IN THE COURT OF COMMON PLEAS

PORTAGE COUNTY, OHIO

- - -

DEBORAH MAZANEC, et al,	)	
Plaintiffs,	)	
vs.	)	Case No. 98-CV-00725
THERESA MCDOWELL,	)	
Defendant.	)	

- - -

Deposition of TARVEZ TUCKER, M.D., a Witness herein, called by the Defendant for cross-examination pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Laura E. Pavlick, RMR and Notary Public in and for the State of Ohio, at the offices of Dr. Tarvez Tucker, Fifth Floor, Hanna House, University Hospitals, 11100 Euclid Avenue, Cleveland, Ohio, on Thursday, the 22nd day of February, 2001, at 10:00 o'clock a.m.

LAURA E. PAVLICK, RMR

COURT REPORTING SERVICES

P.O. Box 2383

Streetsboro, Ohio 44241

(330) 995-9652

FAX (330) 562-0970

APPEARANCES:

On Behalf of the Plaintiff:

Messrs. Becker & Mishkind *Co.,* LPA

By: Howard D. Mishkind, Attorney at Law
660 Skylight Office Tower
1660 West Second Street
Cleveland, Ohio 44113

On Behalf of the Defendant:

Messrs. Giulitto & Berger

By: Paula C. Giulitto, Attorney at Law
222 West Main Street
Ravenna, Ohio 44266

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TARVEZ TUCKER, M.D.

Of lawful age, a Witness herein, having been first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION

BY MS. GIULITTO:

Q. Dr. Tucker, we just had an opportunity to meet each other just before we began this deposition. My name again is Paula Giulitto and I represent Ms. McDowell in this lawsuit. It's my understanding that you had occasion to meet Ms. Deborah Mazanec at some point in time; is that correct?

A. Yes.

Q. Before I start asking you questions, Dr. Tucker, have you ever had your deposition taken before?

A. Yes.

Q. Okay. So you are familiar with the standard rules about answering all the questions audibly, not doing the nods and shakes of the head because it's always difficult for Laura to take down?

A. Yes.

Q. Okay. Can you tell me how you came to meet Deborah Mazanec?

A. Yes. She was referred to our pain management center by Dr. Annette Bressi, and I first saw her on

September 14th of 2000.

Q. Okay. Is that your file that you're looking at?

A. Yes.

Q. Can I take a look at that, please?

A. Yes.

Q. Okay. For the record, prior to the deposition beginning I was only provided with four pieces of paper, that being your written, or typed report for exam date October 26th, Year 2000, your handwritten follow-up evaluation of that same date, and a report that you wrote to Dr. Bressi on September 14th.

When I came here this morning you presented me with some additional records out of your file, but it appears that I am now looking at one piece of paper that I still do not yet have, and that would be the initial evaluation handwritten notes from September 14th. Could I get a copy of that?

A. Are these the three pages you are referring to?

Q. I do not have those.

A. Okay. They're blank. This is just a form with only her name on it, but it's not filled out at all. You are welcome to have it, but they're blank.

Q. Okay, that's fine. I would just like to have everything that's in your file just so there is no confusion about me not having some piece of paper.

A. Okay.

Q. There is also the Robinson Memorial Hospital physical therapy initial evaluation form that although I was, I don't believe I received a copy through your file, I do have a copy through the hospital's file, so that's fine.

You know, I would like a copy of this, too, just her prescriptions in the back. We don't need to do that right now, we can do that at the end, that's fine.

A. Okay.

Q. Okay? There you go, don't want to mess up your file.

Dr. Tucker, when Ms. Mazanec came in did she complete a history form for you?

A. Yes.

Q. And is that this patient questionnaire --

A. Yes.

Q. -- which I have? On the top it says, referring M.D., and M.D. is marked out and it says referring doctor, Howard Mishkind. Would that have been something that Ms. Mazanec filled out?

MR. MISHKIND: It says referring attorney, Howard Mishkind, not referring doctor.

MS. GIULITTO: Well, it was referring M.D., and M.D. was crossed out by someone and the word "attorney" was

written in, so it says attorney referring, Howard Mishkind.

MR. MISHKIND: Right, you said attorney. You said referring M.D., Howard Mishkind, I was just correcting you.

MS. GIULITTO: Okay. I will take away your medical license.

MR. MISHKIND: Haven't gotten it yet.

BY MS. GIULITTO:

Q. Is this information that Ms. Mazanec would have filled out?

A. Yes, this is her handwriting.

Q. Is it your understanding that the reason Ms. Mazanec came to you was because of her attorneys sending you, sending her here or her doctor, if you know?

A. I don't recall.

Q. Doctor, is neurology your area of specialty?

A. Yes.

Q. And how long have you been practicing in this area?

A. I graduated from medical school in 1980 and I accepted a position of an Assistant Professor here in 1987 following my residency.

Q. So fair to say you've been doing this 13, what is it, 13, 14 years?

A. 14 years.

Q. Okay. On the second page of the patient questionnaire it looks like these are your notes; is that correct?

A. The examination was filled in actually by my Pain Fellow, Dr. Sing.

Q. Okay.

A. And that's his handwriting.

Q. Under the motor, upper extremities and lower extremities, can you tell me what that says?

A. It says 5 slash 5, which means that her motor strength was normal, and there was normal tone in both upper and lower extremities.

Q. Does that basically mean that she had no motor deficiencies at that time?

A. That's correct.

Q. And under sensory, what does that say?

A. It's D to P, meaning a distal to proximal gradient of diminished perception of pin prick.

Q. Can you explain that for me, please?

A. That means that in her hand, it was actually her left hand, which she doesn't delineate here but it's in the dictation, there was a diminished perception of sharp, a sharp modality that was worse distally and got better proximally in the hand.

Q. Okay. So that I am understanding and so that

Laura's notes are clear, does that mean she could feel the pin pricks more in the base or palm of her hand than she could in her fingertips?

A. Exactly.

Q. The next page is history of present illness, and it asks for some information such as symptoms, tests, treatments and surgeries. Was this information that was completed by Ms. Mazanec?

A. Yes, and then reviewed by us with her.

Q. Same thing with the next page, which is medications; that would have been something that she completed?

A. Yes.

Q. Okay. Doctor, in addition to your associate, I think you said Mr. Sing or Dr. Sing --

A. Yes.

Q. -- did you have occasion to examine Ms. Mazanec on that September 14th visit?

A. Yes. I always examine the patients either with or after Dr. Sing does the initial evaluation.

Q. And can you tell me what you did during your examination?

A. We assess sensory, motor, reflex examination and cerebellar.

Q. Okay. And what is cerebellar?

A. That's coordination.

Q. Okay.

A. And take notes usually just following the examination and then summarize it after the patient has actually left with a full dictated report, which you have.

Q. And is that the September 14th report to Dr. Bressi?

A. Yes.

Q. Would it be fair to say that in that report then you basically related information Ms. Mazanec gave you in that she indicated she has had constant pain since an accident in November of 1997?

A. Yes. And we were, actually made an error; the accident was in September of '97.

Q. It's a typographical error, that's fine. You reference some injections that she underwent in January of 1999 in the first paragraph of your report. Are you aware of who gave her those injections?

A. I am now.

Q. Okay.

A. Dr., the other Dr. Bressi, the pain anesthesiologist I believe married to Annette Bressi did both epidural steroids and also sacroiliac joint injections.

Q. Were you aware that Dr. James Bressi had given Ms. Mazanec those injections when you issued this report?

A. I may not have known the name of the doctor. I didn't list it here.

Q. Okay. Can you tell me how you know today that it was James Bressi?

A. I reviewed them with Mr., I was going to call you Dr. --

MR. MISHKIND: That's okay. Go right ahead, be consistent.

THE WITNESS: -- in my office in the last hour.

MS. GIULITTO: Okay.

MR. MISHKIND: Off the record.

(Discussion had off the record.)

BY MS. GIULITTO:

Q. Would it also be fair to say as a result of your report that when you saw Ms. Mazanec she denied any problems that she was having, such as tingling or numbness in her hands and feet, weakness of any bladder or bowel dysfunction?

A. Yes.

Q. And that was important for you to note for what reason?

A. Those symptoms might indicate a certain kind of neurologic disorder, such as radiculopathy, for example, or peripheral neuropathy. It's our screening review of systems that we always obtain in taking a full neurologic

history.

Q. Okay. Her neurological examination, for all intents and purposes, was normal; is that true?

A. No. She had an asymmetry of her ankle reflexes, she had one plus at the Achilles' heel on the right and two plus on the left. Two plus in her case is normal.

Q. Okay.

A. So that she had an asymmetry at her ankles, and that can be due to a variety of things, such as pressure on a nerve root from a disk.

Q. Do you have any idea what was causing that asymmetry in Ms. Mazanec's case?

MR. MISHKIND: Does she have an opinion? You said any idea.

BY MS. GIULITTO:

Q. Do you have any idea or an opinion, Doctor?

MR. MISHKIND: Let me object, but go ahead.

BY MS. GIULITTO:

Q. That's fine.

A. Yes.

Q. Can you tell me what your opinion is?

A. In patients with back pain our concern, as neurologists, is not the pain so much, but that the pain is the result of pressure on a nerve root that exits the spinal canal in the lumbar or cervical region.

One of the things that we're concerned about checking is reflexes, because it tells us the integrity of the nerve, and the integrity of her nerve to this leg was interrupted.

Q. Can you --

A. There can be a variety of reasons for that.

Q. Can you tell me which nerve that is?

A. Yes. It's the first sacral root or in sometimes contribution from the lower lumbar, the **L-5** nerve root.

Q. Is there any way to discern which particular nerve caused her asymmetry in this case?

A. Yes.

Q. And were you able to do that?

A. Yes.

Q. And tell me how you did that and what you found.

A. Because I know that the S-1, the sacral nerve root is the one that actually provides for the reflex, so if the reflex is absent or suppressed, as it was in her, by inference there is pressure or abnormality of conduction in the **S-1** nerve root.

Q. Are there any objective tests that can be done to confirm your inference?

A. Yes. For example, an **EMG** could be done and an **MRI** scan.

Q. Okay. And what would an **EMG** scan show you if

there was pressure?

A. An EMG isn't a scan --

Q. Okay.

A. -- it's a test of the electrical integrity of a nerve. And it can tell us, although in many cases it cannot, in other words, it's helpful when it's positive, it can tell us whether or not the nerve is conducting electricity abnormally or incompletely.

Q. Okay. You said the test is helpful if it's positive. If it's negative, doesn't it show that there is no nerve pressure?

A. No, because the clinical examination is your bottom line for nerve injury. EMG only helps you confirm a diagnosis, so that we count on predominantly our clinical examination and support it with electrical tests.

Q. Was an EMG ordered in this case?

A. No.

Q. Why not?

A. Actually at the time, and I don't indicate this, I don't remember the conversation with her, but she had already had an EMG. So I might have found that out and didn't get transcribed to the record.

Q. If you were aware that the EMG was negative, would that have changed your opinion at all in this case?

A. No.

Q. Okay. You also said that another diagnostic test that would be helpful is an MRI.

A. Yes.

Q. And I take it that would be an MRI of what part of the body?

A. Of the lumbosacral area.

Q. You are aware that an MRI of Ms. Mazanec's lumbosacral area was performed?

A. Yes. I believe she referred to it in her notes from March of '99 when it was obtained at Cuyahoga Falls Hospital.

Q. Are you aware of the results from that MRI?

A. Yes.

Q. And what are they, to your knowledge?

A. That she had degenerative disk disease and had actually a herniation at L-3-4.

Q. Okay. Are you familiar with a test called the diskogram?

A. Yes.

Q. What is that?

A. It's a way of envisioning the disk a little bit more specifically than an MRI scan. MRI shows structure, but not necessarily inflammation. So if a disk is desiccated, that is dried and not doing its cushion job, that's what a disk is supposed to do between the vertebral

bodies, sometimes the diskogram can give us very specific information about inflammation or loss of height and actually efficacy of the disk, so it's an adjunctive test to an MRI scan.

Q. In this particular case do you think that it would have been a helpful test to have had performed?

MR. MISHKIND: Objection. Go ahead, you can answer the question.

THE WITNESS: No.

BY MS. GIULITTO:

Q. Why not?

A. The orthopedic doctors generally use that before they operate or to consider surgery, and I did not consider her a surgical candidate on the basis of my clinical evaluation.

Q. So you don't -- do you still believe that she is not a surgical candidate today?

A. Yes, I do.

Q. Are you aware that another physician had requested or indicated that a diskogram would be helpful in diagnosing or at least ruling out whether that area of Ms. Mazanec's back was causing her pain?

MR. MISHKIND: Objection. You can answer.

THE WITNESS: I just learned that this morning.

BY MS. GIULITTO:

Q. Okay. Did you learn that from Mr. Mishkind?
A. Yes.
Q. Ms. Mazanec never related to you in her course of treating with you that that test had been requested of her?
MR. MISHKIND: Objection.
THE WITNESS: You know, I don't remember specifically, but I certainly didn't refer to it.
BY MS. GIULITTO:
Q. Okay. When she wrote down the many tests that she has had performed, she did not indicate that a diskogram had been requested but not performed, did she?
A. Not to my knowledge.
Q. Did you perform any pin prick tests on Ms. Mazanec other than on the hands?
A. Oh, yes. We would do all four extremities. We just list the abnormalities, we don't list the normal response.
Q. Okay. So if the abnormalities in this particular case -- are you saying the pin prick abnormalities were in her ankle, or were those in the tips of her hand?
A. No, in her hand.
Q. Okay. Where else would you perform pin prick tests?
A. We generally perform it distally in all four extremities, and if there is an abnormality, we'll test

proximally; because the way the nerves are injured they're affected distally first, and then retrograde become abnormal. So the way to screen for abnormalities is distal.

Q. And she had an abnormality in both of her hands or just one?

A. You know, it's not listed here, but on the basis of our final diagnosis, it just was an omission, it was in the left.

Q. Okay. So she has deficiency in the left hand for the pin pricks only, correct?

A. Correct.

Q. Her right hand --

A. And, **I** am sorry, and temperature.

Q. Okay. Her right hand and both feet then were normal?

A. That's correct.

Q. Your diagnosis after seeing Ms. Mazanec on one occasion was fibromyalgia and carpal tunnel syndrome of the left hand; is that true?

A. Yes.

Q. **I** need to address these separately for one moment. The carpal tunnel of the left hand has nothing to do with this car accident; is that true?

A. That is true, yes.

Q. Is it also true that if you have carpal tunnel in your left hand, that that could cause an abnormality in the pin prick test?

A. Yes.

Q. Were you relying on anything else other than the abnormality in the pin prick test on her left hand and the abnormality in her temperature when you arrived at the diagnosis of fibromyalgia?

A. Yes, we relied on other things.

Q. Can you tell me what you relied upon?

A. The clinical diagnosis of fibromyalgia includes, as necessary for the diagnosis, the presence of multiple, usually 18 very specific tender spots in the body called trigger points or tender points.

Q. Okay.

A. And she had those in the appropriate places, bilateral upper arms, shoulders, interscapular area, which actually is predominantly the trapezius, lateral buttocks and medial patellar areas.

Q. I don't see any notation in here about any tenderness in the patellar area.

A. Right. I am giving you what the places for diagnostic criteria are. We listed the ones that she had.

Q. Okay.

A. And they were commiserate with those to make the

diagnosis in general.

Q. Can you tell me how many of these 18 tender points she had?

A. No.

Q. Is there any diagram in your notes to show where the tender points are and where she had problems?

A. No. She has a diagram that she filled out of the areas of pain, and some of those tender points were indeed in these areas, but we didn't diagram them. We normally don't diagram, we make the diagnosis based on the presence of them, and also if they're in atypical locations, which they were not in her.

Q. So sitting here today, we don't know how many of the 18 tender points she had?

A. I don't remember, no, but sufficient to make the diagnosis.

Q. Are there any other factors that you consider when making a determination that someone has fibromyalgia?

A. Yes. The diagnosis of fibromyalgia includes chronic pain, generally cervical and lumbar, because those are the high risk areas of the back, particularly following trauma. And fibromyalgia is most common to occur following trauma.

In addition, patients describe fatigue, sleep disturbance and often depression. So that in making the

diagnosis of, clinical diagnosis, again there is no laboratory tests to make this diagnosis, it's a clinical diagnosis, she fit the criteria for us.

Q. Is it your opinion that fibromyalgia is triggered by a trauma?

A. It often is, yes.

Q. And what do you rely upon in making that statement?

A. I actually had reviewed fibromyalgia for us by a talk I gave to the American Bar Association actually downtown Cleveland and have much literature on the cause of fibromyalgia and also whether or not, because many physicians have difficulty with the diagnosis because it is a clinical diagnosis, whether or not there are subjective and objective criteria.

I can give you those references. I have got books on the subject and studies and actually a Power Point presentation, if you would like to see it.

Q. I would love to see it, but can you tell me what treatises or books or other authors you rely upon in stating to a scientific degree of certainty that fibromyalgia is trauma induced?

A. It is not always trauma induced, but it's one of the, it's probably the predominant cause of fibromyalgia is trauma.

Q. Okay. And what do you rely upon in saying it is the predominant cause?

A. It's a chapter written by Dr. Jennifer Kreigler in a neurology text, there is a book in my office, "Fibromyalgia," I don't recall the author, there is a study done in Sweden actually on a variety of post motor vehicle accident cases of fibromya gia compared with those that weren't caused by trauma; and what was fascinating was whether or not litigation affected outcome, and it did not.

So to us that substantiates that it is a very real syndrome and not based just on patients concerned about litigation, prolonging symptoms for that reason. so I have that data for you if you want it.

Q. I would before we go.

Is it also true that fibromyalgia can be triggered by other things other than trauma?

A. Yes, but the most common cause is trauma.

Q. I understand that's your position. What other things can trigger fibromyalgia?

A. We don't know, we don't know the cause of fibromyalgia. Viral infections have been looked for, for example, the Epstein-Barr virus, because that's felt to be instrumental in causing chronic fatigue, lime disease, which is prevalent in this part of the country, New Jersey,

anywhere there are white tailed deer.

There are a variety of other possible causes, but it's not known, the actual cause of fibromyalgia is not scientifically known.

Q. *So* it's not scientifically provable.

A. Exactly.

Q. Would it also be true that an onset of sudden stress or emotional stress could trigger fibromyalgia?

A. Not to my knowledge.

Q. Is it true that hormonal changes can trigger fibromyalgia?

A. Let me just question your use of the term "trigger". Stress can certainly exacerbate symptoms of fibromyalgia. Is it causative, in other words, as a virus causes a meningitis? No. But stress can unquestionably exacerbate symptoms.

Q. Okay. Could someone have fibromyalgia, never know it, have a significantly stressful event in their life and all of a sudden become symptomatic?

A. No.

Q. Okay. So we are back to we don't know what causes fibromyalgia?

MR. MISHKIND: Objection. Asked and answered.

MS. GIULITTO: This is a discovery deposition.

MR. MISHKIND: I objected. *Go* ahead and ask

your question.

MS. GIULITTO: I did. Are you instructing the witness not to answer?

MR. MISHKIND: Did you hear me say that?

THE WITNESS: I am sorry, I forgot the question after that.

MS. GIULITTO: Don't feel bad, I did, too. Could you read it back?

(The following question was read back by the Notary as requested:)

"Q: Okay. So we are back to we don't know what causes fibromyalgia?"

MR. MISHKIND: And I objected to that.

THE WITNESS: Yes, we don't know the cause of fibromyalgia.

BY MS. GIULITTO:

Q. You saw Ms. Mazanec a second time; is that correct?

A. Yes.

Q. October 26th?

A. Yes.

Q. Starting on your handwritten follow-up evaluation page, are those notes that would have been taken by you or taken by your associate, Dr. Sing?

A. Dr. Sing wrote the notes.

Q. Were you present when he performed these, the tests that yielded these results?

A. Yes.

Q. Although Dr. Sing does have very nice handwriting, could you make sure I am not misreading what he wrote under Section B for interval history?

A. Do you want me to read it to you?

Q. Yes. I just want to make sure I am not --

A. Okay. "Symptoms improved since she was started on Neurontin and Vioxx," that's something that we did at our first visit, "and with aqua therapy. Last weekend she sprained her back while bending over. She is also under stress because of her husband's recent hospitalization due to an MI," which is a myocardial infarction.

Q. Okay. Is that a second myocardial infarction?

A. No, secondary to.

Q. Okay.

A. That's what that means.

Q. You started Ms. Mazanec on Vioxx?

A. No, she had been on Vioxx when she came to us. We started her on Neurontin.

Q. Okay. Is that a new medicine?

A. Relatively new.

Q. And what is the purpose for that medicine to be

prescribed?

A. Neurontin originally was designed as an anti-epileptic. It's now used far more commonly for pain management, particularly pain due to neuropathic causes.

Q. Is that your belief, that she has neuropathic --

A. Yes. The pain from fibromyalgia involves nervous tissue, and Neurontin is an excellent choice for nervous tissue pain induced.

Q. Under "exam," can you tell me what Dr. Sing's notes say?

A. "Alert and oriented times three," that means she knew where she was and who she was and what time it was. Boy, this is --

MS. GIULITTO: Off the record.

(Discussion had off the record.)

THE WITNESS: I honestly can't read this.

BY MS. GIULITTO:

Q. Is that the second --

A. Something long speech. "Cranial nerves 2 through 12 are intact," which is evaluation of the cranial nerves to the face and head. "There was present some muscle spasms in her back and tender spinous points over the back." So in a sense a reaffirmation of what we had found on previous examination.

Q. Was the recommendation that she continue on the

Neurontin, continue with her aqua therapy, and did you issue her a new prescription?

A. Yes. We actually increased her Neurontin from 200 three times a day to 300. This is still a low dose in terms of therapeutics for pain; and because of the tender spots on her back and the muscle spasm that was palpable, we suggested a muscle relaxant, which is Xanaflex.

Q. Had she ever taken that before, to your knowledge?

A. No.

Q. Was she still taking the Vioxx?

A. Yes.

Q. That was issued by someone else, I take it?

A. Yes.

Q. Okay. Are you aware that Ms. Mazanec was, **I** am not sure at this time, but that she was enrolled in taking yoga classes?

A. I don't know if I was aware of it then.

Q. Okay. Have you seen Ms. Mazanec since the October 26th examination?

A. Yes. The last occasion, which was February 8th of this year.

Q. Do you have any idea why she selected to come in and see you that date?

A. No. Unless we had just scheduled a follow-up, because of course we want to see what happens to our

patients, particularly when we change medication.

Q. Is there any way to tell when this February 8th examination was scheduled?

A. I can find that out for you, but I have no idea.

Q. That's fine. Can you read for me the notes on that date?

A. Yes. "Ms. Mazanec was seen in follow-up for fibromyalgia. She's doing better on Vioxx and Neurontin, 600 milligrams t.i.d." I can't read the next sentence. "And she has no new complaints. Her examination today is unchanged. Our assessment was fibromyalgia, our plan to continue Vioxx, increased Neurontin again now to 800 milligrams t.i.d. and continue with a home exercise program."

Q. Can you tell me how she got from 300 milligrams of Neurontin to 600?

A. It may have been done by phone.

Q. Okay. Is there any record of that in your notes?

A. Let me look. No record that I can find, but that doesn't mean it didn't occur. We don't always record our phone conversations in the chart.

Q. Is Neurontin a narcotic?

A. No.

Q. To your knowledge is Ms. Mazanec on any type of narcotic prescriptions for pain?

A. No.

Q. Do you have any plans to see Ms. Mazanec again?

A. Yes. Actually our recommendation, but it was a little problematic because of distance, was for her to participate in our four week chronic pain management program. That, from the outset, was our intention.

Q. I recall that from your first report.

A. Right.

Q. Do you know if she has any future appointments scheduled at this time?

A. No.

Q. Can we find that out once we get off the record?

A. Yes.

Q. Doctor, at any course in time in your treating Ms. Mazanec have you received records or notes from any other doctors?

A. No. I did, however, review some this morning.

Q. At whose request?

A. At Mr. Mishkind's request.

Q. Okay. And what records did he have you review before your deposition?

A. Both the, what is their last name, Annette Bressi and her husband's records as well as copies of the reports of the MRI scans performed, the EMG, and in addition the procedure reports for her epidural steroid injections and

sacroiliac joint injections.

Q. Do you know why Mr. Mishkind asked you to review these before your deposition?

A. Do I know why? So that I am up to date and knowledgeable.

Q. Do you feel that it would have been helpful for you to have had that information before you treated Ms. Mazanec?

A. We l, remember I am not the primary treating physician for her. I viewed her consultation with me as a consultation. She had been cared for by pain management physicians and other doctors that were caring for the problem for which she consulted me. It's not at all unusual for patients to seek a second opinion, particularly when they're frustrated.

Q. Okay.

A. I would love to have records and I have a letter that goes out to every new patient asking them to bring their MRI scans and any medical records with them. That didn't happen in this case, but I certainly, it certainly makes my job easier.

Q. Do you have a copy of the letter that you sent Ms. Mazanec asking her to bring those documents with her?

A. We have a standard copy that is sent out from central scheduling. I don't have a copy in her chart.

Q. Okay. Do you feel that it was important for you to have reviewed Dr. Bressi, both Dr. Annette Bressi and Dr. James Bressi's records, and all of these tests for the purposes of today's deposition or for the purposes of knowing how Ms. Mazanec was doing before she ever even got to you?

A. The event that initiated her chronic pain problem was three years, just more than three years from the time that I first saw her. It would have been much more important had I seen her immediately after the event. Again, I wasn't the treating physician.

Given the chronicity of her symptoms and the examination that I obtained, it wasn't important for me to actually view her MRI scan then.

MR. MISHKIND: It was or was not?

THE WITNESS: Was not. I was able to make a clinical judgment and decision and also a recommendation for her immediate future on the basis of her history and examination.

BY MS. GIULITTO:

Q. So why was it important for you to see everything today before your deposition, in your opinion?

MR. MISHKIND: Let me object. I don't think she said it was important for her. You asked her whether she would have liked to have seen it. I don't think she

said it was important, but go ahead.

THE WITNESS: No. I mean, it wasn't important, it's something that happened this morning.

BY MS. GIULITTO:

Q. Okay. Did you request Mr. Mishkind to show you records or reports?

A. No.

Q. To your knowledge did you ever send a letter to Dr. James Bressi requesting a copy of his records and diagnostic tests that he ordered?

A. You know, I don't remember from October, it's something that we often do, and in particularly it would be important if she came into the program, because then we would be working with her on a daily basis.

Q. Is there anything in your chart that indicates you requested that information from Dr. James Bressi?

A. I don't have that. We sent Dr. Annette Bressi the letter, but not Dr. James Bressi any letter.

Q. Okay. If you had made a request for records and reports to another physician, would a copy of that letter be in the patient's file?

A. Yes. Unless we just asked the patient to obtain them and send them. Sometimes we do that, too.

Q. Okay. So would it be fair to say that your file contains no letter to any doctor requesting any records or

test results regarding Deborah Mazanec?

A. That's correct.

Q. Would it also be fair to say that if you had made an oral request to Deborah Mazanec for records and reports, that she didn't bring any to you?

A. If we had, yes.

Q. Okay. If you had, and I understand we simply don't know.

A. Right.

Q. Doctor, other than your September 14th, Year 2000 letter to Dr. Bressi, have you issued any other letters or reports regarding your treatment of Ms. Mazanec?

A. No.

Q. Other than Dr. James Bressi and Dr. Annette Bressi, are you aware of any other physicians with whom Ms. Mazanec has consulted regarding this accident?

A. No, I don't think so.

Q. You are unaware that she was referred to Dr. Tharp? She didn't mention that?

A. No.

Q. How about Dr. Rausch?

A. Mr. Mishkind mentioned Dr. Rausch, her name, and I recall that because I know her.

Q. Okay. To be fair I think Ms. Mazanec may have indicated to you that she had an EMG performed?

A. She may have.

Q. Okay. She probably didn't indicate the doctor who performed that, though, do you know?

A. I don't believe so.

Q. Did any of the information shown to you this morning cause you to change your opinion of Ms. Mazanec's ailments?

A. No.

Q. And again, the carpal tunnel has nothing do with this accident?

A. That's correct.

Q. Are you aware that the MRI taken of Ms. Mazanec's cervical spine was negative?

A. Yes.

Q. You are aware that the bone scan taken of Ms. Mazanec was negative?

A. Yes.

Q. Would you agree with me that pain is a subjective finding as opposed to an objective finding?

A. Yes.

Q. Would you agree that migraines can be a sign of fibro, the existence of fibromyalgia?

MR. MISHKIND: Objection. *Go* ahead.

THE WITNESS: There, migraines are what we call a co-variable with fibromyalgia. In other words, they

occur with increased incidence in a population of patients that have fibromyalgia. Is there a causation? In other words, does a migraine, does having a migraine make you more vulnerable to fibromyalgia? We have no idea.

BY MS. GIULITTO:

Q. Does having a migraine tend to be a symptom of someone who has -- I am not asking that question. Let me start again.

If someone suffers from chronic migraines, is that a symptom or a sign that they may also be suffering from fibromyalgia?

MR. MISHKIND: Objection. *Go* ahead.

THE WITNESS: Actually we know a lot more about migraine, and this happens to be my particular specialty.

BY MS. GIULITTO:

Q. Great!

A. It is a genetic disorder. We are learning much more about what genetic vulnerability there actually is. In a fascinating syndrome called familial hemiplegic migraine, there is a missing chain in chromosome 13. It's probably on the X chromosome because migraine is so much more common in women than men.

Twenty-four percent of women in America suffer from migraine, so that there is, to my knowledge, no causation or association between, other than the increased

occurrence. It's a genetic disorder and we don't know the genetics of fibromyalgia, or migraine, we are learning.

Q. Is it your testimony then that there is no correlation between someone who has migraines and someone who has fibromyalgia?

A. Just as I stated, it's a co-variable. So is depression, for example.

Q. Someone could suffer from migraines and depression and not have fibromyalgia?

A. Oh, yes.

Q. What about fatigue, is that a symptom of fibromyalgia?

A. Yes.

Q. Is it also existent in some people who don't have fibromyalgia?

A. Yes.

Q. Would you agree that if a person has a lot of stress in their life, that can relate to physical, or cause physical pain?

A. Yes.

Q. Are you aware of any emotional traumas that Ms. Mazanec had prior to this accident?

A. No.

Q. Are you aware of any hormonal changes that she had before this accident?

A. I know that when she came to us she was on hormone replacement therapy, that's all.

Q. Are you aware that prior to Ms. Mazanec being involved in this accident she had been treating for migraines?

A. Yes, I think I was, because it was in her past medical history.

Q. Are you aware that prior to Ms. Mazanec being involved in this accident she was treated for fatigue?

A. Not aware of that.

Q. In your opinion is the diagnosis of fibromyalgia different than cervical and lumbosacral myofascial pain?

A. Fibromyalgia is by definition a constellation of symptoms and signs which include chronic pain, and it's very commonly in the back.

Q. It's the larger diagnosis for the smaller whole?

A. Exactly, something like that.

Q. Something like that. I don't want to mislead you. Is it that myofascial pain is just one part of fibromyalgia; is that what you are trying to tell me?

A. That's correct.

Q. Okay. And the other parts of fibromyalgia may include migraines, fatigue?

A. Sleep disturbances and depression.

Q. Did you find any problems that Ms. Mazanec had

with sleeping disorders?

A. I didn't record it, but it's something we always ask, so it probably contributed to our diagnosis.

Q. Well, if she had indicated she was having problems sleeping, would it not appear in your notes?

A. Not necessarily.

Q. If someone indicated they were having a symptom of fibromyalgia, you wouldn't include it in your note?

A. Not necessarily. We are not as complete as we should be on all occasions.

Q. That's probably an admission you should not have made.

A. It's part of our diagnosis. We always ask about sleep. She actually didn't include it in her spontaneous notes, but it's one of our inclusions for making a diagnosis of fibromyalgia. In her I don't think it was a predominant symptom.

Q. Doctor, understand the purpose of my talking to you today is to find out what symptoms either you found or she related to you that caused you to arrive at this diagnosis.

A. Yes.

Q. So I am relying on what is written.

A. Uh-huh.

Q. And so basically what I am seeing that you relied

would have recorded it. And again, in chronic pain situations you won't see the kind of autonomic changes you do in acute, such as pupillary dilation, tachycardia, sweating, increased respiratory rate, but it is a very, very real phenomenon to pain specialists as it affects function. So that it's more than subjective, it is also a clinical phenomenon that involves psychosocial issues, psychology and person's every day activity, and we assess that.

Q. So when you say it affects their function and their every day activity -- is it something you need to get?

A. I can get it in ten minutes.

Q. Okay. -- you would look to see how Ms. Mazanec performs in her day-to-day life in the activities that she's involved in to determine her level of functioning; is that true?

A. Yes. And that's kind of the things that we want to assess in a chronic pain management program, which is what we recommended for her.

Q. Okay. If someone is in a high degree of pain, would it be fair to assume that they are going to engage in less activities?

A. Frequently activity can exacerbate pains, yes.

Q. So people would tend to shy away from those to avoid the pain?

upon for the fibromyalgia, and correct me if I'm wrong or missing anything, is that she had some number out of the total 18 tender points; is that correct?

A. Yes.

Q. She had migraines, which she also had before?

A. I didn't include, I never -- you are the one that included migraines in the diagnosis, I never have.

Q. Okay.

A. I just told you they were a co-variable. They're not part of the definition.

Q. Other than those trigger points then, what else did you rely upon?

A. Her history, chronic myofascial pain, which is non-radicular.

Q. Which is subjective.

A. You know, and you asked me that and I didn't elaborate, but pain management physicians are often asked, particularly in legal situations, pain is a subjective symptom. It certainly is. We don't measure it, there are visual analog scales to measure pain from one to ten, but what we measure is function. And there are, with chronic pain, far less autonomic changes that you can identify; but we are very skilled in recognizing whether somebody is elaborating on a symptom or malingering.

I didn't have that sense with Deborah or I

A. Yes.

Q. All right. *So* we have the some unknown number of tender points, chronic pain, and what else that led you to the diagnosis of fibromyalgia?

A. The location of her pain, the paraspinous spasm, the tender points, as you said, and the absence of any other cause for back pain, such as radiculopathy or peripheral neuropathy.

MR. MISHKIND: Did you include history in the equation as well I think is one of the things that you said.

THE WITNESS: Yes, the history and the longevity. Fibromyalgia is not a six week pain phenomenon, it generally is very long lasting. And her symptoms hadn't changed appreciably in three years following the accident.

BY MS. GIULITTO:

Q. Okay. She hasn't participated in this four week course that you recommended?

A. Not yet.

Q. Is it an every day meeting type course?

A. It's an every day multi-disciplinary adventure that we have patients from 8 o'clock in the morning until 4:30. They are involved in occupational, physical therapy, aquacize, psychology, biofeedback, relaxation techniques, ergonomic work station evaluation, which was something very

appropriate for her, and group meetings of patients with similar chronic pain disorders from a variety of causes.

Q. And she hasn't participated with this class yet?

A. No.

Q. But she has seen you on three occasions?

A. Right. She, it was a matter of distance.

Q. I drove that distance.

A. How far is that distance?

Q. Probably from where she lives about 40, 45 minutes.

A. So for every day it would extend her day quite a bit, and there is a lot of physical activity involved in the program.

Q. You sent her to physical therapy as part of your treatment?

A. Yes.

Q. Are you aware that the physical therapy helped her pretty significantly, at least she related?

A. She said that therapy helped, and I got a report from the therapist from I believe Robinson Memorial Hospital.

Q. Are you aware that she was discharged because she had met all of her goals?

A. I do not have a discharge summary. I have an initial evaluation.

Q. I am happy to share with you the discharge summary and provide you with a copy.

A. She met her goals, and one of the intentions is to continue with aerobic exercises daily, so that's an ongoing recommendation. And for aquatics, which I fully agree with. I think it's one of the best, absolute best rehabilitation plans for patients with chronic pain.

Q. It's actually good exercise for anybody, isn't it?

MR. MISHKIND: Objection. *Go* ahead, Doctor.

THE WITNESS: Yes.

BY MS. GIULITTO:

Q. Doctor, would you also agree that whether or not someone suffers from chronic pain or not, it's a good idea health-wise that people exercise?

MR. MISHKIND: Objection. *Go* ahead.

THE WITNESS: Yes.

BY MS. GIULITTO:

Q. Can't hurt them, generally, unless they overdo it.

A. Yeah. There are some people that die out on the racetrack there. Particularly, oh, that -- who is that runner who wrote the book on running and then died of an MI while running?

Q. I am not talking about that type of running, I am just talking about getting out and getting a little good exercise. It's always a good idea, would you agree with

that?

A. Yes.

Q. Doctor, do you often find that individuals suffering from fibromyalgia have irritable bowel syndrome?

A. Actually that's a eo-variable for fibromyalgia and also for migraine. So it occurs more often than the general population, but that is still the minority. Do you understand what **I** mean by a co-variable?

Q. No.

A. It's something that occurs with another condition at greater than the expected rate epidemiologically, but it may be ten percent versus what you would find four percent in the population. So when **I** say it's a co-variable, it's not causative, it's not associated with the disorder, it just occurs more commonly in patients that have that disorder.

Q. Ms. Mazanec does not have irritable bowel syndrome, does she?

A. Not to my knowledge.

Q. She doesn't have pain in her abdominal area?

A. Not to my knowledge.

Q. Is pain in the abdominal area a symptom that you would also find more likely than not in people who have fibromyalgia?

A. Diffuse pain is a characteristic of the syndrome,

and again the abdominal area is not one that has the characteristic tender points; but can patients complain of pain in that area? Yes, they do, but it's not one of the most common ones.

Q. What about constipation, do you feel that that is often the symptom of individuals who suffer from fibromyalgia?

A. The difficulty with constipation is that most of these patients are on a variety of medications that can produce constipation. It's very difficult to decipher that out.

Q. What the cause of the constipation is?

A. Exactly.

Q. In any event, Ms. Mazanec is not suffering from constipation, to your knowledge anyways?

A. Not to my knowledge.

Q. If I could get a copy of your prescriptions in the back there, Doctor, and if we could please find out about, one, when that February appointment was made, if we can find out, and if she has any additional ones, and I am more than happy to let you copy that.

MR. MISHKIND: I can do that.

THE WITNESS: All right.

MR. MISHKIND: Do you want to read or do you want to waive signature?

THE WITNESS: Oh, waive, thank you.

MR. MISHKIND: Okay. Sure.

(Discussion had off the record.)

MR. MISHKIND: I will take a copy.

MS. GIULITTO: I'd like the original.

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(Deposition concluded at 10:57 o'clock a.m.)

(Signature waived.)

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C E R T I F I C A T E

STATE OF OHIO,)
) SS:
PORTAGE COUNTY.)

I, Laura E. Pavlick, RMR and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, TARVEZ TUCKER, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to Stenotypy in the presence of said witness, afterwards transcribed upon a computer; and that the foregoing is a true and correct transcription of the testimony so given by the witness 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 HEREOF, I have hereunto set my hand and affixed my seal of office at Aurora, Ohio on this 24th day of February, 2001.

Laura E. Pavlick

Laura E. Pavlick, RMR and Notary Public in and for the State of Ohio.

My Commission expires December 7, 2005.