IN THE CIRCUIT COURT OF THE
COUNTY OF ST. LOUIS, STATE OF MISSOURI

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JUNATA WEBER, a/k/a JOE WEBER and BARBARA WEBER his wife Plaintiff vs. DR. JEFFREY S. BROOKS, MID-WEST PODIATRY and ASSOCIATES, INC Defendant	:	CAUSE NO. 656734 TEAM B

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Oral deposition of JACK B. GORMAN, D.P.M., taken pursuant to notice, at the offices of Jack Gorman, D.P.M., 399 North York Road, Warminster, Pennsylvania, on August 8, 1995, beginning at approximately 1:00 p.m., before Patricia Hemingway, Court Reporter-Notary Public, there being present.

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APPEARANCES:

SUSMAN, SCHERMER, RIMMEL & SHIFRIN
BY: NORTON Y. BEILENSON, ESQUIRE
7711 Carondelet Avenue, 10th Floor
St. Louis, Missouri 63105-3388
Phone: (314) 725-7300
Representing the Plaintiff

APPEARANCES: (Cont.)

BROWN & JAMES, P.C.
BY: M. DEANN OUTLAW, ESQUIRE
705 Olive Street, 11th Floor
St. Louis, Missouri 63101-2270
Phone: (314) 421-3128
Representing the Defendant

I N D E X

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EXHIBITS

THE REPORTER: The usual stipulations?

MR. BEILENSON: The doctor will read and the sign the transcript.

MS. OUTLAW: Fine.

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(It is hereby stipulated and agreed by and between counsel for the respective parties that sealing, certification, and filing are waived and that all objections, except as to the form of questions, be reserved until the time of trial.)

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JACK B. GORMAN, D.P.M., after having been first duly sworn, was examined and testified as follows:

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EXAMINATION

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BY MS. OUTLAW:

Q. Doctor, would you state your full name?

A. Jack B. Gorman.

Q. What is your address?

A. 399 North York Road, Warminster, PA.

Q. Is that your home address?
A. No. That is where you are right now.
Q. What is your present occupation?
A. I am a podiatrist.
Q. Is this your only office?
A. No.
Q. Where are your other offices?
A. I have an office in Lansdale and I have an office in Newtown.
Q. Are those all in Philadelphia?
A. None of them are Philadelphia.
Q. Where is Lansdale?
A. They are both in Bucks and Montgomery County. They might both be Bucks County.
Q. Where is that?
A. That is where you are sitting.
Q. This York address, is this your primary office?
A. Yes, it is.
Q. Doctor, you provided me with a copy of your CV, which we will mark as Exhibit A.

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(Whereupon Exhibits A through D were marked for identification.)

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BY MS. OUTLAW:

Q. Doctor, you have handed me a copy of your CV which we have marked as Exhibit E; is that correct?

A. No, it is Exhibit A.

Q. I am sorry. Is that an up to date CV?

A. Yes, it is.

Q. When is the last time you updated it?

A. I have no idea. My secretary does it. Probably in the last couple of months.

Q. Are there any changes or additions to this that need to be added?

A. Not that I know of.

Q. Do you belong to any organizations that advertise to lawyers and others that they have doctors that will review files and give testimony and opinions for money?

MR. BEILENSON: Objection. Irrelevance and immaterial. Subject to the objection you can answer.

THE WITNESS: I don't know what you mean by belong.

BY MS. OUTLAW:

Q. Are you affiliated with any organization that advertises to lawyers or other members of the

community that they have doctors available that will look at files and records and give opinions for medical malpractice cases?

A. I am not affiliated with any, but I do get cases from different groups. I have no contracts or agreements with those.

Q. What organizations are those?

A. TASA.

Q. Technical Advisory Services for Attorneys?

A. Yes.

Q. How long have you been a member of TASA?

MR. BEILENSON: I objection to the use of the word member.

BY MS. OUTLAW:

Q. How long have you been connected with TASA?

A. I have no idea. I has been a number of years.

Q. Is it as early as 1970?

A. I guess it could be. I don't know.

Q. How did you first come in contact with TASA?

A. It was a friend I met many, many years ago at a party who needed somebody to review a podiatry case who referred me to Mr. Bass in Phoenix, Arizona.

Q. Is that who you have been working with?
A. He is one of the people at TASA.
Q. What is his first name?
A. There are a number of them. There is a father and a son.
Q. With TASA?
A. Yes, in Arizona.
Q. And you work with the Arizona office?
A. Arizona is malpractice and they have different offices around the country for different problems.
Q. How many cases have you received over the are years from them?
A. I have not the slightest idea.
Q. Over a hundred?
A. I have no idea.
Q. Could it have been as many as 500?
A. I would doubt that. I presume in all the years maybe it is a couple of hundred cases for everybody. I doubt it is that many. Some months you get one and some months you don't get any. It varies.
Q. When you say a couple of hundred over the years, you mean 200?
A. It is strictly a guess. Over all of the

years I just don't know any longer. It is less than 300 and it might be more than 200.

Q. Somewhere in that time frame?

A. It is guesstimate.

Q. How long have you been working in legal matters and malpractice matters such as this?

A. Since the 1970s.

Q. Totally since the 70s you have had greater than 200 and less than 300?

A. It is a guess.

Q. That is your best estimate?

A. It is a guess, yes.

Q. Are you also in contact with the Forensic Medical Advisory Service?

A. I might have review a case for them in the past. I have not done anything for them in the last few years.

Q. What is the last time you got a case from them to review?

A. I don't remember. It has been a long, long time.

Q. Less than 5 years?

A. I am not here to play games with you. I don't know.

Q. I am just trying to get answers.

A. The answers are I have no idea.
Q. More than 5 or less than 5?
A. I have no idea. It was within the last few years. It could have been 5. It could have been 7. I could have been 4. I could have been 3 and a half. It might have been 8 or 7. I don't know.
Q. Sometimes in the 3 to 7 year time frame?
A. It could have been. I don't know.
Q. How many cases do you receive from Forensic Medical Advisory Service?
A. It could have been 1 or 2. I might have been 3. I could have been 4. I might have been 5 over the years. I don't know.
Q. 1 to 5 is your best estimate?
A. I have no idea.
Q. Would it be as many as 20?
A. I doubt it.
Q. Less than 20 is your best estimate?
A. I am not estimating. I presume it was 2 or 3, but that is about it.
Q. The cases you have received from TASA over the years what percentage of those did you receive to look at on behalf of the plaintiff versus the defendant?
MR. BEILENSON: I object. It assumes

he was asked to look at them on with behalf of the plaintiff or the defendant whereas he could have been asked to look at it. Subject to the objection, he can answer if he can.

THE WITNESS: I reviewed cases for TASA just to review to see if there was any problem in the case, if there was a malpractice situation or a drug company, a problem with the drug or the equipment for the gym or whatever. I can't tell you the exact number. Most of it is for plaintiff.

BY MS. OUTLAW:

Q. What about the Forensic Medical Advisory Service?

A. I don't even remember the cases. It is a long time ago.

Q. Have you ever advertised personally without regard to the organization we talked about that you are willing to review cases and give opinions for money?

A. I did years ago.

Q. When is the last time you advertised?

A. I advertised in the 70s, early 80s and by accident the add was put in for a month and I took

it out immediately. It was a secretary who didn't know what she was okaying. I have not advertised in years.

Q. The last time you advertised on a continuing basis was early 80s or late 70s?

A. I would think. It was problem in the 80s.

Q. Where did you advertise?

A. I believe she put an add in the National Legal Journal, the Trilawyers Journal and I don't remember the other name of the journal. It was a classified add.

Q. Do you advertise in the ABA Journal?

A. I didn't do it. I really don't know. She took care of it for me.

Q. And the National Legal Journal and the Trilawyers Journal are national adds that go throughout the nation to lawyers; is that correct?

A. I don't know if it was a regional for the northeast section. I believe it was a regional one for New York, Pennsylvania and New Jersey area.

Q. Why did you stop advertising?

A. I wanted to practice podiatry. I had calls and sometimes a call would come and I was too busy. At this rate if I can do the case, fine. I

read it and review it. If I can't, I can turn it away.

Q. Did you ever advertise on radio or TV?

A. No.

Q. Do you have a fee arrangement for doing this reviewing files and giving your opinions on malpractice matters?

A. In this particular case?

Q. Yes.

A. TASA has a fee schedule. They set it with the attorney and I get paid by TASA.

Q. What is your fee schedule in this case?

A. They are all of the same. $100 an hour to review the case. I think there is an $800 minimum for deposition for cancelling a half a day's office hours.

I don't remember what the deposition. I believe it is $2000 for courtroom appearance from TASA. Plus, expenses if there is an air flight.

Q. How much if you testify in court?

A. I believe it is $2000.

Q. Is that for in state and out of state?

A. It varies. I think TASA has one fee, but I am not sure.

Q. What would it be for the St. Louis charge?
A. If it is a day, it is a day.
Q. It is $2000?
A. Or $2500. When they send the letter to me they will send me a letter stating that somebody is sending a case would I like to review it. And I call and say I would or would not like to review it.
Q. Did you get a letter in this case?
A. Yes.
Q. Do you still have it?
A. No. I look at it and dispose of it. Once the attorney calls me there is no reason to keep it.
Q. You mean you throw it away?
A. Usually.
Q. You don't have a copy of the letter?
A. I don't. I could probably get one for you from TASA. Unless it is sitting in the pile of papers on my desk at home.
Q. I am trying to figure out what the charge is?
A. I get $100 to review the file and $800 for deposition and $2000 to $2500 for courtroom appearance and I believe it is a little less if

there is video involved.
Q. The deposition is $800 for deposition?
A. Yes. That is because I cancel half a day out in the office.
Q. How many hours have you reviewed this case?
A. I guess I spent 15 hours on this case.
Q. Does that include writing the report you made in the case?
A. If you count everything I am sure I spent a lot more. I think I charge for 12 or 15 hours. If you are talking about typing and writing everything up I probably spent 30 hours, but I didn't charge the attorney for that.
Q. How much have you charged to date?
A. $1200 to $1500, somewhere in there. That is what I get paid. I don't know what TASA charges. I get paid that.
Q. When you say that you charge them 1200 hours or $1200 or 12 hours?
A. If I charged 1200 hours, I wouldn't be sitting here. $1200 which is $100 an hour for 12 hours.
Q. Do you get paid through TASA or does it come from the attorney?
A. It comes from TASA.

Q. Does the, such as this case, we will use Mr. Weber. Does the plaintiff make a deposit to TASA and the money comes out of the what is paid to them?

A. You have to ask them. I am told that they give me the case to review and ask if there is a case, if there is a problem.

I review it and tell them what the charges are and they send me a check. What they do with the attorney and the person who hired them, I have no idea.

Q. When you have to travel out of state for court appearances you said that was $2000 or $2500 a day, does that include expenses for the day or is that separate?

A. There is no expenses except the air flight, whatever that is.

Q. If you have to spent the night, that is an additional charge?

A. If I stay over to a second day, then it is two days.

Q. The hotel is a separate charge?

A. Yes. If they feed me occasionally, that is an extra charge.

Q. What percentage of your practice is related

to legal matters such as this?
A. Very small. Usually I do this on Friday. Friday is the usual day if I am going to do a deposition.

It disrupts my whole office and because it is the summer and you wanted to get this in, I did a favor here. Friday is normally the only day that I do this.
Q. What is the percentage of your practice, 10 or 20?
A. Less than that. I can't tell you -- you mean the actual time I spend or money wise? I don't understand the question.
Q. Whatever way is easier to tell me. We will get to the money. Just a percentage of the practice when patients come to see you for treatment versus such as this case where Mr. Beilenson had you review the file and give opinions?
A. Probably less than 10 percent, because I am a workaholic. I spend 60, 80 hours in the office a week and I might only spend 4 to 6 hours a week and not every week on legal matters. It varies.
Q. You have been reviewing matters such as this since the 1970s and your best estimate is you

reviewed more than 200, but less than 300 cases since the 70s?

A. It is an estimate. I don't know if the best estimate.

Q. Is that the best you can do today?

A. Yes.

Q. Of the 200 to 300 cases, what percentage are for plaintiffs versus defendants?

A. It is 70/30 plaintiff to defense.

Q. 70 percent plaintiff and 30 percent defendant?

A. Yes. Not all of the cases are plaintiff and defendant. Some of them are Workers Compensation. They are not all malpractice cases.

Q. Of the 200 to 300 cases that you have reviewed since the 1970s, how many depositions have you given?

A. I couldn't even make a wild guess.

Q. Have you given a deposition in each case?

A. Absolutely not. There are many that are not malpractice. In 20 to 30 percent there is really no case and I send it back to the attorney.

And occasionally I hear that somebody else found there was malpractice. If it is not there and clear, I do not write a report.

Q. Can you tell me how many depositions you have given? Is it over 100?
A. I doubt that.
Q. Over 75?
A. I can't answer that. I don't know.
Q. Do you think you have given 75 depositions since the 1970s?
A. I can't answer that. I don't know.
Q. It is less than 100?
A. I don't know. You are talking about 30 years. I don't know.
Q. How many times have gone to court and testified since the 70s?
A. Once or twice a year and some years a couple times more and some years never.
Q. Do you recall any of the identity of any of the parties or doctor or lawyers involved in any of the cases that you have reviewed in the past?
A. Right now I don't remember your name and at the end of the day, I won't even remember you. I do the deposition and whatever I am supposed to do and I am done. I don't try to remember.
Q. Other than reviewing the case and giving opinions to testify at trial or deposition, do you take cases to review on a consultation basis?

A. That is what a lot of them are just to review to see if I find anything abnormal on either side. It is up to the attorney to see if they want to go any further with it or if I want to go further with it.

Q. When did you enter private practice?

A. 1967 I think.

Q. You began taking legal matters such as this in early 1970s?

A. Sometime in the 70s. I don't know an exact date.

Q. Is it true in the past that you have been so busy in the legal matters that you have testified on two separate cases in one day; isn't it?

A. That is not what happened at all. Everybody asks that along the way and it is a nice question. I did a deposition for somebody one day a video deposition and about 6 or 8 months later it came up in court.

It just so happened I was in the same court on the same day and I was in two courtrooms and the gentleman asked me did I know I was testifying in two courtrooms on the same day and I had no idea because it was a video deposition.

Q. I appreciate your answer. I am referring to giving depositions in your office one in the morning and one in the afternoon with the same plaintiffs attorney?
A. It could have been. I only testify one case at a time because it is too confusing to do more than that. But it is possible that if somebody asked me to do them a favor so they didn't have to come back, I could have done two.
Q. What is your system of keeping track of the legal matters you work on in the office?
A. I don't understand the question.
Q. Do you have a file cabinet? Do you keep it computerized? How do you know what legal matters you have versus the patients you treat?
A. Put it in the file with the patients. I have cases at home or I get rid of them after a period of time.
Q. How do you bill them? Do you keep it computerized?
A. Beverly keeps a record for me. Most things are paid for in advance so there is no billing.
Q. Beverly is your secretary?
A. Yes. There is no billing involved.
Q. How many cases do you currently have

pending in the office?
A. I have no idea.
Q. Is there any way to find that out?
A. No. Most of them if you don't hear from them for awhile, we pull it and throw it away. See if it is an active case and most aren't and we destroy the record.
Q. Could you have as many as 20 cases in your office currently that you review for legal malpractice matters?
A. I can't answer the question that way. I can say there might be 20 to 30 outstanding from all of the years that I don't know if they are active or inactive.

I can't give you an exact number. This is an inactive case until today and now it is active again.
Q. How much of your income is derived from reviewing files and giving your deposition and trial testimony forensic type matters?

MR. BEILENSON: Including worker's compensation and all of that?

BY MS. OUTLAW:
Q. Yes. Legal matters?
A. I guess in the $40,000 range. It is only a

guess. We put everything in the office setting and with the Surgicenter is doing $800,000. It is a smaller percentage of what I take in.

Q. Does $40,000?

A. It could be 40 or 45 or 48 or 38. At the end of the year I have a record from my accountant and he keeps it for me.

Q. Is there any way you can from 40 to 48 that you can break down how much of that is for malpractice cases?

A. I guess it would take a lot of time. I could look up cases. The accountant has the records. It would be very time consuming.

Q. Can you give a range today?

A. I really can't. I don't know.

Q. The legal matters that you look into the 40 to $48,000 range of your income is the majority of those cases for malpractice?

A. I would say more than 50 percent, yes. If that is what you mean by majority.

Q. Doctor, have you ever had your license suspended restricted or limited in any way?

A. No.

Q. Have you ever had your hospital privileges suspended or restricted in any way?

A. No.
Q. Have you ever sought certification or approval or licensing by any medical or surgical Board or entity in which you were not successful?
A. Yes.
Q. What one was that?
A. The American Board of Podiatric Surgery in the 1970.
Q. Any others?
A. No.
Q. How many times did you try to take the Boards?
A. I took it on two occasions. Passed the written one time and passed the oral the second time.
Q. You have to pass the oral and the written to become board certified; is that correct?
A. Not any more. That was the rule at that time.
Q. So, you failed the exam on two occasions; correct?
A. That's true. I am Board certified now in surgery.
Q. How did you get that certification?
A. It was another Board at the same time I

took. It had a written exam and an oral exam.

Q. Which Board?

A. The American Board of Ambulatory Foot Surgery. A written exam and oral exam. I had to write a book with 75 cases.

And besides that they had to send out two doctors to evaluate us doing surgery in the hospital to be board certified.

The first Board didn't do that. I passed that without a problem and became Board certified. And then both boards came together in the early 80s. They are both one Board now.

Q. The Ambulatory Foot Surgery emerged with the American Board of Podiatry?

A. There was a judge in Washington in one day dissolved both boards and gave it the name of the American Board of Podiatric Surgery and put them together and made the Ambulatory Board a division of the American Board of Foot Surgery or whatever it is called. Basically it is one Board. We are a division of that Board.

Q. You did you attempt to the take the Boards for the American Board of Podiatric Surgery on the two occasions that you failed prior to taking the examine for the Ambulatory Foot Surgery?

A. I don't understand the question.
Q. What did you take first the ambulatory foot?
A. No. The other Board first.
Q. The only way you are certified by the American Board of Podiatric Surgery is because it merged with the Ambulatory Board because the Ambulatory Board and American Board of Podiatry Surgery merged?
A. No. I passed the examination. I am Board certified with the American Board of Ambulatory Foot surgery. I am not Board certified by the American Board of Podiatric surgery. I am part of their Board.
Q. You never passed the exam for the American Board of Podiatric Surgery?
A. I am Board certified by the American Board of Ambulatory Foot Surgery which is a division of the American Board of Podiatric Surgery.
Q. When you took the exam sponsored by the Ambulatory Board, the one that you passed, when you took it at that time it was not associated with the American Board of Podiatric Surgery; is that correct?
A. That's true.

Q. In fact, the American Board of Podiatric Surgery at that time did not even recognize the American Board of Ambulatory Foot Surgery; is that right?

A. That is not exactly how it was. Neither Board recognized either one. In podiatry there were two groups of people, the people that did hospital surgery and the people that did office surgery and some outpatient surgery at hospitals.

In 1960 and 70s you were asked to put the patients in the hospital and do surgery. In the 80s and 90s you are asked to keep them out of the hospital.

It is what we were doing in 60s and 70s and early 80s that they are coming back to do. Both Boards didn't agree with each other.

You could are not get Board certified by the American Board of Podiatric Surgery unless you were in certain states and had certain criteria. It limited podiatrists all over the country and that is why they had to come together eventually.

Q. They came together pursuant to a court order?

A. A long and costly court case.

Q. Have you ever been subject of a state or Federal Board of medical podiatry since licensing investigation?
A. Not that I know of.
Q. Have you ever been asked to respond to a complaint made against you by a state or federal hospitals or professional association or committee?
A. I don't think so.
Q. Have you ever received a reprimand or letter that could be deemed critical of your practice?
A. No.
Q. Have you ever been sued before?
A. Yes.

MR. BEILENSON: I object to the form of the question. As long as it is limited to his practice and as long as it is relative to the same surgery we are talking about here, otherwise, it is irrelevant.

BY MS. OUTLAW:
Q. What were the claims that were made? How many lawsuits are you talking about?
A. You have to ask me a little differently. Was it me personally being sued or was it me as

the head of the podiatry department at the hospital?

Q. Let's talk about you personally?

A. I guess about 6 or 7 suits over the years.

Q. And those 6 to 7 lawsuits you have been sued personally for malpractice?

A. Yes.

Q. What were the issues in those cases?

A. I can remember some of the facts here and there. A little boy got out of bed and walked into a toilet and there was a hospital lawsuits for not restraining the child and they gave him 1500. That was a nuisance thing.

There was a suit where a woman sued me after removing a staple from her foot, her angle hurt her. That was dropped. We won by Jury trial.

There was a gentleman that said he couldn't walk after our surgery and then he quit his job and wanted to collect for the rest of his life and we have pictures of him working as a bartender. That are was dropped in arbitration.

There was another lady that said her bunion wasn't right after she injured herself twice and we couldn't go on with that, because she

went to jail with her husband for murder and tax evasion. I don't remember any others.

Q. When was the last time you have been sued?

A. About 3 weeks ago I think it was.

Q. What is the issue in that case?

A. It is a lady that I discharged for being perfect and no problems. And two years later she decided to sue because she said her bunion wasn't right.

I have no idea why at this point. When I discharged her she was having no pain or discomfort and I treated her with routine care twice after the surgery.

Q. Where were the lawsuits pending the 6 or 7?

A. None of them are pending. They are all gone.

Q. Where were they filed?

A. It is either Philadelphia, Montgomery or Bucks County. There was a man, a senior citizen that I sent him a bill because in Medicare you must send the 20 percent bill.

He sued me and dropped it after we did deposition. They saw no case and that was dropped.

Q. Have you ever been found liable in any of

the lawsuits?
A. No.
Q. Have you settled cases before going to court?
A. There was one case settled with there was 6 doctors that treated a lady for a heel problem and I believe the 6 put together and gave her $50,000.
Q. Do you recall if you have been found liable or paid any settlement in any other cases?
A. I don't believe so.
Q. Do you recall of the 6 to 7 the name of the plaintiffs or the plaintiff's lawyers names?
A. You are talking about some going back years. I have no idea.
Q. Do you remember the experts in the case?
A. No.
Q. The one that you were served upon three weeks ago, what is the plaintiff's name in the case?
A. Helen Faust.
Q. Where is that filed?
A. I don't know.
Q. Did you treat her in the office where you are sitting today?
A. Yes. I don't know if it is filed or if it

is going become a case. I received papers that they wanted the records and things like that.

Q. Do you know who her lawyer is?

A. No.

Q. Ever been accused of a crime, Doctor?

MR. BEILENSON: Let me object to the form of the question. If he was ever accused of a crime is irrelevant and immaterial.

You can ask if he had ever been convicted. But arrests and accusations are irrelevant.

MS. OUTLAW: Are you instructing him not to answer?

MR. BEILENSON: Yes.

BY MS. OUTLAW:

Q. Have you ever been accused of a crime?

MR. BEILENSON: You don't have to answer. If you want to, you can.

THE WITNESS: The answer is no.

BY MS. OUTLAW:

Q. Have you ever been sued in a malpractice case relating to plantar fasciotomy or DVT developing?

A. No.

Q. Ever been sued with the plaintiff suffering from plantar fasciotomy?
A. Plantar fasciotomy, I don't believe so.
Q. What about the fasciotomy surgery that is performed, such as Doctor Brooks did in this case, has that ever been an issue in any of your cases?
A. No. I don't believe so. I did a lady years ago with a plantar fascial problem, but that was I believe dropped or never became a case.
Q. What was it about?
A. A patient had plantar facial strain. Nothing with phlebitis or anything like that.
Q. Were you sued?
A. I believe the hospital was. That was Oxford Hospital. That was 30 years ago. I don't think anything came of it.
Q. Do you remember giving a deposition?
A. No, I don't.
Q. Were you contacted by Mr. Bass, as I understand your earlier testimony, for this case?
A. Somebody from his office would call and ask if I know the doctor. I won't even review the case if I know the doctor personally.
Q. The first contact was someone from TASA or did they call or write?

A. They could have sent a notice or called me to see if I would review a case.
Q. Did they go into any detail or tell you they had a case and let you read the records?
A. Normally they give me the name of the physician and if it is against the physician, because I will not review the case if I know the physician.
Q. And they told you it was against Doctor Brooks?
A. Yes.
Q. What is the next step?
A. They send it or the lawyer sends me a letter with the material.
Q. Does TASA ever get the records in the case or they just contact you and you work with the lawyers on the case?
A. I presume they came directly from the lawyer. I never sent anything to TASA as far as the information about the case.
Q. In this case after they contacted you, did you call Mr. Beilenson yourself or did he talk to you about the case?
A. This is back in '93. I am sure one of us called one another after I received the material.

Q. Did you receive the material from TASA or Mr. Beilenson?
A. I always receive it from the attorney and I normally try to call the patient to get a history from the patient before I review the material.
And usually that leads me to call the attorney to get the phone number and make sure it is all right to call the person to make sure they are not incapacitated or dead or whatever.
Q. You call the patient before you begin reviewing the records?
A. Often I do.
Q. Do you remember what you did in this case?
A. I don't remember.
Q. Do you know Doctor Bechtle?
A. I don't know any of the doctors in this case.
Q. He is Mr. Weber's other expert in this case, the vascular surgeon?
A. I don't know him.
Q. You have never spoken to him obviously?
A. I might have spoken to him once on the phone I am not sure. I think two years ago in the winter, but I am not sure.
Q. What makes you think you talked to him?

A. I could have. I just know an attorney named Paul Bechtle, but I don't know.
Q. Do you know why you would be talking?
A. I might have had a question.
Q. Do you remember the substance of the conversation?
A. I am being honest. I think I might have talked to him, but I am not sure. It was awhile ago if I did. I am sure it was not anything other than a question I might have had.
Q. You don't know what the question was or what the conversation entailed?
A. I do not remember.
Q. This is the file that Mr. Beilenson sent you; is that correct?
A. Yes. This you saw. This is parts of the file with Doctor Brooks notes and there is the rest of the file.
Q. Could you tell me what he sent you to review?
A. The office records of Doctor Brooks. The records of Saint Joseph Hospital in pieces. The medical records of Doctor Kloecker.

The medical records of Doctor Donald Sauer. Miscellaneous records of treating

physicians including records of Jewish Hospital and Washington University.

Q. Do you remember what miscellaneous records?

A. They are all in there.

Q. If you could review the file and tell me what you received?

A. I am reading it right now.

Q. I need to know what miscellaneous records you are referring to?

A. I have no idea. It would take us 7 hours to go through it.

Q. Have you ever seen Doctor Weiss' records?

A. Yes.

Q. Is that part of the miscellaneous records you are referring to?

A. Let me read the next list and I can tell you. Additional office notes I received of 6-18 Doctor Kloecker. Christian Hospital venus duplex scan I received from 6-18-93.

The records of arthritis consultants Doctor Andrew Baldassare. Nerve conduction test of 11-8-91 and the Health South Rehabilitation records.

The miscellaneous records were probably Doctor Skor, Doctor Sicard, Doctor Rubin.

That is it and Doctor Weiss.
Q. And that is all of the records you have seen in the case?
A. Plus the x-ray, the one pre-operative x-ray of poor quality.
Q. Why do you say poor quality?
A. It is poor quality.
Q. What do you mean?
A. It is light and not taken well. It is not labeled correctly.
Q. Do you know when it was taken?
A. It was under developed. It is burnt. It says Joe Weber 11-1-991. That was the first visit to Doctor Brooks.
Q. Doctor, I am looking at the letter, which we will mark.

- - -

(Whereupon Exhibits E and F were marked for identification.)

- - -

BY MS. OUTLAW:
Q. I am handing you what has been marked as Defendants Exhibit E. Is that a letter from Mr. Weber's lawyer to you?
A. Yes.

Q. What is the date of the letter?
A. August 17, 1993.
Q. And the first sentence says this is a follow up of our conversation of August 16, 1993; is that correct?
A. Yes.
Q. Would that be around the time you were first contacted in the case, would be August of '93?
A. Yes. I have that written on top for you here and I spoke to the patient August 30, 1993 at that time, right after I received the case. I must have reviewed some of the records before I spoke to him.
Q. What is the next date you have handwritten?
A. 8-7-95 that is the next time I spoke to Mr. Weber.
Q. And what we were referring to that we marked as Defendants Exhibit D; is that correct?
A. That's correct.
Q. And those are your notes that you took yourself you found pertinent from review of the records?
A. These are the notes I prepared to have a general outline because it is so factual intense

with all of the different doctors I just wanted to keep a rhythm and reason in my mind of all of the doctor and the order they were seen.

Q. Did you make them as you were reviewing the records?

A. I made the notes on various pieces of paper and the other day I took the liberty of putting it together to make it easier for you to read because you would have never understood my handwriting.

Q. Did you throw them away?

A. Yes. There is no reason to keep them.

Q. On Exhibit D in the top left hand corner are handwritten dates that you authored; is that right?

A. They are the dates I received the case and spoke to the plaintiff.

Q. August of 1993 is when you received the case?

A. Yes.

Q. And August 30 and August 7 of 1995 is when you spoke to Mr. Weber; is that correct?

A. Yes.

Q. Doctor, I am going to hand you what we have marked as Exhibit E, that is the letter to you from Mr. Beilenson?

A. Yes.
Q. In there it appears he gives a brief history or what he claims to be a brief history of Mr. Weber. Did you use that in any way in forming your opinions?
A. No.
Q. There are some inaccuracies in there?
A. I didn't use that. I used the report and the time I spoke to the patient and I put it together.
Q. I did see, Doctor, that you have also other than the records we went through you stated you looked at and reviewed that you were sent by Mr. Beilenson son you also received --
A. Yes. There is a couple of depositions at the end. Doctor Brooks' deposition and there is one other deposition of one of the other doctors I believe.
Q. Doctor Skrobot?
A. Yes.
Q. Did you ever receive Doctor Bechtle's deposition?
A. I never received any others.
Q. Have you ever discussed with anyone Doctor Bechtle's opinions in this case?

A. No.
Q. Doctor, I have handed you what is marked as Exhibit F and that is a letter directed to your attention; is that right?
A. Yes.
Q. And in there he is sending additional records; is that correct?
A. Yes.
Q. And that last paragraph, did you look at that and use that in any way in forming your opinions in this case?
A. Not really.
Q. I just looked at the letter, but I used the records to guide me and what the patient tells me.
Q. Have you ever spoke to any of his treating physicians in this case?
A. No, I have not.
Q. And I think we were getting into this when we took the brief break. Have you ever discussed Doctor Bechtle's opinions with anyone in the case at all?
A. No.
Q. Are you aware of what his opinions are in this case?
A. I believe I talked to him and I believe we

might have reviewed that for a short time, but I can't tell you exactly because I have no notes from him. I presume he was saying the same thing I was thinking about the case. I believe we were on the same page.

Q. Do you recall what his opinions were?

A. If you go through mine, you probably have similar opinions.

Q. The conversation you are talking about, is the one you were referring to earlier about two years ago?

A. It could have been a year ago. I only spoke to him once.

Q. How long was the conversation?

A. I am sure it was only a few minutes.

Q. By phone I assume?

A. Yes.

Q. Did you receive any other materials? You have the depositions and the records. Anything else that you received from this case?

A. No, I have not.

Q. Did you review any publications in forming your opinions in this case?

A. No, I have not.

Q. I see you lifted up your computer screen?

A. Just warming it up for you for later.
Q. Did you do any research in any way other than reading the records?
A. Reading the records and from my knowledge over 30 the years, teaching and readings. Nothing in particular in this case.
Q. Have you discussed this case with anyone other than Mr. Weber and Mr. Beilenson?
A. Not that I know of.
Q. What have your conversations entailed with Mr. Beilenson?
A. I can't tell you. I have spoken to him a number of times over the years asking for additional materials.

The other day I called asking for a page that was missing from the OR about tourniquet times and things like that.

We have not had any in-depth discussions. He read the reports and that is about it. I never change anything.
Q. And you have never examined or met Mr. Weber; is that right?
A. I have not.
Q. You have only talked to him two times on the phone?

A. Three times.
Q. When have you talked to him?
A. 8-30 and 8-7.
Q. When was the third time?
A. 8-7-95 I spoke to him twice on one day. I called and had to look something up and called him back.
Q. You spoke with Mr. Weber on August 30, 1993; correct?
A. Yes.
Q. And you spoke to him on two separate occasions August 7, '95?
A. I believe so, yes.
Q. How long was your conversation on August 30?
A. They are both a couple of minutes.
Q. What did you ask him? Did you have specific questions on the first conversation?
A. I think my questions related to the fact that I wanted to check my thoughts on my original conversation in August of '93 when he stated he had continuous pain and discomfort.

And I wanted to check that with him again, because the doctors records reflect the opposite and I wanted to see if he remembered that

was being true or false.

Q. You are talking about the August 7 conversation?

A. Yes.

Q. What is his response to that?

A. The doctor didn't have the record corrects or changed the records. He was in extreme pain from the day the surgery happened.

The next day when he called the doctor's office and through the whole time he was in pain and discomfort, which is understandable when you see Doctor Sauer's notes when the man had deep vein thrombophlebitis.

So, we know he was in pain and discomfort. So, with a reasonable degree of podiatric medical certainty Doctor Brooks either falsified his records or did not know what he was talking about when he wrote the records.

Q. Do you see any evidence of falsification on the records?

A. There are questions. I have his records we can go to the one page and I am holding the records on 2-7-92 there is one handwriting showing Jobst and he talks about that and then there is a completely different note that says the patient

has no pain or tenderness and no temperature.

And Mr. Weber says without question he was in extreme pain. He had calf pain and tenderness and that was to be expected with all of the swelling, which Doctor Sauer saw him the next day 2-8. It didn't just happened like that.

Doctor Brooks I feel either wrote this to protect himself, because he knew he was in trouble --

Q. You are referring to the 2-7 note?

A. Yes. Different handwriting and different penmanship and just an add-on thought to say I better cover myself because this guy might have phlebitis. It finally came to his mind, I don't know. You have to ask Doctor Brooks that.

Q. Doctor Gorman, if it has been testified to in the past that the first note is written by a nurse or the second note is written by him, that is not unusual; is it?

A. That is true. Some doctors do that. It is very unusual to refer the patient on 2-8 and he has swelling, tenderness and deep vein thrombophlebitis brewing for a long time and not have any of these things the day before.

It is just a novel. It can't be

true. I have been treating phlebitis for 20 some years at the rehabilitation hospital. This doesn't happen. If the patient was in that much discomfort, he should have put it down on the paper.

Q. What are you saying, this shouldn't have happened?

A. He is saying there is no pain, no tenderness, no temperature. It is absolutely false. The next day he was in pain. He had a swollen, hot, tender leg and had phlebitis going on.

Q. What you are basing your opinion on is that it is your understanding that if the patient on 2-8 had pain and is being checked with a vascular surgeon for phlebitis he should have felt pain on the day before 2-7-92?

A. He had felt pain the whole time. When you have circulation being interrupted you have pain and tenderness and swelling.

You don't have to have a positive Homan's Sign, but you have pain and discomfort, which is very, very common.

Q. It is your opinion that on 2-7 there is no way he could not have been feeling pain?

A. That is true. From his history, from the time the cast was put on and all of the swelling he had and the restrictions around the limb to give a long term deep vein thrombophlebitis starting from the pressure from the cast, there is no way.

He had to have pain and discomfort. He was annoyed he said and that is when he went on to his consultation with Doctor Sauer.

Q. Is there any way you could suffer from the Phlebitic problem without suffering from pain in the leg?

A. You could take analgesics. When the condition levels off sometimes if you are resting in bed the pain can subside.

Q. So your claim that Doctor Brooks falsified the records or didn't know what he was talking about is based on the fact that it is your opinion there is no way he could have not been suffering from pain on 2-7 given what is found on 2-8?

A. No. I am adding in the fact I know the whole history from the day of the surgery all the way up and what is written and what the patient went through and talked about, there is no way he could not have had pain at that time. I think it

it might be clearer if you start at the beginning.
Q. I have a few background questions and then why don't we get to nuts and bolts of what your criticisms are and then go onto the explanations.
Where we left off is that you had three separate conversations with Mr. Weber, which you said were about two minutes long each conversation. The first conversation is when --
A. I don't know if they were 2 or 3 or 5 minutes. The second was very short and the first might have been a few minutes. Nothing of any consequence.
Q. The first conversation August 30, '93, is that when Mr. Weber informed you he felt continuous pain from the point of surgery on?
A. Yes.
Q. Do you remember anything else about the conversation?
A. I have it all incorporated in the notes and you will see. That is why I said if you take the notes and the report, it is all incorporated in that.
Q. And the notes you are referring to is what we have marked as Exhibit D; is that correct?
A. Yes.

Q. And in that second conversation you said that you spoke with him two times on that day on August 7, '95. Why did you speak with him on two separate times?

A. I had to look something up and I wanted to ask him about something.

Q. Do you recall what that was?

A. I really don't.

Q. Doctor, in your --

A. Yes, I do remember. I wanted to know if he knew the difference between a plantar fasciotomy and a plantar fasciectomy.

If the doctor ever explained to him the different procedures since he lists he was doing a plantar fasciectomy.

And then he lists in the operative report he did a plantar fasciotomy and I wanted to know what he understood the surgery would be.

Q. What did he tell you?

A. He didn't know too much about the difference. He knew he was going to get rid of his pain. He didn't have in-depth education as to what was going to be done.

Q. Did you explain the difference in the two?

A. I told him briefly. I didn't take the time

to go into detail with him.
Q. What did you tell him?
A. Plantar fasciectomy is where you remove part of the plantar fascia and the plantar fasciotomy is where you make a cut into the plantar fascia.
Q. What was done in this case?
A. I wasn't there.
Q. Can you tell from reviewing the operative report?
A. I can from what he writes in his operative report, but he says plantar fasciotomy and fasciectomy interchangeably throughout. So, I don't know what he did really did.

That is not a significant part of the case. The fact that he uses otomy and ectomy showed that his record keeping is very poor. And basically it is in there to show you an over all picture. It is not the man's problem at this time.

Q. Do you recall what was done in this case, can you tell from the operative report?
A. He says plantar fasciotomy I believe.
Q. Do you perform surgery in your practice on a regular basis?

A. Yes.
Q. Have you ever performed a plantar fasciotomy surgery?
A. Probably last week.
Q. You do it on a regular basis?
A. It is not done very often. I believe 90 percent of the patients do not require surgery in this. If you give oral anti-inflammatories, injection therapy and orthotics, it is rare to have to do the surgery, thank God.
Q. Doctor, in your surgery do you occasionally fail to achieve perfect or near perfect results?
A. Not every surgery is perfect.
Q. Would you agree that less than desirable results do not necessarily indicate a lack of care or skill on the part of the physician?
A. In this case or in general?
Q. Generally?
A. Generally, yes. That is true.
Q. In fact at times excellent care and skill can be done throughout the surgery and the postoperative care and still undesirable results can follow; is that right?
A. In this case?
Q. Generally?

A. Generally, because I know you are not talking about this case.

Q. For example, one patient can be more predisposed to a complication generally than another patient; is that right?

A. That is why you have to plan ahead and not put a patient in the position where they can be and since they are predisposed to certain things, you have to use extreme care.

Q. Some patients just don't heal as well?

A. I guess that is possible. If they have severe vascular decrease, which I don't believe he had.

Q. There are other reasons people don't heal well. Sometimes they just don't heal as well as other patients?

A. There is always a reason for not healing well. If you check it out you should be able to find out ahead of time if you are going to have a problem.

Q. You are not of the opinion that he was predisposed to any vascular problem?

A. Yes, I am.

Q. Where is that noted in the report?

A. It is in the records. I told you I just

reviewed everything again. I knew you were coming for a factual deposition and it is noted in the records that in 1988 that he had varicose veins.

And when they have varicose veins and you are using a tourniquet during surgery and putting him into a cast, they are predisposed to thrombophlebitis.

As soon as a patient complaints of pain in a cast, you remove the cast and evaluate the patient.

Q. In your report dated October 25, 1993 which we have marked as Exhibits B in this case you state on the third page near the bottom that in this case there is no prior history of any vascular problems which would contraindicate the use of a lower extremity casting or the use of a tourniquet during the performance of surgery. Do you disagree with that statement now?

A. Yes. I have additional records and in talking to the patient I realized he had varicose veins in 1988. One of the old histories stated he had varicose veins.

The statement I made in the first report is not true, because you are predisposed to this problem and a podiatric surgeon should take

that into account before putting a cast on somebody of this weight.

Q. What if the surgeon was not aware of the fact that he had varicose veins in 1988?

A. He had just to look at his leg because they are on the leg and visible and, therefore, you would be able to see them.

A physical evaluation prior to surgery is quite important and if you go through the records, you will see he doesn't go into any of the systems or into anything other than the fact he schedules the patient for surgery without conservative care.

And I go back with you there is nothing in here. He skips over just about everything. There is nothing about the pulses, the neurologic signs, the ranges of motion. This is one of the poorest histories I ever saw.

If one of my residents came to me with a history like that he would be out of the program or he would learn darn quick. Even the fact that he is scheduling the surgery, he scheduled it without mentioning risks.

His records are sparse, incomplete and not within the standard of care in the

podiatric profession.

Q. Doctor, speaking generally again, do you agree that certain events occur after a surgeons operation that might affect the patient's recovery, the patient may fail to perform the follow-up care that the doctor has given such as exercising the leg?

A. I don't understand what exercising the leg is going to do here instead of prevent phlebitis.

Q. Do you agree if that was not performed that may affect or could have affected Mr. Weber's outcome in this case, the DVT?

A. When you have varicose veins whether you do exercises or not is not the point. The patient develops swelling and tenderness, whether he exercised and did Berger's exercises, it is not the important factor.

The factor is the patient had swelling and pain. He even had another pain medication prescribed for him after he called up with the pain, therefore, the cast had to be removed.

Forget about the exercises. You are talking the day after surgery. If you develop something that quickly you could exercise all you

want and you are not going to get rid of those thrombi that form.

Therefore, your theory or your question is not of concern. The fact is he had varicose veins. If he exercised or not is not the problem. He had a cast on that was probably too tight or the tourniquet damaged the varicose veins and the cast should have been removed.

When you do a plantar fasciotomy you don't have to put a patient in a casts in the first place. So, I don't know why he was in a cast.

Unless he had a special reason for putting him in there for physiologic rest, which really is not necessary after that surgery.

Q. Referring back to your report August 25 Exhibit B where you state that it is also well-established that in performing a fasciotomy surgery the patient should be placed in a cast for physiologic rest?

A. No. I am saying there are different kinds of fasciotomy. If you do a small incision and you cut the band, there is no reason to put somebody in the cast.

If you do a large incision, there is

a reason to rest the person in the cast. In the 60s, 70s and early 80s they did it all of the time.

Into the 90s people are not doing it very much any more. It is still within a standard of care to put somebody in a cast if you want to, but it is not necessary.

Q. Doctor, would you agree it is possible for two surgeons to examine the same patient and review the same x-ray and still disagree as to the best course of treatment and both of the surgeons could be exercising the reasonable degree of care and skill?

A. Not in this case.

Q. Generally speaking?

A. Yes. You can bake an apple pie many ways.

Q. Just because two doctors disagree, it doesn't mean one is wrong?

A. In general that is absolutely true. There are standards that one must follow in the profession.

If you breach the standards, it doesn't matter if the opinion is different or not, you shouldn't be allowed to do those things to hurt someone.

Q. Do you agree that in regard to surgery and the follow up treatment of a patient and even in the most carefully planned and exercised conditions complications can occur and do occur?
A. That is true.
Q. You stated earlier that you do perform plantar fasciotomy surgery?
A. In many ways.
Q. How many have you performed in the past?
A. I have no idea. I do plantar fasciotomy through endoscopic surgery. I do it through minimal incision approach with a fluoroscope and I do open procedures, where you go in and see the heel and do the plantar fasciotomy.
Q. That was the open surgery done in this case?
A. Yes.
Q. How many have you done?
A. Many over the years. As I say at this point we have found many people, at least 90 percent, do not need surgery. You give them support, anti-inflammatory and injection therapy I would say 90 percent at least get better.
Q. There are patients that have to have surgery even after you give them support and

injection therapy?
A. Yes. If he would have done that here, he would have probably avoided surgery.
Q. Doctor, such as the surgery that was performed in this case, do you agree it was within the standard of care to put Mr. Weber in a cast following the surgery?
A. That was up to the surgeon. I don't believe he should have been because of the varicose veins, but there was nothing wrong with doing it if he watched the patient carefully.
When the patient developed the swelling, the cast should have been removed, because of the varicose veins the patient had a history of.
Q. Assuming for the sake of this question that he did suffer from varicose veins, it was still within the standard of care to put him in a cast?
A. You can use a cast with appropriate padding and with watching the patient and if the leg swells, you then must remove the cast with a history of varicosities.
Q. It is also well-established and recognized that a tourniquet is used in this type of surgery?
A. You need a tourniquet. You can see the

area and it allows for better visualization. It could be used at the ankle or mid thigh.

Q. What was used in this case?

A. I don't remember. I believe it was the ankle. It was proper tourniquet time. I think it took almost an hour.

Q. Did you say it was proper?

A. I have no problem with that from the record.

Q. It is also well-recognized that DVT can form following surgery of this type with the casting and tourniquet?

A. The deep vein doesn't form normally right away. Usually you get a superficial thrombophlebitis first and then since they are all interrelated the deep veins become involved. And that is when you worry about throwing an emboli and killing the patient.

The secret here is to get immediate care, remove the cast and try to find out what is going on by doing Doppler and other studies.

Q. The DVT is a recognized risk of the surgery such as this?

A. It is a far cry risk. You don't get it unless you have the criteria there are. In other

words, you don't get a hurricane unless you have the warm water and the tropical depression.

In this case he had varicose veins, he was big and the cast was put on tight to hold it into position. He developed pain and pressure and thrombi, which are clots.

The cast was opened at the top and they put an elastic wrap that puts more pressure and he went back still complaining of pain.

Finally they took the cast off and they put another one on. It worsened the condition. If they would have left him out of the cast and treated him from day one, we would not be sitting here.

Q. It is your opinion he could have been treated without a cast?

A. You can treat everybody without a cast. You bandage them and put them than in crutches or a walker or wheel chair or special shoes without the back.

Q. Don't you agree that it is possible for DVT to develop even under the best of surgery and the best of follow-up care?

A. It is a risk of surgery. When you have at hand certain factors that are going to make it

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more risky, you have to be more careful to identify these problems and be aware of them, which he was not.

Q. My question to you is: Under the best of circumstances, the best of surgery, the best of follow up care, DVT can develop because it is a recognized risk of this surgery?

A. Anything about can develop.

Q. I take it the answer is yes?

A. Yes. Anything can develop, but it would take an act of God.

Q. Doctor, I am sure throughout your years given that you performed these surgeries, do you explain to your patients that DVT is a possible risk of the surgery?

A. You explain that it is a possibility, yes.

Q. Have any of your patients developed DVT?

A. Not from this procedure, no.

Q. Do you agree that it is possible for a surgeon to perform an instep fasciotomy as was performed in this case with the resulting cast and have the resulting DVT develop and still have exercised a reasonable degree of care and skill?

A. In this case, no. But it is possible. In this case we know what happened. It is possible

to happen.

Q. It can develop even under the best of circumstances?

A. You asked that three times already. I told you it can happen. It is rare. But in this case the patient had all of the predisposing factors to give him a venous problems.

And the podiatric surgeon should have taken the care necessary to evaluate the patient immediately rather than giving him more pain medication following this.

Rather than just opening the top of the case, he should have evaluated the limb better or sent the patient out for a secondary opinion. There is nothing wrong with that when you are dealing with somebody's life.

Q. In treating a plantar fasciotomy if the patient doesn't have relief with conservative care the next step is to perform surgery?

A. That is true. You have to do the conservative care first.

Q. Why don't we get into the nuts and bolts of your opinions. We have marked as Exhibit B and C the two reports that you wrote for Mr. Beilenson and Exhibit D are the notes that you had taken.

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Do the reports contain all of your opinions in this case?

A. No. My notes do and the reports.

Q. So, there is additional opinions on your type written notes; is that correct?

A. This is the most recent area. I can go through the summary quickly for you.

Q. You are referring to Exhibit D?

A. Yes.

Q. What are the criticisms?

A. No conservative care performed by the physician. No orthotics were given. Oral anti-inflammatories, follow-up with orthotics, which all could have avoided this problem.

Doctor Weiss was treating the patient and was getting 75 percent improvement and then he didn't go back and he got worse again. Obviously he got mad at Doctor Weiss, because he was involved with pain again.

He went back to Doctor Brooks and Doctor Brooks I guess thought he had all of the conservative care and not taking a good enough history because there is no history listed.

He had three injections, but he didn't have the time to take the oral

anti-inflammatory and he didn't take an orthotic device in his shoe and that would support the foot.

And I can show you this. This is an educational tool that will show you what an orthotic will do with plantar fascial strain.

Q. You are referring to your computer screen and there is a computerized animation?

A. Yes. When and if we go to court we would like to teach the Jury about plantar fascitis.

Q. Will you be using something of this nature in the court room?

A. Yes. It will be in a video form.

Q. Is this a program that you purchased?

A. This is called the animator. We have a few programs here. We can make our own. The only thing it is showing here --

Q. Where can I get that? Where did you buy it?

A. I don't know. It is a company in Texas. There is the foot and the plantar fascia and during walking it says that the plantar fascia is stretched and this is what is wrong with this gentleman.

You can see that it pulls, because

you can get a heel spur formation because you put calcium in the back. The only mechanism to correct it is to put support in there.

You alleviate the stretch and you don't have to cut the band. He cut the band, but if you just put support in there you alleviate it.

In almost every case the patient is relieved enough where they don't need surgery. What I will do is I will make a copy of this and he could give you a copy.

It is only about a minute and a half presentations. It shows everything what the plantar fascia is, how it works and how to alleviate the problem without surgical intervention.

MS. OUTLAW: Can you get me a copy of it?

MR. BEILENSON: Sure. What am I going to get a disk?

THE WITNESS: I can video it off of there and send it to you. The next area I believe that the diagnosis was incorrect in the first place.

He states in his notes that he could palpate the calcaneal bursa. This was on

the forms he filled out for the patient for the insurance on her disability forms.

BY MS. OUTLAW:

Q. Can you show me that?

A. On 1-11-92 disability form he states that he palpated the bursal sac.

Q. Why was that opinion not in your original reports?

A. A lot of these things I didn't have. I don't know if I had all of the disability forms. They came in pieces and I took the time to outline everything here for you.

Q. Your reports show that you received Doctor Brooks records before your October 25, 1993 report was made?

A. You will see that I received from faxes and other things different pages at different times. This one was faxed to me yesterday. Everything didn't come at one time.

MR. BEILENSON: So the record is clear during the deposition of Doctor Brooks that is when we got the copy of the disability forms. That was not included in the original records provided to me by counsel.

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They showed up when I reviewed his record in his office during his deposition.

So whenever we took Doctor Brooks deposition that is when I got it, which is way after I sent the original records to Doctor Gorman.

MS. OUTLAW: And you sent it to Doctor Gorman?

MR. BEILENSON: That's correct.

THE WITNESS: It said he palpated the bursa. It is right there on the January 11, 1992 form.

BY MS. OUTLAW:

Q. Why weren't they included in your report?

A. I got them after the reports were written. Here it is palpation pain heel medial band and bursa palpated.

Q. And you are referring to the January 11, 1992 when he filled it out?

A. Yes.

Q. What is the significance of that?

A. If the patient had a sac in there, it wasn't a plantar fascitis. He should have gone in and taken out the mass.

Instead of cutting the plantar

fascia, he should have removed the bursa which was causing the patient's discomfort.

Q. Is it your opinion that Mr. Weber is suffering from the bursa versus the plantar fasciotomy?

A. I have no idea. I can only go by the records. When a doctor puts down that he can palpate the mass in the heel and he opened the heel and doesn't evaluate the mass, but writes it on a disability form and doesn't put it in the records there is something wrong.

If there was a mass there, it should have shown up on his records and not on a disability form for the patient.

Q. When Doctor Brooks performed the surgery would you expect him to find this mass during the surgery?

A. If he palpated it, where was it. He wrote it as a diagnosis. When he went in there, what happened to the mass.

This is still not the crux of the problem. The problem is the patient developed DVT and he had a tourniquet on during the procedure. He had varicose vein history from 1988.

He then had a cast put on. The

patient swears from day one that night calling the doctor's office the next day he was in pain and the doctor told him to use ice, elevation and rests and called the pharmacy with pain medication.

Q. What medication is that?

A. He was going to get back to me on that. I never got back to that third phone call.

Q. Is that in the records?

A. No. The phone call is not in the records. He tells me he had a prescription from the pharmacy for pain.

The pain continues to January 15th and he went to the office. He had to be in pain because why would you open the top of the cast and re-wrapped it if you didn't have pain.

Q. Assume for me it is testified to that the cast was cracked with the material put around the cast because Mr. Weber had irritation around the top of the cast?

A. If that was the case that is his story and they took off the wrap and they could have been web roll or padding around it.

Q. Assuming it was not open up and cracked because of the patient suffering from pain, but

because he was having irritation around the skin, would that affect your opinion?

A. You can fix a cast if you don't have pain there is no reason to remove it. I am saying that Mr. Weber told me he called for pain medicine and he got pain medicine and he continued and the pain continued and the doctor opened the cast up and put the web wrap around it.

Q. You state that Mr. Weber told you that he received pain medication, do the record reflect any prescription for pain medication?

A. The records don't reflect much of anything to tell you the truth. They are sparse and ill kept.

Q. Assuming that pain medication was not prescribed on the date when the surgery was performed, would that affect your opinion in any way?

A. That he was taking it at home or the man didn't remember. I don't know. You have to ask him. I am only going by what I read and what I was told.

He told me he was given pain medication and told to use ice and rest and he was in a lot of pain until he finally got to see

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Doctor Sauer.

Q. And if assuming Mr. Weber is incorrect in his memory and we go by what is noted in the records that he did not begin to feel extreme pain and great swelling until 2-7-92, do you find within a reasonable degree of care and skill for -- strike that.

Doctor, assume that Mr. Weber did not experience left leg swelling until 2-7-92 when Doctor Brooks performed the examination on plaintiff and there was no pain in the left calf and no tenderness and no increase in temperature --

A. That is not what the record says.

Q. What do you read in the record?

A. On 1-29 he talks about edema. It says reduced edema.

Q. It is normal to have minimal edema after surgery when you have a cast; is that true?

A. Not in the leg. You gave me a hypothetical stating no edema at all. The records are so poor it is difficult to ascertain what he had and didn't have. Do you have the forms that he filled out, the disability forms?

Q. You are basing your opinion --

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A. If he didn't have edema all the way through he would not be ordering Jost decompression stocking, leg elevation.

Q. Wouldn't you expect that type of swelling and those items ordered following the normal course of treatment of the patient following the surgery?

A. No.

Q. Why not?

A. The leg doesn't swell on people. You don't get a lot of swelling. You get a little swelling around the foot sometimes.

Even on 3-6 that was another one where he said the patient had edema and Doppler studies were done, on all of his forms painful edema chronic and painful fascia.

The patient had varicose veins and edema. I guess it is up to the Jury to decide if the patient was swollen and if the doctors records are adequate enough to determine what was done.

Q. You are basing your opinion that Doctor Brooks should have caught the vascular problem prior to 2-7-92, you are basing that opinion on what Mr. Weber told you he told Doctor Brooks about suffering from pain since surgery to the

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present?
A. The question is not answerable. I was saying not what he told Doctor Brooks, but what he told me occurred.
He gave me a history from 1-9-92 until the time he saw Doctor Sauer the swelling was there and the pain and the discomfort level was there.
And it worsened over a period of time until later on he had to go back to Doctor Sauer when it became discolored and he had more of a problem. That is the history of thrombophlebitis that is how it goes worse and worse and worse.
Q. If he was not suffering from pain and swelling as he told you all the way through, does that change your opinion in any way?
A. If he had no pain and discomfort there is no reason for him to do any more unless there was edema. If there was edema you do not put somebody in a cast if they get continued swelling.
Q. The continued swelling that you were referring to is that found in the records?
A. There is swelling throughout the record. There is only 3 lines written on some of the pages with 6 words.

There is no real meat to the order of what happened to the patient, what was going on, were his toys normal color, was his leg or foot swollen. Did he have a temperature, no temperature, how he felt, what he was doing.

The records are terrible. That is what the problem is. If he would have taken the time to put down everything that happened he wouldn't be in this position.

Q. Assume that Mr. Weber was not suffering from pain all the way through from the point of surgery on and there was only minimal edema noted on 1-29-92 and the left leg swelling on 2-7-92. And then Doctor Brooks sending Mr. Weber to Doctor Sauer on 2-8-92.

Assume those are the facts that there was no pain and only minimal edema, do you agree that he did what he was supposed to do and was within the standard of care in referring him to Doctor Sauer?

MR. BEILENSON: Let me interpose an objection. It leaves out facts which are essential to this physician to give an answer to it adequately and that is the history of the patient prior to the time

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you have referred to and the notes including the ones on the disability forms filled out.

There are other things that Doctor Brooks notes in his record. If you are going to leave all of those in and exclude the pain thing, that is fine.

You have to take into consideration everything else that Doctor Brooks wrote down about the patient in the initial notes and the disability notes and exclude the pain thing if that is what you are trying to do.

BY MS. OUTLAW:

Q. You can answer the question.

A. I have no idea what it is.

Q. Assume he was not suffering from pain from the point of surgery on and there was only minimal swelling up to 2-7-92, is it your opinion that given those facts that Doctor Brooks was acting in a reasonable degree of care and skill in waiting for 2-7-92 visit to direct him to Doctor Sauer?

A. These are all of the facts and there are no forms, there is nothing else, no other notes or clinical history.

This man is a perfect specimen when he walks in for the heel surgery and has no history of any problems and has a little bit of swelling and no pain, he did everything right. If you take into account everything else, he didn't do everything right.

Q. Assume for me that Mr. Weber told Doctor Brooks at the initial evaluation that he underwent 3 cortisone injections and immobilization by tape and changed his socks and shoes and tried shoe therapy all with no relief, is it your opinion the next step would have been to then perform the surgery on Mr. Weber?

A. You have to understand Mr. Weber was being treated with methods to alleviate or mask the pain. The thing to get rid of it is support.

If you can put something in the shoes to support the foot and alleviate the stress on the plantar fascia, that is the best conservative care.

The patient according to Doctor Weiss was 75 percent improved by 7-31-91 and that is without taking the oral medication and a few injections. That is without an orthotic and that relieves it without any problem sometimes.

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Q. Doctor, couldn't the 75 percent be related only to the cortisone only?

A. That is exactly what I am saying. Most people are corrected with orthotics without cortisone. This man was improved by the injection and then with support would have gotten the other 25 percent and never needed surgery.

Doctor Brooks could have given one more injection and put him in an orthotic and he would have not needed surgery.

Q. Doctor, is it your opinion that the conservative care is the injections given and then orthotics should always be used before performing the surgery?

A. Why would you operate if you could avoid the surgery. The care for plantar fascitis are oral anti-inflammatory injection therapy and support. That is the basic treatment to avoid surgery and he didn't do orthotics.

He tried to prefabricate an orthotic. He could have gotten a Doctor Scholl and stuck it in his shoe. If he improved with conservative care with an injection, the orthotic would have put him over the hill and he wouldn't need the surgery.

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Q. Assume that Mr. Weber told Doctor Brooks in the initial evaluation that again he underwent the cortisone injections, the immobilization by tape and changed his socks and shoes and did try shoe therapy without relief, would it be your opinion the next step is to perform the surgery?

A. If he did strappings and had orthotics and had oral medication and had injections and physical therapy, then you have no choice. Either Rest the person, get them off the leg or do surgery.

Q. In this case assuming that Mr. Weber told him that he had the injection, the immobilization by tape, changed his socks and shoes and tried shoe therapy --

A. He didn't have the immobilization by tape. He was allergic to the tape and couldn't use it. He only had it on for a very short period of time.

Q. And he moved on?

A. It should have been an orthotic.

Q. And that is the shoe therapy?

A. Orthotics. Shoe therapy is where you build a support in the shoe. Orthotics is taking from a casting of the patient's foot and the proper support is given to realign and support and

cushion the foot.
Q. Is it your opinion that the orthotics should always be used before surgery is performed in any case?
A. In this particular case when you have a man that is this heavy and having this much discomfort you do orthotics first to try to alleviate the need for surgery.
Q. Do you know, Doctor, if when Doctor Brooks was evaluating Mr. Weber whether or not the varicose veins were evident on the leg?
A. I never saw the man's leg.
Q. If the veins were not evident --
A. Superficial veins are evident. I would only presume they are and you can ask him if the veins are evident or not.
Q. At the time of the evaluation when the decision was made to perform surgery if you couldn't see the veins, do you have an opinion of whether or not Doctor Brooks should have been aware of the veins unless Mr. Weber told him?
A. Doctor Brooks should take an adequate history and ask questions about circulation and previous history. He should write a record that is legible enough for another doctor to take over

and know a complete history of the patient prior to any surgery.

I can understand a doctor cutting toe nails and doing a callous and that is still not excusable. When you are going to do surgery on a patient you certainly have to know everything you can about the patient so the case doesn't blow up like this one did.

If he doesn't keep adequate records, he can't know. So, my thought is he should have taken an adequate history. If he would have, he would have known he had them whether you could see them or not.

Q. The only way that Doctor Brooks could have been aware that Mr. Weber suffered from varicose veins would have been through him telling him that?

A. That is one way or seeing the leg or examining the leg and asking questions about it.

Q. Those are the only two ways?

A. Or reviewing other doctors record. If he asked his previous podiatrist what happened.

Q. Doctor, assume for me that Doctor Brooks had no idea that Doctor Weiss treated him in the past, it was his impression that Doctor Sauer had

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treated him with the conservative care, assuming that to be the case --

A. That is even worse. Being a podiatrist he should have made an orthotic right away to try to alleviate the man's problem.

To show you how bad the records are there is a letter from Doctor Skor to Doctor Brooks dated November 7, 1991 and in number 6 he says ineffective orthotic therapy, he never had orthotic therapy.

He couldn't even get information from his own records when he wrote a letter to Doctor Skor telling him the facts. There was none.

Q. We are talking about orthotics and I see something on your desk, is that an example of the orthotic you are referring to?

A. Yes.

Q. Can I see that?

A. You sure can.

Q. Do you plan on using one of these at trial to explain what you are talking about?

A. You will see it on the video. There are many of them. There is not one generic orthotic. I can go into one other area in his operative note it is listed spur neuroma, left foot heel.

The man had a plantar fascial strain. He had no heel spur and the record reflects a spur with neuroma.

Q. You are referring to the operative report?

A. Yes. Doctor Brooks clearly states he palpated a bursa and scheduled the man for surgery without the support.

And then in the hospital record he has spur, which there is none, neuroma, which he never mentioned anywhere before third interspace and it is crossed out and says error, left heel.

He is so confused. The records are horrible. He has a fasciectomy, fasciotomy. He doesn't know when he was treated before. He didn't have orthotic. He doesn't know he had varicose veins.

He writes a letter stating there were orthotics, but there were not orthotics. He talks about a spurs and neuroma and talks about a bursa.

The record are terrible and he reflects that in his own hospital records. And then he goes onto say under Saint Joseph Hospital record in the pre-admission testing there is no edema. Therefore, the edema is after the surgery.

What I am trying to say is he needs a

course in record keeping and has to get straight what is happening to a patient. It is so confusing. I don't think he knows what the diagnosis was.

Q. That is your third criticisms on Exhibit D?

A. It is the fourth, where I talked about the tight cast. We have been through it all.

Q. Number 3 where it says DVD?

A. It should be DVT.

Q. When do you feel in your review of the records that Mr. Weber should have be sent to a vascular surgeon to get examined for any vascular problems?

A. When he complained of severe pain in the back of the leg following the surgery if the pain continued and had to get more pain medication, the cast that should have be removed and he should have been evaluated by an internist who does phlebitis conditions, a vascular surgeon, somebody other than a podiatrist.

Q. Where do the records show he suffered from pain in the back of the leg?

A. It doesn't. Mr. Weber told me he suffered the entire time. If you look at Doctor Sauer's records the thrombophlebitis didn't start in 12

hours. It started over a period of time with the chronic swelling.

I believe Mr. Weber in the fact that he had swelling and pain all along. If you look at the doctor's records, the mix up in the hospital records and the mix up in the name of procedure and all of that, I don't know how anybody cannot believe Joe Weber. These records are a disaster.

Q. Referring to Exhibits B the report of October 25, 1993 where you state in the middle of the page 3, therefore, Doctor Brooks continued with a course of conservative therapy. It is my opinion the patient would achieve significant relief sufficient to avoid or postpone surgical correction?

A. We discussed that.

Q. What do you base that on, the fact that Doctor Weiss there was improvement noted in his records with the injection?

A. He was improving on three occasions with injection. 60 percent once, 50 percent once, 75 another time. With improvement with injection therapy and not even taking the oral medication in the beginning with an orthotic which alleviates

most of the stress the problem is the band is pulling.

The problem is the pulling of the plantar fascia. If you support it in many cases you don't need the oral medication or the injection. The only thing he needed is the support.

If I take my glasses off today and try to read, I am going to have a headache. If I put glasses on, the strain disappears. It is the same thing with the foot. You put an orthotic on.

Q. In some cases you use the injection and move on and that still not be successful and then you have to perform surgery?

A. In rare cases that is true.

Q. On page 4 of your Exhibit B you stated it is my opinion that he started to experience the signs and symptoms of deep vein thrombosis shortly after surgery.

You are basing that on the conversation where he told you he felt pain?

A. The continuous us pain from the time of surgery which got worse and worse and had to get medication to alleviate the pain.

Q. Doctor, when you are looking for a possible

vascular problem, what type of exam should a physician perform?

A. You could use pressure testing and evaluate the foot for edema and check pulse and the simplest is doing a Doppler. Most doctors have a Doppler in the office.

If they do not, it is simple to send the patient across to a hospital and do a venous Doppler which is pain free.

Q. Do you do that when you suspect a problem?

A. I do Doppler if the age is there and there are no good palpable pulses. I make a note and do a Doppler study. After surgery if the patient has pain in the back of the leg, you send them to have a venous Doppler.

There are venograms that could be done. There are a lot of tests. There is no real test to find out if there is thrombophlebitis without doing a venogram. You are injecting the dye and looking for the thrombi.

But you can do Dopplers to try to ascertain the damage. The longer the phlebitis goes on, the more damage to the valves and you get a postphlebitic syndrome that lasts forever.

Swelling, pain, tenderness, limited

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activity. Special stockings and special support and limited activity.

Q. In the Exhibit B, you note it is your opinion that the delay in Doctor Brooks' referral or the delay in the proper diagnosis of the DVT caused it to become exacerbated resulting in permanent injury and disability. What did you base that on?

A. Years of experience working with the vascular hospital. The fact that the longer the problem continues the more inflammation in the inter lining of the vein the more damage is caused.

And once the valves is destroyed, that is the end of the problem. You have a long term swelling burning tender leg with edema. There is no way to correct it.

Q. When you state in the same report he displayed the signs and symptoms of a vascular problem shortly after surgery, you are referring to the pain in the back of the leg and having to get pain medication?

A. I am saying when somebody has a heel surgery I can understand heel pain, but pain in the back of the leg, continuing pain you have to

look immediately for phlebitis.

And when the patient has a history of varicose veins you have no choice, but to send the patient out and have them checked or you wind up with long term permanent disability.

Q. Would it affect your opinion if Doctor Brooks was not aware that he had suffered from varicose veins?

A. If I saw Doctor Brooks had taken an adequate history and took nice notes and had everything shown that he did a history and asked about vascular problem and asked about neurologic problems and checked for allergies, my opinion would change. Doctor Brooks' record are so bad I can't tell you what he did or didn't do.

Q. In what way would it change?

A. If he did a complete history and the patient didn't answer him and he couldn't see the varicose veins, it is not his problem any more.

As soon as you see the pain or discomfort, he should have sent the patient out for evaluation. He messed up either way.

In the one spot he could have gotten a history and not gotten it from the patient. He should have noticed as soon as he had leg pain, he

should have sent him out immediately.
Q. In your report your last page of Exhibit B in the last page you state on January 20, 1992 he showed signs of DVT problems; is that right?
A. Yes.
Q. Assuming the case be that Doctor Brooks did not know about the varicose veins and they were not evident from looking at the records, you have no problem with him applying the cast, but on the January 20th date that is when he should have been sent to the vascular surgeon?
A. I said from 1-10 on he should have been right there with it. He is suffering with pain and he has pain medication and it is in the leg and not in the foot, he should have had the cast off and been evaluated with a simple Doppler study or done a venogram.

You don't take a chance in throwing a clot that is going to kill a patient. You have to go ahead and do the testing.
Q. When you say on 1-10 the day after the surgery you are basing it on the fact that Mr. Weber told you he called Doctor Brooks and told him he had pain in his leg and received medication?

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A. Yes.
Q. Assume on January 20 that the cast was removed and no sign of infection and Doctor Brooks examined the plaintiff on the same date and he found plaintiff had no severe discomfort or pain.
And plaintiff left the office comfortably and when he palpated into the leg he found no symptoms or signs of a phlebitic type of problem?
A. On January 20 he ordered erythromycin as a prophylactic antibiotic. The surgery was done on 1-9, it is 11 days later.
Why on earth would you give somebody antibiotic 11 days after surgery unless you thought there was an infection brewing.
Q. Do you sometimes give it as a precaution?
A. At the time of surgery, yes. 10 days later, no unless you think there is a problem
Q. Is it below the standard of care to give it 10 days after surgery?
A. No, it isn't. Mr. Weber told me he never gave him the medication. He doesn't know why it is in the records. That is the interesting part.
He tells me the doctor has it in his records and he said he never received any. You

can't tell from these records because there is so many back and forth statements here. I don't know.

If you are going to give it, you give it at the time of surgery. Something is going on 11 days later or you would not give an antibiotic.

There must be something to trigger the mechanism in the doctor to give it and the mechanism must have been the spelling and the pain.

Q. Doctor Brooks records go on to note there is no discomfort or pain and no infection?

A. Why would it give it 11 days later. There is no reason to give somebody an antibiotic and put more medicine in their system.

And if Mr. Weber is right, he never received it any way. Maybe he was writing another chart and put it down in the wrong chart.

Q. It is true that the erythromycin is given as a precaution to avoid infection occurring?

A. Not 11 days later. If an infection is going to start it is going to start the day of, not 11 days later.

Q. Did your opinion that if he would have performed the Berger exercises following the

surgery that would not have change the resulting DVT?

A. Not in this case. If the pain started immediately after surgeon, they could have exercised him day and night and it wouldn't have changed one thing except maybe thrown the clot off faster and might have killed him.

Q. Assume Mr. Weber was not suffering from pain early on as he claimed and that the first time swelling was noted on 2-7-92 visit?

A. He notes it in the notes. If this is a hypothetical, fine. In the notes he says there is swelling in the disability forms. The notes really don't reflect a lot of swelling.

Q. Where does the disability notes show swelling?

A. Let me look for that.

Q. While you are looking, you have no criticism of the surgery?

A. If you palpated a bursa and it was there, why didn't he take it out. If it wasn't a neuroma, why did he call it that in the operative page and call it a bursa in the form and call it something in the office. Did he know what he was operating on.

Q. The surgery that was performed you have no problem with that?

A. I was not there to determine if it was good or bad.

MR. BEILENSON: Let me interject. The doctor said that Doctor Brooks used fasciotomy and fasciectomy and we are not sure what he did.

THE WITNESS: On 1-11-92 that is where he says there is chronic plantar facial tear at diagnosis. This is what he diagnosed for the insurance company.

If there is a fascial tear, you don't cut it. You put the patient in a rest strapping cast and let it heal. Then we have another one.

You have plantar facial tear as one diagnosis. You have neuroma as another. You have palpable bursa as another. You have fascitis and they are all on different forms and all different areas.

The edema was noted on this form. We have a date here for you I guess it is the March one where he talks about patient having chronic edema. The extremity, the

Doppler studies were done. I can't make out the handwriting.

This is January of '92 there was a written prescription for erythromycin. There is a copy of it, but the patient said he had not gotten it. It may not have gotten to the patient.

BY MS. OUTLAW:

Q. That is a copy of a prescription written on 1-20-92?

A. Yes. He says he wrote a prescription for erythromycin 1-20-92. As he was redoing his notes he didn't check the dates and he wrote 1-20-91. This is so bad. 1-20-91 and this is before he even saw the patient.

Q. Assume that that is meant to be 1-20-92 as we all have done in the past when you change years, what you are looking at that is a prescription that a doctor writes out and gives to the patient and that is what the patient takes to the druggist; is that correct?

A. Yes. That would be a prescription the patient would take to the pharmacist. I don't see it here. We were looking for edema areas and I don't see it here.

Basically to sum up, you are saying if the patient had no edema, no pain, no discomfort and no history of anything else, was he within the standard of care in putting the cast on and waiting and taking it off?

Yes. If the patient had the history and had the problems and was swollen, he was not within the standard of care. He should have been sent for vascular studies immediately.

Q. Assume there was minimal edema noted on the 1-29-92 visit and assume that Doctor Brooks was not aware wire of the varicose vein problem in the history of the patient?

A. Why wasn't he aware?

Q. If Mr. Weber did not ever tell him and he couldn't see the veins, assume that to be the case, was Doctor Brooks acting in the standard of care when he did not send him to a vascular surgeon until the 2-7-92 visit?

A. What you are asking is if he didn't know anything about anything?

Q. If Mr. Weber was suffering from minimal edema on 1-29-92 and he was not suffering from pain as he claimed, Doctor Brooks was not aware of the varicose vein problem and you couldn't see

them?
A. He could have waited awhile.
Q. As he did in this case?
A. Not in this case, he had all of these other facts.
Q. If you assume that to be the case?
A. He could have waited to see what would happen. As it started to swell, he would have had to send the patient out immediately.
Q. Which is what he did on 2-7-92 visit?
A. This is not what he did. Unless you are asking me to assume he knew none of those things, then you are right. I agree with you. I agree.
Q. Have we covered all of your opinions in this case, Doctor?
A. I believe so.
Q. Doctor, referring to Exhibit D your handwritten or type written notes on the 11-20 visit and the 1-9-92 surgery under Doctor Brooks' name, why do you have fasciectomy and fasciotomy underlined?
A. The reason I told you before. I don't know whether he did a fasciotomy or fasciectomy and they are two different procedures and two different payments plans on the insurance.

Q. On the 1-10-92 you state patient called the doctor's office, he was in extreme pain from the time of surgery, leaving the hospital through the time he called, told him to use ice and elevation and got new pain medication at the pharmacy, did you receive that from Mr. Weber?

A. Yes.

Q. That is not in any of the medical records?

A. No.

Q. Where you state on the same exhibit on 1-15-92 he went back to the office still in a lot of pain, is that also the information you received from Mr. Weber?

A. Everything that you see here that is in not in the pile of records are from Mr. Weber. There is no other place I could have gotten it.

Q. It is true that you also got in the same notation the leg is really quite swelling that again came from Mr. Weber?

A. Yes. The rest of the records don't apply here. It goes back for page 5. The rest are doctors records as they go through.

Q. Where you state he also talked about calcaneal fracture, possible bone scan. Mr. Weber was not suffering from a calcaneal fracture; is

that true?
A. I would presume so.
Q. You found no indication of a fracture in the records?
A. No.
Q. Doctor, when you take a history from a patient and the patient tells you what type of problems and treatment they have had in the past, you have to assume what they are telling you as true because there is no way to follow-up and check each and every claim the patient is making for accuracy; is that true?
A. I don't understand.
Q. Referring to your summary fax on page 5 of Exhibits D he was stating in the record the patient had 8 months of conservative care, the patient only had 4 injections of an oral anti-inflammatory to void the problem as well as anti-inflammatory strappings, et cetera?
A. It is not in his record. He said the patient had pain for 6 to 8 months and he just says chronic severity increasing, left heal pain 10 or 11 years work at something, shot to 6 month felt like something and left heal pain ice, cold, left foot numb. I can't make it out. Hurts all

day. Basically sketchy, nothing about a history of previous treatments.

Q. If he told Doctor Brooks he had received 8 months of conservative care with injections and --

A. You wouldn't get 8 months of conservative care with injections. Most doctors give 3 and some 4. You wouldn't get 8 months of injections.

Q. With injections and strapping?

A. He didn't have strapping because he was allergic to the tape.

Q. Assume that Doctor Brooks did not know he was treated by Doctor Weiss and Mr. Weber told him he did receive the 3 injections and immobilization by tape and changed the socks and shoes and shoe therapy you as a physician have to assume that to be true when the patient told you that?

A. Absolutely.

Q. Do you anticipate doing any other work in this case?

A. I just did.

Q. What are you looking at now?

A. I have the bills here. I didn't have these before.

MR. BEILENSON: I just handed them to him.

BY MS. OUTLAW:

Q. Bills for what are you referring to?

MR. BEILENSON: From Doctor Brooks.

THE WITNESS: If you could give me a minutes I would appreciate it. His diagnosis on the forms dated 11-20-91 and dated 11-1-91.

11-1-91 was the first visit and these are the bills that were billed to the insurance carrier strain or sprain of foot, it doesn't say plantar fascitis, neuralgia, neuritis or radiculitis.

Then you go onto the next one which is 11-20 sprain, strain of foot. Here he is scheduling the patient because of a plantar tear possible neuroma, palpates a bursa and he is calling it here sprain or strain of the foot.

And he schedules the patient for surgery and on 11-29 he calls it a plantar fascitis or neuritis. And all the way through he calls it plantar fascitis.

There is nothing about the bursa or neuroma or anything else. I don't know where he get neuralgia, neuritis and

radiculitis.

BY MS. OUTLAW:

Q. Is that a criticism of inadequate record keeping?

A. It is all part of it. Bills go out one way because you want to collect X amount of money from the insurance company and the hospital records are one thing and your own personal records are another thing and nothing matches.

Q. Do you anticipate doing anything other work?

A. Only if I review other depositions if they are sent to me. I am going to make an anatomy board showing the heel and get a copy of the video. I am going to bring orthotics. Everything is generic.

I am going to take the x-ray and blow it up to show there is nothing there except there is a poor x-ray. So the Jury can understand the foot and there is no pathology and there is no bone spurs, nothing like that.

Q. You see nothing on the x-rays that is abnormal?

A. There is nothing to require that surgery. If you don't have a heel spur and it is fascitis,

it is nothing more than the band being pulled and you have to put support in.

If the person had a spur I could understand this being chronic and long term and you want to go in and try to cut it loose. But this does not show any pathology on the right or left foot in the heel area.

Q. What type of board are you referring to that you are going to bring?

A. This x-ray is going to be blown up.

Q. Before you were talking about a board?

A. You are going to have 10 pictures of different layers blood vessels, nerves, tendons, muscles to show the complications of the procedure what you have to go through to get down to the plantar fascia and cut it.

Q. Do you have it now?

A. It is going to be made.

Q. Through a computer generized?

A. It is generic for teaching purposes. Just so the Jury understands what you are dealing with.

Q. Are you going to bring anything else?

A. Not that I know of.

Q. Have we discussed all of your opinions in this case?

A. I believe so.
Q. If you received any other information that changes or expands your opinion, would you please let Mr. Beilenson know and he will let me know?
A. I sure will.
MS. OUTLAW: Do you agree with that?
MR. BEILENSON: That is fine.
BY MS. OUTLAW:
Q. What is your prognosis for the plaintiff?
A. The patient is going to have problems for the rest of his life with swelling and tenderness. He is going to have to watch that he doesn't throw clots off because blood will pool when there is system to hold it up.
Q. What is your opinion of his current condition?
A. He needs support hose and he swells.
Q. Have you ever practiced medicine in missouri?
A. I never practiced there. I think I went to the baseball stadium once.
Q. You are not licensed in Missouri?
A. No.
MR. BEILENSON: I object as irrelevant and immaterial.

BY MS. OUTLAW:

Q. Have you ever attended any doctor or hospital seminars in Missouri?

A. I have attended seminars from doctors from Missouri in the past. I read literature from doctors from Missouri.

There is only about 12000 of us and we come from six colleges in the whole country and we go to the same seminars and learn basically the same things.

Q. Have you ever acted as an expert in any other case other than the case we are here today regarding plantar fasciotomy and DVT?

A. I could have.

Q. Do you recall any as you sit here?

A. In the back of my mind I think there was one in Chicago, but I can't tell you for sure.

Q. How many years ago was that?

A. One in chicago in the last year. It might have been settled by this time. It was a lady attorney and I know it was a big building and I was in Chicago for the day.

Q. Do you know what the issue was in that case?

A. No, I don't. I probably still have that

case.

Q. Was it similar to this case?

A. No.

Q. Would you agree with me that in order to give expert testimony, the expert should possess special knowledge about the field in which they are giving testimony?

A. I believe an expert should know what he is talking about and be able to evaluate the problem.

Q. You agree that the person acting as an expert should possess some specialized knowledge in the field?

A. I don't know about specialized knowledge. The person should be an expert in the field of podiatric medicine which would encompass anything we talked about today.

Q. Do you agree that one of the indicators of having such knowledge in the field is the Board certification a physician receives?

A. No. This has nothing to do with the surgery. Board certification is a process to keep you up to date in the reading and materials, which every state requires training by going through a certain amount of credits. You read literature and review different cases.

We have a resident at the hospital we review with all of the time. It is a matter of keeping up and it is not a matter of being Board certified. I know people Board certified that don't do surgery.

Q. You are not Board certified in vascular surgery; are you?

A. No, I am not. I am a podiatrist and I am Board certified.

Q. That is not available to you?

A. I am not that kind of a doctor.

Q. Doctor, would you agree that one of the problems of being a podiatrist looking at this case over a year and a half subsequent to the surgery is that you are not looking at the problem and the actual follow-up care, you are looking at artifacts, medical records, witness' memory, things of that nature.

Would you agree that that is one of the problems in this case that you have to rely on what people have told you rather than looking at the actual surgery?

A. If that was the case you could never go back you on anything. These are facts. I disagree. You are looking at facts And basic

medical principles and this doctor's medical principles do not follow the standard of care from his record keeping down to his treatment.

And whether you are looking at it a year or 10 years later the standard was to keep reasonably good records and treat the patient in the manner they are entitled to be treated. This patient was not as noted from the records and the doctor's writing.

There is no organization. He is a hap hazard individual. He might be the nicest man in the world. As a doctor in keeping records, he messed up.

Q. Doctor, if mistakes are made in the recollection of the witness or the plaintiff in this case there is no way you over a year and a half later could know that; is that right?

A. I can only go by facts and records that I review. From the records alone without talking to the gentleman, I know there are a lot of problems.

Q. What you are talking about then, Doctor, is the improper record keeping?

A. The improper record keeping, the fact that the records themselves reflect most of the problems. The facts are there, whether they are

artifacts or not, it is laid out. That is why I did it on the sheets.

The fact that the patient can give you a broader view of what happened day-to-day clarifies the picture. And I truly believe Joe Weber because of the records and because of the way the thing is outlined and because of all of the doctor's errors and diagnosis here and here.

He is not an organized person. He does not follow through in a rational matter in treating the patient on paper. I can only assume his paper carries through to his treatment of the patient after hearing the story of Joe Weber and reading it.

Q. If you are basing your opinions and conclusion on memory that are not completely accurate chances are that your opinions or conclusion could be incorrect?

A. No. Not from this, from reading these materials my opinions are correct. This patient developed a phlebitic condition following the surgery and it worsened to a point where on 2-8 he had to be sent to a vascular doctor for evaluation.

That is very clear. So, it either

happened from the tourniquet that had a varicose vein problem or happened from too tight a cast or both problems. Where the case was cracking or splitting the man was having pain.

The cast should have been removed and a simple Doppler could have told us if there was a problem or not and saved us all this aggravation.

Q. I see that you went to school at the Pennsylvania College of Podiatric Medicine?

A. Yes.

Q. And you graduated in June of '67?

A. Yes.

Q. And that is in Philadelphia?

A. 8th and Pine at that time. Now it is at 8th and Vine.

Q. Have you ever been offered a position on the faculty at that institution?

A. I was on the adjunct clinical staff. That ended when I started to testify in a courtroom.

Q. Why did that affect it?

A. The president of the college approached me on numerous occasions and told me not for testify in court against his boys.

And I a signed an affidavit for a Judge a few months ago and had him stopped from

bothering me and telling me not to testify.
Q. You are not a fellow of the American College of Foot Surgeons; are you?
A. No, I am not.
Q. Why are you not a member?
A. I am not in that Board. It is a fraternity that you can join or not. It is just a fraternity.
Q. And I see something on the CV is what I am referring to the International College of Podiatric Surgery?
A. I started that many years ago with a doctor from virginia. We had a couple of hundred members and that was incorporated in the medical group and the M.D, Phd. I am a member of it, the American Society of Podiatric Laser Surgery I think.
Q. Do you specialized in minimal incision surgery?
A. Absolutely not. I wrote a book in it because I was interested in it, but I do all types of surgery.
Q. Have you ever written anything, authored any articles, publications of any type on plantar fascitis or DVT problems developing?
A. No. I wrote a book on plantar fasciotomy

where there is an illustration on how to do the surgery. That is it.

Q. Nothing related to the issues in this case?

A. Just the fact that it is the same surgery. It had nothing to do with the side affects that develop after the surgery or the care.

Q. You have never written any articles or publications dealing with the risk of the surgery or the side affects or the proper care of the patient?

A. No. I wrote a diaphragm book on how to perform the surgery.

Q. What is the Professional Liability Incorporation publications?

A. I don't know. That was an article on forming professional corporations at that time and I did research and gave lectures on it.

Q. What is the article with Discotheque Dancer and Podiatric Medicine?

A. Discotheque at one time was quite popular and they would come in with all types of problems and a couple of residents decided they would like to go to bars and evaluate the discotheque dancers.

And they did studies on the pressure

of discotheque dancer and we determined certain types of orthotics would help the problem you get from dancing in a disco.

Q. Under the lectures you get better understanding of how to avoid malpractice, what was that?

A. I have been asked to lecture to podiatry societies about malpractice issues and how to better be able to defend yourself in a malpractice case such as keeping good records and that is it. How to make the patient aware of side affects and risks and complications of surgery.

Q. A lecture titled just malpractice?

A. The same thing. Basically what you do in order to defend yourself if you are called in for a malpractice case such as keeping good medical records.

MS. OUTLAW: That is all I have.

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EXAMINATION

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BY MR. BEILENSON:

Q. I have several questions. In looking at Doctor Brooks' record of November 20, '91 and I am reading at page 20 in the deposition at that point

I was going through his records with him.

And I said going back for a moment on the note of November 20, '91 in your handwriting you indicate may need orthotics. And I said the same day he was scheduled for surgery; is that correct? And he said yes.

The question was: Is there any reason why there wasn't any attempt made at using orthotics or why that was there?

He said I put that in there for following surgery. My question was: Not before, but following is that what you mean by that? And the answer was that's correct.

I just want to know is there such a thing as after surgery orthotics?

A. It is the same as the one used prior to surgery. The used prior to surgery eliminates the need for surgery in most cases.

The one after is the one that allows you to support the foot after you cut it. You need an orthotic to support the foot because the band is collapsed and you need support or you get other pains and aches.

Q. It is different from this?

A. They are both the same. The uno boot is

gauze with gelatin material that is wrap around like an ace bandage. It is much stiffer.

Q. Do you have any reason to wonder or ask why he would have said he may need orthotics after surgery? Why would a note like that be necessary?

A. I have no idea why he did most of the things he did on paper.

Q. So that an orthotic after this type of surgery is something you would normally do?

A. You would because you are cutting the band. Once you cut it, you release everything under there and in most cases you need support, because you cut the support.

Q. There wouldn't be any need to put that in your record?

A. Nobody should put it in any record. It is automatic.

Q. There was some mention about the Berger's exercises. Would you agree with me that if in fact the man had DVT or an indication there was a phlebitic problem, you want to get rid of the clots through blood thinners before you start having him exercise the foot or leg?

A. That is what I was saying. If the gentleman had clots forming and you started to

exercise him, you could throw the clots lose and throw one to his lung and kill him.

So you don't want to do exercise if you have phlebitis. You want warm compresses, elevate the limb and bed rest anti-inflammatories, many things like that.

Q. You have given all of your opinions as to what you felt was done by Doctor Brooks that was below the standard of podiatric care.

And can you state upon reasonable medical certainty that he failed to use that degree of skill ordinarily used under the same or similar circumstances by members of the podiatric community?

MS. OUTLAW: I object as being not limited to each opinion and not knowing which opinion we are talking about and it is over broad.

BY MR. BEILENSON:

Q. It is meant to apply to each opinion?

A. All of the opinions I have given about the care of this patient are well below the standard of podiatric care in all areas that I mentioned in the treatment of the patient without question.

MR. BEILENSON: That is all I have.

Doctor, you have the right to read the deposition after it is transcribed by the court reporter to check it for accuracy.

The main reason for checking is to make sure she got the right words down or you can waive signature?

THE WITNESS: I will be glad to read it.

MR. BEILENSON: If you would forward the original and one copy to Ms. Outlaw and forward to me my copy, I will go ahead and make a copy and forward it to him with the errata and the signature page.

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(Whereupon the deposition was concluded at 4:00 p.m.)

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C E R T I F I C A T E

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

I, Patricia Hemingway, Court Reporter, Notary Public within and for the County of Philadelphia, Commonwealth of Pennsylvania, do hereby certify that the foregoing testimony of JACK GORMAN, D.P.M., was taken before me at 399 North York Road, Warminster, Pennsylvania on August 9, 1995; that the foregoing testimony was taken by me in shorthand and reduced to typing under my direction and control, that the foregoing pages contain a true and correct transcription of all of the testimony of said witness.

Patricia Hemingway
PATRICIA HEMINGWAY
Notary Public

Notarial Seal
Patricia Ann Hemingway, Notary Public
Philadelphia, Philadelphia County
My Commission Expires Aug. 10, 1998
Member, Pennsylvania Association of Notaries

I have read the foregoing deposition and the answers given by me are true and correct, to the best of my knowledge and belief.

JACK GORMAN, D.P.M.

Witness to signature

Address

My Commission expires