

1 IN THE COURT OF COMMON PLEAS

2 CUYAHOGA COUNTY, OHIO

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4 CRISTEN L. DOUBLER,)

5 Plaintiff,)

6 vs.)

7 DAVID E. HELSEL,)

8 Defendant.)

) CASE NO. 301684) JUDGE DANIEL GAUL

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10
11 Videotaped deposition of SUSAN ELLEN

12 STEPHENS, M.D., a witness herein, called by the
13 Defendant for Direct Examination pursuant to the
14 Ohio Rules of Civil Procedure, taken before me,
15 the undersigned, Mary Lyn Liddle, a Registered
16 Professional Reporter and Notary Public in and
17 for the State of Ohio, at the offices of
18 Associates in Orthopedics, 5 Severance Circle,
19 Suite 304, Cleveland Heights, Ohio, on Friday,
20 the 27th day of June, 1997, commencing at 3:30
21 o'clock p.m.

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23 - - -
24
25

COPY

1 APPEARANCES:

2 On Behalf of the Plaintiff:

3 NURENBERG, PLEVIN, HELLER & MCCARTHY
4 CO., L.P.A.

5 BY: Ellen McCarthy, Attorney at Law
6 1370 Ontario Street, First Floor
 Cleveland, Ohio 44113-1792

7 On Behalf of the Defendant:

8 LAW OFFICES OF MARILLYN FAGAN DAMELIO

9 BY: Cornelius J. O'Sullivan
10 Attorney at Law
11 Lakeside Place, Suite 410
 323 Lakeside Avenue West
 Cleveland, Ohio 44113

12 ALSO PRESENT:

13 Scott Morrison, Videographer

14 Ken Simon, Videographer

15 - - -

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Red.</u>	<u>Rec.</u>
Susan Ellen Stephens, M.D.	4	22	53	56

1 THE VIDEOGRAPHER: We're on the
2 record.

3 SUSAN ELLEN STEPHENS, M.D.,
4 of lawful age, a witness herein, having been
5 first duly sworn, as hereinafter certified,
6 deposed and said as follows:

7 DIRECT EXAMINATION

8 BY MR. O'SULLIVAN:

9 Q. Dr. Stephens, my name is Cornelius
10 O'Sullivan, and I'm here on behalf of my
11 associate, Laurie Letts, who represents David
12 Helsel in this lawsuit. I understand that you're
13 expecting a baby soon.

14 A. In a week.

15 Q. If there's anything we can do to make you
16 more comfortable, I will hurry this along, just
17 let us know.

18 A. Thank you. I appreciate that.

19 Q. Have you picked any names yet?

20 A. Timothy.

21 Q. Doctor, could you please state your name
22 and spell your last name for the record?

23 A. Dr. Susan Ellen Stephens, S-t-e-p-h-e-n-s.

24 Q. Are you duly licensed as a physician and
25 surgeon in the State of Ohio?

1 A. Yes, I am.

2 Q. When did you obtain your license?

3 A. In 1986.

4 Q. And where are your offices located?

5 A. We have one office here at this location,
6 which is at the Severance Medical Building, and
7 another one at the Saint Luke's Medical Building.

8 Q. Where did you attend medical school,
9 Doctor?

10 A. I went to the University of Pennsylvania in
11 Philadelphia.

12 Q. And when did you graduate?

13 A. I graduated in '86.

14 Q. After medical school, did you have an
15 internship?

16 A. Yes. I did a one year internship in
17 general surgery at the University of Southern
18 California, LA County Hospital in Los Angeles,
19 and then I did my orthopedic residency at the
20 same place, the University of Southern
21 California, LA County Hospital, and then after
22 that I did a one year spine fellowship at the
23 Cleveland Clinic.

24 Q. And what is your specialty now?

25 A. My specialty is spine disorders of the

1 cervical spine, the neck or the -- and the lumbar
2 spine, low back.

3 Q. After completing your postgraduate studies
4 and training, did you then engage in the
5 full-time practice of orthopedic medicine?

6 A. Yes.

7 Q. And have you been so employed since?

8 A. Yes.

9 Q. Are you on staff at any hospitals?

10 A. Yes. I'm on staff at approximately eight
11 hospitals: University Hospital, University
12 Bedford, Mt. Sinai, Saint Luke's, St. Vincent
13 Charity, Meridia Huron, Meridia South Pointe and
14 Meridia Euclid.

15 Q. And do you teach?

16 A. Yes. I'm on the teaching staff at Case and
17 also at Saint Luke's.

18 Q. Can you tell me about any professional
19 medical associations you belong to?

20 A. I belong to quite a few. I belong to the
21 American Academy of Orthopedic Surgeons, the
22 American Medical Association, the National
23 Medical Association, the Ruth Jackson Orthopedic
24 Society, the Ohio Orthopedic Society, the
25 Cleveland Medical Association, the Cleveland

1 Orthopedic Society and maybe a few others.

2 Q. Can you tell us what it means to be board
3 certified?

4 A. Board certification is a -- it's like a
5 special certificate, kind of like a special
6 accomplishment or feather in your cap. It's a
7 test that you take. After you're done with all
8 your orthopedic training, you have a written
9 test. The pass rate is only 60 percent.

10 You take that written test, and then two
11 years later, if you've passed the written test,
12 you take an oral exam, and that's when you -- for
13 one year, you submit a complete list of all the
14 surgeries and cases you've done, and you take
15 them all -- you submit that list to the board in
16 Chicago.

17 They pick, I think it was between 15 and
18 30, I always forget the exact number, and you
19 bring all those x-rays and charts and stuff to
20 Chicago. And then you go through an all-day
21 testing where different physicians sit around the
22 table and test you on the different cases that
23 you've done. And so if you pass your written and
24 your oral, then you get your board certification.

25 Q. And you're board certified, aren't you,

1 Doctor?

2 A. Yes, I am.

3 Q. Okay. We're here today to discuss the
4 examination that you performed of Cristen
5 Doubler, the Plaintiff in this case. Dr.
6 Stephens, you're being compensated for your time
7 today, are you not?

8 A. Yes, I am. Can I take this jacket off?
9 It's pretty hot. Okay.

10 Q. Would you tell me, please, the amount of
11 your compensation?

12 A. I get \$2,000 for this deposition.

13 Q. Is it customary for you to charge that
14 amount?

15 A. Yes. I charge that amount for my time.

16 Q. Are you aware of what other physicians
17 charge for their time in these matters?

18 A. Yes.

19 MS. MCCARTHY: Objection.

20 THE WITNESS: They charge the
21 same amount.

22 BY MR. O'SULLIVAN:

23 Q. And is that a standard in the industry?

24 MS. MCCARTHY: Objection.

25 THE WITNESS: Yes, it is

1 standard.

2 BY MR. O'SULLIVAN:

3 Q. Doctor, during the course of your practice
4 over the years, have you had the occasion to
5 examine and treat people with spine, neck and
6 shoulder injuries?

7 A. Yes, I do.

8 Q. Have you had a chance to examine people
9 where those injuries came from automobile
10 accidents?

11 A. Yes, I do.

12 Q. Have you had an occasion to examine the
13 Plaintiff in this case?

14 A. Yes. I examined her on January 3rd, 1997.

15 Q. Do you remember the details of that exam?

16 A. Yes, I do.

17 Q. Do you keep a record or a report of that
18 exam?

19 A. Yes. I make notes at the time of the exam,
20 and then I dictate a formal report.

21 Q. Do you have that record with you?

22 A. Yes, I do.

23 Q. Would that record refresh your
24 recollection?

25 A. Yes.

1 Q. You may refer to that record as needed
2 throughout the remainder of the questioning.

3 A. Okay.

4 Q. Did you obtain a history of the Plaintiff
5 when she came in for her examination?

6 A. Yes.

7 Q. What was the history that she gave you?

8 A. She stated she was a driver in a motor
9 vehicle, she was wearing a seat belt, she was
10 stopped and that she was rear ended.

11 Q. Did she tell you anything further?

12 A. No.

13 Q. Did she tell you about medical history?

14 A. Her medical history was significant only
15 for another motor vehicle accident, which she
16 states she wasn't injured in, and she didn't
17 really have the exact -- she denied any prior
18 history of injury; although when I reviewed her
19 medical records, I saw that she was in a motor
20 vehicle accident before I examined her. And when
21 I asked her about it, she said that she hadn't
22 had an injury in a motor vehicle accident.

23 Q. Did her history include the medical
24 treatment or the care that she had sought in this
25 case?

1 A. Yes, it did.

2 Q. And can you briefly describe that?

3 A. Initially, after the accident, she was seen
4 in the emergency room. From the emergency room,
5 she was referred to a Dr. Kim Stearns, who is an
6 orthopedic surgeon. She was treated and examined
7 by him. Also, at the same time, she was seeing a
8 Dr. Mandat, who I believe was her family
9 physician. And then later on that year, or the
10 following year, she was also seen by another
11 physician in California.

12 Q. And why do you take a history, Doctor?

13 A. Well, it's important to take a history,
14 because, number one, you want to find out what's
15 wrong with the patient. You need to ask them,
16 "What parts of your body are hurting? When does
17 that pain come on? Are there specific activities
18 or specific things that aggravate the pain or
19 cause the pain?"

20 It helps you get together all the facts so
21 that you can make a diagnosis, so that you can
22 make a conclusion or an impression about exactly
23 what's going on with the patient. So you want to
24 know their past medical history, if there have
25 been any other accidents, if they've ever had

1 back pain before, what kind of work they do.

2 Sometimes work can aggravate injuries. What kind
3 of activities they do outside of work, do they
4 work out, lift weights, things like that.

5 Q. And do you rely on the history that's given
6 to you by the patient?

7 A. Yes, I do.

8 Q. After you obtained the history of the
9 Plaintiff in this case, did you then perform an
10 examination?

11 A. Yes, I did.

12 Q. What did that examination consist of?

13 A. The examination consisted of testing the
14 range of motion of her -- of the involved area
15 she complained of, her neck, her dorsal spine,
16 her low back, her right shoulder, muscle testing
17 to see what kind of strength she had in her upper
18 extremities or lower extremities, her reflexes,
19 that's part of the neurologic exam, if all her
20 reflexes were intact and her sensation. Also, we
21 did some radiographs, some x-ray exams of the
22 parts of the body that she complained of.
23 Basically, the standard exam.

24 Q. And what were your findings?

25 A. My findings were that basically I had

1 very -- I didn't really have any pertinent --
2 what we call pertinent positive findings in that
3 her -- the physical exam of her neck showed full
4 range of motion. Although she complained of
5 tenderness when I touched her muscles in the back
6 of her neck, I could not palpate or feel any
7 spasm, any muscle spasm.

8 There was no edema, which is swelling, or
9 erythema or redness around the area. Her
10 neurologic exam of her upper extremities in terms
11 of her deep tendon reflexes were -- was
12 completely normal. Her sensation was normal.

13 When I examined her right shoulder, she
14 also had full range of motion, although she
15 complained of pain when she fully lifted up her
16 shoulder. She also complained of pain, what we
17 call diffusely, meaning all around her shoulder,
18 wherever it was palpated.

19 There were also no signs of instability of
20 her shoulder, meaning when I did the different
21 tests of her shoulder, her shoulder didn't feel
22 like it was going to pop out or come out of the
23 socket. And then examining her low back, that
24 was a normal exam also.

25 Q. And what's the significance of that in

1 regard to the statements that the Plaintiff made
2 to you?

3 A. Well, if you're complaining of neck and
4 right shoulder and low back pain two or three
5 years out from an injury or at all, you expect to
6 find some factual, objective, physical findings
7 to support your claim.

8 So if I say I have a cervical strain and
9 I'm complaining of neck pain, when I touch back
10 there in the muscles, I expect to feel some spasm
11 or some tightness. I also would expect a
12 decreased range of motion.

13 If I say that I have numbness and tingling
14 in my upper extremities or weakness in my arms, I
15 expect some abnormal reflexes, abnormal motor
16 testing, abnormal sensory testing. You try to
17 put all your facts together to support and
18 validate what the patient complains about.

19 Q. And did you find any of those facts in this
20 case?

21 A. No, I did not.

22 Q. Doctor, did you do x-ray examinations and
23 things of that nature?

24 A. Yes, I did.

25 Q. And what were your findings with regard to

1 those other tests that you performed?

2 A. We performed x-rays of her right shoulder,
3 her neck, her dorsal or her thoracic spine and
4 her lumbar spine, which were all normal.

5 Q. And any other tests that you performed?

6 A. I didn't perform any other tests, although
7 she did have records of an MRI of her cervical
8 spine, MRI of her neck, which was read as
9 normal. And also she had an EMG and nerve
10 conduction study, testing the nerves of her right
11 upper extremity, which also was completely
12 normal.

13 Q. And what is the significance of these
14 normal findings?

15 A. Well, again, anytime a person is
16 complaining of pain and they continue to complain
17 of neck pain, back pain, arm weakness, arm
18 numbness and tingling, you want to find some
19 path -- what we call pathologic basis for the
20 pain, meaning you want to find something abnormal
21 on the x-ray or you want to find something
22 abnormal on the MRI, like a disk herniation or
23 nerve compression or something like that. Or on
24 the EMG, when they do the muscle testing, you
25 want to find something that would cause what the

1 patient complains of. So you want to find some
2 kind of abnormality that would cause the patient
3 to complain of the neck or the -- of the -- the
4 neck, the arm or the low back pain.

5 Q. Are those what you would call objective
6 tests?

7 A. Yes.

8 Q. What's the difference between an
9 "objective" and a "subjective" test?

10 A. An "objective test" is something that can
11 be repeated. It's fact, like this table is
12 wood. It's something that, in terms of a
13 physical exam, that another physician can
14 repeat. You know, if I do range of motion on my
15 neck and it's full like this and another
16 physician does range of motion on my neck and
17 it's full like this, that's an objective finding
18 that you can repeat. It's factual.

19 A "subjective complaint" or a -- it's
20 basically "subjective" complaints meaning that
21 that's what the patient complains of. "I have
22 back pain, I have neck pain, I have arm
23 weakness." And so what you want to do is find
24 some objective or factual evidence on the
25 physical exam or on the diagnostic studies that

1 back up her subjective complaints.

2 Q. Now, Doctor, the Plaintiff in this case was
3 seen by a Dr. Mandat. Have you reviewed those
4 records?

5 A. Yes, I have.

6 Q. And can you tell me what your review
7 consisted of?

8 A. My review consisted of looking at all the
9 records that -- and the office notes from Dr.
10 Mandat when he saw the patient.

11 Q. And what did that review tell you?

12 A. The review told me that he was treating her
13 for a neck -- neck, right shoulder strain and
14 some -- with natural antiinflammatories,
15 antidepressants, as well as local injections,
16 what he called trigger points. And what those
17 are are local steroid injections at the different
18 places she complained of pain. I don't know what
19 else you want me to say about --

20 Q. Did you also review the records of Dr.
21 Stearns, who examined the patient?

22 A. Yes, I did. What I noted a few times is
23 that she would go to see Dr. Stearns, he would
24 document full range of motion of her shoulder,
25 then she would see Dr. Mandat within the same,

1 you know, month or so, and he would say that she
2 had decreased range of motion. So there really
3 are some discrepancies in terms of the exam.

4 Q. And what is the significance of that,
5 Doctor?

6 MS. MCCARTHY: Objection.

7 THE WITNESS: It can really mean
8 several things. It can mean that there was
9 incomplete effort on behalf of the patient during
10 the exam, meaning with one doctor she maybe put
11 forth full effort, whereas with another doctor
12 she didn't. It can mean that there truly was
13 some cause for the decreased range of motion. It
14 can also mean that maybe there was some injury
15 that took place between one exam and another.

16 BY MR. O'SULLIVAN:

17 Q. Doctor, did you find anything objective to
18 support the Plaintiff's complaints?

19 A. No, I did not.

20 Q. Doctor, based upon the medical history
21 you've obtained from the Plaintiff, your
22 examination and review of the medical reports and
23 records, as well as your education, training and
24 experience as an orthopedic surgeon, do you have
25 an opinion, within a reasonable degree of medical

1 certainty, as to whether the Plaintiff received
2 any injury in the January 26th, 1994 automobile
3 accident?

4 A. I believe that if she did sustain any
5 injuries, such as a neck or a low back or a
6 thoracic strain, that they have completely
7 resolved. Her subjective complaints have been in
8 the past, by reviewing the records, as well as my
9 exam, clearly out of proportion and
10 unsubstantiated by objective physical findings.
11 She has no physical findings that support her
12 subjective complaints.

13 MS. MCCARTHY: Objection. Move to
14 strike. Nonresponsive to the question.

15 BY MR. O'SULLIVAN:

16 Q. Doctor, based upon the same factors,
17 history and exam that you performed and so on, do
18 you have an opinion, based upon a reasonable
19 degree of medical probability, whether the
20 Plaintiff has recovered from those injuries
21 received in this accident?

22 MS. MCCARTHY: Objection.

23 THE WITNESS: I believe that she
24 has completely recovered.

25

1 BY MR. O'SULLIVAN:

2 Q. Based upon the same factors I've listed
3 above, do you have an opinion, based upon a
4 reasonable degree of medical probability, whether
5 the Plaintiff has other factors not related to
6 the automobile accident which explain the
7 complaints that she has?

8 MS. MCCARTHY: Objection.

9 THE WITNESS: Yes.

10 BY MR. O'SULLIVAN:

11 Q. And could you explain that, please?

12 MS. MCCARTHY: Objection.

13 THE WITNESS: Well, there are
14 several mentions in the notes of her job as
15 initially when she injured herself, she was
16 working as a stewardess, a flight attendant, and
17 they carry -- she said they carried heavy cases
18 of soda and heavy food trays, and I believe that
19 that could contribute to her accident -- or to
20 her subjective complaints, I should say.

21 And then also in the note of Dr. Stearns of
22 12 -- December '94, he states that her right
23 shoulder bothered her because she was working out
24 with heavy weights. And in Dr. Stearns' notes,
25 he started seeing her in February of '94, and no

1 documentation of shoulder pain was made until
2 10/94. So I think that -- I guess summing up
3 what you said, yes, there are other factors, her
4 work history of heavy lifting and also weight
5 lifting.

6 BY MR. O'SULLIVAN:

7 Q. Those notes of Dr. Stearns, about how many
8 months were those after the accident that we had
9 in question?

10 A. Her injury was in January of '94, and in 10
11 of '94 is the first time he mentions the
12 shoulder.

13 Q. But he had seen her prior to that?

14 A. He started seeing her in February of '94.

15 Q. And based upon the same factors I had
16 listed above, the medical reports, the review of
17 the records, your education, training and
18 experience, can you tell me, based upon a
19 reasonable degree of medical certainty, whether
20 the Plaintiff has any permanent injury as a
21 result of the January 26th, 1994 automobile
22 accident?

23 MS. MCCARTHY: Objection.

24 THE WITNESS: No, no permanent
25 injury whatsoever.

1 BY MR. O'SULLIVAN:

2 Q. And based upon the same factors, do you
3 have an opinion, based upon a reasonable degree
4 of medical certainty, as to whether the
5 Plaintiff's complaints are a direct and proximate
6 result of the automobile accident of January
7 26th, 1994?

8 MS. MCCARTHY: Objection.

9 THE WITNESS: They are not a
10 direct result of the automobile accident.

11 MR. O'SULLIVAN: Thank you, Doctor.
12 I have no further questions at this time.

13 THE WITNESS: Thank you.

14 MS. MCCARTHY: Off the record.

15 (Thereupon, a discussion was
16 held off the record.)

17 THE VIDEOGRAPHER: We're on the
18 record.

19 CROSS-EXAMINATION

20 BY MS. MCCARTHY:

21 Q. Doctor, my name is Ellen McCarthy, and I
22 represent Cristen Doubler in this action. I'm
23 here in place of Andy Krembs, who is trying
24 another lawsuit in Cuyahoga County Common Pleas
25 Court.

1 I want to understand what your role was
2 with respect to this patient. Your assignment
3 was to review her medical records, to examine her
4 and to write a report; is that correct?

5 A. Yes.

6 Q. It was not your intention to provide
7 Cristen with any medical care or treatment when
8 you saw her in January of 1997; is that correct?

9 A. Correct.

10 Q. All right. At that time, in January of
11 1997, when you conducted your examination, how
12 much time did you spend with her?

13 A. I don't -- I don't normally time my exams.
14 As a matter of fact, I never time my exams.
15 However, I believe that the lawyer that was with
16 her did, so you should probably consult whoever
17 is in your office.

18 Q. What lawyer was with her at the time?

19 A. I don't remember which one. I don't have
20 the person's name. It was a woman.

21 Q. How do you know it was a lawyer?

22 A. She told me she was a lawyer.

23 Q. And you put that down in your notes?

24 A. Did I put it down in my notes? I didn't
25 write it in my notes; however, she was there with

1 her mother and a lawyer. I mean, it wasn't hard
2 to remember.

3 Q. So the patient, Cristen, came in with her
4 mother; is that true?

5 A. Yes.

6 Q. All right. Can you tell me today, as you
7 sit here, what your recollection is in terms of
8 how much time you spent with her?

9 A. I'm sure I spent at least a half hour with
10 her.

11 Q. Okay. Do you have a customary amount of
12 time that you spend with patients that you've
13 testified to in the past?

14 A. Never. Because I have some patients that
15 come in, you know, and their exam only takes five
16 minutes and their history only takes five
17 minutes, and then you have other patients that
18 take, you know, two hours. So you really tailor
19 it to the patient and to getting the information
20 that you need. I don't time -- like I said, I
21 don't time my exams.

22 Q. Okay.

23 A. And I don't time my exams for my patients
24 that aren't here for independent medical exams.

25 Q. If Cristen said that -- and the people who

1 accompanied her said that you spent 16 minutes
2 taking a history and 10 minutes examining her,
3 you wouldn't quibble with that, would you?

4 A. Would I quibble with it? I don't know,
5 because, like I said, I didn't time it. I don't
6 think there's any correlation between how long
7 you take a history and how long you do an exam.
8 Sometimes it's easier to do the exam than it is
9 to obtain a history. Sometimes it's the other
10 way around.

11 Q. Had you reviewed Cristen's medical records
12 before you saw her on January 3rd?

13 A. Yes, I did.

14 Q. All right. Did you review any of those
15 records while you were taking a history from
16 Cristen?

17 A. Yes, I did.

18 Q. Okay. Is it important or helpful to you,
19 in evaluating the nature and extent of an injury,
20 to understand the forces involved in an accident?

21 A. Yes.

22 Q. Okay. In other words, you don't
23 necessarily concern yourself with looking at
24 photographs of property damage and police
25 reports, since you're more interested in the

1 forces that occur between the vehicles that
2 become translated to the bodies inside the
3 vehicles; would that be a fair statement?

4 A. I don't -- I would say that a better
5 statement would be I'm more concerned about the
6 mechanism of injury.

7 Q. Okay. As opposed to reviewing photographs
8 of the damage to the vehicle?

9 A. Right.

10 Q. Okay.

11 A. Because, as you know, you see on the news
12 all the time, they'll show a crumpled up car, and
13 they'll say, "And this person walked out and
14 wasn't injured at all." So that doesn't help
15 me. I need the patient to tell me how they were
16 injured in the car and what the mechanism of
17 injury is.

18 Q. Okay. Would you agree that Cristen
19 sustained an injury to her trapezius area, her
20 midback and her neck in this accident?

21 A. As -- when reviewing the medical records,
22 that was the indication, that she sustained a
23 strain to her neck, her trapezius and her
24 thoracic spine, yes.

25 Q. Now, thoracic spine is the midback; is that

1 right?

2 A. Yes.

3 Q. Okay. So you would agree that she injured
4 all three of those body parts in this accident?

5 A. I agree that if you look at the medical
6 records, that's what the medical records state.

7 Q. Okay. But weren't you asked for -- or to
8 arrive at some conclusions with regard to, number
9 one, the injury that you believe she sustained?

10 A. Yes.

11 Q. Okay. And outside of the medical records
12 that you reviewed, just if we talk about your
13 examination and your experience --

14 A. Yes.

15 Q. -- we can agree that she did sustain an
16 injury to her trapezius area, her midback and her
17 neck?

18 A. I -- I would conclude that she might have
19 sustained a strain.

20 Q. All right. That's an injury, isn't it?

21 A. It sure is.

22 Q. Okay. Would you agree that injuries to the
23 trapezius area, the midback and the neck are
24 productive of pain and discomfort?

25 A. For limited periods of time, yes.

1 Q. All right. And the pain and discomfort
2 that one experiences with those injuries may make
3 it difficult for that person to perform his or
4 her normal daily routine?

5 A. Yes.

6 Q. And the pain and discomfort one experiences
7 with those injuries may make it difficult for
8 that person to perform his or her job as that
9 person had performed it prior to the injury?

10 A. Absolutely.

11 Q. All right. And the pain and discomfort one
12 experiences with those injuries may make it
13 difficult for that person to find a comfortable
14 position in which to sleep; is that fair?

15 A. Yes.

16 Q. Okay. Would you agree that someone who
17 sustains injuries to her neck, midback and
18 trapezius area may have difficulty doing heavy
19 lifting or pushing and pulling of heavy objects?

20 A. Yes.

21 Q. Now, because of pain, discomfort and
22 restriction one may experience with injuries to
23 the trapezius area, the neck and the midback, it
24 would be appropriate to seek medical care and
25 attention, wouldn't it?

1 A. Yes.

2 Q. All right.

3 A. But you can seek medical attention without
4 having an injury at all, too.

5 Q. All right. I'm strictly interested in as
6 it relates to somebody who has got an injury to
7 the trapezius area, of the neck and back. Okay?

8 A. So are we talking about the patient or in
9 general?

10 Q. We're talking about a person who sustains
11 an injury.

12 A. So we're talking about not the patient, but
13 just in general?

14 Q. A person who sustains an injury to the
15 trapezius, the neck and the midback. You would
16 agree it's reasonable for a person like that to
17 get medical treatment --

18 A. Absolutely.

19 Q. -- for that injury? And you would also
20 agree that it would be reasonable for a physician
21 treating that person to prescribe physical
22 therapy for that person?

23 A. Physical therapy, within the first six
24 weeks of an injury, is reasonable.

25 Q. All right.

1 A. This patient had --

2 Q. Thank you. That answers the question.

3 A. -- physical therapy two years after her
4 injury.

5 Q. She had physical therapy right after the
6 accident, didn't she, Doctor --

7 A. And two years after.

8 Q. -- out of an abundance of fairness; is that
9 correct?

10 A. And two years after.

11 Q. Just so that we're all clear here, she had
12 physical therapy by referral of Dr. Stearns right
13 after this accident?

14 A. Absolutely.

15 Q. Thank you.

16 A. And two years after.

17 Q. All right.

18 THE REPORTER: Could you please
19 let each other get their question and answer
20 out? I'm having trouble getting you talking on
21 top of each other.

22 MS. McCARTHY: Sure.

23 THE WITNESS: I'm sorry.

24 BY MS. McCARTHY:

25 Q. It would also be appropriate for a

1 physician treating such a patient to prescribe
2 medications for that patient --

3 A. Yes.

4 Q. -- is that right? And for such a patient,
5 it may also be appropriate for a physician
6 treating that patient with those injuries to keep
7 that patient off work or on restricted duty for a
8 certain amount of time, true?

9 A. If that patient has an injury, yes.

10 Q. All right. Now, do you believe that there
11 was a period of time between January 26th, 1994
12 and the present time when Cristen was in pain and
13 suffered restriction because of the accident?

14 A. I believe that she might have sustained an
15 injury in the motor vehicle accident consisting
16 of a cervical strain, trapezius strain and
17 upper -- what you call upper back or midback.

18 Q. All right. Over what period of time would
19 you attribute any pain or restriction to this
20 accident?

21 A. I would say usually most muscle strains and
22 pulls, particularly whiplash, in these type of
23 car accident injuries resolve themselves within a
24 period of six weeks to three months.

25 Q. As it relates to Cristen Doubler, over what

1 period of time would you attribute any pain and
2 restriction to this accident?

3 A. Six weeks to three months.

4 Q. When did Cristen fully recover from the
5 injuries you believe she sustained in this
6 accident?

7 A. I believe she fully recovered, I would say,
8 within the first three months. If you look at
9 Dr. Stearns' notes from -- that's her treating
10 physician, he always states that she had full
11 range of motion of this and full range of motion
12 of that, and the only thing that he could find
13 was tenderness in different areas. It's not
14 until October of '94, eight months after the
15 initial injury, that he starts talking about
16 different kinds of restrictions.

17 Q. I think you testified earlier, and I might
18 be mistaken, that there is no documentation of
19 shoulder pain until October of '94. Did you
20 testify to that?

21 A. I documented that Dr. Stearns doesn't talk
22 about her shoulder injury until October of '94.

23 Q. All right. You're aware, though, are you
24 not, that Cristen complained in the emergency
25 room of shoulder pain to the right shoulder?

1 A. Yes, I am.

2 Q. All right. And you are also aware, because
3 you carefully reviewed the records, that the
4 physical therapy that Dr. Stearns prescribed
5 immediately following the accident documents
6 complaints in February of right shoulder pain?

7 A. What I'm talking about is her treating
8 physician.

9 Q. I'm not asking you that, Doctor. I'm
10 asking you, because you carefully reviewed the
11 records, you are aware that the physical therapy
12 records, generated in February, by referral of
13 Dr. Stearns, indicate that this woman was making
14 complaints of right shoulder pain?

15 A. I have -- I have reviewed the records and I
16 have seen that.

17 Q. All right. After three months, Cristen
18 continued to make complaints of neck pain, right
19 trapezius pain and midback pain; is that correct?

20 A. After three months what?

21 Q. After three --

22 A. Can you repeat that?

23 Q. Certainly. After three months, Cristen
24 continued to make complaints of right trapezius
25 pain, neck pain and midback pain; is that

1 correct?

2 A. To Dr. Stearns, yes.

3 Q. And up to the present time, she continues
4 to make those complaints, doesn't she?

5 A. Yes, she does.

6 Q. To what do you attribute her present
7 complaints of neck pain, midback pain and right
8 trapezius pain to?

9 A. Given that she's had normal x-rays, she's
10 had a normal MRI, she's had a completely normal
11 EMG and nerve conduction study, she's had
12 completely normal physical exams, which
13 objectively show that there are no limitations, I
14 cannot attribute her pain to any pathologic cause
15 or any particular injury. I don't know why she's
16 complaining of the pain.

17 Q. All right. But you and I can agree that
18 these are the same complaints to the same body
19 parts that she was making during the first three
20 months proceeding the accident, correct?

21 A. What significance does that have?

22 Q. I'm just asking you, can we agree to that?

23 A. That these are the same things she's
24 complained about from the beginning?

25 Q. Yeah.

1 A. All except -- in terms of looking at what
2 she complains of to her treating physicians, I
3 would say yes, all except the right shoulder.

4 Q. I said -- listen to my question closely.

5 A. I did listen.

6 Q. For the first three months following this
7 accident, she complained of pain to the right
8 trapezius area, the neck and the midback; is that
9 correct?

10 A. That's correct.

11 Q. And after the three-month period of time
12 was over and after the date on which you believe
13 she recovered completely, she continued to make
14 complaints of neck pain, midback pain and pain to
15 the right trapezius area, correct?

16 A. Yes.

17 Q. And as you sit here today, you can't tell
18 me why she was having complaints to the neck, the
19 midback and the right trapezius area on the
20 fourth, fifth month after this accident or at any
21 time since the three months was up; is that
22 correct?

23 A. I can't tell you why she is, but I can tell
24 you why she isn't. She isn't having those
25 complaints because of any pathologic injury or

1 findings on her x-ray, exam, MRI or EMG or nerve
2 conduction study.

3 Q. What pathologic findings were present
4 within the first three months?

5 A. None.

6 Q. Okay. So there really isn't any difference
7 in her objective situation after the three-month
8 period of time is over; is that correct?

9 A. No. Initially Dr. Stearns documented
10 spasm.

11 Q. Okay. What's a "spasm"?

12 A. A "spasm" is a tightness in the muscle. A
13 lot of people complain of -- the most common
14 thing is when you're bending over a desk and
15 you're working and you get some spasm in your
16 neck and maybe in your trapezius muscles. By the
17 way, these are your trapezius muscles right
18 here. (Indicating.)

19 Q. Doesn't Dr. Stearns, in August of '94,
20 document spasm in the right trapezius muscle?

21 A. I would have to look at the note.

22 Q. Why don't --

23 A. But even if --

24 Q. Why don't you look at the note then.

25 A. Even if there is spasm in the right

1 trapezius muscle in August, that doesn't mean
2 that it's from an accident in January. August
3 '94?

4 Q. August 29th, 1994.

5 A. Tender and mild spasm, right trapezius.

6 Q. Actually, the full note reads, "Still
7 complaining of pain and soreness, right side of
8 neck, upper back and arm. Occasional numbness,
9 right hand. Exam: Tender and mild spasm, right
10 trapezius." Did I read that correctly?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes, that is a yes.

14 Q. All right. So even after you believe this
15 woman to have recovered from this accident, Dr.
16 Stearns is continuing to document objective
17 evidence of the same nature that he documented
18 within the first three months of the accident; is
19 that correct?

20 A. That's correct.

21 Q. And you can't sit here today and tell this
22 jury why she's having objective evidence to
23 injury similar to that which she had in the first
24 three months?

25 A. What I can do is tell the jury that there's

1 no pathologic injury, that this spasm could be
2 because she worked out at a club, it could be
3 because she's lifting heavy soda at work, it can
4 be from a number of things.

5 Q. All right. On direct examination, you had
6 indicated that Dr. Stearns had documented she
7 injured herself working with heavy weights.
8 Could you point out in Dr. Stearns' record where
9 that is located?

10 A. Yes, I can. It says, "Stop flying --"

11 Q. Which date? Is that the --

12 A. 12/22/94. "No pain until last week when
13 working out."

14 Q. It doesn't say anything in that note --

15 A. You're right.

16 Q. -- about working out with heavy weights; is
17 that correct?

18 A. It doesn't say "heavy weights," but in my
19 past medical history, she said that she weight
20 lifted.

21 Q. All right. You don't object to an
22 individual who has a muscle-type sprain or strain
23 to attempt to strengthen or gain muscle tone by
24 lifting or doing free weight exercises, do you?

25 A. It depends what kind of strain they have.

1 But as a rule, no, I do not object to that.

2 Q. And if the physical therapy people to whom
3 Dr. Stearns had referred her encouraged her to
4 work out with free weights to strengthen her neck
5 and midback and shoulder area, you wouldn't
6 object to that, would you?

7 A. No, I would not.

8 Q. And it's entirely possible that a person
9 who has an injury to the trapezius area, the neck
10 and the midback, who continues to work out with
11 free weights, may reaggravate the injury; is that
12 a fair statement?

13 A. In my experience, what happens, I think, is
14 that the physical therapists are sometimes too
15 zealous and that they end up injuring something
16 doing the physical therapy. But yes, there are
17 two hypotheses. You can aggravate an already
18 present injury, or you can actually cause an
19 injury by therapy.

20 Q. Okay.

21 A. Particularly with free weights. They're
22 very dangerous.

23 Q. Okay. Is it possible that Cristen Doubler
24 did not recover from this accident after three
25 months?

1 A. Is it possible? I don't think it's
2 possible, no.

3 Q. Is it possible to this day she continues to
4 experience pain in her trapezius area, neck and
5 midback, because she was struck from behind by a
6 driver going 40 to 45 miles an hour?

7 A. I don't think it's possible given all the
8 facts, given her physical exam and given the
9 review of the records. No, I do not think it's
10 possible.

11 Q. All right. In the past you've done work
12 for Mr. O'Sullivan's firm, haven't you?

13 A. Yes, I have.

14 Q. Now, as it relates to this case, how much
15 did you charge for reviewing the medical records,
16 examining Cristen and writing a report?

17 THE WITNESS: Can you tell her?
18 I don't keep the bills in front of me. Do you
19 know?

20 MR. O'SULLIVAN: I don't know.

21 MS. MCCARTHY: We can go off the
22 record while you ask someone out front for that
23 charge. We're off the record.

24 MR. O'SULLIVAN: I have no idea.

25 (Thereupon, a discussion was

1 held off the record.)

2 BY MS. MCCARTHY:

3 Q. Before we get to the legal housekeeping,
4 Doctor, I'd like to go back to Dr. Stearns' notes
5 and the issue of muscle spasms, and again, muscle
6 spasm is an objective finding; is that correct?

7 A. Yes, it is.

8 Q. That is not something a patient can fake;
9 is that true?

10 A. No, not usually.

11 Q. It is a painful episode for a patient,
12 isn't it?

13 A. Yes.

14 Q. All right. Now, in May of 1995, Dr.
15 Stearns continues to document spasm and
16 tenderness to the right trapezius area, doesn't
17 he?

18 A. Yes, he does.

19 Q. All right. And he continues to document
20 it, at least as of August 25th of 1995; is that
21 true?

22 A. That may be true. You said August of '95?

23 Q. August 25th, 1995.

24 A. Yes.

25 Q. A year and a half after the accident, he

1 continues to document muscle spasm in the right
2 trapezius area similar to the muscle spasm
3 documented within the first three months of the
4 accident?

5 A. Correct.

6 Q. All right.

7 A. Similar -- let me take that back. Similar,
8 I don't know, because he doesn't say what area of
9 the trapezius muscle, is it at the origin, at the
10 insertion, he just says "general spasm." So in
11 order for me to say it's exactly similar, I
12 can't. Only he would know that.

13 Q. Okay. Now, when we went off the record, we
14 were able to determine that you charged Mr.
15 O'Sullivan's firm, for writing your report,
16 reviewing the records and examining Cristen and
17 x-raying her, \$1,135; is that correct?

18 A. Eight hundred for the review and 3- -- I
19 think 335 for the x-rays.

20 Q. Okay. And that would be \$1,135. And
21 you're charging him an additional \$2,000 for your
22 testimony today; is that correct?

23 A. Yes, I am.

24 Q. All right. And you made sort of a
25 disclaimer at the beginning stating that that is

1 customary in this industry. Is that your
2 statement?

3 A. I didn't think it was a disclaimer. All I
4 said was as far as I know, other physicians
5 charge the same amount. Initially, when I
6 started doing depositions, I thought that I
7 charged more than anybody else, and then I soon
8 found out that I charge just as much, if not less
9 than a lot of physicians out there.

10 Q. Didn't you testify, as of December of '96,
11 six months ago, when Mr. O'Sullivan's firm
12 retained your services, that you didn't keep
13 track of what other physicians were charging for
14 this type of work?

15 A. I might have said that, but you know what,
16 when people like you keep asking the same
17 question like that, I have to go out there and
18 find out what other people are doing to make sure
19 that I'm in line, to make sure it's not
20 outrageous.

21 Q. Who else is charging \$2,000 for deposition
22 work besides yourself?

23 A. Plenty of people.

24 Q. That you can document.

25 A. That I can document?

1 Q. Today. Yeah, right now.

2 A. Well, Dr. Collis charges \$1,000 an hour.

3 Q. How do you know that?

4 A. Because I asked. There's a Dr. Gordon.

5 You know, maybe -- you can call those people and
6 ask them, but I did ask around.

7 Q. I've been around, and I've never seen
8 anyone charge \$2,000 for this type of work.

9 MR. O'SULLIVAN: Objection. You are
10 testifying.

11 MS. MCCARTHY: She started it.

12 MR. O'SULLIVAN: You're testifying.

13 BY MS. MCCARTHY:

14 Q. So you can't document today, as you sit
15 here, any --

16 MR. O'SULLIVAN: Objection. She
17 just did.

18 BY MS. MCCARTHY:

19 Q. -- any basis for the statement that
20 everyone else customarily charges the same amount
21 you do; is that right?

22 A. No, I think I can. When I first came on
23 board in this practice five years ago, the
24 customary charge for a deposition was \$1,500. So
25 it's five years later, it's \$2,000. I mean, that

1 doesn't sound unreasonable to me. And if you
2 wanted, you know, signed, sworn testimony from
3 other physicians saying how much they charged,
4 you would have to get that.

5 Q. I'm asking you today if you can produce any
6 written documentation?

7 A. Why should I be able to produce something
8 like that? That's not my job. That's your job.

9 Q. I'm asking --

10 A. My job is to take care of patients.

11 Q. And this is not necessarily taking care of
12 patients, is it?

13 A. Sure it is.

14 Q. How did you --

15 A. Of course it is.

16 Q. How did you take care of Cristen Doubler as
17 your patient?

18 A. I examined her and I gave an honest
19 account, an honest opinion of how I feel her
20 injuries were sustained, how I feel her injuries
21 are chronic or not chronic, how I feel her
22 injuries are permanent or non -- not permanent.
23 That's -- I think that's a valuable service to
24 society and a valuable service to her.

25 Q. But it was never your intent to treat her;

1 is that right?

2 A. I don't have to treat her. I examined
3 her. The point of an independent medical exam is
4 for me to examine the patient, look at all the
5 facts and make a judgment, and I think that's a
6 service to the patient.

7 Q. Okay. But the patient is not paying you
8 \$3,135 for that service, is she?

9 A. What I'm paid for is my time, not my
10 opinion. I'm not a whore. You can pay for my
11 time. You can't buy my opinion.

12 Q. All right. But the patient is not paying
13 you \$3,000 -- in excess of \$3,000; is that right?

14 MR. O'SULLIVAN: Asked and
15 answered.

16 MS. MCCARTHY: Actually, she
17 didn't answer the question.

18 MR. O'SULLIVAN: She did answer.

19 BY MS. MCCARTHY:

20 Q. The patient is not paying you, is she?

21 A. Does the patient have to pay me in order
22 for it to be a valid exam?

23 Q. Is the patient paying you, Doctor?

24 A. I'm asking you.

25 Q. I don't have to answer any questions for

1 you, Doctor.

2 A. Okay. And I don't --

3 Q. Is the patient paying you?

4 A. Is the patient paying me? I think who pays
5 me is the person who schedules the independent
6 medical exam, which in this case is Laurie Letts'
7 firm.

8 Q. All right. Thank you. You've testified in
9 the past that you charge \$2,000 for your
10 deposition testimony, because you don't
11 necessarily like doing this kind of work and you
12 keep it high so that people don't come to you; is
13 that right?

14 MR. O'SULLIVAN: Objection. She
15 testified that she's here for her time and not
16 for her testimony.

17 THE WITNESS: I testified that I
18 charge \$2,000, and what I was testifying to in
19 the -- in the -- whatever you're bringing up, is
20 that the lawyer at that time asked me how many I
21 did a month, and I said I only do maybe one
22 deposition a month, maybe two independent medical
23 exams a month, because I'm a surgeon and I like
24 to keep my time doing surgery and taking care of
25 patients.

1 I never want to become one of those
2 unobjective people who just do independent
3 medical exams all day. This keeps me honest. I
4 get to review the literature. I get to go
5 through the literature and I get to see and
6 examine patients, and that way I can only do one
7 or two a month. And that's the way I've
8 scheduled my office.

9 BY MS. MCCARTHY:

10 Q. Well, let's --

11 A. I only do one or two a month.

12 Q. Let's see if we can't --

13 MR. O'SULLIVAN: Can we go off the
14 record --

15 MS. MCCARTHY: No.

16 MR. O'SULLIVAN: -- for one second?

17 MS. MCCARTHY: No.

18 MR. O'SULLIVAN: I'd like you to
19 identify the documents to which you are
20 referring.

21 MS. MCCARTHY: I'm going to just
22 now.

23 MR. O'SULLIVAN: You've been
24 referring to them for five minutes.

25

1 BY MS. MCCARTHY:

2 Q. I'd like you to -- I'd like to know if you
3 remember testifying in a case called Peckinpaugh
4 versus Tabor?

5 A. Yes, I do. And I remember saying something
6 like that, yes.

7 Q. Let me -- let me ask my question. Do you
8 remember this exchange, Doctor: "Just a little
9 legal housekeeping that I have to do here to wrap
10 up. You were retained by the defense in this
11 case. Can you tell us what your charge is for
12 the deposition?" "Answer: I charge more than
13 probably anybody in the City of Cleveland for
14 depositions. I charge \$2,000, and I do this
15 because I don't like to do them all that much.
16 So if I am high, I don't get that many." Do you
17 remember that exchange; yes or no?

18 A. Yes, I do.

19 MR. O'SULLIVAN: Is there a date on
20 that document?

21 MS. MCCARTHY: There is.

22 THE WITNESS: And what I meant to
23 say was "all the time," not "all that much." I
24 actually -- I actually don't mind doing this,
25 because I think it's a helpful service.

1 BY MS. McCARTHY:

2 Q. So your testimony is now --

3 MR. O'SULLIVAN: Ellen, could you
4 identify the date of that document, please?

5 MS. McCARTHY: It was February
6 27th, 1996.

7 MR. O'SULLIVAN: Thank you.

8 BY MS. McCARTHY:

9 Q. It was also -- I take it, since you don't
10 do it that much, you would remember being deposed
11 by Mr. O'Sullivan's firm in December of '96 in
12 Sessin versus Tysiak, where you essentially
13 testified to the same thing, correct?

14 A. I don't know what -- you would have to read
15 it back to me, but I remember Virginia Sessin,
16 yes, I do.

17 Q. All right. Do you remember being
18 cross-examined on the statement that you made in
19 the Peckinpaugh case about being the most
20 expensive doctor in Cleveland because you don't
21 like doing these that much?

22 A. I remember saying -- or trying to clear up
23 exactly what I said. I probably should have
24 never said that, because what I meant was I don't
25 do them every day. And shortly after that is

1 when the lawyers told me and when I started
2 calling around to find out how much other doctors
3 charge, and I found out that my charge was
4 average.

5 Q. All right. Within the first two years of
6 this accident, Cristen Doubler was treated by the
7 emergency room physician, Dr. Stearns, and the
8 osteopath, Dr. Watson; is that correct?

9 A. And Dr. Mandat.

10 Q. Do you have any notes that indicate Dr.
11 Mandat saw her within the first two years of the
12 accident?

13 A. The first -- January --

14 Q. Actually, let's go within the first 18
15 months. That should make it easier for you.

16 A. Dr. Mandat -- the first note I have from
17 Dr. Mandat is January '90 -- I'll have to look at
18 my record.

19 Q. January of '96, isn't it, Doctor?

20 A. I'm pretty sure that's what I have written
21 down.

22 Q. All right.

23 A. Yeah.

24 Q. So from --

25 A. During the time from January '96, and then

1 last seen in July of '96.

2 Q. All right.

3 A. At least by my records.

4 Q. So in '95 and '96 -- excuse me. In '94 and
5 '95, Cristen was seen, in terms of M.D.s or
6 D.O.s, by the emergency room doctor, Dr. Stearns,
7 and Dr. Watson, the osteopath; is that correct?

8 A. And he was -- she was also seen and
9 evaluated by Dr. Shamir, the medical director of
10 PM&R --

11 Q. All right.

12 A. -- someplace, and that was October of '95.
13 So that's another physician.

14 Q. Do you know what Dr. Shamir charged her?

15 A. No.

16 Q. Are you aware that the emergency room
17 doctor charged her \$62 for his treatment of her?

18 A. No, I'm not aware of that.

19 Q. Are you aware that Dr. Stearns' total bill,
20 for over two years of care and treatment, is
21 \$470?

22 A. No, but that's probably accurate.

23 Q. Are you aware that Dr. Watson charged her
24 \$302?

25 A. No.

1 Q. That's a total of \$834 for the first two
2 years of treatment by doctors who actually cared
3 for her. Are you aware that you're being paid in
4 excess of three times that for your one
5 evaluation, one-time evaluation of this woman?

6 A. Yes, I am. It's a customary fee.

7 Q. Are you aware that that is more than Dr.
8 Mandat charged her for over a year's worth of
9 actual care and treatment?

10 A. It's more than I charge patients that I see
11 over two years of treatment. That doesn't mean
12 anything. We're talking about a totally
13 different circumstance, a totally different
14 service. We're not talking about five-minute
15 office visits.

16 MS. MCCARTHY: I don't have any
17 more questions for you.

18 REDIRECT EXAMINATION

19 BY MR. O'SULLIVAN:

20 Q. Doctor, I just have a few very brief
21 questions. Much was made about the amount of
22 time that you spent with the Plaintiff. If a
23 reasonably young person comes into your office
24 with no objective injury, how long would it take
25 you to examine that person?

1 MS. McCARTHY: Objection.

2 THE WITNESS: Five minutes.

3 BY MR. O'SULLIVAN:

4 Q. And if a reasonably young person were to
5 come in under similar circumstances, how long
6 would it take you to determine their history?

7 MS. McCARTHY: Objection.

8 THE WITNESS: Maybe five
9 minutes. I mean, it really doesn't take that
10 long.

11 BY MR. O'SULLIVAN:

12 Q. Does the time that you spend with a person
13 performing an independent medical evaluation, is
14 that determinative of the quality of your work?

15 A. I don't -- no, it's not. I think I spend
16 the amount of time necessary so that I don't miss
17 anything and I don't make any false judgments. I
18 mean, my testimony and my exam is getting used in
19 a court of law, and my reputation rides on it, so
20 I want it to be factual. So -- and I want it to
21 be unbiased, it's independent, and so I spend the
22 time necessary to do a good job, just like I do
23 with my patients that come in to see me that
24 don't have any litigation pending.

25 Q. Now, Doctor, finally, you've identified Dr.

1 Kim Stearns as the treating physician for the
2 Plaintiff?

3 A. Uh-huh.

4 Q. And could you, once again, clear up, with
5 regard solely to Dr. Stearns' treatment of the
6 physician -- of the Plaintiff and his notes, the
7 treating physician's notes, can you explain the
8 significant -- not explain. Can you, again,
9 develop for us the significant lapse of any
10 reference to a shoulder injury in those records?

11 MS. MCCARTHY: Objection.

12 THE WITNESS: Well, I think that
13 anytime you go to a physician, you know, you --
14 you know, you walk in and you say, "My head
15 hurts. I am here for headaches," and that's your
16 chief complaint; and every time you come back, if
17 that's the only thing you're talking about, then
18 you would have to deduce from the records, as
19 well as from what the patient complains of, that
20 that's all that's really bothering them. So if
21 every time I go and see a doctor I only complain
22 of my neck, my trapezius and my midback and not
23 my right shoulder, then I'd have to say that at
24 that time your right shoulder wasn't bothering
25 you, because you didn't complain about it. You

1 complained about everything else. Why did you
2 leave out the shoulder?

3 MR. O'SULLIVAN: That's all I have,
4 Doctor. Thank you very much.

5 RECROSS-EXAMINATION

6 BY MS. MCCARTHY:

7 Q. Doctor, could you show us again where the
8 right trapezius muscle begins and ends?

9 A. The right trapezius muscle begins here,
10 fans out here and stops right here.
11 (Indicating.)

12 Q. Where's the shoulder?

13 A. The shoulder is right here. (Indicating.)

14 Q. And does the trapezius muscle play any role
15 in the use and movement of the shoulder?

16 A. No. The trapezius muscle is used for range
17 of motion and also elevation.

18 Q. Might a patient experience pain in the area
19 of the shoulder, midback and neck with a
20 trapezius injury?

21 A. They would experience pain in the area of
22 the trapezius muscle.

23 Q. Which is fairly closely associated with the
24 area of the shoulder, isn't it? I mean, we're
25 only --

1 A. It's right --

2 Q. -- talking about a few inches away, aren't
3 we?

4 A. Yeah. But if you're seeing an orthopedic
5 surgeon, we usually know the difference between a
6 trapezius muscle and a shoulder. I mean, that's
7 what we work with. So, I mean, if she was having
8 pain in her shoulder, he would have said her
9 shoulder. I mean, I know Dr. Stearns. He's a
10 great orthopedic surgeon. He knows the
11 difference between a shoulder and a trapezius
12 muscle.

13 Q. So you're not critical of Dr. Stearns'
14 documentation with respect to this, are you?

15 A. All I said is that I know Dr. Stearns. I
16 think he's a good orthopedic surgeon. I didn't
17 say anything about his documentation.

18 Q. So you're not critical of it, are you?

19 A. I haven't even thought about it in terms of
20 being critical or not critical.

21 Q. So as you sit here today, you don't have
22 any criticisms of Dr. Stearns' documentation, do
23 you?

24 A. I have not made a judgment of his
25 documentation.

1 Q. Okay. There isn't any evidence that this
2 woman had a shoulder injury prior to this
3 accident or a trapezius injury prior to this
4 accident, is there?

5 A. Prior to the accident? Is -- no, I don't
6 think there is.

7 Q. And there isn't any evidence that this
8 woman had a neck injury prior to this accident,
9 is there?

10 A. She didn't state there was.

11 Q. Well, you haven't been presented with any
12 medical records --

13 A. No.

14 Q. -- that would indicate otherwise, have you?

15 A. No. I think I said that already.

16 Q. And the same is true for the midback, isn't
17 it?

18 A. That's true.

19 MS. MCCARTHY: All right. I don't
20 have any more questions for you.

21 THE WITNESS: That's it?

22 THE VIDEOGRAPHER: Doctor, you have
23 the right to read this transcript and/or view the
24 videotape or you can waive such rights.

25 THE WITNESS: Waive.

1 THE VIDEOGRAPHER: Do you waive the
2 filing of this deposition?

3 MR. O'SULLIVAN: Pardon?

4 THE VIDEOGRAPHER: Filing?

5 MR. O'SULLIVAN: I don't know. Call
6 Laurie.

7 THE VIDEOGRAPHER: Thank you.

8 (Thereupon, the Stephens deposition
9 was concluded at 4:36 o'clock p.m.)

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C E R T I F I C A T E

STATE OF OHIO,)
)
SUMMIT COUNTY,) SS:

I, Mary Lyn Liddle, a Registered Professional Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, SUSAN ELLEN 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 her was by me reduced to Stenotypy in the presence of said witness, afterwards prepared and produced by means of Computer-Aided Transcription and that the foregoing is a true and correct transcription of the testimony so given by her as aforesaid.

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 of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 10th day of July, 1997.

Mary Liddle

Mary Lyn Liddle, Registered
Professional Reporter and
Notary Public in and for the
State of Ohio.

My commission expires May 30, 2002.

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