

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX: CIVIL TERM: 1A-6

3 FRANKLIN ABREU-DEPENA
4 Plaintiff(s).

Index No:
305352/2013

5 -against-

WITNESS:
LEON REYFMAN, MD

6 JAMES P. WEBER, TC HUDSON VALLEY
7 AMBULANCE CORP. d/b/a TRANSCARE CORP.
8 TC HUDSON VALLEY AMBULANCE CORP.
and TRANSCARE CORPORATION

9 Defendant(s).

10 851 Grand Concourse
11 Bronx, New York 10451
12 February 5, 2019

13 B E F O R E: HONORABLE JAMES W. HUBERT,
14 J U S T I C E

15 A P P E A R A N C E S:

16 DINKES & SCHWITZER, P.C.
17 Attorney for Plaintiff
18 112 Madison Avenue - 10th Floor
New York, New York 10016
BY: GEORGE PFLUGER, ESQ.

19 LEWIS, BRISBOIS, BISGAARD, LLP
20 Attorney for Defendant
21 77 Water Street - 21st Floor
New York, New York 10005
BY: ALECIA WALTERS-HINDS, ESQ.

22
23
24 Rosemary Yancey, RFR, CSR
Senior Court Reporter

Proceedings

1 COURT OFFICER: Jury entering.

2 (Whereupon the jury enters the courtroom.)

3 THE COURT: All right. Please be seated. Welcome
4 back on this beautiful day. We are going to resume the
5 presentation of the evidence in the case. Counsel you may
6 call your witness.

7 MR. PFLUGER: Yes, sir. Thank you. Dr. Reyfman,
8 please.

9 THE COURT: Please give your attention to the court
10 officer please.

11 L E O N R E Y F M A N, having been first duly
12 sworn by the court officer, testifies as follows:

13 THE WITNESS: I do.

14 COURT OFFICER: In a loud, clear voice state your
15 name for the record and you business address.

16 THE COURT: Leon Reyfman, 2279 Coney Island Avenue,
17 Brooklyn, New York 11223.

18 THE COURT: You're a doctor?

19 THE WITNESS: Yes.

20 THE COURT: During your testimony, please keep your
21 voice up, that way we can hear you because this is a very
22 large courtroom, no microphones or speakers, and if you
23 don't speak up, we won't be able to hear you. Also speak
24 slowly enough so that the reporter who is working right in
25 front of you, she can accurately record your testimony.

1 Wait until the question is fully asked before you
2 respond so that both question and answer could be accurately
3 recorded. If you do not understand a question, say so, and
4 we will have it rephrased.

5 THE WITNESS: Understood.

6 THE COURT: Counsel, you may inquire.

7 MR. PFLUGER: Thank you.

8 DIRECT EXAMINATION

9 BY MR. PFLUGER:

10 Q Good afternoon, sir.

11 A Hello.

12 Q I guess you are a medical doctor?

13 A Yes, I am.

14 Q Okay. And what specialty, if any, do you practice?

15 A My primary specialty is pain management.

16 Q Well, tell the jury what that means?

17 A Pain management specialty encompasses treating patients
18 who have pain, whether it's pain related to spinal conditions or
19 neurological conditions, such as headaches, neuropathy, nerve
20 damage.

21 I also treat patients who have cancer, and I see
22 pediatric patients at the hospital where I have privileges. I
23 also treat them for various painful conditions.

24 Q You just mentioned the hospital where you have
25 privileges, what hospital or hospitals do you have admitting

Dr. Reyfman - Plaintiff - Direct

1 privileges?

2 A I'm a practicing resident at SUNY Downstate Hospital in
3 Brooklyn, New York.

4 Q I'm sorry?

5 A SUNY Downstate.

6 Q Okay.

7 A In Brooklyn, New York. I'm also on the faculty at
8 Mount Sinai Hospital in Brooklyn.

9 Q So when you say on the faculty, what does that mean?

10 A It means that I see patients at the hospital. I also
11 participate in rounds, discussions, training, in various other
12 duties pertaining to hospital role.

13 Q Okay. So, why don't you give us your educational
14 background?

15 A I finished pharmacy school in 1997. After that I
16 completed medical school in 2002. I did first year of my
17 residency, I did internal medicine at Maimonides Hospital in
18 Brooklyn.

19 Then I spent three years in anesthesia residency, SUNY
20 Downstate Medical Center. And lastly, I completed the pain
21 management fellowship at Roosevelt Hospital, New York City.

22 Q What does a fellowship mean?

23 A Fellowship means it's an area of specialty that
24 physicians will specialize to get advanced skills to perform
25 within the scope of practice.

Dr. Reyfman - Plaintiff - Director

1 Q You said advanced skills, correct?

2 A Yes.

3 Q In order to get that fellowship, you said you spent
4 three years?

5 A Yes.

6 Q Okay. Is there a written aspect, a written test
7 aspect, to getting a fellowship?

8 A There are written, multiple written exams to get there,
9 yes.

10 Q Okay. And are you board certified, sir? .

11 A Yes, I am.

12 Q In what areas?

13 A In anesthesia and pain management.

14 Q Okay. Are you licensed in the state of New York?

15 A Yes.

16 Q Any other states?

17 A New Jersey.

18 Q So medical school is how many years?

19 A Four years.

20 Q And residency?

21 A Four years.

22 Q And...

23 A Fellowship.

24 Q How many?

25 A A year.

Dr. Reyfman - Plaintiff - Direct

1 Q How many years altogether before you're a newly
2 admitted doctor?

3 A Nine years.

4 Q Back in 2013, where was your practice?

5 A I had an office in Brooklyn at 813 Quentin Road, and I
6 was also seeing patients in the New York City office at 780
7 Eighth Avenue, New York City.

8 Q Okay. What is the name of the practice?

9 A The practice is named Pain Physicians NY.

10 Q You kind of mentioned the types of patients that you
11 did see. In your practice with pain management, how would you
12 get the patients?

13 A I have been practicing since 2008. I started my career
14 at SUNY Downstate Medical Center and then Mount Sinai. I
15 developed a lot of relationships within the hospital community,
16 doctors, primary care doctors, surgeons, orthopedists.

17 They became my main source of the referrals. And
18 outside the hospital, I would get referrals from the community
19 doctors and other specialists.

20 Q Okay. Can you give us an example of the type of
21 patients that would come to you for treatment?

22 A Probably 70 percent of patients that I see, they have
23 some sort of spinal condition, meaning pain, mid-back pain,
24 lower back pain. The rest would be patients who will have
25 shoulder pain or knee pain or some other form of painful

Dr. Reyfman - Plaintiff - Direct

1 syndrome, such as nerve damage or neuropathy.

2 Q Okay. And did there come a time that you saw
3 Mr. Franklin Abreu Depena?

4 A Yes. I saw him for the first time on October 15, 2013?

5 Q Okay. Before I get to that, sir, you have some papers
6 in front of you, what is that?

7 A This is a printout of my office chart.

8 Q Okay. When you say print, is that an electronic chart
9 that they use today?

10 A Yes, it is.

11 Q Okay. Are those -- Judge, if I may, can we get that
12 marked for identification initially?

13 THE COURT: His report, his chart?

14 MR. PFLUGER: Yes, sir.

15 THE COURT: I suppose so. What do you want to mark
16 it as, Plaintiff's Exhibit what?

17 COURT OFFICER: Plaintiff's 17 for ID so marked.

18 THE COURT: Plaintiff's 17 is what?

19 MR. PFLUGER: Dr. Reyfman's chart for Mr. Abreu
20 Depena.

21 MS. WALTERS-HINDS: Judge, can we have a brief
22 sidebar?

23 THE COURT: Sure.

24 (Whereupon discussion off the record.)

25 (Whereupon back on the record.)

Dr. Reyfman - Plaintiff - Direct

256

1 COURT OFFICER: No. 18 so marked in evidence.

2 THE COURT: Plaintiff's 18 being handed to the
3 witness. Take a minute to look at that, I think, I believe
4 it's the same as Plaintiff's 17, but it just got here by a
5 different route. That's been marked in evidence.

6 THE WITNESS: It's exactly the same, your Honor.

7 THE COURT: Okay. Next question.

8 Q Sir, how did Mr. Abreu come to see you?

9 A Mr. Abreu was referred to me by Dr. Avanesov.

10 Q And who was Dr. Avanesov?

11 A He is the orthopedic spine surgeon.

12 Q Okay. And where was he located back in 2013?

13 A I think he had an office in the Bronx and Brooklyn, if
14 I'm not mistaken.

15 Q Okay. You saw Mr. Abreu Depena for the first time,
16 what, if any complaints, did he make on that date, that would be
17 October 15, 2013, correct?

18 A He had two main complaints. He was complaining of
19 lower back pain that was radiating into his left leg. He also
20 reported numbness in his left foot. He also had neck pain that
21 was traveling through his left shoulder and left upper
22 extremity, left arm, with numbness and tingling as he described
23 in his left hand.

24 Q What significance is the numbness and the tingling?

25 A Anyone complaining of numbness, pins and needles, it

Dr. Reyfman - Plaintiff - Direct

1 signifies there may be a nerve impingement resulting in such
2 symptoms.

3 Q What about the history?

4 A The history he gave me, he was involved in a motor
5 vehicle accident 7/27/2013. He was a driver. He was hit on the
6 driver side. He stated that he was wearing seat belt. He
7 sustained injuries to his neck and lower back. He was taken to
8 Jacobi Hospital emergency room by ambulance where he was
9 evaluated and then released home.

10 Q Okay. Now, when he came to your office and he gave
11 that information, what, if anything, did you do?

12 A I obtained all of his complaints, all of his
13 information, and I performed a physical exam to his neck and
14 lower back.

15 Q Okay. So tell the jury what that is, what did you do
16 for the physical exam, and if I could ask, why did you conduct a
17 physical exam and why?

18 A A physical exam is an integral part of evaluating
19 someone that has complaints of neck or back pain. It helps us
20 to identify the source of the pain and the reason, and then
21 render a proper treatment based on those findings.

22 Physical exam consists of three parts, muscular,
23 neurological exam and orthopedic exam when we examine neck and
24 lower back. With regards to his neck, he had tenderness across
25 his muscles in his neck.

Dr. Reyfman - Plaintiff - Direct

1 There was also moderate muscle spasm along various
2 muscle groups in his neck. He also had restricted range of
3 motion. When we asked him to look down or look up, he had
4 complications when we asked him to perform those maneuvers.

5 Q Okay. Under muscular, sir, the second paragraph?

6 A Okay.

7 Q You reference spinous processes L3-S1, moderate muscle
8 spasm along with lumbar paravertebral, sacrospinalis performed,
9 what is that?

10 A This is the list of muscles that we examine in his
11 lower back and upon palpation, meaning feeling the muscle
12 groups, it was noted that he had muscle spasm in the area.

13 Q Okay. On the first page you mention left foot/toes
14 numbness, tingling?

15 A Yes.

16 Q What significance does that mean?

17 A That means that there may be a nerve impingement either
18 at L4 or L5 nerve on the left side.

19 Q VAS means what?

20 A VAS means, visual analog scale. We ask patients to
21 describe their pain on the 0 to 10 scale, 0 means no pain, 10
22 means a lot of pain.

23 Q Okay. And after that number 8/10?

24 A He described 8 out of 10.

25 Q I'm sorry?

Dr. Reyfman - Plaintiff - Direct

1 A He described 8 out of 10.

2 Q You wrote constant dull, aching, sharpshooting, what
3 does that mean, what's the significance?

4 A That's how he described his pain. He said his pain is
5 constant, dull, aching, sharpshooting, worse when he was
6 standing, sitting, bending forward, lifting, twisting. And when
7 he stood to walk, his left pain was worse.

8 Q Okay. How about the neck pain?

9 A Neck pain, he described 8 out of 10, 10 being the worst
10 pain constant. Worst with neck extension, meaning looking
11 backwards, and lateral rotation, means turning the neck to
12 either side. And he also described his pain as deep and
13 pressure on his neck.

14 Q Okay. You wrote neck pain radiating to left shoulders
15 and left upper extremities, numbness and tingling?

16 A Yes.

17 Q Once again, what's the significance of that?

18 A There is a possibility of having nerve impingement.

19 Q How many patients have you treated with those kinds of
20 conditions?

21 A Many.

22 Q Can you give a number, approximately?

23 A I've been doing this for ten years. I see about 30, 35
24 patients a day, for the last nine years. So, a lot.

25 Q Okay. Now, your exam had a neurological component?

Dr. Reyfman - Plaintiff - Direct

260

1 A Yes.

2 Q What does that mean?

3 A Neurologically, we assess for three things. A sensory
4 exam, simply touch with the skin. A motor exam, strength in the
5 muscles, and reflexes, to see if there is any nerve damage.

6 Q Okay. On exam, what were your findings under the
7 neurological?

8 A With regards to lower back and lower extremity, his
9 sensory exam on the left side along the L5 and S1 dermatome
10 showed diminished sensation. There was also decreased reflexes
11 to patella achilles, one plus.

12 Two plus being normal. His was one plus, which is
13 moderately impaired. He also had mild motor weakness in his
14 hips and ankle on the left side.

15 Q And you wrote C5-C6 dermatome, what significance does
16 that have?

17 A What you're describing is the neurological exam to his
18 upper extremity, and his neurological exam and his sensory, he
19 had diminished sensation of the C5-C6 dermatome. He had
20 diminished reflexes in bicep, of one plus. Two plus being
21 normal. And he had mild motor weakness in his deltas and biceps
22 on the left side.

23 Q And you performed various compression tests, what were
24 they?

25 A We did multiple compression tests. Those are the tests