

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CIVIL TERM: PART 91

3 -----X

4 EL-SAYED M. GHONEIM,

Plaintiff,

Index #:

517861/2016E

5

-against-

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7 DAVID A. POLINSKY,

T R I A L

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Defendant.

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360 Adams Street
Brooklyn, New York 11201
June 18, 2019

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12 B E F O R E: HONORABLE DEVIN COHEN, Justice, And a Jury

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

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2681 E 14th Street
Brooklyn, New York 11235
BY: STEVEN V. PODOLSKY, ESQ.

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CARTIGLIA, CONNOLLY & RUSSO, ESQS.
1010 Franklin Avenue
Garden City, New York 11530
BY: LYNNE M. NOLAN, ESQ.
BY: JAMES S. McMAHON, ESQ.

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Shanasia Ilgner
Senior Court Reporter

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Proceedings

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1 THE CLERK: Continued case on trial, El-Sayed M.
2 Ghoneim versus David Polinsky, index number 517861 of '16.
3 Counsels, please state your appearances, for the reporter.

4 MR. PODOLSKY: For the plaintiff, El-Sayed
5 Ghoneim, Steven Podolsky with the law firm of Cherny and
6 Podolsky. Good morning, your Honor.

7 THE COURT: Good morning.

8 MR. McMAHON: For the defendant, Mr. Polinsky,
9 James McMahon, the law firm of Cartiglia, Connolly and
10 Russo, associated with my partner, Ms. Nolan, who will
11 introduce herself.

12 MS. NOLAN: Good morning. Lynne Nolan from
13 Cartiglia, Connolly and Russo for the defendant David
14 Polinsky. Good morning, Judge.

15 THE COURT: Good morning.

16 MS. NOLAN: I'm seeking to preclude plaintiff's
17 expert Chirag Shah from testifying today. The basis of my
18 objection to his testimony is that it's speculative and
19 it's based upon injuries and future medical expenses
20 pertaining to his neck, his low back and his knee. It has
21 been placed on the record that plaintiff has withdrawn the
22 injuries claimed to the knee and low back and I, therefore,
23 argue that the experts' numbers which include life care
24 planning for injuries and future treatment to the neck --
25 to the neck, back and left knee are inconclusive and

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1 incorrect.

2 THE COURT: Just so I'm clear, while I do think
3 you've said that you are not focusing on the low back, that
4 you believe those injuries are resolved, I haven't heard
5 you say that you withdrew the claims for the knee only,
6 that you are not making a big deal out of them.

7 MR. PODOLSKY: That's correct, your Honor.

8 THE COURT: Secondly, for better or worse, the
9 plaintiff, although I don't think this was in your plan Mr.
10 Podolsky, that for better or worse the plaintiff did say
11 yesterday that he has ongoing complaints in his lower back,
12 it just wasn't something that was talked about the expert,
13 right. But in any event why don't you say what you want to
14 say about the motion.

15 MR. PODOLSKY: First of all, Dr. Shah is here
16 today. Counsel knew about his testimony for months. It's
17 the first time that they are raising an objection to him.
18 They've never raised an objection to him before today. I
19 believe the objection is late and unfounded.

20 THE COURT: So it's less complicated than that.
21 As with most not all testimony of this type the question is
22 what assumptions was the expert asked to make and whether a
23 change in assumptions changes his testimony, that goes to
24 the weight of his testimony rather than the admissibility.
25 This isn't a Frye question really, this is a question about

Proceedings

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1 that you believe his number is inflated based on the fact
2 that you believe it represents future treatment he won't
3 have. I think that's a totally legitimate concern to have
4 about his testimony. And I would say two things, one,
5 let's see whether he includes all those numbers. I think
6 it's prejudicial to you if he adds stuff that didn't exist,
7 but I don't think it's prejudicial to you if he takes out
8 things that he did originally put in, because he's, you
9 know, because he's expecting to adjust his numbers based on
10 how the testimony goes in.

11 So if it turns out that Dr. Shah gets on the stand
12 and talks about -- talks about expenses that the plaintiff
13 is not -- that we don't expect the plaintiff to have then I
14 would expect you to rough him up about it, you know,
15 verbally, not physically. Other than that, it's a question
16 of degree. It's not a question of admissibility of his
17 testimony. For that reason, your motion is denied.

18 MR. McMAHON: Thank you, Judge.

19 THE COURT: Obviously, you're welcome to cross him
20 about things that he says that are incorrect. This isn't a
21 -- question, it's a numbers question. You had something
22 else too, right? Off the record.

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

25 THE COURT: Ms. Nolan, I know you have a question

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Proceedings

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1 about Dr. Shah's qualification in the field, I just want to
2 let you know that's reserved and you are entitled to make
3 that objection once we hear his qualifications. We have to
4 call you, so just wait for the jurors to come in.

5 (Whereupon, the jurors entered the courtroom.)

6 THE COURT: The plaintiff I understand is asking
7 to call a witness out of order today, correct?

8 MR. PODOLSKY: Yes, your Honor.

9 THE COURT: Who is that witness?

10 MR. PODOLSKY: At this time I'd like to call Dr.
11 Shah to the stand.

12 THE COURT: Call Dr. Shah.

13 THE CLERK: Raise your right hand, please.

14 C H I R A G S H A H , called by and on behalf of the
15 Plaintiff, having been first duly sworn, was examined and
16 testified as follows:

17 THE CLERK: In a loud, clear voice please state
18 your name and address for the record.

19 THE WITNESS: Dr. Shah and I work at 333 East 38th
20 Street, New York, New York 10016.

21 THE CLERK: And the spelling is S-h-i-r-a-g?

22 THE WITNESS: C-h-i-r-a-g.

23 THE CLERK: Last name S-h-a-h.

24 THE WITNESS: Correct.

25 MR. PODOLSKY: Thank you, your Honor.

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Plaintiff - Direct - Dr. Shah

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1 DIRECT EXAMINATION

2 BY MR. PODOLSKY:

3 Q Good morning, Dr. Shah.

4 A Good morning.

5 Q Would you please tell the jury where you went to
6 school?

7 A So for medical school I went to the University of
8 Illinois, for under graduate school I went to the University of
9 Illinois as well, I also went to graduate school at John
10 Marshall law school, received my master's there as well, in
11 regards to residency training after medical school I went to
12 Ross University where I had specified training in physical
13 medicine rehabilitation, upon completion I went to fellowship at
14 Mount Sinai for interventional spine and sports medicine.

15 Q How long have you been working in that field?

16 A Currently as an attending physician, roughly one year.

17 Q Have you read any articles on the subject of spines?

18 A Correct. Yes, I have written several book chapters as
19 well as articles too.

20 Q And how many?

21 A I've roughly written three book chapters I believe
22 somewhere in the ballpark of maybe three to five articles as
23 well.

24 Q Have those publications been accepted by the medical
25 community in your field in your expertise?

Plaintiff - Direct - Dr. Shah

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1 A Yes, they have.

2 Q Have you been given any honors or distinctions?

3 A I have gotten several honors and distinctions as chief
4 resident at Ross University, I've also, you know -- and probably
5 one of the major distinctions as well.

6 Q Have you given any lectures?

7 A Several lectures throughout my career including to
8 residents to other attending physicians, to physical therapists,
9 occupational therapists, other people in our department as well.

10 Q In what field?

11 A That would be in orthopedic spine surgery as well as
12 physical medicine and rehabilitation and neurology, as well as
13 internal medicine.

14 Q Do you practice medicine?

15 A Yes, I do.

16 Q And where do you practice medicine?

17 A New York University Langone Medical Center.

18 Q Is that a teaching hospital?

19 A It is.

20 Q Are you involved in teaching at all?

21 A I am.

22 Q How are you involved in teaching?

23 A Currently on faculty as well as a clinical instructor.

24 MR. PODOLSKY: I'd like to qualify Dr. Shah as an
25 expert witness in the field of medicine.

Plaintiff - Direct - Dr. Shah

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1 THE COURT: In medicine?

2 MR. PODOLSKY: For now.

3 THE COURT: In medicine I see no objection.

4 MS. NOLAN: Oh, okay.

5 THE COURT: But he is not here -- specifically --

6 MR. PODOLSKY: That too --

7 THE COURT: Okay, go ahead. In the field of
8 physical medicine and rehabilitation I accept him as an
9 expert.

10 MR. PODOLSKY: Thank you.

11 Q What else are you -- what else do you do?

12 A I'm also a certified life care planner as well.

13 Q Tell the jury about that.

14 A So as a certified life care planner I basically will
15 assess patients or individuals who have sustained an injury.
16 When they've sustained an injury I will evaluate them based on
17 the type of injury, where it's located, what types of symptoms
18 they have as well. And then based on those I do a physical
19 examination as well as looking at all of their medical history,
20 other medical evaluation about other physicians, other surgeries
21 they have had, as well as other treatment modalities, based on
22 statistical evidence anecdotal evidence within our field as well
23 as literature I'll compile an assessment or a predictive value
24 to see what those -- what that person, what the individual with
25 the head injury, so I guess the patient, what kinds of things

Plaintiff - Direct - Dr. Shah

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1 they might require in the future to help them be functional
2 members of society as well as decrease their pain and improve
3 their mobility as well.

4 Q Are you licensed in that field?

5 A I am.

6 Q When were you licensed in this field?

7 A That was in 2016.

8 Q Have you worked ever since you became licensed in this
9 field?

10 A I have, yes.

11 Q Please tell the jury what's involved in the type of
12 work that you do as a life care planner.

13 A Sure, based on what I had mentioned already, I'll also
14 create a report, a narrative report outlining the patient, you
15 know, situation with their history, what their assessment of
16 their condition is, their functional abilities, their social
17 impacts and then I will also compile a list of tables of
18 different modalities of treatments that they will require, also
19 as well as they will require evaluation by other specialties,
20 devices that they might need as well as social services that
21 they might need as well.

22 Q Did you go to school to learn how to do this?

23 A It is a course, correct.

24 Q And are you -- you said you're certified. Who are you
25 certified by?

Plaintiff - Direct - Dr. Shah

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1 A Certified life care planning.

2 MS. NOLAN: Objection.

3 THE COURT: Overruled.

4 MS. NOLAN: He said licensed he didn't say
5 certified.

6 THE COURT: Are you licensed or certified?

7 THE WITNESS: Certified, I suppose. Certified,
8 yeah.

9 Q Is there a particular body that gives these
10 certifications out?

11 A The associate certified life care planners.

12 Q Have you performed life care plans in the past?

13 A I have.

14 Q Now, what is the basis of your life care plans? Are
15 they based on scientific information? Is the information
16 acceptable in the community of life care planners?

17 A Yes, they are, so it's based on literature, as well as
18 what's accepted within the field as well, as well as statistical
19 evidence as well as predictive values.

20 MR. PODOLSKY: At this time I'd offer this witness
21 as an expert witness in the field of life care planning.

22 MS. NOLAN: Objection. Can I inquire?

23 THE COURT: You want to voir dire, sure.

24 MS. NOLAN: Thank you, Judge.

25 VOIR DIRE EXAMINATION

Defense - Voir Dire - Dr. Shah

11

1 BY MS. NOLAN:

2 Q You're not licensed you're certified, right?

3 A Correct, there's no licensure for it. It's a
4 certification.

5 Q Nobody can be licensed in life care planning, correct?

6 A Correct.

7 Q And what does it entail to get that license, you just
8 take a course?

9 A You take a course. It's roughly a 100-hour course, you
10 also are required to take six -- within each module there are
11 six modules, six parts to the course and then within each course
12 you take a test at the end of it. Finally at the end of the
13 entire course you have an in-person course or an in person I
14 guess weekend course with another attorney, with other certified
15 life care planners, with individuals and other students as well
16 and that's also roughly 20 hours and finally at the end of it
17 you take a full final examination that was developed by the
18 certified life care planners association.

19 Q You don't have to prepare a life care plan in order to
20 pass the course?

21 A So you have two options, one is that you can create a
22 life care plan that you've already been practicing as a life
23 care planner but not a certified one, you can submit one of
24 those as review, if you have not been then they give you a mock
25 life care plan that you create, that you write and then you

Defense - Voir Dire - Dr. Shah

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1 submit it to them as well, they go through that with you as well
2 to make sure that it's appropriate and passes, it's part of the
3 homework assignment that you have to do.

4 Q What did you do in order to become licensed -- I'm
5 sorry -- in order to become certified?

6 A In terms of that I used a mock, the one that they
7 offered to me.

8 Q And you haven't previously done one?

9 A Previous to that, no.

10 Q How many have you done?

11 A Roughly since being certified?

12 Q Yes.

13 A Roughly 10 to 15.

14 Q Have you ever testified in court?

15 A No.

16 MS. NOLAN: My objection stands.

17 THE COURT: Okay, it's overruled. Thanks. I'll
18 accept the witness as an expert in life care planning. He
19 holds the appropriate certification. It sounds as though
20 you can testify without having certification anyway and
21 everybody has to be accepted for a first time so I'll
22 accept him.

23 MR. PODOLSKY: May I proceed, your Honor?

24 THE COURT: Yes.

25 MR. PODOLSKY: Thank you.

Plaintiff - Direct - Dr. Shah

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1 DIRECT EXAMINATION

2 BY MR. PODOLSKY (Continued):

3 Q Dr. Shah --

4 THE COURT: Sorry, and your individualized
5 objection is obviously with respect to his methodology,
6 those still stand.

7 MS. NOLAN: Thank you, Judge.

8 Q Dr. Shah, are you familiar with Mr. El-Sayed Ghoneim?

9 A Yes.

10 Q Can you tell the jury what your familiarity is with Mr.
11 Ghoneim, how do you know him?

12 A So I met with him, I evaluated him, I discussed his
13 injury as well as his symptoms, what treatments he's had and
14 then did a physical examination with him as well.

15 Q As part of your exam with Mr. Ghoneim did you review
16 any medical records?

17 A I did, yes.

18 Q Tell the jury what records you reviewed.

19 A In regards to his medical records I evaluated his
20 imaging studies, which included a cervical spine MRI, lumbar
21 spine MRI, and then the cervical spine MRI, as well as a left
22 knee MRI, also operative reports and progress notes by his spine
23 surgeon, as well as progress notes and operative reports by his
24 orthopedic knee surgeon as well as -- I believe that's mostly it
25 -- progress notes from his internal medicine physician.

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1 Q What MRI did you have to review?

2 A The MRI that I reviewed was the lumbar spine MRI, the
3 cervical spine MRI and the left knee MRI.

4 Q Do you recall the date on the cervical MRI?

5 A Let me check here.

6 Q If you have to check your notes that's okay.

7 A I'll check my notes.

8 MS. NOLAN: On the report or on the actual film?

9 THE WITNESS: My note.

10 THE COURT: You're asking whether he looked at the
11 film or the report?

12 MS. NOLAN: That's what you asked, right?

13 THE COURT: He asked the date of the study that
14 the doctor looked at.

15 MS. NOLAN: So the actual MRI film?

16 THE COURT: He didn't ask that yet, he asked the
17 date of the study. That's all he asked.

18 A The date of the lumbar -- I'm sorry. Which MRI?

19 THE COURT: The cervical spine.

20 A The cervical spine MRI was 6/30/2016.

21 Q Can you say that in a loud voice?

22 A 6/30/2016.

23 Q And that was for the neck, correct?

24 A Correct.

25 Q Were there any MRIs, that you know of, other than that

Plaintiff - Direct - Dr. Shah

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1 date for the cervical neck?

2 THE COURT: MRIs not x-rays, right?

3 MR. PODOLSKY: MRIs.

4 Q Just for the neck?

5 A Just for the neck, correct. Yeah, it's the only MRI
6 that I have seen.

7 Q Are you aware of any other MRIs that Mr. Ghoneim might
8 have had for his entire life other than this one?

9 THE COURT: In the neck?

10 MR. PODOLSKY: In the neck.

11 A Of the neck there's mention in I think Dr. Lerman's
12 report -- that did not have the report for another MRI.

13 Q So as far as you know there's only one MRI from that?

14 A Correct.

15 Q That's dated June 30, 2016?

16 MS. NOLAN: Objection. Asked and answered.

17 A Yes.

18 THE COURT: Overruled. He is just trying -- he is
19 just getting us back on track.

20 Q What were the findings in that MRI?

21 A So the findings on that MRI included, he had several
22 disk bulges from C-3 to C-7 as well as some of those mentioned
23 disk bulges also effecting the ventral thecal sack of the spine.

24 Q What does that mean?

25 A That's basically touching the spinal cord.

Plaintiff - Direct - Dr. Shah

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1 Q What's the significance of that?

2 A The significance of that is that if you have a disk
3 herniation or a disk bulge that's effecting the spinal cord
4 itself then you can have neurologic symptoms including pain,
5 numbness, tingling, as well as weakness.

6 Q What are radiculopathy symptoms?

7 A Sure, radicular symptoms are basically when you have
8 pain that generates from roughly your neck or the area where the
9 injury is, and it goes all the way down in to your arms in to
10 your finger tips.

11 Q Did Mr. Ghoneim have any of those symptoms?

12 A He did, yes.

13 Q Can you tell the jury about that?

14 A Sure, so after having the accident he did complain of
15 having neck pain as well as -- he had mentioned radicular
16 symptoms, the pain radiating down in to his fingertips, he
17 stated that the one side -- there were both sides, the right
18 side was worse than the left side, he also had changes in his
19 sensation in that same area as well.

20 MS. NOLAN: Judge, I'm sorry. Would you mind if
21 we shut the door?

22 THE COURT: I don't mind.

23 MS. NOLAN: Thank you.

24 Q Dr. Shah, are those subjective symptoms, complaints or
25 are they objective complaints, symptoms?

Plaintiff - Direct - Dr. Shah

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1 A So the pain would be subjective, so that the symptoms
2 of having pain going down in to the arms would be subjective
3 symptoms.

4 Q Is there a way to figure out whether those subjective
5 complaints correlate to objective testing?

6 A Sure, so in regards to pain it would be unable to do
7 that, but in regards to numbness, tingling as well as weakness
8 or strength those would be objective findings that we can truly
9 test.

10 Q What tests can you do that are objective to a person
11 like Mr. Ghoneim to confirm whether or not his subjective
12 complaints are actual?

13 A Sure, so in regards to strength we can do a manual
14 motor exam, which is basically testing the different muscles in
15 your arms and each muscle group has an associated nerve that's
16 attached to it, so essentially your brain is sending a signal
17 through that nerve and the nerve attaches to the muscle, by
18 attaching to the muscle we know if, for example, that muscle is
19 not moving the way it should be then we can say it is likely
20 coming from the nerve that's getting irritated, pinched or
21 damaged resulting in that weakness and then you can also do a
22 sensation exam where you are testing the true sensation of the
23 skin because each part of your arm has, again, an associated
24 nerve to that part of your arm. So what we'd call that is
25 dermatomes, and by testing each dermatome in your arm you can

Plaintiff - Direct - Dr. Shah

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1 test to see if there's changes in sensation, true numbness,
2 tingling in those areas of your arm.

3 Q Did you do any of those tests for Mr. Ghoneim?

4 A I did, yes.

5 Q What were the results of those tests?

6 A So he had weakness in his upper extremities, he had
7 weakness in regards to his triceps, which correlates to certain
8 nerves in his neck which also correlate with some of the MRI
9 findings as well.

10 Q What did it correlate with?

11 A It correlated with having disk bulges in his cervical
12 spine.

13 Q Was there a particular level that effected his motor
14 strength?

15 A Sure, so that would be probably his C-5/C-6 as well as
16 his C-6/C-7 level.

17 Q Why is that?

18 A Because the nerves that attach to those muscle groups
19 stem originally from the C-5/C-6 and the C-6 levels in your
20 spine and so when those nerves get irritated they cause -- or
21 damage to the nerve they can cause weakness to that muscle
22 group, and when you have muscle weakness in that muscle group
23 then it correlates with the disk bulges that he had on the MRI.

24 Q Now, was Mr. Ghoneim on any kind of medication when he
25 came to see you?

Plaintiff - Direct - Dr. Shah

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1 A He was taking Naproxen, Ibuprofen.

2 Q What does Naproxen do?

3 A It basically is, as I mentioned, it's an
4 antiinflammatory, it decreases inflammation in your body.

5 Q People use it for pain control?

6 A You can use it for pain control. So it has both
7 properties, it has pain control as well as inflammatory or
8 swelling control, so both.

9 Q Would a medicine like that mask a person's symptoms?

10 A It can diminish or decrease the symptoms, yes.

11 Q Is that the purpose for the medicine?

12 A Partly, yes.

13 Q Now, when you did the exam was Mr. Ghoneim on this
14 medicine?

15 A Yes, he was.

16 Q So do you have an opinion to a reasonable degree of
17 medical certainty whether or not the medicine made his range of
18 motion better or worse?

19 A I would believe that based on having that type of
20 medication, which is commonly prescribed for this condition does
21 improve your pain level as well as your ability to move on that
22 medication so, yes, I do believe with a reasonable degree of
23 medical certainty that it was improved based on being on that
24 medication.

25 Q Did you do a range of motion test on Mr. Ghoneim?

Plaintiff - Direct - Dr. Shah

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1 A I did.

2 Q What were your findings?

3 A So my findings, just reviewing here as well, so in
4 regards to his left upper extremity he had limited range of
5 motion for flexion as well as abduction, as well as extension.
6 In regards to his right upper extremity he also had limited
7 range of motion in all three of those planes or those motions.
8 In regards to his lower back he also had limited range of motion
9 with flexion, lateral rotation, some bending, as well as
10 extension. And in regards to his neck he also had decreased
11 range of motion as well in those three planes, extension,
12 flexion and rotation.

13 Q In terms of percentages how much was the neck decreased
14 in range of motion?

15 A In regards to his neck --

16 MS. NOLAN: Objection.

17 THE COURT: Why, is it not in the report?

18 MS. NOLAN: It's not in the report.

19 A I don't have the specific number, I just have it as
20 decreased range of motion.

21 Q Did you do any other kind of tests like a Spurling's
22 test or a head compression test on your exam?

23 A Yes, I did.

24 Q What are those tests? Can you tell the jury?

25 A So those are tests where we're essentially putting

Plaintiff - Direct - Dr. Shah

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1 extra pressure or stress on the spine and on certain disks as
2 well as certain nerves. So by putting extra stress or tension
3 on those things which, you know, in theory if you had no issues
4 or no injuries they -- you wouldn't have any pain, they are part
5 of your body's ability to adopt to, you know, different
6 movements and bending and flexing, however, when you do those
7 extra stresses in those certain positions if there is an injury
8 then you will irritate or aggravate the nerve as well as the
9 muscles and the disk in that area.

10 Q What were the results of those test?

11 A He had a positive Spurling's test.

12 Q Was there any radiation from the Spurling's test?

13 A He had radiation on both sides so he had radiation on
14 the right as well as the left.

15 Q Now, these tests were performed after his cervical
16 surgery, correct?

17 A Correct.

18 Q Is there any significance in that?

19 A So after the surgery there's two possibilities, one
20 possibility is that the damage that was originally done prior to
21 the surgery became permanent and even though we relieved
22 pressure off of the spine the nerves themselves were damaged and
23 are likely permanently damaged and will continue to have pain in
24 that area. The other possibility is that once you've had a
25 surgery you're very likely to have deterioration or changes

Plaintiff - Direct - Dr. Shah

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1 above and below that surgery because you're putting more stress
2 on the rest of your spine. By putting more stress on the rest
3 of your spine you can also end up irritating, damaging those
4 nerves and those disks as well.

5 Q So what happens in that event if there's damage to the
6 nerves?

7 A If there's damage to the nerves above and below the
8 area of the injury then essentially what you will have to do is
9 go through treatment again for that which includes medications,
10 injections or potentially surgery again extending the surgery.

11 Q Would that be a revision surgery or another surgery?

12 A That would be -- well, if it's the nerves above and
13 below the surgery that are getting damaged it would be an
14 extension of the surgery.

15 THE COURT: So it's an additional surgery?

16 A An additional surgery.

17 Q What is the cost of that?

18 A The cost can range but roughly between 70 to \$100,000.

19 Q 100,000?

20 A Correct.

21 Q Did you come to a conclusion whether or not Mr. Ghoneim
22 will require future surgery?

23 A So based on his medical records, based on the fact that
24 he's continuing to have injury -- pain, symptoms going down both
25 of his arms, has decreased range of motion, has weakness in his

Plaintiff - Direct - Dr. Shah

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1 arms as well as MRI findings that correlate with, you know,
2 continued damage and disk bulges above the level of the surgery
3 that he had as well as evidence based on Dr. Lerman who is also
4 a spine surgeon agree that there's a high likelihood that he is
5 going to need an additional surgery.

6 Q What in Dr. Lerman's records did you review that
7 supports your conclusion that Mr. Ghoneim will need a further
8 surgery to his neck?

9 A I reviewed a narrative report that was done by Dr.
10 Lerman who stated that based on his symptoms as well as his
11 additional findings on his neck, MRI, he will likely need a --
12 an extension surgery to the level above where he had it
13 originally. So he originally had it at a C-5/C-6 level, he also
14 has damage to his C-4 and C-5 level, which is the level above
15 and it will likely require surgery within the next five years
16 for that.

17 Q Do you agree with that conclusion?

18 A I do.

19 Q Are these types of injuries permanent?

20 A They can be, yes.

21 Q With regard to Mr. Ghoneim do you have an opinion
22 whether or not his particular condition is permanent or not?

23 A I do believe that his condition is permanent.

24 Q What is the basis of your opinion?

25 A In regards to damage to your neck including your disks,

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Plaintiff - Direct - Dr. Shah

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1 your nerves, they have a spectrum or a timeline of how quickly
2 they heal and they don't heal so quickly. The nerves once they
3 get damaged they take a very long time to heal in the spectrum
4 of one, sometimes two years. If you do not have healing or
5 resolution within that time frame then there's a very high, very
6 high likelihood that that is permanent at that point if you
7 don't have any improvement in your condition after roughly one
8 to two years, it's a very likely scenario that it's permanent.
9 When you have damage to your disks themselves or bulging of your
10 disks once they are out they don't go back in. You can have
11 some small resorption, small scarring of some of the damage
12 there, but once it's happened they essentially will be there
13 forever.

14 Q And is that the case with Mr. Ghoneim?

15 A It is.

16 Q For the rest of his life?

17 A Yes.

18 Q Did you review the operative report of Dr. Lerman?

19 A Yes, I did.

20 Q And what were the findings in Dr. Lerman's operative
21 report?

22 A So in his operative report he had disk disease at
23 C-5/C-6 and based on that condition as well as symptoms that
24 correlate with the same disease process he underwent an anterior
25 cervical discectomy and fusion at that level.