State of Ohio,)
) SS:
County of Cuyahoga.)

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IN THE COURT OF COMMON PLEAS

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Herbert C. Ross, Jr.,)
)
Plaintiff,)
)
vs.) Case No.: CV-13-815257
) Peter J. Corrigan, J.
City of Cleveland, et al.,)
)
Defendants.)

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Videotaped deposition of Dr. George Serna, a witness herein, called by the defendant for cross-examination pursuant to the Ohio Rules of Civil Procedure, taken before Karen A. Toth, Registered Professional Reporter and Notary Public in and for the State of Ohio at Cleveland City Hall, Law Department, 601 Lakeside Avenue, Room 106, Cleveland, Ohio on Friday, October 3, 2014, commencing at 2:16 p.m.

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APPEARANCES:

On behalf of the Plaintiff:

Mark E. Barbour, Esq.
The Terminal Tower
50 Public Square, Suite 920
Cleveland, Ohio 44113

On behalf of the Defendants:

Joseph Scott, Esq.
Lisa A. Mack, Esq.
City of Cleveland Law Department
Assistant Directors of Law
601 Lakeside Avenue, Room 106
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Also present:

Steven Mengelkamp, Video technician

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E X H I B I T S

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PROCEEDINGS

THE NOTARY: I am Karen Toth, Registered Professional Reporter and Notary Public employed with the firm of Fincun-Mancini Court Reporters. We are at Cleveland City Hall, 601 Lakeside Avenue, Room 106 in Cleveland, Ohio to take the deposition of Dr. George Serna in the matter of Herbert C. Ross versus City of Cleveland, pending in the Court of Common Pleas, Cuyahoga County, Ohio, Case No. CV-13-815257.

Mr. Steve Mengelkamp is the video technician who will record the testimony by videotape.

Will counsel please state their appearances?

For the plaintiff?

MR. BARBOUR: Mark Barbour for plaintiff Herbert Ross.

THE NOTARY: For the defendant?

MR. SCOTT: Joseph Scott and Lisa Mack for defendant City of Cleveland

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GEORGE SERNA, M.D.

Of lawful age, being first duly sworn, as hereinafter certified, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Scott:

Q Good afternoon, Dr. Serna.

A Good afternoon.

Q Would you please state your name for the record?

A Dr. George Serna.

Q And, Dr. Serna, we're here today to preserve your testimony for the upcoming trial so that we can play this for the ladies and gentlemen of the jury in this matter.

Would you please tell the ladies and gentlemen what it is that you do? What is your profession, sir?

A I am a neuropsychologist, which is a psychologist by professional training, and I have specialty in the field of assessment, specifically psychological and cognitive assessment.

Q Okay. And, Doctor, where is your business, professional offices located at?

A In Beachwood, Ohio.
Q Okay. And, sir, how long have you been engaged as a licensed psychologist in the State of Ohio?
A I've been a licensed psychologist for ten years, over ten years, and I've been practicing psychology for nearly 15.
Q Doctor, I wonder if you can tell the ladies and gentlemen of the jury a little bit about your educational background beginning with your undergraduate work.
A Undergraduate Bachelor's of Science in psychology from John Carroll University. I also have a minor in criminology -- sociology/criminology. From there I completed my Masters and my Ph.D. from the University of Akron. Ph.D. was completed in 2004.

I did a predoctoral internship, which is a requirement for the licensing in Ohio, at the Louis Stokes Department of Veterans Affairs Medical Center in Cleveland, Ohio. And then I did two years of postdoc training also at the Cleveland VA.

Q Okay. And thereafter you received your licensure from the State of Ohio?

A Yes. My licensure was in 2004.
Q Okay. Doctor, have you done --
A I'm sorry, let me restate that. It was in 2006.
Q Doctor, have you engaged at all in the clinical practice of neuropsychology?
A Yes.
Q And could you tell the folks a little bit about that?
A I've been an employee of the Cleveland VA Medical Center for over ten years. I have also maintained a private practice for nearly 15 years. And part of that practice was with an associate who can be considered the owner of the practice, but I was a partner with him. I've also since maintained my own private practice approximately since 2007. I've also done clinical work at the Correctional Institution in Mansfield, and the Juvenile Court Diagnostic Clinic here in Cleveland. And that's for Cuyahoga County.
Q What kinds of patients is the field of neuropsychology concerned with?
A Both patients who are suspect to have some level of cognitive impairment, whether that's

related to a head injury, to dementia, to some type of neurodegenerative disorder, Parkinson's, Huntington's Disease, et cetera, but also general psychological, emotional dysfunction patients within that broad range of problems.

Q Okay. Doctor, in your practice do you assess whether or not those conditions exist in an individual patient?

A Yes.

Q Okay. And how many times have you had to do that in the course of your practice, make those kinds of assessments?

A Collectively over the past ten years, to make an -- opinions of my own as an independent psychologist, neuropsychologist, I would say approximately 2,000 patients.

Q Okay. Dr. Serna, at the request of the City did you conduct an independent medical examination of Mr. Herbert Ross?

A I did.

Q Okay. And when did you do that?

A I did that September 6th I believe was the date, 2014.

Q And what did your independent medical

examination of Mr. Ross entail?
A It entailed the administration of the MMPI-2-RF, which is a measure of emotional and psychological functioning, the Beck Depression Inventory 2nd Edition and a structured clinical interview.
Q Okay. Did you review any other records of any other physicians as part of your independent medical examination of Mr. Ross?
A I did.
Q What records did you review, sir?
A Well, specifically the psychological evaluations from Dr. Chatterjee, who I believe is currently Mr. Ross's treating psychologist. I reviewed the evaluations of Dr. Lee Howard. Oh, and by the way, I also reviewed the available psychological notes, treatment notes from Dr. Chatterjee. I reviewed the evaluation of Dr. Lee Howard, the evaluation of Dr. Donald Tosi, and one other -- I'm drawing a blank on the name. The last psychological evaluation before mine.
Q Okay.
A I also reviewed medical notes from his medical providers, which were indirectly relevant to

my evaluation.
Q Okay. Doctor, let me hand you what's been marked as Defendant's Exhibit F and ask you if that is one of the records that you reviewed as part of your independent medical examination of Mr. Ross?
MR. BARBOUR: Objection.
A It is.
Q Okay. And that record is from whom?
A Donald Tosi. Dr. Tosi, psychologist.
Q Okay. Let me next hand you, Doctor, what has been marked as Defendant's Exhibit E, and again ask you, Doctor, is that one of the records that you reviewed as part of your independent medical examination of Mr. Ross?
MR. BARBOUR: Objection.
A It is.
Q Okay. And what is that record, Doctor?
A This is the psychological evaluation from Dr. Lee Howard, who is also a psychologist.
Q Okay. Next let me hand you what's been marked as Defendant's Exhibit D. And same question, Doctor; is that one of the records that you reviewed in this matter?
A It is.

Q And what is that record?
A This is the Beck Depression Inventory II dated April 13, 2011.
Q Okay.
A And it doesn't say on here specifically, but I recognize this as the Beck Inventory that was administered to Mr. Ross by Dr. Chatterjee.
Q Okay. Now, Dr. Serna, as a result of your examination of Mr. Ross and the testing that you conducted as well as your review of the other relevant records in this matter, did you prepare an evaluation of your independent medical examination of Mr. Ross?
A I did.
Q Okay. Let me hand you what's been marked as Defendant's Exhibit C and ask you if you would please tell the ladies and gentlemen of the jury what that document is?
A This is the independent psychological evaluation that I conducted on Mr. Ross dated September 6, 2014.
Q Okay. And, Dr. Serna, lest I forget, I had previously asked you about your qualifications. Let me hand you what has been marked as Defendant's Exhibit B, and could you

please tell the ladies and gentlemen of the jury what that document is?
A This is my curriculum vitae which outlines my educational and occupational experiences going back to my undergraduate studies.
Q And, Dr. Serna, is that curriculum vitae correct and accurate as we sit here today?
A That's correct.
Q Doctor, let me also hand you what was previously marked as Defendant's Exhibit A and ask you if that is another document that you reviewed as part of your independent medical examination of Mr. Ross?
A It is.
Q Okay. And what is that record?
A This is the MMPI-2 or the Minnesota Multiphasic Personality Inventory 2nd Edition. And this is the report of that testing by Dr. Chatterjee for Mr. Ross.
Q Okay. Now, Doctor, if we can get back to your results of your independent medical examination and the report you prepared, sir. As a result of your examination and your review of the relevant records, were you able to form an opinion within a reasonable degree

of psychological certainty as to whether Mr. Ross suffered from any psychological condition?

MR. BARBOUR: Objection.

Q First of all, were you able to reach an opinion, Doctor?

A Yes, I was.

Q And what was that opinion?

MR. BARBOUR: Objection.

A That opinion was that because of the way that Mr. Ross responded to my administration of the MMPI-2, which was the RF by the way, it's a restructured version of the MMPI, slightly different than Dr. Chatterjee's measure which was the MMPI-2, but they're very comparable. My interpretation of Mr. Ross's MMPI-2-RF results were that they were invalid and not interpretable for the purposes of making any decision or any opinion based on depression or anxiety or any emotional or psychological functioning.

Q Okay. So, Doctor, was it your opinion, based upon the test results that you received from Mr. Ross, that a diagnosis of major depressive disorder could not be made?

MR. BARBOUR: Objection.
A That's correct.
Q Dr. Serna, in reviewing the records of Dr. Howard, can you say whether or not those records and those findings were consistent or inconsistent with your own findings?
MR. BARBOUR: Objection.
A They were generally consistent with my findings. Dr. Howard's administration of the MMPI -- I believe he used the RF as well -- showed that there was elevations in a particular validity indicator suggesting that he was overreporting his -- his degree of psychological dysfunction. There was another test that Dr. Howard -- Howard administered that clearly and unequivocally showed that he was overreporting the degree of his psychological impairment.
Q Okay. What about the records of Dr. Tosi, were those test results consistent or inconsistent with your own?
MR. BARBOUR: Objection.
A Those were consistent with mine in that Dr. Tosi's results also showed that the psychological testing could not be interpreted

because of the level, the degree of overreporting on those instruments.
Q Okay.
A In fact, Dr. Tosi indicated that -- I believe he said, his phrase was they were grossly invalid.
Q Okay. And again, we're talking about test results from objective tests such as the MMPI?
A That's correct.
Q And that was in the case of Dr. Tosi and Dr. Howard both?
A That's correct.
Q You reviewed the MMPI-2 test results for Mr. Ross as administered by Dr. Chatterjee; is that correct?
A That's correct.
Q And what is your understanding of those test results?
A Based on the MMPI-2 results, those showed no indication of any type of depression or anxiety to a significant degree, certainly not to a clinical level. And that is what Dr. Chatterjee reported as well, that they were generally within the normal range, the unelevated range, at which point you would --

it would suggest depression, anxiety or some other psychological impairment.

Q Okay. Is the MMPI-2 test a diagnostic tool for assisting in the diagnosis of a condition such as major depressive disorder and/or anxiety?

A It is.

Q Okay. And --

A In fact, it's one of the gold standard tools of the field that's very commonly used in these types of evaluations.

Q Okay. And if a patient suffers from major depressive disorder would you expect that to be indicated in the results of the MMPI-2?

A Absent any attempt to present in a particular manner. For example, there is an indicator on the MMPI and the MMPI-2-RF that would flag an individual if they're attempting to minimize their psychopathology or emotional dysfunction. There are also scales that would flag an individual if they're attempting to overreport psychopathology or emotional dysfunction. But absent any of those flags, you would expect the MMPI-2 and the MMPI-2-RF to have indication of major depression.

Q Okay. Let's talk a little bit about that, Doctor. You indicated that there are reliability factors or scales, if you will, built into the MMPI-2 test to check for validity of answers?
A Yes.
Q Okay.
A There are several -- several scales for that purpose.
Q Okay. And what's your understanding of the MMPI-2 test that was administered by Dr. Chatterjee; how extensive of a test is that, how many questions?
A The MMPI-2 is 567 questions.
Q Okay. And what we've marked as Defendant's Exhibit A, the test results for the MMPI-2 as administered by Dr. Chatterjee, includes an interpretive report; is that correct?
A That's correct.
Q And, Dr. Serna, would the interpretive report indicate any attempts at deception or lack of consistency in answering?
A It would do both of those, as -- both of those things in addition to other validity indicators.

Q Okay.
A But yes, those are two -- there are two scales that assess for both of the factors that you mentioned.
Q Okay. Now, the interpretive report for the MMPI-2 administered by Dr. Chatterjee to Mr. Ross, did that indicate whether or not the test results were valid?
A It did.
Q Okay. And what was the indication?
A The overall indication is that they were generally valid.
Q Okay.
A There was a slight elevation on one scale which Dr. Chatterjee indicated on her report that suggested that Mr. Ross was attempting to portray himself slightly in a positive manner, well adjusted manner.

Now, one caveat to that scale is at those elevations it's not necessarily an indicator of impression management. If somebody is from a more traditional background with high moral standards or from a disciplinarian type of background, that particular scale would be -- would be slightly

elevated. And, in fact, Mr. Ross indicated that he was from a very traditional southern background. And so that level of indication would not surprise me. It's certainly not within a range that would invalidate those results.

Q Okay. Now, other than what you mentioned in terms of projecting somewhat of a more positive image, was there any indicator on the MMPI-2 as administered by Dr. Chatterjee to indicate that Mr. Ross suffered from major depressive disorder?

A There was no indication of that.

Q Was there any indication to indicate that Mr. Ross suffered from anxiety?

A There was no indication of that.

Q Okay. In fact, the test results were normal?

A Yes. And that was -- that was her interpretation as well, that the results of her administration of the MMPI-2 were within the normal range. And normal range meaning how the general population would answer overall if administered these -- this particular test.

Q Okay. Now, Doctor, one of the other tests

that where administered by Dr. Chatterjee was a Beck Inventory for Depression; is that correct?
A That's correct.
Q Okay. And what is that test?
A Well, Beck Depression Inventory, it is what it says. It's an assessment of depression. Particularly one's emotional status over a period of the prior two weeks.
Q Okay. And how does the Beck Depression Inventory compare with MMPI-2 in terms of built-in reliability scales?
A The Beck Depression Inventory has no validity indicators whatsoever. It's a very face valid or straightforward assessment of depression. Depression is in its title, so it's very clear what it's measuring and it's depression and only depression that that instrument is measuring.
Q Is the Beck Inventory considered to be a form of self-reporting?
A Yes, it is.
Q Okay. As opposed to any sort of objective testing?
A That's correct.

Q And a Beck Inventory is composed of how many groups of questions?
A 21 groups of questions or statements. Within each of those groups you read those statements and you indicate which one most describes how you've been feeling or functioning over the prior two weeks.
Q Okay. If we can look at the exhibit, the Beck Inventory II that you reviewed. Now I just want to go through some of the kinds of statements that are included within these 21 groupings. This is a two-page document, correct?
A Uh-huh.
Q And the first one, the question is sadness and the choices are I do not feel sad, I feel sad much of the time, I am sad all the time, I am so sad or unhappy that I can't stand it, correct?
A That's correct.
Q All right. And these are the kinds of questions -- groups of questions that make up the Beck Inventory?
A That's correct.
Q All right. So they're somewhat self-evident

in terms of what the point of the question is?
A Yes.
Q Dr. Serna, approximately how much time did you spend with Mr. Ross in conducting your independent medical examination?
A It was approximately three hours.
Q Okay. And how does that compare with other assessments that you have done?
A In terms of psychological assessments for depression, that would be consistent with what a typical evaluation is. If we're talking about a cognitive or neuropsychological assessment, which is much more involved in terms of assessing for cognitive impairment, things like memory loss, concentration problems, et cetera, those can go eight to ten hours. But this is a very straightforward psychological assessment. Three hours is the norm.
Q Okay. And so you felt that you had an adequate opportunity to fully evaluate Mr. Ross?
A Yes.
Q Did you give Mr. Ross any instructions in terms of the amount of time that you had

available to meet with him and conduct the evaluation?

A Yes.

Q And what -- what was that discussion that you had with him?

A As part of my standard instructions at the beginning of the evaluation I let all of my clients know that they're -- they can take as much time as they need, that, you know, they need -- they can take any breaks that they feel is necessary. I have them ask any questions. They are free to -- and I let them know they are free to interrupt at any point during the process to ask questions or ask for clarification.

I have an informed consent that each of those clients sign in that regard. And at the end of the interview, the end of the evaluation process, I let all of my clients know that at that point I've asked the questions that -- that I feel I need to ask them and I allow them the opportunity to discuss with me or to tell anything to me that they feel is important for that evaluation. And I did that with Mr. Ross.

Q So as far as that, you had an open-ended question at the end of it, sort of is there anything else I need to know?
A Yes.
Q Okay. And what was his response?
A He said that he felt that he told me everything that I needed to know for this purpose.
Q So you didn't feel that the examination was rushed in any way?
A No, not at all.
Q And you didn't get any indication from Mr. Ross that he felt the examination was rushed in any way?
A Not at all.
Q Dr. Serna, the results of the Beck Inventory as administered by Dr. Chatterjee, how did that compare with the results of the MMPI-2 administered by Dr. Chatterjee?
A They were quite inconsistent. On the one hand on the Beck Depression Inventory he's reporting a quite significant severe degree of depression, which is odd since there was absolutely no indication of depression on the MMPI-2 that she administered, so that -- I saw

that as highly unusual.
Q Dr. Serna, are you aware of any studies or literature concerning the Beck Inventory and whether it is susceptible to overreporting of symptoms?
A Yes.
Q And what are you aware of in the literature?
MR. BARBOUR: Objection.
A That it's easily faked. It's easily overreported if that's one's goal. Because the items are so apparent and they are so face -- face valid is the term, that that can easily be done. And because there are no validity indicators on the Beck Depression Inventory there is no way to indicate whether or not those are an accurate or consistent level of reporting that you would see in patients with mild depression, moderate depression, severe depression or depression that's to the extent requiring psychiatric hospitalization.
Q Okay. Was there any particular category of overreporting of symptoms that you detected in the test that you administered to Mr. Ross?
A On the MMPI-2-RF, my administration of that

instrument to him was invalid and uninterpretable. He basically overreported to such an extent that that was unequivocally uninterpretable because for no other reason other than that the symptoms were reported to such an extent that it's just not what you would see in a sample of severely depressed psychiatric patients.

Q Did your test results show a magnification or exaggeration of symptomatology?

A Yes.

Q Okay. What about suicidal ideation?

A That was one of the highest scales that he -- that he produced on the MMPI-2-RF.

Q Dr. Serna, based upon your examination of Mr. Ross, your professional training and experience, do you have an opinion as to whether or not a diagnosis of major depressive disorder could be made based upon the test results obtained by Dr. Chatterjee through the MMPI-2 and the Beck's Inventory that were administered?

MR. BARBOUR: Objection.

Q First do you have an opinion?

A I could only offer you the opinion, from my

perspective, whether or not I can offer an opinion based on an evaluation that I would have done and it produced those results.

Q And based on your evaluation you don't believe the diagnosis could be made of major depressive disorder?

A Not without better understanding the inconsistencies that were produced on that testing.

Q Just one moment, please.

MR. SCOTT: Thank you, Doctor.

CROSS-EXAMINATION

By Mr. Barbour:

Q Hi, Doctor. I'm Mark Barbour. I represent Herbert in this lawsuit. A couple of questions.

If I understand your testimony, you're not able to reach a conclusion solely based on the test data -- the data from the test that you administered?

A That's correct.

Q All right. As I understand from looking at your resumé, you work for the VA, that's your --

A That's correct.

Q -- primary --
A And can I clarify just one thing?
Q Sure.
A I cannot come to a conclusion based on whether or not there was a presence of any type of emotional or psychological diagnoses. The -- I did make a conclusion that the test results were not valid and not interpretable.
Q That's what I -- that's what I meant.
A Okay.
Q We're actually on the same page.
A Okay. I just wanted to clarify that so there is no confusion.
Q No confusion. You are a full-time employee of the Veterans Administration?
A I am.
Q And then you also have a private practice. I want to call it like a part-time practice.
A That's correct.
Q Is that fair?
A That's fair to say.
Q Okay. On your resumé one of your customers for your services in your part-time business is the City of Cleveland?
A That's correct.

Q And you do -- that's the employer in this case, correct?
A Correct.
Q All right. And you do -- apparently do disability evaluations for the City of Cleveland?
A That's correct.
Q All right. So not just this particular case we're on, but other matters involving their employees?
A That's accurate.
Q All right. And you've apparently been doing that since at least 2007?
A Yes.
Q I'm presuming that you were paid for your evaluation in this case?
A Of course.
Q How much were you paid for your evaluation?
A For the -- for the evaluation I -- I have a flat fee of $900 for these types of evaluations.
Q All right. You also mentioned that you reviewed some records in this case?
A Uh-huh. Yes, that's correct.
Q And only a couple of pages of records were

actually marked in your deposition, but you reviewed quite a bit more, didn't you?
A That's correct.
Q How much were you paid to review the records in this case?
A The fee that I charged, the $900 that I mentioned --
Q Includes the record reviews?
A -- includes the record reviews, yes.
Q All right. Very good. Lastly, you're here today giving your testimony, and I'm assuming you're being paid for that as well?
A That's correct.
Q Is there an additional charge for that?
A Yes, there is.
Q And how much is that charge?
A That's my standard forensic fee of $250 an hour.
Q All right. And so that depends on how long you're here and how long -- any time you might spend in preparation and those kind of things?
A That's correct.
Q If you find that an employee like Herbert in a case has the particular disability or injury at issue, presumably you wouldn't get to give

a deposition?
A That's hypothetically true. That's not how I -- how I look at these evaluations at all. In fact, I was quite surprised when I was called for this deposition since this is the first deposition I've done for the City of Cleveland.
Q Have you done other depositions for other employers?
A I've been part of depositions but I have not been the expert in those depositions. My partner in the practice was the -- was the one being deposed.
Q Dr. Kenny?
A John Kenny, that's correct.
Q So you've never given a deposition before?
A No.
Q When you say you've been part of depositions, may I assume that that meant you helped Dr. Kenny get prepared for a deposition?
A That's correct.
Q Is this the first time you've ever offered expert opinion at a trial in the form of a deposition?
A It is.

Q There are quite a few medical records that you listed. It looks like -- well, there is just many, many. You relied on the City of Cleveland to give you whatever medical records you reviewed in this case?
A That's accurate.
Q You didn't independently obtain any medical records?
A No.
Q Were there any medical records -- and when I say medical records I should be -- I mean it in the broadest sense. So let's include psychological and mental health records, okay?
A Okay.
Q Same answer?
A Yes.
Q All right. Were there any records that you asked for or that you wanted that were not provided?
A No, there wasn't.
Q Did you ask for any additional records?
A I did not.
Q Okay. All right. As I understand it, you saw Herbert one time about a month ago, September 6, 2014?

A That's correct.
Q You're not going to provide him with any treatment in this case?
A No.
Q That's not part of this. You're not going to make any recommendation concerning his situation?
A No.
Q All right. You used the term or the attorney used the term independent medical examination. You, in fact, were hired by the City of Cleveland?
A That's correct.
Q You were not selected randomly?
A I don't know how they make their selections.
Q You were not selected by the court, were you? The judge didn't contact you and ask you to evaluate this case?
A No. No.
Q And I didn't select you, did I?
A No.
Q All right. Can you tell us what type of work ethic does Herbert have? Were you able to form an opinion as to that?
A I only have what he told me, which he stated

to me that he has a very strong work ethic, that work was ingrained in him from an early age. He's a veteran of the United States military, so that certainly is some indication. He served honorably, so that's an indication of his work ethic I would imagine.

Q And he's a relatively long-time police officer for the City of Cleveland and for another department?

A That's correct.

Q You were aware of that?

A I was aware.

Q You didn't need to look at his work file for any reason?

A No, I did not.

Q Personnel file I meant.

A No.

Q You didn't ask for that?

A No.

Q Did you look at any documents that gave you any indication about how Herbert felt about his job before he got in this accident?

A Can you repeat the question?

Q Sure. Did you do anything to help assess how Herbert felt about his job before this

accident occurred?
A I asked him.
Q During your interview?
A Yes.
Q And the same with his life, same thing?
A Yes.
Q His life outside of work?
A Yes.
Q Did you get a feeling from talking to Herbert for that one session that his work and his life were greatly intertwined?
A I asked him those questions. The way you ask the question, do I fell like I get a feeling of how those things -- I -- that particular phraseology I don't agree with. That's not how I approach my evaluations. I asked him. He gave me a response. I incorporated that into my evaluation.

My evaluations are based, in large part, on the objective data that I collect during that evaluation. Part of that objective data is the psychological testing, the MMPI. When the MMPI gives me an indication that there is evidence of a particular presentation management, whether

it's a positive impression management, meaning that somebody is trying to present in a very favorable way, or just the opposite, if they are overreporting symptoms, et cetera, you know, I take that into consideration of how I view the entire evaluation.

Q You -- in this particular case anyway, you relied upon that true/false test you gave him to reach your conclusions that you voiced today?

A The MMPI-2-RF.

Q Right. I'm going to call it the true/false test; is that fair?

A It's an oversimplification of the complexity of that measure.

Q It is, in fact, a test where the answer is -- to each question is either true or false?

A That's correct.

Q All right. And there are many questions?

A Yes.

Q All right. And that's what you're basing your evaluation on; is that fair, of Herbert in this case?

A To a large extent, but certainly also my review of records and the clinical interview.

Q Your clinical interview that took place on September 6th?
A That's correct.
Q And your review of the other medical records that we've either discussed or about to discuss?
A That's correct.
Q If I understand you, in simple terms you're saying that Herbert is exaggerating his symptoms concerning his depressive disorder?
A That's correct.
Q And that really, when it comes to this aspect of his case, that he's -- he's a malingerer?
A That's -- that's the DSM V criteria for a diagnosis of malingering. Malingering is --
Q That is -- I'm sorry?
A Malingering is -- it's a loaded term and the fear is that it gives the indication that somebody is completely falsifying their condition. The actual diagnosis or the actual definition is that they can be overreporting or exaggerating conditions that are there, or they can be indicating symptoms that aren't there. So it's not -- having a condition such as depression or anxiety is not mutually

exclusive with somebody who is malingering.
Q So I'm sorry, I'm a little confused. You're saying that it's possible to have a depressive disorder and to show exaggeration on these true/false tests?
A That's correct.
Q So the fact that you have a certain result on the true/false test does not exclude depression?
A That's correct.
Q I kind of said the same thing but the other way?
A That's correct.
Q All right.
A However, because of the -- the invalid nature of the -- of the assessment, one is not able to make an opinion on the presence or absence of those conditions because they are so elevated as -- that you can't take that person's self-report at face value.
Q So in the test -- the test results that you're talking about can't tell you one way or another whether he has depressive disorder or a depressive condition by themselves?
A That's correct.

Q All right. You would need something else?
A You would need the claimant to be straightforward and to -- to not try to present themselves in a particular fashion.
Q Okay. So to put it in kind of layman's terms, everyday terms, what you mean is that Herbert is lying about his depression?
A That's not what I'm saying.
Q Are you saying that he's not being straightforward, he's not being truthful in answering his true/false test; is that what you're saying?
A That -- I'm saying that he's overreporting. You can say he's exaggerating his symptoms. Whether or not he actually has depression or anxiety, I can't make that opinion because I don't know if there is anything there that he is exaggerating or whether he's -- whether he's lying about having depression or anxiety.
Q I'm sorry. Can you explain that again? I don't understand your answer.
A Okay. The MMPI validity indicators are an indication of overreporting of symptoms. Okay. Symptoms of depression, symptoms of anxiety. Regardless of whether or not that

person actually has depression. Okay. So somebody can actually have some level of depression that they're overreporting the magnitude of that depression. Or, on the other hand, that person can be reporting symptoms of depression that they do not have at all.

Q Making it up?

A Making it up.

Q And in this case you can't tell me whether he's either making it up or he has it and he's overreporting it?

A In any case on the MMPI that has his profile.

Q Say that again.

A It's not just my evaluation, that's --

Q I'm asking you about your opinion.

A Yes.

Q That's your opinion?

A That's my opinion.

Q You can't say whether he's intentionally making it up or whether he's just exaggerating what he has?

A That's correct.

Q I'm going to use the term malingerer in the sense of somebody who's exaggerating their

symptoms, whether intentionally or otherwise, as opposed to the strict psychological definition that you may have. Is that okay?

A It depends on what you mean by otherwise.

Q Well, as I understand it, there is two things here; he's either faking it or he has depression and he just exaggerates his symptoms somewhat.

A Yes, sir. And both of those would be considered --

Q Malingering?

A -- under the strict definition, malingering, if, in fact, they are overreporting those symptoms in the clear presence of a secondary gain. That's the -- the DSM V, which is the -- sort of the diagnostic Bible of psychiatry and psychology. That would be the strict definition for somebody who is malingering.

Q And is it your opinion that Herbert is doing this for some kind of secondary gain?

A There -- there certainly appears to be a secondary gain.

Q And what's the secondary gain?

A His disability -- disability claim.

Q This Workers' Compensation claim?
A Yes.
Q And is it your opinion that he is exaggerating his symptoms to try to make the claim?
A With these types of evaluations, because the -- you can't take the self-report at face value, we're never really 100 percent accurate as to what the secondary gain might be. So we take just the data that we have, yes, he's involved in a disability claim, yes, we know that he exaggerated on the MMPI-2. Based on that criteria he meets the definition of malingering. However, is there hypothetically a reason -- another reason why these test results would be invalid? We acknowledge that possibility.
Q But in this case is it your testimony or your opinion -- I'm sorry. Is it your opinion that more likely than not he's exaggerating his symptoms for the purposes of secondary gain related to this Workers' Compensation case?
A That is -- that is not my opinion.
Q You do not believe it has anything to do with this case?
A It may have something to do with this case.

Q All right.
A My approach in this matter is an agnostic approach. I don't know exactly what the motivation would be. I do know that he's overreported on the MMPI-2, the MMPI -- MMPI-2-RF, that that instrument is invalid. So it questions the reliability of his self-report. I know that he's involved in a disability claim. And so those two things put together, as I mentioned, the diagnosis -- the diagnostic criteria are met for a diagnosis of malingering.

So the presumption is there that, you know, this is -- this may be why he's exaggerating, why he's overreporting. But do I know for certainty that that's the reason why he's overreporting? I can't say that.
Q Well, you know the standard is not absolute certainty, right?
A That's correct.
Q Right. The standard is more likely than not?
A Right.
Q And are you telling me that more likely than not, in your opinion, he's exaggerating on the test because of this Workers' Compensation

claim?
A I -- then I would say yes.
Q All right. So in other words, it's kind of a scheme on his part to make something happen?
MR. SCOTT: Objection. You can answer.
A I wouldn't say -- I wouldn't phrase it that way.
Q You did say in your report that it's intentional exaggeration, correct?
A That's correct.
Q So we can call it intentional malingering for secondary gain. In our case you believe he's saying things to try to make his claim, correct?
A That would be the presumption based on the criteria for malingering that I just went over.
Q When he got hit by the car -- do you know about the facts of the underlying accident?
A I do.
Q All right. He was in a police car. They were chasing a suspect. The suspect lost control of the vehicle and T-boned them, correct?
A The police vehicle T-boned the suspect's car.

Q Right. So there was an accident?
A That's correct.
Q And then later on he aggravated his back chasing a suspect, correct, 2011?
A That's what the records indicate, yes. That's what he told me.
Q All right. And it's in the records. I mean, you reviewed the records from that, right?
A Yes.
Q So it's not just what he told you?
A That's correct. But I -- I'm not a physician so I can't say with certainty whether his back condition was there or whether it was aggravated. And I rely on the reports that are there. So that's -- so my opinion is not that it was an exaggerated or aggravated --
Q I understand. But you have no reason to disagree with what I just told you, do you?
A No.
Q Was that 2009 accident part of his scheme?
MR. SCOTT: Objection.
Q You can answer.
A The 2009 was the car accident?
Q Yes.
A The T-bone?

Q The T-bone. Was that part of the intentional exaggeration thing that we've been talking about?
A I can't answer that question.
Q Do you know from looking at the records that after that accident he returned to work about two weeks or so later?
A Yes, I knew that.
Q All right. Was that part of his overall approach to try to intentionally exaggerate his symptoms?
A I can't answer that question.
Q You know that he had quite a lot of treatment to his back because you saw a whole bunch of records?
A That's correct.
Q Right?
A Uh-huh.
Q He had injections in his back; you're aware of that, epidural pain injections?
A That's correct.
Q Were those part of his scheme to malinger?
A I have no opinion on that. I have no opinion with regards to his back pain, his physical condition. I'm not a physician. I'm not --

that's beyond my scope of practice.
Q I understand. You're a Ph.D. psychologist, correct?
A Neuropsychologist.
Q I'm sorry. And you do disability evaluations of injured workers for the City of Cleveland, correct?
A Ye. For mental purposes.
Q And you reviewed a whole stack of medical records that aren't currently in front of you when you produced your written report, didn't you?
A That's correct.
Q All right. So you're aware that he had a surgical procedure on his back in 2014?
A That's correct.
Q Was that part of his scheme to malinger?
A I can't answer that question.
Q How about his -- you're aware, aren't you, that he's physically unable to be a police officer anymore?
A That's correct. That's --
Q And you accept that as true?
A I do.
Q Right. Because you reviewed the report of

Dr. Michael Harris who found him unable to return to work as a police officer, correct?
A That's correct. And, in fact, the City of Cleveland has medically retired him.
Q Right. Was that inability to physically work as a police officer part of his malingering scheme?
MR. SCOTT: Objection.
Q Do you have any opinion on that?
A I have no indication of that. I have no opinion on that. What I --
Q Was the fact that he had no real work experience other -- as an adult other than the military and being a police officer, was that figured into his scheme to be a malingerer?
MR. SCOTT: Objection.
A I can't answer that question. I can't answer those questions because I don't know what the overall -- I don't know what the -- you know, what he was thinking at any point in time other than when I evaluated him.
Q You don't know what he was thinking other than when you saw him on September 6, 2014?
A Objectively assessed, that's correct.
Q Objectively assessed meaning what you saw and

heard?
A Yeah. I can tell you that during the time that I saw him on that evaluation --
Q He was fine?
A He was, I'm sorry?
Q Fine. He was fine?
A No, no, that he was overreported, that he was exaggerating his symptoms.
Q Okay. What about everything that happened that the other doctors reported that you relied upon? Let me back -- let me ask that a different way. You relied on things that other doctors reported, did you not?
A I reviewed those records and I reported what they said. And so that did, in fact, factor into -- into my report.
Q And Dr. Tosi said that he was overreporting his symptoms or exaggerating his symptoms, correct?
A Yes.
Q Dr. Tosi found that he was depressed, did he not?
A That was his opinion.
Q Yes, it was, wasn't it?
A Yes.

Q And so did Dr. Howard; is that correct?
A That's correct.
Q And so did Dr. Stacey Foerstner, another psychologist?
MR. SCOTT: Objection.
Q Is that true?
MR. SCOTT: Objection.
A Yes.
Q You reviewed Dr. Foerstner's medical report, did you not?
A I did.
Q You reviewed Dr. Pawlarczyk's psychological evaluation?
A I did.
Q Were you provided with a report from a Dr. Waltman?
A I was not.
Q Dr. Waltman would have seen Herbert in August of 2014. You didn't have that report?
A I did not.
Q Would you agree with me that each of these physicians whose reports -- I'm sorry, each of these psychologists whose reports that you reviewed all recommended continued psychological treatment?

MR. SCOTT: Objection. You can answer.

A That's what they recommended.

Q Okay. Dr. Chatterjee, you reviewed her notes?

A I did.

Q Dr. Chatterjee has spent a considerable amount of time with Herbert Ross?

A That's correct.

Q She testified that she saw him bimonthly, twice a month, or at least monthly for the last three years, and that was over 40 times?

A That's correct.

Q Any reason to disagree with that?

A No.

Q And you reviewed her office notes concerning that?

A Yes.

Q Doctor, who's in a better position to evaluate somebody's overall mental health, a person who's a professional who sees that patient one time like yourself in September of 2014 or Dr. Chatterjee who started seeing Herbert in April of 2011 and has saw him on a regular basis up through 2014?

A My opinion --

Q This is all your opinion, I think.
A -- as an independent objective evaluator. Treatment providers, clinical providers have an inherent advocacy approach to treatment where they are more likely to take inconsistent evidence such as what we described, talked about earlier where you have such extreme findings on tests that Dr. Chatterjee found, they are more likely to take those type of inconsistencies and overlook those and proceed with treatment because they -- that's their role. That's what -- that's what they're supposed to do.
Q -- is that what you do when you're treating your patients?
A I do that.
Q Dr. Tosi and Dr. Howard, Dr. Foerstner, Dr. Pawlarczyk and Dr. Waltman all saw Herbert only one time, correct?
A I can't speak to Dr. Waltman. I did not see --
Q I'm sorry. How about Dr. Tosi, Dr. Foerstner, Dr. Pawlarczyk and Dr. Howard?
A Yes.
Q One time, correct?

A Yes.
Q They drew -- they had the same information that you had, correct, up to that point?
A Presumably. I can't speak with certainty what information they had before them.
Q And they had recommended -- each of them recommended further treatment?
MR. SCOTT: Objection.
Q Correct?
MR. SCOTT: You can answer.
A That's correct. I don't agree with the recommendations.
Q I understand. And you don't agree with Dr. Chatterjee's diagnosis?
A I -- I do not agree on how she went about making that diagnosis.
Q That's not what I asked you. My question was do you agree or disagree with her diagnosis of depressive disorder arising out of the 2009 motor vehicle accident?
A I would have to say I disagree.
Q For the reasons that you've said?
A For the reasons that I said.
Q Primarily the results of the true/false tests?
A The MMPI-2, correct.

Q No other records, you're relying primary on the results of those tests?
A Well, I have reviewed the records and she did treat him for a very, very long time, well beyond the norm for treating depression, major depression. And I saw little to no improvement throughout that time.
Q Really? Did you look at the records?
A Overall. I mean, yeah, there were times where he came and he said he was doing well. You know, but if you --
Q So --
A -- if you aggregate that over time he's -- you know, he's not any better. When I -- certainly as he's reporting to me when I saw him or some of the more recent reports from Dr. Chatterjee.
Q All right. So when you look at those records as a whole you don't see any improvement in Herbert's condition?
A Not as a whole, no. Again, there are periods of time where he was doing better than others.
Q You may not know this because of the timing but I'll represent to you that Dr. Chatterjee testified that he has improved. Does that

change your opinion at all?
A That doesn't change my opinion.
Q I mean, relative to her treatment, et cetera?
A Yeah, from my records, my review of her records, I -- I don't understand what that's based on.
Q You don't think the self-reporting of the patient is important in that regard?
A As I stated before, based on the -- my evaluation of the patient I opine that you can't take -- you can't take his -- the client's self-reporting at face value.
Q Because he's a liar?
MR. SCOTT: Objection.
A I didn't say he was a liar.
Q You can't take any -- you can't take his self-reported symptoms on face value?
A Yeah, they're unreliable.
Q They're unreliable. His statements made to his doctors are unreliable; is that fair?
A His statements made to me are unreliable.
Q All right. His statements he made to other doctors are unreliable or reliable or you don't know?
A I can speak for my review of Dr. Lee,

Dr. Tosi, their evaluations, that my opinion would have been that his self-report at that time was unreliable as well.

Q But both of those doctors found him to have depressive disorder, correct?

MR. SCOTT: Objection. Objection. You can answer.

A That was their opinion.

Q Right.

A Whether -- I -- I don't believe they have the data or the evidence to make that opinion.

Q All right. In these psychological injuries is it possible to show the injury like a fracture on an X-ray? I'm not trying to be a smart aleck but is it -- it's not like a broken bone, it's a little bit different; isn't that fair?

A Right. Let me give you an example of some of the dangers. If you give somebody an X-ray or an MRI or a CT scan, if they're in there moving, you know, shaking, you're going to get very blurry images of whatever it is that their -- whether it's a bone or whether an MRI of the brain. And those results are uninterpretable. So a radiologist looking at

those results would not say, well, you know, he has a brain injury. You know, I can't interpret it, but, you know, he was in a car accident or he fell down the stairs and it's possible that he has a brain injury so that's what I'm going to diagnosis. That's just not appropriate to do that because there is too much noise, there is too much artifact in making that opinion.

And so in very much the same way the MMPI-2 and other psychological instruments have been related, compared to, you know, psychological X-rays or MRIs. If the patient responds in a reliable and valid way you can get a pretty good interpretation of what's going on psychologically. If there are artifacts, if there is noise, if there is evidence of overreporting, underreporting, inconsistent reporting, you can't interpret those results. You don't know what you have.

Q So you are pretty knowledgeable with medical terms and things like that, aren't you?

A I would not say that I'm an expert in any of these things.

Q You just gave a nice description of MRIs and

X-rays and what happens if you move?
A That's a layman's interpretation, sure.
Q Okay. Do you agree that the physical injuries that Herbert sustained that you're aware of from looking at all his records, or a lot of his records, can produce stress?
A I agree with that, yes.
Q Do you agree that those physical injuries likely produced pain?
A In his case?
Q Yes.
A I'm not in a position to answer that.
Q Wasn't pain reported in many of the records that you reviewed?
A Yes, it's possible.
Q And based upon your medical knowledge that you just gave us, wouldn't you expect that this herniated disk that he sustained in his back would, in fact, produce pain?
A That's not my area of expertise.
Q Well, you just got done telling me all about the MRIs and X-rays and jiggling at all that --
MR. SCOTT: Objection.
Q -- so can you tell me whether you would think

that these herniated disks, based on the records that you reviewed, in fairness to you, were producing pain?

A I can't answer that question.

Q You don't know?

A No.

Q And whether or not his physical injuries were producing pain, that wasn't important to you in your reaching your diagnosis or your opinions concerning his psychological condition?

A If, in fact, the results of my evaluation would have indicated that he was being straightforward and answering without any attempt to overreport his symptoms I would have taken his self-report, you know, of pain for what it was.

I have no reason to not believe that those things would produce pain. I just can't tell you, you know, whether it was there or to what extent. I just don't know.

Q Doesn't show up on the test, the true/false test?

A What's that?

Q Pain.

A Pain, no.
Q Can you measure the effect of the inability to pursue his career as a police officer, if that is having any effect on him, can you measure that with your test?
A No.
Q Is it fair to say that you are reasonably certain that this back injury is not affecting his mental health?
A Can you restate the question?
Q Sure. Is it accurate to say or fair to say that you are reasonably certain that this physical injury is not affecting or affected Herbert's mental health?
A That's not my opinion. I can't make that opinion.
Q You have no opinion one way or the other?
A No.
Q You weren't asked to reach that conclusion?
A I was not asked to reach that conclusion, and even if I were I couldn't make that opinion.
Q That's not something you can do?
A For the same reasons I indicated before, because of the indication of overreporting I don't -- I just can't take his self-report of

depression, including what that might be related to, at face value.

Q Have you known other police officers? Let me ask it a different way. Have you had opportunities to do evaluations of other police officers?

A Yes.

Q Have you found in cases where police officers were unable to return to work that it affected their mental health?

A Yes.

Q So that's not unheard of?

A Absolutely not.

Q And it can happen in cases?

A Yes. And, in fact, there is a very -- very common that pain and mental functioning, depression, anxiety, et cetera, they share a common psychological or chemical process where you can have somebody with significant pain that that results in depression. Yeah, that -- that process is well known, well understood.

Q These records that you reviewed in your medical report, there is quite a long entry and will you be -- will you be commenting on

any of these other records as part of your testimony?
A No. I list those mainly to show that I -- I looked at them. Many of those were not directly relevant to my evaluation, again, because they were medical reports. I'm not a physician, I'm not a medical provider, so...
Q So why did you look at them in the first place then?
A To make sure that there wasn't anything that I overlooked in those records in terms of his emotional, psychological functioning.
Q See if there is anything you can use in your evaluation?
A Yes.
Q Would you agree with me that Herbert has had a pretty steady employment history?
A From my understanding, yes.
Q From all the records you reviewed and from what he told you?
A Sure, yes.
Q And that he was a good police officer?
A My understanding, yes.
Q You don't have anything to indicate otherwise, do you?

A No.
Q Do you know anything about his reputation for his honesty and integrity?
A I don't know anything about that.
Q You didn't interview any of his co-workers?
A No.
Q Or former co-workers, I should say.
A No.
Q You didn't interview any of his family members?
A No.
Q You didn't talk to any of his treating physicians?
A No.
Q You didn't talk to any of these other psychologists?
A No.
Q I notice that you don't have any papers in front of you other than the exhibits that were handed to you by counsel. Did you maintain a file in this case?
A I did.
Q And is it a paper file or is it all on computer?
A It's all on computer.

Q Did you make any notes when you were interviewing him?
A I did.
Q Did you retain those?
A Yes, I did.
Q I haven't seen a copy of your test that you administered. Do you have that?
A I have those, not in paper form with me.
Q But they are available?
A Yes.
Q All right. You would have retained those --
A Yes.
Q -- as part of a file?
A Oh, yeah. Absolutely.
Q I don't have any other questions for you. Thank you.

REDIRECT EXAMINATION

By Mr. Scott:

Q Dr. Serna, you understand that -- let me ask you this: Your evaluation concerned whether or not Mr. Ross suffers from major depressive disorder; is that fair?
A That's correct.
Q All right. You weren't asked to determine whether or not he sustained a back injury in a

2009 motor vehicle accident, correct?
A No, I was -- that's correct. I was not asked to do that.
Q In fact, you indicated it's your understanding that the City has already medically retired Mr. Ross as a result of that injury?
A That's correct.
Q I'm going to ask you about your true/false test. You administered a version of the MMPI, correct?
A That's correct.
Q All right. Now, Dr. Chatterjee also administered a version of the MMPI-2 to Mr. Ross; is that correct?
A That's correct.
Q All right. And that test was a valid test, correct?
A That's correct.
Q All right. So we have MMPI-2 as administered by Dr. Chatterjee that showed Mr. Ross tested within normal range with no psychological condition whatsoever, correct?
A That's correct.
Q Versus the results of a Beck Inventory for depression that showed severe depression?

A That's correct.
Q And the Beck Inventory has none of the reliability scales built into it that the MMPI-2 has?
A That's correct.
Q So we have a normal test with built-in reliability factors versus a self-reporting exam in the results of the Beck Inventory, correct?
A That's correct.
Q And that's what the Beck Inventory is, a self-reporting exam?
A Self-reporting, yeah, measure of depression.
Q All right. Doctor, I appreciate that you charge for your professional time. We all have jobs and we all expect to get paid to do our jobs. That's how we support our families so I appreciate that you charge for your time. Do you sell your opinions?
A Absolutely not.
Q All right. So your opinions are a result of your own independent medical examination, correct?
A Yes. I am an advocate for my opinion. I'm not an advocate for anything else. So what I

see in front of me, the objective data that I have before me, is how I report.
Q Okay. And you made an independent medical examination of Mr. Ross in this case; is that correct?
A That's correct.
Q Without any concern for any outside interests or anybody else's agenda in this matter; is that fair?
A Absolutely. Yeah, that's fair.
Q Is there anything, as a result of Mr. Barbour's questions, that in any way changes any opinion that you hold in this matter?
A There is not.
Q You previously told me that Dr. Howard and Dr. Tosi with regard to the objective test that they gave, those tests also demonstrated overreporting of symptoms; is that correct?
A That's correct.
Q Okay. And given that overreporting of symptoms, in your opinion could any diagnosis -- reliable diagnosis of Mr. Ross be made?
A No, not in my opinion.

Q Okay. You treat a great many patients. I think you've indicated that you also do work with the VA; is that correct?
A That's correct.
Q The Veterans Administration?
A That's correct.
Q You've treated patients with, I assume, very severe injuries?
A Yes.
Q Okay.
A And very minor injuries as well.
Q And very minor injuries.
Dr. Serna, does sustaining severe injuries necessarily cause major depressive disorder in a patient with severe injury?
A No.
Q They are independent of one another; is that fair?
A Yes.
Q And the issue here is whether or not Mr. Ross has major depressive disorder, not whether or not he has a back injury, but whether or not he has major depressive disorder, you understand?
A That's correct.

Q You weren't asked to look at anything else, correct?
A That's correct.
Q You weren't asked to evaluate his reputation for honesty or his work ethic or anything else like that, correct?
A No.
Q Doctor, was there any records that you felt that you needed that you were not given access to to make a reliable evaluation of Mr. Ross in this case?
A I did ask for Dr. Chatterjee's interpretive report on the MMPI.
Q Okay. And you received that?
A And I received that.
Q Okay. Doctor, you indicated that you had seen -- certainly seen the Beck Inventory that was administered to Mr. Ross in April of 2011, correct?
A Can you repeat the question?
Q I think that's the Beck Inventory you have there in front of you.
A Yes, I have that. I reviewed it.
Q Okay. Do you recall whether or not you saw other Beck Inventories from Dr. Chatterjee's

office that may have been administered more recently?
A Yes.
Q Did those continue to show severe depression?
A Yes. There were some fluctuations but the Beck Inventories that I reviewed were all fairly consistent with a significant degree of depression.
Q So at least as far as the self-reporting on the Beck Inventory there appears to be no improvement of Mr. Ross's condition?
A That's correct.
Q And would you expect to see improvement from Mr. Ross or any patient with this condition over the course of time?
A Yes.
Q Okay. And that's not evident here?
A No.
Q Over what period of time would you normally expect to see improvement?
A Well, the standard time frame for expecting to see improvement in cases of even major depression is anywhere between six and nine months. There are -- there is quite a bit of evidence, once you start getting into some of

these manualized treatment programs for depression, that you can have significant improvement in as little as 12 sessions. And so, yeah, certainly he's well beyond that time frame that you would expect to see at least some improvement.

Q Okay. With Mr. Ross it's been almost three years; is that correct?

A That's correct.

Q And no change, at least as far as the self-reporting on the Beck Inventory?

A That's correct.

Q All right. It's your understanding that Mr. Ross also had back surgery in May of this year?

A That's correct.

Q Okay. It's your understanding that that surgery was successful?

A That's -- by successful you mean there were no complication, that he reported to me that it had improved his pain, and so to that extent successful I would agree, yes.

Q And, in fact, Dr. Chatterjee, I'll represent to you in her deposition the other day, used the phrase pain free. That would sound like a

successful operation, correct?
A Sure.
Q Based upon that you'd expect to see an improvement in the Beck Inventory, wouldn't you?
A Yes.
Q But no improvement in the case of Mr. Ross?
A I don't know what he's reporting at this point in time but he had the back surgery a few weeks before I saw him, and yeah, there certainly was not any improvement in what he was reporting to me.
Q Thank you, Doctor.

RECROSS-EXAMINATION

By Mr. Barbour:
Q Doctor, where is that Beck Inventory other than the one that was marked as an exhibit from April of 2011? You talked about other Beck Inventories, and I'll tell you, I don't have a copy with me.
A Okay.
Q So I wanted to see it, if I could, either -- either through counsel or from you, whatever is --

MR. BARBOUR: Do you have a copy of

those? I'm sorry, I didn't bring them.

MS. MACK: That's fine.

MR. BARBOUR: Thank you.

I'm going to mark this as an exhibit. Can I use your copy.

MS. MACK: (Nods head.)

MR. BARBOUR: Thank you.

Q And unfortunately I got out of order, I apologize. But I'm going to hand you this Plaintiff's Exhibit 5 dated August 4, 2014 and I don't know if you have a copy. Do you have a copy with you?

A I have that.

Q You have that. Okay. It looks like the total score is substantially less than the 2011 Beck Depression Inventory; is that true?

A I wouldn't say substantially.

Q Didn't it go from something to the 40s to the 27 on Page 2?

A In 2011, you're talking about the 4-13-2011?

Q In fairness to you, the one that is 4-13 is marked Exhibit D. But we also have one marked Plaintiff's Exhibit 6, which is 9-6-11 that was provided to you as well.

A I don't -- wait a minute. Let me check. Yes.

Q Okay. So you have that in front of you, 9-6-11?
A Yes.
Q Looks like the total score there was 43?
A That's correct.
Q Okay. And then on Exhibit 5, you agree with me the total score is 27?
A Right.
Q So that certainly shows some change in the self-reporting, doesn't it?
A They are both in the severe range, but there -- that does indicate, you know, a decline in that.
Q All right.
A Now, is that due to the pain-related factors or is that due to depression? I wouldn't know that without, you know, looking into that further. Because pain certainly can factor into the Beck scores. When you factor in things like loss of sleep, fatigue, et cetera, pain is going to impact that.
Q Can pain, fatigue and loss of sleep, to use your examples, contribute to depression?
A Absolutely.
Q Doctor, I want to hand you what -- I got -- I

already had premarked these. I apologize, I got out of sequence. I want to hand you what's been marked as Plaintiff's Exhibit 3. If you can take a look at that for me. Is that the July 19, 2013 report of Dr. Foerstner?

A It is.

Q And that is one of the records you reviewed?

A Yes.

Q And didn't she also -- it says on the front page there that she did some psychological testing?

A Where?

Q Can I point it out?

A I see, psychological testing inventory.

Q Right. Inventories. And then on Page 4 looks like she did a Beck Inventory?

A Page 4.

Q Up at the very top?

A Yes.

Q And in July of 2013 that inventory reported a range in the -- reported severe depression?

A Yes.

Q In the 30 to 40 range?

A Yes.

Q You didn't mention her testing in your direct testimony, did you?
A I did not.
Q Okay.
A Would you like to know why?
Q No. We'll cover that in a second. And you agree that her finding was -- and she also did a clinical evaluation?
A Clinical interview.
Q I'm sorry, clinical interview. And she --
A I didn't call it an evaluation. She administered testing.
Q I'm sorry, I'm using your terms interchangeably. Interchangeably, I know as a professional that can be galling and I apologize for that.
A That's fine.
Q She did the same thing, correct, the same kind of interview that everybody else did?
A Presumably. I don't have the specifics of her interview. I don't know how it was structured or what questions she specifically asked but --
Q And that's a report that you reviewed in reaching your conclusions, one -- it's one of

the records you looked at?
A Yes.
Q The last one I have is Plaintiff's Exhibit 4. That's the February 25, 2014 report of Douglas Pawlarczyk?
A Yes.
Q Is that a copy of one of the record you looked at also?
A Yes.
Q Doctor, counsel asked you about, you know, you weren't asked to make a comment about Herbert's integrity or character or anything like that, but isn't that --
A Not a comment, an opinion.
Q An opinion. But isn't that, in effect, what you're doing by saying he's intentionally exaggerating his symptoms, you're commenting on his integrity and character?
A That has no -- no bearing on his integrity or his character, in my opinion.
MR. BARBOUR: No further questions. Thank you.
MR. SCOTT: Nothing further, Doctor. Thank you so much for giving us the opportunity to speak with you today.

VIDEO TECHNICIAN: We're off the record at 3:38.

(Deposition concluded at 3:38 p.m.)

(Signature not waived.)

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I have read the foregoing transcript from page 1 through page 78 and note the following corrections:

PAGE	LINE	REQUESTED CHANGE

_____
George Serna, M.D.

Subscribed and sworn to before me this _____day of _____, 2014.

_____
Notary Public

My commission expires:_____.

State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga,)

I, Karen A. Toth, Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, George Serna, M.D., was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy/computer in the presence of said witness, afterward transcribed, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that the testimony given by the witness was recorded by video/audio tape, and that the videotape is a true and correct visual and audio reproduction of the testimony given by him.

I do further certify that this deposition was taken at the at Cleveland City Hall, Law Department, 601 Lakeside Avenue, Room 106, Cleveland, Ohio on Friday, October 3, 2014, commencing at 2:16 p.m. and was completed without adjournment.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 5th day of October, 2014.

_____

Karen A. Toth, RPR and Notary Public
in and for the State of Ohio.
My Commission expires May 6, 2018.