

1 THE COURT: Okay, let's -- we'll leave it in.

2 MR. ROBERTA: Your Honor, can we just be --

3 THE COURT: Come in the back.

4 (Whereupon, the following discussion takes place in
5 the robing room among the Court and Counsel, outside the
6 hearing of the sworn jury.)

7 THE COURT: So, he's saying he talked to Kaplan,
8 basically Kaplan told me and I just adopted it, but he
9 didn't say --

10 MR. KELLY: No, so I thought throughout the course
11 of this are I developed -- I can do the foundation in very
12 brief like three questions. You know, who do you work with,
13 who do you consult with to design these plans. Is it the
14 nature of your discipline to design such plans. How do you
15 go about doing it. Who do you talk to, why do you talk to
16 them. Pretty simple stuff. He's a physician and he's in
17 consultation with the continuum care with other physicians
18 and he developed these future life.

19 THE COURT: It didn't really feel like hearsay to
20 me. He said I talked to him based on that conversation this
21 was my --

22 MR. RAINIS: My objection was really that I think
23 it was hearsay. It's like, I don't know so I asked Doctor
24 Kaplan and Doctor Kaplan says this.

25 THE COURT: But he didn't say that did he?

1 MR. RAINIS: And he didn't say and Doctor Kaplan
2 says. He didn't quite say that, but that's essentially what
3 he said.

4 MR. ROBERTA: I think some of also what the problem
5 is he's relying upon undisclosed sources, as well. He said
6 I do it my research in this and none of that was attached to
7 his disclosure.

8 MR. KELLY: He's a physician entitled to rely on
9 the customary material relied upon by physicians. He
10 doesn't have to disclose it all. That's black letter law in
11 New York. He is allowed to rely on.

12 MR. ROBERTA: Is that case law on that?

13 MR. BAXTER: Does he have to say what it is?

14 MR. ROBERTA: He does have to say what it is, yes
15 he does.

16 MR. KELLY: Okay, so every time he's answers a
17 question he says I went to school and at school they taught
18 me this and we went through. No he's not every time he's
19 ask question I went to -- off, off the.

20 THE COURT: I think it's like right up to the line
21 but I think it's okay. If you keep him away from the, you
22 know, and Kaplan told me and I like copied and pasted it
23 into my thing. I think like somewhere there's a little
24 distance where -- like he's free to adopt or reject
25 whatever, you know -- I know you're kinds of making a face,

1 Mr. Rainis, I get it. I'd like I said it's close to the
2 line. It's not quite there.

3 MR. ROBERTA: It's an out of court statement not
4 for the truth of the matter asserted.

5 THE COURT: No it isn't, it isn't. He's saying I
6 consulted with my colleague who gave me some information or
7 shared his opinion, and based on that opinion he shared, my
8 recommended treatment plan is X Y Z, no?

9 MR. KELLY: That's correct.

10 THE COURT: Okay, so I think it stays in. You guys
11 go out. I want to talk to my court attorney for a second.

12 (Whereupon, the following takes place in open
13 court, in the presence of the defendant and the sworn jury.)

14 THE COURT: Okay, let's continue.

15 DIRECT EXAMINATION

16 BY MR. KELLY:

17 Q Doctor Grimm, is it a normal part of your work to
18 create care plans for patients?

19 A Yes.

20 Q And in the course of creating such care plans, do you
21 consult with other treating physicians and colleagues?

22 A Yes.

23 Q Have you adopt their recommendations occasionally
24 creating such plans?

25 A Yes.

1 Q Do you apply your independent skill, and knowledge to
2 creating such plans?

3 A Yes.

4 Q Based on input from colleagues?

5 A Yes.

6 Q And it's normal and customary for you in care and
7 treatment of patients to rely on conversations and discussions
8 with colleagues?

9 A Yes.

10 Q Did you design a lifetime care plan for Mr. Herrera for
11 his left foot?

12 Orthopedic surgery visits for his left foot?

13 A Yes.

14 Q And is there a cost associated with those visits?

15 A \$300 per visit.

16 Q How many times a year do you anticipate those visits to
17 be?

18 A Up to four times a year.

19 Q And do you also plan for Mr. Herrera's medical care to
20 include visits with an orthopedic spinal surgeon?

21 A Yes.

22 Q And what is the cost of those visits?

23 A \$500.

24 Q And is there a frequency with which you project those
25 visits?

1 A I'd say roughly once a year.

2 Q Over his lifetime; is that correct?

3 A Yes.

4 Q Do you project lumbar steroid injection series for Mr.
5 Herrera over the course of his lifetime?

6 A Yes, as his condition progresses and he has radiating
7 pain.

8 Q Is there a cost affiliated with those lumbar steroid
9 injections?

10 A Cost of \$1,200 for the injection, and \$2,000 for the
11 facility costs.

12 Q And what is the frequency with which those are
13 projected over Mr. Herrera's lifetime?

14 A I find that patient in his condition the average can be
15 roughly, approximately, three every two years for a lifetime.

16 Q And do you project cervical steroid injections for Mr.
17 Herrera over his lifetime?

18 A Yes.

19 Q Is there a cost affiliated with that?

20 A The same \$1,200 per injection, plus a \$2,000 facility
21 cost.

22 Q What is the frequency with which Mr. Herrera's
23 projected to have these treatments?

24 A Again, for systematic relief up to three injections
25 every two years on average for lifetime.

1 Q You project trigger point injections for Mr. Herrera
2 over his lifetime?

3 A Yes.

4 Q Is there a cost affiliated with such projections?

5 A \$300 per set.

6 Q And what is the frequency with which you anticipate Mr.
7 Herrera will get these injections?

8 A Again, on average, one set every three months for
9 lifetime duration for the cervical lumbar spine, as needed.

10 Q Did you plan future treatment for physician therapy for
11 Mr. Herrera?

12 A I feel he'd benefit from, yes, structured therapy to
13 assist with home and monitoring home exercises and stretching.

14 Q Is there a cost affiliated with physician therapy?

15 A \$100 to \$150 per visit.

16 Q Is there a frequency with which Mr. Herrera should
17 attend such therapy?

18 A I recommend once or twice a month.

19 Q Do you project occipital nerve block injections for Mr.
20 Herrera over his lifetime?

21 A Yeah, as needed for occipital headaches.

22 Q Cost associated with that?

23 A \$800.

24 Q What is the frequency with which you anticipate Mr.
25 Herrera will receive these occipital nerve block injections?

1 A Up to three times a year for lifetime.

2 Q Did you project a spinal cord stimulator for Mr.
3 Herrera?

4 A We have discussed the spinal cord stimulator in the
5 office. It is an excellent treatment option for patients who
6 chronic pain and who have diagnoses failed neck and back
7 syndrome. The spinal cord stimulator is a device where like I
8 said earlier if everything structurally is okay, but they're
9 having nerve related pain after surgery, and initial trial is
10 done where a lead or cable is put into the epidural space where
11 the medication's going before, but this cable is inserted up to
12 an area and it has leads on it they get fired at a very fast
13 rate, and what it does is just sort of stimulates your brain an
14 just sort of override the pain signal. And the way patients
15 have describe it to me as this sort of nerve pain just sort of
16 washes away while the stimulators on. There's a trial first
17 where you wear this device for one week, and the battery is sort
18 of taped on the side of your body. If that works, then the
19 trial gets removed and a permanent device will get placed.
20 That's why I sort of really like that procedure because patients
21 get to test drive it before doing anything permanent. The
22 permanent one will then be placed in the battery instead of
23 being taped on your body is actually just inserted under the
24 skin, that's similar to pacemaker battery. And I have discussed
25 it with Mr. Herrera. I feel he would be an excellent candidate.

1 Resources haven't been available to really proceed --

2 Q Doctor, have you performed such surgery yourself?

3 A I probably 30 a year.

4 Q Okay, and is there a cost affiliated with the trial?

5 A Yes.

6 Q Tell the jury what the cost is for the trial?

7 A The cost of the trial again for the week is
8 approximately \$25,000 that's including facility costs, equipment
9 costs, and physician costs.

10 Q And is there a cost affiliated with the permanent
11 implantation of spinal cord stimulator?

12 A The permanent implantation is the cost of approximately
13 \$50,000. Most of that cost is involved in the battery, the
14 device itself is the battery costs I believe it's about \$30,000.
15 And so that is -- and then the rest of the cost is, again, the
16 physician cost, the facility cost.

17 Q Does that battery have to be replaced?

18 A It does need to be replaced depending on the use it
19 gets fired at a frequency. Some patients again this is
20 something that gets tweaked and adjusted over time. Some
21 patients like it to be firing at very high frequency, so they
22 burn through their batteries quite quickly. And some people
23 like it at a much lower frequency, so those ones last a little
24 longer. So, I'd say the average replacement can be somewhere
25 between 3 to 7 years; and some people have gone on to like ten

1 years or so. But the earliest is about three years.

2 Q Is there a fee affiliated with the battery replacement?

3 A Yes. Again, it's about \$30,000 for the battery, and
4 then \$5,000 physician fee, and \$2,000 for the facility fee.

5 Q How frequently does the battery need to be replaced?

6 A Like I said, it's uses possibly at high frequency it
7 can be as early as like 3 to 5 years or upward of 7 to 10 years.

8 Q Okay, and that's for Mr. Herrera to use over the
9 lifetime; is that correct?

10 A Yes, if, again, provided the --

11 Q Doctor?

12 A Yes.

13 Q Is a separate spinal cord stimulator required for Mr.
14 Herrera's cervical spine?

15 A Yes, if he liked it for the lower back or the neck
16 whichever he tried first, then he would proceed with the trial
17 for the other and generally if he likes high frequency two
18 battery would be needed.

19 Q All right and is the cost the same --

20 A Yes.

21 Q \$5,000 for the trial?

22 A Yes.

23 Q And is the cost the same for the permanent implantation
24 in the neck as it is for the low back?

25 A Yes.

1 Q And is the battery replacement costs, physician's fees
2 and facility fees the same?

3 A Yes.

4 Q All right, and is there any difference between the pace
5 at which the cervical battery has to be replaced? Or is that
6 the same?

7 A Again, it all depends on the patient's use of it. So,
8 it's about the same.

9 Q Okay, 3 to 5 or 7 to 10?

10 A Yeah depending on how fast they go through it.

11 Q Did you make a plan which includes MRIs for Mr.
12 Herrera's lumbar spine?

13 A Yes.

14 Q And what is the cost of those MRI?

15 A Approximately \$1,300 every five years to monitor his
16 back.

17 Q Did you plan for MRI of the cervical spine?

18 A Yes.

19 Q And what's the cost of that?

20 A \$1,300 every five years over a lifetime.

21 Q And did you plan for MRI of the right shoulder?

22 A Yes.

23 Q And what is the cost of that?

24 A \$1,300 same every five years.

25 Q And did you prescribe an MRI of the left foot?

1 A Yes.

2 Q And tell us the cost there?

3 A At \$1,300 every five years. And it can be -- these are
4 just estimates -- if they are having pain. It's not like I tell
5 a patient, oh, you have to wait five years. And if they are
6 doing very well, it can be a bit more. I'm just giving an
7 average.

8 Q There is your plan consultation with other treating
9 physicians reflect upon the usual customary material you apply
10 and your examination of Mr. Herrera?

11 A Yes.

12 THE COURT: Slow down Mr. Kelly.

13 Q Your examination of Mr. Herrera, correct?

14 A Yes.

15 Q And did you prescribe x-rays for Mr. Herrera's lumbar
16 spine over the course of his lifetime?

17 A Yes, approximately every six-month cost of \$400.

18 Q Did you prescribe x-rays for Mr. Herrera's cervical
19 spine?

20 A Yes.

21 Q And is that over his lifetime?

22 A Yes.

23 Q What is the cost of that?

24 A Same every six months at a cost of \$400.

25 Q And did you prescribe x-rays for Mr. Herrera's right

1 shoulder?

2 A Yes.

3 Q What is the frequency?

4 A The same.

5 Q And the cost?

6 A The same.

7 Q And did you prescribe x-rays of Mr. Herrera's left
8 foot?

9 A Yes.

10 Q And the frequency for that?

11 A The same.

12 Q And the cost?

13 A The same.

14 Q Tell the jury, if you would, what EMG or NCV?

15 A EMG is a test that is done, so when I was discussing
16 earlier, about radiculopathy and the nerves being inflamed to
17 not having signal. The way I describe it to patients is sort of
18 thinking as a water hose it's now kinked and everything down
19 stream starts to die, whatever, it's watering grass. Whereas
20 the nerve is supplying water to the muscles and now if it's
21 being kinked the muscles will start to die. And EMG will just
22 pickup on that at a level, even if they are not showing weakness
23 it will show that starting to become some damage to the muscle.
24 And it will sort of tell us which nerves are involved depending
25 on which muscle is affected. And the EMG also give us an

1 ongoing issues if there's new damage, then we'll see high sort
2 of action potentials on the test. If it's old chronic damage,
3 then they are very small and low and we'll see different types
4 of findings on the EMG.

5 So, it can be helpful to determine if it's still just a
6 chronic issue or if because of some adjacent issue's going on
7 there's now a new acute issue happening, so that's why it's safe
8 to order get period EMG just to make sure it's either still just
9 a chronic issue or if it's not turned into acute or chronic.

10 Q Do you plan for EMG/NCV study for Mr. Herrera's upper
11 extremity over his lifetime?

12 A Yes.

13 Q And is there a cost affiliated with that?

14 A \$2,000 per study.

15 Q And what's the frequency of that study?

16 A Five years.

17 Q And did you prescribe EMG/NCV studies for Mr. Herrera's
18 lower extremity?

19 A Yes.

20 Q Over the course of his lifetime?

21 A Yes.

22 Q And what's the cost of that?

23 A \$2,000.

24 Q And frequency?

25 A Five years.

1 Q Now, this plan that you've made admittedly it's an
2 optimal plan, the best care for Mr. Herrera?

3 A Yes, I don't want to give and I don't think it would be
4 good to give a second best plan or crappy plan. Yes.

5 Q That's fine?

6 A I prefer to -- this is in an ideal world.

7 Q Okay, and the recommendations in your plan, Doctor, do
8 you have an opinion, to a reasonable degree of medical
9 certainty, whether the recommendations you make in your plan are
10 caused by the accidents to Mr. Herrera of March 5, 2013?

11 A Yes.

12 Q And what is that opinion?

13 A It's with a reasonable degree of medical certainty,
14 these recommendations are related to that accident.

15 Q Okay, doctor, if you weren't here with us today, what
16 would you be doing?

17 A I had to cancel my entire afternoon of patients and its
18 jacked up my scheduled for next week or so.

19 Q Is your office charging a fee for your appearance here
20 today?

21 A My office is charging yes a fee of, I believe, \$8,500
22 for my time.

23 Q Did you prepare certain reports in this case?

24 A Yes.

25 Q Is your office charging a fee from to those reports?

1 A Yes.

2 Q Do you know what it is?

3 A I think it's \$700. I think the first one is \$750 and
4 then each subsequent is \$450, but I'm not -- I believe that's
5 what it is.

6 Q All right. And, doctor, have I done an examination of
7 you in court before?

8 A Yes.

9 Q Probably over the last ten years, three times?

10 A With you, yeah. Three times or so.

11 Q Okay.

12 MR. KELLY: Doctor, I appreciate your time. I have
13 no further questions for you. Thank you.

14 MR. ROBERTA: Judge, can we just speak for one.

15 (Whereupon, the following discussion takes place in
16 the robing room among the Court and Counsel, outside the
17 hearing of the sworn jury.)

18 THE COURT: All right, Mr. Roberta.

19 MR. ROBERTA: So, obviously elicited twice
20 testimony regarding cost. We had a ruling that that was not
21 suppose to happen, it happened. And I didn't want to inject
22 on the spot because then that just draws more attention to
23 the testimony that wasn't supposed to come in. I'd like to
24 renew our application and just ask the doctor if he's a
25 named defendant in a Ricco suit, Federal Ricco suit, two of

1 them. I think it's the only fair way to proceed.

2 There was a motion in limine they weren't allowed
3 to negligence that, it got mentioned. I think it would be
4 allowed to ask --

5 THE COURT: It got mentioned? How did it get
6 mentioned.

7 MR. ROBERTA: It got mentioned the cost. The
8 doctor elicited the testimony he couldn't afford the
9 treatment.

10 MR. KELLY: He said if they are available.

11 MR. ROBERTA: Resources, resource is available.

12 THE COURT: Hold on don't talk over each other.
13 What did you think he said Mr. Roberta.

14 MR. ROBERTA: He said resources available. The
15 exact thing he wasn't supposed to say from this morning. He
16 said it twice.

17 THE COURT: So, I can barely hear the guy. It's so
18 hard to hear. What do you think he said, I will have
19 Lorraine read it back.

20 MR. KELLY: He said generally patients if resources
21 are available will avail themselves of these, whatever it
22 was. But he didn't say this patient doesn't have the
23 resources. That's completely mischaracterization.

24 THE COURT: First of all, I'm not, we're not -- the
25 Ricco stuff is not coming in. Nice try Mr. Roberta.

1 MR. ROBERTA: We have a ruling that we weren't
2 suppose to say it.

3 THE COURT: I respect your zealous advocacy. It's
4 not coming in. I do agree, I don't think -- that's not what
5 I was contemplating with my ruling.

6 MR. ROBERTA: He said resources available.

7 THE COURT: I know, but we were talking about
8 specifically with testimony that how would this guy know
9 that this plaintiff doesn't have the money and that's the
10 reason why he didn't follow-up with certain recommended
11 treatment, that's what we were talking about. And I already
12 gave you a ruling that we're going to deal with that. If
13 you guys want to bring it in, you can talk to plaintiff
14 about that. So I don't think, I don't think we're at
15 that --

16 MR. ROBERTA: I just thought the testimony was
17 elicited contrary to the ruling this morning that was my
18 opinion, Judge.

19 THE COURT: I disagree, but I respect your --

20 MR. ROBERTA: Thank you.

21 THE COURT: Desire to raise that. Okay, let's step
22 out.

23 (Whereupon, the following takes place in open
24 court, in the presence of the defendant and the sworn jury.)

25 CROSS EXAMINATION

1 BY MR. RAINIS:

2 Q Doctor Grimm, you have your records in front of you?

3 A Yes.

4 Q Could you just tell us when the last time it is that
5 you saw Mr. Herrera, the date?

6 A The last time was August 14, 2024.

7 Q Okay, so a month and a half or two months ago,
8 something like that?

9 A Yes.

10 Q And when was the time before that?

11 A Time before that was May 15, 2024.

12 Q Okay. Now, can you tell us, please, when was the last
13 time that he saw Doctor Sheskier his foot orthopedic surgeon?

14 A I don't have an exact date, but I believe it's been
15 sometime.

16 Q Okay, how about when is the last time he saw the
17 orthopedic surgeon in your practice group Doctor Kaplan?

18 A Doctor Kaplan I believe he'd seen --

19 Q Withdrawn. The question -- let me ask you this. Are
20 you aware that Doctor Kaplan was here testifying yesterday?

21 A Yes.

22 Q Did you speak with him about your testimony before
23 coming in today?

24 A Yes.

25 Q What did you say to him and what did he say to you

1 about testifying?

2 A I said -- he asked about you.

3 Q He had nice stuff to say, right?

4 A What?

5 Q He said nice sufficient to say, right?

6 A He said you were very respectful.

7 Q Are you aware that when he was here yesterday, Doctor
8 Kaplan said that the last time he treated the patient was in
9 2021, and that he had never told the patient to come back for
10 any schedule four time a year visits, but rather come back as
11 the need arises, are you aware of that?

12 A No.

13 Q And that would be in contravention of the plan you just
14 gave us about what the orthopedic visits are required and how
15 frequently they are going to be required in the future, correct?

16 A It's just average.

17 Q Now, when is the last time Mr. Herrera saw his spine
18 surgeon Doctor Brisson?

19 A I believe it's been sometime.

20 Q Doctor Brisson was here I think on Monday? I forget.
21 And he testified, as I recall it, that he last saw the patient
22 six years ago. And he had not seen him since, and he was not
23 seeking to see him with any frequency. And that would be in
24 contravention in what you just told the jury would be required
25 for future plan for Mr. Herrera, correct?

1 A I'm just giving you what I think an ideal plan would
2 be. I'd prefer to see a surgeon, if I had surgery. But, yes, I
3 know Brisson does not always follow.

4 Q And you would defer to the spine surgeon with respect
5 to how frequently the patient should see his spine surgeon,
6 correct?

7 A I think it's up to the spine surgeon and the patient.

8 Q And you would defer to Doctor Kaplan in terms of how
9 often, in fact, you asked Doctor Kaplan, you had said you asked
10 Doctor Kaplan this question, but you would certainly defer to
11 him in terms of how frequently Mr. Herrera needs orthopedic
12 evaluation, correct?

13 A Yeah, a lot of this is symptom dependent. If they are
14 having symptoms, you come in sooner. If you're not --

15 Q When is the last time you administered any injection of
16 any kind to Mr. Herrera?

17 A It's been quite sometime. We've discussed them, but I
18 believe for one reason or another we have not proceeded.

19 Q I'm sorry what?

20 A We discussed them in the office I offered them.

21 Q When is the last time you administered any injection of
22 any type to Mr. Herrera?

23 A I don't have an exact date. I can go through -- it's
24 been sometime.

25 Q In years we'd agree?

1 A Yeah.

2 Q Over five years?

3 A That I don't know.

4 THE COURT: What was the answer to that?

5 THE WITNESS: That I'm not sure. I'd have to go
6 through and look.

7 Q When is the last time you prescribed physician therapy
8 for Mr. Herrera?

9 A I recommend therapy every visit. Resources aren't
10 available, so I can't prescribe it, if he can't get it.

11 MR. ROBERTA: Objection.

12 THE COURT: Sustained. The jury is directed to
13 disregard that last question and answer.

14 Q When you recommend physician therapy, in order to get
15 physician therapy, doesn't a patient need a prescription?

16 A Yes.

17 Q Did you give him a prescription?

18 A Not if he can't get it.

19 Q When is the last time he had physician therapy?

20 A It's been years.

21 Q What medications is he taking currently for his
22 condition that you're treating him for?

23 A Currently he's -- as we talked about in his last visit,
24 he's getting -- buying over the counter medications.

25 Q And the plan that you came up with for his future care,

1 that was memorialized in your report dated September 25th of
2 this year?

3 A Yes.

4 Q Just what 5 or 6 days ago?

5 A Yes.

6 Q And you were asked to come up with that plan by the
7 plaintiff's lawyers for use at trial, correct?

8 A Yes.

9 Q Now, in your report it says that -- it doesn't say that
10 he's gonna need a spinal cord stimulator, but rather that he is
11 a candidate for someone who might need a stimulator, correct?

12 A Yes, I've discussed it with him. And feel he's good
13 candidate.

14 Q And it's true that in more than 50 percent of the
15 people who have a trial of spinal cord stimulators, don't get
16 benefit from it, correct?

17 A No. I'd say if selected properly, I have success rate
18 in the 70 to 80 range of patients proceeding on a permanent.

19 Q When was the last time you got an MRI of Mr. Herrera?

20 A Again, I've tried to send him for MRIs for one reason
21 or another we haven't been able to. His last MRI was dated --

22 Q Other than the -- can you other than the visit, you
23 talked about in your report in preparation for trial. Can you
24 tell me the last time in your office record there's a
25 prescription for that you wanted him to get an MRI of anything?

1 A I know we've discussed it, and he's been reluctant
2 to --

3 Q Can you point other than the last --

4 MR. KELLY: Can the witness complete his answer
5 before he shout over him.

6 THE COURT: Hold on, hold on, hold on. She can't
7 takedown multiple people talking over each other. There was
8 an objection, correct?

9 MR. KELLY: I apologize. I objected. :

10 THE COURT: Approach. Lorraine can you read that
11 back.

12 (Whereupon, there is a discussion held in the
13 robing room, outside the presence of the jury.

14 Whereupon, the Court Reporter reads back the
15 requested testimony.)

16 THE COURT: Look if it's nonresponsive it's
17 nonresponsive. Make your objection. Because he's not
18 responding to your question and that's not really what's
19 supposed to be coming in, unless you have another
20 suggestion. But your wincing Mr. Kelly. :

21 MR. KELLY: So, the they're creating a false
22 impression. Workers comp has to approve the MRI before he
23 issues a prescription for MRI.

24 MR. ROBERTA: That's not the case --

25 MR. KELLY: Workers Comp has to approve MRIs and

1 all this other treatment. They can't just raise the
2 impression that he's willy-nilly not doing the treatment.
3 And so the doctor's not going to have a prescription in his
4 records because workers compensation didn't approve it.

5 THE COURT: You can ask him that on redirect,
6 can't you? I mean.

7 MR. KELLY: I can.

8 THE COURT: And so the questions pretty simple it
9 was when is the last time there was a prescription for MRI?
10 I don't know, or last Tuesday or five years ago. But then
11 if he starts going off, that's on you.

12 MR. RAINIS: Understood.

13 THE COURT: Okay, anything else anyone wants to put
14 on.

15 MR. RAINIS: Excuse me?

16 MR. BAXTER: He's not on comp.

17 MR. KELLY: Not now.

18 THE COURT: Keep it on.

19 MR. RAINIS: The thing is, and my understanding of
20 the process for workers compensation, I have to put in a
21 request for authorization which is essentially a
22 prescription saying I want him to get an MRI, workers comp
23 will say yes or no, and then he will or won't.

24 MR. KELLY: Yes.

25 THE COURT: Ask him what you want to ask him.

1 MR. RAINIS: Okay.

2 THE COURT: If he starts going off track, that's on
3 you.

4 MR. RAINIS: Got it.

5 THE COURT: And you've already heard my ruling, so.

6 MR. RAINIS: Understood. Thank you.

7 THE COURT: Everybody out. I need to talk to my
8 court attorney.

9 (Whereupon, the following takes place in open
10 court, in the presence of the defendant and the sworn jury.)

11 THE COURT: Back on the record. Why don't we start
12 fresh.

13 CROSS EXAMINATION

14 BY MR. RAINIS:

15 Q When's the last time, and you had time to look now?

16 A Yes, I got it.

17 Q When is the last time you prescribed an MRI for Mr.
18 Herrera?

19 A So, I mean just looking back through, I've been
20 recommending an updated MRI and EMG, like in the 2023 visit,
21 2022. Back into -- so here I found it. This one is before the
22 2024 ones. February 2023, recommended update MRI/EMG, May of
23 May of 2022. Again, recommending update MRI and EMG. February
24 of 2022, again, was recommending update. So I have been
25 recommending it at our subsequent visits we --

1 Q Did you give him a prescription to get it done?

2 A I believe I did at one visit give him prescriptions to
3 get it done and he wasn't able to.

4 Q In the 11 or so years that you've been treating Mr.
5 Herrera, has any of the treatment that you've given him
6 significantly reduce his pain for any significant period of
7 time?

8 A Uhm, again, giving him some of the trigger points, the
9 SI injections has reduced his pain.

10 Q For how long?

11 A It was temporarily relief. The pain would return and
12 he's presently dealing with it.

13 MR. RAINIS: Thank you. I think that's all I have.

14 MR. ROBERTA: No questions, Your Honor.

15 MR. BAXTER: No.

16 REDIRECT EXAMINATION

17 BY MR. KELLY:

18 Q Doctor, the plan that you created for Mr. Herrera, what
19 is the standard that you use?

20 Is it the minimal care possible? Is it the ideal plan
21 for a person in pain? Is it the best medical practice, or
22 something else?

23 A It would be what I would consider the best plan for a
24 patient with his symptoms after surgery, and the best thing to
25 offer them for monitoring, as well as treatment.

1 Uhm, and if the resources are available, they can
2 either take me up on it or not.

3 Q Would it be substandard practice to prescribe something
4 less than the best care plan for Mr. Herrera?

5 A I don't think it would be. Again, I'm trying to treat
6 their pain. I generally don't like to practice suck it up
7 medicine. Meaning just suck it up, take the pain. I would
8 prefer to offer things to try and treat it and bring it down.

9 MR. KELLY: I have nothing further for doctor.
10 Thank you.

11 MR. RAINIS: No questions.

12 THE COURT: Okay, thank you doctor. You can step
13 down.

14 MR. KELLY: I have no further witnesses for today,
15 Judge.

16 THE COURT: All right, folks. We're going to break
17 for today. We'll start backup tomorrow at 9:30. Thank you
18 again for your attention and just be reminded again that you
19 can't discuss the case with each other or anyone else and no
20 outside research. Thank you. See you in the morning.

21 THE COURT OFFICER: All rise jury exiting.

22 (Whereupon, the sworn jurors exit the courtroom.)

23 THE COURT: See you tomorrow.

24 (Whereupon, the trial is adjourned to 10-03-2024.)

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