

Mr. Brown, please continue.

Q Doctor, so other than our June 2002 X rays, that's the complete file in front of you that you have maintained in your course of business of Plaintiff, Guy Magloire?

A There are X rays on July 2, 2002.

Q That are also not with you today?

A Correct.

MR. BROWN And as to the stipulation prior, I would just reiterate here it applies to the June 2002 X rays.

MR. KARSMAN: That's agreeable.

MR. BROWN: And the file associated with that.

MR. KARSMAN: Okay.

Q Doctor, in any patient, not so much Mr. Magloire, in any patient that you see, what's the common practice of your initial visit with respect to what you do in obtaining the history, and just what would be an initial visit, if you could go through that?

A On initial evaluation of a patient I would obtain past medical history, past surgical history, any prior injuries to the affected part, the medications, allergies, the work status of the individual.

I would perform a physical examination and review any prior medical records, and obtain any diagnostic studies.

Q In your review, if you want to look to refresh your recollection of the initial visit with Guy Magloire, what, if any, significance is noted in the past history of Mr. Magloire?

A There was no past medical history.

Q Of significance?

A Of significance.

Q And he presents, I think, what were his chief complaints on that visit?

A Neck pain and weakness in the left shoulder with numbness.

Q And he doesn't mention to you in history that he had at one point a dislocated shoulder in his -- during his work life, but before this accident happened or related to this accident?

A I don't believe so.

Q In your course of the treatment of Mr. Magloire, would it be --

MR. FRANKEL: Excuse me.

THE VIDEOGRAPHER: Going off the record. It's 5:54 p.m

MR. FRANKEL: I object to the characterization of the prior left shoulder injury.

MR. BROWN: I didn't say "left shoulder." I just said that he had a prior shoulder injury. I didn't note left or right.

MR. FRANKEL: I'm objecting to the characterization that that's what it was, because you are saying that's the injury that he sustained, and I object to that characterization.

I respectfully request that you ask --

MR. BROWN: The problem would be that in this situation this would be on his direct testimony, because it came out in his deposition. It's known, and the significance is for the one information which is related which is -- you know what, just leave it on.

MR. FRANKEL: If we have his EBT transcript and it's noted left shoulder dislocation --

MR. BROWN I didn't say left shoulder

MR. FRANKEL: But, if that's what it is, that's what it is. I'm just objecting, because I don't know if that's accurate, and it was a shoulder dislocation as opposed to a shoulder sprain or shoulder something else.

He said his shoulder was dislocated. That's my question.

MR. BROWN: Yeah. But, I mean, to bring the whole file is utterly absurd. And if the limitation is going to be so limited it's going to be problematic, I'll ask a couple different questions.

MR. FRANKEL: I mean, if you asked, did Mr. Magloire mention that he broke his neck ever.

MR. BROWN: Yes. But talk about lightning striking twice. Okay. Okay. Let's go back on the record.

THE VIDEOGRAPHER: Back on the record Continuing the deposition, it's 5.56 p m.

Q We discussed the chief complaints that Mr. Magloire presented with. In his case, if on the initial visit, if there had been a prior left or right or anything shoulder injury to Mr. Magloire, would that be past history that may or may not be significant for you to want to know about in beginning to treat with this patient?

A Yes, it may.

Q And your record doesn't reflect that he discussed that with you?

A Correct.

Q Do you take any other past history? Do you ask about diabetes, obesity, any other issues like that when you intake?

A. Yes.

Q What was -- from review and refreshing your recollection with your file, what does your file say as to any of those issues of some past history of diabetes or obesity of Mr. Magloire?

A In terms of past medical history, there were no prior medical issues or any prior injuries to the neck.

Q You also said something that was interesting The referral of Mr. Magloire was by his wife?

A I believe so, but I'm not a hundred percent sure.

Q Your record wouldn't reflect how he was referred here?

A The record does have a note for "referred by," but it was not completed.

Q Do you think that it was possible -- do you know his wife, or is there some reason why that sticks out in your mind?

A I believe I had treated the wife in the past, or had some contact.

Q And after the initial visit, in fact, at any time of your treatment of Mr. Magloire, have you

reviewed the records that were generated by Dr. McAllister during the January 2002 accident?

A Yes.

Q And you have a complete copy of these in your file?

A I have records reflecting the treatment from Dr McAllister.

Q Do you have any radiologic films from Dr McAllister that were taken on the night of the accident?

A No, I do not.

Q And we discussed a number of numbers regarding range of motion, and I would like to just go through them a little bit more, and probably referring to the most recent visit to you, Doctor, of May 11, 2000, or 10th?

A Yes, 10th.

Q Let's start with the lateral rotation. That restriction at his initial intake was what?

A Lateral rotation was 45 degrees to the right and left.

Q And has that changed at this time?

A No.

Q How about the extension?

A Extension was 20 degrees, which is the same.

Q And the lateral rotation we covered, correct, lateral bending?

A Was 30 degrees to the right and left.

Q And did you, in the recent visit of the Plaintiff, test the left arm for the weaknesses or restrictions?

A. Yes.

Q. What, if anything, were the changes from the visit in 2002 to 2004?

A They were similar.

Q Actually, the visit of May 10, 2004, how is it that Mr. Magloire came to see you at that visit?

A. He was brought back to the office for evaluation. And I generated a narrative report to Mr. Frankel

Q And that was -- so the visit was for the purposes of this litigation?

MR. FRANKEL: Wait.

THE VTDEOGRAPHER Going off the record. It's now 6.03 p.m.

MR. FRANKEL: I object to that question. I object to any reference to litigation. I object to the characterization, and respectfully request that you rephrase that scandalous inflammatory remark in the administration of justice.

THE VTDEOGRAPHER Back on the record at 6:03 p.m.

Q I'll withdraw that question that was just asked.

Prior to May 10, 2004, when was the last time you saw Mr. Magloire?

A January 22, 2003

Q So, you hadn't seen Mr. Magloire in some 14 months?

A Correct.

Q And when he presented on May 10, 2004, was it for any chief complaints, or is there any reason he came in, saying he had difficulties or some medical problem to you?

A He stated that he was complaining of neck pain, weakness in his left shoulder, and numbness.

Q Upon your review of your file, how, if any, is that complaint different than June '02, July '02 and even January '03, basically, his chief complaints as he commented to you for his treatment?

A The complaints were the same.

Q Doctor, does your record note when, if at all, Mr. Magloire was to return to see you after his last visit 14 months prior to May 10, 2004?

A No, I don't know.

Q Would the chart note if you had a scheduled appointment that was missed, or would it be reflected somewhere in your notes?

A I have a note January 22, 2003, but it does not reflect the follow-up visit.

Q Does it reflect that maybe at this time he was discharged from care, and to see on an as-needed basis?

A He was still continued on physical therapy at that time, but I did not discontinue him from treatment.

Q. And in the case such as Mr. Magloire, after your initial visit with him, is there any sort of frequency that's associated with the visits that you would schedule with this type of patient?

A. During the acute phase of the injury, the visits are more frequent. As the injuries are more chronic and stabilized, the office visits are subsequently sequentially followed on a larger, longer period of time

Q And on the June 6, 2002, if you could just restate for me, say what your findings were on that visit?

A. On my physical?

Q After you physically examined him.

A My physical findings, I had noted on the neck that there was a scar, well-healed scar on the front of the neck, measuring 4 inches. There was a well-healed scar on the back of the neck, measuring approximately 10 inches.

The range of motion was restricted in lateral rotation 45 degrees. There was flexion 30 degrees, extension 20 degrees. The arm strength on the right side was normal The left side showed a four plus over five weakness of his ability to bring his left arm up.

There was some decreased sensation in the left shoulder area. The reflexes were diminished. The other provocative tests were normal

Q Is that a notation in that record at this time we are finding an incomplete callus formation?

A Correct.

Q There is a notation or no?

A The notation is an incomplete callus formation.

Q With regard to the callus formation that you told us earlier would be around the bone that was placed in between the disks?

A This is a radiographic -- a finding where the bone graft is inserted between the two vertebral bodies, and one would see a callus formation seen on the radiographs And at that time there was an incomplete bone callus formation.

Q Was there a radiograph completed on the May 10, 2004, visit?

A Yes.

Q And what was the result, if any, of a callus formation at that time?

A There was callus formation at that time.

Q Would your records note in between the June 6, 2002, and the May 10, 2004, when that occurred?

A. It occurred between August 7, 2002, and May 10,2004.

Q August 7th to May 2004, did you take any X rays of the Plaintiff?

A. No.

Q How about any MRIs of the Plaintiff in that time period?

A No.

Q Actually, in the course of your treatment of Mr. Magloire, have you ever ordered an MRI of the Plaintiff?

A No, I have not.

Q You did tell us, when Plaintiff's counsel was asking you questions, there might be a need for future MRIs.

Why would it be in the future and not in the past treatment?

A. MRIs require further deterioration, worsening neck pain, further degenerative changes on the spine noted on a plain film, progressive sensory or motor abnormalities, or incomplete fusion of a cervical procedure, or any changes on a radiograph.

Q I think on direct testimony you discussed some of those issues were present in Mr Magloire?

A Some of the findings I discussed are present, correct.

Q And those findings might be better determined or shown through an MRI Would that be fair to say?

A Again, the indications for an MRI, as I mentioned, if there was progressive deterioration of a neurologic examination, if there were clinical findings of worsening neck pain, or further changes in the plate alignment.

Q Well, you did tell us that there was -- you did say there were some degenerative changes in May 2004?

A Correct.

Q And I do think you did discuss some plate changes; is that correct?

A No.

Q The plates stayed the same?

A Correct.

Q What about the alignment?

A The same.

Q It's stable, as well?

A Yes.

MR. FRANKEL: Off the record.

THE VIDEOGRAPHER: Going off the record. It's now 6.12 p.m.

MR. FRANKEL: I just object to the characterization of his testimony. said it stays the same in June '02, but he says there's subluxation There is not normal anatomical alignment.