IN THE COURT OF COMMON PLEAS

OF SUMMIT COUNTY, OHIO

CHRISTINE PIZZUTE,

Plaintiff,

vs. Case No.

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

Defendants.

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

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APPEARANCES:

On behalf of the Plaintiff:

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

JOHN F. HILL, ESQ.

JOY D. MALEK, ESQ.

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(330) 376-4558

On behalf of the Defendants

Falls Foot & Ankle Clinic, Inc. and

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

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

DOUGLAS K. FIFNER, ESQ.

24500 Center Ridge Road, Suite 390

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(440) 871-5020

APPEARANCES, Continued:

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

Hanna, Campbell & Powell, LLP, by

GREGORY T. ROSSI, ESQ.

3737 Embassy Parkway

Akron, Ohio 44334

(330) 670-7300

ALSO PRESENT:

Christine Lin Pizzute

George D. Silver, II

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

EXAMINATION OF RICHARD JOSEPH RASPER, D.P.M.

BY MR. HILL:

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

A. Richard Joseph Rasper.

Q. And what's your residence address?

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

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

A. About ten years.

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

A. Yes.

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

A. 11-9-62. 39.

Q. How are you currently employed?

A. I am currently employed by Riverwood Community Chapel.

Q. What is that?
A. It's a church.
Q. Of any particular denomination?
A. It's nondenominational.
Q. Where is that at?
A. It's on Fairchild Road in Kent.
Q. And how long, about, have you worked there?
A. Two years.
Q. Doing what?
A. My title is family ministries pastor.
Q. And can you tell me in layperson's terms what that means?
A. It means that I take care of the needs of the people of the church in general. Those would include people who are sick or have counseling needs, those type of issues.
Q. Did you have to go through some sort of special education or training to obtain that position?
A. Yes.
Q. I don't want to get into great detail, but can you tells us an overview of that? Is it school or something else?

A. Seminary training.
Q. Did you attend seminary?
A. Yes.
Q. For how long?
A. Six years.
Q. Over what period of time?
A. From 1992 through 1998.
Q. Where was that at?
A. Ashland Seminary.
Q. In Ashland, Ohio?
A. Yes.
Q. Are you currently a licensed podiatric doctor, if that's the right term?
A. Yes.
Q. You're still licensed?
A. Yes.
Q. And do you intend to remain licensed?
A. Yes.
Q. Do you practice podiatry in any form right now?
A. Yes.
Q. In what form?
A. I practice on a limited basis.
Q. Where at?

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

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

A. That's in my own name.

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

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

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

A. I don't have an office.

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

A. Yes.

Q. Where else?

A. Falls Foot & Ankle Clinic.

Q. Under what circumstances do you now practice there?

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

Q. Same day or hours every other week?

A. Yes, generally, yes.

Q. What is it?

A. Mondays from 11 to 1.

Q. Why are you doing that?

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

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

A. No.

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

A. I'm an associate of the group.

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

A. Yes.

Q. Tell us about that, please.

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

Q. Which is what?

A. The Canton Regency. The Canton Regency.

Q. Do you do that through Falls Foot &

Ankle or on your own or something else?

A. No, that's on my own.

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

A. No, that's it.

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

A. I believe that's correct.

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

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

Q. Are you paid for fees that you generate?

A. No.

Q. So in what sense are you

compensated for whatever you do for the clinic?

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

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

A. Yes.

Q. And you do bill for fees?

A. Yes.

Q. Or the clinic does anyways?

A. Yes.

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

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

Q. At some point in your life.

A. Yes.

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

A. Well, 1990 through 2000.

(Discussion had off the record.)

Q. From 1990 to 2000, what kind of

practice did you have?

A. General podiatry practice.

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

A. No.

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

A. From 1992 to 2000.

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

A. Yeah, I owned it.

Q. Sole owner?

A. Yes.

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

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

Q. Who was that?

A. Dr. Patrick Landers.

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

A. That was part of what he did.

Q. What else did he do, that you were

aware of?

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

Q. What's your medical or podiatric education?

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

Q. Residency in what?

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

Q. Where was that?

A. Kansas City.

Q. Can you name the hospital?

A. The residency was based at Lakeside Hospital.

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

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

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

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

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

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

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

Q. They certify foot surgeons?

A. They certify podiatric physicians

in foot surgery.

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

A. Yes.

Q. When did you get it?

A. 1994.

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

A. Currently there is.

Q. How about back then?

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

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

A. Sure.

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

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

Q. Are you still certified?

A. Yes.

Q. In any subclassifications now?

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

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

A. Yes.

Q. When?

A. Ten years from the time you are certified.

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

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

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

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

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

A. Yes.

Q. In terms of your clinical practice --

A. Yes.

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

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

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

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

Q. Did patients get letters or just the docs?

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

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

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

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

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

Q. General and City?

A. Yes.

Q. How about Falls?

A. Yes.

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

A. Did I have them?

Q. Yes.

A. Yes.

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

A. That changed over the years.

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

A. In that particular year?

Q. Or around that time, yeah.

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

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

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

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

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

Q. Within the last day or so?

A. Some of the records, yes.

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

A. Yes.

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

A. Yes.

Q. How recently, approximately?

A. Yesterday.

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

A. No.

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

A. No.

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

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

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

A. No.

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

A. No.

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

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

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

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

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

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

Q. Who did you sell to?

A. Dr. Silver.

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

A. Correct.

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

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

Q. Yes.

A. And Dr. Silver.

Q. And by assistants, you mean what?

A. Receptionists, billing people, medical assistants.

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

A. Yes.

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

A. Yes.

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

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

Q. Of that clinic?

A. Yes.

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

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

Q. When did that happen, approximately?

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

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

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

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

A. Yes.

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

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

then he came down to take a look at it.

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

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

Q. How would you say it?

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

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

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

Q. Was she a podiatrist?

A. Yes.

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

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

interested.

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

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

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

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

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

A. Yes, uh-huh.

Q. Where was his residency done?

A. In Cleveland.

Q. Do you know particularly where?

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

Q. And that means what?

A. The podiatry college.

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

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

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

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

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

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

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

A. That was my understanding.

Q. The latter?

A. Yes.

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

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

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

A. No.

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

A. Yes.

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

A. Yes.

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

MR. ROSSI: Objection.

Q. Was that your plan?

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

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

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

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

A. Yes.

Q. And if so, what was it?

A. Yes.

Q. What was it?

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

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

MR. ROSSI: Show a continuing objection.

MR. HILL: Okay.

A. As I recall, there was no end date

on that particular part of the agreement.

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

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

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

A. We had a contract.

Q. Did it include a consulting agreement?

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

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

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

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

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

Q. Do you know her mother?

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

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

A. May 15th, yes.

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

A. My hours changed at that date.

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

(Discussion had off the record.)

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(Thereupon, Rasper Deposition Exhibit 1 was marked for purposes of

identification.)

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Q. We'll go back on the record.

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

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

MR. HILL: I'll ask --

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

MR. HILL: That he did.

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

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

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

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

MR. ROSSI: Objection.

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

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

A. I saw her one time in June.

Q. Was it before the first surgery?

A. Yes.

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

A. Yes.

Q. What do you remember?

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

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

A. Yes.

Q. Was she at some point your patient?

A. No.

Q. Never?

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

Q. Did you perform a surgery on her?

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

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

A. I was actively involved.

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

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

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

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

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

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

A. Okay.

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

A. Okay.

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

A. Uh-huh.

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

A. I would call this a progress note.

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

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

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

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

A. You're saying on 5-15?

Q. Or on 6-12.

A. No.

Q. Those are authored by Dr. Silver?

A. Yes.

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

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

Q. To make notes, progress notes.

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

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

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

A. Well, didn't make these notes.

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

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

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

A. Yes.

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

A. Are you talking about these notes specifically?

Q. Sure.

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

Q. Do you -- I'm sorry.

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

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

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

Q. When he used --

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

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

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

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

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

Q. That Christine asked to see you.

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

Q. Which day?

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

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

A. No.

Q. Otherwise?

A. Otherwise what?

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

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

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

A. Yes.

Q. Before or after you; do you know?

A. At the same time.

Q. You saw her together?

A. Yes.

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

A. Yes.

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

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

recall that.

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

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

Q. Do you know if anyone did?

A. I don't know.

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

A. I don't recall.

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

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

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

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

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

A. Yes.

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

A. Yes.

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

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

Q. Like a tracing paper?

A. Yes.

Q. What was your practice back then?

A. At what point?

Q. 6-12-2000.

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

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

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

there were marks on those x-rays.

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

A. Yes.

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

A. The PASA is zero to 8.

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

A. I don't recall.

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

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

too detailed with the angles unless it was very pertinent.

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

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

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

A. Yes.

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

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

Q. Okay. What is it?

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

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

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

Q. Why do you want to know that? In

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

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

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

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

Q. Elevated is the word?

A. Is increased, uh-huh.

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

A. With the PASA?

Q. Yes.

A. Do I characterize severity of it?

Q. Or do doctors in your field?

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

determine how much weight you put on them.

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

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

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

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

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

A. I would describe it as above normal.

Q. Both of them?

A. Yes.

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

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

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

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

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

A. Okay.

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

A. Yes.

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

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

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

A. Normal range is 10 to 15 degrees.

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

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

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

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

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

Q. What things --

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

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

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

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

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

Q. Right.

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

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

A. Yes.

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

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

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

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

A. Well, I think, I think yes.

Q. Tell me. What?

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

Q. I'm only talking about bones.

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

Q. How do you do that?

A. You see it.

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

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

you see the whole thing.

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

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

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

A. It --

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

MR. HILL: Yeah.

MR. FIFNER: But I think I understand.

MR. HILL: Yeah.

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

A. For bunion cases?

Q. Yes.

A. Not unless it was warranted.

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

A. I treated every case individually.

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

A. In order to help --

Q. Decide whether to do surgery on a bunion.

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

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

A. Not necessarily.

Q. In Christine's case was it true?

A. I had, I saw the patient for a

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

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

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

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

A. Okay.

Q. I'm not.

A. Okay.

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

A. Okay.

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

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

A. Sure.

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

A. Okay.

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

A. Yeah.

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

A. Okay.

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

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

right foot.

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

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

A. Okay.

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

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

MR. HILL: Okay. Let's take a

short break.

(Recess taken.)

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

A. Are you asking me --

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

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

Q. On June 12 of 2000?

A. Yes.

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

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

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

the procedure on the right foot.

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

A. Yes.

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

A. The location of the osteotomy.

Q. Osteotomy means cutting the bone, right?

A. Yes. Yes.

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

A. Yes.

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

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

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

A. In the distal metaphyseal of the bone.

Q. Distal?

A. Distal metaphyseal.

Q. Metaphyseal?

A. Yes.

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

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

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

A. Yes.

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

A. Yes.

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

A. No, normally two cuts.

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

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

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

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

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

A. Okay.

Q. Just something to let us talk about it.

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

A. Okay.

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

MR. FIFNER: That is the metatarsal there.

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

MR. FIFNER: Yeah.

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

A. Okay.

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

A. Okay.

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

A. Yes.

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

A. No, this would be the heel.

Q. All right. I'm getting lost.

A. This would be the ankle.

Q. Yeah.

A. Okay.

Q. Yes.

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

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

A. Oh, okay. Okay.

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

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

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

THE WITNESS: Yes.

MR. FIFNER: Yes.

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

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

Q. In the Austin procedure?

A. In the traditional Austin procedure.

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

A. Okay.

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

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

A. Yes.

Q. You remove that?

A. Uh-huh.

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

A. Yes.

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

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

A. Yes.

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

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

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

MR. ROSSI: Thank you.

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

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

you tell her that?

A. I don't recall telling her that.

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

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

Q. Fine.

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

Q. What are they?

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

Q. Okay. Any other that you can think

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

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

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

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

Q. In the distal area?

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

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

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

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

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

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

A. I don't have it.

Q. Do you know if the practice does?

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

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

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

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

Q. Then or ever?

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

Q. Ever?

A. I don't recall.

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

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

Q. You saw her more than once?

A. Yes.

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

A. Like what?

Q. She's not very compliant.

A. I can't recall that statement.

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

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

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

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

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

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

Q. Consulted by Dr. Silver?

A. Yes.

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

A. I recall being there twice.

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

A. Yes.

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

A. No.

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

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

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

A. No.

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

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

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

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

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

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

A. Can you say that one more time?

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

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

Q. Do you know, based on what you know

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

A. Yes.

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

A. How many times he did?

Q. Yes.

A. No.

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

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

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

A. Which surgery?

Q. The second one.

A. Yes.

Q. What was said?

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

Q. Who called you?

A. Dr. Silver.

Q. Himself?

A. Yes.

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

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

Q. And you couldn't?

A. Right.

Q. Because of some other --

A. Prior commitment.

Q. With the ministry or something else?

A. Yes.

Q. And then so what happened?

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

Q. And then what happened?

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

Q. Who told you that?

A. Dr. Silver.

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

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

Q. Or if he told you why.

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

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

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

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

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

was not present at that surgery.

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

A. I don't know.

Q. Did you assume he had?

A. Yes.

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

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

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

A. Between eight months and a year.

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

correct?

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

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

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

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

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

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

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

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

A. Yes.

Q. In both time and depth?

A. Yes.

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

A. I commented on specific questions and issues.

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

A. To a limited degree.

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

MR. ROSSI: Objection. Go ahead.

A. Based on -- tell me again.

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

MR. ROSSI: Objection.

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

Q. How do you measure it?

A. Oftentimes the success of a surgery

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

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

MR. ROSSI: Objection.

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

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes.

Q. So are you unable to tell me, based

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

MR. ROSSI: Objection.

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

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

A. I saw her in --

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

MR. HILL: Well, I'm asking.

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

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

A. I don't recall examining that left

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

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

A. Okay.

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

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

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

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

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

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

Q. All right. And so on both of those

occasions you saw what the foot looked like then?

A. Yes.

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

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

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

A. Yes.

Q. Okay.

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

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

A. What angle?

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

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

Q. (Nodding affirmatively.)

A. Yes.

Q. And you did that, right?

A. When?

Q. When you saw the foot in October.

A. When I saw the foot in October.

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

A. Some, some of them.

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

MR. ROSSI: Objection.

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

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

MR. ROSSI: Objection.

MR. FIFNER: What do you mean by corrected?

THE WITNESS: Yeah. Right.

Q. Do you know what that means? In

this context?

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

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

A. Yes.

MR. FIFNER: What do you mean by corrected?

A. What do you mean by corrected?

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

A. Yes.

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

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

MR. HILL: Thanks for the answer.

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

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

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

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

THE WITNESS: Okay.

Q. Using your definition of correcting a bunion --

A. Okay.

Q. -- based on what you saw --

A. Okay.

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

MR. FIFNER: Objection to the form.

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

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

A. It means that certain parameters were improved.

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

A. No.

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

didn't correct it?

A. No, I can't answer.

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

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

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

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

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

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

Q. What procedure?

A. An osteotomy at the base of the metatarsal.

Q. What was it called or what would

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.

Q. Do you know from any other source?

A. No.

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

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

Q. In the area of the base?

A. Yes.

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

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

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

A. Yes.

Q. Reverdin-Green osteotomy?

A. Yes, you said it right.

Q. Did he tell you why he did that?

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

Q. Do you know from any other source?

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

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

A. Yes. The intermetatarsal angle.

Q. The IM angle?

A. Yes.

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

A. I believe so.

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

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

A. Yes.

Q. Is it made straight across?

A. In a traditional Reverdin-Green, yes.

Q. Was it here?

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

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

A. Why do you cut it straight across?

Q. Yeah.

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

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

A. In the traditional Reverdin-Green?

Q. Yes.

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

Q. We're talking generally.

A. -- what was done on that base.

In general, you would remove a small wedge here.

Q. So you would make another cut?

A. Yes.

Q. A second cut?

A. Uh-huh.

Q. And take a wedge out?

A. Uh-huh.

Q. Was that done here?

A. I have no knowledge of that.

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

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

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

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

Q. Not including the op note?

A. Not including the op note.

Q. All right. What's a modified

McBride? In this context.

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

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

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

Q. Soft, what kind of soft tissue?

A. The joint capsule is involved.

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

A. With the modified McBride procedure?

Q. Yes.

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

Q. Meaning what?

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

Q. How would you do that?

A. Multiple different ways. You would

most likely remove part of it and sew it together.

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

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

Q. Any particular angle that it addresses?

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

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

A. No.

Q. Do you know why?

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

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

A. Uh-huh.

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

A. Okay.

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

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

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

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

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

A. There have been a variety of

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

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

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

Q. What choices did they have?

A. K wires.

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

A. No.

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

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

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

A. I understand.

Q. -- was typically used?

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

Q. Okay. That's the answer.

A. -- one standard.

Q. That's the answer.

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

THE WITNESS: Yes.

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

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

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

Q. Okay. Are you done?

A. Yes.

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

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

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

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

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

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

A. Okay.

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

A. Okay.

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

MR. ROSSI: Objection.

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

A. Not necessarily.

Q. So it could be within the standard

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

MR. ROSSI: Objection.

A. I believe so.

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

A. Can you say that one more time?

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

MR. ROSSI: Objection.

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

Q. What was your practice in that regard?

MR. ROSSI: Objection.

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

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

MR. ROSSI: Objection.

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

Q. Yes.

A. Is that the question?

Q. Yes.

A. Yes.

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

A. Yes.

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

more intraoperative x-rays?

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

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

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

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

A. Okay.

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

A. Not necessarily.

Q. -- diagnostic tests.

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

MR. ROSSI: Objection.

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

Q. Did you ever learn that?

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

Q. Did you, in the course of your

consult, look at the intraoperative x-rays?

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

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

A. Yes.

Q. Do you remember which ones you looked at?

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

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

A. Questions about the procedure and the fixation.

Q. Specifically what questions?

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

Q. What others?

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

Q. What question?

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

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

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

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

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

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

specificity as you can tell me.

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

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

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

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

A. Yes.

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

A. Okay.

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

A. Uh-huh.

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

A. Uh-huh.

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

A. X-rays.

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

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

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

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

A. Right, correct.

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

A. At this visit?

Q. Yes.

A. Yes.

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

MR. ROSSI: Objection.

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

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

A. Can you say that one more time?

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

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

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

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

to remain nonweight bearing for six weeks.

Q. And at this point it was four weeks?

A. Approximately.

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

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

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

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

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

A. Yes.

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

A. That was my belief. I may or may

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

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

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

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

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

Q. A walking cast?

A. Yes.

Q. Which tells you what?

A. That a cast was applied on that date.

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

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

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

Q. What's your -- what was the

condition of her foot the last time you were involved?

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

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

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

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

A. Yes.

Q. What did he tell you about that?

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

Q. Did he give you details about that?

A. No. That's what he said.

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

A. No.

Q. Do you know why?

A. No.

Q. Is that a problem you have encountered before?

A. Yes.

Q. With what frequency?

A. Occasionally, I would say.

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

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

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

A. Yes.

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

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

Q. What do you mean by that?

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

Q. The angles?

A. Yes.

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

A. Yes.

Q. For the better or for the worse?

MR. ROSSI: In comparison to what? Pre?

MR. HILL: To what he last saw.

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

Q. Yes.

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

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

MR. FIFNER: Right.

A. Yes.

Q. You told us.

A. Involved, what do you mean?

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

A. Yes.

Q. -- in October.

A. Okay.

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

A. Yes.

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

A. Okay. Yes.

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

A. Yes.

Q. From when you last were involved, correct?

A. Yes.

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

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

Q. Were any better?

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

Q. Were any worse?

A. Yes.

Q. Which?

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

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

A. It looked like it was increased.

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

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

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

A. Yes.

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

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

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

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

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

Q. We have established that.

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

Q. Here's what --

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

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

A. Okay.

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

A. Okay.

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

A. Okay.

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

MR. ROSSI: Objection.

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

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

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

Q. What else?

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

Q. What reasonable possibilities could account for that.

MR. ROSSI: Objection.

Q. Based on what you have looked at.

MR. ROSSI: Objection.

Q. One, you said noncompliance.

A. Yes.

Q. Any others?

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

Q. Any others?

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

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

A. Information other than my lawyer --

Q. Yes.

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

Q. Regarding weight bearing.

A. After the first or the second surgery?

Q. After the left foot surgery.

A. No.

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

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

Q. Sure.

A. -- when you consider bone healing.

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

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

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

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

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

whether it healed within the routine time frame or otherwise?

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

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

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

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

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

that I have any information to that regard.

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

EXAMINATION OF RICHARD JOSEPH RASPER, D.P.M.

BY MR. ROSSI:

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

A. No.

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

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

MR. ROSSI: Absolutely, yeah.

(Discussion had off the record.)

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

A. Okay.

Q. Under paragraph of A there, as I

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

A. Yes.

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

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

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

A. Yes.

MR. FIFNER: This is Silver's.

THE WITNESS: Oh.

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

(Discussion had off the record.)

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

A. Yes.

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

A. Yes.

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

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

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

A. Yes.

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

A. Yes.

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

A. You mean in my experience?

Q. Yes.

A. Yes.

Q. Under subsection C of that note you

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

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

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

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

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

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

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

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

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

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

A. Yes.

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

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

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

A. Yes.

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

A. Yes.

Q. And we know now that that walking

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

A. Yes.

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

A. Can you say that again?

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

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

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

the events surrounding this; is that fair?

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

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

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

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

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

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

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

MS. MALEK: Objection.

A. That's 6-12, right?

Q. Right.

A. Let me just take a look at it.

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

THE WITNESS: Okay.

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

MS. MALEK: Objection. Go ahead.

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

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

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

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

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

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

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CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

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

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

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

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

Denise M. Munguia

Denise M. Munguia, Notary Public
within and for the State of Ohio

My commission expires May 23, 2005.

I N D E X

SIGNATURE OF WITNESS

The deposition of RICHARD JOSEPH RASPER, D.P.M., taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.

AFFIDAVIT

The State of Ohio,)

) SS:

County of Cuyahoga)

Before me, a Notary Public in and for said County and State, personally appeared **RICHARD JOSEPH RASPER, D.P.M.**, who acknowledged that he/she did read his/her transcript in the above-captioned matter, listed any necessary corrections on the accompanying errata sheet, and did sign the foregoing sworn statement and that the same is his/her free act and deed.

In the TESTIMONY WHEREOF, I have hereunto affixed my name and official seal at this_____ day of_____ A.D 2002.

_____

Notary Public

_____

My Commission Expires:

DEPOSITION ERRATA SHEET

RE: CHRISTINE PIZZUTE VS.
FALLS FOOT & ANKLE CLINIC, INC.,
ET AL.

RRS File No.: 50163
Deponent: RICHARD JOSEPH RASPER,
D.P.M.
Deposition Date: MAY 15, 2002

To the Reporter:
I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

_____