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Leonid Reyfman M.D., R.Ph., F.I.P.P.

Anesthesiology,Pain Management Medicine,Pharmacy Sciences

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EXPERT DEPOSITION OF LEON REYFMAN, M.D. ; 2022 DEPO. TRANS. LEXIS 1718

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Docket No. 1:21-cv-9552 (JPC)

October 21, 2022

Reporter
2022 DEPO. TRANS. LEXIS 1718

SHANIQUA CATTENHEAD-FOLK, Plaintiff, -against- UNITED STATES OF AMERICA, Defendant.

Expert Name: Leon Reyfman, M.D.

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Counsel

WILLIAM SCHWITZER & ASSOCIATES, P.C., Attorneys for Plaintiff, New York, New York, GEORGE PFLUGER, Esq.

UNITED STATES ATTORNEY'S OFFICE SOUTHERN DISTRICT OF NEW YORK, Attorney for Defendant, New York, New York, CARLY WEINREB, Esq., Assistant United States Attorney.

Proceedings

1

[11]VIRTUAL DEPOSITION of LEON REYFMAN, M.D.,

[12]taken by Defendant via Webex, on Friday, October 21,

[13]2022, commencing at 10:00 o'clock a.m., before Tina

[14]DeRosa, a Shorthand (Stenotype) Reporter and Notary

[15]Public.

[16]

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

[3]

[1]Reyfman, M.D.

[2]THE REPORTER: Will counsel

[3]please stipulate that in lieu of

[4]formally swearing in the witness the

[5]court reporter will instead ask the

[6]witness to acknowledge that the

[7]testimony will be true under the

[8]penalties of perjury, that counsel

[9]will not object to the admissibility

[10]of the transcript based on

[11]proceeding in this way, and that the

[12]witness has verified that he is, in

[13]fact, Leon Reyfman, M.D.

[14]MR. PFLUGER: Yes.

[15]MS. WEINREB: Yes.

[16]LEON REYFMAN, M.D., called as a

[17]witness, having been first duly sworn by

[18]Tina DeRosa, a Notary Public, via Webex,

[19]was examined and testified as follows:

[20]THE REPORTER: Would you

[21]state and spell your first and last

[22]name and provide and give us your

[23]address.

[24]THE WITNESS: Leon Reyfman,

[25]L-E-O-N, R-E-Y-F-M-A-N. 2279 Coney

[4]

[1]Reyfman, M.D.

[2]Island Avenue, Brooklyn, New York

[3]11223.

[4]EXAMINATION

[5]BY MS. WEINREB:

[6]Q Is that your home or your business

[7]address?

[8]A That's my business address.

[9]Q All right, great. Good morning, Dr.

[10]Reyfman.

[11]A Good morning.

[12]Q By name is Carly Weinreb. I'm

[13]Assistant United States Attorney with the United

[14]States Attorney's Office in the Southern District

[15]of New York and my office is counsel to the United

[16]States which is Defendant in this lawsuit brought

[17]by Plaintiff Shaniqua Cattenhead-Folk.

[18]During today's deposition I'm going

[19]to ask you a series of questions which you will

[20]answer under oath. Do you understand that today

[21]you are under oath and that you are sworn to tell

[22]you truth?

[23]A Yes, I do.

[24]Q Great. So I just want to go through

[25]some ground rules before we get started and you

[5]

[1]Reyfman, M.D.

[2]may already be familiar, but I just want to be

[3]sure we are on the same page.

[4]We have a court reporter here. She

[5]is going to write down everything that we say

[6]today. So to make sure we get a clean record it's

[7]important that we don't interrupt each other or

[8]speak over each other.

[9]So I'm going to ask that you please

[10]let me finish my question before you begin to

[11]answer even if you know where I'm going and in

[12]turn I will let you finish answering before I ask

[13]the next one, is that fair?

[14]A Yes, it is.

[15]Q Okay. And because we have a court

[16]reporter who is writing down everything that we

[17]say that means that all responses have to be

[18]verbal. So, in other words, that means no nodding

[19]your head or shrugging that doesn't get reflected

[20]in a transcript. You have to actually verbalize

[21]yes, no or give some kind of verbal response, do

[22]you understand?

[23]A Yes, I do.

[24]Q If any time you don't understand my

[25]question please just ask me to clarify or repeat

[6]

[1]Reyfman, M.D.

[2]or rephrase and I'm happy to do that, but if you

[3]don't ask for clarification and you proceed to

[4]answer the question myself and anyone else reading

[5]the transcript will assume that you understood

[6]what the question meant. Is that fair?

[7]A Yes, it is.

[8]Q If you need a break just let me

[9]know. We can take a break at any time. I only

[10]ask that if I have already asked a question to

[11]please answer it before we take the break, okay?

[12]A Yes.

[13]Q From time to time your attorney here

[14]may object to one or more of my questions.

[15]Notwithstanding any objections you should still

[16]proceed to answer my question unless Mr. Pfluger

[17]objects on grounds of attorney client privilege or

[18]any other privilege and specifically instructs you

[19]not to answer, but in every other case

[20]notwithstanding any objection you still have to

[21]answer the question. Did you understand?

[22]A Yes, I do.

[23]Q Did you take any drugs or

[24]medications today that could prevent you from

[25]testifying truthfully and fully?

[7]

[1]Reyfman, M.D.

[2]A No.

[3]Q Is there any reason why you would

[4]not be able to understand my questions today?

[5]A No.

[6]MR. PFLUGER: That's not a

[7]question I guess, right, Carly?

[8]Q Assuming that the question is clear

[9]is there any reason why you would not be able to

[10]understand it?

[11]A No.

[12]Q Is there any reason why you wouldn't

[13]be able to fully and truthfully respond to my

[14]questions today?

[15]A No.

[16]Q All right. So you have authored an

[17]expert report in this lawsuit, correct?

[18]A Yes.

[19]Q So I want to bring that up on my

[20]screen so we can look at it together. If you have

[21]a hard copy with you please feel free to look at

[22]that If that's better, but I will put it up on my

[23]screen so we can follow along together.

[24]A Okay.

[25]Q Okay. Do you see the report on your

[8]

[1]Reyfman, M.D.

[2]screen?

[3]A Let me enlarge this screen, one

[4]second.

[5]MR. PFLUGER: Carly, it says

[6]customize your own view by dragging

[7]one or more features to the stage.

[8]What does that mean? It's kind of

[9]blocking part of the exhibit.

[10]MS. WEINREB: I don't know.

[11]I'm guessing it's some type of

[12]setting for how you want to view it

[13]on your computer.

[14]MR. PFLUGER: Okay. Because

[15]I haven't seen that type of thing

[16]before.

[17]MS. WEINREB: Yes, I think

[18]the way this works is I have control

[19]over the document. So I can scroll.

[20]I can make it bigger or smaller. I

[21]don't think you guys have the

[22]ability to do that. So if you need

[23]it bigger or if you need me to go to

[24]a different page just ask and I'm

[25]happy to do that.

[9]

[1]Reyfman, M.D.

[2]MR. PFLUGER: Okay. It's

[3]very small and I really can't --

[4]MS. WEINREB: Is that

[5]better?

[6]MR. PFLUGER: Yes. And it's

[7]not full screen if we have us on

[8]top. We can't move.

[9]BY MS. WEINREB:

[10]Q Dr. Reyfman, are you able to see the

[11]report?

[12]A Yes.

[13]Q Okay. And can you read it. Is it

[14]clear and legible on your screen?

[15]A Yes.

[16]Q All right. So like I said if any

[17]time you need it bigger or smaller just let me

[18]know and I can definitely do that.

[19]Okay. So I have up here on the

[20]screen a document that is 20 pages and it's titled

[21]Plaintiff's Expert Exchange Pursuant to Rule

[22]26(a)(2).

[23]Have you seen this document before?

[24]A Yes, I have.

[25]Q And what is this?

[10]

[1]Reyfman, M.D.

[2]A This is a document describing my

[3]background and the treatment pertaining to this

[4]patient.

[5]MR. PFLUGER: Well, just for

[6]clarification this is a legal

[7]document. What is in the first page

[8]just so we'll --

[9]MS. WEINREB: You know what,

[10]I'll just go through it page by

[11]page.

[12]MR. PFLUGER: Yes.

[13]Q So we are here on the first page.

[14]I'm going to scroll down. I've scrolled down to

[15]the second page and now I am on the third page and

[16]I'm just going to stop a minute.

[17]So the first three pages of this

[18]document, have you seen that before?

[19]A I only see the bottom of the third

[20]page. Can you scroll up a little bit, please?

[21]Q Sure.

[22]A I do believe I saw the document,

[23]yes.

[24]Q And what is your understanding of

[25]what these first three pages are?

[11]

[1]Reyfman, M.D.

[2]A It's a legal document. I'm not an

[3]attorney to comment on this.

[4]Q Okay. Did you author or contribute

[5]to any piece of these first three pages.

[6]A I read the document and confirmed

[7]that this is accurate information.

[8]Q Okay. But would it be fair to say

[9]that you didn't write the first three pages of

[10]this document?

[11]A That's correct.

[12]Q Okay. So now let's scroll to Page 4

[13]of this document. It says Exhibit A and if we

[14]scroll to Page 5 it's titled Narrative Report

[15]dated August 23, 2022. Do you recognize this

[16]page?

[17]A Yes.

[18]Q What's this?

[19]A This is a narrative report that I

[20]prepared for this patient.

[21]Q Okay. Is this the first page of the

[22]expert report that you have authored in this

[23]lawsuit?

[24]A Yes.

[25]Q All right. Now, I'm just going to

[12]

[1]Reyfman, M.D.

[2]scroll through your expert report, each of the

[3]pages. All right. And I have stopped on Page 11

[4]of the document, but it's Page 7 of Exhibit A.

[5]Is this the end of your expert

[6]report?

[7]A Yes, it is.

[8]Q Okay. And is that your signature at

[9]the bottom of the page?

[10]A Yes, it is.

[11]Q And what does your signature

[12]signify?

[13]A That I've read -- I prepared the

[14]report and authored the report and I signed the

[15]report.

[16]Q Okay. And what does your signature

[17]mean about the contents of the report?

[18]A That this is a true and accurate

[19]information.

[20]Q Okay. So we have seen that there

[21]are seven pages of your expert report.

[22]Is that the entirety of your report?

[23]A Yes, it is.

[24]Q Are there any pages that are

[25]missing?

[13]

[1]Reyfman, M.D.

[2]A As long as there is one through

[3]seven there are not.

[4]Q All right. Now, I'm moving on to

[5]Page 12 of this document. It says Exhibit B and

[6]if we go to Page 13 what do you see on the screen

[7]now?

[8]A This is my CV.

[9]Q Okay. And that's your name at the

[10]top?

[11]A That's correct.

[12]Q All right. So let's scroll through.

[13]I'm on Page 13, Page 14, Page 15 and Page 16.

[14]Is that the entirety of your CV?

[15]A Yes, it is.

[16]Q Okay. And at the bottom of Page 16

[17]there appears to be what looks like a signature.

[18]Do you see that?

[19]A That's my signature, yes.

[20]Q It's your signature, okay.

[21]And when did you sign this CV?

[22]A I'm not sure.

[23]Q Did you sign it in connection with

[24]this lawsuit or for some other reason?

[25]A I'm not sure.

[14]

[1]Reyfman, M.D.

[2]Q All right. And now moving on to

[3]Page 17 of this document it says Exhibit C and if

[4]we go to Page 18 there's a page that's titled

[5]Prior Testimonies.

[6]Do you recognize this page?

[7]A This is the list of the testimonies,

[8]yes.

[9]Q Okay. What kind of testimonies?

[10]A These are the testimonies that I

[11]serve as an expert, a treating physician for

[12]patients that I have treated.

[13]Q Okay. That you -- you said that

[14]it's for cases that you served as an expert?

[15]A Correct.

[16]Q Who prepared this list of prior

[17]testimonies?

[18]A I did.

[19]Q Okay. And on this page there are

[20]eight cases listed; is that right?

[21]A That's correct.

[22]Q All right. And now I've scrolled to

[23]Page 19. There's a page called Declaration of

[24]Service. That is a legal document, so I am going

[25]to move on. Page 20 is just the case caption.

[15]

[1]Reyfman, M.D.

[2]Did you submit any other documents

[3]or pages as part of your expert report that are

[4]not contained within this document that I just

[5]showed you?

[6]A No.

[7]MS. WEINREB: So I'd like to

[8]mark this as Reyfman Exhibit 1 for

[9]this depo.

[10](Plaintiff's Expert Exchange

[11]was marked as Reyfman Exhibit No. 1

[12]for identification, as of this date.)

[13]BY MS. WEINREB:

[14]Q All right. We are going to go back

[15]to the top now. All right. So just for ease of

[16]reference when I refer to your expert report what

[17]I mean is Exhibit A to Reyfman Exhibit 1 from this

[18]deposition because Exhibit A is the seven-page

[19]report that you authored in this case.

[20]So do you understand what I mean if

[21]I say your expert report?

[22]A Yes, I do.

[23]Q All right. Did you draft the

[24]entirety of your expert report?

[25]A Yes, I have.

[16]

[1]Reyfman, M.D.

[2]Q Did anyone else contribute any

[3]sections or write any portion of your expert

[4]report?

[5]A No.

[6]Q Do you agree with all of the

[7]opinions contained in your expert report?

[8]A Yes, I do.

[9]Q Do you plan to make any amendments

[10]or supplements to your expert report?

[11]A No.

[12]Q And are all of the opinions

[13]contained in your expert report offered to a

[14]reasonable degree of medical certainty?

[15]A Yes.

[16]Q All right. So we will go through

[17]the specifics of your report, but for now I just

[18]want to confirm your expert fees.

[19]So according to Page 2, Paragraph 5

[20]of Reyfman Exhibit 1 it says that you charge a

[21]$ 600 flat fee for the expert report which includes

[22]all record review and drafting; is that correct?

[23]A That's correct.

[24]Q And you also charge $ 6,000 per day

[25]of testimony; is that accurate?

[17]

[1]Reyfman, M.D.

[2]A Yes, it is.

[3]Q I'm sorry, I misspoke.

[4]Per half day of testimony.

[5]A Yes.

[6]Q And you charge $ 9,000 per day of

[7]full day testimony; is that accurate?

[8]A Yes, it is.

[9]Q How much have you been compensated

[10]to date in this matter?

[11]A I haven't been.

[12]Q Approximately how many hours did you

[13]spend reviewing the medical records and other

[14]materials from this case in preparing your report?

[15]A Approximately about an hour when I

[16]prepared this report.

[17]Q Okay. So would you say you spent

[18]about an hour in total preparation before drafting

[19]the report?

[20]A Yes.

[21]Q And did you examine the Plaintiff at

[22]all in connection with this report?

[23]A Yes, I have.

[24]Q Okay. On how many occasions did you

[25]examine the Plaintiff in preparation for writing

[18]

[1]Reyfman, M.D.

[2]the report?

[3]A I examined her several weeks before

[4]writing this report, but I have been seeing this

[5]patient for like eight or nine times starting

[6]March 15, 2021.

[7]Q Okay. Which of those occasions when

[8]you examined the plaintiff did you rely on in

[9]forming the expert opinions in your report?

[10]A On the examination dated 8/23/2022,

[11]that's when the report was written.

[12]Q Okay. So you relied on information

[13]and observations that you made during your August,

[14]2022 your examination of the Plaintiff in forming

[15]your expert opinions contained in your report?

[16]A Correct.

[17]Q Okay. And did you rely on any

[18]information or observations that you may have made

[19]on the prior occasions that you examined the

[20]plaintiff in forming the expert opinions in your

[21]report?

[22]A Yes. I relied on the information

[23]that I obtain throughout the course of the

[24]treatment.

[25]Q Okay. Would it be fair to say that

[19]

[1]Reyfman, M.D.

[2]you relied on all the information and observations

[3]from all of the occasions in which you treated the

[4]Plaintiff?

[5]A Yes.

[6]Q And approximately how much time did

[7]you spend with Ms. Cattenhead-Folk during your

[8]August, '22 evaluation?

[9]A Approximately 30 to 40 minutes.

[10]Q Okay. And what about or on those

[11]prior occasions approximately how long were each

[12]of those appointments?

[13]A On the average 20 to 30 minutes.

[14]Q Okay. And what was the purpose of

[15]your examination of the Plaintiff in August of

[16]2022?

[17]A The purpose was to examine and

[18]review the records and provide a narrative report

[19]to describe all the treatments that she had and

[20]render an opinion as to future treatment and

[21]causality of prognosis.

[22]Q Was there any other purpose for

[23]which you were examining the Plaintiff on that

[24]day?

[25]A No.

[20]

[1]Reyfman, M.D.

[2]Q For example, is one of the purposes

[3]of your August, 2022 appointment treatment of the

[4]Plaintiff?

[5]A I'm sorry?

[6]Q Was one of the purposes of your

[7]August, 2022 examination of the Plaintiff for

[8]treatment?

[9]A Of course. I mean we discussed

[10]treatment as well not just necessarily the

[11]narrative report.

[12]Q Is Ms. Cattenhead-Folk your patient?

[13]A Yes, she is.

[14]Q Okay. And when did you first

[15]establish care with her?

[16]A I personally saw her on March 15,

[17]2021, but she was seen by my colleague in our

[18]office. It's a group practice. I can tell you in

[19]just a second.

[20]We saw her on the first time on

[21]January 27, 2021 by Dr. Zhivotenko,

[22]Z-H-I-V-O-T-E-N-K-O.

[23]Q And who is Dr. Zhivotenko?

[24]A He was employed as a neurologist and

[25]pain management specialist in our practice.

[21]

[1]Reyfman, M.D.

[2]Q What is the name of your practice?

[3]A The practice is Pain Physicians NY.

[4]Q Where is Pain Physicians NY located?

[5]A The Brooklyn location 2279 Coney

[6]Island Avenue, Brooklyn, New York 11223.

[7]Q Okay. And you said that you saw the

[8]Plaintiff approximately eight to nine times in

[9]total; is that right?

[10]A One second. I saw her eight times.

[11]Q Okay. And what about your

[12]colleagues from your practice, how many times did

[13]they see her?

[14]A Dr. Zhivotenko has seen her at least

[15]six or seven times.

[16]Q Okay. So that is six or seven times

[17]in addition to the eight times that you personally

[18]saw her?

[19]A That's correct.

[20]Q Okay. And did anyone else from your

[21]practice ever examine the Plaintiff?

[22]A Let me double check. I don't

[23]believe so. No. It was myself and Dr.

[24]Zhivotenko.

[25]Q Okay. It looks like maybe you're

[22]

[1]Reyfman, M.D.

[2]checking this information by looking something up;

[3]is that right?

[4]A Yes. I'm looking at my medical

[5]record.

[6]Q I see, okay.

[7]Okay. Is Ms. Cattenhead-Folk still

[8]your patient?

[9]A Yes, she is.

[10]Q When is the most recent time that

[11]you saw her?

[12]A October 12, 2022.

[13]Q And did you personally see her on

[14]that day?

[15]A Yes, I did.

[16]Q Did you document that visit with

[17]medical notes?

[18]A Yes, I have.

[19]Q Okay. So I don't believe we have a

[20]copy of those notes, so I'm going to call for the

[21]production of those medical notes.

[22]A Sure.

[23]Q And prior to the October 12, 2022

[24]appointment when was the next most recent time

[25]that you saw the Plaintiff?

[23]

[1]Reyfman, M.D.

[2]A I saw her on, that would be the

[3]8/23/2022 exam.

[4]Q Going back to your report for a

[5]second, it's dated 8/23/2022. So did you examine

[6]the Plaintiff on the same day that you wrote the

[7]report.

[8]A Yes, I had.

[9]Q Okay. So if you scroll down to the

[10]bottom of Page 2 it says physical exam August 10,

[11]2022. Is that a different appointment?

[12]A I used physical exam findings from

[13]the appointment dated 8/10/2022. On 8/23/2022 I

[14]review the entire medical records, but I used

[15]physical exam findings from two weeks prior.

[16]Q Okay. So I just want to make sure I

[17]understand. Did you personally examine the

[18]patient on August 23, 2022?

[19]A No. I used -- I spoke to her. I

[20]went over the medical records, the history of the

[21]illness, but I did not physically examine her. I

[22]used my exam that was done two weeks prior.

[23]Q Okay. So I understand. So when you

[24]spoke to her was it a phone call or something

[25]else?

[24]

[1]Reyfman, M.D.

[2]A In person.

[3]Q Okay. So was this like a

[4]consultation?

[5]A Correct.

[6]Q Okay. So what kind of meeting, what

[7]consisted of your meeting on August 23, 2022?

[8]A I asked her to return to my office.

[9]I wanted to review the treatment that was rendered

[10]to her and also medical records to render my

[11]opinion as to future -- to confirm of future

[12]treatments and then also the prognosis of this

[13]patient.

[14]Q Okay. So can you tell me some of

[15]the specifics of that conversation that you had

[16]with her?

[17]A I mean I don't have the direct

[18]recollection, but everything that took place

[19]during this consultation is written in the

[20]narrative report.

[21]Q Okay. Can you point me where in the

[22]narrative report you describe your meeting with

[23]the Plaintiff on August 23, 2022?

[24]A Can you please go to Page 1?

[25]Q Sure.

[25]

[1]Reyfman, M.D.

[2]A Okay. This is the summary of the

[3]visits. That she is a 33 year old female, injured

[4]her neck, lower back, both hips, right knee.

[5]I summarized that I performed -- Dr.

[6]Zhivotenko performed the initial examination in

[7]our practice and these are her complaints. Low

[8]back pain. I only see part of this report. Can

[9]you scroll down, please.

[10]Q Sure.

[11]A Perhaps maybe you can zoom out a

[12]little bet so I can see the full page entirely.

[13]Thank you. So those are the

[14]complaints that she had initially and this was the

[15]treatment that she was rendered with physical

[16]therapy, trigger points.

[17]Then we saw her again on 8/10, but

[18]this is just a summary of what transpired

[19]initially and physical examination findings of the

[20]October 10, 2022 report.

[21]Q Okay, yes. So what I'm asking is

[22]does your expert report contain any discussion of

[23]the meeting that you had with the Plaintiff on

[24]August 23, 2022?

[25]A No.

[26]

[1]Reyfman, M.D.

[2]Q Okay. Did you document that meeting

[3]in any way such as through medical notes or some

[4]other means?

[5]A I did not.

[6]Q What you said that one of the

[7]purposes of that meeting was for treatment; is

[8]that correct?

[9]A More so to review the medical

[10]records entirely and just make sure nothing was

[11]missed throughout the course of treatment.

[12]Essentially just a review of all the records prior

[13]for me to prepare the narrative report.

[14]Q Okay. When you say you wanted to

[15]make sure nothing was missed, what do you mean by

[16]that?

[17]A Meaning that I wanted to make sure

[18]with the patient that the treatment, the records I

[19]had in my possession there were accurate records.

[20]There were no additional records that were missed.

[21]MR. PFLUGER: I'm sorry,

[22]Carly, he froze and cut out. I

[23]didn't hear his answer.

[24]MS. WEINREB: Tina, would

[25]you mind reading it back.

27

[1]Reyfman, M.D.

[2](The record was read.)

[3]Q Dr. Reyfman, do you want me to ask

[4]you the question again or is that a complete

[5]answer?

[6]A I can just add on if you don't mind

[7]so this is clear for the record. When I prepare

[8]narrative reports I rely on medical records to

[9]review to render an opinion.

[10]So my practice is to have patients

[11]come into my office. We go over all the medical

[12]records, make sure none of these records have been

[13]missed. And if I have any additional questions

[14]pertaining to the records I will ask these

[15]questions directly to the patient.

[16]This was exactly of purpose was to

[17]review all the prior medical treatment records

[18]that were listed in this record as well and make

[19]sure that the patient has no additional records

[20]for me to present for me to render an opinion.

[21]Q And the records that you reviewed

[22]with Ms. Cattenhead-Folk on August 23, 2022, are

[23]those identified in your expert report?

[24]A Yes.

[25]Q Okay. And can you please point me

28

[1]Reyfman, M.D.

[2]to where in the report they are identified?

[3]A Can you please scroll down under

[4]section Medical Records. So starting at the

[5]Review of Records, all the diagnostic studies that

[6]I had available I reviewed and I put the date of

[7]each study.

[8]I received physical treatment

[9]records, records from Dr. Lerman, Dr. Drazic. So

[10]all these records that I have listed I had in my

[11]possession when I saw the patient on 8/23/2022.

[12]Q And we are looking now at Page 4 of

[13]your expert report?

[14]A Yes.

[15]Q Did you review any other records

[16]with Ms. Cattenhead-Folk on August 22, 2022 other

[17]than what's listed on Page 4?

[18]A No.

[19]Q Okay. So you said during that

[20]meeting you went through the records to make sure

[21]they were complete and you weren't missing

[22]anything.

[23]What, if anything, else did you

[24]discuss with her?

[25]A That's it.

29

[1]Reyfman, M.D.

[2]Q How long was that meeting?

[3]A About 30 minutes.

[4]Q Did you discuss the substance of any

[5]of these medical records during that meeting?

[6]A No.

[7]Q Did you discuss any treatment for

[8]the Plaintiff during that meeting?

[9]A No.

[10]Q I believe you said that you

[11]confirmed the medical diagnosis during that

[12]meeting; is that right?

[13]A As part of the narrative preparation

[14]yes, by reviewing the records, my records, also

[15]treatment records.

[16]Q Can you just explain to me what does

[17]that mean to confirm a diagnosis?

[18]A Meaning that I reviewed the MRI.

[19]She was seen by Dr. Zhivotenko initially and she

[20]also brought 2021, 2022 she had several injections

[21]by Dr. Zhivotenko. So I reviewed his records as

[22]well and the diagnosis that were list in my

[23]narrative I just wanted to make sure it was an

[24]accurate diagnosis and also prognosis of this

[25]patient.

30

[1]Reyfman, M.D.

[2]Q Okay. And how did you make sure

[3]your diagnosis as contained in that expert report

[4]were accurate?

[5]A By reviewing Dr. Zhivotenko's

[6]records, diagnostic studies and all the prior

[7]treatment records that I had available to me.

[8]Q And did you discuss the diagnosis

[9]with the Plaintiff during your August 23, 2022

[10]meeting?

[11]A I did not.

[12]Q Did you ever communicate your

[13]diagnosis of Ms. Cattenhead-Folk to her?

[14]A Throughout the course of treatment,

[15]yes.

[16]Q Okay. And I'm sorry if I asked this

[17]already. Did you say you don't have any notes or

[18]documentation of your August 23, 2022 meeting?

[19]A No, except for the narrative that I

[20]wrote.

[21]Q Okay. Approximately how many hours

[22]did you spend drafting your expert report?

[23]A Probably 45 minutes to an hour.

[24]Q Okay. So just to summarize what you

[25]said, I just want to make sure I got it right, I

[31]

[1]Reyfman, M.D.

[2]think you said you spent about an hour preparing

[3]for the expert report which consisted of

[4]documentation review, that you examined the

[5]Plaintiff eight times in total and that you met

[6]with her on August 23, 2022 and then spent

[7]approximately 45 minutes to an hour actually

[8]drafting the report. Is that an accurate summary?

[9]MR. PFLUGER: Hold on. Just

[10]note my objection to summarizing the

[11]testimony. It's okay.

[12]A Yes, it is accurate.

[13]Q So now I want to go to your CV which

[14]is Exhibit B to Dr. Reyfman's Exhibit 1.

[15]A Okay.

[16]Q Is this an accurate and up to date

[17]copy of your CV?

[18]A Yes, it is.

[19]Q So it's current as you sit here

[20]today?

[21]A Yes.

[22]Q All right. So your name is listed

[23]at the top and there are some letters after your

[24]name. The first credential is M.D. and that

[25]signifies that you are a medical doctor, correct?

[32]

[1]Reyfman, M.D.

[2]A Yes.

[3]Q All right. And when did you earn

[4]your M.D.?

[5]A In 2002.

[6]Q And that's from the Ross University

[7]School of Medicine?

[8]A Yes, it is.

[9]Q All right. And what does FIPP stand

[10]for?

[11]A Fellow of Interventional Pain

[12]Practice.

[13]Q What does that mean?

[14]A I took an exam in 2009 or 'ten. I

[15]don't remember. It just gives a status, a

[16]fellowship status in the Board of Pain Medicine.

[17]Q Okay. And what does it mean to have

[18]fellowship status. What kind of privileges does

[19]that give you?

[20]A That I completed advanced training

[21]after my fellowship in 2007 by taking education

[22]and also taking advanced training in

[23]interventional surgical procedures pertaining to

[24]the spine and I was able to take an exam, pass the

[25]exam, a written, oral exam and I was granted this

33

[1]Reyfman, M.D.

[2]fellowship status.

[3]Q Okay. And does the fellowship

[4]status enable you to do certain kinds of treatment

[5]or certain activities that you wouldn't be able to

[6]do without an FIPP credential?

[7]A No. It's just additional training.

[8]Q All right. So now let's scroll down

[9]to the bottom of the third page of your CV, the

[10]section titled Licensure and Certifications.

[11]So I just want to go through the

[12]entries in that section. The first entry says

[13]physician and surgeon licensed by the New York and

[14]New Jersey Medical Board.

[15]So does that mean that you are

[16]currently licensed to practice medicine in New

[17]York and New Jersey?

[18]A Yes.

[19]Q When did you first become licensed

[20]in New York?

[21]A 2004.

[22]Q And has your licensure in New York

[23]to practice medicine been continuous from 2004 to

[24]the present?

[25]A Yes.

[34]

[1]Reyfman, M.D.

[2]Q Have there ever been any gaps,

[3]suspensions, revocations, any kinds of gaps in

[4]your licensure in New York?

[5]A No.

[6]Q Okay. And when did you first become

[7]licensed to practice medicine in New Jersey?

[8]A 2008.

[9]Q Okay. And has that licensure in New

[10]Jersey been continuous from 2008 to the present?

[11]A Yes.

[12]Q Have there been any gaps or

[13]suspensions, revocations in your New Jersey

[14]license during that time period?

[15]A No.

[16]Q Did you have to take any kind of

[17]exam to become licensed to practice medicine in

[18]New York?

[19]A Licensing in New York the

[20]requirements are the completion of medical school,

[21]residency, then followed by Board certification.

[22]Board certification is not required

[23]to be licensed in New York. So as long as the

[24]physician has a medical degree and completion of a

[25]residency degree that is enough to practice

35

[1]Reyfman, M.D.

[2]medicine.

[3]Q Are you licensed to practice

[4]medicine in any other state or territory?

[5]A No.

[6]Q All right. The next entry in this

[7]section is DEA controlled substance registration.

[8]What is that?

[9]A It's a DEA number that allows

[10]physicians to prescribe medications.

[11]Q Is it to prescribe medications

[12]generally or a certain kind of medication?

[13]A Controlled substances.

[14]Q And when did you first become

[15]registered with the DEA. I don't know if I asked

[16]that question in a way that makes sense.

[17]A I received my DEA registration in

[18]either 2003 or 2004.

[19]Q Okay. And what did you have to do,

[20]if anything, to become registered with DEA?

[21]A Apply for registration. It's a

[22]registration process.

[23]Q And has that been continuous from

[24]2003, 2004 to the present?

[25]A Yes.

36

[1]Reyfman, M.D.

[2]Q Okay. The next entry is Board

[3]certified by the American Board of Anesthesiology.

[4]So what does that mean?

[5]A That I have completed an

[6]anesthesiology residency and I took written and

[7]oral exam by the American Board of Anesthesiology

[8]and successfully passed this exam and I was

[9]granted the status of Board certified physician.

[10]Q When did you first receive Board

[11]certification from the Board of Anesthesiology?

[12]A 2007.

[13]Q Okay. And is that continuous to the

[14]present?

[15]A Yes, it is.

[16]Q Did you pass your exam on the first

[17]attempt?

[18]A Yes.

[19]Q All right. The next entry,

[20]diplomate of the American Board of Anesthesiology

[21]and Pain Medicine. What is that?

[22]A Diplomate status is given

[23]essentially to Board certified physicians. So

[24]once a physician becomes Board certified by an

[25]American Board of specialty essentially it's a

37

[1]Reyfman, M.D.

[2]diplomate status. It's pretty much the same thing

[3]as Board certified physician.

[4]Q That was going to be my next

[5]question. Is there any difference between the

[6]third and fourth entries in this section?

[7]A No.

[8]Q Okay. Do you have any

[9]certifications in subspecialties?

[10]A Pain management is a subspecialty of

[11]anesthesia.

[12]Q Okay. Does that involve a separate

[13]certification process?

[14]A Yes.

[15]Q Okay. And do you have that?

[16]A Yes.

[17]Q When did you first become Board

[18]certified in the subspecialty in pain medicine?

[19]A In 2008.

[20]Q Okay. Was that a separate exam or a

[21]separate process from the anesthesiology Board

[22]certification?

[23]A Yes.

[24]Q So what did you have to do to become

[25]Board certified in pain medicine specifically?

38

[1]Reyfman, M.D.

[2]A I finished the pain management

[3]fellowship in 2007 and I took a separate Board

[4]examination and upon successful completion of the

[5]fellowship and passing the grade of the exam I was

[6]given the status of Board certified physician in

[7]pain management.

[8]Q Did you pass the exam for pain

[9]medicine Board certification on the first attempt?

[10]A Yes, I have.

[11]Q And has that been continuous to the

[12]present?

[13]A Yes.

[14]Q Do you have any other Board

[15]certifications in a field or some kind of

[16]subspecialty other than what we just discussed?

[17]A No.

[18]Q All right. Moving on to the next

[19]entry, Board certified by American Board of

[20]Independent Medical Examiners.

[21]What's that?

[22]A I took an exam in 2008 or '9 by

[23]American Board of Independent Medical Examiners,

[24]but I haven't practiced as an IME examiner since

[25]then.

39

[1]Reyfman, M.D.

[2]I took an exam. It was essentially

[3]a learning experience. I was interested in

[4]becoming independent medical examiner, but before

[5]that I took courses and I decided not to pursue

[6]that.

[7]Q Okay. So not to pursue becoming an

[8]independent medical examiner?

[9]A That's correct.

[10]Q What is an independent medical

[11]examiner?

[12]A It's a field of medicine where an

[13]IME doctor reviews records, renders opinion as to

[14]disability status.

[15]So this was primarily, not primarily

[16]to, for examples, victims of motor vehicle

[17]accidents or work related injuries. So it's more

[18]so for disability examination for other requests

[19]for disability purposes of the patient.

[20]Q Okay. And would that be for a

[21]litigated settings or something else?

[22]A No, it's not for litigating. It's

[23]just disabilities exams.

[24]Q Okay. So did you actually become an

[25]independent medical examiner?

40

[1]Reyfman, M.D.

[2]A I took the Board exam, I passed it,

[3]but I have never worked as IME examiner.

[4]Q Okay. When did you pass the Board

[5]examination to become an independent medical

[6]examiner?

[7]A I believe it was sometime in 2008,

[8]2009. I don't remember exactly.

[9]Q Do you know if your Board

[10]certification as an independent medical examiner

[11]is still active?

[12]A It's not active.

[13]Q When did it stop being active?

[14]A I think that every five years

[15]there's a recertification course which I have

[16]never taken since then. So probably 2013 or '14.

[17]Q Okay. And why did you choose not to

[18]pursue becoming an independent medical examiner?

[19]A My focus is treating patients as a

[20]pain management specialist, but not as disability

[21]doctor I guess.

[22]Q So is it accurate to have this, for

[23]your CV to say you are Board certified by the

[24]American Board of Independent Medical Examiners?

[25]A I think at this point the statement

[41]

[1]Reyfman, M.D.

[2]needs to be removed.

[3]Q Okay.

[4]A But thank you for pointing it out.

[5]Q All right. So moving on, the last

[6]entry fellow of interventional pain practice.

[7]What is that?

[8]A This is what you asked me before

[9]after my initials M.D. and FIPP. This is what it

[10]stands for, Fellow of Interventional Pain Medicine

[11]Practice.

[12]Q All right. So now I want to go back

[13]to the education section of your CV and this is on

[14]the first page of your CV.

[15]Is all of the information contained

[16]in the education section accurate and complete as

[17]shown in this document?

[18]A Yes.

[19]Q The second entry lists the British

[20]Institute of is it Homeopathy --

[21]A Yes.

[22]Q -- in England.

[23]What kind of degree did you earn

[24]from that institution?

[25]A This is an online course that I took

[42]

[1]Reyfman, M.D.

[2]after I graduated pharmacist school in 1997. I

[3]had a degree as a homeopath. So essentially I was

[4]able to treat patients with homeopathy. That was

[5]in transition between my pharmacy career to

[6]medical career as a doctor.

[7]Q Okay. So how many years was the

[8]program to become a homeopath?

[9]A It was 12 months.

[10]Q I'm sorry, I didn't here.

[11]A Twelve months, one year.

[12]Q Are you currently considered a

[13]homeopath?

[14]A Yes.

[15]Q So many terms.

[16]Okay. And then your CV indicates

[17]that you earned two separate Bachelor's of Science

[18]degrees, one in pharmacy and one in biochemistry;

[19]is that correct?

[20]A Yes.

[21]Q Okay. And the biochemistry

[22]Bachelor's of Science degree you earned in 1993;

[23]is that right?

[24]A Yes.

[25]Q The pharmacy Bachelor's of Science
43

[1]Reyfman, M.D.

[2]degree you earned in 1997?

[3]A Correct.

[4]Q Why did you choose to pursue a

[5]second Bachelor's of Science degree after your

[6]first one?

[7]A Let me clarify this. So in 1993 I

[8]had a degree -- my major was Bachelor of

[9]Biochemistry. I transferred to LIU in 1993 where

[10]I completed dual biochemistry and pharmacy degree.

[11]So it's a little confusing here, but

[12]ultimately when I finished pharmacy school in 1997

[13]I had a dual degree in biochemistry and pharmacy

[14]science.

[15]Q Just to make sure I understand, is

[16]it fair to say you didn't actually earn a

[17]biochemistry degree in 1993?

[18]A That's correct. I transferred to

[19]LIU where I finished my biochemistry degree along

[20]with my pharmacy degree in science.

[21]Q What is LIU?

[22]A Long Island University which is also

[23]known as Arnold & Marie Schwartz College of

[24]Pharmacy.

[25]Q All right. So in 1997 you graduated
44

[1]Reyfman, M.D.

[2]from LIU earning a Bachelor of Science in both

[3]pharmacy and biochemistry; is that correct?

[4]A Yes.

[5]Q All right. The next section of your

[6]CV is postgraduate training. Is all the

[7]information in this section accurate and complete?

[8]A Yes.

[9]Q All right. Then the next section is

[10]medical experience. The first entry listed is

[11]Pain Physicians NY. I believe you mentioned that

[12]practice earlier.

[13]Is that where you currently practice

[14]medicine?

[15]A Yes.

[16]Q Okay. And how would you describe

[17]what kind of practice that is?

[18]A It's pain management practice.

[19]Q Okay. Is that on an outpatient

[20]basis?

[21]A Yes.

[22]Q Okay. So you have been there since

[23]2008; is that right?

[24]A Yes.

[25]Q Okay. And your current position is

[45]

[1]Reyfman, M.D.

[2]Director of Anesthesiology and Pain Management?

[3]A Yes.

[4]Q Have you held that position the

[5]entire time you have been with Pain Physicians NY?

[6]A Yes.

[7]Q Okay. Is that a full-time position?

[8]A It's a full-time position, yes.

[9]Q Okay. Can you just describe your

[10]job responsibilities at Pain Physicians NY as the

[11]Director of Anesthesiology and Pain Management?

[12]A I oversee a staff of two physicians

[13]and four mid-level providers, MP's and PA's. I

[14]see patients throughout the week with various

[15]complaints of pain.

[16]I also have administrative duties as

[17]a director pertaining to staff education,

[18]compliance of the practice with regards to the

[19]practice of pain.

[20]I do also oversee part of

[21]anesthesiology component of the practice. Some of

[22]our patients when they do have procedures do get

[23]anesthesia. I collaborate with other

[24]anesthesiologists who perform anesthesia in our

[25]setting in out practice.

46

[1]Reyfman, M.D.

[2]So that is just a brief summary of

[3]what I do.

[4]Q Thank you.

[5]So what percentage of your time at

[6]Pain Physicians NY do you spend on direct patient

[7]treatment?

[8]A At least about 80 to 90 percent.

[9]Q Okay. And what percentage of your

[10]time do you spend overseeing staff?

[11]A Ten, 15 percent of the time.

[12]Q And what percentage of your time do

[13]you spend doing administrative duties?

[14]A Mostly, you know, after work or on

[15]the weekends, I guess. It doesn't really conflict

[16]with my clinical time I spend with the patients.

[17]Q Okay. And I know you mentioned

[18]already certain anesthesiology procedures. What

[19]else do you offer in terms of treatments to your

[20]patients?

[21]A It's interventional pain management

[22]practice. So the vast majority of we do is

[23]injections to spine, joints, muscles. We do also

[24]minimally invasive spine surgical procedures that

[25]require anesthesia. So that's the realm of what

47

[1]Reyfman, M.D.

[2]we do in that practice.

[3]Q Okay. What kind of injections do

[4]you do?

[5]A Epidural steroid injections, lumbar

[6]or cervical facet injections, radiofrequency

[7]ablation, trigger points, joint injections.

[8]Q Okay. And approximately how many

[9]times do you perform injections for patients each

[10]week?

[11]A I do injections three times a week.

[12]Monday, Wednesday and Friday.

[13]Q Okay. When you say three times a

[14]week, do you mean three days a week or three

[15]times?

[16]A Three days a week, I'm sorry.

[17]Q Okay. And approximately how many

[18]injections do you do on each of those three days

[19]per week?

[20]A Approximately ten to 15 injections

[21]per day.

[22]Q All right. You also said that your

[23]practice also offers minimally invasive spine

[24]surgical procedures. Do you perform the surgical

[25]procedure yourself?

48

[1]Reyfman, M.D.

[2]A Yes.

[3]Q Okay. And you said there's an

[4]anesthesia component. Do you also administer

[5]that?

[6]A I work as an anesthesiologist as

[7]needed if there is staff shortage, but most of my

[8]clinical duties pertain to pain management.

[9]Q Okay. What kind of minimally

[10]invasive spine surgical procedures do you perform

[11]for your patients?

[12]A Sure. Cervical lumbar discectomies,

[13]endoscopic discectomies, endoscopic rhizotomies.

[14]We also offer spinal cord stimulators, trials. We

[15]have done a fair amount of kyphoplasties.

[16]Q All right. So then going to the

[17]next entry under medical experience, Long Island

[18]College Hospital in Brooklyn, New York.

[19]It looks like -- well, first of all,

[20]tell me what is that institution and what is your

[21]role there?

[22]A When I finished my fellowship in

[23]2007 I took a full-time position at Long Island

[24]College Hospital, Director of Pain Management.

[25]I worked there full-time up until

49

[1]Reyfman, M.D.

[2]2008. Then I worked part-time as a faculty

[3]member. I would see patients for consult services

[4]usually after work or on the weekends.

[5]The hospital was closed in 2013, or

[6]somewhere along that line. I think it was 2013.

[7]Q What is a consult service?

[8]A Seeing patients at the hospital with

[9]acute and chronic pain.

[10]Q Okay. In connection with your

[11]duties at Long Island College Hospital, did you

[12]administer injections or minimally invasive

[13]surgeries similar as what you just described at

[14]Pain Physicians NY?

[15]A Not the surgeries, but I would do

[16]occasionally injections at the hospital, yes.

[17]Q All right. Moving ahead to the

[18]entry for SUNY Downstate Medical Center in

[19]Brooklyn, New York. It says that you were an

[20]attending anesthesiologist there from 2006 to the

[21]present. Is that accurate?

[22]A Yes.

[23]Q Okay. So can you please describe

[24]your duties and responsibilities at that

[25]institution?

50

[1]Reyfman, M.D.

[2]A From 2006 to approximately 2009 I

[3]worked as a clinical attending anesthesiologist,

[4]now on faculty since 2008. I oversee parts of

[5]Pain Management Department at the hospital

[6]primarily with a mid-level provider that works for

[7]the hospital. So I serve as one of the faculty

[8]members for the Department of Anesthesiology Pain

[9]Management.

[10]Q Okay. And in terms of your specific

[11]tasks or duties on a daily basis what do you do

[12]there?

[13]A I don't do anything there on a daily

[14]basis. It's mostly as needed. I have a nurse

[15]practitioner. Is she has any questions she will

[16]call me to discuss any challenging patients that

[17]are in the hospital.

[18]So I am also one of the faculty

[19]members for their Anesthesiology Department to

[20]train the pain management fellows as well as

[21]anesthesiologists if they have questions

[22]pertaining to treatment of patients with regard to

[23]chronic pain.

[24]Q Okay. What is the difference, if

[25]any, between anesthesiology and pain medicine?

[51]

[1]Reyfman, M.D.

[2]A Anesthesiology is a field where an

[3]anesthesiologist will essentially administer

[4]anesthesia for certain surgical procedures.

[5]Anesthesiologists also train with acute pain,

[6]postoperative pain.

[7]Pain management more so encompasses

[8]patients who have chronic pain rather than acute

[9]for the most part and not so much for surgical

[10]pain.

[11]Q I see. Are there any other

[12]differences between anesthesiology and pain

[13]medicine?

[14]A I think the big one is

[15]anesthesiologists provide anesthesia. It's short.

[16]Pain manager deals primarily with pain management

[17]or pain symptoms and depending obviously the

[18]source of the pain will offer different types of

[19]treatment.

[20]Q Okay. So in your current practice

[21]how do you allocate your time between

[22]anesthesiology activities versus pain medicine

[23]activities?

[24]A My anesthesiology activity is purely

[25]on a consultation basis. It doesn't require me to

[52]

[1]Reyfman, M.D.

[2]attend at this point to a hospital since it's

[3]mostly by telephone and just to respond to various

[4]questions, situations that may arise over the

[5]course of a patient's condition, I guess.

[6]This is a part-time faculty

[7]position. This is not a full-time position at the

[8]hospitals. I maintain privileges there both and

[9]you can see the line below at Mount Sinai

[10]Hospital. It's essentially the same thing I am

[11]doing at SUNY Downstate, but my practice of

[12]medicine is purely devoted to pain management.

[13]Q When is the last time that you

[14]administered anesthesia to a patient?

[15]A About three months ago.

[16]Q And in connection with your work at

[17]which institution?

[18]A At the surgery center that I'm part

[19]of. It's Island Ambulatory Surgery Center.

[20]Q Is that on your CV?

[21]A It's not. I do injections there and

[22]I don't have any positions there or any titles.

[23]Q Okay. Since it's not on your CV can

[24]you just explain a little more what that

[25]institution is and what you do there?

53

[1]Reyfman, M.D.

[2]A Sure. Island Ambulatory Surgery

[3]Center is a multi-specialty center. It's a place

[4]of service for doctors, surgeons to perform

[5]various surgical procedures including injections.

[6]This is a place of service that I do

[7]some of my procedures and three months ago there

[8]was a shortage of anesthesiologists and was asked

[9]for a couple of hours just to assist. That's all

[10]it is.

[11]Q Okay. All right. Your CV also

[12]lists Pain Medical, PLLC.

[13]What is that?

[14]A It's a company that I own and it's

[15]involved with the laboratory toxicology testing

[16]for patients who are part of our practice.

[17]Part of the clinical guidelines for

[18]patients who are on chronic opioid therapy are

[19]required to have toxicology testing and I have

[20]been actively involved with this lab as a

[21]consultant and also as a laboratory supervisor for

[22]services that are performed by this laboratory.

[23]Q Okay. What about the next entry,

[24]Advanced Clinical Laboratory Solutions, Inc. What

[25]is that?

54

[1]Reyfman, M.D.

[2]A It's a company that I serve as

[3]clinical consultant. This is also a toxicology

[4]laboratory that I'm part of and it's just purely

[5]clinical consultation on per diem or an as needed

[6]basis.

[7]Q Okay. Is the same kind of

[8]toxicology work related to opioid that you do at

[9]Pain Medical?

[10]A That is correct.

[11]Q Have you held any other employment

[12]other than what's listed on your CV I guess aside

[13]from Island Ambulatory Surgery Center?

[14]A No.

[15]Q Okay. Have you ever been -- have

[16]you ever worked at or been affiliated with BL Pain

[17]Management, PLLC?

[18]A BL Pain Management, PLLC is part of

[19]Pain Physicians NY. Pain Physicians NY is a

[20]practice name or like a d/b/a, rather, and BL Pain

[21]Management, PLLC is the actual entity that bills

[22]for services or credential entity, for example.

[23]Q Sorry. So what's the relationship

[24]between Pain Physicians NY and BL Pain Management,

[25]PLLC?

55

[1]Reyfman, M.D.

[2]A So Pain Physicians is d/b/a and BLP

[3]Pain Management is the actual PLLC entity.

[4]Q Okay. And have you ever worked at

[5]or are you affiliated in any way with LR Medical,

[6]PLLC?

[7]A It's the same thing. LR Medical and

[8]BLP Management are two companies that are

[9]providing services and d/b/a remains the same.

[10]Q D/b/a is Pain Physicians NY?

[11]A Correct.

[12]Q Okay. Are you familiar with Metro

[13]FL Consulting in Sarasota Beach, Florida?

[14]A This is my real estate company.

[15]Q Is that company medical in nature at

[16]all?

[17]A No.

[18]Q And what about the Hexagon Group?

[19]A Same. It's real estate.

[20]Q Okay. What about JSJ FL Initiative?

[21]A It's my real estate company in

[22]Florida.

[23]Q Okay.

[24]A I have various real estate

[25]investments and I typically open a company that

[56]

[1]Reyfman, M.D.

[2]correlates the investment.

[3]Q Okay. Is JSJ Foundation also a real

[4]estate company?

[5]A It's not for property company that

[6]my family has and it has nothing to do with

[7]medicine.

[8]Q Okay. What about 1975 Honeywell

[9]OZF, LLC?

[10]A Same thing, real estate.

[11]Q You are a busy person.

[12]A Yes, I try.

[13]Q Okay. What about Natural Pharmacy

[14]in Brooklyn, New York?

[15]A That was closed several years ago.

[16]Probably like 1998, 1999.

[17]Q Okay. What was that?

[18]A I own a health food store with my

[19]parents going back to 1995 or 1996.

[20]Q Okay.

[21]A That was my (inaudible) of

[22]homeopathy.

[23]Q Okay. And are you affiliated in any

[24]way with Stem Cell therapy Advanced Regenerative

[25]Medicine Center of New York?

57

[1]Reyfman, M.D.

[2]A It's a part of our practice. It's

[3]not a company. It's just, you know, a name. It's

[4]not registered in any way. This is -- we do

[5]regenerative medicine as parts of our practice.

[6]Q Just to clarify, is it part of a

[7]larger practice?

[8]A No. It's just a service that we do

[9]regenerative medicine.

[10]Q When you say we, who are you

[11]referring to?

[12]A The practice.

[13]Q Do you treat patients as parts of

[14]the stem cell therapy center?

[15]A Yes. Patients come in to us for

[16]consultations, let's say, PRP treatment rich

[17]plasma or have questions about regenerative

[18]treatment such as stem cells, although this is not

[19]terminology that we typically use, but yes, we do

[20]treat them.

[21]Q Okay. And is there a physical

[22]location for this practice?

[23]A No. It encompasses all of the

[24]locations that we have Pain Physicians NY.

[25]Q So, in other words, if you need to

58

[1]Reyfman, M.D.

[2]treat a patient where do they go to receive the

[3]treatment?

[4]A They will come to Brooklyn, our

[5]office in New York City or are office in Astoria

[6]or the Bronx.

[7]Q Okay. Are all of those locations

[8]associated with Pain Physicians NY?

[9]A Yes.

[10]Q How many physicians work with you at

[11]Stem Cell Therapy Regenerative Center of New York?

[12]A We have including myself five

[13]doctors.

[14]Q Okay. And when did you first start

[15]providing stem cell treatments through this

[16]company?

[17]A Again, it's not a company.

[18]Q I'm sorry, a practice.

[19]A It's a treatment that we started

[20]providing about three years ago, four years maybe.

[21]Q Okay. What kind of treatments do

[22]you offer?

[23]A PRP injections, mesenchymal

[24]treatments or mesenchymal cells which is known as

[25]stem cells. Treatment into patients' joints. For

59

[1]Reyfman, M.D.

[2]example, if they have arthritic knee or arthritic

[3]shoulder or some sports injuries.

[4]I have done a number of spine

[5]procedures involving PRP. So this is known to be

[6]as regenerative medicine.

[7]Q Okay. And do you need any sorts of

[8]special approval, for example, from the FDA to do

[9]these kinds of procedures?

[10]A We are not using anything that FDA

[11]does not allow. So, for example, I think a year

[12]ago FDA issued a guidance for physicians not to

[13]use any amniotic derived stem cells which we are

[14]not using. So all the stem cells I need are

[15]products that I use are from the patient's body.

[16]Q Okay. And because of that FDA

[17]approval is not required?

[18]A FDA approval is not required for

[19]what we do at least.

[20]Q So how many hours a week would you

[21]say you spend on stem cell treatment versus your

[22]pain management treatments?

[23]A Stem cell is also pain management

[24]because we are treating painful conditions. So

[25]it's part of our practice. That's no specific

60

[1]Reyfman, M.D.

[2]hours allocated so if we have a patient that is

[3]specifically inquiring about regenerative

[4]medication that is parts of our day-to-day

[5]operation.

[6]Q Is your work, your stem cell therapy

[7]identified on your CV?

[8]A No. It's just a service that we do

[9]or parts of a treatment options.

[10]Q Okay. Is there a reason why it's

[11]not on your CV?

[12]A It's part of my, you know, training,

[13]part of offering treatment. So, in other words,

[14]if I do minimally invasive spine surgery, for

[15]example, I wouldn't identify this on my CV because

[16]it's parts of the practice in pain management. So

[17]it's regenerative medicine.

[18]Q Okay. So let's move on to the

[19]university appointment section of your CV.

[20]The section, is the information in

[21]this section complete and accurate?

[22]A Yes, it is.

[23]Q And the next section is research

[24]experience.

[25]Is all of the information in this

[61]

[1]Reyfman, M.D.

[2]section complete and accurate?

[3]A Yes.

[4]Q Okay. And can you just briefly

[5]describe this first entry, what this involved. It

[6]says you were a primary investigator in 2014 with

[7]Pain Physicians NY.

[8]A This was a cohort study that I was

[9]involved in to look at comorbid conditions, such

[10]as depression, anxiety, schizophrenia in patients

[11]who have a history substance abuse and we wanted

[12]to correlate to see if this increased incidence of

[13]substance abuses --

[14](Connection lost.)

[15]Q So let's go back on the record.

[16]Sorry to make you repeat, but I'm not sure when it

[17]cut off. Would you mind starting again.

[18]A Sure. I was principal investigator

[19]in a cohort study that looked at substance abuse

[20]disorder and incidence of abuse in populations

[21]that have major depression, schizophrenia and

[22]anxiety, general anxiety disorder and we looked --

[23]we tried to get the data to see what's the

[24]incidence of substance abuse disorder with mental

[25]health illness versus not.

62

[1]Reyfman, M.D.

[2]Q And did that study result in any

[3]kind of written paper or article?

[4]A No, it didn't. The study we weren't

[5]able to get the population number to meet the

[6]criteria and we decided not to publish the study.

[7]Q Okay. Did any of the other

[8]researches experience listed in this section

[9]result in any kind of work product?

[10]A No.

[11]Q All right. Let's then just skip

[12]ahead to the last section of your CV, professional

[13]membership.

[14]Is all of the information listed in

[15]this section complete and accurate?

[16]A Yes.

[17]Q Have you ever published any articles

[18]or book chapters or any other kind of publications

[19]in the area of medicine?

[20]A No, I did not.

[21]Q Over the course of your career have

[22]you ever been disciplined, reprimanded,

[23]sanctioned, suspended or anything else of that

[24]nature with respect to the practice of medicine?

[25]A No.

63

[1]Reyfman, M.D.

[2]Q Have you ever, over the course of

[3]your career have you ever appeared before a

[4]disciplinary committee or disciplinary body?

[5]A No.

[6]Q Have you ever been reported to the

[7]National Practitioner Databank?

[8]A No.

[9]Q And have you ever been terminated or

[10]suspended by an employer?

[11]A No.

[12]Q All right. Dr. Reyfman, what do you

[13]consider to be your areas of expertise?

[14]A Pain management.

[15]Q Anything else?

[16]A That's it.

[17]Q Is anesthesiology encompassed within

[18]pain management?

[19]A I guess, let me rephrase this. I

[20]would be considered an expert in anesthesiology

[21]and pain management.

[22]Q Okay. So aside from anesthesiology

[23]and pain management do you have any other area of

[24]expertise in medicine?

[25]A No.

64

[1]Reyfman, M.D.

[2]Q Are you qualified to offer expert

[3]opinions in any area of medicine other than

[4]anesthesiology and pain management?

[5]MR. PFLUGER: Objection.

[6]A No.

[7]Q And which area or areas of expertise

[8]did you rely in offering your opinions contained

[9]in your report?

[10]A On my expertise as a pain management

[11]doctor and as an anesthesiologist also.

[12]Q Anything else?

[13]A No.

[14]Q All right. So now I just want to

[15]quickly review some of the procedures that you

[16]have mentioned in this deposition and that are

[17]mentioned in your report.

[18]One such procedure is the trigger

[19]point injection. Over the course of your career

[20]approximately how many times would you say you

[21]have administered trigger point injections?

[22]A A lot. Thousands.

[23]Q Okay. Same question for spinal

[24]epidural steroid injections.

[25]A It would be the same answer.

65

[1]Reyfman, M.D.

[2]Epidural injections are one of the most common

[3]injections that most pain management doctors will

[4]do. And as I mentioned I do 15, 20 injections a

[5]day and probably at least 60, 70 of those are

[6]epidural injections. So over the course of my

[7]career I have done thousands of these injections.

[8]Q Okay. And what about how many

[9]times, approximately, over the course of your

[10]career have you performed a lumbar facet

[11]injection?

[12]A Same as epidurals. It's also

[13]another common injection. Not as common as

[14]epidural, but it's fairly common.

[15]Q What about spinal radiofrequency

[16]ablations?

[17]A I probably do about four to five a

[18]week. Probably a hundred plus a year.

[19]Q Okay. Same question for

[20]rhizotomies.

[21]A Rhizotomy is a form of

[22]radiofrequency. It just performs slightly

[23]differently using a video camera versus to a

[24]needle. So it's not as common radiofrequency.

[25]But I'll do three or four a month.

66

[1]Reyfman, M.D.

[2]Q Okay. And what about spinal cord

[3]stimulation?

[4]A Approximately 15 to 20 a year.

[5]Q Okay. So which of these -- I'm

[6]sorry, before we move on. Are there any other

[7]procedures that I haven't listed that you commonly

[8]perform in your pain management practice?

[9]A I think injections are the most

[10]common procedures that I do. We do percutaneous

[11]discectomies, endoscopic discectomies as I

[12]mentioned before which is a fairly common

[13]procedure as well?

[14]Q Okay. So of the procedures that we

[15]just discussed which, if any, are appropriate or

[16]can be appropriate for treatment of cervical disc

[17]herniations?

[18]A Procedures that are appropriate for

[19]cervical disc herniation can be a simple trigger

[20]point injection to reduce some of the muscle

[21]spasms of the cervical spine. But the most

[22]appropriate injection would be the epidural

[23]steroid injection.

[24]That's what we use for patients who

[25]have herniated disc whether it's neck or back.

[67]

[1]Reyfman, M.D.

[2]Q Which, if any, of these procedures

[3]are appropriate treatments or can be appropriate

[4]treatments for cervical radiculopathy?

[5]A That would be epidurals.

[6]Q Okay. And which, if any, of these

[7]procedures and treatment can be appropriate for

[8]the treatment of lumbar disc herniation?

[9]A It would be an epidural steroid

[10]injection.

[11]Q Okay. And same question for muscle

[12]spasm.

[13]A That would be trigger points.

[14]Q Okay. So when are lumbar facet

[15]injections clinically indicated in your

[16]experience?

[17]A So mostly a patient who have primary

[18]back pain and we use physical exam to help us

[19]determine which is the appropriate injection to

[20]elicit certain orthopedic movements.

[21]In this case patients will have a

[22]lumbar facet loading positive test. It would be

[23]indicative of lumbar facet syndrome or

[24]inflammation of the facet joints and that would be

[25]appropriate to perform for lumbar facet injection.
68

[1]Reyfman, M.D.

[2]I.

[3]Q Is lumbar -- I'm sorry, go ahead.

[4]A Also, you know, we have patients who

[5]have MRI findings also consistent with facet

[6]hypertrophy which is inflammation of the facet

[7]joints which would also be an indication for facet

[8]injection.

[9]Q So is lumbar facet syndrome a

[10]different diagnosis than lumbar disc herniation?

[11]A Yes.

[12]Q And in your clinical experience and

[13]training when are spinal radiofrequency ablations

[14]indicated?

[15]A It's indicated only if patients who

[16]have had facet injection had positive response

[17]diagnostically.

[18]So when we do facet injection we

[19]inject with Lidocaine with steroid. So Lidocaine

[20]serves as the diagnostic part of the injection.

[21]The joints we will ask the patients after it is

[22]performed whether they have any pain and how much

[23]pain reduction they have.

[24]If a patient tells me I feel better

[25]about 70, 80 percent what it was baseline then we
69

[1]Reyfman, M.D.

[2]can discuss radiofrequency procedure as the next

[3]modality to see if we can denervate that nerve and

[4]give patients longer lasting relief.

[5]Q Okay. Is spinal radiofrequency

[6]ablation an appropriate treatment for disc

[7]herniations?

[8]A No.

[9]Q Is it an appropriate treatment for

[10]radiculopathy?

[11]A No, unless radiculopathy --

[12]actually, no. It's not appropriate treatment.

[13]Q Okay. When in your experience and

[14]training, when is a rhizotomy clinically

[15]indicated?

[16]A A rhizotomy can be performed after

[17]radiofrequency if radiofrequency does not

[18]completely reduce symptoms or, you know, when we

[19]discuss procedures with patients we'll or at least

[20]my practice we will describe two of these

[21]procedures.

[22]Rhizotomy is somewhat more effective

[23]than radiofrequency, but it requires risk of

[24]anesthesia and it requires an incision so it's a

[25]surgical procedure. So most patients that we see
70

[1]Reyfman, M.D.

[2]would try to do radiofrequency first and see if it

[3]helps and then if it doesn't help we'll resort to,

[4]sorry, there's a lot of noise in the background,

[5]we'll resort to a rhizotomy procedure.

[6]Q Finally, in your training and

[7]experience when is spinal cord stimulation

[8]clinically indicated?

[9]A Most of the time for patients who

[10]had had spine surgery and then if they have failed

[11]spine surgery we typically wait almost a year

[12]before we can classify that they failed surgical

[13]procedure. And if they continue to be symptomatic

[14]then that would an indication for a stimulator.

[15]It's also used for patients who have

[16]diabetic neuropathy, but those are the two most

[17]common indications in the United States.

[18]Q Okay. Can spinal cord stimulation

[19]be an appropriate treatment for disc herniations I

[20]guess we'll start with postoperatively?

[21]A Postoperatively, yes. So any

[22]residual pain postoperative that lasts for at

[23]least six months to a year patients will be a good

[24]candidate for stimulators, yes.

[25]Q And what about is it an appropriate

[71]

[1]Reyfman, M.D.

[2]treatment for disc herniations preoperatively?

[3]A Not always. I mean I have seen

[4]patients who had had stimulator trials for cases

[5]where they are non-operable for other reasons,

[6]meaning patients have some other comorbidities or

[7]health related problems that they cannot have

[8]major spine surgery then the stimulator would be

[9]appropriate in this case, but for a healthy

[10]individual that doesn't necessarily want surgery I

[11]wouldn't recommend stimulator.

[12]Q Okay. So just to make sure I

[13]understand you correctly, is it your testimony

[14]that lumbar facet injections, spinal

[15]radiofrequency ablations and rhizotomies are not

[16]appropriate for the treatment of spinal disc

[17]herniations?

[18]A Correct.

[19]Q And are those three treatments

[20]appropriate for the treatment of radiculopathy?

[21]A It's not appropriate, no.

[22]Q All right. In terms of which

[23]diagnostic studies or imaging are most useful for

[24]you in your pain management practice?

[25]A Most often MRI's or CAT scans, but

72

[1]Reyfman, M.D.

[2]preferably MRI.

[3]Q Why preferably MRI?

[4]A MRI shows soft tissue, shows the

[5]disc, nerve and all the vital structures that we

[6]need to look into before administering an

[7]injection or a surgical procedure.

[8]Q Okay. So what kind of spinal

[9]conditions or abnormalities can be visualized in

[10]an MRI?

[11]A Herniated disc, nerve impingement,

[12]any abnormalities in the thecal sac or the dural

[13]sac. We can see if there is any malignancy,

[14]tumors in the spine by looking at the MRI's.

[15]Q Okay. Aside from an MRI are there

[16]any other radiology images that can visualize

[17]herniated discs?

[18]A Yes, it can. Not as sensitive as

[19]the MRI, but we do use CAT scan from time to time

[20]to help also determine the herniations.

[21]Q Okay. So given the choice of MRI or

[22]CAT scan to see if there is any disc herniation

[23]your preference would be the MRI?

[24]A Correct.

[25]Q And when, if ever, do you want a

73

[1]Reyfman, M.D.

[2]patient to get a nerve conduction study?

[3]A A nerve conduction study most often

[4]is performed when a patient is complaining of

[5]radiating pain where it's radiating from neck down

[6]to shoulders or hands.

[7]The same thing applies to lower

[8]extremities being radiating to buttocks, legs,

[9]also looking for pins and needles, radicular

[10]components.

[11]We may also look at the physical

[12]exam finding which may be consistent with

[13]radiculopathy or radiculitis and also looking at

[14]the MRI's if they are available to see if there is

[15]any nerve impingements on the MRI.

[16]Then once we have all this

[17]information then we can determine whether a

[18]patient should have a nerve conduction test and an

[19]EMG.

[20]Q All right. Are you familiar with

[21]the terms acute and chronic pain?

[22]A Of course.

[23]Q What, if any, is the difference

[24]between the two?

[25]A Acute being typically defined from

74

[1]Reyfman, M.D.

[2]onsets of pain for about three months duration.

[3]Chronic pain usually is six months on. That's the

[4]major difference between the two.

[5]Some textbooks will say that acute

[6]pain can range from three to four months. Some

[7]texts will say three months, but I three months is

[8]the average that we define as acute versus chronic

[9]pain.

[10]Q Okay. And when you say three

[11]months, sorry, three months of what?

[12]A From onset of symptoms. If somebody

[13]comes to us, for example, with pain, if they said

[14]we had pain that I developed two months ago, we

[15]still consider it to be acute or subacute. If

[16]somebody comes to me and says I have this pain for

[17]over six months I consider this be a chronic pain.

[18]Q I see. So the three and six months

[19]you are referring to the months of the pain that

[20]the patient is experiencing?

[21]A That's correct.

[22]Q Okay. Are there any other

[23]differences between acute and chronic pain.

[24]A It's the time component. It's the

[25]onset of pain.

75

[1]Reyfman, M.D.

[2]Q What about the onset of pain?

[3]A So the definition of acute versus

[4]chronic purely relies on the onsets of pain. Any

[5]pain that's from today to three months period is

[6]considered to be acute. Any pain that is more

[7]than six months is considered to be chronic.

[8]Now, there is also something called

[9]acute and chronic to make it more complicated. So

[10]it's any patients that had chronic pain, that has

[11]sharp pain we can also call it acute pain.

[12]Q Okay. And what about the time

[13]period between an injury and the onsets of pain.

[14]Does that have any significance in determining

[15]whether it's acute or chronic?

[16]A Same principle applies. For

[17]example, somebody is injured today we see them

[18]tomorrow we consider this to be acute pain and

[19]this definition will last three months. If a

[20]patient comes to us three months later and says I

[21]feel great, I have not pain. That's not a good

[22]example.

[23]If somebody comes in to us after

[24]three months it still can be considered acute. If

[25]somebody comes in six months later the injury,

76

[1]Reyfman, M.D.

[2]it's still symptomatic I would classify it as

[3]chronic pain.

[4]Q All right. Let me ask it a

[5]different way. Is the three-month or six-month

[6]period is that measured, the start of that, is

[7]that measured from the date of the onset of pain

[8]or the date from the initial injury?

[9]A Onset of pain.

[10]Q All right. And then is there any

[11]difference between the intensity or the type or

[12]quality of pain in acute versus chronic

[13]descriptors?

[14]A Acute I think really focuses on the

[15]timeline when the pain started. Description of

[16]pain obviously has subjective value to it.

[17]Everyone has their way of expressing pain.

[18]So having a patient with ten out of

[19]ten versus a patient five out of ten it doesn't

[20]necessarily classify as acute versus not meaning

[21]pain level.

[22]Q Okay. So, A patient presenting with

[23]ten out of ten pain it could be either acute or

[24]chronic depending on the duration of that pain?

[25]A The onset of pain, correct.

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[1]Reyfman, M.D.

[2]MS. WEINREB: We've been

[3]going about an hour and a half and

[4]I'm going to move on to a new topic.

[5]Would you like to take a five-minute

[6]break time.

[7](A short recess was taken at

[8]this time.)

[9](The deposition resumed with

[10]all parties present.)

[11]LEON REYFMAN, M.D., resumed, and

[12]testified further as follows:

[13]BY MS. WEINREB:

[14]Q Dr. Reyfman, what percentage of your

[15]time do you spend reviewing legal cases as an

[16]expert?

[17]A Only if I'm asked. Maybe a couple

[18]times a month.

[19]Q Okay. During what time period have

[20]you done this expert work upon request?

[21]A Since --

[22]MR. PFLUGER: He's a

[23]treating doctor. Your using expert,

[24]Counsel. He happens to be a

[25]treating doctor, not a designated

[78]

[1]Reyfman, M.D.

[2]expert. So I would object to form.

[3]MS. WEINREB: Okay. I mean

[4]he submitted an expert report in the

[5]lawsuit.

[6]MR. PFLUGER: No, I

[7]understand that, but he's a treating

[8]doctor.

[9]MS. WEINREB: Right. I will

[10]clarify the question, so back on the

[11]record.

[12]Q Putting aside patients that you just

[13]treat in the normal course of your practice as a

[14]practicing doctor, what percentage of your time

[15]did you spend specifically preparing expert

[16]testimony, an expert report, to do some kind of

[17]expert work relating to litigation or a lawsuits?

[18]A Okay. So I guess there is a

[19]distinction between being an expert versus a

[20]treating physician.

[21]So if I'm asked to prepare a

[22]narrative for the patient that I treat I typically

[23]do three to four narratives a month on the

[24]average. Whether you treat this as an expert

[25]versus a treating physician I'm not sure, but

79

[1]Reyfman, M.D.

[2]ultimately I only render narratives on people,

[3]patients that I actually treat.

[4]MR. PFLUGER: I'm sorry.

[5]Carly, can you give me one second.

[6]I have to go outside for one minute.

[7](A brief recess was taken.)

[8]BY MS. WEINREB:

[9]Q So just to clarify what we were

[10]talking about before, I understand that in

[11]connection with your treatment of certain patients

[12]you may be asked to testify about your treatment

[13]without serving as an expert; is that fair?

[14]A Yes.

[15]Q And then in other cases you may be

[16]specifically asked to prepare a narrative report

[17]to give as expert opinion on some issue in a case;

[18]is that fair?

[19]A Yes.

[20]Q In this case you're serving as an

[21]expert; is that right?

[22]A I think both as a treating

[23]physician, I guess, and an expert.

[24]Q And you give expert testimony is

[25]that when you charge a separate fee for that

80

[1]Reyfman, M.D.

[2]service such as here charging the $ 600 flat fee

[3]for the narrative?

[4]A That's correct.

[5]Q So just focusing on the latter

[6]category of the cases in which you are serving as

[7]an expert in a case where you charge a separate

[8]fee for a narrative report, what percentage of

[9]your time do you spend doing that?

[10]A Very little. I do approximately

[11]about three or four of these reports a month.

[12]Q And how long have you been doing

[13]that?

[14]A Since 2013.

[15]Q How often do you testify at

[16]deposition or trial as an expert witness?

[17]A On the average I testify about six,

[18]seven times a year.

[19]Q That's specifically as an expert

[20]witness as opposed to only a treating physician?

[21]A Again I think maybe not necessarily

[22]miscommunication, but every patient that I

[23]treated, I'm sorry, every patient I testify for I

[24]was the treating physician and I was I guess an

[25]expert on all these cases. So I think it's a

[81]

[1]Reyfman, M.D.

[2]combination of both.

[3]MR. PFLUGER: No. But the

[4]clarification is have you been hired

[5]just to testify as an expert not for

[6]a patient of yours?

[7]THE WITNESS: No.

[8]Q I understand that for all of the

[9]times that you have been asked to testify, all the

[10]times you are asked to testimony it involves a

[11]patient of yours, but only a subset of those times

[12]involves a separate expert narrative report; is

[13]that accurate?

[14]MR. PFLUGER: Object.

[15]Forgive me I'm just going to object

[16]to form.

[17]Can we go off the record for a

[18]second, is that okay?

[19]MS. WEINREB: Yes, sure.

[20](Discussion held off the

[21]record.)

[22]BY MS. WEINREB:

[23]Q So, Dr. Reyfman, in situations when

[24]you give testimony for your patients do you write

[25]a narrative report for which you charge an extra

82

[1]Reyfman, M.D.

[2]fee for every one of those patients or only a

[3]subset of them?

[4]A Only a subset of them.

[5]Q Focusing on the subset of patients

[6]for which you actually write a separate narrative

[7]report for which you charge a separate fee, how

[8]often do you give testimony in a deposition or at

[9]trial, and we are staying within that subset of

[10]cases?

[11]A Again, it would be the same answer.

[12]Probably maybe five, six times a year.

[13]Q Okay. And for the cases in which

[14]you write an expert narrative report and charge a

[15]separate fee, what percentage of those cases are

[16]for a plaintiff in a lawsuit versus defendant in a

[17]lawsuits?

[18]A I do not write any expert opinions

[19]narrative for defendant's lawsuit.

[20]Q Okay. So would it be fair to say

[21]that you have never served as an expert for a

[22]defendant in a lawsuit?

[23]A Correct.

[24]Q And why is that?

[25]A I only testify for patients that I

83

[1]Reyfman, M.D.

[2]treat. I don't testify for any other reasons.

[3]Q Is there a particular reason for

[4]that?

[5]A My practice is a clinical practice.

[6]I don't testify that often. If I am asked to

[7]testify on behalf of a patient I will do that, but

[8]not for any other reason.

[9]Q So approximately how much

[10]compensation did you earn annually from your

[11]expert work?

[12]A That includes preparing narratives

[13]and appearing in testimony, maybe 25, $ 30,000 a

[14]year.

[15]Q And what percentage of your overall

[16]annual salary does this account for?

[17]A A very small fraction.

[18]Q So in the past when you've written

[19]expert narrative reports and given expert opinions

[20]in a lawsuit have you offered those opinions in

[21]the areas of anesthesiology and/or pain medicine?

[22]A Correct.

[23]Q Have you ever offered expert

[24]opinions in any other area?

[25]A No.

84

[1]Reyfman, M.D.

[2]Q All right. I'm going to bring back

[3]up your expert report.

[4]All right. I want to go to Exhibit

[5]C which is the list of prior testimony. So there

[6]are eight cases listed on this page and it looks

[7]like the most recent of them is from 2016 which is

[8]Entry No. 8.

[9]Have you testified in a deposition

[10]or trial as an expert since 2016?

[11]A Yes, I have.

[12]Q Okay. And on how many occasions?

[13]A Since 2016 to present probably up to

[14]20 times.

[15]Q Okay. So does this list of prior

[16]testimony need to be updated?

[17]A Correct.

[18]MS. WEINREB: So I'm just

[19]going to call for an updated list of

[20]prior testimony through the present.

[21]Q Okay. And this page, it looks like

[22]all of the eight cases listed are from New York

[23]State courts.

[24]Have you in the past four years,

[25]have you given any expert testimony in any courts,

85

[1]Reyfman, M.D.

[2]any other state courts or any Federal courts?

[3]A No.

[4]Q So all of your expert testimony has

[5]been in New York State court?

[6]A Correct.

[7]Q Okay. So would it be fair to say

[8]you've never testified as expert in Federal court?

[9]A I have done one Federal court

[10]deposition, but nothing in court, no.

[11]Q Okay. Just to clarify so my

[12]question covers deposition testimony and court

[13]testimony. So let me ask it again.

[14]So have you ever testified as an

[15]expert in a deposition for any Federal case in the

[16]past four years?

[17]A I believe it was once and I believe

[18]it was within four years.

[19]Q Which Federal court was that case

[20]in?

[21]A I'm not sure. I think, I would have

[22]to look it up. I think it was Kings County.

[23]Q I just ask when you update this list

[24]to make sure that one is included.

[25]A Okay.

86

[1]Reyfman, M.D.

[2]Q Has a court ever refused to accept

[3]your expert testimony or report for any reason?

[4]A I'm sorry. You came out muffled.

[5]Q Sorry. Has a court ever refused to

[6]accept your expert testimony or expert report for

[7]any reason?

[8]A No.

[9]Q Has a court ever held that you are

[10]not qualified to testify as an expert?

[11]A No.

[12]Q Has a court ever found an expert

[13]opinion that you have authored to be without

[14]basis?

[15]A No.

[16]Q Okay. Did you prepare at all for

[17]today's deposition?

[18]A What do you mean?

[19]Q Did you do anything in advance of

[20]today's deposition to get ready for today?

[21]A No. I spent about ten minutes

[22]before the call looking at my notes, my medical

[23]records, I mean.

[24]Q Okay. When you say the medical

[25]records, do you mean the Pain Physician New York

87

[1]Reyfman, M.D.

[2]records?

[3]A Yes.

[4]Q Did you review any other documents

[5]in preparation for today?

[6]A Not today, no.

[7]Q Did you review your expert report at

[8]all in preparation for today?

[9]A Not today, no.

[10]Q And what about, you know, not just

[11]today. The question is just in the days or weeks

[12]leading up to this deposition did you review any

[13]other documents to prepare for your deposition?

[14]A I do not. The last time I reviewed

[15]anything was 8/23/2022.

[16]Q Okay. Did you just without telling

[17]me who did you meet with anyone to prepare for

[18]today's deposition?

[19]A I did not.

[20]Q Did you have any telephone or other

[21]kinds of communications with anyone to prepare for

[22]today's deposition?

[23]A I did not have any phone calls.

[24]Q What about e-mail correspondences?

[25]A No. I was notified by Schwitzer's

88

[1]Reyfman, M.D.

[2]office about the deposition. That was about a

[3]week or two ago.

[4]Q All right. So would it be fair to

[5]say that you have not reviewed the report between

[6]the time you finalized it between August 23, 2022

[7]and today?

[8]A Correct.

[9]Q All right. Let's just back up.

[10]Let's go to the beginning of the report again.

[11]All right. In offering an expert medical opinion

[12]in a lawsuit would you agree with me that it's

[13]important to review all of the available medical

[14]records relating to the plaintiff that you are

[15]evaluating?

[16]A Yes.

[17]Q And is it important to review all of

[18]the available radiological imaging relating to the

[19]plaintiff that you are evaluating?

[20]A Yes.

[21]Q And why is that?

[22]A To help us determine the proper

[23]course of treatment.

[24]Q Okay. If you are given incomplete

[25]records or information about a person that you are

[89]

[1]Reyfman, M.D.

[2]evaluating how, if at all, could that impact your

[3]assessment of that person's condition?

[4]A It may lead to inconclusive

[5]information about the assessment or be unable to

[6]determine the proper cause of the diagnosis.

[7]Q Okay. Would you agree that every

[8]new piece of information medically relating to a

[9]plaintiff should be considered in determining

[10]whether to adjust your expert opinions about that

[11]person's condition?

[12]MR. PFLUGER: Object to

[13]form, but he can answer of course.

[14]A I mean using very generic terms I

[15]guess in terms of medical documentation I think

[16]it's important to view all the medical records to

[17]determine the course of treatments and I'm sure

[18]there are certain part of this that may be not so

[19]relevant, but it's case by case, I guess.

[20]Q Sure. But you wouldn't be able to

[21]make a determination as to whether it's relevant

[22]until you see it, correct?

[23]A Correct.

[24]Q Okay. So if you learn at a later

[25]time that you offered an expert opinion based on

90

[1]Reyfman, M.D.

[2]incomplete information would you want to see the

[3]information that was not made available to you

[4]initially?

[5]A Yes, I would.

[6]Q Okay. And why would you want to see

[7]that information?

[8]A To review to make sure my opinion is

[9]accurate.

[10]Q Okay. If you after reviewing that

[11]new information, if you conclude that your

[12]opinions are not accurate in light of the new

[13]information what, if anything, would you do?

[14]A It depends. I mean I'm a treating

[15]physician, so if this information pertains to an

[16]injury that additional clinical information was

[17]provided that was missed before and that will

[18]change the treatment algorithm that's something

[19]that's important to me.

[20]But any other information that's

[21]relayed to me except for clarifying this is not as

[22]important because my goal is to treat this

[23]patient, not to document various inconsistencies.

[24]Q All right. So looking at the first

[25]page of your expert report, I'm just going to read

[91]

[1]Reyfman, M.D.

[2]the first sentence out loud.

[3]It says, "In order to explain the

[4]injuries sustained by Ms. Cattenhead-Folk in the

[5]accident of January 9, 2018, I am forwarding the

[6]following report containing the subjective and

[7]objective findings of my evaluation which was

[8]performed after reviewing her medical records."

[9]Did I read that correctly?

[10]A Yes, you did.

[11]Q So you stated you performed your

[12]evaluation after reviewing her medical records.

[13]Are you referring to that list of

[14]medical records on Page 4 that we looked at

[15]earlier?

[16]A Yes.

[17]Q Did you review any other medical

[18]records other than what's listed on Page 4?

[19]A I don't believe so, but I can double

[20]check if you don't mind scrolling down. I think

[21]this is a complete list of medical records.

[22]Q Okay. And did you review any

[23]diagnostic studies other than what's listed on

[24]this page of the report?

[25]A I only reviewed what's listed on

[92]

[1]Reyfman, M.D.

[2]this report.

[3]Q Okay. So I just want to go through

[4]some of these. So starting with the medical

[5]records. The first record is physical therapy

[6]treatment records.

[7]From which clinic are the physical

[8]therapy treatment records that you reviewed?

[9]A This was from Integrated Physical

[10]Therapy.

[11]Q Okay. Is that separately listed a

[12]few lines down?

[13]A Yes, it is.

[14]Q Okay. So did you review any

[15]physical therapy treatment records other than from

[16]Integrated Physical Therapy of New York City?

[17]A I don't believe so, but give me one

[18]second. Just let me double check.

[19]It's only from Integrated Physical

[20]Therapy.

[21]Q Okay. So basically that's a

[22]duplicate entry?

[23]A That would be a duplicate entry,

[24]yes.

[25]Q All right. Then the next line says

93

[1]Reyfman, M.D.

[2]acupuncture treatment records.

[3]Which clinic are those from?

[4]A I'm not sure. I'm trying to see if

[5]I have them. One second. I'm not sure. I don't

[6]have acupuncture treatment records, meaning I

[7]don't have the clinic name to answer your

[8]question.

[9]Q So I'm going to ask after the

[10]deposition today if you could please go through

[11]your records and identify the specific notes that

[12]you reviewed that you identify as acupuncture

[13]treatment records.

[14]A Okay.

[15]Q Thanks.

[16]A Not a problem.

[17]Q Going two lines down it says you

[18]reviewed medical records from Dr. Robert Grazic.

[19]A Yes.

[20]Q Which clinic are those from?

[21]A Dr. Grazic is an orthopedic surgeon

[22]and I saw his records. Just give me one second.

[23]These are Total Orthopedics & Sports.

[24]Q Okay. Some all of the Dr. Robert

[25]Grazic notes that you reviewed are from Total

94

[1]Reyfman, M.D.

[2]Orthopedics & Sports Medicine?

[3]A Correct.

[4]Q All right. Did you review any

[5]records from Advanced Ortho and Joints

[6]Preservation?

[7]A I don't believe so. Let me double

[8]check. I don't recall seeing it.

[9]Q If it helps one of the treating

[10]doctors there was Dr. Stan Stanislav.

[11]A No, I don't have those records.

[12]Q Okay. Did you review any records

[13]from Network Spine?

[14]A Just I'm looking through the list.

[15]Just give me a moment.

[16]Q Sure.

[17]A No, I don't have Network Spine.

[18]Q Okay. And one of the treating

[19]doctors from that clinic is Dr. Yasha Magyar.

[20]Do you have any notes from that

[21]person?

[22]A I don't have those records.

[23]Q Okay. Did you review any records

[24]from Unity Chiropractic and Wellness, Dr. Anna Di?

[25]A Dr. Anna Di. The only chiropractic

95

[1]Reyfman, M.D.

[2]records I have is Helmandi Chiropractic.

[3]Q Okay. And did you review all of the

[4]notes from Pain Physicians New York?

[5]A Yes, I have.

[6]Q So should that be listed as well?

[7]A Not necessarily. This is our

[8]practice. So they are readily available.

[9]Q Okay. So I'll represent to you that

[10]we did receive records relating to the Plaintiff

[11]from Advanced Ortho and Joints Preservation,

[12]Network Spine and Unity Chiropractic and Wellness

[13]which was shared with her attorneys.

[14]So would you want to see those

[15]records in connection with your expert opinions?

[16]A Sure.

[17]Q And without having seen those expert

[18]opinions are you able to say whether or not they

[19]are, in fact, reliable?

[20]A I would like to see those records

[21]first before rendering an opinion to answer your

[22]question.

[23]Q All right. Then in terms of the

[24]diagnostic studies, did you review an x-ray of the

[25]Plaintiff's thoracic and lumbar spine dated

96

[1]Reyfman, M.D.

[2]January 10, 2018?

[3]A One moment. Yes, I have. Just one

[4]more second. I think they are from Lenox Hill

[5]Radiology. Just let me double check. You said

[6]thoracic spine, correct?

[7]Q Thoracic and lumbar spine x-ray from

[8]January 10, 2018.

[9]A January 10th, I do not have those.

[10]Q Do you have or have you reviewed a

[11]CAT scan of the Plaintiff's thoracic spine from

[12]that same date, January 10, 2018?

[13]A Can you tell me which radiologist

[14]this is from?

[15]Q Yes. I believe it's from NYU

[16]Langone Brooklyn.

[17]A I have NYU records. Let me just

[18]pull them up. One second. Okay. Yes, I have

[19]those records in front of me.

[20]Q Which records specifically?

[21]A NYU Lutheran discharge papers which

[22]includes the impression of the x-ray that was

[23]obtained of the thoracic spine and that was part

[24]of the Emergency Department visit.

[25]Q Okay. So you have the January 10,

97

[1]Reyfman, M.D.

[2]2018 x-ray of the thoracic spine?

[3]A Yes. And also the CAT scan of the

[4]thoracic spine.

[5]Q Okay. And what about the lumbar

[6]spine from that same date, is that there, too?

[7]A I'm looking. There are 47 something

[8]pages here. I'm just trying to scroll through

[9]them. Just give me a minute.

[10]Q Sure.

[11]A No. I only see an x-ray of the

[12]thoracic spine, CT thoracic.

[13]Q You know what, I think the x-ray is

[14]from Mount Sinai Roosevelt the same day.

[15]A Okay. Let's see if I have that.

[16]Yes. I do have Mount Sinai, okay.

[17]There's a Mount Sinai --

[18]Q I think it's on Page MSR10 and 11.

[19]A Okay. Yes. So there is -- actually

[20]I have the lumbar sacral spine. I see that. And

[21]I see an x-ray of the thoracic spine again. I

[22]don't see -- I guess I am looking for CT scan of

[23]the lumbar spine; is that correct?

[24]Q No, I think it's --

[25]A I mean I have those records.

98

[1]Reyfman, M.D.

[2]Q Okay. I don't believe there is a CT

[3]of the lumbar spine from that date. It's just the

[4]thoracic spine from NYU Langone.

[5]A I have it.

[6]Q Okay. So did you review these

[7]radiology images from January 10, 2018 in

[8]preparing your report?

[9]A Yes, I have.

[10]Q If you have reviewed them why are

[11]they not listed on your report?

[12]A I probably didn't write them, but

[13]they are available. They are part of my chart.

[14]Q I understand they were made

[15]available to you, but did you actually review

[16]them?

[17]A I did. I reviewed the entire sets

[18]of records that I had.

[19]Q Okay. So should they be listed on

[20]Page 4 of your report?

[21]A They should be listed, yes.

[22]Q Okay. Was the March 6, 2018 MRI of

[23]the Plaintiff's thoracic spine made available to

[24]you?

[25]A From which radiology?

99

[1]Reyfman, M.D.

[2]Q Neighborhood Radiology.

[3]A Yes, I have it. I have the CT

[4]thoracic spine dated 3/23/2018 as well as the MRI

[5]of the right knee from the same radiology dated

[6]12/28/2018.

[7]Q And there should also be an MRI of

[8]the thoracic spine from March 6th of 2018?

[9]A Correct. I have it in front of me.

[10]Q Okay. Did you review that image in

[11]preparing your report or the report rather --

[12]A I believe I did. I see that's not

[13]mentioned here. I am not sure why I didn't put

[14]this in. Perhaps I did not see it. I'm not sure.

[15]Q So should it be added?

[16]A It should be added, yes.

[17]Q All right. Finally, was the MRI of

[18]the Plaintiff's lumbar spine from March 5, 2022

[19]made available to you?

[20]A Yes, it was actually. I saw it this

[21]morning. It was from I believe Citywide Radiology

[22]if I'm not mistaken.

[23]Q Yes.

[24]A I saw it this morning. It's not

[25]there. It too should be listed.

100

[1]Reyfman, M.D.

[2]Q Did you see it this morning for the

[3]first time?

[4]A No, I was looking over the records

[5]and I saw it this morning.

[6]Q So you testified a few minutes ago

[7]this morning you only reviewed the Pain Physicians

[8]NY records. Did you review other records as well?

[9]A Other records are part of Pain

[10]Physicians NY chart. I reviewed the record that I

[11]had available.

[12]Q I see. Okay. So the March 5, 2022

[13]lumbar spine MRI should be added to your list as

[14]well in your report?

[15]A Yes.

[16]Q Do you know if you actually reviewed

[17]that MRI report in preparing your expert report?

[18]A I did. All these reports have been

[19]available to me in preparation of the narrative

[20]report.

[21]Q Okay. Is there a reason it's not

[22]included in your report or was it an oversight?

[23]A It was an oversight.

[24]Q Okay. Did you review any nerve

[25]conduction studies of the Plaintiff in preparing

101

[1]Reyfman, M.D.

[2]your report?

[3]A I did not see nerve conduction

[4]studies.

[5]Q Okay. If a nerve conduction study

[6]had been completed for the Plaintiff would you

[7]have wanted to see that?

[8]A Yes.

[9]Q Okay. In forming your expert

[10]opinions did you speak with any of the Plaintiff's

[11]other treating doctors?

[12]A I did not.

[13]Q What about any of her other treating

[14]physicians from Pain Physicians NY?

[15]A I do not have direct recollection of

[16]speaking to anybody in this case.

[17]Q Okay. Did you review any outside

[18]materials or professional literature in preparing

[19]your report?

[20]A No.

[21]Q Did you review any non-medical

[22]documentation in preparing your report?

[23]A I did not.

[24]Q All right. So going back to the

[25]first page of the report and you can still see it

102

[1]Reyfman, M.D.

[2]on your screen?

[3]A Yes.

[4]Q All right. So the third paragraph

[5]says, "On January 27, 2021, I performed an initial

[6]examination."

[7]And I believe you said earlier that

[8]January 27, 2021 was the first time that she

[9]presented to your clinic; is that correct?

[10]A That's correct.

[11]Q Okay. But you did not personally

[12]examine her on that date; is that right?

[13]A That's right. It was Dr.

[14]Zhivotenko, Dr. Zhivotenko.

[15]Q So this sentence in your report is

[16]not accurate?

[17]A It's not accurate.

[18]Q So it should be changed to say that

[19]Dr. Zhivotenko performed an initial evaluation

[20]examination of the Plaintiff on January 27, 2021?

[21]A It should be changed to that, yes.

[22]Q Okay. So following that paragraph

[23]is a discussion of the examination that occurred

[24]on that date. So what is the source of your

[25]information for that visit?

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[1]Reyfman, M.D.

[2]A It's patient describing the

[3]symptoms.

[4]Q Did you speak with her directly

[5]about that initial appointment?

[6]A This was Dr. Zhivotenko's note that

[7]I used and also -- so this was the description of

[8]symptoms that she presented initially as described

[9]by Dr. Zhivotenko on January 27, 2021.

[10]Q Okay. Is that as reflected in the

[11]notes that you took to document that meeting?

[12]A Yes, it is.

[13]Q Did you obtain information about

[14]that initial examination from any other source?

[15]A No. From the medical records of our

[16]practice.

[17]Q All right. And the motor vehicle

[18]accident that's the subject of this lawsuit

[19]occurred on January 9, 2018, correct?

[20]A Yes.

[21]Q Okay. So the Plaintiff's initial

[22]examination at your practice took place over three

[23]years later; is that right?

[24]A Yes.

[25]Q All right. If we scroll down to the

104

[1]Reyfman, M.D.

[2]bottom of Page 2 there is a section that describes

[3]your physical exam of the Plaintiff on August 10,

[4]2022. Was there anything -- let me back up.

[5]Was that exam conducted in

[6]preparation for the expert report that you were

[7]asked to prepare?

[8]A No. This was just a routine

[9]physical exam for a routine office visit.

[10]Q As of August 10, 2022 had you been

[11]asked to provide an expert narrative?

[12]A I'm sorry?

[13]Q Let me ask it a different way.

[14]When were you first approached to

[15]provide an expert narrative for

[16]Ms. Cattenhead-Folk?

[17]A I'm not sure exactly, but sometime

[18]in August, early August I would assume.

[19]Q Of this year?

[20]A Yes.

[21]Q Okay. So did you know at the time

[22]of her exam on August 10th that you were going to

[23]provide an expert narrative for her?

[24]A I'm not sure. I don't have any

[25]indications and I typically would not write this

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[1]Reyfman, M.D.

[2]exam pertinent to a narrative preparation, but I'm

[3]sure I was asked somewhere along those dates to

[4]prepare a narrative report.

[5]Q Okay. When you are asked to prepare

[6]a narrative report is there anything different

[7]that you do in your exam of the Plaintiff to help

[8]you prepare for that report?

[9]A No. The only difference would be I

[10]would use a goniometer to do range of motion.

[11]That's the only difference. I typically don't use

[12]routine goniometer to perform ranges of motion on

[13]every visit the patient comes to my office.

[14]Q Okay. So if we look at Page 3 of

[15]your report it says range of motion performed

[16]testing using goniometer.

[17]A Uh-huh.

[18]Q Does that indicate you knew by this

[19]date you were going to prepare an expert report

[20]for the Plaintiff?

[21]A Probably.

[22]Q Is there anything else you did

[23]during this August 10th exam of the Plaintiff that

[24]differed from a normal routine session with a

[25]patient?

106

[1]Reyfman, M.D.

[2]A No.

[3]Q Do you receive compensation for your

[4]normal appointments with Ms. Cattenhead-Folk as

[5]your patient?

[6]A I'm sorry?

[7]Q Are you compensated for treating

[8]Ms. Cattenhead-Folk as your patient?

[9]A Yes.

[10]Q What is the rate that you charge her

[11]per session?

[12]A She has a health care insurance that

[13]is being charged.

[14]Q Okay. Does she pay any portion of

[15]that amount?

[16]A She has I think a copayment. I'm

[17]not sure. She has insurance and I believe she has

[18]some form of copayment that she has to pay on

[19]every visit that she comes in.

[20]Q Do you have reason to believe that

[21]your expert conclusions could result in Ms.

[22]Cattenhead-Folk agreeing to continue or not

[23]continue seeing you as her treating doctor?

[24]MR. PFLUGER: Object to

[25]form.
107

[1]Reyfman, M.D.

[2]A I don't understand your question,

[3]I'm sorry.

[4]MR. PFLUGER: That's why I

[5]objected to form.

[6]Q Okay. I'll rephrase.

[7]Has Ms. Cattenhead-Folk ever

[8]indicated to you that whether or not she would

[9]continue to see you as your patient depended on

[10]the outcome or the opinions that you wrote in your

[11]report?

[12]A No, she did not.

[13]Q Did you ever have any discussions

[14]with Ms. Cattenhead-Folk about the lawsuit

[15]specifically?

[16]A I did not.

[17]Q What, if anything, did

[18]Ms. Cattenhead-Folk tell you about the motor

[19]vehicle accident in 2018?

[20]A Just from the history that she

[21]provided that she, again this is noted in my --

[22]Dr. Zhivotinko's report. She was crossing the

[23]street and she was struck by a car and that's the

[24]mechanism of injury or description of the injury

[25]that was provided to us, to Dr. Zhivotenko in
108

[1]Reyfman, M.D.

[2]January of 2021.

[3]Q Okay. And you indicated in the

[4]beginning that you are still seeing

[5]Ms. Cattenhead-Folk as your patient and you have

[6]had subsequent visit with her since August of this

[7]year. So my question is has anything about her

[8]condition changed at all since you wrote this

[9]report?

[10]A Nothing has changed, no.

[11]Q Have any of your recommendations for

[12]treatment changed at all since you wrote this

[13]report?

[14]A One second. On the visit, I know

[15]you don't have the records, but at the visit of

[16]October 12, 2020 her main complaints were her hip

[17]pain and she did have a left -- (inaudible) bursa

[18]injection on 10/12/2022. That's the only thing

[19]that was different given.

[20]Q What was the last thing you said?

[21]I'm sorry, I didn't hear you.

[22]A She had a left CT bursa injection on

[23]10/12/2022. So her primary complaints were not

[24]just her neck and back pain, but also her hip

[25]pain.
109

[1]Reyfman, M.D.

[2]Q That's the left CT bursa injection?

[3]A Yes.

[4]Q What is that?

[5]A So she had a left greater

[6]trochanteric bursa injection.

[7]Q And does that have any significance

[8]for expert opinions that you're offering in this

[9]case?

[10]A She had complaints of hip pain

[11]before and this is the first time I injected or

[12]addressed it, but this has no effect on my expert

[13]opinion in today's deposition.

[14]Q Are you offering any expert opinions

[15]in this case pertaining to the Plaintiff's hip?

[16]A I will defer this to a specialist.

[17]Q Okay. So I just want to make sure

[18]I understand. Your report does not contain any

[19]expert opinions specifically relating to the

[20]Plaintiff's hip?

[21]A Correct.

[22]Q And your expert report contain any

[23]opinions specifically relating to any body parts

[24]other than the spine?

[25]A No.

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[1]Reyfman, M.D.

[2]

[3]MS. WEINREB: Can we go off

[4]the record for a minute.

[5](Discussion off the record.)

[6]Q Are you offering any expert opinions

[7]in your report pertaining to any body parts other

[8]than the spine for the Plaintiff?

[9]A The answer is no. I am only

[10]offering my expert opinion to the cervical lumbar

[11]spine.

[12]Q So you're not offering expert

[13]opinions relating to the thoracic spine?

[14]A I did not treat her thoracic spine.

[15]Q Okay. Back on the first page of

[16]your report, if we could go to the fifth paragraph

[17]that starts with neck pain.

[18]Actually, let me ask you this. In

[19]the paragraphs that describe the January 27, 2021

[20]initial examination, are those copied and pasted

[21]from Dr. Zhivotinko's notes. Are these your

[22]summary of whatever you reviewed?

[23]A Give me one second. I believe this

[24]is his description of his note. It's copied and

[25]pasted from his note, yes.

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[1]Reyfman, M.D.

[2]Q Okay. So if you look at the

[3]paragraph starting with neck pain, toward the end

[4]of that paragraph it says, "The patient also

[5]reports concomitant fatigue, impaired work

[6]tolerance."

[7]Do you know what Dr. Zhivotenko

[8]meant when he said impaired work tolerance?

[9]A That she wasn't able to work.

[10]Q So your understanding of that phrase

[11]is that the Plaintiff told Dr. Zhivotenko that she

[12]wasn't able to work as of January 27, 2021?

[13]A Or something to that extent. It

[14]doesn't mean the patient was completely out of

[15]work, but the patient had inability to perform her

[16]normal work activities.

[17]Q Do you know what degree her work was

[18]impaired, whether she was unable to work at all or

[19]something to a lesser degree?

[20]A I don't know.

[21]Q Okay. Is that important information

[22]for your assessment of her functionality?

[23]A Yes, it would be.

[24]Q Did you ask Dr. Zhivotenko what he

[25]meant?

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[1]Reyfman, M.D.

[2]A I did not or at least I don't have a

[3]direct recollection of that.

[4]Q Did you ask the patient what she

[5]meant when she reported that?

[6]A I don't remember.

[7]Q Okay. It also says at the very end

[8]of the sentence that she reported difficulty

[9]performing activities of daily living.

[10]Do you know which activities of

[11]daily living Dr. Zhivotenko is referring to?

[12]A I'm not sure what he is referring to

[13]as the January 27, '21 exam because she is able to

[14]perform basic ADL's as of my narrative report.

[15]Q What's a basic ADL?

[16]A Basic personal hygiene, basic meal

[17]preparation.

[18]Q Anything else?

[19]A Small grocery shopping. Those the

[20]bigger elements of basic ADL's.

[21]Q So as of your August, 2022

[22]examination she was able to do those ADL's that

[23]you listed?

[24]A She is able to do personal hygiene

[25]and also basic meal preparation.

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[1]Reyfman, M.D.

[2]Q Okay.

[3]A She has somebody helping her with

[4]cleaning the apartment she lives in. Anything

[5]like large grocery shopping she has somebody

[6]assisting her with, but smaller items that she can

[7]carry she has no problem with.

[8]Q Okay. Were there any other ADL's

[9]that she reported that she was unable to do as of

[10]the August 10th evaluation?

[11]A I don't believe so. Just give me a

[12]second. Let me see if I have any notes to reflect

[13]that.

[14]No. I think her main concern was

[15]heavy lifting and long standing, walking

[16]exacerbates her pain, but with regards to ADL's

[17]there's no significant impairment.

[18]Q So going back to the January 27,

[19]2021 description, do you know which activities of

[20]daily living Dr. Zhivotenko was referring to in

[21]that appointment?

[22]A No.

[23]Q Is that information that you would

[24]want to know for your understanding of the

[25]patient's history and functionality?

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[1]Reyfman, M.D.

[2]A I mean it's important information to

[3]know, but, you know, essentially it's not going to

[4]change my treatment recommendation just based on

[5]ADL's impairment alone.

[6]Q Why does that not change your

[7]treatment recommendation?

[8]A We are not treating her ADL issue.

[9]We are treating her overall condition, her

[10]presenting complaints and other findings that go

[11]along with her condition, physical exam,

[12]diagnostic studies so on and so forth.

[13]Q Sure. But isn't her ability to

[14]perform ADL's indicative of her underlying

[15]condition?

[16]A No. I mean you're talking about

[17]severity of her condition perhaps?

[18]Q Sure. So, in other words, if a

[19]patient can't do personal hygiene what, if

[20]anything, does that indicate to you about their

[21]injury or their pain?

[22]A That means her condition is severe

[23]enough for her not to be able to do personal

[24]hygiene. So in his report he indicated that her

[25]ADL's are impaired or she had difficulties of

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[1]Reyfman, M.D.

[2]performing activities of daily living. It was

[3]already indicative that she had severe impairment

[4]or moderate to severe impairment that prohibits

[5]her from doing certain some things, such as

[6]personal hygiene or shopping. Although it's not

[7]spelled out exactly what type ADL impairments are,

[8]but she did mention that they are impaired.

[9]Q Sure. Would it be fair to say

[10]though Dr. Zhivotenko does not specify whether the

[11]impairments are mild, moderate or severe?

[12]A He does not.

[13]Q All right. And then if you look at

[14]the next paragraph that starts with the word

[15]treatment. Is this treatment that Dr. Zhivotenko

[16]prescribed or recommended at the January 27, 2021

[17]appointment or is this a history of her prior

[18]treatments?

[19]A History of the prior treatment.

[20]Q Okay. And how do you know that?

[21]A That's what the history of present

[22]illness would now recommend. Future treatment,

[23]the section, it would be towards the end after the

[24]physical exam or diagnosis has been rendered.

[25]Q Okay. Does your report contain a

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[1]Reyfman, M.D.

[2]section describing the treatment that

[3]Dr. Zhivotenko recommended at the conclusion of

[4]the January 27th appointment?

[5]A My report reflects treatment in

[6]general, not what Dr. Zhivotenko had recommended.

[7]Q Okay. Sitting here today do you

[8]know what, if anything, he recommended in terms of

[9]treatment?

[10]A Yes. If you look at his report from

[11]January 27, '21 he recommended a lumbar epidural

[12]steroid injection. He prescribed that Diclofenac

[13]50 milligrams taken as needed. He recommended

[14]further physical therapy. He recommended trigger

[15]point injections, all describing his assessment

[16]and plan on the report dated 1/27/2021.

[17]Q So I'm going to pull up those notes

[18]now so we can look at them together.

[19]A Okay.

[20]Q So I just put up on the screen from

[21]LR Medical PLLC consisting of 67 pages that were

[22]provided to my office by Plaintiff's counsel.

[23]Are these medical notes from your

[24]office?

[25]A Yes, they are.

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[1]Reyfman, M.D.

[2]Q And LR Medical is one of the names

[3]that you practice under?

[4]A That's correct.

[5]MS. WEINREB: All right.

[6]The pages are not Bates stamped, but

[7]contain just a series of notes and

[8]there are 67 pages in total. So I

[9]would like to mark this as Reyfman

[10]Exhibit 2.

[11](Document on the letterhead of

[12]LR Medical PLLC consisting of 67 pages

[13]of notes was marked as Reyfman Exhibit

[14]No. 2 for identification, as of this

[15]date.)

[16]BY MS. WEINREB:

[17]Q So let's go to the note from the

[18]initial visit which is Page 1. It says date of

[19]service January 27, 2021. The Plaintiff's name is

[20]listed at the top and if you scroll to the bottom

[21]of note on Page 4, can you see that?

[22]A Yes.

[23]Q So it says attending provider

[24]Dr. Leonid Reyfman.

[25]That's you, right?

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[1]Reyfman, M.D.

[2]A Yes, that's me.

[3]Q Then covering provider is Dr.

[4]Vitaliy Zhivotenko and that's the doctor that

[5]actually saw the patient on this date?

[6]A Yes.

[7]Q And Dr. Zhivotenko electronically

[8]signed the notes on January 27, 2021 at 2:00 p.m.;

[9]correct?

[10]A Yes.

[11]Q So let's go back to the beginning and

[12]you were discussing his recommendation for

[13]treatment. So let's find that in his note.

[14]Actually, maybe you can direct me. Where were you

[15]looking?

[16]A Please scroll down. So under the

[17]diagnosis section. That would be the next page.

[18]So scroll down, please, one more page.

[19]Q Okay. So here we have under

[20]assessment and plan on the left upper corner he

[21]indicated patient has diagnosis of intervertebral

[22]disc displacement and he recommended lumbar

[23]epidural steroid injection. Further down he

[24]indicated he prescribed Diclofenac, 50 milligrams

[25]and he gave advice as to possible adverse reaction

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[1]Reyfman, M.D.

[2]with taking anti-inflammatory medications.

[3]Further down he advised if you

[4]scroll down a little bit more he advised the

[5]patient not to lift anything heavy, push or do any

[6]strenuous activities.

[7]He gave a set of exercise --

[8]educational material to avoid further back

[9]injuries and under cervical disc displacement he

[10]recommended cervical epidural after addressing her

[11]lower back complaints and he advised her to go to

[12]continue with physical therapy.

[13]Q Thank you. And do you agree with

[14]this course of recommended treatment?

[15]A Yes, I do.

[16]Q All right. So let's toggle back to

[17]your expert report. If we look at the bottom of

[18]the first page it says on August 10, 2020 --

[19]sorry. Let's back up three paragraphs from the

[20]bottom it says, "I subsequently evaluated and

[21]treated Ms. Cattenhead-Folk until August 10, 2022,

[22]as outlined below."

[23]Did you evaluate and treat her

[24]personally on -- actually, sorry, maybe now is a

[25]good time for lunch since my questions are like

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[1]Reyfman, M.D.

[2]devolving.

[3]Hold on one second. Second to last

[4]paragraph on that page, imaging studies,

[5]diagnostics studies reviewed. Are you referring

[6]to that list on Page 4 of your report?

[7]A No. This was referred by

[8]Dr. Zhivotenko to what he had available during the

[9]initial evaluation on January of 2021.

[10]Q Okay. Because the way the report is

[11]written it makes sense --

[12]A Sorry to interrupt you, Carly. This

[13]is a referring to Page 4, I apologize.

[14]Q All right. Then the last paragraph

[15]on that page, what is the source of that

[16]information?

[17]A This is my intake of her complaints

[18]on 8/10/2022.

[19]Q Okay. These are complaints that she

[20]reported to you during that meeting?

[21]A Yes.

[22]Q Okay. And then the next paragraph

[23]on the following page, is that her report to you

[24]of her neck complaints?

[25]A Yes.

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[1]Reyfman, M.D.

[2]Q All right. So if we scroll back to

[3]the paragraph discussing lower back pain on

[4]August 10, 2022 how would you characterize her

[5]reports of her symptoms on that date as compared

[6]to January 27, 2021?

[7]A Just based on the pain scale

[8]assessment her condition improved by about

[9]40 percent just symptom-wise. But she still

[10]reports -- she reports less frequent pain, but she

[11]still has complaints where pain is exacerbated

[12]when she stands, when she sits, when she bends

[13]forward, lifting, twisting.

[14]Q Okay. So the improvements that you

[15]just noted what significance, if any, does that

[16]have for you about the progression of her

[17]condition?

[18]A I think her condition improved to a

[19]certain extent.

[20]Q And do you have any sense of what

[21]caused her condition to improve during that time

[22]period?

[23]A Well, she had fairly extensive

[24]treatment. She started off with physical therapy.

[25]She had a series of epidural injections. She

122

[1]Reyfman, M.D.

[2]still takes pain medications, anti-inflammatory.

[3]The combination of these factors, all these

[4]treatment options that she had that overall

[5]improved her lower back condition.

[6]Q Okay. Then if we go to Page 2 of

[7]your report to the second paragraph, the second

[8]sentence of the second paragraph says, "The

[9]patient also reported concomitant fatigue,

[10]impaired work tolerance, difficulty sleeping,

[11]concentrating, and performing activities of daily

[12]living."

[13]So did you write this sentence based

[14]on your examination of her on August 10 of 2022?

[15]A Yes.

[16]Q So when you say she reported

[17]impaired work tolerance, can you be more specific.

[18]What did she say exactly about her ability to

[19]work?

[20]A That she is not able to perform

[21]full-time job. I don't recall what she does. I

[22]don't have specifics as to what her impairments

[23]are and what she does honestly.

[24]Q Do you have any contemporaneous

[25]notes that contain that information?

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[1]Reyfman, M.D.

[2]A No.

[3]Q So as you sit here today do you know

[4]to what extent she reported she was not able to

[5]perform her job as of August 10, 2022?

[6]A I don't have detailed information

[7]about that.

[8]Q All right. And in that sentence you

[9]also say she had reported that she had difficulty

[10]performing activities of daily living.

[11]Specifically what did she report to

[12]you that led you to write that?

[13]A Her main problem is really doing

[14]work around the house, at home cleaning, grocery

[15]shopping. Those are her main issues. But in

[16]terms as I testified before personal hygiene,

[17]basic meal preparation it's not an issue.

[18]Q Okay. And then in terms of your

[19]note that she reported difficulty sleeping, what

[20]did she tell you about her ability to sleep?

[21]A She has difficulty sleeping because

[22]of pain. It wakes her up at night.

[23]Q Okay. What kinds of difficulties?

[24]A It wakes her up at night.

[25]Q How often does the pain wake her up

124

[1]Reyfman, M.D.

[2]at night?

[3]A I'm not sure.

[4]MS. WEINREB: All right. So

[5]let's go off the record for a

[6]second. It's just about 1:00

[7]o'clock. I think maybe now is a

[8]good time for lunch because I have

[9]more to go. We are making good

[10]progress, but I am getting hungry,

[11]so what do you think.

[12](Discussion off the record.)

[13](A lunch recess was taken at

[14]this time.)

[15]

[16]

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

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[1]Reyfman, M.D.

[2]AFTERNOON SESSION

[3]October 21, 2022

[4]1:35 o'clock p.m.

[5](The deposition resumed with

[6]all parties present.)

[7]LEON REYFMAN, M.D., resumed, and

[8]testified further as follows:

[9]MS. WEINREB: We are back on

[10]the record after the lunch break.

[11]The time is 1:35 p.m.

[12]EXAMINATION

[13]BY MS. WEINREB:

[14]Q Just a friendly reminder, Dr.

[15]Reyfman, that you remain under oath and all the

[16]ground rules we went through at the beginning of

[17]today continue to apply, okay?

[18]A Yes.

[19]Q So let's pull up your expert report

[20]again. All right. So I think where we left off

[21]we were on Page 2 of your expert report and we

[22]were talking about the discussion of your

[23]evaluation of the Plaintiff on August 10, 2022 and

[24]her reported symptoms.

[25]So if you look at the top of Page 2

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[1]Reyfman, M.D.

[2]there is a paragraph that said the third line, the

[3]third paragraph down, past medical history.

[4]Do you see that?

[5]A Yes.

[6]Q So I'm just going to read it out

[7]loud.

[8]"Past medical history was reviewed

[9]and found to be non-contributory."

[10]So which or what past medical

[11]history did you review?

[12]A We ask patients to see if there is

[13]any medical condition that such as high blood

[14]pressure, diabetes, any chronic conditions.

[15]Also we inquire about prior history

[16]of pain, whether it's neck or back, to see if

[17]there is any other treatment records or complaints

[18]of that nature and if there are we will document

[19]the section when it says past medical history.

[20]And past medical history essentially refers to any

[21]chronic conditions.

[22]Q Okay. And you said that you get

[23]that information both from the Plaintiff's report

[24]and from the medical records?

[25]A Right.

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[1]Reyfman, M.D.

[2]Q Okay.

[3]A I'm sorry, so this is really the

[4]section where we ask the patient about the medical

[5]symptoms -- medical conditions, not necessarily

[6]medical records.

[7]Q Okay. When you wrote that past

[8]medical history was reviewed, were you referring

[9]only to what Ms. Cattenhead-Folk told you or have

[10]you also reviewed medical records?

[11]A This primarily refers to what she

[12]told me.

[13]Q Okay. What does it mean to be

[14]contributory or non-contributory?

[15]A It means is it significant or not,

[16]meaning is there anything that signifies any

[17]history that warrants further discussion of her,

[18]any further review of any records.

[19]Q Does it mean that some aspect of

[20]past medical history is contributing or

[21]influencing the Plaintiff's complaints or symptoms

[22]in some way?

[23]A Correct.

[24]Q Okay. So in this paragraph are you

[25]saying that based on what Ms. Cattenhead-Folk told
128

[1]Reyfman, M.D.

[2]you during the August 10, 2022 examination you

[3]determined that past medical history was

[4]non-contributory?

[5]A Yes.

[6]Q Okay. Did you also separately

[7]review her medical records to inquire whether she

[8]had past medical history that was contributory.

[9]A The only history that

[10]was attributable to a certain extent is the fact

[11]that she complained of neck and back pain in 2016.

[12]Q Can you describe what you're

[13]referring to specifically?

[14]A I reviewed the chiropractic report

[15]by Dr. Hermandi, that she saw him at the end of

[16]2016, it was November 4, 2016 when she complained

[17]of neck and back pain.

[18]She received several chiropractic

[19]treatments. That's where at least I saw from the

[20]past conditions, but the treatment that she

[21]received was very short in duration and there's

[22]no further treatment after December of 2016 so I

[23]found this to be really a non-contributing factor

[24]or it's a past medical history.

[25]Q Okay. So it your opinion based upon
129

[1]Reyfman, M.D.

[2]your review of the Hermandi medical records that

[3]aspect of the Plaintiff's medical history is

[4]non-contributory?

[5]A Yes.

[6]Q Okay. And do you know whether her

[7]back and neck pain that she experienced at the end

[8]of 2016, whether it improved, stayed the same or

[9]got worse after, you know, starting in 2017 and

[10]going forward?

[11]A She indicated that her pain has

[12]improved after receiving several chiropractic

[13]treatments. She did not experience any pain since

[14]2017.

[15]Q So you got that information based on

[16]what Ms. Cattenhead-Folk told you?

[17]A Correct.

[18]Q And did you get that information

[19]from any other source?

[20]A No.

[21]Q Does Ms. Cattenhead-Folk have any

[22]congenital conditions affecting her spine?

[23]A She does not.

[24]Q Were you ever made aware that she

[25]has scoliosis from birth?

130

[1]Reyfman, M.D.

[2]A I don't have direct recollection or

[3]at least I didn't see any mentioning of scoliosis

[4]in any of the imaging studies.

[5]Are you referring specifically to

[6]any diagnostic studies to support that she has

[7]scoliosis?

[8]Q Not at the moment, but I can see if

[9]I can get that for you.

[10]A I don't have any recollection of

[11]seeing that. Perhaps I missed it.

[12]Q Hold on. I can pull up a report for

[13]you. Give me one second.

[14]All right. So I'm pulling up, here

[15]let me share my screen, okay. So I have up here

[16]on the screen a document stamped NYUBK13 which is

[17]a record that was produced to our office in

[18]response to a subpoena from NYU Langone Brooklyn.

[19]Have you seen this record before?

[20]A Yes, I have.

[21]MS. WEINREB: We are going

22to mark this as Dr. Reyfman Exhibit

233, which is the Page NYUBK13.

[24](Document bearing Bates No.

[25]NYUBK000013 was marked as Reyfman

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[1]Reyfman, M.D.

[2]Exhibit No. 3 for identification, as

[3]of this date.)

[4]BY MS. WEINREB:

[5]Q So I will make it a little bigger.

[6]If you look in the middle of the page it's the CT

[7]thoracic spine without IV contrast performed on

[8]January 10, 2018 and if you look under the

[9]impression it says, "No acute fracture or

[10]traumatic malalignment. Focal upper thoracic

[11]levocurvature with congenital vertebral anomaly as

[12]described."

[13]A Okay. Yes, I saw that. It's not a

[14]scoliosis.

[15]Q What is it?

[16]A It's just an abnormal anomaly as the

[17]radiologist describes in the vertebra at only one

[18]level, a T3/T4, creating a small abnormal

[19]curvature of the spine, but it's also very mild.

[20]It's just a single level.

[21]So I don't believe it has any

[22]significance in this case at all. It says mild

[23]compensatory dextrocurvature mild lower thoracic

[24]spine. So whatever it is it's very mild and I

[25]don't think it's contributing to any of her

132

[1]Reyfman, M.D.

[2]symptoms.

[3]Q Okay. I'm going to show you one

[4]other record. So now I'm showing you the page

[5]Stand Up five which is a record that our office

[6]received in response to a subpoena to Stand Up MRI

[7]of Bensonhurst.

[8]Have you seen this record before?

[9]A Yes, I have.

[10]Q So we will mark this a Reyfman

[11]Exhibit 4.

[12](Records from Stand-Up MRI of

[13]Bensonhurst were marked as Reyfman

[14]Exhibit No. 4 for identification, as

[15]of this date.)

[16]Q This is a MRI of the Plaintiff's

[17]cervical spine on August 8, 2020. And if you look

[18]under the impression it says, "Scoliotic cervical

[19]and upper thoracic curvature with convexity to the

[20]right through the cervical region and more sharply

[21]to the left through the upper thoracic region,

[22]particularly at the level of C3-4."

[23]So does that indicate that she has

[24]scoliosis?

[25]A One second. So with regards to the

133

[1]Reyfman, M.D.

[2]thoracic spine this is exactly what C disc scan

[3]showed that you just read briefly a minute ago.

[4]Let me read the entire report if you don't mine.

[5]Q Do you want me to scroll back a

[6]page?

[7]A Can you scroll up for me because she

[8]also had cervical forces which were seen primarily

[9]because of muscle spasm.

[10]MR. PFLUGER: Does it have a

[11]date on it, is that 2020?

[12]MS. WEINREB: Yes, it is

[13]August 8, 2020.

[14]A So she has a degree of scoliosis in

[15]her thoracic spine, part of the cervical spine but

[16]she also has bent forces in her neck because of

[17]muscle spasm. But again I don't think this is --

[18]this is definitely congenital, meaning it's a

[19]birth defect, but I don't think any of these

[20]abnormalities are symptomatic. If they were

[21]symptomatic she would have some degree of chronic

[22]discomfort, chronic neck pain.

[23]Q Okay. Would you based on the

[24]description of the scoliosis in this MRI report,

[25]would you consider that contributing. How did you

134

[1]Reyfman, M.D.

[2]phrase it, contributory to her current complaints?

[3]A No, I don't think -- if she never

[4]had these MRI's or CAT scans she would probably

[5]never have had an idea that she had this

[6]abnormality.

[7]Q Do you have an understanding of what

[8]caused the Plaintiff's neck and back pain in 2016?

[9]A I don't have a good understanding,

[10]but from reading Dr. Hermandi's report I mean he

[11]doesn't describe what was the cause of the

[12]symptoms, but he just merely describes her

[13]presenting complaints, but nothing more than that.

[14]And he noted actually that the

[15]patient has no previous prior medical conditions

[16]or medications. So he doesn't really describe

[17]what is the onset of her symptoms.

[18]Q Do you know what Ms. Cattenhead-Folk

[19]does for work?

[20]A I'm not sure.

[21]Q Do you know where she works?

[22]A I don't.

[23]Q Do you know what kind of position

[24]she holds?

[25]A I don't.

135

[1]Reyfman, M.D.

[2]Q Do you know whether her job whether

[3]now or in the past involved any component of

[4]manual labor?

[5]A I'm not sure.

[6]Q Would that information be

[7]significant in your evaluation of her spinal

[8]condition?

[9]A Well, evaluating her condition not

[10]because of her work, but, yes, you're right. It

[11]would be important to me.

[12]Q All right. I also want to show you

[13]another exhibit. So I just pulled it up on the

[14]screen. I'll represent to you that these are

[15]records from Network Spine that my office received

[16]in response to a subpoena. I'll just say it's six

[17]pages, Network Spine Pages 1 through 6.

[18]Let me just scroll through them so

[19]you can see. I know it's very small. I can make

[20]them bigger, but just at first glance have you

[21]ever seen these notes before?

[22]A I did not.

[23]Q And I believe you said earlier that

[24]you had not reviewed records from Network Spine in

[25]connection with this case. correct?

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[1]Reyfman, M.D.

[2]A That is correct.

[3]MR. PFLUGER: I thought he

[4]said yes.

[5]MS. WEINREB: I'm pretty

[6]sure he said no.

[7]Q I'll just ask again, have you

[8]reviewed any records from Network Spine relating

[9]to Ms. Cattenhead-Folk?

[10]A I did not. I did see a report, an

[11]expert report, hold on, Dr. Witkin, that she does

[12]mention these records, that the patient had seen

[13]Dr. Modiker and she had a couple trigger point

[14]injections, but I'm only getting this from

[15]Dr. Witkin's expert report, otherwise I haven't

[16]seen his records before.

[17]MS. WEINREB: Okay. Let's

[18]mark this as Reyfman Exhibit 5.

[19]This will be the six pages stamped

[20]Network Spine Pages 1 through 6.

[21](Network Spine records

[22]consisting of six pages were marked as

[23]Reyfman Exhibit No. 5 for

[24]identification, as of this date.)

[25]

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[1]Reyfman, M.D.

[2]BY MS. WEINREB:

[3]Q Now I'm on the page Network Spine 3.

[4]So I'm going to make it bigger.

[5]Can you read that?

[6]A Yes.

[7]Q All right. If you go to the top of

[8]the page the note is dated November 14, 2016.

[9]Patient name Shaniqua Cattenhead-Folk. I'm just

[10]going to read the first sentence or two of the

[11]note.

[12]It says, "Initial presentation, with

[13]frequent neck pain, upper back pain, pain across

[14]the shoulders, and low back pain. Neck, upper

[15]back, and shoulder pain began approximately in

[16]June, 2016 with recent worsening of pain is 7 out

[17]of 10 severity. Lumbosacral complaints began

[18]approximately one month ago and have been

[19]intermittent and are of lesser severity."

[20]Would you have wanted to know this

[21]information in forming your expert opinions in

[22]this case?

[23]A Well, I mean I knew about that she

[24]had seen a chiropractor for treatment. I did not

[25]know until I saw your expert's, Dr. Witkin's

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[1]Reyfman, M.D.

[2]notes, but I don't believe that this statement

[3]here would change my opinion with regards to her

[4]treatment?

[5]Q Why not?

[6]A Because had no -- she received a

[7]short course of treatment in 2016, less than

[8]approximately a month or so. Her symptoms began a

[9]month prior to seeing this doctor.

[10]She did not continue with treatment

[11]or at least we don't have any records for after

[12]the end of 2016 the signifies that whatever she

[13]had in 2016 was resolved and did not cause any

[14]chronic disability or pain.

[15]Q Okay. So are you assuming that

[16]because there are no notes from this provider past

[17]2016 that her symptoms resolved?

[18]A Not just this provider, but the

[19]patient herself. She said that she had no pain

[20]leading to this injury in 2018.

[21]Q Okay. And she is the sole source of

[22]your information as to whether or not her symptoms

[23]resolved after 2016?

[24]A Correct.

[25]Q And I think you just said that the

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[1]Reyfman, M.D.

[2]symptoms as noted here in this note began one

[3]month ago. It says the neck, upper back and

[4]shoulder began in June of 2016 which would have

[5]been several months earlier. Does that impact

[6]your opinion at all?

[7]A No.

[8]Q It says that she was reporting pain

[9]of seven out of ten severity which is more severe

[10]pain than she reported to you on August 10, 2022,

[11]correct?

[12]A Correct.

[13]Hold on. I think it was about the

[14]same.

[15]Q I'm just toggling back now.

[16]A She had pain of six out of ten, yes.

[17]Q Right. So her pain in 2016 was

[18]worse than when she saw you earlier?

[19]MR. PFLUGER: Objection.

[20]That's one moment in time. I have

[21]to object, I'm sorry. I mean it

[22]argumentative.

[23]Q You can answer the question.

[24]A We're just basing this on the pain

[25]scale and I don't think basing an opinion of

140

[1]Reyfman, M.D.

[2]degree of impairment or severity of pain on any

[3]condition should be based solely on pain scale

[4]which is fairly subjective.

[5]Q Okay. So what else should it be

[6]based upon?

[7]A Based on the physical exam findings,

[8]based on supporting MRI's or any other diagnostic

[9]studies supporting the underlying problem.

[10]It's not uncommon for patients to

[11]have muscle spasms, aches and pains throughout the

[12]ordinary course of life and not every neck or back

[13]pain leads to a long-term sequelae in terms of

[14]chronicity.

[15]We have a lot of patients that we

[16]treat with sprains that get resolved with physical

[17]therapy or some trigger point injection. That

[18]doesn't mean they will continue on to have chronic

[19]problems.

[20]Q Do you have an understanding of what

[21]caused the Plaintiff's pain as reported to

[22]Dr. Magyar on November 14, 2016?

[23]A I don't.

[24]Q Do you consider this information

[25]contributory medical history.

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[1]Reyfman, M.D.

[2]A I don't. I mean it's not going to

[3]effect or contribute anything to my examination

[4]four or five years after this exam.

[5]Q So contributory --

[6]A I'm sorry, Carly, can we see the

[7]entire note because you're just showing me the

[8]complaints. I don't see any physical exam

[9]findings.

[10]Q Yes. It looks like it says physical

[11]exam up here. Do you see that?

[12]A So physical exam, normal gait.

[13]Tenderness trigger points, left more than right.

[14]Negative Spurling sign. Painful active range of

[15]motion. Thoracic spine, tenderness, trigger

[16]points, shoulder tenderness. Under neurological

[17]it says Straight leg raises negative.

[18]There is no neurological sequelae of

[19]any kind. The reflexes are normal. Sensory is

[20]intact. Essentially this is a myofascial pain as

[21]he describes cervical pain, thoracic pain, myalgia

[22]and spasm. So we are not treating some form of

[23]herniated disc or condition that may lead to more

[24]progressive pain for the treatment.

[25]This is as he indicated this is

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[1]Reyfman, M.D.

[2]muscle spasm. We treated her only with trigger

[3]point injection which helped her.

[4]Q Okay. So putting aside the term

[5]contributory, do you think this information is

[6]relevant for purposes of your analysis?

[7]A No.

[8]Q Okay. So just to make sure we are

[9]on the same page. So would you agree that it's

[10]important when evaluating a patient's condition

[11]relating to a certain body part that you would

[12]want to at least be aware of all past medical

[13]history concerning that body part?

[14]A Yes.

[15]Q And then once you're made aware of

[16]it and review it, you can then make a

[17]determination as to its impact, if any?

[18]A Correct.

[19]Q Okay. So going to the end of the

[20]note. The last note is from December 27, 2016.

[21]It says, "Shaniqua presents for urgent visit for

[22]complaints of spontaneous worsening of her neck,

[23]mid-back, and lower back pain. She has associated

[24]muscle spasm and pain with movement. Previous

[25]complaints of shoulder pain and right knee pain

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[1]Reyfman, M.D.

[2]are asymptomatic.

[3]Does this information impact your

[4]evaluation of the Plaintiff's condition at all?

[5]A It does not impact my evaluation of

[6]this patient's condition at all.

[7]Q And why is that?

[8]A She again, I'm going to repeat

[9]myself again. This Dr. Magyar clearly states the

[10]patient has a muscle spasm which was treated with

[11]trigger point injection and she did fairly well

[12]after the treatment and that there's nothing else

[13]in the note reflecting this patient has some form

[14]of spine deformity, spine problem.

[15]This is myofascial pain, muscle

[16]spasm and it's different for what I've been

[17]treating this patient for cervical herniation. We

[18]are treating two different things. This is

[19]myofascial pain and I'm treating her for herniated

[20]disc.

[21]Q Do you know if she had any herniated

[22]disks as of this date?

[23]A No. There is no records to reflect

[24]it. I mean this doctor clearly testifies that he

[25]is treating her for muscle spasm and she is

144

[1]Reyfman, M.D.

[2]responding to trigger points. In fact, if she

[3]didn't get improvement with trigger point

[4]injection that would lead me to assume that she

[5]would need some further workup, MRI's or other

[6]diagnostic modalities to see if there is anything

[7]other abnormal which she did not.

[8]Q It says under plan MRI workup be

[9]ordered if no improvement on follow-up?

[10]A Great, but she had improvement and

[11]no MRI has been ordered.

[12]Q She had improvement based on her

[13]report to you, correct?

[14]A There's no other records either

[15]chiropractic or Dr. Magyar saying that she did not

[16]improve and she needs the MRI. I mean the first

[17]part of her HPI clearly states that at the last

[18]visit trigger point injection was helpful and he

[19]is not clear as to why her pain worsened.

[20]So he is repeating another trigger

[21]point injection and it looks like it helped her

[22]and she didn't return to him for any other further

[23]treatment.

[24]Q So to diagnose a herniated disc do

[25]you need to see the MRI of the body part to make

145

[1]Reyfman, M.D.

[2]that diagnosis whether there is one or there isn't

[3]one?

[4]A It's one of the requirements, yes.

[5]Q So basically -- Sorry.

[6]A Symptomatically you can suspect a

[7]herniation, but to have, you know, a conclusion, a

[8]firm diagnosis that there is a herniation you need

[9]to have an MRI done, yes.

[10]Q Not all disc herniations are

[11]symptomatic, correct?

[12]A Correct.

[13]Q Okay. So based on this note in the

[14]absence of any MRI report or findings you cannot

[15]tell definitively one way or the other whether she

[16]had any herniated discs as of this date?

[17]A Correct.

[18]Q I'm going to stop sharing my screen

[19]for a minute.

[20]All right. I'm going to share my

[21]screen and show you another document.

[22]Okay. So I'm showing you a 27-page

[23]document and represent that these are records that

[24]we received from Helmandi Chiropractic in response

[25]to a subpoena and they are stamped Helmandi 1

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[1]Reyfman, M.D.

[2]through 27.

[3]Have you seen these records before?

[4]A Can you please enlarge this?

[5]Q Yes.

[6]A Yes, I have seen these records.

[7]Q And you reviewed them in connection

[8]with your report?

[9]A Yes, ma'am.

[10]MS. WEINREB: All right. So

[11]let's mark this as Reyfman Exhibit 6

[12]and let's go back to the beginning.

[13](Helmandi Chiropractic records

[14]consisting of 27 pages were marked as

[15]Reyfman Exhibit No. 6 for

[16]identification, as of this date.)

[17]BY MS. WEINREB:

[18]Q All right. So this first note is

[19]from November 14, 2016. Patient name Shaniqua

[20]Cattenhead-Folk. I'd like to direct your

[21]attention to the second paragraph. I'm going to

[22]read it out loud.

[23]"The patient also has bilateral

[24]lower back pain and stiffness. This is a chronic

[25]issue they have had for over a year now and it has

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[1]Reyfman, M.D.

[2]continued to worsen over the past month."

[3]Is this information consistent with

[4]what the Plaintiff told you?

[5]A It's not consistent.

[6]Q How is it not consistent?

[7]A That she did not tell me that she

[8]had any chronic lower back problems.

[9]Q Would a chronic lower back problem

[10]be a contributory medical history?

[11]A It would be, yes. And I believe

[12]Dr. Magyar never reflects that her symptoms

[13]started just recently, that he did not mention

[14]anything that she has chronic lower back pain if

[15]I'm not mistaken.

[16]Q Okay. So if that information is

[17]contributory, what impact, if any, does it have on

[18]your opinions on causation in this case?

[19]A You know, it's not contributive

[20]because if you bring up the note from Dr. Magyar

[21]she says that her back pain just started recently.

[22]Q So putting aside his note, though,

[23]based on the note from Hermandi Chiropractic she

[24]told him it was a chronic issue for the past year.

[25]That's what the note says, correct?

148

[1]Reyfman, M.D.

[2]A Yes. That's correct. That's what

[3]the doctor transcribed as a chiropractor.

[4]MR. PFLUGER: Yes, as a

[5]chiropractor.

[6]Q So do you have any reason to doubt

[7]the accuracy of that note?

[8]MR. PFLUGER: Objection. A

[9]chiropractor is not a medical

[10]doctor.

[11]Q Okay. You can answer the question.

[12]Do you have any reason to doubt that note?

[13]A Yes, I am doubting that note now,

[14]yes.

[15]Q On what basis?

[16]A Because she had a medical doctor

[17]that saw the patient at the same timeframe that

[18]describes opposite onset of pain.

[19]Q Is there any kind of medical

[20]information in that sentence. Isn't it just him

[21]writing down what the Plaintiff told him?

[22]A Correct.

[23]Q So why is it not reliable if a

[24]chiropractor reports what the patient told him as

[25]opposed to a medical doctor.

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[1]Reyfman, M.D.

[2]A Well, if you look at the other notes

[3]in the chiropractic records it's copy and paste

[4]from visit to visit.

[5]Q I'm just asking about that sentence.

[6]A I'm sorry, repeat your question.

[7]Q I'm trying to understand why you

[8]think that that note is inaccurate or unreliable.

[9]A I'm not -- I don't think the note is

[10]unreliable, but I'm not going to base my opinion

[11]whether this is contributable or non-contributable

[12]based on a chiropractic note and obviously

[13]discrepancy between two providers, a chiropractor

[14]and a medical doctor. That was your question

[15]before this last question.

[16]Q Okay. So you think that the medical

[17]doctor's summary of patient symptoms are more

[18]reliable than chiropractors?

[19]A I think doctors tend take a better

[20]oral history, yes, especially Dr. Yadaho who is

[21]Board-certified as a medical doctor.

[22]Q Do you know that Dr. Helmandi, do

[23]you know for certain whether or not that note

[24]regarding the chronic nature of Plaintiff's lower

[25]back pain, do you know if that is inaccurate or

150

[1]Reyfman, M.D.

[2]not?

[3]A I don't.

[4]Q If it is accurate what impact, if

[5]any, does it have on your assessments of causation

[6]in this case?

[7]MR. PFLUGER: Objection to

[8]the hypothetical. How can the

[9]answer that hypothetical if it is

[10]accurate. We don't know if it is.

[11]We don't know if English was his

[12]first language. I mean there are

[13]too many variables. Objection, but

[14]you can answer.

[15]Q You can answer.

[16]A I don't know. I mean I don't know.

[17]As you know it's more for just a sentence from

[18]previous doctor as you indicated to determine

[19]whether her chronic back history is contributing

[20]or not because we are looking at other things. We

[21]want to see if there are any treatment records,

[22]any complaints, anything to support that.

[23]Just because Dr. Helmandi wrote a

[24]sentence that said the patient had started pain a

[25]year ago, he didn't describe what type of

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[1]Reyfman, M.D.

[2]treatment she received. He didn't describe the

[3]type of pain she was experiencing or whether she

[4]was able to do her work or what type of medical

[5]treatment she required before she saw him.

[6]He just wrote a statement that the

[7]patient apparently told him that the onset of pain

[8]was over a year ago, but there is nothing more

[9]specific, how it started, how frequent was it and

[10]what the nature of the pain was.

[11]So I can't really answer your

[12]question if it's relevant. Every information is

[13]relevant that we get from those doctors, but in

[14]this case I can't tell you how reliable his note

[15]is.

[16]Q Do you include any discussion of

[17]these chiropractic notes in your expert report?

[18]A No, I did not. I mean I listed as

[19]part of the medical record, but I did not list the

[20]discussion.

[21]Q Okay. So your report does not

[22]contain any information on the basis on which you

[23]found those notes to be not reliable or

[24]significant for your purpose?

[25]MR. PFLUGER: Hold on.

152

[1]Reyfman, M.D.

[2]Objection. You just asked the

[3]question. Now you are asking the

[4]question. Objection, asked and

[5]answered.

[6]Q Do you think it's important to

[7]include a discussion of relevant medical history

[8]and to explain whether or not you think it impacts

[9]your opinions?

[10]A I don't think this was a relevant

[11]medical history that I included in my report.

[12]Q Okay. You just testified a moment

[13]ago that all of these medical notes are relevant,

[14]but whether they influence your ultimate

[15]conclusion is another matter.

[16]A Correct.

[17]Q It's relevant. So do you think it's

[18]important to include a discussion of the relevant

[19]documentation in an expert report?

[20]A I did not include the discussion. I

[21]indicated that I reviewed the records. That is

[22]all I did.

[23]Q Why do you want to know whether

[24]there is contributory medical history for a

[25]patient?
153

[1]Reyfman, M.D.

[2]A Because there is other medical

[3]conditions that may affect my treatment options.

[4]So, for example, if somebody has heart disease

[5]taking blood thinners, there are certain

[6]injections that we cannot perform without medical

[7]clearance. There are certain rheumatologic

[8]conditions that are important to know, systemic

[9]medical conditions.

[10]This is just overall medical

[11]requirement that we need to obtain any history of

[12]illness whether it's related to chronic or acute

[13]conditions.

[14]Q And contributory medical history

[15]could not necessarily, but could shed light on the

[16]case of any particular injury; is that right?

[17]A Sure.

[18]Q All right. Let's go back to your

[19]expert report. Okay. So on Page 2 there is a

[20]section titled Review of Symptoms.

[21]What is the source of this

[22]information?

[23]A It's asking the patient these

[24]questions whether she has any of these symptoms.

[25]Q If you look at the last entry for
154

[1]Reyfman, M.D.

[2]Psych it says, "Patient does not show signs of

[3]serious depression."

[4]What do you mean by that?

[5]A She does not have any major mood

[6]swings. She doesn't see a psychiatrist. She

[7]doesn't need any psychotropic medications.

[8]Q And what would be signs of serious

[9]depression that you look for to make that

[10]determination?

[11]A We would look at the overall patient

[12]presentation, their affect when they come to the

[13]office. We ask questions about their mood, is

[14]there fluctuation in that, just generic questions

[15]because we know that pain may cause depression and

[16]as part of pain management assessment we are

[17]required to have a brief understanding whether

[18]there's underlying serious depression and also

[19]whether patients have any history of opioid use.

[20]We are required to review if there is any evidence

[21]of medication and in this case there was none.

[22]Q Did you give Ms. Cattenhead-Folk any

[23]screening questionnaires for depression or other

[24]psychiatric or psychologic conditions.

[25]A She did not require any
155

[1]Reyfman, M.D.

[2]questionnaires.

[3]Q I'm sorry, I didn't hear your

[4]answer.

[5]A She did not require any

[6]questionnaires.

[7]Q So no?

[8]A The answer is no, yes.

[9]Q Are you a psychiatrist or a

[10]psychologist?

[11]A I'm not.

[12]Q All right. Moving on, the section

[13]Physical Exam, August 10, 2022.

[14]What is the source of information in

[15]section?

[16]A This was my physical exam performed

[17]on 8/10/2022.

[18]Q Any other source of the information

[19]in this section?

[20]A No.

[21]Q And what did your exam consist of?

[22]A It consisted of musculoskeletal

[23]exam, examining neck and back. It consist of

[24]neurological exam, also orthopedic exam.

[25]Q Anything else?

156

[1]Reyfman, M.D.

[2]A That's it.

[3]Q Did you administer any specific

[4]tests?

[5]A Meaning?

[6]Q I'm not sure. Are there any kind of

[7]tests that you would perform on a patient to get

[8]information about their condition?

[9]A The physical exam consist of

[10]palpation which she had muscle spasm neck and

[11]back. She had lumbar facet loading on both sides.

[12]She had a straight leg test positive on the right

[13]side. The neurological exam performed on her

[14]upper and lower extremities as described here.

[15]Can you scroll down for me?

[16]Q Sure.

[17]A Next page. Can you go up to the

[18]bottom of Page 2 if you may for me. Actually It's

[19]fine. There was an orthopedic exam performed for

[20]straight leg test that was positive on the right.

[21]Can you up a page, please. She had

[22]a Spurling test positive on the left side. She

[23]had a cervical compression positive on the right

[24]side. So these are indicative orthopedic tests

[25]for a cervical radiculopathy.

157

[1]Reyfman, M.D.

[2]Q Okay. Are any of these tests or

[3]aspects of the examination that you did diagnostic

[4]for disc herniations?

[5]A Yes, they are. You have some

[6]patients who have herniations with possible

[7]radiculopathy or radiculitis will manifest

[8]symptoms or signs or Sterling sign positive,

[9]cervical compression, straight leg test was

[10]positive.

[11]Also on the neurologic side she had

[12]sensory deficit in the left upper extremity along

[13]the C5-C6 dermatome. Diminished reflexes to one

[14]plus, motor weakness four or five.

[15]Same thing on the lower extremity.

[16]She had sensory deficit L5/S1. So neurologically

[17]there is indication of nerve implication because

[18]of the herniation.

[19]Q Okay. But would you agree with me

[20]to positively diagnose someone with a herniation

[21]you would also need a diagnostic image?

[22]A Yes.

[23]Q Now, we are at the bottom of Page 4

[24]of your report to the section called Final

[25]Diagnosis and there are four diagnosis listed. So

158

[1]Reyfman, M.D.

[2]who made these diagnosis?

[3]A I did.

[4]Q And at what point, when did you make

[5]these diagnosis?

[6]A She was diagnosed with cervical disc

[7]displacement, cervical radiculopathy. If you can

[8]scroll down to the top of Page 5 for me, please

[9]and lumbar disc herniation, muscle spasm as early

[10]as onset of our treatment as Dr. Zhivotenko and

[11]subsequently by me in March of 2021 and these

[12]diagnosis has not changed.

[13]Q So your examination of the Plaintiff

[14]on August 10, 2022 was consistent with these four

[15]diagnosis?

[16]A That's correct.

[17]Q A diagnosis, is it fair to say it's

[18]a snapshot in time of the Plaintiff's condition at

[19]the moment you make the diagnosis?

[20]MR. PFLUGER: Object to

[21]form.

[22]A A diagnosis can change, but, yes,

[23]you're right. The diagnosis is given at that

[24]particular visit depending on the physical exam,

[25]complaints and the records, yes.

159

[1]Reyfman, M.D.

[2]Q So the four, you have four diagnosis

[3]listed in your report. Cervical disc herniation,

[4]cervical radiculopathy, lumbar disc herniation and

[5]muscle spasm.

[6]Have you diagnosed the Plaintiff

[7]with any other diagnosis other than these four?

[8]A No.

[9]Q Okay. So going through them one at

[10]a time, her cervical disc herniation, what is the

[11]basis for this diagnosis?

[12]A The basis are a history of a chronic

[13]neck pain radiating to left upper extremity.

[14]Physical exam findings consistent with muscle

[15]spasm, nerve irritation. MRI findings consistent

[16]with C5-C6 disc herniation.

[17]That is the basis for a cervical

[18]disc herniation as well as cervical radiculopathy.

[19]Q Okay. Did you rely on any other

[20]information in forming the diagnosis of cervical

[21]disc herniation?

[22]A No.

[23]Q Now, in looking at the diagnosis

[24]cervical radiculopathy, what is the basis for that

[25]diagnosis?

160

[1]Reyfman, M.D.

[2]A Exactly the same as the basis for

[3]the cervical disc herniation.

[4]Q And did you rely on any other

[5]information other than what you just described in

[6]arriving at the diagnosis of cervical

[7]radiculopathy?

[8]A No.

[9]Q The next diagnosis is lumbar disc

[10]herniation. What is the basis of the diagnosis.

[11]A Chronic back pain, physical exam

[12]findings consistent with nerve irritation of the

[13]L5-S1. dermatome, diminished reflexes.

[14]MRI finding consistent with L5-S1.

[15]Posterior disc bulge with peripheral extension

[16]into the right. Right and left foramena with also

[17]a bulging disc at L4 and 5.

[18]Q Did you rely on any other source of

[19]information in diagnosing the Plaintiff with

[20]lumbar disc herniation?

[21]A No.

[22]Q Finally for muscle spasm, what was

[23]the basis for that diagnosis?

[24]A This was based upon a patient's

[25]complaints of neck and back pain as well as my

161

[1]Reyfman, M.D.

[2]physical exam consisting with muscle spasm.

[3]Q Okay. And did you rely on any other

[4]information in diagnosing the Plaintiff with

[5]muscle spasms?

[6]A No.

[7]Q Okay. Do you know when

[8]Ms. Cattenhead-Folk first developed a cervical

[9]disc herniation?

[10]A Well, I started treating her

[11]approximately three years after her injury so I

[12]don't, at least based on review of the records or

[13]discussions that I had with her I believe the

[14]onset of her symptoms are due to the accident she

[15]sustained and I believe the disc herniations are a

[16]result of this accident.

[17]Q Okay. I'm not sure if you answered

[18]my question.

[19]Do you know when she first developed

[20]the cervical disc herniation?

[21]MR. PFLUGER: Objection. He

[22]just answered it.

[23]MS. WEINREB: I don't think

[24]he did.

[25]MR. PFLUGER: He said

162

[1]Reyfman, M.D.

[2]accident.

[3]Q Is that your testimony, that she

[4]sustained a cervical disc herniation on January 9,

[5]2018?

[6]A That is my testimony, yes.

[7]Q That is your opinion to a reasonable

[8]degree of medical certainty?

[9]A Yes, it is.

[10]Q Okay. What is that opinion based

[11]on?

[12]A Based on that she -- now we know she

[13]had some pain in 2016 which was approximately only

[14]a month she received treatment.

[15]She was asymptomatic prior to this

[16]injury and she presented to us and she reported

[17]that her symptoms started on January 9, 2018

[18]because of the car accident she was involved in.

[19]Q How do you know that the cervical

[20]disc herniation wasn't caused by something else?

[21]MR. PFLUGER: Objection.

[22]A This is a 33 year old female now.

[23]She was in her late twenties. There is no

[24]degenerative condition of any kind in her neck

[25]except for levoscoliosis as we discussed before.

163

[1]Reyfman, M.D.

[2]If she had herniation prior to this

[3]injury she would be symptomatic. She would be

[4]receiving some form of treatment.

[5]So I feel within a degree of medical

[6]certainty that the herniation that she sustained

[7]in her neck and her back are a result of this

[8]injury.

[9]Q Do you have any diagnostic imaging

[10]to confirm your belief that she developed a

[11]cervical disc herniation on January 9, 2018?

[12]A I don't.

[13]Q And as you said before it's possible

[14]to have a disc herniation that is asymptomatic?

[15]MR. PFLUGER: Objection.

[16]Asked and answered.

[17]A Sorry, I can answer the question?

[18]MR. PFLUGER: You did answer

[19]it earlier on, much earlier on in

[20]the deposition.

[21]Q You can answer.

[22]A Right. So the question that you

[23]asked me when we started this deposition was can

[24]you have an asymptomatic herniation, the answer is

[25]yes.

164

[1]Reyfman, M.D.

[2]Now, there are different types of

[3]herniation. This could be central herniation,

[4]without nerve impingements, but most of the times

[5]patients who have herniations that are impinging

[6]the nerve root will have symptoms. It's rare that

[7]you'll have asystematic with large herniation that

[8]will be asymptomatic.

[9]Q What kind of cervical disc

[10]herniation did you diagnose Plaintiff as having?

[11]A Well, she had, you know, a fairly

[12]large herniated disc with extension into the

[13]foramina with nerve impingement.

[14]Q Once a person develops disc

[15]herniation can that progressively get worse over

[16]time?

[17]A Yes.

[18]Q And disc herniations can also or

[19]alternatively be caused by normal degenerative

[20]changes in just in a general person. That can

[21]happen, correct?

[22]MR. PFLUGER: Objection.

[23]Q I'll rephrase it. That was a bad

[24]question.

[25]Can normal degenerative changes in

165

[1]Reyfman, M.D.

[2]the spine cause a disc herniation in the cervical

[3]spine?

[4]MR. PFLUGER: Objection.

[5]Except this patient did not have

[6]degeneration in her neck at 28, 27

[7]years old.

[8]Q I'm questioning that testimony right

[9]now, so you can answer the question.

[10]MR. PFLUGER: But it's not a

[11]question he could answer. It's a

[12]hypothetical. It doesn't apply to

[13]the Plaintiff.

[14]MS. WEINREB: This is within

[15]his expertise and training. He

[16]should know the different causes of

[17]disc herniation.

[18]Q I'm just asking can degenerative

[19]changes cause a disc herniation?

[20]A The answer is yes, but it also

[21]depends on the age factor, right. So she is 28

[22]years old when this accident happened. So there

[23]is nothing degenerative in her spine. If she was

[24]a lot older then the answer would be yes.

[25]Q Is there a minimum age when you

166

[1]Reyfman, M.D.

[2]start to see degenerative changes?

[3]A So we start to see degenerative

[4]changes of the spine in our forties, mid-forties,

[5]late forties, fifties, but also in the lower back

[6]because it's weight bearing, not so much the neck.

[7]So in this case in reviewing MRI's

[8]there's nothing degenerative. She has good

[9]hydration in all the disc and she has a herniated

[10]disc. It's what she has.

[11]Q Is it possible for a person to have

[12]degenerative changes before the age of 40?

[13]A Yes.

[14]MR. PFLUGER: Objection.

[15]Q So then with respect to the lumbar

[16]disc herniation, same question.

[17]Do you know when her lumbar disc

[18]herniation first developed?

[19]A Based on the MRI you cannot

[20]determine exactly the onset or the time the disc

[21]herniation developed, but again the same answer

[22]would apply for the lower back as I testified

[23]before with regards to her neck.

[24]She had complaint of lower back pain

[25]in the past for which she was treated. She was

167

[1]Reyfman, M.D.

[2]asymptomatic. She developed progressive back and

[3]neck pain as a result of injury in 2018. So I

[4]believe these disc herniations are related to the

[5]motor vehicle accident.

[6]Q Okay. So now I'm going to share the

[7]screen. I'm going to show you another document.

[8]This is one page stamped BP13. This is a MRI

[9]lumbar spine without contrast report from Lenox

[10]Hill Radiology, and I will represent to you that

[11]my office received this record in response to a

[12]subpoena.

[13]Have you seen this document before?

[14]A Yes.

[15]MS. WEINREB: Okay. Let's

[16]mark this as Exhibit 7.

[17](Lenox Hill Radiology report

[18]was marked as Reyfman Exhibit No. 7

[19]for identification, as of this date.)

[20]BY MS. WEINREB:

[21]Q So the patient is Shaniqua

[22]Cattenhead-Folk. The date of the exam is

[23]February 7, 2018. So that's approximately one

[24]month after the accident, correct?

[25]A Yes.

168

[1]Reyfman, M.D.

[2]Q Okay. So this an MRI of her lumbar

[3]spine and if we look at the impression it says,

[4]"No acute bony or soft tissue abnormalities on MR

[5]evaluation of the lumbar spine."

[6]So what does that mean?

[7]A That means that this MRI did not

[8]demonstrate any herniation in the lower body.

[9]Q Okay. Does this indicate anything

[10]to you about whether or not the accident caused

[11]her lumbar spine herniation?

[12]A The accident 1/9. This is 2/7. So

[13]this MRI was taken exactly a month right after the

[14]accident. This MRI does not support the fact that

[15]she developed herniation right after the accident,

[16]but subsequent MRI does as you know.

[17]Q Sorry. What was the last thing you

[18]said?

[19]A The subsequent MRI that was

[20]performed on 8/8/2022 did demonstrate a bulging

[21]disc at L4-5 and a larger L5-S1 disc bulge as I

[22]testified before.

[23]Q I think you may misspoken. It was

[24]August 8th of 2020?

[25]A Yes, correct.

169

[1]Reyfman, M.D.

[2]Q And that was about two and a half

[3]years after the accident?

[4]A That's correct.

[5]Q Okay. So of those two MRI's which

[6]one do you think, if any, has more significance

[7]for identifying the cause of the lumbar

[8]herniations?

[9]A The only -- the only thing that I'm

[10]questioning is that the first MRI was done a month

[11]after the injury which potentially could have not

[12]demonstrated the herniation or bulge that was

[13]later picked up two years later by a different

[14]MRI.

[15]It's not uncommon for patients to

[16]develop a simple muscle spasm strain after an

[17]injury and then becomes a bulging disc as time

[18]evolves.

[19]The same concept applies to certain

[20]tests such as an EMG, for example. If an EMG is

[21]performed way too soon prematurely then it's not

[22]going to pick up any nerve damage. We have two

[23]conflicting obviously MRI's. One is a month and

[24]one is two years which does show that there is a

[25]progression of her condition.

170

[1]Reyfman, M.D.

[2]So in summary, I'm not sure how to

[3]answer your question.

[4]Q So if I'm understanding you

[5]correctly what you're says is it's possible that

[6]she could have sustained a herniation in her

[7]lumbar spine from the accident that wasn't

[8]captured on the February 7, 2018 MRI?

[9]A Correct. And also the MRI that she

[10]had in 2018 versus the MRI that she had in 2020.

[11]There are two different MRI's. The 2020 MRI was a

[12]Stand Up MRI with flexion extension with weight

[13]bearing. In 2018 this was not a weight bearing

[14]MRI.

[15]Q What's the difference, like what's

[16]the significance of that?

[17]A It's more -- so a stand up MRI is

[18]more sensitive because we see the movement of our

[19]spine because the picture is taken in three

[20]planes, flexion, extension. So we do see, it's

[21]more sensitive in determining if there is actually

[22]an underlying disc bulge or herniation by having

[23]the spine films in different planes flexion,

[24]extension for that reason.

[25]Q Okay. Is it also possible that the

171

[1]Reyfman, M.D.

[2]accident based on this MRI report did not cause

[3]the lumbar spine herniation?

[4]MR. PFLUGER: Objection.

[5]Anything is possible. I object.

[6]A Anything is possible.

[7]Q I'm going to stop sharing my screen

[8]for a minute.

[9]You said you reviewed that MRI in

[10]preparing your report?

[11]A Yes, ma'am.

[12]Q Okay. Did you discuss it at all in

[13]your expert report?

[14]A I did not, but I list all the

[15]reports that I reviewed in the section where it

[16]says medical records.

[17]Q And is there a reason why you didn't

[18]discuss that one?

[19]A I did not discuss any of the

[20]reports. I sent you a list of them as the records

[21]that were available to me forward to you.

[22]Q All right. And I want to show you

[23]one more. So I have up here on the screen a

[24]document stamped PPNY5 to 6. This is a radiology

[25]report from City Wide Health Facility relating to

172

[1]Reyfman, M.D.

[2]the Plaintiff. It's an MRI of the lumbar spine

[3]without contrast.

[4]Have you seen this document before?

[5]A Yes, I have.

[6]MS. WEINREB: Let's mark

[7]this as Reyfman Exhibit 8.

[8](City Wide Health Facility,

[9]Inc. radiology report was marked as

[10]Reyfman Exhibit No. 8 for

[11]identification, as of this date.)

[12]BY MS. WEINREB:

[13]Q Did you review this report in

[14]preparing your expert narrative?

[15]A Yes, I have.

[16]Q All right. So this is dated March

[17]5, 2022, so earlier this year, MRI of Plaintiff's

[18]lumbar spine and if we go down to impression it

[19]says, "Unremarkable exam."

[20]What is your understanding of what

[21]that means?

[22]A This exam is normal.

[23]Q Does it mean this exam did not show

[24]any lumbar herniations?

[25]A Yes.

173

[1]Reyfman, M.D.

[2]MR. PFLUGER: That's what

[3]the report says.

[4]MS. WEINREB: That's what I

[5]am asking.

[6]MR. PFLUGER: The report

[7]speaks for itself. He is not

[8]agreeing with it. He is agreeing

[9]that that's what it says.

[10]Q Okay. That is what it says.

[11]So what significance, if any, does

[12]that have on your expert opinions concerning the

[13]condition of the Plaintiff's lumbar spine?

[14]A It means the MRI that was repeated

[15]in March. Again this not a weight bearing MRI.

[16]This Is a regular supine MRI.

[17]Q So what is your opinion as to

[18]whether or not the Plaintiff currently has a

[19]lumbar herniation?

[20]A Because she still has symptoms. She

[21]has radicular symptoms, she has numbness. She has

[22]mildly decreased motor strength and she still has

[23]sensory deficits which are consistent with nerve

[24]irritation.

[25]So my impression that supports the

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[1]Reyfman, M.D.

[2]MRI that was done in 2020, the Stand Up one, with

[3]flexion, extension, with spinal movement that

[4]there is an underlying disc problem that causes

[5]her symptoms and her symptoms are more when she is

[6]upright, when she walks, when she stands and when

[7]she lifts things which are consistent with

[8]exerting pressure into the vertebral disc that can

[9]cause nerve irritation.

[10]That's why we have seen two MRI's

[11]that were essentially normal and they were the

[12]same type of MRI's, the same quality MRI's at two

[13]different facilities but the Stand Up MRI showed

[14]there was a bulging disc at two levels.

[15]Q So just to make sure I understand

[16]you. Is it your expert testimony that

[17]Ms. Cattenhead-Folk currently has a lumbar disc

[18]herniation?

[19]A I suspect that she does and probably

[20]this study was done with the same type of MRI that

[21]was performed in 2018.

[22]MR. PFLUGER: Could we just

[23]ask what level?

[24]Q Sure. What level?

[25]A L5-S1.

175

[1]Reyfman, M.D.

[2]Q I'm sorry, I didn't hear.

[3]A L5-S1.

[4]Q So do you think there is any

[5]diagnostic value for MRI's that are not taken in

[6]the weight bearing Stand Up method?

[7]A No. No, there is diagnostic value.

[8]There's no question about it.

[9](Discussion held off the

[10]record.)

[11]Q So my question to you, I think your

[12]answer got cut off so let's start again.

[13]In your opinion is there any

[14]diagnostic value for MRI's that are not done in

[15]the weight bearing Stand Up method?

[16]A There is definitely a diagnostic

[17]value in MRI's that are done in a not weight

[18]bearing way.

[19]The reason I'm bringing this up, the

[20]Stand Up MRI it accounts for spinal movement. And

[21]from my experience seeing patients who have

[22]persistent chronic back pain and from years of

[23]treating patients regardless of whether it's a car

[24]accident or not, it's not uncommon to see stand-up

[25]MRI supporting the diagnosis, meaning you have a
176

[1]Reyfman, M.D.

[2]patient who complains of symptoms, radiating pain,

[3]physical exam findings also consistent with the

[4]patient's complaint. Then you have a diagnostic

[5]test that doesn't make any sense. In this case

[6]two MRI's were normal, one was not.

[7]That is why the MRI was obtained to

[8]see if there was weight bearing affect. Not only

[9]weight bearing. Also flexion, extension. So it's

[10]a more sensitive study in patients who have

[11]demonstrated and normal MRI, but the symptoms

[12]didn't make sense or physical exam findings don't

[13]make sense. They don't correlate.

[14]So that's why my opinion she still

[15]has perhaps a bulging disc or a herniated disc

[16]that with weight bearing causes never irritation

[17]and causes her symptoms and that was demonstrated

[18]by a Stand Up MRI, but not by the two other MRI's.

[19]Q So your name is at the top of this

[20]report, correct?

[21]A Yes.

[22]Q So you ordered this MRI for the

[23]Plaintiff?

[24]A Yes, I have.

[25]Q Why didn't you send her for a Stand
177

[1]Reyfman, M.D.

[2]Up MRI if that in your opinion has better

[3]diagnostic value?

[4]A This was -- this should have been

[5]done at Stand Up MRI. I believe when we gave the

[6]prescription for referral perhaps there was a

[7]misunderstanding with my office staff and she

[8]ended up going to this facility instead of the

[9]Stand Up MRI.

[10]Q So would you want to see the results

[11]from a Stand Up MRI of the lumbar spine to be in a

[12]position to opine on the current condition of her

[13]lumbar spine?

[14]A Yes, I would.

[15]MS. WEINREB: All right. I

[16]am going to stop sharing my screen.

[17]We've been going over an hour, let's

[18]take five minutes and come back at

[19]2:50.

[20](A short recess was taken at

[21]this time.)

[22](The deposition resumed with

[23]all parties present.)

[24](Discussion off the record.)

[25]MS. WEINREB: So the time is
178

[1]

[2]approximately 2:54 p.m. The witness

[3]has indicated that he needs to stop

[4]the deposition at this point due to

[5]child care responsibilities.

[6]So we are going to pause the

[7]deposition to facilitate that request

[8]and we are going to reconvene likely

[9]next Tuesday, October 25th, to

[10]conclude the remainder of the

[11]deposition.

[12](Whereupon, at 2:55 o'clock

[13]p.m., the deposition was adjourned

[14]to Tuesday, October 25, 2022.)

[15]

[16] 16

[17]LEON REYFMAN, M.D.

[18]

[19]SUBSCRIBED and SWORN to before me this

[20]day of , 2022, in the

[21]jurisdiction aforesaid.

[22]

[23] 23

[24]My Commission Expires Notary Public

[25]

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Go to table1

Go to table2

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[1]

[2]CERTIFICATE

[3]STATE OF NEW YORK

[4]ss.

[5]COUNTY OF NEW YORK

[6]I, TINA DeROSA, a Shorthand

[7](Stenotype) Reporter and Notary

[8]Public, do hereby certify that the

[9]foregoing Deposition of the witness,

[10]LEON REYFMAN, M.D., taken at the time

[11]and place aforesaid via Webex, is a

[12]true and correct transcription of my

[13]shorthand notes.

[14]I further certify that I am

[15]neither counsel for nor related to any

[16]party to said action, nor in any wise

[17]interested in the result or outcome

[18]thereof.

[19]IN WITNESS WHEREOF, I have

[20]hereunto set my hand this 28th day of

[21]October, 2022.

[22]

[23]/s/ [Signature]

[24]TINA DeROSA

[SEE DEPOSITION ERRATA SHEET IN ORIGINAL]

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[1]

[2]UNITED STATES DISTRICT COURT

[3]SOUTHERN DISTRICT OF NEW YORK

[4]- - - - - - - - - - - - - - - - - -x

[5]SHANIQUA CATTENHEAD-FOLK,

[6]Plaintiff,

[7]-against-.

[8]UNITED STATES OF AMERICA,

[9]Defendant.

[10]- - - - - - - - - - - - - - - - - -x

[11]

[12]

[13]CONTINUED DEPOSITION of LEON REYFMAN, M.D.,

[14]taken by Defendant via Webex, on Tuesday, October

[15]25, 2022, commencing at 1:00 o'clock p.m., before

[16]Tina DeRosa, a Shorthand (Stenotype) Reporter and

[17]Notary Public.

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

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[1]

[2]APPEARANCES:

[3];WILLIAM SCHWITZER & ASSOCIATES, P.C.

[4]Attorneys for Plaintiff
;820 Second Avenue

[5]New York, New York 10017

[6]BY: GEORGE PFLUGER, Esq.
;MICHAEL KRIGSFELD, Esq.

[7]

[8];UNITED STATES ATTORNEY'S OFFICE

[9]SOUTHERN DISTRICT OF NEW YORK
;Attorney for Defendant

[10]86 Chambers Street, Third Floor
New York, New York 10007

[11]
;BY: CARLY WEINREB, Esq.

[12]Assistant United States Attorney

[13]

[14]

[15]

[16]

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[18]

[19]

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[22]

[23]

[24]

[25]

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[1]Reyfman, M.D.

[2]LEON REYFMAN, M.D., recalled as

[3]a witness, having been previously sworn via

[4]Webex, was examined and testified further

[5]as follows:

[6]EXAMINATION

[7]BY MS. WEINREB: (Continued.)

[8]Q So welcome back, Dr. Reyfman.

[9]This is your continued deposition from last

[10]Friday. So the same ground rules apply that I

[11]went over at the beginning of the deposition on

[12]Friday and you remain under oath.

[13]Do you need me to review any of

[14]those rules?

[15]A No.

[16]Q So I would like to ask you in your

[17]office what is the typical procedure for

[18]ordering an MRI for a patient?

[19]A We typically ask the patient as to

[20]preferences, where he or she like to attend.

[21]Some patients have been to different radiologist

[22]in the past.

[23]Q I'm sorry. I don't mean to

[24]interrupt you, but I can barely hear you. Would

[25]you mind speaking a little louder and directly

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[1]Reyfman, M.D.

[2]in the mic?

[3]A Sure. We ask patients as to where

[4]they would prefer, which radiology they would

[5]like to go to. Also, it depends on the

[6]insurance type because some radiologists don't

[7]accept certain insurance.

[8]We will write a prescription for a

[9]diagnostic test. We also have radiology scripts

[10]from various radiologists in the office for ease

[11]of use. That's really the process.

[12]Q Okay. And did you say that you

[13]ask the patient if they have a preferred

[14]location to go receive the MRI?

[15]A Yes, I do.

[16]Q So when you write a prescription

[17]or an order for an MRI do you need to specify

[18]any kinds of information on that prescription,

[19]for example, the body part, whether or not there

[20]is going to be contrast, et cetera?

[21]A Yes. We have to indicate the type

[22]of study, the contrast, the diagnosis.

[23]Q Okay. So can you just list for me

[24]what the different pieces of information you

[25]have to include in that order for an MRI?

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[1]Reyfman, M.D.

[2]A First and last name of the

[3]patient. Date of the prescription. Type of the

[4]MRI. Which body part, whether it's with or

[5]without contrast. Diagnosis.

[6]So those are the really pertinent

[7]things that should be included with the

[8]referral.

[9]Q Thank you. And if you recall from

[10]our discussion last Friday you mentioned that

[11]there can be different methods of taking MRI's.

[12]For example, some places can do it weight

[13]bearing, meaning the patient standing up and

[14]other patient do it with the patient lying down.

[15]Is that the kind of information

[16]something you would specify in an MRI

[17]prescription?

[18]A No, it's not a routine order and

[19]it would not unless I'm specifically asking the

[20]patient to obtain such an MRI.

[21]Q Okay. And if you are treating a

[22]patient and determine that you want that patient

[23]to get an MRI, do you personally write the order

[24]or the prescription for the MRI or is that

[25]typically delegated to a staff member, a

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[1]Reyfman, M.D.

[2]physician assistant or some other member of your

[3]team?

[4]A It's all of the above. So it's

[5]either myself or we have other physicians or a

[6]PA or we can delegate to a medical assistant to

[7]help us with the MRI request.

[8]Q Okay. Is that typically an

[9]electronic prescription or is it on paper the

[10]old-fashioned way?

[11]A It's not electronic. It's

[12]old-fashioned way on paper.

[13]Q Okay. And at Pain Physicians New

[14]York or wherever you are practicing and treating

[15]the patients is it your practice to maintain a

[16]copy of the prescriptions for MRI's in the

[17]patient's file?

[18]A Most of the time, yes. The answer

[19]is yes.

[20]Q Okay. Are you aware if you or

[21]Pain Physicians New York maintained copies of

[22]the MRI prescriptions for Ms. Cattenhead-Folk?

[23]A Yes, we do have them.

[24]Q Okay. I'm just going to call for

[25]the production of copies of those. I don't

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[1]Reyfman, M.D.

[2]believe they were included in the records that

[3]we received.

[4]So after today if you or someone

[5]else at the practice could please collect those

[6]and give them to Mr. Krigsfeld that would be

[7]great.

[8]A Sure.

[9]Q Okay. And in your experience and

[10]training what is the standard of care for

[11]determining when it's appropriate to order or

[12]prescribe an MRI for a patient?

[13]A We discuss the specific body part

[14]or generally speaking?

[15]Q Just generally speaking what are

[16]the factors or the criteria that you are looking

[17]for to determine whether or not to order an MRI?

[18]A So, for example, a patient

[19]presents with a moderate rate pain without any

[20]physical exam findings, especially neurological

[21]findings and the patient did not have any form

[22]of conservative treatment such as physical

[23]therapy or trials or medications then I would

[24]advise the patient to consider starting physical

[25]therapy first, get reevaluated one to two months

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[1]Reyfman, M.D.

[2]after the onset of symptoms and then determine

[3]whether the MRI is needed. That's one type of

[4]scenario.

[5]Patients who had, for example,

[6]treatment, had an MRI, they still continue to

[7]have symptoms and those symptoms are somewhat

[8]different than before I would repeat an MRI

[9]approximately a year, a little more than a year

[10]after treatment, or after the last MRI when it's

[11]available.

[12]Q Thank you. Okay. And in your

[13]experience and training how long does it

[14]typically take after a herniated disc has

[15]developed, has first developed for it to become

[16]visible on an MRI?

[17]A There are what's called annular

[18]tears we don't often see on the MRI. I've see

[19]from the past that we'll have a patient with a

[20]relatively normal MRI that have a small disc

[21]bulge, for example, that progress over time to

[22]herniation.

[23]Unfortunately, I cannot tell you,

[24]you know, for sure how much time does it take

[25]for a normal MRI to convert to a bulge, a bulge

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[1]Reyfman, M.D.

[2]to a herniation, maybe once maybe a year or

[3]month. It just it's hard to predict.

[4]Q Sure. And just to clarify my

[5]question, I understand that a spinal injury

[6]could progress through a number of different

[7]phases. There could be a tear, there could be a

[8]bulge and then there could also be a herniation

[9]and a herniation is something specific and

[10]distinct as opposed to a tear or a bulge or

[11]something else; is that correct?

[12]A Yes. I mean you can have a tear

[13]with a herniation also which is called an

[14]annular tear, an annular fissure, but there is a

[15]distinction between a disc bulge and disc

[16]herniation.

[17]Q Okay. So just to clarify my

[18]question. With respect to herniations in

[19]particular. So from the time a herniation first

[20]developed in a patient typically how long does

[21]it take for that herniation to become visible on

[22]an MRI?

[23]A Again, I don't think I can answer

[24]that question. I mean I don't think in medical

[25]terms, I don't think there is a time progression

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[1]Reyfman, M.D.

[2]for noticing a herniation on the MRI.

[3]Q Okay. I understand. Is there any

[4]kind of range, a range that you would expect to

[5]see?

[6]A I don't know how to answer the

[7]question, but I don't think there is a range.

[8]Q Are you familiar with the phrase

[9]reasonable degree of medical certainty?

[10]A Yes, I am.

[11]Q Okay. And what does that phrase

[12]mean to you?

[13]A It means that based on the medical

[14]knowledge or overall scope of medicine my

[15]opinion is within reasonable for the basis of my

[16]knowledge, my experience, and also the common

[17]standards in the medical community the standard

[18]of care is involved.

[19]Q I had a little trouble hearing

[20]you.

[21]A My speaker is up a hundred

[22]percent. If you having difficulty hearing me I

[23]can dial in with my phone.

[24]Q Are you speaking directly into the

[25]microphone?

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[1]Reyfman, M.D.

[2]A I'm right in front of the

[3]computer. I'm a foot away from the computer.

[4]Can you hear me now or is it the same.

[5](Discussion off the record.)

[6]A So just repeat your question and

[7]I'll answer the question.

[8]Q Sure. So I asked you what does

[9]the phrase reasonable degree of medical

[10]certainty mean to you?

[11]A It means that the opinion that I'm

[12]providing is based on my medical knowledge and

[13]the standard of care is based on the medical

[14]community or in the field of pain management.

[15]MR. PFLUGER: I'm sorry,

[16]just note my objection to the

[17]question. It's a legal question,

[18]not a medical question.

[19]Q What degree of certainty do you

[20]have to possess for you to offer an expert

[21]opinion to a reasonable degree of medical

[22]certainty?

[23]A There are different levels of

[24]degrees. I'm sorry, I don't think I understand

[25]your question.

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[1]Reyfman, M.D.

[2]Q Sure. I'm just trying to

[3]understand in your expert report for

[4]Ms. Cattenhead-Folk you have offered a number of

[5]opinions to a reasonable degree of medical

[6]certainty; is that correct?

[7]A Yes, it is.

[8]Q So I'm just trying to understand

[9]what you mean when you say that. So is there a

[10]certain degree of certainty in terms of a

[11]percentage, let's say, that you feel you have to

[12]possess before being comfortable making an

[13]expert opinion to a reasonable degree of medical

[14]certainty?

[15]MR. KRIGSFELD: Objection to

[16]form. You can answer.

[17]A As a Board-certified pain

[18]management in the field of pain management I

[19]feel confident offering 100 percent medical

[20]certainty within the scope of my possession.

[21]Q Okay. So if you have offered an

[22]opinion to a reasonable degree of medical

[23]certainty that means that you believe you're 100

[24]percent certain of that opinion. Is that what

[25]you are saying?

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[1]Reyfman, M.D.

[2]A Yes.

[3]MR. PFLUGER: Objection.

[4]Q Okay. Dr. Reyfman, would it be

[5]fair to say that you care about the well-being

[6]of your patients?

[7]A Of course.

[8]Q And as their treating provider you

[9]want to help alleviate their pain; is that

[10]right?

[11]A Yes.

[12]Q Have any of your patients ever

[13]asked you to submit testimony or documentation

[14]or some kind of statement to support a worker's

[15]compensation claim?

[16]A To support, what do you mean by

[17]support a worker's compensation claim?

[18]Q Have any of your patients ever

[19]asked for your help in connection with

[20]submitting claims for worker's compensation?

[21]A I treat patients who are injured

[22]at work and we submit medical records to the

[23]Worker's Compensation Board, yes.

[24]Q And have you ever been asked to

[25]testify before the Worker's Compensation Board

195

[1]Reyfman, M.D.

[2]for any of your patients?

[3]A Not the Compensation Board, but

[4]for worker's comp depositions determined by the

[5]carrier.

[6]Q So what form do you testify in for

[7]that?

[8]A As a treating physician.

[9]Q I'm sorry, I didn't hear you.

[10]A As a treating physician.

[11]Q Right. So are you talking about

[12]live testimony or electronic testimony?

[13]A Telephonic testimony.

[14]Q Okay. So who are you giving that

[15]testimony to?

[16]A To a claimant's, plaintiff

[17]attorney and a court reporter.

[18]Q Okay. Is that before some kind of

[19]worker's compensation body?

[20]A It's before the worker's

[21]compensation attorney representing the carrier

[22]involved in this case.

[23]Q Is there any judge or

[24]administrator present during that testimony?

[25]A No.

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[1]Reyfman, M.D.

[2]Q Is this like a deposition?

[3]A Correct.

[4]Q How many times have you given

[5]deposition testimony concerning a patient's

[6]worker's compensation claim?

[7]A I do approximately one to two

[8]depositions weekly for worker's comp patients

[9]that I treat.

[10]Q Okay. And when you give that

[11]deposition testimony what is the purpose of your

[12]testimony, if you know?

[13]A It's various. Sometimes it's

[14]requesting approval for additional treatment,

[15]discussing degree of disability. Sometimes any

[16]additional body parts to an injured area, it

[17]depends the situation, but most often it's

[18]discussing overall medical treatment, requesting

[19]additional treatment. That's really the scope.

[20]Q Now, I would like to discuss

[21]Ms. Cattenhead-Folk's cervical spine.

[22]So in reviewing her medical

[23]records to prepare your expert report is it fair

[24]to say that the only MRI of her cervical spine

[25]that you reviewed is from August 8, 2020; is

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[1]Reyfman, M.D.

[2]that right?

[3]A Well, she also had an MRI from

[4]Lenox Hill Radiology on 9/21/2022.

[5]Q 9/21/2022?

[6]A Correct.

[7]MS. WEINREB: I don't

[8]believe that we have that. So I'm

[9]going to call for production of that

[10]and any other MRI's that we don't

[11]have.

[12]Q Are you aware of the results of

[13]her cervical spine MRI from September 21, 2022?

[14]A Yes, I am.

[15]Q What are those results?

[16]A The impression was that she is

[17]status post C5-C6 posterior -- anterior cervical

[18]spinal fusion. There is no discrete hardware,

[19]fracture or loosening. There is a disc bulge at

[20]C4-C5, disc bulge at C3-C4. That's it.

[21]Q Okay. So this MRI was taken after

[22]you authored your expert report; is that

[23]correct?

[24]A That's correct.

[25]Q Okay. So you did not rely on the

198

[1]Reyfman, M.D.

[2]September 21, 2022 cervical spine MRI in forming

[3]the expert opinions contained in your expert

[4]report, correct?

[5]A Correct.

[6]Q Okay. And now that you have

[7]reviewed the September 21, 2022 cervical spinal

[8]MRI is any information contained in that

[9]report -- sorry. Does any information contained

[10]in that report impact or change in any way the

[11]opinions that you have offered in this case?

[12]A No.

[13]Q Okay. So aside from the August

[14]10, 2020 and the September 21, 2022 cervical

[15]spine MRI's, have you reviewed any other MRI's

[16]of the Plaintiff's cervical spine?

[17]A I did not. I'm not aware of any

[18]other MRI's of the cervical spine.

[19]Q So you did not review any MRI's of

[20]the Plaintiff's cervical spine that were

[21]contemporaneous with the January 9, 2018

[22]accident?

[23]A That's correct. So I reviewed two

[24]MRI's. One was from Stand Up Radiology, one was

[25]from Lenox Hill.

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[1]Reyfman, M.D.

[2]Q Okay. Did you review any MRI's of

[3]the Plaintiff's lumbar spine that were

[4]contemporaneous with the January 9, 2018

[5]accident?

[6]A We discussed that last time. I

[7]believe I listed all the MRI's by narrative

[8]report. There was an MRI from Stand Up

[9]Radiology dated 8/8/2020. There was an MRI of

[10]lumbar spine dated 3/5/2022. There was another

[11]MRI you had as an exhibit if I'm not mistaken

[12]from last time.

[13]I mean if you don't mind pulling

[14]up my narrative report it has a list of all the

[15]MRI's that I reviewed.

[16]Q That's all right. I see it.

[17]Okay. Is it possible that some

[18]kind of intervening event caused the Plaintiff's

[19]cervical spine injuries as shown on the

[20]August 8, 2020 MRI between, you know, after

[21]January 9, 2018 leading up to August 8, 2020?

[22]MR. KRIGSFELD: Note my

[23]objection. You're using the word

[24]possible. So anything is possible,

[25]so if you want to narrow that down.

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[1]Reyfman, M.D.

[2]Q It's a proper question. You can

[3]answer.

[4]A I am not aware of the injury that

[5]she sustained in 2018 and the MRI that was

[6]performed two years later. At least she didn't

[7]report any injuries to me.

[8]Q Okay. But the question was is it

[9]possible there was an event in between January

[10]9, 2018 and August 8, 2020 that caused her

[11]cervical spine injuries as shown in the

[12]August 8, 2020 MRI?

[13]MR. KRIGSFELD: Same

[14]objection.

[15]A Yes, that is possible.

[16]Q Do you know with any certainty the

[17]condition of the Plaintiff's cervical spine in

[18]the days and weeks following the January 9, 2018

[19]motor vehicle accident?

[20]A Sorry, I don't understand your

[21]question.

[22]Q What was the condition of the

[23]Plaintiff's cervical spine in the days and weeks

[24]following the January 9, 2018 motor vehicle

[25]accident?

201

[1]Reyfman, M.D.

[2]MR. KRIGSFELD: Just note my

[3]objection.

[4]A She was complaining of pain. She

[5]was receiving treatment of physical therapy. So

[6]she has been complaining constantly of neck

[7]pain.

[8]Q Anything else?

[9]A That's -- I don't have anything

[10]else.

[11]Q And what is the source of

[12]information that you relied on in describing the

[13]condition of her cervical spine at that time?

[14]A She has records, physical therapy

[15]records from Integrated Physical Therapy that do

[16]indicate that she has been complaining of neck

[17]pain as well as low back pain.

[18]Q Okay. Did you rely on any records

[19]other than the physical therapy records in

[20]basing your description of the condition of her

[21]cervical spine in the days and weeks following

[22]the accident?

[23]A Also what she told me. So I

[24]reviewed the records, physical therapy records

[25]primarily and as well as since the injury.

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[1]Reyfman, M.D.

[2]Q Sorry, I think your audio cut out

[3]in the middle of your answer.

[4]I got down you said physical

[5]therapy records, what the Plaintiff told you.

[6]What else did you say?

[7]A That's it, physical therapy

[8]records and what the Claimant told me.

[9]Q All right. Now, I would like to

[10]go back to your report. I'm going to pull it up

[11]on the screen, okay. So I would like to look at

[12]Page 5 of your report which is Page 9 of Reyfman

[13]Exhibit 1. I'll make it a little bigger.

[14]Okay. So I'm looking at the

[15]section titled Recommendations for Future

[16]Treatment and Medical Expenses. Do you see

[17]that?

[18]A Yes, I do.

[19]Q Okay. And then there's a section

[20]called Interventional Pain Management and

[21]there's a section titled Lumbar Spine and there

[22]are two bullet points in that section.

[23]The first bullet point says lumbar

[24]epidural steroid injections and the second

[25]bullet point says lumbar facet injection.

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[1]Reyfman, M.D.

[2]So my question to you is during

[3]the last session we reviewed the March 5, 2022

[4]MRI of the Plaintiff's spine which was

[5]unremarkable. So why is it you were

[6]recommending lumbar treatments going forward?

[7]A We also reviewed the MRI from

[8]Stand Up Radiology that demonstrated that she

[9]had a bulging disc. The recommendations are set

[10]forth because she has chronic back pain with one

[11]of the MRI's indicating that she has a problem

[12]and that's my basis for the recommendation of

[13]epidural steroid injections.

[14]Q Which MRI showed her to have a

[15]bulging disc in her lumbar spine?

[16]A The Stand Up radiology MRI fro,

[17]8/8/2022 showed that L5-S1 posterior broad based

[18]central disc bulge with peripheral extension at

[19]the right greater then the left foramina as well

[20]as the L4-L5 posterior disc bulge.

[21]Q You said that the date of that MRI

[22]is 2022. Did you mean 2020?

[23]A I'm sorry, 2020, correct.

[24]Q But the March 5, 2020 MRI of the

[25]lumbar spine does not contain those findings; is

204

[1]Reyfman, M.D.

[2]that correct?

[3]A That's correct.

[4]Q Okay. So your expert opinion is

[5]that you recommend lumbar epidural steroid

[6]injections and lumbar facet injection

[7]notwithstanding the March 5, 2022 MRI?

[8]A That's correct.

[9]Q And why is that?

[10]A As I testified last Friday, the

[11]difference between the weight bearing MRI which

[12]she had in 2020 and the MRI that she had in

[13]March are two different types of MRI and I

[14]believe most of the pain that she is

[15]experiencing with weight bearing walking and

[16]standing.

[17]So I do believe she still has an

[18]underlying problem which at some point I do

[19]believe she should get updated stand up MRI to

[20]see if there is still a bulging disc which I

[21]think there is and that's the basis for my

[22]recommendation.

[23]Q Okay. A few minutes ago you

[24]mentioned that there's a C spine MRI from

[25]September 21, 2022.

205

[1]Reyfman, M.D.

[2]Did you order that MRI or is that

[3]ordered by a different provider?

[4]A It was ordered by a different

[5]provider.

[6]Q Have you ordered any MRI's for the

[7]Plaintiff since March 5, 2022?

[8]A The only MRI that I ordered was on

[9]March 5, 2022. There are no other MRI's that I

[10]ordered.

[11]Q Okay. And the September 21, 2022

[12]MRI that was ordered by a different provider, is

[13]there also an MRI for her lumbar spine?

[14]A No. It's only the cervical spine.

[15]Q All right. And then going back to

[16]your report, under the lumbar epidural steroid

[17]injection bullet point you write cost $ 1,200 per

[18]procedure. Total cost $ 7,200 based on a series

[19]of three injections repeated two times a year.

[20]How did you get those figures for

[21]the cost?

[22]A I referenced the average cost of

[23]the epidural steroid injection from various

[24]sources with different insurance information

[25]that's readily available to get the base

206

[1]Reyfman, M.D.

[2]approximate cost for these procedures.

[3]The frequency it's determined

[4]based obviously on the symptoms, but the maximum

[5]amount of epidurals would be three injections

[6]that can be repeated every six months. That's

[7]the frequency. Of the maximum allowable number

[8]of injections.

[9]Q So are you recommending that the

[10]Plaintiff should receive the maximum allowable

[11]number of lumbar epidural steroid injections

[12]going forward?

[13]A No. I'm recommending she may

[14]consider if her pain is severe that she may have

[15]up to six injections a year.

[16]Q In any given year how should it be

[17]determined how many lumbar epidural steroid

[18]injections Ms. Cattenhead-Folk should get?

[19]A Again it's not how many per year

[20]should be determined. It's really based on how

[21]much pain and discomfort throughout the course

[22]of her life, I guess.

[23]The epidurals are performed as a

[24]symptomatic treatment and she can have one

[25]injection per year or if her pain is severe

207

[1]Reyfman, M.D.

[2]enough she can have up to six injections a year.

[3]Unfortunately, I cannot predict

[4]how many injections she will have in 2023. It

[5]all depends on how much pain she is

[6]experiencing.

[7]Q She should make that decision in

[8]conjunction with her treating provider?

[9]A This's correct.

[10]Q Okay. So are you recommending a

[11]specific number of injections per year or is

[12]this just a recognition of the maximum she could

[13]receive?

[14]A That's the recognition of the

[15]maximum that she can receive.

[16]Q I see. Okay. In terms of $ 1,200

[17]cost, you said that you consulted various

[18]sources. Which sources did you consult?

[19]A I looked at the worker's comp fee

[20]schedule. I looked at the other Commerce payers

[21]such as Aetna and Cigna. So average

[22]reimbursement including facility cost is

[23]approximately $ 1,200. The insurance will pay a

[24]little less or a little more, but this is the

[25]average. And if she were to pay out of pocket

208

[1]Reyfman, M.D.

[2]that's how much she will pay.

[3]Q Did you consult any other sources?

[4]A No.

[5]Q Okay. So the 1,200, does that

[6]represent the total cost of the procedure or

[7]Ms. Cattenhead-Folk's out of pocket cost?

[8]A That would be the total cost of

[9]the procedure. Assuming she doesn't have

[10]insurance that's how much she will pay for an

[11]epidural.

[12]Q And some or all or no portion of

[13]that could or could not be covered by her

[14]insurance company; is that fair?

[15]A No. The insurance companies do

[16]pay for epidurals. The insurance company will

[17]reimburse physicians approximately $ 1,200.

[18]MS. WEINREB: I see. Okay.

[19]So I'm just going to call for

[20]production of the sources that you

[21]consulted in determining that

[22]average procedure cost.

[23]MR. KRIGSFELD: We'll take

[24]it under advisement. Dr. Reyfman

[25]just testified to the sources that

209

[1]Reyfman, M.D.

[2]he used.

[3]MS. WEINREB: Okay. I have

[4]to be able to find them. I

[5]shouldn't have to hunt and peck.

[6]I'm asking for specific information

[7]so I can find those sources.

[8]MR. KRIGSFELD: All right.

[9]We'll take it under advisement.

[10]Q So if that's an average cost per

[11]procedure, any given provider could charge more

[12]or could charge less; is that fair?

[13]A This is average. So, yes, it

[14]could be more or less, but this is an average

[15]number that I was able to obtain from various

[16]sources.

[17]Q Okay. In your practice how much

[18]do you charge for a lumbar epidural steroid

[19]injection?

[20]A $ 1,200.

[21]Q Does the cost also vary depending

[22]on the manufacturer?

[23]A What do you mean by manufacturer?

[24]MR. KRIGSFELD: Yes.

[25]Objection to form.

210

[1]Reyfman, M.D.

[2]Q Sure. A lumbar epidural injection

[3]you are injecting some kind of substance into

[4]the body of the patient; is that correct?

[5]A Correct.

[6]Q And you get that injection from

[7]some kind of pharmaceutical or manufacturer?

[8]A Correct.

[9]Q Okay. And different

[10]pharmaceutical companies and different

[11]manufacturers may price their injections

[12]differently; is that fair?

[13]A Yes.

[14]Q Dr. Reyfman, do you have any

[15]expertise or training in the field of economics?

[16]A No.

[17]Q Do you have any expertise or

[18]training in pharmaceutical pricing?

[19]A No, but I am a registered

[20]pharmacist. I used to work in a pharmacy for

[21]many years before medical school.

[22]So I have basic knowledge of

[23]pricing and economics from my previous past, but

[24]I don't necessarily possess significant

[25]knowledge.

211

[1]Reyfman, M.D.

[2]Q I'm sorry.

[3]A I don't possess expertise in

[4]pricing pharmaceuticals.

[5]Q Do you have any expertise or

[6]training in the area of life care planning?

[7]A No.

[8]Q The $ 1,200 average cost per

[9]procedure, for lumbar epidural steroid

[10]injection, is that an opinion you are offering

[11]to a reasonable degree of medical certainty?

[12]A Yes, it is.

[13]Q Okay. Looking at the next bullet

[14]point, the lumbar facet injection.

[15]Did you determine the cost of that

[16]procedure in the same way as the lumbar epidural

[17]steroid injection?

[18]A Yes, I have.

[19]Q Did you rely on any different

[20]sources in determining that figure?

[21]A Same sources.

[22]Q Okay. And is that an average

[23]cost?

[24]A Yes, it is.

[25]Q Okay. This section contains a

212

[1]Reyfman, M.D.

[2]number of other procedures, all with costs

[3]listed under them.

[4]Did you determine the cost for

[5]each of the procedures under the Interventional

[6]Pain Management section of your report -- I'm

[7]sorry, under the Recommendations for Future

[8]Treatment and Medical Expenses section of your

[9]report in the same way as you just described to

[10]me?

[11]A Yes, I have.

[12]Q Okay. And did you rely on any

[13]sources that you haven't already mentioned in

[14]determining the cost for any of the other

[15]procedures identified in this section of your

[16]report?

[17]A No additional sources.

[18]Q Okay. And all of the costs that

[19]are identified in this section of the report

[20]titled Recommendations for Future Treatment and

[21]Medical Expenses, are they all average costs?

[22]A Yes, they are.

[23]Q Are there any procedures

[24]identified in this section whose average cost as

[25]identified in your report differs from the cost

213

[1]Reyfman, M.D.

[2]that you charge in your practice for that kind

[3]of procedure?

[4]A No.

[5]Q Are you offering all of the

[6]pricing information in this section for each of

[7]the procedures identified to a reasonable degree

[8]of medical certainty?

[9]A Yes, they are.

[10]Q Okay. In the subsection titled

[11]Conservative Treatment there is a paragraph for

[12]physical therapy and a paragraph for

[13]chiropractic treatment.

[14]Does that mean that you are

[15]recommending that Ms. Cattenhead-Folk receive

[16]physical therapy and chiropractic treatment

[17]going forward?

[18]A She can consider either

[19]chiropractic treatment or physical therapy or in

[20]conjunction she can alternate both as part of

[21]conservative treatment, yes.

[22]Q Are you specifically recommending

[23]for physical therapy that she get physical

[24]therapy two to three times a week for three

[25]months, repeated two times a year?

214

[1]Reyfman, M.D.

[2]A Correct.

[3]Q So that before you said that the

[4]frequency was a maximum and not a

[5]recommendation.

[6]Is this a recommendation for Ms.

[7]Cattenhead-Folk or is it a maximum?

[8]A This is a recommendation.

[9]Q I'm sorry, I can't hear you.

[10]A So to answer your question the

[11]conservative treatment that I recommended with

[12]physical therapy and chiropractic are

[13]recommendations, not a maximum amount of

[14]treatment.

[15]I have seen patients do more

[16]physical therapy or more chiropractic treatment

[17]than I listed in my report, but this is an

[18]average that someone may consider doing

[19]approximately three months of therapy a year.

[20]It can be repeated up to two times.

[21]Q Okay. Going back for a minute to

[22]subsection one, Interventional Pain Management,

[23]each of the bullet points identifying procedures

[24]in this section they have under each heading

[25]there is a frequency per year. Are all of those

215

[1]Reyfman, M.D.

[2]maximums?

[3]A Yes, they are. These are maximum

[4]allowable number of injections a person can have

[5]in a year.

[6]Q Okay. So are there any procedures

[7]listed in the Interventional Pain Management

[8]section that are specific recommendations for

[9]Ms. Cattenhead-Folk?

[10]A They are all specific

[11]recommendations that she may consider as part of

[12]her pain management treatment program.

[13]Q Right. Sorry. Let me rephrase

[14]that question. So, for example, if you look

[15]under the Cervical Spine section it says

[16]cervical epidural steroid frequency series of

[17]three injections repeated two times a year.

[18]To make sure I am understanding

[19]your testimony, are you recommending that

[20]Ms. Cattenhead-Folk receive three cervical

[21]epidural steroid injections twice a year or are

[22]you saying that she should consider these kind

[23]of injections up to a maximum of three

[24]injections repeated two times per year?

[25]A She should consider up to six

216

[1]Reyfman, M.D.

[2]times per year.

[3]Q Okay. And that is true of all of

[4]the procedure listed in the Interventional Pain

[5]Management section?

[6]A Correct.

[7]Q Okay. Thank you. Then in

[8]subsection three, Diagnostic Studies, are these

[9]maximums or specific recommendations for

[10]Ms. Cattenhead-Folk?

[11]A So this is just -- they are

[12]specific to her, but the circumstances obviously

[13]can change. I described that she can have an

[14]MRI every two to three years for her neck and

[15]back as well as the upper and lower extremity,

[16]but, for example, if she develops a worsening of

[17]her pain and also some neurological findings

[18]that requires an updated MRI it may not

[19]necessarily fit into two, three year timeframe,

[20]but on the average from my experience with

[21]patients who have had injuries we would want

[22]monitor them every two to three years.

[23]Q Okay. So if she is doing better

[24]she may need fewer diagnostic studies; is that

[25]fair?

217

[1]Reyfman, M.D.

[2]A That's fair.

[3]Q And if she is doing worse she may

[4]need more; is that fair?

[5]A Yes, it is.

[6]Q All right. So now I want to go to

[7]the next section, Assessment of Daily Living

[8]Activities. And we already talked about much of

[9]this last time, so I just want to ask a few

[10]questions.

[11]A Go ahead.

[12]Q Yes. Okay. So this first

[13]paragraph contains one of your expert opinions

[14]in this case regarding the cause of the

[15]Plaintiff's injuries and you say that the

[16]accident on January 9, 2018 was the definite

[17]cause of the above-mentioned injuries. So first

[18]I want to ask what does the term or phrase

[19]definite cause mean?

[20]A That there's no other reasons for

[21]her to have this neck and back pain.

[22]Q Okay. So this is an opinion that

[23]you're offering with 100 percent certainty?

[24]A Yes, I am.

[25]Q Okay. And when you say that the

218

[1]Reyfman, M.D.

[2]accident was the definite cause of the

[3]above-mentioned injuries, are you referring to

[4]the diagnosis in the section in your report

[5]starting at the bottom of Page 4 and continuing

[6]on to the top of Page 5?

[7]A Yes.

[8]Q Okay. And are you referring to

[9]anything else when you use the phrase

[10]above-mentioned injuries?

[11]A No.

[12]Q All right. Then if we move on to

[13]the next paragraph it says, "Based on my medical

[14]opinion Ms. Cattenhead-Folk's current degree of

[15]impairment did result from the aforementioned

[16]accident."

[17]So can you please describe what

[18]you mean when you say her current degree of

[19]impairment?

[20]A Meaning the neck and back, the

[21]chronic pain that she developed since 2018.

[22]Q Okay. So chronic pain in her neck

[23]and back. Anything else?

[24]A That's it.

[25]Q All right. Then the next sentence

219

[1]Reyfman, M.D.

[2]says, "It is my further medical opinion, with a

[3]reasonable degree of medical certainty, that

[4]Ms. Cattenhead-Folk's injuries are permanent in

[5]nature and that they are significant and serious

[6]as she has lost the functional capacity of her

[7]neck and lower back."

[8]So what do you mean by permanent

[9]in nature?

[10]A I mean that four years after the

[11]injury she is still experiencing moderate to

[12]severe neck pain and lower back pain.

[13]She had a cervical spine fusion.

[14]There has been an impairment of her range of

[15]motion of her neck and back and I think these

[16]injuries or symptoms will be permanent given the

[17]chronicity of her condition four years after the

[18]injury.

[19]Q So what exactly do you believe is

[20]permanent?

[21]A Her pain in her neck and lower

[22]back.

[23]Q Okay. Anything else?

[24]A That's it.

[25]Q Okay. And you describe her

220

[1]Reyfman, M.D.

[2]injuries as significant and serious. What do

[3]you mean with those adjectives?

[4]A They are significant to the point

[5]where she required the spine surgery.

[6]Q And what do you mean by the term

[7]serious?

[8]A Serious means that she is still

[9]symptomatic and she still will require further

[10]treatment, perhaps further surgical intervention

[11]down the road.

[12]Q Okay. And you say that she has

[13]lost functional capacity of her neck and lower

[14]back. What do you mean by that?

[15]A Her range of motion has

[16]significantly been diminished with her neck and

[17]back. She does experience a lot of pain in her

[18]neck and back. She is not able to perform her

[19]overall activities of daily living as we

[20]discussed on Friday.

[21]Q Okay. Has she lost all functional

[22]capacity of her neck and lower back?

[23]A No.

[24]Q So what functional capacity of her

[25]neck and her back does she still possess?

221

[1]Reyfman, M.D.

[2]A She is unable to bend fully even

[3]with her neck and back. She is unable to turn

[4]her neck fully on her left and right side. Same

[5]thing with her lower back. She is not able to

[6]bend as she normally would and all these

[7]movements exacerbate her pain.

[8]Q Okay. So the question was what

[9]functional capacity of her neck and back does

[10]she still possess?

[11]A She is still able to move her neck

[12]and back, but they are severely impaired.

[13]Q Okay. Is there any other loss of

[14]functional capacity of her neck and lower back

[15]that we haven't already discussed?

[16]A No.

[17]Q All right. Now, let's go down to

[18]the Prognosis section. I'm just going to read

[19]the first sentence out loud.

[20]"It is my professional opinion,

[21]with a reasonable degree of medical certainty,

[22]that Ms. Cattenhead-Folk has sustained a

[23]significant permanent partial and quantifiable

[24]loss of use and functions to her neck and lower

[25]back as a result of the accident of January 9,

222

[1]Reyfman, M.D.

[2]2018."

[3]So when you say a significant and

[4]permanent loss, is that what we were just

[5]talking about or are you referring to something

[6]else in this paragraph?

[7]A This is what we were talking about

[8]before.

[9]Q Okay. And what do you mean by

[10]partial and quantifiable loss of use and

[11]functions?

[12]A Well, she doesn't have 100 percent

[13]loss of her neck and back. It's partial. So

[14]she is still able to move her neck, but it is

[15]not 100 percent loss of function.

[16]Q You say that that loss is

[17]quantifiable.

[18]A To a certain extent, I guess.

[19]I mean if you are looking at the

[20]range of motion has decreased by about 50

[21]percent based on normal.

[22]Q Okay. So is that what you mean by

[23]quantifiable, that she has lost approximately 50

[24]percent of the use and function of her neck and

[25]lower back?

223

[1]Reyfman, M.D.

[2]A Correct.

[3]Q Okay. Anything else?

[4]A That's it.

[5]Q All right. And then the next

[6]sentence says, "The accident is the competent

[7]producing cause of her existing injuries which

[8]are listed in my diagnoses and they are

[9]permanent and progressive in nature."

[10]So what do you mean by competent

[11]producing cause?

[12]A That she had no prior, meaning

[13]that the injuries that she sustained are related

[14]to the motor vehicle accident dated 1/9/2018.

[15]Q I guess my question is what's the

[16]difference between a cause and a competent

[17]producing cause?

[18]A There's no difference.

[19]Q Okay. And you describe her

[20]injuries as permanent and progressive in nature.

[21]So we have already talked about

[22]what you mean by permanent. What do you mean by

[23]progressive?

[24]A Progressive means that with

[25]regards to her neck she may require additional

224

[1]Reyfman, M.D.

[2]interventions, especially after cervical fusion

[3]with adjacent level disease. Half these

[4]patients will have fusions.

[5]With regards to her lower back, we

[6]do have an MRI that showed that she had two

[7]bulging discs which can progress to herniations

[8]as she gets older and this will require further

[9]treatment obviously and will cause more

[10]disability and more pain.

[11]Q Okay. Do you know if her injuries

[12]will worsen or are you saying that's possible

[13]that going forward that they may worsen?

[14]A It's possible.

[15]Q Okay. So the next sentence says,

[16]"Her complaints will be subject to periods of

[17]exacerbation." So would they be subject to

[18]periods of exacerbation?

[19]So why would they be subject to

[20]periods of exacerbation?

[21]A Well, if you look at her trends

[22]since 2018 she has good days and bad days and

[23]this is not uncommon, patients with spinal

[24]injuries more so at the surgical intervention to

[25]have episodes of worsening of symptoms.

225

[1]Reyfman, M.D.

[2]We call this good days and bad

[3]days. That's why we recommend more therapy if

[4]necessary, more medications if necessary. So

[5]this is the outgrowth of patients who have

[6]chronic neck and back pain that they will have

[7]exacerbations.

[8]Q Okay. So when you say good days

[9]and bad days, are you referring to the patient's

[10]subjective experience of pain or something about

[11]the actual underlying injury?

[12]A No. Mostly subjective complaints.

[13]Q Okay. So in terms of the

[14]underlying injury itself, do you expect that to

[15]get worse or exacerbated in the future for Ms.

[16]Cattenhead-Folk?

[17]A I think both.

[18]Q And can you explain what you mean

[19]by that?

[20]A So exacerbation means that muscle

[21]spasms, for example, it's not uncommon after a

[22]spinal surgery or somebody has disc bulge or

[23]herniation.

[24]In terms of worsening, as I

[25]mentioned before it is not uncommon that
226

[1]Reyfman, M.D.

[2]patients will have fusion surgery on their neck

[3]or back and develop adjacent level disease. And

[4]what that means is that the disc above and below

[5]the surgery will go through an accelerated

[6]degenerative process which may require

[7]additional surgery, additional treatment.

[8]Q Okay. And is that a reason why

[9]Ms. Cattenhead-Folk should be monitored by

[10]medical professionals going forward?

[11]A Yes.

[12]Q All right. Then if we go to the

[13]Closing Comments section you say, "Based upon

[14]this final medical evaluation, Ms.

[15]Cattenhead-Folk presents a permanent/partial

[16]disability to her neck and lower back which were

[17]due to the injuries from this accident.

[18]So when you use the word

[19]disability here what do you mean by that?

[20]A Same as impairment.

[21]Q Okay. So disability and

[22]impairment mean the same thing?

[23]A Yes.

[24]Q All right. I'm just going to stop

[25]sharing my screen for a minute. Dr. Reyfman,
227

[1]Reyfman, M.D.

[2]are you familiar with the term maximum medical

[3]improvement?

[4]A Yes, I am.

[5]Q And that's frequently abbreviated

[6]to MMI, correct?

[7]A Yes.

[8]Q Okay. So what does MMI mean?

[9]A It means that any further

[10]treatment will be palliative in nature. It will

[11]not cure the underlying condition.

[12]Q As of the date that you wrote this

[13]report had Ms. Cattenhead-Folk reached MMI?

[14]A I believe she reached MMI, yes.

[15]Q And why do you believe that?

[16]A Because she had, going back to

[17]2018 she had an extensive course of physical

[18]therapy. She had several injections in her neck

[19]and back. These injections provided her with

[20]temporary relief.

[21]She had a cervical spine fusion

[22]that also provided improvement in her pain, but

[23]she did complain of neck pain again. And all

[24]these procedures that are listed as in my

[25]narrative report are really performed for
228

[1]Reyfman, M.D.

[2]patient's symptomatic treatment.

[3]So she will not get better in my

[4]opinion as of my narrative report of 8/23/2022,

[5]and she exhausted all the treatment options.

[6]That's why we use this term MMI as

[7]is indicated. The only thing that I have

[8]really, that she may consider is a spinal cord

[9]stimulator which is also mentioned in the

[10]narrative report as one of the treatment

[11]modalities to help her with pain.

[12]Q Okay. Is there anything else that

[13]she hasn't tried that you think she should to

[14]exhaust treatment options?

[15]A No.

[16]Q Okay. If there is a treatment

[17]that alleviates pain, but doesn't necessarily

[18]affect the underlying condition, does that mean

[19]that the patient, what does that mean in terms

[20]of MMI?

[21]A It means that any further

[22]treatment will be like I said palliative to

[23]control the symptoms, but not result in the cure

[24]of the condition.

[25]Q Okay. So I just want to make sure

229

[1]Reyfman, M.D.

[2]I understand your testimony. So if a patient

[3]cannot -- if there are no treatments available

[4]that will improve the underlying condition, but

[5]there are treatments available to alleviate

[6]pain, you would say that that person reached

[7]MMI?

[8]A Yes.

[9]Q Okay. Do you believe that

[10]Ms. Cattenhead-Folk has exhausted her options in

[11]term of pain alleviation in particular?

[12]A No. That's why I initiated

[13]various procedures that she could consider to

[14]help her cope with pain.

[15]Q So, for example,

[16]Ms. Cattenhead-Folk has not tried neuropathic

[17]pain medications; is that correct?

[18]A She did not.

[19]Q And is that something that you

[20]think she should consider?

[21]A I don't think so.

[22]Q Why not?

[23]A She is not complaining of any

[24]significant neuropathic pain that she would be

[25]required or she should consider taking these

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[1]Reyfman, M.D.

[2]medications.

[3]Q Ms. Cattenhead-Folk has not tried

[4]Gabapentinoids; is that correct?

[5]A Right, which is also considered to

[6]be on neuropathic medication.

[7]Q Gabapentinoid is neuropathic pain

[8]medication?

[9]A Yes.

[10]Q Has Ms. Cattenhead-Folk to your

[11]knowledge tried any anti-depressants with pain

[12]relieving properties?

[13]A Again, the anti-depressants are

[14]considered as neuropathic medications. So it's

[15]the same form as Gabapentin as mentioned.

[16]Q Okay. And you don't think that

[17]any of these should be considered by

[18]Ms. Cattenhead-Folk in terms of relieving her

[19]pain?

[20]A I don't think she needs them now.

[21]Q Are there any non-pharmaceutical

[22]treatments that Ms. Cattenhead-Folk can try

[23]aside from physical therapy and chiropractic

[24]care which we already discussed?

[25]A The other non-pharmaceutical

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[1]Reyfman, M.D.

[2]treatment is biofeedback. It has a very limited

[3]role. Patients will have neck and back pain,

[4]but that's something she could try. She could

[5]try acupuncture as a treatment modality.

[6]Q Has Ms. Cattenhead-Folk tried

[7]acupuncture yet as far as you are aware?

[8]A I'm not sure. I don't think she

[9]did.

[10]Q All right. Now, I want to just

[11]briefly pull up the Pain physician New York

[12]notes that we marked on Friday. So just give me

[13]one second.

[14]All right. So we marked this as

[15]Exhibit 2 on Friday. This is a compilation of

[16]all of the notes from LR Medical PLLC also known

[17]as Pain Physicians New York.

[18]This first note is from the

[19]appointment of January 27, 2021. So if we

[20]scroll down to the end of that note, at the end

[21]of the note there is a section called Causality.

[22]Do you see that?

[23]A Yes.

[24]Q What is the purpose of that

[25]section?

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[1]Reyfman, M.D.

[2]A The purpose of this causality

[3]statement is that there is no prior intervening

[4]events that could have resulted in the symptoms

[5]that the patient is experiencing.

[6]Q Okay. Yes, I understand that's

[7]the content of the section, but what is the

[8]purpose of including a causality section at all

[9]in the notes?

[10]A There is no specific purpose.

[11]This is the statement that I use when I treat

[12]patients.

[13]Q So there's no reason for including

[14]this information?

[15]A This is just a medical statement

[16]with the causality statement. That's all this

[17]is. It has no meaning.

[18]Q Does it have any significance for

[19]the treatment of the patient?

[20]A No, not at all.

[21]Q All right. And I'm skipping ahead

[22]now to the note dated February 17, 2021.

[23]You know what, let me just ask a

[24]different question. Is it typical practice at

[25]your medical practice to include a causality
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[1]Reyfman, M.D.

[2]section in patient notes?

[3]A Yes, it is.

[4]Q All right. So now let's look at

[5]the notes dated March 15, 2021. This is a note

[6]about the Plaintiff from a visit to your

[7]practice on that date.

[8]If we scroll to the end it shows

[9]that the note was authored and signed by you as

[10]her treating provider; is that correct?

[11]A Yes.

[12]Q All right. And then right above

[13]the signature line or rather the electronic

[14]signature line there's that causality section

[15]that we were just talking about.

[16]So at the time that you wrote the

[17]causality section in connection with this

[18]appointment in March of 2021 what, if any,

[19]medical records had you reviewed from the

[20]Plaintiff's medical file outside of any records

[21]maintained by your office?

[22]A During my March 15th visit I

[23]reviewed all the imaging studies that were

[24]predating the office visit. I'm not sure if I

[25]had physical therapy records available during
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[1]Reyfman, M.D.

[2]that visit.

[3]Q Okay. And how did you obtain

[4]copies of the prior imaging studies?

[5]A We normally ask patients where

[6]they have the imaging studies done and we will

[7]call the radiology to give us the records.

[8]Q So aside from the imaging studies

[9]do you know if you had copies of records from

[10]any of her other providers?

[11]A I'm not 100 percent sure. I don't

[12]have a time stamp when the records were received

[13]by us, but we try to get most of the record as

[14]much as possible throughout the course of

[15]treatment from various providers if they are

[16]available.

[17]Q Okay. So would it be fair to say

[18]that the conclusions or the observations

[19]contained in the causality section of the

[20]medical notes are based on the information

[21]available to you at the time?

[22]A Yes.

[23]Q Okay. So if at a later time you

[24]obtain additional medical information that could

[25]or could not change your opinion on causality;
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[1]Reyfman, M.D.

[2]is that fair?

[3]A Yes.

[4]Q Okay. So I'm going to stop

[5]sharing my screen.

[6]Have you seen a copy of the expert

[7]report authored by Dr. Lisa Witkin in this

[8]lawsuit?

[9]A Yes, I have.

[10]Q Have you had a chance to review

[11]that report in full?

[12]A I read the report, yes.

[13]Q Okay. Are there any opinions

[14]contained in Dr. Witkin's report that you would

[15]like to specifically respond to now?

[16]A Not at this moment. This is a

[17]very comprehensive report. If you are asking me

[18]to review this report I would like to take my

[19]time to do that.

[20]Q Yes, I understand. Just as you

[21]are sitting here today, do you have recall

[22]having any specific reactions to parts of her

[23]report as you sit here today?

[24]A Not as far as I recall sitting

[25]here today, but I would like to take my time to

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[1]Reyfman, M.D.

[2]go over it in more detail to cover that.

[3]Q Okay. Do you have a response to

[4]any opinions contained in Dr. Witkin's report

[5]that is not already contained in your expert

[6]report?

[7]A No.

[8]MR. KRIGSFELD: Objection to

[9]form.

[10]Q Having read Dr. Witkin's report do

[11]you wish to make any changes or amendments to

[12]your expert report based on anything she said?

[13]A No.

[14]Q Okay. In general putting aside

[15]Dr. Witkin's report, but just overall do you

[16]plan to make any additions, changes or

[17]corrections to your expert report?

[18]A No, I do not.

[19]Q Do you plan to submit any kind of

[20]supplemental report?

[21]A No.

[22]Q So does your expert report

[23]together with your deposition testimony today

[24]accurately state the entirety of the opinions

[25]that you are offering in this case?

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[1]Reyfman, M.D.

[2]A Yes.

[3]Q And does your report together with

[4]your deposition testimony accurately state the

[5]basis for all of your opinions in this case?

[6]A Yes.

[7]Q Have you formed any opinions not

[8]contained in your expert report?

[9]A No.

[10]Q Have you formed any other expert

[11]opinions that we have not discussed today?

[12]A No.

[13]Q Or today and Friday?

[14]A No.

[15]Q And are there any opinions that

[16]you intend to offer at trial in this action that

[17]we have not discussed during your deposition?

[18]A No.

[19]Q Is there anything else about your

[20]expert report or this lawsuit that we have not

[21]covered that you would like to discuss?

[22]A No, I do not.

[23]MS. WEINREB: All right.

[24]That concludes my questions for

[25]today.

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[1]

[2]I am going to hold the

[3]deposition open because I have

[4]requested a number of categories of

[5]information. So once I receive

[6]those we can talk again, but I have

[7]no further questions at this time.

[8]MR. KRIGSFELD: We reserve

[9]our right under Rule 30 to make any

[10]changes to the deposition

[11]transcripts both and Friday's once

[12]Dr. Reyfman has had the opportunity

[13]to review it.

[14](Whereupon, at 2:20 o'clock

[15]p.m., the deposition was concluded.)

[16]

[17] 17

[18]LEON REYFMAN, M.D.

[19]

[20]SUBSCRIBED and SWORN to before me this

[21]day of , 2022, in the

[22]jurisdiction aforesaid.

[23]

[24] 24

[25]My Commission Expires Notary Public

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[9]EXHIBITS

[10](None marked.)

[11]

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[20]

[21]

[22]

[23]

[24]

[25]
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[1]

[2]CERTIFICATE

[3]STATE OF NEW YORK)

[4]) ss.

[5]COUNTY OF NEW YORK)

[6]I, TINA DeROSA, a Shorthand

[7](Stenotype) Reporter and Notary

[8]Public, do hereby certify that the

[9]foregoing Continued Deposition of the

[10]witness, LEON REYFMAN, M.D., taken at

[11]the time and place aforesaid via

[12]Webex, is a true and correct

[13]transcription of my shorthand notes.

[14]I further certify that I am

[15]neither counsel for nor related to any

[16]party to said action, nor in any wise

[17]interested in the result or outcome

[18]thereof.

[19]IN WITNESS WHEREOF, I have

[20]hereunto set my hand this 31st day of

[21]October, 2022.

[22]

[23]/s/ [Signature]

[24]TINA DeROSA

[25]
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[2]DEPOSITION ERRATA SHEET

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[25]LEON REYFMAN, M.D.

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