IN THE COURT OF COMMON PLEAS

OF SUMMIT COUNTY, OHIO

CHRISTINE PIZZUTE,

Plaintiff,

vs.

" Charling to Commission

Case No.

1

FALLS FOOT & ANKLE CLINIC, CV2001094453 INC., et al.,

Defendants.

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.

RENNILLO REPORTING SERVICES

2500 Erieview Tower, 1301 East Ninth Street, Cleveland, Ohio, 44114 tel 216.523.1313 fax 216.263.7070 One Cascade Plaza, Suite 1950, Akron, Ohio, 44308 tel 330.374.1313 fax 330.374.9689 1.888.391.3376 (DEPO)

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1	APPEARANCES:
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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
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60%,

1	APPEARANCES, Continued:
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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
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11	
12	ALSO PRESENT:
13	Christine Lin Pizzute
14	George D. Silver, II
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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.

ð	5
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
~ <u>12</u>	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 tells us an overview of
25	that? Is it school or something else?

		6
1	Α.	Seminary training.
2	Q.	Did you attend seminary?
3	Α.	Yes.
4	Q.	For how long?
5	Α.	Six years.
б.	Q.	Over what period of time?
7	Α.	From 1992 through 1998.
8	Q.	Where was that at?
9	Α.	Ashland Seminary.
10	Q.	In Ashland, Ohio?
11	Α.	Yes.
12	Q.,	Are you currently a licensed
13	podiatric d	octor, if that's the right term?
14	Α.	Yes.
15	Q.	You're still licensed?
16	Α.	Yes.
17	Q.	And do you intend to remain
18	licensed?	
19	Α.	Yes.
20	Q.	Do you practice podiatry in any
21	form right	now?
22	Α.	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?

7

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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 &

	9
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

	10
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

80 1 - 2 1	11
· 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

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	12
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

	14
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.

ан 19	15
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.

	16
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.

· · ·	17
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?
1.5	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.

	18
, 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.
2.0	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.

	19	
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.	

	20
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.

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	21
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.

->>

	22
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

	23
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

	24
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.

	23
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 Fa	alls Foot &
4 Ankle Clinic?	
5 A. I'm sorry, could you	repeat that?
6 Q. Before Dr. Silver car	me along, had
7 you worked with any partners or a	associates
8 during the time that you ran Fall	ls Foot &
9 Ankle?	
10 A. No.	
11 Q. Had you develop, by t	the time you
12 met Dr. Silver, a referral base of	of doctors and
13 a patient base?	
14 A. Yes.	
15 Q. And again, I'm not lo	ooking for
16 monetary numbers, but was the pra	actice doing
17 well, in your view?	· · · ·
18 A. Yes.	
19 Q. And was it your inter	ntion, then, if
20 Dr. Silver was going to be the pe	erson, that you
21 were going to basically sell to h	him and let him
22 take the practice and run it and	control it and
23 you were going to step out and go	o do this
24 ministry?	
25 MR. ROSSI: Objection	n.

	27
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

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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?
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	29
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

	30
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?

	31
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,
2.5	nor the attending physician.

	32
- 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

	33
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?

	34
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

	35
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?

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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.
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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
. · ·	

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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.

Ĩ	
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
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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

	41
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
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	ΤΔ
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

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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?

•	44
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

	45
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

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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

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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?

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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?
2,3	A. Not necessarily.
24	Q. In Christine's case was it true?
25	A. I had, I saw the patient for a

	49
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

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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

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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

	53
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?

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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
2,4	two cuts in the distal metaphyseal area of the
25	bone.

25	though?
24	Q. Right. You know what I'm saying,
23	there.
22	MR. FIFNER: That is the metatarsal
21	overview kind of diagram.
20	me where it's cut? I'm looking for a big
19	metatarsals and the other bones and then show
18	using sticks, a rough depiction of the
17	Q. Can you draw me a rough, even just
16	A. Okay.
15	context of the bones of the foot.
14	All right. Let's put this in the
13	it.
12	Q. Just something to let us talk about
11	A. Okay.
10	Doesn't have to be a work of art.
9	Q. Will you draw me a picture?
8	the bone.
7	make two cuts in order to completely go through
6	A. I think I would just say that you
5	you wanted to, if that would make it easier.
4	understanding. You could draw me a picture if
3	twice to make one cut or what? I'm not
2	of the bone or locations or are you cutting
1	Q. Are you cutting two different parts
•	55

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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.

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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	58
. 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
	RENNULO REDORTINO CERUICES

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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

	60
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

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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
б	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.

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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?

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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?
	RENNULO REPORTING SERVICES

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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?
б.	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

	C0
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

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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?

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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?

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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

	69
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.

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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

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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

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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

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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

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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?

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,, may . 1	Α.	You're asking if I was able to
2	ascertain t	he preoperative angles?
3	Q.	(Nodding affirmatively.)
4	Α.	Yes.
5	Q.	And you did that, right?
6	Α.	When?
7	Q.	When you saw the foot in October.
8 -	Α.	When I saw the foot in October.
9	Q.	You ascertained the presurgical
10	angles of t	he left foot, true?
11	Α.	Some, some of them.
12	Q.	Based on what you saw, did the
13	surgery cor	rect the bunion?
14		MR. ROSSI: Objection.
15	Α.	I observed that there were
16	improvement	s in some of the parameters of the
17	x-rays that	I saw on October 20th compared with
18	the preoper	ative x-rays of the left foot.
19	Q.	Even with the improvements, was the
20	bunion corr	ected?
21		MR. ROSSI: Objection.
2.2		MR. FIFNER: What do you mean by
23	corrected?	
24		THE WITNESS: Yeah. Right.
2,5	Q.	Do you know what that means? In

· .	77
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.

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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

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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
	RENNUL O REPORTING GERMAGES

 you call the procedure that was done? Was it a closing base wedge osteotomy or something else? A. I don't know that there's a particular name for the procedure. Q. What name was used in the record? You can look and see if you want. In the op note he called it a crescentic base osteotomy, right? A. Okay. Q. That is the same thing or different than a closing base wedge osteotomy? A. It's in the same location, but it's a different osteotomy cut. Q. Did he tell you why he did a different osteotomy cut there? A. No. Q. If you answered, I didn't hear. A. No.
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16 A. No. 17 Q. If you answered, I didn't hear.
17 Q. If you answered, I didn't hear.
10
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?
A. I observed that the osteotomy was
24 in the area of the base.
25 Q. In the area of the base?

	81
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.

	82
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.

	83
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
	444

•	84
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
	222

-	03
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.

	80
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

	87
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	88
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

	09
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
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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

	91
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.

	92
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?
2 2	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

	93
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

	94
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	95
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

95

96 1 specificity as you can tell me. 2 I recall that she had seemed to Α. 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 Did she give you any more detail 0. 8 that you can remember? 9 I don't remember exactly what she Α. said, but she seemed to feel that there was a 10 miscommunication in -- about that issue. 11 12 Q. Let's look at your note from October 20, 2000. You have had that in front 13 14 of you for a couple minutes, right? 15 Α. Yes. 16 Ο. Could you look under the P section 17 of the note. 18 Α. Okay. 19 Under section A, one of the things Q. 20 you say is that I think that the 21 intermetatarsal angle has been improved. 22 Α. Uh-huh. 23 And the alignment of the first and Q. 24 second metatarsals is relatively good. 25 Α. Uh-huh.

	97
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?

	98
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

	99
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,
б	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

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	100
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

25	A. No. That's what he said.
24	Q. Did he give you details about that?
23	did not purchase the plantar cortex.
22	A. He said that the screw in surgery
21	Q. What did he tell you about that?
20	A. Yes.
19	screw to purchase during the procedure?
18	had, according to the op note, getting the
17	you with any specificity about the trouble he
16	Q. Did Dr. Silver ever say anything to
15	foot.
14	not, because it doesn't look like a normal
13	can't really tell if the bunion is there or
12	look a balloon, and until that goes down, you
11	that foot. It's like sometimes, it's kind of
10	the truth is as far as what's going on with
9	with post-op swelling it's hard to tell what
8	A. With, you have to understand that
7.	something else?
6	Q. Was the bunion there or not or
5	ecchymosis at that point.
4	was still moderate swelling and minimal
3	A. The condition of her foot. There
2	involved?
1	condition of her foot the last time you were
ſ	101

	102
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.
	N N N

		103
1	Q.	The angles?
2	Α.	Yes.
3	Q.	The angles had changed in the
4	x-rays that	you saw?
5	Α.	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	Α.	Well, in comparison to what I saw
11	on the post	operative 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	Α.	Involved, what do you mean?
21	Q.	You were involved on this limited
22	consulting	basis
23	A.	Yes.
24	Q.	in October.
25	Α.	Okay.
	RENNI	LLO REPORTING SERVICES

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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.
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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

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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.

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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.

	108
. 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.
	109
-----	--
. 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
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,	110
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
. 2 0	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

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Г	111
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

	112
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.

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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

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-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
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	611
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.
2 5	Q. And we know now that that walking

	116
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

а	117
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
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а т. Т	118
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?

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	MR. FIFNER: Yeah, we'll let him
	read it.
	(Thereupon, Rasper Deposition
	Exhibit 2 was marked for purposes of
	identification.)
	(Deposition concluded at 12:42 p.m.)
	~ ~ ~ ~
-	
L	RENNILLO REPORTING SERVICES

	120
1	CERTIFICATE
2	The State of Ohio,)
3	SS:
4	County of Cuyahoga.)
5	
6	I, Denise M. Munguia, RMR, CRR, a
7	Notary Public within and for the State of Ohio,
8	duly commissioned and qualified, do hereby
9	certify that the within named witness, RICHARD
10	JOSEPH RASPER, D.P.M., was by me first duly
11	sworn to testify the truth, the whole truth and
12	nothing but the truth in the cause aforesaid;
13	that the testimony then given by the
14	above-referenced witness was by me reduced to
15	stenotypy in the presence of said witness;
16	afterwards transcribed, and that the foregoing
17	is a true and correct transcription of the
18	testimony so given by the above-referenced
19	witness.
20	I do further certify that this
21	deposition was taken at the time and place in
22	the foregoing caption specified and was
23	completed without adjournment.
24	
25	

	121
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 22 day of May, 2002.
8	
9	
. 0	
1	
2	Denier M. MUMeria
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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2 0	
21	
22	
23	
24	
5	

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	123
1	SIGNATURE OF WITNESS
2	
3	
4	
5	
6	The deposition of RICHARD JOSEPH
7	RASPER, D.P.M., taken in the matter, on the
8	date, and at the time and place set out on the
9	title page hereof.
10	It was requested that the
11	deposition be taken by the reporter and that
12	same be reduced to typewritten form.
13	It was agreed by and between
14	counsel and the parties that the Deponent will
15	read and sign the transcript of said
16	deposition.
17	
18	
19	
20	
21	
22	
23	
24	
25	

. [124
1	AFFIDAVIT
2	The State of Ohio,)
3) SS:
4	County of Cuyahoga)
5	
6	
7	
8	Before me, a Notary Public in and for
. 9	said County and State, personally appeared
10	RICHARD JOSEPH RASPER, D.P.M., who acknowledged
11	that he/she did read his/her transcript in the
12	above-captioned matter, listed any necessary
13	corrections on the accompanying errata sheet,
14	and did sign the foregoing sworn statement and
15	that the same is his/her free act and deed.
16	In the TESTIMONY WHEREOF, I have hereunto
17	affixed my name and official seal at this
18	day of A.D 2002.
19	
20	
21	
22	Notary Public
23	
24	
25	My Commission Expires:

RENNILLO REPORTING SERVICES A LEGALINK AFFILIATE COMPANY (216) 523-1313 (888) 391-DEPO

	125
1	DEPOSITION ERRATA SHEET
2	
3	RE: CHRISTINE PIZZUTE VS.
4	FALLS FOOT & ANKLE CLINIC, INC.,
5	ET AL.
6	
7	RRS File No.: 50163
8	Deponent: RICHARD JOSEPH RASPER,
9	D.P.M.
10	Deposition Date: MAY 15, 2002
11	
12	To the Reporter:
13	I have read the entire transcript of my
14	Deposition taken in the captioned matter or the
15	same has been read to me. I request that the
16	following changes be entered upon the record
17	for the reasons indicated. I have signed my
18	name to the Errata Sheet and the appropriate
19	Certificate and authorize you to attach both to
20	the original transcript.
21	
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