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Deposition of Gerald V. Yu, D.P.M.

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TACKLA & ASSOCIATES

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*Yu add*

CONDENSED TRANSCRIPT AND CONCORDANCE

TACKLA & ASSOCIATES  
1700 SUPERIOR BUILDING  
815 SUPERIOR AVENUE  
CLEVELAND, OH 44114  
Phone: (216)241-3918  
FAX: (216)241-3935

## Page 1

(1) ----  
 (2) HENDERSON CIRCUIT COURT  
 (3) ----  
 (4) SHEILA ANN PARKEST, )  
 (5) Plaintiff, )  
 (6) vs. ) Case No.  
 (7) PETER J. DOLL, D.P.M., ) 95-CI-00079  
 (8) Defendant. )  
 (9) ----  
 (10) Deposition of GERARD V. YU,  
 (11) D.P.M., a witness herein, called by the  
 (12) Plaintiff as if upon cross-examination,  
 (13) and taken before Lynn A. Regovich, Notary  
 (14) Public within and for the State of Ohio,  
 (15) pursuant to agreement of counsel, and  
 (16) pursuant to the further stipulations of  
 (17) counsel herein contained, on Friday, the  
 (18) 5th day of January, 1996, at 2:00 p.m., at  
 (19) the offices of Gerard V. Yu, D.P.M., 26250  
 (20) Euclid Avenue, City of Euclid, County of  
 (21) Cuyahoga and the State of Ohio.  
 (22) ----  
 (23)  
 (24)  
 (25)

## Page 2

(1) APPEARANCES:  
 (2)  
 (3) On Behalf of the Plaintiff:  
 (4) PRISCILLA DIAMOND, ESQ.  
 (5)  
 (6) On Behalf of the Defendant:  
 (7) Stites & Harbison, by:  
 (8) MARY BOAZ, ESQ.  
 (9)  
 (10) ----  
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(1) PROCEEDINGS  
 (2) ----  
 (3) GERARD V. YU, D.P.M., of lawful  
 (4) age, having been first duly sworn,  
 (5) as hereinafter certified, was  
 (6) examined and testified as follows:  
 (7) ----  
 (8) CROSS-EXAMINATION  
 (9) BY MS. DIAMOND:  
 (10) Q Would you state your name, please?  
 (11) A Gerard Vincent Yu.  
 (12) Q And it's Dr. Yu and you're a  
 (13) podiatrist, aren't you?  
 (14) A Yes, ma'am.  
 (15) Q Dr. Yu, I have before me your CV, and  
 (16) it's very interesting. I see that you  
 (17) were trained at Doctors Hospital in  
 (18) Tucker, Georgia; is that correct?  
 (19) A Yes, it is.  
 (20) Q And who did you work under there?  
 (21) A Oh, a whole relatively large  
 (22) department of attendings. Mostly  
 (23) podiatrists and some D.O.s and M.D.s.  
 (24) Q Are you familiar with Dr. Stanley  
 (25) Kalish?

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(1) A Yes.  
 (2) Q Did you work with him or under him?  
 (3) A Yes, he was one of my attending  
 (4) physicians.  
 (5) Q Okay. And what do you think about  
 (6) Dr. Kalish?  
 (7) A Well, Dr. Kalish is a professional  
 (8) colleague and a friend.  
 (9) Q Okay. Have you discussed this case  
 (10) with Dr. Kalish?  
 (11) A No.  
 (12) Q Have you discussed this case with  
 (13) anyone?  
 (14) A Meaning?  
 (15) Q Anyone other than the attorney who  
 (16) represents Dr. Doll?  
 (17) A No.  
 (18) Q Have you discussed it with Dr. Doll?  
 (19) A No. Dr. Doll and I have had no  
 (20) conversation.  
 (21) Q Do you know Dr. Doll?  
 (22) A Yes.  
 (23) Q How do you know Dr. Doll?  
 (24) A Through his publications.  
 (25) Q Okay.

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- (1) A On a professional basis only.
- (2) Q All right. Have you ever attended
- (3) any meetings or seminars with him?
- (4) A Not that I'm aware of. I'm sure he's
- (5) been in seminars and meetings where I've
- (6) lectured. Virtually all the meetings I go
- (7) to I'm lecturing, so.
- (8) Q All right. You do not recall having
- (9) socialized with him?
- (10) A No, ma'am.
- (11) Q Or anything of that nature? And I
- (12) understand that you also trained in
- (13) Philadelphia; is that correct?
- (14) A I did my podiatric medical studies at
- (15) the Pennsylvania College of Podiatric
- (16) Medicine.
- (17) Q All right. And you were trained in
- (18) part by Dr. Weissman; is that correct?
- (19) A Dr. Weissman was one of my
- (20) instructors.
- (21) Q Yes. And so he taught you; is that
- (22) correct?
- (23) A Yes, he did.
- (24) Q Okay. For how long?
- (25) A I think one course.

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- (1) Q Okay.
- (2) A And he may have also been a clinician
- (3) for part of the time.
- (4) Q Meaning?
- (5) A He was in the clinic setting as an
- (6) attending physician.
- (7) Q And supervising your work?
- (8) A To some degree, yes.
- (9) Q Okay. Do you have any sort of a
- (10) personal relationship with Dr. Weissman?
- (11) A No.
- (12) Q All right. And how do you feel about
- (13) Dr. Weissman professionally?
- (14) A I acknowledge him as a colleague.
- (15) Q Okay. And do you think he's well
- (16) qualified?
- (17) A In what area?
- (18) Q The area of podiatry.
- (19) A I really can't comment on his
- (20) qualifications now as a practitioner. I've
- (21) really had no contact with him or known much
- (22) about his style of practice for the last -
- (23) since I graduated.
- (24) Q Okay. And how did you regard him while
- (25) you were in school?

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- (1) A We got along very well.
- (2) Q Okay. And do you regard him as a
- (3) competent and qualified podiatrist?
- (4) A I did at that time.
- (5) Q Okay. And you've no reason to change
- (6) that opinion?
- (7) A I know he practices differently now
- (8) than he used to and he changed some of his
- (9) methods of practice.
- (10) Q How do you know that if you've had no
- (11) contact with him?
- (12) A Because I've been in contact with
- (13) some of the instructors up in that area
- (14) over the years and I've kept a pretty good
- (15) relationship with people that have
- (16) graduated from there and students who come
- (17) from there.
- (18) Q And when you say he's changed his
- (19) methods of practice, what specifically do
- (20) you mean?
- (21) A The biggest one I heard about
- (22) probably maybe ten years ago was he moved
- (23) into the realm of minimal incision
- (24) surgery.
- (25) Q Minimal incision surgery?

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- (1) A Yes, ma'am.
- (2) Q And do you do minimal incision surgery?
- (3) A Very limited.
- (4) Q But you do some?
- (5) A Yes.
- (6) Q Is that a new thing?
- (7) A No. Not now.
- (8) Q Not ten years later?
- (9) A I'm not sure it was that new then. I
- (10) think it was definitely new to him I
- (11) think.
- (12) Q You have lectured quite a bit for drug
- (13) companies, haven't you?
- (14) A I'm not sure I understand what you mean
- (15) by "Drug companies."
- (16) Q Well, you list in your professional
- (17) activities "Speakers bureaus," and they're
- (18) all for pharmaceutical companies, right?
- (19) Or medical - it looks like they're all
- (20) for pharmaceutical companies or medical
- (21) equipment companies. Is that true?
- (22) A They're definitely all companies that
- (23) are somehow involved in the medical field.
- (24) Q Okay. Well, you list them, you say you
- (25) are a member of the Bristol-Myers Squibb

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- (1) Company speakers bureau, is that a correct
- (2) way to put it?
- (3) A Yes.
- (4) Q And that's a drug company, correct?
- (5) A Yes, ma'am.
- (6) Q And Pfizer Laboratories?
- (7) A Yes, ma'am.
- (8) Q And that's a drug company?
- (9) A Yes.
- (10) Q And you list Pfizer Laboratories I
- (11) think twice. Glaxo Pharmaceuticals, it's a
- (12) drug company?
- (13) A Yes.
- (14) Q Wright Medical Technology. What kind
- (15) of company is that?
- (16) A They're a prosthesis and implant
- (17) company.
- (18) Q Okay. And Bioelectron. What kind of
- (19) company is that?
- (20) A A medical equipment company
- (21) specializing in electrical bone
- (22) stimulators and internal fixation devices.
- (23) Q And SmithKline Beecham Pharmaceuticals
- (24) is a drug company, isn't it?
- (25) A Yes.

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- (1) Q And the Upjohn Company is also a drug
- (2) company?
- (3) A Yes.
- (4) Q So when you speak for them, they pay
- (5) you, don't they?
- (6) A Not necessarily pay me, no.
- (7) Q Or they provide you with some sort of
- (8) remuneration on honorarium or something in
- (9) the way of compensation?
- (10) A Or they give it to the -- they make a
- (11) donation to the organization, an
- (12) educational grant or something. Sometimes
- (13) they pay me or give me an honorarium
- (14) directly for my involvement in the
- (15) meeting.
- (16) Q And when you speak on part of their
- (17) speakers bureau, that is what I'm talking
- (18) about now, they either pay you or they
- (19) provide you with an honorarium or
- (20) something, is that what I'm understanding?
- (21) A Yes.
- (22) Q Okay. And some sort of remuneration;
- (23) is that correct?
- (24) A Yes.
- (25) Q Okay. And what are you speaking about

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- (1) when you speak for them? Are you speaking
- (2) about their products, their drugs or their
- (3) medical device, implant device or whatever
- (4) it is?
- (5) A No. I've never given a presentation
- (6) that highlights or specifically is geared
- (7) toward a company's particular product.
- (8) Q All right. So when you're part of
- (9) their speakers bureau and are remunerated
- (10) in some way or compensated in some way by
- (11) them, you're speaking on just any old
- (12) topic?
- (13) A Could be. Yes, ma'am.
- (14) Q Okay. Are those the lecturing
- (15) experiences that you have listed in your --
- (16) in your resume, CV?
- (17) A Most of them are there, yes.
- (18) Q Okay. And so those are speaking
- (19) engagements that you have taken as a result
- (20) of your being on these various companies
- (21) speakers bureaus?
- (22) A No.
- (23) Q Are they in addition to or, you know,
- (24) some of them are part of that?
- (25) A Some of them -- there's only one type

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- (1) of presentation that's directly tied in with
- (2) any of the companies and that would be the
- (3) lecture series that Bristol-Myers Squibb
- (4) provides across the country.
- (5) Q But you lectured in your speaking
- (6) experiences that you've listed here in
- (7) detail in your CV, you've lectured
- (8) extensively on the use of antibiotics,
- (9) correct?
- (10) A Well, I'm not trying to be difficult
- (11) but I'm sure I've given lots of lectures
- (12) on antibiotics. I've never tallied them
- (13) all.
- (14) Q In fact, a great number of these are
- (15) about the use of antibiotics, correct?
- (16) A Meaning the different presentations
- (17) I've done?
- (18) Q Yes, sir.
- (19) A I've never tallied it up. I really
- (20) don't know.
- (21) Q Well, we can count them at some point,
- (22) but are these antibiotics that are produced
- (23) by the companies who you list here as being
- (24) speakers bureaus of which you are
- (25) affiliated?

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- (1) A Not necessarily.
- (2) Q Well, are they in part?
- (3) A Not necessarily.
- (4) Q Well, whether they necessarily are or
- (5) not, I want to know if they are at all.
- (6) A Well, I explained it to you earlier.
- (7) I said there's one company there that has
- (8) a series of lectures that I give when
- (9) requested that deal specifically with
- (10) their line of products. They are the only
- (11) company that I do that with.
- (12) Q All right.
- (13) A The other companies -- let me finish.
- (14) The other companies I may be in their
- (15) speakers bureaus but I do not call and/or
- (16) solicit anyone to sponsor me for
- (17) presentation. If an organization in this
- (18) country requests me to speak at the
- (19) meeting, I simply tell them what the
- (20) arrangements are that I require, what my
- (21) requirements are as a speaker, and if they
- (22) get a corporate sponsor, that's fine, if
- (23) not, then they're responsible for whatever
- (24) my charges are.
- (25) Q Okay. If they get a corporate

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- (1) sponsor, are you -- do you then consider
- (2) yourself a part of that corporation
- (3) speakers bureau and list them on your
- (4) resume the way you did there?
- (5) A Usually if I have listed it there
- (6) they have indicated to me that I am listed
- (7) in their corporate speakers bureau that
- (8) they give to I guess people that work for
- (9) them. Let's say field representative,
- (10) district managers, educational people in
- (11) their company.
- (12) Q Okay. And what do you require in order
- (13) to speak?
- (14) A It varies. Sometimes it's nothing,
- (15) sometimes it could be a thousand dollars
- (16) or more.
- (17) Q Okay. Do you know about how many times
- (18) a week or a month on an average you speak
- (19) someplace?
- (20) A I would say it averages between 15 and
- (21) 30 per year.
- (22) Q 15 and 30 per year. And about what do
- (23) you make in remuneration for speaking 15 to
- (24) 30 times a year?
- (25) A I really couldn't tell you that. It

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- (1) varies from year to year. It varies quite
- (2) a bit actually.
- (3) Q Average? Any average?
- (4) A It could be as low as 10,000 a year to
- (5) as much as 30.
- (6) Q Okay. Do you believe that anything
- (7) you have listed here under your lecturing
- (8) experience or under your publications
- (9) bears any direct relationship to any issue
- (10) in this case?
- (11) MS. BOAZ: Do you need to
- (12) review your CV?
- (13) THE WITNESS: No. Probably
- (14) not.
- (15) A No.
- (16) Q All right. So while you have lectured
- (17) considerably and written about some things,
- (18) none of the things about which you have
- (19) lectured or written directly concern any
- (20) issue in this case; is that correct?
- (21) A Not that I can think of at this moment,
- (22) that's correct.
- (23) Q So it is correct. Okay. If for any
- (24) reason this or any -- you believe that that
- (25) answer is not correct and you think of

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- (1) something that is before the end of this
- (2) deposition, will you tell me about it?
- (3) A Certainly.
- (4) Q Okay. Of course this deposition is the
- (5) only opportunity I have to talk to you and I
- (6) would expect that your answers here will be
- (7) complete and I would certainly expect that
- (8) you will be bound by them, so if you do
- (9) think of something, will you let me know?
- (10) A I will at least let my attorney know
- (11) and hopefully she'll communicate that with
- (12) you.
- (13) Q Before the end of this session,
- (14) correct?
- (15) A Yes.
- (16) Q Thank you. Now, I normally start out
- (17) by telling people that I represent Sheila
- (18) Parkest and that's what I'm telling you,
- (19) and that I'm going to be asking questions
- (20) and if you don't understand the questions,
- (21) I would request that you let me know that
- (22) you do not understand them, will you do
- (23) that?
- (24) A Certainly.
- (25) Q Okay. That you need to answer

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- (1) questions yes or no because the court
- (2) reporter can't get down an accurate
- (3) "uh-huh" or "huh-uh," and I didn't start
- (4) out that way with you, Dr. Yu, because it
- (5) was my understanding that you are very
- (6) experienced in this area of giving
- (7) depositions; is that true?
- (8) A People have characterized me as that
- (9) way, yes.
- (10) Q How many times have you given a
- (11) deposition of any type?
- (12) A I think probably at least 50.
- (13) Q And how many times have you given
- (14) depositions in podiatry malpractice cases?
- (15) A All of my depositions that I can think
- (16) of to date have in some way related to
- (17) podiatry, whether it's an injury at a store
- (18) by somebody where I never treated them.
- (19) They're all in essence tied into foot and
- (20) ankle problems, or leg problems.
- (21) Q Sir, the question was not was it
- (22) related to podiatry, but to a podiatry
- (23) malpractice case.
- (24) A Probably 90 percent.
- (25) Q Okay. And how frequently have you

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- (1) testified in court in podiatry malpractice
- (2) cases?
- (3) A I believe I can only estimate, probably
- (4) five or six times. It could be more.
- (5) Q Do you have a list of the cases, the
- (6) podiatry malpractice cases which comprise
- (7) you say maybe 90 percent of the
- (8) depositions that you have given in which
- (9) you have testified and the court cases in
- (10) which you have testified at trial -
- (11) A No.
- (12) Q - that you can provide me?
- (13) A No.
- (14) Q Can you get that information and
- (15) provide it to Ms. Boaz?
- (16) A No.
- (17) Q Why not?
- (18) A Because once I've completed the case,
- (19) I either return all the records or I
- (20) destroy them. I keep no records other
- (21) than what I need to keep for tax purposes
- (22) only, and only until my accountant tells
- (23) me I no longer need to keep those
- (24) materials for tax purposes.
- (25) Q All right. Doctor, I'm going to ask

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- (1) you to start telling me the cases that you
- (2) have testified in, because I'm entitled to
- (3) that information, and if I can't get it
- (4) directly from you, or if you can give it
- (5) to Miss Boaz she can give it to me, I'm
- (6) going to ask that a Court order you to
- (7) produce that information. So I would like
- (8) you to do your very best to give it to me
- (9) or Miss Boaz and tell us now what it is
- (10) you can tell us about that subject.
- (11) MS. BOAZ: Well, he has
- (12) said he may not be able to give you all
- (13) the information is what he just
- (14) testified. You can ask him -
- (15) MS. DIAMOND: I think I'm
- (16) entitled to that information, Doctor, and
- (17) so I'm going to ask that you provide it to
- (18) me now as best you can, to Miss Boaz, and
- (19) I'm going to ask the Court to order that
- (20) you provide it.
- (21) A You may do that.
- (22) Q All right. What can you tell me now
- (23) about the, for example, cases that you have
- (24) testified in this year?
- (25) A None.

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- (1) Q Have you given depositions in anything
- (2) this year besides this case?
- (3) A No.
- (4) Q What about in 1995, either testified or
- (5) given depositions?
- (6) A Yes.
- (7) Q All right. Will you tell us what cases
- (8) you testified in either by deposition or at
- (9) trial?
- (10) A I don't have any of the names of the
- (11) cases at hand. I can only tell you right
- (12) now the one that comes to mind was a trial
- (13) that was held in Albany, New York last
- (14) year is the only one I can tell you
- (15) specifically. I don't know the names.
- (16) Q Who are the parties to that?
- (17) A I do not know names.
- (18) Q Who was the lawyers involved in that
- (19) case?
- (20) A I do not know.
- (21) MS. DIAMOND: Mary, I'm
- (22) going to move that he be ordered to
- (23) produce a complete list of all cases in
- (24) which he has testified. Certainly if you
- (25) can get together with him after this

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- (1) deposition and produce that information to
- (2) me, I won't have to make that motion and
- (3) we can avoid that hassle. So I just want
- (4) you -
- (5) MS. BOAZ: We'll get
- (6) whatever we can.
- (7) MS. DIAMOND: I just want
- (8) you to be aware that that's going to
- (9) occur, because I think that clearly and
- (10) unequivocally I'm entitled to it.
- (11) Q Doctor, you have spoken a number of
- (12) times for these various drug companies on
- (13) the subjects that you've listed here and at
- (14) various meetings and so forth. Do you
- (15) believe that one of the reasons that you're
- (16) called upon to do that is because you're an
- (17) interesting speaker?
- (18) A Yes.
- (19) Q Is it also because sometimes you take a
- (20) unique perspective to certain things?
- (21) A I don't know. That's never been
- (22) given to me as a reason, but I think
- (23) people find me to be a very interesting
- (24) speaker and a very audience captivating
- (25) speaker.

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- (1) Q And do you take sometimes a very
- (2) unique perspective?
- (3) A I'm sure people think I do. I think
- (4) sometimes my perspectives are different.
- (5) Q Perhaps different than other
- (6) podiatrists?
- (7) A Oh, I'm sure.
- (8) MS. DIAMOND: Let's go off
- (9) the record for a moment.
- (10) (Discussion had off the record.)
- (11) Q You think that you do take a little
- (12) bit different perspective than many other
- (13) podiatrists; is that correct?
- (14) A I'm not so sure it's my perspective.
- (15) I think it's my delivery and my - maybe
- (16) it's partly perspective, my way of trying
- (17) to help my colleagues look at things and
- (18) formulate ideas about treating patients
- (19) with foot and ankle conditions.
- (20) Q Let's take it this way. On a
- (21) continuum, there's the very conservative
- (22) end and then there's the very
- (23) non-conservative or more unique or unusual
- (24) end of the practice of podiatry. Would
- (25) you place yourself at that end, of the

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- (1) more unusual, less conservative end?
- (2) A No, actually I wouldn't. Actually,
- (3) people who know me well will tell you that
- (4) I'm actually a very conservative
- (5) practitioner. I think people get the
- (6) impression from the topics I present that
- (7) I see some very as you described on a
- (8) continuum far out conditions, complex and
- (9) interesting, challenging cases, but my
- (10) actual approach to foot and ankle medicine
- (11) and surgery is actually conservative.
- (12) Q Well, then would you - I guess
- (13) perhaps the correct word is "different."
- (14) While you may see yourself as
- (15) conservative, your approach sometimes is
- (16) different than others?
- (17) (Interruption in proceedings.)
- (18) (Question read.)
- (19) A I'm sure it is.
- (20) Q Doctor, can you tell me everything that
- (21) has been provided to you in this case to
- (22) review?
- (23) A Sure. I can also show it to you if
- (24) you'd like.
- (25) Q Yes.

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- (1) A This is basically the material that
- (2) has been - this is all the material that
- (3) has been provided to me to review to date,
- (4) and the condition you see it here is how
- (5) it was. It was bound and sent to me with
- (6) the exception of correspondence. That is
- (7) not here.
- (8) Q All right. Do you have the
- (9) correspondence?
- (10) A Here with us?
- (11) Q Yes.
- (12) A No, I do not.
- (13) Q Do you have it in your office?
- (14) A No, I do not.
- (15) Q What did you do with it?
- (16) A I maintain my legal files and
- (17) correspondence at home, my home office.
- (18) MS. BOAZ: We're not going
- (19) to produce our correspondence.
- (20) Q When were you first contacted about
- (21) this case?
- (22) A I can only tell you sometime in 1995.
- (23) I don't even know the month.
- (24) Q All right. Who contacted you? How did
- (25) you hear about it?

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- (1) A Well, it was one of the – one of two
- (2) mechanisms. It was either OUM contacted me
- (3) or had somebody in their claims office
- (4) contact me first, or Mary Boaz may have
- (5) contacted me first, and to be honest I don't
- (6) know.
- (7) Q OUM is Dr. Doll's insurance company?
- (8) A I believe so.
- (9) Q You think they may have contacted you
- (10) first?
- (11) A I'm saying I don't remember and
- (12) frequently they're the first ones to
- (13) contact me.
- (14) MS. BOAZ: He said he doesn't
- (15) know if it was OUM or us.
- (16) A Or PICA, I'll put PICA in there.
- (17) Q Who's PICA?
- (18) A Another insurance carrier.
- (19) Q Do the insurance carriers pretty
- (20) routinely contact you to review cases for
- (21) them?
- (22) A I would say one-third, one-half the
- (23) time they'll call and somebody from the
- (24) office who has been assigned to the case
- (25) will contact me, even before an attorney

- (1) cases that are – involve this case, and
- (2) actually the reason it came up, this is
- (3) just another case in the same realm, I
- (4) actually have a patient who I'm dealing
- (5) with with a very similar entity which is
- (6) actually how the conversation got
- (7) started. For example, my partners in my
- (8) practice.
- (9) Q All right. Who have you provided any
- (10) scenarios from this case or from a similar
- (11) case to?
- (12) A Well, primarily my partner, one of my
- (13) partners.
- (14) Q Okay. And what particular part of this
- (15) case did you reference to him?
- (16) A The nerve disorder.
- (17) Q Tell me what it was you discussed with
- (18) him.
- (19) A Simply asked if he had seen anybody
- (20) in his own or what would he do if he had
- (21) somebody that had a nerve entrapment,
- (22) involving a nerve, this particular nerve
- (23) in the bottom of the foot and the big toe.
- (24) Q And what did you all discuss about what
- (25) you would do? What did he say, what did you

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- (1) has contacted me.
- (2) Q Okay.
- (3) A Sometimes it's a doctor and other times
- (4) it's the attorney.
- (5) Q Okay. Have you been contacted by Dr.
- (6) Doll?
- (7) A No, I don't think so.
- (8) Q Have you talked to him about this case?
- (9) A I don't believe I have. I don't recall
- (10) any conversations with him.
- (11) Q Have you talked to any other
- (12) podiatrists about this case?
- (13) A No.
- (14) Q Have you talked to any other doctor of
- (15) medicine about this case, any doctor of
- (16) medicine?
- (17) A No. I have created a case scenario
- (18) and asked some of my colleagues if they've
- (19) ever seen some of the conditions that are
- (20) talked about in here. Not for purposes of
- (21) discussing this case, but just to see if
- (22) they ever had.
- (23) Q Well, but it was this case that you
- (24) were talking about, right?
- (25) A No, not really because I have other

- (1) say?
- (2) A I don't really remember. It was just
- (3) general conversation. If I had to, I'd
- (4) take the nerve out maybe. As you know, I
- (5) try conservative care first, it was
- (6) basically that type of – the gist of the
- (7) conversation. And that was probably about
- (8) it. It was probably no more than a
- (9) two-minute discussion.
- (10) Q You have two copies of Dr. Donley's
- (11) deposition here. Is there any particular
- (12) reason?
- (13) A I think I might have – I received one
- (14) first and then counsel wasn't sure if I had
- (15) received – had that one originally.
- (16) Q Is this the second set of depositions
- (17) that you have received?
- (18) A I don't know.
- (19) MS. BOAZ: What do you mean
- (20) the second set of depositions?
- (21) Q I mean, did you receive another set
- (22) of depositions of these same depositions
- (23) from the defense attorney in the case?
- (24) A No.
- (25) MS. BOAZ: Of all of these



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- (1) depositions you mean?
- (2) MS. DIAMOND: Yeah. Any or
- (3) all of them.
- (4) A Everything I received is here in
- (5) front of you.
- (6) Q Okay.
- (7) A So if there's two depositions, then
- (8) those were the two exactly as I received
- (9) them.
- (10) Q Okay. Is this something that you have
- (11) written on this?
- (12) A I'm sure it is.
- (13) Q Is this something that relates to this
- (14) case?
- (15) A I don't know. I have to look at it.
- (16) Q Will you read it to me?
- (17) A Well, what I can read, two years -
- (18) two years baptist medical center. I don't
- (19) know what the second thing is. Maybe it's
- (20) vitamins or - I don't know. I think that
- (21) says Vietnam. I don't know what the
- (22) second word is though. And psych
- (23) orderly. That must relate to this case I
- (24) think.
- (25) Q You have tabs that you've placed here.

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- (1) Have you placed them or has someone else
- (2) placed them?
- (3) A I placed them.
- (4) Q Okay. We'll talk about that in a
- (5) minute. Have you reviewed these x-rays?
- (6) A Yes, ma'am.
- (7) Q And do you know how many x-rays you've
- (8) received?
- (9) A No.
- (10) Q Have you -
- (11) MS. DIAMOND: Let me just
- (12) ask, counsel, did he receive the same
- (13) complete set of x-rays that your other
- (14) expert Dr. Nava received?
- (15) MS. BOAZ: He should have.
- (16) Q Okay. Doctor, have you done any
- (17) research or found any books or articles that
- (18) you think bear any relevance to the issues
- (19) in this case?
- (20) A In my initial review of the case I
- (21) looked quickly through some references I had
- (22) on my own library shelf just to confirm
- (23) radiographic interpretation of some of the
- (24) issues in the case. Did I read the articles
- (25) and - no, I did not.

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- (1) Q What books did you refer to to
- (2) confirm radiographic interpretations?
- (3) A I looked in Dr. Weissman's book on
- (4) radiology. I looked in the comprehensive
- (5) textbook of foot surgery, I looked in a
- (6) book that was authored by I believe Josh
- (7) Gerber.
- (8) Q I didn't -
- (9) A Joshua Gerber. I don't know the name
- (10) of the book. I looked at a couple
- (11) orthopedic texts, Campbell's I think, may
- (12) have been Josh's book also. That's all I
- (13) can recall.
- (14) Q Have you researched any articles to
- (15) support any opinion that you plan to give in
- (16) this case?
- (17) A No.
- (18) Q Okay. Do you plan to do that?
- (19) A If requested by counsel.
- (20) Q But you have not at this point and have
- (21) nothing to tell me about; is that correct?
- (22) A No, I've done no literature reference
- (23) or literature reviews on these issues.
- (24) Q Of course I'm going to object to his
- (25) testifying from any article that he hasn't

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- (1) told us about now or regarding any article
- (2) he isn't telling us about now.
- (3) MS. BOAZ: Have you gone
- (4) through the articles, Doctor, that - have
- (5) you told her all the articles?
- (6) THE WITNESS: The ones that
- (7) I can think of, yes.
- (8) Q Were you provided any articles by
- (9) defense counsel?
- (10) A No.
- (11) Q Or by the insurance company?
- (12) A No. I have not - I know -
- (13) Q Or Dr. Doll?
- (14) A I don't think so. Not that I can think
- (15) of.
- (16) Q All right. Has Dr. Doll provided you
- (17) anything?
- (18) A No. As I mentioned, Dr. Doll and I, I
- (19) don't think we ever even talked about this
- (20) case.
- (21) Q Okay.
- (22) A I don't want you to think I'm trying
- (23) to be evasive to your questions. I have a
- (24) lot of malpractice cases so I don't know
- (25) who I talked to. I try not to talk to

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- (1) anybody because I don't believe expert
- (2) witnesses should be talking to defending
- (3) physicians and I make it a general rule
- (4) not to but I can't control that if
- (5) somebody picks up the telephone. But I
- (6) have no recall of him ever calling me to
- (7) discuss this matter at all.
- (8) Q Okay. We were on the subject of
- (9) articles. Let's move on for a moment to
- (10) something else.
- (11) Dr. Yu, what happens if - what
- (12) is likely to happen to a bone, first
- (13) metatarsal in the foot if it is put in a
- (14) position that is too low, too depressed?
- (15) A Repeat your question to make sure I
- (16) understand it correctly.
- (17) Q If through surgery the first
- (18) metatarsal, the metatarsus primus I believe
- (19) is the way you podiatrists refer to it, is
- (20) placed in a position and if it is lowered or
- (21) depressed too much what happens? What
- (22) happens to the bone itself?
- (23) A What do you - what are you using as a
- (24) reference for too much?
- (25) Q More than the bone is comfortable

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- (1) with. Does the bone show signs of stress
- (2) under such a circumstance?
- (3) A It may.
- (4) Q And what are those signs of stress?
- (5) A The - a bone which has too much stress
- (6) in terms of being overloaded could develop a
- (7) stress fracture.
- (8) Q Are there others?
- (9) A Could manifest some x-ray changes at
- (10) another joint level because of an
- (11) impingement or jamming.
- (12) Q What might you find on the bone itself?
- (13) A I don't think I understand your
- (14) question.
- (15) Q Okay. Let me see if I can ask it
- (16) differently.
- (17) A Okay.
- (18) Q Have you reviewed all of the x-rays
- (19) that were provided to you?
- (20) A Yes, ma'am.
- (21) Q Okay. Both pre and post-operatively?
- (22) A Yes.
- (23) Q Have you reviewed all of the x-rays
- (24) both before - well, you have reviewed the
- (25) x-rays of Dr. Donley as well as the x-rays

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- (1) of Dr. Doll?
- (2) A Yes, I presume some of them are from
- (3) Dr. Donley's. I never really checked them
- (4) from that perspective.
- (5) Q Okay. Did you notice anything
- (6) significant with regard to the first
- (7) metatarsal after this surgery and prior to
- (8) Dr. Donley's surgery?
- (9) A Notice anything significant?
- (10) Q With regard to the bone itself.
- (11) A The bone was cut and transpositioned.
- (12) Q Okay. And what else?
- (13) A That's basically it.
- (14) Q Did you look for cystic changes on that
- (15) bone?
- (16) A Not specifically, no.
- (17) Q What would cystic changes indicate?
- (18) A Could indicate nothing, and it could
- (19) indicate that there's some bone process
- (20) taking place such as a slow union or slow
- (21) healing, arthritic changes in the joint
- (22) nearby, a reaction to a pin or screw
- (23) that's in the area, avascular necrosis.
- (24) Q Are cystic -
- (25) A Infection.

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- (1) Q Are cystic changes sometimes seen on a
- (2) first metatarsal, a bone, when it is bearing
- (3) too much weight?
- (4) A I've never - I've never heard that
- (5) really or read about that as being a
- (6) manifestation of excessive weight bearing.
- (7) Q Okay. If there's too much pressure on
- (8) the bone as a result of being lowered, will
- (9) it sometimes show cystic changes?
- (10) A That's not something I'm used to
- (11) seeing, no.
- (12) Q Okay. Under what circumstances do you
- (13) see cystic changes after surgery?
- (14) A In the ones I just described.
- (15) Q Explain them to me. Under what
- (16) circumstances are you used to seeing cystic
- (17) changes?
- (18) A Well, I'm not used to seeing a lot of
- (19) cystic changes at all in the first
- (20) metatarsal bone after surgery other than if
- (21) they're - a patient has some bone healing
- (22) complication related to the surgery.
- (23) Q Would cystic changes be very painful?
- (24) A Cystic changes from any etiology
- (25) could be painful and they could be totally

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- (1) asymptomatic.
- (2) Q Okay.
- (3) A Cystic changes are a very common
- (4) observation in general on foot x-rays, or
- (5) I should say they're not uncommon,
- (6) especially in older patients.
- (7) Q And if a bone is depressed, a
- (8) metatarsal, a first metatarsal is
- (9) depressed to a point where there's
- (10) excessive pressure on it, would it be fair
- (11) to say that that bone might begin to show
- (12) osteoporotic type changes, cystic type
- (13) changes?
- (14) A I would say absolutely not.
- (15) Q You think that doesn't ever happen?
- (16) A You said commonly, or you implied
- (17) commonly and I said no. Does it ever
- (18) happen? It could happen, but I can
- (19) honestly say I've never seen it in my time
- (20) being in practice where the bone has
- (21) become cystic because of excessive weight
- (22) bearing to it.
- (23) Q Okay. Have you ever seen a bone, a
- (24) first metatarsal become cystic under any
- (25) circumstances?

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- (1) A Yes.
- (2) Q What are the circumstances under which
- (3) you have seen first metatarsal become
- (4) cystic?
- (5) A In the list I gave earlier where
- (6) patients have arthritic changes, may have
- (7) had a previous surgery and a complication
- (8) from that, may be having a reaction to the
- (9) pin, may be developing an avascular
- (10) necrosis of the bone, may be developing a
- (11) bone tumor or as part of the normal aging
- (12) process.
- (13) Q Have you ever seen such changes in a
- (14) bone be reversed?
- (15) A You mean spontaneously reverse
- (16) themselves?
- (17) Q No, reversed by some action.
- (18) A Sure.
- (19) Q Under what circumstances would that
- (20) - can you reverse such a process?
- (21) A I've seen it reversed as a result of
- (22) just time. I've seen it reversed with
- (23) surgery if it's a big enough cyst that could
- (24) be treated surgically.
- (25) Q What kind of surgery?

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- (1) A Well, usually a surgery to remove the
- (2) cyst and replace it with other bone.
- (3) Q Other kinds of surgery ever help such
- (4) changes to reverse themselves?
- (5) A Not that I can think of.
- (6) Q Okay. Do you have a record of the time
- (7) that you have spent on this case?
- (8) A Not a separate record, no. The only
- (9) record I would keep is in the course of my
- (10) Daytimer calendar. If I am spending time
- (11) consulting with somebody on the telephone, I
- (12) may keep a log if I remember to do it of the
- (13) date or enter it in my daily ledger of
- (14) activities that I spent 20 minutes talking
- (15) to you or some other attorney relative to a
- (16) -
- (17) Q How do you bill?
- (18) A I bill according to my fee schedule.
- (19) Q What is your fee schedule?
- (20) A I don't know what the fee schedule
- (21) says.
- (22) Q Well, I mean, what are you billing for
- (23) the review that you have done and the time
- (24) you have spent on this?
- (25) A I'd have to look at the fee schedule.

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- (1) And if I exceed the number of hours for the
- (2) initial review, well then I'll know.
- (3) Q I'm lost. You'll have to explain that
- (4) to me better. I don't understand.
- (5) A Okay. I'll be happy to but I need to
- (6) have a copy of my fee schedule to do that.
- (7) Q Can your secretary bring it down?
- (8) A Sure. Or she may have one.
- (9) MS. BOAZ: I may have a
- (10) copy.
- (11) A Actually, I understand you were
- (12) provided with a copy of it. No?
- (13) Q No.
- (14) MS. BOAZ: I think it was
- (15) too late. We got it late. We called -
- (16) somebody called your office. Did you get
- (17) a call about his fees for the deposition?
- (18) MS. DIAMOND: Yes.
- (19) MS. BOAZ: Okay.
- (20) THE WITNESS: So can we go
- (21) off the record for a moment?
- (22) MS. DIAMOND: Sure.
- (23) (Discussion had off the record.)
- (24) BY MS. DIAMOND:
- (25) Q Have you prepared a report in this

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- (1) case?
- (2) A No, ma'am.
- (3) Q Okay. Have you spent pre-deposition
- (4) consultation time?
- (5) A Yes, ma'am.
- (6) Q Okay. So you charge \$250 an hour for a
- (7) case review with a minimum of three hours,
- (8) \$150 an hour to prepare a report, but you
- (9) have consulted prior to the deposition,
- (10) haven't you?
- (11) A Yes.
- (12) Q You have spent additional time. Do you
- (13) have a record of how much time you spent?
- (14) A In my Daytimer as I mentioned, yes,
- (15) for some of it.
- (16) Q Okay. But you don't have any record
- (17) here with you today?
- (18) A No. Definitely not.
- (19) Q Okay.
- (20) MS. DIAMOND: Can you
- (21) produce that?
- (22) A Can I produce my calendar?
- (23) Q No. I just wanted - I don't want
- (24) your calendar. I just want to know how
- (25) much time you spent on our case so far.

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- (1) A If you want an estimate, I'd be happy
- (2) to give you an estimate right now.
- (3) Q Okay.
- (4) MS. BOAZ: That's fine.
- (5) A The initial review was a minimum of
- (6) three hours, that's probably been exceeded
- (7) because after the initial review there was
- (8) some supplemental materials that were sent
- (9) which probably took one or two hours.
- (10) There was maybe an hour at the most of
- (11) total telephone legal consultation time to
- (12) date, and the maximum would be one hour
- (13) for pre-deposition consultation conference
- (14) prior to today. And perhaps about 30
- (15) minutes of browsing through the - 30
- (16) minutes to an hour going through the texts
- (17) that we talked about earlier.
- (18) Q Have you tabbed what you consider to be
- (19) significant in the medical records, or what
- (20) is the reason that you have tabbed what you
- (21) have tabbed?
- (22) A Usually what I tab is pertinent items
- (23) at the time of first review so I can refer
- (24) back to them when I speak with counsel, or
- (25) I tab things that I think will need to be

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- (1) used in the course of the deposition so we
- (2) don't waste time trying to track something
- (3) down. That's usually it.
- (4) Q Okay. You, according to the attorney
- (5) in this case, have formed an opinion, and I
- (6) want you to tell me about your opinion in
- (7) this case. Will you tell me what it is?
- (8) A Yes. To do that what I would like to
- (9) do is ask counsel if I can simply refer to
- (10) what I've gone over with you before.
- (11) MS. BOAZ: To the
- (12) disclosure?
- (13) Q Have you prepared -
- (14) THE WITNESS: Right.
- (15) MS. BOAZ: The supplemental
- (16) disclosure that we provided to you is what
- (17) he prepared.
- (18) MS. DIAMOND: Is this what
- (19) you're talking about?
- (20) MS. BOAZ: Yes.
- (21) THE WITNESS: That looks
- (22) like it.
- (23) MS. BOAZ: Yeah.
- (24) Q Okay. Doctor, what role in assessing
- (25) whether or not there is elevated metatarsal,

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- (1) first metatarsal, does measurements play in
- (2) that determination?
- (3) A You're talking about clinical
- (4) measurements or x-ray measurements?
- (5) Q X-ray measurements or clinical
- (6) measurements. Tell me about that. What
- (7) role do measurements play?
- (8) A In the diagnosis of an elevated
- (9) metatarsal?
- (10) Q Metatarsal. First metatarsal.
- (11) A The most important thing is the
- (12) clinical diagnosis and assessment. And
- (13) x-rays would be used to supplement or to
- (14) further - could be used to further
- (15) document and substantiate the clinical
- (16) findings.
- (17) Q My question was with regard to
- (18) measurements.
- (19) A That's what I answered.
- (20) Q What do you measure clinically or on
- (21) x-ray and how do you do it?
- (22) A No, I think your question was how do I
- (23) measure -
- (24) Q No.
- (25) THE WITNESS: Could you

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- (1) repeat the question for us that she asked
- (2) originally, please.
- (3) (Question read.)
- (4) Q What role do measurements play in that
- (5) determination?
- (6) A That's the answer I gave you.
- (7) Q You haven't mentioned what you would
- (8) measure or how you would measure it.
- (9) That's what I'd like you to do.
- (10) A Now you're asking me rather than
- (11) answering the question of what role do
- (12) measurements play, now you're asking me to
- (13) define -
- (14) Q You haven't told me at all what role
- (15) measurements play yet, but I'll ask the
- (16) question differently if it would be
- (17) helpful to you.
- (18) A Sure.
- (19) Q What if anything would you measure and
- (20) how would you measure it?
- (21) A If you're defining measure as
- (22) determining a number for relationship, I
- (23) measure nothing. For the condition of
- (24) metatarsus primus elevatus.
- (25) Q You would measure nothing?

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- (1) A Nothing.
- (2) Q So you do not -
- (3) A I -
- (4) Q - think -
- (5) A Let me finish my answer.
- (6) Q Sure.
- (7) A I have in 12 years can think of no
- (8) cases in which I have treated either
- (9) metatarsus primus elevatus or any
- (10) metatarsus elevatus. Actually measured a
- (11) number as part of my evaluation and
- (12) assessment of the patient until
- (13) determining what treatment I would provide
- (14) or the treatment that I provided.
- (15) Q So do you just sort of eyeball it and
- (16) decide whether or not it's elevated?
- (17) A I use my eyeballs to look at it and I
- (18) use my hands and I use the x-rays to get
- (19) an idea of the relationship of the bone.
- (20) Q How do you use the x-rays?
- (21) A How I use the x-rays to determine
- (22) length and position and condition of the
- (23) bone.
- (24) Q And you don't think it's necessary to
- (25) determine, for example, if you have an

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- (1) elevated first metatarsal how elevated it
- (2) is?
- (3) A No, ma'am.
- (4) Q How do you decide then if you're going
- (5) to lower it, how much you're going to lower
- (6) it?
- (7) A By clinical judgment in surgery.
- (8) Q So it's just again sort of eyeballing
- (9) it and doing so much?
- (10) A You don't just eyeball it. I go by
- (11) feel of one bone to all the other bones in
- (12) the foot you think are important in
- (13) determining the position of the bone
- (14) you're operating on.
- (15) Q So you would never measure angle of
- (16) declination?
- (17) A No, I didn't say I would never
- (18) measure angle of declination. I have not
- (19) in my professional career can I think of
- (20) in treating a patient actually determined
- (21) the measurement of the first metatarsal
- (22) declination for purposes of making my
- (23) diagnosis or establishing what I'm going
- (24) to do or how I'm going to do what I'm
- (25) going to do in surgery.

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- (1) Q Under what circumstances would you
- (2) measure angle of declination of the first
- (3) metatarsal?
- (4) A Primarily when I'm in a teaching
- (5) situation for people to understand
- (6) relationships of that first metatarsal
- (7) declination to a global picture.
- (8) Q And why would you teach them that if
- (9) you don't want them ever to use it?
- (10) MS. BOAZ: I don't know
- (11) that he testified -
- (12) A I never said -
- (13) MS. BOAZ: - to that.
- (14) A I never said I don't want them to use
- (15) it.
- (16) Q Well, you don't use it, do you?
- (17) A The actual measurement, of course
- (18) not, because I don't usually measure it
- (19) for purposes of treating a patient. But
- (20) do I use metatarsal declination?
- (21) Q Yeah.
- (22) A As a factor in treating patients?
- (23) Q Yes.
- (24) A Oh, yes.
- (25) Q For what purposes?

BSA

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- (1) A So I know what the condition is.
- (2) Q Okay.
- (3) A And I can see that in fact what I think
- (4) I am feeling and seeing and observing
- (5) clinically is in fact correlated with what I
- (6) see on x-ray.
- (7) Q So you use it sort of as a
- (8) confirmation?
- (9) A You could say that, yes.
- (10) Q Okay. Have you ever performed the same
- (11) combinations of surgery that Dr. Doll
- (12) performed, in this case lowering or
- (13) depressing the first metatarsal and at the
- (14) same time doing a sesamoidectomy beneath it?
- (15) A Yes.
- (16) Q How many times?
- (17) A Many.
- (18) Q Do you have evidence of that here and
- (19) can you produce it?
- (20) A Well, I would not produce for you any
- (21) patient records.
- (22) Q I'm going to ask that you produce any
- (23) patient records and you may black out the
- (24) names, redact the names of any record of
- (25) any time that you have performed both of

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- (1) those simultaneously.
- (2) A Well, I'll tell you I won't do it
- (3) because there's no easy way for me to do
- (4) it.
- (5) Q Well, can you think of anyone you've
- (6) performed it on?
- (7) A I can think of many patients that I've
- (8) taken out the fibular sesamoid and cut the
- (9) first metatarsal bone and repositioned it
- (10) with part of that aimed at lowering first
- (11) metatarsal. Absolutely. Now, to help you
- (12) understand it and make this a little more
- (13) realistic an issue, if you want to know
- (14) about it in terms of as it refers to this
- (15) case, which I presume is what you're trying
- (16) to arrive at, I would ask that you address
- (17) the questions from that perspective and I'll
- (18) try to answer them for you.
- (19) Q Well, if you would like to relate
- (20) what we are now discussing to this case in
- (21) particular, go ahead, I'll be glad to
- (22) listen to you.
- (23) A I don't want to do that unless
- (24) there's something I can answer for you.
- (25) Q Does it relate to this case? Does

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- (1) the subject matter relate to this case?
- (2) A I really - to be honest with you, I
- (3) think it's a matter of what your personal
- (4) opinion is about it. If you want to ask
- (5) me, is up down position of the first
- (6) metatarsal important in the first ray,
- (7) it's important in anybody doing any
- (8) surgery on the first metatarsal. For
- (9) example, let's take a simple condition,
- (10) hallux valgus deformity.
- (11) Q We're not dealing with the hallux
- (12) valgus deformity in this case, are we?
- (13) A Well, do you want to change the line of
- (14) questioning?
- (15) MS. BOAZ: Just answer the
- (16) question.
- (17) Q I just wanted to ask -
- (18) MS. BOAZ: Just answer.
- (19) Q - the question before we go on.
- (20) A No.
- (21) Q Let's talk about what we are dealing
- (22) with in this case.
- (23) A Okay.
- (24) Q What do you think we're dealing with
- (25) in this case?

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- (1) MS. BOAZ: Well, don't
- (2) answer this question, Doctor.
- (3) Q Of course -
- (4) MS. BOAZ: No. You ask him
- (5) a question and he'll answer it.
- (6) THE WITNESS: I can answer
- (7) it for her.
- (8) MS. BOAZ: No. No. Don't
- (9) answer that question.
- (10) Q Well, what do you think Dr. Doll was
- (11) dealing with?
- (12) MS. BOAZ: Do you mean what
- (13) condition -
- (14) MS. DIAMOND: Yes.
- (15) MS. BOAZ: - the patient
- (16) had?
- (17) Q What condition do you think Dr. Doll
- (18) had to deal with?
- (19) A Based on my review of the records,
- (20) Dr. Doll was dealing with a patient who
- (21) had a nerve irritation or some type of
- (22) nerve problem in relationship to a fibular
- (23) sesamoid, which is part of the problem,
- (24) and a condition that he diagnosed as
- (25) metatarsus primus elevatus.

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- (1) Q All right. Let's talk about it in
- (2) connection with what you believe Dr. Doll
- (3) was dealing with. All right. Do you
- (4) believe that there was a metatarsus primus
- (5) elevatus?
- (6) A Based on his review of the records and
- (7) x-rays, yes.
- (8) Q All right. Based on what now?
- (9) A Based on my review of the medical
- (10) records and the x-rays, yes.
- (11) Q All right. Based on what Dr. Doll
- (12) said in his medical records?
- (13) A Well, based upon his medical records of
- (14) the patient.
- (15) Q All right. And based upon the x-rays?
- (16) A Yes.
- (17) Q Okay. Was there any x-ray that you
- (18) believe prior to Dr. Doll's surgery
- (19) demonstrated metatarsus primus elevatus?
- (20) An elevated first metatarsal or first ray
- (21) as you podiatrists like to say?
- (22) A Either way. Yes.
- (23) Q Okay. And how did you determine that
- (24) the first metatarsal was elevated in any
- (25) x-ray if you didn't measure any angle?

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- (1) A By visualizing the bone in relation to
- (2) all the other bones that are on the x-ray.
- (3) Q Okay. Did you measure any angle of
- (4) declination?
- (5) A No.
- (6) Q And you did say that if it was - if
- (7) you were doing this, you would use a
- (8) measurement of the angle of declination to
- (9) confirm your opinion; is that correct?
- (10) A I may, yes.
- (11) Q But you did not in this case?
- (12) A I used all of the material that was
- (13) given to me.
- (14) Q No. Did you measure angle of
- (15) declination on whatever x-ray you believe
- (16) showed a metatarsus primus elevatus?
- (17) A I think I stated earlier, no.
- (18) Q Okay. Did you think it was not
- (19) necessary?
- (20) A Wasn't necessary for me to do so.
- (21) Q Okay. Do you know what a normal
- (22) declination number would be, a normal
- (23) degree of declination for metatarsus -
- (24) first metatarsal, first ray?
- (25) A First of all, there's no one number.

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- (1) Q Is there a range?
- (2) A Well, secondly, you can argue there is
- (3) a range, but it would not be widely accepted
- (4) in a profession that if you fell outside of
- (5) the range that you could not have a normal
- (6) foot. I know it's probably hard to
- (7) understand that, but I'll give you a range.
- (8) An accepted range would be 15 to 25 degrees,
- (9) perhaps up to 30.
- (10) Q But if -
- (11) A Let me finish.
- (12) Q Sure. Go ahead.
- (13) A If you ask a podiatrist, all
- (14) podiatrists practicing in the country to
- (15) give you a number, the closest number to the
- (16) average as we accept as a metatarsus
- (17) declination, it would be 20 degrees plus or
- (18) minus one or two degrees because this is
- (19) what I understand and at the time I was
- (20) teaching was being taught and I think to
- (21) some degree still is. Now, you'll have
- (22) patients that will fall outside of that
- (23) range that I gave you, but actually have -
- (24) would be considered as having a normal foot,
- (25) even though they fall outside of that

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- (1) range. So consequently I don't know that
- (2) using the number or the range by itself
- (3) would have a lot of meaning. For this
- (4) condition most people would correlate it
- (5) with a clinical symptomatology and clinical
- (6) findings maybe even more so than a lot of
- (7) other things we do measure on x-ray where
- (8) angles seem to be more important.
- (9) Q All right. Let me see if I can
- (10) paraphrase what you said so I can be sure
- (11) that I understand at least some of what
- (12) you said.
- (13) A Okay.
- (14) Q What you have said is that a normal
- (15) range might be 15 to 30, but that if you
- (16) were looking for a normal - real normal
- (17) number, it would be 20 plus or minus one;
- (18) is that correct?
- (19) A One or two degrees, yes, ma'am.
- (20) MS. BOAZ: I think he said
- (21) an average number.
- (22) A Average number.
- (23) Q Is that an average number for a
- (24) normal degree of declination of the first
- (25) ray?

- (1) A I think that would be the number if
- (2) you polled all podiatrists. Give me a
- (3) number of the closest to the normal first
- (4) metatarsal declination. It would be 20
- (5) degrees plus or minus one or two degrees.
- (6) Q If I understand also what you said,
- (7) you can be outside of that range and still
- (8) have a perfectly normal foot?
- (9) A Yes. Maybe a better way to say that
- (10) would be a normal functioning foot that
- (11) doesn't necessitate any treatment or
- (12) require any ~~conservative or surgical care.~~
- (13) Q Okay. Do you know what the angle of
- (14) declination was for Sheila Parkest before
- (15) Dr. Doll operated on her foot?
- (16) A No, I don't.
- (17) Q Would you be surprised to learn that
- (18) it measures 21 degrees?
- (19) A Not really, because I know there was
- (20) something in his deposition dealing with
- (21) this whole issue.
- (22) Q Okay. So she would have what would
- (23) be considered by most podiatrists a
- (24) perfectly normal degree of declination
- (25) before he operated on her; is that

- (1) correct?
- (2) MS. BOAZ: If she had 21
- (3) degrees? I don't think there's any
- (4) testimony in the record that she had 21
- (5) degrees.
- (6) MS. DIAMOND: If she had 21
- (7) degrees.
- (8) Q Okay. If she had 21 degrees she
- (9) would have had a perfectly normal degree
- (10) of declination at the time Dr. Doll
- (11) operated on her, before he operated on
- (12) her?
- (13) A The only way I can answer your
- (14) question is to say if you ask all the
- (15) podiatrists the question, I have a patient
- (16) with a metatarsal declination of 21
- (17) degrees, would that be normal. I think the
- (18) answer you're going to get is it could be.
- (19) Q Okay.
- (20) A I think that's what the vast majority
- (21) of podiatrists would tell you, yes, it
- (22) certainly could be.
- (23) Q But would they also think that it might
- (24) not be?
- (25) A I think a good practicing physician is

- (1) going to say, immediately going to have a
- (2) flag raised in their mind, say it may or may
- (3) not be, depends on what the rest of the
- (4) patient's foot is, or what kind of problems
- (5) they have had, have they had any work done
- (6) before, what kind of symptoms do they have.
- (7) Q On what basis do you believe that Dr.
- (8) Doll determined that Sheila Parkest had an
- (9) elevated first metatarsal?
- (10) A My understanding from reviewing of
- (11) records is both clinical and radiographic.
- (12) Q Based on x-rays, he talked about a
- (13) shadow on an x-ray, didn't he, in his
- (14) deposition? Do you remember that?
- (15) A I remember something to that effect,
- (16) but I don't remember the specific -- his
- (17) specific testimony about it.
- (18) Q Let me ask you this. Do you follow
- (19) the shadow method of reading x-rays in
- (20) determining whether or not there's a
- (21) raised metatarsal?
- (22) A I never understood exactly the shadow
- (23) theory. I look at the x-rays and whatever I
- (24) can see and draw lines on is what I draw.
- (25) Maybe that is the shadow thing or not, but

- (1) I'm not sure what the shadow thing is.
- (2) Q When you say draw lines, what lines
- (3) are you drawing? Tell me about how you
- (4) would look at an x-ray to determine if
- (5) there was an elevated metatarsal.
- (6) A Okay. Now, are you asking me about
- (7) with drawing lines or just by looking at
- (8) the x-ray?
- (9) Q Well, you said you would do it by
- (10) drawing lines.
- (11) A What I'm saying is if I was drawing
- (12) lines on the x-ray, I would just draw my
- (13) lines based upon the lines I would see. I
- (14) don't know if those are shadows.
- (15) Q Can you explain what lines you would
- (16) draw?
- (17) A Sure.
- (18) Q Would you do that for me now?
- (19) A Sure. If I were to draw lines to
- (20) assess first metatarsal position on an
- (21) x-ray, I would draw lines that involve the
- (22) first metatarsal, I would draw lines that
- (23) involve the second metatarsal, I would
- (24) draw lines that involve the talus and the
- (25) calcaneus and probably a line that would



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- (1) represent the bottom of the foot.
- (2) Q And then what would you do with those
- (3) lines?
- (4) A I would probably just look at them.
- (5) Q What would you be looking for?
- (6) A Where various lines would intersect.
- (7) Q And where they intersected would be of
- (8) what significance to you?
- (9) A Depending on the patient's symptoms
- (10) and my physical exam, it would mean a lot
- (11) or it could mean really nothing. Really
- (12) all depends on what my clinical findings
- (13) are and what the complaint is.
- (14) Q Okay. You evaluated this case based
- (15) upon in part those x-rays, correct?
- (16) A Yes, I reviewed the x-rays as part of
- (17) the case.
- (18) Q All right. What did you see
- (19) significant, if anything, in those x-rays at
- (20) any time? What if - what about any of
- (21) those x-rays do you think makes any kind of
- (22) difference in this case, either to Dr.
- (23) Doll's actions or to anything else that
- (24) bears any importance to this case?
- (25) MS. BOAZ: Now -

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- (1) MS. DIAMOND: What I -
- (2) MS. BOAZ: - that's a
- (3) little broad, Penny. You can't just ask
- (4) him what's significant on 15 x-rays.
- (5) MS. DIAMOND: If he's going
- (6) to testify in this case, I'm entitled to
- (7) know what he's going to testify about. He
- (8) needs to tell me.
- (9) Q So what I'm asking you now is what in
- (10) these x-rays are going to be worth your
- (11) talking about at trial?
- (12) MS. BOAZ: With regard to
- (13) what?
- (14) MS. DIAMOND: With regard
- (15) to the issues in this case. Whether or
- (16) not Dr. Doll's work was appropriate.
- (17) A Well, I don't know because I don't know
- (18) what really I'm going to be asked. I'm
- (19) going to answer whatever is asked of me at
- (20) trial.
- (21) Q No you're not, sir. The way the
- (22) rules read -
- (23) MS. BOAZ: Yes, he is.
- (24) MS. DIAMOND: No.
- (25) MS. BOAZ: He's going to be

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- (1) asked questions and he's going to answer
- (2) them, and that's what he's going to do
- (3) today.
- (4) Q The way the rules go, I'm entitled to
- (5) know what your opinions are. Your - the
- (6) lawyers in this case have provided me with a
- (7) very sketchy, very sketchy summary of your
- (8) opinions and I'm entitled to ask you here
- (9) now, tell me what your opinions are, and you
- (10) need to tell me what they are or I'm going
- (11) to object to your saying them at any other
- (12) time.
- (13) So do you have any opinions, and
- (14) now I'm trying to help you out by being more
- (15) precise. Tell me, do you have any opinions
- (16) about any of these x-rays? Did you believe
- (17) any of these x-rays were significant? If
- (18) so, tell me which ones and what was
- (19) significant about them.
- (20) MS. BOAZ: Just a minute,
- (21) Doctor. You have got to ask - you have
- (22) got to be more specific than that.
- (23) Significant as to what?
- (24) Q Do you believe any of these x-rays
- (25) demonstrated anything that justified either

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- (1) of - any of the surgery performed by Dr.
- (2) Doll? Let's try that.
- (3) A You mean the x-rays as they stand by
- (4) themselves?
- (5) Q Did any of the x-rays in any way verify
- (6) any of his opinions expressed in his notes,
- (7) or justify anything that he did? Did they
- (8) verify or justify anything that he did?
- (9) A Okay. I'll use the word verify and
- (10) ignore the word justify. I will say that
- (11) he has a lateral - one lateral x-ray
- (12) taken before surgery -
- (13) Q Before his surgery?
- (14) A - that would be consistent with his
- (15) observation of a metatarsus primus elevatus.
- (16) Q Can you show us that x-ray and tell
- (17) us why it's consistent?
- (18) A Sure. I think this one's his.
- (19) MS. BOAZ: It's 9-8-93.
- (20) A I think there's two.
- (21) MS. BOAZ: I think those
- (22) smaller ones were also. That may be it.
- (23) Yeah. Those are his?
- (24) A This would be the x-ray.
- (25) Q All right.

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- (1) A This is a pre-operative x-ray I believe
- (2) dated 9-8-93. You probably have to turn it
- (3) upside down to read the date.
- (4) Q What do you see on that x-ray that
- (5) indicates to you that you have an elevated
- (6) first metatarsal?
- (7) A The relationship of the first
- (8) metatarsal here to the second metatarsal.
- (9) Q And what is that relationship that you
- (10) see?
- (11) A It's above the level of the second
- (12) metatarsal very clearly when one looks at
- (13) the dorsal cortex.
- (14) Q Now, if you weren't putting a lot of
- (15) weight on the area under the first
- (16) metatarsal because it was painful, wouldn't
- (17) that cause that effect?
- (18) A Say that again.
- (19) Q If the person who was standing there
- (20) having their x-ray taken was un-weighting
- (21) the inside of the foot, wouldn't it give
- (22) the same effect, and if because it was
- (23) painful they were not putting a lot of
- (24) weight on that foot, wouldn't you get the
- (25) same effect?

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- (1) A You could, but the rest of the foot
- (2) wouldn't have this alignment on x-ray.
- (3) Q Are you saying that you think you can
- (4) tell whether or not somebody is putting
- (5) weight equally on all parts of their foot by
- (6) looking at an x-ray?
- (7) A As a general rule you can tell
- (8) whether someone is standing with their
- (9) foot in a weight bearing attitude. You
- (10) may not be able to know that if the foot
- (11) has such significant deformity that the
- (12) x-ray would be markedly distorted because
- (13) the foot is distorted and they could still
- (14) be putting all their weight on the foot.
- (15) Q You can put all your weight on
- (16) different parts of the foot, too, can't
- (17) you? You can un-weight a toe or a side of
- (18) the foot or a heel?
- (19) A Sure. But you cannot un-weight just
- (20) the first metatarsal and leave everything
- (21) else in what would indicate a weight
- (22) bearing attitude for an x-ray.
- (23) Q If you lean on the outside of the foot,
- (24) wouldn't you do just that?
- (25) A No, you wouldn't. You would create

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- (1) what you see here, possibly, but the rest of
- (2) the x-ray would be different.
- (3) Q So you think you can tell from looking
- (4) at that?
- (5) A No, I know that you can tell from
- (6) looking at this x-ray that this is not a
- (7) patient who's taking their foot and as you
- (8) have suggested unloaded and un-weighted
- (9) the area beneath the first metatarsal
- (10) because of pain.
- (11) Q Well, you know, don't you think that
- (12) people if they have a painful say big toe
- (13) would try to keep the weight off of that
- (14) part of the foot without even realizing
- (15) they were doing it?
- (16) A Not if you're taking - well, maybe I'm
- (17) presuming we're talking about the same
- (18) thing here. I'm presuming as I've learned
- (19) in the records that this was an instructed
- (20) weight bearing lateral x-ray under the
- (21) doctor's supervision, and this x-ray would
- (22) be very consistent with that. Could a
- (23) patient unconsciously unload the first
- (24) metatarsal given the instruction that we're
- (25) taking an x-ray, I need your weight on it

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- (1) and I'm setting up the x-ray beam? I guess
- (2) they could if for a split second I didn't
- (3) see them when the x-ray was taken, but you'd
- (4) be able to see a change in the position of
- (5) the foot, because you and I could not stand
- (6) there and in any way simply unload our first
- (7) metatarsal bone and just have the first
- (8) metatarsal bone change position. In other
- (9) words, and have everything else stay in
- (10) position. It can't happen.
- (11) Q Doctor, so you think you can tell by
- (12) looking at this x-ray whether or not the
- (13) weight was equally distributed in the foot
- (14) as it should have been?
- (15) A No. What I said was I can - my
- (16) belief is that this is a weight bearing
- (17) x-ray as taken under Dr. Doll's
- (18) supervision. Whether all parts of the
- (19) foot bore equal weight, I would doubt
- (20) that.
- (21) Q If -
- (22) A Not given her condition.
- (23) Q When you're measuring angle of
- (24) declination, what are the important parts
- (25) that you measure?

- (1) A You mean the important angles that  
 (2) you determine if you do it?  
 (3) Q Yes.  
 (4) A Well, I think there's actually  
 (5) multiple ones. I don't think there's just  
 (6) one. There's one - most common one that  
 (7) people use, but I don't think it's of any  
 (8) greater importance than the other ones.  
 (9) Q Why is that?  
 (10) A Because it's just one part of the  
 (11) picture. There are three or four  
 (12) different ways to actually assess first  
 (13) metatarsal position as we're talking about  
 (14) it in a condition of metatarsus primus  
 (15) elevatus.  
 (16) Q And what are they?  
 (17) A Well, one is you could just measure  
 (18) the angle of declination with respect to  
 (19) the ground. Two is you could measure the  
 (20) angle of declination of the first  
 (21) metatarsal with respect to the talus.  
 (22) Q Okay.  
 (23) A Three, you could measure the angle  
 (24) declination of the first metatarsal with  
 (25) respect to the calcaneus.

- (1) Q What is the most common method of  
 (2) doing it?  
 (3) A I would say it's split.  
 (4) Q Between what and what?  
 (5) A Between measuring the angle - I  
 (6) didn't really finish all the other ways.  
 (7) Q Go ahead.  
 (8) A I'm going to give you an answer that  
 (9) I didn't explain yet.  
 (10) The other way is to measure the  
 (11) angle of declination of the first metatarsal  
 (12) to the second metatarsal, based on looking  
 (13) at the cortex of the bone.  
 (14) I would say that what's done in  
 (15) clinical practice when people are assessing  
 (16) this condition is look at three probably  
 (17) equally. One is relationship of the first  
 (18) metatarsal to the second metatarsal. One is  
 (19) relationship of the first metatarsal to the  
 (20) ground. And one is relationship of the  
 (21) first metatarsal to the talus.  
 (22) Q And what do you think is the most  
 (23) commonly used method when you're measuring  
 (24) angle of declination?  
 (25) A I think most people if you're

- (1) measuring the angle of declination, that's  
 (2) separate than assessing metatarsus primus  
 (3) elevatus. Measuring the angle of  
 (4) declination, the most common way to do  
 (5) that, there's really only one way, is  
 (6) measure the angle with respect to the  
 (7) ground. To identify your first metatarsal  
 (8) declination.  
 (9) Q And that's what we were talking about  
 (10) when we were talking about a range of 15 to  
 (11) 30 and the average accepted as normal being  
 (12) 20 plus or minus one or two, right?  
 (13) A I didn't say that was normal. I said  
 (14) if you polled all podiatrists and asked them  
 (15) to give you a number, that's the number  
 (16) people have had drilled in their heads in  
 (17) studying, in learning in school and studying  
 (18) all the angular measurements in the foot,  
 (19) that's what people would think is 20  
 (20) degrees.  
 (21) Q And when Dr. Donley returned Sheila  
 (22) Parkest's metatarsal to about where it was  
 (23) when it started out before Dr. Doll  
 (24) operated on it, do you know what the angle  
 (25) of declination was after he returned it?

- (1) A No, I don't.  
 (2) Q Okay. Do you believe that he acted  
 (3) improperly in returning it?  
 (4) A I have not reviewed the case to look at  
 (5) it from that perspective at all. I  
 (6) understand what he did and why he did it.  
 (7) Q What did he do and why did he do it?  
 (8) A He re-cut the bone and repositioned it.  
 (9) Q And why did he do it?  
 (10) A His records indicate that he thought it  
 (11) was positioned or was carrying excessive  
 (12) pressure or was excessively plantar flexed.  
 (13) Q It was too low?  
 (14) A Too low, same thing.  
 (15) Q Excessive pressure or excessive plantar  
 (16) flexed. And if it was too low following  
 (17) surgery in which it was placed low, then we  
 (18) would have to conclude, wouldn't we, that  
 (19) the surgery was how it got too low, and it  
 (20) got this carrying excessive pressure, it  
 (21) was Dr. Doll's surgery that caused that,  
 (22) right?  
 (23) A Well, I would presume that as a result  
 (24) of the surgery that's the position it would  
 (25) end up in, yes.

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- (1) Q All right. Do you believe that Dr.
- (2) Doll properly was – let me scratch that
- (3) question. Is that all right with you?
- (4) A Sure.
- (5) Q Let me ask it differently. Based on
- (6) your review of the records, do you believe
- (7) that the position Dr. Doll placed the
- (8) first metatarsal in was appropriate, or do
- (9) you believe it was too high or too low?
- (10) A Oh, I think where he positioned it was
- (11) appropriate.
- (12) Q Okay. Then how do you explain that
- (13) Dr. Donley raised it because he thought it
- (14) was too low causing excessive pressure?
- (15) A Just when it healed it turned out it
- (16) was too low and she apparently had – or
- (17) appears to have symptoms.
- (18) Q So you say it was too low when it
- (19) healed?
- (20) A I don't know if it was too low. What
- (21) I'm saying is I believe that what Dr. Doll
- (22) did at the time of surgery was cut the
- (23) bone in position where he felt was
- (24) appropriate.
- (25) Q Did you feel it was appropriate?

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- (1) A I have no way to have any feeling about
- (2) it.
- (3) Q Did you look at the x-rays?
- (4) A Yes. You can't assess that based on
- (5) the x-rays, as I mentioned from the very
- (6) beginning. This is a clinical decision just
- (7) as the diagnosis is made based upon the
- (8) clinical findings in conjunction with the
- (9) patient's complaints or symptoms. The
- (10) decision in surgery of where to position it
- (11) has nothing to do with the x-ray. We talked
- (12) about this extensively at the beginning and
- (13) that's why I don't recommend and never have
- (14) condoned nor have I ever measured angles to
- (15) use that as a determining factor in surgery
- (16) as to where to move the bone.
- (17) Q So he just sort of decides on his own
- (18) while he's in surgery how low he's going
- (19) to place it?
- (20) A I hope so. He's the surgeon and the
- (21) surgeon's responsibility is to cut the bone,
- (22) reposition it, and based upon everything the
- (23) surgeon knows of that patient's foot of his
- (24) examination before in treating the patient
- (25) and whatever he has gleaned from the x-rays

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- (1) is to reposition that bone where he feels
- (2) will be the most functional and best place
- (3) for that patient.
- (4) Q So do I understand then that you have
- (5) no opinion at all as to whether or not he
- (6) placed it appropriately, that you can only
- (7) say that he's the surgeon and it's his
- (8) judgment to do it wherever he feels like
- (9) doing it?
- (10) A I'm not really sure I understand what
- (11) you're asking me.
- (12) MS. BOAZ: That's not quite
- (13) what he said.
- (14) Q All right. Well, let me dissect that
- (15) section into two parts. Is it your
- (16) position then, do I understand, that you
- (17) have no opinion with regard to whether or
- (18) not Dr. Doll placed it appropriately in as
- (19) much as you consider it simply his
- (20) decision as to where to place it, that
- (21) anyplace he would have placed it would
- (22) have been appropriate?
- (23) MS. BOAZ: Do you
- (24) understand that?
- (25) THE WITNESS: No, not

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- (1) really.
- (2) A I don't really understand what you're
- (3) asking me.
- (4) Q That's what I want you to tell me when
- (5) you don't understand it because I'll ask it
- (6) again.
- (7) Do you have any opinion of your
- (8) own based on your review of the records and
- (9) the x-rays about whether or not Dr. Doll
- (10) placed this bone appropriately, or whether
- (11) or not it was too low?
- (12) A No. I think I answered that earlier.
- (13) I think based on whatever I've read in the
- (14) records and looked at, at that time x-rays
- (15) before and after surgery, I think it looked
- (16) like it was appropriately positioned.
- (17) Q Where you say it looked like it was
- (18) appropriately positioned, what do you mean
- (19) by that?
- (20) A I mean when I look at the x-rays and
- (21) read the records, they seem to correlate.
- (22) Q Explain that in more detail. What
- (23) correlates with what?
- (24) A Dr. Doll is treating a patient and
- (25) diagnoses metatarsus primus elevatus.

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- (1) Q Do you agree that -
- (2) A Wait a minute.
- (3) Q - that there was metatarsus primus
- (4) elevatus?
- (5) MS. BOAZ: Let the Doctor
- (6) finish his answer. Were you finished?
- (7) THE WITNESS: No. I
- (8) started the first of probably ten
- (9) sentences.
- (10) A Once he made that appropriate
- (11) diagnosis, he had x-rays and felt the
- (12) x-rays confirmed his clinical impression.
- (13) He then recommended or discussed surgical
- (14) correction of this to the patient and she
- (15) underwent the surgery. As a result of the
- (16) surgery or in the course of the surgery he
- (17) cut the bone and repositioned it.
- (18) Intentionally moving it to its new
- (19) location. Based upon what I've read in
- (20) the records and in particular with regard
- (21) to the surgery, the operative report, his
- (22) before and after x-rays coincide very
- (23) accurately and very well exactly what he
- (24) described and correlate very nicely for
- (25) the diagnosis he made. I think it was

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- (1) entirely appropriate.
- (2) Q Okay. I think I understand what
- (3) you're saying.
- (4) A Okay.
- (5) Q Are you through now?
- (6) A Yes.
- (7) Q Now, let me ask you some questions
- (8) about what you're saying. You have said
- (9) that you read his notes, his office notes
- (10) with his diagnosis, correct?
- (11) A Yes.
- (12) Q And that you have looked at the
- (13) before x-rays and you have looked at the
- (14) after x-rays and you have looked at the
- (15) operative note where it describes what he
- (16) did. So far am I with you?
- (17) A Yes.
- (18) Q Okay. And you believe that the x-rays
- (19) afterwards correlate with what he said he
- (20) did; is that correct?
- (21) A Oh, yeah. They definitely do.
- (22) Q All right. Do you believe that what he
- (23) said he did was appropriate?
- (24) A Yes.
- (25) Q What if he had said that he lowered

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- (1) it two millimeters less than he said he
- (2) lowered it, and the x-rays confirmed? In
- (3) other words, what if he had said something
- (4) different and the x-rays confirmed
- (5) something different by two millimeters,
- (6) would you then also think that was
- (7) appropriate?
- (8) A Yes.
- (9) Q And if he had said in the operative
- (10) note that he had lowered it actually two
- (11) millimeters more than he actually said in
- (12) the operative note and the x-rays confirmed
- (13) those extra two millimeters, would you also
- (14) then think that was appropriate?
- (15) A I might start to question at that point
- (16) that it would have been an excessive amount
- (17) of movement for everything he's described
- (18) there.
- (19) Q So within some sort of range you think
- (20) anything he does is okay?
- (21) A No, I didn't say that at all.
- (22) Q How much do you think that you can
- (23) lower this bone without causing a problem in
- (24) general for people?
- (25) A It depends on how severe the clinical

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- (1) impression is of this malalignment.
- (2) Q How severe in your opinion was Sheila
- (3) Parkest's malalignment?
- (4) A You're talking about pre-operatively?
- (5) Q Yes, sir.
- (6) A I don't think it would be considered
- (7) excessive by any means. I think it's
- (8) clearly a metatarsus primus elevatus
- (9) clinically and radiographically.
- (10) Q By how much was it elevated based on
- (11) your review of the x-ray we just held up?
- (12) A I didn't measure it.
- (13) Q Would you look at it and tell me? Can
- (14) you tell me in millimeters if you can't tell
- (15) me in degrees?
- (16) A I can tell you based on the lateral
- (17) x-rays that the dorsal cortex of the first
- (18) metatarsal is several millimeters above
- (19) the dorsal cortex in the second. That you
- (20) can measure perhaps two or three.
- (21) Q Okay.
- (22) A The first metatarsal head is way in
- (23) excess of several millimeters. It may be
- (24) the top of the metatarsal head to the top
- (25) of the second metatarsal could be - it's

- (1) probably getting close to a sonometer.
- (2) Q But in fact he did something different
- (3) to the metatarsal head, didn't he? He
- (4) didn't just lower it?
- (5) A No, he didn't.
- (6) Q What did he do?
- (7) A He also remodeled it.
- (8) Q Right. Right. So let's just talk
- (9) about the metatarsal bone itself.
- (10) A The metatarsal -
- (11) Q Not the head, the rest of the
- (12) metatarsal.
- (13) A Ignore the head?
- (14) Q No, just for the purposes of this
- (15) question, sir. We're not going to ignore
- (16) the head forever.
- (17) A Okay.
- (18) Q For the purposes of this question, you
- (19) think two or three millimeters is what this
- (20) metatarsal was too high and that's based
- (21) upon this x-ray?
- (22) A Maybe I'm just totally lost now. Did
- (23) you ask me just to ignore the metatarsal
- (24) head?
- (25) Q No. I did, yes.

- (1) A Then you're asking me the question
- (2) about the position of the first metatarsal
- (3) head by more than two millimeters?
- (4) Q No. No. You said two different
- (5) things before. You said the metatarsal
- (6) itself was a couple of millimeters too
- (7) high based upon this x-ray that we have
- (8) been talking about?
- (9) A The whole metatarsal bone.
- (10) Q This whole metatarsal bone, but the
- (11) metatarsal head was higher than that, right?
- (12) A Right.
- (13) Q Okay. But he did some things besides
- (14) lower the metatarsal head and I'm just now
- (15) talking about the metatarsal itself, all
- (16) right?
- (17) A Okay.
- (18) Q Because you made that distinction?
- (19) A Yes.
- (20) Q All right. The metatarsal was lowered
- (21) I think you said a couple centimeters,
- (22) right? I mean a couple of millimeters. Big
- (23) difference there.
- (24) A Yes. I didn't actually measure, but
- (25) I recall from his description of the

- (1) deposition plus I looked at the post-op
- (2) x-ray it was probably a couple
- (3) millimeters.
- (4) Q Do you know how much he lowered it?
- (5) A I don't remember exactly the number.
- (6) If he said a number in the op report, I
- (7) don't recall if he did that.
- (8) Q So as far as you're concerned,
- (9) whatever it was he lowered it, it was
- (10) okay; is that right? Without knowing a
- (11) number, you think whatever he did was all
- (12) right, that's what you're telling me?
- (13) A Yeah. I think based - when I look at
- (14) the x-rays -
- (15) Q And so are you comparing this x-ray
- (16) to another x-ray in saying that? You're
- (17) comparing the x-ray of 9-3-93 to another
- (18) x-ray in saying what he did is okay?
- (19) A No. What I mean, I'm specifically
- (20) saying when I looked at the x-rays before
- (21) and after surgery, all the x-rays, I looked
- (22) at two or three x-ray views. I looked at
- (23) all the x-rays and I could see the bone was
- (24) repositioned in a downward position to
- (25) correct for metatarsus primus elevatus, and

- (1) I looked at the x-ray because I didn't - I
- (2) don't think I had the x-rays initially when
- (3) I reviewed the materials, and when I looked
- (4) at the x-rays, I thought it was well
- (5) positioned. I didn't think it was
- (6) excessive. It didn't strike me as being
- (7) excessive. The fixation looked good.
- (8) Everything looked good and it seemed to
- (9) correlate with what he described in his
- (10) records.
- (11) Q Am I correct then in understanding
- (12) that you have no opinion whatsoever with
- (13) regard to whether Dr. Donley was correct
- (14) or incorrect in raising that same bone
- (15) back to about where it was?
- (16) A Could you repeat that?
- (17) Q Yes. Would you please read that
- (18) question back?
- (19) MS. BOAZ: I think that's
- (20) assuming a fact that you haven't - you
- (21) haven't asked him if he - where he thinks
- (22) Dr. Donley put the bone. I don't think
- (23) you've asked him that and that's included
- (24) in the question.
- (25) Q Let me ask you this. Where do you

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- (1) think Dr. Donley put the bone? Have you
- (2) looked at that?
- (3) A I've looked at it, but I did not
- (4) measure in any way to see if it's back to
- (5) where it started out.
- (6) Q But you haven't measured any of these,
- (7) you've just been eyeballing them, right?
- (8) A Eyeballing them is a loose term.
- (9) Q You've been looking at the x-rays. You
- (10) haven't measured anything because you don't
- (11) believe in measuring, right?
- (12) A I don't believe in measuring to obtain
- (13) numbers.
- (14) Q Okay. So you haven't measured
- (15) anything?
- (16) A Yes. To determine a number or angle or
- (17) specific millimeter, no, absolutely not.
- (18) Q And so you didn't measure what Dr.
- (19) Donley did either, right?
- (20) A That's correct.
- (21) Q You looked at it, or didn't you?
- (22) A Yeah, I studied the x-ray.
- (23) Q Okay.
- (24) A I studied all the x-rays.
- (25) Q Okay. So you studied it. Do you

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- (1) think he put it back about where it was to
- (2) start with, based on studying it?
- (3) A No, I don't think he did at all.
- (4) Q You don't think he put it back about
- (5) where it was?
- (6) A Well, about. Plus or minus a
- (7) millimeter. It's certainly not back from
- (8) where she started at the very beginning.
- (9) Q Is it back about 20 or 21 degrees? I
- (10) guess you wouldn't know that because you
- (11) didn't measure it, right?
- (12) A Which -
- (13) MS. BOAZ: Which question
- (14) do you want him to answer?
- (15) A Which question are you asking me?
- (16) Q You didn't measure it, correct?
- (17) A That's correct.
- (18) Q Why do you think it's not about back
- (19) where it was? How does it differ from
- (20) where it was before Dr. Doll cut it and
- (21) moved it?
- (22) A How is it -
- (23) Q How does the position that Dr. Donley
- (24) put it in differ from the position that it
- (25) was in before Dr. Doll operated?

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- (1) A I couldn't tell you unless I were to
- (2) study the x-ray now.
- (3) Q Well, please look at it.
- (4) A I could look at it if you like me to.
- (5) Q Sure, I would like you to. Because
- (6) you said it was not the same and I want to
- (7) know in what way it was not the same.
- (8) Now, there's going to be certain
- (9) differences, aren't there, as a result of
- (10) there having been two surgeries on that
- (11) bone, right?
- (12) A I think that was sort of what I was
- (13) trying to tell you earlier.
- (14) Q Is that correct?
- (15) A Yes.
- (16) Q It can never be exactly the way it was
- (17) to start with because it's been cut on
- (18) twice, correct?
- (19) A That's correct.
- (20) Q And every time you cut on it, you
- (21) lose some bone, right?
- (22) A Yes.
- (23) Q Just like when you're sawing on a piece
- (24) of wood, every time you make a cut there's
- (25) going to be sawdust on the ground, right?

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- (1) And you're losing something, correct?
- (2) A That would be correct.
- (3) Q And it's the same thing in cutting on
- (4) a bone, every time you cut on it you lose
- (5) something, right?
- (6) A Sure.
- (7) Q Okay. So that bone can never be
- (8) exactly the way it was before, right?
- (9) A That's correct.
- (10) Q Okay. All right. Doctor, have you
- (11) had an opportunity while we have been
- (12) chatting to look at those x-rays and you
- (13) also referred to the records. Can you
- (14) tell us what you referred to and what you
- (15) noted?
- (16) A I just briefly reviewed Dr. Doll's
- (17) operative report and then I was looking at
- (18) Dr. Doll's post-op x-ray of 9-24-93.
- (19) Q Which one?
- (20) A Lateral x-ray. And then I was looking
- (21) at an x-ray which is dated 3-6-95, which is
- (22) by Dr. Donley, and this is also a lateral
- (23) x-ray. And you had asked me to -
- (24) Q Have you reviewed any pre-op x-ray of
- (25) doctor - before Dr. Doll's surgery?

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- (1) A No. Not just now.
- (2) Q Okay. But you think you have it well
- (3) enough fixed in your memory that you can
- (4) tell us?
- (5) A Well, now I can answer the question.
- (6) Q All right.
- (7) A And hopefully not be confusing. If I
- (8) remember, your question was asking me is
- (9) not the first metatarsal bone after Dr.
- (10) Donley's surgery back to the same position
- (11) as it was before Dr. Doll's surgery, given
- (12) the fact that it's never going to be
- (13) exactly the same because some bone is
- (14) removed?
- (15) Q Yes, sir.
- (16) A Okay.
- (17) Q And you feel you can answer that
- (18) question without reviewing a pre Dr. Doll
- (19) surgery x-ray; is that correct?
- (20) A Well, only because Dr. Doll's pre-op
- (21) x-ray is fresh in my mind.
- (22) MS. BOAZ: We've just
- (23) looked at that x-ray.
- (24) A When I studied the x-rays, I was asked
- (25) to study the case in relationship to Dr.

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- (1) Doll's care and treatment of Sheila Parkest.
- (2) So now we're sort of engaging in a little
- (3) different side line which is the care and
- (4) treatment by Dr. Donley.
- (5) Q Well, it's not really, Doctor,
- (6) because what he did is correct what Dr.
- (7) Doll did. He felt that what Dr. Doll did
- (8) was causing her problems and he corrected
- (9) it?
- (10) A Yes.
- (11) Q So it's a part of this discussion?
- (12) A Yes, I would agree - I agree with
- (13) that. But the emphasis was a little bit
- (14) greater on the other materials. So I was
- (15) hesitating in the answer.
- (16) My answer would be that he has
- (17) moved - or the bone - I can't even tell
- (18) you if he moved it here. I can only tell
- (19) you how the bone healed because I don't even
- (20) know if I have the whole series of x-rays
- (21) that Dr. Donley took, but I presume I have
- (22) what's pertinent to the case.
- (23) Q Well, I will tell you that it's my
- (24) understanding that the lawyers who
- (25) represent Dr. Doll subpoenaed all of those

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- (1) x-rays from the hospital and the clinic and
- (2) provided them to you from what they have
- (3) told me.
- (4) MS. BOAZ: This is all we
- (5) - we did subpoena x-rays. These are the
- (6) x-rays we got. We provided them to you
- (7) and we've provided them also to Miss
- (8) Parkest's counsel.
- (9) A That's fine. That's great. So what
- (10) I can tell you is that the bone has healed
- (11) with the first metatarsal in line with
- (12) what looks like it was the top of the
- (13) metatarsal after Dr. Doll finished the
- (14) surgery.
- (15) Q I'm sorry. I don't understand that
- (16) answer because -
- (17) A I didn't think you would.
- (18) Q Because the question that I asked
- (19) was, and let me ask it again.
- (20) A Okay.
- (21) Q Isn't it true that Dr. Donley
- (22) returned the first metatarsal to
- (23) substantially the same position it was in
- (24) before Dr. Doll's surgery, given of course
- (25) that it can never be exactly the same

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- (1) because of the surgeries?
- (2) A No, I'm going to disagree with you, but
- (3) I'll tell you the best way to answer your
- (4) question is just to make a little diagram
- (5) for you.
- (6) Q Why don't you think he did that? He
- (7) said he did that and do you disagree with
- (8) that?
- (9) A No. In order for me to explain what's
- (10) on x-ray and understand -
- (11) Q Go ahead and draw me a picture and
- (12) tell me why you disagree with his
- (13) statement and our understanding of what he
- (14) did?
- (15) A It can be seen on x-ray, but it would
- (16) be hard for people who don't look at x-rays
- (17) a lot to really understand. This would be a
- (18) representation of the first metatarsal.
- (19) Q When?
- (20) A At the time of surgery by Dr. Doll.
- (21) Q Before surgery by Dr. -
- (22) A No, during surgery.
- (23) Q After surgery by Dr. Doll?
- (24) A During surgery.
- (25) Q During surgery. After he cut it?



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- (1) A Yes, during surgery, after he cut
- (2) it. After he moved the bone down, he
- (3) remodeled the top of this ledge right
- (4) here, and he says that in the operative
- (5) report, that's why I was hesitating.
- (6) Q That's the exostosis that he was
- (7) talking about?
- (8) A No, he remodeled that other exostosis
- (9) I think before. When he shifts the bone
- (10) down, I can just refer to the operative
- (11) report if it'll make it easier.
- (12) Q Well, I'm looking at your diagram and I
- (13) would like you to go ahead and explain the
- (14) diagram. If you think it would be easier to
- (15) refer to the operative report, go ahead.
- (16) A Not really, but the exostosis that he
- (17) was referring to is here in the metatarsal.
- (18) We know he took that away. That's in the
- (19) operative report. What he also did is
- (20) remodeled this bone back here, and you can
- (21) see it on his x-rays very clearly. So after
- (22) he shifted the bone down and pinned it, it
- (23) says he burred away, remodeled the dorsal
- (24) lip on this metatarsal, and I see that on
- (25) x-ray.

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- (1) Now -
- (2) Q So that's another thing that he did
- (3) that can never ever go back to the way it
- (4) was before, correct?
- (5) A Well, sometimes bone re-grows and
- (6) fills in, but it's probably not going to
- (7) make any difference. It's not -
- (8) Q But it can never be the same as it
- (9) was before because when you say he
- (10) remodeled, he's sanded some of it?
- (11) A Right. It's never going to be exactly
- (12) the way it was before surgery.
- (13) Now, when the bone healed, it
- (14) clearly is lower than the rest of the bone.
- (15) And Dr. Donley's x-ray indicates that the
- (16) bone was cut and moved back up and the x-ray
- (17) shows it as being equal in line with the top
- (18) of the other bone. That's how it healed.
- (19) But the reality of it is ~~since this bone was~~
- (20) ~~remodeled, that - how do I say this? The~~
- (21) top of the bone is lower than the original
- (22) top was.
- (23) Q Because it can never be the same,
- (24) correct?
- (25) A That's correct. We've established

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- (1) that.
- (2) Q But the bottom of the bone has been
- (3) raised, right?
- (4) A The bottom of the bone has been
- (5) raised but not back up to where it was
- (6) originally because originally the top of
- (7) the bone was up here somewhere and he
- (8) remodeled it. Now, when the bone was
- (9) shifted back up from where it healed, it
- (10) is probably somewhere in between where -
- (11) the best thing we could say in between
- (12) where Dr. Doll had it and where it
- (13) originally was in the very beginning.
- (14) Q So you don't think there was any
- (15) possible way that Dr. Donley could get it
- (16) back the way it was, exactly?
- (17) A In terms of up, down position?
- (18) Q Yes.
- (19) A Oh, sure he could. He could just push
- (20) it up higher, in which case the after x-ray
- (21) would show that the original bone after it
- (22) re-contoured from let's say Dr. Doll's
- (23) surgery, now when Dr. Donley's done, if he
- (24) pushed it up higher than that ledge then it
- (25) would look something like this. What would

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- (1) happen is we have a lip up here.
- (2) Q You would have a problem if you had a
- (3) lip up there?
- (4) A No. This would fill back in with
- (5) bone back here, or you'd have to remodel
- (6) it this way.
- (7) Q You'd have to take off more bone to
- (8) make it meet is what you're saying?
- (9) A You'd have to take off more bone if
- (10) you wanted the top to be -
- (11) Q Even?
- (12) A - even.
- (13) Q And you would want the top even,
- (14) wouldn't you?
- (15) A I don't usually remodel it.
- (16) Q You don't worry about it if it's a
- (17) little jagged up there?
- (18) A No. As long as it's not going to
- (19) interfere with the function. Jagged isn't
- (20) - there's a ledge. I don't worry about it,
- (21) but back to the original question you were
- (22) asking was.
- (23) Q Let's have this diagram marked as
- (24) Plaintiff's Exhibit A and attached to this
- (25) deposition. Would you put your initials

- (1) on it, Dr. Yu?
- (2) A Sure.
- (3) MS. BOAZ: Do you want him
- (4) to finish answering the question?
- (5) Q Sure. And keep the paper if you need
- (6) it.
- (7) A This?
- (8) Q Yeah. If you need to show anything
- (9) else.
- (10) A That's all right.
- (11) So I mean, yes, Dr. Donley has
- (12) moved the – re-cut the bone, probably at
- (13) about the same place it was cut
- (14) originally, and he clearly moved it back
- (15) up. Where it heals is somewhere in
- (16) between where the bone originally started
- (17) and where Dr. Doll had moved it.
- (18) Q Closer to where it was originally or
- (19) closer to where Dr. Doll moved it?
- (20) A I don't think there's any way to really
- (21) know it because we're talking about being
- (22) the total amount that the x-ray shows it was
- (23) ever moved down looks like it couldn't have
- (24) been more than – between one and two
- (25) millimeters. So we're talking about

- (1) fractions of less than two millimeters, no
- (2) matter how you start out the conversation.
- (3) Q But those are significant millimeters,
- (4) aren't they? Or are they insignificant?
- (5) A I think whatever – I think whenever
- (6) you move a bone it's significant. I don't
- (7) know if the millimeters itself is what
- (8) makes the significance. It seems to be
- (9) always more significant when there's a
- (10) problem afterwards, then that little bit
- (11) seems to be a little bit more
- (12) significant. That's pretty common in
- (13) medicine.
- (14) Q Is it justified to cut a bone and move
- (15) it for only a millimeter or two?
- (16) A Sure.
- (17) Q Why?
- (18) A Because that may be all that's needed
- (19) to achieve correction.
- (20) Q And what does moving it that millimeter
- (21) or two potentially do?
- (22) A Well, it hopefully corrects some sort
- (23) of clinical problem.
- (24) Q Okay. In your opinion was there –
- (25) and have you – was there a problem that

- (1) Dr. Donley corrected?
- (2) A Again, based on the records, appears
- (3) that she was having increased pressure
- (4) under the first metatarsal.
- (5) Q Did you see signs of that on x-ray?
- (6) A No.
- (7) Q Did you look for it?
- (8) A Well, let me complete my other answer.
- (9) No in the sense that I don't think there's
- (10) – other than what I've talked about before,
- (11) that there's specific things that you can
- (12) actually see on the x-ray that tell you on
- (13) the first metatarsal that the bone has too
- (14) much weight to it. When you talked about a
- (15) cyst before, their presence or absence does
- (16) not mean anything to me in terms of
- (17) excessive weight merely because people who
- (18) have the most pressure under their first
- (19) metatarsal of all the people we treat don't
- (20) have any cysts.
- (21) Q So if there was too much pressure and
- (22) Dr. Donley was correct in moving it
- (23) higher, there was too much pressure
- (24) because of where Dr. Doll moved it, right?
- (25) A Well, there's too much pressure because

- (1) of where the bone healed, yes, or was
- (2) carrying more than was comfortable for her.
- (3) That presumes that as a result of his
- (4) procedure, that she is now walking and
- (5) doesn't complain of any pressure underneath
- (6) that area anymore.
- (7) Q After someone has two surgeries on a
- (8) bone and in the course of those surgeries
- (9) there is an exostosis, and that is a
- (10) removal, isn't it, of parts of the head of
- (11) the bone, and there is also – exostosis
- (12) is a removal of that bone, isn't it?
- (13) A An exostosis is part of – is the
- (14) bone spur.
- (15) Q It's a removal of the bone spur?
- (16) A Exostosectomy would be a correct term
- (17) for removal of the bone spur.
- (18) Q What did he do?
- (19) A He removed and remodeled the two
- (20) areas. One is the top of the first
- (21) metatarsal, which he indicated was
- (22) prominent, and also remodeled the first
- (23) metatarsal bone after he cut it and
- (24) repositioned it.
- (25) Q All right. So he really did three

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- (1) things to take – that affected that bone
- (2) permanently and can never be changed, didn't
- (3) he?
- (4) A Well, I mean, it's a hard question to
- (5) answer because you could just keep going
- (6) on. You could say every pin he put in
- (7) permanently changed the bone to some
- (8) degree. Any time you cut a bone, fixate a
- (9) bone, remodel the bone, the bone is
- (10) changed.
- (11) Q When you say "Remodel a bone,"
- (12) because he did remodel the top part of her
- (13) metatarsal, where he cut it, didn't he,
- (14) and near where he cut it?
- (15) A Yes, he did.
- (16) Q Can you explain in lay language what
- (17) he does? When I said before that he has
- (18) sanded it and removed some of it, is that
- (19) a good – is that a good description or
- (20) can you give us a better one?
- (21) A There are a number of different ways to
- (22) do it, but in essence you could either use a
- (23) little like sharp chisel, or you can use an
- (24) instrument that would bite away at pieces of
- (25) the bone, and you could take special drills

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- (1) or burrs that sort of smooth it and give it
- (2) a fine, smooth finish.
- (3) Q What did he do?
- (4) A I'd have to read it to tell you exactly
- (5) how he –
- (6) Q Would you do that?
- (7) A Sure.
- (8) (Dr. Yu Exhibit A marked for
- (9) identification purposes.)
- (10) A Well, he doesn't describe exactly how
- (11) he did it. He simply says the first
- (12) metatarsal was then burred to a smooth
- (13) contour. So he may have used just a burr
- (14) only.
- (15) Q So he either clipped it off, or pinched
- (16) it off, or cut it off, and then sanded it,
- (17) or you don't exactly know because his
- (18) records don't say?
- (19) A Or he could have just used the burr
- (20) for the whole thing.
- (21) Q Okay.
- (22) A Usually it's just – many times
- (23) orthopedic surgeons or podiatric surgeons
- (24) don't say exactly how they do it. They
- (25) simply indicate that the bone exostosis or

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- (1) lip was removed and re-contoured.
- (2) Q I'm talking now about the part you
- (3) referred to, the top of the bone that was
- (4) remodeled.
- (5) A Okay.
- (6) Q That's separate from the head of the
- (7) bone on which he performed the exostosis,
- (8) isn't it?
- (9) A Well, there's two separate areas,
- (10) yes.
- (11) Q Now, how was the exostosis performed?
- (12) A I don't know that he says that
- (13) either, per se. I'm not even sure you can
- (14) make a distinction between which is
- (15) which. He indicates in the beginning of
- (16) the operative report he says the exostosis
- (17) and mediolateral aspects of the dorsal
- (18) first metatarsal head were free from any
- (19) ligamentous attachment in the dorsal
- (20) exostosis. Okay. Burred to a normal
- (21) contour. So apparently he used a burr
- (22) there also.
- (23) Q Okay. So again, he took off parts of
- (24) the bone in two separate places, right?
- (25) A Yes.

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- (1) Q And that can – will never change,
- (2) the fact that he has re-shaped the bone,
- (3) that he's taken off parts of it will never
- (4) change, correct?
- (5) A Well, I'm not – change, and what do
- (6) you mean by change?
- (7) Q It can never go back to the way it
- (8) was? Nothing Dr. Donley could do could
- (9) replace the parts of the bone that he –
- (10) that Dr. Doll had removed, right?
- (11) A Well, Dr. Doll removed what he judged
- (12) to be pathological bone, abnormal bone.
- (13) Now, can the abnormal bone come back again
- (14) like it was in the very beginning? It
- (15) could. I mean, many patients get a
- (16) recurrence of the same problem, looks
- (17) identical five years later, ten years
- (18) later. I would hope that in her that
- (19) wouldn't happen, because that was abnormal
- (20) bone he removed. So I don't believe it
- (21) would be desirable for her to have that
- (22) bone come back.
- (23) Q But that removal affected the ability
- (24) of Dr. Donley to exactly replace the bone
- (25) the way it was originally, didn't it, in

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- (1) that he would have what you describe as a
- (2) lip or a jagged place because of the bone
- (3) that he had removed, correct?
- (4) A I can't answer that for Dr. Donley.
- (5) I can tell you for me as a surgeon, it
- (6) wouldn't make any difference. I'm going
- (7) to move the bone where I need to move it
- (8) to be in the proper position, whether
- (9) there's going to be - because there's
- (10) going to be a lip there would not preclude
- (11) me from moving the bone to where it should
- (12) be positioned. The most important thing
- (13) is I get the bone positioned so I think it
- (14) is where it will bear a proper share of
- (15) weight during the course of function.
- (16) So I don't think any surgeon going
- (17) in there saying on any bone, I need to move
- (18) this bone five millimeters but I can't move
- (19) it up because I'll have a little lip there,
- (20) unless it's going to negatively impact on
- (21) function less than it could be to not move
- (22) it, this is a decision that has to be made
- (23) by a surgeon. Happens all the time. When
- (24) you cut the bone or move it, there's going
- (25) to be a lip, so we don't sit there and say,

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- (1) I'm not going to move it because there's
- (2) going to be a lip. That's a byproduct of
- (3) doing the surgical procedure. So as long as
- (4) that lip is either going to be remodeled or
- (5) as I indicated earlier, isn't going to be a
- (6) problem with function, it may not need to be
- (7) remodeled. So it's a byproduct.
- (8) Q Okay. Let me see if I understand
- (9) where you are with regard to Dr. Donley.
- (10) What Donley did was appropriate,
- (11) in your opinion, correct?
- (12) A Based upon what I have reviewed in the
- (13) records, what he did was appropriate to
- (14) correct an overly prominent or overly weight
- (15) bearing metatarsal segment, and that's what
- (16) he sort of described as his impression of
- (17) the problem. That being correct, then that
- (18) would be an appropriate procedure to move
- (19) the bone and decrease the amount of pressure
- (20) to it, yes.
- (21) Q Okay. And the way the bone got in
- (22) that position was by virtue of the surgery
- (23) performed by Dr. Doll; is that correct?
- (24) A Yes, that was the end result of Dr.
- (25) Doll's surgery.

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- (1) Q And you nonetheless maintain that
- (2) what Dr. Doll did was appropriate to move
- (3) it in such a position that it caused that
- (4) kind of pressure?
- (5) A Yes.
- (6) Q How do you -
- (7) A Well -
- (8) Q How do you reconcile those two
- (9) statements?
- (10) A Let me complete that. No, it was not
- (11) - what Dr. Doll did was quite appropriate.
- (12) For the diagnosis he established, I think he
- (13) picked an appropriate procedure, he executed
- (14) appropriately and all the x-rays and records
- (15) to me show a very reasonable and well done
- (16) job. It turns out that what Dr. Donley has
- (17) said is the problem since he's treating her,
- (18) if in fact that was the problem and I'm not
- (19) saying it isn't, I presume it is, that
- (20) means that the bone was bearing too much
- (21) weight and had too much pressure. So it
- (22) means that the bone was - ended up being
- (23) down too low, or whatever it is that
- (24) contributes to a bearing excessive
- (25) pressure. Doesn't in any way mean that what

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- (1) Dr. Doll did was wrong. I'm sure Dr. Doll
- (2) positioned it where he thought it would best
- (3) be to function best in her.
- (4) Q So do you believe then that Dr.
- (5) Doll's decision about where to position it
- (6) turned out to be incorrect?
- (7) A I'd see - I mean, the records would
- (8) suggest that it was lower, it was too low
- (9) for her condition.
- (10) Q And how does a surgeon - well, let me
- (11) scratch that question. Is that all right
- (12) with you if I start over?
- (13) A Sure.
- (14) Q How does a podiatrist make sure that
- (15) he doesn't put it - put the bone too low?
- (16) A There's no way to guarantee that.
- (17) Q Is it sort of hit and miss then?
- (18) A In a sense that since you can't have a
- (19) patient walk and you can't measure that
- (20) pressure, the hit and miss implies a
- (21) reckless kind of approach. You just go in
- (22) and do it and hope. No, that's not what you
- (23) do at all. You go in there and reposition
- (24) it based on your experience and your
- (25) clinical impression that that is the right

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- (1) position for it.  
 (2) Q All right. And you don't believe  
 (3) that it would help to measure the angle  
 (4) beforehand the way you were taught to do  
 (5) in school to determine if it really needs  
 (6) to be lowered at all?  
 (7) A That's correct.  
 (8) MS. DIAMOND: If you need  
 (9) to take a break, that's all right with me.  
 (10) THE WITNESS: Unless  
 (11) everybody else wants to take a break.  
 (12) MS. DIAMOND: Why don't we  
 (13) take a break for a few minutes.  
 (14) (Recess held.)  
 (15) BY MS. DIAMOND:  
 (16) Q Doctor, I would like you to take each  
 (17) of the tabbed pages and tell me what you  
 (18) thought was important on each of those  
 (19) pages, what it was why you tabbed them.  
 (20) What page are we referring to now?  
 (21) A Actually, there may be nothing that's  
 (22) important on them. I tabbed them because in  
 (23) my initial review they're usually areas that  
 (24) I need to go back to when I talk to counsel,  
 (25) or when we get to a deposition it usually

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- (1) comes up. So I only tabbed this section  
 (2) because this is the start of the original  
 (3) office records of Dr. Doll.  
 (4) Q Okay.  
 (5) A I tabbed the next thing, which was  
 (6) his op report, because that would probably  
 (7) be necessary. I tabbed the radiographic  
 (8) reports. I'm not even sure whose surgery  
 (9) they were, I'm not even sure whose they  
 (10) were. And the bone scan report. And I  
 (11) tabbed the - this must be - yeah, Dr.  
 (12) Donley's surgery, his op report. Then  
 (13) there is a consultation that was done by  
 (14) Dr. Saunders. I don't know what this was,  
 (15) maybe a second opinion or third opinion.  
 (16) Second opinion. And then I tabbed a  
 (17) report by Dr. Davis. This was at the  
 (18) Trover Clinic, I think he was the original  
 (19) podiatrist, and the functional capacity  
 (20) evaluation talking about her present  
 (21) condition.  
 (22) Q All right. Which of those things, if  
 (23) any, do you consider critical or important  
 (24) even to the opinion that you have  
 (25) propounded that everything that Dr. Doll

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- (1) did was appropriate? Is that your  
 (2) opinion, incidentally?  
 (3) A Yes.  
 (4) Q All right. Are any of those things  
 (5) critical to that or important to it?  
 (6) A I think they're all very important,  
 (7) very critical to the whole picture of the  
 (8) case. I think - I mean, I probably  
 (9) reviewed in closer detail records  
 (10) particularly written by Dr. Doll or  
 (11) dictated by Dr. Doll, especially the op  
 (12) report and those type of things.  
 (13) Q Doctor, what facts or factors are  
 (14) essential to the opinion that you have  
 (15) propounded that Dr. Doll's surgery was  
 (16) appropriate? On what do you base that  
 (17) opinion?  
 (18) A That the surgical procedure he selected  
 (19) and performed was appropriate?  
 (20) Q The procedures. Yes.  
 (21) A Because I think the procedure was  
 (22) appropriate for correction of the condition  
 (23) of metatarsus primus elevatus if one can  
 (24) diagnose and substantiate that clinically,  
 (25) and especially if you have radiographic

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- (1) confirmation.  
 (2) Q So the fact that the x-rays seem to  
 (3) you to show elevated metatarsal is a  
 (4) critical factor to you?  
 (5) A It's not critical. It's a part of the  
 (6) case.  
 (7) Q And what Dr. Doll says that he found  
 (8) on examination is important to you or not  
 (9) important to you?  
 (10) A I think what one finds in the physical  
 (11) exam and how that physician correlates that  
 (12) with his - with the subjective symptoms  
 (13) that a patient is giving is important. Very  
 (14) important.  
 (15) Q Okay. Are there any other facts that  
 (16) you have learned that are very significant  
 (17) to you?  
 (18) MS. BOAZ: To his opinion -  
 (19) MS. DIAMOND: Yes.  
 (20) MS. BOAZ: - that Dr. Doll's  
 (21) procedure was appropriate?  
 (22) MS. DIAMOND: Procedures. In  
 (23) the plural.  
 (24) A None that come to mind.  
 (25) Q Okay. And you believe that they are,

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- (1) based upon what Dr. Doll has said about
- (2) them and on the x-rays; is that correct?
- (3) A Yes. As well as the other records are
- (4) there.
- (5) Q So you don't attach any particular
- (6) significance to the depositions that we have
- (7) taken and that you have read?
- (8) A No, I think they're a part of the
- (9) case.
- (10) Q Do they tell you anything that was
- (11) important to your opinion?
- (12) A Different than what I was able to take
- (13) from the medical records and x-rays?
- (14) Q Yes.
- (15) A Not that I can think of right now, no.
- (16) Q All right.
- (17) A Sometimes they do. I don't recall that
- (18) being in this case.
- (19) Q That's why I'm asking. So it's your
- (20) opinion that he operated for an elevated
- (21) metatarsal and not for a forefoot varus?
- (22) A Yes.
- (23) Q How did you come to that conclusion?
- (24) A I never got the impression that the
- (25) forefoot varus was the main thing he was

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- (1) treating here. I always got the
- (2) impression the problem was confined to the
- (3) first ray but she had symptomatology in
- (4) other parts of her foot.
- (5) Q Would operating for forefoot varus be
- (6) unusual?
- (7) A There's a lot of different -- well,
- (8) there's a lot of different kinds of forefoot
- (9) varus. I don't really -- haven't given what
- (10) he says in his records was part of his
- (11) findings of forefoot varus, if my memory is
- (12) correct, I haven't really thought much about
- (13) that.
- (14) Q Because you don't believe that's what
- (15) occurred?
- (16) A I think she probably -- she may have
- (17) had varus of part of the forefoot, but I
- (18) mean, was the whole forefoot up in varus?
- (19) I mean, I don't know. There's no way to
- (20) know that from looking at these x-rays,
- (21) but I'll tell you this, to me these
- (22) x-rays, you don't use x-rays to make the
- (23) diagnosis of a forefoot varus, just as you
- (24) don't use them to make the diagnosis of a
- (25) metatarsus primus elevatus. But the

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- (1) x-rays clearly show to me that there is a
- (2) metatarsus primus elevatus. Seems to
- (3) correlate very well with what he has
- (4) described in the records. The x-rays on
- (5) the other hand are not impressive to me of
- (6) being somebody with forefoot varus. Does
- (7) that answer the question?
- (8) Q Yes, sir.
- (9) The overall impression that I
- (10) have gotten from what you have said this
- (11) afternoon is that x-rays are not
- (12) particularly important to you as a
- (13) podiatrist in making a diagnosis; is that
- (14) correct?
- (15) A No, that's not correct. Maybe it came
- (16) across that way, but that would not be an
- (17) accurate reflection. To me x-rays are
- (18) important as part of the workup of a
- (19) patient, but they are in general secondary
- (20) to the clinical findings in the physical
- (21) examination -- and the physical
- (22) examination. So I take them and use them,
- (23) but I don't put as much stock on the issue
- (24) of measurements, as you've called them. So
- (25) in terms of determining actual numbers and

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- (1) millimeters, I don't do that.
- (2) Q Okay. A measurement like that would be
- (3) an objective thing, however, that you could
- (4) compute, correct?
- (5) A Sure. You could, yes.
- (6) Q And the rest --
- (7) A One of many.
- (8) Q And the rest of the things that you
- (9) are talking about on which you put more
- (10) weight are subjective in that they depend
- (11) upon the interpretation of the particular
- (12) person who's looking at it, right?
- (13) A Well, you could say that, but if you're
- (14) going to say that, I would say it's actually
- (15) true for the interpretation of the x-ray.
- (16) In one case you draw a line and can tell.
- (17) If when you draw the line you want to look
- (18) at it from a different perspective, there's
- (19) certain guidelines that you want to weigh to
- (20) do it. If you put ten podiatrists in the
- (21) room and ask them to measure it, they're not
- (22) going to come up with the same numbers
- (23) exactly.
- (24) Q Will they be substantially the same?
- (25) A They'll be close. Probably have no

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- (1) clinical bearing or significance, that's
- (2) why when somebody talks about one
- (3) millimeter, or two millimeters, it may or
- (4) may not have, you know, any significance,
- (5) or it could be very significant. So we
- (6) talked earlier about - talking about
- (7) moving a bone one millimeter or two
- (8) millimeters, and hey, it may have nothing
- (9) to do with anything. In other cases or
- (10) other situations it could be very, very
- (11) critical.
- (12) Q Do you think it was very, very critical
- (13) to move her bone downward?
- (14) A If you want to correct metatarsus
- (15) primus elevatus, it would be the critical
- (16) part of the surgery, it would be when you
- (17) cut that bone, move it downward. Most
- (18) people that do that surgery aren't very
- (19) good at getting it down. They don't get
- (20) it down enough.
- (21) Q Absent your examining her foot
- (22) personally, assuming if, as you say, that's
- (23) the most important thing to you and
- (24) measuring angles isn't, you have no way of
- (25) knowing, do you, whether or not you would

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- (1) have personally considered her to be a
- (2) candidate for surgery for an elevated
- (3) metatarsal; isn't that correct?
- (4) A In this case that's correct, yes.
- (5) Q So you must rely on what Dr. Doll has
- (6) said about his opinion in forming your
- (7) opinion since you have nothing that is
- (8) objective that's available to you that you
- (9) would use to make that decision?
- (10) A Well, if I understand your comment or
- (11) question to me, Dr. Doll's physical
- (12) examination is very objective. A physical
- (13) examination, a biomechanical exam, a
- (14) physical assessment, to me they're
- (15) objective. There is -
- (16) Q What parts, for example, of a -
- (17) MS. BOAZ: Were you
- (18) finished with your answer?
- (19) THE WITNESS: No.
- (20) Q Go ahead.
- (21) MS. BOAZ: Let him finish
- (22) his answer.
- (23) Q Sure. I want you to finish your
- (24) answer.
- (25) A I think we would all agree that there

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- (1) is some subjective interpretations as we
- (2) all understand subjectivity to mean in
- (3) doing anything. So when he examines this
- (4) foot, and he has to decide when he touches
- (5) this foot if this first metatarsal is
- (6) clinically up or not to determine - to be
- (7) able to say there's metatarsus primus
- (8) elevatus. I, well, I mean, the objective
- (9) - the objective aspect of that is he has
- (10) got to palpate and touch the foot and
- (11) determine if the first metatarsal bone is
- (12) in line with the second, third, fourth or
- (13) fifth or not. To me is an objective thing
- (14) to do. How much he determines without any
- (15) way to actually measure a number when
- (16) you're examining the foot clinically, is
- (17) this mild, moderate or severe, well now
- (18) we're talking there's some subjectivity
- (19) here. Because no one's going to be able
- (20) to define for you clinically when you
- (21) examined this foot you said it was
- (22) moderate. What did you mean by moderate.
- (23) Well, that would imply it's one inch up,
- (24) it's moderate. If it's two inches up it's
- (25) severe. There's no such grading scale

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- (1) with a lot of things in medicine and
- (2) that's what you have here. So there is a
- (3) subjective component to it. But the
- (4) overall diagnosis I would hope is based
- (5) upon objective factors that we teach and
- (6) learn about in terms of physical
- (7) conditions or disorders.
- (8) Q What are those objective factors that
- (9) you would expect to find related to you
- (10) for example in a record or by a student
- (11) who is describing a biomechanical exam
- (12) that indicated such a problem?
- (13) A You mean metatarsus primus elevatus?
- (14) Q Yes, sir.
- (15) A Well, in a student record I expect a
- (16) little more detail. The student is going
- (17) to say, the position of the first
- (18) metatarsal is above the level of the
- (19) second, third, fourth and/or fifth.
- (20) Podiatrist in practice may very well
- (21) examine the foot and say, there's
- (22) metatarsus primus elevatus. One is going
- (23) to be a little more wordy about describing
- (24) that metatarsus primus elevatus, and some
- (25) people may argue that's actually the final

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- (1) conclusion or diagnosis based upon the
- (2) findings, but it says the same thing.
- (3) Q Did Dr. Doll describe any finding
- (4) that would have told you there was
- (5) metatarsus primus elevatus?
- (6) A I didn't - I didn't look at the
- (7) records from that perspective.
- (8) Q So you -
- (9) A I didn't anticipate this so I didn't
- (10) look at it from that perspective. I think
- (11) he mentioned that the first metatarsal is
- (12) prominent, somewhere, I don't know if it's
- (13) in his deposition or in medical records,
- (14) that the first metatarsal joint was
- (15) prominent clinically. To me that's a
- (16) finding that there's metatarsus primus
- (17) elevatus.
- (18) Q What other findings would be
- (19) consistent with that for a podiatrist to
- (20) note if they existed?
- (21) A Lesser metatarsalgia or pain underneath
- (22) the second, third, fourth or fifth
- (23) metatarsal, or all of them, and I think that
- (24) there's - that that exists here because if
- (25) my memory is correct, not only did he

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- (1) mention there was some pain in the lateral
- (2) portion of the foot, but I think the
- (3) original podiatrist may have mentioned that
- (4) also.
- (5) Q Besides pain in the lateral portion of
- (6) the foot under the second, third, fourth or
- (7) fifth bones in the foot, rays, as you guys
- (8) like to say, doctors of podiatry, what other
- (9) physical manifestation would there be that a
- (10) doctor might note in his records?
- (11) A You could have problems with the
- (12) quality or quantity of range of motion in
- (13) the big toe joint, great toe.
- (14) Q What about calluses?
- (15) A Yeah, calluses.
- (16) Q Where would those calluses be if there
- (17) was an elevated metatarsal? First
- (18) metatarsal. I'm sorry. An elevated first
- (19) metatarsal.
- (20) A You could have calluses underneath the
- (21) second, third, fourth and/or fifth
- (22) metatarsal.
- (23) Q But not under the first?
- (24) A If you had it under the first it
- (25) wouldn't be directly under. You could have

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- (1) it on the medial side because people can
- (2) roll off abnormally when they walk.
- (3) Q But it wouldn't be directly under the
- (4) first?
- (5) A Very unlikely.
- (6) Q Because it's raised?
- (7) A Sure.
- (8) Q Okay.
- (9) A Actually, you know what, let me back
- (10) up a minute. That's not really the
- (11) correct answer.
- (12) You could get it underneath the
- (13) big toe if you had what's referred to as a
- (14) hallux ligamentous along with this
- (15) metatarsus elevatus.
- (16) Q But no one's said she had a hallux
- (17) condition?
- (18) A I don't think so. I just want to make
- (19) sure I gave you the right answer.
- (20) Q Okay. Tell me about a
- (21) sesamoidectomy. Under what circumstances
- (22) do you take out the sesamoid?
- (23) A Wow, that's a loaded question in the
- (24) sense that there's a lot of conditions for
- (25) which you could do it. It's relatively

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- (1) common in dealing with bunion surgery
- (2) correction. It is.
- (3) Q She didn't have bunion surgery, did
- (4) she?
- (5) A No. That's not the focus of the
- (6) surgery, no.
- (7) Q Why did he take out her sesamoid?
- (8) A I'm not going to finish answering the
- (9) first question now, but that's okay if you
- (10) want.
- (11) Q Let's focus it more directly on her.
- (12) That's all I'm trying to do.
- (13) MS. BOAZ: As long as it's
- (14) clear that -
- (15) Q That's what I've said.
- (16) A That's fine. Why did he remove the
- (17) fibular sesamoid? As he indicated in his
- (18) report, he felt that the sesamoid was
- (19) directly irritating or causing a problem
- (20) with one of the nerves that goes to the
- (21) plantar lateral aspect of her great toe.
- (22) Q Where was that nerve relative - in
- (23) fact, I'd like you to draw me another little
- (24) - do you have another piece of paper?
- (25) Another little drawing.



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- (1) A Sure.
- (2) Q Can you show me the first metatarsal,
- (3) the nerve and the sesamoid? Just a little
- (4) sketch that would show where those are
- (5) relative to one another.
- (6) A You actually have two sesamoids.
- (7) Both should be about the same size.
- (8) Q All right. And what we have here is
- (9) the -
- (10) A Yeah. Let's -
- (11) Q We have the metatarsal, that's the
- (12) bone. We have the sesamoids. And are
- (13) they beneath the metatarsal?
- (14) A Yes, directly.
- (15) Q There's two sesamoids?
- (16) A Yes.
- (17) Q Beneath the first metatarsal, the
- (18) fibular sesamoid and -
- (19) A Tibial sesamoid.
- (20) Q Tibial sesamoid. And where is the
- (21) nerve at issue located relative to those
- (22) three items?
- (23) A Normally?
- (24) Q Normally.
- (25) A Normally - normally the nerve that's

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- (1) been talked about in this case would run
- (2) somewhere just adjacent to on the lateral
- (3) side of the fibular sesamoid.
- (4) Q And where does Dr. Doll say it was in
- (5) this case?
- (6) A He says that it was directly beneath
- (7) the sesamoid as drawn there.
- (8) Q Is that unusual?
- (9) A Yeah, I would say it's unusual. Yes.
- (10) Q And is that why he removed it, the
- (11) sesamoid?
- (12) A I believe so, yes.
- (13) Q Have you ever removed a sesamoid
- (14) under similar circumstances?
- (15) A Yes.
- (16) Q And at the same time lowered the first
- (17) metatarsal?
- (18) A I've removed the fibular sesamoid and
- (19) at the same time have lowered the first
- (20) metatarsal.
- (21) Q For the reason that there is a
- (22) nerve -
- (23) A That's what I was just going to say.
- (24) But not for - not because of a nerve
- (25) condition.

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- (1) Q Okay. Is there a basic inconsistency
- (2) in doing both of those things when there
- (3) is a nerve that is being irritated in the
- (4) position that he said this nerve was in?
- (5) A Is there an inconsistency?
- (6) Q Yes.
- (7) A You mean in doing both of those
- (8) procedures?
- (9) Q Under those circumstances where there's
- (10) a nerve that's being irritated.
- (11) A I'm not sure I really understand the
- (12) question, but let me answer it and tell me
- (13) if I misunderstood it.
- (14) MS. BOAZ: Well, if you
- (15) don't understand it, don't answer.
- (16) A Okay.
- (17) Q Let me rephrase the question. Let me
- (18) ask it to you this way, Doctor. Isn't it
- (19) true that if you are removing the sesamoid
- (20) because it is pressing on a nerve beneath
- (21) it, and then you lower the bone, you
- (22) replace the thing you have removed with
- (23) something else to press on it?
- (24) A No, I would disagree with that.
- (25) Q Why?

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- (1) A Because you have another sesamoid bone
- (2) next to it. So there would never be able to
- (3) create - you wouldn't be able to get that
- (4) same kind of pressure against the nerve up
- (5) in that area. The sesamoid bone is very
- (6) thick. I don't know what the number is, but
- (7) it's close to - it's between half and one
- (8) sonometer in thickness, in average, normal
- (9) non-hypertrophic sesamoid. If that is
- (10) pressing against the nerve, and I've seen
- (11) cases, I have a case right now that I'm
- (12) taking care of, it can be a real problem.
- (13) One way to deal with it would be to take out
- (14) the sesamoid.
- (15) Q Are you planning to lower the
- (16) metatarsal of your patient?
- (17) A I thought that would be coming now.
- (18) Q Are you planning to raise it, or do
- (19) nothing with it?
- (20) A No, actually I'm probably planning on
- (21) doing something else to the bone, but I may
- (22) not do it at the same time.
- (23) Q What is it you're planning to do and
- (24) why wouldn't you do it at the same time?
- (25) A I'm planning on exploring the area

- (1) first to see if I can simply either
- (2) transpose the nerve, or remove the nerve
- (3) in lieu of removing the sesamoid, or
- (4) whether I should remove the sesamoid.
- (5) Q Why do you think it would be an
- (6) advantage to transpose or move the nerve
- (7) rather than remove the sesamoid? Is it -
- (8) what advantage does the sesamoid provide
- (9) that you want to preserve?
- (10) A Well, if you have any tendency toward
- (11) abnormal balance to function because the toe
- (12) has been operated on a couple of times, as
- (13) is the situation of the patient I'm thinking
- (14) of right now, I would be inclined to try not
- (15) to take out the sesamoid bone.
- (16) Q Why?
- (17) A Because it may cause a significant
- (18) imbalance in the rest of the joint muscles
- (19) and tendons, such that the toe starts
- (20) deviating in an abnormal direction and
- (21) creating another deformity.
- (22) Q In which direction would it be likely
- (23) to deviate if you remove the fibular
- (24) sesamoid?
- (25) A Inward, away from the second toe.

- (1) Q So in order to maintain the appropriate
- (2) balance, you want to maintain both
- (3) sesamoids, if you can; is that correct?
- (4) A Yeah, if you can. In some cases.
- (5) Q You said you were thinking about doing
- (6) a separate operation not at the same time,
- (7) or to do something to the first metatarsal?
- (8) A Correct.
- (9) Q What?
- (10) A You mean - I thought you just made -
- (11) Q What is it you're contemplating doing
- (12) to the first metatarsal?
- (13) A Well, depending on how the toe ends
- (14) up taking is depend how much I need to
- (15) move the bone, whether I need it move it
- (16) altogether. This patient's already been
- (17) operated on three times. I'm in a little
- (18) bit different predicament.
- (19) Q If you plan to move it at all, which
- (20) direction will you move it if at all?
- (21) A I don't know that yet.
- (22) Q You don't know if you'll move it up,
- (23) down or sideways?
- (24) A Depends where the toe ends up after I
- (25) take out the sesamoid, if I do.

- (1) Q Why do you think it's prudent to wait
- (2) and see where the toe ends up?
- (3) A In my own case that I'm dealing with
- (4) right now because she's had three surgeries.
- (5) Q What are the surgeries?
- (6) A All bunion surgeries.
- (7) Q How does that change the picture or
- (8) affect what you're doing?
- (9) A Well, in this particular patient she's
- (10) got so much scar tissue and she's had so
- (11) much surgery done, including already having
- (12) her nerve and tendons operated on, that I
- (13) don't want to do anything more than I need
- (14) to.
- (15) Q And have you considered how you would
- (16) move the bone? Do you have a metatarsus
- (17) primus elevatus situation?
- (18) A I don't remember.
- (19) Q You don't?
- (20) A I can tell you she's not walking with
- (21) that part of her foot bearing weight right
- (22) now. I don't remember if it's because
- (23) it's metatarsus primus elevatus or she's
- (24) holding that foot that way.
- (25) Q You could hold your foot that way if

- (1) you were in pain, right?
- (2) A Sure you could. Sure.
- (3) Q What's the affect of multiple
- (4) surgeries to say on someone's foot?
- (5) What's likely to happen long-term?
- (6) A It's really a variable, but I think
- (7) most surgeons would agree that the more you
- (8) operate in the same area, the more likely
- (9) you are to have increased amounts of scar
- (10) tissue formation. That would be the main
- (11) thing in general.
- (12) Q And that happens over a period of
- (13) time?
- (14) A You mean with each surgery?
- (15) Q Yes.
- (16) A Well, it usually increases with each
- (17) surgery.
- (18) Q And so you just - and over time will
- (19) you get more scar tissue?
- (20) A It will reach a plateau and
- (21) stabilize. There will be some point in
- (22) time after each surgery where let's call
- (23) it fibrosis and scarring will reach a
- (24) maximum and sort of level off.
- (25) Q What's that period of time usually?

- (1) A I think clinically? Somewhere between  
 (2) three months and a year.  
 (3) Q And what about arthritis?  
 (4) A What about it?  
 (5) Q Do you increase the likelihood of  
 (6) arthritis with each surgery that's been  
 (7) performed?  
 (8) A Not necessarily. I mean, you  
 (9) could, depending on how the surgery is  
 (10) done.  
 (11) Q Explain that. I don't understand.  
 (12) A As long as you're not going inside  
 (13) the joint and moving around so to speak  
 (14) with it and doing all kinds of things with  
 (15) it, it shouldn't. And providing that the  
 (16) alignment of the bones that make up that  
 (17) joint are in good position, it would  
 (18) probably be okay.  
 (19) Q But if the alignment of the bones are  
 (20) not in good position that make up a joint,  
 (21) then you increase the likelihood of  
 (22) arthritis?  
 (23) A You could.  
 (24) Q And what you were changing when you  
 (25) raised and lowered the metatarsal was

- (1) ultimately the alignment of that bone in a  
 (2) joint, correct?  
 (3) A Sure. I mean, the purpose of the bone  
 (4) surgery was to change the alignment of the  
 (5) bone.  
 (6) Q All right.  
 (7) A Whether it would impact the joint  
 (8) negatively, not if it's being moved to a  
 (9) more normal position, it could not.  
 (10) Doesn't mean it couldn't happen.  
 (11) Q What about pain? If you operate on the  
 (12) same place more than once, do you increase  
 (13) the likelihood that that particular spot  
 (14) will be sensitive and painful from time to  
 (15) time?  
 (16) A As long as the surgery goes well and  
 (17) there's no complication and once it all  
 (18) heals, probably not. If in the course of  
 (19) surgery patients develop nerve irritation  
 (20) from the surgery, or, let's say, develop a  
 (21) complication where a bone spur develops in  
 (22) the area where the bone was cut, it  
 (23) irritates the overlying soft tissues, well  
 (24) then you could develop increased pain.  
 (25) Q How do you know whether that's going to

- (1) happen or not?  
 (2) A You mean whether you're going to have  
 (3) that happen?  
 (4) Q You don't. It's a risk, isn't it?  
 (5) It's a risk of surgery?  
 (6) A Yeah, it's a low risk, but it's a  
 (7) risk.  
 (8) Q It's something that you can't always  
 (9) determine even that it's happened until  
 (10) sometime after the surgery, after the fact  
 (11) of the surgery?  
 (12) A Sure, that's correct. That could be  
 (13) said of any complication, not just that  
 (14) one.  
 (15) Q All right. Dr. Yu, I'm entitled to  
 (16) know any opinion that you intend to  
 (17) express at the trial of this action. If I  
 (18) haven't asked a question to elicit any  
 (19) opinion, is there any subject matter about  
 (20) which you intend to give an opinion that you  
 (21) have not told me about?  
 (22) A No, not that I can think of at this  
 (23) point.  
 (24) MS. DIAMOND: Thank you.  
 (25) That's all the questions that I have.

- (1) MS. BOAZ: No questions  
 (2) here.  
 (3) (Dr. Yu Exhibit B marked for  
 (4) identification purposes.)  
 (5) (Deposition concluded at 5:02 p.m.)  
 (6)  
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 (25)

(1) CERTIFICATE

(2) The State of Ohio, )

(3) County of Cuyahoga. ) SS:

(4)

(5) I, Lynn A. Regovich, Notary

(6) Public within and for the State of Ohio,

(7) duly commissioned and qualified, do hereby

(8) certify that the within-named witness,

(9) GERARD V. YU, D.P.M., was by me first duly

(10) sworn to testify to the truth, the whole

(11) truth and nothing but the truth in the

(12) cause aforesaid; that the testimony then

(13) given by the above-referenced witness was

(14) by me reduced to stenotype in the presence

(15) of said witness; afterwards transcribed,

(16) and that the foregoing is a true and

(17) correct transcription of the testimony so

(18) given by the above-referenced witness.

(19)

(20) I do further certify that this

(21) deposition was taken at the time and place

(22) in the foregoing caption specified, and

(23) was completed without adjournment.

(24)

(25)

(1) I do further certify that I am

(2) not a relative, counsel or attorney for

(3) either party, or otherwise interested in

(4) the event of this action.

(5)

(6) IN WITNESS WHEREOF, I have

(7) hereunto set my hand and affixed my seal

(8) of office at Cleveland, Ohio, this 7th day

(9) of January, 1996.

(10)

(11)

(12)

(13) Lynn A. Regovich,

(14) Notary Public/State of Ohio.

(15) My commission expires: 6-14-98.

(16)

(17)

(18)

(19)

(20)

(21)

(22)

(23)

(24)

(25)

## Look-See Concordance Report

UNIQUE WORDS: 1,517

TOTAL OCCURRENCES: 6,183

NOISE WORDS: 385

TOTAL WORDS IN FILE: 21,060

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S): NOISE.NOI

INCLUDES ALL TEXT OCCURRENCES

IGNORES PURE NUMBERS

WORD RANGES @ BOTTOM OF PAGE

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OCCURRENCE THRESHOLD: 13

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