MR. McCRORIE: Okay, I have nothing further.

THE COURT: Thank you. Counsel, You can proceed

CROSS EXAMINATION

BY MR. HALL:

Q. Good morning.

A. Good morning, sir.

Q. You have testified in Court before?

A. Yes.

Q. Okay and you said generally in the past it has been for patients under you care, correct?

A. Correct.

Q. And, in fact, do you recall testifying back in February of this year on behalf of a patient by the name of Jesus Solis?

A. Correct.

Q. Right, that was in New York County, correct?

A. I believe so.

Q. All right, do you recall being cross-examined, by your understanding, by my partner Steve Cohen?

A. I remember that session, correct.

Q. Okay and in this case did Dr. Kaplan also testify on behalf of Jesus Solis?

A. I cannot say. I am not sure.

Q. Did Dr. Kaplan have any involvement in Jesus Solis'

care and treatment?

A. I believe so.

Q. Did you get Jesus Solis as a patient through referral from Dr. Kaplan?

A. Correct.

Q. Can you tell the jury, I know that will be approximation, about how many times per year you testify either in a courtroom like this or Workers' Compensation Board hearing or some other type of medical hearings?

A. Well, compensation board hearing once to twice a month. Usually once a month and Court hearings like this one, all this here is an average one to two times a year.

Q. And is there is a difference between how much you charge for compensation board hearings oppossed to testifying in Court cases like this one?

A. Compensation board hearings are, again, court appointment fees. I don't determine the fees.

Q. And your typical rate for testimony in Court is $10,000?

A. Correct.

Q. What percentage of your patients, Dr. Brisson, are involved in litigation?

A. I cannot tell you, sir.

Q. But more than Ms. Blue, you have at least we know about Mr. Solis, there are others?

A. There are others.

Q. Yes?

A. Yes. That is the way of life in this part of the world. There are others. The exact percentage I cannot tell you.

Q. More than ten percent?

A. I think it would be probably as an orthopedic surgeon involved in an accident case, ten to fifteen percent.

Q. Okay, ten to fifteen percent of your patients have active cases in litigation, at some point in time during your care and treatment, correct?

A. Quite possible.

Q. And do you ever get patient referrals from lawyers?

A. Direct referrals?

Q. Yes.

A. Some lawyers will sometimes send patients to my attention, correct.

Q. And about how many a year, if you can estimate for us?

A. I cannot tell you that.

Q. In connection with cases for your patients that are in litigation, do you prepare reports for lawyers if you are asked?

A. If I am asked then the answer is yes.

Q. Do you get paid for that?

A. I do get paid.

Q. How much do you get paid for your reports?

A. Anywhere from $500 to $750.

Q. Per report?

A. Per report.

Q. How many such reports do you write per year, if you can estimate for us?

A. I cannot say for certain, but probably that two reports a month or so, two to three reports a month.

Q. Now if you had to estimate and I am going to ask you to, based upon your testimony on behalf of patients who are in litigation, between the Court testimony and the reports that you write for the lawyers who asked for them, what percentage of your income does that represent?

A. Less than five percent.

Q. You testified earlier, before you testified here today, you met with Mr. McCrorie twice, correct?

A. Correct.

Q. Now, are you going to be paid for the time that you spent with Mr. McCrorie preparing for you testimony in addition to the 10,000 you being paid to appear here?

A. You mean today, no it is all inclusive.

Q. Everything is included in that $10,000?

A. Yes.

Q. How long did you meet with Mr. McCrorie on those two occasions you sat down?

A. I would say both times approximately four to five minutes.

Q. So about an hour-and-a-half in total?

A. Approximately.

Q. Okay do you write any reports for Mr. McCrorie on behalf of Ms. Blue?

A. I am not certain. I believe not.

Q. Did you want to check your file?

A. Yes, I believe the only thing I have on Mrs. blue is the office notes.

Q. Okay, you didn't write a formal report at the request of Mr. McCrorie for Ms. Blue?

A. I don't believe so. I really don't. It would be here, but I don't have it.

Q. Do you recall for Mr. Solis when he testified back in February, do you write a formal written report for him?

A. I did, I think, for him.

Q. Trolman, Glaser and Lichtman; is that correct?

A. You know better than I.

Q. I have the transcript right here, if I told it was for Mike Madonna -- excuse me David Corley at Trolman, Glaser and Lichtman; does that reflect your recollection?

A. Again, I don't really remember the names and types

of case. I just remember that I did a report.

Q. Do you know if you have any other cases with Trolman, Glaser & Lichtman?

A. I couldn't tell you.

Q. Do you have cases with more than one or two lawfirms?

A. Oh, all over the place. I just don't know.

Q. Dr. Brisson, how long are your typical visits with the patients?

Why don't we focus on Ms. Blue. Typically, how long were your visits with Ms. Blue in your care and treatment, each office visit?

A. When they came to me?

Q. Yes.

A. They certainly vary, but you know, quite frankly after a bit of time with her easily 20 to 30 minutes.

Q. Okay, all right, I am going to show you what I have in my hand, a fax from your office and actually has appointments listed for Ms. Blue for December 12th 2011, 15 minutes. January 25 2012, 15 minutes. March 7, 2012, 15 minutes. April 11, 2012, 15 minutes.

A. Counsel, that is a scheduling system. That does not reflect the time spent with her.

Q. You are saying that the minutes and the start time here doesn't reflect how much time you spent with them?

A. Probably I can tell you also they waited a long time from --

Q. I am not asking for what she can tell me -- I am asking you to tell me if you spent more than 15 minutes listed in your records, yes or no?

A. Sir, scheduling is 15 minutes --

Q. You are saying you spent more than 15 minutes with her on those visits?

A. Definitely with her. Easily.

Q. And we are talking about the rates you are getting paid before with Mr. McCrorie, am I correct that for the visits Ms. Blue made to your office she was charged anywhere from $49.26, for example, for the January 27, 2010 visit; is that correct?

A. She is prescribed compensation --

Q. I am asking you what was paid for the visit? You charged and paid an amount of money, it was $49.26; is that correct?

A. I will answer the question if you let me.

Q. I am asking for yes or no; is that correct?

A. Yes, it is correct.

Q. All right, then for a visit on October 14, 2009 you charged and were paid $71.49, is that true?

A. Correct. I suppose. You have it.

Q. You don't have it in your file?

A. I can pull it out if you want to ask me questions about these things.

Q. Is that your billing summary?

A. Correct, statement of account.

THE COURT: What is your question, Counsel?

Q. I don't know what you are checking. You believe what I said is correct, so.

A. I was waiting for additional questions on the matter. I am ready.

Q. You are ready. Am I correct that for the x-rays you charged and were paid $171.21?

A. This one for some reason I don't have listed here, so.

MR. HALL: May I approach the witness, your Honor?

THE COURT: Yes.

A. That is the compensation rate for x-rays?

Q. I am not talking about what the rate is.

You charged and were paid $171.21 for the x-rays, correct?

A. Yes.

Q. All right, now you talked about different rates when a patient like Ms. Blue comes in and you are getting paid $50 bucks a visit opposed to $150 or $200 a visit, is the standard of care that you render any less?

A. No, not at all.

Q. You get the same treatment as a patient like Ms. Blue whether or not you are paying 50 bucks for the visit or $150 or $200 a visit, correct?

A. Yes.

Q. So in the future if Ms. Blue comes back to you and says, you know what, I was paying 50 bucks before it is all I really can afford, are you going to turn her away?

A. I never did that, I don't know why I would do that now.

Q. In the future going forward, you would treat her at the same rate you are treating her now, correct?

A. I would have a normal conversation like we have in the office and we deal with private patients.

Q. Okay, if you decided, you know what, I have been treating Ms. Blue, I put a three level fuse in her neck, I feel a commitment as a doctor, an obligation of a doctor to continue treating her, if she said, I can only continue to pay the 50 bucks a visit, you some accept that?

A. I can assure you if that is the case I will do that.

Q. Concerning the 170 bucks, Doc, that is all I can afford, you would do that, right?

A. I am telling you I would take care of her the same way I would before. I wouldn't change anything.

Q. I want to go back to the MRI cost for a moment when Mr. McCrorie asked do you know what the standard fee is for an MRI, do you know what Ms. Blue paid for her MRI's?

A. I don't. I mentioned what I thought I knew, but I don't.

Q. When was the last time you checked, just generally, as to how much an MRI costs?

A. Because sometimes private patients tell us how much they pay at a facility. I don't really now, $1,000 to $1,200 many times.

Q. Before you came here today, did Mr. McCrorie and you discuss fact that you were going to be testifying or asked to testify about future medical care costs?

A. There was discussion about future medical costs, but not MRI's as such.

Q. Isn't an MRI part of future medical care? You just testified it was, yes or no; isn't it?

A. It is, but not the rates. Rates are what I know from my patients in the office.

Q. As you are sitting here today, you cannot tell us -- you can't tell this jury how much Ms. Blue will have to pay in the future for an MRI, can you?

A. Well, I am faced with these people all the time --

Q. Doctor, please, yes or no. You cannot tell them. You didn't make any calls or do any research into this

before you took the stand, did you?

A. About the topic, no.

Q. You understand, right?

A. No.

Q. You didn't, right? You pulled the number out based upon something that you had heard about some time in the past and you didn't follow up before you took the stand today, correct?

A. I see patients every day. The answer is not so up in the air. I don't run an MRI business, I am not going to give you a rate that I don't myself charge.

Q. That $1,200 rate, you cannot state with any type of certainty that is what she would have pay in the future, correct?

A. It would be very likely, sir.

Q. I am not asking for likely, you can't say with any certainty, can you?

A. Certainly in sense you are asking me, no.

Q. Thank you. Let's go back to this issue of certainty, there is also discussion of future surgery and you were reflected for a minute after Mr. McCrorie asked you a question and you said that it was moderately likely, correct?

A. Correct, sir.

Q. Can you sit here and state to this jury within a

reasonable degree of medical certainty Ms. Blue is going to need future cervical surgery?

A. As I said, moderately lightly.

Q. I am not asking you to explain your answer again, I am asking you to answer my question, Doctor.

Can you say within a reasonable degree of medical certainty that Ms. Blue will require further surgery, spine surgery in the future, yes or no?

A. The answer is no.

Q. Now, Mr. McCrorie elicited on direct examination that you had treated a patient and a client of his by the name a Daniel Breen (phonetic) correct?

A. Correct.

Q. And that --

MR. McCRORIE: I didn't mention the name under HIPPA. I would stay that is the name, but we shouldn't be talking about the name.

MR. HALL: You are correct. That is my fault. I apologize.

THE COURT: That is stricken from the record.

Q. Mr. B?

MR. McCRORIE: The name is out there.

Q. You testified in that case back in October of last year; isn't that correct?

A. Correct.

Q. And in that case the care and treatment for Mr. Breen included a discectomy and fusion also, correct?

A. Yes.

Q. That was also cervical spine, correct?

A. Yes.

Q. And Mr. McCrorie had gone through the same type of education of the jury in that case with regard to the physiology of the human spine?

A. To a logic stand, correct.

Q. Same thing with regard to the care and treatment of what the surgery entailed, same thing?

A. Correct.

Q. Mr. McCrorie paid you $10,000 to testify in this case as well, correct?

A. Correct.

Q. In that case the referral actually came from a different doctor, a Dr. Hauskinecht, correct?

A. You would know better. I cannot recall.

MR. McCRORIE: I will stipulate.

MR. HALL: I certainly would.

Q. Mr. McCrorie will stipulate Dr. Hauskinecht is another doctor who you get patients from by way of referral?

A. Very few. I know him, but I don't get many patients from him.

Q. Are any of the patients, other than the person we

are talking about just now, involved in personal injury litigation?

A. (No response.)

Q. The Hauskinecht referrals?

A. I operate as follows. The answer is no.

Q. Other than this one?

A. I cannot answer the referral part as you are describing it to me. The sources of the patients are all walks, all types.

Q. You are not saying that Dr. Hauskinecht hasn't referred other litigants to you, that could be true?

A. No, no, Dr. Hauskinecht has referred other patients, personal injuries in the past. The answer is yes, but he doesn't refer much to me to begin with.

Q. Okay, but the cases he does refer to you tend to be personal injury cases?

A. I don't know. I cannot recall for certain.

Q. You just said he referred other plaintiffs of personal injury cases to you in the past?

A. If you understood this, that is not what meant. I said a patient comes from various sources. Has Dr. Hauskinecht refered cases to me that have personal injury history, the answer is yes.

Q. Right, okay, that is what I thought I heard.

Now, do you have any current patients who are

clients of Mr. McCrorie other than Ms. Blue?

A. I don't know. I don't think so.

Q. Now, Doctor, am I correct that your first visit with Ms. Blue was on September 21, 2009, correct?

A. Correct, sir.

Q. You were seeing her at the request of Dr. Kaplan, correct?

A. Correct.

Q. You used to share an office with Dr. Kaplan; is that right?

A. Correct.

Q. I think on direct examination Mr. McCrorie elicited an answer that back in 2009 you were sharing an office back then, correct?

A. Correct.

Q. Now, for how long did you share an office with Dr. Kaplan?

A. I arrived there in January 2007 and left in October of 2010.

Q. And since October of 2010, you have been in your current office, correct?

A. Correct.

Q. How about before you shared an officer with Dr. Kaplan, where was your practice before that?

A. At the office I am at now.

Q. Okay, and what years was that?

A. 2000 to January 2007. 2000 to 2007.

Q. From the 2000 to 2007 time period, did you share those offices with any other doctors?

A. It was a gentleman by name a Dr. Keisman that worked there and for a while Dr. Wright.

Q. Is that Dr. Arden Keisman?

A. Yes.

Q. What was his specialty?

A. Pain management.

Q. Did you and Dr. Keisman have a relationship where you would refer each other clients or he would refer you clients and you might refer him clients?

A. He referred to me. I referred to him very little.

Q. Other than Ms. Blue, Dr. Kaplan has referred other patients to you in the past; is that correct?

A. Yes, Dr. Kaplan has referred to me, yes.

Q. He has referred quite a few patients to you in the past?

A. In the past more than now he did.

Q. Again, we know that Jesus Solis was at least one of the other patients that he referred you, right?

A. Dr. Kaplan is an orthopedic surgeon. I saw quite a few patients from him.

Q. And many of his patients were involved in personal

injury actions?

A. Correct. Probably higher percentage than otherwise. The answer is yes.

Q. How many referrals per year and I guess I will break it down. You said not as much as before back in the day when you were getting more referrals from Dr. Kaplan, about how many a year were you getting, Dr. Brisson?

A. Probably maybe two to three a week.

Q. Okay and when Dr. Kaplan was referring you two to three patients a week, how many of those patients were personal injury litigants?

A. They were compensation cases versus no fault or whatever.

Q. Whatever, there was an accident involved there was some kind of proceeding, either court proceeding, comp, no-fault; what was the percentage?

A. Pretty high, probably 90 percent.

Q. 90 percent of those referrals back when you were getting two to three a week, those people had some sort of legal action going, correct?

A. Quite likely, correct.

Q. How about now currently, how many referrals do you get from Dr. Kaplan presently on a weekly basis, since you broke it down that way?

A. Less now. I probably get one case or two a month

maximum.

Q. Okay, so that is anywhere from 12 to 24 cases a year now from Dr. Kaplan, correct?

A. If so many, but okay.

Q. Okay, what percentage of those current referrals from Dr. Kaplan are involved in some type of injury case, same percent?

A. Got to be the same percent.

Q. 90 percent?

A. I would think so.

Q. Now, when you first saw Ms. Blue, you were talking about taking a history, you took a history from her when she first came to see you, correct?

A. Correct.

Q. All right, and you said the history was important, correct?

A. Correct.

Q. And can you tell us why taking a history from a patient that you are seeing on referral for the first time is so important?

A. Because it is the basis of a good patient physician relationship. In order to treat well you need to have, the best you can, accurate facts, especially when it comes to a patient's symptoms.

Q. Okay and the word whiplash that appears in your

report from your first office visit, that was a phrase used by her to describe what happened to her?

A. Well --

Q. Or did you characterize it as something else?

A. Whiplash is a medical diagnosis, so I probably used it.

Q. Based upon what she told you in terms of what happened in that motor vehicle accident?

A. Of course.

Q. Now, I am not sure if I heard this correctly on direct examination, but I think you said you saw her like 12 months after the accident; is that correct?

A. Well, September 21st 2009 is the initial consultation with me and she got involved with this motor vehicle in October of 2008, so it is almost a year. Is 51 weeks.

Q. Actually, the accident happened in March of 2008?

A. Is that correct?

MR. McCRORIE: No, October. The accident happened in October of 2008.

Q. Okay, I am sorry.

All right, so you saw her about a year after the accident?

A. 51 weeks after, correct.

Q. Her complaints at that time were with the neck and

the back, at least for what she was seeing you for?

A. Neck, back, left arm.

Q. You said with regard to the neck complaint at that time they were at five out of ten on a scale of one to ten?

A. It was subjective pain rating five over ten.

Q. From zero to five you characterize that as what type of pain?

A. It is zero to five, five is getting there, but zero to is five usually manageable pain. It is moderate paint. It is not severe pain.

Q. When you go from five to ten, how does that characterize, six to ten?

A. You get into a range where a patient, at least subjectively, is pointing out to more issues regarding to the pain experience.

Q. What would an eight out of ten be?

A. Counsel pain is a personal experience. Eight out of ten is a way for the patient to express to us some the severity of their experience.

I mean, some people have eight over ten and don't look that bad. Some people have five over ten are rarely functional. That is a subjective area. Eight over ten in normal parlance is significant pain.

Q. Now, do you know if Ms. Blue received any medical treatment in connection with her lower back in the

year-and-a-half in the year between the accident and when you first saw her?

A. I believe other consultants have been involved in pain management there.

Q. Were those records made available to you?

A. I am aware that some of them were made available to me afterward.

Q. Did you see Dr. Kaplan's record?

A. Yes.

Q. Now, in the time leading up to the accident, the years leading up to the accident, are you aware of whether or not Ms. Blue had any medical care and treatment in connection with the neck and lower back?

A. History-wise, I am not aware of anything.

Q. When you say history-wise, you mean from what she told you, correct?

A. What I know from the moment I met her the answer is I don't know of anything that existed before.

Q. The moment you met her she told she hadn't had any prior care treatment for her neck and back?

A. That is what I heard.

Q. You talk about in your direct examination the assault that occurred about three days before the accident, correct?

A. Correct.

Q. Now, the first time you were made aware of that was when?

A. That was recent. That was a week ago.

Q. So in your history it doesn't reflect that, correct?

A. Correct.

Q. Ms. Blue didn't tell you about that?

A. I was not aware of it. The answer is correct.

Q. So, if we were talking about before, you were talking about neurologic conclusions, that someone who had the kind of degenerative condition that Ms. Blue had in her neck and back with the type of -- even a very light impact, it could be activated by something as light as a very light impact, correct?

A. Correct.

Q. How about something very light like being punched in the arm very forcefully?

A. It could certainly create it too.

Q. And being shaken?

A. That is an event that could do it too.

Q. When you first saw Ms. Blue on September 21, 2009 your impression was that she had cervical disc herniation with myelopathy and lumbar disc herniation without myelopathy, correct?

A. Correct sir.

Q. Myelopathy, from what I wrote from the record, was numbness in her arm or at least one of the symptoms was numbness in her arms?

A. Weakness as well.

Q. And weakness. When you talk about the weakness and numbness in her arm, was that based upon her complaints to you or something else?

A. No, no, this is based on physical examination. The objective sign that we obtained while examining her.

Q. So in the examination you were manipulating her arm or something?

A. Testing the muscles strength.

Q. Okay, it wasn't from one of the films, it was from your manipulation of her arm?

A. Yes, the films cannot tell me if the patient is weak or not. That is from a clinical examination.

Q. Is there anyway or have you seen in the past a person effect the results of that type of clinical examination when they either tell you something about numbness or don't quite perform to full capacity?

A. It is always possible. I have seen it in the past.

Q. Your clinical examination of her, which is what you base the numbness and myelopathy, that can be manipulated by the patient, correct?

A. The answer is yes.

Q. Thank you.

Now, we are talking about the November 8, 2008 MRI of -- MRI's I should say of the cervical lumbar spine, you had a change to see those during your first consultation, correct?

A. Correct.

Q. And then in your narrative report of September 21, 2009, you note that you reviewed the cervical spinal MRI films, they showed spondylosis at C5-6, right?

A. Correct.

Q. You also note that x-ray by Dr. Kaplan which she had taken some time earlier, that demonstrated spondylosis at C5-6 and C6-7, which was advanced, correct?

A. Correct.

Q. Okay and then when you saw Ms. Blue again on October 14, 2009, that is for a follow-up after that, right?

A. Correct.

Q. All right, and your notes from that follow-up visit you indicate that you had the opportunity to review that MRI again -- I guess you actually did review it again, correct?

A. Correct.

Q. You wrote on it note that MRI shows spondylosis which is severe at C5-6 and C6-7 with narrowing or disc space, correct?

A. Correct, sir.

Q. You also took x-rays that day, correct?

A. Correct.

Q. Those showed severe spondylosis and narrowing, right?

A. Yes, sir.

Q. Okay and again you testified -- and I don't want to beat a dead horse, the narrowing is part of the aging process in the spine, correct?

A. Yes.

Q. Drying out the discs, correct?

A. Correct.

Q. I am 45 years old, I am not going to guess how old you are, we have those types of conditions going on in our spine?

A. We do, both of us.

Q. I am not going to guess the ages of the jurors, but that is that part of the normal aging process, correct?

A. We fall apart, sir.

Q. How old was Ms. Blue when you first saw her?

A. 54.

Q. So the spondylosis that you saw, you would agree, is not unexpected in a woman of that age?

A. Garden variety, if you want to call it. The answer is that spondylosis along with our history. I can't say anything about the patient.

Q. That didn't make her any different than another 53 year old you might have seen, right?

A. I meant what I said. If I just look at this without knowing any history I cannot comment on the fact other than there is narrow bone spurs and so forth.

Q. And I think you agree and I believe you testified on direct examination that that spondylosis was present in Ms. Blue's spine prior to the accident of October 2008, correct?

A. It is definitely a developmental aging process.

Q. Type of degenerative arthritis of the spine, correct?

A. That is one way to put it.

Q. Not brought on by trauma?

A. No. We said that also.

Q. Spondylosis is a condition of the spine that can get progressively worse, correct?

A. With regard to radiographs, what do you mean? Tell me, that is all I am asking.

Q. If the condition gets progressively worse so that you might come to a point in time that spondylosis can continue to develop in a person's spine to the extent that they might start feeling symptoms, correct?

A. Spondylosis can. The answer is yes.

Q. That is fine. That is all I want.

A. Yes.

Q. Thank you.

A. I would like to say more, but --

Q. And the spondylosis as it develops can result in pain and that can happen even without trauma, correct?

A. But, the point is that --

Q. I am asking you it can happen without trauma?

A. If that is a question the answer is yes, it can happen without trauma.

Q. Thank you. You said in part when you were giving your opinion before, that your impression that the injuries to Ms. Blue's cervical spine were due to the work related motor vehicle accident was based at least in part upon the history she gave you concerning her onset of symptoms, correct?

A. That is right.

Q. Okay, now going back to the MRI films of the lumbar spine in the initial office notes when September 21, 2009, you note that the lumbar spine MRI showed no nerve root impingement, correct?

A. Correct, sir.

Q. Would you agree that MRI's are diagnostic tests that can show nerve root impingement or irritation?

A. It shows a relationship -- well and if there is impingement I would normally see it.

Q. Are there are also clinical tests for nerve root impingement?

A. Correct.

Q. And can you explain what the clinical tests for nerve root impingement are?

A. In which part of the body?

Q. How about the lumbar spine, that is what we are talking about now.

A. Without complaints of weakness, numbness to the lower leg, more often than not, weakness of the dorsiflexion of the foot. Weakness in the big toe flexion. Weakness in the -- the push off from the ground. Numbness to the top of the foot or bottom of the foot. And you can have what we call a positive straight leg raising test, when we lift the leg you have a shooting pain indicating sciatic distribution of the pain.

Q. What are you looking for when you perform the straight leg raising test?

A. You are looking for the effect of tension on the nerve. If the nerve is inflammed then you put all the tension it will react and give you additional pain symptoms, so it is a sign of inflammation.

Q. So, if it is positive you would say that reveals tension root signal; is that correct?

A. Correct.

Q. And what does that mean?

A. Again, it would mean that if the nerve has somewhere in its section an inflamed area because when you put that nerve on the tension the pain is reduced. There is a lot of reason for this. That is why I am putting it in a generic way.

Q. Okay, on September 21, 2009, after the initial consultation with Ms. Blue, you did a straight leg raising test, correct?

A. That is right.

Q. And the straight leg raising test failed to reveal any tension root sign, correct?

A. Correct.

Q. The clinical test that you did on September 21, 2009 was negative for nerve root impingement, correct?

A. Correct.

Q. The MRI that was done on November 8th, 2008 was also negative for nerve root impingement, correct?

A. Correct.

Q. We can have bulges and herniations without necessarily having a lost of containment which would cause pain, correct?

A. I agree with that.

Q. That would go for also there may be bulges and herniations that don't cause the nerve root irritation,

correct?

A. Right.

Q. Now, in terms of the Woodhull Hospital x-rays, do you have a copy of the x-rays?

A. I want to --

Q. I want to focus on the lumbar spine.

THE COURT: What is the exhibit you are using now?

MR. HALL: That is exhibit Plaintiff's 2C.

Q. Now that x-ray report that was taken in the hospital immediately after the accident shows there was no fractures or dislocations in the lumbar spine, correct?

A. Correct.

Q. And the intervertebral disc space in the lumbar vertebral body were all normal, correct?

A. In terms of the relationship, yes.

Q. What does it mean that the intervertebral disc space and lumbar vertebral bodies were all normal in height?

A. Means that you have normal configuration. That is sort of God has given to us in terms of disc heights. Lordosis is position of bone. It is one layer of knowledge. It doesn't give you disc tissue appearance, it gives you a bone relationship. That is a good start.

Q. All right, the x-ray report doesn't mention any condition in the lumbar spine that might cause or suggest

instability, correct?

A. They didn't do flexion extension, but we don't see any displaced bone in this way.

Q. The impression that is lumbar sacral spine radiographs within normal range, right, other than those other things we talked about that were gynecological and not related?

A. The answer is yes to your question, sir.

Q. Now, your initial September 21, 2009 recommendation you said you were already leaning toward spinal surgery, correct?

A. Correct.

Q. That was after seeing Ms. Blue once?

A. Yes, but knowing that she had --

Q. Yes, you wrote that after seeing her once, right?

A. Yes, the answer is yes.

Q. And next at the follow-up on October 14, 2009, you mentioned that she failed conservative treatment, correct?

A. Yes.

Q. That is the assessment?

A. Yes.

Q. Surgery is warranted in this case, right?

A. Correct.

Q. That was your assessment, conclusion, after having seen her twice, correct?

A. Based on history, yes.

Q. Now, when you mentioned that she had failed conservative treatment, would you agree that before you proceed onto a spinal surgery with a patient, you would attempt to address the symptoms of the problem in the spine through other measures first?

A. It was done by the other people.

Q. I am Just asking you if you would agree with that?

A. But I am only one type of doctor.

Q. I am not asking what you did.

I am just saying would you agree that is the way it is generally done?

A. That is what happened to her, the answer is yes.

Q. You would agree first to try conservative care before moving onto spinal surgery, correct?

A. She had it for one year.

Q. Please, this goes so much faster if you can answer yes or no.

A. Yes.

Q. True, right?

A. Yes.

Q. So that would be medications, right?

A. Yes.

Q. Physical therapy?

A. Yes.

Q. Even injections?

A. Yes.

Q. Okay, so that's the course you would actually follow before you would actually progress onto a surgery, correct?

A. Was all done. The answer is yes.

Q. Now, you saw her again on January 27, 2010, correct?

A. Yes, sir.

Q. And again, it looks like you had taken x-rays at the prior visit, correct?

A. You are suggesting I took x-ray that day or the one that was done before?

Q. That wasn't the one at the prior visit, you took x-rays at a prior visit?

A. The x-ray I am referring to sir, the one that dates October 14.

Q. That's what I meant. You refer to the x-ray you had done at her last consultation, the prior one?

A. Yes.

Q. And you note that it showed severe spondylosis at C5-6 and C6-7, right?

A. Yes.

Q. There was anterior and posterior osteophyte formation, correct?

A. Yes.

Q. What is an osteophyte?

A. Bone spurs. Bone overgrowth.

Q. And do those occur over time?

A. Same process. Same aging process. They occur over time.

Q. You get to a point where they are noticeable, it takes a fairly lengthy period of time?

A. Yes.

Q. And again your assessment was she had failed conservative treatment options and then your plan was at that point starting to discuss cervical surgery, correct?

A. Correct.

Q. All right, now at that point you note in your plan as well I do not feel that the patient will improve unless surgery be performed, correct?

A. Correct.

Q. You also said that she would definitely, in your view, benefit from a decompression anteriorly with fusion, correct?

A. Correct.

Q. That was your opinion?

A. Yes, sir.

Q. After that on March 1, 2010, you note indicates that Ms. Blue called in order to attempt to schedule

surgery, correct?

A. You have it. I take your word for it.

Q. Okay, then she comes in again March 15, 2010, correct?

A. Correct.

Q. All right and I am looking at the imaging studies part, Doctor, it says you say, I had the opportunity to review the x-rays that were done in the past, so I am not quite sure which ones they were, do you know which ones?

A. Same ones we are referring to since the beginning.

Q. The ones for Dr. Kaplan or the ones that you did?

A. I did flexion extension views and he had regular x-rays done.

Q. Okay, which ones are we talking about here?

A. Both series.

Q. Okay, looking at all the x-rays and you noted instability at C4-5, correct?

A. Yes.

Q. The other two levels we have been talking about C5-6 and C6-7, there was spondylosis and narrowing, correct?

A. Correct, sir.

Q. But you don't note any instability there, correct?

A. In those two levels, no.

Q. Yes?

A. No.

Q. At the end of that note the plan is for anterior cervical discectomy and fusion, correct?

A. Correct.

Q. At all three levels?

A. Yes.

Q. During your career, you spent a lot of time seeing patients with herniated discs, correct?

A. Yes.

Q. And you operated on people with herniated discs, correct?

A. Yes.

Q. And in this case you operated on Ms. Blue to remove a disc which you felt that was the source of her pain and other symptoms, correct?

A. And as well as deal with the instability, yes.

Q. What about disc removal without fusion, do you do those as well?

A. In cases of cervical spine -- the answer to this question is that it can be done in specific situations, not hers.

Q. Well, could you explain to us why you didn't go that way with her?

A. Referring to cervical or lumbar?

Q. For cervical the surgery that you did, why you went the fusion and not simply the discectomy?

A. One side had small disc herniations, cervical, affecting the root at the exit point. We call that enunciate disc herniation. You can do a small dorsal window opening as a treatment, that will work well. When you have central disc problems like she had, wide based like she had, in addition instability, that treatment would not be recommended.

Q. So?

A. It is based on this case, the imaging has a lot of bearing. It is based on the history, plus the imaging here in terms of a decision and plan of which methodology to use.

Q. All right, so it was your opinion based upon all the factors that you need to go with fusion as opposed to just a discectomy, correct?

A. Historically, discectomies without fusing the cervical spine were done, they were proven not to give good results. As far as I know, nobody does that.

Q. No one does discectomies?

A. Sir, listen to me, I don't know of anybody who does that.

Q. Would you agree that the discectomy with fusion is highly invasive?

A. No, because it's the right treatment. Invasive, would mean I did more than I had to do. It is the right treatment. It is an invasive treatment.

Q. That's what I'm talking about. You showed the jury you cut open the neck, correct? Doctor just follow me here, you cut down the neck, correct and you have to move the windpipe over to access the spinal cord, correct?

A. Correct, to access the point --

Q. That is invasive; is it not?

A. It's an open surgery.

Q. Right. You have been doing this procedure based upon what I heard on your direct examination since about 1989; is that correct?

A. Long time --

Q. Is that correct?

A. That is correct.

Q. 1989, right, that is 22 years, right?

A. Correct, sir.

Q. All right and I think you testified on direct that you do about 100 or 200 of those a year; is that correct?

A. At the beginning I was not doing that many, but that is pretty much the average I do now the last couple of years.

Q. If you was a little less in the beginning, even if you take out a few, that is thousands of surgeries, correct?

A. Yes, it sounds like it, correct.

Q. Many times. If it was 200 a year for 22 years it is 4,400 surgeries?

A. I didn't do that many. I did thousands, yes.

Q. Does a patient's age potentially affect the success of --

A. You were talking this way. Let me get it again.

Q. I am sorry. I apologize.

A. Does a patient's age affect the likelihood of success of the procedure?

A. To some degree, in general, yes, but at her age group we are still in a good zone to have good outcomes.

Q. She was 53 or 54 at the time, that is still a zone -- age zone for a good outcome, correct?

A. Surgery has a place if indicated, yes.

Q. There are other factors that might affect the likelihood of success with this surgery with other medical issues?

A. Related or unrelated. You have to clarify your questions, sir.

Q. Other than unrelated medical issues?

A. Smoking, for example, is a bad one. If the patient that is not her, by the way, if she was having rheumatoid arthritis, that would be a problem. Steroid dependancy. Some people have bowel disease and need to take steroid. That would that be a bad thing.

Medical condition in general can have unfavorable success. That is spinal surgery and everything else.

Q. Did you anticipate when you requested the authority to do the surgery on Ms. Blue that it would lead to improvement of her conditions?

A. Yes.

Q. And that was certainly one of the goals, correct?

A. I wouldn't do it otherwise.

Q. And you wrote again January 27, 2010 that you did not feel she would improve until surgery was performed, in fact, right?

A. Because we had a history --

Q. I am just asking --

A. The answer is yes.

Q. You also wrote that she definitely would benefit from the procedure in your view?

A. Right.

Q. So the goal was to stabilize her neck, correct?

A. Yes.

Q. Try to address some of this neck pain, correct?

A. Yes.

Q. Some of the numbness in her left fingers, correct?

A. Correct.

Q. Based upon the people that are in your practice you have some patients who are litigants, involved in lawsuits, and some that aren't, correct?

A. Correct.

Q. Have you performed the discectomy and cervical fusion on both some of the patients that are involved in lawsuits and those that are not?

A. Correct.

Q. And you find there is a difference between the degree or quality of recovery between the patients who are involved in personal injury litigation oppossed to those who are not?

A. There is a different perception of outcome, yes.

Q. You said there is a difference of the perception of outcome, does that have anything to do with the term of malingering?

A. No, it just has to do with the sentiment of wellness after. I don't think malingering. Malingering you create -- at least for me, you create and make up symptoms. I think it is more like the level of satisfaction or the existence of symptoms versus complete dissipation.

Q. When you say sentiment, you mean -- again, what people's sentiment would be in a postoperative course of care while you are following up, what they are telling you about their symptomology, correct?

A. To some degree, yes.

Q. Whether or not surgery has actually cleared up or helped to alleviate the symptoms they were complaining about before the surgery?

A. The way they look at their outcome, in general. The answer is yes.

Q. Because those people who were involved in personal injury litigation have a stake in the outcome of their lawsuit, correct?

A. You say it.

Q. I am not just saying it. You know what malingering is, Doctor?

A. She is not malingering.

Q. I am not talking about anybody in particular here, I am talking about the notion. The notion is -- isn't malingering a medical term?

A. It is a term to describe people who create and amplify symptoms.

Q. So that is recognized in the medical community, that that does occur? There is a test for malingering, correct?

A. There are some attempts to try and identify those patients, correct. They are not the greatest.

Q. If it didn't happen, there wouldn't be a test to try to identify people who are involved in malingering, correct, it goes on?

A. I don't disagree with you on this one.

THE COURT: Counsel, how much longer are you going to be?

MR. HALL: Maybe 15 or 20 more minutes.

THE COURT: All right, let's keep going.

Q. How about the term secondary gain, you heard of that term as well?

A. Yes, I did.

Q. That is basically the same thing or similar to malingering, correct?

A. I don't know if it the same thing, but it implies an intention --

THE COURT: By the way, if any members of the jury need a break just raise you hand. You have to let me know, okay?

A. It implies an intention to considerations that I even as a physician would not know sometimes.

Q. Because the person making the complaints, the subjective complaints, might be so convincing that you couldn't even tell?

A. Well, that is one aspect certainly, and many others.

Q. Okay, now you did that surgery on April 22, 2010, correct?

A. Correct.

Q. And then in your experience, does recovery take time or is it like immediate?

A. It takes time.

Q. Okay, so because of that fact, you continued to see Ms. Blue and follow-up, correct?

A. Correct.

Q. All right, let's take a quick look at few of your records. And what was going on in post-op June 2, 2010, that visit; are you there?

A. Yes, I am there.

Q. That visit we are about five weeks out, correct?

A. She had surgery in April, yes.

Q. And you saw her for an urgent consultation, correct?

A. That is what it says, yes. I don't recall, but I am reading like you do.

Q. You take these notes contemporaneously with your visits?

A. Yes.

Q. It says here that is what happened on June 2, 2010?

A. No question.

Q. Urgent consultation, correct?

A. That is what it says.

Q. That is what it says. So that's the impression you had, she was showing up because she had an urgent complaint, correct?

A. Correct.

Q. And her complaint included sharp stabbing pain to

the left trapezius muscle and intermittent, correct?

A. Correct.

Q. She told you she had numbness that had come back in her last two fingers and the ulnar aspect of her arm, correct?

A. Correct.

Q. The ulnar aspect of your arm, just for the jury benefit?

A. Distribution extending to last two digits, fourth and fifth digit. Forearm, same area.

Q. At the end of your visit with her you day you had an assessment which was of residual cervical radiculopathy and myelopathy, correct?

A. Correct.

Q. Five weeks out. Please turn to July 12th, 2010.

A. I am there.

Q. You beat me. All right, we are about ten weeks out after that point, correct?

A. Correct.

Q. And Ms. Blue continued to complain of residual pain located at the base of her neck and into her shoulder bilaterally, correct?

A. Correct.

Q. She noted lots of pressure at the base of her neck, correct?

A. Correct.

Q. She did have residual tingling and numbness in the finger tips of her left hand, correct?

A. Correct.

Q. And your assessment, again, was she continued to complain of muscle spasms and pressure to the base of her cervical spine, correct?

A. Yes.

Q. All right let's go to July 26th, 2010, please, 12 weeks out at that point, correct?

A. Yes, sir.

Q. And in your assessment after visiting with with that day you said she suffers from muscle spasm and residual cervical pain, correct?

A. Correct.

Q. Okay, June first, 2011, at this point about 13 months out, so a little over a year, correct?

A. Yes, sir.

Q. All right and the first paragraph you are talking and you say result after spinal surgery is painful spasm in the left trapezius muscle group, unchanged in spite of aggressive pain management therapeutics, correct?

A. Correct.

Q. You also say the patient as well points out to some numbness to the tips of her left fingers that is sort of

reminiscent of prior symptomology, correct?

A. Same distribution, yes.

Q. Prior symptomatology prior. Means before the surgery, correct?

A. Correct.

Q. Last office note doctor January 25, 2012 we are about 21 months out at this point, correct?

A. Yes.

Q. And when you saw her for follow-up consultation that day she continued to complain of persistent unrelenting muscle spasms many in the cervical spine, correct?

A. Correct.

Q. The spasm is pain, right?

A. A spasm is a muscle tightening. It can be painful, in her case it is. It doesn't have to be painful.

Q. She is having spasms again in her cervical spine?

A. That is what she has.

Q. Movement of her neck provoked pain, range of motion was limited, correct?

A. Correct.

Q. Then, again your assessment was persistent neck pain that is associated with stiffness and spasm, correct?

A. Correct.

Q. Doctor, are you familiar with a company by the name of K2M?

A. Yes, I am.

Q. What is K2M?

A. A medical implant company.

Q. What do they do, make prostheses that are used in surgical procedures?

A. They make the peek, they make the plate, they make what you saw in the x-ray.

Q. And you are familiar with company by the name of Interpore Cross International?

A. Yes, I am familiar with that.

Q. What is Interpore Cross International?

A. It is another implant company.

Q. Now, you own shares of K2M, correct?

A. No.

Q. You don't, you owned shares of K2M back in 2004; is that right?

A. 2004 or 5, I did. The company was sold a year a half or two ago.

Q. Well, let's go back to 2008, in 2008 did you own shares in K2M?

A. I did.

Q. How many shares of K2M did you own back in October of 2008?

MR. McCRORIE: Objection.

THE COURT: Is there any relevance into this?

MR. HALL: Yes, your Honor. Subject to connection.

THE COURT: I will give you some leeway.

Q. How many shares of K2M did you own in October of 2008?

A. Little over 95,000, I think.

Q. 95,000 shares?

A. Yes.

Q. This is a company that makes implants that you use in your fusion surgeries, correct?

A. Yes, but I used other implants too, but in this case I used K2M.

Q. Did you use K2M for this surgery?

A. Yes.

Q. You remember Dr. Keisman that we talked about?

A. Repeat.

Q. Do you remember the Dr. Keisman that we talked about?

A. Yes, I remember him, yes.

Q. You shared office space with him for a number of years, correct?

A. Correct, sir.

Q. Okay, isn't it true that in February of 2009 Dr. Keisman filed a lawsuit on behalf of the United States of America and other states including New York under the

federal and New York State false claims act?

A. He did.

Q. Okay.

MR. McCRORIE: Objection.

Q. Isn't is that true that this lawsuit claimed that you were paid kickbacks to use the surgical hardware made by Interpore and an K2M.

MR. McCRORIE: Objection.

THE COURT: I will allow it, yes or no?

A. The answer is that this claim --

Q. No, did he not file that lawsuit?

A. He did, sir.

Q. Okay, thank you.

He did not make a claim in that lawsuit on behalf of the State of New York and the United States of America that you violated the New York and Federal False Claims Act because you were paid kickbacks to use the surgical hardware made by Interpore interest K2M?

MR. McCRORIE: Objection to claims. Why don't we asked what happened --

THE COURT: I will allow --

MR. HALL: He can ask about the outcome. You can ask about the outcome.

Q. Wasn't that one of the claims, yes or no? Was that claimed in the suit?

A. You know, I think you should know at least how I --

Q. Doctor, this jury should know that I am asking you a question.

THE COURT: Don't argue with the witness. Doctor, just answer the questions posed by the attorney. Plaintiff's attorney will have an opportunity to redirect.

MR. HALL: Thank you.

THE WITNESS: Your Honor, I found out about all this about a month ago --

Q. Doctor, please, is that the claim in the lawsuit?

A. Again -- I guess, I do know now. A month ago I didn't know? I didn't know until then.

Q. I don't care when you knew you were being sued.

A. I care when I knew.

Q. I bet you do, Doctor. You are being sued.

MR. McCRORIE: Objection.

A. I am not sued anymore.

THE COURT: Your comment is stricken from the record.

A. I am not being sued anymore, sir.

THE COURT: I want to get this done before lunch, so Doctor, please listen to the question and if you are able to answer it answer it. If you are not able to answer it tell me.

THE WITNESS: Okay, your Honor. Thank you.

Q. I am asking you a very, very simple question, if you can answer it yes or no that is fine.

You found out about it a couple of months ago, fine.

I am not asking when you found out, I am asking you part of the lawsuit if I had in February of 2009 by Dr. Arden Keisman, with whom you shared office space for many years, it is claimed that you were paid kickbacks to use the surgical hardware made by Interpore and K2M, yes or no?

A. It was his claim.

Q. Doctor, did you ever tell Dr. Keisman that Interpore paid you tens of thousands of dollars a year as a consultant, yes or no?

MR. McCRORIE: Objection.

THE COURT: Sustained.

Q. Did you ever tell Doctor --

THE COURT: Counsel, what he told somebody else? I am going to sustain that.

Q. Were you paid tens of thousands of dollars a year as a consultant to Interpore, a company whose implants you put in your patients' necks?

THE COURT: I will allow it.

A. 2003, 2004.

Q. You were a consultant then?

A. Yes, I was a consultant.

Q. In 2003 and 2004 are you putting Interpore prosthetics into your clients' necks?

A. I don't think they had neck implants. Probably not. I don't recall.

Q. Did you use Interpore products for lumbar spine surgeries back then when you were a consultant for them?

A. I probably did.

Q. Did you have written contract which provided that Interpore was going to pay you for quote, unquote consulting work back then?

A. Correct.

Q. And isn't it true that you did very little or probably no consulting work?

A. That is not true.

Q. You actually did consulting work pursuant to that contract?

A. I did.

Q. That was on behalf of the medical device company who manufactured the implant that you put in your patients' spines, correct?

A. Correct.

Q. Now, back then were surgeons paid based upon the volume of Interpore products that they used in a particular year?

A. Absolutely not.

Q. So, you deny that claim?

A. Of course.

Q. Isn't it true that once you claimed to Dr. Keisman you were only getting $20,000 a year and other surgeons who were doing less surgeries than you were getting $80,000 to $100,000 a year doing surgeries?

MR. McCRORIE: Objection.

THE COURT: Sustained.

Q. Back in 2003, were you paid $60 to $80,000 in consulting from Interpore pursuant to your contract?

A. 2003, probably yes.

Q. How about 2004?

A. I think it stopped. I cannot tell you when I stopped. I stopped around that year.

Q. Up to that point you were making about $60 to $80,000 doing consulting for this company?

A. For only two years, I believe.

Q. Do you know a gentleman by the name of Gary Perez?

A. Sure I do.

Q. Who is Gary Perez?

MR. McCRORIE: Objection.

THE COURT: I will allow it.

A. Gary Perez is an implant rep.

Q. Implant rep who used to work for in Interpore,

correct?

A. I don't think he worked -- you are asking -- he wasn't working for Interpore. He is an independent guy.

Q. Really, Gary Perez was never an employee of Interpore?

A. I don't believe so.

Q. What about K2M?

A. He is not employed by K2M either.

Q. He is salesman who sells their products to you?

A. Correct.

Q. Dr. Keisman, did you attend a meeting with Perez after he had started selling K2M products in order to talk about receiving shares of K2M?

A. No.

MR. McCRORIE: Objection.

THE COURT: I will allow the answer to stand, but let's limit the questions in that area.

Q. Did there come in time which you did become a shareholder in K2M?

A. Yes.

Q. Again, you were a shareholder owning about 90,000 shares of K2M stock back in October of 2008, correct?

A. I would say so, correct.

Q. Now, Doctor, you wouldn't do a surgical procedure on one of your patients unless you thought it was medically

necessary, correct?

A. You spoke so fast. Can I have that again?

THE COURT: Repeat the question.

Q. Doctor, you wouldn't recommend a surgical procedure for one of your patients unless it was medically necessary, would you?

A. Correct.

Q. And your own personal economic benefit plays no role in your assessments or recommendations; am I correct?

A. Correct.

Q. What about here in the case of Ms. Blue, back in October of 2009 you had 95,000 shares of K2M stock, correct?

A. That is correct.

Q. All right, then in Ms. Blue's procedure -- you actually have the New York Hospital record available there, the surgical record?

A. No.

MR. McCRORIE: It is in evidence thought.

MR. HALL: This is in evidence. This is my copy.

Q. Operating room implant log form. Can you run down the list of surgical implants that you put in Ms. Blue's neck?

MR. McCRORIE: For the record, it is in evidence, deemed in evidence as 14.

A. We have bone graft material, we have implants, K2M spacers, spacers, three level blades, the screws.

Q. All right, so in the operation on October 22, 2010 on Ms. Blue's cervical spine you put in three seven degree spacers, correct?

A. Correct. Three seven degree orthotic spacers, yes.

Q. Who manufactured them?

A. K2M.

THE COURT: Counsel, I am not limiting you, but how much longer are you going to be?

MR. HALL: Five minutes.

THE COURT: Okay, let's keep going.

Q. All right, in addition to those three seven degrees spacers manufactured by K2M, you put in one three-level plate, correct?

A. Yes.

Q. Who manufactured that?

A. K2M.

Q. In addition to that, you put in eight self-starting screws, correct? K2M also?

A. Correct.

Q. So, let me get that straight now. After seeing Ms. Blue on two occasions you recommend a highly invasive surgical spine procedure, you undertake this procedure which involves a three-level fusion, correct?

A. Correct.

Q. And includes implantation of three spacers, a plate and eight screws, right?

A. Correct.

Q. And all of those implants were supplied by K2M, the company in which you owned shares at the time, right?

A. It is an innovated company, the answer is yes.

Q. By the way, did Ms. Blue execute a consent form for the surgery?

A. Yes.

Q. And it is known as a informed consent form, correct?

A. Yes.

Q. And what are some of the medical risks or issues that are in the consent form?

A. Essentially, everything, but I don't know which one you are referring to.

Q. A risk of complications, correct?

A. Infection, neurological injuries, failed fusion, so on.

Q. Did you ever disclose to Ms. Blue before the surgery that you own stock in the company that provides the implants that you were putting in her neck?

A. I do. I don't know about her, but I do.

Q. Do you have any evidence that you disclosed to Ms.

Blue that you owned 90,000 shares in the company whose medical devices you were putting in her neck?

A. Don't point at me this way.

I know patients were informed of my association. It was started around this time. I don't know if she herself got it.

Q. That is the question before --

A. The answer --

Q. Did you inform her, did you give her the opportunity to know that information before you went in and did the surgery?

A. I don't know about her.

MR. HALL: I have nothing further. Thank you.

MR. McCRORIE: Real briefly.

REDIRECT EXAMINATION

BY MR. McCRORIE:

Q. Doctor, do you know if the doctors or the New York State Workers' Compensation Board that authorized your surgery as medically necessary has any stock in K2? Anyone who said from the Workers' Compensation Board of the state, you need to do this surgery, you got authorizations to do it; do you know if they own stock in K2?

A. I don't know.

Q. But your surgery was found to be authorized and medically necessary, the same one you did and put in for,

correct?

A. Correct.

Q. Are you aware either through your employees telling you or the New York Post articles that Dr. Keisman was sued for sexual harassment and using for pornography in your office and then you kicked him out of your offers?

A. I saw it --

MR. HALL: Objection. Hearsay.

Q. Did the employees in your --

THE COURT: There is an objection.

MR. McCRORIE: I will withdraw the question.

THE COURT: The question is withdrawn.

Q. Did the employees in your office sue Dr. Keisman for sexual harassment?

A. You bet they did.

Q. Did you kick him out after your employees said, this Dr. Keisman is a little crazy, he is touching us, he is doing things to us?

MR. HALL: Objection.

THE COURT: Sustained.

Q. Okay, did you kick Dr. Keisman out of your office on your own?

A. I own the office half and half. In order to protect reputation I left because he was on uncontrollable.

Q. But, there was a lawsuit involved where you made

him leave?

A. He sent how many lawsuits and he lost everything, four, five, six --

Q. Is that what happened, because I want to move on.

Is it a lawsuit against you or did he report you to the United States -- New York State blah, blah, blah?

A. Dr. Keisman reported me to the New Jersey attorney who was involved with these issues regarding physicians and conflicts of interest and that was dismissed October last year.

Q. Okay, so regardless of those issues, you told the jury -- you were being asked questions about malingering and secondary gain, you started to say it, you have been practicing medicine for years and you said you haven't seen it before, what is your opinion as to whether or not Ms. Blue is exaggerating, either the bars you put in her neck or exaggerating anything about her symptoms?

A. She is not.

Q. The spasm that she has been getting 50 some odd injections for to try to break up the spasm for, is that something she can exaggerate or fake, the palpable spasm?

A. It is there. It is not exaggerating. It is there.

Q. Do you consider her malingering to any degree?

A. Never did.

Q. Would you have expected when you asked her her

medical history whether or not she has ever been injured before, due to her neck or her back or whatever, would you expect that she would say by the way, I was assaulted three days before and I wasn't injured to my neck or back; is that something you expect she would tell you if all she complained about being punched in the right arm and being diagnosed with a wrist sprain, would you expect that she would bring that up to you?

A. I mean --

Q. If you asked about her neck or back history?

A. I mean, she didn't have any history. She didn't mention it to me. That is all I can say.

Q. If she did injure her neck so badly that she needed a neck surgery or back spinal cord stimulator from this assault where she only complained about her right arm and her right wrist, would you expect she would be able to go to work like she was coming home from when this truck lightly tapped the back of her car hard enough to throw the car four feet forward?

Would you expect that if she was so injured from the assault on the arm that she couldn't go to work?

A. Exactly. The answer is no.

Q. Again, you were ask asked did you also do a cervical fusion on the client, we mentioned his name, did that client fall 18 feet from a scaffold, have a brain

injury, was unconscious at the bottom of a scaffold and did he require a cervical fusion from herniations after he resolved the brain injury?

A. Yes.

Q. Did he also break his hand so badly after four surgeries he couldn't make a fist?

A. Correct.

Q. But he also required the cervical fusion, did you get any kickbacks for doing the cervical fusion to Mr. B. after he fell 18 feet and was unconscious at the bottom of his scaffold?

A. Dr. Keisman is a liar. I never had a kickback in my whole life.

MR. McCRORIE: I have nothing further.

THE COURT: Anything, counsel?

MR. HALL: One.

RECROSS EXAMINATION

BY MR. HALL:

Q. Doctor Keisman -- I'm sorry.

A. Don't make that mistake again.

Q. I don't mean any disrespect about that.

Dr. Brisson, you said that Dr. Keisman's action against you was dismissed; is that what you said?

MR. McCRORIE: The one from New Jersey.

Q. The one from New Jersey, the one I was talking

about.

A. Yes.

Q. Isn't it actually true that it was voluntarily dismissed without prejudice; isn't that correct?

MR. McCRORIE: By Dr. Keisman.

Q. Is that correct, it was voluntarily dismissed without prejudice?

A. That is a legal --

Q. I am asking you.

THE COURT: Counsel, that is a legal term.

A. Come on.

Q. Have you ever seen the stipulation --

THE COURT: First of all, let's --

A. Don't throw things at me, sir.

THE COURT: What do you want to say

(Pause in the proceedings)

THE COURT: Counsel, the reporter cannot get down everyone speaking at the same time.

MR. McCRORIE: Dr. Keisman withdrew these claims that he made.

MR. HALL: Voluntarily without prejudice.

THE COURT: Is that your stipulation, Counsel? That is the stipulation. It is stipulated to. Thank you.

Thank you, Doctor. You can step down.

Counsel, come up a second.

(Whereupon, an off-the-record discussion was held.)

THE COURT: All right ladies and gentlemen, we are going to recess for lunch.

I ask you to return to Court promptly at two o'clock.

Remember all my admonitions. Don't discuss the case with anybody. Don't let anybody discuss this case with you. Have a pleasant lunch. Thank you.

* * * *

(At this time, a luncheon recess was taken, and the trial adjourned to 2:00 p.m.)

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CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE MINUTES TAKEN IN THE ABOVE-CAPTIONED PROCEEDING.

JEANMARIE EPISCOPIA
SENIOR COURT REPORTER