

In The Matter Of:

*James Yarbrough, et al. v.
Max Quinton*

*Fredric Lax, M.D.
May 29, 2002*

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[1] IN THE COURT OF COMMON PLEAS
[2] CUYAHOGA COUNTY, OHIO
[3] JAMES YARBROUGH,
[4] et al.,
[5] Plaintiffs,
[6] JUDGE BURNSIDE
[7] -vs- CASE NO. 356193
[8] MAX QUINTON, et al.,
[9] Defendants.
[10] Videotaped deposition of FREDRIC LAX, M.D.,
[11] taken as if upon direct examination before
[12] Katherine A. Koczan, a Notary Public within and
[13] for the State of Ohio, at the offices of Fredric
[14] Lax, M.D., 6731 Ridge Road, Suite 203, Parma,
[15] Ohio, at 2:30 p.m. on Wednesday, May 29, 2002,
[16] pursuant to notice and/or stipulations of
[17] counsel, on behalf of the Defendant, Joseph
[18] Ambrose, in this cause.
[19]
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On behalf of the Plaintiffs;

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[1] VIDEOTAPE OPERATOR: We're now	
[2] ready to begin the deposition. Will the reporter	
[3] please swear in the witness.	
[4] FREDRIC LAX, M.D., of lawful age, called	
[5] by the Defendants for the purpose of direct	
[6] examination, as provided by the Rules of Civil	
[7] Procedure, being by me first duly sworn, as	
[8] hereinafter certified, deposed and said as	
[9] follows:	
[10] DIRECT EXAMINATION OF FREDRIC LAX, M.D.	
[11] BY MR. SIGMIER:	
[12] Q: May we have your name and address, please.	
[13] A: My name's Dr. Fredric Lax. My business address	
[14] is 6731 Ridge Road, Parma, Ohio.	
[15] Q: What is your profession?	
[16] A: I'm a neurosurgeon.	
[17] Q: What does the specialty of neurosurgery involve,	
[18] Dr. Lax?	
[19] A: Treat surgical diseases of the spine and head.	
[20] Q: All right.	
[21] A: Peripheral nerve as well.	
[22] Q: Pardon me?	
[23] A: Peripheral nerve as well.	
[24] Q: All right. Could you summarize for the jury,	
[25] please, your education, training and experience.	

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[1] A: I went to undergraduate school in Schenectady,	
[2] New York at Union College. I went to medical	
[3] School at Hahnemann Medical College in	
[4] Philadelphia. I did a year of surgical training	
[5] in the Bronx in New York, and then I did five	
[6] years of neurosurgery at the Albert Einstein	
[7] College of Medicine doing a straight	
[8] neurosurgical residency. Then I graduated and I	
[9] went into practice.	
[10] Q: And where do you practice at currently, doctor?	
[11] A: I practice primarily in Parma, out of Parma	
[12] Hospital.	
[13] Q: All right. And are you licensed to practice	
[14] medicine in Ohio?	
[15] A: Yes.	
[16] Q: What year did you receive your Ohio license?	
[17] A: I believe it was '94.	
[18] Q: Did you practice in some other states before you	
[19] came to Ohio?	
[20] A: Yes.	
[21] Q: Where did you practice?	
[22] A: Texas, New Jersey and Oregon.	
[23] Q: Now, doctor, are you board certified?	
[24] A: Yes.	
[25] Q: In what specialty are you board certified?	
[1] A: Neurosurgery.	
[2] Q: And what does it mean to become board certified?	
[3] A: It's just a standardized test of neurosurgical	
[4] resident graduate, graduates to see if they're	
[5] all at the same baseline of knowledge.	
[6] Q: What year did you receive your board	
[7] certification?	
[8] A: '83.	
[9] Q: Can you describe, doctor, the nature of the	
[10] practice that you have here in Parma?	
[11] A: I have a private practice of neurosurgery.	
[12] Q: And you operate on patients, I take it?	
[13] A: Yes.	
[14] Q: Now, doctor, did there come a time when you	
[15] examined a man named James Yarbrough at my	
[16] request?	
[17] A: Yes.	
[18] Q: And do you recall the date of that examination?	
[19] A: It was January 26th of 2001.	
[20] Q: And did I ask you to determine for me the extent	
[21] and nature of any injuries that Mr. Yarbrough	
[22] sustained as a result of an automobile accident	
[23] on July 30, 1999?	
[24] A: Yes.	
[25] Q: All right. Now, I take it when you met with	

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[1] Mr. Yarbrough, was it here in this office?
[2] **A:** I believe it was at my Deaconess office —
[3] **Q:** All right.
[4] **A** — which I see patients at occasionally.
[5] **Q:** And did you take a history from Mr. Yarbrough?
[6] **A:** Yes.
[7] **Q:** And what did he tell you about his injuries?
[8] **A:** That he told me that he had been involved in two
[9] motor vehicles accident, accidents, one in 1997
[10] and another in 1999.
[11] **Q:** All right. And did you ask him what sort of
[12] complaints he was having at that time, at the
[13] time that you examined him?
[14] **A:** At the time I examined him he had complaints of
[15] neck pain and back pain.
[16] **Q:** All right. Did you perform a neurological
[17] examination of Mr. Yarbrough?
[18] **A:** Yes, I did.
[19] **Q:** And can you explain to the jury how you go about
[20] performing a neurological examination and what
[21] you're looking for?
[22] **A:** Basically, the neurologic examination is aimed at
[23] trying to determine if there's any abnormality of
[24] the nerves either in the head, the spinal cord or
[25] in the peripheral nervous system. It consists of

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[1] doing a motor examination to see how the
[2] patient's muscles are working, reflex
[3] examination, sensory examination and examination
[4] of coordination as well as the general
[5] musculature and body habit.
[6] **Q:** What were the results of your examination of
[7] Mr. Yarbrough?
[8] **A:** I found that he had a normal neurologic
[9] examination.
[10] **Q:** What does that mean, normal?
[11] **A:** That means that his muscles, nerves and reflexes
[12] were all behaving in a normal fashion.
[13] **Q:** All right. Now, doctor, did you review any of
[14] Mr. Yarbrough's medical records?
[15] **A:** Yes, I did.
[16] **Q:** And can you identify for the jury what medical
[17] records you reviewed?
[18] **A:** There are multiple records here from the
[19] Cleveland Clinic, from Meridia Hospital, Meridia
[20] Hillcrest emergency room, there's a place called
[21] Rehabilitex, multiple x-ray reports, there are,
[22] there are many records here.
[23] **Q:** All right. And did you study those medical
[24] records in an effort to determine the extent of
[25] the injuries that Mr. Yarbrough sustained as a

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[1] result of the July 30, 1999 accident?
[2] **A:** Yes, I did.
[3] **Q:** All right. And what did those, what did your
[4] study of those records indicate to you concerning
[5] the injuries he sustained as a result of that
[6] accident?
[7] **A:** My opinion is, is that as a result of the
[8] accident in 19 July of 1999, he sustained a
[9] exacerbation of a previous cervical spine
[10] problem.
[11] **Q:** All right. And when you say exacerbation, what
[12] do you mean by that?
[13] **A:** This is a patient who, prior to 1999, had
[14] evidence of degenerative disease or arthritis of
[15] the cervical spine, and he had some neck pain,
[16] but after the accident in July of '99 his neck
[17] pain became somewhat worse and his x-rays looked
[18] a little bit worse and he had some, some
[19] increased symptoms related to his neck, and that,
[20] that was the result of my findings.
[21] **Q:** All right. Did you review x-ray reports from
[22] before the July, 1999 accident?
[23] **A:** Yes.
[24] **Q:** And can you describe for the jury what they
[25] showed?

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[1] **A:** The main finding on the prior, the x-rays prior
[2] to 1999 was that the patient had degenerative
[3] disease or arthritic changes at C5/6.
[4] **Q:** All right. And did you review the reports from
[5] x-rays taken after the July, 1999 accident?
[6] **A:** Yes, the reports of the cervical spine taken,
[7] reports of x-rays of the cervical spine taken
[8] after 1999 showed evidence of so-called stepoffs
[9] or subluxations at C3/4, C4/5 and C5/6.
[10] **Q:** All right. Now, when you met with Mr. Yarbrough
[11] and you asked him about his complaints, what, was
[12] he complaining about his neck or his back, low
[13] back or both?
[14] **A:** Well, at the time he told me that he had
[15] complaints in both places but the neck was
[16] bothering him the most at that time.
[17] **Q:** All right. And did he tell you what he thought
[18] result, what injuries he thought resulted from
[19] the second accident?
[20] **A:** He was a very difficult historian and I don't
[21] specifically recall if he told me which symptoms
[22] came from what accident.
[23] **Q:** All right. Now, what about his, his low back, in
[24] reviewing the records, were you able to determine
[25] whether Mr. Yarbrough suffered any injury to his

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<p>[1] low back as a result of the second accident in</p> <p>[2] July of 1999?</p> <p>[3] A: Based upon review of the records and talking to</p> <p>[4] the patient as well as the examination, I see no</p> <p>[5] evidence that the patient sustained an injury to</p> <p>[6] his low back as a result of the 1999 accident.</p> <p>[7] Q: All right. Now, in reviewing Mr. Yarbrough's</p> <p>[8] medical records, do you, did you see some</p> <p>[9] references, references to complaints of</p> <p>[10] dizziness?</p> <p>[11] A: Yes, I did.</p> <p>[12] Q: And what do the medical records indicate</p> <p>[13] concerning those complaints?</p> <p>[14] A: This is a patient who's been extensively worked</p> <p>[15] up for complaints of dizziness. He's had</p> <p>[16] complaints of dizziness documented in his chart</p> <p>[17] extending back to 1976. There have been multiple</p> <p>[18] attempts to determine what the reason for his</p> <p>[19] dizziness was and nobody has been able to come to</p> <p>[20] a definitive conclusion as to what the problem,</p> <p>[21] what the actual cause for the dizziness is.</p> <p>[22] Q: And based on your review of this case, your, your</p> <p>[23] examination and your review of the records,</p> <p>[24] doctor, do you have an opinion to a reasonable</p> <p>[25] degree of medical certainty as to whether the</p>	<p>[1] Q: Now, was, were there any indications in the</p> <p>[2] records as to whether or not he lost</p> <p>[3] consciousness after the second accident?</p> <p>[4] A: The, the chart says he did not.</p> <p>[5] Q: All right. Now, is loss of consciousness a</p> <p>[6] prerequisite to a diagnosis of a concussion?</p> <p>[7] A: True concussion, a true concussion requires loss</p> <p>[8] of consciousness.</p> <p>[9] MR. MESTER: Objection. Move to</p> <p>[10] strike.</p> <p>[11] Q: Now, in reviewing the medical records, do you see</p> <p>[12] any indication that Mr. Yarbrough had the</p> <p>[13] symptoms of a concussion in the months that</p> <p>[14] followed after the July, 1999 accident?</p> <p>[15] MR. MESTER: Objection.</p> <p>[16] A: No, I don't.</p> <p>[17] Q: All right. Now, doctor, I'd like to conclude by</p> <p>[18] asking you to summarize your opinions in this</p> <p>[19] case, and my question is, do you have an opinion</p> <p>[20] to a reasonable degree of medical certainty based</p> <p>[21] on your review of the records and your</p> <p>[22] examination of Mr. Yarbrough, as to the nature</p> <p>[23] and extent of the injuries he sustained as a</p> <p>[24] result, result of the July 30, 1999 accident?</p> <p>[25] MR. MESTER: Objection.</p>
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<p>[1] accident of July, 1999 caused Mr. Yarbrough's</p> <p>[2] dizziness?</p> <p>[3] MR. MESTER: Objection.</p> <p>[4] A: May I answer?</p> <p>[5] Q: Yes, you may.</p> <p>[6] A: I do not believe it caused his dizziness.</p> <p>[7] MR. MESTER: Move to strike.</p> <p>[8] Q: And what is that opinion based on?</p> <p>[9] A: This is —</p> <p>[10] MR. MESTER: Objection.</p> <p>[11] A: — based upon the patient's Complaints, the</p> <p>[12] charts and the diagnoses made by the physicians</p> <p>[13] involved in the case.</p> <p>[14] Q: All right. Now, did you review the records,</p> <p>[15] Dr. Lax, after the July, 1999 accident for any</p> <p>[16] indication that Mr. Yarbrough suffered a</p> <p>[17] concussion as a result of that accident?</p> <p>[18] A: Yes.</p> <p>[19] Q: And what did the medical records show on that</p> <p>[20] issue?</p> <p>[21] A: That basically if he had a concussion at all, it</p> <p>[22] was an extremely minor one.</p> <p>[23] Q: All right.</p> <p>[24] MR. MESTER: Objection. Move to</p> <p>[25] strike.</p>	<p>[1] Q: First of all, do you have an opinion?</p> <p>[2] A: Yes, I do.</p> <p>[3] MR. MESTER: Objection.</p> <p>[4] Q: And what is your opinion?</p> <p>[5] MR. MESTER: Objection.</p> <p>[6] A: I believe he had the, a degenerative condition of</p> <p>[7] the cervical spine, and after the 1999 accident,</p> <p>[8] the symptoms from that became worse.</p> <p>[9] MR. SIGMIER: That's all I have.</p> <p>[10] Thank you.</p> <p>[11] MR. MESTER: Why don't we go off</p> <p>[12] for two seconds.</p> <p>[13] VIDEOTAPE OPERATOR: We're off the</p> <p>[14] record.</p> <p>[15]</p> <p>[16] (Off the record.)</p> <p>[17]</p> <p>[18] VIDEOTAPE OPERATOR: On the</p> <p>[19] record.</p> <p>[20]</p> <p>[21] CROSS-EXAMINATION OF FREDRIC LAX, M.D.</p> <p>[22] BY MR. MESTER:</p> <p>[23] Q: Doctor, good afternoon, my name is Jonathan</p> <p>[24] Mester. I represent James Yarbrough in this</p> <p>[25] matter.</p>

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<p>[1] Now, doctor, I just want to ask you a few</p> <p>[2] questions based upon your, your direct</p> <p>[3] examination. First of all, I want to make sure</p> <p>[4] that we're clear on exactly what your role is in</p> <p>[5] this case. You were hired by the Defendant,</p> <p>[6] Mr. Sigmier's client, Mr. Ambrose, is that</p> <p>[7] correct?</p> <p>[8] A: Yes.</p> <p>[9] Q: All right. And you are being compensated for</p> <p>[10] your testimony here today on behalf of</p> <p>[11] Mr. Ambrose?</p> <p>[12] A: Yes.</p> <p>[13] Q: Okay. And you did not treat James Yarbrough at</p> <p>[14] any point in time since either one of his</p> <p>[15] accidents, correct?</p> <p>[16] A: Correct.</p> <p>[17] Q: You've never prescribed medications for</p> <p>[18] Mr. Yarbrough?</p> <p>[19] A: Correct.</p> <p>[20] Q: You've never sent him for any diagnostic tests</p> <p>[21] such as MRI's and so forth?</p> <p>[22] A: No.</p> <p>[23] Q: Okay. In fact, Dr. Lax, to summarize, you've</p> <p>[24] never essentially treated this patient or done</p> <p>[25] anything to help this patient in any way as a</p>	<p>[1] 2001?</p> <p>[2] A: Correct.</p> <p>[3] Q: Okay. And again, doctor, your purpose for being</p> <p>[4] here today is to evaluate Mr. Yarbrough's</p> <p>[5] condition on behalf of the defense in this case,</p> <p>[6] correct?</p> <p>[7] A: Well, I — the defense paid for my evaluation,</p> <p>[8] yes.</p> <p>[9] Q: Correct. Okay. Now, doctor, you've prepared a</p> <p>[10] report in this case which summarized your</p> <p>[11] findings, is that correct?</p> <p>[12] A: Right.</p> <p>[13] Q: Okay. And that's the report dated January 26,</p> <p>[14] 2001?</p> <p>[15] A: Yes.</p> <p>[16] Q: And, doctor, I take it that's the only report</p> <p>[17] you've prepared in this case?</p> <p>[18] A: As I — yes.</p> <p>[19] Q: Okay. There are no other reports, in other</p> <p>[20] words, you can prepare supplemental reports but</p> <p>[21] there aren't any supplemental reports that you</p> <p>[22] prepared setting forth additional opinions beyond</p> <p>[23] the January 26, 2001 report, correct?</p> <p>[24] A: Not to my knowledge.</p> <p>[25] Q: Okay. Well, you, you haven't prepared any such</p>
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<p>[1] treating physician, correct?</p> <p>[2] A: Correct.</p> <p>[3] Q: Okay. Your role was to see this gentleman one</p> <p>[4] time, review some records and issue opinions,</p> <p>[5] correct?</p> <p>[6] A: I evaluated the patient, yes.</p> <p>[7] Q: Okay. Based — right, based upon your</p> <p>[8] evaluation. All right.</p> <p>[9] And I think you testified that the one time</p> <p>[10] you saw Mr. Yarbrough was the date of your</p> <p>[11] report, January 26, 2001?</p> <p>[12] A: I don't know if that was that exact date but it</p> <p>[13] was approximately that time.</p> <p>[14] Q: Okay.</p> <p>[15] A: I don't know if that's the exact date.</p> <p>[16] Q: All right. But within that week certainly —</p> <p>[17] A: Yes, certainly.</p> <p>[18] Q: — Something like that?</p> <p>[19] And you would agree with me that that would</p> <p>[20] have been roughly four years since his initial</p> <p>[21] accident in '97 and two years since the second</p> <p>[22] accident in '99?</p> <p>[23] A: Yes.</p> <p>[24] Q: Okay. And you had not had an opportunity, I take</p> <p>[25] it, to meet Mr. Yarbrough prior to January of</p>	<p>[1] reports?</p> <p>[2] A: Not that I recall, no.</p> <p>[3] Q: Okay. All right. Now, doctor, I've taken the</p> <p>[4] liberty of blowing that report up, and I'd like</p> <p>[5] to just, I don't know if we can pick this up or</p> <p>[6] not?</p> <p>[7] MR. SIGMIER: Objection.</p> <p>[8] MR. MESTER: Off the record.</p> <p>[9] VIDEOTAPE OPERATOR: Off the</p> <p>[10] record.</p> <p>[11]</p> <p>[12] (Thereupon, a discussion was had off</p> <p>[13] the record.)</p> <p>[14]</p> <p>[15] MR. SIGMIER: Note an objection.</p> <p>[16] MR. JEPPE: Yeah, I object also to</p> <p>[17] the use of the report. This is as good as</p> <p>[18] giving it to the jury and I object to it</p> <p>[19] being shown on videotape or being displayed</p> <p>[20] before the jury.</p> <p>[21] VIDEOTAPE OPERATOR: On the</p> <p>[22] record.</p> <p>[23] Q: Okay. Doctor, I'd like to go over a few things</p> <p>[24] in your report if we could. First of all, this</p> <p>[25] is the report that I've blown up, the first page</p>

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<p>[1] of that report?</p> <p>[2] A: Yes.</p> <p>[3] Q: Okay. And, doctor, with — let's start with,</p> <p>[4] with regard to the '97 accident and your opinions</p> <p>[5] that you've expressed in this report with regard</p> <p>[6] to his lower back. Am I reading correctly the</p> <p>[7] first highlighted sentence in the second</p> <p>[8] paragraph which states, "With regards to</p> <p>[9] Mr. Yarbrough's low back and leg symptoms,</p> <p>[10] clearly this patient had a significant injury in</p> <p>[11] 1997"?</p> <p>[12] MR. JEPPE: Objection.</p> <p>[13] A: Yes.</p> <p>[14] Q: And, doctor, that is your opinion?</p> <p>[15] A: Yes.</p> <p>[16] Q: Okay. Would you explain that to the ladies and</p> <p>[17] gentlemen of the jury, please.</p> <p>[18] MR. JEPPE: Objection.</p> <p>[19] A: Would I explain what?</p> <p>[20] Q: Exactly what you meant by this patient having a</p> <p>[21] significant injury in '97.</p> <p>[22] MR. JEPPE: Objection.</p> <p>[23] A: Well, I believe that he had an injury in 1997</p> <p>[24] which resulted in symptoms to his low back.</p> <p>[25] Q: Okay. I guess what I'm really keying on is the</p>	<p>[1] Q: Okay. Do you recall whether he had any objective</p> <p>[2] evidence of injury as demonstrated by MRI scans</p> <p>[3] with regard to the low back?</p> <p>[4] A: There was evidence of a small disc herniation on</p> <p>[5] x-ray.</p> <p>[6] Q: Okay. Doctor, would you explain, again, to the</p> <p>[7] ladies and gentlemen of the jury, what a disc</p> <p>[8] herniation is?</p> <p>[9] A: A herniation is medical terminology that means</p> <p>[10] that some body part has come to lie outside of</p> <p>[11] its normal boundary. It can be any kind of body</p> <p>[12] part, and if it's an intestine, it's an abdominal</p> <p>[13] wall hernia, and if it's a disc in the low back,</p> <p>[14] then it's a disc herniation, that's all.</p> <p>[15] Q: Okay. And with respect to Mr. Yarbrough, he had</p> <p>[16] a disc herniation in his lower back?</p> <p>[17] A: Yes.</p> <p>[18] Q: Okay. And that was found on the MRI, doctor?</p> <p>[19] A: Yes.</p> <p>[20] Q: Okay. Now, doctor, with, specifically with</p> <p>[21] respect to a lumbar disc herniation, can you just</p> <p>[22] explain to the jury what happens when a disc</p> <p>[23] herniates in the lumbar spine?</p> <p>[24] A: Well, the, the story of a disc herniation in the</p> <p>[25] lumbar spine is a patient that first has</p>
Page 22	Page 24
<p>[1] word significant. Exactly what injuries did you</p> <p>[2] see in your review of the records from '97?</p> <p>[3] MR. JEPPE: Note a continuing</p> <p>[4] objection to this examination, again, with</p> <p>[5] regards to the low back.</p> <p>[6] MR. MESTER: Sure.</p> <p>[7] A: Could you restate the question.</p> <p>[8] Q: Sure. My question is, doctor, I guess what I'm</p> <p>[9] keying on in your, in your report there is the</p> <p>[10] word significant, where you say, "Clearly this</p> <p>[11] patient had a significant injury in '97, 1997."</p> <p>[12] What in particular did you review in the records</p> <p>[13] of his injury of his low back from the '97</p> <p>[14] accident?</p> <p>[15] MR. JEPPE: Objection.</p> <p>[16] A: I, I read the reports regarding his low back</p> <p>[17] injury, the symptoms that he began suffering</p> <p>[18] after 1997 and the problem, some of the problems</p> <p>[19] that he's had since then.</p> <p>[20] Q: Okay. And, doctor, do you recall specifically</p> <p>[21] what some of those problems he had in his low</p> <p>[22] back were?</p> <p>[23] A: Back pain, right leg pain, some radiculopathic</p> <p>[24] symptoms down the right leg, and that's what I</p> <p>[25] recall.</p>	<p>[1] arthritic or degenerative changes at a disc,</p> <p>[2] because a normal disc will not herniate. So</p> <p>[3] first you have an arthritic or degenerative</p> <p>[4] changes. On top of that is added some kind of a</p> <p>[5] trauma, and as a result of the trauma, portions</p> <p>[6] of the disc begin to shift out of their normal</p> <p>[7] anatomic boundaries, sometimes compressing nerves</p> <p>[8] and sometimes not.</p> <p>[9] Q: Okay. And that's what occurred with</p> <p>[10] Mr. Yarbrough, portions of his disc shifted</p> <p>[11] outside of the normal boundaries?</p> <p>[12] A: The presumption is, yes.</p> <p>[13] Q: Okay. And by the way, did you actually look at</p> <p>[14] the actual films of the MRIs?</p> <p>[15] A: They were not available to me.</p> <p>[16] Q: Okay, fine. But again, you have no reason to</p> <p>[17] doubt that Mr. Yarbrough had a disc herniation in</p> <p>[18] his lower back, correct?</p> <p>[19] A: No.</p> <p>[20] Q: Okay. And, doctor, you would agree with me that</p> <p>[21] a disc herniation can wind up putting pressure on</p> <p>[22] the nerve roots, is that also correct?</p> <p>[23] A: It's a possibility, yes.</p> <p>[24] Q: Okay. Do you know if that's what occurred with</p> <p>[25] Mr. Yarbrough?</p>

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<p>[1] A: It's possible, but it, I mean, as far as his</p> <p>[2] right leg complaints are concerned, it's a strong</p> <p>[3] possibility.</p> <p>[4] Q: And why is —</p> <p>[5] MR. JEPPE: Objection.</p> <p>[6] Q: — why is that, doctor?</p> <p>[7] MR. JEPPE: Ask that be stricken.</p> <p>[8] Q: Why is that, doctor?</p> <p>[9] MR. JEPPE: Objection.</p> <p>[10] A: Because he has radicular type, radicular like</p> <p>[11] complaints, and disc herniations tend to cause</p> <p>[12] radicular like complaints.</p> <p>[13] Q: Okay. And when you say radicular like</p> <p>[14] complaints, you're referring to the symptoms he</p> <p>[15] was having in his legs?</p> <p>[16] A: Pinched nerve type symptoms —</p> <p>[17] Q: Okay.</p> <p>[18] A: — which he seemed to have.</p> <p>[19] Q: All right. And, doctor, is this type of</p> <p>[20] condition that Mr. Yarbrough had a painful</p> <p>[21] condition?</p> <p>[22] A: Yes.</p> <p>[23] Q: Okay.</p> <p>[24] A: Frequently.</p> <p>[25] Q: Okay. You've obviously, in your practice as a</p>	<p>[1] legs were very realistic and you believed real?</p> <p>[2] A: Yes.</p> <p>[3] Q: Am I reading that correctly?</p> <p>[4] A: What, what line are you looking at?</p> <p>[5] Q: I'm sorry. Second paragraph, right in the</p> <p>[6] middle, beginning, "I would add to this"?</p> <p>[7] A: Yes, that's correct.</p> <p>[8] Q: And could you just read that line for us, doctor?</p> <p>[9] A: "I would add to this the fact the patient's</p> <p>[10] description of his pains in his low back and legs</p> <p>[11] are very realistic and I believe real."</p> <p>[12] Q: Okay.</p> <p>[13] A: That's all.</p> <p>[14] Q: Thank you, doctor. So again, doctor, you have no</p> <p>[15] reason to believe that Mr. Yarbrough did not</p> <p>[16] suffer a disc herniation in this case, correct?</p> <p>[17] MR. JEPPE: Objection.</p> <p>[18] A: I have no reason to believe that he did not.</p> <p>[19] Q: Okay. And, doctor, would it be your opinion</p> <p>[20] that, in fact, Mr. Yarbrough did suffer a disc</p> <p>[21] herniation in his lower back as a result of the</p> <p>[22] accident in 1997?</p> <p>[23] MR. JEPPE: Objection.</p> <p>[24] A: I would say that he probably did, yes.</p> <p>[25] Q: Okay. Thank you, doctor.</p>
Page 26	Page 28
<p>[1] neurosurgeon, you see patients every day who have</p> <p>[2] this type of condition, correct?</p> <p>[3] A: Yes.</p> <p>[4] Q: Okay. And you would agree with me that, again, a</p> <p>[5] herniated disc in the low back is a very painful</p> <p>[6] condition?</p> <p>[7] A: In some patients it's very painful and in other</p> <p>[8] patients it's not too painful.</p> <p>[9] Q: And what about Mr. Yarbrough, based upon your,</p> <p>[10] your, your one visit with him and your review of</p> <p>[11] the records?</p> <p>[12] A: His symptoms regarding his low back tended to</p> <p>[13] fluctuate depending upon, you know, what chart</p> <p>[14] note you were reading and when I was see, and,</p> <p>[15] you know, and the way compared to when I was</p> <p>[16] seeing him, sometimes he had more back complaints</p> <p>[17] and sometimes he seemed to have less.</p> <p>[18] Q: Okay. When he saw you, did he describe the pains</p> <p>[19] he was having in his lower back?</p> <p>[20] A: I'm sure he did.</p> <p>[21] Q: Okay. In fact —</p> <p>[22] A: They, they were radicular type pains.</p> <p>[23] Q: Okay. In fact, in your report, I believe you</p> <p>[24] said that you found that the patient's</p> <p>[25] description of his pains at his lower back and</p>	<p>[1] Now, doctor, what about the type of treatment</p> <p>[2] that we see for a herniated disc, what type of</p> <p>[3] treatment — obviously you treat these, I'm sure,</p> <p>[4] again, every day, what type of treatment do we</p> <p>[5] normally see for a patient such as Mr. Yarbrough</p> <p>[6] with a herniated disc?</p> <p>[7] MR. JEPPE: Continuing objection.</p> <p>[8] A: Broadly speaking, it, from my, from my</p> <p>[9] perspective as a surgeon, broadly speaking, the</p> <p>[10] treatment breaks down between surgical and</p> <p>[11] nonsurgical.</p> <p>[12] Q: Okay. And I assume you would normally start with</p> <p>[13] a more conservative, nonsurgical approach?</p> <p>[14] A: Yes.</p> <p>[15] Q: Physical therapy would probably be the starting</p> <p>[16] point?</p> <p>[17] A: Yes.</p> <p>[18] Q: Okay. And then is nerve blocks also another</p> <p>[19] potential form of treatment for a herniated disc?</p> <p>[20] A: Yes.</p> <p>[21] Q: Okay. And in your review of the records, did you</p> <p>[22] see whether Mr. Yarbrough received physical</p> <p>[23] therapy and nerve blocks for his lower back?</p> <p>[24] A: Yes.</p> <p>[25] Q: Okay. He did receive these?</p>

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<p>[1] A: Yes.</p> <p>[2] Q: Okay. And you would agree with me that those</p> <p>[3] were appropriate treatments for his low back?</p> <p>[4] A: Yes.</p> <p>[5] Q: Okay. Now, doctor, in addition to the herniated</p> <p>[6] disc, I want to hand you a record from the</p> <p>[7] emergency room at Meridia Hillcrest Hospital. I</p> <p>[8] believe you said you reviewed these records but</p> <p>[9] I've taken the liberty of identifying the exact</p> <p>[10] portion I want to ask you about.</p> <p>[11] This is a document dated March 29, 1997 of</p> <p>[12] the, and it's reporting the results, apparently,</p> <p>[13] of the MRI of the lumbar spine. And it indicates</p> <p>[14] that there's an area of abnormal signal at levels</p> <p>[15] of herniation which may represent a hematoma</p> <p>[16] within the canal and associated with nerve roots.</p> <p>[17] A: Uh-hum.</p> <p>[18] Q: Have you seen that document, doctor?</p> <p>[19] A: I've seen that report.</p> <p>[20] Q: Okay. Can you, can you explain that to the jury,</p> <p>[21] doctor, how does one get a hematoma in the low</p> <p>[22] back such as that?</p> <p>[23] A: I can't explain it. I can, it's a very unusual</p> <p>[24] finding for the radiologist to come back with</p> <p>[25] that, with that diagnosis, but the presumption</p>	<p>[1] A: Yeah.</p> <p>[2] Q: Doctor, is, is that a normal finding on an MRI?</p> <p>[3] A: No, it's not.</p> <p>[4] Q: Okay. Can you explain that to the jury?</p> <p>[5] A: It's the same sort of thing, it's, it's a</p> <p>[6] hematoma.</p> <p>[7] Q: Okay. And that's something that, that I take it</p> <p>[8] you don't normally see on, on MRIs of the lumbar</p> <p>[9] spine?</p> <p>[10] A: That's correct.</p> <p>[11] Q: Okay. And, doctor, again, based upon a</p> <p>[12] reasonable degree of medical probability, what</p> <p>[13] would be your explanation for that, the finding</p> <p>[14] of blood within the lower lumbar canal?</p> <p>[15] A: I would suspect it's trauma related.</p> <p>[16] Q: Okay. And again, doctor, based upon a reasonable</p> <p>[17] degree of medical probability, you'd agree with</p> <p>[18] me that it was caused by the accident of 1997?</p> <p>[19] MR. JEPPE: Objection.</p> <p>[20] A: Yes.</p> <p>[21] Q: That was a yes, doctor?</p> <p>[22] A: Yes.</p> <p>[23] Q: Okay. Thank you. Doctor, did you have a chance</p> <p>[24] to review the medical reports that were submitted</p> <p>[25] by the Plaintiff's treating physicians in this</p>
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<p>[1] has to be that it's secondary to an accident,</p> <p>[2] unless the patient had some direct surgical type</p> <p>[3] manipulation or needle manipulation of the spine.</p> <p>[4] Q: Okay. And, doctor, from your review of the</p> <p>[5] records, Mr. Yarbrough had never had such</p> <p>[6] manipulation of the lower spine, had he?</p> <p>[7] A: Not that I was able to deduce, no.</p> <p>[8] Q: Okay. So, doctor, would you agree with me that</p> <p>[9] it would be your opinion that the hematoma that</p> <p>[10] was found in his lower lumbar disc on the MRI of</p> <p>[11] March 29, 1997 was caused by this, the motor</p> <p>[12] vehicle accident of 1997?</p> <p>[13] MR. JEPPE: Objection.</p> <p>[14] A: That's my suspicion, yes.</p> <p>[15] Q: Based upon a reasonable degree of medical</p> <p>[16] probability, doctor —</p> <p>[17] A: Yes.</p> <p>[18] Q: — you'd agree with me?</p> <p>[19] A: Yes.</p> <p>[20] MR. JEPPE: Objection.</p> <p>[21] Q: Okay. Now, doctor, also on that MRI report, the</p> <p>[22] radiologist's interpretation, there's an</p> <p>[23] indication where it says probable blood within</p> <p>[24] the lower lumbar canal, did you see that, doctor?</p> <p>[25] I'll be happy to show it to you.</p>	<p>[1] case?</p> <p>[2] A: Most of them, I don't know about every one of</p> <p>[3] them —</p> <p>[4] Q: Okay.</p> <p>[5] A: — but the vast majority of them.</p> <p>[6] Q: That's fine, and I'll of course be more specific.</p> <p>[7] Dr. Mars' reports, did you have a chance to</p> <p>[8] review that?</p> <p>[9] A: The name is familiar, let me see the report,</p> <p>[10] Q: Sure. Dr. Harold Mars, he's a neurologist on the</p> <p>[11] east side.</p> <p>[12] A: Yes, I did see this.</p> <p>[13] Q: Okay. I want to ask you, doctor, the second page</p> <p>[14] of the report —</p> <p>[15] MR. SIGMIER: Can we have the date</p> <p>[16] on that report, please?</p> <p>[17] Q: Of course. This is a report of December 7, 1999</p> <p>[18] from Dr. Harold Mars. And Dr. Mars makes a</p> <p>[19] notation that the accident was consistent with a</p> <p>[20] traumatic tear of a small vein in the intrathecal</p> <p>[21] lumbar area, and I hope I'm saying that correct,</p> <p>[22] doctor.</p> <p>[23] A: Okay.</p> <p>[24] Q: And it's the bottom sentence there. And again,</p> <p>[25] doctor, I'm just wondering if you might explain</p>

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[1] that to the jury.
[2] **MR. JEPPE:** Objection.
[3] **A:** I think you'll have to ask Dr. Mars how he came
[4] to that conclusion.
[5] **Q:** Okay. You're not familiar with that, doctor?
[6] Okay.
[7] Now, doctor, with regard to the MRI, in this
[8] case, it would appear that an MRI was done on
[9] Mr. Yarbrough's low back when he presented to the
[10] emergency room immediately after the accident,
[11] did you see that, doctor?
[12] **A:** I don't recall exactly when, but —
[13] **Q:** All right. I'll hold for you that the accident,
[14] the first accident in this case happened on March
[15] 29, 1997, and I'll hand you the MRI report from
[16] that date.
[17] **A:** This is March 31st.
[18] **Q:** Excuse me, doctor.
[19] **A:** On the top.
[20] **Q:** Well, I'll have you read this.
[21] **A:** On March 29th, this is — is this the same study?
[22] **Q:** I believe it is, doctor. Well, let me just ask
[23] you this, doctor. Is it unusual for a patient to
[24] have an MRI upon their first presentation to the
[25] emergency room?

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[1] **A:** Yes.
[2] **Q:** Okay. And why is that, doctor?
[3] **A:** Because the CAT scan is a better study,
[4] basically.
[5] **Q:** Okay. And this isn't something that, that you
[6] would normally see?
[7] **A:** That's correct.
[8] **Q:** Okay. Thank you, doctor.
[9] Now, doctor, in addition to the MRI findings,
[10] you also make an indication in your report that
[11] he had electrical studies which demonstrated
[12] abnormalities in the right lower extremity.
[13] **A:** Yes.
[14] **Q:** Which electrical studies were you referring to
[15] there, doctor?
[16] **A:** That would be an EMG, an, an abnormal EMG.
[17] **Q:** All right. And you had a chance to review those
[18] EMG reports in this case, doctor?
[19] **A:** I, I don't interpret EMG myself, I just read, I
[20] just took the interpretation from the report.
[21] **Q:** Right, that's what I'm asking.
[22] **A:** Yes.
[23] **Q:** I think we've made it clear already that you've
[24] never, you haven't reviewed any actual films with
[25] regard to Mr. Yarbrough, correct?

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[1] **A:** Well, this is an electrical study.
[2] **Q:** Okay. So, and I'll hand you a copy of the
[3] electromyography report that was done on December
[4] 2nd, 1997. Have you reviewed that, doctor?
[5] **A:** Yes.
[6] **Q:** Okay. And what were the findings of the, of
[7] that, that study?
[8] **MR. JEPPE:** Objection.
[9] **A:** There was some nerve root irritation around L4/5
[10] with some mild chronic neurogenic potentials in
[11] the right L4/5 distribution peripherally.
[12] **Q:** Okay. And again, doctor, just, just for the, the
[13] ladies and gentlemen of the jury who may not be
[14] familiar with that terminology, could you, if
[15] possible, in layman's term, explain what that
[16] means?
[17] **A:** He has a pinched nerve on the right.
[18] **Q:** Okay. And this is an objective finding of that
[19] in this electromyography report?
[20] **A:** Yes.
[21] **Q:** Thank you, doctor.
[22] Doctor, I believe Mr. Yarbrough had at least
[23] one other electromyography done on March 18,
[24] 1999, and I'll hand you a copy of that. And,
[25] doctor, what were the findings of that study?

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[1] **MR. JEPPE:** Objection.
[2] **A:** Mild post — well, there, there the EMG result is
[3] that there is a, a very definite right H reflex
[4] latency delay suggesting sciatic S1 involvement,
[5] there is no evidence of an acute radiculopathy.
[6] **Q:** Okay. With respect to that middle portion, the
[7] right H reflex latency delay suggesting sciatic
[8] S1 involvement, would you explain that to the
[9] jury, doctor?
[10] **A:** It is a chronic pinched, he has a chronic pinched
[11] nerve or chronic nerve abnormality on that side.
[12] **Q:** Okay. And you'd agree with me, doctor, that that
[13] resulted to a reasonable degree of medical
[14] probability from the accident in 1997?
[15] **A:** Based upon my, my review of the records, yes.
[16] **Q:** Okay. Doctor, are you familiar with a
[17] neurologist at University Hospitals named
[18] Jennifer Kriegler?
[19] **A:** No.
[20] **Q:** Okay. Have you reviewed any of the records that
[21] she may have generated with regard to
[22] Mr. Yarbrough?
[23] **A:** Probably.
[24] **Q:** I know he's had a lot of records.
[25] **A:** Yeah.

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[1] Q: That's why I've got them here for to you look at.
[2] A: There's so many different doctors.
[3] Q: I'm going to hand you the record of Dr. Kriegler
[4] dated January 20, 1998 and ask you, if you would,
[5] to read the last long paragraph there starting
[6] with, "Idiscussed."
[7] A: "Idiscussed with Mr. Yarbrough," this is
[8] Dr. Kriegler speaking, "Idiscussed with
[9] Dr. Yarbrough that I feel it is important for him
[10] to have a spine surgeon's evaluation. I gave him
[11] the name of a variety of spine surgeons at
[12] University Hospital. I told him that at this
[13] point I think the concern, the concern of
[14] weakness along with his difficulty with his bowel
[15] and bladder make me feel that he could not be
[16] handled conservatively. In order for us to
[17] preserve function, he should have a surgical
[18] opinion."
[19] Q: Okay.
[20] MR. JEPPE: Objection.
[21] Q: Thank you, doctor.
[22] MR. JEPPE: I ask that be
[23] stricken.
[24] Q: Now, doctor, again, you are a neurosurgeon and
[25] this is your field, so based upon this record,

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[1] what is it that Dr. Kriegler was concerned about?
[2] MR. JEPPE: Objection.
[3] A: Dr. Kriegler is concerned about the fact that the
[4] patient has radicular complaints, plus he has
[5] some complaints of bowel and bladder when he
[6] discussed this with her, and she was afraid that
[7] the two might be related.
[8] Q: And, doctor, if the two were related, what type
[9] of disease process might Mr. Yarbrough have?
[10] MR. JEPPE: Objection.
[11] MR. SIGMIER: Objection.
[12] A: Well, the thing that Dr. Kriegler is concerned
[13] about is the possibility that a disc herniation
[14] is causing abnormality of bowel and bladder
[15] function by virtue of nerve root compression.
[16] Q: Okay.
[17] A: That's what she's concerned about.
[18] Q: Doctor, is this also, are these also potential
[19] symptoms of a cauda equina problem?
[20] A: You can say that, yes.
[21] Q: Okay. And, doctor, just so the jury understands,
[22] what is a cauda equina?
[23] A: The cauda equina is an anatomic term which refers
[24] to not one of the nerve roots or two of the nerve
[25] roots — oh, I take that back, it refers to

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[1] involvement of more than one of the nerve roots
[2] in the lumbar region with a disease process.
[3] Q: Okay.
[4] A: Usually bilateral, and the idea being that if a
[5] patient has problems with bowel and bladder, then
[6] they have involvement of more than one nerve root
[7] and the problem is more serious.
[8] Q: Thank you, doctor.
[9] Doctor, just to, to summarize quickly with
[10] regard to the lower back and then I'm going to
[11] move on, Mr. Yarbrough had a, had herniated discs
[12] in his lower back, correct?
[13] A: Yes.
[14] Q: That was, in addition to that, he had a hematoma
[15] in his lower back?
[16] A: Yes.
[17] Q: Which caused blood in the canal, correct?
[18] A: It's the same thing.
[19] Q: Correct. Okay, I'm sorry about that. And he
[20] also has electrical studies which demonstrate a,
[21] a pinched nerve and other nerve problems,
[22] correct, doctor?
[23] A: Yes.
[24] Q: Okay. And, doctor, again, it would be your
[25] opinion that all of these problems that have been

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[1] documented and that Mr. Yarbrough's treated for
[2] were as a reasonable degree of medical
[3] probability caused by the accident in 1997,
[4] correct?
[5] MR. JEPPE: Objection.
[6] A: Yes.
[7] Q: Okay. And, doctor, you would agree with me then
[8] as well, I assume, that all of the medical care
[9] that he has received for his low back that you've
[10] reviewed in the records in front of you has been
[11] reasonable and made necessary by the accident of
[12] 1997?
[13] MR. JEPPE: Objection.
[14] A: Yes.
[15] Q: Okay. And, doctor, when Mr. Yarbrough saw you, I
[16] think you told us on direct he was still
[17] expressing complaints in his lower back, correct?
[18] A: Yes —
[19] Q: Okay.
[20] A: — he did have complaints.
[21] Q: Doctor, do you have an opinion at this point
[22] regarding whether Mr. Yarbrough's lower back
[23] condition is permanent?
[24] MR. JEPPE: Objection.
[25] A: I wouldn't be willing to say that on the basis of

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[1] one exam.
[2] Q: Okay. In other words, you only saw Mr. Yarbrough
[3] the one time and you have reviewed his records
[4] but you haven't seen him in the last year or so?
[5] A: I think, I think that in order to make an
[6] assessment like that, you have to examine the
[7] patient serially for a while.
[8] Q: Okay. And that's not something you've had an
[9] opportunity to do here?
[10] A: No.
[11] Q: Okay. Doctor, you would agree with me that
[12] Mr. Yarbrough has experienced a great deal of
[13] pain in his lower back since the 1997 accident?
[14] A: I would agree that he's experienced pain.
[15] Q: Okay, Well, as you said in your report, that —
[16] A: It's real pain.
[17] Q: Okay.
[18] A: It's real.
[19] Q: And based upon his presentation, everything
[20] appears to be very consistent here, correct,
[21] doctor?
[22] A: It's real. That's it.
[23] Q: Okay. Thank you, doctor.
[24] Doctor, patients that have herniated discs
[25] such as Mr. Yarbrough in their low back, have you

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[1] had experience in your practice where such
[2] patients require ongoing treatment throughout
[3] their life?
[4] A: Well, for an extended period of time, I don't
[5] know about throughout their life —
[6] Q: Okay.
[7] A: — but for an extended period of time, yes.
[8] Q: And I know you haven't seen Mr. Yarbrough since
[9] the year 2001, but would you agree that just
[10] based upon your review of the records and your
[11] experience in treating similar patients, that
[12] Mr. Yarbrough may be in for additional treatments
[13] in the future?
[14] MR. JEPPE: Objection.
[15] A I would say that that's a strong possibility.
[16] Q: Okay. Strong possibility that he'll be in for
[17] such treatments with regard to his low back?
[18] MR. JEPPE: Objection.
[19] A: Yes.
[20] Q: What type of treatments would you expect, doctor?
[21] MR. JEPPE: Objection.
[22] A: More physical therapy, more injections and if his
[23] x-ray changes, perhaps surgery.
[24] Q: And with regard to his surgery, doctor, what type
[25] of low back surgery would you be expecting for

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[1] someone such as Mr. Yarbrough?
[2] MR. JEPPE: Objection.
[3] A: I wouldn't — based upon what I've read so far, I
[4] would not give him that surgery based upon what I
[5] see right now. And if surgery were to be used at
[6] all, it would be needed for much larger disc
[7] herniation and more obvious evidence of nerve
[8] root compression, which has yet to be seen.
[9] Q: Okay.
[10] A: So I can't really make that decision.
[11] Q: All right, But you, you just said it before,
[12] doctor, that down the road, Mr. Yarbrough may be
[13] looking at a surgery with these types of
[14] complaints, that it's consistent with, with what
[15] you've seen here, correct, doctor?
[16] MR. JEPPE: Objection.
[17] A: Yes.
[18] Q: And if that were to occur, doctor, what type of
[19] surgery would you be talking about —
[20] MR. JEPPE: Objection.
[21] Q: — as a practicing neurosurgeon?
[22] MR. JEPPE: Objection.
[23] A: If he has, if he has evidence of, of an expanding
[24] disc herniation, that he may require a disc
[25] removal, that's all.

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[1] MR. JEPPE: Ask that be stricken.
[2] Q: Disc removal?
[3] A: Disc removal or disc resection or discectomy,
[4] they're all the same thing.
[5] Q: And, doctor, is that done on an out-patient or
[6] in-patient basis?
[7] MR. JEPPE: Objection.
[8] A: Well, that's a matter of semantics. It usually
[9] takes about a day or so, sometimes two days.
[10] Q: Okay. And I assume there would be a period of
[11] recovery associated with that for Mr. Yarbrough?
[12] A: Yes, there's usually a period of recovery.
[13] Q: How long, based upon your experience, do patients
[14] generally need to recover?
[15] MR. JEPPE: Continuing objection.
[16] A: It depends upon what you mean by recovery. Okay.
[17] If by recovery you mean when are they up and
[18] around and walking, they're usually up and
[19] around, walking within a couple days. If you
[20] mean by, by when are they finished changing and
[21] finished improving or what's, when do they become
[22] stable, then that can be anywhere from six months
[23] to a year after surgery.
[24] Q: Six months to a year post surgery in order to
[25] stabilize a patient for this type of procedure?

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[1] A: For everything to settle down in a permanent
[2] fashion.
[3] Q: Okay. And, doctor, you performed these, I know,
[4] I'm sure you performed these disc removals?
[5] A: Yes.
[6] Q: Do you know what the approximate cost of such a
[7] procedure is?
[8] MR. JEPPE: Objection.
[9] A: Probably a simple discectomy is probably going to
[10] be, run you around five, six, seven thousand
[11] dollars depending upon what exactly is done.
[12] Q: Okay. And that's just the surgical cost?
[13] A: Yes.
[14] Q: There would be related hospital and anesthesia
[15] costs, I assume?
[16] A: Yes.
[17] Q: Okay. And following that procedure, during this
[18] period of recovery, would he, would he need some
[19] therapy and that sort of thing?
[20] MR. JEPPE: Objection.
[21] A: Sometimes.
[22] Q: Okay. It would depend on the circumstances?
[23] A: Yes.
[24] Q: Okay, Okay, doctor. Thank you.
[25] Now, doctor, with regard to his lower back at

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[1] this point, as you said, he's, he's got a very
[2] real injury, would you expect that this type of
[3] injury to his low back is going to cause
[4] Mr. Yarbrough disabilities in doing certain
[5] things in his daily life?
[6] MR. JEPPE: Objection.
[7] A: It's likely that certain activities of daily
[8] living will have to be adjusted.
[9] Q: Such as, what do you, what do you have in mind in
[10] that regard, doctor?
[11] MR. JEPPE: Objection.
[12] A: I think he may find he's not able, he might find
[13] that he's not able to do heavy labor, either at
[14] the work, at the workshop or at, or around the
[15] home, in the garden, he may have some
[16] difficulties with certain types of physical
[17] activities, that's all.
[18] Q: Now, doctor, the jury will have heard by this
[19] point that Mr. Yarbrough's occupation is that of
[20] a mechanic. Based upon that type of occupation,
[21] do you think he would have any difficulties
[22] fulfilling that type of employment with his lower
[23] back condition?
[24] MR. JEPPE: Objection.
[25] A: Well, I suppose that it would matter, it would

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[1] depend upon exactly what kind of mechanic he is,
[2] but if he has to do a lot of heavy lifting as
[3] part of his job, he will have problems.
[4] Q: Okay. What about getting under a car, bending,
[5] twisting, that sort of thing, will that cause him
[6] problems, in your opinion, doctor?
[7] MR. JEPPE: Objection.
[8] A: I think that will cause problems, I don't know if
[9] it would cause as much problem.
[10] Q: Okay. But you'll agree with me that's something
[11] that is going to present some difficulties for
[12] Mr. Yarbrough?
[13] MR. JEPPE: Continuing objection.
[14] A: Yes.
[15] Q: Okay. Any other type of daily activities that
[16] you haven't already mentioned that you would
[17] foresee being a difficulty for Mr. Yarbrough?
[18] MR. JEPPE: Objection.
[19] A: Offhand, no.
[20] Q: Okay. Thank you, doctor.
[21] Now, I believe you testified in direct
[22] examination that you didn't see any additional
[23] injury in the records with regard to his low back
[24] from the '99 accident, am I characterizing your
[25] testimony, doctor?

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[1] A: I didn't see any evidence that there was any
[2] significant change.
[3] Q: Okay. You reviewed, as part of the records I
[4] assume in front of you, records from Dr. Harold
[5] Mars?
[6] A: Yes.
[7] Q: And, doctor, am I correct in saying that Dr.
[8] Mars, from the records, appears to have been the,
[9] the primary neurologist that followed
[10] Mr. Yarbrough through his first and into his
[11] second accident?
[12] A: I don't know that. He was definitely a
[13] neurologist who has seen the patient several
[14] times.
[15] Q: Okay. In Dr. Mars' report, I don't know if you
[16] saw this, he makes an indication that he saw
[17] Mr. Yarbrough on August 3rd, 1999, this is at
[18] page five of his report. And this would have
[19] been a few days after the July 30, 1999 accident.
[20] And Dr. Mars reports that Mr. Yarbrough
[21] indicates that the pain in his back had increased
[22] about 70 percent and was now felt into both legs.
[23] Did you have an opportunity to see that, doctor?
[24] A: I've seen that.
[25] Q: Okay. Doctor, based upon that, I guess I'm

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[1] having a hard time understanding why, why you
[2] indicate there was no injury to his low back in
[3] the second accident.
[4] **MR. SIGMIER:** Objection.
[5] Q: You would agree with me that apparently there,
[6] there was certainly an increase in pain in
[7] Mr. Yarbrough following the second accident?
[8] **MR. SIGMIER:** Objection.
[9] A: Yes, but it led to no permanent change in his
[10] symptoms.
[11] Q: Okay.
[12] A: The symptoms that he had when he saw me were much
[13] the same as the symptoms he had after the 1997
[14] accident.
[15] Q: Okay. And again, when he saw you, that would
[16] have been roughly two years after the '99
[17] accident?
[18] A: That's correct.
[19] Q: Okay. But again, doctor, you'd agree with me
[20] that — in other words, you don't have any reason
[21] to doubt what Dr. Mars has indicated in his
[22] records here, do you?
[23] **MR. SIGMIER:** Objection.
[24] A: No, I have no — acutely after the injury,
[25] anything goes.

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[1] Q: Okay. And so you don't have any reason to
[2] disbelieve Dr. Mars' records that Mr. Yarbrough's
[3] pain increased about 70 percent after the first
[4] accident, after the second accident?
[5] A: Four days after the first, after the second
[6] accident, that, that's correct.
[7] Q: Okay. And again, doctor, you don't have any
[8] reason to disbelieve Dr. Mars' records that at
[9] that point, as you said, four days or four or
[10] five days after that second accident that he was
[11] feeling problems into both legs?
[12] A: I have no reason to suspect that that's wrong.
[13] Q: All right. Doctor, further in his report,
[14] Dr. Mars indicates that he saw Mr. Yarbrough
[15] again a week later on August 10th of 1999 and
[16] that he put Mr. Yarbrough on a lifting
[17] restriction of under 25 pounds. Did you see
[18] that, doctor?
[19] A: I didn't, but —
[20] Q: You'll —
[21] A: — I believe it.
[22] Q: You'll take my word for it?
[23] A: I'll take your word for it.
[24] Q: Okay. And you'll agree with me, doctor, that if,
[25] if Dr. Mars is putting him on a, on a lifting

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[1] restriction for his lower back at that time that
[2] hadn't been present prior to that second
[3] accident, that would also indicate that there was
[4] further injury in his low back from the second
[5] accident?
[6] A: I, he certainly had more symptoms immediately
[7] after the accident, there's no question about
[8] that.
[9] Q: Okay. In other words, doctor, your opinion, I
[10] guess that you've expressed, is that when you saw
[11] him two years later, you didn't see any, any, any
[12] worsening of his lower back than was existing
[13] before the second accident?
[14] A: That's correct.
[15] Q: But you don't doubt, doctor, that based upon
[16] these records, again, that I'm reading to you
[17] here, that Mr. Yarbrough did have a increase
[18] complaints, increased complaints of pain and
[19] increased difficulties following his second
[20] accident, correct?
[21] A: There's no question that there was an injury to
[22] the low back after the, after the second
[23] accident.
[24] Q: Okay.
[25] A: It led to a transitory change in his symptoms and

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[1] the patient then went back to the way he was
[2] before, that's all.
[3] Q: Okay. Thank you, doctor.
[4] Doctor, I'd like to shift, if I could then,
[5] to the cervical spine and your opinions in that
[6] regard. And, doctor, first of all, again,
[7] turning, turning your attention to your report,
[8] which I see you have in front of you there, it
[9] looks like your opinions with respect to the
[10] cervical spine begin at the bottom of the page.
[11] And would you read your second sentence there
[12] with respect to Mr. Yarbrough's cervical spine
[13] injuries?
[14] A: "Again the patient's complaints of cervical pain
[15] are realistic in nature. I do not, however, find
[16] any evidence of radiculopathy or myelopathy."
[17] Q: Okay, doctor, thank you.
[18] Now, again, doctor, if you could, could you
[19] just explain when you said the complaints of
[20] cervical pain, I think your, your wording here is
[21] quite realistic in their nature?
[22] A: Yeah.
[23] Q: Well, what did you mean by that, doctor?
[24] A: I, the description of the pain is typical for a
[25] patient who's really in pain. It's not, I don't

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[1] believe it's, I don't believe he's faking it —
[2] Q: Okay.
[3] A: — is what I'm trying to say.
[4] Q: All right. So you'd agree with me, doctor, that
[5] there's no question that Mr. Yarbrough suffered
[6] an injury to his cervical spine in the second
[7] motor vehicle accident of 1999?

[8] A: Yes.

[9] Q: Okay. We can agree on that.

[10] Now, doctor, based upon your review of the
[11] records from the 1997 accident with respect to
[12] the cervical spine, did Mr. Yarbrough injure his
[13] cervical spine in that accident?

[14] A: Well, this is, part of the problem is there are,
[15] there are certainly complaints around the time of
[16] the first accident that the patient had some
[17] cervical spine complaints.

[18] Q: Okay.

[19] A: So we know that there was some cervical spine
[20] problems prior to the 1999 accident. And at
[21] least, you know, the 1999 accident, most likely
[22] exacerbated problems that were set up before that
[23] date.

[24] Q: Okay.

[25] A: Some of which we heard about in 1997.

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[1] Q: All right. In fact, I believe in Dr. Mars'
[2] report of his treatment from the '90, immediately
[3] after the '97 accident, he reports that
[4] Mr. Yarbrough was experiencing stiffness and pain
[5] in the posterior cervical radiating to the
[6] shoulders, both arms with numbness and tingling
[7] in the right upper extremity?

[8] A: Yes.

[9] Q: Okay. You remember seeing that, doctor?

[10] A: Yes.

[11] Q: Okay. And did you also see in Dr. Mars' records
[12] where, in addition to the cervical injury, he
[13] reported having headaches and dizziness from the
[14] '97 accident?

[15] A: Yes.

[16] Q: Okay. And again, doctor, based upon those, your
[17] review of those records, you would agree with me
[18] that Mr. Yarbrough did suffer injury to his
[19] cervical spine area in the 1997 accident?

[20] A: I would presume so since he was complaining to
[21] his doctors in 1997 that he was having posterior
[22] cervical complaints.

[23] Q: Okay.

[24] A: They were not a prominent part of his complaints
[25] at that time. At — let's put it, his back was

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[1] more of a problem for him in 1997.

[2] Q: Meaning that if, from your review of the records
[3] between '97 and '99, the bulk of his treatment
[4] was really directed towards the low back as
[5] opposed to the neck?

[6] A: That's correct.

[7] Q: Okay. That doesn't mean, however, that he didn't
[8] have an injury to his neck in '97, does it,
[9] doctor?

[10] A: No, it does not mean that.

[11] Q: Okay. Now, and then as you said, doctor, with
[12] regard to the second accident, his injuries were
[13] increased with regard to the cervical spine by
[14] the second accident?

[15] A: Yes, I believe that's true.

[16] Q: Okay. And again, doctor, you find that his
[17] complaints with respect to, that he presented to
[18] you in January of 2001 to be quite realistic in
[19] nature with respect to the cervical spine?

[20] A: Yes.

[21] Q: Okay. As you said before, this guy's not faking
[22] it, right?

[23] A: I don't think he's faking it.

[24] Q: Okay. Now, doctor, you've, I think you testified
[25] on direct, you had a chance to review the

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[1] materials from the Cleveland Clinic Foundation,
[2] did you not?

[3] A: Yes.

[4] Q: Okay. And it looks like Mr. Yarbrough has been
[5] treated there by a Dr. Oas and several other
[6] doctors in their vestibular division?

[7] A: Yes.

[8] Q: Okay. Doctor, do you know Dr. Oas?

[9] A: No.

[10] Q: Okay. Do you know any of the other doctors, I
[11] think there was a Dr. Stillman who treated him
[12] for headaches, a Dr. Dinner, as well as a, a
[13] surgeon, a surgeon who did a consult, I think a
[14] Dr. Benzel, are you familiar in your practice,
[15] doctor, with any of those Cleveland Clinic
[16] doctors?

[17] A: Just Benzel.

[18] Q: Okay. Because he is a surgeon, correct?

[19] A: Yes.

[20] Q: Okay. Doctor, would you agree with me that the
[21] field where Dr. Oas practices is a specialty
[22] field within the field of neurology?

[23] A: Yes.

[24] Q: Okay. And, doctor, you do not hold yourself out
[25] as being a doctor within that field, do you?

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[1] **A:** No.

[2] **Q:** Okay. In other words, I think Dr. Oas'

[3] letterhead indicates that he works in the program

[4] of vestibular and balance disorders, and again,

[5] doctor, that's not an area where you practice

[6] medicine, is it, doctor?

[7] **A:** No, it's not an area of expertise.

[8] **Q:** Right. Okay. And you would agree with me, I

[9] know you don't know Dr. Oas, but as a doctor who

[10] specializes in that area, he's likely to be more

[11] current with regard to the literature and with

[12] regard to seeing patients on a daily basis?

[13] **A:** I would assume that he is more in tune with the

[14] literature, I don't know about the daily.

[15] **Q:** Okay.

[16] **A:** I don't know about his patient level.

[17] **Q:** Okay. I know you don't know Dr. Oas, so I won't

[18] ask you to offer a critique.

[19] Have you had a chance to review the report

[20] that Dr. Oas authored to me on May 25, 2001?

[21] **A:** I read many of Dr. Oas' notes.

[22] **Q:** Okay. Specifically — well, okay, fine. And

[23] doctor, you saw in those notes that Dr. Oas

[24] diagnosed Mr. Yarbrough with, I believe he called

[25] it cerviconenic dizziness?

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[1] **A:** That's one of the diagnoses that has been

[2] applied.

[3] **Q:** Correct. I believe he also referred to it as

[4] otogenic and I hope I'm pronouncing that

[5] correctly, dizziness?

[6] **A:** That's the second one that was applied.

[7] **Q:** And he also referred to it as posttraumatic

[8] dizziness?

[9] **A:** That's the third one that was applied.

[10] **Q:** Okay. And, doctor, you also saw, I believe, in

[11] the records that Dr. Oas diagnosed Mr. Yarbrough

[12] with posttraumatic stress disorder?

[13] **A:** Yes.

[14] **Q:** And, doctor, based upon your review of the

[15] materials in this case, do you have any reason to

[16] question the diagnoses made by Dr. Oas in that

[17] regard?

[18] **A:** I don't know if the patient has cervicogenic, I

[19] don't think you can make, based upon, based upon

[20] the chart notes and the, and what the patient has

[21] told me and the patient's history, I don't think

[22] you can make a definitive statement that the

[23] patient's dizziness is coming from his neck at

[24] this point in time.

[25] **Q:** Doctor, what is cervicogenic dizziness?

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[1] **A:** That's a question that, he's implying that the

[2] neck is responsible for the patient's dizziness.

[3] **Q:** All right.

[4] **A:** He also implies that the ear is responsible for

[5] the patient's dizziness and that posttraumatic

[6] stress is responsible for the patient's

[7] dizziness. It's true that some patients can get

[8] dizzy with, with cervical problems, but this

[9] patient's dizziness preceded his injuries.

[10] **Q:** Meaning that he had had dizziness in the past

[11] before the '99 accident?

[12] **A:** Meaning that he has a history of dizziness going

[13] back to the '70s.

[14] **Q:** All right. And you've reviewed then the old

[15] records from the Cleveland Clinic, I think that

[16] are, are essentially from 1976 then, doctor?

[17] **A:** Yes.

[18] **Q:** Doctor, based upon your review of those records,

[19] have you seen any records to indicate that

[20] Mr. Yarbrough had any complaints or treatment for

[21] dizziness between 1976 and 1997?

[22] **A:** I don't — if, if there was, it was only once or

[23] twice.

[24] **Q:** Okay.

[25] **A:** I don't recall many.

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[1] **Q:** You don't remember seeing any records of that

[2] nature, do you, doctor?

[3] **A:** No.

[4] **Q:** Okay. So you'd agree with me that, at least

[5] according to the materials you've read,

[6] Mr. Yarbrough expressed no problems whatsoever

[7] and received no treatment for dizziness in

[8] roughly a 21-year period since 1976 before this

[9] accident, before the first accident in this case,

[10] correct?

[11] **A:** As far as I know, he didn't receive that

[12] treatment for, for, for dizziness after 1976.

[13] **Q:** All right. And, and again, doctor, you don't

[14] have any reason to believe that Mr. Yarbrough was

[15] experiencing dizziness in the period, you know,

[16] immediately before the first accident in '97, do

[17] you?

[18] **A:** I really don't know, to be honest with you.

[19] **Q:** You don't have any, anything to base that on, any

[20] medical records or anything like that, do you,

[21] doctor?

[22] **A:** I have nothing to say one way or the other —

[23] **Q:** All right.

[24] **A:** — that he did or did not have dizziness.

[25] **Q:** Okay. And so based upon that, doctor, and you've

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[1] reviewed the Cleveland Clinic records now, which
[2] indicate that Mr. Yarbrough has had a tremendous
[3] amount of problems in that regard, have you not?

[4] **A:** He's being worked up for problems with dizziness.

[5] **Q:** Yeah. And based upon that, doctor, that based
[6] upon the fact that he had no such problems in
[7] this roughly 21-year period, would you agree with
[8] me that the dizziness must have been brought on
[9] by these motor vehicle accidents?

[10] **A:** I don't know if I can make that statement. Maybe
[11] you should rely on, maybe you should rely on
[12] Dr. Oas' comments in that regard.

[13] **Q:** Okay. So that's fair, and if, and if that's
[14] where we need to, to go with this, that's fine,
[15] doctor. You'd agree with me then that we should
[16] rely on Dr. Oas' diagnosis and testimony with
[17] respect to the dizziness condition, since that's
[18] where he primarily treated?

[19] **A:** I would agree that I have no idea whether his,
[20] whether there was any dizziness between '76 and
[21] 1997, and I don't have any idea whether or not —
[22] I have no definitive idea as to what the specific
[23] cause of dizziness the patient now has as
[24] compared to 1997.

[25] **Q:** Okay.

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[1] **A:** Of 1976, forgive me.

[2] **Q:** So, doctor, am I correct then in summarizing that
[3] you do not have an opinion in this case with
[4] regard to whether or not Mr. Yarbrough's
[5] dizziness was caused by these accidents?

[6] **A:** I can tell you that this dizziness is not typical
[7] dizziness that you see after typical trauma.
[8] It's not, it's simply not the typical story of,
[9] of dizziness that you, that the patient, that
[10] patients complain of after trauma.

[11] **Q:** I understand, doctor, but that's not my question.
[12] My question is do you have a specific opinion
[13] with respect to Mr. Yarbrough?

[14] **A:** Yes.

[15] **Q:** Okay. In this case that you're going to provide
[16] to this jury with respect to whether or not his
[17] dizziness problems that he's been treated for at
[18] the Cleveland Clinic were caused by the motor
[19] vehicle accidents, do you have an opinion one way
[20] or the other?

[21] **A:** I don't understand the question.

[22] **Q:** Sure. I'm asking whether or not you have an
[23] opinion in this case with regard to whether or
[24] not Mr. Yarbrough's dizzy, complaints of
[25] dizziness and problems that he's had, as

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[1] evidenced by the Cleveland Clinic chart, do you
[2] have an opinion whether those were caused by the
[3] motor vehicle accidents of 1997 and 1999?

[4] **MR. SIGMIER:** Objection.

[5] **A:** The answer is that I tend to doubt that his
[6] dizziness is, is caused in whole part by the
[7] accident of 1997 or 1999.

[8] **Q:** All right. You tend to doubt that, but as you
[9] said earlier, doctor, the most reliable person to
[10] look to on that, on that front is going to be
[11] Dr. Oas?

[12] **A:** Oh, I think that the answer, the, with regards to
[13] the patient's cervical trauma, okay.

[14] **Q:** Yeah.

[15] **A:** I can tell you that this is not a typical story
[16] for cervical dizziness, and in that regard, I can
[17] say that I doubt that the trauma is responsible
[18] for the patient's dizziness. With regards to
[19] otogenic dizziness or with regards to dizziness
[20] after, post, so called posttraumatic dizziness, I
[21] really don't know and you have to trust Dr. Oas.

[22] **Q:** Doctor, what is otogenic dizziness?

[23] **A:** I believe he's trying to say that it's coming
[24] from the patient's middle ear.

[25] **Q:** Okay. All right, fine. So, doctor, let me just

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[1] make sure I understand this and then I'll move
[2] on. With respect to Dr. Oas' diagnosis,
[3] diagnoses of otogenic dizziness and posttraumatic
[4] dizziness, you do not have an opinion in that
[5] regard?

[6] **A:** That's correct.

[7] **Q:** That's beyond your field?

[8] **A:** Yes.

[9] **Q:** We're going to have to look to Dr. Oas for those
[10] opinions?

[11] **A:** That's correct.

[12] **Q:** Okay. Thank you, doctor. And with respect to
[13] his diagnosis of posttraumatic stress disorder,
[14] same thing, we have to look to Dr. Oas on that?

[15] **A:** Yes.

[16] **Q:** Okay. Thank you, doctor.

[17] Now, doctor, in that vein, with respect to
[18] Dr. Oas' diagnoses of otogenic and posttraumatic
[19] dizziness, did you see where Dr. Oas indicated in
[20] his report that Mr. Yarbrough will need
[21] aggressive chronic pain management in the future?

[22] **A:** I saw that note.

[23] **Q:** Okay. And did you also see where Dr. Oas
[24] indicated in his report that Mr. Yarbrough would
[25] need ongoing physiotherapy, psychiatry and

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[1] psychotherapy interventions?

[2] **A:** I saw that note.

[3] **Q:** Okay. So, doctor, again, based upon the previous
[4] question and answer, I assume that you would
[5] again defer to Dr. Oas with respect to those
[6] opinions with respect to his diagnosis of
[7] otogenic and posttraumatic dizziness?

[8] **A:** That's correct.

[9] **Q:** Okay. You don't have an opinion as to whether
[10] Mr. Yarbrough will need those, that additional
[11] treatment in the future with respect to those
[12] conditions?

[13] **A:** I have no idea.

[14] **Q:** Okay. Thank you, doctor.

[15] Doctor, just a few more questions. With
[16] regard to the cervical spine, again, just to
[17] summarize here, you've indicated, as we talked
[18] about, that his complaints are quite realistic in
[19] nature. I assume then you would agree with me
[20] that all the medical care that he has received
[21] from the '97 and '99 accidents with respect to
[22] his cervical spine was reasonable and made
[23] necessary by these accidents?

[24] **A:** Yes.

[25] **Q:** You would agree with me on that, doctor?

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[1] **A:** Yes, I do.

[2] **Q:** Okay. And again, doctor, just based upon your
[3] statement in your report, you would agree with me
[4] that at least up until the time he saw you,
[5] Mr. Yarbrough was having realistic pain problems
[6] in his cervical spine as a result of these
[7] accidents?

[8] **A:** He has real pain.

[9] **Q:** Okay. Thank you, doctor.

[10] **MR. MESTER:** Doctor, I thank you
[11] for your honesty today. Thank you very
[12] much.

[13] **VIDEOTAPE OPERATOR:** Off the
[14] record.

[15]
[16] (Thereupon, a discussion was had off
[17] the record.)

[18]
[19] **MR. JEPPE:** Just for the record,
[20] not for the video, I have objected to a
[21] number of questions with regards to the low
[22] back, which objections I will pursue at the
[23] time of trial. In the event that the judge
[24] does allow Dr. Lax's testimony with regards
[25] to the low back in the first accident, then

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[1] I am going to cross-examine on that aspect
[2] of it. Okay?

[3] **VIDEOTAPE OPERATOR:** On the
[4] record.

[5]

[6] CROSS-EXAMINATION OF FREDRIC LAX, M.D.

[7] **BY MR. JEPPE:**

[8] **Q:** All right. Doctor, my name's Jerry Jeppe and I
[9] do have a couple of questions I want to ask you
[10] with regards to your testimony.

[11] **A:** Okay.

[12] **Q:** I believe you stated that, that the only time you
[13] treated, or excuse me, examined Mr. Yarbrough was
[14] what date, sir?

[15] **A:** During the month of January in 2001.

[16] **Q:** All right. It's fair to say you had never seen
[17] him before that time, is that correct?

[18] **A:** That's correct.

[19] **Q:** Obviously you had never seen him then prior to
[20] the first accident in 1997, is that correct?

[21] **A:** That's correct.

[22] **Q:** Do you know what his physical condition was like
[23] with respect to the low back prior to that first
[24] accident in 1997?

[25] **A:** I don't know. I only have information from the

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[1] chart, that's all.

[2] **Q:** Okay. Now, with respect to the information that
[3] you do have, is it, is it fair to say that
[4] Mr. Yarbrough had a degenerative disc disease in
[5] the low back prior to the first accident?

[6] **A:** Yes, that's true.

[7] **Q:** He had back problems then before the first
[8] accident —

[9] **A:** Yes.

[10] **Q:** — is that correct?

[11] Now, you stated also that you did not examine
[12] the MRI, and I believe it was taken on the date
[13] of the first accident, it was March 29th, 1997,
[14] is that correct?

[15] **A:** That's correct.

[16] **Q:** You rely upon whoever it is that read that MRI
[17] for its accuracy, are you not?

[18] **A:** Yes.

[19] **Q:** Okay.

[20] **MR. JEPPE:** Now, if we could,
[21] could I have a copy of that MRI, if you
[22] would, sir?

[23] **MR. MESTER:** Sure.

[24] **MR. JEPPE:** Thank you.

[25] Okay. Thank you.

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[1] Q: Now, with respect to the MRI that **was** done on
[2] March 29th of 1997, the impression here, I
[3] underline the word impression, of whoever read
[4] this MRI as far as the L4/L5, that's low back
[5] disc in between the L4/L5 vertebrae, is that
[6] correct?

[7] A: Yes.

[8] Q: Okay. Now, it says small disc herniation just to
[9] the left of midline. Now, you didn't actually
[10] observe that on the MRI, did you?

[11] A: I never saw an MRI, all I had was records.

[12] Q: So really you have no idea whether the MRI was
[13] being read correctly at this time, do you?

[14] A: No, I don't.

[15] Q: Also it says that L5/S1, a small disc herniation
[16] just to the left of midline superimposed upon
[17] mild disc bulge. Again, you did not review that
[18] MRI, is that correct?

[19] A: It was not available to me.

[20] Q: And therefore you cannot testify as to the
[21] accuracy of that MRI, is that correct?

[22] A: No, I can't.

[23] Q: Now, it says down here, probable blood within the
[24] lower lumbar canal. Now, doctor, again, you did
[25] not review the MRI, correct?

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[1] A: Correct.

[2] Q: And it says probable. You cannot testify as to
[3] whether there actually was blood within the lower
[4] lumbar canal, can you?

[5] A: I only have the report, that's all.

[6] Q: All right. So you will rely upon the report for
[7] its accuracy in forming your opinions here today
[8] with respect to the low back, is that correct?

[9] A: That's correct.

[10] Q: All right. Now, doctor, with respect to the
[11] L4/L5 small disc herniation just to the left of
[12] midline, let's assume, for instance, that that
[13] really **was** there, that it actually was seen. Can
[14] you testify to a reasonable degree of medical
[15] certainty that that did not, in fact, exist prior
[16] to the accident of March 29th of 1997?

[17] A: You can't, you can't make that assumption one way
[18] or the other.

[19] Q: That's what I thought. With respect to this,
[20] this L5/S1 a small disc herniation just to the
[21] left of the midline, let's assume that that was
[22] interpreted correctly and that there was a small
[23] disc herniation, can you testify to a reasonable
[24] degree of medical certainty that that small disc
[25] herniation was caused by the accident on March

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[1] 29th of 1997?

[2] A: Again, you can't make those kind of statements.

[3] Q: Thank you.

[4] MR. JEPPE: Off the record for a
[5] second.

[6] VIDEOTAPE OPERATOR: Off the
[7] record.

[8]
[9] (Thereupon, a discussion **was** had off
[10] the record.)

[11]
[12] VIDEOTAPE OPERATOR: Back on the
[13] record.

[14] Q: Going back to the language that was pointed out
[15] to you in cross-examination, the radiologist was
[16] Dr. Miller, evidently, and it reads here on page
[17] one of that report from Hillcrest Hospital that
[18] Mr. Mester **was** referring to, it says, Disc
[19] herniation L4/L5 and L5/S1, distal aspects of
[20] spinal cord is normal in appearance, there's an
[21] area of abnormal single levels of herniation, may
[22] represent hematoma within the canal.

[23] Now, I take it the word may represents what
[24] exactly what it says, is that correct, it may or
[25] may not be a hematoma within the canal?

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[1] A: I guess so, I don't, I would presume so.

[2] Q: Therefore, and reason being that you didn't have
[3] a chance yourself to review the MRI, so you can't
[4] say one way or the other?

[5] A: That's correct.

[6] Q: You are capable of reading MRIs, are you not?

[7] A: Yes.

[8] Q: Do it every day in your practice?

[9] A: Yes.

[10] Q: All right.

[11] MR. JEPPE: Off the record a
[12] second.

[13] VIDEOTAPE OPERATOR: Off the
[14] record.

[15]
[16] (Off the record.)

[17]
[18] MR. JEPPE: All right. Go back on
[19] the record.

[20] VIDEOTAPE OPERATOR: Back on the
[21] record.

[22] Q: All right. Now, with respect to the neck, let's
[23] talk about the neck for a little while, the
[24] cervical area. There was an indication that
[25] Mr. Yarbrough was complaining of pain or problem

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[1] with his neck after the first accident of March
[2] 29th of 1997, is that correct?
[3] **A:** Yes.
[4] **Q:** Now, they did not do an MRI on the neck, did
[5] they?
[6] **A:** I don't recall specifically.
[7] **Q:** You don't remember reading a report of an MRI on
[8] the neck?
[9] **A:** For the 1997 accident?
[10] **Q:** Yes.
[11] **A:** I don't specifically recall, no.
[12] **Q:** What about x-rays, do you remember reviewing any
[13] x-ray reports with respect to the cervical area
[14] following the first accident?
[15] **A:** I remember they said that he had degenerative
[16] disease at C5/6.
[17] **Q:** Okay. Let's talk about that. Degenerative
[18] disease at C5/6, and that was discovered, or that
[19] was not discovered that was, in fact, found on
[20] the x-rays of March 29th of 1997, is that
[21] correct?
[22] **A:** Yeah.
[23] **Q:** Now, doctor, am I correct, and if I'm not, please
[24] tell me, but am I correct in stating that that
[25] condition just didn't happen that day, is that

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[1] correct?
[2] **A:** That's correct.
[3] **Q:** Degenerative condition had been there for a long
[4] time, is that correct?
[5] **A:** Yes, it has.
[6] **Q:** And as far as a degenerative condition in the low
[7] back, that had been there for a long time prior
[8] to March 29th of 1997 too, hadn't it?
[9] **A:** Yes, it had.
[10] **Q:** Doctor, do you know whether or not Mr. Yarbrough
[11] had radicular symptoms into the lower extremities
[12] prior to March 29th of 1997?
[13] **A:** I don't recall reading anything like that.
[14] **Q:** Do you know if he did or not?
[15] **A:** I don't.
[16] **Q:** Okay. Do you remember any type of treatment for
[17] the cervical area between the first accident and
[18] the second accident?
[19] **A:** As I recall, the patient had some trigger point
[20] injections, I think he had some physical therapy,
[21] that's all I can recall.
[22] **Q:** Do you recall if that was for the neck?
[23] **A:** I believe so, yes.
[24] **Q:** All right. Anything besides that?
[25] **A:** Not that I recall.

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[1] **MR. JEPPE:** Thank you, doctor. I
[2] have nothing further.
[3] **MR. SIGMIER:** Doctor, Harry
[4] Sigmier, I have a couple follow-up
[5] questions.
[6]
[7] REDIRECT EXAMINATION OF FREDRIC LAX, M.D.
[8] **BY MR. SIGMIER:**
[9] **Q:** I'm going to show you a couple of reports here.
[10] First is a report of cervical x-rays dated March
[11] 29, 1997, which is the day of the first accident.
[12] Is that one of the x-ray reports that you've been
[13] referring to?
[14] **A:** Yes.
[15] **Q:** What does that report indicate?
[16] **A:** I had the level wrong, it was 6/7 not 5/6, but he
[17] had degenerative changes there.
[18] **Q:** And showing you another report dated October 27,
[19] 1998, what is that?
[20] **A:** This also states that he has degenerative changes
[21] at 6/7.
[22] **Q:** And is that an MRI film?
[23] **A:** This is an MRI.
[24] **Q:** All right. So —
[25] **A:** 1998.

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[1] **Q:** — we have evidence of two films showing
[2] degenerative changes to the neck before the
[3] second automobile accident, is that correct?
[4] **A:** That's correct.
[5] **Q:** All right. Now, you've been asked a lot of
[6] questions about herniated discs in the low back.
[7] Did Mr. Yarbrough sustain a herniated disc in the
[8] neck as a result of the second accident?
[9] **A:** I believe that they, as I recall, the MRI of the
[10] cervical spine after the second accident talks
[11] about a few, two-millimeter, a few small disc
[12] bulges in the cervical spine area, so he probably
[13] did have a couple of small ones.
[14] **Q:** And you say in your report that there was, you
[15] found no evidence of cervical radiculopathy or
[16] cervical —
[17] **A:** Myelopathy.
[18] **Q:** — myelopathy. What does that mean?
[19] **A:** There was no neurologic impairment on the basis
[20] of his cervical spine.
[21] **Q:** All right. So if there was anything impinging on
[22] the, in the cervical spine, it wasn't causing any
[23] kind of impairment, is that correct?
[24] **A:** That's correct.
[25] **Q:** Now, did you, in reviewing the reports, did

[1] you — you said that there was a transient
 [2] increase in his symptoms in the low back after
 [3] the second accident, correct?
 [4] **A:** That's correct.
 [5] **Q:** And transient, by transient I take it you mean

[7] **A:** That's correct.
 [8] **Q:** Now, did you review the reports from the low back
 [9] films before the second accident and the reports
 [10] from the low back films after the second
 [11] accident?
 [12] **A:** I believe I did, yes.
 [13] **Q:** And did you see any indications of change,
 [14] changes in the low back after the second
 [15] accident?
 [16] **A:** No.
 [17] **Q:** All right.
 [18] **MR. SIGMIER:** That's all I have,
 [19] doctor, thank you.

[21] RE-CROSS-EXAMINATION OF FREDRIC LAX, M.D.

[22] **BY MR. MESTER:**

[23] **Q:** Doctor, just a few more questions. I promise. I
 [24] think I forgot to ask you before, what is
 [25] Mr. Ambrose compensating you today for, for your

[1] time and your testimony?
 [2] **A:** I think **2,500** for the review of the charts and
 [3] the deposition.
 [4] **Q:** 2,500 for, and that encompasses the review of the
 [5] chart and today's deposition?
 [6] **A:** Yes.
 [7] **Q:** Okay. Thank you, doctor.
 [8] Now, doctor, I think you said this before,
 [9] but let me just be clear, In the records that
 [10] you've been provided with and you've, as we've
 [11] talked about, you've got a pretty good lump of
 [12] them here —
 [13] **A:** Yes.
 [14] **Q:** — for Mr. Yarbrough, did you see any evidence
 [15] that he was having problems with his lower back
 [16] prior to the **1997** accident?
 [17] **A:** I did not.
 [18] **Q:** Okay. Now, the word degenerative condition has
 [19] been thrown around. Essentially, doctor, that's
 [20] a sign of age in your spine?
 [21] **A:** Yes.
 [22] **Q:** That's something, I take it, that a lot of folks
 [23] have?
 [24] **A:** Yes.
 [25] **Q:** And a lot of folks have that but have absolutely

[1] no problems in their lower back?
 [2] **A:** Yes.
 [3] **Q:** I may have it, Mr. Sigmier may have it, Mr. Jeppe
 [4] may have it?
 [5] **MR. JEPPE:** Not me.

Q: Is that all true?

[9] **Q:** Okay. Doesn't mean we're having back problems,
 [10] doctor?
 [11] **A:** Doesn't mean that you're having back pain.
 [12] **Q:** Right.
 [13] **A:** Whether you have back problems is another issue.
 [14] **Q:** All right. But again, doctor, there's nothing to
 [15] indicate in any records that you've seen that
 [16] Mr. Yarbrough had any problems with his back
 [17] prior to the '99, 1997 accident, is there?
 [18] **A:** Not that I recall.
 [19] **Q:** All right. And lastly, doctor, with regard to
 [20] the MRI results that you've seen and we have
 [21] discussed here today, the hematoma, the disc
 [22] herniations, the blood in the canal, doctor,
 [23] based upon your education, training and
 [24] background and experience, are all of those
 [25] findings consistent with a motor vehicle

[1] accident, a trauma such as occurred to
 [2] Mr. Yarbrough in this case?
 [3] **MR. JEPPE:** Objection.
 [4] **A:** Any one of those findings might have occurred
 [5] with, with a motor vehicle trauma.
 [6] **Q:** You'll agree with me, doctor, that all of those
 [7] findings are indeed consistent with this type of
 [8] trauma?
 [9] **MR. JEPPE:** Objection.
 [10] **A:** I guess, I guess so. Any one of those, any one
 [11] of those diagnoses can occur with, with trauma to
 [12] the spine.
 [13] **Q:** And you've certainly treated a number of people
 [14] over the years who have had that type of problem
 [15] from a motor vehicle accident?
 [16] **A:** Yes.
 [17] **Q:** Okay.
 [18] **MR. MESTER:** Thank you, doctor.
 [19] **MR. SIGMIER:** That's it.
 [20] **MR. JEPPE:** That's it.
 [21] **MR. MESTER:** Great.
 [22] **VIDEOTAPE OPERATOR:** Doctor, you
 [23] have a right to review this videotape in
 [24] its entirety or you could waive that right,
 [25] do you wish to waive that right?

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[1] **THE WITNESS:** I waive the right.
[2] **VIDEOTAPE OPERATOR:** You have a
[3] right to review the written transcript or
[4] you can waive that right, will you waive
[5] that right also?
[6] **THE WITNESS:** I'd like to actually
[7] see the written transcript.
[8] **VIDEOTAPE OPERATOR:** Can we
[9] stipulate possession of the videotape
[10] remains in the custody of Mehler &
[11] Hagestrom till trial in court?
[12] **MR. SIGMIER:** Yes.
[13] **MR. MESTER:** Yes.
[14] **MR. JEPPE:** Yes.
[15] **VIDEOTAPE OPERATOR:** Thank you.
[16] Off the record.

[17]
[18]
[19] FREDRIC LAX, M.D.
[20]
[21]
[22]
[23]
[24]
[25]

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[1]
[2]
[3] CERTIFICATE
[4] The State of Ohio,) SS:
County of Cuyahoga.)
[5]
[6] I, Katherine A. Koczan, a Notary Public
[7] within and for the State of Ohio, authorized to
administer oaths and to take and certify
[8] depositions, do hereby certify that the
above-named witness was by me, before the giving
[9] of their deposition, first duly sworn to testify
the truth, the whole truth, and nothing but the
[0] truth; that the deposition as above-set forth was
reduced to writing by me by means of stenotypy,
1] and was later transcribed into typewriting under
my direction; that this is a true record of the
2] testimony given by the witness; that said
deposition was taken at the aforementioned time,
3] date and place, pursuant to notice or
stipulations of counsel; that I am not a relative
4] or employee or attorney of any of the parties, or
a relative or employee of such attorney or
5] financially interested in this action: that I am
not, nor is the court reporting firm with which I
6] am affiliated, under a contract as defined in
Civil Rule 28(D).

7]
IN WITNESS WHEREOF, I have hereunto set my
8] hand and seal of office, at Cleveland, Ohio, this
_____ day of _____, A.D. 20____.
9]
0]
1] Katherine A. Koczan
Notary Public, State of Ohio
2] 1750 Midland Building, Cleveland, Ohio 44115
My commission expires August 27, 2006

3]

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