

CUYAHOGA COUNTY, OHIO

RODNEY L. McCLENDON,

Plaintiff,

- VS -

JUDGE MCGINTY
CASE NO. 374136

KAISER FOUNDATION HEALTH
PLAN OF OHIO, et al.,

Defendants.

— — — —

Deposition of MARTIN L. MELNICK, M.D., taken as if upon cross-examination before Laura L. Ware, a Notary Public within and for the State of Ohio, at the offices of Mazanec, Raskin & Ryder, 100 Franklin's Row, 34305 Solon Road, Solon, Ohio, at 1:20 p.m. on Friday, June 25, 1999, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiff in this cause.

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The Cleveland Clinic Foundation.

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2 (Thereupon, Plaintiff's Exhibits 34
3 through 36 were mark'd for purposes of
4 identification.)

5 - - - -
6 MARTIN L. MELNICK, M.D., of lawful age,
7 called by the Plaintiff for the purpose of
8 cross-examination, as provided by the Rules of Civil
9 Procedure, being by me first duly sworn, as
10 hereinafter certified, deposed and said as follows:

11 CROSS-EXAMINATION OF MARTIN L. MELNICK, M.D.

12 BY MR. RUF:

13 Q. Could you please state your name and spell your
14 name.

15 A. Martin L. Melnick, M-A-R-T-I-N, L., Melnick,
16 M-E-L-N-I-C-K.

17 Q. And what is your address?

18 A. 24758 Meldon Boulevard, Beachwood, Ohio.

19 Q. And what's the zip code there?

20 A. 44122.

21 Q. Dr. Melnick, my name is Mark Ruf. I represent
22 Rodney McClendon in a case that's been brought
23 against Kaiser and the Cleveland Clinic.

24 If I ask you a question and you do not
25 understand my question, please tell me. If you give

1 me an answer to a question, I'll assume you
2 understood the question. Okay?

3 A. Fine.

4 Q. Who is your current employer?

5 A. I have none, I'm retired. I'm now a student, I'm
6 going back to school.

7 Q. Good for you. Who was your employer back in 1998?

8 A. Permanente Medical Group.

9 Q. Ohio Permanente Medical Group?

10 A. Ohio Permanente Medical Group.

11 Q. How long were you employed by Ohio Permanente?

12 A. Since July the 14th, 1975.

13 Q. Is your license to practice medicine still in good
14 standing in the State of Ohio?

15 A. Yes, it is.

16 Q. And when were you first licensed?

17 A. In Ohio?

18 Q. Yes.

19 A. July -- oh, the spring of 1975. I don't exactly
20 remember when though.

21 Q. Did you practice in another state before then?

22 A. Yes.

23 Q. What state?

24 A. New York state, New York state.

25 Q. How long were you licensed to practice in New York

1 state?

2 A. Oh, licensed to practice, quite a few years. I only
3 practiced for about 18 months in New York state.

4 Q. How long have you practiced medicine total?

5 A. Including my internship or excluding my internship;
6 including my internship and residencies?

7 Q. Yes.

8 A. Since I started my internship, my first internship
9 would have been July the 1st, 1965, and then I did
10 an internship for a year. I practiced medicine as a
11 member of the United States Air Force for two years,
12 then I went back into the residency in St. Louis in
13 general surgery, residency in neurology at the
14 University of Washington for a year, and then did a
15 urology residency at William Beaumont Hospital in
16 Royal Oak, Michigan, then I was a family
17 practitioner, a real country doctor for a year and a
18 half in upstate New York, and then I came down here
19 to Cleveland and worked for the Permanente Medical
20 Group.

21 Q. So you've had medical experience in a lot of
22 different areas?

23 A. Yeah, I'd say.

24 Q. Kind of a jack of all trades?

25 A. I guess.

- 1 Q. Have you ever specialized in any area?
- 2 A. Well, I'm board certified in emergency medicine.
- 3 Q. Are you board certified in any other area?
- 4 A. No.
- 5 Q. Have you ever done an internship, residency or
- 6 fellowship in orthopedics?
- 7 A. No.
- 8 Q. I assume that over your numerous years of medical
- 9 practice that you've diagnosed fractures of the
- 10 elbow?
- 11 A. Yes.
- 12 Q. What are the symptoms of an elbow fracture?
- 13 A. Oh, pain, swelling, tenderness, decreased range of
- 14 motion, and of course an antecedent history of that,
- 15 of trauma.
- 16 Q. Can you have a fracture of the elbow without having
- 17 swelling?
- 18 A. Can you?
- 19 Q. Yes.
- 20 A. Not classically. I guess it's possible, but I mean
- 21 not classically, certainly not.
- 22 Q. When you have a fracture of the elbow, what would
- 23 cause swelling?
- 24 A. Well, usually the general inflammation in the
- 25 general elbow joint itself, you have broken blood

1 vessels, you've broken the periosteum, you've broken
2 the synovial membrane, and so frequently that will
3 cause swelling, cause inflammation essentially, it's
4 inflammation and swelling.

5 Q. And I assume that you've ordered x-rays to confirm
6 whether or not a patient has an elbow fracture?

7 A. Oh, in our present state of knowledge that's a
8 definitive way to make a diagnosis, x-rays. You
9 suspect it clinically, but you need x-rays for
10 proof.

11 Q. If a patient was suspected as having a possible
12 fracture of the elbow, what views of the right
13 extremity would you order?

14 A. Of the elbow, I'd probably certainly order a PA and
15 lateral of the elbow. If somebody comes in with
16 trauma, I usually seek tenderness. I find the
17 mechanism of the injury and try to determine from
18 there what I should x-ray certainly on examination
19 where it's tender.

20 Q. Are there fractures of the elbow which will not show
21 up on a forearm x-ray?

22 A. Yes, certainly ideally you would want to have an
23 x-ray of the elbow.

24 Q. Can you have a fracture of the radial head that will
25 not show up on an x-ray of the forearm?

1 A. Certainly.

2 Q. Have you ever made the diagnosis of a fracture when
3 a fracture has not been read on x-ray?

4 A. Clinically I would suspect one and then I would
5 splint it or cast it and have the patient come back
6 in several days to be re-x-rayed. It's very
7 difficult to make a diagnosis without having an
8 x-ray, but I mean, you can clinically suspect one
9 and you treat the patient as though he had one, and
10 then if the patient comes back several days later, a
11 week or ten days later, you'll either sometimes see
12 absorption of the bone around the fracture site or
13 you'll see the beginning of callus and you know he
14 had a fracture.

15 Even though you may not see it on an x-ray,
16 ultimately my clinical impression is what carries
17 the weight. X-rays, they confirm what you think,
18 but ultimately it's what I think when I look at the
19 patient. That's what carries the weight for me.

20 Q. So you've treated a patient for fracture just based
21 on clinical signs and symptoms?

22 A. I don't know that I would treat him on -- I don't
23 know that I would treat them. I mean, I might very
24 well say, I mean, I might very well have the patient
25 come back in a week or ten days, I mean, and

1 re-x-ray the patient, and I certainly would
2 immobilize the joint in the interim.

3 But I mean, I don't know that I would say -- I
4 don't know that I would tell the patient you have a
5 fracture. I tell the patient straight out, I mean,
6 I don't see it on the x-ray, but I'm worried. And I
7 say the best thing to do is immobilize it and come
8 back in seven to ten days and see what it shows
9 then, and then I tell the patient the same thing,
10 the bone could be reabsorbed then. My favorite
11 story is of Rusty Staub, who you probably don't
12 remember.

13 MR. LEAK: New York Mets.

14 A. He was a right fielder. The man made over a million
15 dollars a year. He got injured playing baseball, he
16 got injured, got hit in the right hand, and they
17 took an x-ray and it was negative. And his batting
18 average before the accident was .320 and the last
19 half of the year after the injury went down to .230
20 and he still complained of pain.

21 Well, the next spring when he came off of
22 spring training, somebody took an x-ray and, voila,
23 he had a fracture of his navicular bone which was
24 missed the first time but nobody bothered, even with
25 this million dollar ball player, nobody bothered to

1 take an x-ray later on, which they should have done
2 and they would have picked up his navicular
3 fracture. So I tell this story to the patients. I
4 tell them exactly that.

5 The point is you can pick up a fracture later
6 on. You do not always see it on the x-ray. This is
7 something I tell the patient to emphasize for him
8 it's important to come back to be re-x-rayed.

9 Q. So if you suspected a patient had a fracture based
10 on clinical symptoms and no fracture showed up on
11 the x-ray, you would schedule a patient for a
12 follow-up visit and order additional x-rays at that
13 time?

14 A. Correct. Well, frequently -- yes, that's correct.

15 Q. Was Rodney McClendon a patient of yours?

16 A. Well, I saw Rodney, yes.

17 Q. So he was a patient of yours?

18 A. Well, I saw him, yes, I saw him in consultation.

19 When I consider somebody to be a patient I look at
20 it from the point of a primary care doctor. I was
21 not his primary care doctor, but I did see him
22 professionally, if that's what you mean, yes.

23 Q. What type of consultation were you?

24 A. Well, as I remember it, he told me that on February
25 the 6th he had an accident where he fell, I don't

1 recall what the circumstances were, and landed on
2 his outstretched hands, and he was seen in the
3 Kaiser emergency room in the Cleveland Clinic where
4 x-rays were done, and then they were apparently
5 negative.

6 He was then seen again in the musculoskeletal
7 clinic at Parma, and then he still was not feeling
8 any better, still was having pain, then he came to
9 see me.

10 Q. Did he request you as a physician?

11 A. That I honestly do not know. I mean, I have no way
12 of knowing. The nurses, or whoever makes the
13 appointments, if a patient requests a physician the
14 nurse will make the appointment with the physician,
15 but they do not tell me whether the patient
16 requested me or not, so I have no way of knowing.

17 Q. So you do not know how he came to see you
18 specifically?

19 A. Well, if he was going to see a physician, it was
20 only -- well, there were two of us, me or Dr.
21 Arsino. It would be one of the two of us, correct.

22 Q. I'm handing you what's been marked Plaintiff's
23 Exhibits 34 through 36. Could you take a look at
24 those documents, please.

25 A. Yes. It's my -- it's a record of my encounter with

1 Mr. McClendon.

2 Q. Do Exhibits 34 through 36 constitute all of the
3 medical documentation for the time or times you saw
4 Rodney McClendon?

5 A. Yes, they do.

6 Q. How many times did you see Mr. McClendon?

7 A. I saw him once. I saw him once, if I remember
8 correctly.

9 MR. MILLER: I'm sorry, I didn't hear
10 that.

11 THE WITNESS: Once.

12 MR. LEAK: Once.

13 Q. What was the date you saw him?

14 A. It was on March 31st, 1998.

15 Q. You took a history from Mr. McClendon?

16 A. Correct, I did.

17 Q. What was the history you obtained?

18 A. Shall I read?

19 Q. Yes.

20 A. Gentleman who states that he fell while breaking up
21 a fight. He broke his fall with the palms of his
22 hand. It should have been hands. This happened on
23 2-6-98. Since that time has had pain in both of his
24 forearms, elbows, wrists. Patient had x-rays at
25 CCF. I reviewed and could find no fracture. He

1 complains now mainly of pain in both elbows. And
2 then I have the physical examination.

3 Q. So based on the history you took, Mr. McClendon had
4 had pain since February 6th --

5 A. Correct.

6 Q. -- in his forearms, elbows and wrists?

7 A. Correct.

8 Q. Do you know if he had pain on a daily basis or
9 continuous pain?

10 A. I didn't note it down there, but I thought it was
11 fairly continuous.

12 Q. Now, at the time you saw him he was complaining of
13 pain in both elbows, correct?

14 A. Correct.

15 Q. What type of pain was he having?

16 A. His forearms, elbows and wrists, the upper
17 extremities.

18 Q. What type of pain was he having at that time?

19 A. Can you break that down a little bit? What do you
20 mean?

21 Q. Was he having a dull ache, shooting pain, did you
22 characterize the pain or just note that he had pain
23 in general?

24 A. I just noted he had pain localized to those areas.
25 I do not know.

1 Q. Did you perform a physical exam?

2 A. Yes, I did.

3 Q. And what information did you obtain through your
4 physical exam?

5 A. In general, he didn't appear to be in any particular
6 distress. Examination of his upper extremities, I
7 just wrote down here the part that was most
8 pertinent. He flexed and extended -- he had
9 decreased flexion and extension of both elbows,
10 however, he pronated and supinated well. He was
11 tender over both olecranon bursa. There is no
12 forearm tenderness and there was no wrist
13 tenderness. I then ordered x-rays of both of his
14 elbows.

15 Q. Doctor, could you try and speak a little slower to
16 help the Court Reporter out.

17 A. That must be my New York accent.

18 MR. LEAK: That's a New York accent? I
19 didn't know that.

20 A. It's been changed by 25 years living in Cleveland,
21 St. Louis.

22 Q. So you noticed a loss of range of motion?

23 A. Yes, particularly flexion and extension, although he
24 pronated and supinated well. I mean pronation.
25 This is supination, flexion and extension.

1 (Indicating.) Those are essentially all the motions
2 that the elbow does.

3 Q. So when you talk about flexion and extension, if you
4 hold your arm bent and then you straighten it out,
5 what is that?

6 A. That's extending your arm. And if you bend i like
7 that, that's flexion. (Indicating.)

8 Q. Bring it back towards your body?

9 A. That's flexion.

10 Q. So he had loss of range of motion with both those
11 movements?

12 A. Correct.

13 Q. And did he also have any other problems with motion
14 of his arm?

15 A. His arm or his elbow?

16 Q. Either one.

17 A. His elbow, no. The other motions of his elbow are
18 supination or pronation. He did that fairly well.

19 Q. Based upon your history and physical exam, did you
20 order any tests --

21 A. Yes, I did.

22 Q. -- for Mr. McClendon?

23 A. I ordered x-rays of both of his elbows.

24 Q. Also it would be good for the Court Reporter if you
25 wait until I finish my question.

1 A. Okay. I didn't know you had -- I thought you had
2 finished it, but let's carry on though.

3 Q. It's difficult for her because you're answering
4 before I finish the question.

5 A. No, I thought you had finished it, that's why I
6 answered.

7 MR. LEAK: It's that New York thing
8 creeping in again.

9 THE WITNESS: That's right.

10 Q. What tests did you order for Mr. McClendon?

11 A. Well, I ordered, let's see, I ordered x-rays of the
12 elbows. I think I ordered x-rays of the hands, and
13 the x-rays of the hands were essentially negative,
14 however, x-rays of the elbows revealed bilateral
15 radial head fractures.

16 MR. RUF: Let's mark these.

17 - - - -

18 (Thereupon, Plaintiff's Exhibits 37
19 through 39 were mark'd for purposes of
20 identification.)

21 - - - -

22 Q. Did you order x-rays of more than one view?

23 A. Well, usually they're standard views. If you order
24 x-rays of the elbows they will do standard views,
25 PAs and laterals of the elbows. I think the reading

1 is there.

2 Q. So did you order x-rays both of the forearms and the
3 elbows?

4 A. I have down here ordered x-rays of the hands, I also
5 have x-rays of the elbows.

6 Q. And did you order x-rays of the elbows because he
7 was having pain in them?

8 A. Because he was tender. I place a lot of emphasis
9 upon tenderness, particularly seven weeks after an
10 accident.

11 Q. Did the results of the x-rays come back on March
12 31st, the day you saw him?

13 A. Oh, yes, absolutely. The patient brought them back,
14 I looked at them, and I thought that he might have
15 fractures. And I then walked over to the
16 radiologist and I asked if he agreed with me and he
17 did.

18 Q. So based on your history and physical examination,
19 you suspected bilateral elbow fractures?

20 A. I can't say I suspected them. Let's put it this
21 way, I thought that x-rays were indicated based upon
22 the history, the physical and probably by what he
23 said and the course of events and the examination I
24 thought they were indicated.

25 I mean, to say that they were suspected, I

1 don't know. I mean, all I know is I have to ask
2 myself can I send this man home or do I have to
3 explore further, and then I decided I have to
4 explore further in this particular case.

5 We physicians, in general, if I can
6 philosophize, worry too much about the diagnosis.
7 You've got to decide how much do you have to do or
8 how secure are you in what you are doing.

9 Now, take appendicitis. A surgeon doesn't have
10 to know does he have appendicitis. It's do I have
11 to operate tonight, do I have to send him home. If
12 he operates, it doesn't matter what he has. It's
13 the same thing with a doctor. He's got to decide,
14 am I satisfied with this man's history and this
15 man's findings, can I send him home, or do I have to
16 go further.

17 And I decided on this particular case you have
18 to go further, and that's what I did. So, I mean,
19 I'm not trying to worm out of it, but that's the way
20 I practice medicine. I just decide. I mean, we
21 spend too much time with how many angels dance on
22 the head of a pin. We've got to decide do I have to
23 do something else, am I secure in what I'm doing, or
24 do I have to go beyond that. That's the way I
25 practice.

1 Q. What was it, in your findings, that made you feel
2 that you had to go further?

3 A. Well, his decreased range of motion, his tenderness,
4 and the fact that it was seven weeks post the
5 accident and he was still having pain. That's what
6 made me decide I have to go beyond. I can't just
7 say, well, this man is, you know, this man's --
8 there's nothing wrong with him. There were too many
9 findings, I mean, to make me think I've got to do
10 something beyond this.

11 Q. At the time you saw Rodney McClendon, I think your
12 note said you reviewed the films of February 6th?

13 A. No, I did not review the films. I reviewed the
14 reading. I did that, I must admit, after I saw the
15 x-rays. After I saw the x-rays I figured, Lord,
16 what's happened, I mean, why was that missed.
17 That's why I --

18 Q. When you ordered the x-rays, were you aware that he
19 had had previous x-rays?

20 A. Well, he told me the x-rays were negative.

21 MR. LEAK: Slow up a little bit. He's
22 got to finish his question.

23 a. Were you aware that he had had x-rays on February
24 6th?

25 A. Yes, I was. He did tell me that x-rays were done.

1 Q. Did he tell you what views were done or did he just
2 say x-rays were done?

3 A. I think he just told me x-rays were done. I do not
4 recall. I mean, I didn't dwell on it at that
5 particular point.

6 Q. Are you able to pull up on computer past radiology
7 results?

8 A. Yes.

9 Q. Did you do that for Rodney McClendon?

10 A. Not when I spoke to him, since I knew I was getting
11 the x-ray. I mean, I did not do that until -- it
12 was only after I got the x-ray that I did that.

13 Q. I'm handing you what's been marked Plaintiff's
14 Exhibits 37, 38 and 39. Are those the x-ray reports
15 for the x-rays you ordered?

16 A. Yes, those are the x-rays. Those are the x-ray
17 reports that I ordered. Those are the x-rays that I
18 ordered and they're read by Dr. Boltuch, correct.

19 Q. Did you actually read the x-rays yourself?

20 A. I looked at them, yes. And when I saw there were
21 fractures, then I went over to the radiologist and
22 talked to Dr. Boltuch. I think it was Dr. Boltuch.
23 I don't remember. But I did talk to him about it.
24 It's unusual.

25 Q. What view showed a fracture?

1 A. I don't recall. I honestly don't recall which view
2 it was.

3 Q. Based on your review of the reports, can you tell me
4 what view showed a fracture?

5 A. I don't recall, honestly.

6 Q. Can I see those?

7 A. Okay.

8 MR. LEAK: Off the record.

9 - - - -

10 (Thereupon, a discussion was had off
11 the record.)

12 - - - -

13 MR. LEAK: Back on the record.

14 A. The anterior fat pad is important, the elevation of
15 the anterior fat pad. That means there's fluid in
16 the joint. That means something has happened in the
17 joint. That's the first thing I remember that I saw
18 was the anterior fat pad.

19 Q. Well, the radiology report actually says both
20 elbows, correct?

21 A. Correct.

22 Q. So there was an actual x-ray of the elbow, correct?

23 A. Yes. Well, he says in the right elbow there was one
24 and in the left elbow -- the left one there was a
25 possible fracture too. I would agree with him.

1 Going over the film, we both agreed we have to
2 assume this man has bilateral fractures.

3 Q. What was the specific finding based on the films?

4 A. I don't understand your question.

5 Q. What type of fracture did he have?

6 A. Radial head fracture.

7 Q. Was that of both elbows?

8 A. Yes.

9 Q. Was one of the fractures worse than the other one?

10 A. I don't know what worse means. I mean, I think it
11 was more obvious, as he points out, on the right
12 side, but I mean, I'm not quite sure which one is --
13 I don't quite know -- I'm not trying to parse words
14 with you here, but I'm not quite sure what you mean
15 by worse. The one on the right was more obvious,
16 correct, that there's no doubt about, if I remember
17 the x-rays.

18 Q. Now, after you got the results from x-ray, did you
19 call an orthopedic physician?

20 A. I did. I called Dr. Sabogal.

21 Q. Why did you call the orthopedic physician?

22 A. There was a fracture, and the way it is set up if a
23 patient has fractures if it's anything other than
24 his fingers or toes we call the orthopedic surgeon.
25 The orthopedic surgeon has got to get involved.

1 That's something that's not done in
2 musculoskeletal.

3 Q. Was that done for assistance in deciding how to
4 treat Rodney McClendon?

5 A. That's, A, for assistant and, B, for follow-up
6 because this patient had to be followed up obviously
7 with a fracture and would have to be followed up
8 with the orthopedic surgeon.

9 MR. LEAK: Can you spell that name for
10 the Court Reporter?

11 THE WITNESS: S-A-B-O-G-A-L.

12 MR. LEAK: Thank you.

13 Q. Did you consider putting a cast on Rodney
14 McClendon?

15 A. Did I consider it? No. I mentioned it to Dr.
16 Sabogal. He didn't seem to think it was necessary,
17 so I did not. I yielded to his superior orthopedic
18 judgment.

19 Q. Did he tell you it was too late to do that?

20 A. I don't recall that. I do remember asking him and
21 he said, no, if it's seven weeks out, no, and that
22 he wanted me to follow up with the patient, he
23 wanted the patient to follow up with him.

24 Q. Did you tell Rodney McClendon that you can't put a
25 cast on the elbows after two months?

1 A. I don't recall saying that to him. But I do recall
2 asking Dr. Sabogal about it, whether he thought it
3 was necessary, whether he thought it was worthwhile
4 doing.

5 Q. If Rodney McClendon has testified that you told him
6 you can't put a cast on after two months, would you
7 disagree with that?

8 A. I can't agree or I can't disagree. If I did, Dr.
9 Sabogal was the one that told me not to do it.

10 Q. And then you related whatever you heard from Dr.
11 Sabogal to Rodney McClendon?

12 A. Correct.

13 Q. Did you tell Rodney McClendon that the previous
14 physicians had made a mistake or had screwed up?

15 MR. LEAK: Objection. Go ahead.

16 Q. Well, some words to that effect?

17 A. I said they had taken the wrong x-rays.

18 Q. Did you tell him that they had taken x-rays of the
19 forearm, and if they had taken x-rays of the elbows
20 they would have known his elbows were broken?

21 A. I might have said that.

22 Q. At the time you saw him, did he have some healing
23 going on of the elbows?

24 A. Well, the way to tell that would be to look and see
25 if there's any kind of callus around his elbow or

1 around the fracture site. I honestly did not see
2 any.

3 I don't recall seeing any, and Dr. Boltuch
4 doesn't make any mention of it in his report. But
5 that's the only way to tell that, would be looking
6 for callus.

7 Q. Do you know if his treatment would have differed if
8 the diagnosis had been made on February 6th?

9 A. I cannot say. I cannot answer that with any kind of
10 certainty.

11 Q. Is that outside of your expertise?

12 A. I would say it would be outside my expertise,
13 correct.

14 Q. Now, you referred Rodney McClendon to Dr. Cheng?

15 A. Well, I'm not -- quite frankly, I'm not quite sure
16 how he got to Dr. Cheng. Dr. Sabogal was the
17 orthopedic surgeon on call that day, that's how I
18 pick up who I'm supposed to call.

19 Now, how that happened, how he got from Dr.
20 Sabogal to Dr. Cheng, that I cannot answer. I do
21 not know. But as I say, I have to go by the
22 orthoped who's on call that particular day, and that
23 was Dr. Sabogal.

24 Q. What instructions did you give to Mr. McClendon?

25 A. That he would be -- that they would get in touch

1 with him. I mean, in a very short time the
2 orthopedic department would be speaking to him very,
3 very shortly. And physical therapy, I think, I
4 think we started him on PT.

5 Q. Did you order physical therapy for him?

6 A. Yes, that is also based on the advice of Dr.
7 Sabogal.

8 Q. Is that your signature on Plaintiff's Exhibit 36?

9 A. That's correct, it is. 36, correct, it is.

10 Q. Is that the first time that physical therapy was
11 ordered for him?

12 A. As far as I know, yes.

13 Q. Did you measure the degree of the loss of range of
14 motion?

15 A. No, I honestly did not.

16 Q. So you can't specifically tell me how much his range
17 of motion was reduced?

18 A. No, no, I cannot.

19 Q. Other than Dr. Sabogal --

20 A. Sabogal.

21 Q. -- did you discuss Rodney McClendon with any other
22 physicians or employees of Kaiser?

23 A. No.

24 MR. LEAK: He did mention the
25 radiologists.

1 A. Oh, the radiologists, yes. Dr. Boltuch, I think it
2 was Dr. Boltuch.

3 Q. Can you specifically tell me what you discussed with
4 Rodney McClendon and what his response was?

5 A. Well, I told him that he had bilateral fractures and
6 that I had consulted with the orthopedic surgeon,
7 and that the orthopedic surgeon recommended physical
8 therapy and they would be getting in touch with him
9 for further follow-up.

10 MR. RUF: Thanks. That's all I have at
11 this time.

12 MR. LEAK: We may have some questions
13 over here.

14 MR. MILLER: Yeah, I just have a few
15 questions. My name is Nick Miller. We met
16 earlier.

17 THE WITNESS: It's nice to meet you
18 again. Who do you represent?

19 MR. LEAK: The Cleveland Clinic.

20 - - - -

21 CROSS-EXAMINATION OF MARTIN L. MELNICK, M.D.

22 BY MR. MILLER:

23 Q. You said you ordered some x-rays and that you had
24 ordered elbow x-rays and hand x-rays?

25 A. Correct.

1 Q. Did you order wrist or forearm x-rays?

2 A. No, I did not order forearm x-rays. I ordered
3 elbows and hands.

4 Q. Those were when you show the wrists or the
5 forearms?

6 A. I wasn't satisfied so I ordered the wrists.
7 Forearm, you can't hide. Fractures don't hide too
8 much in forearms. I mean, if you're going to miss
9 anything you're going to miss it close to a joint,
10 and that's why I emphasized the joints.

11 I mean, if you fracture a radius or an ulna,
12 most of the time you will see that initially on the
13 initial x-ray, so that's why I concentrated on the
14 joints rather than on the forearm itself. And he
15 was not tender, again, the physical examination, he
16 was not tender. If he had been tender over his
17 forearm I would have examined his forearm, but he
18 was not tender over his forearms. He was not tender
19 in his wrists, but on the other hand, as I said, you
20 can miss a fracture in his wrist. Remember Rusty
21 Staub with his navicular fracture? That's why I
22 ordered x-rays of the elbows. I wasn't really
23 concerned about a fracture of the forearm.

24 Q. So you did order an x-ray of the wrist?

25 A. X-ray of the wrist or I could x-ray the elbows.

1 Q. And I think you answered this already, but I just
2 want to be clear, what did the x-ray of the wrist
3 specifically show?

4 A. It was negative, there was no fracture. The wrist
5 we're talking about now?

6 Q. Right, correct.

7 A. It was negative, there was no fracture.

8 Q. You said at some point you did come across the
9 emergency room x-rays?

10 A. After I saw the results of the x-ray which I
11 ordered, yes, I then went back and looked at the --
12 pulled it out of the computer.

13 Q. Which x-rays did you look at from the emergency
14 room?

15 A. I did not actually look at any.

16 Q. Okay.

17 A. I must say, I looked at the report which was in the
18 computer. I did not actually look at the x-rays.

19 Q. Was that report consistent with what you found with
20 the subsequent x-rays that you took?

21 A. Was the report --

22 Q. Right.

23 A. Go ahead.

24 Q. Just let me rephrase that. Was the report from the
25 emergency room consistent with the x-rays that you

1 ordered and viewed later on?

2 A. No, they were not. The man complained of tenderness
3 and pain and a decreased range of motion in his
4 elbow, and my entire experience has always been, I
5 mean, you look for the -- I mean, you look at the
6 elbow. I mean, you x-ray the elbow. If somebody
7 has pain in the elbow, you x-ray the elbow.

8 Again, I only had the report. The report did
9 not say anything about the -- there was no x-ray of
10 the elbow. I mean, that really is what bothered
11 me.

12 Q. I guess my question is what the report did say with
13 respect to the wrist or the hand, was that
14 inconsistent with what you saw on the x-rays?

15 A. In regard to the forearm and the wrist?

16 Q. Correct.

17 A. It was normal. I mean, they were both normal.

18 Q. so --

19 A. Nothing inconsistent about that.

20 Q. -- there was nothing inconsistent about the report
21 from the emergency room and what you viewed with --

22 A. Yeah, of the wrist and of the -- of the wrist and of
23 the forearm only.

24 MR. MILLER: Okay. I have no further
25 questions.

1 MR. RUF: No further questions,
2 Doctor
3 MR. LEAK: Doctor, I'm going to
4 recommend that you read this because that New
5 York accent just throws everybody off.
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MARTIN L. MELNICK, M.D.
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C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Laura L. Ware, a Notary Public within and for the State of Ohio, do hereby certify that the within named witness, MARTIN L. MELNICK, M.D., 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 was reduced by me to stenotypy in the presence of said witness, subsequently transcribed into typewriting under my direction, and that the foregoing is a true and correct transcript of the testimony so given as aforesaid.

I do further certify that this deposition was taken at the time and place as specified in the foregoing caption, and that I am not a relative, counsel or attorney of either party or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, this 34 day of July, 1999.



Laura L. Ware, Ware Reporting Service
3860 Wooster Road, Rocky River, Ohio 44116
My commission expires May 17, 2003.