In The Matter Of:

Honorio Rosario-Silvero v.

PPC Commerical, LLC, 1489 Food Corp., d/b/a Foodtown Supermarket and Parkchester, Preservation, Inc.

Mehrdad Golzad, M.D.

December 9, 2025

Michelle Cox

Senior Court Reporter

Bronx Civil Supreme Court

851 Grand Concourse

Bronx, New York 10451

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM: PART IA-5

HONORIO ROSARIO-SILVERO,

Plaintiff,

-against-

PPC COMMERCIAL, LLC, 1489 FOOD CORP., d/b/a FOODTOWN SUPERMARKET and PARKCHESTER PRESERVATION, INC.,

Defendants.

Index No.
31210/2017E
Mehrdad Golzad, M.D.

851 Grand Concourse
Bronx, New York 10451
December 9, 2025

B E F O R E:
HONORABLE WILMA GUZMAN,
Justice of the Supreme Court

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ALSO PRESENT: Daisy Koch

Michelle Cox
Official Court Reporter

THE COURT: We're going to finish up the reading, and then you can call your next witness.

Bring the jurors out.

MR. CALABRESE: Your Honor, I have an application before -- if the Court would like to take it before we bring out the jurors regarding the testimony of Dr. Golzad that we're going to hear from this morning.

THE COURT: How long is that going to take?

Because I have jurors waiting?

MR. CALABRESE: Nothing but a moment, Your Honor.

THE COURT: I'll hear you.

MR. CALABRESE: In preparing for Dr. Golzad, reviewing his report that he's going to testify about in court, Your Honor, Dr. Golzad is relying on other treating doctors.

So I'd just ask that his testimony be precluded from referencing the hearsay findings and conclusions of non-testifying doctors because they are not subject to cross-examination, Your Honor. They're subjective interpretation and assessment of other non-testifying hearsay statements, Your Honor.

THE COURT: Counsel?

MR. PRONER: Your Honor, the law is pretty clear and established that he's able to and titled to rely upon any other physician's findings, test results normally

relied upon in his field and expertise in the field of neurology and brain injury medicine.

The idea that you can't rely on other doctors and findings is just not New York law.

MR. CALABRESE: For clarity, Your Honor, I'm not asking him not to talk about what he relied upon; just that he cannot testify to the conclusions or findings of those non-testifying doctors.

He can say I relied upon doctor so and so's test. But he can't say doctor so and so came to the conclusion or doctor so and so found.

That's my current statement --

MR. PRONER: Your Honor, this is all established. This is not an application. This is a normal practice.

THE COURT: Well, I don't know if it's normal or not. And I don't know if the doctor is going to testify on that. I'm not sure. We've been getting so many objections during testimony. We spend more time arguing and objections than hearing testimony. So I want to nip it in the bud right now, okay.

He can rely, whether it's something he relied on during the examination and whatever he did with this patient. He cannot opine to whatever other doctors opine. That would be hearsay.

MR. PRONER: Of course.

THE COURT: Whatever he did rely in the regular course of the business of that examination with those doctors in that field, yes, he can; but not opine as to what those doctors opine.

MR. PRONER: And I wouldn't ask him to, of course.

THE COURT: Okay. All right. Bring out the jurors.

MR. CALABRESE: And, Your Honor, I have no further Ruiz readings. I think Ms. Buholtz will be reading.

THE COURT: Okay.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Please be seated.

Good morning, Ladies and gentlemen.

THE JURY: Good morning, Your Honor.

THE COURT: You noticed yesterday was cold in here; today it's like a steam bath in here.

So if you get uncomfortable, if you think you need, like, to just get some fresh air. Because like I said, I cannot control the temperature in this courtroom.

As you did yesterday someone yelled out break. Do the same thing. Because I know when it gets very hot, it gets uncomfortable, if there comes a point in time that

any member of the jury feels uncomfortable and needs that break, just let me know, okay.

We'll continue, at this point. We were still with the reading of the deposition of Mr. Andres Ruiz. And at this point Ms. Buholtz is going to now -- her turn to do the cross with regards to the deposition.

Continue.

MS. BUHOLTZ: Thank you, Your Honor.

Continuing with Andres Ruiz's testimony. Page 208, lines 2 through 19 and page 209, lines two through 7.

"QUESTION: Okay. And so had you received any payment from Mr. Estevez before the date of the accident?

"ANSWER: I don't think so.

"QUESTION: Did you give --

"ANSWER: I don't think so because it was too soon, but perhaps.

"QUESTION: All right. Did you get paid by check by Mr. Estevez?

"ANSWER: Yes.

"QUESTION: And did you have a business account into which you deposited the checks?

"ANSWER: I had an account, my business account, but he would pay me as well with some Resnick checks. He did not give me a check from Foodtown.

"QUESTION: And why would you except checks from Resnick, from Mr. Estevez?

"ANSWER: Simple, because he would tell me Resnick is going to give you a check. Resnick is the company. Simple. I wanted my check.

Page 209, line 22 through page 210, lines 2, 12 through 14, 17, 18 through 21 and 24.

"QUESTION: Did you talk to somebody from Parkchester who told you that they were -- that the job was shut down, your part of the job was shut down?

"ANSWER: No. No. I never spoke.

"QUESTION: You never spoke to Parkchester?

"ANSWER: No, no.

"QUESTION: Do you know the names of anybody at Parkchester who worked for Parkchester?

"ANSWER: No.

Page 212, lines 14 through 25:

"QUESTION: So you learned days prior to this installation work that you were going to have to bring them down into the basement because Resnick was not delivering them down in the basement, correct?

"ANSWER: Correct.

"QUESTION: A couple of days prior you have a phone call with Pocholo where you discuss the winch system and the metal ramp and advised them that you never done

this before, correct?

"ANSWER: Correct.

Page 214, lines 7 through 8. Page 214 7 through 8, 11 through 18.

"QUESTION: How much work had you done already prior to the racks being installed, prior to the racks being delivered?

"ANSWER: I created the space to install the rack system. I had moved some compressors that were at the jobsite and I moved -- and I moved them to another location, another place.

That's all I have, Your Honor.

THE COURT: All right. That's the deposition of Andres Ruiz.

Mr. Proner, your next witness.

MR. PRONER: Call to the witness stand, Dr. Mehrdad Golzad, M.D.

THE COURT: Is he outside.

MR. PRONER: Yes.

You want me to get him?

THE COURT: No. Our officer will get him.

THE COURT OFFICER: Please stand. Raise your right hand.

M E H R D A D G O L Z A D, a witness called on behalf of the plaintiff after having been first

duly sworn and took the witness stand and testified as follows:

THE COURT OFFICER: Have a seat.

State your name and professional address, for the record.

Speak in the mic. Pull your chair. Up some more. Get comfortable?

THE WITNESS: Mehrdad, M-e-h-r-d-a-d, Golzad, G-o-l-z-a-d. Professional address, 91-31 Queens Boulevard, Suite 601 Elmhurst, New York.

THE COURT: You may inquire.

DIRECT EXAMINATION

BY MR. PRONER:

Q Good morning, Dr. Golzad.

A Good morning.

Q Prior to you and I meeting just briefly in the hallway this morning, had you or I ever met?

A No, we hadn't.

Q And I want you to assume that I've been practicing for a little over 30 years.

Have you ever testified for me before?

A No, I haven't.

Q Doctor, what is your profession?

A I'm a neurologist.

Q And do you have any subspecialty certification?

A Yes, I do.

Q What is that?

A I have two subspecialty certifications. One in electro diagnostic medicine. It consists of tests that use electrical recording, like EEG, to make neurological diagnosis.

And my second subspecialty is brain injury treatments.

Q Are you licensed to practice medicine in the state of New York?

A Yes, I am.

Q Is his microphone working, Your Honor, or am I not getting it?

THE COURT: It is.

MR. PRONER: Okay. Sorry. My hearing is not great.

Q Doctor, could you tell the jury what neurology is?

A The specialty of neurology consists of the diagnosis and treatment of conditions, diseases that affect either the brain, the spinal cord, the nerves, the arms and the legs and the muscles.

Q And you have additional specialty in brain injury medicine; is that correct?

A I would call it a subspecialty. It's connected to neurology.

Q Does every neurologist have that subspecialty?

A No. It's a matter of choice. Pursue further training.

Q Can you tell the jury about your education please, and professional experience.

A Sure.

So I was born in Iran. I finished high school there. Then I move to Paris and France. I learned French and went to the Medical School of the University of Paris.

And after completing an eight-year program of premedical and medical studies, I came to the United States where I had to take a number of exams.

And I completed my residency in neurology and brain injury medicine here.

Q So you completed your residency in the United States.

What is a residency?

A A residency is a postgraduate training. Once doctors complete medical school and obtain an MD degree, if they wish to go beyond general practice of medicine, they complete their residency and they become specialists in a given area.

Q And your residency was here in the United States.

And that was in neurology?

A Correct.

Q And amongst residences, is there a chief resident?

A Yes.

Q What is a chief resident?

A A chief resident is more of an administrative type of responsibility to coordinate activities of other residents.

Q Does every resident have a chance to become a chief resident, or is that a specific title for just some residence?

A Just one per year.

Q And were you, in fact, chief resident?

A Yes, the last year of my training.

Q Did you go on for any further training?

A During that same year I spent my last year of training at the JFK Johnson Rehab Institute that specializes in brain injuries. And I had training in evaluation and treatment of patients who have suffered traumatic brain injury.

Q What is a traumatic brain injury?

A Traumatic brain injury is an injury that the brain suffers as a result of application of physical force to the brain.

So in layman's terms, if something hits the brain or if the brain hits an object and the mechanical energy is sufficient, that can cause damage to the brain.

This is not unlike any other part of the body. We can fall down and break a bone. If you hit the head, you can suffer injuries either to the skull or to the brain.

Q And in addition to your postgraduate training in brain injury, did you have any board certifications?

A Yes, I did.

Q What is a board certification?

A The board certification or to become board certified, a

doctor, chooses to take additional examinations that is governed by a body called American Board of Medical Specialties. And they have different subdivisions for each specialty.

So I took the board examination for neurology. And subsequently, I took the subspecialty board certifications for brain injury medicine.

Q So you became board certified not just in neurology, but board certified in brain injury medicine; is that correct?

A It is correct?

Q And is every neurologist board certified in neurology?

A No.

Q Is every neurologist board certify in brain injury medicine?

A No.

Q But you had the additional training required and took and passed the exams in that specialty and subspecialty; is that correct?

A It is correct.

Q Additionally, have you published any articles in the field of neurology?

A Yes, I have.

Q Can you just briefly tell the jury what subjects you've published on?

A So the subject of interest, which is usually a challenge when a doctor, right -- it's a patient with traumatic

injury, and especially when there is a case going on and there is vested interest, is whether they're telling you the truth or not.

If I ask you if I want to take a memory exam of every single one of you, you can technically pretend that you don't remember.

The doctor needs a technique to figure out if the patient is telling the truth or not. Because it's very simple to feign that you don't remember.

So we came up with a technique that, based on the cognitive test that the patient has taken to figure out if they were truthful or not.

So then we published an article and that was accepted in a journal.

Q Can you tell the jury about your professional experience.

A So I started my practice in 1997. In 1999, I was nominated as chief of neurology at St. Vincent Catholic Medical Centers of Brooklyn and Queens. So I ran the neurology department in all four hospitals. I obtained stroke center certification, and that lasted until 2009, at which point the Catholic Medical Centers unfortunately went bankrupt.

And from that point on, I remained full time in my private practice.

Q And in your private practice as well as at the hospitals, did you and do you continue to routinely evaluate and

treat patients with traumatic brain injuries?

A Yes, I do.

Q Are you familiar with the term "post-concussion syndrome"?

A Yes, I am.

Q Can you explain to the jury post-concussion syndrome and how it relates to traumatic brain injury, please?

A So as at name indicates, post, something that comes after.

Concussion is a different word for traumatic brain injury. And the concussion usually refers to mild types of traumatic injury. There are moderate types and severe types.

And the syndrome is a situation in which the symptoms caused by the brain injury do not resolve.

In a mild traumatic brain injury concussion, you could expect about 80 percent of patients, four out of five to recover, and one of five that's not.

And these are patients who suffer from post-concussion syndrome, because the symptoms continue. They do not resolve.

Q Approximately, how many patients have you treated over of the course of your career with traumatic brain injuries?

A Thousands. I don't know the exact number, but thousands.

Q And based upon your training and experience and professional practice, are you able to render opinions, to a

reasonable degree of medical certainty regarding diagnoses, causation, prognosis and permanency?

A Yes?

MR. PRONER: Your Honor, I ask the Court to recognize Dr. Golzad as an expert in the field of neurology and the subspecialty of brain injury medicine.

MR. CALABRESE: No objection, Your Honor.

THE COURT: So qualified.

Q Did there come a time that you became the treating neurologist for the patient, Honorio Rosario-Silverio?

A Yes.

Q And, Doctor, do you have his patient chart and records with you here in court today?

A Yes, I do.

MR. PRONER: Okay. I ask the Court to allow him to refer to his records to the extent it might refresh his recollection if he feels the need to do so.

THE COURT: If he feels the need to do so, then he can indicate he needs to refresh his recollection.

MS. BUHOLTZ: Your Honor, can we have them marked for identification.

THE COURT: For identification. We can have it marked for identification.

MR. PRONER: I believe the doctor has the records.

THE COURT: Doctor, may I just have the record so I can mark it for identification.

(Plaintiff's Exhibit 15, Medical Records of Mehrdad Golzad, MD, was received in evidence.)

THE COURT: Plaintiff 15 for identification.

THE COURT OFFICER: So marked.

Q When did you first evaluate Mr. Honorio Rosario-Silverio?

A January of 2019.

Q Doctor, by the way, do you know Mr. Honorio Rosario-Silverio's primary language?

A Yes. He's Mexican. His primary language is Spanish.

Q Do speak Spanish?

A I do.

Q And what is your level of fluency?

A Totally fluent and operational. I can do everything in Spanish.

Q When you first examined him in January of 2019, did you get a history from Mr. Rosario-Silverio?

A Yes, I did.

Q And what did that history reveal, if anything?

A The history consisted at about 14 months earlier, in October of 2017, he suffered a fall. Apparently, there was oil on the floor. Suffered multiple injuries to different body parts. And he was in pain, including in his head.

He was evaluated in an emergency room, and I believe discharged the same day. And he said that subsequent to that day, he was suffering from headaches, constant headaches. He felt dizzy. He had issues with his memory, attention span. And he also felt anxious and depressed.

Now he did have some other body symptoms related to his other injuries, like neck pain, back pain and such. My focus was on the head. That's the area that I evaluated and treated. He had other doctors for those other problems.

Q Did the history he gave you about his fall and the injuries remain consistent throughout your treatment?

A Yes.

Q And did you conduct an examination?

A Yes, I did.

Q And what symptoms did Mr. Rosario-Silverio present at your initiation evaluation?

A So as I said earlier, his symptoms included headaches. He felt dizzy. He had issues with his memory, attention span, with balance. He was off balance, and I was anxious and depressed.

Q Were these symptoms consistent with a traumatic brain injury and post-concussion syndrome?

A Yes, they are the typical symptoms.

Q Could you explain to the jury why these types of symptoms arise out of a traumatic brain injury.

A The pain is common. I guess we have all suffered trauma.

We know that there is pain.

Now, here, in this particular case, because the trauma is to the head, it causes headaches.

Dizziness is because, when there is brain injury, the balance function of the brain is impaired. That means that the brain cannot balance properly. And as a result we feel off balance and dizzy.

Symptoms like anxiety and depression can occur as a result of brain injury. We could suffer from anxiety as a primary condition, which was not his case. But it can also occur as a result of trauma and injury to the brain.

So that's an explanation as to why he has such symptoms. Obviously, the cognitive symptoms is the brain. The brain is injured, our attention span, memory, concentration, processing speed are not the same.

Q Doctor, prior to testifying here today, have you had an opportunity to review his initial hospital records from Jacobi Hospital?

A Yes.

Q Was there anything significant in his hospital records?

A They do indicate that he was experiencing headaches at that point.

Q Was there any complaints of his neck?

A Yes. He also had neck pain.

Q And is there any significance to a neck injury with regard to traumatic brain injury?

A The mechanisms are often of the same. Like his -- he actually never hit his neck, yet the neck injuries were so severe that he required surgery.

So the question is that where did the neck injury come from. It was nothing hitting his head nor nothing hitting his neck, nor did he hit his neck when he fell down against anything.

And the answer is that similar to somebody who dives in shallow pool, the impact to head can cause severe cervical spine and neck injury, up to the point of causing fracture.

So the mechanisms are usually the same, and they affect two different areas. One is the brain; the other one is the neck.

And very frequently when we see these patients in the emergency room, they have both neck pain and headaches.

Q And Mr. Rosario presented in the emergency room with both neck pain and headache?

A Correct.

Q Doctor, could you tell the jury about your course of treatment of the patient?

A So his most bothersome symptom was headaches. So I

started to give him various medications and supplements to help him with his headaches. And it took, finally, multiple prescriptions for him to experience relief.

His -- we have a questionnaire to find out how bad headaches are. And I believe in the beginning that was in the 60 percent, which is significant.

While he had the opportunity to take all the medications and he did not have coverage issues, that would drop to 20, 24 percent. Never dropped to 0, but he did experience improvement.

Q So you prescribed medication.

What were these medications?

A Both regular painkillers, like anti-inflammatory medications. In this case it was Celebrex.

Also, medication that are specific for headaches, that means that it would not help if pain is in a different part. Some pain medications will help with pain regardless, from head to toe.

Some headache medications are effective only for headaches. So I prescribed also a medication called sumatriptan to relief the tension in the neck that was also exacerbating his headaches. I gave him a muscle relaxer baclofen, B-a-c-l-o-f-e-n.

And there's also medication that can prevent headaches. It's not necessarily helpful when headaches are

there. But if you take regularly, they prevent headaches. It's called Neurontin, n-e-u-r-o-n-t-i-n.

So these were the medications that I prescribed.

Q And some were helpful?

A Yes.

Q Now, you mentioned problems with his balance and mood issues, memory and cognitive complaints.

Can someone fake these?

A Yes. You could fake any of the symptoms, yes.

Q Did you do any screening to see if he was perhaps faking these?

A So for the cognitive complaints, they pretty much function like a lie detector test, and he passed that. He passed it with pretty high score. So we know that he was not lying. He was not trying to.

Q I'm sorry, so what is a cognitive test?

A Well, a cognitive test is a test of cognition, which means you test your memory, your attention span, your processing speed, your visual-spatial capabilities. They show you a shape from different angles to see if you recognize. That's a cognitive testify.

Q So how do we know that there was an impairment rather than maybe someone is just not that smart?

A Well, you look at the background of the person. You look at the number of years of education, and you have an idea of

where they stand.

And the fundamental question is that, are they being truthful; are they exaggerating the problem, are they feigning that they don't remember when in reality they do.

So to answer this question, there are specific tests. The first called test of malingering. And when we administer this test -- and we usually do not tell the patient what the test is about.

If they pass, we know they are not trying to exaggerate.

Q So you mentioned a preaccident baseline.

Have the symptoms ever returned to his preaccident baseline?

A No. What I meant by preaccident baseline, so it was cognitively-speaking. He has nine years of education. He came to America not speaking English, but managed to work as a specialist, I believe, a refrigerator technician.

Having been an immigrant myself, I know that is not easy. You go to a new country, you do not speak the language, you do not know anybody, he managed not to be a burden for society.

So that shows a certain degree of intelligence.

MR. CALABRESE: Objection, Your Honor. We don't need the immigrant story.

THE COURT: Objection, Counselor, nothing else.

Sustain, Doctor, as to anything with regard to your personal experience.

Q So, Doctor, in the neuropsychological evaluation, what were the significant findings?

A He did have deficits. He had problems with memory, with attention span, something called executive function, and processing speed.

He was slowed down.

Q What is executive function?

A Executive function is the capability to plan for a complex action; that could be a simple as drawing a geometric shape. You need a plan to do it right.

That could be as simple as cooking. To cook you need executive function because you need to sequence the events properly when you add different ingredients.

When the executive function is impaired, it is very disabling.

Q And what is processing speed?

A Processing speed simply means how quickly you perform cognitive functions.

Like if I tell you what is four times four, you may say 16 right away or take some time. And that is one of the measures in patients with concussion, they become excessively slow.

Q And what about problems in memory; tell the jury a

little bit about that.

A That consists of not remembering. Not remembering conversations, events. And it also affects learning and adaptation to new environments. All these issues are impaired when there's memory problems.

Q And were all these findings consistent with traumatic brain injury?

A Yes, they are.

Q Did you send him for any imaging studies?

A Yes, I did.

Q And were there any significant findings in these studies?

MR. CALABRESE: Objection, Your Honor.

THE COURT: Sustained.

Rephrase it.

Q Do you normally rely on these imaging studies as part of your practice in the field of diagnosis and treatment of traumatic brain injury?

A Yes, I do.

Q And what type of studies do you typically rely on in your medical practice in the diagnosis and treatment of traumatic brain injuries?

A Special brain MRI sequences that are tuned for detection of traumatic brain injury.

Q What are these special MRIs?

A So there's first standard sequences that are performed in any MRI. And when one is looking for evidence of traumatic brain injury, they to additional sequences that are categorized under the title of microstructural imaging.

The brain components are exceeding small. And when damaged, they have consequences.

Because those components are so small, usually regular imaging studies cannot detect abnormalities; therefore, there are special techniques that can reveal even small, microscopic type lesions and are very familiar in traumatic brain injury.

Q And are these findings considered relevant in the field and practice of diagnosis and treatment of traumatic brain injuries.

A They are very helpful because they are objective. That means that the patient has no influence on that. The patient cannot decide to have an abnormal MRI.

And those microstructure imaging are interpreted with FDA-approved artificial intelligence technologies. That means that even the radiologists bias has been eliminated. It's as objective as they could be and, therefore, reliable.

Q Okay. You used a term I'm not familiar with.

Can you explain to the jury what radiologist bias is?

A That means if a radiologist wants to favor and give you an exaggerated reading, based on that image, they can. With this technology, they cannot.

So one -- there's more than one. One is called DTI. That stands for Diffusion Tenser Imaging. Tenser is the sum of vectors. Diffusion tensor imaging in this case was completed with an FDA-approved technology by a company called Imeka, I-m-e-k-a. They use a sequence called, ANDI, A-N-D-I, Advanced Neurodiagnostic Imaging that got government approval for accuracy and reliability.

Q What is FDA approval?

What does that mean?

A FDA approval is basically for a device -- if they have approval for medications, that's for bringing a new medication to the market.

For a device is that if it's reliable for the purpose it's been designed. So in this case the question was, is this technology reliable for evaluation of microstructural injuries to the brain.

Q So there was radiological objectivity and special technology to eliminate radiological bias in his MRI with Diffuse Tenser Imaging, the DTI you mentioned. And it's FDA-approved and it's Imeka processing.

Is that the type of exam you sent Mr. Rosario to get?

A Yes. That in addition to another technology which is objective also, that's called NeuroQuant?

Q And do specialists in field of brain injury medicine typically rely upon these findings?

A Yes, they do.
Q And did you, in fact, rely upon your findings in coming to your diagnosis and treatment of this patient?
A Yes, I did.
Q And were these -- did this MRI with DTI, was that read by a board certified neuroradiologist?
A Yes.
Q And do you know the name of that board certified neuroradiologist?
A Dr. Michael Rosenberg.
MR. PRONER: And, Your Honor, I'd like the Court to take judicial notice that we've called him on as a witness, and we except him to testify on Tuesday.
Q Doctor, what were the findings that you relied upon?
A Are you referring to MRI findings?
MR. CALABRESE: Objection, Your Honor.
THE COURT: Overruled. Subject to connection.
Q You can go ahead tell the jury, please.
A So two different types of abnormalities were elicited by the MRI. One is that he did have --
MR. CALABRESE: Again, Your Honor, objection. He can't interrupt --
THE COURT: Overruled. Subject to connection.
MR. CALABRESE: He's connecting it right now.
THE COURT: It's okay.

Go ahead.

A So the microstructure abnormalities revealed that some of the connections within different structures of the brain had been ruptured.

These are very fine fibers. Imagine very, very fine electrical cables, wires. And the rupture of these elements results in symptoms like cognitive problems, memory problems and such.

The second objective test, the NeuroQuant showed that his brain, the size of his brain was shrinking much faster than normal.

And when this type of problem occurs in an asymptomatic fashion, it's most of the time caused by the trauma. If there's a trauma to the left side of my head, you would expect -- where there's injuries to the left side of the head, you with expect shrinkage in that area because the brain tissue suffers. And he did have shrinkage on the left side of the brain, and in the back of the brain.

Q How does shrinkage of the brain happen from an injury?

A The sequence is that when the brain cells lose their connections, when they're not connected to other structures in the brain they die off.

And very similar to a muscle that's not being used and loses its spark, that part of the brain can lose its spark, its volume.

Q So there was a -- and you say asymmetrical, that means -- what does that mean?

A So that's crucial to distinguish between a condition like Alzheimer's or dementia, in which you have symmetric shrinkage, the whole brain is involved, as compared to traumatic injury, which is like falling down. When you fall down you don't break everything. One area breaks.

And in this case, it was the left side in the front of the brain and then in the back.

When it's patchy, one spot here one spot it's more often traumatic. When it's the whole brain, then it's a degenerative condition like Alzheimer's, dementia.

Q So would it be possible for Mr. Honorio Rosario-Silverio to fake these parts of asymmetrical or unequal brain shrinkage?

A No. Those are objective images. And they are interpreted by artificial intelligence.

Q And were they consistent with the symptoms he was complaining of?

A Yes.

Q Doctor, for what period of time did you see Mr. Honorio Rosario-Silverio?

A So I believe my last encounter took place in 2013. And more recently he was seen by other doctors in my practice.

Q So he's still a brain injury patient in your practice;

is that correct?

A Correct.

Q And his problems have remained?

A Yes.

Q Doctor, what is your diagnosis of Mr. Honorio Rosario-Silverio, to a reasonable degree of medical certainty?

A Concussion or traumatic brain injury of mild type with post-concussion syndrome.

Q And doctor, within a reasonable degree of medical certainty, what caused Mr. Rosario's traumatic brain injury and resulting symptoms?

A I believe the accident in 2017 was the cause because before that he had none of the symptoms and all the symptoms began at that point.

Q Doctor, were you aware he had an automobile accident in 2020, October of 2020?

A I found out later. I wasn't aware of it at that time.

Q Doctor, you saw him approximately 22 months, almost two years before that subsequent accident.

At that time during those 22 months, prior to his automobile accident, did he already have all these problems and all these symptoms?

A I'm sorry, can you repeat.

Q Okay. So you saw him in January of 2019?

A Correct.

Q Twenty-two months later, he has an auto accident, from when you saw him --

A Okay.

Q -- which was approximately three years postaccident.

All right.

A Okay.

Q So when you first saw him in January, which was 22 months, he already had the same symptoms he's complaining of today with regard to his traumatic brain injury; is that correct?

A Correct.

MS. BUHOLTZ: Objection, Your Honor. He has not seen plaintiff since 2023, so he doesn't know what his complaints are today.

THE COURT: Overruled.

He's been seen at his office up to 2025, all right. You can cross-examine.

Go ahead.

Q So, Doctor, based on you're seeing him before his car accident, after his car accident, is it your opinion within a reasonable degree of medical certainty that his brain injury was caused by the fall and not the car accident?

A Yes, it is.

He had a gradual improvement, which was not interfered

with, with the car accident. Had he suffered brain injury in the car accident, he would have gotten much worse, which he didn't.

Q What was the gradual improvement from?

A The specialty of my office is treatment of such conditions. He was receiving multiple medications. He received -- he also had issues with his eyes. He received care for that.

So I assume the improvement which occurred after we started his care was due to the treatment provided.

Q So the treatment was working, but did it get rid of all of his problems?

A No, it didn't.

Q Doctor, based on your years of treatment and the objective findings, your education and professional experience, do you have opinion within a reasonable degree of medical certainty whether or not the problems Mr. Rosario is suffering from as a result of his traumatic brain injury are permanent?

A I do believe so because they've lasted for eight years at this point. Usually, if it's not resolved within three years, you could expect them to be permanent.

Q Do you expect any neurological improvement in the future?

A No.

Q How do these injuries affect his daily function?

A He's daily function is affected by incongruent balance, by issues with -- like anxiety and depression and cognitive problems. He cannot remember properly. He cannot focus. He cannot concentrate. He's learning. He's impaired.

Q Would that impair his work capacity?

A It would impair every aspect of his life, personal and professional.

Q Does he require ongoing medical care?

A Yes, he does.

Q What type of neurological care will he need?

A For all medication that help him with headaches, such patients need adjustment. After a while a medication may stop helping. So he needs to have continuous care to evaluate, make sure the medications are helpful.

He also suffers, at some point, when his condition stopped improving, he looked even worse than a regular concussion case.

I sent him for a sleep study, and it turns out he also suffers from sleep apnea syndrome. And sleep apnea syndrome is condition that could have been, again, present before the accident. But it's known that concussion makes it worse.

And the combination of these two factors proportionally increase the risk of all the consequences and complications down the road.

One reason he has suffered brain atrophy, the loss of

volume is the combination of the two. It's like a double whammy, double damage to the brain.

And such patients are at significantly increased risk of dementia early on.

Q I'm sorry, explain early dementia to the jury.

A Dementia is a condition that affects the brain. Degeneration means destruction. And big chunks of the brain die off. And as a result, the patient suffers severe cognitive difficulties, balance problems and a host of other neurological conditions. They become totally disabled.

Within 10 years it's almost always fatal. It actually has a worse prognosis than cancer.

Q And this is your prognosis for Mr. Honorio Rosario-Silverio?

A I think he has a significantly high risk of having such complications because he was already suffered atrophy of his brain. It's not statistical anymore.

Since he has suffered atrophy depending on the speed of progression, he is at a very high risk.

Q He's going to require lifelong medical management?

A Yes.

Q Doctor, can you tell the jury about cognitive rehabilitation therapy.

A Cognitive rehabilitation or remediation therapy is usually administered by psychologist neuropsychologist, and they

provide various types of mental exercises, calculation, memory, problem -- memory exercise.

And the idea is to maintain or improve of the cognitive function of such patients. Like the rest of the body, exercise helps, and the mental and cognitive exercises help preserve the brain.

Q And should he get a traumatic brain injury rehabilitation program?

A That's been shown to slow down the progression of the condition.

Q And how often should he have that?

A The usual schedule is twice a week, usually.

Q For how long?

Once in his life or something else?

A So every six months, or every one year, they have to be reevaluated to assess the efficacy of the treatment and to decide about changes, discontinuation or continuation.

Q What about psychotherapy, should he get that?

A Since he suffered from anxiety and depression, and psychotherapy in the past did help him. I believe that would be very helpful.

Q Pain management?

A Pain management in my area is the headaches that we already discuss. So he does need medication management for his headaches.

The risk of his injuries, obviously, with other doctors.

Q Prescription medication?

A Yes, he does need.

Q Doctor, is there anything about your treatment and tests and prognosis that we didn't cover?

MS. BUHOLTZ: Objection, Your Honor.

THE COURT: Sustained.

MR. CALABRESE: Join.

Q Doctor, are you being paid for your time away from your practice?

A Yes, I am.

Q And is that -- what is that payment?

A $750 per hour. So it will be determined at the end of the session.

Q And is that payment, in any way, contingent upon whether or not Mr. Honorio Rosario-Silverio is successful in this case?

A No, it's not.

Q Is there any chance that Mr. Rosario-Silverio is going to spontaneously recover from these injuries within a reasonable degree of medical certainty?

A Well, I mean, any chance, anything can happen. I hope for him that will be the case.

But as I mentioned earlier, when symptoms are present

so many years after, and he also suffers from sleep apnea the chances are exceedingly small to none.

Q Is this going to affect his social relationships?

A Yes, it does.

MR. PRONER: Thank you, Doctor.

THE COURT: Okay. Before we begin cross-examination. We'll take a five-minute break.

MR. CALABRESE: Thank you, Your Honor.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom.)

(Whereupon, a recess was taken.)

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Please be seated.

Cross-examination.

CROSS-EXAMINATION

BY MR. CALABRESE:

Q Dr. Golzad, good morning.

A Good morning.

Q I'm going to be asking you some questions today about your opinions that you hold and your basis for those opinions.

Okay?

A Okay.

Q If you don't understand one of my questions, simply say I don't understand and I'll ask --

MR. PRONER: Objection, Your Honor.

Q -- it a different way.

THE COURT: Overruled.

Q Okay. If you don't understand, I'll ask it a different way.

A Sure.

Q And I'll ask, sir, that if I ask you a yes-or-no question, that you answer it in a yes-or-no fashion.

Okay?

A Okay.

Q To the extent as possible.

A Okay.

Q Okay. I'm going to be as brief as possible.

Are you a surgeon?

A I'm not a surgeon.

Q Do you ever perform brain surgery?

A I do not.

Q Your initial assessment of Mr. Rosario was in January of 2019, nearly 15 months after the accident, yes?

A Correct.

Q Okay. You sent him for various testing, correct?

A Correct.

Q You sent him for various treatments and cognition therapies, correct?

A Correct.

Q Okay. You yourself have seen him several times over the years, correct?

A Correct.

Q Okay. And he's still a member of your practice today, currently?

MR. PRONER: Objection.

THE COURT: Sustained as to member.

Q He's still a patient in your practice currently?

A He's still a patient in my practice.

Q And you got paid for all that treatment, yes?

A I believe so. I'm not sure if everything has been paid, but I guess so.

Q Well, you haven't been treating Mr. Silverio for free, have you?

A Just to be precise, not in his specific case, generally, doctors do receive a lot of denials.

So what I try to -- the thing is that I do not have the certainty that every single service has been paid for.

It might not, but I'm not sure.

Q Fair.

But we've talked about this morning many years of your own treatment, yes?

A Right.

Q We've talked about the other therapy you sent him for, correct?

A Correct.
Q We talked about the testing you did of him, correct?
A Correct.
Q You may not, each single one, but you got paid for that, yes?
A Once again, I believe so. But I don't have the certainty because I don't take care of that aspect of the practice.
Q Understood. Okay.
And who paid that?
MR. PRONER: Objection.
THE COURT: Sustained.
Q Did Mr. Rosario pay that?
MR. PRONER: Objection.
THE COURT: Sustained.
Q Every time Mr. Rosario came to your office you made money, yes?
MR. PRONER: Objection, Your Honor.
THE COURT: Sustained to form.
Q You make money off treating him, yes?
THE COURT: Sustained.
Q Do you have financial interest in the facilities you sent him to; are you an owner?
A The facilities I sent him to, these are outside offices.

And, no, like when I send him for an MRI, I have no financial interest in that.

Q What about the testing?

A Testing are done by myself and that's my own practice.

Q Okay. And others in your practice, correct?

A Correct.

Q Okay. And if a patient tells you, Doctor, I'm all better now; I could do this, I could do X, Y and Z now that I couldn't do before, you stop billing, correct?

A So you stop billing when you stop providing service.

So I guess what you want to say, would I discharge a patient who has recovered, the answer is yes.

Q If a patient gets better, you discharge him and stop treating him, yes?

A But getting better may not mean total resolution of symptoms, right. Simply improving is not a reason to discharge. Resolution, yes. Or if you feel that I cannot help them anymore.

But getting better does not mean they have recovered.

Q I'm not talking about total resolution.

If a patient comes to you and says, Doctor, I can't remember things; I can't remember my car keys; I'm having these issues, you give him treatment and then, all of a sudden after months or however long of treatment, he gets better.

You stop treating him after that; is that correct?

MR. PRONER: Objection as to form.

THE COURT: Sustained.

Q Would you discharge a patient after that?

MR. PRONER: Objection.

THE COURT: Sustained. Just covered that.

Q Plaintiff discussed your narrative report that you prepared?

MR. PRONER: Objection.

THE COURT: Sustained. They're not.

MR. CALABRESE: He talked about his report.

THE COURT: Counsel, treatment. Never mentioned report.

Let's go.

Q You prepared a report, correct?

A I did.

Q A 2023 narrative report, correct?

A Correct.

Q And you prepared that report for Mr. Proner, right, not another doctor?

A Correct.

Q All right. And you got pay for that narrative report, correct?

A Correct.

Q And you charged for review of the other medical records, correct?

A I'm not certain. I have to check if I did charge for

that.

Q Are you in the business of reviewing medical records for free?

MR. PRONER: Objection, Your Honor.

THE COURT: Sustained.

Q You bill for your time, right, Doctor?

A Yes.

Q Are you going to spend time on a patient reviewing records and not billing for it?

A We routinely review patient's medical records. And by the insurance code, there's actually not a CPT code for that. You can look at that since you referred to bill and all of that.

We never billed for medical records review.

Now, in this particular case, I told you I'm not certain.

Q Okay. Did you review records in preparation of creating your narrative December 2023 report from Mr. Proner.

A Yes, I did.

Q You did?

Did you bill for that?

A Separately, no.

Q It was included in the price that you charged Mr. Proner for the narrative, yes?

A I believe so.

Q Could be?

A I said I believe so.
Q Okay. What -- how much was the narrative?
A I do not remember.
Q And we've already discussed how much you're being paid here today for your time?
A Yes, we did.
Q Okay. Attorneys often use you in their cases involving traumatic brain injuries, correct?
A What do you mean by often use me. Nobody uses me.
Q Do other attorneys retain your services?
A Attorneys, no. Most of my patients, like this particular plaintiff, are referred by doctors.
Q Most of your patients are plaintiffs.
Did I hear that, sir?
A No. I said like this particular plaintiff.
I said most of my patients, like this particular plaintiff here, are referred by their doctors.
Q Okay. But Mr. Proner retained you for the narrative, yes?
MR. PRONER: Objection.
THE COURT: Sustained.
Q Mr. Proner retained you to come here today?
MR. PRONER: Objection.
THE COURT: Sustained.
Q This is not the first time you're being retained by an

attorney to come to a court of law, correct?

A Correct.

Q Okay. You've testified in court, such as you have this morning, multiple times, yes?

A Yes.

Q Okay. More than 50?

A No. I've done five for defense, actually.

Q Five for defense?

A Yes.

Q Okay.

A Probably ten for plaintiff. I'm not certain.

But the last time I testified was probably two years ago, if not more.

Q Okay. Have you also been retained by attorneys other than attorneys for narrative reports, not necessarily resulting in coming to the courthouse and actually giving testimony?

MR. PRONER: Objection as to form.

THE COURT: Sustained as to form.

Q Other attorneys hire you for narratives, yes?

A Other attorneys, at times, request a narrative report.

Q I'm sorry, I didn't hear you, sir.

THE COURT: You want to have it read back?

I'll have it read back.

You can read it back.

MR. CALABRESE: I'm just having trouble hearing

the witness.

THE COURT: Okay. But you said you didn't hear him. I'll have the last answer read back.

MR. CALABRESE: Thank you.

THE COURT: You can read back the last answer.

And speak up closer to the mic so it can carry your voice. Thank you.

(Whereupon, the record was read.)

Q Thank you.

And you said you do some work for defendants as well, too?

A I do.

Q Okay. But more than 50 percent of it is plaintiff's side, correct?

A I don't know the exact proportion.

Q Okay. Sir, we went over this morning the things you reviewed to come to your conclusion for Mr. Rosario diagnosis that you give him --

MR. PRONER: Your Honor, objection. He keeps talking about "we." And I don't think he's gone over any of this with him.

THE COURT: I'm not sure who "we" are.

So sustained.

MR. CALABRESE: Apologies, Your Honor.

Q The jury heard and Mr. Proner asked, that's what I

meant when I say "we."

THE COURT: Just ask the question.

Q So the items that you testified to when Mr. Proner asked you, that you relied upon, these are important in your analysis, yes?

A The items, you mean the records that I reviewed and his tests results; is that what you mean but "item"?

Q Well, I believe we went through your own personal examination, yes?

A Correct.

Q Your review of medical records, yes?

A Yes.

Q Your cognitive testing of him?

A Correct.

Q And your history from him?

A Correct.

Q Okay. And all of these are important to you, yes?

A Yes, they are.

Q Okay. The history from the patient is important to you, right?

A Yes, it is.

Q You rely upon it, right?

A Yes.

Q Okay. You also indicated that you looked at the Jacobi Hospital, the emergency room records; is that accurate?

A Correct.
Q Okay. Now -- and you relied upon those Jacobi Medical Records, correct?
A Correct.
Q Okay. And you said that in those Jacobi Medical Records you saw the word "headaches," complaints of headaches, yes?
A Yes.
Q Tell me where they are in the Jacobi Records where the word "headache" shows once?
MR. PRONER: Your Honor, we -- the records are here in court. We could pull them up.
A They appear more than once.
Q The word -- your testimony is that the word headache --
THE COURT: Help us, Counsel.
MR. CALABRESE: May I continue, Your Honor?
THE COURT: Well, you asked him a question.
Doctor, do you want to pull the record or -- can you answer it or something else?
There's an open question.
Q Yes or no, Doctor?
THE WITNESS: I'm positive, Your Honor that the word "headache" is there.
A And I'll tell you why I'm positive. It's a PDF file.

I used the search engine and highlighted the word headache. So, yeah, it's absolutely there.

You probably didn't read it.

Q Okay. You looked at the triage records, right?

A The triage, I'm not sure I have that.

Q Triage is the first thing that happens in the hospital, right?

A Usually the nurse, the triage nurse is the first medical person.

Q First in time medical professional at the hospital is the triage nurse, yes?

A The first medical person. Usually they see administrative before.

Q And before we even get to the triage at the ER, there's an ambulance, correct?

A When there's an ambulance, yes.

Q Do you know, yes or no, if Mr. Rosario was brought to that emergency room by an ambulance?

A I did not have the ambulance records. I believe he was taken by an ambulance, brought.

Yeah, they used in the hospital notes, BIBA. That stands for brought in by ambulance.

Q Okay. So you knew, when looking at the Jacobi Records that he was brought in by an ambulance, yes?

A Correct.

Q But you didn't look at the ambulance records, did you?
A I didn't have it.
Q Did you ask Mr. Proner for them?
A I did not have such records.
Q Did ask Mr. Rosario them?
A He doesn't have hospital records or ambulance records.
Q But he has access; they're his records.
A Usually patients do not request it directly.
Q When I want medical records, Doctor, right, a HIPAA form needs to be filled out by that patient to give another person authorization to look at the records, right?
A That's an administrative procedure.
Q I'm sorry?
A You're reciting the administrative procedure. The HIPAA is necessary to get the records.
Q It's a necessary element before anybody else can look at the records. He's got to give you authority.
The patient has to give you his approval?
A His authorization, yes.
Q Okay. So you didn't look at the ambulance call report, correct?
A I did not have the ambulance records. Had I had them, I would have looked.
Q We've already established you didn't have them.
Did you ever ask for them?

Did you search them out?

A When we request records, we do request all the records. And as you know, we don't always get them.

Q I don't know what happens in your practice, sir.

So you're aware ambulance personnel was called to the scene and brought this man to a hospital.

You ask for them because you would have thought they were necessary, correct?

A Correct.

Q First in time medical treatment is something you want to see, correct?

A Correct.

Q Because it's part of your assessment and evaluation, correct?

A Correct.

Q And in treating a brain injury or diagnosing a brain injury, would you agree, Doctor, that first in time presentation of symptoms is a very big part of it for a TBI or a concussion?

A What do you mean, "a very big part of it"?

Q A very big part of your medical conclusion is, what was he like initially; what happened at scene and then at the ER, yes?

A Well, depends on where you get the information from.

What I can tell you is that the majority of patients with brain injury don't remember the event.

Q Sir, I'm not asking about other patients and brain injury.

I'm asking, yes or no -- I'm trying to be as brief as possible.

Yes or no, it's part of your assessment --

A With all due respect, you ask a general question. You said that the first -- is it important or not. That was a general question.

And respectfully I responded that, in this particular case with brain injury it just so happens that a good number of these patients do not even remember the event because they were hit on the head.

Q Again, I'm not asking about what anybody remembered, sir.

You were aware --

MR. PRONER: Objection.

THE COURT: Sustained.

I think he's answering the question, because you phrased it in a particular way.

And I believe, Doctor, what you're getting at, you can't answer his question that way.

MS. BUHOLTZ: Your Honor, can I have that answer read back.

THE COURT: Okay.

MS. BUHOLTZ: Because I didn't hear it.

THE COURT: Can we have the last answer read back, please.

Thank you.

(Whereupon, the record was read.)

THE COURT: Before you go any further, Doctor, if you can't answer yes or you can't answer no, you can indicate, I cannot answer your question that way, or I don't understand your question.

Those are other options you do have.

THE WITNESS: Thank you.

THE COURT: Continue. Okay.

Q I know you know how to do this, Doctor.

THE COURT: That's not what I asked, Counsel. I didn't ask comments from you whether he knows or not. These are directions from the Court. And I appreciate that you don't follow with other directions, because this is the Court giving directions to the witness.

Thank you.

MR. CALABRESE: Thank you, Your Honor.

Q But, Dr. Golzad, you told this jury when Mr. Proner was asking you that he actually didn't even hit his head?

MR. PRONER: Objection.

MR. CALABRESE: What's the objection?

THE COURT: Sustained to form.

Q Did you not tell this jury when asked questions by

Mr. Proner, that Mr. Rosario didn't even -- nothing hit his head that day?

Yes or no.

A I do not remember the exact wording now.

If you want me to tell you what my impression is from the history he gave me, I'll be happy to repeat.

MR. PRONER: Object.

Q We'll get into his history --

A Actually, I don't remember --

Q -- in a moment.

A -- having said that. Can be verified.

THE COURT: You can't over speak over each other.

You ask a question. You wait. The doctor gives an answer. Once the doctor finishes. You follow up with your other question.

You don't keep interrupting the doctor.

A So I do not remember word by word what I said and I don't believe I said that, not having hit his head.

Q I'm taking diligent notes as you testify --

THE COURT: Sustained.

He actually didn't say his head. He said he hit his neck.

Okay. Let's move on.

MR. CALABRESE: He said head.

Q But in any --

THE COURT: Are you arguing with me now?

Counsel, are you arguing with the Court now, is that what you're saying?

MR. CALABRESE: Absolutely, I am.

THE COURT: We have the reporter that takes the notes. And if the jury has any problem remembering the testimony, it will be jury's recollection that will supersede everyone in this courtroom with the court reporter's notes.

Okay. Next question.

Q You gave an analogy about a diver diving into water and talking about the impact to the diver's head on striking the water.

Do you recall giving that analogy 20 minutes ago?

A That I do remember, what you just said, yes.

Q So what did Mr. Rosario strike his head on that day, do you know?

A No, I don't.

Q Okay. You're relying on the information he gave you, correct?

A I'm relying on the information that he told me that immediately after he had headaches. He had symptoms related to concussion. And then I investigated that to see if there was any brain injury. That's how doctors -- that's how doctors operate. We are not police investigators.

We get the symptoms and we look for medical evidence. And that's how I proceeded with him.

Q And one of those areas of medical evidence would be the emergency room records, agreed?

A I'm talking about objective medical evidence, like MRI.

Q We'll get to -- sorry.

You're finished?

A Yes.

Q We will get to objective testing in a moment, sir.

Right now you said you investigated after receiving complaints from a patient, subjective complaints from a patient, correct?

A Correct.

Q Okay. And you've already told this jury that you looked at the Jacobi records.

Did you see throughout the Jacobi record, denies LOC?

A LOC is loss of consciousness.

I don't remember the exact sentence; but, yes, they did indicate he had not lost consciousness.

Q Okay. And that history came from Mr. Rosario at the ER, if you know?

A I believe so.

Q Okay. Denies LOC, loss of consciousness, is throughout his medical records at the Jacobi emergency room, correct?

A I've already said that. He did not lose consciousness. That's what LOC means.

Q Is there any documentation whatsoever in the Jacobi emergency room records that say head strike?

A Head strike?

I don't know any documentation for those that I reviewed, no.

Q Okay. So "patient alert and oriented aware of his surroundings. Negative LOC."

Okay, that's against, that's loss of consciousness?

THE COURT: Counsel, you're reading from something that's not in evidence or something that is in evidence.

If you are, can you identify what you're reading from?

MR. CALABRESE: I'm reading from the Jacobi emergency room medical records, Your Honor. I stipulated to these.

THE COURT: I didn't ask you what you stipulated to. I asked you if you're reading from something in evidence, please identify what you're reading from.

Exhibit what?

What exhibit is that?

MR. CALABRESE: I offer the Jacobi emergency room records into evidence, Your Honor. They are hospital

records. They're certified.

THE COURT: Are they in evidence.

MR. PRONER: No objection.

THE COURT: Where are they?

Please show counsel. Anything offered in evidence must be shown to everybody.

MR. PRONER: We have court records.

MS. BUHOLTZ: They're from Jacobi.

MR. CALABRESE: These are from your exchange, and they're Bates stamped, Mitch.

MR. PRONER: I'm asking if we have the Jacobi Hospital Records.

THE CLERK: Yeah, we have Jacobi.

MR. CALABRESE: The CD came in, Your Honor. I can't show him a CD.

THE COURT: Counsel, please.

Take a five-minute break.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom.)

(Whereupon, a recess was taken.)

THE COURT: What came in through the subpoenaed records into the court system, pursuant to the subpoena, and this was subpoenaed by the Office of Richard J. Calabrese.

And in response to that subpoena, the records

came in with a certification and pursuant to the CPLR, those records come in automatically.

The only thing I am withdrawing from the records that I don't allow, is the subpoena itself, admitting it into evidence as Plaintiff's 16.

And just hold on with any additional comments.

Give it to the reporter to so mark.

(Plaintiff's Exhibit 16, Jacobi Hospital Record, was admitted in evidence.)

MR. CALABRESE: Judge, while I was questioning the Dr. Golzad, I was talking about the subpoena certified records. I did not have the court subpoenaed records in my hand, but Ms. Buholtz was handing him what we previously consented to, Your Honor.

THE COURT: Let me make it straight.

While you were questioning the doctor you were looking at records, never indicated. You were asking questions about Jacobi Hospital Records. Never indicated that you were looking at them. Then you started reading from a record. That's when the Court inquire, Counsel, are you reading from records that are in evidence, and if so, what exhibit are they, or are those records that are not in evidence and therefore you should not be reading from them.

Those records were not in evidence at the time you were reading from those records in front of the jury.

That's how this whole thing got started.

And all of a sudden, at that point, you offered the recorded that you had in your hand in evidence.

I then said, where are the subpoenaed records, those are the ones that get offered in evidence.

At that point, someone, I'm not sure which of the attorneys interjected, Well there's a notice to admit. Notice to admit really doesn't apply to hospital records because all I need is a certification from the hospital. Under 4518, it's automatically admissible subject to redaction.

So I don't need anybody's permission or anyone's notice to admit, to admit the hospital record. But I do need a subpoena because I do know where that hospital record came from, not someone offering what they have in their hand.

Now, if someone else wants to offer a different hospital record, then they have to consult, meaning the attorneys with each other saying, yes, we all agree to have this version of the hospital record admitted into evidence.

So now I admitted on plaintiff's question Jacobi Hospital Record, Exhibit 16.

If you have an exception to that, Mr. Calabrese, so note it on the record.

MR. CALABRESE: Thank you, Your Honor.

THE COURT: Now, Ms. Buholtz.

MS. BUHOLTZ: I would like to have marked as Defendants' Exhibit -- I think we're up to K, maybe, yes.

This is Plaintiff's exchange. There is going to be a K-1 and a K-2. K-1 is attorney Proner's letters -- no, I take it back.

It's going to be our Exhibit K.

Exhibit K is from on Attorney Proner with his notice of intent to admit. It's -- I Bates-stamped it. I share it with him ahead of time, and it's 40 pages minus -- it's 38, if you disregard the first two letters from Mr. Proner, which are Bates-stamped pages 1 and 2.

I saw from Plaintiff's Exhibit 16 that there 24 or so Bates-stamped pages. Plaintiff's Exhibit 16 in evidence is less complete than what Mr. Proner originally exchanged with us.

MR. PRONER: So you're wrong because, unlike defense counsel, these records have been there for a long time.

I sent the paralegal from my office to the subpoena record room and scanned them all. These have been there since September. And if they took the time to look at these records beforehand, they would know that the records that the court has admitted into evidence are numbered pages, and there happens to be 40 pages.

MS. BUHOLTZ: I'm sorry, happens to be what?

MR. PRONER: Forty pages. They're numbered. They're 40 pages. The last page is No. 40.

MS. BUHOLTZ: I will need to look at that again, Your Honor, because I did not see 40 pages.

THE COURT: The records are right there. The subpoenaed records are right there, counsel.

MR. PRONER: They're numbered. They have numbers in the lower right-hand corner of each page, and they've been there for months.

THE COURT: All right. I'm not wasting any more time. Bring the jury out.

MR. PRONER: Thank you, Your Honor.

MS. BUHOLTZ: Your Honor, the pages are different. And there's less substance in Exhibit 16, than there is what I'm going to have marked at Defendants' K.

THE COURT: Counsel, I will mark Exhibit K for ID at this -- I'll mark it for ID only. I will not mark it in evidence since we already have Jacobi Hospital Record in evidence. I don't know where that came from. I know you said Attorney Proner provided it to you. I'll mark it as a Court exhibit. You can't do it with the jury. But I will not mark it in evidence because you're holding it in hand, and that did not come through subpoena.

MS. BUHOLTZ: I'm going to re-staple this,

because I took the staples out.

THE COURT: That's another problem now. You know what, that's a problem I have, taking things from attorneys because I don't know what was there. Was it there. I'm only marking the Jacobi Hospital record.

If you want to re-subpoena the Jacobi Hospital record to find if there's anything different from what you got, that's your prerogative, Counsel.

MS. BUHOLTZ: They are certified. They came from Mr. Proner certified.

THE COURT: But they didn't come under subpoena, Counsel. You said they came from an attorney's office; that's the problem.

MR. PRONER: And, Your Honor, the subpoenaed records we couldn't even take them out of the courthouse. I have to bring a portable scanner in the courthouse to look at them.

THE COURT: No. That's why -- there's a reason why I do not allow attorneys to take records out of this courthouse once they are on trial and even review them without other attorneys present.

MS. BUHOLTZ: Your Honor, the CPLR was amended to allow for certified records.

THE COURT: I know that, Counsel. I know the CPLR, 4518. I know it very well.

MS. BUHOLTZ: With respect to Your Honor that certified records that came to attorneys' offices are admissible. They don't have to necessarily come directly to Court.

THE COURT: Counsel, however, I already have one set. So unless there is something different with that set -- you can compare them in front of all the lawyers during the lunch break. But let's finish with the doctor.

MR. PRONER: It's all there.

THE COURT: Okay. She can compare it in front of the two of you.

Bring the jury.

MR. PRONER: Are we going to -- give him Exhibit 16.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Please be seated.

Okay. Counsel.

MR. CALABRESE: Thank you, Your Honor.

Q Dr. Golzad --

A Yes.

Q -- you now have before you, in evidence, the Jacobi Medical Records. I'm going to ask you some questions on them.

Unfortunately, I didn't have the ability to tab them for you. So, sir, I want you to look at the -- if you can

find -- I'm sure you're used to ripping through medical -- through records --

THE COURT: Counsel, avoid the comments. Just ask your no question. It will make life go real smoothly and questioning smoothly.

Question.

Q Can you turn to the triage, page one of two.

Doctor, do you need this for reference, if you can see it.

Do you have it?

MR. PRONER: May we approach.

A The pages are numbered. Just please give me the page number.

THE COURT: Do you have a page number.

MR. CALABRESE: My pages are not numbered, Your Honor. This is --

THE COURT: All. Approach and just show him what page you're referring to.

MR. CALABRESE: Thank you.

THE COURT: Show him the page, that's it.

Q Triage.

Put these to the side for now.

Doctor, those are the records from Jacobi Hospital on October 24, 2017, when Mr. Rosario returned, those are not the records from the actual date of accident.

What I'm going to do now is, I'm going to move on, during the lunch break, we'll fix the record issue and come back to it.

Okay?

MR. PRONER: Objection.

THE COURT: Overruled.

Q Did you also look at the records from Rye Family Medical where he went after Jacobi?

A I did not receive those records.

Q Okay. Did you look at the record from Dr. Alan Go, the third doctor he saw before the attorney got involved?

MR. PRONER: Objection.

THE COURT: Sustained.

Q So your assessment, the medical records, and the testing all come together to your conclusion, help you come to your conclusion, correct?

A Can you repeat your question, please.

Q We talked about the elements, I'm sorry.

You do an examination, you review medical records, and you sent him for testing, all culminated in your conclusion, yes.

A They all contribute to the conclusion. But since there are other elements, these are not the only factors.

Q Okay. They are all contributing elements, though, yes?

A Yes.

Q Okay. So like a math equation, one plus one plus one equals three, yes?

MR. PRONER: Objection.

THE COURT: Sustain.

Q If one of those elements are missing or improper or wrong or inaccurate, the testing, the assessment, or the history, can your conclusion become inaccurate?

A In regular practice of medicine very often we have incomplete information. And the conclusion is based on objective reliable data. It's not based on questionable data.

Q Okay. While we're talking about objectiveness, tell this jury, please, if you don't mind, be difference between objective and subjective when we're talking about, you know, medical examinations?

A Subjective is a symptom that is not verifiable, like headaches. There's no test that measure if somebody has headaches or any other subjective symptoms; and if so, how intense that would be. That's subjectives.

Headaches, dizziness. If I comment to you, I'm sad, you have no measure, no test to do that.

If I told you I broke my arm, you can send for an x-ray, and the x-ray will show the fracture. They call that objective evidence of injury.

Q Okay. Thank you, Doctor.

So if a patient's complaint is the subjective evidence, it hurts here, right?

A Okay.

Q And the subjective aspect of that is the thing, the test that confirms the subjective complaint; is that accurate, you following me?

A No, it's not. If you allow me, I can explain why.

Q Please.

A I could have an MRI of the brain and see a lot of abnormalities in absence of all types of subjective symptoms. They're not necessarily related, actually.

Q Okay. But subjective is inside of my control. If I say my arm hurts, there's really no way for you to test if my arm actually hurts or not?

MR. PRONER: Objective, objection.

THE COURT: Sustained.

You can rephrase it.

Q A subjective complaint, you just gave this jury an example. Headaches, that's subjective.

I could tell you I'm having headaches, correct?

A Yes, you could.

MR. PRONER: Objection.

THE COURT: Sustained.

Not you.

Q Someone can tell you they're having headaches?

A Okay.
Q No, I'm asking?
A Someone could tell me if they're having headaches.
Yes, I said that's possible that somebody would come and tell me that they have headaches.
Q Okay. And you indicated earlier in your testimony with Mr. Proner that technically someone can pretend and that you need to do objective testing to confirm that, correct?
A Not to confirm the symptom, the way I would phrase it is that, is there a pathological basis that would make you expect that such symptoms would be present, right.
Medically speaking, if there's evidence of injury on an objective, diagnostic testing, then you would expect such symptoms to be present.
Q Okay. So someone's making a complaint of a headache, subjectively, let me do an objective MRI to see if there's anything on that MRI that supports the subjective complaint, yes? Fair enough?
MR. PRONER: Objection. That's not a question.
THE COURT: Sustained.
Rephrase.
Q Is that accurate, what I just said?
MR. PRONER: Objection to the form.
THE COURT: Rephrase.
MR. CALABRESE: I'll ask the whole question.

THE COURT: That's what rephrase means.

Q So, Dr. Golzad, objective or subjective, my question is this: Somebody can tell you they're having a headache, subjective complaint, then you use an objective test to confirm it, yes?

A That's precisely what I'm trying to explain to you.

The objective test does not confirm that they have headache or not; then headache would become actually objective because there is an objective method to measure the headaches.

What an objective test ask, it shows you the presence or absence of pathology that would result in headaches.

Q So that objective test is looking for something that may try and explain the headaches, better?

A That my result in that symptom.

Q Okay. Thank you, Doctor.

So you use the term before that you have a test, it's like a lie detector test?

A There are multiple. One of them is called the Rey 15 R-e-y 15. Then the computerized test that the patients take have embedded measures of reliability.

Q Since you used the term like a lie detector test, are you aware that lie detector tests aren't even admissible in court?

THE COURT: Sustain.

MR. PRONER: Objection.

THE COURT: Sustain.

Q There's a question of reliability with certain tests, correct?

A You mean the accuracy of the test, yes. The accuracy of the tests are not equal.

Q The accuracy of the tests are not equal.

Let's talk about the neuro behavioral assessment.

You did one of those, yes?

A Yes, I did.

Q That's a subjective test, correct, not objective, subjective?

A To the extent that it depends on the cooperation of the patient, I would agree with you.

Q It depends on the cooperation of the patient.

So these neuro behavioral assessments, in brief summary, Doctor, can you draw a certain time on a clock. I tell you it's 3:30, you draw 3:30. I'm going to give you a bunch of sequences in a row, can you repeat them back to me after seconds or minutes.

Yes.

A That part of the test as you explain, yes.

Q But I can -- that's in my control of my response, correct?

I can just write 2:45 on the little drawn clock you give me, right?

A I guess that's what we try to explain by the word "cooperation."

Q Cooperation.

The patient themselves, you testified earlier that it's fundamentally founded on it being the patient being truthful.

Your own words, yes?

A I don't remember word by word, but I think so, yeah.

Q But I do. I wrote it down.

A Sounds like that.

Q So the neuro behavioral assessment cognition test that you gave them are subjective, yes?

A To some extent, yes.

Q Okay. There are lists that doctors go through to see and diagnosis an acute traumatic brain injury, correct?

A Correct.

Q They look for, did the patient sustain impact to the head, correct?

A Correct.

Q Did Dr. Rosario sustain an impact to the head?

A We already discussed about that. I did not have a complete account of the accident. When I saw him, it was 14 months, I believe, after the accident, and there was no video recording.

What I relied on, and my methodology was to go from

his symptoms like a doctor does and explore and identify the causes of those.

Q So you didn't have a complete history when you saw him, your own admission, you based your conclusion on what he's telling you, fair?

A Corroborated by records.

Q Okay. Next thing they look for, Doctor, is a loss of consciousness, correct?

A So what's the question?

Q We're talking about a list that doctors go through to try and diagnosis an acute traumatic brain injury.

First, we talked about the impact to the head, which we already put out of here because you didn't have a complete history.

Next, let's talk about loss of --

MR. PRONER: Objection, Your Honor.

THE COURT: Sustained.

Q On that list the next thing they also look for, or one of the things they look for is a loss of consciousness, correct, Doctor?

MR. PRONER: Objection as to "they."

THE COURT: Sustained.

Q One of the things that doctors, when assessing traumatic brain injuries look for is a loss of consciousness, correct?

A It's the presence of loss of consciousness usually indicates more severe brain injuries.

Q The presence of loss of consciousness.

And he didn't have loss of consciousness, correct?

A The reality is that he does not have a good recollection of the entire accident.

Q I'm not asking -- again, yes or no, I'm not asking about Mr. Rosario's recollection. I'm asking about the medical objective evidence.

Did he have loss of consciousness, yes or no?

A The honest answer is I really don't know.

Q You don't know?

A We do not have evidence. We do not have a recording or witness that saw him losing conscious.

However, because of the nature of the problem, as I mentioned to you earlier. These people do not remember what happened is uncertain.

But the short answer to your question is that we don't have absolute evidence that he did lose consciousness.

Q Thank you.

We've already established the nature of the accident to you comes from him, yes?

A Corroborated by the records, yes.

Q Which, again, I didn't see.

Did he have a skull fracture?

A He did not have a skull fracture.
Q Did he have any facial swelling?
A Not recorded, no, not documented.
Q Did he have any blood coming from his ears or nose?
A No.
Q Okay. A concussion, that is considered a mild TBI, correct?
A Correct.
Q And that's what you're telling this jury Mr. Rosario sustained, a mild TBI, correct?
A TBI is traumatic brain injury.
Q Excuse me, a mild concussion.
A No, concussion is not mild. Concussion already means mild TBI. So it's redundant.
Q So we categorize TBIs in sort of three ways, Doctor, mild, moderate, severe?
A Correct.
Q The TBI that you're telling this jury that Mr. Rosario sustained was a mild one?
A Correct.
Q Do you even have any documentation of him sustaining a concussion?
A I think it's the same question you asked. We do not have a video of the accident, right.
Q There's no video, I agree.

A So the determination of that was based on evidence that he has suffered a concussion, the medical evidence, radiological imaging showed evidence of concussion.

Q The radiological imaging you sent him for?

A Correct.

Q Okay. The radiological imaging you sent him for that DTI MRI, the fancy MRI with Dr. Rosenfeld, right?

A I don't know what you mean by "fancy."

Q The DTI, MRI?

A The DTI sequence of the MRI.

Q Okay. The one you relied upon by Dr. Rosenfeld, yes?

A Interpreted by Dr. Rosenfeld.

Q Okay. That was conducted by Dr. Rosenfeld, yes?

MR. PRONER: Objection.

THE COURT: Sustained.

Q You relied upon Dr. Rosenfeld's DTI MRI, yes?

A On his interpretation, yes.

Q And that DTI MRI was conducted in April of 2024, right?

A Correct. That was his second DTI. But that one was in 24.

Q Okay. So seven years later is the MRI you're basing your opinion on, yes?

MR. PRONER: Objection.

THE COURT: Sustained.

Q So when looking for -- if a concussion has been sustained, there is list that doctors go through also.

THE COURT: I think that's a good point. That's a going area to break for lunch --

MR. CALABRESE: Thank you, Your Honor.

THE COURT: -- because it's that time.

So Ladies and gentlemen of the jury, we're going to break at this time.

What I'll tell you, some of the evidence, you have not heard all of the evidence. Please keep an open mind until you do hear all the evidence until you hear the summations by the attorneys, you hear my charge to you on the law. More importantly, you get this case for fully deliberation.

Do not discuss this case amongst yourselves or with anyone else. I see you back here at two o'clock.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom.)

THE COURT: Doctor, you understand you talk about your testimony to anyone.

MR. CALABRESE: Your Honor.

THE COURT: Go ahead.

MR. CALABRESE: I know there's people that manage this courtroom. Can I make a request that during this break, given what happened with the records, can we just,

during the lunch break, remain in the courtroom.

THE COURT: Unfortunately not.

MR. CALABRESE: Okay.

THE COURT: Because there are protocols and there are rules and court officer associations have their rules, work out their rules, and I have to abide by them. And they need their hour of lunch.

MR. CALABRESE: Of course.

THE COURT: So be here on two on the dot, and we can settle about the hospital records, since it appears that the one that went into evidence was October 24, rather than October 17th.

MR. PRONER: No, that's not --

THE COURT: That's what I heard.

MR. PRONER: I know that's what you heard, but that's because he doesn't know what's in the records.

THE COURT: Well, I don't want to hear he doesn't know what's in the record. Get the records from October 17th.

MR. PRONER: They are in there.

THE COURT: We'll do it at two o'clock.

MR. PRONER: It's all there.

MR. CALABRESE: Thank you, Your Honor.

(Whereupon, a luncheon recess was taken at 1:00 p.m.)

** A F T E R N O O N S E S S I O N **

(Whereupon, the proceedings resumed at 2:00 p.m.)

MS. BUHOLTZ: Your Honor, I going to have marked as Defendants' Exhibit K, for identification, the records that Attorney Proner exchanged with us pursuant to his Notice of Intent to Exchange.

THE COURT: It hasn't been marked yet. You're requesting it be marked.

MS. BUHOLTZ: It's filed November 5, 2025, at Docket No. 184.

THE COURT: You're requesting to have it marked. No, wait. It hasn't been marked yet. You're requesting it to be marked, and that's not part of the record.

That's your record, correct?

MS. BUHOLTZ: This is the notice.

THE COURT: Those are your records, Counsel. Those are not court records. What's on this desk is everything that's been subpoenaed.

MS. BUHOLTZ: They were not subpoenaed to court. They were obtained by Mr. Proner and they were certified, and they were filed in NYSCEF with his Notice of Intent at Docket No. 184, that he intended to offer, what I'm going to have marked as Defendants' Exhibit K for identification.

THE COURT: No, you don't have it mark. You

request the Court to marked it for identification. You don't have it marked. I just want to correct the protocol.

MS. BUHOLTZ: That's correct.

I'm asking Your Honor to mark this as Defendants' Exhibit K, for identification.

THE COURT: Okay. We can have it marked for identification as Defendants' K, that we can do. And I'll address that it's not coming into evidence and why.

Mr. Calabrese, you got up?

MR. CALABRESE: I just wanted -- with respect to those records he's seeking to have marked as a court ID. These are records that we previously stipulated that were to come into evidence.

THE COURT: That's not what I heard before we took the break from Mr. Proner.

Mr. Proner, are you stipulating to have those records come into evidence.

MR. PRONER: No, Your Honor.

THE COURT: Okay. That was the problem. We're doing a 360 circle here.

And I heard your -- Ms. Buholtz's, your reasoning why they should come into evidence under 4518 because they came into your office, I believe, through a subpoena or somebody's office.

MS. BUHOLTZ: They came into Mr. Proner's office.

THE COURT: I don't know how they came into Mr. Proner's office. Now, I'm going to cut this real quick and make it very sweet and short.

Jacobi Hospital -- and I apologize it just didn't occur to me before we broke for lunch. Jacobi Hospital is a municipal corporation. It's under the New York City Health and Hospital Corporation. That's a hospital corporation.

So although 4518 allows hospital records, medical records, documents and everything to come in evidence, at the discretion of the Court, if there is a certification, it does refer you to 2306 and 2307 of the CPLR.

Municipality corporation records, including hospital records, must be obtained through court order which means subpoena. Therefore, they have to come to the clerk of the Court via subpoena.

Jacobi is a municipal corporation under the New York City Health and Hospital Corporation. Exhibit X, marked for identification only will not come into evidence because they're not -- that that particular exhibit was not subpoenaed to the Court pursuant to 2306.

That takes care of everything, thank you.

MR. PRONER: Your Honor, if I may, neither was a plaintiff's exhibit that's been received in evidence --

THE COURT: Exhibit 16 did come into court

through a subpoena.

MS. BUHOLTZ: Your Honor, under 2306, because it's a municipal corporation, that should have been done on notice to the corporation on one day's notice before the subpoena went out, it did not. And I did not get notice of Mr. Proner's trial subpoena with regard to Jacobi.

THE COURT: It wasn't Mr. Proner's trial subpoena, it was Mr. Calabrese's trial subpoena.

MS. BUHOLTZ: I stand corrected, Your Honor.

THE COURT: Okay. All right. But it did come through a subpoena via to the Court, which I did not allow it to go into evidence. I don't allow subpoenas to go into evidence. I did allow the records to come into evidence.

MS. BUHOLTZ: And, Your Honor, additionally --

THE COURT: Can we continue with the witness so we can finish the witness?

MS. BUHOLTZ: Additionally, Your Honor, Exhibit K is different, is substantially different from the document that's been admitted into evidence, Plaintiff's 16.

THE COURT: Mr. Proner.

MR. PRONER: It's the same Jacobi Hospital Records.

THE COURT: That's not the Court's relay. All I do is allow proper documents the way -- according to either the CPLR allows it to come in, consent on attorneys or

based on my discretion. I allow documents that come in accordingly.

If you believe there's something wrong, you have options, Counsels. And I'm not here to teach law or evidence or anything else. You can subpoena those records again.

Okay.

(Defendants' Exhibit K, Jacobi Hospital Records, marked for identification as of this date.)

THE COURT: Please be seated.

Good afternoon, Ladies and gentlemen.

THE JURY: Good afternoon.

THE COURT: We'll continue at this point with the cross-examination of Dr. Golzad.

MR. CALABRESE: May I, Your Honor.

THE COURT: You may continue, yes.

MR. CALABRESE: Thank you, Your Honor.

Q Dr. Golzad, good afternoon.

A Good afternoon.

Q We are talking about the list of things a doctor would look through to determine when seeing if a concussion was sustained, okay.

So is vomiting something that they look for?

A It could be related to concussion.

Q Okay. What about blurred vision?

A Yes, it could be related to concussion as well.
Q Did plaintiff have vomiting at the emergency department?
A No, I don't think I saw this in the record.
Q Did plaintiff have blurred vision at the emergency room department?
A No, I don't think it was documented.
Q Another thing they're looking for on that list for a concussion is --
MR. PRONER: Objection.
Q -- that doctors are looking for?
THE COURT: Sustained.
Q Another thing that doctors would look for on that list, Dr. Golzad, would you agree with me, loss of hearing?
A Loss of hearing is not common. However, it is valid when they say that they did look for it, and it wasn't here. So they don't even talk about that. Same for blurred vision. They did not say whether, yes or no, he had blurry vision. That means they never asked a question.
Q I'm not asking yet about the records.
I'm asking you, as a neurologist, what treating doctors look for in assessing if a concussion was sustained. So we've already covered a few: Vomiting, blurred vision.
Now, loss of hearing, is loss of hearing one of those items?

A No. It's exceeding rare to lose complete hearing. It's possible, but it's not common.

Q What about ringing in the ears?

A That's common.

Q That is common?

A That is common.

Q Did Mr. Rosario have ringing in the ears at the ER?

A In the emergency room, it was not notified -- it was not documented one way or the other.

That means that they did not say they asked him the question and he said no.

Q Not documented one way or another, correct?

A Yeah.

Q Okay. Next on the list of things that doctors would look at, slurred speech?

A Yes, it can happen in the context of concussion.

Q Now, again, did Mr. Rosario have slurred speech at the emergency department?

A I did not see that.

Q You didn't see it.

Let's look -- we started to look at the records before lunch, and there was a little hiccup with the records. I'm going to ask that they be put back before you now, Doctor.

MR. CALABRESE: Your Honor, with the Court's permission, Jacobi Exhibit 6.

MR. PRONER: Sixteen.

MR. CALABRESE: Sixteen, the Jacobi emergency room records.

THE WITNESS: Thank you.

Q Page 11, please. I believe the page number is on the bottom left or right corner, depending on which one you're looking at.

A I just randomly ended up on page 24, and it indicates headaches that you thought was not there. So it's on page 24.

Q Page 24, the word "headache" actually shows up?

A Yeah.

Q So go to page 11.

A I have page 11, yes.

Q Okay.

A Is that the one that starts with approval by ambulance? I just want to make sure we're on the same page.

Q. Well, my records are a little different. So they don't match up.

A. That's why I'm asking.

Q. Sure. But page 11, because I looked at those during the lunch break.

A. Okay. I'm on page 11.

Q. Thank you.

You see where it says chief complaint left-hand side column near the top?

A. You know what? Do me a favor, please, can you please look at this page 11 and make sure it's not the -- chief complaint, okay, the one that says sleep and four?

Q. Sure. Read that.

A. Sleep and four.

You want me to read everything?

Q. Please, under the chief complaint heading.

A. Heavy object struck his left forearm, complains of pain to left shoulder, ribs, open wound to left arm, denies LOC which stands for loss of consciousness.

Q. Does it say headache?

A. Not here.

Q. Okay. Does it say denied loss of consciousness?

A. I just said it; yes.

Q. Go to page 23.

Are you there?

A. Yes, I am.
Q. You see the section history of present illness on the right-hand side?
A. Yes.
Q. Okay. I want you to go from the bottom third sentence up on that where it says "he also has pain." Read that.
MR. PRONER: Are you talking about the sentence after the one where it says, "pain radiating to the top of the head"?
THE COURT: Counsel.
MR. CALABRESE: Judge.
THE COURT: Sustained. I mean, let him refer to what he wants. You can come back and read the rest, Mr. Proner.
A. So you want me to read the paragraph --
Q. Yes.
A. I know you want me to read it. I just want to clarify make sure I know what you want me to do.
Q. After the part where it says, "neck pain radiating up to the head."
A. So is that in the paragraph that's titled history of present illness? Is that the one that you're referring to?
Q. Doctor, "he also has pain to the lateral right knee," that sentence, start with that sentence and read the last three sentences.

A. Okay. He also has pain to the lateral right knee, patient points, he did not lose consciousness or hit his head and has not had numbness, tingling, focal weakness, vision changes, nausea, vomiting or other symptoms.

Q. Thank you, Doctor.

Now, do you recall seeing these records when making your assessment?

A. Yes.

Q. Okay. Now, let's talk about what a Glasgow Coma Scale is, Doctor.

A. That's the question what the Glasgow Coma Scale --

Q. Yeah, can you tell the jury what the Glasgow Coma Scale is?

A. The Glasgow Coma Scale is a very brief neurological examination. It checks for movement of extremities, eye opening, eye contact and verbal response. And it determines how badly the patient's consciousness has been affected. So if there's somebody in a coma unconscious would not have reactions. And then there all types of stages. The maximum normal is 15, and people with mild tibial concussion usually have a normal Glasgow Coma Scale.

Q. Fifteen is normal; right?

A. Correct.

Q. There's a scale on the Glasgow Coma Scale three to 15; yes?

A. Yes.
Q. Fifteen is the highest?
A. Fifteen is the -- that means that all the reactions were present.
Q. Again, I'm trying to keep this brief. Answer my questions yes or no, please.
Fifteen is the highest; yes?
A. Correct.
Q. It's like you and I are 15 right now; right?
A. Correct.
Q. Okay. Go back to page 11. Go down. On that column under chief complaint where it says GCS, Glasgow Coma Scale, what does it say, Doctor?
A. Let me find the paragraph.
MR. CALABRESE: May I approach, Your Honor, only because my records aren't exactly --
THE COURT: You may.
MR. CALABRESE: Thank you.
A. Yeah, I found it. I found it.
Q. You found it?
A. GCS. Yes.
Q. Tell us what it says.
A. So GCS, Glasgow Coma Scale, score 15.
Q. Fifteen?
A. Yes.

Q. The highest Glasgow Coma Scale you can score?

A. Correct.

Q. Thank you.

Doctor, what is an EEG study?

A. EEG stands for electroencephalogram. It's an electrogram test of the brain, brainwave test. It's similar to EKG but for the brain.

Q. Is this an objective test?

A. It is an objective test.

Q. Okay. Is the EEG that lie detector test we were talking about before or that's something different?

A. Something different.

Q. Something different, I'm sorry.

So EEG is objective?

A. It is objective.

Q. And you did an EEG -- you performed an EEG of Mr. Rosario, did you not?

A. Yes, I did.

Q. And you did that on the month following seeing him in February, 2019; correct?

A. Correct.

Q. You first saw him in January of 2019 approximately 15 months post accident. You're now doing an EEG approximately 16 months post accident; yes?

A. Yes.

Q. And this objective test of February 8, 2019, what was your impression of that test?

A. Unremarkable, normal.

Q. Normal.

It's normal EEG test; yes?

A. Yes.

Q. Okay. Did you review the first in time brain MRI of November 17, 2017 in coming to your conclusion?

A. Yes, that MRI was a third of the MRIs that we did later and they were consistent.

Q. Doctor, listen to my questions and answer only my questions. Again, I'm trying to be as brief as possible and in a yes-or-no fashion.

Did you review the November 17, 2017 MRI of the brain, the one done approximately one month following this accident?

A. Yes, I did.

Q. Okay. And what can that study show?

A. It's exactly the same thing on the subsequent one for that portion.

Q. It was normal?

A. It was normal but it was an incomplete test as compared to subsequent ones. But for what was identical compare apple to apple, for the portions of the test that were identical, they were consistent the three MRIs.

Q. Okay. No acute pathology; right?

A. Correct, for that part.
Q. And that's in your records we see; yes?
A. Yes, it is.
Q. And you relied upon that; yes?
A. I reviewed it; yes.
Q. That MRI, that first in time MRI of the brain finding, is important to you in your diagnosis; yes?
A. Yes.
Q. So far we have a no acute pathology MRI one month post accident, and a negative and normal EEG 16 months post accident; are you with me?
A. I'm with you.
Q. Okay. Have you seen any photographs of a head injury from Mr. Rosario or --
MR. CALABRESE: I will withdraw that question. Poorly worded on my end.
Q. Have you seen any photos of a head injury Mr. Rosario sustained on the date of this accident?
A. No.
Q. Okay. Have you seen any photos of bruising, cuts, scrapes to the head?
A. No.
Q. Okay. I know you're not here to talk about the left forearm; right?
A. I did not evaluate or treat him for that, so.

Q. So there was no reason for you to see the photographs that we have of the left forearm; right?

A. Correct.

Q. Okay. Are you aware that there are photographs of the left forearm?

A. I was actually not aware that there were photographs.

Q. Okay. Have you ever seen a picture of him with black eyes following the accident? I think you referred to it as raccooning?

A. I referred to it as raccooning?

Q. You haven't used that term in assessing brain injuries and looking for black eyes, raccooning?

A. No. So you mentioned that I referred to it as raccooning for him for this particular --

Q. No.

A. Are you talking general?

Q. Let me back up.

Did you ever see a photo following the accident of Mr. Rosario with black eyes?

A. I already told you I did not see any photos. I didn't even know that there were photos.

Q. And you've already established before, you mentioned a few times, that you haven't seen any video of the accident?

A. Same thing.

Q. So there's no video of striking the head?

THE COURT: Sustained.

MR. PRONER: Objection.

THE COURT: That's already covered.

Q. Have you seen any medical records documenting bruising, cuts or scrapes to the head?

A. No.

Q. That's not found anywhere in the ER; right?

A. Correct.

Q. That's not found anywhere in his subsequent treating doctor's records that you have reviewed?

A. For those that I reviewed; correct.

Q. Okay. But you're aware that there were co-workers there that day; right?

A. I believe so; yes.

Q. You eventually came to know that; fair?

A. I know now.

Q. I didn't get the answer.

A. Well, I know now, now that you're telling me. Once, again, I was not present. I do not know the circumstances from my own visual observation.

Q. Doctor, of course. I'm not trying to be silly with you, Doctor. We all know you weren't there. We get it. None of us were there.

MR. PRONER: Objection.

THE COURT: Sustained.

Counsel, just ask the question.

Q. When did you first learn that there were co-workers with Mr. Rosario that day? Is it today here in court as I tell you or did you learn of it previously?

A. I always assume that there were people there but did I have anybody specifically telling me who was there, who was not there or did I see any picture? No.

Q. Okay.

A. No.

Q. You know what happens when we assume?

So did you have an assumption --

THE COURT: Counsel, counsel, again, I've been telling you we don't need the remarks.

MR. CALABRESE: Sorry, Your Honor.

Q. Since you assumed there were co-workers, did you seek them out to go interview them about --

MR. PRONER: Objection.

THE COURT: Let him finish. Don't answer because there's going to be an objection.

Go ahead finish your question.

Q. Doctor, since at the time you were assessing and coming to an evaluation of Mr. Rosario for the concussion mild traumatic brain injury that you're telling this jury, you thought out there were possible witnesses to the accident; is that accurate?

MR. PRONER: Objection.

THE COURT: Sustained. That's not what he said.

Q. Did you ever interview any workers?

MR. PRONER: Objection.

THE COURT: Sustained.

Q. You speak Spanish, you could have; right?

MR. PRONER: Objection.

THE COURT: Sustained.

MR. CALABRESE: You want to sit down?

THE COURT: No, I'll tell him if he should sit down or not, counsel. You don't run my courtroom. Okay.

MR. CALABRESE: Sorry, Judge. I didn't mean to imply --

THE COURT: This is the second or third time I've already indicated that to you.

Q. In traumatic brain injuries, present illness do we sometimes see brain MRIs or CT scans done at the emergency room?

A. Yes, the rule is that if the patient has lost consciousness and they know, they usually get a CAT scan or MRI. Usually CAT scan, actually. CT scan.

Q. And none of that was done at the emergency room here with Mr. Rosario at Jacobi Hospital; correct?

A. No CAT scan was done; correct.

Q. No imagining of the head at all; correct?

A. No imaging of the head; correct.

Q. Okay. There was other imaging though; right?
A. Yes, there were.
Q. We looked at the records. There's imaging of other body parts that he was making complaints to; correct?
A. Correct, he did make complaint of headaches. Page 24.
Q. So he made complaints of headaches but they didn't do anything for the brain?
A. They did not do any imaging study of the brain.
Q. Okay. Read to me where it says complaints of headaches?
A. Page 24.
Q. Read it. Read the sentence.
A. There's a paragraph titled "Neuro: Headache", in bold, small case.
Q. Would you expect in a traumatic brain injury case an overnight stay in the hospital?
A. Most cases they do not. They do the workup and they discharge the patient in the mild cases, not more serious ones.
Q. Okay. So there was no loss of consciousness per the records; correct?
MR. PRONER: Objection.
THE COURT: Sustained. Asked and answered.
Counsel, sit down.
Q. Do you know the length of time of any memory loss that Mr. Rosario may have had?

A. What type of memory loss are you referring to?
Q. Well, the one he's telling you he has.
A. Well, he did not specifically use this term. He said that he does not have a good recollection of the events.
Q. Okay. So if somebody has a loss of consciousness for an extended period of time, would they be able to recall the events leading up to an accident that caused the brain injury?
A. Some cases yes, some cases no. In a very mild case, they may remember. If the case -- if the impact was stronger, then usually they do not.
Q. Okay. If Mr. Silverio sustained a concussion as a result of the accident, would he have been able to answer thousands of questions at depositions with details about the accident occurring, who was present, who, what, when, where and why?
A. Well, I have not seen the deposition you're talking about. The answer is not really yes or no. Am I allowed to elaborate?
THE COURT: If you can. It's up to you.
Q. I'm sorry, I couldn't hear what he said.
A. So I said if I was allowed to elaborate to you if you wished me to explain.
Q. No, I don't wish.
A. Okay. Fine.
Q. Like I said yes or no.

A. There's no yes or no answer to this.
Q. Okay. You didn't look at those transcripts though; right?
A. In the deposition transcripts?
Q. Correct.
A. No, I did not.
Q. Are you even able to say, Doctor, what side of the head he hit; left side, right side, front, back?
MR. PRONER: Objection.
THE COURT: Sustained.
Q. Do you know what side of his head he hit?
MR. PRONER: Objection.
THE COURT: Sustained.
MR. CALABRESE: Your Honor, I'm sorry, I don't understand the objection.
THE COURT: Sustained. That's sustained.
Q. Are you telling this jury he hit his head?
A. Well --
Q. Yes or no.
THE COURT: If you can answer yes or no. If that's an answer you --
THE WITNESS: It's not a yes-or-no answer. I told you how I proceeded, the methodology used. As a doctor, I obtain the patient's complaints, symptoms and then verify the presence or absence of abnormalities. And

based on those, yes, I determine that he had suffered injury to his brain, traumatic injury to his brain.

Q. So once again, based on the history he provided, you came to the ultimate conclusion that he struck his head some way?

A. More than the history. The symptoms and the condition he was in.

Q. The symptoms in those subjective testings, the neurological assessments?

A. So a test is not subjective. The symptoms, the complaints are subjective. You're mixing up what a test is and what a complaint.

Q. Okay. Not the behavioral test that we talked about, the drawing of the clock, and the giving you back a number in sequence after you give it to me; that's not subjective?

A. Your previous question was my information from the plaintiff and those were based on his subjective complaints.

Q. Okay. You sent Mr. Rosario for cognition testing; yes?

A. Correct.

Q. And you're telling this jury that those tests resulted in him having deficits that are causally related to the 2017 accident with medical certainty; yes?

A. Well, the way you're forming your sentence you're saying that the test resulted in him having cognitive deficit.

Q. No, no.
A. That's what you said.
Q. Fine. I'll withdraw it. If that's the way -- Doctor, I said it when I first started, if I ask it in a confusing way, I will reask it.
A. I'm really glad that you're speaking your own native language because it's my fourth language.
Q. Doctor, I don't speak multiple languages like you, okay, so bear with me, please.
MR. PRONER: Objection.
THE COURT: Sustained.
Q. You found that this man had deficits; yes?
A. Correct.
Q. Okay. Based on a totality of things; yes?
A. Well, the cognitive deficits is based on the cognitive testing.
Q. Okay. You found they had problems taking these tests; yes? He wasn't scoring well on the tests?
A. I'm sorry, he had problems taking the test?
Q. The results of those tests led you to believe that he has the deficits?
A. Correct.
Q. Okay. We talked earlier about his baseline, okay. We. Mr. Proner asked you questions about his baseline, okay.
So where did this man go to school?

A. In Mexico.
Q. Okay. What grade did he make it up to?
A. I believe nine.
Q. Okay. What was his IQ before this accident?
A. The IQ was -- to my knowledge he never had a measurement of the IQ. It was based on his achievements in life that we determined where he would stand. But I don't think he had an actual IQ test.
Q. So you didn't know the man's IQ before the accident; right?
A. This is not what I said. I said we had an estimate of his IQ based on whatever he had achieved in his life. But was a formal IQ test performed? Not to my knowledge.
Q. What is your basis for what this man's IQ was before October 14, 2017?
MR. PRONER: Objection.
THE COURT: Overruled. I thought you had an estimate.
A. The most convincing basis of that is that he came to the United States, he did not speak English, and he succeeded and he had a job and he was independent. Somebody who is retarded, would never be able to do that. Somebody who had significant intellectual deficit could not do this.
Q. Do you know anything about his employment?
A. He was a refrigerator mechanic which is a technical

job.

Q. Sure. But you ever see him perform it before the accident?

A. No, it's based on the records.

Q. Well, you've seen employment records?

A. In the medical records they indicated that he was a refrigerator mechanic and he had not been fired from his job. So his employer had kept him.

Q. How do you know anything about his employment before you ever came to see him, sir? What are you basing that on?

A. Well, I did not know anything. I don't pretend that I knew him or I knew his employment before I saw him.

Q. It kind of seems like you are, with all due respect.

MR. PRONER: Objection.

THE COURT: Counsel, you appear to argue with the witness. Let the witness finish answering the question.

Sit down, Mr. Proner.

You're not allowing the witness to finish.

Q. Continue.

A. So as I wrote in my initial report, that you may not have read, I do say that he used to work as a refrigerator mechanic. So I obtained the information from him. He told me what he was doing.

Q. From him; yes?

A. Correct.

Q. You obtained the information from him?
MR. PRONER: Objection.
Q. Are you aware --
THE COURT: Sustained.
Q. Have you seen the testimony of his employer Andres Ruiz?
MR. PRONER: Objection.
THE COURT: Sustained. He hasn't seen depositions.
Q. You never interviewed Andres Ruiz; right?
A. Correct.
Q. You've never seen employment records; right?
A. Correct.
Q. You don't know if he was working full time or part time before this accident, if at all, or a highed hand when needed? You don't know any of that; correct?
MR. PRONER: Objection as to form.
THE COURT: Sustained.
Q. Do you know any of that?
A. I -- other than the history provided by the patient, I did not have any access to any other records --
Q. Okay.
A. -- regarding his employment. That's what I meant.
Q. Agreed, sir. I'm talking about just his employment during that line of questioning.

You haven't seen employment records. You haven't interviewed his employer.

THE COURT: Counsel, we went through that already. Next question.

MR. CALABRESE: I just want to be clear, Your Honor.

THE COURT: You keep going over everything over and over again. Next. Let's go.

Q. Did you speak with any of his teachers?

THE COURT: What?

MR. PRONER: Objection.

THE COURT: Sustained. Next.

Q. Dr. Golzad, you have no knowledge of this man's baseline before you ever met him; correct?

A. Before I met him I did not know him and nor did I have any information about him. I didn't even know his name before --

Q. Of course. I will agree with you, sir. You know nothing about this man before you treated --

MR. PRONER: Objection.

THE COURT: Sustained.

Q. So what is your basis for telling this jury about his baseline before the accident?

MR. PRONER: Objection.

THE COURT: Sustained. Next question.

Q. Did you ever ask to review the six deposition transcripts from his lawsuits --

MR. PRONER: Objection.

THE COURT: Counsel, sustained.

MR. CALABRESE: Your Honor.

THE COURT: Counsel, move on.

MR. CALABRESE: The prior question was if he did.

THE COURT: Counsel, move on.

MR. CALABRESE: Now, I want to know if he asked.

THE COURT: Move on. I sustained the objection. Move on.

MR. CALABRESE: Different question, Your Honor, but, okay, I'll move on.

THE COURT: When I sustain, it's because it's not a question to be asked or it's been asked and answered or something else. Move on.

Q. So, Mr. Golzad -- Dr. Golzad, the only person -- only the person with the lawsuit told you that he changed after this accident; correct?

MR. PRONER: What? Objection.

THE COURT: That's the way you do it. It's not "what". It's objection.

Objection sustained.

Rephrase your question, counsel.

MR. CALABRESE: A little allowance, Judge?

THE COURT: Rephrase your question, counsel. Rephrase your question, counsel.

Q. We've already established you don't know this man prior.

THE COURT: Counsel, rephrase your question. That was not -- rephrase your question. You keep repeating testimony over and over again. That's not the way it works. Rephrase your question or ask another question.

Q. What is your basis for telling --

THE COURT: No, you asked that question already what is your basis. New question.

Q. How are you able to tell this jury that this is a changed man due to his brain following this accident then he was before?

A. You want to know the basis of my conclusion?

Q. No, I'm not allowed. I tried to ask that question.

THE COURT: No, counsel, that's not the way it goes. Okay. It's not that you're not allowed. You're just not asking the right questions and in the right form. That's the problem. Is that how you want me to tell you? In front of a jury? No. Okay. The doctor could tell you exactly how he got to his conclusion. That's the way it's asked.

Q. You took plaintiff at his word; correct?

A. Well, if it's about the conclusion, it's based on what

he said, examination, test results and such, the entire file, everything that's there.

Q. Okay. So if a patient is misleading you on his history and his baseline and what he was like, your conclusion can be inaccurate; is that fair?

A. To the extent that it relies more heavily on objective test results, then I'm totally confident that he has suffered traumatic brain injury and to the extent that his symptoms began at that point and there's no record whatsoever that he had such symptoms before, that's why I correlated that to the accident.

Q. Doctor, I didn't ask you anything about his symptoms before. I just ask you --

MR. PRONER: Objection as to form.

Q. -- if a patient --

THE COURT: Let him finish the question.

Don't answer until the question is completely asked.

Q. We talked about what goes into your assessment, Doctor, your ultimate conclusion. So wouldn't you agree you have objective testing but then you have history from patient. If, I'm not saying it is, but if the history from the patient is inaccurate, wouldn't that throw off your ultimate conclusion?

A. You know, in real life more often than not you get incomplete --

Q. Doctor, yes or no.

A. No.
Q. No, it would not throw it off?
MR. PRONER: Objection.
THE COURT: Okay. Hold on. Please, counsel.
If you can answer the question yes or no, Doctor. If you can't, just indicate you can't answer the question that way.
THE WITNESS: There's no yes-or-no answer.
Q. Doctor, Mr. Proner asked you about if you knew he was involved in a subsequent auto accident; do you recall that testimony earlier this morning?
A. Yes, I do.
Q. Okay. So my question is, when did you learn that he was involved in the accident?
A. Just a few days ago. I was not aware of that.
Q. You only learned about the subsequent accident in 2020 a couple of days ago before coming here?
A. Yes.
Q. You were not aware of it while treating him; correct?
A. I was not aware of it.
Q. You're not aware of it, okay.
You saw him four times in 2019 starting in January through December '19; correct?
A. Right.
Q. Okay. And then there's no complaints of blurred

vision in any of your 2019 entries; correct?

A. Correct.

Q. Okay. And then you didn't see him again for a full year until December of 2020; agreed?

A. Correct.

Q. Okay. Are you aware -- did you become aware just the other day that his auto accident was in October of 2020?

A. So what's your question? If I was aware then? I already told you that I was not.

Q. No, no, no.

Just the other day when you first learned of the accident ever, did you become aware just the other day that his accident was October 2020 right before you saw him after a year gap?

MR. PRONER: Objection.

THE COURT: Sustained.

Can you just rephrase the question?

Q. We've already established that you last saw him in December '19. There was a year gap and then you saw him again in December of 2020. We've already agreed to that; yes?

A. Correct.

Q. Now, I'm telling you he was involved in an October 2020 accident.

Do you know that he was involved in an accident before you saw him again in December 2020?

A. Well, as I told you, I recently found out about the motor vehicle accident in 2020, and at the time I saw him back then, no, I did not know. I found out recently.

Q. Okay. And the complaints of blurred vision in your records in your report don't come in until 2023; right?

A. Correct.

Q. So Doctor, isn't it possible that the December -- October 2020 auto accident affected something, isn't it possible?

A. Well, in the event he had injuries to his eyes or to his head, it is possible.

Q. So if somebody complains of blurred vision following that auto accident, is that something you'd want to know?

A. When you say is that something you want to know, what is that something?

Q. Doctor, do you want to know it or not if a man complains following the 2020 auto accident of headaches, blurred vision, would you want to know that?

A. So you mean -- you mean to assume that I knew when he came at that point that he --

Q. I'm not asking you to assume anything. But you're giving a clinical diagnosis as a neurologist that this is all -- that his decreasing brain size and his degrading neurological ability is with a medical degree of certainty resulting from this October 2017 accident, but you didn't even know about the

October 2020 auto accident and then the complaints of blurred vision started in your records. Wouldn't you want to see those records from the 2020 auto accident to have a complete picture of Mr. Rosario's medical history; yes or no?

A. Well, to the extent that I found out --

Q. Yes or no.

A. Well, I'm answering your question. To the extent that I found out, he had injuries to the leg, there were no injuries to the head and there was no indication that he got really worse after that. Furthermore, I had -- I had previous MRI reports that had shown brain injury before that accident.

Q. Are you talking about the November 2017 brain MRI that showed no acute pathology?

A. No, the subsequent one in 2019 I believe.

Q. In 2019?

A. Yes.

Q. Two years after the accident.

A. Well, once again, so that nobody is mislead, these MRIs have three different sections. Section one was repeated in all three studies and that's consistent among the three MRIs. Section two and three are additional tests, microstructure. They show small injuries. And the additional test showed the problems. So the tests are not contradictory.

Q. Doctor, you previously testified in court. Wouldn't you agree that a brain MRI -- that no radiologist interpreting a

brain MRI can tell you a date stamp of when that atrophy started?

A. It does not create a precise date stamp.

Q. Correct. So you can't tell if the injury is old or new; right?

A. Usually you cannot.

Q. You cannot.

So you got no date stamp and you're still telling this jury that the mild concussion traumatic brain injury with certainty is caused by October 2017? Yes, you're still saying that?

A. Based on the MRI of 2019 before the second accident.

Q. I have no further questions for you, Doctor. Thank you.

THE COURT: Cross?

No wait.

MR. PRONER: Of course, I'm sorry.

CROSS-EXAMINATION

BY MS. BUHOLTZ:

Q. On the file that's to your left, it's been marked, I believe. Can you tell me the exhibit number, please?

A. Fifteen.

Q. Yes. I'm sorry?

A. You want the exhibit number?

Q. Yes, please.

A. It says 15.
Q. Fifteen?
A. Yeah.
Q. Okay.
A. Yellow sticker; right?
Q. Is Exhibit 15 a copy of your office's complete file with regard to Mr. Rosario-Silverio?
A. Yes.
Q. And is that something you brought with you today or is that something that was sent to court pursuant to a subpoena?
A. I brought it personally.
Q. And everything that you're relying on is in that record?
A. I believe so.
Q. I'm sorry?
A. I believe so; yes.
Q. All right. So when did you first see Plaintiff's Exhibit 16 in evidence, the Jacobi Hospital record?
A. Just a few days ago.
Q. Just a few days ago? And is that when you met with Mr. Proner?
A. I didn't meet with him in person. He sent me an electronic copy.
Q. Say that again?
A. I did not meet with him in person. He sent me an

electronic copy.

Q. He sent you an electronic copy.

And that's not in your records Exhibit 16; correct?

A. Probably not.

Q. All right. Well, can you tell me is it or is it not?

A. I don't think so but I'm not certain.

Q. And now, when you see -- when you saw Mr. Rosario-Silverio, you saw him with another paraprofessional in your office; is that correct?

A. It is correct.

Q. And were you present for each of those interviews?

A. Yes, I was.

Q. Were you present for the whole thing?

A. Yes.

Q. Who took the notes?

A. I personally take the notes. Sometimes they assist me.

Q. Do you take them in handwriting or do you take them on the computer?

A. Either way or sometimes I go over to a dictaphone and dictate immediately.

Q. So sometimes you don't take any notes at all, you just go back and dictate immediately?

A. Correct.

Q. On each of these reports the paraprofessional signs on

the left-hand side and you sign on the right-hand side. What's the reason for that?

A. Transparency.

Q. Sorry?

A. Transparency. Whoever contributed to the evaluation, we put the --

Q. Is the person who signs on the left-hand side the person who drafted the report?

A. Not necessarily.

And by the way, the word paraprofessional, I don't know what you mean. These are licensed -- New York State licensed professionals.

Q. And NC-P, that is a -- what does that stand for?

A. Nurse practitioner.

Q. Okay. It's not an M.D.; correct?

A. Correct.

Q. And what about an AGMP-C, what kind of professional is that?

A. Nurse practitioner as well.

Q. When I say paraprofessional, I mean someone who's not a physician; is that understood?

A. Not a medical doctor. The AG stands for adult geriatric nurse practitioner and they are licensed under the law to evaluate and treat patients independently without supervision of anybody else.

Q. But my question is when I speak of a paraprofessional, I'm speaking of a non-medical doctor, is that understood?

MR. PRONER: Objection.

THE COURT: Sustained.

Q. Does your file reflect any phone calls from Mr. Rosario-Silverio, if any?

A. Are you asking me if he called me?

Q. I'm asking you if your file shows any phone calls, would it show any phone calls from Mr. Rosario-Silverio?

A. To me you mean?

Q. To your office.

A. To my office he had certainly called for appointments or for regular visits but nothing of medical nature.

Q. All right. So if there's nothing of a medical issue, does it show up in your file that's marked as Plaintiff's Exhibit 15? Is it 15?

THE COURT: It's only 15 for identification.

Q. Fifteen for identification.

Is there any evidence of any phone calls in Plaintiff's Exhibit 15 for identification? I'm asking you, the document that's in front of you with the black clamp on it, is there any evidence of phone calls from Mr. Rosario-Silverio to you, to your office?

A. So the phone calls if they're not of medical nature, are not documented. If he makes an appointment, the appointment

is documented and he sees us on the date of the appointment and the report is produced.

Q. Is there any record in your Exhibit 15 -- Plaintiff's Exhibit 15 for identification of appointments that were made but not kept?

A. What type of record not kept?

Q. I'm sorry?

A. Could you please repeat your question? I'm not sure I understood it.

Q. Is there any evidence in Plaintiff's Exhibit 15 for identification of appointments that were made for Mr. Rosario-Silverio but not kept?

A. No, I don't think so.

Q. Who referred Mr. Rosario-Silverio to your office?

A. A medical office called CitiMed.

Q. C-I-T-I-M-E-D; correct?

A. Correct.

Q. Do you know who referred Mr. Rosario-Silverio to CitiMed?

A. One of the doctors who had seen him there. I don't recall her name. It was one of the doctors at CitiMed who did not stay there, so. But it was one of the doctors who was attending him in that office.

Q. Well, that's the doctor who referred Mr. Rosario-Silverio to you. But my question was, do you know

who referred Mr. Rosario-Silverio to CitiMed?

A. No, I do not know that.

Q. And the end of an appointment with Mr. Rosario-Silverio how was the next appointment made, if one was made?

A. I determine if a follow-up appointment is necessary. And if so, in what span of time.

Q. And then does your office automatically set up that appointment or is that left up to Mr. Rosario-Silverio to go out to the desk and make the appointment?

A. So, he's asked to go to the desk and before he leaves the office, he gets an appointment with a card and date and time indicated on it.

Q. Now, his first appointment was January 28, 2019; is that correct?

A. It is correct.

Q. And at that appointment, you recommended formal neuropsychological evaluation and cognitive remediation therapy; is that right?

A. It is correct.

Q. And at each subsequent appointment you recommended cognitive remediation therapy; is that correct?

A. Correct.

Q. And did he ever follow through on that?

A. No, he -- the cognitive remediation therapy has to be

done on a regular basis twice a week and he had issues with transportation, he couldn't come that often to my office.

Q. You originally were going to -- you were originally going to have it done at your office; correct?

A. Correct.

Q. All right. Now, do you know whether he had a car at that point?

A. I do not know.

Q. Do you know whether he was driving that car?

A. So I knew that on and off he was driving but I'm not sure if at that particular point of time he did have a car or not.

Q. And at your first meeting you prescribed magnesium for him and you're going to have to pronounce it for me, sumatriptan; is that right?

A. Correct.

Q. All right. That was January 28, 2019; is that right?

A. Correct.

Q. Now, if your recommendation is for him to follow up in two months, is there any procedure in your office to follow up with him if he does not make an appointment or come in within the recommended time?

A. Yes, usually the patient is called and given another appointment.

Q. I'm sorry, say that again?

A. So I don't know exactly in this case but the usual procedure is to call the patient and give them another follow-up appointment.

Q. And is there any record of those calls if anyone made in Exhibit 15 -- Plaintiff's Exhibit 15 for identification?

A. No.

Q. Now, the next appointment is March 2, 2019; is that right?

A. Correct.

Q. And you had the MRI with the various parts of the MRI; is that correct?

A. Correct.

Q. And the regular MRI was normal; isn't that correct?

A. It is correct.

Q. And there was a neuro quant part of that test; is that right?

A. Correct.

Q. And did that neuro quant report indicate that Mr. Rosario-Silverio had been unconscious for 20 minutes?

A. The clinical portion?

Q. I'm sorry, say that again?

A. That's not -- that's not the MRI abnormalities.

Q. I'm talking about the neuro quant. There was a test that was done between January 28, 2019 and March 2nd. And the neuro quant report, as I read it, states at the beginning --

MR. PRONER: Objection.

THE COURT: Sustained. Not in evidence.

Q. If the neuro quant report from March 2, 2019 states that the --

MR. PRONER: Objection.

THE COURT: Sustained. Not in evidence.

Q. Did you rely on anything that indicated that plaintiff had been unconscious for 20 minutes after his incident?

A. As we discussed before, we don't know. There's no evidence that he had lost consciousness and he does not have a good recollection of events. So that's the extent of what I know.

Q. Okay. Now, the DTI part of the MRI, that was done between January 28, 2019 and March 2, 2019, that came with a several page bibliography single spaced; is that correct?

A. Correct.

Q. And that was to justify the DTI MRI; correct?

A. I wouldn't say so. By the way, when you say that it was done between January and March, MRI is done -- it takes 45 minutes in one day. It doesn't take three months to do it.

Q. I'm sorry, it was done on a date between January 28th and March 2, 2019 that's what I mean.

A. Okay.

MS. BUHOLTZ: Your Honor?

THE COURT: Hold on. Break?

All right. Jurors need a break. Take a five-minute break.

COURT OFFICER: All rise.

(Whereupon, the jury exits the courtroom.)

THE COURT: Five minutes.

(Whereupon, there was a recess stake even.)

COURT OFFICER: All rise.

(Whereupon, the jury enters the courtroom.)

THE COURT: Be seated.

You may continue.

MS. BUHOLTZ: Thank you, Your Honor.

Q. Sumatriptan that Mr. Rosario-Silverio was taking between January 28, 2019, your first visit with him and your second visit on March 2, 2019, did that have any affect on his cognitive abilities?

A. No.

Q. Now, on March 2, 2019 you changed his medication. He stopped taking the sumatriptan because he didn't like the side effects; is that correct?

A. Correct.

Q. And you started him on Celebrex; is that right?

A. That is correct.

Q. Twice a day as needed for headaches; is that right?

A. This is correct.

Q. And he was taking magnesium glutamate per your

direction; is that right?

A. That is correct.

Q. Is that a dietary supplement?

A. It's a supplement yes. A prescription.

Q. And he was also taking methyl folate; is that correct?

A. Correct.

Q. And that's vitamin B9; correct?

A. Correct.

Q. And that's a dietary supplement; is that right?

A. Correct, with medicine on use.

Q. I'm sorry?

A. With medicine on use.

Q. And at the March 2019 appointment you told him that the medications prescribed causes central nervous system depression which may impair physical or mental abilities; is that correct?

A. That's for -- I believe for baclofen one of the medications we said that it's possible that it may cause that and in such case you should you notify.

Q. And you started him on baclofen in the March 2019 second appointment; is that right?

A. Correct.

Q. And you told him to avoid drinking alcohol or operating heavy machinery while taking the baclofen; is that right?

A. Correct.

Q. All right. Did you -- but he could drive a car; correct?

A. Not while taking baclofen.

Q. Does it say so in your records?

A. No, but he was given -- because driving a car has many other restrictions. He told me that he had light sensitivity, that was another restriction. He told me that he already had headaches. I told him not to -- not to drive when he had the symptoms.

Q. Right. So you told him that but you didn't write it down; is that right?

A. Correct.

Q. Now, with regard to the -- one of the tests that you gave him in March of 2019 the MESA AE assist standard report. What's that -- what's that report called?

A. That's a cognitive test.

Q. That's the cognitive test?

A. Yes.

Q. All right. And does it say at the beginning of that report not description, definitive, no diagnostic, not to be used as a stand-alone instrument in diagnosing; correct?

A. Correct. It's an adjunct to the rest of the evaluation.

Q. And there was an adjustment made for his education; is

that correct?

A. Correct.

Q. And given that you did not know his educational level, the test scores were adjusted to compare performance to the same level of intelligence as an average high school graduate; is that correct?

A. Correct.

Q. And that was an average high school graduate in the United States; is that correct?

A. It's a non-verbal test, so the language doesn't matter.

Q. Say that again?

A. It's a non-verbal test and the language or the country doesn't matter.

Q. Okay. I'm not talking about language. I'm talking about an average level of intelligence of an average high school graduate. Are you assuming a U.S. high school graduate or a high school graduate from any country?

A. From any country.

Q. Okay. And was it your information that he had a high school equivalent education from Mexico?

A. Could you please repeat? I didn't hear your question.

Q. Is it your understanding that he had the equivalent of a high school education from Mexico given that he completed the 9th grade in Mexico?

A. He started high school but he did not finish, approximate.

Q. And in the neuro behavioral assessment, was it assumed that the pre-accident level of functioning was estimated to be probably in the average range?

A. Correct.

Q. Now, you gave him a balancing test at each appointment; is that correct?

A. Correct.

Q. And that was the tandem leg stance; is that right?

A. Correct.

Q. And the tandem leg stance means you put one foot -- the heel of one foot in front of the toe of the other one so they're in a straight line; is that correct?

A. It is correct.

Q. Now, you could have done a side-by-side leg test to test his balance; isn't that correct?

A. That's the easier test. But --

Q. It's the easier test. So you give him the more difficult test; is that right?

A. The more difficult that he's supposed to be able to do.

Q. All right. Were you aware that he was claiming a right knee injury from this incident?

A. Yes.

Q. And did you take that into account when you had him do the tandem leg stance test?

A. Well, the tandem leg stance is done to see if he can hold his balance in that position. So the answer is yes or no whether he can or not, and he could not. As to the cause of it, it was always considered to be multifactorial because he had multiple injuries.

Q. Multifactorial, that means there could have been more than one cause for the inability to do the tandem stance test; is that right?

A. More than one factor is contributing to that result.

Q. And were you aware that he was claiming a right knee injury?

A. We already said it, yeah, we did.

MS. BUHOLTZ: I'm sorry?

MR. PRONER: He said yes.

MS. BUHOLTZ: Okay.

Q. And I'm talking about the gap between the December 2019 appointment and the December 2020 appointment, is there any indication --

MS. BUHOLTZ: Withdrawn.

Q. When COVID hit, were you still making appointments and keeping appointments with your patients?

A. Yes.

Q. Were you doing them in person?

A. Personally no. My administrative staff would do.

Q. Your administrative staff was doing them in person?

A. Yes.

Q. In your records is there any indication that you followed up with Mr. Rosario-Silverio between December of 2019 and December of 2020 for appointments?

A. We already talked about that. We don't have record of administrative calls.

Q. All right. So could you assume that he's doing better?

A. Not necessarily.

Q. But if you don't hear from him, you don't chase him down, do you?

A. During that time, as you know, many visits, many doctors' offices actually were closed. I remained open for more serious cases but my volume was down by 80 percent. And no, we would not chase patients because for various reasons they could not attend.

Q. Now, on the December 2019 appointment, he told you he is unable to commute to your office for cognitive remediation therapy. He was given a referral and will try to find a facility closer to his home. Was that done? Did you give him a referral to something that was closer to his home?

A. Yeah, we have a printout that gives them different places that provide that type of treatment.

Q. All right. And did you ever receive any indication from anybody that he followed through on those referrals?

A. No.

Q. And on the December 2019 appointment, you ask him to follow up evaluation in two months which would have been February of 2020. Is there any indication that he made an appointment for February of 2020, that would have been before COVID?

A. The appointment was certainly made because as I mentioned to you, when patients were seeing me, I would instruct the front desk administrative staff to make an appointment. But February 2020 COVID had started and I believe that's why he could not --

Q. Sir, is there any indication in your record to that effect that an appointment was made and he didn't make it because of COVID?

A. If in the record it says follow up in two months, if in the return note it indicates that the follow up in two months was recommended, a follow up is made -- a follow-up appointment is made.

Q. All right. And for some reason he did not keep the follow-up appointment in February of 2020; is that correct?

A. Correct. That was during COVID; yes.

Q. I'm sorry, say that again?

A. I said that was during COVID. COVID had started by

then.

MS. BUHOLTZ: Move to strike that as non-responsive.

Q. Now in December of 2020, he came to an appointment and you note on motor examination patient had unsteady gait and used a cane to ambulate because of knee and ankle pain; do you recall that?

A. Yes.

Q. And he was unable to do the tandem leg stance test; correct?

A. Correct.

Q. Did you ask him why -- anything about the knee and ankle pain?

A. What do you mean if I ask him because I indicated --

Q. Did you ask him why he had the knee and ankle pain, was using a cane, if something had changed in his history?

A. No, I did not. I was under the impression it was all due to the previous accident.

Q. Okay. And did he ever tell you that the auto accident that he had in October of 2020 was on his way home from your office trying to make an appointment to see your office because he had missed one?

A. Well, I told you earlier that I was not aware of that accident until recently. So the answer is automatically no.

Q. So you found out about the auto accident just a couple

of days ago in discussions with Mr. Proner in preparation for today; is that right?

A. That's correct.

Q. Now, you saw him in January of 2022; is that correct?

A. Correct.

Q. And that's when he first reported blurry vision and sensitivity to light; is that correct?

A. Well, the first report -- the first report could be in other type of reports because I believe in a neuro behavioral report early on would indicate that. So that was not the very first time.

Q. Well, in your note you state accompanied by blurry vision and sensitivity to light and you're taking that from some other report in your file?

A. No, the sensitivity to light he had expressed that earlier and so he had expressed issues with his vision early on. I believe even the first report I indicated photophobia, that means light sensitivity and that is always accompanied with blurring of vision at that time. And he had an expression of blurry vision was probably in a different report, in a neuro behavioral report.

Q. If your reports don't reflect that, that's something that you left out of your report as compared to what he told you; is that what you're saying?

A. No, that's not what I'm saying.

Q. Pardon?

A. No, that's not what I'm saying.

Q. Okay. All right. Now, on January of 2022, you state he takes Tylenol for acute pain with good relief and Celebrex for severe pain and does not respond to Tylenol. Was that when he was doing better?

A. Over time he did -- he improved in his headaches and he told me that day that he had a step-wise medication routine that he would start with Tylenol and if Tylenol would not be helpful, he would take Celebrex.

Q. Well, my question was on January 2022, he reported to you that he was taking Tylenol for acute pain with good relief and Celebrex for severe pain that does not respond to Tylenol; isn't that correct?

A. Correct.

Q. And you were still recommending cognitive remediation therapy but he has not done it; correct?

A. Correct.

Q. And that continued out to 2023 when you last personally saw him; isn't that correct?

A. It is correct.

Q. Now, you testified in response to Mr. Proner's questions that he needs continued appointments and therapy and so forth in the future. Do you have any guarantee that he will actually follow through on those?

A. No.

MS. BUHOLTZ: Now, Your Honor, if I may approach the witness?

THE COURT: With regards to?

MS. BUHOLTZ: I want to show him Defendant's Exhibit K in evidence as compared to Plaintiff's Exhibit --

THE COURT: Well, no, you want to show him Exhibit K. It's not -- Exhibit K is not in evidence. It's ID only.

MS. BUHOLTZ: I stand corrected.

THE COURT: Okay. And you could only show him. You can't read from it or anything.

MS. BUHOLTZ: I will not.

THE COURT: Go ahead.

(Handed to the witness.)

Q. I'm showing you Defendant's Exhibit K for identification and you have in front of you Plaintiff's Exhibit 16 in evidence which I'm representing to you are both Jacobi Hospital records. Which one did Mr. Proner show you, if either?

A. Sixteen.

Allow me to one second to look at this because I'm not even sure they're different.

Q. I'm sorry, say that again?

A. Just allow me to look at the papers.

Q. Sure.
A. Exhibit K appears to be --
THE COURT: No, that's not the question. Which was shown to you?
Q. Which one did Mr. Proner show you?
A. This one.
Q. Exhibit --
A. Sixteen.
Q. -- sixteen in evidence. Okay.
With regard to the Jacobi records, what does P-E-R-R-L mean?
A. That's the examination of the eyes. It means that pupils are equal and reactive to light.
Q. What does E-O-M-I mean?
A. External ocular movements.
Q. I'm sorry, say that again?
A. External ocular movements. It refers to eye movements. That means that he's -- he could move his eyes in different directions.
Q. All right. And that's normal? He was doing that normally; is that right?
A. Consistently.
Q. I'm sorry?
A. Yes, at that time and later on.
Q. All right. And Jacobi in the emergency room they

found that he had no nasal septum hematoma; correct?

A. Correct.

Q. That means he had no bloody nose; correct?

A. Correct.

Q. And he had no hemotympanum; is that correct?

A. Correct.

Q. And what does that mean?

A. No blood in the ear.

Q. All right.

A. The tympanic membrane that's what it refers.

Q. The tympanic membrane is the ear drum; correct?

A. Correct.

Q. He had no battle sign; correct?

A. Correct.

Q. What's a battle sign?

A. Battle sign are bruises that one can see after trauma to the skull and trauma to the bone structures.

Q. Trauma to what?

A. To the skull.

Q. So he had no battle sign indicating trauma to the skull; correct?

A. It does not exclude. It does not rule out but it means that there was no fracture. Usually happens in case of very severe trauma.

Q. So no fracture to the skull; correct?

A. Correct.
Q. And he had no raccoon eyes; correct?
A. Correct.
Q. And he had no facial contusions?
A. Correct.
Q. He had no scalp contusions?
A. Correct.
Q. And contusions are what?
A. Bruise.
Q. Bruises and bumps; correct?
A. Correct.

MS. BUHOLTZ: Your witness, Mr. Proner.

THE COURT: Redirect?

MR. PRONER: Yes.

I'm going to try and be as quick as I can.

THE COURT: Counsel, when I say no remarks to one, I'll say it to you too. No remarks.

MR. PRONER: Fair enough.

THE COURT: Question.

REDIRECT-EXAMINATION

BY MR. PRONER:

Q. So, you were asked by both counsels about no vision disturbances prior to the 2020 motor vehicle accident. But you referred to a neuro behavioral assessment. When was the initial neuro behavioral assessment?

A. I believe on the first day I saw him. That was on January 28, 2019.

Q. I'm referring to a neuro behavioral assessment by a Dr. Schweiger. Is that a doctor in your office?

A. Correct.

Q. Can you find in your records Dr. Schweiger's initial neuro behavioral assessment?

MR. CALABRESE: Objection, Your Honor.

THE COURT: Well, he just said find it. He didn't say anything else. So overruled. I'm not sure what he's doing with it.

MR. PRONER: May I show him a document just to refresh his recollection?

THE COURT: He didn't say he needed to refresh his recollection. If he can find the report. If can't find it, he'll let us know.

THE WITNESS: I got it.

Q. And what was the date of that report?

A. The date of this report is August 15, 2019. My previous response was the behavioral screen. This is by Dr. Schweiger on August 15, 2019.

Q. August of 2019. So that would be before the accident of October '20; correct?

A. Correct.

Q. And at that time, what were the patient's complaints?

MR. CALABRESE: Objection.

Q. If you -- did Dr. Schweiger indicate what the patient's complaints were?

MR. CALABRESE: Objection.

THE COURT: Sustained.

Q. Are those records part of your office records?

A. Yes, they are.

Q. And are they normally relied upon you as part of your practice and treatment of brain injury patients?

A. Yes, they are.

Q. And is that a tool that you use in diagnosis and treatment of brain injury patients?

A. Yes.

Q. And was that, in fact, used in the diagnosis and treatment as part of your practice in the treatment of your patient Honorio Rosario-Silverio?

A. Yes.

Q. Okay. And were those recorded contemporaneously at the time that the information was obtained?

A. Yes.

Q. Okay. And did you record the patient's complaints at that time as part of your business records?

MR. CALABRESE: Objection. He's not the recorder.

THE COURT: Well, hold on. He's establishing the

foundation, counsel. Overruled.

MR. CALABRESE: Your Honor, he asked if he did it. This is a test being done by another doctor.

THE COURT: Counsel. Hold on. Go ahead. Let him establish the foundation. Then you can make your objection inside.

Q. Were these recorded in your medical records which are business records as part of the business of providing medical care to brain injury patients?

A. Yes, they are.

Q. And as part of your medical records maintained by your office in the treatment and diagnosis of brain injuries, did you record or -- I'm sorry, did those records record the patient's complaints at that time?

A. Yes, they did.

Q. Okay. What were the patient's complaints at that time in August of 2019?

MR. CALABRESE: Objection, Your Honor.

THE COURT: Overruled.

Let's go inside.

(Whereupon, the following discussion takes place on the record, in chambers, in the presence of the Court, the plaintiff's attorney, and both defense counsel and out of the hearing of the jury.)

THE COURT: Objection on the record?

MR. CALABRESE: Your Honor, my objection is to the prior question was that --

THE COURT: No, it's not the prior question. It's the question that's pending.

MR. CALABRESE: We're going down a line of questioning where he wants that doctor's testing and assessment, the results and findings, to be talked about. I believe this was covered in your motion -- in my motion in limine and your ruling on same.

THE COURT: Counsel?

MR. PRONER: Your Honor, not only is it in his medical records, and they brought it up on cross, I'm entitled to bring it up on redirect. But it was actually part of the 3101(d) exchange and it --

THE COURT: Anything that's discoverable doesn't mean it's admissible.

MR. PRONER: It's part of his records and part of his exchange and it's no surprise and he should be allowed to testify to it. It's part of his records in the treatment and diagnosis.

THE COURT: My only question is that this doctor has his report, it's under New York City Medical and Neurological Offices, P.C. And Dr. Golzad is Dr. Golzad at 9131 Queens Boulevard, although New York City Medical and Neurological Offices, P.C. is under the same address. Make

that connection that it's one in the same and it is a business.

MR. PRONER: Okay.

THE COURT: Connect it. Then that's a business record of that business and what his business is with that connection, then it comes in as a business record of that business. But, otherwise, it's two separate doctors.

MR. PRONER: Okay.

THE COURT: And you know, he may say how he relied and what he did with the reliance of what, you know, was referred to him. But he can't read from them.

MR. PRONER: Okay. I'll clarify that.

(Back in open court.)

THE COURT: Okay. Go ahead.

MR. PRONER: Thank you.

Q. Doctor, are you familiar with an entity known as NYC Medical and Neurological Offices, P.C.?

A. Yes, I am.

Q. What is the basis of that familiarity?

A. That is the medical P.C. under which I operate.

MR. PRONER: Is it okay if I give him back the chart?

THE COURT: Yes, you can.

Q. Once, again, Doctor, what complaints did he present on --

THE COURT: So now the objection is overruled having established the foundation. Okay.

Q. What complaints did he allege -- what complaints was the patient Honorio Rosario-Silverio having in August --

THE COURT: I'm sorry, I don't mean to interrupt. You still can't read from the record. It's not in evidence.

Q. Right. You can't read from the records but you can refer to them to the extent that it might refresh your recollection.

A. Sure. So he -- he did have complaints of blurry vision at that point, headaches, dizziness, and cognitive difficulties. Cognitive means issues with his memory attention span.

Q. So all those were in August of 2019?

A. Yes.

Q. And did he indicate at that time how much year of schooling he had had?

A. I believe it was nine years of education.

Q. Same as he was assumed?

A. Correct.

Q. Doctor, you were asked about a lot of different findings in the -- in the emergency room. Do you know of any study that says you need to demonstrate raccoon eyes to have a traumatic brain injury?

A. Well, raccoon eyes it's like a bruising around the eyes. They can happen in more serious injuries, especially to the facial bones. It also happens after plastic surgery. That's where the blood comes from to the face.

Q. But do you need them to have a traumatic brain injury?

A. No, there are different degrees of brain injury. And in concussion or mild traumatic brain injury usually they are not present.

Q. Do you need to have a blow to your head to have a --

MR. PRONER: Withdrawn.

Q. Can traumatic brain injury happen from acceleration, deceleration rather than a direct blow to the head?

A. It could.

Q. Can you explain to the jury what acceleration, deceleration is as opposed to a direct blow to the head?

A. So my neck if it goes very fast down and up, the acceleration and deceleration refers to speed of the head. The brain inside the skull has some extra space. It moves and it hits against the bone. So when the speed is very high, like a passenger in an automobile that has a seatbelt, they can still suffer brain injury as a result of this mechanism. It goes down and up inside the skull. The brain hits the bone and causes injuries. A lot of football players' injuries occurs in this fashion because they have a helmet. So that their hit to the brain is attenuated but the movement of the brain inside the

skull still causes brain injury.

Q. So do you need to have blood coming out of your ears to have a traumatic brain injury?

A. Well, usually in these cases you don't have blood coming out of the ears.

Q. Do you need to have vomiting to have a traumatic brain injury?

A. No, no, you can't. You don't have to. It may happen. But if absent, it does not rule it out. It does not exclude.

Q. Now, you have described the term mild traumatic brain injuries. Can a mild traumatic brain injury have a serious effect on someone's life and their ability to work and enjoy life?

MR. CALABRESE: Object. Beyond the scope.

THE COURT: Sustained.

Q. Okay. Can a mild traumatic brain injury have serious effects?

MR. CALABRESE: Still beyond the scope.

THE COURT: Sustained.

MR. PRONER: Nothing further.

THE COURT: That's it. Okay.

MR. CALABRESE: Nothing, Your Honor. Thank you.

MS. BUHOLTZ: Nothing, Your Honor.

THE COURT: Okay. All right, Doctor. Thank you.

THE WITNESS: Thank you.

THE COURT: I believe Exhibit 15 is yours. You can take it back.

(Whereupon, the witness exits the courtroom.)

THE COURT: All right. Ladies and gentlemen, that will be it for today. I will see you tomorrow at 9:30. Okay. Just remember, you have heard some of the evidence, not all of the evidence. Please keep an open mind until you hear all the evidence. You know what? I'm just realizing I have something in the morning. 10:00, not 9:30. 10:00. Okay. Just keep an open mind until you do hear all the evidence, you hear the summations by the attorneys, my charge to you on the law, and more importantly you get this case for full deliberation. Do not discuss this matter amongst yourselves or with anyone else.

I'll see you tomorrow at 10:00.

COURT OFFICER: All rise.

THE COURT: Enjoy the rest of the evening.

(Whereupon, the jury exits the courtroom.)

THE COURT: Counsel, just a warning, you are not to separate, if it's stapled, if an exhibit is stapled, you are not to take it apart whatsoever. And I am very very cautious and careful with exhibits once they are admitted in evidence. There is a reason why. We have had trials that exhibits went missing. We've had -- and I'm not

saying this is going to happen here. But now I am very cautious with all my trials. So it's not that I'm picking on anybody in this trial. I do this with all my trials. Documents were transferred, pages were missing, pages were substituted. So I do not want documents that are stapled, that they should be taken apart. I do not want documents that are put on counsel's desk when they've been marked for exhibits. They are to be on the exhibit table that's in front of the bench or if the witness is using, and the minute they're finished being used with a witness or otherwise, they are to be handed to my court officer or my clerk. I am peculiar once an item is marked in evidence. I do not want to hear that evidence has been tampered, changed, altered in any way, shape or form. And Exhibit 16 had been separated. I'm not saying who did it because I don't know who did it but it was separated and it had been stapled. Okay.

See you tomorrow at 10:00.

(Time noted: 4:04 p.m.)

(Whereupon, Court is recessed and the case adjourned to Wednesday, December 10, 2025.)

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