

DE-IDENTIFIED DEPOSITION OF PHYSICAL MEDICINE & REHABILITATION DOCTOR

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1

2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF KINGS

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4

,

5

Plaintiff,

6

-against-

7

, M.D.,

8

M.D.,

, M.D.,

,

9

, M.D. and ,

10 Defendants.

11 ----- X

12

13

June 20, 2002

14

10:30 a.m.

15

16

17 EXAMINATION BEFORE TRIAL of the

18 Defendant,

, M.D.

19

20

21

22

23 TOMMER REPORTING, INC.

192 Lexington Avenue

24

Suite 802

25

(212) 684-2448

1

2 APPEARANCES:

3

MALLILO & GROSSMAN, ESQS.
Attorneys for the Plaintiff
150 Great Neck Road, Suite 304
Great Neck, New York 11021

6 BY: GERALD M. OGINSKI, ESQ.

7

8 Attorneys for the Defendant

, M.D.

, LLP

9

10

BY: , ESQ.

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12 , ESQS.

Attorneys for the Defendant
, M.D.

13

14

15 BY: , ESQ.

16 , LLP

17 Attorneys for the Defendant

18

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BY: , ESQ.

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, LLP
Attorneys for the Defendants,

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BY: , ESQ.

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1

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

3

4 It is hereby stipulated and agreed

5 by and between counsel for the respective

6 parties hereto that all rights provided by the

7 C.P.L.R., including the right to object to

8 all questions except as to form, or to move to

9 strike any testimony at this examination, are

10 reserved, and, in addition, the failure to

11 object to any question or to move to strike any

12 testimony at this examination shall not

13 be a bar or a waiver to doing so at, and is

14 reserved for, the trial of this action;

15 It is further stipulated and agreed by

16 and between counsel for the respective parties

17 hereto that this examination may be sworn to by

18 the witness being examined before a Notary

19 Public other than the Notary Public before whom

20 this examination was begun, but the failure to

21 do so, or to return the original

22 of this examination to counsel, shall not be

23 deemed a waiver of the rights provided by Rules

24 3116 and 3117 of the C.P.L.R., and shall be

25 controlled thereby;

1

2 It is further stipulated and agreed by
3 and between counsel for the respective parties
4 hereto that this examination may be utilized
5 for all purposes as provided by the C.P.L.R.;

6 It is further stipulated and agreed by
7 and between counsel for the respective parties
8 hereto that the filing and certification of the
9 original of this examination shall be and the
10 same hereby are waived;

11 It is further stipulated and agreed by
12 and between counsel for the respective parties
13 hereto that a copy of the within examination
14 shall be furnished to counsel representing the
15 witness testifying without charge.

16

17

18 ** ** **

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1

2

, M.D.,

3

called as a witness, having been

4

first duly sworn, was examined and

5

testified as follows:

6

EXAMINATION BY

7

MR. OGINSKI:

8

Q State your name for the record,

9

please.

10

A , M.D.

11

Q State your address for the record,

12

please.

13

A , ,

14

15

Q Good morning, Doctor.

16

What is a meningioma?

17

A It is a benign tumor involving the

18

central nervous system, including the brain and

19

spine and meninges.

20

Q Are there any symptoms that you are

21

aware of that are associated with a meningioma

22

that a patient would present with?

23 A Well, this is not my area of
24 expertise but I have general sense; depending
25 on the location of the tumor causes different

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6

1 , M.D.

2 symptoms.

3 Q Based upon your understanding and
4 your general knowledge, can you tell me of the
5 symptoms that are commonly associated with a
6 meningioma?

7 A Visual view impairment can be
8 hemiparesis weakness of the extremities or loss
9 of sensation.

10 It really depends on the location.

11 Q Over the course of your
12 career, have you had an occasion to render a
13 diagnosis in a patient who had a meningioma?

14 A Not that I recall.

15 Q Where do you currently work?

16 A Private practice in pain
17 management.

18 Q Where?

19 A I have an office in the upper
20 side of New York.

21 Q May I have the address?

22 A , ,

23 , .

24 Q Are you in practice with any other

25 physician?

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1 , M.D.

2 A No.

3 Q Does this office have a name?

4 A I have a PC.

5 Q What is that name?

6 A

7 , PC.

8 Q What is your title, if any, with

9 this professional corporation?

10 A I'm the owner.

11 Q When did you open up this

12 particular office?

13 A Approximately two and a half years.

14 Q Other than this particular office,

15 do you maintain any other office for practice

16 of medicine currently?

17 A Yes.

18 Q Where?
19 A I have another one in .
20 Q What is the name of that office?
21 A The same. Belongs to the same PC.
22 Q What is the address of that office?
23 A , ,
24 .
25 Q Do you currently have other

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8

1 , M.D.
2 physicians working in your employment at any of
3 these offices?
4 A No.
5 Q Are you a solo practitioner?
6 A Yes.
7 Q Before opening up your own office
8 known as ,
9 PC, where did you work?
10 A I worked for . I had
11 a few other jobs. I cannot recall exactly the
12 names and addresses.
13 Q Tell me when you first started to
14 work at ?
15 A I cannot recall the exact date.

16 Q Approximate month or year or season

17 of a particular year?

18 A I'm really not sure.

19 Q Let me ask it a different way.

20 When did you last work at

21 ?

22 A Approximately early .

23 Q Was there any particular reason

24 that you left ?

25 A Because I wanted to have my own

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9

1

, M.D.

2 full time practice.

3 Q At the time that you left in early

4 2,000 at , how long had you

5 worked there as of that time?

6 A Probably one year. Maybe a little

7 bit more.

8 Q Had you worked there full-time

9 part-time or something else?

10 A Part-time.

11 Q How many days a week did you work

12 there?

13 A Approximately one day a week.

14 Q Was it the same day each week?

15 A I believe so.

16 Q Were there multiple offices under

17 the name?

18 A They have two offices.

19 Q Where were those offices?

20 A Another one in .

21 Q Where was the one that you worked

22 out of?

23 A I worked both.

24 Q Let's go with the first office that

25 you just mentioned, the office.

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1

, M.D.

2 A Yes.

3 Q Where was that?

4 A I don't have the address.

5 Q What town was that in ?

6 A I think very close to .

7 Q What about the other office

8 affiliated with ?

9 A .

10 Q Do you recall that address?

11 A No.

12 Q Under what circumstances would you

13 be at on one occasion and the on

14 another occasion, how would that work?

15 A Schedule. Different time patients

16 I go there regularly in particular time.

17 Q Who was the person in charge at

18 that you would report to if

19 there was such a person?

20 MR. : Note my objection to

21 form.

22 MR. : You mean for

23 general administrative things?

24 MR. OGINSKI: Yes.

25 Q Was there an owner, a president

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11

1 , M.D.

2 of the corporation or somebody who is in charge

3 of the office if there was someone?

4 A There were two owners, I believe.

5 I don't know exactly the structure of the

6 company.

7 Q What is your knowledge as to who

8 those owners were?

9 A There's one called -- last name is

10 Dr. (phonetic).

11 Q Can you spell that?

12 A I'm not sure.

13 Q ?

14 A Yes.

15 Q The other one?

16 A I know his first name is .

17 I don't remember the last name.

18 Q Do you know what type of doctor Dr.

19 was?

20 A He was a chiropractor.

21 Q Was there a person named ,

22 was he a physician?

23 A No.

24 Q An administrator of some sort?

25 A Probably.

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12

1

, M.D.

2 Q Okay.

3 MR. : If you don't know the

4 answer, don't guess. Say you don't

5 know.

6 A I really don't know.

7 Q Do you know a Dr. ?

8 A Yes.

9 Q What is your knowledge of his

10 relationship with ?

11 A I don't know.

12 Q When you were hired, who hired you

13 at ?

14 A These two persons I just mentioned.

15 Q Were you provided with any type of

16 written contract for your employment at

17 ?

18 A No.

19 Q During the time that you were at

20 , was your name put on a

21 letterhead?

22 MR. : Assuming there was some

23 letterhead.

24 Q Assuming there is a letterhead?

25 A No.

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1 , M.D.

2 Q When bills would be sent out for

3 various treatments that you rendered, would

4 your name appear on the billings from

5 ?

6 MR. : If you know.

7 A I am not sure.

8 Q Did you receive a W2 form at the
9 end of your employment or 10 or something

10 else?

11 A 10.

12 Q Were you an employee of

13 ?

14 MR.

: Note my objection.

15 A No.

16 Q How do you know that?

17 A I'm not sure.

18 Q When you were hired, did anyone
19 inform you as to what your status would be in
20 terms of whether you were an employee or
21 something else for purposes of payments made to
22 you for your services?

23 A I was paid by hour.

24 Q Did you have a set number of hours
25 that you were required to work per week?

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1

, M.D.

2 A It's varied, depending on the

3 patient's schedule.

4 Q If you needed a particular time off
5 for vacations, how would you arrange that with
6 the group?

7 A I give them notice.

8 Q In terms of obtaining male
9 practice insurance coverage for your care that
10 you rendered to patients, were you required to
11 obtain your own coverage or were you provided
12 coverage by the , PC?

13 A My own coverage.

14 Q Before coming to work at
15 , did you have your own malpractice
16 coverage?

17 A Yes.

18 Q Were you given the option of
19 allowing to provide malpractice
20 coverage for you or something else?

21 A I don't recall.

22 Q How would you be assigned patients
23 on those days that you did work at

24 ?

25 A I don't understand the question.

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1

, M.D.

2 Q In addition to working at

3 part-time for approximately a year, did

4 you also work elsewhere during that same period

5 of time?

6 A I think I have part-time job.

7 Q Where?

8 A I really don't remember.

9 Q Did you work in a hospital?

10 A No.

11 Q Did you work in a private office?

12 A Yes.

13 Q Where was the office located?

14 A I don't remember exactly the time

15 if I was working there or overlap between this

16 job and another job.

17 Q Regardless of the precise time in

18 which you worked at another place, do you

19 recall where it was that you worked?

20 A One in office also.

21 Q Do you recall the name of that

22 office?

23 A No.

24 Q Were there other physicians in that

25 group?

1 , M.D.

2 A I'm not sure.

3 Q Is there anything that you might
4 have at home that would indicate where it was
5 that you had worked, whether it's W2 forms,
6 10 or any other documents that would refresh
7 your memory?

8 A I don't know.

9 Q Do you recall receiving 10 forms
10 from PC from more than a year;
11 in other words, more than once?

12 A I don't remember.

13 Q In preparation for filing whatever
14 taxes you may have prepared, would you have
15 kept such records to reflect earnings that you
16 had made at ?

17 A Possibly.

18 MR. OGINSKI: I would ask that you
19 just make a search. If you find any
20 10 forms to provide that to your
21 counsel.

22 Q This other job that you
23 mentioned, Doctor, how many days a week would
24 you work in the other job?

25 A I am really not sure if it's the

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17

1 , M.D.

2 same time when I was working at

3 I have another job.

4 Q Are you currently licensed to
5 practice medicine in the State of ?

6 A Yes.

7 Q When?

8 A I believe -- I don't recall the
9 exact date.

10 Q Approximately.

11 MR. : Just give him the year.

12 A 18.

13 Q Are you board certified in any
14 field of medicine?

15 A Yes.

16 Q What field?

17 A

18 .

19 Q When did you become board
20 certified, again, the year?

21 A Probably .

22 Q Are you board certified in any

23 other field?

24 A No.

25 Q Are you licensed to practice

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18

1

, M.D.

2 medicine in any other state?

3 A No.

4 Q Has your license to practice ever

5 been suspended or revoked?

6 A No.

7 Q Have you published any articles or

8 have you published any articles in any peer

9 review journals over the course in your

10 career?

11 A No.

12 Q Have you presented any papers that

13 you have prepared for purposes of national

14 presentation to physicians in your specialty?

15 A No.

16 Q Going back to when you were working

17 at , how were you assigned

18 patients that walked in the door, how did they

19 get sent to you?

20 A I just see the patient. I don't

21 know.

22 Q Was there a procedure that you were

23 aware of as to how a particular patient gets

24 assigned to you as opposed to any other doctor

25 working in that office?

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19

1

, M.D.

2 A I don't know.

3 Q Did you know a Dr. ?

4 A Yes.

5 Q Who is Dr. ?

6 A I know he's a also

7 working there.

8 Q Were there times when you worked at

9 where you had interactions with

10 Dr. about patients that you were both

11 treating?

12 MR. : When you say

13 interactions?

14 MR. OGINSKI: I'll rephrase the

15 question. Thank you.

16 Q During the time that you were

17 working at , did you have

18 occasion to consult with Dr. about

19 patients that you were both treating?

20 A No, we worked different time

21 shifts.

22 Q Were there occasions when you did

23 need to speak to Dr. about a particular

24 patient that you were both treating?

25 A I look at the report in the chart.

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1

, M.D.

2 Q Other than any notes or reports

3 that were in the patient's chart, did you ever

4 have occasion to speak to Dr. either

5 telephone or in person about a patient's

6 progress or the course of treatment?

7 A I don't recall.

8 Q Was it customary that from time to

9 time you would consult with other physicians at

10 about mutual patients that

11 various documents in the groups were treating?

12 A If it's necessary.

13 Q Would it be customary for you prior

14 to treating a patient at any given time that

15 you review the patient's chart to see what was

16 done before, if anything, in terms of any

17 doctors who had seen and evaluated the patient

18 before you?

19 A Yes.

20 Q Patient records at

21 where were they kept?

22 A In the office.

23 Q Did you have your own filing system

24 where you would keep records for patients that

25 you saw separate and apart from other doctors

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21

1

, M.D.

2 in the group?

3 A No.

4 Q If a patient that you had seen

later went to go see Dr.

or any other

6 doctor in that group, would the records be

7 found in the same central location for the

8 entire office?

9 MR. : In the recordings she

10 prepared?

11 MR. OGINSKI: Yes.

12 A Yes.

13 Q What was the custom and practice
14 that you ascribed to during the time that you
15 worked at in terms of making
16 notes about your examinations, did you hand
17 write them, did you dictate them or did you do
18 something else?

19 A I do both.

20 Q Under what circumstances would you
21 make handwritten notes and put it in the
22 patient's chart?

23 A Usually the initial evaluation.

24 Q At some point after that initial
25 evaluation, would those handwritten notes be

22

1 , M.D.

2 transcribed into a typed written format?

3 A Yes.

4 Q How soon after did you usually do
5 that?

6 A I do right away.

7 Q You do the hand notes right away?

8 A And dictating right away also.

9 Q Once you dictate whatever it is
10 you've noted on your papers, what do you do
11 with those handwritten notes?

12 A In the chart.

13 Q Does exist today, to

14 your knowledge?

15 MR. : If you know. Don't

16 guess.

17 A I'm not sure.

18 Q When was the last time you had

19 contact with anyone from ?

20 A Since I left the job.

21 Q Have you spoken to Dr.

22 about this particular patient?

23 A No.

24 MR. : You mean since she left

25 there?

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23

1

, M.D.

2 MR. OGINSKI: Yes, since she

3 left.

4 A No.

5 Q Have you spoken to Dr.

6 about this patient since the

7 time you left up until today?

8 A No.

9 Q Tell me the names of the other

10 doctors who worked at during the

11 time that you worked there other than the ones

12 before discussed; Dr. and Dr. and
13 the two gentlemen that you mentioned before?

14 A It was the psychologist.

15 Q Any other individuals,
16 professionals that worked there that you
17 recall?

18 A No.

19 Q Do you recall the name of the
20 ?

21 A I don't want to guess.

22 Q Man or a woman?

23 A Man.

24 Q Were there occasions during the
25 year or so that you worked at

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1 , M.D.

2 when you would send a patient that you had seen
3 and evaluated to the psychologist for
4 evaluation?

5 A Yes.

6 Q How would that work; in other
7 words, if you wanted a patient of yours to see
8 one of the other members in the group, how was

9 that accomplished?

10 A They schedule the patient to see

11 the .

12 Q When you say "they," who do you

13 refer to?

14 A The front desk.

15 Q What do you tell the patient

16 customarily as to what they should do to see

17 one of other people in the group?

18 A Tell them schedule the appointment

19 with the front desk.

20 Q Were there ever occasions when you

21 would go out to whatever central front desk

22 there was and make up or set up the appointment

23 for them?

24 A I don't recall.

25 Q Where did you go to college,

25

1

, M.D.

2 Doctor?

3 A University.

4 Q When did you graduate?

5 A .

6 Q That was in ?

7 A Yes.

8 Q You say College or --

9 A University.

10 Q How many years was that?

11 A It was five years.

12 Q What did you do in terms of your

13 career after completing your course of

14 study there?

15 A I did my residency.

16 Q Where?

17 A In .

18 Q Do you recall the name of the

19 facility that you did your training in?

20 A Hospital.

21 Q Where was that located?

22 A .

23 Q From when to when did you do that?

24 A to .

25 Q Was there a particular field of

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26

1 , M.D.

2 medicine that you trained in?

3 A .

4 Q After you completed that training,

5 what did you do to further your career?

6 A I came to the .

7 Q When was that?

8 A .

9 Q Upon your arrival here, what, if
10 anything, did you do to continue on your
11 career?

12 A I was studying .

13 Q Was there a formal course of
14 education to do that?

15 A Yes.

16 Q Where did you go to school?

17 A College of , State
18 University of .

19 Q Which one?

20 A State University of

21 College of . That was the name.

22 Q How many years was that program?

23 A Three years.

24 Q Did you complete that?

25 A Yes.

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1

, M.D.

2 Q When did you finish that?

3 A I can't remember the year.

4 Q Approximately.

5 A .

6 MR. OGINSKI: Off the record.

7 (Informal discussion held off

8 the record)

9 Q After completing your training

10 in , what did you do, Doctor?

11 A I did my internship in .

12 Q When did you start your internship

13 at ?

14 A Maybe .

15 Q ?

16 A I really don't remember exactly the

17 year.

18 Q What was your area of study in your

19 internship?

20 A .

21 Q After you completed your

22 internship, what did you do?

23 A I had my residency.

24 Q Where?

25 A Hospital, .

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2 Q In what field of medicine?

3 A Physical medicine .

4 Q When did you complete that?

5 A ' .

6 Q Was your residency a three-year

7 program?

8 A Yes.

9 Q Your internship was a one-year

10 program?

11 A Yes.

12 Q After completing your residency at

13 Hospital, did you do anything else

14 in terms of your career, further

15 training or subspecialty?

16 A No.

17 Q Did you ever perform any type of

18 fellowships?

19 A No.

20 Q Have you ever taken any type of

21 fellowship in the field of ?

22 A No.

23 Q Are you certified in any field of

24 currently?

25 A No.

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, M.D.

1

2 Q Or have you ever been --

3 A No.

4 Q -- been board certified in

5 ?

6 A No.

7 MR. : Off the record.

8 (Informal discussion held off

9 the record)

10 Q Doctor, after completing your

11 residency at Hospital, where did

12 you begin to work?

13 A I had a few part-time jobs before I

14 worked for .

15 Q Do you recall the names of any of

16 those offices where you worked?

17 A No.

18 Q Did you work at any hospitals

19 during that period of time?

20 A No.

21 Q Is there anything that you would

22 have at home to refresh your memory as to where

23 you worked?

24 A No.

25 Q Other than the doctors that you

1 _____, M.D.

2 mentioned and the _____ that were
3 working at _____ when you were there,
4 was there a physician who was rendering pain
5 management treatment?

6 A I'm not aware.

7 Q Was there a particular individual
8 who was in charge of the physical therapy that
9 was being rendered to patients at

10 _____?

11 A I prescribed physical therapy for
12 patients.

13 Q Was there a particular individual
14 who would _____ out that physical therapy?

15 A They had a physical therapist
16 working there.

17 Q Was there any physician that
18 oversaw the physical therapy that was
19 administered to patients?

20 A What do you mean?

21 Q When you recommended or prescribed
22 physical therapy for a patient, was there some
23 individual who was in charge of seeing that
24 that patient got the therapy?

25 A I'm not sure.

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1

, M.D.

2 Q Would the therapy be ied out by
3 therapists, physiatrist, physicians or someone
4 else, if you know?

5 A Therapist.

6 Q You had prescribed physical therapy
7 for a patient, how would you be advised that
8 the patient's progress that they were marking
9 was with the physical therapy?

10 A I do re-evaluation of the patient
11 and ask the question also and do my
12 examination.

13 Q Other than asking the patient what
14 progress they were making, were you ever
15 provided with any other information, notes or
16 otherwise, from the therapists who were
17 providing therapy?

18 A If it's necessary I can have
19 to the chart for the physical therapy notes.

20 Q Were the physical therapy progress
21 notes separate and apart from the records that
22 you would customarily see?

23 A Yes.

24 Q Where would those be kept?

25 A In the same office.

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1

, M.D.

2 Q How would you obtain those notes if
3 you wanted to see them during the time that you
4 worked there?

5 A Ask them. Give the name of the
6 patient. They'd give me the chart.

7 Q Were there ever occasions when
8 those physical therapy progress notes would be
9 put into the doctor's or the physician's
10 progress notes or reports that you would
11 customarily see?

12 A I don't recall.

13 Q Do you have an independent memory
14 as you sit here now of ?

15 A I don't recall.

16 Q Do you recall what she looks like
17 as you sit here now?

18 A I'm not sure.

19 Q Have you reviewed the copies of

18 Q Where are they?
19 A In the chart.
20 Q When was the last time you saw the
21 original chart for ?
22 MR. : He wants to know the
23 original chart, the actual original
24 records as opposed to Xerox copies.
25 A The last time I worked there

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1 , M.D.

2 was the last time I saw the patient.

3 Q In the records that you reviewed?

4 A The copy.

5 Q The copies?

6 A Yes.

7 Q Did you see any of your own

8 handwritten notes?

9 A Copy, yes.

10 Q Just for clarification purposes,
11 this report which is dated April 17th and it's
12 typed and has a signature at the last page of
13 the report, separate from a typewritten report,
14 did you also see handwritten notes that you

15 made during the course of your examination?

16 A Yes.

17 Q Okay.

18 MR. OGINSKI: Do you have copies?

19 MR. : Yes.

20 MR. OGINSKI: Can I see them?

21 MR. : I don't have any.

22 MR. OGINSKI: I don't have

23 handwritten --

24 MR. : You don't? We got

25 them from you.

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1

, M.D.

2 MR. OGINSKI: No, couldn't have

3 been. I don't have the handwritten.

4 Q Doctor, did you review any

5 deposition transcripts prior to coming here

6 today, any prior testimony given by anybody in

7 this case?

8 A No.

9 Q Did you review any other documents

10 in preparation for today?

11 A No.

12 Q Did you review any textbooks or
13 literature in preparation for this
14 deposition?

15 A No.

16 Q Were you provided with any type of
17 business cards to give patients that you were
18 seeing and treating at ?

19 A Yes.

20 Q Can you tell me what it said on
21 those business cards?

22 A I don't remember exactly.

23 Q Did it have your name printed on
24 there?

25 A Yes.

36

1 , M.D.

2 Q Was the name of also
3 printed on there?

4 A I'm not sure.

5 Q What specialty or area of medicine
6 did you practice at ?

7 A .

8 Q In addition to your reports that
9 you prepared as a result of your examinations
10 of in preparation for today, did
11 you also look at the other reports of the

12 physicians who saw and examined ?

13 A Yes.

14 Q That would include Dr. ,

15 correct?

16 A Yes.

17 Q As well as Dr. ?

18 A Yes.

19 Q Did you see in those records that
20 you reviewed any person such as a psychologist

21 or psychiatrist regarding an evaluation that

22 was done at ?

23 A I didn't see the report.

24 Q Did you see it at some point during

25 the time that Ms. was treating at

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1 , M.D.

2 that you had suggested that she
3 be seen and evaluated by a psychologist or
4 someone in that field?

5 A Yes.

6 Q Based upon these records that you
7 have reviewed, is there anything to suggest
8 that she was, in fact, seen by an individual in
9 your group for that purpose?

10 A I asked the patient. I didn't see

11 a report.

12 MR. : Do you need to look at

13 the records? If you need to look at

14 the records about any of the

15 questions that counsel is asking you,

16 you can do that. You don't have to

17 guess. You can look at the records.

18 THE WITNESS: I'd like to see

19 the report.

20 A It is one handwritten report

21 from the psychologist.

22 Q What is the date of that report?

23 A June 15, ' .

24 MR. OGINSKI: The witness reports a

25 report from " , Licensed

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1

, M.D.

2 Clinical Psychologist."

3 Q Tell me what this note says

4 under the heading "List new complaints and

5 findings"?

6 A I don't want to guess.

7 Q I don't want you to guess. If you

8 can read it, tell me what it represents?

9 A I can't.

10 Q Can you read any part of the line

11 underneath that as to whatever it is the doctor

12 has reported there?

13 MR. : Don't guess.

14 A I can only read the words

15 "resolving," the handwritten word.

16 Q Doctor, based upon records that

17 your attorney have provided, can you tell me

18 when the last time it was that you saw and

19 examined ?

20 A February 8, .

21 Q Am I correct that those notes also

22 reflect that Ms. continued to be

23 treated at at some point after

24 that time?

25 MR. : I would suffice to say

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, M.D.

2 she was seen at . The doctor

3 was no longer employed there so I

4 don't want to characterize what other

5 doctors were doing. There are notes.

6 MR. OGINSKI: Okay.

7 Q Would it be correct to say

8 there are notes for the patient being seen and

9 evaluated at all the way into

10 the year ?

11 A Yes, I saw doctor's notes on March

12 9, .

13 Q Doctor, let's go back to the first

14 time that you saw , specifically

15 your handwritten note.

16 What is the date of your note,

17 Doctor?

18 A April 16, '.

19 Q I'd like you to read, please, your

20 note in its entirety as best you can. I

21 understand it's a photocopy. If there are

22 abbreviations, tell us what they represent and

23 to continue on?

24 MR. : Just for the record,

25 it's probably not a great photocopy

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2 either.

3 A Shall I read exactly what I

4 wrote?

5 Q Yes.

6 A "39, April 13, ' . Presents motor

7 vehicle accident. Nurse 8. Center of

8 passenger."

9 Q Are there certain words that you're

10 skipping?

11 A I cannot --

12 MR. : If you cannot read it,

13 say you cannot read the word.

14 A I cannot read this word.

15 "Right knee, headache, left against, loss --

16 LOC."

17 Q What does that represent?

18 A Loss of consciousness. "Neck,

19 back."

20 Q What was the word before back?

21 A Neck.

22 Q Okay.

23 A " Hospital ER, x-ray, CT

24 of head, negative, PMH which means past

25 history, HTN allergy NKDA."

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, M.D.

2 Q That would be "no known -"

3 A "Drug allergy."

4 Q Okay.

5 A "PSH, past surgical history,
6 negative. Medication, Tylenol. Right hip,
7 left face, lower back, neck."

8 Q Did you prepare this note at the
9 time that you did your examination of
10 ?

11 A Yes.

12 Q When did you dictate your report
13 which was then typed out and dated April 17th?

14 A Immediately.

15 Q I'd like you to turn, please, to
16 your typewritten report.

17 How did you obtain the history that
18 you have written in this report?

19 A By asking the patient.

20 Q The information that she told you
21 about the x-rays and the CAT scan at
22 Hospital, how did you learn that information?

23 A According to the patient.

24 Q At any time after Ms.
25 presented to your office on April 16, , did

1

, M.D.

2 you ever take copies of the Hospital

3 records?

4

A No.

5 MR. : Did she what?

6 MR. OGINSKI: Obtain copies of

7 Hospital records.

8 A No.

9 Q Did you ever obtain copies of

10 either x-ray films or the CAT scan reports that

11 were done on April 13th at Hospital?

12 A I don't recall.

13 Q Did you ever ask to

14 fill out an authorization allowing your office

to obtain the records from

Hospital?

16 A I don't recall.

17 Q Would it have been helpful to you

18 to obtain those records at Hospital

19 for purposes of diagnosing and treating this

20 patient?

21 MR. : It's kind of

22 speculative if those records would

23 have been helpful.

24 MR. OGINSKI: I'll rephrase the

25 question then.

43

1

, M.D.

2 Q Did you feel that you needed to

3 have the records from Hospital in

4 order to prepare a plan of treatment for

5 ?

6 A No.

7 Q Did you ever learn during the

8 course of treating if the

9 results of the CAT scan was something other

10 than what the patient initially reported to

11 you?

12 A No.

13 Q Did you ever learn at any time from

14 when you last treated up until

15 the time that this lawsuit was started that the

16 results of the CAT scan that were taken on

17 April 13, at Hospital were, in

18 fact, positive?

19 A No.

20 Q Going down to the chief complaint

21 area of your report, again, this is the report

22 dated April 17th.

23 A 16th.

24 Q Well, at the top of letter it says

25 April 17th, correct?

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1

, M.D.

2 A Yes.

3 Q But that's based on your exam from

4 the day before, correct?

5 A Yes.

6 Q The chief complaint amongst them

7 she lists a headache, correct?

8 A Yes.

9 Q Also dizziness?

10 A Yes.

11 Q And left face pain, correct?

12 A Yes.

13 Q Now, these are comments that the

14 patient is making to you, right?

15 A Yes.

16 Q In addition to the other ones

17 concerning her neck and back and knee pain,

18 right?

19 A Yes.

20 Q Now, what was your custom and

21 practice that once you have identified or

22 learned of a patient's particular complaint in
23 terms of preparing a diagnosis and a plan of
24 treatment?

25 MR. : Wait a minute.

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1 , M.D.

2 Why don't you ask her what she
3 did with respect to this patient as
4 compared to her custom and practice.

5 MR. OGINSKI: Fair enough.

6 MR. : She is not saying
7 she can't answer those questions.

8 MR. OGINSKI: Fair enough.

9 I'll withdraw the question.

10 Q After obtaining the history and
11 complaints from the patient, did you perform a
12 physical examination?

13 A Yes.

14 Q Did you obtain the patient's vital
15 signs?

16 A No.

17 Q Did you obtain the patient's
18 weight?

19 A No.

20 Q What would represent the patient's
21 vital signs?

22 A Blood pressure, heart rate,
23 breathing rate.

24 Q Was it customary that on an initial
25 visit to you that you obtain that information

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1 , M.D.

2 concerning the patient's vital signs?

3 A No.

4 Q Were there people in the office,
5 technicians, nurses or other people who would
6 customarily obtain that information prior to
7 you seeing a given patient?

8 A No.

9 Q After obtaining the patient's
10 history and complaints you did a physical
11 examination, correct?

12 A Yes.

13 Q How did you examine the patient's
14 face?

15 A By observation, also palpation.

16 Q Was there any other method that you

17 used to examine the patient's head or face?

18 MR. : You mean this

19 particular patient on that particular

20 day?

21 MR. OGINSKI: This patient.

22 I'm only talking about this patient.

23 A I observed and used my hand.

24 Q What did you observe about the

25 patient's face on your examination?

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1

, M.D.

2 A Review generalize tenderness and

3 swelling.

4 Q That was on the left side of the

5 face?

6 A Yes.

7 Q What else did you observe?

8 A As compared to the right side, the

9 left eyelid was drooping.

10 Q That observation, Doctor, did you

11 form any opinions as of that date as to what

12 conditions this might represent following

13 trauma from a motor vehicle accident?

14 A I don't recall.

15 Q If you had formed any opinion as to
16 the possible conditions that this observation
17 could have represented, would you have expected
18 to make a note of that in your either
19 handwritten note or in your typewritten note?

20 MR. : Objection because
21 there's at least two pieces of that
22 question that are speculative, if she
23 had done something would you expect.

24 MR. OGINSKI: Only because she
25 said she doesn't recall.

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1 , M.D.

2 MR. : Yes, I know, but
3 that question is not going to make
4 it.

5 Q As a general sense, not
6 specifically relating to this patient, what
7 conditions does a drooping eyelid represent, if
8 any, following trauma from a motor vehicle
9 accident?

10 MR. : You mean generally
11 speaking?

12 MR. OGINSKI: Yes.

13 MR. : Let me just state

14 my objection.

15 There's certainly -- it may

16 represent some things which fall

17 outside of this witness's expertise.

18 MR. OGINSKI: That's fine. I

19 just want her general knowledge.

20 MR. : So within her

21 general knowledge and within her area

22 of expertise she may be able to

23 answer that.

24 A Can be present local injury.

25 Possible .

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1

, M.D.

2 Q Any others?

3 A That's my two main...

4 Q As part of evaluating a patient's

5 presenting condition once you have identified

6 certain observations, are there certain things

that you do in order to rule out certain

8 conditions in terms of the most likely to least

9 likely as part of your overall treatment of the
10 patient?

11 MR. : Why don't we just focus
12 on what she did with this patient as
13 opposed to what she generally does.

14 MR. OGINSKI: Okay.

15 Q Did you formulate a
16 differential diagnosis with regard to this
17 patient's observation that you made of a
18 drooping eyelid?

19 A No, that's why -- reason why I
20 referred the patient to see a neurologist.

21 Q In addition to observing the
22 patient's face you also did an examination of
23 her spine, correct?

24 A Yes.

25 Q You also examined her knee?

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1 , M.D.

2 A Yes.

3 Q You came to a clinical impression,
4 correct?

5 A Yes.

6 Q First one you have listed as post
7 traumatic headaches, correct?

8 A Yes.

9 Q Define that, please?

10 A The person complains about a
11 headache after a certain trauma.

12 Q For how long do you customarily
13 expect that condition to last, if you can
14 describe that?

15 A I can't.

16 Q The next thing you mentioned was
17 left facial contusion injury, correct?

18 A Yes.

19 Q What did you mean by that?

20 A Means soft tissue injury.

21 Q The other items that you had a
22 clinical impression of relate to her spine,
23 correct?

24 A Yes.

25 Q And her right knee?

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1

, M.D.

2 A Yes.

3 Q As part of your management plan you
4 requested an MRI of her spine?

5 A Yes.

6 Q You suspected she might have a disk
7 herniation?

8 A Yes.

9 Q Was there any other reason as to
10 why you referred the patient for neurologic
11 work-up?

12 A The headaches, history of head
13 trauma, the eyelid drooping, also spine injury
14 as well.

15 Q In addition to that referral, you
16 also formulated a treatment plan of physical
17 therapy, correct?

18 A Yes.

19 Q You had wanted that to be done
20 three times a week?

21 A Yes.

22 Q To include heat, electrical
23 stimulation, correct?

24 A Yes.

25 Q What parts of the body did you

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1 , M.D.
2 intend to have that applied to?

3 A Cervix spine and lumbar spine.

4 Q You also requested therapy for a
5 myofacial release, correct?

6 A Yes.

7 Q What is that?

8 A It's a kind of manual treatment,
9 like, very deep massage to break the muscle
10 spasim.

11 Q What part of the body?

12 A Cervical spine and lumbar spine.

13 Q The range of motion exercises were
14 for what part of the body?

15 A Cervical spine, lumbar spine.

16 Q Was there any treatment that you
17 had requested or provided to the patient
18 specifically relating to the eyelid droop?

19 A No.

20 Q Or specifically relating to the
21 headaches that she complained of?

22 MR. : You mean other than
23 sending the patient to a neurologist?

24 MR. OGINSKI: Yes, other than
25 that. Anything that she did for the

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, M.D.

2 patient.

3 A Well, take pain medication.

4 Q Was that the Tylenol that you are

5 referring to?

6 A Yes.

7 Q The restrictions that you advised

8 her to follow, those related primarily to her

9 cervical and lumbar spine?

10 A Yes.

11 Q You did not place any restrictions

12 on her at that time based upon the drooping

13 eyelid or the headaches that you learned of,

14 correct?

15 A No.

16 Q Now, you mentioned at the

17 conclusion on the last page of the report your

18 prognosis.

19 Can you define what a prognosis is,

20 Doctor?

21 A The outcome of the illness, injury.

22 Q Of the what?

23 A The illness or injury.

24 Q You write that "At this time the

25 prognosis is guarded."

1 , M.D.

2 What condition or conditions were
3 you referring to when you made that statement?

4 A Cervical spine, lumbar spine.

5 Q Were you referring at all to your
6 observations of the patient's drooping eyelid?

7 A I'd like neurology to have that
8 opinion.

9 Q I'm only asking when you wrote "The
10 prognosis is guarded," was that referring at
11 all to the drooping eyelid that you observed?

12 A No.

13 Q Or to the headaches that the
14 patient told you about?

15 A No.

16 Q The following day on April 17,
17 , Ms. presented again to the
18 Office, correct?

19 A Yes.

20 Q At that time she was seen by Dr.
21 ?

22 A Yes.

23 Q That is a man or a woman?

24 A A man.

25 Q The day after that on April 19th

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1 , M.D.

2 Ms. had presented again to

3 and was seen by Dr. ,

4 correct?

5 A Yes.

6 Q When was the next time Ms.

7 was seen in the Office?

8 MR. : By this witness?

9 MR. OGINSKI: By anyone.

10 A By me?

11 Q No, by anyone.

12 After April 19th when she was seen

13 by Dr. , when was Ms.

next seen in

14 the office?

15 A May 3, ' by Dr. .

16 Q After that who was the next person

17 who saw her in the office?

18 A Me, May 19, ' .

19 Q From the time you had last seen

20 on April 16th up until the next

21 visit on May 19th that you had with her, was

22 she undergoing the therapy that you had

23 recommended?

24 A Yes.

25 Q Is there something within the

56

1

, M.D.

2 reports that you see in front of you that would

3 confirm that she was going and treated by

4 physical therapy during that time frame?

5 A Yes.

6 Q What do you see?

7 A Because she reported her knee has

8 been better with physical therapy program.

9 Q Do you have a handwritten note for

10 this particular office visit?

11 MR. : Maybe the question

12 should be is there a handwritten note

13 in this set of records we have

14 because we have no way of knowing

15 whether these are, in fact, a

16 complete set.

17 MR. OGINSKI: Fair enough.

18 Q Is there anything in the

19 records that you have before you that reflect a

20 handwritten note that you made and/or around

21 the time that you saw on May

22 19th that's contained within the set that your

23 attorney has provided?

24 A I don't know.

25 Q Is there anything that you've seen

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1

, M.D.

2 so far that suggests that there's a handwritten

3 note contained within those copies?

4 A I don't know, no.

5 MR. : Just so the record is

6 clear, I mean you referenced that

7 these records were provided by the

8 doctor's attorney.

9 We didn't get these records

10 from the doctor and these came to us

11 as part of the discovery proceedings.

12 So whatever is there, is there.

13 Whatever is not there, is not there.

14 MR. OGINSKI: Fine.

15 I didn't mean to imply

16 anything. I meant for these purposes

17 you presented them today. That's

18 okay.

19 MR. : I just wanted to be

20 clear.

21 MR. OGINSKI: Fine.

22 Q In any event, Doctor, looking
23 at the typewritten report that you had dictated
24 which has a date of May 20th --
25 A May 19th.

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1 , M.D.

2 Q That's the day you saw the patient,
3 right?

4 A Yes.

5 Q The report is dated May 20th.

6 What complaints did she have at
7 that time?

8 A You want me to read?

9 Q I'll rephrase the question.

10 She had headaches at that time?

11 A Yes.

12 Q That she advised you about?

13 A Yes.

14 Q Also, insomnia?

15 A Yes.

16 Q Nightmares?

17 A Yes.

18 Q Also, loss of smelling function,

19 correct?

20 A Yes.

21 Q What, if anything, did you conclude

22 as a result of your examination and

23 ' description of the loss of smelling

24 function, as to what this could possibly

25 represent?

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1

, M.D.

2 A I didn't conclude.

3 Q Did you formulate any type of

4 differential diagnosis as to what this

5 condition could represent, if anything?

6 A Not my expertise to.

7 Q Was this one that you referred her

8 to specifically to identify that particular

9 complaint that she had addressed with you?

10 A I requested to evaluate follow-up

11 by a neurologist.

12 Q What was it that suggested to you

13 that her complaints of loss of smelling

14 function might be neurologically related?

15 A That's the reason I was not sure.

16 I referred her to a neurologist to make that

17 opinion.

18 Q The fact that she was still
19 complaining of headaches, what, if anything,
20 did that represent to you

21 A Consistent of her history of
22 injury.

23 Q Did you ask whether she had been
24 taking any pain medication to relieve the
25 headaches?

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1

, M.D.

2 A Tylenol.

3 Q Did Ms. wear eyeglasses?

4 A I don't recall.

5 Q On your first examination of Ms.

6 going back to April 16th of , did

7 you perform an ophthalmological examination of

8 her?

9 A No.

10 Q Am I correct, Doctor, that there

11 are 12 cranial nerves in and about the face and

12 head?

13 A Yes.

14 Q Can you identify what those 12
15 cranial nerves are?

16 MR. : I mean that's really a
17 little bit outside the doctor's area
18 of expertise.

19 MR. OGINSKI: Well, I would
20 disagree for -- let me just put on
21 the record only for the fact that she
22 has a background and training in the
23 field of ophthalmology.

24 A That is 15 years ago.

25 MR. : Let him talk.

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1 , M.D.

2 MR. OGINSKI: It's a general
3 question. It relates a good deal to
4 the issues in this case as to what
5 may or may not have been done in
6 terms of full evaluation of her
7 presenting complaints.

8 I'll tell you where I'm going.
9 Once she identifies them, I'm going
10 to ask her if she evaluated any of
11 those.

12 That's pretty much the reason

13 for my question.

14 MR. : Well, why don't you

15 ask her if she evaluated any of the

16 cranial nerves rather than having

17 this test of whether she can identify

18 any 12 of them.

19 MR. OGINSKI: Then it assumes

20 that she knows it and I'd like to

21 know beforehand if she knows it.

22 MR. : Well, why don't you

23 ask her what she evaluated. If she

24 evaluated, then she can tell you

25 which ones she did.

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1

, M.D.

2 Q Did you evaluate any of this

3 patient's 12 cranial nerves on April 16, ?

4 A No.

5 Q At any time while you were treating

6 , did you ever refer her out to

7 an ophthalmologist for an evaluation?

8 A No.

9 Q Did Dr. , based upon your
10 review of his report, review the patient's 12
11 cranial nerves?

12 A I don't know.

13 Q What is the date of Dr. 's
14 report?

15 A April 17, '.

16 Q Is there anything in the report to
17 suggest that he examined the patient's cranial
18 nerves?

19 A Not to my knowledge.

20 Q Did Dr. render any
21 conclusion in his report as to what the
22 drooping eyelid represented, if anything?

23 MR. : Just based solely on
24 her reading?

25 MR. OGINSKI: Only on the

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1 , M.D.

2 report.

3 MR. : Does she see any
4 reference to the drooping eyelid?

5 MR. OGINSKI: Correct.

6 A No.

7 Q When you saw Ms. again on
8 May 19th a month and three days later after the
9 original visit, did you make any observations
10 about any drooping of the patient's left
11 eyelid?

12 A It's resolving.

13 Q How do you know this?

14 A If it's there I'll document it.

15 Q When you say it was resolving, tell
16 me what you mean?

17 A It means no sign of eyelid
18 drooping.

19 Q If you had observed the drooping
20 eyelid, would you have expected to make a note
21 of that in your report?

22 A Yes.

23 Q Insomnia and nightmares you had
24 noted on the May 19 evaluation, do you as a
25 physician commonly see this type of complaint

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, M.D.

2 post motor vehicle accident?

3 A Yes.

4 Q What, if anything, do you recommend

5 to the patient to treat it?

6 A See a psychologist.

7 Q The patient did, in fact, see a

8 psychologist in your office on June 15th,

9 correct?

10 A Yes.

11 Q In addition on May 19th the patient

12 complained of left face pain. What, if

13 anything, did you attribute that complaint to?

14 A Because she give me a history of

15 her left side head against the window during

16 the car accident.

17 Q The fact that she was still

18 experiencing left face pain now over a month

19 since the accident, what was the significance

20 of that to you, if any?

21 A Repeat the question.

22 MR. OGINSKI: Read it back.

23 (Record read)

24 MR. : Do you understand

25 the question?

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, M.D.

2 A It means she still has not

3 resolved the injury.

4 Q Did you formulate any opinions at
5 that time on May 19th as to why the patient was
6 still experiencing this condition?

7 A The same opinion as the first time.
8 Still a soft tissue injury.

9 Q Did you have any opinion as to how
10 long this patient could expect that particular
11 condition or symptom?

12 A No.

13 Q What specific treatment, if any,
14 did you recommend for Ms. for the left
15 face pain?

16 A I don't recall.

17 Q Is there anything in your records
18 to indicate what treatment you rendered to her
19 as a result of the left face pain?

20 A No.

21 Q The fact that there is nothing
22 indicated in terms of your treatment plan for
23 that particular condition, what does that
24 suggest to you, if anything, in terms of what
25 was done for that complaint?

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2 A I don't understand the question.

3 Q The treatment plan that you had

4 listed in your report refers primarily to

5 physical therapy, correct?

6 A Yes.

7 Q The physical therapy, if I'm not

8 mistaken, would relate primarily to her neck

9 and back complaint, am I correct?

10 A Yes.

11 Q Is there any treatment that you

12 recommended for Ms. with regard to her

13 facial pain?

14 A No.

15 Q You had mentioned in your clinical

16 impression that she had a post concussion

17 syndrome, right?

18 A Yes.

19 Q Can you define that for me, please?

20 A The patient had an injury which may

21 have brief loss of consciousness, develops

22 physical symptom, some of the cognizant

23 symptoms such as nightmare, lack of

24 concentration, become irritable, headaches,

25 dizziness.

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, M.D.

1

2 Q Had you referred her to the
3 neurologist or to any other doctor besides the
4 psychologist to address those issues at that
5 time?

6 A No.

7 Q You had also noted that she had
8 post traumatic headaches, correct?

9 A Yes.

10 Q Did you render any treatment or
11 prescribe any treatment as a result of that
12 impression?

13 A Pain medication and see the
14 psychologist and neurologist.

15 Q Where do you have noted that the
16 patient was to continue the pain medication?

17 A By the history the first time she
18 was taking and advised her to continue to take.

19 Q Is there anything in your report to
20 reflect that you advised her to continue with
21 the pain medication?

22 A No.

23 Q Yes or no?

24 A No.

25 Q Did you prescribe her any

1 , M.D.

2 medication?

3 A I don't recall.

4 Q If you had would you have expected

5 to note it in your report?

6 A Probably.

7 Q Did you have scripts for

8 prescription medications that were in your name

9 or the group's name or somebody else's name

10 that you could prescribe for patients if

11 warranted?

12 A Yes.

13 Q As you sit here now, do you recall

14 whose name appeared on those prescription pads?

15 A I don't recall.

16 Q Do you have any of those

17 prescription pads today?

18 A No.

19 Q At any time while you worked at

20 did you have prescription pads

21 in your name?

22 A I don't recall.

23 Q Did you speak to Dr. between

24 April 16th and May 19th about this patient?

25 A I don't recall.

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1

, M.D.

2 Q Did you speak to Dr.

3 between April 16th and May 19th about this

4 patient?

5 A I don't recall.

6 Q Ms. was seen again by Dr.

7 on June 7th, correct?

8 A Yes.

9 Q When was the next time she appeared

10 in the office to see a physician?

11 A June 25, '.

12 Q She saw you at that time?

13 A Yes.

14 Q Is there any handwritten note

15 that's contained within the copy that you have

16 in front of you reflecting your examination of

17 June 25th?

18 A Yes.

19 Q Is that in your handwriting?

20 A Yes.

21 Q Can you tell me what you have

22 contained in that particular note?

23 Read whatever section or parts

24 contain your handwriting, Doctor?

25 A "Neck and back."

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1

, M.D.

2 Q I'm sorry, starting from the top.

3 A "June 25, '." It's not my

4 handwriting.

5 MR. : You want her to read

6 everything handwritten or what she

7 wrote?

8 THE WITNESS: This is not my

9 handwriting.

10 Q What part is in your

11 handwriting?

12 A Here. (Indicating)

13 Q What is the title or heading?

14 A "Twice a week for six weeks."

15 Q I'm sorry, it says, "Duration and

16 frequency"?

17 A "Two times a week."

18 Q "For six weeks"?

19 A "For six weeks."

20 Q Then it says, "Part of the body to

21 be treated." What do you have?

22 A "Neck, back."

23 Q What is that form?

24 A Physical therapy prescription.

25 Q Was this completed after you had

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1

, M.D.

2 examined Ms. on June 25th?

3 A Yes.

4 Q Do you have any other notes similar

5 to the notes that reflect your findings and

6 your examination of that day?

7 MR. : You mean any other

8 handwritten notes for that day?

9 MR. OGINSKI: Correct.

10 A I don't see.

11 Q Let's go back to your typed report

12 dated June 26th.

13 Ms. made certain

14 complaints that you recorded in this report,

15 correct?

16 A Yes.

17 Q They primarily relate to her neck

18 and back and right knee, correct?

19 A Yes.

20 Q Is there any complaint that she
21 made with regard to face pain on this visit?

22 A No.

23 Q Yes or no?

24 A No.

25 Q Did you inquire or ask Ms.

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1 , M.D.

2 whether she had any facial pain?

3 A Yes.

4 Q What did she reply?

5 A No pain.

6 If the patient tells me she has

7 pain I would document it.

8 Q In the event that Ms. did

9 not specifically tell you of a particular

10 complaint, would you have customarily asked

11 whether she was still experiencing any of those

12 conditions she had told you about at the prior

13 visit that you had with her?

14 A Yes.

15 Q That would be your custom, correct?

16 A Yes.

17 Q It's not something that you

18 specifically remember as you sit here today,

19 correct?

20 A No.

21 Q Now, your examination on June 25th

22 consisted of an examination of her spine,

23 correct?

24 A Yes.

25 Q As well as performing a straight

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1

, M.D.

2 leg raising test?

3 A Yes.

4 Q In the clinical impression --

5 MR. : I think also vertical

6 compression test.

7 MR. OGINSKI: Thank you.

8 Q There's also a vertical

9 compression test that you performed, right?

10 A Yes.

11 Q Those tests and that evaluation

12 relate only to the neck and back, correct?

13 A Yes.

14 Q In the clinical impression you

15 wrote -- it says, "COSY," that should be post

16 concussion syndrome, right?

17 A Yes.

18 Q Can you tell how what was the basis

19 for concluding as of that June 25th visit why

20 you still felt she had a post concussion

21 syndrome?

22 A The first three diagnoses, one,

23 two, three, should be deleted.

24 Q Why?

25 A Because the patient had no

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1

, M.D.

2 complaint on the physical examination. There's

3 no examination show -- I mean consistent with

4 the diagnosis.

5 Q The second impression is post

6 traumatic headaches, right?

7 A Yes.

8 Q The third impression that's listed

9 here is left facial contusion injury, right?

10 A Yes.

11 Q Can you explain how those three

12 clinical impressions appear in this report

13 based upon the fact you have identified and

14 told me that they should not be there?

15 A Because when they do the typing,

16 they have certain templates. Sometimes they

17 just type the previous report.

18 Q Regardless of what the typist does

19 during their transcription, after the report is

20 prepared it is then given to you for signature,

21 correct?

22 A Yes.

23 Q Prior to signing the report; am I

24 correct, that you would customarily read the

25 report to check for accuracy?

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1

, M.D.

2 A Yes.

3 Q If there were any typographical

4 changes or any other changes you would make

5 them and have them revise it, correct?

6 A Yes.

7 Q Did you make any revisions to this

8 particular report?

9 A No.

10 Q Am I correct, you did sign the

11 report?

12 A Yes.

13 Q The treatment plan as of that date
14 was to continue her physical therapy?

15 A Yes.

16 Q That again was relating to her neck
17 and back complaints and her knee complaints?

18 A Yes.

19 Q As of June 25th she had not yet had
20 an MRI of her cervical or lumbar spine,
21 correct?

22 A Correct.

23 Q When you write at the bottom of the
24 second page of your report, "She should
25 continue to be followed by orthopedics and

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1 , M.D.
2 neurology," how is that to be accomplished?

3 A By making the appointment to see
4 the orthopedic/neurologist.

5 Q Did you advise your office that you
6 wanted her to be seen again by a neurologist
7 and orthopedics or was it the patient's
8 responsibility to make those appointments?

9 A I told the patient.

10 Q In addition to telling the patient,
11 did you also tell your office staff that you
12 wanted the patient to be seen by those two
13 specialists?

14 A I don't recall.

15 Q Would it have been customary for
16 you to do that?

17 A Yes.

18 Q Then you wanted her to return to
19 you again in six weeks, correct?

20 A Yes.

21 Q Was Ms. making any
22 progress with her physical therapy?

23 A Yes.

24 Q When was she next seen in the
25 office after your June 25th visit?

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1

, M.D.

2 A By me or by other physicians?

3 Q Anyone.

4 A July 12, ' by Dr. .

5 Q He noted a chief complaint of pain
6 and discomfort in the low back, correct?

7 A Yes.

8 Q From the note appears that he did
9 an examination of her lumbar spine, correct?

10 A Yes.

11 Q In his clinical impression number
12 one he listed contusion to the head, do you see
13 that?

14 A Yes.

15 Q Do you have any knowledge as to why
16 or how his clinical impression was arrived at
17 just based on the note?

18 MR. : If you know. Don't
19 guess.

20 MR.

: Note my objection.

21 A No.

22 Q Based on this note, can you tell
23 whether Dr. examined this patient's head
24 or face during the course of his examination?

25 A No, I don't know.

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1 , M.D.

2 Q When was the patient next seen in
3 the office?

4 A August 13, '.

5 Q You saw her at that time?

6 A Yes.

7 Q Do you have a handwritten note that
8 you prepared at the time that you examined the
9 patient?

10 A Yes.

11 Q Was that also a prescription or a
12 note to continue with physical therapy?

13 A Yes.

14 Q Would you agree that would be done
15 after the examination?

16 A Yes.

17 Q Other than that note, do you have
18 any other handwritten notes for this particular
19 office visit?

20 A Not in the chart.

21 Q Let's turn then to the typewritten
22 report, please.

23 What complaint did Ms.
24 make on August 14th?

25 A Lower back pain.

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1

, M.D.

2 Q Where do you see that?

3 A Here. (Indicating)

4 Q The first paragraph under
5 "reevaluation"?

6 A Yes.

7 Q Other than the complaint that you
8 write, "However, she still suffers from lower
9 back pain that radiates to her right lower
10 extremity associated with numbness, tingling
11 sensation," at the end of your examination,
12 Doctor, did you recommend that Ms. be
13 evaluated by a neurologist?

14 A Yes.

15 Q What was the reason for suggesting
16 that she be seen by a neurologist in light of
17 what you observed and what she complained of?

18 A For her lower back injury.

19 Q Had you ever learned from Ms.
20 what comments Dr. had made as
21 a result of his examination concerning the
22 findings that you had previously observed of
23 her drooping left eyelid?

24 A I don't know.

25 Q Had you elicited from Ms.

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, M.D.

1
2 any comments that Dr. had said to her
3 as a result of his examination and findings
4 back in April of ?

5 A I don't recall.

6 Q Would it be correct to say that
7 before examining the patient on any of visits
8 that you had seen Ms. that you had
9 reviewed the other doctor's reports and
10 records?

11 A Yes.

12 Q Your examination on August 13th
13 consists of primarily the cervical and lumbar
14 spine?

15 A Yes.

16 Q Again, you performed a straight leg
17 raising test?

18 A Yes.

19 Q That was positive, correct?

20 A Yes.

21 Q Did Ms. make any
22 complaints of headaches on this visit?

23 A If she do I would document.

24 Q Did she make any complaints of
25 continued loss of smell?

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1 , M.D.

2 A No.

3 Q Was she taking any medication at
4 this time?

5 A I don't recall.

6 Q Going back to the very first visit
7 that you saw Ms. on August 16th, did
8 you ask her whether she was under the care of
9 any other physician for any reason at all?

10 A I don't recall.

11 Q You had observed that she had
12 histories of hypertension, correct?

13 A Yes.

14 Q Did you ask her what medication, if
15 any, she was taking to control her
16 hypertension?

17 A I assumed she has a primary care
18 physician to control her high blood pressure.

19 Q I don't want you to assume
20 anything, Doctor.

21 As you sit here now, can you tell
22 me whether you asked her whether she was taking
23 any medication for her hypertension?

24 A Yes.

25 Q What do your notes reflect about

1 , M.D.

2 that?

3 A Because on the initial evaluation
4 she told me she had a significant history of
5 hypertension.

6 My custom would be to ask the
7 question, "Who is taking care of your high
8 blood pressure, do you have a doctor or take my
9 medication."

10 Q What did she reply?

11 MR. : Don't guess. If you
12 don't recall.

13 A I don't recall.

14 Q Did you make a note of that
15 anywhere in any of your notes for the first
16 visit, either the typewritten report or the
17 handwritten report?

18 A About?

19 Q About who her primary care doctor
20 was and whether she was taking any medication
21 for hypertension?

22 A Not from the report.

23 Q Is there anything in your

24 handwritten notes which would reflect that?

25 A No.

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1

, M.D.

2 Q Turning back to the August 13th

3 visit after you completed your examination you

4 again formed a clinical impression, correct?

5 A Yes.

6 Q Again, the first three impressions

7 are post concussion syndrome, post traumatic

8 headaches and left facial contusion injury,

9 correct?

10 A Yes.

11 Q How did you conclude as a result of

12 your examination on the August 13th visit that

13 she still had those conditions?

14 A This should be deleted.

15 Q Why should they be deleted?

16 A The patient has no complaints. By

17 evaluation it's not consistent with the

18 clinical impression.

19 Q The bills that would be sent for

20 treatment relating to doctor's visit and

21 physical therapy were being sent to Worker's

22 Compensation, correct?

23 MR. : Well, if you know that.

24 A I don't see the bill.

25 Q Can you turn, please, to the

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1 , M.D.

2 handwritten note for the physical therapy that
3 you had.

4 A Yes.

5 Q On the top right portion on this,
6 it says, "Doctor," it lists your name, " "

7 A Yes.

8 Q "DOA," that would be date of
9 accident?

10 A Yes.

11 Q It lists April 13, '. Then it
12 says, "INS," that would represent the
13 insurance, correct?

14 A Yes.

15 Q Next to that is written, "WC,"
16 would it be fair to say that represents
17 Worker's Compensation?

18 A Yes.

19 Q Just based on that alone can you
20 tell whether the bills or payments for your
21 services and other services at
22 were being submitted to Worker's Compensation?

23 A I don't know.

24 Q Based upon the fact that
25 had Worker's Compensation coverage,

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1 , M.D.

2 would you have expected the reports that you
3 were generating that copies would be sent to
4 Worker's Compensation?

5 MR. : If you know.

6 A I don't know. I'm not sure.

7 Q At any time while you were treating
8 , did you ever correct or make
9 changes to the reports that you had generated
10 as a result of your examinations of her?

11 A I don't recall.

12 Q Going back to the August 13th
13 visit, you had recommended at that time she
14 continue with her physical therapy?

15 A Yes.

16 Q You've also given her a sequence of

17 home exercise stretching program?

18 A Yes.

19 Q Am I correct, that you were still

20 requesting an authorization for an MRI of her

21 lumbar spine?

22 A Yes.

23 Q Was it your opinion before the MRI

24 was performed that she had some form of a

25 herniation as a result of the motor vehicle

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1

, M.D.

2 accident?

3 A Yes.

4 Q When is the next time that the

5 patient was seen at ?

6 MR. : By anybody?

7 MR. OGINSKI: By anyone.

8 A February 8, and by me, Dr.

9 .

10 Q Were you familiar with a doctor by

11 the name of ?

12 A No.

13 Q Have you ever known him to be an

14 orthopedist?

15 A I heard his name.

16 Q But at any time while you working

17 at were you aware whether a Dr.

18 worked in either of the offices?

19 A I don't recall.

20 Q At some point Ms. did, in

21 fact, have the MRI that you had been

22 requesting, correct?

23 A Yes.

24 Q On February 8, , you saw Ms.

25 . Is this a handwritten note that you

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, M.D.

2 made contemporaneously with your examination?

3 A It's for a physical therapy

4 prescription.

5 Q That was written on that date on

6 February 8th?

7 A Yes.

8 Q Turning, please, to your

9 typewritten report, the date of that report is

10 February 9th?

11 A Yes.

12 Q Can you read the reevaluation

13 paragraph, please?

14 A "Ms. reports she has not

15 been to our office since September of '

16 because she had a brain tumor for which she had

17 an operation in September. After surgery she

18 continued to be followed by our neurosurgeon.

19 She came today for reevaluation and asked him

20 to resume her physical therapy."

21 Q Did Ms. make any

22 complaints referable to her vision or to any

23 aspect of her brain tumor?

24 A If she did I would document it.

25 Q In fact, you don't have anything

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1

, M.D.

2 recorded there. What does that suggest to you?

3 A Which means she didn't complain to

4 me.

5 Q Did you learn from Ms.

6 under whose care she was currently seeking

7 treatment for her brain condition?

8 A Currently?

9 Q At the time that you saw her on

10 February 8th.

11 A I didn't recall.

12 Q Did you ever obtain any records
13 from any physicians who had treated her for
14 that condition or involving the brain tumor?

15 A I don't recall.

16 Q Were there occasions when you
17 worked at when you requested
18 patient's records from other physicians?

19 MR. : Generally speaking?

20 MR. OGINSKI: General.

21 A Yes.

22 Q How would you obtain other doctor's
23 records?

24 A I ask the front desk. They do
25 their procedure. I don't know how.

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1

, M.D.

2 Q How would you learn when those
3 records came in?

4 A They'd present it to me.

5 Q Was there ever an instance while
6 you were treating Ms. when you were

7 provided records from any other source other
8 than regarding treatment
9 she had received elsewhere?

10 A I don't recall.

11 Q If records did come in for a
12 particular patient, would those other doctor's
13 records be maintained in the same place that
14 you had kept your own reports?

15 A I'm not sure.

16 Q Your impression at that time on
17 February 8th, did that relate only to the neck
18 and back complaints she was still experiencing?

19 A Yes.

20 Q Can you tell me from the papers you
21 have in front of you when she actually had the
22 MRI of her back and her neck?

23 A February 3, .

24 Q Where was that done?

25 A , PC.

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1 , M.D.

2 Q At the time that you saw her on

3 February 8th, did you have the results of that

4 imaging?

5 A I'm not sure.

6 Q Was it customary when the results
7 were presented to you that you would initial
8 it, sign it and then put it in the chart?

9 A No.

10 Q Did you ever advise Ms. of
11 the results of the imaging studies done on
12 February 3rd?

13 A I'm not sure.

14 Q If you had done it, would you have
15 made a note of that in the chart?

16 A Yes.

17 Q Is there any notation in your
18 chart, in your report?

19 A No.

20 Q Let me ask you to turn back,
21 please, to the visit of April 19th that the
22 patient made with Dr. , the orthopedist.

23 As one of the chief complaints on
24 that visit he records that she had severe
25 headaches, correct?

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, M.D.

2 A Yes.

3 Q Is there anything in this written
4 or typed report to suggest what, if anything,
5 was done for her complaint of severe headaches?

6 MR.

: Note my objection.

7 MR. : Anything in the
8 report that talks about what was
9 done?

10 MR. OGINSKI: If anything,
11 correct.

12 MR. : You're asking her
13 to read the note?

14 MR. OGINSKI: Correct.

15 A I don't see from the report.

16 Q You don't see any treatment?

17 A Any treatment plan for this
18 particular complaint at this particular report.

19 Q Can you turn, please, to the May
20 3rd examination that Ms. had. The
21 report is dated May 4th. This is the
22 orthopedic examination by Dr. . Again, he
23 notes the patient has a chief complaint of
24 headaches, correct?

25 A Yes.

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, M.D.

2 Q In addition to pain and discomfort

3 in the lower back, right?

4 A Yes.

5 Q Is there anything that you see in

6 Dr. 's note dated May 4th to indicate if

7 any treatment was provided for her complaint of

8 severe headache?

9 MR.

: Just note my objection.

10 MR. : Just reading the

11 note.

12 A No.

13 MR. OGINSKI: Off the record.

14 (Informal discussion held off

15 the record)

16 Q Can you tell me what a

17 differential diagnosis is?

18 A For her headache?

19 Q I'll rephrase?

20 MR. : Just generally

21 speaking.

22 Q What is a differential

23 diagnosis?

24 MR. : Just generally

25 speaking.

1
2 A Generally speaking, the
3 patient's history, complaints of -- from this
4 particular patient or generally?
5 Q No, as a general question.
6 A Headaches of -- many different kind
7 of headaches.
8 MR. : No, he wants to know
9 can you tell him what a differential
10 diagnosis is, generally speaking.
11 Just generally.
12 A You have injury, high blood
13 pressure --
14 Q No, Doctor, I don't want to know
15 specifics.
16 MR. : Maybe rephrase the
17 question. I don't think she
18 understands.
19 MR. OGINSKI: Sure.
20 Q During the course of your
21 training, did you learn that as part of
22 an examination and your history and physical
23 that you prepare or identify or create a
24 differential diagnosis to evaluate what
25 possible conditions the patient might be

, M.D.

1 , M.D.

2 suffering from?

3 MR. : Well, note my objection
4 to the form.

5 MR. OGINSKI: I'll rephrase.

6 MR. : Take out some of
7 the stuff about her history and her
8 training and so forth.

9 MR. OGINSKI: Okay.

10 Q Is a differential diagnosis an
11 attempt to rule out certain conditions that the
12 patient may have in order to ascertain what the
13 patient may, in fact, have?

14 A Yes.

15 Q In deciding or trying to determine
16 what conditions the patient has, do you
17 formulate either in your mind or in paper those
18 different causes that might be attributable to
19 a particular complaint or a condition that you
20 observe?

21 A Yes.

22 Q Did you have a custom and practice
23 during the time that you worked at
24 that when you made certain observations
25 or learned of certain complaints the patient

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1 , M.D.

2 was having that you formulated a differential
3 diagnosis?

4 A In my expertise, yes, my area of
5 expertise.

6 Q When you formulated a differential
7 diagnosis, did you reduce that to writing, did
8 you put it on paper?

9 A Yes.

10 Q If you were later transcribing that
11 into a report, would you also dictate your
12 differential diagnosis?

13 MR. : Hold on.

14 MR. OGINSKI: I'll rephrase.

15 MR. : Focus on what she
16 did in this case.

17 MR. OGINSKI: That's what I'm
18 going to do.

19 MR. : You have a very
20 round about way of getting to it.

21 Why don't we just get to it.

22 Q At any time while you were

23 treating and you concluded that
24 she had post concussion syndrome, did you ever
25 conclude or reach any other possible causes or

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1 , M.D.

2 explanations for the headaches she was
3 experiencing?

4 MR. : Well, hold on a second.

5 I don't think she said that she
6 ever reached a conclusion as to what
7 was causing this patient's headaches.

8 MR. OGINSKI: I'll rephrase the
9 question.

10 MR. : Okay.

11 Q As a result of the headaches
12 that complained of, am I
13 correct, that it was your clinical impression
14 that she had a post concussion syndrome?

15 A Yes.

16 Q In addition to that syndrome that
17 you have identified, did you ever consider any
18 other alternatives that she might be suffering
19 from as a result of the symptoms she described
20 to you specifically relating to the headaches?

21 A No, because the history she gave to
22 me is consistent with my clinical impression.

23 Q You had also concluded in your
24 clinical impression that she was suffering from
25 post traumatic headaches, correct?

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1 , M.D.

2 A Yes.

3 Q Did you ever consider other
4 alternatives to the motor vehicle accident that
5 would be attributable to the headaches that she
6 complained of?

7 A Repeat the question.

8 Q Sure.

9 When you wrote post traumatic
10 headaches you were referring to the trauma she
11 sustained on April 13th in the motor vehicle
12 accident, correct?

13 A Yes.

14 Q Did you ever attribute her
15 complaints of headaches to any other possible
16 cause other than what you have already
17 attributed to?

18 MR. : Well, I think she
19 already said one of the reasons she
20 sent the patient to the neurologist.

21 MR. OGINSKI: Correct, I
22 understand that.

23 MR. : So I think you're
24 -- she is a pain management doctor.
25 I think you're getting somewhat

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1 , M.D.
2 outside of her area of expertise.

3 MR. OGINSKI: I just wanted to
4 know what her thinking was, knowing
5 that she did send the patient to a
6 neurologist. Did she consider any
7 other alternatives or other
8 possibilities that these headaches
9 could arise from.

10 MR. : She already told
11 you that she considered within her
12 area of expertise. She doesn't
13 consider things outside of her area
14 of expertise. I mean she already

15 told you that. It's on the record.

16 Q The loss of smelling function

17 that you observed on May 19th as the patient

18 advised you about, did you perform any tests to

19 address that complaint?

20 A No, I think it's more properly to

21 refer to a neurologist.

22 Q Did you see any other neurological

23 note by Dr. or any other neurologist at

24 with regard to that complaint?

25 A No.

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, M.D.

2 Q The records that you have in front

3 of you reflect when Ms. was last seen

4 for physical therapy at ?

5 A I don't know. I only see a

6 doctor's report.

7 Q Based on the report that you have,

8 what is that date again?

9 A March 9, .

10 Q Who saw her at that time?

11 MR. : In the records that we

12 have been provided with there's an

13 exam that's dated March 9th of .

14 The report is dated June 4th but it

15 looks like what we have is only one
16 page. It doesn't seem to be a
17 signature to your page.

18 A It's a follow-up orthopedic
19 evaluation.

20 Q Let me go back again to your first
21 visit of April 16th. On that date Ms.
22 complained of dizziness. To what, if anything,
23 did you attribute that complaint?

24 A The injury in the car accident.

25 Q Did you contribute that complaint

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1 , M.D.

2 to any other cause or condition other
3 than the trauma she had sustained on April
4 13th?

5 MR. : Again, limiting her
6 answer to her area of expertise?

7 MR. OGINSKI: Yes.

8 A Consistent with the injury she
9 give to me.

10 Q Other than being consistent, did
11 you consider any other cause for the

12 dizziness that she experienced and addressed

13 with you?

14 A I don't recall.

15 Q In the year that you worked at

16 , were there times when you did

17 perform funduscopic examinations of patients?

18 A No.

19 Q Were there occasions when you did

20 refer patients to ophthalmologists?

21 A I don't recall.

22 Q In April of , had you become

23 board certified at that time?

24 MR. : Do you know when in '

25 you got board certified?

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, M.D.

2 A I don't recall.

3 Q The board certification

4 examinations for physical medicine

5 rehabilitation, did that include a written part

6 of the examination?

7 A Yes.

8 Q In addition to the written part,

9 did it also require an oral examination?

10 A Yes.

11 Q Was there some requirements that
12 you have some clinical training or experience
13 before you can sit for your boards?

14 A Yes.

15 Q When you wrote on August 14,
16 as part of your clinical impression, which you
17 mentioned should not be in that particular
18 report, you wrote "Left facial contusion
19 injury." What did you mean with regard to that
20 comment?

21 MR. : I don't think she said
22 she wrote that. I think she said
23 that that was picked up as part of
24 template. So I don't think she
25 actually said she wrote that.

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, M.D.

2 MR. OGINSKI: Okay.

3 Q As it relates to one of the
4 prior reports that you did refer to, the left
5 facial contusion injury, what did that mean to
6 you?

7 A Part of soft tissue injury during
8 the accident.

9 Q Did you observe any bruises on Ms.
10 ' face on August 16th?

11 A If I did I'd document it.

12 Q Did she have any unusual
13 discoloration to her face that you observed?

14 MR. : On?

15 MR. OGINSKI: On August 16th.

16 MR. : August 13th, I

17 think you mean.

18 MR. OGINSKI: No, I'll rephrase

19 the question.

20 Q When you saw Ms. on
21 April 16, , did you observe any bruises to
22 her face?

23 A If I did I'd document it.

24 Q Did you observe any cuts or
25 scratches or open wounds to any part of her

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1 , M.D.

2 body that you examined or observed on that

3 date?

4 MR. : I think it should be

5 clear the doctor has already said her
6 evaluation of the patient's face was
7 based upon observation and palpation.

8 So if you want her to be more
9 specific as to what she exactly saw I
10 think she already said she can't
11 recall.

12 Q At any time from April up
13 until February of , did you ever learn that
14 she had been diagnosed with a meningioma?

15 A I saw her on February 8, . The
16 first time I knew she had a brain tumor. I
17 don't know exactly what kind of tumor.

18 Q Did you ask her any questions about
19 the treatment she received for that brain
20 tumor?

21 A Yes.

22 Q What did you ask her?

23 A She told me she had surgery.

24 Q Other than what is contained in
25 your typed note, do you recall any conversation

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2 with her that day?

3 A I don't recall.

4 Q How would you be paid for your

5 services at , would it be cash

6 check or something else?

7 A Check.

8 Q Whose name appeared on the check?

9 MR. : You mean who signed the

10 check?

11 MR. OGINSKI: No.

12 Q What name was printed at the

13 top of the check, if any?

14 A I don't want to guess. I don't

15 recall.

16 MR. OGINSKI: Off the record.

17 (Informal discussion held off

18 the record)

19 Q When you first started to work

20 at , did anyone ever indicate to

21 you that you would be considered an independent

22 contractor and use those specific words?

23 A I don't recall.

24 Q Did anyone suggest to you or tell

25 you that you would be an employee of the

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2 , PC, Group?

3 A I don't recall.

4 Q Did you have an understanding as to

5 what your status was at , whether

6 you were an employee or had some other status

7 there?

8 MR.

: Note my objection as it

9 calls for a legal conclusion.

10 Q Just your understanding,

11 Doctor.

12 MR. : Do you have an

13 understanding?

14 A I was hired for doing

15 consultation for pain management.

16 Q Were there ever times when other

17 physicians in the group would be supervising

18 you?

19 A No.

20 Q Were there times when other doctors

21 in the group would be reviewing your treatments

22 of patients in your presence or with your

23 knowledge?

24 MR. : If you know.

25 A I don't know.

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, M.D.

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MR. OGINSKI: Thank you, Doctor.

3

MR.

: No questions.

4

MR. : No questions.

5

MR. : No questions.

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(Time noted: 12:17 p.m.)

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EXAMINATION BY PAGE

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MR. OGINSKI 5

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7 R E Q U E S T S

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2 C E R T I F I C A T E

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4 I, , hereby certify that

5 the Examination Before Trial of

6 M.D. was held before me on June 2, ;

7 That said witness was duly sworn before

8 the commencement of the testimony;

9 The within testimony was stenographically

10 recorded by myself and is a true and accurate

11 record of the Examination Before Trial of said

12 witness;

13 That the parties herein were represented

14 by counsel as stated herein;

15 That I am not connected by blood or

16 marriage with any of the parties. I am not

17 interested directly or indirectly in the matter

18 in controversy, nor am I in the employ of any

19 of the counsel.

20

21 IN WITNESS WHEREOF, I have hereunto set my hand

22 this 20th day of June, .

23

24 _____

25

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