UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRIANDER S. CHOHAN,

Plaintiff,

Index No.
04CIV2364

-against-

BUDGET RENT-A-CAR CORP., et al,

Defendants.

DEPOSITION of Plaintiff's Treating Physiatrist, DR. ALI GUY, taken by the Defendant, pursuant to Order, held at the offices of DR. ALI GUY, 15 Jericho Turnpike, Jericho, New York, on June 24, 2005, at 9:15 a.m. before a Notary Public of the State of New York.

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

BLOCK & O'TOOLE, ESQS.
Attorneys for Plaintiff
HARRIANDER S. CHOHAN
One Penn Plaza
New York, New York

BY: BRAD ROSKEN, ESQ.
of Counsel

MORRIS, DUFFY, ALONSO & FALEY, ESQS.
Attorneys for Defendant
BUDGET RENT-A-CAR
Two Rector Street
New York, New York 10006

BY: MATTHEW J. VITUCCI, ESQ.
of Counsel

ALAN J. STERN, P.C.
Personal Attorney for Dr. Guy
300 Garden City Plaza
Garden City, New York 11530

BY: ALAN J. STERN, ESQ.
of Counsel

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that all rights proved by the C.P.L.R., including the right to object to any question except as to the form, or to move to strike any testimony at this examination, are reserved; in addition, the failure to object to any question or to move to strike testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved for, the trial of this action.

IT IS FURTHER STIPULATED AND AGREED that the within examination may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or return the original of this examination to counsel shall not be deemed a waiver of the rights provided by Rules 3116 and 3117 of the C.P.L.R., and shall be controlled thereby.

IT IS FURTHER STIPULATED AND AGREED that the filing and sealing of the original of this examination are waived.

A L I G U Y,

Having been first duly sworn before a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. VITUCCI:

Q. Please state your name for the record.

A. Dr. Ali Guy.

Q. What is your address?

A. My office address is 15 Jericho Turnpike, Jericho, New York, 11753.

Q. Good morning, doctor. My name is Matthew Vitucci. I am an attorney for defendants in a law suit brought by Harriander Chohan. I am here to ask you some questions today about your care and treatment of Mr. Chohan.

A. Okay.

Q. Please don't hesitate to stop me if I confuse you or if you would like a clarification of a question I ask you; okay?

A. Okay.

Q. The address we are in today, this is your address for the practice of medicine; is

that correct?

A. This is one of my two addresses for the practice of medicine.

Q. Where else do you have an address for the practice of medicine?

A. Gramercy Park, 7 Gramercy Park West, New York, New York, 10003, that's where I saw the patient and I have a satellite office in Yonkers where I go there once a month at 995 Yonkers Avenue, Yonkers, New York.

Q. What was that address?

A. 995 Yonkers Avenue, Yonkers, New York.

Q. Do you have any other physicians who are associated with you at these offices?

A. Currently, no.

Q. How about at any time during the treatment of Mr. Chohan?

MR. STERN: What dates were those?

Q. Beginning at or about 6-29-02 to the present time?

A. No.

Q. In addition to you on the staff, who else is on the staff aside from clerical

personnel? Do you have therapists?

A. Yes, I have therapists, I have massage therapists.

Q. What else?

A. I have clerical people.

Q. Do you have any diagnostic equipment at these offices?

A. No, other than EMG, no.

Q. Doctor, can you give us a little bit of a background of your educational background and what have you?

A. Okay. Would it save time if I gave you a copy of my curriculum vitae?

Q. Yes.

A. Okay, I will get you a curriculum vitae.

Q. You don't need it, I have it. Just for general purposes, doctor, where did you go for undergraduate school?

A. Queens College.

Q. What was your course of study there?

A. I had three majors, English, accounting, business and pre-med.

Q. Did you obtain degrees in all three?

A. No.

Q. What was your degree from college?

A. Did not obtain a degree, I went to medical school with the prerequisite requirements.

Q. What was your grade point average at Queens College?

A. It was, I don't know exactly, it was about 2.2.

Q. What pre-med courses did you take?

A. The basic stuff that was required.

Q. Organic chemistry?

A. Organic chemistry once.

Q. What else?

A. Chemistry, biology, math, physics.

Q. What was your grade in organic chemistry?

A. The first time I took it I did not take a final exam, I got an incomplete which appeared on the diploma as a F, took it again the following semester, I passed it with a D, and that brought my GPA down from about a 3.0 to a 2.2.

Q. How about chemistry?

A. One was a B, one was a C.

Q. How about biology?

A. Biology, I don't remember.

Q. How about math and physics?

A. Calculus was about a C plus, that was the math.

Q. Where did you go to medical school, doctor?

A. I graduated from the University of Northeast in the Dominican Republic in June of '81.

Q. Is there any reason why you went to school in the Dominican Republic rather than the United States?

A. Yes.

Q. What was that?

A. I didn't have the GPA to get into medical school in this country. I came from a poor family. I didn't have the luxury of studying home eight to ten hours a day. I worked two part time jobs and one weekend job and I was helping my parents, I was helping myself and I applied to only one medical school, I was accepted and I went.

Q. After you got out of medical school did there come a time that you set up a medical practice?

A. After medical school I did three residencies. After I did three residencies I started a medical practice, yes.

Q. Where were your residencies, doctor?

A. Mt. Sinai School of Medicine, Mt. Sinai Medical Center, 18 months in the field of internal medicine, one year of general surgery at Cabrini Medical Center, three years of physical medicine and rehab at Mt. Sinai School of Medicine, Mt. Sinai Medical Center.

Q. That, doctor, is your field of specialty, physical medicine?

A. Physical medicine is my field of specialty, known as physiatry.

Q. Do you have a degree or certification in physiatry?

A. I am board certified in physiatry, physical medicine and rehabilitation.

Q. When were you board certified?

A. May of '89.

Q. Are you a fellow?

A. Diplomate of the American Board of Physical Medicine and Rehabilitation.

Q. Is there a fellowship involved with that?

A. Fellowship is you just pay your annual membership. If you pay your annual membership, you can become a fellow.

Q. Are you a fellow?

A. I was a fellow. The last couple of years I did not renew my membership but if I renew my membership I could become a fellow again.

Q. When did you set up an office for the practice of physiatry?

A. I believe it was about 1989.

Q. Where was that office located?

A. 247 Third Avenue, Manhattan, New York.

Q. Were you alone or were you with another physician?

A. I was with a neurosurgeon and a neurologist.

Q. Who was the neurosurgeon?

A. It will come to me in a second.

Guy

Q. Was the neurosurgeon Doctor Richard Radna?

A. No.

MR. STERN: We will leave the answer blank and you can fill it in upon execution if you recall it.

Q. How long did you practice physiatry beginning from '89 at 247 Third Avenue?

A. Approximately one year.

Q. Did you move from there?

A. I moved to 7 Gramercy Park, from there as of 1990, and I have stayed there ever since. I just remembered the name of the neurosurgeon if you want it.

Q. Go ahead.

A. Robert Holtzman. H-O-L-T-Z-M-A-N.

Q. Doctor, can you explain for us, if you could, what is involved in the practice of physiatry, what do you do in terms of care and treatment of patients, what does a physiatrist do?

A. I take a history, I examine the patient, I render diagnosis, I render rehabilitation therapy program which I

Gu

supervise, not personally directly but indirectly. If a patient needs EMGs, I perform EMGs. If the patient needs pain management, I provide pain management. If the patient needs trigger point injections, paraspinal injections, I do so. I do life care plans, I do disability and impairment evaluations, gait analysis. That's essentially it, just to give you a ballpark.

Q. Let's move onto Mr. Chohan. There came a time that you saw an individual, Harriander Chohan; is that correct?

A. Yes.

Q. Where did you see him?

A. Gramercy Park location.

Q. Did you ever see him here?

A. No.

Q. If I would point out that he has testified that he has visited you here, would that be correct?

A. Let me just make sure before I say yes or no. Let me check my records.

MR. STERN: When you say "here", you are referring to the

Guy

Jericho office?

MR. VITUCCI: That is correct, counselor.

A. (Continuing) Based on my records I have down him as Gramercy Park. He may have seen me for the first time in this office, I'm sorry, he may have seen me here for the first time and continued care there.

Q. How did you come to see Mr. Chohan? How did he come to you, in other words? Was he referred by a physician --

A. Yes.

Q. -- an attorney?

A. Dr. Radna.

Q. Over the course of your years of practice have you been referred patients by Dr. Radna?

A. Many. I refer to him, he refers to me.

Q. Do you have a business relationship with him in any way?

A. Yes, sir. We know each other from Mt. Sinai, from our training days.

Q. He trained at the same time as you?

Guy

A. No, I think he was ahead of me, but we know each other from Mt. Sinai.

Q. Doctor, are you familiar with the law firm of Block and O'Toole?

A. Yes.

Q. How many of their patients have you treated over the years of your practice?

A. In the past or recently?

Q. In the entirety.

A. I can't give you a exact number because I have no way of knowing.

Q. Have you ever testified in cases involving the law firm of Block and O'Toole?

A. Yes, I have.

Q. How many?

A. Perhaps between a dozen to a dozen and a half times, it could be slightly more, it could be slightly less.

Q. Do they refer you patients?

A. In the past they have, recently they have not.

Q. Is there any reason for that?

MR. STERN: Objection. How would he know as to another person's

state of mind?

MR. VITUCCI: He might know. If he knew, he could tell me.

MR. ROSKEN: I object as well.

Q. How many patients are you treating of theirs?

MR. ROSKEN: Currently?

MR. VITUCCI: Currently.

A. Less than a half a dozen, could be even less or it could be slightly more.

Q. Have you ever been referred patients by Doctor Shaheed Mian?

A. Yes.

Q. How many patients have you been referred by Dr. Mian?

A. In the past or recently?

Q. In its entirety, the entirety of your career.

A. I can't give you an exact amount. I can tell you in the last several years none, in the beginning we used to work together at Cabrini, I used to do a lot of the consults at Cabrini for him, patients he would operate on I would go see them, do consults, he would

send me patients for therapy and EMGs and I would send him patients as well. I can't give you an exact number. I have no way of knowing.

Q. Doctor, do you have a percentage that you can articulate of patients that are involved in litigation?

A. No, I cannot give you a percentage.

Q. Do you testify in court, doctor?

A. I do.

Q. How often do you testify in court?

A. On the average approximately 12 to 15 times per year, that is between all my three offices, and some years more, some years less.

Q. What is your fee for testimony?

A. My fee is 3,000 for half a day of testimony, 1,000 for pretrial preparation, altogether 4,000 for half a day.

Q. How about a full day?

A. 7, if it is the same day.

Q. When you see a patient involved in litigation, is it your custom and practice to issue a narrative report?

A. If I am required or I am asked by someone to do so, yes.

Q. What do you charge for a narrative report?

A. Depends on how extensive it is, generally if I treat the patient on a regular basis and there aren't a lot of records I don't charge for the report. If I see the patient and I don't treat the patient on an extensive basis and there is a lot of records to review, I charge about $400 per report, some reports more, depending on how many records. If the patient has two telephone books, then obviously more.

Q. How many reports do you issue a year?

A. Now?

Q. Yes.

A. Now it's much less than before. I can't give you an exact number but, I can't even begin to give you a number. It is much less than before.

Q. 100, 200, 300?

A. I would say if I take a good guess --

MR. STERN: We don't want you

guessing.

A. -- there is no way for me to know.

Q. Would it be more than 100?

A. No.

Q. Would it than less than 100?

A. Again, I would say again I am guessing.

MR. ROSKEN: Don't guess, doctor.

THE WITNESS: Then I can't tell you.

Q. Doctor, why, if you know, was Mr. Chohan referred to you by Dr. Radna?

A. For the purposes of rehabilitation.

Q. What specific purpose was that?

A. Physical therapy.

Q. What did he need therapy on?

A. He needed therapy on his neck, his back, his left knee.

Q. Do you know the date Mr. Chohan was involved in an accident?

A. Yes.

Q. What date was that?

A. December 2nd, 1999.

Guy

Q. When did you first see this patient?

A. June 29, 2002.

Q. So, approximately two and a half years after the accident?

A. That's correct.

Q. Prior to your seeing him did you or were you aware of whether he was on any kind of therapy program?

A. I will tell you in a second. Yes. He was receiving physical therapy from a Doctor Mikhail Trimba on Kissena Boulevard in Flushing.

Q. By the way, doctor, you are referring to various notes in front of you, notes and reports?

A. Yes.

Q. Is that the sum total of your medical records concerning this patient, Mr. Chohan?

A. That's correct.

Q. Do you have any films here in your office referable to Mr. Chohan?

A. I do not.

Q. Have you ever reviewed any films for Mr. Chohan?

A. One second. No, just reports.
Q. Doctor, is that contained within a chart, those records that are in front of you?
A. That's correct.
MR. VITUCCI: I would like to have that marked as an exhibit please. We will mark the outside of the chart as Defendant's A.
(Whereupon, Defendant's Exhibit A marked for identification.)
MR. VITUCCI: At my cost I would ask that your office duplicate that chart in its entirety, including the outside with the exhibit mark. I will reimburse you.
THE WITNESS: No problem.
Q. Before you testified today did you consult with anyone from the Block and O'Toole law firm about your testimony?
A. No, sir.
Q. Did you consult with your attorney to my left, Mr. Stern?
A. I did, not about the case, there was

nothing about the case.

Q. Just the arrangements for being here?

A. Formalities, yes.

Q. When you were referred Mr. Chohan for rehabilitation, was there an indication from Dr. Radna about why Mr. Chohan needed to see you?

A. No.

Q. Was there any indication that he was having difficulty or pain in any parts of his body?

A. The patient?

Q. Yes.

A. Yes. It is indicated in the history portion of my report.

Q. How did you receive the referral from Dr. Radna, telephone call, a writing?

A. He gives the patient my name and phone number, the patient calls, makes an appointment and comes to my office.

Q. Did you ever communicate with Dr. Radna other than through any report you might have generated to him?

MR. STERN: With regard to this

patient?

MR. VITUCCI: Yes.

A. I have no independent recollection. It's possible.

Q. Do you do that on occasion?

A. I do, yes.

Q. Do you know if Dr. Mian has any rehabilitative facilities at his office?

A. Now he does, yes.

Q. Has he at any time during the care and treatment of Mr. Chohan?

A. I have no idea.

Q. Do you have any indication that Mr. Chohan received treatment from Dr. Mian in terms of rehabilitation prior to coming to you?

A. I have to check. I have records from Dr. Mian indicating physical therapy. I don't have any records indicating that he got physical therapy at his facility.

Q. Let's go through your records, doctor. We will start at the beginning. You first saw this gentleman on June 29, '02; is that correct?

A. That's correct.

Q. At that time when you saw him did you take a history?

A. I did.

Q. When you saw him and prior to taking a history were you provided with any records? In other words, what came first, a review of records or a history from the patient?

A. I don't remember offhand.

Q. Do you know how the records came to you?

MR. STERN: Which records?

MR. VITUCCI: The records that are in his hand.

MR. STERN: Are you suggesting records other than the ones he generated?

MR. VITUCCI: Thank you.

Q. Doctor, are there records in front of you other than ones you generated?

A. Yes, there are, the past medical records.

Q. Whose medical records are they, do you know?

A. The patient's.

Q. Do you know where those records came from?

A. I am not sure. Either they came from the patient, Dr. Radna or Mr. Block's office or a combination of both. I am not sure.

Q. Is there a cover letter enclosing the records contained within your file?

A. No.

Q. When you saw Mr. Chohan, you took a history from him; is that correct?

A. That's correct.

Q. Can you tell us in general terms what is the importance of a medical history?

A. Well, 70 percent of the working diagnosis comes from the history and 10 percent comes from the physical exam and the remaining 20 percent is confirmed by way of other past medical records, other diagnostic studies and/or surgical procedures.

Q. What was the history you received from this patient?

A. That he was well until December 2nd, 1999 when while driving his car he became

involved in a motor vehicle accident being hit with the front with a severe impact sustaining injuries to his neck, his back, left leg, left knee. Initially he went to Metropolitan Medical Facility and saw Dr. Mian. X-rays were taken, revealed no fractures. He had arthroscopic surgery of his left knee. Then he was seen by Dr. Radna. He had back surgery.

At the present time he complained to me of the lower back pain being somewhat better after the back surgery but not yet 100 percent. He complained he still has left knee pain although it is better since the surgery. He complained of neck pain radiating down both upper extremities. He complained of lower back pain radiating down the left lower extremity and he complained of left knee pain.

Q. You mentioned there was a severe impact to the vehicle in which Mr. Chohan was driving; is that correct?

A. That is the history I obtained, yes.

Q. Have you ever seen photographs of the

vehicle damage of the car Mr. Chohan was a passenger in?

A. I have not.

MR. VITUCCI: Can we mark these documents as Defendant's B, C and D.

(Whereupon, Defendant's Exhibit B, C and D marked for identification.)

Q. Doctor, I am going to show you photographs that have been marked on sheets labeled Defendant's B, C and D.

MR. STERN: Let the record reflect that counsel is handing the doctor photographs of a vehicle.

MR. VITUCCI: That is correct.

A. (Witness perusing photographs).

Q. Have you looked at the photographs, doctor?

A. I have.

Q. Does that evidence to you a severe impact?

MR. STERN: Objection.

MR. ROSKEN: Objection. The doctor is a medical doctor. He is not

Guy

a --

MR. STERN: We can voir dire the doctor. Doctor, do you have any training in accident reconstruction?

THE WITNESS: No.

MR. STERN: Do you have any training in automobile repair?

THE WITNESS: No.

MR. STERN: Have you had an opportunity to see this car in person?

THE WITNESS: I have not.

MR. STERN: Thank you.

Q. My question stands. Does that show a severe impact?

MR. ROSKEN: Objection. I would instruct him not to answer. He is not qualified to answer that.

MR. VITUCCI: You can't instruct him not to answer.

Q. Doctor, does that show severe impact to you?

MR. ROSKEN: The doctor is not qualified to give that answer.

Guy

MR. STERN: I object to that. I will advise him that he does not have to answer your question.

Q. With that taken, can you answer my question?

A. Based on what I see, it can be severe impact, it is a pretty strong car, it can be severe impact.

Q. Doctor, do you know that after the accident Mr. Chohan filled out a police report in his own handwriting where he indicated that he was not injured?

MR. ROSKEN: Objection.

Q. Was that brought to your attention, doctor?

A. It has not.

Q. Would you expect someone a day after an accident who is injured to write down that they were not injured?

MR. STERN: Objection. Just for clarification, the doctor is here as a fact witness. You have just asked him an opinion. I didn't object. I objected to the opinion

with regard to the car because he is totally unqualified in that regard. You haven't even produced property damage appraisal reports. As far as him giving you another opinion in that regard, he is here as a fact witness. He isn't your expert witness and I advise him not to answer.

MR. VITUCCI: He is not going to answer the question; is that right?

MR. ROSKEN: He is not qualified to answer that question.

MR. VITUCCI: Why not? I just asked if it was brought to his attention.

MR. ROSKEN: You are asking him what he knows about what Mr. Chohan was thinking after the accident. Nobody is qualified to answer that question.

MR. VITUCCI: No. I simply asked him was that brought to his attention.

MR. ROSKEN: It has no bearing

on anything that he is here for, as a fact witness as to what treatment and what injuries.

MR. VITUCCI: I will try to make it relevant for you.

Q. Doctor, let me ask you this. If someone has an accident with an injury, would you expect someone to have complaints of an injury within a day of the accident?

MR. ROSKEN: I am going to object. That is a hypothetical question. This is a fact witness here to say what treatment he rendered to a patient and what diagnoses and what prognoses he came to.

MR. VITUCCI: Since he is not your expert you have no basis to object or direct the witness in any shape or fashion. So, you can note your objections to the record and move on.

MR. ROSKEN: I understand that but you are asking the questions that is beyond the pale of why we are here

in the first place.

MR. VITUCCI: Aren't we here to talk about Mr. Chohan's injury?

MR. ROSKEN: So, ask your question about Mr. Chohan. It is my understanding that you asked "do people". Mr. Chohan is not people, Mr. Chohan --

MR. VITUCCI: He is not a person?

MR. ROSKEN: He is a person, but he is not people. He is an individual, a specific individual. You asked a broad-based general question, not a specific individual question.

MR. STERN: Let's clarify and then you can get a ruling if you want. The doctor isn't here to answer hypothetical questions. Those are within the purview of an expert. He is here to answer what he knows from personal knowledge of this particular patient. I agree with counsel for the

Guy

plaintiff on that.

MR. VITUCCI: Are we going to have a stipulation that this doctor is not going to offer expert testimony at trial, counselor?

MR. ROSKEN: Excuse me. Say that again? I didn't hear you.

MR. VITUCCI: Are you going to stipulate for the record that he is not going to offer expert testimony at trial?

MR. ROSKEN: No, but he is here to give you testimony with respect to his treatment of Mr. Chohan. You have asked a question about people in general.

MR. STERN: Has the doctor been designated as an expert and have expert responses been exchanged?

MR. VITUCCI: He was designated and an expert and expert response was exchanged.

MR. ROSKEN: Yes.

MR. STERN: But he is not here

today as an expert. Here you have called him in his individual capacity as a treating physician. If you were to call him in as an expert, you would have to pay him as an expert. I think that is a ruling that the judge would feel secure with, having experienced quite a bit of this in federal report, but you guys are familiar with your case and do what you want.

MR. VITUCCI: I will move on.

Q. Doctor, when you saw Mr. Chohan you elicited this history and then you mentioned you reviewed some records. Can you tell us what records you reviewed?

A. Yes. I reviewed EMG studies of the upper and lower extremities performed on March 6, 2000, a report of a Dr. Beg, B-E-G, report of Dr. Triba, T-R-I-B-A, MRI reports of the cervical spine, lumbar spine, left knee, CT scan of the lumbar spine, numerous x-ray reports of the cervical and lumbar spine, pelvis, left knee, surgical records of the Cabrini Medical Center dated March 23,

2000, surgical records of Saint Joseph's Medical Center dated August 3, 2001, numerous records from Doctor Richard Radna and Dr. Mian, other records from Dr. Haider, H-A-I-D-E-R, Dr. Markan, M-A-R-K-A-N, and Thanikasalem, T-H-A-N-I-K-A-S-A-L-E-M. I reviewed, that's basically it, essentially it.

Q. You mentioned you reviewed only reports of the diagnostic tests. Did you ever ask to see the films themselves?

A. I did not.

Q. Is that normally part of your practice?

A. It varies. Sometimes I ask to see the actual films. In this case I didn't because I felt there were a lot of qualified doctors involved with the case and I pretty much trusted the reports and the findings especially since the patient had surgeries on the knee and on the spine.

Q. Who were the qualified doctors you trusted?

A. Dr. Radna, Dr. Mian.

Q. Are you aware of any reports from any other doctors indicating that the pathology they saw on the films was not seen?

A. Was not seen?

Q. Yes.

A. I go with the operative reports because that is much more accurate than the actual films, so.

Q. By the way, are you qualified to read films, doctor?

A. I am.

Q. Have you read films in court?

A. Absolutely.

Q. You mentioned, if we can go back, there were certain complaints made by Mr. Chohan when he saw you; is that correct?

A. That's correct.

Q. The complaints, if we could break them down, did he make complaints about his left knee?

A. Yes.

Q. What was his complaint with regard to his left knee?

A. He had pain to his left knee, that

after the surgery it was somewhat better but not 100 percent.

Q. Did you review the records of Dr. Mian?

A. Some of the records.

Q. Let me ask you this. You took a history from the patient and then you wrote this report that is in front of us; is that correct?

A. Yes.

Q. The report is dated when?

A. June 29, 2002.

Q. When you wrote the report had you had the benefit of reviewing all of the records?

A. When I wrote this report, yes.

Q. When you wrote the report you had reviewed the records of Dr. Mian; is that correct?

A. The records that is in front of me, there may be other records that may not be in my possession. I don't know if I have every single report from Dr. Mian.

Q. Were you aware of the reports of Dr. Mian specifically dated April of 2000

indicating that Mr. Chohan had no left knee pain?

A. April of 2000, okay, let me see. According to his report of 6-29-2000 it indicates there is left knee pain, in his report of February 29, 2000 it indicates there is left knee pain. I don't have all of his records.

Here we go. I have his 2-29-2000 report. He complains of left knee pain, his report of 3-28-2000 states that he is status post arthroscopic surgery to the left knee, his report of April 13, 2000 no pain to left knee, obviously he had surgery and the pain was improved, he had no pain to the left knee on that particular date.

Q. Are you looking at an office note of 4-13-2000?

A. That's correct.

Q. In there it says "on physical therapy three times a week", do you see that, doctor?

A. That's correct.

Q. Would that refresh your recollection that Mr. Chohan had been receiving therapy

Guy

prior to his seeing you?

A. That's correct.

MR. ROSKEN: I object. He already indicated that he was receiving therapy, he doesn't need to refresh his recollection. The only thing he didn't recall if the therapy was received at specifically Dr. Mian's location or somewhere else.

MR. VITUCCI: Okay. Let's take a break.

(Whereupon, a brief recess was taken at this time.)

MR. VITUCCI: Let's have the reporter read that back.

(Whereupon, the reporter read back as requested.)

Q. Doctor, you mentioned the various complaints Mr. Chohan had, he had pain in his knee, he had pain in his neck and he had pain in his back; is that correct?

A. Neck pain, back pain, left knee pain and left leg pain, that's correct.

Q. Was there any indication given to you

by the patient as to the severity of the pain?

A. No. The severity was not mentioned.

Q. You mentioned the neck pain was radiating to both upper extremities; is that correct?

A. That's correct.

Q. Can you describe for us the mechanism of that complaint or how that manifested itself?

A. Well, it is a radicular pattern, when you have a disc herniation and/or a radiculopathy, it can travel to one side, one extremity or both extremities.

Q. Can you tell us what was causing that radiation, what specifically caused that radiating pain?

A. The C6-C7 disc herniation with nerve root compromise and the cervical radiculopathy that was picked up on a EMG study that was previously performed.

Q. In connection with your review of those records and taking that history did you examine Mr. Chohan's neck?

A. I did.
Q. What did you find?
A. There was tenderness diffusely, there was diffuse moderate spasm, there were multiple trigger points present, range of motion for lateral flexion was approximately one half of normal, all other range of motion was essentially normal.
Q. What does lateral flexion refer to, doctor?
A. I will demonstrate it for you (indicating).
Q. Moving the head to the left and to the right?
A. And to the right.
Q. Essentially with the ear touching down to the shoulder?
A. That's correct.
Q. All other planes of motion were normal?
A. That's correct.
Q. You mentioned trigger points were found. Where were the trigger points found?
A. Diffusely in the upper neck, middle

neck, lower back, upper back, and, with reference to neck, those were the areas.

Q. What is a trigger point?

A. Trigger point is defined as an area of muscle fibrosis, muscle scarring. What happens is when you have an injury to an area, you get a microscopic bleed inside the muscle fibers. It then heals with scarring. That scarring becomes permanent, the muscle fibers become damaged and fibrosed and there is muscle ischemia, the blood supply to the area becomes decreased and you have these taut bands of fibrous muscle material which are called trigger point and they commonly come from trauma.

Q. Is that a permanent condition?

A. This is a permanent condition, yes, sir.

Q. You mentioned diffuse tenderness. What does that refer to, doctor?

A. Diffuse means the whole entire area.

Q. You mentioned you also recorded complaints of back pain?

A. That's correct.

Q. Did you examine Mr. Chohan's back?

A. Yes, I did.

Q. By the way, was this lower back, mid back?

A. Lower back, I examined the whole back but his complaint was lower back.

Q. What did you find with regard to his lower back?

A. There was diffuse tenderness, diffuse moderate spasm, again multiple trigger points present. There was a 5-centimeter well-healed surgical scar present. Range of motion was one half normal range of motion in all planes of range of motion.

Q. What was the operation that Mr. Chohan received on his back?

A. He had a decompressive laminotomy and fasciectomy at L4-L5.

Q. Can you describe those procedures for us in general terms?

A. Yes. I am not a neurosurgeon. Dr. Radna would probably be able to explain a lot better than I.

Q. I probably won't understand it though

but go ahead.

A. You really require some models to explain it to you because just explain it to you from here you will never understand, you need pictures and models.

MR. STERN: Just give a general description.

Q. Just give us a general description.

A. Basically you have a disc herniation at L4-5 which is sticking out and you basically want to remove that portion of the disc material which is sticking out to relieve the compression on the nerve root and to relieve the obstruction in the neural foramin, thereby improving the radiculopathy. There is no cure for this condition so you don't expect a cure. Once you have a disc herniation, the disc, once it tears, it does not have the ability to repair itself, it cannot glue itself back together even with surgery, you cannot suture the torn disc together, you cannot glue it back together, all you do is remove the part of the fragment that is sticking out. The disc still remains

torn and the chemicals inside continuously leak out and continuously irritate the surrounding structures which is the nerve root, the muscles, the tendons and the ligaments.

Q. Was this the operation Dr. Radna performed, he removed part of the disc?

A. He did, he made the lamina bigger, removed part of the facet to make the space bigger where the nerve roots exit.

Q. What is a facet?

A. Facet is part of the articulation. Let me get you a model and show it to you better.

MR. STERN: Just verbalize it.

Q. You don't have to. Just verbalize it.

A. Facet is the structure by which the vertebra move forward, backwards and to the sides.

Q. Was there any contemplation here of a fusion concerning Mr. Chohan's spine?

A. That is outside my scope. I defer that to the neurosurgeon.

Q. Doctor, have you ever performed this

operation yourself?

A. No, I have not. I have assisted on these operations before in the past.

Q. Was there any indication that the surgery was successful or unsuccessful?

MR. STERN: How do you define that?

THE WITNESS: I was just going to ask the same thing.

Q. How do you define a successful surgical result in an operation performed on Mr. Chohan like this?

MR. ROSKEN: If you feel you are qualified to answer that question.

MR. VITUCCI: I would think he would be.

MR. ROSKEN: He testified he never personally did the surgery, he only assisted in it.

A. From a physiatric point of view, not neurosurgical point of view, I am speaking from a physiatric point of view, there is no cure for this condition --

Q. I understand.

A. -- and if the surgery gave the patient some relief and the patient had some improvement, that is a success but is not a cure, and many times the surgery initially gives the patient relief but over time slowly the symptoms come back. That does not mean that the surgery was unsuccessful, it was not proper, it just means this is the nature of the beast.

Q. The surgery is done for what, to relieve pain; is that correct?

A. No, more than just pain. The surgery is performed to relieve the neurological complaints, to improve the neurological findings and give the patient some relief of compression and obstruction in the neural foraminal area.

Q. What were the neurological complaints here before the surgery?

A. Increased lower back pain with severe radiating pain down the legs.

Q. You have the notes in front of you and you have seen this patient?

A. Yes.

Q. After the surgery what were the complaints, were they the same, were they different?

A. What period after surgery, the first month, the second month, the third month, the sixth month or when I saw him?

Q. When you saw him.

A. He had significant improvement of the lower back pain but not 100 percent.

Q. Not 100 percent, what was the percentage, do you know?

A. That was not discussed.

Q. Did he still complain of radiation of pain?

A. Yes, he did.

Q. Did he complain of numbness in any of his extremities?

A. No, did not complain of numbness in the extremities.

Q. When you saw him, he also complained of knee pain; is that correct?

A. That's correct.

Q. Did you examine his knee?

A. I did not.

Q. Any reason why?

A. I have no reason why.

Q. After you took the history, you reviewed the records, you saw him, you examined him, did you come up with a treatment plan for him?

A. I did.

Q. What was your treatment plan?

A. Physical therapy.

Q. Where was the physical therapy to occur?

A. He got two physical therapy treatments in my New York City office, the first time he came to my Long Island office.

Q. So, three in total?

A. Two physical therapy sessions and two office visits.

Q. Did you prescribe any medicines?

A. I did not because I believe Dr. Radna was prescribing medications for him.

Q. Do you know what kind of medications he was prescribing?

A. Yes. I will tell you in a second. Clinoril, Zantac, Scolaxin. Clinoril is an

analgesic anti-inflammatory and Scolaxin is a muscle relaxant and Zantac is used to prevent irritation to the stomach.

Q. What was your prescription for physical therapy for Mr. Chohan?

A. Hot packs, electrical stimulation, gentle massage and exercises to the left knee but no back extension or extreme range of motion to the spine.

Q. I should have been more particular with my question. Doctor, did you have a plan formulated for him for a certain number of visits or certain period of time for physical therapy?

A. Physical therapy is generally done two to three times per week on a continuous basis with reevaluations on a monthly basis.

Q. Is Mr. Chohan still your patient?

A. He is still my patient.

Q. When was the last time you saw him?

A. It was 7-02. The note was just here in front of me. Let me see where I put it. You can ask the questions, I will find that note. It was 7-02.

Q. You just testified that he was to see you two to three times a week. Would I be correct in saying that he saw you three visits over one month?

A. The first time, yes.

Q. Is that the sum and total of your treatment of this patient, three visits?

A. No. The sum and total of my treatment is four visits, two for office visits, two for therapy.

Q. So, he had two therapy visits?

A. That's correct.

Q. Is there any reason why he didn't follow through on your prescription?

A. I have no idea. The last time I saw him on 7-31-02 he was having irregular heart beats. That is when I told him to stop the therapy until you see your medical doctor and then come back to see me. That is the last I saw him.

Q. Have you ever spoken to him again?

A. I have not.

Q. Doctor, you have also issued some opinions about future medical care for this

gentleman; is that correct?

A. That's correct.

Q. Can you go over that with us, doctor?

A. Sure.

MR. STERN: Can you be more specific?

MR. VITUCCI: Okay.

Q. I am going to refer to the doctor's report of June 29, 2002 which is part of Exhibit A; is that correct, doctor?

A. June 29, yes, more specifically page 5.

Q. It begins at the bottom of page 4, right? In terms of you have written here "plan". Is that correct?

A. Yes, that's correct.

Q. Then it follows to page 5 "opinion"; is that correct?

A. That's correct.

Q. The second paragraph you have written, actually the first and second paragraphs, that Mr. Chohan is disabled; is that correct?

A. That's correct.

Q. What was your basis of that opinion?

A. Based on the history, my clinical examination and findings, range of motion deficits, motor deficits, review of other records and my personal experience with these types of injuries.

Q. When you say he was disabled, are you talking about a work disability?

A. I am talking about disability in terms of disability and impairment evaluation as recognized in the medical field.

Q. But I would point out that you mentioned here that he is disabled and unable to engage in any type of gainful work; is that right?

A. At the present time.

Q. As of June of 2002?

A. That's correct.

Q. Did you know that he was working at that time, sir?

A. I did not know.

Q. Did you know he was working full time at that time, doctor?

A. I did not know.

Q. Did you know he was making more money

at that time than he was prior to the accident?

A. How would I know? I have no way of knowing.

Q. Did he tell you that?

A. Did not.

Q. Did he tell you he was working?

A. He did not.

Q. He didn't mention anything about he was working or did he say that he was not working?

A. My understanding was that he was not working.

Q. Doctor, you mentioned that Mr. Chohan would need a whole bunch of future care; is that correct?

A. That's correct.

Q. You said, if I could quote you, "Good reasonable medical necessity and good medical practice would call for his having 30 to 40 physical therapy sessions per year for life"?

A. On an average, some years less, some years more but that's the average, yes.

Q. That is your opinion?

A. That's correct.

Q. Again, he saw you a grand total of twice for therapy; is that right?

MR. ROSKEN: I object to the question but he can answer it, obviously.

A. He personally saw me twice for therapy but he saw other practitioners as well.

Q. Do you know if he has seen anyone for therapy since your last visit with him in July of 2002?

A. No. I have no understanding as to what his status or his medical care has been since I last saw him.

Q. Let me ask you this. If he hasn't had any physical therapy during that time, would it be your opinion that he would still need it in the future 30 to 40 times a year?

A. Yes, and there is a very good reason for it, and I can tell you why.

Q. You answered my question. Now you mentioned he will need to be seen by a physiatrist, somebody like you, for 12 times a year at $100 a session; is that right?

A. Yes, that's correct.

Q. How many times did he see you?

A. He saw me personally twice.

Q. Do you know if he has seen any other physiatrists?

A. I have no idea.

Q. It says here he needs an EMG study of the upper and lower extremities once every two to three years?

A. That's correct.

Q. Do you know if he has had any EMG studies in the three years since you have seen him?

A. I have no idea. This is based on what medical necessity is, not what he has done. There is a difference between what is medically indicated and what a patient does for whatever reason, financial, whatever reason. This is what the medical necessity is.

MR. STERN: But it hasn't been three years since you have seen him, has it?

THE WITNESS: Not quite.

Q. It will be three years next month?
A. That's correct.
Q. It is your opinion as well that he will need repeat MRIs; is that correct?
A. That's correct, yes.
Q. How many MRIs will he need over the course of his life?
A. A set every two to three years.
Q. So, if he is 40 years old or 41 years old now, how many MRIs would he have to undergo?
A. You do the math, average life span for a male right now is about 77, so you do the math.
Q. So, he will need 20, 30 MRIs?
A. Whatever the math is.
Q. It says he is going to need to be seen by a spinal surgeon three to four times a year?
A. That's correct.
Q. That is for the rest of his life?
A. Everything I am saying is for the rest of the life, yes.
Q. Doctor, do your patients with

conditions such as Mr. Chohan undergo this kind of treatment?

A. Many of them have, some more aggressive. I have had patients that have had three spinal surgeries. They had the first one, didn't work. It worked well for a year or two. They went for a second one, a fusion. You don't want to go to fusion right away because you lose a lot of range of motion. It causes stiffness and pain so a fusion done is a second surgery. If that doesn't work, then you do a more aggressive stabilization procedure with interbody caging and coil and titanium rods. So, depends on the level of stabilization you need to do and the level of the patient's condition.

I have patients such as this that have been getting physical therapy three times a week nonstop for six, seven years. I have one patient has had three neck surgeries, four back surgeries.

Q. Did you in the course of your treatment of Mr. Chohan have an opinion that he needed future surgery?

A. Yes, and I put that in my report. I indicated should his back pain not respond to the first lumbar laminectomy, a repeat surgery is indicated with an additional stabilization procedure such as posterior interbody fusion.

Q. Doctor, as of the time that you were treating him is it your opinion that the surgery worked?

A. It is too soon to tell. Usually you want to come back and revisit the patient usually three to five years after the surgery and see what the patient's condition is.

After surgery once you remove the decompression, naturally you expect to have a significant improvement and then slowly, slowly things happen. Osteophytes begin to form around the area of injury, you have neuro-foraminal crowding, you have compression by the osteophytes, you have progressive worsening of the nerve root from more of those toxins that are released from inside the disc and those will continuously irritate the nerve root so the condition

slowly becomes progressive.

Q. Did you have an opinion whether he would need future knee surgeries?

A. He might need future surgeries. It depends on his clinical picture. That's why you have to follow the patient. Typically, when a patient has arthroscopic surgery, again, meniscus is cartilage, there is no cure for a torn cartilage, all that arthroscopic surgery does is you shave the jagged edges of the cartilage meniscus and you hope you give the patient better freedom of range of motion and more stability to the knee. So, initially again the patient's symptoms improves. It is a matter of time where afterwards that shaving of the jagged edges, the jagged edges and the problem continues to slow to recur again. Then you do a second arthroscopic surgery. It again gives the patient some additional freedom of pain. It could last for one, two, three years and then the symptoms come back again, but then after the second arthroscopic surgery then you go for a total knee

replacement because after two arthroscopic surgeries typically you don't expect a cure, at best it is a palliative procedure, not a curative procedure.

Q. Do you know if the arthroscopic surgery worked for Mr. Chohan?

A. At the time I saw him in June 29, 2002 it worked as expected for that time.

Q. Do you know how much meniscal tissue was removed from his knee?

A. I would have to look at the operative report.

Q. Do you have any idea of the size of the meniscal tissue that was taken out?

A. I will tell you in a second. While I am looking for the report I want to stress the size and removal of the meniscal tissue has nothing to do with what the future will hold for a particular patient.

MR. STERN: Doctor, you don't have the pathology report, do you?

THE WITNESS: No, I don't.

Q. We will move on, doctor.

As of your visits with Mr. Chohan, do

you have an opinion whether he would need a total knee replacement?

MR. STERN: Note my objection to an opinion question. The doctor is free to answer.

A. As I explained to you earlier, once you do one arthroscopic surgery, typically it improves the condition to a point of time, that could be several months or several years, but the problem slowly, slowly recurs. Then you need a second arthroscopic surgery. That again helps the problem to a degree but this second time to a lesser degree. The problem again slowly, slowly recurs.

MR. ROSKEN: Doctor, could you look at your report to see if you discussed this?

THE WITNESS: I did not, I have not.

Q. Doctor, does everyone who has an arthroscopic surgery need a second surgery?

A. Every case is different. It depends on the presentation.

Q. Do you have any indication here that

Mr. Chohan needed a second surgery for his knee?

A. I have not made any indications in my report.

Q. Have you ever asked for follow-up records of Mr. Chohan?

A. I have not.

Q. Why?

A. I have not seen him since July, perhaps he is not interested in pursuing treatments with me, perhaps he is under the care of another orthopedist or physiatrist.

MR. STERN: Let's not speculate. Let's move on.

Q. You mentioned that this gentleman was not capable of gainful employment; is that right?

A. At that time, if you read my report --

Q. What was the basis of your opinion?

A. Based on the fact that he still had range of motion deficits in his neck and significant range of motion deficits to his lower back and left quadriceps muscle weakness.

Q. What would that keep him from doing, doctor?

A. Anything that would typically stress the injured areas especially the spine, prolonged sitting, prolonged standing, lifting heavy things, pulling or pushing heavy things, basically anything that would stress the injured areas.

Q. Doctor, did you issue an opinion with regard to total dollar values of all these components you are talking about?

A. I have not.

Q. Did you have any opinion, did you issue any opinion whether Mr. Chohan would be able to work in the future?

A. Well, I have not made any such opinions in my report other than that he has sustained a permanent partial disability which means hopefully he will be able to be employed in the near future in some capacity on a part time basis.

Q. At the time you saw him he was not; is that correct?

A. That's correct.

Q. Do you have any idea at all as we sit here today what the current condition of Mr. Chohan is?

A. I have not, I have a report from Dr. Radna dated June 8, 2005. Based on his report I have some idea, not a full picture idea.

Q. How did that report come to you?

A. It was sent to me by Dr. Radna. As he sees the patient he also gives me update as to the condition.

Q. Did he give any indication that he was going to send Mr. Chohan back to you?

A. Let me see, in his report of June 8, '05 he indicates the patient still has a total disability, the patient has a permanent, symptoms are permanent, he recommends physical therapy to the neck and the back region and the completion of additional x-rays and additional MRI of the cervical spine.

So, what I predicted is already being brought under. He recommend a formation of a plastic TLSO brace, which stands for

thoraco-lumbar-sacral orthosis, it is a rigid brace to hold the back in place, and he also indicates that the patient still has irritation due to vertebral movement, he wants to stabilize that to get some relief from the nerve root irritation.

Q. What does he recommend?

A. He is also recommending a physical therapy program based on swimming, which is what I have in my office, I have a pool, with the use of a snorkel and a full face mask.

Q. Here?

A. I do, I have a pool.

Q. This was part of your records, this report, June 8, 2005?

A. Yes, along with other reports, May 18, 2005.

Q. Can I see those?

A. Sure. There you go (handing same).

MR. STERN: Off the record.

(Whereupon, discussion held off the record.)

MR. VITUCCI: I call upon counsel to exchange these reports on

me. We are going to get the records from Dr. Radna but these are reports dated May 18, 2005 and June 8, 2005.

MR. STERN: What is the date of the top report?

MR. VITUCCI: July 29, '02.

Q. You were c.c.'d on those recent reports of 2005; is that correct?

A. I was c.c.'d on his record 7-29-2002, the other records, they were addressed to me and sent to me.

Q. Was there any indication given by Dr. Radna to you that this gentleman should come in for repeat physical therapy with you?

A. Yes.

Q. Has anything been scheduled to your knowledge?

A. To my knowledge, no.

MR. VITUCCI: Thank you. I have nothing further.

We have marked the doctor's file as an exhibit. I have requested a copy of that. The doctor said he is going to provide me with a copy.

Guy

However, under the new HIPAA statutes I will need a new HIPAA compliant authorization. Counsel, can you produce that for me?

MR. ROSKEN: I will take it under advisement. Please follow up all requests in writing. However, I am sure we will be able to provide you with that authorization.

(Time noted: 10:30 a.m.)

ALI GUY

Subscribed and Sworn to before me this day of 2005.

Notary Public

EXHIBITS

Defendant's FOR I.D.	DESCRIPTION	PAGE
A	Chart	20
B	Page of photographs	26
C	Page of photographs	26
D	Page of photographs	26

C E R T I F I C A T E

I, Ellori Eiseman, hereby certify that the Examination Before Trial of ALI GUY was held before me on the 24th day of June, 2005; that said witness was duly sworn before the commencement of the testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Examination Before Trial of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 1 day of July, 2005.

Ellori Eiseman

ELLORI EISEMAN