Q It was only in 1997 to 2002 that you had this third location, right?
A That's correct.
Q Okay. Now, there was a large increase in your frequency of your testifying in court right around 1992, isn't that right?
A I don't know. That's 12 years ago. I don't know what you mean -- you mean from 199 -- from 1989 and 1990?
Q Let me ask you the question again.
Between 1992 and today --
A Right.
Q -- you have appeared in court approximately ten or 15 times a year to actually testify and it's been probably twice as many as that, cases where you were notified you might be needed to testify, but for one reason or another you didn't have to go, correct?
A That's possible.
Q Now, this increase in the number of court cases that you had -- well, first, let me ask you this question first.
Within this -- the country there are about 5000 board certified physiatrists, right?
A I would say about that, yes.
Q And a physiatrist is a person who is in physical medicine and rehabilitation such as yourself, right?
A Yes, sir.

Q And you get a book that says how many board certified physiatrists there are and it usually runs around 5000 a year?
A Yes, sir.
Q So there are hundreds of them in New York, right?
A Yes, sir.
Q But none of them come to court with the frequency as you do, correct?
A I don't know if that's correct.
Q You don't know if that's correct?
A No.
Q Isn't it a fact since 1992 there have been hundreds of cases where you've either come to court or been setting aside time to go to court and then your appearance is canceled, is that correct?
A Yes, sir, that's correct.
Q And you were involved in cases which were really not your cases until they were referred to you by attorneys, isn't that right?
A On some cases, yes.
Q Now, in this case Dr. Ben Zvi referred the patient according to your records, right?
A Yes, sir.
Q But you had a relationship with this patient's attorneys before Dr. Ben Zvi referred the patient, is that

right?
A Yes, sir. Yes, sir.
Q And you don't know if the attorneys told Dr. Ben Zvi or asked Dr. Ben Zvi or suggested to Dr. Ben Zvi that you would be a good person to refer the patient to, right?
A I have no idea.
Q Okay, in any event this patient was under the care of only one physiatrist before you, isn't that right?
MR. SCHMEIZER: Objection.
THE COURT: State the grounds.
MR. SCHMEIZER: That's not the case.
THE COURT: Let him answer.
A I don't know to that exact number to that exact question.
Q Well, you got the records of all of her prior treatment before you saw her, right?
A Right -- I don't know --
Q You saw that Dr. Rho, the physiatrist in Lenox Hill Hospital, saw her while she was in that hospital and saw her for the last time on January the 15th, 1999, right?
A I don't know if she saw anybody else after that.
Q Okay. You had no records from July 15th, 1999 until the time that you saw her on October the 18th, 2000 of her having contact with any physiatrist, am I correct?
A I have no record the way you phrased that question,

but, then again, I don't know I have every single page of every single record.
Q Okay. Well, when you took a history from the patient did you obtain any information from her that suggested that she had been under a physiatrist's care at any time since she left Lenox Hill Hospital?
A That was not discussed.
Q And did you get any history from her as to what, if any, physical therapy she had before she came to you?
A Just at the hospital.
Q Now, at the time that you saw her you had already gone to court and testified for Kelner & Kelner on five or six occasions at least, isn't that right?
A Give or take a couple. Yeah, that's about right, give or take.
Q All right, and did you develop a relationship with Kelner & Kelner as a result of any marketing foray on your part?
A As marketing?
No.
Q But you did market your services to attorneys in 1992, isn't that right?
A Oh, yes.
In fact, your office got a copy of it too.
Q Right, okay. I was going to ask you about that.

I mean, you actually sent a letter out to attorneys, including my partner, Mr. Brady, isn't that right?
A I don't know who it was, but your office definitely got a letter.
Q Okay.
A Along with other doctors, other attorneys, other industrial sectors because nobody knew what physiatry was at that time.
Q I see.
A And I was a new guy on the block. I had to advertise my services.
Q Okay, and as a consequence of you advertising your services your court appearances went from one or two times a year to about ten or 15 times a year, is that correct?
A I wouldn't say because of that.
The longer you stay in practice the more patients you treat.
Obviously, the higher chances of cases like this will go into litigation because I treat people with traumatic injuries.
It's like saying how come a cardiologist's patients all have chest pain, how come a pulmonary doctor all have shortness of breath and how come many of an oncologist's patients eventually die?
That's the nature of the practice.

Q Okay, when you started this marketing foray did you hire a director of marketing?
A Yes, Betsy Rosen.
Q Okay, and was she then replaced or assisted by someone named Karen Gordon?
A Yes.
Q Okay, so in your marketing department did they send out letters to attorneys that were on the letterhead of Ali Guy as the Gramercy Park Physical Medicine & Rehabilitation, PC?
A Yes, sir.
Q And did they offer immediate appointments for recent injuries?
A Yes, sir.
Q Did they offer prompt narrative reports in special situations within 24 hours?
A If it's needed to be done, yes.
Q Did they offer hot line communications from your office to theirs?
A Hot line communication means if somebody calls and they want to speak to the doctor they're available.
I'm always available to my patients, to doctors, to anybody that wants to call me. I return all phone calls.
Q And did your marketing message include the statement, "Our team can be your team."

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A Can I see how it's phrased?
Q Sure.
A This is over 12 years old you're asking me.
Q Right.
A If you think my memory is that good, I don't know about that good.
Q Okay, just look at the statement in bold at the bottom paragraph.
Does it say, "Our team can be your team."
(Shown to witness.)
A It states that signed by Karen Gordon, but not by me, but it does state that.
Q It's signed by Karen Gordon who is the director of marketing according to that letter, right?
A Yes.
Q And she's the director of marketing for your practice, is that correct?
A That's correct.
Q So she made that statement with your knowledge and your consent, is that right?
A You're asking me something about 12 years ago.
Obviously, if it's on my letterhead it should be with my consent, but I don't remember that.
Q Okay. But you did send this letter, the same form letter, out to hundreds of attorneys, isn't that right?

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A It went to all the attorneys in the Manhattan area, yes.
Q Okay, probably then thousands of attorneys, isn't that right?
A Well, I don't know. I don't know how many she sent out to but, let's put it this way, she was supposed to send them out to as many that deal with traumatic injuries as possible, so it's not every single attorney.
Q But the services that she was marketing were your services, isn't that right?
A Yes, my practice.
Q Okay. Now, as a consequence of that after 1992 you've gone to court on cases that involve injuries to the back, isn't that right?
A I've had just about every single case you could imagine; spinal cord injuries, head trauma --
Q Okay, okay, just answer my question.
A Yes.
Q You had injuries to the back, right?
A Yes.
Q You've testified about people who have had disk herniations, isn't that right?
A Yes, sir.
Q And you've testified that that is a disabling condition, isn't that right?

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A Not every single disk herniation is a disabling injury. It depends on other criteria.
It depends on if there is radiculopathy at that level, if there is loss of function.
Q Okay. So some patients who have disk herniations, you're telling us, do not have a disability, is that correct?
A In fact, they have no pain, some of those patients, so the answer is yes.
Q Could you just answer my questions?
A Yes.
MR. SCHMEIZER: Objection, he is answering --
Q Would I be correct in saying - and this would be a yes or no; yes I'm correct, or no I'm not correct - would I be correct in saying that some patients who have a herniated disk do not have any disability?
A That's correct.
Q Okay. Now, you try to manage patients conservatively to avoid their going to surgery, isn't that right?
A Yes, sir, if I can.
Q Okay, but sometimes your patients have to undergo surgery anyway, isn't that right?
A Yes, sir.
Q But you try to prevent that from happening wherever you can, isn't that correct?

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A Yes, sir.
Q And that's because even the most skillful surgeon doing the most skillful surgery can have complications, isn't that right?
A That's not the reason why you should have conservative treatment.
There's a very specific reason. If you would like to know what that is I would be happy to share that with you.
Q Do you agree with this statement, even the most skillful surgeon doing the most skillful surgery can have complications?
A Absolutely.
Q Okay. And even when surgery is done correctly a patient can die, isn't that correct?
A Absolutely correct.
Q Even when surgery is done correctly a patient can become paralyzed, isn't that correct?
A Yes, sir.
Q There's a whole panoply of risks even when surgery is done most skillfully, right?
A Yes, sir.
Q So you try to prevent your patients from going to surgery, if possible, so patients, among other things, don't have to face those risks, isn't that right?
A In part.

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Q Right, okay.
Now, with regard to your prior testimony have you ever told a jury that you completed two residencies or three residencies?
A Yes.
A residency means if you complete one year that's considered doing a residency. Not completing two residencies, performing residencies.
I've always explained my credentials the way it has been. I did one year of general surgery, I did 18 months of internal medicine and I did three years of physical medicine.
Q Okay. Well, just let me ask you, did you -- just ask you if you gave these answers to these questions, okay?
Do you remember testifying in the case of John Sharky against Metro North Commuter Railroad in October of '93?
A I remember the patient John Sharky, but I don't remember testifying in that case.
When was that?
Q That was in October of 1993?
A Wow, that's over 11 years old.
Q Were you asked this question and did you give this answer:
"Question: Good morning Dr. Guy. I ask you speak as clearly as possible so everybody can hear

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you. Could you tell us something about your education?
"Answer: Yes. I did my undergraduate training at Queens College. I went to medical school in the Dominican Republic and I did two residencies, first at Mt. Sinai Medical Center in the field of internal medicine, a year of general surgery at Cabrini and three years in medical rehabilitation."
A That's correct, I did --
Q So you did two residencies?
A I did actually three. I did internal medicine, general surgery and physical medicine and rehabilitation.
I never said I completed two residencies. I said I did two residencies. In fact, I did three.
Q Okay, I see, okay.
Well, doctor, in all these hundreds and hundreds of times that you've come to court since 1992 did you say that you've only come --
MR. SCHMEIZER: Objections to hundreds and hundreds of times.
THE COURT: Overruled.
You may continue.
Q You know that there are computer printouts of doctors' testimonies, right?
A Yes, I can give you --

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Q You've been cross-examined with those before?
A I have, yes.
Q And you know that we can get a printout of every time you've been in court, right?
A I can tell you the count right now. It's under 200.
Q Under 200?
A Under 200. About 175, slightly less, slightly more, but it's not hundreds and hundreds and hundreds as you depicted.
Q Okay, 175 times you actually testified in court, right?
A Yes.
Q And didn't we agree that there were more than twice as many cases as that of cases where you were asked to come to court, but for some reason or another you didn't have to go?
A I wouldn't say twice as much. I would say on some additional cases. I have no way of knowing what that exact number is because sometimes I'm called to come, many times I'm not called to come, the case gets settled on its own.
Q Okay. But in terms of the cases that you have testified in would you say that it's correct that once you tear one of these intervertebral disks, once you rupture a disk, it's a permanent irreversible injury?
A Yes, sir, that's correct.

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Q Did you say a disk herniation would get progressively worse over time because traumatic arthritis sets in and osteophytes form going into the spinal canal with progressive impingement on the nerve root and eventually you need a surgical procedure to relieve the compression?
Did you say that?
A On some cases you need the surgical procedure, not on every case.
Q I see.
But you do agree that it's a -- it becomes progressively worse over time because traumatic arthritis sets in and osteophytes form going into the spinal canal with progressive impingement on the nerve root?
Do you agree with that?
MR. SCHMEIZER: Objection.
Some cases, all cases?
THE COURT: You may answer.
A Generally speaking, yes. That's the way I have testified in the past.
Q And you testified that you cannot cure a disk herniation, right?
A That is correct, yes.
Q And when you handle patients with disk herniation, whether it's a small herniation or a large herniation, it makes no difference because the treatment is the same, right?

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A In most cases, yes.
Q Okay. And herniation of a disk is a permanent injury that causes a permanent problem that will never be corrected unless there's surgery to remove the disk, right?
A In most cases that is correct, not on every single case.
Q Okay, if a nerve root is pressed on the symptoms are radiating pain, numbness and tingling and then weakness, right?
A That is correct.
Q Now, in the case of this patient when she came to your office a report was generated of that first contact, right?
A Yes, sir.
Q Okay, and that report was actually written by somebody other than yourself, isn't that correct?
A It was dictated by my licensed physician assistant, Ms. Giordano.
Q Ms. Giordano dictated the report of your contact with the patient at that time, right?
A We both saw the patient together. She dictated the report.
Q So you didn't get any information from the patient on that occasion that wasn't given to Ms. Giordano and put in her report, is that correct?

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A It was given to Ms. Giordano, confirmed by me and it was done by the both of us and the dictation was done by Ms. Giordano.
Q Okay, and the report was seen by you afterwards and it was a complete report of your encounter with that patient at that time, correct?
A Yes, sir, yes.
Q And, in fact, the patient's complaints are stated at the bottom of the paragraph on the first page, isn't that right?
A Yes, sir.
Q Okay, and the complaint, it says, "At the present time patient is complaining of left thigh to left knee numbness associated with pain and tingling. Patient is also complaining of left calf numbness since January 5, 1999 as well as low back pain and bilateral hip discomfort," right?
A That is correct.
Q Okay. None of that relates to the femoral nerve, does it?
A Wrong.
Q Okay, what -- show me which portion of that relates to the femoral nerve?
A Patient is complaining of left thigh to left knee numbness. That's the femoral nerve.
Patient is complaining of pain and tingling as

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well. That's the femoral nerve.
Patient is also complaining of left calf numbness. That could be sciatic nerve.
Patient is complaining of bilateral hip discomfort. That -- the left side can be femoral nerve. The right side is from the compensatory mechanism, which I explained earlier.
Q Okay. Now, that's the complaints that the patient had, right?
A At that time, that is correct.
Q They're all sensory, aren't they?
A At that time those complaints are predominantly sensory and also --
Q Not --
MR. SCHMEIZER: Hold on and let him finish.
A Hip pain is not sensory, hip pain is a local problem.
Q Okay, but the pain ---the patient is complaining of sensory abnormalities in her left leg and in her back and both hips, right?
A She's not complaining of sensory abnormalities in the back, she's complaining of back pain and bilateral hip discomfort.
Q Okay, so she has pain and she has sensory changes, right?

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A Yes, sir.
Q And that's all she's got that she's complaining about, right?
A On history.
On physical exam --
MR. SCHMEIZER: Let him finish.
A On physical exam she has definitely motor weakness, she has gait abnormality, she has atrophy of the entire quadriceps muscle. That's not sensory, that's motor.
Q Okay, but that's not what I'm talking about, is it?
I'm talking about the history.
A What you're asking me is part of the whole picture so in order to answer -- I'm not finished.
Q So when the patient came in --
MR. SCHMEIZER: He's not finished.
MR. LYDDANE: He's not answering the question.
THE COURT: Let him finish his answer.
A The question you're asking me, was it all sensory, the answer is no.
There was sensory as well as nonsensory complaints and the history and the physical exam go together. You can't take them apart because they're both part of each other.
Q Okay. Now, my question is when the patient came in and her complaints were recorded she complained of numbness, pain, tingling, back pain and hip discomfort, right?

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A Correct.
Q Okay. There is no complaint that the patient made at that time of having a weakness or an inability to walk, right?
A That is correct.
Q Okay. Now, although you never completed the surgical residency you do know something about surgery of the type that this patient had, correct?
A Yes, sir. I've assisted on many of these cases.
Q All right, and you know what's involved in a sigmoid colon resection, right?
A Yes, sir.
Q Taking out a portion of the large intestine and then taking the ends and stapling them back together, right?
A Or suturing them back together, yes.
Q And if it's cancer there's also efforts to take a look around and take 19 lymph nodes out like they did here and make sure there isn't some spread of the cancer inside the patient's body?
A If the lymph nodes are indicated to be removed, yes.
Q And you know there were 19 lymph nodes removed in this case, right?
A I don't know how many were removed, but I read the operative records, some lymph nodes were removed.
Q But in order to do that type of surgery a certain

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amount of manipulation of the organs in the pelvis is necessary, right?
A It's called careful manipulation.
Q It's called surgical manipulation, too?
A Careful surgical manipulation.
Q And some of this has to go into the deep pelvic area, right?
A Yes, that's correct.
Q And the organs that have to be surgically manipulated in the careful fashion are often referred to as viscera, right?
A Yes.
Q And viscera just means any internal organ in the abdomen or pelvis, right?
A Yes, sir, that's correct.
Q And so if you have to do this manipulation you come close to where the femoral nerve is, isn't that right?
A Yes, sir.
Q And one of the inherent risks of the surgical manipulation necessary to complete the surgery is damage to the lumbar plexus and the femoral nerve, isn't that right?
A That only happens from prolonged traction on it, not just a slight careful manipulation. That would not happen from a slight normal careful surgical manipulation.
If that were the case, everyone's femoral nerve

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would be injured in these types of surgeries. If that were the case everyone's lumbar plexus would be damaged in these types of cases. So in most cases it does not get damaged.
Q Um-hum.
A And it only gets damaged by prolonged traction, not slight temporary traction.
Q But do you agree with me that one of the inherent risks of the surgical manipulation necessary to complete the surgery is damage to the lumbar plexus and femoral nerve?
Do you agree or disagree?
A Common or uncommon?
Q Do you -- just do you agree or disagree?
A The way you phrased the question I don't have an opinion as to yes or no, it depends --
Q So you could never have an opinion in that regard, right?
MR. SCHMEIZER: Objection.
THE COURT: Counsel, please don't interrupt the witness in the middle of his answer.
You may complete your answer, doctor.
A I was saying the answer depends on if it -- is it a common abnormality?
No, it is not a common abnormality.
Is it a rare uncommon abnormality?
Yes.

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Can it be avoided?
In most cases yes, by avoiding long traction and protraction of that nerve.
Q So it can be avoided in most cases, right?
That means it can't be avoided in some cases?
A Yes, for the reasons I gave.
Q The mechanism of the left femoral nerve injury at this type of pelvic surgery is a surgical procedure itself and the distal manipulation in the area around the femoral nerve, correct?
A Yes.
Q Okay. There are several ways that the necessary surgical manipulation can damage the nerves in this area besides the use of retractors, right?
A Yes.
Q That can be the surgeon's hands that can have an affect on the nerve, right?
A Yes.
Q Clamping vessels can have an affect on the nerve, isn't that right?
A If you clamp the vessels with the nerve attached, clamped as well or pulled, yes.
Q Or if you clamp the vessels that serve the nerve you can devascularize the nerve, right?
A Simple clamping of the vessels, no.

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If you pull on them, yes, it can.
Q Any inadvertent pulling necessary to the surgery can cause an injury like this patient had, correct?
MR. SCHMEIZER: Objection.
THE COURT: You may answer.
A If you did you say it can?
Q Yes.
A Yes, in a remote rare possibility it can, yes.
Q Well, this is the only one case in the history of mankind, isn't it?
MR. SCHMEIZER: Objection.
A I don't know if this is the only case in the history of mankind. I can't say that it is.
Q Well, this is a unique case isn't it?
This case is its own case, isn't it?
A Unique case?
What do you mean by unique?
Q It's only one case out of the history of surgery in the United States, isn't it?
A I wouldn't say that.
Q All right, well, would you agree that a hematoma can develop even after the surgery and cause the type of femoral nerve or lumbar plexus injury that this patient had?
A If it's in the vicinity of that nerve the answer to your question is it can, yes.

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Q And a surgeon performing this type of bowel resection for cancer with the removal of the ovaries has to try surgical manipulation or he can't perform the surgery, isn't that right?
A Prudent careful surgical manipulation, yes.
Q Okay, and some stretching of tissues is involved in that, isn't it?
A Some stretching of tissues is allowed because most tissues, like the viscera, like the intestines, they bounce back, they have a tensile elasticity ability, but most nerves do not.
Q But, in any event, stretching tissues and pulling tissues and probing around is all part of the procedures the surgeon has to do, correct?
A Yes, again, careful probing, yes.
Q And since the nerve doesn't have the ability to stretch, once you pull it it can be damaged, isn't that correct?
A Yes, sir.
Q And if a patient has surgery in the pelvis like this patient did she can get a postoperative bleed in the deep pelvic area and a hematoma can form, but it usually resolves by itself, right?
A Depends on the size of the hematoma, depends on the location and depends on the cause of the hematoma.