SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
- X

ADERITO GASPAR RODRIGUES,

Plaintiff,

vs. Index No. 60251/2019

100 ELM AVE, LLC, (Jury Trial)

Defendant.

- X

May 7, 2025
Westchester County Courthouse
111 Dr. M.L.K., Jr. Boulevard
White Plains, New York 10601

BEFORE: HONORABLE DAVID J. SQUIRRELL

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

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THE CLERK: Number 1 on the calendar for continued jury trial of Aderito Gaspar Rodrigues versus 100 Elm Avenue, LLC, 60251/2019.

Counsels' appearance on the record, beginning with Plaintiff.

MR. WATTLEY: Good morning. Wayne A.J. Wattley, W-A-T-T-L-E-Y, from Elefterakis, Elefterakis & Panek, same address, for Plaintiff Aderito Gaspar Rodrigues who is present and in the courtroom.

THE COURT: Good morning. I note the presence of the Plaintiff and your colleague.

MS. SCARIA: Good morning, Your Honor. Susan Scaria for the Defendant 100 Elm Avenue, LLC, with Fullerton Beck.

MS. SUED: Good morning, Your Honor. Alexandra Sued from Fullerton Beck.

MR. COYNE: Good morning, Your Honor. Rod Coyne from the law firm of McMahon, Martine & Gallagher, same address, for the Third-party Defendant Mariani Management Corp.

MS. ADLER: Jennifer Adler, Mauro, Lilling Naparty, Appellate Counsel for 100 Elm.

THE COURT: Good morning. And I note the presence of the colleagues of other attorneys and the parties. Everyone can have a seat.

So is the jury up?

THE CLERK: Not yet.

THE COURT: Not yet. So are there any applications or anything?

MR. WATTLEY: Not an application, Judge. But I did just receive a text from Dr. Okubadejo who is scheduled to be here now. I asked him to get here at 9:30 so we can start promptly. He did text me and said he is delayed and will not get here until about 10:30. I was hoping to utilize the time by marking the exhibits and medical records and putting them into evidence since we have that time now.

THE COURT: Nobody is going to be rushed, but even starting at 10:30, I don't see why this witness goes into the afternoon.

MR. WATTLEY: I agree.

THE COURT: Just opining on that without hearing the testimony.

MR. WATTLEY: Thank you.

THE COURT: So do you anticipate -- how did you want to use this time?

MR. WATTLEY: Oh, I was going to look at the medical records.

THE COURT: Do you anticipate introducing any pieces of evidence in through Dr. Okubadejo?

MR. WATTLEY: Just his chart specifically which has been e-mailed to Counsel. I think The Court was cc'd on that. Also by way of update, I did speak with Dr. Dwyer. She has prepared an updated report which is going to be NYSCEF-filed so everybody has it. That should be done this morning. And, you know, I do have the demonstrative evidence I wanted to go over with The Court. I do have the spine -- he's a spine surgeon -- and the individual boards that I talked about before.

THE COURT: Okay. First things first. Is everyone of the same mind in regard to this witness' medical records?

MS. SCARIA: Your Honor, the only question I have is that the records that were e-mailed to us only go through August. Yeah, August 8th, 2024. And Dr. Okubadejo continued to see Mr. Rodrigues through March of 2025. So I just wanted to ensure that when Dr. Okubadejo gets here that his file is complete.

THE COURT: Do you have the records that she's referring to?

MR. WATTLEY: I do not. The last record I have is also August of 2024 which is what was sent. So I will call -- text Dr. Okubadejo and ask him if he has anything past August to make sure he has it with him.

MS. SCARIA: I can let Counsel know what the

dates of treatment are that I have.

THE COURT: Sure. If we can do that right now.

MS. SCARIA: There's a reference -- this note I do not have, but it is referenced in a subsequent note, December 10th, 2024, February 18th, 2025.

MR. WATTLEY: Hold on a second.

MS. SCARIA: I'm sorry. I have missed one.

MR. WATTLEY: I'm sorry. You said --

MS. SCARIA: I missed one anyway. The dates that were not included in the records e-mailed to the parties last night were October 8th, 2024, December 10th, 2024, February 18th, 2025, and March 4th, 2025.

THE COURT: So there's four visits?

MS. SCARIA: As far as I'm aware of, Your Honor. I don't know whether there's any visits after March 4th. That's the last note I have.

THE COURT: How are you aware of the fact that there's four visits after the last record?

MS. SCARIA: Those records are contained in the workers' compensation records.

THE COURT: Okay. Does Plaintiff have a copy of the workers' compensation -- of those records? Do you have a copy of the workers' compensation?

MR. WATTLEY: Here with me, I do not.

THE COURT: Okay.

MS. SCARIA: I'm happy to e-mail Counsel whatever I have.

THE COURT: Sure.

MR. WATTLEY: I don't disbelieve you.

THE COURT: I'm just trying to make sure you can have a look at them on the off chance, but it doesn't sound like there will be. Anything else on this issue?

MR. WATTLEY: No, Your Honor.

Okay. So the records that are e-mailed to you from my office did not include these four dates?

MS. SCARIA: Correct. I printed out the ones that --

MR. COYNE: That's correct. They stopped in August.

MR. WATTLEY: No worries. I'm going to text Dr. Okubadejo now.

THE COURT: Take a minute to take care of that and then we'll address the exhibits.

MR. WATTLEY: Judge, can this be off the record?

THE COURT: Yes, absolutely.

(Discussion off the record.)

THE COURT OFFICER: All rise. Jury entering.

(Jurors enter the courtroom.)

THE COURT: Good morning, everyone. Everyone please have a seat. While in some ways it might be the

old good news/bad news, I'll give you the good news first. We're going to do everything we can to have today's session finished by lunchtime. Unanticipated things can happen, but that's today's goal.

Secondly, we will not be starting until 10:30 this morning. Something unforeseen came up. We are all frustrated by this, but it is what it is. These are things that happen. So thank you again for your patience and we'll see everyone again at 10:30.

THE COURT OFFICER: Jury exiting.

(Jurors exit the courtroom.)

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: Let's go back on the record. Yes, sir?

MR. WATTLEY: Thank you, Your Honor. So Dr. Okubadejo's records, including those four treatment dates and subpoenaed records with the certifications, I intend to mark them and offer them into evidence.

THE COURT: Okay. Before we go off the record, it doesn't seem as if they'll be a dispute on this, but we'll have Counsel look at it and then we'll go back on the record.

(Discussion off the record.)

THE COURT: We are now back on the record.

MR. WATTLEY: For purposes of marking exhibits for ID, I'm asking that the Plaintiff's lumbar spine decompression fusion surgery boards be marked as 20 and 21 for identification.

(Plaintiff's Exhibit Nos. 20 and 21 marked for identification.)

MR. WATTLEY: And 22 are the records that Counsel is looking through. Can we have those to mark them, please?

These are -- are you objecting to these going in?

MS. SCARIA: No.

MR. WATTLEY: So 22 in evidence -- or of course, Judge. It's the Institute for Comprehensive Spine Care, Dr. Okubadejo's records.

THE COURT: Okay. That's Plaintiff's 22.

MR. WATTLEY: In evidence?

THE COURT: Mark that in evidence.

(Plaintiff's Exhibit No. 22 marked and received in evidence.)

MR. WATTLEY: 23, CitiMed complete records and subpoenaed records. They are extensive. It's 15A, B, and C as marked by subpoenaed records and they're certified.

THE COURT: Plaintiffs Exhibit 23?

MS. SCARIA: No objection.

THE COURT: Plaintiff's 23 in evidence.

MR. WATTLEY: Your Honor, all of these medical records are subject to the appropriate redaction.

THE COURT: Absolutely.

(Plaintiff's Exhibit No. 23 marked and received in evidence.)

MR. WATTLEY: 24 are the records of Dr. Barbara Steele, orthopedic surgeon, who did the left knee and two of the three right shoulder surgeries.

THE COURT: And she is anticipated to testify tomorrow?

MR. WATTLEY: Tomorrow morning.

THE COURT: Tomorrow morning. Okay.

MS. SCARIA: It's just the one. Are the other ones in here?

MR. WATTLEY: That's just the right shoulder. The left knee, I have to find that one.

MS. SCARIA: Okay.

(Discussion off the record.)

MR. WATTLEY: Back on, Your Honor, please.

THE COURT: Yes, absolutely.

MR. WATTLEY: Plaintiff's 24 in evidence is the Barbara Steele -- Dr. Barbara Steele's records.

(Plaintiff's Exhibit No. 24 marked and received

in evidence.)

MR. WATTLEY: And Plaintiff's 25, also in evidence on consent, is the right shoulder operative report dated January 11th 2024.

THE COURT: Dr. Steele?

MR. WATTLEY: Dr. Steele. With the bill.

(Plaintiff's Exhibit No. 25 marked and received in evidence.)

MR. WATTLEY: Plaintiff's 26 in on consent, Dynamic Surgery Center records which includes the operative report of the left knee surgery done by Dr. Barbara Steele on January 22nd, 2019. That's 26 in on consent.

(Plaintiff's Exhibit No. 26 marked and received in evidence.)

MR. WATTLEY: Your Honor, may I step out? I just missed a call from my office.

THE COURT: Yes.

(Discussion off the record.)

MR. WATTLEY: Plaintiff's 27, Hudson Regional Hospital. That's where the first fusion surgery, cervical fusion surgery, was performed by Dr. Cornacchia.

(Plaintiff's Exhibit No. 26 marked and received in evidence.)

(Discussion off the record.)

THE COURT: Back on the record.

MR. WATTLEY: Westchester Medical Center Hospital records were sent on a CD. Both -- I've looked at the actual records. My understanding is that Defense Counsel has as well. So I'm introducing the CD that contains the records.

THE COURT: And what number is this?

MR. WATTLEY: It would be Plaintiff's 28.

MS. SCARIA: Your Honor, I believe that to be the case, that these two CDs that were in the subpoenaed records box, subpoenaed records room, have the same information on the face of the CD, but it just mentions diagnostic tests. I do believe that one of these, if not both of them, has the entirety of the records.

MR. WATTLEY: You want me to put them both in?

MS. SCARIA: To the extent that we can agree that it's not just diagnostic but it's the entirety of all Westchester Medical records on here without actually putting the disc in to look at it, then I do not object to this.

MR. WATTLEY: Are you asking me to agree that these -- each of these discs contains the entire Westchester Medical Center records?

MS. SCARIA: Yeah.

MR. WATTLEY: I looked at them and they do.

MS. SCARIA: I personally didn't look at these -- this CD. So I just -- I don't know why on the -- on the actual disc itself it does not list the names of records. It only lists --

MR. WATTLEY: I understand.

MS. SCARIA: -- film. So I just wanted to make sure that there was no misunderstanding between us as to what records I'm consenting to.

MR. WATTLEY: Understood. In an over-abundance of caution, you want me to put both of them in as 28 and let the record reflect that they're two CDs.

MS. SCARIA: It doesn't matter to me. I guess it's up to The Court in terms of -- sure.

MR. WATTLEY: I'll do that, and the certifications are attached.

So, Your Honor, are we good on consent?

MR. COYNE: Yes.

MR. WATTLEY: Plaintiff's 28 in evidence is the Westchester Medical Center records which are contained on two CDs.

(Plaintiff's Exhibit No. 28 marked and received in evidence.)

MR. WATTLEY: Montefiore Mount Vernon Hospital, Plaintiff's 29 in evidence, on consent. Again, everything is subject to the appropriate redaction.

(Plaintiff's Exhibit No. 29 marked and received in evidence.)

MR. WATTLEY: That may be it, Your Honor. I'm just making sure.

The Empress ambulance report, certified. Plaintiff's 30 on consent, Empress ambulance records.

(Plaintiff's Exhibit No. 30 marked and received in evidence.)

THE COURT: What was 29?

MR. WATTLEY: The Montefiore Mount Vernon Hospital records.

THE COURT: Thank you. So we're finished with that?

MR. WATTLEY: I think we have one more that Counsel is just checking.

Plaintiff's 31 is on consent, Health Plus Surgery Center records.

(Plaintiff's Exhibit No. 31 marked and received in evidence.)

MS. SCARIA: Your Honor, Appellate Counsel has an issue she wants to address.

THE COURT: Go ahead.

MS. ADLER: Good morning, Your Honor. So I reviewed Dr. Dwyer's updated report. What Dr. Dwyer did -- your order appears to indicate that he is entitled

to economic damages of $945 for the year. So the last line of the order says that claims of lost income are limited to the information and figure used in Plaintiff's W-2 form for the year 2018 that indicates Plaintiff earned 945 that year.

What Dr. Dwyer did is took that 945 and used it over a 10-day period to determine that he would then earn $28,000 for the year which is not what your order indicates. So instead of using a 945 yearly salary, she now used a $28,000 yearly salary which to me is contrary to your order.

I wanted to bring it to The Court's attention. I'm sure Plaintiff will have some response to it. But it clearly does not comport with Your Honor's ruling.

THE COURT: Third-party Defendant?

MR. COYNE: I agree with everything Ms. Adler just said.

THE COURT: Plaintiff?

MR. WATTLEY: Your Honor, Dr. Dwyer is the economist and her calculations are based and are in compliance with The Court's directive. As an economist, she looked at the 945 that was -- he worked one day in 2018. And she extrapolated that -- those earnings for the year.

She's going to be here. I welcome Defense

Counsels to voir dire her outside the presence of the jury to see what the numbers are based on. But she's the economist. She can explain them way better than I can.

THE COURT: I'll reserve on this. So she in essence is instead of opining on the future lost earnings based on an annual salary of 982, she's going back to 2018 and she will opine that if he had worked more than the days as reflected in that 682 figure, that is what he would be making -- those are the lost wages going forward. So she's increasing the base based upon her opinion that had he worked more days in 2018, his annual salary for 2018 would be higher which would then make his lost earnings claim higher. Is that accurate?

MR. WATTLEY: Yeah. And that's the entire point of the economist, to give us an idea of what his earnings would be past the date of the accident into the future.

THE COURT: Right. I'm sorry. Continue.

MR. WATTLEY: And it's based on what he did earn in 2018. That's what every economist does. They take what you earn and they look at -- they do a calculation to figure out what you would have earned had you not gotten injured.

THE COURT: Where is the evidence that indicates he earned more than the 682 -- $982 in 2018.

MR. WATTLEY: Well, there is no -- he only

worked one day in 2018. So he got paid for one day. So there is no documentary evidence that he earned more money. He only worked that one day. But based on him working that one day and his intention to continue working until whenever he decided to stop, probably at the appropriate retirement age, the economist is looking at that number saying here's what he would have earned which is the entire point of the economist.

THE COURT: I know her opinion will be an effort to calculate future lost earnings.

MR. WATTLEY: Yes.

THE COURT: What I'm focusing on is the basis of the foundation of that calculation which is year one, for lack of a better term, and the only evidence we have as to any salary he earned in 2018 is the number that is in my order. There's no testimonial evidence and there's no documentary evidence that he worked more than that one day or whatever day or days, amounts, to the number that was in that W-2.

MR. WATTLEY: I take The Court's point. But he worked the one day because he was injured on that day, and that 945 annual salary is based on that one day. So I take The Court's point, but, again, the economist is coming in and she's going to -- again, she's subject to voir dire and welcomes Defense Counsel to voir dire her

as to why she took that number and extrapolated it for the remainder of the year and moving forward.

THE COURT: Please feel free.

MS. ADLER: Typically we would have someone who had been working from say January through the day of the accident or had worked a year before. Now we have a Plaintiff who there is no salary indicated for the year before. So we have no measurable salary other than that $945. So to say he would have worked any additional days, this is a one-day job. We don't know. It's not like he was employed as a salaried employee. We don't know how long. It would be completely speculative to say he would have gone back every day and earned $945.

THE COURT: Thank you for that. Is the updated expert response uploaded to NYSCEF?

MR. WATTLEY: It is.

MS. ADLER: Thank you, Your Honor.

THE COURT: Sure. And when you're ready, I'd like to address -- do we know the status of the witness?

MR. WATTLEY: I can find out. I'll check to see if he's here.

THE COURT: Sure.

MR. WATTLEY: He's not here. I have to send him a text message asking him where he is.

THE COURT: Okay. So let's address --

MS. SCARIA: The demonstrative?

THE COURT: Yes, which I have as Plaintiff's 20 and 21 marked for ID.

MS. SCARIA: Should I make my application?

THE COURT: I need to see them first, please.

MS. SCARIA: Oh, okay.

THE COURT: I am now looking at Plaintiff's 20 and 21 marked for identification. Is it accurate to state that the anatomy and the images on those two exhibits are an artist's rendering as opposed to a depiction of Plaintiff or Plaintiff's anatomy?

MR. WATTLEY: Yes, Your Honor, that is accurate. It's an artist's rendering based on the operative report from the surgery that was performed by Dr. Okubadejo on June 24th, 2024, with the exception of the postoperative X-ray that is reflected on the Part 2 board which is Plaintiff's 21 for ID. That is an actual X-ray of Mr. Rodrigues' spine.

THE COURT: Okay. And were you intending on using any other demonstrative evidence?

MR. WATTLEY: With Dr. Okubadejo, just the anatomical correct model of the human spine.

THE COURT: If I can see that, please. I think that should be marked. I know earlier you asked and I said it didn't need to be marked.

And how will that, the model which appears to be the bottom of the cranium with the model of the spine and then the lumbar area with the portions of the hipbone, how will that assist the jury in regard to this witness' testimony?

MR. WATTLEY: So Mr. -- Mr. Rodrigues, the Plaintiff in this case, has suffered spinal injuries. Dr. Okubadejo who is a spinal surgeon, I would like him to have the opportunity to explain to the jury the spine, what the purpose of it is, the components of the spine and what function they serve so that the jury gains an understanding of once these parts are injured how that affects the operation of the spine and the adjacent body parts that the nerve endings run to.

THE COURT: And what type of physician, for lack of a better term, is Dr. Okubadejo?

MR. WATTLEY: He's an orthopedic spine surgeon.

THE COURT: Okay. I will not allow the two boards, Plaintiff's 20 and 21, for the same reasons I articulated yesterday, that I believe that the artist's renderings would be bolstering and also perhaps confusing to the jury. So I'm not allowing those two.

This witness, his area of expertise is different than the witness who testified yesterday and he performed the surgery. So I will allow the use of the anatomically

correct spine solely to explain the surgeries and the nature of the injury that was presented to this witness when he first examined the Plaintiff.

MR. WATTLEY: I'm sorry. The Court said solely to explain the surgeries?

THE COURT: And the -- the injury and the surgery.

MR. WATTLEY: Not the make-up of the spine itself?

THE COURT: Well, I would imagine that when he's talking about the injury and his surgery, he will be talking about the spine.

MR. WATTLEY: Okay. I just wanted to make sure I'm not running afoul of The Court's order.

MS. SCARIA: Your Honor --

MR. WATTLEY: I'm sorry, Your Honor. May I put my exception to The Court's ruling regarding the boards on the record?

THE COURT: Yes.

MS. SCARIA: I'm sorry, Your Honor. The spine is marked for identification as Plaintiff's No. 22 is it?

THE COURT: Is this -- are you going -- oh, continue with your objection.

MS. SCARIA: My objection is to the spine, whatever it's marked. In light of the fact that

Counsel -- my objection is to the spine for the same reasons articulated with Dr. Moise. Despite the fact that Dr. Okubadejo performed a lumbar laminectomy and fusion surgery, he presumably did not use that spine to address whether the surgery was necessary. There's no reference to the anatomical -- the demonstrative evidence in any of Dr. Okubadejo's medical records. So the Defendants were never on notice that that was ever used to the extent Dr. Okubadejo is going to argue or suggest or say that he did use that demonstrative as part of his care and treatment of the Plaintiff.

Furthermore, to the extent -- I'm not certain if this is moot or not. But to the extent Counsel intends to elicit any testimony from Dr. Okubadejo relating to Adjacent Segment Syndrome, we're going to object that as Dr. Okubadejo has not opined -- not that he can opine, but he has not referenced any diagnosis of Adjacent Segment Syndrome in his treatment records.

MR. COYNE: I agree.

THE COURT: I'm allowing it for a very limited purpose, one or two questions, to demonstrate the anatomy that Dr. Okubadejo treated, and Plaintiff is advised on that issue.

MR. WATTLEY: Yes, Your Honor.

THE COURT: Literally one or two questions.

MR. WATTLEY: Okay.

THE COURT: I think it's not necessary for -- well, that's my ruling.

MS. SCARIA: Can we go off the record?

THE COURT: Sure.

(Discussion off the record.)

(A recess was taken.)

(Plaintiff's Exhibit No. 32 marked for identification.)

THE COURT: Let's go back on the record. It's now 10 -- is there an application?

MR. COYNE: No, Your Honor. Sorry.

THE COURT: It's now 10:55. We were supposed to start at 9:30. The witness just got here within the last five minutes. Every morning the attorneys have come to court prepared to proceed. This delay is unconscionable in my opinion, and I ask -- I will direct all attorneys to communicate with their experts that if they're not here at 9:30, I will consider calling the case and taking it from there. I know this delay is outside of the control of Plaintiff's attorney, and I don't want to draw any more attention to it with the witness because the goal I think at this point in time is to get started.

So are we ready?

MS. SCARIA: Yes, Your Honor.

MR. COYNE: Yes, Your Honor.

MR. WATTLEY: Yes, Your Honor.

THE COURT: Okay. What is the purpose of the tripod?

MR. WATTLEY: For the dermatome chart.

THE COURT: Has that been marked?

MR. WATTLEY: Yes.

THE COURT: And that's --

MS. SCARIA: That was consented to.

THE COURT: Yes. All right. And what is the marking of that?

MR. WATTLEY: Plaintiff's 14.

THE COURT: Okay. If we can bring the jury in. Thank you very much.

THE COURT OFFICER: All rise. Jury entering.

(Jurors enter the courtroom.)

THE COURT: Good morning, everyone. Please have a seat, and I believe we are ready to proceed.

Please call your next witness.

MR. WATTLEY: Good morning, folks.

Plaintiff calls Dr. Okubadejo to the witness stand.

Should I get him, Your Honor?

THE COURT: Yes, please.

THE CLERK: Please raise your right hand. Do

you solemnly swear or affirm that the testimony you're about to give in this matter will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE CLERK: Please state your name.

THE WITNESS: Gbolahan Okubadejo.

THE CLERK: And spell your first and last name, please.

THE WITNESS: G-B-O-L-A-H-A-N. Last name O-K-U-B-A-D-E-J-O.

THE CLERK: County of employment?

THE WITNESS: Bergen County. New Jersey.

THE CLERK: Please have a seat.

Your Honor, the witness is sworn.

THE COURT: Thank you. Good morning, Doctor. Please have a seat.

THE WITNESS: Good morning.

THE COURT: You may inquire.

MR. WATTLEY: Thank you.

DIRECT-EXAMINATION BY MR. WATTLEY:

Q. Good morning, Dr. Okubadejo.

A. Good morning.

Q. I'm going to ask you a series of questions.

A. Just excuse my voice. I'm a little hoarse, but I'll do my best to annunciate.

Q. I appreciate that. Keep your voice nice and loud so every last juror can hear and understand you. Okay.

A. As loud as I can. As I said, I'm a little hoarse.

Q. Thank you. Doctor, you're licensed to practice medicine in the State of New York?

A. Yes, I am.

Q. Would you be kind enough to take us through your educational experience?

A. I went to undergrad at Brown University in Providence, medical school at Johns Hopkins in Baltimore, I did a residency in orthopedic surgery at Washington University in St. Louis, and a fellowship in spine surgery, University of Pittsburgh.

Q. And, Doctor, would you be kind enough to take us through your professional experience?

A. I've been in practice since 2008 practicing as an orthopedic and spine surgeon. I'd say 99 percent of the work I do is in spine surgery, private practice. I've had my own practice now since 2010.

Q. Doctor, are you board certified?

A. Yes, I am.

Q. In what specialties?

A. Orthopedic surgery.

Q. And briefly, what does it mean for you to be board certified in orthopedic surgery?

A. Board certification means that my peers have evaluated my credentials and seen my cases and deem that my judgment and skill are up to par as to what's expected of a spine surgeon.

Q. And, Doctor, in the course of your career as a spine surgeon, how many spinal surgeries have you performed?

A. Probably on average, 150 to 200 a year. I've been in practice now for 17 years. So a few thousand.

Q. And did you have occasion to treat Aderito Gaspar Rodrigues following an incident he was involved in on May 18th, 2018?

A. Yes.

Q. And, Doctor, if you were not here testifying before the jury today, where would you be, sir?

A. I would be in surgery.

Q. And are you being compensated for your time away from your practice today?

A. Correct.

Q. And what would be that compensation?

A. About $500 an hour.

Q. Doctor, you have your notes in front of you and your records have been entered into evidence. If you

need, with The Court's permission, please feel free to refer to them.

A. Thank you.

Q. Doctor, what was your first visit with Aderito Gaspar Rodrigues?

A. I first met the patient on February 8th, 2024.

Q. And I notice that you used the word "patient." Did you and Mr. Rodrigues have a doctor/patient relationship?

A. When you walk in my door to see me, you're a patient. So --

Q. What is a patient/doctor relationship?

A. You come to me for treatment, I'm a doctor, and I treat you. So you're a patient.

Q. And the first encounter on February 8th, 2024, did Mr. Rodrigues make complaints to you?

A. Yes. He complained of back pain after having an injury at work. He had some radiation of pain down his left leg as well.

Q. And following those complaints, did you conduct an examination to Mr. Rodrigues' lower back?

A. Yes. I examined him. The main findings were he had stiffness with range of motion and he had some diminished sensation on his left side.

Q. And what were your findings specifically with

respect to the range of motion to his lumbar spine?

A. Range of motion, his flexion was 40 degrees, extension 10 degrees, rotation 35 degrees to either direction.

Q. And, Doctor, what, if anything, was the significance of your findings on your examination of the decreased sensation and the reduced range of motion to his lumbar spine?

A. Reduced range of motion just signifies that he's got some stiffness. He doesn't move the same way someone without injury or pain would move. And diminished sensation just means he has a nerve most likely impinged or that's not functioning quite normally.

Q. Okay. Doctor, I think it's a good time to ask you if you could, with The Court's permission, to just utilize this anatomically-correct model of the human spine that's marked for ID as 32 and just explain to the jury with respect to the lower back the anatomy of the spine, the components, as well as the discs, please. Thank you.

A. Okay. So --

MS. SCARIA: Your Honor?

THE COURT: Excuse me. Yes?

MS. SCARIA: May we have a sidebar, please?

THE COURT: Sure.

(Bench conference.)

MR. WATTLEY: May I have the question read back, Your Honor, please.

THE COURT: Yes. Please read back the question.

(Record read back.)

THE WITNESS: Okay. Should I proceed?

THE COURT: Yes, you may.

THE WITNESS: Thank you sir.

A. All right. So this is a model of the entire spine --

THE COURT: Excuse me, Doctor. As your care only focused on the lumbar spine, please limit your answer to that.

THE WITNESS: Okay.

A. The lumbar spine is the lower part of the spine indicated in green here. This is the front of the spine with the vertebral bodies, and in between the vertebral bodies are the discs. And the discs act as cushioning for the spine.

As you get to the next level going backwards, you see the nerves, and when you get to the very back, you have the spinous processes. There are five lumbar vertebrae, and the sacrum is on the bottom. And when we talk about any disc, we refer to a disc as the number between the two vertebrae.

So if we're looking at this disc between L4 and L5, we'll refer to that disc as the L4-5 disc. If you have a disc herniation and it pushes backwards into the nerve and that typically is what causes pain, this here is an indication of a herniation, this red pushing back impinging on this nerve. So that's a brief summary of the anatomy.

THE COURT: Thank you.

Q. Thank you. Doctor, you mentioned the nerves in the lumbar spine or lower back. I have a dermatome chart that's been marked as Plaintiff's Exhibit 14 for ID. Would that assist you in further explaining the nerves to the lumbar -- in the lumbar spine and where those nerves innovate in the body?

A. Yes.

MR. WATTLEY: May I, Your Honor?

MS. SCARIA: Your Honor, may I just walk around?

THE COURT: Yes, absolutely.

MR. WATTLEY: I'll move it back so everybody can see it a little better.

Q. Doctor, are you able to see that?

A. Yes.

Q. All right. With respect to the nerves that are attached to the spinal cord in the lumbar region, would you give us a quick explanation of where those nerves

innovate to and what the purpose of the nerves are?

MR. WATTLEY: With The Court's permission, can the Doctor stand?

THE COURT: Only with specific reference to the lumbar spine, yes, the Doctor may.

Q. So the dermatomes represent where the nerves travel when they come out of the spine. The nerves have sensory and also motor function. This pretty much shows where it's innovated based on sensory patterns. So higher up in the lumbar spine, L1 will innovate around the groin region, L2 the thigh, L3 around the knee, L4 around the inner shin, L5 on the outside, and S1 more laterally.

This is looking at the spine from the front, and then from the back you correlate what you're seeing in the front to the back. You have L1 coming this way, L2 that way, L3 off to the side, L5 a little more distally, and then S1 at the bottom there.

Q. Thank you, Doctor.

A. Thank you.

Q. Doctor, as part of your treatment and care to Mr. Rodrigues' lower back, did you review any diagnostic testing that was taken of his lower back?

A. Yes. I reviewed his lumbar MRI. He had an MRI dated January 4th, 2024.

Q. And, Doctor, did you review that film yourself?

A. Yes.

Q. And when you reviewed that film, what were your findings?

A. My findings were that the level that I thought had the most significant impingement that could explain his symptoms were L4-5. He had some impingement of the anterior thecal sac and he had significant impingement in his bilateral lateral recesses along with some hypertrophy in his facet joints as well.

Q. And what did that mean in terms of pain or functional limitations in the lumbar spine and adjacent extremities from Mr. Rodrigues?

A. Well, it could mean that -- well, from a surgeon's perspective, I review what treatment he's had before and if he had resolution of symptoms with prior treatment. So, you know, can I expound or like -- I don't know. Most patients begin with physical therapy and then we rely on their response to the pain to determine what happens next.

And he was seeing pain management and he had a couple of injections, different types of lumbar injections. His pain persisted. He even had discectomies in his spine at two levels, L3-4 and L4-5. But per my review, I felt that the level that could make

a difference surgically would be L4 or 5. Since he had exhausted all other treatment and he was still in pain, I had to figure out exactly what the best route of treatment would be.

Per my assessment during a complete decompression of L4-5 fully skeletonizing the nerve roots internally, taking off the majority of the facets on both sides, I felt would be the best way. And the irritating disc I thought was L4-5. So typically in a situation like this, I do a complete excision of the disc.

So once you take out of the entire disc to decompress the nerve, you have an empty space and you can't leave that space with nothing. So typically we would do an interbody fusion where we put a graft in between where the disc was, and then you secure that graft with screws.

So, in essence, technically speaking, he had a posterior lumbar laminectomy which is a decompression of the spine along with a discectomy and interbody fusion.

Q. And, Doctor, when did you perform that surgery?

A. I performed that surgery -- just give me a second here -- June 25th, 2024.

Q. Okay. If I told you that your operative report lists the surgical date as June 24th --

A. 24th. 24th. Yeah.

Q. Thank you. Now, in addition to the MRI that you reviewed, did you also review another diagnostic test called an EMG?

A. Yeah. He also had a preoperative EMG. An EMG dated November 17, 2021, showed that he had -- give me a second here. He had entrapment of the left L3 -- L4 nerve root. Excuse me.

Q. I'm sorry, Doctor. That date was November 17th of 2021?

A. Correct. That's the one I have here.

Q. And what is an EMG, what's the purpose of it?

A. An EMG is a way to look at the electronic conduction of a nerve. So the way a nerve does its job is through electronic transmission beginning from the brain through the spinal cord into the periphery. So EMG just maps out the electronic conduction of a nerve, and if there's any malfunction, the EMG is meant to show that to you.

Q. Doctor, when you conducted the physical examination of Mr. Rodrigues on that first visit, February 8th, 2024, did his complaints and your findings, were they consistent with the history that was given to you by Mr. Rodrigues?

A. Yes.

Q. And the surgery that you performed on June 24th,

2024, was that consistent with his complaints, your findings, and the history that was given to you by Mr. Rodrigues being involved in an accident on May 18th, 2018?

A. Yes.

Q. Now, before you mentioned briefly the treatment Mr. Rodrigues had before coming to you as a surgeon. Was that treatment consistent with the treatment that a person who sustained these types of injuries would have?

MS. SCARIA: Objection.

THE COURT: Sustained.

Q. Did Mr. Rodrigues follow up with you after the fusion surgery?

A. Yes.

Q. And for how many visits?

A. Multiple visits. The official assessment was February 8th, 2024. I saw him subsequently July 11th, August 8th, October 8th, December 10th of '24, and then February 18th of '25, and I last saw him on March 4th, 2025.

Q. Okay. Let's start with the first post-fusion surgery on July 11th of 2024. On that date, what were his complaints and what, if anything, did you find on physical examination?

A. He was -- he stated he was feeling better. He

was walking with a cane. His pain was three out of five. His incision looked well. Actual X-rays looked excellent. So he was doing well. I was very happy with him.

Q. And going forward to your most recent visit of March 4th, 2025, how was Mr. Rodrigues with respect to his lower back doing on that visit?

A. Most recently, he stated that he had seven out of 10 pain. He had some stiffness with flexion, range of motion 35 degrees, extension zero degrees, rotation 30 degrees to either side.

In the interim, I had obtained an MRI just to make sure everything looked good, which it did. So he had a well-decompressed spine, structurally sound. So any residual pain, I'm recommending that he do physical therapy, core strengthening, stretching, just modalities, and hopefully he'll feel as best as he could.

Q. And, Doctor, on that most recent visit, did you arrive at a prognosis with respect to your patient Aderito Gaspar Rodrigues?

THE COURT: Could you please state the date of that visit?

Q. Sure. On your most recent visit of March 4th, 2025, did you arrive at a prognosis with respect to your patient's lumbar spine?

A. My prognosis was guarded overall. I felt he had a 75 percent disability and that he could do at least sedentary work.

MR. WATTLEY: Thank you, Dr. Okubadejo. I have no further questions for you at this time.

THE WITNESS: Thank you.

THE COURT: Thank you. You may inquire.

MS. SCARIA: Thank you, Your Honor.

CROSS-EXAMINATION BY MS. SCARIA:

Q. Good afternoon, Dr. Okubadejo. Nice to meet you.

A. Nice to meet you.

Q. Dr. Okubadejo, you referenced an MRI of January 4th, 2024. Do you have a copy of that MRI with you?

A. I have a copy of the report.

Q. Who ordered that MRI?

A. It was ordered by Jit Narinder.

Q. And where did you get that MRI?

A. Where was it done?

THE COURT: Could you please rephrase the question.

MS. SCARIA: Sure.

Q. Did you receive the actual film?

A. Yeah. I review films myself before performing every procedure.

Q. And who gave you that film, the January 4th, 2024 MRI film ordered by Jit Narinder?

A. I believe he brought the CD with him.

Q. Who is "he"?

A. The patient.

Q. Did the patient -- that's Mr. Rodrigues?

A. Correct.

Q. Okay. Did Mr. Rodrigues bring the reports with him as well?

A. I believe so. Typically, if the patient doesn't --

Q. Forgive me. I'm just asking about Mr. Rodrigues.

A. No, no. I know. I'm telling you how the process works in our office.

THE COURT: Excuse me, Doctor. Can you please limit your testimony to your treatment and care of the Plaintiff.

THE WITNESS: Correct. Correct.

A. So either a patient brings the report or it's faxed to us from the place. That's typically how it's done in the office.

MS. SCARIA: Move to strike those portions nonresponsive.

THE COURT: I will strike that. Do you

recall specifically --

THE WITNESS: No. It's impossible --

THE COURT: Excuse me, Doctor. Let me finish the question.

THE WITNESS: Yes.

THE COURT: Do you recall specifically how you came to acquire that MRI?

THE WITNESS: No.

Q. Do you have any memory as to whether the MRI report was provided to you by Mr. Rodrigues' attorneys?

A. No.

Q. Do you have any memory as to whether you received a copy of the MRI film from Mr. Rodrigues' attorneys?

A. No.

Q. And did you review that January 4th, 2024 MRI report while Mr. Rodrigues was in your office or at some other time?

A. While he was in the office.

Q. Referring to your February 8th, 2024 report, which I believe is in evidence, and part of your chart --

THE COURT: Let us know when you have that in front of you, Doctor.

THE WITNESS: Yes.

Q. -- there is no mention of your review of the

January 4th, 2024 MRI report, is there?

A. Yeah. I talk about the MRI in my impression.

Q. Does that say January 2024, Dr. Okubadejo?

A. I didn't state any date.

Q. Okay. So as you sit here right now looking at this, is it your memory that you reviewed the January 4th, 2024 report even though it doesn't say it in your report?

A. This is exactly what I reviewed in the office.

Q. How is it that you remember that now as you're sitting here?

A. Because that's my process. I always look at the MRI when I have a patient with me prior to making any recommendation of surgery.

Q. That's what you do generally with most patients?

A. Every patient. Before I make a recommendation for surgery, I personally review the images.

Q. And -- okay. Did you in addition to reviewing the images prior to seeing this patient review the other medical records that you referenced related to medical treatment to Mr. Rodrigues before his first visit with you in February of 2024?

A. No.

Q. Why not?

A. Because I usually see a patient in the office,

and that's when I'm first encountering them and that's when I view the records.

Q. Did Mr. Rodrigues bring with him anything other than a CD with the MRI of January 4th, 2024, on his first visit with you?

A. I don't recall.

Q. Did you ever receive the medical records from any other source that you referenced are part of your chart?

A. We have his medical records from his pain management physician.

Q. And did you receive those from his attorney?

A. I don't know how we received them. My office typically gets the records.

Q. At the time that Mr. Rodrigues came to see you on February 4th -- excuse me -- February 8th, 2024, he came to see you with complaints of low back pain, right?

A. Correct.

Q. And at that time -- withdrawn. You're a spine surgeon, right?

A. Correct.

Q. As a spine surgeon, do you also perform surgeries to the neck or just the lower back?

A. The neck and the back.

Q. So spine surgeries of the neck are a part of

your surgical practice as well as the back?

A. Correct.

Q. And when Mr. Rodrigues came to see you, he didn't make any complaints about neck pain at that first visit; is that right?

A. Correct.

Q. And, in fact, you didn't even examine his neck at that first visit, right?

A. Correct.

Q. Who referred you to -- who referred Mr. Rodrigues to your office?

A. His pain management doctor.

Q. Who is that?

A. Dr. Anson Moise.

Q. Did you have any discussions with Dr. Moise about Mr. Rodrigues' treatment before seeing him?

A. No.

Q. Have you had any conversations -- withdrawn. Did you have any conversations with Dr. Moise about his treatment after you saw Mr. Rodrigues?

A. I probably told him my plan surgically.

Q. You said probably, so I need to clarify. Do you have a memory as you sit here now as to whether you had any conversations with Dr. Moise, Mr. Rodrigues' pain management doctor, after you saw him for the first time?

A. No.

Q. Were you aware through Dr. Moise, Mr. Rodrigues, or anyone else that the first time Mr. Rodrigues started treating for his back was via a recommendation for a provider by an attorney?

MR. WATTLEY: Objection, Your Honor. That severely mischaracterizes his testimony.

MS. SCARIA: I can withdraw it and rephrase it.

Q. Are you aware of the fact that Mr. Rodrigues testified he was referred to his first treater for his back by an attorney?

A. No.

Q. Did that ever come up in the conversations you had with him on the first visit?

A. No.

Q. When you saw Mr. Rodrigues for the first time, did he tell you that he had filed a personal injury lawsuit?

MR. WATTLEY: Objection, relevance.

THE COURT: I'll allow it, that one question.

A. I knew he was a workers' comp patient. So typically work comp patients are -- there's a lawsuit involved in workers' comp.

Q. Do you treat other patients who are involved in personal injury actions?

MR. WATTLEY: Objection.

THE COURT: I'll allow it, but limit it.

A. Yes.

Q. Did you find out that Mr. Rodrigues -- whether Mr. Rodrigues had any -- this personal injury action at the time of his accident before or after he performed the lumbar surgery?

THE COURT: Sustained. Please rephrase the question.

MS. SCARIA: I'll withdraw it.

Q. Let's go back to your notes, sir. Actually, if I may, before we go to that, you referenced an EMG study that you reviewed.

THE COURT: When you have that in front of you, Doctor, just let us know.

THE WITNESS: I do.

Q. You have that in front of you?

A. Yes.

Q. Okay. And was that a test performed by a Dr. Caroline Lee?

A. Yes.

Q. You weren't involved in the testing, correct?

A. No.

Q. You just reviewed the reports to ascertain the findings?

A. Correct.

Q. And that report -- sorry. That examination was performed, according to the report, on November 17th, 2021, correct?

A. Correct.

Q. So that was a few years before you saw him for the first time, correct?

A. Correct.

Q. And isn't it true that this EMG study says that the study reveals possible evidence of radiculopathy?

A. Correct.

Q. When you -- let's go to your note of the first visit of February 8, if we may. When you first met Mr. Rodrigues, you had -- did you have discussions with him before you performed the physical examination?

A. Yeah. I took a history.

Q. And in that history, did Mr. Rodrigues tell you about what he believed to be causing his pain?

A. The work injury that he had.

Q. And did he tell you that he fell from a ladder?

A. Yes.

Q. So -- and you documented that in your history, correct?

A. Correct.

Q. And is that because the mechanism, the way the

accident happened, was relevant to your assessment of Mr. Rodrigues at this initial visit?

A. Correct.

Q. In your experience treating patients for lumbar issues, is a fall a common cause of back pain?

A. Yes.

Q. When you examined Mr. Rodrigues at that time, he told you he was experiencing back pain?

A. Correct.

Q. And did he talk to you also about the treatment that he had undergone before seeing you?

A. Yes.

Q. Did you make any determination as to -- withdrawn. Did you find that Mr. Rodrigues -- withdrawn.

Doctor, every patient you treat you don't necessarily perform surgery on; is that correct?

A. Every patient that sees me in the office?

Q. Correct.

A. Correct. Not everyone gets surgery.

Q. And would you say in fact most of your patients you do not perform surgery on?

A. Correct.

Q. Okay. And isn't it true that in fact only 10 to 15 percent of your patients you perform surgery on?

A. On average, yes.

Q. And are those 10 to 15 percent of the patients generally personal injury patients?

MR. WATTLEY: Objection.

THE COURT: If you know.

A. No.

Q. When you spoke with Mr. Rodrigues to obtain his medical history as documented in his report, did he talk to you about the fact that he had undergone acupuncture treatment for his back?

A. We didn't list acupuncture.

Q. I'm sorry. Did you say "we" didn't list it?

A. Yeah. I don't have acupuncture in the history here.

Q. Okay.

A. Whatever I have in the history is what I can reference.

Q. Okay. And there's no mention of Mr. Rodrigues having undergone chiropractic treatment?

A. Not in my history.

Q. And there's no mention in your history as to the amounts of, if any, physical therapy Mr. Rodrigues underwent for his back pain before seeing you?

A. I did mention he's had physical therapy.

Q. Okay. Did you mention that it was for his back?

A. Yes.

Q. And did you mention when that was?
A. No. I didn't put a time frame when it was.
Q. Did he inform you or was it in your report as to the last time before he saw you that he had undergone physical therapy for his back pain?
A. We didn't list when he had had physical therapy last prior to seeing me.
Q. As part of your assessment, isn't it true that you determined at this first visit that conservative treatment had failed?
A. Correct.
Q. But you weren't aware of all the conservative treatment he had or the last time he had it; isn't that correct?
A. I was aware of the nature of the treatment that he had had.
Q. But you were not aware of the last time that he underwent specifically physical therapy before he saw you for his back pain, correct?
MR. WATTLEY: Objection, asked and answered.
THE COURT: I'll allow it.
A. We did not list the last time he had physical therapy.
Q. Sir, I don't believe that's an answer to my question.

THE COURT: Can you please ask the question again.

Q. Okay. When --

MR. SCARIA: May I have the question read back, Your Honor.

(Record read back.)

A. Correct.

Q. When you first met Mr. Rodrigues on February 8th, 2024, did he tell you that he had previously treated with a spine surgeon?

A. No.

Q. Had you -- had you -- did you come to learn at any point during the examination that he had undergone a spine surgery with a Dr. Louis Cornacchia?

A. I know he had undergone a lumbar discectomy.

Q. I'll ask you again, Doctor. When you examined Mr. Rodrigues on February 8th, 2024, at any point did you learn that Mr. Rodrigues has undergone a spine surgery for his neck with a Dr. Louis Cornacchia?

A. No.

THE COURT: Excuse me, Doctor.

Yes?

MR. WATTLEY: Well, my objection was this Doctor was instructed to limit his testimony to lower back. She's now asking about the neck.

MS. SCARIA: Actually, Your Honor, I'm asking about the Doctor's knowledge of prior treatment.

MR. WATTLEY: As it relates to the neck.

MS. SCARIA: I'm happy to take the word "neck" out of the question and rephrase it.

THE COURT: I think you should. Let's have a very quick sidebar.

(Bench conference.)

THE COURT: Do you withdraw the question?

MS. SCARIA: I do, Your Honor. I'm going to try and ask a new question.

THE COURT: Okay. That question is withdrawn. To the extent there was any answer to that question, you should completely disregard it as if it never happened.

Please continue.

MS. SCARIA: Thank you, Your Honor.

Q. When you first saw Mr. Rodrigues on February 8th, 2024, were you made aware of the fact that Mr. Rodrigues had previously treated with a spine surgeon, Dr. Cornacchia?

A. No.

Q. Had you ever reviewed -- withdrawn. At any time during your treatment course with Mr. Rodrigues, did you ever have the opportunity to review any of the medical records of Dr. Cornacchia?

A. No.

Q. So then I take it you're not aware of the fact that Dr. Cornacchia, a spine surgeon, never recommended lumbar surgery?

A. No.

Q. When you first saw Mr. Rodrigues on February 8th, 2024 -- withdrawn. You mentioned other medical records that you had reviewed. Amongst the medical records, did that include records from CitiMedical?

A. No.

Q. Were you ever provided any medical records to review related to pain management treatment for Mr. Rodrigues' back from 2021?

THE COURT: Could I have that question read back please.

(Record read back.)

A. No.

Q. So you have no idea one way or another whether the pain management doctor ever even ordered any lumbar MRIs in 2021?

THE COURT: I think the questioning should be focused on the care and treatment provided by this witness to the Plaintiff, and now there are questions that are, arguably, asking this witness to interpret care and treatment rendered by somebody else.

MS. SCARIA: That is not my intention, Your Honor. I'm just asking the witness what information that he had as of the first day of treatment, but I'm happy to withdraw the question.

THE COURT: Please withdraw the question and rephrase it.

Q. Following -- when you -- and at that first visit on February 8th, 2024, were you made aware of the fact that Mr. Rodrigues had been involved in a motor vehicle accident on December 15th, 2021?

A. No.

Q. And following that initial examination on February -- withdrawn. At that initial examination on February 8th, 2024, you didn't have any X-rays taken, did you?

A. No. I reviewed his MRI.

Q. I'm sorry?

A. I reviewed the MRI, the lumbar MRI.

Q. And at that first visit, you didn't order any MRIs be taken that day for you to review, did you?

A. No.

Q. Okay. So at that first -- following that first visit, you immediately recommended lumbar surgery, correct?

A. Correct.

Q. And was that a lumbar laminectomy?
A. Lumbar laminectomy and fusion.
Q. So it was more than just the laminectomy, it was also a fusion surgery?
A. It was a decompression and fusion.
Q. And are you aware of the fact that at no point before -- withdrawn. Your recommendation at that point at that first visit, that was based at least in part on Mr. Rodrigues' history reported to you, correct?
A. Correct.
Q. And that was based also in part on Mr. Rodrigues' complaints of pain at that time?
A. Correct.
Q. And can we agree that your recommendation was also based in part on your physical examination of Mr. Rodrigues?
A. Correct.
Q. And if you would refer to your note, the section where you document the examination, please. The -- well, I'm sorry. Before we get to the examination, Mr. Rodrigues reported to you that he was experiencing pain at a level of six out of 10, correct?
A. Correct.
Q. Did he say six out of 10 or is that how you interpreted that?

A. That's what we documented.

Q. Is that documented in that -- withdrawn. And he also complained, according to your note, that his back pain was sharp and stabbing; is that correct?

A. Correct.

Q. And he also reported that the pain was intermittent; isn't that right?

A. Correct.

Q. That means it comes and goes?

A. Correct.

Q. Referring to the top page of the -- the top of the first page of your report, there's a section that says ROS, correct?

A. Yes.

Q. What does ROS stand for?

A. Review of Symptoms.

Q. Under Review of Symptoms, is there a listing of your findings based on your discussions with Mr. Rodrigues?

A. No. It's just defaults.

Q. What does that mean, it defaults?

A. Meaning that section wasn't changed from -- our EMR has defaults and defaults to normal, and typically I don't really change anything in the ROS section.

Q. There's a section and a form that you filled out for Mr. Rodrigues regarding a Review of Systems but you didn't address that section.

A. I didn't alter any of the defaults in the ROS.

Q. So where it reports here "no joint pain," that's not related to Mr. Rodrigues?

A. No.

Q. Okay. And where it lists "no swelling," that's not related to Mr. Rodrigues?

A. No.

Q. Did you ask him if he had any swelling?

A. I don't believe specifically, no.

Q. Did you examine him to see if he had any swelling?

A. I examined and focused on his lumbar spine.

Q. Where it says "no joint stiffness," did he tell you that?

A. No.

Q. Did he tell you that he did have joint stiffness?

A. No.

Q. Did you ask him one way or the other?

A. No. I focused on his lumbar spine.

Q. Where it says "no unsteady gait," did he tell you that?

A. No.

Q. What is a gait?

A. Walking.

Q. When you examined Mr. Rodrigues on February 8th, 2024, wouldn't you agree that the manner in which he was able to walk has an impact on your assessment?

A. Yes. We documented it in the physical exam.

Q. But you didn't document it in the Review of Systems, correct?

A. Correct.

Q. Is the Review of Systems something that's part of every one of your reports?

A. Yes.

Q. And do you never document it?

A. I typically don't change the defaults in that section, no.

Q. You typically don't. Does that mean you typically don't review the systems?

MR. WATTLEY: Your Honor, objection. We just went over this.

MS. SCARIA: No. I didn't ask about that.

MR. WATTLEY: I'm speaking to the Judge.

MS. SCARIA: So am I.

THE COURT: Please rephrase that last question.

MS. SCARIA: I'll withdraw the question.

Q. When do you review systems?

A. The things that are relevant are based on what a patient tells me in the history, and I document those in my history and I put them in my physical exam and also my summary. My EMR has multiple multiple sections. So I don't go into every section and alter things because I'd be there all day if I did that for every patient. So I tend to focus on the history and the physical and my then summary, and that's the way I do my business. That's the way I typically carry my notes.

Q. Just for clarification for the jury, in your business, what disc EMR mean?

A. My electronic medical records system.

Q. So is it accurate to state sometimes you review systems and sometimes you don't?

A. No. I -- I don't alter that section ever.

Q. Ever?

A. No.

Q. Okay. Would you agree, though, Doctor, that the way Mr. Rodrigues ambulates would be relevant to your assessment of his back injury?

A. I documented it in the physical exam where the date is clearly stated in the physical exam. The date is right under, "Comprehensive lower extremity neurovascular and gait stated to be normal."

Q. Okay. Let's take a look at the rest of what you examined and found under the lumbosacral section on the first page of the report. You also examined -- there's a section that -- it says here towards the bottom, "L spine inspection." Does that refer to the lumbar spine?

A. Correct.

Q. That's the lower back?

A. Yes.

Q. And it says, colon, and there's some words after that. Are the words after that your findings?

A. Yes.

Q. And it says, reads, "Normal alignment." What does that mean?

A. Meaning he was straight.

Q. And it says, "No deformity." What does that mean?

A. He didn't have any curvature.

Q. And it says, "No tenderness." What does that mean?

A. He was not tender upon inspection.

Q. He was not tender where?

A. In his lumbar spine.

Q. Did you palpate his spine?

A. Yes.

Q. And by "palpate," I mean did you touch it to

check for any pains?

A. Yes.

Q. Okay. Going down, does the -- there's -- forgive my pronunciation. This part that says, "Right iliopsoas," did I pronounce that terribly?

A. Iliopsoas.

Q. Iliopsoas. What's that?

A. That's the hip flexor.

Q. Is that relevant -- was that -- withdrawn. Was your examination of the hip flexor relevant to your assessment of Mr. Rodrigues' back complaints?

A. Yes. And he had normal strength.

Q. And normal strength, that means that, what, he was able to flex his hips normally?

A. Yes.

Q. And did he also have normal muscle tone?

A. Yes.

Q. And the -- you performed the same test for the left side of the hip, correct?

A. Yes.

Q. And his strength on the left side was normal?

A. Correct.

Q. And his muscle tone was normal?

A. Yes.

Q. Let's go to Page 2. I won't go through every

single one. But you performed testing on a variety of parts of the lower extremities, correct?

A. Yes.

Q. And that means from the waist down?

A. Correct.

Q. And the purpose of testing the lower extremities is to test what?

A. To test his nerve function, strength, sensation.

Q. And in testing the lower extremities, did you find five out of five strength in all aspects?

A. Yes.

Q. And does that mean he had -- he exhibited full motor strength in all of his lower extremities?

A. Yes.

Q. Did you also find normal muscle tone in all of his lower extremities?

A. Yes.

Q. What is muscle tone?

A. Muscle tone is the force when you palpate a muscle to see if there's any like softness or it doesn't quite feel normal. Like muscles have a certain degree of tension. So if you had less tension, especially if you compare one side to the other, you'd say it was abnormal. But his muscle tone was normal.

Q. And you compared one side to the other, correct?

A. Correct.

Q. If muscle tone -- going back to your explanation of muscle tone, if it was not normal, doesn't that mean that that muscle is being used less?

A. It could be getting less conduction force from the nerve. It could -- the nerve pathology could have existed long enough where the pathology had progressed to a point where it affected the musculature. Typically the sensations affect there first before muscle. So that tells you the degree to which the nerve conduction had been altered if the tone is abnormal.

Q. Okay. And the nerve conduction test that you reviewed from November of 2021 prior to seeing Mr. Rodrigues, that test that was performed prior to you seeing Mr. Rodrigues --

A. Correct.

Q. -- it said possible radiculopathy, correct?

A. Correct.

Q. And that means possible nerve issues?

A. Per the person that conducted the EMG, yes.

Q. But when you examined the muscle tone, all of the muscle tone was normal on both sides of the lower extremities, correct?

A. Correct.

Q. And that supports the fact that Mr. Rodrigues

was not limping; is that right?

A. Correct.

Q. Mr. Rodrigues also reported that his complaints of pain were aggravated by all movement, correct?

A. Correct.

Q. Well, Doctor, wouldn't you agree that your findings of normal muscle tone and full strength in both sides of the lower extremities is not consistent with Mr. Rodrigues' complaint, that his back is aggravated by all movement?

A. No. You are incorrect.

Q. Okay. You continued to see Mr. Rodrigues several more times after the February visit?

A. Correct.

Q. And, in fact, you performed the surgery in June of 2024; is that right?

A. Correct.

Q. Was that surgery done -- did you see Mr. Rodrigues a second time before the June 2024 surgery or did you go straight into the surgery?

A. I saw him once before surgery and the next time I saw him was on the day of surgery.

Q. Okay. And over the course of the subsequent visits before and after the surgery, you continued to perform the same physical examination?

A. Not in detail. After surgery I just focused primarily on healing and pain. I don't really get into -- I don't go too deep every time.

Q. What do you mean you don't go too deep?

A. I don't do like a full -- unless he has specific complaints, I just look at the wound and it's more of an interview versus doing a full assessment every single time.

Q. I see. But if Mr. Rodrigues had made complaints, that's something you would have addressed during any of those examinations?

A. Yeah. If there's something specifying that he brought to my attention, then I'd pay attention to it.

Q. Okay. In each of your subsequent reports after the lumbar surgery in June of 2024, you do continue to note neurovascular findings, correct?

A. Correct.

Q. Okay. And is that because -- did you continue to review the neurovascular findings because of complaints related to sensation?

A. No. Those are just the defaults. So the way my EMR is set up, anybody you examine, once you click it it just populates normal findings. So unless I'm looking for something, I will alter it. Otherwise, I will leave it at the default.

Q. So, for example, the August 8th, 2024 report after this examination -- withdrawn. The August 8th, 2024 examination performed after the lumbar surgery in that section that is called Comprehensive Lower Extremity Neurovascular, is that default answers or did you enter those things?

A. The only one I altered was gait, and gait you're using a cane. Otherwise, the rest of them are just a default.

Q. Did you make any inspection of his peripheral nerve sensations?

A. No.

Q. Did you -- withdrawn. As you sit here right now, do you have any memory as to whether you examined the muscle tone in his lower extremities?

A. No. I don't examine muscle tone after surgery. I focus on wound and range of motion.

Q. Understood. By the time you examined Mr. Rodrigues at the last visit in March of 2025 -- withdrawn. I'm sorry. Let's go back to your report of -- or your examination of February 18th, 2025. Let me know when you have that.

A. Yes.

Q. At that time, Mr. Rodrigues was still complaining of back pain?

A. Yeah. Still complained of some stiffness. I'm not sure how much physical therapy he had or if it was consistent, but he still had complaints of back pain and stiffness.

Q. Did his continued complaints after your surgery impact your assessment of him?

A. Regarding? That's a very broad question. Can you --

THE COURT: Can you please rephrase the question.

MS. SCARIA: Absolutely. I'll withdraw and rephrase it.

Q. Did Mr. Rodrigues' complaints of pain at this visit a couple of months ago after your surgery have any impact on your plan as documented in Page 2 of your exam note?

A. When a patient has postoperative pain, then I try to get -- well, I get imaging to see if there's anything that could explain their pain. If the imaging looks normal, then I will reassure them that they just need more time to recover and I recommend further physical therapy modalities.

Q. And here it says you did recommend a lumbar spine X-ray, correct?

A. Yes.

Q. And then the next time you saw Mr. Rodrigues, that was on March 4th of 2025?

A. Correct.

Q. And that was the last time you saw him?

A. Yes.

Q. And as of that last visit, you recommend -- you reported that Mr. Rodrigues was clear to return to sedentary work; is that right?

A. Correct.

MS. SCARIA: That's all I have. Thank you very much, Doctor.

THE WITNESS: Thank you.

MR. COYNE: I don't have any questions for the witness.

THE COURT: Any redirect?

MR. WATTLEY: I do. I'll be expeditious.

REDIRECT-EXAMINATION BY MR. WATTLEY:

Q. Doctor, you were asked on cross-examination about whether or not it was inconsistent that Mr. Rodrigues had pain aggravated by movement with respect to your findings. Do you recall that question?

A. Yes.

Q. Why was that not inconsistent?

A. Because muscle tone is when you have nerve damage to the degree that you've lost function. So

there's -- clinically, just to give you another scenario, a lot of patients have what's called Lumbar Facet Syndrome. That's when your joints in your back are altered where you have pain with all movement. So you can have pain without necessarily having muscle changes. A lot of -- the majority of my patients don't have muscle tone issues.

When you have a herniation, the sequence particularly is pain, sensory loss, and we try to get to patients before they have a muscle deficit. That's why we treat them. So, yeah. So correlating pain and muscle tone is not -- does not go together. Apples and oranges.

Q. And you also were asked on cross-examination about your February 8th, 2024 visit where, again, you found normal strength, muscle tone, gait, but you still recommended and did a laminectomy, decompression, and fusion to the lumbar spine.

A. Correct.

Q. Why?

A. He complained of pain. He said it was affecting his quality of life and he had undergone extensive pain management treatment with Dr. Moise. He had had multiple facet injections, he had had epidural steroid injections, and his pain persisted.

So when a patient is coming to me as a surgeon

and they've undergone pain management, physical therapy, the pain is still affecting their ability to work, I look for something that I can fix to make things better.

MR. COYNE: Your Honor, I move to strike that portion of the answer that wasn't specific to this patient.

A. I think I --

THE COURT: Excuse me, Doctor. I'll allow it.

Q. Were you finished with your response, Doctor?

A. Yeah. Everything that I referenced was specific to him. He had undergone facet injections, he had undergone lumbar steroid injections, he had had physical therapy, and the pain was keeping him from going back to work. He's coming to me as a surgeon, so I'm looking for a solution. And I reviewed his imaging from his history. The treatment proposed is what I felt would get him hopefully back to work and functioning.

Q. You were asked about Mr. Rodrigues falling off of a ladder during cross-examination. Do you recall those questions?

A. Yes.

Q. The history that you took, the complaints that he made all about his lower back, your findings, your diagnosis, the surgery that you performed, were those -- all of that treatment consistent with him falling off of

a ladder?

A. Yes.

Q. You were asked about Dr. Cornacchia. Did the fact that Dr. Cornacchia performed a -- performed a cervical -- anterior cervical discectomy fusion in September of 2019 have any significance to you treating and evaluating Mr. Rodrigues' lower back?

MS. SCARIA: Objection, Your Honor. I did not ask about specific surgery.

MR. WATTLEY: Opened the door.

THE COURT: Let's have a sidebar.

MS. SCARIA: Your Honor, I'm happy to withdraw the objection. Let's just move on.

THE COURT: Can you answer the question?

A. Can you repeat the question?

Q. Sure. Did the fact that Dr. Louis Cornacchia performed an interior cervical discectomy fusion in September 17th of 2019 have anything to do with your treatment and the care that you rendered to Mr. Rodrigues' lumbar spine?

A. No.

Q. Different part of the spine altogether?

A. Different country, different continent.

Q. Was the last -- you were asked on cross-examination about the last physical therapy date

before Mr. Rodrigues came to you in February of 2024. Does the last physical therapy date have any significance to your treatment, the history that you took, your diagnosis, and the surgery that you performed?

A. None at all.

Q. Why is that, Dr. Okubadejo?

MS. SCARIA: Forgive me. Can I just have the question read back?

THE COURT: Please read it back.

(Record read back.)

MS. SCARIA: Thank you.

A. None whatsoever.

Q. Why is that, Dr. Okubadejo?

A. Because as a surgeon, the sequence that matters to me is first beginning with physical therapy and then going to pain management. And once you've had pain management, if the pain persists and I see something I can fix as a surgeon, then I move forward with that. Physical therapy doesn't alter any of the other. So it's irrelevant.

Q. You were also asked on cross-examination about an EMG to the lumbar spine that was taken on December 6th of 2018 that showed possible evidence of radiculopathy. Do you recall those questions?

A. Yes.

Q. As the doctor who performed the laminectomy discectomy infusion, did you actually cut into Mr. Rodrigues and go into his spine?

A. Yes.

Q. And when you did that, as the surgeon that's inside of his body, did you visualize the herniation and compression of the exiting nerve roots?

A. Yes.

Q. So the fact that the EMG from 2018 said "possible" had nothing to do with your treatment, your diagnosis, and the surgery that you performed; is that right?

MS. SCARIA: Objection.

THE COURT: Please rephrase the question.

Q. Did the fact that the EMG from 2018 said "possible" have anything to do with your diagnosis, treatment, and surgery that you performed?

A. No.

Q. You were asked about a personal injury lawsuit and when it was filed, and you testified something about Mr. Rodrigues' being a workers' comp patient. Do you recall those questions?

MS. SCARIA: Objection.

THE COURT: What's the basis of the objection?

MS. SCARIA: I didn't ask when the lawsuit was

filed. I'm sorry. It was a mischaracterization of the question.

THE COURT: Please ask the -- please rephrase the question.

Q. I apologize. I don't remember the exact question that Counsel asked, Your Honor.

THE COURT: Can you please read the question back.

(Record read back.)

THE COURT: If you could please rephrase the question and remove the reference to when it was filed. I don't believe that was part.

MR. WATTLEY: It was, Your Honor. She said was it before he started treating at CitiMed.

THE COURT: With all of that, then please rephrase the question.

MR. WATTLEY: Sure.

Q. Dr. Okubadejo, does the fact that -- strike that. Does a workers' comp claim or personal injury lawsuit with respect to Mr. Rodrigues, did that have any impact on the history that you took?

A. No.

Q. Did it have any impact on the examination that you performed?

A. No.

Q. Did it have any impact or significance on the treatment that you rendered?

A. No.

Q. Did it have any impact or significance on the surgery that you performed?

A. No.

Q. Did it have any impact or significance on the postoperative treatment that you performed?

A. No.

Q. Did it have any impact or significance on your diagnosis or your prognosis regarding Mr. Rodrigues' lower back or lumbar spine?

A. No.

Q. And, again, why is that, Dr. Okubadejo?

A. When a patient comes to me, I'm a surgeon. I don't really care about anything beyond a patient having pain and me looking for a solution to the pain. So lawyers can do whatever they do, you know, but that's got nothing to do with me. I focus on patients and getting them better through pain meds. That's what I do. That's my focus.

Q. Was that your focus with Mr. Rodrigues?

A. That's my focus with every patient.

Q. You were asked about a CD that Mr. Rodrigues brought on that first visit with the MRI from January

4th, 2024. Do you recall that question?

A. Yes.

Q. Where was that diagnostic test performed?

A. That was performed at Stand-Up Manhattan.

Q. Stand-Up MRI?

A. Stand-Up MRI.

Q. That's not a test that Mr. Rodrigues performed himself on himself?

MS. SCARIA: Objection.

THE COURT: Sustained.

MR. WATTLEY: Nothing further.

MS. SCARIA: Brief, Your Honor?

THE COURT: Yes.

MS. SCARIA: Thank you.

RECROSS-EXAMINATION BY MS. SCARIA:

Q. Dr. Okubadejo, the facility where you practice and you examined Mr. Rodrigues, what's the name of it?

A. My practice? The Institute for Comprehensive Spine Care.

Q. And when you say your practice, are you the owner of the practice?

A. Yes.

MR. WATTLEY: Objection, beyond the scope and relevance.

MS. SCARIA: If The Court may allow --

THE COURT: I'll allow it.

Q. So your focus on treating your patients, including Mr. Rodrigues, isn't solely to alleviate pain, is it?

A. Yeah. It's to improve their quality of life.

Q. You get paid for that work, don't you, sir?

A. Correct.

Q. And in this instance, in fact, you had to fight with workers' compensation in order to --

MR. WATTLEY: Objection. Objection.

THE COURT: Sustained.

Q. You talked about on cross -- on redirect the treatment you provided being consistent with an accident on May 18th, 2018. Do you recall that?

A. Yes.

Q. And is it your testimony that the treatment is consistent with that because he fell off a ladder?

A. His mechanism of injury is what he told me, and my treatment is based on my objective findings and examination. So that's what I have.

Q. So if Mr. Rodrigues had told you he was in a six-car motor vehicle accident on December 15th, 2021, when you examined him on February 8th, 2024, would that have also been consistent with your findings on that day?

A. When a patient presents to me, what they -- I'm

looking at that in one -- in a specific point in time.

MS. SCARIA: Your Honor, forgive me for interrupting, but I'd ask the Doctor to answer the question.

THE COURT: You can ask the question after he answers it.

A. When a patient presents to me -- they're presenting to me with complaints and specific findings, at that point in time my focus is very myopic. It's that -- it's you have pain, can I identify something that's causing you pain, can I provide a solution.

So I look at what treatment you've undergone already, whether you've gone through the protocols, if he's had physical therapy and pain management. So if I see something I can fix, then I fix it.

I don't worry about that other stuff. That's what you guys do. You guys are lawyers. I don't give a damn what -- excuse me. I'm a doctor. I do doctor stuff. You do the legal stuff.

Q. I didn't do anything with Mr. Rodrigues.

A. I'm just saying that's -- my perspective is I'm a doctor. I don't get into the nitty-gritty stuff.

If you have pain, right -- I went to medical school to treat pain. If you have pain and I see a cause of pain and you've gone through the protocols and I can

fix it --

THE COURT: This testimony is well beyond the scope of the question. Please ask your next question.

Q. One of the purposes for treating Mr. Rodrigues was to get him back to functioning as best as possible, right?

A. Correct.

Q. And your treatment was successful of him in that you have told Mr. Rodrigues that he can go back to work; is that right?

MR. WATTLEY: Your Honor, my only objection is, again, this is limited to just with respect to his lumbar spine.

THE COURT: Please rephrase the question and limit it to the lumbar spine, the care and treatment this witness rendered.

Q. Doctor, did you tell Mr. Rodrigues that he is capable of returning to sedentary work?

A. Yes.

MS. SCARIA: That's all I have. Thank you.

MR. COYNE: I don't have anything, Your Honor.

MR. WATTLEY: Nothing from Plaintiff.

THE COURT: Doctor, thank you very much. You may step down.

THE WITNESS: Thank you.

(Witness leaves the courtroom.)

THE COURT: Plaintiff, do you have any more witnesses for today?

MR. WATTLEY: Not for today, Your Honor.

THE COURT: Ladies and gentlemen of the jury, we are finished for today. We do anticipate that there will be two witnesses tomorrow. So please be here at 9:30. Please remember my previous admonitions and instructions. Thank you very much.

THE COURT OFFICER: Jury exiting.

(Jurors exit the courtroom.)

THE COURT: Okay. Please make special effort -- Counsel, if you reach out to both your witnesses and just explain what happened today and how unacceptable it was, just so they know to take extra care to get here on time.

MR. WATTLEY: Yes, Your Honor. And I do apologize to The Court on behalf of the Doctor. Apparently it was something medical with one of his patients.

MS. SCARIA: With respect to the application regarding Dr. Dwyer and her findings, is that something we're just going to deal with during the testimony or --

THE COURT: Yeah. I haven't had a chance to look at the expert response.

MS. SCARIA: Understood.

THE COURT: Just a moment. We'll deal with it tomorrow morning.

MS. SCARIA: Great. Thank you.

THE COURT: My order was pretty clear. I want to review the expert witness response.

(Proceedings ended.)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC RECORD.

JENNIFER GRUSEKE, CSR
Senior Court Reporter

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