2003 WL 25429975 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
Kings County

Robin KAPLAN, Plaintiff,
v.
Timothy DOWNING, Defendant.

No. 17445/01.
December 16, 2003.

(Transcript of Ali Guy, MD)

Case Type: Vehicle Negligence >> Motor Vehicle v. Motor Vehicle
Case Type: Vehicle Negligence >> Rear-End
Jurisdiction: Kings County, New York
Name of Expert: Ali Guy, MD
Area of Expertise: Health Care-Physicians & Health Professionals >>Physiatrist/Rehabilitation Medicine

Representing: Unknown

Appearances:

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Official Court Reporter.

Before: Honorable Leon Ruchelsman, Justice, and a jury.

TRIAL (Excerpt)

15 Willoughby Street

Brooklyn, New York

Dr. ALI GUY, called as a witness, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name and address for the record.

THE WITNESS: My name is Dr. Ali Guy, A-L-I, last name, G-U-Y. My current address is 15 Jericho Turnpike, Jericho, New York 11753.

THE COURT: Okay, counsel.

MR. READY: Thank you, judge.

DIRECT EXAMINATION

BY MR. READY:

Q. Good morning, Dr. Guy.

A. Good morning, sir.

Q. Are you here today by my request on behalf of the plaintiff in this case?

A. Yes, sir.

Q. Can you tell the jury, Dr. Guy, something about your educational and your professional background.

A. Yes. I am a physician licensed to practice medicine and surgery in the state of New York. My undergraduate, I attended Queens college. Medical school, I graduated from University of Northeast, Dominican Republic, in June of 1981. Thereafter, I did three separate residencies. I did my first residency at the school of Mount Sinai school of medicine, Mount Sinai medical center in the field of internal medicine, for a period of 18 months. Then I did one year of general surgery at Cabrini medical center, Manhattan. Then I completed a three year training program in physical medicine and rehabilitation.

I'm board certified in the field of physical medicine and rehabilitation. I was the director of the department of rehab medicine at Maimonides medical center in Brooklyn, from 1997 till July of 2002, where my duties are to be involved with all the inpatient and outpatient services, provide teaching to the residents in orthopedic department, preparing them for their boards under rehab section, to provide teaching to the physical therapists, the physician assistants, and other residents in internal medicine. And to be in charge of quality assurance.

I'm the director of the neuromuscular equipment department at the Hospital for Joint Diseases, NYU medical center, where my duties are to provide teaching to the residents from NYU, as well as seeing the patients assigned to the clinic. And to prepare the residents for the boards, parts one and part two. I'm board certified in the field of physical medicine and rehabilitation.

Q. Now, Dr. Guy, I want to clear up a few things. Have you ever testified in court before today?

A. Yes sir, many times.

Q. And under what circumstances do you come to court to testify?

A. Mostly for my patients.

Q. And when you come into court to testify on behalf of your patients, do you expect to be paid for your time away from your office?

A. Yes, sir.

Q. And are you being compensated for that time here today?

A. Yes, sir.

Q. And can you tell the Court and jury what you're being paid for being away from your office?

A. For cancelling my patients, for travel time and for preparations with this case, it's $3,000 for half a day, $1,000 for pretrial preparation, altogether $4,000.

Q. Now, Dr. Guy, have you ever testified on my calling you before today?

A. Yes, sir.

Q. Now, the particular patient in this case, Robin Kaplan, can you tell the Court and jury how it came to pass that she came under your care?

A. By Peter Maninno, a former patient.

Q. I want to go back. You told us that you're board certified in the field of physical medicine and rehabilitation.

A. Yes, sir.

Q. Can you tell the Court and jury what does that specialty in medicine entail?

A. Yes. The field of physical medicine and rehabilitation is also known as physiatry, not psychiatry or podiatry. But it's a medical specialty that deals with traumatic injuries to the body, covering the whole body from head to toe. Deals with spinal problems, muscle nerve problems, bone problems. And a doctor that specializes in this field deals with a lot of traumatic injuries. The function of a physiatrist is to bring back function to an injured patient to the pre-injured state. And we use different disciplines. We use orthopedics, neurology, internal medicine, kinesiology which is the study of motion. We use electrodiagnostics, muscle and nerve physiology, and internal medicine, cardiac rehabilitation, pulmonary rehabilitation. And it's a mixture of different specialties.

And how it differs from orthopedic surgery is, we both do the same thing except a physiatrist does not perform surgery. We try to prevent surgery. Orthopedic surgeon concentrates primarily on the surgical aspects of the musculoskeletal system. We concentrate on the non-surgical. How we differ from a neurologist is a neurologist concentrates on central neurology. We concentrate on spinal and peripheral neurology. An example of central --

Q. Can I stop you for one minute. When you talk about peripheral neurology as opposed to central, what do you mean?

A. I was just going to explain it. Central neurology means disorders of the brain, diseases such as multiple sclerosis, Lou Gehrig's disease, Parkinson's disease, so on and so forth. We deal with spinal disorders and disorders of the peripheral nervous system, which means the nerves that go to your extremities from the neck, the nerves that go to the legs from the lower back. And again there's a great deal of overlap between what all these specialists do. But this is an example of differences between the two and three different specialties.

And we all cross-refer patients one to another. In a hospital setting, when a patient has a non-surgical component for the low back, it goes to our department. If it has a surgical component, it goes to spinal surgery or orthopedic surgery.

Q. Is it -- up until this point in time, Dr. Guy, have you treated patients who have had spinal injuries?

A. Yes sir, thousands, perhaps tens of thousands.

Q. And in terms of the work that you have -- you did as the director at Maimonides and that you do at NYU, you mentioned that you're board certified.?

A. Yes.

Q. Can you tell the Court and jury how you went about obtaining that board certification status?

A. Yes. In order to become board certified in my specialty, you have to have the following prerequisites. You have to have training in the field other than physical medicine and rehabilitation. You have to have at least two years' prerequisite in the field other than physical medicine and rehabilitation. I had one year training in general surgery. I had 18 months training in internal medicine.

And then you have to take a three year accredited residency training program. You have to get good monthly evaluations by your teachers, your preceptors. You have to take the yearly examination given by the department and you have to score at least 70 percent or higher. And once you finish the three year training program, you must take your boards part one, which is an eight hour written examination which covers principles of orthopedics, neurology, interpretations of x-rays, electromyography and other principles of physical medicine and rehabilitation.

Once you take your boards part one, you then have to prepare for your boards part two which is an oral examination. You have to be in private practice at least one year before you take your boards, part two. You have to be sponsored by two other board certified doctors that know your work closely. You have to be in good medical standing. Then you fly to the Mayo clinic in Minnesota where all the research and textbooks are written, and you are tested orally on interpretations of x-rays, CAT scans, MRI, EMG, principles of neurology, orthopedics, and other principles of physical medicine and rehabilitation. If you prove to these doctors, who are the elite of the specialty, that your knowledge is up to par, they pass you and they give you a title of diplomate of the American Board of Physical Medicine and Rehabilitation. That was obtained in May of 1989.

Q. Now, Dr. Guy, did there come a time that Robin Kaplan came under your care?

A. Yes.

Q. When for the first time -- let me take that back. In connection with your care and treatment of her, did you keep office records?

A. Yes, sir.

Q. And those records, did you bring them with you here today?

A. Yes, sir.

Q. With reference to those records, can you tell the Court and jury when was the first time that you saw Robin Kaplan?

A. January 4, 2001, three days from the time of her injury.

Q. And when you saw Robin Kaplan on that particular occasion, did you do a physical examination?

A. Yes sir, I did.

Q. With respect to that examination that you performed, did you make any positive or abnormal findings?

A. Yes, sir.

Q. Can you tell the Court and jury what examination did you perform, what types of tests did you do and what positive or abnormal findings did you make?

A. After taking an adequate history, then I performed my examination. On a neck examination I found that her neck was diffusely tender. The word diffuse means the whole entire perimeter was tender which was painful to touch. I found spasm. Spasm is defined as a prolonged involuntary contraction of the muscle fiber. Normally when you touch a muscle, it's soft in nature. When a muscle gets injured it goes into a reflex spasm, becomes tight. The muscle fibers shorten. As a result, the range of motion becomes diminished arid there is surrounding tenderness and spasm.

I found that the range of motion in her neck was one half normal in each direction. That's forward flexion, backward extension, left and right, lateral flexion, left and right, lateral rotation; it was one half. There were multiple trigger points present. Trigger points is defined as an area of muscle fibrosis, muscle degeneration. On physical exam it is found by pinpoint tenderness with a palpable nodule like a little marble inside muscle fibers. And there is a surrounding spasm and inflammation. It's usually caused by trauma. There were multiple trigger points present in the neck and the upper back area.

On the back examination there was diffuse tenderness, there was spasm, there were multiple trigger points present. Range of motion was one half of backward extension and one half of left and right lateral rotation. Straight leg raising was 75 degrees with complaints of bilateral low back pain. What a straight leg test indicates is normally for a 32-year-old individual, it should be at least 90 degrees or more without any lower back pain or tightness.

The way the test is performed is the patient is laid down flat on the examination table. The doctor examining the patient, in this case it was me, I take the right leg. I put my right hand behind her ankle. I put my left hand behind the knee with the knee completely -- leg completely straight. I bring it all the way up and once I feel resistance, not just pain, resistance, that is the recorded abnormality. Anything less than 90 degrees is abnormal. It indicates either there's a disk problem in the back or there's a nerve root problem in the back, because all the nerves that go to the legs, they originate from the lower back. So that was 75 degrees. The rest of the examination was normal, unremarkable.

Q. Now, Dr. Guy, you mentioned the nerves in the upper spine, the cervical spine go into the arm and the lower back, they go into the legs?

A. Yes, sir.

Q. Is there something in medicine known as the dermatomes and dermatomal map?

A. Yes, sir.

Q. And what is that?

A. The dermatomal map are the branches of the nerves which stem from the nerve root. In the neck, all the nerves in the neck, they branch off and they give different branches to the muscles in the arm. And there's two types of nerves. We have a motor nerve which controls movement and we have a sensory nerve which controls sensation. The dermatomes refer to the sensory nerves in the forms which come right off the nerve roots in the neck. And each part of the arm is designated to a specific nerve root from the neck. For example, the biceps, the nerves in the biceps come from the nerve root behind the C five and C six.

The word C means cervical, five means the fifth cervical vertebra. Sixth means the sixth. So it's supplied by the nerve root from the C five and C six area.

Q. Dr. Guy, I'm going to show you a document here, and. I'll ask you if you're aware of what's shown on this?

A. Yes.

Q. And is this a fair and accurate representation of the human dermatomal map?

A. Yes sir, it is.

Q. And will these illustrations help in the testimony that you are going to give here this morning?

A. Yes, sir.

MR. READY: Your Honor, I am going to ask that we mark this for identification and I'll offer it into evidence.

THE COURT: Any objection?

MR. GAMBINO: No, Your Honor.

THE COURT: We can mark it, Mr. Gambino? You have no objection to marking it in, do you?

MR. GAMBINO: No, Your Honor.

MR. READY: Thank you.

Q. Dr. Guy, I wonder if with the illustration to this diagram, if you can tell the jury what we've been speaking of here this morning concerning the dermatomes and the way the nerves affect the different parts of the body.

A. Yes. This is a map, a dermatomal map of the different branches of the nerves that come off from the nerve roots in the neck and supply different parts of the body, the arms, the chest, the back of the legs, so on and so forth.

MR. READY: Your Honor, may we perhaps clip this to the bulletin board. That might be a better place so that way everyone can see it.

THE COURT: Yes.

Q. I'm sorry for interrupting, doctor.

A. No problem.

Q. If you can show us how these different nerves correspond to different parts of the body.

A. Yes. As we can see from the color coded dermatomal map up to the human body, neck, chest, so on and so forth, a patient comes to a doctor and says, I have neck pain. If the pain travels or radiates, it has a very, very important clinical significance because any time you have neck pain that radiates down the arm, it means that its origin is in the neck. If it radiates to the anterior chest, as you can see, the upper chest has C five. It comes from the nerve roots behind the fifth vertebra. If the neck pain travels to the shoulders or this portion of the arm, it's the C five and C six nerve roots from the neck. And the back, if it

travels to the upper portion of the back, again we have C five C six, C seven C eight nerve roots. If it travels to this portion of the back of the arm, again this is C six nerve root. So depending on what part of the body, the nerve roots, neck pain travels, determines where its original location is.

Some people have pain that goes into the calf. They have no low back pain. That doesn't mean there's no problem in the lower back. It means they have a particular problem which goes to the calf and the problem is either in the calf or comes from the lower back. Same in the arm. If a patient has pain in the biceps here, you have to test to see if the problem is from here or from here. So this conclusion shows what nerve roots cover what portions of the body which come directly from the nerve roots behind the neck.

Q. Dr. Guy, I want to *jump* ahead just a little with you. You saw the patient, I think you said on January 4, 2001?

A. Yes, sir.

Q. Now, is it fair to say after that period of time there was a hiatus when she did not see you?

A. Yes, that's true.

Q. When did you see her next?

A. I saw her about eleven months afterwards in December of 2002.

Q. Is it fair to say since that time she's remained under your care?

A. She has remained under my care and she also saw different doctors as well.

Q. Now, based upon your initial examination and your subsequent examination and review of records that you have with you here today, did there come a time that you reached an opinion as to what her condition was?

A. Yes, sir.

Q. And the opinion that you reached, was that within a reasonable degree of medical certainty?

A. Yes, sir.

Q. Can you tell the Court and jury what is your opinion as to the injuries that Robin Kaplan suffered?

A. She has a disk herniation at C five C six that's in the neck. She has a disk bulge at L five S one. That's all the way in the lower back. She has a nerve root damage to the right side of the neck at C five C six, the same level where the disk herniation is. She has a bilateral L five S one radiculopathy. The word radiculopathy means damage to a nerve root. So the L five S one in the low back is on both sides at the same level where the disk bulge is. Also, she has a condition called traumatic myofascial pain syndrome which is defined as a condition caused by trauma, where there's injuries to two or more different parts of the body where there are two trigger points or more in two different parts of the body. We found trigger points in her upper neck, mid neck, lower neck, upper back, lower back, multiple trigger points. So that condition has been met and these are basically her diagnoses.

Q. Now, Dr. Guy, I see that at my request you brought in some models this morning of the cervical spine.

A. Yes, sir.

Q. I wonder, Dr. Guy --

MR. READY: Your Honor, may he refer to these models?

THE COURT: Do you have any objections?

MR. GAMBINO: No objection.

Q. With reference to the models that you brought with you here today, if you can explain to the jury how the spine works, how the intervertebral disks work, and then when you talk about herniation in the cervical or the rupturing in the low back, if you can explain to us what those things are.

A. Sure.

MR. GAMBINO: Your Honor, may we approach for a second?

(Whereupon, a bench conference was held off the record.)

Q. Dr. Guy, you've told us here this morning what your opinion is in terms of her injury. Can you tell the Court and jury how you arrived at that opinion?

A. Yes. The right side had C five C six cervical radiculopathy. I did an EMG myself that was performed -- I tell you the exact date -- on January 26, 2002. I personally performed an EMG of her neck and the arms and I found a nerve damage on the right side at the level of C five C six. On the same date I performed EMG of her lower back and the legs. I found damage at the bilateral L five S one nerve roots.

Q. Did you refer to any other records, Dr. Guy, in corroborating the opinion that you reached?

A. Yes, I reviewed the MRI, the actual films and the reports of the MRI of the neck which was taken.

MR. GAMBINO: I'm sorry, can I just have his answer again.

(Whereupon, the reporter read back requested testimony.)

A. Which was taken of the cervical spine, was taken on January 23, 2001, which revealed a C five C six disk herniation. The MRI of the lumbar spine was taken on July 9, 2001 which showed an L five S one disk bulge. And the diagnosis of traumatic myofascial pain syndrome, that's a clinical diagnosis which was confirmed by me on my initial examination and also on my subsequent examinations for the reasons I gave earlier.

Q. Now, Dr. Guy, going back to my original question, can you explain to the Court and jury, when you talk about an intervertebral disk as rupturing or herniating, what does that mean, and then how does that come to pass that we have these nerve injuries that you spoke of?

A. Okay. Well I can answer the question with the use of these models.

MR. READY: May he refer to the models?

THE COURT: Yes.

MR. READY: Thank you.

A. In the neck which is considered the cervical spine, we have seven vertebra. Between each vertebra we have a disk. The function a disk is to serve as a shock absorber. A disk is like a jelly doughnut. It has two components. Outside of it we have a fibrous cartilage material called the annulus fibrosis. There are approximately 100 rings of this fiber cartilage material. Right in the center we have a fluid filled sac which is called a nucleus pulposis. It's filled with water and protein. It is this component that gives us the range of motion, ability to bend forwards, backwards, left and right, left and right, lateral rotation. Right behind the disk is the spinal canal where the spinal cord rests. This yellow object is the spinal cord. The spinal cord travels from high up in the neck all the way down to the lower back. It ends between he first and second lumbar vertebra. In the neck it gives rise to nerve roots on the right and left sides. Each nerve root has two branches, motor for movement, sensory for ability to feel sensation. Each nerve root in the neck branches off and supplies power sensation to different portions of the arm, as I explained earlier.

Now, we have three abnormal conditions to a disk. The first abnormal condition to a disk is called a disk bulge which is defined as a partial tear of the annulus fibrosis. The annulus fibrosis is this outer perimeter. Once there is a partial tear of the annulus the disk begins to bulge out. And once this fibrous cartilage material is torn it is a permanent, irreversible injury because it does not have the ability to repair itself. Bone, once it breaks, it does have tremendous ability to repair itself. It heals with bone cement or callus formation. In fact, it becomes the strongest part of that bone. Unfortunately, fiber cartilage, once it is torn it does not have that ability. You cannot suture this together; it won't hold. You cannot glue this together; it won't hold. Even surgically you cannot repair this tear.

Now, once you have a bulge the next abnormal condition to a disk is called a disk protrusion. A disk protrusion is defined as a complete tear of the annulus fibrosis, but the disk material inside the nucleus pulposis comes out and stops right at the margin of the disk. If it were to pass this disk margin, it is now called a herniation which is defined as a complete tear of the disk with a disk material inside passes the disk margin. Once a disk tears or herniates the following things occur. The outer portion of the annulus fibrosis has nerve fibers. They're called nociceptors which comes off from a branch of this nerve root. So any time you have a tear in the outer one third, you have pain being produced. Once you have a complete tear of this fibers, you have the release of certain chemicals.

These chemicals irritate the surrounding structures and they cause irritation to the nerve roots.

Q. May I interrupt you for just a moment?

A. Yes.

Q. I'd like you to take a look at this. By the way, who is Frank Netter?

A. Frank Netter is a physician who makes medical illustrations.

Q. I'm going to show you this illustration here, and I'll ask you if this is a fair and accurate illustration of the testimony that you're giving here now in terms of the release of certain chemicals from a ruptured disk?

A. Yes sir, it is.

MR. READY: Your Honor, I ask that we mark this for identification and then I'll offer this in evidence.

MR. GAMBINO: Note my objection. The doctor is using one exhibit already. He's testifying, I don't see the purpose of this.

THE COURT: Well let me ask you something, doctor, could you show the same thing that you have on the model that you have there?

THE WITNESS: No, judge, that shows it a lot better. I usually use both to explain.

THE COURT: Is this the last one?

MR. READY: I have a couple more. Should I mark them all?

THE COURT: What I'd like to do, I don't want to have too many in here. I'll let you do one but I think that's it.

MR. READY: Okay, there's one other one. I'll pull it out now and then I'll ask for no more. I have a few but there is one other one I'd like to.

THE COURT: Let's see the other one.

MR. READY: Sure.

THE COURT: Ladies and gentlemen, we're just going to take a short break and we'll go over the diagrams and we'll call you right back.

(Jury exiting the courtroom.)

MR. READY: In addition to the one we've already marked as Plaintiff's Exhibit 1, there are actuality three others that I'd like to put in. And just for purposes of why I want to do this, judge, I'm always concerned and sensitive in these cases where the plaintiff has to get over this, quote, unquote, serious injury threshold, that if I don't do what I need to do to educate the jury as to this particular part of the anatomy, when it comes to the defense doctor's testimony, etc., and even the difficulty in the ambiguous nature of the language, that I don't feel as though I've done my job. I would ask for the Court's indulgence in permitting me to put these in because I do have this issue of serious injury that's plaintiff's burden of proof. The other three items, one is an illustration that deals with the release of chemicals which we've already looked at. There's another one here which also--they're all Frank Netter drawings, by the way, of medical illustrations.

The other one is one that illustrates through different views that you can see on the model, the difference between, as Dr. Guy has talked about today, the bulge, protrusion, herniation. That would be the next illustration. And then with reference to the MRI's that the jury is going to see in this case, quite frankly, they're small and they're hard for a jury to visualize. So I've had an illustrator in this particular case, you know, draw up just the anatomy of the disk. So that's essentially what I have here, Your Honor.

THE COURT: Go ahead.

MR. GAMBINO: Your Honor, I would object, starting with the first one, the role of inflammation in the lumbar pain, number one, there is writing on it which is testimony not under oath or by anybody. It's just -- it's out there in front of a jury. It's unsworn, so we would object to that being used at all.

THE COURT: What's the writing over there?

MR. READY: Judge, of the three this is, quite frankly, the least important to me in terms of --

THE COURT: So take it out.

MR. READY: For the Court's consideration.

MR. GAMBINO: Next, I object again to this one as there is -- the doctor's already explained, described it using a model already that I did not object to him using.

This is, number one, repetitive, number two, how accurate it is, what it states, this are all unsworn testimony. And we again object to this. There's no probative value since the doctor is already using an exhibit.

THE COURT: Let me ask you a question, doctor, these things that are over here, are these the injuries that Ms. Kaplan suffered?

THE WITNESS: Yes, judge.

THE COURT: The tears in the outer annulus fibers?

THE WITNESS: Yes, sir.

THE COURT: Internal annular fibers?

THE WITNESS: Yes, sir.

THE COURT: Herniated nucleus pulposis?

THE WITNESS: Yes.

THE COURT: As far as that, you have your objection. He's testifying that these are the actual injuries.

MR. GAMBINO: These are representations of the type of injuries that they're claiming she suffered. This is not her injury. We don't know that she suffered this injury that's depicted on this thing. Now, if he wanted to have anything blown up that would be germane to this particular case, he would have the MRI's of her actual disk bulge or non-bulge. This is all an artist's rendition and we would object to it. At this point it's misleading. If he had a blow-up of the plaintiff's MRI's which he testified he reviewed, and they are what he based his opinion upon, those I would have no objection to. These are characterizations and again note my objection.

MR. READY: Judge, the standard of care is whether or not an illustration fairly and accurately depicts a condition. The suggestion that somehow you could hire an artist --

THE COURT: I don't think that's the standard of care. What do you mean, the standard of care? MR. READY: I didn't mean the standard of care. What I meant is the standard of admissibility. This doctor has testified that it's a fair and accurate representation of what we have here. And in this case we have two different levels. On the one hand, we have a herniation and on the other hand, we have a bulge.

THE COURT: But I just don't think that the question of specifically whether or not it's a fair representation -- whether the picture represents the injury should be -- I see Mr. Gambino's point about the fact that this is not -- this is a representation of the injuries she suffered as opposed to actual injury. What's the other one? Let me see the other one.

MR. READY: The other one you're going to have to adopt but this is just the drawing. When you look at the MRI you see the sagittal view and this is just a drawing of what's seen in there.

THE COURT: That's a drawing of the MRI. I don't think --

MR. READY: It's not a drawing of this MRI, judge. This is a drawing to show -- they're going to be looking at a small image on the MRI.

THE COURT: Why didn't you blow that up?

MR. READY: To blow it up, you don't have this kind of -- it doesn't show like that.

MR. GAMBINO: It doesn't have the punch.

MR. READY: Judge, you can blow it up but it's still not visible to a jury. That's the problem.

THE COURT: I understand that. I just have a problem with the fact that it isn't the actual thing that's depicted on the MRI.

MR. READY: But, judge, with all due respect, Your Honor, that, that never -- you can't ever draw a person's anatomy.

THE COURT: That's why you show the MRI or just on a model, you show what happened as opposed to -- all right. I'll tell you what, I'll just take a break for a moment or two and then I'll come back and make my ruling.

MR. READY: Okay. Thank you.

(Pause in the proceedings.)

THE COURT: What I'm going to do is allow you to put in two of them. He's already talked about it with the model and his testimony. I'll allow you to put in two. The doctor's testified it's a fair representation of the injury that Ms. Kaplan has suffered. I'm going to let you put in two because it's the Court's discretion in regards to the number that comes in, based on the testimony that's already been elicited plus the other model he's already talked about.

MR. READY: These two then, Your Honor.

MR. GAMBINO: Your Honor, once again note my objection. If they were just representations, but there's writings on them. That's unsworn testimony.

THE COURT: What does the writing say?

MR. READY: This is exactly what Dr. Guy was saying, judge.

MR. GAMBINO: But, Your Honor, unless he's using those words, it's additional unsworn testimony.

THE COURT: We can cover those up and Dr. Guy, when he talks about them, he could put in what each of them represent by himself.

MR. READY: Okay, fair enough.

MR. GAMBINO: Your Honor, I would like to state for the record, note my continuing objection to these being used, based upon the fact that the doctor is already using an exhibit which does not have any additional information on it, other than what this doctor is testifying as to this plaintiff. These diagrams are cumulative, number one. Number two, they're unsworn testimony.

THE COURT: There's no --

MR. GAMBINO: It gives the appearance of bolstering.

THE COURT: There's no unsworn testimony because I'm putting a blank piece of paper over the writings and Dr. Guy can testify to that, and he can write down in his opinion the way the herniated disk looks.

MR. GAMBINO: Your Honor, at this time I still continue with the objection that it's cumulative. He's already gone through Via verbal testimony by pointing out to the -- on the exhibit and on using the prior chart that was put in. Based upon that, those foundations, this is not only cumulative still, it gives the impression to a jury of confirmation of whatever the doctor may say. Based upon that these are, quote, unquote, blow-ups of some drawings.

THE COURT: Okay. You have your objection. We'll just mark these two and then put the paper on.

(Jury entering the courtroom.)

THE COURT: Ladies and gentlemen, thanks again for your cooperation and we're ready to continue.

DIRECT EXAMINATION CONTINUED

BY MR. READY:

Q. Dr. Guy, I know that you were midstream in your answer in terms of explaining how this damage to the annulus, whether it's a herniation or bulge, has an effect on the nerves. I wonder if you could remember where you were, if you can pick up, without use of those charts for now, and continue with your answer.

A. Yes. As I was explaining, we had a bulge, protrusion, herniation. Once a disk herniates the water content in the disk leaks out. Once the water content in the disk leaks out the disk becomes shriveled up or degenerated. This is a normal disk. A normal disk, as you can see, it's about this thick. This is what happens when a disk becomes degenerated or shriveled up. As I was explaining, once you have a tear of this annulus fibrosis, it's a permanent, irreversible condition. And the damage to the disk is progressive. As time goes on, the damage continuously worsens over time for the following reasons. The water contents of a disk leaks out. The disk shrivels up. It's like having a worn out shock absorber.

Then you have the production of osteophytes, these bony spicules which the body will produce to stabilize the injured area. Because once you have a disk herniation, that level of damage, it has made it weak, so the body tries to make itself stronger by forming these osteophytes. As these osteophytes begin to form, which takes several years to occur. It's a very slow progressive condition, and over many years the disk becomes very, very badly shriveled up like so. And these osteophytes will almost be fused one to another. The disk is almost completely gone and the osleophytes continue to grow like the nailbeds on your nails. And as they come out into the neuroforamina where the nerve root exits, they cause crowding and pinching of this nerve root, causing a further damage to the nerve root. As this continues the pain will become exceedingly worse. You'll have more stiffness, more reduction of range of motion. So the condition is permanent and progressive.

And then you have the rapid formation of traumatic arthritis which is the arthritis formed by trauma. There is no cure for arthritis. There's just treatments, as there is no cure for disk herniations. There's only treatments. So that's why it's permanent and progressive.

Q. Now, Dr. Guy, you've told us about these bony productive changes that will occur when a disk ruptures over a course time. Now, the bony productive changes, that would go hand-in-hand with the disk, as you've described for us, an injured disk. Are they visible on an x-ray?

A. If there's significant bony problems, yes, they are visible on x-ray.

Q. I'd like you to assume, Dr. Guy, that Robin Kaplan was involved in a collision on January one of the year 2001, and that from the place of the collision she was taken in an ambulance to Franklin hospital where she was seen. I'd like you to also assume that when she was treated at the hospital, that an x-ray of the cervical spine was taken.

Have you had a chance to review the hospital record?

A. Yes, sir.

Q. Part of your chart?

A. Yes, sir.

MR. READY: Your Honor, we have here a certified copy of the Franklin hospital record. I wonder if we can have this marked for identification.

THE COURT: Okay.

(Whereupon, Plaintiff's Exhibit 4 was marked for identification.)

MR. READY: Thank you.

Q. Dr. Guy, I'm going to hand you --

MR. READY: Your Honor, I offer the hospital chart in evidence as Plaintiff's Exhibit 4.

THE COURT: Any objection?

MR. GAMBINO: No objection.

(Whereupon, Plaintiff's Exhibit 4 was marked in evidence.)

THE COURT: In evidence as Plaintiff's Exhibit 4.

MR. GAMBINO: Are you offering them all in evidence?

MR. READY: Yes, I'm just going to pull off the subpoena page.

MR. GAMBINO: Just let the record reflect, judge, my office subpoenaed the records.

MR. READY: Thank you, Mr. Gambino, for that.

Q. Dr. Guy, getting back to the question about what can be seen on an x-ray, let me ask you this, is there a difference in terms of the diagnostic capability of an x-ray as compared to an MRI as referred -- when we are speaking about the intervertebral disks of the vertebrae?

A. Yes, sir.

Q. In the shortest explanation, can you tell the Court and jury what the different diagnostic capabilities of those two tests are?

A. The x-ray is more sensitive, is more accurate for bony problems. The MRI is more accurate for non-bony problems or soft tissue problems, specifically disks. The x-ray cannot show disks. The MRI will show the disks and the surrounding structures.

Q. Now, Dr. Guy, I'm going to refer you to in so far as there is an MRI -- I'm sorry -- an x-ray of the cervical spine that was performed.

A. Yes.

Q. Does that hospital record tell the physician anything about whether or not there has been an ongoing degenerative process occurring in someone's spine?

A. The answer to your question, yes, in the sense that there has been no ongoing degenerative process going on. It simply shows no fractures and straightening of a normal curvature and disk space now in between the second and third vertebra which is due to muscle spasm, which is exactly what I found on my physical exam. The neck has a curvature depending on which way you look at it. If you look at it from the side, it has a C configuration, same as the lower back. And when that normal curvature is made straight or reverse it indicates severe spasm to the neck.

Q. Now, is severe spasm of the cervical spine consistent with a herniation at the level of C five C six?

A. It can be.

Q. And why can those two processes go together?

A. As I explained earlier, once you have an injury to a specific area, the body tries to protect itself from a repeat or recurrent injury. One of the ways it does this is the muscles shorten, they go into spasm. It's called reflex spasm. By shortening they don't have the ability to get re-injured as readily as if they were not in spasm. In spasm and tight they become stronger. So if you were to have another recurrent injury, there's less of a chance of an injury. It's a way the body protects itself.

Q. Now, with reference to the models that you brought with you here today, and you showed us how when there is a spinal injury, over time you have those bony changes, you talked about osteophytes. Any mention of osteophytes, Dr. Guy, in the hospital record where the cervical x-ray was performed?

A. No, sir.

Q. Dr. Guy, I'd like you to assume that before January one of the year 2001, that Robin Kaplan had never been to a doctor, a chiropractor, physical therapist, a hospital, where she said, my neck hurts and it's radiating into the arms; that she had never been to a doctor, a chiropractor, an internist or a hospital where she said, I have back pain and it's radiating into my legs.

I'd like you to further assume that on January one of the year 2001, she is involved in a collision where she was struck from behind by a Mercury Sable, in an impact which the driver of that car described as heavy. That her car was pushed forward and hit either a car in front of her or a guard rail or both, in heavy impacts.

I'd like you to further assume that from the scene she was taken to the hospital where she was placed on a flat board and put in a cervical collar. And where, as you know, there was a cervical x-ray performed.

I'd like you to further assume that she came under your care, as she did on January four, and thereafter she had treatment which includes the MRI that you looked at and the EMG's that you yourself performed. If that's true, if those things are true, do you

have an opinion within a reasonable degree of medical certainty as to what caused the disk ruptures that we've spoken of here today in the cervical spine and the lumbar spine?

A. I do have an opinion.

MR. GAMBINO: Just note my objection, there is no MRI in evidence nor has the doctor identified the MRI, or has he stated that he ever personally reviewed the MRI's themselves. So anything referring to an MRI at this point, I would object to being inclusive in his hypothetical question.

THE COURT: Okay.

MR. READY: Judge --

THE COURT: Rephrase your question.

MR. READY: I'll ask some other questions.

Q. Dr. Guy, did you ever review the -- I think you already told us that you did, but did you ever review the MRI films, Dr. Guy?

A. Yes, sir.

Q. And can you tell the Court and jury approximately when it was that you first looked at the MRI film?

A. Yes, June 6, 2002.

Q. And in addition to looking at the MRI film, did you also look at the MRI reports that were prepared by the -- that was prepared by the radiologist who actually took the film?

A. Yes.

Q. Based upon your review of the MRI, doctor, of the MRI, can you tell this Court and jury what you found?

A. Yes.

Q. What did you find?

A. I found a disk herniation at C five C six. I found a disk bulge at L five S one and I have the MRI films. If anybody would like to see it I can show them.

Q. I'm going to get to that in just a minute. But I want to get back to my original question. I want you to assume again that Robin Kaplan had no prior medical care to the neck or to the low back. I want you to assume that she had no limitations in her work or in her social life referable to the neck or to the low back.

Further assume, Dr. Guy, that before this collision there was no radiating into arms or radiating into legs. I'd like you to further assume that she was involved in the collision on July 1, 2001, as I described here this morning --

A. January one.

Q. I'm sorry, January 1, 2001, thank you. And then further assume your initial visit in January and then when you picked up near the end of the year, the EMG's that you performed, the MRI that you reviewed, the clinical examinations that you performed. Based upon those things, do you have an opinion within a reasonable degree of medical certainty as to what caused the herniation at the level C five C six and the disk bulge at the level of L five S one?

A. Yes.

Q. Can you tell the Court and jury what is your opinion about what caused those injuries?

A. My opinion is that it was caused by the accident of January 1, 2001 for several good reasons.

Q. Can you tell the Court and jury why you hold the opinion that this auto collision was responsible for causing these injuries?

A. First of all, we have an x-ray that was taken right at the date of the injury, shows the first clue, the first footstep to this puzzle that the neck showed no degeneration, no prior problems to her neck. It showed loss of a normal curvature of the neck consistent with severe muscle spasm. So we already know there was severe muscle spasm present. You cannot say that's old and preexisting. If it was old and preexisting, you would expect the patient to seek medical attention for this some time in the past.

Third, the MRI of the neck showed also, confirmed loss of the cervical lordosis, confirming severe spasm. My examination three days after showed severe spasm, reduction of range of motion and trigger points. EMG confirms nerve damage at the level of C five C six. So you have the history, you have the physical exam, you have the x-rays, you have the MRI's. You have the EMG, all point to the same problem. It's like a big crossword puzzle. To see the whole picture, you have to put all the little pieces together. If you don't put all the little pieces together and just one or two pieces, anything is possible. It's only when you put all the pieces together that then the clear picture becomes obvious.

Q. We've been using the word here today -- the letters, I should say, EMG.

A. Yes.

Q. What does that stand for?

A. EMG stands for electromyography which means it's a study that is done by a physician to see if there's any damage to the muscles and nerves.

Q. Now, in this particular patient did you perform electromyography?

A. I did.

Q. Can you tell the Court and jury how you go about performing that test?

A. Yes. Before you do the EMG you take an appropriate history. You perform an appropriate physical exam, then you perform the EMG. The EMG has three parts. The first two parts checks the peripheral nerve, the motor component and the sensory component. In a pure radiculopathy, which means damage to nerve root, the first two components are almost always normal, as such was the case.

Q. Let me stop you there if I can, why are those two components of the test almost always normal when the injury comes from the spine?

A. Because those two components, the peripheral nerves are checked with the electrical stimulation portion. The motor and sensory conduction portion, it's actual a needle EMG that checks the nerve root components. Each component of an EMG checks a different part of the neurological system. It's the needle EMG that checks the nerve roots. This is a problem of the nerve root origin. It is not a problem of a peripheral nerve like carpal tunnel syndrome. The problem is not here, the problem is here. It is not picked up by conventional conduction studies. It is only picked up by the needle EMG.

And the way that portion is performed is when you perform an EMG, it's like finding a needle in a haystack. You have to be very meticulous going to different directions. You can miss the pathology very easily. And if the initial EMG is negative, you must repeat it several weeks later because it takes several weeks for a nerve injury to manifest itself. It does not manifest itself always right away. Minimal two to four weeks, sometimes much longer. So when you insert a sterile needle into different muscles in the arms, you look for three abnormal conditions, increased activity on the screen. Second, look for positive sharp waves which looks like a V. Then you look for the third abnormality which is called fibrillation potentials, the very small potentials. So if you have any one or any of these three parameters, you meet the criteria for abnormality to that particular area. Depending on what muscles you find abnormal, in this case the muscles that was abnormal was the right biceps and the right C five C six and low back, the L five S one bilateral, these showed increased activity and positive sharp waves, confirming damage to a nerve root at these levels.

Q. Now, Dr. Guy, the EMG examination, that was performed by you, yourself?

A. Yes, sir.

Q. And over the years can you tell this Court and jury how many EMG's you've performed?

A. I have performed tens of thousands. I also teach this to residents from NYU.

Q. Tell us something about that, when you say that you teach EMG, who do you teach and what do you teach?

A. I teach the residents from NYU. I prepare them for boards, parts one and part two. And part of the teaching is that you cannot do an EMG too soon from the time of injury because you will get a false negative or false normal. And if your first EMG that's done comes back as normal but the patient's symptoms continue, you should not be satisfied with the first normal EMG. You must repeat it several weeks down the road because sometimes you may have missed something and subsequent EMG may detect it, as such was the case here.

Q. Now, Dr. Guy, with reference to the EMG's that you performed in your office, did you keep copies of the actual tracings?

A. Yes, sir.

Q. Do you have those with you here today?

A. I do.

Q. Can you pull those out?

A. Yes.

MR. READY: Your Honor, I'm going to ask to mark those as Plaintiff's Exhibit 5 for identification.

THE COURT: Okay.

MR. GAMBINO: May I see them?

(Handing.)

MR. GAMBINO: Mark it for identification, no objection.

(Whereupon, Plaintiff's Exhibit 5 was marked for identification.)

Q. Dr. Guy, are these the actual tracings of the EMG's that you performed on the cervical spine and the lumbar spine?

A. Yes sir, they are.

Q. You were describing certain fibrillation potentials and other showings that an EMG might reveal.

A. Yes.

Q. Do those -- does that printout show those things?

A. It does.

Q. Will that -- will those actual test results help to illustrate the testimony that you're giving here today with respect to those EMG's?

A. Yes, sir.

Q. Those EMG's, those tracings that you have here today, when were they made?

A. 1-26-02.

Q. And when was the test performed?

A. Same time the test was done.

Q. And is it the normal course of your profession as a physician to keep the actual tracing of those tests?

A. Yes, sir.

MR. READY: Your Honor, I offer those test results into evidence.

THE COURT: Any objection?

MR. GAMBINO: May I see them again, Your Honor?

(Handing.)

MR. GAMBINO: If I may ask a question, Your Honor?

THE COURT: Sure.

VOIR DIRE

BY MR. GAMBINO:

Q. Doctor, this tracing was, what, a year after the accident?

A. Yes, sir.

Q. This was done -- when you do this is there a notation made at which point in time you get each peak or valley?

A. I'm sorry, what is the question?

Q. Do you make a notation anywhere -- is a notation made as to what part or where this peak or valley applies to?

A. Yes, it is written on the diagram.

Q. Where are you referring to, doctor?

A. Right C five C six, left L five S one, right L five S one.

Q. Okay. My question to you is, is there any indication of where or when these peaks or valleys were created, as far as what you were doing or what portion of the body was being tested when it made these peaks and valleys?

A. That question makes no sense in the medical context. I can't answer that question.

Q. Well let me ask you this question, doctor, you said this is -- well, should I stop now, Your Honor or continue? This is starting to be cross.

THE COURT: Just in regard to the admissibility.

Q. You're saying that this reflects what?

A. This is the findings that when I inserted the needle into the muscle at the left L five S one level, and these are the abnormal findings when you put the needle into that muscle.

Q. Is it one muscle or more than one?

A. It says one muscle, L five S one.

Q. And the peaks and valleys that are here, that indicates to you, what?

A. The positive sharp waves. There's some normal responses that indicates damage at that level.

Q. And is there any indication for how long this was inserted or tested?

A. No.

Q. I notice that we have something here that --

THE COURT: Mr. Gambino, why don't you ask that -- I mean, you're only asking these questions in regard to the admissibility. Anything else you want to ask you'll be able to cross-examine about.

MR. GAMBINO: Okay, I'll ask on cross. Just note my objection other than the -- never mind, I withdraw my objection.

THE COURT: Okay. We'll move it into evidence.

(Whereupon, Plaintiff's Exhibit 5 was marked in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. READY:

Q. Dr. Guy, can you show the jury on your tracings how those tracings inform you that there is a nerve injury at a particular level?

A. Yes. As I was saying, the needle EMG, the way it's done is you insert a sterile needle into various muscles in the arms, various muscles in the neck if you're testing the upper portion of the body. If you're testing the lower portion it goes into various muscles in the legs, various muscles in the lower back. From anatomy a physician knows what muscle is supplied by which nerve root. And then you can confirm it by going at the same exact level in the neck. Now, you confirm it by going -- if I may borrow your hand for a second, Mr. Ready. I'd like to show what I found.

Q. Which one?

A. A normal response is when the motor unit first goes all the way up and straight back down, if it goes down first, that is abnormal. So as I was testing the muscles, this, from here to here, is the muscle that was tested at the right C five C six. It's written right over here. As you can see here it's a downward deflection. That's one positive sharp wave. There's another positive, here's another positive sharp wave. Here's another, here's another, here's another and another. This is all normal. This is all normal. That's the next muscle. But at the C five C six we see several evidences of abnormality.

Q. Doctor, before you move on, according to the area where you say that it's normal, where is that?

A. Normal is right here.

Q. And what muscle was that testing?

A. That's the next muscle after the C five C six.

Q. So that particular muscle is -- is that muscle enervated by the C five C six nerve or by a different nerve?

A. Different nerve.

Q. For instance, that next muscle, what nerve enervates that muscle?

A. C six C seven.

Q. Okay. And in this particular case, based upon your review of the MRI, was there any abnormality found at the C six C seven level?

A. No, sir.

Q. Is that then consistent -- in other words, was the EMG tracing that you found for C five -- C six C seven muscle consistent with the finding on the MRI, that is, there being no abnormality?

A. It is consistent with the MRI in the sense that there was no abnormality at C six C seven.

Q. You may continue, doctor, thank you.

A. Then --

MR. GAMBINO: I'm sorry, I was over there, I couldn't see. Where did you point that the C six C seven was?

THE WITNESS: Right here.

MR. GAMBINO: And the one before that?

THE WITNESS: C five C six.

MR. GAMBINO: Is that C five C six, this one?

THE WITNESS: From here to here.

MR. GAMBINO: That's C five C six. And the next one, from where to where is C six to C seven?

THE WITNESS: C five C six ends here. This is C six C seven. Then I tested the left L five S one and then the right L five S one. Here again we see a lot of downward deflections. These are all positive sharp waves. There is a normal response. These downward spikes are called positive sharp waves. They confirm damage to the nerves in the lower back. This is the right L five S one. Again, there is a lot of downward deflections called positive sharp waves here and here and here. This again confirms damage to the right L five S one.

Q. Dr. Guy, the results that were revealed by your EMG tracing at the level L five S one in the cervical spine and the level L five S one in the lumbar spine, were they consistent with the findings of the MRI's, that is, a herniation at C five C six and bulge at L five S one?

A. Yes, sir.

Q. And why are they consistent?

A. That's where the MRI shows problems at C five C six. And when you have a disk herniation at C five C six, you can cause nerve damage by any one of the following mechanisms. You can have a direct compression of the nerve root by the C five C six herniation. You can have damage by the nerve root by the rotational forces that works on the nerve root. Because once you have a forward snapping of the neck or the back or the rotation is working on the spine, the nerve root stretches. Once it stretches it gets pulled, becomes swollen. Once it gets swollen it causes dysfunction to the nerve root. The third other mechanism is by the release of the chemicals which are released from inside the disk which causes an irritation to the nerve root and or the surrounding structures behind the nerve root. There are many, many chemicals that are released from inside the disk that causes damage to the nerve root in addition to the other prior conditions I stated earlier.

So the EMG confirms the damage at that level because an MRI does not show nerve damage. That's why we have an EMG. Every test shows a different problem. If the MRI could show nerve damage, there would be no need for EMG and vice versa.

EMG cannot show disk damage, only MRI can show it. That's why we perform different tests to get a better picture as to what's going on in the body as a whole.

Q. Now, can Robin Kaplan or can any patient influence the results that are seen on an EMG?

A. No, sir.

Q. Why not?

A. Because no matter what the patient does or doesn't do, the results, whether they're normal, abnormal, will come through. If the patient is not relaxed, you can't get a normal tracing. If the patient is taking medication or does anything, whether they do it or not, the abnormality will come through and if it's normal, the same.

Q. Now, you've told us, Dr. Guy, that the condition is -- I think your word was treatable?

A. Correct.

Q. And did you treat Robin Kaplan?

A. I did.

Q. And can you tell the Court and jury if the injury is permanent and progressive, then why do you treat it?

A. Because if we don't it will get worse. We do know that arthritis is an example of a condition that there's no cure for. Diabetes is a condition that there's no cure for. What happens if we don't treat diabetes? The patient goes into a diabetic coma and they die. What happens if we don't treat arthritis? The swelling gets so bad --

MR. GAMBINO: Note my objection, can we limit it to the injury in this case.

THE COURT: Doctor, just talk about this injury.

A. If we don't treat the conditions caused by a disk herniation, the purpose of the therapy is not to cure the problem. It is designed to diminish pain, diminish spasm, improve flexibility, improve range of motion, maintain muscle tone, muscle size and to prevent deterioration. There is nothing to cure it. That is the purpose of the therapy. If we don't do the therapy, the condition will worsen.

MR. GAMBINO: I'm sorry, can I just hear the beginning of his answer.

THE COURT: If you don't get the therapy --

MR. GAMBINO: I wanted to know what the purpose of the therapy was, that was his answer, the beginning part of his answer.

(Whereupon, the reporter read back requested testimony.)

MR. GAMBINO: Thank you.

Q. Dr. Guy, did there come a time that you made any recommendations to Robin Kaplan with respect to things to do at home?

A. Yes.

Q. What recommendations did you make in that regard?

A. I taught her, in addition to the therapist, I taught -- I reviewed with her all the different home exercises. I ordered for her a TENS unit which stands for transcutaneous electrical nerve stimulation. It's a little device the size of a beeper which has four electrodes. You give electrical stimulation to the muscles in the neck and the back. The purpose of that is when you do electrical stimulation to a muscle, you cause the secretions of endorphins which are the body's normal, natural opiates that kill pain. Next, the electrical stimulation contracts the muscles, breaks up spasm, diminishes pain. Furthermore, electrical stimulation blocks the transmission of pain from that injured area to the brain. And fourthly, electrical stimulation massages the area, along with hot packs to the area improves the circulation to that area and prevents atrophy, which means loss of muscle size.

Q. Dr. Guy, I'd like to go to, let's say, the last year's time. And in connection with the last year's time, can you describe for the Court and jury what you found with respect to Robin Kaplan when you would examine her?

A. Yes. I saw her last on September 6, 2003. She complained of still having neck pain traveling down both arms, lower back pain traveling down both legs. She was using her TENS machine at home with hot packs and home exercises. The neck showed moderate tenderness, moderate spasm, multiple trigger points. Range of motion had improved but the lateral flexion was one half normal. The back showed moderate tenderness, moderate spasm, multiple trigger points. Range of motion was diminished to one half of normal flexion. Bending forward and backward to one half the normal extension. Straight leg raising was 75 degrees, bilateral lower back pain. Muscle power and range of motion to the joints was normal as expected. Her gait was normal.

Q. I'd like you to assume, Dr. Guy, that at the time of this collision, that Robin Kaplan was working, that she had two jobs. One was a job where she would essentially work with a phone. She would help with sales, take orders, things of that nature. And the other job that she had was taking care of her grandmother on a part-time basis, transferred her from bed to chair and chair to bathroom, etc.

I'd like you to further assume that she has given up the job with the grandmother but that she continues to work in the job where she does these things on the phone. I'd like you further to assume that it's the kind of job where she's in a room where she's sitting and standing and moving about.

Do you have a reasonable certainty as to whether she should continue in this work?

A. With the lifting of her grandmother, no. That she should abstain from. There's a lot of risks of injury to herself and the grandmother if her arms or muscles go into spasm. She can possibly drop the lady and cause damage to her and to herself.

With reference to the other job, she can work but as tolerated. For example, if she works too much on the keyboard, too much on the telephone, she can stress her neck, upper back muscles and she'll pay the price. So she could work as tolerated. Some days she'll have good days, some days she'll have bad days. In the cold winter months, the laws of physics, cold contracts, makes everything stiff. Rain makes everything stiff. And in the good weather, summertime, heat expands everything, makes things less painful. So she'll have good and bad days which is the natural course of this condition.

Q. Dr. Guy, do you have an opinion within a reasonable degree of medical certainty as to whether or not by virtue of this auto collision, if Robin Kaplan has suffered a significant limitation of use of a body function and system?

A. The answer is yes.

Q. Now, I'd like you to take that apart for us, doctor, if you would, and what body systems are we talking about?

A. The cervical spine, she has lost use of the cervical spine. I last examined her on 9-6-2003. This is approximately three years after the injury. There's still spasm. There's still trigger points. There's still reduction of range of motion to her neck and to her back. So there is significant limitation to the use of the neck and the back.

Third, we do know that there's disk problems in her neck and her back. That's damage to the disks now. So we have damage to the muscles. We have damage to the nerves. We have damage to the actual range of motion as well. And so by way of repeat examinations, by confirming the residual deficits of a permanency in terms of range of motion to her neck and back, with the MRI's, EMG, this is a permanent injury to the body, again to the disk nerve roots and the muscles.

Q. Now, do you have an opinion, Dr. Guy, as to whether or not Robin Kaplan will benefit from certain care into the future?

A. Yes.

Q. And what care does she require or will she benefit from in connection with these injuries to her cervical spine and lumbar spine?

A. She will need to see a physiatrist, a doctor like myself or similar specialty, from time to time as needed to supervise her overall condition. She will need physical therapy treatments from time to time as needed. She can't give massage to herself. She can give the electrical stim and hot packs but that may not be enough. She will need the benefit of professional therapy from time to time, again to decrease pain, decrease spasm, abolish trigger points, improve flexibility, so on and so forth. And that will be required on average, 20 to 30 physical therapy sessions per year, and approximately twelve physiatry examinations a year, as needed. Some years will be less, some years will be more, depending on the condition. She will need repeated EMG of her neck and back every two to three years to reassess the damage to the nerve roots to see if they're getting worse. Because as these osteophytes begin to form, and the nerve becomes damaged more, if you don't pick it up early you can possibly have irreversible damage.

She will need repeat MRI's and x-rays of her cervical, lumbar spine to make sure these osteophytes don't begin to grow too fast, too readily and a disk herniation doesn't get worse.

Q. Dr. Guy, in today's market, when we talk about these 20 to 30 physical therapy sessions on an annual basis, what does one physical therapy session typically cost?

A. Approximately $100 for three modalities, hot packs, electrical stim, massage and or therapeutic exercise.

Q. You mentioned that she should be seen by a physiatrist or similar medical specialist approximately twelve times per year. What is the charge per visit for that?

A. For follow-up examination, $100 per visit.

Q. And to perform an EMG, what does that cost?

A. It's approximately $1,500 for an upper extremity and approximately $1,200 for a lower extremity EMG.

Q. And then roughly how much is an MRI study?

A. Approximately $950.

Q. Up to this point in time, can you tell the Court and jury what has been your approximate cost of care to date?

A. My care, apart from Maimonides, has been $3,800. Maimonides, I don't know, I don't have those exact numbers.

Q. That was the period of time that the patient was being treated at Maimonides hospital?

A. Yes, sir.

Q. And that was under your supervision?

A. Yes.

Q. And did you bring in the records from Maimonides hospital?

A. I did.

Q. And can you pull those out of your file, Dr. Guy?

A. Yes.

Q. They're right here. Before coming here today did I ask you to segregate out the Maimonides hospital chart?

A. Yes, sir.

Q. And the records that you have with you here today, is that a complete copy of the records of Maimonides?

A. To the best of my knowledge, yes.

MR. READY: Your Honor, I'm going to ask that this be marked for identification, the Maimonides hospital chart. May we have those marked, Your Honor?

THE COURT: Mark them for ID. Plaintiff's 6.

MR. GAMBINO: May I see them, Your Honor?

THE COURT: Let Mr. Gambino see them.

MR. GAMBINO: We have some of them from subpoena.

Why don't we just offer these?

MR. READY: Sure, why don't we mark this one, judge.

MR. GAMBINO: Those are all of Dr. Guy's records?

MR. READY: I don't know if they're all of his records. Why don't we show them to him.

Q. Dr. Guy, the records that we're about to show you include the Maimonides hospital chart. But I'd like you-- does that include all of your office records as well?

A. No, it does not include all of my office records as well, just some of them.

Q. Now, the records that are not included in there, you have them with you today?

A. I do.

Q. Can you pull those out?

A. Yes. Can I have my other records back, the ones that were taken from me, right there. Those are my records. Those are my records from Maimonides and these are my records from my own office.

MR. GAMBINO: Well, can I have those subpoenaed ones back.

THE WITNESS: These are all the subpoenaed records.

MR. GAMBINO: I didn't hear what you said, doctor.

THE WITNESS: These are all the subpoenaed records.

MR. READY: Judge, may we approach?

THE COURT: Okay.

(Whereupon, a bench conference was held off the record.)

MR. GAMBINO: Just so the record is clear, Your Honor, doctor, is it your testimony that the subpoenaed records are not complete. They're not all your records. You have more records or different records in your file?

THE WITNESS: These are the records from Maimonides. These are my records from my office in Long Island.

MR. GAMBINO: That subpoena is addressed to you, correct? That was the one served on your office?

THE WITNESS: No, this is addressed to the hospital. Has my name on it but it's a hospital location.

It's not my office.

MR. GAMBINO: Okay.

Q. So when you say that it's the hospital location, we're referring to Plaintiff's Exhibit 5 in evidence?

A. Let me see the number. Yes, that's correct.

Q. So why don't we put that to that one side so we don't get that mixed in with your records.

A. This is the other subpoenaed records you gave me earlier.

Q. From Maimonides?

A. This is from the hospital in Long Island.

MR. READY: This is plaintiff's exhibit-- I guess it was marked on the cover. We'll have to figure this out but this is the Franklin hospital record.

Q. Dr. Guy, I'm just about done. All I'm going to ask you to do at this point is, can you pull out your records that are separate and apart from the records that were sent under the hospital subpoena.

MR. READY: Your Honor, I'm going to ask that we mark this for identification. I'll offer it in evidence and I have no further questions.

THE COURT: Any objection to those records going in?

MR. GAMBINO: No, Your Honor.

COURT OFFICER: Number 6, Plaintiff's 6.

THE COURT: Right.

(Whereupon, Plaintiff's Exhibit 6 was marked in evidence.)

THE COURT: Ladies and gentlemen, since we're going to break now anyway, we'll break for lunch and try to get all these records straightened out as to exactly what comes in and the exhibits. I'll ask you to come back at 2:15 and then continue with the cross-examination at that time. So have a pleasant lunch and I'll see you at 2:15.

(Jury exiting the courtroom.)

MR. READY: Your Honor, would the doctor -- I think we can do this off the record.

(Whereupon, a bench conference was held off the record.)

THE COURT: Dr. Guy, you'll come back tomorrow morning, 10:00 o'clock. Make sure you come back.

THE WITNESS: Yes, Your Honor.

MR. GAMBINO: Your Honor, we have the representation that tomorrow he's going to take, how long, for the first part?

MR. READY: Shouldn't be more than an hour. I'm kidding.

THE COURT: He'll ask him a few questions with regards to the MRI's.

MR. GAMBINO: I'm asking just time wise.

(Whereupon, a luncheon recess was taken.)

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

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