PARK PLAZA ORTHOPEDIC CLINIC

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SAMPLE MALPRACTICE CASE

For confidentiality of patient and doctors involved, identifying terms have been removed.
For the same reason, package of references and exhibits is not included.

Anil K. Agarwal, M.D., F.A.C.S.
Board Certified Orthopedic Surgeon

SUMMARY

September 29, 2005

Law Firm

RE:
VS M.D.

09/22-29/05 Review of Complex Case Records
Review of Case
Review of X-rays and CT scan, left foot
Review with Chicago Orthopedic Surgeon
Review with Radiology, Creighton University
Review with Chairmen, Orthopedic Department,

Research
Overall, more than 80 total hours, with 4 doctor consultations

A. K. Agarwal, M.D.

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CONCLUSION
PATIENT INFORMATION

DOI: 6/30/03

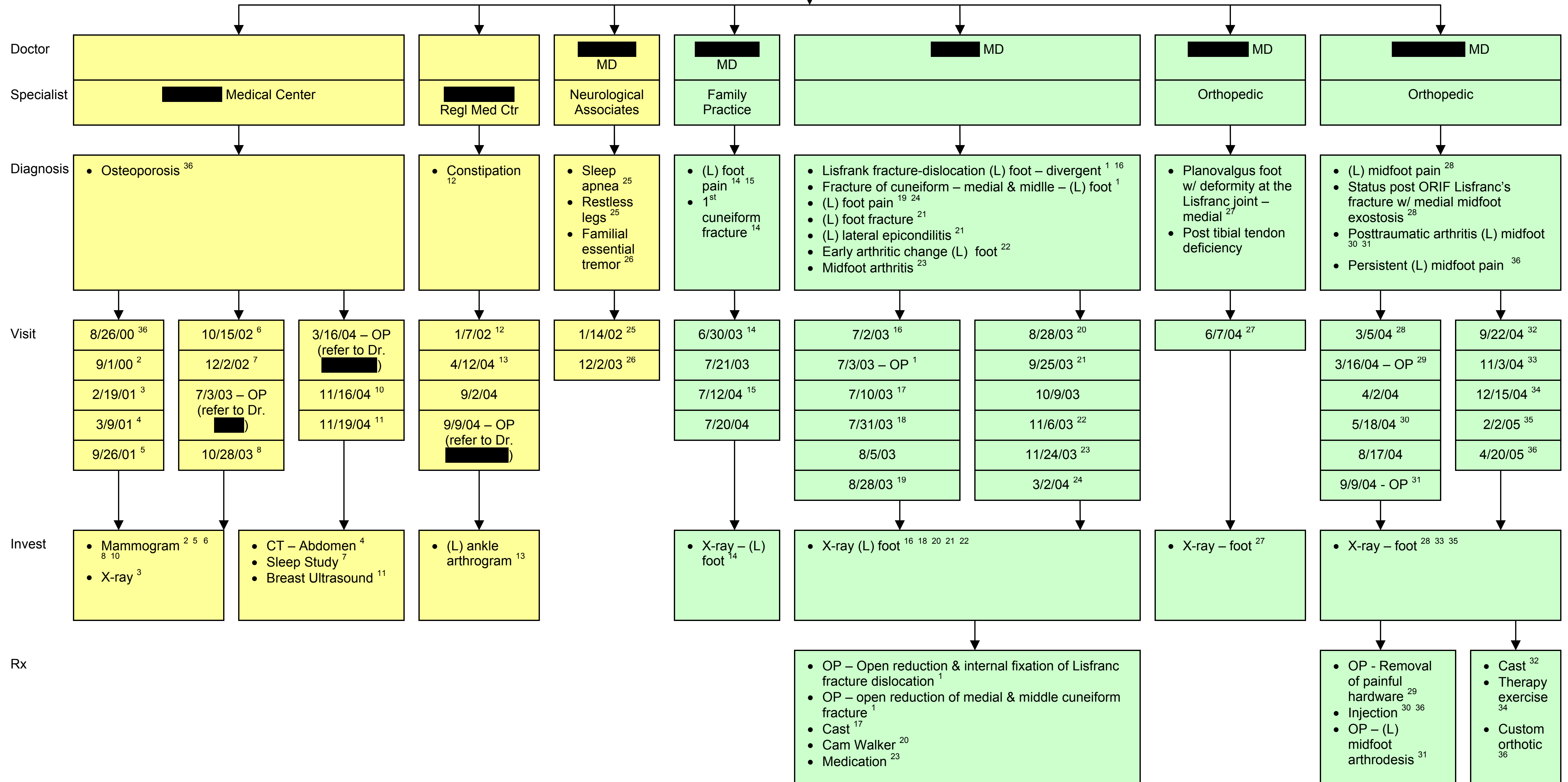
PRE-EXISTING	SURGERY	MEDICATIONS
• Essential or familiar temor, hypoglycemia, GI ulcer, anemia, kidney stones, hypertension	• Partial gastrectomy & vagotomy, rectal surgery, multiple breast biopsies and simple mastectomy, without cancer identified, foot surgery (R)	•

DATE________________

A.K. AGARWAL, MD

Color Index	
	General Info
	Pre-existing
	Trauma (L) foot
	Not Attributed

Foot Surgery: 6/30/03, , 70-year-old



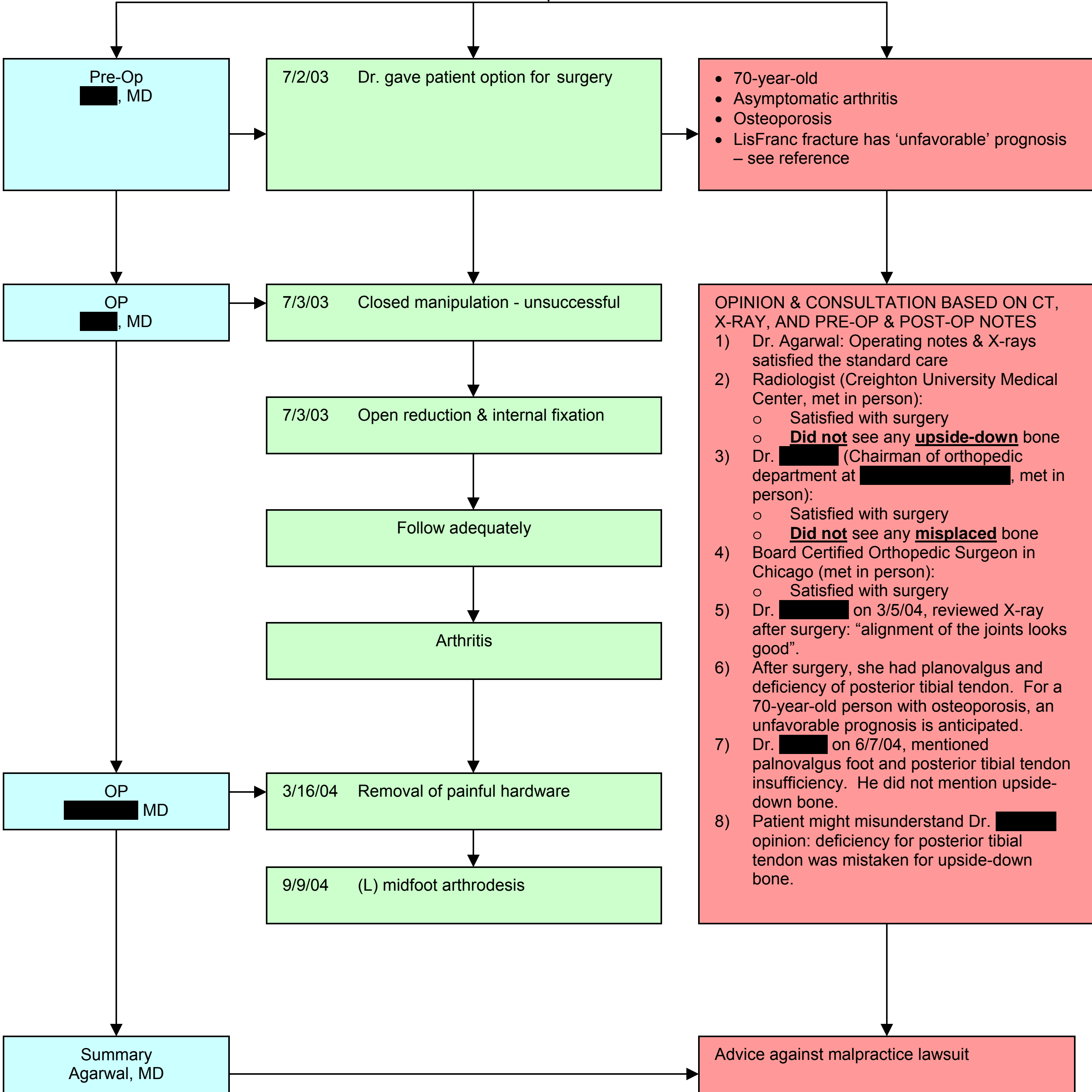
CONCLUSION II
PATIENT INFORMATION
[REDACTED]
DOI: 6/30/03

DATE______________

____
A.K. AGARWAL, MD

Color Index	
	General Info
	Pre-Op & Op Sequence
	Dr. Agarwal's Opinion

CONCLUSION II



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September 29, 2005

Law Firm

RE:
Vs. , M.D.
DOI: 06/30/03
DOB: 06/38/35

Dear Mr. --------:

Thank you for sending records on this case for our review. They were received September 26, 2005, and have been reviewed.

Essentially, as you have indicated, this is the case of a woman who suffered a traumatic injury to her foot when someone stepped on it while she was vacationing in --------. She saw a doctor in --------, who referred her to her general physician in -------- who, in turn, referred her to Dr. Terry --------. An operation was performed to repair a Lisfranc fracture/dislocation of the left foot, resulting in some subsequent surgeries.

Ms. -------- was told by a subsequent consulting physician, a Dr. --------, that one of the bone fractures had been reinserted “upside down” and that this was the cause of her problems. Dr. --------, her current treating physician, “supposedly” ratified this.

The issue here is whether Dr. -------- violated any applicable standards of care in his treatment of Ms. --------.

Name:

I have reviewed what I believe to be the pertinent facts of this case and am omitting, for the present, the medical records before the injury to the foot.

PAST MEDICAL HISTORY:

Surgery: Partial gastrectomy and vagotomy, rectal surgery, multiple breast biopsies and a simple mastectomy, without cancer being identified. Foot surgery, right.

Medical: Essential or familial tremor, hypoglycemia. GI ulcers, anemia, kidney stones, hypertension.

Medications:

Allergies:

Personal:

REVIEW OF MEDICAL RECORDS:

-------- Medical Center –

07/03/03 **Operative Report**

Surgeon: -------- J. --------, M.D.

Preop DX:

1. Left foot Lisfranc fracture-dislocation, closed.
2. Fracture, medial cuneiform – left foot.
3. Fracture of middle cuneiform – left foot.

Postop DX:

1. Lisfranc fracture-dislocation, left foot, divergent.
2. Fracture of the cuneiform – medial – left foot.
3. Fracture of the middle cuneiform – left foot.
4. Fracture, base of first metatarsal, intraarticular.

Procedure:

1. Open reduction and internal fixation of Lisfranc fracture-dislocation.
2. Open reduction of medial cuneiform fracture
3. Open reduction of middle cuneiform fracture.

Closed reduction was unsuccessful and thus open reduction and internal fixation were performed.

08/26/00 Admitted for diagnostics.

09/01/00 Admitted for Radiology (mammogram).

02/19/01 Admitted for x-rays, sitz mark test.

03/09/01 Admitted for CT of the abdomen.

Name:

03/12/01 Admitted to ER because of fever.
09/26/01 Admitted for a mammogram.
10/15/02 Admitted for a mammogram.
12/02/02 Admitted for a sleep study.

07/03/03 Seen for fracture of the metatarsal, closed and fracture of the cuneiform, closed. History **of a fall on a stair/step. CT done. Surgery done and reported above.**

10/28/03 Admitted for mammogram.

03/16/04 Admitted for **removal of painful hardware.**

11/16/04 Admitted for mammogram.
11/19/04 Admitted for ultrasound – breast.

-------- Regional Medical Center

01/07/02 Admitted for constipation.
04/12/04 **Admitted for left ankle arthrogram.**
09/02/04 Admitted for pre-op.

09/09/04 **Operative Report**
Surgeon: Jason R. --------, M.D.
Pre & Postop DX: Posttraumatic arthritis, left midfoot.
Procedure: Left midfoot arthrodesis.

Craig --------, M.D., -------- Family Medicine

Dr. --------'s records date back to the year 2000 and do not affect or relate to the left foot Lisfranc fracture until June 30, 2003.

06/30/03 Ms. -------- has recently returned from --------, where she had an accident with her left foot. The foot was still wrapped, but there was ecchymosis about the toes. She was able to move the toes. X-rays showed **a transverse fracture through the 1st cuneiform with probable ligament tears in that she has an offset of the cuneiform and 1st metatarsal. On the AP projection, something does not look right in numerous articular regions of the forefoot, the cuneiforms with the metatarsals.**

Impression: Left foot pain, 1st cuneiform fracture.

She was placed in a moon boot for stability and comfort. She will use her walker and try not to apply weight. She is to see Dr. -------- and they may want a CT scan or MRI to determine the extent of her injuries.

07/21/03 The patient returns for follow-up with a 1st cuneiform fracture and suspected rather significant damage to her foot. She has had extensive surgery by Dr. -------- and the foot is currently in a cast. On examination, the foot looks a little swollen. Sensory functions are intact. She would follow up with Dr. --------, and return to Dr. -------- as needed.

07/12/04 At this visit the patient reported some foot pain, but had several other problems.

07/20/04 Today Dr. -------- had a long discussion about her foot problems, and the patient was not sure who she wanted to do or upcoming surgery.

-------- J. --------, M.D.

07/02/03 The patient presented for orthopedic evaluation following an injury to her left foot while in --------. Apparently a heavy child stepped on her foot. She had x-rays taken in --------, and again here by Dr. --------. She was placed in a boot and given a walker, and had thus far been unable to put weight on it. She has had a lot of pain. She denies any previous injury to the left foot, but has had previous problems with the right foot.

X-rays of the left foot taken this date are consistent with a Lisfranc fracture/dislocation of the 1st metatarsal cuneiform.

Examination revealed ecchymosis and swelling of the foot with a protuberance over the medial aspect of the mid foot.
Impression: Left foot Lisfranc fracture/dislocation – closed, subacute.
Following a discussion of her options for treatment, the patient decided to undergo operative treatment.

07/03/03 Surgery was performed as outlined above.

07/10/03 Ms. -------- returns with soreness but very little swelling in the foot. She was placed into a short leg, non-weight bearing cast for five weeks, to be followed by a short leg weight bearing cast for six more weeks.

07/31/03 Today there was minimal swelling and the incision we healing well.
X-rays of the left foot show good position of hardware and alignment of the fractures or dislocations. She was put back in a cast and was to remain non-weight bearing for two more weeks.

Name: [redacted]

08/05/03 The patient returns having pain over the lateral aspect of the left foot in the cast. She felt it was rubbing. The cast was removed and the skin looked normal. A new, well-molded cast was applied in neutral position.

08/28/05 X-rays today still show good position and alignment of hardware and fracture. There is minimal swelling and no tenderness. She was put into a cam walker and has been putting some weigh ton the foot, with no change. In two weeks she can progress out of the walker.

09/25/03 The patient has been having some pain over the lateral aspect of her left elbow and forearm, which is more bothersome than her foot currently. The foot looks good and repeat x-rays show interval healing with the hardware intact.

Impressions:

1. **Left foot fracture.**
2. **Left lateral epicondylitis.**

The epicondylitis was treated with local modalities and anti-inflammatories. She may wean herself from the foot to regular show wear.

10/09/03 Ms. -------- returns noting some difficulty with her gait, feeling that she is not rolling over her foot and walks on it externally rotated. She has some stiffness in the foot and ankle. Range of motion of the ankle is full and there is some midfoot stiffness, but none at the MP joints. She may benefit from therapy for strengthening, range of motion and gait training, which was scheduled. She may be a candidate for an arch support and/or rocker bottom sole, if her symptoms persist.

11/06/03 Ms. -------- returned noting a bump over the dorsomedial left foot, likely a result of her injury. It is getting some pressure from her shoe and a wide toe box was discussed. Examination revealed some prominence of the dorsomedial left foot. X-rays showed no interval change in position and alignment, with interval healing and hardware in place.

She may benefit from an arch support or rocker bottom sole. She has difficulty rolling over her foot with some midfoot stiffness. **This may be an indication of some early arthritic change following her injury. She understands this type of injury oftentimes leads to chronic pain.**

Name:

11/24/03 The patient returned noting some redness and heat in her left foot. She got a Plastizote insert for her shoes and has SAS double-wide shoes coming in next week. Dr. -------- felt she was getting some **midfoot arthritis**. Celebrex was prescribed to help with some of her pain.

03/02/04 Ms. -------- returned today noting that **her left foot is not better. She has pain over the dorsum of her foot and prominence of the 1st cuneiform,** but no particular tenderness to palpation. Repeat x-rays show good position and alignment of the midfoot. There is a small amount of rarefaction around the screws, consistent with motion. There may be arthritic change at the base of the 2nd metatarsal.
Impression: Approximately nine months status post a Lisfranc fracture/ dislocation, left, homolateral, with continued pain.
They discussed screw removal, but Dr. -------- did not think this was causing much of her pain. She has some prominence medially, which may cause impingement with shoe wear. She knows these fractures often lead to chronic pain and posttraumatic degenerative change, and may benefit from a midfoot fusion or other procedure. Dr. -------- recommended that she see Dr. -------- for evaluation of treatment regarding her pain.

Hanger Prosthetics & Orthotics

11/06/03 The patient presented with a prescription for a rocker bottom sole for a left foot fracture.

The patient has a left foot fracture and says she has been in a cast for fourteen weeks. She complains of pain in the midfoot at toe-off. Rather than the rocker bottom sole, a carbon fiber insole was tried and the patient was pain free upon ambulating.

Neurological Associates – -----------, M.D.

01/14/02 The patient was seen twice this month for problems not related to her feet, and diagnosed with sleep apnea and restless legs.

12/02/03 Seen for familial essential tremor.

-------- Orthopedic Clinic – ----------, M.D.

06/07/04 Ms. -------- was seen in consultation with a complaint of pain and swelling about the right foot. She stated she had been vacationing in -------- when she injured her foot at a swimming pool. She also noted she had had a second injury while plying softball with some youngsters. She suffered a fracture of the Lisfranc joint on the medial side, fracture of the first

cuneiform bone, with a partial dislocation at the cuneiform first metatarsal joint.

She returned to -------- and was referred by Dr. -------- --------, who performed surgery with internal fixation. On March 19, 2004, she had the internal fixation removed. This improved her pain somewhat but she continued with considerable pain in the area of the first cuneiform on the medial side of the foot.

On examination, Dr. -------- noted a planovalgus foot with the deformity at the Lisfranc joint on the medial side. There is a valgus deformity with lateral deviation of the metatarsals and some open plantar angulation at the Lisfranc joint on the medial side. X-rays show loss of the joints of the cuneiform, first and second metatarsal joints. The intermediate cuneiform is involved, as well. There was some question in Dr. --------'s mind that she has posterior tibial tendon insufficiency and he was concerned that possibly the posterior tibial insertion was taken down partially at the time of her surgery.

Dr. -------- felt the patient needed further surgery and that this was going to be an ongoing problem. The next step might be another injection, since a previous injection was helpful. If she could obtain pain relief, then the deformity can be accepted, but he felt most likely she would need further surgery with exploration of the posterior tibial tendon, possibly advancement of the posterior tibial tendon.

Additionally, Dr. -------- advised an osteotomy to the Lisfranc joint involving the base of the first, second and third, and then a fusion. Possibly the fourth and fifth could be left alone.

------------, M.D. – Orthopaedic & Sports Medicine Clinic

03/05/04 Ms. -------- was seen in consultation with a chief complaint of left foot pain. The history was reviewed and it is noted she had some ongoing pain since surgery. On examination, there was diffuse fullness through the midfoot on the left and she is tender over the dorsal aspect of the midfoot.

X-rays show three mini-fragment partial threaded screws in place through the medial midfoot joints, with what appears to be a prominence over the medial cuneiform. There is some halo effect around the screws. Overall, the alignment of the joints looks good.

Name: [redacted]

Impression: Left midfoot pain, status post ORIF Lisfranc's fracture with medial midfoot exostosis.
It was Dr. --------'s recommendation that they try to remove her hardware and perform an exostectomy. Hopefully this would give her significant improvement. It is possible that she may need some cortisone

injections to the midfoot joints in future, and even potentially a midfoot fusion.

04/02/04 The patient is seen postop removal of hardware and status post exostectomy, left midfoot. She was doing well, but was advised that she had some fairly advanced posttraumatic changes at the time of surgery and Dr. -------- would not be surprised if she needed a midfoot fusion in the future.

05/18/04 Patient still notices prominence medially where she has some swelling, but she is doing okay. She is some better, but certainly not tremendously so. **Impression: Posttraumatic arthritis in midfoot (left).** The patient was told that she should "live with it". An injection which had been ordered through radiology helped some. If it lasts a significant amount of time, it could be repeated, but otherwise she was looking at a midfoot fusion.

08/17/04 Ms. -------- is having persistent pain in the foot. She has seen a couple of outside orthopedists, who basically said the same thing – that she probably needs a realignment arthrodesis. Her diagnosis is unchanged, and Dr. -------- recommended realignment of the midfoot arthrodesis.

09/22/04 Patient seen for postop left midfoot fusion, done September 9, 2004. She was doing well and would be non-weight bearing in a cast for six more weeks.

11/03/04 The patient has no complaints, and has been non-weight bearing. X-rays show good position of her hardware and fusion. She will now go into a walking cast.

12/15/04 The patient has a boot but needs a new liner. She will use the boot out of the house for the next month but wear a shoe with an arch support in the house. She has some therapy exercises to work on already from previous visits, and will **follow up p.r.n.**

02/02/05 Ms. -------- returns, still having some discomfort but still much better than it was before. Examination shows mild swelling in the medial midfoot. X-rays show the first tarsometatarsal screw is broken, but with no significant shift at the joint. She has developed a fibrous union here. The

patient is to return one year postop unless her symptoms get significantly worse in the meantime.

04/20/05 The patient returned for a recheck and reports the left foot has been a little sore, mainly in the mornings. It will swell some toward the end of the day. Most of her pain is over the lateral portion of the foot. On examination most of her tenderness is over the 4th and 5th tarsometatarsal joints. There is increased pain with motion at these joints.
Impression: Persistent left midfoot pain.
Dr. -------- wanted to get her into a custom orthotic and ordered another injection.

DIAGNOSTIC STUDIES

06/30/03 **-------- --------, M.D.**
X-rays of the left foot taken today were compared to x-rays she brought with her and taken on June 25, 2003. The patient essentially has a transverse fracture through the 1st cuneiform, but on the lateral view it looks **like she has about a 1 cm volar dislocation of the proximal fragment.**

07/03/03
A CT scan of the left foot was performed.
Impression: Lisfranc fracture dislocation as described.
There are fractures of the proximal ends of the second, third and fourth metatarsals and of the first and third cuneiform with possible fracture of the dorsal aspect of the distal cuboid. There is lateral and dorsal displacement of the proximal ends of the second through fifth metatarsals…..

07/10/03 **-------- J. --------, M.D.**
X-rays of the left foot show good maintenance of position and alignment of the hardware and fracture/dislocation reduction.

07/31/03 **-------- J. --------, M.D.**
X-rays of the left foot show good position of hardware and alignment of the fractures or dislocations.

08/28/03 **-------- J. --------, M.D.**
X-rays of the left foot show good position and alignment of the hardware and Lisfranc joint fracture.

09/25/03 **-------- J. --------, M.D.**

Name: [redacted]

Repeat left foot x-rays show evident interval healing with hardware intact.

11/06/03 **-------- J. --------, M.D.**
Repeat views of the left foot show no interval change in position and alignment, with interval healing and hardware in place.

01/15/04 **-------- J. --------, M.D.**
X-rays of the left foot today show no interval loss of position and alignment, and the hardware is intact.

DISCUSSION:

Diagnosis:

Lisfrank fracture dislocation, left foot.

I have carefully reviewed the entire file, saw the preoperative and postoperative x-rays, and reviewed the CT scan. I believe overall the written medical records are adequately presented in fact.

The patient is a 70-year-old female with asymptomatic arthritis, osteoarthritis and the Lisfrank fracture, which has an "unfavorable" prognosis. See reference.

OPINIONS/CONCLUSIONS

1. Dr. Agarwal: On review of the operating notes and x-rays, Dr. Agarwal is satisfied with the standard of care. I did not see any inadequacy.

2. Then I went to the Department of Radiology at the Creighton Medical Center and reviewed the CT scan and x-rays both preoperatively and postoperatively and the Radiologist there was satisfied with the surgery and **did not see any "upside down" bone.**

3. I met in person with Dr. [redacted], Chairman of the Orthopedic Department at [redacted]. He was satisfied with the surgery and **did not see a misplaced bone.**

4. I went to Chicago for 24 hours and discussed this case with a Board Certified orthopedic surgeon. He reviewed the medical records and was satisfied with the surgery.

5. Dr. --------, on 3/5/2004, reviewed X-ray after surgery: "Alignment of the joints looks good."

6. After surgery, Ms. -------- had planovalgus, a common deformity following such surgery, and deficiency of the posterior tibial tendon. In particular, this patient is 70 years old, osteoporotic, and an unfavorable prognosis is anticipated.

7. Dr. --------, on 6/7/2004, mentioned palnovalgus foot and posterior tibial tendon sufficiency. He did not mention upside-down bone.

8. Patient might misunderstand Dr. --------'s opinion. Deficiency for posterior tibial tendon was mistaken for upside-down bone.

In summary, my advice is against a medical malpractice lawsuit.

The above opinions and conclusions are based upon my careful review of the medical records provided, evaluation of the case, and upon reasonable medical certainty.

Thank you again for the opportunity to be of service. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Anil K. Agarwal, M.D., F.A.C.S.
Board Certified Orthopedic Surgeon and
Independent Medical Examiner

AKA:bb

Enclosures:
  Conclusions I, II and III
  References
  Invoice
  CV

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Publications:	Thesis- Research on “Serum Enzymes Changes in Tetanus” (1971) Book Chapter – Pediatric Orthopedics		

May 26,2006