

semitrailer truck. He had sustained an injury to the cervical spine, the neck, at that time. His vehicle had been thrown. He was wearing his seatbelt. And he had a period of loss of consciousness.

He was taken to the South Brunswick Medical Center in Georgia, where he was evaluated by the surgical service and spine service, and was admitted to the hospital.

Q What complaints did Mr. Magloire have to you when you initially saw him? What complaints were made to you when he initially saw you?

A At that time, he was complaining of neck pain and weakness in the left arm. And numbness in the left upper extremity.

Q Anything else?

A. That was his chief complaint at that time.

Q In your professional opinion, were these complaints consistent with the prior history given to you by Mr Magloire?

A Yes. They were consistent.

Q Following the taking of the history of Mr. Magloire, kindly tell the jury what you did as his physician?

A At the tune of his evaluation, I performed a physical examination, reviewed his medical studies, and obtained X rays of the neck.

Q By the way, Doctor, how was Mr. Magloire referred to you, if you know that?

A I believe it was his wife.

Q After your physical examination of Mr. Magloire, did you form any professional opinions about his condition?

A Yes.

Q And, Doctor, what were those opinions or impressions?

A. My impression as of June 6, 2002, was that he was status post a cervical fracture dislocation that he had, that he was status post anterior cervical fusion surgery, and status post posterior cervical fusion surgery.

Q That sounds very fancy to me. In lay terms would you say that Mr Magloire broke his neck?

A The diagnosis of a cervical fracture dislocation means that the neck was actually broken and/or separated.

Q Thank you.

You have indicated that as part of your physical examination you noted --

MR. BROWN: Objection.

THE VTDEOGRAPHER Off the record.

MR. BROWN: I just have to object to the form, but let him answer because your and/or impression, just the way it was posed, it sounds fancy.

Would you say it's a broken neck Just objecting to the way you phrased that question.

MR. FRANKEL: I understand, but I want to put it in lay terms.

MR. BROWN: I understand But I think the way you -- it's got some potential inflammatory language for a lay jury in lay language.

MR. FRANKEL: Okay. Okay.

THE VTDEOGRAPHER Back on the record at 3:46.

Q Doctor, you have indicated that as part of your physical examination you noted two incisions on Mr. Magloire's body.

Would you kindly show the jury where those incisions were located and their approximate size.

A On the physical examination, I had noted mere were two scars on Mr. Magloire neck, on the front of the neck, located in the position where I'm pointing on mine, is on the left-hand side, a transverse or horizontal incision, which measured eight centimeters, or approximately four inches.

There was a second healed scar directly in the back of the neck, where I'm pointing to, which measured 25 centimeters, or approximately 10 inches in length in the vertical direction.

Q You indicated that during your physical examination that Mr. Magloire's lateral rotation was

restricted to 45 degrees to the right and the left.

Could you explain the significance of this finding?

A The physical examination was performed, and range of motion was tested The lateral rotation, which represents the patient's ability to turn the head to the right or left direction, was measured at 45 degrees both to the right and left. Normal value is 70 to 80 degrees.

Q On your physical examination form you also indicate that Mr. Magloire had flexion of 30 and extension of 20.

What would the significance of that be?

A The range of motion in flexion where the head is bent forward, and extension, the head is brought backward, was measured. Mr. Magloire's flexion was 30 degrees. Normal is 60 to 80 degrees, approximately And the extension was measured at 20 degrees. Normal extension is 40 degrees.

Q Additionally, on your physical, and just so we have a clear record, I'm indicating, Doctor, what date do we have for the examination?

A June 6, 2002.

Q On that date, you found C5-T1 motor on the right side five over five What does that mean specifically?

A Neurological examination was performed. The strength of the upper extremities was performed. And on the right side his motor function of his entire arm was noted to be normal, otherwise stated as five over five.

Q And on die physical examination, you found the left shoulder abduction four over five.

What specifically does that mean?

A This is also a motor testing What was discovered was that on the left side his ability to bring his left arm upward and out in this position, otherwise elevating the left shoulder, there was weakness against resistance.

Q Additionally, you found decreased sensation in the left shoulder in the C5 dermatome.

Would you explain to the jury what that means?

A The sensory examination portion of the neurological examination was performed where a pin is gently placed over both arms and hands in order to determine the sensitivity.

It was noted that on the left shoulder area that there was decreased sensation compared to the right upper extremity.

Q. You also found that C5-6 and C6-7 reflexes were one-half bilaterally.

What does that mean?

A The reflexes of the upper extremities was tested with a reflex hammer. The two over two notes normal. It was noted on the two reflexes on both arms, they were at one over two, meaning that the neurologic reflexes were diminished.

Q Dr. Rafiy, did you take or examine any X rays of Mr Magloire?

A Yes.

Q Would you kindly discuss your findings. And I would just do it in chronological order.

A An X ray of the cervical spine was obtained on June 6, 2002, and it -- the films were read and interpreted by me. They demonstrated that there was a metallic radiopaque plate on me front of the neck in front of the C6 and C7 vertebral body, along with bone graft between the C6-7 level.

In addition, there were two radiopaque metallic plates in the back of the neck at the C6-7 level, along with a radiopaque spinous wire in the back of the neck

A note was of the bone that was placed was incompletely fused.

Q Doctor, did you take any other X rays of Mr. Magloire?

A. No.

Q Did you take any X rays of Mr. Magloire recently?

A. Yes.

Q When did you last take X rays of Mr. Magloire?

A. May 10, 2004.

Q I'll get back to the May 10, 2004, X rays a little bit later on.

Getting back, sir, to the June 2002 evaluation, you stated that the bone graft was not completely fused.

How did you make that determination? And kindly discuss the significance of that finding.

A If I may refer to the model of the cervical spine, this is a model, an anatomic model of the human neck. This is a side view of the neck, this being the bottom of the skull, this being the top of the neck, and this being the bottom of the neck.

I'm going to rotate the neck so we have a frontal view. The white squares here represent the vertebral bodies, which are the bones of the neck. There are a total of seven vertebral bodies. In between the bones are soft tissue, oval-shaped structures which are called the disks. This being the front part of the neck.

In the back of the neck are covered by bony landmarks, also seven of them. In the sides of this model here, this red structure represents the vertebral artery, which brings the blood to the brain. And these yellow structures coming out on both Sides represent the nerves that are coming out from the cervical spine.

And this structure, the yellow structure that I'm pointing at, is the spinal cord, which connects the brain with all the nerves to the arms and to the legs.

On the X ray evaluation -- this bone here is number 6, and this one is number 7. On Mr. Magloire's X-ray film it was noted that there was a plate in the front of here, in front of the cervical 6 and cervical 7. And in place of this disk a piece of bone graft was interplaced between the vertebral body of C6 and C7, which had not healed.

The radiograph still showed a black line which showed intrabony fusion. And I'm going to rotate the model to show the back. There were two additional plates, one plate in the back of the neck at C6 and C7 And another plate on the right side between C6 and C7.

In addition to that, there was a metallic wire -- I'm pointing now to the side view of the neck -- that was placed between the spinous processes of C6 and 7 and connected the two vertebrae together.

Q Thank you.

You also indicated in your June 6, 2002, report that there was an incomplete callus formation.

What do you mean by that?

A Incomplete callus formation, the purpose of the surgery was to realign the bones in the proper position, and fuse or, in other words, connect one spine vertebra to the next by the -- in the body's incorporation of bone.

As of June 6, 2002, there was an incomplete fusion or bony connection between the two vertebrae.

Q. I may be going over what you just stated, but I'm going to ask the questions anyway.

What are the final findings you made on June 6, 2002, that there was a posterior post lateral plate from C6-C7 with a bony fusion?

Can you explain to the jury what that means?

A. In other words, the posterior, which just means the back of the neck, had the two plates, one here, one here (indicating), along with a wire bone graft was also placed in the back of the neck, which had not completely consolidated. There was an incomplete bony union at the C6-7 level.

Q Dr. Rafiy, following the history and physical that you performed on Mr. Magloire, what were your professional impressions of his condition at that time?

A My impression was that he had sustained a C6-7 cervical fracture dislocation, and had undergone neck surgery, which included an anterior cervical fusion with instrumentation, and a posterior cervical fusion with instrumentation.

Q. Would you kindly tell the jury what your initial plan of treatment was on your evaluation?

A The patient's activities were restricted mainly in the area of the neck. He was to avoid lateral rotation.

In addition to avoiding lateral rotation, which is excessive turning of the neck to one side or the other, he was also started on a physical therapy program for strengthening of the upper extremities, and of the muscles around the cervical spine, with both isometric and aerobic conditioning.

In addition, an external bone stimulator was ordered to be placed on him at a future visit.

Q Was Mr. Magloire ever fitted for an external bone stimulator?

A Yes.

Q What specifically is the function of the external bone stimulator?

A The external bone stimulator is an electrical external device which is actually applied on the outside part of the skin of the neck. It generates a low-level electromagnetic field and electric current which is then brought to the area where the fusion and surgery was performed.

The purpose of die external electrical bone stimulator is to assist, ameliorate and improve the cervical fusion in order to obtain a solid fusion of the bone graft material.

Q What instructions did you give Mr. Magloire following the first visit?

A In summary, two recommendations were restriction of range of motion of his neck, physical therapy, reevaluation, and bone stimulator to be ordered.

Q And when did you next see Mr Magloire as a patient? And please tell the jury what occurred on that visit?

A. I next evaluated Mr. Magloire on June 10, 2002. I obtained a history and performed a physical examination.

Again, at that time, he was complaining of neck pain and upper shoulder weakness. The physical examination findings were similar to those of June 6, 2002. He was advised of the restricted range of motion He was placed and continued on the cervical collar, to continue with the physical therapy. No manipulation of the neck was permitted. And he was to be fitted for and measured for the external bone stimulator.

Q When did you next see Mr. Magloire after June 10th?

A July 2, 2002

Q What occurred during that visit, Doctor?

A On July 2, 2002, I obtained again the history, performed a physical examination, and obtained X rays of the neck.

Q And the next visit, Doctor?

A On July 2, 2002, he was fitted with an external cervical bone stimulator. He was trained and instructed on the application of the bone stimulator, on the incisions of the skin of the neck, and again reinstructed on continuing physical therapy.

Q When did you see Mr. Magloire after that?