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WORKERS' COMPENSATION BOARD

STATE OF NEW YORK

Hearing Point: Queens, New York

Date of Hearing: May 20, 2024

JORDAN CARPIO	Claimant
RCD	Employer Case No. G3455858
STATE INSURANCE FUND	Carrier

HEARING BEFORE THE WORKERS' COMPENSATION BOARD

PRESENT: RICHARD GOLDMAN, WCL JUDGE

VIRTUAL HEARING

AUDIO RECORDING

APPEARANCES:

Claimant is present  
 R. Delicieux, attorney for the claimant  
 V. Thai, attorney for the employer & carrier  
 SPANISH INTERPRETER# 702652

WITNESS  
THE CLAIMANT

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CASE DULY CALLED

THE JUDGE: We'll go on the record in the case of Jordan Carpio, WCB number G3455858. I'm Judge Goldman presiding. The claimant is unavailable. The claimant has an attorney. Can I have the appearances of the parties please? We'll start with claimant's counsel.

MS. DELICIEUX: Good afternoon, Judge. This is Ms. Delicieux, appearing of counsel for the law office of Edmond Hakimian for the claimant.

THE JUDGE: For the carrier?

MS. THAI: Van Thai of Hamberger & Weiss for the State Insurance Fund.

THE JUDGE: Good afternoon everyone. At the last hearing I directed depositions of two providers and it looks as though Dr. Pearl testified on May 3rd, so I'll direct the carrier to pay \$450 to Dr. Pearl in connection with that deposition. There are also C-8.1(b)'s that we'll address today. Would the parties like to be heard regarding the issue of degree of disability?

1 MS. DELICIEUX: Yes, Judge.

2 Judge, I believe I indicated by  
3 error that the claimant is not available.  
4 The claimant is available.

5 THE JUDGE: Okay. Do you want  
6 your client to be present?

7 MS. DELICIEUX: I don't need the  
8 claimant, if Ms. Thai doesn't need the  
9 claimant.

10 MS. THAI: Awards objected to at  
11 the last hearing are on appeal and the one --  
12 I guess, yes, you can call the claimant.

13 THE JUDGE: Okay. How would I  
14 reach your client, Ms. Delicieux?

15 MS. DELICIEUX: The phone number  
16 is 347-658-4185.

17 THE JUDGE: Jordan Carpio  
18 please?

19 THE CLAIMANT: (Speaking Spanish)

20 THE JUDGE: (Speaking Spanish)

21 I've reached the claimant by  
22 telephone at the number provided by his  
23 attorney and I told the claimant that I'll be  
24 calling a Spanish interpreter to help with

1 the communication, so please stand by  
2 everyone, as we connect with the interpreter.

3 (Calling interpreter service)

4 THE JUDGE: This is Judge  
5 Goldman. You're at a Workers' Compensation  
6 hearing. Please raise your right hand.

7 S P A N I S H I N T E R P R E T E R  
8 #702652, duly sworn to translate from English  
9 to Spanish and Spanish to English translated  
10 as follows:

11 THE JUDGE: Okay. You may put  
12 your hand down. Please begin interpreting.  
13 Our Spanish interpreter has joined us. Are  
14 you able to hear her?

15 THE CLAIMANT: Yes, correct.

16 THE JUDGE: I'm going to  
17 confirm some information from you and to do  
18 that I'm going to place you under oath, so  
19 please raise your right hand.

20 T H E C L A I M A N T, being duly  
21 sworn, testified as follows:

22 THE JUDGE: You may put your  
23 hand down. Ms. Delicieux is here on your  
24 behalf and Ms. Thai is here for the insurance

1 company. Please state your name.

2 THE CLAIMANT: My name is Jordan  
3 Alejandro Carpio Moncajo(phonetic)

4 THE JUDGE: What is your date of  
5 birth?

6 THE CLAIMANT: July 19, 2000.

7 THE JUDGE: On what date did you  
8 have your workplace injury?

9 THE CLAIMANT: December 16, 2022.

10 THE JUDGE: Okay. And,  
11 finally, have you returned to any type of  
12 employment since March of 2024? And when I  
13 say employment, I mean part time work, full  
14 time work or self-employment. Yes or no?

15 THE CLAIMANT: No, none. I don't  
16 work since the accident.

17 THE JUDGE: Thank you. Please  
18 stand by for a few minutes.

19 THE CLAIMANT: Thank you.

20 THE JUDGE: Does the claimant  
21 wish to be heard regarding degree of  
22 disability?

23 MS. DELICIEUX: Yes, Judge.

24 THE JUDGE: Okay. When you're

1 ready.

2 MS. DELICIEUX: Thank you, Judge.  
3 Your Honor, depositions were directed at the  
4 last hearing. First, the deposition of Dr.  
5 -- of PA Yusupov was not completed, as the  
6 doctor had an emergency and we were given a  
7 new date of 5/7 at 12:00 p.m. The carrier  
8 did not reschedule the deposition of the  
9 doctor, so we are requesting that the carrier  
10 be precluded from cross-examining dr.  
11 Yusupov.

12 And Dr. Pearl testified on 5/3/24.  
13 He saw the claimant on 1/22/24. At that time  
14 the claimant had complaints of right knee  
15 pain, which was stabbing and constant. This  
16 was confirmed on examination. The claimant  
17 had tenderness in the right knee and  
18 restricted range of motion, positive McMurray  
19 sign. There was an MRI done on October of  
20 2023, which shows effusion and meniscus --  
21 I'm sorry. Which shows effusion. He  
22 reviewed the films. He saw that there were  
23 some irregularities on the MRI that shows to  
24 him that there was a torn meniscus. The

1 doctor felt at that time the claimant was 100  
2 percent disabled and recommended physical  
3 therapy. The doctor only treated -- only  
4 testified with regard to the right knee. The  
5 claimant continues to be out of work and the  
6 claimant is seeing a chiropractor and there's  
7 up-to-date medical in the Board's file from  
8 the chiropractor. We are requesting that  
9 payments continue at the total rate, Your  
10 Honor.

11 THE JUDGE: Which chiropractor?

12 MS. DELICIEUX: Dr. Perez.

13 THE JUDGE: Okay. Just please  
14 stand by for a moment.

15 Okay. Thank you. And, Ms. Thai,  
16 what's the carrier's position please?

17 MS. THAI: Judge, it's the  
18 carrier's position that PA Yusupov's reports  
19 should be precluded from the record. The PA  
20 who is in Dr. Pearl's office saw the claimant  
21 before Dr. Pearl did. The PA did not appear  
22 for a deposition on 4/15/24. His deposition  
23 was rescheduled to 5/7/24 at 12:00 p.m. His  
24 office reached out to us saying that he's not

1 available again due to an emergency, but he  
2 would be available at 1:00 p.m., however,  
3 given the short notice, no parties were  
4 available, so it's our position that it was  
5 the PA that wanted to reschedule and gave the  
6 parties such short notice that we didn't have  
7 time to reschedule. We would ask for another  
8 opportunity to cross-examine him or it's our  
9 position that his reports should be  
10 precluded.

11 When Dr. Pearl did testify, he said  
12 that he had no records from the claimant  
13 prior to the first time he saw the claimant  
14 on 1/22/24, so he didn't even review or have  
15 access to his PA's reports that are outlined  
16 in the transcript. What's more, Dr. Pearl  
17 said the claimant is totally disabled on  
18 1/22/24, but one month later when he saw the  
19 claimant on 2/28/24, he said the claimant was  
20 back to normal, has made a complete recovery  
21 and could return to work without  
22 restrictions. He added that there's been no  
23 permanent damage. So there's no ongoing  
24 total disability based on Dr. Pearl's

1 testimony. His report, unfortunately, was  
2 not available at the time of the last hearing  
3 in March and was submitted only after the  
4 last hearing, so it's our position that the  
5 claimant -- what's more, his findings, I  
6 think, were subjective at the January  
7 meeting. There's no real -- visit. There's  
8 no real change in condition between January  
9 and February except that in February he  
10 thought the claimant could go back to work  
11 without restrictions. It's our position that  
12 the claimant has no further causally-related  
13 disability.

14 I will point out that at the last  
15 hearing Your Honor had found the claimant had  
16 no disability except the claimant started  
17 treating with the PA in between hearings and  
18 that's why awards were adjusted and, by the  
19 way, awards are also on appeal. It's our  
20 position --

21 THE JUDGE: Thank you.

22 MS. THAI: -- there's no further  
23 causally-related disability. I will also  
24 raise attachment to the labor market because

1 the claimant has been released.

2 MS. DELICIEUX: Your Honor, can  
3 I just clarify --

4 THE JUDGE: One second. Did you  
5 say that I found the claimant had no  
6 disability at the last hearing, Ms. Thai?

7 MS. THAI: I believe on 3/5/24 we  
8 were back for summations on degree of  
9 disability. You had found that Dr.  
10 McIntyre's IME opinion of no disability was  
11 more credible than Dr. Weinstein's opinion of  
12 total disability, but because in between  
13 hearings when the parties had just completed  
14 the depositions and the hearing for  
15 summations, the claimant started treating  
16 with a new doctor or new office, which was  
17 Dr. Pearl's office, so we started litigation  
18 again with cross-examination of the PA and  
19 Dr. Pearl.

20 THE JUDGE: Okay. 'Cause I did  
21 find that there was an ongoing disability at  
22 the March hearing, which is why I directed  
23 awards. And did you --

24 MS. THAI: Right. For the --

1 THE JUDGE: Did you take a  
2 position regarding -- okay. Okay. Thank  
3 you. And then, Ms. Delicieux --

4 MS. DELICIEUX: Yes, Judge.

5 THE JUDGE: -- where is

6 MS. DELICIEUX: Sorry.

7 THE JUDGE: Where is that  
8 report? You said Dr. Perez is giving a  
9 disability. Where is that?

10 MS. DELICIEUX: No. I said the  
11 claimant is being seen -- has continued to be  
12 seen by Dr. Perez's office since the last  
13 report from Dr. --

14 THE JUDGE: Yes. You argued  
15 that the claimant was still totally disabled  
16 per the chiropractor, Dr. Perez, so where is  
17 that in the record?

18 MS. DELICIEUX: No. I said Dr.  
19 Pearl testified to a total disability on  
20 January 22, '24 and then the claimant has  
21 up-to-date from the chiropractor, up-to-date  
22 medical evidence from the chiropractor.

23 THE JUDGE: So when you say  
24 up-to-date medical evidence, you don't mean

1 with a degree of disability or do you?

2 MS. DELICIEUX: No, I don't mean  
3 with degree of disability, Judge. It's just  
4 the chiropractor and the chiropractor  
5 continues to mention the claimant's  
6 complaints and findings on examination.

7 THE JUDGE: Okay. Thank you  
8 very much. I've had an opportunity to review  
9 the medical record and the testimony of Dr.  
10 Pearl, which I find credible. Dr. Pearl  
11 testified that the claimant was 100 percent  
12 disabled on January 22, 2024. Explaining the  
13 rationale for that degree of disability  
14 within the deposition indicating that the  
15 claimant had loss of motion in his knee and  
16 shoulder as well as pain and positive  
17 musculoskeletal signs, such as Neer's Sign,  
18 O'Brien's Sign and the Yergasons Test and  
19 those were all positive and I find that  
20 doctor's testimony was credible with respect  
21 to degree of disability, so I'm going to make  
22 the finding that the claimant had a 100  
23 percent disability from March 6, 2024 until  
24 February 28, 2024, which is when Dr. Pearl

1 released the claimant to return to employment  
2 at full duty with no restrictions. I don't  
3 need to reach the testimony or lack of  
4 testimony for PA Yusupov because Dr. Pearl  
5 overseas PA Yusupov and PA Yusupov did not  
6 testify and so I'm not considering PA  
7 Yusupov's reports in light of the PA's  
8 failure to appear for two depositions and,  
9 especially, because the physician who  
10 overseas PA Yusupov gave testimony that,  
11 ultimately, would carry more weight in light  
12 of what I find to be credible testimony, so,  
13 therefore, the award will be March 6, 2024 to  
14 2/28/2024. And just give me one minute while  
15 I enter that award. 3/6/24 to 2/8/24. One  
16 second please. I misspoke.

17 So based on Dr. Pearl's testimony  
18 with respect to the return to work date that  
19 predates the last hearing, I'm making a  
20 finding from March 6, 2024 to date is no  
21 compensable lost time, as there isn't any  
22 evidence that the claimant has any ongoing  
23 disability since the last hearing. And then  
24 I will also address the C-8.1(b)s. Did you

1 wish to be heard, Ms. Delicieux, regarding he  
2 carrier's objections?

3 MS. DELICIEUX: Let me just --  
4 Judge, the C-8.1s from Dr. Perez -- Judge,  
5 we're asking that the C-8.1s be found in  
6 favor of the providers. The carrier raised  
7 issue of a variance and --

8 THE JUDGE: Okay. I didn't see  
9 a variance for any of the requested treatment  
10 in the record. And on that basis I'll  
11 resolve the C-8.1(b)s, which involve  
12 treatment that deviates from the guidelines  
13 in favor of the carrier. I'll find that the  
14 claimant is not responsible. And before I  
15 mark the case no further action, did you have  
16 anything else for the record, Ms. Delicieux?

17 MS. DELICIEUX: Yes, Judge.  
18 Please note my exception to all the findings  
19 today. First, Dr. Yusupov did not testify  
20 because the carrier did not set up the second  
21 deposition date. I believe that this was a  
22 confusion. The carrier never set up the  
23 5/7/24 date, so the doctor only failed to  
24 appear once because --

1                   THE JUDGE:           I'm going to stop  
2                   you right there because if you'd like to note  
3                   an exception, you may, but this is not the  
4                   time to reargue. I already made my finding.

5                   MS. DELICIEUX:           Okay. Also  
6                   please note my exception to the suspension of  
7                   benefits and the finding of no compensable  
8                   lost time. Your Honor, it is our position  
9                   that deposition -- I mean, awards should at  
10                  least be entered at a temporary rate since  
11                  the claimant is seeing a chiropractor and the  
12                  chiropractor does mention complaints and  
13                  symptoms and positive findings on  
14                  examination. Thank you.

15                  THE JUDGE:           And, Ms. Thai,  
16                  anything else for the record?

17                  MS. THAI:           Yes, Judge. It's our  
18                  position that awards should have been  
19                  modified up to 2/28 notwithstanding the  
20                  appeal and bringing awards up to 3/6 -- we  
21                  note an exception to bringing awards to 3/6.  
22                  It should have been to 2/28, so note an  
23                  exception to all awards since the last  
24                  hearing. Thank you.

1 THE JUDGE: Okay. Your  
2 exception is noted. For interpretation,  
3 thank you for being available for today's  
4 hearing. I have addressed medical bills as  
5 well as your ongoing rate of disability and  
6 if you have questions, you should contact  
7 your attorney's office.


8 MS. THAI: Judge, I guess, did  
9 you note the labor market attachment issue?  
10 I know that in case the claimant produces  
11 clarifying medical -- I know there's NCLT,  
12 but it's our position that if the claimant  
13 makes a future claim for awards, he should  
14 demonstrate attachment to the labor market.

15 THE JUDGE: It's noted for the  
16 record. I'm not making any direction because  
17 there are no ongoing awards. Thank you for  
18 your assistance, Madame Interpreter. And  
19 we'll go off the record. Have a good  
20 afternoon everyone.

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Date: October 28, 2024

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

  
\_\_\_\_\_  
Melissa Monaco  
Hearing Reporter

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STATE OF NEW YORK  
WORKERS' COMPENSATION BOARD

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CLAIMANT: JORDAN CAPRIO  
EMPLOYER: APS CONSTRUCTION CORP.  
CARRIER: NEW YORK STATE INSURANCE FUND  
CLAIM: 74094616  
WCB: G3455858  
D/O/A: 12/16/2022

-----x

TELECONFERENCE  
MAY 3, 2024  
12:00 P.M.

**EXAMINATION OF RICHARD PEARL, M.D.,**  
the claimant's treating physician, held at  
the above date and time, taken before  
Christina Cochran, a Reporter and Notary  
Public of 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.

Attorneys for Claimant

31-01 90th Street

Queens, New York 11369

BY: SCOTT ACKERMAN, ESQ.

NEW YORK STATE INSURANCE FUND

Representing Carrier

PO Box 66699

Albany, New York 12206

BY: SEAN WEBER, ESQ., OF COUNSEL

STOCKTON, BARKER & MEAD, 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.

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R I C H A R D P E A R L, M.D.,  
the witness herein, having been  
first duly sworn by a Notary Public  
of the State of New York, was  
examined and testified as follows:

BY THE REPORTER:

Q. Please state your name for the  
record.

A. Richard Pearl, M.D.

Q. Please state your address for the  
record.

A. 47 East 77th Street, Suite 201-A,  
New York, New York 10075.

MR. ACKERMAN: Good  
afternoon, Dr. Pearl.

My name is Scott Ackerman.  
I'm an attorney with the Law  
Offices of Edmond J. Hakimian, P.C.  
My firm represents the claimant in  
this case, your patient, Jordan  
Caprio, for a work-related accident  
on December 16, 2022.

The attorney for State  
Insurance, the representative from

1 *Richard Pearl, M.D.* 5

2 the State Insurance Fund is going  
3 to be having some questions for you  
4 regarding your treatment of the  
5 claimant.

6 VOIR DIRE EXAMINATION BY

7 MR. ACKERMAN:

8 Q. Before questioning begins, can you  
9 kindly give us your medical qualifications,  
10 your specialty and if you're coded by the  
11 Workers' Compensation Board, what are your  
12 code letters?

13 A. Okay. So I'll start backwards.  
14 I'm coded by the Workers' Compensation Board,  
15 COS in orthopedic surgery. I'm Board  
16 certified in 1987. I am licensed currently  
17 in New York. My credentials have always been  
18 in good standing since I've been licensed in  
19 New York. I am also licensed in New Jersey.  
20 My credentials have always been in good  
21 standing in New Jersey. I was licensed in  
22 Connecticut, but I voluntarily gave up that  
23 license because I was not doing any work in  
24 the State of Connecticut. I mean, I don't  
25 know what else you need.

Richard Pearl, M.D.

6

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

Counsel?

MR. WEBER: No. I accept.

MR. ACKERMAN: All right, so your witness.

CROSS-EXAMINATION BY

MR. WEBER:

Q. All right. I think we said it off the record, but, Dr. Pearl, this is the Jordan Caprio workers' compensation claim. Is that your understanding?

A. Yes.

Q. All right. When was the first time you saw Mr. Caprio?

A. The first time I saw Mr. Caprio was on 1/22/2024.

Q. Had he been seen in your office prior to that date from a different provider?

A. I believe he was.

Q. And when would that have been?

A. I don't have those records in front of me. I only have the ones where I

Richard Pearl, M.D.

7

1 personally saw him.

2  
3 Q. All right. So the first time you  
4 saw him was 1/22/24, how many times have you  
5 seen him since then?

6 A. Since this visit, that's the only  
7 time I have seen him. I never saw him after  
8 that visit.

9 Q. Oh, okay. It looks like he was  
10 seen in your practice on February 28th of  
11 this year.

12 A. He was seen on February 28th of  
13 this year? I don't -- let me see if I have  
14 that here. I guess I have some incompetent  
15 people working in my office and I don't have  
16 it here, so I apologize.

17 Q. All right. Well, if you want, if  
18 it only takes you a couple of minutes to  
19 track it down, go ahead.

20 A. If you give me a minute or two, I  
21 can get that information.

22 MR. WEBER: Let's pause the  
23 record. Just let us know when  
24 you're ready.

25 THE WITNESS: Okay.

Richard Pearl, M.D.

8

Thank you.

MR. WEBER: Okay. We're  
back on the record.

Q. Doctor, did you locate any other  
reports besides January 22nd of 2024?

A. Yes. I have February 28th of 2024.

Q. All right. So, Doctor, as far as  
you know, you personally examined Mr. Caprio  
on 1/22 and 2/28?

A. Correct.

Q. And is it possible he met with  
another provider, perhaps a PA, before  
1/22/24?

A. It could have been. Yes, it's  
possible.

Q. The reason why I ask that is  
because there is a 10/24/23 narrative that is  
signed by you, but it's also signed by PA  
Yusupov, Y-U-S-U-P-O-V. Is it possible PA  
Yusupov saw him on 10/24/23?

A. Yes. PA Yusupov saw him on my  
behalf, and I'm not sure why. I should have  
those reports once they are available to me I  
will get them, but not right now.

1 *Richard Pearl, M.D.* 9

2 Q. If it's something you can get, just  
3 let me know. If not, would it be fair to ask  
4 PA Yusupov about any medical opinions  
5 rendered on 10/24/23 rather than you?

6 A. Well, I am sure I went over it with  
7 him and I will get those records. So you can  
8 ask him or you can ask me, sure.

9 Q. Well, his deposition has been  
10 directed, so we will wait for him to testify.

11 So you personally examined  
12 Mr. Caprio on 1/22/24, and to the best of  
13 your understanding, that is the first time  
14 you personally met with him, right?

15 A. Correct.

16 Q. And it looks like you saw him in  
17 Corona under CitiMed, C-I-T-I-M-E-D?

18 A. Correct.

19 Q. All right. Well, actually it says  
20 history of present illness, the patient  
21 returns today for a follow-up visit. Did you  
22 make that statement or did the PA?

23 A. That is me because I knew he had  
24 been seen before, but yeah.

25 Q. So with respect to he came in for

1 *Richard Pearl, M.D.* 10

2 right shoulder and right knee issues, right?

3 A. Correct.

4 Q. And then for the right knee, he  
5 complained of pain 9 out of 10, constant and  
6 stabbing. Is that accurate?

7 A. Yes, it is.

8 Q. All right. So that is what he told  
9 you, correct?

10 A. Correct.

11 Q. All right. And Doctor, is there  
12 any clinical examination or findings that you  
13 made on that day which could corroborate that  
14 high level of pain?

15 A. Yes. With regard to his, if you're  
16 talking about with regard to his knee, yes.  
17 Well, he had tenderness on the joint line and  
18 his range of motion only went to 110 degrees,  
19 normal is 135 for flexion, so that is  
20 abnormal. And he had a positive McMurray's  
21 sign, which means you hear a clicking at the  
22 medial joint space when you go from flexion  
23 to extension, which normally could possibly  
24 indicate a torn meniscus.

25 Q. All right. Was that picked up on

1 *Richard Pearl, M.D.* 11

2 the MRI from October?

3 A. The MRI from October, I just saw  
4 that, too. Well, the MRI showed the knee  
5 effusion and it showed that the meniscus was  
6 intact according to the reading by the  
7 neuroradiologist.

8 I actually saw the films myself.  
9 And remember, the MRI is about 70 percent  
10 accurate. A lot of false positives, a lot of  
11 false negatives. It's not a picture. It's  
12 exactly what it says. It's an image. It's  
13 like you have an image of somebody, but you  
14 don't actually know exactly the way it looks,  
15 but you kind of have an image. It's like an  
16 image and along with your clinical findings,  
17 it helps a physician make a diagnosis.

18 So his reading, the radiologist is  
19 usually somebody, who's home in his pajamas  
20 who just puts on his TV and looks at the  
21 image and makes a diagnosis. I use it along  
22 with my clinical exam. I actual examine the  
23 patient and when I had the patient in front  
24 of me, I looked at the image. I looked back  
25 at the medial aspect and you see there's an

1 *Richard Pearl, M.D.* 12

2 irregularity there, a very subtle  
3 irregularity. And oftentimes, it is a torn  
4 meniscus and I do believe, as I am testifying  
5 under oath, that he does have a torn meniscus  
6 medially.

7 Q. So the radiologist is Dr. Denis?

8 A. Correct.

9 Q. So do you have any --

10 A. He's a neuro --

11 Q. -- doubts as to his ability to read  
12 MRIs?

13 A. Yeah. I think he's probably  
14 competent, but he a neuroradiologist, which  
15 means that he looks at brain, he looks at  
16 spine. Of course he's licensed to look at  
17 joints, I guess, but maybe in this particular  
18 case, he is not as acute, you know, he's not  
19 as adept as maybe someone else would be.

20 Q. So you don't like him as a  
21 neuroradiologist to read MRIs involving the  
22 knee, right?

23 A. Yeah. If you want to put words in  
24 my mouth, I would say that he is probably  
25 more competent reading a brain MRI than a

1 *Richard Pearl, M.D.* 13

2 knee MRI. That's all I could say.

3 Q. Okay. So despite what the  
4 radiologist report states, that the menisci  
5 are intact, you feel that there may be  
6 something wrong with the meniscus because you  
7 determined a positive McMurray's; is that  
8 accurate?

9 A. Well, that along with the fact that  
10 he did, which anybody can -- well, not  
11 anybody, any radiologist can see that the  
12 fact that he had a large knee effusion, so he  
13 doesn't question anything. He just tells you  
14 what he sees. I have to put it together.

15 Now, what's going to cause water in  
16 the knee? A large amount of knee effusion.  
17 It's not an act of God. It can be caused by  
18 a few things. It can be rheumatoid  
19 arthritis, which the patient does not have.  
20 It can be a fracture, which the patient does  
21 not have or it can be a torn meniscus, which  
22 I think he does have.

23 Q. All right. But your clinical  
24 assessment indicates there was no effusion,  
25 despite that being on the MRI, though, right?

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2 A. No, there is an effusion.

3 Q. Okay. The line reads -- let me  
4 just make sure I am on the correct one. Yes,  
5 1/22/24, it says there is no anterior  
6 instability or effusion.

7 So it sounds like you wrote down  
8 there was no effusion.

9 A. Did I write that? Well, hold on  
10 for a second. Let me just -- I am looking at  
11 the MRI diagnostic test. MRI of the right  
12 knee done on 10/12/23, demonstrates effusion  
13 noted, and then what are you referring to?

14 Q. Right under your range of motion  
15 assessment, there's six lines and the second  
16 line says, there is no anterior instability  
17 or effusion, so you must have wrote that,  
18 right?

19 A. I must have wrote it, but I made a  
20 mistake.

21 Q. All right. Are you able to see it  
22 with your own eyes or feel it, that there was  
23 an effusion on that day?

24 A. Yeah. I remember that he had a  
25 swollen knee, yep.

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*Richard Pearl, M.D.*

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Q. So you have an independent recollection of this guy?

A. Yeah, I do because it wasn't that long ago.

Q. All right. Then the right shoulder demonstrated some diminished range of motion, correct?

A. Yes.

Q. All right. So with respect to the MRI, there was tendinopathy and a partial tear of the supraspinatus tendon, and then there was tendinopathy of the infraspinatus and subscapularis tendons, as well as effusion. Those were the negative findings, correct?

A. Yes.

Q. Then based upon your examination of the right knee and right shoulder, did you have a plan of action?

A. You're talking about the last time I saw the patient?

Q. No.

A. Which exam are you --

Q. We have only been focusing on the

1 *Richard Pearl, M.D.* 16

2 January 22nd examination.

3 A. Correct, okay. So the plan of care  
4 was to continue with physical therapy three  
5 times a week. And again, I was waiting for  
6 authorization for a right knee and shoulder  
7 arthroscopy.

8 Q. All right. So you felt that the  
9 right knee and right shoulder were so damaged  
10 to the point where surgery needed to be  
11 performed?

12 A. Yeah. Patient was going to  
13 physical therapy and not making any headway.

14 Q. And did you opine on a degree of  
15 disability?

16 A. Yes. I said he was 100 percent  
17 disabled.

18 Q. And what makes him, in your  
19 opinion, a hundred percent disabled?

20 A. Temporarily impaired, yeah.

21 Q. Okay. But I see he's only 23 years  
22 old. What makes him completely and totally  
23 disabled on January 22, 2024 from all lines  
24 of work?

25 A. Yes.

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2 Q. I'm asking you: What's your basis  
3 for that opinion?

4 A. Oh, I'm sorry. Well, my basis for  
5 my opinion was that he had a lot of pain and  
6 loss of motion. He had loss of motion of at  
7 least 33 percent of his knee and his shoulder  
8 had pain and also loss of motion. And, you  
9 know, he had all positive Neer's sign,  
10 positive O'Brien's, Yergason's test, which is  
11 the labrum. These were all positive tests on  
12 my examination.

13 Q. All right. So the Neer's sign is  
14 essentially for what are you asking him --

15 A. Impingement. It means impingement  
16 against the acromion. It could also be a  
17 torn rotator cuff, which would cause the same  
18 thing because when the rotator cuff hits the  
19 bone, the acromion, you get a Neer's sign.  
20 But if the rotator cuff is torn, you also get  
21 a Neer's sign. So it's very sensitive, but  
22 not specific as it could be.

23 Q. So basically you're doing some  
24 demonstration to his shoulder and you're  
25 asking if he exhibits pain, right?

Richard Pearl, M.D.

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1  
2 A. Correct.

3 Q. Same thing with the Hawkins?

4 A. Yeah. Hawkins and Neer are  
5 competitors. I call them competitors.  
6 They're two guys that knew each other. Neer  
7 died. Hawkins might still be alive. But  
8 they used to argue about which test was more  
9 accurate for the same diagnosis. So I am 75  
10 years old, so I went to those meetings and I  
11 used to sit there and not understand what  
12 they were arguing about, but I remember that.  
13 Same test.

14 Q. All right. And then as far as the  
15 O'Brien and Yergason's test, is that the same  
16 thing, you're demonstrating something to him  
17 and performing the test and asking if he  
18 feels pain?

19 A. That is exactly it. It means the  
20 possibility of having it. The biceps tendon  
21 is attached to the labrum, which is attached  
22 to the glenoid or the cuff of the shoulder.  
23 So along that path, if the tendon is torn or  
24 the labrum or the tendon, or the biceps  
25 tendon, which is attached to the labrum is

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2 torn, you're going to get the same test.  
3 It's going to be positive Yergason's,  
4 positive O'Brien's. Again, all these things  
5 become confirmed when you look into the  
6 shoulder joint, but you know there's  
7 something very wrong there.

8 Q. All right. And then, do you think  
9 he was capable of any type of work on that  
10 day?

11 A. No. I don't believe so.

12 Q. Okay.

13 A. He couldn't lift more than 5  
14 pounds.

15 Q. All right.

16 A. And I remember pressing on his  
17 shoulder, pushing my hand against his hand,  
18 and he couldn't move my hand at all.

19 Q. Okay. And what types of treatment,  
20 if any, did he have after January 22nd, but  
21 before your next visit of February 28th?

22 A. He had physical therapy three times  
23 a week, two, three times a week. I think I  
24 looked at that. I don't have it here in  
25 front of me. There was one week he missed.

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2 He only came once, but most of the time he  
3 was coming three times a week.

4 Q. So he's responded well to that?

5 A. He didn't respond. I mean, he got  
6 somewhat better, but he still has the  
7 essential underlying pathology. It was still  
8 there.

9 Q. Okay. All right, because on  
10 February 28th, you indicated he had no  
11 restrictions and could go back to work  
12 full-time, right?

13 A. Right.

14 Q. All right. And you said he was at  
15 maximum medical improvement, correct?

16 A. Correct.

17 Q. All right. So the right shoulder  
18 demonstrated 180 degrees of flexion; is that  
19 accurate?

20 A. Let me just go over that again.

21 MR. ACKERMAN: I'm sorry.

22 Are we on the February exam or  
23 we're still talking about January?

24 MR. WEBER: No. We've moved  
25 to the February 28th exam.

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2 MR. ACKERMAN: Okay. So the  
3 opinion about returning to work was  
4 in February?

5 MR. WEBER: Correct.

6 MR. ACKERMAN: Okay, thank  
7 you.

8 A. Yes, his shoulder improved to  
9 normal and his knee had full extension and  
10 flexion 135, so he did improve.

11 Q. All right. So essentially he had  
12 normal range of motion in the right knee and  
13 right shoulder, correct?

14 A. Yeah. I mean, he got better.  
15 Physical therapy actually worked.

16 Q. All right. So you haven't seen him  
17 since then, right?

18 A. No, I haven't seen him since then.

19 Q. Okay. Now, you said he's at  
20 maximum medical improvement so would it be  
21 your opinion he has no permanent damage to  
22 the right shoulder and right knee?

23 A. I guess I would agree to that.

24 Q. Okay, great. All right, then just  
25 lastly, if you know, what was the PA's

1 *Richard Pearl, M.D.* 22

2 involvement with the 1/22/24 exam?

3 A. When I saw the patient on 1/22/24,  
4 he was present with me, but --

5 Q. Okay.

6 A. -- so I was dictating to him, but I  
7 saw the patient and he wrote the note in that  
8 case, yeah.

9 MR. WEBER: All right, thank  
10 you.

11 Mr. Ackerman?

12 MR. ACKERMAN: Yes, thank  
13 you.

14 REDIRECT EXAMINATION BY

15 MR. ACKERMAN:

16 Q. Doctor, if you'll excuse me, I'm  
17 just a bit confused. A month prior to the  
18 February visit on -- just give me a moment --  
19 the February visit was on 2/28/24. So you  
20 had seen him on 1/22/24, and you were waiting  
21 for authorization for surgery. How is it  
22 that he improved? Did he still need surgery  
23 and why would you clear him to go back to  
24 work full-time if a month before that you  
25 were waiting for this gentleman, you were

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2 waiting for authorization to get surgery for  
3 him?

4 MR. WEBER: Just note my  
5 objection to the form of the  
6 question. It's leading and it's  
7 outside the scope of cross, but go  
8 ahead and answer. There's no Judge  
9 here.

10 A. Okay. That's actually the best  
11 question of the day. And the reason for that  
12 is if you remember when the first lawyer for  
13 the company asked me about the MRI, and I  
14 noticed there was a tear. So the tear is  
15 what's known as the red zone, and that's near  
16 the outside of the knee and sometimes, you  
17 know, we do meniscal repair because it's in  
18 the red zone. So the meniscus is in the  
19 inside of the knee and there's two discs and  
20 it attaches to the synovium or where the  
21 blood supply of the meniscus is. The outer  
22 two-thirds has a blood supply. The inner  
23 one-third has no blood supply, and so for  
24 that reason, we would have done a  
25 meniscectomy. But if it's in the outside,

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2 there's a chance it won't heal. And with  
3 therapy and time, it actually healed and  
4 became better, so he could go back to work.

5 Q. And a question for you about the  
6 right shoulder, what was it you had requested  
7 the surgery, as you said you were waiting for  
8 authorization, but you had cleared him to go  
9 back to work. Why would you clear him for  
10 work if a month before, just a month prior,  
11 you found him at a hundred percent temporary  
12 totally disabled?

13 A. Well, his right shoulder, he had  
14 what is known as impingement syndrome and  
15 impingement syndrome is treated two ways.  
16 First you try physical therapy and most of  
17 the time it does not work and you have to do  
18 an acromioplasty, where you shave the bone  
19 away. But in this case, it actually did  
20 work. I would love to do surgery, but only  
21 when it's indicated, so I'm not going to just  
22 operate on somebody.

23 Q. I understand. Doctor, do you know  
24 what specific kind of work this gentleman did  
25 for a living?

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2 A. I used to know and I wrote it down  
3 somewhere. Let me see if I can find it. But  
4 I remember the, I guess, I have it in the  
5 other the, first guy who saw him may have  
6 wrote it down. Can you tell me what he does  
7 for a living? You actually ask the  
8 questions, not me. You don't have to answer  
9 my question.

10 Q. So you don't recall what he did for  
11 a living?

12 A. I don't recall right now.

13 Q. And you cleared him -- you cleared  
14 him, you did not find -- well, let me ask you  
15 this: You did clear him to return to work,  
16 but is it possible that this gentleman could  
17 have some kind of permanent impairment to the  
18 knee and the shoulder? He's reached MMI as  
19 far as you're concerned, could he have some  
20 damage, still permanent damage to the knee  
21 and the shoulder?

22 A. It's possible, but not probable.  
23 But I would certainly see him again if that's  
24 the request.

25 Q. Okay. And does he have any further

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appointments to see you?

A. I don't believe so because he said he was going back to work and he seemed to, you know, but if you want to contact the client, I'll be glad to see him again.

Q. Do you know if he did return to work or you don't know?

A. I don't know. I know I told him he could go back to work and he seemed happy and compliant and I don't think it was a problem.

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

I would ask that the doctor be paid for his deposition time today.

Thanks, Doctor, for appearing today.

(Continued on next page to accommodate jurat.)

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MR. WEBER: Bye everyone.

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(Whereupon, the examination  
of RICHARD PEARL, M.D. was  
concluded at 12:32 P.M.)

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RICHARD PEARL, M.D.

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2024.

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C E R T I F I C A T E

I, CHRISTINA COCHRAN, a Notary Public within and for the State of New York, do hereby certify:

That the witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



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CHRISTINA COCHRAN

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