

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

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IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

* * * * *

GEORGE SMITH, Plaintiff,

vs.

BRIAN S. ZIEGLER, M.D. Defendant.

Case No. 05-2002-CA-006066

.

DEPOSITION OF DALTON R. CARPENTER, M.D.

27th of December, 2004

Tucson, Arizona

.

ORIGINAL

COLVILLE & ASSOCIATES

**REPORTED BY: G. ALLEN SONNTAG,
Certified Court Reporter No. 50194**

**Colville & Associates
1309 E Broadway
Tucson, Arizona 85719
(520) 884-9041**



TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

A P P E A R A N C E S

GRAHAM, MOLETTEIRE & TORPY, P.A.,

By: ROBERT M. MOLETTEIRE, Esq.,

For the Plaintiff;

MC EWAN, MARTINEZ & DUKES, P.A.,

BY: THOMAS E. DUKES, III, Esq.,

For the Defendant.

BE IT REMEMBERED that pursuant to notice the Deposition of **DALTON R. CARPENTER, M.D.**, was taken at the offices of Colville & Associates, 1309 East Broadway Boulevard, in the City of Tucson, County of Pima, State of Arizona, before G. Allen Sonntag, Certified Court Reporter No. 50194 in and for the State of Arizona, Certified Realtime Reporter, on the 27th day of December, 2004, commencing at the hour of 3:00 p.m., in a certain cause now pending before the Superior Court of Pima County, Arizona.

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1 MR. DUKES: Let's swear the witness and we
2 will begin deposing.

3 (The witness was thereupon duly sworn.)

4 **DALTON R. CARPENTER, M.D.,**

5 having been first duly sworn to state the truth, the
6 whole truth and nothing but the truth, testified on
7 his oath as follows:

8 EXAMINATION

9 BY MR. DUKES:

10 Q Could you tell us your full name, please.

11 A Dalton R. Carpenter, M.D.

12 Q And you are an orthopedic surgeon; is that
13 true?

14 A Yes, that's true.

15 Q You are no longer a member of the American
16 Academy of Orthopedic surgeons; is that also true?17 A No. I'm still a member. I haven't sent in
18 my latest dues statement yet but I am still a member.

19 Q Are you sure you are still a member?

20 A I haven't gotten notice otherwise.

21 Q I checked and it seems to me that you
22 haven't paid your dues for two years.

23 Does that sound familiar?

24 A I don't think so. I think I'm one year
25 beyond payment.

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1 Q Okay. You believe you are in arrears but
2 you believe you are still a member in good standing?

3 A Yes. I have not had any complaints or
4 problems with my -- in regards to my membership. It's
5 a matter of my dues.

6 Q And not to press the point too hard, but why
7 haven't you paid your dues?

8 A Well, I took a big hickey in the State of
9 Georgia trying to maintain a solo practice with what I
10 was being paid with HMO's and managed care and
11 Medicare and Medicaid and I got behind on a lot of
12 office bills and so forth.

13 So the money just hasn't been there to pay
14 those dues, and I have taken a little bit of a decline
15 in my salary in coming out to Tucson.

16 Q So your testimony is you intend to remain a
17 member of the American Academy of Orthopedic Surgeons;
18 however, you simply at this point don't have the funds
19 to pay your dues?

20 A True.

21 Q How much are the dues?

22 A I think it's \$500 a year.

23 Q When was the last time you paid them?

24 A When I was in Georgia.

25 Q Which was?

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1 A So it's like 18 months ago.

2 Q And how long have they been due?

3 A I have gotten only two notices, so --

4 Q Do you intend to pay them?

5 A Yes, I do.

6 Q When?

7 A Within the next month or so.

8 Q And you say they are, in your view, 18
9 months or so overdue?

10 A Right.

11 Q The American Academy of Orthopedic Surgeons,
12 why is it important to you to continue to belong to
13 the organization?

14 A Well, that's a very well-respected society
15 of orthopedic surgeons across the country, who have to
16 be in good standing to belong.

17 Q In fact, all or virtually all of the
18 reputable orthopedic surgeons belong to the American
19 Academy of Orthopedic Surgery.

20 Would that be an accurate statement?

21 A Yes, who are Board Certified, yes. You have
22 to be Board Certified to belong.

23 Q And if you were to, for whatever reason, not
24 belong to the American Academy of Orthopedic Surgeons,
25 that would put you in a very distinct minority of

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1 Board Certified orthopedic surgeons; true?

2 A Yes.

3 Q The American Academy of Orthopedic Surgeons
4 has recently come out with an expert witness
5 affirmation or oath.

6 Are you familiar with it?

7 A Oh, yes, very familiar.

8 Q And have you signed one?

9 A Yes, I have.

10 Q You have?

11 A I filled it out and sent it in, yes.

12 Q So it should be on file with the American
13 Academy of Orthopedic Surgeons?

14 A That's correct.

15 Q I tried to find it and I will tell you that,
16 to my knowledge, it's not there; but you are telling
17 me --

18 A I have done it.

19 Q -- that you have done it?

20 A Yes.

21 Q And you have sent it in?

22 A Yes.

23 Q Do you happen to have a copy of what you
24 sent to them?

25 A No, I didn't happen to bring that with me.

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1 Q I didn't expect you to bring that with you.
2 My question is: Do you have one at your
3 office?

4 A I have one either at the office or at home,
5 one of the two, yes.

6 Q But you have it locally here?

7 A Yes.

8 Q Could you make it available to
9 Mr. Moletteire?

10 A Sure.

11 Q And then he will send it to me.

12 A Right.

13 Q Did you bring with you -- and, incidentally,
14 you read that affirmation before you signed it;
15 correct?

16 A Yes, I did. It's been in about three years
17 of the American Academy of Orthopedics journal; and,
18 yes, it's been read and reread.

19 Q So you are comfortable with the testimony
20 you are going to give in this case; correct?

21 A Yes.

22 Q And you are comfortable having that
23 testimony peer reviewed by other Board Certified
24 orthopedic surgeons; is that correct?

25 A Yes, very comfortable.

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1 Q Did you bring with you -- incidentally, I
2 sent a notice of taking this deposition.

3 Did you get it?

4 A Yes, I did.

5 Q And it asked you to have certain stuff with
6 you.

7 Did you do your best to bring the stuff that
8 I asked for?

9 A Yes, I did.

10 Q Do you have a curriculum vitae?

11 A Yes, I do.

12 Q Is it up to date and accurate?

13 A Yes, it is.

14 Q Is there anything significant, any award,
15 achievement, accomplishment, that is not on your
16 curriculum vitae that I need to know about to
17 understand your credentials or your expertise to give
18 testimony in this case?

19 A No.

20 Q Okay. Have you written anything on any of
21 the issues that you believe are relevant to the issues
22 in this case?

23 A No, I haven't.

24 Q Have you written anything at all in
25 peer-reviewed literature?

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1 **A** No.

2 **Q** Have you done any research for this
3 particular case?

4 **A** No. I didn't find that that was necessary.
5 I think it's very straightforward, the real issue
6 here, so I didn't think that was important or
7 necessary.

8 **Q** So in answer to my question, you haven't
9 done any research for this case?

10 **A** True.

11 **Q** Are you going to be telling the jury that
12 any research or literature or reference is
13 authoritative as it relates to the issues in this
14 case?

15 **A** I reserve the right to later search the
16 literature base for articles relevant to this
17 situation.

18 **Q** And I respect the reservation of the right.
19 The challenge is: I'm here today in sunny Tucson to
20 try to find out what you are going to be relying on at
21 trial.

22 **A** Yes.

23 **Q** And so I'm going to be upset if, at a later
24 time, there's some article or literature or reference
25 source that you come in and tell folks is

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1 authoritative that I haven't learned about today.

2 Do you understand the quandary?

3 A That's fine. You can question me about that
4 at a later date if so necessary.

5 Q Well, let's then sort of establish where we
6 are.

7 Obviously, you understood I was taking your
8 deposition today as the lawyer for Dr. Ziegler and
9 expecting to hear from you all of your relevant
10 opinions?

11 A Yes.

12 Q And as we sit here today, you understood
13 that we had asked for all literature that you had and
14 you were going to rely on; correct?

15 A Yes, I did.

16 Q And you have nothing with you here today;
17 true?

18 A True.

19 Q And what you have told me is you might in
20 the future do a literature search?

21 A Yes, through MedLine.

22 Q And why would -- again, not to push the
23 point, why have you not done it up to today if the
24 issues are crystallized?

25 A Well, I haven't heard the opposing

