

1  
2 against Metro North?

3 A Yes.

4 Q What is the nature of Mr. Pymn's  
5 injury?

6 A You're asking me about his medical  
7 problems?

8 Q Yes.

9 A I believe that's privileged  
10 information.

11 \*  
12 MS. GIANNETTA: We'll mark this for  
13 a ruling, and I suspect I have a whole line  
14 of questioning, since we disagree on  
15 whether it is proper. I believe I stated  
16 the basis earlier.

17 MR. MARCUS: Counsel, Metro North  
18 already has a complete medical file on Mr.  
19 Pymn. You already have all of the  
20 information regarding his injuries. Dr.  
21 Herrlin oversaw the treatment rendered to  
22 Mr. Pymn, and his successor, Dr. Haaz, is  
23 currently overseeing it. Metro North  
24 maintains a medical file on all employees  
25 injured in the line of duty who bring  
claims against them, they have

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2  
3 authorizations through their legal  
4 department for medical records of Dr. Guy.

5 What you are attempting to do today  
6 is nothing more than harassment and to  
15 7 force the Doctor to violate a privilege  
8 that he can't waive, only the patient can  
9 waive. To the extent the patient has  
10 waived it in connection with his own  
11 lawsuit, you already have that information.  
12 To the extent that the patient has not been  
13 requested to waiste in the context of this  
14 lawsuit, you're attempting to force the  
15 Doctor to violate the laws of the State of  
16 New York. He will not do so, nor will I.  
17 Dr. Guy is not going to be put in the  
18 position of violating confidences of  
19 clients, contrary to law and to good  
20 medical ethics. You already have the  
21 information anyway, this is all witch  
22 hunting, and it is moot.

23 MS. GIANNETTA: I'm still entitled  
24 to ask the witness regardless of what  
25 documents I have, and the Doctor has put  
the treatment and his reputation in issue

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by bringing this lawsuit.

MR. MARCUS: No, he has not put anything at issue other than Dr. Herrlin slandered him. Dr. Herrlin is seeking to put in issue the competency of Dr. Guy's treatment. So to that extent, if you wish to pursue these patients to get releases from them, that's something else, if they will give them to you. That is not for Dr. Guy to do. You seem to have a basic failure to understand the restriction of the privilege. The privilege is waivable by the patient, not by the physician.

MS. GIANNETTA: The Doctor has witness immunity in the context of this lawsuit.

MR. MARCUS: The Doctor has no such immunity to violate the patients' privilege. The fact that you say it doesn't insulate the Doctor or protect him from a lawsuit by the patient or disciplinary proceedings by the medical society or criminal proceedings by the District Attorney of New York County for

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violating that privilege, which is a statutory privilege.

\* MS. GIANNETTA: We'll apply to the Court and resolve it that way.

MR. MARCUS: Fine.

Q Doctor, did you, in the course of your treatment of Mr. Pymn, did you see him personally, or did some other doctor or employee of your office see Mr. Pymn?

A I don't understand the question.

Q Did Mr. Pymn's treatment include any physical therapy?

A Yes.

Q Did you personally administer that physical therapy?

A Some of it, yes.

Q Did you administer all of it?

A No, not all of it.

Q On how many occasions, approximately, did Mr. Pymn come to your office for treatment?

A The exact number, I don't know. You have those records.

Q Approximately, in what percentage of the times that Mr. Pymn came to your office did

1

2 you yourself treat him?

3

4

A Again, the exact number, I don't recall.

5

Q Not the exact number.

6

A Most of it I rendered personally.

7

Q When you say "most of it," can you

8

give me an approximate percentage?

9

A Most means most.

10

Q More than half?

11

A More than half means most, yes.

12

Q More than three-quarters of the time?

13

A Three-quarters, in that vicinity.

14

Q Thank you.

15

Q Were there different fees charged for

16

the visits that you personally saw him, as opposed

17

to the visits where someone else in your office

18

saw him?

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A No, because the person who saw him --

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MR. MARCUS: The answer is no.

21

A The answer is no.

22

Q Was there or more than one other

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person who saw Mr. Pymn?

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A It may have been more than one other

25

person.

Guy

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Q Did any other doctors besides yourself see Mr. Pymn?

A May have been.

Q Would that have been Dr. Megarr?

A Possibly.

Q Did a physical therapist ever see Mr. Pymn?

A A physician's assistant.

Q Is the charge for a visit where the physician's assistant sees a patient the same as for when a doctor sees a patient?

A As by law, yes.

Q What law is that that you are referring to, Doctor?

A If you do your homework, you read the public health laws governing, the rules and regulations to registered physician's assistants. Your company employs them also, so I'm sure you're aware of rules and regulations.

MR. MARCUS: By "her company" you don't mean the law firm, you mean her client, Metro North.

THE WITNESS: Yes.

Q Doctor, is it required by law that

1.

2 the same fees apply to a physician's assistant as  
3 to a physician, or is it permitted?

4 A The charges should be the same. It  
5 can't be less, it cannot be more. It has to be  
6 the same.

7 Q Is Mr. Pymn still under your care?

8 A Yes.

9 Q Was Mr. Pymn ever seen or ever  
10 treated by anyone else from your office, other  
11 than possibly Dr. Megarr, yourself, and a  
12 physician's assistant?

16

13 A I don't believe so.

14 Q Did you have any conversations with  
15 Mr. Pymn regarding his examinations by Dr. Herrlin  
16 at Metro North?

17 A Yes.

18 Q How many conversations did you have  
19 with Mr. Pymn in that regard?

20 A I believe the exact number, I don't  
21 recall, but --

22 MR. MARCUS: It calls for a yes or  
23 no. It calls for that answer. Don't  
24 elaborate. Give the answer.

25 Q Can you approximate how many times

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you spoke to Mr. Pymn, about?

A No, I cannot.

Q What was the substance of your conversations with Mr. Pymn?

A What questions Dr. Herrlin asked him, the statements he made, the things he told him, and the things he told him about me.

Q What did he say Dr. Herrlin said?

A Many things.

MR. MARCUS: Would you like the sum and substance of the conversations, is that the question you want to ask?

MS. GIANNETTA: Yes, I think I did ask him that.

A The sum and substance is, basically, he said that --

MR. MARCUS: By "he," who do you mean?

THE WITNESS: Dr. Herrlin, as mentioned to me -- conveyed to me by James Pymn, he said that Dr. Guy is not a well-respected physician in the community, that he doesn't know what he is doing, he is giving you shake and bake treatment,

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basically derogatory statements about me.

2

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Q Approximately when did Mr. Pymn tell you this?

4

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A Approximately sometime in '91, if my memory serves me correctly.

6

7

Q Did Mr. Pymn tell you that he no longer intended to come to you for treatment because of what Herrlin said?

8

9

A No. The very first time he told me that, he said that he had heard similar comments from Dr. Herrlin before, but this one time he really put the icing on the cake by saying that I have no respect in the community, that I'm not a well respected doctor in the community, that my credentials are questionable, that he really was very, very upset, and actually it made me very upset.

18

19

Q Did Mr. Pymn continue to come to you for treatment after that conversation?

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A I had to reassure him, go over my credentials, show him my degrees on my wall, tell him about my background, my education, and then he sort of was slightly reassured. He was still upset.

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Guy

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MR. MARCUS: Answer the question.

2

Did he continue to treat with you?

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THE WITNESS: Yes, he continued to treat with me; the answer is yes.

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MR. MARCUS: Did you have further conversations with him regarding Dr. Herrlin?

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THE WITNESS: Yes.

9

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Q What were those further conversations

11

in sum and substance?

12

A He again slandered my name.

13

Q Can you be more specific? What did

14

he say?

15

A One episode, this was right after the

16

lawsuit was brought against him and Metro North,

17

and he saw Mr. Pymn on the follow-up exam, and he

18

goes, "Are you still going to Dr. Guy for shake

19

and bake treatment, and that kind of a B.S.

20

treatment?" His favored word seemed to be

21

bullshit.

22

Q Did Mr. Pymn, after that

23

conversation, continue to treat with you?

24

A He did.

25

Q Did you have any other subsequent

1  
2 conversations with Mr. Pymn regarding any  
3 statements by Dr. Herrlin?

4 A Yes.

5 Q What was the sum and substance of the  
6 next conversation?

7 A I don't know if this was the next or  
8 before, but it was one of the conversations:  
9 After Dr. Herrlin had been informed that I was  
10 actually suing him for slander and he had seen Mr.  
11 Pymn on the follow-up examination, he says, "How  
12 could you say those things about me? How could  
13 you do this to me and still expect me to give you  
14 a fair treatment coming to Metro North?"  
15 Something in that category.

16 Q Did he continue to treat with you  
17 after that conversation?

18 A Yes.

19 Q Did he ever indicate to you that he  
20 spoke to any other Metro North employees about  
21 what Dr. Herrlin had said?

22 A It was either that or what they had  
23 told him. It was the general consensus that many  
24 people, if not all of the people, that were  
25 involved with Dr. Herrlin that were treating with

1.  
2 me, and even the other ones that weren't treating  
3 with me, knew about these slanderous remarks.

4 Q Did he give you names of any people  
5 who supposedly knew about slanderous remarks?

6 A Names per se, no. Not that I can  
7 recall.

8 Q Did you ever speak to Dr. Herrlin  
9 directly regarding his comments to Mr. Pymn?

10 A The first time, yes.

11 Q Did you initiate that conversation?

12 A I did.

13 Q Did you call Dr. Herrlin?

14 A I did.

15 Q Approximately when was that?

16 A It was shortly after the first time  
17 Mr. Pymn brought that information to my attention,  
18 sometime around March of '91, I think it was about  
19 that time.

20 Q What was the sum and substance of  
21 your conversation with Dr. Herrlin?

17  
22 A I called him, I introduced myself, I  
23 said, "Dr. Herrlin, I have a patient of mine, Mr.  
24 Pymn, who informs me that you are making these  
25 accusations about me." And he denied them, he

Guy

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2 says, "Absolutely not." I said, "Well, I hope to  
3 God that it doesn't continue because, as you know,  
4 this is very unethical, very unprofessional." He  
5 says, "I never said them." These were his answers  
6 to me.

7 Q Do you recall anything else about  
8 that conversation with Dr. Herrlin?

9 A Anything else of importance, no.

10 Q Did you accuse Dr. Herrlin in that  
11 conversation of sending people back to work when  
12 they were not physically capable of doing that?

13 A I don't remember.

14 Q Subsequent to that conversation with  
15 Dr. Herrlin, did you ever have any conversations  
16 directly with Dr. Herrlin regarding any of the  
17 alleged slanderous remarks that he made about you?

18 A After that, never again.

19 Q Were you ever told by any doctor that  
20 he or she had heard that you did not have a good  
21 reputation as a medical doctor?

22 MR. MARCUS: Can I have that  
23 question read back, please?

24 (Question read.)

25 A With reference to Metro North or

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outside Metro North?

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Q Outside Metro North. Outside Metro North.

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A It's always been to the contrary, what was heard, good things heard by other doctors and other patients.

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MR. MARCUS: That's the answer.

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Q Has any doctor ever told you that they ever heard negative comments about you from Metro North?

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A Yes.

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Q What doctor or doctors?

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A Dr. Korn.

15

Q Is that Dr. Jonathan Korn?

16

A Yes.

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Q On how many occasions did you have conversations on this subject with Dr. Korn?

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A The exact number, I don't recall, but I can tell you it was more than once.

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Q When did these conversations take place?

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A Again, everything around the same time frame with the beginning of the lawsuit, with the stopping of the payments, and the attorneys

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getting involved.

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Q What was the sum and substance of your conversations with Dr. Korn in this regard?

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A Basically, telling him what the attorneys have told me, that if he had heard anything through his sources, because he also treated Metro North people, he also had contacts with attorneys who treated these patients. And he told me, basically, that Metro North had it in for me, they were going to give me every kind of possible problem they could think of, roadblocking me, not paying my bills.

14

15

Q Did he tell you where he got his information?

16

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A No. Similarly, I don't recall. He may have, but I don't recall.

18

19

Q Did he make any complaints to you about Metro North not paying his bills?

20

A Not that I can recall.

21

22

Q Since 1988, have you referred any patients to Dr. Korn for treatment?

23

A Yes.

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Q Has Dr. Korn referred patients to you?

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A Yes.

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Q Approximately how many patients have you referred to Dr. Korn since that time?

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MR. MARCUS: Objection. You can answer over objection.

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A I don't know the exact number.

8

Q Do you know the approximate number?

9

A No.

10

Q Would it be more than, say, 50?

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MR. MARCUS: Objection. Answer over objection.

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A I'm not sure.

14

15

Q Approximately how many patients has Dr. Korn referred to you?

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MR. MARCUS: Objection. You can answer over objection.

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A Again, the exact number, I don't know.

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Q Has any other doctor told you that he or she has heard that Metro North said negative things about you?

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A Initially, I had thought there was one other doctor, Dr. Mian, M-i-a-n, but after I had numerous subsequent conversations with him, he

1  
2 stated nothing really of substance, so his name  
3 should not really -- the answer is no. Initially,  
4 I had thought that he did, but after subsequent  
5 conversations with him, he informed me that he had  
6 heard a few things here and there, but nothing of  
7 substance.

8 Q Have you spoken to Dr. Mian since you  
9 testified at the public authorities hearing?

10 A Which public authorities hearing?

11 Q In this case. I'll reword the  
12 question.

13 Have you spoken to Dr. Mian since  
14 your first testimony on this claim?

15 A Spoken to him about what?

16 Q About the allegations against Metro  
17 North that you made?

18 A I may have spoken to him once,  
19 shortly after.

20 Q Is that when he told you that nothing  
21 much was really said?

22 A I believe that was the time that he  
23 says nothing, nothing of real substance, just a  
24 couple of things here and there from patients.

25 Q Have any other employees of Metro

1  
2 North who are patients of yours told you that Dr.  
3 Herrlin made any remarks about you or your  
4 reputation and your practice?

5 A Yes.

6 Q Which employees of Metro North?

7 A Wendy Bannen, B-a-n-n-e-n, Ramnarine  
8 Lall, L-a-l-l, and Else Osorno through her  
9 attorney, Mr. McCarthy, or that letter that we  
10 mentioned earlier.

11 Q Did any other employees ever tell you  
12 that Dr. Herrlin said anything negative about your  
13 treatment?

14 A It may have been, but they didn't  
15 want to come forward and give me anything  
16 specific.

17 Q How many patients didn't want to give  
18 you specifics?

19 A That I can recall? Two or three.

20 Q What are their names?

21 A I don't recall their names. It's  
22 been two, three years.

23 Q Is Wendy Bannen still under your  
24 care?

25 A No.

Guy

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Q To your knowledge, does Wendy Bannen have a pending lawsuit against Metro North?

A I believe it was settled.

Q Was Wendy Bannen released from your care?

A She stopped coming to me long before her case was ever settled.

Q Who is Wendy Bannen's attorney?

A Elkind, Maurer & Flynn.

Q What did she tell you about conversations she had with Dr. Herrlin?

A Again, the same substance, the same derogatory remarks.

Q What specifically did Wendy Bannen tell you?

A Basically, that I didn't know what I was doing, wasn't a good doctor, the treatment I was giving was not correct. I was giving her injections at some time, paraspinal injections, and he told her, "Are you going to let that guy stick needles into it, let him use you as a pin cushion?" Something to that effect.

Q Over how long a period did you give Wendy Bannen injections?

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A I believe there were four weekly injections. There may have been more afterwards, but not during one particular period.

Q What was the nature of her injury?

A Again, same patient confidentiality, privileged information.

Q For how long a period of time did Wendy Bannen come to you for treatment?

A If my memory serves me correctly, since sometime in late '88 or '89 up until sometime in '91. It should be in the records submitted to Metro North.

Q Not in records that you have submitted to Metro North, Doctor. For billing purposes?

A That's correct, for billing purposes.

Q You don't submit the patient charts for billing purposes, do you, Doctor?

A We submit office records.

Q What do office records include?

A Progress notes, everything that has been done on the patient.

Q Do you keep any kind of -- do you have a chart that you do not provide to Metro

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North in connection with their bills?

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A I don't know what you mean by  
"chart."

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Q When you saw, for instance, Wendy  
Bannen, did you make progress notes, notations?

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A Yes.

Q Did you make any other type of  
notations in a chart?

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A What do you mean "other notations"?

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Q Are there documents that you do not  
provide to Metro North from the patient's chart  
for purposes of billing?

A We provide to Metro North all  
documents that they require of us.

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Q Are there documents, Doctor, that you  
do not provide to them that are in the charts?

A If they don't ask for it, then the  
answer is no. Such as billing insurance  
information, insurance papers, that kind of stuff.

Q Do you provide the actual  
documentation of what the treatment is on each  
date?

A Yes, if it's in the progress notes,  
yes, if they get injections, yes.

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Q Are those progress notes always required to be submitted to Metro North, or is it on a case-by-case basis?

A As far as I can recall, that's always been their policy, and we have always complied with their policy, and they have always paid the bills until that problem started. So apparently, the policy was working.

Q When Wendy Bannen was coming in four times a week for injections, did you personally give her those injections?

A Wait, wait, wait. Once a week for four weeks on a weekly basis. Once a week for a weekly basis for four weeks. Not four times a week.

Q Thank you, Doctor. When Wendy Bannen came in for those injections, did you give her that injection, personally?

A Yes.

Q Did you see Wendy Bannen on every occasion that she came to your office?

A In the beginning, I believe I was solo, I had nobody with me, so the answer is, I believe I did everything for Wendy Bannen in the

1  
2 beginning.

3 Q When you say you "did everything,"  
4 what --

5 A I was a one man show.

6 Q What else besides injections?

7 A Therapy, everything. As I said, I  
8 was a one man show. I had nobody working for me.

9 Q Did there come a point where Wendy  
10 Bannen on saw someone else at your office?

11 A Yes.

12 Q When was that?

13 A Again, the exact time, I don't know.  
14 It was a licensed physician's assistant.

15 Q What kind of treatment did the  
16 licensed physician's assistant give to Wendy  
17 Bannen?

18 A Physical therapy.

19 Q Was the charge for Wendy Bannen for a  
20 visit for physical therapy the same as the charge  
21 when she would see you for the injections?

22 A No, different codes, different  
23 charges.

24 Q What was she charged for the visits  
25 for which she got injections from you?

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A Again, that's all in the billing statements sent to you.

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Q Are you telling me that you don't remember right now, Doctor?

5

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A No. I do remember. I'm saying you have those records.

7

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Q You still are required to answer it here, Doctor.

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A The charge for the injection I believe was either \$85 or \$100, and the charge for an office visit was \$100.

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12

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Q Now, when Wendy Bannen saw the physician's assistant, was that charge also \$100?

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A The same charge, the same fee schedule.

16

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Q When you personally saw Wendy Bannen, other than giving her injections, did you ever give her any other treatment besides physical therapy?

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A My God, that's all I do. EMGs, physical therapy, injections, and office visits, that's it, that's all I do.

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Q Is the physician's assistant licensed to perform anything other than physical therapy?

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A The physician assistant is licensed to do anything I can do.

Q With any exceptions?

A The exception that I can think of is, they can write prescriptions for -- not for controlled substances. Whatever they do, I have to be responsible for them, that they cannot work without my supervision, that supervision --

MR. MARCUS: Do you need a break?

THE WITNESS: It depends how many more questions she has.

MR. MARCUS: I don't know.

MS. GIANNETTA: I will tell you what I plan to do. I'm going to go through some of the patients. I sort of expect that a lot of answers will be brief, that either they didn't say anything of the --

Why don't we take a short break?

(Short recess taken.)

MS. GIANNETTA: On the record.

EXAMINATION CONTINUING

BY MS. GIANNETTA:

Q Doctor, what was the nature of Ram Lall's injury?

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A Again, you're asking me to violate patient confidentiality.

Q Did you have any conversations with Mr. Lall regarding his conversations with Dr. Herrlin?

A Yes.

Q How many conversations, first of all, did you have with Mr. Lall?

A The exact number, I don't recall.

Q Was it more than one?

A Yes.

Q Was it more than two?

A It was more than two.

Q Can you approximate how many?

A I cannot.

Q Was it less than five?

A I can't tell you that.

Q When did you have these conversations with Mr. Lall?

A Again, in the same time frame with the thing that started with Dr. Herrlin.

Q What was the sum and substance of your conversations with Mr. Lall regarding what Dr. Herrlin said?

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A Again, the same derogatory remarks, that the treatments that I was giving was bullshit, that I wasn't a good Doctor. Basically, it's in his transcript, his affidavit.

MR. MARCUS: Deposition.

A Deposition, rather.

Q You're referring to Mr. Lall's deposition?

A Yes.

Q Did Mr. Lall continue treating with you after these conversations with you?

A Yes.

Q Is Mr. Lall treating with you at the present time?

A Yes.

Q Does Mr. Lall have a lawsuit pending against Metro North?

A Yes.

Q Do you know who Mr. Lall's attorney is?

A Yes.

Q Who is his attorney?

A Mr. McCarthy.

Q Do you know how much, in total, you

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2 billed for Mr. Lall's treatment?

2

3

A It's in the statement of services  
4 sent to you.

4

5

Q The statement of services, are you  
6 referring to what we've marked as Defendants' A?

6

7

A That's right, until June of '92.

7

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Q The amounts, these are only the  
9 amounts outstanding; is that correct?

9

10

A Yes.

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MR. MARCUS: Through June of '91, I

11

12

think that is.

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What does that show for Mr. Lall?

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MS. GIANNETTA: For Mr. Lall, it

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15

shows an amount of \$23,825.

15

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Q Was that the total amount that you  
17 billed for Mr. Lall or just the outstanding  
18 amount?

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A I believe none of it was paid, if my  
20 memory serves me correctly.

19

20

21

MR. MARCUS: As of June 5, 1992, the  
22 outstanding amount for Mr. Lall for  
23 treatment through February 10th of '92 was  
24 \$19,644.

21

22

23

24

25

THE WITNESS: We did get some

1

partial payment.

2

MR. MARCUS: Correct.

3

4

Q On what we've marked as Defendants' A, \$23,825 is listed for 3/5/90 through 6/6/91. Are you saying that subsequent to sending this letter to Metro North you received some payment from Mr. Lall?

5

6

7

8

9

MR. MARCUS: The answer is yes.

10

A The answer is yes.

11

12

13

Q The amounts that your attorney has read and that I've just read in the exhibit, these are only the outstanding amounts; is that correct?

14

15

A Yes, these are the outstanding amounts.

16

17

18

Q Was there some amount that had been paid for Mr. Lall before you prepared what's been marked as Defendants' A?

19

20

A At this point, I'm not sure. I would have to check the complete records.

21

22

Q What records would you check?

A The billing records.

23

24

Q Do you have separate billing records for Metro North?

25

A No. We don't keep any --

1

2

MR. MARCUS: Wait.

3

4

Q Are your records computerized at the present time, your billing records?

5

A Yes.

6

7

Q Have they been computerized since 1988?

8

A No.

9

10

Q When did you first go to computerization?

11

A I believe it was sometime in 1991.

12

13

14

15

Q Since the time your computerization became effective, are you able to tell from the computer the total amount billed for services to a particular patient?

16

A Yes.

17

Q Whether paid or not?

18

A Yes.

19

20

21

Q For billing before your computerization date, how would you find out the total amount billed for a particular patient?

22

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A There's a billing ledger, and on the billing ledger, every service that was provided would be put in and calculated. It's the simple ledger that every doctor used before computers

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came into effect, the standard ledger.

Q Is that a ledger for all of your patients?

A Yes, it is a billing ledger, it is a billing card ledger.

MS. GIANNETTA: I call for the production of that billing ledger from 1988 to the present.

Q Did Mr. Lall say anything further to you that you have not already told us, regarding statements by Dr. Herrlin?

A It's pretty much in that deposition.

Q You're referring to Mr. Lall's deposition?

A Yes.

Q Taken in connection with this lawsuit?

A Taken in connection with the slanderous remarks made against me.

Q Is Mr. Lall still treating with you?

A Yes.

Q Did Else Osorno tell you that Dr. Herrlin had made any remarks about you?

A No.

1

2

Q Have you treated Else Osorno for her  
on-the-job injury?

3

4

A In the past.

5

Q Yes?

6

A Yes.

7

Q Is she still under your care?

8

A No.

9

Q Does she still have a pending law  
suited against Metro North?

10

11

A I have no knowledge.

12

Q Do you know who Else Osorno's  
attorney was?

13

14

A Yes.

15

Q Who is that?

16

A Mr. McCarthy.

17

Q When did Else Osorno stop treating  
with you?

18

19

A Exact time, I don't recall.

20

Q Did you release her from treatment?

21

A No.

22

Q What is the reason, if you know, that  
Else Osorno stopped treating with you?

23

24

A I do not know. I can tell you some  
partial reasons.

25

1

2

Q Okay.

3

4

5

A In a conversation with Mr. McCarthy and, also, in a direct correspondence letter to me --

6

Q From who?

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A From Mr. McCarthy. -- in the letter, basically, it says, of her examination, of Dr. Herrlin, and how Dr. Herrlin told her that the treatments I was giving her was bullshit and how unfair I was on her examination and, basically, again, the issue came up with the outstanding amounts of money owed and the fear that the patients had about owing me a tremendous amount of money and a combination of all these things.

MS. GIANNETTA: I again call for the production of that letter from Mr. McCarthy.

Q Did Mr. McCarthy state to you, either orally or in the letter, that Else Osorno would not continue to treat with you?

A No.

Q Doctor, did you ever treat a Metro North employee named Lawrence Biordi, B-i-o-r-d-i?

A Yes.

1

2

Q Is he still under your care?

3

A No.

4

5

Q Did he have a pending lawsuit when you treated him?

6

A Yes.

7

Q Who was his attorney?

8

9

A I believe it was Mr. McCarthy. I'm not 100 percent sure.

10

11

Q Did Mr. Biordi ever tell you that Dr. Herrlin said anything about you or your treatment?

12

13

A I'm trying to think. I'm not sure. He may have. I'm not 100 percent sure at this point. I made no record of it.

14

15

16

Q Did you make records of any conversation with any Metro North employees when you had conversations with them about Dr. Herrlin?

17

18

19

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A Initially, no. I didn't take it seriously initially, until I spoke with him. I thought it was going to stop after my initial conversation with him, and it continued, and that's when I brought it to my attorney's attention and followed his advice.

Q When you say "initial conversation with him," you mean with Dr. Herrlin?

1

2

A Dr. Herrlin.

3

4

Q Was that the telephone conversation you talked about earlier?

5

A That's correct.

6

7

Q What notations did you make after your conversation with Dr. Herrlin?

8

A I didn't. As I mentioned to you, I thought that would end it, that would stop it. I had no idea that this man, this so-called doctor, would do such a thing.

10

11

12

13

14

Q Since your conversation with Dr. Herrlin, have you made any notations of conversations you've had with patients?

15

A With reference to?

16

Q Dr. Herrlin?

17

A I believe on a couple of occasions.

18

Q Where are those notations?

19

A I have them.

20

21

Q Are they in the patient's chart or somewhere else?

22

A No, they are in the -- I have them.

23

24

Q Were those notations made at the time of the conversation with the patient?

25

A Yes. At the time of the conversation

1

2 with the patient.

3 Q Where is that record kept?

4 A As I mentioned to you, I have them.

5 MS. GIANNETTA: I call for the  
6 production of that record.7 Q What was the nature of Mr. Biordi's  
8 injury?

9 A Again, patient confidentiality.

10 Q What was your total charge for your  
11 treatment of Mr. Biordi?

12 A Let me see if it's reflected.

13 MR. MARCUS: Not on this.

14 A I believe his bills were paid in  
15 full.16 Q Did you discharge Mr. Biordi from  
17 your care?18 A Mr. Biordi, I believe, went back to  
19 work, and his last instruction from me was "no  
20 further care needed unless" -- "unless on an as  
21 needed basis."22 Q I'm sorry, did you testify earlier  
23 that you believe his case was settled?

24 A Yes.

25 Q Did you give Mr. Biordi those

1

Guy

109

2 instructions before or after his case was settled?

3 A Before, way before, because he had  
4 gone back to work way before.

5 Q What was the total amount of your  
6 billing to Richard Blasetti, B-l-a-s-e-t-t-i?

7 A The total amount is in the record. I  
8 believe you have a copy of it.

9 Q The record that I have -- are you  
10 referring to what's been marked as Defendants! A?

11 A Yes.

12 MR. MARCUS: That's the outstanding  
13 balance, that's not the total billing.

14 A I don't have a total record with me  
15 today.

16 MR. MARCUS: That's fine.

17 Leave a space in the transcript,  
18 we'll supply that.

19 MS. GIANNETTA: Thank you.

20

21 Q Doctor, just to shorten this, will  
22 you be refusing to answer my questions regarding  
23 the nature of the injury of all these patients and  
24 your treatment of them?

25 A I sure will. I sure will.

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Q Do you know who Mr. Blasetti's attorney was?

MR. MARCUS: If any.

A I'm not 100 percent sure.

Q Is Mr. Blasetti still treating with you?

A No.

Q Did you release him from your care?

A Without his chart in my possession, I cannot tell you, I'm not sure.

Q Did you treat a Metro North employee named Richard Browner, B-r-o-w-n-e-r?

A Yes.

Q Do you know whether there is still an outstanding amount for bills to Mr. Browner?

A Again, sitting here today, I'm not sure.

MS. GIANNETTA: I would ask for that information, and also for the amount of the total billing for Mr. Browner.

Q Did you treat a Metro North employee -- by the way, did Mr. Browner ever tell you that Dr. Herrlin said anything to him regarding your treatment?

1

2

A Not that I can recall.

3

Q Did you treat a Metro North employee  
4 named Miguel Colon.

5

A Yes.

6

Q Did Mr. Colon have a pending lawsuit  
7 against Metro North?

8

A I believe he did.

9

Q Do you know whether that lawsuit was  
10 settled?

11

A I have no knowledge.

12

Q Is he still treating with you?

13

A He is not.

14

Q Do you know who his attorney was?

15

A I do not know.

16

Q Do you know whether there is still an  
17 outstanding balance owed to you for Mr. Colon's  
18 bills?

19

THE WITNESS: May I see that?

20

MR. MARCUS: No.

21

A I don't think so.

22

MS. GIANNETTA: I also ask for the  
23 total amount of Mr. Colon's bills.

23

24

Q Did you treat a Metro North employee  
25 named Ferdinand Correa, C-o-r-r-e-a?

25

1

A Yes.

2

3

Q Is there an outstanding amount on Mr. Correa's bills?

4

A Yes.

5

6

Q Do you know what that amount is?

2

7

8

MR. MARCUS: \$7,170 as of June 5, 1992, but treatment terminated on or about October 3rd of 1990.

9

10

11

Q Did you release Mr. Correa from your care?

12

13

14

A Again, from the records not being in my possession, I'm not 100 percent sure. I may have.

15

16

Q Do you know whether he still has a pending lawsuit against Metro North?

17

A I have no knowledge.

18

19

Q Did you treat a patient named Patrick Dolan who was an employee of Metro North?

20

A Sounds familiar.

21

MR. MARCUS: Yes?

22

THE WITNESS: Yes.

23

24

Q Is there an outstanding amount on Mr. Dolan's bills?

25

MR. MARCUS: As of June 5, 1992,

Guy

1  
2 there was a balance due from Metro North of  
3 \$550 for treatment that ended on November  
4 14, 1990.

5 Q Did Mr. Dolan report to you that Dr.  
6 Herrlin had said anything negative about your  
7 treatment?

8 A None that I can remember.

9 Q Did Mr. Dolan have a pending lawsuit?

10 A I don't know.

11 Q Do you know whether Mr. Dolan was  
12 represented by an attorney?

13 A I'm not -- I don't know. I'm not  
14 sure.

15 MS. GIANNETTA: I call for the  
16 entire amount of the billing for treatment  
17 to Mr. Dolan and for all of the Metro North  
18 employees that I'm going to go through.

19 Q Did you treat a Metro North employee  
20 named Robert Emerson?

21 MR. MARCUS: Yes.

22 A Yes.

23 Q Is there an outstanding amount owed  
24 on the bills?

25 MR. MARCUS: Treatment ended

1

2

3

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December 3, 1990. As of June 5, 1992, there was an outstanding balance due from Metro North of \$5,270.

5

6

MS. GIANNETTA: May we have a copy of the sheet that you are reading from?

7

8

MR. MARCUS: Absolutely not. This is attorney's work product.

9

10

11

MS. GIANNETTA: I thought you said earlier you would provide me with any information --

12

13

14

15

16

MR. MARCUS: I said I will provide you with information. I'm not providing you with this document which contains various material that has nothing to do with you.

17

18

Q Was Mr. Emerson represented by an attorney?

19

A I'm not sure.

20

21

Q Was Mr. Emerson released from your care?

22

23

A Again, without the records in my possession, I cannot be sure.

24

25

Q Did you treat a Metro North employee named John Figueroa?

1

2

A Yes.

3

4

5

Q Did Mr. Figueroa ever tell you that Dr. Herrlin made any comments about your treatment of him?

6

A None that I can remember.

7

8

Q Is there an outstanding balance due on the bills for the treatment of Mr. Figueroa?

9

10

11

MR. MARCUS: As of June 5, 1992, there was an outstanding balance due of \$7,850, treatment ended July 18, 1991.

12

13

Q Is Mr. Figueroa still treating with you?

14

A No, he is not.

15

Q Was he released from your care?

16

17

18

19

A If memory reserves me correctly, from my treatments he got better, he went back to work, his last instructions were, "follow up only as needed."

20

21

Q Does he still have a pending lawsuit against Metro North?

22

A I do not know.

23

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MR. MARCUS: Objection to the form.

Do you know if he ever had a

lawsuit?

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MS. GIANNETTA: I didn't ask that.

Q Do you know if he ever had a lawsuit?

A I'm not sure, no.

Q Do you know who, if anyone, referred Mr. Figueroa to you?

A I do not know.

Q By the way, Doctor, in a patient's chart, do you note who refers a patient to you?

A Only --

MR. MARCUS: Objection, asked and answered.

MS. GIANNETTA: I don't think that he said whether he notes it in the chart.

MR. MARCUS: I didn't say he couldn't answer. I simply objected as asked and answered.

MS. GIANNETTA: You may answer.

MR. MARCUS: Answer the question.

A There's no place in my general information sheet as to who referred the patient.

MR. MARCUS: Fine. That's the answer.

A That's the answer.

Q Is it sometimes noted in any event,

Guy

1

even though there's no place for it?

2

A No.

3

4

Q Is the attorney sometimes noted in the general information sheet?

5

A Noted as what?

6

7

Q Anywhere on the general information sheet?

8

9

A If there's a clause that says, "Is this due to an accident," and there's a whole bunch of questions that follow, what kind of accident, if there's an attorney, the attorney information.

10

11

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Q Doctor, have you, since 1988, treated any patients who were not litigants in a lawsuit?

16

17

18

19

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21

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MR. MARCUS: Objection.

A I don't understand the question.

MR. MARCUS: Not from Metro North.

Generally.

Objection. You can answer.

A That were not related? Of course.

Q What percentage, approximately, of your practice were people who were not litigants in a lawsuit as patients?

A In 1988?

Guy

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Q Yes.

2

3

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A The majority of my practice was people not related to accidents or lawsuits.

5

6

7

Q Can you give me a percentage?

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MR. MARCUS: Majority means more

than half.

A Majority. That's what majority means.

Q Did that percentage remain the same through the present?

A Some minor fluctuations.

Q Did you treat a Metro North employee named Bruce Harrell, H-a-r-r-e-l-l?

A I believe I did.

Q Do you know whether he had a pending lawsuit against the railroad?

A I'm not sure.

Q By the way, Doctor, on the patients and outstanding amounts that you have listed on what we've marked as Defendants' Exhibit A, did you bill Metro North directly for these amounts?

A Yes.

Q If a Metro North employee were not injured as the result of an on-the-job incident --

Guy

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A As a result of a not on-the-job incident? Is that what you're saying?

Q Let me say that again. If they were injured, if a Metro North employee were injured some other way other than on-the-job injury, would you have billed Metro North directly?

MR. MARCUS: Objection to the form. Are you referring to a Metro North employee who sought treatment from Dr. Guy for any cause other than a line of duty injury?

MS. GIANNETTA: I'll tell you what I'm trying to determine. The Doctor has been saying that he doesn't recall whether some of these people have lawsuits against Metro North, and I just would like to ask him: If they had not had lawsuits against Metro North, would he have been billing Metro North directly?

MR. MARCUS: The question is an improper question and assumes facts not in evidence, and there's an insufficient foundation.

Don't answer it in that form.

Off the record.

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(Discussion off the record. )

MS. GIANNETTA: On the record.

EXAMINATION CONTINUING

BY MS. GIANNETTA:

Q Doctor, are all of the patients and the billing amounts listed on Defendants' A, are all of these treatments that you billed for, are they due to line of duty injuries?

A To the best of my knowledge, yes.

MR. MARCUS: Just so the record is clear, Doctor, have you ever treated Metro North employees for other than line of duty injuries?

THE WITNESS: Absolutely.

MR. MARCUS: And those services that you provide, are they covered through a policy of insurance covering Metro North employees issued by Metropolitan?

THE WITNESS: Yes.

MR. MARCUS: Do you bill Metropolitan, then?

THE WITNESS: Yes.

MS. GIANNETTA: I was just going to ask that. Fine.

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Q Did Bruce Harrell ever tell you that Dr. Herrlin said anything about your treatment to him?

A Not that I can recall.

Q Is there an outstanding amount for Bruce Harrell's bills?

MR. MARCUS: As of June 5, 1992, there was due and owing for treatment of Bruce Harrell by Metro North the sum of \$16,005. Treatment ended on January 23rd, 1992.

Q Do you know who Mr. Harrell's attorney was, if any?

A I do not.

Q I don't believe I asked you, are there any outstanding amounts for bills due for the treatment for Wendy Bannen?

A Are there any outstanding?

MR. MARCUS: As of June 5, 1992, there was due and owing the sum of \$12,615 for Wendy Bannen for treatment which ended on or about August 21, 1991.

Q Was Wendy Bannen released from your care by you?

1

2

A No, she stopped coming on her own.

3

Q Did you treat a Metro North employee

4

named Michael Howard?

5

A Yes.

6

Q Did Michael Howard have an attorney?

7

A I do not remember.

8

Q Is there an outstanding amount for

9

the bills for Michael Howard?

10

MR. MARCUS: As of June 5, 1992,

11

there was due and owing the sum of \$5,570

12

for treatment ending June 26, 1991.

13

Q Did Mr. Howard ever have any

14

conversations with you regarding statements made

15

by Dr. Herrlin?

16

A None that I can recall.

17

Q Did you treat a Metro North employee

18

named Nikolas Ketsoglou, K-e-t-s-o-g-l-o-u?

19

A Yes.

20

Q Is there an outstanding amount for

21

the bills due for his treatment?

22

MR. MARCUS: As of June 5, 1992,

23

there was due and owing the sum of \$16,096

24

for treatment rendered to Mr. Nikolas

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Ketsoglou through June 28, 1991.

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Q Did Mr. Ketsoglou tell you that Dr. Herrlin had said anything about your treatment?

A None that I can recall.

Q Do you know whether Mr. Ketsoglou was represented by an attorney?

A Again, I'm not 100 percent sure.

Q Is there an outstanding amount for the bills for Ram Lall?

MR. MARCUS: We have covered that.

Asked and answered.

MS. GIANNETTA: I don't think the amounts of bills. I'm not going to ask him any of the other questions.

MR. MARCUS: It was covered, but as of June 5, 1992, the outstanding balance due was \$19,644, and that was previously asked and answered.

Q Did you treat a Metro North employee named Scott Lowenthal?

A Yes.

Q Is there an outstanding amount for his bills?

MR. MARCUS: As of June 5, 1992, the outstanding balance was \$2,450 for

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treatment ending March 20, 1991.

Q Was Mr. Lowenthal represented by an attorney?

A No.

Q Did Mr. Lowenthal have a claim or a lawsuit against Metro North?

A No.

Q Did Mr. Lowenthal tell you that Dr. Herrlin had said anything about your treatment?

A He had mentioned he had heard some things through other sources.

Q What did he mention he had heard?

A The same general derogatory remarks that were previously mentioned.

Q Did you make any response to him when he told you that?

A No.

Q Did he tell you where he got that information?

A He had heard from some of the other men at Metro North.

Q Did he tell you which men?

A No.

Q Did he continue to see you after he

1

2

told you that?

3

A He only saw me a few times. I don't

4

recall.

5

Q Did you treat Peter Malaspena?

6

A Yes.

7

Q Is there an outstanding amount on his

8

bills?

9

MR. MARCUS: As of June 5, 1992,

10

there was due and owing from Metro North

11

for services rendered by Dr. Guy the sum of

12

\$11,779.20 for treatment through December

13

23, 1991.

14

Q Did Mr. Malaspena tell you that Dr.

15

Herrlin had said anything about your treatment?

16

A Not that I can recall.

17

Q Was Mr. Malaspena represented by an

18

attorney?

19

A I believe he was.

20

Q What attorney?

21

A I believe it was Mr. McCarthy.

22

Q Did you release Mr. Malaspena from

23

your treatment?

24

A Without my records, I'm not 100

25

percent sure, but I don't believe that I did.

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Q Is Mr. Malaspena still under your care?

A No.

Q Do you know the reason that Mr. Malaspena stopped coming to you for treatment?

A No, I don't know. I think it had something to do, I think, with the outstanding amounts.

Q Why do you think that?

A The general basis, Mr. McCarthy spoke to me, and he mentioned he has a big problem, a lot of his clients are very worried about these outstanding amounts, he doesn't know quite how to handle the situation.

Q Do you know whether Mr. Malaspena went to any other physicians after he stopped seeing you?

A I know he was seeing another physician as well, yes.

Q At the same time that he was seeing you?

A He was a surgeon, orthopedic surgeon, I believe.

Q Do you remember that orthopedic

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surgeon's name?

A It's in its records.

Q Do you remember his name?

A No, I do not.

Q Is there an outstanding amount on  
Else Osorno's bills?

MR. MARCUS: The amount as of June  
5, 1992, was \$9,162 for treatment ending  
June 10, 1991.

Q Was Else Osorno released from your  
care?

A She was not.

Q Has she continued to see you?

A No.

Q Who was her attorney?

A Mr. McCarthy.

Q Did you treat Barbara Peterson, a  
Metro North employee?

A Yes, I did, treated her for both  
non-Metro North, privately, both.

Q When you say "privately" --

A Not related to on-the-job injury.

Q But at a time where she was a Metro  
North employee?

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A Yes.

Q Is there an outstanding amount on her bills?

MR. MARCUS: Barbara Peterson apparently had two job-related injuries and two job-related claims as of --

THE WITNESS: One related --

MR. MARCUS: There's two outstanding balances listed.

THE WITNESS: That was resolved. There's only one that remains now.

(Witness confers with counsel.)

MR. MARCUS: As of June 5, 1992, there was due and owing the sum of \$12,538.

Q Listed as a second accident for Barbara Peterson on Defendants' A, was that actually not a job-related injury?

A I sent a letter to Metro North, I explained this, I sent a letter to Barbara Peterson's attorney explaining that one had nothing to do with Metro North. Metropolitan was billed, Metropolitan paid the bills that they were responsible for, the other stuff that was billed was billed to Metro North for on-the-job injury.

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Q Then let me direct you to what's listed as "Peterson, Barbara, second accident."

A Let me see this.

MR. MARCUS: Let the record reflect that, initially, Barbara Peterson and the amount that I gave you previously was due to a non-line of duty occurrence, and that was paid by Metropolitan. The amount due from Metro North --

THE WITNESS: This amount we'll give to you at a later date. It has been revised, corrected.

MR. MARCUS: Leave a space in the transcript, we'll provide the amount due and owing from Metro North for Barbara Peterson.

---

Q Is it true that Barbara Peterson had one job-related injury?

A One job-related injury.

Q And the amounts for any other incidents has been or should have been submitted to Metropolitan.

MR. MARCUS: Was, and paid.

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Q Who is Barbara Peterson's attorney?

MR. MARCUS: Objection to the form.

Don't answer.

MS. GIANNETTA: He testified a little bit earlier that he resolved it with her attorney.

A Either it's Mr. Sable or Elkind, Maurer & Flynn, one of those two. I'm not 100 percent sure.

Q Could it have been Michael Flynn?

A It could have been, could have been, yes.

Q Doctor, did you have a dispute with Michael Flynn over the billing in the Barbara Peterson matters?

MR. MARCUS: Objection to the form.

Don't answer it.

MS. GIANNETTA: That's a proper question, Mr. Marcus. I'm looking to establish that there were other reasons besides what the Doctor says for certain patients not coming to him.

MR. MARCUS: You can make all the self-serving statements you want. I made

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my statement.

Q Did you treat a patient named Robert Potthast, P-o-t-t-h-a-s-t?

A Yes.

Q Is there an outstanding amount on Mr. Potthast's bills?

MR. MARCUS: As of June 5, 1992, there was due and owing from Metro North, the sum of \$3,465 for treatment ending October 10, 1991.

Q Do you know whether Robert Potthast had a pending lawsuit?

A He may have.

Q Do you know whether he had an attorney?

A If he had a pending lawsuit, he had to have an attorney.

Q You said, "He may have."

A I don't want to tell you things and then you use --

Q I'm just asking what you recall, Doctor.

MR. MARCUS: Just answer the questions. Either you know or you don't

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2

know.

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A I believe he may have had a lawsuit.

4

Q Do you know whether he had an

5

attorney?

6

A Again, if I believe he had a lawsuit,

7

I believe he had an attorney.

8

MR. MARCUS: Just answer the

9

question.

10

A Yes.

11

Q Do you know who his attorney was, if

12

he had one?

13

A I'm not 100 percent sure.

14

Q Did Mr. Potthast make any statements

15

to you regarding anything Dr. Herrlin said to him

16

about your treatment?

17

A None that I can recall.

18

Q Is there an outstanding amount for

19

the bills for James Pymn?

20

MR. MARCUS: Yes. As of June 5,

21

1992, there was due and owing for treatment

22

through April 13, 1992, only, although the

23

treatment continues, the sum of \$3,753.

24

Q Did you treat a Metro North employee

25

named John Redgrave?

1

2

A Yes.

3

Q Is he still under your care?

4

A Yes.

5

Q Is there an outstanding amount for

6

Mr. Redgrave's bills?

7

MR. MARCUS: Through June 5, 1992,

8

for treatment only through April 6th of

9

1992, there was due and owing the sum of

10

\$20,925.

11

Q Did Mr. Redgrave tell you that Dr.

12

Herrlin had said anything about your treatment?

13

A I believe, if my memory serves me

14

correctly, he mentioned a couple of derogatory

15

remarks: "Oh, that Guy, him again," something to

16

that effect.

17

Q When he said "That Guy," who did you

18

understand --

19

A Guy. He says, every time he goes to

20

Dr. Herrlin for an examination, for a follow-up

21

examination by him, he would ask him, how do you

22

feel, what your overall condition is, are you

23

getting treatment from anyone, and from whom.

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When he would mention my name, he would get these

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derogatory smirks and remarks, as I mentioned.

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Q On how many occasions did Mr. Redgrave report that to you?

A Well, he's a very --

MR. MARCUS: Just answer the question, if you can.

A I can't answer that question. I'm not sure.

Q More than one occasion?

A I'm not sure.

Q Does he have a pending lawsuit against the railroad?

A I believe he does.

Q Is he represented by an attorney?

A Yes.

Q Do you know who that attorney is?

A I believe it is Mr. McCarthy.

Q Did you treat a patient named Arthur Sealy?

A Yes.

Q Was there an outstanding amount for Mr. Sealy's bills?

MR. MARCUS: As of June 5, 1992, for treatment only through April 16th, 1992, there was due and owing the sum of \$7,075.

1

2 Q Did Mr. Sealy ever tell you that Dr.  
3 Herrlin said anything about your treatment?

4 A No, not that I can recall.

5 Q Is Mr. Sealy still under your care?

6 A No.

7 Q Does Mr. Sealy have a pending  
8 lawsuit?

9 A I don't know.

10 Q Did he have a pending lawsuit while  
11 you were treating him?

12 A I'm not sure. He may have.

13 Q Do you know whether he had an  
14 attorney?

15 A I'm trying to think. His case is a  
16 little puzzling. I'm not sure. I would say I'm  
17 not sure.

18 Q Did you treat a Metro North employee  
19 named John Sharkey?

20 A Yes.

21 Q Did he have a pending lawsuit against  
22 the railroad?

23 A Yes.

24 Q Is there an outstanding amount for  
25 Mr. Sharley's bills?

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A Yes.

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MR. MARCUS: As of June 5, '92,  
there was due and owing the sum of \$8,765  
for treatment through April 11, 1991.

Q Did Mr. Sharkey ever tell you that  
Dr. Herrlin made any comments about your  
treatment?

A I believe he did, yes.

Q What did Mr. Sharkey say?

A The same general derogatory remarks.

Q Can you tell me what Mr. Sharkey, in  
particular, said?

A Again, to the best of my memory, they  
were the same general derogatory remarks and  
gestures that he made when he mentioned my name.

Q What type of gestures?

A The ones I mentioned to you,  
smirking. Again, I don't want to elaborate on it  
because I don't have anything recorded relating  
remarks about me from Dr. Herrlin.

Q You mean you have no recording of Mr.  
Sharkey telling you?

A That's right.

Q Did Mr. Sharkey have an attorney?

1

2

A Yes.

3

Q Who is his attorney?

4

A Mr. Sable.

5

Q Did you testify at the trial of Mr.

6

Sharkey's lawsuit against the railroad?

7

A Yes.

8

Q When did you testify at that trial?

9

A I don't remember exactly. I don't

10

remember. I believe it was in '92.

11

Q Last year, maybe early this year.

12

Did you treat a Metro North employee named Michael

13

Short?

14

A Yes.

15

Q Did Mr. Short tell you that Dr.

16

Herrlin made any remarks?

17

A Not that I can recall.

18

Q Is there an outstanding balance for

19

Mr. Short's bills?

20

MR. MARCUS: As of June 5, '92,

21

there was due and owing \$5,435 for

22

treatment through February 27, 1991.

23

Q Is Mr. Short still under your care?

24

A No.

25

Q Did you release him from your care?

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A Again, without my records, I'm not certain.

Q Was he represented by an attorney?

A I think he was.

Q Do you recall who the attorney was?

A No.

Q Did you treat a Metro North employee named George Stefenakis, S-t-e-f-e-n-a-k-i-s?

A Yes.

Q Is there an outstanding balance on his bills?

MR. MARCUS: As of June 5, 1992, there was due and owing the sum of \$4,500 for treatment through September 25, 1990.

Q Did Mr. Stefenakis ever tell that you Dr. Herrlin said anything?

A Not that I can recall.

Q Was Mr. Stefenakis represented by an attorney?

A I believe he was.

Q Do you know who his attorney was?

A I believe it was Mr. Sable.

Q Do you know whether Mr. Stefenakis has a pending lawsuit against the railroad?

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A I do not know.

3

Q Did you treat a Metro North employee  
4 name Samuel Telesco, T-e-l-e-s-c-o?

5

A Yes.

6

Q Is there an outstanding balance for  
7 his bills?

8

MR. MARCUS: No.

9

Q Did Mr. Telesco ever tell you that  
10 Dr. Herrlin made any remarks about your treatment?

11

A I believe he did, yes.

12

Q What did Mr. Telesco tell you?

13

A The way he would word it -- I  
14 remember, because he was very vivid in his  
15 description -- he would say, "That joker made the  
16 same B.S. remarks about you again."

17

Q Did Mr. Telesco continue to see you  
18 after he relayed these conversations?

19

A Yes.

20

Q Was Mr. Telesco represented by an  
21 attorney?

22

A Yes.

23

Q Who was his attorney?

24

A I believe it was Mr. Sable.

25

Q Did you testify at that trial as a

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witness for Mr. Telesco?

A I don't remember if I testified or it got settled before I testified, I'm not 100 percent sure.

Q Did Metro North pay any remaining bills, or were those bills paid as part of the resolution of the case?

A I believe Metro North paid the whole thing in full.

Q Did you treat a Metro North employee named Matthew Treasure?

A Yes.

Q Are there any outstanding bills for Mr. Treasure.

MR. MARCUS: As of June 5, 1992, there was due and owing the sum of \$550 for treatment through November 28, 1990.

Q Did Mr. Treasure have a pending lawsuit?

A I believe he did not.

Q Did you release Mr. Treasure from your care?

A I think I did. Again, I don't have my records.

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Q Although he did not have a pending lawsuit, was your treatment for a job-related injury?

A Yes, it was.

Q Do you know whether he was making a claim against the railroad?

A I believe he was not.

Q Did you treat a Metro North employee named Mark Scocchera, S-c-o-c-c-h-e-r-a?

A Is he a Police Officer?

Q I don't know. Do you recall treating a person by that name?

A Let me see.

Q It's printed there.

A Yes, he is a Police Officer.

Q Is there an outstanding amount for his bills?

A I don't know. I have to look that up.

MR. MARCUS: No.

A No.

MR. MARCUS: As of June 5, '92, there was no outstanding balance.

Q Did Mr. Scocchera make any remarks to

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you, tell you that Dr. Herrlin had made any remarks about your treatment?

A       Something to the fact that -- I remember Mr. Scocchera's case, he was a Police Officer, he was a right-hand dominant and he had an injury involving his hand and his thumb, and Dr. Herrlin was telling him that he can go back to work, and he goes, "My doctor says I can't go back to work." He said, "Who is your doctor," and he says, "What does he know?" I remember that case vividly.

Q       Did you make any notation regarding that conversation?

A       No, I did not.

Q       Was he represented by an attorney?

A       I don't know if he had a lawsuit pending. I'm not sure. I think not.

Q       Did you treat a Metro North employee named Thomas Holz, H-o-l-z?

A       That name, I don't recall. I'll find out for you.

MR. MARCUS: Don't volunteer to find out anything. You don't recall, you don't recall.

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A I don't recall.

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MS. GIANNETTA: I call for the production of all records of treatment of Metro North employees from 1988 to the present.

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Q Did you treat a --

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MR. MARCUS: Who are you calling?

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MS. GIANNETTA: I'm asking of you, obviously, the plaintiff.

11

Q Did you treat --

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MR. MARCUS: We already told you we are not giving you his treatment records for any patients.

15

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17

MS. GIANNETTA: I'm asking you for treatment records, billing records, and appointment records.

18

19

Q Did you ever treat a Metro North employee named Daniel McLoughlin?

20

A Yes.

21

Q Is he still under your care?

22

A No.

23

24

Q Is there an outstanding amount on his case?

25

MR. MARCUS: Not as of June 5, 1992.

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Q Did he ever tell you that Dr. Herrlin said anything about your treatment?

3

4

A Not that I can recall.

5

6

Q Did you treat a Metro North employee named Tracy Cashaw, C-a-s-h-a-w?

7

A Yes.

8

9

Q Is there an outstanding amount on the bills for Miss Cashaw?

10

A I'm not sure. I'm not sure.

11

12

Q Did Tracy Cashaw ever tell you that Dr. Herrlin said anything about your treatment?

13

A Not that I can recall.

14

15

Q Did you treat a Metro North employee named Richard DeClara, D-e-C-l-a-r-a?

16

A Yes.

17

18

Q Did Mr. DeClara ever tell you that Dr. Herrlin said anything about your treatment?

19

A Not that I can recall.

20

21

Q Is there an outstanding amount on Mr. DeClara's bills?

22

A Not that I know of.

23

24

Q Did you treat a Metro North employee named Timothy Curley?

25

A I believe I did, yes.

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Q Is there an outstanding amount --

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MS. GIANNETTA: I'm looking at --

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Off the record.

5

(Discussion off the record.)

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MS. GIANNETTA: On the record.

7

EXAMINATION CONTINUING

8

BY MS. GIANNETTA:

9

Q Is there an outstanding amount for

Mr. DeClara's bills?

11

A I'm not sure.

8

12

Q Did Mr. DeClara ever tell you that

Dr. Herrlin had said anything about your

treatment?

15

A Not that I can recall.

16

Q Was Mr. DeClara represented by an

attorney?

18

A I'm not sure.

19

Q Did you treat a Metro North employee

name Timothy Curley?

21

A I believe I did.

22

Q Did Timothy Curley ever tell you that

Dr. Herrlin had said anything about your treatment

of him?

25

A Not that I can recall.

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2

Q Is there an outstanding amount for  
Timothy Curley's bills?

3

4

A I do not know. We'll have to find  
out.

5

6

Q Was Mr. Curley represented by an  
attorney?

7

8

A I'm not sure.

9

Q Did you treat a Metro North employee  
named Vito Apollo, A-p-o-l-l-o?

10

11

A Sounds familiar, yes.

12

13

Q Is there an outstanding amount for  
Mr. Apollo's bills?

14

A I don't know at this point.

15

16

Q Did Mr. Apollo ever tell you that Dr.  
Herrlin said anything about your treatment?

17

A Not that I can recall.

18

19

Q Was Mr. Apollo represented by an  
attorney?

20

A I am not sure.

21

22

Q Did you treat a Metro North employee  
named Cheryl, C-h-e-r-y-l, Misiowicz, M-i-s-i-o-  
w-i-c-z?

23

24

A Yes, I treated her once or twice.

25

Q Is there an outstanding amount for

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Guy

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2 her bills?

3 A I do not know.

4 Q Was she represented by an attorney?

5 A I'm not sure.

6 Q Did she ever tell you that Dr.  
7 Herrlin said anything about your treatment?

8 A I only saw her once or twice. I  
9 don't believe so.

10 Q Did you treat a Metro North employee  
11 named Leonard Lloyd?

12 A Yes.

13 Q Do you know whether there's an  
14 outstanding amount for Mr. Lloyd?

15 A I do not know.

16 Q Did Mr. Lloyd ever tell you that Dr.  
17 Herrlin said anything about your treatment?

18 A I don't believe so.

19 Q Was Mr. Lloyd represented by an  
20 attorney?

21 A I'm not sure.

22 Q Is Mr. Lloyd still under your care?

23 A He is not.

24 Q Did you release him from your care?

25 A Without my records in front of me, I

1

2 do not remember.

3

4 Q Did you treat a Metro North employee  
5 named William DeWeese, D-e-W-e-e-s-e?

6

7 A Yes.

8

9 Q Is he still under your care?

10

11 A No, he moved.

12

13 Q Is there an outstanding amount for  
14 his bills?

15

16 A I'm not sure.

17

18 Q Did he ever tell you that Dr. Herrlin  
19 said anything about your treatment?

20

21 A No.

22

23 Q Did you ever treat a Metro North  
24 employee named Michael Coleman?

25

26 A Yes.

27

28 Q Is he still under your care?

29

30 A No.

31

32 Q Did you release him from your care?

33

34 A I am not sure without my records in  
35 front of me.

36

37 Q Is there an outstanding amount for  
38 his bills?

39

40 MR. MARCUS: As of June 5, 1992,

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42 there was due and owing the sum of \$250 for

1

2 treatment ending March 11, 1991.

2

3

Q Was he represented by an attorney?

4

A I'm not sure.

5

Q Did he ever tell you that Dr. Herrlin

6

said anything about your treatment?

7

A Not that I can recall.

8

Q Did you treat a Metro North employee

9

named James K. Vorisek, V-o-r-i-s-e-k?

10

A Yes.

11

Q Is there an outstanding amount for

12

his bills?

13

A I'm not sure. I think I only saw him

14

once or twice. I'm really not sure.

15

Q Was he represented by an attorney?

16

A I'm not sure.

17

Q Did he ever tell you the that Dr.

18

Herrlin said anything about your treatment?

19

A Not that I can recall.

20

Q Are there any other outstanding

21

amounts that you claim for treatment of Metro

22

North employees?

23

A Yes.

24

Q What are those amounts?

25

A I don't have those with me.

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MR. MARCUS: Yes, there is one other Metro North employee I don't believe you asked about, Rod Lee Holliman, H-o-l-l-i-m-a-n. As of June 5, 1992, there was due and owing the sum of \$3,185 for treatment that was pending, and this bill is only through April 6th of 1992.

In addition, there are others, and we don't have them at the present time, but Dr. Guy has them.

MS. GIANNETTA: I call for the production of those amounts.

(Witness confers with counsel.)

MR. MARCUS: Next question.

Q Doctor, do you require or have you required since 1988 that Metro North employees fill out or sign the lien letter you testified about earlier?

A I have no new policy with reference to that. I have the same policy I had in effect from the very beginning.

Q Let me finish the question, because it's about what your policy has always been.

Do you require that all Metro North

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employees, or have you required that they all sign  
3 this lien letter whether or not it's a job-related  
4 injury?

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A Yes. Wait a second. Whether or not  
it's an on-the-job-related injury? If it's an  
injury and it's job-related, the answer is yes.  
If it's an injury that's not job-related, then the  
answer is no, then they don't have to sign that  
lien letter.

Q If it is a job-related injury, do you  
require that the patient sign it even if they are  
not represented by an attorney?

A Yeah, generally everybody signs it, I  
ask everybody to sign it.

Q By that you mean everybody with a  
job-related injury?

A Everybody with an injury.

Q With an injury?

A Yes.

Q If the Metro North employee comes to  
you with an injury that is not job-related, do you  
require that that employee sign the lien letter?

A Are you saying if it's a Workman's  
Comp injury?

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Guy

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Q No. Say, for instance, if someone gets injured at their home.

4

A Okay. If there's an injury and there's going to be a lawsuit and there are attorneys involved, the answer is yes.

7

Q If there are no attorneys involved as far as you know and it is an injury --

9

A We still get them to sign it. We still get them to sign it. If they don't want -- sorry.

12

MR. MARCUS: Don't volunteer. Just answer the questions.

13

14

Q Have you ever had an instance with a Metro North employee where they refused to sign the lien letter?

17

A I'm trying to think. There may have been one or two, and again, this is maybe, I'm not sure, and I said, simply, "If you don't want to sign the lien letter, fine, then be responsible for the bills yourself," and that's been my general policy. I don't know if that ever took place or not.

24

MR. MARCUS: Have you ever pursued a Metro North employee directly to try and

25

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get payment of any outstanding bills,  
personally, from the employee?

3

4

THE WITNESS: No.

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8

Q Doctor, since you've instituted this  
lawsuit for your bills and for slander against  
Metro North and Dr. Herrlin, have you gotten any  
Metro North employees as new patients?

9

A Yes.

10

Q How many?

11

A Very few.

12

Q Can approximate how many?

13

A Very few. I would say less than six.

14

Q Can you tell me who they are?

15

A No.

16

Q Are they all represented by counsel?

17

A I do not know.

18

19

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22

MS. GIANNETTA: I call for the  
production of any records at the Doctor's  
office that would show new patients that  
are Metro North employees since the  
institution of this lawsuit.

23

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At the present time, I have nothing  
further, but I would like to reserve my  
right to further depose the Doctor after

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applying to the Court for some of the  
3 matters that plaintiff has been instructed  
4 not to answer by counsel and some of the  
5 matters which he himself believes are  
6 improper to answer.

7

MR. MARCUS: There is no reservation  
8 as far as I'm concerned. The Doctor is  
9 here, you have any questions, you ask your  
10 questions. We'll not recall the Doctor for  
11 any purpose.

12

MS. GIANNETTA: I intend to apply to  
13 the Court on the issue of asking about the  
14 patients' treatments and obtaining the  
15 patients charts, and for those matters I  
16 may need to continue my questioning of the  
17 Doctor.

18

MR. MARCUS: We will not voluntarily  
19 produce the Doctor again. You have no  
20 reservation as far as I'm concerned. The  
21 Doctor is here, he has been deposed, he has  
22 been here, you have been deposing him for  
23 three hours. If you have any more  
24 questions, ask them now.

25

MS. GIANNETTA: The questions that I

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have, you've instructed him not to answer.

3

So as far as I'm concerned, I do have a

4

reservation, and I'll do what I need to do

5

and apply to the Court.

6

MR. MARCUS: I think you're

7

misconstruing what I'm saying, Counsel.

8

Any reservation that you make where you

9

think that simply by Notice or by some

10

voluntary process you're going to be able

11

to recall the Doctor, in that regard, you

12

you are sadly mistaken.

13

In the event that a court orders the

14

Doctor to appear again for further

15

deposition, and/or orders him to supply

16

certain records, then we will address that

17

either by acquiescing or appealing, but we

18

will not voluntarily produce the Doctor in

19

response to any request you may make

20

hereinafter.

21

MS. GIANNETTA: I understand your

22

position, Mr. Marcus.

23

MR. MARCUS: As long as you

24

understand that.

25

Okay. It's also understood that you

1

2

are producing Dr. Herrlin here on the 13th  
of September, correct?

3

4

MS. GIANNETTA: The 13th, yes.

5

MR. MARCUS: Okay.

10

6

(Time noted: 1:20 o'clock p.m.)

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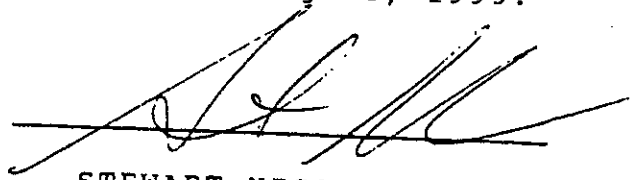
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I, STEWART NISSENBAUM, a Shorthand Reporter, do hereby certify that the within is a true and accurate transcript of the proceedings taken on the 19th day of August, 1993.

I further verify that I am not related to any of the parties to this proceeding by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 27<sup>th</sup> day of August, 1993.



STEWART NISSENBAUM

I N D E X

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2			
3			
4	<u>Issues marked</u>		
5	<u>for rulings</u>	<u>page</u>	<u>line</u>
6		13	17
7		14	15
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16		73	11
17		76	4
18			
19	<u>Defendants' Exhibit</u>		<u>for iden.</u>
20	A	A "demand letter"	63
21			
22	<u>Spaces left in the</u>		
23	<u>transcript for answers</u>		<u>page</u>
24	Number of Metro North employees		19
25	in Dr. Guy's care		
	Total billing for Richard Blasetti		109
	Amounts due and owing from Metro		129
	North for Barbara Peterson		