

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Doc. 284

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DEBORAH A. WALTERS,)
et al.,)
Plaintiffs,)
vs.) Case No. CV93-02-0751
JAMES B. NEWMAN,)
Defendant.) ORIGINAL
- - -

Deposition of JOSEPH G. NARCIUS, D.D.S., a
Witness herein, called by the Plaintiff for direct
examination pursuant to the Rules of Civil
Procedure, taken before **me**, the undersigned,
Michael G. Cotterman, a Notary Public in and for
the State of Ohio, at the offices of Messrs. Clegg
& Cox, 131 Columbus Street, Kent, Ohio, on Tuesday,
the 12th day of October, 1993, at 4:20 o'clock p.m.

COMPUTERIZED TRANSCRIPTION BY
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APPEARANCES:

On Behalf of the Plaintiffs:

Messrs. Clegg & Cox

By: Thomas A. Cox, Attorney at Law
131 Columbus Street
Kent, Ohio 44240

On Behalf of the Defendant:

Messrs. Buckingham, Doolittle
& Burroughs

By: Frank G. Mazgaj, Attorney at Law
10th Floor Akron Centre Plaza
Akron, Ohio 44308

- - -

1 JOSEPH G. MARCIUS, D.D.S.
2 of lawful age, a Witness herein, having been first
3 duly sworn, as hereinafter certified, deposed and
4 said as follows:

5 - - -

6 DIRECT EXAMINATION

7 - - -

8 BY MR. COX:

9 Q. Doctor, my name is Tom Cox, I represent
10 Deborah and Don Walters in this case.

11 Could you state for the jury, Doctor,
12 your full name.

13 A. Joseph G. Marcius, D.D.S.

14 Q. And your address, Doctor?

15 A. 1655 Brittain Road, Akron 44310.

16 Q. Doctor, in what field of dentistry do you
17 specialize, if at all?

18 A. I am a general dentist and I have a
19 special interest treating patients with
20 craniofacial pain.

21 Q. Can you tell the jury briefly your
22 educational background?

23 A. I graduated from Case Western Reserve
24 Universities School of Dentistry, 1979. Since that
25 time I have earned a fellowship with the Academy of

1 General Dentistry and have taken many courses,
2 especially related to temporomandibular dysfunction
3 and facial pain.

4 Q. These are courses after you graduated,
5 Doctor?

6 A. Yes, they are post-graduate courses.

7 Q. Can you estimate for the jury how many
8 hours you have had of these post-graduate courses?

9 A. Since 1986, over three hundred and fifty.

10 Q. All right. Doctor, how long have you been
11 licensed to practice dentistry in the State of
Ohio?

13 A. Fourteen years.

14 Q. Okay. Are you a member of any
15 professional associations?

16 A. Yes, I am.

17 Q. And can you tell the jury which?

18 A. American Dental Association; Ohio Dental
19 Association; Akron Dental Society; Fellow to the
20 Academy of General Dentistry; member of the Midwest
21 Implant Study Group; member of the American
22 Orthodontic Society; the Cranial Academy; and the
23 American Academy of Head, Neck and Facial Pain.

24 Q. Have you lectured in your field, Doctor?

25 A. Yes, I have.

1 Q. And where have you lectured?

2 A. I have lectured to the Tri-County
3 Chiropractic Association, given lectures to the
4 Akron and Stark Dental Hygienist Society and
5 lectures at Cuyahoga Falls General Hospital.

6 Q. Dr. Marcius, when was the first time you
7 had occasion to meet Deborah Walters, the Plaintiff
8 in this case?

9 A. Deborah came to me as a referred patient
10 on April 9th, 1991.

11 Q. And who referred her, if you know?

12 A. Dr. Tracy Price.

13 Q. Did you take a history from her?

14 A. Yes.

15 Q. And can you tell the jury what that was?

16 A. Patient came in and stated that she was
17 injured in a motor vehicle accident which dated
18 February 27th, 1991.

19 Q. All right. Did she give a rundown of the
20 complaints she had?

21 A. Yes, she did. We had initially discussed
22 with Deborah her chief complaints, and those were
23 neck ache with burning and throbbing sensations;
24 headache in the -- especially the occipital,
25 temporal and the vertex as well as general

1 headaches; ear and jaw pain, she felt that her left
2 ear pops and she had a fluid-like sensation in the
3 ear, and her jaw felt like locking.

4 Q. All right. Did you review Deborah
5 Walters' medical records, Doctor?

6 A. Yes.

7 Q. Did the history inform you as to when her
8 symptoms started?

9 A. Yes, I believe the emergency room report
10 was three days after the accident, which stated
11 that the symptoms had started following the
12 accident.

13 Q. Okay. Did you conduct an examination of
14 Deborah Walters?

15 A. Yes, I did.

16 Q. And can you tell the jury what that
17 consisted of, Doctor?

18 A. The head and neck examination I did on
19 April 9th, 1991, consisted of muscle palpation and
20 soft tissue and hard tissue palpations in the area
21 of the head and neck, and the range of motion of
22 the mandible was also evaluated as well as a
23 cervical evaluation, patient posture, examination
24 of the teeth, periodontal structures and
25 occlusion.

1 Q. What did the range of motion study show to
2 you, Doctor?

3 A. The range of motion of the mandible showed
4 maximum active opening without pain of 38
5 millimeters, and when she opened wider than that,
6 to 48 millimeters, she exhibited pain,

7 She had deviation of two millimeters.
8 Left lateral movement was ten and right lateral was
9 eight and there was a deviation of the opening of
10 two millimeters to the left.

11 Q. What did those indicate to you, if
12 anything?

13 A. What they indicate is there is a
14 structural problem in the mechanics of the
15 mandible, most likely related to the injury that
16 she incurred in the accident. And these were a
17 combination of injury to the joint itself, the
18 muscles that control movement of the joint, tendons
19 and ligaments of those structures also.

20 MR. MAZGAJ: Move to strike that
21 response.

22 BY MR. COX:

23 Q. Was Deborah Walters missing any teeth when
24 you examined her, Doctor?

25 A. Yes.

1 Q. Can you tell us which ones?

2 A. She was missing teeth number 2, 3, 4, 5,
3 12, 13, 14, 16, teeth number 18, 19, 29, 30, 32.

4 Q. Did she have bridge work?

5 A. Yes, she did, she had upper and lower
6 partial dentures replacing those teeth.

7 Q. Okay. Did you conduct any tests, Doctor?

8 A. My initial examination tests were
9 palpation tests, where we physically examine the
10 muscles and structures of the head and neck.

11 Q. Okay. Did you take any X-rays?

12 A. Yes, we did.

13 Q. And what did the X-rays reveal to you,
14 Doctor?

15 A. We had taken a Panorex X-ray and lateral
16 skull X-ray and six transcranial X-rays. The
17 transcranial X-rays showed the posterior and
18 superior position of the condyles.

19 Q. Do the X-rays, Doctor, reveal to you that
20 she had a history of grinding her teeth?

21 A. No, they don't.

22 Q. Did you review the M.R.I. report, Doctor?

23 A. I believe I did.

24 Q. Okay. Did that reveal anything to you, if
25 you remember?

1 A. That showed the same thing that I had
2 discussed with my transcranials.

3 Q. Were you able to arrive at a diagnosis?

4 A. Yes, I was.

5 Q. And can you tell the jury what that
6 diagnosis is?

7 MR. MAZGAJ: objection.

8 MR. COX: Pardon?

9 MR. MAZGAJ: objection, I was
10 objecting.

11 BY MR. COX:

12 Q. Okay. Go ahead, Doctor.

13 A. My diagnosis, based on the history, exam
14 and radiographs, is dislocation of the disk,
15 recurrent dislocation, capsulitis, abnormal
16 condylar position, trauma, sprained ligaments,
17 tendinitis, Ernest syndrome, temporal tendinitis,
18 myalgia myositis, cervical strain, cervical
19 dysfunction, headaches, and TMJ pain dysfunction
20 syndrome.

21 Q. Doctor, the diagnosis that you arrived at,
22 was that based upon the history and the X-rays you
23 did and the radiographs?

24 A. Yes, it was.

25 Q. Doctor, did you treat Deborah Walters?

1 A. Yes, I did.

2 Q. And what can you tell us did that
3 treatment consist of?

4 A. The treatment consisted of -- the actual
5 treatment was insertion of a mandibular orthopedic
6 appliance. And we also used physical medicine
7 modalities such as trigger point injections, moist
8 heat, electrical stimulation, ultrasound therapy.

9 Q. Was the treatment successful?

10 A. Yes, it was.

11 Q. Are there plans for treatment of Deborah
12 Walters in the future, Doctor?

13 A. Yes, Deborah is finished with phase one of
14 the treatment and she's ready for the second phase
15 of the treatment.

16 Q. And that consists of what?

17 MR. MAZGAJ: ~~objection~~.

18 THE WITNESS: The second phase of
19 treatment may consist of permanent type of bite
20 restorer appliances, which will keep the mandible
21 in the position that we have put Deborah in to keep
22 her in comfort.

23 BY MR. COX:

24 Q. And how would that be accomplished,
25 Doctor?

1 MR. MAZGAJ: ~~Objection~~.

2 THE WITNESS: That could be
3 accomplished by using her current treatment
4 appliance, where we have established the treatment
5 position of the mandible related to the skull,
6 taking impressions and doing laboratory procedures
7 to build a custom metallic framework for both the
8 upper and lower jaws.

9 BY MR. COX:

10 Q. Okay. What would the cost of that be,
11 Doctor?

12 MR. MAZGAJ: ~~Objection~~.

13 THE WITNESS: The approximate cost to
14 do that is about three thousand dollars.

15 BY MR. COX:

16 Q. Is **that** going to be a permanent treatment
17 or will you have to do subsequent work?

18 MR. NAZGAJ: ~~Objection~~.

19 THE WITNESS: Most likely, these
20 appliances typically last ten years, there are some
21 maintenance procedures that may have to be done
22 within that ten year time span.

23 BY MR. COX:

24 Q. What would have to be done over the ten
25 years, Doctor?

1 MR. MAZGAJ: objection.

2 THE WITNESS: Fabrication of new
3 appliances.

4 BY MR. COX:

5 Q. Okay. And would the cost be the same?

6 MR. MAZGAJ: objection.

7 THE WITNESS: The cost increases likely
8 will be more due to inflationary factors and
9 different things.

10 BY MR. COX:

11 Q. But it **is** the same treatment you would **do**
12 today?

13 MR. MAZGAJ: objection.

14 THE WITNESS: Most likely it probably
15 would be.

16 BY MR. COX:

17 Q. In other words, do **I** have you right that
18 you would just do the same thing after ten years
19 that you are proposing to do now, am **I** reading you
20 right?

21 MR. MAZGAJ: objection.

22 THE WITNESS: My feelings **of** treatment
23 today, that's what **I** would do in ten years.

24 BY MR. COX:

25 Q. Okay. **Is** there a way, Doctor, to give her

1 treatment that would be permanent, that would not
2 have to be redone after ten years?

3 MR. MAZGAJ: objection.

4 THE WITNESS: Another type of treatment
5 would be reconstruction **of** the mouth, where we
6 would have something fixed in the mouth and not
7 removable. That would involve use of implants and
8 crown and bridge work that would be fixed in the
9 mouth.

10 BY MR. COX:

11 Q. All right. Doctor, that treatment, what
12 would you estimate as the cost of that?

13 MR. MAZGAJ: objection.

14 THE WITNESS: The approximate cost
15 would be about fifteen thousand.

16 BY MR. COX:

17 Q. Doctor, can you tell the jury what might
18 cause temporomandibular joint dysfunction, what are
19 the causes of that?

20 A. The causes of the dysfunction, there are
21 many causes. In Deborah's case I believe her cause
22 is related to the trauma from the motor vehicle
23 accident.

24 Q. All right.

25 A. According to the history that Deborah gave

1 are and the findings on examination.

2 MR. MAZGAJ: I will object to that as
3 nonresponsive, he asked for causes not in this
4 specific case.

5 BY MR. COX:

6 Q. Doctor, can you tell us what might cause
7 temporomandibular joint dysfunction in a general
8 sense?

9 A. Growth abnormalities, trauma,
10 malocclusion, bruxism

11 Q. Which is grinding of the teeth?

12 A Grinding of the teeth.

13 Q Can a whiplash injury cause
14 temporomandibular joint dysfunction?

15 MR. MAZGAJ: objection.

16 THE WITNESS: Yes

17 BY MR COX:

18 Q. Is that accepted in your field?

19 MR. MAZGAJ: objection.

20 THE WITNESS: Yes.

21 BY MR COX:

22 Q. And can you cite authority for the jury to
23 that effect?

24 MR. MAZGAJ: objection.

25 THE WITNESS: Yes

Q - 90 to 100 pg.

1 BY MR. COX:

2 Q. What authority might you cite?

3 MR. MAZGAJ: objection.

4 THE WITNESS: Owen, Dr. Owen Rogal,
5 R-O-G-A-L, has a text, "Mandibular Whiplash." Dr.
6 Abdel-Fattah has a text, "Evaluating TMJ
7 Injuries."

8 BY MR. COX:

9 Q. Can you quote from that book for us, the
10 one you just cited in supporting this position?

11 MR. MAZGAJ: Note my objection.

12 THE WITNESS: On page sixty-three.

13 MR. MAZGAJ: objection.

14 THE WITNESS: On page sixty-three,
15 number three, "Upon injury, if the jaw is relaxed
16 and the teeth are apart so that the condyles move
17 freely in the fossa, trauma radiates from the
18 cervical to the mandible. This is an uncontrolled
19 displacement or distraction of the joint and will
20 cause soft tissue and cervical muscle problems and
21 pain."

22 BY MR. COX:

23 Q. Have you brought any other authorities
24 with you, Doctor, or have we covered them?

25 A. Yes, I have. I also have an article

1 written by Stephen Smith, who is a board member of
2 the American Academy of Head, Neck and Facial Pain,
3 and the article is entitled "TMD - Cervical Somatic
4 Disorder Correlated."

5 MR. MAZGAJ: objection note/my
6 objection, move to strike.

7 THE WITNESS: This article discusses
8 the nature of how the TMJ complex and the cervical
9 structures are related.

10 BY MR. COX: _____

11 Q. Can you explain to the jury, Doctor, how a
12 whiplash injury might cause temporomandibular joint
13 dysfunction?

14 MR. MAZGAJ: objection.

15 THE WITNESS: Yes, I can. The method
16 by which this occurs during whiplash injuries can
17 depend on both the velocity and the direction of
18 the force, the position of the head and the
19 position of the body, the head on top of the neck
20 and the shoulder.

21 Basically what happens during whiplash
22 injury is the neck goes through hyperextension,
23 hyperflexion, the mandible can be displaced by the
24 anterior neck muscles, changing the position of the
25 mandible related to the skull. If the head is in

1 an awkward position, this can cause damage to the
2 structures around the joint, leading to the
3 development of TMJ injury.

4 BY MR. COX:

5 Q. Doctor, based on your education, your
6 experience, the history, your examination and
7 treatment of Deborah Walters, do you have an
8 opinion to a reasonable degree of medical certainty
9 as to whether or not the condition you found and
10 diagnosed as TMJ pain dysfunction syndrome was
11 directly and proximately cause by the vehicular
12 collision of February 27th, 1991? Do you have such
13 an opinion, Doctor?

14 A. Yes, I do.

15 Q. And what is that opinion?

16 A. I believe that in fact the injury was
17 related to the accident and the symptoms occurred
18 directly as a result of the accident.

19 Q. All right. Doctor, again based on your
20 education, experience, the history, your
21 examination and treatment of Deborah Walters, do
22 you have an opinion to a reasonable degree of
23 medical certainty as to whether or not the
24 condition you found and diagnosed as dislocation of
25 the disk was directly and proximately caused by the

1 vehicular collision of February 27th, 1991?

2 A. Yes, I believe it was.

3 Q. All right. Again, Doctor, based on your
4 education, your experience, the history, your
5 examination and treatment of Deborah Walters, do
6 you have an opinion to a reasonable degree of
7 medical certainty as to whether or not the
8 condition you found and diagnosed as capsulitis was
9 directly and proximately caused by the vehicular
10 collision of February 27th, 1991?

11 A. Yes, I believe capsulitis is a direct
12 cause.

13 Q. And what is capsulitis, Doctor?

14 A. It's inflammation of the capsule or the
15 supporting structures of the temporomandibular
16 joint.

17 Q. Based on your education, experience, the
18 history, your examination and treatment of Deborah
19 Walters, do you have an opinion, Doctor, to a
20 reasonable degree of medical certainty as to
21 whether or not the condition you found and
22 diagnosed as abnormal condylar position was
23 directly and proximately caused by the vehicular
24 collision of February 27th, 1991?

25 A. Yes, I believe that was also a cause, a

1 result of the collision.

2 Q. Based on your education, your experience,
3 the history, your examination and treatment of
4 Deborah Walters, do you have an opinion to a
5 reasonable degree **of** medical certainty as to
6 whether or not the condition you found and
7 diagnosed as sprained ligaments was directly and
8 proximately caused by the vehicular collision of
9 February 27th, 1991?

10 MR. MAZGAJ: objection.

11 THE WITNESS: Yes, I believe that in
12 fact did occur.

13 BY MR. COX:

14 Q. All right. Based on your education,
15 experience, the history, your examination and
16 treatment of Deborah Walters, do you have an
17 opinion to a reasonable degree **of** medical certainty
18 as to whether or not the condition you found and
19 diagnosed as Ernest syndrome was directly and
20 proximately caused by the vehicular position of
21 February 27th, 1991?

22 MR. MAZGAJ: objection.

23 THE WITNESS: I believe that was caused
24 from the accident.

25 BY MR. COX:

1 Q. What is Ernest syndrome?

2 MR. MAZGAJ: *objection*.

3 THE WITNESS: It is inflammation of the
4 stylomandibular ligament.

5 BY MR. COX:

6 Q. Where is that located?

7 A. It's a ligament that is positioned from
8 the styloid process to the mandible, in this area,
9 and it acts to restrict the motion of the mandible
10 on wide opening.

11 Q. For the jury, who may not understand those
12 terms, can you put that in laymen's language?

13 A. It is a ligament that connects to the base
14 of the skull and to the mandible and its action is
15 to restrict wide opening of the jaw.

16 Q. Doctor, based on your education,
17 experience, the history, your examination and
18 treatment of Deborah Walters, do you have an
19 opinion to a reasonable degree of medical certainty
20 as to whether or not the condition you found and
21 diagnosed as temporal tendinitis was directly and
22 proximately caused by the vehicular collision of
23 February 27th, 1991?

24 A. Yes, I think that is as a result of the
25 accident.

1 Q. And what is temporal tendinitis?

2 A. That's inflammation of the tendon of the
3 temporalis muscle, which is one of the powerful
4 closing muscles of the mandible.

5 Q. Doctor, based on your education,
6 experience, the history, your examination and
7 treatment of Deborah Walters, do you have an
8 opinion to a reasonable degree of medical certainty
9 as to whether or not the condition you found and
10 diagnosed as myalgia myositis was directly and
11 proximately caused by the vehicular collision of
12 February 27th, 1991?

13 A. Yes, I believe that was also a result of
14 the accident.

15 Q. And what is that condition?

16 A. That condition is related to the muscles,
17 exclusively the muscles of mastication or chewing,
18 and the jaw opening muscles, it is inflammation of
19 the muscles and dysfunction of those muscles.

20 Q. And, Doctor, based on your education,
21 experience, the history, your examination and
22 treatment of Deborah Walters, do you have an
23 opinion to a reasonable degree **of** medical certainty
24 as to whether or not the condition you found and
25 diagnosed as headaches was directly and proximately

1 caused by the vehicular collision of February 27th,
2 1991?

3 A. Yes, I believe the headaches related to
4 the temporomandibular dysfunction and were caused
5 -- a result of the accident.

6 Q. Doctor, based on your education,
7 experience, the history, your examination and
8 treatment of Deborah Walters, do you have an
9 opinion to a reasonable degree of medical certainty
10 as to whether or not the conditions you found and
11 diagnosed and which you have just referred to in
12 the preceding questions are permanent?

13 MR. MAZGAJ: objection.

14 THE WITNESS: I believe some of those
15 injuries are permanent as a result of the accident.
16 BY MR. COX:

17 Q. Doctor, based on your education,
18 experience, the history, your examination and
19 treatment of Deborah Walters, do you have an
20 opinion to a reasonable degree of medical certainty
21 as to whether or not any of the conditions you
22 found and diagnosed are permanent in nature?

23 MR. MAZGAJ: objection.

24 THE WITNESS: Yes, they are.

25 BY MR. COX:

1 Q. And which conditions, in your opinion
2 permanent?

3 MR. MAZGAJ: ~~Objection.~~

4 THE WITNESS: The conditions that are
5 permanent are those related to the injuries to the
6 ligaments and to the articular disks of the TM
7 joint. The muscle problems can be a permanent
8 injury from the standpoint it is not unusual for
9 trigger points to develop later on, they can be
10 latent trigger points that can become active at a
11 later time.

12 MR. MAZGAJ: ~~Move to strike.~~

13 BY MR. COX:

14 Q. Is it probable that these latent trigger
15 points will become active in the future with
16 Deborah Walters?

17 MR. MAZGAJ: ~~Objection.~~

18 BY MR. COX:

19 Q. In your opinion, Doctor?

20 MR. MAZGAJ: ~~Objection.~~

21 THE WITNESS: It is possible they can
22 become active.

23 MR. MAZGAJ: ~~Move to strike.~~

24 BY MR. COX:

25 Q. When was the last time you saw Deborah

1 Walters, Doctor?

2 A. I saw Deborah today.

3 Q. All right. Did she have any complaints
4 today when you saw her?

5 A. Yes, she was experiencing discomfort in
6 the cervical area at the base of the skull and the
7 side of the neck and in the area of the
8 sternocleidomastoid muscle. She was having
9 difficulty sleeping and complained of waking at
10 night.

11 Q. Doctor, the treatment program you have
12 outlined for the future, can you tell us what that
13 is meant to accomplish?

14 MR. MAZGAJ: objection.

15 THE WITNESS: The second phase of the
16 treatment is meant to stabilize the position of the
17 mandible related to the skull that we have
18 established through the phase one of treatment. In
19 other words, to hold the treatment position.

20 BY MR. COX:

21 Q. The mandible being the jaw bone?

22 A. Yes.

23 Q. And is that maintained in any way at the
24 present time, Doctor?

25 A. Yes, it is.

1 Q. And how is that?

2 A. We have a mandibular orthotic appliance or
3 a plastic appliance on the lower teeth which holds
4 the jaw in the treatment position.

5 Q. So that the future treatment is meant to
6 provide a permanent way of doing what this
7 temporary structure is doing, do I have that
8 right?

9 MR. MAZGAJ: *Objection!*

10 THE WITNESS: Yes.

11 (Plaintiff's Exhibit
12 No, 1 was marked
13 for identification.)

14 BY MR. COX:

15 Q. Doctor, I am going to hand you what's been
16 marked as Plaintiff's Exhibit 1 and ask if you can
17 identify that for us?

18 MR. MAZGAJ: Off the record a second.

19 (Discussion had off the record.)

20 THE WITNESS: This is a statement of
21 the patient transactions for her treatment.

22 BY MR. COX:

23 Q. That is your bill for your services to
24 date, Doctor?

25 A. Yes.

1 Q. That does not cover the phase two
treatment that you talked about here today?

MR. MAZGAJ: *Objection.*

4 BY MR. COX:

5 Q. Or does it?

6 MR. MAZGAJ: *Objection.*

7 THE WITNESS: No, that does not cover
8 phase two.

9 BY MR. COX:

10 Q. Doctor, are you familiar with the billing
11 practices of other doctors of dental surgery in the
12 Northeast Ohio area?

13 A. Not entirely.

14 Q. Are you familiar enough with them to tell
15 us whether or not your bill is reasonable?

16 A. Yes, I think so.

17 Q. Okay. And your bill for your services
18 that you plan in the future for Deborah Walters, is
19 that bill also reasonable?

20 A. Yes, it is.

21 Q. Have we met, Doctor, before this case?

22 A. No, we haven't.

23 MR. COX: I have nothing further,
24 Doctor. Thank you.

- - -

CROSS EXAMINATION

- - -

BY MR. MAZGAJ:

Q. Doctor, my name is Frank Mazgaj, I represent Mr. Newman, who is the Defendant in this lawsuit, I have some questions for you.

First of all, Doctor, you're not a maxillofacial surgeon; is that correct?

A. No, I'm not.

Q. Are you familiar with the work that Dr. Rogal and his partner have done concerning the diagnosis and treatment of TMJ injuries?

A. No.

Q. Have you attended any lectures or read any articles written by them on TMJ injuries?

A. No.

Q. Doctor, you made a diagnosis in this case of cervical strain?

A. Yes.

Q. And cervical strain is some pulling of the neck muscles and ligaments, correct?

A. Yes.

Q. And that's the type of strain that can result from various types of trauma and things around the house, such as sneezing, picking up bags

1 of leaves, things of that nature, correct?

2 A. Yes.

3 Q. Now, Doctor, you did not receive any
4 history of any neck pain or problems from Mrs.
5 Walters prior to the collision in this case,
6 correct?

7 A. She gave me no history of any problems
8 prior to the accident.

9 Q. And that lack of history was used in your
10 evaluation of the case and the opinions that you
11 rendered today, correct?

12 A. Well, can I rephrase my answer?

13 Q. Sure.

14 A. She gave me no history that she had any
15 problems prior to the accident.

16 Q. Exactly.

17 A. In other words, I asked her if she had any
18 problems and she said no.

19 Q. She told you no?

20 A. She said her symptoms were the result of
21 the accident.

22 Q. Now, Doctor, since you made a diagnosis in
23 this case of cervical strain, are you aware that
24 when the cervical muscles go into spasm they can
25 affect the lordotic curve of the spine?

1 A. Yes.

2 Q. And would that be a rather extreme case?

3 A. Could you rephrase that?

4 Q. Sure, would you usually get a
5 straightening of the lordotic curve when a cervical
6 strain is rather severe?

7 A. Well, I'm not sure what you mean by what
8 constitutes severe?

9 Q. If I have a simple cervical strain, is
10 that going to alter my lordotic curve?

11 A. Yes.

12 Q. And can you explain to us how the lordotic
13 curve is affected or straightened by muscle spasm?

14 A. Yes, I believe the normal lordotic curve
15 is approximately 35 degrees and from contraction of
16 the muscles we can have a reduction in this curve,
17 The reduction thereby causing soft tissue
18 impingement such as nerves, blood vessels, which
19 would specifically cause discomfort, neuralgia,
20 muscle pain.

21 Q. And, Doctor, I take it that loss **of**
22 lordotic curve, again that's the spine we're
23 talking **about**, correct?

24 A. We are talking about the cervical spine.

25 Q. The bone itself?

1 A. Yes.

2 Q. The spasm causes that curve that all of us
3 have naturally to straighten and that causes, as
4 you said, impingement and other physical symptoms?

5 A. Yes.

6 Q. And is that oftentimes a symptom of
7 cervical strain or neck muscle strain?

8 A. The loss of the lordotic curve can be a
9 sign of cervical strain.

10 Q. And that is something that can sometimes
11 be diagnosed objectively by X-ray, correct?

12 A. Sometimes, yes.

13 Q. Doctor, have you received any
14 documentation from the prior lawyers who were
15 representing the Plaintiff in this case concerning
16 a loss of lordotic curve by the Plaintiff prior to
17 the injury in this case?

18 MR. COX: I am going to object, ~~answer~~
19 if you want to.

20 MR. MAZGAJ: Can I have the basis so I
21 can correct that, since this is for purposes of
22 trial?

23 MR. COX: Well, I think if you have a
24 document that purports to show that, you could show
25 it to him and ask him if he has seen it.

1 MR. MAZGAJ: Any other basis for the
2 objection?

3 MR. COX: No.

4 BY MR. MAZGAJ:

5 Q. Okay. Doctor, you have used the term
6 "chronic" in your practice, correct?

7 A. Yes.

8 Q. And what does chronic mean?

9 A. Chronic in my practice, chronic pain?

10 Q. Sure.

11 A. Could mean anything over a month period of
12 time.

13 Q. Could chronic also describe a condition
14 which has existed for years?

15 A. Yes.

16 Q. Doctor, I am going to show you a record
17 which I received in my office today by subpoena
18 from the Akron General Medical Center marked as
19 Defendant's Exhibit 1.

20 (Defendant's Exhibit
21 No. 1 was marked
22 for identification.)

23 BY MR. MAZGAJ:

24 Q. Doctor, I would represent to you that is
25 an X-ray report concerning cervical spine X-rays

1 which were taken of Mrs. Walters on 2/13/91, which
2 was approximately two weeks prior to the accident
3 in this case.

4 Doctor, are you familiar with those
5 types of X-ray reports?

6 A. Yes, I am.

7 Q. And, Doctor, that X-ray report indicates
8 what with respect to Mrs. Walters' lordotic
9 cervical curve?

10 A. It states that there is straightening of
11 the normal cervical curve with minimal reversed
12 curve in the mid portion, and that the vertebral
13 bodies and inner spaces together with the
14 intervertebral foramina and odontoid process are
15 within the range of normal.

16 Q. And, Doctor, the impression that is set
17 forth is what?

18 A. Evidence of muscle spasm.

19 Q. Based upon your review of that report,
20 that would be muscle spasm in what part of Mrs.
21 Walters' body?

22 A. The cervical area.

23 Q. That's exactly what we have been talking
24 about?

25 A. Yes.

1 (Defendant's Exhibit
2 No. 2 was marked
3 for identification.)

4 BY MR. MAZGAJ:

5 Q. Doctor, I will further hand to you another
6 document, which again was received this morning by
7 subpoena. And again it's office notes from Dr.
8 Fenton, who is a doctor at Akron General Medical
9 Center, dated 2/11/91.

10 It indicates there that Mrs. Walters
11 had been complaining of chronic neck symptoms on
12 2/11/91. Were you aware of that, sir?

13 A. No, not prior to the accident. Can I read
14 it?

15 Q. Sure. Doctor, do you know what --

16 MR. COX: Off the record a second.

17 (Discussion had off the record.)

18 BY MR. MAZGAJ:

19 Q. Doctor, do you know what was causing the
20 neck muscle spasm which Mrs. Walters was
21 experiencing two weeks before the accident in this
22 case?

23 A. No, I don't.

24 Q. Do you know how long that muscle spasm
25 existed prior to the accident in this case?

1 A. No, I don't.

2 Q. As far as her complaint of chronic neck
3 symptoms approximately two weeks before the
4 accident in this case, do you know what was causing
5 those?

6 A. No, I don't.

7 Q. Doctor, one of the other physicians in
8 this case has indicated that headaches may **be** a
9 symptom of TMJ, would you agree with that?

10 A. Yes.

11 Q. Doctor, are you aware that two weeks prior
12 to the accident in this case Mrs. Walters presented
13 herself to Akron General Medical Center and made a
14 complaint of severe headaches, are you aware of
15 that, are you aware of that, sir?

16 A. No.

17 Q. Do you know what was causing those severe
18 headaches two weeks prior to the accident in this
19 case?

20 A. No, I don't.

21 Q. Is there -- have you ever heard the term
22 thoracic outlet syndrome?

23 A. Yes.

24 Q. And were you aware that Mrs. Walters was
25 exhibiting signs of that prior to the accident in

1 this case?

2 A. No.

3 Q. Were you aware that she underwent nerve
4 conduction studies two weeks after the accident in
5 this case for thoracic or for symptoms associated
6 with potential thoracic outlet syndrome?

7 A. I don't recall that she had those tests
8 done.

9 Q. Thoracic outlet syndrome can develop as a
10 result of trauma to the neck or back, correct?

11 A. That can be one of the causes.

12 Q. Doctor, in talking about TMJ, for one
13 reason or another, I don't know if there is an
14 answer to it, but it affects women in a higher
15 percentage than men, correct?

16 A. Women seem to present to the office more
17 than men.

18 Q. In fact studies have found that to be
19 about a nine to one ratio; is that correct?

20 A. Yes.

21 Q. And, Doctor, I notice in looking through
22 some of the literature that you brought with you
23 today that there is some mention of findings by Mr.
24 Rogal that twenty-five percent of the population
25 suffers from some form of chronic TMJ dysfunction,

1 would you agree with that?

2 A. Yes, I would.

3 Q. And I notice also Mr. Rogal states that
4 one out of three patients that dentists see prior
5 to an accident have some type of pre-existing TMJ
6 problem, would you agree with that?

7 A. I don't see that statistic myself in my
8 practice.

9 Q. Doctor, what is malocclusion?

10 A. Malocclusion is when the lower and upper
11 teeth do not strike in harmony in relation to the
12 muscles, nerves and temporomandibular joint.

13 Q. And based upon your literature that you
14 provided today, malocclusion a one of the leading
15 causes of TMJ dysfunction, correct?

16 A. Again I don't believe it's one of the
17 leading causes; I think it's a contributing cause.

18 Q. And can extensive dental work or the loss
19 of teeth cause malocclusion?

20 A. If the dental work and replacement is done
21 properly, it can restore the occlusion to the --
22 what we would consider ideal. However, if it's not
23 done properly it can lead to development of TMJ
24 problems.

25 Q. And, Doctor, in your testifying today, I

1 think I counted thirteen teeth that Mrs. Walters
2 was missing, correct?

A. Yes.

Q. And all of those teeth were missing prior
5 to the accident in this case, correct?

6 A. Yes.

7 Q. She has not had any teeth taken out as a
8 result of any of the injuries in this case, has
9 she?

10 A. I don't believe she lost the teeth as a
11 result of the accident, I believe there was one
12 tooth that was removed.

13 Q. And, Doctor, would you agree that the loss
14 of *those* teeth which are -- the majority of them
15 are posterior teeth, correct?

16 A. Yes.

17 Q. And posterior is in the back of the mouth?

18 A. Yes.

19 Q. The molars?

20 A. Yes.

21 Q. That loss of that many teeth in that area
22 of the mouth can cause additional stress and
23 fatigue on the jaw, correct?

24 A. It can. However, in Deborah's case they
25 were replaced.

1 Q. And, Doctor, what is your understanding as
2 to what period of time she went without partial
3 dentures, if at all?

4 A. I don't know how long she went without
5 partials, if she did.

6 Q. Doctor, when you are missing approximately
7 thirteen teeth, can that affect your habits when
8 you chew or eat food?

9 A. In Deborah's case, she did have proper
10 replacement of those teeth so she should have
11 normal functioning, just as the people with
12 dentures who have no teeth have good function
13 without TMJ problems.

14 Q. And, Doctor, you did examine her teeth,
15 correct?

16 A. Yes, I did.

17 Q. And I have some -- an X-ray here today
18 which I will mark as Defendant's Exhibit 3.

19 (Defendant's Exhibit
20 No. 3 was marked
21 for identification.)

22 BY MR. MAZGAJ:

23 Q. I will represent to you that this X-ray
24 was taken September 21st, 1993. And, Doctor, when
25 you look on an X-ray for an indication **of** whether

This deposition was delivered to C.A.T.A. with the following pages missing

Pages 39 to —

Pages _____ to _____

Pages _____ to _____

A. pain relief

40

1 A. They are inclined. Please understand this
2 is a different X-ray than I have and there's
3 twenty-five percent distortion on the Panorex.

4 Q. And, Doctor, when teeth are inclined, can
5 that affect the occlusion?

6 A. Yes, it can.

7 Q. Doctor, would you agree that grinding of
8 the teeth or bruxism can be a cause of TMJ
9 dysfunction?

10 A. It can be a contributing factor. However,
11 to qualify that, there's a lot of people that brux
12 their teeth that **do** not exhibit any symptoms of
13 TMJ.

14 Q. And there are also a group of people that
15 do brux their teeth that do?

16 A. Yes.

17 Q. And, Doctor, I think I read in your book
18 here, too, that stress and anxiety can cause TMJ
19 dysfunction, would you agree with that?

20 A. Again that is a contributing factor.
21 Stress and anxiety alone do not cause TMJ.

22 Q. It says here, "Psychosomatic factors such
23 as anxiety, anger, depression, sadness, worry,
24 fear, frustration, or irritability can play an
25 important part in causing muscle spasms and

1 subsequent internal derangement of the TMJ.
2 Stressful situations such as marital difficulties,
3 family problems, or an unpleasant work environment
4 can influence the balance of TMJ." Would you agree
5 with that statement?

6 A. Yes.

7 Q. And those are out of one of the books that
8 you brought here today, correct?

9 A. Yes.

10 Q. Doctor, what is your understanding as to
11 whether or not Mrs. Walters had been experiencing
12 any problems with anxiety, depression or
13 nervousness prior to the accident in this case?

14 A. I believe she was experiencing some stress
15 prior to.

16 Q. And, Doctor, are you aware of a drug by
17 the name of BuSpar?

18 A. Yes.

19 Q. And what is that usually given for, if you
20 know?

21 A. It's an anti-anxiety type medication.

22 Q. Are you aware that Mrs. Walters was taking
23 that medication within a week prior to the accident
24 in this case?

25 A. I wasn't aware that it was a week before.

1 Q. Doctor, talking about trauma as a cause of
2 TMJ, is the speed of the vehicles one of the
3 factors that you may take into consideration?

4 MR. COX: ~~objection~~

5 THE WITNESS: It is one of the
6 factors.

7 BY MR. MAZGAJ:

8 Q. And what history did you obtain from Mrs.
9 Walters concerning the speed of my client's vehicle
10 in this case?

11 A. I don't have a history of speed of the
12 vehicle.

13 Q. Well, Doctor, would the force of impact
14 help you in arriving at your opinions today?

15 A. We can try.

16 Q. Your answer to that question is what?

17 A. Could you rephrase that?

18 MR. MAZGAJ: Sure, would you read it
19 back.

20 (Previous question read back as requested.)

21 THE WITNESS: Could you rephrase that?

22 BY MR. MAZGAJ:

23 Q. Sure. As to the speed of my client's
24 vehicle in this case, wouldn't that be important to
25 you in determining whether or not the force was

1 sufficient to cause a whiplash type injury?

2 A. Not necessarily.

3 Q. So whether or not my client was going
4 fifty miles per hour or five miles per hour, that
5 wouldn't help you in determining what type of
6 whiplash injury was sustained in this case?

7 A. Obviously the greater the speed would be a
8 more serious -- would have more serious impact to
9 the nature of the injury.

10 Q. Doctor, the type of vehicle that Mrs.
11 Walters was in, could that be important to your
12 assessment of the injury in this case?

13 A. No.

14 Q. Are you telling us that if you're in an
15 impact -- or in a Cadillac and impacted at five
16 miles per hour or in a Chevy Nova and impacted at
17 five miles per hour, that wouldn't make a
18 difference?

19 A. Not in all cases, it depends how the
20 vehicle was struck, and maybe more importantly the
21 other vehicle.

22 Q. What's your understanding as to whether or
23 not Mrs. Walters had any physical impact with her
24 face or head with any part of the interior of the
25 vehicle?

1 A. She couldn't state for sure in fact if she
2 did have impact with her face to any part of the
3 vehicle.

4 Q. Doctor, would you agree that a five mile
5 per hour or less impact places less strain on the
6 jaw and mouth than an individual who sneezes?

7 A. No.

8 Q. Doctor, you reevaluated Mrs. Walters in
9 January of 1992, correct?

10 A. Yes.

11 Q. And at that time she had the TMJ problem
12 which you described, correct?

13 A. On January 16th, 1992, we did a
14 reevaluation and at that time I informed Deborah
15 that we were ready for phase two.

16 Q. And at that point in time, in January of
17 1992, she had normal range of motion without noises
18 in her jaw, no deviation on opening or closing of
19 the jaw, no symptoms related to jaw mechanics, and
20 her only complaint on that date was some neck
21 tenderness, correct?

22 A. Yes.

23 Q. How did her symptoms differ on that date
24 as opposed to the chronic neck problems she
25 complained about on February 11th of 1991, two

1 weeks prior to the accident in this case?

2 A. I don't know what those complaints were
3 two weeks prior.

4 Q. I'd represent to you that the complaints
5 two weeks prior were headache, chronic neck
6 symptoms, in fact the symptoms two weeks prior were
7 worse than what you found in January of '92,
8 correct?

9 A. I don't know if I can answer that, I'm not
10 sure exactly what her symptoms were two weeks
11 prior.

12 Q. Well, Doctor, the medical records which we
13 have marked as Defendant's Exhibit 2, I want you to
14 assume that this information contained in this
15 report is correct.

16 Can you tell us how Mrs. Walters'
17 condition differed on February 11th of 1991 as
18 opposed to your examination of her in January of
19 1992, as far as complaints that she made?

20 A. The only thing I see in here is she
21 described some chronic neck symptoms.

22 Q. And that's in February of 1991?

23 A. February of '91.

24 Q. Doctor, the treatment which you are
25 indicating Mrs. Walters may undergo in the future,

1 she's not -- when did you first recommend that?

2 A. We had discussed on the initial exam, the
3 consultation, what phase one and phase two

5 recommendation was on the reevaluation on January
6 16th, 1992.

7 Appointments prior to that, the topic,
8 I usually will bring the topic up so that the
9 patient is familiar with where we have been and
10 where we are headed to, as far as treatment goes.

11 Q. And, Doctor, so I understand it, this
12 phase two treatment that you talked about, a lot of
13 that will involve giving Mrs. Walters implants of
14 her missing teeth, correct?

15 A. If she would like to.

16 Q. But that's what it entails?

17 A. Yes.

18 Q. And again, **all** of those teeth were missing
prior to this accident?

20 A. Yes.

21 Q. And if in fact she had symptomatology
22 consistent with TMJ dysfunction prior to the
23 accident, given what you saw with respect to her
24 occlusion and her dental work, you would have in
25 **all** likelihood recommended the same treatment,

correct?

Yes.

3 MR. MAZGAJ: Doctor, that's all I
4 have. Thank you.

5 I'm sorry, if I can see your file
6 really quick, I think I am done.

7 MR. COX: Would you object if I meet
8 with him for one second?

9 MR. MAZGAJ: Yes. Doctor, that's all
10 the questions I have. Thank you.

MR. COX: Off the record.

(Discussion had off the record.)

13 - - -

14 REDIRECT EXAMINATION

15 - - -

BY MR. COX: _____

Q. Doctor, referring to Exhibits 1 and 2,
Defendant's Exhibits, do those exhibits by
themselves show that Deborah Walters had any
temporomandibular joint problems prior to the
accident?

A. No, they don't.

Q. Would your answers to the ultimate
questions posed to you as to your opinion that the
25 temporomandibular joint problem was directly and

proximately caused by the accident, would your
2 answers to those questions be different after
3 reviewing these two exhibits?

4 A. Deborah complained of no facial pain prior
5 to the accident, told me she had no clicking sounds
6 prior to the accident, these seem to be more
7 related to cervical problems.

8 Q. So would those answers that I referred to
9 change?

10 A. No.

11 Q. Doctor, is speed the only factor to be
12 considered as to whether or not whiplash type
13 injury might cause TMJ dysfunction?

505
P.
43
CRS

14 MR. MAZGAJ: objection.

15 THE WITNESS: No.

16 BY MR. COX:

17 Q. What other factors might there be?

18 MR. MAZGAJ: objection.

19 THE WITNESS: Other factors besides
20 speed are the direction of the impact, the position
21 of the patient's body. If it was for instance a
22 rear end collision, you would have a difference, if
23 the person's face is forward or sideways, so that
24 the direction of the impact, the direction of the
25 patient's body on impact has an important bearing.

1 BY MR. COX:

2 Q. Doctor, in 1992 when you examined Deborah
3 Walters, did she have a splint in place?

4 A. Could you give me the date?

5 Q. I am referring to the date that attorney
6 Mazgaj referred to when talking about the pain she
7 had.

8 A. Yes, she did.

9 Q. All right. Had she not had the splint in
10 place, would it be likely that she would have had
11 other symptoms, Doctor, in your opinion?

12 MR. MAZGAJ: Objection.

13 THE WITNESS: Yes.

14 BY MR. COX:

15 Q. What would those symptoms be?

16 MR. MAZGAJ: Objection.

17 THE WITNESS: She would probably have
18 recurrence of symptoms of muscle pain, joint
19 tenderness, possible recurrence of headaches.

20 BY MR. COX:

21 Q. All right. Doctor when did you examine
22 her in '92 that you found the pain?

23 A. That I found the pain

24 Q. The incident that Mr. Mazgaj was referring
25 to, what was the date?

1 A. We did a reevaluation January 16th, '92.

2 Q. All right. And at that time she had a
3 bite?

4 A. She had the appliance in at that time.

5 Q. How do you refer to that, as a splint?

6 A. We can call it an appliance, we could call
7 it a splint.

8 Q. All right. And, Doctor, based on the
9 history, your examination and treatment of Deborah
10 Walters, do you have an opinion to a reasonable
11 degree of medical certainty as to whether or not if
12 she did not have that splint in at that time, was
13 not using the splint, whether or not she would have
14 additional symptoms than what was stated to you on
15 that date?

16 MR. MAZGAJ: objection.

17 THE WITNESS: Yes, she would.

18 BY MR. COX:

19 Q. Okay. Tell the jury what those symptoms
20 would be?

21 MR. MAZGAJ: objection

22 THE WITNESS: Well, in fact she had
23 broken the appliance later on that year and she was
24 without it for a few days and with the recurrence
25 of the symptoms.

file into
P. 49

1 MR COX: I have nothing further.

2 Doctor

3 - - -

4 RE-CROSS EXAMINATION

5 - - -

6 (Defendant's Exhibit

7 No 4 was marked

8 for identification.)

9 BY MR MAZGAJ:

10 Q. Doctor, I am handing you what's been
11 marked for identification purposes as Defendant's
12 Exhibit 4. Is that a letter which you received at
13 your office from the Plaintiff's former lawyer?

14 MR. COX: ~~Objection~~. Can I take a look
15 at it?

16 MR. MAZGAJ: I'm sorry.

17 MR. COX: Objection, this is not proper
18 material -- well, you haven't -- have you finished
19 your question?

20 MR. MAZGAJ: No, I will note your
21 objection to the whole line of questioning.

22 MR. COX: Well, it might be proper and
23 I am sorry for interrupting you, if you were to
24 finish your question first.

25 MR. MAZGAJ: I assume you are going to

1 object to every question concerning this letter, I
2 will go ahead and give you that or you can make it
3 after every question.

4 MR. COX: Well, I am going to object to
5 questions related to Defendant's Exhibit 4 as not
6 being proper recross.

7 MR. MAZGAJ: Okay.

8 BY MR. COX:

9 Q Doctor, Exhibit 4 in fact was received by
10 your office from the Plaintiff's former lawyer.
11 correct?

12 A. Yes.

13 Q. And in fact that letter is dated August
14 21st of 1991 and indicates if there is a successful
15 recovery on behalf of Deborah Walters that your
16 bill will be protected; is that correct?

17 A. Yes, that's what it says.

18 MR. MAZGAJ: Thank you, Doctor, that's
19 all I have.

20 MR. COX: Okay. That's it.

21 - - -

22 (Deposition concluded at 5:40 o'clock p.m.)

23 (Signature waived.)

24 - - -

25


C E R T I F I C A T E

STATE OF OHIO,)
) ss:
SUMMIT COUNTY.)

I, Michael G. Cotterman, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, JOSEPH G. MARCIUS, D.D.S., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to Stenotypy in the presence of said witness, afterwards transcribed upon a computer; and that the foregoing is a true and correct transcription of the testimony so given by the witness as aforesaid.

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

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my seal of office at Akron,


Michael G. Cotterman, Notary Public in
and for the State of Ohio.

My Commission expires October 25, 1997.



AKRON GENERAL
MEDICAL CENTER

400 WABASH AVENUE / AKRON, OHIO 44307
DEPARTMENT OF RADIOLOGY

DEFENDANT'S
EXHIBIT

Morgis

INPATIENT DEPARTMENT 384-6450
OUTPATIENT DEPARTMENT 384-7750

PHYSICIAN DIRECT LINE 384-779:
ALL REPORTS 384-670:

NAME: WALTERS, DEBORAH
MED. REC.# 000341251
PHYSICIAN: HOUSE SURGERY
EXAM DATE : 02-11-91

SEX : F

D.O.B. #: 07-17-1956
BILLING #: 001535020
ROOM : CL02
Date Dictated: 02-13-91

ORDER #: 18224

CERVICAL SPINE

The exam showed straightening of the normal cervical curve with minimal reversed curve in the mid portion. The vertebral bodies and inner spaces together with the intervertebral foramina and odontoid process are within the range of normal.

IMPRESSION

Evidence of muscle spasm.

DANIEL B. GORDON, MD

sag 02-13-91

HISTORY - PHYSICAL - PROGRESS NOTES

34 2-51 CLINIC 3710225
WALTERS, DEBORAH
453 LAMPARTER ST 44311
299-58-3565 07-17-56
07-23-90

A. FENTON, M.D. SURG WALTERS, DEBORAH WA 51 2-11-91

Patient is a 35 y.o. white female with multiple complaints, but is seen here in Surgery Clinic because of a possibility of thoracic outlet syndrome. She states for past two years she has had persistent tingling of her left upper extremity, from shoulder to her hand, and also, at times, involving the fingers, although she is specific about which fingers exactly. This has only awakened her from sleep once, and, times, is worse than others. She has done a fair amount of physical activity in the past, although none recently, and the symptoms have persisted. She has done weight lifting the past, and also strenuous activity at work, but has not worked there for several years. She notes nothing that seems to bring it on at this time, or make it better. She is a heavy smoker, and notes occasionally the fingers of her left hand turning blue in cold.

PHYSICAL EXAM: The left upper extremity is normal. The radial pulse is 2+/4 and symmetrical at the right. She has good capillary refill, and no obvious deformity. Tinel's sign is negative over the median nerve, and with full flexion of both wrists there is no increase in symptoms. Adson's test is plus-minus. There is some decrease in left radial pulse with the test, but not greatly different from the right side. However, her left arm does tire quicker than the right side doing this test. The axilla feels normal. There are no lumps or abnormalities, and there is no abnormality in the neck intraclavicular fossa. Chest x-ray is normal, without any evidence of a cervical rib. She does describe some chronic neck symptoms, and for this reason I asked her to obtain cervical spine series, and also obtain nerve conduction studies of the left upper extremity, and then RTC in 4 weeks. This may be a thoracic outlet syndrome, but we need to rule out all other causes first, and then, prior to surgery, she would need to have conservative management, with P.T. first. The patient agrees with this plan.

D: 2-11-91;

T: 2-12-91; P19.

A. FENTON, M.D.

DEFENDANT'S
EXHIBIT

3-11-91 SURG:

BP-122/70 P-88

Current meds

Morgesic

Ibuprofen #3

TOPIC

EXPLAINED TO PATIENT

YES / NO

PATIENT VERBALIZES UNDERSTANDING

YES / NO

PATIENT EDUCATION MATERIALS GIVEN

YES / NO

Plan - ✓ Keep appt. in Ortho Clinic at ACH on 3/20/91

(Flu + mna) → 4-25-91 - @ 12:30

✓ RTC (AE) 6-8 wks, 4-25-91 @ 12:30

Card given ✓ Referral to P.T. for Cervical

Strain, possible Thoracic outlet

Syndrome

Referral to Ortho Clinic here - Cervical strain, possible Thoracic outlet Syndrome

Be sure to sign all your notations

HISTORY PHYSICAL PROGRESS NOTES



**DEFENDANT'S
EXHIBIT**

**DEFENDANT'S
EXHIBIT**

4

ELK AND ELK Co., L.P.A.
LAWYERS

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ARTHUR M. ELK, J.D.
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and HOLMES COUNTIES
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WARREN and
TRUMBULL COUNTY
(216) 352-6677

MT. VERNON
and KNOX COUNTY
(614) 352-6677

August 21, 1991

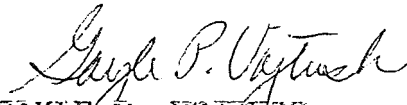
Joseph G. Marcius D.D.S., F.A.G.D.
1655 Brittain Road
Akron, Ohio 44310

Re: Our Client: Deborah A. Walters
453 Lamparter Street
Akron, Ohio 44311
Date of Accident: February 27, 1991
Account No.: 70400
Amount Due: \$2734.00

Dear Dr. Marcius:

We are hereby advising you that in the event we are successful in making a recovery on behalf of Deborah A. Walters, we will protect your bill with regard to the medical expenses incurred as a result of personal injuries sustained in a motor vehicle accident which occurred on February 27, 1991. Thank you.

Very truly yours,


GAYLE P. VOJTUSH
Attorney at Law

GPV: keb

cc: Deborah A. Walters