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1 that help us to diagnose what's called radiculopathy. It's to
2 determine nerve impingement.

3 Q Okay. Tell us what you did?

4 A We asked him, we did -- the most common one that we do
5 is Spurling test or another name is maximum cervical
6 compression. We press down on someone's head, and after a
7 certain amount of time, if someone has more pain down their arm
8 with more pins and needles, that signifies there is nerve
9 impingement.

10 Q Okay. That would include a Jackson compression?

11 A They're very similar, but the purpose is the same to
12 diagnose radiculopathy.

13 Q What medication, if any, was he taking when you saw him
14 for the first time?

15 A He was taking Naproxen and Flexeril, which is a muscle
16 relaxant.

17 Q Okay. Now, after you did the physical exam, what was
18 the next step for you on that first visit?

19 A Next step, review the MRIs of his neck and lower back,
20 and then formulate a diagnosis. Then after that, is discuss
21 treatment option.

22 Q Assess/Plan, and you wrote lumbosacral neuritis
23 radiculopathy, what does that mean?

24 A Lumbosacral neuritis or radiculopathy means that there
25 is a L5-S1, herniated disc compressing.

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1 Q Okay. And you found what kind of treatment did
2 you provide for him?

3 A Based on the physical his complaints, review of
4 his MRIs, we spoke about doing what is called lumbar epidural
5 steroid injection.

6 Q Well, tell the jury what that is?

7 A Epidural administered to patients who have herniated
8 discs, nerve impingement, to simply help with pain. Steroids
9 are very powerful antiinflammatories. This procedure is
10 commonly done in office setting in the procedure room. It's
11 done usually under local anesthesia.

12 During this procedure we use a live x-ray to visualize
13 the spine on the screen. Certain measures are put in place to
14 avoid any trauma to the nerve or introduce infection or
15 bleeding. We sterilize the back of the skin with iodine.

16 We take a needle with lidocaine which is numbing
17 medication. We inject it under the skin, and then we use
18 three-and-a-half inch needle, like this long, and we insert it
19 in this numbed area, we take multiple x-rays as we do this.
20 Once we are in the right place, we inject steroid cortisone.

21 Q So what level did you do that?

22 A This was done at L5-S1.

23 Q Is that under a local or general?

24 A Under local.

25 Q Okay. If I asked you how many times he was injected

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1 during the course of his treatment with your office, what would
2 you tell us?

3 A He had total of three lower back injection epidurals
4 and two neck injections, cervical epidurals.

5 Q Okay. Now, when you wrote indication under lumbosacral
6 neuritis radiculopathy, what does that mean?

7 A This is just description as to why we do this
8 injection, for what reason.

9 Q Tell the jury, because nobody knows except you, the
10 reasons for what you're doing, just let the jury know?

11 A We typically --

12 MS. WALTERS-HINDS: Objection.

13 THE COURT: Overruled. You can answer.

14 THE WITNESS: The epidural injection is performed
15 to patients who have failed conservative treatment, meaning
16 physical therapy, pain medication and they still have
17 persistent neck or back pain, patients with evidence of
18 herniated disc or nerve impingement.

19 And we either do it as a single injection or series
20 of two, even three sometimes, depends how well they respond
21 to the injection. Same thing applies for the neck. Same
22 reason.

23 Q I'm sorry?

24 A Same thing applies to the neck.

25 Q Okay. Is that, those injections what's the period of

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1 time that it's beneficial?

2 A Everyone is different. We have patients that we do an
3 injection, they feel great, we don't see them for years. We
4 have patients that require one or two more, they do well. And
5 we have patients who are just not responding well to the
6 injection at all. It's really individualized.

7 Q Okay. Could some patients have a permanent relief from
8 pain with that kind of injection?

9 A On occasion you see patients who do real well after
10 injection, yes.

11 Q Okay. For what period of time, what's the time between
12 one injection, and the next one, how long does it take?

13 A It varies. The shortest is two weeks. But it can be
14 as long as a month or two.

15 Q Okay. So after you did these injections, did you
16 formulate an opinion about his condition?

17 A Sorry?

18 Q What was wrong with him, if anything?

19 MS. WALTERS-HINDS: Objection.

20 THE COURT: Overruled.

21 THE WITNESS: Based on what I found, I think in his
22 history, and from physical exam, reviewing MRIs, the
23 diagnosis were that he had herniated disc in his neck, lower
24 back and also nerve impingement, neck and nerve impingement
25 in the lower back.

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1 Q Okay. So what's the next time -- well, I want you to
2 assume that you told Mr. Depena, and that he told the jury, that
3 he had no prior medical history for injuring his neck or back,
4 that he was pain free in that area, and I want you to assume
5 that Mr. Depena said he got some of that information on July 27,
6 2013, as he was driving in the right lane on East Fordham Road
7 after crossing over Grand Concourse Avenue, heading toward
8 Valentine, an ambulance weighing ten tons struck him at the back
9 portion of his driver side door, with damage to the rear of that
10 vehicle, with the right corner on that bumper, did you formulate
11 an opinion, within a reasonable degree of medical certainty,
12 whether that accident was a competent producing cause of the
13 injuries that you just told the jury about?

14 A He had no complaints of any neck or back pain prior to
15 7/27/13, and based on the mechanism of the injury, and given the
16 fact that all symptoms on the left side, I feel that this
17 accident is the cause of his symptoms.

18 Q Okay. When is the next time you saw him?

19 A Next time I saw him was on 12/3/2013.

20 Q Yes, sir. And what happened on that visit, sir?

21 A He returned to the office. He had injection in his
22 lower back the visit prior. He stated that he had some relief,
23 but his fingers slowly coming back. He has still more back
24 pain, lower back pain than neck pain. He still described pain 8
25 out of 10 in both neck and lower back.

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1 Q Okay. And the physical examination?

2 A Physical exam essentially the same.

3 Q Okay. And I'm sorry, the treatment you rendered the
4 second time?

5 A He had a second epidural injection in his lower back.

6 Q Okay. What complaints was he making, if any, when he
7 came to you that second time?

8 A Lower back pain radiating through his left leg with
9 numbness, tingling in left foot and toes. Neck pain radiating
10 to the left shoulder, left upright shoulder.

11 Q Okay. Spasms, is that noted in that note?

12 A Yes.

13 Q Okay. So what does that mean, tell the jury why first
14 -- withdrawn that. What does spasm mean first?

15 A Spasm is an involuntary contraction of the muscle.

16 Q Can you give us an example of what's voluntary?

17 A Voluntary is something that someone has control over.
18 Involuntary is just beyond control of the patient.

19 Q Okay. And what is the cause of the spasm?

20 A Trauma, irritation of the nerve that can resolve in
21 herniated disc, all these things can encompass it and cause
22 muscle spasm.

23 Q So where was the spasm and/or spasms located when you
24 examined him on that second visit?

25 A The entire cervical spine and lower back.

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1 Q Okay. And can you tell the jury when the body -- was
2 that muscle tightening?

3 A Yes.

4 Q And why does that involuntary act, that muscle tighten?

5 A It also serves as a protecting mechanism in case
6 there's injury and your body, it protects from certain posture
7 elements to not to engage in some kind of strenuous movement or
8 jerking movement.

9 Q Is it a protection response that the body does?

10 A It's part of it, yes.

11 Q Okay. What does prognosis mean?

12 A Prognosis means how well someone will do after an
13 injury, after certain treatment that's rendered.

14 Q Okay. And what is the different potential categories,
15 if you see a patient, you say, okay, your prognosis is...

16 A There's good, there's fair, there's poor.

17 Q Okay. All right. What was his prognosis?

18 A Fair.

19 Q Okay. If I just asked you, how many times did you see
20 Mr. Abreu Depena?

21 A In total?

22 Q Yes. What were they?

23 A About 15 times, one five.

24 Q When was the last time you saw him?

25 A That was November 4, 2015.

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1 Q The next time you saw --

2 THE COURT: November of what year, November 4th?

3 MR. PFLUGER: Yes, sir.

4 THE COURT: What year?

5 THE WITNESS: 2015.

6 Q When was the next time you saw him?

7 A I saw him December 31, 2013.

8 Q Okay. Tell us your findings at that time?

9 A He returned to the office, he stated that his lower
10 back was better. He stated his pain was 6 out of 10. He still
11 had complaints of neck pain, which he rated 7 to 8 out of 10.
12 Still having pain shooting down his left arm. Those were his
13 complaints.

14 Q Okay. And what about the neurologic and orthopedic
15 examination, tell us what the findings were?

16 A They were the same.

17 Q Still the same?

18 A Yes.

19 Q Okay. What, if any treatment, was rendered on that
20 visit?

21 A He had cervical epidural injection, injection to his
22 neck.

23 Q Okay. And at the bottom of the page, it says cervical
24 indications, what does that mean, just that word?

25 A Indications are reasons as to why we do the injection.

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1 Q What was the indication?

2 A Indication was to inject the area of his spine because
3 of poor response to physical therapy or conservative modalities
4 and having persistent pain.

5 Q In the note it says radicular pain syndrome, what does
6 that mean?

7 A Where there is nerve impingement.

8 Q Did you form an opinion that that was the condition he
9 was suffering from?

10 A Yes.

11 Q Okay. Now, the procedure was an interlaminar epidural
12 steroid injection, correct?

13 A Yes.

14 Q At what level?

15 A C7-T1.

16 Q Why was that injection placed at that location?

17 A The majority of the time when we do an injection in the
18 neck, we either do it at C6-C7 or C7 through 10. Doing
19 injection above that is more dangerous, and the space is narrow
20 and there's more chance to do damage, so we typically do below
21 it. But medication travels up and down, it's liquid. So we
22 inject a little bit more medication to achieve a higher level.

23 Q So what are the risks of sticking a three-inch needle
24 into someone's spine, if any?

25 A There's always three risk factors. There's bleeding

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1 because it's a sharp object. Infection, because we break the
2 skin barrier with the needle, and damage.

3 Damage in the neck, there are case reports of someone
4 having paralysis, because the needle may cause damage to the
5 spinal cord. Lower back is definitely a lot safer than the
6 neck. So those are the risk factors.

7 Q Were those risks discussed with Mr. Depena?

8 A Yes. He did sign a consent to all the risks discussed
9 with him.

10 Q Conservative treatment means what?

11 A Physical therapy, chiropractor, acupuncture, rest,
12 medication.

13 Q So what's the next level to treating someone's spine,
14 you have conservative, what's the next one?

15 A Possibly injection, possibly stronger pain medication.

16 Q Okay. He did that?

17 A Yes.

18 Q Right. Successful or not?

19 A After second epidural, his lower back got better. Then
20 we injected his neck. There was some relief.

21 Q Okay. But fast forwarding toward the end of 2014, was
22 he better, the same or worse, or something else?

23 A He was about the same.

24 Q Okay. Now, the next time you saw him, would that be
25 January 21, 2014?

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1 A Yes.

2 Q Okay. And what information was provided in that note
3 that's in evidence?

4 A He still complained of neck and back pain. The
5 injection that was performed on December 31, 2013, to his neck
6 provided moderate, mild to moderate relief of pain to his neck.
7 He still complained of lower back pain that was traveling down
8 his left leg. And on that date, he had third epidural injection
9 in his lower back.

10 Q Okay. Excuse me. Now, surgical history, you did make
11 a notation, correct, about the shoulder surgery?

12 A Yes.

13 Q I want you to assume that Mr. Depena, Dr. Capiola will
14 be coming in tomorrow, there was surgery to his left shoulder...

15 A Okay.

16 Q ... you wrote what?

17 A It's written, "right."

18 Q Okay. Any explanation why?

19 A Just a typo.

20 Q Okay. Now, you wrote it was written in the note the
21 second page, January 21, 2014, patient is status post C-E-I
22 reports mild to moderate pain relief, continues to have low back
23 and left leg pain as above. What significance, if anything,
24 does that note mean?

25 A It's significant that he had two lower back injections,