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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK  
Index No.. 153179/2019

-----X

JOSE GARCIA,

Plaintiff,

-against-

122-130 EAST 23RD STREET LLC AND CM AND  
ASSOCIATES CONSTRUCTION MANAGEMENT  
LIMITED LIABILITY COMPANY,

Defendants.

-----X

122-130 EAST 23RD STREET LLC AND CM AND  
ASSOCIATES CONSTRUCTION MANAGEMENT  
LIMITED LIABILITY COMPANY,

Third-Party Plaintiffs,

-against-

TRIBESMEN GROUP INC.,

Third-Party Defendants.

-----X

November 7, 2024

11:52 a.m.

VIDEO DEPOSITION of JEFFREY KAPLAN, M.D.,  
taken on behalf of the Defendants pursuant to  
Subpoena/Court Order, held at the offices of  
Fabiani Cohen & Hall LLP, 570 Lexington Avenue,  
New York, New York, before Marianne Witkowski  
Smith, a Shorthand Reporter and Notary Public  
of the State of New York.

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

GORAYEB & ASSOCIATES P.C.

Attorneys for Plaintiff

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New York, New York 10038

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rbreitenbach@harrisbeach.com

ALSO PRESENT:

RON MARRAZZO, Veritext Legal Solutions

\* \* \*

1  
2 221. UNIFORM RULES FOR THE  
3 CONDUCT OF DEPOSITIONS

4 221.1 Objections at Depositions

5 (a) Objections in general. No  
6 objections shall be made at a deposition except  
7 those which, pursuant to subdivision (b), (c)  
8 or (d) of Rule 3115 of the Civil Practice Law  
9 and Rules, would be waived if not interposed,  
10 and except in compliance with subdivision (e)  
11 of such rule. All objections made at a  
12 deposition shall be noted by the officer before  
13 whom the deposition is taken, and the answer  
14 shall be given and the deposition shall proceed  
15 subject to the objections and to the right of  
16 a person to apply for appropriate relief  
17 pursuant to Article 31 of the CPLR.

18 (b) Speaking objections restricted.

19 Every objection raised during a deposition  
20 shall be stated succinctly and framed so as not  
21 to suggest an answer to the deponent and, at  
22 the request of the questioning attorney, shall  
23 include a clear statement as to any defect in  
24 form or other basis of error or irregularity.  
25 Except to the extent permitted by CPLR Rule 3115  
or by this rule, during the course of the  
examination persons in attendance shall not make  
statements or comments that interfere with the  
questioning.

221.2 Refusal to answer when objection is made.

A deponent shall answer all questions at  
a deposition, except (i) to preserve a privilege  
or right of confidentiality, (ii) to enforce a  
limitation set forth in an order of the court,  
or (iii) when the question is plainly improper  
and would, if answered, cause significant  
prejudice to any person. An attorney shall not  
direct a deponent not to answer except as  
provided in CPLR Rule 3115 or this subdivision.  
Any refusal to answer or direction not to answer  
shall be accompanied by a succinct and clear  
statement of the basis therefor. If the deponent  
does not answer a question, the examining party  
shall have the right to complete the remainder of  
the deposition.

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221. UNIFORM RULES FOR THE  
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

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J. KAPLAN

VIDEO TECHNICIAN: Good morning. We are now going on the record. The time is approximately 11:52 a.m. It is the 7th of November 2024.

Please note that the microphones are sensitive and may pick up whispering and private conversations. Please mute your phones at this time. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is the video-recorded deposition of Dr. Jeffrey Kaplan, in the matter of Jose Garcia vs. 122-130 East 23rd Street LLC, et al. This case is filed in the Supreme Court of the State of New York, County of New York, Docket Nos. 153179/2019.

The location of this deposition is Fabiani Cohen & Hall, located at 570 Lexington Avenue in New York City.

My name is Ron Marrazzo, representing Veritext Legal Solutions, and our court reporter is Marianne

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J. KAPLAN

Witkowski-Smith, from the firm Veritext  
Legal Solutions.

I am not related to any party in  
this action, nor am I financially  
interested in its outcome. If there are  
any objections to this proceeding, please  
state them at the time of your appearance.

All counsel present will now state  
their appearances and affiliations for the  
record, beginning with the noticing  
attorney.

MR. GLAZER: Scott Glazer, Fabiani  
Cohen & Hall, counsel for all Defendants,  
and my associate Elliot Schwartz is  
accompanying me.

MR. BREITENBACH: Roy Breitenbach,  
Harris Beach PLLC, attorney for the  
witness, Jeff...Jeffrey Kaplan, M.D.

MR. KELLY: Frank Kelly, Gorayeb &  
Associates, for the Plaintiff Jose Garcia.

VIDEO TECHNICIAN: Very good.

We can now swear in the witness and  
proceed.

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J. KAPLAN

J E F F R E Y   K A P L A N,   M. D.,  
the witness herein, was thereupon duly  
sworn/affirmed by the notary Public and  
was examined and testified as follows:

EXAMINATION

BY MR. GLAZER:

Q.        Good morning, my -- Doctor. My name  
is Scott Glazer. I'm an attorney with Fabiani  
Cohen & Hall.

A.        Yes.

Q.        We're here today to conduct your  
deposition pursuant to a subpoena and a court  
order.

I'm going to ask you a series of  
questions. I ask that you allow me to ask my  
question in it is entirety before you begin to  
answer. This is so that you understand the  
question and also so that our court reporter  
gets down my question accurately and your  
answer accurately.

If we're both talking at the same  
time, we're going to probably have to repeat  
ourselves. And you can imagine, you do that  
five, ten times, the day adds up...the time

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J. KAPLAN

adds up quickly and we're here longer than...than you want to be.

If you need to take a break, as long as there's not a question pending, I'll give you whatever time you need. If there's a question pending, I'm going to ask that you first answer it, and then we'll take the break.

If you don't understand my question, please let me know. I'm not here to trick or confuse you. If you provide an answer, I'll take that to mean you understood my question.

Fair enough?

A. Fair enough.

Q. Your answers need to be spoken words, out loud. And nods, gestures, while your attorney and I may understand what that nod or gesture means today, down the road at trial it may be a little less clear. So I ask that you say yes, no, I don't know, or whatever the proper answer might be.

I think that about covers it.

A. Thank you.

Q. Are you currently employed?



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J. KAPLAN

A. Yes.

Q. By whom are you employed?

A. I'm employed by New York Ortho Sports Medicine & Trauma.

Q. And what is your title at New York Ortho Sports Medicine & Trauma?

A. I am a physician there --

Q. How --

A. -- an orthopedic surgeon.

Q. How long have you been employed at New York Ortho?

A. It's been in business about twenty years.

Q. Have you been employed there the entire time it's been in business?

A. Yes.

Q. What's the address of the New York Ortho office?

A. 160 East 56th Street, Manhattan 10022.

Q. And is that the only location for New York Ortho?

A. Yes.

Q. Has that been the address of your

1 J. KAPLAN

2 office for the twenty years that the practice  
3 has been open?

4 A. Yes.

5 Q. Are you one of the founding members  
6 of the practice?

7 A. Yes.

8 Q. Are there other founding members?

9 A. No.

10 Q. Where'd you go to med school?

11 A. I went to Columbia University.

12 Q. Where'd you do your undergrad?

13 A. Yale University.

14 Q. What year did you graduate Yale?

15 A. 1985.

16 Q. And when did you graduate Columbia?

17 A. '89.

18 Q. Where did you do your residency?

19 A. At the Campbell Clinic in Memphis,  
20 Tennessee.

21 Q. After the Campbell -- well, what  
22 years were you at the Campbell Clinic?

23 A. '89 through '94.

24 Q. After that, where did you go?

25 A. I moved to New York.

1 J. KAPLAN

2 Q. And is that when you opened New York  
3 Ortho or did you --

4 A. No.

5 Q. -- work for another practice first?

6 A. I worked at another practice first.

7 Q. What was the name of that practice?

8 A. Seaport Orthopaedics.

9 (Reporter clarification.)

10 Q. Were you at Seaport Ortho from '94  
11 until you opened New York Ortho?

12 A. I spent a year...how long?

13 I spent several years at a different  
14 practice called John Korn Jeff Kaplan  
15 Orthopedics PC. I believe that was the name.

16 Q. Okay. Was that between Seaport and  
17 New York Ortho?

18 A. Correct.

19 Q. So New York Ortho, what -- strike  
20 that.

21 What year was New York Ortho opened?

22 A. I don't recall.

23 Q. Was it around 2004 or 2005?

24 A. I honestly don't recall, yeah.

25 Q. All right.

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J. KAPLAN

A. Probably.

Q. Fair enough.

A. Yeah.

Q. Since the New York [Orthopedic] practice was opened, have there been any periods of time where the practice was closed?

A. No.

Q. Since you completed your residency, up until yesterday, any period of time where you were not actively practicing medicine?

A. No.

Q. What are the days of the week that New York Ortho is open, currently?

A. Monday through Friday.

Q. And in March of 2019, was it also Monday through Friday?

A. Yes.

Q. Was there ever a period of time where New York Ortho was open on Saturday or Sunday?

A. No.

Q. What are the hours of operation at New York Ortho -- well, let me ask it differently, strike that.

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J. KAPLAN

Have the hours of operation been the same at New York Ortho since 2019 to the present?

A. I believe so, yes.

Q. What are the opened and closed hours?

A. We open at 8:30 for patients and we close at 5:00 for patients.

Q. In 2019, how many people did New York Ortho employ?

A. I don't know the exact number.

Q. Is there a...can you give me an approximate --

A. Fifteen.

Q. How many doctors are included in that number?

A. Two.

Q. Two?

A. Yes.

Q. Who are those two doctors?

A. Myself and Dr. Matthew Grimm.

Q. What type of physician is Matt Grimm?

A. He is a pain management specialist.

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J. KAPLAN

Q. Has he been part of New York Ortho for the same -- well, strike that.

Has he been part of New York Ortho since the practice was opened?

A. No.

Q. When did Matt Grimm join your practice?

A. Approximately ten years ago.

Q. Of the approximate thirteen other employees, how many of them are physicians' assistants, nurses or some other type of medically-trained employee?

A. It differs at different times.

Q. Okay.

A. But I have a full-time physician's assistant, and have for many years, although that position has changed. Employees?

Q. You have --

(Unreportable crosstalk.)

Q. -- dedicated to you, but the person has changed over the years?

A. Correct.

Q. Gotcha. Are there other physicians' assistants at the practice that are not

1 J. KAPLAN

2 dedicated to you?

3 A. There have been. There are not  
4 presently.

5 Q. Currently, there's about fifteen  
6 employees?

7 A. Approximately, twelve to fifteen,  
8 yeah.

9 Q. Other than you and Dr. Grimm, what  
10 are the titles of those additional employees?

11 A. There are...an office manager, a  
12 surgical booker, front desk people, billers,  
13 record-room person, a transcriptionist and  
14 a...a physical therapist.

15 Q. What's a transcriptionist?

16 A. A transcriptionist is someone who  
17 types my dictations.

18 Q. Who...which title that is at your  
19 office is responsible for scheduling  
20 appointments for new patients?

21 A. Those would be the front desk  
22 people.

23 Q. How many people are currently  
24 employed at the front desk?

25 A. Three.

1 J. KAPLAN

2 Q. In 2019, how many people were  
3 employed at the front desk?

4 A. I believe three.

5 Q. Was it the same people that are  
6 there now?

7 A. Not all of them, no.

8 Q. Who was at the front desk in March  
9 of 2019?

10 A. I don't recall.

11 Q. Do you have records that...like a  
12 payroll record that would --

13 A. Oh.

14 Q. -- reflect who...who was employed  
15 there?

16 A. I'm sure there are, yeah.

17 Q. Are any of the front desk people  
18 currently employed -- strike that.

19 Are any of the people that you  
20 currently have working at your front  
21 desk...were they employed in March of 2019?

22 A. I believe so.

23 Q. How many of your current employees  
24 were at the front desk in 2019, as well?

25 A. One or two.



1 J. KAPLAN

2 Q. What are their names?

3 A. Maribel Cruz and Reina Torres.

4 Q. And then there would be a third or  
5 possibly more than a third back in 2019?

6 A. We had some turnover. I don't  
7 recall when that...you know, when that was.

8 Q. In any given day of the week, is  
9 there always three people working at the front  
10 desk?

11 A. Unless there's turnover and we  
12 haven't filled that position --

13 Q. Okay.

14 A. -- or someone is out for some  
15 reason.

16 Q. Do the people that work at the front  
17 desk work the same hours that the practice is  
18 open?

19 A. No.

20 Q. What are the hours of the people  
21 that work at the front desk?

22 A. I don't know the answer to that.

23 Q. Is there a call center where the  
24 front desk employees receive calls twenty-four  
25 hours a day?

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J. KAPLAN

A. Not the front desk people, but there is a call center that takes messages for us, yes.

Q. Okay. Who would know the hours that the front desk people work?

A. The office manager.

Q. Would the hours that the front desk people work be memorialized in a payroll record, as well?

A. I don't know how that's kept.

Q. Okay.

A. That's a matter for the office manager.

Q. What's the office manager's name?

A. Karen Knutson.

Q. I'm sorry, I didn't hear that.

A. Karen Knutson.

Q. Was Ms. Knutson your office manager in 2019?

A. Yes.

Q. Are the people that are employed at the front desk required to speak more than one language?

A. I'm not sure how you define

1 J. KAPLAN

2 required.

3 Q. As part of the requirement of their  
4 employment, are they...do you need them to be  
5 able to speak more than one language?

6 In other words, if they speak only  
7 English, are they not qualified for the job?

8 A. I happen to only hire people who  
9 speak more than one language.

10 Q. Okay.

11 A. Yeah.

12 Q. Is that because it helps your  
13 practice or is there another reason?

14 A. It helps the practice.

15 Q. Gotcha. What languages do the  
16 people at the front desk customarily speak in  
17 your practice?

18 A. English, Spanish, we have Polish and  
19 we, at one time, employed French.

20 Q. Do the people at the front desk also  
21 schedule follow-up appointments?

22 A. Yes.

23 Q. How is the appointment for a new  
24 patient made?

25 A. Someone will call and say they need

1 J. KAPLAN

2 an appointment, they've had an orthopedic  
3 problem. They will be questioned, generally,  
4 about what body parts are injured or body part  
5 is injured, and if it's something that I take  
6 care of, they will schedule an appointment.

7 Q. What types of patients do you treat?

8 A. Patients with orthopedic problems.

9 Q. Is there a specific type of  
10 orthopedic injury that you treat?

11 A. I generally take care of sports  
12 medicine and trauma injuries.

13 Q. Is there certain body parts that you  
14 focus on, like are you a knee, ankle  
15 specialist, or a shoulder, is there...or is it  
16 any orthopedic ailment?

17 A. I do mainly extremity orthopedics --

18 Q. Okay.

19 A. -- meaning arms and legs, primarily.

20 Q. Are the patients you treat all  
21 somehow traumatically injured or are some of  
22 your patients people who are coming to you for  
23 chronic, longterm injuries?

24 A. Both, yes.

25 Q. Are all of your patients -- strike

1 J. KAPLAN

2 that.

3 Do all of the patients you treat  
4 have a workers' compensation claim component  
5 to their treatment?

6 A. No.

7 Q. Do all of the patients you treat  
8 have a personal injury lawsuit?

9 A. No.

10 Q. About what percentage of the  
11 patients that New York Orthopedics is  
12 currently treating are plaintiffs in a pending  
13 litigation?

14 MR. BREITENBACH: Objection.

15 You may answer.

16 A. I don't know the answer to that.

17 Q. Who would know the answer to that?

18 A. The...the patient, I guess.

19 Q. How many patients are you, are...is  
20 New York Ortho actively treating?

21 A. I don't know the answer to that,  
22 either.

23 Q. Can you approximate that number?

24 A. No, I...I wouldn't even know where  
25 to start. I can tell you how many patients --

1 J. KAPLAN

2 well, I wouldn't know where to start.

3 Q. You mentioned earlier that you have  
4 a records room; is that correct?

5 A. Not -- a record-keeper, yeah.

6 Q. Okay.

7 A. Yeah.

8 Q. No more paper file kept --

9 A. They're -- that's correct, yeah.

10 Q. Does -- strike that.

11 When the call comes in for a new  
12 patient appointment to be made, does the  
13 person receiving the call keep a record of  
14 what's discussed during the call?

15 A. Not that I know of.

16 Q. Are notes taken during the call by  
17 the front desk staff?

18 A. I would think the name, phone  
19 number, something like that.

20 Q. When -- during the course of the  
21 call, who makes the determination if the  
22 person calling is describing something that  
23 you can treat?

24 A. The person at the front desk  
25 generally can make that call, they're

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J. KAPLAN

qualified to do that. Sometimes they will ask me if it's something...if they haven't had any experience with that.

Q. Okay. And if they make the decision on their own that this is something you can treat and they go ahead and schedule the initial appointment, do they indicate - when making the appointment - who contacted them to set it up?

A. Not always, no. Sometimes they will.

Q. When they indicate who contacted them to set the initial appointment up, where do they make that indication?

A. Sometimes it's on the schedule.

Q. And where is the schedule kept?

A. The schedule is kept in our electronic medical records.

Q. So if...on whatever date the initial appointment was made for Mr. Garcia to see you, if somebody called to make that appointment -- or someone presumably did call.

Whoever that person was, if it was noted, it would be noted in your schedule?

1 J. KAPLAN

2 A. If it was noted, I think it would be  
3 sometimes in the schedule, yeah.

4 Q. Do you receive calls from Gorayeb &  
5 Associates to schedule initial appointments  
6 for patients?

7 A. We have received calls, yes.

8 Q. Do you receive calls from Fogelgaren  
9 Forman & Bergman to schedule initial  
10 appointments for patients?

11 A. I don't know.

12 Q. How do you know that you've received  
13 them from Gorayeb & Associates' office?

14 A. I have seen, on our schedule,  
15 Gorayeb.

16 Q\* Okay. What other lawyers' names  
17 have you seen on your schedule?

18 DI\* MR. BREITENBACH: Objection,  
19 directing him not to answer.

20 MR. GLAZER: On what grounds?

21 MR. BREITENBACH: It's confidential  
22 business information. Who else he may  
23 have as a...who else may be -- he may be  
24 doing...you know, referring him patients  
25 or making initial calls is absolutely



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J. KAPLAN

irrelevant for your lawsuit, Counsel.

MR. GLAZER: Oh, we can mark that for a ruling.

MR. KELLY: Join the objection, it exceeds...it exceeds the scope of the subpoena.

BY MR. GLAZER:

Q. Does the schedule ever indicate who at Gorayeb's office contacted you to set up the initial appointment?

A. I don't know the answer to that.

Q. When it indicates Gorayeb's office, what do you recall the schedule noting?

A. It will say scheduled by -- actually, yes, the...now that I think about it and you say that, it will say scheduled by someone's name sometimes, but I don't know if that's from Gorayeb all the time. It may be, you know, a family member or something like that.

Q. About what percentage of the patients currently treated at New York Ortho are also represented by Gorayeb & Associates?

MR. BREITENBACH: Objection.

1 J. KAPLAN

2 You may answer.

3 A. Yeah, I don't know the answer to  
4 that.

5 Q. Who would know the answer?

6 A. No one.

7 Q. Well, nobody at your office, is what  
8 you believe, would know the answer?

9 MR. KELLY: Objection,  
10 argumentative.

11 MR. GLAZER: Fair enough. I'll  
12 strike that.

13 Q. What percentage of the patients  
14 being treated currently at New York Ortho are  
15 represented by Fogelgaren Forman & Bergman?

16 MR. BREITENBACH: Objection.  
17 You may answer.

18 A. I have absolutely no idea.

19 Q. About how many new patient  
20 appointments are made in a given week at New  
21 York Ortho?

22 A. It varies wildly. This week, for  
23 example, I would say three.

24 Q. Okay. Last week?

25 A. Don't recall, probably around the

1 J. KAPLAN

2 same.

3 Q. And so you say it varies wildly.  
4 What would be the spectrum, three up  
5 to...

6 A. Three up to six, so --

7 Q. Okay.

8 A. -- double that, yeah.

9 Q. And 2019, was it about the same?

10 A. Probably.

11 Q. Are you able to tell me about how  
12 many of those three to six new patients are  
13 referred to you by Gorayeb & Associates?

14 MR. BREITENBACH: Objection.

15 You may answer.

16 A. No, I mean, that is really simply  
17 not something I look at.

18 Q. Well, is it something though --  
19 strike that.

20 Is the date that the new...that the  
21 new patient appointment is scheduled for, is  
22 the date that it's made memorialized?

23 Does that make -- does...are you  
24 following me?

25 A. I'm not a hundred percent --

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MR. BREITENBACH: I'm going to  
object --

(Unreportable crosstalk.)

Q. -- let me ask the question with a,  
with -- I'll put some dates in there,  
hypothetical --

A. Sure.

Q. -- dates, just to make it a little  
bit easier for you to follow what I'm saying.

If on January 1 a call comes in for  
a new patient, and the appointment is made for  
January 10 for that new patient initial  
evaluation to be performed, does the date  
January 1 - where the appointment was made -  
does that get memorialized in any way?

A. Not that I'm aware of.

Q. Would your schedule for January 10  
reflect that the appointment had been made on  
January 1?

A. No.

Q. Does the schedule get created on  
paper or is it created electronically?

A. Electronically.

Q. Have your servers changed since

1 J. KAPLAN

2 2019?

3 A. I don't know the answer to that.

4 RQ\* MR. GLAZER: We're going to request  
5 metadata, Counsel, but we'll follow up  
6 in --

7 MR. BREITENBACH: I'm going to --  
8 let me put a statement on the record.

9 My understanding is that the note of  
10 issue in this case has been filed. To,  
11 to -- and has been filed a long time ago.

12 To now open up and request metadata  
13 and to reopen discovery to request  
14 meta...metadata from a non-party witness  
15 at this juncture would be manifestly  
16 improper, palpably improper, and abusive.

17 And we would reserve the right to  
18 seek sanctions from your client for the  
19 motion practice required to move to quash  
20 or for protective order in that  
21 connection, so be warned.

22 MR. GLAZER: We'll take it under  
23 advisement.

24 MR. KELLY: I join in the objection.

25 MR. BREITENBACH: Counsel,

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your...your partner represented that this deposition would be over in an hour. We are now, at my [connection], at the 25-minute mark. Please proceed quickly.

MR. GLAZER: Hold...hold on, hold on --

MR. BREITENBACH: Your client said, your -- Mr. Fabiani said this deposition would only take an hour.

MR. GLAZER: Well, I was not privy to that conversation and nobody told me that I was constrained by a sixty-minute clock.

MR. BREITENBACH: You're not, but I'm --

MR. GLAZER: I expect this is going to take more than an hour today and the, the -- there is no court order limiting me and nobody told me I was under a limit. There's no email chain that I was limited.

You and I have had multiple emails about today's deposition, we moved the date once, you know that I was the attorney coming in to take this. Never

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once did you say this is limited. We moved it back to accommodate the doctor's calendar. I'm going to just keep doing my job.

MR. BREITENBACH: Well, I'm just pointing out that my presumption was...was that you do talk to Mr. Fabiani, who's a named partner at the firm who gives you direction and who, I presume, told you that he had represented to me it would be an hour. So just keep asking your questions.

MR. GLAZER: I talk to John about lots of things --

MR. BREITENBACH: Okay.

MR. GLAZER: -- and I'm a partner at this firm, as well, and --

MR. BREITENBACH: Let's not waste time with this. Keep asking your questions.

MR. GLAZER: Was I starting a question?

(Reporter interjection.)

MR. GLAZER: Thank you.

1 J. KAPLAN

2 BY MR. GLAZER:

3 Q. Does New York Orthopedic have an  
4 agreement with Gorayeb & Associates to...to  
5 accept any new patient referred?

6 MR. BREITENBACH: Objection.

7 MR. KELLY: Objection.

8 MR. BREITENBACH: You may answer.

9 A. No.

10 Q. Do you have a handshake agreement  
11 with Chris Gorayeb --

12 MR. KELLY: Objection.

13 MR. BREITENBACH: Objection.

14 You may answer.

15 MR. GLAZER: I haven't even finished  
16 my question, guys.

17 MR. BREITENBACH: Well, when the  
18 question starts out, do you have a  
19 handshake --

20 (Unreportable crosstalk and  
21 reporter interjection.)

22 MR. KELLY: Objection to the form of  
23 the question.

24 (Reporter interjection.)

25 MR. KELLY: Please reform the



1 J. KAPLAN

2 question in a proper manner.

3 MR. GLAZER: If I can get the  
4 question out all the way, maybe I could.

5 Q. Dr. Kaplan, do you have an agreement  
6 with Chris Gorayeb to treat any patient  
7 referred to you by his law firm?

8 MR. KELLY: Objection.

9 MR. BREITENBACH: Objection.

10 You may answer.

11 A. No.

12 MR. BREITENBACH: By the way, just  
13 to clarify, you mean all patients or any  
14 patients?

15 MR. GLAZER: What's the difference?

16 MR. BREITENBACH: Well, any or all,  
17 there's a big difference, but go ahead.

18 MR. GLAZER: I'm not playing --

19 MR. BREITENBACH: Go ahead.

20 MR. GLAZER: -- a semantics game  
21 here.

22 Q. I meant every single person,  
23 anyone -- do you have an agreement with Chris  
24 Gorayeb that any single client that his law  
25 firm sends to your medical practice for

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medical treatment, that your practice will accept them for treatment sight unseen, no matter what?

MR. KELLY: Object --

MR. BREITENBACH: Objection.

You may answer.

A. No.

Q. Is part of your routine to share with -- strike that.

Do you ever inform Gorayeb & Associates when you're going to be on vacation?

MR. BREITENBACH: Objection.

MR. KELLY: Objection.

MR. BREITENBACH: You may answer.

A. I do not.

Q. Okay. Do you take vacations?

A. Yes.

Q. During an average 52-week work...52-week year, how many of those weeks do you take off entirely and not see patients?

A. Two.

Q. Is it the same two weeks every year?

A. No.

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J. KAPLAN

Q. Does the period of time during the year fluctuate or are you always taking off two weeks during the month of August or December, or something along those lines?

A. My vacations are based on my wife's schedule.

Q. Gotcha. Are you familiar with the C-3 form for the Workers' Compensation Board?

A. I'm not sure which form that is, but if you'll tell me the title of it, I may be.

(Brief off-record discussion.)

THE WITNESS: You could also just tell me generally what the form refers to.  
BY MR. GLAZER:

Q. Well, are you familiar with the accident reporting process or procedures with the Workers' Compensation Board?

A. No.

Q. Have you seen an injury report form with the title/letters C-3 at the top of it?

A. Not that I recall.

Q. Okay. Does anybody at your front desk receive payment or money from Gorayeb & Associates when they schedule an appointment

1 J. KAPLAN

2 for a new patient?

3 MR. KELLY: Objection.

4 MR. BREITENBACH: Objection.

5 You may answer.

6 A. Definitely not.

7 Q. Why do you say definitely not?

8 A. I would --

9 MR. KELLY: Same objection.

10 MR. BREITENBACH: Yeah, same  
11 objection.

12 You may answer.

13 A. That's just not what we do.

14 Q. How many doctors do you -- well,  
15 strike that.

16 In 2019, how many doctors do you  
17 customarily refer patients to?

18 DI\* MR. BREITENBACH: Objection, and I'm  
19 going to direct him not to answer that,  
20 because who he refers patients to...who he  
21 may refer patients to as a doctor is  
22 entirely irrelevant to the issues in this  
23 lawsuit. This lawsuit -- and exceeds the  
24 scope of the subpoena.

25 This subpoena was for a -- it's a

1 J. KAPLAN

2 post note-of-issue subpoena for a narrow  
3 issue. That's what was represented  
4 to...to us, that's what was represented to  
5 the Court in a motion practice, and who he  
6 may refer patients to is just...it's so  
7 far beyond.

8 This is not your opportunity to...to  
9 ask a series of questions about all  
10 operations of Dr. Kaplan's practice, okay?  
11 It's a narrow-scope subpoena. Please  
12 limit yourself to the narrow scope of the  
13 subpoena and please stop asking questions  
14 about how many weeks vacation he takes and  
15 when those weeks are.

16 It's entirely palpably improper. If  
17 it continues, we will stop this deposition  
18 and seek sanctions.

19 MR. GLAZER: Well, Counsel, what you  
20 believe is palpably improper and my  
21 questions are two different things, and I  
22 respectfully disagree with your opinion.

23 I'm going to keep going forward with  
24 my deposition. If you feel that you have  
25 to make a motion when the day is over,

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that's your prerogative and you'll have to do what you have to do.

MR. BREITENBACH: Okay.

(Unreportable crosstalk.)

MR. KELLY: -- limits you to the --

MR. GLAZER: I'm not harassing anybody or asking anything that...that I consider to be afield of what I am here to do today.

I'm going to continue.

(Reporter interjection regarding crosstalk.)

MR. KELLY: Sure. Judge Adams' order limits you to the notice in the subpoena. The order is dated 7/29/24 and it limits you to the notice in the subpoena. The subpoena is...distinctly not include anything regarding business practice and anything else, so you're far afield.

BY MR. GLAZER:

Q\* Can you just walk me, briefly, through your initial evaluation of a patient?

DI\* MR. BREITENBACH: All right. I'm

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going to object and direct him not to answer on the grounds that that goes into treatment, which is manifestly not the subject of the deposition.

MR. GLAZER: Well, it's not treatment of Mr. Garcia, we're going into the --

(Unreportable crosstalk.)

MR. GLAZER: If I ask about Mr. Garcia, Mr. Kelly is going to block my questions.

MR. BREITENBACH: Okay. Counsel, then what possibly is the relevance of Dr. Kaplan's practice and procedure on how he conducts his --

MR. GLAZER: That's my --

(Unreportable crosstalk.)

MR. BREITENBACH: -- examination if not to then go and compare that to the treatment that Mr. Garcia received?

MR. GLAZER: Counsel --

MR. BREITENBACH: I'm going to direct him not to answer.

MR. GLAZER: Well, we're going to

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have to get a judge, because I'm not going to --

MR. BREITENBACH: Then...then feel free.

MR. GLAZER: -- articulate my quest...the reasons I'm asking questions.

I'm not required to. Your objections are supposed to be limited to the word "objection" and a period, and telling him not to answer and telling me I have to explain my questions --

MR. BREITENBACH: That's not what I --

MR. GLAZER: -- is not what's required here.

MR. BREITENBACH: Counsel, that's not what I said. What I said was I'm directing him not to answer and I'm giving you the reason. It exceeds the scope of the subpoena and the court order. That goes into the issue of treatment, that is not why we are here.

MR. GLAZER: I don't agree. We'll mark that for a ruling.



1 J. KAPLAN

2 BY MR. GLAZER:

3 Q. When you perform an initial  
4 evaluation of a new patient, what forms do you  
5 fill out?

6 A. What forms do I fill out?

7 Q. Yes.

8 A. None.

9 Q. Do you keep -- take notes during  
10 your examination?

11 A. I take notes or I dictate, yeah.

12 Q. Where do your notes get  
13 memorialized?

14 A. In a dictation.

15 Q. Does the dictation become a record  
16 at some point?

17 A. Yes.

18 Q. Are there paper -- strike that.  
19 Is there paperwork that the new  
20 patient is asked to fill out before you  
21 examine them?

22 A. Yes.

23 Q. What is the paperwork?

24 A. It's an intake sheet, has mostly  
25 demographics.

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Q. How many pages is the intake sheet?

A. They fill out one sheet, I believe.

Q. Is that maintained as part of the file?

A. Yeah.

Q. Is insurance verification also taken?

A. Insurance information is taken, yeah.

Q. Do you have a conversation with the new patient before you have the...before you perform your physical examination?

A. Yes.

MR. BREITENBACH: I'm going to object to that question.

You may answer.

A. Yes.

Q. About how long does the typical conversation last with a new patient before the examination begins?

MR. BREITENBACH: Objection.

You may answer.

A. There's no typical in...in medicine, sorry.

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J. KAPLAN

Q. Does the conversation take place in the same room that the examination occurs or do you speak with your patients in your office or some other environment first?

A. It's in the exam room.

Q\* What types of information do you take note of during your initial examination of a new patient?

DI\* MR. BREITENBACH: Objection, direct him not to answer.

MR. GLAZER: We'll mark it for a ruling.

Q. During your examination of a new patient, do you ask them if anybody referred them to you for treatment?

A. No.

Q. Do you take note, in your initial evaluation, of whether or not they referred...were referred to you for treatment by somebody?

A. No.

Q. Do you...the records of your treatment indicate the time of the examination of a person?

1 J. KAPLAN

2 A. No.

3 Q. Does the transcriptionist enter the  
4 notes into the records or is somebody else  
5 responsible for that?

6 A. I believe that she does that.

7 Q. Does anybody review the  
8 transcriptionist's work, to make sure the  
9 records are accurate?

10 A. I will read the notes at some point  
11 during the course of the patient's treatment,  
12 but not...not before they're in the record.

13 Q. In 2019, were you keeping paper  
14 copies for your patients or were all the  
15 records maintained digitally at that point?

16 A. Paper records are available for the  
17 patient, if I understand your question  
18 correctly.

19 Q. Do you currently store paper records  
20 for your patients?

21 A. No, we could print something for a  
22 patient.

23 Q. Okay.

24 A. Maybe I misunderstood your question.

25 Q. Yes, I'm asking, do you...is the

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J. KAPLAN

storage of your...your patients' records  
electronic --

A. Yes.

Q. -- at this point?

A. Yes.

Q. In 2019, was the record stored  
electronically?

A. Yes.

Q. Have any of your records been lost  
or damaged?

DI\* MR. BREITENBACH: Objection, I'm  
going to direct him not to answer.

Counsel, if you want to ask him  
whether, in...in his knowledge, were any  
of the records regarding this particular  
patient lost or damaged, and if he knows  
that, that's an appropriate question. But  
to generally ask him whether, in his  
entire practice --

MR. GLAZER: It's fine, it's fine,  
it's fine.

MR. BREITENBACH: Let me make my  
objection, Counsel.

MR. GLAZER: I get the point. I

1 J. KAPLAN

2 don't...you don't have to say it all, I'll  
3 just change the question.

4 MR. BREITENBACH: Okay.

5 MR. GLAZER: It's not a big deal.

6 Q. Since you began treating Mr. Garcia,  
7 have any of the records for Mr. Garcia been  
8 lost or damaged, files corrupted?

9 A. Not that I'm aware of.

10 Q. Have you had any problems with  
11 retrieving his records that required you get  
12 an IT specialist to...to locate them?

13 A. I...I don't do that, so no, not that  
14 I'm aware of.

15 Q. You don't do IT work is, I think,  
16 what you're meaning there, right?

17 A. Correct.

18 Q. But if you had a problem with  
19 technology, you would call in an IT specialist  
20 to help you, correct?

21 A. I'm not aware of any problem with  
22 technology --

23 Q. Okay.

24 A. -- for this patient.

25 Q. Do you perform x-rays at your

1 J. KAPLAN

2 office?

3 A. We have an x-ray machine, yes.

4 Q. In 2019, did you have an x-ray  
5 machine?

6 A. Yes.

7 Q. Did you have any other radiology  
8 capabilities in 2019?

9 A. Ultrasound.

10 Q. Do you perform neuro...neurological  
11 testing at New York Ortho?

12 DI\* MR. BREITENBACH: I'm going to  
13 object and direct not to answer. Counsel,  
14 if you can explain to me, please, what  
15 this has to do with what the topic of this  
16 deposition is, other than a fishing  
17 expedition?

18 MR. GLAZER: I'll withdraw the  
19 question. I'm just working...working my  
20 deposition here. I'm...nobody's fishing.

21 MR. BREITENBACH: Well, asking about  
22 when he takes vacation, one could say, is  
23 fishing but --

24 MR. GLAZER: I'll tell you what, we  
25 can take a five-minute break and we can

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talk in the hallway, and I'd be happy to tell you what I'm thinking about, why I'm asking that question. I'll be an open book, I'll answer whatever you want, but I'm not doing it here on the record, in front of your client, while I'm deposing him. You want to take a break, I'm more than happy to share --

MR. BREITENBACH: Sure, Counsel.

MR. GLAZER: -- you into what I'm thinking about.

MR. BREITENBACH: Sure, counsel.

VIDEO TECHNICIAN: Okay. The time is 12:36 p.m. We're going off the record.

(Recess taken.)

VIDEO TECHNICIAN: The time is approximately 12:37 p.m. We are back on the record.

MR. BREITENBACH: I just want to say that when we went out into the hall with Mr. Glazer, based upon his offer to provide us...to provide me with an explanation as to why he was asking questions about the radiology equipment,



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J. KAPLAN

he would not speak with me in front of  
counsel, the other counsel in the case.

I believe that is inappropriate and  
improper. If he's going to make a  
representation as to why something is  
relevant, he should make it for all  
appearing counsel.

His refusal is improper,  
unprofessional and, quite frankly,  
discourteous. And therefore, my direction  
not to answer stands and we're reserving  
the right to seek sanctions for  
Mr. Glazer's --

MR. GLAZER: Sanctions for  
not willing to --

(Unreportable crosstalk.)

MR. KELLY: For not allowing all  
appearing counsel to appear at all the  
discussions.

MR. GLAZER: We're...we're not in  
front of a judge, there's no -- this isn't  
an ex parte conversation --

MR. KELLY: Clearly questioning  
counsel has something to hide and wishes

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to hide it from at least one of the attorneys here --

MR. GLAZER: Well, I...I take exception --

(Unreportable crosstalk.)

MR. BREITENBACH:

MR. GLAZER: -- to your accusations, Frank --

(Unreportable crosstalk.)

MR. GLAZER: -- private conversation with the attorney representing the witness, I'm entitled to do that.

There is nothing that prevents me from doing that, the same way you gentlemen had your conversations before we began today --

(Unreportable crosstalk.)

MR. GLAZER: -- conversations they want, there's no grounds for sanctioning a lawyer for wanting to speak privately with another lawyer.

MR. KELLY: Unless you have no good faith basis and you're trying --

(Unreportable crosstalk.)

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J. KAPLAN

MR. KELLY: I'm accusing you of acting in bad faith, that's what I'm --

MR. GLAZER: Well, that's ridiculous, okay --

(Unreportable crosstalk.)

MR. GLAZER: -- with counsel privately.

I didn't say I'd speak to both of you, I said I'd speak spoke to counsel. He acknowledged that. He was surprised, but he acknowledged that that's what I said.

I didn't invite you both to have a conversation, I invited one lawyer, who's representing the witness who has issues with the questions I'm asking today.

MR. KELLY: And I --

MR. GLAZER: -- not you.

MR. KELLY: -- respectfully invite you to lay out the good-faith basis for these questions --

MR. GLAZER: I don't need to.

MR. KELLY: -- on the record.

MR. GLAZER: I don't need to.

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MR. KELLY: So clearly you have no good-faith --

(Unreportable crosstalk.)

MR. KELLY: -- ridiculous.

MR. GLAZER: A lot of things I think, too --

MR. KELLY: Your behavior is beneath --

(Unreportable crosstalk.)

MR. GLAZER: Oh, okay.

MR. BREITENBACH: Counsel, we're not going to sit here for a temper tantrum by you. My client is a busy professional, and he's not going to sit here for you to have temper tantrums.

So I...I suggest that you take down your rhetoric, you take down your volume and you [answer] reasonable, relevant questions in accordance with the subpoena and court orders, because if you continue the conduct that you're continuing right now, we will terminate the deposition.

BY MR. GLAZER:

Q\* If one of your new patients requires

1 J. KAPLAN

2 pain management, do you refer them to

3 Dr. Grimm?

4 DI\* MR. BREITENBACH: Objection, direct  
5 him not to answer.

6 MR. GLAZER: We'll mark it.

7 Q. When you perform radiology studies  
8 of a new patient, do you store them with your  
9 records?

10 A. They're stored separately.

11 Q. Are they maintained for the duration  
12 of your care and treatment of a patient?

13 A. Yes.

14 Q. Is there a second orthopedist at the  
15 practice that fills in for you if...if you're  
16 not in when a patient comes in for --

17 MR. BREITENBACH: Objection --

18 (Unreportable crosstalk.)

19 DI\* MR. BREITENBACH: Objection, direct  
20 him not to answer.

21 Q. In March of 2019, was there a second  
22 orthopedist at the practice, on call, if you  
23 were suddenly unavailable on a given day?

24 MR. BREITENBACH: You may --  
25 objection.

1 J. KAPLAN

2 You may answer.

3 A. There's not a...someone employed by  
4 our practice, no.

5 Q. So if...if a patient was scheduled  
6 for an initial evaluation and you were  
7 unavailable for...whatever the reason might  
8 be, would that appointment be rescheduled?

9 A. Yes.

10 Q. Does your schedule reflect if the  
11 initial appointment was changed or...or  
12 rescheduled?

13 A. I don't think so.

14 Q\* How -- strike that.

15 In March of 2019, if you sent...if  
16 you referred a new patient for a CT scan, was  
17 there a specific facility that you would send  
18 them to?

19 DI\* MR. BREITENBACH: Objection, direct  
20 him not to answer.

21 Counsel, this is fishing.

22 MR. GLAZER: This is from the  
23 medical record of this patient. It says  
24 CT referral, it --

25 (Unreportable crosstalk.)

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J. KAPLAN

MR. BREITENBACH: -- and you're not supposed to be asking about treatment, okay?

MR. GLAZER: That's not treatment, it's the name of a facility. It's a little bit different than treatment --

(Unreportable crosstalk.)

MR. GLAZER: -- mark it for a ruling.

Q. When...when you open a file to begin treating a new patient, do you determine the rate that they're going to be billed based on whether or not they have an active workers' compensation claim?

MR. BREITENBACH: Objection.

You may answer.

A. I'm not even sure I understand the question.

Q. If a person comes in for treatment and has no insurance, are they charged a certain rate for treatment?

MR. BREITENBACH: Objection.

You may answer.

A. If they have no insurance?

1 J. KAPLAN

2 Q. Correct.

3 A. Yes.

4 Q. And is the rate if they have  
5 workers' comp -- strike that.

6 If...if a different person comes in  
7 with health insurance, is the rate they're  
8 charged different than the rate they're  
9 charged if they don't have insurance?

10 MR. BREITENBACH: Objection.

11 You may answer.

12 A. Yes.

13 Q. And if a person has worker...a  
14 workers' compensation claim, is the rate that  
15 that person's charged different from the  
16 health insurance rate and the self-pay rate?

17 MR. BREITENBACH: Objection.

18 You may answer.

19 A. Those are statutory rates that are  
20 set by the Workers' Compensation Board, so  
21 those are the rates we use.

22 Q. When you begin treating a new  
23 patient, sometimes you know they have a comp  
24 claim, sometimes you don't know that, correct?

25 A. Correct.



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J. KAPLAN

Q. So do you open the books for each patient as a self-pay?

MR. BREITENBACH: Objection.

You may answer.

A. No, no. If they tell me that it's a workers' comp claim, that's what we assume.

Q. Okay. Do you carry two separate books or two separate columns for what the rate would be if they were self pay versus the rate that...that you're collecting because they're a workers' compensation --

A. No.

MR. GLAZER: I have no further questions. Thank you for your time, Doctor.

THE WITNESS: Thank you.

MR. BREITENBACH: So, wait a minute, do you have any --

MR. KELLY: I don't have any questions.

VIDEO TECHNICIAN: The time is 12:47 p.m. This concludes today's testimony. We are off the record.

(Reporter requests orders.)

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J. KAPLAN

MR. KELLY: I would like a copy,  
yeah, regular delivery time.

(Whereupon, at 12:47 p.m., the  
examination of this witness was  
concluded.)

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D E C L A R A T I O N

I HEREBY CERTIFY that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.

-----

JEFFREY KAPLAN, M.D.

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

-----

NOTARY PUBLIC

## I N D E X

EXAMINATION BY	PAGE
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## INFORMATION AND/OR DOCUMENTS REQUESTED

PAGE/LINE	DESCRIPTION
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29/1	Scheduling metadata.
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## QUESTIONS MARKED FOR A RULING

PAGE/LINE	QUESTION
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24/16	Okay. What other lawyers' names have you seen on your schedule?
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38/23	Can you just walk me, briefly, through your initial evaluation of a patient?
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43/7	What types of information do you take note of during your initial examination of a new patient?
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52/25	If one of your new patients requires pain management, do you refer them to Dr. Grimm?
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54/14	In March of 2019, if you sent...if you referred a new patient for a CT scan, was there a specific facility that you would send them to?
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C E R T I F I C A T E

STATE OF NEW YORK            )  
  )ss.:  
COUNTY OF NEW YORK        )

I, MARIANNE WITKOWSKI-SMITH, a Notary  
Public within and for the State of New York,  
do hereby certify:

That JEFFREY KAPLAN, M.D., the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such deposition  
is a true record of the testimony given by  
the witness.

I FURTHER CERTIFY that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 21st day of November, 2024.

*Marianne Witkowski-Smith*

MARIANNE WITKOWSKI-SMITH

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JURAT

CASE NAME: Garcia, Jose v. 122-130Th

ASSIGNMENT NO.: 7014218

ASSIGNMENT DATE: 11/7/2024

I, Jeffrey Kaplan, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place.

-----

Jeffrey Kaplan

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of \_\_\_\_\_ by said witness, Jeffrey Kaplan, on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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NOTARY PUBLIC

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800-567-8658  
ASSIGNMENT NO. CS7014218  
CASE NAME: Garcia, Jose v. 122-130Th  
DATE OF DEPOSITION: 11/7/2024  
WITNESS' NAME: Jeffrey Kaplan

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Jeffrey Kaplan

SUBSCRIBED AND SWORN TO  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_.

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New York Code  
Civil Practice Law and Rules  
Article 31 Disclosure, Section 3116

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