Supreme Court of New York.
Westchester County
CANONICO,
v.
BEECHMOUNT BUS SERVICE, INC.
No. 7078/00.
2000.

(Transcript)

Name of Expert: Aric Hausknecht, M.D.

Area of Expertise: Health Care-Physicians & Health Professionals >> Pain Management/Neuroanesthesiologist

Area of Expertise: Health Care-Physicians & Health Professionals >> Neurologist

Case Type: Vehicle Negligence >> Motor Vehicle v. Motor Vehicle

Case Type: Vehicle Negligence >> Rear-End

Jurisdiction: Westchester County, New York

Representing: Plaintiff

Dr. Aric Hausknecht M.D.

witness.

MR. GALLUZZI: I would like to call Dr. Hausknecht.

(Whereupon, the witness took the stand and was sworn.)

ARIC. HAUSKNECHT, M.D., called as a witness, having been first duly sworn, testifies as follows:

THE COURT: State your name.

THE WITNESS: Aric, A-R-I-C, Hausknecht, H-A-U-S-K-N-E-C-H-T.

THE COURT: Your professional address.

THE WITNESS: 6915 Austin Street, Forest Hills, New York.'

DIRECT EXAMINATION

BY MR. GALLUZZI:

Q. Good morning, Doctor. Where do you live presently?

A. Where do I live? In New York City.

Q. Your occupation is?

A. I'm a physician.

Q. What type of physician?

A. I specialize in neurology and I specialize in pain management. Neurology is the field of medicine which deals with the treatment and evaluation of disorders of the nerve system. The nerve system include the brain and the spine. Typical problems I deal with are neck and back pain.

Q. Are you licensed to practice medicine in the state of New York?

A. Yes. I received that license to practice medicine and surgery in the state ofNewYorkinl992.

Q. What medical school did you attend?

A. I went to Mount Sinai Medical School and graduated in 1991. Previously, I attended Duke University and graduated in 1987 with a bachelor of Arts in physical anthropology. I completed one year of medical internship at Beth Israel Medical Center. I completed two years of neurology residency training at Mount Sinai Medical Center, and J completed the remainder of my training at New York Hospital, Cornell Medical Center, and Memorial Sloan Kettering Cancer Center.

Q. Did you - are you on any medical committees or teach anywhere?

A. Yes. I'm currently in private practice. I have an office in Queens and an office in New York City.

I'm on staff at several different hospitals, including Beth Israel Medical Center. I'm involved in teaching of the residents in neurology and pain management.

Q. Your practice in New York City, is there a name for it?

A. Yes. The name of my practice is Complete Care.

Q. Primarily, what does Complete what kind of patients or cases does Completes Care deal with?

A. The type of patients that I see are adult patients with neurological and pain management problems. Some common disorders that I treat in my office include headaches, neck pain, back pain, numbness, weakness.

Q. What percentage, if you could put one, in your practice, deals with injuries to the nervous system due to trauma?

A. Approximately half of my practice is due to traumatic injuries to the neck and back.

Q. Now, did you see Gregory Canonico at some point in 2001?

A. Yes, I did.

Q. What were the circumstances under which Mr. Canonico came to your office?

A. He came to my office on 8-16-02. I brought my office record with me to refresh my recollection. At that time, he basically had complaints of neck and back pain which he attributed to a car accident that had occurred on July 9th of 1999. So about three years prior.

Q. Is that the history that you took?

A. Yes. The history that I took was that he was the driver of the vehicle and was restrained, and he was involved in a rear-end collision. He had initially gone to an emergency room and subsequently had seen his internist, Dr. Landau, and physiatrist, Dr. Marini; he had seen a neurologist, Dr. Yaffe; an orthopedist, Dr. Unis. He received an extensive course of physical therapy, and had made a slight response to the treatments, but was still experiencing neck and back pain. The neck pain was radiating into his right arm. It was associated with paresthesia, which is basically a tingling sensation. The back pain was radiating into his legs, and he also was having his tingling sensation in the legs. The patient had been unable to return to his initial occupation as an electrician, and was working as an electrical estimator. He had problems with particular activities and specifically was having difficulty sitting, standing, and kneeling. The patient had been involved in a subsequent motor vehicle accident on 5-3-02 and reported that basically just flared up his neck and back, and that his neck and back injuries had never really recovered from that first accident in '99.

Q. Regarding the second accident, did he discuss with you a new injury he had in the second accident?

A. Yes. In addition to an exacerbation of his neck or the cervical region, or his back, or the lumbosacral region, *he* was also experiencing middle back pain, thoracic back pain. He indicated that was not a problem he had after the '99 accident. He believed it was predominantly due to the second accident in 2002.

Q. Did you perform a physical examination?

A. Yes. I performed a comprehensive physical examination including a detailed neurologic examination with specific emphasis on the neck and back, because these were the areas that he was having problems with. On the physical examination what I found was, there was 5 -/5 weakness of the hip flexors, or the muscles that bring your knee up to your chest. Motor strength is graded on a scale of 0 to 5 with 0 being complete paralysis and 5 being full strength. He. was far from being paralyzed, but he did not have the full strength he should have had in his hip flexors. He had evidence of cervical paraspinal tenderness. The cervical spine is the neck. Spasm is the reflexive tightening of the muscles that occurs due to a neck injury. The patient also had a positive spurring maneuver. That maneuver is performed by taking an individual's head in your hands and bending it sideways and backwards and pushing down on the top. If there is a problem with the spine, either the vertebrae, which are the bones, the discs, which is the cartilage between the bones or the nerves - this maneuver will exacerbate, that underlying pathology and reproduce the patient's symptoms. That test was positive which indicates there was pathology in the neck. The patient also has a positive straight leg raising test. The straight leg raising test is performed by slowly elevating an extended leg while the person is in a seated position. This puts tension on the muscles, tendons and ligaments in the lower back, or the lumbosacral spine, and can reproduce the patient's symptoms; therefore, indicating there is an injury or pathology in the lumbosacral spine itself. The patient also demonstrated a restriction of mobility. There was 25 percent loss of lateral flexion in the cervical spine on both sides. Normally, your neck, you can move it forwards and backwards. You can rotate, and you can move sideways. In this case, his ability to move sideways, to touch his area down to his shoulder, was limited by 2 5 percent. Normally, an individual can do that to approximately 70 or 80 degrees. In this case, he could only do it to about 5 0 degrees. There was also a 25 percent loss of forward flexion in the lumbar spine. This is the ability to bend forwards at the waist with your knees extended. Normally, an individual car get to about 90 degrees, almost touching their toes. In this case, he was missing 25 percent. So he couldn't get to about 65 degrees. That was the positive findings on the physical exam. The remainder of the exam, motor strength reflexes and sensations were intact.

Q. Why is - the loss of lateral flexion and forward flexion, is it clinically significant?

A. Yes, it is.

Q. Had you reviewed records or any diagnostic tests of his prior treating physicians?

A. Yes, I had reviewed them.

Q. Which records had you reviewed?

A. Specifically, his prior treating neurologist, Dr. Yaffe, his prior treating doctor, comparing their finding to my finding; they are basically consistent. They show that Mr. Canonico had loss this mobility after this first accident, and it had remained relatively stable. Typical in this type of condition, that an individual is going to have an - good days and bad days. There are going to be days when someone has more pain or less pain, more stiffness or less stiffness; efficiently, the patient's condition was static or stationary. There was no significant change for the better or for the worse.

Q. Did you review any MRI films that were taken after the first accident?

A. Yes. I reviewed MRI films and reports of the cervical spine, or the neck, and the lumbar spine, the lower back.

Q. What were the impressions from the cervical spine MRIs?

A. In the cervical spine, the patient had sustained three disc bulges at the level of C3-4, C4-5, and C 5 - 6. In the lumbar spine, the patient had a left side disc protrusion at L3-4, impinging on the L3 nerve root and a disc herniation at L4-5.

Q. What was significant in the context of the plaintiff's history, his complaints to you? What was significant, if anything at all, about the lumbar MRI at the - the cervical MRI and the bulges? A. The MRI are objective diagnostic tests as opposed to a subjective complaint or a symptom. So if somebody comes into my office and they say, I'm having a neck pain, that's a subjective complaint. I, as an outsider observer, without actually examining that individual, I don't know whether that patient is actually having neck pain or not.

The physical examination, the restriction of mobility, the motor weakness, the spasm, these are objective findings; that is to say, another clinical examiner, with similar background, who examined the patient at a similar time would find similar findings. These are objective. In this case, he had subjective complaints of neck and back pain with radiation. He has objective findings of cervical and lumbar impairment, including weakness, spasm, tenderness, and restriction of mobility, - these were also supported by the objective findings on the MRI - three disc bulges of the neck, two disc herniations of the back, in the lower back, with associated impingement on the nerve root.

Q. What is a disc herniation? What happens to a disc?

A. I brought a small model of the spine which I think will help me to explain some of the anatomy and some of the pathology to the jury, if I might.

THE WITNESS: May I step down, please?

THE COURT: Sure.

A. (Cont'g) The human spinal column is made up of separate bones known as vertebrae. Each one of these is known as a vertebra. They stack up on each other. In the neck and cervical spine, there are seven vertebrae. In the back or the thoracic spine, there are 12 vertebrae. In the lumbosacral spine or lower back, there are five vertebrae. In between each of those vertebrae is a piece of cartilage known as a disc. It is a soft jelly-like substance that's sitting between the bones, and it is held in place by a series of ligaments or tough connective fibrous tissue. It allows you to have flexion ability so you can bend forwards, backwards, and rotate, but maintain stability. The human spinal column has two basic functions. One is to provide support so that an individual can stand upright. And there is a point of attachment to the arms and legs. The second major function is to protect the spinal cord and the nerve roots, because nerve tissue cannot regenerate. Once that nerve is damaged, that damage is permanent. Nerve tissue is not like other tissues in the body, such as skin or muscle where it can repair itself with scar tissue. Scar tissue in the nervous system does not function like nervous tissue. The discs themselves can be slipped out of place. It can either be bulging. And a bulge occurs when the ligaments that normally keep that disc in place are stretched so that, there is no tearing of the ligament, but a stretch beyond its elastic limit, so the disc bulges outwards. A disc herniation occurs when there is actually a tear in that ligament, a piece of that cartilage. That jelly-like substance protrudes through that tear. Depending on the location of a disc bulge or disc herniation, it can produce different types of symptoms. If the disc herniation is in the

MR. BARRY: Your Honor, could we have a question?

Q. Do you want to show the level or the herniation, the herniations that occurred in Mr. Canonico, and explain where the nerve impingement was?

A. Certainly. In the. cervical spine, it was at the level C3-4, C4-5, and C5-6, so the disc itself is named for the vertebrae it is between. So the disc between the C3 and C4 vertebrae is a C3-4 disc. So in the neck, C3, C4, C5, C6, is basically right in the middle, where my four fingers are. In the lower back, the disc herniations were at L3-4 and L4-5, once again, basically in the small of the back just above the buttocks. The disc herniation at L3 on the left would refer to this L3-4 disc pushing forward through that ligament that is torn and pressing on this nerve root. In the neck, the nerve roots go down to the arms. In the lower back, the nerve roots go down to the legs. They provide innervation to the muscles so you can move, and they also send feedback to the brain in terms of sensation.

Q. In this case, what symptoms did the cervical disc bulges cause Mr. Canonico?

A. The symptom that it caused him, or the complaints were that of pain and these paresthesias, or this tingling sensation, that he was having in his arms.

Q. Is that type of injury to the disc consistent with Mr. Canonico's history of being hit in the rear in an automobile accident?

A. Yes. Disc bulges and disc herniations can basically occur by two mechanisms. One is wear and tear or degenerative joint diseases. Over the course of a Lifetime, just do to microtrauma, sitting, standing, walking, getting older, these ligaments become more brittle, these joints wear down. Disc bulges and herniation can also occur from an acute traumatic event. So if you are sitting in a car and you are (demonstrating) hit from behind, and your spine is flexed and extended and rotated, it can stretch and tear those ligaments that normally keep. the bones in place and keep the discs in p1ace. In this case, he is a young man. He doesn't have any evidence of degenerative joint disease or osteoarthritis. He never had any problems before. It is unlikely this was a consequence of degenerative joint disease. He was involved in a traumatic event - - the car accident. There, is a strong temporal relationship in terms of the onset of his symptoms and the car accident; and, therefore, with a reasonable degree of medical certainty, these bulges and herniation occurred due to the trauma and due to the accident.

Q. Did you review EMG testing that was done to Mr. Canonico after the first accident?

A. Yes, I did.

Q. What were the results of - I believe there were two or three done?

A. There was an EMG done on 10-4-01 and 10-18-01. There was another one done on 8-8-02.

Q. Would you discuss those EMGs and what the results were. A. Certainly. An EMG or electromyography is done in conjunction with an NCV, or nerve conduction velocity, test. Basically, the human nervous system functions by sending small electrical impulses from the brain into the nerve roots, into the muscles, or the motor units. This electrical activity is created by the flux of certain ions - including potassium, calcium, fluoride - across the nerve cell membrane. With computer technology, we're able to actually measure these electrical impulses in the human body. Therefore, the EMG study can determine if there is any nerve damage; if so, what level that nerve damage is coming from and how severe it is. For example, if there are 12 lights on the top, on the ceiling, and there is a light switch over here with four switches, and you turn on all four of those switches, and only ten lights go on, it is going to mean there is a problem with the switch, that there is a problem with the wiring, or there is a problem with the light bulb in the fixture it self. It is the same thing with the body. If you make a fist, and that fist does not occur properly, it is an indication that there is a problem in the brain, which would be the switch, a problem in the wiring, which would be the nerve root, or a problem in the muscle, which would be the bulb in the fixture. This NCV EMG can objectively identify where that damage is. In this case, it did indicate that there was nerve damage in the lower back at the level of L4-5 - so, the two nerve roots that are exiting adjacent to those disc herniations at L3-4 and L4-5. And there was also evidence of left C7, C8 radiculopathy or the two nerve roots that are exiting adjacent to the lower disc in the neck.

Q. What complaints of Mr. Canonico's would be consistent with the findings in that EMG?

A. The EMG being positive is an indication that there is a radiculopathy or abnormal function of the nerve root. The typical symptoms that an individual has with a radiculopathy include pain. That pain is often radiating and described as electric, or burning-like. A person may experience altered sensation, either lack of sensation or heightened sensation or abnormal sensation. A person will often experience tightness or pain in the area of the disc itself in the neck. The patient will also have typical findings on a physical examination in a radiculopathy. That will include motor weakness, loss of reflexes, loss of sensation, restricted mobility, and muscular spasm. Usually an individual will have some of the symptoms and some of the signs; rarely will they have everything from both categories. The symptom and signs in this case - the symptoms that Mr. Canonico was experiencing - was radiating pain with the paresthesia. And the signs he had on the physical examination included muscle spasm, motor weakness, restrictive mobility, positive spurring maneuver in the back, and positive straight leg raise test in the back. These signs and symptoms that he demonstrated were consisten with the objective findings on the MRI, which showed structural pathology, the disc bulges, and the disc herniations, as well as the abnormalities on the EMG which showed physiological impairment, radiculopathy.

Q. So is it accurate to say that your physical examination and findings are consistent with those in the MRI and EMG test?

A. Yes. A doctor is sort of like a detective. They take in all of the clues - what the patient tells you, what other doctors have found, what they see on the examination, what physicians were able to glean from diagnostic tests, the MRIs, the EMG. They process all of this information. They come up with a conclusion and plan on how to treat the patient. In this case, all of the indications were that he had *a* pinched nerve and a slipped disc both in his neck and back - both what he was telling me and what I found on the examination, what I was seeing *on* the MRI and EMG, as well as what other doctors have found.

Q. Do you have an opinion within a reasonable degree of medical certainty if Mr. Canonico's complaints of pain and limitation in the neck and back had. completely resolved prior to his second accident?

A. I do have an opinion, yes.

Q. What is your opinion?

A. That they had not resolved prior to the second accident. It is clear from v;hat Mr. Canonico has told me, as well as what his other doctors had documented, as well as what was shown on the MRIs and EMG which was done before the second accident, that he was having significant problems with his neck and back, including pain, prior to the second accident.

Q. What effect, if any at all, in your opinion, did the second impact have on Mr. Canonico's neck and back?

A. Based upon what he has told me, Mr. Canonico, as well as what I see in the records from the other doctors, the second accident had very little impact on his neck and tack injuries. These were already established. They had already been caused by the first accident. The second accident may have caused a temporary exacerbation, but did not produce any significant change in the underlying injury itself. There were no new disc herniations. There were no new disc herniations; that was already there.

Q. Is a person with herniation and cervical bulges, such as Mr. Canonico, more vulnerable to a minor exacerbation?

A. Yes. When these discs are slipped out of place, the spine doesn't function properly. It makes it more susceptible, more vulnerable to a subsequent injury.

Q. And a subsequent injury can. occur from mundane, normal, everyday tasks; is that true?

A. It is possible that simple activity, like bending or lifting, could actually set it off, the condition - maybe not cause a new injury, but exacerbate that underlying injury that was there.

Q. What body system is the neck or the cervical spine?

A. The neck or cervical spine is part of the neurologic and musculoskeletal system.

Q. The lumbar back, the same question.

A. Likewise, the lumbosacral spine is part of the neurologic musculo-skeletal system.

Q. Do you have an opinion within a reasonable degree of medical certainty as to whether or not Mr. Canonico, as a result of the first accident, suffered a permanent limitation to his neurological and musculoskeletal system?

A. I do.

Q. What is that opinion?

A. With a reasonable degree of medical certainty, he has sustained permanent loss of use of this portion of his neurological and muscular skeletal system, specifically his neck and his back. His neck and back will never function normally, as they had been. He is going to experience pain and stiffness; he is going to have good days and bad days; he is going to have difficulty with activities which require use of the neck and back, such as sitting, standing, bending and lifting.

Q. Do you have an opinion within a degree of medical certainty as to whether the complaints of pain and the symptoms - lack of range of motion, and limitation of range of motion - are causally related to the automobile accident of July 9th, 1999?

A. Yes, I do.

Q. What is that opinion?

A. With a reasonable degree of medical certainty, these injuries - the disc bulges, the disc herniation, the radiculopathy - were caused by the car accident.

Q. ___ Did you see Mr. Canonico again, another time?

A. Yes, I did.

Q. When was that?

A. I saw him again on March 26th of 2003. He indicated his condition was essentially unchanged. He was still having neck and back pain, and he wanted to discuss further treatment options which we had addressed during our initial encounter, including cortisone injection around the disc and surgical intervention. He had been receiving rehabilitation, including physical therapy, under the supervision of Dr. Marini, but really had not seen any significant improvement in his neck and lower hack pain. He had been taking medications. But these only provided temporarily symptomatic relief. His physical exam was essentially unchanged. He still had weakness in the upper and lower extremities. He was still experiencing tenderness and spasm in the neck and back. The restricted mobility in the neck and back was really unchanged. At that point, I told him that, basically, his only options for relief were surgery or what's known as an epidural steroid injection, which is performed by inserting a 3 1/2 inch needle through the muscles of the lower back between the lamina process and the vertebrae into the epidural space, which is the area around the nerve roots and the disc, and injecting a solution of cortisone, which is a strong steroid and acts an anti-inflammatory; Lidocaine, which is a local anesthetic and numbs out the nerve roots; and normal saline, which is salt water, which helps to break up any adhesions or scar tissue. Mr. Canonico agreed that because - because of the pain he wanted to try it. And on 4-24-03, last week, we did the first of three lumbar epidural steroid injections.

Q. Are there any risks to that procedure?

MR. BARRY: Objection, your Honor. Could we approach?

(Discussion held off the record at the bench.)

BY MR. GALLUZZI:

Q. Dr. Hausknecht, what is Mr. Canonico's prognosis?

A. The prognosis is basically what can be expected in the future. In this case, his prognosis is poor. Once these discs slip out of place, they never go back to their normal healthy state. They tend to become dried out and form the basis of osteoarthritic changes. It is, basically, he is going to have neck and back pain for the rest of his life. There is going to be good days, there is going to be bad days, depending on what type of activity he has done, depending on what type of treatment he is receiving. He is going to need treatment.

Q. You mentioned back surgery; would that be to the lumbar spine?

A. Yes. If the epidural steroids do not alleviate his symptoms, then lower back surgery would be an option.

Q. As far as projecting over the future, what kind of neurological care, if any at all - I'm not talking about an operation right now - as far as the treating or seeing a neurologist on a continuing basis, what would the cost of that be and how long would he have to do that, in your opinion?

A. In my opinion, he will probably have to come in four to six times per year, depending on his condition; if he is doing well, maybe he only has toco me in every three or four months. If he is doing poorly, he might have to come in every month. In general, a neurology visit costs about $100.

Q. How many years would you expect he would have to be treated in such fashion?

A. Really indefinitely.

Q. If he were to have surgery, do you know what the costs associated with surgery are?

MR. BARRY: Objection, your Honor.

THE COURT: What's the objection?

MR. BARRY: One, it is speculation at this point. There is nothing in the record to indicate that that was a recommendation. There is no testimony as to that.

MR. GALLUZZI: There is no testimony as to what? He testified that he may need surgery. That's his nextcption.

THE COURT: I'm going to allow it. Go ahead.

THE WITNESS: The surgery would' consist of opening up the spine, taking out the disc, fusing the bones together with plates and screws. 'The cost of that surgery, including the surgeon, the anesthesia, the hospitalization, and the rehabilitation afterwards, is somewhere in the neighborhood of $40,000 to $50,000.

BY MR. GALLUZZI:

Q. Doctor, do you have an opinion within a reasonable degree of medical certainty as to whether or not Mr. Canonico, after his first accident treated his symptomatology with regard to his neck and back conservatively?

A. I'm not sure I understand the question.

Q. The treatment that Mr. Canonico received prior to coming to you for his neck and back, would you consider that conservative treatment with regard to his back and his neck?

A. Yes. I would consider it conservative treatment. It is appropriate. They are basically three types of treatment that one can receive for a back problem: Conservative, which would include physical therapy, chiropractic, acupuncture, different types of medication; two, interventional, which would be with a pain management specialist, cortisone injections, facet blocks, trigger point injections, epidural steroid injections; and the last option is surgical discectomy, fusion, laminectomy.

MR. GALLUZZI: Thank you. I have no further questions.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. BARRY:

Q. Good morning, Doctor.

A. Good morning.

Q. What year did you become licensed in the state of New York?

A. 1992.

Q. Did you at any time take a test to become board certified?

A. Did I become board certified.

Q. Yes.

A. I'm double board certified in neurology and pain management.

Q. What years did you become board certified?

A. 1996, in both.

Q. During your - did you do a residency at Mount Sinai?

A. Correct.

Q. What specific areas was your residency in? Was it general medicine or -

A. Neurology.

Q. Did you take any further courses after that or further advancement in medicine?

A. Yes.

Q. What else did you do?

A. I did continuing education, seminars on neurology, seminars on pain management.

Q. Have you written any articles?

A. Not since medical school. No.

Q. Where do you have an office?

A. In New York City and in Forest Hills, Queens.

Q. Do you testify - • have you ever testified before this case today?

A. Have I testified before? Yeah, I testify approximately once or twice a month.

Q. And you do that for plaintiffs, defendants, or for both?

A. For both. Usually, if it is for patients I treat in my office, it is on the plaintiffs, but, occasionally, I am retained as an expert, meaning you see the patient one time for the defendant or for the plaintiff.

Q. What percentage of your practice involves testifying in court?

A. Less than 1 percent, I guess.

Q. Are you also retained as an expert to write reports for people?

A. Yes.

Q. That would include examining the person ore time or two times and then writing a report?

A. Correct.

Q. How often do you do that?

A. On a weekly basis.

Q. On a weekly basis?

A. Yes.

Q. Once a week?

A. A couple times a week.

Q. Now, Mr. Canonico came to you back in August of last year, 2002?

A. Correct.

Q. Was he referred to you or did someone bring him to your office?

A. Nobody brought him to the office, no.

Q. How did he come into contact with you?

A. I'm not sure.

Q. When a new patient comes into your office, do you have a sheet that takes down information?

A. Yes.

Q. _ On your sheet, do you have any information on there which can say that the person is referred to you?

A. No.

Q. Is it important to know how the person came to your attention to be treated?

A. Sometimes, yes.

Q. Mr. Canonico lives in Westchester County, and your office is in Queens. Didn't you inquire from him how he found you?

A. No.

Q. That wasn't important to you?

A. No.

Q. Was he referred to you by a physiciar.?

A. I'm not sure.

Q. Was he referred to you by anotherdoctor?

A. I'm not sure who referred him to the office.

Q. Well, when he first came to you, was it for an initial examination?

A. Yes.

Q. When he first came there, did you inquire from Mr. Canonico why he was there?

A. Yes.

Q. Did he tell you why he was there?

A. Yes.

Q. What was his purpose?

A. He had terrible pain which couldn't be relieved by all of the therapy he had received, and he wanted an opinion of a pain management specialist.

Q. Did anybody ask you to write the report?

A. Yes.

Q. Who asked you to write his report?

A. His attorney, Mr. Galluzzi.

Q. Did any doctor ask you to write a report?

A. No.

Q. So do you know who referred Mr. Canonico to you?

A. As I said, I'm not sure.

Q. Did you ask Mr. Canonico how he located you to do this exanination?

A. I didn't ask him, no.

Q. Prior to August 16th of 2002, hadyou ever seen Mr. Canonico before?

A. No. That was the first time.

Q. And other than this visit., the only other time that you saw him was approximately a month ago, on March 26th, 2003?

A. And last week, when we did the injection.

Q. *So* you have seen him a total of three times?

A. Correct.

Q. Now, the first time that you saw him was more than three years after the initial accident, July 9th, 1999?

A. Correct.

Q. When he came to you, did he bring any medical records with him?

A. Yes.

Q. What records did he bring with him?

A. All the records that I discussed; his treating doctors: Marini, Yaffe, Dr. Landau, emergency room, MRI, EMG.

Q. He brought you the emergency room record from which hospital?

A. Sound Shore.

Q. That wa's from the first accident?

A. I'm sorry. He didn't have the records. He just told me that he had gone there, yes.

Q. Did he bring any films with him?

A. The second time he brought the films.

Q. But back in August of 2002, when you first examined him, you wrote in your report that you reviewed records including testing records. You didn't actually review the films?

A. No. The films I reviewed in March.

Q. But when you saw him in August and report in August regarding the of the right knee, the lumbar spine, and the cervical spine, that wasn't based on your actual review of any films; was it?

A. No. It was based upon the radiology films.

Q. You looked at a report from a radiologist?

A. Correct.

Q. MRI films are subject to interpretation of a radiologist?

A. Correct.

Q. So what one person sees, another person may not see?

A. Correct.

Q. You didn't actually look at the films at that time, but you made an opinion just based on that report?

A. Yes, I did. I believe what the radiologist wrote and what - when I saw the films in March, I knew first-hand that it was correct. I agreed with the radiologist's interpretation.

Q. But you didn't actually look at those films to make your own determination?

A. No, I did. In March he brought the films in. The next time he came, I asked him to bring the films in. There was a bulging at C3-4, C4-5 and C5-6. There was a herniation at L3-4 and L4-5, impinging on the nerve root.

Q. Doctor, if you would look at your report on page 3, under testing?

A. Yes.

Q. Now, you write there - go down to "Testing," the fifth line: "MRI of the cervical spine apparently revealed disc bulges at C3-4, C.4 - 5, and C5 - 6." You put the word "apparently" in there?

A. Correct.

Q. That doesn't mean that there was or there wasn't? That's a ye 53 or no question.

A. I can't answer that yes or no.

Q. Because you didn't look at the films; correct?

A. That's not correct. Let's make it clear. In August I did not have the films. I only had the report. In March he returned and I looked at the films.

Q. That's not the question.

A. What - the films showed what was exactly on the report.

THE COURT: Doctor, just answer his question. Mr.' Galluzzi will bring it out. He'll let you explain.

Q. You wrote a report in August stating that, "apparently," it "revealed disc bulges," but you didn't look at any films, and you wrote this based on a report that you saw -

A. Correct.

Q. - without actually looking at the films to confirm for yourself?

A. Correct.

Q. In the course of your type of work, you do review films?

A. Yes.

Q. And as a neurologist, you would look at MRI films of the spine; correct? That's part of your job?

A. Sometimes I look at the films; sometimes I will look at the report. If I have a reason to question the interpretation, then I would look at the films. Otherwise, I would just rely on the report.

Q. Do you have any certifications in radiology?

A. Am I board certified in radiology? No.

Q. When you examined Mr. Canonico back in August of 2002, did you inquire of him who his doctors were prior to him coming to you?

A. Yes.

Q. Did he provide you with a list of doctors who he had seen?

A. Yes.

Q. Was one of them a Dr. Marini?

A. Yes.

Q. Now, did he tell you when the last time was that he had seen Dr. Marini prior to your treatment in August?

A. He told me that he was actively treating with him. I don't know if he told me the exact day that he was there. But it was an on-going process.

Q. When you saw him in August of 2002, you understood it to be that he was still receiving treatment from Dr. Marini?

A. Correct.

Q. And he was still under his care at that time?

A. Correct.

Q. Do you ever speak to Dr. Marini?

A. No.

Q. Do you have any reports in your file from Dr. Marini?

A. Yes.

Q. Do you have any reports from Dr. Marini regarding the second accident?

A. Yes.

Q. What date is the report?

A. I have a report from Dr. Marini is 8-19-9 9. I have one from September 3 0th, '99, October 28th, 1999, and August 2nd, 2001.

Q. Do you have a May 31, 2001?

A. No, I do not. November 16, 2 001. I'm sorry, I do. May 31st, 2002 as well.

Q. Did you have that report prior to examining him in August of 2002?

A. I don't recall exactly.

Q. But you had that report in your file now?

A. Yes.

Q. That report refers to the May 3rd, 2002, accident; doesn't it?

A. Correct.

Q. Is there a history of the present illness listed in that, report?

A. *Yes.*

Q. Could you read what it says for history of the present illness?

A. It is based on an exam, 3-30-02. The date of the report is 5-31-02. "The patient indicated while driving his motor vehicle in a stopped position he was struck by an oncoming car to the rear."

Q. Continue. Read the whole paragraph.

A. He indicated that: "Due to acute discomfort to the cervical spine and lumbosacral spine, that he presented to Putnam County Hospital where no x-rays were obtained, and he was released on pain medication. He presented" The whole thing?

Q. Yes.

A. (Reading cont'd.) "He "was sent home with progressive cervical neck pain referred to the right shoulder and lower back pain upon bending as well as extending. He indicated that within the last few days, he has had continuing posterior headaches with blurry vision. "He presents today for an evaluation and a course of physical therapy."

Q. Can you turn to the next page, which it says "Impression," if you can read that.

A. (Reading.) " Impression. "Number 1. Acute cervical hyperflexion extension injury. "Number 2. Rule out cervical radiculopathy. "Number 3. Lumbosacral derangement. "Number 4. Post traumatic headache syndrome."

Q. That all refers t;o the May 3rd, 2002, accident?

A. Correct.

Q. Now, when you examined him in August, you knew about the May 3rd, 200 2, accident?

A. Absolutely.

Q. And you knew about the first accident?

A. Correct.

Q. But you didn't examine - you had never had the opportunity to examine Mr. Canonico prior to the second accident?

A. Correct. The first time I saw him was in August.

Q. Which is after the second accident?

A. Correct.

Q. So you never - not - because he hadn't been to you, you never had the opportunity to see what his symptoms were prior to the second accident?

A. That's correct.

Q. Prior to your examination, you had some records one year from Dr. Marini and you also said you had Dr. Yaffe's records?

A. Correct.

Q. Now, in your,report, which is dated August 16th, 2002, you note on page 4 of that report that: "The patient was involved in a subsequent motor vehicle accident. These records are unavailable for review."

A. Okay.

Q. So you knew that he was involved in another accident, but you didn't review any records, from that accident?

A. Not at that time, that's correct.

Q. Did you inquire from Mr. Canonico if he had gone to a hospital after the accident, the second accident?

A. Yes.

Q. Did he tell you where he went?

A. He told me that he had gone to an emergency room, he had gone to several doctors, including Dr. Marini. And I asked him to give me - to get me those records as well as the films the next time he came back.

Q. The next time he came back wasn't until this year, a month ago?

A. Correct.

Q. So you wrote this report based on not seeing records from the second accident, and based on not seeing any films; correct?

A. Correct.

Q. Do you know if any films were taken of the plaintiff after the May 2nd, 2002, accident?

A. I believe there were films of his middle back, the thoracic spine, done.

Q. But you don't know if there were any films taken of the lumoar back?

A. I don't believe that there were. Hold on one second. To the best of my knowledge, only the thoracic spine films were performed after the second accident.

Q. When Mr. Canonico came to see you in August of 2002, you also said you reviewed the EMG. Did you review the actual EMG or did you just review the report?

A. The EMG report as well.

Q. The data that comes with it?

A. The data that comes with it.

Q. So you reviewed all of that?

A. Yes.

Q. After you saw Mr. Canonico in August, did you recommend to him that he should have an MRI?

A. No.

Q. You didn't recommend an MRI for the neck or lumbar region?

A. No. He already had it done.

Q. Those MRIs were done before the second accident; weren't they?

A. Yes.

Q. Page 4 in your report.

A. (Reading.) "Patient was involved in a subsequent motor vehicle accident. These records are unavailable for review. "With a reasonable degree of medical certainty, the motor vehicle accident of 7-9-99 is partially responsible for his current physical condition."

Q. So you write that the accident of 7-9-99 is only "partially responsible for his current physical condition"?

A. Yes.

Q. What is "partially"?

A. It is less than total.

Q. So you don't know - he is there for treatment in August, and you can't determine if the injuries that you're examining for at that time were from this May 2nd accident or the July 9th accident?

A. It is hard to answer that yes or no. I only know that he told me that he didn't re-injure his neck or back. It was only until I had the opportunity to review those other records that it was clear it was really the first accident that caused the neck and back problems.

Q. You wrote in your report "partially"; correct?

A. Correct.

Q. If it was something other, it was significant, you would have used a word like "significant"; wouldn't you have, Doctor?

A. I don't understand that question.

Q. "Partially" is a word that means not a lot. It is not significant. It is small?

A. No, that's not true.

Q. Well, it was 9 9 percent. If it was 99 percent responsible, you would use the word "partially"?

A. Yes.

Q. You would?

A. Yes, of course.

Q. Don't you think "partially" means smaller?

A. No.

Q. Is there a medical definition for the word "partially"?

A. It is not a medical term. It is a general term that means part of the whole.

Q. But, Doctor, in paragraph 4 and 5 of your report, you used:he word "significant" four times in two paragraphs. Now, don't you think if you had examined him and said that that first accident was responsible for all of his pain in August of 2002, you would have used the word "significant"?

A. No. There are two different terms: one is referring to a clinical condition and one is referring to a percentage.

Q. Well, isn't "significant" "significant" means significant; doesn't it? It means a lot?

A. No.

Q. What does."significant" means?

A. It means serious.

Q. "Serious." So if you're saying that his injuries were serious enough in August of 2002, wouldn't you have used that word "significantly" responsible instead of "partially" responsible?

A. No. I told you in that paragraph I'm talking about a causal relationship, a percentage; Was it wholly, zero, or something in between? The other paragraph I'm talking about the impact that it has on his clinical conditions. You're mixing apples and oranges. The two terms are not interchangeable.

Q. When you write reports, Doctor, don't you use specific words to get across a specific point?

A. That's the purpose of a report, to communicate.

Q. And "partially" is a very vague term?

A. Is it vague?

Q. Yes.

A. I don't think so.

Q. You don't know what percentage it means. "Partially" can be interpreted many different ways?

A. You told me it means "small."

Q. You seem to say it means everything.

A. That's not what I said. Exactly what 1 said is it is a part of the whole.

Q. What is the "whole"?

A. I'm not sure that I can answer. The "whole" is the entirety.

Q. But when you wrote that "with a reasonable degree of medical certainty the motor vehicle accident is partially," you wrote that because you really couldn't state specifically that it was solely responsible; could you?

A. At that time, that's correct.

Q. Well, that's what you wrote at that time; isn't it correct? That's what the records that you had indicate and nothing that he was involved in a second accident?

A. That's correct.

Q. And you still wrote "partially" because you can't confirm whether it is or is n't?

A. At the time I wrote that report, that's correct.

Q. When you wrote this report, you had no plan on seeing Mr. Canonico again did you?

A. No, that's not true. I told him that I felt his options were injections and surgery on that date. If he decided he wanted to go that route, to return to the office with the films as well as the rest of the records. He returned in March, and we scheduled to do the injections. He has the first injection. He has two more appointments to complete those injections. If they don't work, we will refer to surgery.

Q. If you were going to see him again, wouldn't you put that in your report?

A. I did.

Q. You said he is "in need in further medical attention." In his report, it says: "The patient is in need of further medical attention. I have recommended that he continue with his rehabilitation program." A. "Ultimately, he may require epidural steroids or further surgery."

Q. It doesn't say you're going to see him?

A. I'm not going to argue with you. I'm the doctor writing the report. Who else is going to see him?

Q. If you are going to put in a report that you want to see him, wouldn't you put that in the report? Isn't that something that is important if you want

A. It is important to tell the patient. It is not important to put it in the report.

Q. Do you have your office records from that day?

A. These are them.

Q. Does it say anywhere in your office records that you told him to come back in three, four weeks?

A. I told him to come back if he decided he wanted to do the injections, or the surgery. That's when he came back.

Q. If he decided. You didn't make an appointment for him to come back?

A. Of course I can't force somebody to do an injection. I can't force them to do a surgery.

Q. We're not asking you that. You said he needed some follow-up. Wouldn't it be important to see him again?

A. If he wanted the surgery or the injection, otherwise, he was already treating with Dr. Marini and getting the therapy. When he decided that he wanted the injection, he came back.

Q. How many times did he see Dr. Marini from the time that you saw him up until you testified here today?

A. I don't know. But I would

Q. From August of last year up until today, do you know if he is still treating with Dr. Marini?

A. Yes, I believe he is.

Q. And he went to Dr. Marini's physical therapy place at Westchester Rehabilitation Associates?

A. I assume so. Dr. Marini was here. I mean, you could ask him. I don't want to testify for Dr. Marini.

Q. Now, did you ever speak to Dr. Marini?

A. You asked me that before. I said, "No."

Q. Since stating that he was treating with him and receiving physical therapy and other treatment, and you're an expert neurologist, don't you think it would have been important for you to speak to Dr. Marini to see what kind of treatment he was providing, to see if it worked?

A. I already knew from his records. I knew from what Mr. Canonico cold me. There was no reason for me to call him. It was clear what was going *on* here.

Q. You were satisfied with that?

A. Absolutely.

Q. Now, the next time you examined him was on March 26th of 2003?

A. Correct.

Q. Did he call you, Mr. Canonico?

A. Yes.

Q. Where was that office visit conducted?

A. In the same office, Forest Hills.

Q. In your report, you note: "He has been receiving rehabilitation. He also does exercises at home." You wrote that in your report of March 26th, 2003?

A. Correct.

Q. You also note that he was being followed by a physiatrist doctor, Dr. Marini?

A. A physiatrist.

Q. Was that information given to you by Mr. Canonico at that time?

A. By Mr. Canonico as well as the fact that he wrote the facts and brought these records and films in, and I was able to review them at that time.

Q. What other records did he bring you?

A. The subsequent motor vehicle accident records from Dr. Marini, the MR I films, the report from the cervical spine.

Q. Did you see any records from Putnam Hospital?

A. Not to the best of my recollection, no.

Q. But you saw records and reports from Dr. Marini?

A. That's correct.

Q. Did you see a report from Dr. Marint dated September 12, 2002?

A. No, I did not.

Q. Did you see an EMG nerve conduction study which was conducted on August 8th, 2002, by Dr. Marini?

A. Yes, I did.

Q. That you saw, but you didn't see the report?

A. The report of the EMG I did see.

Q. You didn't see any written report from Dr. Marini regarding that other than the EMG report?

A. I don't understand the question. I saw the EMG and the EMG report dated 8- 08.

Q. Did you see a report by Dr. Marini, June 29th, 2002? A. No, I did not. Q. You think it would be significant to get all of the records before you examine Mr. Canonico from Dr. Marini?

A. No. It is pretty clear what's going on here.

(Whereupon, Defendant's A was marked for identification.)

BY MR. BARRY:

Q. Doctor, I want to show you a report from Dr. Marini dated June 29th, 2002. It is Defendant's A for identification. It is a report regarding the accident of May 3rd, 2002. It says assessment: "The patient presents with continuing cervical derangement, with thoracic and lumbosacre 1 derangement. The injuries sustained by the patient are permanent and causally related to the accident referred to above." Have you ever seen a copy of that report?

A. No, I have not.

Q. Don't you think it would have been helpful to see that report?

A. It doesn't say anything different.

Q. It says "causally related to the accident above" which is dated 5-3-02.

A. It is clear it is a typographical error. Once again, Dr. Marini can testify for himself. I don't want to testify for Dr. Marini.

Q. You didn't see that report before today?

A. No.

Q. You're going to speculate that's probably a typographical error?

A. Dr. Marini was here. He can speak for himself.

Q. We're asking you. You're here now.

A. I can't speak for Dr. Marini.

Q. That's a medical record

THE COURT: Let's move on.

Q. When Mr. Canonico came to you on March 26th, 2003, was he taking any medications?

A. Yes. He was on Vioxx and Skelaxin.

Q. Did you prescribed those?

A. No.

Q. Do you know who did?

A. I assume it was Dr. Marini, but I'm not sure.

Q. Do you know how long he was taking them?

A. I do not know.

Q. When you examined him on March 26th, 2003, did Mr. Canonico present to you with any complaints of having a dropped foot.

A. On that date, no.

Q. Any incontinence?

A. No.

Q. Any signs of pain within the toes?

A. No.

Q. Loss of sensation in the foot?

A. No.

Q. Atrophy in either calf?

A. No.

Q. Atrophy in the thigh?

A. No, not that I was aware of.

Q. In your examination, you didn't do any type of examination on Mr. Canonico's right knee; did you?

A. No. The knee is outside of my field of expertise.

Q. That's in the orthopedic field?

A. Correct.

Q. You limited your examination to neurology?

A. To the neck and back.

MR. BARRY: I have nothing else. Thank you, Doctor.

MR. GALLUZZI: Just a little bit.

REDIRECT EXAMINATION

BY MR. GALLUZZI:

Q. Doctor, at the time that Mr. Canonico presented to your Forest Hills Office, were you aware that he was working in Long Island City, Queens?

A. I did not know where he was working. But I was aware of his job responsibilities as well as difficulties he was having on the job.

Q. Would you concur that Long Island City, Queens, is closer to Forest Hills than Westchester County?

A. It is about 10 minutes away.

Q. Counsel was asking you a lot about reports that you read prior: What did you know prior to your examination? Isn't it true that being a board certified neurologist that you can perform an examination and come to your own conclusions?

A. Absolutely.

Q. And didn't you do that in this case?

A. _ I did.

Q. And didn't you fand that all the prior history as concerns testing, objective testing, agreed or concurred with your findings?

A. Yes. The patient's clinical presentation, the symptoms he was having as well as what was identified *on* the physical examination, was consistent with the disc bulges and herniations that were seen on the MRIs and the radiculopathy that was identified on the EMGs. All of these MRIs and EMGs were done prior to the second accident. So it is clear these occurred as a consequence of the first accident. He may have exacerbated his neck and back in the second accident, and that may have contributed partially to his condition, but the overwhelming majority of his condition was caused by the first accident. This is confirmed by the reports of the doctors that treated him, including Dr. Marini.

Q. Now, counsel also marked a Marini record that you just testified about, and he made an emphasis on "continuing." Isn't it true that if the second accident didn't exist, that Mr. Canonico's conditions; and symptoms would be continuing into the future, always continuing?

A. Yes,itistrue.

MR. GALLUZZI: Thank you very much.

THE COURT: Okay. Thank you very much, Doctor.

THE WITNESS: If the chart is going to be remanded, he has an appointment to come back in three weeks. Is it possible to get the chart back and make copies of records so I can treat him when he presents to the office?.

THE COURT: You should get it back before then. I don't think the jury is going to go that long.

(Whereupon, the witness was excused.)