

<p>1 IN THE COURT OF COMMON PLEAS 2 LAKE COUNTY, OHIO</p> <p>3 DEBBIE MORUS, et al., 4 Plaintiffs, 5 vs Case No. 99CV000701 6 ELAINE M. MARZANO, Judge Parks 7 Defendant.</p> <p>8 9 0 - - - - -</p> <p>1 DEPOSITION OF RALPH KOVACH, M.D. 2 MONDAY, JUNE 12, 2000 3 - - - - -</p> <p>4 The deposition of RALPH KOVACH, M.C., the 5 Witness herein, called by counsel on behalf of 6 the Plaintiff for examination under the statute, 7 taken before me, Vivian L. Cordon, a Registered 8 Diplomate Reporter and Notary Public in and for 9 the State of Ohio, pursuant to agreement of 0 counsel, at the offices of Ralph Kovach, M.D., 1 9500 Garfield Boulevard, Garfield Heights, Ohio, 2 commencing at 1:30 o'clock p.m. on the day and 3 date above set forth. 4 5</p>	<p>Page 1</p> <p>Page 3</p> <p>1 RALPH KOVACH, M.D., a witness herein, called 2 for examination, as provided by the Ohio Rules of 3 Civil Procedure, being by me first duly sworn, as 4 hereinafter certified, was deposed and said as 5 follows: 6 EXAMINATION OF RALPH KOVACH, M.D. 7 BY MR. MISHKIND: 8 Q. Would you please state your name for 9 the record. 10 A. Ralph Kovach. 11 Q. You are an orthopedic surgeon; 12 correct? 13 A. Yes, sir. 14 Q. Are you still in the act of clinical 15 practice of medicine, doctor? 16 A. Yes. 17 Q. Has your practice in terms of the 18 number of patients that you see, is it about the 19 same as it's been over the last several years or 20 actually has the number been reduced? 21 A. No, it's lower than it has been. 22 Q. What do you attribute that to? 23 A. My age and referring physicians dying 24 or not practicing, the change in the HMO 25 situation, not belonging to everyone that is</p>
<p>1 APPEARANCES: 2 3 On behalf of the Plaintiff 4 Becker & Mishkind 5 B Y HOWARD D. MISHKIND, ESQ. 6 Skylight Office Tower Suite 660 7 Cleveland, Ohio 44113 8 9 On behalf of the Defendant 10 Law Offices of William R. Doslak 11 B Y GREGORY L. WILLIAMSON, ESQ. 12 18151 Jefferson Park Road Suite 104 13 Middleburg Hts., Ohio 44130 14 15 - - - - -</p> <p>1 2 3 4 5 6 7 8 9 0 1 2 3 4 5</p>	<p>Page 2</p> <p>Page 4</p> <p>1 available. 2 Q. What percentage of your time, your 3 professional time would you say you spend in the 4 act of clinical practice of medicine? 5 A. I am in two days a week, if that's 6 what you mean. So it's approximately 20 hours a 7 week. 8 Q. What are you doing the rest of the 9 time? 10 A. I actively raise Pembroke Welsh Corgis 11 and Whippets, so I take care of them. Once and 12 awhile I get in a round of golf. I go to 13 hospital meetings and specialty seminars. 14 Q. But in terms of seeing patients, it's 15 two days a week? 16 A. Two days a week in the office, and if 17 there is surgery to do, I will do that, naturally 18 in a hospital. 19 Q. Now, the two days a week, does that 20 include the examinations that you do at the 21 request of defense attorneys or is that inclusive 22 of the time? 23 A. No, that's all included, 24 Q. So that in any given week when you are 25 in the office two days a week, you may be seeing</p>

1 patients of your own as well as seeing patients
2 that have been referred to you by an attorney
3 representing a party from litigation; is that a
4 fair statement?
5 A. Yes.
6 Q. Do you have a current curriculum vitae
7 available?
8 A. I can give it to you if we can get a
9 hold of the young lady who just went out. She
10 will have it. She is going to leave in a little
11 while because she has another job and we will be
12 left alone talking here.
13 Q. Let's go off the record.
14 A. I can give it to you if you want me to
15 dictate it.
16 Q. Go off the record.
17 (Thereupon, a recess was taken.)
18 Q. What hospitals do you do surgery at,
19 doctor?
20 A. St. Michael's, Marymount and
21 Deaconess. I used to do this also at St. Luke's
22 until they closed.
23 Q. Doctor, my name is Howard Mishkind and
24 I represent Debbie Moms-Entis in the lawsuit
25 that is going to trial next week. The purpose of

1 Q. That's just something Mr. Williamson
2 showed you during your predeposition conference?
3 A. Yes.
4 Q. Do you recall offhand what the date of
5 that office visit was?
6 A. No, but I believe it was May of this
7 year.
8 Q. Other than that note from Dr.
9 Maggiore's office, have you seen any other notes
10 or anything else that would pertain to this case?
11 A. No, I have everything here that I've
12 looked at. This is the only thing that was not
13 in here.
14 Q. And as you sit here right now, do you
15 still hold the same opinions that you expressed
16 in your letter of February 21, 2000?
17 A. Yes, sir.
18 Q. Does the report contain all of the
19 opinions that you understand that you have been
20 asked to provide in connection with this case?
21 A. Yes.
22 Q. Now, you examined Debbie Moms on
23 February 21, 2000; correct?
24 A. Yes, sir.
25 Q. And prepared your report the same day

1 my get together with you today is to find out
2 some information that will be perhaps helpful to
3 all concerned and to find out what opinions you
4 will be expressing when your video is taken
5 tomorrow afternoon.
6 You have had your deposition taken
7 before, so what I say to you I'm sure comes as no
8 surprise; correct?
9 A. Yes, correct.
10 Q. Doctor, have you ever published
11 anything in the medical literature?
12 A. No, sir.
13 Q. The report that you prepared is dated
14 February 21,2000. Do you have a copy of it --
15 A. Yes, sir.
16 Q. -- in front of you?
17 Since preparing that report, have you
18 reviewed anything subsequent to February 21,
19 2000?
20 A. The only thing that I saw was the note
21 that Mr. Williamson showed me earlier today. And
22 I believe it's an office note of Dr. Maggiore.
23 Q. You don't have a copy of that in your
24 file; correct?
25 A. No, I do not.

1 as the examination; correct?
2 A. Correct.
3 Q. That examination was about two years
4 and nine months after the collision, wasn't it?
5 A. I am sure it was.
6 Q. Based upon the review of the records,
7 your examination of my client, would you agree
8 with me to a reasonable degree of medical
9 probability that Debbie Moms was injured in the
10 auto collision of May 29, 1997?
11 A. Yes.
12 Q. Would you tell me just so I can sort
13 of focus in my questioning what injuries you
14 believe she sustained as a direct and proximate
15 result of the collision of May 29, 1997?
16 A. It's my opinion that she strained the
17 muscles of her upper back and neck.
18 Q. Can you explain the mechanism under
19 which or by which such a strain to the muscles of
20 the upper back and neck occurred?
21 A. A sudden unguarded movement, as she
22 told me being shaken back and forth can produce
23 such a condition.
24 Q. Is that commonly referred to as a
25 hyperextension or hyperflexion injury?

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1 A. It depends on which direction is this
 2 severe, but it doesn't have to be hyper. It can
 3 be even to a lesser degree to produce a strain.
 4 Q. In any event, based upon the history
 5 that was given and the physical examination, your
 6 opinion is that she suffered a strain of the
 7 muscles involved in the areas that you just
 8 indicated; correct?
 9 A. Yes, sir.
 10 Q. And that when it refers to a strain,
 11 essentially that is a pulling of the muscles and
 12 the ligaments in that particular area of the
 13 upper back and neck; correct?
 14 A. It would be, yeah, it would be
 15 primarily stretching of the muscles.
 16 Q. When Debbie was seen by you on
 17 February 21, 2000, her subjective complaints at
 18 that time were of the neck and shoulder area,
 19 pain and stiffness in that area; correct?
 20 A. She would use the word tightness.
 21 Q. And I think I used the word stiffness,
 22 didn't I?
 23 A. Yes. I am using what she used and
 24 tightness is what she identified. So she said
 25 tightness that she felt through the neck and

1 you the history, at the time of this exam, in
 2 February of 2000, she indicated to you as of that
 3 time that she had, using her term, tightness in
 4 the neck and the shoulder area, as well as pain
 5 in those areas, and also sometimes stabbing pain
 6 into the shoulder and some tingling in the fourth
 7 and fifth finger of her right hand. Is that a
 8 fairly accurate statement?
 9 A. Yes. Also she said that her hand and
 10 her arm to her felt cold.
 11 Q. Can you tell me, doctor, do you have
 12 an opinion to a reasonable degree of medical
 13 probability as to what is the cause of the
 14 symptomatology that she complained to you of in
 15 February of 2000?
 16 A. I found no cause for complaints on
 17 that date.
 18 Q. Do you have an opinion then as to what
 19 is causing her current symptoms as of February
 20 2000?
 21 A. I found nothing wrong with her to
 22 cause those particular complaints.
 23 Q. She indicated to you that she had
 24 those complaints; correct?
 25 A. Yes, sir.

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1 shoulder, primarily on the right side, along with
 2 pain in those areas, as well.
 3 Q. Tightness or stiffness --
 4 A. And that's synonymous, so I won't use
 5 them synonymously, so I won't agree with you they
 6 are the same.
 7 Q. Doctor, just one second. Before you
 8 can agree or disagree with me I have to finish my
 9 question. You may or may not be accurate with
 10 where I am going, but I'll let you finish and do
 11 the same for me, okay?
 12 A. Yes.
 13 Q. Patients use different terms when they
 14 describe symptomatology than when you examine
 15 them in your clinical practice; correct?
 16 A. Yes, they may.
 17 Q. And when a patient describes stiffness
 18 in an area that has been injured, do they always
 19 use the term stiffness or do they use a number of
 20 different terms to describe that phenomenon?
 21 A. People may use different terms to
 22 describe various things that they are
 23 experiencing, and so from that standpoint, yes,
 24 people do use different terminology.
 25 Q. And when you examined her and she gave

1 Q. And assuming that she has those
 2 complaints; in other words, assuming that she
 3 does have tightness, she does have pain, she does
 4 have the tingling in the fourth and fifth
 5 fingers, and also that her arm and hand feel
 6 cold, do you have an opinion as to what from a
 7 physiological standpoint is causing that
 8 symptomatology?
 9 A. I don't think she has anything
 10 physiologically wrong with her to cause that
 11 symptomatology.
 12 Q. So in other words, you believe that
 13 even though she is telling you that she has these
 14 symptoms, your testimony is that you don't
 15 believe that she does have those symptoms?
 16 A. I have no findings that I can
 17 attribute that would cause those particular
 18 symptoms. It's unexplainable from a medical
 19 standpoint.
 20 Q. So is it your opinion that her current
 21 symptoms are not related to the automobile
 22 collision of May 1997?
 23 A. My opinion is that she had a normal
 24 examination showing no signs to indicate that she
 25 had anything that would cause those symptoms. So

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1 with that reasoning, I would have to say that the
2 motor vehicle incident no longer was causing any
3 problems.

4 Q. In this particular -- strike that.

5 Patients heal at various speeds and in
6 various ways; correct?

7 A. Correct.

8 Q. And when one has a strain of the
9 muscles and the ligaments in the neck and the
10 back, the muscles and ligaments heal in each
11 patient in a different manner and in different
12 periods of time; correct?

13 A. Correct.

14 Q. Do you have any way to say, based upon
15 your review in this case, exactly when Debbie
16 healed from the strain of the upper back and neck
17 muscles from the collision of May 29, 1997?

18 A. I couldn't say when, because she,
19 herself, was not giving any particular time when
20 she said she was better. So I can't use her
21 terminology to try to come to a date.

22 The documentation by her physicians
23 regarding muscles is minimal.

24 Q. So, just to -- I'm sorry, I didn't
25 mean to interrupt you.

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1 A. Minimal to absent. So when you ask me
2 for a date, I couldn't give you one, because
3 there is none documented.

4 Q. Okay. I just want to understand what
5 your opinion is going to be as to based upon your
6 review of all of the information and the history
7 and the physical that you did, whether or not you
8 are in a position to provide an opinion to a
9 reasonable degree of medical probability as to
10 when Debbie Moms, now known as Debbie
11 Moms-Entis, had healed from the strain of the
12 muscles and ligaments in the upper back and
13 neck. And your testimony is that based upon
14 everything that you have seen, you have no
15 opinion as to when she healed; is that a fair
16 statement?

17 A. Well, you would have to take it
18 farther than that, because the treating physician
19 originally has no documentation that there was
20 anything other than subjective complaints. There
21 was no physical finding on his part that he
22 documented. And assuming that if there were, he
23 would have documented that, I would say that
24 after a couple months, there is no documentation
25 that she had any injury, although she was

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1 receiving treatment.

2 Q. What kind of documentation would you
3 expect in the records of the treating physician
4 that would correlate in your mind with objective
5 evidence of an injury to support the subjective
6 complaints?

7 A. Something that he could see or feel or
8 document, either with testing or by physical
9 examination.

10 Q. Which would include such things as
11 palpating the muscles and feeling spasms in the
12 area; correct?

13 A. There was no spasm documented
14 originally.

15 Q. Well, doctor, if you are accurate in
16 your interpretation of the records, that's one
17 thing, but I am asking you if you are examining
18 someone and you feel an area in palpation of an
19 area and you are able to elicit muscle spasms,
20 would that be the kind of evidence that you would
21 be looking for to support or correlate with the
22 subjective symptoms?

23 A. Yes, spasm is a physical finding that
24 is subjective.

25 Q. Okay. And based upon your review of

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1 the records, you don't see any evidence that
2 muscle spasm in the neck or the shoulder area was
3 documented by the treating physician; is that
4 correct?

5 A. Originally that was not, no, sir.

6 Q. Okay. And certainly, if the records
7 did document muscle spasm originally, that would
8 certainly affect the opinions that you hold in
9 this case, would it not?

0 A. It would be more helpful to indicate
1 that she had enough symptomatology that could be
2 documented rather than just saying that they have
3 pain which cannot be recorded or in any manner.

4 Q. Based upon your careful review in this
5 case, can you tell me when it is that Debbie
6 first started complaining of any tingling or
7 paresthesia or any type of involvement of the
8 digits in her right hand?

9 A. She said that her whole body went numb
10 immediately. And so I asked what she meant by
11 numb and she said that she had a tingling
12 feeling. So the first documentation that she
13 reported would have been immediately after the
14 incident, she said the whole body, not any
15 particular part, such as the digits or the hand.

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1 And then later on it dissipated.
 2 Q. I'm *sorry*, later on it what?
 3 A. It stopped.
 4 Q. What are the records --
 5 A. I am trying to find it so I can
 6 continue to answer your question.
 7 Q. I'm sorry, doctor, I didn't mean to
 8 interrupt you.
 9 (Pause.)
 10 A. Could we be off the record? I am
 11 trying to find it in Dr. Maggiore's record. I
 12 don't have the exact date when she again gave
 13 those particular complaints.
 14 Q. Understand, doctor, anything you say
 15 since the start of the deposition needs to be on
 16 the record, so --
 17 A. Well, all right. Say I am looking for
 18 it. That's all I said so that she doesn't stay
 19 poised.
 20 In the letter that Dr. Maggiore wrote
 21 to you, he says that she was experiencing
 22 numbness, generalized, over the right upper
 23 extremity. That means the shoulder on down. And
 24 that it also involved all of the fingers of her
 25 right hand. And then he says in the next

1 the tingling sensation that Debbie Morus
 2 experienced that is documented in the records?
 3 A. To put it differently, the thing that
 4 this lady described was a loss of feeling. She
 5 used the word numbness, and it was the entire
 6 upper extremity. And it wasn't localized to any
 7 particular area.
 8 Furthermore, Dr. Maggiore states that
 9 it involved all of the fingers of the right hand,
 10 which is an extensive area in nerve
 11 distribution. So to attribute that complaint to
 12 anything other than perhaps an involvement of a
 13 blood vessel, that goes into the extremity, such
 14 as the axillary artery, would be kind of unusual,
 15 because that can give you numbness of the whole
 16 hand because you are shutting off circulation to
 17 a certain degree.
 18 To attribute this to the muscle and
 19 nerve would be very difficult to do. So from
 20 that standpoint, I can't attribute that complaint
 21 to anything.
 22 Q. Okay. Doctor, in your report, you
 23 reference diminished reflexes in the patella. --
 24 A. Yes.
 25 Q. -- that diminished bilaterally.

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1 sentence that she was experiencing numbness of
 2 the middle and ring fingers, but only when
 3 getting up in the morning.
 4 So, you would almost say that that
 5 complaint was present probably right from the
 6 beginning.
 7 Q. Okay. Based upon your review --
 8 A. Yes, and this.
 9 Q. Doctor, I want to move to my next
 10 question, but I don't want to cut you off. Are
 11 you done?
 12 A. Yes.
 13 Q. Thank you. You would certainly agree
 14 with me, would you not, that parasthesia can be
 15 caused by a strain in the muscles?
 16 A. Yes, it can.
 17 Q. And when one describes a tingling
 18 sensation in fingers, is that synonymous with
 19 parasthesia?
 20 A. Parasthesia would mean anything in the
 21 way of an unusual sensation, such as itching or
 22 tingling or crawling sensation. All these things
 23 that would fall into that term.
 24 Q. Do you have an opinion to a reasonable
 25 degree of medical probability as to the cause of

1 A. Yes.
 2 Q. Of what significance, if any, was that
 3 finding?
 4 A. It's of no significance whatsoever.
 5 It was not a question of having absent reflexes.
 6 It's a matter that they were not as active. But
 7 they were present on both sides and certainly the
 8 reflexes of the Achilles tendon area was normal.
 9 So as I stated in that sentence,
 10 although that was present, it's of no
 11 pathological significance.
 12 Q. Okay. Would you explain to me what
 13 you mean in the last page of your report where
 14 you state, the second complete paragraph, third
 15 line down, after review of all of the submitted
 16 material, quote, it is my opinion the these
 17 objective findings do not substantiate her
 18 subjective complaints?
 19 A. Yes, sir.
 20 Q. What does that mean?
 21 A. That was I didn't see anything
 22 recorded in the records that I reviewed that
 23 would explain why she had those particular
 24 complaints.
 25 Q. As of when?

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1 A. During the time she was treated,
2 mostly.
3 Q. You indicate normal exam and prognosis
4 is favorable. What do you mean by favorable?
5 A. It means that I feel that she will or
6 should be symptom free as a result of any
7 injuries that she may have sustained immediately
8 after this particular incident, which I felt was
9 a strain of the muscles of the upper back and
0 neck area.
1 Q. When will Debbie Moms, in your
2 opinion, be free of pain?
3 A. I think she should be free of pain
4 now.
5 Q. And if she isn't, when will she be
6 free of pain?
7 A. I think she should be free of pain
8 now.
9 Q. She should be free of pain?
0 A. Sheshould be.
1 Q. Are you saying then that she is lying
2 to you when she tells you that she has pain?
3 A. If that's my opinion, I would be
4 prosecuted for that, would I?
5 Q. Doctor, my question to you is --

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1 A. I feel that she was not fully truthful
2 with me.
3 Q. Is it your statement that when she
4 says that she has pain now that she's lying to
5 you? *Yes* or no.
6 A. It's my statement that my objective
7 examination does not substantiate the complaints
8 that she gave me about the pain or the numbness
9 that she was experiencing.
10 Q. And my question to you is, do you
11 always have objective findings to correlate with
12 subjective symptoms?
13 A. If there is an anatomical reason for
14 the symptoms that are elicited by the individual,
15 there should be some objective finding. And by
16 that objective finding we are talking about MRI
17 studies, we are talking about electromyographic
18 studies, as well.
19 Q. When one has an injury to the muscles
20 and there is a strain and a pulling of the
21 muscles, when the muscle and the fibers of the
22 muscles heal, they heal sometimes with scar
23 formation; correct?
24 A. If the injury is sufficient to cause
25 bleeding or tearing of the muscle, which will

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1 cause bleeding, yes, that will cause scar
2 formation. But if there is no actual tearing of
3 the muscle fibers, then there will not be scar
4 formation,
5 Q. And if you have scar formation from
6 the healing after there has been the tearing and
7 the bleeding of the fibers from the strain, that
8 isn't anything that you necessarily are going to
9 see on an MRI, is it?
10 A. First of all, the MRI, you can see
11 that on an MRI.
12 Q. That was my question.
13 A. The tearing and bleeding, yes, you
14 can.
15 Q. I'm sorry, yes, you can?
16 A. Yes, you can.
17 Q. An MRI will show scar tissue from a
18 healed muscle?
19 A. Well, she had an early MRI study, but
20 she did not have the MRI taken for that. She had
21 an MRI concentrated on the neck area. The
22 muscles are not really examined for that
23 particular problem.
24 Q. So it can be agreed --
25 A. So I would not expect that MRI to show

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1 anything because it was concentrating on the
2 spot.
3 Q. Doctor, that's my only question.
4 Please, we will finish the deposition a lot
5 quicker if you just confine your answers to my
6 question.
7 Would you expect an MRI to show the
8 residuals of any type of injury if the strain of
9 the muscle was sufficient enough to cause a
10 tearing and a bleeding and subsequent scar
11 formation?
12 A. There is an MRI study and there are
13 certain drugs that are used to enhance the MRI to
14 show scar formation. So if you had significant
15 scar formation, you can find them.
16 Q. Was there such a dye used in this
17 particular MRI or would this MRI more likely than
18 not, not have picked up any type of residual?
19 A. The type of MRI she had would not pick
20 up any muscle injury because it was not directed
21 to the soft tissues. This was an MRI study of
22 the cervical spine looking for herniated disks.
23 Q. Doctor, that's all.
24 A. And they checked the spinal cord from
25 that manner. So the studies she had would not be

1 expected to show anything. It wasn't done for
2 that.

3 Q. Arc you done?

4 A. Yes.

5 Q. Okay. And the EMG and the nerve
6 conduction study, would that show any residuals
7 caused by a strain of the muscle after it's
8 healed?

9 A. The particular muscles that were
10 tested on the EMG were not involved, they never
11 checked the neck muscles or the back muscles.
12 They check muscles usually down in the hand and
13 forearm, which, of course, were not involved in
14 this.

15 They did check to see if there was any
16 injury to the nerve roots or the spinal cord and
17 of course that was -- and also the peripheral
18 nerves -- and those are all normal. So that
19 wouldn't be expected to show anything in the neck
20 area, because those areas were not tested.

21 Q. Okay. Now, I want to see what areas
22 we are in agreement on.

23 A. Yes, sir.

24 Q. You have told me a few thus far.

25 Certainly, would you agree with me that the

1 emergency room treatment that she received
2 following the auto collision was reasonable and
3 necessary in this case; correct?

4 A. Yes.

5 Q. And you would certainly agree that the
6 medical treatment provided by Dr. Maggiore was
7 reasonable and necessary in this case?

8 A. Yes.

9 Q. Would you also agree that physical
10 therapy was reasonable and necessary in this
11 case?

12 A. Restricting the physical therapy to
13 the therapy provided by Dr. Maggiore's
14 institute?

15 Q. Well, it was from Euclid Therapy.

16 A. That's his place, from my
17 understanding, isn't it?

18 Q. Well, doctor, do you know that for a
19 fact?

20 A. I was asking you a question. You arc
21 not allowed to tell me?

22 Q. No, I'm not allowed to answer
23 questions. You arc the one that has to answer
24 questions.

25 A. I think it's his place, yeah.

1 Q. In any event, whether it is or isn't --

2 A. Nothing wrong with that. His
3 business.

4 Q. Doctor, whether it is or isn't, that's
5 not the question. My question to you is whether
6 or not the physical therapy that she received was
7 reasonable and necessary, in your opinion? Can
8 we agree upon that?

9 A. I would have to check the number of
10 times she went there.

11 Q. I will represent to you, at least
12 based upon my count --

13 A. Just a number.

14 Q. -- 23 from June 3rd through August
15 28th.

16 A. I'll answer this way. It was
17 necessary, but the total number, I think, bore
18 more than would be required.

19 Q. And on what do you base that?

20 A. I base it on the experience with
21 people with strains of their upper neck and back.

22 Q. And each patient, again, heals at
23 various speeds and at different rates, do they
24 not?

25 A. Well, primarily the modalities that

1 arc utilized really have no effect on the
2 outcome. Simple rest and exercises usually arc
3 sufficient.

4 Q. Doctor, my question to you -- I am
5 going to cut you off because you arc not
6 answering my question.

7 A. I thought I was.

8 Q. No, you're not.

9 People heal at different speeds and at
10 different rates, don't they?

11 A. Yes.

12 Q. And you in your practice have
13 prescribed physical therapy to patients and then
14 depending upon how the physical therapy is coming
15 along and how the patient seems to be responding,
16 you have on occasion prescribed additional
17 physical therapy for a period of time and on
18 other occasions you have told the patient that
19 they don't need any further physical therapy;
20 right?

21 A. Correct.

22 Q. So that you really evaluate each
23 patient based upon their physical facts and how
24 they arc responding to the healing process;
25 correct?

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1 A. Yes.
 2 Q. You can't take someone like Debbie
 3 Morus or Howard Mishkind or Greg Williamson and
 4 go to a book and say this is how they should heal
 5 or this is how quickly they should resolve,
 6 because they are human beings and every human
 7 being heals in a different manner; correct?
 8 A. Right.
 9 Q. What about the massotherapy, do you
 0 have an opinion as to whether or not that was
 1 reasonable and necessary?
 2 A. I don't know, because there is no
 3 documentation, other than that she went there and
 4 bills. I don't know what the findings were, why
 5 the massotherapist.
 6 Q. Okay. So you have no opinion on that;
 7 correct?
 8 A. I don't know if they were required at
 9 all.
 0 Q. Okay.
 1 A. I don't know.
 2 Q. Do you have an opinion as to whether
 3 or not the chiropractic treatment was necessary
 4 and reasonable?
 5 A. Based on my findings, she did not

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1 require any manipulation at the time that I saw
 2 her.
 3 Q. Okay. But what about back over almost
 4 two years before you saw her when she saw Dr.
 5 Bond in March of 1998, do you have an opinion as
 6 to whether or not the chiropractic treatment that
 7 was commenced at that point was reasonable and
 8 necessary?
 9 A. I would say reading his bills, he was
 0 reasonable in his charges, but the necessity for
 1 the number, again, is, I think, awful high.
 2 Q. When should the chiropractic treatment
 3 have stopped? Or putting it another way, doctor,
 4 when did it become unreasonable for Debbie Moms,
 5 now known as Debbie Moms-Entis, to have
 6 continued with chiropractic treatment?
 7 A. Well, first of all, the treatment that
 8 she was receiving was manipulation and getting
 9 some joints to move. We call that joint play.
 0 Chiropractors may use a different word or
 1 different terminology. If something is going to
 2 respond, it will respond upon one and no more
 3 than two sessions.
 4 Q. So is it your testimony that after two
 5 sessions --

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1 A. I think it was much more than she
 2 really needed.
 3 Q. Is it your testimony that after two
 4 sessions with the chiropractor that it was no
 5 longer reasonable for her to continue to be seen
 6 by the chiropractor?
 7 A. If she had the condition that would
 8 respond to manipulation, it should be responding
 9 within one to two manipulations.
 0 Q. And if she is responding and then
 1 after several days --
 2 A. I said she should be better.
 3 Q. Let me finish my question. If she is
 4 responding and after several days she is
 5 symptomatic again, would it be reasonable for her
 6 to go back for further treatment?
 7 A. She can go back and get some relief,
 8 but going back is not going to improve her
 9 symptomatology, because she always goes back and
 0 nothing else is done, other than like cracking a
 1 knuckle.
 2 Q. Now, doctor, besides testifying as to
 3 whether all of the treatment was or was not
 4 necessary, does the other opinion that you intend
 5 to offer when you testify tomorrow relate to

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1 whether or not the injuries that Debbie is
 2 claiming, the subjective injuries that she is
 3 complaining of as of February 2000, whether or
 4 not they are permanent and ongoing?
 5 A. I didn't find any injury that was
 6 permanent.
 7 Q. No, doctor. I asked you whether
 8 besides testifying as to whether or not the
 9 treatment was necessary -- and we talked about
 0 what treatment you felt was necessary and what
 1 treatment you felt was unnecessary, have we not?
 2 A. Yes.
 3 Q. Besides testifying to that, are you
 4 also going to be providing an opinion as to
 5 whether or not the injuries that she has as of
 6 February, when you saw her for the one and only
 7 time, whether or not those injuries are permanent
 8 and ongoing as of February 2000? Is that the
 9 other opinion that you are going to be providing?
 0 A. I will not offer that, but if I am
 1 asked, I will say that she has no injuries that
 2 are permanent and ongoing on the basis of my
 3 examination.
 4 Q. As of February 2000?
 5 A. Yes, sir.

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1 Q. Okay. To your knowledge, and based
2 upon the review and the questions that were
3 presented to you by Mr. Williamson's office, do
4 you intend to offer any other opinions when you
5 testify on direct examination whether or not the
6 treatment for the injuries which she sustained as
7 a result of this collision, whether or not all of
8 that treatment was necessary and whether or not
9 her injuries are permanent and ongoing in nature?

10 A. I can only answer questions. I can't
11 offer that opinion if I'm not asked.

12 Q. But as you sit here now, do you have
13 any other opinions as it relates to this case,
14 other than those two areas?

15 A. I don't believe so.

16 Q. Okay. That's fine. Thank you.

17 A. I don't think so.

18 Q. You would certainly agree, would you
19 not, doctor, that it would have been reasonable
20 for Debbie to have missed time from work when she
21 was at doctor's appointments treating for the
22 injuries caused by the auto collision?

23 A. If you are in a doctor's office, you
24 can't be at work during that particular time, so --

25 Q. So you would agree with that

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1 statement; correct?

2 A. Yes, unless you were in a situation
3 where you could go back and work longer hours,
4 but I don't know too many people that do that.

5 Q. And would you agree that it would be
6 reasonable for Debbie to have missed time from
7 work when the pain or the discomfort in her neck
8 and shoulder areas was bothering her to the point
9 where it interfered with her ability to work as a
10 hairdresser?

1 A. I would think so.

2 Q. Okay. These are questions which you
3 have been asked countless number of times and I
4 am going to add to that list, so bear with me.

5 A. Okay.

6 Q. The examination that you did of my
7 client was requested by Mr. Williamson's office;
8 correct?

9 A. Yes.

10 Q. Have you ever had the pleasure of
11 meeting this nice gentleman before today?

12 A. Just today.

13 Q. Have you ever worked with his office,
14 the law offices of Bill Doslak, with their office
15 before?

1 A. Yes.

2 Q. And you have written reports based
3 upon examinations of parties that Mr. Williamson
4 was on the opposite side of, you have done
5 medical examinations at his request; you have
6 just never met him before; correct?

7 A. Yes.

8 Q. On how many occasions has Mr.
9 Williamson or his office requested that you
10 examine a plaintiff to provide a medical
11 examination and to comment on the nature of their
12 injuries?

13 A. I don't know, but can I ask Mr.
14 Williamson. It was six to ten, probably. I
15 don't think it's any more than that.

16 Q. You weren't asked by the court to do
17 this examination, were you?

18 A. The court doesn't ask you to do an
19 examination in a civil case, do they?

20 Q. You weren't asked by the court to do
21 this examination?

22 A. No. Does the court ever do this? If
23 they do ask individuals to do it, other than a
24 criminal case, no.

25 Q. All right. Doctor, again, it's a yes

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1 or no. Were you asked by the court to do this
2 examination?

3 A. No. I don't think I'm supposed to.

4 Q. Doctor, were you asked --

5 A. No.

6 Q. It's a simple question.

7 A. Yeah, okay.

8 Q. The medical examination was requested
9 by the defendant's attorney, Mr. Williamson;
10 correct?

1 A. Yes.

2 Q. You weren't asked to treat Debbie
3 Moms, were you?

4 A. No.

5 Q. You weren't asked to provide any
6 recommendations to her with regard to any
7 injuries that you may have found at the time of
8 her examination, were you?

9 A. No, sir.

10 Q. The sole purpose of your exam was to
11 issue a report to Mr. Williamson, the attorney
12 for the defendant, and to testify as necessary;
13 isn't that correct?

14 A. Yes, sir,

15 Q. The single examination that you did on

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1 February 21 was the one and only time that you
 2 examined Debbie Morus?
 3 A. Yes.
 4 Q. You had no purpose or intention in
 5 this case to care for or treat Debbie; correct?
 6 A. Correct.
 7 Q. You never met her before and haven't
 8 seen her since?
 9 A. That's correct.
 10 Q. You have no knowledge as you sit here
 11 now as to what her subjective complaints are, if
 12 any, do you?
 13 A. No.
 14 Q. Or whether they are consistent with
 15 the subjective complaints that she provided to
 16 you when you took the history from her back in
 17 February; correct?
 18 A. I have no knowledge, other than the
 19 one time that I saw this lady.
 20 Q. When you treat patients for ongoing
 21 problems with back or neck problems, you
 22 ordinarily examine and treat them over a period
 23 of weeks, months or years, isn't that typically
 24 correct?
 25 A. Sometimes, yes.

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1 Q. And you would certainly agree with me,
 2 would you not, doctor, that Dr. Maggiore had an
 3 opportunity to examine Debbie Morus on multiple
 4 occasions as compared to your single examination?
 5 A. Yes, he did.
 6 Q. By the way, do you know Dr. Maggiore?
 7 A. No.
 8 Q. Are you aware of his reputation in the
 9 medical community?
 10 A. No.
 11 Q. Are there any areas in Dr. Maggiore's
 12 report that you disagree with?
 13 A. Let me look at it.
 14 (Pause.)
 15 A. Yes, I disagree with his last
 16 statement that the prognosis should be guarded.
 17 Q. And you indicate that the prognosis is
 18 favorable?
 19 A. Yes, sir.
 20 Q. Okay. Other than that --
 21 A. I don't think I would disagree with
 22 anything else that is in there.
 23 Q. Dr. Bond had an opportunity to examine
 24 Debbie Morus on multiple occasions as compared to
 25 your single examination. We have already talked

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1 about that; correct?
 2 A. Yes.
 3 Q. Do you know Dr. Bond?
 4 A. No.
 5 Q. Do you know anything about his
 6 reputation?
 7 A. No.
 8 Q. The same question, have you read Dr.
 9 Bond's report?
 10 A. Yes.
 11 Q. Are there any areas -- actually before
 12 I get to Dr. Bond's report, you also were
 13 provided with a copy of Dr. Maggiore's note of
 14 May 5 from the office visit that Debbie had, May
 15 5 -- or May 11 was the date, of 2000. That was
 16 the note that Mr. Williamson showed you?
 17 A. I didn't have a copy.
 18 Q. But Mr. Williamson showed it to you?
 19 A. Yes.
 20 Q. My same question to you, is there any
 21 areas where you take issue with --
 22 A. May I read it?
 23 Q. Sure, absolutely.
 24 (Pause.)
 25 A. I don't disagree with what he has on

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1 there, other than what he may have said to her.
 2 That's his opinion.
 3 Q. And what he said -- what are you
 4 referring to?
 5 A. I don't know what he is referring to
 6 other than she is going to be having chronic
 7 problems that he discussed with her.
 8 Q. And just so the record is clear, what
 9 you disagree with is, and correct me if I am
 10 wrong, the sentence that says we did discuss why
 11 she never responded and she accepts the fact that
 12 she is now chronic and probably permanent.
 13 Am I correct in that you disagree with
 14 Dr. Maggiore's statement that Debbie Moms in
 15 terms of her condition is now chronic and
 16 probably permanent?
 17 A. Yes.
 18 Q. Okay. Other than that, the rest of
 19 the note of May 11,2000, you don't take issue?
 20 A. The rest of the note is just
 21 describing what she told him and his examination.
 22 Q. Okay. And in his examination, he
 23 notes significant spasm on the right side of the
 24 base of the neck extending into the nuchal
 25 trapezius junction and into the trapezius.

1 A. That's what he said.
 2 Q. And that's something that you did not --
 3 A. I wasn't there.
 4 Q. Let me finish. That's something that
 5 you did not detect during your physical
 6 examination back in February; correct?
 7 A. That's correct.
 8 Q. And are you aware that not only on May
 9 11, but on dates where Debbie was seen by Dr.
 10 Maggiore and by others that spasms were detected
 11 on physical examination before February of 2000?
 12 A. I don't know who the others were. You
 13 would have to be more specific.
 14 Q. Dr. Bond.
 15 A. Dr. Bond, okay, one time he found it.
 16 One time.
 17 Q. Your testimony is that Dr. Bond found
 18 spasms on one occasion?
 19 A. From what I could -- going through his
 20 records, I think he found it on one occasion of
 21 the right trapezius, not in the same area that
 22 Dr. Maggiore said he found his.
 23 Q. And Dr. Maggiore found spasms on more
 24 than one visit in his office records, did he not?
 25 A. His first record is on August 27th of

1 finding any spasm. Up until that time, he did
 2 not record any.
 3 Q. On how many different occasions did
 4 Dr. Maggiore find spasms?
 5 A. I don't know. I didn't count, but
 6 that was his first record from my going through
 7 his notes.
 8 Q. Okay. But you can't tell me based
 9 upon your careful review how many different
 10 visits Dr. Maggiore --
 11 A. I didn't count or did I memorize or
 12 write down how many visits that she actually made
 13 to the doctor, not just to the therapy portion of
 14 her treatments, but I don't know.
 15 Q. The opinions expressed by Dr. Bond in
 16 his report, do you take issue with those
 17 opinions?
 18 A. Yes.
 19 Q. Tell me which opinions you take issue
 20 with.
 21 A. The only opinion he renders is that
 22 she had cervical sprain or strain; that this
 23 resulted from multiple subluxations in her neck
 24 and upper thoracic spine.
 25 Q. Well, you agree that she sustained

1 cervical sprain and strain?
 2 A. Subluxations I do not agree with.
 3 Q. Any other opinions?
 4 A. The definition of subluxation
 5 according to medical literature would mean
 6 partial dislocation of a joint. Chiropractorally
 7 she does not refer to subluxation in that
 8 terminology, so I have to disagree from a medical
 9 standpoint that that's the diagnosis.
 10 Q. I'm sorry, doctor, I didn't hear the
 11 very beginning part of your answer about -- or
 12 maybe Vivian can read it.
 13 (Thereupon, the record was read.)
 14 Q. Doctor, what did you mean when you
 15 said chiropractorally she does not refer to
 16 that?
 17 A. The chiropractor does not mean that a
 18 joint is partly dislocated when they use the word
 19 subluxation, so medically that should mean that a
 20 joint is partly dislocated and it wasn't.
 21 Q. Do you know what the chiropractor
 22 means when he uses the term subluxation?
 23 A. I don't know what he means.
 24 Q. Okay.
 25 A. Nor did he explain what he meant in

1 this letter to you.
 2 Q. You have never picked up the phone and
 3 called Dr. Bond and inquired about what he meant,
 4 did you?
 5 A. I didn't call Dr. Maggiore, I didn't
 6 call Dr. Bond and there was no reason.
 7 Q. Doctor, listen to me, doctor. Did you --
 8 A. I am answering that.
 9 Q. No?
 10 A. I didn't call because there was no
 11 reason to.
 12 Q. I didn't ask you whether there was a
 13 reason?
 14 A. I know what you are trying to do. No,
 15 I didn't call.
 16 Q. Doctor, just because you have
 17 testified a number of times doesn't mean you get
 18 the opportunity to change the question.
 19 My question to you was, did you call
 20 Dr. Bond to get an explanation; yes or no?
 21 A. I cannot answer that in general. It
 22 has to be qualified because there was no reason
 23 for me to call this individual. I was not this
 24 lady's physician. I had no legal right to call
 25 this doctor; therefore, no, I did not call him.

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1 Q. And you want to report the truth in
2 this case, don't you? You want the jury to
3 understand what truly this case is all about,
4 don't you?
5 A. Yes.
6 Q. Because justice should be done in this
7 case; right?
8 A. Certainly.
9 Q. And certainly you want to have as much
0 information as possible to be able to provide
1 honest and objective opinions; correct?
2 A. Yes.
3 Q. Did you ever ask Mr. Williamson to
4 provide you with any clarification as to what Dr.
5 Bond meant by subluxation; yes or no?
6 A. No, I didn't, no.
7 Q. When Debbie was examined in your
8 office, she was accompanied by a female attorney
9 from my office; correct?
0 A. Yes.
1 Q. And you have her identified as Kathy?
2 A. Yes, that's the name she gave me.
3 Q. You didn't ask her what her last name
4 was?
5 A. She wouldn't give it to me.

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1 Q. She wouldn't tell you what her last
2 name was?
3 A. Only Kathy, that's all you are
4 entitled to. That's what she did, other than the
5 fact that she was representing her and I said
6 that's fine.
7 Q. She told you she wouldn't tell you her
8 last name?
9 A. Right.
0 Q. Did you mark that down in your notes
1 that she wouldn't tell you her last name?
2 A. No. So she didn't.
3 Q. But she told you, the lawyer from my
4 office told you that you weren't entitled to know
5 her last name. That's your testimony?
6 A. No, she doesn't have to give me her
7 last name and she didn't.
8 Q. She told you that she didn't have to
9 tell you her last name?
0 A. Yeah, that's my recollection.
1 Q. That's your recollection?
2 A. Yeah.
3 Q. But it's not reflected in your notes?
4 A. It doesn't have to be. There is
5 nothing wrong with that.

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1 Q. Okay. Well, whether it is or isn't, I
2 just want to find out.
3 A. Well, you never know. A lot of people
4 are sensitive in not providing that information.
5 Q. We certainly know about sensitivity.
6 Doctor, let me ask you this.
7 A. What did you say, sir?
8 Q. I said, we certainly know about
9 sensitivity.
10 A. I do.
1 Q. When she was present, you took notes
2 when she was sitting there, didn't she?
3 A. Yes.
4 Q. And I don't suppose you happened to
5 mark down the time that you entered the examining
6 room and started your history, did you?
7 A. No, because I was sure that she would
8 keep careful records of that and provide it for
9 me so you could inform me.
10 Q. So that certainly --
11 A. Whatever she wrote down, I will
12 accept.
13 Q. Well, let's have it on the record,
14 because I have the notes here and Kathy marked
15 down the history started at 10:18 a.m. and it

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1 ended at 10:24 a.m.
2 Do you have any basis to disagree with
3 that?
4 A. It started at what time?
5 Q. 10:18 and ended at 10:24 a.m.
6 A. What started, sir? Everything?
7 Q. The history.
8 A. Okay.
9 Q. Do you have any reason to disagree
0 with that?
1 A. No.
2 Q. If Kathy then notes, indicates that
3 you started your examination at 10:29 a.m., and
4 finished at 10:37, or roughly eight minutes, does
5 that sound approximately correct to you?
6 A. Yes.
7 Q. And when you were done with the eight
8 minute physical exam and the six minute history,
9 you didn't take any x-rays, did you?
0 A. No, sir.
1 Q. And at the end when you walked out of
2 the office and said good-bye to my client and to
3 Kathy, you didn't provide them with any
4 information as to what your findings were, did
5 you?

1 A. No, sir.
 2 Q. Okay. And I think as you indicated in
 3 your report, Debbie was cooperative with the
 4 examination?
 5 A. Yes.
 6 Q. Correct?
 7 A. Yes, she was.
 8 Q. And do you remember Debbie as being a
 9 rather pleasant young lady?
 10 A. Yes, that's what I wrote. She was.
 11 Q. Can we agree from your careful review
 12 of all of the records, all of the information
 13 that was provided to you by Mr. Williamson, which
 14 had been provided during the course of discovery,
 15 and from your interview of Debbie that there is
 16 absolutely no evidence in anything that you have
 17 seen or read to suggest that she had any neck or
 18 shoulder pain or disability prior to the auto
 19 collision of May 29, 1997?
 20 A. That's correct.
 21 Q. Doctor, if a patient complains of pain
 22 in the neck, in the shoulder area, do you expect
 23 to find spasm in the area where the patient tells
 24 you they have pain?
 25 A. Not always.

1 Q. They may have pain without spasm;
 2 correct? Doctor, before you --
 3 A. There are many causes.
 4 Q. Doctor, is it possible for you to
 5 answer my question as put to you? Let's try an
 6 exercise. I am going to have Vivian read back
 7 the question to you and see if you can answer it
 8 the way it's put to you rather than going off and
 9 giving a long explanation. If you can't, doctor,
 0 that's the only way that you humanly can respond,
 1 I'll accept that.
 2 MR. MISHKIND: Vivian, read back the
 3 question.
 4 MS. GORDON: QUESTION: They may have
 5 pain without spasm; correct?
 6 A. Yes.
 7 Q. Thank you.
 8 Can a patient experience spasm
 9 secondary to an injury on one day and the next
 0 day not have spasms and then the next day have
 1 spasms again in the injured area?
 2 A. Yes.
 3 Q. You did not find any spasms or trigger
 4 points in her back and neck; correct?
 5 A. Yes.

1 Q. You looked in the cervical, thoracic
 2 and the lumbar area when you did your exam;
 3 correct?
 4 A. Yes.
 5 Q. Are you aware that Debbie was not
 6 claiming any ongoing injury to or any injury to
 7 the low back area?
 8 A. Yes.
 9 Q. Is there a reason that you were
 10 looking for spasms or trigger points in the low
 11 back area?
 12 A. Yes.
 13 Q. Tell me why.
 14 A. It's a general examination of the
 15 entire back. She was in a motor vehicle accident
 16 and sometimes I'll find things that an individual
 17 did not have complaints about and this will show
 18 up and they will report it.
 19 Q. And she didn't claim any --
 20 A. No, she didn't claim anything in that
 21 area.
 22 Q. Okay. And she was very honest with
 23 you in that regard; correct?
 24 A. Yeah, the same reason why she claimed
 25 that she injured her neck. Why do they check her

1 reflexes? It's possible she may have had spinal
 2 cord injury or nerve injury, so this is why you
 3 do the general exam.
 4 Q. So the fact that -- strike that.
 5 Are trigger points different than when
 6 you feel for spasms?
 7 A. Absolutely.
 8 Q. And what are trigger points?
 9 A. Trigger points are also known as
 0 tender points. These can be palpated. You can
 1 feel them. When present, they are somewhat oval
 2 in configuration, usually about the size of a
 3 Navy bean and these areas are painful when you
 4 find it. There are various techniques that you
 5 look for, but usually you can palpate them. Now,
 6 that's different than generalized contraction,
 7 sustained contraction of a muscle.
 8 Q. What causes trigger points?
 9 A. Many causes at present, some of which
 10 are not known. Such as fibromyalgia. Injury, of
 11 course, can cause trigger points. Viral
 12 infections, many things can do it.
 13 Q. Okay.
 14 A. But trauma or injury to an area is one
 15 of them.

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1 Q. Can a patient experience pain in an
2 area of the muscles and the ligaments without
3 having evidence of trigger points?

4 A. If trigger points are searched for and
5 not found, they aren't there. But sometimes you
6 can experience pain without having a trigger
7 point, because that's a particular type of
8 finding that is not always present,

9 Q. Okay. But in any event, during the
10 examination that you did, you were not able to
11 elicit spasms or trigger points; correct?

12 A. I didn't find any muscle spasm at that
13 time and I didn't find any trigger points.

14 Q. But as to whether the patient had
15 spasms a day before or a day later, there is no
16 way that you can say whether she did or didn't,
17 is there?

18 A. That's correct.

19 Q. All you can do is report what you
20 found during that eight minute examination;
21 correct?

22 A. Well, that and review and give an
23 opinion.

24 Q. I understand that.

25 A. But as far as reporting what I found,

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1 only what I found.

2 Q. And doctor, no matter how good a
3 doctor you are, you can't feel or see someone
4 else's pain, can you?

5 A. No one else can either.

6 Q. So if Debbie Moms-Entis -- so I don't
7 get criticized by my client -- complains of pain
8 in her neck and shoulder on a daily basis, there
9 is no way you can dispute that or say that she is
10 not having those neck pains, can you?

11 A. No, I can't experience her pain.

12 Q. Would you agree that the human head
13 weighs about ten to 15 pounds, doctor?

14 A. Approximately that, yeah.

15 Q. Excuse me?

16 A. Yes.

17 Q. Okay.

18 A. I haven't weighed one lately, but the
19 last time, it was about that much.

20 Q. I just wanted to make sure, because I
21 know you have been asked that before. I just
22 wanted to see if your opinion of what the human
23 head weighs is still consistent in a 10 to 15
24 pound range; correct?

25 A. Yes.

1 Q. Isn't it true that there is very
2 little bone support of the head; in other words,
3 most of head is supported by soft tissue
4 structures?

5 A. That's correct.

6 Q. And soft tissues we are talking about
7 are the muscles in the neck, the ligaments of the
8 spinal column and the ligaments of the spinal
9 column to the skull; correct?

10 A. Yes.

11 Q. And when someone is hit from behind
12 and they are stopped at the time, isn't it a fair
13 statement to say that the head has cause to snap
14 back and then rebound or move in a forward
15 direction?

16 A. Yes.

17 Q. And you would certainly agree that,
18 would you not, that when the head moves backward,
19 that can cause injuries to the soft tissues of
20 the neck?

21 A. Depending on how far back you move,
22 and if there is no stopping, such as a head rest,
23 and usually the front of the neck is injured and
24 then the rebound if you don't crush any
25 vertebrae, of course, is when you stretch the

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1 posterior muscles.

2 Q. Well, you would agree that when
3 someone is seated in a stopped position, they are
4 hit from behind, they have much more support in
5 the low back sitting up against the seat than
6 they do with their head which does not have the
7 seat portion going up all the way to protect the
8 neck, even with a head rest; correct?

9 A. That's correct.

10 Q. And if the strained muscle heals with
11 scar tissue, that can cause ongoing symptoms, can
12 it not?

13 A. Qualified.

14 Q. I'm sorry?

15 A. The degree of scar tissue, so a lot of
16 scar tissue can produce more symptoms than
17 someone with minimal or no scar tissue.

18 Q. Okay. But in any event, if someone
19 sustains an injury to the muscle fibers and
20 ligaments and the injury causes a tearing and a
21 bleeding in the area, and ultimate scar
22 formation, the scar formation can cause ongoing
23 symptoms, the degree of those symptoms may be
24 influenced by the degree of scarring that's
25 formed; is that a fair statement?

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1 A. Yes.

2 Q. Thank you. And would you agree that
3 scar tissue does not stretch as easy as normal
4 tissue and can lead to stiffness?

5 A. Yes.

6 Q. In examining this patient and in
7 preparing your report, did you learn the speed of
8 the defendant's vehicle at the time of the
9 impact?

0 A. No. I don't know what speed the
1 striking car was traveling at.

2 Q. Okay.

3 A. She was still.

4 Q. And do you know based upon the review
5 in this case and the information that you have
6 been provided, not only the speed of the vehicle
7 that hit Debbie when she was stopped, but the
8 angle at which the car was hit or the degree or
9 amount of damage done to the car?

10 A. Well, in this instance, I don't know
11 the monetary damage, but then again, the parts
12 are fixed and replaced, so it's always high.

13 Not having to go to a hospital
14 immediately indicates that there was probably a
15 moderate degree of strain rather than a severe,

1 permanent in nature?

2 A. Just on the basis of the complaints
3 without actually treating the individual, I would
4 want to reserve judgment on that answer. I don't
5 think I could say that unless it were actually my
6 patient.

7 Q. All right. Just so I understand what
8 you--

9 A. You know what I am getting at. Not
10 because -- if they are going to someone else and
11 that's chronic, I couldn't say that the prognosis
12 was bad unless I actually examined them in
13 between.

14 Q. Well, let me give you the benefit
15 again as an orthopedic surgeon, which you are,
16 who treats people with musculoskeletal problems.
17 As a general proposition, would you agree with me
18 that if somebody has a problem that persists over
19 two years, you begin to have concerns as to
20 whether or not that's permanent, that the injury
21 is permanent in nature?

22 A. Taking that statement just as you put
23 it without applying this to this individual, yes,
24 I would agree with that statement.

25 Q. Okay. Just a few more questions,

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1 initially. That's all I can say.

2 Q. Okay.

3 A. This is surmising, we don't know.

4 Q. And this is based upon the information
5 that you have when I am taking your deposition
6 the day before your video trial testimony;
7 correct?

8 A. Yes.

9 Q. Okay. You would certainly agree that
0 property damage doesn't always correlate with the
1 degree of injury that someone has sustained;
2 correct?

3 A. That's correct.

4 Q. If someone doesn't get better
5 following an injury after six months, I think in
6 reviewing some previous information that I had
7 had a chance to review, you refer to that
8 condition as chronic after six months; correct?

9 A. Yes. Six months would be nice.

10 Probably even four, but six months certainly is a
11 conservative estimate.

12 Q. Can we agree as a general principle if
13 somebody has a problem persist following an
14 injury for over two years, you begin to have
15 concerns as to whether or not the injury is

1 doctor, and I think we will be done.

2 You charged in this case, I think your
3 normal charge is \$450 to do the examination at
4 the request of the defendant and to prepare the
5 report, but in this case, I think you had \$111
6 supplement; was that what it was?

7 A. Yes, that's for excess numbers of
8 pages to review, a dollar of page, so that's
9 where the \$111 came from. Some legal basis for
10 counting rather than so much per hour and
11 knocking up the next half hour.

12 Q. In any event, doctor, in this
13 particular case, your fee, and correct me if I am
14 wrong, because I think you have the statement in
15 there, was initially \$450 and then an additional
16 \$111 supplement?

17 A. Yes, sir.

18 Q. And the normal charge that you have is
19 \$450 for the exam and the report. It can go up,
20 such as in this case, depending upon the extent
21 of the information; correct?

22 A. It depends on the amount of pages I
23 have to review.

24 Q. I think that's what I just said.

25 A. Would go up and that's \$1 per page

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1 above 50 pages.

2 Q. And that includes the report, the
3 \$450?

4 A. Oh, yes.

5 Q. In this case, the \$561 that you
6 charged; correct?

7 A. Yes, sir.

8 Q. And am I correct in that you are still
9 performing approximately four to six examinations
10 per week at the request of a defense attorney?

11 A. Four to six exams, but not necessarily
12 for defense attorneys. By that we are including
13 Bureau of Worker's Compensation cases that I'll
14 review. As far as examinations such as these,
15 these are not all litigation. Some of these are
16 others that I include in that and the charge is
17 the same.

18 Q. That's not my question. My question
19 to you has to do with examinations where you are
20 seeing someone other than your patient at the
21 request of someone in litigation, which I refer
22 to that someone in litigation being the defense
23 attorney.

24 You may be qualifying the answer, but
25 am I correct in that you are still doing

1 patients I'm seeing has lessened.

2 Q. Today is Monday, so you haven't --
3 strike that.

4 Did you do a medical exam today at the
5 request of a defense attorney?

6 A. No.

7 Q. Did you do a medical examination of
8 someone other than your client for a Workers'
9 Comp or for any other purpose?

10 A. Today, no.

11 Q. When is the next one you have
12 scheduled?

13 A. Two days from now. Actually Thursday,
14 three days from now.

15 Q. When is the last time your deposition
16 was taken in one of these medical examination
17 cases?

18 A. Last time was six days ago.

19 Q. When is your next deposition scheduled
20 after tomorrow's deposition?

21 A. I don't know if I have anything
22 scheduled for about a month.

23 Q. In reviewing information I have, it
24 would appear -- strike that.

25 Tell me how many times per year you

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1 approximately four to six of these medical
2 examinations at the request of an attorney or
3 someone else, you're examining someone else, not
4 your own client?

5 A. Oh, now you are qualifying the
6 question. And yes.

7 Q. Okay. And you have been doing this
8 type of examination where you are examining
9 someone other than your client for the purpose of
10 reporting your findings, not for the purpose of
11 treating, you have doing that now for
12 approximately 42 years; right? Since 1958?

13 A. I have done some, yes, but not to that
14 particular degree.

15 Q. It's been increasing, has it not?

16 A. Well, it's been steady about the last
17 four or five years.

18 Q. Isn't it a fact, doctor, that the
19 amount, the number of examinations that you are
20 doing have increased as your clinical practice
21 time has decreased?

22 A. I don't believe so.

23 Q. That's not an accurate statement?

24 A. I think that that has remained about
25 the same and the number of actual clinical

1 are giving deposition testimony where your
2 testimony is being obtained by attorneys?

3 A. Between 12 to 20, depending on the
4 year. Either one a month or sometimes more.

5 Q. Has the number decreased?

6 A. I think there are probably more
7 settlements and so the depositions are frequently
8 cancelled. There are many scheduled, few are
9 completed.

10 Q. Well, I am looking at --

11 A. So I'm thinking that it has decreased.

12 Q. As recent as last year, do you recall
13 indicating under oath and testifying --

14 A. I don't recall, but I'm sure what you
15 have is correct, because you have got a depo
16 there.

17 Q. And as recently as last year, do you
18 recall indicating under oath that you are
19 testifying 30 times a year, sometimes more?

20 A. I may have said that, but I am not
21 doing that any longer. The numbers is less.

22 Q. Your testimony now is that you are
23 testifying 12 to 20 times per year?

24 A. That's my estimate, yeah.

25 Q. How many times have you testified so

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1 far this year?

2 A. I think about six times.

3 Q. And again, according to review of
4 information that I have, it would appear that
5 when you are testifying, you are testifying close
6 to 100 percent of the time at the request of an
7 attorney who asked you to do the examination, not
8 on behalf of your own patient who is involved in
9 litigation?

10 A. That's correct.

11 Q. Has the amount of income that you
12 generate from doing these medical examinations at
13 the request of the defense, has it increased,
14 decreased or stayed about the same over the last
15 two or three years?

16 A. I think it's decreased.

17 Q. For 1999, you just filed your taxes a
18 couple months ago. How much did you show from
19 nonclinical work in doing these defense medical
20 examinations?

21 A. I'm going to answer that in a
22 different way. My W-2 form filed for 1999, which
23 includes my entire income from the practice,
24 which includes all these medicals was \$45,000.

25 Q. Well, doctor, when you do these

1 minimum.

2 Q. Excuseme?

3 A. Certainly less than a major league
4 minimum.

5 Q. Major league what?

6 A. Baseball.

7 Q. Doctor, your sworn testimony is that
8 in 1999, your income from the practice of
9 medicine and from doing medical examinations at
10 the request of defense attorneys was \$45,000?

11 A. Yes, sir.

12 Q. And is that a substantial decrease
13 from the last two or three years?

14 A. Yes.

15 Q. Do you recall as recently as 1997
16 indicating that from defense examinations alone
17 you made \$130,000?

18 A. That's what I charged, yes.

19 Q. That's what you charge?

20 A. Yes. \$130,000 for that particular
21 year. Things have gone down.

22 Q. In 1998, how much did you --

23 A. I don't remember. You have the figure
24 there.

25 Q. I am asking You how much?

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1 medical examinations, you receive a 1099 from the
2 party responsible for the payment of the bills.
3 It's not part of your W-2.

4 A. No, not always. The W-2 -- if a 1099
5 is received, it's received. But not everyone
6 sends in a 1099.

7 Q. Okay. Well --

8 A. And it's made out to the corporation
9 that I'm a part of.

0 Q. Well, how much income --

1 A. My income.

2 Q. Doctor, let me finish the question,
3 please.

4 A. Okay.

5 Q. How much income did you -- revenue did
6 you generate for your corporation from doing
7 defense medical examinations in 1999?

8 A. I didn't really check that out. All I
9 can tell you is the total income from my
10 practice, which included these things that we are
11 talking about, was \$45,000. Now, that means I
12 paid expenses and all that, but that's take home
13 pay, \$45,000.

14 Q. That is --

15 A. Certainly less than a major league

1 A. I don't recall. You have got it under
2 oath.

3 Q. But your testimony is \$45,000 last
4 year?

5 A. Yes, sir.

6 Q. Of that \$45,000, how much was from
7 doing this nonclinical work where you're
8 testifying?

9 A. Probably \$75,000. I have to pay
0 salaries for people, I have to pay rent, I have
1 the office, I have malpractice. All these things
2 are entered in when you consider all those
3 things.

4 Q. Okay.

5 A. This is what brings you down to what I
6 say as far as take home pay. Certainly I
7 generated more than \$45,000 total income, but we
8 are talking about what you took home.

9 Q. All right. Just so the record is
10 complete and clear before we adjourn, in 1999,
11 from doing what I refer to as defense medical
12 examinations at the request of a defense attorney
13 and from you're testifying in these type of
14 cases, is it fair to say that the receipts, the
15 gross revenue payments that were made to you or

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1 to the corporation was in the area of \$75,000?
 2 A. Yes. It could even be a little
 3 higher.
 4 Q. Could it have been as high as
 5 \$100,000?
 6 A. I don't think so.
 7 Q. How would we go about checking that?
 8 A. You would have to go ahead and go
 9 through every one of my charts, but I won't do
 10 that.
 11 Q. Why is that, doctor?
 12 A. Because I don't have the time. But
 13 you have the staff. You can have them come out
 14 and have them go through each one of my reports,
 15 if you wish.
 16 Q. Okay. You charged me today \$950 for
 17 the discovery deposition, whether it was a half
 18 hour or in this situation an hour and a half;
 19 correct?
 20 A. Yes.
 21 Q. Tomorrow for Mr. Williamson's video
 22 deposition that he is taking, he is being charged
 23 \$950, as well, regardless of the length of time?
 24 A. Yes, sir.
 25 Q. Talking about Debbie, we have talked

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1 about your report and the opinions that you
 2 expressed and the opinions that you intend to
 3 express. I want to find out whether there are
 4 any other areas that you are aware of in terms of
 5 disagreement with what you have seen in the
 6 records or any other opinions that you believe
 7 that you have that we haven't talked about in
 8 this deposition?
 9 A. I have nothing that I can think of
 10 that's going to be any different than what we
 11 have expressed, to my knowledge, at this time.
 12 MR. MISHKIND: Doctor, I have no
 13 further questions for you. Thank you. I'll see
 14 you tomorrow.
 15 (Thereupon, a discussion was had off
 16 the record.)
 17 Q. Doctor, I just had a couple
 18 questions. I have got a sheet here which is a
 19 one yellow sheet, front and most of the back
 20 page. These are your notes that you took during
 21 the history and then ultimately the examination
 22 of Debbie; correct?
 23 A. Yes.
 24 Q. And the back here it says PMH. Is
 25 that prior medical history?

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1 A. Yes, sir.
 2 Q. And it says negative and no prior
 3 accidents?
 4 A. Yes.
 5 Q. And that was borne out, at least from
 6 the information that you have looked at?
 7 A. Yes.
 8 Q. What does it say at the very bottom
 9 here?
 10 A. Normal examination. IMP, normal
 11 examination.
 12 Q. And throughout the history and the
 13 physical examination, did you get a sense in any
 14 way that my client was trying to trick you in any
 15 way or to mislead you in terms of fully
 16 appreciating and understanding the nature of her
 17 injury?
 18 A. As far as the examination was
 19 concerned, as I say, there was no hesitation on
 20 turning or resisting movement or anything like
 21 that that would indicate that she wasn't
 22 cooperating with my examination. And this is
 23 what she related to me.
 24 Q. Okay. And again, so as far as from
 25 the moment you met her to the moment that she

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1 left, there is nothing that you felt as if this
 2 woman was trying to pull the wool over your eyes
 3 or be less than honest with you?
 4 A. No. I wouldn't -- you know, when
 5 someone talks, you talk. If I thought she was
 6 evasive, but she wasn't evading any question.
 7 She just came right out.
 8 Q. Okay. She was an honest and sincere
 9 person as far as you were concerned?
 10 A. As far as I can tell, she was telling
 11 me what she believed.
 12 Q. Okay. Nothing further. Thanks.
 13 - - - -
 14 (Deposition concluded at 3:15
 15 p.m.; signature waived.)
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 18
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1 CERTIFICATE

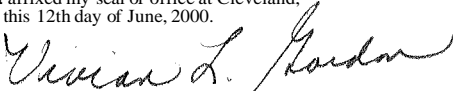
2 State of Ohio, }
3 County of Cuyahoga, } SS:

4
5 I, Vivian L. Gordon, a Notary Public within
6 and for the State of Ohio, duly commissioned and
7 qualified, do hereby certify that the within
8 named RALPH KOVACH, M.D., was by me first duly
9 sworn to testify to the truth, the whole truth
10 and nothing but the truth in the cause aforesaid;
11 that the testimony as above set forth was by me
12 reduced to stenotypy, afterwards transcribed, and
13 that the foregoing is a true and correct
14 transcription of the testimony.

15 I do further certify that this deposition
16 was taken at the time and place specified and was
17 completed without adjournment; that I am not a
18 relative or attorney for either party or
19 otherwise interested in the event of this action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office at Cleveland,
22 Ohio, on this 12th day of June, 2000.

23



24 Vivian L. Gordon, Notary Public
25 Within and for the State of Ohio

My commission expires June 8, 2004.

26

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