STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

JAMES WILLIAM FAIRLEY, a Protected Person, and KIM FAIRLEY,

Plaintiffs,

vs. Case No. 08-2759-NI

Hon. Thomas D. Wilson

SCHIBER TRUCK CO., a foreign Corporation, and RAY D. KISSICK, Jointly and Severally,

Defendants.

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The Videotaped Deposition of ROSALIND GRIFFIN, M.D., Taken at 31330 Northwestern Highway, Suite C, Farmington Hills, Michigan, Commencing at 9:02 a.m., Friday, December 3, 2010, Before Becky L. Johnson, CSR-5395.

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APPEARANCES:

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Appearing on behalf of the Defendants.

ALSO PRESENT:
Michael Gurlides - Video Technician

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Farmington Hills, Michigan
Friday, December 3, 2010
9:02 a.m.

MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT 1
9:02 a.m.

VIDEO TECHNICIAN: We are now on the record. This is the videotaped deposition of Rosalind Griffin being taken on Friday, December 3rd, 2010. The time is now 9:02 and 30 seconds a.m. We are located at 31330 Northwestern Highway in Farmington Hills, Michigan. We are here in the matter of James William Fairley and Kim Fairley vs. Schiber Truck Company and Ray D. Kissick. This is Case No. 08-2759-NI. This matter is being held before the Honorable Thomas D. Wilson in the Circuit Court for the County of Jackson.

My name is Mike Gurlides, video technician. Will the court reporter swear in the witness and will the attorneys briefly identify themselves for the record, please?

ROSALIND GRIFFIN, M.D.,
was thereupon called as a witness herein, and after having first been duly sworn to testify to the truth,

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the whole truth and nothing but the truth, was examined and testified as follows:

MR. OBRINGER: Robert Obringer on behalf of the Defendants.

MR. GURSTEN: Steven Gursten, I'm here for Jim Fairley and Kim Fairley.

EXAMINATION

BY MR. OBRINGER:

Q. And you're Dr. Rosalind Griffin?
A. Yes, sir.
Q. And what is your profession, Doctor?
A. I'm a medical doctor and I specialize in psychiatry.
Q. And would you tell me a little bit about your -- your practice, what it is that you do and -- well, let me first ask this, we're at your office here on Northwestern Highway in Farmington Hills, correct?
A. That's correct.
Q. And is that where you conduct your practice?
A. Yes, it is.
Q. And would you tell us a little bit about what that practice consists of?
A. My practice consists of treating patients and I have a subspecialty in forensic psychiatry.
Q. And what is forensic psychiatry?
A. Forensic psychiatry is that part of psychiatry that

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encounters legal issues and assists the courts with any legal decisions it might need.
Q. I'll go a little bit through your -- your background. You obtained your medical degree from the Wayne State School of Medicine in 1977?
A. Yes.
Q. And then did you go on for further specialized training?
A. Yes, I did, at Sinai Hospital I specialized in psychiatry and graduated from that program in 1982, became licensed to practice medicine and certified in psychiatry in 1982.
Q. And have you been practicing psychiatry continuously since 1982?
A. Yes, I have, and in this office since 1993.
Q. And the practice that you've conducted, has it been all here in the general Detroit metropolitan area?
A. Yes, it has.
Q. And are you on the staffs of any of the local hospitals?
A. Yes, I am. I'm on the staff of Sinai-Grace Hospital in Detroit and William Beaumont Hospital in Royal Oak.
Q. You talked a little bit about being certified in forensic psychiatry. Now, are you board certified in the general field of psychiatry?

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A. Yes, I am board certified in the general field of psychiatry which required me to sit for an examination and then subsequently have an oral examination in front of patients where two certified psychiatrists observed whether or not I can conduct an interview in psychiatry and neurology, and then after that the results of the tests come out and those two, the oral and the testing, determine whether or not I've passed both and I did and I was certified at that point in general psychiatry.
Q. And that point was --
A. 1982.
Q. Okay. And then you also spoke about forensic psychiatry, what's in -- are you board certified in that?
A. Yes, by the American Board of Psychiatry and Neurology.
Q. Is that the same board that did your other one?
A. Yes.
Q. Okay.
A. And that requires sitting for an examination as well and then after passing that examination, which reviews 100 landmark cases in law and other practices of forensic psychiatry, then one is able to go on and become certified and I was. I now sit as a board

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examiner for psychiatrists who want to become certified as psychiatrists.
Q. So just like when you completed your residency and you were going through the tests, you had to be examined by other established psychiatrists?
A. Yes.
Q. Now you're one of the psychiatrists who supervises the tests of the others?
A. That's correct.
Q. Okay. And how long have you been doing that work?
A. I've been doing that work for several years, over the last decade.
Q. And in -- let's see, academic or university connections or points, what academic appointments --
A. I'm appointed to the faculty of Wayne State University as an assistant professor.
Q. And what do you do in that capacity?
A. I conduct several courses, one in transition to private practice for the psychiatric residents, and those are the senior ones who are about to enter the field of work after their training is completed, some go into fellowships and come -- some go directly into private practice or clinical practice associated with the university or community mental health.
Q. And in addition just serving -- or being on the

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hospital medical staffs, have you served or do you serve as a -- a psychiatric consultant to various public agencies?
A. Yes, I do. I served as consultant to New Center Community Mental Health Center in Detroit, that's a part of the community healthcare -- healthcare system throughout the state, this one is located in Detroit. I've also and continue to consult with Catholic Social Services and Northeast Guidance Center.
Q. And just in -- in looking at your resumé I see that for a period of time you were involved with working with deaf people, what -- what was that?
A. That's an additional certification that I found myself interested in. I began studying deaf culture and went on to Madonna University in Livonia and took several courses there and interpret for my church and for deaf patients. I have deaf patients in my private practice and I am able to sign with them, American Sign Language, and that remains an interest of mine and has gone on to help me develop a school for the deaf in Cape Town, South Africa as well as Dur -- as well as Durban, South Africa.
Q. And what are some of the professional societies to which you belong?
A. I belong to the American Psychiatric Association, the

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local Michigan State Medical Society, the local Medical Psychiatric Society and I also belong to the Ac -- Academy of Psychiatry and Law and other social -- well, other psychiatric-related associations, as well as Wayne County Medical Society where I serve on the peer review and the ethic -- ethics committee of the Michigan Psychiatric Society.

Q. And in reviewing your curriculum vitae, as an attorney it caught my eye that actually you have some connection with the -- the -- the state and attorneys, could you explain what that is?

A. Yes, I was appointed by the Michigan Supreme Court, which is ratified by the Congress, that I serve on the Attorney Grievance Commission. This is a body that reviews complaints against attorneys and then determines if those are legitimate and then refers it to the Attorney Discipline Board. I also serve now on the Attorney Discipline Board, which sits in -- it's sort of the persecutory arm of the legal practice and determines what sentence or what kind of reprimand or discipline is directed toward attorneys who have broken certain rules of conduct.

Q. And that also is by the appointment of the Michigan Supreme Court?

A. Yes, sir.

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Q. And then for a certain period of time you were appointed by Governor Engler to the Board of Regents at Eastern Michigan University?

A. Yes, sir, that --

Q. How -- how long did you -- when and for how long did you serve in that capacity?

A. In the, well, late '90s, early 2000. My recollection is that it was for at least to fulfill an absent term, an unfulfilled term of a prior region, which -- which is the governing board of the university to determine who the next president is, how the various committees work on campus, the unions, the faculty, the student body and they're reserved on those committees to make sure that they are meeting the expectations of the public as well as the educational system and I served there for at least two terms and each term is about five years.

Q. And I see that you've also been appointed by the governor to, at -- at times in the past on various tasks force on issues of social concern?

A. Yes, the race and gender bias was a -- a very important committee that was to advise the governor and the Supreme Court whether there was any discrimination that was being practiced in courts or by lawyers.

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Q. And I noticed something about the child abuse and neglect too?

A. Yes, I have been a lecturer for those groups who are interested in understanding how to detect child abuse. My familiar -- familiarity with this began in my residency as a -- a pediatric resident and from there I became interested in advocating for child safety.

Q. And are you called upon from time to time to give lectures or presentations?

A. Yes, most recently at Harvard University on campus there I lectured to women and discussed their issues with suffering.

Q. And when you say most recently, when was that?

A. That was in November -- around the 15th of November 2010 for about three days; 15th, 16th, 17th and 18th.

Q. And your practice, does it include both adults and adolescents?

A. Yes, it does.

Q. And in this case at -- at my request you did an evaluation and a mental-status examination of Mr. James Fairley?

A. That's correct.

Q. Is this type of evaluation or mental-status examination of persons who -- whom you are not seeing

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for purposes of treatment, is that part of your private practice as well?

A. That is part of my private practice as well. It involves applying the tools of mental status that are part of the discipline of psychiatrists, the mental-status examination, and those tools are used to assess whether the injuries are related to a certain event, employment or an incident such as a motor-vehicle accident or any other kind of precipitant that may be the perception of an individual and determine if there are any objective findings of -- findings that may be in men -- may be determined by a mental-status examination.

Q. Now, does it matter to you or affect your conclusions or impressions whether the party who's asking you to examine someone is the -- is the attorney or the party that's bringing the claim or the attorney or the party that's defending the claim?

A. No, it doesn't matter.

Q. Do you see individuals from both perspectives in your practice?

A. Oh, yes, I do, about equally for defense and plaintiff.

Q. And you mentioned mental-status examination, and if you could just briefly explain to me what it is, I'm

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not that familiar with what goes on, so when you refer to a mental-status examination what --
A. What do I mean by that?
Q. Yeah, without getting too -- so I can follow it.
A. Okay. I'll make it real simple and it's simple for me and it's very much the tool of psychiatrists inasmuch as we don't use a stethoscope or lay hands on a -- on a patient. We observe how a patient is -- or a person is able to communicate. We look at their body posture, how they behave in the interview, whether their attitude is, you know, consistent with cooperation or consistent with what is appropriate for an individual at a given time. We also observe whether they have appropriate judgment.

We observe whether or not there's sadness or depression. We observe whether or not their body posture represents that because someone may say I'm very depressed by something, but they're showing a contradiction in that depression by being very upbeat and following the conversation -- conversation. We look for whether or not there's problems with memory, concentration, comprehension. We also look whether there's disturbance in reality testing, such as psychosis, paranoia, hallucinations, whether visual or auditory. We look for suicidal signs, homicidal

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signs, impulses control.

We coordinate that with any medical findings, what might give rise to these sort of parameters of the mental-status examination where there's a review of systems, that that produces certain conditions that might cloud the person's memory or their affect. We also look at whether or not their age may determine certain things, not being able to remember may be -- be a part of the natural aging process. So all of those encompass the mental-status examination. We're looking at the psychological, sociological and biological functioning of an individual.
Q. And I forgot to talk about money, do you -- do you charge for these mental-status examinations in this -- in this sort of litigation context where you see people?
A. Yes, it's customary and standard to have a retainer or charge for services rendered for conducting such an examination, and in my practice it includes review of records, any legal consultations, the interview with the patient or the person who is a subject of a -- usually a litigation or though it may be related to other, performances in their job or whether they're safe or not to be at the workplace or fitness to

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perform certain duties, but in this instance to also assess what the opinions may be about their functioning and put that in a -- in a report and submit it to the court or at the deposition.
Q. And at least in this case the charge was $4,500?
A. Yes, sir.
Q. And -- and for the deposition like we're doing today you would make an additional charge?
A. That's correct.
Q. And that charge includes meeting with me before the deposition or any other consultations that we would have?
A. Yes.
Q. Okay. As well as the time here at the deposition?
A. Yes, sir.
Q. And for that your charge is $3,500?
A. Yes, it is.
Q. Okay. How -- how much time did you spend talking with Mr. Fairley?
A. At least two hours.
Q. And I take it from what you said that this -- this proceeds by talking with Mr. Fairley?
A. That's correct.
Q. You don't have him get on a scale or tap his knee with a rubber hammer or anything like that?

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A. None of that.
Q. Okay. And the time that you spent talking with Mr. Fairley, are you satisfied that that was sufficient to reach the opinions and conclusions that you have?
A. Yes, it was.
Q. All right. And when you first started talking with Mr. Fairley did you explain to him the nature of the interaction that was going to take place that day?
A. Oh, absolutely. It's responsible and appropriate to tell Mr. Fairley exactly what the purpose of this evaluation is, that it was not for treatment, which would be contradictory to a forensic evaluator's time and purpose. A forensic examination -- examiner does not treat the patient, that would be contradictory.

And I told him that it would not be confidential, that what I found out during that evaluation may be put in a report, may be submitted to the court for trial testimony or even a deposition. And I also explained that he's not held captive here, if he wants to take a break or needs to take a break he's free to do that, and those are the three areas that are important to administer or discuss with any patient so that they can discuss whether or not they want to proceed under those circumstances or they

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cooperate to go forward.
Q. And we'll go back over some of this, but did you on the basis -- oh, and you were provided with documents actually by me, but you were provided with documents as well in connection with this evaluation?
A. Yes, to peruse them and consider them pertinent to my analysis.
Q. And those would be, just to speed this up, the 12 items that you have listed in your report at the evaluation?
A. Yes, my report dated August 26th, 2010 also includes my evaluation of Mr. Fairley that was done on June 7th, 2010 and includes the review of 12 items of records that were submitted to me.
Q. And my understanding is, although I wasn't here, was that the interview itself was videotaped?
A. Yes, it was.
Q. And did you have the opportunity to review that videotape?
A. Yes, I did.
Q. Okay. And, you know, I forgot to ask you, what -- when was it that you met with Mr. Fairley?
A. I met with him June 7th, 2010.
Q. Okay. And did you reach any conclusion as to whether based on your evaluation Mr. Fairley was suffering

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from depression?
A. There may have been a mood disorder related to a medical condition, which could be associated with his chronic illnesses of diabetes, hypertension, high cholesterol, obesity and as a result also perhaps chronic pain related to those conditions or perceptions that he has chronic pain.
Q. And -- well, what do you mean by mood disorder, is that the same thing as a depression or --
A. It --
Q. -- does it include depression or -- --
A. It includes depression and it includes the fact that it's a mood associated with a patient's perception of his condition, as well as the objective findings of -- of systemic illnesses such as diabetes, which over time can be a medical condition that associates itself with the mood of depression, and as well as the other systemic illnesses I mentioned, diabetes, hypertension, I mean, those are not fatal of course, but can be managed, but chronicity of them over a long period of time may cause a person to be fatigued, have problems sleeping, not make them feel interested in certain activities, may add to their problems with sleeping.
And then at -- in this instance Mr. Fairley

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also felt that his chronic pain may -- associated with the accident may contribute to his condition of a mood disorder or depression in this instance.
Q. Did Mr. Fairley say anything to you about whether he was improving or getting worse?
A. Oh, good -- it's a good reaction, a good prognosis for him. He felt that he was improving and by my observation he looked to be certainly improving, which shows there's a positive -- positive prognosis for his continued improvement.
Q. And -- and, I mean, how -- how did he seem as a person to interview, was he -- was he hostile or difficult or anything like that?
A. He was quite cooperative and we established a rapport. He was quite straightforward, forthright in his responses. He was spontaneous in them, he didn't take a long time to answer questions and he appeared to be showing perfect memory, absolute good concentration.
No problems at all in his comprehension of my questions and I observed no evidence of distortion of reality, no problems with his ability to interpret proverbs, ability to count, remember items, spell words backwards. All of those things are part of the evaluation that I conducted and found him to be consistent with what he stated, that he was improving

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and I felt that he would continue to improve.
Q. Now, part of the records that you reviewed were the records of Dr. Wilanowski?
A. Yes.
Q. And when you talked to Mr. Fairley did you explore with him as to whether he was suicidal or feeling suicidal?
A. Oh, not at all. I did ask him that and he had no plans or a time frame to hurt himself or to hurt others.
Q. But you did explore that with him?
A. Yes, I did.
Q. Okay.
A. And this was perhaps less than I would say -- this accident happened in April of 2008 so I saw him in June of 2010 and that would be roughly two years from the date of the accident that he's reporting he's continued to improve and I expect that he would continue to improve.
Q. And as part of you -- you talked to Mr. Fairley about his general background and history, I mean, growing up, schooling, those sorts of things?
A. Yes, I did and they're contained in my report.
Q. All right. And was there anything about that general background that struck you as sailing into unusual --

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A. No, pretty much consistent with the activities that he presented, his ability to conduct himself nowadays and that he had a quite fulfilling life and that his marriage was beautiful and stable to him, that he had supportive friends and family, uh-huh.
Q. And then you asked him about his employment?
A. Yes.
Q. And he explained to you that he had not been employed since the accident?
A. That's what he said, that's correct.
Q. And what did he tell you the -- the reason for that was?
A. He stated that the reason was because he had pain in the back of his head and that he thought it was also due to a closed-head injury or traumatic brain injury.
Q. And -- and was the pain in the back of his head or the back of his legs?
A. Back of his legs, I'm sorry.
Q. And did you talk with Mr. Fairley about the details of the motor-vehicle accident, direct -- direct your attention to part -- page 3 of your report where it talks about the details of the accident as he recalled them?
A. Yes, if I can read from that. As regards to the motor-vehicle accident Mr. Fairley stated that he was

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driving a Honda Odyssey on his way to work when he was about to make a left turn and was clipped by a truck from the rear and his car spun around and was hit from the rear again and his vehicle flipped.

And I go on to mention what resulted from that. Mr. Fairley stated he was not drinking. He was seat belted. Mr. Fairley stated that he did not claim that he was trapped in the car. He did not feel that help was not on the way. He knew the police and ambulance were en route to treat him. He was put on a backboard which did not frighten him --

Q. Which did -- it says did --
A. Which did frighten him.
Q. Okay.
A. He recalled that he was in and out of consciousness -- consciousness and that the first thing that he recalled was being in the ambulance where he was reassured he was on his way to a hospital, Allegiance Hospital, also known as Foote Hospital. And it goes -- goes on to talk about his treatment.
Q. All right. And as far as his ability to be independent what did Mr. Fairley tell you when you met with him?
A. When I met with him he was able to drive, able to dress himself, clothe himself, feed himself and that

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he drove in certain areas that were familiar to him and when he wasn't in those familiar areas he could use a GPS to help him, and those were the areas of functioning that he was able to comment on.
Q. Okay. Did he say anything about being anxious when he's out in traffic or trucks around or anything like that?
A. Yeah, he said he was afraid of trucks and that he had some anxiety associated with heavy stop-and-go traffic.
Q. And did you ask Mr. Fairley about his medications, what he was on?
A. Yes --
Q. I -- I won't ask you to list all those because by this time the jury will have heard his medications.
A. Yeah, he told me what his -- in a review of his systems when I asked about any chronic conditions he told me he had hypertension, that he had diabetes, that he had problems with his arthritis and that he had elevated triglycerides and he had asthma. And I asked him for what -- what was he being treated with and he said certain medications. He also mentioned that he had been in physical therapy and that currently he was enjoying and did go to the YMCA to swim several times a week and he thought that was

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helping him and he was improving.

So the chronic conditions would be preexistent to the accident, asthma and diabetes and hypertension, but currently were being managed by medications and would continue to be managed and improve, my estimation, my projection for his continued living and quality of life.
Q. And I guess as part of -- of the history you asked him about his -- his social history or his family history, was anything that he told you about that particularly significant?
A. Only that he remembered certain things and he had a fair appreciation for his background. He had -- he was the youngest of two brothers and his parents were deceased. He was able to talk about his mother dying of demen -- dementia at -- after stroke at age 82, that occurred in 2001. He also knew and was able to discuss his father's death secondary to congestive heart failure.

And he finished high school in 1972 in Jackson, attended some college at Jackson Community College before he went on to the factory. He denied prior criminal or -- history. He said his moving violation was some -- long time ago. He denied any childhood trauma, such as rape or molestation.

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Q. And then you went on to do the mental-status examination?
A. Yes, I did.
Q. And what -- what -- what did you find out in the course of that, describe it for me?
A. Sure. As stated in my report, on page 6 is where it begins, I describe Mr. Fairley as casually groomed and had a stiff and rigid gait. He sat comfortably on the couch, but did stretch at one point to loosen his muscles. He was cooperative. He gave his current weight and height. His appetite is different in that sometimes he forgets to eat he stated. There was no prolonged reaction time to questions, he was quite spontaneous. As I would ask a question he would answer it promptly and not figure out -- or delay due a -- due to some memory problems. There was no evidence of that.

He maintained good eye contact, showing that he was interested in the -- in the examination and able to be forthright about it instead of wandering his gaze and looking elsewhere for -- searching for questions or answers. He did not appear to have any confusion. He was articulate, had a normal rate and speed in his recollection -- rec -- recoll -- recollections of events. He showed no

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problems such as confusion or concentration or comprehension.

He was able to recall details of the motor-vehicle accident and treatment rendered thereafter. Mr. Fairley stated he had a -- had had a bald head for a long time and he shaves his head every two weeks. He stated he had been treating with Dr. Wilanowski in 2010 after three or four sessions, but that -- I believe that turned out to be an evaluation, not treatment. He stated that he had been given medication to treat his mood and appeared to be congruent with a blunted affect. He denied --
Q. What -- what -- you missed -- I'm not sure what congruent --
A. He stated --
Q. -- I -- I missed that?
A. Sure. He stated he -- his mood, which he stated was depressed, that it appeared to be consistent with what I felt was a blunted affect. He didn't have a -- a dramatic or theatrical or upbeat affect where he smiled and laughed or any of that. He appeared to be rather subdued and in that regard I saw that he wasn't as affectively full and that would be consistent what he said -- with what he said, that he was depressed.

And he described himself as being in total

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pain from head to toe after he arrived at the hospital. He was able to give sequential events such as being sedated in order to relieve the pain.

Mr. Fairley had a -- a perception that his memory problems were difficult based on using a microwave and cooking and he makes notes to himself, but I found no evidence that these were -- ran over into his regular life or that it impaired his functioning in his regular life.

So his performance there on certain tests were consistent with a person who was average to superior intellect, showing that he had a perception of his being more disabled but his performance showed that he was operating on all cylinders, doing very well.
Q. Was he able to demonstrate immediate and remote memory?
A. Yes, he was and those are tested by saying here's three items, can you repeat those items after five minutes or ten minutes and he was able to do just that, showing good memory. And he talked about watching TV, reading books, sports books, and currently reading the biography of Ernie Harwell, a sportscaster who died some time -- a very famous sports -- sportscaster -- sportscaster.

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Q. And was he able to recall a motor-vehicle accident that he had in the 1980s?
A. He did and he said at that accident he may have had whiplash.
Q. Did he talk about having good days and bad days?
A. Yes, he did.
Q. And -- and what's lability of mood?
A. Lability of mood would be that he was up and down, having mood swings where he was very high, euphoric, elated, outgoing and inappropriately outgoing, spending a lot of money and gambling or anything like that and that's -- this mood -- mood swing to the other side was totally isolated, recluse, sort of a hermit, not interested in any activities, depressed, suicidal and in those regards perhaps isolated and not participating in any social activities, not going to work if it were given to him as a choice. So he didn't show any lability of moods in that regard, not only -- not in his history and not in the time that I saw him as well.
Q. Is that a good thing?
A. That's a great thing.
Q. Okay. And did he talk about how he felt at times now as compared to how he felt before the accident?
A. At times he stated he feels profound sadness,

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helplessness and hopelessness compared to his former activities prior to the motor-vehicle accident, that was his perception of himself.

Q. Okay. And you have a category here for sensorium and mental grasp, what -- would you explain to me what that is?

A. That is the actual testing done in a mental-status examination to see if there's any corroboration or correlation with what I observed and what is actually the objective findings on certain tests, and it may be me asking what date is it, the time, the place and who he is, his name and he was able to give all of that. And I also ask his understanding of why he's here, he understood that he's alleged -- he's launched a lawsuit alleging certain damages related to the motor-vehicle accident and he knew that that was the pursuance of the exam. It also -- this tests for any problems related to someone's stability, whether he had --

Q. Ability, I'm sorry?

A. Stability and ability, if he had a stable functioning in his life and ability to function at his own motivation to do certain things. He stated he has a fear of driving physicians -- of driving and that physicians had ordered him to take a driver's

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certification program that he passed.

The conclusion of the mental-status examination is contradictory as to his statements because he performed very well on the exam. As I said, it tests memory, proverb and abstraction, which is a rather sensitive --

Q. Let -- let me ask you some questions about that a little more. So he indicated to you that he had problems sometimes being able to remember?

A. Yes.

Q. And then when you put him through these various tests was his performance consistent with his perception of how he thought he couldn't remember?

A. No, it was not and part of it is already shown, the jury may be interested in, his whole history that he gave me would be a part of that memory testing and that appeared to be rather rational and logical and sequential of information about his past history. Then current history, he was able to talk about that without any de -- deficits or holes in his recall.

And then at the time of the examination there's a testing of information that is unrelated to his background and his functioning or his occupation that board -- that includes serial seven subtractions from 100 or two subtractions from 20, you're able to

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count down by two from 20; 18, 16, 14, et cetera.

Q. Did you have him do those while --

A. Yes, I -- I had him --

Q. -- the serial sevens --

A. Yes, yes, I did and he performed quite well on that. He knew the current headlines in the newspaper, which shows that his orientation is appropriate to the current setting of our existence today, newspapers, headlines, what might be in them. I think he was able to talk about the Mobil oil spill he called it and tornados in -- in Toledo. He was able to do the tap-tap exercise where he was able to follow my directions to tap when only I did two taps and -- to tap only when I did two taps and if I did one tap and then he would not do any taps, which shows he's able to concentrate and follow direction. That's a rather simple test.

He knew that his shadow was shortest at noon, which is quite unusual for some people, they -- they think that it's shortest in the afternoon or -- or late at night or early morning they might give and the actual true fact is that your shadow is shortest at noon and he knew that, showing an above-average intelligence I would say.

Q. You asked him -- did you ask him about who's the

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president?

A. Yes, I did and he was able to name presidents in reverse order to Carter without any errors. He understood the symbolism of stars in the flag and how they represented the 50 states. He was able to spell the word sugar backwards. If he found a wallet with ID on the -- a street he would make sure it goes back to the person who owned it and he -- if he smelled smoke in a theater what would he do. He would not yell fire, which is often a panic trigger, but that he would make sure that he started his -- himself for the exit.

And again, as I asked him to interpret the grass is greener pro -- proverb, he knew it without concreteness. So somebody that would say well, the grass is greener rather than saying what does it mean that it's -- grass is greener on the other side. He was able to say well, things look a little better from one perspective, but when you actually get there it may be different and so that was -- that's a normal response. And I gave him a difficult one because sometimes the grass is greener proverb or the glass house proverb, such as don't throw stones at a glass house and why not, someone might say it's concrete, it might break, but actually the abstraction is, you

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know, take care of your own house. If you start criticizing somebody else you might also be at fault.

And he -- I gave him a difficult one that said if two -- the dragons wading across shallow ponds have nails -- snails nipping at their heels and to my surprise he did quite well with that one. It's out of the norm for proverbs that are given and he understood that it means even big people have problems and he was able to interpret that appropriately.

So I had enough information based on that testing that he was operating on all cylinders, doing quite well and functioning despite his perception that he had memory problems and -- and all those, they did not appear to be existent at the time of this exam and I was make -- able to make a certain conclusion from my testing and the history and my clinical observation and skills.

Q. And -- and what did -- conclusion did you arrive at with respect to his -- his ability to remember things and his ability to think clearly?

A. I saw that there was absolutely no evidence of a closed-head injury that affected his consciousness or physiological or psychological functioning and I found that there was a mood disorder due to a general medical condition, which could be inclusive of his

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diabetes, hypertension, asthma, and also perhaps the chronic pain that he suffered, and these factors are a part of the diagnosis of psychological problems in a general medical condition.

Q. Now, what's a -- a prognosis?

A. My prognosis is what the future may hold for him and I saw it as favorable, that he continued to improve, that despite his -- of perceptions of himself being disabled or not being able to function he was actually showing that he was able to function pretty much as general as anyone might do of his age and circumstance, he'd do quite well. And I had a favorable outlook that he would continue to do well. He was being treated, responding to that, compliant with medications, it was as much as you could hope for.

Q. Did he tell you whether he was feeling more or less depressed and whether he was making progress?

A. He felt he was less depress -- depressed and making progress.

Q. And did you assess Mr. Fair -- Fairley's -- you used the term character strengths and willingness and -- and how would that affect his prognosis for the future?

A. If he didn't have a willingness to improve -- if for

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instance correlated with the legal issues he may have an increased or exaggeration of his symptoms for that purpose, in fact there's a correlation of increased symptoms with legal issues such as damages that he's seeking related to the incident, but if he decided that he wasn't motivated to do certain things and he wasn't able to pull himself to do that, then his prognosis would not be as favorable, but given his interests and able to demonstrate an ability and motivation I felt that he'd be quite -- quite successful.

Q. Did you feel that with his own character strengths and willingness to return to an active life that that was a favorable indication?

A. Yes, I did feel that.

MR. OBRINGER: Thank you, I don't have any other questions then.

THE WITNESS: You're welcome.

EXAMINATION

BY MR. GURSTEN:

Q. Doctor, good morning.

A. Good morning.

Q. My name is Steven Gursten, as I said, I'm here for Jim and Kim Fairley.

Just so we're clear, all those different

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organizations you mentioned in the beginning when Mr. Obringer was asking you questions, none of those organizations asked you to do this one-time forensic evaluation of Mr. Fairley, it was -- it was actually the Defendant in this lawsuit, true?

A. Those organizations are part of my C.V. and the American Academy of Psychiatry and Law informs me about forensic evaluations.

Q. I'm sorry, maybe you -- maybe I wasn't clear with my question, I apologize. Who hired you to do this examination, ma'am?

A. Oh, I was retained by Mr. Obringer to evaluate Mr. Fairley.

Q. And as -- as part of your examination you have on the last page your diagnoses and conclusions and you have something that's called a GAF, can you tell the jury what that is?

A. That is a global assessment of functioning.

Q. And is that --

A. It is -- it is an exam -- it is a sort of a -- a report card of how someone is functioning based on the examination and my diagnoses, that despite all -- all the individual ones, the ax -- there's a multiaxial process. The first is any psychiatric conditions; the second is axis II, personality problems; axis III,

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what medical problems; axis IV, what psychosocial problems; and axis V, despite all of these, whatever they are, what is the assessment of his functioning and it goes from 0 to 100. Like a report card 100 is doing very well, 70 is C, 50 is showing some severe impairment, 40, 30, 20 would indicate the person is not doing well at all.

Q. Well, 50 indicates they're not doing very well at all too, correct?

A. 50 represents serious symptoms of any serious impairment in social, occupational and school functioning.

Q. And 50 is what you gave Jim Fairley?

A. Yes, it is.

Q. And in your code you also diagnosed him with chronic pain disorder?

A. Yes.

Q. And by definition that means that the pain he is having is causing clinically-significant distress or impairment in his social and occupational and other areas of functioning?

A. That's correct.

Q. And by definition it means that he is not malingering or exaggerating or faking?

A. That's correct.

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Q. And you do not believe that he is malingering or faking or exaggerating?

A. That's correct.

Q. So just as an overview of your -- your total conclusions based upon this one-time exam at the request of the defense attorneys in this case, you find no evidence of a closed-head injury?

A. That's correct.

Q. And the jury has heard the term closed-head injury and traumatic brain injury -- traumatic brain injury intermittently, can -- is that the same thing to you?

A. Yes, it is.

Q. Okay. Closed-head injury and -- and traumatic brain injury, it just depends on which doctor is using it, but they're all talking about injury to the brain?

A. That's correct.

Q. And you -- you found no evidence at all of traumatic brain injury?

A. That's true.

Q. And you found no evidence of any abnormal memory or concentration?

A. That's correct.

Q. No -- no evidence at all in your exam?

A. That -- that's correct.

Q. And you found no evidence of PTSD, posttraumatic stress disorder?

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A. That's correct, no posttraumatic stress disorder.

Q. And you found no emotional injury at all, at least as it relates to him being hit by two trucks?

A. That's correct. I mentioned that if he had some depression it may be related to the motor-vehicle accident but was responding to treatment and was limited at the time I saw him and showing remarkable signs of improvement.

Q. And that was based also on the things that he was saying to you?

A. That's correct.

Q. And you found no evidence of suicide?

A. That's right.

Q. The depression that you find you say in your report is related to a general mood disorder?

A. Yes.

Q. And by the general mood disorder you're -- you're saying that that's due to medical conditions that you list in your axis III?

A. Yes.

Q. And those medical conditions that you've listed in your axis III are diabetes?

A. Yes.

Q. Elevated triglycerides?

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A. Yes.

Q. Hypertension?

A. Yes.

Q. Asthma?

A. Yes.

Q. Obesity?

A. Yes.

Q. And vertebral degenerative arthritis?

A. That's correct.

Q. I did not leave anything out?

A. Chronic pain I've also used in my axis I diagnosis.

Q. And so just -- just so I'm clear, you feel that it is his diabetes, elevated triglycerides, hypertension, asthma, obesity and vertebral degenerative arthritis in conjunction with the chronic pain therefrom that is causing his depression and chronic pain?

MR. OBRINGER: Well, just -- my objection only is that there's another entry there, it says status-post motor-vehicle accident under that axis III so --

MR. GURSTEN: I -- I think that's improper, Bob, and --

MR. OBRINGER: Okay.

MR. GURSTEN: -- I think she -- that -- that's an improper way to object, that's a speaking

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objection so --
MR. OBRINGER: Well, no, it's an objection to your question because you -- you left it out of your question.
MR. GURSTEN: I -- I -- I don't -- I have too much respect for you to argue with you so I'll just note that I think that's an improper objection. I'll cite the Holly Clifton Precision (phonetic) case and I'll just ask that you just restrain your objections to something that -- that perhaps is not a speaking objection in the future.
Would you -- would you read back my question, please?
(The following requested portion of the record was read by the reporter at 9:52 a.m.:
Q. And just so I'm clear, you feel that it is his diabetes, elevated triglycerides, hypertension, asthma, obesity and vertebral degenerative arthritis in conjunction with the chronic pain therefrom that is causing his depression and chronic pain?)
MR. OBRINGER: Objection to form.
BY MR. GURSTEN:
Q. You may answer, Doctor.

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A. I think I did already.
Q. Would you answer again, please?
A. Okay. Again, I see that these conditions status-post motor-vehicle accident and including the diagnosis I made in axis I are related to his mood disorder.
Q. So how -- how much of this is related to the motor-vehicle accident and how much of it is related to these general medical conditions?
A. Well, I explained that these are flowing from the motor-vehicle accident.
Q. So when you say that he is now seriously impaired in his global assessment of functioning and GAF defines it as seriously impaired in his social and occupational functioning, you also feel that that is from the motor-vehicle accident as well?
A. I feel that that plus the other medical conditions contribute to his severe impairment.
Q. The other general medical conditions that you list, did you list those in order of severity?
A. No.
Q. How did you arrive at this disorder -- at this order of general medical conditions?
A. It's a compilation of all the conditions he gave, his review of medical systems that he could produce for me.

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Q. So diabetes was put first for what reason?
A. It's just -- was just listed first.
Q. Okay. So there's -- there's no significance to it being listed first?
A. No.
Q. And you're saying that he told you he has diabetes?
A. Yes, and the medications he takes for them -- for it.
Q. He did not deny having diabetes?
A. That's correct.
Q. Can you tell me how -- did he tell you he had elevated triglycerides?
A. Yes, he did.
Q. Okay. Is he taking medication for that?
A. I'm not sure that I saw that in his review of medications.
Q. Okay. Can you tell me how elevated triglycerides would be contributing to his chronic pain?
A. Well, he has an elevated cholesterol and he's obese and those conditions together can produce the diabetes that he has, and his family history of congestive heart failure would indicate that he's at high risk for those, and so I saw them as significant when I listed them here.
Q. Okay. But how -- how does elevated triglycerides contribute to chronic pain?

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A. I don't have a connection for that. Mr. Fairley said that he had chronic pain from head to toe and that encompasses a number of contributing factors to his chronic pain, his arthritis, his asthma, his hypertension, his blood flow as a result of diabetes might constrict some of his, you know, arterials and his muscular functioning.
Q. Do you have evidence that he had diabetes before this truck crash?
A. No, I don't, but diabetes is not a sudden onset. It's a chronic, preexistent condition that Mr. Fairley stated he had.
Q. Do you -- do you have any evidence that he had either diabetes or any possible precursor that could lead to diabetes at all before this double truck crash?
A. No.
Q. And do you have any evidence that he has diabetes today?
A. Only his statement, his history that he provided to me.
Q. Okay. Are you aware that we took the deposition -- the trial deposition of his family doctor two days ago who --
A. No.
Q. -- indicated that there is absolutely no evidence that

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Mr. Fairley has diabetes?
A. No, I'm not aware.
Q. Okay. So going back to his elevated triglycerides, how did you learn about that again?
A. From Mr. Fairley.
Q. And assuming that he does have it and it is being controlled by medication, how does this contribute to either his depression or his chronic pain?
A. It would contribute to what I considered to be a high risk for his heart functioning, contributory to whether his diabetes is regulated. If his family physician, medical information is produced, it says he doesn't have those conditions then I'm happy for him, but as I can see them now triglycerides would be a contributory factor to his functioning and I saw that as significant.
Q. Okay. But help me because I'm -- that's where I'm getting confused, how is it contributing to his functioning right now?
A. It's a factor that he offered as part of his medical background, medical history.
Q. Okay. But does -- does elevated triglycerides cause pain?
A. Not to my understanding.
Q. Does elevated triglycerides cause depression?

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A. Not to my understanding.
Q. Next you have hypertension, where did you learn that he has hypertension?
A. From Mr. Fairley.
Q. And do you have any records or evidence as to how long he's had hypertension?
A. No, I don't.
Q. Can you point to any evidence that he had hypertension before the injuries he suffered in this double truck crash?
A. No, I -- I have no medical records prior to the motor-vehicle accident.
Q. You were not provided with any medical records from before this by defense counsel?
A. I have no medical records prior to the motor-vehicle accident.
Q. Are you aware that when we took the trial deposition of the family doctor he indicated that Mr. Fairley never had any issues with hypertension before this truck crash?
A. No, I'm not aware.
Q. Okay. You are aware, however, that pain, especially severe pain, can elevate blood pressure and cause hypertension?
A. That's chronic pain, yes.

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Q. Okay. Next you list in your -- in your list here you have asthma, where did you learn he had asthma?
A. Mr. Fairley produced that information for me and it's part of the multiaxial diagnostic order of making a psychiatric diagnosis. It's a multiprong or five different areas that one must mention when you're making a psychiatric diagnosis. The axis I, as I said, is a clinical psychiatric disorder; axis II includes personality traits; and axis III, without listing the priority, is inclusive of all medical conditions currently contributing to Mr. Fairley's stability or disability or impairment.
Q. Right, and that's -- that's what I'm trying to get at is how is asthma contributing to his -- his depression or his chronic pain?
A. Well, it's taken into consideration that part of his dysfunction or impairment is not from one sole source, that these all must be considered as part of his condition.
Q. Dr. Griffin, are you aware that he does not have asthma?
A. No, I'm not.
Q. Can you point to any medical records in your possession that say he has asthma?
A. No.

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Q. And you weren't provided with the records from his -- from his family doctor from before this, but I'd like you to assume the family doctor records indicate that he's had no problems with asthma before this truck crash. So you can say that asthma is certainly not contributing to any of these chronic pain syndrome or depressive symptoms he's having if he doesn't have it?
A. That's not the intent, it's to list what medical conditions he has and that's what I did on axis III.
Q. But where did you get that he has asthma from?
A. From Mr. Fairley.
Q. You're sure?
A. I am sure.
Q. Okay. Next you have obesity, was he obese before this truck crash?
A. I have no records of Mr. Fairley's condition before the motor-vehicle accident.
Q. But, Doctor, I'm -- I'm asking if -- if you know if he was considered obese before the injuries from the truck crash?
A. I have no records of his condition before the motor-vehicle accident.
Q. I'm just asking if you -- if you know if there's any records you have in your possession today or if there's any source of information that you have in

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your -- in -- in your possession today that would suggest that Mr. Fairley was obese before the injuries he suffered in this double truck accident?
A. I have no records before his motor-vehicle accident.
Q. Your -- your last and final finding on axis III is vertebral degenerative arthritis, is that correct, Doctor?
A. Yes.
Q. And -- and I stated that correctly, it's called vertebral degenerative arthritis?
A. Yes.
Q. What is that referring to?
A. That's referring to his osteoarthritis that was existent at the time of the motor-vehicle accident and subsequently continues to be his diagnosis, osteoarthritis.
Q. Okay. Where -- where do you see in any of the medical records in this case the words osteoarthritis?
A. I saw them in the records, I'm not able to point to them now.
Q. Whose records, Doctor?
A. Mr. Fairley's records.
Q. From what doctor?
A. I'm not sure, but it's in -- it's cited in his medical records.

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Q. Are you absolutely sure?
A. I'm sure.
Q. Maybe we can take a break shortly and you can try and find that for us. My question is if -- if -- well, actually one of the records you were provided with was the trial deposition of his neurosurgeon, Dr. Rawal --
A. Yes.
Q. -- correct?
So how is it that Dr. Rawal is saying that Mr. Fairley comes within a couple millimeters of being paralyzed and that his T12 vertebral body is so badly fractured and collapsed, how is it you're calling that vertebral degenerative arthritis?
A. Well, I associate that with the findings that Dr. Rawal saw and that the condition is certainly not causing him to have spinal root or paralysis and is limited and controlled and fixed and re -- repaired.
MR. GURSTEN: I'm sorry, can you read that back to me, the last answer?
(The following requested portion of the record was read by the reporter at 10:04 a.m.:
A. Well, I associate that with the findings that Dr. Rawal saw and that the condition is certainly not causing him to

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have spinal root or paralysis and is limited and controlled and fixed and repaired.)
BY MR. GURSTEN:
Q. Okay. What evidence do you have from anywhere in this case that this is limited or repaired or improving?
A. Mr. Fairley's presentation shows that he's not paralyzed, shows that he is not dysfunctional in that regard, he had a stiff gait and that's how he presented as he walked in, but I did not see that he was showing any kind of immobility.
Q. In -- in any of the medical records that defense counsel provided to you do they indicate that this condition is improving?
A. Mr. Fairley's statement was that he has improved and his statement also that he continues to go to the Y and swim three times a week is consistent with an improved state.
Q. Okay. But I was asking you about all of the medical records that have been given to you by the doctors that are treating him for his physical injuries and his fractured vertebral body and his chronic pain, do you see any indications of improvement there?
A. I saw from Mr. Fairley that he has continued to improve and that's his own statement and I agree with

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that.
Q. Doctor, we'll -- we'll go on and -- and I -- I don't mean to -- I -- I just would like an answer to my question. In any of the medical records from the specialists who are treating him for these injuries, do any of them indicate anything consistent with the statements you've just made --
MR. OBRINGER: Objection to the form of the question.
BY MR. GURSTEN:
Q. -- that he's improving?
A. I certainly would help you understand that my role in this was to look at whatever condition he may allege or whatever conditions other medical providers may give that his emotional injuries are certainly not inclusive of a posttraumatic disorder and not inclusive of a continuing disabling emotional disorder, and that from my standpoint as a psychiatric expert he showed no problems with his emotional state and the treatment has been successful and he continues to improve. There's been no plateau in that, he continually improves his psychological, sociological and biological functioning.
Q. How do you know that?
A. I have an expertise that is able to detect whether

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someone is depressed or not and whether they're resolving in those symptoms and I saw Mr. Fairley as being that person with good luck that he was improving.
Q. Okay. So with the exception of -- of the statement that you say he made to you that he is improving and with the exception of your one-time examination are there any records, including the trial depositions that defense counsel has provided to you for you to review, that indicate anything consistent with what you -- with the statements you have just made that he is improving and his physical injuries are getting better?
A. I'm the expert in looking at his psychological functioning and that's my limited dealing with Mr. Fairley. I can only go by what his statement was, that he was improving and continues to improve psychiatrically.
Q. Okay. Well, I guess my question though is in all the medical records you've been provided are you aware of any doctor out of all of the specialists who have been treating him for his back injuries and spinal injuries who called these vertebral disc fractures vertebral degenerative arthritis like you did?
A. I list them in my axis III diagnoses and I'm

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redirecting you to look at my expertise in making a psychiatric diagnosis --
Q. I -- I understand that, Doctor.
A. -- and physical condition and other medical specialists that may, you know, be produced prior to this time or at trial.
So my expertise is in that area of his psychiatric or emotional injuries and in that --
Q. Doctor, can you answer my question?
A. -- regard I'm saying he's improving.
Q. Can you answer my question, please?
A. I can't answer --
MR. OBRINGER: Objection, I believe that it has been asked and answered.
A. I can't answer it any further. I've done my best and --
BY MR. GURSTEN:
Q. Okay.
A. -- that's as much as I can do.
Q. So -- so my -- my question is very specific and perhaps you could just answer it with a yes or a no. Are you aware of any doctor anywhere in this case of the 40 medical specialists that have provided care to him over the last two and a half, almost three years that have called his physical injuries to his back and

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his spine what you did when you called it -- referred to it as vertebral degenerative arthritis, are you aware of any doctor that -- that has used those words?
A. I cannot answer your question as stated.
Q. The vertebral degenerative arthritis, if we -- if we put that aside, is there a reason that you did not include any of his other injuries from this double truck accident?
A. Well, I saw the records and I imagine that there are -- that there may be additional medical records that would be consistent with my perusal of certain documents, but, again, my addressing those physical conditions is not my expertise but only to list them as offered by Mr. Fairley and I concentrated on my area of expertise, which is to look at him psychiatrically and emotionally.
Q. I -- I understand that's what you're saying, Doctor, I guess my question is you -- you listed diabetes that he doesn't have, elevated triglycerides that is not symptomatic, asthma that he doesn't have, obesity that I don't believe there's any evidence of before this double truck crash, but you don't list anything about traumatic headaches, tinnitus and ringing in the ears, the fractures he's sustained to other areas of his body, to his mouth, his shoulder, his knee injury, any

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of these other injuries from this crash. I'm wondering why those are omitted from your axis III listing of injuries and conditions?
A. And your question is?
Q. Why are they not listed?
A. I didn't feel that they were pertinent to my analysis.
Q. Okay. I'm -- I'm confused so please help me to understand. How is diabetes, elevated triglycerides, hypertension and asthma and obesity pertinent to your diagnosis and conclusions but the other physical injuries that he is seeking medical attention for for the past two and a half, almost three years and taking narcotic medication for every day not pertinent?
MR. OBRINGER: Asked and answered.
A. I can't help you further.
BY MR. GURSTEN:
Q. You can't answer that?
A. I cannot help you further, as you requested, help you understand. I've said as much as I can on that subject.
Q. Would you agree that something like traumatic headaches, where he's taking three Darvocets a day to control them, might be more pertinent than listing something like diabetes or asthma or obesity that he doesn't even have or hypertension that he never had

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before this and elevated triglycerides that if he does have is not symptomatic?

MR. OBRINGER: Objection, form and foundation.

BY MR. GURSTEN:

Q. Doctor?

A. I'm not sure of your question.

MR. GURSTEN: Would you read it back, please?

(The following requested portion of the record was read by the reporter at 10:13 a.m.:

Q. Would you agree that something like traumatic headaches, where he's taking three Darvocets a day to control them, might be more pertinent than listing something like diabetes or asthma or obesity that he doesn't even have or hypertension that he never had before this and elevated triglycerides that if he does have is not symptomatic?)

A. No.

BY MR. GURSTEN:

Q. It's not more pertinent to your conclusions and diagnosis?

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A. No, I've already addressed that in my axis I diagnosis, which is chronic pain, so I have addressed it.

Q. So you -- if I understood your testimony earlier where I -- I believe you said on -- on more than one occasion his chronic pain is related -- in fact this is what you said, his chronic pain and mood disorder is related to his general medical condition. His chronic pain is related to these illnesses.

You're saying that the chronic pain he has, including the traumatic headaches that you now say is incorporated in the chronic pain disorder diagnosis you list in axis I, that -- that those things he's having, like traumatic headaches and chronic pain, is related to the general mood condition that you went on to list in axis III as the cause of his depression?

A. Well, it includes the chronic pain, whatever contributes to his chronic pain. I -- I am admitting that as it flows from the motor-vehicle accident it may have a contributory factor in his mood, but I also mention that he is responding to treatment and that has very promising outlook that he will continue to respond and it's being managed.

Q. But that seems to be only based upon your -- your exam and what you say Mr. Fairley said to you, true?

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A. That's what an expert witness does.

Q. I see. So I'm -- I'm trying to understand because my copy of the DSM-IV that defines chronic pain disorder says that when you use that diagnosis, when you diagnose someone with that that means that, number one, the pain is the predominant focus, and number two, it is severe enough to warrant clinical attention?

A. That's correct.

Q. Okay. So looking now at all of the things that you listed in axis III, his diabetes, elevated triglycerides, hypertension, asthma, obesity and vertebral degenerative arthritis, do any of those conditions cause pain?

A. Well, the chronic pain that I list in axis I, that you just clarified by your definition, addresses your concern about your understanding in what chronic pain means.

Q. Okay. But you said in your report and in your testimony on more than one occasion that his chronic pain and his depression is related to the mood disorder, which is related to his general medical conditions?

A. That's correct.

Q. Okay. So what I'm trying to get at is how do any of

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these general medical conditions cause him pain, with the exception perhaps of the hypertension which can be caused by someone who is undergoing and experiencing severe pain?

A. I can't help you understand it better. You stated it correctly earlier and that's just as good as I can do. He has chronic pain that need -- needs condition -- needs treatment and attention and chronic pain is the number-one priority in addressing his complaints.

Q. So when I asked you in the very beginning of my questioning that you found no evidence at all of any emotional injury from this double truck crash, you're saying that the depression he has is related to these axis III conditions, these -- these general medical conditions that you listed?

A. I think I've been clear that he has chronic pain that I've addressed in axis I, so I've covered pretty much every diagnosis that relates to the motor-vehicle accident and his current functioning.

Q. Okay. So when you say he is depressed, is he depressed also because of this motor-vehicle crash?

A. That's possible.

Q. Is it possible or is it probable?

A. It's possible.

Q. Why isn't it more probable that he is depressed from

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serious physical injuries from a motor-vehicle crash and the constant pain he's had for two and a half years as well as all the things he can't do like go back to work, than -- than axis III conditions like diabetes and asthma that he doesn't even have?
A. Your question is rather confusing, I don't know which part to answer.
Q. Why is it --
A. He can work --
Q. Why is it --
A. He can work and he just -- he refused to go back to his other employment and I can understand why he cannot, but he is employable and he has chronic pain and it may have flown from -- flowed from the motor-vehicle accident, but it's being addressed with medication and I see that as promising, that he's -- he's able to address those things and be managed by it.
Q. You feel he's able to go back to his job?
A. No, I said he cannot go back to his job, but he is employable.
Q. Doing what?
A. Well, he could be a security guard, he could sit down and watch video of certain kinds of movings and goings on in an -- an area that requires observation and

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surveillance. He could be a receptionist where he's not demanding any physical movement, but I'm sure he could manage that. He has a great intelligence, memory, responsibilities for certain things, I think he'd do well if he were motivated and interested.
Q. You don't feel he's motivated and interested?
A. If he was motivated and interested in performing employment then he could pursue those avenues, and not having sought those or failed at it I can only hope that he would entertain those if he were interested and working -- if he were interested in working.
Q. So you feel that the reason he's not working any of these other jobs is -- is not because of any of his injuries, but because he's not interested in it?
A. If he were interested in those other areas I would feel that he'd be quite successful.
Q. Doctor, can you -- I -- I just want to get back to this depression being possible from the motor-vehicle accident and not probable. Can you explain to us why -- well, let me ask you this, a -- as -- as a medical doctor, as a psychiatrist you're supposed to pick the most likely cause for someone's symptoms, aren't you, not -- not the least likely?
A. Yes.
Q. Okay. Do you have any evidence of him functioning at

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a -- at anything other than a very, very high level before this crash that we're here for, be -- before the effects on his life?
A. I have no medical records prior to his motor-vehicle accident.
Q. Okay. Do you have any evidence from -- from his history to you or all the depositions and medical records that have been provided to you of him functioning at anything other than a very high functioning level before he's hit by two trucks on April 4th, 2008?
A. Well, I know that he had a motor-vehicle accident in the early '80s where he stated he had a whiplash.
Q. Okay. That was 30 years ago, anything besides 30 years ago where he may have had a whiplash?
A. Well, I might suggest that that could be possible -- maybe came from those -- from that accident that he has some conditions now, that's about all according to his history, but according to his history only that -- that I can see of -- can see could be contributory to his current functioning and I have no other medical records to corroborate that, but he offered it that he did have a motor-vehicle accident before. So some of the conditions may be related to that and some to this, I'm not able to determine --

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Q. Okay. But he has --
A. -- how much one or the other.
Q. But he has shattered, collapsed vertebral bodies in his back, are you saying that that is -- and he worked for 24 straight years, including 12 years without ever missing a day from work, you -- you're -- you're saying that -- that this whiplash he may have had 30 years ago was a contributing cause?
A. I don't know.
Q. Okay. Are you aware of any other possible contributing cause besides him getting hit by two trucks?
A. I see that as contributory, certainly, a dramatic contribution.
Q. Okay. So back to my -- my question, do you have any evidence to the contrary that he is functioning at anything other than a very high level until this truck crash on 4-4-08?
A. I've answered --
MR. OBRINGER: Asked and answered.
A. I sure have answered it a couple times and I don't know what more you want from me.
BY MR. GURSTEN:
Q. I -- I want to know if you have any evidence?
A. You know that I have no records prior to his

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motor-vehicle accident, I've said that.
MR. GURSTEN: Let's change the tape.
VIDEO TECHNICIAN: This marks the end of tape number one, the time is 10:22 and 12 seconds a.m., we are now off the record.
(Recess taken at 10:22 a.m.)
(Back on the record at 10:25 a.m.)
VIDEO TECHNICIAN: This marks the beginning of tape number two, the time is 10:25 and 50 seconds a.m., we are back on the record.
BY MR. GURSTEN:
Q. Doctor, I'd like to turn to a new area now. You said that you find no evidence of traumatic brain injury or closed-head injury; is that correct?
A. That's correct.
Q. And on page 6 of your report you did a mental-status examination?
A. That's correct.
Q. Can you tell the jury how long that actually took you, that -- that actual mental-status examination?
A. Approximately two hours.
Q. I'm sorry, the -- the actual mental-status examination itself?
A. Two hours.
Q. Okay. You have a paragraph here where you asked him

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about doing serial sevens, interpreting proverbs, spelling sugar backwards, how many stars are in the flag, how long did that segment take?
A. I'm not sure, it's part of the mental-status examination.
Q. Okay. It's -- it's actually referred to as a mini mental-status examination, isn't it?
A. No.
Q. Okay. It took about five minutes?
A. No, the mental-status examination begins at the time I'm observing Mr. Fairley, that means from the time I see him until the time the examination is over.
Q. Okay. And -- and I understand that, that -- that your whole interview is part of your -- your examination, but what I'm saying is is specific questions that you were asking him to then have a basis to testify that he has perfect memory, perfect concentration, no problems with comprehension, no problems with my exam questions, that I wrote down you saying in your direct, I want to know how long those series of questions were?
A. Well, they were questions that were conducted based on his history, when I asked about auditory and visual hallucinations, so I'm not sure what you're -- what I can tell you about --

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Q. All right. The question --
A. -- which part fit into what and which part fit into that, but part of a mental-status examination includes sensorium and mental grasp, just as part of it includes history, part of it includes social history, his functioning, his childhood history.
Q. Doctor, if you would, please, could you refer to your report, page 7, the last paragraph, it starts off with the conclusion of this sensorium and mental grasp is contradictory to the statements not being able to remember and then you list a number of -- of tests and questions that you administered to him; do you see where I'm referring?
A. Yes.
Q. Okay. And I just want to know that all those tests that you have in that paragraph, do you think it took you more or less than five minutes?
A. More.
Q. More or less than six minutes?
A. I don't know.
Q. And I -- I don't want this question to sound not respectful, but most of these questions are -- are questions that really an eight-year-old could answer correctly, true?
A. Well, I don't know that.

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Q. Well, an eight-year-old can answer how to spell sugar backwards, right?
A. I don't know.
Q. An eight-year-old knows how many stars there are on an American flag? These -- these questions don't rule out traumatic brain injury, do they?
A. No, they don't.
Q. The serial sevens that he got right with you one time, how much significance do we put on that, that on one day he got that right with you?
A. You can add it as significant.
Q. Well, all right, that's what I'm trying to understand. Why is that so significant that he gets it right with you?
A. Because traumatic brain injury does not wax and wane and consistently with his continued improvement it shows that he did not have a traumatic injury and does not have it at this time.
Q. The fact that he got the serial sevens right shows that he doesn't have traumatic brain injury? What about the quote that you said he -- the obscure proverb, what's the significance of that?
A. The significance is that he's able to do more than recite something an eight-year-old would know, but would have an ability as a mature mind to understand

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it, know the parts of which relate -- relate to dinosaurs and snails and rivers and streams and have an -- an ability to understand what that relevance may be to the functioning of an object such as a dinosaur, all of which are meant to be abstract.

And the ability of ab -- abstract -- the ability to abstract is a rather significant, sophisticated ability to understand, concentrate, comprehend and it's more than just a waxing and waning and to and fro of his cognitive abilities, which shows he has a -- attained a rather sophisticated ability to have positive cognitive demonstration. So his performance there is consistent with my diagnosis that he has no traumatic brain injury, not just at that point, but over a long period of time.

Q. Doctor, would you -- would you read back what the obscure proverb even was, please, in your report, what was the proverb you gave him that you're attaching such importance to?

A. Even dragons wading across streams with snails nipping at their heels.

Q. And what was his interpretation that you found so sophisticated?

A. That even big people who appear to be secure and protected and -- and, you know, don't look as if they

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have problems still have little things that may bother them no matter how insulated and protected they appear.

Q. Would you turn to page 8 of your report, the very first paragraph, that's where you address this proverb, correct?

A. Yes.

Q. And this is where you say this is a sophisticated interpretation for someone who believed that his memory and concentration are disturbed?

A. Yes.

Q. And you put his answer in quotes? Doctor? Doctor, did you put his answer to your proverb in quotes there?

A. Yes, I did.

Q. So that was his answer to you?

A. I'm not understanding your question, you made a statement. That was his answer to me, yes.

Q. Okay. That's why you put it in quotes?

A. Yes.

Q. That's his exact answer?

A. Yes.

Q. Doctor, going through your five-minute -- or I'm sorry -- six-minute mini mental-status examination --

A. I didn't say it was six minutes.

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Q. I'm sorry. Going through your -- your mini mental-status examination --

A. I didn't say --

MR. OBRINGER: Objection --

A. -- it was a mini mental-status examination.

BY MR. GURSTEN:

Q. Going through the questions that you asked in that paragraph I've been asking you about, and -- and maybe we can clarify, do you know how many minutes it took you to actually go through those questions?

A. No, I do not.

Q. Okay. Going through those -- those questions did he ever have a problem with any of your questions?

A. Not that I recall or recorded.

Q. Did he ever ask you to repeat any of them?

A. I don't recall that.

Q. Did he ever say he didn't understand any of your questions?

A. I don't recall that.

Q. If he did could that be a sign of brain damage?

A. No, I've asked a question be repeated here and, I'm sorry, it doesn't mean it's a sign of traumatic brain injury.

Q. Well, the -- you're putting a lot of significance to the questions he's getting right, would that suggest

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that you would put an equal amount of significance on those questions if he were to get them wrong?

A. Yes.

Q. That would indicate brain damage?

A. It would indicate that he got the questions wrong and I'd look for reasons why.

Q. And, Doctor, you should never misrepresent in your report what actually has occurred, true?

A. I would not do that consciously, no.

Q. That would not be honest or ethical to misrepresent what someone says to you?

A. Would not try to do that, no.

Q. Doctor, you knew your examination was recorded, true?

A. Yes.

Q. And you knew it was recorded and in fact you -- you demanded a copy of the videotape before you would even write your report, true?

A. I required it to complete my review of all pertinent records, yes.

Q. And you did review that videotape before you finally issued your report about two months after your examination, true?

MR. OBRINGER: Objection to the form of the question.

MR. GURSTEN: Would you read it back?

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(The following requested portion of the record was read by the reporter at 10:35 a.m.:
Q. And you did review that videotape before you finally issued your report about two months after your examination, true?)
A. I did review the -- the videotape prior to my completion of the report.
BY MR. GURSTEN:
Q. Doctor, I'd like to play a portion of that videotape for you.
(Whereupon the videotape was played as follows:
Okay. Mr. Fairley, tell me, please, do you remember my name? Rosalind. I can't remember your last name.
Do you know where you are? I'm in Farmington Hills.
Can you subtract seven from 100? 93.
And keep counting down by seven. 86, 79, 72, 66.)
BY MR. GURSTEN:
Q. Doctor, if you subtract 7 from 72 what number do you get?
A. 85 (sic).

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Q. I'm sorry, if you subtract seven from 72 like you were asking --
A. 65.
Q. Okay. He answered 66. Let's continue.
(Whereupon the videotape was played as follows:
59, 52.
Okay. 45.
Okay. And if I asked you what this meant, even dragons wading across shallow ponds have snails nipping at their heels, what does that mean to you? Nothing really to me.
Just give it a thought. Say it again, please.
Dragons wading across ponds, shallow ponds, have snails nipping at their heels. No matter how big you are if you go across the pond snails will come after you or something.
Okay.)
BY MR. GURSTEN:
Q. No matter how big you are if you go across the pond snails will come after you or something, that's very different from what you put in quotes as his answer to you, isn't it, Doctor?
A. Yes, it is.

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Q. What you put in quotes was no matter how big you are you can still have problems, correct?
A. Yes.
Q. Now, Doctor, these tests that you gave in that one paragraph that we've been going over, however many minutes that was, that actually -- you gave your own battery of -- of questions and tests in those five minutes or -- or whatever it was, true?
A. Yes.
Q. The point is is that there are a number of standardized mini mental-status examinations, the most famous being the Folstein, F-O-L-S-T-E-I-N, that you could give that are almost identical but are standardized and have a score. Are you familiar with the Folstein --
A. No, I'm not.
Q. -- mini mental-status examination?
A. No, I'm not.
Q. If you don't give a standardized battery and if you don't have to score it, you don't have to say if someone is -- is responding in a brain-damaged range if it's your own test, true?
MR. OBRINGER: Objection, form and foundation.
BY MR. GURSTEN:

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Q. Doctor, your -- your test isn't standardized and doesn't have a score, does it?
A. That's correct.
Q. And in your report you make absolutely no reference to all the medical records you have from all the doctors that defense counsel did give you to where they did specifically test for traumatic brain injury and they diagnosed traumatic brain injury; is that true?
A. That's true, I did not make reference to them in my report except to notice that I had reviewed them.
Q. And all those doctors that diagnosed brain injury in his first week at the hospital at Foote and the second week in the hospital at Chelsea, you also did not put those in your report?
MR. OBRINGER: Objection, form and foundation.
BY MR. GURSTEN:
Q. Is that true, Doctor?
A. That's true.
Q. Most, if not all, these doctors have done far more extensive actual testing into a traumatic brain injury than you did, true?
MR. OBRINGER: Objection, form and foundation.
BY MR. GURSTEN:

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Q. Is that true, Doctor?
A. From -- not as a psychiatric point of view, no, they have not.
Q. You also had in your records a brain MRI from Mr. Fairley, a positive abnormal brain MRI, and you don't mention that at all in your report?
A. I didn't find --
MR. OBRINGER: Object -- excuse me. Objection, form and foundation.
A. I don't recall any MRI that stated specifically that it -- it pointed towards a traumatic brain injury. And interestingly enough, it may surprise you, that no matter how sophisticated imaging tests may be they contribute nothing to a diagnostic formulation.
MR. GURSTEN: Would you read back my question, please?
(The following requested portion of the record was read by the reporter at 10:41 a.m.:
Q. You also had in your records a brain MRI from Mr. Fairley, a positive abnormal brain MRI, and you don't mention that at all in your report?)
MR. OBRINGER: Again, I -- well, I -- I put it on the record so --

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BY MR. GURSTEN:
Q. Doctor, did you mention the brain MRI in your report anywhere?
A. No, I did not inasmuch as it wasn't pertinent and pointed to any direction that I -- my diagnostic formulation would support.
Q. Doctor, you -- when you say you find absolutely no evidence of traumatic brain injury or closed-head injury, it -- it's kind of like if someone comes to you with a positive mammogram or an abnormal mammogram and says I've got these ten doctors who are telling me that I have cancer and it would be like you saying you have no cancer because you just do a five or six-minute test?
MR. OBRINGER: Objection; form, foundation, argumentative.
BY MR. GURSTEN:
Q. Is that -- is that a fair statement, Doctor?
A. No, it's not.
Q. But most of these questions that you asked him, like spelling sugar backwards or how many stars there are on the flag, even someone who is brain injured, even profoundly brain injured, can answer, true?
A. Not in my experience.
Q. Okay. But in -- in the testing you did give him of

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however many minutes it was, he still managed to get four wrong. He got your last name wrong?
A. He didn't get my last name. He knew my first name, which is unusual, most people don't remember that or they mispronounce it.
Q. He didn't remember your last name though, correct?
A. He knew my first name, he got it right. Who am I, he remembered Rosalind. He knew I was a doctor.
Q. So you think that's -- that's a correct answer?
A. I think it's as good as he can get --
Q. Even though he didn't remember your last name?
A. -- having only met me -- absolutely.
Q. Okay. He told you that it was the Mobil oil spill, not the BP oil spill?
A. That's correct.
Q. He made a math mistake on his serial sevens?
A. Yes.
Q. And he got your proverb wrong?
A. No, he did not.
Q. He gave a -- an answer that is markedly different than the answer you put in quotes as his exact answer in your report, isn't that true, Doctor?
A. Yes. He did not get it wrong, your tape shows that he did not get it wrong.
Q. Let's hear it again, Doctor.

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(Whereupon the videotape was played as follows:
I was very frightened at that point.
Okay. And tell -- dragons wading across shallow ponds have snails nipping at their heels, what does that mean to you? Nothing really to me.
Just give it a thought. Say it again, please.
Dragons wading across ponds, shallow ponds, have snails nipping at their heels. No matter how big you are if you go across the pond snails will come after you or something.
Okay.)
A. He didn't get it wrong.
BY MR. GURSTEN:
Q. Snails will come after you or something?
A. Yeah.
Q. That's your testimony?
A. Yes.
Q. Okay. Doctor, you -- can we agree your report is inaccurate?
A. No.
Q. Can we -- your report is accurate? Your report is accurate? Doctor?
A. Yes.

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Q. Do you believe your report is accurate?
A. Yes.
Q. You wrote that he got the serial sevens correct, he made a mistake, and you put down a completely different answer in quotation marks to the proverb that you asked him about and I'm asking you is your report accurate?
A. Yes.
Q. You would never intentionally misrepresent what he said to you?
A. That's correct.
Q. Let's turn to PTSD. What does PTSD stand for?
A. Posttraumatic stress disorder.
Q. You're aware that he was first diagnosed with PTSD in June of 2008, approximately two months after this crash?
A. Yes.
Q. Where in your report does it show that you asked him about all of the symptoms of PTSD?
A. It's not in my report.
Q. Doctor, did you give any of the tests that are designed to determine the existence of PTSD?
A. No.
Q. You did no testing for it, you just concluded he doesn't have it?

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A. That's correct. He did not offer that he was near a -- in a near-death situation, that he had flashbacks and nightmares of or changes in his personality or irritability or numbing of his feelings and so I can establish that posttraumatic stress disorder did not exist at the time I saw him.
Q. But this is kind of like that -- my mammogram example I just gave you. You -- you're aware that he's been told and being diagnosed with it by a number of doctors for two and a half years and -- and you did no specific testing for it?
MR. OBRINGER: Objection, form and foundation.
BY MR. GURSTEN:
Q. Is -- is that an accurate statement?
A. I am saying that, like the mammogram, opinions may be offered and many of the women on the jury will find some people will say you have it and you get another opinion that says you don't and you're not dying, and this was an abnormal test and -- and so they will generally be optimistic of the fact that they don't have such a disease and Mr. Fairley should be I think as well optimistic that he doesn't have the labels that have been applied to him, that he does not have closed-head injury.

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Q. But you're aware -- if it's -- if it's an issue in this case, if it's -- if it's in the medical records and specialists for brain injury have been providing medical treatment to him for this, there are a number of very well-respected and established tests that you could have given if you chose to specifically rule in or rule out a diagnosis of posttraumatic stress disorder, you just chose not to do that?
MR. OBRINGER: Objection, form and foundation.
BY MR. GURSTEN:
Q. Is that true?
A. I have stated that those tests, even imaging tests, do not shed light on the diagnosis of posttraumatic stress disorder and many clinicians will say that if the diagnostic formulations required a lot more than the testing, that maybe MRIs or maybe formulated by psychologists, which are extensive and may pick up a number of things, but not a -- not conclusive for posttraumatic stress disorder or for traumatic brain injury --
Q. I -- I understand that conclusive --
A. -- it is a clinical diagnostic formulation --
Q. I'm sorry.
A. A clinical diagnostic formulation, which I'm able to

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give and can do in the time I had and the way that I presented in my report, substantiates there's no traumatic brain injury, no posttraumatic stress disorder.
Q. Is your clinical diagnostic interpretation that you say you did, is that your own that you just make up out of thin air or is it based upon the American Psychiatric Association and the Diagnostic of Statistical Manuals definition of PTSD?
A. It is based on my clinical expertise and also fits into the DSM-IV.
Q. Because the definition of posttraumatic stress disorder in the DSM-IV says that someone -- an essential feature of PTSD is exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury and the person's response to the event -- to the event must involve fear, helplessness; is that true?
A. That's true.
Q. And you're saying that in your evaluation of Mr. Fairley you had no indication at all of any of the indicia to meet the definition of PTSD as offered by the DSM-IV?
A. That's true.

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Q. Doctor, I'd like you to hear what he told you in your examination.

(Whereupon the videotape was played as follows:

What's the next thing you recall? Woke up in the ambulance just as we were coming into the hospital.

Were you on a nick (phonetic) board or anything like that? Yes. Yeah, I was very frightened at that point.

Can you tell me what you were frightened about? I didn't know where I was and I didn't know what had happened. I couldn't figure out who these people were.)

BY MR. GURSTEN:

Q. I'd like you to hear what else he said, Doctor.

(Whereupon the videotape was played as follows:

Your head was wedged between what and what? Between the seat and the -- the post there by the door.

The front seat? Back seat.

Oh. I base that on the fact that the cup holder was -- had about 2 inches of blood in it.

You describe it really dramatically. I --)

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BY MR. GURSTEN:

Q. Doctor, doesn't that meet the DSM-IV definition of posttraumatic stress disorder as I just read to you?

A. No.

Q. So he tells you that he wakes up in an ambulance, he is waking up immobilized on a spinal immobilization board, tells you he is very frightened, he tells you that he has no idea where he is or who these people are, he's in pain all over and there are 2 inches of blood in the cup holder and you say he is describing that very dramatically -- and then, if you would, Doctor, can you turn to page 7 of your report? Are you there?

A. Yes.

Q. On page 7 of your report under sensorium and mental grasp did you write the following, and please tell me if I'm reading this to you exactly word for word as you wrote it in your report, Mr. Fairley stated that without the Ambien he will awake screaming recalling the accident. Did I read that correctly, Doctor?

A. That's correct.

Q. So Mr. Fairley has been diagnosed with posttraumatic stress disorder by his treating doctors since June of 2008, that's in the medical records that you have, you don't do any testing for it and despite these things

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that he has told you you say there's absolutely no evidence of posttraumatic stress disorder?

MR. OBRINGER: Objection, form and foundation.

BY MR. GURSTEN:

Q. Is that true?

A. As you stated it, it leaves out the fact that there's no standardized tests for posttraumatic stress disorder, I didn't use one, but the clinical evaluation of whether he had posttraumatic stress disorder is evident that he has no posttraumatic stress disorder at the time I saw him, and I don't know if other treating physicians reevaluated their diagnosis at that time, but certainly at the time I saw him there was no existence of posttraumatic stress disorder. And whatever symptoms he had certainly, which were sympathetic and certainly painful to him, they're being addressed in his current treatment and I consider that to be appropriate and certainly responsive to the treatment as showing improvement.

Q. Posttraumatic stress disorder is defined as exposure to an extreme traumatic stressor involving direct personal experience that directly involves actual or threatened death or serious injury. The person's response to the event must involve intense fear or

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helplessness. Despite all those things that we've just discussed, your conclusion is is that there is no evidence whatsoever of PTSD?

A. That's absolutely correct.

Q. And the doctors that do say he's had it and that have been treating him for it for the past two and a half years, you conclude they are also wrong, you just chose not to give any of the tests yourself that are established by the American Psychiatric Association that could have helped to definitively rule in or rule out this diagnosis?

MR. OBRINGER: Objection; form, foundation, argumentative.

A. You've misrepresented my response as I did not say those doctors were wrong.

BY MR. GURSTEN:

Q. You just disagree with them?

A. I'm telling you at the time I saw Mr. Fairley there was no evidence of posttraumatic stress disorder and, I'm sorry, even in your playing back the tape you can see how it's inconsistent with posttraumatic stress. How could he recall 2 inches of blood in a cup holder, I mean, that's his perception, but it's -- doesn't agree with the facts and as he even presented his history he's certainly saying that what he recalls and

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what actually was the case is his recollection based on whoever told him that or whatever he says, he woke up -- that's not unusual to have some amnesia after an accident, be disoriented, but it doesn't -- it doesn't govern the rest of his progress. It doesn't govern the rest of his treatment and it shows even in his treatment that he's continually improving. Those records indicate that as well.

Q. Well, he told you that he is -- without his Ambien he will wake screaming recalling the accident. I guess what I want to know, Doctor, is how much more would he have to tell you, what -- what else would he have to tell you for you to be able to conclude that he may have posttraumatic stress disorder?

A. Well, you've just stated it for me. He's on Ambien, there's no wakening with nightmares or screaming. I don't know what else to tell you. Who would not want to take the Ambien to wake up screaming, so I'm telling you that's how he's being managed and he's responding to the treatment and there's no evidence of posttraumatic stress disorder that would exist despite medication and he's responding to the treatment and that's appropriate.

Q. So is it -- is it fair then to say, because I think we're just going to have to agree to disagree on this,

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that -- that it is an issue in this case that many of his treating doctors believe he suffers from, and you chose not to test for it specifically, you just chose to conclude he does not have it?

A. That's not correct --

MR. OBRINGER: Objection; form and foundation.

A. -- as you stated.

BY MR. GURSTEN:

Q. Okay. How is that -- strike that.

Let's move on, Doctor. Doctor, on page 3 of your report you say that he has absolutely no evidence of emotional injuries related to the April 4th crash. Is that still your testimony now?

A. Would you direct me to that area on my report that you're quoting from?

Q. Bottom of page 2, last paragraph. Mr. Fairley has no emotional injuries related to the motor-vehicle accident of April 4, 2008. The depression that he has is secondary -- secondarily to a medical condition?

A. Yes, and I've stated what the axis I diagnosis is.

Q. Would you tell us what you would need to have heard or to know to be able to conclude that he does suffer from serious emotional injuries from this double truck crash from April 4th, 2008?

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A. Would I tell you what I needed to hear or what I did hear to tell me he did not have it?

Q. Well, let's start with that then. What -- what did he tell you that you did hear that allows you to -- to conclude that there's no evidence of emotional injuries?

A. Well, I don't think that's fair of my conclusions. He does have chronic pain that's related to the motor-vehicle accident and from that there would be a depression. I did not say he doesn't have it related to his diagnosis.

Q. He told you he is profoundly sad and depressed?

A. That's his perception, he's profoundly sad and depressed.

Q. And you have no reason to believe that he's exaggerating or being less than honest with you?

A. That's correct.

Q. In other words, that's -- that's his real suffering?

A. That's what he perceives subjectively. Objectively, no, that's not the case.

Q. Objectively, no, because you disagree?

A. Objectively that he shows no evidence of -- of that.

Q. Doctor, can I have you listen to what he said to you about this in your examination?

A. Certainly.

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(Whereupon the videotape was played as follows:

I just have a profound sadness and I feel overwhelmed at times, just I don't know what to do, just none of the -- none of the things I like to do I can do anymore and, I don't know, it just seems -- seems useless to be around sometimes, I don't know, I -- I talk to my wife about it and thank God she's here because she's -- she's wonderful, she's strong and --

She's patient with you? Yeah.

She doesn't fuss at you and tell you to get off -- she's -- she's convinced me that -- that I'd be a bigger burden if I did do something to myself than I would be now.

Let's talk about that, Mr. Fairley, you -- suicide, what would that accomplish for you? It would take the pain away.

You're not feeling like the pain is being managed? Well, you can only manage it so far. You don't want to get it -- heavy into the narcotics, I mean, I don't --

You don't want to be addicted? No, I -- I don't want them controlling me, but then again the -- I think the pain is controlling me so I'm -- I'm still

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working on that with the doctors. We'll see. I think the counseling has helped me some, going to continue with that. It was a little bit -- I was a little bit more -- had thoughts that way when I was on the Paxil and I've been off of that now so that -- that seems to --

Paxil made you feel more suicidal? Yeah, I -- the Wellbutrin seems to be a little better. I still have days where I just -- I could just stay in bed, but my wife, bless her heart, she --

Prompts you to get up? She prompts me to get up, prompts me to get showers and stuff. Some days I don't feel like it, but I -- she makes me.

You do shower yourself and bathe yourself? My depression, what I can do to help it.

Have you been suicidal? I have thought about it.

Have you ever acted on it? No.

Have you ever planned or -- when you would do it? I've thought about planning it, but never really -- I've had people around me, they've been talking to me so I -- they've been adjusting my meds, I think it's helping a little bit. There's still some days and I just need to have somebody to talk to at those times and fortunately I have them.

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So you're in group therapy on Thursdays and you see her three to four times this year? About once a month.

Once a month? Yeah.

And what made you start seeing Dr. Wilanowski? Well, for about a year I hid those thoughts and --

You didn't talk about it in group? Not really, and finally came out one time and -- at the rehab and they were concerned about me so I -- I arranged an appointment with her and --

Do you own any weapons? No, I don't.

Have you ever tried to hurt anyone else? No.

Do you think you're depressed, sir? I do.

Why would you just start seeing Dr. Wilanowski this year? Well, like I said, they -- they mentioned the -- the suicidal thoughts and they picked up on it somewhere and -- I'd never mentioned it to anybody. They recommended I see -- see someone, that's how -- she was the closest one to me so --

How do you get along with her? She's a wonderful lady.

She is a nice lady. What does she say or recommend to you? We've just been trying to adjust

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the meds and she just says continue to talk to people and talk to me and --

Have you been tearful? Oh, yeah, I cry at the drop of a hat sometimes. A lot of times I just have to turn the news off because it's just so depressing and intensifies what I have already.

Whose fault is it this accident happened? Frustrated and just sad.

I understand, sir, frustrated and sad.)

BY MR. GURSTEN:

Q. Okay. Doctor, your testimony --

(Whereupon the videotape was played as follows:

What are you going to do the rest --)

BY MR. GURSTEN:

Q. -- in direct and in response to my questions now about what you wrote directly in your report is there is no emotional injury related to the April 4, 2008 motor-vehicle accident.

Is that still your opinion today?

A. Well, I can concede that he has some depression now and that he states it's intensified by the television. He stated that he was --

Q. Doctor, I don't mean to --

A. -- seeing Dr. Wilanowski --

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Q. Doctor --

A. -- as a result of his depression and I would say -- state that embodied in my diagnosis it clearly states that chronic pain may cause a depression, which is a mood, and that it's related to his medical condition and the chronic pain and I think I've stated that clearly.

Q. I -- I -- I don't think so, so respectfully, Doctor, you state two times in your report and in your direct and in the very beginning of my cross-examination that Mr. Fairley suffered -- that you said there was no evidence, no evidence of emotional injuries related to this April 4, 2008 crash. Is that still your opinion?

MR. OBRINGER: Objection, form and foundation.

A. That is my opinion.

BY MR. GURSTEN:

Q. Doctor, let's go on. I want to turn to a new topic. You are -- the medical records in the trial deposition testimony that you have received from defense counsel, at least as it regards the physical injuries in this case, would clearly indicate that these are catastrophic, serious injuries, would you agree?

A. I leave that for the specialists in that area to determine physical, catastrophic illnesses and their

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diagnosis.
Q. Well, since you -- you actually have what defense counsel has provided to you and -- and we've already taken their trial depositions, I have not stated -- I did not make that statement inaccurately, did I?
MR. OBRINGER: Objection, asked and answered and -- and form and foundation.
BY MR. GURSTEN:
Q. Can you answer?
A. I remain in the accuracy of my previous answer.
Q. There are -- in your medical examination that you did on behalf of the lawyers for Schiber there are questions that you did spend a lot of time on. You spent a lot of time it looks like asking about other potential causes or -- or what else could be causing the emotional injuries and depression. You asked him about what his religion is, how often he goes to church, does he gamble, has he ever declared bankruptcy, has he ever had any extramarital affairs, you went through basically every single form of alcohol and every single form of drug, including crack. You asked him all these questions in your report, true?
MR. OBRINGER: Objection, form and foundation.

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A. Those are normal questions that are done in a mental-status examination.
BY MR. GURSTEN:
Q. Can you tell me something, please, in a case of -- of this kind of severity where you're asking him about these things like how often he goes to church, do you think that is more important than asking him about how the relationship with his wife has changed?
MR. OBRINGER: Objection; form, foundation.
A. I didn't weigh one response greater than the other. I did a general assessment of his ego strengths and the functioning of his coping skills.
BY MR. GURSTEN:
Q. Can you show me anywhere in your report where it reflects you asking him or him telling you about how the relationship with his wife has been affected by this crash?
MR. OBRINGER: Objection, form and foundation.
A. It is not in my report, as you stated.
BY MR. GURSTEN:
Q. Doctor, was that a -- another mistake or did you intentionally exclude that information from your report?
A. Not --

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MR. OBRINGER: Objection; form, foundation, argumentative.
A. Not as you stated that.
BY MR. GURSTEN:
Q. I'm sorry?
A. Not as you stated it.
Q. Did you ask questions about his relationship with his wife and how it's affected her in your examination?
A. I think he put forth that about his wife, trying to get him to go out and -- and helping him cope with his condition.
Q. You just thought that was not important enough to include in your report?
MR. OBRINGER: Objection; form, foundation.
A. That's not what I said.
BY MR. GURSTEN:
Q. Okay. Do you think that it's more important as a psychiatrist who's doing a -- a psychiatric evaluation to know how the relationship and intimacy between a man and wife who have been married for 25 years, how that has been impacted, than it is to talk about his general medical conditions like diabetes which he doesn't have, triglycerides, hypertension, asthma which he doesn't have, obesity and vertebral degenerative arthritis?

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MR. OBRINGER: Objection, form and foundation.
A. I have no records of Mr. Fairley's functioning with his wife prior to the motor-vehicle accident in April of 2008.
BY MR. GURSTEN:
Q. Do you have anything to indicate to you that he and his wife had a very successful and happy marriage?
A. I have no records prior to April 2008.
Q. What -- what -- do you think that would be important in terms of evaluating the psychological and psychiatric impact, the emotional injuries he has suffered, to know how the relationship with his wife has changed?
A. Mr. Fairley didn't offer that as I recall and I don't have any records to suggest that there has been a change.
Q. Mr. Fairley did not offer that and you have no records to suggest there has been a change?
A. That's correct.
Q. Doctor, I'd like you to listen to your examination with him.
(Whereupon the videotape was played as follows:
Some days I -- I -- I forget to eat. I'll

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eat a bowl of cereal and I'll just -- before I know it it will be time to eat dinner and I hadn't ate lunch or nothing, it's just -- just forget.

How often do you have sex with your wife? Since the accident, zilch.

Is there something that was damaged that you can't get an erection? It's not that, it's just too painful.

You don't work around it like different positions or anything like that? Well, other than maybe a little masturbation by -- with her, but other than that, no, and that's very seldom. It's just -- we're just not intimate anymore. It's just -- it's one of the things I really miss.

How old is your wife? Oh, God.

Younger or older than you? She's younger, she's 49.

So a lot younger. She's a lot younger than you? Six -- six years.

Six years.)

BY MR. GURSTEN:

Q. Doctor --

(Whereupon the videotape was played as follows:

How has your life --)

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BY MR. GURSTEN:

Q. -- he told you that since this crash and his injuries he's had no sex with his wife, that they're no longer intimate and that's something that he really misses.

Was that something that would be important to have in your report?

A. Well, it disproves your assumption that he changed his sexual --

Q. Doctor, would you answer my question, please?

A. I am answering it, sir.

Q. Please.

A. I have no information of how he functioned prior to the motor-vehicle accident and this is a very sensitive subject about his sexual performance. I think it's pretty clear, when someone masturbates with their wife, that's sexually intimate and whether he's performing sexually with penetration I have no interest or understanding about his functioning prior to the motor-vehicle accident. That may be by his choice, it may be by their availability. I wasn't performing any kind of sexual therapy or investigation into his intimate life.

As it relates to this examination it's pretty clear to me that intimacy is still available to him and he still feels pain and I understand that that

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may limiting -- may limit his certain positions, but he offered that he has adjusted to it or compensates for it and that they choose those activities that are mutually satisfying.

Q. Did he tell you how frequently he and wife would have intimacy before his injuries?

A. No, he didn't.

Q. And he told you he's had no intimacy since, that they've had seldom masturbation and that the intimacy with his wife is something he really misses?

A. Yes.

Q. And isn't it true, Doctor, that he did tell you during your two-hour medical examination extensively about the things he loved to do and the things that were important to him and the relationship and quality with his wife, you just chose not to put any of those things in your report so you could conclude that there is no emotional injuries that relate to this motor-vehicle accident; isn't that true?

A. No.

MR. OBRINGER: Objection, form and foundation.

BY MR. GURSTEN:

Q. I'll take an answer.

A. No.

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Q. Doctor, the basis for your prognosis, your optimistic prognosis, is that he has told you that he is improving, isn't that what you said?

A. That's what I said.

Q. He told you that he felt he was less depressed and he was making progress, isn't that what you said -- what you testified to that he said to you?

A. Would you show that in my report what you're referring to?

Q. On your report -- that's what I wrote down you testifying to.

A. Well, I -- I would rely on my report to answer that.

Q. But in your report you clearly do say on page 3, first paragraph, he noted that he has been improving. Did you write that?

A. Yes, I did write that.

Q. And I read that exactly word for word as it appears in your report?

A. Yes.

Q. Doctor, do you have your notes from the examination that you took with him?

A. Yes.

Q. Would you look through your notes and please point to where he told you he is improving?

A. No, I don't know that I can point that out in my

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notes.
Q. Do you want to try and find it for us?
A. I cannot.
Q. Doctor, you're testifying under oath today and your testimony is that he told you he is improving, true?
A. That's my understanding, yes.
Q. Well, that's not your understanding, this isn't a mistake, you specifically testified under oath that he's told you he's improving, true?
A. My understanding of what he told me is in my report.
Q. Where you say he told you he's improving?
A. That's my understanding.
Q. Because if he did not say those things to you, if he never said he's improving but the jury believed he did because of your sworn testimony, the consequences for Mr. Fairley could be catastrophic, couldn't they?
A. No.
MR. OBRINGER: Objection, form and foundation.
BY MR. GURSTEN:
Q. Well, the jury could unfairly turn him away or punish him based upon your testimony that he said to you he's improving, couldn't they?
A. No, they couldn't. The trier of fact would assess -- would assess all of the conditions to determine his

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status. My role is to look at the psychiatric portions.
Q. And is your role to put things in your report and to testify about things that the person you are examining has never said?
A. No, that's not my role.
Q. If -- if that were what you were doing and you're testifying about it, you would be committing perjury?
MR. OBRINGER: Objection; form, foundation, argumentative.
BY MR. GURSTEN:
Q. I'll take an answer.
A. You didn't ask me a question.
MR. GURSTEN: Would you read it back, please?
(The following requested portion of the record was read by the reporter at 11:21 a.m.:
Q. If that were what you were doing and you're testifying about it, you would be committing perjury?)
BY MR. GURSTEN:
Q. Isn't that true?
A. As you stated, yes.
Q. And you'd also be committing fraud and you'd also be

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violating your code of ethics with your own profession, the American Psychiatric Association?
MR. OBRINGER: Objection, form and foundation.
BY MR. GURSTEN:
Q. Is that true, Doctor?
A. That's true.
Q. Doctor, were you told by any of the lawyers or any agent of Schiber Truck to put in your report or to testify that Mr. Fairley said he is improving?
A. No.
Q. Doctor, I'd like you to listen to what he said to you in your examination.
(Whereupon the videotape was played as follows:
So after you got out of Chelsea you followed up with the physical therapy? Yeah, they came to my house for like six weeks and --
So you had home therapy then? Yeah.
When were you able to walk on your own? I could walk when I got out of Chelsea, I just couldn't go very far. Still can't go real far.
How far can you go? I'm probably up to I'd say a mile and a half at the Y and I used to -- I used to walk four miles before the accident.

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Do you think you'll ever go back to work? Highly doubt it.
Why is that? Just the pain factor, that and I can't -- unless it's a simple job I don't think I could even get it through my head, keep things in order, whatever.
What do you mean, in your head? I don't think -- if I had a lot of duties I don't think I could keep them straight.
Oh, you mean your head as far as -- Yeah, I kind of -- I can't sit or stand for more than 15 minutes at a time without severe spasm coming in.
Where is the severe spasm? My back.
Are you doing all that your doctors have advised you to do -- Yep.
-- except the Y is something that Dr. Perlman says no sense coming back there, go to the Y? Yeah.
Okay. Pretty much.
So you are compliant? Yeah, and basically that's just so I can continue to be mobile and get out of the chairs and stuff, it's not anything beyond that. Most chairs though I'm uncomfortable in. If I can recline it's a little better.
Reclining is better? But as far as a

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set-up chair like these, huh-uh, it's just a certain amount of time and it just starts hurting really bad.

Hurts (sic) better if you lay back? Do you have a recliner at home? Yeah, some days I've just got to go up and lay in the bed.

Do you do any reading or watching TV? TV is about all I can do anymore.

What's a good day for you? I don't know, I haven't had one lately.

Any constipation? Sometimes with meds.

Is there anything I haven't asked you you feel is important for me to know? Yeah, I just have a profound sadness and I feel overwhelmed at times and just -- I don't know what to do, I just -- none of the -- none of the things I like to do I can do anymore and, I don't know, it just seems -- seems useless to be around sometimes. I don't know.)

BY MR. GURSTEN:

Q. Doctor, you testified and wrote in your report that he told you he's improving. I heard him say that he hasn't even had a good day, can you explain?

MR. OBRINGER: Objection, form and foundation.

A. That is his perception, he hasn't had a good day and I acknowledge that that's his perception.

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BY MR. GURSTEN:

Q. Doctor, did he ever tell you in your examination of him that he is improving?

A. I need to see the entire videotape and audiotape and my recollection is that he said he was improving, not at this time, but amongst some other areas of his functioning, yes.

Q. That's -- that's not what you've testified to, Doctor. You didn't -- let's do this, Doctor, you're -- you're --

MR. OBRINGER: I don't know if it's a question, but I object to form and foundation.

MR. GURSTEN: No, I'll strike it. I'll strike it.

BY MR. GURSTEN:

Q. Doctor, I'd like you to assume that the jury in this case does have notebooks and if they write this down and if Judge Wilson allows them to watch the full medical examination that you took of Mr. Fairley --

A. Yes.

Q. -- you are testifying under oath that this jury will hear him tell you that he is improving?

Doctor?

A. I'm sorry, what is your question?

Q. Is it your testimony today that if the jury watches your examination of Mr. Fairley that they will hear him tell you at any time that he is improving, that he feels he's getting better, is that your testimony?

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A. I'm not -- I can't say what the jury will hear, but I would say the trier of fact will get the impression that Mr. Farley -- Fairley implied to me and told me and I understood from his -- his statement of what he's had in the past and what he's undergoing now is an improvement and in that regard I captured that in my report. Not a quote, but as he stated it there's certain things he had in treatment that he no longer requires and that to me is improving, that he told me he's no longer using those things and electing to use others, and from that I deduced, as is my right as an expert witness, that he has shown improvement.

Q. Doctor, you testified in your direct examination in response to the lawyer from Schiber's questioning, his direct questioning, that you said he was -- that Mr. Fairley told you he is improving, from your observation he is improving and that was a positive prognosis to you, and that you said consistently that he said he is improving and you wrote in your report that he said he is improving. My question to you is simple, if we listen to your two-hour videotape are we ever going to hear Mr. Fairley say to you that he is improving?

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A. You won't hear it in a quote, but you'll hear how he's no longer the way he was. Even as he stated, he was able to walk when he left the hospital, not as much as four miles, but I don't know that he walked four miles before the incident -- accident and that he has --

Q. He told you he did?

A. -- improvement.

Yes, he did. I have no records to support that and his perception is that he walked four miles. I don't know four miles or not, but at the gym he's walking a mile and a half. And further, he has indicated that he is not doing the things he used to do that he was interested in, the things he's able to do he performs well, like the Ernie Harwell -- Harwell book that he's reading that he --

Q. Well, I'm --

A. -- said he doesn't read.

Q. -- I'm glad you brought that up.

Are you saying that if we listen to the videotape he's going to tell you that he's currently reading the Ernie Harwell report or that that was a book he had read before this accident, that he remembers reading?

A. I'm not sure.

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Q. Is he going to tell you if we watch this report (sic) that he has diabetes?
A. I'm not sure.
Q. Is he going to tell you that he has asthma?
A. I'm not sure.
Q. Is he going to tell you that he has hypertension from before this accident?
A. I'm not sure.
Q. Is he going to tell you that he was obese before this accident?
A. I'm not sure.
Q. Nowhere in your report do you write down that because he could walk better now than he did when he left Chelsea after his first two weeks in the hospital that he is improving on his walking, if we read your report we're going to get the impression and listen to your -- your testimony today we get the impression that he's telling you, at least at the time of your exam, Doctor, that he feels he's improving, true?
A. My -- my report reflects that he is improving.
Q. Doctor, nowhere in your report did you write that he contradicts himself, that he told you in one place that he's not improving, that he, quote, hasn't had a good day lately, but you told us that he told you he's improving. Is that a contradiction?

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A. That's my understanding that he hasn't had a good day lately, but he has had good days.
Q. That's very different from what you've testified to now, isn't it?
A. That is what I'm saying.
MR. OBRINGER: Objection, form and foundation.
BY MR. GURSTEN:
Q. Okay. Doctor, I just want to be absolutely crystal clear on this. Is it your testimony under oath that Mr. Fairley ever told you that he is improving --
MR. OBRINGER: Objection --
BY MR. GURSTEN:
Q. -- yes or no?
MR. OBRINGER: Objection, asked and answered.
A. I rely upon my statements already made.
MR. GURSTEN: Nothing else.
RE-EXAMINATION
BY MR. OBRINGER:
Q. Doctor, is there anything after all this -- after the cross-examination here that would cause you to change the opinions and conclusions that you rendered under direct examination?
A. No.

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MR. OBRINGER: Thanks, Doctor, nothing else.
Oh, I just -- before we close the record I wanted to read in those -- I didn't put in the specific documents, you know, that -- the list of 12 things. So these were the -- the items.
One, narrative report of Dr. Wilanowski dated April 16, 2010. Two, medical records of Dr. Wilanowski. Three, report of Dr. Yvan Silva, M.D. Four, report of Dr. Louis, B-O-J-R-A-B, M.D. dated April 14th, 2010. Report of Dr. -- or report of Steven Schechter, M.D. dated August 6th, 2009. Neuropsychological assessment of Philip Liethen, Ph.D. dated May 13th, 2009. Deposition transcript of Harish Rawal, M.D. dated April 5, 2010. Neuropsychological evaluation of Bradley Sewick, Ph.D. dated November 21, 2009. Medical records of Associates in Physical Medicine, Dr. Perlman. Initial neuropsychological evaluation by Dr. Terry Braciszewski and medical records of Ann Arbor Rehabilitation Centers, Inc., and the records of Robert B. Ancell, Ph.D., and those are the 12 items that I didn't go through on direct.
That's all I wanted to complete.
MR. GURSTEN: Nothing else.
VIDEO TECHNICIAN: This concludes today's

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deposition, the time is 11:33 and 41 seconds a.m., we are now off the record.
(The deposition was concluded at 11:33 a.m. Signature of the witness was not requested by counsel for the respective parties hereto.)

CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, BECKY JOHNSON, certify that this deposition was taken before me on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.

BECKY JOHNSON, CSR-5395
Notary Public,
Oakland County, Michigan
My Commission expires: January 28, 2013