1998 WL 35229955 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
Bronx County

William C. HOPPER and Laurel Hopper,
v.
REGIONAL SCAFFOLDING AND HOISTING CO. INC. d/b/a Regional Ladder and Scaffolding Company.

No. 1998-7884.
1998.

(Transcript of Dr. Ali Guy)

Case Type: Products Liability >> Ladder
Jurisdiction: Bronx County, New York
Name of Expert: Dr. **Ali Guy**
Area of Expertise: Health Care-Physicians & Health Professionals >>Physiatrist/Rehabilitation Medicine

Representing: Unknown

[Note: Pages 1-865 missing in original document]

first all of the plaintiffs' witnesses go and then they're cross-examined and then, after the plaintiff puts in its entire case, then the defense begins. But I did say that sometimes we take witnesses out of turn, so we sometimes interrupt that flow.

We're going to do that now. We're going to take one of the defense witnesses out of turn. Okay --

MR. YOUNG: Actually, Judge --

THE COURT: I'm sorry.

It's your witness?

MR. YOUNG: We're still with my case.

THE COURT: Sorry.

Still on their case. I'm jumping ahead.

Remember that instruction, it does apply tomorrow. Okay:

MR. YOUNG: Dr. Ali Guy, please.

DR. ALI GUY, 7 Grammercy Park, New York, New York 10003, called as a witness on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated, sir.

For the record, state your name and your business address.

THE WITNESS: My name is Dr. Ali Guy, A-l-i, last name is G-u-y. My office address is 7 Gramercy Park, New York, New York 10003 and 995 Yonkers Avenue, Yonkers, New York.

DIRECT EXAMINATION

BY MR. YOUNG:

Q Good afternoon, Doctor.

A Good afternoon, sir.

Q Can you please tell the jury, as I start with most witnesses, somewhat of your being educational background?

A Yes, sir.

Undergraduate, I went to Queens College, Flushing, New York. Medical school, I graduated from University of Northeast Dominican Republic in June of 1981.

Thereafter, I did three residencies. My first residency was in the field of internal medicine at Mount Sinai School of Medicine, Mount Sinai Medical Center for a period of 18 months. Then I did one year of general surgery at Cabrini Medical Center. Then I completed a three-year training program in physical medicine and rehabilitation at Mount Sinai.

I'm board certified. I'm currently the director of the Department of Neuromuscular Equipment Clinic at the Hospital for Joint Diseases --

Q What was that position again?

I'm sorry.

A I'm the head of the Neuromuscular Equipment Clinic at Hospital For Joint Diseases slash NYU, where my duties are to see the patients assigned to the clinic and to provide teaching to the residents from NYU to prepare them for the boards, part one and part two.

Also, I was the director of the department of rehab medicine at Maimonides Medical Center in Brooklyn from 1997 to July of 2002, when my duties were to conduct teaching to the house staff, the orthopedic residents, to prepare them for the boards under the rehab section, to provide teaching to the internal medicine residents, the physical therapy students, occupational therapy students and other doctors under my supervision, and to, of course, conduct consultations to other specialists in my hospital.

Q Now, you told us, Doctor, that you're board certified in physiatry.

Can you please tell our jury what physiatry is?

A Yes. Physiatry is a medical specialty that was founded shortly after World War II by Dr. Howard Russ. It deals with traumatic injuries to the body. It covers the whole body from head to toe. It's an overlap between internal medicine, muscle, neuro-physiology, orthopedics, neurology, and kinesiology, which is the study of motion. It also deals extensively with disability and

impairment evaluation. That means to evaluate a patient to see if that patient is disabled, are they partially or totally disabled. If they're partially disabled, is it mild, moderate or severe. Things of that nature.

Q And do you provide opinions like this, Doctor, in your practice?

A Yes, sir. Both in my practice and also at the hospitals that I'm affiliated with.

Q Now, you and I have met before, correct?

A Yes, sir.

Q Fair to say that, during my 19 years as an attorney, and I don't know how many years you've been a doctor --

A About 15.

Q -- our paths have crossed on four occasions?

A That is correct.

Q As a matter of fact, you've testified in a case for me twice?

A That is correct.

Q Once in this courthouse and once in Manhattan, correct?

A That's about right.

Q And you've seen Mr. Hopper and you've seen one other client of mine, correct?

A That's about right, yes, sir.

Q Now, also, have you been qualified to testify as an expert before?

A Yes. Many times.

Q And how many years have you been practicing medicine, Doctor?

A About 15 years.

Q And over that 15 years, how many times have you, in fact, testified in court?

A All together, about a hundred times. It could be slightly less, slightly more. Average is about 12 to 15 times a year. Some years more, some years less.

Q Now, did there come a time when you began with Mr. Hopper?

A Yes, sir.

Q And do you remember when that was?

A Yes, sir. May 5, 2001.

Q And do you know how he came under your care?

A Yes, I do.

Q Go ahead.

A I was -- my understanding is he was being treated at Yorktown Physical Medicine Center, which closed down. They gave him a list of several board certified physiatrists, which is my specialty. He went to another physiatrist before, and I don't know exactly what happened, the scheduling or the timing. He then showed the list of those several board certified doctors to you and you picked my name because you knew me from before. That's how he came to me.

Q And have you had a chance, since May 5, 2001, to be with Mr. Hopper and to evaluate his physical condition?

A Yes, sir.

Q All right. And, can you tell us, what have you reviewed prior to coming to an assessment of his condition?

A I have reviewed many records that's in front of me.

I have reviewed records from Yorktown Physical Medicine Rehabilitation, records from Dr. Allan Rubin, records from Dr. Kranzler, Dr. McCormick, the surgical operative procedure. I've reviewed physical therapy records from Burke Physical Medicine Rehabilitation, records from Columbia-Presbyterian.

Just want to make sure I didn't leave anything out.

I reviewed records from Dr. Mark Greenbaum.

Q He would be Yorktown Physical Medicine, right?

A Yes, sir.

Q Okay.

A I believe I covered everything.

Q Okay.

A And Dr. Richard Sweet, as well.

Q Dr. Sweet is Dr. Kranzler's office?

A Yes, sir.

Q And Dr. William Burke, as well?

A Yes, sir.

Q Okay. Now, Doctor, when Mr. Hopper came to you in May of '01 --

A Yes, sir?

Q -- can you tell us what his physical condition was at that time?

A Yes. He complained to me of severe lower back pain shooting down the legs with a burning sensation in both his legs; that it was so hypersensitive at times that he had difficulty sometimes keeping his pants on; and he had weakness, both lower extremities, the left side was worse than the right.

There was massive atrophy on the left side. There was the atrophy of his buttock area, there was atrophy of his left thigh, left quadriceps, and his left calf muscles.

Q Is that something that you physically saw?

A Not only did I physically saw, I also measured for atrophy. When comparing the left side to the right side, the circumference of the thigh was four centimeters less than the right side. The circumference of the left calf was two centimeters shorter than the right side.

And the muscle power was about two grades weaker than normal for the left side. The right side, the muscle strength was about one grade weaker than normal.

And there was loss of sensation in the penile area and in the scrotal area and the buttock area.

And his back had a long midline thoracic surgical scar, well healed.

Range of motion in his back, backward bending, was one half normal extension.

Q Now, the area where the scar was, were you able to feel that there, Doctor?

A Yes, sir.

Q All right. Was there -- were you able to feel bone or were you just able to feel muscle at that location?

A That was ---it's right near the-bone.

Q Okay.

A Measured about 13 centimeters.

Q 13 centimeters would be the scar?

A Yes. The length of the scar is 13 centimeters.

Q Okay.

A It's about five-and-a-half to six inches.

Q That was your evaluation of his condition at that time, correct?

A Yes, sir.

Q Now, has Mr. Hopper continued under your care since that time?

A Yes, sir.

Q And can you please tell us when the last time was that you saw Mr. Hopper?

A Last month.

Q Okay. And can you please tell us presently what you, as a physical medicine rehabilitation or a physiatrist, how do you evaluate his present physical condition?

A By way of history, by way of physical examination, by way of his response to different medications and different treatments.

Q And can you tell us, as of the time of your last visit with Mr. Hopper, can you please tell this jury; in whatever language you want to use, medical or otherwise, what type of disability Mr. Hopper is suffering from?

MR. POBERESKIN: Judge, I have an objection, because it's not in the report that was exchanged. The report only discusses --

THE COURT: Can you step up?

MR. POBERESKIN: Sure.

(Whereupon, a discussion was held at the bench off the record among the Court and counsel)

Q Doctor, you prepared a report, did you not?

A Yes, sir.

Q. And that was May of 2001, correct?

A Yes, sir.

Q I am going to restrict my questioning at this point to the condition of Mr. Hopper at that time.

A Yes, sir.

Q Okay?

Now, are you aware of the treatment that Mr. Hopper has received in the past for these injuries?

A Yes, sir.

Q And did you, at that time, give an opinion as to what treatment Mr. Hopper should have in the future?

A Yes, sir.

Q And have you also reviewed the reports of Dr. William Burke?

A Yes, sir.

Q And do you agree with the recommendations of Dr. William Burke?

A I do, for the most part, except in two places where I feel that he underestimated the needs for future physical therapy and for physiatry examinations per year.

Q Okay. And how is that underestimated?

A Well, Dr. -- Mr. -- Dr. Burke estimated the patient will need four physiatry examinations per year. I estimate at least minimum 12 sessions per year to supervise his overall condition, to prescribe pain medications for his pain, and Neurontin for the neurogenic pain he's having, and to assess any other complications he may be having.

And also the amount of physical therapy that I feel he needs based on his medical condition and his needs, I feel, ?? be at least 30 to 40 times per year as needed. This is an average over his lifespan. His prediction was much less.

Q Okay. Now, you tell us that you believe that Mr. Hopper needs physical therapy?

A Yes, sir.

Q Okay. And why is that?

A Okay. Physical therapy is designed, not to cure a problem, because there is no cure for this severe condition. Physical therapy is designed to diminish pain, diminish spasm, improve range of motion, prevent further atrophy, prevent further deterioration. We want to make sure this man has at least maintained what he has and that he doesn't lose any more than what he has lost to the present.

Q And how will physical therapy assist us in doing that?

A Very simply.

Physical therapy consists of hot packs, electrical stimulation.

The purpose of electrical stimulation is to. forcefully contract the atrophied muscles, make them stronger so they gain back their bulk as close to the normal original condition before his current condition. And, also, electrical stimulation causes the secretions of endorphins from muscles. Endorphins are natural painkillers. This naturally diminishes his pain. Also, electrical stimulation blocks the transmission of pain from the area all the way to the brain.

And therapeutic exercises, flexibility, range of motion exercises, when you do flexibility and stretching range of motions, you're nourishing the joints. That's how you feed the joints, by range of motion exercises. And by isometric and strengthening, you prevent any further weakness to the muscles, therefore, a -- and you prevent any further atrophy, which means loss of muscle mass, muscle bulk.

Q Are you aware, Doctor, that he does some stretching, et cetera, on his own now?

A Yes, he does that, as well as some isometrics at home, as well.

Q And is it your testimony that, in addition to that, he should have physical therapy in a professional setting?

A Yes, for a very good reason.

Q Go ahead.

A There is no substitute for professional guidance through these serious injuries. A patient can do some of the treatments at home himself, but, again, it's no substitute for professional supervision.

Q All right. Now, the physical therapy, Doctor, have you made any other recommendations as to future treatment required to try to reduce the pain and physical deterioration for Mr. Hopper?

A Yes, sir.

Q Go ahead.

A He will need lumbar and nerve blocks to diminish his neurogenic pain, to diminish his pain in the back, and also the legs. And the approximate cost for that is $2,000 per set. He will need about a dozen sets per year, as needed. Some years more, some years less.

He will also require a dorsal column stimulation implant to diminish his pain. And the approximate cost for that, with all the associate expenses, the surgical implantation and the actual device, is about $30,000. There's a battery that needs to be changed every two years. The battery costs about $5,000. The surgical procedure to take out the old one and put the new one in is about 7,000 to $10,000. And this dorsal column stimulation implant is not going to alleviate all of the pain. At best, it will only diminish 30 percent of the pain. And, of course, it has risks. Infect --

Q What are the risks?

A It has risk of infection, spinal cord paralysis, and that it may not work, and it may damage the spinal cord further.

Q But, in your opinion, Doctor, is it something, based on his present physical condition, is it something that you recommend he try?

A Yes, I would recommend that it be tried.

And it if works, then it can be implanted on a permanent basis.

Q Now, Doctor, again, I don't know if you have to refer to your report or no??.

Have you made any other recommendations for future care of Mr. Hopper?

A Yes. That he would benefit from biofeedback.

Biofeedback is a process by which a patient is hooked up to electrical devices. By way of these electrical devices, he's able to see his pain level from the tension on the muscles. He is taught a series of different exercises to do by concentration, by meditation, by self-hypnosis, to diminish the tension in his muscles. As the tension in the muscles decreases, the biofeedback screen shows a reduction in the size of the responses, so he sees how he can diminish the tightness and stress to his own body

and his own muscles. That's one way of doing it. And the biofeedback for a 45-minute session is about $125. And this would be required on an as-needed basis, about 10 to 15 sessions per year.

Q Anything else, Doctor?

A He will need pain medications on an annual basis.

Q Can you tell us what type of pain medication and for what purpose?

A Yes, sir.

Right now, I have him on Paxil -- I'm sorry -- I have him on Bextra. Bextra is an anti-inflammatory medication and an analgesic. It takes away pain and inflammation. The pill costs about $3 for one pill. He takes that twice per day. So that's $6 a day, times 30 days, that's $180 a month. Multiply by 12, you can arrive at the annual number.

Q All right.

A Also, he takes Neurontin, 2,400 milligrams daily, for his burning pain, for his neurogenic pain. And the approximate cost for that is about $1200 a year.

And he also takes other medications for his neurogenic bladder. Neurogenic bladder means that the nerve supply to his bladder is damaged and he is not able to have full control over his bladder. In the beginning it was worse. Now he is -- it's partially back. He empties his bladder by putting pressure on his abdominal area and pushing the bladder and the bladder empties. And there's medications taken for that, as well.

There's medications taken for his bowel preparation. Colace, Citrical, different suppositories.

There's medications taken for his spasms. Zanofelx, Z-a-n-o-f-l-e-x. And the approximate cost for that medication, the Neurontin I think I mentioned to you, Zestril for his high blood pressure, and Zanoflex is about $200 per year.

Detrol is used for his bladder, that s about $400 per year. Citrical is about $200 per year, that's for his neurogenic bladder.

Medications for his bowel prep is about 5 to $600 per year.

And he also needs incontinent shorts or incontinent briefs, just in case he loses control of his bladder. It's like a diaper. And the annual cost for that is about 3 to $400 per year.

And then he's going to need to be seen by different doctors and different specialists, such as an orthopedic surgeon. That, ideally, should be three to four times per year.

He needs to see a neurologist, ideally, three to four times per year.

He needs to see a neurosurgeon, ideally, two to three times per year.

And the approximate cost for each of those follow-up visits is about $100.

He needs to see a urologist, ideally, two times per year. The approximate cost of that is about $100.

He needs to have a bladder function test, a cystometrogram or urodynamics. That is approximately $500 on an annual basis.

Q You say annually, Doctor?

A $500 for the cystometrogram, urodynamic study.

He needs blood tests to make sure his metabolites, his electrolytes, his urine is all under normal control.

He would need complete blood counts, a chemistry profile, urine culture, urinalysis three to four times per year. The approximate cost for that is about $500 per year.

Q Now, Doctor, can you tell us, while you were director of physical medicine at Maimonides, can you tell us what your -- what you did on a daily basis at the hospital?

A Yes. It was a part-time position.

My job was to teach the orthopedic residents, to prepare them for the boards, for their rehab section questions, because the orthopedic residents also have questions covering physical medicine.

My job was to teach the internal medicine residents. I had residents from the internal medicine department rotating through my department in the clinics. My job was to teach them, go over the patients with them.

My job was to conduct teaching, periodically, to the therapists in the hospital. We had about 50 physical therapists, speech therapists, occupational therapists, regular physical therapists, recreational therapists.

My job was also to conduct quality assurance rounds with the other doctors in my department. There were about 10, 12 of them. We met once a month to go over all the issues of concern and to improve quality of care in the hospital.

And, also, there were administrative duties. And those administrative duties increased more and more regularly until I couldn't keep up with the demand, and I had to resign from my position.

Q Now, Doctor, based upon what --

MR. YOUNG: Withdrawn.

Q You're talking about neurogenic pain. I don't know if we covered that.

Will you please tell -- it may be a difficult thing for jurors if we haven't experienced it ourselves and haven't heard about it on a regular basis.

A. Yes.

Q Can you try to explain what is going on with neurogenic?

A Yes. Neurogenic pain means pain in the legs from a nerve origin. And it can be called neurogenic pain. It can be referred to as causalgic, which means burning pain. It can be referred to as dysesthetic pain. It could be called different names, but it means that there's a nerve injury, and a nerve is hyper-irritated. As a result, you get shooting pain in the legs and it's burning like -- the patient feels like sometimes there's a sword cutting the legs, or there's hot lava on the legs.

Q And, Doctor, is it your opinion that this is something that Mr. Hopper had on a daily basis?

A Yes, sir. That's why he's taking Neurontin. The Neurontin controls that.

Q And, Doctor, in your opinion, with Mr. Hopper's physical condition and with all of these things that you're talking about, will it ever get better from this day forward?

A No, this will never get better. This condition will get progressively worse over time. You will have traumatic arthritis settling into the mid-back area, known as the thoracic spine. The atrophy can progressively worsen. He has lost proprioception. Proprioception means the sensation of feeling your feet on the ground when you're walking. That is as a result of nerve damage. And, also, as a result of loss of proprioception, your balance is lost. This condition, you can't sit or stand on a continuous basis. You can sit, but you will pay the price if you sit too long. And if you have the medications that you're supposed to take, that pain will be much less. So this is a progressive condition and it will get worse over time.

Q Now, Doctor, the opinions you've given us this afternoon, have you stated them with a reasonable degree of medical certainty?

A Yes, sir.

MR. YOUNG: I have nothing further.

Thank you.

THE COURT: Cross, please.

CROSS-EXAMINATION

BY MR. POBERESKIN:

Q Good afternoon, Dr. Guy.

A Good afternoon, sir.

Q Dr. Kranzler told us the other day that Mr. Hopper had preexisting degenerative lumbar disk disease and herniation.

Do you agree with that?

A He did, yes, sir.

Q Preexisting the accidents in this case of June 2nd, 1995 and July 8, 1997, the accidents in this case?

A Yes, sir, that is correct.

Q Now, does that injury produce pain?

A It can.

Q And isn't it true, Dr. Guy, that that injury alone could prevent much of the same kind of pain that Mr. Hopper has now, especially the lack of sensation in the legs?

A No, sir. That radicular pain does not cause neurogenic pain. He has what is called neurogenic pain, which differentiates from pain coming from a disk herniation. That is called radicular pain, different than neurogenic pain.

Q Now, one of the aspects of a disk herniation is that it can press on the nerve root coming out of that level of the lumbar spine, isn't that correct?

A Some cases yes, some cases no.

Q And that would be an injury to a nerve, would it not?

A It can be, yes, sir. That would be called radicular nerve injury or radiculopathy.

Q And isn't it also true that that pressure on the nerve root can cause what you call neurogenic pain?

A No. That's called radicular pain, not neurogenic pain.

Q And so you would disagree with Dr. Kranzler in that regard?

A I wasn't here when he spoke. I don't know how the question was phrased, in what context he answered the question, but I'm sure the teaching is the same; neurogenic pain is different than radicular pain.

Q You say he needs to see an orthopedic surgeon?

A Yes, sir.

Q On some periodic basis?

A Yes, sir.

Q Do you know if he's seen an orthopedic surgeon since June 2nd, 1995?

A I do not know.

Q You haven't reviewed the records of any orthopedist, have you?

A I have not.

Q And you've been provided with no records of any orthopedist, isn't that true?

A That is correct, yes.

Q Now, when you first saw Mr. Hopper, what medications was he on?

That would be --

A I'll tell you in a second.

Q -- the visit in May 5th, 2001.

A He was taking Neurontin, Zestril, Flomax, Zanoflex and other medications for his urine and bowel, such as what I mentioned earlier.

Q Now, Flomax is a drug that he was taking, wasn't it, for his bladder?

A It's the drug used for bladder, as well, yes.

Q And do you know if he's still taking that?

A That has been switched to a different medication. He's not taking that right now, no.

Q Now, Doctor, you are aware that Dr. Kranzler has testified in this case, are you not?

A I imagine he did, yes.

Q And Dr. McCormick, the neurosurgeon?

A I imagine he did also.

Q And do you know that Dr. Kranzler has not recommended blood tests and complete blood counts?

A His training and specialty is different. He's a neurologist, he's not a physiatrist. The training is different and the requirements and the standards of care are different for each specialist in each different specialty.

Q When you reviewed all the charts and you reached a diagnosis in your report, was the diagnosis that you reached in your report based upon your review of the charts and the other reports?

A It was a combination of different things, but those -- as far as the surgery is concerned, that was based on past medical records. As far as the other diagnosis that I mentioned, it was a combination of my own assessment and review of past medical records.

Q Dr. Kranzler was here the other day; he testified that Mr. Hopper could not go back to work as a hoist operator.

And you would agree with that, wouldn't you?

A Yes, sir.

Q But he also testified that he could go back to work at a job where he sits, basically a desk job, would you disagree with that?

A That needs to be quantified.

I am not saying he cannot do any type of work. I'm saying he can do some work. But when you ask me what that is, I have to spell it out for you.

I am the disability and impairment evaluation expert. A neurologist is not. I'm in a better position to answer that question than a neurologist because of my specialty.

Q Now, let me ask you this question.

Dr. Burke is not a medical doctor, isn't that right?

A He's not.

Q He's a PhD?

A Yes.

Q And he's a vocational rehabilitation expert?

A Yes, sir that's correct.

Q And what a vocational rehabilitation expert does, in part, is determine what kind of work somebody can do in the future, right?

A Yes, sir.

Q When you were -- when Mr. Young referred Mr. Hopper to you, did you understand that one of the things you were going to do was testify in this case?

A If it led to testimony, yes.

Any time different sides can't settle their disputes, experts are called upon, judge and juries are called upon, and we explain the injuries and the legal system decides.

Q Right.

And would it be fair to say that you know you're going to testify in a case when you get a patient referred to you by a lawyer?

A No, that is not correct. I do not know if I'm going to testify. There's a chance I may testify after two sides can't settle their disputes amicably.

Q But you recognize, when you get a patient referred to you by a lawyer, that there's some litigation involved?

A After there's an injury, of course there's litigation involved.

MR. POBERESKIN: I have no further questions.

THE COURT: Okay.

MR. YOUNG: To follow up.

REDIRECT EXAMINATION

BY MR. YOUNG:

Q Doctor, you understand, prior to your involvement in Mr. Hopper's care, he was treated by Yorktown Physical Therapy, correct?

A Yes, sir.

MR. POBERESKIN: Judge, that's way outside the scope of direct. I didn't touch that at all.

THE COURT: Approach.

(Whereupon, a discussion was held at the bench off the record among the Court and counsel)

(The following takes place on the record in the open court following the sidebar held off the record.)

REDIRECT EXAMINATION

BY MR. YOUNG: (Cont'd)

Q. Doctor, counsel started to ask you about employability of Mr. Hopper, okay.

A. Yes, sir.

Q. And he went so far and then he changed his question. I'm going to continue with that question.

Now you tell us, do you note in the report that he certainly can't go back to the construction field?

A. Absolutely not.

Q. Now counsel has indicated that Dr. Kranzler said Mr. Hopper could go do some sedentary work. Now can you please tell us what he can do and what he can not do physically and mentally, what type of shape he is in based upon these injuries and based upon the medicines that he necessarily must take?

A. First of all, he has to abstain from a job that requires prolonged sitting or standing because that will aggravate his condition, he has to avoid any job that requires his cognitive ability, function, ability to think clearly, he has to avoid that job because he takes neurontin, 2400 milligrams per day, that interferes with normal clear cognitive function, that medication causes sedation and drowsiness and, those jobs must be avoided. That is jobs cutting with a machine, jobs requiring calculation, figures, things of that nature. He has to avoid a job that avoids extremes of temperature, extremes of cold, extremes of heat, because that can aggravate his condition. He has to avoid situations that causes increased physical and emotional stress because any type of stress can contract the muscles and make the muscles more tight and that will aggravate his pain. And also has difficulty traveling on a long distance basis.

When you put all that into consideration, yeah, you might be able to find a job for him to do on a one-to-two hours per day with those restrictions, but he can not do that on a regular continuous basis, he will be here and then have a lot of absenteeism, perhaps he can do one day, two days, the third or fourth day he will not able to do it on a regular basis so based on all these restrictions, nobody would hire him with these restrictions. And he needs a medical clearance for these things. No doctor would sign his name to this medical clearance because the doctor would be at risk if he gets injured.

MR. YOUNG: That is all I have, thank you.

MR. POBERESKIN: Yes, Judge, just very briefly.

RECROSS EXAMINATION

BY MR. POBERESKIN:

Q. When Dr. Kranzler testified the other day that Mr. Hopper could work at a job, specifically when he sits down, you would disagree with it?

A. The way --

Q. Yes or no?

A. I can't quantify it the way you phrased it, yes or no.

Q. And you can answer this one yes or no, or if you can't answer it yes or no, please. Dr. Kranzler says he can go to work in a job where he sits down, would you -- and spend a day working, would you disagree with Dr. Kranzler?

A. I need some more questions first before I can answer your question, I need to know how many hours.

Q. Well, Dr. Kranzler seemed to indicate he could work a full time job like a real job, you would disagree with that?

A. I don't think Dr. Kranzler will ever say that.

Q. Were you here?

A. I was not here, I would never believe --

Q. Leave us to assume, Dr. Guy, that Dr. Kranzler testified in that way, would you disagree with him, yes or no?

A. It's an unfair question to ask me to disagree or agree with another specialist's opinion.

Q. Okay. Now when you say he couldn't travel a long distance to go to work, could he travel locally in his own town?

A. Sure. In the neighboring town, short term, as long as he doesn't take his medication, neurontin, skips a dose when he's driving and takes the dose after he's driving and it is for short term period, yes.

Q. Sir, do you know that when Mr. Hopper was here the other day, and his wife also testified, the testimony was that he drives his kids around from place to place after school for various activities, do you know that?

A. Yes. I know -- I know he does take his kids and himself to different places but it is for short term period and I also know that he doesn't take all of his medications at the same time he's doing this, otherwise he could not do it.

Q. All right. And yet he doesn't take all that medication, is that what you know?

A. No. He takes his medication, he doesn't take the dose for that period of time, he takes it after he arrives home.

Q. So that for some period of time his practice is to do whatever he needed to do and he doesn't take his medication, that is your understanding, for that short period of time?

A. Yes.

Q. That is very good.

MR. POBERESKIN: Thank you very much.

THE COURT: Thank you, doctor, you may step down.

Ladies and gentlemen, we have again a short day, I apologize but sometimes we can't figure out how long -- we've had a lot of experts in this case, we can't figure out how many we can get in this day, usually it is one in the afternoon, we tend to leave more time for them, more time than less time, and sometimes we miscalculate so we're ending a little earlier today, we apologize for that.

I will ask you to return tomorrow morning at 11 a.m., I told you I don't begin

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