SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM

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SAMUEL MOISE,

Plaintiff,

-against-

Index No: 20028/2016E

BAGNIKIM YAKADJENE and IYESHA NESBITT,

Defendants.

----------X

WITNESS: DR. TOULIOPOULOS | Cross Examination

Bronx Supreme Court
851 Grand Concourse
Bronx, New York 10451
October 7, 2024-October 8, 2024

B E F O R E:

THE HONORABLE VERONICA HUMMEL,
Justice of the Supreme Court

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

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This is a continuation and only a partial transcript. The oath was administered in the beginning part of the transcript which was not ordered.

MR. LESNEVEC: Doctor, I have nothing further. Thank you very much.

THE COURT: Counselor?

MR. JONES: I'm going to set up the projector, Judge.

MR. CORRING: Your Honor, may I sit in the jury box?

THE COURT: Sure. Whatever helps you see.

MR. CORRING: I would like to mark an additional copy, Plaintiff's Exhibit 12 as for identification only. Defendant's Exhibit D.

THE COURT: Okay. Proceed.

(Whereupon, a copy of Plaintiff's Exhibit 12 was marked as Defendant's Exhibit D for identification.)

CROSS EXAMINATION

BY MR. JONES:

Q Good afternoon, Dr. Touliopoulos.

A Good afternoon.

Q You and I met for the first time in the courtroom. Right?

A Yes.

Q Now, approximately how many patients have you been sent by Michael Lamonsoff's office?

A They have referred us patients to treat but I don't know the exact number.

Q Well, you're familiar with them, right? You're familiar with their office, correct?

A I am familiar with their office, yes.

Q And the reason you're familiar with them is because they refer patients to you, plaintiffs, right?

A Yes.

Q And have you testified before for Mr. Lesnevec's office?

A Yes, I have.

Q How many times this year have you testified for this attorney's office?

A I've testified a few times this year, but I don't recall the offices that I testified for.

Q A few times this year?

How about 2023? How many times did you testify for Mr. Lesnevec's office?

A I don't keep track of that in my head. I can look it up in my computer database, but I have testified for him in the past, yes.

Q Over the course of your career, when did you start taking plaintiffs from Mr. Lesnevec's office?

Five years ago?

Three years ago?

Ten years ago?

A I don't know the exact date that they started referring to me, but I would say it's probably more than five years.

Q And in addition to testifying from Mr. Lesnevec's office, you testified for other plaintiff attorneys.

Correct?

A That is correct.

Q And when you do testify in court, you testify exclusively for plaintiffs.

Correct?

A For the patients I've treated. And one time I believe I did testify for the defense on a patient that I treated. But the vast majority is for the plaintiff's side.

Q And you testified that your fee would be somewhere between six and ten thousand dollars but you don't know the amount.

Right?

A Not as we speak right now.

Q And you're coming to testify in front of the jury, Supreme Court Bronx County, but you're telling us you don't know what fee you're being paid to be here today?

A It's determined by the office staff, they handle the bills.

Q Well, what did you bill for the knee surgery for Mr. Moise?

A It's in my chart.

Q Take a look at your chart.

Tell us what you billed for it.

A I believe for the knee surgery, it was approximately six thousand dollars.

Q And what did you bill for the shoulder surgery?

A I believe that was approximately five thousand dollars.

Q Eleven thousand dollars for the two surgeries plus about ten thousand dollars for your testimony times four times this year, about, right?

A I don't know the exact amount this year. It may be three or four.

Q So you have made a hundred thousand dollars just on referrals from Mr. Lesnevec's office this year.

Correct?

A I don't believe the other testimonies were just for his office.

Q When you said it was a few times this year, a few times in 2023, and at least five years going back, right?

MR. LESNEVEC: Objection, your Honor, misstates the testimony. It was not that it was for our office, but that it was in general.

THE COURT: Overruled.

Q So you make quite a bit of money on referrals from Mr. Lesnevec's office, don't you?

A Mr. Lesnevec's office refers me a minority of my patients, but I do make money by being a doctor. Yes.

Q And, in fact, you even have his phone number in the intake sheet that was filled out by the plaintiff on October 7th, 2015.

Right? Meaning Mr. Lesnevec's phone number.

Is that right?

A If it's on the intake sheet, it's filled out by the patient.

Q Let's take a look at the intake sheet.

There's a designation for the referral on the intake sheet.

Right?

A Yes.

And there's a phone number listed.

Q And the --

THE COURT: Counsel, I think you should remove your other notepad from the screen.

MR. JONES: Oh, yes.

Q I'm referring to his attorney's office referred him to you.

Correct?

MR. LESNEVEC: Objection. Asked and answered,

Judge.

THE COURT: Overruled.

Q It's on the intake sheet, right?

A Yes, I believe he was referred by his attorney as well as Dr. Schwartz.

Q And it's by Mr. Mr. Lesnevec's office himself.

Correct?

Do you see that designation?

There's a line there for attorney's office?

A Yes, under "Who referred you to the practice," it was both the attorney and Dr. Schwartz, and as far as the attorney, it is Mr. Lesnevec with his phone number.

Q Okay. So the intake sheet provided by your office has a designated line for attorneys.

Would you agree with that?

A Yes, I do agree with that.

Q But you're telling the jury you only get a minority of your patients from attorneys?

It's probably a majority.

Right?

A No, it's not a majority, but attorneys do represent patients that get injured in work and car accidents, and that's why we do have a space in the form to be filled out by the patient.

Q Doctor, you have a binder in front of you.

Do you see it?

A Yes.

Q Is that prepared by the attorney's office and handed to you?

A No, this was prepared by my office manager.

Q Who is your office manager?

A Nicky Leon (ph).

Q And did your office manager make the decision to leave out the emergency room records as part of your chart?

A It's not a record generated by my office, so it may not be something that's included in my records.

Q Well, the New York Presbyterian or Manhattan, that was generated by your office.

Right?

A That was generated by my office.

Q Those were your records.

Right?

A Well, the operative report is generated by my office, and these are my records.

Q You don't have those records as part of your chart, do you? Talking about the knee surgery, the hospitalization records, do you?

A The only part of the hospital records I have is the operative report. I don't have the entire hospital record in my chart.

Q Now, Doctor, are you here to talk as an advocate for Mr. Moise, or are you here to provide an objective opinion on all the medical records?

A I'm here to -- as a physician, I'm a patient advocate, but I'm here today to give you my objective opinion on his care and treatment.

Q So you're an advocate -- you can't be an advocate and objective at the same time.

Would you agree with that?

A No, as I said, as a physician treating the patient, I'm an advocate for the patient, but I'm here in this courtroom right now to give you my objective opinion here on his care and treatment.

Q Okay. And not only are you here to provide the jury a narrative of what you did, but you're also here to provide an opinion on causation as to whether or not the accident on 9/27/15 caused the complaints or the surgeries that you did.

Would that be fair?

A Yes, I have an opinion on causation, too.

Q Okay. So if you want to offer an opinion on causation, would you agree with me that it's important that you review all the records and not just your own records?

That's a yes or no.

A I would say it's important to review all pertinent records.

Q So it's important to review all the records if you want to give a detailed and accurate opinion on causation.

Would you agree with that?

A I said the pertinent. I would say yes, that is accurate.

Q Okay. But you doesn't review the emergency room records.

Correct?

A No, I said I did, about the it was a while ago. I didn't recently review them.

Q Do you consider yourself a detailed physician?

A Detailed in what respect?

Q Well, do you read all the information you think you need to offer an opinion?

Do you consider yourself detailed in that regard?

A I tend to believe that I read the pertinent information that is provided to me.

Q Do you think it would be important for you, a physician offering an opinion on causation, to review the emergency room records before you offer an opinion?

Yes or no?

A I said I did review the records.

Q Doctor, you didn't have an opinion on the records because you have no idea when you reviewed those records if I heard your testimony accurately.

Would that be right?

A It was not recent. I don't recall the exact time I reviewed them.

Q So you didn't review the emergency room records to form your opinion on causation.

Would that be fair?

A No, I would say I did, because if there was something in my review, I would have noted it in my records.

Q Let's take a look at them.

I'm looking at Plaintiff's 12 in evidence, this is Page 1 of the emergency room record from Brookdale Hospital.

Doctor, we see here that the plaintiff arrived in the hospital about 1:22 a.m.?

A Yes.

Q And were you aware of that before I just showed this to you?

A When I reviewed the records, I was aware of that.

Q And his complaints and final diagnosis were right hand pain, right shoulder pain, and muscle soreness.

Do you see that?

A Yes.

Q Now, if you're going to be objective and offer the jury an opinion on causation, do you think you're being fair if you wait until cross examination before you tell the jury about the content of those records or do you think you're being too much

of an advocate?

A No, the absence of right knee in the emergency room diagnosis does not mean that he didn't injure his right knee.

Q I didn't even mention that yet, Doctor, but I'll get to that now that you mention it.

We can agree that there's only complaints of right hand pain and right shoulder pain in the emergency room records.

Right?

A And muscle soreness, which is a general term.

Q Okay.

Doctor, as a physician offering an opinion on causation, would you want to know the mechanism of injury, whether it's a serious impact or low speed impact or something in between?

A I have to go by what the patient tells me.

Q As a general, if you're going to offer an opinion on causation, would it be fair to say you want to know about the mechanism of injury, whether it was a severe impact or a light impact?

A It was an impact, but who is defining the severity of the impact?

Q Doctor, simple question, yes or no.

Would you want to know about the mechanism of injury, whether it was severe or light impact, to give an opinion on causation?

Yes or no?

A I would need to know that he was involved in an impact accident. The severity is very subjective. My job is to determine what body parts were injured, and to treat them.

Q Nothing else?

Doctor, look at October 7th in your notes.

A Yes.

Q You thought it was important enough to mention how the accident occurred in the notes.

Right?

That's pretty detailed.

A Yeah, this was actually done by Dr. DeMarco, but he did state that the vehicle was T-boned by another vehicle.

Q He says more than that, Doctor, doesn't he? He says that one of the vehicles ran a stop sign, doesn't it?

A That's correct.

Q "Vehicle that ran the stop sign," do you see that phrase?

A He states his vehicle was T-boned by a vehicle that ran the stop sign. That's correct.

Q So one of the vehicles involved in this accident ran a stop sign.

Correct?

A That's correct.

Q So are you telling us you didn't do this intake?

Someone else in your office did?

A This is the history performed by a doctor in my office.

THE COURT: Excuse me, Counselor, your notes are on the screen.

Q So your office thought it significant enough to record the details of the accident.

So what I'm asking you is, is it important to know the mechanism of injury, such as whether it was a severe or light impact?

Yes or no?

A Listen, I can't assess the severity of the impact from the patient's history.

My job is to ask the patient what got injured in the accident, and from my experience, you may be in a serious accident with no injuries, and you may be in a minor accident with serious injuries.

MR. JONES: Your Honor, I am going to ask the Court to ask the doctor to please answer the questions yes or no.

THE COURT: Doctor, please listen to the question and if it's yes or no question, answer yes, no, or I can't answer. Go ahead.

Q If you're going to offer an opinion on causation, yes or no, would you want to know the mechanism of injury and the severity of impact?

Yes or no?

A Well, the mechanism of injury is documented in the records.

Q Yes or no, Doctor.

If you're going to offer an opinion on causation, would you want to know the mechanism of injury and the severity of impact?

Please give a simple yes or no.

A We do have the mechanism of injury recorded, and the answer is yes.

Q In that regard, though, I'm showing you another page from the emergency room record.

On the date of accident, 9/27/15, this is Plaintiff's 12 in evidence, and talking about the mechanism of injury, the following is recorded in the hospital record:

No windows were broken, no airbags were deployed, patient denies trauma to head, denies loss of consciousness, denies dizziness and loss of sensation.

You see that?

A Yes.

Q When's the last time you reviewed that record before coming to court today?

A It was not recent. I don't recall the last time I reviewed it.

Q So you come in and give the jury an opinion on causation but you didn't read the record of his first treating

physicians for you don't know how long.

Correct?

A I did read it, and if there was something in it that altered my opinion, I would have documented it.

Q Well, this talks about the mechanism of injury. Is that starting to alter your opinion a little bit, Doctor, as to whether or not the plaintiff's claims were actually caused by this accident?

A No, not at all.

Q Not yet?

A Nope.

Q Okay.

Now, typically in the emergency room where you claim you worked, physical exams are performed.

Correct?

A That's correct.

Q And here we have a review of systems: Musculoskeletal, that's your area of expertise.

Correct?

A Yes.

Q All right. Negative for arthralgia. Negative for back pain.

Let's look at gait problem. Okay?

Gait refers to the way one walks.

Correct?

A That's correct.

Q And he had no problems walking in the emergency room only about one hour after this accident.

Correct?

A It's negative for gait problem. I don't know how much walking he actually did in the time between the accident and the emergency room evaluation, but it does state it's negative for gait problem.

Q You can just state what's there, Doctor, it's negative for a gait problem. He had no difficulty walking according to this note.

Correct?

A That's correct.

Q And this was recorded by the emergency room doctor only an hour after this accident.

Correct?

A It's recorded -- I don't know the date or the time of the accident and the time of this note, but if you say it's within the hour, I would agree with you.

Q Well, I just showed you he arrived at the hospital at 1:22 and the accident happened sometime after midnight, so it's within an hour.

Correct?

A Yes.

Q Okay.

No joint swelling. None.

Now, an hour after an accident, if someone is claiming an acute injury to one's knee, you would expect to see swelling, wouldn't you, Doctor?

Yes or no?

A Well, this is --

Q That's a yes or no.

A It depends --

Q If you can't answer that yes or no, let me know.

A I can't answer that yes or no.

Q Okay.

Neck pain, neck stiffness, negative.

Negative for dizziness, tremors, seizures, shortness of breath, facial asymmetry, weakness, light-headedness, numbness and headaches.

Pretty detailed examination, wasn't it, Doctor?

A This is not an examination, this is a review of systems.

Q Well, they're asking questions and he's giving answers.

Right?

A Well, I can't answer that yes or no, but I can answer that if you let me.

Q I'll move on, Doctor.

A diagram was prepared by the physicians. You see the upper extremities here? Do you see them?

A Yes.

Q And a complaint of tenderness to the right shoulder.

Do you see that?

A Yes.

Q Are you seeing this for the first time in a matter of years?

A It would be within the year, but I see it, yes.

Q Okay.

So, tenderness, bony tenderness and pain, he exhibits no swelling, no effusion, no crepitus meaning no clicking, no deformity, no laceration, no spasms, and normal pulse.

Do you see that?

A Yes.

Q So he has some complaints of pain to his right shoulder.

Do you agree with that?

A Yes.

Q So far no diagram of the lower extremities, hips, knees, ankles.

Correct?

A None that you've shown so far.

Q Well, since you've reviewed this record, did you see any diagrams pertaining to the lower extremities of this plaintiff regarding his ER visit to Brookdale?

Yes or no?

A Not that I recall.

Q Because none was done.

Right, Doctor?

A I don't recall.

Q An x-ray, based upon his complaints, Mr. Moise's complaints, x-rays are done on his right hand and shoulder.

Do you see that?

A Yes.

Q You're seeing this for the first time?

A No.

Q Whenever it was that you read these records, whether it be a year ago, seven years ago, or October 7th of 2015, did you ever ask for copies of the x-rays from the emergency room to evaluate?

Yes or no?

A I asked for all records that could be obtained. I never received any x-rays of the shoulder.

Q Well, when you reviewed these records like you said you did as a detailed physician, did you ask for the x-rays from Brookdale?

Yes or no?

A I don't remember.

Q Do you think it was important to get copies of the x-rays taken on the day of the accident to know what body parts were x-rayed before you come to the jury and offer them opinions

on causation? I'm asking if you think it was important.

Yes or no?

A No, because it's documented on the chart what x-rays were taken.

Q Now, Doctor, how long, according to this record, has Mr. Moise been in critical care being examined by the physicians?

A 30 to 74 minutes.

Q Now, 37 to 40 [sic] minutes speaking to a doctor and not one complaint of knee pain, does that cause you to alter your opinion that you gave to the jury earlier that his complaints of knee pain and things you addressed surgically were actually caused on 9/27/15?

Yes or no?

A No.

Q Doctor, if someone is in pain, what would you expect to see with regard to one's vital signs?

A Well, it depends on the degree of pain. The vital signs can be elevated, the heart rate and blood pressure may or may not be elevated.

Q But you expect increased heart rate, maybe increased respiration, increased blood pressure, for someone who claims to be in pain.

Is that right?

A It can be elevated, but not always.

Q I'm showing you what's been highlighted here, this is Sunday September 27th, vital signs taken of the plaintiff, he arrived at 1:22. If that refers to the time the vitals were taken only eight minutes after his arrival, that's the time that's shown there. He's got a pulse rate of 68.

That's pretty normal, right?

A Yes, but his blood pressure --

Q Is it normal or not?

A Yes, that pulse rate is normal.

Q And you don't know his baseline, but that appears normal.

Correct?

A That's within normal limits, yes.

Q Respiration, 18. That's seminormal, not knowing his baseline.

Correct?

A It's slightly elevated.

Q All right. And blood pressure.

Do you see it there?

A Yes.

Q 137 over 97.

Slightly elevated?

A The 97 is very elevated, actually.

Q What were your vitals on 10/7 of 15?

Do you take vitals?

A I didn't check blood pressure. No.

Q You didn't?

A brand new patient goes into your office, theoretically in need of medical treatment from you, and no one in your office takes his vitals?

Yes or no?

A Not the blood pressure. I'm an orthopedic surgeon, I'm not a medical doctor.

Q Doctor, is it a standard practice in any medical office to take the vitals of someone who is walking into your office for treatment?

A The vitals can be taken; it depends on the type of visit that's being performed.

Q So if it's referred by an attorney for the lawsuit, you already made up your mind that you're not going to take the vitals.

Is that what you're telling us?

A That's not what I'm telling you.

Q Take a look at the 10/17 notes, and tell us if you took the vital signs.

A The vital signs were not taken, no.

Q So then you don't know if the 137/97 is his baseline or was elevated following the accident.

Correct?

A Well, we don't know if any of those values are his

baseline or elevated.

Q And patient's weight is 318.

Do you see that?

A Yes.

Q That's pretty high, isn't it?

A Yes.

Q And knees are weight-bearing joints, aren't they?

A Yes.

Q And the weight of one can have a direct effect on the degeneration on one's knees.

Would you agree with that?

A Weight does not cause arthritis, but it can aggravate an arthritic problem if you have one.

Q Doctor, your records indicate that the dominant complaint on 10/7 of 2015 was shoulder pain.

Correct?

A That is correct.

Q Now, 10/7 of 2015 is about almost two weeks post-accident.

Correct?

A Yes.

Q All right.

And I'm looking at what's marked in evidence as Plaintiff's Exhibit 14.

You did a physical examination here?

MR. LESNEVEC: Objection.

I thought the testimony was --

THE COURT: Hold on. I'm sorry.

Step up.

(Off the record.)

THE COURT: Overruled. Actually, Counsels, can you approach again? I am going to have to ask you to approach. Everyone, could you please step up.

(Off the record.)

THE COURT: Go ahead.

BY MR. JONES:

Q Doctor, you did a physical examination of the plaintiff and it's reflected on October 7th, 2014.

Do you see that?

A It's October 7th of 2015.

Q 15, I'm sorry.

A And no, that was not me, it was my colleague Dr. DeMarco.

Q So when you stated before that the plaintiff first presented to your office on the 14th of October 2015, it was actually going to trial, wasn't it?

MR. LESNEVEC: Objection. That was not the testimony.

THE COURT: You can answer.

A The first time I personally saw the patient I believe

was October 14th, but the first time the patient was seen by anyone in the office was October 7th.

Q And the examination was done by whatever physician saw him October 7th of 2015.

Correct?

A That's correct.

Q All right.

Now, look through this physical examination, and tell the jury where the word "swelling" appears with regard to the right leg.

A There is no notation for swelling.

Q None?

A That's correct.

Q And even two weeks after this accident on a right knee injury you're claiming was caused by this accident, there is no presentation of swelling with regard to the right knee.

Correct?

A That's correct.

Q But we do have zero to sixty, that's flexion.

Correct?

A Zero is extension, sixty is flexion.

Q Flexion meaning bending the knee towards one or laying on your stomach and bending it back all the way.

Correct?

A Yes, that's flexion.

Q Now, do you have a measurement of quadriceps or the calves of the plaintiff?

Yes or no?

A Well, I did note atrophy, as I said earlier.

Q Okay. Doctor, please focus on my question.

Were measurements taken of the plaintiff's quadriceps and calves at the initial examination?

A Oh, in this examination?

No, they were not.

Q They were not.

In order to measure atrophy, you have to measure that, is that fair to say?

A You can do it visually or use a measuring tape.

Q And you don't know what his flexion was prior to this accident.

Correct?

A I never examined the patient prior to this accident.

Q Well, does the muscle mass and the size of one's legs have an effect on the range of motion?

Yes or no?

A It does not have an effect on the extension. It may or may not have an effect on terminal flexion.

Q In other words, if you have more girth on your legs, it's going to decrease the range of motion, won't it?

A It can, but it's minimal, and it would be a lot more

than 60.

Q And we notice that the left leg has 60 degrees as well. Correct?

A That's correct.

Q Exact same as the right knee. Correct?

A That's correct.

Q As part of your chart, Doctor, the MRI taken of the plaintiff's right knee, the MRI report, is contained as a part of your chart. Is that correct?

A I'm sorry, what was your question?

Q The MRI report taken of plaintiff's right knee is part of your chart, isn't it?

A Yes.

Q And that film study was done on October 11th of 2015. Correct?

A Yes.

Q And it was referred by Douglas Schwartz. Correct? Dr. Douglas Schwartz?

A That's correct.

Q And were you aware that Mr. Moise was also referred to Dr. Schwartz by his attorneys?

A I'm not certain of the referral to Dr. Schwartz.

Q Did you and Dr. Schwartz discuss the fact that this

patient was referred by the attorneys when you were talking to each other?

A I don't recall ever talking to Dr. Schwartz about this patient.

Q But Dr. Schwartz is one of his treating physicians, isn't he?

A Yes, he is.

Q So you're telling us before you did surgery you never spoke with one of his treating physicians?

A On the phone, no.

Q How about outside, in person?

A About this patient, no.

Q How about -- did you speak with Dr. David Payne, the radiologist who interpreted this film study, any time before doing surgery?

A No, I did not.

Q But you told the jury before that you disagreed with his findings in the MRI.

Correct?

A Yes, it's very common for a physician to have different opinions.

Q I didn't ask you that.

You disagree with the finding.

Correct?

A Yes, some of them.

Q And you elected to perform a surgery on his right knee. Correct?

A That's correct.

Q And you never ever consulted with the radiologist who interpreted this film study or his other treating physician. Correct?

A That's correct. Very correct, yes.

Q As a matter of fact, you elected to do the surgery after a 10/28/15 office visit. Correct?

A I don't recall the date, but soon thereafter.

Q Take a look.

A Yes, right knee surgery was recommended on 10/28/15.

Q So you saw Mr. Moise one time before that, on 10/14/2015. Correct?

A Yes.

Q And by 10/28, two weeks later, you recommended surgery to him. Is that correct?

A That's correct.

Q So you never talked to Dr. Schwartz about whether or not his physical therapy was improving. Correct?

A Well, I spoke to the patient, but not Dr. Schwartz.

Q Okay. And what was your conclusion about whether or not the physical therapy range of motion were improving or getting worse with regard to his right knee?

A Well, the surgery wasn't for his range of motion, it was for his pain and stability.

Q Well, was one of the points of surgery, Doctor, to increase range of motion?

A The point of surgery was to decrease pain and improve stability to help his function, motion and strength.

Q Let's talk about the indications for surgery.

All right?

A Yes.

Q By indications, it's a fancy medical term for I think this is the reason he needs surgery. It's called an indication.

Right?

A Yes.

Q Would you agree with me that one of the indications are pain?

A Yes.

Q Would you agree with me that another indication for surgery would be a positive diagnostic test such as an MRI or an x-ray or a CAT scan?

A Are you talking in general or this patient?

Q I'm talking about indications to surgery.

A On this patient?

Q Generally.
A In general?
Q Yes.
A So the indications for surgery in general are --
Q Answer my question.
Pain is one.
Correct?
MR. LESNEVEC: Objection. Argumentative, he is answering the question.
THE COURT: Repeat the question.
Q Pain is one of the indications for surgery.
Correct?
A It can be, yes.
Q Is a positive diagnostic test another indication for surgery?
A It can be, yes.
Q And would the failure of conservative therapy be an indication for surgery?
A It can be an indication for surgery.
Q Did you consider all of those indications before you performed the surgery?
Yes or no?
A I considered everything before I did the surgery.
Q And would instability of a joint be another indication for surgery?

A Yes, it could be.
Q So we've articulated four indications for surgery.
Correct?
A Four possible indications, yes.
Q What was the range of motion of inflection with regard to the plaintiff's right knee on 10/7?
A His range of motion was zero to 60 degrees.
Q Okay. And on 10/14, what was his range of motion?
A Zero to 100.
Q So he improved 40 degrees in one visit to your office.
Correct?
A He did. Then he went back to 80 degrees on his next visit.
Q His range of motion inflection with the right knee went from 60 to 100 degrees.
Am I correct?
A Yes, between those two visits.
Q And we don't know if 100 degrees was normal for him prior to the accident.
Correct?
A I would say that he had no history of injuries or symptoms that was not normal for the patient.
Q We'll get to prior history in a moment, Doctor.
But you don't know what his baseline of flexion range of motion was before the accident.

Correct?

A His exact flexion, I don't.

Q You don't have any idea what it was.

Correct?

A I would say it was within normal limits.

Q But despite the fact that he had improving range of motion between October 7th and October 14th, by October 28th, you scheduled the surgery.

Correct?

A Yes, because his motion deteriorated on October 28th. It went down to 80 degrees.

Q Went down to 80, but it still improved from two weeks prior, and nevertheless, you scheduled the surgery.

Correct?

A The motion was getting worse, and yes, I did schedule the surgery.

Q So, Doctor, if failure of conservative therapy is one of the indications for surgery, that reason was not present on October 28th, 2015.

Correct?

Yes or no?

A The failure of conservative therapy was not the primary factor for indicating surgery.

Q We can agree that his range of motion was improving.

Correct?

A It was not improving when I last saw him.
Q Well, it improved from October 7, 2015.
Didn't it?
A It improved and then and deteriorated after that.
Q It still had improvement in two weeks, Doctor, we can see the math.
Correct?
A It went from 60 to 80 which is very poor.
Q 60 to 80. Okay. So, which means that the therapy might've been working.
Correct?
A I can't answer that yes or no because the therapy is not meant to fix the tears of his meniscus or his ligaments which is the reason why we did the surgery. The reason we did the surgery really had not much to do with his motion as much as the dysfunction of the knee.
Q Doctor, let's take a look at the --
THE COURT: Counsel, you have five.
MR. JONES: Okay, Judge.
Q Doctor, an MRI of the plaintiff's right knee was performed on October 11th, 2015.
Do you see that date right there?
A Yes.
Q All right. What does the MRI report say with regard to the ligaments?

Last line.

A Intact ligaments, cruciate.

Q Intact?

A Yes.

Q And one of those ligaments is one that was surgically addressed by you.

Correct?

A Yes.

Q And according to this MRI report, the gold standard of diagnostic test, found it was intact.

Correct?

Yes or no?

A No, the gold standard is arthroscopic surgery.

Q Okay, Doctor, there's no reason to do a surgery according to this MRI report.

Would you agree?

A No, I disagree with that. He has a torn meniscus there.

Q There's no reason to address the ACL according to this.

Correct?

A According to that report, I agree with you, but again, I have different findings during surgery as well as my interpretation of the MRI.

Q I'll get to your operative report next. But first, Doctor, I want to talk about congenital conditions.

What does congenital mean, Doctor?

A Congenital is something that you're born with.

Q Now, you told the jury earlier that you're here to give an objective view of all the medical records. Right?

A Yes.

Q And that you want to give an informed opinion of causation.

Am I correct?

A Yes.

Q Now, let's take a look at interpretation by Dr. David Payne with regard to what he sees in the right knee MRI. We have lateral tilt and subluxation of the patella.

Do you see that?

A Yes.

Q You didn't mention on direct examination for plaintiff's attorney, did you?

Yes or no?

A No, I did not mention it.

THE COURT: Counsel, I think we're going to have to break now.

MR. JONES: Okay.

THE COURT: Attorneys approach please.

(Off the record.)

THE COURT: Okay. Doctor, we're going to have to take a break in the testimony, and you are still under oath.

And members of the jury, we're going to call it a day and start at 9:30 tomorrow. Once again, I remind you, please do not discuss this case with anyone. Okay? Thank you.

(Whereupon, the testimony of Dr. Touliopoulos was concluded for 10/7 and adjourned for continuation on 10/8.)

* * * * * *

Court Reporter's Certification

I hereby certify that the foregoing transcript is a true and accurate record of the stenographic proceedings in the above matter of Moise v. Yakadjene/Nesbitt.

Brynn C. R. Seymour
Senior Court Reporter
Bronx County

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