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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS
----------x
,
Plaintiff,

- against -

, P.C., , D.P.M., , D.P.M.,
,
P.C. and ,

Defendants.

- - - - - - - - - - - - - - - - - - x

December 8, 2006
10:50 a.m.

CONTINUED DEPOSITION of , M.D., one of the Defendants herein, taken by the Plaintiff, pursuant to Order, held at the offices of , LLP, 90 Merrick Avenue, East Meadow, New York, before Karin Genalo, CSR, a Notary Public of the State of New York.

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LAW OFFICES OF GERALD M. OGINSKI, LLC
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Attorneys for Defendant
, D.P.M.

BY: , ESQ.

NOT PRESENT:
, ESQS.

Melville, New York 11747
Attorneys for Defendant

, M.D., called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. OGINSKI:

Q. Please state your name for the record.

A. .

MS. : Can you mark the doctor's medical chart, please?

(The above-referred-to document was marked as Plaintiff's Exhibit Number 2 for identification as of this date.)

MR. OGINSKI: Good morning, Doctor.

THE WITNESS: Hi, how are you?

Q. Could you please take a look at the X-rays that you have contained in your original chart which has been marked as Exhibit 2, please, and if you can just pull out all those X-rays.

MS. : Are you

going to want him to interpret them because we can get a shadow box?

MR. OGINSKI: No, I want him to identify them.

Q. Can you go through with me, Doctor, and tell me what X-rays you have in front of you and the dates, please?

A. Sure.
Q. And which feet they represent.
A. Okay. In successive order or just arbitrarily?
Q. Whichever ones you have is fine.
A. Okay.
MS. : Off the record.
(A discussion was held off the record.)
A. Okay. This is January 24 of '03, this set of X-rays.
And these are --
Q. Hold on.
Can you identify how many

X-rays you have for January 24th?
A. Five.
Q. And what are those views or films that you have in front of you?
A. Okay. First view, we have a left foot, this would be considered the medial oblique view.
We have a right also medial oblique.
Q. When you say right, you mean right foot?
A. Right foot, yes.
This is a right foot anterior posterior or DP view.
Left foot, same, anterior posterior DP view.
And we have lateral views, lateral views left foot and lateral views right.
MS. : On one film, from one sheet?
THE WITNESS: Yes.
Q. And on each of those films, Doctor, may I just see --

A. Sure.
Q. There is one film which is, if you could take a look at it, there is no markings at all on it, either dates, names or anything else, do you see any identifying features on that particular film?
A. With the actual bone itself, you mean?
Q. With the patient's name.
A. Oh, the name.
No, there isn't. However,

when a patient first comes in there are a certain set of views that we always take, two laterals, one on each foot, one medial oblique on the right and one medial oblique on the left. And the same with AP, AP, DP views on right and left. So there is always a total of six views on every patient.

Q. Other than your customary practice of taking those views, is there any other identifying feature on this particular film that you're holding in

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front of you which would specifically identify this film as being for ?

A. In terms of labeling, no.

Q. Is there any labeling to indicate the date that that particular X-ray was taken or the patient's name for that particular film?

MS. : Can we identify which film exactly we're talking about?

That's the left foot.

Which one is that?

THE WITNESS: This is for --

No, neither one of the same view are indicated right or left. They're medial oblique views, but it does not indicate right or left.

Q. And one of those has a sticker on that identifying ?

A. Right, and the date.

Q. And the other film that you're looking at has no identifying

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features?

A. Right.

MS. : Which foot does not have identifying features? Which foot doesn't have a label on the film?

THE WITNESS: This here is the left. (Indicating.)

MS. : Okay.

THE WITNESS: This is the right. (Indicating.)

MS. : The right has a label, the left does not.

Okay, got it.

THE WITNESS: Both taken on the same day.

Q. And that's the AP view?

A. No; this is the medial oblique.
Q. Can you turn to the next group of X-rays that you have?
A. Sure.
, left foot.
Q. What date, Doctor?

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A. November 26 of '03, two views.
Q. Left foot, right foot?
A. Both left.
And the view is an ankle mortise view, and an AP view of the left ankle.
Q. Do you have any other X-rays in your chart relating to ?
A. That's it.
Q. Am I correct that both sets of X-rays, the ones on January 24th of 2003 and the November 26, 2003 X-rays, were taken in your office?
A. Yes.
Q. And you had, I think, previously told me that you had personally reviewed those X-rays and evaluated them?
A. Yes, I did.
Q. Okay.
Doctor, let's talk about the tendon lengthing procedure.
A. Sure.

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Q. At any time after you recommended the procedure to , did you ever suggest to her that the tendon lengthening procedure may not work to cure or alleviate her problems that she was experiencing?
A. I don't recall any specific comment to that effect. I'm sure I did suggest to her that the lengthening procedure would alleviate to some degree, but I don't recall any specific comment made.
Q. What were the risks or the chances that after performing this type of procedure she would not achieve any lessening or reduction of the complaints that she was experiencing?
A. Just repeat the question again.
Q. Other than the tendon lengthening procedure, did you recommend any other surgical alternative to ?

A. No.
Q. Were there any other
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surgical alternatives in your opinion that were available to her to treat her ongoing condition and her complaint?
A. No.
Q. Did you suggest to that one option was not to do any surgery and simply to continue on with conservative care and treatment?
A. No, that suggestion was not made.
Q. In the tendon lengthening procedures that you had done in your career, had you experienced success in terms of having the patients' problems alleviated with that type of procedure?
MS. : Objection to form.
Q. In the past, Doctor, when you had performed tendon lengthening procedures, and understanding that there were different patients maybe for different reasons why you did the procedures, had you experienced success in the procedures you had performed?
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MS. : Objection.
Q. When you had talked to about doing the tendon lengthening procedure, did you explain to her that there was the possibility that even if the procedure is done she would not achieve the desired result and not achieve her reduction of pain and symptoms?
MS. : May I have that question again?
(The requested portion was read by the reporter.)
MS. : Fine. That there was a possibility.
Go ahead.
A. Yes, I did discuss with her specifically risks, possible complications, desired objectives may or may not be obtained, there was no surety.
Q. Now, I understand you're talking generally, do you have a specific memory of what it was that you told her?
A. I don't have a specific
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memory.

Q. That's all right.
MS. : Let him finish.
Were you done with your answer?
A. I was going to say that, but a general comment that I make to all of my patients.
Q. No, that's okay, we went through the general stuff before.
When you talked to about the procedure, were her parents present?
A. I really don't recall.
Q. Did you tell that her tendons were too tight and needed to be stretched?
A. Elongated or lengthened.
Q. Did you ever tell or her parents that her bones in part of her ankle were too large causing the tendons to become irritated?
A. Yes, I did. I did

mention --
Your question was to her parents or to her?
Q. Either to her or her parents together.
A. It would be to her, yes, I did make mention that there was an osseous component there, an enlargement of the bone that was actually causing friction or irritation to the tendon coursing around it.
Q. Now, when you actually performed the tendon lengthening procedure, you actually cut through the tendon, correct?
A. No.
Q. During the course of the surgery, you make incisions into the tendon, correct?
A. Not through and through, but the tendon is incised but not entirely.
MS. : Your previous question was cut through it.
MR. OGINSKI: I'm sorry.

Q. And as part of any type of cutting during surgery there is a risk of forming adhesions afterward?
A. Sure.
Q. And when you form adhesions, there is the risk of contractions?

A. Absolutely.
Q. And can contractions cause pain or stiffening or tightness?
A. It can.
Q. And can that aggravate the patient's symptoms of pain as well?
A. Absolutely.
Q. And at some point post-operatively, did you notice or observe that had complained of continued complaints of pain unrelated to incisional pain?
A. Not at the postoperative site, no.
Her pain became more apparent due to the irritation from the bandage causing an ulceration to her heal, an allergic response that I believe

occurred from the cast padding, that was more her complaint afterwards. No more than general postoperative incisional pain that everyone experiences. There was nothing specific.
Q. Did you form any opinion after the surgery that she had developed some type of adhesions that was causing her continued complaints?
MS. : Objection to form, but you can answer.
A. I'm sure I did. I don't recollect any specific comment, but I -- if I may make a general statement, I make a, I make my patients very aware that any incision is going to produce scar tissue and keloid, so --
Q. How do you tell the patient, look, we're going to treat you with this procedure, but the procedure itself may have certain problems and you may still have the problems you came in with, how do you reconcile that in terms of recommending a particular procedure to

the patient to alleviate their symptoms?
MS. : Objection to form.
Q. When you talked to about doing this type of tendon lengthening procedure --
By the way, is there more than one way to do the tendon lengthening procedure?
A. I suppose, yes, there are. They all achieve the same goal.

There is one particular Z-plasty which I usually do quite frequently.

Q. That's what you did in this case?

A. Yes.

Q. Doctor, I'd like you to take a look at your post-op notes, your typed notes starting with July 7th, 2004.

MS. : Off the record.

(A discussion was held off the record.)

A. That date again?

Q. July 7th.

MS. : July 7th, '04.

Q. You write in your note, Doctor, patient states that she is in considerable pain and discomfort to her left foot. Patient states that she is not in pain at the ulceration site secondary to the cast incision. Can you explain to me why, in your opinion, was in pain as of July 7th?

MS. : Do you have an opinion?

A. I really don't, no more than just postoperative complications, that's usually part of that.

Q. You continue on in your note by saying that the incision is not painful either. Do you identify where exactly it is that is experiencing the pain and discomfort to her left foot?

A. Usually when she was standing or walking, which I really

didn't sense that she was entirely compliant, that's when her pain was greatest.

Q. I'm only asking, in your note do you identify where it is in her foot that she experiences the pain that she describes?

A. No, I don't.

Q. You continue by saying patient states that she is in pain when weightbearing especially on dorsiflexion and weightbearing. Did you ask her specifically where she was having the pain?

A. Let me explain. When the foot is dorsiflexed it's going to add

particular tension to the incision site, whereas, otherwise there would be no pain. But flexing a foot and the ankle and that tension being placed on the incision site and scar tissue that would produce pain.

Q. However, you note that the incision is not painful either?

A. Right, ordinarily, but upon dorsiflexion and weightbearing it could become painful.

Q. Did you explain to the basis or the reason why she would still be having pain as of July 7th, 2004?

A. Again, I'm sure I did, but my note may not indicate that.

Q. Now, just to be clear, the surgery that you performed was done on May 14, 2004?

A. Yes.

Q. This is now almost two months postoperatively, in your opinion, Doctor, is it customary or normal for a patient to have this type of pain almost two months postoperatively?

A. Yes.

Q. Why?

A. For a myriad of reasons.

Again, this is the foot and you're standing on it. It is not a limb that is, such as an arm or a hand. The foot maintains quite a bit of weight and

she is, if I recall, a big girl, fairly tall, so this would indicate or exacerbate any kind of postoperative pain or complications.

Q. Did you recommend that she limit her weightbearing?

A. Yes.

Q. In what regard?

A. What?

Q. How?

MS. : At what point in time?

MR. OGINSKI: As of July 7th.

A. Well, my recommendations to limit weightbearing is immediately post-op.

Q. At this point, other than recommending physical therapy and ultrasound, what other treatment did you recommend in order to reduce the pain

that she was experiencing, as well as the medication that you described in this note?

A. Yes. I don't recall if there was any other recommendation.
Q. Did you have an opinion at that time as to how long it would take her to reduce the pain that she was experiencing?
A. No.
Q. Did you form an opinion as to whether the pain she was experiencing was related to adhesions as a result of the surgery?
A. When you say form an opinion and indicate that to her?
Q. Yes.
A. I had an opinion, yes, which is why I had initiated the ultrasound and referred her to physical therapy, which would help alleviate that scar tissue.
Q. When you would send her to physical therapy, was it your intention that she have ultrasound therapy at the physical therapy place?
A. Yes.
Q. What was the purpose of

having it both done at your office and also the physical therapy place?
A. Well, if I recall, she didn't have ultrasound at my office very often. I can't really recall many ultrasound visits at all.
I might have initiated ultrasound in my office one time and then thereafter in the process of getting authorization from the insurance company for outside physical therapy care, it would commence at that point outside. But many times I will initiate the first treatment.
Q. And is it customary that after a procedure such as this tendon lengthening procedure, when the patient first starts to bear weight on the leg, that they do experience some discomfort, either stretching, pain or something like that?
A. Yes.
Q. And, typically, how long does it take for those types of symptoms

or complaints to resolve?
MS. : Objection.
Q. If you can tell me generally.
MS. : If you can answer that generally. Every patient is different, I would assume. But if you can answer that in the full spectrum of patients.
A. I believe you're asking me typically when does pain usually begin to resolve with most patients in this type of procedure?
Q. Yes.
A. Typically, I would say about three months. Not that in three months pain is entirely diminished, but that is usually when they begin to feel much better. The adhesions begin to break up and scar tissue diminishes.
Q. Did you prescribe any type of pain medication for for what you describe as considerable pain and discomfort on the left foot?

MS. : At what point in time?
MR. OGINSKI: On July 7th.
A. Yes, I did.
Q. That was to reduce the inflammation and swelling?
A. Yes.
Q. Is that specifically a pain reliever or an anti-inflammatory?
A. Yes.
MS. : Yes, it is what?
THE WITNESS: An anti-inflammatory.
Q. And that's the Lodine?
A. Yes, it is.
Q. Separate and apart from the Lodine, did you prescribe any pain relief medication to her?
A. I don't believe I did.
Q. And would you have expected that if you had you would have made a note of that somewhere in your chart?
A. Yes.

Q. Can you turn, please, to your next postoperative visit, July 10th?
On the third line you write, still experiences pain along the incision site and the foot in general is swollen,

do you see that?
A. Yes, I do.
Q. Now, just three days earlier you had indicated that there was no incision pain?
A. Yes.
Q. Did you have any opinion as of July 10th as to why she was now experiencing incision pain?
A. Well, incision pain is intermittent, it could be very painful at one point and the next day it can be much more bearable.
Also, these are subjective complaints, so the patient may feel better one day and not so great the following, so --
Q. Now, the comment that you made about the foot in general being

swollen, that is something that you observed, correct?
A. Yes.
Q. And even though you noted it was swollen you said the swelling had reduced --
A. Yes.
Q. -- I imagine from the previous --
A. Absolutely.
Q. -- visit.
A. Yes.
Q. The swelling that you observed, can you describe or quantify for me in any fashion, other than what you have in your note, as to the swelling that you observed?
A. No more than it was localized, that I can recall, did not consume the whole foot.
She did have swelling near the ulceration, which is typical of ulcers, but nothing out of the ordinary.
Q. And did you explain to her

how long that swelling would last for?
A. I don't recall if I did or not.
Q. To your knowledge, after you had recommended or prescribed the Lodine, did she tell you that she had obtained the medication and was taking it?
A. I don't recall.
Q. And, to your knowledge, was the patient continuing to do her range of

motion exercises as you had encouraged her to do in your note?
A. You know, again, I don't recall, but most patients -- again, I'm trying to keep this as specific as possible, but in general most patients are not very compliant.
Q. I'm not asking about general, Doctor.
A. That's what I'm saying, I can't recall whether she was doing it or not.
Q. Is it normal, Doctor, for a patient, after undergoing a tendon

lengthening procedure to, postoperatively, to have swelling in her foot?
MS. : Objection to form, but if you can answer in that form go ahead.
A. Normal, sure.
Healing rates differ from patient to patient, activity level, compliance levels, size of patient, so, yes.
Q. Can you turn, please, to your July 14 follow-up visit?
A. I'm sorry, the date?
Q. The next visit, 7/14.
At the end of the second line it says swelling is gradually diminished, patient continues to guard, however, less so. What did you mean by patient continues to guard?
A. Guarding is basically a patient's -- I don't know if the word is refusal to move their foot for fear of ing something or causing greater

complications, that sort of thing. So she still was, I guess, very apprehensive about certain types of range of motion that I was encouraging her to do.
Q. Typically, when a patient guards against moving a part of their limb or body, is it typically because of pain that they're experiencing?
A. Not necessarily.
Q. In this particular case, did she explain to you that she was having some pain when she tried to move her foot either passively or actively?
MS. : At what point in time?

MR. OGINSKI: On July 14.
A. I don't recall.
My note does not indicate that there was pain that prevented or, I should say, caused her to guard.
Q. You said that patient encouraged to continue doing passively move foot in an inverted position as much as possible, was that the positioning

that she was guarding?
A. Yes.
Q. And did you have any conversation with her as to why she might be experiencing any difficulty with that movement in particular?
A. Well, I don't recall any particular conversation, but it would make sense that she would guard upon inversion because that does provide extra stress on the tendon that was just lengthened.
Q. Can you turn, please, to your letter dated August 25, 2004 on your letterhead? It says to whom it may concern, who was this letter to be sent to, Doctor?
A. I don't recall to whom it may concern. It was apparently a letter that she requested from my staff.
Q. Is that for getting additional physical therapy visits?
A. Yes, but a particular name I'm not sure of.

Q. It was to be extended for another 16 visits?
A. Yes.
Q. Now, you write, after her most recent evaluation, can you tell me which evaluation it is that you referred to concerning that date of her last or of her most recent evaluation before August 25?
MS. : Do you understand the question?
THE WITNESS: No.
MS. : Please rephrase it.
Q. You write, after her most recent evaluation, and then you go on to describe what it was.
A. Okay.
Q. Can you refer back to which evaluation you're referring to?

A. I presume it was the July 14th note.
Q. Okay.
MS. : Is that
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the --
THE WITNESS: The last note from her.
Q. You write that improvement was noted, however, full function not yet achieved.
MS. : Where are you quoting from?
MR. OGINSKI: The August 25 note.
Q. Can you tell me what you meant by that?
A. Improvement, meaning her range of motion or swelling. She was feeling much better, the ulceration I don't believe had fully closed entirely, but basically she was able to weightbear much more comfortably, but I felt physical therapy wasn't needed on the second course.
Q. When you said full functioning not yet achieved, what did you mean by that?
A. Full inversion.
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Q. And did you have any particular time frame or time line as to when you would have expected her to have full inversion and full range of motion?
A. Soft tissue procedures can become very lengthy, many times more subtle in terms of healing than bone. So I keep the option open, not option, I'm sorry, I keep the time frame open as to full healing. It's very difficult to say, but I never sensed that she was entirely compliant, so it would be, it would vary, the healing timetable.
Q. And I think we discussed earlier that that compliance was a gut feeling rather than any actual confirmed observations or confirmation?
A. Right.
Q. You also note in the August 25 letter, you say lack of full range of motion with inflammation, correct?
A. I don't see that.
Q. It's the last letter of the
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first paragraph.

(A discussion was held off the record.)

Q. Doctor, in the last line of the first paragraph it says, lack of full range of motion with inflammation.

A. Yes.

Q. Did you have any opinion at that time as to why she was still experiencing lack of full range of motion with inflammation?

A. The inflammation I'm not sure. However, any time there is soft tissue that hasn't healed, it will be localized, localized swelling or inflammation specific to the site.

As far as the lack of full range of motion, my only guess is that many times patients are not, the reason for sending them to physical therapy is not resolved in the first regimen of treatment, so I usually have to send them back for another X amount of visits.

Q. And what is postoperative

tendonitis?

A. Swelling of the tendon or the tendon sheath, especially after having been elongated.

Q. Did you have any conversation with about why she may be having postoperative tendonitis as of August 25, 2004?

A. Any specific recollection of it I don't recall.

Q. I'm going back now to the X-rays that we talked about earlier.

You had told me at the previous deposition that you had observed, not just clinically, that there was some evidence of an enlarged malleolus, but there was evidence on X-rays of an enlarged malleolus; is that correct?

A. Correct.

Q. Can you tell me which X-rays it was that you were referring to where you were able to visualize that enlarged part of her anatomy?

MS. : I think he already discussed that in the last deposition.

MR. OGINSKI: It was at page

46 of his deposition.
MS. : Let me take a look.
A. The ankle mortise.
Q. And just which date and which X-ray, Doctor?
A. Left foot, November 26, '03.
Q. That's the AP view?
A. No.
Q. I'm sorry, the ankle mortise?
A. Right.
Q. When you talked to about your recommendation to have the tendon lengthing procedure, did you ever suggest to her that there were any other procedures that could be done after, in other words, if this doesn't work we can do X, Y and Z or we can do the following treatment?

A. I don't recall mentioning that to her. Sometimes -- I just don't remember ever suggesting to her
Q. Did you ever have any direct conversations with any of the radiologists who read and interpreted 's MRI's?
A. Direct conversation, no.
Q. Before recommending to that she have the tendon lengthening procedure, did you ever tell that you would like to try and adjust her orthotics that she currently had?
A. I don't recall suggesting that to her.
Q. Can the change in orthotics, either in the substance or the makeup of the orthotics, sometimes relieve a patient's complaints of pain?
MS. : Objection.
Narrow it to this patient, please.
Q. Okay.
Would you agree, Doctor,

that sometimes adjusting orthotics or changing the material in orthotics or a support can make a difference in pain relief?
MS. : It's the same objection.
Narrow it to .
Q. When came to you and advised you that she had in the past had

orthotics and they were not giving her relief, did you attempt to make any changes to the orthotics that she had?

A. No, I did not.

Q. Was there a particular reason as to why you did not chose to offer her that treatment option?

A. Well, specifically, if I can speak general first?

Q. I'd like just specifics, if you can.

A. So, the question again is?

(The requested portion was read by the reporter.)

Q. For modifying or changing

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her orthotics.

A. The only reason that I can think of would be that the orthotics were made by previous physicians or whoever made them up for her.

If they're made by me for my patients I'm seeing, then I will offer that as a form of conservative treatment initially.

Q. And is there any particular reason as to why you did not offer an orthotic regimen to her before engaging in, recommending surgery?

A. Well, I'm sure I offered her the option of going back to where the orthotics were made because I do that frequently and have them, whoever it was done by, modify them, you know, and they would be indicated on a prescription as to what my changes, my recommended changes should be.

Q. Doctor, I think, not to belabor the point, I think we've already confirmed that there was nothing to

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indicate that you were going to do or had that done?

A. Right.

Q. My question to you is, is there any particular reason as to why you did not offer her to have new orthotics made or those that she had modified?

A. Well, I didn't think that orthotics would make a radical change in her pain.

Q. Why?

A. I didn't think it would improve it.

Q. Why?

A. Because it was clear that her tendon was visibly tight, palpably tight, and an orthotic would not be a consideration as far as I was concerned with her treatment.
Q. In your evaluation of , when she had originally complained of her pain and her symptoms to you, before you had recommended this tendon lengthening procedure did you form any opinion as to

whether she was doing any type of activity which was causing excessive use or pronation for the foot causing her pain?
A. I don't believe I formed an opinion that there was any excessive aggravating activity that was causing the problem. No more than I recall her stating that she stood for long periods of time at the job.
But I don't recall any traumatic event that she indicated to me or anything like that.
Q. The sinus tarsi string that you talked about earlier in your first deposition, how do you alleviate or how do you treat the sinus tarsi string separate and apart from surgery?
MS. : Objection to form.
Are you asking whether there are other ways to treat it or are you asking in this patient or --
Just please rephrase the

question.
MR. OGINSKI: All right.
Q. Describe for me the different methods or modalities of treating sinus tarsi string?
MS. : In this particular patient or in general?
MR. OGINSKI: In general.
MS. : Okay.
A. One modality would be cortisone injection therapy, physical therapy, such as ultrasound. If the pain is, you know, not too severe, anti-inflammatories or any combination of the three.
Q. Does immobilizing that part of the anatomy or that part of the foot help in relieving the problems of sinus tarsi string?

A. Relieving, yes.
It's a little difficult to maintain due to most patients who are active, so the compliance level really drops tremendously when you're speaking

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of immobilizing any part of the foot.
Q. Tell me about the different ways that you can immobilize a patient's foot with sinus tarsi string, other than the Ace bandage that we've already discussed?
A. There is an Unna boot which is available which is a soft cast, which is again used for immobilization.
You mean -- I'm sorry, you mean modalities just for immobilization?
Q. Correct.
A. There are ankle casts, air casts.
Q. And, in your experience, Doctor, have you had experience in using each of those modalities for immobilization?
A. Yes, I have.
Q. At any time while you were caring for , did you recommend, other than the Ace bandage, using either the device like an Unna boot, an ankle cast or an air cast?

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A. I don't recall using -- I'm sorry, I don't recall or recommending those modalities.
Q. And is there anything in your notes that you saw that would suggest that you did at some point recommend any of those modalities to treat immobilization for this type of sinus tarsi string?
A. I don't believe so, but let me just look further.
No.
Q. Okay.
Do you have an opinion, Doctor, as you sit here now as to whether the tendon lengthening procedure that you performed on was successful?
MS. : Objection to form.
Successful? Objection to form.
Q. Achieved the desired result.
A. I believe it did.
Q. How?

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A. Postoperatively I did not -- I was not able to palpate readily the peritoneal tendon, nor was it visible.
She did -- I recall she did experience increased range of motion, specifically on inversion.
However, I might add that after her second course of physical therapy, I should say after her first course of physical therapy, I wasn't able to follow-up, she never returned, so there was no particular closure to her treatment that I would have liked.
Q. When you say that you were not able to palpate the peritoneal tendon nor was it visible, tell me what you mean by that?
A. It basically was much less taut.
Q. So, it had more slack?
A. Absolutely.
Q. Do you recall having any conversations with after approximately August of 2004, either her
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or her parents, about her ongoing condition?
A. After August 2004?
Q. Yes.
A. I don't recall any conversation.
Q. Did you --
THE WITNESS: Can I?
MR. OGINSKI: Yes.
MS. : Excuse us.
(The witness conferred with counsel.)
Q. Were you provided with any of 's ongoing medical records at any time after August of 2005 up until today that you have reviewed?
A. None.
Q. Turning to the surgery, Doctor, and your operative report of May 14, 2004.
The resident or the assistant --
MS. : We already talked about her, but go ahead.
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MR. OGINSKI: I know.
Q. Did she make any decisions as to how the procedure was going to be

performed?
MS. : Objection to the form.
You can answer.
A. My assistant?
Q. Yes.
A. No.
Q. What is it that she actually did during the procedure for you?
A. Basically, retract soft tissue so that the tendon was visible.
Q. To your knowledge, did ever see separately and independently from you either at Hospital or at any other office?
A. No, she didn't.
The only thing that probably could have happened in the recovery room, as most patients go after the procedure, the residents will then follow-up with

prescriptions and that sort of thing and see the patient on their way out, where I would not be physically there.
Q. At any time before you had recommended surgery, did you form an opinion as to whether had any type of peritoneal spasm in her foot?
A. She never indicated to me any kind of muscular spasms or that type of complication, no.
Q. And was there anything that you observed to suggest that she had the spasm in her foot, in the peritoneal tendon area?
A. No, there wasn't.
Q. And I just want to clarify, was it also your opinion that she did not have flatfootedness in her left foot?
A. No, she did not.
MR. OGINSKI: Thank you, Doctor.
THE WITNESS: Sure.
MS. : I just have a couple of questions.

EXAMINATION BY MS. :
Q. Were Dr. actions at your supervision and direction?
A. Sure.
Q. And did you discharge the plaintiff from the hospital?
A. Yes, I did.
Q. Were any postoperative

instructions provided by you?
A. Yes, they all are.
Q. And were any prescriptions provided by you?

(Continued on next page to allow room for jurat.)

A. Yes.
MS. : No further questions.
MR. : I have no questions for you today, Doctor.
THE WITNESS: Thank you.

(Time Noted: 11:47 a.m.)

, M.D.

Subscribed and sworn to before me on this _____day of _____, 2006.

_____
NOTARY PUBLIC

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C E R T I F I C A T I O N

I, KARIN GENALO, a Certified Shorthand Reporter and Notary Public, do hereby certify that the foregoing witness, , M.D., was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

KARIN GENALO, CSR

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, M.D.

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THIS____DAY OF_____, 20___.

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