IN THE COMMON PLEAS COURT OF LICKING COUNTY, OHIO

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MARK NEESE, ET AL.,)
PLAINTIFFS,)
-vs-) CASE NO. 05 CV 0002JRS
SETH T. CUNNINGHAM, ET AL.,)
DEFENDANTS.)

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VIDEOTAPED DEPOSITION of DR. ROBERT J. THOMPSON, a Witness herein, called by the Defendant for examination under the statute, taken before me, Debbie M. Bobo, Registered Professional Reporter, Notary Public in and for the State of Ohio, pursuant to the stipulations of counsel hereinafter set forth at 945 Bethesda Drive, Zanesville, Ohio, on Tuesday, February 7, 2006, beginning at 5:10 p.m.

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APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

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ON BEHALF OF THE DEFENDANTS:

(Seth T. Cunningham)
Miles D. Fries, Esq.
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P.O. Box 190
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ALSO PRESENT:

Mr. Terry Tahyi, Videographer.

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S T I P U L A T I O N S

It is stipulated by and between counsel for the respective parties that the deposition of DR. ROBERT J. THOMPSON, a Witness herein, called for examination by the Defendant under statute, may be taken at this time by the

Notary and by agreement of counsel without notice or other legal formality; that said deposition may be reduced to writing in stenotype by the Notary whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the reading and signature of the said witness to the transcript of the deposition are expressly waived by counsel and the witness; said deposition to have the same force and effect as though signed by the said witness.

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VIDEOGRAPHER: Dr. Thompson, would you raise your right hand for me, please.

DR. ROBERT J. THOMPSON

being by the videographer first duly sworn, as hereinafter certified, deposes and says as follows:

VIDEOGRAPHER: Thank you very much. Go right ahead, Mr. Fries.

MR. FRIES: Thank you.

DIRECT EXAMINATION

BY MR. FRIES:

Q. Dr. Thompson, good afternoon. Would you tell the ladies and gentlemen of the jury your name and professional address, please.

A. Robert Jorden Thompson, 945 Bethesda Drive, Zanesville, Ohio.

Q. And you've been sworn to testify here today?

A. Yes.

Q. Dr. Thompson, my name is Miles Fries. I represent Seth Cunningham in a lawsuit filed by Mr. and Mrs. Neese that relates to a car accident that Mrs. Neese was involved in in January of 2000. We're here to take your deposition today for purposes of presentation to the jury at trial.

First thing I'd like to ask you to do, if you would, is explain to the jury a little bit about what you do and your educational background and training.

A. I am a neurologist. A neurologist is a subspecialty of medicine that deals with the diseases and injuries of the nervous system, including the brain, spinal cord, nerves, muscles and those supporting structures including the spine.

I graduated from the University of Pittsburgh in 1968 with a B.S. degree in chemistry. I subsequently graduated from the University of Pittsburgh School of Medicine with an M.D. degree in 1972. I completed a medical internship at Montefiore Hospital in Pittsburgh in 1973. I then completed a three-year residency in neurology at the University of Pittsburgh in 1976. And I've been board certified in

neurology since 1977.
Q. Could you tell us what the term board certification means?
A. Once he or she completes a residency program one then sits for a one day written examination and a two day oral examination. If those examinations are successfully passed one is said to be board certified.
Q. Are all -- are all neurologists board certified?

A. No.
Q. Are all other physicians board certified?
A. No.
Q. Now, you've been practicing here in Zanesville since when?
A. I've been in private practice, in office and hospital, in Zanesville, Ohio since 1976.
Q. And what kinds of patients do you see here in your office?
A. I see patients who suffer from various neurologic problems, including problems of the spine, brain disorders such as Parkinson's disease and epilepsy, headaches. I do diagnostic studies, including EMG's, in the office also. I also treat various painful conditions, including arthritis, various spine problems, and fibromyalgia.
Q. You have hospital privileges?
A. Yes. I've been on the staff of Genesis HealthCare Systems here in Zanesville since 1976.

Q. Now, are you familiar with and/or affiliated with the Genesis inpatient rehabilitation unit and the pain management unit?

A. Yes. I've been the medical director of the inpatient rehabilitation unit since 1978. And I've been the medical director of the chronic pain

management program here at Genesis for the last approximately 15 years.

Q. Could you explain us to, Doctor, what the rehabilitation unit is and what the pain management unit is and -- and what kinds of patients are seen there?

A. The rehabilitation unit, we treat patients who are recovering from serious disabling illnesses, such as stroke, paralysis from spinal cord injuries, various orthopedic problems, such as total joint replacements, multiple fractures, and amputations. On the pain management program we take care of individuals who suffer from various chronic painful conditions, such as spinal conditions, arthritis, chronic headaches and fibromyalgia.

Q. As part of your practice, both here in your office and in the hospitals, do you see and treat patients who have been involved in different kinds of accidents?

A. Yes, every day.

Q. Do you have any idea, Doctor, of the number of patients that you would see in an average week?

A. I'd have to think about that for a minute. I

would -- I would estimate I probably see at least 200 patients in an average week.

Q. Do you regularly receive referrals from other physicians?
A. Yes. My practice is almost completely referral practice from other physicians in this area.
Q. Have you been asked over the years to perform medical evaluations for any governmental agencies?
A. Yes. I'm an examiner for the federal government, for the -- for people who are applying for Social Security Disability. I'm an examiner for the State of Ohio for the Bureau of Workers' Compensation, for the Bureau of Vocational Rehabilitation, and for the Bureau of the Visually Impaired.
Q. And how does one get selected by these government agencies to perform these kinds of evaluations?
A. One has to be a board certified physician that has demonstrated knowledge and skills in these type of evaluations.
Q. How long have you performed those kinds of evaluations?
A. For at least 25 years.
Q. When you perform evaluations for government agencies do you submit a -- a bill for your services?
A. Yes.
Q. Do you also perform evaluations and

examinations in cases that are pending in court?
A. Yes.
Q. Do you have occasion to have lawyers hire you to perform what are called independent medical examinations?
A. Yes.
Q. Have -- have I and other members of my firm asked you to do that in the past?
A. Yes.
Q. And do you charge us for your time?
A. Yes.
Q. Is your fee for your services in any way connected to the outcome of the case?
A. No.
Q. Have you also on occasion performed independent medical examinations in cases where I represented the injured party and you were hired by the other side?
A. Yes.
Q. Did I ask you in this case, in connection with Jeri Neese, to perform a -- an independent medical examination?
A. Yes.
Q. And have you done that?
A. Yes. In fact, I saw her on two occasions and

reviewed fairly extensive medical records.
Q. And do you expect to be paid for the time that

you've expended in connection with those examinations?
A. Yes.
Q. Do you expect to be paid for the time that you're giving us here this evening testifying?
A. Yes.
Q. Does the fact that you're being paid have any effect on the opinions that you're going to render?
A. Absolutely not. My fee is just based on the time involved.
Q. When this case is over with and you've completed testifying do you have any expectation of having any further involvement in this matter?
A. No.
Q. Do you have any financial interest in the outcome of this case?
A. No.
Q. Now, Doctor, during the course of this deposition I will probably be asking you for some opinions that you hold with regard to certain matters. Will you assure us that your opinions expressed will be those that you hold to a reasonable degree of medical certainty?
A. Yes.

Q. Okay. I -- I want to ask you before I get into asking you about Jeri Neese. You used the term before, that's going to be talked about later, you used the term fibromyalgia. Would you explain to the ladies and gentlemen of the jury exactly what that term means?

A. Fibromyalgia is a disorder of unknown cause in which individuals suffer rather diffuse muscular-type pain. They also experience fatigue and mental depression with this condition.

The cause of fibromyalgia has never been determined for certain. As far as the diagnosis of fibromyalgia, there is no laboratory test, X-ray or scan that can provide objective proof that someone is suffering from fibromyalgia. And the diagnosis is made by -- from the patient's symptoms and from finding certain trigger points or tender points in various areas of the body when we examine them.

It is a very controversial issue, condition within the medical community. There are some physicians that do not even believe it exists because there's no way to prove whether a given individual has it or not. But I do believe that it exists and I do treat patients who I believe have this condition.

Q. Now, when you say there's no known cause, why -- why do you say that?

A. Medical science has not come up with a reason as to why people get fibromyalgia. No one knows why.

Q. But you do acknowledge that it is a recognized diagnosis?

A. Yes.

Q. And you treat patients yourself that have fibromyalgia?

A. Yes.

Q. Have you had occasion to diagnose people with

fibromyalgia?
A. Yes.
Q. And you said there are certain kinds of symptoms. What are the most common symptoms that people who suffer from fibromyalgia exhibit?
A. Pain and fatigue.
Q. And are there certain recognized or recommended treatments for people suffering from fibromyalgia?
A. No. There actually are no proven treatments that -- or curative. There are reports that -- there's one or two studies that show that therapeutic exercises, such as stretching, can be helpful. But there's no scientific proof that any other treatment could be of any benefit. There are treatments are done out in the community, including the -- the medical

community, including various medications, injections of local anesthetics into the area of tenderness, and massotherapy. But there's absolutely no proof whatsoever that these treatments are of any benefit.
Q. And -- and how does one go about actually determining or making the diagnosis that somebody suffers from fibromyalgia?
A. In an individual who has the complaints of pain and fatigue the doctor will then examine them, and if they do have 11 out of 18 tender points in predetermined areas of their body that is how the diagnosis is made. Also, they would not be expected to

have any pain or tenderness over nonfibromyalgia trigger points, such as the collarbone or the skull or bony prominences.

Q. What does the -- what do those terms tender points or trigger points actually mean?

A. A tender point is a area in the body where we push on the skin and subcutaneous issues that have -- moderately hard pressure and the person will complain of pain. So it depends largely on the person's subjective complaints that they hurt. So we have to rely on the person being truthful, that that really is painful.

In some individuals we can actually palpate

little bands in the -- called taut bands in the trigger point, but very often we can't feel those.

Q. Now, turning to Jeri Neese. You've actually had occasion to examine her twice; is that right?

A. Yes.

Q. Okay. Would you tell us when the first time was that you examined her?

A. The first time I examined her was on December 3rd of 2002.

Q. And as part of the examination did you obtain a history from her?

A. Yes.

Q. Can you explain to the ladies and gentlemen of the jury what it means to say that a physician takes a history from someone?

A. Yes. A history is a story in the person's own

words of how an injury occurred, what symptoms they experienced immediately after the injury, what subsequently happened with the symptoms, what treatment they had, and how those symptoms have affected their life. Also, it's a -- we inquire about past history of any similar problems or other diseases.

Q. And with -- with respect to your own patients that you're treating, do you obtain a history from them?

A. Yes.

Q. Could you tell us, Doctor, what the history was that Jeri Neese related to you?

A. Ms. Neese is a 42-year-old lady who is a restrained driver who was involved with a head-on collision with a pickup truck on January 30th of 2000.

She was not aware of any injuries immediately at the scene of the accident because she was concerned about the four children who were in the car with her. She rapidly got out of the car under her own power and were able to get the children into a nearby house. After she got into the house she began to notice she had some tightness and soreness in her neck, shoulders, and her upper back.

I asked Ms. Neese if she was still experiencing these symptoms almost three years after the accident and she indicated to me that she was still having some soreness in her neck, shoulders and upper back. She told me that these symptoms would wax and

wane in severity but overall had remained about the same and were not particularly getting any better or worse as time went by.

She -- she informed me that she was not employed at the time of the accident nor has she been employed since the accident. She lives in a house on

20 acres with her husband and four children. They do own horses and she home -- and time I saw her she was home schooling her children. She was independent with the -- her self-care; dressing, grooming, feeding and bathing.

She was able to clean the house, although at times would need some help. She was able to do some gardening but would experience some discomfort when she did this. She was able to do the laundry, the cooking and the shopping. She was able to drive.

I asked her if she had any hobbies of any kind and she indicated that the only hobbies she had was horseback riding and that she had not been able to ride her horses as often as she used to. And, in fact, had only been able to ride once in the year of 2002.

She told me she had to -- had to stop working in the garden as vigorously, playing croquet, playing with her church softball league, and had to stop playing basketball.

I asked her what type of medical intervention she had, and she was taken by ambulance to the emergency room on the day of the accident where she was treated and released. She saw two -- two family

doctors, Dr. Szekely, and the -- then the second doctor, Dr. Born.

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She had had two bouts of physical therapy. She'd had some chiropractic treatment off and on, which only gave her some temporary improvement. She would get some massotherapy on occasion.

She reported that she'd had an MRI scan that was normal. She saw a Dr. Gatens, who's a physician who's a physiatrist, who performed an EMG test, which is a test to check for any type of serious nerve or muscle problems. And he had prescribed some cortisone pills for her, which had no effect. At the time I saw her she was on Ibuprofen, Tylenol, aspirin and Flexeril.

I asked her if she'd ever experienced any similar problems in the past prior to the accident and she indicated to me that she had never had any problems with her neck, her upper back prior to this accident. She stated in approximately 1996 she saw her family -- another family doctor, Dr. Campolo, for low back pain, and he prescribed physical therapy. But she had otherwise never had any similar problems, never had any previous auto accidents, Workers' Compensation claims, or seen any chiropractors prior to this accident.

I asked her if she was experiencing any other symptoms other than the symptoms she mentioned as a result of the accident and she specifically denied any

other symptoms. She denied any headache, jaw pain, emotional problems, or low back pain at the time I saw her.

And that completed the history that I obtained from her.

Q. Did you also conduct a physical examination?

A. Yes.

Q. Could you tell us what the physical examination consisted of?

A. She was five-foot seven and weighed 180 pounds. She was examined in a disrobed state with an examination gown on in the presence of her husband.

She was extremely pleasant. She did not appear to be depressed. Her walking was normal. She was able to walk on her toes, heels, and heel to toe well. In patients who have possible spine problems it's important to do that because they may experience difficulty walking or weakness with walking, but her walking was perfectly normal.

I checked the range of motion of her neck by having her put her chin on her shoulder, each shoulder as far as she could (indicating), down on her chest, and look up at the ceiling as far as she could, and that was perfectly normal.

I also checked the range of motion of her low

back by having her bend over and touch her toes, bend back as far as she could, and bend from side to side as

far as she could, and that was normal.

She was able to get up from a laying down position on the exam table to a sitting position with no difficulty.

The straight leg raising test was normal. That's a test with a person laying on their back, the doctor will lift their leg straight up and if they have a pinched nerve in the low back they'll experience pain. But there was no signs of that.

She did have some mild tenderness in some of the muscles in her neck when I pushed on the muscles of her neck, but there was no evidence of any muscle spasm and there was no true trigger point tenderness.

Also, I performed a complete trigger point at the time -- exam at the time of that exam, and it was totally negative. There was no evidence of any trigger points.

The cranial nerve exam was normal. That's an exam where we check eye movements and speech and facial weakness. Sometimes if people have been in an accident they may have had some injuries about the head and neck, but that was normal -- about the head, but that was normal.

There was no evidence of any muscle weakness, muscle atrophy, or muscle fasciculations. In patients who have a pinched nerve in the neck or back, they may very often develop weakness of muscles or little twitches in the muscle called fasciculations, or

wasting of the muscles. But there was no evidence of that in Mrs. Neese.

There was no loss of any sensation in her arms and legs. And again, in patients who have a pinched nerve in the spine they may have evidence of loss of sensation, but her sensation was normal.

And lastly, all of her deep tendon reflexes were normal. That's where the doctor will tap on the knee or the various tendons in the arms to elicit a reflex. And again, in patients who have had a pinched nerve or any serious problems with the spine there may be alterations in those reflexes, but that was all -- they were all normal.

Q. Is this --

A. And that concluded the -- my exam of her.

Q. Okay. Is this the same type of examination that you would conduct for your own patient?

A. Yes.

Q. Do you have any idea how long that examination would take?

A. I would estimate it would take about 30 minutes face-to-face with her. I subsequently spend about two or three hours reviewing medical reports and preparing a report.

Q. Are you satisfied that the time spent performing this examination was sufficient for diagnostic purposes?

A. Yes.

Q. What was the significance to you of your --

your findings on this physical examination?
A. Essentially, there were no objective findings. She had a little bit of subjective tenderness in her neck muscles.
Q. Now, can I -- can I stop you there? I don't know --
Would you explain to the ladies and gentlemen of the jury what those terms, objective and subjective, mean?
A. An objective finding in medicine is a finding that's not dependent upon the patient's cooperation. For instance, an X-ray that shows a broken bone, there's no question that that broken bone exists. It doesn't depend on the patient reporting to us whether something hurts or not.
This is opposed to a subjective finding, such

as tenderness. If I push on someone's neck and they say that hurts there's no way that I know whether it hurts or not. I'm totally at the mercy of the -- of the patient to tell me that.
Another objective finding would be a bruise, for instance. A bruise is something I can see. It doesn't depend on the patient reporting to me. That's an objective finding.
Q. Now, you said that you tested for trigger points and your test was -- was negative?
A. Yes. There was no evidence of any trigger points.

Q. And how and -- and why was that significant in this case?

A. In patients who have a condition called fibromyalgia we are generally able to palpate trigger points. But in her case I was not able to find any true trigger points.

Q. Now, this examination was done in December of 2002; is that right?

A. Yes.

Q. Okay. As part of your examination and evaluation did you also review certain medical records?

A. Yes.

Q. Okay. Could you tell us what records you were

provided and then what you reviewed?

A. At that time I was provided with emergency room records from the day of the accident, some physical therapy records in the months after the accident, some chiropractic records over the next year after the accident, and some physical therapy records over the next year or so after the accident.

Q. And was there anything significant in any of these medical records?

A. Yes. In the emergency room she did have some complaints of pain in the neck, the upper back, and the right knee. She was alert and oriented when the doctor in the exam -- in the emergency room examined her. There was some tenderness over the left collarbone, in the shoulder, and there was some restriction of range of motion of the left shoulder. There was a little

abrasion on the right knee, although she had full range of motion of the right knee.

X-rays of the neck and collarbone were normal. The emergency room doctor diagnosed an acute neck, back and shoulder sprain, and she was advised to return to her family doctor.

Q. What does the term acute mean?

A. Acute means of recent onset.

Q. Okay. And the -- and the diagnosis that the

emergency room physician made, what do those terms mean?

A. A sprain is simply a stretching of the muscles in the neck and shoulder and back which causes discomfort.

Q. Okay. You can continue.

A. I essentially reviewed physical therapy records from February and March of 2000. When she was initially seen on February 18th of 2000, about two weeks after the accident, she had full range of motion of the neck and shoulder. So she was obviously much better than in the emergency room.

By March 9th of 2000 her pain level was down to a three or -- three out of four out of 10, and she was feeling better, and exercises were prescribed.

I subsequently reviewed chiropractic records from July of 2000 until June of 2001.

Q. And these were from Dr. Coble?

A. This is from Dr. Amy Coble. Dr. Coble's notes

indicate in almost every visit that she was improving. By October 11th of 2000 she was feeling so much better that she actually forgot to come in for her appointment.

On April 9th of '01 she had full range of motion of the neck. By June 30th of '01 Mrs. Neese

actually stopped the chiropractic care on her own because she was feeling fine.

I subsequently reviewed physical therapy records from February of '01 through March of '01. Again, with each subsequent visit she reported that her symptoms were decreased.

By February 22nd of '01 her neck was feeling better. By February 26th of '01 she had gone away for a convention. March 6th of '01 she was improving each day. March 8th of '01 she reported that if she got emotionally upset her pain got worse.

By March 13th of '01 she was overall improved, her headaches were diminished, and she was only having some intermit -- intermittent soreness, and she was released from physical therapy.

Q. And does that complete the records that you reviewed at that time?

A. Yes.

Q. Okay. Now, subsequent to the visit in December of 2002 were you provided with some additional medical records?

A. Yes.

Q. Okay. And could you tell us what medical

records you were next provided with or what they were and what they revealed to you?

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A. Yes. I received some records from a physiatrist, Dr. Timothy Gatens, some records from another physiatrist, Dr. Mark Pellegrino. I did receive the ambulance records from the day of the accident.

I subsequently reviewed some records prior to the accident, from the 1990's.

THE WITNESS: Can we go off the record for one second?

MR. FRIES: Sure.

VIDEOGRAPHER: We're going off the record at 5:38:48.

- - -

Off the record.

- - -

VIDEOGRAPHER: We're going back on the record at 5:41:46. Go right ahead.

BY MR. FRIES:

Q. Doctor, you were explaining to us that you'd reviewed some records from Dr. Gatens and Dr. Pellegrino. Could you indicate what those records showed?

A. Dr. Gatens first saw her on May 31st of '01 and performed a test called an EMG, a nerve conduction

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test, which is a test that's used to diagnose any type of serious nerve or muscle injuries.

And these -- and this test was normal. He subsequently saw her again on November 27th of 2002 and on his exam found trigger points in the thoracic region and trapezius muscles. He also noted range of motion of her neck was 95 percent of normal and that her deep tendon reflexes and muscle strength was normal. He opined that she was suffering from posttraumatic fibromyalgia and recommended therapeutic exercises and massage therapy.

Q. And then you also reviewed the records from Dr. Pellegrino?

A. Yes. Let me get these in chronological order here.

Dr. Pellegrino first saw her on January 9th of 2003. When he examined her he found that her gait and station was normal. That is, her walking was normal. She had tenderness over the spinous processes. That's the bone -- little bony prominences in the spine. But he also found 18 out of 18 fibromyalgia trigger points.

Dr. Pellegrino opined that she was suffering from posttraumatic fibromyalgia and recommended various treatment options, including medication, nutritional supplements, and injections, including prolotherapy.

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Prolotherapy is a -- not a commonly used treatment, in which saline or saltwater is injected

into the subcutaneous tissues and some of the muscles in the body and painful areas. But he basically left it up to Ms. Neese as to what treatment she wanted to try.

Q. Okay. And does that complete the second set of records that you reviewed then?

A. I also reviewed the ambulance records from the day of the injury in which she did have a -- a cut on her right -- below her right knee, and she complained of pain between her shoulder blades and in her neck on the day of the accident.

Q. Now, since that time have you had occasion to conduct yet a second examination of the plaintiff?

A. Yes. I just saw Ms. Neese again on December 22nd of 2005, just about six weeks ago.

Q. Okay. Did you at that time obtain an additional history from her?

A. Yes.

Q. And could you tell us what she related to you in December of 2005?

A. She told me in -- in the two years since I had seen her that her symptoms have actually gotten progressively worse and that now her entire body hurts

her and that the pain is constant and getting worse.

She is still able to do the dressing, grooming, feeding and bathing and some light cleaning. She's able to do some laundry, though her husband had to actually put the washing machine up on blocks so --

so she wouldn't have to bend over.

She's still able to do the cooking and shopping and is able to drive, but she's no longer able to ride horses or ride (sic.) in the garden.

She told me that Dr. Pellegrino has been treating her with medications. She's been getting massages twice a week. She had trigger point injections by Dr. Pellegrino.

Trigger point injections are injections usually of a local anesthetic into the areas of tenderness. But despite -- and she's been on various medications. She also uses Lidoderm patches, which are patches of local anesthetics that are put over painful areas. But despite all this treatment she stated she'd been getting progressively worse.

In addition to this she indicated that in the summer of 2004 she began to experience pain in her feet and she felt that the pain in her feet was also due to the auto accident. She also complained of soreness in her hands which started in the fall of 2004, and she

also felt that this was due to the auto accident, even though it started about two-and-a-half years after the accident.

So basically she just got progressively worse and the pain seemed to have spread to her whole body, including her hands and her feet.

Q. Did you proceed to conduct another physical examination?

A. Yes. She was five-foot seven and weighed 220

pounds, which was a 40-pound weight gain from when I had previously seen her.

Again, her gait and station was normal. She was able to walk on her toes and heels and in tandem. The range of motion of her neck and back, however, were slightly reduced. She was not able to turn her neck or bend as well as she had previously.

She was able to get up from a laying down to a sitting position with no difficulty. The straight leg raising test was negative.

Exam on this time, however, revealed that she reported that tenderness literally wherever she was palpated on her body. Wherever I would push with my thumb, even barely compressing the subcutaneous tissues, she complained of pain.

These were not real true trigger points or

discreet areas of pain, as we see in fibromyalgia, but just wherever she was just barely touched she complained of pain.

She also had tenderness over so-called control points, such as the skull and the clavicle. In fibromyalgia, if you push over bony prominences, such as the collarbone or the skull, that should not hurt. I mean, that's not an area that's affected by fibromyalgia. But she even had tenderness over the control points, such as the skull and the clavicle.

And this was also consistent with Dr. Pellegrino's exam when he noticed she had

tenderness over the spinous processes, which are the bony processes in the spine. They -- they are not areas that should be tender in fibromyalgia.

Again, there was no evidence of any muscle weakness or sensory loss. Her reflexes were all normal. There were no joint abnormalities. She did have a lot of tenderness over the tissues in the soles of both feet, but there was no swelling noted. Examining her hands, her hands appeared normal. So I wasn't sure why she was having pain in her hands.

There was no swelling, deformity, or joints did not hurt when I palpated her joints, although she did complain of pain in her hands. But there wasn't

any swelling or tenderness.

And that completed my second exam on February -- on December 22nd of 2005.

Q. You used the term diffuse tenderness. What does that mean?

A. Diffuse just means it's everywhere. Literally, no matter where she was touched on her body it hurt.

Q. And how does that relate to or compare to the term trigger points?

A. Trigger points are very specific areas that are examined in patients who have true fibromyalgia in which we can palpate just in those areas in the subcutaneous tissues at the base of the neck, upper thoracic area, lower lumbar area, the medial aspect of the knee and thigh, the outer part of the arm, the soft

tissues in those areas, but not over bony prominences, such as the skull or the collarbone.

Q. What was the significance of your findings on this physical examination?

A. I did not -- I was unable to make a definite diagnosis as to what the cause of her symptoms were. And there basically wasn't any change in my opinions from after I saw her the first time.

Q. All right. And now subsequently have you had

occasion to review additional medical records as well?

A. Yes.

Q. Okay. Could you relate to us the -- the remainder of the medical records you've reviewed?

A. Yes. I was recently in receipt of some additional medical records date -- dating back to the 1990's, prior to the accident, and some additional records after the accident.

In 1995, though, she saw an orthopedic surgeon in Newark, Ohio, Dr. Henry Rocco, for low back pain. At that time she was wearing a back brace and was taking Daypro. And she had a diagnosis of spondylolisthesis and spondylolysis at L5.

Q. Now what -- what does that mean?

A. I know that's a mouthful, but in plain English it's a birth defect that causes a slippage of one of the vertebrae in the low back, forward on the other -- on the other one.

Q. What kind of symptoms does that cause?

A. Well, in her case she had been experiencing low back pain for the last two years with pain radiating into the right leg. So this pain had actually started in 1993.

Dr. Rocco noted that she had had an MRI of the spine, which showed moderately advanced degenerative

disc disease, and this spondylolisthesis, which I mentioned is a birth defect.

Q. What -- what does disc disease mean?

A. The spine is made up a number of bones called vertebrae. In between these bones are little cushions called discs. And as we age those discs lose some of their water content and become thinner and we call it degenerative disc disease. Commonly causes low back discomfort.

I subsequently reviewed some records from her family doctor, Dr. Born. He had seen her in July of '99, about six months prior to the accident, for headache and a sinuous infection.

He saw her in November of '99 in which she gave a history that she'd been struck by a metal post in August of '99 and was still having pain in her left shoulder radiating into the neck with headache. Advil did not help and he gave her some Vioxx.

He saw her again on December 28th of '99, about a month prior to the accident, and her shoulder pain was continuing and was so severe that Ms. Neese herself wanted to be referred to an orthopedic surgeon.

She subsequently saw Dr. Mark Holt, an

orthopedic surgeon, on January 4th of 2000, 26 days before the auto accident. And she informed Dr. Holt

that she had injured her left shoulder at the end of August when a post hit her in the collarbone area. She was having persistent pain in the anterior part of her chest and her trapezius muscle, which is a muscle that connects the neck with the shoulder, and in the collarbone. She was also having pain in the arm. Dr. Holt was unable to explain all of the symptoms that she was experiencing at that time.

I subsequently reviewed some additional records after the accident. Dr. Szekely examined her on February 9th of 2000, about nine days after the accident. At that time there was some decrease in range of motion of the neck consistent with a muscle strain. There was some bruising noted over the left anterior chest wall consistent with the auto accident. Although, she did have full range of motion of both shoulders. And Dr. Szekely felt that she had a neck and shoulder sprain.

He saw her again about -- on February 15th of 2000 for an earache, but there was not any mention of neck pain at that time.

By March 10th of 2000 she told Dr. Szekely that her neck pain was improved. She only had a little bit of stiffness occasionally. She had some intermittent tenderness over both of her shoulders.

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But her main complaint was knee pain. Walking and swimming did not bother her and no specific motion bothered her.

When Dr. Szekely examined her on March 10th of 2000 there was absolutely no tenderness over the neck muscles and she had full range of motion. And Dr. Szekely opined that her neck sprain had resolved.

Q. This was how long after the accident?

A. This was on March 10th of 2000, which is approximately six weeks after the accident.

Also, some X-rays of both knees on March 10th of 2000 were normal, with no evidence of any trauma.

I subsequently had some records from the Licking Memorial Health professional offices, dated June 30th of 2000. She was complaining of some neck and knee pain, but her neck was, quote, supple, unquote. Supple means better than normal range of motion. And -- but she did have some tenderness in the trapezius muscles.

I had some additional family doctor records, one was July 3rd of 2000, in which she had normal strength and sensation. July 17th of 2000 she reported chiropractic treatment, quote, helped a lot, unquote. She was still having some back and neck pain, however. Low back pain -- there was no low back pain. There was

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no motor weakness, sensory loss, or reflex changes.

On August 3rd of 2000, again, her neck was

supple with good range of motion.

Had some additional family records that I believe was dated February 15th of '01 in which her family doctor noted that there was muscle spasm, but then stated that her back was supple with good range of motion. I find it hard to understand that, because if you've got muscle spasm it would be very difficult to be supple.

By May 23rd of '01 Dr. Born noted she was in no apparent distress, her neck was supple with good range of motion, no muscle spasm. June 13th of '01, neck supple with only slightly decreased range of motion. And Dr. Born noted that she injured her back getting out of the bathtub.

September 28th of '01 there was some decrease range of motion of her neck, but no weakness or objective findings. The -- she did have EMG's performed on May 31st of '01, which is the diagnostic test I alluded to before, and this was normal with no evidence of a pinched nerve or muscle spasm.

She subsequently had an MRI scan of the neck on October 1st of '01. That's a test in which magnetic rays, instead of X-rays, are used to give us pictures

of the neck. And we cannot only see the bones, but we can see the muscles and the ligaments and the -- and the discs and the spinal cord and the nerves. And that was perfectly normal.

Additional records from Dr. Born, by

October 5th of '01, quote, neck is great, is normal, unquote. Full range of motion of the neck. Neck's supple. No tenderness. April 1st of '02, neck supple with good range of motion. July 1st of '02, in no distress, neck supple with good range of motion.

Additional records from Dr. Gatens, June 10th of '03. Dr. Gatens felt that he found trigger points noted in the thoracic region and upper trapezius region and just above the right knee. There was no reflex changes or weakness.

On September 22nd of '03 he felt -- felt she had trigger points in her feet. In January 22nd of '04, no motor weakness or reflex changes.

On January 22nd of '04, Dr. Gatens again did not find any definite objective findings. And Dr. Gatens at that time felt that he was not qualified as to -- as to give a prognosis in this particular case.

And that completed the medical records that I reviewed.

Q. Are those all the records then that you've seen on -- throughout the time since you did your first examination?

A. Yes.

Q. Now, if -- if I understand your testimony correctly, you've seen the plaintiff on --

- - -

Interruption in proceedings.

- - -

MR. FRIES: We're going off the record --
VIDEOGRAPHER: We're going off the record --
MR. FRIES: -- for a minute.
VIDEOGRAPHER: -- at 6:00:07.

- - -

Off the record.

- - -

VIDEOGRAPHER: We're going back on the record at 6:01:15. Go right ahead.

BY MR. FRIES:

Q. Okay. Now, Doctor, I -- I think you've seen the plaintiff on two occasions; is that correct?

A. Yes.

Q. Taken histories from her, done two

examinations, and reviewed a number of medical records. Do you have any estimate of the total amount of time that you've spent in taking the histories, doing the physical exams, and reviewing the records?

A. Yes. I spent about half an hour face-to-face on each occasion with Ms. Neese. I subsequently spent about eight hours reviewing records and preparing reports. So all told, I've spent about nine hours evaluating this case.

Q. Are you satisfied that you've had sufficient time to discuss your diagnostic impressions of the plaintiff?

A. Yes.
Q. In terms of these diagnostic studies that you've testified about, are -- are there any diagnostic studies that you've reviewed -- and I'm talking about the objective tests that don't depend on what the plaintiff said -- that revealed any abnormalities that would explain any of the symptoms that she's complained about?
A. No. She had normal X-rays of the spine, the knees. She had normal EMG's. And she had a normal MRI scan of her neck.
Q. Okay. Now, Doctor, I want to ask you for certain opinions on certain matters and I want to

remind you to please state those opinions that you hold based upon a reasonable degree of medical certainty. Is that fair?
A. Yes.
Q. Based upon your education, your training, your experience, the histories that you've obtained from the plaintiff, your review of the various diagnostic studies and other medical records that you testified about, the physical examinations that you've conducted, do you have an opinion regarding what injuries the plaintiff suffered as a direct and proximate result of the motor vehicle accident that she was involved in on January 30 of 2000?
A. Yes.
Q. Okay. And could you tell us, Doctor, what that opinion is?

A. I think she suffered some muscle strains to her neck and mid back and also an abrasion to her knee.
Q. And -- and what did those terms mean?
A. A strain is a stretching of muscles to the point of causing discomfort. An abrasion is simply a injury to the skin over the knee causing a scrape on the knee, essentially.
Q. And what is that opinion based on?
A. That is based on the history I obtained from

Ms. Neese, my physical exam of Ms. Neese, and review of extensive medical records that I've already alluded to.
Q. Doctor, have you also concluded that the plaintiff suffers from certain conditions that are not related to this motor vehicle accident? Do you have an opinion about whether she suffers from certain conditions that are not related to the motor vehicle accident?
A. Yes.
Q. Okay. And could you explain what that opinion is?
MR. CECIL: Objection. Go ahead, Doctor.
A. She did have an injury to her shoulder and neck in August of 1999 that pre-existed the injury and was still having symptoms immediately prior to this accident as a result of that condition. But it obviously was not caused by that condition -- or the by the accident. She also had a history of severe low back pain due to a birth defect and degenerative disc

disease in her low back which pre-existed this condition.

She also suffers from a painful condition of her feet, which has been diagnosed as plantar fasciitis, which is obviously is not related to the condition -- or to the injury -- the accident.

She also has some soreness in her hands, which has not been diagnosed by anyone as to cause, but I do not think that's related to the accident.

She has also been diagnosed by other physicians as having posttraumatic fibromyalgia, which in my opinion does not exist in her and is not related to this accident.

Q. Now, with respect to those conditions that you have said she suffers from that are not related to the accident in your opinion -- and that opinion is based upon a reasonable degree of medical certainty; is that right?

A. Yes.

Q. -- can -- can you explain to us, with respect to each of those conditions, why you don't believe they're related to the accident, the motor vehicle accident?

A. As far as the posttraumatic fibromyalgia, again, I do not think this condition exists in her, as I was unable to find any evidence of true trigger points on my exam. She did have some mild nonspecific tenderness, but no true trigger points.

Also, she had pain on palpation of almost

anywhere -- of anywhere in her body, including control points, such as the clavicle, the skull, and the

spinous processes, which are inconsistent with fibromyalgia. Also, a consensus conference held in 1994 recommended that the term posttraumatic fibromyalgia actually be abandoned, since there's no way to objectively diagnose this nebulous condition in the posttraumatic group of patients.

Q. Doctor, do you have an opinion as to whether any of the injuries that the plaintiff suffered in the accident -- in the motor vehicle accident that you've told us about are permanent?

A. Yes.

Q. Could you tell us what that opinion is?

A. I would have expected complete recovery from the muscle strains she had to her neck and back and the abrasion to her knee within four weeks.

Q. And what is that based on?

A. The natural history of recovery from muscle strains of this nature is for complete recovery within four weeks. Also, there was no evidence of any more serious injury, such as fracture, dislocation, disc herniation, or any other injury that would be expected to cause symptoms beyond four weeks.

All of her testing was perfectly normal. There was X-rays of her knee and neck were normal, an MRI scan of her neck was normal. The EMG test was

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normal. There was no evidence of nerve injury or muscle spasm. Several times in the records doctor have alluded -- doctors have alluded to the fact they thought she had muscle spasm. But the EMG is extremely sensitive at picking that up. And there was no evidence of any muscle spasm.

Also, my exam of Ms. Neese, on two separate occasions, revealed no objective abnormalities.

The physical therapy records indicate that by March of '0 -- 2000 her pain was only three out of four and she was feeling much better. The second set of physical therapy records indicate that she was steadily improving and was only experiencing discomfort when she got emotionally upset.

By March 13th of '01 she was having only intermittent soreness and was released.

The physical therapy records also indicate that by February of '01 she was able to go to a convention.

Dr. Coble, the chiropractor's records, indicate that by April 9th of '01 she had full range of motion of the neck and on one occasion even forgot to come in for treatment since she was feeling so well.

So for all these reasons I feel that I would have expected complete recovery within four weeks.

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Q. Do you have an opinion as to what medical care and treatment was reasonable and necessary as a direct

and proximate result of the injuries that the plaintiff did suffer in this accident?

A. Certainly I think that medication or physical therapy up to four weeks after the accident was reasonable and necessary for these muscle strains. But there was no objective evidence of any injury that we would expect to -- any further therapy beyond four weeks be needed.

Q. Do you believe that the plaintiff will require any further care or treatment for any of the injuries that she suffered in this accident?

A. There are no objective findings on examination or diagnostic testing of any injury related to the January 30th, 2000 accident that would require any future or ongoing medical, chiropractic, surgical, or physical therapy treatments.

Q. Do you believe that the plaintiff suffers from any ongoing impairments as a result of the injuries that she suffered in this accident?

A. No.

Q. Okay.

MR. FRIES: Can we go off the record for a minute?

VIDEOGRAPHER: Sure. We're going off the record at 6:10:32.

- - -

Off the record.

- - -

VIDEOGRAPHER: We're going back on the 6:11:45. Go right ahead.

BY MR. FRIES:

Q. Doctor, the opinions and conclusions that you've testified about -- or testified to this evening, are they consistent with written reports that you've prepared in connection with your examination and evaluation of the plaintiff?

A. Yes.

Q. Okay.

MR. FRIES: Doctor, thank you. I don't believe I have any further questions.

CROSS-EXAMINATION

BY MR. CECIL:

Q. Hi, Doctor. My name's Andy Cecil. I'd like to ask you some questions and then we'll take a look at your file. But let me go into a little bit here. I want to address your background.

You indicated that you do these examinations. You do these examinations primarily for defense attorneys; correct?

A. I would estimate I do three or four exams a week at the request of attorneys, and I would estimate about 80 percent of those are at the request of defense attorneys and 20 percent plaintiff attorneys.

Q. And you also do these for businesses, say in Workers' Comp. situations?

A. Very rarely would I do one for a business. I -- I'll do them for the state frequently through the Bureau of Workers' Compensation.
Q. Do you do them for insurance companies?
A. Usually -- you mean for -- for a personal injury case?
Q. Whether it'd be personal injury, disability, whatever. Do insurance companies ask you to examine people on their behalf?
A. Occasionally, but almost always it's through an attorney.
Q. All right. Has Mr. Fries ever asked you to examine one of his own clients?
A. Yes.
Q. Okay. Who was that?
A. I can't recall.

Q. When was that?
A. I can't recall.
Q. How many times have you done that?
A. I can't recall.
Q. Now, the law firm he's with, you soc -- you socialize with some of those folks, don't you? Some of the lawyers in that firm, you socialize with some of them?
A. I have to think who's in the firm.
Q. If you want I can get your prior deposition testimony.
A. Okay. Mr. Fries, I do not socialize with

Mr. Fries. Who else is in the firm? You got --

Q. Wayne Phillips.

A. Wayne Phillips is actually my attorney.

Q. Okay. And he's in that firm?

A. He's my personal attorney and he's --

Q. All right.

A. And he's --

Q. Mr. Dal -- I'm sorry.

A. Let me back up. He -- he's in that -- he's in the office with them. I think he's of counsel. Does that mean he's in the firm, or just rents space from them?

Q. And that kind -- that kind of depends on how

they're setting things up.

A. Okay.

Q. But when you want to go see your own lawyer you go to that law firm?

A. I go to -- I go to that building, yes.

Q. All right. And is -- when you walk through the front door does it have your lawyer's name on it, or does it have Mr. Fries' law firm on it?

A. I can't remember.

Q. All right. When you call in there, how's the phone answered, do you know?

A. I think they say -- I think --

Q. Gottlieb?

A. Gottlieb, Beam --

Q. Gottlieb, Johnston, Beam & Dal Ponte?

A. And Dal Ponte. Okay.

Q. Which is Mr. Fries' law firm; correct?
A. Yes.
Q. All right. You also golf with some of the lawyers there?
A. Who's in the firm again? I'm -- I'm sorry, I just can't remember.
Q. Well, have you ever golfed with Mr. Dal Ponte?
A. No.
Q. All right. A Mr. Kaido?

A. I don't even know Mr. Kaido.
Q. Okay. I believe you indicated that that's a Mike Kaido that you played golf with.
Mr. Beam is a golfer?
A. I've played with Mr. Beam.
Q. Okay.
A. Yes.
Q. And I believe you've also testified during your discovery deposition that you consider some of those lawyers to be friends?
A. Again, if you could just tell me who's in the firm. I forget. Mr. Beam --
Q. Well, do you consider any of the lawyers in that law firm --
A. We're in --
Q. -- to be your friend?
A. I mean, we're in a small town. I mean, I'm acquaintances. I can't even recall if any of those attorneys in that firm have ever even been to my house.

Q. Okay.
A. But could I see their -- if you tell me who's in the firm I'll tell you --
Q. Well, let me -- I'll --
A. I can answer your question better.
Q. I'll tell you. Let me -- Let me see if this

refreshes your recollection.
A. Okay.
Q. And this is your prior deposition testimony.
A. Okay.
Q. The question was: You say you know him socially and with capacity?
A. Now who --
Q. Talking about --
A. Who's him?
Q. Wayne Phillips. I mean, are you a member of the same club or any organizations? And your answer: Mr. Dal Ponte and I, our kids grew up together and went to the same school is basically how we know each other. Mr. Beam is a golfer and I play golf with him from time to time. Okay, I've never been to Mr. Dal Ponte's house. And then you state: Our kids grew up together. I consider them to be friends.
Do you recall that -- giving that testimony?
A. No, but I would -- I think that's accurate.
Q. All right. Now, with respect to fibromyalgia in general, you've made that diagnosis yourself; right?
A. Yes.
Q. You treat people with fibromyalgia?

A. Yes.
Q. When you treat people with fibromyalgia what

treatment do you administer or recommend?
A. The only treatment that's ever been shown to be of any benefit scientifically is therapeutic exercise, so I am a big advocate of therapeutic exercise for the treatment of fibromyalgia.
Q. Have you ever recommended physical therapy for any of your fibromyalgia patients?
A. Only for instruction in the therapeutic exercise. There's no evidence that going to the physical therapist for months on end for ultrasound or massage or electrical stimulation is of any benefit whatsoever.
Q. What about massage therapy, do you recommend that for your fibromyalgia patients?
A. No.
Q. What about injections, trigger point injections?
A. No.
Q. You've never done trigger point injections or recommended those?
A. On a rare occasion, some years ago, I may have, but I have found them to be almost uniformly useless and of no long-term benefit.
Q. Okay. You'll agree that this is a medical condition, but I believe you also said there is no cure

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for fibromyalgia?
A. Yes.
Q. Now, with respect to fibromyalgia, you've told me previously that you didn't do much studying of fibromyalgia back when you were in med. school because it was kind of a new thing; is that right?
A. Yes.
Q. And I believe you've also testified previously that you've attended one conference that addressed fibromyalgia?
A. I have attended conferences on fibromyalgia. I can't give you a list of them, no.
Q. Now then, with respect to your own practice, how many studies have you performed for peer review with respect to fibromyalgia?
A. I don't understand the question.
Q. Have you ever conducted any studies which were research studies or published studies with regard to care, treatment of fibromyalgia?
A. No. I'm a practicing physician. I don't do research.
Q. Have you ever written any books regarding fibromyalgia?
A. No.
Q. Have you written any articles regarding

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fibromyalgia?
A. No.

Q. Have you been a speaker at any kind of conference or seminar with other medical doctors where you were a speaker on behalf of -- excuse me, a speaker discussing fibromyalgia?

A. No.

Q. Some of the characteristics of fibromyalgia, folks with fibromyalgia have good days and bad days?

A. Yes.

Q. There's no true diagnostic test, not an electric diagnostic test; correct?

A. There is no test that can be done to diagnosis the condition, no.

Q. So someone can be suffering or diagnosed with fibromyalgia and have a normal X-ray?

A. Yes.

Q. Someone can have fibromyalgia and have a normal MRI?

A. Yes.

Q. Someone can have fibromyalgia and have a normal EMG?

A. Yes.

Q. So whether or not Jeri Neese has normal X-rays, MRI's, EMG's does not indicate that she does or

does not have fibromyalgia?

A. That's correct.

Q. I believe you indicated that two or the more common characteristics or symptoms of someone with fibromyalgia is fatigue?

A. Yes.
Q. Depression?
A. Yes.
Q. A couple others would be sleeplessness?
A. Usually it's nonrestorative sleep. That is, they will get a full night's sleep but then feel like they didn't get a full night sleep.
Q. They don't get re-energized, so to speak?
A. And they may -- and they may be restless sleepers because of the discomfort in bed.
Q. Now, in -- and also depression?
A. Yes.
Q. And diffuse muscle pain?
A. Yes.
Q. And all of those symptoms or characteristics you found in the medical records that you reviewed on behalf of Jeri Neese; right?
A. She reported all of those symptoms, yes.
Q. And her doctors used that information as part of their diagnoses; right?

A. Yes.
Q. And that's the same thing you would do with your patients where the patient has to come in and tell you they're fatigued. You don't know if they're fatigued or not; right?
A. Certainly I would consider someone's subjective complaints in making a diagnosis, yes.
Q. Well, that was my next question. So subjective complaints, you treat people based on

subjective complaints?
A. Yes.
Q. Dr. Gatens, you reviewed his records. He's a board certified neurologist?
A. He's a physiatrist.
Q. Physiatrist. I'm sorry. And he's a board certified physiatrist?
A. I don't -- I don't know whether he is or not.
Q. All right. He diagnosed fibromyalgia; correct?
A. Yes.
Q. Dr. Pellegrino, do you know that -- do you know Dr. Mark Pellegrino?
A. No.
Q. Have you read any of his books?
A. No.

Q. Are you aware that he has written books with respect to fibromyalgia?
A. No.
Q. Are you aware that he has written numerous articles with respect to fibromyalgia?
A. No.
Q. Are you aware that he has lectured to other medical profession -- professionals on numerous occasions with respect to fibromyalgia?
A. No.
Q. And Dr. Pellegrino diagnosed fibromyalgia in Jeri Neese, didn't he?

A. Yes.
Q. Another doctor that has been consulted was a Dr. George Waylonis. Do you know Dr. George Waylonis?
A. Yes.
Q. He is recognized in central Ohio as someone who has great knowledge with respect to fibromyalgia, isn't he?
A. He treats a lot of patients with fibromyalgia, yes.
Q. You've gone places where he was a featured speaker regarding fibromyalgia; correct?
A. I went to a conference at the American Academy of Neurology several years ago in Toronto in which he

spoke to a group on fibromyalgia.
Q. All right. Have you read any of his articles?
A. I've read his -- some of his patient information brochures.
Q. Are you aware that Dr. Waylonis has written books regarding fibromyalgia?
A. No.
Q. Are you aware that Dr. Waylonis has conducted studies with respect to fibromyalgia?
A. No.
Q. Dr. Waylonis has written articles regarding fibromyalgia, are you aware of that?
A. No.
Q. And Dr. Waylonis was in charge of physical medicine at Riverside Methodist Hospital, were you aware of that?

A. No. I wasn't aware of what his position is. I know -- I know that he is a physiatrist.
Q. And were you also aware that he was on staff at Ohio State University Hospital for a number of years?
A. No.
Q. He was also teaching at OSU Medical School for a number of years.
A. No, I was not aware of that.

Q. Have you taught at any medical schools?
A. No.
Q. When you create your reports, which you've been kind enough to give me, are those reports dictated by you as you go along during your examination process, or do you make notes and come back and create a report?
A. When I'm seeing the patient I will make some notes. I will then dictate the history and physical exam part and then I will review the medical records and dictate as I go along in reviewing the medical records.
Q. But as far as the exam itself, you have handwritten notes?
A. On occasion. Not always.
Q. Okay. What is the time frame from when you examine the patient, you then -- I'm assuming you'd have to finish your day out before you do anything further in that regard; is that correct?
A. Yes.

Q. So at the end of the day then you sit down and dictate the history that was obtained?

A. Yes.

Q. And you begin reviewing all the medical records?

A. Yes.

Q. And then after you've done all of that you create your report?

A. Yes.

Q. All right. Can you show me, if you would, your handwritten notes from the first examination of Jeri Neese. And while you're going through there if you could get the notes for the second one also, because I'll have questions about that.

A. These are handwritten notes from the second exam. And I may or may not have handwritten notes from the first exam. Let me look.

- - -

Pause in proceedings.

- - -

Q. Doctor, if it'll help, I think I've got a copy.

A. How'd you get a copy?

Q. We've met before, if you recall.

A. On this case?

Q. Yes, sir.

A. Oh.

Q. Sorry I didn't stand out more. Hurt my feelings.

A. You sure you didn't take my original? I can't find the original.

Q. I don't know -- what -- what I've got there is a copy. Is that your handwriting on there?
A. Yes.
Q. Okay.
MR. CECIL: Let's go off the record for a minute and just mark these documents if we may.
VIDEOGRAPHER: We're going off the record at 6:26:24.

- - -

Off the record.

- - -

(Plaintiff's Exhibits 1 - 2 marked.)

- - -

VIDEOGRAPHER: We're going back on the record at 6:27:19. Go right ahead.

BY MR. CECIL:
Q. Doctor, I want to hand you what's been marked as -- we're going to -- for now we're going to call it Exhibit No. 1. Would you identify for the record what that is?
A. These are handwritten notes that I took when I first saw Jeri Neese on December 3rd of 2002.
Q. And these are the notes that you would have taken before meeting her and while being with her?

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A. I'm sorry?
Q. I'm sorry, let me --
A. Say that again.
Q. Let me start all over. These are notes that would have been created before you met her. I believe some of this was created by your nurse?
A. Oh, I'm sorry. Yeah, I understand. Yes. My receptionist writes in the date and her name and her gender and her age, and then my medical assistant writes in her height, her weight, her blood pressure, the medicine she's on, her allergies, whether she's married or single, whether she smokes or drinks. Then the rest -- the rest of the handwriting is mine.
Q. Okay. And as far as your physical exam, any kind of notes you would have made at that time would be contained on this paper?
A. Yes.
Q. All right. Looking at that first page, which was your notes from the physical exam in 2002, can you show me the words trigger point?
A. No.
Q. No you can't show me, or no, you're not -- it's not on there?
A. She didn't have any trigger points so I didn't write trigger points down.

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Q. Can you show me where it indicates that you palpated?

A. I'm sorry, I don't understand the question.
Q. Well, I believe you testified that part of your examination on the first time, back in 2002, you palpointed -- palpated, excuse me, various trigger points. And what I want to know is where on here does it indicate that you actually performed that testing?
A. It doesn't say it on here, it just says tender cervical.
Q. Now, when you're searching for trigger points -- you've testified earlier there was fibromyalgia -- there are 18 recognized trigger points?
A. Yes.
Q. And those trigger points are all over the body; correct?
A. Yes.
Q. Not just the cervical area?
A. Correct.
Q. All right. And does it say anything in here about palpating any part of a body?
A. No. It's in my report but it's not in here.
Q. All right. But you didn't do your report till later; right?
A. Correct.

Q. Okay.
A. I did it -- I saw her on December 3rd and did the report on December 5th.
Q. Two days later?
A. Yes.

Q. Describe Jeri for me. Can you tell me anything about her other than her height and weight which is written on your notes?

A. Whatever is in my report is what I recall.

Q. Now, you put things in your notes because you see so many people; right? You want to make sure you remember the important stuff?

A. Well, this -- this is a worksheet that I work from, but it -- it's not all inclusive.

Q. I understand. But the reason in medical school they teach you to keep good notes, because you're going to be seeing so many people and you don't want to forget anything that's important; is that correct?

A. But -- but notes are just meant to jog your memory. Notes are not War and Peace. You don't write down everything in the world.

Q. Okay. What important stuff do you not keep notes of?

A. Well, when somebody has -- when somebody says

that they were diagnosed as having posttraumatic fibromyalgia I do a complete trigger point exam. I don't write down in my worksheet that I do a complete trigger point exam, but in the -- in the final report, where I have to write down everything I did, I put it in the final report.

Q. Well, if there would be testimony that you did not do a complete trigger point exam do you have any documentation which was made contemporaneously, or at

the same time as did you the exam, to demonstrate that you did?

A. My report is what I did.

Q. Which was two days later?

A. Correct.

Q. Okay. Now, your report in 2005 -- if you could take a look at your notes from that examination. Same questions. Does -- is the word palpation found anywhere in your notes from your second examination?

A. No.

Q. Now that's the primary test that's used for diagnosing fibromyalgia, correct, palpating trigger points?

A. The word palpation is in the final report, because that's what I did, but it's not in my notes, no.

Q. In your notes there's an 18/18. What's that mean?

A. That means that at -- at every fibromyalgia trigger point she was palpated that she -- she complained of pain, but she also complained of pain over control points, including the clavicle and the skull. And in the final report, which I dictated the same day as I saw her, she literally had pain everywhere.

Q. So when you saw her in 2005 every time you pressed on a trigger point you found a positive response?

A. Every time I pushed anywhere in her body she complained of pain.

Q. Okay. And in your report it says there are no true trigger points. What do you mean, no true trigger points?

A. A trigger point is a discreet area of tenderness that the doctor can palpate with his thumb. Sometimes we can feel little taut bands or evidence of muscle spasm within the trigger point. But then if we move off the trigger point it doesn't hurt everywhere. In fibromyalgia it's just over the tender points that it hurts. And certainly when you palpate over the spinous processes, or the skull or the clavicle, those

areas are totally nontender.

Q. With respect to Dr. --

MR. CECIL: Excuse me, we're going to have to go off the record a minute.

VIDEOGRAPHER: We're going off the record at 6:33:10.

- - -

Off the record.

- - -

VIDEOGRAPHER: We're going back on the record at 6:36:21.

BY MR. CECIL:

Q. Sorry, Doctor. We had some kind of buzz -- humming sound apparently that we had to take care of.

You'd indicated on your chart that you found

18 out of 18 trigger points. Now, Dr. Pellegrino in his report found 18 out of 18 trigger points; correct?

A. Now wait a minute. Let's stop a minute. You are referring to handwritten notes. My official report is what the final report is.

Q. Okay. Let me rephrase --

A. These are just some handwritten notes that are not meant for anything other than to jog my memory as to what I found when I examined her and have no

official meaning whatsoever.

Q. Okay. Doctor --

A. Yes, she did have pain over every trigger point I palpated and she had pain everywhere else in her body, including the clavicle and the skull. But what I found is outlined in my official report, not in my handwritten notes.

Q. I'll rephrase it.

Your handwritten notes show 18 out of 18 trigger points; correct?

A. No.

Q. Okay. Could you tell me what the 18/18 is?

A. That means when I examined every trigger point she reported tenderness.

Q. Okay.

A. I didn't think they were true trigger points. And also, she was tender everywhere. So that has absolutely no meaning whatsoever.

Q. All right. Dr. Pellegrino, in his

examination -- you reviewed his reports, haven't you?

A. Yes. Yes.

Q. He also found 18 out of 18 trigger points; correct?

A. I object to the word also because I did not --

Q. Okay.

A. -- find true trigger points.

Q. Dr. Pellegrino --

A. Dr. Pellegrino reported he found 18 out of 18. I did not.

Q. And -- and Dr. --

A. She was tender everywhere you touched her.

Q. And Dr. George Waylonis, he found 18 out of 18 trigger points; correct?

A. Yes.

Q. Now, Doctor, I want to go over your re -- your first report, which is I believe 2002. That's the one you started with. And you were kind enough to recite for us some various records that you reviewed and some findings.

Now, when you went through here and created this report you're trying to be objective during this whole process; right?

A. Yes.

Q. You want the jury to believe that you don't have a -- a dog in the fight, so to speak? You don't care what happens here; right?

A. That's exactly right.

Q. Now, can you show me, with respect to Dr. Amy

Coble's records, which you've listed some of the things you found important. And please look at your report.

You've listed five entries there, is that correct, maybe six?

A. Yes.

Q. How many times did Dr. Coble see Jeri Neese?

A. She saw her more than this, but I can't recall exactly how many times.

Q. And in any of those other entries do -- was there anything which indicated that Jeri Neese was having pain?

A. Well, actually, in all the records said she was having pain, but the -- the gist of the records was that she was slowly improving and that by the time she finished treatment with her she -- the patient herself actually stopped care on her own.

Q. Would you show me, in any of the entries that you put in your report, where you indicate that she has pain other than in the first entry?

A. Well, the first entry's complain of pain in the neck, left shoulder, right shoulder and mid back. The other records don't say pain, but they say she's steadily improving, which implies that she's still having some degree of pain.

Q. And Dr. Coble, when she first saw Jeri, indicated that she was having problems and that those problems were a direct result of the car crash; right?

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A. Ye --

MR. FRIES: Objection.

A. Yes.

Q. And those are records you relied on for part of your process; right?

A. The records that I reviewed were one of three things that I relied on, yes.

Q. Okay. And there were also -- there was also an indication in Dr. Coble's records, which you did review, right, you've established that --

A. Yes.

Q. -- of hand pain with Jeri Neese; right?

A. Yes.

Q. Because I believe you had testified earlier that the first time there was ever an indication of hand pain was approximately 2004?

A. It was one -- you know, one reference to hand pain, but certainly nothing related to the accident.

Q. Well, actually there's more than one with Dr. Coble, wasn't there?

A. Yeah, but this was months after the accident.

Q. What was months after the accident?

A. Hand pain.

Q. Okay. When was the hand pain that Dr. Cob -- Dr. Coble mentioned that you're talking about?

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A. Sometime in the year after the accident. I don't recall the exact date.

Q. It wasn't in the same year?
A. I said sometime in the year aft -- the 12 months after the accident.
Q. I'm sorry. I'm -- I'm sorry. I -- I thought you meant the year after the accident. I apologize --
A. No.
Q. -- sir.
A. So I don't believe she saw Dr. Coble until about five or six months after the accident.
Q. And with respect to the physical therapy, there were notes in there which indicated that Jeri was having ongoing problems; right?
A. Everyone she saw she had complained of pain, yes.
Q. Okay. But it seems that -- and maybe I'm just mistaken. It seems like you've selected certain records to put in your report which would paint a rosy picture on behalf of Mr. Fries' client.
A. Oh, absolutely not. Dr. Pellegrino's records indicated she was going to be disabled for life.
Q. Is that in your report? Would you point that out for me, please.
A. Dr. Pellegrino's records from 2003, for

constant pain and spasm, intense ropey muscles, physical therapy did not help, numerous painful tender points, tender points on palpation, 18 out of 18 tender points.
Q. I'm -- I'm sorry, what document is that you're

reading?

A. I'm sorry. These are Dr. Pellegrino's records from 2003, 4 and 5.

Q. But the document you're reading, is that the one that was just prepared last night?

A. No. This was a document dated January 19th of 2006.

Q. Okay. I don't have that either. Can I see that?

A. Okay. I sent that to Mr. Fries.

Q. Okay. Where in this report that you gave to Mr. Fries do you state that Dr. Pellegrino was finding that Jeri's going to be disabled for the rest of her life?

A. I don't see it in the report, but he implies that it's going to be -- he saw her over a three-year period of time and her symptoms didn't get any better.

Q. Well. That's significant, isn't it, if a doctor says that?

A. Yes. I mean, that -- from reading the gist of

the report it doesn't look like he thinks she's going to get any better.

Q. Is there some reason why you didn't want to pass on that significant information to Mr. Fries?

A. I'm not sure whether he actually said those words or not. I'd have to look through his records again. But certainly, from the gist of the report, it doesn't look like her symptoms were getting any better or that he was holding out much hope that she would

improve.
Q. Have you reviewed any depositions of any of the treating physicians?
A. No.
Q. I just used the phrase treating physician. You're not a treating physician?
A. No.
Q. You weren't asked to try to help Jeri?
A. No.
Q. Doctor, I want to, if we can now, go to some of your testimony and some of the statements that you were making. I -- I tried to keep up with my notes, so if they're kind of helter-skelter, I apologize.
Your practice, you believe you see over 200 patients a week?
A. Yes.

Q. And how many days a week do you work?
A. Six or seven.
Q. What's your -- what's your hours?
A. I usually start at 8:00 in the morning and go till I'm done.
Q. Okay. Well, I -- I mean, do you work --
A. That could be anywhere from 5:00 in the afternoon till all night if I'm on call.
Q. Do you work, say, 8:00 to 5:00 Monday through Friday?
A. I have office hours 8:00 to 5:00 Monday through Friday and then I have duties in the -- in the

hospital. I'm also the medical director of the rehabilitation unit and the pain management unit. I'm one of the medical directors of the sleep disorders unit. I perform EMG diagnostic studies. I also have privileges in the hospital to interpret MRI scans and CAT scans --

Q. With respect --

A. -- of the spine.

Q. -- to those activities, do you include that as your 200 patients, or is that something different than the 200 patients? You follow my question?

A. All those patients I see in the various venues I'm including in the 200 patients a week. I see a lot

of people.

Q. Okay. Well, that's -- I'm just trying to find out if you saw 200 people in your office per week and then you also saw patients outside of the office in these other venues.

A. No. I have a very -- very diverse practice, including office and hospital.

Q. You had mentioned that a -- a -- a ropey sensation or a ropey feeling of muscles and nodules, correct, with fibromyalgia?

A. Typically with fibromyalgia we feel very discreet areas of tenderness in which sometimes we can palpate what they call little band or a taut band or muscle spasm within the trigger point, yes.

Q. Is that something you can create? I mean, as you sit here right now can you go ahead and have one of

your --
A. Well --
Q. -- muscles do that?
A. Well, that's very controversial. There's some doctors that think these trigger points are just a figment of the patient's imagination because they have to -- they flinch or they have to say it hurts when you point. And not always can I feel any muscle spasm or a taut band in people that have fibromyalgia. But they

are very discreet. They don't -- you -- they don't hurt everywhere wherever -- wherever you push them.
Q. But my question is, can you recreate that sensation in your own muscles as you sit here?
A. I don't understand the question.
Q. This ropey sensation that you find on a -- in a muscle sometimes, I realize you don't have to have that with a diagnosis of fibromyalgia, but on occasion when you do find that is that something that the patient can create themself?
A. Oh, yeah. If somebody -- if somebody was willingly contracting the -- the muscle while you were examining them it -- it would feel tense and -- and taut, yes.
Q. Do you think an experienced examiner, such as yourself, would realize if someone is purposely tensing up their muscles?
A. Possibly. Maybe not always.
Q. You'd indicated that the clavicle, or at least

the bony matter -- and -- and I don't mean to put words in your mouth -- but it basically has nothing to do with fibromyalgia or trigger points?

A. That's correct.

Q. Because it's a bone?

A. Correct.

Q. So if my client would have had a fractured clavicle sometime in the period before this crash, that fractured clavicle, the bone, would have nothing to do with trigger points or fibromyalgia; right?

A. I wasn't aware she'd fractured her clavicle.

Q. I thought you had indicated that in some of the records that you -- something about being hit with a post?

A. She had been hit by a post in August prior to this injury and prior to the accident was still complaining of pain in her shoulder and -- and clavicle, yes, and her arm.

Q. None of the records you reviewed --

A. And neck.

Q. I'm sorry. None of the records you reviewed show that there was a fractured clavicle?

A. Not that I recall.

Q. Okay.

A. Like Dr. Holt, the orthopedic doctor who saw her about three weeks before the accident, said he didn't know why -- what the cause of her symptoms was.

Q. Now, Doctor, fibromyalgia's not the same as low back discomfort, is it?

A. Fibromyalgia can cause low back discomfort.
Q. I understand. But if somebody has low back

discomfort that doesn't mean they have fibromyalgia?
A. Oh, no. There's a lot of -- there's a lot of different things that can cause low back discomfort.
Q. Let me see your file, if I may.
MR. CECIL: And let's go off the record.
VIDEOGRAPHER: We're going off the record at 6:49:57.

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Off the record.

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VIDEOGRAPHER: We're going back on the record at 7:01:59. Go right ahead.

BY MR. CECIL:
Q. Doctor, I want to thank you for giving me the opportunity to review your file.
Dr. Gatens was the treating physician, and you've already told us you -- you are not a treating physician of Jeri Neese; right?
A. Yes.
Q. Okay. Dr. G -- Dr. Gatens, excuse me, I believe is how it's pronounced, is a treating physician, and he diagnosed Jeri as having fibromyalgia; correct?
A. Yes.

Q. Dr. Pellegrino is a treating physician. He diagnosed Jeri as having fibromyalgia; correct?
A. Yes.
Q. Dr. Waylonis did a consult similar to what you've done, and Dr. George Waylonis, it was his findings that Jeri had fibromyalgia; correct?
A. Yes.
Q. Out of all of the doctors that saw Jeri after the accident and the records that you reviewed, out of all the treating physicians that saw Jeri, which ones did not find her to have fibromyalgia?
A. The emergency room doctor did not diagnose that. Dr. Coble did not diagnosis that condition. Dr. Szekely, her family doctor, did not diagnosis that condition. And Dr. Born did not diagnosis that condition.
Q. And Dr. Born --
A. And --
Q. I'm sorry.
A. And she also saw a rheumatologist, Dr. Hashmi, H-a-s-h-m-i, whose records I do not have, but in the allusions to his records by Dr. Gatens he did not indicate that Dr. Hashmi diagnosed fibromyalgia. Although, I do not have his actual records.
Q. Okay. I believe, just in fairness to you, I

believe Dr. Hashmi is a -- a she, but I could be mistaken. That's what I was --

A. I don't know Dr. Hashmi.
Q. Okay. And just so you have a complete chart, I thought you were given all of the records?
A. I did not have Dr. Hashmi's actual report.
Q. Here's Dr. Hashmi's report. And, by all means, feel free to review the entire report. Towards the end I believe you will find her assessment and prognosis.
A. Dr. Hashmi did diagnose fibromyalgia and arthritis in the knees and plantar fasciitis.
Q. And what -- what was the date of that?
A. October -- October 23rd of 2003.
Q. Okay. If I could have that back. Thank you.
Now, the emergency room physician, you wouldn't expect an emergency room physician to make an initial diagnosis of fibromyalgia, would you?
A. Well, if it existed --
Q. Prior?
A. -- at that time he may have.
Q. Right.
A. Anybody -- any physician can diagnosis fibromyalgia. You don't have to be a specialist like me to diagnosis fibromyalgia.

Q. But it's fibromyalgia -- are you of the opinion it's something that occurs over time, or it occurs with immediate onset?
A. Ask me that question again. I'm not -- I'm sorry.

Q. Do you believe that fibromyalgia is something that is an acute condition, occurs immediately --

A. It --

Q. -- or it develops --

A. It generally --

Q. -- from that?

A. It generally comes on acutely. I mean, if someone -- someone comes in and has it they'll say, you know, it really came on pretty suddenly. Now, it can get worse or get better with time, but it generally comes on pretty suddenly.

Q. But in order to make the diagnosis it's something that has been there for a period of time; correct?

A. No, not necessarily. I mean, I've seen people who came in to see me and they said, you know, I started having this pain last week, and I examine then and they've got all kinds of trigger points and I've diagnosed fibromyalgia and it's come on, you know, pretty sudden.

Q. What's the shortest time frame that you've seen it develop?

A. Within days.

Q. Okay. Within hours?

A. Well, I mean, if the -- if the patient could have gotten to me within hours of when it started. That doesn't -- usually you can't get in to see a doctor within hours.

Q. That's what I mean about an -- an emergency

room physician, though.
A. Yeah, there was no evidence of it when that emergency room physician saw her or when -- or when the family doctor examined -- examined her in the time -- in the months after that.
Q. Based on your experience would you have ex -- expected the emergency room physician to make that diagnosis on that date of the crash?
A. I see emergency room physicians make the diagnosis of fibromyalgia all the time, yes.
Q. My question was, would you have expected this emergency room physician to have made that diagnosis at that time based on the evidence --
A. If it --
Q. -- that was presented?
A. If it existed at that time he certainly --

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Q. Okay.
A. -- I would have expected him to have made the diagnosis, yes.
Q. And Dr. Coble was the doctor that saw her some months after the crash and said that she did have injuries related to the crash?
A. Yes.
Q. Out of all the physicians that treated Jeri are you aware of any of them that share your belief that she was fine after four weeks?
A. I don't know what the other -- you would have to have -- get depositions from them to ask. I don't

know.

Q. As far as any of the records that you see or you've reviewed, do any of them indicate that she was fine after four weeks?

A. Yes. Let me just --

Q. And while you're looking, can you tell me which record you're looking for --

A. Okay.

Q. -- so I can pull it up myself.

A. Excuse me. In my -- in my February -- hold on one second. In my February 4th of '06 record, which I don't think you have a copy of --

Q. I don't.

A. -- which alludes to Dr. David Born's records, he indicates on May 23rd of 2001, in no distress, neck supple with good range of motion. A month later, neck supple with only decreased range of motion.

Dr. Szekely, on March 10th of 2000, about six weeks after the accident, indicates that her neck sprain had resolved and that she had no tenderness over the cervical muscles, had full range of motion.

Q. Does that indicate that he performed a trigger point test?

A. He indicated there was no tenderness over the cervical muscles, so.

Q. Do trigger points -- trigger point testing is not limited to cervical muscles; correct?

A. Well, I think he examined the area she was complaining about.

Q. Okay. And as far as Dr. Born, which you mentioned that was 2001 --
A. That --
Q. -- neither one of them are saying she was fine after four weeks; correct?
A. Well, Dr. Szekely, on March 10th -- I'm sorry, March 10th, which is -- you'll have to forgive me -- five-and-a-half weeks after the accident, opined that her neck sprain had resolved.

Q. And, Doctor, I believe that you've testified previously that you don't know what is the cause of her current condition?
A. As far as Mrs. Neese?
Q. As far as Ms. Neese what is the --
A. I -- I don't know --
Q. To a reasonable degree of medical certainty, what is the cause of her current condition?
A. I do not know what is causing Mrs. Neese's current symptoms, but there's certainly no evidence of any injury that occurred six years ago that would be expected to still be producing symptoms now.
Q. Out of all the records that you saw was there anything to indicate that she had a pre-existing condition which would be causing whatever condition she is suffering from now?
A. The only -- the only thing I saw that was pre-existing was this August of 2000 injury when she got hit with a post, and even by -- and even by the

month of the accident she requested referral to a specialist because of pain in her chest, shoulder, arm, and neck area and headaches.

Q. Okay. In fairness to you, Doctor, I -- I believe you said 2000, but I think you meant '99, wasn't it?

A. I'm sorry. The -- the injuries she had with the post was in August of '99.

Q. Okay.

A. And then she saw the specialist, Dr. Holt, about three weeks prior to the auto accident with persistent pain in these areas.

Q. Do you know if Mr. Fries' client was injured at all?

A. No.

Q. Did he ever ask you to examine his client?

A. No.

MR. CECIL: Doctor, I think that's all the questions I have at this time. Thank you.

MR. FRIES: Dr. Thompson, I have just a couple questions.

REDIRECT EXAMINATION

BY MR. FRIES:

Q. With regard to making a determination and rendering an opinion as to the proximate cause of an injury or a condition and stating an opinion as to whether or not that condition is related to an accident or some other event, does the history related by the

patient play a role in that?
A. That would be one thing I would consider

before making an opinion, yes.
Q. And if the history is inaccurately related does that affect the opinion that you would render with regard to the issue of proximate cause?
MR. CECIL: Just -- just note an objection on the record. This exceeds anything that was brought up on cross-examination.
Go ahead and answer, Doctor. Thank you.
A. It -- it conceivably could, but in a case like this, where I also examined her on two occasions and reviewed extensive medical records, I don't know if it would make any substantial difference in the opinions.
Q. Now, you were asked questions about other physicians that had diagnosed the plaintiff as suffering from fibromyalgia. And I believe you were given some of the names of the physicians. Can you tell, from reviewing your records, when the first time was that any doctor diagnosed this plaintiff as suffering from fibromyalgia?
A. As I recall, I believe it was Dr. Gatens on November 27th of 2002.
Q. All right. So that would be close to two years after this accident?
A. Yes.
Q. She'd seen a number of other physicians before

that?
A. Yeah, the family doctor's records and the physical therapist and the chiropractic records all indicate that she was either fine or -- or rapidly improving.
Q. Now finally, Doctor, does your knowledge of association with lawyers have anything to do with the opinions that you render in -- in -- in this case or any case?
A. Absolutely not.
Q. You ever been to my home?
A. No.
Q. Even know where I live?
A. No, I don't. I know you live -- I think you live in Zanesville, but I've never been to your home.
Q. Okay. Have you had occasion to testify in cases in Zanesville where there are lawyers involved who are friends of yours where you're essentially opposing them in that case?
A. Yes. I mean, Zanesville's a small town.
Q. Okay. And does that influence the opinions that you render?
A. Absolutely not.
Q. Okay. Are all the opinions that you've stated here this afternoon and now this evening based upon a

reasonable degree of medical certainty?
A. Yes.

Q. Okay.

MR. FRIES: That's all the questions I have. Thank you.

MR. CECIL: We can go off the record just a second.

VIDEOGRAPHER: We're going off the record 7:15:0 -- or :10.

- - -

Off the record.

- - -

VIDEOGRAPHER: We're going back on the record at 7:16:31. Go right ahead.

MR. CECIL: Doctor, I don't have any more questions myself. I want to thank you for your time this evening.

VIDEOGRAPHER: Dr. Thompson, you have the right to view this videotaped deposition right now for its accuracy. You also have the right to read the typewritten transcript after it's been prepared, or you can waive those rights.

THE WITNESS: I'll waive.

VIDEOGRAPHER: Thank you very much.

(THE VIDEOTAPED DEPOSITION CONCLUDED AT 7:20 P.M.)

State Of Ohio : C E R T I F I C A T E
County Of Muskingum :

I, Debbie M. Bobo, Registered Professional Reporter, Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named DR. ROBERT J. THOMPSON was first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given

was by me reduced to stenotype in the presence of said witness; that the foregoing is a true and correct transcript of the testimony so given as aforesaid, transcribed from my stenographic notes upon a computer; and 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, employee, or attorney of any of the parties hereto, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action. I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

In witness whereof, I have hereunto set my hand and affixed my seal of office at Zanesville, Ohio, on this 15th day of February, 2006.

My Commission Expires
January 8, 2008

DEBBIE M. BOBO, RPR
NOTARY PUBLIC, STATE OF OHIO