

1 State of Ohio,) SS:

2 County of Cuyahoga.)

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4 IN THE COURT OF COMMON PLEAS

5 - - -

6 Kathleen Lapps,)

7 Plaintiff, Case No. 238568

8 vs. Judge McMonagle

9 Elizabeth Wall-Tarnay,)

10 Defendant. }

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12 THE DEPOSITION OF PATRICK METRO, D.D.S.

13 WEDNESDAY, OCTOBER 27, 1993

14 - - -

15 The deposition of PATRICK METRO, D.D.S., a witness,
16 called for examination by the Plaintiff, under the Ohio
17 Rules of Civil Procedure, taken before me, Michelle R.
18 Hordinski, Registered Professional Reporter and Notary
19 Public in and for the State of Ohio, pursuant to
20 agreement, at 20899 Lorain Road, Fairview Park, Ohio,
21 commencing at 9:00 a.m., the day and date above set
22 forth.

23

24 - - -

25

1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4 JOSEPH NAEGELE, ESQ.

THOMAS KRAUS, ESQ.

5 Hyland & Hyland

517 Leader Building

6 Cleveland, Ohio 44114

7

8 On behalf of the Defendant:

9 TERRENCE KENNEALLY, ESQ.

Savoy, Bilancini, Flanagan & Kenneally

10 595 West Broad Street

Elyria, Ohio 44035

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1 PATRICK METRO, D.D.S.

2 a witness, called for examination by the Plaintiff, under
3 the Rules, having been first duly sworn, as hereinafter
4 certified, deposed and said as follows:

5 -- PROCEEDINGS

6 MR. NAEGELE: Let the record
7 show that this is the testimony of Patrick
8 S. Metro, D.D.S. taken by way of a discovery
9 deposition, the time, date, and location
10 done by agreement.

11 Can we have an understanding that
12 formalities as to notice and service are
13 waived?

14 MR. KENNEALLY: Yes.

15 MR. NAEGELE: Okay.

16 CROSS-EXAMINATION

17 BY MR. NAEGELE:

18 Q. Dr. Metro, would you state your full name, please?

19 A. Patrick Steven Metro, M-E-T-R-O.

20 Q. And what is your residence address?

21 A. 23484 Wingedfoot, W-I-N-G-E-D-F-O-O-T.

22 Q. All one word?

23 A. All one word.

24 Q. That's in Westlake?

25 A. That's in Westlake.

1 Q. Do you have your curriculum vitae with you,
2 Doctor?

3 A. No, I don't.

4 Q. Could we get one from you?

5 A. Certainly.

6 Q. From your office?

7 A. I'll see to it.

8 Q. It would have saved some questions, so I'm going to
9 have to ask a few, but we would like one anyway.

10 You are a dentist in the State of Ohio, is that
11 right, Doctor?

12 A. Yes.

13 Q. What's your date of birth?

14 A. March 17th, 1936.

15 Q. Where did you attend college?

16 A. John Carroll University.

17 Q. You graduated when?

18 A. I didn't graduate from John Carroll. I was
19 accepted into Case Western Reserve School of
20 Dentistry as an advanced student.

21 Q. Okay.

22 When did you graduate from dental school?

23 A. 1961.

24 Q. 1961, all right.

25 And the degree that's given there is a D.D.S.,

- 1 is that right?
- 2 A. Correct.
- 3 Q. And that translates as what?
- 4 A. Doctor of dental surgery.
- 5 Q. And that is your title and your degree today?
- 6 A. Well, I've received additional training.
- 7 Q. Okay.
- 8 A. But that is my title and degree today.
- 9 Q. You practice in a certain area of dentistry?
- 10 A. Yes.
- 11 Q. What is that area?
- 12 A. Oral and maxillofacial surgery.
- 13 Q. Is that a recognized subspecialty of dentistry?
- 14 A. Yes.
- 15 Q. Is there a board certification that you have in
- 16 oral surgery that is similar to what the M.D.'s get
- 17 in orthopedics or neurosurgery or something like
- 18 that?
- 19 A. Yes, there is.
- 20 Q. When did you obtain that?
- 21 A. 1967.
- 22 Q. And specifically what is that that you obtained in
- 23 1967?
- 24 A. I became board certified by the American Board of
- 25 Oral and Maxillofacial Surgery.

1 Q. Okay.

2 And since that time, have you limited your
3 practice to oral and maxillofacial surgery?

4 A. Yes, I have.

5 Q. Where are your offices located?

6 A. My office is located at 3865 Rocky River Drive,
7 Cleveland, Ohio.

8 Q. That's essentially at Kamm's Corners, is it?

9 A. Yes, it is.

10 Q. Doctor, you obviously have had your deposition
11 taken before, is that right?

12 A. Yes, I have.

13 Q. And you understand that this will concern some
14 questions I'm going to ask regarding a patient,
15 Kathleen Lapps, and hopefully some answers that
16 you'll provide?

17 A. Yes.

18 Q. If any of my questions are not clear, I ask that
19 you let me know. If you want the question read
20 back, we can have the reporter do so.

21 We don't want you to guess, of course, all
22 right?

23 A. I won't guess.

24 Q. Fine.

25 You are also licensed by the State of Ohio, is

1 that right?

2 A. Yes, I am.

3 Q. When did you obtain that licensure?

4 A. June, 1961.

5 Q. At the present time, are you engaged full-time in
6 the practice of dentistry?

7 A. I am engaged full-time in the practice of oral and
8 maxillofacial surgery.

9 Q. Does that consist essentially of receiving patients
10 at your office at Kamm's Corners?

11 A. Seeing the patients at my office and the hospital.

12 Q. Where do you see patients, at what hospital?

13 A. Basically since I'm the section chief at Fairview,
14 I see probably about 90 percent of my patients at
15 Fairview Hospital.

16 I also see patients at Lakewood Hospital, Saint
17 John West Shore Hospital, and at Metro General
18 Hospital where I'm on the teaching staff.

19 Q. Doctor, you said you've had some additional
20 training beyond your dental school.

21 Where did you obtain that additional training?

22 A. University of Cincinnati General Hospital and
23 Medical School in Cincinnati, Ohio, from 1961 to
24 1964.

25 Q. Okay, and is that in oral and maxillofacial

1 surgery?

2 A. Yes.

3 Q. And is that the extent of the additional training
4 that you were referring to?

5 A. Yes, three years of internship and residency.

6 Q. And is there anything else beyond that?

7 A. I also keep current with my specialty by taking
8 continuing education courses on an on-going basis.

9 Q. Right, which you're required to do anyway?

10 A. Well, that was just recently, but I've taken them
11 ever since I graduated.

12 Q. And at the present time you are in good standing
13 with your specialty board and with the State of
14 Ohio?

15 A. Yes.

16 Q. Now, in the course of your practice, did you have
17 occasion to examine a woman by the name of Kathleen
18 Lapps?

19 A. Yes, I did.

20 Q. And when did that examination occur?

21 A. On July 29th, 1993.

22 Q. Now, prior to coming here today, and I know this
23 deposition was scheduled after a flurry of phone
24 calls, but were you able to bring with you your
25 entire file on this?

1 A. Yes.

2 Q. Okay, good.

3 Your exam was where, at your office on July
4 29th?

5 A. Yes.

6 Q. She came to your office?

7 A. She came to my office.

8 Q. Okay, and what occurred after she came to your
9 office?

10 Who did what?

11 A. She filled out an information sheet, and then she
12 was escorted to the examination room.

13 At that time, I physically examined her. I
14 secured an x-ray, a complete x-ray of her upper and
15 lower jaws, and I took her complete history.

16 Q. You took her history?

17 A. Yes, I did.

18 Q. Do you have the information sheet that she filled
19 out?

20 A. Yes, this is it (Indicating).

21 Q. What you just handed me is the information sheet,
22 front and back?

23 A. Yes, part of it.

24 The other additional information is on the --

25 Q. She does this, too (Indicating)?

1 A. Yes, she did all of that.

2 MR. NAEGELE: Can we mark
3 these and get copies made?

4 MR. KENNEALLY: Sure.

5 Why don't we have copies made first?

6 MR. NAEGELE: Sure.

7 We might be able to defer some of this
8 until we know just what we need copies of.

9 MR. KENNEALLY: That's fine.

10 MR. NAEGELE: So we aren't
11 running back and forth.

12 MR. KENNEALLY: That's fine.

13 I just like to have something in
14 front of me if you're going to ask
15 questions.

16 MR. NAEGELE: Okay, good
17 idea. Let me take a look at this.

18 (Thereupon, Plaintiff's Exhibits 1 through 3 were
19 marked for identification.)

20 BY MR. NAEGELE:

21 Q. While we're at it, Doctor, what other information
22 do you have in your file that we might be able to
23 identify and mark so we can get copies of it?

24 A. This is the clinical examination sheet and my notes
25 on the reverse (Indicating).

1 MR. NAEGELE: Let's mark
2 these as Exhibit 4.

3 (Thereupon, Plaintiff's Exhibit 4 was marked for
4 identification.)

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

6 MR. NAEGELE: For the record,
7 I think we've indicated we've marked the
8 examination notes, front and back, as
9 Exhibit 4 from Dr. Metro's file.

10 Also we're marking the originals of
11 these exhibits with the understanding we're
12 making copies. I understand, Mr. Kenneally,
13 that we can have an agreement that the
14 copies may be used in lieu of the originals
15 and that the originals can be returned to
16 Dr. Metro?

17 MR. KENNEALLY: Yes.

18 MR. NAEGELE: And we can use
19 the copies at trial or for any other purpose
20 as if they were originals?

21 MR. KENNEALLY: Yes.

22 MR. NAEGELE: Fine.

23 Also, the doctor has identified that he
24 had in his file a copy of an x-ray made by
25 Dr. Blakemore's office taken 6-17-92.

1 BY MR. NAEGELE:

2 Q. What kind of an x-ray is this called (Indicating)?

3 A. Panoramic, P-A-N-O-R-A-M-I-C.

4 Q. And that's dated 6-17-92.

5 Then the doctor had one taken of Kathleen Lapps
6 on 7-29-93. That's also a panoramic, is that
7 right, Doctor?

8 A. Yes.

9 Q. I'm returning these to Dr. Metro for the benefit of
10 his file.

11 You don't have any x-ray interpretations that
12 are handwritten or typewritten?

13 A. No.

14 MR. NAEGELE: Maybe we ought
15 to wait until we get those copies back.

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

17 Q. Doctor, you indicated that there was a history
18 furnished by Kathleen Lapps to you in writing,
19 isn't that right?

20 A. Yes.

21 Q. She answered some questions?

22 A. Yes.

23 Q. This is a form that's been marked as Exhibit 1.

24 Essentially she had come to you at the request
25 of Mr. Kenneally, is that right?

- 1 A. Yes.
- 2 Q. And you were examining her at Mr. Kenneally's
3 request?
- 4 A. Yes.
- 5 Q. And this pertains to a condition of the jaw known
6 as TMJ, is that right?
- 7 A. Well, I was examining Kathleen Lapps at Mr.
8 Kenneally's request for a proposed injury she
9 received in an auto accident.
- 10 Q. Okay, and where was that injury located?
- 11 A. In the course of the examination and her history,
12 she related that she was hit on the chin.
- 13 Q. Okay.
- 14 You were given records by Mr. Kenneally from
15 various sources pertaining to Kathleen Lapps, and
16 you were able to confirm from those records, were
17 you not, that there was an injury to her chin that
18 was described in those records elsewhere?
- 19 A. Yes.
- 20 Q. And was there anything more specific about this
21 injury to the chin as to the type of blow or the
22 severity of the blow that it was?
- 23 A. I'm not sure that I understand what you're asking
24 me.
- 25 Q. Was the mechanism of the injury detailed to you

1 either by Kathleen Lapps or any sources that you
2 looked at?

3 A. In my discussion with her on the events of the
4 accident, she was uncertain, but she thought that
5 her chin may have hit the steering wheel.

6 Q. And did she relate to you that there was pain after
7 her chin had hit the steering wheel?

8 A. She said there was some discomfort about the chin
9 area, yes.

10 Q. Did she say how long that discomfort lasted?

11 A. Well, it was immediate.

12 Q. The discomfort was immediate?

13 A. In the chin area, yes.

14 Q. She had other injuries, also, that she probably
15 made mention of?

16 A. Yes, she said she 'had some discomfort in her neck.

17 Q. Okay.

18 A. And her shoulders.

19 Q. Is that the word she used, discomfort, rather than
20 pain?

21 A. As I recall, she used the word discomfort. She did
22 say she had no complaints of her jaw hurting. I
23 have that written down in my notes.

24 Q. No complaints of her jaw hurting, you mean the day
25 you looked at her?

1 A. No.

2 This was at the time of the auto accident,
3 following the auto accident.

4 Q. At the time of the auto accident, there was no
5 complaint of the jaw?

6 A. I have in my notes in 1990 she was in an auto
7 accident in September. She thought she hit her
8 chin on the steering wheel. She was taken to the
9 emergency room at Lakewood. Her spine was x-rayed,
10 and she had no complaints of the jaw.

11 Q. Where are you reading from on here (Indicating)?

12 A. The very top (Indicating).

13 Q. Okay.

14 Now, earlier you indicated she described some
15 discomfort which was immediate?

16 A. That was on her chin.

17 Q. That was on her chin?

18 A. Yes.

19 Q. Now, here we're talking about complaints of the
20 jaw?

21 A. Yes.

22 Q. Okay.

23 And specifically you differentiate between the
24 words jaw and chin?

25 A. Yes.

1 Q. When she described discomfort in her chin, what did
2 you understand her to mean?

3 Did she explain it further?

4 A. No, she didn't explain any further.

5 Q. When you asked her about complaints of the jaw, did
6 you also ask her about complaints to her chin in
7 your office?

8 A. I'm sure that I did.

9 That was the only way that I could have
10 differentiated between the two.

11 Q. You made no written note of it in your records?

12 A. No.

13 Q. Okay.

14 Despite what you wrote down at the time of your
15 interview with Miss Lapps, you indicated that you
16 had, from a review of records furnished to you, you
17 had confirmed that there was a reference in the
18 records to her sustaining an impact to her -- you
19 said chin.

20 Elsewhere in the questionnaire that she filled
21 out for you, she related in answer to question 21,
22 did she not, you asked her if she could remember
23 any injury to her jaw, and she wrote yes on there,
24 is that right?

25 A. Yes.

1 Q. And then the request goes on, if yes, describe,
2 colon, and her answer was, car accident, jaw
3 hitting steering wheel on impact.

4 A. Yes, she used the word jaw, and it relates to jaw,
5 but specifically when I questioned her, she said
6 her chin.

7 Q. All right.

8 A. That was verified in the hospital records.

9 Q. All right.

10 So although she indicated in her questionnaire
11 that her jaw hit the steering wheel on impact, you
12 wrote down in your notes that there were no
13 complaints of the jaw?

14 A. Right, because on questioning she related that it
15 was her chin that hit. She had some discomfort in
16 her chin. She was using that synonymously with her
17 jaw.

18 Q. In the first line of your handwritten notes,
19 Exhibit 4, I'm trying to understand the word after
20 hit.

21 A. Chin.

22 Q. Is that the word chin?

23 A. Yes.

24 Q. Okay.

25 Did you have the emergency records of Lakewood

1 Hospital available to you as well as the physical
2 therapy records of Lakewood Hospital when you made
3 your examination of Kathleen Lapps in July of
4 '93?

5 A. Yes.

6 Q. What other history did she give to you regarding
7 her chin and jaw and relating to the anatomy of her
8 face in response to your questions?

9 What else did she tell you?

10 A. That was essentially it.

11 Q. Okay.

12 A. I asked some questions, and they were negative, so
13 I mean, you don't burden yourself with volumes of
14 -- you know, so you write down only those positive
15 things that you find.

16 Q. So I see the next thing you wrote was, one year
17 later, eating in restaurant.

18 What was that about?

19 A. I asked her, I said, well, I understand you've had
20 some problems with your joint, your jaw joint. I
21 said, when did all of that start? And those were
22 her words, well, about a year later I was eating in
23 a restaurant.

24 Q. Now, by the jaw joint, is that also known by some
25 other medical name?

- 1 A. It's known by the abbreviation of **TMJ**, which stands
2 for temporomandibular joint.
- 3 Q. Each person has two of these, is that right, one on
4 the right and one on the left side?
- 5 A. Yes.
- 6 Q. And that's actually the hinge that our lower jaw
7 forms when we move our lower jaw back and forth,
8 that's the hinge back here in front of the ears,
9 basically?
- 10 A. Yes.
- 11 Q. All right.
- 12 Over on the left here, you made a note, started
13 two months post **MVA**. What is that reference to
14 here?
- 15 A. Well, on further questioning, I said, are you
16 telling me you had no problems whatsoever for an
17 entire year?
- 18 Well, you know, she said I had some gradual
19 things. I said, well, you know, tell me exactly.
20 Then she said maybe about two months after -- MVA
21 is motor vehicular accident, just an abbreviation.
22 She had some gradual complaints of -- she didn't
23 use **TMJ**, but I put it in parentheses. I was
24 interpreting it as that.
- 25 Q. She was talking about the hinge area?

- 1 A. She was talking about the area in and around your
2 ear, in front of her ear, behind her ear, and I was
3 trying to focus.
- 4 I said, where was the pain? Well, I didn't
5 really have any pain. I had some tired muscles.
6 Those are her words, tired MM, meaning muscles at
7 any time of the day or after chewing taffy or
8 steak.
- 9 She said this then gradually progressed to
10 where she had some popping and clicking.
- 11 Q. Okay.
- 12 A. It progressed up to the point where, about one year
13 after the MVA, the motor vehicular accident, she
14 was eating at Chi-Chi's, and this is referring back
15 to where she said it started one year later eating
16 at a restaurant, her jaw locked.
- 17 Q. Okay.
- 18 A. And she had pain on the left side and also pain in
19 her ear and her neck.
- 20 Q. She couldn't open her jaw, she said at that time,
21 is that right?
- 22 A. I think that's what she said.
- 23 Q. Is that what you wrote here, couldn't open --
- 24 A. Right, down here, couldn't open.
- 25 Q. Well, this is your handwriting, though, isn't that

1 correct?

2 A. That's correct.

3 Q. Then you wrote to the right of that, extreme pain
4 on left side?

5 A. Yes.

6 Q. Then would you tell us further what she told you?

7 A. I said, is this the first time that it happened?

8 And she said, well, it had happened a couple of

9 other times that she had consulted with Dr.

10 Pashayn, who was her family dentist, who referred

11 her to Dr. Moodt who advised a bite splint in

12 February of '92 and some Tylenol.

13 This was only an initial visit that she saw
14 him. He never took any x-rays, and to my knowledge
15 at that time she didn't follow through with any
16 treatment.

17 Q. Okay.

18 A. She also said that at the time of this incident in

19 Chi-Chi's, that she went to the emergency room at

20 the Cleveland Clinic. She was told by an ear nose

21 and throat physician that she had an ear ache, and

22 she was told to take Tylenol with codeine and was

23 sent home.

24 Q. You asked her further about more locking that

25 occurred?

1 A. Yes.

2 Q. Locking meaning locking of the jaw?

3 A. Well, you know, first she related she couldn't get
4 her jaw open, and then on further discussion with
5 her she got to the point where she said she
6 couldn't get her jaw closed.

7 So, you know, she uses the word lock, and she
8 uses it intermittently with unable to open and
9 unable to close.

10 Q. All right.

11 A. She went on to say that this locking, which at that
12 point in my discussions I was interpreting as
13 locking open, would happen more frequently, and she
14 was able to unlock it herself. The term we use is
15 reduce, but --

16 Q. Okay, all right.

17 She wouldn't know that word necessarily?

18 A. She wouldn't know.

19 Q. Is it significant whether she is talking about a
20 locking that occurs with the mouth open or the
21 mouth closed?

22 Is that significant with respect to the
23 injury?

24 A. I don't think -- it's generally related to
25 disruption of the joint.

- 1 Q. It just happens to be the position of the jaw when
2 something slips?
- 3 A. Yes.
- 4 Q. This is a mechanical thing back there that occurs,
5 isn't it?
- 6 A. Exactly, mechanical.
- 7 Q. It gets off the track, so to speak?
- 8 A. Yes.
- 9 Q. Now, in further history that you took from her,
10 there's a reference to April of '93 and a Dr.
11 Hauser?
- 12 A. Yes.
- 13 Q. She told you she had been to him?
- 14 A. Yes.
- 15 Q. Are you acquainted with Dr. Hauser?
- 16 A. Yes, I know him. He's a colleague.
- 17 Q. By a colleague, you mean he practices in the oral
18 and maxillofacial surgical area?
- 19 A. Yes.
- 20 Q. Then there's a note here, July, '93, follow up, Dr.
21 Hauser?
- 22 A. Yes.
- 23 She said she was initially referred to him in
24 April of 1993, and he ordered magnetic resonance
25 imaging.

1 Q. That's the MRI?

2 A. Yes, and she went back to see him, had those done,
3 and went back to see him in July of 1993.

4 Q. At the time of your examination of her in July of
5 '93, did you have the results of those MRI's in
6 your file?

7 A. Yes.

8 Q. Do you still have them now?

9 A. I think they are in here.

10 Do you want me to take the time to dig them
11 out?

12 Q. Sure, absolutely.

13 A. I found it.

14 Q. You found it?

15 A. Yes.

16 Q. All right.

17 Where were those interpretations done, the MRI
18 that was taken at Mt. Sinai?

19 A. It's on Mt. Sinai stationary, so I'd have to
20 believe it was taken at Mt. Sinai.

21 Q. What were the results that were reported concerning
22 that MRI?

23 A. It says there is disease of the disk on the right
24 side with reduction on the open mouth views. The
25 disk on the left is not visualized and is presumed

1 to be dislocated.

2 Q. Then your note goes on to indicate in your
3 handwriting, suggest arthroscopic surgery before
4 reconstruction.

5 What does that refer to, do you know?

6 A. Well, Miss Lapps said that -- I said, what has Dr.
7 Hauser suggested to you, and she said he suggested
8 that arthroscopic surgery be done. He further
9 suggested that she would need some reconstructive
10 surgery.

11 Q. Okay.

12 A. I said, what is planned? She said, there's no
13 treatment at this time. I don't know whether I'm
14 going to have it done or not. She said, I don't
15 know if I want it done.

16 Q. By treatment we're referring both to arthroscopic
17 and reconstruction, or just reconstruction?

18 A. As I recall, there was no treatment either
19 arthroscopic or reconstructive.

20 Q. Down at the bottom it says ^{crown}common number 10.

21 A. Crown number ten means the number ten tooth. RCT
22 means there was a root canal done about two years
23 ago.

24 He was examining her dentition, her teeth, the
25 inside of her mouth, the rest of her face, the jaw,

1 and the surrounding structures.

2 Q. All right.

3 That specific finding doesn't impact the TMJ
4 questions, does it, or does it?

5 A. Well, it may, because, you know, if that tooth was
6 injured in an accident, if she was hit in the face
7 and she received a blow to the face or her jaw
8 sometime earlier, this is just all part of the
9 puzzle that we try to piece together.

10 Q. Where is tooth number 10?

11 A. It's in the upper jaw, and it's to the left of the
12 midline, the second tooth over (Indicating).

13 Q. Is that what some people call the lateral
14 incisor?

15 A. Yes, very good, I'm impressed with you.

16 Q. Medial is in the middle, and lateral is to the side
17 of it. That's the way I learned it.

18 Is that right, or not?

19 A. That's absolutely correct.

20 Q. So that's number 10 on the left side?

21 A. Yes.

22 Q. Upper?

23 A. Upper.

24 Q. There was a root canal done about two years before?

25 A. Yes.

- 1 Q. Before your exam?
- 2 A. Yes, I would take that to mean about two years ago.
- 3 Q. You aren't referencing it to the accident date?
- 4 A. No.
- 5 Q. Okay.
- 6 Then the results of your clinical examination
- 7 are on the back side of number 4, is that right?
- 8 A. Yes.
- 9 Q. You examined the TM joint how?
- 10 A. I palpated with my fingers, my hands, placed my
- 11 hands on her, examined her to form various motions,
- 12 muscular ranges, and so forth, so it was --
- 13 Q. Specifically are we talking about opening and
- 14 closing and turning the jaw, if possible?
- 15 A. Yes.
- 16 Q. Okay.
- 17 Up and down and sideways mostly?
- 18 A. Up and down, sideways and protrusive and back.
- 19 Q. Protrusive means what, forward?
- 20 A. Forward.
- 21 Q. You did all of those things with her?
- 22 A. Yes.
- 23 Q. Or she did them with you?
- 24 A. Yes.
- 25 Q. And what were the results of this manipulation and

1 this palpation in your findings?

2 A. Well, on palpation, she had no pain in either the
3 right or the left joint, either in the surrounding
4 area or directly over the joint itself.

5 She did have some joint noise, either popping
6 or clicking, however you wish to describe it. It
7 appeared to me as a click. It first appeared on
8 the right side when she opened about 18
9 millimeters. She could open maximally to at least
10 48, sometimes beyond that, 48 millimeters.

11 Q. Okay.

12 A. **As** she opened her jaw, it deviated first to the
13 left, and then swung over to the right. I asked
14 her, what was it that caused pain, and she answered
15 that, you know, most of the motions of the jaw
16 caused pain.

17 Not in my examination, but we were talking in
18 general, and I said, well, could you give me
19 something specific? What do you do to minimize the
20 pain in your daily life? She said she avoids
21 chewing gum and steak, but I found that she had a
22 good range of motion. She could move her jaw
23 laterally four to five millimeters and protrusively
24 four to five millimeters without any pain.

25 The rest of the examination was really more the

1 inside of her mouth, her teeth, how they related to
2 each other and so forth.

3 Down at the bottom of the page, I have her
4 height. I asked her, and she said she was five
5 foot seven inches. She weighed 145 pounds, and
6 this had not varied since high school.

7 Q. The clicking noise that you found, you note that
8 both on right and left sides, is that right?

9 A. Yes, correct.

10 Q. What's the significance of the clicking?

11 A. Well, that's an involved question.

12 You know, we find joint noise in patients who
13 are asymptomatic, who have no problems with their
14 jaw whatsoever, no dysfunction. We find joint
15 noise in patients who have various degrees of
16 dysfunction, so I think that the significance of
17 joint noise is dependent upon the individual
18 patient and their history, their degree of
19 dysfunction.

20 Q. Given that you found the clicking noise in Kathleen
21 Lapps from whom you had a history and had done the
22 other exam and had other records, what was the
23 significance of the click given all of that?

24 A. My summary of Miss Lapps, her injury, and her
25 condition at this time is that -- and I think you

1 have a copy of the report which I furnished to her.

2 She does have TMJ dysfunction.

3 Q. All right.

4 Is the clicking confirmatory of that?

5 A. Not necessarily, because in a significant number of
6 patients without any dysfunction whatsoever, we
7 find clicking. It's an incidental finding.

8 Q. Okay, so it's an incidental finding.

9 It's not an inconsistent finding?

10 A. It's not an inconsistent finding.

11 In all fairness, I'm sure you understand we
12 also find it, as I said previously, in patients who
13 have symptomatology, So you have to relate to each
14 patient in each instance.

15 Q. All right.

16 A. So she has some degree of dysfunction, however --

17 Q. Does she have TMD or TMJ problems on both sides in
18 your opinion?

19 A. Probably.

20 Q. Okay.

21 Moreso on one side than the other?

22 A. Moreso on one side than the other.

23 Q. Which side would that be?

24 A. I believe it was the right side.

25 Q. What's the significance of the deviation that you

1 noted as she was opening her mouth? At first it
2 went to the left and then to the right?

3 A. This again has to be related to each patient in
4 each instance.

5 Q. Relating it to Kathleen Lapps.

6 A. It may be related to the displaced disks that she
7 has.

8 Q. It may be related to the displaced disk?

9 A. Disks.

10 Q. Disks, okay.

11 And displaced disks are part of the
12 temporomandibular disease or joint dysfunction?

13 A. Yes.

14 Q. In the other history that was given to you, or
15 patient information, I think it's called in your
16 records here, Kathleen Lapps identified herself
17 further. Her height and weight is noted there.

18 That's the same as you note it in your records,
19 is it not?

20 A. Yes, it is.

21 Q. Was there anything significant about the answers to
22 her other questions that she furnished to the
23 questions you had given her, anything specific or
24 that's related to her problem with the
25 temporomandibular joint?

1 A. No.

2 This is a generalized medical information sheet
3 in which she supplied a number of answers to
4 specific questions, you know, 50 or more questions.

5 Q. Right.

6 A. I did note that in one of the records, that she was
7 taking a medication called Zantac, which she did
8 not inform us of in this record.

9 Q. Is Zantac for the stomach problem?

10 A. Yes.

11 It's commonly prescribed for that reason.

12 Q. Okay.

13 A. Patients that have hyperacidity, under a lot of
14 stress, that type of thing.

15 Q. A stomach problem or hyperacidity or other stress?

16 A. Since I do not prescribe it, this is outside of my
17 field. I have a general knowledge of what it's
18 prescribed for.

19 Q. So you don't know why she was taking it
20 specifically, because she had forgotten to mention
21 it?

22 A. No.

23 All I know is that she didn't inform us she was
24 taking it. She did tell us she was taking Tylenol
25 and birth control pills.

1 Q. But she didn't mention the Zantac, okay.

2 You found that information anyway. Did that
3 information impact in any way on the findings that
4 you made concerning her?

5 A. Well, it could very well.

6 I'd like to know why she is taking it, how long
7 she has taken it. We know that patients with
8 temporomandibular joint disease have a high
9 association with patients who lead stressful lives.
10 This is all part of the picture. I think it would
11 be important for us to be aware of that.

12 Q. It didn't come up in your discussions that she had
13 had a peptic ulcer problem for which she took
14 this?

15 A. No.

16 Q. And that wasn't contained in the records that were
17 furnished to you?

18 A. No, not in the record that she filled out for us.

19 Q. How about the records that were furnished to you by
20 Mr. Kenneally?

21 A. I think that in one of those records I was able
22 to --

23 Q. That's where you did pick it up?

24 A. That's where I picked it up.

25 Q. Did you also pick up there was a peptic ulcer

1 problem at least suspected which was the reason she
2 was taking the Zantac, or not?

3 A. I'm not sure that I picked that up from the
4 records.

5 Q. Okay, all right.

6 Did you have occasion to question her about the
7 Zantac?

8 A. No, because it was only after my examination with
9 her that I went back through the records and picked
10 that up.

11 Q. Other than that, you found both the oral questions
12 and the written questions to be responsive and in
13 conformity with the records that were furnished to
14 you by Mr. Kenneally?

15 A. In conformity?

16 I'm not sure what you mean by that.

17 Q. Were they consistent, her answers with what was
18 contained in the records?

19 Did you find any glaring inconsistencies of
20 your own?

21 A. There were just some problem areas. **As** I said, she
22 used the word jaw when she meant chin. She used
23 the word locked to mean either opened or closed.

24 I'm not sure she in her own mind could remember
25 which, but if you're asking me do I think she was

1 withholding information deliberately, I'm not sure
2 of that, no. But I do think there were some minor
3 inconsistencies which we picked up.

4 Q. But you did not detect any withholding of
5 information on an intentional basis?

6 A. No, she was cooperative

7 - - -

8 CROSS-EXAMINATION

9 BY MR. KRAUS:

10 Q. Dr. Metro, are you aware previously that she had
11 had her wisdom teeth extracted?

12 A. Yes.

13 Q. Does that have any significance as to her situation
14 or any situation when we're talking about the TM
15 joint?

16 A. Yes, that has certainly some significance.

17 The wisdom teeth were removed by Dr. Blakemore.
18 It was done under a general anesthetic. It was
19 done after the auto accident. As I examined his
20 x-ray, they were full bony impactions, very
21 difficult removal.

22 During a general anesthetic, the mouth is
23 propped open. A good deal of pressure has to be
24 placed on the bone during the cutting procedure and
25 in removing the teeth.

1 Quite often in patients who have
2 temporomandibular joint dysfunction, this is a
3 challenging problem, this opening of the mouth wide
4 in order to get in to do the surgery. The amount
5 of pressure that you have to place will either
6 precipitate an acute episode of pain and
7 dysfunction, or it'll take an existing episode and
8 make it worse. It can have a devastating effect.

9 In some cases, we choose and elect not to do
10 the surgery on patients with temporomandibular
11 joint dysfunction only because of what could
12 possibly ensue.

13 Apparently in her case it was done without any
14 problem whatsoever.

15 - - -

16 CROSS-EXAMINATION

17 BY MR. NAEGELE:

18 Q. Do you have the date that was done by Dr.
19 Blakemore?

20 A. Yes, I do have it in here. Again, I'm going to
21 have to --

22 Q. All right, I'll look for it, too. I don't have it
23 in my memory.

24 A. 6-30-92.

25 Q. 6-30 of '92?

1 A. Now, whether he saw her first for an examination or
2 removed them at a later date -- no, 6-30-92, that
3 was the date that he saw her, and that's also where
4 she indicated to him that she was taking Zantac. I
5 have it circled in red.

6 Q. All right.

7 And the date of June 30th, '92 is two and three
8 quarter years after her auto accident of September
9 of 1990, is it not?

10 MR. KENNEALLY: I don't think
11 it's two years.

12 MR. KRAUS: One and three
13 quarter years.

14 BY MR. NAEGELE:

15 Q. I'm sorry, one and three quarter years.

16 Her auto accident was reported to you in
17 September of '90, was it not?

18 A. Yes.

19 Q. The symptoms she described to her jaw and chin were
20 before she had her wisdom teeth out as found in
21 your records and as found in your questions?

22 A. The symptoms that she related to her chin.

23 Q. All right.

24 How about the ones to her jaw that she talked
25 about that occurred two months --

1 A. Yes, those would pre-date her meeting with Dr.
2 Blakemore.

3 Q. Okay.

4 Also her visit to Dr. Pashayn which you
5 referred to, that was in 1991, was it not?

6 A. I believe so.

7 Q. And when she went to Dr. Pashayn -- she also told
8 you about the incident at Chi-Chi's, the locking
9 where she had to go to the Cleveland Clinic
10 emergency room?

11 A. Yes.

12 Q. That was September of '91. That was about nine
13 months before she had her wisdom teeth out?

14 A. Yes.

15 Q. So it's fair to say that the records and her
16 answers establish, do they not, that she was
17 complaining of pain and problems in the
18 temporomandibular joint area well before **she** had
19 her wisdom teeth out on June 30, **1992?**

20 A. Yes, but I think you missed my point.

21 Q. Okay.

22 A. That's all right.

23 Q. I don't think I missed your point. We may come
24 back to that in a second.

25 You were talking about wisdom teeth and the

1 operation she had at the end of June of '92?

2 A. Yes.

3 Q. I think you also made the comment that she seemed
4 to survive the June 30, '92 wisdom teeth extraction
5 rather well?

6 A. Without any precipitation of any problem with her
7 temporomandibular joints whatsoever.

8 Q. Did you ask her specifically about that?

9 A. Yes.

10 I said, did you have any problems when you had
11 your wisdom teeth out? She said no other than
12 swelling and discomfort associated with the
13 surgery.

14 Q. Okay.

15 A. I said, was your dysfunction any more severe
16 afterwards than it was before?

17 Oh, no, no, no problems.

18 Q. Where would that be in your notes here?

19 A. I don't have it listed specifically, but I did
20 question her about that, because this was part of
21 the records, and I knew -- and I was immediately --

22 Q. Okay, but although you questioned her about it,
23 it's not written down on any of these handwritten
24 records that you made?

25 A. No.

1 Q. So there's no records of that anywhere that we find
2 either in your report or in your handwritten notes?

3 It's only in your memory that you talked to her
4 about it?

5 A. Yes.

6 Q. You referred more than once, I think, to a report
7 that you wrote to Mr. Kenneally concerning your
8 exam and findings concerning Miss Lapps.

9 Do you have a copy of it in front of you
10 there?

11 A. Yes, I do.

12 Q. It's the one of August 17.

13 You only wrote one report, didn't you?

14 A. That's correct.

15 Q. Were there any other letters or reports that you
16 wrote to Mr. Kenneally or to anyone else concerning
17 your examination of Kathleen Lapps?

18 A. No.

19 Q. In that report you indicate that you had examined
20 her on July 29 of 1993 as you have testified to
21 here?

22 A. Yes.

23 Q. Do I understand that you had all of the records
24 that are in your file by the time you examined her
25 on July 29, or were some supplied later?

1 A. Well, to my knowledge, all of the records that I
2 have in my file currently were provided to me prior
3 to her coming in for an examination.

4 Q. So that all the records were provided before July
5 29 of 1993, is that right?

6 A. Yes, to my best recollection.

7 Q. So to say it another way, you haven't gotten any
8 additional records since July 29, '93 pertaining to
9 Kathleen Lapps?

10 A. If I have, I didn't make a specific notation of
11 that.

12 Q. In your report, you then indicate that her motor
13 vehicle accident occurred on September 7 of 1993.

14 Obviously that's a typographical error, is it
15 not?

16 A. Yes.

17 Q. And we know from your records it should be 1990, is
18 that right?

19 A. That's correct.

20 Q. You also went on to state, then, in your
21 conclusions -- incidentally, this exam of Kathleen
22 Lapps occurred over what period of time in your
23 office?

24 This was a single visit?

25 A. Single visit.

1 Q. Okay.

2 How long were you with Kathleen Lapps during
3 your examination and the history taking this
4 particular day?

5 A. I would estimate somewhere between -- we generally
6 allow a full hour for this type of visit. I'm not
7 sure I took a full hour, but I'm sure I took 45
8 minutes, between 45 minutes to an hour.

9 Q. That includes the history taking and the filling
10 out of the questionnaire in addition to the exam,
11 is that right?

12 A. Yes, yes.

13 Q. Now, you indicated you found no signs or symptoms
14 of TMJ injury noted at the time of the accident, is
15 that right?

16 A. Yes.

17 Q. You're talking specifically of signs or symptoms of
18 TMJ injury, not injury, per se, but TMJ injury,
19 isn't that right?

20 A. I think that's what we were focussing on here.

21 Q. All right, you're talking about on the day of the
22 accident, is that right?

23 A. On the day of the accident and immediately
24 afterwards.

25 Q. What about her reference to within two months of

1 the fact that she was having some complaint, did
2 you take that into consideration?

3 A. Yes, yes, I did.

4 Q. Were those gradual complaints that she described to
5 you?

6 A. Well, they were vague, and she really -- I think
7 she described them as being tired muscles.

8 Q. All right.

9 In your notes you wrote gradual complaints of,
10 and then in parentheses, TMJ with a question mark
11 above it?

12 A. Uh-huh.

13 Q. She didn't use the word TMJ?

14 That had to be put there by you?

15 A. That's correct.

16 Q. So there was some mental process going on in your
17 mind about whether she was describing a TMJ
18 complaint, was there not?

19 A. Well, I was giving her every benefit of the doubt.

20 Q. All right, she said that started about two months
21 after the accident?

22 A. Yes.

23 Q. That wasn't soon enough to impress you with this
24 being as a result of the accident?

25 A. No.

1 Q. Now, you indicate in item number 2, she did not
2 have any complaints of dysfunction until some ten
3 months following the accident.

4 Those gradual complaints that she described
5 developed about two months after the accident. You
6 didn't consider those to be complaints of
7 dysfunction that she described?

8 A. They weren't specific enough to be complaints of
9 dysfunction.

10 I mean, my interpretation was that the first
11 point of reference that I could definitely say,
12 yes, I think at this point you had dysfunction is
13 ten months.

14 I would have to go back in the records to see
15 where it was.

16 Q. You mean when she had the locking?

17 A. It was either that or some other incident in the
18 records which would have indicated to me at that
19 point in time I think there was definite -- I would
20 agree that, yes, at this point in time there's no
21 question she had dysfunction.

22 Q. Okay.

23 You don't know if it's a locking or some other
24 incident that's described in there?

25 A. No, I don't.

1 Q. Do you want to check it and see?

2 A. I may have used that point of reference as a time
3 that she was referred to one of the -- when was she
4 referred to Dr. Moodt?

5 Q. I'm not sure.

6 MR. KRAUS: Her mother
7 called Dr. Pashayn. You might look at
8 that.

9 A. I think that's it. I have down here July 1st,
10 1991.

11 Q. All right.

12 A. So would that be ten months if it happened in
13 September? Well, then that's the point of
14 reference that I made.

15 Q. Okay.

16 But despite the fact that there's a record
17 indicating a call from the mother to the dentist on
18 July 1, Kathleen Lapps had told you, had she not,
19 of some complaints, some gradual growth of problems
20 that had occurred after the accident even as early
21 as two months after the accident in addition to the
22 initial pain that she had noted in her jaw at the
23 time of the accident? Isn't that true?

24 A. Well, first of all, you know, let's clear that up
25 once and for all. She noted discomfort in her chin

1 at the time of the accident. Upon further
2 questioning, she had no pain or dysfunction. She
3 had no signs or symptoms of any problem with her
4 jaw joint.

5 Now, she did have some pain and discomfort on
6 the chin that she hit apparently on the steering
7 wheel.

8 Q. But elsewhere she has described in answer to your
9 very question that her jaw hit the steering wheel
10 on impact, so she used the word jaw in addition to
11 the word chin, isn't that true?

12 A. Well, no.

13 She used the word jaw, and upon questioning
14 her, she stated to me, well, my chin, so she was
15 using the terms synonymously. I think the point
16 I'm trying to make here is that, by using the word
17 jaw, it would infer that perhaps the joints were
18 hurting, when, in fact, they weren't.

19 Let's just be very specific. In her own words,
20 she said her chin had -- you know, she said, I had
21 some pain and discomfort in my chin.

22 Q. Okay.

23 A. So, I mean, it was a matter of just unraveling it,
24 and in her own words that's what it was.

25 When she was taken to the emergency room, and

1 by her recollection, she had no pain in her jaw
2 joint. She had no dysfunction. She had no signs
3 or symptomatology of anything gone wrong in the jaw
4 joint at the time of the accident.

5 Q. That's the day of the accident?

6 A. Yes.

7 Q. Okay.

8 When someone receives a blow to the chin, the
9 lower jaw, force is applied, is it not, to the
10 lower jaw when there's a blow to the lower jaw, is
11 that right?

12 A. Yes.

13 Q. And the forces are transmitted, are they not, to
14 the two joints that form the TMJ on either side?

15 A. Yes, they can be. A certain amount of the forces
16 are, depending on --

17 Q. A certain amount of the forces are assuming it's a
18 blow directly to the chin, is that right?

19 A. Or it could be a glancing blow.

20 Q. Or a glancing blow, even?

21 A. The engineering involved in determining just how
22 much force is directed back to the joint I think
23 would be impossible to determine.

24 Q. But is it fair to say that, if there was a blow to
25 the chin, some of the forces are transmitted back

1 to the joint area, the hinge area, either on both
2 sides or on one side? Isn't that true?

3 A. I'll agree with that, yes.

4 Q. All right.

5 Now, you also state in your report what the
6 average incisional opening is for a young female.
7 She's what, 24 years old, is she, I think,
8 something like that? 24 qualifies as a young
9 female. You come up with the range of 36 to 40
10 millimeters is the average opening.

11 This is found somewhere in the literature, is
12 it?

13 A. This is something that, you know, I've picked up in
14 my experience and training.

15 Q. Okay.

16 A. It's what I've heard when I've attended continuing
17 education courses and so forth.

18 Q. You indicate she opens to 48 millimeters?

19 A. And beyond.

20 Q. Essentially, then, eight millimeters -- the
21 difference between 48 -- we'll take the maximum of
22 the range, 40. Eight millimeters translated into
23 inches is about one-third of an inch, is it not,
24 approximately?

25 A. Is it 2.24 centimeters per inch? If you've worked

1 it out and --

2 Q. I haven't worked it out exactly, but I'm asking you
3 what the difference is, eight millimeters
4 difference?

5 A. Well, that may not sound a lot when you're building
6 a house, but when you're opening your jaw, that's a
7 rather significant amount, It's almost 20 percent
8 of the full range.

9 Q. Okay.

10 It's 20 percent of the full range of -- what's
11 really important to you is the opinion purported to
12 you as the average?

13 A. Yes.

14 Q. It's not 20 percent over what she ought to be. You
15 don't know what she ought to be, do you?

16 A. I don't understand that question.

17 Q. Well, are you saying 48 is an exaggerated finding
18 with her, that she really shouldn't be opening that
19 much?

20 A. Yes, I'm saying that.

21 I'm saying that, in my training and experience
22 in this particular field, that it is very unusual
23 to find a normal opening of 48 millimeters.

24 Q. But to get an average of 36 to 40, you have to have
25 some people that are below that and some people

1 that are above it, don't you?

2 A. That's right.

3 Q. Now, you go on to state about the stretching of the
4 capsule and ligament of the joints.

5 What evidence did you have that there was
6 stretching of the capsule and ligaments, et 'cetera,
7 of the joint?

8 Did that come from her history or your records
9 or what?

10 A. My training and experience tell me the only way the
11 joint -- the only way she could open her jaw to 48
12 millimeters and beyond is by having stretched
13 ligaments and tendons and the other apparatus that
14 support the joint.

15 Q. It couldn't be that she is higher than the average
16 range to start out with?

17 A. Even given two, maybe four millimeters over the
18 highest end of the average, she is still well
19 beyond that.

20 Q. Okay.

21 Is there anything in the literature which
22 supports this conclusion that you've reached
23 concerning the four to eight millimeters, the
24 dental literature I'm talking about?

25 A. Yes, I understand what the literature is, but I

1 don't understand. What part of the conclusion of
2 the 48 millimeters are you referring to?

3 Q. Well, you indicated that the only way she could
4 open to 48 millimeters was that there was a
5 stretching of ligaments and tendons.

6 A. And has hypermobility of her joint.

7 Q. Yes.

8 A. Yes, I'm sure there must be, you know, studies that
9 have been done to indicate that.

10 Q. You indicate further in here that Miss Lapps has
11 been over-opening for many years.

12 Was there something in her history that she
13 gave you about that?

14 A. My experience and training indicates to me that the
15 only way that she can achieve this over-opening of
16 48 and more millimeters when encouraged -- she can
17 open beyond that. She easily opens to 48
18 millimeters, and when encouraged she can open even
19 beyond that, which is a little bit of an eye
20 opener.

21 My experience and training, you know, has
22 indicated that the only way -- this can't happen in
23 a day or a week or a month. This is something that
24 takes place over a long period of time.

25 The ligaments and the capsule are not very

- 1 elastic at all. They don't have very elastic
2 properties. They aren't like muscle, and in order
3 to stretch those you have to work on them for a
4 long period of time.
- 5 Q. Could part of that period of time be the two years
6 and what, nine or ten months from the time of the
7 accident until your date of examination?
- 8 A. I think it would take longer than that.
- 9 Q. Now, when you say she over-opens her mouth, I mean,
10 are we talking about her eating ^{D.B.} ~~six~~ sandwiches, is
11 that what you're talking about, that she is in the
12 habit of doing things like that that cause her to
13 open her mouth to that exceeding degree?
- 14 A. I don't know what she does to achieve this end.
15 All I can tell you is that, as an expert in this
16 area, when you see this end, you know what forces
17 must be at play to cause it.
- 18 Q. Did you question her at all about her habit, either
19 in eating or in doing other things with her jaw
20 that would focus on how far she opens it up and how
21 often she does this?
- 22 A. No.
- 23 Q. You didn't ask her about it at all?
- 24 A. No.
- 25 Q. Do you recognize that trauma to a person's jaw can

- 1 cause a TMJ problem?
- 2 A. Yes.
- 3 Q. Is that one of several recognized causes of TMJ
- 4 injury?
- 5 A. Yes.
- 6 Q. What other causes are there on occasion?
- 7 A. Pathologic causes, tumors, that sort of thing. You
- 8 can have systemic diseases such as arthritis. You
- 9 can have congenital and developmental
- 10 malformations, trauma being one of them,
- 11 environmental influences such as over-usage of the
- 12 jaw.
- 13 Q. Okay, is that about it?
- 14 A. I think that would probably cover the majority of
- 15 it.
- 16 Q. Okay.
- 17 In your examination of the records and Kathleen
- 18 Lapps, did you find any pathologic causes for her
- 19 TMJ problems?
- 20 A. No.
- 21 Q. Did you find any evidence of tumor or systemic
- 22 disease?
- 23 A. No.
- 24 Q. How about any congenital malformations?
- 25 A. None were obvious.

1 Q. What about environmental influences?

2 A. Now, just to back up, when I said none were
3 obvious, it could very well be that her particular
4 anatomy, she may have had hypermobility all her
5 life. She may have been born with it. I cannot
6 determine that, though.

7 Q. Or she may not have had it. You cannot determine
8 that by palpation?

9 A. That's correct.

10 Q. I understand what you meant when you said none
11 obvious. You didn't dissect her jaw. You felt it
12 with your hand?

13 A. I didn't know how far she could open when she was 8
14 or 9 or 10 years old.

15 Q. Or at the time of the accident?

16 A. Or at the time of the accident, right.

17 Q. All right.

18 What about environmental influences that you
19 mentioned, did you find any evidence of that?

20 A. Well, you know, I didn't get into that with her. I
21 didn't ask her.

22 Q. Didn't ask?

23 A. I didn't ask her what her diet was. I didn't ask
24 her, do you eat double burgers and so forth, do you
25 stick cue balls into your mouth, do goofy things.

1 I was faced with a set of signs and symptoms,
2 and I had an end product. You know, my experience
3 and training tells me you only can get there by one
4 way.

5 Q. Your experience and training tells you what?

6 A. You can only get there one way when all of the
7 other ways are excluded.

8 Q. Okay.

9 Do I understand from your testimony that your
10 particular philosophy is that one has to experience
11 dysfunction in the jaw much sooner than she did for
12 you to believe it was caused by an auto accident?

13 A. Well, I think that that's good common sense.

14 Q. Is that your philosophy?

15 A. It's not in each and every case. Each and every
16 case I think has to be examined on its individual
17 merits.

18 Q. Okay.

19 A. But my experience and training has taught me that
20 an overwhelming number of cases, when you have
21 trauma as the etiology of TMJ dysfunction, you have
22 temporal relationship of the signs and symptoms.

23 Q. I take it, then, from the answer you just gave me,
24 that you are not ruling out that an auto accident
25 could be the cause even with a ten month hiatus in

- 1 TMJ symptoms?
- 2 A. No, I did not say that.
- 3 Q. You're not ruling it out?
- 4 A. I said in an overwhelming number of cases there is
- 5 a temporal relationship between the signs and
- 6 symptoms and the trauma.
- 7 Q. I understand.
- 8 A. Each case must be, you know, evaluated on its own
- 9 merits.
- 10 Q. So you're saying that it's possible in some cases
- 11 for there to be a gap of time before there are
- 12 symptoms of dysfunction specifically noted?
- 13 A. Yes, but that gap of time, in my experience and
- 14 training, is very unusual, very unusual
- 15 circumstances and certainly is not ten months.
- 16 It's not two months.
- 17 Q. How long a period of time is it, in your
- 18 experience?
- 19 A. Twenty-four, **48** hours.
- 20 Q. Okay.
- 21 Can you cite anything in the literature which
- 22 is supportive of that conclusion?
- 23 A. Well, you know, I don't carry a library around in
- 24 my head, but my testimony today is that my
- 25 experience and training indicates what I've just

1 expounded to you.

2 Q. I understood your answer. I just asked if you
3 could cross reference that to any specific text.

4 A. No, I don't have any.

5 - - -

6 CROSS-EXAMINATION

7 BY MR. KRAUS:

8 Q. Dr. Metro, you differentiated previously as to the
9 chin as far as Kathleen's synonymous use. In your
10 answer to the question about trauma to the jaw, if
11 I said if there was trauma to the chin, would that
12 change your answer or --

13 A. Yes, you know, I don't deny that there was evidence
14 that she had trauma to her chin.

15 Q. Could trauma to the chin lead to or cause a TMJ
16 dysfunction?

17 A. Depending on how severe the trauma and depending in
18 what manner it was received. There's a lot of
19 variables, but to answer your question very
20 generically, yes, it can happen.

21 Q. Okay.

22 Did you have a chance to review the records of
23 Dr. James Moodt?

24 A. Yes.

25 Q. At some point during the on-going examination of

1 Kathleen Lapps?

2 A. Yes.

3 Q. In one of his handwritten notes, I noted --

4 A. Do you want to tell me exactly where?

5 Q. Yes, I'm in his -- it looks like the treatment

6 notes, the patient or treatment notes, 2-26 of

7 '92.

8 A. Okay.

9 Q. About three quarters of the way down the page he

10 references opening, 44 mm with it looks like right

11 to left to right. He has DEV. I assume that's

12 developing.

13 A. I think it's deviation.

14 Q. And pain on left side?

15 A. Uh-huh.

16 Q. Now, he examined her apparently in February of '92,

17 your examination taking place about 14 months

18 later.

19 A. Yes.

20 Q. Would you find that to be of any significance, that

21 he at that point is recognizing an opening of 44

22 mm?

23 A. No, I don't think it changes my opinion, if that's

24 what you're asking me.

25 I know that when she went to see Dr. Hauser,

1 which was shortly after she had seen Dr. Moodt,
2 that I think he noted at his examination that she
3 could open 48 millimeters.

4 Q. Well, Dr. Moodt, of course his date on his notes is
5 February of '92. I believe she first saw Dr.
6 Hauser sometime in winter of '93, March or --

7 MR. KENNEALLY: April.

8 MR. NAEGELE: April of '93.

9 BY MR. KRAUS:

10 Q. So we have some 12 to 13 months.

11 I guess my question is, could her dysfunction
12 progress four millimeters and beyond in the period
13 of time between the time that she saw Dr. Moodt and
14 the time that she saw yourself or Dr. Hauser?

15 A. Well, that's a difficult question to answer.

16 I suppose yes, it could, but it's inconsistent
17 that a patient that is having dysfunction, that's
18 pain on movement of your jaw, would be stretching
19 it and moving it to the point where she is gaining
20 an increased amount of mobility.

21 It could very well be that, if she was having
22 dysfunction on this particular day and having pain,
23 that she opened it to 44 millimeters and maybe it
24 was painful beyond that point. So there are some
25 variables.

1 It could very well be that, with some
2 encouragement, she may have been able to open to 48
3 millimeters.

4 But if she was having a bad day, you can
5 understand that, bad jaw joint day, maybe that was
6 the best she could do.

7 Q. Okay.

8 The clicking or popping that we talked about
9 earlier, I think your answer was that you have to
10 look at that on a case by case basis. It may be
11 significant in some cases and then insignificant in
12 others?

13 A. Yes.

14 Q. In this case, is there significance to it as of the
15 time of the motor vehicle accident if it is
16 reported that there is clicking at the time of the
17 motor vehicle accident?

18 A. Well, I think that that's just one sign or symptom.
19 You know, an individual sign or symptom would have
20 to be related and correlated with all the other
21 signs and symptoms.

22 Q. So again it's just one aspect?

23 A. Yes.

24 MR. KRAUS: Okay, nothing
25 else.

1 MR. NAEGELE: Doctor, just a
2 few other questions here.

3

- - -

4

CROSS-EXAMINATION

5 BY MR. NAEGELE:

6 Q. You've indicated you've been in your field of
7 specialization since 1967, I think it was, was it
8 not?

9 A. Well, I actually started practice in 1964.

10 Q. Right, but your specialization came a little later
11 than that?

12 A. I was certified in -- you can still practice as an
13 oral and maxillofacial surgeon while your
14 certification is pending.

15 Q. Okay.

16 Over the years, have you examined many
17 claimants or Plaintiffs on behalf of defense
18 attorneys or insurance companies at their request
19 over the years?

20 A. I would have to say yes. It's not a huge part of
21 my practice, but I've done a significant number of
22 examinations both for Plaintiff and defense.

23 Q. All right.

24 What percentage would you say you do for the
25 defense versus the Plaintiff?

1 A. Well, I can't give you a percentage. I don't have
2 that, but I do know that, on those cases that I
3 have actually testified -- I probably review an
4 equal number of cases, but on those cases on which
5 I actually testify -- is that what your question
6 was?

7 Q. Either way. I was going to ask it both ways.

8 A. On those cases I actually testify, I'm sure I
9 testify more on behalf of the defense than the
10 Plaintiff, but there's a reason for that.

11 Q. All right.

12 You say you testify more on behalf of the
13 Defendant than you do on behalf of the Plaintiff?

14 A. Yes.

15 I mean, not all of my cases are cases such as
16 this. I testify on behalf of malpractice cases
17 in which I'll testify both for or against the
18 doctor.

19 Q. But excluding those malpractice cases in which you
20 say you testify, would you say you testify more for
21 the defense or more for the Plaintiff?

22 A. Probably more for the defense, but I said there was
23 a reason for that.

24 Q. That you know?

25 A. Yes, certainly I know.

1 Q. What's the reason?

2 A. Well, in many of the Plaintiff cases, when I
3 completely evaluate and give my opinion and tell
4 them I do not feel that there is just cause here,
5 they find someone else. They'll have it reviewed
6 by someone else, and they don't use me. They don't
7 want my testimony in court.

8 Q. Well, you're only looking at this one way, then?

9 A. No, I'm looking at it objectively.

10 Q. Okay.

11 A. When a case comes to me, I look at it objectively.
12 I don't have any preconceived ideas.

13 Q. You think people come to you, and if they don't get
14 what they want, they go somewhere else?

15 A. Yes, I know that to be a fact.

16 I later find out that someone else testified on
17 that case because their findings were maybe not
18 exactly what mine were.

19 Q. Well, when the defense comes to you, do they ever
20 go to somebody else after they come to you?

21 A. Those cases are usually settled before they get to
22 court.

23 Q. I see.

24 But you have had to testify in some cases that
25 have gone to court, have you not?

1 A. Yes, I have.

2 Q. You've testified both in court and by way of
3 deposition?

4 A. Yes.

5 Q. And how many of these examinations have you made in
6 the past year on behalf of the defense, either by
7 month or by week or --

8 A. I have no way of knowing.

9 Q. On an average.

10 A. Over the course of a year I may be requested to
11 review a half a dozen cases, whether it be
12 malpractice or whether it be an auto accident.

13 Q. So you're saying it's definitely under a dozen a
14 year for the defense?

15 A. Oh, yes.

16 Q. Let me turn your answer you just gave me around a
17 little bit differently.

18 Have you ever on occasion testified for a
19 Plaintiff in a case involving a matter? --

20 A. Certainly, yes, I have.

21 Q. Do I take it from your testimony that this doesn't
22 occur very often?

23 A. Well, you know, I told you that I don't have any --
24 I don't keep any records to give me any
25 percentages, but I treat an awful lot of TMJ

1 cases.

2 Q. I'm talking about your testimony, though.

3 A. If you will just bear with me, many of those cases
4 in which I treat I'm asked to participate in
5 testimony form.

6 Q. Okay.

7 You're asked to do that?

8 A. Well, I don't volunteer. Certainly I'm asked to do
9 it.

10 Q. And you do testify in those cases?

11 A. Certainly when it's warranted, yes.

12 Q. Let me just take one more look at these records
13 here.

14 Can I see what's in the file here?

15 A. Sure (Indicating).

16 Q. Thank you very much.

17 A. Sure.

18 (Thereupon, Plaintiff's Exhibit 5 was marked for
19 identification.)

20 BY MR. NAEGELE:

21 Q. Doctor, I'll hand you a piece of correspondence
22 dated August 31 of 1993 and ask if you can identify
23 that as being a piece of correspondence from Mr.
24 Kenneally to you.

25 A. Yes.

1 Q. Okay, and does that record indicate that there were
2 some records and materials that were forwarded to
3 you by Mr. Kenneally?

4 A. Yes.

5 Q. Are those additional materials that you didn't have
6 at the time of your examination of Miss Lapps back
7 at the end of July?

8 A. Well, I would have to go through the records.

9 In some instances I have duplicates, so I'm not
10 sure which of those I had. To my best recollection
11 I had all of the information prior to my
12 examination. But again, I would have to go back
13 and find out.

14 Q. Okay.

15 From the letter that Mr. Kenneally wrote to
16 you, it's very simple. He encloses copies of --
17 they're really three sets of records, office
18 records from Dr. Hauser, Dr. Blakemore, and Mt.
19 Sinai records, is that right?

20 A. Yes.

21 Q. And in his last sentence he indicates, after you
22 have had a chance to review them, please let me
23 know if your opinions regarding the TMJ remain the
24 same.

25 The implication seems to be that these are new

1 records that you hadn't been sent before. Did you
2 respond to Mr. Kenneally either by telling him you
3 already had those records when you rendered your
4 opinion in July, or did you respond to him by
5 indicating something further with respect to his
6 last sentence?

7 A. I'm sure I responded to him, and whatever the
8 scenario was, either I had the records and my
9 opinion remained the same or I reviewed these
10 records in addition to what I had and my opinion
11 remained the same.

12 Q. But you don't have a record of which it was?

13 A. No.

14 Q. This would be by phone call?

15 A. Probably, yes, by phone call, I think.

16 Q. If it was in writing, it would be in this file,
17 wouldn't it?

18 A. If it was in writing, it would be in the file.

19 Q. Your memory is that your opinion hadn't changed,
20 but you don't know whether you had these records
21 before, which would mean you already viewed them,
22 or whether these records were new, which means
23 there was nothing in here to change your opinion,
24 is that right?

25 A. Yes.

1 My best recollection is that I had the Mt.
2 Sinai medical records, and I think he had sent me a
3 duplicate, number one.

4 Number two, I had all of Michael Hauser's
5 records with the exception of a final report. I
6 think there was more than one report with Dr.
7 Hauser, or there was something additional that he
8 was sending me. Now, I'm relying on my memory. I
9 would have to go through.

10 Q. Okay, go ahead.

11 A. I believe I did not have Dr. Blakemore's records.
12 I asked that they be sent to me.

13 So Dr. Blakemore's records to my best
14 recollection I probably did not have.

15 Q. So Blakemore's records would be new?

16 A. To my best recollection.

17 Q. When you say Blakemore's records, is Blakemore the
18 fellow that pulled the wisdom teeth?

19 A. Yes.

20 Q. Well, I thought in answer to your earlier testimony
21 you indicated you had noted something in those
22 records that you had inquired from Kathleen Lapps
23 about, mainly what the problem was at the time her
24 wisdom teeth were extracted.

25 A. She told me that she had her wisdom teeth out.

1 Q. You didn't have Blakemore's records?

2 A. I said to the best of my recollection I didn't have
3 the office records. Maybe that's why I asked that
4 they be secured.

5 Q. But in any event, there is no written response to
6 Mr. Kenneally's letter of August 31.

7 Is there any other place where you might have
8 made a note on that?

9 A. No. This is my complete record. Anything which
10 was written would be included on this.

11 Q. Phone calls aren't recorded, then?

12 A. No.

13 I would have phone calls recorded, but that's
14 on a separate sheet of paper for billing purposes.
15 If I spent a half an hour on the phone with Mr.
16 Kenneally, I would certainly, you know, have to
17 mark that down for billing purposes.

18 Q. Well, you don't have those records with you?

19 A. No, I don't keep my billing, the time that I spent
20 on this.

21 Q. All right.

22 All I'm asking is, can we have an understanding
23 that you'll check your records and provide us with
24 whatever your records show if there was anything by
25 way of time spent after August 31 excluding the

1 deposition today?

2 A. Okay.

3 Q. I'm talking about in response to this (Indicating).

4 A. All right.

5 Q. Is that fair enough?

6 A. Sure. I'm just writing these down.

7 One is to check the CV. Two is to check the

8 records.

9 Q. If there was any time spent by you after August 31

10 in response to this letter or records review or

11 whatever. I don't know what you did. If they were

12 duplicates, you might not have reviewed them.

13 A. Yes.

14 Q. If they were new, you might have to look at them.

15 I assume that's what you were indicating to me.

16 A. Right.

17 Q. If the record was a duplicate, you'd say, I already

18 looked at it, and you'd put it aside?

19 A. Exactly.

20 I think when you went through the records, you

21 recognized there was a lot of duplication in there.

22 Q. There was some, yes.

23 MR. NAEGELE: Maybe we can

24 get a copy of this before we leave.

25 I have nothing further.

1 MR. KRAUS: I have nothing,
2 no.

3 MR. NAEGELE: Thank you very
4 much, Doctor.

5 Do you want to explain signature to him,
6 Terry?

7 MR. KENNEALLY: I think he's
8 probably familiar with it.

9 You have a right to read it if it's
10 typed out. I'm going to ask for a copy of
11 it, or you can waive it.

12 THE WITNESS: I'll waive.

13

14 - - -

15

16 (DEPOSITION CONCLUDED)

17

18 (SIGNATURE WAIVED)

19

20 - - -

21

22

23

24

25