

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CANDY CASTILLO,

PLAINTIFF,

-against-

Case No.:
2-CV-06429-LGS-OTW

JPMORGAN CHASE BANK, N.A. d/b/a CHASE BANK,

DEFENDANT.
-----X

DATE: August 12, 2022
TIME: 10:04 a.m.

DEPOSITION of the Non-Party
Witness, JOSEPH WEINSTEIN, D.O., taken by
the Respective Parties, pursuant to a
Notice, before Jamie Bortner, a Notary
Public of the State of New York.

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

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BY: JOHN HSU, ESQ.

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221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made. A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

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221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

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THE COURT REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, I will administer the oath remotely, pursuant to Executive Order number 202.7. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting. Please indicate your agreement by stating your name and your agreement on the record.

MR. SACK: Ian Sack, Plaintiff's counsel from Law Offices of Richard Kenny. So stipulated.

MR. HSU: John Hsu, for the Defendant. We consent.

J O S E P H W E I N S T E I N, called as a witness, having been first duly sworn by a Notary Public of the State of New York,

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WEINSTEIN

was examined and testified as follows:

EXAMINATION BY

MR. HSU:

Q. Please state your name for the record.

A. Joseph Weinstein.

Q. What is your address?

A. 1150 Park Avenue, New York, New York 10128.

Q. Dr. Weinstein, good morning. My name is John Sack. I'm an attorney with the law firm of Wilson Elser. You're here this morning to give testimony regarding a patient you've been treating by the name of Candy Castillo. I represent the Defendant in a lawsuit that she's brought as a result of an incident that occurred back in 2019. I'm going to try to get you out of here as quickly as possible. I just have a series of questions that I'm going to ask you. We are doing this virtually, so if you can't hear me, if something I say is not coming through the computer clearly, please, just let me know, so that we can have a clear,

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2 concise transcript of the questions that I
3 ask, and then the answers that you give,
4 okay?

5 A. Of course.

6 Q. If you need a break at any
7 time, just let me know, and I'll be happy
8 to accommodate you, okay?

9 A. Sure.

10 Q. Doctor, do you have an
11 independent recollection of this particular
12 patient, Candy Castillo?

13 A. Of course, yes.

14 Q. Do you remember what she looks
15 like?

16 A. Yes.

17 Q. Do you remember what treatment
18 you provided to her?

19 A. Yes.

20 Q. Is that based on your personal
21 recollection or having reviewed notes in
22 preparation for this deposition?

23 A. Both. But I do know her very,
24 very well.

25 Q. Did you review anything in

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2 preparation for your deposition this
3 morning?

4 A. I reviewed my chart.

5 Q. Your medical chart?

6 A. Yes.

7 Q. Did you have an opportunity to
8 speak with the attorney that represents
9 her, either Mr. Sack or anyone else from
10 the law firm that represents her?

11 A. Yes.

12 Q. Who did you speak to?

13 A. I spoke to -- I didn't speak to
14 Mr. Sack. I spoke to his associate. Hold
15 on.

16 MR. HSU: Ian, are you at the
17 firm that represents the Plaintiff in
18 this case, or are you of counsel?

19 MR. SACK: We are just covering
20 today.

21 A. I spoke to James Lundy.

22 Q. When did you speak to
23 Mr. Lundy?

24 A. When?

25 Q. Yes. When did you speak to

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him?

A. I believe on Tuesday.

Q. Today is Friday. Tuesday of this past week?

A. Yeah.

Q. What was the sum and substance of your conversation?

A. Just to go over my notes with him. That's about it, basically.

Q. What notes are you referring to? Are you talking about the notes in your electronic medical records, or handwritten notes, or something else?

A. The treatment that she's had, in my notes.

Q. But, by "notes," Doctor, are we referring to the medical chart of the Plaintiff, or something else?

A. The medical chart. Whatever I have in my EMR.

Q. Is there anything else in your EMR, other than what I have here, which is about 141 pages?

A. I mean, I don't know what you

1 WEINSTEIN

2 have there. But, I don't have anything, as
3 far as I know, that wasn't sent. But I
4 don't know what you have, so I can't really
5 compare.

6 Q. Doctor, I have what your office
7 sent me. It is 115 pages. How many pages
8 is your medical chart? Are you able to
9 tell?

10 A. I don't know how to tell that.

11 Q. You're not able to tell a page
12 count?

13 A. As you can tell, I'm not very
14 tech-savvy. I don't know how to do a page
15 count of the whole chart.

16 Q. Do you have any handwritten
17 notes regarding your treatment of
18 Ms. Castillo that you either reviewed or
19 you're going to be referencing today for
20 this deposition?

21 A. No.

22 Q. Do you have anything that you
23 reviewed, or that you're going to be
24 referencing, that's not in your electronic
25 medical chart?

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A. I believe the only thing that I may reference is the life care plan that's not in my medical chart. Other than that, I don't believe there's anything else.

Q. Okay. What life care plan are you referencing or referring to?

A. For Ms. Castillo.

Q. Who was the life care plan expert?

A. Edmond Provder.

Q. Doctor, how did you get a hold of that document?

A. By his lawyer -- her lawyer.
Sorry.

Q. Did you review the contents of Dr. Provder's report?

A. I looked it over. Yes.

Q. Did you look it over in preparation for today?

A. Correct.

Q. Have you ever seen the video of the incident involving Ms. Castillo?

A. Yes.

Q. When and where did you see

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that?

A. I saw it a while ago. I don't remember the exact date, but it was sent to me by Mr. Zemsky.

Q. Who is Mr. Zemsky? Is he an attorney?

A. It's her lawyer, I believe.

Q. What were the circumstances that he sent you a video of the incident?

A. So that I could have a complete understanding as to what happened, how she was injured.

Q. Did you ask for that, or did he suggest that you review it?

A. It's possible I asked for it.

Q. Do you have any notes regarding what you viewed? Did you take any notes after watching the video?

A. No. I remember the video.

Q. My question is, did you take any notes after looking at the video?

A. No.

Q. Is anything in your medical records referencing that you reviewed the

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2 video?

3 A. I believe in my narrative I
4 referenced that I reviewed the video.

5 Q. Did you review the video in
6 preparation for the narrative that you did
7 in this case, or did you review it prior to
8 your starting treatment of Ms. Castillo?

9 A. It wasn't at the start of
10 treatment, but it wasn't in preparation for
11 the narrative. It was in between them
12 sometime.

13 Q. Do you still have a copy of
14 that video in your possession somewhere?

15 A. Yeah. Probably. Yeah, I do
16 have it.

17 Q. Doctor, is that standard in
18 your practice? When treating a patient, if
19 there's a video of an incident or an
20 accident, that you would review that video?

21 A. If I know of a video, I
22 certainly would want to see it, yes.

23 Q. Is the reason for that because
24 it could affect your prognosis, your
25 diagnosis, or something else?

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A. I want a whole understanding as to what happened and how things occurred.

Q. Other than what the patient tells you themselves, Doctor?

A. To see the complete story as to what's going on. I want as much detail as possible. If there's any medical record, any video, certainly, I would want to see as much as possible.

Q. Doctor, could you just briefly provide me with your educational background?

A. Sure. Starting from when?

Q. Let's start from college.

A. I went to Queens College. Graduated with a degree from there. Then, I went to New York College of Osteopathic Medicine. I graduated with a D.O. degree. Then, went to a residency in orthopedics in the Northwell system. Graduated after five years of that. And then, went to a fellowship in spine surgery at the Hospital for Special Surgery in 2013, 2014. Then, I opened a private practice.

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Q. Doctor, the orthopedic residency that you did in the Northwell hospital system, what type of orthopedic conditions did you treat during that residency?

A. We treated all types of orthopedic conditions. Anything that you could think of, we treated it.

Q. Did that include spine surgery?

A. Of course.

Q. Did you perform any surgeries during that five-year residency?

A. They weren't my patients. But I certainly was a participant in many, many surgeries.

Q. Tell me what types of surgeries you were a participant in during that five-year residency.

A. Well, we did surgery on children, tumors, spine surgery, all types of spine surgery. We did sports medicine, sports medicine procedures, arthroscopies, joint replacements. Really anything that you could think of -- foot and ankle

1 WEINSTEIN

2 surgery, hand surgery, trauma surgery. It
3 was very all-encompassing.

4 Q. The fellowship you did at HSS,
5 did you say that was in spine surgery?

6 A. Correct.

7 Q. Tell me about that fellowship,
8 exactly what you did.

9 A. We did many, many spine
10 surgeries with world-famous surgeons. As
11 you know HSS's reputation. We were
12 involved in very complicated surgeries,
13 smaller surgeries. All different types of
14 spine surgeries for the neck, thoracic
15 spine, and lumbar spine.

16 Q. During that fellowship, were
17 you the lead on those surgeries, or were
18 you the second or third assistant?

19 A. There was always an attending
20 on the surgeries, but we did play a major
21 role.

22 Q. You said in 2014 or about, you
23 started your own private practice?

24 A. Yes.

25 Q. What's the name of that medical

1 WEINSTEIN

2 office?

3 A. We operate under Comprehensive
4 Orthopedic and Spine Care.

5 Q. Are you an owner in that
6 business?

7 A. I don't know the financial
8 structure of it. But -- I'm not sure.

9 Q. You're not sure if you own that
10 practice?

11 A. I don't know how it works with
12 a corporation owning things. I don't know.
13 I don't know how it works.

14 Q. Are you a shareholder in the
15 corporation of Comprehensive Orthopedic and
16 Spine Care?

17 A. I'm sure I am.

18 Q. You don't know one way or the
19 other if you are?

20 A. I really don't deal with the
21 financial aspect of my business a lot.

22 Q. Well, do you share that
23 business with anyone else, or are you the
24 sole principal or shareholder of
25 Comprehensive Orthopedic and Spine Care?

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A. I don't even know. I have to look into that. I don't know.

Q. How do you get paid from Comprehensive Orthopedic and Spine Care? Are you on a salary, or something else?

A. Yeah. Salary.

Q. Who else is involved in that business? What other shareholders or what other principals are there in that business?

A. I don't know. I mean, I can't answer you a hundred percent. I have to look. I have to ask my accountant.

Q. Doctor, in 2014, when you became part of this practice, was this an already existing practice, or did you start this practice?

A. I started it.

Q. When you started it, did you start it by yourself or with someone else?

A. I started it by myself.

Q. Since that time, have you been the only person who owns this practice, or did you bring in other investors or other

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partners?

A. No. There's no other investors and partners. Again, as I said, I don't know how it's structured. I can't really testify to how the business is structured.

Q. Doctor, that's fine. I'm just trying to figure out if this was a new or existing practice when you joined it.

A. It's a new practice.

Q. Do you have any other doctors who are partners with you in this practice, or shareholders or principals of this practice?

A. No.

Q. The practice that you started in 2014, is it just one location where you work out of, or more than one location?

A. We have two locations.

Q. Can you tell me what those locations are, the addresses?

A. 1150 Park Avenue, as I said before. And the other one is in Rego Park. It's a newer office. It's on -- I don't know the exact address.

1 WEINSTEIN

2 Q. That office has been in
3 existence since what date?

4 A. That office -- we've been there
5 for approximately about a year and a half.
6 We moved.

7 Q. Where did you move from?

8 A. From 6815 Main Street, in
9 Flushing.

10 Q. As part of your practice, do
11 you have people that do the billing for
12 you?

13 A. Yes.

14 Q. You don't do any of the billing
15 yourself, correct?

16 A. Correct.

17 Q. When I say "billing," I mean
18 payment for your services. Payment for
19 medical treatment. You don't handle any of
20 the payments, following up with insurance
21 companies, making sure bills are sent,
22 making sure the right insurance codes are
23 used? You don't do any of that, correct?

24 A. We have a billing company, as I
25 said. Yes.

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Q. What billing company do you use?

A. I don't know.

Q. It's not in house? It's not one of your own employees?

A. No. We have an outside billing company that we use.

Q. Doctor, do you have any other medical partners that are part of your practice?

A. Yes.

Q. Who is that?

A. Dr. Carlos Castro.

Q. Has Dr. Carlos Castro been with you since the inception in 2014?

A. No. I think he came about a year later.

Q. Does he have any ownership interest in the practice?

A. No.

Q. Does he perform any surgeries?

A. Yes.

Q. What surgeries does he perform? What types of surgeries?

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A. Spine surgery. Joint surgery.

Q. Does he assist you in your surgeries?

A. Yes.

Q. In any surgery that you perform, is Dr. Castro always your assisting surgeon?

A. Most of the time, yes.

Q. Doctor, do you have any hospital privileges?

A. Yes.

Q. What hospitals?

A. Lenox Hill Hospital, Mount Sinai Beth Israel, NewYork-Presbyterian Queens, and Mercy Hospital.

Q. What are the privileges that you have there?

A. I have privileges to operate.

Q. Do you have admitting privileges? Surgical privileges? Both?

A. Both privileges.

Q. Have your privileges at any of those hospitals ever been suspended?

A. No.

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Q. Have you ever had any privileges at any hospitals, since you've been practicing medicine in the state of New York, been suspended?

A. In Lenox Hill, I'm undergoing a review process, and that's all I can say about that.

Q. So, do you currently have privileges at Lenox Hill Hospital?

A. Yes.

Q. Are those privileges temporarily suspended, as we sit here today?

A. No.

Q. Do you currently have admitting and surgical privileges at Lenox Hill Hospital?

A. Yes.

Q. Who are your privileges under review by, currently?

A. The hospital. I'm under a review. My privileges are not under a review. I'm under just a review.

Q. You don't want to say why

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you're under review?

A. I can't talk about it.

Q. Doctor, are you board-certified
in orthopedics?

A. Yes.

Q. By who?

A. The American Osteopathic
Association of Orthopedics.

Q. When did you get that
certification?

A. The dates should be on my CV.
I'm not sure about the dates.

Q. In order to get that
certification, did you have to take a test?

A. Yes.

Q. How many times did you take the
test?

A. One time.

Q. Are you board-certified by the
American Board of Orthopedics?

A. I'm board-certified by the
AOAO, as I said.

Q. Right. Are you board-certified
by the American Board of Orthopedics? Not

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the Osteopathic board, but the American Board?

A. No.

Q. You understand that that's a different board certification?

A. Correct. They are both equivocal.

Q. Have you ever taken the certification for the American Board of Orthopedics? Have you ever taken the test for that certification?

A. No.

Q. Doctor, other than New York State, are you licensed anywhere else to practice medicine?

A. New Jersey.

Q. Has your medical license in either New York or New Jersey ever been suspended?

A. No.

Q. Have you ever been under review by the Office of Professional Misconduct in the State of New York?

A. No. Not that I know of.

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Q. Do you have any medical malpractice lawsuits pending against you currently?

A. I have one. However, they just either dismissed it or are in the process of dismissing it. The other side withdrew their motions.

Q. Is that the only medical malpractice lawsuit that has ever been brought against you?

A. Yes.

Q. What county was that pending in?

A. I'm not sure. Maybe Queens. Not sure. I don't know.

Q. Do you have your medical records for your treatment of Candy Castillo printed in front of you, or are they on a computer screen?

A. I have them printed, but I also have a computer.

Q. You said earlier that you reviewed them in preparation for today?

A. Yes.

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Q. Your practice is an orthopedic practice, correct?

A. Yes.

Q. You treat orthopedic conditions, medical conditions, for shoulders, knees, spine; is that correct?

A. Both. Yes.

Q. Do you treat hands, ankles --

A. No. Very infrequently.

Q. Primarily, your treatment focuses on the shoulder, the knees, and the spine, orthopedic ailments related to those body parts; is that correct?

A. Correct.

Q. Doctor, what percentage of your practice comes from people who are involved in some type of accident or incident? Not work-related, just some type of accident or incident?

A. Not work-related?

Q. We will get to work-related separately, because I think you have a good percentage of that.

A. I would say it's mostly

WEINSTEIN

work-related.

Q. How much of your practice is based on work-related accidents?

A. A large percentage. 60 or 70 percent.

Q. Sixty or seventy percent of the patients that you treat have been involved in a work-related accident and are receiving workers' compensation benefits? Would that be accurate?

A. I don't know if they are receiving benefits, but they are involved in workers' compensation.

Q. If they are involved in workers' compensation, then workers' compensation is paying for the medical treatment that you're providing; is that accurate?

A. They should be, yes.

Q. Doctor, the other 30 or 40 percent of your practice, how much of that portion of your practice is treating patients who have a personal injury lawsuit?

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A. Can you be more specific? I don't understand the question.

Q. Sure. You said 60 or 70 percent of the patients that you treat are receiving workers' compensation, correct?

A. Correct.

Q. How many of the patients you treat are receiving no-fault, as a result of a car accident, let's say?

A. Maybe 10 percent, 15 percent.

Q. The other remaining percentage, are they paying you either out of pocket, private health insurance, or through Medicare or Medicaid?

A. I would assume yes.

Q. Doctor, the law firm that represents Ms. Castillo in this action, are you familiar with that law firm?

A. Which law firm would that be?

Q. The law firm that sent you the video of the accident.

A. Which law firm? You have to be specific.

WEINSTEIN

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2 Q. Who sent you the video of the
3 accident?

4 A. I got it from Mr. Zemsky.

5 Q. Do you know what law firm
6 Mr. Zemsky is a part of?

7 A. Zemsky & Salomon.

8 Q. Are you familiar with that law
9 firm?

10 A. Yes.

11 Q. Were you familiar with that law
12 firm prior to your treatment of
13 Candy Castillo?

14 A. Yes.

15 Q. How were you familiar with
16 them?

17 A. I know Mr. Zemsky.

18 Q. How do you know him? Is he a
19 college friend? Does he live in your
20 neighborhood? How do you know him?

21 A. I've known him for a bunch of
22 years. He was introduced to me, and I know
23 him.

24 Q. Did you know him before you
25 became a doctor?

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A. No.

Q. How was he introduced to you?

Was it by a plaintiff's bar association? A
plaintiff's party? Where did you guys
meet?

A. I believe it was a mutual
friend.

Q. What were the circumstances of
your interaction, prior to your treatment
of Candy Castillo? Did you guys have
dinner on a regular basis? Did you go to
ball games together? What was the nature
of your interaction?

A. No, just an acquaintance.

Q. Did Mr. Zemsky refer you
patients since you guys were introduced to
each other?

A. Yes.

Q. Have you known him since your
practice began in 2014?

A. No.

Q. As of what year were you guys
introduced, approximately?

A. 2018, maybe. I'm not sure.

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2 Q. How many patients has he
3 referred you over the years since then?

4 A. I don't know.

5 Q. Doctor, would you say it's been
6 hundreds? Has it been ten?

7 A. No, he refers patients. I
8 don't know. I don't know how many.

9 Q. Do you know on what sort of
10 regularity he refers patients? Is it
11 daily? Is it weekly? Is it monthly?

12 A. I don't know. He sends me some
13 patients. I really don't know.

14 Q. Of all of the plaintiffs that
15 he represents, how many of them are you the
16 treating surgeon?

17 A. I have no idea.

18 Q. Do you and Mr. Zemsky speak on
19 the phone with any regularity?

20 A. No.

21 Q. I apologize if I asked you this
22 already. Did you speak with Mr. Zemsky in
23 preparation for today?

24 A. No.

25 Q. When a patient comes to you

1 WEINSTEIN

2 that's been referred by Mr. Zemsky, do you
3 and he discuss the course of treatment?

4 A. No.

5 Q. Have you ever testified on
6 behalf of Mr. Zemsky's firm?

7 A. I don't believe so.

8 Q. Have you ever testified at
9 trial, Doctor, since you've been in private
10 practice?

11 A. Yes.

12 Q. Since 2014, can you approximate
13 if it's more than ten times that you
14 testified at trial?

15 A. No, I believe it was like four.

16 Q. Four times. Okay. Did you
17 testify on behalf of a patient that you
18 were treating, or did you testify on behalf
19 of a defendant, or someone else?

20 A. A patient I was treating.

21 Q. Each of the four times, did you
22 always testify on behalf of a patient you
23 were treating?

24 A. Yes.

25 Q. Were any of those patients

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represented by Zemsky & Salomon?

A. No.

Q. Do you have relationships with any other plaintiffs' personal injury firms?

A. I don't have relationships. I don't know what that means.

Q. Well, you were introduced to Mr. Zemsky by a mutual friend. So, I guess my question is, prior to your treatment of Candy Castillo, had you been introduced to any other plaintiffs' personal injury lawyers?

A. Yes.

Q. Do any other plaintiffs' personal injury lawyers refer you patients?

A. There are people that refer me patients. Certainly, yes.

Q. Tell me what firms.

A. I don't know off the top of my head. There's many referrals that I get from many different places.

Q. I'm just concerned with the ones you get from the plaintiff's personal

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2 injury bar. Just rattle off whatever names
3 you can remember of lawyers who represent
4 plaintiffs in personal injury lawsuits, and
5 refer you patients.

6 A. I don't know any names off the
7 top of my head.

8 Q. Do you have a book or a ledger
9 with the names of the plaintiffs' lawyers
10 that you deal with?

11 A. I don't think so. I don't have
12 a book with lawyer's names. Not as far as
13 I know.

14 Q. Doctor, do you perform any
15 independent medical exams on behalf of
16 defendants in the personal injury world?

17 A. No.

18 Q. Doctor, when you testify for
19 patients involved in work-related accidents
20 or incidents, those are typically telephone
21 hearings or depositions; is that accurate?

22 A. For workers' compensation?

23 Q. Yes.

24 A. Yes. Telephone.

25 Q. You do those on behalf of the

1 WEINSTEIN

2 patients that you're treating at the time;
3 is that accurate?

4 A. Correct.

5 Q. Doctor, other than depositions
6 or hearings for workers' compensation
7 cases, and other than those four cases that
8 you've testified at trials, have you ever
9 given, prior to today, deposition
10 testimony?

11 A. Yes.

12 Q. Do you know how many times?

13 A. I believe once.

14 Q. That was on behalf of a
15 patient, I presume?

16 A. Yes.

17 Q. Do you know what the patient's
18 name was?

19 A. I don't remember.

20 Q. Doctor, approximately how many
21 patients are you seeing on a weekly basis?

22 A. Maybe approximately 80 or
23 90 patients. Maybe a little less.
24 Depending on the week.

25 Q. But on the high end, 80 or

1 WEINSTEIN

2 90 per week?

3 A. Possibly.

4 Q. Are you operating every week
5 now?

6 A. Every week, yeah.

7 Q. Are you operating on one day or
8 more than one day?

9 A. Two days.

10 Q. What days, Doctor?

11 A. Tuesdays and Thursdays.

12 Q. Where do you typically operate?

13 A. I operate at a hospital and
14 surgery center.

15 Q. What surgery center do you
16 utilize?

17 A. New York Surgery Center of
18 Queens.

19 Q. How many operations are you
20 doing weekly now?

21 A. This week, I did six
22 operations.

23 Q. So, three on Tuesday, three on
24 Thursday, approximately?

25 A. Actually, I did five. One on

WEINSTEIN

Tuesday, and four on Thursday.

Q. Typically, post COVID, when things started to pick up here in New York, are you doing approximately five to six surgeries on average, weekly?

A. Depends what type of surgeries I'm doing.

Q. Since you've been in private practice, how many spine surgeries have you done?

A. Maybe about twelve to fifteen hundred. I'm not sure.

Q. Those spine surgeries, since you've been in private practice, have any of them been minimally invasive spine procedures?

A. What do you consider minimally invasive?

Q. Micro or percutaneous procedures.

A. I've done minimally invasive procedures, certainly, if that's what you consider. Sure.

Q. What percentage of that number

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that you just gave me is of those types of procedures?

A. A low percentage.

Q. What about discectomies? What percentage of that number of procedures to the spine that you've completed is a discectomy?

A. A low percentage.

Q. And what percentage is fusions?

A. A high percentage.

Q. When you say "a high percentage," more than 50 percent of those surgeries are fusions?

A. Yes.

Q. What about arthroscopies? Since you've been in private practice, Doctor, can you quantify -- let's start with the knee. Can you quantify how many knee arthroscopies you've done?

A. Possibly like 1,000.

Q. How many did you do in the year 2021?

A. I don't know.

Q. Since you've been in private

1 WEINSTEIN

2 practice, on an annual basis, do you know
3 about how many you've been doing?

4 A. I don't know. I have to work
5 the numbers.

6 Q. What about shoulder
7 arthroscopies? Approximately how many have
8 you done since you've been in private
9 practice?

10 A. I do a bunch. I can't tell you
11 exact numbers.

12 Q. Doctor, do you own any MRI
13 facilities?

14 A. No.

15 Q. Do you have a financial
16 interest in any MRI facilities, where
17 you're an investor, a silent investor,
18 principal, at any MRI facilities?

19 A. No.

20 Q. Doctor, the American
21 osteopathic certification that you have, is
22 there any subcertification related to the
23 spine that's available?

24 A. I'm not sure. I don't think
25 so. But I'm not sure.

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Q. Candy Castillo, do you remember when the first time it was that you saw her?

A. 8/7/2019.

Q. Was she a patient referred to you by Mr. Zemsky?

A. That, I don't know.

Q. He sent you a video of her accident. So, is it fair to say he referred you the patient?

A. Those are not related necessarily. I don't know if she was sent by him or not. The video was sent much after -- I don't know about "much." But, after I did see her the first time.

Q. Doctor, is it your belief that Ms. Castillo might have found you on the Internet or something?

A. I don't know how she found me. It's not marked on her intake form. So, I can't tell you one hundred percent that he sent her. I really don't know.

Q. Speaking of intake forms, Doctor, I was looking through your medical

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2 records last night, and I noticed that
3 there's no patient intake form in the
4 records that we received from your office.
5 Like, a form that the patient fills out
6 during their initial visit where they
7 describe what their complaints are, what
8 their past medical history is. Do you have
9 such a form that you ask your patients to
10 fill out?

11 A. Yes, of course.

12 Q. Are you looking at one?

13 A. Yes. So, I guess I have
14 something that you don't have. So, we
15 would have to send that to you.

16 Q. Doctor, how many pages is the
17 patient intake form that you have?

18 A. Medical history is two pages.
19 And demographics is one page.

20 Q. So, it's a three-page intake
21 form; is that fair?

22 A. Correct.

23 Q. That form was completed by
24 Ms. Castillo; is that accurate?

25 A. As far as I know, yeah.

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2 Q. Did she sign it at the end? Is
3 there a signature line there at the end of
4 the intake form?

5 A. Yes.

6 Q. Is it dated, Doctor?

7 A. Yes.

8 Q. What is it dated?

9 A. It's dated 6/5/2019.

10 Q. Doctor, who from your office
11 would I contact after this to get a copy of
12 that?

13 A. You can contact Raquel, my
14 manager.

15 Q. That intake form is part of
16 your electronic medical record for
17 Ms. Castillo; is that accurate?

18 A. Correct.

19 Q. The date of that intake form is
20 6/5/2019. According to your billing
21 records, that was the first time that she
22 came to your office; is that accurate?

23 A. That was the first date that
24 she came to my office, 6/5/2019.

25 Q. Doctor, can you see what I put

1 WEINSTEIN

2 on the screen?

3 A. Yes.

4 MR. HSU: Jamie, can we mark
5 this as Defendant's Exhibit A?

6 (Whereupon, a Billing ledger
7 was marked as Defendant's Exhibit A
8 for identification as of this date by
9 the Reporter.)

10 Q. Doctor, do you recognize what
11 I've marked as Defendant's Exhibit A? I'll
12 scroll, from the very top, through the
13 document. It's a one-page document.

14 A. I never saw this before.

15 Q. Do you know what this document
16 is?

17 A. It's a ledger. But I've never
18 seen this before.

19 Q. It was a ledger provided by
20 your office for Joseph Weinstein, D.O., PC.
21 Do you see that on the upper right-hand
22 side?

23 A. Correct.

24 Q. Have you ever seen the ledger
25 for the billing related to Ms. Castillo?

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A. No.

Q. Someone else from your office handles that?

A. Yeah. Like I said, I don't really deal with the financial stuff in the office.

Q. The chart number on this ledger, which is 92230171, does that match the chart number in your EMR?

A. Yes.

Q. Given that the chart number matches, would you agree that this is your billing ledger for treatment to Ms. Castillo?

A. I'll take your word. I guess so. You got it from my office.

Q. Doctor, on the lower right-hand corner, there's a date of 6/5/2019. It has your name. Next to it, in terms of the transaction, it says, "Office consultation. New established patient, 40 minutes." Do you see that?

A. Yes.

Q. Then, there's a bill of \$350

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for that office visit?

A. Okay.

Q. Did you see Ms. Castillo on that date?

A. Yes. I saw her, as I said, 6/5/2019.

Q. Dr. Weinstein, is there -- I don't have one. But, is there a medical record for that visit?

A. You don't have a note?

Q. A medical record, Doctor. A record that would have the date, would have Comprehensive Orthopedic Spine Care at the top, and would have a chief complaint and history?

A. Of course. You should have that.

Q. I don't have that. Is there one?

A. Yeah. Of course.

Q. Is that note electronically signed by you or someone else?

A. By me.

Q. Would you consider that to be

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your initial office consultation or a new patient consultation?

A. Yeah. That's the first note that I have. Yes.

Q. Am I correct in understanding that you never treated or had any communication with Ms. Castillo prior to 6/5/2019?

A. That's correct.

Q. Doctor, I'm going to mark the records that I got from your office as Defendant's Exhibit B. It's 115 pages.

(Whereupon, Ms. Castillo's medical chart was marked as Defendant's Exhibit B for identification as of this date by the Reporter.)

Q. Doctor, I have 115 pages. I know you're not able to tell me exactly how many pages your EMR is. But, does the radiology taken at Lenox Hill Radiology, is that included in the EMR that you have for Ms. Castillo?

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Q. Doctor, the diagnostic studies that were done to Ms. Castillo by Lenox Hill Radiology, you have all of those reports as part of your EMR; is that correct?

A. I should.

Q. Did you ever review the actual films?

A. Of course.

Q. How did you get the actual films? Were they sent to you by Lenox Hill Radiology, or somewhere else?

A. I have a portal that I can look at.

Q. You have a portal that connects you directly to Lenox Hill Radiology?

A. Yes.

Q. Do you then import the actual film to the patient's EMR?

A. No.

Q. Doctor, other than taking your word for it, how do we know that you reviewed the actual film? Is it referenced anywhere in your records?

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A. It should say multiple times that I reviewed all imaging studies.

Q. Is that in your initial consultation record, which I don't have? Does it say that anywhere?

A. It does not that say, no.

Q. What about in the next record on 8/7/2019? Does it say anywhere in that record that you reviewed the actual films through the portal for Lenox Hill?

A. No, it doesn't.

Q. Does it say it anywhere in any of the records that you created for Ms. Castillo?

A. 4/7/2021, it states under number 3, "Reviewed all imaging studies."

Q. Doctor, I see where you're referencing. That's the first time that it references that you reviewed the imaging studies, right?

A. That's the first time it does reference. However, I will tell you that my practice is to review the imaging studies at the earliest time that I can do

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that.

Q. And you have access to a portal with Lenox Hill; is that's correct?

A. That's correct.

Q. You have access to that 24 hours a day, seven days a week?

A. Correct.

Q. Doctor, by the visit of 4/7/2021, by that time, had you already performed surgery on Ms. Castillo to any part of her body?

A. Yes.

Q. To what parts of her body had you already performed surgery to?

A. 1/14/2021, I did a left knee arthroscopy. That was it, before 4/7/2021.

Q. Doctor, the MRIs that I have from Lenox Hill Radiology, those exam dates are in May of 2019. Do you see that?

A. Yes.

Q. You didn't see Ms. Castillo in May of 2019, correct?

A. Where are you looking? Which radiology?

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Q. Sure. I apologize. Let's go individually, because I kind of grouped them together. I'm looking at the MRI of the lumbar spine from Lenox Hill Radiology. The date of the exam was May 20, 2019. Do you see that?

A. Which one are you looking at?
Sorry.

Q. MRI lumbar spine. I'll put it on the screen for you.

A. 5/20/2019. Correct.

Q. Yes. Is this the same MRI that you have, Doctor? It's page 3 of 115. "MRI lumbar spine without contrast."

A. Yes.

Q. Am I correct in interpreting that the date of the exam was May 20, 2019?

A. 5/20/2019. That's correct.

Q. You didn't see Ms. Castillo in May of 2019; is that accurate?

A. Correct. I didn't order those films.

Q. Why is your name on the films, then?

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A. It was copied to me. I don't know. Someone sent it to me. The exam was ordered, if you go down further, by Albert Villafuerte, M.D.

Q. Do you know Dr. Albert Villafuerte?

A. No.

Q. Doctor, the facility at the top of the MRI report, it says -- the facility wrote, a copy to Dr. Joseph Weinstein. That's you, correct?

A. That would be me, yes.

Q. Do you know another Dr. Weinstein at 1150 Park Avenue?

A. It was probably me, yeah.

Q. That's your business address, correct?

A. Correct. I operate an office there.

Q. You see patients at that address?

A. Correct.

Q. How is it that Lenox Hill knew, before you even saw Ms. Castillo, that they

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should copy you on her MRI form?

A. That's a very good question. I have no idea. Usually, the referring doctor will put it, if there was a request from the patient. But, I have no idea why it was on there.

Q. Had you spoken to Lenox Hill before you actually saw Ms. Castillo to request that they send you a copy of the MRI report?

A. No.

Q. Had you spoken to Ms. Castillo in anticipation of her coming to see you in June of 2019?

A. No.

Q. So, Lenox Hill, they just guessed, right?

MR. SACK: Objection.

A. I have no idea.

Q. Doctor, if the MRI report was copied to you, where it says "Copied to," does that mean that you were sent a copy of that report?

A. Yeah. I guess I was sent a

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copy of the report, I would imagine.

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Q. This is probably not the first

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time that Lenox Hill Radiology copied you

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on an MRI report; is that accurate?

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A. It was probably not. I don't

7

know.

8

Q. You don't know if prior to

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treatment of Ms. Castillo, Lenox Hill has

10

ever copied you on an MRI report?

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A. I don't really look at it. But

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I'm sure reports have been sent to me, yes.

13

Q. Do you refer patients for

14

radiology at Lenox Hill Radiology?

15

A. Yeah. Sure. Of course. Yes.

16

Q. Is that the facility that you

17

primarily refer patients to?

18

A. No. Whatever is convenient for

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the patient, the patient goes to. I don't

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really care where they get their MRIs.

21

Q. If a copy was sent to you,

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Doctor, and you hadn't yet saw the patient,

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on the date that the copy was provided,

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what would you do with it?

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A. Well, I don't know in this

1 WEINSTEIN

2 case. But, if it was sent to me and the
3 patient had a pending appointment, I would
4 imagine my girls would put it in the chart.
5 Otherwise, we could reach out to them to
6 see why they are sending it to us.

7 Q. Why, when you saw Ms. Castillo
8 on 6/5/2019, did you have these MRI reports
9 already?

10 A. I believe they were in the
11 chart. Let me see. Hold on. I don't know
12 when they were put in the chart. I can't
13 tell you a hundred percent.

14 Q. Does your 6/5/2019 EMR
15 reference that you have the MRI reports for
16 the back, the neck, the left knee, and the
17 right knee, for Ms. Castillo on that date?

18 A. I would imagine I had access to
19 them. I certainly reviewed them, because I
20 recommended treatment.

21 Q. Doctor, does your medical
22 record reference that you're in possession
23 of those reports, the actual record?

24 A. I don't understand what that
25 means.

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Q. Does your record for 6/5/2019, the medical record that you created for Ms. Castillo in relation to her examination, does it state anywhere in the record that you had reviewed either the MRI report or the actual film for Ms. Castillo's neck, back, left or right knee?

A. No.

Q. Doctor, if you see on the top of this record that I have on the screen in front of you, it has a fax number. It's going to 347-507 -- it looks like either "5853" or "553." Is that your fax number?

A. Yes.

Q. It looks like, based on the fax date, that it was faxed to your office on 6/6/2019; is that correct, Doctor?

A. Correct.

Q. On the date that you saw Ms. Castillo, you would agree, you didn't have these reports, correct?

A. These reports -- but, again, I have access to Lenox Hill. So, most

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probably I reviewed them. I can tell you that I reviewed them. There's no question in my mind that I reviewed them.

Q. Doctor, all I want to know right now is whether you agree that you did not receive these reports until the day after you saw Ms. Castillo for the first time. Do you agree or disagree with that?

A. The portal doesn't just have the images. It has the reports on them as well. These reports, it says that the office did not receive them until 6/6/2019. Correct. If that date is accurate on that fax.

Q. I got these records from your office.

A. Is there a confirmation that this fax was sent and received, other than this line up here?

Q. No, I think that's the imprint on the record when it's faxed.

THE WITNESS: Do you mind if I take a ten-minute break?

(Whereupon, a short recess was

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taken.)

Q. Doctor, when you go into the portal for Lenox Hill, it shows you both the report, and then if you want to look at it, the actual diagnostic image, whether it's the X-ray, MRI, CT scan, right?

A. Yes.

Q. The initial office visit record for Ms. Castillo, there's no mention by you that you reviewed the actual films or the reports, correct?

A. Correct.

Q. If I scroll down, on screen in front of you, the MRI of the cervical spine taken on the same date, 5/20/2019, that also was copied to your office; is that correct?

A. Yes.

Q. Again, do you know why you were copied on an MRI for a patient that you had not yet seen?

A. Again, I can't tell you a hundred percent. Except that someone knew that they were going to see me, or wanted

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my opinion at some point. They referred them to me or something. That's the only thing I can say. Otherwise, I don't know. I certainly did not request them before I saw the patient. There's no way.

Q. Doctor, is it possible that Mr. Zemsky told the patient that he was going to be referring her to you?

MR. SACK: Objection, as to the "possible" word. Anything is possible.

MR. HSU: Doctor, you can answer.

A. I have no idea.

Q. Did you and Mr. Zemsky have any conversations about Ms. Castillo possibly coming to you for treatment prior to 6/5/2019?

A. No. As I said before, I have no idea how she came to my office.

Q. Does the intake form that you have for Ms. Castillo list who the referral is coming from? I know typically, for other doctors, it lists that. There's a

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WEINSTEIN

section for if she was referred by a doctor
or a lawyer, or someone else?

A. As far as I could tell, going
over it, there's no referral source on the
intake form.

Q. Do you know when it is you
learned that Mr. Zemsky was representing
Ms. Castillo in this lawsuit, in relation
to your treatment, Doctor?

A. I don't know.

Q. You don't know if it was
before? After?

A. Well, I said before that it
wasn't before. Because we didn't speak or
have any sort of communication regarding
her, that she would be coming in. So, I
don't know when I learned that he was her
lawyer.

Q. Do you know when it is that
Ms. Castillo scheduled her first
appointment with you? Do you know if it
was before this film was taken or after?

A. I don't know.

Q. Is there any record that you

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1
2 have, that would indicate when she made the
3 appointment to come see you, Doctor, that
4 would explain why you're copied on this MRI
5 film?

6 A. It looks like, from my records,
7 that the appointment was scheduled on
8 6/3/2019. That could be mistaken. That's
9 what I see here. I'm not sure a hundred
10 percent. But that's what I see from this
11 appointment.

12 Q. Doctor, what are you looking at
13 that would lead you to believe that that
14 would be the case?

15 A. I pulled up the appointment.
16 And I see the history of the appointment.
17 And it says here, "Scheduled appointment,
18 6/3/2019, at 2:06:23 p.m."

19 Q. Got it. So, the custom and
20 practice is, if somebody calls your office
21 and schedules an appointment with you, I
22 would imagine that someone from your office
23 would put that into an appointment
24 calendar?

25 A. Yes. So, in our system, when

1 WEINSTEIN

2 you schedule an appointment and do a
3 follow-up, there's a history of it. From
4 this appointment -- again, I don't know if
5 she had another appointment that she
6 canceled beforehand. That, I don't know.
7 But, I don't know if -- that's all I'm
8 seeing on here. I don't see anything else.
9 I'm not sure.

10 Q. Doctor, if there had been
11 another appointment before 6/5, that had
12 been canceled, that would show up on your
13 appointment calendar?

14 A. I believe so.

15 Q. But you don't see one there
16 indicating that she had any other
17 appointments scheduled prior to 6/5/2019?

18 A. I don't see any, no.

19 Q. Just going back to Defendant's
20 Exhibit A for a second. The billing record
21 from your office for 6/5/2019, indicates
22 that the amount billed for that visit was
23 \$350. Is that the cost for an initial
24 office consultation with yourself?

25 A. No. It should be for more. I

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have to look into that, actually. Thank
you for pointing that out.

MR. SACK: Can you scroll to
the top of the page? I think there's
a heading for what these are.

MR. HSU: Yeah. It says
"Amount."

Q. Doctor, when you say it should
be more, what do you believe the office
consultation fee is?

A. I know if someone comes in off
the street, and let's say wants to pay
cash, I believe it's \$500 for an initial
consultation.

Q. Doctor, are your fees written
anywhere, your office consultation fees?
Are they written anywhere?

A. That, I don't know.

Q. When you see a patient pursuant
to workers' comp, you understand there's a
fee schedule, right?

A. Of course.

Q. The workers' comp fee schedule
for an initial consultation visit, it's not

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\$350; is it, Doctor?

A. That's correct.

Q. It's much less, right?

A. I don't know the exact amount.

But it's less, yes.

Q. For no-fault, as well? The
initial consultation fee is much less than
\$350, correct?

A. Correct.

Q. Through Medicare or Medicaid,
the initial office consultation fee that
that insurance will pay is much less than
\$350, correct?

A. Correct.

Q. Doctor, when Ms. Castillo came
to your office for the first time, how did
she pay for your consultation?

A. I believe she was seen on a
lien, like it says there.

Q. Where it says on the left,
"lien"?

A. Correct.

Q. What does that mean?

A. It means that she is seen on a

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1
2 lien. That we basically provide care and
3 get paid at a later date and time.

4 Q. Doctor, does the patient sign
5 any forms before they are seen on a lien
6 with your office?

7 A. They should sign a lien form.

8 Q. Let me see if I have that.
9 Doctor, on page 11 of Defendant's
10 Exhibit B, is this the lien assignment form
11 that the patient signs?

12 A. It can be, yeah.

13 Q. Do you recognize this form as
14 being the one that your office uses?
15 It's page 11 and 12 of the 115-page PDF.

16 A. Yeah. Correct.

17 Q. It's part of your chart,
18 correct?

19 A. Yes. That's why you have it.

20 Q. Doctor, this is the document
21 that the patient signs saying that you will
22 treat them without any cost to them, and
23 that if they recover money in the lawsuit
24 that they have, that they will owe you
25 money; is that correct?

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2

A. That's what a lien is.

3

Correct.

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Q. If they don't recover any

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money, then you don't recover any money,

6

correct?

7

A. I guess so.

8

Q. The form has the option for you

9

to go after them personally. But you guys

10

don't do that, right?

11

A. I can't speak to that.

12

Q. Have you ever had to go after a

13

patient that you did treatment on a lien,

14

personally?

15

A. I don't recall. I don't know.

16

Q. Doctor, did you take all of

17

Candy's treatment, that you provided, on a

18

lien? The entirety of her treatment?

19

A. I don't believe so.

20

Q. What treatment did you not take

21

on a lien that you provided?

22

A. I believe that there was

23

funding for the surgeries.

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Q. Funding from who?

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A. From the patient.

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Q. Where does it state that?

A. Where does it state what?

Q. Where does it state that there was funding from the patient for some of the treatment that you provided?

A. I have no idea.

Q. I'm just a little bit confused. According to the billing records, which is Defendant's Exhibit A that I have here, which goes through most of your treatment dates of Candy Castillo, it says on the left-hand side that these are all on a lien. Do you see that?

A. Those are all office visits.

Q. Right. Are these all office visits?

A. That's what it says there, "Office visits. X-rays." Scroll down, please. They are all office visits.

Q. Is it fair to say that all of these office visits are on a lien?

A. That's correct.

Q. Why do the office visits, the costs -- like here, on 2/22/22. Why are

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some of them \$500, and some of them \$350?

A. That, I don't know. I have to look into that.

Q. On 2/23/2022, on the top, it says "RADEX." Is that an X-ray?

A. Most probably.

Q. An X-ray of the cervical spine. The amount you charged was \$150?

A. I guess so.

Q. Do you have a capability to do that in your office, Doctor, the X-rays?

A. In one of my offices, yes.

Q. Which office?

A. Queens.

Q. Doctor, I just want to make sure there's not another billing chart that I don't have, other than this one on the screen.

A. As I said, this is for the office visits. She did have surgery as well.

Q. The four surgeries that you performed on Candy, did you take that on a lien?

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A. Partial lien, yes.

Q. Where in your electronic medical records would I be able to figure out what you took on a partial lien and what you were actually paid? Where would I be able to see that?

A. I guess you have to contact my billing person in the office.

Q. We did. They gave us what I marked as Defendant's Exhibit A. How would I be able to see the other part that I don't have, that you just described?

A. I'll talk to them. I'll have them send it to you. I just need your information.

Q. What is the other record that you have?

A. The other record regarding what?

Q. The surgeries, and what you were paid versus what you took on a lien?

A. I don't have that in front of me. I don't know. We would have to look at the billing history.

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Q. Doctor, as you sit here today for this deposition, do you know if you were paid any money by Ms. Castillo for any of the four surgeries that you performed?

A. I'm sure I was.

Q. Do you know how much that was?

A. No. That, I don't know.

Q. Do you know how much you charge for each surgery?

A. I have to look. I'm not sure a hundred percent.

Q. What would you have to look at?

A. I have to look at the billing records.

Q. How much do you typically charge for an arthroscopy?

A. I don't really know. As I told you before, I don't handle a majority of the billing in my office. So, I do not speak to the patients -- my office speaks to the patients regarding the billing and particulars.

Q. Doctor, would you agree that the billing company that you use, they have

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a set schedule of fees for the different medical services that you provide. And then, according to the code that you use on any particular date, whether it's an office visit or a surgery, that medical company then bills whoever is paying for the treatment; is that accurate?

A. We have a biller, correct, who sends out -- we have a set fee schedule, and they send out bills regarding that fee schedule, as you said.

Q. Do you know what the fee schedule is for a routine arthroscopy?

A. I don't have that in front of me. I don't know.

Q. You don't have that memorized? You don't have that to memory?

A. No.

Q. Do you know what the charge is for a single-level lumbar fusion?

A. I told you, I don't have the fee schedule in front of me.

Q. Do you know what you charge for a single-level cervical fusion?

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A. Same answer.

Q. What about for a left shoulder arthroscopy?

A. Same answer.

Q. Doctor, how much of the surgical cost for Ms. Castillo did you take on a lien? Would it be more than 50 percent or less than 50 percent?

A. I don't know. I think usually it's approximately about 50 percent. But I'm not sure.

Q. Do you know who paid the 50 percent that was paid, approximately? Was it insurance? Was it a loan that funded her? Something else?

A. I don't know. I have to look into it.

Q. Do you fund the patients for surgery?

A. Do I fund -- what do you mean? Do I fund them myself?

Q. Do you loan the patients money to fund their surgeries?

A. Is that legal?

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Q. I don't know, Doctor. Nothing would surprise me in this day and age.

A. No. Certainly I don't fund the surgeries. Get back to me if that's legal though, okay? I'm curious.

Q. Doctor, in your EMR, does it reference how much of the surgical bills were actually paid, as opposed to the lien amount?

A. I don't think it would be in my notes section. It's probably in the billing department.

Q. Doctor, the document I have up on the screen, which is a billing record from your office, that's part of your electronic medical chart, correct?

A. Again, I said this many times. I can continue saying it. I really do not deal with the billing. I've never seen this document before. They don't ask me before they send it out, and I really don't know. If you have a bunch of questions, I can find out, and get you the exact answers. I don't know even where to find

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it -- I'm involved in the medicine.

So far, we are here for over an hour and a half. And really, you haven't had any medical questions. This is mostly billing stuff. So, I really don't know.

Q. Speaking of billing, you did a narrative report in this case, right?

A. Correct.

Q. In that narrative report, towards the end of it, you recommend certain future treatment for Ms. Castillo for the remainder of her life, correct?

A. Correct. Yes.

Q. Did you know what her life expectancy is when you wrote that report? Do you know what that is?

A. I'm not an actuary. I can't tell you what her life expectancy is.

Q. Do you know what it is in the pattern jury instructions for the State of New York? After you wrote that report, do you know what the pattern jury instructions for the State of New York provides for Ms. Castillo's life expectancy?

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A. No.

Q. Doctor, in that narrative report, you provide not only treatment that you are stating with a reasonable degree of medical certainty that Ms. Castillo needs for the remainder of her life, but you also provide the cost associated with that treatment, correct?

A. Correct. Yes.

Q. How did you know what cost to put if you're not familiar with the billing?

A. I said I'm not familiar with my billing that you referenced here. There's certain FAIR Health guidelines that are -- anyone can access those. I believe that those prices are consistent with FAIR Health.

Q. Doctor, when you say "FAIR Health," what are you using to come up with the cost in your narrative? What document are you using? What billing record are you using?

A. FAIR Health is a website that

1 WEINSTEIN

2 has money associated with different codes.

3 That's what I base it on.

4 Q. Doctor, when the narrative
5 report was created, did you yourself go to
6 FAIR Health and look up each medical code,
7 and see what the range of cost was in the
8 United States?

9 A. I have an understanding. I've
10 done other narratives, certainly. That was
11 my understanding from doing that.

12 Q. I believe the narrative is
13 dated 4/11/2022. When you completed the
14 narrative on or about that date, you
15 referenced in there certain procedures,
16 medications, MRIs, X-rays, physical therapy
17 that you believe Candy would need for the
18 remainder of her life. Do you recall that?

19 A. Correct.

20 Q. And then, next to each type of
21 treatment, or exam, or medication, you put
22 a cost. Do you recall that?

23 A. Correct.

24 Q. Did you put the cost next to
25 that, or did someone from your office do

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that?

A. I put the cost.

Q. When you put the cost, were you looking at a website for the cost, or were you just doing it based on your memory of the last time you had been to that website?

A. I don't specifically remember the last time I've been to the website.

Q. Were you doing that based off of memory?

A. Yes. I'm in the field. I know what FAIR Health is, the guidelines and the approximate cost of these things.

Q. Doctor, you don't know what you charge in your own office, but you know what the general cost is? Is that what you're telling us?

A. That's correct. That's what I testified.

Q. The cost that you put in your narrative next to each of those items that you believe Candy will need for the remainder of her life, you put that cost based on your general knowledge of what the

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cost is; am I accurate in my statement?

A. As I said, it's based on FAIR Health, what the cost is that is an unbiased guideline throughout the country, of healthcare costs.

Q. Did you look at FAIR Health at the time that you did the narrative? Were you on the website?

A. I can't tell you exactly when I looked at it. But I am familiar with the FAIR Health costs.

Q. You didn't look at it on the day of your narrative. We can agree on that; is that correct?

A. I can't say the last time I looked at it. I can't tell you the exact date.

Q. You are not even sure if you looked at it prior to doing the narrative, correct?

A. I definitely looked at it. I can't tell you exactly when I looked at it.

Q. Does FAIR Health, for different forms of treatment, does it show a range of

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cost?

A. They have to also realize that there's hospital charges as well. It's not just the surgeon fee for the procedures that she may need in the future. I believe it says what the procedure should cost.

Q. Does it show a range, Doctor?

A. I don't remember right now.

Q. Do you have it memorized, what the range is for an MRI, or what the cost is?

A. No, I don't have that right now in front of me.

Q. Do you know what the cost is on FAIR Health for a single-level fusion to the cervical lumbar?

A. I don't have that in front of me right now, besides the narrative that you have. Those prices are inclusive of a hospital fee, anesthesia, equipment, and surgeon fee.

Q. Doctor, when you perform an operation at a surgical center, are you billing for the anesthesiologist, or does

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the surgical center of the hospital bill
that separately?

A. The anesthesiologist and the
hospital would bill, depending on the
situation.

Q. They would bill their fee
separate from your fee as the surgeon,
correct?

A. Correct.

Q. When you're performing a
surgery, you have no idea what fee the
hospital is billing. You don't know what
their fee is. You never see their fee,
correct?

A. I've seen some bills. Of
course I have.

Q. What does a hospital charge for
a single-level surgical fusion?

A. It ranges. It could be
\$80,000, \$100,000, \$40,000. Everyone is a
bit different. That's why FAIR Health is a
standard. As opposed to if you go to
doctor X or doctor Y, you could get someone
to see you for \$350, or you could get

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someone to see you for \$500. There's not one set fee that everyone just does. Besides, like you said, workers' comp and no-fault have a standard set of fees.

Q. Doctor, do you know, what is the smallest fee that a hospital charges following a single-level cervical fusion? What's the smallest you've seen, Doctor?

MR. SACK: Recently? Ten years ago? Something else?

MR. HSU: That Dr. Weinstein has ever seen in his eight years of practice.

A. I've seen a range of between 40-, 50- to 80-, \$90,000.

Q. When you were calculating these costs associated with your narrative, did you use fees that were in the \$40- or \$50,000 range when figuring out the costs for a single-level cervical fusion?

A. I think I said I used FAIR Health.

Q. My question is, did you use a 40- or \$50,000 cost basis for the hospital

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2 fee, when you put these fees onto this
3 narrative?

4 A. Again, it's an addition of a
5 hospital fee, physician fee, and anesthesia
6 fee.

7 Q. Doctor, can you turn to your
8 narrative for me?

9 A. Go ahead.

10 Q. On number 7, on your
11 recommendations for her future care, you
12 put that the patient is at risk for
13 adjacent-level disease in the lumbar due to
14 fusion surgery. Do you see that?

15 A. Yes.

16 Q. You put the cost of surgery is
17 \$100- to \$150,000. Do you see that,
18 Doctor?

19 A. Yes. That's correct.

20 Q. How did you come to that
21 number?

22 A. Again, I accessed my FAIR
23 Health knowledge and came to that number.

24 Q. Is there anything connected to
25 your narrative showing what FAIR Health

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lists for that type of procedure?

A. No.

Q. Does your number break down what the cost is between the hospital, the anesthesiologist, and the surgeon?

A. No.

Q. Doctor, if we took what's on the lower end of the cost for this type of procedure, you would agree that this procedure could cost anywhere from \$100- to \$150,000, as you described, or it could be anywhere from \$40- to \$50,000; is that accurate?

A. No, that's not accurate.

Because, as I said, the hospital fee -- the lowest that I said for the hospital fee was 30- to \$40,000. Then, you have the surgeon fee. Then, you have anesthesia, and any equipment that they have to implant in the patient, possibly.

Q. What's the lowest anesthesiology fee that you've ever seen, Doctor?

A. I don't know. I would have to

1 WEINSTEIN

2 look it up.

3 Q. What's the lowest surgeon fee
4 that you've ever seen?

5 A. Why you are you looking for a
6 deal? Why the lowest?

7 Q. I want to know, Doctor, since
8 you project out costs for the future for
9 Ms. Candy. What's the lowest fee that
10 you've ever seen?

11 A. I don't look at other fees.
12 So, I really don't know. I don't know
13 other surgeon's fees that they charge.
14 Maybe you could find a deal.

15 Q. Doctor, do you charge 100- to
16 \$150,000 for every single-level fusion
17 surgery that you perform?

18 A. I don't know. But again, that
19 100- to \$150,000 is for the hospital, for
20 the anesthesia, and for the surgeon, and
21 any implants.

22 Q. Doctor, I guess my question is,
23 for any surgery that you perform at a
24 hospital, inclusive of the hospital, the
25 anesthesiology, and any instruments that

1 WEINSTEIN

2 are implanted, when you perform the
3 procedure, does it cost more or less than
4 100- to \$150,000?

5 A. Depends on what's going on. As
6 you said, workers' comp has their own fee
7 schedule --

8 Q. Doctor, I'm only talking about
9 your cost or your charge. We are not
10 discussing right now what they will
11 actually pay for your charge --

12 A. Yeah, but I told you multiple
13 times that I don't have in front of me my
14 charges. I can get that to you. You're
15 trying to ask me the same question. I'm
16 giving you the same answer. I don't have
17 my charges in front of me. I'm sorry. I
18 can get back to you on that. That's not an
19 issue.

20 Q. I hope you can forgive me. I'm
21 trying to understand how you came to these
22 numbers, if you don't even know what you,
23 yourself, inclusive of the hospital, the
24 anesthesiologist, and the instrumentation
25 that you might use in this type of surgery

1 WEINSTEIN

2 cost. How are you able to project what it
3 will cost in the future, if you don't even
4 know what you charge, Doctor?

5 MR. SACK: He's already
6 answered this.

7 A. I don't know how what I charge
8 is relevant. Maybe I'm very cheap. Maybe
9 I'm expensive. I told you multiple times,
10 it's base on FAIR Health.

11 Q. Doctor, it's possible that your
12 fee, inclusive of the hospital, the
13 anesthesiologist, is much less than the fee
14 that you indicated here on the narrative,
15 correct?

16 MR. SACK: Objection. Anything
17 is possible.

18 A. You have to realize, also,
19 these are different types of procedures
20 than what I have done. If you're just
21 talking about the procedures, these are
22 revision procedures that are more
23 complicated than a primary procedure.
24 Assuming, like you say, that my fees are
25 less.

1 WEINSTEIN

2 Q. Right. Doctor, you've done
3 revision surgeries for patients to the
4 spine and to the neck, correct?

5 A. Yes, I have.

6 Q. You've done revision surgeries
7 for adjacent-level deterioration following
8 an initial fusion surgery, whether you were
9 the initial surgeon or not, correct?

10 A. That's correct.

11 Q. What do you charge for a
12 revision surgery, single-level, to an
13 adjacent level from where the initial
14 surgery was performed?

15 A. I don't have my fees in front
16 of me.

17 Q. You don't know, as you sit
18 here, what you charge for a revision
19 surgery, what the hospital charges, what
20 the anesthesiologist charges? You don't
21 have any idea?

22 A. Within my narrative is the cost
23 that I feel is appropriate. I do not have
24 my fees in front of me, as I told you.

25 Q. Doctor, before you agreed to

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take this case on a lien, did you want to
make sure that Ms. Castillo had a high
probability of recovering money?

A. Excuse me? I didn't hear the
question.

Q. Before you agreed to take this
case on as a lien, did you look at the
facts surrounding the accident to ensure
there was a high probability that you could
get repaid for your medical treatment?

A. No.

Q. Is that why you asked for the
video relating to the incident?

A. No.

Q. You're not a biomechanical
expert, correct?

A. We understand in orthopedics
biomechanics. But, I'm not officially a
biomechanic expert, correct.

Q. You don't have any life care
planning certifications, correct?

A. That's correct.

Q. You've never testified as a
life care plan expert at any trial,

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correct?

A. Correct. Yes.

Q. You've never been qualified as a life care plan expert, correct?

A. Correct.

Q. Doctor, do you perform knee replacement operations?

A. No.

Q. Have you ever billed a knee replacement operation, then?

A. I don't believe so.

Q. Do you perform shoulder replacement surgeries?

A. No.

Q. Doctor, you would agree that not every patient that has a single-level fusion will require an adjacent-level revision or further surgery, correct, Doctor?

A. Of course.

Q. You agree that not every patient, not even a large percentage of the patients, that have a knee arthroscopy will require a knee replacement, correct?

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2 A. Of course, yes.

3 Q. You'll agree that a knee
4 arthroscopy, similar to a shoulder
5 arthroscopy, is a pretty common procedure
6 in the United States, correct?

7 A. Very common.

8 Q. And that most patients make a
9 complete recovery following those types of
10 procedures, correct?

11 A. Correct. Yes.

12 Q. Doctor, were you aware that
13 Candy had Medicare health insurance at the
14 time that she came to see you?

15 A. I don't know. No, I don't
16 know.

17 Q. Do you know why your office
18 didn't take Medicare for all of these
19 procedures?

20 A. I'm not sure. But -- I'm not
21 sure. I don't know.

22 Q. If a patient comes to you and
23 they have health insurance, why would you,
24 as a doctor, not take their health
25 insurance for the treatment that you're

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2 providing?

3 A. I believe -- I'm not a hundred
4 percent sure. But I believe if there's a
5 personal injury case, Medicare really
6 doesn't cover it. There certainly are
7 instances if a patient has a problem, we
8 would take their private medical insurance.

9 Q. Did your office bill Medicare
10 for any of the treatment that you provided
11 to Candy?

12 A. I believe she was treated on a
13 lien. So, I would not think so. But I
14 would have to check that.

15 Q. Medicare never actually
16 indicated to your office that they wouldn't
17 pay for any of the treatment associated
18 with Candy, correct?

19 A. I don't know if we've had any
20 conversations with Medicare.

21 Q. Is there anything in your
22 record that indicates that Medicare was
23 ever billed for any of this treatment?

24 A. I don't know.

25 Q. Do you see anything, Doctor?

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A. The only thing I see from the treatments is the lien that you have in front of me on the screen. I don't believe that that would be billed to Medicare. You can't bill two people for the same thing. So, I don't believe it would be billed to Medicare.

Q. There's nothing in your chart for this patient that indicates that your office ever attempted to bill Medicare; is that accurate?

A. As far as I know, no. I can check into it. But I can't tell you a hundred percent. I have to look into it.

Q. Doctor, the fee that Medicare would reimburse you for a single-level fusion or an arthroscopy would be much less than the range of cost that's in your narrative, correct?

A. Most probably. Yes.

Q. You would agree that the cost would be probably 50 to 60 percent less than what's in your narrative, correct?

A. Possible.

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Q. Do you know what Medicare reimburses for an MRI?

A. No.

Q. Do you know what Medicare reimburses for a single-level cervical fusion?

A. I don't know exactly. No.

Q. Do you know what Medicare reimburses for a total knee replacement?

A. No.

Q. Doctor, on your narrative, paragraph number 1 that we were just discussing, you say that Ms. Castillo should be seen by a spine surgeon four to six times per year. Do you see that?

A. Yes.

Q. And then, you say the cost of each visit would be \$450. Do you see that?

A. Yes.

Q. That cost is more than your own office visits, correct?

A. Well, it says "Approximately." It doesn't mean she's seeing me.

Q. That approximate cost is more

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2 than the cost that you billed on your own
3 billing records for the visits for
4 Ms. Castillo.

5 A. That's correct.

6 Q. These recommendations that you
7 make, you would agree that you're not
8 making these to a reasonable degree of
9 medical certainty, correct?

10 A. What do you mean?

11 Q. These recommendations that we
12 are discussing, 1 through 11, you're not
13 making them with a reasonable degree of
14 medical certainty, correct?

15 A. I don't understand what that
16 means.

17 Q. Meaning, this is all
18 speculation on your part?

19 A. You're saying that she doesn't
20 a hundred percent need these things?

21 Q. Right. You're not saying that
22 she needs these things with a reasonable
23 degree of medical certainty; is that
24 correct?

25 A. I put them there. And I'm not

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saying she 100 percent is going to need to have this. But, these are the possibilities that could come out of her treatment and her accident.

Q. Right. Doctor, these are the extremes, right? If everything goes wrong -- if all of her injuries get progressively worse, this is the worst case scenario, correct?

A. Well, for the surgeries, I would say that's worst-case scenario. It's a -- at least for the spine, a percentage of people do undergo adjacent-level disease, about 20 to 30 percent. For the rest of the treatment, I think it's fairly reasonable. You know, not worst-case scenario, as you're saying. But certainly she needs follow-up, and to have these other sort of things going on.

Q. Doctor, are you saying, with a reasonable degree of medical certainty, that Ms. Candy will require bilateral total-knee replacement surgery?

A. I don't think that's what I

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answered before. Certainly there is a chance that she will need knee surgery due to post-traumatic arthritis, as I said in the narrative.

Q. What I'm asking you is, you would agree that it's not to a reasonable degree of medical certainty that she will require bilateral knee replacement surgery in the future? You would agree with that?

A. I can't tell you with certainty that she will have it, correct.

Q. You're not making these statements to a reasonable degree of medical certainty, relating to bilateral knee replacement; is that correct, Doctor?

A. I have -- as I said in the bottom of the narrative, I reached these conclusions to be within a reasonable degree of medical certainty. I think you're maybe miscategorizing how these recommendations are put out. I'm not recommending her for a knee replacement right now. But maybe in 15, 20 years, or less, she may need a knee replacement after

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2 her treatment and the injury.

3 Q. Doctor, she may also not need a
4 knee replacement surgery, right?

5 A. A thousand percent. You're
6 correct.

7 Q. So, you cannot say with any
8 certainty, based upon your treatment of
9 Candy, that she will require bilateral knee
10 replacement surgery. You agree, Doctor,
11 correct?

12 A. Correct.

13 Q. And you can't say with any
14 certainty that she will require a further
15 revision surgery, correct, Doctor?

16 A. Certainly, I can't say with
17 certainty. But again, as I put it, she's
18 at risk for these procedures. Yes.
19 Correct.

20 Q. Doctor, I understand that these
21 are all possibilities. I'm asking you if
22 you agree, you cannot state that with any
23 certainty, correct?

24 A. I can't tell you 100 percent
25 that she will 100 percent need these

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2 procedures. Correct.

3 Q. Doctor, you can't even say with
4 75 percent certainty that she will require
5 revision surgeries.

6 A. I think there is a percentage
7 that she is at risk for having to undergo
8 these surgeries that I have outlined. I
9 can't tell you if it's a hundred percent
10 correct. I can tell you that, for the
11 spine at least, in the literature, it's 20
12 to 30 percent of people who undergo these
13 primary procedures need to undergo a
14 revision surgery. That's why I put it
15 there.

16 Q. Doctor, how many of the
17 patients who undergo knee arthroscopies
18 does the literature say that they will
19 require an MRI once every three years?

20 A. I think that there is --
21 especially in a patient like Candy, there
22 is a risk that she does need an MRI within
23 the next three years.

24 Q. Right. But, Doctor, your
25 recommendation is not one MRI in the next

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three years. Your recommendation is one MRI every three years for the remainder of her life, correct?

A. That's correct. Yes.

Q. You would agree that that is very, very unlikely, correct?

A. I don't know. She already had two MRIs before this. So, I don't think that's very unlikely at all.

Q. Doctor, what does the literature say about people who undergo arthroscopies? How often do they need follow-up MRIs?

A. Depends on the subset of population that you're talking about.

Q. What subset does Candy fall in?

A. She falls into a subset of -- almost like a workers' compensation category.

Q. Why does that matter, Doctor?

A. That's a long conversation. But, there are some differences between patients who have workers' compensation and patients that are treating for other

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2 reasons.

3 Q. Other reasons being like a
4 personal injury lawsuit?

5 A. Well, a personal injury
6 lawsuit. Or someone who is a weekend
7 warrior, and injured their shoulder, and
8 wants to get back to playing right away.

9 Q. Right. So, are you referring
10 to a patient that has a secondary motive
11 for treatment? Is that what you're
12 referring to? A financial motive for
13 treatment? Is that what you're referring
14 to?

15 MR. SACK: Objection to form.

16 A. Yeah. I just think -- I think
17 in Candy's case that these would be
18 appropriate.

19 Q. Why, Doctor? Why?

20 A. I know her very well. I've
21 seen her. I have talked to her. I hear
22 her. And I think that she's going to need
23 this treatment.

24 Q. Why? Doctor, let's see how
25 well you know her. Was Ms. Castillo on

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Social Security Disability when she came to see you for the first time?

A. I believe she was.

Q. Do you know why?

A. She has a lot of psychiatric issues.

Q. How do you know that?

A. She reported it to me.

Q. Have you ever seen any of her psychiatric records?

A. I asked for clearance prior to surgery for her spine, and I received that from her doctor.

Q. Who was her doctor that you got clearance from?

A. Dr. Gangoo, psychiatrist at the New York State Psychiatric Institute.

THE WITNESS: Before you continue, I just need two or three minutes.

(Whereupon, a short recess was taken.)

Q. Dr. Weinstein, why did you get clearance from a psychiatric doctor,

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psychiatrist?

A. Any time you undergo a major surgery, such as lumbar fusion, I always get clearance from a psychiatric doctor to make sure that there's no -- he doesn't think it's due -- that the patient is basically stable, and that the psychiatric illness is under control.

Q. You didn't get medical clearance for Candy from her primary care medical doctor?

A. Of course, yes. That we do as well. We get psychiatric clearance as well.

Q. Got it. So, if your patient is undergoing psychiatric treatment, in addition to getting clearance from their PCP, you also get it from their psychiatrist?

A. Correct.

Q. If you knew that the patient had prior attempted suicides, would you still perform major lumbar surgery on that particular patient, if the psychiatrist

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provided clearance?

A. So, I evaluate the patient myself, and I send them to a psychiatrist. With the clearance, I need to know the patient is aware and stable to undergo the procedure.

Q. Did you send Candy to your own psychiatrist as well?

A. No. I mean, the psychiatrist that knows her best is the one that's treating her.

Q. That's the one that you got clearance from?

A. That's correct.

Q. Is that a note that you got from Dr. Gangoo?

A. A note. Correct.

Q. What does the note say?

A. It says, "Dear Dr. Weinstein, I have known our mutual patient, Candy Castillo, since 2015. She's in treatment for schizoaffective disorder, bipolar disorder. Her current medications include: Abilify, 15 milligrams TO daily;

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2 quetiapine, 150 milligrams TOHS;
3 duloxetine, 60 milligrams TO BIV; Ambien
4 DR, 12.5 milligrams TOHS; Colace,
5 100 milligrams TO BIV. Ms. Castillo is
6 psychiatrically stable and is aware of the
7 upcoming surgery for lumbar fusion, as well
8 as the postsurgical recovery/interventions.
9 Please feel free to reach out to me for
10 further information. I could be easily
11 reached at 212-928-3107."

12 Q. Doctor, did you have any
13 concerns about performing that procedure on
14 someone who suffered from schizophrenia?

15 A. No.

16 Q. What about bipolar disorder?

17 A. No. Not on her.

18 Q. Did Candy ever inform you that
19 she had a lawsuit as a result of this
20 incident? Did you ever talk with her about
21 that?

22 A. About the lawsuit?

23 Q. Yeah, about the fact that she
24 had a lawsuit?

25 A. No.

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Q. Does Candy know that Mr. Zemsky was a friend of yours prior to you beginning treatment on her?

MR. SACK: Objection.

A. I don't know what she knows.

Q. Did you guys ever discuss that she knew Mr. Zemsky prior to her treatment?

A. I don't believe so.

Q. Doctor, your surgical treatment to Ms. Castillo included a cervical fusion, a lumbar fusion, a shoulder arthroscopy, and a knee arthroscopy; is that accurate?

A. No.

Q. No?

A. No.

Q. Which part is inaccurate, Doctor?

A. The shoulder arthroscopy was not performed, and she had surgery on both of her knees.

Q. You said a shoulder arthroscopy was not performed?

A. That's correct.

Q. She had knee arthroscopies on

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2 both knees?

3 A. That's correct.

4 MR. SACK: I have the two knee
5 scopes, the fusion -- and what was
6 the fourth?

7 MR. HSU: Cervical lumbar
8 fusion.

9 MR. SACK: Thank you.

10 Q. Doctor, did you have any
11 concern performing four separate operations
12 on Ms. Castillo?

13 A. No.

14 Q. Did you have any concerns about
15 performing both a lumbar fusion and a
16 cervical fusion on a patient who suffers
17 from schizophrenia and bipolar disorder?

18 A. No.

19 Q. Doctor, what was the indication
20 for a right knee arthroscopy? What was the
21 indication?

22 A. She had positive physical exam
23 findings. She had pain. She had failure
24 of physical therapy and other medications.
25 So, I performed a diagnostic arthroscopy

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due to continuation of pain and symptoms.

Q. What is a diagnostic arthroscopy? Is that where you don't really know why you're going in, but you're looking for what the cause of her complaints are?

A. Diagnostic arthroscopy is when a patient continues to have pain after a period of time. And again, you don't really know what's going on, why the MRI is not positive; however, her physical exam findings are positive. And with failure of conservative treatments, you look inside the knee.

Q. Doctor, just going back for a second. You said she failed conservative treatment. Do you know what conservative treatment she had prior to you performing a right knee arthroscopy on April 22, 2021?

A. Sure. She had physical therapy, and she was taking anti-inflammatory medications. I also did offer her a knee injection. She refused. But also, in her entry, she has diabetes,

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2 and any steroids to increase the sugar.
3 But I did offer it to her. Undergoing
4 physical therapy, anti-inflammatories, plus
5 or minus a knee injection for at least
6 three to six months, with the continuation
7 of pain and positive physical exam
8 findings, a diagnostic arthroscopy is
9 indicated.

10 Q. Doctor, how many physical
11 therapy visits did she have for
12 specifically her right knee prior to your
13 surgery?

14 A. I have to find it. One second.

15 Q. Doctor, you don't have the
16 physical therapy records, do you?

17 A. I don't have them in my chart,
18 no.

19 Q. They are not part of your EMR,
20 correct?

21 A. They are not in my chart,
22 correct.

23 Q. The patient never provided you
24 copies of her PT records, correct?

25 A. She never did, no.