2012 WL 8436673 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
Bronx County

Rudy PADILLA, an infant by his mother and natural guardian,
Olga Padilla, and Olga Padilla Individually, Plaintiffs,
v.
THE CITY OF NEW YORK, Defendant.

No. 7073/2007.
March 20, 2012.

(Transcript of Dr. Ali Guy)

Case Type: Premises Liability >> Public Property
Case Type: Premises Liability >> Sports/Amusement Facilities
Jurisdiction: Bronx County, New York
Name of Expert: Dr. **Ali** **Guy**
Area of Expertise: Health Care-Physicians & Health Professionals >>Physiatrist/Rehabilitation Medicine

Representing: Plaintiff

Before: Hon. Norma Ruiz, Justice of the Supreme Court.

CIVIL TERM: PART IA-22

851 Grand Concourse

Bronx, New York 10451

(Same as previously noted.)

Valerie E. Monaco

Senior Court Reporter

THE COURT: With regard to my reserving decision on the issue regarding the films, the x-ray films of the plaintiff's Doctor.

MR. KELNER: The hospital.

THE COURT: The hospital. This is the Lincoln Hospital records which came in as certified records.

MR. KELNER: Yes, Your Honor.

THE COURT: All right. I'm going to allow those records to come in over objection.

Anything else?

MR. ACCARDO: Only once again, on the record, the city would ask that its motion to limit the testimony of Dr. Guy, plaintiff's medical expert, be accepted as a court exhibit. I understand Your Honor does not wish to permit that.

THE COURT: Yes, I'm not interested in taking any more papers. We have no place to warehouse those documents. You brought a record, that's sufficient.

MR. ACCARDO: Thank you, Your Honor.

THE COURT: And that application is denied as well.

This is the doctor who is an expert?

MR. KELNER: Yes, Your Honor.

THE COURT: All right. He agreed to testify with regard to anything in evidence and anything with regard to personal knowledge. As I understand the medical records are in evidence?

MR. KELNER: Yes, Your Honor.

MR. ACCARDO: Yes, Your Honor.

THE COURT: He is free to comment on those items which are in evidence. All right.

MR. KELNER: Thank you, Your Honor.

MR. ACCARDO: Thank you, Your Honor.

THE COURT: Anything else? Off the record?

(Whereupon, a discussion was held off the record.)

THE COURT: Let's get the jury, please.

(Whereupon, diagram of the leg was marked as Plaintiff's Exhibit 18 in evidence.)

COURT OFFICER: All rise, jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Welcome back. Have a seat. All right, everyone, you're ready to roll?

THE JUROR: Yes.

THE COURT: Very good.

All right. Mr. Kelner, do you have a witness to call?

MR. KELNER: Yes, Your Honor. The plaintiff calls Dr. Ali Guy.

(Whereupon, the witness takes the witness stand.)

COURT OFFICER: Raise your right hand, place your left hand on the bible.

DR. ALI GUY, a witness called on behalf of the Plaintiff after having been first duly sworn and having stated his address as 7 Gramercy Park, New York, New York 10003, took the witness stand and testified as follows:

COURT OFFICER: You could have a seat.

In a loud voice please state your name and business address.

THE WITNESS: Yes. May name is Ali Guy. A-L-I is my first name. G-U-Y is my last name. My office address is Seven Gramercy Park, New York New York 10003.

THE COURT: All right. Good morning, Dr. Guy.

THE WITNESS: Good morning, Your Honor.

THE COURT: I'm going to ask you to move your body in a way so that you're facing the back because when you turn it to the jurors, sometimes I have difficulty hearing.

THE WITNESS: Okay.

THE COURT: So would you turn your body a little bit.

THE WITNESS: This way?

THE COURT: Just so you're facing the back. Very the good.

I'm going to ask you, sir, to speak up nice and loudly, clearly and slowly. If you do not understand the question, please say so. If you cannot answer it as posed, likewise so say. Please wait for the attorney to conclude the question before responding and likewise, the attorney will wait until you finish your response before following up. All right, sir?

THE WITNESS: Yes, Your Honor.

THE COURT: Very good.

All right. Mr. Kelner, you may inquire.

MR. KELNER: Thank you, Your Honor.

DIRECT-EXAMINATION

BY MR. KELNER:

Q. Good morning, Dr. Guy.

A. Good morning, sir.

Q. Are you a physician licensed to practice medicine in the State of New York?

A. Yes, sir, I am.

Q. When did you receive your license?

A. 1985.

Q. And could you briefly tell us your educational background?

A. Yes.

THE COURT: All right. Just one second. I want you to give me the institution, the degree conferred and the year.

THE WITNESS: Yes.

THE COURT: All right, sir.

A. Undergraduate I went to Queens College, Flushing, New York. Medical school I graduated from the University --

THE COURT: All right. Queens College, you graduated when, and you got a BA, BS or what?

THE WITNESS: No, no, just the basic sciences.

Then --

THE COURT: Just let's start again.

I7 The institution, the degree conferred and the year the degree was. Queens College?

THE WITNESS: Undergraduate I went to Queens College. I did three-and-a-half years not four years.

THE COURT: I just need the degree conferred and the year.

THE WITNESS: No degree was obtained.

THE COURT: All right.

THE WITNESS: I continued medical school. A degree was obtained in medical school, University of Northeast Dominican Republic in June of 1981, that was an M.D. degree.

Q. Are you board certified?

A. I'm board certified in the field of physical medicine and rehabilitation, yes.

Q. What does it mean to be board certified?

A. Board certification is the highest degree which you can obtain in your level of specialty. In order to be board certified in my speciality, which is physical medicine and rehabilitation, you have to have the following prerequisites: You have to have training in the field other than physical medicine and rehabilitation. At least one year of internal medicine, one year of general surgery. That was met.

You then have to satisfactorily complete a three-year residency training program in the field of physical medicine and rehabilitation. You have to pass the monthly evaluations given by your preceptors. You have to then take the annual exams given by the Department of Physical Medicine and Rehabilitation.

Once you do all of that and you finish your three-year training program, you take your boards Park One, which is an eight hour written examination which covers everything you learned from the beginning to the end. Once you pass your boards Part One, you have to prepare for your boards Part Two. You have to be in private practice at least 18 months. You have to be sponsored by two other doctors that are already board certified, preferably your former teachers. You have to be in good medical standing.

You then fly to the Mayo Clinic in Minnesota where you take your boards Part Two which is half a day oral examination. You get tested on principals of orthopedics, general surgery, interpretations of x-rays, MRI's EMG's, muscle and nerve physiology, disability and impairment evaluations and other principals of physical medicine and rehabilitation.

Once you pass your boards Part One and Part Two, all your credentials are sent to the American Board of Physical Medicine and Rehabilitation. That includes your college grades, your medical school grades, credentials, your residency credential. If they find that everything is up to par, they pass you and you get a title of Diplomate of the American Board of Physical Medicine and Rehabilitation and that was obtained in May of 1989.

Q. And do you remain board certified?

A. Yes, sir.

Q. You mentioned that you performed a residency. Can you tell us what a residency is?

A. A residency is formal training in an area of speciality. I did 18 months of residency in the field of internal medicine at Cabrini Medical Center -- I'm sorry, Mount Sinai Medical Center. I did one year of general surgery at Cabrini Medical Center and then I did three years of physical medicine and rehabilitation at Mount Sinai Medical Center.

Q. Were you ever a chief resident in any of your training programs?

A. Yes, I was the chief resident during my training in the field of physical medicine and rehabilitation at Mount Sinai for a period of six months.

Q. How was somebody chosen to be the chief resident?

A. You have to be in good medical standing. You have to be a good resident. You have to be able to teach other residents and supervise them and discipline them as indicated.

Q. Have you ever been the director of a department in a hospital?

A. Yes.

Q. And can you tell us about that?

A. Yes, I was the director of a department of rehab medicine at Maimonides Medical Center in Brooklyn, New York from 1997 until 2002. That's approximately five years where my duties were to be in charge of the department, being in charge of all the inpatient and outpatient rehab services; provide teaching to the house staff, that will be the orthopedic residents, the general surgical residents, internal medical residents, physical therapists, speech therapists, occupational therapists, and 12 other doctors under my department. I would also have to provide consultations to other doctors in the hospital.

And also I was the director of the Department of Neuromuscular Equipment Clinic at NYU's Hospital for Joint Diseases from 1990 till December of 2005. That's 15 years where my duties were to see all the patients assigned to the clinic. These are patients that have birth defects, spinal cord injuries and other special rehabilitation needs. I would also teach the residents assigned to the clinic. And from January 1, 2006 to the present, I'm a clinical instructor of physical medicine at NYU School of Medicine, NYU Medical Center.

Q. What does it mean to be a clinical instructor at the NYU Medical Center?

A. What it means is you have to pass a credential's committee where all your records credentials are very carefully reviewed and investigated. You have to pass the rigorous credential's committee, be able to have knowledge and ability to teach, you have to be in good medical standing and continuously learn yourself so you can be able to teach other residents, other doctors.

Q. And what do you do as a clinical instructor at NYU?

THE COURT: Let's move it along. Let's get into the case. All right.

MR. KELNER: Thank you, Your Honor.

Q. You've been talking about your field being physical medicine and rehabilitation.

A. Yes.

Q. Can you tell us what that is?

A. Yes, it's a medical specialty that was founded shortly after World War II by Dr. Howard Rusk and that's why the Rusk Institute at NYU is named after him. This field deals with traumatic injuries covering the whole body from head to toe. Deals with fractures, deals with disc herniations, deals with the treatments given to a patient right after the cast is removed, deals with knee replacements, joint replacements, deals with disability and impairment evaluations.

Q. Have you received formal training in the fields of neurology and orthopedics?

A. Yes, I have.

Q. Can you tell us about that?

A. Yes, when I was doing my training in the field of internal medicine for a period of 18 months, we had formal rotation in the department of neurology for approximately two to three months and also in the field of physical medicine rehabilitation. It's basically a combination of neurology and nonsurgical orthopedic, there's a lot of neurology involved. And we also have formal neurological teaching rounds at least two or three times a month. And our textbook covers various neurological concepts and

principals. And part of our boards we are required to read certain neurological textbooks and know them and we get tested on neurology as well.

Q. Have you also received formal train in radiology?

A. Yes, sir.

Q. Can you tell us about that?

A. As part of our training in the field of internal medicine, general surgery, physical medicine, rehabilitation, which is approximately five-and-a-half years, we have daily rounds on interpretations of x-rays, MRI's, CAT scans and other various radiological studies.

Q. Do you read x-rays during the course of your practice?

A. Yes, sir, I do.

Q. And do you do so regularly?

A. I do, yes.

Q. Does your field deal regularly with traumatic injuries?

A. It does.

Q. And does your work with people injured in accidents ever bring you to court?

A. That is true.

Q. Can you tell us about that?

A. Well, I treat a lot of patients that have been injured in some capacity whether it's from a slip and fall, whether it's from a sporting injury, whether it's from a car accident, a work related accident. When there's trauma and there's an accident and someone is responsible for that, I'm asked to come to court and render my opinion with the diagnosis and the future of those injuries.

Q. Have you ever been qualified as an expert in court?

A. Many times.

Q. What percentage of your practice is devoted to treating patients and teaching as opposed to testifying in court?

A. The vast majority is devoted to treating patients. I would say over 90 percent. And out of that 90 percent I would say 20 to 30 percent is devoted to teaching. And I come to court and testify for less than one percent of all the patients I've treated. I generally testify in court six to eight times per year recently. In the past it was more eight to ten times per year. Sometime less, sometimes more.

Q. Do you do consultations for other doctors as well?

A. I do.

Q. Can you tell us about that?

A. Just about every specialty, neurosurgery, orthopedics, neurology, internal medicine, doctors, general surgeons, just about every medical specialty.

Q. Doctor, do you have a file with you today regarding this case?

A. I do.

Q. And would it assist you in your testimony periodically to consult that file?

A. Yes, sir, it would.

Q. At some point did our law office ask you to review Rudy Padilla's medical records?

A. Yes, sir.

Q. Just by the way, you've testified within which my firm has been involved before?

A. I have.

Q. In order to be here today did you have to cancel your medical appointments and close down your office?

THE COURT: Let's have direct questions, all right, counsel.

MR. KELNER: Thank you.

Q. Dr. Guy, what did you have to do, if anything, with regard to your office schedule in order to be here in court today?

A. Cancel my morning half and part of the early afternoon portion.

Q. Did you also review records in preparation for your testimony today?

A. Yes.

Q. Are you being compensated for your time in court today away from your practice?

A. Yes.

Q. About how much are you been compensated?

A. My fee for being here in the morning and early afternoon portion is $4,000.

Q. And were you also compensated for reviewing records and conducting an examination of Rudy Padilla?

A. Yes.

Q. How much were you compensated for the time spent performing that?

A. $650.

Q. Now, I'm going to be asking you a number of questions today concerning your professional opinion. I only want you to give an opinion, if you can express it, to a reasonable degree of medical certainty.

A. Yes.

Q. Is that understood?

A. Yes.

Q. And if it's not -- if you can't express an opinion, then please tell us that. Otherwise, we will assume as to that degree of certainty.

A. Okay.

Q. What records did you review with regard to Rudy Padilla?

A. I reviewed the records from the Lincoln Medical Center and the x-ray reports and other records contained in Lincoln Medical Center.

Q. When Rudy was first brought to the hospital, what complaints of pain was he making, if any?

A. Right leg pain and swelling.

Q. Did the physicians who treated him at the hospital reach a diagnosis?

A. Yes.

Q. And by the way, what is a diagnosis?

A. A diagnosis is what a patient has that -- diagnosis is a medical term to show what a patient has, a condition.

Q. And what was the diagnosis that they reached?

A. Had a spiral fracture of the right distal tibia.

Q. Doctor, I'm going to show you a diagram we have marked for identification as Plaintiff's 18.

(Handed to the witness).

Q. Doctor, is this diagram a fair and accurate representation of the bone structure in the vicinity of the right ankle?

A. Yes, sir, it is.

Q. And would this diagram assist you in explaining Rudy Padilla's treatment of injuries to this jury?

A. Yes, sir, it would.

MR. KELNER: Your Honor, may I ask the doctor to step down and tell the jury what the diagram shows?

THE COURT: Yes.

MR. KELNER: Please, doctor.

MR. ACCARDO: May I go around, Your Honor?

THE COURT: You may stand by the end over by the rail.

MR. ACCARDO: Thank you, Judge.

THE COURT: All right. If you can't see, just let me know. If you can't see. Everyone can see?

THE JURORS: Yes.

THE COURT: Go ahead. Can you see?

THE JURORS: Yes.

THE COURT: You know what? Why don't you prop it on the easel.

All right. Now, can everyone see, ladies and gentlemen?

THE JURORS: Yes.

THE COURT: Very good. Let's continue.

A. Okay. What we're looking at here is a diagram of the bones that go from the kneecap all the way down to the ankle. This is the knee joint up here. This is called the proximal portion of the tibia which is your shin bone. Proximal means closest to the heart. Distal means furthest away from the heart. So this is proximal, this is distal.

Down here is where the ankle is. So this is the tibia. This is your shin bone right here. This is the fibula. This is the bone on the outer portion of your leg.

So what happened to Rudy Padilla, he broke, fracture means broke, he broke this tibia from here to here. I'm going to show you x-rays, spiral means just what it says spirally which is a very devastating break, very bad fracture, so that's what the anatomy is.

Q. Doctor, what is the anatomical purpose of the tibia?

A. The tibia connects the ankle and the knee to the femur. The femur connects the lower leg to the hip socket. So the tibia is a very strong weightbearing bone. It's very important in that crucial factor.

Q. What does it mean for a bone to be weightbearing?

A. Holds the body. The body is held up by the bones in the lower extremity, that would be the tibia and the fibula. And the femur which goes from the kneecap to the hip socket holds the body up.

Q. Now, you mentioned something called a spiral fracture. Can you tell us the definition of spiral fracture?

A. A spiral fracture is where -- just what it says, at your spiral, like this. The fracture has gone from one area to a higher portion and the pieces are completely pulled away from each other. That's why it's devastating. The pieces are not stuck together. They are pulled away from each other. And as a result, the sheering forces they travel upwards and downwards effects the joint above it and the joint below it that's why it's so devastating. And it has long-term swelling.

Q. You said that one of the things that makes it devastating is the pieces being pulled away from each other, can you tell us why it's devastating?

A. Yes, because they usually don't heal with a perfect union. They many times heal with nonunion, that means the pieces are not glued back together in a normal fashion. When a bone breaks, all you have to do is properly, correctly align the two pieces together. It then heals with a very strong healing. However, if the pieces are not aligned together, they're further apart from each other and then it heals, it does not heal right. You get bow legging, you get problems with walking, you get problems with proper alignment. And when you have malalignment, it effects the joints above and below. That's why it's a devastating fracture.

Q. Doctor, you mentioned the term nonunion, are you familiar with a term malunion?

A. Yes.

Q. What is malunion?

A. Union means when the pieces are glued together, that means union. Malunion means they've glued together but not properly, with poor anatomical support. Nonunion means they have not glued back together. So in this case there was malunion, the pieces did get glued together but not properly, not a normal proper alignment.

Q. When Rudy was taken to the hospital on July 8, 2006, were any films taken of his right tibia?

A. Yes.

Q. Doctor, how often do you read x-ray films in your practice?

A. Every day.

MR. KELNER: Your Honor, may I have the film from July 8, 2006 put on the shadowbox?

THE COURT: Yes.

MR. KELNER: Thank you, Your Honor.

THE COURT: All right. That's number 10?

MR. KELNER: Yes, Your Honor.

THE COURT: Ten is now in evidence with no objection.

MR. KELNER: Can you pull the films from July 8th, August 28th, September 25th and October 2nd so we can mark them in advance?

THE COURT: Why don't we hand them up in the order that you are going to testify in.

(Whereupon, x-rays were marked as Plaintiff's Exhibits 10A, 10B, 10C and 10D in evidence.)

COURT OFFICER: Plaintiff's 10A, B, C and D marked in evidence.

MR. KELNER: Thank you.

Q. Doctor, would you please put 10A on the shadowbox?

THE COURT: Just give me a moment.

Can everyone see?

THE JURORS: Yes.

THE WITNESS: May I begin?

THE COURT: Yes.

A. Okay. So just to orient everyone, this is the knee joint, this is the ankle joint. Knee joint, ankle joint. This is the fracture of the tibia. You see the jagged edge? There's one piece broken here, there's another piece broken here, here it is, that's the break. And when you see it from another angle, here it is, it's a spiral because it has gotten all the parts of the tibia broken, it's a full break, here, here, and here.

Next one?

Q. Not yet, Doctor.

First, could you tell us generally how the bone heals?

A. Yes, the way the bone heals is, first of all, there's going to be a lot of bleeding and a lot of swelling. When there's a lot of the bleeding and swelling you cannot put the patient in a cast right away. If you put the patient in a cast right away from the massive swelling, you get what is called compartment syndrome. All the blood vessels, all the nerves will be compressed and the patient will develop a foot drop because of the compression of all the nerves. You have to wait until the swelling goes down significantly, then you can put the cast on.

When you put the cast on, it is hopeful that you can proximate, squeeze together all this broken pieces and that by immobilizing it with a long cast for eight weeks minimum, these pieces will stick together and they will heal. Bone has a tremendous property to heal itself. It does so by what is called callus formation which is bone cement. As long as you put these broken pieces together, align them up properly, the bone has this amazing property of producing bone cement and it sort of glues the broken pieces together. And if it is fused together, if it's glued together properly, it will be the strongest part of that body. However, if it goes to malunion or nonunion, that will not happen because it did not become proximated together, the alignment is off.

Q. Now, did Mr. Padilla have some form of apparatus put DR. GUY - PLAINTIFF - DIRECT on his leg when he was first at the hospital?

A. Yes, a special form of a brace, external brace, to give these broken pieces support so they don't break loose any longer and so the swelling gets a chance to go down.

Q. And some number of days later was the leg casted?

A. Yes, several days later.

Q. Now, Mr. Padilla did not undergo surgery?

A. That's correct.

Q. That means it was a minor fracture?

A. Yes.

MR. ACCARDO: Objection.

THE COURT: Sustained.

Direct questions, please, counsel.

MR. KELNER: Yes, Your Honor.

Q. Do fractures that are set in casts necessarily have a better prognosis than other fractures?

A. No, every fracture, every type, every presentation, is unique and depends on its own merit and its own presentation.

Q. And when a bone gets back together after a fracture, does it return to the same state that it was in before the accident?

A. Depends on where the bone fracture is. If it's in the vicinity of a joint, an ankle or a knee, the answer is no. It heals with traumatic arthritic complications down the road.

If it's in the middle of the bone and only in the middle of the bone and not a spiral where it starts from the lower portion and goes all the way up and it's in a perfect alignment, it could heal normally without problems.

But, if it's in the vicinity of a joint, which this is, it's in the vicinity of the ankle and the spiral portion goes upwards here as you could see, and here, this is not going to heal with a perfect prognosis, with a perfect union. This is going to have complications as future x-rays will show this.

Q. Would you put up the next x-ray then, Doctor, from, I believe, August 20, 2006?

THE COURT: Let's just be sure we know which one it is. Is that B?

THE WITNESS: Yes, Your Honor, that's B.

MR. KELNER: Yes.

A. At this point, the patient has a leg cast in place. You start to see bone callus formation beginning to proximate, bring closer, the broken pieces together here and here and here. You all see that? Okay.

So this is the body's way of trying to proximate all these broken pieces together. But as you could see, it is still not glued together. It is still not a full union.

Next one?

Q. Please.

And, Doctor, when you put it up, please, just for the record, say the date of the film and the tag on it.

A. Yes, this is 9/25/06. It happened 7/8/06. So this is roughly two-and-a-half months later. The date is 9/25/06.

So at two-and-a-half months you expect if the bone is going to heal correctly and normally, it should have done so by now.

Q. And did it?

A. Did not. As you could see it still has not healed. There is still swelling, there's still a jagged piece of this bone sticking out. So this leads to improper alignment, improper alignment leads to improper walking ability and it transfers the pressure to the joint below to the joint above which is the knee and the ankle.

Q. Doctor, why does improper alignment lead to improper walking ability?

A. Because the human body is designed that these weightbearing bones that holds the whole entire body, they have to be in a perfect alignment because of -- when we walk, we walk straight. If they're not in proper alignment, you could be walking with your foot externally rotated or internally rotated and you could be walking with different uncommon and abnormal gait patterns.

Q. Doctor, what is gait?

A. The normal way you walk. Okay.

The normal gait pattern and how you stand is very important. If you don't stand properly, you're going to stretch your low back muscles and your discs. If you don't walk properly, again, you're going to put stress on your discs and your muscles. It's just a matter of time where eventually you will cause some damage to any of those structures, both the muscles, the discs and the nerve roots and the joints.

Q. Is there anything else on this film, Doctor?

A. No.

Q. Please proceed to the next one.

A. The next one is 10/2/06. This is almost three months later.

At this point the bone has completely healed to the best that it could heal. This is the best that the bone has been able to do. As you could see, this jagged edges are still opened, not completely aligned. Look at this bone how nice and smooth it is. Look at how irregular and unsmooth this is. This is called malunion, mal means bad, union means the way it heals. So this has a malunion. The jagged pieces are sticking out and the fracture site has not, has not, completely healed. But that's the best that could be done without suggesting the patient to surgery.

Q. Is malunion something that is significant for a person's prognosis?

A. Yes.

Q. By the way, what is a prognosis?

A. A look into the future. What the future outcome has for the patient.

A malunion in this vicinity -- look how close we are to the foot and the ankle. Very very close. Okay. As I indicated, any time you have a break in the vicinity of a joint, it's a matter of time, it heals with traumatic arthritis to the joint that is close to. Here's the ankle.

The ankle, the foot, is a major major weightbearing ankle joint structure. It is surrounded by very small tendons, ligaments and muscles. Look at the size of the muscles in your thigh and hamstrings. They are huge. But unfortunately the muscles in the foot and the ankle are very small and the blood supply, once you go from here down away, the blood supply is diminished. So it adds further insult to injury. It's just a matter of time before this leads to traumatic arthritis here and vascular problems down the road many, many, many years down the road.

Q. Was this film also read at the hospital by its radiology department?

A. Yes, it was.

Q. How was it read at the hospital?

A. Malunion of the fracture, the spiral fracture, of the distal portion of the tibia.

Q. Meaning that the hospital radiologist also read this film as showing malunion; correct?

A. That is correct.

Q. Is there anything else on this film, Doctor?

A. No.

Q. Doctor, you may return to your seat.

A. Thank you.

Q. Doctor, did there come a time when you examined Rudy Padilla personally?

A. Yes.

Q. And when was that?

A. June 8, 2011.

Q. In connection with that, did you create a report?

A. I did.

Q. If it would refresh your recollection, please feel free to refer it to.

A. Yes.

Q. When you examined Rudy Padilla, did you take what is called a history?

A. I did.

Q. And what is a history?

A. A history is what a patient tells a doctor that is pertinent that leads the doctor to arriving at his conclusion and his diagnosis as to exactly what happened to a patient.

Q. To what extent is history significant to you as a physician?

A. The right appropriately guided history gives a doctor 70 percent of the diagnosis. The other 10 percent comes from the physical examination, that's 80 percent. The 20 percent is confirmed by other radiological studies such as x-rays, CAT scans, MRI's.

Q. What history were you given by Rudy Padilla?

A. That on 7/8/2006 he was skateboarding and his skateboard got caught in a hole. He was caused to fall and he fractured his right distal leg. There was swelling, black and bluish discoloration. He was taken by ambulance to Lincoln Medical Center where the x-rays were taken and showed the fractures which I showed you earlier, spiral fracture of a distal third of the tibia. And because of the massive swelling and ecchymosis, which is collection of blood around the soft tissue, he was not able to be placed in a cast. He was given an immobilizer, a brace, and then about four to five days later he was then put in a cast once the swelling went down.

Q. What, if any, continuing complaints of pain did Rudy Padilla make to you?

THE COURT: What was that question?

Q. What, if any, continuing complaints of pain?

THE COURT: Direct questions, please.

What did he complain of?

Q. What did he complain of, Doctor?

A. He complained to me of right leg pain made worse by prolong standing, walking fast and he could not run. If he ran he would be really having tremendous amount of pain but persistent pain made worse by prolong standing or walking fast.

Q. Did you conduct an examination of Mr. Padilla?

A. I did.

Q. And what did this examination consist of?

A. I examined the area of chief complaint which is the right leg. The knee was normal. The ankle was normal. The leg there was no tenderness because the bone fracture had healed. However, when he walked, when he walked slowly, it appeared normal. But when I asked him to walk fast, he cannot walk fast. His gait became antalgic which means he walked with a limp.

Q. Is that significant, Doctor?

A. Yes.

Q. Why?

A. In a 15-year old person it is very significant because it is showing that everything I said during those explanations and viewing those films is beginning to happen. He's walking with an incorrect gait pattern and is putting stress on the joints above and below the fracture sites mostly the joint below, which is the foot and the ankle. And he's walking with a limp because the area cannot properly weight bear and he doesn't have proper alignment so it begins to hurt. Pain is your body telling you something is off, something is not properly balanced.

Q. Did you come to a diagnosis with regard to Rudy Padilla?

A. I did.

Q. What diagnosis did you come to?

A. He had a fracture of the right tibia distal third spiral fracture that led to malunion.

Q. Doctor, do you have an opinion to a reasonable degree of medical certainty as to whether the complaints of pain that Rudy Padilla related to you in his examination are causally related to his accident of July 8, 2006?

A. Absolutely. 100 percent, yes.

Q. Why do you say that?

A. Based on the history, based on the fracture, based on those x-rays and based on the history and the physical exam. Put all the pieces together, you arrive at that full picture.

Q. Are those complaints consistent with the nature of his spiral fracture?

A. Yes, they are.

Q. And what is that?

A. That he's left with a permanent injury and as time goes on down the road, he's going to have more and more dysfunction that's going to start to his foot, the ankle first and it's going to spread to the knee. And as a result, he's going to have early rapid formation of traumatic arthritis of the foot and the ankle which are the major weightbearing structures of the body.

Q. Doctor, what is arthritis?

A. Arthritis?

Q. Yes.

A. Well, we have many different types of arthritis. We have the normal natural aging arthritis which we will all go through, that's called osteoarthritis. We have another form called rheumatoid arthritis which affects the proximal joints and also affects the heart and the lungs. Then we have traumatic arthritis which is caused by trauma, an accident or a break, where the normal natural aging arthritic process is accelerated very quickly.

Q. And which form of arthritis is Rudy going to be susceptible to?

A. Traumatic arthritis.

Q. Is that causally related to this accident of July 8, 2006?

A. Yes, sir.

Q. Do you have an opinion that you can express to a reasonable degree of medical certainty as whether the impairmen of his gait, his walk, was causally related to his accident?

A. Yes, it is.

Q. What is that opinion?

A. That it is causally related to the fracture of 7/8/06

Q. Do you have an opinion, that you can express, to a reasonable degree of medical certainty, as to whether Rudy Padilla has suffered some form of disability causally related t this accident?

A. Yes, I have an opinion.

Q. What is that opinion?

A. That he's left with a permanent partial disability. Permanent means that he's going to have it for the rest of his life and partial disability means he's not totally disabled. He can still work. He can still walk. He could still engage some activity but not to the full normal extent.

Q. Did you have a chance to examine Rudy Padilla in the hallway today before testifying?

A. I did.

Q. And what, if anything, did you observe?

A. Essentially similar findings. His gait pattern is still off. He still walks with a limp. The shin area has a little slowing over it, that's from the callus formation, the bone cement. It is not tender to touch but when you touch it, there's a deformity, there's swelling deformity from the bone. And his gait is off especially when he walks.

Q. Is the presence of swelling in that area some six years after his accident significant to you?

A. It's permanent, yes.

Q. Doctor --

THE COURT: Sir, what is that answer?

THE WITNESS: The answer is yes, it was a permanent swelling to that portion of the body.

Q. And why is there swelling?

A. Because the bone that is bone cement called callus formation trying to stabilize those broken pieces as I showed you in the last x-ray.

Q. Do you have a prognosis with regard to Rudy Padilla?

A. I do.

Q. What is your prognosis?

A. Again, prognosis means a look into the future. He's left with a permanent partial injury and as time goes on, he is going to have traumatic arthritis of his foot and ankle with pain and dysfunction.

Q. Do you have an opinion that you can express to a reasonable degree of medical certainty as to how, if at all, Rudy's pain will changed over time?

A. Well, as traumatic arthritis gradually sets in, it will worsen. He's going to have more pain in the foot and the ankle. He's going to have more and more difficulty to stand an to walk normally. He's going to have difficulty in walking on slippery floors on uneven terrain like uneven roads where there is a lot of gravel and cement. So he's going to be very very careful as to what he does for the future.

Q. And will the progression of his pain over time will be continuous?

A. Yes, his condition is permanent, progressive and continuous.

Q. Doctor, I want you to assume that Rudy Padilla testified in this case that while he was skateboarding on July 8, 2006, his skateboard became stuck in a hole and he fell down the skate ramp. He immediately began to feel pain in his right leg and was unable to bear weight upon it. He was then taken to Lincoln Hospital where the x-rays that you referred to earlier were taken.

Based on that, do you have an opinion to a reasonable degree of medical certainty as to whether the fractures on his films were causally related to this accident?

A. Absolutely, yes.

Q. And why do you say that?

A. Because you could not have a break in those bones like that and not be recent and can't be preexisting, he can't be walking around like that. So based on the history, based on the physical findings and the initial x-ray, everything comes together it came from this episode.

Q. Doctor, I want you to assume that Rudy Padilla testified that he cannot walk more than approximately six blocks without pain that is often so severe that he needs to sit down.

Do you have an opinion to a reasonable degree of medical certainty as to whether that pain is causally related to this accident?

A. Yes, it is.

Q. And why do you say that?

A. Because of the reasons I gave earlier and by the explanation of the x-rays earlier.

Q. Doctor, I want you to assume that Rudy Padilla testified that if he stands for more than approximately half an hour, he again feels pain in his legs so severe that he often needs to sits down.

Do you have an opinion to a reasonable degree of medical certainty as to whether that pain is causally related to this accident?

A. The answer is yes, it is for the reasons I gave earlier.

Q. I want you to assume that Rudy Padilla testified that he has difficulty playing sports and activities, that he sometimes plays these activities so he can fit in with kids his age but that after the fact he again feels significant pain in the area of his leg.

Do you have an opinion to a reasonable degree of medical certainty as to whether that pain and that limitation is causally related to the accident?

A. It is.

Q. And why do you say that?

A. For the reasons I gave earlier.

Q. I want you to assume that Rudy Padilla testified that he qualified for the baseball team at his school but was unable to stay on that team because the pain in his leg would be so severe after practice.

Do you have an opinion to a reasonable degree of medical certainty as to whether that is causally related to this accident?

MR. ACCARDO: Objection.

THE COURT: Yes, I think he's set forth that the subsequent injuries and conditions are causally related to the accident.

MR. KELNER: Thank you, Your Honor.

I just have one other additional matter that we have not touched on yet.

Q. I want you to assume that Rudy Padilla testified that when the weather changes, he feels pain at or around the site of his fracture.

Do you have an opinion that you can express to a reasonable degree of medical certainty as to whether that is causally related to this accident?

A. Yes, it is for very good reason.

Laws of physics. Cold contracts, heat expands. Rain, humidity, snow, causes the barometric pressure to drop, makes the muscles and joints very, very stiff. This is why people that have arthritic conditions they want to go to a nice warm dry weather like Arizona. And rain, snow and cold weather like New York is very very bad for them. Laws of physics.

Q. Is that permanent, Doctor?

A. This is permanent, yes.

Q. Finally, I want you to assume that Rudy Padilla testified that he is in pain seven days a week at and around the site of this fracture.

Do you have an opinion to a reasonable degree of medical certainty as to whether that pain every day of the week is causally related to this accident?

A. It is.

Q. Why do you say that?

A. For the reasons I gave earlier.

MR. KELNER: Thank you very much. I have no further questions.

THE COURT: All right. Ladies and gentlemen, I believe I may have another matter that I have to squeeze in here today. So I'm going to give you a quick five minutes maybe ten but it will be quick. You can use the facilities, refresh yourselves, take some more of that delicious caffeine that you have up there. And then rejoin us.

Again, ladies and gentlemen, please do not discuss the case amongst yourselves nor with anyone else. Do not allow -- well, you're not going anywhere so no one will be talking to you. If you did, you wouldn't let them and you'd tell me; right?

No texting in the meantime and no going to any search engines you might have on your handy dandy phones. All right, everyone. We will be with you very very soon.

COURT OFFICER: All rise.

(Whereupon, the jury exits the courtroom.)

THE COURT: Doctor, be careful stepping down.

(Whereupon, a recess was taken.)

THE COURT: All right. Are we ready to go?

MR. KELNER: Yes, Judge.

MR. ACCARDO: Yes, Your Honor.

THE COURT: Doctor, would you resume the stand, please.

(Whereupon, the witness takes the witness stand.)

COURT OFFICER: All rise.

(Whereupon, the jury enters the courtroom.)

THE COURT: All right. Ladies and gentlemen, have a seat.

Mr. Accardo, you may inquire.

MR. ACCARDO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ACCARDO:

Q. Dr. Guy, good morning.

How are you?

A. Good morning, sir. I'm well.

Q. I'm just going to ask you a few questions and follow up to Mr. Kelner's questions and about your report and examination of Mr. Padilla if that's all right.

THE COURT: Hang on a second.

MR. ACCARDO: Yes.

Q. Doctor, you examined Mr. Padilla on June 8, 2011; is that correct?

A. Yes, sir.

Q. And were you an examining doctor or a treating doctor?

A. Examining doctor.

Q. Could you explain to the jury what the difference is between an examining doctor and a treating doctor?

A. A treating doctor is a doctor that sees the patient on more than one occasion and actually treats the patient as well. Whereas, an examining doctor sees the patient once, reviews the pertinent history, medical records and arrives at an expert opinion about the patient's diagnosis and the future.

Q. You stated that you saw Mr. Padilla once then, would that be accurate?

A. Yes, sir.

Q. Did you see Mr. Padilla at any time after the date of the incident but before June 8, 2011 when you examined him?

A. No, sir.

Q. Have you seen Mr. Padilla since June 8, 2011 until today when you examined him in the hallway?

A. No, sir.

Q. And when you say you examined him once on June 8, 2011, how long did that examination last?

A. I don't know. I didn't take a time measurement. I think between the history and the physical exam half hour, 45 minutes, could be less, could be longer.

Q. And you testified earlier on direct of Mr. Kelner that you were receiving $4,000 for your testimony today; is that correct?

A. For canceling my schedule, yes.

Q. And you received $650 for the preparation of the report; is that correct?

A. For the preparation of the report would be the records and my opinion, yes, sir.

Q. And in addition, you also received payment for the examination of Mr. Padilla; is that correct?

A. No, everything combined $650.

Q. Everything combined $650?

A. Yes.

Q. So the total payment was $4,650?

A. Correct.

Q. And you testified that you used to do this a lot, eight to ten times per year?

A. That is correct.

THE COURT: What was that question?

Q. You testified that you used to do this, testify at trial, eight to ten times per year; is that correct?

A. On the average, yes.

Q. And now you're doing it a little less, six to eight times per year; is that correct?

A. That's correct, yes.

Q. Would it be fair to say that you made over the past 20 years approximately 40 to $50,000 a year testifying for plaintiffs?

A. For testifying, yes. But also loss for not being in my office. So it's almost a wash.

Q. But you have a choice as to whether to take on this work; do you not?

A. It's part of my specialty, yes, I do have a choice, yes.

Q. So when you say you're losing time from work, this is time that you bargain to lose by taking on this work; is it not?

A. No, when I treat a patient, when I'm asked to testify, I don't have a choice. Because the medical guidelines, Office of Professional Medical discipline, has very strict rules and regulations. If I'm asked to testify, I have to do so. If not, I can come in by a subpoena.

Q. But you know when a plaintiff's firm hires you or a defense firm hires you, a legal law firm, that there is a possibility that you will be called in to testify; is that not true?

A. Yes, on some small percentage of those cases, yes, that is possible.

Q. Okay. So making approximately $40,000 per year you've made perhaps eight or $900,000 over the course of 20 years have you not, sir?

MR. KELNER: Objection.

THE COURT: All right. Counsel, I think it's clear from the way you've done your math calculations that the doctor does make X amount of money when he decides that he will provide expert services either by the plaintiff or defendant.

Now, while we're here, let me just explain it to the ladies and gentlemen of the jury.

Ladies and gentlemen of the jury, experts are called, as I will explain to you later on, when there are items in evidence that are beyond the every day understanding of either the jurors or the Court that requires some special skill or knowledge.

In this case a Dr. Guy is being called not as the treating doctor because the treating doctor is not going to be testifying but he's called as an expert to give you the information that you need to understand the claims that are being made with regard to the plaintiff's medical condition. All right, ladies and gentlemen. So he's not the doctor who treated the plaintiff but he is the doctor who is an expert in a particular field which is required in order to explain to you the medical conditions which are the subject of this particular case.

All right, everyone? So he's the expert not the treating doctor.

MR. ACCARDO: Thank you, Your Honor. I'll move on from the subject of payment.

Q. Dr. Guy, would it be fair to say that approximately 98 -- 90 percent of the times you are called to testify in court is for plaintiffs?

A. For my patients the legal system refers to them as plaintiffs, yes, that is correct.

Q. Okay. You just said that they're your patients but the legal system refers to them as plaintiffs; is that correct?

A. That is correct, yes.

Q. Do you consider Rudy Padilla your patient?

A. No, this is one rare case which he's not my patient.

Q. Approximately how many times have you testified in court for plaintiffs?

A. If you do the math, eight to ten times per year, approximately 200 times in my 22-year career as a physician, it could be slightly less, slightly more.

Q. And you're compensated for all of those testimony --

MR. ACCARDO: I'm sorry, Your Honor, withdrawn.

Q. When plaintiff came to see you on June 8, 2011, did he fill out any type of medical history questionnaire, any type of written document?

A. He did.

Q. May I see that document?

A. Yes.

MR. ACCARDO: Thank you.

I'm sorry, Your Honor, if I may just have one moment?

THE COURT: Mr. Accardo, during the break did you not look at the file that was brought in by the witness?

MR. ACCARDO: I'm sorry, pardon me, Your Honor?

THE COURT: During the break did you not look at the file that was brought in by the witness?

MR. ACCARDO: I did not, Your Honor. I'll leave it alone.

Q. Dr. Guy, prior to this, you have testified for the firm of Kelner and Kelner before; is that correct?

A. I have, yes, sir.

Q. And at the time when you first testified for them, did you hire a marketing director?

A. Yes, I did.

Q. And what does marketing director do? Can you help the jury understand that, please?

A. Well, marketing director very few people know what physiatry was back in 1989 when I first started my private practice. So I always felt that I had to educate the public about a physiatrist. Some thought physiatry was psychiatry, some thought it was podiatry. So the marketing director tells the public what physiatry does and they try to market my practice to all the different sectors. That will be the medical sector, the legal sector, the lay sector, the industrial sector so on and so forth.

Q. When you have say physiatry, you're referring to the field of medicine which you have a board certification in physical medicine and rehabilitation; is that correct?

A. Yes, sir.

Q. And that would also be known as physiatry and you are a physiatrist?

A. Yes, sir.

Q. Going back to your education. You stated that you never graduated from Queens College?

A. No, you don't have to. In this country you only have to have the basic sciences two, three years. There's some medical schools in this country that combine --

THE COURT: In this country?

THE WITNESS: In this country, yes.

A. Sophie Davis is one of them. Sophie Davis you combine two years of undergraduate with four years of medical school is six years. You just have to have your basic sciences.

Q. Would biology be a basic science?

A. It is a basic science, yes.

Q. And when you took biology at Queens College, you received a grade D; is that correct?

A. That is correct, yes.

Q. Or chemistry is the basic science used for medical school?

A. Yes.

Q. And would it be fair to say you failed basic chemistry --

A. I -- I did not take the final exam on one course. So if you don't take the final exam, you get an F. I took it the following semester and I passed.

Q. Okay. And what was your grade point average not when you graduated Queens College but when you left Queens College?

A. Right. Well, if you take organic chemistry with organic chemistry it drops down.

Q. Sir --

A. I'm getting there. I'm getting there.

It was a 3.0 but with organic chemistry it dropped significantly from a 3.0 to 2.3 or a 2.4.

Q. Now, you were not present at Lincoln Hospital for any of the treatment or any of the x-rays that were taken of Rudy Padilla, were you?

A. I was not.

Q. And you were never present during the physical therapy of Mr. Padilla?

A. I was not.

Q. And you yourself testified earlier that you actually, as part of your job teaching at NYU, you teach physical therapists how to do physical therapy; is that correct?

A. I teach them principals of physical medicine and rehabilitation, yes.

Q. I'm sorry, so going back to your education for a second. Did you ever finish your residency in internal medicine?

A. No, this was a prerequisite for physical medicine and rehabilitation residency.

Q. And did you ever finish your residency in surgery?

A. No, again, that was a prerequisite for physical medicine and rehabilitation.

Q. And you were not board certified in internal medicine, are you?

A. I never wanted to pursue --

Q. And you're not board certified in orthopedics, are you?

A. I am not.

Q. And you are not board certified in surgery, are you?

A. I am not.

Q. And you are not eligible to make board certification in any of those fields, internal medicine, orthopedics or surgery; is that correct?

A. That's correct. I never chose to pursue them.

Q. Okay. Did you review Plaintiff's 50-H testimony from December of 2006?

A. No, sir.

Q. When you examined Mr. Padilla on June 8, 2011, you knew that there was litigation pending; is that correct?

A. That it would be possible, yes.

Q. You were hired by the law firm of Kelner and Kelner?

A. For disability and impairment evaluation, yes.

Q. Now, during your examination of Mr. Padilla on June 8, 2011 you yourself did not take an x-ray, did you?

A. I did not.

Q. And you did not take an MRI, did you?

A. I did not.

Q. And you did not conduct an EMG, did you?

A. There was no need, no.

Q. Could you explain to the jury what an MRI is?

A. MRI stands for Magnetic Resonance Imaging. It is a test to check to see if there is any problems with soft tissues. If you do the spine, it checks to see if there is any disc bulge for herniation. If you check for the knee, you check to see if there's any torn meniscus, x-ray is the proper test for fracture. MRI is the proper test for soft tissue problem. So no MRI was indicated.

Q. And can you explain to the jury what an EMG is?

A. Electromyogram. It is a test that is done -- that is done by a physician to determine if there is a problem with a muscle or a nerve.

Q. And would it also be fair to say that you did not take an x-ray, MRI or EMG out in the hallway when you examined Mr. Padilla this morning; would that be fair to say, sir?

A. Obviously, no.

Q. Good. Okay. Moving onto the report itself.

You note in the history it states at present time plaintiff complains of right leg pain made worse by running, increased standing and increased walking; is that correct?

A. That's correct, yes, sir.

Q. And plaintiff communicated this to you; did he not?

A. Yes, sir.

Q. And you, to a certain extent, have to trust what the plaintiff was saying; did you not?

A. That's what a history is, yes.

Q. So there is a certain element of suggestive reporting by Mr. Padilla?

MR. KELNER: Objection.

THE COURT: I'll allow it.

A. There is, yes, sir.

Q. Now, in addition, there were also objective tests that you did; is that correct?

A. Yes.

Q. For example, you examined his back; is that correct?

A. Yes, sir.

Q. You found his back was non-tender; is that correct?

A. That's correct.

Q. You found that his back had full range of motion; is that correct?

A. Yes, sir.

Q. And you also examined his right shin; is that correct?

A. Yes, sir.

Q. And you found that his right shin was non-tender?

A. That is correct.

Q. Okay. And there is no notation in this report that on June 8, 2011 that there was any type of swelling, is there?

A. That's correct.

Q. And you note that there are no scars on Mr. Padilla's right shin; is that correct?

A. That is correct.

Q. So it will be a fair indication that he did break his bone, his bone did not jut out from the skin or anything like that; is that correct?

THE COURT: I'm sorry, ask that question, again.

MR. ACCARDO: I'm sorry, I will rephrase it, Your Honor.

Q. Would that be a fair indication to you, Doctor, that when Mr. Padilla's distill tibia broke, that his bone did not stick out through the skin?

A. Yes, that is correct.

Q. And would it also be an indication that there was no surgery; is that correct?

A. That is correct, yes, sir.

Q. Now, you also found in examining all four of Mr. Padilla's extremities, meaning -- that means his two arms and his two legs; is that correct?

A. Yes, sir.

Q. So you did physical objective tests on those four extremities; correct?

A. Range of motion and muscle power, yes.

Q. And you found that there was an active range of motion; is that correct?

A. Yes.

Q. And that was within normal limits; is that correct?

A. Yes, sir, that is correct.

Q. And you also tested his manual muscle power for his right leg; is that correct?

A. Yes, sir.

Q. And, again, you found it was within normal limits; is that correct?

A. Yes, sir.

Q. Okay. And you tested Mr. Padilla's sensation?

A. That's correct.

Q. How did you do that?

A. By a paperclip, blunt end. You touch various parts to see if he feels it. And with his eyes closed I touched the right side. I say do you feel it. I touch the left side, do you feel it. Was there any difference from side to side. If the answer is yes, I record it. If the answer is no, I record it as normal. So it was normal as expected.

Q. Okay. Very good.

Now, you also noted in your assessment --

MR. ACCARDO: Withdrawn.

Q. You reviewed the x-ray records that you testified to today in preparation for your examination of Mr. Padilla; is that correct?

A. I'm sorry, I didn't hear the question.

Q. You reviewed the x-rays that you testified about today when you examined Mr. Padilla; is that correct?

A. One second.

I did not review the x-rays, just the reports. I reviewed the x-rays just this morning.

Q. You had never seen the x-rays before?

A. No, sir.

Q. And in your assessment on June 8, 2011 you note that there was minimal displacement; is that correct?

A. That is correct.

Q. And what do you mean by minimal displacement?

A. Well, I think the x-rays I show shows that minimal displacement means that the bone was not properly aligned, another name for it would be malunion. Displacement means movement. There was some movement of the fracture site but minimally.

MR. ACCARDO: Officer, can I have shown to Dr. Guy the ten pages from Plaintiff's 8, the medical records from Lincoln Hospital?

THE COURT: Gentlemen, approach for a moment.

(Whereupon, a discussion was held off the record.)

Q. Dr. Guy, can you take a look at those ten pages and tell me when you're done.

THE COURT: All right. Ladies and gentlemen, again, these are part of the Lincoln Hospital records which have been received in evidence collectively as number eight. All right.

A. Okay.

Q. Okay. These are -- well, let me ask you this: What are these records?

A. These are the x-ray reports of various x-rays taken at Lincoln Hospital.

Q. Are those the documents that you reviewed when you did the June 8, 2011 examination of Mr. Padilla?

A. Yes.

Q. Okay. You testified on direct that one report from October 2, 2006 indicates that there is malunion; is that correct?

A. I believe that's correct, yes.

Q. And that report was by Dr. Sarwat Kamal Amer? Doctor, do you see that?

A. One second.

Q. Certainly.

A. It's not here.

Q. Could you look again, please?

A. Sure. I found it. Yes.

Q. Thank you.

And that is the radiology report of an x-ray that indicates malunion; is that correct?

A. That is correct.

Q. Now, the other nine reports are all by Dr. Hooma Zaidi; is that correct?

A. That's correct.

Q. Okay. And these are for all of the other x-rays taken from the date of the incident and every other x-ray report that we have; is that correct?

A. That is correct.

Q. And only Dr. Sarwat Kamal Amer indicates that there is malunion; is that correct?

A. That is correct.

Q. Dr. Zaidi does not indicate a malunion in any of his reports; does he?

A. Does not.

Q. Or she, I actually don't know, I apologize.

A. That is correct.

Q. Okay. What does the phrase bones in apposition mean?

A. The bones are in -- trying to be approximated.

THE COURT: I'm sorry say that, again?

THE WITNESS: The bones are being approximated, being made -- brought close to each other.

Q. And by bringing them close to each other by, as you said earlier, forcing them together through a cast, that's where the callus develops?

A. That is correct.

Q. And you said earlier that the callus will actually in form be the strongest part of the bone; is that correct?

A. If you heard correctly I said if they heal in proper alignment. That's the magic word you left out.

MR. ACCARDO: Move to strike that portion as nonresponsive.

THE COURT: I'll allow it.

Q. Doctor, your review of all the medical records from Lincoln, had any doctor ever recommended to Mr. Padilla that he receive physical therapy?

A. At the hospital I did not see it. And there's a very good reason for that. It's too soon.

Q. Do you know in the six years since Mr. Padilla has had his accident, has he had any physical therapy?

A. He has not.

Q. Would physical therapy have helped offset the development of any type of pragmatic arthritis in the future?

A. No, sir.

Q. It would not?

A. Would not.

Q. It is not the case that by having physical therapy earlier it would help prevent that; is that correct?

A. No, sir, it would not have prevented. It's called a sine quo non the condition which follows after this type of an injury.

Q. In your final opinion on the June 8, 2011 report you actually state plaintiff has made good recovery; is that correct?

A. Yes, from this type of a devastating injury, yes.

MR. ACCARDO: Dr. Guy, thank you very much.

THE WITNESS: You're welcome.

THE COURT: Anything further from you?

MR. KELNER: Just a few, Your Honor. Actually may I approach?

THE COURT: Yes.

(Whereupon, a discussion was held off the record.)

THE COURT: All right, Mr. Kelner.

MR. KELNER: Thank you, Your Honor.

REDIRECT-EXAMINATION

BY MR. KELNER:

Q. Doctor, can you explain to us the reason for your grades at Queens College?

A. Yes, I had a lot of A's. Organic chemistry, biology are very very difficulty subjects. I came from a very poor family. I was working two jobs. I just didn't have the time to study as hard as I needed to get A's in those subjects.

Q. How many years ago was it that you were at Queens College?

A. 1974, roughly 36 years ago.

Q. When you were made director of physical medicine and rehabilitation at Mamanodies Hospital, did anybody care when you got good grades at 20?

A. Absolutely not.

Q. And when you were made a clinical instructor of medicine at NYU teaching other doctors how to practice this area, did anybody care what your grades were when you were 20?

A. Absolutely not for a very good reason.

Q. What's that?

A. Once you become board certified, you shut everybody's mouths closed. You are an expert in this area, you've proven by taking the boards part one and taking an oral board part two and you pass a rigorous credential committee by two major hospitals and you fulfilled all their academic needs.

Q. Other than defense lawyers where you're not allow to say the actual medicine, does anybody ask you about your college grades anymore?

A. Not one person.

MR. KELNER: Thank you, I have nothing further.

THE COURT: Anything further?

MR. ACCARDO: Nothing further, Your Honor, thank you.

THE COURT: All right. Thank you, Doctor. You may step down. Be careful when you step down.

(Whereupon, the witness steps off the witness stand.)

THE COURT: Mr. Kelner, do you have any other witnesses to call?

MR. KELNER: I do not, Your Honor.

I do have something I believe we discussed that defense counsel and I would like to put on the record.

THE COURT: Approach.

(Whereupon, a discussion was held off the record.)

THE COURT: All right, gentlemen.

MR. ACCARDO: Would Your Honor like me to put

[Note: Pages 294-?? missing in original document]

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