IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

DIANNE S. TACKETT, etc.,

Plaintiff,

-vs- JUDGE PARKS
CASE NO. 99CV001415

SCOTT NELSON, M.D., et al.,

Defendants.

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Deposition of GREGORY M. RAY, D.C., taken as if upon cross-examination before Kenneth F. Barberic, a Registered Professional Reporter and Notary Public within and for the State of Ohio, at the offices of Anthony P. Dapore, Esq., 8039 Broadmoor, Mentor, Ohio, at 1:10 p.m., on Wednesday, January 31, 2001, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiff in this cause.

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P R O C E E D I N G S

MR. PARIS: All right. Mark that.

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(Thereupon, Plaintiff's Exhibit 1, Dr. Ray's chart, was mark'd for purposes of identification.)

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GREGORY M. RAY, D.C., of lawful age, called by the Plaintiff for the purpose of cross-examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION OF GREGORY M. RAY, D.C.

BY MR. PARIS:

Q. Doctor, state your full name, please?

A. Gregory Michael Ray.

MS. VANCE: Keep your voice up, doctor.

Q. Dr. Ray, my name is David Paris. I represent the Tackett family in connection with Herb's death. I want to ask you some questions this afternoon about your background, your care and treatment of Herb and any information that you have relative

to your records and the visits that you had with him.

If at any time I ask you a question that is unclear for whatever reason, it's important that you stop me and tell me that so that I'm afforded the opportunity to rephrase the question. Will you do that?

A. Yes.

Q. If you answer one of my questions I will assume that you understood it. Do you understand that?

A. Yes.

Q. If for whatever reason you need to take a break or stop and talk to Vicky about something feel free to do so, all right?

A. Yes.

Q. Where do you live, sir? Your home address?

A. 8216 State Route 46 South, Orwell Ohio.

Q. And how long have you lived there?

A. The exact number of years?

Q. Approximately.

A. All my life except when I was an associate in southern Ohio.

Q. And who do you live there with?

A. My mother.

Q. And how old are you, sir?

A. 38.
Q. Your date of birth?
A. 11-7-62.
Q. You're single?
A. Yes.
Q. And you've never been married?
A. No.
Q. Can you tell me a little bit about your educational background starting with high school going in order?
A. Grand Valley High School in Orwell, Ohio.
Q. What year did you graduate?
A. June of 1981.
Q. And then what?
A. Then I went to Walsh College in Canton, Ohio.
Q. What year did you graduate?
A. I didn't graduate from Walsh College. Then I transferred to Youngstown State.
Q. What year did you start Walsh College?
A. In the fall of '81.
Q. And what year did you leave Walsh College?
A. The fall of '83. Then I went to, I started the fall of '83 at Youngstown State.
Q. How often do people tell you you look like Steven Seagal?

A. I don't think I've ever heard that before.
Q. You started at Youngstown State when?
A. I'm pretty sure it was the fall of '83. I'm not exact.
Q. And did you complete your undergraduate schooling at that institution?
A. Completed the requirements for chiropractic college. I didn't get a degree from Youngstown State.
Q. And so when did you leave Youngstown State?
A. I finished there in the summer of '85. I'm pretty sure it was the summer.
Q. That's a while ago.
A. I can't exactly remember if it was the summer or the spring of '85. Right in there.
Q. That's fine.
A. I started chiropractic college in the fall of '85.
Q. Walsh College is a four year school?
A. Yes, it is.
Q. And just so I'm clear, you went there your freshman year and sophomore year?
A. Right.
Q. And when you left Walsh College had you completed your sophomore requirements?

A. I can't really answer to tell you the truth. I don't remember.
Q. When you transferred over to Youngstown do you recall if you transferred in as a junior?
A. I think I transferred in as a sophomore. I think.
Q. Okay.
A. Because the credits changed. They give you some credit.
Q. Right. Some courses they probably didn't accept credit for?
A. Right.
Q. You transferred to Youngstown State. When you were at Walsh College did you know at that point that you wanted to go into chiropractic medicine?
A. Yes.
MS. VANCE: Keep your voice up.
Q. When did you make that decision?
A. In high school. Probably my junior year.
Q. Junior year of high school?
A. Yes.
Q. Is there anything --
A. I had been a chiropractic patient before.
Q. Was there a particular role model, an individual that you emulated and kind of steered you into

the path of that profession?
A. The chiropractor I went to, I conferred with him. He did steer me into that.
Q. Who was that?
A. Dr. Harvey Feenstra in Cortland, Ohio.
Q. Youngstown State is also a four year school?
A. Yes.
Q. When you finished your requirements for chiropractic college and left Youngstown State were you a junior or a senior?
A. I don't know. I really didn't pay much attention. I just finished my requirements and went on.
Q. It was never your purpose then in going to college to graduate with some kind of a degree, a Bachelor of Science --
A. Just gaining the requirements to enter chiropractic college.
Q. Or Bachelor of Arts?
Understood.
MS. VANCE: One other tip. Wait for David to ask his question before you begin to answer. It makes the court reporter's, Ken's job easier and that way you heard the complete question.

THE WITNESS: Okay.

Q. Where did you apply to chiropractic college?

A. Palmer College Chiropractic.

Q. Located where?

A. Davenport, Iowa.

Q. And were you accepted?

A. Yes.

Q. And what year did you start?

A. September of '85.

Q. And what year did you -- I'm sorry. When did you complete that training?

A. December of '88.

Q. And when you graduated you then had your degree in chiropractic medicine?

A. Yes.

Q. Did you go on to have any further formal education after that? Besides continuing education requirements, seminars and things of that nature.

A. No.

Q. Do you belong to any organizations or academies within your field?

A. Ohio State Chiropractic Association. Northeast Ohio Academy of Chiropractic. Those are the only two.

Q. Have you ever belonged to any others?
A. I was a member of the American Chiropractic Association.
Q. And did you let your membership lapse in that organization?
A. Yes, I let it lapse.
Q. When was that?
A. It's been two or three years now probably. Maybe more.
Q. Are you involved in any orthopedic organizations within your field?
A. No. But there's another one I just remembered. American -- I can't think of the name. Of radiology. I can't think of the name. It's, they send out a quarterly journal.
Q. It has to do with chiropractors who are involved in also reading and taking x-ray films?
A. Yes. But they send out a quarterly report and it's all dedicated to x-rays. I can't remember the name of it.
Q. Have you ever been a member of the American College of Chiropractic Consultants?
A. No.
Q. Or the American Back Society?
A. No.

Q. Or the American College of Chiropractic Orthopedists?
A. No.
Q. Have you ever heard of any of those organizations?
A. Heard of them, yes.
Q. The National College of Chiropractic -- I'm sorry. I take that back. Are there other programs beyond the three year degree?
A. Other programs?
Q. Yes.
A. Just the continuing education programs.
Q. Are you licensed to practice chiropractic in Ohio?
A. Yes.
Q. And when did you become so licensed?
A. August of '89.
Q. Have you ever had that license suspended or revoked?
A. No.
Q. Are you licensed in any other states?
A. Pennsylvania.
Q. When in Pennsylvania?
A. June of '89.
Q. Did you ever have any training in neurological

aspects of chiropractic medicine?
A. Outside of college?
Q. No. Within your, within your training program. Help me understand. I mean, chiropractic deals with, with what parts of the body?
A. The spine mainly.
Q. The spine?
A. And pelvis.
Q. And do you have training in how the nerves interact with the muscles and the bone?
A. Yes.
Q. Along the spine?
A. Yes.
Q. Okay. I take it there's a body of literature that you're familiar with in chiropractic that deal with a stroke, people with strokes or predispositions to strokes?
A. As far as the specific training?
Q. Well, is there a body of literature that you're familiar with in chiropractic circles that deals with the relationship between manipulation of the neck and injuries to the vascular structures, the carotid arteries or vertebral vascular region?
A. Through the classes we are made aware of that, yes.

Q. All right. Let's talk about that. Through orthopedic classes and through neurological classes that you took in school?
A. Yeah. Mainly through the diagnosis classes that would have been covered. And, which would fall under the orthopedic neurological.
Q. Okay. This is back in college in Davenport, Iowa?
A. Yes.
Q. Have you taken any continuing educational courses after college that deal with these subjects?
A. No.
Q. Have you received any publications from any of the societies and associations to which you belong that deal with that subject?
A. Let's see. Publications. There have been articles written in some publications. I can't remember reading recently of any, though.
Q. Okay. But to the extent that those articles were included in the publications to which you subscribe you read them?
A. Yes.
Q. And can you tell me what publications you do subscribe to?
A. I subscribe to presently the Back Letter and the

OSCA will send out a publication every quarter now. There's all kinds of different information in there.

Q. Anything else that you subscribe to?

A. Well, the one with radiology. The radiology, Diagnostic Radiology, that comes out every quarter, but it's mainly geared toward radiology.

Q. Can you tell me a little bit, not verbatim and not in tremendous detail, but could you give me an overview of what you were taught back in chiropractic school in your orthopedic neurological classes about the relationship of stroke, the vasculature of the neck and chiropractic manipulation?

A. Probably the main test they taught us was the George's test.

Q. I'm sorry?

A. The George's test was taught.

Q. What's is that?

A. It's a test to test the vertebral arteries through an orthopedic exam.

Q. Could you spell that test for me?

A. G-e-o-r-g-e-s. T-e-s-t.

Q. And would do you describe that test for me?

A. Describe the test? The patient would, you would have the patient sitting, you would palpate the pulse of the patient, the patient then --
Q. Which pulse, on the wrist?
A. Yeah, on the wrist. The doctor would palpate the pulse on the patient and you would have the patient rotate the head, you can start with the right or left, I would start on the right, you would have the patient rotate the head to the right.
Q. Is it passively or actively?
A. The patient would.
Q. The patient?
A. The patient would do it.
Q. You call that passive, right?
A. Passive. Rotate and elevate the chin slightly and you would watch the patient for a deviation of the eyes, fluttering of the eyes, possibly a sweating on the forehead or any kind of changes, ask them if they feel faint or any discomfort while you are performing that test. And if so that would indicate a positive test. If any of those indications were, occurred as you performed the test then you would also perform a test on the left doing the same thing. Also as you are

palpating you check for a change in the pulse and amplitude, the pulse would change, diminish, decrease in number.

Q. What is it about passively rotating the head to the right with the chin slightly elevated, I think you said, that elicits that type of, that will -- strike that.

When that test that you've just described is positive what does, what does that indicate?

A. It indicates that there could possibly be a problem with the vertebral artery up the vasculature.

Q. And what is it about a positive response to the, to, say, rotating the head to the right that would make you think that? Mechanically what is happening?

A. There's actually a closing down of the artery, a physical closing of it down so you would get decreased blood flow to the brain.

Q. So if I were to passively move my head to the right and elevate my chin?

A. It would compromise the artery.

Q. We're currently, I am currently compromising the blood flow in which artery?

A. The carotid. Or the vertebral artery, I'm sorry.

Q. In the vertebral artery. Okay. And if there's no deviation in my eyes what does that signify?
A. It's negative for stroke.
Q. And the type of deviation you are looking for, describe that?
A. Like a fluttering of the eyes. The patient, they will flutter or like if they are going to pass out, maybe close the eyes or something. That type of a change you would look for.
Q. And what causes the fluttering of the eyes, the lack of oxygen?
A. The lack of oxygen.
Q. And what causes the sweating on the forehead?
A. The, it could be the lack of blood flow also to the brain, a change.
Q. All right. And you indicated you would ask the patient if he's experiencing any discomfort. Discomfort where?
A. Any kind of discomfort, like a nauseous feeling or a light-headedness, like a pain, discomfort when they rotated their head.
Q. Where would the pain be located? Where are you looking for pain?
A. Pain in the neck and pain in the head possibly. Pain in the eyes.

Q. And what type of change are you looking for in the pulse?
A. A change in the number, a change in the number of the pulse.
Q. From what to what?
A. It would decrease. It would go mainly from like a 70 or 80 down to like a 50 or 40 or a, like a skip actually in the pulse. It would actually slow right down to almost nothing or it would be a skip in the pulse.
Q. What would cause the pulse to diminish the pulse rate, mechanically what's going on?
A. Also a decrease in the blood flow.
Q. All right. And how do you chart that test?
A. How do I chart that test?
Q. Yeah. Have you ever performed that test?
A. Yes, I have.
Q. Okay. And how do you chart that test?
A. I would chart it as being positive or negative and whatever changes, if it was positive whatever changes were noted at the time the test was performed.
Q. You write down George's test, right?
A. Right.
Q. Okay. And you would chart it if the results were

positive and then you would chart it if the results were negative?

A. Right, I write a negative or if it was positive I would write what went along with it.

Q. What are the positive signs?

A. Write what were the positive signs.

Q. Are there also tests that you perform -- strike that.

Are there also tests that you were taught to perform in school that deal with the carotid arteries?

A. I would say that would be reasonably the main one. The George's test would be the main one.

Q. Is the George's test for the carotid arteries as well as the vascular vertebral arteries?

A. Could you repeat that question, please?

Q. Are there different tests to look for compromises in different arteries that supply blood to the brain besides the George's test?

A. Possibly. I would say yes.

Q. You can't think of any right now?

A. I can't think of any offhand.

Q. That's fine. Just so I'm clear, this is the only opportunity that I'm going to have to talk to you.

And if I'm redundant I apologize.
A. That's all right.
Q. There's more than one set of arteries that supply blood flow to the brain, right?
A. Right.
Q. Okay. In order to test the integrity of the various arteries that supply blood flow to the brain you are familiar with the George's test, correct?
A. Right.
Q. And as we sit here today that is the only test you are familiar with in that connection?
A. In that connection?
Q. Yes. In that context?
A. In that context, yes.
Q. All right. Fine. Back at school or in any of the articles you've read or any of the continuing educational courses that you have taken since graduation, have you dealt with certain contraindications to performing manipulations to the neck or treatment to the neck in persons who are high risk for TIA's or strokes?
A. Could you repeat the question?
Q. Yeah. Are you, are you conscious of any contraindications in manipulating a patient's

neck when that patient might be, have risk factors for TIA's or strokes?

A. Contraindications, yes. Those would be exhibited through the George's test which I went through.

Q. Which is a test you perform before you would treat somebody's neck or manipulate somebody's neck?

MS. VANCE: Objection.

A. I guess I don't understand the question. I'm thinking of giving you answers like contraindications to adjusting and you want to know -- I don't understand the question.

Q. When a patient comes to you and you say to yourself, you know, I think this person might have some risk factors for a stroke or TIA's, is there a process you go through, a mental checklist or any kind of a checklist where you say before I perform any manipulations of this person's neck I'm going to do something or satisfy myself of something that I'm not going to exacerbate a carotid artery problem that might throw some clots, may cause some problems as it relates to a TIA or a stroke?

A. Yes.

MS. VANCE: You are saying yes. Are

you saying yes because you understand the question as it is asked or is that the answer to your question?

A. I'm saying yes, because I would perform the George's test, I would do, like I would make sure, check the medication the patient was taking in regards to like a high risk, the age of the patient, if they've had a history of problems before, I would take in all of that and adjust, definitely change the adjusting techniques.

Q. What is it about the adjusting techniques that can pose a problem to persons who are, are at higher risk for, have risk factors for a stroke or TIA's?

A. Adjusting techniques of the soft tissue, as well as the osseous adjusting.

Q. The what?

A. Osseous, adjusting the spine itself, the bone. Osseous. The risk would be the high amplitude adjusting, thrusting into the cervical spine with a lot of rotation in there would be a, would be definitely something you wouldn't want to do.

Q. In a patient who had risk factors for TIA or stroke?

A. Yes, for TIA or stroke.

Q. Why?
A. Because you could cause damage.
Q. Help me understand the physiology of how such a manipulation can cause damage.
A. You could, there could be a thrombus resulting from the adjustment that could cause problems. It could possibly be a tearing of the artery, that's another problem which could cause serious implications to the patient.
Q. Okay. Is what you've just described to me things that you have been taught at chiropractic school?
A. Yes.
Q. These things that you have read about in the publications to which you subscribe?
A. More the, more recent subscriptions occasionally things come up on cerebral vascular accidents, such as strokes thus far.
Q. I'm sorry. I didn't mean to cut you off.
A. That's, that's it.
Q. You are through with your answer?
A. Yes.

MS. VANCE: Could I take a break for just a second?

MR. PARIS: Sure.

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(Thereupon, a recess was had.)

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Q. Doctor, now that you've had a chance to consult with your lawyer is there anything, any of your answers that you have given me thus far that you would like to change?

A. Not, not that I can think of.

Q. Okay. Great. Are we ready to move on?

A. Yes.

Q. After you finished up with college in Davenport, Iowa, did you move back to Ohio?

A. Yes.

Q. And have you been in private -- let's talk about your employment since coming back to Ohio.

A. Okay.

Q. When you came back to Ohio where did you work?

A. I worked for Dr. Robert Sheely in Trenton.

Q. S-h?

A. E-e-l-y.

Q. And where is Trenton, Ohio?

A. Northwest of Cincinnati about 45 minutes.

Q. And you worked for Dr. Sheely from when to when?

A. From January of '89 until September of '92.

Q. And then what after that?

A. Then for Dr. John Patterson since September of

'92.
Q. To the present?
A. Yes.
Q. And are you, what is the name of your employer? I mean, are you self-employed, are you employed by John Patterson, the Patterson Clinic?
A. Independent contractor under Dr. Patterson.
Q. So you are actually self-employed then?
A. Yes.
Q. Do you have your own corporation or are you a sole proprietorship?
A. Corporation.
Q. What is the name of your corporation?
A. Dr. Gregory M. Ray, Incorporated.
Q. And were you so employed back in May of 1998?
A. Yes.
Q. Okay. And as a, is your relationship with John Patterson that of an independent contractor?
A. Yes.
Q. Tell me a little bit about the, the physical plant at which you report to work every day. Is it a clinic?
A. It's an office building with treatment rooms.
Q. And what's the name on the outside of the office building, on the directory?

A. Patterson Chiropractic Clinic.
Correction. It was a house converted into an office.
Q. Do you wear a coat or any identification badges indicating that --
A. No.
Q. -- it's Dr. Gregory M. Ray, Inc.?
A. No.
Q. Any insignia that says Patterson Chiropractic Clinic?
A. No.
Q. How many other chiropractors worked in that clinic back in May of 1998?
A. Dr. Patterson and myself.
Q. Have you between 1989 and 1998 when you saw Herb Tackett treated patients and arrived at a diagnosis that somebody was experiencing a TIA or an evolving stroke?
A. At the time in the clinic when I was treating them, you mean?
Q. Yes.
A. No.
Q. Okay. Let me change that question just a little bit. Have you between 1989 and May of 1998 treated patients in the clinic setting where

you've come to learn afterwards that when you had seen them they were having a TIA or an evolving stroke?

A. No.

Q. Okay. As a chiropractor I take it you don't have, or maybe you do, privileges at any hospitals?

A. No, I don't.

Q. Are you involved in teaching to any extent?

A. No.

Q. Have you ever had any exposure to the medical-legal arena such as a consultation as an expert witness?

A. No.

Q. Have you ever given deposition testimony prior to today?

A. No.

Q. Have you ever appeared in court in connection with a patient's care and treatment prior to today?

A. No.

Q. Have you ever been sued by a patient before?

A. No.

Q. Prior to your deposition did you review any materials aside from Mr. Tackett's chart?

A. I reviewed part of the technique manual.
Q. What is the name of that manual?
A. Palmer College Technique Manual.
Q. And what was the purpose of reviewing that?
A. If I needed to demonstrate an adjustment to the properly named areas. I did not know how far of an explanation, how detailed I would need, so just to review the fine points of the treatment.
Q. Were there any particular chapters in that manual that you reviewed or portions of chapters?
A. I picked out not anything really particular. Just, you know, pages with adjusting the cervical spine, thoracic and pelvic region.
Q. In other words, if I wanted to go back to my office and pull out my copy of the technique manual to, to look at what you reviewed, would you be believe to tell me now what you reviewed so I could go read it?
A. Verbatim?
Q. No. Just generally.
A. Generally, yes, I can.
Q. She's laughing at me.
MR. PARIS: You have copies for me?
MS. VANCE: Yes.
MR. PARIS: I knew you would.

Why don't we mark that.

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(Thereupon, Plaintiff's Exhibit 2, pages from the Palmer College Technique Manual, were mark'd for purposes of identification.)

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Q. Exhibit 2 which you have in front of you is portions of the Palmer College of Chiropractic Technique Manual?

A. Yes.

Q. And Miss Vance has handed me a series of pages that deal with various manipulations, is that correct?

A. Yes.

Q. Why don't you just help me understand what each page is meant to depict and why you reviewed it.

A. The cervical technique on the front would be abbreviations, the definitions would be the placement of the patient and where the doctor should be placed and how, where the position of the hands is, how the, what body part, how to contact, how to do the adjustment, the direction of the adjustment.

Q. Okay. The next page?

A. The next page demonstrates an actual adjustment.

It goes through it step by step.
Q. This is a typical adjustment of somebody's neck?
A. This is an adjustment of the cervical spine.
Q. They call it a Modified Rotary Break up on top?
A. Yes.
Q. Is that something special, unique?
A. That is an adjustment that's taught at Palmer College. Yes, that is a specific.
Q. Are there other types of manipulations to the neck besides the Modified Rotary Break?
A. Yes.
Q. Okay. Are there other cervical adjustments in the Palmer manual, technique manual?
A. Yes.
Q. Okay. Why did you choose to review this particular one?
A. I primarily use that treatment primarily for myself. But, and each patient of course you have to detail the treatment to the patient. But that's primarily the one I use.
Q. You are partial to this technique?
A. Partial to that one.
Q. All right. Anything else about Page 101 that was, that is important to you or to me?
A. No.

Q. Okay. Page 154, why did you review that?
A. Also I prefer, I use this technique.
Q. Well, what is this?
A. Double Transverse.
Q. This is for the neck?
A. For the mid back, thoracic spine.
Q. And I take it that Palmer, in the manual there are other thoracic techniques?
A. Yes.
Q. Other techniques for manipulating the thoracic spine?
A. True.
Q. But this is the one you are partial to?
A. Right. One, but also I tailor the treatment to the patient also. This is not the only one that I use on the thoracic spine.
Q. Page 202, what does that intend to depict?
A. That is the leg check. It's a, a test to determine for a pelvic problem, sacroiliac. It's a general test.
Q. And is there more than one test that one can utilize to determine a pelvic problem?
A. Yes.
Q. This is the one you are partial to?
A. I use this one quite a bit. But there are

others.
Q. Okay. Page 218?
A. This shows the adjustment of the pelvis also.
Q. And Page 217?
A. It's another leg check test, the Thompson leg check also for the pelvis and also possible cervical problems.
Q. Okay. Did you review any other documents besides Exhibit 2 and the chart which has been marked as Exhibit 1?
A. No.
Q. Did you do any other independent research other than whatever you've told me about?
A. No.
Q. It goes without saying any questions that I ask about Herb Tackett please feel free to use your chart. This is not a memory test.
Can you go back to your chart and let's talk a little bit about when your relationship with Herb first began. When did Herb become your patient?
A. August 28th of 1995 he was first treated.
Q. When he first came to you you had him fill out the Confidential Patient Information form?
A. Yes.

Q. And that would be in his own handwriting?
A. Yes.
Q. All right. And did he prepare it and provide it to you for your review?
A. Yes.
Q. Okay. And is this a requirement that you give all of your, that you have all of your patients perform?
A. Yes.
Q. So on the first -- let's just talk about the paperwork that's generated as a result of the first visit. You've got the Confidential Patient Information form which is a, is it a two-sided piece of paper?
A. Yes.
Q. And then you've got a Physical Examination form that you fill out?
A. Yes.
Q. And you filled that out in connection with the actual examination?
A. Yes.
Q. All right. And in this particular case it is a four page form -- strike that.
Two pages each having two sides?
A. Yes.

Q. All right. There's also something called the Patient Consultation form?
A. Yes.
Q. What's the purpose of that form?
A. To check the patient's complaints and we get more detailed information of the exact complaint of the patient as well as background information.
Q. So that's a two-sided form?
A. Yes.
Q. And then I have another form that is an X-ray Examination form?
A. Yes.
Q. And that should go along with the, probably the Physical Examination forms, correct?
A. Correct.
Q. All right. Is there other paperwork that is -- strike that.

And then the other paperwork that is generated as a result of that first visit was your handwritten notes?
A. Yes.
Q. Okay. Generally speaking, besides the billing statement is that all of the records that would be generated as a result of the first visit?
A. Yes.

Q. When Herb came to see you he was 45 years old, he was five foot six and he weighed 265 pounds?
A. Yes.
Q. Did you consider that to be obese?
A. Yes.
Q. Apparently he was working at the time?
A. Yes.
Q. Did you get a feel for the type of work that he was doing?
A. In regard to?
Q. Well, it says he is employed by Rain Tree Liquidations. Do you know what kind of work he did?
A. He stated he did auctioneering work through Rain Tree.
Q. Okay. And the reason that he came to see you on August 28th, 1995 was pain in the left leg?
A. Yes.
Q. All right. But apparently this is not a problem that kept him off of work? Strike that.
He did lose some days from work as a result of that, right? I'm still on the patient information.
A. Yes. He did not state he was self employed, he did not state the days he lost work.

Q. He had had these symptoms previously since when? Is that April of 1995?
A. April -- he stated similar condition March of 1993.
Q. I'm trying to get an idea of when these symptoms in his left leg, pain in the left leg first appeared. Would that be April?
A. Yeah.
Q. He states April of '95?
A. April of '95, yes.
Q. Okay. But he had a similar problem with pain in his left leg back in March of '93?
A. Yes.
Q. And that was as a result of slipping on some ice?
A. Yes.
Q. You asked him when he had last been examined by a physician, is that right?
A. Yes.
Q. And he told you May of '95?
A. Yes.
Q. Did he tell you who the doctor was that had examined him in May of '95?
A. No.
Q. Did you ask?
A. I do not recall.

Q. You asked him what medications he was taking?
A. Yes.
Q. And he told you Aleve, Advil and he had previously been taking a drug called Relafen but had stopped taking it?
A. Yes.
Q. What is Relafen?
A. Relafen is a -- I'm not quite, I'm not exactly sure. I think it is a pain medication.
Q. Okay. Did you ask why he had been on Relafen?
A. Why he had been, no.
Q. Did you ask him who had prescribed the Relafen?
A. Can I back up to the last question?
Q. Certainly.
A. Restate the question before.
Q. I can't remember it. But I'll try.
Did he tell you why he had been taking Relafen?
A. For pain relief basically. But he had stopped it. His prescription had ran out. That's why he stopped.
Q. Okay. Did you ask him who had prescribed it?
A. No.
Q. Was it your impression that the Relafen was something that he was taking in connection with

this acute problem, this pain in the left leg?
A. Yes.
Q. Okay. Then you asked him to provide you with any symptoms that he was having, to let you know the symptoms he was not having and the symptoms he was in fact having and you gave him about 28 symptoms to check off?
A. Yes.
Q. He told you that he was not having any headaches?
A. No.
MS. VANCE: That's correct?
THE WITNESS: That's correct, yes.
Q. And we're talking about, these are current symptoms, right?
A. Right.
Q. So currently he was not having any headache, he was not having any blurred vision, dizziness and a host of others. This document will speak for itself. The three symptoms that he was currently having were numbness and tingling?
A. Yes.
Q. Where?
A. Into the left leg.
Q. He was having some excess perspiration?

A. Yeah. Yes.
Q. Was it, I mean excess perspiration all over his body or --
A. He did sweat easily.
Q. Okay. And it asks, the form asks whether or not the patient is a nervous person and he put down that currently he was a nervous person, I think?
A. Yes.
Q. Okay. Did you have any other conversation with the patient that you, that you remember as you sit here today that is not embodied on that first sheet?
A. In regards to the first treatment to the patient?
Q. Yeah. Is there anything that you have an independent memory of that first visit?
A. No, I don't.
Q. Okay. You conducted a physical examination, that was the next thing that occurred?
A. Yes.
Q. All right. And the exam is embraced in this two page document called Physical Examination?
A. Yes.
Q. Did you, did you attempt to grade the amount of distress he was in on that first visit? Let me

back up. In filling out the form I see that you did not attempt to grade the amount of distress he was in, is that right?

A. Right.

Q. Any particular reason?

A. He was in a lot of distress so in regards to that part a good part of the exam did not get filled out.

Q. How do you know he was in a lot of distress?

A. The way he presented himself in the office and the pain he was in.

Q. Okay. Is that something that you remember independent of the forms? That's what I meant by is there anything about the patient or the exam that you remember that's not really contained in the forms.

A. Right.

Q. All right. He was in a lot of distress?

A. He was in a lot of pain.

Q. And that was in his left leg?

A. Yes. And his lower back.

Q. All right. So his lower back and his left leg.

All right. When he filled out the form he didn't characterize it as being in his low back, though, is that right?

A. No.
Q. It was his perception that the pain he was having was in his left leg?
A. Left leg.
Q. Okay. How do you then come to the conclusion that he was in severe pain in his low back?
A. By asking him on the Patient Consultation form.
Q. Okay. Is this in his handwriting on the complaints on that form?
A. That is one of the office girl's handwriting as well as mine. I review this sheet with the patient and add things to it and also highlight the pertinent points.
Q. Okay. So on that form the symptoms are left leg hurts most of the time. Lower back stiff and sore during the night. What does it say next?
A. Employment, liquidates households, lifting and moving things. Twisted his body March, 1983 on ice. Chiro and doctor in Cleveland. Better after a few months of treatment, apparently.
Q. And you went through the frequency of the problems he was having?
A. Yes.
Q. And it was constant/intermittent?
A. Constant and then it was local and extended.

Q. Help me understand this. I understand what constant and daily means. That's all day every day, right?
A. Yes.
Q. What does constant/intermittent mean?
A. It can go from constant to intermittent, sometimes he has it constantly with activity and then it goes, then it comes and goes with different activities.
Q. The next item says location, local slash extended, what does that mean?
A. Local and extending, local and extended into the left leg.
Q. Okay. So the pain was locally in his low back and it extended into his left leg?
A. Correct.
Q. The character of the pain was dull?
A. Dull and achy.
Q. Nobody filled out the intensity of the pain?
A. No.
Q. But you have an independent memory that it was severe?
A. Yes. He had trouble moving, yes.
Q. Date of onset being March of '95 where apparently he was changing a tire, am I reading this right,

changing a tire, pulled up with a wrench on a tight bolt?
A. Yes.
Q. Okay. And then your handwriting says what?
A. Lateral thigh left side. That's where the pain was.
Q. All right. You went to the contributing factors and what does that say?
A. Motor vehicle accident, parked in the middle of the street and he also had a pre-existing fall on the ice which was, which he described that on the Confidential Patient Information sheet.
Q. You asked him about his general health. He said he was okay or is that your handwriting?
A. That's mine.
Q. Okay. And what does work life style mean?
A. The type of work, occupation. Auctioneer, he was doing that.
Q. Past history, what does that mean?
A. Past history of this type of problem he was exhibiting at the time.
Q. So he's had low back pain?
A. Yes.
Q. Including the pain into his left leg?
A. I don't recall if he stated that before.

Q. How far down the leg did the pain go, by the way?
A. It was on the lateral leg not quite --
Q. The thigh?
A. -- to the thigh.
Q. All right. Did it extend to the knee?
A. No. Into the thigh.
Q. Into the thigh only?
A. Yes.
Q. All right. He told you that he had some previous chiropractic treatment?
A. Yes.
Q. Where they used electric heat and the heat made it feel better?
A. He had used electric heat, a heating pad, electric, by himself and he stated that he had made it better in addition.
Q. All right. You asked him whether or not he had any prior fractures and he told you about his car accident in '92?
A. Yes.
Q. Where he had a fracture of C1 and C3?
A. Yes.
Q. And he told you the medications that he had been on included Relafen and what does that say?
A. Three months ago, 500 milligram tablets.

Q. All right. Did you ask him if he smoked?
A. No.
Q. Why not?
A. I do not recall why I didn't.
Q. Did you ask him when he had had his last physical exam?
A. Yes.
Q. What did he say?
A. May of '95.
Q. Okay. You've got something down at the bottom of this sheet that indicates about impending trouble, heart trouble, being alone, problems with crowds, I guess, strokes. What's the purpose of those different items at the bottom of that sheet?
A. Those are in regards to the family history of those types of problems.
Q. Okay. Did you ask him about his family history?
A. No, I did not.
Q. Did you take any x-rays on that first visit?
A. No, I did not.
Q. Can you tell me about the examination?
A. Okay. I examined him, he -- I palpated the lumbar region. I palpated the SI joints. I marked that he had left leg pain and the primary

area of discomfort of the patient was the L4 and L5 regions of the back.

Q. What's your entry, what do your entries mean?

A. The entry of the lumbar region, L4 and L5 are marked. Those are the pain areas where the patient was exhibiting pain in those areas. I also wrote down below that he was experiencing left leg pain.

Q. How do we know that you palpated the lumbar region or the joints, is that written there?

A. I marked it right there.

Q. And then what did you do?

A. The examination, due to the pain that the patient was in I did not put him through a lot of range of motion exercises.

Q. Did you put him through any range of motion?

A. He couldn't do a whole lot because of the way he was having trouble standing and bending. Pretty much every motion was painful for him.

Q. So I take it then you didn't do any, you didn't record any range of motion on this patient?

A. It was very difficult. Like I said, he could hardly move around. It was very difficult.

Q. I understand. Just so I'm clear, because of the pain he was in you did not try to determine any

range of motion?
A. Right.
Q. Okay. And you didn't do so while he was sitting or standing, is that correct?
A. No.
Q. By the way, was he alone or was he with his wife?
A. On the very first visit?
Q. Yeah.
A. I don't recall. I really don't.
Q. Did you perform a neurological exam?
A. Yes. I did the Achilles and the patellar reflexes.
Q. And did you record those?
A. No, I did not.
Q. Where on your form would that be recorded? Under neurologic exam?
A. Neurologic exam.
Q. Whereabouts?
MS. VANCE: Don't write on it.
A. Sorry.
Q. Would it be under sitting supine, prone?
A. Right here normally. I would record it right here, the sensory examination, the dermatomes.
Q. So under sensory exams, supine, you would have recorded his Achilles and patellar reflexes? Is

that true?
A. Yes.
Q. But it's not on this form?
A. No, it's not.
Q. So are you saying that as you sit here today you remember doing it and not recording it or --
A. Yes, I do.
Q. You have a specific memory of five years ago doing that?
A. Yes.
Q. Okay. Can you tell me why you didn't record it?
A. No, I can't.
Q. Did you take his blood pressure?
A. No, I did not on the first visit.
Q. Any particular reason?
A. No.
Q. Do you normally take a patient's blood pressure?
A. Normally it is taken on every visit, unless the patient is in a position where it's very uncomfortable to do it we will not. Occasionally we skip the blood pressure.
Q. Why didn't you do it on this occasion?
A. Again, due to the patient's state I did not take the blood pressure. But I normally do.
Q. But the thing is the blood pressure wouldn't

exacerbate his pain, would it?
A. No.
Q. If we go to your handwritten notes can you tell me what you wrote for August 28th of '95?
A. Okay. Complains of low back pain and left leg. L5, PL would be the adjustment performed. T6 PL.
Q. Let me stop you there. What does PL mean?
A. Posterior to the left. The adjustment would have been in that position.
Q. Okay. Is that PL reflected in the technique manual that you've copied or is that in a different part of the manual?
A. I don't know if it would be in that exact page or not. It might be.
Q. Okay. All right. PL and what, that's T?
A. T6 PL.
Q. What does that mean?
A. That means the six thoracic segment is moved posterior to the left. Category one inspiration on the right.
Q. PL is the location of a vertebral body?
A. Vertebra, PL would be, it would be the location of the spinous process on the vertebrae, it would be moved back posterior and then shift it to the left.

Q. Okay. Then I understand T6 PL. Let's continue on.
A. Okay. Category one inspiration on the right.
Q. What does that mean?
A. That is a, that would be a finding dealing with the pelvis itself. It is a mechanism where the patient's breathing and pelvic musculature is very tight. What we do in that case, we block the patient and they lay and it helps to relax the muscles of the pelvis.
Q. You did all of this while he was lying down?
A. Face down, yes.
Q. Face down. Okay. Please continue.
A. Okay. Diagnosis was lumbosacral strain. And then sciatic left due to the leg pain. And off to the right I wrote stand in one spot would exacerbate the pain. That's why I wrote the note there.
Q. Okay. What recommendations did you make to him at that time?
A. What recommendations?
Q. Yeah.
A. After the treatment?
Q. Yes.
A. None.

Q. When he left did he leave improved?
A. I do not recall.
Q. Okay. When was the next time you saw Herb?
A. 8-31-95.
Q. And where did you see him on that occasion, at the office?
A. At the office, yes.
Q. Okay. Did, did you fill out any paperwork on each, on any subsequent visits for Herb Tackett other than your handwritten sheet?
A. No.
Q. Okay. Is there a particular reason for that?
A. We try to note everything in the chart. Occasionally a patient will call in and we will make notes in the chart or a, a note will be written on a separate piece of paper and then later on placed in the file or put on the file.
Q. I understand why you may not have a separate Confidential Patient Information form every time a patient returns.
A. Right.
Q. But is there any reason why you don't utilize these very specific Physical Examination forms for each time you examine a patient?
A. Every time I examine a patient?

Q. Yes.
A. Yes.
Q. Why is that?
A. Repeat the question, please.
Q. Maybe I put the cart before the horse.
Do you examine a patient every time the patient comes in to see you?
A. There is somewhat of an exam form.
Q. And is there any reason why you don't continue to utilize these Physical Examination forms every time a patient comes in for an examination and treatment?
A. For preceding treatments on the patient if the patient, we treat them two to three weeks before we do a re-examination. If they don't show anymore, any improvement we do a re-examination and then we continue on from there.
Q. Okay. So every time you a see a patient it is not necessarily for an examination, it is for a treatment?
A. Exactly.
Q. And if you perform a re-exam then you'll fill out the Physical Examination form?
A. Fill out another one.
Q. Okay.

A. If it is a re-examination. Depending on the circumstances of the patient.
Q. Am I to infer from that answer then that the only physical examination you performed on Herb was the one on August 28th of '95?
A. Yes.
Q. Okay. And you never conducted a physical examination on him after August 28th of '95?
A. Partial, not complete.
Q. Okay. Well, on August 28th of '95 wasn't really a complete examination either because you didn't take his blood pressure, right?
A. Right.
Q. You weren't able to do any range of motion testing?
A. Right.
Q. The only thing you were able to do really is palpated L4 and L5 and you independently remember checking his Achilles and patellar reflexes, is that right?
A. Yes.
Q. When Herb returned to see you on August the 31st, 1995, using your chart, what were his complaints?
A. He was feeling some better since his last

treatment. Left leg was better in the morning. Worse towards the evening. Back feels a little sore.

Q. And who wrote that?

A. The girl in the office.

Q. What's her name?

A. Audrey Laudermill.

Q. Is she still with you?

A. No, she's not.

Q. All right. Who took Herb's blood pressure?

A. Audrey did.

Q. That was her job?

A. Yes. She would work up the patients and take the blood pressures also.

Q. Okay. And what was Herb's blood pressure on August 31st of '95?

A. 170 over 110.

Q. Is that elevated?

A. That's elevated, yes, it is.

Q. All right. And you were aware that he had elevated blood pressure at that time?

A. At that time after that reading, yes, I was.

Q. Okay. Did you make an assessment that this is a fellow with high blood pressure?

A. Yes.

Q. Did you at that time ask him if he smoked?
A. No, I did not.
Q. Were you able to smell cigarettes on him?
A. No.
Q. Do you smoke?
A. I can't recall. I can't recall. I can't recall asking.
Q. Do you smoke?
A. No.
Q. Okay. What did you write?
A. I wrote patient, I wrote on the side, was relieved, got relief by taking Aleve, it is a medication, over the counter.
Q. I know it well.
A. The patient sleeps on back okay. Tingling in the calf. Still experiencing tingling.
Q. Wait. You say still experiencing tingling. I thought the tingling he had was into his lateral thigh?
A. Tingling in the calf. On this date he was experiencing tingling in the calf.
Q. Okay.
A. The adjustment was L4 posterior to the left. Sacroiliac is negative as well as the category was negative. The T10 PL was adjusted and he

stated ice helped his condition.
Q. In what way?
A. Helped relieve the discomfort in the back and leg.
Q. He would use an ice pack on his low back?
A. Yes.
Q. Okay. When was the next time you saw Herb?
A. 9-5-95.
Q. And are these scheduled visits that people make -- strike that.

Is this a scheduled visit that he would have made on August 31st or is this a situation where he calls up and says I need to come in and see you?
A. I could not, I cannot really tell you because there was no written treatment plan on this patient. As far as giving the patient a written treatment plan, I did not. I would see him and then determine from the evaluation when he should be seen the next time.
Q. So when you last saw him, when you first saw him on August 28th is it more likely than not that you would have said I want to see you in three days?
A. On that particular visit, yes.

Q. Okay. And when you saw him on August 31st of '95 is it more likely that you would have said I want to see you next week?
A. Yes. Or sooner.
Q. Or sooner.
A. If complications arose.
Q. Okay. On September 5th, 1995 Herb came back?
A. Yes.
Q. And what did he tell Audrey?
A. He had pain in his lower back. It had improved. Still feels stiff and sore. Pain in his left leg still present.
Q. Was he, was it your impression that the pain that he was having on September 5th was as severe as when you first saw him?
A. Not as severe.
Q. Was he walking with a limp?
A. I couldn't, I don't recall at that time.
Q. Was he walking with a limp on the first time you saw him?
A. A slight limp, yes.
Q. Okay.
A. Much favoring the left leg, yes.
Q. On September 5th do you know if he was walking with a limp?

A. I don't recall then.
Q. Were you able to perform any range of motion tests on him on September 5th?
A. I did not perform any.
Q. Okay. Did you perform any neurological examinations on him?
A. No.
Q. Audrey took his blood pressure?
A. Yes.
Q. And what was it?
A. 170 over 108.
Q. Elevated, correct?
A. Yes.
Q. How would you characterize that elevation?
A. Very high.
Q. Very high?
A. At that time, even though it's not noted in the record, that is the second time he had high blood pressure and I did ask him had he been taking any blood pressure medication and if not he should see someone and definitely get that problem looked at.
Q. When you asked him if he was taking blood pressure medication what did he tell you?
A. He said no.

Q. And you said you should get that taken care of?
A. Yes. You should have it definitely looked at.
Q. And did you make any referrals or any suggestions as to who he should see for that?
A. No. I said he should contact an M.D. of his choice.
Q. You had a level of concern because one of the dangers of blood pressure, very high blood pressure especially in somebody who is overweight, who is a male in that age category is TIA or stroke, correct?
A. A possible.
Q. Sure. Were there any other dangers that, to this patient that you were concerned about when you conveyed that information to him besides TIA or stroke?
A. A heart attack also possibly.
Q. Anything else?
A. No.
Q. You didn't chart that, though, did you, that conversation?
A. No.
Q. Any particular reason?
A. No.
Q. And you have an independent memory of having that

conversation with him five years ago?
A. I remember definitely talking about it and making a recommendation. As far as charting it, no, I did not.
Q. When you examined him tell me, let's run through your examination.
A. On 9-5?
Q. Yes.
A. Okay. His walking was still painful. He claimed he was 50 percent better he stated. I asked him if he was taking medications. He said no. But then he later stated he was taking Aleve at bedtime.

I adjusted T6 PL, C3 on the right, he had decreased right cervical rotation. The diagnosis was lumbosacral strain, sciatic problem on the left still present.
Q. What did you do to his neck?
A. I adjusted the cervical spine.
Q. How did you do that?
A. How did I do that?
Q. Yes. Describe the manipulation.
A. With manipulation, with -- go through the, how I adjusted it?
Q. Yes.

A. Using the modified rotary technique I would take the patient's head, I would stand at the head of the patient, the patient would be on his back, I would slightly elevate the patient's head, with my left hand placing it underneath the occiput and stabilizing the left side of the neck I would contact, I would slightly flex the patient's head and contact with the right hand the third cervical vertebra, I would take laterally flex the neck and the head at the same time, rotate the cervical, the head and cervical spine approximately 15 to 20 degrees and administer the thrust.

Q. Thrust?

A. Yes. Gentle thrust into the cervical spine to adjust the segment.

Q. And what occurred as a result of that maneuver? I mean, what was the object, what was it you were doing?

A. Correcting, when I had palpated the patient there was a, what we --

Q. An inferior deviation with the third cervical what, vertebra?

A. Vertebra on the right side.

Q. And that would do what?

A. Correct that deviation.
Q. Was he complaining of any neck pain at that visit?
A. Not as I can recall.
Q. Okay. Was the manipulation to the third cervical vertebra done as a preventative measure or did it have some effect on his low back?
A. More of a, more, it would have been done to correct a fixation at that level.
Q. At this C, at the C3 level?
A. Yes.
Q. Did you perceive that the patient was having any pain as a result of a deviation of the third cervical vertebra?
A. Through the palpation it was uncomfortable at that level when I palpated him.
Q. So you palpated his neck and he was uncomfortable at that level, the C3 level?
A. Yes.
Q. Okay. And that's not charted either, right? That he had pain at the C3 level on palpation?
A. No, it's not.
Q. Okay. Did you at that time tell him to come back in about a week or sooner if he had any further problems?

A. Yes. I think. He would have been scheduled for another week, yes. I can't tell you exactly.
Q. And he came back on September 12th of '95?
A. Yes.
Q. Audrey didn't take down a history, is that right?
A. No. That's my handwriting.
Q. All right. Tell me what you wrote down?
A. Okay. 9-12-95, patient complains of worse at the end of, it should have been at the end of the day. I don't know why I didn't. Feet and posture still off when he was standing. His walk, worse when he walks. When he stands still makes it worse and that's bad. His blood pressure was 170 over 100.
Q. Now you took his blood pressure this time, right?
A. Yes.
Q. And that's elevated, correct?
A. Yes.
Q. And how would you characterize that elevation, high?
A. High, yes.
Q. Okay. Did you talk to him at that time about whether he had contacted an M.D. for getting his blood pressure under control?
A. I talked to him. I asked him if he had and his

response was, I believe he had not at that time but it is not written.

Q. But that's something you have an independent memory of five years ago?

A. Independent, no.

Q. Well, if it's not written in your chart that would suggest to me, and I may be wrong on this, but that would suggest to me that you have some independent recollection aside from your chart.

A. Due to the fact that he had a high blood pressure before, nearly every patient that comes in with this type of problem I continue to ask them, you know, have you looked into this problem.

Q. That's your habit?

A. Pretty much a habit.

Q. Okay. All right. And that's something that you do because you care about your patients?

A. Yes.

Q. Okay.

A. Especially when the blood pressure is like this.

Q. And it goes beyond chiropractic manipulation in that regard?

A. Yes.

Q. You are also concerned about the patient's blood pressure?

A. Yes.
Q. Even though you don't treat patients for high blood pressure? Or do you? Let's me withdraw that.
Do you treat patients for high blood pressure?
A. No.
Q. Okay.
MR. PARIS: Off the record.
- - - -
(Thereupon, a discussion was had off the record.)
- - - -
MR. PARIS: Back on.
Q. Please continue reading your note after the blood pressure.
A. Okay. Lumbosacral strain, sciatica left. I did lumbar distraction at that time.
Q. What's that?
A. We put the patient on a specific table, it's designed for lumbar distraction, and what it does is, basically the table holds the torso and the head and neck flat and you can distract the lumbar spine by using equal pressure, placing, there's a handle on the end of the table and you

place your hand on the lower back and you distract, a very easy pressure.

Q. I'm not getting the visual picture of what distraction is.

A. Distraction is designed to slowly open up the disk space to relieve tension on the spine is what it is designed to do. This table is designed, it actually will flex the legs and the legs of the patient will actually hang down and it will actually help to distract the lumbar spine, to actually open up the disk spaces very slightly, very minimally, to help ease the tension on the spine.

Q. So you performed lumbar distraction?

A. Yes.

Q. And what else?

A. I did T6 PL and he also complained the side of the ankle to be sore on the left side.

Q. How was his thigh?

A. It must have been better. He didn't complain about it.

Q. How was his calf?

A. It was probably improved because he did not complain about it. No complaint.

Q. Did you want to see him again?

A. At that time, yes, I did. I did want to see him again. He was scheduled again.
Q. When did you see him?
A. Approximately two weeks.
Q. I'm sorry?
A. He was scheduled for --
Q. September 29th?
A. The 29th.
Q. Tell me about that visit.
A. Okay. The patient states that he's doing a lot better. But feels like everything is pushed to the right. Unable to stand for very long. Blood pressure was 108 over 100.
Q. Very high?
A. Very high.
Q. Who took his blood pressure on that occasion?
A. Donna Patterson.
Q. And tell me about what you did for him?
A. The diagnosis, again, was lumbosacral strain and sciatica on the left. I adjusted T6 PL, L2 on the right, L2 on the right side posture.
Q. Was he complaining about his neck?
A. Again, through the palpation there was discomfort at that level, so I adjusted it there.
Q. Did you talk to him on that occasion about his

high blood pressure?
A. I would have reminded him again.
Q. Because your level of concern was still the same as it had been previously?
A. Yes.
Q. When did you next see him?
A. 10-31-95.
Q. Was this a scheduled appointment or was he late?
A. This was not, probably not a scheduled appointment.
Q. Why do you say that?
A. Due to the time frame involved. He was not, probably after this, after this visit --
Q. Which visit?
A. The 9-29-95 he was not in a great deal of pain. And he was due to come back if symptoms became worse on more an as needed basis.
Q. Okay. So in all probability looking at your records when you saw him on 9-29-95 you said since you are doing so well just come back as needed?
A. Exactly.
Q. Okay. And he came back on 10-31-95 and what were his complaints?
A. He had some pain and stiffness across his low

back and down the outside of his left leg. His blood pressure again was 144 over 94.

Q. How would you characterize that?

A. On the high side. Definitely an improvement from what it was before.

Q. Did you talk to him about that?

A. I would have reminded him again.

Q. Well, did you talk to him about what the improvement to his blood pressure was attributed to? In other words, had he been to an M.D., had he been on blood pressure medication?

A. Restate the question, please.

Q. Did you talk to Herb about the improved nature of his blood pressure?

A. Probably not.

Q. What's the purpose of taking his blood pressure, you and your staff?

A. We do it for, to maintain, to catch to see obviously for people with high blood pressure.

Q. But do you need to take a patient's blood pressure in order to perform chiropractic on that patient? How are the two related?

A. We do it, you can, you do not have to take a blood pressure. But we do it to generally to monitor for patients like Herb who have high

blood pressure. We do it as a general screening for most every patient.

Q. Even though it's not related to chiropractic treatment that you are giving to the patient? Don't get me wrong. I'm not being critical. I'm just trying to understand myself how it fits into your program.

A. We do it as a screening, like I stated, to check and to catch people with high blood pressure.

Q. Okay.

A. Also the probability, you know, of complications from the blood pressure.

Q. Okay. You are concerned about the patient as a whole?

A. Yes.

Q. Not just about a C3 deviation?

A. Right.

Q. Okay. Did we --

All right. So the manipulations you performed on 10-31-95 were what?

A. C1 posterior on the left. L4 PL. T6 PL. Posterior lateral. And the diagnosis was lumbo, lumbar strain.

Q. All right. And you told him the same thing, p.r.n., come back as needed?

A. As needed, yes.
Q. And he came back again on December 11th of '95?
A. Yes.
Q. Tell me about that visit.
A. The patient was having left gluteal pain radiating down the lateral aspect of the left leg to just above the ankle region. The patient states he has difficulty straightening up after sitting. He describes the discomfort more like an ache. His blood pressure was 140 over 90.
Q. Was that high?
A. That's still high, yes.
The condition started Thursday, 12-7-95.
Q. What did you do for him?
A. T6 PL. C2 inferior on right.
Q. What was your diagnosis?
A. Lumbar strain.
Q. Did you talk to him about his blood pressure?
A. I would have reminded him it's still high.
Q. What did he say? Did you talk to him about seeing a doctor, getting on some medication?
A. On each visit I would have definitely stated it was high and that he should see someone about it and apparently no response to that point.
Q. Well, had it been improving?

A. It had been improving, yes.
Q. Do you know why it had been improving?
A. No.
Q. Did you ask him whether he was changing his life style, whether that was causing it to improve?
A. No.
Q. Or whether he was on any medication?
A. Apparently not.
Q. Apparently you didn't ask or apparently he was not on any?
A. I didn't ask if he was on medication, no.
Q. Okay. At any time before December 11th of '95 had Herb ever expressed to you that he was having headaches?
A. Not that I can recall, no.
Q. As a chiropractor do you treat patients with headaches?
A. Yes.
Q. How do you do that?
A. Through manipulation.
Q. Of what?
A. Of the spine.
Q. Any particular portion of the spine?
A. Cervical, thoracic. Cervical and thoracic regions.

Q. Different manipulations and maneuvers depending on what type of headache you are dealing with?
A. Yes. Depending on the patient, the age of the patient. Many factors are involved in there as to what technique is used.
Q. Did Herb wear eyeglasses?
A. I am not aware if he did.
Q. Herb came back on December 27th of 1995 and what did he tell Audrey?
A. Having pain in the left low back, buttocks and down in his left ankle. His left leg is okay. He was plowing with his tractor. His blood pressure was 160 over 90, elevated.
Q. That's high?
A. That's high.
Q. So help me understand this complaint, he had low back pain, the pain extended into his buttocks?
A. Yes.
Q. And?
A. Down his left leg, down into the left ankle.
Q. Down into the left leg but the left leg was okay?
A. Right. You can experience pain in like an ankle, a calf, a thigh independently.
Q. Independent of the leg?
A. Yes.

Q. All right. So what did you do for him?
A. I adjusted the T6 PL. C1 posterior on the right. PL on the left side posture. And the diagnosis was lumbar strain.
Q. Did you talk to him about his high blood pressure on this visit?
A. I would have reminded him again.
Q. October 15th of '96, now we're ten months since you had last seen him?
A. Correct.
Q. And he came in and tell me what transpired?
A. He had lower back pain, occasionally pain down the left leg. Lifted cases Thursday. Pain started Friday. He was using ice. Judy Fedders would have written the note. He had lateral leg pain also.
Q. And what did you do for him?
A. Adjusted T6 and C1 posterior on the right.
Q. How was his blood pressure?
A. 140 over 78.
Q. Is that high or is that within normal range?
A. That is, the top number would still be high. But the lower number was definitely better. Good range.
Q. Did you ask him to explain why his blood pressure

was coming down?
A. No, I had not.
Q. When was the next time you saw Herb?
A. 10-25-96.
Q. Why is that?
A. He had lower back pain left side, some pain in the left gluteal region, patient states about 60 to 70 percent better. His blood pressure was 140 over 80. T6 PL. C1 posterior right. Lumbosacral strain is the diagnosis.
Q. His blood pressure was still high?
A. The top number was high. The bottom number was in a good range.
Q. And when Herb left that day I take it that your recommendations to him were to come back as needed?
A. Yes.
Q. All right. Why don't we come away from the, your notes for a minute.
Is it safe to say that Herb had like a chronic lumbar strain?
A. True. That would be correct. He had a definite problem with his low back that needed periodic treatment. It was treated as needed.
Q. It would wax and wane depending on his activity

level?
A. Yes, it would change.
Q. And he tried to help himself at home with ice and historically with some heat?
A. Correct.
Q. And some Aleve?
A. Correct.
Q. I take it you never felt the need to get an orthopedic surgeon involved in his care and treatment?
A. No. He responded quite well to the adjustments.
Q. You never felt that Herb needed a consultation with a neurosurgeon because of the radicular symptoms that he had down his leg?
A. No. Due to the fact that he did not, he responded well to the treatment and it didn't stay or I would have proceeded further with recommendations.
Q. Okay. Have you on occasion referred patients who had radicular symptoms, true radicular symptoms either down their arms or down their legs, have you referred those patients to neurosurgeons or orthopedic surgeons?
A. Orthopedic surgeons, yes.
Q. And those would be physicians in the Ashtabula

area?
A. Yes. Also depending on the patient's preference.
Q. Okay. Were you aware that Herb had been under the care of a neurosurgeon from his 1992 accident?
A. Was I aware?
Q. Did you ever come to learn that while Herb was still your patient?
A. No.
Q. Okay. Herb Bell, does Dr. Herb Bell ring a bell with you?
A. No.
Q. That name?
A. No.
Q. How about Dr. Nelson? Scott Nelson?
A. No.
Q. When Herb told you that he had had a car accident in June of 1992 where he had fractured C1 and C3, did you ask him what doctors had taken care of him?
A. No, I did not.
Q. Or what hospital he had been in?
A. No.
Q. Would it have been of any benefit to you to send

authorizations out to get any of those records so you would have a, a larger picture of Herb's prior medical condition?

A. No. Due to the fact that I was treating the lower back condition. A lower back condition, I didn't think that would be of benefit.

Q. Would it have been of any benefit to you to take a look at some of his cervical x-rays since you were performing some manipulations to his cervical spine?

A. No. Due to the fact that that was, that happened in 1992. And the patient exhibited no contraindications to the adjustment.

Q. Did you know the nature of the fractures of C1 and C3 from the 1992 accident?

A. No, I did not.

Q. Are there any concerns that chiropractors carry with them about manipulations of vertebral bodies that have previous injuries and fractures?

A. Due to the fact that the injury had been so long ago and it was already healed and he was not exhibiting symptoms, he wasn't exhibiting any contraindications to adjusting that region.

Q. What would the contraindications be in manipulating a cervical vertebra when somebody

has had a prior cervical fracture under, under what circumstances wouldn't you want to manipulate them?

A. If they were like exhibiting hypermobility in the region, if they had a possibility of a tumor or a patient was unable to be placed in a position to adjust the site would all be contraindications, or other immediate trauma to the area that would have happened recently that would possibly elicit a fracture to the area.

Q. Herb came back to you about 17 months later?

A. Yes.

Q. May 12th of '98?

A. Yes.

Q. And Miss Patterson was there to take a history?

A. Yes.

Q. And what did he tell Miss Patterson?

A. He complained of blurred vision, headaches, soreness from the neck upward, he had the condition for two weeks, he had been doing a lot of driving, he had stiffness with flexion and extension, more discomfort with flexion. His blood pressure was 160 over 100.

Q. Is that high?

A. That's high.

Q. The word before for two weeks, is that constant or condition?
A. Condition. It's just abbreviated condition.
Q. C-o-n-d period?
A. Yes.
Q. All right. Did you perform an exam?
A. The patient was under care with another doctor. I did not know the name of the doctor. At that time I was asking him if he, he had told me he was taking medication for headaches.
Q. Let me stop you for a minute. Did you perform a physical exam?
A. I performed a very brief exam.
Q. Okay.
A. The blood pressure was done. I looked in the patient's eyes, I palpated, did range of motion.
Q. Let's go through this. Let's go through your note, okay?
A. Okay.
Q. All right. After Miss Patterson's initials it says call in lab?
A. The patient stated he was concerned due to the problems with his headaches and his eyes that he was having trouble with his sugar. That was his concern and he wanted lab work done.

Q. Are you, did this patient have diabetes?
A. Not that I was aware of, no.
Q. Did he tell you that he had diabetes?
A. No.
Q. Okay. So the patient said to you I'm concerned about my sugar?
A. Yes.
Q. Okay. Did you write that down?
A. No, I did not write that down.
Q. So you called in lab work. Did you draw blood?
A. No.
Q. Who drew blood?
A. He was sent to a lab that does the lab work.
Q. That was at the hospital, where was that, Geneva Memorial Hospital?
A. Yes, Geneva Memorial Hospital.
Q. So after you were done with him that day you directed him to go to Geneva Memorial Hospital for blood work?
A. No.
Q. Explain.
A. He was, he was concerned about the lab work. That was one of the first things he discussed when he came in for treatment. Because of the headaches and the eye problems. He said I think

I would like to have some lab work done. He was working as a courier for the lab. He said I can get it done. And I tried to explain to him that the problems he was exhibiting was probably not from sugar. And I said you should see an eye doctor to get your eyes examined and see a doctor to get your blood pressure looked at. Those were problems that reasonably would be causing the headaches and the problems with his vision.

Q. His wife was with him that day?

A. His wife was with him that day.

Q. And you had this conversation with his wife present?

A. Yes, she was present.

Q. So he came in and he said I'm a courier for the lab?

A. He stated that during the visit.

Q. Okay.

A. He said he had been doing that kind of work. He did it, I don't remember how long, but he stated he had been doing that.

Q. All right. So you wrote down call in lab work?

A. Yes.

Q. What does that mean, call in lab work?

A. That means he needed a doctor to call in the lab

work to be performed on him.
Q. And what is the lab work that you called in?
A. Standard, a CBC and the UA.
Q. All right. Standard urinalysis?
A. Yes.
Q. In order to find what? What were you looking for when you ordered this test?
A. I was not really in favor of this for the patient. To appease the patient I said yes, I will call the lab work in, but I also told the patient that I did not think that this information would be helpful in his condition, that he still needed to see the eye doctor.
Q. I understand. What were you looking for when you called in this lab work?
A. I wasn't really looking for any significant findings with the lab work.
Q. Well, when you ordered the urinalysis what were you looking for?
A. I was doing this as a favor to the patient. Mostly to, he wanted it done, he wanted it checked, I said okay, I will order that lab work for him but I did caution him that it is probably not going to be relevant to the condition he was exhibiting.

Q. I don't understand. You were ordering a test that you felt was unnecessary? Is that what you are telling me?
A. Basically to appease the patient. He insisted he wanted the lab work. He insisted on it.
Q. Well, have you ever told a patient I am --
A. I told him.
Q. Let me finish. Have you ever told a patient I am not going to order an unnecessary test, I'm sorry, I'm sorry, I'm just not going to do that?
A. Yes, I have done that.
Q. Okay. What time did Herb and his wife come to see you that day?
A. I cannot recall the exact time.
Q. Was it during the day or was it during the evening or was it during the morning?
A. It was during the day.
Q. And when he left your office did he then go to the hospital, as far as you know, to have that test performed?
A. I received the results of the lab test and apparently on 5-14-98 he did have the lab test done at the hospital.

MS. VANCE: May 12th happened to be a Tuesday of that year, if that makes a

difference.
A. May 14th of '98 the lab test was performed.
Q. So he came to see you on the 12th?
A. Yes.
Q. Did you fill out a requisition or did you call it into the hospital?
A. I called it in.
Q. Okay. And he followed up and that lab work was done on the 14th?
A. Yes.
Q. That's when he appeared at the hospital?
A. Yes.
Q. Okay. Let's continue on with after the words call in lab work.
A. Okay.
Q. What are the next words?
A. Spots and lines. The patient was seeing spots and lines at times. His vision. That's how he explained it to me. He was dizzy and I wrote clammy but he was, again with the, Herb was, he was always sweaty, he was always sweating when he came in. I examined, I offered to call in the eye exam.
Q. To who?
A. To a doctor. And have his eyes checked for him

and he said that he had a doctor that he would see for his eyes.
Q. Who were you going to call the eye exam to?
A. Dr. Bender which was only, within a mile from the office.
Q. Is he an ophthalmologist?
A. He is a ophthalmologist as well as an eye surgeon, a husband and wife team.
Q. All right. Eye exam call in. And then what are the next words?
A. Cervical cranial is the diagnosis due to the patient having a headache.
Q. What is that?
A. Cervical cranial.
Q. Read off those initials for me, if you will?
A. C-C-R-A-N, which is an abbreviation for cervical cranial syndrome, which is a headache diagnosis.
Q. How come it is not C-C-S?
A. It's easier for me to remember that way.
Q. C-C-R-A-N?
A. Yes.
Q. Is this your own personal acronym for headache or is this something out of the, a chiropractic term of art?
A. That's an abbreviation I wrote as far as -- I

can't relate it to a specific.
Q. Just so I know, C-C-R-A-N is an abbreviation that, that you have adopted?
A. For cervical cranial syndrome, yes.
Q. Which is another way of saying headache?
A. Yes.
Q. Okay. Just so I'm clear, eye exam call in is the end of that thought process, right?
A. Right.
Q. And then we have the C-C-R-A-N, that's the end of that thought process?
A. Right.
Q. Then you have tracers, floaters?
A. Yes.
Q. You have underlined that?
A. Yes.
Q. Why?
A. Because that's what he was seeing in his eyes, tracers and floaters at times, and tails on the subject, tails on the floaters he was saying. That's when I stated that you need to see an eye doctor for this. You need to see someone for this condition. This is not normal.
Q. And he also told you that he's taking what?
A. He did not tell me this. I asked the patient.

He said he had seen a doctor and he had given him medication. I do not recall the doctor's name. I do not recall him stating the doctor's name. That's why in the beginning I referred, I did not recall ever hearing Dr. Nelson's name because I never did. And I asked him what medications he was taking. He could not recall. His wife was not responsive. And I said could they possibly be Imitrex, Midrin, do those sound like the medications and he said possibly but he wasn't sure. But I wrote them down because I did ask him if he was taking medication. But I don't know what he was taking because I never actually saw the prescription myself to read them. They did not bring it with them. They didn't produce them if they did.

Q. And you've got refer for eye exam?

A. Refer for eye exam.

Q. That would have been to Dr. Bender?

A. Yes, I would have referred him. But he again stated that he has his own doctor that he could go to and see for an eye exam.

Q. And then what did you do?

A. I adjusted the patient. I did the, after this I would have then done the palpation, looked in his

eyes to see if his pupils had changed, any change in dilation due to the fact that he was having trouble with his eyes.

Q. Describe the manipulation that you performed?

A. I adjusted the cervical vertebrae.

Q. Which one?

A. The first cervical. Posterior and to the right. Also -- oh, I'll go through this. Then T4 posterior to the left. PI right. I used the drop piece.

Q. What's that?

A. PI to the right.

Q. What's PI?

A. Posterior ilium on the right side. And I used the drop piece to adjust that.

Q. DR?

A. Yes.

Q. Means drop piece?

A. Yes.

Q. That's the detractor?

A. No. That is a, it's a drop piece, it's a pelvic drop piece on the table and it is designed to adjust the pelvis and spine with tension on it and you adjust the pelvis and the spine when you see that it needs adjusting. It is another form

of adjustment for the lower back, hip.
Q. Did you ask Herb -- strike that.
Why did you perform those manipulations, for what reason, to treat what?
A. I adjusted the patient, the cervical manipulation to help relieve the headache the way I could with the manipulation. And cervical manipulation can reduce the signs and symptoms of a headache.
Q. Did it?
A. It didn't affect him. It made no change at all.
Q. It didn't affect him at all?
A. No. He did not get worse, he did not get better.
Q. Typically at the end of your manipulations would Herb say hey, I feel a little bit better?
A. Not typically. Most of the patients instantaneously do not get relief. It is within the following few hours or days.
Q. On May 12th when you were talking to Herb and his wife did you ask if he had ever had these types of visual disturbances before?
A. I do not recall ever asking him if he had them before.
Q. But would it be important for you to know whether or not he had these visual disturbances before?
A. Yes. But he did not state that he ever had the

problem before, a visual problem like that at any time before.

Q. Right. So as far as you were concerned this is the first time he's ever had it?

A. That he was exhibiting that and that alerted me to the eye exam.

Q. And the visual disturbances that he was complaining about included blurred vision?

A. Yes.

Q. Spots and tracers?

A. Yes.

Q. And floaters?

A. Yes.

Q. And tails on objects?

A. Yes.

Q. Had you ever had patients complain to you about visual disturbances like that before?

A. Yes.

Q. And is that a condition that you treat?

A. A condition that I treat? That I try to correct?

Q. Yes.

A. No.

Q. What do you typically do with patients who make those complaints to you?

A. I send them to an ophthalmologist to get an exam first and if, also I want to state that it is not in my record but I did tell Herb as well as getting the eye exam he needed to get that blood pressure under control. I said that was another cause that could have caused the headache as well as the visual changes that he was exhibiting.

Q. I was going to get to your differential diagnosis. But since you brought it let's talk about that.

Based on this constellation of symptoms did you arrive at a differential? Do you know what I mean by differential diagnosis?

A. Differential is meaning more than just the cervical spine problem.

Q. Well, you told me that one of the things that you considered in your diagnosis was an ophthalmological problem?

A. Yes.

Q. And also within your differential diagnosis was a problem related to his high blood pressure?

A. Yes.

Q. Anything else?

A. Not at that time, no.

Q. Okay.

A. Possible, due to the visual changes I thought there was a possible, he might have a retinal problem. That was one of the things, one of the differentials that I, I am not obviously capable to make that diagnosis but I considered there could be a problem with the retina.

Q. I'll keep that under the ophthalmology umbrella of differential diagnoses.

So the two systems at work here, in your thinking at that time, was something related to high blood pressure?

A. Exactly.

Q. Which could have been vascular, correct?

A. It could have been.

Q. Or it could have been within the, the eye system, the ophthalmology?

A. Yes.

Q. And let's talk about the headaches that he was complaining about.

A. Okay.

Q. Did you ask him whether he was having, whether he had ever had a history of headaches before?

A. As far as a continuous problem or an occasional headache?

Q. What did you ask him and what did he tell you?

A. He presented with the headache and I had, and he had stated he was having a headache that affected his eyes. He had never stated he had a headache -- let me back up. He had never presented to me with a headache condition before. That's about all I can tell you about his headaches.
Q. Did you ask him had you ever, and I take it that he told you that this condition that he came to see you about that day, blurred vision, the headaches, the soreness from the neck up, had been a condition that he had been living with for two weeks?
A. Yes.
Q. Did you ask him have you ever had a headache like this that lasted for two weeks?
A. Did he ever have a headache that lasted two weeks?
Q. Yeah.
A. I do not recall if I asked him that question exactly.
Q. Was it your impression that Mr. and Mrs. Tackett were trying to tell you that it was something out of the ordinary, this two week headache?
A. Yes.

Q. This two week visual disturbance was definitely out of the ordinary?
A. Yes, definitely.
Q. And they had never experienced anything like that before?
A. Yes.
Q. Was that the impression that you had been left with by these people?
A. Right.
Q. Did you inquire or did they tell you whether or not the condition had remained constant or was it progressively getting worse?
A. It was pretty well constant, I do remember that part. He said it was pretty well continuous, the headache.
Q. Had Mrs. Tackett accompanied Herb on many or any of the prior visits to your office?
A. I cannot exactly recall. But I remember maybe once or twice maybe. But I'm not exactly sure on that.
Q. Do you recall whether or not she indicated to you that she drove to the appointment on that day?
A. I don't remember, no.
Q. Okay. Or that Herb was unable to drive that day because of the headaches and the visual

disturbances?
A. No. And one of the reasons why I was concerned about his headache and visual problems was because he told me he was a courier at that time and I was like well, you're driving all the time now and that's what I said on the other exam.
Q. Do you know what Midrin is?
A. It is a medication for headaches.
Q. Do you have a PDR in your office?
A. PDR, yes, we do.
Q. Do you use it from time to time?
A. Occasionally, yes.
Q. Do you know whether Midrin is contraindicated for patients with high blood pressure?
A. I cannot answer that question.
Q. Do you know how Midrin works?
A. The exact mechanics of it?
Q. Well, I mean does it, does it constrict or does it dilate the arteries?
A. I assume due to the majority --
MS. VANCE: Don't assume unless you know.
Q. No. If you know.
A. Okay. Dilation more than likely, yes.
Q. Did he tell you or did you ask how long he had

been taking the medication which we're supposing was Midrin and/or Imitrex?

A. He said he had seen a doctor previously and received the medication from him. But exactly how long he had been taking it I could not tell you.

Q. Would it have been significant to you if he was taking this medication for a week and it was still not doing any good for his two week old headache and visual disturbance?

A. It's, patients with headaches I've, it can go on, they can go on for weeks. I mean, I've seen as far as, and it was a significant indication that there was definitely a problem. But from what I have seen, I have seen them last longer, I have seen them shorter with the same symptoms that he was exhibiting here.

Q. Do you know what some of the symptoms are for TIA's or strokes?

A. Yes.

Q. What?

A. Blurred vision, dizziness, visual changes, there are paralysis, trouble with speech, trouble with walking, trouble with balance.

Q. I don't want to cut you off. Tell me if you're

done.
A. I'm done.
Q. Are there risk factors that you are aware of for people with strokes? Are you aware of some of the risk factors?
A. Very similar to the TIA also is the stroke. Everything. Also the same dizziness.
Q. Not symptoms. I mean risk factors. Cigarette smokers?
A. Yes.
Q. Is that a risk factor, cigarette smoking?
A. Cigarette smoking, high blood pressure, obesity, women over the age of 40 on birth control pills.
Q. How about just being a middle-aged man?
A. Any person, the primary areas are 30 to 50 are stroke candidates, men.
Q. High cholesterol?
A. Yes.
Q. Did you, in the years that you had taken care of Herb had you ever checked his cholesterol?
A. No, I had not. Due to the fact that I was treating his low back condition. I didn't think that was pertinent.
Q. Do you agree that symptoms of a TIA could be warning signals for an impending stroke?

MS. VANCE: Objection.

Q. I think you can answer.

MS. VANCE: You can answer if you are able to answer. I'm not instructing you not to answer the question.

A. I can't determine if, or whether a person would have a stroke or a TIA as far as that goes.

Q. I just want to know whether it is a fair statement, if you know, that TIA's can be a warning signal for an impending stroke? Have you come to learn that through your education, background and training?

MS. VANCE: Objection.

A. Again, I can't relate, I mean I can't substantiate that with a qualified answer due to the --

Q. Due to what?

A. I can't substantiate that with an answer.

Q. You don't know?

A. I don't know.

Q. Okay. That's fine. If you don't know just tell me you don't know.

A. Okay.

Q. Do you know what a thrombolytic stroke is?

A. A thrombus which causes a stroke.

Q. And what is an embolic stroke?
A. That's an embolism that results in a stroke.
Q. Do they present, if you know, differently or the same?
A. I could not differentiate. I'm not able to.
Q. When a patient comes to you and have two or more conditions that may be responsible for his or her complaints and one of those conditions may be lethal, is it your standard of care or practice to, to rule out the most lethal first?

MS. VANCE: Objection. You are talking about the standard of care of a chiropractor?

MR. PARIS: That's right. I can't ask any other standard of care questions.

A. Could you repeat the question?

MR. PARIS: Kenny, could you read it back?

- - - -

(Thereupon, the requested portion of the record was read by the Notary.)

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MS. VANCE: Objection.

A. Due to what was presented with this patient I treated him according to how I would, a patient

exhibiting these symptoms.
Q. Did you understand my previous question? Because the question I asked was a general question. It was not, it was not patient specific.
A. Okay.
Q. Do you want, do you want the court reporter to read back the question? Rather than making it patient specific I would like to keep it general for the time being.
A. I am unable to --

MR. PARIS: Kenny, could you read the question back?

- - - -

(Thereupon, the requested portion of the record was read by the Notary.)

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MS. VANCE: Show an objection.

A. Generally the patients that I treat do not exhibit lethal conditions, okay?
Q. Okay. But under circumstances in which a hypothetical patient would come to you with complaints wherein two conditions may be responsible for those symptoms or complaints, one condition being potentially fatal or catastrophic and the other condition not, is it your standard

of practice to rule in or rule out the more lethal or more catastrophic condition first?

MS. VANCE: Objection. It goes beyond the scope of a chiropractor.

A. I can't.

Q. There are certain conditions that chiropractors deal with that could be potentially catastrophic and that, I think, includes spinal cord injuries and things that can render a patient paralyzed. Within the context of your profession when you are dealing with patients who come in with conditions that may be catastrophic -- or strike that.

In that context can you answer the previous question?

MS. VANCE: Objection.

A. I cannot.

Q. Without my rephrasing the question again?

MS. VANCE: Still an objection.

A. As far as ruling out, it would take, in the catastrophic sense it would take more testing than I would be able to perform and I would not be able to do those tests. I cannot. I cannot do that.

Q. Then you are saying you would not be the person

to rule in or rule out such a catastrophic condition?

A. Exactly.

Q. I can change the question to address instead of rule in or rule out. Would your focus be on the condition that you suspect, that is within your differential diagnosis, would it be your custom and practice to address that condition within the differential diagnosis which is most catastrophic first?

MS. VANCE: Objection.

A. If I'm presented with a catastrophic illness, like I said, I would have to send the patient to someone who could rule it in or rule it out if I suspected such. I would need to refer that patient to someone who could do it or definitely not a chiropractic, that I could not handle, if it does not fall within the scope of chiropractic I would have a consultation with that patient.

Q. If you suspected a TIA or an impending stroke what would you do with such a patient hypothetically?

A. I would refer the patient.

Q. Right to the hospital?

A. For an evaluation.

Q. Right to the hospital?
A. Probably to the hospital or to a neurosurgeon.
Q. All right.
A. In the hospital.
Q. And in your particular locale which hospital would that be?
A. The closest one we are close to is ACMC, which is 15 minutes away. But in this -- go ahead.
Q. And with a patient, let me see if I can understand the mechanics of this hypothetical situation, if you have a patient in your office who you suspect is having a TIA or impending stroke and you want the patient to go to ACMC, would it be your, your practice to call the emergency room and alert them that somebody's on their way in?

MS. VANCE: Objection.

A. I don't understand.
Q. Give me a hypothetical situation where there's a patient in your office?
A. It would depend on the patient.
Q. What would it depend on?
A. What the patient was exhibiting at the time.
Q. I'm saying if the patient was exhibiting symptoms such that you thought or suspected that the

patient was having a TIA or an impending stroke would you encourage that patient to go to ACMC?
A. Yes.
Q. Okay. And would it be your practice then to call the hospital and alert them that one of your patients is on their way in or do you have a practice in that regard?
A. I've never really had to do that. I would, if that situation arose I would call ahead.
Q. You would call ahead?
A. Yes.
Q. Okay. All right.
A. I never have been involved in that situation. Hopefully I never will.
Q. When Herb did come to see you on May 12th did he have significant risk factors for a TIA or impending stroke?
A. Herb was exhibiting a headache with blurred vision. I have seen many patients that have exhibited those symptoms.
Q. Not symptoms. I mean risk factors. Was he overweight?
A. He was overweight.
Q. On May 12th still?
A. Yes.

Q. I know that he weighed two hundred --
A. 65.
Q. 265 in 1995. Was he any lighter in '98?
A. No. I doubt it.
Q. Was he bigger?
A. He looked about the same.
Q. Okay.

MR. PARIS: Off the record.

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

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Q. As of May 12th, 1998 did you ascertain whether Herb was a cigarette smoker?
A. No.
Q. You still didn't know by then?
A. No.
Q. His blood pressure certainly was still high?
A. Definitely. Due to the blood pressure and the visual changes, though, I did refer him to the eye doctor as well as to get his blood pressure checked due to he definitely was exhibiting signs with the eyes and I was extremely conscious of the eye problems and he needed to have that looked at. As well as the blood pressure. And I

told him that day he needed to have his eyes checked and if not that day the next day he should have the blood pressure looked at. From receiving lab work on the 14th that's all I know that was done after he left my office.

Q. Did you tell Herb and his wife that his symptoms were probably just related to an ophthalmologic problem?

A. Yes. Might possibly. As well as the high blood pressure were probably causing the problem rather than the sugar, which he thought his sugar was elevated and causing the problem and he insisted on having the lab test run. I kept telling him no, that is not a factor.

Q. Wait. So you told him that in your opinion Herb's complaints were related to one of two things, either his eyesight?

A. Possibly a visual problem.

Q. Or?

A. The blood pressure as the problem.

Q. And within the --

A. Causing the headaches and the visual.

Q. Within the umbrella of blood pressure within your differential diagnosis would have been what, vascular problems?

A. Due to the blood pressure that could be causing the headaches, yes.
Q. Did you discuss with Mr. and Mrs. Tackett that Herb fit the profile and had some of the symptoms for a possible stroke or possible transient ischemic attack, or words to that effect?
A. No, I did not. Due to the information that I had I could not.
Q. Could not what? Did you finish your answer?
A. That's it.
Q. What other information would you have needed to impart that information to Mr. and Mrs. Tackett?
A. Well, if he was having problems with equilibrium, walking, maintaining his balance, like a numbness or a tingling or problems with the face, like maybe slurred speech or things of that sort.
Q. Under those circumstances what would you have done?
A. I would have definitely sent him.
Q. Right to the emergency room?
A. Right to the emergency room. But like I've stated, I've treated many headache problems with similar symptoms with good results.
Q. When was the next time you obtained any information about Herb after the 12th?

A. I received the lab work in the mail. And I read the obituary in the paper maybe the day before I received the lab work. I'm not exactly sure on the dates whether the two coincided.
Q. Did you have any conversation with the family after that?
A. No, I did not.
Q. Have you ever talk to the family members since May 12th?
A. No. I sent flowers to the funeral, though.
Q. I'm going to ask you a question retrospectively. This is going to be a retrospective question. I'm saying that for the benefit of your counsel more than anybody else.

Do you currently believe that the headaches and the visual disturbances that Herb was complaining about on May 12th, 1998 was related to an ophthalmological problem?

MS. VANCE: Objection.

A. I cannot make that determination. I'm not a specialist in that field. I can't answer that question.
Q. Okay. Did you come to learn what Herb died from?
A. No.
Q. You still don't know?

A. No.
Q. You haven't reviewed the autopsy or looked at his University Hospital records?
A. Just these.
Q. Okay. Fair enough. If you would have suspected a neurological component to Herb's headaches and visual disturbances on May 12th of 1998 would you have sent him directly to ACMC?
MS. VANCE: Objection.
A. Could you rephrase the question?
Q. I don't know if I can.
If on May 12th of 1998 you had suspected that there was a neurological component to Herb's complaints of visual disturbances, headaches, the floaters, the tracers, would you under those circumstances have sent him to ACMC?
MS. VANCE: Objection.
A. Due to what was presented with the patient, no, I wouldn't have done anything different.
Q. What I'm saying is at that time you didn't suspect a neurological component, did you, when he was in your office on May 12th of 1998?
A. No.
Q. And my question to you is, if you had suspected that there was in fact a neurological component

to those complaints would you have then under those circumstances sent him to ACMC?

MS. VANCE: Objection.

A. I can't relate to that because I mean that's a hypothetical situation.

Q. Absolutely it's hypothetical. It is no different than the other hypothetical question that I asked you.

A. I would definitely have to see the patient. Each case is treated differently. I could not make a determination without --

Q. I'm just saying imagine, if you will, Herb Tackett in your office on May 12th of 1998, the same circumstances, the same complaints, only you had suspected that there was a neurological component to those complaints, under those circumstances would you have sent him to ACMC?

MS. VANCE: Objection.

A. I would have done exactly what I did with the patient. Like I said, you're adding to the situation and I can't go beyond what I have already.

Q. Okay. Just give me a minute here.

On May 12th of 1998 you didn't perform the George's test?

A. No, I did not.
Q. Why not?
A. Herbert was already under the care of another doctor, he had already prescribed a medication and I was just trying to get him, give him temporary or any kind of relief with the chiropractic manipulation that I performed on him to the best of my ability and then I realized with the visual changes and the blood pressure that he definitely needed treatment elsewhere other than myself. He was not rescheduled.
Q. Is the George's test designed to help you get an understanding right then and there whether a patient is having an impairment to blood flow to his brain through the carotids?
A. The George's test is designed, but it is not a full proof test.
Q. Understood.
A. It gives the doctor a false sense of security. It is not a definite test. I can get a generalization, but not a real factualization of what's going on.
Q. Like any other test it's one more piece of information, right?
A. Exactly.

Q. If Herb was having, this is a hypothetical, if Herb was in fact having symptoms of a TIA in your office on May 12th, 1998 do you know what the results of your George's test would have been in all likelihood?

MS. VANCE: Objection.

A. I cannot predict the outcome of that. Every patient is different.

MR. PARIS: Okay. Thank you. I don't have anything further.

MR. CONWAY: I don't have any questions.

MS. VANCE: Kenny, we'll read it. Thank you.

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GREGORY M. RAY, D.C.

C E R T I F I C A T E

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

I, Kenneth F. Barberic, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named GREGORY M. RAY, D.C., was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and was subscribed by said witness in my presence; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this ____ day of _____, A.D. 20 __.

_____
Kenneth Barberic, Notary Public, State of Ohio
14237 Detroit Avenue, Cleveland, Ohio 44107
My commission expires October 18, 2003

E X H I B I T I N D E X