IN THE COURT OF COMMON PLEAS

OF CUYAHOGA COUNTY, OHIO

VIRGINIA B. SESSIN, et al.,

Plaintiffs,

vs. Case No.

NIKOLAUS TYSIAK, et al., 299010

Defendants.

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Videotape deposition of SUSAN E. STEPHENS, M.D., called for examination under the statute, taken before me, Denise M. Munguia, a Registered Professional Reporter and Notary Public in and for the State of Ohio, at the offices of Associate Orthopedics, 5 Severance Circle, Cleveland Heights, Ohio, on Tuesday, December 17, 1996, at 4:03 o'clock p.m.

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APPEARANCES:

On behalf of the Plaintiffs:

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ALSO PRESENT:

Norman C. Hadad

MR. HADAD: Today's date is December 17th, 1996. On the record at 12:03 -- I'm sorry, 4:03 p.m. Will the reporter please swear in the witness?

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

EXAMINATION OF SUSAN E. STEPHENS, M.D.

BY MR. PEARSON:

Q. Good afternoon, Doctor.

A. Hi.

Q. How are you today?

A. Good.

Q. I understand you're pregnant and you've already instructed us that if you need to take a break, we're all okay with that. Okay?

A. Okay.

Q. All right. So just let me know if at any time during this deposition you need a break.

A. All right.

Q. Would you please introduce yourself to the jury?

A. I am Dr. Susan Stephens.

Q. And, Dr. Stephens, are you a duly licensed physician in the State of Ohio?

A. Yes, I am.

Q. And when was that license obtained?

A. Oh, boy. 1986 or 7.

Q. Okay.

A. I have to look. 1987.

Q. Okay. And do you maintain an office in the Cleveland area?

A. Yes, I do, two offices, one at the St. Luke's Medical Building and one at the Severance Medical Arts Building.

Q. Okay. And you've been a practicing physician since 1986 -- 87? I'm sorry.

A. Yes.

Q. Where did you receive your medical training?

A. I went to medical school at University of Pennsylvania for four years and I did five years orthopedic residency at LA County Hospital-University of Southern California, and then I did one year spine fellowship training at the Cleveland Clinic.

Q. Okay. And do you currently

specialize in any particular branch of medicine?

A. I specialize in spine.

Q. Spine? Okay. Explain to me and the jury what your specialty means?

A. Spine specialty means that you specialize in disorders of the neck and the low back, or really anyplace along the spinal cord, the cervical region, the thoracic region, or the low back or lumbar region, and this can involve trauma, it can involve arthritis, it can involve muscle strains, it can involve all kinds of things, but just any kind of difficulty that people have with back and neck injuries.

Q. Okay. Is there a name that's given to that particular branch of medicine?

A. Just spine surgery or cervical spine surgery, lumbar spine surgery.

Q. After completing your postgraduate studies and training, did you engage in the full-time practice of spine surgery?

A. Yes, I've been in this practice of Associates in Orthopedics for five years.

Q. Okay. Are you currently on the staff of any hospitals?

A. Yes, I'm on the staff I think of

seven hospitals. Let's see. St. Vincent Charity, University, Mount Sinai, Bedford, the Meridia System. Did I say St. Luke's?

Q. I'm not sure.

A. Okay. I think that, that covers it.

Q. Okay. Are you a member of any professional societies or groups?

A. Yes, I'm a member of the American Academy of Orthopedic Surgeons, I'm a member of the Ruth Jackson Orthopedic Society, I'm a member of the Cleveland Orthopedic Society, I'm a member of the American Medical Association, the Cleveland Medical Association. I think that just about covers it.

Q. Okay. Are you board certified, Doctor?

A. Yes, I am.

Q. And what does it mean to be board certified?

A. Well, in orthopedic surgery, after you do your training, you have the option of taking what's called your boards, it's a written test and also an oral test. You take the written test two -- you take the written test right when you graduate from your residency, and the pass

rate is around sixty percent, and then two years after you have been in practice you take the oral exam, and that's when you go through your practice and you list for one year all the surgeries that you have done, you send that in to the board, and then they pick thirty cases, they send those back to you and you bring all your x-rays and your charts and everything on those cases, you schlep it all to Chicago, and then you go through a whole day of oral testing where they go through your cases.

Q. Okay. And that's something done on a national basis, correct?

A. It's done on a national basis.

Q. And that's something over and above your license to practice?

A. Uh-huh.

Q. When were you board certified? When did you become board certified?

A. I was board certified in I think 94. My memory's really, of these dates -- I think it's 94.

Q. Okay. Do you want to take a moment and look at your CV there?

A. Sure.

MR. PEARSON: We can go off the record for this.

MR. HADAD: Okay?

A. 94. That's fine.

MR. HADAD: Sorry.

Q. Okay. Doctor, are you published?

A. Yes, I am.

Q. Tell the jury what you have published.

A. I have published a chapter in a neurosurgery book on the natural history and epidemiology of lumbar disc degeneration, I've published on children's tumors in the upper extremity, I've published on a newly discovered type of fracture in the hand, and I also published when I was in college on, my major was neuropsychology and I dissected a bunch of rat brains and I published on that.

Q. Okay. Dr. Stephens, during the course of your practice as a spine surgeon, have you had the opportunity to observe and study and surgically treat injuries and deformities of the neck, back and head?

A. Yes.

Q. Okay. And at my request did you have

an occasion to examine the plaintiff in this case, Virginia Sessin?

A. Yes, I did.

Q. And when was that examination done?

A. It was done on October 25th, 1996.

Q. Okay. And do you remember at this time the details of that examination?

A. Yes, I do.

Q. Okay. Doctor, if at any time during the course of this examination you do not recall, you have made a record, I believe?

A. Uh-huh.

Q. Okay. And you do have that with you? And if it would refresh your recollection to refer to that record, you may look at that. Okay?

A. Okay.

Q. Dr. Stephens, are you being paid for your time today?

A. Yes, I am.

Q. What are you being paid?

A. I charge $2,000 for depositions.

Q. Okay. And did you also prepare a report --

A. Yes, I did.

Q. -- in connection with this, this case?

A. Uh-huh. I did.

Q. And did you charge us for that report?

A. Yes, I did.

Q. Do you remember what you charged for that report?

A. I believe it was a thousand dollars.

Q. Okay.

A. I had my secretary write it on a piece of paper, but I don't think she gave it to me.

Q. Okay. Doctor, when you examined Mrs. Sessin, did you obtain a history?

A. Yes, I did.

Q. Would you explain to me and the jury what you mean, what's meant by a history?

A. A history is when the patient first comes in to the office and you sit down, you introduce yourself, and then you talk about why they're there. A patient comes in and says, well, I have back pain, and then you take a history of the back pain, when did it start, was there a traumatic event, was there some inciting

event, when does the pain come, what brings on the pain, how is the pain relieved, what treatment they have had to date, what treatment they're to receive, who's treated them, you just really try to get a handle on what caused the problem and how the problem's affecting the patient.

Q. Okay. And what history was given with respect to Mrs. Sessin?

A. Ms. Sessin stated that she was in a motor vehicle accident, actually two, first her car was hit from the front, and then her car was rear ended.

Q. Okay. In conjunction with this examination, did you review records that were provided to you by me?

A. Yes, I did.

Q. And those records were from doctors who have treated or examined Mrs. Sessin in connection with the December 25th, 1993 accident, correct?

A. Yes, and they're all right here.

Q. Okay. Why don't you tell the jury what those records show, what you have there in your report?

A. Her records basically start off in the emergency room where she was initially taken. She was treated for a superficial laceration to the skull initially and, in the emergency room, it was closed and then she was sent home. She came back to the emergency room the next day complaining of neck and low back pain.

She then was referred to an orthopedic surgeon who also specializes in spine diseases, a Dr. Wilbur. He saw her and basically found that she had a pretty normal exam except for tenderness along the cervical spine and the low back. She didn't have any signs of neurologic damage or any signs consistent with a disc herniation, although she complained of low back pain occasionally radiating or going down into the right leg. So -- is this too detailed?

Q. No, go right ahead.

A. Okay. So he sent her for an MRI and the MRI showed disc degeneration and also showed two areas of lumbar disc herniation. This was the reading by the radiologist. Dr. Wilbur in his notes stated that he observed disc degeneration at these levels and slight

herniations. She was treated with months and months and months of physical therapy, always still complaining of mainly low back pain to Dr. Wilbur. He always recommended conservative care, meaning nonoperative care. Surgery was never recommended. And she basically just complained of what he called mechanical low back pain. She was then, seven full months after the accident, she went to her doctor, a Dr. Konfala --

Q. Doctor, I'm going to interrupt you quickly.

A. Okay. Sorry.

Q. Just to back up a bit. You said mechanical pain. Can you explain to the jury what you mean by mechanical pain?

A. There are a couple different kinds of back pain. There's back pain that comes from a disc degeneration, which is what this patient has, meaning your discs get arthritis and the water goes out of them and they're kind of smushed and they can cause back pain. There's also back and leg pain, when we say radiating pain or pain going down your leg, that's from a disc herniation where there's a big piece of disc pressing on the nerve going down the leg. That's

not the kind of pain she had. She complained of low back pain, and that, and mechanical low back pain means that when you sit or stand or move or bend or do anything mechanical with your back that you get the back pain.

Q. And why is that caused? How is that caused?

A. Well, studies have shown that disc degeneration causes back pain.

Q. Okay.

A. And back pain can also come from body habitus. If you are obese, this patient's obese, you have, you can have back pain. If you smoke, this patient smokes, it's been shown by epidemiology studies by Kelsey and others that if you smoke you have increased risk of low back pain. If you perform a job that involves bending and stooping and twisting and turning, you can have low back pain. And those are all mechanical actions that can cause low back pain.

Q. Okay. I'm sorry, you can continue.

A. Where was I? Okay. Dr. Konfala, seven months after the injury she started complaining of headaches which the patient stated was from the accident, Dr. Konfala saw her and

thought that her headaches were from hypertension. This patient had a long history of hypertension and had been seen in the past by Dr. Konfala. They also entertained the notion that these were post-traumatic headaches. In my report I don't really agree with that because these headaches started seven months later.

What's interesting about this patient is that she really has a difficult social situation in that she works at night and then comes home and has toddlers and young children to deal with all day, so Dr. Konfala, as well as the neurologists that she went to see, indicated that her headaches were related to her insomnia, her job, and also her difficult social situation. She was treated with antihypertensives and also she was treated with antidepressants, she was treated with Prozac.

Q. And what are those, the antihypertensives and the antidepressants?

A. She took Calan --

Q. Okay.

A. -- which is a antihypertensive, and she took Prozac which is an antidepressant.

Q. What is hypertensive? What do you

mean by hypertensive?

A. Hypertensive, I'm sorry, is high blood pressure.

Q. Okay.

A. So if they call somebody a hypertensive or they have hypertension, that just is a fancy medical word for high blood pressure.

Q. And Dr. Konfala found that Mrs. Sessin had high blood pressure?

A. That she had mild hypertension, that she had mild high blood pressure, but she also stated this patient had been seen prior to her motor vehicle accident and in the past and she also had high blood pressure.

Q. Okay.

A. So this wasn't a new finding.

Q. Okay.

A. Subsequently, because of her headaches, she was sent for MRI of her head and a CT scan of her head, which were both negative.

Let's see. What else? So over the period of time, she had years and years, she had two years' worth of physical therapy, which is ridiculous. She was seen by two neurologists, the last one was a Thomas Gretter who recommended

a psychiatric consultation for stress factors. So that basically is a review of the records.

Q. Okay, Doctor. And you also performed an examination; is that correct?

A. Yes, I did.

Q. Look at your report again and I want you to discuss for the jury what your examination found.

A. Well, my physical exam basically was completely normal except her, the patient's physical examination was completely normal, except for the fact that she complained of tenderness when I touched or palpated posteriorly back here along her neck muscles and her low back muscles, but she had completely normal range of motion, her motor strength, her muscle strength was normal, her sensation was normal, her reflexes were normal, everything was normal, as was when her physicians examined her, Dr. Wilbur and the neurologists and other people examined her. I found in my exam that her complaints were out of proportion to her objective actual physical findings.

Q. What do you mean by objective?

A. Objective physical findings are if I

move the pen from here to there, objectively everybody agrees that I moved the pen from here to there. It's not subject to opinion.

Q. Something that you can see?

A. Yeah, something that you can see and something that you can proof. Subjective is my saying this pen is purple and your saying it's light purple or, you know, mauve or something like that. So an objective physical finding is to say, okay, this patient's spine range of motion is normal, it's from zero to 90, this patient doesn't show nerve tension signs, meaning when I straighten the patient's leg out she doesn't complain of pain which is indicative of a disc herniation. Objective findings are something that anybody can, any other doctor can substantiate, there are tests that don't involve my using my opinion.

Q. Okay.

A. Okay?

Q. And an example of subjective would be pain?

A. Would be pain --

MR. ALKIRE: Objection.

Q. Okay. Let me ask you like this,

Doctor: What would be an example of subjective, of a subjective problem or a subjective finding?

A. A subjective, what we call in medicine subjective complaints, excuse my little cough thing, if the patient complains of back pain, if I have a patient that comes in and says I have back pain going down my leg, that's a subjective complaint, so it's my job to see when I examine them if I can find objective proof to come up with a diagnosis that's causing the back and leg pain. So if a patient comes in and says I have back and leg pain and I do a straight leg raise, which is a particular maneuver, and that's positive, meaning it causes them pain, I can say, okay, she has a subjective complaint of leg pain and an objective finding of a positive straight leg raise to substantiate her diagnosis which is a disc herniation.

Q. Okay.

A. Is that confusing?

Q. It's clear to me.

A. Okay.

Q. What were your findings with regard to the post-traumatic headaches?

A. I'm not a neurologist and I didn't --

you know, in terms of her overall gross motor exam, her exam was normal. In terms of her headaches, all I can go by is what I have read by her neurologists which have consistently pointed to stress, consistently recommended psychological evaluations, and also I can point to objective findings like an MRI of the brain and a CT scan of the brain, those are objective tests, those are tests that are performed by radiologists which were both found to be normal. So there's nothing causing the headaches, there's no blood, there's no tumor, there's no abnormality.

Q. Okay. And you also mentioned hypertension?

A. Right.

Q. And I believe that there was some mention by the, according to your records, some mention by the plaintiff of hypertension? Or that she was suffering from hypertension?

MR. ALKIRE: Objection to the leading nature of the questions. I think you ought to ask the doctor direct questions.

A. Well, actually I can answer that. That's no problem. The patient didn't say that she had a history of hypertension. Her doctor in

her report says that she was familiar with the patient and had treated her in the past for borderline hypertension, and that was Dr. Konfala.

Q. Okay. And you reviewed those records?

A. Yes, I did.

Q. And what were your findings with respect to the hypertension?

A. My findings were that she has a history of hypertension, she's mildly obese, and that can contribute to continued high blood pressure. And I think her high blood pressure continued as it does in many people throughout their lives and worsens as they get older and/or fatter or both.

Q. Okay. Doctor, I'm going to take you back just a little bit. You refer to an MRI that was done of Mrs. Sessin in January of 1994.

A. Correct.

Q. And you reviewed the records relating to that MRI; is that correct?

A. Yes, I did.

Q. And I just want to ask you a little more in detail about that MRI.

A. Okay.

Q. There were several findings from that MRI; is that correct?

A. Yes.

Q. Would you explain to the jury what those findings were?

A. I looked at the radiology report done by the radiologist, I also looked at the report of the MRI done by her spine doctor, which was Dr. Wilbur, and I also had the opportunity luckily to see the actual MRI, and Dr. Wilbur and my reading of the MRI are both different than what the radiologists came up with.

Nevertheless, what the radiology report came up with was that there was disc degeneration at every level in the low back, at the L3 level, at the L4 level, and at the L5 level. Also at the L4 level there was a left-sided disc herniation and at the L5 level the radiologist's report read a right-sided disc herniation.

However, when I reviewed the actual MRI myself, I agreed with the lumbar disc degeneration at those levels; however, the left- and the right-sided disc herniations were very

small and did not entrap the nerve or touch the nerve or cause any compression of the nerve, and this corresponds to Dr. Wilbur's reading when in his report he says that he found disc degeneration and slight, and quote, unquote, he used the word "slight," herniation at the L4 and the L5 level.

And he also made a point to say that these herniations did not correspond to any physical findings for the patient and also didn't correspond to any of her complaints, therefore he did not recommend any surgical treatment or further treatment of these, quote, unquote, slight disc herniations.

Q. Okay. Doctor, did you find anything in your exam or review of the records of the doctors that treated Mrs. Sessin to medically support the complaints of Mrs. Sessin?

A. No, I did not.

Q. Okay. Doctor, do you have an opinion within a reasonable degree of medical certainty whether Mrs. Sessin sustain injuries to her back in the December 25th, 1993 automobile accident?

A. I think that Mrs. Sessin initially could have sustained a low back strain, but this

would have resolved clearly within four to six weeks and, at the most, two months. I do not believe that the complaints that she has now are a direct and proximate, are directly or proximately caused by the initial injury. I also do not believe that her headaches are caused by the accident as she began complaining of them seven months ago and I believe that a lot of this patient's problems are stress related, related to her night hours, related to insomnia, related to her body habitus, her large size, and related to stress factors.

Q. Okay. Doctor, I'm going to continue, I'm going to conclude here very shortly, but do you have an opinion within a reasonable degree of medical certainty whether Mrs. Sessin sustained injuries to, well, whether she -- whether anything occurred in the accident to cause the hypertension that she's now suffering from?

A. No, I don't think anything happened to cause the hypertension or to cause the findings on her MRI or to cause the disc degenerations or the herniations that were seen in the MRI. Those are all normal findings in 90 percent of people over the age of 30.

Q. Okay. And you mentioned that there may have been an injury, a strain of the back, as a result of this automobile accident. If there had been a injury to the back from the December 25th, 1993 accident, do you have an opinion within a reasonable degree of medical certainty whether that injury should have healed?

A. Oh, that injury definitely should have resolved and I also in -- when looking through her records, I think that her treatment was inappropriate. I don't think that she should have had physical therapy over a period of two years. It's been shown time and time again in the literature that physical therapy past four to six weeks initially is of no therapeutic benefit.

MR. ALKIRE: Objection. Move that that be stricken.

THE WITNESS: Why? It's in the literature.

MR. PEARSON: That's just, that's just for the record.

Doctor, I thank you for your time. I don't have any further questions at this time.

MR. ALKIRE: Doctor --

THE WITNESS: Can I take a break?

MR. ALKIRE: Sure. May I see your file while you take your break?

MR. PEARSON: Off the record.

MR. HADAD: Off the record at 4:26 p.m.

THE WITNESS: Can he see my file?

MR. PEARSON: Sure.

(Recess taken.)

MR. HADAD: Back on the record at 4:29 p.m.

EXAMINATION OF SUSAN E. STEPHENS, M.D.

BY MR. ALKIRE:

Q. Doctor, hi, my name is Rick Alkire and I have the privilege of representing the Sessins, both Virginia and Anthony, and during the course of my questioning of you this afternoon, if you don't understand one of my questions --

A. Sorry. Okay.

Q. -- would you please let me know so that I can rephrase the question and make it understandable to you?

A. (Nodding affirmatively.)

Q. Is that yes?

A. Yes. I'm sorry.

Q. It's important that you speak out loud --

A. That's right.

Q. -- even though we have a videotape going.

Doctor, as you took a break, I had an opportunity of review the records that are in the chart that are right in front of you. Are all those records the only records that you reviewed in connection with this case?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Are there any more records that you reviewed?

A. I reviewed her MRIs and her regular plain films, but she had those, she brought them with her and then she took them away.

Q. That was your request and she complied with your request, correct?

A. Yes, absolutely.

Q. All right. And I take it you found her to be a cooperative individual when she was here?

A. She was your average cooperative

patient, yes.

Q. All right. And do you remember how long you spent with her?

A. Oh, I spent a pretty significant amount of time. I would say at least an hour, talking to her, examining her, talking to her again.

Q. So you would disagree with her if it's her testimony that you spent 16 minutes with her in two separate sessions, eight minutes each session?

A. I absolutely would agree because, as I have done these before and I know that if you don't spend a significant amount of time with the patient and a significant amount of time taking the history, that people like you will bring it up in a deposition and say you only spent eight minutes twice. No, it was not that short.

Q. All right. So if she timed you the two separate times you were with her, you would disagree with her timing?

A. I would totally disagree.

Q. All right. You didn't record the time, did you?

A. Absolutely not.

Q. All right.

A. But I also take off between 2 and 3 o'clock every Friday, so it's usually an hour that I spend doing a medical report.

Q. And is that what you're doing now every Friday, doing a medical report?

A. No, not every Friday, but when I have them, I only schedule them on Friday because that's the only time I can really devote a full hour to a physical exam.

Q. How many are you doing a month now?

A. I would say maybe two.

Q. Two medical reports a month?

A. Two independent medical exams, yeah.

Q. And are you doing still about two depositions a month as well?

A. No, not as many depositions.

Q. When did that change?

A. It never changed. It was never that many depositions.

Q. So you were never doing two depositions a month; is that correct, Doctor?

A. Correct. Absolutely.

Q. All right. Would it be fairer to characterize it as one or two a month?

A. One or two what?

Q. Depositions a month.

A. No. There are many months where I don't do any depositions.

Q. Do you do one or two IMEs a month?

A. Yes.

Q. How many depositions did you do this month?

A. This is my first.

Q. How many --

A. I haven't done a deposition in, I don't know when the last one was, maybe four months, five months ago.

Q. Okay. Have you reviewed cases for Mr. Pearson before?

A. No, I haven't.

Q. Have you ever reviewed any cases for his office before?

A. Yes, I have.

Q. Do you know how many?

A. Total?

Q. Yeah. Your best estimate.

A. I don't -- maybe eight or ten over the past couple of years maybe.

Q. And would those have been situations

where you were reviewing, like in this case, the claim that a plaintiff was making in a lawsuit for personal injury sustained by that person?

A. Yes.

Q. Each of those times; is that correct?

A. Each of those times, I would say so, yes.

Q. For Mr. Pearson's office.

A. For the office.

Q. Have you ever done any examinations for Mr. Greer's office here? Mr. Greer's from Gallagher Sharp.

A. You would have to ask him. I don't -- I kind of don't keep track of the exact office where they come from. So you would have to ask him.

Q. How much time did you spend on the report in this case; do you remember?

A. I spent a considerable amount of time. As you can see, they're underlined, they're highlighted, they're written, I have my little sticky notes, I also make other notes on the chart, so I spend a considerable amount of time doing the medical reports, and I also like to quote literature, I look up literature, I --

Q. You studied those records very carefully?

A. Absolutely.

Q. And I take it you did your very best to be fair in characterizing those records in your report?

A. Always. Always.

Q. And you did your very best to be fair in characterizing what's in those records today before the jury here?

A. Always.

Q. Is that correct? Did Virginia claim that she had headaches when she saw you?

A. At the time, yes, she did.

Q. Yeah. And in fact you write in your report that you believe the headaches she is having are due to stress, not the automobile accident at all, correct?

A. Based on the information that I received, yes, her headaches started seven months after the accident. If you usually have headaches -- if you have headaches secondary to an accident, you have headaches right away.

Q. Is it your opinion that that's what she told Dr. Konfala, that she only started

having them seven months after the accident?

A. That's the only, that's the only indication that I have.

Q. That's the indication that you believe is in these records?

A. Absolutely.

Q. Well, when we get to that, we'll discuss that specifically, Doctor.

A. That's fine.

Q. If she began having the headaches right after the accident, would that have any effect on your opinion about the relationship between the accident and her headaches?

A. I think it might have, I would definitely say that the headaches could be because of the accident, but again, after negative MRIs and negative CT scans, I would expect there to be some kind of pathologic reason or some kind of damage that would cause continued headaches, which haven't been found by myself or the neurologist or Dr. Konfala.

Q. In the several years of your active practice two years since you have been board certified, have you --

A. Well, I practiced five years.

Q. -- have you treated, Doctor, individuals who were in automobile accidents and who also complained of headaches due to the automobile accidents?

A. Yes, I have.

Q. And have you treated people that continued to complain of the headaches even after the physical therapy was over?

A. They usually complain of the headaches for about the first four to six weeks, and then they resolve.

Q. And have all of your patients who have complained of headaches had headaches that resolved?

A. Absolutely.

Q. Have you ever referred patients to neurologists or other specialists --

A. Absolutely, I have --

Q. -- who complained of headaches?

A. Yes. I refer them within -- if you come in and you have an injury and you're complaining of a headache, that's the first thing I do. I send you to a neurologist to make sure there's no organic cause, meaning that you didn't bump your head and you have some blood or your

brain shifted or something like that. So usually you send them right away to a neurologist, they get the MRI, they get the CT scan, and then you can make sure there's nothing wrong. She had an MRI and a CT scan and nothing was wrong.

Q. And is it your testimony here that people who complain of intransient chronic headaches always have MRI findings that would provide the reason for those complaints? Is that your testimony?

A. It is my testimony that if you are still complaining of headaches four years, or three years after an accident, that there has to be some kind of cause, and what you have to do is you have to look at the patient and look at everything that's going on and try to rule out the cause. Is it from the accident, is it from stress, is it from sleep deprivation, or is it from an organic reason? So you look at all of these things and to my, to my best estimation, and to my best opinion, it's because of stress, and also the psychologist that saw her as well as the neurologist came up with the same, the same thing.

Q. What psychologist was that?

A. Not the psychologist, the neurologist, I'm sorry.

Q. Actually both the neurologist and her internist both called these headaches post-traumatic, didn't they?

A. They called them post-traumatic, but also put a disclaimer in all their notes saying that they believe that they were stress related.

Q. Well, we'll go through those notes carefully so that --

A. That's fine.

Q. -- nothing's mischaracterized here, Doctor, but the truth is every single diagnosis attributable to headaches by the internist called them post-traumatic --

A. No, the truth is --

Q. -- in the diagnosis section of her --

A. The truth is if you just want to look at one line and say it only said post-traumatic, that's fine, but throughout every single note, the first thing they talk about is the incredible amount of stress and stress that this patient's under and her work habits and her insomnia.

Q. By the way, Doctor, what stress is different since this accident that didn't exist

before this accident, as far as you know?

A. What stress is different?

Q. Yeah.

A. I don't think there are any -- I don't think there's any different stress.

Q. So why isn't there a history of her complaining of headaches before this accident, in your opinion, Doctor? Given the fact that you're aware of no different stressors.

A. I think that maybe there are no headaches.

Q. Okay. So you don't believe she's having headaches; is that your opinion in this case?

A. I have found no objective findings to support her claim that she had headaches.

Q. All right. Doctor, let me ask you this, point-blank: Do you have an opinion as to whether this woman has headaches today?

A. Yes.

Q. And what is your opinion?

A. I think that if she does have headaches, they're related to her job, they're related to working all night, taking care of kids all day, and not sleeping. That would give me a

headache.

Q. What is her job?

A. Her job is a secretary, a receptionist, in the emergency room.

Q. All right. And would headaches interfere with one's ability to perform that role?

A. I would say so, as well as lack of sleep. And stress.

Q. And would back pain interfere with one's ability to perform that role?

A. I would say, yes.

Q. And again, just so that I am clear here, what home situation or what social factors were different after December the 25th, 1993 than had existed before that date when she was still employed and going to work on a regular basis at that same location, at Metro?

A. I think there was no different social situation, but there was also nothing to blame it on before the motor vehicle accident, whereas after the motor vehicle accident you have something to blame whatever is going on in your life, you know, I'm stressed out, the motor vehicle accident did it; I have a headache, the

motor vehicle accident did it; I can't sleep, the motor vehicle accident did it.

Q. What do you know about that motor vehicle accident, Doctor, in terms of precisely what my client's body parts hit within the vehicle?

A. She was initially hit head-on, or from the side, she said, and she had a laceration to the front of her forehead, then she put her foot up on the dashboard and braced herself as she was hit from behind.

Q. Yeah. And do you have any idea about the speeds of the vehicles when the various collisions occurred?

A. She didn't, when I asked her about it, she didn't exactly know the speeds, but I don't remember if I saw speeds in these notes --

Q. Well, did you ask --

A. -- so I can't --

Q. I'm sorry, go ahead, Doctor.

A. So from what I remember, I don't think that either one of the, either one of the cars were high speed. Meaning --

Q. Did you know where the accident happened?

A. It happened on, she was, it was around Christmas and she was getting on or off a highway exit or something. A ramp.

Q. Would it surprise you that she was in a vehicle as a passenger --

A. No, she was a passenger.

Q. -- on Interstate 480, she wasn't getting on or off, and she was going about forty-five miles an hour; would that surprise you?

A. No, that wouldn't surprise me, because she was on a highway.

Q. Yeah. Now, it was Mr. Greer's client that was entering that highway on that date and his vehicle went in front of Ms. Sessin's, the vehicle in which Ms. Sessin was situated, and there was a collision. Do you have any idea about the amount of property damage that was sustained by either of the vehicles due to that first collision?

MR. PEARSON: Objection.

A. I don't think it's my place to know the amount of property damage, it's my place to know the amount of bodily damage, and I can say that she was taken to the hospital and she had a

superficial laceration. This laceration did not probe to bone, so it was my opinion that this wasn't great force, it was a laceration that only went through skin. If it was a deep laceration that went through bone or caused fractures, then you could say, oh, my God, the car was traveling at excessive speeds and, you know, her head went through the windshield and things like that, but it was more like a paper cut than a real laceration down to bone.

Q. Doctor, do you agree that forces that occur when vehicles come into contact with one another become translated into the bodies that are contained within those vehicles?

A. Uh-huh.

Q. Do you agree with that?

A. Absolutely.

Q. And do you agree that when a person's head hits a windshield and stars it, causes a star pattern to occur, that great force is involved in that?

A. Not necessarily.

Q. Well, do you know how much force would be necessary to produce a star in a windshield?

A. Do you?

Q. I'm asking you, Doctor, you're the expert witness --

A. No, I don't.

Q. -- that's charging $2,000 for this deposition, not me.

A. But that's not unreasonable. I would like to know. Maybe you could inform me.

Q. Do you know, Doctor?

A. I know that if a person is in a car and they get hit, that the forces are transmitted throughout the body. It's just not one part.

Q. And do you know whether the windshield in this vehicle was caused to be starred because of the contact between Ms. Sessin's head and that windshield at the time of impact?

A. No, I don't.

Q. All right. You didn't see that in the records?

A. No, I did not.

Q. All right. Let me show you the record that verifies that, the North Olmsted Fire Department EMS run report marked Plaintiffs' Exhibit 3, Doctor, and would you please read for

the jury the history of present illness section of that report?

MR. ALKIRE: Mr. Pearson, let me hand you a copy of that so you'll see what I've handed your witness.

A. Patient was passenger in motor vehicle struck from behind, patient then struck windshield with forehead creating star in windshield and one centimeter laceration to the right eyebrow and forehead. Hematoma developed enroute and patient complained of nausea.

Q. And by the way, Doctor, is nausea a finding that -- strike that.

Is nausea a complaint one frequently receives in connection with a head injury?

A. Yep. Yes.

Q. So that would be consistent with a head injury, correct?

A. Well, she had a head injury.

Q. Yeah. Now, I want you to let the jury know whether you've ever seen any photographs of my client's injury --

A. No, I haven't.

Q. -- before you rendered any of the opinions here and before you characterized this

incident as insignificant.

A. I didn't --

Q. And superficial.

A. Just because you have a very large hematoma, as documented very well in this, in this record, that does not mean that you sustained a significant injury.

Q. All right. And by the way, just so that the jury understands, Doctor, on page 4 of your report you make the statement that there is no evidence that significant trauma was caused by the accident, as demonstrated by the lack of depth of the laceration which she sustained in that accident.

A. That's right.

Q. I read that correctly, didn't I?

A. Yes, you absolutely did.

Q. Please show the jury what has been marked Plaintiffs' Exhibit 20C and what you have characterized as a trauma which is not significant?

A. It's a large hematoma.

Q. Would you please show that to the jury?

MR. ALKIRE: And would the video

operator please focus on that photograph, please?

A. It's -- this is no big deal.

Q. Yeah, I understand in your opinion that that's no big deal, Doctor. You've made that clear.

THE WITNESS: Do you have it?

MR. HADAD: Yes, I do.

THE WITNESS: Should I hold it still?

Q. And, Doctor, let me hand and put the other one up, the frontal view, have you ever seen that photograph?

A. No.

Q. All right. And likewise, Doctor, upon your review of that photograph, that's insignificant as well, correct?

A. I don't think, and I think that most doctors would say this, is that you can't tell the degree of trauma from somebody developing a bruise or a hematoma because some people bruise more easily than others.

Q. All right. Doctor, see if you can answer my question, please.

A. You have to go by the depth of the

laceration. I did answer your question.

Q. Yeah. Yeah. See if you can, please.

A. That is the answer.

Q. The Exhibit 20B, please hold it up.

A. You hold it up.

Q. Okay, Doctor. Exhibit 20B, can you see it?

MR. HADAD: Did you want me to focus in on it?

MR. ALKIRE: Yeah, I wish you would, please.

MR. HADAD: Okay.

Q. You would adhere to your testimony, Doctor, that the photograph -- and could you do me the courtesy of telling me what Exhibit Number that is?

A. 20B.

Q. Yeah, 20B shows an injury which you term insignificant, correct?

A. The injury shows -- that picture shows a large hematoma. There is no way to go by the basis of the size of the bruise or the hematoma based on what kind of injury it is. What you have to go by is the laceration. She

had a cut which was superficial. It did not go to bone. This area bruises very easily. Some people bruise more significantly than others. I think you would have to use other information.

Q. All right. So, Doctor, just see if you can answer my question.

A. Like fractures.

Q. The injury shown in this photograph is something that you term not significant trauma, correct?

A. And I could not answer that question based on just that photo.

Q. All right.

A. That's why I just gave the answer I did. You have to go on other information. You have to use all the information together.

Q. Let me hand you Exhibit 20A, Doctor.

A. You have it, you can hold it for the camera just like I can.

Q. All right. Thank you, Doctor, for your cooperation.

A. You're welcome, and it's Exhibit 20A.

Q. Likewise Exhibit 20A also depicts an injury which you have decided is not significant, correct?

A. Based on the information I have.

Q. Yeah. Now, and by the way, you didn't have these photographs before you wrote your report?

A. I didn't need the photographs.

Q. All right.

A. In the chart, in the ER record it's documented very well that she had a large hematoma. In the clinic record when she followed up with plastic surgery it also documents that she had a large hematoma. I have seen those before. I don't need a picture of it. I can read the record.

Q. All right. And by the way, Doctor, do you need any pictures of the automobiles to understand the forces?

A. I can talk to the patient. I mean I have seen patients who have been significantly injured in automobile accidents. Yes.

Q. All right. So you really don't need to see the vehicles and the way they came into contact with one another to at all understand the forces that were visited upon the person --

A. You see --

Q. -- inside the vehicle; is that

correct, Doctor?

A. Yes, that is correct.

Q. And please give me the courtesy --

A. That is, that is correct.

Q. Please give me the courtesy of finishing my question before you interrupt me --

A. That's fine. That's fine.

Q. -- and I will afford you the same courtesy.

A. I thought you were finished.

Q. Well, I wasn't.

A. Well, I didn't know. That's why I started my answer.

Q. Well, please listen.

A. You see all the time on TV cars that are smushed and the person walks away.

Q. All right.

A. So I mean just because the car's all banged up and messed up, that doesn't mean anything in terms of the injury.

Q. And Mrs. Sessin didn't walk away from this collision, did she?

A. She was brought in by a stretcher on the basis of a laceration to the forehead, which is typical protocol for EMS, if you have a head

lac or a head injury, they bring you in on a stretcher on a back board to make sure you don't have neck injuries.

Q. And how many sutures were involved in repairing the injury to her head?

A. I don't know exactly how many sutures.

Q. Well, were any of them deep sutures?

A. All that was said in the plastic surgeon's note was that the superficial skin was closed and that the wound did not probe to bone.

Q. Well, perhaps we could look at the Fairview Hospital emergency room record that was generated right after this accident to determine the number of sutures, Doctor.

A. No problem.

Q. And the fact is that there were three 4-ought visceral deep sutures and fifteen 6-ought Ethilon simple sutures layered in a layered closure, correct?

A. That's fine.

Q. Well, is that correct or not?

A. I don't -- I'm looking for the record.

Q. I would appreciate if you would find

that.

A. Okay. I'm looking for it.

Q. I'd be happy to show you because --

A. That's fine.

Q. -- I went through your chart before and you do have it tabbed.

A. I have it tabbed for something else, though. So you want my comments on how the wound was closed?

Q. No, I want you to state to the jury the facts that have to do with the depth of this wound.

A. Deep sutures don't indicate how deep a wound is. All deep sutures mean is that it's below the skin. So if you have a laceration and it separates, you know, sometimes you cut yourself and you can see the white fleshy or fatty part below, so you put a couple sutures in to bring that fat together and then, in typical plastic surgeon style, it's not unusual to have 30 sutures in something that, that, in a cut that's that small just so that you get a beautiful repair. She has a beautiful repair. You can hardly see the scar.

Q. Does she have a loss of sensation in

the area of that scar?

A. Most people do.

Q. Does she?

A. I didn't test it.

Q. Did you ask her?

A. Nope, and I didn't ask her either.

Q. All right. So you weren't concerned with that aspect of her injury?

A. Well, I palpated the scar, I looked at it and she didn't complain and I palpated her cranium or I mean her whole head to see if I could feel any old fractures or any divots in her head and she didn't complain and I didn't feel anything.

Q. And if she had a lack of sensation she wouldn't complain, would she?

A. Well, she would say "I have a lack of sensation."

Q. Oh, really? Is that how you would elicit that subjective --

A. That's one of the ways.

Q. -- piece of --

A. That's one of the ways.

Q. Please let me finish the questions. I will do the same for you.

A. I thought you were finished.

Q. Well, if you would quit interrupting me.

A. I don't feel that I am interrupting you.

Q. All right. Now, Doctor, you have mentioned twice that she went to the emergency room the next day?

A. Yes.

Q. Please show me that record. And tell me what emergency room it is.

A. You have to give me a minute because these dates are --

Q. You could take all the time you need, Doctor.

A. Great.

Q. I sure would.

A. It was in one of Dr. Wilbur's notes, it says the next day she had increasing back pain and neck pain and then one of these notes --

Q. Well, what --

A. I'm looking for it. I know I saw it. It was in here.

Q. Yeah, I want to see the emergency room record that you're referring to, Doctor. Or

Dr. Wilbur's note, if it says such a thing, which I don't believe it does.

A. Says such a thing like what?

Q. Like there was an emergency room visit the next day.

A. Well, I thought there was.

Q. As you have said so in your report.

A. Did I say that in my report?

Q. Well, let's make that clear, Doctor.

A. Let's make it clear.

Q. Let me refer you to page 1 of your report. Would you like a copy of your report?

A. No, I have a copy.

Well, I'm not -- tell me if I'm looking for something that doesn't exist.

Q. Well, you're looking for something that doesn't exist.

A. Okay.

Q. And I want to make sure that the jury understands that you claimed it did. So would you please go to your report, paragraph 3?

A. Okay. Hold on one second. Date. I have --

Q. Have you found paragraph 3 of your report, Doctor?

A. Yeah, I did.

Q. And let's read to the jury what you said in paragraph 3 of your report.

A. Let me, let me finish looking through my stuff.

Q. Well, see if you can answer my question, please. Would you please read to the jury what's in paragraph 3?

A. I said let me finish looking through my records.

Q. I must advise you, Doctor, that if the judge were here you wouldn't be able to treat me that way. And I object to the tone and I object to the lack of respect that you show.

MR. PEARSON: And I'm going to object for the record at this time and ask that that be stricken from the record.

MR. ALKIRE: And I move that it remain.

MR. GREER: I join in that objection.

THE WITNESS: Is it in here?

MR. PEARSON: Don't say anything.

A. Because I remember seeing x-ray reports from the next day.

Q. You saw x-ray reports that were transcribed the next day, not taken. But I shall hand you your report so you can look at it.

A. I have a copy of my report.

Q. Well, you can't look at it and also look through your records, can you?

A. Well, and I -- right. So how could I look at your report and my record at the same time? I don't need it. I'm still looking through my records.

Q. Doctor, in paragraph 3 of your report you stated the patient was treated in the emergency room with closure of the laceration. Now, we found that record, correct?

A. Right. Right.

Q. The patient reported to the emergency room the next day complaining of neck and low back pain. She denied any radiation of neck pain into the arms or numbness and tingling. She did complain of low back pain radiating into the right leg.

You haven't been able to find a record that substantiates that, have you?

A. That she went to the ER the next day?

Q. Yeah, and did all those things.

A. Well, you know what I think? Well, I think what I did was in my notes I have ER close laceration, orbital x-ray, next day neck and low back pain constant pain. And I think that that is, if it's not in here under ER, under any ER records, and I believe that you say it's not there, I got it from my notes which says that she was in the ER. So --

Q. So your notes are incorrect, aren't they?

A. I guess they are.

Q. All right.

A. That particular note right there.

Q. All right. Now, let's go on to the next claim that you make factually that's not supported by the records.

A. Okay.

Q. Let's go to Dr. Wilbur's records, and in particular Dr. Wilbur's record that interprets the January 15th, 1994 MRIs.

A. Okay.

Q. Because you've characterized them one way and I want to make sure the jury understands how Dr. Wilbur characterized them.

A. Okay.

Q. First of all, do you know Dr. Wilbur?

A. Yes, I do, but he's dead.

Q. Yeah. And was he a board certified orthopedic surgeon?

A. I have no way of knowing that. You probably know.

Q. Do you know how many years of experience he had before he died?

A. Many years of experience.

Q. Yeah. Many more years of experience than you, correct?

A. That doesn't mean anything.

Q. Is that correct?

A. You have to -- how many, how many years did he have?

Q. Is that correct, Doctor?

A. I don't know. How many years of experience did he have?

Q. That's fine. Good enough. That's fine, Doctor. I'm not under oath, you'll not question me today.

Now, let's move on to Dr. Wilbur's note that you referred to to make the claim that he characterized both the L4-L5 and L5-S1

herniations as slight.

A. Okay.

Q. And perhaps I can expedite it for you. I believe he wrote a note on January the 27th, 1994.

A. Yes.

Q. Now, let's read paragraph 2 to the jury, please.

A. Review --

MR. PEARSON: Counsel, what are you referring to?

THE WITNESS: This.

MR. ALKIRE: Paragraph 2 of the 1-27-94 note --

THE WITNESS: January 27, 1994.

MR. ALKIRE: -- of Dr. Wilbur.

A. Review of the MRI showed disc degeneration at the 3, 4, 5, 1 levels. There is --

Q. Woah, woah, woah, woah, woah. You've misread that. And I want you to go back and read it.

A. Disc degeneration at the 3-4, 4-5 and 5-1 levels. There is central --

MR. ALKIRE: 5-S1 levels.

A. 5-S1 levels. There is central disc bulge with some upward tracking, slight, that's where I got slight from, slight herniation at the 4-5 and right-sided herniation at the 5-S1.

Q. He did not say slight herniation at the 5-S1 level at all in that note, did he, Doctor?

A. Yes, he did. There is no comma to separate that.

Q. Doctor.

A. Slight herniation at 4-5 and right-sided herniation at L5-S1.

Q. All right.

A. That's how I read it.

Q. In all fairness, Doctor, as you review these records fairly, your interpretation of that sentence is that the word "slight" not only applies to the 4-5 level, but also the 5-S1 level; is that right?

A. And also because I reviewed the MRI myself and I also know Dr. Wilbur, or knew Dr. Wilbur, and I know that if there was a problem, he would have operated on it.

Q. Now, let's talk about the MRI that you reviewed and that you felt was overread.

Doctor, did you know Daniel Feneli or Anthony Minotti?

A. (Nodding negatively.)

Q. Did you know that both of them are board certified radiologists?

A. That doesn't mean anything.

Q. Did you know that?

A. There's a difference of opinion.

Q. Did you know that?

A. I assumed it.

Q. All right. They were specialists in administering this test and interpreting the results, correct? Is that correct, Doctor?

A. That is correct.

Q. All right. Now, let's read what they said about the test that they administered and interpreted and then supplied to Dr. Wilbur. Please read what they said in connection with the L4-5 level and the L5-S1 level.

THE WITNESS: Do I have to read all this stuff?

MR. PEARSON: Yes.

THE WITNESS: I mean why can't he read it?

A. You want me to read the last three

paragraphs?

Q. I'd like you to read their impression of those two levels.

A. At the L4-5 level decreased signal intensity within the intervertebral disc on the T2 weighted images as noted. Consistent with degenerative disc disease. Left lateral disc herniation of the L4-5 intervertebral disc is noted on the left L4 foramen causing moderate stenosis. Also a mild central disc bulge is noted at this level. However, there is no evidence of central canal stenosis.

Q. All right. Fine. Now please read the same paragraph that would apply to L5-S1.

A. At the L5-S1 level a moderate sized focal right parasagittal disc herniation is identified which contacts the thecal sac and right S1 nerve root and results in mild central canal stenosis. No significant foraminal narrowing is noted.

Q. Now, please explain to the jury what the thecal sac is and what the right S1 nerve root is.

THE WITNESS: Can I get a model?

MR. PEARSON: Sure. Could we go off

the record?

MR. HADAD: Off the record at 5:02 p.m.

(Recess taken.)

MR. HADAD: Back on the record at 5:03 p.m.

A. This is a model of a spine.. These are the bones in between the discs, these are the discs right here. And each disc acts like a cushion between the bones. Each disc is like a jelly doughnut, it's got a soft center. So anytime people talk about a disc herniation, it's like if you squeeze a jelly doughnut, the soft, the soft jelly pops out the back. Now, when the jelly pops out the back, you get a big piece of disc pressing on this nerve root.

So this, what the thecal sac is, this is like taking a salami and cutting it in half, you take the x-rays or the MRI images and you can cut the person in half and you can see, you can see their spine just like this. So the thecal sac is the surrounding of the nerves, and what that is, it's like you take Saran Wrap and cover the nerves and you have spinal fluid beneath the Saran Wrap coating the nerves, and that whole

part, the Saran Wrap, the fluid and the nerves within is called the thecal sac, and at different points down the, down the spine, the nerves come out at different levels.

Q. And can contact with that sac produce radiating pain into the buttock or the right leg, if it's on the right?

A. If it's on the right, yes, and if it's on the left, on the left.

Q. All right. So a complaint of pain in the buttock or the right leg would be consistent with a right-sided herniation where there was contact with the thecal sac and the S1 nerve root, correct?

A. Only if you took into -- you have to -- the danger in medicine is just looking at one piece of information and trying to make a conclusion from that. You have to look at the physical exam together with this. So if there is an MRI finding of a right-sided disc herniation and the patient complains of right-sided leg pain, but on physical exam you don't have the straight leg raise or the tension signs that go along with the findings, then that herniation is not symptomatic, it can just be it was there,

it's an aside, it's something that happened.

Q. Now, there is no, there is in Dr. Wilbur's notes no doubt expressed by him that she was having low back pain or, for that matter, radiating pain in her buttock, her right hip or her right leg, correct?

A. But --

Q. Is that correct?

A. Incorrect. Because he states that she has mechanical low back pain, throughout his notes his diagnosis is mechanical low back pain, not herniated disc, not radiating pain, not she has a right-sided disc herniation that's causing problems and we need to do surgery. It was always mechanical low back pain.

Q. And he calls it mechanical low back pain throughout his notes, doesn't he, Doctor?

A. Yes, he does.

Q. He's not challenging the fact that she's coming to him because she's in pain, is he, in his notes?

A. When you said --

Q. Is he, Doctor?

A. -- the patient returns with mechanical back pain. It doesn't say the patient

returns with symptoms of a disc herniation. She comes in complaining of back pain, not leg pain.

Q. I understand that, Doctor. And the point is she's having pain, isn't she?

A. In her back.

Q. There's no question about that, is there?

A. No, there is no question.

Q. And there's no question that that was due to the automobile accident, is there?

A. I think there is a question of that.

Q. All right. So do you think it was purely coincidental that the pain she started having after December 25th, 1993 was because of the car accident? Do you think that's coincidental?

A. I don't -- what I think is that she suffered a lumbosacral strain in the accident. She had the MRI shortly thereafter and it showed diffuse disc degeneration, which was there before the accident. And I think that her pain is mechanical in nature, on the basis of her disc degeneration, on the basis of her work, on the basis of the work she does, sitting, bending, twisting, lifting heavy charts, and, I'm sorry to

have to get back to this, on the basis of her lifestyle and the stresses in her lifestyle and smoking and all other kind of factors that go into continued low back pain.

Q. Doctor, is there any evidence at all that this woman ever saw a doctor before she saw Dr. Wilbur for low back pain?

A. No, there is no evidence.

Q. And is there --

A. That I have.

Q. And is there any evidence at all that she ever missed a day of work due to low back pain before this automobile accident?

A. The only evidence that I saw, actually I have to take back what I said before, is in Dr. Gordon's report, do you have Dr. Gordon's report?

Q. Sure, I do.

A. And it says that she was in a motor vehicle accident twenty years ago, but I don't remember --

Q. Where she hurt her knees, Doctor?

A. Did she hurt her knees?

Q. Well, do you know that, the detail on that?

A. All I said was that she was in a motor vehicle accident. I didn't say what she said or whatever. I'm just --

Q. See if you could answer my question.

A. -- proposing.

Q. Are you aware of any evidence at all that this woman ever saw a doctor for low back pain before this car accident?

A. Me? No, I'm not. I don't have any of that information.

Q. All right. I understand that. Now, you made the statement that she had two years of physical therapy due to this accident, Doctor, and I want you to look at your records and show me what substantiates that statement.

A. When I said two years, I didn't mean two solid years of physical therapy. She had interrupted treatment.

Q. Doctor, she had physical therapy that ended April the 1st, 1994; isn't that correct?

A. And she said that, when she was here, she said that she had recently been back. And that she does exercises at home.

Q. Doctor, the only physical therapy she had due to this automobile accident began as a

result of Dr. Wilbur's prescription and continued through April the 1st --

A. And was interrupted.

Q. -- 1994, correct?

A. And she told me that she had continued physical therapy.

Q. Doctor, is there any record that indicates she had any more physical therapy beyond April the 1st, 1994?

A. The record that she told me.

Q. Doctor, are there any records in front of you, you've been provided them all, that indicate --

A. In here?

Q. -- that this woman had physical therapy after April the 1st, 1994?

A. No. Other than her telling me in the office that she had continued physical therapy.

Q. All right. Well --

A. She works in the hospital.

Q. Well, I understand that that's what you're saying, Doctor. There is not one record to substantiate physical therapy after April the 1st, 1994, correct?

A. In here? I don't, I don't know. I

would have to look through it again.

Q. Well, look through it again, then. Please.

THE WITNESS: Is there?

MR. PEARSON: Can we go off the record for this?

MR. ALKIRE: No, we can't.

THE WITNESS: I'm going to take a break. Okay?

MR. HADAD: Off the record at 5:10 p.m.

(Recess taken.)

MR. HADAD: Back on the record at 5:14 p.m.

A. She had physical therapy over a period of four months, not two years. But also I did not document that in my medical record.

Q. Actually, Doctor, the physical therapy began on January the 24th and it ended on March the 28th.

A. Here in the bill it said she received physical therapy on April 15th.

Q. Did you read the physical therapy records, Doctor?

A. Yeah, I did.

Q. And how many times did you notice that there were spasms that she was having?

A. Most of the time she had spasm.

Q. She had moderate to severe muscle spasm, didn't she?

A. That's not unusual.

Q. And is that at least due to the automobile accident, Doctor? Or do you think that's coincidental?

A. I would say that if you have paraspinal muscle spasm, it's an acute finding, meaning within the first four to six weeks. So if there's continued muscle spasm after six weeks, I think it's based on something else. Position, sitting, job, some other activity.

Q. Well, are you telling us that the muscle spasm she experienced during physical therapy were due to the automobile accident or not?

A. It depends when the spasm was. If it was in, if it was in the first four to six weeks, I would say yes. If it was after that, I would say no. Muscle spasm is something that happens acutely.

Q. Doctor, what is the physiology that

accounts for a muscle spasm in an automobile accident, as a result of an automobile accident.

A. Muscle spasm occurs usually in a automobile accident mainly in the neck and the low back because of flexion/extension injury. What happens is, even with a seat belt, if you're hit from behind, your body goes forward and your body goes backwards, and then sometime during that episode your muscles tighten and so your muscles are tightening going against a force that's going forward and backwards.

Q. Do the muscles also overstretch?

A. They can.

Q. And when they overstretch, do small hemorrhages occur within them microscopically?

A. You know, I know lawyers like to hang their hat on that, but it's not documented in the literature. I mean you can have, if you're talking about ligamentous strains and ligamentous hemorrhages, yeah, the ligaments can tear, but it hasn't been documented that you have hemorrhages in the muscle.

Q. Spasms are objective findings, aren't they?

A. Definitely.

Q. And there were objective spasms throughout her physical therapy, correct?

A. That's fine.

Q. Is that correct?

A. If it's in the note, then it must be correct.

Q. Well, see, now, Doctor, you reviewed the notes and all of these records and I'm just trying to test whether you have made any notes and given any significance to what's actually in those physical therapy records.

A. In the first six weeks, yes, there was spasm, even after six weeks there was spasm. But on my exam and on Dr. Wilbur's exam --

Q. Well, when was the first muscle spasm that was more than six weeks after the accident?

A. When was the first muscle spasm?

Q. Yeah, more than six weeks after the accident.

A. I would have to look through the records.

Q. Well, I ask that you do that. If you're going to make that statement.

A. Okay. Why don't I refer to Dr. Wilbur's.

Q. Well, Dr. Wilbur didn't administer the physical therapy, did he?

A. No, but he can -- when you examine somebody and you prescribe physical therapy, you should be able to note spasm. Right? That's one of the reasons why you send somebody for physical therapy.

Q. And do you think, Doctor, that the physical therapists who are administering the physical therapy would note spasms?

A. Yes.

Q. All right. And my question to you, Doctor, is what's the first muscle spasm that's noted that's more than six weeks after this accident? By the physical therapists, the records that you reviewed.

A. She has spasm all along.

Q. Well, I want you to tell me the first spasm that's more than six weeks old, if that's your testimony, that she had spasm all along. Because the last spasm I see is February the 11th when a statement is made that spasms are less painful, and I don't see another objective finding of spasm after that, Doctor. Maybe you do.

A. When did you say your last note is on spasm?

Q. February 11th. And that's a report, that spasms are less painful.

A. I don't see any after that.

Q. All right. Thank you, Doctor.

Now, let's turn to your characterization of Dr. Konfala's notes that you have reviewed very carefully. First of all, Ms. Sessin saw Dr. Konfala for the first time after this accident on July the 19th, 1994; is that correct?

A. I hate to say yes. I have to look at the note. This is an urgent visit and it's from July 19th, 94.

Q. Right. And would you -- and this is the record you were talking about of the Dr. Konfala records that you had reviewed in connection with your testimony today, correct?

A. Right.

Q. And, Doctor --

A. One of several records from Dr. Konfala.

Q. Right. We're going to go through them.

A. This is the first one.

Q. Okay. And this is the first one; I have characterized that correctly, haven't I?

A. Yes.

Q. And you know from reviewing Dr. Konfala's records that Ms. Sessin had been a patient of Dr. Konfala, correct? Is that correct?

A. Yes.

Q. And you understand, having read this accident -- having read this record that Dr. Konfala disagrees with you in terms of the characterization of this trauma, correct? She calls it significant, doesn't she?

A. She calls it significant? Can you point out where she says it's significant?

Q. Yeah. Sure. Sure. Third sentence, patient involved in MVA on 12-19-93 with significant trauma --

A. Okay.

Q. -- to the forehead and right eye. I read that correctly, didn't I?

A. Yes, you did.

Q. So at least with that opinion of yourrs Dr. Konfala has some disagreement

apparently?

A. She does disagree.

Q. Okay. Now, she also indicates in the next sentence that since the time of the car accident she has had persistent right posterior occipital pain, correct?

A. Yes.

Q. Not pain that just began seven months later, correct?

A. She says since the time of the car accident.

Q. And where is the location that those words describe?

A. The posterior occipital pain --

Q. Right.

A. -- is right back here.

Q. Right posterior?

A. The posterior occiput, this is your posterior occiput back here.

Q. All right.

A. And this is the right side. So this would be the right side.

Q. Thank you. And that's in the vicinity of the area where Ms. Sessin complains of neck pain, correct?

A. Yeah. I would say yes.

Q. And by the way, are you familiar with the term "contracoup"?

A. Yes.

Q. And what is meant by contracoup as it relates to the movement of the brain?

A. Contra means opposite, and so what they feel happens, and it's usually not a front to back type of injury, it's a side to side, is that if you hit yourself on one side, instead of having damage on the same side that you hit, you would have damage on the opposite side, and the hypothesis behind that is that you hit on this side, the brain pulls to the right side and causes some bleeding or some other kind of injury on the opposite side.

Q. Now, Doctor, when Ms. Sessin's head struck the windshield, creating a star pattern, did her brain move?

A. I don't know.

Q. Well, what do you think about that? Would you expect it to have moved? Given the physiology --

A. No.

Q. -- that would apply?

A. Given that she had a negative MRI and a negative CT scan which showed no evidence of blood or hematoma or old blood, if it had moved, if her brain had moved at all, you would see blood. You would see old blood on the MRI or you would see old blood on the CT scan.

Q. Well, what would prevent the brain from moving when the head abruptly stopped at the windshield?

A. Not having a significant enough force.

Q. Okay. So you feel that when her head hit the windshield, her brain didn't move at all? Is that correct?

A. I feel that way based on the CT and the MRI, which was normal. Which were normal.

Q. Now, did the doctor in this note list impressions or plans that she had?

A. Yes.

Q. And did she list two of them?

A. Yes.

Q. Did she list post-traumatic head pain for one?

A. And she also listed doubt any intracranial process occurring.

Q. All right. Did she list post-traumatic head pain?

A. Yes.

Q. And does that imply head pain after the traumatic --

A. Trauma.

Q. -- event which is described which would be the motor vehicle accident?

A. Yes, it does imply that.

Q. All right. And the hypertension, she lists that also, right?

A. Yes, she does.

Q. Now, she doesn't say that's causing the post-traumatic head pain, in fact she says it may be secondary to the present pain, correct?

A. Right.

Q. And that's far different than cause, correct?

A. Right.

Q. All right. And --

A. She also says that she suspects the patient has underlying hypertension, given her obesity.

Q. All right. And in fact she believes she was hypertensive before this accident,

correct?

A. Yes.

Q. And before this accident she wasn't having post-traumatic head pain, as far as this doctor documents, correct?

A. Correct.

Q. And you see no records among all those that you have carefully reviewed that would indicate that this lady ever went to a doctor complaining of head pain before this accident, correct?

A. Correct.

Q. And let's go to the next visit that is documented by Dr. Konfala and that would be August the 3rd, 1994? Do you have that visit, Doctor?

A. I go -- August the 3rd. 94?

Q. Yes. The next one chronologically.

A. 7-19. Yes.

Q. And does she continue to list as impression or plan post-traumatic headaches?

A. Yes, she does.

Q. And does she indicate that the hypertension was much improved?

A. Yes. She also says her headaches

seem to occur when she has been working, especially when she does not sleep well after working.

Q. All right. And again, just so that we're clear on this, these are headaches she's describing that she never described to anyone before December the 25th of 1993, correct?

A. That we know of, yes.

Q. Yeah. Well, do you doubt that she's been --

A. That I know of.

Q. Do you doubt that she's been candid, Doctor? Is that what you mean to imply?

A. I don't know. I can only go on the information that I have.

Q. All right. And do you doubt that a thorough search of records has been made in this case to make sure that you were supplied with all the medical records that have any significance?

A. No. No.

Q. You don't doubt that?

A. I don't doubt her prior complaints, I doubt her present complaints.

Q. All right. Now, September the 28th, 1994.

A. September 28th.

Q. Does Dr. Konfala once again provide the impression of post-traumatic headaches?

A. Yes, she does. She also says she has been having problems with insomnia related to her job, also related to her headaches.

Q. Does she indicate that the headaches are very intense and occurring daily?

A. Very intense and occur daily.

Q. And does she start out this note by saying that this is an urgent visit for this 39 year old white female with a history of post motor vehicle accident head pain times nine months?

A. Yes, she does.

Q. And would that imply that she's been having that pain for nine months?

A. Yes, head pain for nine months.

Q. So that's far different than your statement earlier that she was only having the pain beginning seven months after this accident, correct?

A. Very different.

Q. All right. And that's not what Dr. Konfala said at all; what she said is exactly

what we just read in this note, that she had been having head pain for nine months, correct?

A. Which is highly unusual.

Q. But nonetheless that's the what's been noted, correct?

A. Particularly given a normal MRI, a normal CT scan, a normal neurologic exam, which recommends a psych consult.

Q. On October the 12th, 1994 Ms. Sessin again saw Dr. Konfala for her headaches, correct?

A. Uh-huh.

Q. And Dr. Konfala characterizes them as a history of intractable headaches as of December 1993, correct?

A. Yes.

Q. And again she calls them post-traumatic headaches, correct, in her impression?

A. Yep. And she discussed significant social and work factors which are making things more stressful.

Q. All right. And once again, these social and work factors, Doctor, you're not aware of any difference between them at this point in time, in October of 1994, and the same factors

that applied in December of 1993, before this accident, are you?

A. No, other than there's something to blame them on.

Q. Well, you didn't ask Ms. Sessin, when you had an opportunity to question her, what differences there were in social, in her social circumstance before and after the accident, did you?

A. There were no differences.

Q. The only difference is the intervening automobile accident, as far as you could see, correct?

A. Correct.

Q. And did Dr. Konfala call these headaches chronic in her October the 12th, 1994 note under post-traumatic headache impression?

A. Yes, a chronic problem.

Q. And what does that mean?

A. It means, chronic, unlike acute, means right away, within, within an hour, within four to six weeks. Chronic usually means, in the medical literature, greater than six weeks.

Q. Of duration?

A. Right.

Q. Longstanding duration is what we're talking about, correct?

A. Yes.

Q. And she went on to characterize this as it may take months to years to find adequate treatment, correct?

A. Right.

Q. And to this day, as of the time you saw Ms. Sessin, she was taking medication and participating in treatment for her headaches, correct?

A. Yes, she was taking Calan for her hypertension and Motrin.

Q. And by the way, you alleged in your report that in addition to the Prozac that she was also taking Elavil. Is there any evidence in these records that she was ever taking Elavil?

A. Amitriptyline.

Q. Well, that's not what you said in your report, Doctor.

A. Well, that's just another name. But there are often more than one name for a drug. Elavil is Amitriptyline.

Q. All right. And do you know Dr. Konfala, by the way?

A. No, I don't.

Q. Do you know Dr. Rorick, the neurologist that Dr. Konfala referred Ms. Sessin to?

A. No, I don't.

Q. And did you see his December 8th, 1994 report among the records that we obtained from Dr. Konfala?

A. His -- what date?

Q. That he wrote a letter.

A. It's October 12th, 94?

Q. No, he wrote a letter December the 8th in addition to that. It's among Dr. Konfala's notes.

A. Okay. Yes.

Q. And did he indicate -- and that was one of the records you reviewed in connection with your opinions, correct?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. And he indicated under the impression that it was his impression that she is continuing to have chronic daily headaches and I cannot characterize them other than to say that they

seem to be post-traumatic and may be the muscle contraction or tension variety. Do you see that?

A. Yes, I do.

Q. All right. So he adhered to their origin as post-traumatic, correct?

A. Yes.

Q. And he didn't seem to doubt that she was having them, correct?

A. Yes. But then he prescribed Prozac which is an antidepressant.

Q. And by the way, do you understand the pharmacological workings of Prozac, what it's meant to do?

A. It's a feel-good drug, yeah.

Q. But what does it do specifically?

A. It acts centrally to build up serotonin. In the brain there are receptors that take up certain substances and serotonin is something that's found in things like chocolate, that's supposedly why women like chocolate so much, and other kinds of things that make your -- that make you feel good. And it's just like the new drug that came out to keep you from eating, to make you lose weight, is it blocks serotonin uptake so that serotonin stays around longer.

Q. Right.

A. And that's what Prozac does.

Q. Right. And that's the theory for its use to inhibit the absorption of serotonin and make it available for whatever else may be happening in this patient --

A. Exactly.

Q. -- so the patient could benefit from the serotonin?

A. Exactly.

Q. And there's no doubt in your mind that this Prozac was prescribed in connection with this sequelae of headaches?

A. I think it might have been prescribed for her anxiety and depression and stress related to her job.

Q. Well, you used it --

A. It says it may, look, in this thing it says it may take her two hours to fall asleep after going to bed at midnight. I mean why would he --

Q. And if one is having intractable headaches, that isn't an unlikely scenario, is it?

A. It's also not an unlikely scenario if

your circadian rhythm or your sleep rhythms are off.

Q. Do you know how long she had been working night shift at Metro?

A. Years.

Q. Yeah. And years before the accident, too, correct?

A. Yes.

Q. Now, in addition to that, Doctor --

A. But she hadn't had a three year old son for years either.

Q. Well, for three years she did, right?

A. That's enough to --

Q. Do you know how many sons she had?

A. That's enough to disrupt her. I know that she has three children.

Q. All right. Do you know how old the other two are?

A. I think one's ten and I forget how old the other one is.

Q. Is it your testimony, Doctor, that the forces that were generated in this accident were not sufficient to produce a herniation in a back that was already compromised by degenerative arthritis?

A. Yes. Studies have been done to show that degenerative arthritis does not predispose you to having disc herniations.

Q. All right. So you don't believe that the degenerative arthritis finding has anything to do with one's capacity to have one's discs herniated due to a trauma?

A. Studies have proven that not to be the case.

Q. And be that as it may, are you telling us that the forces in this accident with her right leg up against the dashboard at the time of the second hit wasn't sufficient to produce a herniated disc in the back?

A. I think it was significant enough to produce a strain, but given her physical exam at the time of her complaints and being seen by Dr. Wilbur, I have concluded that it was not significant enough to cause a disc herniation.

Q. Whether it did in her or not, were the forces sufficient to produce a herniation in someone, in this accident?

MR. PEARSON: Objection.

A. I mean I don't know what the forces were other than what you have to go by is the

physical exam.

Q. Well, Doctor --

A. If someone has a disc herniation, they have a positive straight leg raise, they have positive nerve tension signs, if they have a symptomatic disc herniation. She didn't have those kind of things, so I would have to say no, I do not believe the forces were significant enough to cause a disc herniation.

Q. The reason you don't know whether the forces were enough to cause a disc herniation is because you haven't explored the facts that would give you the information necessary to define the forces; isn't that correct?

A. I don't think so, no.

Q. Well, Doctor, how far did the car that she was in move after it was struck the second time?

A. I don't think that's -- I really, truly, in my mind and in my heart, do not think that that is indicative of what kind of injury people sustain, just like I said before, you have cars that are crushed to little bits all the time that are shown on the news and people get up out of the car and walk away. So I really think you

have to go by the physical exam. And we have to go by Dr. Wilbur's physical exam. Which was not indicative of a disc herniation, it was indicative of mechanical low back pain.

Q. Okay. So just so that I'm clear on what you don't know in terms of the facts of this case, you don't know the extent of property damage to any of the vehicles involved, correct?

A. Correct.

Q. You haven't seen any of the photographs that we all have and that were taken and are available to document that property damage, correct?

A. Because --

Q. Is that correct, Doctor?

A. -- property damage is not necessarily related or directly related to how much injury there is.

Q. I understand that's how you feel, Doctor. Other doctors might disagree with you. You don't know that, do you?

A. I don't know what?

Q. You don't know what the extent of the property damage is, do you?

A. No, I don't.

Q. You haven't seen the pictures, have you?

A. I have not seen the pictures.

Q. Before you wrote this report, you didn't even see the pictures of my client, correct?

A. I knew she had a large hematoma, if that's what you're trying to say, that I had no idea she had a big hematoma, it was in the record.

Q. No, what I'm trying to say is what I said.

A. When they say there is a large hematoma, there is a large hematoma. I don't need a picture. I can visualize that because I've seen it before.

Q. What I'm trying to say is what I said, you didn't see the photographs of her before you --

A. No, I did not.

Q. -- wrote the report or examined her?

A. But I don't need to, just like I don't need to see the pictures of the damaged car, because it's not necessarily indicative of how much injury the patient sustained.

Q. You didn't see the police report, correct?

A. I didn't see the police report.

Q. You don't know the speeds that the vehicles were traveling when --

A. No.

Q. -- when the collisions occurred, correct?

A. I don't know that either.

Q. All right.

A. Don't need to know that stuff.

Q. You don't need to know that stuff if you're predisposed to opine in this case that this accident caused --

A. Wait. Predisposed to --

Q. Predisposed to opine.

A. What's opine?

Q. Give an opinion.

A. Okay.

Q. That there is no relationship between the accident and the current complaints of my client, correct?

MR. PEARSON: Objection.

A. I don't think that I'm predisposed. I do independent medical exams all the time and I

am not a gun for hire, I come up with what I think is an independent and very accurate assessment and opinion and I oftentime give opinions to my clients that they don't like. So I just did that two days ago, I can show you the report.

Q. All right. What did Dr. Catana do by way of care and treatment of this insignificant superficial laceration?

A. Dr. Catana the plastic surgeon?

Q. Yes.

A. She had the large hematoma and I believe that she was seen in the office and she irrigated out the hematoma.

Q. Was it evacuated?

A. She evacuated, same thing, evacuated, irrigated.

Q. What's that mean?

A. That means that, when you saw the picture, she had that big lump underneath the laceration, so what she probably did was just take out a couple of the sutures and either squeeze out the clotted blood and then probably just put a little bit of fluid in there to wash it out a little bit.

Q. How many times did Dr. Catana see her?

A. I don't remember. Two or three.

Q. How about four?

A. Okay. Four.

Q. Over what period of time?

A. I don't know. Edema hematoma. Healing well. The last office visit I have is from 2-22-94.

Q. All right. So Dr. Catana saw Ms. Sessin, Ms. Sessin on the 4th, on the 6th, on the 11th --

A. And on the 22nd.

Q. -- and on the 22nd, correct?

A. Yes.

Q. And the first three dates were in January, correct?

A. Uh-huh.

Q. While the last one was in February, correct?

A. Correct.

Q. You mentioned that, in your direct testimony, that the amount of physical therapy in this case was ridiculous. Do you adhere to that?

A. I think that any physical therapy

above and beyond four to six weeks is not indicated. I believe -- what did you tell me the last date was? February something.

Q. Well, what the records indicate, which you have carefully reviewed --

A. Yeah, but I don't remember.

Q. -- is that physical therapy began on January the 24th and the plan was two times a week for three weeks and it was extended through 3-28-94, although there was no therapy given that day, and there was an aerobic screening on 3-17, so that the last therapy was really March 14th. That's not ridiculous, is it, Doctor?

A. I think it's ridiculous in that what they were doing for her was usually ultrasound, massage, and modalities that aren't proven.

Q. So you think Dr. Wilbur inappropriately prescribed the physical therapy that you see in these records; is that correct?

A. I don't think it's inappropriate to prescribe physical therapy. I just think as a physician, particularly with back injuries, you have to be more on top of the physical therapist because I think that it's more recent literature has shown that the typical modalities of

ultrasound and heat and ice and massage aren't modalities that provide any benefit, it's more the exercise, range of motion and things like that, and it was towards the end that they started doing the aerobic stuff.

Q. All right. So is it your opinion that it was inappropriate for this physical therapy to have been provided?

A. I don't think it was inappropriate to be provided, I don't think they were doing any modalities that were of any use.

Q. So you don't think the patient benefited from it?

A. Well, she obviously didn't. She's still complaining of back pain, right?

Q. Well, did you ask her?

A. Yes.

Q. And what did she tell you when you asked her if she benefited from the physical therapy?

A. She said that she had benefit, just like most people when they say they're there, they feel great, when you leave, it's the same.

Q. And is that what she told you?

A. Yeah.

Q. And, Doctor, lastly, you have gone on record indicating that you charge more than probably anybody in the City of Cleveland for depositions?

MR. PEARSON: Objection.

MR. GREER: Objection.

Q. Isn't that correct?

MR. PEARSON: Objection.

A. Gone on record?

Q. Yeah, you have said that in deposition, haven't you?

A. I think I might have, sure. Is that true? Is that true?

Q. Well, is that what you said?

A. I think when I first started doing depositions I charged $2,000 and most people were charging 1,700. I think that it's up to, most people are probably up now to 2,000.

Q. All right.

A. But I don't keep track of what other people do. I can only keep track of what I do.

Q. Just so that we're clear and so that there's no question about this, on page 59 of a deposition you gave in a case called Marilyn Peckinpaugh versus Beatrice Tabor, at page 59,

lines 3 through 13, the following exchange took place:

"Question: Doctor, just a little legal housekeeping that I have to do here to wrap up. You were retained by the defense in this case. Can you tell us what your charge is for the deposition?"

And your answer at that time was "I charge more than probably anybody in the City of Cleveland for depositions. I charge $2,000 and I do this because I don't like to do them all that much. So if I am high, I don't get that many. I do one or two IMEs a month."

I read that correctly, didn't I?

MR. PEARSON: I'm going to object and move to strike at this time.

Q. I read that correctly, didn't I, Doctor?

A. Absolutely.

MR. ALKIRE: Thank you. I have nothing else.

MR. PEARSON: Also move to strike.

EXAMINATION OF SUSAN E. STEPHENS, M.D.

BY MR. GREER:

Q. Okay, Doctor, my name is Mark Greer

and I represent the other defendant in this matter, Nikolaus Tysiak. And I have a few questions for you. I want to clarify a few things.

You have been licensed as a physician in Ohio since 1987?

A. Yes.

Q. So nearly ten years now?

A. Yes.

Q. Before you were licensed in Ohio, you did an orthopedic residency?

A. Yes.

Q. How long was that?

A. Five years.

Q. Then you mentioned something about doing a fellowship at the Cleveland Clinic?

A. Yeah, I did a year of extra spine training and spine surgery and spine study and research at the Cleveland Clinic for a year.

Q. Okay. Then you also mentioned that you became board certified in 1994?

A. Yes.

Q. Are all physicians board certified?

A. No, not all physicians pass the test.

Q. Okay. Do you know what percent of

orthopedic surgeons are board certified?

A. You know, I don't know what percentage actually are, but I know that the pass rates are between 60 and 70 percent.

Q. Okay. Is it true that some physicians don't even attempt to become board certified?

A. Some physicians don't attempt to be board certified and some physicians take the test ten to millions of times and never pass.

Q. Okay. Now, Doctor, I want to follow up on a couple items that plaintiffs' counsel asked you. He asked you about your testimony concerning physical therapy that the plaintiff underwent, and I want to make sure I understand something. On October 25th of 1996 when you performed your independent medical examination, did the plaintiff report to you that she had recently gone back to physical therapy?

A. She mentioned it. But I don't, I don't have any record of it, so --

Q. Okay. But that's the history that she gave you, correct?

A. Yes.

Q. Okay. Is it fair to state, Doctor,

that you must rely, that any physician must rely on their patients to give correct information in terms of history and during an examination?

A. Exactly.

Q. Okay.

A. Yes.

Q. You were also asked a question by plaintiffs' counsel concerning spasms and whether there were any spasms which were found more than six weeks after the accident, and plaintiffs' counsel referenced you to a February 11, 1994 physical therapy record. Was February 11, 1994 more than six weeks after the December 25th, 1996 accident?

A. February?

Q. 11th.

A. I think it's just on the border, isn't it? December, January? It's just on the border.

Q. Okay.

A. Just a little bit outside of six weeks.

Q. So it was beyond six weeks? Okay.

Now, Doctor, you were asked a lot of questions by plaintiffs' counsel concerning

whether you ever saw any photographs of the cars involved, or of the plaintiff. When you were provided with the records of Dr. Wilbur, were there any photocopies of photographs of the cars in Dr. Wilbur's records?

A. No.

Q. Were there any photocopies of photographs of the plaintiff in Dr. Wilbur's records?

A. No.

Q. Is there any indication whatsoever that Dr. Wilbur was ever given photographs of the cars or the plaintiff?

A. No.

Q. Similarly, Doctor, you were asked whether you had ever seen the police report. Is there any indication that Dr. Wilbur was ever given the police report?

A. No.

Q. Okay. Now, Doctor, I'd like to talk to you about, and this is on page 1 of your four page report, at the bottom, you talk about Dr. Wilbur's examination.

A. Uh-huh.

Q. Am I correct that he first saw the

plaintiff on January 14th of 1994?

A. Yes.

Q. What was his conclusion, according to his notes, as to the plaintiff's physical examination?

A. His conclusion, you mean what he found on his --

Q. What he found on a physical examination.

A. She had completely normal range of motion and negative nerve tension signs, and he treated her conservatively, meaning with some medicine and followup.

Q. Okay. Did he find any objective abnormalities during that examination, Doctor?

A. Any abnormalities? The only thing he states is that she complained of pain on range of motion.

Q. Okay. Did he find any objective?

A. No, he didn't. There was no atrophy, her motor exam was 5 out of 5, which is normal, her sensory exam was normal, and no abnormal or pathologic reflex was seen.

Q. Okay. So the only finding he had was a subjective complaint that the plaintiff made?

A. Right.

Q. Now, Doctor, plaintiffs' counsel asked you some questions concerning the radiologist interpretation of the MRI.

A. Okay.

Q. And there was some discourse about the word mild or moderate in terms of describing herniations.

A. Okay.

Q. Do you recall that?

A. Yes.

Q. From your review of Dr. Wilbur's records, how do you believe that Dr. Wilbur characterized those findings?

MR. ALKIRE: Objection.

Q. Himself.

MR. ALKIRE: Objection.

A. Well, I know by, by his record, he was not impressed. He said that she had a slight herniation at the L4-5 level and the S1 level. He --

MR. ALKIRE: Objection. That's a misreading of that record.

THE WITNESS: It is not.

MR. ALKIRE: That's not what he

said.

THE WITNESS: There's no comma there. I know my grammar. Maybe you should look it up.

MR. ALKIRE: It's a slight herniation at 4-5 and right-sided herniation at 5-S1. If you're going to read a record of a dead person, read it correctly.

MR. PEARSON: Objection. Move to strike.

MR. GREER: I'm going to object and move to strike.

THE WITNESS: Just because he's dead doesn't affect this.

MR. ALKIRE: Sure, it does.

THE WITNESS: No, it doesn't.

MR. ALKIRE: He can't come in here and defend this record.

THE WITNESS: He wouldn't come in and defend it anyway right now.

MR. ALKIRE: Of course he would.

THE WITNESS: You're just trying to use that. That's horrible. Using a dead person like that.

MR. ALKIRE: I think what you're

doing is horrible, Doctor.

THE WITNESS: I think what you're doing is horrible.

MR. GREER: I'm going to object and move to strike the comments from Mr. Alkire.

Now, Doctor --

MR. ALKIRE: I move that they remain.

THE WITNESS: That's horrible.

Q. Again, would you indicate what you believe Dr. Wilbur's notes state concerning his findings --

A. Okay.

Q. -- as to the nature of the herniations?

A. He discusses the MRI.

MR. ALKIRE: I object to that.

A. And he says in his note 1-27-94 review of the MRI showed disc degeneration at the 3-4, 4-5 and 5-S1 levels. There is central bulge, upward tracking, slight herniation at 4-5 --

MR. ALKIRE: You're not reading every word, Doctor.

THE WITNESS: Yes, I am.

MR. ALKIRE: I object to that.

THE WITNESS: I am. There is central disc bulge with upward tracking, slight herniation --

MR. ALKIRE: Now you are.

THE WITNESS: I was before, too. I'm sure if you read the record you'll see that. Slight herniation at 4-5 and right-sided herniation at 5-1. I recommend further --

MR. ALKIRE: 5-S1.

A. I recommend further conservative care.

So it is my opinion that as a spine surgeon, if I see somebody and their MRI is so remarkable and they're having all these complaints that correspond with the MRI, I'm not going to recommend further conservative care. I mean it is ob-- he says the patient is slowly getting better with time.

Q. Okay. Thank you, Doctor. Now, Doctor --

A. She is, wait, even she is to continue Motrin, of all of the things he could give her, you know, he's not giving her narcotics for pain, he's not recommending epidural blocks, he's

not -- he's giving her Motrin, which is like, you know, aspirin, it's the least, it's, you know, when I start somebody on pain meds, there's a pyramid, you go Motrin, then you go the stronger ansaids like Lodine and Relafen and things like that, then if that doesn't hold the pain, you go to Tylenol Number 3, then, you know, all kinds of other things for pain. But he gave her Motrin, so it's obvious, it's only obvious that he was not impressed.

Q. Okay. Now, Doctor --

MR. ALKIRE: Objection. Move that that be stricken.

Q. Now, Doctor, you personally had a chance to review the MRI films, correct?

A. Yes, I did.

Q. What did you feel the MRI films demonstrated?

A. I --

MR. ALKIRE: Objection.

A. As a independent medical exam and looking at her MRI, I agree that she had disc degeneration at the same levels that the radiologist talked about. However, at the 4-5 level, as said, as stated by Dr. Wilbur, I was

not impressed with the size of the disc herniation. I also was not impressed with the size of the disc herniation at the 5-1 level.

Q. Okay.

A. 5-S1 level.

Q. Now, in terms of the disc degeneration, Doctor, you discussed that on page 3 of your report. Do you have an opinion to a reasonable degree of medical certainty as to what caused that degeneration that was noted?

A. Well, many studies have been done, I wrote a chapter in Hardy's book, who is a neurosurgeon, about lumbar disc degeneration. Ninety percent of the people over age 30 have evidence of disc degeneration. It's just a natural aging process where as you walk around and as you live, you're always weight bearing and so the disc just gets squished more and more and they lose some of the water. And so as they lose some of the water, the signal changes on the MRI or the CAT scan and it shows up as disc degeneration.

Q. Okay. Now, Doctor, did the accident cause the disc degeneration?

A. No, it did not.

Q. Okay.

A. And the MRI was taken a little bit more than two weeks after the motor vehicle accident and disc degeneration doesn't happen in two weeks.

Q. Okay. How long does it take for disc degeneration like what you saw --

A. Takes years.

Q. -- to occur?

A. Years.

Q. Okay. Now, Doctor, continuing on in your report, you talk about Dr. Konfala next. And you note that the plaintiff first saw Dr. Konfala on July 19th of 1994; is that correct?

A. Yes.

Q. That's seven months after the accident?

A. Yes.

Q. Correct? And that's the first time that the plaintiff went to Dr. Konfala concerning headaches?

A. It's the first documented episode of, it's the first documented page or anything, history, of her complaining of headaches.

Q. Okay.

A. So I don't know if she had headaches for seven months and didn't go to see somebody or they just started at seven months.

Q. Okay. That's the first time she saw Dr. Konfala?

A. Yes.

Q. And she had seen Dr. Konfala before the accident?

A. Yes.

Q. Okay. Dr. Konfala was her physician?

A. Yes.

Q. Okay. Now, in your review of Dr. Konfala's records, are there any photographs of the property damage as to the vehicles?

A. No, there are no photographs at all.

Q. Any photographs of the plaintiff?

A. No.

Q. Is there a police report?

A. No.

Q. Is there any indication that Dr. Konfala was ever given photographs of the cars, the plaintiff or the police report before she was able to issue a report?

A. No indication whatsoever.

Q. Okay. Now, you talked about Dr.

Konfala's notations about the plaintiff's lack of a regular sleep pattern and that she also noted on August 3rd of 1994 particular occasions when the headaches seemed to have occurred.

A. Uh-huh.

Q. What did Dr. Konfala indicate concerning those headaches and when they occurred?

A. Well, she indicated that she felt that her sleep pattern was causing this as well as the stresses at work. Her headaches in one note, 8-3-94, her headaches do seem to occur when she has been working, especially when she does not sleep well after working.

Q. Okay. Now, Doctor, is that what the plaintiff reported to Dr. Konfala?

MR. ALKIRE: Objection.

A. Pardon?

Q. Is that what the plaintiff reported to Dr. Konfala on that visit?

A. It's in the history of present illness and that's where you put what the patient states.

Q. Okay. Now, Doctor, on page 3 of your report you discussed Dr. Rorick, who the

plaintiff was referred to for a neurologic consultation.

A. Okay.

Q. What significance, what, if anything, did you note of significance concerning Dr. Rorick's consultation or treatment of the plaintiff, with regards to her headaches?

A. What I noted the most is that although everybody, not everybody, but Dr. Konfala and Dr. Rorick are always talking about post-traumatic headaches, they always put in their notes her sleeping patterns, her stress level, all of these other things, even though they keep saying post-traumatic. In his impression it says it is my impression that she is having post-traumatic headaches, but then in the following session -- sentence he says in a situation like this it is difficult to separate psychological from organic factors.

Q. Okay.

A. It says she would undoubtedly benefit from having a more regular routine with regular sleep hours. However, due to economic factors, she needs to work at night.

Q. Doctor, during your examination of

the plaintiff, did you find any objective abnormalities?

A. No, I didn't. Her exam was completely normal.

Q. Okay. Doctor, in your opinion, based upon a reasonable degree of medical certainty, do you believe that the accident in December of 1993 had any cause or relationship to the plaintiff's leave of absence two years later?

A. No.

MR. ALKIRE: Objection.

MR. GREER: Okay. I have no further questions, Doctor. Thank you.

EXAMINATION OF SUSAN E. STEPHENS, M.D.

BY MR. PEARSON:

Q. Doctor, I just have one followup question to everything that you've been testifying about for the last two hours. Plaintiffs' counsel presented you with a document marked Plaintiffs' Exhibit 3, which is a EMS run report form, and he asked you to read from the chief complaint section of that document. Do you remember that earlier?

A. Yes.

Q. There is another section on that

document, if you look down at the comments section at the bottom of that document, there's also some notes made there. You see that?

A. Uh-huh.

Q. Why don't you read for the jury what that says?

A. It says changes, comments, patient denies neck or back pain, denies any other injury, patient was wearing seat belt, no change in status and wrapped.

Q. Okay. And that document is from the day of the accident, right?

A. Exactly.

Q. Okay. And that's the document that you testified to earlier, correct?

A. Yes.

MR. PEARSON: Okay. I have no further questions. Thank you, Doctor.

EXAMINATION OF SUSAN E. STEPHENS, M.D.

BY MR. ALKIRE:

Q. And, Doctor, it's not uncommon for a person involved in an automobile accident to deny pain in the back or neck at the scene and within 48 hours begin experiencing pain?

A. No.

Q. Isn't that correct?

A. That's correct.

Q. All right. So that's not a significant finding to dismiss potential neck or back pain due to the automobile accident, correct?

A. I don't think it's significant, but it's also not insignificant.

Q. All right. And what also is not insignificant, Doctor, is the fact that nowhere in your report do you indicate that Ms. Sessin told you that she started physical therapy again, correct?

A. That -- there is nowhere in my report, no.

Q. Right. And there's --

A. I don't think I even mentioned physical therapy in my report.

Q. The fact of the matter is you didn't mention in this report that Ms. Sessin told you that she went back to physical therapy after this --

A. I remember everything Ms. Sessin said. I spent a long time with her. She gave me a long speech about how Dr. Wilbur's wife was

doing and how the wife was moving to Colorado, and all of this couldn't have taken place in two eight-minute sessions about how the wife was copying with the death. I mean we had a very -- we spent a long period of time together. This was not that long ago. I remember everything.

Q. And it's not in your report?

A. No, it's not in my report.

Q. All right. And the sentence you skipped when you reading Dr. Rorick's report under impression is that however, I am prepared to treat her as I would any patient who has had an accident with subsequent headaches, correct?

A. I didn't skip that sentence.

Q. Well, did you --

A. I didn't read it.

Q. All right.

A. I stopped at the sentence before.

Q. Well, then you read the one after it, didn't you?

A. I guess I did.

Q. I have no further questions.

A. However, I am prepared to treat her as I would. But you have to look at the however. I mean however. He has nothing else to

hang his hat on, he's going to say post-traumatic despite the fact that he goes through all her social issues.

Q. And not only did he say it in that report, but the final report that he wrote dated December the 8th, 1994, he went on to say, "It is my impression that she is continuing to have chronic daily headaches."

A. Yes.

Q. "I cannot characterize them other than to say that they seem to be post-traumatic and may be the muscle contraction or tension variety," correct?

A. Correct.

MR. GREER: I have nothing further.

MR. PEARSON: Let's go off the record.

MR. HADAD: Off the record at 8 -- I'm sorry, excuse me, 6:03 p.m.

MR. PEARSON: I don't know if Mark has anything else. He seems to be having a problem.

MR. GREER: No.

(Discussion had off the record.)

MR. HADAD: On the record at 6:04

p.m. This concludes the deposition on 12-17-96 at 80 -- excuse me, 1804 p.m., 6:04 p.m. Thank you.

MR. PEARSON: As you know, you have the right to review the transcript. You have to tell her whether you want to reserve or waive it.

THE WITNESS: (Nodding negatively.)

MR. PEARSON: You waive?

THE WITNESS: Waive. Definitely.

- - - - -

CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 30 day of December, 1996.

Denise M. Munguia

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

My commission expires May 23, 2000.

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