

Summations

1 pain nine out of ten at that moment for the
2 patient to sit there in no distress. His
3 reflexes were normal, no sensory defects or
4 weakness on exam. His positive findings and
5 limitations were to palpation and some
6 orthopedic tests, but most of those were
7 subjective in nature. And the doctor went
8 round and round, but finally admitted that
9 the claimant probably could do sedentary
10 work. He didn't want to admit it because of
11 the type of work that he performs, but he
12 finally admits that if the claimant were not
13 in the line of work that he is, he would
14 probably clear him to return to work in a
15 sedentary work, but because he works
16 construction, he wouldn't even entertain it.
17 And we would submit that that's not credible.
18 We would submit we have a 22 year old who had
19 injuries to be sure, but those injuries had
20 now had a year-and-a-half to improve
21 themselves or almost a year-and-a-half,
22 coming up on it, to improve themselves. By
23 the time of the exam it had been more than
24 six months from the date of injury and

1 Dr. McIntyre's opinion of no disability and a
2 normal exam finding is completely credible in
3 this instance. In the alternative, we would
4 submit that if you try and blend together the
5 credible parts of each doctor recognizing
6 that each may of had some credibility issues,
7 that the record really would not support
8 anything above a moderate disability. And so
9 in the alternative, we would ask for awards
10 from June 29, '23 to be made at no more than
11 a moderate rate. Thank you.

12 THE JUDGE: Okay. Thank you,
13 both. The -- I've had an opportunity to
14 review Dr. Weinstein's testimony and
15 Dr. McIntyre's testimony. And I'll turn to
16 Dr. Weinstein's testimony first. Just
17 chronologically, he's the one who testified.
18 He indicated the claimant was totally
19 disabled in connection with the causally
20 related injuries. That was on the exams of
21 March 6th as well as July 12, 2023. The
22 claimant had positive findings on physical
23 examination including intense pain. As
24 Mr. Carlton points out, there was no acute

1 distress and reflexes were normal. And as
2 noted, the doctor did concede toward the end
3 of his deposition that essentially deferring
4 to the claimant that if they'd like to go
5 back to work, then sure, which would not
6 support a total disability in my opinion.
7 Dr. McIntyre testified in connection with his
8 single examination on June 29, 2023. He
9 evaluated the claimant's range of motion
10 using a goniometer finding normal movement
11 for all affected sites of injury. And in the
12 stark contrast to what Dr. Weinstein found,
13 Dr. McIntyre indicated that there was no
14 disability whatsoever at least as of
15 June 29, 2023. He was cross examined about
16 schedule loss of use, which he was not asked
17 to determine, I don't take any -- find any
18 negative inference would apply because he
19 wasn't asked to evaluate for schedule loss of
20 use. I find that Dr. McIntyre's inability to
21 articulate what was contained in each of the
22 records he reviewed and which is referenced
23 in the IME-4 to be irrelevant. It would not
24 serve anyone's purpose for Dr. McIntyre to

1 have basically reiterated what was contained
2 in medical records that are already in the
3 record. Overall, I don't find that either
4 doctor testified to a moderate disability.
5 And as to whether Dr. McIntyre or
6 Dr. Weinstein is more credible regarding the
7 relevant period, I'm inclined to find
8 Dr. McIntyre more credible with respect to
9 the claimant's degree of disability. And I
10 agree with carrier's counsel that really
11 nothing in Dr. McIntyre's testimony
12 undermines his medical opinion articulated in
13 documentary form. Dr. McIntyre examined the
14 claimant on June 29th of 2023. And I see
15 that although Dr. Weinstein was deposed,
16 there are reports from Physician's Assistant
17 Yusupov under the direction of Dr. Pearl.
18 And based on the record concluding the
19 testimony all evidence, I'm finding that the
20 period June 29, 2023 until six months later
21 from that IME date is a period of no
22 compensable lost time. Before I make any
23 awards, I'll ask the interpreter if you could
24 please interpret. Since December 29, 2023,

1 have you returned to any type of employment
2 for pay or as a volunteer? Yes or no.

3 THE CLAIMANT: I do not
4 understand. Can you repeat the question?

5 THE INTERPRETER: Judge, can I go
6 ahead and repeat the question?

7 THE JUDGE: I'll phrase it
8 differently. Since December 2023, have you
9 returned to any type of employment
10 whatsoever? Yes or no.

11 THE CLAIMANT: No.

12 THE JUDGE: And have you
13 performed any volunteer work since December
14 of 2023? Yes or no.

15 THE CLAIMANT: No, not at all.

16 THE JUDGE: Okay. Thank you.
17 You can standby, Madam Interpreter, please.
18 So I'll make the award and direction for the
19 carrier to pay 12/29/23 to date and
20 continuing at \$533.33. And that's in
21 accordance with PA Yusupov's opinion under
22 the direction of Dr. Pearl with nothing
23 contrary to date. And there are -- I'll give
24 you opportunities to note your exceptions if

1 you wish. But there are a number of C-8.1Bs
2 in the file that I'd like to address next.
3 And does Mr. -- do you wish to be heard,
4 Mr. Ackerman, regarding the C-8.1B
5 objections?

6 MR. ACKERMAN: Not as to the
7 C-8.1B objections, just as to your finding --

8 THE JUDGE: Okay.

9 MR. ACKERMAN: -- of no
10 compensability.

11 THE JUDGE: Right.

12 MR. ACKERMAN: -- for the period
13 of time.

14 THE JUDGE: Right. Okay. And is
15 there anything that you would like to add,
16 Mr. Carlton, to what's already articulated on
17 the C-8.1B objections themselves?

18 MR. CARLTON: No, I think they
19 are pretty straightforward. Most of them or
20 at least a lot of them appear to be issues of
21 treatment without authorization or treatment
22 for unestablished injury sites.

23 THE JUDGE: Okay. Thank you. I
24 agree. Referencing either post concussion

1 syndrome and other sites for which the case
2 is not established. And other C-8.1Bs are
3 for treatment that would require a variance
4 under the treatment guidelines. There is no
5 variance in the record and there is at least
6 one C-8.1B involving treatment that's outside
7 of network for diagnostic purposes. And I
8 will therefore resolve the C-8.1Bs in favor
9 of the carrier. I'll find that the claimant,
10 excuse me, is not responsible. And did you
11 have a fee request, Mr. Ackerman? I'll share
12 with you that it's 9.6 weeks since December
13 29, 2023.

14 MR. ACKERMAN: Requesting a fee
15 of \$945.78.

16 THE JUDGE: \$945.78 is that what
17 you requested?

18 MR. ACKERMAN: Yes, Judge.

19 THE JUDGE: Okay. That is
20 approved and is as it is consistent with
21 Section 24. And then Mr. Ackerman, did you
22 have anything that you'd like to state for
23 the record as to any issues or any exceptions
24 you'd like to take?

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MR. ACKERMAN: Yes, Judge.
Claimant would like to note its exception to
your finding that of a zero degree of
disability for the period of time that has
been held in abeyance up and through
December 29, 2023. Thank you.

THE JUDGE: Okay. That's noted.
And Mr. Carlton, anything for the record?

MR. CARLTON: Yes, we'll take an
exception to the imposition of awards as of
12/29/23. Request testimony of Dr. Pearl
and/or PA Yusupov. Thank you.

THE JUDGE: Okay. Your exception
is noted. And did you want to -- a time
period to take testimony of those providers?

MR. CARLTON: Yeah. It would be
our position they should be taken before the
awards are imposed. But absolutely if you're
gonna grant us the opportunity, we would like
to do that and have you rule on it.

THE JUDGE: Okay. Well, I won't
address -- I'm making the award. I'm not
gonna rescind my findings of the awards.
There's been no request to take Dr. Pearl or

1 the PA's testimony. But I will grant the
2 carrier an opportunity to depose those
3 providers. So let me just direct those.
4 Dr. Pearl and PA Yusupov, 60 days sufficient?

5 MR. CARLTON: Yes, I think that
6 would be fine. I would just note the last
7 time we were before you, their reports are
8 not in the record, so that's why they weren't
9 requested then.

10 THE JUDGE: Okay. That's noted.
11 So I'll direct the depositions of PA Yusupov
12 and Dr. Pearl by May 7, 2024. Carrier to
13 produce those transcripts regarding the
14 ongoing disability rate. And do you want a
15 return date, Mr. Carlton?

16 MR. CARLTON: Please.

17 THE JUDGE: Okay. I have
18 May 20th, 1:30. I'll set it for 25 minutes.
19 That will be for return of depositions, oral
20 argument and bench decision. Anything else
21 for the record?

22 MR. ACKERMAN: I have nothing
23 further. Thank you.

24 MR. CARLTON: Thank you.

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THE JUDGE: Okay. Madam
Interpreter, thank you very much for your
patience and expertise. Have a great
afternoon, everyone.

MR. CARLTON: Thank you, Judge.
You too.

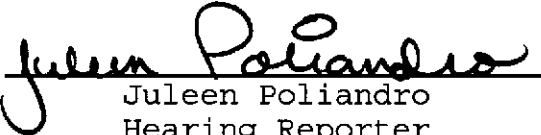
THE INTERPRETER: As well, Judge.

THE JUDGE: Okay. Thank you.
Bye-bye.

WHEREUPON THE CASE ADJOURNED

Date: July 25, 2024

Certified to be a complete transcription of the
Digital Audio Recording to the best of my belief and ability.


Juleen Poliandro
Hearing Reporter

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STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

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CLAIMANT: JORDAN CARPIO
EMPLOYER: RCD
CARRIER: NEW YORK STATE INSURANCE FUND
CLAIM: 74094616-373
WCB: G3455858
D/O/A: 12/16/2022

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TELECONFERENCE
SEPTEMBER 18, 2023
2:01 P.M.

EXAMINATION OF LOUIS MCINTYRE, M.D.,
an Independent Medical Examiner, held at the
above date and time, pursuant to Notice,
taken before Kerry Harper, a Reporter and
Notary Public within and for the State of
New York.

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

LAW OFFICES OF EDMOND J. HAKIMIAN, P.C.

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CONNORS & CANO, LLP

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the
form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer authorized
to administer an oath, with the same force
and effect as if signed and sworn to before
the Court.

1
2 L O U I S M C I N T Y R E, M.D.,
3 the witness herein, having been
4 first duly sworn by a Notary Public
5 of the State of New York, was
6 examined and testified as follows:

7 BY THE REPORTER:

8 Q. Please state your name for the
9 record.

10 A. Louis McIntyre, M.D.

11 Q. Please state your address for the
12 record.

13 A. 162-04 Jamaica Avenue, Jamaica,
14 New York 11432.

15 VOIR DIRE EXAMINATION BY

16 MS. O'CONNOR:

17 Q. Dr. McIntyre, are you licensed to
18 practice medicine in the state of New York?

19 A. Yes.

20 Q. Since what year?

21 A. Since 1987.

22 Q. And what is your specialty?

23 A. Orthopaedic surgery.

24 Q. Are you Board certified?

25 A. Yes.

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Louis McIntyre, M.D.

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practice, is it fair to say what you do during the week is only IMEs?

A. No.

Q. Okay. Well, what percentage -- what percentage of your work now is devoted to performing IMEs?

A. 15 to 20 percent.

Q. And when you are not doing the IMEs, what are you doing?

A. I'm the chief quality officer for a management service organization.

Q. Doctor, when you say you are board certified in orthopaedic surgery, did you operate on the spine, either the neck or the back?

A. No.

Q. So your specialty was in the extremities?

A. My specialty was orthopaedic surgery.

Q. What would you do if somebody had come in to you with a neck or back problem? You said that you don't do spinal surgery. What type of --

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Louis McIntyre, M.D.

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A. I treated many --

Q. Let me ask you this, Doctor. What type of orthopaedic surgery did you do, if not neck and back?

A. General orthopaedic surgery.

Q. When was the last time you performed surgery?

A. Three years ago.

Q. What body part?

A. I don't recall.

Q. General orthopaedics is what? It could be anything in orthopaedics?

A. Yes.

Q. And back in -- when you say 15 to 20 percent IMEs, what you do, how many is that per week, on average?

A. It varies.

Q. Between what number and what number?

A. Between 10 and 40. It could be zero to 40. This week I don't have any. Last week I didn't have any. Next week, I don't have any. No. I'm sorry. That's not true. Next week, I have -- I don't know how

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Louis McIntyre, M.D.

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many I'm going to have. So it's -- as I said, I estimate it to be between 15 and 20 percent of what I do.

Q. And you last practiced medicine three years ago?

A. Yes.

Q. Was your license suspended for any reason?

A. No.

MR. ACKERMAN: All right.

I don't have any further questions of the doctor regarding the doctor's qualifications.

MS. O'CONNOR: Okay. I'm just going to qualify the doctor's report in accordance with the protocol of the State Insurance, and then turn the doctor over to you for cross-examination.

MR. ACKERMAN: Okay.

DIRECT EXAMINATION BY

MS. O'CONNOR:

Q. Doctor, have you had an opportunity to evaluate Jordan Carpio?

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Louis McIntyre, M.D.

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A. Yes.

Q. On how many occasions?

A. I believe once.

Q. And the date of that evaluation,
Doctor?

A. June 29, 2023.

Q. And following that examination, did
you prepare a multi-page document outlining
your findings and conclusions also dated
June 29 of 2023?

A. Yes.

Q. And do you have that report before
you now?

A. Yes.

Q. If you are to testify today,
Doctor, will your testimony be in substantial
accordance with that report?

A. Yes.

MS. O'CONNOR: Thank you.

I will submit the doctor's
report into evidence, subject to
cross-examination.

And I now defer to you for
cross-examination, Counsel.

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Louis McIntyre, M.D.

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Q. Would you agree with me that a review of the films is more accurate in giving a diagnosis than relying upon that of an independent radiologist?

A. I don't know how to answer that question.

Q. Why don't you know how to answer that question?

A. I can't answer that question.

Q. Why?

A. Because I can't answer the question.

Q. Well, if you tell me why, I'll rephrase it. What is it about the question you can't answer?

A. It's too broad a question.

Q. Well, I'm asking you, Doctor, would it be more accurate to review the films of the MRIs when making a diagnosis rather than rely upon simply reports from an independent radiologist?

MS. O'CONNOR: I'll just note an objection, as the doctor has already indicated he could not

1 *Louis McIntyre, M.D.* 12

2 answer the question as phrased.

3 If you could rephrase, per
4 the doctor's request.

5 Q. Doctor, would you agree with me
6 that a review of an MRI film is more accurate
7 than a review of an MRI report?

8 A. I don't know how to answer that
9 question.

10 Q. Okay. What is it about that
11 question that you don't understand?

12 A. The question is too broad.

13 Q. In what sense is it too broad for
14 you? I'll narrow it.

15 A. It's too broad a question. You
16 know, I can't answer with any surety based
17 upon how it's phrased.

18 Q. When you had your own private
19 practice, did you review MRI films?

20 A. Yes.

21 Q. And when you had your private
22 practice and you reviewed the films, would
23 you review the report that went along with
24 those films?

25 A. Yes.

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Louis McIntyre, M.D.

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Q. What did you rely on as more accurate, the review of the actual films themselves when you did it, or the report?

A. I can't answer that question.

Q. Or was the both?

A. I can't answer that question.

Q. Well, why can't you, Doctor? It's a simple question.

A. Because the question is too broad.

Q. In what sense is my question too broad?

A. The question is too broad. It takes into --

Q. Why? Why is it too broad?

A. Because it's too broad. I just answered the question.

Q. In what sense is it too broad? Doctor, I don't want to be here all day. I'm trying to just get this done and I want to relieve you of your time, but --

A. I'm answering this question truthfully and honestly, okay, because I'm under oath. The question is too broad. It's too broad in regards to MRI. It's too broad

1 Louis McIntyre, M.D. 14

2 in regards to specific patients. It's too
3 broad in regards to who reads MRIs. It's too
4 broad. I can't answer that question.

5 Q. I'm asking you when you read an MRI
6 film. Doctor, so I'm asking when you read an
7 MRI film --

8 A. I practiced orthopaedics for 30
9 years. I read MRIs for 30 years. I can't
10 answer the question you posed because it's
11 too broad.

12 MS. O'CONNOR: Can we move,
13 on, Counsel? I mean, you can take
14 it as you will and make whatever
15 application. But the question has
16 been asked and answered.

17 MR. ACKERMAN: I'll move on.
18 I'll just ask him one more question
19 on it.

20 Q. Doctor, regarding one specific
21 patient, if you had one specific patient --
22 I'm trying to narrow this down for you -- and
23 you had an MRI film of that patient, one MRI
24 film, and you had one report of that patient,
25 which would be more accurate in terms of you

1 Louis McIntyre, M.D. 15

2 making a diagnosis for that patient, a review
3 of the film or a review of the report?

4 A. I can't answer that question.

5 MS. O'CONNOR: It's been
6 asked and answered. Just move on,
7 Counsel.

8 Q. Doctor, did you find that the
9 claimant had a -- you found that the claimant
10 had a 10 percent schedule loss of use to the
11 right shoulder here. Can you at least look
12 at your report?

13 A. No.

14 Q. Okay. What were your findings?

15 A. My findings -- I wasn't asked to
16 comment on schedule loss of use. I was asked
17 to comment on degree of disability. I found
18 that he had no disability.

19 Q. Was that based upon your range of
20 motion testing in which you found no -- in
21 which you found all range of motion testing
22 on all levels to be normal?

23 A. I found the examination to be
24 completely normal of all body parts involved.

25 Q. So other than range of motion -- so

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Louis McIntyre, M.D.

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you did range of motion testing, neuro testing. What other testing did you do?

A. I did observation, outpatient, range of motion, special testing, muscle testing, testing for instability, complete orthopaedic exams of the lumbar spine, cervical spine, right shoulder and right knee.

Q. When you did range of motion testing on those body parts, did you do so with a goniometer?

A. Yes.

Q. Did you do it actively or passively?

A. Actively.

Q. How many times?

A. Three times.

Q. And would you agree with me that range of motion testing can depend day to day upon whether or not the claimant -- whether or not an individual is having a bad day or good day?

A. I can't answer that question.

Q. Why can't you answer that question?

1 *Louis McIntyre, M.D.* 17

2 A. Because that question is too broad.

3 Q. How would you like me to narrow it
4 down for you so you can answer it?

5 MS. O'CONNOR: Objection.

6 It's not up to the doctor.

7 A. You ask the questions.

8 MR. ACKERMAN: The doctor is
9 being completely nonresponsive
10 throughout the entire course of his
11 testimony.

12 MS. O'CONNOR: I think
13 that's a mischaracterization,
14 Counsel. It's the second question.
15 If you can just narrow it down, it
16 would be appreciated.

17 MR. ACKERMAN: Madam court
18 reporter, what was my question to
19 the doctor that he said he couldn't
20 answer?

21 (Whereupon, the requested
22 portion was read by the reporter.):
23 And would you agree with me that
24 range of motion testing can depend
25 day to day upon whether or not the

1 *Louis McIntyre, M.D.* 18

2 claimant -- whether or not an
3 individual is having a bad day or
4 good day.)

5 Q. Doctor, can range of motion testing
6 change from one day to the next? Yes or no?

7 A. I don't know.

8 Q. Did you ask the claimant when you
9 saw him on that one occasion whether or not
10 he was taking any type of prescription
11 medication?

12 A. I don't recall.

13 Q. If somebody sees you before an IME
14 and has taken prescription medication, could
15 that affect range of motion testing?

16 A. No.

17 Q. Did you record whether or not the
18 claimant had an antalgic gait?

19 A. I did not record his gait.

20 Q. So simply because you didn't report
21 it, doesn't mean that he did not have it; is
22 that correct?

23 A. I don't know.

24 Q. Doctor, is it fair to say that on
25 your report, you list all the reports but you

1 *Louis McIntyre, M.D.* 19

2 do not state what is contained within those
3 reports, correct?

4 MS. O'CONNOR: Objection to
5 relevance.

6 You can answer if you can,
7 Doctor.

8 A. I don't understand the question.

9 Q. Sure. If you take a look at your
10 report, you said records for review. And
11 then you -- do you see that?

12 A. I see review of available records.

13 Q. Okay. Did you delineate what was
14 contained within those records?

15 A. I just listed the records.

16 Q. So without you putting down what it
17 is that you reviewed, how would somebody know
18 whether or not you actually reviewed them or
19 not?

20 MS. O'CONNOR: Objection to
21 the relevance.

22 The doctor is only required
23 to list the records so they can
24 properly identified. Here, it is
25 done. I don't know what the

1 Louis McIntyre, M.D. 21

2 you can over my objection.

3 Q. Please.

4 A. I don't remember the question.

5 Q. The question was, if you didn't
6 put down -- if all you did was list the
7 reports, how do I -- how would somebody know
8 whether or not you actually reviewed the
9 reports or not, if you don't state what's
10 contained within them?

11 A. When I put the reports in the body
12 of the report, that means that I looked at
13 the reports.

14 Q. Do you know for how long you
15 reviewed these reports that were given to
16 you?

17 A. 39 minutes.

18 Q. And when do you usually review the
19 reports, the day before, the day of the
20 examination or something else?

21 A. It varies.

22 Q. What did you do for this situation?
23 When did you review it for 39 minutes?

24 A. I don't recall.

25 Q. When did you review them for 39

Louis McIntyre, M.D.

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minutes?

A. I don't recall.

MR. ACKERMAN: I don't have any further questions.

MS. O'CONNOR: I don't have anything on redirect.

Thank you, Doctor, for your time.

-o0o-

(Whereupon, the examination of LOUIS MCINTYRE, M.D. was concluded at 2:23 P.M.)

LOUIS MCINTYRE, M.D.

Subscribed and sworn to before me this _____ day of _____, 2023.

NOTARY PUBLIC

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I N D E X

<u>WITNESS</u>	<u>EXAMINATION BY</u>	<u>PAGE</u>
LOUIS MCINTYRE, M.D.		
	MS. O'CONNOR	8
	MR. ACKERMAN	10

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