IN THE COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

CASE NUMBER: A1402190

JUDGE STEVEN E. MARTIN

MCKENZIE DAVIS — PLAINTIFF

vs.

DELHI TOWNSHIP, OHIO, ET AL. — DEFENDANTS

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DEPONENT: RICHARD WICKSTROM, PT, DPT, CPE, CDMS

DATE: SEPTEMBER 14, 2016

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Mindy Davis

Certified Court Reporter

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EXHIBITS

The videotaped deposition of RICHARD WICKSTROM, PT, DPT, CPE, CDMS, taken for the purpose of discovery and/or use as evidence in the within action, pursuant to notice, heretofore taken at the office of WorkAbility Center, 7665 Monarch Court, #109, West Chester, Ohio, on September 14, 2016, at 9:00 a.m., upon oral examination, and to be used in accordance with the Ohio Rules of Civil Procedure.

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APPEARANCES

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VIDEO TECHNICIAN: Connie Adkins-Ihle

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VIDEO TECHNICIAN: We are on videotape record. Today is Wednesday, September the 14th, 2016. The time is 9:04 a.m. Would the attorneys now introduce themselves and state who they represent?

MR. POWELL: Brad Powell and Rick Rinear for the defendants.

MR. MAISLIN: And Blake Maislin for the plaintiff.

VIDEO TECHNICIAN: Would the court reporter please swear in the witness?

RICHARD WICKSTROM, PT, DPT, CPE, CDMS, called on behalf of the Defendants, after having been first duly sworn, was examined and deposed as follows:

DIRECT EXAMINATION

BY MR. POWELL:

Q. Good morning. Would you state your name for the jury, please?

A. My name is Richard Joseph Wickstrom.

Q. What is your profession?

A. I'm a licensed physical therapist. I'm a doctor of physical therapy, a certified professional ergonomist and a certified disability management specialist.

Q. How are you employed?
A. I'm employed through my private practice, WorkAbility Systems.
Q. Is that the name of your business?
A. That's -- yeah, that's my private practice, which is part of a network that I also own called WorkAbility Network.
Q. Where is your office located, where are we today?
A. We're at my office called WorkAbility Center at 7665 Monarch Court, West Chester, Ohio, Suite 109.
Q. Would you tell the ladies and gentlemen of the jury your educational background?
A. Sure. I have a doctorate in physical therapy from Alabama State University. And actually, my undergraduate degree back in 1982 was from -- was in physical therapy from the Ohio State University.
Q. What is your training and experience as a physical therapist?
A. Well, as a physical therapist, I have -- initially did -- when I graduated in 1982, I worked in an outpatient county hospital in Durham, North Carolina called Durham County General Hospital

basically doing acute care and outpatient orthopaedics. Then we moved to Cincinnati, Ohio where since I've moved to Cincinnati, I've done a variety of different physical therapy settings. I've worked in skilled nursing facilities, providing care at -- I worked for Drake Center helping, assisting with their industrial rehabilitation services. I started one of the first work hardening programs in Cincinnati through the Department of Orthopaedic Surgery at the University of Cincinnati, and then from there essentially went into private practice back in the late '80s, early -- late 1980's, early 1990's.

Q. Are you licensed to practice physical therapy in the State of Ohio?

A. Yes, I am.

(Defendant's Exhibit 1 was marked for identification.)

Q. I'm going to hand you what's been marked as Defendant's Exhibit 1 and ask if you can identify this for the record, please?

A. Sure. This is a copy of my most recent curriculum vitae.

Q. Does the curriculum vitae contain your educational background, your training and experience

as a licensed physical therapist?

A. It does.

Q. Does it also reference the memberships that you are or were a member of?

A. Yes, it does.

Q. And could you briefly describe for the ladies and gentlemen of the jury some of those memberships?

A. Sure. For the American Physical Therapy Association, which is the association that represents physical therapists throughout the country, I've served in a variety of roles. I've worked with -- I've served as their key liaison or contact with the Ohio Bureau of Workers' Comp on payment and policy kinds of matters. I've also served on the board of directors for the occupational health special interest group serving as both the director of practice and also membership with them. And in my capacity of doing that, led several work groups; one of which is serving as the lead editor for the APTA Functional Capacity Evaluation Guideline.

Q. When were you serving as the lead editor for the Functional Capacity Evaluation Guideline?

A. That guideline was basically introduced

around 2009.

Q. And is that article or that publication what you and others who perform functional capacity evaluations follow?

A. Yes, it is. It's the practice guideline for physical therapists that perform functional capacity evaluations.

Q. Dr. Wickstrom, would you describe your practice? What exactly do you do?

A. Well, I have really quite a varied practice. On any given day or any given week, I could be at the work site performing functional job analysis. This afternoon I'm going to a work site to work with a firefighter that's at work exercising in a transitional work plan. I perform functional capacity evaluations for a variety of different referral sources. I will -- I'm leading a software build right now that essentially relates worker abilities to job demands. It's called Worker Fit. And also basically interact with all the providers in our WorkAbility network to kind of like review their documentation and provide feedback to them to promote better quality of occupational health services that they're performing.

Q. And I heard you mention functional

capacity. Before we go much further with your deposition, can you explain to the jury what is functional capacity?

A. Sure. Well, I would say that you can think of functional capacity as a bridge between the medical evaluation of impairment and how an injury or illness affects the persons to perform work or important lifestyle activities. So it includes, of course, a review of the health history and a physical exam, but we go far beyond that and we actually do objective testing of things like grip strength, pinch strength, hand dexterity, ability to lift in different positions, agility. So it's a more performance-oriented evaluation that reflects what the person is actually able or willing to do rather than just sort of a report of subjective complaints.

Q. So the functional capacity evaluation that you perform, is that to determine what a person's ability to function on certain types of activities of daily living are?

A. Correct. I mean, not just daily living, but also any type of work activities. So oftentimes our -- the information that we provide is a foundation for job placement or whether -- or

development of a vocational rehab plan to direct the person to a suitable job. So it's more oriented towards the physically -- physical demands of employment or important activities of daily living.

Q. So in those circumstances, you're taking the job tasks or functions of a particular occupation or profession and applying your functional capacity evaluation to see if that person is able to perform those functions or tasks associated with their occupation?

A. Yes. When I have a -- when I'm provided with a specific job for comparison, I would look at the job demands kind of in the -- kind of characterize the job demands in the same way that I would be evaluating the person, matching them sort of apples to apples on all the different factors that are important for a successful physical performance in the job.

Q. With respect to the functional capacity evaluation or FCE, what qualifications does somebody have to have in order to perform these evaluations?

A. Well, the -- you have to have the skills of doing patient examination and specialty training related to administering these performance-based tests. Typically most exams are done by a physical

or an occupational therapist. The entry level background for a physical therapist is now the doctoral presentation, but this evaluation requires other skill sets that need to be built beyond what the entry level preparation is. So you got to know how to evaluate the functional demands of the job, because that's what you're comparing to a person, and you got to be able to administer all these different kinds of tests that relate to that and document that in a way that reveals the person's physical functioning.

Q. How do you go about obtaining qualifications to perform a functional capacity evaluation?

A. Well, just like in any profession, you go to continuing education programs that are taught by experts in functional capacity evaluation.

Q. Do you need a license or a certification to perform these functional capacity evaluations?

A. Yes, in general you need a license or certification to perform those evaluations.

Q. Are these functional capacity evaluations standardized?

A. Well, there are different methods for doing functional capacity evaluations. The

guidelines for performing a quality exam have been standardized by the American Physical Therapy Association in terms of what elements and how to best approach important aspects of administering the exam.

Q. With respect to the Functional Capacity Evaluation Guidelines that you helped edit and publish for the American Physical Therapist Association, are these the Functional Capacity Evaluation Guidelines that others in your field use?

A. Yes, it's the best available guideline or standard that's available for performing these evaluations at this time.

Q. Who do you perform functional capacity evaluations for?

A. I perform them for a variety of sources. I'm the lead -- one of the lead examiners for this entire region of Cincinnati, Dayton, Springfield, even Columbus to some extent, for what's called Opportunities for Ohioans with Disabilities. It's a state agency that serves individuals that are trying to return to work that have more significant disabilities. I also do evaluations for -- at the referral of attending physicians, like orthopaedic surgery practices. Pain management doctors will

refer individuals to me for this evaluation, individuals that are applying for different kinds of disability benefits as well, companies that have workers that are struggling to perform their tasks or maybe not able to work may initiate the referral. It's quite a variety of different referral sources.

Q. Do you perform functional capacity evaluations for individuals who are involved in litigation?

A. I do.

Q. And do you perform them on behalf of the plaintiff or the defendant or both?

A. I do, I do them on behalf of both plaintiff and defendants.

Q. Can you give us an estimate of the percentage of functional capacity evaluations performed on behalf of the plaintiff versus the defendant?

A. I'd say that my case mix, at least it varies on any given time or year, but I'd say it's probably -- I probably get almost an equal number of referrals for plaintiff or defense. I don't specifically track that in my practice.

Q. With respect to the functional capacity evaluation you perform for plaintiffs or defendants,

is there any difference?

A. No, I perform the same evaluation in either case.

Q. Dr. Wickstrom, have you performed functional capacity evaluations on individuals who have been diagnosed with reflex sympathetic dystrophy or complex regional pain syndrome?

A. I have.

Q. And before we start getting into the actual evaluation in this case, have you been recognized by the Hamilton County Court of Common Pleas as an expert witness qualified to render opinions as to functional capacity?

MR. MAISLIN: Objection.

A. I have testified in that court jurisdiction and been recognized as an expert.

MR. MAISLIN: Objection.

Q. And that was particular to the functional capacity evaluation that you performed?

A. Yes, it was.

MR. MAISLIN: Objection.

Q. At my request, did you perform a functional capacity evaluation on McKenzie Davis?

A. I did.

Q. You may refer to your report, Doctor, if

it assists you in answering these questions. When did you perform your functional capacity evaluation on McKenzie Davis?

A. The date of my examination on McKenzie Davis was 5/13 of 2016.

Q. What did I ask you to do?

A. You asked me to evaluate her functional or physical capacities as it relates to work and other important activities of daily living.

Q. Was the functional capacity evaluation you performed on McKenzie Davis the same or similar as the functional capacity evaluations you normally perform or otherwise perform for these other individuals?

A. It was.

MR. POWELL: Could we go off the record?

VIDEO TECHNICIAN: We're off the record.

(OFF THE RECORD)

VIDEO TECHNICIAN: We are back on the record.

BY MR. POWELL:

Q. Dr. Wickstrom, did you prepare a report outlining the functional capacity evaluation you performed on McKenzie Davis, the information you obtained during your evaluation, and the opinions

generated with respect to your functional capacity evaluation?

A. I did.

(Defendant's Exhibit 2 was marked for identification.)

Q. And let me hand you what's been marked as Defendant's Exhibit 2 and ask if you can identify this document?

A. That's the report that I provided to your office.

Q. What's the date of the report?

A. The date is 6/9 of 2016.

Q. What I'd like to do, Dr. Wickstrom, is I'd like for you to explain to the ladies and gentlemen of the jury your functional capacity evaluation of McKenzie Davis, and I'd like to go through basically what you did --

A. Okay.

Q. -- whatever the easiest way is. But before we do that, did you inform her to notify you if any aspect of your evaluation or examination caused her pain or discomfort?

A. Yes, I did. She signed an informed consent that outlined a number of conditions for -- or requirements for exam and participation.

Q. Did you obtain a medical history from her?
A. I did.
Q. And did you obtain a medical history from any other source besides McKenzie herself?
A. Yes, her mother was present with her during the interview and provided some information.
Q. What information was provided to you in the medical history section that you found to be significant with respect to your functional capacity evaluation?
A. Well, the medical history provided a brief description of what went on from the beginning or onset of her condition to present in her words or her terms. And that's my style as an examiner, is to sort of get initial impressions from the person and then go back and look at the records.
Q. Did the information that she provided to you assist in forming the background of what was going on with McKenzie as she presented to you in May of 2016?
A. Yes, it gave me a sense for maybe what to expect and what areas of the exam that I need to direct more attention to.
Q. Okay. So let's talk then about what you did. I'm going to mark as Exhibit 3 -- you had some

photographs contained in your report, correct?

A. Yes.

(Defendant's Exhibit 3 was marked for identification.)

Q. All right. And so I just want to go through some of these and just show the camera. What is Exhibit 3? Why did you take that photograph?

A. Well, it's my habit to kind of capture the person as they present to me at times during the intake interview. Just -- it's kind of a people first kind of thing that I find just helps the person reading the report understand who the subject is and how they're presenting themself.

Q. You also list on there under appearance during intake, it also illustrates the posture?

A. Yes, it does. So, for example, you know, some of the time that McKenzie participated during the intake interview she was sitting and at times she would periodically stand up. And so that basically illustrates her standing posture and her -- how she normally stands.

Q. Okay. So you introduce yourself, you take a picture of her, you explain what you're going to do to her and her mother?

A. Yes, I do.
Q. Okay. So why don't we go through and start discussing then your evaluation.
A. Sure.
Q. Go ahead.
A. Okay. So I'll ask a variety of -- basically during the first part of the evaluation process, she'll complete a series of intake interview types of forms, and I'll go through those forms reviewing just things that relate to like her medications or that she's got any impending injury claims or is she receiving any kind of disability benefits, what her most recent job activities are.
Q. And let's talk about that. Under most recent job activities, what's the significance of you reporting that she was completing her RN program at Good Samaritan College of Nursing?
A. Well, it speaks to her current level of lifestyle functioning. She -- I went through her activities and her experiences, how she got through that program, to help understand any difficulties she was experiencing as a result of her condition.
Q. And with respect to the purpose of this particular functional capacity evaluation, did this provide confirmation that the job or the occupation

at issue was nursing?

A. Yes, it did. She had just, in fact, on the date prior to my exam, she just graduated from her BSN, or from her nursing certificate program. And she also was quite proud of that, and told me that she graduated in the top eight of 65 to 70 candidates and that she'd already lined up a job as what they call a patient care attendant during that intermediate period where they're waiting for her to get her board results, board exam results. And that as soon as they got confirmation, then she would be transferred to a regular nursing position --

Q. Okay.

A. -- at UC.

Q. And then she also referenced that part of this RN program she was required to work 12-hour shifts?

A. Yes. In fact, she just accepted a job as a patient care attendant working a 12-hour shift. So part of her internships involved working 12-hour shifts and she was entering a part-time employment that required 12-hour shifts.

Q. All right. The next section of your report is titled job match demands.

(Defendant's Exhibit 4 was marked for

identification.)

Q. And I'm going to hand you what's been marked as Exhibit 4. And just show the jury just so they know what that is. So would you explain to the jury what the job match demand section is?

A. Sure. The job demands section essentially represents important areas of physical functioning or demands for that type of job that she's going into. So there are three sections; materials handling, physical aptitudes and work tolerances. And it basically represents a combination of my experience evaluating these kinds of nursing positions and also discussing that with McKenzie and what she experienced during her internships and requirements. So that's what this represents. And we've also cross-referenced this to what's called the Dictionary of Occupational Titles description, which basically also represents, this is what they call a medium level physical demand job.

Q. Okay. And you also have underneath this section occupational references. Is that just describing what the nursing job entails?

A. Correct. It's a description that was developed by the -- through the Department of Labor, the Dictionary of Occupational Titles. And that

actual description was probably developed long before they had really great patient handling, equipment and devices, but it's -- it basically represents that the work demands is medium.

Q. In your experience as a licensed physical therapist and licensed functional capacity evaluator, have you worked with nurses before?

A. I have. I've worked with nurses and nurse aides which -- in all kinds of healthcare settings.

Q. Okay. Let's talk about -- the next section I would like to point out is the comorbidity survey.

A. Sure.

Q. What is that?

A. Well, I do a comorbidity survey to determine all the different conditions that may impact physical functioning. Sometimes when people are referred to me for a functional capacity evaluation, they only have specific claims allowances for, say, a work-related injury and other people have other problems. So this is a self-survey that just kind of represents what the person's reported comorbidities are.

Q. Okay. And you have, have this problem, any recent treatment, or limits any activities?

A. That's correct. So they identify whether they have the problem, then if they have the problem or they've had any recent treatment for the problem, and then if they've had recent treatment, whether it limits any important life activities.

Q. With respect to this comorbidity survey, are you just looking for current issues or issues that may have been experienced in the past?

A. These are -- this is really focused on current issues. And this is largely just taking the results of her self-reported comorbidity questionnaire that she completed on intake.

Q. And in this section, she didn't talk to you about -- or, I'm sorry, she didn't mark having anxiety or depression, correct?

A. No, she didn't.

Q. And she didn't mark back pain or other spine condition, correct?

A. No, she didn't.

Q. And do you recall her otherwise talking to you about whether she had experienced or was experiencing anxiety or depression?

A. She did. We did discuss that to a limited extent.

Q. But it wasn't marked on this comorbidity

survey?

A. But she didn't mark it on the comorbidity survey.

Q. And the same question with respect to back pain, did she discuss with you, even though she didn't mark it down, that she had back pain issues?

A. She -- when I asked her what her recent symptoms were, they were basically left foot and ankle pain, left foot and ankle swelling. She reported she had color changes to her foot and other sensory disturbance, that she had hypersensitivity and rashes, and that she had trouble sleeping at night due to left ankle pain and allergies and shortness of breath and heartburn. That was the extent of symptoms that she reported to me.

Q. All right. What about the brief history of injury or disability, is this where she described for you what has been going on with respect to her medical issues?

A. Yes, it's basically my best effort to put together a short summary based on what she's describing to me at the time of the exam in a somewhat chronological fashion, so I have a big picture, understanding of what happened or what she's gone through since the onset of the injury.

Q. Did you -- well, in here you note that she fell on vacation to Italy in 2013 and twisted her left ankle?

A. I did.

Q. Did she provide you with information regarding any other falls that she experienced after this particular one which occurred in September of 2012? Other than the one that she reported to you and that you've noted in Italy in 2013, did she provide you with any additional information on any other slips, trips or falls?

A. No.

Q. And in here you note that she reported to you that Dr. Amis indicated that she had full-blown RSD. Is that what she told you that Dr. Amis told her she had full-blown RSD?

A. That's what she reported to me. This brief history is largely from interviewing her and her mother.

Q. Okay. And then with respect to these recent symptoms, and we'll get into your examination in a little bit, you did perform an examination, correct?

A. I did.

Q. All right. These recent symptoms, I think

you said this is what she reported to you as having experienced as a result of this injury --

A. Yes.

Q. -- within the past month?

A. Yes.

Q. Okay. And then you have a section where you talk about recent therapy, medications, things like that. Is that what she reported to you in terms of the type of medical treatment she was receiving?

A. Yes, it is.

Q. With respect to the hospitalizations or emergency care during the past year, did she tell you that she did not go to the hospital since the beginning of 2015?

A. Yes, she did.

Q. So let me back up on this report. Activities-specific balance confidence, what is that?

A. Well, that's basically a person's perceived balancing ability. So it's a common screening tool that's used with -- even more with elderly folks, but it's basically the person's perception or their self-report of how confident they are when they perform this short series of

balance activities. It's been validated against other research stuff like falls and things like that.

Q. And are you asking her to give you how confident she is in these circumstances of not falling or falling?

A. That's correct.

Q. All right. Tell the jury what this is and what you found.

A. So if the person was completely confident, for example, standing on a chair and reaching for something, they would put 100 percent. And if they wouldn't even attempt the activity because they're fearful of falling or balance, they put a zero percent. And they can choose a number anywhere between zero and 100 percent. But it gives me a quick sense for how confident they feel about their own balance.

Q. Okay. And in McKenzie's case, what did she tell you her confidence level was with respect to these various circumstances?

A. Well, she was 80 percent confident standing on her tiptoes and reaching for something overhead, 20 percent confident standing on a chair reaching for something, 90 percent confident if she

was bumped like walking through a crowded shopping area, 70 percent if stepping on and off an escalator but holding the railing, 50 percent if she didn't have the railing to hold onto, and then 20 percent on icy sidewalks. It's a fairly, I don't know, consistent rating pattern of perception based on the relative difficulty of these activities.

Q. Also in your report you have relevant diagnostics/records findings. Doctor, I'm not going to ask you to go through all of them, but does this section list the medical records that you reviewed as part of your evaluation of McKenzie?

A. Yes, it does.

Q. And in addition to -- and these records came from my office. I provided those records to you, correct?

A. Yes, you did.

Q. And in addition to these records, did I provide you a summary that I prepared of the medical records?

A. Yes, you did.

Q. Did you rely on in any way the information contained in the summary from my office in reaching your opinions in this case?

A. No.

Q. With respect to recent physical activities, tell the jury what this section is.

A. Sure. The recent physical activity basically reports, again, her rating of activity level that she's currently engaging in. There's, I think, nine -- seven levels of physical activity. She's reporting that she has a light level of physical activity, which means basically that she's able to walk and take steps and things along those lines. So she's active and being up, moving about type of thing. It's not a high-exercising level. That would be a moderate level of physical activity where she's doing -- she's not doing any type of aerobic exercise. So she's basically relatively inactive, but walking about through daily activities.

Q. Okay. And then above that is the wellness check. And you have that this is a brief self-report of factors that are relevant to wellness?

A. Yes.

Q. And explain that for the jury, please.

A. Well, this is just a self-report of -- or quick pulse, if you will, on how she feels about her overall quality of life, what she reports as fair,

her mental health that she reports as fair, her physical health that she reports as fair, her home --

Q. No, wait. Wait. Wait. Physical health, read that again.

A. Oh, I'm sorry, she reports her physical health is poor, my apologies. Her home functioning that she reports is fair and her job satisfaction which she reports as good, sleep quality that she reports as fair. Asked about things like tobacco use, which she doesn't smoke tobacco products. Consumes less than one drink per week for alcohol use. She says that she takes drugs for mood about one time per day and that she takes drugs for pain over two times per day. And then at the bottom she also incidentally reported that she gained about 70 percent -- 70 pounds during her injury and wants to improve her physical fitness and lose weight.

Q. What's the purpose of this section of the wellness check, what information are you trying to obtain for your evaluation?

A. Well, I really utilize that section to identify what sort of the priority areas are that she wants to change or improve to improve her physical functioning. We're always -- as physical

therapists we're always looking for triggers that will motivate people to comply with exercise and other things within our plan of care. So I use that section to identify what are the important elements that are most important to them as far as overall functioning.

(Defendant's Exhibit 5 was marked for identification.)

Q. All right. The next section is recent lifestyle activities. And I'm going to hand you what's been marked as Defendant's Exhibit 5. And can you identify, please?

A. Sure. These are the results of a questionnaire that she completed in advance of the appointment that I went through and basically clarified some of her responses to understand better why she rated those the way she did, but it's a perceived report of her physical and lifestyle types of functioning.

Q. Okay. And I don't want to go through all of them, but where you have no difficulty, mild difficulty, moderate difficulty and so forth, severe difficulty, these are her self-reports of her ability to perform these lifestyle activities?

A. Yes, they are.

Q. Okay. And to the right of that, is there an explanation such as sitting 30 minutes at a time? She writes -- or it's two, moderate difficulty, and then to the right of that it says lower back gets uncomfortable. Was that her explanation to you as to why she had moderate difficulty for sitting 30 minutes at a time?

A. That's correct. When someone reports something as being moderate, severely difficult or unable, I ask the question why, why is that difficult to you. And I put that explanation in there so that I can better understand how her conditioning is affecting her perceived ability to function.

Q. And then you have a score, 57 percent?

A. I do.

Q. What does that mean?

A. Well, there are 25 questions and there are essentially four levels of rating on each question. So the extent -- it basically scores the rating and arrives at a percentage on there, and that's the main purpose, just to give an objective number. When we treat people in physical therapy, we're asked to show how we've improved something or what are the functional outcomes for our care. And so

that percent kind of helps show where we've made a difference in terms of their lifestyle functioning.

Q. Okay. Why don't you go ahead then, Doctor, with going on with your report? Just kind of take us through, you know, after you obtained this information on the lifestyle activities, just take us through the information you obtained under these various sections.

A. Sure. Well, the first section that I assess is communication affect and cognition. It's more of a broad assessment just to see am I having any difficulties with communicating with her, and the answer was, no, she has normal communication. Was there orientation, you know, did she know the date, time, was she oriented to person, place and time, and I had no difficulties there as well. And that's perfectly understandable given how well she did in her nursing program. And then her emotional or behavioral responses, and I essentially marked that as normal or abnormal. In this case I marked it as abnormal. I made a few incidental observations that she was fidgeting in sitting, asked her about that and she said it was because of back pain and she got up periodically during my evaluation. Then I asked -- just tried to get a

sense for how much her pain, her perceived or subjective reported pain changes within the past month. I asked her basically what's your pain level as we're sitting and talking together, and she said it was a six out of a 10, which six is kind of the upper end of moderate. And then I asked her where that pain was, and she said it was primarily in the bottom of her left foot. And then I asked, well, what's the highest it's been in the past month and she reported -- and she reported it was a 10 out of 10. Ten is as high as the scale goes. And then I asked what the lowest was during the past month and then also just within the past 24 hours what the highest her pain has been, and she said it was a nine out of 10.

Q. What was the lowest the pain was over the last month?

A. The lowest was a zero. So at times she has no pain or reports no pain. Then we move on to basically vital signs. She -- heart rate and vital signs were in relatively normal ranges or expected ranges for someone that's not real actively engaged in aerobic activities. Then we checked her body size measurements, and her weight was the most significant area there. She's 267 pounds, which is

in the -- based on BMI, that would be considered morbidly obese, a BMI of 42.4. And then I do a movement screen, a movement screen in a variety of different positions, things like closing your hands, opening your hands, bringing your thumbs across, raising your arms up like this, touching your shoulders, bending forward, kneeling, along those lines. And I use that movement screen to determine which areas of the body I want to investigate or evaluate more thoroughly.

Q. So in this case, it looks like her upper extremity movement was normal?

A. It was completely normal.

Q. There was a rotate torso in stand. You have fair?

A. Yes, fair meaning it was mildly restricted.

Q. Okay. And then when you started doing the lower extremity, that movement test, that's when they became a little more -- well, you found some problems, you noticed some problems.

A. Well, the only area that really jumped out a little bit during the lower extremity movements -- because all these other ones were mild restrictions that I would typically refer to a health or fitness

instructor to work with her to coach her on exercise, but she did have poor toe walking in place on the left side. That was the only one that was in the poor range.

Q. She was able to heel walk normally on both --

A. She was able to heel walk in a normal manner.

Q. Okay. And then you have overall score 83 percent, and you classify that as medium?

A. Yes. We score that in a similar way. There's essentially 25 movements total that are rated from zero to four, so it can add up to a total score out of 100.

Q. And then you have inconsistent, maybe. What does that mean?

A. Well, in looking at the movement screen, I also contrast that with the -- she reported from a comment standpoint, reported she had left calf and shin and ankle pain. I thought it was pretty remarkable that she was able to heel walk in a pretty normal manner. And some of this is just -- when I say maybe, that sometimes pain or reports of pain explains movement limitation. So when pain is a major limiting factor, then that can reduce the

consistency of the evaluation of the person on a given day's test and they have no pain, they might perform that movement better.

Q. Did she report left calf, shin and ankle pain to you that day?

A. She did during that evaluation. That was the main area that limited her function.

MR. POWELL: Let's go off the record.

VIDEO TECHNICIAN: We are off the record.

(OFF THE RECORD)

VIDEO TECHNICIAN: We are back on record.

(Defendant's Exhibit 6 was marked for identification.)

(Defendant's Exhibit 7 was marked for identification.)

(Defendant's Exhibit 8 was marked for identification.)

(Defendant's Exhibit 9 was marked for identification.)

(Defendant's Exhibit 10 was marked for identification.)

(Defendant's Exhibit 11 was marked for identification.)

(Defendant's Exhibit 12 was marked for identification.)

(Defendant's Exhibit 13 was marked for identification.)

(Defendant's Exhibit 14 was marked for identification.)

(Defendant's Exhibit 15 was marked for identification.)

(Defendant's Exhibit 16 was marked for identification.)

BY MR. POWELL:

Q. Dr. Wickstrom, when we were off the record, I had an opportunity to mark some of the photographs that you took during your examination or evaluation of McKenzie. And what I'd like to do for the ladies and gentlemen of the jury is for you to show them each photograph and just describe what you are attempting to depict with each photograph, okay? So let's start with Exhibit 6.

A. Sure. Exhibit 6 is the rotate torso in stand and to -- and this is just a real broad, quick check of the ability to kind of rotate through the ankles, knees, hips and spine while in a standing position.

Q. Exhibit 7?

A. This is the same movement, it's just in the other direction.

Q. Okay. Exhibit 8?
A. This is the diagonal bend over movement. So it -- the criteria for this movement is to be able to touch the floor in front of the feet without noticeably bending the knees too much, and she demonstrates a perfectly normal movement pattern in this.
Q. Exhibit 9?
A. And this is the same movement performed in the other direction. That's relevant to both back and -- primarily back function.
Q. Exhibit 10?
A. This is a step back to kneeling maneuver, and basically indicates how much assistance she needs to kind of step back and kneel down. She used her arms for only incidental support to step back to kneeling.
Q. And Exhibit 11?
A. And this is the same movement performed with the other leg. So in this case the -- all the powering up is done on the right leg whereas the one before the powering up was done on the left.
Q. Exhibit 12?
A. This is a deep squat movement, and it basically indicates how low a person is able to

squat to the floor. And in her case, she was able to perform the movement to criteria, but she was a little bit slow regarding getting up.

Q. Exhibit 13 and Exhibit 14?

A. I guess I could show you those both together. So Exhibit 13 has her performing what I call the dorsiflexion maneuver with both feet, so you have a comparative measure of active range of motion with her knees extended. And then Exhibit 14 is performing the plantarflexion movement or pointing your feet down, pointing your toes, with a comparative measure left versus right.

Q. Exhibit 15?

A. This really cuts to the chase of the physical exam. It shows what her upper extremity flexibility is when she's lifting an empty box overhead. So it demonstrates any movement limitations through the upper quarter doing this task.

Q. And then Defendant's Exhibit 16?

A. And, again, this is like the functional movement to perform a squat or a box lift, and it shows how it kind of relates to that physical exam measure, but her ability to kind of bend and squat to pick up something from a lower level.

Q. And, again, you did photograph these movements, but you also obviously observed them while she was doing these movements, correct?

A. I did.

Q. And during these movements, did she report to you complaints of pain?

A. During some of the movements she reported complaints of pain. I didn't specifically itemize -- I did the movement screen like all at once. And then at the end of the movement screen, I said did any areas of pain limit your function. And so that was where on the movement screen the left calf, shin, and ankle pain were her primary complaints during that movement.

Q. So she did report to you that during some of these movements, she experienced pain, correct?

A. She did.

Q. However, she was still able to perform these particular movements?

A. She was.

Q. Okay.

A. That's really why I said it was maybe inconsistent because her lifestyle report of limitations were more significant than what I expected to find when I had her do the movement

screen. I thought she was functioning better when she was actually doing the tasks for me than what she was reporting in her lifestyle.

Q. Did you have an opportunity to examine her left foot and ankle?

A. I did.

Q. Did you observe skin discoloration?

A. No, I didn't.

Q. Did you touch her ankle, left ankle?

A. I did.

Q. Did you touch her right ankle?

A. I did.

Q. Did you notice any temperature differential?

A. No, I didn't.

Q. Were there any skin changes such as lesions or rashes, a shiny appearance to it?

A. No, there weren't.

Q. Any changes in her toenail, brittle?

A. Not that I could tell.

Q. Are you familiar with the signs and symptoms of RSD in terms of having evaluated other individuals who have RSD and/or CRPS?

A. Yes, I am.

Q. Did you observe any signs consistent with

the diagnosis of RSD or CRPS while you observed her that day?

MR. MAISLIN: Objection.

A. Not objective signs.

Q. What --

A. She reported hypersensitivity, which is --

Q. Okay. So when you were performing your examination, she was telling you that that either caused pain or that she was very sensitive in that area?

A. Yes.

Q. Okay. Now, you also, moving on, did a spine and pelvis exam, a lower extremity exam, grip strength, tripod pinch strength, keyboard speed test, so forth and so on, Doctor. I guess what I would like to do is go through some of them. I don't want to go through all of them, but, for instance, a spine and pelvis exam, what were you doing and what was the purpose of these particular examinations?

A. Well, during the examination process, whenever there's a movement that's restricted, like, for example, she had trouble with torso rotation and a little bit of tightness of torso rotation standing. So I felt like it was relevant to check

her spine, do what we call an upper quarter or low quarter screen of the spine to see, you know, are there any differences in reflexes, are there any abnormalities in movement. And so I did a back exam because that came up as one area of the movement screen and checked her reflexes for that.

Q. And then you noted the findings for -- were abnormal in terms of inspection. You have, two scars on lower back for spinal cord stimulator.

A. That's correct.

Q. Was there any other basis for an abnormal finding other than these two scars?

A. No.

Q. Okay. I'll get to reflexes in a second. The sensation, abnormal, was that referencing the ankle reflex test that you performed?

A. Well, actually the sensation was kind of referencing her hypersensitivity. I don't know that it specifically says that right above it.

Q. Okay. Then the range of motion in her back you have as abnormal. And explain that.

A. Well, she's morbidly obese, so she's got more of a sacral tilt, more of what we call lumbar lordosis. And she has normal flexion and actually normal extension in side bending. The main

abnormality there is just that she has more of an exaggerated lumbar curve which is a function of her morbid obesity and likely lower abdominal weakness.

Q. Okay. Then let's talk now about the reflexes where you have abnormal. Explain to the jury what you were testing and then in this particular case what happened.

A. Okay. So I -- first I tested her patellar reflexes.

Q. That's the knee?

A. That's the knees. Those were normal. Then I -- the way that I do the ankle reflex, I have the person basically in a standing position kind of kneel with one knee on the chair and I just tap the back of the heel cord with the reflex hammer. So I test -- it's my pattern to kind of test the right side first and then test -- which is her unaffected side, so that she knows what to expect when I test the left side. So right side no problem, left side no problem, no indication there was going to be any difficulty. But when I tapped the left Achilles tendon, she had a pretty dramatic response, dramatic behavioral response. She began to cry uncontrollably. Her mother basically got down on her hands and knees and kind of like hugged her like

a baby and, you know, tell her -- and gave her like pain management types of instructions like count to 10 and breathe. And in tapping it, there wasn't a normal -- you know, I wasn't able to get an Achilles jerk response with it, but that's what triggered this emotional or behavioral incident during my evaluation which was most unusual.

Q. You reference that there was no ankle jerk reflex?

A. That's correct.

Q. And what's the explanation or do you know what the explanation for that was?

MR. MAISLIN: Objection.

Q. Just do you know?

MR. MAISLIN: Objection.

A. Well, I don't know the exact explanation for it. I mean, there's potential reasons for that.

MR. MAISLIN: Objection. Move to strike.

Q. The next examination was a lower extremity examination, correct?

A. Yes, just on the -- yes, it is.

Q. All right. Let's go into that. What did you do and what did you find?

A. Essentially looked at her ankle and noted the left lateral ankle scar, noted that she had some

mild disuse atrophy of the calf and she had mild, very mild swelling that I measured through a figure eight girth type of measurement. I didn't see any color changes when I, you know, compared the two feet.

Q. What is heel cord tightness?

A. Well, heel cord tightness can be due to tightness -- it's tightness of the tendon that goes from the gastrosoleus muscle group, and she had a history of a tendon lengthening procedure. So that was, I thought, reasonably consistent with her reported history to me.

Q. The left cord -- left heel cord tightness?

A. Right, essentially calf tightness more so than ankle tightness, per se.

Q. All right. And I don't want to go into the rest of these strength tests that you have on page 13, 14, 15, but do these tests represent upper extremity tests and lower extremity tests that you performed on McKenzie?

A. Yes, they do, and her functioning was completely normal.

Q. On all these tests?

A. Correct.

Q. All right. So then let's go to the

consistency of performance section on page 15. What is this? What are you looking for? What are you trying to -- what information are you trying to provide, page 16?

A. You want me on page 16? Okay. Well, that's basically a summary of factors that I observed or that concerned me for the evaluation. For example, I checked off that she's got magnified pain ratings, you know. She had reported pain ratings as high as nine within the past 24 hours and as high as 10 within the past 30 days. I checked off that she had nonanatomic or superficial tenderness. That's really referring to the hypersensitivity response which is more of like a stocking glove kind of pattern to me in her entire left foot. And then also checked that she had excessive pain behaviors or overreaction, which the best example for that is how she reacted to the light tapping of her heel cord with the reflex hammer.

(Defendant's Exhibit 17 was marked for identification.)

Q. The next thing I'd like to do, Doctor, is hand you what's been marked as Defendant's Exhibit 17 and ask for you to identify that

document, please?

A. So this is the last page or the summary page of the functional capacity evaluation report. And essentially when the doctor -- just like with an x-ray, they'll have a diagnostic at the bottom of the x-ray that summarizes the results, and that's what this page does for a functional capacity evaluation. In this case it summarizes the physical ability factors on this side, and next to those factors is a column for worker which reflects what her -- what her safe capabilities are. And then it has a column for job match which reflects -- if I'm matching her abilities to a specific occupation, in this case I was looking at the registered nurse, then it would have the ratings for those same abilities going down. And then we have a couple of sections that relate to whether I feel like she needs to have permanent restrictions, whether she's reached maximum -- you know, what her functional progress has been, and then a more detailed summary information about -- that further explains her work abilities and her progress, and then signed at the bottom by me. If she was referred to me by a -- like her attending healthcare provider, then there might even also be a sign-off place for the doctor

to review it and sign if they agree with the recommendations that I've provided as well.

Q. Well, when you compare the information under the worker column to the information in the job match column, were you able to arrive at any conclusions in terms of her workability?

A. Yes, I was.

Q. And what is that?

A. Well, essentially in every area of physical functioning, with the exception of ambulation agility, she's matching or exceeding her job demands. So the only factor that didn't match was ambulation agility. And I measured ambulation agility on our two square agility test.

Q. And you already testified that nursing, you believe, is in the medium range for agility?

A. Some nursing jobs require a medium range of agility. They tend to be the more active nursing positions. For example, you know, if I had a life flight nurse, I'd want that person to have at least medium agility.

Q. But nevertheless, Dr. Wickstrom, other than -- we'll talk a little more about this ambulation agility information, but otherwise from a functional standpoint, based upon your evaluation,

she was able to meet the job requirements and demands of a nurse?

A. Essentially she met all of the job demands that covered the majority of nursing positions that I've analyzed.

MR. MAISLIN: Objection. Move to strike.

Q. And then the further explanation section, tell us what that is.

A. Sure.

MR. MAISLIN: Objection.

A. Well, it's really my executive summary of the exam. My first statement always addresses cooperation because if someone doesn't cooperate, it sort of equals garbage in equals garbage out.

Q. Was she cooperative?

A. She was cooperative with me.

Q. Did she give you what you perceived to be her best effort?

A. I felt that she gave me a pretty reasonable effort throughout the entire evaluation in terms of when I had her actually do activities.

Q. Do you believe she was truthful with you?

A. I believe that she was reasonably truthful with me too. I -- you know, when I checked the records against what the reported history was, it

seemed to be reasonably consistent with the sequence of events that she was providing to me.

Q. So you don't have any issue with her level of cooperation, her level of effort, the information that she was providing to you, you felt she was forthright?

A. I did, and I felt like I got a pretty good exam.

Q. Okay. And does the section further explanation, does that reference or summarize all the information that you obtained either from McKenzie in the history or your review of the medical records and your observations during her functional capacity evaluation itself?

A. It reflects sort of a final overall summary for the entire exam.

Q. Okay. Doctor, I'm going to ask you an opinion, and for your response I would like for you to base your answer on your education, training and experience as a licensed physical therapist, on your licensed physical -- I'm sorry, functional capacity evaluation and your education as having a doctorate in physical therapy and to base your opinion on the information you obtained during the functional capacity evaluation. Will you agree to do that?

A. I will.
Q. And to a reasonable degree of physical therapy and ergonomic probability?
A. Yes, I will.
Q. Okay. Do you have an opinion as to whether McKenzie Davis is physically capable of performing the functions of a nurse?
A. My opinion is that she's able to perform most of the assignments, most, many of the RN occupations without any need for restriction or accommodation.
Q. And with respect to most, how or why are you qualifying your response?
A. Well, there's just a few nursing assignments that require -- that literally require the person to have a little bit better ambulation agility that maybe involve more extensive walking that are likely to be -- that may be a challenge for McKenzie Davis based on her current state of deconditioning.
Q. All right. And that's what I was going to ask you, Dr. Wickstrom. With respect to the ambulation or agility that you referenced that she is in the light level versus the medium level, do you have an opinion as to -- from a functional

capacity standpoint -- as to the reasons for that lower performance level or lower ability to ambulate or the agility?

A. I do.

Q. And what is that?

A. Well, she is generally deconditioned and a big factor is that she's morbidly obese. It's really hard -- the agility test that I do has a person stepping back and forth across a marked tape. And it's kind of like stopping a big truck, you know. When you're changing directions and that kind of thing, you're not going to have the -- be able to move that mass back and forth quickly as a result of her weight. So she's very heavy and that has a direct impact on her ability to move quickly.

Q. With respect to her ability to function in terms of the testing and the examinations that you performed and the movements you observed, was she restricted or limited by her complaints of pain?

A. To some extent during some of the activities, yes.

Q. Was she still able to perform those activities such as the movements?

A. Yes. I was quite struck by her ability to lift 50 pounds in a deep squat position from a lower

level. That's a remarkable level of function for -- considering her brief history that she provided to me and then also just for her age and sex. I mean, it's not easy for most -- it probably puts her in well over the 50th percentile of women for her age and sex to be able to lift 50 pounds from a lower level.

Q. From a functional capacity standpoint then, Doctor, does McKenzie have any restrictions or limitations that would affect her ability to perform activities of daily living?

A. Not the basic or the instrumental activities of daily living. I wouldn't expect that she would be limited in any of those usual activities.

Q. Again, are you qualifying your response based upon your findings of limited ambulation and agility due to her weight?

A. Well, I'm considering that. I mean, there's just -- I mean, she is heavy, but she can still do the basic activities of daily living. Will she experience some pain or discomfort? Yes, but I'm saying that functionally she's capable of performing her usual activities of daily living.

MR. POWELL: Thank you. I have no

further questions.

CROSS-EXAMINATION

BY MR. MAISLIN:

Q. Hi, Doctor. Good afternoon. My name's Blake Maislin. I had an opportunity to take your deposition once before, and I think you pretty much covered everything with defense counsel. There's just a couple of things that I want to go over. Objective findings that you made regarding McKenzie's left ankle included swelling or edema, correct?

A. That's correct, she had mild swelling and edema.

Q. Okay. She had some atrophy. And what is atrophy?

A. Atrophy is a reduced girth of the muscle bulk.

Q. I mean, what is atrophy, is it a deading or is it a lessening, what is atrophy?

A. Well, atrophy just suggests that the muscle -- that the muscle bulk or size of the muscle is somewhat smaller than, say, the comparative side.

Q. Okay. So in this case, she had atrophy on the left side where she also had the swelling compared to the right side? Yes?

A. Yes.
Q. So -- and, I'm sorry, that was a bad question. So she had swelling on the left, but not on the right, correct?
A. That's correct.
Q. And she had atrophy on the left, not on the right, correct?
A. That's correct.
Q. And she had no ankle reflex on the left, but she did on the right?
A. That's correct.
Q. And she had left calf tightness, did not have that on the right?
A. Yes, that is true.
Q. She had pain in the left lower extremity that she told you about. She did not suggest that she had any pain on the right?
A. That's correct.
Q. And, in fact, I think even when you were doing your testing, you found some instability on the left, not on the right. Left ankle, left lower extremity there was some -- I don't know if instability is the right word, but some altered gait on the left compared to the right?
A. Well, her movement screen was somewhat

abnormal on the left compared to the right.

Q. I'm sorry, that's what I meant, the movement screen.

A. Okay. Yeah, it wasn't necessarily instability because --

Q. Right. Okay. I'm sorry I called it instability.

A. That's okay.

Q. We mentioned that you thought that McKenzie gave you a full, appropriate effort with you during all of this four-hour exam, right?

A. I did.

Q. Okay. And she seemed honest. She wasn't trying to intentionally deceive you, correct?

A. That's correct.

Q. Is McKenzie making a lost wage claim in the case, do you know?

A. I don't know.

Q. It wouldn't surprise you, based on everything that you found, that she is not making a lost wage claim, correct?

A. I'm just trying to digest your question the way you stated it.

Q. Well, let me state it differently. I'm telling you that she's not making a lost wage claim,

okay?

A. Okay.

Q. What would be the purpose of a functional capacity evaluation summary for workability if somebody's not making -- if they're not claiming that they're going to miss any work?

A. Well, it speaks to their overall lifestyle functioning for one thing, work being an important lifestyle function.

Q. Okay. Did McKenzie ever tell you that she wanted to stop working because of her injury or had to stop working because of her injury?

A. No, she expressed excitement over her new career in nursing.

Q. Are you aware of any modifications that she made so that she could continue with her schooling or with any type of employment in the nursing field?

A. Well, I'm not aware of any accommodations that she's made for her new positions going forward. We did discuss how she went through some of her clinicals, but it sounded like she was doing fairly well with those clinicals.

Q. What did she tell you about the clinicals? Did she have to wear a boot sometimes or did she

have to routinely sit down, or you tell me, what did she tell you?

A. Okay. On the first page of my report I document that a little bit. She told me their most difficult assignments were on the renal floor which is a med surgery floor of the hospital and ICU. And I believe under recent job activities she reported that she had to wear her boot on the floor for some days around 2013, so it -- and that she was -- you know, she did work 12-hour shifts during her clinical thing. So in terms of recent accommodations or activities, she didn't report the need for any recent accommodations or activities in any of her clinical assignments since 2013.

Q. So if we're accepting what McKenzie Davis is saying, and we don't have any reason to doubt her from your testimony, she's working through any pain that she might have?

A. Yes, she is.

Q. Okay.

MR. MAISLIN: Okay. I have nothing further. Thank you.

MR. POWELL: That's all the questions. Thank you, Doctor.

VIDEO TECHNICIAN: We are off the record.

The time is 10:18.

(Witness excused.)

(Deposition concluded at 10:18 a.m.)

Signature expressly waived

RICHARD WICKSTROM, PT, DP DATE

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STATE OF OHIO)

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I, Mindy Davis, Notary Public for the State of Ohio, do hereby certify:

That the witness named in the deposition, prior to being examined, was by me duly sworn;

That said deposition was taken before me at the time and place therein set forth and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That said deposition is a true record of the testimony given by the witness and of all objections made at the time of the examination.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF I have subscribed my name and affixed my seal this 22nd day of September, 2016.

MINDY DAVIS

Notary Public

My Commission expires: 04/03/21