

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABIGAIL M. RODRIGUEZ,

Plaintiff, Index No.: 24-CV-4037

-against-

PSC INDUSTRIAL OUTSOURCING,
LP, and SYED ZAIDI,

Defendants.

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October 8, 2025
10:00 a.m.

EXAMINATION BEFORE TRIAL of

VADIM LERMAN, D.O., a Nonparty witness, taken by the
attorney(s) for the Defendant, pursuant to Order,
held via Zoom Workplace, before THERESA RATIGAN, a
Certified Shorthand Reporter and Notary Public within
and for the State of New York.

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

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BY: MICHAEL J. SCHACHER, ESQ.
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(File No.: SEDGCJ-1355752)

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BY: MICHAEL J. KEANE, JR., ESQ.
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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED

by and between the parties hereto, through their
respective counsel, that the certification, sealing,
and filing of the within examination will be, and the
same are hereby waived;

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

IT IS FURTHER STIPULATED AND AGREED that
the within examination may be signed before any
Notary Public with the same force and effect as if
signed and sworn to before this Court.

V. Lerman, D.O.

(Time noted: 10:04 a.m.)

(WHEREUPON, the New York Reporter
Statement for Remote Proceedings was read,
after which the following transpired:)

MS. MILORAVA-KELMAN: Mari
Milorava-Kelman, Cherny & Podolsky, PLLC;
consent.

MR. SCHACHER: Michael Schacher, Gordon,
Rees, Scully & Mansukhani for the defendants;
consent.

MR. KEANE: Michael Keane with Garfunkel
Wild, attorney for Dr. Lerman; we consent.

(Identification of witness verified)

V A D I M L E R M A N, D.O., a nonparty witness
herein, after having first been duly sworn by a
Notary Public of the State of New York, upon being
examined, testified as follows:

BY THE REPORTER:

Q Please state your name for the record.

A Vadim Lerman.

Q And your address, sir, for the record?

A 115 Eileen Way, Syosset New York.

EXAMINATION BY MR. SCHACHER:

Q Good morning, Dr. Lerman. My name is

V. Lerman, D.O.

Michael Schacher, and I'm an attorney with the law firm of Gordon and Rees, and we represent the defendants in a lawsuit titled Abigail Rodriguez versus PSC Industrial and Syed Zaidi pending in the Eastern District Federal Court of New York. I'm gonna be asking you questions today about Ms. Rodriguez, her treatment, and other related questions.

Before we start, can you hear me okay, sir?

A Yes.

Q Okay. I'm gonna go over some preliminary ground rules before we start questioning you. Well, first of all, let me mark the subpoena that we served.

MR. SCHACHER: We're gonna mark this as Defendants' A, just bear with me here (displaying).

Q Sir, let me know if you can see my screen.

A You're asking me to -- if I see your screen?

Q Yes. Yes.

A Yes. Yes.

1 V. Lerman, D.O.

2 MR. SCHACHER: Okay. So we're marking
3 this as Defendants' A. I'm just gonna scroll
4 through slowly here.

5 (WHEREUPON, the above-referred-to
6 document, Subpoena to Testify at a Deposition
7 in a Civil Action, dated July 2, 2025, three
8 pages, was marked as Defendants' Exhibit A,
9 for identification, as of this date.)

10 MR. KEANE: And just for the record, I'm
11 gonna have a standing objection that the
12 exhibits used here are not -- he -- Mr. Lerman
13 does not have access to move on the things
14 shown to him by plaintiff's counsel at his
15 discretion.

16 MR. SCHACHER: I'm sorry, I didn't -- I
17 didn't get that, Mickey.

18 What was that?

19 MR. KEANE: Just a standing objection for
20 exhibits, I always put it on Zoom where if
21 you're just showing him the exhibits versus
22 him actually having a copy in front of him, he
23 doesn't have -- you're showing him the parts
24 you want to at your discretion. I'm just --

25 MR. SCHACHER: Okay.

1 V. Lerman, D.O.

2 MR. KEANE: -- noting it for the record.

3 MR. SCHACHER: Okay.

4 Q Sir, have you had an opportunity to look
5 at -- to review Defendants' A?

6 A Excuse me?

7 Q Have you had an opportunity to review
8 Defendants' Exhibit A?

9 A What's Defendants' Exhibit A?

10 Q It's what I'm showing you on the screen.
11 Can you see it okay?

12 A Yes, I see it.

13 Q Okay. Are you able to read it, or -- or
14 are you too far away?

15 A It's hard to read, but --

16 Q Okay.

17 MR. KEANE: I can put it on the lap- -- I
18 can put it on the laptop --

19 MR. SCHACHER: Yeah.

20 MR. KEANE: -- for him.

21 MR. SCHACHER: We may need to do that,
22 Mickey, because there's gonna be other
23 exhibits, and if he can't -- and smaller
24 than -- you know, the writing may be smaller
25 than this, so --

1 V. Lerman, D.O.

2 MR. KEANE: Let me just log into the
3 Zoom -- if we could just go off the record.

4 MR. SCHACHER: Yeah.

5 (Discussion held off the record)

6 MR. SCHACHER: Okay. So the witness --
7 Mr. Keane has provided the witness with a
8 laptop so -- so he can see the exhibits more
9 clearly.

10 Q Okay. I'm just gonna scroll through
11 Exhibit A again, Doctor.

12 Okay. Have you had an opportunity to
13 look at Defendants' A, sir?

14 A Yes, I looked at it.

15 Q Okay. Can you see it more clearly now?

16 A Yes.

17 Q Okay. Have you seen this document
18 before?

19 A Yeah, it came.

20 Q I'm sorry, I didn't get that.

21 A Yes.

22 Q Okay. And when did you see it -- when --
23 when -- when did you review it?

24 A I don't know. Whenever it was --
25 whenever it was sent to our office.

1 V. Lerman, D.O.

2 Q Okay. All right. So this is --
3 obviously, the document indicates that we -- the
4 caption of the matter, Abigail Rodriguez versus PSC
5 Industrial, that my office subpoenaed you for a
6 deposition in this case on July 2nd of this year.

7 Do you see that, Doctor --

8 A Yes.

9 Q -- on page 1 of Exhibit A?

10 And I'll represent to you that -- well,
11 is it your understanding that this deposition did not
12 proceed, obviously, on July 2nd and has been
13 rescheduled, I believe, twice; is that your
14 understanding, Doctor?

15 A Correct.

16 Q Okay. And you and I have never spoken
17 before; correct?

18 A No.

19 Q Okay. Okay. Okay. And where are you
20 currently testifying from today?

21 A 900 Stewart Avenue.

22 Q Okay. So I'm just gonna go over --
23 Stewart Avenue in what city?

24 A Garden City.

25 Q Okay. And you're at your -- your

1 V. Lerman, D.O.

2 attorney's office currently?

3 A Correct.

4 Q Okay. And who is your counsel?

5 A Mickey Keane.

6 Q Okay. And what law firm is Mickey --

7 Mr. Keane with?

8 A Garfunkel and Wild.

9 Q Okay. All right. So I'm gonna go over
10 some preliminary ground rules before we start.

11 If you don't understand a question that
12 I've asked, just let me know and I'll try to rephrase
13 it so you can understand it.

14 Do you understand that?

15 A I do.

16 Q If you've answered a question that I've
17 asked, the assumption is that you understood that
18 question; fair?

19 A Correct.

20 Q Okay. If at any time you need to take a
21 break, that's perfectly fine, I just ask that you
22 answer the question that's pending before we break;
23 okay?

24 A Yep.

25 Q And then lastly, we want all your answers

1 V. Lerman, D.O.

2 to be verbal so the court -- so Teri can take down
3 your testimony. So no "uh-huh," no nodding of the
4 head, everything has to be verb- -- verbalized;
5 understand -- understood?

6 A Yes.

7 MR. SCHACHER: Okay. Mickey, can we move
8 that laptop away from the witness?

9 MR. KEANE: Yep.

10 MR. SCHACHER: All right. Great.

11 Q Okay. Dr. Lerman, have you ever appeared
12 for a deposition before?

13 A Yes.

14 Q Okay. And when did you appear?

15 A A couple of times. I don't know the
16 exact dates.

17 Q Okay. And -- and lastly, I -- what I
18 should have said earlier is, your attorney and I are
19 okay with you approximating in terms of time, so can
20 you approximate for us when you appeared for
21 depositions previously?

22 A I really don't recall a time. Maybe
23 three months ago, four months ago. I -- I don't
24 remember.

25 Q Okay. Was that the only time that you've

1 V. Lerman, D.O.

2 appeared for a deposition, or you've appeared
3 previously?

4 A No. I've been in a couple depositions
5 before.

6 Q Okay. Were those related to personal
7 injury cases?

8 A Yes.

9 Q Okay. And do you recall the cases, or --
10 or not?

11 A I do not.

12 Q Okay. Do you recall the -- were you
13 rep- -- were you a -- a surgeon for the plaintiffs in
14 those cases?

15 A Yes. Correct.

16 Q Okay. And do you recall the plaintiffs'
17 firms that you -- that were representing the
18 plaintiffs at that -- in those cases?

19 A No.

20 Q Okay. All right. So plaintiff, I'll
21 represent -- are you -- do you know who represents
22 the plaintiff in this case, Abigail Rodriguez?

23 MS. MILORAVA-KELMAN: Note my objection.

24 MR. KEANE: Can you repeat the question?

25 Q Do you know who represents the plaintiff

1 V. Lerman, D.O.

2 in this case?

3 MS. MILORAVA-KELMAN: Note my objection.

4 You can --

5 MR. KEANE: You could still answer.

6 THE WITNESS: Oh.

7 MR. KEANE: I'll give you a guide. When
8 somebody says "objection," unless I say don't
9 answer, you could always answer.

10 A Yes. I was able to see right now on
11 subpoena, Cherny & Podolsky.

12 Q Okay. And have -- have you ever
13 testified for a plaintiff in a prior case that was
14 represented by Cherny & Podolsky?

15 MS. MILORAVA-KELMAN: Note my objection.

16 A I testify on behalf of my patient,
17 correct.

18 Q Okay. But specifically, was that patient
19 represented by Cherny & Podolsky?

20 A Correct.

21 MS. MILORAVA-KELMAN: Note my objection.

22 Q Okay. So I just want to be clear.

23 So you previously appeared to testify in
24 other depositions on behalf of patient plaintiffs
25 that were represented by Cherny & Podolsky; is that

1 V. Lerman, D.O.

2 accurate?

3 A Yes.

4 MS. MILORAVA-KELMAN: Note my objection.

5 Q Okay. And how many times have you
6 testified for patient plaintiffs that were rep- --
7 that were represented by Cherny & Podolsky?

8 MS. MILORAVA-KELMAN: Note my objection.

9 A I do not remember.

10 Q Okay. Well, can you approximate for us;
11 was it one time that you testified for -- on behalf
12 of plaintiff patients that was represented by Cherny
13 & Podolsky, or was it a few times, can you
14 approximate?

15 MR. KEANE: Or -- or not.

16 MS. MILORAVA-KELMAN: Note my objection.

17 A Including this one, probably about three,
18 four times.

19 Q Okay. Was that depositions or -- or at
20 trial?

21 MS. MILORAVA-KELMAN: Note my objection.

22 A I don't remember.

23 Q Well, do you know if it was a -- a
24 mixture with depositions and trial or -- or not?

25 A It was a mixture.

1 V. Lerman, D.O.

2 Q Okay. And do you know when those three
3 or four times that you testified on behalf of
4 plaintiff patients that were represented by Cherny &
5 Podolsky, do you remember when that was in terms of
6 time?

7 A No, I don't.

8 Q Okay. Have you testified on behalf of
9 other plaintiff patients for other plaintiffs' firms
10 in your career?

11 A Yes.

12 Q Okay. Do you recall the other firms that
13 you -- do you recall these other firms, the names of
14 them?

15 A I don't recall the other firms.

16 Q Okay. Were any of these plaintiff
17 patients -- any of these plaintiff patients that you
18 testified on behalf of, were they represented by the
19 Liakas firm in New York City?

20 MS. MILORAVA-KELMAN: Note my objection.

21 MR. KEANE: You can answer.

22 A Yes, I think so.

23 Q Okay. And do you recall how many times
24 that you've testified on behalf of plaintiff patients
25 that was represented by the Liakas Law firm?

1 V. Lerman, D.O.

2 A I don't remember.

3 Q Now, has -- in the past, has Cherny &
4 Podolsky, have they referred patients to your office?

5 MS. MILORAVA-KELMAN: Note my objection.

6 A Yeah. I don't know who refers us.
7 Usually, it would be a physician who refers to us.

8 Q Okay. And how about in this particular
9 case with Abigail Rodriguez, did Cherny & Podolsky
10 refer the patient to you?

11 MS. MILORAVA-KELMAN: Note my objection.

12 A No. It would be a physician referring to
13 us.

14 Q Have you ever had any personal injury law
15 firms refer potential plaintiffs to your office?

16 MR. KEANE: Objection.

17 MS. MILORAVA-KELMAN: Join.

18 A I deal only with physicians through the
19 referral, and it's my front desk that gives us all
20 the stuff.

21 Q Okay. And just to be clear, what --
22 what -- your practice, what is the name of your
23 practice?

24 A It's Total Orthopedics Sports & Spine.

25 Q Okay. And where is -- and from here on,

1 V. Lerman, D.O.

2 we'll just refer to your firm -- your practice as
3 Total -- is it Total Orthopedics or Total Ortho? I'm
4 sorry.

5 A Total Orthopedics.

6 Q Okay. We'll just refer to them as Total
7 Orthopedics; is that okay?

8 A Yeah, that's fine.

9 Q Okay. And where is Total Orthopedics
10 located?

11 A We have multiple locations.

12 Q Okay. Do you have a main office?

13 A We have 115 Eileen Way, Syosset, New
14 York.

15 Q Okay. And is that where you practice out
16 of?

17 A It's one of our main locations that I
18 practice out of, correct.

19 Q Okay. And where'd you go to medical
20 school?

21 A I went to New York College of Osteopathic
22 Medicine.

23 Q Okay. So you're -- you're a D.O., not an
24 M.D.; correct?

25 A I'm a D.O.

1 V. Lerman, D.O.

2 Q Okay. And when did you graduate medical
3 school?

4 A A long time ago. 2006.

5 Q Okay. No, it's not too long ago.

6 Okay. And how much does Total Ortho earn
7 per year in terms of profits?

8 MR. KEANE: Objection.

9 A I have -- I have no idea.

10 MS. MILORAVA-KELMAN: Join.

11 A You have to -- you have to contact our
12 CFO.

13 (Reporter clarification)

14 A And you have to contact their accountant
15 and our CFO.

16 Q And how much do you earn per year to
17 testify on behalf of plaintiff patients?

18 MS. MILORAVA-KELMAN: Note my objection.

19 A A year?

20 Q Yes.

21 A Minimal. I don't know. Everything goes
22 to Total Orthopedics.

23 Q Okay. Are you able to give us a figure,
24 or are you unable to do that?

25 A Figure you testify two times per year,

1 V. Lerman, D.O.

2 average \$560 an hour, you could take -- take -- even
3 to calculate, let's say, 20 hours for these two
4 testimonies, right, about 11 to \$15,000.

5 Q Are you being paid by Cherny & Podolsky
6 to appear today for your deposition?

7 MS. MILORAVA-KELMAN: Note my objection.

8 A Not that I know of.

9 Q I'm sorry, what was that?

10 A Not that I know of.

11 Q Okay. And who would know that?

12 A What was the question?

13 Q Sorry.

14 Who -- who would know whether you've been
15 paid by Cherny & Podolsky to appear today?

16 MS. MILORAVA-KELMAN: Note my objection.

17 A My accountant, probably. Billing.

18 Q Okay. Typically when you -- when you
19 appear for depositions on behalf of plaintiff
20 patients, are you -- are you compensated by the
21 plaintiff's firm?

22 A Again, not -- not that I know who pays
23 for the depositions. It's either defendant's firm or
24 plaintiff's firm, I -- I don't know.

25 Q Okay. Do you represent any -- do you do

1 V. Lerman, D.O.

2 any work for defense firms?

3 A No.

4 Q Okay. You strictly only work for
5 plaintiff's law firms; correct?

6 MR. KEANE: Objection.

7 Q Or you typ- -- let me rephrase -- let me
8 rephrase. I'm sorry.

9 You only represent -- in terms of
10 litigation, you only treat plaintiff patients, you
11 don't -- you don't offer any -- you don't do any
12 defense independent medical examinations; fair?

13 MS. MILORAVA-KELMAN: Note my objection.

14 A I treat patients, correct.

15 Q Okay. But in terms of litigation, you --
16 when you testify, you only testify on behalf of
17 plaintiffs; accurate?

18 MS. MILORAVA-KELMAN: Note my --

19 MR. KEANE: Objection.

20 MS. MILORAVA-KELMAN: -- objection.

21 A I'm sorry --

22 MR. SCHACHER: Mari, can you just give
23 the witness a -- a second to answer the
24 question or -- or --

25 MS. MILORAVA-KELMAN: Well, I have to

1 V. Lerman, D.O.

2 interpose my objection before he answers.

3 MR. SCHACHER: Well, I guess -- I don't
4 know -- I'm having a tough time hearing the
5 witness.

6 So maybe, Doctor, can you give Mari -- I
7 think it's the doctor that may be -- right,
8 Mickey? We just --

9 MR. KEANE: Sure.

10 MS. MILORAVA-KELMAN: I think we are
11 doing fine. I think we are doing fine. The
12 doctor -- and I apologize, Doctor, but I have
13 to interpose my objections where it's proper
14 for me to do so, and I have to try and do so
15 before you answer, so --

16 MR. SCHACHER: Yeah. Doctor, if you
17 could just give Mari a second --

18 MS. MILORAVA-KELMAN: I think Doctor's
19 doing just fine.

20 MR. SCHACHER: No. Yeah, if you could
21 just give her a second to object, Doctor,
22 please. And it makes it easier for the court
23 reporter.

24 Okay. Can you read back the last
25 question, please, Teri?

1 V. Lerman, D.O.

2 (WHEREUPON, the previous question was
3 read by the court reporter.)

4 Q Okay. What's the answer?

5 MS. MILORAVA-KELMAN: And that was my
6 objection.

7 MR. SCHACHER: Okay.

8 Q Doctor, what's the answer, please?

9 A I testify on my patient -- on behalf of
10 my patients, correct.

11 Q Okay. And typically, they're usually
12 plaintiffs, your patients are the plaintiffs in
13 cases; accurate?

14 MS. MILORAVA-KELMAN: Note my objection.

15 A I would assume so.

16 Q Doctor, would you agree with me that your
17 goal in treating patients is to diagnose their --
18 their particular ailment or issue?

19 MS. MILORAVA-KELMAN: Just note my
20 objection to form.

21 What does that mean?

22 Q You can answer, Doctor.

23 MR. KEANE: Can you repeat the question,
24 please?

25 MR. SCHACHER: Sure.

1 V. Lerman, D.O.

2 Q Is it -- Doctor, is it fair to say --
3 well, let me ask you, what -- what is -- what is your
4 goal -- in terms of when you treat a patient, what is
5 your ultimate goal?

6 A Is to diagnose the correct and
7 appropriate problem, the source of the issue, and
8 figure out a plan of treatment towards making the
9 patient feel better.

10 Q Okay. And, Doctor, isn't it true that
11 when you're treating a patient, you -- you should
12 have as much information as possible regarding the
13 patient?

14 A Absolutely. Relevant information for my
15 treatment plan. I don't need to know patient's
16 family history or whether they're married six times
17 or not.

18 Q Okay. In terms of the history that
19 you -- you obtain from the -- the patient, does that
20 include past medical history?

21 A Correct.

22 Q Okay. And is that something that you ask
23 the -- the patients when you initially evaluate them,
24 what their past medical history includes?

25 A Correct.

V. Lerman, D.O.

Q And you're expecting the -- is your expectation that the patient will be truthful to you with regards to their past medical history?

A Yeah, absolutely.

Q Okay. And why is that --

A Some of --

Q -- important?

Go ahead, sorry.

A Yeah. You -- you just asked me a question why is it important, because with -- with inadequate history, not only you can hurt yourself -- as I spoke to one of my friends yesterday whose patient did not disclose to them that he had HIV -- so having the appropriate history taking and patient being honest with the doctor will save not only, you know, the patient's outcome but also the doctor's outcomes.

Q Okay. When you say -- when you say "save the outcome," what do you mean by that; can you clarify what you mean by that, please?

A I mean great, positive outcomes in the treatment plan.

Q Okay. So is the -- my understanding is then, if the patient is untruthful regarding his or

1 V. Lerman, D.O.

2 her past medical history, that could affect a -- a
3 great positive outcome in terms of treatment and
4 potential procedures?

5 A If you're -- again, when you're asking
6 untruthful about their past medical history --

7 Q Yes.

8 A -- to be more specific, of course.

9 Q Okay.

10 A Of course.

11 Q And isn't it true that your expectation
12 is the patient needs to be truthful regarding his or
13 her prior spine complaints and symptoms?

14 A Yes. We want to know everything that
15 happened in the past so we can always compare to
16 previous MRIs, previous complaints to the -- to the
17 new MRIs, new complaints, as well as the physical
18 exam.

19 Q Now, if a plain- -- if a patient is --
20 does, in fact, have prior complaints to his or her
21 spine treatments and treatment, will that affect your
22 causation analysis?

23 MR. KEANE: Objection.

24 MS. MILORAVA-KELMAN: Join.

25 A It will -- it will not affect my

1 V. Lerman, D.O.

2 causation analysis, it will add to the picture of
3 putting the whole causation analysis, I guess,
4 will -- will be a diagnosis.

5 Q I'm sorry, I don't understand.

6 A So if you have previous history with
7 previous complaints, it can only add to the picture
8 of determination of how bad the situation is after
9 one or the other incident.

10 Q Okay. So let's assume a patient
11 plaintiff is involved in a motor vehicle accident,
12 like this case, if a patient plaintiff is untruthful
13 to you with regards to prior complaints, accidents,
14 and treatment, will that affect your causation
15 analysis with regard to that subject accident?

16 MR. KEANE: Objection.

17 MS. MILORAVA-KELMAN: Note my objection.

18 A Yes, absolutely.

19 Q Okay. And why would -- why would it
20 affect -- why would it absolutely affect your
21 causation analysis with regard to the subject
22 accident?

23 A Because you would have to --

24 MR. KEANE: Objection. Are you talk- --
25 just to be clear, are you talking in general

1 V. Lerman, D.O.

2 or just to this case?

3 MR. SCHACHER: I'm talking generally
4 right now.

5 MR. KEANE: Okay. You ended it with the
6 subject for that part.

7 MR. SCHACHER: Can you read back the
8 question, please? I'm sorry.

9 THE REPORTER: Yes, please.

10 (WHEREUPON, the previous question was
11 read by the court reporter.)

12 MR. SCHACHER: Okay. Let's -- let me
13 rephrase that.

14 Q Why would it affect your causation
15 analysis -- and again, we're talking about
16 individuals -- right now we're hypothetical -- we're
17 talking about a hypothetical patient plaintiff that
18 was involved in a prior incident and had treatment
19 and complaints, if that -- if that patient plaintiff
20 was untruthful to you, would that affect -- you
21 testified earlier that that would affect your
22 causation analysis; do you recall giving that
23 testimony?

24 A Yes.

25 Q Okay. And I think you testified it would

1 V. Lerman, D.O.

2 absolutely affect your causation analysis; fair?

3 A Fair.

4 Q Okay. My question is, generally, why
5 would it absolutely affect your causation analysis?

6 A Because you would have to compare the
7 previous studies to the -- to the current studies and
8 see how much more -- because once -- once you're
9 testing a certain injury -- if you'll allow me to
10 elaborate --

11 Q Yes.

12 A -- any follow-up injuries can protrude or
13 make -- exacerbate symptomatology. So seeing
14 something that happened before, and then something
15 that happened now is such a crucial moment because
16 that will give you an opportunity to see how much
17 quicker you have to react to certain things for --
18 for a treatment plan. Because the patient had a
19 small, let's say, bulge in the past, and now --
20 because now the patient is much more susceptible to
21 any future injuries; correct? So now the patient
22 undergoes any other incident in the -- in -- in right
23 now, in the -- say in the present, just
24 hypothetically speaking, and now this is not a bulge,
25 but now it's a herniation with core compression, with

V. Lerman, D.O.

everything. So now I know that there was a significant progression due to the weakness -- weakening of the symptomatology, and now the new incident or -- that happened progressed to the point where I have to be acting quicker and with a different type of treatment plan involved.

Q Okay. And why would you have to act quicker if the hypothetical patient had a prior accident with treatment?

A Knowing that a patient had prior injuries, again, as I mentioned earlier, the underlying susceptibility of patient's issue or make it more vulnerable for any future incidents. So -- so now -- if it progresses, so now we're in a point where, if tomorrow she falls again or it protrudes or goes in the wrong direction of nerve -- because we're dealing with the nerves here -- any issue with the nerves or severe compression of the nerves can really affect someone's life for -- for good.

As I mentioned earlier -- can I see your pen? -- 2 centimeters and the weight of the pen from the table is enough to paralyze someone. So -- so having to know that person had previous issue and now it's exacerbated by whatever accident we're dealing

1 V. Lerman, D.O.

2 with or incident, we have -- and -- and -- and the
3 progression that it happened in a short period of
4 time or a long period of time will give us a clear
5 picture of how to treat the patient.

6 Q Okay. So, obviously, it's -- it's
7 important -- it's true that it's critical to obtain
8 an accurate history of a patient's prior medical
9 history, especially with prior spine complaints;
10 fair?

11 A Correct.

12 Q Okay. And just to be clear, your -- your
13 practice is focussed on spinal treatment and surgery;
14 fair?

15 A My personal, or Total Orthopedics as a
16 whole?

17 Q You personally.

18 A Yes. Correct. Only spine, neck,
19 mid-back, and lower back.

20 Q Okay. And Total Orthope- -- and Total
21 Orthopedics, do they just focus on treating the
22 spine, or do the doctors do other -- treat other
23 parts of the -- the --

24 A We have --

25 Q -- body?

1 V. Lerman, D.O.

2 A We have almost every specialty in
3 orthopedics controlled, yes.

4 Q And how many doctors work -- practice
5 with Total Ortho?

6 A I'm proud to say that we're 27 surgeons
7 and -- and 40 providers total with -- with physician
8 assistants.

9 Q Isn't it -- based on your testimony,
10 isn't it true that you would want to know about
11 prior -- any prior accidents and prior treatments of
12 the spine that your patients have; fair?

13 A Yes, absolutely.

14 MS. MILORAVA-KELMAN: Just note my
15 objection. It's asked and answered multiple
16 times.

17 Q And if a patient is untruthful, could
18 that affect your diagnosis?

19 MS. MILORAVA-KELMAN: Again, asked and
20 answered.

21 A A prior diagnosis -- of course. I mean,
22 if the patient is untruthful, of course it's gonna
23 affect the diagnosis.

24 Q And how would it -- how would it affect
25 your diagnosis?

1 V. Lerman, D.O.

2 A Again, as -- did the patient have
3 previous -- patient have -- patient had previous
4 treatment. Also, if the patient -- now we're talking
5 about truthful or not truthful -- if patient gives me
6 accurate physical exam findings. I mean --

7 Q What was -- what was that? Sorry. I
8 didn't get that. Sorry. What --

9 A I mean, we're talking about truthful or
10 untruthful, then how -- I mean, if someone's
11 untruthful, how can I rely on their physical exam?
12 And the only thing that will not lie to me is the MRI
13 findings.

14 Q Okay. So you're saying -- based on your
15 testimony, you're saying if a patient's being
16 untruthful regarding a prior medical history, they
17 could potentially be also untruthful regarding their
18 complaints with regards to your physical exam; is
19 that what you're saying, Doctor?

20 MS. MILORAVA-KELMAN: Note my objection.

21 A Correct.

22 Q Okay. Meaning that they could
23 potentially be untruthful with regards to what, a
24 range of motion testing; could you be a little bit
25 more specific or -- please?

1 V. Lerman, D.O.

2 MS. MILORAVA-KELMAN: Note my objection.

3 A Any -- any subjective test of strength,
4 range of motion. You can't really fake the muscle
5 spasm, though, and you can't really fake the
6 provocative tests, that's why I -- I -- I do certain
7 tests that patients would not be able to fake.

8 Q So you're more concerned -- you're --
9 you're -- when you say reliability, you're -- you're
10 focussed on the subjective testing may be unreliable,
11 the witness -- if the plaintiff -- if the patient's
12 being unreliable about her prior history; fair?

13 A Correct.

14 MS. MILORAVA-KELMAN: Note my objection.

15 Q I'm sorry, what was the answer?

16 A Correct.

17 Q Now, did you read the depositions of
18 Ms. Rodriguez in this case and the defendant driver
19 Zaidi?

20 A I did not.

21 Q Okay. Did you review any photographs of
22 the damage to the vehicles as a result of this
23 November 2023 accident?

24 A No. I'm a doctor, not a body shop.

25 Q Okay. So is it fair to say then when

1 V. Lerman, D.O.

2 you're treating plaintiff patients, generally you
3 never review photographs of the vehicles that they
4 were involved in an accident in?

5 MS. MILORAVA-KELMAN: Just note my
6 objection. That's not what he testified to.

7 MR. SCHACHER: Okay.

8 Q You can answer, Doc.

9 A No. My primary duty isn't to review the
10 cars.

11 Q Okay. Now, Doctor, isn't it -- is it
12 fair to say that you didn't know that this plaintiff,
13 Abigail Rodriguez, was involved in a January 6 -- 12,
14 2016 motor vehicle accident and received treatment
15 thereafter; isn't that true, Doctor?

16 MS. MILORAVA-KELMAN: Note my objection.
17 Where does this come from?

18 Q Okay. You can an- --

19 MS. MILORAVA-KELMAN: Michael --

20 MR. SCHACHER: Okay.

21 MS. MILORAVA-KELMAN: -- there was no --
22 okay. So there were no exchanges -- I just
23 wanted the record to be --

24 MR. SCHACHER: But the --

25 MS. MILORAVA-KELMAN: Mi- --

1 V. Lerman, D.O.

2 MR. SCHACHER: Okay.

3 MS. MILORAVA-KELMAN: Okay.

4 MR. SCHACHER: But, Mari, just --

5 MS. MILORAVA-KELMAN: Okay. Hold on.

6 You're stating as a fact something that
7 has never been -- there are no documents --
8 there is no documentation of that.

9 MR. SCHACHER: Oh, really, there's no
10 documentation of that?

11 MS. MILORAVA-KELMAN: Did you exchange
12 any documents pertaining to the plaintiff
13 being involved in this --

14 MR. SCHACHER: We have -- we -- you gave
15 me a HIPAA authorization for plaintiff's prior
16 records, Mari; do you remember that?

17 MS. MILORAVA-KELMAN: And did you -- did
18 you receive any prior records?

19 MR. SCHACHER: We were gonna show them
20 today to the doctor; okay?

21 MS. MILORAVA-KELMAN: Well, you have
22 ne- -- you -- now you're ambushing me,
23 Michael, because you have never exchanged
24 those. If you --

25 MR. SCHACHER: Why am I -- how am I

1 V. Lerman, D.O.

2 ambushing you? This is your own client.

3 MS. MILORAVA-KELMAN: Because you have to
4 exchange every document that you're going to
5 use in advance of this case, and you have
6 never exchanged any prior medical records that
7 you were going to show to the nonparty
8 witness.

9 MR. SCHACHER: Okay. Did you ever demand
10 for prior records?

11 MS. MILORAVA-KELMAN: All documents are
12 demanded.

13 MR. SCHACHER: Okay. Okay. Mari,
14 that's -- that's a --

15 MS. MILORAVA-KELMAN: All right. Let me
16 state -- let me state my demands on the record
17 right now, that I demand any and all documents
18 received by you as a result of process from
19 the HIPAA documents.

20 MR. SCHACHER: Okay. Okay.

21 MS. MILORAVA-KELMAN: And I believe this
22 is -- shows in the Federal Rules of Civil
23 Procedure, so --

24 MR. SCHACHER: O- -- okay.

25 MS. MILORAVA-KELMAN: -- we need those

1 V. Lerman, D.O.

2 documents.

3 MR. SCHACHER: Well, you're gonna get --
4 you're gonna get them today; okay?

5 MS. MILORAVA-KELMAN: All right. I would
6 like to get them before we -- we can -- you
7 can send them to me now --

8 MR. SCHACHER: No. We're going
9 forward --

10 MS. MILORAVA-KELMAN: -- so I can --

11 MR. SCHACHER: -- Mari. This is my
12 deposition and it's your client's records.

13 MS. MILORAVA-KELMAN: I understand, but
14 your deposition is based on the documents that
15 have never been exchanged. How am I --

16 MR. SCHACHER: Well --

17 MS. MILORAVA-KELMAN: -- supposed to
18 defend this deposition if I do not have --

19 MR. SCHACHER: All right. Mari --
20 Mari -- Mari, I think we all need to just take
21 a breath.

22 Okay. First -- first of all, under
23 Federal Rule 30(c)(2), there's no speaking
24 objections allowed in federal cases. Okay.
25 You just went on a rant about your client's

1 V. Lerman, D.O.

2 records, which, all due respect, you should
3 have in your possession, and that you gave me
4 a HIPAA authorization for, and that we
5 questioned your client about during her
6 deposition. So this is not an ambush; okay?

7 So I'm gonna show the doctor her records.
8 You can make your speaking objection, which I
9 completely, again, say is against the rules.
10 We're gonna give the records today, they're
11 going to be marked; okay?

12 Do you understand that?

13 MS. MILORAVA-KELMAN: Don't speak to me
14 in this tone of voice, Michael.

15 MR. SCHACHER: No. No. You're being --
16 you're being unprofessional now.

17 MS. MILORAVA-KELMAN: Don't speak to me
18 in this tone of voice. I'm not answering --

19 MR. SCHACHER: Okay.

20 MS. MILORAVA-KELMAN: -- your questions,
21 and you had to exchange the documents before
22 the deposition.

23 MR. SCHACHER: I don't have --

24 MS. MILORAVA-KELMAN: All right.

25 MR. SCHACHER: Okay.

V. Lerman, D.O.

MS. MILORAVA-KELMAN: I'm gonna bring
this up to the judge, so --

MR. SCHACHER: Fine, bring it up to the
judge.

MS. MILORAVA-KELMAN: -- again --

MR. SCHACHER: I'm sure he'll --

MS. MILORAVA-KELMAN: -- I'm gonna --

MR. SCHACHER: -- be happy to hear --

MS. MILORAVA-KELMAN: -- yeah.

MR. SCHACHER: -- about that; okay?

CONTINUED EXAMINATION BY MR. SCHACHER:

Q All right. Doctor, I apologize about
that. So let me rephrase -- re-ask my question;
okay?

Doctor, is -- is it -- isn't it true that
you did not know that plaintiff, Abigail Rodriguez,
was involved in a January 12, 2016 motor vehicle
accident and retrieved -- and received treatment two
days after; did -- you did not know that; correct,
Doctor?

MS. MILORAVA-KELMAN: Note my objection.

A I did not know.

Q And you didn't know that because isn't it
accurate that when you asked Ms. Rodriguez during

V. Lerman, D.O.

your initial exam of her in -- in March of 2024, she did not indicate to you -- when you asked what her prior medical history was, she didn't indicate to you that she was involved in a prior 2016 motor vehicle accident; accurate?

MS. MILORAVA-KELMAN: Note my objection.

Q Accurate?

MS. MILORAVA-KELMAN: Under my objection.

MR. SCHACHER: Okay. Okay.

Q Accurate, Doctor?

MR. KEANE: Yeah, you can answer.

Remember, if I just say "objection," you can always answer --

THE WITNESS: Okay.

MR. KEANE: -- unless I say don't answer.

A Yeah, I'm -- I'm -- I did not know.

Q Okay. So you didn't know that she was involved in a head-on motor vehicle accident in Staten Island on January 10, 2016; accurate, Doctor?

A Accurate.

Q Okay. And you didn't know that she presented to Maimonides Medical Center, MMC, at the emergency department with chief complaints of neck and back pain on January 12, 2016; you didn't know

V. Lerman, D.O.

that --

MS. MILORAVA-KELMAN: Note my --

Q -- right, Doctor?

MS. MILORAVA-KELMAN: Note my objection.

A I did not.

Q Okay. And you were unaware that at MMC, a physical exam of plaintiff, Abigail Rodriguez, was done on her neck and noted supple possible positive for tenderness in the trapezius area; you didn't know that, right, Doctor?

MS. MILORAVA-KELMAN: Note my objection.

A I did not.

MR. SCHACHER: All right. We're gonna mark the records, so we'll go through them.

MR. KEANE: While we're doing that, can I just take a restroom break --

MR. SCHACHER: Yeah. Sure.

MR. KEANE: -- if this is a good spot?

MR. SCHACHER: We'll take five?

MR. KEANE: Thank you.

MS. MILORAVA-KELMAN: Okay. Mean- -- in the meantime, Michael, can you --

MR. SCHACHER: We're off --

MS. MILORAVA-KELMAN: -- e-mail me the

1 V. Lerman, D.O.

2 records --

3 MR. SCHACHER: -- wait -- wait a sec- --
4 wait a second.

5 We're off the record?

6 MS. MILORAVA-KELMAN: We're on the
7 record. I -- I would like to ask Michael
8 while we are taking a bathroom break to e-mail
9 me the records.

10 MR. SCHACHER: I'm gonna show the records
11 to the doctor now.

12 MS. MILORAVA-KELMAN: That's fine.
13 E-mail me the records now.

14 MR. SCHACHER: I'll e-mail them to you
15 after I mark them.

16 MS. MILORAVA-KELMAN: No. Can you e-mail
17 me the records now, so I have something to
18 look at while you're looking at it?

19 MR. SCHACHER: No. We're gonna -- you're
20 gonna look at them while we -- just as if we
21 were in person. I'm gonna show them to you
22 and to the doctor. I don't -- I'm not playing
23 that game; okay?

24 MS. MILORAVA-KELMAN: All right, Michael.

25 MR. SCHACHER: They're your client's

1 V. Lerman, D.O.

2 records.

3 I'm off the record now. I don't want to
4 be on the record right now.

5 (WHEREUPON, a brief recess was taken,
6 after which the following transpired:)

7 (Time noted: 10:53 a.m.)

8 MS. MILORAVA-KELMAN: Okay. As we
9 discussed, counsel failed to provide the
10 medical records -- or purported medical
11 records of the plaintiff, Abigail Rodriguez,
12 that he obtained and was going to use in the
13 deposition.

14 Also, discovery cutoff day -- Fed
15 discovery cutoff day was yesterday. These
16 records were never provided -- not only they
17 were never provided, they were also not -- not
18 provided within the court's allocated
19 discovery exchange time.

20 So hence my objection, and I'm going to
21 make a standing objection to the use of these
22 records.

23 MR. SCHACHER: Okay. I'll make a -- I'll
24 make a statement as well.

25 Plaintiff's counsel and I spoke several

1 V. Lerman, D.O.

2 months ago, at this point, probably four or
3 five months ago, about plaintiff's prior
4 January 2016 accident. Counsel and I had a
5 conversation about this. In fact, plaintiff's
6 deposition was supposed to proceed, I received
7 an ISO claims report noting this prior.

8 Ms. Kelman and I spoke about it. We adjourned
9 the deposition based on this specific prior.

10 I then immediately served a request for
11 production regarding this prior. I provided
12 the ISO claims report to plaintiff's counsel,
13 et al. in -- and to be clear, counsel
14 provided me with an auth- -- multiple
15 authorizations from Maimonides Medical Center,
16 among others. My office processed those
17 authorizations, and we obtained these records.

18 This is absolutely not an ambush.
19 Counsel was 100 percent aware of this prior
20 accident, the medical providers. She had --
21 she and her office had every opportunity to
22 obtain these records, just as my office did.
23 This, we're going on multiple months ago, at
24 least four months ago we received these
25 authorizations.

1 V. Lerman, D.O.

2 So counsel's objection is completely
3 without any merit, and we're showing the
4 doctor these records, we're showing the doctor
5 a public police report associated with
6 plaintiff's prior accident, and we're going to
7 ask him questions regarding the same.

8 MS. MILORAVA-KELMAN: Okay. Just note in
9 response to that is that this is not my burden
10 to obtain these records. Those records are
11 gonna be used in defense of this -- oh, I'm --
12 I'm understanding those records, provided they
13 are for my plaintiff, provided they exist,
14 they're gonna be used by defense, and this was
15 their burden to obtain and exchange those
16 records with the plaintiff since they were
17 going to use them in a defense of this matter.

18 This does not have anything to do with my
19 prima facie case. It's the defendants' burden
20 to obtain those records, and they should have
21 been exchanged. And if this one attorney had
22 them and knowingly hid them until this
23 deposition, that is something that we need to
24 discuss with the judge.

25 MR. SCHACHER: Oh, we're -- we're

V. Lerman, D.O.

definitely discussing it with the judge; okay?
And if you're going on the fact of the
discovery deadline, which was a day ago,
there's absolutely no prejudice to you -- to
you. And again, you knew about this accident
in fine detail at least four or five months
ago, so see what Judge Cho has to say about
that.

CONTINUED EXAMINATION BY MR. SCHACHER:

A Okay. I'm gonna mark this -- Doctor,
we're gonna mark this as Defendants' B (displaying).
It's the police report assoc- -- I'll represent to
you that it's the police report associated with
plaintiff's prior accident. I'm gonna have you
review it, and then I'm gonna ask you some questions;
okay?

(WHEREUPON, the above-referred-to
document, Police Accident Report (NYC), dated
January 10, 2016, six pages, was marked as
Defendants' Exhibit B, for identification, as
of this date.)

MR. KEANE: I've just --

THE WITNESS: I really --

MR. KEANE: -- put the laptop in front of

1 V. Lerman, D.O.

2 him with the -- to review the records.

3 MR. SCHACHER: Yeah, please. Thank you.

4 THE WITNESS: Michael, I really don't
5 know what I'm looking at.

6 Q All right. Can you see it?

7 A One or two -- one -- I mean, I see Police
8 Accident Report, but it's a lot of gibberish I don't
9 understand.

10 Q Okay. So -- so I'll -- I'll represent to
11 you, Doctor, that we obtained this police report
12 based on information that we received regarding your
13 patient, Abigail Rodriguez, being involved in a prior
14 accident that I discussed with plaintiff's counsel
15 many months ago; okay?

16 MS. MILORAVA-KELMAN: Just note my
17 objection.

18 Q Okay. My question to you is, I want you,
19 first of all, to review this document (scrolling),
20 it's six pages --

21 MR. KEANE: You've got to go a little
22 slower.

23 A I can't review it --

24 MR. KEANE: Yeah.

25 A -- in such a short period of time.

1 V. Lerman, D.O.

2 MR. KEANE: You -- you've got to ask him
3 more specific questions about --

4 MR. SCHACHER: Okay.

5 MR. KEANE: -- certain things.

6 Q I'm just gonna ask --

7 A I'm not familiar with police reports,
8 I've never seen one before.

9 Q Sure.

10 A I'm not gonna --

11 Q So -- so basically I have one ques- -- I
12 have one question for you, Doctor. I'll represent to
13 you that this is a New York State Department of
14 Vehicles -- Motor -- Motor Vehicle Police Accident
15 Report dated January 10th, 2016. It list plaintiff
16 here, your patient, Abigail Rodriguez?

17 Do you see that there that I'm pointing
18 to?

19 A Well, I see Rodriguez, Abigail. I don't
20 know the date of birth.

21 What -- what's the date of birth there?

22 Q The date of birth is -- it just says
23 her -- her age here, 26.

24 Do you see that down here where I'm
25 pointing?

1 V. Lerman, D.O.

2 A I know, but we've got to be a little bit
3 more specific with the date of birth; right?

4 Q It -- it only has the -- the number,
5 Doctor. I'll represent to you that; okay?

6 And it has her address, which is a match
7 to the medical records, okay; 1 Driprock Street,
8 Staten Island.

9 Do you see that, Doc?

10 A Michael, again, what -- what you're
11 showing me, I have no idea what her address is. I --
12 I --

13 Q Okay. I'm --

14 MR. KEANE: I'll -- I'll make it -- I'll
15 make it easier. If you represent based off
16 that's her address, that's her date of birth,
17 we'll consent that -- based on your
18 representation, we consent that that's real,
19 but -- which would be your burden.

20 MR. SCHACHER: Okay.

21 MS. MILORAVA-KELMAN: I'm not consenting
22 to anything. And the name here applies to the
23 owner of the vehicle, not the driver.

24 Q Okay. Doctor, I'll represent to you --
25 and then we'll move on, okay, because I want to get

1 V. Lerman, D.O.

2 to the records, more importantly.

3 But I'll represent to you that this is
4 plaintiff, the address is a match -- exact match, and
5 that the police report indicates she was a passenger
6 in this January 10, 2016 accident that occurred in
7 Staten Island, and that her age at the time of
8 accident was 26 based on her birthday from her
9 medical records, which is October 1st, 1989; okay?

10 So my question to you, Doctor --

11 MS. MILORAVA-KELMAN: You know what --
12 hold on. Hold on.

13 Note my objection to that rep- --
14 representation.

15 Q Okay. Doctor, my question to you is, the
16 plain- -- were you aware that plaintiff was involved
17 in this January 10, 2016 head-on motor vehicle
18 accident?

19 MS. MILORAVA-KELMAN: Note my objection.

20 A No, I was not.

21 Q Okay. And plaintiff never -- when I say
22 "plaintiff," obviously, from here on, I'm referring
23 to Abigail Rodriguez.

24 And plaintiff, when you initially treated
25 her in March of 2024, she didn't tell you anything

1 V. Lerman, D.O.

2 about this January 10, 2016 accident; accurate,
3 Doctor?

4 A Yes. My --

5 MS. MILORAVA-KELMAN: Note my objection.

6 A Can we re- -- can we refer to it as my
7 patient? I don't like the word "plaintiff" because
8 I'm not an attorney.

9 Q Okay.

10 A I did not know anything about Abigail's
11 previous accident.

12 Q Okay. Doctor, would it have -- would it
13 have been -- would you have wanted to know that
14 plaintiff was involved in a January 10, 2016 head-on
15 motor vehicle accident?

16 MS. MILORAVA-KELMAN: Note my objection.

17 A You definitely want to get as much
18 information as possible.

19 Q Okay. We're gonna -- just bear with me
20 here.

21 Okay. Doctor, we're gonna mark this as
22 Exhibit C (displaying). This is -- I'll represent to
23 you that these are your patient, Abigail Rodriguez's,
24 records that my office obtained via HIPAA
25 authorization that we received from Ms. Rodriguez's

1 V. Lerman, D.O.

2 counsel, Cherny & Podolsky. I'm just gonna show you
3 these records and I'm gonna ask you some questions;
4 okay, Doctor?

5 A Yes. It's very hard to see what --
6 what's there, but I see Maimonides, I see her name.

7 What's the date of birth on here?

8 Q The date of birth is 10/1/89 on the top
9 right?

10 Do you see that, Doctor?

11 A Yes. I just want to make sure that this
12 is correct. Yes.

13 Q Okay. And then it has the day of
14 treatment, which is two days after the police report
15 that we just looked at, January 12, 2016.

16 Do you see that in the top right of
17 page 1 of Exhibit C?

18 A Yes.

19 Q Okay. And it's signed here.

20 Do you see that?

21 A Yes.

22 Q All right. I'll just go through these
23 quickly, Doctor (scrolling).

24 All right. Again, number -- page 2's
25 just another signature page.

1 V. Lerman, D.O.

2 Do you see that, Doc?

3 A Yes.

4 Q Okay. Page 3 is a consent form, again,
5 signed by the pa- -- your patient.

6 Do you see that, Doctor?

7 A Correct.

8 MS. MILORAVA-KELMAN: Just note my --

9 Q Okay.

10 MS. MILORAVA-KELMAN: -- objection to
11 this line of questioning.

12 Q Okay. And then you see the patient's
13 date of birth, October 1st, 1989; do you see that,
14 Doctor?

15 A Yes.

16 Q And that she signed it on January 12th,
17 2016; accurate?

18 A Yes.

19 MS. MILORAVA-KELMAN: Note my objection.

20 Q Okay. Page 4 of Exhibit C is standard
21 MMC consent paperwork, consent about HIV.

22 Page 5, again, HIPAA privacy signed by
23 the patient and dated.

24 Do you see that, Doctor?

25 MS. MILORAVA-KELMAN: Note my objection.

1 V. Lerman, D.O.

2 Q Do you see it, Doctor? Sorry.

3 A I do see the signature.

4 Q Okay. And page 6, page 6 says the date
5 of birth, the age, ED physician.

6 Do you see that, Doctor?

7 A Yes, I do.

8 Q Do you know who Sabrina Sokolovsky is?

9 A Sokolovsky, no, I have no idea.

10 Q Okay. ED, what does ED stand for,
11 Doctor?

12 A Emergency Department.

13 Q Okay. And when it says here -- then
14 again, for the record, I'm on page 6 of
15 Defendants' C.

16 Doctor, when it says, "Acuity: ESI 4,"
17 do you know what that stands for?

18 A No, not at all.

19 Q Okay. And "Chief Complaint" to left on
20 page 6, "MVAE," I'll rep- -- do you know what that
21 stands for?

22 A Not really, no.

23 Q Okay. Is it -- is it fair to say or do
24 you believe that's motor vehicle accident; is that
25 what the MVA stands for?

1 V. Lerman, D.O.

2 A What's the E stand for?

3 Q I don't know, to be honest with you.
4 Encounter, probably, I'm assuming.

5 Okay. Well, in my experience, I'll
6 represent to you that MVA stands for motor vehicle
7 accident; okay?

8 And we see that the vital signs -- why
9 does the hospital take the vital signs, Doctor?

10 MR. KEANE: Objection.

11 A To see a patient in any acute distress.

12 Q Okay. I see temperature, pulse.

13 What are the rest of these figures?

14 A Type of blood, blood pressure,
15 respiratory, O2 saturations. So she's in -- she's in
16 no distress. She was -- she looks like she's within
17 normal limits.

18 Q Okay. Okay. And then "Triage," what is
19 triage, Doctor?

20 A It's when they get the basic stuff from
21 the patient.

22 Q Is that when they're asking the patient
23 questions?

24 A It's -- it's a preparation, it's the --
25 the first glance, I would say, is triage, yes.

1 V. Lerman, D.O.

2 Q Okay. Is -- that's when the doctor or
3 the nurses are specifically asking the patient
4 questions verbally?

5 A Yes.

6 Q Okay. Because we see here "Confidential
7 Rapid HIV," it does say, "The patient verbally
8 declined confidential rapid HIV testing."

9 Do you see that, Doctor?

10 A Yes.

11 Q And it has an initial for the date and
12 the time; accurate?

13 A Yes.

14 Q Okay. And then the next line is "Chief
15 complaints/quote."

16 When it say "quote," is that -- is it
17 fair to say that that's the quote of the patient; is
18 that what that means in the record, Doctor?

19 MS. MILORAVA-KELMAN: Note my objection.

20 A Michael, I have no idea what
21 Maimonides -- I've never been to Maimonides Hospital,
22 I've never seen this -- this type of recording.

23 Q Okay. And you've never -- have you ever
24 worked in an emergency department before?

25 A I worked in an emergency department as an

1 V. Lerman, D.O.

2 intern, of course --

3 Q Okay.

4 A -- but never seen this type of recording.

5 Q I understand.

6 But "Chief Complaints," what is that
7 based on your 20 -- almost 20 years of practicing,
8 what is a chief complaint, Doctor?

9 MS. MILORAVA-KELMAN: Note my objection.

10 A Chief complaint is when patient states
11 what bothers him or her.

12 Q And here we have on page 6 of Exhibit C,
13 "quote: PT."

14 What does PT stand for, Doctor?

15 MS. MILORAVA-KELMAN: Note my objection.

16 A Where are we looking at -- patient.

17 Q Patient was front seat restrained
18 passenger involved in MVA days ago. PT C/O, slash, O
19 neck and back pain. No air bag deployment. Car
20 headlight hit -- car hit headlights.

21 Is that accurate in what -- in regards to
22 what it says there, did I accurately -- accurately
23 read that to you, Doctor?

24 MS. MILORAVA-KELMAN: Note my objection.

25 A I don't know if it's accurate, but it's

1 V. Lerman, D.O.

2 accurate what you read to me.

3 Q Okay. And when -- the second sentence
4 where it says, PT C, slash, O, what does C/O mean?

5 A Complaining of.

6 Q Okay. Okay. So is it fair to say based
7 on this document that Ms. Rodriguez told the doctors
8 that she was involved in a motor vehicle accident
9 three days ago and complained of neck pain?

10 MS. MILORAVA-KELMAN: Note my objection.

11 A Yes.

12 Q And then a few lines down, we have "Pain
13 Scale."

14 What is a pain scale, Doctor?

15 A On a scale from 1 to 10, 1 being no pain,
16 10 being the severe pain.

17 Q Okay. And here it says, Currently is 5
18 out of 10, hyphen, moderate pain.

19 Do you see that, Doctor?

20 A Yes.

21 Q Okay. Is that acc- -- is that your
22 understanding that 5 out of 10 equals -- equates to
23 moderate pain for a patient?

24 A 5 out of 10 is moderate.

25 Q Okay. Then we're on page 8 of

1 V. Lerman, D.O.

2 Defendants' C.

3 MS. MILORAVA-KELMAN: No, that's page 3,
4 the one you're showing us, of 8.

5 MR. SCHACHER: I'm just on page 8 of the
6 exhibit; right? It's -- yeah, I'm on page 8
7 of the exhibit.

8 Q Doctor, it says here -- it lists
9 medicines.

10 Is it fair to say that these were the
11 medicines that Maimonides Medical Center prescribed
12 to Ms. Rodriguez on January 12, 2016?

13 MS. MILORAVA-KELMAN: Note my objection.

14 A I'm not sure if it was given on -- on the
15 date or it was prescribed to pick it up in the
16 pharmacy. I don't -- I'm not sure.

17 Q Okay. And what is -- Motrin, obviously,
18 what -- what is that for, Doctor?

19 A It's anti-inflammatory.

20 Q Okay. And methocarbamol or Robaxin, what
21 is that for, Doctor?

22 A It seems more like a muscle relaxant.

23 Q Okay. Then within the records that we
24 received from Maimonides, there's a no-fault
25 insurance paper, this is page 10 of C, indicates the

1 V. Lerman, D.O.

2 "Admitting Diagnosis" was "Sprain of ligaments of
3 cervical spine, initial encounter."

4 Do you see that, Doctor?

5 A Yes.

6 Q And then "Discharge Diagnosis: Car
7 occupant (driver) injured in unspeci-" -- it's
8 abbreviated, but unspecified non- -- I'm not sure
9 what -- what the rest means there, but do you see
10 that, Doctor; "Car occupant (driver) injured"?

11 A I see it.

12 Q Okay. Then we're on page 12 of
13 Defendants' C for Maimonides Medical Center
14 Examination.

15 Do you see that, Doctor?

16 A Yes.

17 Q Okay. And then when you go down to --
18 well, what's your understanding in terms of what this
19 entails; when you look at "Examination" and
20 "Constitutional," "Head," "Eyes," what -- what's --
21 what's -- what is your understanding of what's --
22 what transpired here as a doctor?

23 MS. MILORAVA-KELMAN: Note my objection.

24 A An emergency room physician is doing her
25 examination -- physical exam.

V. Lerman, D.O.

Q Okay. And the doctor would have been Dr. Sabrina Sokolovsky that we see in the top right; fair?

A I would assume so.

Q Okay.

A We'll have to see who signed the paper.

Q Okay. And then we go to "Neck" under "Examination," it says, Supple, comma, plus sign, tenderness in the trapezius area.

Do you see that, Doctor?

A Yes.

Q Okay. What does that mean?

A It means that the -- the -- it talks about the tenderness in her trapezius muscle, but they're not talking about any tenderness in her paraspinal muscles in her neck.

Q Okay. And the trapezius area -- but it is next to the neck -- it does say, Neck, semicolon; correct?

A Supple is -- is -- yeah, it's nothing ser- -- serious, it's supple. She is within normal limits.

Q Okay. And then what does the plus sign mean?

1 V. Lerman, D.O.

2 A It's positive tenderness in trapezius.
3 Trapezius is -- is from your shoulder to your --
4 bottom of the -- bottom of the -- or top of the
5 thoracic spine.

6 Q I'm sorry, can you say that again? The
7 shoulder to the top of the thoracic --

8 A The thoracic spine, yeah.

9 Q Okay.

10 A This -- this here, yeah (indicating).

11 Q The shoulder blade; right?

12 A Yeah, correct.

13 Q Okay. Which technically would include
14 the neck, right, if you go from the shoulder to --
15 well, you tell me.

16 Is it your understanding that that
17 includes the neck area?

18 A I mean, they -- they're not mentioning
19 anything about her paraspinal muscle tenderness or
20 any decreased range of motion, which is interesting,
21 and it's just, you know, her trapezius, which is --
22 again, entitles your -- pretty much your whole entire
23 mid-back and your shoulder blades.

24 Q And then at the bottom of page 12, it
25 indicates, "The patient is to follow up with the

1 V. Lerman, D.O.

2 following clinic/specialty: Non-MMC physician."

3 Do you see that, Doctor?

4 A Yes, I do.

5 Q Okay. And "Follow-up is semi-urgent two
6 to five days."

7 Do you see that?

8 A Yes.

9 Q Okay. Do you know if the patient
10 followed up per the MMC's recommendation?

11 MS. MILORAVA-KELMAN: Note my objection.

12 MR. KEANE: Objection.

13 A I have no idea.

14 Q Okay. Doctor, would it -- would it have
15 been helpful if you had those records before you saw
16 the patient in March of 2024?

17 MS. MILORAVA-KELMAN: Note my objection.

18 A It -- it -- it's always helpful to have
19 more records, but the -- the question now, what had
20 transpired; did she have further treatment? Did she
21 have MRIs? I mean, those are the things that I care
22 about more.

23 Q Okay. And would it have affected your
24 diagnosis of the patient if you had known about this
25 prior motor vehicle accident and the prior emergency

V. Lerman, D.O.

room records; would it have affected your diagnosis in any way?

MS. MILORAVA-KELMAN: Note my objection.

A It would definitely not affect my diagnosis, no, because you're getting -- you're basing your -- your treatment on an acute status always. So someone slept the wrong way and they had neck pain at 15 years old or -- or -- or they had a slip -- a slip and they fell when they were riding their bicycle at -- when they were, you know, 20, and they went because they had some -- some -- some neck tenderness, did it transpire -- I mean, the question is, is did it transpire into anything else; did the pain persist? Did patient have numbness, tingling, weakness in her upper extremities? Did she have to go for further treatment of physical therapy which followed up by not getting better and getting an MRI? Did she -- so -- so this is -- this is -- there's a lot of things that you have to include, but just to say that someone had neck pain when this happened would absolutely not affect my -- my diagnosis.

Q Okay. But to be fair, you don't know if the patient Rodriguez continued treating; accurate?

A Accurate.

1 V. Lerman, D.O.

2 Q Okay. And you don't know if the patient
3 had numbness and tingling following the 2016 accident
4 up until the 2023 accident; fair?

5 A I mean, I did not know it up until now,
6 but after reviewing the records, as you mentioned,
7 the physical exam did not mention any weakness or any
8 alteration of her sensation at physical exam by the
9 emergency room physician.

10 Q Okay. But the indication was the
11 diagnosis was a sprain of -- to the cervical spine,
12 though; correct?

13 A Yeah. We -- we can call a sprain --
14 MS. MILORAVA-KELMAN: Note my objection.

15 Q I'm sorry, go ahead, Doctor.

16 A Yeah. I mean, "sprain" is such a -- a --
17 a vague diagnosis that, you know, sleeping the wrong
18 way and waking up and not being able to move your
19 neck is a sprain of your neck.

20 Q Okay. But that wasn't the case here.
21 She went -- this wasn't waking up from sleeping, this
22 was, as you saw in the motor -- in the police report,
23 the patient was involved in a head-on motor vehicle
24 accident; right, isn't that a difference between that
25 and sleeping on your neck the wrong way?

1 V. Lerman, D.O.

2 MS. MILORAVA-KELMAN: Note my objection.

3 A As a matter of fact, sometimes sleeping
4 a -- a wrong way can -- can come out with worse
5 outcomes than -- than being in a car accident.

6 Q Okay. But this -- just to be clear, this
7 wasn't a -- sleeping on the neck the wrong way or on
8 the wrong side of the bed. This was related
9 specifically to the accident that occurred three days
10 prior; fair, Doctor?

11 MS. MILORAVA-KELMAN: Note my objection.

12 Q Is that fair, Doctor?

13 MS. MILORAVA-KELMAN: Note my objection.

14 A Yes.

15 Q After an accident like that, a
16 front-end -- a front -- head-on collision when a
17 patient is in the front passenger seat, could that
18 cause a disc bulge to the cervical spine?

19 MS. MILORAVA-KELMAN: Note my objection.

20 A Sure. Again, anything's possible.

21 Q But the reality is, you didn't have those
22 records when you treated the patient Rodriguez; fair?

23 MS. MILORAVA-KELMAN: Note my objection.

24 A Fair.

25 Q And you didn't have the opportunity --

1 V. Lerman, D.O.

2 because she didn't tell you about the accident, you
3 didn't have the opportunity to ask her any questions
4 about the accident or her treatment thereafter; fair,
5 Doctor?

6 A Correct.

7 MS. MILORAVA-KELMAN: Note my objection.

8 Q I'm sorry, what was that?

9 THE REPORTER: He said, "Correct."

10 MR. SCHACHER: Okay.

11 THE REPORTER: I heard it in between.

12 THE WITNESS: I'm sorry, I'm gonna give
13 like the three-second pause.

14 Q Now that you know that you've reviewed
15 these records, albeit you haven't spoken to the
16 patient, would it -- would your opinion regarding
17 causation regarding the 2023 accident be changed in
18 any way?

19 MS. MILORAVA-KELMAN: Note my objection.

20 A I don't think so, because if someone had
21 significant issue in 2016 that will require any
22 further treatments, again, that I don't know of, but
23 they would not be able to go without seeing a spine
24 surgeon or a pain management doctor at least for such
25 a long period of time, because as I mentioned

V. Lerman, D.O.

earlier, the com- -- the -- sometimes these progressions of the disc herniation can -- can happen really quickly. And the only thing that -- again, it's good to know the previous injuries, as I mentioned to you earlier, because even if there was a bulge there after this accident, any further incidents could have exacerbated or made things worse given that she was susceptible, so, obviously, it's good to know anything that's happened in the past.

Q Right.

Because earlier when we began your deposition, you did testify that if a patient was involved in a prior accident, one of your patients, and injured her spine, that they would be vulnerable, that the symptoms could then be exaggerated thereafter.

Do you recall giving that testimony?

A Absolutely.

Q Okay. And you also --

MS. MILORAVA-KELMAN: Okay. Note my objection to the term "exaggerated." Exacerbated.

MR. SCHACHER: Exacerbated. I -- I believe he said exaggerated, but it's --

V. Lerman, D.O.

either way.

Q And you also testified that such a prior incident could be -- your words were crucial -- a crucial part of a patient's history; is that -- is that fair?

A Yes.

MS. MILORAVA-KELMAN: Note my objection.

Q Okay. And you also testified earlier that if a patient had prior accidents and injured her spine, that it would affect your diagnosis and that you may move quicker in terms of treatment.

Do you recall giving that testimony?

A Yes. Correct.

Q Okay. And you also testified earlier that knowing the true prior medical history of one of your patients, you used the word, quote, save the outcome and affect a, quote, great positive outcome.

Does that remain true in -- in this particular case with respect to patient Rodriguez?

MS. MILORAVA-KELMAN: Note my objection.

A Yes.

Q Okay. Then following the subject accident -- and when I refer to the "subject accident," I'm referring to November 28th, 2023 motor

1 V. Lerman, D.O.

2 vehicle accident that occurred in Brooklyn which is
3 the subject of this litigation.

4 Do you understand that, Doctor?

5 A Yes.

6 Q Okay. But following this accident, are
7 you -- did you review the patient's records from NYU
8 Langone?

9 A I -- I don't remember.

10 Q Okay. Well, I'll represent to you that
11 on the day of the incident, the plaintiff went --
12 presented to NYU Langone.

13 Are you -- are you aware of that?

14 A Again, I don't remember.

15 Q Okay. So you don't re- -- you don't have
16 a recollection of reviewing those records; fair?

17 MS. MILORAVA-KELMAN: Note my objection.

18 A Usually when the patient walks in, we
19 review every record that's -- that's provided to us.

20 Q Okay. But you don't have an independent
21 recollection of reviewing those records; fair?

22 A Correct.

23 Q Okay. Well, I'll represent to you that
24 at the -- at NYU Langone, patient Rodriguez did not
25 undergo any X-rays or MRI studies; okay? And I could

1 V. Lerman, D.O.

2 show you the records if -- if you -- if you'd like,
3 but that -- I'm representing that to you; okay?

4 MS. MILORAVA-KELMAN: Note my objection.

5 Q Okay. Now, isn't it true, Doctor, if the
6 patient was in severe pain to their spine, the lumbar
7 or neck, that there -- that the doctors in the -- in
8 the -- the doctors would perform X-rays or MRIs to
9 the spine; isn't that fair?

10 MS. MILORAVA-KELMAN: Note my objection.

11 A Again, it all depends on the
12 symptomatology and the physical exam.

13 Q Okay. So what does it indicate to you,
14 the fact that patient Rodriguez presented to NYU
15 Langone on the day of the accident, and the doctors
16 there did not undergo any radiology to Rodriguez;
17 what does that indicate to you, Doctor?

18 MR. KEANE: Objection.

19 You can answer.

20 A To me, it indicates an oversight and
21 sloppy work.

22 (Discussion held off the record)

23 (WHEREUPON, the above-referred-to
24 document, Maimonides Medical Records,
25 15 pages, was marked as Defendants' Exhibit C,

1 V. Lerman, D.O.

2 for identification, as of this date.)

3 Q All right. So, Doctor, the fact that
4 patient Rodriguez did not undergo any radiology on
5 the day of the incident, is it possible that the
6 doctors didn't think that the nature or the
7 complaints warranted that -- warranted radiology be
8 performed?

9 MS. MILORAVA-KELMAN: Note my objection.

10 A Michael, if you're an emergency room
11 physician and someone comes in to you after a car
12 accident, it's a protocol to get X-rays of the neck.
13 It's a must. Whether someone -- because there could
14 be potential internal bleedings, there can be, you
15 know, certain fractures, and I'm shocked -- I'm
16 really shocked that NYU did not get an X-ray of the
17 neck.

18 MR. KEANE: And I'm just gonna put an
19 objection on the record. Just, Michael, he's
20 not here as an expert witness, he's just a
21 fact witness, so his opinions shouldn't really
22 be asked, because that's not the purpose of
23 him here, but I'm giving you some leeway.

24 MS. MILORAVA-KELMAN: I join the
25 objection.

V. Lerman, D.O.

Q Okay. And then we have records from Brooklyn Medical Practice, 410 Ditmas Avenue, the day following the accident.

Have you reviewed those records, Doctor?

A Yes.

Q Okay. And when did you review them?

A I'm sure on the day of the initial visit.

Q Okay. And do you know what doctor Ms. Rodriguez saw at Brooklyn Medical when she initially started working there -- started treating there?

A I don't recall off the top of my head.

Q Okay. Because the records don't indicate the provider.

Are you familiar with Ms. Rodriguez's -- strike that.

Do you know what Ms. Rodriguez's job was at the time of the accident?

A I don't recall off the top of my head.

Q Okay. Did you -- do you recall asking her anything about her employment when you examined her in March of 2024?

A Usually we do. Again, I don't have my notes in front of me.

1 V. Lerman, D.O.

2 Q Okay. We'll show -- I'll show them to
3 you.

4 And do you recall what the -- the
5 diagnosis was of Ms. Rodriguez at Brooklyn Medical?

6 A Again, I do not recall off the top of my
7 head.

8 Q Okay. We have records from -- do you
9 know how long she -- strike that.

10 Do you know how long she treated --
11 Ms. Rodriguez treated at Brooklyn Medical?

12 A I don't -- again, I don't recall off the
13 top of my head. If you would show me my notes,
14 it's -- everything should be there.

15 Q Okay. Are you aware -- well, did you
16 speak to any of the doctors at Brooklyn Medical
17 regarding Ms. Rodriguez's treatment and diagnosis?

18 A No, I did not.

19 Q Okay. And why not?

20 A Because it's not common practice to call
21 about every single patient that's -- that's -- that's
22 being treated somewhere. If I'm gonna be doing this,
23 I'm not gonna have time treating my patients.

24 Q Okay. Well, what about the patients that
25 ultimately undergo fusion surgeries, do you -- do you

1 V. Lerman, D.O.

2 find the time to speak with the other providers
3 before under- -- undergoing -- or performing the
4 surgeries?

5 A No.

6 MS. MILORAVA-KELMAN: Note my objection.

7 A No.

8 Q Okay. And why not?

9 MS. MILORAVA-KELMAN: Note my objection.

10 A Because I'm the -- because I'm the
11 surgeon for making decisions whether surgery's needed
12 or not.

13 Q Okay. And then in December of 2023, we
14 have records from plaintiff's -- or patient's records
15 from North Shore Family Chiropractic, slash, Brooklyn
16 Medical Physical Therapy.

17 Did you re- -- did you review any of
18 those records, Doctor?

19 A I'm sure we have these records.

20 Q Okay. But I just want to know, do you
21 have an independent recollection of reviewing the
22 records; yes or no?

23 A I don't recollect, no.

24 Q Okay. Do you recall speaking to any of
25 the chiropractors at North Shore regarding their

1 V. Lerman, D.O.

2 treatment or diagnosis of Ms. Rodriguez?

3 A No. I do not speak to doctors on every
4 patient unless it's absolutely necessary.

5 Q And when is it absolutely necessary?

6 A If there's some serious emergency that
7 needs to be relayed to the doctor.

8 Q Okay. And what kind of emergency are you
9 talking about?

10 A This patient just received an ep- -- an
11 epidural, and she has an epidural hematoma. We're
12 taking patient to the operating room because it's an
13 emergency.

14 Q Okay.

15 A Nothing would happen. Very rare.

16 Q Okay. The North Shore Family
17 Chiropractic, is that also --

18 MS. MILORAVA-KELMAN: Hello?

19 I'm so sorry. Everybody froze and I --
20 can you hear me?

21 MR. SCHACHER: Yeah.

22 MS. MILORAVA-KELMAN: Okay. Did anything
23 happen in those past 15 seconds that I was
24 frozen out?

25 (WHEREUPON, the previous portion of the

1 V. Lerman, D.O.

2 testimony was read by the court reporter.)

3 Q Okay. And, Doctor, North Shore Family
4 Chiropractic, is that also located at 410 Ditmas
5 Avenue in the -- in the Brooklyn Medical Practice
6 facil- -- office?

7 A Probably.

8 Q Okay. And then we have records from
9 plaintiff, December -- also December of 2023 from
10 Unicorn Acupuncture.

11 Did you review those records?

12 A No, I don't re- -- recall this name, no.

13 Q Okay. Did you speak with any of the
14 providers from Unicorn Acupuncture regarding patient
15 Rodriguez?

16 A No.

17 Q Okay. And then we have pa- -- Rodriguez
18 undergoing an MRI -- oh, strike that.

19 And then we have Ms. Rodriguez treating
20 at Advanced Orthopedics & Joint Preservation.

21 Did you review those records, Doctor?

22 A No.

23 Q Okay. And then we have Ms. Rodriguez
24 undergoing an MRI to her cervical spine on
25 January 26th, 2024 conducted at Community Medical

1 V. Lerman, D.O.

2 Imaging and reviewed by Dr. Andrew McConnell (sic).

3 Did you -- do you recall reviewing that
4 MRI report?

5 A Not only the MRI report, but the actual
6 film as well.

7 Q Okay. So you did review the -- the
8 MR- -- the January 26th, 2024 MRI study?

9 A Correct.

10 Q All right. Did you speak to
11 Dr. McConnell regarding his report; yes or no?

12 A No.

13 Q And why not?

14 A I don't talk to every provider on every
15 single patient. As I mentioned earlier, Michael, I'm
16 not gonna have time treating patients if I would be
17 talking to providers. I have to read images, I have
18 the report, and as any physician, you review it on
19 your own unless you have absolutely complete, I
20 guess, disconnect between what you see on the MRI and
21 what is said on the report, you do not pick up the
22 phone to call the doctor and discuss.

23 Q Okay. Well, what if you're -- what if
24 you have a -- strike that.

25 MR. SCHACHER: Okay. I'm just gonna mark

1 V. Lerman, D.O.

2 the MRIs. I think we're on D now?

3 THE REPORTER: Yes, sir.

4 MR. SCHACHER: Can we just go off the
5 record for a second.

6 (Discussion held off the record)

7 MR. SCHACHER: Okay. Back on.

8 Q Okay. Doctor, I'm gonna show you what
9 we're going to mark as Defendants' D (displaying).

10 Okay. Can you see my screen, Doctor?

11 A Yes.

12 (WHEREUPON, the above-referred-to
13 document, Community Medical Imaging, MRI
14 report, dated January 26, 2024, three pages,
15 was marked as Defendants' Exhibit D, for
16 identification, as of this date.)

17 Q Okay. So what are we looking at here,
18 Doctor?

19 A MRI on the cervical spine without
20 contrast report.

21 Q Okay. And what does it -- what does that
22 mean, without contrast?

23 A Exactly what it says, Michael.

24 Q Well, could you explain to -- to me what
25 that mean, without contrast?

1 V. Lerman, D.O.

2 A Am I an expert witness, or I'm just
3 stating the facts?

4 MR. KEANE: You're stating the facts.

5 A That means patient without -- patient
6 getting MRI without contrast.

7 Q Okay. Well, what's the difference
8 between with and without contrast?

9 A Someone gets an IV contrast versus not
10 getting IV contrast.

11 Q Okay. Is there -- is -- is with con- --
12 does with contrast -- the MRI with contrast give a
13 more definitive view of the spine or -- or vice
14 versa?

15 A No.

16 MS. MILORAVA-KELMAN: Note -- note my
17 objection.

18 A Contrast is done for other reasons.
19 Again, if I'm -- if I'm an expert witness, that's one
20 thing, I'll be explaining; if I'm just stating the
21 facts, then --

22 Q Okay. And this was signed by
23 Dr. McConnell; correct?

24 A Correct.

25 Q On -- on page 2 of the report.

1 V. Lerman, D.O.

2 And do you know Dr. McConnell?

3 A I do not know who -- Dr. McConnell.

4 Q Okay. And it looks like the report was
5 sent to Todd Lebson, top left.

6 Do you see that, Doctor?

7 A Yes.

8 Q A chiropractor.

9 Do you work -- have you -- do you know
10 Dr. Lebson?

11 A I've seen his name in the report.

12 Q Okay. But do you know him personally?

13 A No, never met the guy, never spoke to
14 him.

15 Q Okay. Do you see that -- he's a
16 chiropractor; correct?

17 A D.C. is, yeah, doctor of chiropractor.

18 Q Okay. And he's located at 410 Ditmas
19 Ave.; accurate?

20 A I don't know.

21 Q Okay. Do you know -- do you know if
22 Dr. -- do you know if Dr. Lebson practices at
23 Brooklyn Medical practice?

24 A I have --

25 MS. MILORAVA-KELMAN: Note my objection.

1 V. Lerman, D.O.

2 A Michael, I have no idea where he
3 practices. I've seen the name in the report.

4 Q Okay. Now, we see in the report -- now,
5 when did you -- do you know when you reviewed this
6 report?

7 A On the first day the patient came in. I
8 always review MRIs before I even look at the report,
9 the actual MRI films, and then I compare my findings
10 to the MRI findings by the radiologist.

11 Q I'm sorry, you compare your findings with
12 the report; is that what you're saying?

13 A Correct. The way I was taught through
14 residency and fellowships, that you never read the
15 reports unless you review MRI itself, because you
16 create a bias just by reading the reports. So you
17 review it always yourself, because I'm a spine
18 surgeon.

19 Q Okay. Now, when you read -- so did
20 you -- so this was on the day -- this would have been
21 on -- you reviewed the report and the study when you
22 treated Ms. Rodriguez on the -- on her initial
23 examination; is that accurate?

24 A Absolutely.

25 Q Okay. And when -- when you reviewed the

1 V. Lerman, D.O.

2 report, which would have been -- just for the record,
3 March 25th, 2024 was your first, I'll represent that
4 to you, with Ms. Rodriguez.

5 So that would have been the day that you
6 looked at the report and the film?

7 A Yes.

8 Q Okay. Now, do you recall specif- -- do
9 you have an independent recollection of reviewing
10 this report and the MRI study on that day?

11 A I always review my reports -- I mean, the
12 MRI films together with -- with follow-up with the
13 report.

14 Q Okay.

15 MR. KEANE: And I'm just gonna note an
16 objection. This comes back to my similar
17 objection I noted in the beginning. Since
18 you're controlling the exhibit, he can -- the
19 patient -- I mean, since Dr. Lerman can't see
20 the full report the whole time, and, for
21 example, "Date of Service" for this would be
22 on the top, which he -- which you have it,
23 it's being covered right now.

24 MR. SCHACHER: Okay. So -- yeah.

25 Q So, Doctor, we're on page 1, "Patient:

1 V. Lerman, D.O.

2 Abigail Rodriguez"; do you see that, Doctor?

3 A Yes.

4 Q "DOB: October 1st, 1989"; fair?

5 A Yes.

6 Q "Date of Service: January 26th, 2024";
7 accurate?

8 A Yes.

9 Q Okay. So my question to you is, do you
10 have an independent recollection of reviewing this
11 report on March 25th, 2024, simultaneously reviewing
12 the study; yes or no?

13 A Yes.

14 Q Now, did you -- when you reviewed the
15 report, did you disagree with Dr. McConnell's
16 impressions and findings?

17 A No.

18 Q Okay. So you agreed with everything?

19 A Yes.

20 Q Now, under the "Findings: C4-C-" --
21 well, strike that.

22 Under the "Findings," under "C3-C4:
23 There is a disc bulge."

24 Do you see -- fair, Doctor?

25 A Yes.

1 V. Lerman, D.O.

2 Q Okay. And you agreed with that based on
3 your review of the study; accurate?

4 A Michael, again, it's been quite some
5 time, and I don't have the -- the films right in
6 front of me to be able to go just by this. If you
7 want a general picture that I agreed with the report,
8 correct.

9 Q Okay. All right. So that -- and you
10 agree -- fair to say that you agree -- based on your
11 review of the study, you agree with all the findings
12 here that Dr. McConnell -- McDonnell -- excuse me,
13 McDonnell drafted; fair, Doctor?

14 A Yes.

15 Q Okay.

16 A From the report that he produced and the
17 report, yes.

18 Q Okay. And that would include C4-C5 --
19 well, "There is a diffused disc bulge. A herniation
20 is seen at the rat" -- "right lateral canal
21 projecting locally."

22 And you agreed with that; right, Doctor?

23 A Right.

24 Q Okay. What -- tell me please, what is --
25 what is a diffused disc bulge?

1 V. Lerman, D.O.

2 A It's a diffused disc bulge.

3 MS. MILORAVA-KELMAN: Note my objection.

4 Q Okay. Well, what does "diffused" mean?

5 A It's a generalized bulge together with a
6 herniation. So it's -- one sided can be, you know,
7 popped out of the disc, and the other one through the
8 annular tear, there's -- there's a material that --
9 that leaks into the right side and producing the
10 canal compression locally, as you could see on the
11 report.

12 Q Okay. So the diffused disc bulge, that
13 corresponds with the herniation seen at the right
14 lateral canal projecting outwards; is that -- is that
15 what you're saying?

16 A It does not -- it does not respond.
17 It's -- it's -- it's one -- one thing. If it's one
18 sided, it's -- it is popped out, and the other one --
19 through the other side is -- through the tear, the
20 material leaks and -- and compressing the right-sided
21 neural structures.

22 Q Okay. And when it -- when the report
23 says, "Herniation is seen at the right lateral canal
24 projecting locally," what -- what does that mean?

25 A That means the material came out and

1 V. Lerman, D.O.

2 causing compression of the local and neural
3 structures. Like the C5 ner- --

4 Q Okay. And --

5 A -- C5 nerve would -- would be the --
6 something that's sitting right there.

7 Q Okay. And that would have been to the
8 right side of the disc; fair?

9 A Correct.

10 Q Okay. And when we say "the right side,"
11 does that mean your right -- the patient's right-hand
12 side?

13 A So when we say "right side," patient can
14 have symptomatology on both sides, because if the
15 disc comes out, it can push the spinal cord because
16 we have minimal area for the spinal cord in the -- in
17 the cervical spine in rel- -- in comparison to the
18 lumbar spine. So anything can happen. So you can
19 have pain, let's say, on the left side, but numbness
20 and weakness can be on the -- on the right side. So
21 it's -- even though it can be a right-sided
22 compression, it can produce symptoms on both sides.

23 Q Okay. No, I understand that, but -- I
24 appreciate that.

25 But what I'm really asking is, when the

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disc is herniated and bulging, is it -- when you --
when the -- when McConnell wrote, "Seen at the right
lateral canal projecting locally," did -- did he mean
that it was projecting out on the right side of
Rodriguez's spine?

A Yes.

MS. MILORAVA-KELMAN: Note my --

A Correct.

MS. MILORAVA-KELMAN: -- objection.

A The answer's --

Q Yes?

A -- correct.

Q Okay. Meaning, the right -- and my
previous question was, the right would be her
right-hand side; accurate?

A Yes.

Q Okay. And then McConnell's impression
was, "A hernia-" -- number 1, I'm on page 2 of
Defendants' D, "A herniation was seen at the right
lateral canal at C4-5 level as noted."

Do you see that, Doctor?

A Yes. Yes.

Q And then number 2, "Reversal of the
cervical" -- "cervical lordosis is seen suggesting

V. Lerman, D.O.

severe spasm."

Can you explain what -- what the
revers- -- reversal of cervical lordosis in- --
means, Doctor?

A Yeah. The spine lordosis goes this way,
and if you have muscle spasm, it strains out, so it
tightens you up so you don't have this nice curve in
that a- -- what a normal static balance is -- is
there for.

Q Okay. When plaintiff presented to
Maimonides in 2016 and she was positive -- she tested
positive for trapezius pain, is that indicative of a
spasm in that area?

A No.

MS. MILORAVA-KELMAN: Note my objection.

A No, it is not.

Q Was that indic- -- was that -- in the
2016 records, the position test for trapezius pain,
is that -- is that -- is that indicative of a sprain?

MR. KEANE: Objection.

MS. MILORAVA-KELMAN: Note my objection.

A I don't understand your question.

Q When we looked at the Maimonides
records --

1 V. Lerman, D.O.

2 A Yes.

3 Q -- the physical exam of the neck noted
4 supple possible positive for tenderness in the
5 trapezius area.

6 Do you remember that?

7 A Yes.

8 Q So my question to you is, the positive
9 for tenderness in the trapezius area, does that --
10 that correlate to a spasm or to the sprain?

11 MR. KEANE: Objection.

12 MS. MILORAVA-KELMAN: Note my objection.

13 A And the -- the trapezius has nothing to
14 do with the -- the reserve of cervical lordosis.

15 Q I'm not talking about the lordosis, I'm
16 talking about a sprain -- the difference between a
17 sprain and a str- -- and a spasm; okay?

18 So my question specifically is, if she
19 tested positive for tenderness in the trapezius area
20 in 2016, does that -- does that indicate to you
21 that -- is that evidence of a sprain in the cervical
22 spine?

23 MS. MILORAVA-KELMAN: Note my objection.

24 A Michael, the question does not make sense
25 to me at all. I'm sorry, I -- I -- I can't answer

1 V. Lerman, D.O.

2 this question for you. I -- I don't understand what
3 you're asking.

4 Q Okay. Well, we'll -- let me rephrase it.

5 As a spine surgeon, what -- what -- if
6 you have a positive test for tenderness in the
7 trapezius area, what -- what does that indicate?

8 A Nothing.

9 MR. KEANE: And objection. I just want
10 to go back to my previous objection. He's not
11 here as an expert, and we're -- like I said,
12 I've given you some leeway, but you're
13 starting to ask his opinions about what
14 happened. All we're here is for treatment of
15 this patient.

16 MR. SCHACHER: Okay. Well, I think it's
17 relevant and it's related, but I -- I
18 understand what you're saying.

19 Q All right. So -- so you, Doc -- your
20 answer's --

21 MS. MILORAVA-KELMAN: So I -- I agree.
22 I'm -- I'm sorry. I join the objection.

23 MR. SCHACHER: Okay.

24 Q All right. Doctor, so to you it means
25 nothing then, the positive tenderness in the

1 V. Lerman, D.O.

2 trapezius area in 2016, that -- that's -- that --
3 that indicates nothing?

4 A Absolutely nothing, because if we're
5 gonna check -- start -- check every single person
6 that comes in for trapezius tenderness, I guarantee
7 that probably 90 percent of us will have trapezius
8 tenderness.

9 Q Okay. But she ultimately was diagnosed
10 with the cervical sprain -- sprain, excuse me, in
11 2016.

12 You saw that; right, Doctor?

13 MS. MILORAVA-KELMAN: Note my objection.

14 A Yes.

15 MS. MILORAVA-KELMAN: Note my objection.

16 Q Right; you saw that, right, Doctor?

17 A Yes, I did see it.

18 Q Did you see anything in this -- again,
19 I'm referring to Defendants' D.

20 Do you see anything here, Doctor, that
21 indicates there was any acute pain or findings in
22 McDonnell's MRI report?

23 A Yes. You can see that there is --
24 there's severe cervical spine pulling muscle
25 lordosis, so that's a sign of acute spasm.

1 V. Lerman, D.O.

2 Q Okay. But there's nothing here --
3 there's -- there's no notation regarding acute or
4 traumatic; is there?

5 MS. MILORAVA-KELMAN: Note my objection.

6 A I think disc herniation is -- is -- is
7 pretty -- is pretty acute and traumatic.

8 Q Okay. But just to be clear, this -- this
9 doesn't -- the report does not indicate that, though;
10 right?

11 MS. MILORAVA-KELMAN: Note my objection.

12 A Yeah, I don't think the report would be
13 indicating like that, because they're stating what
14 they've seen.

15 Q Okay. So you've never seen an MRI -- an
16 MRI report of the cervical spine in all your years of
17 treating that said acute or traumatic herniation; you
18 never read that before?

19 MS. MILORAVA-KELMAN: Note my objection.

20 A I never seen in the -- honestly, in the
21 longest time, I've never seen a traumatic herniation
22 or acute herniation report, no.

23 Q All right. And then we have plaintiff
24 going --

25 MR. KEANE: Can we go off the record

V. Lerman, D.O.

before we --

MR. SCHACHER: Yeah.

(Discussion held off the record)

(WHEREUPON, a brief recess was taken,
after which the following transpired:)

(Time noted: 12:00 p.m.)

MR. SCHACHER: Can you read back the last
Q&A, please?

(WHEREUPON, the requested portion of the
testimony was read by the court reporter.)

CONTINUED EXAMINATION BY MR. SCHACHER:

Q Doctor, then we have patient Rodriguez
seeing Dr. Richard Apple in February of 2024.

Did you review those records?

A Again, off the top of my head, I don't
have -- you know, it's been a while ago, but I'm sure
I did. I -- I review all pain management records.

Q Okay. And then on -- on that
February 8th, 2024, records indicate Dr. Apple
performed an epidural injection at C6-C7.

Do you recall reviewing those -- that
record?

A Again, I don't remember at the top of my
head, but I'm sure I did.

1 V. Lerman, D.O.

2 Q Okay. And then we have late February
3 2024, February 27th, plaintiff undergoing an EMG test
4 at North Shore Family Chiropractic.

5 Do you recall reviewing that record?

6 A Again, as it was almost two years ago, I
7 definitely had these records, and I would definitely
8 review them on the first day of seeing patients.

9 Q Okay. All right. So we're gonna look at
10 that -- your first initial visit with Rodriguez now.
11 Just bear with me.

12 MR. SCHACHER: We'll mark this as
13 Defendants' E -- just give me one second.

14 Q Okay, Doctor. We're marking this as
15 Defendants' E (displaying). These are the records
16 that my office obtained from Total Orthopedics &
17 Sports Medicine.

18 And again, that's your office; correct?

19 A Yes. Correct.

20 (WHEREUPON, the above-referred-to
21 document, Total Orthopedics & Sports Medicine
22 Medical Records, 39 pages, was marked as
23 Defendants' Exhibit E, for identification, as
24 of this date.)

25 Q Okay. Are you an -- are you an owner of

1 V. Lerman, D.O.

2 that practice?

3 A I'm a -- a -- one of the partners.

4 Q Okay. Who are the other partners?

5 A There's --

6 MS. MILORAVA-KELMAN: Note my objection.

7 A -- six other partners.

8 Q Okay. And what are their names?

9 MS. MILORAVA-KELMAN: Note my objection.

10 A Dr. Charlie Ruotolo; Dr. Richard
11 McCormack; Dr. Elizabeth Morrison; Dr. -- I don't
12 know -- Karen Avanesov; and Dr. Aries Rubinchar (ph).

13 (Reporter clarification)

14 Q Okay, Doctor. So we have 39 pages total
15 in Exhibit E. I'm gonna direct your attention to
16 page 22 of the record.

17 Okay. So I just want you to take look at
18 this first page, and then I'll ask -- these few
19 pages, then I'll ask you a few questions; okay?

20 Can you see it, or you want me to zoom
21 in?

22 A Can you zoom in a little -- yeah.
23 Perfect. Thank you.

24 And that's my first initial visit; right?

25 Q Yes.

1 V. Lerman, D.O.

2 A Okay. Okay.

3 Q Okay. So I'll go through it with you,
4 I -- there's a few pages here.

5 So again, for the record, we're on
6 Defendants' E as in Edward, page 22. It says
7 "Encounter number 1" in the top left.

8 Do you see that, Doctor?

9 A Yes.

10 Q Okay. Does that -- does that indicate to
11 you that this is the first time you examined the
12 plain- -- the patient?

13 A Correct.

14 Q And it has her name here, Abigail
15 Rodriguez; fair?

16 A Yes.

17 Q Okay. The date, March 25, 2024,
18 12 o'clock; accurate?

19 A Correct.

20 Q Okay. And you saw her in Brooklyn.

21 What -- what address did you see her at?

22 A 1789 Sheepshead Bay Road, Brooklyn,
23 New York. The ZIP, I don't know.

24 Q Okay. And then there's a history there,
25 History of Present Illness, parentheses, Vadim

1 V. Lerman, D.O.

2 Lerman, D.O., the date and the time.

3 Do you see that, Doctor?

4 A Yes. Correct.

5 Q Okay. And -- and what -- what does that
6 indicate to you that you -- there's a parentheses,
7 your name, the date, and the time; what does that
8 indicate?

9 A That I was the one who was getting the
10 history of pres- -- of present illness.

11 Q Okay. And who types that in; is that
12 you -- physically type that in, or is it your
13 assistant, or some- -- somebody else?

14 A It depends. If there's a -- there's an
15 M.A. that day, then -- and then they help me while
16 I'm talking to the patient, they're ent- -- entering
17 information; if we're short in the -- then I'm doing
18 it myself.

19 Q Okay. Do you have a specific
20 recollection -- you said "M.E." --

21 A No.

22 Q -- Mary Edward --

23 A M- -- M.A. -- M.A., medical assistant.

24 Q Okay. And do you re- -- okay. All
25 right. So the fact that it says, parentheses, your

1 V. Lerman, D.O.

2 name, date, and time, would that indicate to you that
3 you spoke to the patient and took a -- her history?

4 A Correct.

5 Q Okay. Not somebody else, right, it was
6 specifically you; right?

7 A Correct.

8 Q Because if it had somebody's else name,
9 then it would indicate that that person spoke to the
10 patient; fair?

11 A I am not gonna -- there's -- there's also
12 initial M.A. that starts speaking and they start
13 populating the note, and then I -- then I walk in,
14 so, yeah, could be combination of both people first.

15 Q Okay. Okay. So it says that -- I'll
16 just paraphrase, but Rodriguez is a 34-year-old
17 female. Presents with neck pain radiating into the
18 left shoulder and arm associated with numbness and
19 tingling.

20 Do you see that, Doctor?

21 A Yes. Correct.

22 Q Okay. And the problem originated on
23 November 28th, 2023 as a result of an MVA, motor
24 vehicle accident.

25 Do you see that, Doctor?

1 V. Lerman, D.O.

2 A Yes.

3 Q Okay. So a few sentences down, the
4 sentence where I'm pointing says, "There he was
5 rendered a physical examination, X-rays, and given
6 pain medication."

7 Do you see that?

8 A Uh-huh.

9 Q Why does it say "he" there, "There he,"
10 instead of --

11 A Human --

12 Q -- "she"?

13 A -- error. Human error. A typo. We're
14 humans.

15 Q Okay. And then it says X-rays there; do
16 you see that?

17 A Yes.

18 Q Okay. I'll represent to you the records
19 that we got from NYU Langone don't indicate -- do not
20 indicate Rodriguez underwent any radiology at NYU
21 Langone.

22 Is there any reason why you would have
23 that there, X-rays noted, if there was, in fact, no
24 X-rays conducted?

25 A Maybe the patient told us that she had

1 V. Lerman, D.O.

2 X-rays done there, so this is the area where we
3 document everything that the patient's telling us.

4 Q Okay. So this is specifically coming
5 from the patient; right?

6 A Correct.

7 Q Okay. And then the next sentence says,
8 "He was discharged the same day."

9 You see that?

10 A Yes.

11 Q Okay. Why does it say "he" instead of
12 "she"?

13 A Again, typo.

14 Q Okay. And then the next sentence says,
15 "Patient described his neck pain as severe and
16 constant."

17 Do you see that?

18 A Yes.

19 Q Okay. Why does it say "his" instead of
20 "her"?

21 A Again -- so there's a template that we
22 use for these notes, and as that populates, maybe,
23 you know, I erased, or if M.A. was in the room,
24 erased and said -- because we usually say she, dash,
25 he, and maybe by accident we erased one or the other,

V. Lerman, D.O.

so --

Q Okay. But --

A But it's just a -- it just a -- it's just
a -- it's just a human error. Nothing but that.

Q Okay. But Abigail Rodriguez is a female;
right?

A You can see from the top of the chart,
yeah, it says female.

Q Right.

Okay. And do you recall her being a
female?

A Yes, I do recall her being a female.
Yes.

Q These days, you have to be specific.

Okay. So -- all right. So -- all right.
So we can agree -- we can agree that he is -- this is a
typo and it should have been she --

A It's just a typo. Correct. Yes.

Q Okay. And then, again, it says, "Patient
rates his neck pain 9 on zero to 10 pain scale";
right?

A Correct.

Q Okay. Obviously, another typo; right?

A Yes.

1 V. Lerman, D.O.

2 Q Okay. And then it says, "The patient's
3 currently working full time"?

4 A Correct.

5 Q Okay. Okay. You testified about a
6 template used for notes.

7 So is that -- is it -- is that on all our
8 visits and all your examinations you use a template
9 to -- utilize a template to draft your reports?

10 MS. MILORAVA-KELMAN: Note my objection.

11 A Yes, of course. Every single note would
12 be templated in every possible office throughout the
13 United States.

14 Q Okay. And how do you know that?

15 A Because even the Mount Sinai system, we
16 simply made sure that everything is templated to make
17 sure that -- to avoid more errors. So everything is
18 templated; the operative reports, notes, everything,
19 so you just have to make sure that you can really be
20 concise and straight to the point.

21 Q Okay. And as you've testified to
22 earlier, you have the option of, I guess, deleting
23 the "he" or the "she," and then leaving the other
24 sex; is that fair?

25 A Correct.

1 V. Lerman, D.O.

2 Q Okay. But here, there was multiple times
3 that "his" and "he" was selected versus "she" and
4 "her"; accurate?

5 A Yes.

6 Q Okay. And it's your testimony that was
7 because of a human error?

8 A Absolutely.

9 Q Okay. Was that you that -- that -- that
10 made that error, or was that someone else?

11 A Michael, I don't recall. It's been over
12 two -- close to two years ago.

13 Q Okay. And then the sentence below the
14 paragraph says, "The pat-" -- quote, The patient
15 denies any prior injury.

16 Do you see that, Doctor?

17 A Correct.

18 Q Okay. And that was the patient telling
19 you that; fair?

20 A Correct.

21 Q Okay. Do we -- we now know that that was
22 untrue; fair?

23 MS. MILORAVA-KELMAN: Note my objection.

24 A Correct.

25 Q Okay. And how do we know that?

1 V. Lerman, D.O.

2 MS. MILORAVA-KELMAN: Note my objection.

3 A Because you provided documentation about
4 a car accident in 2016.

5 Q And that she went to emergency department
6 three days after; right, Doctor?

7 A Yes.

8 Q And then she --

9 MS. MILORAVA-KELMAN: Note my objection.

10 Q And then she complained of neck pain and
11 was diagnosed with a cervical sprain; fair?

12 MS. MILORAVA-KELMAN: Note my --

13 A Yes.

14 MS. MILORAVA-KELMAN: -- objection.

15 Q Would it have ben- -- would it have
16 benefited your evaluation of the patient to know
17 about this prior injury when you examined her in
18 March of 2024?

19 MS. MILORAVA-KELMAN: Note my objection.

20 A Again, with a diagnosis of -- that was
21 given in the emergency room and no follow-up
22 treatments, obviously, would not affect anything, but
23 it's good to know.

24 Q Okay. But you don't know definitively
25 whether or not she followed up for any treatment, you

1 V. Lerman, D.O.

2 don't know for certain; right?

3 A Do we know it? So you tell me, Michael.

4 Q You're her -- you're her doctor.

5 You don't know; right?

6 A I -- I --

7 MS. MILORAVA-KELMAN: Note my --

8 A -- don't know.

9 MS. MILORAVA-KELMAN: -- objection.

10 Q You don't know; right?

11 A I don't, no.

12 Q And you don't know -- considering that
13 she was untruthful to you about a prior injury, you
14 don't know if she had pain from 2016 up until March
15 of 2024, you don't know that either; right, Doctor?

16 MS. MILORAVA-KELMAN: Note my objection.

17 A Again, if she would have the level of
18 pain, I'm sure she would seek help prior to seeing
19 me.

20 Q Okay. And she did seek help; right? She
21 went to emergency room and she was examined by a
22 doctor; right? We -- we read those records; right?

23 MS. MILORAVA-KELMAN: Note my --

24 A Correct.

25 MS. MILORAVA-KELMAN: -- objection.

1 V. Lerman, D.O.

2 Q Right, Doctor?

3 A Yes.

4 Q Okay. So what does that indicate to you?
5 Three days after a motor vehicle accident, your
6 patient went to the emergency room at Maimonides
7 Medical Center; what does that ind- -- with neck
8 pain; what does that indicate to you?

9 MS. MILORAVA-KELMAN: Note my objection.

10 A It just indicates that she had some pain.
11 Nothing more than that.

12 Q Yeah.

13 But she obviously felt like it was enough
14 pain to go to the ER versus just to stay at home;
15 right?

16 MS. MILORAVA-KELMAN: Note my objection.

17 This is speculative.

18 Q Is there a dif- -- you can answer,
19 Doctor.

20 A Yeah, I'm not sure why, because again,
21 lately, people treat the emergency room as a walk-in
22 clinic, so I don't know why she went to the emergency
23 room instead of an urgent care center or something
24 like that -- oh, it was -- 2016, there was no urgent
25 care centers. I'm sorry.

1 V. Lerman, D.O.

2 Q And then we see -- as we move below, we
3 see Diagnostic -- again, for the record, we're on --
4 we're on page 22 of Exhibit E.

5 As we move down, Doctor, do you see in
6 the middle, "Diagnostics Study History"?

7 A Yeah.

8 Q Okay. And it says, parentheses, Angela
9 Tepi, T-I- -- sorry, T-E-P-I; date, same date; time,
10 12:36.

11 Do you see that?

12 A Yes.

13 Q Okay. Who is Angela Tepi?

14 A She's one of our, I think, medical
15 assistants who scans reports in.

16 Q She's a medical assistant?

17 A Or a front desk, I -- I don't remember.

18 Q Okay. Well, I rep- -- I'll represent to
19 you that I -- I looked up Angela Tepi. Her full name
20 is Angela Reyes de -- D, David, E, Edward -- Tepi.
21 And online, it indicates that she has a certification
22 in medical billing and coding.

23 Does that refresh your recollection with
24 regards to her title?

25 A No. I -- I don't -- it does not, no. I

1 V. Lerman, D.O.

2 mean, we have 300 employees, Michael. I -- I don't
3 recall every single employee that's in our practice.

4 Q Okay. Do you know Angela Tepi
5 personally?

6 A I do not know Angela Tepi personally.

7 Q Okay. So then why is she -- was she in
8 the visit with -- I mean, did the records indicate,
9 based on your review, that she was in the visit with
10 you present at that time?

11 A No. It's whoever scans the -- the
12 diagnostic records that get -- cervical MRI report
13 scanned, it might have been by Angela Tepi.

14 MR. KEANE: Who works for Total
15 Orthopedics.

16 Q Okay. So you don't know her at all --
17 even though she works for the -- Total Ortho, you
18 don't know her at all?

19 MR. KEANE: Objection.

20 A Michael, this is a very -- same question,
21 do you know every single employee that works in your
22 firm?

23 Q In my office, yes.

24 A Yeah, but in your whole firm. We're not
25 talking about your office, in your firm.

1 V. Lerman, D.O.

2 Q All right. Doctor, I'm here to ask the
3 questions.

4 So my question to you is, do you know her
5 or not?

6 A I don't recall. Maybe if I see her face,
7 I'll -- I'll know who she is. Maybe -- we have a lot
8 of Angelas in the office.

9 Q Okay. All right. So my question to you
10 is, you testified earlier that you reviewed the MRI
11 studies of the patient Rodriguez on the first day of
12 your first encounter with her.

13 Do you recall giving that testimony?

14 A Yes.

15 MR. KEANE: Objection.

16 Q Okay. So then why does it say Diagnostic
17 Studies History, parentheses, Angela Tepi, on the day
18 of the encounter, her name and not your name?

19 A Because it's someone who scans in the
20 reports. It's -- it's not -- it's -- she's not
21 reviewing the records. It's -- it's the scan in --
22 it's the -- it's the system that populates whoever
23 scanned in the information. So if it's something
24 that has to do with diagnostic reports, it's usually
25 getting scanned into the system and gets populated

1 V. Lerman, D.O.

2 into your note. So I personally review the MRI and
3 report, and I don't need to be putting in the chart
4 that I am personally reviewing the MRI and the
5 reports.

6 Q Okay. Well, does it say anywhere in
7 encounter number 1 -- and I'll go through the three
8 pages with you -- does it say anywhere that you
9 personally reviewed the MRI studies on the note?

10 A I do not need to be putting it there.

11 Q Okay. Well, wouldn't it be thorough to
12 put that the doctor reviewed the MRI studies rather
13 than a medical billing coordinator?

14 MS. MILORAVA-KELMAN: Note my objection.

15 A Absolutely not, Michael.

16 Q And why not?

17 MR. KEANE: Objection.

18 A Because I personally review every single
19 MRI and report, and it does not need to be
20 documented.

21 Q Okay. Why doesn't it need -- why doesn't
22 it need to be documented?

23 MS. MILORAVA-KELMAN: Note my objection.

24 MR. KEANE: Objection.

25 A Because it's my note, it's -- everything

1 V. Lerman, D.O.

2 that needs to be in the note is there, and whoever
3 scans in the report, it -- it doesn't matter because
4 I personally review this, and when I talk about
5 diagnostic studies, that's what comes out from me
6 reviewing absolutely everything.

7 Q Okay. So then when it says, "Location:
8 Community Medical Imaging" -- which is spelled
9 wrong -- "Impression," the three impressions, is that
10 your impression, or is that Dr. McConnell's --
11 McDonnell's impression?

12 A This is the doctor -- this is who scanned
13 in the report.

14 Q Okay. And then the same thing with the
15 North Shore Family Chiropractic EMG test, is that --
16 is that just verbatim what he --

17 A Correct.

18 Q -- report said?

19 A Yes. Absolutely.

20 Q Okay.

21 A This is the report section.

22 Q Okay. And then the Assessment & Plan,
23 parentheses -- and again, sorry, for the record, I'm
24 on page 23 of Exhibit E.

25 Under -- next to Assessment & Plan, do

1 V. Lerman, D.O.

2 you see that, Doctor, it has your name --

3 A Yes.

4 Q -- date and time?

5 A Yes.

6 Q Okay. So why does it have your name here
7 for Assessment & Plan?

8 A Because this is something that I was
9 personally putting in to the chart manually.

10 Q Okay. And then I'm just gonna go back
11 for a second to page 22 on the bottom. It has
12 "Weight: 165 pounds," "Height: 65 inches." I'll
13 represent to you 65 inches is five-foot-four.

14 Doctor, given the height of the patient
15 and her weight, would you agree or disagree that the
16 plaintiff is morbid -- will be considered morbidly --
17 morbidly obese?

18 MS. MILORAVA-KELMAN: Note my objection.

19 A BMI of 27 is not morbidly obese.

20 Q Okay. Well, what about the weight, at
21 165 pounds at five-foot-four, is that considered
22 obese?

23 A BMI --

24 MS. MILORAVA-KELMAN: Note my objection.

25 A BMI is 27. It's not morbidly obese. So

1 V. Lerman, D.O.

2 BMI consists of your height and weight, which, again,
3 27 is not morbidly obese.

4 Q Okay. Have you reviewed plaintiff's
5 primary care records at all, Doctor?

6 A No.

7 Q Okay. Would it surprise you that her
8 records from Claudia Pineda, P-I-N-D-E-A (sic),
9 hyphen, Muyir, M-U-Y-I-R, her primary PA, indicate
10 that she has weight issues and is -- and is
11 recommended to lose weight; would that surprise you?

12 MS. MILORAVA-KELMAN: Note my objection.

13 A Yeah, I mean, 165 pounds is -- I don't
14 know that that's -- there's weight. I'm not -- I
15 would tell you, Michael, 90 percent of United States
16 have, you know, weight issues.

17 Q I understand that, but my question is,
18 would it surpri- -- would you be surprised to
19 read -- and I can show them to you, but I'm
20 representing to you that her PC -- primary care
21 records do, in fact, multiple times, indicate that
22 she has weight issues.

23 The question is specifically with
24 Rodriguez, would that surprise you given her weight
25 and height as listed in your report?

1 V. Lerman, D.O.

2 A No, it would --

3 MS. MILORAVA-KELMAN: Note my objection.

4 A -- it would not. If she's -- overweight
5 is never good. So I think having extra weight is not
6 helpful for your -- for your -- for your heart or
7 any- -- any- -- anything in your body, so --

8 Q Okay. Would you consider this
9 overweight, five-foot-four and 165 pounds?

10 A Slightly overweight.

11 MS. MILORAVA-KELMAN: Note my objection.

12 Q Okay. When you're overweight, Doctor, is
13 it your understanding that the overwei- -- an
14 overweight patient, that can affect -- that weight
15 can affect their joints and their spine?

16 A In your lower back maybe, in your middle
17 back maybe, but not your neck. You can have the same
18 weight whether you're 300 pounds or 150 pounds.

19 Q And how does being overweight affect your
20 lumbar and thoracic spine?

21 MS. MILORAVA-KELMAN: Note my objection.

22 A You can have a little extra, you know,
23 strain in there.

24 Q Okay. So I'm back on page 23 of your
25 record, and it's signed by you here; right, Doctor,

1 V. Lerman, D.O.

2 that's your signature?

3 A Correct.

4 Q Okay. And you ultimately -- based on the
5 assessment, there is radiculopathy, cervical region,
6 neck pain, herniation of cervical intervertebral disc
7 without myelopathy.

8 What is -- I don't know if I'm
9 pronouncing that correctly, but what is myelopathy,
10 Doctor?

11 A Without myelopathy, without -- without --
12 meaning that -- without irreversible changes in her
13 neurological status.

14 Q Okay. So that means --

15 A So -- so we're -- which means that we're
16 catching it at the early stages.

17 Q Okay. So if it was with myelopathy, what
18 would that -- what would that indicate to you?

19 A With myelopathy, you mean?

20 Q Yeah.

21 A It would indicate that patient is already
22 starting to go into irreversible neurological
23 deficits.

24 Q Okay. Would you recommend surgery if
25 that was the case?

1 V. Lerman, D.O.

2 MS. MILORAVA-KELMAN: Note my objection.

3 A Absolutely.

4 Q Okay. And the records -- we don't need
5 to go line by line here, but -- well, let's -- let's
6 just look at the bottom here. Current plan was
7 discectomy, spine, cervical anterior approach, with
8 fusion using bone graft.

9 Do you see that, Doctor?

10 A Yes.

11 Q With instrumentation, allograft, and
12 autograft; correct?

13 A Yes.

14 Q Okay. And at this point on the first
15 encounter with Rodriguez, you recommended a cervical
16 discectomy; fair?

17 A Correct.

18 Q Okay. Is that typical that if during a
19 first visit with the patient or patients, you'll
20 recommend discectomy and fusions?

21 MS. MILORAVA-KELMAN: Note my objection.

22 A It's depending on the situation. I'm a
23 surgeon. I'm the last stop. So I have people coming
24 to me for -- for -- after receiving all the
25 treatments they already had, whether with physical

1 V. Lerman, D.O.

2 therapy, or injections, epidurals, and if everything
3 fails, they come to me, then yeah, it -- it happens
4 all the time.

5 Q Okay. So in this particular case, the
6 accident happened in late November of 20- --
7 November 28th, so December of 2023, January of 2024,
8 February of 2024, and then a few weeks in March of
9 2024 she treated; accurate?

10 A Yeah.

11 Q Okay. Is that enough time in your
12 opinion to -- to evaluate whether conservative
13 treatment is successful or failed?

14 A Yes.

15 MS. MILORAVA-KELMAN: Note my objection.

16 Q Yes, Doctor?

17 A Yes.

18 Q And you discussed all the risks
19 associated with the surgery I see here at the bottom
20 of 23; accurate?

21 A Correct.

22 Q Okay. And the patient consented to
23 undergo the cervical discectomy and fusion; accurate?

24 A Right.

25 MR. SCHACHER: Okay. We're just gonna

1 V. Lerman, D.O.

2 mark -- we're on F; right?

3 THE REPORTER: Yes, sir.

4 MR. SCHACHER: Okay. I'm just gonna mark
5 the -- the operative record. Bear with me
6 here.

7 (WHEREUPON, the above-referred-to
8 document, Mount Sinai South Nassau Operative
9 Report, dated April 4, 2024, three pages, was
10 marked as Defendants' Exhibit F, for
11 identification, as of this date.)

12 Q All right. Can you see my screen,
13 Doctor?

14 A Yes.

15 Q Okay. All right. So following the
16 March 25th, 2024 initial visit, I just marked
17 Defendants' F, the operative report from Mount Sinai
18 South Nassau. It's a three-page report. I'll just
19 show it to you, Doctor, and then I'll ask you some
20 questions (scrolling).

21 Okay, Doctor. Have you had enough time
22 to review the -- we'll go through it, but --

23 A I mean, I remember my operative report,
24 yes.

25 Q I'm sorry?

1 V. Lerman, D.O.

2 A I mean, that -- it looks like my
3 operative report, correct.

4 Q Okay. All right. So it's dated April 4,
5 2024; accurate?

6 A Correct.

7 Q Same date -- DOB again, October 1st,
8 1989 --

9 A Yes.

10 Q -- for Ms. Rodriguez?

11 You were the surgeon, and your assistant
12 was Karen Avanesov; correct?

13 A Correct.

14 Q Okay. And we've already established that
15 he's a partner at Total Orthopedics; correct?

16 A Yes.

17 Q Okay. The preoperative diagnosis and
18 then the postoperative diagnosis is identical;
19 correct?

20 A Yes.

21 Q Okay. All right. So my question to you
22 is -- well, strike that.

23 The postoperative diagnosis, is that
24 based off of what you observed when you were
25 performing the surgery; is that -- is -- is that what

1 V. Lerman, D.O.

2 this indicates here, this postoperative?

3 A Correct. It -- it has been confirmed by
4 visualization.

5 Q Right.

6 Okay. Because sometimes the preoperative
7 and postoperative diagnoses can differ if -- when --
8 after you go into the patient, or open them up, so to
9 speak, and perform the surgery, the doctor, or you,
10 for instance, can see something definitely when
11 they're inside the body; fair?

12 MS. MILORAVA-KELMAN: Note my objection.

13 A I mean, it happens very rarely because we
14 have MRI findings before we go into them. Everything
15 is possible, Michael.

16 Q Okay. So is it -- all right. So you
17 said -- you said "very rarely."

18 So typically or usually when you go into
19 the body when you're performing the surgery, is it
20 usual that the -- is it -- is it usual that the --
21 the findings from the MRI study will -- will
22 correlate to what you observed when you're performing
23 the surgery?

24 MS. MILORAVA-KELMAN: Again, note my
25 objection. He is not here in an expert

V. Lerman, D.O.

capacity.

MR. SCHACHER: Okay.

Q You can answer, Doctor.

A Yeah, correct.

Q And how rare -- you testified earlier that it's rare, you used the word "rare," that the MRI study would differ from what you observed inside the body.

How -- could you give us a percentage of how -- how often that happens?

MS. MILORAVA-KELMAN: Same objection.

A Unfortunately, I can't give you a percent.

Q Okay. But it is rare; fair?

A Right.

Q Okay. Okay. So we looked at the MRI report earlier, you recall that; correct?

A Yes.

Q Okay. So the MRI report notes -- and just to be clear for the record, discectomy was recommended and performed at C4-5 anteriorly; correct?

A Correct.

Q Okay. All right. So we looked at the

1 V. Lerman, D.O.

2 Community Medical image earlier -- the report --
3 excuse me -- we reviewed that; correct?

4 A Yes.

5 Q All right. That was Exhibit D as in
6 David.

7 Okay. And you testified earlier that you
8 reviewed the MRI study; fair?

9 A Yes.

10 Q Okay. All right. So my question to you
11 is, the report -- and that you agreed with the
12 findings of the report; fair?

13 A Yes.

14 Q Okay. So my question to you is, the
15 report indicates -- and I can show it to you again, I
16 probably will have to -- the report indicated at
17 C4-5, there was a right lateral canal herniation.

18 Do you recall that?

19 A Yes.

20 Q Okay. But in your operative report,
21 postoperative diagnosis, it notes C4-5 posterior disc
22 herniation with neural impingement.

23 So my question to you is, is you agreed
24 with the MRI study from January 2024, why does your
25 diagnosis change in terms of the C4-5 level during

V. Lerman, D.O.

the operation?

MS. MILORAVA-KELMAN: Note my objection.

A Nothing has changed, Michael. Posterior disc herniation is a herniation whether it's to the right or to the left.

Q Okay. So it just doesn't -- you just don't indicate here in the operative report whether it's right or left?

A No, because you remove all of the discs, so it's -- you don't indicate it in the operative report. Posterior disc herniation means it is extruding (sic) material into the canal.

Q Okay. So when you -- do you recall when you went -- performed the surgery if the disc was, in fact, herniated to the right?

A Michael, I don't remember off the top of my head, but it was definitely posteriorly herniated.

Q Okay. And then the implant that you used -- and I have the records from Mount Sinai and I can show them to you if you like, but the im- -- implant is noted as a SeaSpine hardware implant; is that the -- do you recall if that's the implant that you used on -- in this surgery?

A You can scroll down, I'll be able to tell

1 V. Lerman, D.O.

2 you that.

3 Q (Complying)

4 A Go. Go. Go. Go. Keep going.

5 Q (Complying)

6 A Cage place- -- placement.

7 Yes. Okay. Yeah, the cage was placed at

8 C4-C5. Yeah, so probably it was -- it was -- I used

9 SeaSpine element to place.

10 Q Okay.

11 (Reporter clarification)

12 MR. SCHACHER: It's S-E- --

13 S-E-A-S-P-I-N-E.

14 A Actually, no, it's not SeaSpine
15 diagnosed. It's not -- it was -- no, not -- there's
16 no SeaSpine, no. It's Spinal Elements, it's not --
17 not SeaSpine.

18 Q Spinal Elements?

19 A It used to be Amendia -- it used to be
20 Amendia and then Spinal Elements.

21 Q It used to be what? I'm sorry.

22 A Amendia.

23 Q Amendia.

24 And how do you spell that?

25 A A-M-E- -- let me -- let me write it --

1 V. Lerman, D.O.

2 N-D-I-A.

3 Q Okay. So it's A-M, as in Mary, E-N,
4 Nancy, D, David, I-A?

5 A I think so.

6 Q Okay. All right. So the records
7 indicate from Mount Sinai that it was a SeaSpine
8 hardware implant.

9 Would you like me to show you those?

10 A I mean, I don't know. Okay. Let me see
11 them.

12 Q Okay. Bear with me. Just give me a
13 second, I have to move it over to outside of my
14 system here.

15 Okay. All right. I have it, I'll --
16 I'll send it over. Let's -- bear with me.

17 MR. SCHACHER: Let's go off the record
18 for a second.

19 (Discussion held off the record)

20 MR. SCHACHER: Okay. All right. So
21 we'll mark this -- we're at G; correct?

22 THE REPORTER: G.

23 MR. SCHACHER: Okay.

24 THE WITNESS: Correct.

25 Q All right. All right, Doctor. So

1 V. Lerman, D.O.

2 we're -- I'm gonna mark this as Defendants' G
3 (displaying). I'll represent to you that these are
4 the complete Mount Sinai South Nassau records that we
5 received for the surgery; okay?

6 A Uh-huh.

7 Q There's 128 pages. I'm gonna direct your
8 attention to page 99; okay, implant report -- well,
9 let's -- let's just go back. We should just --

10 (WHEREUPON, the above-referred-to
11 document, Mount Sinai South Nassau Medical
12 Record, dated April 4, 2024, 128 pages, was
13 marked as Defendants' Exhibit G, for
14 identification, as of this date.)

15 Q All right. So, sir -- Doctor, we see
16 Mount Sinai South Nassau, top left?

17 A Uh-huh.

18 Q Okay. Patient: Abigail Rodriguez.
19 DOB, again, October 1, '89; accurate?

20 A Yes.

21 Q The date, again, April 4, 2024.
22 Attending M.D. is you; correct?

23 A Correct.

24 Q Okay. Okay. So I'm just gonna -- and,
25 again, these are the complete records. I'll

1 V. Lerman, D.O.

2 represent that to you. I'm not gonna make you look
3 at all 128 pages, but I'm gonna refer you to page 99
4 of page 128, "Implant Report." We discussed earlier
5 the implant -- hardware implant. It notes here that
6 SeaSpine spacer was used.

7 Do you see that, Doctor?

8 A Uh-huh.

9 Q Okay. Does that -- does that refresh
10 your recollection that there was a SeaSpine implant
11 used, not Spinal Elements?

12 A Maybe. I have no idea. It was a year
13 and a half ago, so whatever was accurate and
14 appropriate for the patient to be used, that's
15 probably what we used.

16 Q Okay. But it says it here, you --
17 there's no denying it; correct?

18 A Yeah.

19 Q Then it has the date, "Implant Date,"
20 "Status: Implanted," "Body Site: C4-5."

21 Do you -- do you have any reason to --
22 and the "Patient's Name: Rodriguez."

23 Do you have any reason to -- to
24 disbelieve or not believe that this is accurate?

25 A No, no disbelief at all.

1 V. Lerman, D.O.

2 Q Okay. And then it notes also that the --
3 that the tissue material, the matrix was Orios,
4 O-R-I-O-S.

5 Do you see that, Doctor, above the
6 spacer?

7 A Correct. Yes. So it's a light -- yes.

8 Q Okay. And can you explain how the -- the
9 Orios tissue is used in the surgery?

10 A Yeah. It's used to place in a cage for
11 the -- a bone to stimulate the growth between the
12 vertebral bodies.

13 Q Okay. And then the spacer, the SeaSpine
14 spacer, can you -- can you tell us what -- what the
15 purpose of the spacer is?

16 A Simply to remove all the discs out of the
17 vertebral bodies to -- to be able to decompress for,
18 here, a disc herniation, it can leave the space
19 empty, so that -- I use it as a spacer to prevent any
20 instability in the cervical spine, and it conducts
21 the bone growth from one vertebral body to another by
22 providing a bony bridge, and then you have to
23 supplement it -- until that happens, you have to
24 supplement it with -- with two screws until that --

25 Q Okay. That --

1 V. Lerman, D.O.

2 A -- until that fusion occurs.

3 Q Okay. And the allograft, do you know
4 what that -- what kind of allograft was used with
5 this particular surgery?

6 A Whatever we always use, the same
7 allograft, again, for the conduction of the bone --
8 bone vertebral body to another --

9 Q Okay. And what -- what --

10 A -- to -- to make sure that the fusion
11 occurs.

12 Q Okay. And what allograft do you always
13 use?

14 MS. MILORAVA-KELMAN: Note my objection.

15 MR. KEANE: Objection.

16 A Yeah, I'm not -- I'm not sure. It was
17 just one like a -- it's like a 5 cc square block that
18 we use to put into the vertebral body every time
19 we --

20 Q Okay. It notes here "Matrix bone Orios
21 5 cc," is that what you're referring to or --

22 A No. No. It's a separate allograft. The
23 matrix is Or- -- Orios is -- is -- is like a light
24 bone from a tissue bank that's actually -- instead of
25 using what -- some people use a B&E (ph) which is

1 V. Lerman, D.O.

2 chem- -- a chemical, this is natural bone growth
3 which is amazing for the fusion.

4 Q Okay. And then following the surgery, we
5 have records of her -- Rodriguez going back to Total
6 Ortho in late April 2024, mid-June 2024, August of
7 2024, and then recently in July of 2025.

8 Did you see her during -- did you perform
9 her post-op exams?

10 A We have a PA evaluating patients on the
11 same days that I'm present in the office.

12 Q Okay. That's Serguei Jouravlev?

13 A Yes.

14 Q Okay. All right. So, Doctor, did you --
15 did you perform an examination of the plaintiff
16 following the April 4, 2024 surgery?

17 MS. MILORAVA-KELMAN: Note my objection.

18 A I had Serg perform physical exam and
19 follow up with Ms. Abigail.

20 Q Okay. Because the records -- I'll
21 represent to you that the records indicate that
22 Mr. -- PA Jouravlev did perform the -- the
23 postoperative exam, not -- your name is not on those
24 records; is that accurate or inaccurate?

25 A It's correct because every PA is working

1 V. Lerman, D.O.

2 under a physician, so we're present in the office on
3 the days the patient -- he sees postoperative
4 patients as well.

5 Q Okay. So were you -- so you were
6 actually at these postoperative visits, despite the
7 fact that your name is not on the report?

8 MR. KEANE: Objection.

9 A On the initial, I was there, and I'm not
10 recollecting if I was there for the follow-ups.

11 Q Okay. Because like I said, I'll
12 represent to you the records do not indicate -- or do
13 not note your name on the postoperative follow-ups,
14 they rep- -- they -- they note Jouravlev's name?

15 A Correct.

16 Q Okay.

17 A Correct.

18 Q So did Jouravlev do the follow-up exams?

19 A Yes, he can do follow-up exams.

20 Q Okay. And why -- how -- why did you not
21 do the follow-up exam after Rodriguez's surgery?

22 A Because this is one of our protocols to
23 be followed up by a physician assistant unless
24 there's any issues, and I am always in the office
25 when patients come in and -- and Jouravlev's always

1 V. Lerman, D.O.

2 present with us in the office or operating room.

3 Q Okay. Were you aware that her neck pain
4 was -- she said it was a 1 out of 10 scale in June of
5 2024; were you aware of that?

6 A Yes.

7 MS. MILORAVA-KELMAN: Note my objection.

8 Q I'm sorry?

9 A Yes.

10 Q Okay. And then does that indicate to you
11 that the surgery was successful?

12 A Oh, absolutely, surgery was successful.

13 Q Okay. All right. So, Doctor,
14 considering the records we reviewed, we agree that
15 you didn't have all of Ms. Rodriguez's medical
16 records before you performed the April 2024 surgery;
17 fair?

18 MS. MILORAVA-KELMAN: Note my objection.

19 A Correct.

20 Q And just to be clear, we agree that you
21 were unaware of her past medical history, including
22 her treatment at Maimonides, her neck pain, her lower
23 back pain resulting from her January 2016 accident;
24 fair?

25 MS. MILORAVA-KELMAN: Note -- note my

V. Lerman, D.O.

objection.

A Correct.

Q Okay. And you didn't know that she had prior neck complaints in 2016 until today; correct?

MS. MILORAVA-KELMAN: Note my objection.

A Yes. Correct.

Q Okay. And, Doctor, in the past ten years, have you been sued for malpractice?

MS. MILORAVA-KELMAN: Note my objection.

A I think I have one pending lawsuit as an assistant, not personally, yes.

Q Okay. And just to go back for a second with the surgery, Karen Avanesov, he was the assistant; correct?

A Correct.

Q Okay. And, Doctor, you're a- -- are you aware of the pending lawsuit in the Eastern District -- there's three, but the -- the first one -- the -- the -- the oldest one is Roosevelt Road Re v. Total Orthopedics and Dr. Lerman with multiple other plaintiffs and defendants; are you aware of that lawsuit?

A Yes.

MS. MILORAVA-KELMAN: Note my objection.

1 V. Lerman, D.O.

2 Q I'm sorry?

3 A Yes, of course.

4 Q Okay. And Michael's office, Garfunkel
5 Wild, he's representing you in that -- presently in
6 that case; correct?

7 A Yes.

8 Q Okay. And he's also representing Total
9 Orthopedics in that case?

10 A Yes.

11 Q And you're aware that the allegations in
12 that case are RICO violations, common law fraud,
13 unjust enrichment; are you aware of that?

14 A Yes.

15 MS. MILORAVA-KELMAN: Note my objection.

16 Q And you -- are you the director and
17 officer of Total Orthopedics?

18 A No.

19 Q Okay. Who is the director?

20 A The -- the president?

21 Q Yes.

22 A Dr. Charles Ruotolo.

23 Q And how do you spell his last name?

24 MR. KEANE: Maybe R-O-U- --

25 A R-O-U- --

V. Lerman, D.O.

MR. KEANE: -- T-O-U -- can you just look
up online? I'm sorry, I --

MR. SCHACHER: That's okay. We'll look
it up.

Q Charles -- Charles Ruotolo?

A Yes.

Q Okay. Are you an officer of Total
Orthopedics?

A What do you mean by "officer"?

Q Well, you're a partner.

Is that -- is that your --

A Yes, I'm a partner.

Q Okay. So are you an equity -- are you
considered an equity partner?

A Again, what's the -- I'm a partner.

Q Okay. But do you have an equity stake in
the -- in the practice?

A Equity stake is -- I guess. I mean, if
you mean like what we -- we're making from -- what I
make, and then what the other guys make? I'm not
sure exactly what you're -- what you're --

Q Well, equity -- equity -- well, did you
put equity into the practice; meaning, did you put
money towards the practice to become an equity --

1 V. Lerman, D.O.

2 A Yes.

3 Q -- partner?

4 A Yes, I did.

5 Q Okay. And then an equity partner would
6 also mean that you obtain a percentage of the profits
7 from the practice, you know, annually, that you
8 receive a --

9 A Yes.

10 Q -- percentage --

11 A Yes.

12 Q Okay. Yes, you do?

13 Yes, Doctor?

14 A Yes. Yes.

15 Q Okay. Okay. Is it true that
16 Dr. Sayeedus, S-A-Y-E-E-D-U-S, Salehin,
17 S-A-L-E-H-I-N, of Brooklyn Medical would refer
18 claimants to Dr. McConnell at Community Medical?

19 MS. MILORAVA-KELMAN: Note my objection.

20 A I have no idea.

21 Q So does Dr. Stanislav Avshalumov, was he
22 formally with Total Orthopedics?

23 A He was, I think, be- -- maybe a three
24 months overlap when I joined in 2012.

25 MR. SCHACHER: Okay. And just for the

1 V. Lerman, D.O.

2 record, first name is S-T-A, N as in Nancy,
3 I-S-L-A-V, last name A-V-S-H-A-L-U-M, Mary,
4 O-V, Victor.

5 Q Okay. So he was -- I'll just call him
6 Dr. A -- Dr. Stanislav A was -- was an overlap when
7 he was at Total Ortho when you got there?

8 MS. MILORAVA-KELMAN: Note my objection.

9 A Yeah. He left, I think, three months
10 into me joining Total Orthopedics.

11 Q Okay. So he was there for three months
12 while you were there when you started?

13 A Yes.

14 Q Okay. And when did you --

15 MS. MILORAVA-KELMAN: Note my objection.

16 Q And when did you start there?

17 A August 2020- -- 2012.

18 Q Okay. And then just to go back to your
19 equity stakes with Total Orthopedics, is there a
20 percentage that you own of the company?

21 MR. KEANE: Objection.

22 MS. MILORAVA-KELMAN: Note my objection.

23 A Yes.

24 Q Okay. And what is that percent?

25 MR. KEANE: Objection.

1 V. Lerman, D.O.

2 A I have no idea, honestly. We're gonna
3 have to see about that.

4 MS. MILORAVA-KELMAN: I join in the
5 objection.

6 Q Okay. Was there an ongoing -- are you
7 aware -- isn't it true that Dr. Stanislav Avshalumov
8 had a prior relationship with Karen Avanesov?

9 MS. MILORAVA-KELMAN: Okay. Note my
10 objection. What does it have to do with this
11 case?

12 MR. SCHACHER: It has to do with the
13 credibility of the surgeon.

14 MS. MILORAVA-KELMAN: Well, credibil- --
15 surgeon can testify about himself. Why are
16 you asking him about relationship between two
17 other doctors?

18 MR. SCHACHER: Why are you doing speaking
19 objections? That's against the rule. Just
20 note your objection on the record.

21 MS. MILORAVA-KELMAN: Well, your question
22 then is against the rules, too, because it has
23 nothing to do with this case.

24 MR. SCHACHER: It has everything to do
25 with this case. Dr. Avanesov was an assistant

1 V. Lerman, D.O.

2 surgeon in your client's surgery, Mari.

3 A Can you repeat -- who is this? I'm

4 not --

5 Q Karen Avanesov. I'm butchering his name,
6 so I apologize. Karen.

7 A Avanesov.

8 Q Okay. Do you know when Karen Avanesov
9 started at Total Ortho, Doctor?

10 MS. MILORAVA-KELMAN: Note my objection.

11 A I don't remember exactly.

12 Q Okay. Was he there when you arrived in
13 2012?

14 A Yes.

15 Q Okay. Is it common place for Brooklyn
16 Medical to refer claimants to Total Orthopedics where
17 you would referen- -- recommend spine surgeries?

18 MR. KEANE: Objection.

19 MS. MILORAVA-KELMAN: Note my objection.

20 MR. KEANE: Yeah, this is where I'm gonna
21 start cutting you in that the top- -- this is
22 a personal injury case. He's not -- if --
23 outside this personal injury case, that's
24 outside the scope, but I'll take that up with
25 the judge. So we're here as a fact witness

1 V. Lerman, D.O.

2 for this case, and that's it. I don't mind
3 going to the judge on this issue if we're
4 going outside the scope. I gave you a lot of
5 leeway, so --

6 MR. SCHACHER: Okay. So you're directing
7 him not to answer the question?

8 MR. KEANE: I -- what's the question?

9 Q The question is, is it common place for
10 Dr. Salehin of Brooklyn Medical to refer claimants to
11 Total Orthopedics where Total would then perform
12 surgeries?

13 MR. SCHACHER: Objection.

14 You can answer.

15 MS. MILORAVA-KELMAN: I join the
16 objection. I think it has no relevance to
17 this lawsuit.

18 A No, I don't think it's anything common
19 about that. No.

20 Q Okay. But it happened in this case;
21 right? Rodriguez treated first with Brooklyn Medical
22 and then was referred by Brooklyn Medical to Total
23 Orthopedics; fair?

24 MS. MILORAVA-KELMAN: Note my objection.

25 MR. KEANE: Objection.

1 V. Lerman, D.O.

2 A Again, maybe. I don't have the
3 recollection, again, as -- as I don't make the
4 appointments myself.

5 Q Well, I'll represent to you that that's
6 what transpired. We went through the records.

7 Is that common place that -- do you
8 receive multiple referrals from Brooklyn Medical to
9 your practice?

10 MS. MILORAVA-KELMAN: Michael, it's the
11 same question that has been objected to
12 before.

13 MR. KEANE: There was -- it was never
14 established as a referral. We -- you
15 established that the patient went there
16 previously.

17 MS. MILORAVA-KELMAN: I agree.

18 MR. SCHACHER: Okay. So then who
19 referred Ms. Rodriguez to Total Orthopedics?

20 MR. KEANE: Doctor already said he
21 doesn't know.

22 MR. SCHACHER: Okay.

23 Q Well, does your office receive --
24 generally receive referrals from Brooklyn Medical?

25 MS. MILORAVA-KELMAN: Again, this is --

1 V. Lerman, D.O.

2 MR. KEANE: Objection.

3 MS. MILORAVA-KELMAN: -- for the third
4 time, this is the same question that you've
5 been asking, and the same objection.

6 A Michael, I really don't -- don't
7 remember. We get 120,000 patients a year at Total
8 Orthopedics, so I -- I'm not sure who the ref- --
9 referring sources are.

10 Q Okay. How about referrals from
11 Dr. Apple, Big Apple Pain Management, does Total
12 Orthopedics receive referrals from Dr. Apple?

13 A I've seen --

14 MS. MILORAVA-KELMAN: Note my objection,
15 same objection.

16 A I've seen his name on reports, I'm not
17 sure who exactly referred the patients.

18 Q The allegation in the -- in the Roosevelt
19 Road matter pending in the Eastern District under
20 docket number 25-CV-00300, is that you and your
21 practice, Total Orthopedics, performed unnecessary
22 and excessive and unwarranted surgery; is that true?

23 MR. KEANE: Objection.

24 MS. MILORAVA-KELMAN: Note my objection.
25 Seriously.

1 V. Lerman, D.O.

2 THE WITNESS: It's 1 o'clock.

3 MR. KEANE: And it's 1 o'clock, too,

4 so --

5 MR. SCHACHER: Okay. Did we get an
6 answer on that?

7 A No, absolutely not.

8 MR. SCHACHER: All right. We're stopping
9 now?

10 MR. KEANE: Yeah.

11 MS. MILORAVA-KELMAN: Okay.

12 MR. SCHACHER: We're going to
13 reschedule -- did you say next Wednesday?

14 THE WITNESS: It's up to you.

15 MS. MILORAVA-KELMAN: Okay.

16 THE WITNESS: How long do we have so I
17 can schedule my patients?

18 MS. MILORAVA-KELMAN: I have a que- --
19 before we do that, I have a question, Michael.

20 MR. KEANE: Are we off -- are we off the
21 record or --

22 MS. MILORAVA-KELMAN: Yeah, we can do off
23 the record.

24 (WHEREUPON, a brief recess was taken,
25 after which the following transpired:)

1 V. Lerman, D.O.

2 (Time noted: 1:04 p.m.)

3 MR. SCHACHER: So we're stopping now at
4 1 o'clock. Counsel for Dr. Lerman has stated
5 that the doctor has to see patients. Michael
6 Keane indicated -- counsel for Dr. Lerman
7 indicated that he will bring the doctor back
8 for -- to finish the -- his deposition today.

9 Correct, Michael?

10 MR. KEANE: Yes, that's correct. And I
11 think we've proposed Dr. Lerman's available
12 next Wednesday at the same time if you'd like
13 that.

14 MR. SCHACHER: He is available?

15 MR. KEANE: Yes, if we do Wednesday at
16 10:00.

17 MR. SCHACHER: Yeah, that's -- it looks
18 like that will work.

19 MS. MILORAVA-KELMAN: That is fine with
20 me, too.

21 MR. SCHACHER: Okay. All right. So
22 we'll order the reporter again and I'll get
23 the exhibits out to everybody now.

24 MR. KEANE: Thank you, guys.

25 MR. SCHACHER: All right. Thanks,

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V. Lerman, D.O.

everybody.

THE REPORTER: Okay. And for me to close
out the record, Ms. Kelman, will you be taking
a copy of today's deposition transcript?

MS. MILORAVA-KELMAN: Yes.

(WHEREUPON, the examination of this
witness was adjourned at 1:05 p.m.)

VADIM LERMAN, D.O.

Subscribed and sworn to before me
this ____ day of _____ 2025.

NOTARY PUBLIC

V. Lerman, D.O.

I N D E X

| WITNESS | EXAMINATION BY | PAGE |
|--------------------|----------------|------|
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EXHIBITS

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| Exhibit A | Subpoena to Testify at a Deposition in a Civil Action, dated July 2, 2025 | 6 |
| Exhibit B | Police Accident Report (NYC), dated January 10, 2016 | 46 |
| Exhibit C | Maimonides Medical Records | 71 |
| Exhibit D | Community Medical Imaging, MRI Report, dated January 26, 2024 | 79 |
| Exhibit E | Total Orthopedics & Sports Medicine Medical Records | 95 |
| Exhibit F | Mount Sinai South Nassau Operative Report, dated April 4, 2024 | 119 |
| Exhibit G | Mount Sinai South Nassau Medical Record, dated April 4, 2024 | 127 |

(WHEREUPON, original exhibits marked during today's deposition were retained by U.S. Legal Support.)

V. Lerman, D.O.

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: ABIGAIL M. RODRIGUEZ v. PSC INDUSTRIAL
OUTSOURCING, LP, and SYED ZAIDI

Proceeding Date: October 8, 2025

Deponent: VADIM LERMAN, D.O.

Place: Remote Videoconference

* PLEASE MAKE ANY CORRECTIONS/CHANGES BELOW AND
NOTE THE REASON FOR SAME *

[illegible]

Under penalties of perjury, I declare that I have read the foregoing transcript and that the facts stated in it are true.

VADIM LERMAN, D.O.

DATE _____

Subscribed and sworn to before me
this ____ day of _____ 2025.

NOTARY PUBLIC

V. Lerman, D.O.

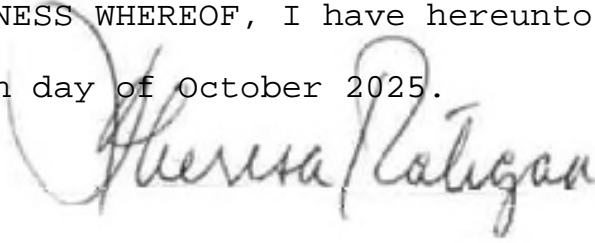
C E R T I F I C A T E

I, THERESA RATIGAN, a Shorthand Reporter and
Notary Public of the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth, was duly sworn, and that such
examination is a true record of the testimony given
by such witness.

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.

IN WITNESS WHEREOF, I have hereunto set my
hand this 24th day of October 2025.



THERESA RATIGAN

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