STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

ORIGINAL

COURT OF COMMON PLEAS

KIMBERLY RICHLEY,)
)
Plaintiff,)
)
vs.) Case No. CV-03-511510
)
REICHENBACH FAMILY) Judge Carolyn Friedland
CHIROPRACTIC PROFESSIONAL)
COMPANY, et al.,)
)
Defendants.)

- - -

DEPOSITION OF PATRICK W. McCORMICK, M.D.

DATE: September 24, 2004 at 5:00 p.m.

PLACE: St. Luke's Hospital
5901 Monclova Road
Maumee, Ohio

REPORTER: Robert W. Scheid, Jr., RPR
Notary Public

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APPEARANCES:

On Behalf of the Plaintiff:

LAW OFFICE OF MARK W. RUF:
Mark W. Ruf
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Suite 300
Cleveland, Ohio 44113
(216) 687-1999

On Behalf of the Defendants:

EASTMAN & SMITH:
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P.O. Box 10032
Toledo, Ohio 43699-0032
(419) 241-6000

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I N D E X

PATRICK W. McCORMICK, M.D.,
a Witness herein, called by the Plaintiff as if upon Examination, was by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION

BY MR. RUF:

Q. Could you state your name, please?

A. Patrick William McCormick.

Q. Dr. McCormick, my name is Mark Ruf. I represent Kim Richley. If at any time during this deposition you do not understand a question, please tell me. If you give me an answer, I'll assume you understood the question. Okay?

A. Fine.

Q. Also, when I ask you a question, please give me a direct answer to the question. If you give me an evasive answer or a nonresponsive question, I'm going to ask my question again. Okay?

A. Sounds fair.

Q. So this will go faster if you give me direct answers to my questions. Okay?

A. Sounds fine.

Q. It appears from your CV that your concentration is in vascular neurosurgery?

A. It is.

Q. Is that your specialty?

A. Well, my specialty is neurological surgery. I did subspecialty training in cerebrovascular neurological surgery.

Q. What percentage of your practice is vascular neurosurgery?

A. Well, I'm in the general practice of neurosurgery. And I'd say perhaps 10 percent of my practice is vascular work.

Q. And what's the remainder of your practice?

A. General neurosurgery, such as cervical spine, lumbar spine, trauma, brain tumors, hydrocephalus.

Q. Would you agree that none of your publications relate to the issues in the Richley case?

A. I haven't thumbed through a list of publications, but none of them, to my recollection, would touch on those issues.

Q. You have not published or lectured on the injury that Kim Richley sustained, correct?

A. Again, to the best of my recollection, there's nothing in my CV regarding these issues.

Q. And you've not published or lectured on the surgery that was performed on Kim Richley, correct?

A. Same answer.

Q. So the answer would be yes? I mean, if you want, you can look through your CV.

A. What I'm saying is, when you ask me if I've ever lectured on the topic, let's say, of spine trauma, I'm sure I have. Whether there's anything captured in my CV, I don't recollect anything there that would reflect on that.

Q. Well, have you published on the surgery that was performed on Kim Richley?

A. No, I have not published on the surgery performed on Kim Richley.

Q. And have you lectured on the surgery that was performed on Kim Richley?

A. Well, I'm involved in a teaching program with the residents at St. Vincent's Mercy Medical Center and I give a number of lectures on trauma and cervical spine trauma. So I'm certain that I've lectured on it many times, but nothing that I've included in my CV.

Q. I noticed in the records that you have,

that you had a meeting at 5:00 p.m. June 24th with Attorney Regnier; is that correct?

A. I certainly had a meeting with him. I couldn't testify to the date.

Q. Let me show you, there's a letter of June 8, 2004. It's the second page. Would you agree it refers to a meeting at 5:00 p.m. June 24?

A. It does.

Q. Do you know how long that meeting was?

A. Half hour to an hour.

Q. Do you know what the purpose of the meeting was?

A. We discussed the case.

Q. Did you review any materials at that time? Did you have the meeting before you reviewed materials or after you reviewed materials?

A. After I reviewed materials. And I don't know that we reviewed anything specifically. I don't have any recollection of that.

Q. Do you remember what you discussed in that meeting specifically?

A. I think we discussed the nature of the facts in the case and the type of injury that Mrs. Richley was found to have and what its relationship

would be to chiropractic treatment, issues like that.

Q. Did you render any opinions at that time?

A. I don't know that I did. I created a series of opinions that are in my letter, but I don't know that I created any at that time.

Q. Do you know how much time you spent total reviewing this case and meeting with defense counsel?

A. I don't.

Q. Do you know what your total bill has been on this case?

A. I do not.

Q. Could you give me an estimate of what it's been?

A. I would be purely guessing. I honestly don't know.

Q. What do you charge for being involved in medical-legal matters?

A. I have a fee schedule.

Q. Could I see that, please?

A. (Witness complies.)

(Court Reporter marked Plaintiff's Exhibit 1.)

BY MR. RUF:

Q. Okay. Your fee schedule's been marked as

Plaintiff's Exhibit 1, correct?

A. Correct.

Q. Can you give me an estimate as to the amount of time you've spent reviewing this case and forming your opinions?

A. I think you asked me that already. I don't have a recollection of the exact time.

Q. Well, I asked if you could give me an estimate. I know you said you didn't know the exact amount of time. I'm asking if you could give me an estimate.

A. I really would be purely guessing.

Q. Do you have your time written in bills that you've sent to Mr. Regnier?

A. We certainly have sent invoices along the way.

MR. RUF: Would you have a problem producing those, Mike?

MR. REGNIER: No.

BY MR. RUF:

Q. How many years have you been licensed to practice medicine?

A. Since 1984.

Q. 20 years?

A. 20 years.

Q. Has your license ever been subject to any type of disciplinary action?

A. No.

Q. Have you ever been subject to any type of disciplinary action by a hospital?

A. No.

Q. Have your privileges ever been revoked at any hospital?

A. No.

Q. Have your privileges ever been suspended at any hospital?

A. No.

Q. Did you comply with the local rule in Cuyahoga County and put all of the opinions that you have in the report that was produced in this case?

A. As far as I know, I have.

Q. Are any of the hospitals that you work at a Level 1 trauma center?

A. Yes.

Q. What hospitals?

A. St. Vincent's Mercy Medical Center and the Toledo Hospital.

Q. How many times have you been an expert

witness in legal cases?

A. I don't have an exact answer to that. It'd be my guess that over the past five years or so, I've reviewed somewhere between five and ten cases a year.

Q. And that's medical malpractice cases?

A. Yes.

Q. So how many have you done in total, approximately?

A. Well, I've done them prior to the last five years. Prior to that, it would just be, you know, one or two a year that would come along.

Q. And how long had you done one or two a year?

A. Probably started that about '95.

Q. So in the last five years, you've reviewed between 25 and 50 medical malpractice cases?

A. Sounds like a lot, but I think that's a reasonable range.

Q. And before that, you probably had reviewed less than 10?

A. Probably.

Q. Have you also served as an expert in automobile accident cases, or other types of auto

accident cases?

A. When they've involved my patients.

Q. How many times have you done that?

A. Oh, gosh, I really don't know.

Q. Can you give me an estimate?

A. You know, it comes up a few times a year, slip injuries, automobile accidents, Workers' Comp issues. Probably a half dozen of those kinds of cases a year that I end up being deposed or something.

Q. So about a half dozen injury cases per year that you serve as an expert for patients?

A. Only if they're my patients.

Q. Have you ever served as an expert for a plaintiff in a medical malpractice case?

A. I have.

Q. How many times have you done that?

A. I've reviewed about six records.

Q. And did you actually render an opinion in those six cases that a physician deviated from accepted medical practice?

A. One of them is up in the air. I've just started to review it. Out of the other five, I thought two were meritorious. Out of those two, one was settled in arbitration. And one, I never heard

another word about.

Q. Did you ever write a report?

A. No.

Q. The other one that you thought was meritorious, were you reviewing it for defense counsel?

A. No. For plaintiff's counsel.

Q. And you told them you thought the case was meritorious and then you heard nothing else?

A. Right. I presumed that maybe it settled somewhere, but I never heard anything more about it.

Q. Do you advertise your services as an expert in any way?

A. No.

Q. So approximately what percentage of your expert review has been for the defense?

A. Oh, 95 percent or something. Just to qualify that, that's referring to the medical-legal work. You know, obviously if you threw in the cases where you had auto accidents and things that involve my patients, that's typically plaintiff's counsel.

Q. Okay. Let me ask a more precise question. For medical malpractice cases, approximately 95 percent of the reviews have been for

the defense?

A. I think that's a fair estimate, yes.

Q. Have you ever served as an expert for Attorney Regnier before?

A. I believe we have had a prior case together.

Q. Do you know what type of case that was?

A. My recollection is that it involved a subarachnoid hemorrhage.

Q. How about his firm, Eastman & Smith? Do you know any other attorneys at that firm?

A. I do know other attorneys there, yes, but I haven't been involved in any other situations where I was an expert witness for them.

Q. So you think you've only been an expert for Mr. Regnier at that firm?

A. I believe that's true. Yes.

Q. Have you ever been represented by the law firm of Eastman & Smith?

A. I have not.

Q. Have you been sued for practice?

A. I have not.

Q. As part of your practice, do you hand out any literature on medical malpractice to your

patients? Some doctors are doing that these days. Are you one of them?

A. I'm not sure I know what you mean. But I don't have any specific literature that I hand out to patients.

Q. Have you attended any anti-medical malpractice doctor rallies?

A. No, I have not.

Q. Have you ever done anything socially with Mr. Regnier?

A. No, I have not.

Q. Have you ever gone out to dinner or lunch with him?

A. No, I haven't.

Q. Have you ever done any work before for NCMIC? Are you familiar with that? It's a chiropractic malpractice insurer.

MR. REGNIER: Objection.

Go ahead and answer.

THE WITNESS: No, I never have.

BY MR. RUF:

Q. Have you ever served as an expert on a chiropractic malpractice case before?

A. I don't believe so.

Q. Can you tell me approximately how much money you've made per year serving as an expert witness?

A. Gosh, I really don't know the answer to that. I mean, I don't think we accounted separately.

Q. You can't give me some type of estimate?

A. Maybe something like $20,000 or something. I really don't know. I'm kind of guessing.

Q. Could you describe for me the manipulation that was performed by Dr. Reichenbach on Kim Richley on 10/21/02?

A. Well, obviously there's different versions of that story. Dr. Reichenbach has testified that Kimberly was laying on a bed or a treatment table of some type and that he was supporting her head and applied some pressure at the C5-6 level in a modified break-type maneuver.

I believe it's Ms. Richley's testimony that she was sitting in a chair upright, as we are sitting now, facing Dr. Reichenbach, and that he sort of held her head between his hands and moved it forward, backwards, and side to side.

Q. Is it your understanding that she

testified that there was a rotary component to his manipulation?

A. When I said, "side to side," yes, I meant -- I think what she testified to is that he moved her head forward, then moved her head backwards, then moved her head in a rotational manner to one side and then a rotational manner to the other side.

Q. Are you familiar with what a modified rotary break is?

A. I first heard of it on this case.

Q. So you had no independent knowledge of what a modified rotary break was before this case?

A. That's correct.

Q. Have you done any research to determine what a modified rotary break is?

A. No. I just relied on the explanation given by Dr. Reichenbach in his testimony.

Q. To your knowledge, is that a high-velocity manipulation?

A. Well, it seems to me that you can do that maneuver with different types of velocity, but the testimony is that it was done with low velocity.

Q. Didn't Dr. Reichenbach testify that it is a quick-impulse manipulation?

A. Well, I think velocity is one issue and quick impulse is another issue. I believe what he testified to is that he gave a low-velocity force in a short period of time, or on a quick basis, not a sustained basis. But I don't think he describes using velocity.

Q. Do you know if a modified break is referred to as a high-velocity manipulation in the literature?

A. That, I wouldn't be aware of.

Q. You haven't reviewed any literature on modified rotary break, correct?

A. Right. And I'm not holding myself out as an expert witness in chiropractic medicine.

Q. As we sit here today, can you tell me the amount of force that the manipulation exerted on Kimberly Richley's cervical spine, or don't you know?

A. I think I could say that it was a low amount of force consistent with the type of forces that we all experience in our daily life.

Q. Did Ms. Richley feel pain after this manipulation?

A. I believe she actually described minimal pain and I think she may have even left the

chiropractic office feeling better. Although, in retrospect, in her deposition, she describes having some deep achy sensation.

Q. If she heard or felt a shattering sensation in her neck, would that be consistent with a facet fracture at that time?

A. It would be kind of unusual. I certainly have taken care of many patients with fractured bones. I never heard anybody say that they actually heard the bone fracture. So it seems a little odd.

Q. Well, if she had a sensation of a shatter occurring in her neck, would that be consistent with a facet fracture occurring?

A. I think it's the same answer. All I can say is that when you ask me if it's consistent, I'm somebody who sees people with fractured facets and fractured necks all the time. And I just have never had a patient describe hearing shattering noises in their neck when the bone broke.

It's a very small bone and it's very deep in the neck, surrounded by capsular ligaments and heavy muscles. It's kind of implausible that you would hear it break.

Q. So would a deep soreness or a deep pain

in the neck be consistent with a facet fracture?

A. I think that's certainly -- most facet fractures are acutely painful. One could feel pain.

Q. Would a toothache-type pain extending into the shoulder be consistent with a facet fracture?

A. Well, most people with fractured necks have significant pain, typically right over the area where the fracture is. Toothache pain would seem kind of minimalistic for this type of a fracture.

And pain can radiate, although most people do not describe radiation as much as they describe pain right over the broken bone, very similar to a broken bone in the extremity.

Q. Based upon your experience, what sensation do patients have when they sustain a facet fracture?

A. Oh, usually they have onset of acute severe pain. And, you know, they complain bitterly of it. They typically refuse to move their neck, hold it very rigid and stiff.

Q. Has it been your experience that the pain can increase over time?

A. No. Actually, the pain, in my experience, tends to be maximally severe at the time

of the fracture and then taper off over time.

Q. Well, have you ever read or heard of a patient's pain increasing over time?

A. From an acute fracture of a facet?

Q. Yes.

A. No. I'd say it would be the opposite.

Q. What do you mean by "opposite"? The pain would be the worst at first and then become less?

A. That's correct.

Q. Why do you think that's the situation?

A. Why do I think? Well, first of all, it's my experience in treating these people on a frequent basis. But secondly, it's like any other fractured bone. It's a painful event and it's acutely painful at the time it happens.

For whatever reason, as time goes by, even before the fracture is repaired, the symptom does settle down a little bit, the symptom of pain. Although many people do have the stiffness of the neck and they refuse to move it, they hold their heads typically in an awkward posture, they realize something dramatic has happened and typically are seeking care at the time it happens.

Q. Are you aware Kim Richley first saw Dr.

Reichenbach on 10/16/02?

A. I'd have to check that.

MR. REGNIER: Are you representing that's when she first saw him?

BY MR. RUF:

Q. Well, let me ask this question: Do you agree Dr. Reichenbach took a cervical x-ray of Kim Richley on 10/17/02?

A. I'm going to have to check, so just a second. Yes. He has a radiology report in his file dated 10/17/02 on Kim Richley.

Q. And you've actually reviewed that x-ray, correct?

A. I believe I have, yes.

Q. Do you agree that the x-ray of 10/17/02 does not show a fracture of Kim Richley's neck?

A. Yes, I agree, I do not see a fracture.

Q. You do not see any fracture in the x-ray of 10/17/02 at the C6-C7 level, correct?

A. Yes. I have an AP and a lateral plain film. These two films do not show an obvious fracture.

Q. Would you also agree that neither of the

films of 10/17/02 show a subluxation at C6-C7?

A. That is correct.

Q. Is it your understanding that subluxation is the same as dislocation?

A. I think, in a general sense, that's a true statement.

Q. So subluxation of C6-C7 and dislocation of C6-C7 can be used synonymously?

A. Well, "dislocation" would not be a word that's typical in allopathic medicine, but I think they convey the same concept.

When we use the word, we're speaking of one of the cervical vertebrae being shifted out of its normal alignment with the bone next to it, and that we refer to as a subluxation. "Dislocation" would be a term that probably conveys the same thing but would not be used in typical medical parlance for the neck.

Q. Do you agree that on 10/17/02, Kim Richley had normal range of motion for cervical flexion?

A. Could you repeat the question?

Q. Sure. Dr. Reichenbach has a chart on 10/17 where he recorded range of motion. Are you aware of that?

A. I'll have to look at it. I do see an office note dated 10/17/02 on a patient Kim Richley with a section called "range of motion."

Q. Do you agree that she had full range of motion for cervical flexion?

A. If I'm understanding his notations properly, he has a reference number to the left in parentheses. For example, for flexion, it says 60. And then he's recorded in his own handwriting the number 60 next to it.

So being unfamiliar with this type of format -- I believe it's a chiropractor format -- if I understand it correctly, those two numbers being the same would imply that it's a normal range of motion and flexion.

Q. Would you agree that Kim Richley had normal range of motion for cervical extension?

A. Well, given the same set of issues, I would say yes, because he's got 75 in parentheses and records next to it 75.

Q. And she had normal range of motion for right rotation?

A. Again, the same issues. Yes. Both are listed as 45.

Q. Normal range of motion for left rotation?
A. I would say the same set of issues, he has 45 written in parentheses and handwritten.
Q. And she had normal range of motion of right lateral flexion.
A. Correct.
Q. And normal range of motion of left lateral flexion.
A. Assuming I'm interpreting this correctly, that would be correct.
Q. So would you agree that, based upon his records, she had normal range of motion in her cervical spine in all directions on 10/17/02?
A. If I'm interpreting this notation properly, yes, I would agree with that.
Q. Would you agree that a person with a facet fracture would not have normal range of motion in all directions of their cervical spine?
A. An acute fracture, they would not.
Q. Would you agree that Kimberly Richley had a normal cervical spine on 10/17/02?
MR. REGNIER: Objection. Go ahead, Doctor.
THE WITNESS: Well, I mean,

she's seeing a chiropractor for her cervical spine. When you say "normal," I presume you mean the radiographs did not show a fracture and the range of motion, if we're interpreting it correctly, is normal. But obviously she's having some condition that's causing her discomfort.

BY MR. RUF:

Q. Well, she actually went to see the chiropractor for low back problems, correct?

A. That was what initiated their treating relationship.

Q. That's why she was referred there, correct?

A. That is correct.

Q. She was not referred there for cervical treatment, correct?

A. Correct.

Q. Do you agree that there is no medical evidence that Kimberly Richley had a neck fracture at C6-7 on 10/17/02?

A. None that I'm aware of.

Q. So would you agree that, based upon reasonable medical certainty, she did not have a neck

fracture on 10/17/02?

A. I think I would agree with that.

Q. Was there any diagnosis for her neck on 10/17/02?

A. Well, again, the chiropractor began treating her neck, because she developed complaints referencing her neck after their relationship began, although it did initiate regarding a lumbar spine problem. I think he was considering the possibility of a disk problem.

Q. Based upon your review of the records, would you have a diagnosis for the condition of her neck on 10/17/02, or would you characterize her neck as being normal?

A. I think she has a diagnosis.

Q. What's the diagnosis?

A. Well, the diagnosis is, at the minimum, neck pain. And I think he has a working diagnosis of a possible disk problem. On that radiology report that we discussed earlier, he's talking about her having osteophytes and a flattening of the cervical lordosis and he's considering an MRI.

His third impression was a vertebral malposition. So I would say she has, at a minimum, a

diagnosis of neck pain. At a maximum, she has three or four diagnoses, including these chiropractic diagnoses, and there's probably a working diagnosis of a disk problem.

Q. What would your diagnosis be, as a neurosurgeon reviewing the records?

A. If I was working this patient up, I think I would probably have a leading diagnosis of neck pain and a working diagnosis of probable disk disease.

Q. Did she have any radicular symptoms at that time?

A. Well, she did not present with radiculopathy, no. She had some pain that was midline with paraspinal radiation.

Q. And if you were seriously considering a disk problem, wouldn't you be looking for radiculopathy?

A. Well, if you were talking about a lateral disk herniation, typically you do get radiculopathy with that. But there's obviously many forms of disk disease in the cervical spine.

Q. Are you aware of any film before 10/17/02 that shows a fracture at C6-7 of Kimberly Richley's spine?

A. I'm not aware of such a film.

Q. Would you agree that, based upon a reasonable medical certainty, Kim Richley did not have a fracture at C6-7 before 10/17/02?

A. Did you not already ask me that question?

Q. No. I asked you on 10/17. I'm now asking you before 10/17.

MR. REGNIER: Is this based on the records you won't produce in this case?

THE WITNESS: I would only qualify my answer by saying in the end, she shows up with a fracture. And it's my opinion that the only way she could obtain a fracture from chiropractic manipulation is if she had a preexisting injury or abnormality of her bone.

So that would be the only line of evidence that would support a fracture or an abnormality prior to 10/17/02.

BY MR. RUF:

Q. Doctor, are you aware of any medical evidence that supports a fracture prior to 10/17/02 in Kim Richley?

MR. REGNIER: Objection. You refused to produce records prior to that date.

Go ahead, Doctor.

BY MR. RUF:

Q. Doctor, are you aware of any medical evidence? I'm not talking about speculation.

A. I presume by "medical evidence," you mean an x-ray?

Q. X-ray, medical record, anything that would document a preexisting fracture.

A. I've not reviewed any such record.

Q. You're not aware of any history documenting a neck fracture prior to 10/17/02, correct?

MR. REGNIER: Same objection. Go ahead.

THE WITNESS: I think I just testified to that fact.

BY MR. RUF:

Q. So you would agree you're not aware of any medical record documenting a fracture prior to 10/17/02, correct?

MR. REGNIER: Same objection,

based on failure to produce preexisting records.

Go ahead, Doctor.

THE WITNESS: I'm not aware of it, nor have I reviewed it.

BY MR. RUF:

Q. And you're not aware, in any of the medical records that you've reviewed, of a history of a neck fracture prior to 10/17/02, correct?

A. In these records, there is no mention of a fracture prior to 10/17/02.

Q. And are you aware of any trauma prior to 10/17/02 that occurred with respect to Kim Richley that could have caused a neck fracture?

MR. REGNIER: Same objection.

Go ahead, Doctor.

THE WITNESS: I know that she's had a seizure disorder, but I'm not aware of any specific episode of trauma, like a car accident or anything of that nature.

BY MR. RUF:

Q. So you're not aware of any trauma prior to 10/17/02 that could have caused a neck fracture in Kim Richley, correct?

A. Well, what I'm saying is that trauma comes in many forms. I don't know of any car accidents or falling out of trees or anything like that. You can, of course, fracture a cervical vertebrae during a seizure or something, and we know she had seizures.

So there are episodes that could have given rise to a fracture that perhaps would not fall into your definition of "trauma" or perhaps it would.

Q. So, Doctor, would you agree that the answer is no, you're not aware of any trauma prior to 10/17/02 that could have caused a neck fracture in Kim Richley?

MR. REGNIER: Same objection.

Go ahead, Doctor.

THE WITNESS: I've answered your question. But if you'd like a more specific answer, she's not had a high-velocity automobile accident or traumatic episode that typically causes these fractures, that I'm aware of, prior to 10/17/02.

However, her medical history does contain events that could lead to

these types of fractures prior to 10/17/02.

BY MR. RUF:

Q. If a person sustains a fracture of the facet, would you expect to see arthritic changes where the fracture occurred more than a year after the fracture occurs?

A. It depends.

Q. Is one of the arthritic changes that you could see a thickening of the bone where the fracture occurs?

A. You could see that.

Q. Do you agree that, based upon Dr. Likavec's operative report, no arthritic changes were noted at the location of the facet fracture?

A. Let me just look at the report. Is there a particular part of the report that you're referencing?

Q. I'm just asking you that, based upon the report, there's no notation of any changes where the facet fracture is?

A. Well, it's a lengthy report and he does describe abnormality of the bone. I guess when you say "arthritis," that's a rather nonspecific term.

You know, if you had a specific observation here, I could address it. But my best answer is that he does note abnormality of the bone.

Q. Well, what type of arthritic changes would you expect to see for a person that has sustained a facet fracture?

A. Well, you asked me could they have them and I said it's possible. They also may not have them. So I don't know that I'd expect to see any quote, unquote, arthritic changes from a facet fracture.

Q. Okay. If you did see arthritic changes, what would you expect to see?

A. Well, they could have some broad range. You could have some minimal thickening of a ligament. You could have hypertrophy of bone, as you mentioned. You could have some exophytic bone spurs.

You could have narrowing of the facet joint. You could have gapping of the facet joint. You could have irregularity of the facet surfaces. I mean, there's a broad range of changes that one could throw into the category of arthritic.

Q. Would you agree that Dr. Likavec, as a surgeon, is in a better position than you to determine

the condition of her bones intraoperatively?

A. Well, I would suppose. He's the only one that saw the bones intraoperatively.

Q. If he has testified that, based upon his performing this surgery, he was of the opinion that this was an acute fracture, would you disagree with that opinion?

A. I don't see any reason to dispute it.

Q. Would you agree that a neck fracture is a contraindication to cervical manipulation?

MR. REGNIER: Objection. Not a standard of care expert.

Go ahead, Doctor.

THE WITNESS: I would presume it is, yes.

BY MR. RUF:

Q. To put it another way, it would be a deviation from acceptable, medical, or chiropractic practice to manipulate somebody's neck where they had a neck fracture, wouldn't it?

MR. REGNIER: Objection. Go ahead, Doctor.

THE WITNESS: Well, I can't hold myself out as an expert on the standards

of care in chiropractic medicine.

If you're talking about a patient who has an acute fracture that's unstable and is known to the treating chiropractic, it would seem prudent that that would be a standard.

BY MR. RUF:

Q. Would you agree it would be unreasonable and imprudent to manipulate somebody's neck where that person had a neck fracture?

MR. REGNIER: Objection. Go ahead, Doctor.

THE WITNESS: I think I just said that if it was an acute fracture and it was unstable and the treating physician was aware of it, I think it would be imprudent to treat it with manipulation unless the manipulation was done to reduce the fracture with x-ray guidance and other well-known techniques.

BY MR. RUF:

Q. Are you aware of "Campbell's Operative Orthopedics"?

A. Am I aware of it?

Q. Yes.

A. I'm aware that it's a general textbook of orthopedics.

Q. Have you reviewed that text and studied that text?

A. No.

Q. Would you agree with the statement in "Campbell's Operative Orthopedics" that unilateral facet dislocation usually results from flexion and rotation of the cervical spine?

MR. REGNIER: Objection.

Go ahead, Doctor.

THE WITNESS: I would only say that that's an incomplete description. It does not -- you know, we all flex and rotate our spines every day. We've probably done it during the course of this discussion.

It takes far more than that to cause a unilateral facet fracture.

MR. REGNIER: Pardon me, Mark. Could you identify the edition for me?

MR. RUF: Sure. Eighth edition.

BY MR. RUF:

Q. Well, would you agree that a facet fracture is typically caused by rotational force?

A. No, no. Facet fractures are not caused by rotational force. There are different types of facet fracture. The fracture described here in Kim Richley is a combination of simultaneous forces.

Q. Okay. In your opinion, what simultaneous forces caused her neck fracture?

A. You would have to get a simultaneous hyperflexion and rotational component to result in the type of injury you see here. That accounts only, however, for the facet fracture. Her transverse process fracture would not fall into that set of forces.

Q. If Kim Richley's subluxation was such that one vertebra was not directly over the other one, there was partial slipping, would that be consistent with a rotational force causing her facet fracture?

A. No, no. That's just a natural logical consequence of a jumped facet, which is what she ends up with in the end.

Q. Would you agree that if a chiropractor performs a neck manipulation that results in a facet fracture at C6-7, that would be a deviation from

acceptable medical practice?

MR. REGNIER: Object. Can't testify as to chiropractic standard. Go ahead.

THE WITNESS: I think I've mentioned already that I can't testify to the chiropractic standard of care. So I don't think that I would have an answer to your question.

BY MR. RUF:

Q. Well, Doctor, do you think it's acceptable to break a patient's neck with a manipulation?

MR. REGNIER: Objection.

THE WITNESS: Well, obviously, if you're talking about a patient who has a normal neck and you do something to fracture it, that would seem unreasonable.

However, it also is quite implausible that you could fracture a patient's neck with routine manipulation.

BY MR. RUF:

Q. I mean, you would agree if enough force

was exerted on a patient's spine to fracture the facet, that that would be unacceptable medical care?

MR. REGNIER: Objection.

Go ahead, Doctor.

THE WITNESS: We're talking about forces that occur in high-speed automobile accidents. These are not the kind of forces that one would encounter in medical care.

BY MR. RUF:

Q. Well, do you know exactly how much force is exerted on a patient's spine with a modified rotary break? Have you ever studied that?

A. I've already testified to the fact that I have not studied modified rotary break. But I would just say that you cannot, with human force, fracture the cervical vertebrae in this manner.

Q. Have you treated patients that have gotten in fights with other people?

A. Altercations?

Q. Yes.

A. Sure.

Q. And have those patients sustained fractures of bones as a result of those altercations?

A. We're speaking now of a unilateral facet fracture, and --

Q. I'm first asking you: Have you treated patients who have sustained fractures as a result of blows or hits from other human beings?

A. Well, for example, an orbital rim fracture or a broken jaw from a punch, yes, I've seen that.

Q. So you would agree that a human being has a potential to cause fractures in another human being?

A. If you're talking about fracturing a thin bone with a focal impact of a fist, yes. That's certainly not applicable to this case.

Q. Doctor, could you tell me the amount of foot pounds of force that were exerted on Kim Richley's spine by this modified rotary break technique?

A. Nobody could tell you that.

Q. You don't know.

A. Nobody knows.

Q. Do you know the amount of foot pounds it takes to fracture a facet in a person's spine?

A. Depends on the quality of the bone. If they have normal, healthy bone, it would be much

higher than if they have, for example, soft bone.

Q. Okay. What about for either one? Do you know the amount of foot pounds of force it would take?

A. I would only know in a rough category that it would be significantly high for normal healthy bone. In reality, we see these fractures only in high-speed, high-velocity, high-force-type deceleration trauma. So I know they'd be high forces.

Q. Have you ever treated patients who have had injuries caused by a chiropractor?

A. When I was a resident at Henry Ford Hospital, we had a patient who had a vertebral dissection after chiropractic manipulation. That's the only one I've ever seen.

Q. Have you read about injuries caused by chiropractors in the medical literature?

A. The only topic I've ever seen discussed relative to that would be vertebral dissections.

Q. And what do you mean by "vertebral dissections"?

A. The vertebral artery is a blood vessel that supplies blood flow to a portion of the brain. And it runs through the bones of the neck. And there are isolated case reports of that blood vessel being

injured during manipulation by chiropractors and osteopathic physicians.

Q. Have you ever done a literature search to determine what the literature documents as complications caused by chiropractors?

A. No, I haven't.

Q. And you aren't aware of the potential complications caused by chiropractic manipulation, correct?

A. Well, you had asked me my experience, and my experience is I've seen vertebral dissection and I'm aware of vertebral dissection. And in my years of general practice in neurosurgery, I've not seen any other type of injury from chiropractic treatments.

Q. But you've never specifically researched or studied the potential complication from chiropractic manipulation, correct?

A. Correct.

Q. So you don't know what the potential complications are from chiropractic manipulation, correct?

A. Other than from my own experience.

Q. Right. Other than from your own experience, you don't know what the documented

complications are from chiropractic manipulation, correct?

A. I think that's a fair statement.

Q. Doctor, in your practice, you use a written consent form, correct?

A. Yes.

Q. As a matter of fact, that's available on-line, is it not?

A. Yes.

Q. And you have a rather extensive written consent form, correct?

A. I believe it's comprehensive.

Q. That's the standard that you use in your practice, a written consent form, correct?

A. For invasive procedures, yes.

Q. Would you agree that in treating a patient's spine, you have to inform a patient of all the potential risks of the treatment?

A. In our practice, for example, when you're doing surgery and invasive procedures, yes.

Q. Do you ever manipulate a patient's spine?

A. Only in attempting to reduce fractures and things under x-ray guidance.

Q. Well, do you agree with any type of

medical treatment, a patient should be informed and consent to the risks of that treatment?

MR. REGNIER: Objection. Go ahead, Doctor.

THE WITNESS: Well, I think that, you know, it would be a little hard to say. I mean, for example, if --

BY MR. RUF:

Q. Well, isn't that the way that you practice medicine, Doctor?

A. I'd like to finish my answer.

Q. All right.

A. I was going to say, you know, in medicine, many times we do things like swab the back of a throat, look into an ear canal, et cetera. They're not considered to be issues one would obtain informed consent over or have lengthy discussions regarding the risk benefits of. When you get down to something like an invasive procedure, doing surgery, then, yes, it would be typical and I would say prudent to have those types of discussions.

Q. So would you agree that if there's a risk of injury to the patient, that risk should be discussed with the patient?

MR. REGNIER: Objection.

Go ahead, Doctor.

THE WITNESS: Well, I just answered that. I mean, of course, when you're swabbing the back of a throat, you could ostensibly injure somebody. Of course, there's a risk of injury in any of the things we do.

But I'm not suggesting that all of those issues are subject to formal discussions regarding the risks and benefits.

BY MR. RUF:

Q. Well, are you telling me it's acceptable to treat a patient where there's a risk of injuring that patient without obtaining that patient's consent?

MR. REGNIER: Objection.

Go ahead, Doctor.

THE WITNESS: I think I'm answering your question and I think I've been very clear and I'll say it again.

BY MR. RUF:

Q. Well, I think you're giving me an evasive answer. Do you think it's acceptable to treat a

patient where there's a risk of injuring the patient and the patient has not consented to that risk?

MR. REGNIER: Objection.

THE WITNESS: There's nothing evasive about my answer, and I will repeat it.

Many times, we perform investigations, observations, manipulations. Even during the course of an examination, I do straight leg raising. I do an external rotation of the hip to check range of motion. I have people stand on their toes.

They could fall. I could fracture a hip. I could pull a muscle. Of course these things aren't subject to consent discussions.

So when you ask if we do something that has the potential to harm, isn't it necessary to have a consent discussion beforehand, I think I've answered clearly no.

When you then turn around and say, well, are you telling me it's okay

to do things that can harm patients without telling them about it, I'm saying, you know, in practical reality, that is true, that there are things like swabbing the back of a throat that could harm somebody and, in fact, we don't have lengthy consent discussions about it.

I'll bet you the last time you had your teeth cleaned, you didn't have a lengthy consent discussion with your dentist before he cleaned your teeth. But can teeth cleaning harm you? Sure.

When your barber cuts your hair, I'm sure you didn't have a lengthy consent discussion. But could he harm you with those shears? I'm sure he could.

BY MR. RUF:

Q. A barber's not a doctor, correct?

A. I think what I'm doing is using analogies to help you understand my point on this issue.

Q. I think you're the only doctor I've ever talked to that doesn't think you need to obtain informed consent from a patient.

MR. REGNIER: Objection.

BY MR. RUF:

Q. Doctor, if there's a risk of fracturing a patient's neck from treatment, would you agree that's something that has to be explained to the patient and the patient has to consent to the treatment?

MR. REGNIER: Objection. Your question's not consistent with Ohio law.

Go ahead, Doctor.

THE WITNESS: I don't think that there is necessarily any strong body of evidence or literature to support fracturing a neck during manipulation.

And if it's the type of thing that would occur one in a million times, I think that you would not need to have a discussion regarding that. It just doesn't seem reasonable.

If it's something that occurs with frequency, 5 percent of the time, I think, yes, you should have a discussion regarding that.

BY MR. RUF:

Q. Do you agree there's no evidence of any

event or occurrence which could have caused Kim Richley's facet fracture between 10/17 and 10/21 other than the chiropractic manipulation?

A. I don't agree with that.

Q. You don't agree with that. Well, are you aware of any trauma to Kimberly Richley's cervical spine between 10/17 and 10/21/02?

A. I'm not aware of any.

Q. So you're not aware of any other potential cause for Kimberly Richley's neck fracture other than the cervical manipulation of 10/21/02?

A. I didn't say that. I distinctly believe there has to be some other explanation. It's just not plausible that her neck was fractured by manipulation, either by the description she gives or the one that Dr. Reichenbach gives.

She's a seizure patient, and my best guess is that she had a seizure that caused it. But maybe there's some type of trauma that she suffered that I'm not aware of. Because certainly the transverse process fracture is a telltale sign that whatever caused the fracture was beyond what one would expect with flexing and rotating the head.

Q. But you have no other plausible

explanation for why she sustained a fracture which appeared on the films on 10/22/02?

A. No. I think my plausible explanation, my best explanation, is that it must have been a seizure. She awoke out of sleep with it, common history for a seizure. That type of fracture would fit with a seizure. And I don't think it's plausible that she suffered a fracture from the manipulation.

Q. Are you aware of any evidence that she actually had a seizure between 10/21 and 10/22?

A. Other than she's a patient that's treated for epilepsy and that she ended up with a fracture that's consistent with a seizure. That's my best evidence for that.

Q. So you would agree you have no evidence that she actually had a seizure between 10/21 and 10/22?

MR. REGNIER: Objection. Asked and answered.

THE WITNESS: I think I gave you my best answer to that question.

BY MR. RUF:

Q. Do you have any evidence or don't you, Doctor?

MR. REGNIER: Objection. He just gave it to you.

Go ahead, Doctor.

THE WITNESS: She has a fracture that I believe is consistent with a seizure, and the only plausible explanation for her to have this fracture is a seizure or some event that we're not aware of.

She has a history of seizures. And she also woke out of sleep with this problem, which would fit the pattern of seizures. That's what I would offer to you as evidence that there's a reasonable and perhaps best explanation of her fracture.

BY MR. RUF:

Q. Do you know if she had had seizures before 10/21/02?

A. I'm sure she had.

Q. Do you know for sure whether or not she had seizures?

A. She had been treated for them.

Q. Do you know the frequency of the

seizures?

MR. REGNIER: Same objection, based on your failure to produce records. Go ahead.

THE WITNESS: It wouldn't matter what the frequency was.

BY MR. RUF:

Q. Do you know how long before 10/21/02 she had a seizure?

A. Again, it wouldn't matter. If a person has one seizure every day or one seizure every 20 years, they could still fracture their neck during seizure. The frequency doesn't have any impact on that.

Q. Can you cite one medical article or one medical textbook that documents a facet fracture in the neck as a result of a seizure?

A. I don't know that it's written in any textbooks, but it's certainly quite plausible and I think the best explanation for this situation.

Q. So as we sit here today, you can't tell me any medical literature that would document a facet fracture being caused by a seizure, correct?

A. Well, I don't claim to have memorized the

world's medical literature, nor do I believe that appearing in literature is something that is necessary to state that something is a reasonable and appropriate conclusion.

And I'm certain that if we did search the literature, we'd probably find that reported. But if you're asking me have I memorized literature and can cite it chapter and verse, of course not.

Q. I'm asking you are you aware of any literature as we sit here today that documents any facet fractures being caused by a seizure? The answer is no, correct?

A. The answer is the answer I just gave you.

Q. Why can't you just give me a simple answer, Doctor, instead of these circular answers?

MR. REGNIER: Objection.

THE WITNESS: Because the answer is not simple. The answer is not simple at all.

BY MR. RUF:

Q. Can you cite an article as we sit here today?

A. Well, that, I did answer quite directly. I said I do not have the world's literature memorized.

I cannot give you a citation off the top of my head. I said that if we searched the literature, we may well find it.

And I also pointed out that because something is documented in literature is not the litmus test for whether it's reasonable, unreasonable, true, or untrue.

Q. Have you ever treated a patient that sustained a cervical facet fracture as a result of a seizure?

A. I can't recall that set of circumstances.

Q. How many people have you treated with facet fractures in the cervical spine?

A. Oh, I'm sure it's probably, if not 100, very close to it.

Q. Would you agree that, based upon a reasonable medical certainty, the facet fracture to Kimberly Richley's cervical spine occurred between 10/21 and 10/22/02?

A. I'm not sure I would. I don't think that you would have to tie it down to that time frame.

Q. Well, you've already testified that, based upon reasonable medical certainty, she did not have a fracture on 10/17/02, correct?

A. Yes.

Q. So would you agree that the cervical fracture had to be caused sometime between 10/17/02 and 10/22/02 when the film showed the fracture?

A. Well, that's a different set of dates that you just stated. I was confused as to why you were trying to narrow the dates earlier.

Q. Well, since you wouldn't agree with my question, I'm changing it.

A. I see. I think, you know, based on the medical records that I've been allowed to review, I do not see evidence of a fracture before 10/17. And we have those x-rays. And then I think the first time we see evidence of a fracture, if I'm correct, is 10/22. I'll check that and make sure I've got it right. Yeah, I think 10/22 is the date.

Q. So you would agree that the fracture occurred sometime between 10/17/02 and 10/22/02?

A. I believe that's a reasonable conclusion.

Q. Would you also agree that the subluxation at C6-7 occurred sometime between 10/17/02 and 10/22/02?

A. Yes.

Q. Have you performed surgery on patients

that have sustained facet fractures of the cervical spine with subluxation?

A. I have.

Q. Was the type of surgery performed by Dr. Likavec appropriate to treat Kim Richley's condition?

A. Yes.

Q. Would you agree that the treatment by Deaconess Hospital, Metro Hospital, and Precision Orthopedics was all reasonable and necessary treatment?

A. I'm okay with the hospital and with the surgery. I'm not so sure what Precision Orthopedics --

Q. It's Dr. Chauhan.

A. You know, I don't really know what Dr. Chauhan is doing for her. The problem was treated surgically, and I don't know what an orthopedic surgeon is offering that's of value. But I agree that the hospitalization and the surgery were necessary and reasonable treatment.

Q. Based upon your experience, would approximately 34,000 in medical bills be the approximate cost to treat a facet fracture surgically, with subsequent follow-up treatment?

A. Well, including the hospitalization and all ancillaries.

Q. Yes?

A. Yes, including the hospitalization and all ancillaries.

Q. Doctor, can you identify for me any medical article or any medical textbook that supports the opinions you set forth in your letter?

A. Do you have a specific opinion that you're referring to?

Q. Any of your opinions.

MR. REGNIER: Objection. Vague.

THE WITNESS: For example, Opinion 1, which states the description of the chiropractic treatment rendered to Kimberly Richley does not correspond to the forces involved in a unilateral jump facet injury and that such injuries are usually associated with high-velocity deceleration injuries, you could find virtually in any textbook that discusses this type of issue, and I'm certain innumerable articles.

BY MR. RUF:

Q. Can you cite to one?

A. Well, I didn't come here prepared with citations and I don't keep citations memorized in my head.

Q. I'm just asking if you can cite one. If you can't, tell me you can't.

A. I would just say that any general textbook that discusses cervical spine trauma.

Q. Okay. Why don't you name a textbook?

A. Gosh, there's a number of general texts in neurosurgery. I'm sure they must cover the topic.

Q. Name one.

A. Yeoman's would be a textbook in general surgery that may cover this topic.

Q. Have you found Yeoman's to be accurate and reliable?

A. I use textbooks for general reference.

Q. That's a peer-review textbook, is it not?

A. Peer review usually refers to articles and literature. Textbooks are typically not peer review.

Q. Well, what's written in Yeoman's is reviewed by a whole group of doctors, is it not?

A. Well, my general understanding of the process, having been a contributor to general textbooks, is that usually contributing authors write a chapter and it's the editor of a text who will generally review it and sign off on it, but it's not reviewed by any panel of experts or anything like that for a textbook.

Textbooks are just basically representing the chapter's author's experiences. And the experiences that are included in the chapter are usually defined by the instructions given by the managing editor.

And you may well find textbooks like that that have multiple contributing physicians that you'll find conflicts, even, in what they write in one chapter versus the next. But that just reflects the nature of the medicine. It's not something that can be pinned down to exact precise science. A lot of it is judgments and opinions and biases.

Q. Are you aware of any other textbooks that would support the statement you made in Paragraph 1?

A. Well, I said just about any general textbook would support it.

Q. Can you cite any others other than

Yeoman's?

A. Another general textbook of neurosurgery would be Wilkins & Rengachary. That's a very similar book. I'm sure you'll probably even find it in your "Campbell's Operative Orthopedics."

Well, it's an operative book. That probably wouldn't be germane. You'd probably want to see something in a more generalized text. But there are certainly many of these textbooks out there. I just don't have a whole list of them in my mind right now.

Q. Any other ones you can think of that would support the statement you made in Paragraph 1?

A. I think I'm just going to stop. I just can't think of any other general textbooks to offer you.

Q. What about for Paragraph 2, either articles or general textbooks?

A. I'd say the same answer. You could find that in any general text on the topics. If you need specifics, I'll just stick with the two I've already been able to think of off the top of my head.

Q. The same with Campbell's?

A. No, I can't include Campbell's. It's an

operative book, so it wouldn't really discuss these issues, at least not in any depth.

Q. What about Paragraph 3?

A. Delayed onset of pain recorded by the patient? Well, of course, it's a very common piece of information that would probably, again, be covered in any general textbook. When you fracture a facet, you have pain at the time of the fracture.

I mean, it might be so widely accepted, it's assumed in the chapter. I don't think you would find a book that would suggest otherwise.

Q. Would you stick with the same two textbooks you've named for Paragraph 3?

A. Since they're the only ones I can think of off the top of my head right now, I'll go with them.

Q. What about Paragraph 4?

A. Well, Opinion No. 4 states that the jump facet injury could only be caused by low-velocity forces if there's a significant preexisting injury of the facet joint.

I doubt that a topic like that would be covered in a general textbook of any type. I think that this is based on the fact that I have expertise

in treating these, and I've treated, as I've said, hundreds of neck fractures and certainly a great deal of facet fractures.

You just don't see them in low-velocity injuries. You see them as a result of high-velocity injuries, significant forces like you find in high-velocity car accidents, that type of thing.

Q. What about Paragraph 5?

A. Well, now, in Paragraph 5, C7 nerve root compression is a common clinical case, that many patients with symptoms similar to Kimberly Richley's are seen in my practice. And it goes on to say that in my experience, these injuries do not result in debilitating lifelong symptoms.

Now, I doubt my experience is captured in anybody's textbook, but certainly I treat C7 radiculopathy on a daily basis, and I find it incredulous that anybody would claim permanent disability from a C7 nerve root injury. It just doesn't fit at all with my experience.

Q. Have you ever had a patient who has had permanent sequelae from a facet fracture where a piece of the fracture is impinging on the nerve?

A. Well, yeah. That's common, to find a

piece of -- in these types of fractures, if the facet jumps and fractures off the tip of the bone as it did here, you can find a piece of bone lodged in the neural foramina of the nerve root. That's not exceptional. And it would be similar to rupturing a disk and having the ruptured disk sit in the neural foramina with the nerve root. Nothing more, nothing less.

Q. Have you had patients that have had permanent sequelae from that?

A. Well, you could certainly have permanent numbness, permanent weakness of all varying degrees. But what I'm saying is that it's not something that would cause a person to be disabled.

Q. Based upon your experience in general, does the healing to the cervical spine occur within a year of the injury?

A. Well, the bony healing, of course, is quicker than that. Nerve root healing, if it involves regeneration, you know, we usually use a time frame of 9 to 12 months for nerve root regeneration.

Q. So has it been your experience that if a patient has problems past one year, that those are permanent problems?

A. Well, it depends on what the problem is. When we're talking about nerve root degeneration, we're talking about numbness and weakness. So if you have weakness and it doesn't get better in a year's time, then we usually say whatever portion of that weakness you have is probably permanent. And the same with numbness.

Q. What about pain?

A. Pain, you couldn't say that. Pain is a very subjective thing. It can come and go. People who walk into my office who have had pain for years and years and years can be relieved of their pain.

Q. Have you ever testified in an automobile accident case that a patient was going to have permanent pain for the rest of their life?

A. I don't recall testifying to that, but I guess it would depend on the nature of the case facts.

Q. Well, would you agree that the conditions that Kimberly Richley is currently suffering from are permanent conditions?

A. I don't know that she's suffering from any condition.

Q. Okay. Could you tell me what her current condition is?

MR. REGNIER: Objection.

THE WITNESS: I would say that I think the record leaves off with her surgeon finding her to be in normal health without any neurologic residual. And that's what I would expect.

BY MR. RUF:

Q. Are you aware that Dr. Likavec, her surgeon, and Dr. Chauhan, her pain management orthopedic doctor, have both rendered the opinions that her current condition is permanent?

MR. REGNIER: Objection.

THE WITNESS: I don't know what condition you're speaking of. But we can review Dr. Likavec's office notes. And as far as I could tell, I think his office notes said she was doing fine.

BY MR. RUF:

Q. First let's start with Dr. Chauhan. Have you reviewed his report? I think I saw it in your materials (indicating).

A. Do you want to hang on to that? I'll try and find my copy.

Q. Sure.

A. Okay.

Q. Would you agree that in his report of April 15th, 2004, he documents that presently, the primary complaint is that of neck pain?

A. I see in Paragraph 3, it says regarding her current condition, she continues with substantial neck pain.

Q. You have not examined Kimberly Richley, correct?

A. That's correct.

Q. So do you have any basis to dispute that she suffers from neck pain on a daily basis?

A. Well, I guess I was earlier looking for the office records of Dr. Likavec. I just wanted to cross-reference this with what he wrote about her postoperative condition.

MR. REGNIER: Which report are you looking for?

THE WITNESS: I was looking for the office notes from Dr. Likavec, his follow-up visits.

BY MR. RUF:

Q. Well, let me ask you this: Would you agree that Dr. Chauhan is in a better position than

you are to know what Kimberly Richley's current condition is?

A. Well, in the fact that you've represented that he's treating her, I'm sure he is.

Q. Are you aware that the defense had an examination done by a neurologist, Dr. Mann?

A. I don't know that I'm aware of that.

Q. If Dr. Mann, as a witness for the defense, conducted a neurological examination on September 9th, 2004, and stated that Kimberly Richley is troubled with burning, tightness, and pain in the neck radiating down the arm into the fingers, and headaches originating in the neck, do you have any basis to dispute that?

A. No.

Q. Would you agree that if she is suffering from those conditions almost two years from the date of the fracture that, based on reasonable medical certainty, those conditions are permanent?

A. Well, I find that harder to agree to. I would just say that, in my experience, these types of injuries, when you treat them, use them, patients may have some complaints of achy pain, stiff neck. But nothing quite that dramatic.

And whether it would be permanent would be hard to say. Because as I've mentioned, you know, I'll see people that come in years after a problem and we can treat them and get them better.

Q. Would you agree that the healing and improvement for an injury to the cervical spine usually occurs within the first year after the injury?

A. What I testified to the last time you asked me that question was that if the injury is to the nerve and it requires nerve regeneration, a 9-to-12-month time frame is about right.

For bone healing, it's a little bit quicker than that. But that's about how long it takes for these tissues to heal and/or regenerate.

But when you speak of healing in the sense that they become symptom-free, that's a little bit different. Because symptoms can linger on for longer than a year and longer than two years. And that doesn't mean that they'll be permanent.

Q. If Dr. Chauhan has testified that Kimberly Richley cannot sit for long periods of time due to her condition, do you have any basis to dispute that?

A. It seems implausible.

Q. Do you know whether or not she can look up and down repetitively?

A. No, I don't know whether she can look up and down repetitively. I presume she can, because if you have a single level of your neck fused, you lose probably 7 degrees of total motion out of a range that's probably 40 to 50 degrees flexion-extension, so it would only be a small percentage that she would lose.

Q. Do you know if she can lift more than 2-1/2 pounds?

A. She can lift more than 2-1/2 pounds.

Q. Do you know if she's been tested for that?

A. I don't know that she's been tested. But you can function without your C7 root altogether and lift more than 2-1/2 pounds.

Q. Doctor, would you agree that if Kimberly Richley is troubled with burning tightness, pain in the neck radiating down the right arm to the fingers, headaches originating in the neck, that she can't lift more than 2.5 pounds, she can't sit for long periods of time, she can't look up or down repetitively, she has daily neck pain, that those things would disable

her from working?

MR. REGNIER: Objection. Go ahead, Doctor.

THE WITNESS: I would say those things are not consistent with the injury she had. It would only seem to me that that's an extraordinary pattern of symptomatology for a person with a C7 root injury, and there must be some other explanation.

BY MR. RUF:

Q. Well, assuming those problems are documented both by Dr. Chauhan by Dr. Mann, if she has those conditions, don't you think it would be difficult for her to get a job?

A. Well, I think that -- you know, I wouldn't want to hold myself out as a rehabilitation expert, but I would think that she could be rehabilitated to meaningful remunerative employment.

Q. Doing what? What do you think she can get a job doing?

A. Well, can she talk on the phone? She could get a job as a telephone operator, as a phone solicitor, as a receptionist. I mean, there's a lot

of light-duty work. People with really, truly dramatic injuries to their neck who are paralyzed and things work in those capacities all the time.

Q. Do you know if any of those jobs would require lifting more than 2.5 pounds?

A. I doubt they would.

Q. Do you know of an employer that would hire her with all these restrictions?

MR. REGNIER: Objection.

THE WITNESS: Do I know of an employer personally?

BY MR. RUF:

Q. Yes.

A. I don't know that many employers, but I know disabled people are hired all the time. I go to the checkout line in the store and I've had groceries bagged by people with cerebral palsy. I've had people in wheelchairs ring up my orders.

I mean, in the courthouses around, I've seen people who are blind preparing and serving meals. Yes, disabled people are fully able to return to work.

Q. Would you agree that you don't know whether or not she's employable, because you don't know her current condition?

A. I wouldn't agree to that, no. You've described her current condition as you believe it is, and I'd say I still think that, you know, in this day and age, people with much worse injuries than she sustained go back to remunerative employment, and that people with disabilities are employed in many different walks of life.

Q. So what jobs is she qualified for?

A. We've talked about that.

Q. Any other jobs you can think of she's qualified for?

A. Filing logistics. I'm sure, you know, if I was a rehab specialist, I could probably come up with a whole litany of them.

Q. I'm asking you. You've talked about employability in your report.

A. And I'm answering you.

Q. Okay. Any other jobs you can think of that she's qualified to do?

A. I said radio dispatch logistics in trucking companies, fire departments, police departments. She could be some type of a school aide to help teach kids how to read. She could probably work in any one of a number of capacities, and I think

a rehab specialist could probably rattle off a whole litany.

Q. Do you know if any of those jobs require lifting more than 2.5 pounds?

MR. REGNIER: Objection.

THE WITNESS: I doubt they would.

BY MR. RUF:

Q. You don't know one way or the other, though, right?

A. Well, I would say that there are definitely jobs out there that do not require lifting 2-1/2 pounds that she would qualify for.

Q. And do any of those jobs that you named require sitting for long periods of time?

A. Well, it depends. Perhaps. Perhaps you could take frequent breaks.

Q. Do you know if any of those jobs require looking up and down repetitively?

A. I would say it's unlikely they would.

Q. Are you aware that the defense expert, Dr. Mann, has rendered the opinion that her cervical facet fracture appears to him to have been caused by the manipulation of October 21st, 2002?

A. I don't believe I'm familiar with his report. I see the highlighted sentence here in the report you've handed me, this appears to me to be caused by the manipulation of October 21st, 2002.

Q. Do you agree that, based on the Metro Health medical records, the doctors at that facility attributed Kimberly Richley's neck fracture to the cervical manipulation?

A. I see an encounter form from the emergency department that says a 39-year old, status, post-manipulation by report. In patient's chiropractor's office yesterday with exquisite pain, sharp, shooting down right arm.

Now, your question is am I aware they attributed it to manipulation? I don't know that would be an attribution, but there might be somewhere else you want to point me in the record.

Q. Sure. Do you agree that the radiology report for the CT states under "History": "C6-7 dislocation with numbness in upper extremities, chiropractor dislocation"?

A. Do I agree that's what it says? Yes, that's what it says. Do I agree that that means the treating doctors have gone on record stating that they

believe that the chiropractic manipulation caused the fracture? I don't think that that would....

Q. Well, are you aware that Dr. Likavec, the neurosurgeon, has written a report in which his opinion is that the chiropractic manipulation caused the fracture and the condition he observed at the time of surgery?

A. I'm aware of Dr. Likavec's report.

Q. Don't you agree that that's a reasonable conclusion?

A. Well, I think I've given you my conclusion, is that it's implausible that the low-velocity forces involved in chiropractic manipulation on this patient, either by the plaintiff's description or Dr. Reichenbach's description, would result in this type of fracture. It's just not biologically plausible.

Q. What I'm asking you is: Do you think Dr. Likavec's conclusion and Dr. Mann's conclusion that the chiropractic manipulation caused Kimberly Richley's facet fracture is an unreasonable conclusion?

A. Yes, I think it's an unreasonable conclusion.

Q. Even though you're not aware of any other trauma that could have caused this facet fracture?

A. We've gone over that extensively and I think I've offered my explanation, which I think is a better explanation for her facet fracture.

Q. Do you know whether or not an EMG of March 2nd, 2004, documented ongoing evidence of chronic nerve damage in Kimberly Richley?

A. Well, I think that we're going back now to precision orthopedics. I've never seen an EMG. I think he references that there was an EMG done in his report dated April 15th, 2004. And in that report, he states an EMG was repeated on March 2nd, 2004, and she had ongoing evidence of chronic nerve damage, but with some recovery of nerves noted.

Now, taken at face value, that sentence is not reasonable and is self-contradictory. What I think he means to imply is that the EMG shows evidence of a prior or a chronic nerve injury. To say it's ongoing, I think he doesn't mean to imply that she has ongoing nerve damage.

Q. You haven't even seen the results of the EMG, correct?

A. No, I have not seen the results of this

particular EMG.

Q. So you're commenting on the results of the EMG without even seeing it, right?

A. No. I think you have to give me a chance to finish my answer here. Basically, this patient has had an injury, and this EMG is being done well after the injury is completed.

The sentence does not have internal consistency. And I think that what he means to say is not necessarily conveyed in the words he used. Typically after a patient has had a nerve root injury and you get an EMG, it won't be normal.

It will show evidence of the prior injury, and we usually refer to that as a chronic change that's related to a prior injury. What it doesn't imply is that there's some kind of ongoing injury to the nerve.

And the reason we know that's not the case is because he goes on to say that the same EMG shows some recovery of the nerves noted.

Now, an EMG can't show recovery of nerves. What I think he's intending to mean there is that there was an injury. The acute phase is over. You don't see any acute phase changes on EMG. All you

see is chronic phase changes indicative of the prior injury.

That would be found virtually in anybody. I mean, if you had a ruptured disk and had a surgery done and your EMG was positive, if you got an EMG ten years later when this was all over with, you would see this pattern of chronic phase changes consistent with a prior injury. I think that's what he's referring to.

Q. Have you reviewed any studies in the medical literature on neurological sequelae from facet fractures?

A. I mean, I've read extensively on facet fractures.

Q. I'm asking you: Have you reviewed any specific article that addresses the subject of neurological sequelae from facet fractures?

A. The answer is I've read extensively on facet fractures. I've read a number of articles and reports and things over the course of my training and career that have addressed neurological injury from facet fractures.

Q. Would "The Journal of Neurosurgery" be a good place to look for information on neurological

sequelae from facet fractures?

A. "The Journal of Neurosurgery" is just one of many journals that has publications on that type of topic. The publications, of course, range. Some would be a higher grade of evidence than others.

Q. You've published in "Neurosurgery," correct?

A. I have.

Q. Do you consider it to be a quality journal?

A. Well, I consider it to be a quality journal. But please remember that quality journals carry a variety of pieces of information.

And I'm sure you're well aware of the fact that scientific reports can be Grade A evidence, double-blind, randomized, controlled study; or it can be Grade D evidence, which is anecdotal case reports.

So we don't claim that these journals are authoritative references. They're simply reflections of people's experiences.

Q. Well, have you found the articles in "Neurosurgery" to be accurate and reliable?

A. I have found them to be reasonably reliable. I can't say that's universally true, but

certainly the majority that I've read have been pretty reasonable.

Q. What about "The Journal of Neurosurgery"? You've published in that, correct?

A. I have.

Q. Have you found the articles in "The Journal of Neurosurgery" to be accurate and reliable?

A. Well, when you say, "accurate and reliable," you know, if somebody's reporting their anecdotal case series, I mean, you know, there's no way to say whether it's accurate and reliable.

It may be interesting reading. It may resonate with something that you've seen or experienced as a physician. It may offer a new way of looking at an old problem or a new technique for treating an old problem.

I think when you're asking me is it reliable, you're implying that there's some scientific presentation that I would agree to or sign off on, and those types of articles are few and far between.

Those are the types of articles that are double-blind, randomized, and set standards of care, you know, because the evidence is irrefutable. Those types of articles appear only rarely in our

discipline.

Q. You have never conducted a study on the neurological sequelae from facet fractures, correct?

A. How would you study it? Go and fracture a --

Q. Have you ever written a paper on that?

A. No. I think we started off by reviewing my CV and whether any of the publications directly impacted the issues, and I didn't believe it did.

Q. Have you ever been involved in a study where doctors are studying the neurological sequelae from facet fractures?

A. I don't know what you mean by your question, but I think that'd be an awfully hard thing to study. But, again, we've gone over my CV and I don't claim to have published or been involved in research that has to do with specific topic.

Q. Based upon your experience, have you found the articles in "The Journal of Neurosurgery" to be accurate and reliable?

MR. REGNIER: Objection. Asked and answered.

MR. RUF: He's given me circular answers. It's a simple question.

BY MR. RUF:

Q. Have you found it to be accurate and reliable or not?

MR. REGNIER: Objection. Asked and answered.

THE WITNESS: It's not a simple answer and it's not a binary answer. It's not a yes/no answer. The articles that appear in "The Journal of Neurosurgery," as in any scientific journal, are articles that range from anecdotal reports, single-case reports, all the way up to double-blind, randomized trials.

And "accurate and reliable" would be terminology that I would apply to a double-blind, randomized trial. It would not be something that I would apply to a report in the literature of somebody's experience with ten facet fractures or something.

BY MR. RUF:

Q. How about "The Journal of Spine"? Are you familiar with that journal?

A. Same answer.
Q. Have you read it?
A. "The Journal of Spine"?
Q. Yes.
A. I'm familiar with it and I have read it.
Q. What journals do you subscribe to?
A. "The Journal of Neurosurgery", "Neurosurgery", "The Journal of Spine", "Surgical Neurology." That pretty much covers the ones that I read.
Q. And you subscribe to those journals to stay current on the medical literature and what's going on in medicine?
A. Not really. They come automatically with my membership in the society. I think that, you know, reading the journals does, you know, keep you informed as to what other people's experiences are and what issues are being, you know, highly contested amongst the people who have expertise in one area of neurosurgery or another.
And I think that's pretty much why I read them. But I don't necessarily subscribe to them so that I remain current in my field. There are many ways in which one does that.

Q. Would you agree that there's articles in medical literature that document permanent nerve damage as a result of the facet fracture?

MR. REGNIER: Objection.

THE WITNESS: Well, you can have permanent nerve damage as a result of many things, ruptured disks, facet fractures, et cetera, that wouldn't surprise me at all.

I don't know of such an article, but it would be one of those things that you would certainly find if you searched the literature, I'm sure.

BY MR. RUF:

Q. How much time would have to pass before you would be willing to say that Kimberly Richley's condition is permanent?

A. Well, you know, I think if you're talking about healing the bone, six months. A nerve regeneration takes place, like we said, 9 to 12 months.

When you're talking about this sort of vast -- and in my mind, implausible -- pain disorder, I think that's something that would be -- wouldn't

have any time limits. I just wouldn't want to bracket that and say it's permanent after some point in time.

Q. Do you know what Kimberly Richley's pain in her neck is from?

A. Well, as I said earlier in the deposition, I do hundreds of fusions. And those patients with single-level fusion -- I mean, people are born with congenital fusion. They don't complain of loss of motion in their neck.

People with congenital fusions don't even know they have them until somebody gets an x-ray. So single-level fusions, they don't tend to complain too much of loss of motion in the neck.

They may complain of a stiff, achy sensation, and it may get aggravated when they're particularly active. Those types of complaints are kind of routine.

The kind of complaints she's offering is so extraordinary, it would be hard to say what they're due to. But what you could say with some reliability is that they don't reflect the typical patient with the injuries that she's sustained.

Q. You have not examined her, have you?

A. I think we've gone over that.

Q. Have you heard of Dr. Likavec?
A. No, I haven't.
Q. Do you ever keep personal notes on a patient outside of the patient file?
A. Do I?
Q. Yes.
A. Not that I'm aware of.
Q. That's not something you've ever done in your practice?
A. No.
Q. Have you ever referred a patient for chiropractic treatment for carpal tunnel syndrome?
A. I can't imagine that I would refer a patient for chiropractic treatment for carpal tunnel syndrome.
Q. Why not?
A. Well, because I think there's better treatments for carpal tunnel syndrome.
Q. Would you agree there's no proven benefit for manipulating the neck for carpal tunnel syndrome?
MR. REGNIER: Objection.
THE WITNESS: There's no benefit for manipulating the neck for carpal tunnel syndrome?

BY MR. RUF:

Q. No proven method.

A. None that I'm aware of.

Q. Are you aware of any proven benefit for manipulating the neck for a sprain/strain?

MR. REGNIER: For what?

THE WITNESS: Sprain/strain of the neck?

BY MR. RUF:

Q. Yes.

A. Well, you know, obviously, that's probably the most common diagnosis supporting treatment, including chiropractic treatment. I mean, I'm sure that that would be perhaps the most common reason to manipulate the neck.

Q. You're saying perhaps. You don't know?

A. Well, let me put it this way: I used to chair the quality assurance committee at Workers' Comp in Columbus, and we would do all types of comprehensive reviews.

And I think, of allowed conditions in Workers' Comp systems, sprain/strain was always ranked among the highest. And virtually, I'd say 50 percent or more of those patients would have been treated at

some point in their course with manipulation therapy.

Q. Doctor, have you ever referred one of your patients to a chiropractor for manipulation for a cervical strain/sprain?

A. Well, I don't use that word. To me, that's not a diagnosis I would make. But, yes, there are certainly patients in my practice who come to me with that diagnosis, oftentimes in the Workers' Comp system.

I don't find anything surgically curable. I give them a range of options. If they choose chiropractic treatment and they haven't got an established relationship and wanted a referral, I'm happy to offer one.

Q. Are you aware of any proven benefit to cervical manipulation for a wrist strain/sprain?

A. No. I have never heard of that.

Q. If a manipulation has no proven benefit, is that something that should be explained to a patient before it's done?

MR. REGNIER: Objection.

THE WITNESS: Well, if you're saying that a manipulation has no proven benefit, the patient should be informed

of that.

I guess my only question is: What would be a proven benefit? For example, is manipulation proven to cure anything? I don't know.

I guess if you're suggesting that you're using manipulation for some indication which would be unrecognizable to your chiropractic peers, that might be something you want to discuss with your patient.

But I would say that if you demanded double-blind, randomized, absolute proof before you did manipulation, there probably would be very little in chiropractics that you could do without sitting down and telling your patient that it hasn't been proven by a double-blind, randomized scientific trial.

BY MR. RUF:

Q. Have you done any research for this case?

A. No.

Q. Doctor, would you agree, bottom line,

it's unacceptable to break a patient's neck due to any type of medical treatment?

MR. REGNIER: Objection. Go ahead.

THE WITNESS: I guess it would be unacceptable to break a patient's neck.

BY MR. RUF:

Q. I mean, that's not something you want to do, right?

A. That's correct.

MR. RUF: Why don't we finish on that note.

MR. REGNIER: Do you want to review it?

THE WITNESS: I'll review it.

(Deposition concluded and witness excused at 6:50 p.m.)

(Signature reserved.)

- - -

SIGNATURE PAGE

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I, Robert W. Scheid, Jr., a Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given was by me reduced to stenotype in the presence of said witness and afterwards transcribed; that the foregoing is a true and correct transcription of the testimony so given as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee of or attorney for any of the parties in this action; that I am not a relative or employee of an attorney of any of the parties in this action; that I am not financially interested in this action, nor am I or the court reporting firm with which I am affiliated under a contract as defined in the applicable civil rule.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Toledo, Ohio on this 12th day of October, 2004.

ROBERT W. SCHEID, JR.
Notary Public
in and for the State of Ohio

My Commission expires May 29, 2008.

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