 oriented?

4 A The note that I have from the emergency  
5 room physician was that the patient went to  
6 bed at 11 p.m., was unconscious on the scene,  
7 but responded immediately when oxygen was  
8 applied.

9 Q And she was awake when she got to the  
10 emergency room?

11 A According to their -- what I can read  
12 of their notes. According to what I can read  
13 from the emergency room record, she was  
14 responsive on arrival in the emergency  
15 department.

16 Q There were no abnormal findings  
17 neurologically, were there?

18 A According to the sheet that I have here  
19 from St. Vincent's, "Motor power symmetrical  
20 plantar stem going, patient oriented."

21 Q In other words, there were no abnormal  
22 neurological findings, were there?

23 A No gross abnormal neurological  
24 findings. The emergency department, again,  
25 you make sure they can talk to you and move

1 all four extremities. There is no detailed  
2 neurological exam here. But to the level  
3 that they were able to examine her, they  
4 didn't find anything.

5 Q Did you perform a detailed neurological  
6 exam and find anything wrong with Veronica  
7 Ferrette?

8 A I found her gait was abnormal, was the  
9 initial impression that I got, and for a  
10 detailed neurological examination, to go into  
11 great detail, I have to rely on a neurologist  
12 who can take the time and has the equipment  
13 to do that.

14 Q And that's Dr. Mars?

15 A That would be Dr. Mars.

16 Q And Dr. Mars did perform a detailed  
17 neurological, clinical neurological exam, did  
18 he not?

19 A Yes, he did.

20 Q And he found no abnormalities, did he?

21 MR. HAWAL: Objection.

22 A No, he found abnormalities.

23 Q What did he find?

24 A He found that the left side was weak.  
25 And if you read his letters, which I have to

1 find here, it was not normal.

2 Here we go. He found on examination,  
3 questionable Marcus Gunn on the left.

4 Q What is Marcus Gunn?

5 A Marcus Gunn is abnormal pupillary  
6 response.

7 Q Did that come from depression and  
8 anxiety?

9 A That, I would defer to Dr. Mars. This  
10 is his examination, not mine.

11 Q I would like to refer you to a report  
12 that Dr. Mars sent to you. I believe it's  
13 dated June 4, 1998. Got it?

14 A Yes.

15 Q On page 2, I think he's referring to  
16 his examination of May 28, which is on the  
17 first page.

18 MR. HAWAL: Objection.

19 Q In that report to you that Dr. Mars  
20 wrote regarding his examination of Mrs.  
21 Ferrette, he states that she was alert, this  
22 is on May 28, 1998, that she was -- and  
23 again, this is like 20 days after the  
24 incident, Mrs. Ferrette was alert, oriented  
25 and cooperative. Does that mean -- that says



1 what it says, right?

2 A Says what it says.

3 Q Blood pressure was 100 over 60. That's  
4 not an abnormality, is it?

5 A That's normal.

6 Q Speech was normal and no receptive or  
7 expressive dysphasia. Could you explain what  
8 he means by that?

9 MR. HAWAL: Objection.

10 Q Or the word dysphasia for the jury's  
11 benefit?

12 A Dysphasia would be difficulty  
13 expressing, difficulty speaking, difficulty  
14 understanding someone who is talking to you.

15 Q Wouldn't this be something you would  
16 find if you had carbon monoxide  
17 encephalopathy?

18 A Not necessarily.

19 Q Hearing was intact. Pupils were round,  
20 regular, reacting to light and accommodation.  
21 That's indicating her eye reactions and the  
22 nerves dealing with the eyes were normal?

23 MR. HAWAL: Objection.

24 Q Is that a fair statement?

25 A It's a gross test of the cranial nerve.

1 Q External ocular movements were full to  
2 confrontation testing?

3 A Again, you are just going through the  
4 cranial nerve.

5 Q Right, and this is what a good  
6 neurologist does, does he not, to test the  
7 patient to see if there is any neurological  
8 findings, is that correct?

9 A Um-hum.

10 Q Then he goes on to state that the  
11 funduscopy exam was benign. There were no  
12 exudates. Can you explain that to the jury?  
13 There were no exudates, hemorrhages or  
14 papilledema.

15 A Exudates would be fluid that had leaked  
16 into the retina. When you do a funduscopy  
17 examination, you are looking at the back of  
18 the eye, the back layer of the retina.  
19 Exudates. Hemorrhages are hemorrhages, it's  
20 bleeding. Papilledema would be swelling of  
21 the optic nerve head which you can examine,  
22 associated with a number of other  
23 abnormalities.

24 Q Her face and soft palate were  
25 symmetrical. That deals with the --

1 A Again, you are looking at cranial  
2 nerves.

3 Q Cranial nerves were intact?

4 A At that point, they are intact.

5 Q Deep tendon reflexes were physiologic  
6 and bilaterally symmetrical?

7 A Um-hum.

8 Q That means that those reflexes, the  
9 nerves were normal, in a normal state, is  
10 that a fair statement?

11 A It means that those specific reflexes,  
12 those tendon reflexes, the spinal reflexes  
13 were intact.

14 Q Nothing abnormal?

15 MR. HAWAL: Objection.

16 A No, it says her spinal reflexes are  
17 intact. It says exactly what it says.  
18 Nothing more, nothing less.

19 Q But he says that, okay. Both toes were  
20 flexor in response to plantar stimulation.  
21 Can you explain that to the jury?

22 A If there is damage in the upper areas  
23 of the brain and it is severe enough, when  
24 you do plantar stimulation, you have an  
25 extensor response rather than a flexor

1 response. But there has to be enough damage  
2 and in the right areas to produce that  
3 response.

4 If you wish more detail on this, you  
5 really need again to talk to Dr. Mars.

6 Q But this is a clinical examination that  
7 a good neurologist performs to check to see  
8 if there is any lesion or any damage to the  
9 brain, is that a fair statement?

10 A This is the initial exam. Again, this  
11 is a level above the cursory examination that  
12 people start with. He's going a little bit  
13 further.

14 Q It's a level above?

15 A It's a level above, but it's not  
16 perfect. Which is why they have all these  
17 other ancillary tests.

18 Q But this is another test to see if  
19 there is any brain damage?

20 A Correct.

21 Q And this was normal, was it not?

22 A Yes.

23 Q So that indicates at least -- it does  
24 not indicate that there is a brain damage?

25 MR. HAWAL: Objection.

1 A It does not indicate -- it doesn't pick  
2 up anything at this level.

3 Q In addition to that, he says that the  
4 muscle strength was intact throughout. That  
5 was his examination on May 28, 1998, 20 days  
6 after this incident. So in other words, her  
7 muscle strength was intact throughout her  
8 body, is that a fair statement?

9 A Again, it says what it says. If you  
10 have further questions about this, you really  
11 need to direct them to the neurologist.

12 Q Dr. Mars --

13 A His report is consistent. At this  
14 point, her muscle strength is normal.  
15 Everything is normal up to that point.

16 Q Everything is normal from a muscular  
17 standpoint, is that a fair statement?

18 A That's what his report is.

19 Q And he's reporting to you as the doctor  
20 that referred her to him?

21 A Right.

22 Q And there were no -- there was no  
23 atrophy or vesiculations. Atrophy means a  
24 shrinkage of muscle?

25 A Lost muscle mass. Cells have actually

1 decreased in size. Vesiculations are  
2 abnormal movements.

3 Q None of that was found on his  
4 neurological examination of Mrs. Ferrette?

5 A According to his report.

6 Q Finger-nose-finger and fine finger  
7 movements were well done with no cerebellar  
8 dysfunction. Tell the jury what that means?

9 MR. HAWAL: Objection.

10 A Well, finger-nose-finger is you have  
11 them put their index finger out, use the  
12 other index finger to touch their finger,  
13 then touch their nose. You increase the  
14 speed, have them close their eyes, open their  
15 eyes.

16 Q Is that another test --

17 A It's another test for specific  
18 dysfunction of the cerebellum, the part of  
19 the brain that controls that.

20 Q So there was no evidence of any brain  
21 damage in that particular test, was there?

22 A According to his report.

23 Q Well, you expected him to tell you the  
24 truth?

25 MR. HAWAL: Objection. This is

1                   getting argumentative, Hank.

2   Q           The gait -- he noted that her gait was  
3   normal?

4   A           Um-hum.

5   Q           Is that what he says?

6   A           That's what it says.

7   Q           When he examined her. He doesn't find  
8   any ataxia, does he?

9   A           No.

10   Q          In addition to the clinical exam that  
11   he performed which we just went through, Dr.  
12   Mars also ordered a visual evoked potential  
13   exam?

14   A           Um-hum.

15   Q          Could you explain to the jury what that  
16   was, what that is?

17   A          That's a highly specialized examination  
18   to test some of the function of the optic  
19   nerve where you are picking up microcurrents  
20   on the scalp in response to visual  
21   stimulation.

22   Q          Is that also a test to determine  
23   whether there was any brain damage?

24                   MR. HAWAL: Objection.

25   A          It's a test to determine whether --

1 it's a test to determine whether exposure to  
2 a visual stimulus produces the expected  
3 responses.

4 Q But if I remember correctly, that  
5 examination turned out to be normal?

6 A Right, but it would also be abnormal --  
7 the reason he asks was because he was  
8 concerned about the optic nerve. So he was  
9 looking more at the optic nerve with that  
10 particular test.

11 Q So he had that test performed --

12 A He wanted to have the optic nerve  
13 checked and that was the way it was done.

14 Q That turned out to be a normal  
15 examination?

16 A That turned out to be normal.

17 Q He also on June 8 performed an EEG,  
18 electroencephalogram?

19 A Um-hum.

20 Q Is that to test the brain to see if  
21 there is any lesions or any problems with the  
22 brain?

23 A It looks for electrical abnormalities.

24 Q In the brain, though?

25 A In the brain.



1 Q And that test was normal?

2 A That test did not show us anything.

3 Q Then on June 13, 1998, he performed an  
4 MRI?

5 A Correct.

6 Q And that turned out to be normal --  
7 that was a test to determine whether there  
8 was any brain damage?

9 A MRI scan is to look for anatomic  
10 abnormalities, that would be visible on MRI.  
11 Again, none of these tests are perfect.

12 Q None of us are perfect, either.

13 MR. HAWAL: Objection to  
14 counsel's gratuitous statement. Move  
15 to strike it.

16 Q The MRI conducted on June 13 by Dr.  
17 Mars was normal?

18 A It is negative.

19 Q Or negative, okay. How about on August  
20 22, 1998, the CT scan, the CAT scan, did you  
21 determine whether there was any  
22 abnormalities?

23 MR. HAWAL: Objection, asked  
24 and answered.

25 A CAT scanning is, compared to -- well,

1 CAT scanning is very primitive.

2 Q He ordered -- Dr. Mars ordered it two  
3 times, did he not?

4 A It's a first step. The work-ups  
5 proceed in orderly fashion from the least  
6 complicated to the most sophisticated. It's  
7 a nice first step.

8 Q There were two CAT scans performed on  
9 Mrs. Ferrette and they were all normal or  
10 negative, is that correct?

11 A They failed to show pathology.

12 Q And on December 29 of 1999, another  
13 EEG, electroencephalogram -- is that what EEG  
14 stands for?

15 A Yes.

16 Q -- was performed by Dr. Mars and that  
17 was also negative or normal?

18 A It was negative.

19 Q So it didn't show any evidence of any  
20 brain damage?

21 A It was negative.

22 Q And it didn't show any evidence of  
23 brain damage?

24 A It was negative.

25 Q I don't mean to go through your records

1 all over again, but I just would like to  
2 point out that on January 12 of 1999 is when  
3 Mrs. Ferrette came in -- this would be about  
4 seven, eight months after the incident?

5 A Um-hum.

6 Q She came in and complained of being  
7 assaulted by her boyfriend?

8 A Um-hum.

9 Q That was a concussion. You gave a  
10 diagnosis of a concussion, is that correct?

11 A Um-hum.

12 MR. HAWAL: Objection, asked  
13 and answered.

14 Q Is a concussion also damage to the  
15 brain?

16 A Yes.

17 Q So she had damage to her brain by  
18 virtue of that incident. If you could go to  
19 that section of your records, I just would  
20 like to point out that following that  
21 incident, I think she came in for a cold on  
22 January 14?

23 A Um-hum.

24 Q She came in on February 2 for a sinus  
25 infection?

- 1 A Um-hum.
- 2 Q On February 11, she came in for a  
3 cough?
- 4 A Um-hum.
- 5 Q On March 11, 1999, she came in that her  
6 glands were swelling?
- 7 A Um-hum.
- 8 Q And that she had a sore throat?
- 9 A Um-hum.
- 10 Q I believe you performed a clinical  
11 neurological exam on that date, and there  
12 were no new findings?
- 13 A She had not changed significantly from  
14 what I remember. But remember again, I'm not  
15 the neurologist. And the focus on those  
16 visits were other problems besides --
- 17 Q And then I believe she came in August  
18 24 for a chest cold. August 23, 1999, a  
19 sinus problem. October 14 for heartburn, and  
20 otitis, is that ear infection?
- 21 A It's an ear infection.
- 22 Q Then November 22 for sinus drainage and  
23 a chest cold. Then she came back on April 27  
24 of 2000, I guess -- you want to go to that  
25 note. I think you referred back to the

1   encephalopathy then.   Those colds and --  
2   chest colds and sinus problems, they were not  
3   related to the incident of May 8, 1998, were  
4   they?

5   A           No.

6                   MR. HENTEMANN:   I have no  
7           further questions.

8                   MR. HAWAL:   Doctor, I just have  
9           a couple follow-up questions.

10                   - - - - -

11                   REDIRECT EXAMINATION

12   BY MR. HAWAL:

13   Q           Since so much was asked about what Dr.  
14   Mars found and what he wrote to you based  
15   upon his very good and thorough neurological  
16   examinations, can you refer to his report  
17   that you were asked questions about dated  
18   June 4, 1998 where he reported to you  
19   following his neurological examination at the  
20   last paragraph.   What did he report to you  
21   his diagnosis was?

22                   MR. HENTEMANN:   Objection.

23   A           His last paragraph states, Mrs.  
24   Ferrette was diagnosed as having carbon  
25   monoxide encephalopathy and a history of gran

1 mal seizures.

2 Q Is that the current diagnosis that you  
3 understand Dr. Mars to have with regard to  
4 this patient?

5 A Yes.

6 Q And that is your diagnosis for this  
7 patient, as well?

8 A Yes.

9 Q Questions were also asked about this  
10 patient as having, whether or not she had  
11 seizures or witnessed seizures. Have you  
12 seen a report from Dr. Mars, who will be  
13 testifying as a witness in this case, dated  
14 January 5, 1999, which was shared with  
15 counsel for the defense, where he had  
16 reported that on October 29, 1998, that she  
17 had two episodes consisting of some jerking  
18 associated with urinary incontinence and one  
19 of those episodes having been witnessed by  
20 someone else? Were you aware of that  
21 history?

22 MR. HENTEMANN: Objection. I  
23 believe my question was whether she  
24 knew of any witness.

25 Q Were you aware that this history had

1 been obtained from the patient or anyone else  
2 with regard to her medical care, or had you  
3 yourself for that matter been informed by the  
4 patient that she had episodes of jerking and  
5 a loss of urinary continence which not only  
6 she observed, but was observed by someone  
7 other than herself?

8 A The jerking episodes, she had mentioned  
9 to me. Urinary incontinence, she had not  
10 reported to me.

11 Q Perhaps Dr. Mars will enlighten us  
12 about those episodes.

13 Questions were asked of you about Mrs.  
14 Ferrette's prior psychiatric care and prior  
15 psychiatric history of depression. Dr. Iahn,  
16 who is her previously and subsequently  
17 treating psychiatrist, will also be  
18 testifying in this case. Are you aware that  
19 Dr. Iahn reported that her major depression  
20 was - -

21 MR. HENTEMANN: Hold it. I'm  
22 just going to object for the record  
23 as to reading what he says when she  
24 doesn't have anything in her records  
25 about it.

1 Q I understand. Doctor, were you aware  
2 that at the time that this carbon monoxide  
3 poisoning incident occurred, that Mrs.  
4 Ferrette was almost in full remission with  
5 regard to her history of depression?

6 MR. KROHNGOLD: Objection.

7 Q Are you aware of that?

8 A No.

9 Q Assuming that that is in fact going to  
10 be the testimony of her treating psychiatrist  
11 that she was almost in full remission, what  
12 significance medically do you find a past  
13 history of depression that at the time of  
14 this incident was in full remission as it  
15 relates to that depression playing any role  
16 whatsoever in her symptoms that you described  
17 as being related to her carbon monoxide  
18 poisoning and her resulting encephalopathy?

19 MR. KROHNGOLD: Objection.

20 A If her depression was in full  
21 remission, then I would not expect it to be  
22 contributing to her symptoms.

23 Q Doctor, were you aware that Mrs.  
24 Ferrette, Veronica, was not working at  
25 Hillcrest Hospital at the time of her carbon



1 monoxide poisoning incident?

2 A No.

3 Q Questions were asked about the  
4 incident, the assault incident that was  
5 reported to you on January 12, 1999 involving  
6 her boyfriend?

7 A Um-hum.

8 Q Did you determine that Veronica  
9 suffered any long-term injury as a result of  
10 this incident?

11 A I determined, no, that she did not have  
12 any long term.

13 Q Just prior to this incident, had her  
14 problems that stemmed from her carbon  
15 monoxide poisoning and her resulting brain  
16 damage, had they changed in any way or  
17 improved in any way leading up to this  
18 January 12, 1999 incident?

19 A I don't know that she had improved.

20 Q Was there any change, any worsening of  
21 her condition or complaints either before or  
22 after this concussion incident that you  
23 described?

24 A I didn't see a change in that. She had  
25 new complaints following the assault.

1 Q In terms of the complaints that she had  
2 before this, does she continue to have the  
3 same complaints and problems at the present  
4 time?

5 A Yes.

6 Q Doctor, does a normal CT or MRI in any  
7 way diminish your diagnosis of encephalopathy  
8 or brain damage as a result of her carbon  
9 monoxide poisoning?

10 A No.

11 Q would a patient be sent for treatment  
12 in a hyperbaric chamber from Hillcrest  
13 Hospital if there had not been a finding of  
14 significant carbon monoxide poisoning?

15 A No.

16 MR. KROHNGOLD: Objection.

17 Q Would you expect any physician to send  
18 a patient for hyperbaric treatment to an  
19 outside facility if there was not significant  
20 carbon monoxide poisoning?

21 A No.

22 Q With the type of encephalopathy that  
23 you diagnosed Veronica as having, and the  
24 types of symptoms and complaints that she has  
25 been consistently exhibiting since May of

1 1998, would you expect to find any more or  
2 additional direct evidence by way of any form  
3 of X-ray study or radiographic study to show  
4 that there is an anatomical brain injury than  
5 what you would expect to see in Veronica's  
6 case?

7 MR. KROHNGOLD: Objection.

8 A Unless there was an experimental  
9 technique, these are what are currently  
10 available.

11 Q Are sometimes the types of tests that  
12 are administered simply not sophisticated or  
13 sensitive enough to be able to demonstrate  
14 cellular damage caused by carbon monoxide  
15 poisoning?

16 A Yes.

17 Q Are neuropsychological tests the types  
18 of tests that you are called upon to rely  
19 upon to confirm and demonstrate direct  
20 evidence of encephalopathy caused by this  
21 type of carbon monoxide poisoning?

22 A We need to use those and include them,  
23 yes.

24 Q And have the neuropsychological tests  
25 that were shared with you by Dr. Layton, to

1   whom you referred Veronica, confirmed the  
2   presence of brain damage caused by her carbon  
3   monoxide poisoning?

4                   MR. KROHNGOLD:  Objection.

5   A           They confirm profound loss of function.

6                   MR. HAWAL:  Thank you, Doctor.

7                   That's all I have.

8                   - - - - -

9                   RE CROSS-EXAMINATION

10   BY MR. HENTEMANN:

11   Q           Doctor, with respect to Dr. Mars'  
12   opinion about carbon monoxide poisoning or  
13   encephalopathy, did you ever discuss with him  
14   as to how he arrived at that decision or that  
15   conclusion?

16   A           No.

17   Q           There is nothing in any report he sent  
18   you that shows any abnormalities found on any  
19   tests and then his clinical examination which  
20   we went through in detail did not find  
21   anything to support it?

22                   MR. HAWAL:  Objection.

23   A           His clinical examination does mention  
24   that Marcus Gunn pupil.  He also mentioned  
25   some decrease in distal peripheral sensation

1 on several of his examinations. Then we both  
2 defer to the neuropsychological reports.

3 Q So you deferred to the  
4 neuropsychologist for an opinion?

5 A For an opinion on some of the  
6 complaints and the ability of this lady to  
7 function.

8 Q In his report of June 4, Dr. Mars to  
9 you, the last paragraph on the first page  
10 says that at the time he saw her, there had  
11 been no further seizures, does he not?

12 A Yes.

13 Q Incidentally, going back to the  
14 emergency room, Mrs. Ferrette was conscious,  
15 alert I think as to, did you say person,  
16 place and time?

17 A According to what they sent me, they  
18 say that she was oriented.

19 Q And she had been exposed to carbon  
20 monoxide, correct, and they thought that the  
21 proper treatment would be this hyper --

22 A Hyperbaric.

23 Q -- hyperbaric oxygen which was over at  
24 Charity Hospital?

25 A Correct.

1 Q And she was transported to Charity  
2 Hospital by land transportation, was she not?

3 A Um-hum.

4 Q And the hyperbaric oxygen is to remove  
5 the carbon monoxide from the blood?

6 A Yes.

7 Q And it does it quickly?

8 A Um-hum.

9 Q And the object is to get it out of the  
10 system as fast as possible, is that correct?

11 A That's correct.

12 Q And they did, did they not?

13 A She underwent the treatment, yes.

14 Q And she was sent home, if I'm not  
15 mistaken, still in the morning of May 8,  
16 1998?

17 A Yes.

18 Q On the same morning she had been there,  
19 she had received her treatment, they gave her  
20 the hyperbaric oxygen and sent her home?

21 A Yes.

22 Q And she didn't see you until 10 days  
23 later, the 18th?

24 A Yes.

25 Q Just getting back quickly to, you

1 talked about paresthesia and the extremities  
2 or something as one of the things you think  
3 maybe Dr. Mars relied upon. She also had a  
4 cervical degenerative disease in her cervical  
5 spine, did she not? There was some X-rays  
6 that showed that.

7 MR. HAWAL: Objection.

- 8 A Well, that would have been upper  
9 extremities. The complaints that she had  
10 were lower extremities. Diminution to  
11 pinprick distally. Scattered areas. He  
12 doesn't specify where those areas were.

13 Q Could he or do you know?

14 A I can't address that. I can't answer  
15 you.

16 MR. HENTEMANN: Okay, I have no  
17 further questions.

18 MR. KROHNGOLD: I just wanted  
19 to ask one last question, Dr.  
20 Kimball.

21 - - - - -

22 RECROSS-EXAMINATION

23 BY MR. KROHNGOLD:

24 Q In the note that Mr. Hentemann was  
25 talking about where Dr. Mars saw her on May

1 28 and indicated she had not had any  
2 subsequent seizure since what' apparently was  
3 the initial one at the time she was found at  
4 the house, she was not on any anti-seizure  
5 medication at that time, is that correct?

6 A Which date are we referring to?

7 Q The initial report regarding the  
8 initial exam. It's at the bottom of the  
9 first page.

10 A On the June 4 letter?

11 Q Yes. It says she is not on any  
12 medication, has not had any seizures since  
13 the initial one when she was found at the  
14 house, correct?

15 A Correct.

16 Q would you expect her -- if she was  
17 having some significant problems with  
18 seizures to manifest themselves relatively  
19 quickly after the initial episode if she was  
20 unmedicated? Would there be a good  
21 likelihood that they would show up relatively  
22 soon since there was nothing to control them?

23 A I don't know that that would be a  
24 realistic expectation.

25 Q So you don't attach any proximity of



1 the seizures to the time of the event,  
2 especially if there is no medication to  
3 control that?

4 A I don't think I could interpret that as  
5 being significant. I understand what you are  
6 trying to ask me, but the answer is no, I  
7 don't think we can say that that's  
8 significant. I can't. Perhaps Dr. Mars can  
9 help you there.

10 MR. KROHNGOLD: All right.

11 Thank you, Doctor.

12 MR. HAWAL: Doctor, I have no  
13 further questions on behalf of  
14 Veronica.

15 You have the right to read the  
16 deposition transcript for accuracy  
17 and you have the right to view the  
18 videotape, or you can waive either  
19 one or both of those rights as you so  
20 choose.

21 THE WITNESS: I don't like  
22 having my picture taken, so I will  
23 pass on the tape, but I'll read the  
24 transcript.

25 MR. HAWAL: Thank you, Doctor.

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- - - - -

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(Deposition concluded at 1:06 p.m.)

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Suzanne E. Kimball, D.O.

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1 The State of Ohio, )

2 County of Cuyahoga.) SS: CERTIFICATE

3

4 I, Gerald Abbadini, a Notary Public  
5 within and for the State of Ohio, duly  
6 commissioned and qualified, do hereby certify  
7 that the within-named SUZANNE E. KIMBALL,  
8 D.O. was by me first duly sworn to testify  
9 the truth, the whole truth, and nothing but  
10 the truth in the cause aforesaid; that the  
11 testimony then given by him/her was by me  
12 reduced to stenotypy in the presence of said  
13 witness, afterwards transcribed upon a  
14 computer, and that the foregoing is a true  
15 and correct transcript of the testimony so  
16 given by him/her as aforesaid.

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

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

25

1           IN WITNESS WHEREOF, I have hereunto set  
2 my hand and affixed my seal of office at  
3 Cleveland, Ohio on this 22nd day of  
4 September, 2000.

5

6

7           ~~Gerald Abbadini, Notary Public~~  
            in and for the State of Ohio.

8           My Commission expires 12-4-03.

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