ORIGINAL

IN THE COURT OF COMMON PLEAS

OF CUYAHOGA COUNTY, OHIO

EDWARD COLLINS, et al.,

Plaintiffs,

v. : Case No. 258554
: Hon. Kenneth Callahan

MICHELE KOSTURA, et al., :

Defendants. :

- - -

Deposition of CHRISTOPHER C. LAYNE, Ph.D., a Witness herein, called by the Plaintiffs as upon Cross-Examination, pursuant to the Ohio Rules of Civil Procedure, taken before Constance L. Boyden, Registered Professional Reporter and Notary Public in and for the State of Ohio, at Layne Psychological Services, 2800 West Central Avenue, Suite A, Toledo, Ohio, on Monday, December 5, 1994, commencing at 9:27 a.m.

- - -

SEAGATE REPORTING SERVICE, INC.
405 Madison Avenue, Suite 900
Toledo, Ohio 43604
(419) 241-2070

I N D E X

DEPOSITION OF CHRISTOPHER C. LAYNE, Ph.D.

- - -

- - -

APPEARANCES:

On behalf of the Plaintiffs:

SPANGENBERG, SHIBLEY, TRACI, LANCIONE & LIBER:
John A. Lancione
Suite 2400, 1900 East Ninth Street
Cleveland, Ohio 44114-3062 (216) 696-3232

On behalf of the Defendants:

KITCHEN, DEERY & BARNHOUSE:
Eugene B. Meador
Suite 1100, 55 Public Square
Cleveland, Ohio 44113 (216) 241-5614

- - -

CHRISTOPHER C. LAYNE, Ph.D.,

being first duly sworn, as hereinafter certified, testified and said as follows:

- - -

CROSS-EXAMINATION

BY MR. LANCIONE:

Q Would you state your full name for the record, please.

A Christopher Layne, L-a-y-n-e.

Q Dr. Layne, as you know, my name is John Lancione, and I represent Ed and Karen Collins in this case that's been brought against Michele Kostura arising from an automobile accident on September 23rd, 1991.

I'm sure you know the rules for a deposition, but just so your understanding is on

the record, I'm going to go over them with you real quick. During my questioning, if you don't understand a question, please tell me, and I'll rephrase it and ask it in a more understandable manner. Also keep your answers verbal so the court reporter can take down your testimony. Okay?

A Okay.

Q Thank you. What is your professional address?

A 2800 West Central, Suite A, Toledo, Ohio, 43606.

Q Is that your only office?

A Yes.

Q And what is your home address?

A 3436 Brookside, Toledo, Ohio.

Q Is that in Ottawa Hills?

A Yes.

Q Right off of Talmadge?

A It is about three quarters of a mile from Talmadge going east. It's also about two blocks from Secor.

Q Okay. Are you married?

A Yes.

Q How many children?

A One.

Q Doctor, you've been kind enough to provide me

with a copy of your CV. I'd just like you to identify it for the record, and we'll mark it as Exhibit 1.

A This is the vita that I just handed you, yes.

Q And it was dated, printed on October 21st, 1994?

A Yes.

Q Is there anything that you would consider important to add to this?

A No.

MR. LANCIONE: Okay. Would you mark that as Exhibit 1.

(Plaintiffs' Exhibit 1 marked.)

Q Doctor, since receiving your license in Ohio as a licensed psychologist in 1980, have you continuously -- it appears that you've continuously been holding yourself out as Layne Psychological Services; is that correct?

A Yes, that's -- 1 guess I started using that name around 1985.

Q Okay. But you entered private practice in 19803

A Well, I practiced also in Mississippi before I arrived here, so I've been in practice since about 1976.

Q Right after you received your Ph.D. from University of Alabama?

A Right.
Q All right. But in terms of private practice in Ohio, it's been from 1980?
A Correct.
Q What was your thesis topic at the University of Alabama?
A My thesis was on the incentive values of rewards for children.
Q Do you have a subspecialty or a focus in your practice on child psychology or is it --
A No. Although I do treat a lot of children now, my primary focus is on the treatment of anxiety and depression.
Q You're a diplomate in the -- in clinical psychology of the American Board of Professional Psychology and you received that certification in 1980?
A Correct.
Q What does it take to be eligible to take the board examination administered by the American Board of Professional Psychology?
A To be eligible you have to have five years of experience in the field, and of course you have to have a legitimate doctorate and internship training. That's eligibility.

Then the second stage is to hand in a lot of written work samples and a tape recording of your therapy skills, and if those go well then you get a face-to-face day-long examination with three board certified psychologists.

Q Did you need to take the test only once?

A The entire exam is a one-shot situation, yeah, consisting of those three phases.

Q So you passed on the first occasion?

A Yes.

Q Now, this board, this is not a medical board, American Board of Professional Psychology?

A No. I'm not a physician.

Q You need an M.D. to -- it's not a requirement that you have your medical -- your M.D.

A No.

Q Okay. You're also listed here as being a tenured professor. Well, your report said you're a tenured professor at the University of Toledo, the Department of Psychology or Psychology Department.

A Correct.

Q Now, your CV says associate professor, but somewhere in your report it says tenured professor. Is there a difference?

A No, no, tenure is something that's awarded for basically people who have been professors for a long time, and associate professor is a rank, so they're sort of different domains.

Q A rank among tenured professors?

A Yes.

Q Does associate professor mean something with respect to the amount of time you devote to teaching?

A No. It's not relevant to that. It's more relevant to the amount of time you've been at the university, more than anything else.

Q Are you currently engaged in teaching students right now?

A Yes.

Q How many courses are you involved in currently?

A This year I'm on sabbatical so that means I'm doing research, but generally 1 teach about 200 students per quarter for three academic quarters.

Q That's the calendar year, three quarters at UT?

A Yes, yes.

Q Those 200 students, is that one class or is that several classes?

A Two classes.

Q Two classes of 100 approximately?

A That's correct

Q And what are -- what is your normal curriculum that you teach?

A Usually it is principle of Psychology, which is the introductory course for undergraduates, and then Personality Psychology, which is a course in giving an overview of personality theories

Q Those are all undergraduate courses?

A Right.

Q Have you taught any graduate courses ever?

A Yes At the University of Southern Mississippi I taught graduate courses in psychological testing and psychotherapy, and I did that at the University of Toledo too.

Q They have a graduate school there?

A Yes.

Q What's your topic that you're involved in right now in research while on sabbatical?

A It is on the tendencies of people to exaggerate mental problems I'm asking the question about what the effects of exaggeration are on people's personality testing I'm comparing three groups of people, people who are involved in litigation, patients who are not involved in litigation and then people who are not patients

Q Litigants, patients and nonpatients?
A Right.
Q And the issue is -- or the topic is the tendency of people to exaggerate what?
A Mental problems.
Q Mental problems?
A Right, whether or not that's detectable and whether or not it correlates particularly with psychological test results.
Q Have you reached any conclusions at this point?
A No, no, just gathering the data.
Q Just gathering. Did you utilize your examination and evaluation of Karen Collins as part of this --
A No.
Q -- research?
A No.
Q Did you apply any of the research issues or testing to Karen Collins in this evaluation?
A No, since it's in its formulative stage, there's nothing available to apply.
Q So with respect to Karen Collins, you have formulated no opinion as to whether or not she is exaggerating her symptoms or malingering or anything like that?

A I have formulated opinions about that.
Q Okay.
A She's not a part of my research, but I can still --
Q Briefly what are your opinions about whether she's exaggerating her symptoms?
A She's not exaggerating her symptoms.
Q With respect to the issues involved in your research or concerning your research other than not exaggerating, have you formulated any other opinions about Karen Collins that may be germane to your research, current research?
A I can't think of any, no. That's the one place that the research and Karen Collins intersect is the notion of exaggeration, and she does not, so --
Q Okay. In this field, there's always concern, I think, on the part of some parties involved that the patient is malingering or trying to become enriched monetarily because of the litigation. Do you find that Karen Collins has any of those factors motivating her in this case?
A Well, the --
MR. MEADOR: Well, I think I'm -- unless Dr. Layne evaluated her for that

purpose, I would object to him expressing opinions on that subject because I don't think, John, unless I'm wrong, I don't think he's indicated them in the report.

MR. LANCIONE: No, he hasn't, but I just -- I'm going -- I should just ask a global question if he has any other opinions, but I'll ask your question.

Q Did you evaluate her for that purpose?

A I -- that wasn't my primary purpose, but it is always a concern. I mean, I have to -- particularly in the area of psychological litigation, I've got to ask the question, is the person exaggerating or is the person not, so I'm always concerned about that.

Q Okay. Then with respect to this specific question about being motivated by factors involving monetary gain, is that something that was within that inquiry of exaggerating?

A The interest in monetary gain is, of course, a part of the whole domain of exaggeration. Karen Collins is not exaggerating in my opinion.

Q So you don't feel she's motivated by monetary gain?

A Well, she is suing, and people can be motivated for monetary gain for reasons other than exaggeration or those motives can well up out of reasons other than exaggeration. For example, if a person is actually damaged by someone else, they could want compensation, they could be motivated by money but not be exaggerating, so again, two points.

Q Sure.

A She's not exaggerating. She may very well be motivated by money, but it could be legitimate.

Q Do you have an opinion one way or the other whether she is -- whether she has a legitimate motivation for money?

MR. MEADOR: Objection, just for the same reasons I stated before.

A Right. The fact that she filed a lawsuit makes it clear that she's motivated by money. If she were unmotivated by money, she wouldn't have filed a lawsuit, it seems to me.

It is possible, I grant, that someone could file a lawsuit asking for money and yet not be motivated by it, but it's unlikely. My purpose was to ask the question, is she justified in suing this particular person. Is she justified

in blaming the accident? There my answer is no, that I don't believe that she's justified in blaming the accident.

Q And that gets into the ultimate opinion that you rendered in your report that the accident's not the cause of her depression, right?

A Correct.

Q All right. We'll get into that later. How would you describe your private practice?

A It's one that specializes in the treatment of anxiety and depression. It is, I think, a fairly objectively oriented practice, one that has a problem oriented focus, one that likes to cure people as quickly as possible. It's a practice that does not particularly like hospitalizations, believing that many people can be treated without going to the hospital, and I believe we have a great respect for patients here.

We don't have a waiting list and we don't have a waiting room, we like to say. If we're late for a patient by over 10 minutes, we give them $10. We don't do that with attorneys though. That was a joke.

We like to use behavioral techniques and what are called cognitive techniques for those

two disorders of anxiety and depression because experiments have shown them to be the most effective.

Q All right. But in terms of giving it a classification, you are -- your private practice is a practice of clinical psychology?

A Yes.

Q Okay. Being involved -- well, being a teacher and also on sabbatical and being involved in research and I see your CV notes you're an editor, how much time do you currently devote to the active clinical practice of clinical psychology? How much of your professional time?

A Right. I would say roughly half my time is devoted to my practice and half of my time is devoted to the university.

Q So 50 percent give or take on either side?

A Right.

Q What are your office hours for your private practice?

A 8:30 till 6:00, Monday through Friday.

Q And during that five-day week, what -- how many hours do you spend seeing patients and how many hours do you spend involved -- do you do your research here in your office?

A Yes, often, yeah.
Q So you're not -- you're not engaged in treating patients all day on that 8:30 to 6:00 day?
A That's right.
Q But you are involved in -- spend hours here researching as well?
A Yes.
Q Do you have an office at the university?
A Yes.
Q Do you do some research there?
A Yes, but I generally have consolidated a lot of my activities here.
Q With how many patients do you currently engage in a psychologist-patient relationship?
A I'm guessing 60.
Q In terms of the practice over the last five years, is that high, low, is that the average at any given time?
A I think it's low average in terms of number of patients treated, yeah.
Q Is that because of your research or just because of fluctuation?
A Because of my university stuff and also the legal work which is what I call this deposition and so on.

Q Of the 60 patients you're currently treating, how many have you made a diagnosis of depression?
A I'm guessing about six or so.
Q On the first page of Exhibit 1 which is your CV, under the affiliations topic there are several hospitals, Mercy, Riverside, St. Charles, Flower, St. Vincent?
A Uh-huh.
Q What's the nature of that affiliation?
A I'm on the adjunct staff or some call it the auxiliary staff, some call it the courtesy staff. Psychologists in general are -- don't have full privileges at hospitals because we don't admit many patients to hospitals.

There's one exception to that now and that's Riverside where I can admit patients if I want. I don't, never have, but I could if I wanted to.

Q All right. So with the exception of Riverside, you don't have admitting privileges at any of the hospitals listed here?
A Right, and no psychologist does.
Q That's what I was going to ask.
A Right.
Q Psychologists generally don't have admitting privileges. Why at Riverside? What have they

done?

A They've just changed. There was a law passed several years ago, a law that indicates that psychologists are eligible to admit people to hospitals. It didn't require hospitals to open their doors to psychologists though.

Q Sure. Have you ever admitted a patient to a hospital?

A No.

Q Are psychologists allowed to prescribe medications?

A No.

Q Have you ever ordered an x-ray?

A No.

Q Have you ever interpreted an x-ray for purposes of patient care?

A No.

Q Have you ever ordered that -- or prescribed physical therapy for a patient?

A No.

Q Have you ever recommended that a patient take up exercise as part of your treatment of them?

A Rarely, and with some caution because it has about it a physical aspect that it could send me a little bit over the border outside the bounds

of my expertise, but with caution, yes.

Q Have you ever treated a suicidal patient?

A Sure.

Q Have you ever lost a patient to suicide?

A No.

Q Are you currently involved in any editorial consultant work?

A No, not now. I have no manuscripts that I'm editing.

Q When was the last time you were involved in that kind of work?

A About a year ago.

Q In your report at footnote 58 you said that you are consulting editor of scholarly journals, and on page 4 of your CV, it says Dr. Layne has been a consultant to Addison-Wesley Publishing Company, American Psychologist, Behavior Therapy, Journal of Abnormal Psychology, Journal of Consulting and Clinical Psychology, Journal of Personality Assessment, Journal of Research in Personality and Journal of Social and Clinical Psychology. By identifying these or describing these as scholarly journals, do you consider these journals authoritative in the field of clinical psychology?

A Yes.
Q You also have on your CV and stated in your report on this case books and publications on psychological assessment, and the first book is by Christopher Layne, 1983, Psychological Torts Manual. What is that? What is Psychological Torts Manual?
A It's 1993.
Q What did I say, '83? I'm sorry, 1993.
A That's all right. It's a review of mental health litigation, recent mental health litigation, and from the late '80s and '90s mostly that has been filtered through the eyes of a psychologist, me, and a treatise at the beginning of the review of these cases, one that tries to put them in some perspective psychologically. So the two aspects are commentary, psychological commentary, and just a review of the cases themselves.
Q And that's -- you're the author of that book?
A Yeah.
Q Is it on sale anywhere?
A Yeah. You can get it from this office, for example.
Q How much?
A $39.

MR. MEADOR: Is that today only?

A What's that?

Q Is that a special thing? Okay. Can I get one of these before I leave here today?

A Sure.

Q Thanks. I might have to run out to a money machine. My wife robbed me before I left the house this morning.

Now, you talked about mental health litigation. How do you describe mental health litigation?

A It is -- there are several types. The main one is people claiming psychological damages for accidents, terminations, harassment, that sort of thing. There are a few others though, custody evaluations for the purpose of finding out which parent a child will stay with when there's a divorce. That's psychological litigation in the sense that generally the best interests of the child come down to psychologically oriented issues.

Then there's competence, competence to stand trial, not guilty by reason of insanity litigation. Involuntary commitment is another myriad of psychological litigation as well.

Q Okay. The next book listed in 1992 is Know Your Psychological Experts. What's that book about?

A That is a book that critiques bad psychological evaluations and puts forth a model for good psychological evaluations.

Q Is that in the -- let me just interrupt for a minute if I can. Is that in the context of personal injury litigation?

A Yes. That is pretty much focused on personal injury litigation, although -- yes, although it can -- the notions can be applied to the other areas of litigation, personal injury is heavily emphasized.

Q Can we also get a copy of that book today?

A Yeah.

Q For $39?

A On sale. You may get -- sorry. You may get, of course, a refund today because depending on how long you stay, you know, you left us some money. So if you want to deduct it out of that, that's fine.

Q Well, I'll try and hurry along so I don't use up my full three hours. The next book down there or publication is 1990, The Science of Psychological Damages, and was that an article that appeared in

the Ohio Association of Civil Trial Attorneys?
A Right.
Q Do you have a copy of that here, that article?
A I think so, although we have had trouble locating that. The reason for that is that it actually was a publication of a speech that I did which is another way of saying it wasn't much.
Q Uh-huh.
A So we will look for that.
Q Was the speech given to that association?
A Yeah, yeah. I made a speech and they published the transcript of it and so we had copies, but we weren't very compulsive about keeping them around. I'll check.
Q Okay. Let me just understand something about this speech. Was it a continuing legal education seminar?
A I don't know. It was about five years ago here in Toledo. I don't even -- I rarely remember the name of the organization. Some attorney asked me to give a speech at a lawyer's organization.
Q Are you aware that the Ohio Association of Civil Trial Attorneys is a group of attorneys primarily comprised of defense lawyers or insurance defense lawyers?

A Yes.
Q Okay. Let's talk about your work as an expert witness in litigation. Obviously you've given a deposition before.
A Yes.
Q Now, you said earlier in your testimony something about legal work, that you describe what we're doing here, depositions, as legal work. In the field of personal injury litigation, are you aware that there is a rule of civil procedure that allows for an opposing party to a personal injury case to have the -- a person examined by an independent doctor called an independent medical examination?
A Yes, that sounds familiar.
Q And just so we can use the same terminology and understand each other, when I refer to a medical examination in the questions to follow, I'm referring to the type of examination you did on Karen Collins, an examination of a plaintiff in a personal injury case claiming they are injured, and so when I ask you these questions, the number of these you've done and so forth --
A Okay.
Q -- I'm asking about examining an injured or

allegedly injured plaintiff in an action.

A I understand.

Q Okay. Sometimes they're referred to as defense medicals --

A Uh-huh.

Q -- or independent medical examinations, okay. What percentage of your practice do you devote to -- of your private practice do you devote to legal work, doing medical examinations of plaintiffs?

A About a third.

Q How many times in the last year have you given a deposition in a legal case such as this, in a medical examination?

A Say seven.

Q How about in the last five years? Can you give us an evaluation of that?

A 30.

Q In all of these seven cases in the last year, did you conduct an examination of an alleged -- allegedly injured victim, an examination similar to the type given or done of Karen Collins?

A Yes, yes.

Q And the same with respect to the 30 in the last five years?

A Yes.
Q How long have you been doing legal work like this?
A Since about 1986.
Q Have you ever been retained by Tim McGrail or his law firm of Kitchen, Deery & Barnhouse?
A No.
Q First time you've done any work for them?
A Correct.
Q Have you done any of this type of legal work for any Cleveland law firms, any other Cleveland law firms?
A Yes.
Q Can you tell me which ones?
A Gallagher Sharp.
Q Do you know the name of the attorney or attorneys?
A Joe Papalardo, Pat Foy, a guy named Travis, a fellow named Calderone. There may be one or two others as well.
Q Okay. Any other law firms in Cleveland besides Gallagher Sharp?
A Yeah. Rhoa, I think it's R-o-h-a.
Q Rhoa and Follen, uh-huh.
A Uh-huh.

Q Okay.
A That's another Cleveland firm.
Q Can you think of any others?
A I can't think of any -- I believe that there is one more. I just don't remember the name of the firm.
Q What about Toledo law firms?
A Yes. Examples are Eastman & Smith.
Q Do you have any cases currently open that involve the plaintiff's firm of Williams, Marty Williams' firm?
A That doesn't sound familiar, but as you can tell, I have some difficulty remembering the names of law firms and the names of the opposing law firms as well. I just -- it's not something 1 keep in my head very well.
Q How many legal cases do you have open at this time?
A At various stages, I would say four or five. Some of them may be a year old.
Q Have you given testimony in open court in the last year?
A Yes.
Q Where, Lucas County, Cuyahoga County, Wood County?

A In Akron. It was a -- an attorney for Gallagher Sharp.
Q Do you remember the plaintiff's attorney's name?
A He was -- the name of the firm had three Greek names involved with it.
Q Nukes, Perantinides & --
A No.
Q -- Nolan?
A No. His name was Cherpas.
Q What about in Lucas County? Have you given testimony in court in Lucas County for trial?
A I have given testimony in Lucas County. The question is when.
Q Within the last year?
A Probably so. 1 just don't recall.
Q All right. Do you advertise your services as an expert for these legal type cases?
A No.
Q Have you ever testified in a case involving the onset of depression after a motor vehicle accident, similar to this case?
A I'm sure that I have.
Q Do you remember when the last one was?
A None -- no one case strikes me. It's just that that's -- that is one of the claims that's made

after an auto accident. Let me think. I can think of no specific case.

Q Do you -- have you ever testified on behalf of a patient of yours --

A Yes.

Q -- who was a victim of an accident?

A I think so, yes. That is rarer, but I believe that it has happened.

Q In all the legal work you do, what percentage of your legal work is for defense lawyers and involving examinations of victims that are not your patients as opposed to testimony on behalf of your patient who is a plaintiff? Do you understand the question?

A Let me perhaps answer a different question that might help you. In my legal work, about two-thirds of my work is for defense, about one-third for plaintiff. I often get plaintiff cases that are not my cases but rather are sent to me for essentially an evaluation by the plaintiff's attorney.

Q Okay.

A It is much rarer for me to be an expert for a patient.

Q Can you remember the names of any plaintiff's

attorneys that consulted you or sent their patient or client to you for this type of work, this type of legal work?

A One was Jim Schuller, I think that's S-c-h-u-l-l-e-r, here in Toledo. I'm involved in one even as we speak. Now, who is the attorney? If you'll give me a second, I'll get that name.

Q Yeah. I want to use the restroom, get a cup of coffee and you can get the name.

A That sounds great.

Q Is that fair?

A Okay.

(Recess taken.)

Q Let's talk about the issue of charges. My secretary marked this up, but I'm going to ask the court reporter to mark this as Exhibit 2.

(Plaintiffs' Exhibit 2 marked.)

MR. LANCIONE: Have you seen that, Gene?

Q Doctor, let me hand you what's been marked as Exhibit 2. Would you identify that for the record, please?

A A letter that I sent to you.

Q After we set up this deposition, you sent me that letter for the purpose of establishing the

deposition date and confirming and also setting forth your charge?

A Correct.

Q Okay. Is that your typical charge for a deposition, $200 an hour?

A Yes.

Q And do you always require a $600 advance?

A Yes.

Q The last sentence of the first paragraph, and this is just out of curiosity, I may charge you $100 if you cancel less than 24 hours before our scheduled time. What are the circumstances that you may and may not?

A That is hard to say. Generally we don't. If it were a situation where, for example, there was some other thing for me to do that became very important and we got lots of pressure to cancel the other thing and stick with this, you know, we might charge it. I don't think we've ever done it in the past.

Q Do you have a standard letter or form that sets forth all your charges for all your legal work? For example, I get -- for some experts in malpractice cases, I get X amount for testimony, X amount for records review, X amount for in

court testimony, X amount for traveling out-of-state, that kind of stuff.

A Right, right.

Q Do you have something like that?

A We do -- when people ask us, we send them a letter and the letter's not the same every time, but close.

Q Have your charges for legal work changed at all in the last year or have they been pretty consistent?

A Consistent.

Q Do you have a different charge for record review?

A Yes.

Q What's that?

A $100 an hour for my time. My time's at 100 an hour, for anything else besides really testimony, and then when others do records review, other people in here, then it's at $40 an hour.

a Is there a different charge for in court testimony as opposed to video testimony?

A No. Testimony is at 200.

Q What about travel time? For example, you came to Cleveland to examine Karen Collins.

A $100 an hour.

Q Okay. Have you submitted a bill thus far to

Mr. McGrail for the time you've spent on this case?

A Probably so, though I don't track those things.

Q Who tracks that, your staff?

A Yes.

Q Do you have that hourly -- do you have that accumulation readily available now?

A I think so.

Q Would you ask someone to get that for us while we continue?

A Yeah.

(Off the record.)

Q The charge during examinations is also $100?

A That's right.

Q And this bill we're getting would be an accumulation of everything up to today?

A Probably up till today, that's right.

Q Writing the report is $100 an hour?

A Correct.

Q You do that yourself here at the computer?

A Yes.

Q Other than completing this deposition today and coming to Cleveland on Thursday for your trial testimony at 8:00 -- we're still on for that?

A Yes.

Q -- do you plan to do anything else with respect to this case?
A No.
Q How much is your patient charge for one hour of psychological services?
A $90 an hour.
Q This issue recently came up in a significant Supreme Court opinion, so I'm going to ask you about it. Where does your income from legal work go? Is it for personal use or is it directed toward a charity or research foundation, something along those lines?
MR. MEADOR: Objection.
A My income goes to myself, yeah.
Q All right. In this one case, there was a question about the percentage of income an expert derived from testifying as an expert in malpractice cases, and he gave a figure and he said, but it all goes to charity. It goes to a research foundation.
A Uh-huh.
Q And there was a Supreme Court opinion about that. Yours goes to yourself. It's personal use?
A Yeah. In turn, we, of course, do some charitable giving, but there's no direct relationship

between, for example, this case and some charity.
Q Do you have a file that you have kept for this case?
A Yes.
Q Can I take a look at it real quick?
A While you are looking, I wonder if I could get on the record that I gave you the name of the plaintiff's attorney.
Q Sure, good idea.
A Bonfiglio.
Q Mike Bonfiglio.
A Right. I had given you a slip of paper with that name on it.
Q Sure.

MR. MEADOR: Is he out of Cleveland or Toledo?

THE WITNESS: Toledo.

Q Connelly, Soutar & Jackson?
A Right.

(Discussion held off the record.)

MR. LANCIONE: Why don't we mark this as Exhibit 3.

(Plaintiffs' Exhibit 3 marked.)

Q Doctor, I'm going to hand you what's been marked as Exhibit 3 and ask you if you can identify that

for the record.

A My file on Karen Collins.

Q Just let me ask you something. You can hold it. On this last portion, the last tab says not in report.

A Right.

Q What does that mean? Why wasn't that --

A Sometimes we receive records after we've written the report. I believe that was true in this case, although I haven't had time to confirm that. It's -- that's typically what happens. We get records sometimes after a report is written, get additional records, so I assume that's what it is, but I'll have to double check to make sure that this isn't a mistake.

Q Do you know whose records these are?

A They look like Physician Walborn's records.

Q Well, let's see. You marked Walborn, McCoy physical therapy records?

A Yeah.

Q What about these right here, this last tab with the post-it note?

A I've got that marked as Psychologist Martin.

Q And you understand that to be the psychologist who conducted the neuropsychological evaluation?

A Right.
Q All right. Can I see that again real quick? Under the tab identified as LPS, there's a letter dated November 3rd, 1994 from Tim McGrail to you --
A Uh-huh.
Q -- referring to a conversation with the firm's paralegal, Pam. Concerning November 3rd, 1994, is that the first contact you had with Mr. McGrail, or with his office, I mean?
A I believe so.
Q Do you know how he came about finding you?
A No.
Q What was the scope of the task he asked you to perform for him?
A To evaluate her to -- for the purpose of determining, or helping to determine what, if any, effects the accident had on her mental health.
Q Everything you were provided by Mr. McGrail is contained in this three-ring binder, Exhibit 3?
A Yes.
Q Were you provided any facts about the case over the phone or in other conversations with Mr. McGrail other than what's contained in this

file?

A No.

MR. LANCIONE: Your report to us, that we'll mark as Exhibit 4.

(Plaintiffs' Exhibit 4 marked.)

Q First of all, would you identify Exhibit 4 for the record?

A Yes. The front page is actually not a part of the report, but is just a fax cover sheet, so the report really starts on page 2 of this set of stapled documents, and beyond that, this is the report that I wrote.

Q The first endnote says, Layne Psychological Services began analyzing Ms. Collins' records around November 8 and mas began -- what's that supposed to mean?

A Those are the initials for Marcy Skirvin.

Q Oh, Marcy Skirvin, who typed the report, okay. So that's when the records were received in this office, November 8th, based on this note?

A Let me look again. Well, that's not necessarily true. They probably were received days before that. We began to review them on that day.

Q So that's the first work done on the case was began on November 8th and it involved records

review?
A Correct.
Q And footnote 2 sets forth all the records you reviewed?
A No. The -- it sets forth the major records. The statement is the documents that I reviewed included, so it's not exhaustive. There may be some handwritten notes or something that are there too.
Q So handwritten notes from what, the examination?
A No, that we received from other doctors.
Q All right.
A This is not an exhaustive list.
Q Do you know whether you received Robert Weiss' records?
A I believe that we did.
Q Okay.
A But we got his letter of September 1st, 1994.
Q Okay.
A And I believe we also received some handwritten records from him.
Q Okay. Good. Now, you examined Karen on November 16th, 1994, correct?
A That's right.
Q Eight days after you started reviewing the

records?
A That's right.
Q All right. Now, you came to Cleveland for that?
A Correct.
Q Is that correct? Why did you come to Cleveland for that as opposed to have her come here?
A That's what I was asked to do, and I don't know why.
Q Did you have a court appearance that day or were you in Cleveland for another legal case other than Karen Collins?
A I was in Akron the day before. That wasn't relevant to it being scheduled in Cleveland, as I recall, but --
Q What about on the 16th? Did you have any other commitments in Cleveland other than the Karen Collins examination?
A No, no.
Q What -- was there a letter that sets up this examination in the file, or was that all done over the phone?
A I'm not sure. I'm going to get some water.
Q Sure. Go ahead.
(Off the record.)
A I have just given you the bill for this case. At

least that's what I'm told by my secretary.

MR. LANCIONE: Okay. Why don't you mark this as, I believe, 5.

(Plaintiffs' Exhibit 5 marked.)

Q Doctor, I'm going to hand you what's been marked as Exhibit 5 and ask you to identify that for the record.

A This is our billing format, and appears to be the bill for this case, for the Karen Collins case, sent to Tim McGrail.

Q And that bill is current up to today?

A Yes.

Q Okay. Now, that does not include the $600 that I have paid you, correct?

A Correct.

Q And that does not include whatever your billing will be for the deposition on Thursday?

A Correct.

Q All right. Now, I turned to Exhibit 4, your file on this, to a letter concerning --

A Yeah, I see it.

Q -- concerning -- I'm sorry, exhibit -- your report's 4. That's 3?

A Exhibit 3.

Q 3, okay.

A Is the file.
Q The file. That concerns a letter setting up the appointment from 9:00 to 4:00 p.m., 9:00 a.m. to 4:00 p.m.
A Yes.
Q And a written portion taken from 9:00 to 11:00 a.m.
A Yes.
Q And then a -- what was the other portion, discussion?
A After the paper-pencil tasks essentially I then interviewed the plaintiff, Karen Collins.
Q Is there time for lunch in there or do you work straight through typically?
A That varies. Sometimes we break for lunch and sometimes we don't.
Q All right. What time do you recall arriving at Mr. Deery's office for this examination on the 16th?
A 1 recall being somewhat late, like, I think I was there 12:30, maybe even 1:00.
Q Now, did she have the written portions to work on in the morning in your absence? Were those provided to his office?
A Yes.

Q Why were you late? You were supposed to be there at 11:00. Do you know why you were late?
A I was testifying in the case in Akron that I told you about earlier.
Q What kind of case was that?
A That was a -- the case involving the Greek attorney whose name was Cherpas.
Q Do you know that case caption, case name?
A The plaintiff's name was Pamboukis.
Q Do you know the defendant's name, your client?
A The name of the plaintiff was Pamboukis. That's the person who I evaluated.
Q Oh, that was the -- oh, I'm sorry.
A Her attorney's name was Cherpas. And so I had testified the day before, and my testimony continued over into the next day unexpectedly, so I was a bit late.
Q Now, for your testimony in this case, we're starting at 8:00 in the morning at Cleveland. Do you also have a court appearance or an arbitration this Thursday afternoon as well? Is that why you're coming to Cleveland to testify?
A I think that I do. That sounds familiar, but I'm not sure. I can check the calendar if you want to know.

Q Yeah, just so we can make sure what we're talking about.
A Do you want to do that?
Q Yeah.
(Off the record.)
A Yes. I have an arbitration hearing in Cleveland this Thursday after I do your case.
Q What kind of case is that arbitration?
A It's another personal injury case. Beyond that I don't recall the details of it.
Q Sounds like you're going to be busy between now and Thursday getting ready for your two cases on --
A That's probably right.
Q -- the same day.
A Yeah.
Q Did you check on your calendar whether, besides this case and the case on Thursday, you have any other appointments to do any legal work, any depositions or any examinations this week?
A No, I didn't.
Q Okay. Do you know whether you have anything else legally related this week besides this case and the arbitration on Thursday?
A I don't think that I do. I think this is it.

Q Okay. How long did you spend with Karen once you got there at around 12:30 or 1:00?

A I believe that I spent about four or five hours. It will be on the bill, and I don't recall specifically, four or five hours. Boy, I don't know the codes, but it should be a -- okay, here we go, diagnostic interview per person, that implies about two and three quarter hours --

Q Okay.

A -- I think -- I know. The reason for that is that I also gave her some face-to-face tests. I gave her the Bender which is a face-to-face administered test and the Slosson which is another face-to-face test, so the amount of time I spent in front of her is about four hours, maybe five, but of that four or five hours, two and three quarter hours were involved in exclusively talking with her and asking her questions.

Q Okay.

A Hence the interview time.

Q Sure. Did you make any notes other than test results or any notes from your conversation for that?

A The answer to that is no. The reason is that, as

she will tell you, I did my work on a laptop computer, and the way laptop computers work is that in our case, I enter what she tells me into the report itself. Soon after I see her, I smooth out those pieces of information into the report that you have.

Q so --

A So while it's not exactly -- while I can't say that the report that I have consists of contemporaneous notes, the -- it's pretty close to it. They are contemporaneous notes edited later for clarity. But in the process, the computer basically throws out the preceding drafts and they're -- they don't exist anymore.

Q What did your evaluation consist of, history and -- I mean, tell me what the aspects of it were.

A There are three components to this evaluation, and all others really, and they are getting an accurate history and I get that through records and what she tells me, and then how she acts in front of me, the behavior observations, and then finally her psychological testing.

Within the psychological testing I administered, I think, four different tests, and

they are the Slosson Intelligence Test, a Bender Motor Gestalt Test, an MMPI which is a personality test, and a Personality Assessment Inventory, so those were the four tests.

Q Do these -- do any one of these four tests duplicate any test that Dr. Martin gave her?

A I don't think so, although I'm -- I'm thinking he may have given an MMPI.

Q Yeah. You made a reference to that in your footnotes.

A Okay. Yeah, I believe that I did, and my problem is that I didn't have his raw data so I thought I better not emphasize it, but I believe he also administered an MMPI, yes, the MMPI-2.

Q 2?

A Footnote 49.

Q Right. Is there a difference between MMPI-2 and MMPI?

A Yeah, the MMPI-1 is 40 years old, and the MMPI-2 was published in 1989. The -- there's some debate about the use of the newer version over the older version, and people like me, and I remain in the majority, continue to adhere to the MMPI-1 because there's so much more research to guide us in the interpretation of the MMPI-1.

Q It's time tested?
A What's that? Yeah.
Q Time tested.
A The MMPI-2 is --
Q Let me just ask you this. You have Martin's opinion on his MMPI results. He wrote in his report that the profile was entirely consistent with Mrs. Collins' history of severe to moderate depression with attending anxiety, and how do you pronounce --
A Anhedonia.
Q Anhedonia, what's that mean?
A It means she doesn't get any pleasure out of anything.
Q -- and low energy, reduced ability to cope with additional stressors, symptoms of post-traumatic stress, intrusion ideation, hyper arousibility. What were -- was your interpretation of the MMPI that you gave Karen consistent with Martin's interpretation of the results of the MMPI-2?
A I believe that they are. I think that they're fairly consistent. The differences are trivial.
Q All right.
A Again, the differences between my interpretation and what I read about his interpretation in his

report are -- I have no suspicions about his interpretation.

Q With respect to the history you took from the patient, any contemporaneous notes would be reduced to this exam or incorporated within this exam and they don't exist anywhere else?

A Correct.

Q Are all her test results included within that medical records binder, number 3?

A Yes.

Q You can hold that. I want to flip through something. Turning to a page with some pencil drawings on it under the tab marked LPS, what's this, these markings in pencil?

A That's called her Bender, B-e-n-d-e-r, Bender Motor Gestalt.

Q What's -- how is that administered?

A The person is given nine nonsensical figures and is asked to make a copy of them, a drawing copy of them using a pencil. It has been shown that certain kinds of neurological problems will impair a person's ability to copy nonsensical drawings, so it's a simple quick assessment of at least some kinds of brain damage.

Q How did she do on the Bender?

A Fine. No errors.
Q Okay. So that what was your impression from her performance on the Bender?
A That it showed no neurological problems.
Q Okay. And the Slosson -- I can't even read my own writing, Slosson what?
A It's a Slosson Intelligence Test.
Q Intelligence?
A Right.
Q This is it right here?
A Yes.
Q All right. Now, questions 1 through 108, those appear not to be answered; is that correct?
A Correct.
Q Why is that?
A The method for administration is that you -- the questions get harder and harder beginning at the very easy question number 1 and ending at the very difficult question number 187. Examiner tries to pick a spot where the person is sort of in the middle where she can answer some but not others. Then what the examiner does is to back up until the person passes 10 in a row. At that point you have their -- you assume that they're going to answer all the rest of them correctly.

Q Okay.
A Then it's a matter of going forward until she misses 10 in row, and you stop, so you notice questions 181 through 187 are not administered.
Q So checks mean correct; zeros mean wrong?
A Correct.
Q Are the questions that you asked her contained in your file?
A No. Those are in a Slosson administration booklet.
Q Can I get a copy of that --
A Yeah.
Q -- before I leave? All right. What kind of questions are on the Slosson test, math questions or --
A There are a wide range of primarily verbal questions where verbal is loosely defined to mean mathematical, knowledge of information, short-term memory.
Q Is this a test where they purposely repeat the same questions?
A No.
Q Is there a test like that where you purposely repeat some questions?
A The MMPI repeats some questions. That's a

personality test and it repeats some questions.
Q The purpose of repeating some questions is to --
A Actually it's not as sneaky as everybody thinks. The purpose was that back before we had sophisticated computers, it was still found that some questions were great predictors, they were outstanding predictors of people's future problems or current problems, and so they would put the question in twice just to -- assuming that the person would answer it consistently both times, just to load up the importance of that question. It wasn't -- the repetition wasn't there to trick people or something, so that's why that was done.
Q Did you give Karen a complete exam that you ordinarily give all other people in this category of legal work?
A I think that's fair. I mean, everybody's different. I threw in two intellectually oriented tests because there had been a vague question of brain damage, and I wanted to nail that down.
Q The Slosson and the Bender?
A Correct, yes.
Q So the only other two tests you administered were

the MMPI and the Personality Assessment Inventory?

A Correct.

Q Did you skip any portion of the test or certain questions of any one test because of time constraints?

A No.

Q Okay. On the math portion or on math questions is there any requirement to repeat questions? Are any of the questions repeated in the math portion?

A No.

Q Now, for this case, when you testify Thursday you'll have seen the patient one time?

A Correct.

Q For the amount of time previously stated?

A Yeah.

Q She's not a patient of yours?

A That's correct, in the sense of --

Q Treatment.

A -- I'm not treating her. That's sort of ambiguous as to whether she's a patient whom I'm evaluating.

Q Right. Well, is there some kind of a -- like, doctors have the Hippocratic oath. Is there a

similar thing with psychologists?
A I mean, I think that's -- no, we don't have an oath. But we're supposed to do things in the best interests of the patient.
Q And your examination of her was a little over three years after her motor vehicle accident?
A Right.
Q And you have no plans in the future to treat her?
A Correct.
Q All right. I'm going to hand you Exhibit 4 because we're going -- would you rather go through this or the one in your book?
A The one in my book is fine.
Q All right. I have my copy. Now, on the front fax transmission page, there's an LPS and that stands for Layne Psychological Services?
A That's correct.
Q And that's just an acronym or abbreviation of your professional corporation?
A Correct.
Q Is that an Ohio corporation?
A Yes.
Q Did you incorporate in 1980 or whenever you said, '84?
A We were incorporated around 1988.

Q '88. Then there's a cover page for the report of confidential psychological evaluation of Ms. Karen Collins.
A Right.
Q Okay. Then there's a contents page?
A Yes.
Q And then there's a, I guess it must be a continuation of a contents page, a visual aids and summary?
A Yes.
Q Okay. The summary, what's the purpose of setting forth that summary there?
A It is no more or less than the purpose of any summary, namely to give the person an overview or road map of what they're about to read.
Q All right. First statement in the summary is, parental rejection predisposed Ms. Collins to depression.
A Yes.
Q What does that mean? Does a predisposition -- what does that mean in clinical psychology?
A It raises the probability that the person will one day be depressed without causing the depression immediately.
Q Meaning the person can be enjoying a completely

normal mentally healthy life, but because she has some predisposing factors that there could be events that could make this -- make depression come out in her or she can get depression? I mean how does that happen? Can you get depression --

A Yes.

Q -- like a cough or a virus or something?

A In -- I mean the statement that it was possible that when she became an adult she would not be depressed. She's only predisposed. She needs another cause in adulthood to become depressed. The predisposer is not sufficient.

Q So there are a lot of people walking around today whose parents rejected them and they're not depressed?

A Correct, but they are predisposed.

Q Predisposed?

A If the rejection were of this caliber.

Q And it's possible that Karen Collins could have lived her life through her normal life expectancy and never become depressed?

A That's correct.

Q Just because she was predisposed didn't mean before she became depressed, the depression we

know about, that she suffered any mental illness?

A Correct.

Q The next sentence, then, she endured job and health problems, including a hysterectomy. Why do you describe the job situation, her job situation, as a problem? What was problematic about them for Karen?

A As you'll notice in the report, the -- when she began to work, she worked as a secretary for 11 years but then she was laid off. The layoff was one minor problem.

Q Okay. Why do you interpret that as a problem? Was there something she said that upset her or was a problem to her or it caused financial hardship? I mean what -- people get laid off. In fact, the first -- footnote 12, Ms. Collins' jobs before accident, date and job and why leave?

A Yes.

Q '72 to '81 secretary, quit, got married and drive too long to work, and then 1981 to '83, secretary, then it says laid off. Is that the problem you're referring to?

A Yes. Well, that's one of them, yeah.

Q All right. Let me see something in your notes here. I saw something. Maybe it's closer up

here. Yeah, employer and duties, company cut-backs, laid off. These are your notes or hers?

A Those are hers.

Q She filled that out?

A That's correct.

Q Now, did she say anything like -- did you ask her, did that layoff cause you to become upset or was it a financial hardship? I just don't understand how you can say it's a problem without hearing from her that it was a problem. I mean, a layoff may or may not be a problem with somebody, and how can you define it as a problem unless she said it was a problem to her?

A Well, two tacks on that. First is I guess the common sense point and that is nobody wants to be laid off. I believe that's a fair statement. Layoffs are generally not regarded as neutral events. People are generally disappointed when they are -- or bothered when they're laid off.

Secondly, I believe that I briefly touched on that issue with her in the course of going over the form that she had filled out. But in the -- as I recall, in going over it, it was a very brief -- I just very briefly touched on it.

I said that must have been a lousy situation. She said, yeah, well, and went on.

Q Okay. You didn't go into anything deeper than just a lousy situation?

A Right, right, and her acknowledging that.

Q So you don't know if she became depressed over that, do you?

A No, and I'm not indicating that that layoff caused her to become depressed.

Q You don't know whether that caused a financial hardship, that '83 layoff?

A While I don't know that, again, I sort of think common sense is the rule here. We're back to the notion that if you had a room full of laid off people and you asked, is there anybody overjoyed by this, is there anyone that feels neutral about this, you just don't care one way or the another, you wouldn't have a whole lot of hands raised in a room full of laid off people.

Q Well, aren't you looking for a response in your patient rather than speculating about whether she's found it problematic or felt that her layoff was problematic? It seems to me common sense approach is pure speculation, where if you ask a person directly, was it a problem, was it a

hardship, did you become upset, did it cause problems with your husband, did you have to go on Unemployment, things like that, that would seem to me to be more indicative of whether it was a problem as opposed to speculating about common sense.

MR. MEADOR: Objection to, John, your characterization and your problem with using a common sense approach.

MR. LANCIONE: Okay.

A Yeah. I touched on it with her, and again I would maintain that it is something I checked with her about.

Q And then the last one, own import business, deal with buyers' reps, sold goods wholesale and retail, okay, product became too common at end, unable to deal with people anymore. Okay. And that was 1992?

A Right.

Q Now, 1992 is after the onset of her depression, correct?

A I believe so, yes.

Q Is inability to deal with people anymore a manifestation or a common symptom you find in depressed people?

A It can be, yes.
Q Can you state whether her depression at all contributed to her not continuing with her import good business?
A That's ambiguous. As she says on her form, the -- she stopped her import business for two reasons. One is the craft that she was selling became commonplace. That wasn't caused by the accident. The second reason that she mentions is that she can't deal with people anymore. That probably came from her depression.
Q Okay. Then you also said health problems, including a hysterectomy.
A Yes.
Q Same question with respect to health problems. Why do you define hysterectomy as a problem? What about it was problematic for Karen?
A Well, we have to start again with the -- our knowledge of hysterectomies. It is clear from the opinions of experts in this field that hysterectomies are nearly universally stressful for people, for women, for several reasons, one of which is purely psychological.

Those psychological reasons involve the idea of aging. It's a marker for advancing age. It's

also the end of one's ability to bear children, and so that's another psychologically oriented problem with hysterectomies.

Q Well, did you ask Karen, was this a problem for you?

A Yes.

Q Were you upset about the hysterectomy?

A Yes. We talked about that fairly extensively. She says that it didn't bother her at all.

Q And is -- on the same -- in the same sense that it's common sense that what the literature suggests, isn't it also common sense that if someone endures a lifetime of painful periods and heavy bleeding and when someone has a hysterectomy and that pain and discomfort and heavy bleeding is gone, common sense says that that might cause someone to feel relief over -- that a hysterectomy might bring relief to somebody and withdraw an additional stressor that is involved in someone's life?

A Yes. It could also, however, be a mixed blessing, meaning that it -- those are the benefits, that there would also be some liabilities.

Q Have you ever treated a patient who became

depressed after a hysterectomy?

A I believe so, yeah.

Q How many patients have you treated who became depressed after a hysterectomy?

A Oh, I would guess 15 or so.

Q When was the last time you treated a patient who became depressed after a hysterectomy?

A I have one in treatment now who's in marital counseling. This is a person who had hysterectomy several years ago and continues to refuse to take hormone replacement therapy. I'm not really quite sure why, but she does, and meanwhile her mood is a lot worse than it used to be.

Q In these 15 patients is the sole cause of the depression hysterectomy or are there additional related stressors that you believe all contributed to causing onset of depression?

A They're probably related -- there are certainly related problems with the marriage, particularly now. I'm still trying to tease apart whether the real initiator of the problem though was the hysterectomy.

Q Okay. Now, in the body of your report on page 2, you refer to medical and psychiatric experts

caution that hysterectomies can cause negative mental reactions, including anxiety, fatigue, tension, emotional lability, irritability, dizziness, depression and insomnia, especially in women suffering from low self-esteem and low life-satisfaction.

Then there's footnote 10, and when we turn to footnote 10 there's a statement, psychiatrists wrote, and then there's a big quote there and it says page **1173**, Kaplan and Sadock.

A Yes.

Q Now, in writing this report, did you have to go look up that quote, or --

A Yes.

Q -- is that something you had on your disk?

A No. I had to go look that up.

Q So before making this statement, did you have to actually conduct research to figure out whether there was literature out there that stated that there are psychiatric or psychological effects of a hysterectomy?

A No. I knew that there was literature out there. I wasn't quite sure where. So it was a problem of rekindling my memory of exactly where I had seen that stuff, and this is one of actually

other many sources that deal with the rough psychological side effects of hysterectomies.

Q Okay. In the summary then you state, after a benign accident -- what was benign about the accident? Why do you define it as benign?

A It is involved in telling the story of the accident, and so let me do it in summary fashion, and then we can go back and maybe amplify. They were rear-ended from a car going about **25** miles an hour.

Q Just let me stop you for a minute, please, Doctor. You're on page **3** of the report?

A Yes.

Q Section entitled your accident -- or Her Accident?

A Yes.

Q All right.

A All right. It was her behavior. She was wearing her seat belt, had a headrest. Her behavior after the accident, it seems to me, is the key to calling the accident benign, and in sum it is the story of a person who gets out of the car and checks on various things that, at least from my perspective, are not life-threatening issues.

The first thing she did was to leave the

car, go over and berate the person who rear-ended her. Then she walked back to the car, checked on her husband again, then she decided that she needed to cancel a dinner engagement for that night. So she went over to a house somewhere and called her mother and said, we're not coming to dinner tonight. We've had an accident.

Again, I want to emphasize there's something about checking your social calendar, yelling at the offender, that strikes me as not the behavior of somebody whose life, physical or mental, has been devastated.

Q Let me stop you for a minute. Why do you use the term berate? Why do you define what she said to the driver of the other car as a beratement?

A Those are quotes from her, and I think if --

Q Wait a minute. 'What's the matter with you? Didn't you see the turn signal?" That's her quote, right?

A Correct.

Q Why do you define that as berating?

A The way that she told me she told these people, I think her words were that, "I went over to them and yelled at them."

Q There're more than two people or more than one

person?

A No. I may have that wrong. She went over and yelled to the driver.

Q All right.

A Yeah. Okay, I believe that -- well, I'm sure that it is her statement to me that these things were not said in a cool, calm way.

Q All right.

A Getting back, we have her berating the driver, making a call to adjust her social calendar, and then coming back, and then as the ambulance people were putting her husband in the ambulance, she decided that her dogs were getting restless and needed to have some space to run around, so she decided -- she got worried about her dogs and decided to take them home to let them out to run.

And so she drove her car off the premises. When she got home she placed another phone call then went to the hospital to check on her husband, not for herself but to check on her husband. And so I left out that the very first impulse that she had once the accident occurred was to check on her dogs. That was the very first thing she did. Again, in total, I would argue that that's not the behavior of somebody

who's been physically devastated or mentally shocked.

Q Let me ask you something. Do you think it's reasonable for someone who is on their way to have dinner with their mother when she knows they're not going to be able to make the dinner engagement to call ahead and say, hey, we're not going to make it. That's reasonable, isn't it?

A Well, let me rephrase it. Of course it's reasonable as stated. It is not reasonable in the context of somebody who's arguing that her life has been ruined by an accident or that her life has been significantly damaged by an accident.

Q Would you expect -- first of all, you would agree that someone that has a physical injury like a car accident can cause the onset of depression where someone is predisposed; would you agree with that generally?

A It can happen, yeah.

Q Would you expect -- strike that. Do you have any patients or have you treated anybody or given the opinion that someone's depression was a direct and proximate result of a motor vehicle accident or other bodily injury?

A I believe -- I believe so.
Q Okay. In those -- first of all, would you expect that someone who was rear-ended, would you expect them to immediately become depressed even before undoing their seat belt or getting out of the car?
A No.
Q That the symptoms of depression would have an immediate onset?
A Not the symptoms of depression, no.
Q All right. In the cases in which you've testified that you believed, it was your professional opinion that depression was brought on by a motor vehicle accident or other physical injuries, did the patients manifest the depression immediately after the impact or the bodily injury or did it take time for the depression to come on?
A It took time because what happens is uniformly the person shows lasting physical damage. The physical damage in turn becomes a depressing event, so what I'm looking for in this case is lasting physical damage.
Q Okay.
A Such people having been afflicted by lasting

physical damage don't make social calls immediately after the accident. They are in fact hurt, badly hurt.

Q We'll get into that. On page 1 of the report, under the section entitled Roots of Depression, the first sentence is, Ms. Collins suffered several stressors which may or may not have been sufficient to produce a mental depression, and you talk about, one, parental rejection; two, gynecological problems; three, hysterectomy four months before, and, four, job problems.

A Okay.

Q And then five, I guess her accident is a whole different topic?

A Correct.

Q All right. So am I correct in stating that you do not include the motor vehicle accident as one of the several stressors in that first sentence on page 1 that may or may not have been sufficient to produce a mental depression?

A That's not exactly correct. This is all under the heading of Roots of Depression, that is to say the predisposers and the other things that precede the accident that may or may not have been sufficient to cause it, yeah.

Q All right. So parental rejection is one of the predisposers?
A Yes.
Q Gynecological problems you feel is one of the predisposers?
A That, no. The parental rejection is a predisposer. The gynecological problems in general could be sufficient to cause a depression, but I wouldn't call them predisposers. They would be actuators, triggers. Same thing for the hysterectomy and the job problems. So we have one predisposer and three traumatic events or stressful events, I should say.
Q So the gynecological problems, the hysterectomy and the job problems are potential actuators?
A Yes.
Q All of those happened before the accident?
A Correct.
Q And is there any history of depression in this woman before September 23rd, 1991?
A None that I know of.
Q Do you think that if there was a history of depression that you'd know about it in the case where depression is the injury being claimed?

A That is generally true, yes.
Q Okay. Now, under the section entitled Parental Rejection, the last sentence says, perhaps as a consequence, Ms. Collins had no children. She told me, "I decided I wanted dogs."
What from your interview with her makes you make that statement, perhaps as a consequence of parental rejection she had no children? Did she say, because I had such a horrible childhood I didn't want kids, or because of the way my mother treated me, I didn't want kids? Did she make that kind of statement to you?
A No. I don't recall her making a statement like that.
Q Do any of the medical records contain any evidence that she did want kids?
A None that I can recall, no. She generally says that she did not want kids, and I'm sure that she told me that.
Q All right. So based on the fact that there's no history of depression before September 23rd, 1991, say to a reasonable degree of psychological certainty that Mrs. Collins' painful periods, her gynecological problems did not cause the onset of depression before September 23rd, 1991?

A That's -- the information that we have at hand suggests that, that's right.

Q Besides depression, do any of the medical records that you have indicate any unusual mental reaction to any of her health problems short of depression?

MR. MEADOR: What was that question again? I'm sorry.

Q Do any of the documents that he has in his file, any of the medical records, indicate that Karen Collins showed an unusual mental reaction to her health problems short of depression? You used the term odd in a couple places in your report, any odd mental reactions or unusual mental reactions?

A No. I don't recall any records showing that she was depressed by her gynecological problems, for example.

Q Okay.

A Yeah, I recall no such records.

Q Other than her hysterectomy -- strike that. If a person -- if a woman who had a hysterectomy and was predisposed to depression was going to get depression from a hysterectomy, when would you expect the onset of depression to occur following

the hysterectomy?
A Within months.
Q One month?
A Months, plural.
Q Months?
A Yeah.
Q She had the hysterectomy in April of '91?
A I believe that's correct.
Q Okay. And between April of 1991 and September 23rd of 1991, approximately five months after the hysterectomy --
A Correct.
Q -- there's no onset of depression; is that correct?
A I have seen no records to indicate an onset of depression during that five-month period.
Q When you say -- getting back to that statement about medical and psychiatric experts caution a hysterectomy can cause negative mental reactions including depression, is that something you learned in your schooling or your education, other education and training?
A Yes.
Q Have you ever -- strike that. Besides the research you did for this quote on the

hysterectomy on footnote 10, did you do any other research, medical research for this report to this evaluation?

A Yes. In terms of pinning down what I had in my head, what I had been trained to do, again, an overview statement, I like to not only use my training but to buttress it with the opinions of others, particularly in medical areas where I'm on less solid ground. Well, having said that as a prelude, I did some research on drug side effects.

Q In the Physicians' Desk Reference?

A Yes, and a few other references involving drugs.

Q Well, the problem list -- no, that's a medical record. Footnote 22, is that the other source?

A Yeah. That is -- well, that's one of the other sources dealing with drug side effects, that's correct, yeah, there are two others there, as I recall.

Q PDR?

A There's the PDR, there's Psychiatric News, and then there's an article by Michelson and Marchione.

Q I see, okay. Now, am I interpreting your report correctly that the hysterectomy alone did not

actuate the onset of depression?

A That -- there are no records to support that statement. This is a place where I'm -- I feel quite ambiguous. Here we have an event that is often targeted by experts as a cause of depression, yet there is no written evidence that it caused her depression, so I'm left kind of in 1imbo.

Q So you did not formulate an opinion to a reasonable degree of psychological certainty that the hysterectomy alone actuated the onset of depression?

A That's correct. I did not form such an opinion.

Q You feel that's a possibility, but it's not a probability, right?

A Correct.

Q All right.

A Yeah.

Q Now, the job problems is another potential actuator of depression?

A Correct.

Q Based on her predisposition of parental rejection?

A Yes.

Q And it appears from her records that between 1972

and 1992 she enjoyed continuous employment. Laid off but got right back into it in '83?

A That is ambiguous. She lists herself sometimes as, occupation housewife.

Q That was in the medical records in 1991, right?

A Okay, yeah.

Q Is that correct?

A Correct.

Q Emergency room record?

A Yes, right. And so --

Q So that was after the accident, '91, September?

A Yeah. I thought your question was has she been continuously employed for --

Q Well, let's look at footnote 12, Mrs. Collins' jobs before accident, from '72 to '81.

A Right.

Q Nine years approximately she was a secretary. Then from '81 to '83 she was also a secretary?

A Right.

Q Then from right after that, '84 to '92, import business?

A Yes.

Q So for approximately 20 years she was gainfully employed during all or most of those years?

A Yes, with --

Q Based on history?
A Well, again, I would say that she was gainfully employed clearly between 1972 and 1983. If she defines her craft business as a, I don't know, a hobby or an avocation with her primary employment being that of homemaker, then I couldn't really agree with that, that she was employed from 1984 to 1992. All I'm saying is that she seemed somewhat ambiguous about whether that was employment.
Q You said she worked between zero and 65 hours a week?
A Right. It sounds like employment to me. I will grant you that.
Q Okay. It sounds like a pretty intense schedule, doesn't it, 65 hours a week?
A Zero to 65 hours a week sounds often intense, sometimes quite relaxing, for example, when the zero -- when the hours are zero.
Q Now, a person who's predisposed to depression who can work a 65-hour week, does that demonstrate to you an ability to handle additional stressors in life?
A Yes. A work week of 65 hours suggests ability to handle psychological stressors.

Q Okay. And we also don't -- well, strike that. Do you have an opinion based on a reasonable degree of medical -- or reasonable degree of psychological probability or psychological certainty that her job problems, what you describe as job problems, were a direct and proximate actuator or cause of her -- of the onset of her depression?

A No, I don't have an opinion with respect to that.

Q Okay. Again, with respect to the job problems, it's a possibility, not a probability?

A Correct.

Q On page 3 in the first paragraph under job problems, she listed herself as a homemaker, and that's under medical records, that's footnote 13, that's from the Southwest General Hospital Emergency Room records on the day of the accident?

A Did you say this was on page 3?

Q Page 3, first paragraph, very top.

A I see, okay.

Q And there's footnote 13.

A Uh-huh.

Q Footnote 13 references a Southwest General Hospital --

A Yes.
Q -- record on the day of the accident?
A Yes.
Q Okay. And then later her counselor noted that she suffered a burnout, and that is Lee Sweeney's letter of 9-25 -- or, I'm sorry, 10-25-94?
A Correct.
Q And I have that and I see where it says -- yeah she says job burnout. Let's mark this as -- what are we up to -- 6.

(Plaintiffs' Exhibit 6 marked.)

(Off the record.)

Q I've handed you what's been marked as Exhibit 6.
A Yes.
Q Can you identify that for the record?
A The October 25th, 1994 letter from Lee Sweeney.
Q Is that something you have in your file?
A I believe so, yes.
Q Now, there's a reference in your report to job burnout and there's a reference in Lee -- you can hold on to that -- in Lee Sweeney's report to me about job burnout.
A All right.
Q Did you *go* into that topic of job burnout with Karen Collins at all?

A Briefly, yes.
Q What did she tell you about it?
A That she had two different problems. One was that she was tired of beating her head against the wall selling stuff that was increasingly -- for which there was increasing competition and lower demand -- therefore, lower demand.

In addition to that, she became tired of the business after the accident, and she suggested that the accident somehow lowered her motivation to work at this -- at this business.

Q What was it that lowered her motivation to work after the accident? Was it the physical injury from the accident or was it the onset of depression after the accident?
A Well, that's what's so ambiguous about the case. It was not the physical injury. She is the first to say that she got over her physical injuries relatively quickly, so we're really left with, why is she depressed after this accident? What is it about the accident that was depressing?

And here's in my opinion the big mystery in the case. Why is it that someone can experience an accident where she's somewhat concerned about her dogs and her husband, is assured that both of

them are fine, she has some stiffness and gets over that relatively quickly and then says that the accident is depressing to her. I spent a fair amount of time asking her what is it about the accident that was depressing and there's where I really got no answer.

Q What did she say?

A Something about the accident, and she shifted, it seems to me, from implying that she was terribly worried about her husband, at times she painted the picture of someone who was so worried about her husband during that particular period of time immediately after the accident, so worried about him that somehow that made her depressed later. That just doesn't hold water.

At other times she indicated that somehow it was the straw that broke the camel's back, a phrase that is often used by plaintiffs in more minor accidents. In trying to find out exactly what that straw was besides just a stroke of bad luck, again, 1 just couldn't find what it was about the accident that was so depressing. I mean, it didn't --

Q Well, we know she had a problematic relationship with her mother, parental rejection.

A Yes.
Q Right? Are you aware that her husband had a longstanding history of a back problem before the accident?
A That does not ring a bell. At this moment I don't recall that.
Q Might that be a legitimate reason to be very concerned about your husband? If the evidence in this case is that in 1983 he was diagnosed with two herniated disks between the fourth and fifth lumbar vertebrae and the fifth lumbar vertebra and the sacrum, that he experienced many years of pain and period of time off work and lost wages because of a back problem, and then immediately after the accident she asks, are you okay, and he says, no, my back hurts, isn't that something that might elicit a feeling of intense concern for your husband?
MR. MEADOR: Objection.
Q If you have -- I'm sorry, let me finish my question, if you have a concern that he's going to be reinjured or aggravated or worsened his already existing back condition?
MR. MEADOR: Objection, subject to your proof there, John, on what

you've said.

Q Okay.

A As a hypothetical?

Q Sure.

A In this particular -- of course, in the abstract it would raise one's worry. The question is in this case how much would it raise one's worry that, you know, that my husband here has been in an accident, number one, and, number two, he has a history of back problems.

Her behavior just doesn't conform with that kind of panic. While they were loading him into the ambulance, her thoughts were on the restlessness of her dogs. While he was in the car, her thoughts were on berating the people behind her and making sure that a mother didn't cook an extra dinner for them, or thoughts were on her social calendar.

Q Well, they were on their way to a restaurant. Did you know that?

A I believe that's correct -- well, that I don't know about.

Q Okay. You don't know?

A But I do know that later on that day they were scheduled to eat dinner with, I think it's his

mother. I don't remember, one of their mothers.

Q Do you know who called the ambulance or the police?

A Hang on. I don't know.

Q Is it common for people who are injured to feel anger toward the person that injured them?

A It depends how severe the injury. For minor collisions where the person was not physically injured, yes. For collisions where, you know, there's a substantial brain damage or heavy physical injury, the person's thoughts naturally are not ones of being angry. They're struggling to survive. They're terrified. They're anxious, so on.

Q Was Karen Collins in your opinion injured in this case from this accident, physically, bodily?

A The answer to that is, in my opinion -- let me rephrase that. I have read records suggesting that she was injured. It's just that the injuries were minor and they -- she got over them very quickly. By quickly I mean within about two and a half weeks.

Q Okay. Now, the last sentence of the Her Accident portion, you said then Mrs. Collins drove to the hospital where physicians reassured her that her

husband was fine.

A Yes.

Q Do you know -- you understand that she was also examined and treated at the hospital? She underwent x-rays and was given medications for pain?

A Yeah. That would be right after Her Accident under Her Other Stressors Persisted. It goes on to talk about the physician's diagnosing strain and so on.

Q Right. You've heard of the term a cervical sprain-strain or lumbar sprain-strain?

A Yes.

Q Okay. Have you ever treated injuries like that before?

A Well, I've never treated physical injuries like that. That's not my job.

Q Okay. You're not a medical doctor, so you're not licensed to treat those types of injuries, right?

A Right, right.

Q Now, do you know whether it's a common -- whether it's common that these types of injuries manifest themselves hours after the impact? Is that a common sequela that these things manifest later as opposed to immediately?

A While this is not my area of expertise, it's my understanding that there can be a delayed onset. Sometimes it's immediate and sometimes it can be delayed.

Q Okay. Now, the complaints of dizziness and lightheadedness and stiff back, do you know whether those are common symptoms in patients who suffer cervical sprains and strains from car accidents?

A Again, this is out of my area of expertise, but I don't recall dizziness and lightheadedness being symptoms. Stiffness, I believe, is.

Q But you're not a medical doctor --

A Right.

Q -- nor expert, so you can't say with any degree of certainty?

A Right. I would rather just rely on the opinions of the physicians.

Q Why did you comment that she refused to remove her slacks because she insisted that she had pain only in her neck?

A I don't know. She mentioned it or it was in a record, and it's not a big deal, but it does show someone that is in control of her life. She has her wits about her.

Q All right. Your next statement is the physical effects of her accident seemed to disappear within weeks, but unrelated ills persisted. Let me just -- okay. On Dr. Walborn's note of November 19th, 1991 it says neck and upper back pain resolved, under the title of **MVA, MVA.** In physical therapy two times a week, neck and upper back pain resolved. Is that --

A What is the date of that?

Q November 19th, improved, and **MVA,** in physical therapy --

A Uh-huh.

Q -- two times a week, neck and upper back pain resolved.

A Yes.

Q Then the impression is depression?

A Uh-huh.

Q Continue Prozac?

A Yeah.

Q So it's more than just a couple weeks or several weeks from the accident that it took for her physical effects to disappear. You say within weeks, but it was actually almost two months.

A Well, I don't think that you can conclude that from this document at all. It is also -- I could

write a note today if I were a physician and write that Karen Collins' neck and upper back pain have resolved. I could write that today and I would be correct. They resolved years ago.

Q Well, the previous note of October 29th, 1991, follow-up says neck pain improved. Complaint of increased housework with something increased pain, lumbar pain, walks with hands on back. That's indicative of pain from the accident, right?

A All right. Let me look. Where are we now?

Q Right here. Follow-up, October 29th.

A I see.

Q Neck pain improved, with increased housework, increased pain, lumbar pain, walks with hands on back.

A Yes.

Q So that's indicative of some pain, right?

A Yes, that appears to be indicative of at least some pain. That's right. It says neck pain improved. Also over here says something about hot packs and massage two times a week.

Q Physical therapy?

A Suggesting, and I think it is Feldene, so, yeah.

Q That's a drug for --

A For pain.
Q -- for pain?
A Right, okay. So I think you've got some handwritten notes suggesting a slightly longer time frame.
Q Yeah. And that's a week -- that's the first appointment after the accident, right, October lst?
A Uh-huh. One other comment that I need to make, the accident was on September 23rd. October 17th, this would be like four weeks we're finding -- no, I'm sorry, October 29th would be a little over a month, so instead of my two and a half weeks, we've got basically four or five weeks, okay. Go ahead.
Q Well, October 29th and then -- so between October 29th and November 19th apparently it resolved because it says --
A Right.
Q -- neck and upper back pain resolved on November 19th, right?
A Yeah, yeah, so -- yeah, uh-huh.
Q So it's -- in reality it's actually longer than stated in your report?
A By a few weeks, although again, it's -- there's

no doubt you are correct. The October 29th thing suggests some pain. I'm just -- I guess the reason I'm confused is that the October 17th note which is typed doesn't mention pain, seems to be much more focused on other things. The typewritten note at the bottom of the October 29th thing doesn't mention it. I mean, it's -- but, yes, I will concede that instead of two and a half weeks, it's more like five weeks, she was well within five weeks instead.

Q All right. And possibly up until November 19th based on the note, neck and upper back pain have resolved, it's conceivable that the day before on the 18th she could have said, gosh, I don't feel any pain, but I had pain yesterday.

A Yes, it's conceivable.

Q The next section -- well, the next section is Her Other Stressors Persisted.

A Yes.

Q What other stressors are you talking about there, unrelated physical ills and her mother-in-law dying?

A Unrelated physical ills, and that's the important one and then the mother-in-law's death, and then the third thing is the depressing drug side

effects. Those are also --

Q We'll get into that in a second. I want to talk about unrelated physical ills.

A Okay.

Q You said, for the next two weeks she complained of many physical ills but some seemed unrelated to her accident. Which ones seemed unrelated to her accident?

A Hot flashes, dry skin, can't stand heat and cold and a change in her hair texture.

Q What's that related to?

A I'm sorry? What?

Q What's that related to?

A I don't know. It just seems unlikely to me, not being an expert in this field, but it just seems unlikely to me that a change in her hair texture was caused by the accident.

Q But in terms of the dizzy, lightheaded, stiff back, aching shoulder, back pain, neck pain, spine tight, pressure and pain in the spine, you think those are all related to the accident?

A Sound like it, yeah.

Q All right. Now, you said on page 4, the top of the page, beginning four weeks after the accident, documents suggest that her complaints

were unrelated to her accident. Now, the first one is stomach queasy, poor sleep, and that's on the 17th of October, 1991, Dr. Walborn?

A Uh-huh, yes.

Q Now, she was on Prozac from October llth, right, 1991?

A That sounds correct.

Q Isn't stomach problems and gastrointestinal problems a common effect of Prozac?

A I believe it is a side effect, that's correct.

Q So would that explain the queasy stomach on October 17th?

A It may. My only point would be that Prozac is not the accident.

Q Also constipation is a side effect of Prozac?

A That may be true.

Q And blood in stool is also a side effect of Prozac? Did you check the PDR on that?

A I don't know.

Q Did you check the PDR for side effects on Prozac?

A No, I didn't think I did in this case.

Q Okay. 18 days after the accident, Dr. Walborn on October 11, 1991, makes a note about depression, October 11, '91 note?

A October llth of '91. I think I've -- I don't

seem to have yours. I can look at yours.

Q October llth, '91.

A All right.

MR. MEADOR: What are you referring to?

Q This is Mary Walborn's office note, October llth, 1991, was in car accident, seen last week. What's Robaxin?

A It's some drug, but I don't know.

Q She was in an MVA and sustained cervical strain. She currently is having problem with her lumbar spine and increased pressure and pain. She has paraspinal muscle tightness in the cervical lumbar area. Impression, paraspinal muscle tightness. She was to continue hot packs, ultrasounds and massage.

Impression number 2, depression, it seems like this accident clinched an underlying despondent attitude since her hysterectomy. I started her on Prozac and referred her to Dr. Savinsky.

A Yes. You've read that correctly.

Q So it appears that at least or at the earliest on October 11, 1991, she was feeling depressed.

A Yes, she was by that time, yes.

Q Okay. Do you agree that it was appropriate to start her on Prozac at that time?

A I think that's fine to treat her for depression using an antidepressant, yes.

Q What do you think about the statement, it seems like the accident clinched an underlying despondent attitude since her hysterectomy?

A That's ambiguous in my opinion. It is not ambiguous in one respect, and that is clinching an underlying attitude goes along with my point that she was predisposed to depression. It sounds like the experts are in agreement about that point, that she was ready to be depressed about something. This physician has chosen the -- or has concluded that the accident was the precipitator, and I don't agree with that.

But then again the physician is -- has not strongly stated it either. The wording, it seems that the accident clinched an underlying attitude is very close.

MR. LANCIONE: Mark this as the next one, up to 7.

(Plaintiffs' Exhibit 7 marked.)

Q Doctor, let me hand you what's been marked as Exhibit 7. Can you identify it for the record?

A Okay, yeah.
Q Have you seen that before?
A Yes.
Q What is it?
A It's a letter from Physician Walborn to you dated October 20th, 1994.
Q Okay. And in this report to me I think you referred to this letter to me as having -- as Dr. Walborn having reversed her opinion that the -- that she had depression following her hysterectomy or that the accident clinched an underlying despondent attitude from her hysterectomy?
A Yes.
Q Okay. And in fact in this report Dr. Walborn states that there is a causal relationship between the depression and the automobile accident?
A Let me --
Q Last paragraph.
A Yes, yes. See, this letter seems much firmer than her statements in the past concerning the role of the accident.
Q Okay. Now, on page 4 -- you can just set that down, thanks -- you say medical tests seemed to

show no effects of the accident, and then you list some x-rays done in the emergency room and then other, a mammogram and chest x-ray and ultrasound?

A Yes.

Q But really the only two tests that were done to diagnose conditions from the accident were the two x-rays in the emergency room, right?

A I believe so, yes.

Q Okay. What do you mean that the tests showed no effects of the accident? You mean the two x-rays were normal?

A Yes.

Q All right. That's not to say though that she didn't suffer these cervical sprain and lumbar strain, sprain-strain injuries from the accident?

A That's correct. It just goes on to say that she didn't damage her spine.

Q Are you familiar with the term soft tissue injury?

A Yes.

Q Do you know -- are you familiar with the fact that accident victims, especially rear-end collision victims are -- that this is a common injury to the neck and back from a rear-end

collision?
A Yes.
Q Have you ever heard the term myofascitis?
A Yes.
Q Do you know what that is?
A Well, again, outside the area of my expertise, but just sort of speculating along, it is within a cluster of terms, myofascial strain, fibrositis is another one that's similar.

Medical books generally are ambiguous about the cause and indicate that it may be physical, but then again it may be mental. No physical cause has ever been found. By that I mean the physicians don't understand the mechanism whereby the condition causes pain.

Q Your testimony is doctors don't understand why soft tissue whiplash injuries cause pain?
A Well, we're talking about myofascitis.
Q Yeah.
A What I'm saying is that the experts in the field, for example, Harrison's Principles of Internal Medicine, will tell you that the condition is not well understood and may have psychological as well as physical roots.
Q Harrison on internal medicine?

A Correct.
Q Opining about an orthopedic injury?
A Yes.
Q Okay.
A Harrison's Principles of Internal Medicine, yes.
Q Doctor, not being a doctor and not having treated the types of injuries that Karen Collins suffered in this accident, specifically cervical and lumbar sprains and strains, you're not familiar with what kind of pain these types of injuries can cause patients, are you?
A Well, it is outside the area of my expertise, that is true.
Q Okay.
A I do have some layman's knowledge of the problem.
Q Well, you didn't examine Karen and you didn't -- at the time that she was suffering these pains, you didn't ask her to gauge the pains on a scale of 1 to 10 or anything, so you don't know what her pain level was from these injuries, do you?
A That's reasonable. I do know what physicians have reported.
Q But you don't know specifically about Karen Collins?
A Well, no.

Q Okay.
A I've also asked her about her impressions of the accident, and she told me that she didn't think that she had anymore pain from the accident. She wonders if the depression isn't causing her current physical discomforts.
Q That's not what I'm talking about. I'm talking about her level of pain, the severity of pain. You don't know about that?
A Well, I'm telling you that I asked her about that issue when I examined her, and her response was that she had a -- some pain but didn't know where it came from, but if you're asking, did I ask her to rate it on a 10-point scale, my answer is, no, I did not ask her to rate it on a 10-point scale.
Q That was my question. Page 5 at the top, depressing side effects -- Depressing Drug Side Effects, physicians placed Ms. Collins on many sedating drugs that may have aggravated her depression and other preexisting complaints. Now, as a predicate, all these drugs were prescribed after the accident and after the onset of depression, correct?
A I believe, yes.
Q So you're not saying that these drugs caused her

depression, are you, because they were given after the depression came on, right?

A I believe that to be true, yes.

Q And you got your information from a -- let's take a look at footnote 20, the problem list flow sheet, and medication flow sheet, 1-92. Is that this? Do we have the same document?

A Yes, that's the one.

Q Okay. Look at that. Now, the first entry is January of '92, right?

A Yes.

Q So under the problem, second problem, depression, we have Prozac, right?

A Yes.

Q But we know that was started in October of '91 --

A Uh-huh.

Q -- from Dr. Walborn's office note, right?

A Yes.

Q October llth, okay. And that was continued through at least 1-93?

A Yes.

Q And we have Valium and that was started in when, January of '92, it looks like?

A Looks like January of '92, yes.

Q Do you know whether it was started earlier?

A That I don't know.
Q Okay. And the Klonopin, is that how you pronounce that?
A I believe so, yes.
Q Let me back up to Xanax.
A Yes.
Q What's Xanax?
A Xanax is a drug that's very much like Valium. It's a tranquilizer.
Q And that was also started in January of '92?
A Well, you know, I'm not sure how to read these notes. There's an X under Xanax for October of '92, and 1 don't know whether that means that it was just represcribed then as refills or whether it was started then for the first time. I just don't know.
Q Well, looks like April 13th, '92, Xanax, 25 qd, on Prozac, and I didn't see Xanax anywhere else in the records, so --
A Uh-huh. Well, she was taking that at the time of my exam --
Q All right.
A -- as well.
Q So also the Xanax was prescribed and taken several months after the accident, after the

onset of depression, correct?

A That I believe is true.

Q Same with the Klonopin, the anticonvulsant?

A Yes.

Q It looks like 12-92 and 1-93?

A Uh-huh.

Q I'm just going by her chart here, if you go back to a note in December of '92 --

A Yeah.

Q -- it says Klonopin, .5 milligrams.

A Yes.

Q Okay. So that's, again, well over a year after her accident?

A Yes.

Q First time?

A Well, I don't know whether this document purports to list the very first time she took these medications.

Q But looking in the chart we can tell.

A We do know she was taking them.

Q Let me just ask hypothetically, if her depression was actuated by the accident, does it follow that these drugs are then prescribed as a result of the accident because they're prescribed for her depression, hypothetically?

MR. MEADOR: Objection.

Q Noting your opinions in this case.

A Right.

MR. MEADOR: Objection.

A No, that does get at the root of the problem here. These drugs were also prescribed, and again I don't mean to be facetious here, but these drugs were also prescribed after her birthday and after she closed her business and, you know, the point is the drugs were prescribed after a number of events.

Q Sure.

A The teasing apart which one is the --

Q I understand.

A -- cause is different.

Q But if -- let me just ask you this hypothetically. If you have held the opinion that the -- there was a relationship between the accident and the depression, is it reasonable then for Valium, Xanax and Klonopin to be prescribed for depression?

MR. MEADOR: Objection. Again, this doctor does not prescribe these drugs.

MR. LANCIONE: I know. I'm going

to get into that in a minute too.

A Yeah. I'm going to echo that sentiment and further add, and I hope I'm answering your question here, Xanax, Valium and Klonopin are not considered to be antidepressants. Far from it, they're considered to be sedating drugs which, again --

Q Aren't they -- I'm sorry.

A -- a physician will have to --

Q You would defer to a physician for the reason for these prescriptions, right?

A Well, what I was going to say is that a physician will have to confirm what I'm about to say, but generally these drugs would aggravate depression. They're -- one of their side effects in almost every case is major symptoms of depression, so it's quite confusing as to why she would be taking depressing drugs for depression.

Q Do you know whether these drugs were prescribed to help deal with some of the side effects of Prozac?

MR. MEADOR: Objection.

A Number one, I've never heard of that, and, number two, at the time of my exam she was not taking Prozac, but she was taking Xanax and Klonopin.

Q Was she taking Effexor also; do you know?
A Yes.
Q That's an antidepressant?
A That may well be true.
Q Is one of the side effects convulsions and tremors, Effexor and Prozac?
A While that may be true, while that may be listed, it's quite unusual in my experience with my depressed patients to have patients on a tranquilizer, depressed patients.
Q You've never prescribed any of these medications, Xanax, Valium or Klonopin?
A Correct.
Q You're not permitted to by law?
A Correct.
Q Your sole source of information on Valium, Xanax and Klonopin as contained in this report is from the PDR and other references --
A Right.
Q -- in your footnotes, correct?
A That's correct, and I might add my experience with my patients and my training. While I'm not competent to prescribe these drugs, I did get some training in them.
Q You're not a medical doctor, as we've

established. You're not a pharmacologist.
A That's correct.
Q You're not a pharmacist, correct?
A (Indicated affirmatively.)
Q Note the witness is nodding his head affirmatively.
A Yes, and also I said that's correct.
Q Okay. The next section is Physically Active. What's the significance of this aspect of her?
A There are -- the major significance is that she is telling us that she is basically over the physical problems of the accident. The -- I would argue that the medical records suggest that she is over the physical impact of the accident. This is further confirmation of that.

We've got somebody going to high impact aerobics classes. I mean, I think this is quite consistent. She is not maintaining that she suffers from serious physical injuries that were sustained by this accident, and she acts that way.

Q Okay. Page 6, Odd Mental Symptoms After Her Accident. Why do you describe it as odd? What's odd about her depression?
A Well, if you just quickly go through, there are

lots of inconsistencies. Let me preface it by saying I agree she's depressed at the time that I saw her, so I don't want to make too big a thing out of this.

But Sweeney diagnosed a temporary depression, one which by definition lasts no more than six months. Her physician suspected mania, a very much different kind of mental disorder.

Later she was talking about not wanting to go to therapy because it would bring back too many memories of the accident. That is odd that the accident, as described, an accident where she did the things that she did, she would now be phobic about remembering those things. I'm trying to think back about what part of the accident she would be afraid to remember. Would it be the part where she's calling to cancel her dinner or where she needs to get her restless dogs home? I'm just trying to think where the traumatic part would be.

Q What about the physical pain and what about the anger? Those might be things she doesn't want to remember.

A She had, as far as I could tell, no physical pain during the first four hours after the accident.

Q So you're limiting this to the first four hours of the accident, her not wanting to hear things about the accident?

A Yeah, for fear it would bring back too many memories of her accident.

Q So you don't consider any of the pain she suffered something related to the accident?

A No. That's not what I'm saying.

Q All right. I know what you're saying.

A But she says she doesn't want to remember the accident, I assume that she means the accident and not the pain that occurred four hours afterwards or four weeks afterwards.

Q Isn't that speculation on your part by limiting that for this report?

A I consider it to be just a reading and interpretation of the words. The word is accident, not pain.

Moving along, she -- while working, she endured symptoms of depersonalization. There is no such symptom of depression. Depersonalization is a symptom of anxiety but not depression.

And then finally there was that odd thing the counselor wrote, Karen came to my home for this session. Her trauma over memory based

anxiety makes it impossible for her to see me in the office. I don't understand.

Q Okay.

A She needs to see her therapist at home because of the accident. I just -- that's odd. And then finally, the last odd thing is that 1 believe that my fellow professionals were in the same boat, they even started wondering, well, maybe she's brain damaged. So they sent her off for an evaluation of brain damage trying to nail down why she's showing some of the symptoms she's showing. That's why I called it odd.

Q All right. Now, you're saying that Counselor Sweeney's diagnosis of adjustment disorder with depressed mood, 309.00 from the **DSM-III-R** --

A Right.

Q -- is a temporary depression?

A There's no doubt about it.

Q All right. Can a temporary depression such as adjustment disorder with depressed mood become a dysthymia?

A Yes.

Q What's a dysthymia?

A A chronic depression that must last at least two years, keeping in mind that Sweeney diagnosed

this adjustment disorder years after the accident.

Q Well, why don't you turn to the first office note of Lee Sweeney?

A The date of that is?

Q October 23rd, 1991, a month after the accident.

A October what again?

Q 23rd.

A 23rd.

Q Sweeney, not Walborn. Here.

A Right. Show me, okay. I got it somewhere else.

Q Here's Clinical Counseling Associates, Lee Sweeney.

A Okay.

Q Background, then my hole is punched out, October 23rd, 1991.

A Okay.

Q History, I am diagnosing her as 309.00 **DSM-III-R.**

A Okay.

Q So she made a diagnosis within a month -- you know what, that was November, November 23rd -- no, October 23rd, 1991.

A Okay.

Q so --

A All right. I did -- all I'm saying is that --

Q Do you agree that's an accurate diagnosis at that time of her condition?
A That -- well --
Q 309?
A I'm not sure whether that was an accurate diagnosis at the time. From the standpoint of the time frame, it's perfectly legitimate. In other words, adjustment disorders must occur within three months of the trauma, whatever the identified trauma is, then they can -- but my point is they can only last six months. So this diagnosis at least makes that time frame. The question is whether or not Sweeney diagnosed that again later outside the time frame.
Q Then you said, but her physician suspected a longstanding genetically-based problem called mania.
A Uh-huh.
Q And then let's -- and I think you got that from a September 1st, 1992 note from Dr. Walborn.
A Yes.
Q I am concerned that there were some periods in her life that could be interpreted as such elevated moods that could be a manic phase.
A Yes.

Q So based on that statement, you say that Dr. Walborn suspected a mania? That's your interpretation of that?

A Yeah. The letter goes on to say, if so, we should medicate her with a medication, as I recall, specifically designed --

Q Lithium.

A -- to cure mania.

Q Was she ever prescribed lithium?

A I don't think so.

Q Was she ever diagnosed as having mania?

A No. I have, as stated, said that the physician suspected. I think that's a fair interpretation of what you just read.

Q So if there's never any diagnosis, why bring it up in this report? What's -- was there any evidence of a mania?

A You would have to ask the physician why the physician speculated that there was a mania. I would assume that the physician doesn't randomly pick mental health labels and just throw them in, that she suspected it because she suspected it.

Q And Observed Behavior on page 7, was her observed behavior consistent with depression?

A Yes.

Q What's the significance of mentioning the little quip that you guys had, I'll bet you want a copy of this test and she smiled, laughed a little and said, no, I don't think so?

A Well, it was meant to balance out my major statement which is that she showed essentially symptoms of depression, emotionally flat, apathy, little sparkle, long latencies and so on, she was capable of laughing a little.

Q Anything wrong with that, uncommon or unusual?

A No.

Q Okay. Normal Cognitive Tests, Martin's test showed no brain damage, and you're referring to his report?

A Yes.

Q Your tests showed no brain damage?

A Correct.

Q Okay. Your MMPI test showed depression?

A Yes.

Q Okay. And your Personality Assessment Inventory showed depression?

A Yes.

Q Now, DSM-IV, I don't have that. What was your DSM-IV diagnosis for her?

A It was that she suffered from some form of

depression, and I was not clear about the type. The two major candidates are dysthymia and sedative-induced mood disorder, so this amounts to provisional diagnoses.

Q Is one more likely than the other of those provisional diagnoses?

A No, I think they're about equally likely at this point.

Q Okay. Now, on these axes, these axes used by the DSM-IV, her personality disorder warrants no diagnosis. Does that mean she doesn't have a personality disorder?

A That's correct.

Q Okay. Her Clinical Disorder, on this dimension Mrs. Collins' diagnosis is depression, okay, but the type is unclear. She suffers from a dysthymia. She may suffer from dysthymia and may suffer from sedative-induced mood disorder?

A Right.

Q Her General Medical Condition, medical records show that Ms. Collins has suffered years of gynecological difficulties and these were stressful enough to prompt surgery. Why did you use the term stressful as opposed to painful?

A Well, pain and stress kind of go hand in hand,

and so --

Q Okay. The next axis is Psychosocial and Environmental Problems.

A Yes.

Q In the past year Ms. Collins' stressors have included marital problems and her lawsuit.

A Uh-huh.

Q Now, obviously the lawsuit was a result of the accident, right?

A That's fair to say, yeah.

Q And her marital problems, do you know when her marital problems arose?

A No, I really don't, although I do know that some of them have occurred after the accident.

Q After the onset of depression?

A After the accident, yeah, and probably after the onset of the depression.

Q And the Global Assessment of Functioning, that's Axis V?

A Yes.

Q What did that show?

A A moderate level of psychological problems.

Q So her depression is moderate depression; is that what that means?

A Yes.

Q Differential Diagnosis, she doesn't have -- doesn't fit the criteria for post-traumatic stress?
A Right.
Q You say she doesn't suffer from an adjustment disorder because of her temporary, but you do agree an adjustment disorder can evolve into an dysthymia?
A Yes.
Q What's secondary dysthymia?
A I don't think I've ever heard of that term, secondary dysthymia.
Q Okay.
A It may be one that someone is using in some sense.
Q Now the big issue, Causes of Ms. Collins' Mental Problems. First sentence reads, it is clear that the accident was not the sole cause of Ms. Collins' depression and that many stressors caused the depression. Now, by using that term sole cause, I interpret that as saying, although not the only cause, it was a cause among -- together with many other things.
A No. That is not what I intended.
Q That's not what you're trying to say?

A This being a complicated case, difficult one, I'm trying to rule in and out as much as I possibly can unambiguously. All I'm saying here, we can all agree, I believe everybody will agree that the accident was not the sole cause, but look at the next sentence. The remaining question is whether the accident was one of the stressors that contributed to the depression.

Q Now, see, that also doesn't mean to me -- let me just tell you my interpretation, why I asked the question. On the second sentence, it says the remaining question is whether the accident was one of the stressors that continues to contribute to her depression.

I'm talking about causation. I'm talking about in September, on September 23rd, 1991, and the onset of the depression within a month of that accident as a cause, as a straw that broke the camel's back, as an actuator or activator as we've used the term earlier.

A Yes.

Q Do you have an opinion to a reasonable degree of psychological certainty as to whether the accident was a cause of the depression, an activator or actuator of the depression?

A All right. Let me think about this.
Q Just because your second sentence talks about it continuing.
A Right.
Q I'm not talking about continuing after October, after its onset, but I'm talking about what caused its onset.
A Right. My answer is no, I have no opinion within a reasonable degree of psychological certainty about whether or not the accident contributed. It may have and it may not have.

To put it in its reverse form, I know this is ambiguous, it is clear to me -- in other words, I have an opinion that there were several things that contributed to her depression listed in the report. The accident is not sufficient to explain the depression.

On the other hand, I don't know what's causing it and that's my problem. That's the weakness in my testimony is that I don't have, with a reasonable degree of psychological certainty, some alternative cause.

Q We talked about her being predisposed from parental rejection and we talked about other potential actuators or activators, activators is

what we used, activators of the depression, and we talked about gynecological problems, painful periods as a potential activator of the depression, the hysterectomy four months before it and job problems in the past.

But we know that the job -- well, your testimony in that was already on the record, but then we have her accident as another potential activator, but you don't have an opinion as to whether any of those activators we just talked about was a cause of the accident -- or a cause of the depression?

A I believe that in descending order that it's clear that her parental rejection was a cause. Whether it's the sole cause or not, I don't know. I doubt it. But a cause with a reasonable degree of psychological certainty, her childhood experiences with her mother were a cause.

Q Predisposal?

A Or her parents, right, and therefore a cause.

Q Okay.

A Her gynecological problems, broadly speaking, were more likely than not a contributor. Those, by the way, included not only the difficulties that she had before the accident but as I recall

afterwards she had some --

Q -- urinary tract infections, things like that?

A Right, and breast -- dense breast tissue.

Q Right. All after the accident though, right?

A I'm sorry?

Q The mammograms were after the accident?

A Right.

Q '93, '94?

A Right, and broadly conceived, those are part of her gynecological problems. It is -- my sense is that after her hysterectomy it becomes very disappointing when you have yet more gynecologically oriented problems like breast masses. So that was clearly a contributor in my opinion.

The -- it is also though clear to me that the accident was of such a small magnitude in terms of it being benign that its contribution to her ongoing depression couldn't possibly be significant.

Q Let me stop you there. She didn't have depression at the time of the accident, did she?

A Correct.

Q Why do you say contributing to her ongoing depression? It didn't happen until after the

accident, so it couldn't have been ongoing.

A 1 mean by that the notion of predisposition, that she was already predisposed. She had something that the average person does not have, and so again, the problem with the accident is that its effects seemed to clear up so quickly.

Q All right. Let me ask you this. Can you say to a reasonable degree of psychological certainty whether she ever would have become depressed had she not been in this accident?

A I don't know. I cannot at this point say that. I don't -- not with a reasonable degree of psychological certainty.

Q Do you have an opinion as to whether the childhood problems alone, nothing else, are sufficient enough to cause her depression?

A Yes, and my opinion is that they are not sufficient by themselves.

Q Same with the gynecological problems, those by themselves are not sufficient to cause depression?

A Let me make a fine hair-splitting distinction here. The gynecological problems by themselves, meaning if she had never had a bad childhood?

Q Right.

A If she simply had the gynecological problems, I doubt that they would be sufficient to cause depression by themselves.
Q Now, add the factor, the reality that she did have parental rejection, were the gynecological problems in this case alone enough to cause the depression?
A They are enough in this case.
Q But you can't say one way or the other whether it did in fact cause the depression?
A Right, but they are sufficient. Those two major categories are sufficient to send somebody into depression.
Q And the other stressor you noted, the job problems, taking into consideration the childhood problems and parental rejection, it too is sufficient to cause the onset of depression?
A They are sufficient.
Q But you can't say one way or the other whether it was in fact in this case the cause of the onset of the depression?
A Correct.
Q Okay. Do you feel that -- do you have an opinion to a reasonable degree of psychological certainty that the medications she took contributed to the

duration of her depression?

A Yes. My opinion is that it contributed to the duration of her depression, her medications did.

Q The fact being that they were not prescribed until after a depression was diagnosed, the medications did not cause her depression in September and October of 19913

A That's right, yeah. Assuming that the drugs were given after the depression started, and while that appears to be the case -- I'm not sure about that, but while that appears to be the case, yes, then the drugs would be an aggravator, which is basically what I said.

Q I thought I would get a refund today, Doctor, but I guess I was wrong. Those are all the questions I have.

- - -

REDIRECT EXAMINATION

BY MR. MEADOR:

Q I have a couple questions just to clarify, Doctor. What you're saying is that you don't know the cause of the depression; is that correct?

A Yes.

Q And taking all of these different factors, the

job problems, the hysterectomy, the gynecological problems and the accident, you can't say whether any of those were the cause of this accident; is that correct?

A The cause of the depression?

Q I'm sorry, cause of the depression?

A Yeah, that's right. And another thing I'm trying to say, obviously, I'm telling you it's a confusing and difficult case, but I'm saying that the -- that I can rule out the accident as being a major cause of the depression. The trouble is, and this is my -- I understand that this is my weakness in the case, I don't -- I'm unable to propose the -- a combination of other causes to a reasonable degree of psychological certainty, so that's my problem.

Q So you can rule out the accident as a cause of the depression, but you can't say definitely what was the cause?

A Right. It makes no sense to me that an accident of this magnitude could cause the kind of depression that she's showing, years of depression after an accident like this. It just doesn't make sense to me.

Q With respect to the depression itself, apparently

you are conceding that it was not diagnosed until October of '91, which would have been approximately a month or so after the accident?

A Right. That sounds about right, uh-huh.

Q Do you know whether or not the depression existed before the accident but went undiagnosed? Can you say?

A There is no evidence for that, so by definition, I'm left to sort of wonder and speculate, but there is no evidence that I know of of a depression before the accident or before the hysterectomy.

Q Okay. You can't rule out that there was depression that occurred after the hysterectomy but before the accident, can you?

A I can't because -- I mean obviously I need to operate on evidence. There is no evidence of a preexisting depression. On the other hand, I note a sort of dearth of records in that window, that five-month window between the hysterectomy and the accident. I have -- I am not acquainted with lots of records during that period of time, and I must say perhaps to both concerned that if those records were to pop up, they would be quite relevant to the discussion.

Q I take that the reason why you said that there was some inconsistency in what Dr. Walborn said is that when you read her note, it seemed as though she attributed the depression somehow to the hysterectomy, but then when she wrote her letter, she discounted the hysterectomy and said that the cause was the accident?

A Correct. That's one of the parts of what I call odd, yeah.

Q All right. Thank you.

A You're welcome.

- - -

RECROSS-EXAMINATION

BY MR. LANCIONE:

Q The basis that you rule out the motor vehicle accident as a cause of the depression is the lack of severity it appeared to be to Ms. Collins?

A That's correct. Her behavior at the time of the accident and physician's opinions about her -- the injuries she sustained from the accident, both suggest a benign accident.

MR. LANCIONE: Okay. Great.

MR. MEADOR: Thank you.

MR. LANCIONE: Now, Doctor, I'm going to have this typed up today and

probably well into tonight and have it ready for testimony on Thursday. Do you want to read this before your testimony?

THE WITNESS: Waive.

MR. LANCIONE: Waive, okay.

(Deposition concluded at 12:36 p.m.)

(Signature waived.)

- - -

C E R T I F I C A T E

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

I, Constance L. Boyden, Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that CHRISTOPHER C. LAYNE, Ph.D. was by me first duly sworn in the cause aforesaid; that the testimony then given was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony so given as aforesaid; that this deposition was taken at the time and place in the foregoing caption specified.

1 do further certify that I am not a relative, employee or attorney of any of the parties or counsel employed by the parties hereto or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal of office at Toledo, Ohio, this 6th day of December, 1994.

Constance L. Boyden

CONSTANCE L. BOYDEN, RPR
Notary Public in and for the
State of Ohio

My Commission expires April 14, 1999