

In The Matter Of:
Diane Pashalis v.
Shore Pharmaceutical Providers Inc.

Dr. Kim Busichio
June 18, 2019

Lighthouse Court Reporting Inc.

1 KIM BUSICHIO, PH.D.

2

3 STATE OF NEW YORK

4 WORKERS' COMPENSATION BOARD

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6 DIANE PASHALIS,

7 Claimant, Carrier No.:30177947255-0001
WCB:G1935566

8 -VS- D/A:5/26/17

9 SHORE PHARMACEUTICAL PROVIDERS INC.,

10 Employer,

11 SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,

12 Carrier.

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14 Telephonic Deposition of KIM BUSICHIO, PH.D.,
15 taken pursuant to Workers' Compensation Law in the
16 law offices of GOLDBERG SEGALLA, LLP, 665 Main
17 Street, Buffalo, New York 14203-1425 on Tuesday,
18 June 18, 2019, commencing at 11:01 a.m., held
19 before Vera Dujovic, Court Reporter and Notary
20 Public in and for the State of New York.

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2 APPEARANCES: UGALDE & RZONCA, LLP
3 BY: FLAVIA FRANCO, ESQ.
(Via Telephone)
4 96-14 63rd Drive
Suite 500
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6 Appearng for the Claimant

7

8 GOLDBERG SEGALLA, LLP
9 BY: CHARLI B. BALDINGER, ESQ.
(Via Telephone)
10 200 Garden City Plaza
Suite 520
11 Garden City, New York 11530-3203
(516)281-9800
12 Appearng for the Carrier

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5 MS. BALDINGER: Yes, I'll stipulate.

6 MS. FRANCO: Yes.

K I M B U S I C H I O, PH.D., 952 5th Avenue,
Suite 4-A, New York, New York 10075, after being
duly called and sworn, testified as follows:

12 VOIR DIRE EXAMINATION BY MS. FRANCO:

13 Q. All right. Good morning, Doctor. This is Flavia
14 Franco from Ugalde & Rzonca. We represent the
15 claimant in this matter. We'll start with some
16 questions on your qualifications.

17 | A. Okay. Sure.

18 Q. So what is your date and place of graduation from the
19 school you went to to become a psychologist?

20 A. Yes. So in 2004 I graduated from Fairleigh Dickinson
21 University in Hackensack Teaneck, New Jersey in
22 clinical psychology. I received my PhD. I then went
23 on to do a internship in -- specialized in

1 neuropsychology at NYU, Rusk Rehabilitation Institute
2 for a year.

I then went on to do a two-year post doctoral residency in neuropsychology at JFK Johnson Rehabilitation Institute in Edison, New Jersey. I did a year of inpatient rotation in assessing traumatic brain injury, head injury, concussion, and rehabilitation working on cognitive deficits related to brain injury. And I did a year of outpatient assessment and rehabilitation in traumatic brain injury, concussion, head trauma. And I've been the clinical -- I've been the clinical director at the Center for Cognition and Communication.

14 Q. Okay. When were you licensed to practice in
15 New York?

16 A. In 2007.

17 O. Have you been licensed in any other state?

18 A. Yeah. New Jersey.

19 Q. All right. Have either of those licenses ever been
20 subject to any kind of disciplinary action?

21 A. No. No.

22 MS. FRANCO: Okay.

23 Ms. Baldinger, do you have any questions for the

1 doctor on qualifications?

2 MS. BALDINGER: Briefly. Are you coded by
3 the Workers' Compensation Board?

4 THE WITNESS: Yes.

5 MS. BALDINGER: And do you happen to know
6 your letters?

7 THE WITNESS: Yes. My code is PSY.

8 MS. BALDINGER: Thank you. I'll stipulate
9 to the doctor's qualifications as coded.

10 MS. FRANCO: All right. Thank you.

11 EXAMINATION BY MS. FRANCO:

12 Q. Okay. Doctor, when did you first have cause to
13 examine the claimant, Ms. Diane Pashalis, in this
14 matter?

15 A. October 19, 2018.

16 Q. And was a history taken?

17 A. Yes.

18 Q. What was that history?

19 A. Yes. That on 5/26/2017 a large medical printer
20 machine cover fell onto her head. She lost
21 consciousness briefly, reported feeling dazed and
22 confused. She was taken by her mother to North Shore
23 Hospital emergency room where imaging scans were

1 performed. She was evaluated and treated and
2 discharged.

3 She came under the care of a neurologist,
4 Dr. Soni, who ordered an MRI of the brain and then we
5 saw her on 10/19/2018 with complaints of attention,
6 memory, headaches, dizziness, numbness, difficulty
7 walking, balance problems, hearing and vision
8 difficulty, sleep disturbance and anxiety and
9 depression.

10 Q. Okay. And did you perform an exam on that date or an
11 --

12 A. We did.

13 Q. -- evaluation?

14 A. Yes, we did.

15 Q. And what were your positive findings on that
16 evaluation, if any?

17 A. The cognitive findings, she had deficits in areas of
18 learning and memory, both verbal and nonverbal,
19 sustained visual attention and concentration, verbal
20 functioning, confrontation naming which is word
21 finding.

22 Q. Okay. And what was your diagnosis?

23 A. Diagnosis -- oh, was a head injury, post-concussion

1 syndrome and cognitive deficits.

2 Q. Okay. And in your opinion were those causally
3 related?

4 A. Yes.

5 Q. Okay. And did you have -- well, was the claimant
6 working when you first evaluated her?

7 A. She returned to work on a part-time basis, but
8 reported that she had been having difficulty.

9 Q. Okay. And did you have an opinion on disability as
10 of that point?

11 A. At that point overall she was in the ninth percentile
12 in -- on her cognitive evaluations, so she was --
13 based on our assessment she was about 90 -- 90th
14 percentile. 90 and 91st percentile. I mean 90th
15 percentile in terms of disability.

16 Q. Okay. And do you know if there came a time that she
17 stopped working?

18 A. She did. She stopped working, it looks like, in
19 November. Again, she returned a few months -- she
20 returned part-time initially, then she stopped
21 because of her attentional problem and her cognitive
22 difficulties.

23 Q. Okay. Did you have any conversations with the

1 claimant on whether she should be working or not?

2 A. Whether she should be working?

3 Q. Yes, or not working.

4 A. No. She -- she told us that she had -- she tried to
5 go back, but she wasn't able to. She was having too
6 much difficulty, so that was reported to us by her.

7 Q. Okay. All right. And you said she stopped working
8 in November.

9 When did you first see her after she stopped
10 working?

11 A. Give me just a moment. I'm going to look it up
12 because she said November she had stopped and we have
13 been doing -- have been seeing her for cognitive
14 treatment. So we saw her in October when she was
15 still working, and then in November she reported she
16 stopped working and we saw her again in November and
17 we've been seeing her every since.

18 Q. Okay. And as of November did you have an opinion on
19 degree of disability?

20 A. Yeah. Like I said, it was about 90 percent disabled.

21 Q. Okay. And when did she --

22 A. And that's -- and that's from -- and that's strictly
23 from a cognitive perspective.

1 Q. Okay. And when did you last see her?

2 A. Well, actually yesterday she was here, but that was
3 for a re-evaluation, but before that for cognitive
4 therapy she was here on 5/30/2019.

5 Q. Okay. When was the last time you did an evaluation?

6 A. So yesterday, 6/17, Dr. Brown and I spoke with her,
7 updated -- she had an update assessment with us and
8 conducted that assessment.

9 The problem with that assessment was it was
10 invalid due to either sleep difficulty -- she had
11 severe headaches. And those were the main issues she
12 reported to us at the evaluation.

13 MS. BALDINGER: I'm just going to note --
14 I'm sorry, I'm just going to note for the record that
15 yesterday the examination of 6/17/19 is not currently
16 contained in the Board file.

17 So I am going to object to any testimony with
18 respect to that medical and I would request
19 recross-examination of the doctor upon receipt of
20 that narrative.

21 MS. FRANCO: Okay. Yes.

22 CONTINUED EXAMINATION BY MS. FRANCO:

23 Q. So, Doctor, I'm going to ask you -- so before

1 yesterday when did you last do an evaluation?

2 A. Yes. The evaluation -- well, I -- I assess her every
3 day she comes in in terms of her therapy progress.

4 In terms of a formal re-evaluation, we did that
5 in October 19, 2018, but every time she comes in for
6 treatment I'm continuously re-assessing her progress,
7 so she's been making nice improvement in treatment
8 all along.

9 Q. Okay. So I guess as of May 30th, 2018, I guess what
10 was your opinion on her -- her progress?

11 A. Yeah. So she's still -- still impaired in terms of
12 memory and attention and word finding difficulty,
13 which were all of the areas that we found when she
14 initially came in. But she went from the very, very
15 basic level of treatment and she's moving toward the
16 lower end of the moderate level of treatment in those
17 areas.

18 So she's still having significant difficulties
19 in there, but she's -- she's slowly making gradual --
20 well, she's making gradual progress in treatment
21 which -- which she's benefiting from treatment.

22 Q. Okay. Do you have an opinion on disability as of
23 your last assessment with her?

1 A. Right. So in terms of disability rating, I would
2 want to do a valid re-evaluation with her. Like I
3 told you, yesterday's was invalid due to other
4 circumstances in terms of lack of sleep and/or
5 headaches or severe headaches.

6 So she did not perform -- she was unable to
7 perform -- it's not a valid index of how she's been
8 improving in treatment, so I'd like to get a
9 re-evaluation with her when she's feeling better or
10 at least when she's -- it's not going to interfere
11 with her performance on the testing and then I'd be
12 able to give you a better indication of her
13 disability rating.

14 MS. FRANCO: Okay. All right. That's all
15 I have subject to redirect.

16 Thank you.

17 MS. BALDINGER: Thank you.

18 EXAMINATION BY MS. BALDINGER:

19 Q. Okay. Doctor, my name is Charli Baldinger. I do
20 represent the insurance carrier, and I would just
21 like to thank you at this time for your appearance
22 today.

23 And if you can't hear me at any point, please

1 just let me know, and I will repeat my questioning.

2 A. No problem.

3 Q. Firstly, Doctor, just for purposes of housekeeping,
4 you keep referring to we.

5 Are you referring to Dr. Brown?

6 A. Yes, I am.

7 Q. Okay. So is it fair to say that the medicals that
8 are contained in the Board file as of right now only
9 have one medical from you and that was dated, I
10 believe -- hold on one second -- 10/19/18?

11 A. Uh-hmm.

12 Q. The rest of the medicals are submitted from Dr. Brown
13 and don't have your name listed as a medical provider
14 name.

15 Is it fair to say that Dr. Brown had been
16 continuing to treat the claimant?

17 A. So I'm the overall supervisor here, so the documents
18 might have Dr. Brown's name on it, but I'm the one
19 that's assessing and re-assessing the -- the
20 sessions, the treatment sessions, so I'm overseeing
21 everything.

22 He might have signed it or they might have sent
23 it in under his name, but I am the neuropsychological

1 super -- director here, so I'm the one that's
2 implementing the treatment planning and adjusting any
3 treatment plan accordingly.

4 Q. Thank you for the clarification.

5 A. Sure.

6 Q. Doctor, just previously on direct examination you did
7 testify that the claimant relayed to you that she
8 stopped working November due to her cognitive
9 deficits; is that accurate?

10 A. Exactly what she said -- I'm looking at the note from
11 Dr. Brown yesterday -- she said working since --
12 stopped since November. Then -- she was part-time
13 initially, then she stopped because of attentional
14 problems.

15 Q. Did the claimant also relay all that part of the
16 reasoning as she testified at the last hearing on
17 April 4th, 2019, was that her company was moving to
18 New Jersey and she could not do the drive to New
19 Jersey?

20 A. No. I just told you exactly what she told us.

21 Q. Okay. At any point in time did you recommend to the
22 claimant that she stop working?

23 A. We -- Dr. Brown and I -- she does medical records, so

1 she -- she was working when we initially saw her in
2 October, but she said she was having difficulties, so
3 she said she was working on a part-time basis she
4 told us at that -- at that point doing as much as she
5 could because she did want to work.

6 So we -- Dr. Brown and I, as long as a patient
7 is trying to work, we always -- we always encourage
8 them to do what they can and so she -- she was
9 working at the time, but she did stop on her own.
10 We did not tell her to stop working. She stopped on
11 her own.

12 Q. Okay. Thank you.

13 And throughout your treatment of the claimant,
14 you did just indicate that you continue to find her
15 within the 90 percent -- percentile for disability;
16 is that correct?

17 A. Well, again, like I said, I'd like to get a
18 re-evaluation to get the new disability rating.
19 When she first came in I found her in the 90th to the
20 91st totally -- percentile in terms of disability
21 from a cognitive perspective.

22 Again, she is making improvement in treatment so
23 that would have improved based on her improvement and

1 treatment. But again, how much that improved would
2 be determined on a re-evaluation of valid index of
3 her cognitive abilities as we weren't able to get
4 yesterday due to the sleep and/or headaches, the
5 severe headaches.

6 Q. Fair enough. Thank you.

7 And, Doctor, would that percentile that you just
8 indicated be from her line of work or all work
9 overall?

10 A. No. It would be relative to -- it would be relative
11 to her peers in terms of her age and education level,
12 so it's a standard neuropsychological evaluation so
13 all the scores are normed with her age and education,
14 so it would be compared to her age and someone that
15 has an Associate's degree.

16 Q. Now, would it be fair to say as Dr. Brown testified
17 earlier that the claimant would be in a position to
18 do something, let's say, in a repetitive nature or
19 something that does not require 100 percent
20 attention?

21 A. Sure. So, again, Dr. Brown and I always encourage
22 patients to be able to do what they can do. Again,
23 I'm not sure if a patient is going to be -- is going

1 to make mistakes because of the memory and the
2 attentional problems.

3 That part I'm not going to be sure a patient is
4 going to be able to sustain a job. But sure, to go
5 back and try something, we always encourage patients
6 to do that.

7 Q. And in your opinion do you think the claimant would
8 be capable of some type of sedentary-type job or some
9 type of work at this point?

10 A. Again, I wouldn't be able to tell you that. I
11 wouldn't -- I mean, she could try something. I'm not
12 sure how she'd perform because she still has a lot of
13 attention and memory problems.

14 Q. And, Doctor, are you aware of the medications that
15 the claimant is taking, specifically are you aware
16 that the claimant is taking Trokendi XR 100
17 milligrams for her headaches?

18 A. Yes, I am aware of that.

19 Q. And have you reviewed any medical narratives from
20 Dr. Soni, specifically March 26th, 2019?

21 A. I have them right in front of me right here.

22 Q. Okay. So then are you aware that Dr. Soni has
23 indicated in multiple reports, specifically also in

1 the March 26, 2019 report, and I quote, that Trokendi
2 is helping with the headaches, but at the same time
3 affecting her cognition very badly to the point that
4 the patient is not able to do her day-to-day
5 functioning?

6 A. I'm -- I'm aware that that was said, but if you want
7 me to let you know from a neuropsychology perspective
8 how that's not interfering with her test performance
9 in October, I can explain to you what the results
10 would look like if the medication was affecting her.

11 Q. Well, Doctor, is it fair to say that if the claimant
12 relayed to Dr. Soni that her cognition is being
13 impaired by this medication, then isn't it fair to
14 assume that it is affecting her overall cognition?

15 A. Oh, medication can definitely affect, but this --
16 this is not a medication profile that I have in front
17 of me. This is a head injury profile and I can
18 explain what I mean by that if you'd like me to.

19 Q. Yes, please do.

20 A. Sure. So if medication was -- was the reason that
21 we're getting these results, we would have a
22 depressed profile across the board and what I mean by
23 that, processing speed would be significantly

1 impaired across the board. She was in the average
2 range in processing speed, so medication would
3 significantly affect her speed of processing.

4 And the areas that she performed poorly on the
5 testing were the specific areas that she was
6 complaining about in terms of memory, attention, word
7 finding.

8 It's exactly -- the exact same subjective
9 complaints were found objectively on the testing and
10 that would not have happened had it been the
11 medication effect. Medications would have been
12 affecting everything, spatial skills, processing
13 speed, executive functioning, motor skills. Motor
14 skills was in the 50th percentile. That would not be
15 the case if medications was affecting.

16 Q. And, Doctor, just to be fair, if she relayed to
17 Dr. Soni that the medication was causing her to lose
18 attention on -- with respect to words and finding
19 words, wouldn't that have a direct correlation to her
20 testing?

21 A. Again, like I said before, medication can affect
22 testing, but what an evaluation does, it looks at the
23 standard deviation across domain and if medication

1 was affecting attention and process -- attention and
2 word finding, it would also be affecting processing
3 speed and motor skills too. You wouldn't -- you
4 wouldn't get variables.

5 Q. Doctor, do you know when the claimant began taking
6 Trokendi?

7 A. I know she was on it when she initially came here in
8 October, so I wouldn't be able to tell you before
9 that when she was on it. But she was on it when we
10 first saw her 10/19/2018.

11 Q. And have you reviewed any of the medical narratives
12 prior to the claimant taking Trokendi with respect to
13 her complaints?

14 A. The only narrative I have here is Dr. Soni's report.
15 I have an MRI scan ordered by Dr. Soni. That's what
16 I have in front of me.

17 Q. Would it be helpful to see the claimant's cognitive
18 complaints prior to her taking Trokendi if at all
19 there were any cognitive complaints?

20 A. Well, of course any medical records is always -- is
21 always helpful. So if you have anything you want --
22 you want me to review, I'll definitely review it, but
23 again, like I told you before, if -- if this was due

1 to medication, we would be seeing a different
2 profile.

3 Q. And, Doctor, are you aware if the claimant has ever
4 tried any other prophylactic medications aside from
5 Trokendi?

6 A. I'm not a medical doctor. She's under the care of
7 Dr. Soni, so that would be whoever prescribed it to
8 her, that would be the person that's responsible for
9 her medication management.

10 Q. Right. I'm just asking if you're aware if she -- if
11 you have a history of whether or not she tried any
12 other medications listed in your medical narrative?

13 A. Again, I don't have a -- I don't have -- I'm not
14 aware of anything besides the ibuprofen, Trokendi,
15 and vitamins.

16 Q. Doctor, to the best of your knowledge -- and if you
17 don't know the answer, you can say you don't know --
18 but to the best of your knowledge are you aware if
19 the effects of Trokendi can be long term?

20 A. Again, I'm not a medical doctor, so I would defer
21 that to medical professionals.

22 Q. Okay. Doctor, have you discussed the claimant her --
23 with the claimant her activities of daily living?

1 A. Yes. So yesterday she again saw Dr. Brown and myself
2 here yesterday, and we asked her to update us on how
3 she was doing, you know, even at home and she told us
4 that she leaves the stove on all the time which is a
5 safety concern. Her -- she's very forgetful,
6 medications, when cooking, so there is safety
7 concerns for her.

8 Q. Have you discussed with the claimant what she does on
9 a daily basis with respect to shopping, cooking, and
10 cleaning, running errands?

11 A. Cooking -- cooking she told us about. Shopping we
12 didn't discuss. I'm telling you the stuff that we --
13 the areas that we addressed yesterday was cooking.
14 That was -- that was the big area that she talked to
15 us about.

16 Q. Are you familiar with how the claimant gets to and
17 from each appointment?

18 A. I'm taking a look right now. She came on a train
19 yesterday.

20 Q. Okay. And as Dr. Brown confirmed earlier, your
21 office is in Manhattan; is that correct?

22 A. Correct.

23 Q. And you are aware that the claimant does live in

1 Bethpage, Long Island, correct?

2 A. I am. She did report to us yesterday that although
3 she comes by train, she often gets lost. She's
4 confused and she -- her -- the direction, she gets
5 confused with direction.

6 Q. But nonetheless, she was unattended when she arrived
7 at her appointment, correct?

8 A. Correct.

9 Q. And are you also aware that the claimant continued to
10 drive?

11 A. Drive -- she told Dr. Brown yesterday that she drives
12 locally.

13 MS. BALDINGER: Okay. Thank you, Doctor.
14 I have nothing further at this time.

15 THE WITNESS: Okay.

16 MS. FRANCO: All right. Doctor, I don't
17 have anything else either. Thank you for taking the
18 time. We'll request a fee for your appearance.

19 THE WITNESS: Thank you.

20 MS. FRANCO: Thank you, everybody. Have a
21 great day.

22 THE WITNESS: You too. Bye-bye.

23 MS. BALDINGER: Thank you, Vera.

1 (Whereupon, the deposition of Dr. Kim Busichio
2 concluded at 11:24 a.m.)

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and nothing
15 but the truth, relative to said action.

16

17

18



19 Vera Dujovic
20 Notary Public No. 01DU6261690
21 State of New York
22 My commission expires
23 June 14, 2020

A	20:4 assess (1) 10:2 assessing (2) 4:6;12:19 assessment (6) 4:10;7:13;9:7,8,9; 10:23 Associate's (1) 15:15 assume (1) 17:14 attention (9) 6:5;19;10:12;15:20; 16:13;18:6,18;19:1,1 attentional (3) 7:21;13:13;16:2 Avenue (1) 3:8 average (1) 18:1 aware (11) 16:14,15,18,22; 17:6;20:3,10,14,18; 21:23;22:9	both (1) 6:18 brain (4) 4:7,9,10;6:4 Briefly (2) 5:2,21 Brown (12) 9:6;12:5,12,15; 13:11,23;14:6;15:16, 21:21;1,20;22:11 Brown's (1) 12:18 Busichio (1) 23:1 Bye-bye (1) 22:22	3:22;4:12,12 code (1) 5:7 coded (2) 5:2,9 Cognition (4) 4:13;17:3,12,14 cognitive (13) 4:8;6:17;7:1,12,21; 8:13,23;9:3;13:8; 14:21;15:3;19:17,19 Communication (1) 4:13 company (1) 13:17 compared (1) 15:14	5:20 currently (1) 9:15
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4:20	enough (1)	3:13	4:4	
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