

IN THE COURT OF COMMON PLEAS
OF SUMMIT COUNTY, OHIO

CHRISTINE PIZZUTE,

Plaintiff,

vs.

Case No.

FALLS FOOT & ANKLE CLINIC,

CV2001094453

INC., et al.,

Defendants.

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Deposition of RICHARD JOSEPH RASPER,
D.P.M., called for examination under the statute,
taken before me, Denise M. Munguia, a Registered
Merit Reporter and Notary Public in and for the
State of Ohio, pursuant to notice and
stipulations of counsel, at the offices of
Scanlon & Gearinger Co., L.P.A., 1100 First
National Tower, 106 South Main Street, Akron,
Ohio, on Wednesday, May 15, 2002, at 10:06
o'clock a.m.

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RENNILLO REPORTING SERVICES
A LEGALINK AFFILIATE

1 APPEARANCES:

2
3 On behalf of the Plaintiff:

4 Scanlon & Gearinger Co., L.P.A., by

5 JOHN F. HILL, ESQ.

6 JOY D. MALEK, ESQ.

7 1100 First National Tower

8 106 South Main Street

9 Akron, Ohio 44308-1463

10 (330) 376-4558

11
12 On behalf of the Defendants

13 Falls Foot & Ankle Clinic, Inc. and

14 Richard J. Rasper, D.P.M.:

15 Douglas K. Fifner Co., L.P.A., by

16 DOUGLAS K. FIFNER, ESQ.

17 24500 Center Ridge Road, Suite 390

18 Westlake, Ohio 44145

19 (440) 871-5020

1 APPEARANCES, Continued:

2
3 On behalf of George D. Silver, II, D.P.M.
4 and George D. Silver, D.P.M., Inc.:

5 Hanna, Campbell & Powell, LLP, by

6 **GREGORY T. ROSSI, ESQ.**

7 3737 Embassy Parkway

8 Akron, Ohio 44334

9 (330) 670-7300

10 ----

11
12 ALSO PRESENT:

13 Christine Lin Pizzute

14 George D. Silver, II

15 ----

1 RICHARD JOSEPH RASPER, D.P.M., of lawful
2 age, called for examination, as provided by the
3 Ohio Rules of Civil Procedure, being by me
4 first duly sworn, as hereinafter certified,
5 deposed and said as follows:

6 EXAMINATION OF RICHARD JOSEPH RASPER, D.P.M.
7 BY MR. HILL:

8 Q. Doctor, will you say your full name
9 for the record, please?

10 A. Richard Joseph Rasper.

11 Q. And what's your residence address?

12 A. 5425 Diana Lynn Drive, Stow, Ohio
13 44224.

14 Q. How long, approximately, have you
15 lived there?

16 A. About ten years.

17 Q. And do you intend for that to be
18 your address for the foreseeable future?

19 A. Yes.

20 Q. What's your date of birth and your
21 age?

22 A. 11-9-62. 39.

23 Q. How are you currently employed?

24 A. I am currently employed by
25 Riverwood Community Chapel.

1 Q. What is that?

2 A. It's a church.

3 Q. Of any particular denomination?

4 A. It's nondenominational.

5 Q. Where is that at?

6 A. It's on Fairchild Road in Kent.

7 Q. And how long, about, have you
8 worked there?

9 A. Two years.

10 Q. Doing what?

11 A. My title is family ministries
12 pastor.

13 Q. And can you tell me in layperson's
14 terms what that means?

15 A. It means that I take care of the
16 needs of the people of the church in general.
17 Those would include people who are sick or have
18 counseling needs, those type of issues.

19 Q. Did you have to go through some
20 sort of special education or training to obtain
21 that position?

22 A. Yes.

23 Q. I don't want to get into great
24 detail, but can you tell us an overview of
25 that? Is it school or something else?

1 A. Seminary training.

2 Q. Did you attend seminary?

3 A. Yes.

4 Q. For how long?

5 A. Six years.

6 Q. Over what period of time?

7 A. From 1992 through 1998.

8 Q. Where was that at?

9 A. Ashland Seminary.

10 Q. In Ashland, Ohio?

11 A. Yes.

12 Q. Are you currently a licensed
13 podiatric doctor, if that's the right term?

14 A. Yes.

15 Q. You're still licensed?

16 A. Yes.

17 Q. And do you intend to remain
18 licensed?

19 A. Yes.

20 Q. Do you practice podiatry in any
21 form right now?

22 A. Yes.

23 Q. In what form?

24 A. I practice on a limited basis.

25 Q. Where at?

1 A. I practice at St. Thomas Hospital
2 at the wound center at St. Thomas.

3 Q. Do you do that in your own name or
4 in a corporate name or something else?

5 A. That's in my own name.

6 Q. What kinds of things are you doing
7 at the wound center now?

8 A. I treat patients who have
9 difficult-to-heal wounds on their feet and
10 legs.

11 Q. Do you have an office anywhere out
12 of which you practice podiatry?

13 A. I don't have an office.

14 Q. Do you practice anywhere else other
15 than at St. Thomas wound center now?

16 A. Yes.

17 Q. Where else?

18 A. Falls Foot & Ankle Clinic.

19 Q. Under what circumstances do you now
20 practice there?

21 A. I practice on a limited basis every
22 other week for two hours.

23 Q. Same day or hours every other week?

24 A. Yes, generally, yes.

25 Q. What is it?

1 A. Mondays from 11 to 1.

2 Q. Why are you doing that?

3 A. It -- I think there's several
4 reasons. I think that it keeps me in touch
5 with more than just wound problems and I'm able
6 to see some of my old patients who still want
7 to see me.

8 Q. Do you have presently any ownership
9 or equity interest in Falls Foot & Ankle
10 Clinic?

11 A. No.

12 Q. Are you an employee or something
13 else of the clinic, in your mind?

14 A. I'm an associate of the group.

15 Q. Other than the two things we have
16 now talked about, do you practice podiatry in
17 any other respect currently?

18 A. Yes.

19 Q. Tell us about that, please.

20 A. I go to a retirement center one day
21 a month.

22 Q. Which is what?

23 A. The Canton Regency. The Canton
24 Regency.

25 Q. Do you do that through Falls Foot &

1 Ankle or on your own or something else?

2 A. No, that's on my own.

3 Q. Any other practice that you have
4 now, other than what you have told us about
5 already?

6 A. No, that's it.

7 Q. So if I wanted to kind of summarize
8 the deal, if that's a fair word, that you have
9 with Falls Foot & Ankle, would it be correct to
10 say that right now you do not have any
11 ownership interest, but you have an arrangement
12 where you work as an associate of the group
13 part of one day every other week? Am I right
14 so far?

15 A. I believe that's correct.

16 Q. And are you paid on a, you know,
17 salary, per patient or some other basis? I'm
18 not looking for dollars, just the basis.

19 A. No. Dr. Silver pays some of my
20 expenses and so I don't receive money for that
21 necessarily.

22 Q. Are you paid for fees that you
23 generate?

24 A. No.

25 Q. So in what sense are you

1 compensated for whatever you do for the clinic?

2 A. Dr. -- I have expenses to stay, to
3 keep licensed and to stay in practice and
4 Dr. Silver pays those expenses, some of those
5 expenses.

6 Q. But whatever treatment of patients
7 you do, the clinic gets the fees generated?

8 A. Yes.

9 Q. And you do bill for fees?

10 A. Yes.

11 Q. Or the clinic does anyways?

12 A. Yes.

13 Q. There was some period -- was there
14 some period in your life when you were engaged
15 full time and exclusively in the practice of
16 podiatry?

17 A. Was I practicing full time? Is
18 that the question?

19 Q. At some point in your life.

20 A. Yes.

21 Q. As best you can recall, from when
22 to when?

23 A. Well, 1990 through 2000.

24 (Discussion had off the record.)

25 Q. From 1990 to 2000, what kind of

1 practice did you have?

2 A. General podiatry practice.

3 Q. During that whole time, were you
4 doing it at Falls Foot & Ankle Clinic?

5 A. No.

6 Q. What portion of it was at Falls
7 Foot & Ankle?

8 A. From 1992 to 2000.

9 Q. And during that time, did you have
10 some ownership or equity interest in that
11 corporation?

12 A. Yeah, I owned it.

13 Q. Sole owner?

14 A. Yes.

15 Q. Did you found it, if that's the
16 right word?

17 A. No, it was founded by the fellow
18 who was there before me.

19 Q. Who was that?

20 A. Dr. Patrick Landers.

21 Q. And was he engaged in the full-time
22 practice of general podiatry at Falls Foot &
23 Ankle Clinic before you came there?

24 A. That was part of what he did.

25 Q. What else did he do, that you were

1 aware of?

2 A. He worked for Kaiser. And he
3 worked for the -- he taught at the Ohio College
4 of Podiatric Medicine.

5 Q. What's your medical or podiatric
6 education?

7 A. I graduated from the Ohio College
8 of Podiatric Medicine in 1984 -- 1988, and I
9 did a residency after that.

10 Q. Residency in what?

11 A. I did a 24-month podiatric surgical
12 residency.

13 Q. Where was that?

14 A. Kansas City.

15 Q. Can you name the hospital?

16 A. The residency was based at Lakeside
17 Hospital.

18 Q. Now, when you do -- when you did
19 surgical residency, did you focus it on any
20 particular part of the foot or type of surgery
21 or was it general podiatric surgery or
22 something else?

23 A. Well, the best way that I can
24 answer that is that the residency, the American
25 Podiatric Medical Association and the Academy

1 of Foot Surgeons determined different
2 categories of surgery that must be completed in
3 order for a resident to successfully complete
4 the residency, so it was a broad range of
5 different procedures and types of foot surgery
6 that met the requirements for that residency
7 program.

8 Q. And in words a layperson like me
9 would understand, are we talking about surgery
10 on any or all parts of the foot or limited to
11 different parts of the foot or something else?

12 A. The categories that are required
13 are foot and ankle, so that would include
14 surgery on the ankle and all of the structures,
15 including the toes and the heel and the top of
16 the foot and everything you can think of.
17 Surgery on every, every part of it.

18 Q. Was there, during the time that you
19 were engaged in the full-time practice, a
20 certification or a certifying board in
21 podiatric surgery to be obtained?

22 A. There is the American Board of
23 Podiatric Surgery, yes.

24 Q. They certify foot surgeons?

25 A. They certify podiatric physicians

1 in foot surgery.

2 Q. Right. Okay. Did you ever get
3 that certification?

4 A. Yes.

5 Q. When did you get it?

6 A. 1994.

7 Q. Is the certification couched in
8 terms of you're certified in podiatric surgery
9 of particular types or subclassifications or
10 anything like that?

11 A. Currently there is.

12 Q. How about back then?

13 A. I'm not sure that there was. I
14 don't believe there was.

15 Q. And so what would have been, if
16 you're right, and it's okay if you're not --

17 A. Sure.

18 Q. -- you're working from memory, if
19 you're right about that, what would have been
20 the right name for the certification that you
21 got in 1994?

22 A. Certified by the American Board of
23 Podiatric Surgery in foot surgery. Yeah.

24 Q. Are you still certified?

25 A. Yes.

1 Q. In any subclassifications now?

2 A. Well, now they have divided into
3 rear foot and ankle surgery and general foot
4 surgery. And I would be classified in the
5 general foot surgery category.

6 Q. Do you have to do something to be
7 recertified at any point?

8 A. Yes.

9 Q. When?

10 A. Ten years from the time you are
11 certified.

12 Q. Okay. I'd like to focus on the
13 year 2000 because obviously that's when you saw
14 my client. By that time, and during that
15 year -- first of all, that was, I think, the
16 last year that you consider yourself to have
17 been full-time engaged in the practice,
18 correct?

19 A. 2000 is the last year that I was
20 practicing in full-time podiatry.

21 Q. Was that kind of the transition
22 year where you transitioned from full-time to
23 something less than full time?

24 A. I left the practice as an owner
25 June 1st of 2000.

1 Q. And that means what? You sold your
2 share of the company then?

3 A. Yes.

4 Q. In terms of your clinical
5 practice --

6 A. Yes.

7 Q. -- what changes happened and when
8 during 2000?

9 A. As of June 1st, I was present as an
10 associate on a limited basis, basically with
11 the hours on Monday that we described
12 previously.

13 Q. Did you do anything to announce to
14 your patients the change effective June 1st?

15 A. We informed patients through a
16 variety of means and we also informed the
17 family doctors of the patients in a letter
18 format.

19 Q. Did patients get letters or just
20 the docs?

21 A. I don't recall that all of the
22 patients got letters, and I don't believe so.
23 I don't recall that.

24 Q. Did any -- I didn't mean to talk
25 over you.

1 A. Some may have. I don't recall.

2 Q. Okay. Before this change in or
3 around June of 2000, was there a particular
4 hospital at which you focused your practice?

5 A. I was on staff at both of the major
6 Akron hospitals and practiced out of both of
7 them.

8 Q. General and City?

9 A. Yes.

10 Q. How about Falls?

11 A. Yes.

12 Q. You had privileges at all three of
13 those places?

14 A. Did I have them?

15 Q. Yes.

16 A. Yes.

17 Q. Up until -- and then was there one
18 of them where you saw more patients or did more
19 procedures or anything much more than the
20 others?

21 A. That changed over the years.

22 Q. I mean by this time, you know,
23 2000.

24 A. In that particular year?

25 Q. Or around that time, yeah.

1 A. At that time I was probably doing
2 most of my work at St. Thomas.

3 Q. Where were you doing most of your
4 surgeries? At St. Thomas or elsewhere?

5 A. Probably at that time. I can't
6 tell you completely accurately, because I still
7 practiced at all of those other places,
8 including surgery centers that were affiliated
9 with Akron General, so it's hard to tell you
10 accurately, but my guess would be that I did
11 most of my cases at St. Thomas.

12 Q. Fair enough. In order to refresh
13 your recollection about Christine and her case,
14 have you sometime recently looked at the
15 medical records?

16 A. Yeah, I had an opportunity to
17 review them.

18 Q. Within the last day or so?

19 A. Some of the records, yes.

20 Q. Including your chart? Or the Falls
21 Foot & Ankle chart?

22 A. Yes.

23 Q. Have you recently also had a chance
24 to look at x-rays of her feet?

25 A. Yes.

1 Q. How recently, approximately?

2 A. Yesterday.

3 Q. Setting aside this case, have you
4 ever before been a party defendant to a
5 negligence claim arising out of your practice?

6 A. No.

7 Q. Have you ever been a party
8 plaintiff or defendant to any lawsuit other
9 than this one?

10 A. No.

11 Q. Have you had made against you
12 claims of negligence that did not proceed to a
13 lawsuit, but got resolved somehow short of a
14 lawsuit, setting aside this instance?

15 A. There was one incident eight or
16 nine years ago of removal of a wart that there
17 was a complaint, but no lawyer would take the
18 case and nothing happened.

19 Q. Have you ever testified as an
20 expert witness in a medical legal case?

21 A. No.

22 Q. Have you ever reviewed, whether or
23 not you testified, reviewed records and given
24 people opinions about medical legal cases?

25 A. No.

1 Q. Can you tell me kind of an overview
2 of the history of this company called Falls
3 Foot & Ankle Clinic, that you are aware of?

4 A. A history of Falls Foot & Ankle
5 Clinic? Do you have a specific aspect of
6 history?

7 Q. I'd like to, rather than kind of
8 grilling you about it, I'd like to give you a
9 chance to tell me an overview of what you know
10 about the history of that organization. Ten
11 years, 20 years, whatever you can tell me, in
12 overview fashion.

13 A. It was started by Dr. Landers prior
14 to the time that I came on. It was a part-time
15 practice. And I took over in 1992 and worked
16 at it for the next eight years.

17 Q. By June of 2000 you were still the
18 sole owner of the corporation?

19 A. June 1st of 2000 is when I sold the
20 practice and became the associate.

21 Q. Who did you sell to?

22 A. Dr. Silver.

23 Q. He and no one else? Him and no one
24 else, whatever is the right word?

25 A. Correct.

1 Q. Immediately before that sale, how
2 many people, physicians or otherwise, were
3 employed by Falls Foot & Ankle Clinic?

4 A. Well, I believe there were three
5 assistants and -- immediately before the sale?

6 Q. Yes.

7 A. And Dr. Silver.

8 Q. And by assistants, you mean what?

9 A. Receptionists, billing people,
10 medical assistants.

11 Q. Did they all work out of the same
12 office?

13 A. Yes.

14 Q. And there was only one physical
15 office for the practice?

16 A. Yes.

17 Q. Even later into 2000, when you had
18 whatever involvement you had with Christine's
19 care, were you doing that through either
20 employment or work through Falls Foot & Ankle
21 Clinic?

22 A. I saw her in the capacity of an
23 associate.

24 Q. Of that clinic?

25 A. Yes.

1 Q. Right. Okay. How did you first
2 come to know Dr. Silver?

3 A. I was advertising the practice for
4 sale and other colleagues brought his name up
5 as a person who may be interested.

6 Q. When did that happen,
7 approximately?

8 A. Probably prior to, prior to, the
9 summer or the spring of 1999.

10 Q. Why were you, and again, I don't
11 want to get overly personal or detailed, but in
12 a general sense, why were you then looking to
13 sell? What was your plan?

14 A. I had an opportunity to go into
15 full-time ministry and had decided that
16 that's -- that would be my first choice, if I
17 could move on.

18 Q. The type of ministry that you're
19 doing now?

20 A. Yes.

21 Q. And so specifically how did you
22 meet Dr. Silver?

23 A. I believe there was a phone call in
24 which we discussed the possibility of him
25 coming down and looking at the practice and

1 then he came down to take a look at it.

2 Q. Was there a person who kind of
3 brokered, for lack of a better term, you two
4 coming together?

5 A. I wouldn't say that. No, I really
6 wouldn't say that there was --

7 Q. How would you say it?

8 A. I would say that colleagues who
9 knew Dr. Silver let him know about a possible
10 opportunity and they let me know that he might
11 be interested in a possible opportunity. So --

12 Q. And I guess I'm getting to who were
13 those people?

14 A. Yes. Would be Dr. Debbie Thornton
15 was one.

16 Q. Was she a podiatrist?

17 A. Yes.

18 Q. And you knew her from -- how did
19 you know her?

20 A. She actually was, I think, an
21 associate professor at the college when I was a
22 senior and she was practicing in Cleveland at
23 the time and had actually expressed some
24 interest in maybe taking over the practice
25 before Dr. Silver decided that he may be

1 interested.

2 Q. And so in the summer or fall of 99
3 when you first met Dr. Silver, what did you
4 know or what were you told about where he was
5 in his career?

6 A. That he was, that he had completed
7 his residency and was looking for an
8 opportunity.

9 Q. When had he completed his
10 residency? As best you know.

11 A. As best I know, it was prior to
12 June of 1999.

13 Q. Would have been the spring or early
14 summer of 99?

15 A. Yes, uh-huh.

16 Q. Where was his residency done?

17 A. In Cleveland.

18 Q. Do you know particularly where?

19 A. It was based out of the Ohio
20 College of Podiatric Medicine.

21 Q. And that means what?

22 A. The podiatry college.

23 Q. Yeah, but I mean does that mean did
24 he work at one or more hospitals or something
25 else? If you know.

1 A. Yeah. Yes. They managed the
2 residency, but he had rotations at different
3 hospitals and worked with a variety of
4 different surgeons.

5 Q. Were you told details about the
6 residency, how long it was, what kind of
7 procedures, things like that?

8 A. Yes, the information that I had was
9 that it was a two-year, 24-month podiatric
10 surgical residency.

11 Q. When do you become board eligible
12 in podiatric surgery? By that I mean at what
13 point in your training or experience?

14 A. Uh-huh. I believe, those rules
15 seem to have changed over the years as well,
16 but I believe in general it's when you graduate
17 from podiatry college. That was the case for
18 me.

19 Q. And did you know or were you told
20 whether Dr. Silver had practiced in private
21 before coming to join you? Or was this going
22 to be his first private practice?

23 A. That was my understanding.

24 Q. The latter?

25 A. Yes.

1 Q. Had you, before Dr. Silver, had any
2 partners, associates or anything in the last,
3 you know, five, eight years of Falls Foot &
4 Ankle Clinic?

5 A. I'm sorry, could you repeat that?

6 Q. Before Dr. Silver came along, had
7 you worked with any partners or associates
8 during the time that you ran Falls Foot &
9 Ankle?

10 A. No.

11 Q. Had you develop, by the time you
12 met Dr. Silver, a referral base of doctors and
13 a patient base?

14 A. Yes.

15 Q. And again, I'm not looking for
16 monetary numbers, but was the practice doing
17 well, in your view?

18 A. Yes.

19 Q. And was it your intention, then, if
20 Dr. Silver was going to be the person, that you
21 were going to basically sell to him and let him
22 take the practice and run it and control it and
23 you were going to step out and go do this
24 ministry?

25 MR. ROSSI: Objection.

1 Q. Was that your plan?

2 A. My plan was to sell the practice
3 and pursue full-time ministry.

4 Q. Right. And did you and Dr. Silver
5 come to some agreement about what way you would
6 make the transition from the practice going
7 from Dr. Rasper to Dr. Silver?

8 A. So you're asking did we have some
9 plans in place for a transition?

10 Q. Yeah, whether they were written or
11 not, I don't care, but did you come, in your
12 mind, to a plan for the transition?

13 A. Yes.

14 Q. And if so, what was it?

15 A. Yes.

16 Q. What was it?

17 A. We agreed that I would be an
18 associate of the practice and work at a
19 mutually agreeable time for limited hours.

20 Q. Do you remember any of the details
21 about for how long or anything like that?

22 MR. ROSSI: Show a continuing
23 objection.

24 MR. HILL: Okay.

25 A. As I recall, there was no end date

1 on that particular part of the agreement.

2 Q. Was a part of the sale transaction
3 a consulting agreement between you and Falls
4 Foot & Ankle?

5 A. The agreement was that I was --
6 would be willing to assist with patient care at
7 mutually agreeable times.

8 Q. Right. But I mean did you have an
9 express and written consulting agreement as a
10 part of the transaction?

11 A. We had a contract.

12 Q. Did it include a consulting
13 agreement?

14 A. I don't know what you mean
15 specifically by that term. But we had an
16 agreement that I would assist with patient care
17 at mutually agreeable times.

18 Q. Okay. With regard to Christine
19 Pizzute, did you ever know or were you ever
20 told how she came to Falls Foot & Ankle Clinic
21 when she first came?

22 A. I don't know exactly how she came
23 there.

24 Q. You don't know the referral source
25 or anything like that?

1 A. At one point I was informed that
2 her mother knew me.

3 Q. Do you know her mother?

4 A. I don't have a recollection of her
5 mother.

6 Q. The records tell us that it was May
7 15 of 2000 when she first came to Falls Foot &
8 Ankle Clinic. If that's correct, we're talking
9 about literally a couple weeks before this
10 actual transaction date, correct?

11 A. May 15th, yes.

12 Q. Right. And was that a hard date,
13 that June 1 date, in other words, you guys used
14 it as literally as of this date I'm going to
15 stop coming in like I used to come in, I'm
16 going to change the time that I practiced and
17 come to the office, things like that, was that
18 a hard date?

19 A. My hours changed at that date.

20 MR. HILL: Do we have a copy of the
21 chart? Let's go off the record for a minute.

22 (Discussion had off the record.)

23 - - - - -

24 (Thereupon, Rasper Deposition

25 Exhibit 1 was marked for purposes of

1 identification.)

2 - - - - -

3 Q. We'll go back on the record.

4 Do you have any knowledge or
5 recollection of anything that you personally
6 specifically talked to Christine about
7 regarding the transition from you to
8 Dr. Silver? You know what I'm asking?

9 A. Yeah, kind of. It's kind of a
10 compound question.

11 MR. HILL: I'll ask --

12 MR. FIFNER: Yeah, I don't have a
13 problem, but I think your question implies
14 that --

15 MR. HILL: That he did.

16 MR. FIFNER: -- her original
17 association was with Dr. Rasper.

18 MR. HILL: I'll ask it a different
19 way.

20 MR. FIFNER: Okay. And I'm not
21 sure whether that's true or not.

22 Q. Did you ever have any discussion,
23 that you can remember, with Christine about the
24 fact that the practice was being moved from you
25 to Dr. Silver?

1 MR. ROSSI: Objection.

2 A. Yes, I have a memory of discussing
3 that issue with her in the limited visit that I
4 did see her.

5 Q. Where in time or in the course of
6 events did that happen?

7 A. I saw her one time in June.

8 Q. Was it before the first surgery?

9 A. Yes.

10 Q. And do you remember at that point
11 having some conversation with her about this
12 topic?

13 A. Yes.

14 Q. What do you remember?

15 A. I remember explaining to her that I
16 was leaving the practice as owner and manager
17 and would be available only on a limited basis.

18 Q. And you think you told her that
19 before that first surgery on her right foot?

20 A. Yes.

21 Q. Was she at some point your patient?

22 A. No.

23 Q. Never?

24 A. I was never the doctor of record,
25 nor the attending physician.

1 Q. Did you perform a surgery on her?

2 A. I was actively involved in the
3 surgery on her right foot.

4 Q. Right. And by actively involved,
5 what do you mean? Did you do it or assist on
6 it or something else?

7 A. I was actively involved.

8 Q. Okay. I mean don't you, amongst
9 surgeons, delineate between who performs the
10 surgery and who assists, for the record?

11 A. In reality, two capable surgeons
12 working on a case often perform different parts
13 of the procedure.

14 Q. Right. But I guess what I'm
15 getting to is if we want to, and maybe there's
16 no answer to this, in your view, but if we want
17 to know for the record who did the surgery on
18 Christine's right foot as opposed to -- who was
19 the primary responsible doctor, or whatever
20 term you want to use, who was it?

21 A. I would say that I was not the
22 attending physician on the case, but I was
23 actively involved on the case.

24 Q. I'm going to hand you a packet of
25 materials. The entire packet's been marked as

1 Exhibit 1 to your deposition. For now you can
2 assume that this is a complete copy of the
3 chart as I got it from Falls Foot & Ankle, I'm
4 not asking you to vouch for that or not, just
5 assume it and the lawyers will work it out
6 later if there are problems.

7 A. Okay.

8 Q. If you see things that are missing
9 that are important or something, you can call
10 them to our attention. But for now we'll
11 assume Deposition Exhibit 1 is your chart for
12 Christine.

13 A. Okay.

14 Q. Will you turn, please, to the first
15 office visit note? I don't mean that form, I
16 mean the first charted office visit. For May
17 15, 2000; do you see that?

18 A. Uh-huh.

19 Q. This note, is it correct to call
20 that an office note or something else? What's
21 the term we should use?

22 A. I would call this a progress note.

23 Q. A progress note. And is it in the
24 form that you typically made progress notes in
25 charts?

1 A. It has a standard progress note
2 form, yes.

3 Q. Right. I'd like to know just a
4 little bit about the procedure for how these
5 things were made. Were they dictated -- well,
6 let me take a step back.

7 Did you make this note or the
8 second one? By that I mean did you dictate it
9 or have any role in authoring it?

10 A. You're saying on 5-15?

11 Q. Or on 6-12.

12 A. No.

13 Q. Those are authored by Dr. Silver?

14 A. Yes.

15 Q. When you made notes in her chart or
16 others back then, did you two use the same
17 basic process for how they got from your brain
18 onto paper?

19 A. You're asking that if did he and I
20 use the same process?

21 Q. To make notes, progress notes.

22 A. To make notes. I used a standard
23 format when I dictated my notes.

24 Q. Here's what I'm trying to get to.
25 Did you dictate these and then have them typed

1 up or did you type them yourself into a
2 computer or some other process to get your
3 thoughts on paper and into the chart? What did
4 you do, first of all?

5 A. Well, didn't make these notes.

6 Q. When you did it, what did you do?

7 A. My standard practice when I had the
8 practice was to dictate the notes.

9 Q. And then someone would type them up
10 for you?

11 A. Yes.

12 Q. Do you know was Dr. Silver's
13 practice to do the same thing, did he dictate
14 or something else?

15 A. Are you talking about these notes
16 specifically?

17 Q. Sure.

18 A. I wasn't present when he formulated
19 these notes --

20 Q. Do you -- I'm sorry.

21 A. -- and so I'm not sure what vehicle
22 he used to chart them.

23 Q. Do you know what his practice was
24 back then? Did he dictate, type them up,
25 something else?

1 A. As I recall, there were some notes
2 that he dictated. I'm not sure if he wrote
3 some. There was also a computer program he was
4 using to formulate some notes at that time.

5 Q. When he used --

6 A. I don't know if there are any other
7 means that he used.

8 Q. Do you know if when he used the
9 program he typed it himself or someone else did
10 it for him? In this time frame.

11 A. I don't know what he did with the
12 notes and I wasn't present when these notes
13 were formed.

14 Q. My kind of overview interpretation
15 of these first two visits is that Christine saw
16 Dr. Silver first on the 15th, but then asked to
17 see you once before the surgery was done on her
18 right foot; is that consistent with your
19 recollection or what you were told?

20 A. He said that, Dr. Silver asked to
21 see me?

22 Q. That Christine asked to see you.

23 A. Okay. Christine was on my schedule
24 that day, and so I saw her.

25 Q. Which day?

1 A. I saw her on June 12th of 2000.

2 Q. Did you make any note of what you
3 saw or did that day for the chart?

4 A. No.

5 Q. Otherwise?

6 A. Otherwise what?

7 Q. Make a note somewhere else other
8 than in the chart?

9 A. I don't recall making any notes
10 anywhere.

11 Q. How did it come about? Did she
12 also see Dr. Silver on the 12th of June?

13 A. Yes.

14 Q. Before or after you; do you know?

15 A. At the same time.

16 Q. You saw her together?

17 A. Yes.

18 Q. And then Dr. Silver is the one who
19 made this note of the 12th?

20 A. Yes.

21 Q. Did you know, then, or were you
22 told that she had asked specifically to see you
23 before surgery was done?

24 A. You know, I recall that she
25 mentioned that her mother knew me and I do

1 recall that.

2 Q. Did you tell her in words or
3 substance who would be doing her surgery on her
4 right foot?

5 A. I don't recall having that specific
6 conversation with her.

7 Q. Do you know if anyone did?

8 A. I don't know.

9 Q. In the note of 6-12-2000 there is
10 some discussion about x-ray angles, and here is
11 the part of the depo where I need to kind of
12 make a record, so you have to bear with me.
13 X-ray angles for the right foot are listed
14 here. Did you participate in making or
15 measuring them?

16 A. I don't recall.

17 Q. How do you do that? When you do do
18 it.

19 A. There are methods that we learned
20 in training, measuring these angles.

21 Q. Right. Talk to me like you'd talk
22 to a jury of lay people, tell me, please, how
23 you would do that.

24 A. You look at the bones and draw
25 lines in order to measure specific parameters.

1 Q. What are you drawing lines on, of
2 the foot? On an x-ray?

3 A. Yes.

4 Q. So you take an x-ray of the
5 patient's foot?

6 A. Yes.

7 Q. And then you look at the x-ray and
8 then do you draw on the x-ray or on something
9 else?

10 A. You can do it either way. You can
11 draw on the x-ray or you can lay a sheet over
12 the x-ray and draw on that.

13 Q. Like a tracing paper?

14 A. Yes.

15 Q. What was your practice back then?

16 A. At what point?

17 Q. 6-12-2000.

18 A. I usually made -- drew on the
19 x-rays.

20 Q. Now, have you looked at the x-rays
21 and seen if you did that in this case or if
22 someone did it in this case? The pre-op x-rays
23 from before her foot surgery.

24 A. You know, I did look at those and I
25 can't tell you exactly, but I do believe that

1 there were marks on those x-rays.

2 Q. Now, the angles that you are
3 measuring you give numbers for here for the
4 right foot, you say PASA 18, IM 14, MA 15, HA
5 26. I'm not going to go through all of these,
6 but are there normal numbers or ranges of
7 normal numbers for each of those different
8 x-ray angles?

9 A. Yes.

10 Q. Can you tell me what they are for
11 the PASA?

12 A. The PASA is zero to 8.

13 Q. And do you talk, did you back then,
14 talk with the patient specifically about
15 details like PASA angle, HA angle, things like
16 that?

17 A. I don't recall.

18 Q. As a matter of practice, do you
19 remember what your practice was, or did you do
20 it differently from patient to patient?

21 A. In general, I talked about the
22 angles when I felt that they were pertinent,
23 but when talking about a surgery with a
24 patient, I focused on what the surgery was
25 supposed to accomplish and I usually didn't get

1 too detailed with the angles unless it was very
2 pertinent.

3 Q. Can you tell me in words like you
4 would use to educate a patient what's the PASA
5 angle in this context?

6 A. It's the angle of the cartilage on
7 the distal part of the metatarsals.

8 Q. Now, are those words that you would
9 use with the patient, distal, metatarsal?

10 A. Yes.

11 Q. And so they would probably say what
12 does that mean, and that's what I'm going to
13 say, can you use words that I'm going to
14 understand?

15 A. Well, they would have to know what
16 a metatarsal is, so I would explain that first.

17 Q. Okay. What is it?

18 A. It's the long bones in the mid part
19 of the foot.

20 Q. Okay. So you are comparing with
21 this PASA angle the long, the angle of the long
22 bone to what?

23 A. The angle of the cartilage on the
24 end of the bone.

25 Q. Why do you want to know that? In

1 words a layperson would understand. What does
2 it tell you?

3 A. Well, that helps to determine the
4 direction that the big toe, that the great toe
5 is positioned in.

6 Q. And zero to 8 is the normal range
7 and she had an 18, so if a patient knew that
8 and said what does that mean, what would you
9 tell them?

10 A. That that is, that the angle on the
11 x-ray, that is elevated.

12 Q. Elevated is the word?

13 A. Is increased, uh-huh.

14 Q. Do you characterize, you know,
15 severity of that, if that's the right word, you
16 know, above 10 means something, above 15, above
17 20, anything like that?

18 A. With the PASA?

19 Q. Yes.

20 A. Do I characterize severity of it?

21 Q. Or do doctors in your field?

22 A. I think that some people put more
23 weight on the proximal articular set angle than
24 others and there are a lot of variables with
25 these angles and clinical interpretations that

1 determine how much weight you put on them.

2 Q. How would you, Dr. Rasper,
3 characterize a PASA of 18?

4 A. I think that if there was that
5 number on a black and white test, I would
6 indicate that that was above the normal range
7 of zero to 8.

8 Q. How about a PASA of 24, how would
9 you characterize that for the left foot?

10 A. I would also characterize that on a
11 black and white test as above the normal range
12 of zero to 8.

13 Q. That's all, nothing more
14 descriptive than above normal?

15 A. I would describe it as above
16 normal.

17 Q. Both of them?

18 A. Yes.

19 Q. Okay. HA, what angle, again in
20 terms like you would talk to a patient, what
21 does that angle measure?

22 A. The hallux abductus angle is
23 normally on the range of about 10 to 15.

24 Q. No, first what parts of the body is
25 it measuring, what anatomy?

1 A. Oh, that angle measures the
2 bisection of the first metatarsal with --

3 Q. Okay. You've got to, I'm going to
4 ask you, please, to use words again.

5 A. Okay.

6 Q. The metatarsal, you have described
7 for me the first metatarsal means what, the one
8 that goes to the big toe?

9 A. Yes.

10 Q. All right. The angle of that bone
11 to what?

12 A. The direction of the toe. The big
13 toe.

14 Q. All right. What's the normal
15 range?

16 A. Normal range is 10 to 15 degrees.

17 Q. How would you characterize a 38,
18 which is what she had on the left foot?

19 A. I would say that on a black and
20 white test, 38 is elevated.

21 Q. When you say on a black and white
22 test, what do you mean by that?

23 A. Well, reality is much different
24 than black and white numbers on an x-ray. You
25 know, the feel of the tissues, that what you

1 see in surgery is often much more important
2 than what you see on these x-rays and these
3 angles that you measured.

4 Q. What things --

5 A. These have to be tempered by your
6 experience and by what you see clinically.

7 Q. What things are you looking for
8 clinically or in surgery that makes a
9 difference more than just the black and white
10 x-ray?

11 A. You are looking for the position of
12 the tissues and the bones.

13 Q. Can you be more specific? The
14 position of the bones is measured by the x-ray
15 angle, right?

16 A. Well, that's, you know, that's a
17 measurement on an x-ray.

18 Q. Right.

19 A. It's not a measurement of real
20 living tissue, in a sense.

21 Q. Okay. But let's talk about bones
22 first.

23 A. Yes.

24 Q. Is there something that you are
25 looking for clinically or in surgery different

1 than what you can see on x-ray that's
2 significant to you in this context?

3 A. Is there something that you can see
4 in surgery that is different than the x-ray?
5 Sometimes.

6 Q. That tells you more than just the
7 angle on the x-ray.

8 A. Well, I think, I think yes.

9 Q. Tell me. What?

10 A. I think you get a more accurate
11 picture of what the real tissue is like.

12 Q. I'm only talking about bones.

13 A. Well, you get a more accurate
14 assessment of the relationship of one bone to
15 another.

16 Q. How do you do that?

17 A. You see it.

18 Q. I mean what is it about being in
19 surgery that tells you anything more than on
20 x-ray? About the angle of the bones.

21 A. The bones are three-dimensional
22 portions of anatomy. And on an x-ray you see
23 one dimension. And x-rays have, depending on
24 the angle that the x-ray's taken, you get a
25 view of, one view of that anatomy. In surgery

1 you see the whole thing.

2 Q. Do you, or when you were engaged in
3 the full-time practice, did you all the time
4 make decisions about whether to do surgery on a
5 bunion based simply on x-ray findings and your
6 physical exam?

7 A. Did I all the time -- can you
8 repeat that, please?

9 Q. Did you rely on x-rays as opposed
10 to something else, an MRI or a CAT scan or
11 whatever, to make the decision about whether to
12 do surgery or not?

13 A. It --

14 MR. FIFNER: I think your original
15 question was x-rays plus a clinical exam.

16 MR. HILL: Yeah.

17 MR. FIFNER: But I think I
18 understand.

19 MR. HILL: Yeah.

20 MR. FIFNER: I think your question
21 is before you did surgery did you ever do, did
22 you always -- I don't know what it was,
23 something about did you incorporate MRIs or CTs
24 always as well.

25 A. For bunion cases?

1 Q. Yes.

2 A. Not unless it was warranted.

3 Q. In other words, in terms of a
4 radiologic study, you all the time relied on
5 x-ray and not CT or MRI to decide whether to do
6 surgery on a bunion, right?

7 A. I treated every case individually.

8 Q. Did you usually rely on x-rays and
9 not other radiology studies?

10 A. In order to help --

11 Q. Decide whether to do surgery on a
12 bunion.

13 A. I usually relied on x-rays to help
14 me determine whether to -- it was part of what
15 I used to determine whether a person needed
16 surgery on a bunion.

17 Q. Here's a layperson's question.
18 Boy, I've got, on my right foot I've got an HA
19 angle of 26, but on my left I've got an HA
20 angle of 38. That must mean that my left foot
21 is a lot worse than my right foot. Is that
22 necessarily true?

23 A. Not necessarily.

24 Q. In Christine's case was it true?

25 A. I had, I saw the patient for a

1 brief visit and had a limited acquaintance with
2 this patient prior to that time. I did not do
3 an in-depth biomechanical exam of her feet and
4 compare them. I don't recall how much worse
5 clinically one foot was than the other.

6 Q. Does the record tell you anything
7 in that regard?

8 A. The record tells me that --
9 basically what you are trying to say to me is
10 that she had an increased angle on the record
11 and --

12 Q. I'm going to interrupt you. Don't
13 assume I'm trying to twist your words or get
14 you to say something.

15 A. Okay.

16 Q. I'm not.

17 A. Okay.

18 Q. You may or may not ever believe me
19 about that, but what I'm trying to do is let
20 you talk, and if I'm saying something that you
21 disagree with, I want you to -- I want to give
22 you a chance to tell me you disagree and tell
23 me why.

24 A. Okay.

25 Q. I don't want to force you to say

1 something, but I do want to, if you disagree,
2 hear why and how.

3 A. Sure.

4 Q. And that's what I'm asking you to
5 do.

6 A. Okay.

7 Q. So does the record tell -- what I'm
8 trying to get to, Doctor, is this.

9 A. Yeah.

10 Q. You can now look at the record,
11 there was a physical exam done and noted, there
12 are things here that are of the typical form
13 that you use.

14 A. Okay.

15 Q. Can you tell me, looking at this
16 record, particular to this patient, did she
17 have a much more severe bunion on the left foot
18 than on the right foot?

19 A. I can tell you that the numbers, I
20 can tell you that the PASA is elevated on the
21 left when compared with the right foot on this
22 record. The IM is, on this record from
23 6-12-02, is increased from the left foot
24 compared with the right foot. And the HA is
25 increased on the left foot compared with the

1 right foot.

2 However, I think it's very
3 pertinent to note that I had a very limited
4 exposure to this patient, I did not examine her
5 clinically, and I had a limited acquaintance
6 with this patient at this point. I did not
7 thoroughly examine her foot or have any, any
8 recollection of which one was what.

9 Q. Based on the documentation of
10 Dr. Silver's clinical physical exam, can you
11 give me your thoughts, yes or no, on whether
12 she had a much more severe bunion on the left
13 side than the right? In other words, using the
14 data that's here, I understand you didn't
15 spend --

16 A. Okay.

17 Q. -- a lot of time with her, using
18 the data that's in the chart, can you
19 characterize the left as much more severe than
20 the right, or not? If not, we'll move on.

21 A. I think that requires a clinical
22 exam to fully answer that question. I can tell
23 you that the numbers are larger and that's all
24 I can really tell you.

25 MR. HILL: Okay. Let's take a

1 short break.

2 (Recess taken.)

3 Q. Doctor, the record suggests to me
4 that as of the first visit and up through the
5 second surgery the patient was told that the
6 recommendation was an Austin procedure on the
7 right foot and something called a CBWO on the
8 left foot. Was that the fact; do you know?

9 A. Are you asking me --

10 Q. Was she told that the doctor or
11 doctors recommended that procedure on the right
12 and the other on the left? If you know.

13 A. I can tell you that I was there to
14 briefly talk to her about the surgery on the
15 right foot.

16 Q. On June 12 of 2000?

17 A. Yes.

18 Q. Was there talk about what procedure
19 would be done -- let me say it a different way.

20 Was there talk in your presence
21 about what procedure would be done on the left
22 foot on June 12 of 2000?

23 A. I don't recall specifically talking
24 about the procedure on the left foot. I do
25 recall talking in, you know, some detail about

1 the procedure on the right foot.

2 Q. Can you tell me in even the most
3 basic fashion the difference between the two
4 procedures, the Austin and what's called a
5 CBWO, is that closing base wedge osteotomy?

6 A. Yes.

7 Q. All right. In the roughest sense,
8 what's the difference between those two
9 procedures?

10 A. The location of the osteotomy.

11 Q. Osteotomy means cutting the bone,
12 right?

13 A. Yes. Yes.

14 Q. So one difference is where you cut
15 the bone?

16 A. Yes.

17 Q. Are there differences in the number
18 of cuts that are made or any other major
19 differences in the two procedures?

20 A. Well, each of these procedures has
21 a multitude of varieties and, you know,
22 innuendos, so I would say that the, you know,
23 the major difference is the location.

24 Q. And on the Austin, where are you
25 cutting the bone?

1 A. In the distal metaphyseal of the
2 bone.

3 Q. Distal?

4 A. Distal metaphyseal.

5 Q. Metaphyseal?

6 A. Yes.

7 Q. And a patient like me, a layperson,
8 that would mean what?

9 A. Closer to the big toe, just behind
10 the joint.

11 Q. What bone is being cut in the
12 Austin procedure? The metatarsal?

13 A. Yes.

14 Q. And the part of the metatarsal
15 that's being cut is closer to the big toe?
16 That's what distal means in this context?

17 A. Yes.

18 Q. And one cut is made in the Austin
19 procedure?

20 A. No, normally two cuts.

21 Q. In two different locations? Or
22 describe the two cuts.

23 A. The traditional Austin normally has
24 two cuts in the distal metaphyseal area of the
25 bone.

1 Q. Are you cutting two different parts
2 of the bone or locations or are you cutting
3 twice to make one cut or what? I'm not
4 understanding. You could draw me a picture if
5 you wanted to, if that would make it easier.

6 A. I think I would just say that you
7 make two cuts in order to completely go through
8 the bone.

9 Q. Will you draw me a picture?
10 Doesn't have to be a work of art.

11 A. Okay.

12 Q. Just something to let us talk about
13 it.

14 All right. Let's put this in the
15 context of the bones of the foot.

16 A. Okay.

17 Q. Can you draw me a rough, even just
18 using sticks, a rough depiction of the
19 metatarsals and the other bones and then show
20 me where it's cut? I'm looking for a big
21 overview kind of diagram.

22 MR. FIFNER: That is the metatarsal
23 there.

24 Q. Right. You know what I'm saying,
25 though?

1 MR. FIFNER: Yeah.

2 Q. I'd like to see the five
3 metatarsals, I'd like to see a schematic, so to
4 speak, of the bones of the foot and then some
5 indication of where on this particular bone the
6 cut or cuts are being made in the Austin
7 procedure.

8 A. Okay.

9 Q. Here's, you know, this is my idea.
10 You know, I'm looking for, you know, something
11 like this, if there are different bones, you
12 know, and then you can show me, you know,
13 here's where we make the cut on this one or
14 whatever, just a rough schematic to let us talk
15 about this intelligently.

16 A. Okay.

17 Q. So what you have drawn, and you are
18 doing it for my benefit, you kind of did it
19 upside down, is this supposed to be, what, the
20 first metatarsal?

21 A. Yes.

22 Q. And then there would be four others
23 here; you haven't drawn that, right?

24 A. No, this would be the heel.

25 Q. All right. I'm getting lost.

1 A. This would be the ankle.

2 Q. Yeah.

3 A. Okay.

4 Q. Yes.

5 A. So here's the heel and here's the
6 ankle and here's the arch coming here. And
7 this is the big toe.

8 Q. All right. I'm not with you still,
9 so you're going to have to just do me a, you
10 know, I'm looking from a, what's it called, a
11 dorsal view looking down from the top.

12 A. Oh, okay. Okay.

13 Q. I'm looking for a dorsal view
14 schematic of the foot.

15 A. Okay. That's not what I made.

16 MR. FIFNER: Here, do this. Put a
17 1 up on top of there, which is the big toe, and
18 then put 2, 3 and 4, 5, and that's obviously a
19 right foot.

20 THE WITNESS: Yes.

21 MR. FIFNER: Yes.

22 Q. Okay. So we're getting somewhere.
23 This line you have made across the first
24 metatarsal represents what, the area of the cut
25 or cuts that you make in the Austin procedure?

1 A. That represents a dorsal view of
2 the dorsal osteotomy.

3 Q. In the Austin procedure?

4 A. In the traditional Austin
5 procedure.

6 Q. Okay. Now, either using this one
7 or another drawing, can you show me the cut or
8 cuts that are made in I'm going to call it a
9 traditional closing base wedge osteotomy?

10 A. Okay.

11 Q. Show me where they are cut. Where
12 the cut or cuts are made.

13 So you make two cuts there, and
14 then this little wedge that I'm going to shade
15 in, does that come out?

16 A. Yes.

17 Q. You remove that?

18 A. Uh-huh.

19 Q. Okay. Then are you trying to get,
20 after the wedge is taken out, are you trying to
21 get these two bone surfaces together to touch
22 and heal together, or something else?

23 A. Yes.

24 Q. All right. So again, when we talk
25 about rough distinction between the Austin and

1 the closing base wedge, it seems like the most
2 obvious one regarding the osteotomies is the
3 bone cut on the Austin is made up toward the
4 top or what's probably called the distal part
5 of the metatarsal and in the Austin procedure
6 it's made at the bottom or the base on the
7 CBWO, true?

8 A. Yes.

9 Q. Why does one take longer to heal
10 than the other, if it does?

11 MR. ROSSI: I'm sorry, what was the
12 question, Denise, can you read it?

13 Q. Why does one procedure take longer
14 to heal than the other one, if it does?

15 MR. ROSSI: Thank you.

16 A. Healing is somewhat variable from
17 patient to patient. General guidelines are
18 that bone heals in four to six weeks, and
19 that's generally true any time you cut a bone.

20 Q. Okay. We're going to have to --
21 we're going to be here a while. The patient
22 was told that if she had the CBWO on the left
23 foot she would need six to eight weeks to heal,
24 if she had the Austin on the right foot she
25 would need three to four weeks to heal. Did

1 you tell her that?

2 A. I don't recall telling her that.

3 Q. Is that true, in your experience?
4 So far as healing time?

5 A. Generally, in my experience, it's
6 been that the Austin, that in the Austin
7 procedure, patients are clinically back on
8 their feet and recovered more quickly than the
9 base procedure.

10 Q. Fine.

11 A. There are probably a number of
12 reasons why the one procedure seems to get
13 patients back to their normal activity quicker.

14 Q. What are they?

15 A. I think one could be that the base
16 generally requires more exposure and more
17 removing of tissues and that probably requires
18 a longer time to heal than the Austin which
19 doesn't require quite as much of an incision
20 and removing tissues and repair of all those
21 tissues probably is part of the reason. In
22 general, I think the more tissues you disrupt,
23 the longer something takes to heal and that's
24 probably why the base takes longer.

25 Q. Okay. Any other that you can think

1 of and reasons you can tell me about, reasons
2 why one takes longer than the other typically?

3 A. The one possible reason, and I
4 think that each case is variable, nobody heals
5 the same way, and --

6 Q. We're just talking about
7 generalities here, though.

8 A. Okay. The bone in this area is
9 thought to be more well vascularized.

10 Q. In the distal area?

11 A. Yes. And so that may be a factor
12 as to why it may heal more quickly.

13 Q. Did you have in the office in May
14 and June of 2000 some sort of computerized
15 demonstration of these two procedures that you
16 showed to patients?

17 A. I had purchased a computer program
18 that helped to visualize these procedures for
19 patients, yes.

20 Q. Did you show that or do you know if
21 it was shown to Christine?

22 A. I used that frequently. I don't
23 recall if I reviewed that specifically or not,
24 but I did review that frequently with patients
25 when I reviewed surgeries.

1 Q. Do you still have it, or do you
2 know if the practice still has it?

3 A. I don't have it.

4 Q. Do you know if the practice does?

5 A. I don't know if they have it or
6 not.

7 Q. The June 12 note includes this
8 statement: Patient relates she is not very
9 compliant, so a CAM, C A M, all caps, walker
10 will be necessary.

11 Did you hear the patient say that
12 or something like that?

13 A. I don't recall hearing the patient
14 say that statement or a statement like that.

15 Q. Then or ever?

16 A. I saw the patient on a very limited
17 basis in a consulting fashion, for a very
18 limited visit. I don't recall that detail.

19 Q. Ever?

20 A. I don't recall.

21 Q. I mean you saw her more than once
22 and you don't recall her ever saying anything
23 like that; am I correct?

24 A. Ever -- I'm sorry, say that again.

25 Q. You saw her more than once?

1 A. Yes.

2 Q. And you don't remember her ever
3 saying anything like that; am I correct?

4 A. Like what?

5 Q. She's not very compliant.

6 A. I can't recall that statement.

7 Q. During the specific visit of the
8 1st, were there times when she was with
9 Dr. Silver outside of your presence? Or did
10 you two see her together at all times during
11 that visit?

12 A. I don't recall if there was a time
13 when she was just with Dr. Silver on that
14 particular visit.

15 Q. Were you actively involved, to use
16 your phrase, in the second surgery?

17 A. No, I wasn't present at the second
18 surgery.

19 Q. Did you have any role in the second
20 surgery, the surgery on her left foot, or the
21 followup care for that?

22 A. I was not present for the second
23 surgery. I was consulted for a limited consult
24 after that point.

25 Q. Consulted by Dr. Silver?

1 A. Yes.

2 Q. And can you tell me, you know, in
3 overview, you know, was it once or three times
4 or five times, or whatever is your best
5 recollection?

6 A. I recall being there twice.

7 Q. Being there meaning seeing the
8 patient in the office?

9 A. Yes.

10 Q. Do you remember anything else you
11 did other than the two office visits you
12 remember?

13 A. No.

14 Q. What was your understanding about
15 why Dr. Silver was consulting you after the
16 second surgery?

17 A. My understanding was that I was
18 consulted to address some questions about the
19 procedure that had been performed on the
20 fixation.

21 Q. Were you ever asked to do the
22 second surgery, by anyone?

23 A. No.

24 Q. In terms, you know, amongst
25 podiatrists, was the second surgery, at least

1 the one that was planned, a more difficult
2 surgery, in general, than the first one?

3 A. I think that depends on your
4 experience and the surgeon.

5 Q. Well, let's start with you. Would
6 it have been a more difficult surgery for you,
7 based on your experience back then?

8 A. I think that the base wedge is
9 somewhat more technically challenging.

10 Q. What do you know or what have you
11 been told, I don't want to get into lawyer
12 communication, I'm not entitled to know that, I
13 don't want to know, what do you know otherwise
14 or what have you been told about Dr. Silver's
15 experience performing the type of procedures he
16 actually performed on Christine's left foot?

17 A. Can you say that one more time?

18 Q. Do you know anything about what was
19 the level of Dr. Silver's experience performing
20 the procedures he performed on Christine's left
21 foot before he ever did them?

22 A. I know that he completed a two-year
23 podiatric surgical residency and met the
24 criteria that was required for that.

25 Q. Do you know, based on what you know

1 about that, that he would have had to have done
2 those procedures in his residency to get out of
3 the residency?

4 A. Yes.

5 Q. Do you know anything about how many
6 times he would have had to do them to get out
7 or how many times he did do them during his
8 residency?

9 A. How many times he did?

10 Q. Yes.

11 A. No.

12 Q. During the time that you two had
13 practiced in the same building, up until
14 whatever time that was, did you know whether he
15 ever did any of those procedures on patients
16 other than Christine before Christine?

17 A. I don't recall if he did or not.

18 Q. And did he ever, before the
19 surgery, talk with you or ask you for your
20 assistance at the surgery or your presence
21 there or anything to that effect?

22 A. Which surgery?

23 Q. The second one.

24 A. Yes.

25 Q. What was said?

1 A. I got a phone call prior to the
2 second surgery asking if I could be present on
3 a specific date and I was not available that
4 date.

5 Q. Who called you?

6 A. Dr. Silver.

7 Q. Himself?

8 A. Yes.

9 Q. And he told you what, in words or
10 substance?

11 A. He told me that the patient wanted
12 to have the left foot done and they had
13 scheduled the procedure on a specific date and
14 asked if I could be present for that date.

15 Q. And you couldn't?

16 A. Right.

17 Q. Because of some other --

18 A. Prior commitment.

19 Q. With the ministry or something
20 else?

21 A. Yes.

22 Q. And then so what happened?

23 A. I offered several other dates when
24 I could be available to do that.

25 Q. And then what happened?

1 A. I got word back that the patient
2 was comfortable with Dr. Silver and that they
3 were going to proceed with the case without my
4 assistance.

5 Q. Who told you that?

6 A. Dr. Silver.

7 Q. Did you know or were you told why
8 he was initially asking you to be present?

9 A. You're asking me if I knew why he
10 was asking me to be present?

11 Q. Or if he told you why.

12 A. No, he simply asked if I could be
13 present that day.

14 Q. Did he tell you that he was
15 planning on doing a closing base wedged --
16 wedge osteotomy?

17 A. I remember a brief phone call
18 asking about a specific date. I don't recall
19 talking about the type of procedure.

20 Q. Did he tell you anything about his
21 experience or comfort level with the procedure
22 that was going to be done?

23 A. I don't recall discussing his
24 comfort level with the procedure. Our
25 conversation was about a specific date and I

1 was not present at that surgery.

2 Q. Did you know, and if I'm
3 overlapping, I am not intending to, but I want
4 to be clear about this, did you know as of that
5 point whether Dr. Silver had ever performed a
6 closing base wedge osteotomy?

7 A. I don't know.

8 Q. Did you assume he had?

9 A. Yes.

10 Q. Were you personally comfortable
11 that he was qualified and experienced enough to
12 do this one, and by that I mean Christine
13 Pizzute's left foot bunion?

14 A. As I said before, I had a limited
15 acquaintance with the patient and my focus was
16 on the right foot, so I can't tell you details
17 about this particular bunion on the left foot.
18 I can tell you that I felt that Dr. Silver was
19 competent to perform a base wedge procedure.

20 Q. How long had you two been
21 affiliated by this point? September of 2000.

22 A. Between eight months and a year.

23 Q. After the surgery was performed,
24 you were consulted about some questions or
25 things that had happened during the surgery,

1 correct?

2 A. I was consulted to address
3 questions about the procedure and the fixation.

4 Q. The doctor's or the patient's
5 questions, or both?

6 A. I'm not sure where the questions
7 were generated from. They were questions that
8 I was called on to address.

9 Q. Did you, when you were being
10 consulted or during the course of your being
11 consulted, make yourself familiar with the
12 details of the bunion and the surgical
13 procedures that were done? I mean you had to
14 do that to give a consult; did you not?

15 A. I was present for a limited consult
16 and I had the information that was given to me
17 and was in front of me.

18 Q. I'm not trying to argue with you,
19 but what's a limited consult? What do you mean
20 by that?

21 A. The limited time and depth of
22 consult have variable levels.

23 Q. And this one, in your mind, was
24 limited?

25 A. Yes.

1 Q. In both time and depth?

2 A. Yes.

3 Q. Even considering that, you did look
4 at x-rays and medical records and the patient
5 enough to bring you up to speed with the case
6 and let you give opinions about it, right?

7 A. I commented on specific questions
8 and issues.

9 Q. Before you did that, did you
10 familiarize yourself with the x-rays and the
11 medical records?

12 A. To a limited degree.

13 Q. Based on everything you saw and
14 were told, can you characterize the surgery on
15 the left foot as successful or not?

16 MR. ROSSI: Objection. Go ahead.

17 A. Based on -- tell me again.

18 Q. Based on everything you saw, heard,
19 read, can you tell me whether this was or was
20 not a successful surgery on the left foot?

21 MR. ROSSI: Objection.

22 A. I think that success, success of
23 surgery is measured in different ways.

24 Q. How do you measure it?

25 A. Oftentimes the success of a surgery

1 isn't known for a long time. Did it, did it
2 accomplish in the life of the patient what the
3 patient and the physician had hoped? It's
4 probably the ultimate measure of successful.

5 Q. And what's the fact about this
6 procedure, using that test, what's your
7 opinion?

8 MR. ROSSI: Objection.

9 A. I had a -- I saw the patient for a
10 limited consult on that date, and I have no
11 knowledge of what the situation is after that
12 point.

13 Q. Doctor, you have read her whole
14 medical chart before today, right?

15 A. Yes.

16 Q. And you saw her a couple times
17 afterwards, right?

18 A. Yes.

19 Q. And you have consulted and gave her
20 some advice about what you would do, right?

21 A. Yes.

22 Q. And within the last few days you
23 have looked through the whole record, true?

24 A. Yes.

25 Q. So are you unable to tell me, based

1 on all that, sitting here today, whether or
2 not, using Dr. Rasper's test, this was a
3 successful surgery?

4 MR. ROSSI: Objection.

5 A. What I can tell you is that I can
6 tell you what I had firsthand knowledge of, and
7 that was very limited. I can read a record,
8 but I had no firsthand knowledge of those
9 encounters with the patient and I had no
10 firsthand knowledge of what her foot even
11 looked like or looks like. So based on that, I
12 can't tell you whether this was a success by
13 that particular definition.

14 Q. You saw her foot, her left foot,
15 before and after the surgery, right?

16 A. I saw her in --

17 MR. FIFNER: Objection to the form.
18 I don't think he said he ever saw the left
19 foot.

20 MR. HILL: Well, I'm asking.

21 MR. FIFNER: I know, but your
22 question implied that he did.

23 Q. I said did you not, didn't you see
24 the left foot before and after the surgery?

25 A. I don't recall examining that left

1 foot. I know that, what I do know is that I
2 focused on the right foot on the visit that I
3 saw her on June 12th of 2000.

4 Q. When you saw it after, you knew
5 that she had -- you knew the angles that she
6 had in the right foot before, because those
7 were in the chart, correct? Let me say it a
8 different way. When you saw the left foot
9 after the left foot surgery --

10 A. Okay.

11 Q. -- you went back to look and see
12 what the angles in the left foot were before
13 the left foot surgery, correct?

14 A. You're talking about when I saw her
15 on what date?

16 Q. On any of the dates after the left
17 foot surgery.

18 A. Okay. And you're asking me if I --
19 what did I do?

20 Q. You saw, after her left foot
21 surgery, you saw the condition of her left foot
22 on various dates, true?

23 A. I saw the condition of her foot on
24 10-20 and I saw it on 10-30.

25 Q. All right. And so on both of those

1 occasions you saw what the foot looked like
2 then?

3 A. Yes.

4 Q. And you knew from the medical
5 record at least the data about the foot before
6 the surgery, right? You knew, at a minimum,
7 the angles and you saw x-rays from before the
8 left foot surgery, right?

9 A. I don't think the medical record
10 was completed at the time that I saw those --
11 the patient the second time. I don't recall
12 seeing the medical record, in a sense.

13 Q. You saw the x-rays, right, the
14 pre-op x-rays?

15 A. Yes.

16 Q. Okay.

17 A. I did see the pre-op x-rays, yes.

18 Q. And whether the record was complete
19 or not, you were able to find out what the
20 angle was on the left foot before the surgery,
21 right?

22 A. What angle?

23 Q. The angle, the angles that you do
24 and calculate before these procedures. You
25 knew that, didn't you?

1 A. You're asking if I was able to
2 ascertain the preoperative angles?

3 Q. (Nodding affirmatively.)

4 A. Yes.

5 Q. And you did that, right?

6 A. When?

7 Q. When you saw the foot in October.

8 A. When I saw the foot in October.

9 Q. You ascertained the presurgical
10 angles of the left foot, true?

11 A. Some, some of them.

12 Q. Based on what you saw, did the
13 surgery correct the bunion?

14 MR. ROSSI: Objection.

15 A. I observed that there were
16 improvements in some of the parameters of the
17 x-rays that I saw on October 20th compared with
18 the preoperative x-rays of the left foot.

19 Q. Even with the improvements, was the
20 bunion corrected?

21 MR. ROSSI: Objection.

22 MR. FIFNER: What do you mean by
23 corrected?

24 THE WITNESS: Yeah. Right.

25 Q. Do you know what that means? In

1 this context?

2 A. You're asking me a black and white
3 question that is a gray answer.

4 Q. The question of whether a surgery
5 corrected a bunion is gray, is what you're
6 saying?

7 A. Yes.

8 MR. FIFNER: What do you mean by
9 corrected?

10 A. What do you mean by corrected?

11 Q. I mean the term that all of us
12 human beings use when we're walking around on
13 the face of the Earth when we use it, I mean do
14 you ever use the word "corrected" a bunion?

15 A. Yes.

16 Q. I could find that in one of your
17 medical charts, right? Sure, I could.

18 MR. FIFNER: It means there were
19 improvements in the angles. That's your
20 answer.

21 MR. HILL: Thanks for the answer.

22 MR. FIFNER: That's what he's been
23 trying to tell you.

24 MR. HILL: I'm okay with talking
25 objections, but don't tell him what to say.

1 MR. FIFNER: It's what he's already
2 told you. And then I said what do you mean by
3 correction and he said exactly the same thing.
4 He told you what he found.

5 MR. HILL: I want to hear it from
6 the witness.

7 THE WITNESS: Okay.

8 Q. Using your definition of correcting
9 a bunion --

10 A. Okay.

11 Q. -- based on what you saw --

12 A. Okay.

13 Q. -- in October, did this surgery
14 correct the left foot bunion?

15 MR. FIFNER: Objection to the form.

16 A. I can tell you that I observed that
17 certain parameters were improved.

18 Q. Does that mean it was corrected or
19 something else?

20 A. It means that certain parameters
21 were improved.

22 Q. Can you answer yes or no to
23 corrected, using your own personal definition?

24 A. No.

25 Q. No, you can't answer, or no, it

1 didn't correct it?

2 A. No, I can't answer.

3 Q. Okay. So that's a term you use in
4 your practice, but you're not able to use it
5 here today?

6 MR. FIFNER: We're getting very
7 close to not being fair to the witness. He's
8 already told you that --

9 MR. HILL: We're already past not
10 being fair to the lawyer, so please stop
11 talking on the record.

12 A. I'm not sure that I use that term
13 in general for an outcome of a surgery. I
14 think that there are a lot of different
15 variables to the outcome of the surgery.

16 Q. Did you see, during the course of
17 your limited consult, that Dr. Silver had not
18 performed a closing base wedge osteotomy, but
19 in fact had done something else?

20 A. I observed that a base procedure
21 had been performed.

22 Q. What procedure?

23 A. An osteotomy at the base of the
24 metatarsal.

25 Q. What was it called or what would

1 you call the procedure that was done? Was it a
2 closing base wedge osteotomy or something else?

3 A. I don't know that there's a
4 particular name for the procedure.

5 Q. What name was used in the record?
6 You can look and see if you want. In the op
7 note he called it a crescentic base osteotomy,
8 right?

9 A. Okay.

10 Q. That is the same thing or different
11 than a closing base wedge osteotomy?

12 A. It's in the same location, but it's
13 a different osteotomy cut.

14 Q. Did he tell you why he did a
15 different osteotomy cut there?

16 A. No.

17 Q. If you answered, I didn't hear.

18 A. No.

19 Q. Do you know from any other source?

20 A. No.

21 Q. Did you look to see if he even cut
22 the base or somewhere else on the bone?

23 A. I observed that the osteotomy was
24 in the area of the base.

25 Q. In the area of the base?

1 A. Yes.

2 Q. So in your view, he did cut in the
3 base of the metatarsal?

4 A. Well, as I recall from that moment,
5 I felt that he had, yes.

6 Q. Did he tell you why he did a
7 Reverdin -- am I saying that right?

8 A. Yes.

9 Q. Reverdin-Green osteotomy?

10 A. Yes, you said it right.

11 Q. Did he tell you why he did that?

12 A. I don't recall him telling me why
13 he did that.

14 Q. Do you know from any other source?

15 A. I believe, I believe it was to
16 correct the PASA.

17 Q. What was the crescentic based
18 osteotomy to correct? Different angle?

19 A. Yes. The intermetatarsal angle.

20 Q. The IM angle?

21 A. Yes.

22 Q. He did this procedure
23 Reverdin-Green, as you believe, to correct the
24 PASA angle, right?

25 A. I believe so.

1 Q. Can you show me on your rough
2 diagram here where the cut is made for a
3 Reverdin-Green osteotomy, like the one done
4 here?

5 It's made, you already had
6 previously drawn a line up to the first distal
7 metatarsal?

8 A. Yes.

9 Q. Is it made straight across?

10 A. In a traditional Reverdin-Green,
11 yes.

12 Q. Was it here?

13 A. From what I saw on the x-ray, it
14 appeared to be.

15 Q. Why, when you're doing it in this
16 context, are you just cutting the bone straight
17 across? What are you trying to accomplish?

18 A. Why do you cut it straight across?

19 Q. Yeah.

20 A. You are trying to correct the
21 proximal articular set angle, the PASA.

22 Q. What are you doing to correct, do
23 you move part of the bone or do something else?

24 A. In the traditional Reverdin-Green?

25 Q. Yes.

1 A. You know, I have to tell you, I
2 wasn't at this surgery, so I don't know --

3 Q. We're talking generally.

4 A. -- what was done on that base.

5 In general, you would remove a
6 small wedge here.

7 Q. So you would make another cut?

8 A. Yes.

9 Q. A second cut?

10 A. Uh-huh.

11 Q. And take a wedge out?

12 A. Uh-huh.

13 Q. Was that done here?

14 A. I have no knowledge of that.

15 Q. According to the op note, which you
16 recently read, was it done here?

17 A. I haven't read that note for a long
18 time.

19 Q. I thought you told me you reviewed
20 the chart in the last couple days?

21 A. In the last couple days I looked at
22 portions that were pertinent to my involvement.

23 Q. Not including the op note?

24 A. Not including the op note.

25 Q. All right. What's a modified

1 McBride? In this context.

2 A. It's a McBride is generally a soft
3 tissue bunion procedure. And there are several
4 modifications that can be done to it.

5 Q. For example? What, essentially
6 what are you doing with that procedure? I mean
7 are you taking out fat, callus, tendons,
8 something else?

9 A. You are using soft tissues to
10 realign the joint.

11 Q. Soft, what kind of soft tissue?

12 A. The joint capsule is involved.

13 Q. So can you show me with this rough
14 diagram we are using, you know, the modified
15 McBride, what would be done?

16 A. With the modified McBride
17 procedure?

18 Q. Yes.

19 A. Say this is the joint capsule, the
20 capsule would be released on this side.

21 Q. Meaning what?

22 A. It would be cut. And it would be
23 tightened on this side.

24 Q. How would you do that?

25 A. Multiple different ways. You would

1 most likely remove part of it and sew it
2 together.

3 Q. It's designed to correct what angle
4 or symptom or problem, typically?

5 A. It's designed to help realign the
6 joint.

7 Q. Any particular angle that it
8 addresses?

9 A. It would address the hallux
10 abductus angle, HA angle.

11 Q. Did Dr. Silver tell you why he did
12 a modified McBride on this patient?

13 A. No.

14 Q. Do you know why?

15 A. No. I wasn't there at the surgery.
16 I can't tell you anything about what happened
17 there.

18 Q. I understand. So I want to kind of
19 summarize this, I'm not trying to argue with
20 you, I'm trying to short circuit things.

21 A. Uh-huh.

22 Q. The patient, I want you to assume,
23 is told she is going to have a closing base
24 wedge osteotomy. Assume that's true.

25 A. Okay.

1 Q. And if she's going to have one to
2 fix the left foot bunion that you know that she
3 had, that would require this wedge to be taken
4 out at the base of the metatarsal, right?
5 Typically? Cuts made and a wedge taken out,
6 correct? Am I right?

7 A. You're telling me a scenario that
8 you want me to agree with, and I'm not sure if
9 you are asking me if this is the typical base
10 wedge or if you are asking me accept that as
11 part of the story you are telling.

12 Q. I want you to assume the client was
13 told she was going to have a closing base wedge
14 osteotomy. I'm now asking you isn't it true
15 that if she was, then what would have happened
16 was a wedge, as you have depicted here, would
17 have been taken out of the base of the
18 metatarsal, right?

19 A. I can tell you that a closing base
20 wedge osteotomy involves removing a wedge from
21 the base of the metatarsal, yes.

22 Q. And then typically how, what's done
23 there and what's put in there are use to hold
24 the bone together?

25 A. There have been a variety of

1 different fixation devices that have been
2 described over many years for fixation of a
3 base wedge.

4 Q. What was most commonly used in
5 September of 2000?

6 A. Wow. You name it. I mean, you
7 know, the surgeon, whatever the surgeon is best
8 at tends to be the thing that they fixate
9 something with.

10 Q. What choices did they have?

11 A. K wires.

12 Q. Are you saying that, in your
13 experience, K wires typically were used by
14 podiatrists to affix bone in a traditional
15 closing base wedge osteotomy?

16 A. No.

17 Q. All right. Typically they used
18 what, in your experience?

19 A. I don't mean to be difficult with
20 you, but I have seen every, just about every
21 form of fixation used for this procedure.

22 Q. Okay. I'm not asking now, though,
23 about what you could use, I'm asking what, in
24 your experience --

25 A. I understand.

1 Q. -- was typically used?

2 A. You asked me typically and I can't
3 tell you typically that there is --

4 Q. Okay. That's the answer.

5 A. -- one standard.

6 Q. That's the answer.

7 MR. ROSSI: I'd like to know if he
8 was finished answering the question. You cut
9 him off, John. Are you finished answering the
10 question, Doctor?

11 THE WITNESS: Yes.

12 Q. So going back to what we were going
13 through, I want you to assume the patient's
14 told you're going to have a closing base wedge
15 osteotomy to fix this bunion on your left foot
16 and she is told what to expect afterwards by
17 the doctor. And then after the surgery she
18 comes out with not one cut in the bone, but
19 multiple cuts, different parts of the bone, and
20 she has a wire sticking out of the top of her
21 foot. And rather than a closing base wedge
22 osteotomy, Dr. Silver did what's described in
23 this op note, crescentic base osteotomy and a
24 Reverdin-Green osteotomy and modified McBride.
25 Are you telling me that you then consulted with

1 Dr. Silver after that happened and he never
2 told you anything about why he did these three
3 procedures instead of the one that was planned?

4 A. I can tell you that on 10-20, when
5 I saw the patient, I had the information in
6 front of me that I commented on. I did not
7 have an extensive conversation about the
8 details of the surgery and I was not present at
9 the surgery to give you any firsthand knowledge
10 of that.

11 Q. Okay. Are you done?

12 A. Yes.

13 Q. I mean I'm asking a little bit
14 different thing, though. What I'm trying to
15 get to is did you go through these consults and
16 do whatever you did on this patient after that
17 left foot surgery never hearing from Dr. Silver
18 any discussion or description or explanation of
19 why he did the three procedures he did instead
20 of the one he told the patient he was going to
21 do? Is that true?

22 A. That's a very long question and I
23 don't know if each part of that is true or not.
24 What I can tell you is that I did not -- I
25 don't recall hearing the rationale for all of

1 those procedures that went through Dr. Silver's
2 mind.

3 Q. Was it -- do you know what the
4 standard of care is? In this context?

5 A. I'm not sure to what you are
6 referring to.

7 Q. What I mean by that is the standard
8 of care is what a reasonably prudent doctor
9 would do under the same or similar
10 circumstances.

11 A. Okay.

12 Q. All right. Let's use that for a
13 definition.

14 A. Okay.

15 Q. Did the standard of care for a
16 podiatrist doing the three procedures described
17 in this op note of September 28, 2000, did it
18 require the doctor, the podiatrist, to do any
19 intraoperative x-rays?

20 MR. ROSSI: Objection.

21 Q. If you have an opinion. If you
22 don't have an opinion, you can tell me and
23 we'll move on.

24 A. Not necessarily.

25 Q. So it could be within the standard

1 of care to do this procedure and finish it and
2 close up without doing any x-rays
3 intraoperatively, in your opinion? Am I
4 understanding you or not?

5 MR. ROSSI: Objection.

6 A. I believe so.

7 Q. Could you do the procedure and not
8 do any sort of diagnostic or x-ray study to see
9 if you had achieved alignment or bone
10 positioning?

11 A. Can you say that one more time?

12 Q. Was it within the standard of care
13 to do the procedure, the three procedures
14 described here, and finish them and close up
15 without having done any diagnostic study?

16 MR. ROSSI: Objection.

17 A. You are asking me about a term
18 called the standard of care and I'm really not
19 sure, I mean you gave me a definition, but it's
20 kind of foggy to me, I know that, depending on
21 a surgeon's, what he sees on the table, and his
22 experience is more important than the x-rays,
23 and it's conceivable that a surgeon could do
24 these procedures without the aid of the x-ray
25 and accomplish a good result.

1 Q. What was your practice in that
2 regard?

3 MR. ROSSI: Objection.

4 A. I took each case as it went and
5 when I felt I needed an intraoperative x-ray or
6 it would be helpful, I use it.

7 Q. Did you ever do a surgery to repair
8 a bunion using any known procedure and fail to
9 take a single x-ray or intraoperative
10 diagnostic test? Did you ever do that in your
11 career?

12 MR. ROSSI: Objection.

13 A. You're asking me did I ever repair
14 a bunion and not take an intraoperative x-ray?

15 Q. Yes.

16 A. Is that the question?

17 Q. Yes.

18 A. Yes.

19 Q. Considering the three procedures
20 that were done here, have you done any or all
21 of those procedures?

22 A. Yes.

23 Q. When doing any of them, any single
24 one of them, let alone the three of them
25 together, would your practice be to get one or

1 more intraoperative x-rays?

2 A. I don't mean to repeat myself, but
3 I was not there at this case.

4 Q. I'm not talking about this case.
5 I'm talking about in general. Your practice in
6 general.

7 A. You're talking about in general?
8 Okay. And your question was would I -- can you
9 say it again?

10 Q. Doing even one of these, let alone
11 three of them together --

12 A. Okay.

13 Q. -- would you, as a matter of
14 practice, have performed some intraoperative --

15 A. Not necessarily.

16 Q. -- diagnostic tests.

17 So what do you know, if anything,
18 about what intraoperative studies were done in
19 this case?

20 MR. ROSSI: Objection.

21 A. I don't recall. I wasn't there.

22 Q. Did you ever learn that?

23 A. I don't recall ever having had that
24 information.

25 Q. Did you, in the course of your

1 consult, look at the intraoperative x-rays?

2 A. I don't recall seeing
3 intraoperative x-rays.

4 Q. Did you look at any x-rays in the
5 course of your limited consult after the left
6 foot surgery?

7 A. Yes.

8 Q. Do you remember which ones you
9 looked at?

10 A. I looked at x-rays that were
11 postoperative x-rays.

12 Q. What specific questions were you
13 consulted about after the left foot surgery?

14 A. Questions about the procedure and
15 the fixation.

16 Q. Specifically what questions?

17 A. One question was whether the screw
18 was too prominent.

19 Q. What others?

20 A. There was a question about the
21 fixation at the base of the metatarsal.

22 Q. What question?

23 A. I think the question was about the
24 type of fixation and, you know, if it was
25 basically adequate.

1 Q. And Dr. Silver asked you that or
2 the patient or someone else?

3 A. I don't recall who addressed the
4 question to me at that visit.

5 Q. Do you remember anything Christine
6 said to you during the course of any of the
7 limited consult or consults that you had with
8 her after the left foot surgery?

9 A. I recall that she was upset. I
10 don't have a real recollection of a lot of
11 details of what she said at that point. I was
12 focused on answering the questions that were
13 given to me and I had a general feeling that
14 she was upset and that she said a lot of
15 things, but I don't recall, I don't recall a
16 lot of that, I was focusing on the problems
17 that I was asked to address.

18 Q. What I want to know, just, you
19 know, so we're being fair with each other, is
20 if you are going to come into court and tell
21 the jury Christine Pizzute told me X, Y, Z, I
22 want to hear it now if you remember it. If you
23 don't remember, you can tell me you don't
24 remember, but if there's something that you
25 remember now, I'd like to hear it with as much

1 specificity as you can tell me.

2 A. I recall that she had seemed to
3 have some question about whether she could, at
4 what point or whether she could walk on the
5 surgery. There seemed to be some confusion
6 about that.

7 Q. Did she give you any more detail
8 that you can remember?

9 A. I don't remember exactly what she
10 said, but she seemed to feel that there was a
11 miscommunication in -- about that issue.

12 Q. Let's look at your note from
13 October 20, 2000. You have had that in front
14 of you for a couple minutes, right?

15 A. Yes.

16 Q. Could you look under the P section
17 of the note.

18 A. Okay.

19 Q. Under section A, one of the things
20 you say is that I think that the
21 intermetatarsal angle has been improved.

22 A. Uh-huh.

23 Q. And the alignment of the first and
24 second metatarsals is relatively good.

25 A. Uh-huh.

1 Q. Were you saying that and making
2 that conclusion based on direct vision of the
3 foot or x-rays or something else?

4 A. X-rays.

5 Q. Did you measure the angle that you
6 were talking about?

7 A. I don't believe -- I don't recall
8 if I actually measured it or if I just observed
9 it compared with the original post-op --
10 original x-rays.

11 Q. And the goal of -- well, I'll
12 withdraw that.

13 So you don't remember if you
14 measured the angle or not or if you just
15 eyeballed it on the x-ray; is that what you're
16 telling me?

17 A. Right, correct.

18 Q. Was this the time you remember her
19 being upset?

20 A. At this visit?

21 Q. Yes.

22 A. Yes.

23 Q. Did you think that she had some
24 right to be upset over how things had gone to
25 that point?

1 MR. ROSSI: Objection.

2 A. I felt like I was out of the loop
3 and coming in to address certain questions. I
4 didn't have background information, I didn't
5 have an understanding of the ongoing
6 relationship between Dr. Silver and the patient
7 to make a judgment like that. I was focused on
8 answering the questions that were in front of
9 me.

10 Q. Were you asked by either one of
11 them specifically to give advice or an opinion
12 about whether she could then or sometime after
13 go into a walking cast?

14 A. Can you say that one more time?

15 Q. Were you asked by either the
16 patient or the doctor for an opinion or advice
17 about whether the patient could go into a
18 walking cast?

19 A. That was one of the questions that
20 was on the table.

21 Q. And it's not clear to me from your
22 note what your conclusion and advice was. What
23 was it?

24 A. I agreed with the attending
25 physician, which the best course of action was

1 to remain nonweight bearing for six weeks.

2 Q. And at this point it was four
3 weeks?

4 A. Approximately.

5 Q. All right. And so were you saying,
6 then, that she should not, was your view that
7 she should not go into a walking cast until six
8 weeks had arrived?

9 A. I expressed the opinion that any
10 weight bearing carried additional risks.

11 Q. Did you make a specific comment
12 about when or how or whether she should go into
13 a walking cast?

14 A. I agreed with the attending
15 physician and stated that I felt that the best
16 course of action would be to remain nonweight
17 bearing for six weeks.

18 Q. Did you tell the patient that, that
19 that was the best course of action?

20 A. Yes.

21 Q. And then did you also tell her that
22 weight bearing at this point, approximately
23 four weeks post-op, would most likely not
24 compromise her results?

25 A. That was my belief. I may or may

1 not have communicated that to her. I don't
2 recall.

3 Q. So you're sure you told her the one
4 thing, but you're not sure if you told her the
5 other?

6 A. I'm not sure. I know I held that
7 as my own belief. And I may have communicated
8 that to her.

9 Q. In any event, what do you know, if
10 anything, about what the patient did regarding
11 the nonweight bearing and the walking cast?

12 A. I know that a cast was applied on
13 10-30.

14 Q. A walking cast?

15 A. Yes.

16 Q. Which tells you what?

17 A. That a cast was applied on that
18 date.

19 Q. Is it correct to say that -- let me
20 say it a different way.

21 What's your information or belief
22 about the condition of her foot right now?

23 A. I do not know what her foot is like
24 right now.

25 Q. What's your -- what was the

1 condition of her foot the last time you were
2 involved?

3 A. The condition of her foot. There
4 was still moderate swelling and minimal
5 ecchymosis at that point.

6 Q. Was the bunion there or not or
7 something else?

8 A. With, you have to understand that
9 with post-op swelling it's hard to tell what
10 the truth is as far as what's going on with
11 that foot. It's like sometimes, it's kind of
12 look a balloon, and until that goes down, you
13 can't really tell if the bunion is there or
14 not, because it doesn't look like a normal
15 foot.

16 Q. Did Dr. Silver ever say anything to
17 you with any specificity about the trouble he
18 had, according to the op note, getting the
19 screw to purchase during the procedure?

20 A. Yes.

21 Q. What did he tell you about that?

22 A. He said that the screw in surgery
23 did not purchase the plantar cortex.

24 Q. Did he give you details about that?

25 A. No. That's what he said.

1 Q. Did he tell you what he thought
2 about why it wouldn't purchase?

3 A. No.

4 Q. Do you know why?

5 A. No.

6 Q. Is that a problem you have
7 encountered before?

8 A. Yes.

9 Q. With what frequency?

10 A. Occasionally, I would say.

11 Q. You have recently looked at all of
12 her x-rays, right?

13 A. I have looked at some of them. I'm
14 not sure if I have seen all of them.

15 Q. Have you looked at postoperative
16 x-rays beyond your involvement?

17 A. Yes.

18 Q. And what did they suggest to you
19 about the condition of the bunion?

20 A. I would say that I observed some of
21 the parameters had changed.

22 Q. What do you mean by that?

23 A. The parameters would be the
24 different things that we talked about
25 originally, the things that we measure.

1 Q. The angles?

2 A. Yes.

3 Q. The angles had changed in the
4 x-rays that you saw?

5 A. Yes.

6 Q. For the better or for the worse?

7 MR. ROSSI: In comparison to what?
8 Pre?

9 MR. HILL: To what he last saw.

10 A. Well, in comparison to what I saw
11 on the postoperative x-rays?

12 Q. Yes.

13 MR. FIFNER: Wait, on the post-op
14 or the pre-op?

15 Q. I'm talking about you were involved
16 in October?

17 MR. FIFNER: Right.

18 A. Yes.

19 Q. You told us.

20 A. Involved, what do you mean?

21 Q. You were involved on this limited
22 consulting basis --

23 A. Yes.

24 Q. -- in October.

25 A. Okay.

1 Q. You looked at the foot, you looked
2 at some x-rays?

3 A. Yes.

4 Q. If we're communicating with each
5 other, you have now told me that since then and
6 very recently you have seen some more x-rays
7 that postdate October of 2000?

8 A. Okay. Yes.

9 Q. And they showed some change in the
10 parameters or angles, correct?

11 A. Yes.

12 Q. From when you last were involved,
13 correct?

14 A. Yes.

15 Q. Were they changes for the better or
16 the worst? "Worse" is the word I wanted to
17 use.

18 A. It depends on which parameters that
19 you specify. I did not measure any of those
20 angles on those x-rays. And so it depends on
21 which parameters. Some were, some were the
22 same.

23 Q. Were any better?

24 A. I didn't specifically look at those
25 with that question in mind.

1 Q. Were any worse?

2 A. Yes.

3 Q. Which?

4 A. I believe that the intermetatarsal
5 angle was, if I had measured it, which I
6 didn't, it probably would have measured larger.

7 Q. It looked worse to you when you
8 eyeballed it, right?

9 A. It looked like it was increased.

10 Q. Right. And that's worse for the
11 patient, right?

12 A. You're asking me a question about
13 an x-ray and I have to tell you that x-rays are
14 not always reality. Oftentimes they are not
15 reality.

16 Q. That's okay. All right. I
17 understand. We are limited to what's shown on
18 the x-ray.

19 A. Yes.

20 Q. But just based on what you have
21 seen on the x-ray, the angle looked worse. Is
22 it the IM angle that looks worse? Right?

23 A. When I reviewed the x-rays, it
24 seemed to me, and I did not study the x-rays, I
25 didn't study them with this intent to -- it

1 seemed to me, in the time that I took a look at
2 them, that the intermetatarsal angle was
3 somewhat increased.

4 Q. Okay. Do you have an opinion about
5 why?

6 A. I wasn't at the surgery, I'm not
7 sure what factors could have been involved at
8 that point. I was involved for a limited time
9 with this case.

10 Q. We have established that.

11 A. And I was not present for these
12 followup visits.

13 Q. Here's what --

14 A. There could have been a number of
15 reasons why that was increased, and I can't
16 tell you why, which one of those factors would
17 have caused that.

18 Q. Okay. Now, I think you have
19 answered me, but I want to be fair to you and
20 give you a chance.

21 A. Okay.

22 Q. Understanding the limitations of
23 your involvement, understanding the limitations
24 of just looking at an x-ray.

25 A. Okay.

1 Q. Based on, you have looked at the
2 whole -- at the medical chart recently, you
3 have looked at x-rays recently, you know
4 something about the patient.

5 A. Okay.

6 Q. Based on what you know now, and
7 those things, do you have an opinion about why
8 the IM angle appeared to be worse?

9 MR. ROSSI: Objection.

10 A. I think that I have limited
11 resources and knowledge about that and that it
12 could be any number of reasons why it shifted.

13 Q. And what are the reasonable
14 possibilities that are -- what are the
15 reasonable possible reasons that cause that?
16 In your mind.

17 A. Well, if a patient was noncompliant
18 with the limitations of weight bearing, that
19 could cause additional forces that may be a
20 problem.

21 Q. What else?

22 A. The question is about why the IM
23 angle could have increased, that is --

24 Q. What reasonable possibilities could
25 account for that.

1 MR. ROSSI: Objection.

2 Q. Based on what you have looked at.

3 MR. ROSSI: Objection.

4 Q. One, you said noncompliance.

5 A. Yes.

6 Q. Any others?

7 A. If the bone didn't heal in an
8 adequate time frame, if the bone didn't heal in
9 an adequate time frame, that could have been
10 part of a contribution to why that the
11 intermetatarsal increased.

12 Q. Any others?

13 A. I think that reasonably, that if
14 the fixation was not stable enough, that that
15 could have allowed for some drift of the
16 metatarsal.

17 Q. Do you have information from any
18 source other than your lawyer that the patient
19 was noncompliant regarding weight bearing after
20 the left foot surgery?

21 A. Information other than my lawyer --

22 Q. Yes.

23 A. -- that the patient was
24 noncompliant after the first surgery?

25 Q. Regarding weight bearing.

1 A. After the first or the second
2 surgery?

3 Q. After the left foot surgery.

4 A. No.

5 Q. Do you know, based on simply
6 looking at the x-rays, can you make any
7 determination about whether the bone did or did
8 not heal at the different points shown in the
9 x-rays?

10 A. There are objective things that you
11 look for --

12 Q. Sure.

13 A. -- when you consider bone healing.

14 Q. What did you see, if anything, in
15 that regard?

16 A. I have to tell you, I didn't study
17 these for that purpose, and I'm just trying to
18 remember what I, what I saw. I wasn't there
19 for these visits.

20 Q. That's all I'm asking you to do.

21 A. From what I recall, it looked as if
22 the bone eventually healed.

23 Q. Were you able to tell, just, again,
24 with the limitations we have talked about, just
25 by looking at the x-rays, were you able to tell

1 whether it healed within the routine time frame
2 or otherwise?

3 A. I didn't, I didn't look at the
4 specific dates and time in healing, but it
5 looked as if it took longer than the normal
6 time frame.

7 Q. Is there something that you know
8 about about the patient that would account for
9 any delayed bone healing, or about the
10 procedure or something else?

11 A. Is there something I know about the
12 patient that would have accounted for the
13 delayed bone healing? I saw this patient on a
14 limited basis. I don't have much information
15 there.

16 Q. Based on what you have seen in the
17 records, what you have heard from her, do you
18 know of anything about her, her medical
19 history, her medical situation, these
20 surgeries, do you know of anything as you sit
21 here that would account, in your mind, for any
22 delayed healing of the bone after that left
23 foot surgery?

24 A. You mentioned the patient said she
25 was noncompliant. Besides that, I don't think

1 that I have any information to that regard.

2 MR. HILL: Those are all the
3 questions I have, Doctor. I don't know, are
4 you going to ask questions or not?

5 EXAMINATION OF RICHARD JOSEPH RASPER, D.P.M.
6 BY MR. ROSSI:

7 Q. I have some questions for you. My
8 name is Greg Rossi. I represent Dr. Silver.
9 You and I have not met before today, have we,
10 Dr. Rasper?

11 A. No.

12 Q. I do have a few questions for you.
13 I'd like to review your chart note of October
14 20th, 2000.

15 A. Can I get some more water before we
16 proceed?

17 MR. ROSSI: Absolutely, yeah.

18 (Discussion had off the record.)

19 Q. Let's take a quick look at your
20 note of October 20th of 2000. I just want to
21 make sure I understand some things. If we look
22 at the P section of your note, which would be
23 plan, I take it?

24 A. Okay.

25 Q. Under paragraph of A there, as I

1 understand that note, you told the patient and
2 Dr. Silver that, in your opinion, she did have
3 a chance for a good outcome?

4 A. Yes.

5 Q. Under subsection C you noted
6 patient does seem very anxious to walk on her
7 foot, quote, is that what, is that --

8 A. I'm sorry, I'm not sure if I'm
9 following you with the letters on this.

10 Q. Yeah, if you look at your October
11 20th note.

12 A. Yes.

13 MR. FIFNER: This is Silver's.

14 THE WITNESS: Oh.

15 MR. ROSSI: I've got an extra copy,
16 if you want to use that.

17 (Discussion had off the record.)

18 Q. You've got a copy of your note in
19 front of you now?

20 A. Yes.

21 Q. All right. Just to kind of
22 reiterate my initial question, under the plan
23 section of your note, which is designated as P,
24 you see paragraph A there?

25 A. Yes.

1 Q. Reading that note, it's my
2 understanding that you informed the patient and
3 Dr. Silver at that time that, in your opinion,
4 you felt this patient still had a chance for a
5 good outcome, right?

6 A. I gave the opinion that the patient
7 at that point had a chance for a good outcome,
8 yes.

9 Q. You continue that statement by
10 saying although the original plan for a
11 fixation did not succeed and a secondary plan
12 needed to be performed, right?

13 A. Yes.

14 Q. And you were referring to the
15 surgery that Dr. Silver performed, right?

16 A. Yes.

17 Q. In performing surgeries, do you
18 sometimes have situations whereby you face
19 unforeseen circumstances that require you to do
20 things differently than you thought you might
21 preoperatively?

22 A. You mean in my experience?

23 Q. Yes.

24 A. Yes.

25 Q. Under subsection C of that note you

1 wrote, quote, patient does seem very anxious to
2 walk on her foot, unquote, and then the note
3 goes on from there. Is that what she told you
4 that day?

5 A. I can't say that those were her
6 words, no.

7 Q. Do you recall anything about the
8 discussion between you, the patient and
9 Dr. Silver that led you to write the note that
10 you did under subsection C there?

11 A. I wrote that because I sensed an
12 urgency from the patient about her perceived
13 need to weight bear.

14 Q. Do you recall what she told you
15 about that or what she did which led you to
16 make that conclusion, Doctor?

17 A. I can't recall the specific
18 statements that she made or the reasons that
19 she gave, but I did have an impression that
20 this was very important to her.

21 Q. To get out of this cast that she
22 was presently in and into a walking cast,
23 right?

24 A. You know, my impression was that
25 she, my impression was that she seemed very

1 anxious to walk on her foot. That was my
2 impression.

3 Q. Am I correct that on that day,
4 during that discussion, both you and Dr. Silver
5 told her that it would be the best
6 postoperative care for her to stay in a
7 nonweight bearing cast for six weeks?

8 A. Yes.

9 Q. And that she was the person in this
10 discussion who wanted to get into a walking
11 cast as soon as possible, if not immediately?

12 A. I wouldn't say that. I would say
13 that my perception was that she was very
14 anxious to walk on her foot. I don't recall
15 the reasons for that or why she was so anxious,
16 but my impression at that time was that it
17 seemed important to her and she seemed very
18 anxious to do that.

19 Q. A walking cast was applied ten days
20 later, on October 30th of 2000, correct?

21 A. Yes.

22 Q. You were present for that, weren't
23 you?

24 A. Yes.

25 Q. And we know now that that walking

1 cast was put on before she had been six weeks
2 post-op, correct?

3 A. Yes.

4 Q. And would you agree that the reason
5 that the walking cast was applied on that date
6 was because of her insistence to get into a
7 walking cast? If you recall.

8 A. Can you say that again?

9 Q. Sure. The reason that she was put
10 into a walking cast on October 30, 2000 was
11 because of her insistence to get out of a
12 nonweight bearing cast and into a walking cast
13 because of her job?

14 A. You know, I was consulting on this
15 patient on a limited basis at this point, I
16 made recommendations, I gave opinions on what
17 should be done to the attending doctor and to
18 the patient. I do not know all of the details
19 that went into the reasons why all of those
20 things were done. I only had a limited amount
21 of ability to ascertain those things and I had
22 a limited exposure to it.

23 Q. So it sounds like you can't say one
24 way or another, in response to my question, you
25 don't specifically recall the events, all of

1 the events surrounding this; is that fair?

2 A. I think you asked me, if I'm
3 correct, why the patient was casted on that
4 date. You asked me if it was --

5 MR. FIFNER: If you know why, tell
6 him. If you don't know why, just say you don't
7 know. If you know why, tell him.

8 A. I gave my opinion, and after that,
9 I don't know what all the conversation or
10 details or what she was thinking or -- I don't
11 know that.

12 Q. When Mr. Hill was questioning you,
13 he asked you if, in your presence, the patient
14 ever stated that she was noncompliant. And I
15 think your -- well, why don't you tell me what
16 your answer was again so I don't convolute
17 this.

18 A. I was present for a limited visit
19 on June the 12th. My focus was on reviewing
20 the surgery for the right foot and I don't
21 recall the patient making comments about that
22 specifically.

23 Q. Are you aware that Dr. Silver has
24 documented in his chart from that date the
25 following: Quote, patient relates she is not

1 very compliant, so a CAM walker will be
2 necessary, unquote. My question is this,
3 Doctor: Is it possible that the patient could
4 indeed have said that that day and you simply
5 don't remember?

6 MS. MALEK: Objection.

7 A. That's 6-12, right?

8 Q. Right.

9 A. Let me just take a look at it.

10 MR. FIFNER: No, just listen to his
11 question. You don't have to look at anything.
12 Just listen to his question.

13 THE WITNESS: Okay.

14 Q. My question was is it possible that
15 she could have related that during the 6-1-2000
16 office visit and you just don't remember?

17 MS. MALEK: Objection. Go ahead.

18 A. I recall reviewing surgery of the
19 right foot with the patient. Beyond that, I
20 really have very little recollection about what
21 she said or didn't say.

22 MR. FIFNER: Fair enough. That's
23 all I have for you, Doctor. Thank you.

24 MR. ROSSI: Are you going to have
25 him read, Doug?

1 MR. FIFNER: Yeah, we'll let him
2 read it.

3 - - - - -

4 (Thereupon, Rasper Deposition
5 Exhibit 2 was marked for purposes of
6 identification.)

7 - - - - -

8
9 (Deposition concluded at 12:42 p.m.)

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CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Denise M. Munguia, RMR, CRR, a
Notary Public within and for the State of Ohio,
duly commissioned and qualified, do hereby
certify that the within named witness, RICHARD
JOSEPH RASPER, D.P.M., was by me first duly
sworn to testify the truth, the whole truth and
nothing but the truth in the cause aforesaid;
that the testimony then given by the
above-referenced witness was by me reduced to
stenotypy in the presence of said witness;
afterwards transcribed, and that the foregoing
is a true and correct transcription of the
testimony so given by the above-referenced
witness.

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

1 I do further certify that I am not
2 a relative, counsel or attorney for either
3 party, or otherwise interested in the event of
4 this action.

5 IN WITNESS WHEREOF, I have hereunto
6 set my hand and affixed my seal of office at
7 Akron, Ohio, on this 28 day of May, 2002.

8
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11 
12

13 Denise M. Munguia, Notary Public

14 within and for the State of Ohio
15

16 My commission expires May 23, 2005.
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EXAMINATION OF RICHARD JOSEPH RASPER, D.P.M.

BY MR. HILL..... 4:6

EXAMINATION OF RICHARD JOSEPH RASPER, D.P.M.

BY MR. ROSSI..... 111:5

Exhibit 1 was marked..... 29:25

Exhibit 2 was marked..... 119:5



SIGNATURE OF WITNESS

The deposition of RICHARD JOSEPH RASPER, D.P.M., taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.

AFFIDAVIT

The State of Ohio,)

) SS:

County of Cuyahoga)

Before me, a Notary Public in and for
said County and State, personally appeared
RICHARD JOSEPH RASPER, D.P.M., who acknowledged
that he/she did read his/her transcript in the
above-captioned matter, listed any necessary
corrections on the accompanying errata sheet,
and did sign the foregoing sworn statement and
that the same is his/her free act and deed.

In the TESTIMONY WHEREOF, I have hereunto
affixed my name and official seal at this _____
day of _____ A.D 2002.

Notary Public

My Commission Expires:

DEPOSITION ERRATA SHEET

RE: CHRISTINE PIZZUTE VS.
FALLS FOOT & ANKLE CLINIC, INC.,
ET AL.

RRS File No.: 50163

Deponent: RICHARD JOSEPH RASPER,
D.P.M.

Deposition Date: MAY 15, 2002

To the Reporter:

I have read the entire transcript of my
Deposition taken in the captioned matter or the
same has been read to me. I request that the
following changes be entered upon the record
for the reasons indicated. I have signed my
name to the Errata Sheet and the appropriate
Certificate and authorize you to attach both to
the original transcript.



A				
abductus 43:22 85:10 ability 116:21 able 8:5 75:19 76:1 79:4 109:23 109:25 above 42:16,16,16 43:6,11,14,15 above-captioned 124:12 above-referenced 120:14,18 Absolutely 111:17 Academy 12:25 accept 86:10 accompanying 124:13 accomplish 40:25 72:2 82:17 91:25 according 83:15 101:18 account 107:25 110:8,21 accounted 110:12 accurate 46:10,13 accurately 18:6 18:10 achieved 91:9 acknowledged 124:10 acquaintance 49:1 51:5 69:15 across 57:23 82:9 82:17,18 act 124:15 action 98:25 99:16 99:19 121:4 actively 32:2,4,7 32:23 63:15 activity 60:13 actual 29:10 actually 23:20,23 65:16 97:8 additional 99:10 107:19 address 4:11,18 64:18 70:2,8 85:9 95:17 98:3 addressed 95:3 addresses 85:8 adequate 94:25 108:8,9 adjournment 120:23 advertising 22:3	advice 72:20 98:11,16,22 AFFIDAVIT 124:1 affiliated 18:8 69:21 affirmatively 76:3 affix 87:14 affixed 121:6 124:17 aforsaid 120:12 after 12:9 37:14 58:20 63:24 64:15 69:23 72:11 73:15,24 74:4,9,16,20 88:17 89:1,16 94:5,13 95:8 98:12 108:19,24 109:1,3 110:22 117:8 afterwards 72:17 88:16 120:16 again 22:10 26:15 43:19 44:4 58:24 62:24 71:17 93:9 109:23 116:8 117:16 against 19:11 age 4:2,21 ago 19:16 agree 86:8 116:4 agreeable 27:19 28:7,17 agreed 27:17 98:24 99:14 123:13 agreement 27:5 28:1,3,5,9,13,16 ahead 71:16 118:17 aid 91:24 Akron 1:19 2:9 3:8 17:6 18:9 121:7 al 1:8 125:5 alignment 91:9 96:23 allowed 108:15 alone 92:24 93:10 along 26:6 already 9:5 78:1 79:8,9 82:5 although 113:10 always 47:22,24 105:14 American 12:24 13:22 14:22 amongst 32:8	64:24 amount 116:20 anatomy 43:25 46:22,25 angle 40:15,15 41:5,6,21,21,23 42:10,23 43:19 43:21,22 44:1,10 45:15 46:7,20,24 48:19,20 49:10 75:20,22,23 81:18,19,20,24 82:21 85:3,7,10 85:10 96:21 97:5 97:14 105:5,21 105:22 106:2 107:8,23 angles 38:10,13 38:20 40:2,8,22 41:1 42:25 45:3 74:5,12 75:7,23 76:2,10 77:19 103:1,3 104:10 104:20 ankle 1:7 2:13 7:18 8:9 9:1,9 11:4,7,23 13:13 13:14 15:3 18:21 20:3,4 21:3,20 26:4,9 28:4,20 29:8 33:3 57:1,6 125:4 announce 16:13 another 46:15 58:7 83:7 116:24 answer 12:24 32:16 51:22 77:3 77:20,21 78:22 78:25 79:2 88:4 88:6 117:16 answered 80:17 106:19 answering 88:8,9 95:12 98:8 anxious 112:6 114:1 115:1,14 115:15,18 anyone 38:7 64:22 anything 14:10 16:13 17:19 26:2 27:21 28:25 30:5 42:17 46:19 49:6 62:22 63:3 64:10 65:18 66:5,21 68:20 85:16 89:2 93:17 95:5 100:10 101:16	109:14 110:18 110:20 114:7 118:11 anyways 10:11 anywhere 7:11,14 37:10 APPEARANCES 2:1 3:1 appeared 82:14 107:8 124:9 applied 100:12,17 115:19 116:5 appropriate 125:18 approximately 4:14 19:1 22:7 99:4,22 arch 57:6 area 54:24 57:24 61:8,10 80:24,25 argue 70:18 85:19 arising 19:5 around 17:3,25 77:12 arrangement 9:11 arrived 99:8 art 55:10 articular 42:23 82:21 ascertain 76:2 116:21 ascertained 76:9 Ashland 6:9,10 aside 19:3,14 asked 36:16,20,22 37:22 64:21 67:14 68:12 88:2 95:1,17 98:10,15 117:2,4,13 asking 27:8 30:8 33:4 34:19 50:4 52:9 67:2 68:8,9 68:10,18 73:20 74:18 76:1 77:2 86:9,10,14 87:22 87:23 89:13 91:17 92:13 105:12 109:20 aspect 20:5 assessment 46:14 assist 28:6,16 32:5 assistance 66:20 68:4 assistants 21:5,8 21:10 assists 32:10	associate 8:14 9:12 16:10 20:20 21:23 23:21 27:18 associates 26:2,7 association 12:25 30:17 assume 33:2,5,11 49:13 69:8 85:22 85:24 86:12 88:13 attach 125:19 attend 6:2 attending 31:25 32:22 98:24 99:14 116:17 attention 33:10 attorney 121:2 Austin 52:6 53:4 53:24 54:12,18 54:23 56:6 57:25 58:3,4,25 59:3,5 59:24 60:6,6,18 authored 34:13 authoring 34:9 authorize 125:19 available 31:17 67:3,24 aware 12:1 20:3 117:23 A.D 124:18 a.m 1:21
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