

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CIVIL TERM: PART 19

3 - - - - -X

4 JONATHAN PAULINO,

5 Plaintiff,

6 - against -

7 KOLA HOUSE, LLC; 408 WEST 15TH STREET
8 OWNER, LLC, DUPRAT CONSTRUCTION CORP.,

9 Defendants.

10 - - - - -X

11 Supreme Court
12 360 Adams Street
13 Brooklyn, New York 11201
14 June 4, 2025

15 B E F O R E :

16 HONORABLE HEELA D. CAPELL,
17 Justice of the Supreme Court and a jury

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

19 GORAYEB & ASSOCIATES, P.C.
20 Attorneys for the Plaintiff
21 100 William Street - Suite 1205
22 New York, New York 10038
23 BY: MARIA STAVRAKIS-HANSEN, ESQ.

24 WILSON, ELSER, MOSKOWITZ,
25 EDELMAN & DICKER, LLP
Attorneys for the Defendant
408 15th Street Owner, LLC
& 408 15th Street Owner, LLC
1133 Westchester Avenue
New York, New York 10038
BY: NICHOLAS NAPOLI, ESQ.
BY: TIMOTHY J. SHEEHAN, ESQ.

(Appearances Continued on Next Page.)

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

LONDON FISCHER, LLP
Attorneys for the Defendant
DUPRAT CONSTRUCTION CORP.
59 Maiden Lane
New York, New York 10038
BY: ANTHONY MALECHI ESQ.

LAURA HUTZEL DELVAC
SENIOR COURT REPORTER

* * * *

COURT OFFICER: All rise, Part 19 is now in session. The Honorable Heela D. Capell presiding.

THE COURT: Good morning. Off the record.

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

THE COURT: Good morning, again, yesterday we did speak to Alternate Number Two, who I think then became Alternate Number One about foot pain and that if she really couldn't make it this morning, that she would call in, and so at this point, I am ready to excuse her from her service for the rest of the trial; is that okay with you, counsel?

MS. STAVRAKIS-HANSEN: Yes, your Honor.

THE COURT: And what about you?

MR. SHEEHAN: Yes, your Honor.

THE COURT: So then we will make that call down to

Proceedings

1 the jury room and let them know. Thank you so much, we can
2 go off the record.

3 (Whereupon, an off the record discussion was held.)

4 COURT OFFICER: Ready, Judge?

5 THE COURT: Is everybody ready for the jury?

6 MS. STAVRAKIS-HANSEN: Yes.

7 MR. SHEEHAN: Yes.

8 MR. NAPOLI: Yes.

9 COURT OFFICER: All rise, jury entering.

10 (Whereupon, the jury entered the courtroom.)

11 THE COURT: Good morning everyone, please be
12 seated. I hope you're all well this morning.

13 Okay, so we will continue with Plaintiff's case and
14 you have a witness.

15 MS. STAVRAKIS-HANSEN: Yes, your Honor, we call
16 Dr. Matthew Grimm.

17 (Whereupon, Dr. Grimm took the witness stand.)

18 THE COURT: Thank you.

19 THE CLERK: Good morning, doctor, please raise your
20 right hand?

21 Do you solemnly swear or affirm that the testimony
22 you're about to give this Court will be the truth, the whole
23 truth and nothing but the truth?

24 THE WITNESS: Yes.

25 THE CLERK: Please be seated. In a loud clear

1 voice, state your name and address for the record?

2 THE WITNESS: Matthew Grimm, 160 East 56th Street,
3 New York, New York 10022.

4 THE CLERK: Thank you.

5 THE COURT: Thank you, good morning.

6 THE WITNESS: Good morning.

7 THE COURT: Your witness.

8 DIRECT EXAMINATION BY

9 MS. STAVRAKIS-HANSEN:

10 Q Good morning, Dr. Grimm.

11 A Hello.

12 Q Would you tell the jury, please what is your
13 profession?

14 A I'm a physician.

15 Q And in what specialty?

16 A Physical medicine and rehabilitation and pain
17 management.

18 Q Can you just explain to us a little bit what that
19 means?

20 A I would sort of treat, generally the neck and back
21 conditions and in a nonsurgical manner using physical therapy,
22 medications, injections, and just sort of trying to treat a
23 patient in the stage before they might need surgery to try to
24 prevent it, and then I will treat chronic pain, patients who
25 have pain for one reason or another, that need the treatment in,

1 again, multidisciplinary fashion, physical therapy, medications,
2 injections and in various ways.

3 Q Can you just tell us a little bit about your
4 educational background?

5 A I graduated in Penn State in electrical engineering, I
6 went to medical school at Jefferson Medical College, graduating
7 in 2005, and then I did my residency in physical medicine and
8 rehabilitation at University California Irvine and William
9 Beaumont Hospital in Royal Oak, Michigan. I then did a
10 fellowship, which is just further training in interventional
11 pain management in Marietta, Georgia and then that was one year,
12 and then I started working at New York Ortho Sports, Medicine &
13 Trauma under Jeffrey Kaplan in 2011.

14 Q Thank you.

15 Are you licensed to practice medicine in the State of
16 New York?

17 A Yes, since 2011.

18 Q And are you board certified?

19 A Yes, in physical medicine and rehabilitation.

20 Q What is being board certified mean?

21 A It's a set of tests in my case, it's both oral and
22 written, and just to make sure you're proficient in your
23 specialty and then you have to upkeep it every year, you have to
24 take online tests every quarter and then maintain a certain
25 amount of continuing medical education, you have to read

1 journals and whatnot to keep my education up.

2 Q Are you a member of any medical societies, anything
3 like that?

4 A Member of the American board of Physical Medicine and
5 Rehabilitation, and member of the New York County Medical
6 Society.

7 Q Do you engage in private practice?

8 A Yes, I work for New York Ortho Sports, Medicine &
9 Trauma.

10 Q What discipline do you private practice?

11 A Pain management.

12 Q Please explain to the jury, do you regularly see
13 patients?

14 A Yes, I see patients, generally every day of the week.

15 Q And in our case, Mr. Paulino contends that he was in a
16 state of good health, had no complaints to his back or neck or
17 shoulder and then he suffered injury to his neck, back and
18 shoulder in a fall from a collapsing scaffold on a hard surface,
19 now he suffers ongoing pain.

20 Do you have experience in your profession applying your
21 skills and your experience to problems of Mr. Paulino's kind?

22 MR. SHEEHAN: Objection to the form.

23 THE COURT: Sustained.

24 Q Do you see patients in general who complain who have
25 had a traumatic accident and have fallen from a height?

1 A Yes.

2 Q And do you typically treat those kind of patients?

3 A Yes.

4 Q And have you been qualified as an expert in the past in
5 New York?

6 A Yes.

7 MS. STAVRAKIS-HANSEN: I offer Dr. Grimm as an
8 expert in page management, your Honor.

9 MR. SHEEHAN: His board certified in physical
10 medicine and rehab, Judge, so I would object to that.

11 THE COURT: He practices daily with pain
12 management, I will allow it.

13 MS. STAVRAKIS-HANSEN: Thank you.

14 Q Dr. Grimm, did there come a time when you encountered
15 Mr. Paulino yourself?

16 A Yes.

17 Q And before you look at whatever you're looking at, tell
18 us what you're looking at?

19 A My office prepared my chart for me, so it's my -- my
20 visits and MRIs, the procedures he's had and some outside
21 records.

22 MS. STAVRAKIS-HANSEN: Your Honor, for the record,
23 that should be number one, Exhibit 1, already in evidence.

24 THE COURT: Thank you.

25 Q And Mr. Paulino, Dr. Grimm, can you tell us when was

1 the first time you encountered Mr. Paulino?

2 A I saw him for the first time on January 23, 2017.

3 Q And did you see him for the purposes of treatment?

4 A Yes.

5 Q And what was the nature of the first encounter?

6 A He was referred to me by Dr. Kaplan for evaluation of
7 his neck and lower back pain.

8 Q At that initial visit, did you take a history?

9 A Yes.

10 Q And can you tell us, can you describe for us what type
11 of history in your practice, what kind of information do you
12 get?

13 A I just get a basic history from my patients, I'm
14 primarily interested in their symptoms and what their feeling,
15 so I just get the basics and then jump into mostly how they're
16 feeling, what they're doing, and we will try to diagnose what's
17 going on.

18 Q Does that history help you in treating the patient?

19 A Yes.

20 Q Okay, and did you perform a physical examination at
21 that initial encounter?

22 A Yes.

23 Q Can you tell us the finding of that initial counter?

24 A Yes, with regards to his neck, he was in some mild
25 distress, and he was tender over his cervical spine processes,

1 so the bony prominence.

2 MS. STAVRAKIS-HANSEN: Your Honor, just for the
3 record, we are having, I think Dr. Grimm has a demonstrative
4 tool, that we're going to be trying to use as evidence, I
5 can lay the foundation if you want.

6 THE COURT: Please.

7 Q Dr. Grimm, is there a demonstrative tool that you use
8 to help you explain your treatment to the jury?

9 A Yes.

10 Q And do you customarily use that?

11 A Yes.

12 Q And is this an accurate depiction of what the human
13 spine would be, but it's demonstrative tool?

14 A Just yes, just the lower back.

15 Q Thank you.

16 THE COURT: Counsel, any objections to the
17 demonstrative tool?

18 MR. SHEEHAN: Ideally, it should be marked for
19 identification.

20 MS. STAVRAKIS-HANSEN: We can mark it, we can mark
21 it for ID like we did the other one, what number is this? I
22 just don't remember the number.

23 THE COURT: I don't know that we marked the other
24 one.

25 MS. STAVRAKIS-HANSEN: Oh.

1 THE COURT: I'm up to, this would be 35 for ID at
2 this point.

3 MS. STAVRAKIS-HANSEN: It's up to you, your Honor,
4 if you want us to mark it, I have no issue, but he's going
5 to take it back with him.

6 THE COURT: Are you up to 35? Can you just tell
7 me?

8 MR. NAPOLI: I will double check.

9 MS. STAVRAKIS-HANSEN: I was up to 34. Oh, this
10 would be number 35, yes.

11 MR. NAPOLI: Yes, that's what I have, 34 is the
12 last one.

13 MS. STAVRAKIS-HANSEN: Me too.

14 Your Honor we're marking the demonstrative tool of
15 the back for ID as number 34 -- 35.

16 THE COURT: If you want, we can have the other one
17 deemed marked as 36 from yesterday, the demonstrative tool
18 utilized by Dr. Kaplan, okay.

19 MS. STAVRAKIS-HANSEN: Okay.

20 THE COURT: We will mark that 36 for ID as well,
21 so, in case it needs to be referred to.

22 Q Can you please explain to us what complaints and
23 findings did you make at your initial encounter?

24 A So, yes, he was tender over the cervical spine
25 processes, he had range of motion of extension at 45 degrees,

1 with pain at the end range, normal is approximately 60 degrees,
2 and he had full flexion, chin to chest and pain end ranging
3 normal is 50 to 80, he had pain with left and right lateral
4 flexion at 40 degrees, normal is 45 degrees, he had pain with
5 left rotation at 70 degrees and right rotation at 70 degrees,
6 normal is approximately 80 degrees, and he did have a wrist
7 brace in place, but no gross deficits of the other musculature
8 strength was noted. He had normal sensation, normal reflexes,
9 and negative Hoffmann's sign and negative Spurling sign, muscle
10 spasm was noted in his cervical paraspinal musculature. He was
11 walking with an antalgic gait, and he had no visual abnormality
12 of his back, he was tender over it lower lumbar spinal
13 processes, he had no sacroiliac joint tenderness, and he had
14 pain with extension at roughly five to ten degrees and normal is
15 to 25 degrees, and he had pain with flexion at 45 degrees,
16 normal would be 85 to 90 degrees, and pain with left and right
17 lateral flexion at 20 degrees, normal is 25 degrees. He had
18 absent calf tenderness, absent log rolling tenderness checking
19 for hip issues, and he had normal and symmetrical deep tendon
20 reflexes, normal sensation, he had normal positive straight leg
21 on the right, and he had intact strength, and he had muscle
22 spasm noted.

23 Q After physical examination, were those your findings?

24 A Yes.

25 Q Anti did, did Mr. Paulino follow-up with you after that

1 initial encounter?

2 A Yes.

3 Q And did you come up with a treatment plan at your
4 initial encounter?

5 A Yes.

6 Q What was that treatment plan?

7 A At that time, I was recommending EMG nerve conduction
8 tests to test his nerves and musculature for any damage, I was
9 also recommending an epidural steroid injection for his upper
10 back and he was given antiinflammatory medication.

11 Q Can you just explain to the jury what an EMG test does
12 and what significance it has?

13 A An EMG test is an test to evaluate the nerves and what
14 I was looking for is to see if the nerves in his back were being
15 affected by some process, in his case, he had a disc herniation
16 noted at L5-S1, which is the lowest disc here in the lower back,
17 the disc is the sort of cushion between the bones in the back,
18 and if that disc comes into contact with the nerve, it could
19 cause the nerve to be inflamed and that can disrupt the signal
20 going to the muscle, and the way I describe it to patients it's
21 like a water hose being kinked, the water is not reaching what
22 it's trying to water and it can start to die.

23 So this test I will put a small pin in different
24 muscles corresponding to different nerves in the back and if we
25 see some disruption in the muscle when the pin is in the muscle,

1 then we can -- the -- it will pick up some very slight
2 degeneration of the muscle to allow us to know which nerves are
3 being affected and if the nerves are being affected.

4 Q Is that the same thing as NCV test or?

5 A NCV is the other parts of the test, it's testing to see
6 if the nerves are conducting or if there's any blockage of the
7 nerves.

8 Often times people have carpal tunnel or some blockage
9 in their wrist or a nerve goes over your ankle or some blockage
10 there, we're testing to make sure to see if the nerve is
11 conducting properly to see if that can be possibly why a patient
12 is feeling some issue.

13 Q Can you explain to the jury what an epidural steroid
14 injection is?

15 A An epidural steroid injection is use an X-ray machine
16 to take live pictures, and I will guide an approximately a three
17 and a half to four inch needle down into the epidural space
18 which is the space outside of the -- where the spine is, and you
19 want to coat the nerve with some antiinflammatory medication,
20 and the goal of this is to, if the nerve is involved, to take
21 the swelling down and sort of open that hose up to try and get
22 the signal to go through.

23 So if you take the swelling down, hopefully the pain
24 goes down and it can help resolve the issue combined with some
25 other treatment like physical therapy and whatnot.

1 Q Speaking of physical therapy, did you also prescribe
2 physical therapy for Mr. Paulino?

3 A Yes, I believe he had already been attending therapy as
4 well at his first visit.

5 Q And was Mr. Paulino compliant with the treatment plan,
6 and did he undergo the EMG and NCV tests?

7 A Yes.

8 Q Did you get the results?

9 A Yes.

10 Q Can you please tell us the findings of the results?

11 A Sure. His first test on 2/14/17 was positive for a
12 left L5 radiculopathy.

13 Q Can you explain to the jury what left L5 radiculopathy
14 means?

15 A It means I was seeing some degeneration involving the
16 L5 nerve, involving some of the muscles that innervates in his
17 left leg.

18 Q What significance does that have?

19 A It can correlate with pain radiating into the leg due
20 to nerve issues in the back.

21 Q Was another EMG test done or was that the only one that
22 was conducted?

23 A He had some additional testing done, he then had an
24 additional nerve test done on March 6, 2019, and that was of his
25 upper and lower extremities, and --

1 Q And did you get the results?

2 A Yes.

3 Q Can you tell us what the results showed?

4 A This showed a bilateral L5-S1 radiculopathy and then a
5 right sided multilevel cervical radiculitis secondary to
6 cervical mild spasm.

7 Q Can you explain the secondary mild spasm; what does
8 that mean?

9 A Well, if you're having a lot of spasm or issues in the
10 neck related to either a nerve or trauma, it can irritate the
11 nerves and it can cause radicular symptoms.

12 Q Thank you, Dr. Grimm.

13 Did you look at any films or did you have Mr. Paulino
14 go for diagnostic films?

15 A Yes, he's been sent for MRIs, both by myself and by
16 other physicians.

17 Q And did Mr. Paulino make you aware of any complaints
18 that he had before his accident to his neck, back, shoulders or
19 wrists?

20 A He denied a history of neck pain, and he denied a
21 history of lower back pain, and I was focusing primary on the
22 neck and back, that's sort of what I asked him about.

23 Q I'm sorry, just give me one second.

24 (Pause in the proceedings.)

25 And Dr. Grimm, throughout your examination today,

1 I'm going to be asking you certain opinions of yours and
2 when I ask you for your opinion, it's to a reasonable degree
3 of medical certainty, is that okay?

4 A Yes.

5 Q I might not say that phrase, but for the -- for the
6 remainder of your questioning, your opinions are to a reasonable
7 degree of medical certainty?

8 A Yes.

9 Q Any significant findings of Mr. Paulino's condition,
10 that you recorded on the first visit competent producing cause
11 of pain?

12 A Yes, he had the issues with the straight leg raise,
13 which can be a nerve issue, he also had decreased ranging of his
14 back, related to pain and probably stiffness and he had spasm
15 noted which can be related to trauma and also nerve issues and
16 pain.

17 Q And Dr. Grimm, the pain that was expressed to you by
18 Mr. Paulino, is it consistent with a fall from a collapsing
19 scaffold from approximately 12 feet onto a hard surface?

20 MR. SHEEHAN: Objection.

21 THE COURT: Sustained.

22 MS. STAVRAKIS-HANSEN: Do you want me to rephrase
23 it?

24 THE COURT: Yes.

25 Q And the pain that Mr. Paulino was explaining to you in

1 all of the diagnostic studies and your review of them, is that
2 consistent with a traumatic accident from a fall from a height?

3 A Yes.

4 Q Thank you.

5 Did you form a diagnosis at your initial assessment in
6 respect to Mr. Paulino?

7 A Yes.

8 Q What was that diagnosis?

9 A Lumbar radiculopathy, which is a diagnosis of a nerve
10 issue in the back and cervicalgia, which is just meaning he's
11 having neck pain, and lumbago, which is low back pain.

12 Q Earlier you said you sent him for diagnostic tests; did
13 you review the results of the MRI?

14 A Yes, I've reviewed MRIs at the first, let me see what
15 the first one was, yes, he had an MRI done at Stand Up MRI on
16 November 1, 2016.

17 Q And can you please tell us the results of the MRI
18 diagnostic?

19 A It was, it says L1-2 through L4-5 discs are
20 unremarkable, and diffuse disc bulge is noted at the L5-S1 level
21 which extends into the ventral epidural fat and interior aspects
22 of the L5-S1 neural foramina bilaterally.

23 Q Did you review any other diagnostic testing?

24 A The first visit, I mean I've -- I think at the first
25 visit I think that was the only one available, but he's had

1 multiple tests throughout his treatment.

2 Q He did follow-up with you, when was next MRI that you
3 reviewed?

4 A Then there was an MRI, there was a CAT scan, that was
5 done on 8/14/2017, which showed a broad-based midline posterior
6 disc herniation at L5-S1, he then had an MRI done on 12/1/2017,
7 that showed a broad-based midline posterior disc herniation at
8 L5-S1, and then I believe the MRI that was done after that were
9 postsurgical MRIs.

10 Q Okay. Dr. Grimm, are those findings on the MRIs that
11 you just explained to us throughout the multiple MRIs, were they
12 consistent with the trauma accident like the one we've been
13 discussing that Mr. Paulino had?

14 MR. SHEEHAN: Objection.

15 THE COURT: Rephrase, please.

16 Q Are the findings on the MRI consistent with a traumatic
17 accident from a height?

18 MR. SHEEHAN: I'm going to object.

19 MS. STAVRAKIS-HANSEN: What is the objection.

20 THE COURT: I will sustain it. Maybe a background
21 question.

22 Q Do you have experience in reviewing MRIs and
23 determining what the findings are of those MRIs?

24 A Yes.

25 Q Do you use those findings to make a determination and

1 treat a patient such as one whose experiencing a traumatic
2 accident?

3 A Yes, as part of the treatment, yes.

4 Q In your opinion, with a medical degree of reasonable
5 certainty, would you say in this particular situation after
6 looking at the MRIs, it's consistent with the traumatic accident
7 for an individual whose fallen from a height?

8 MR. SHEEHAN: I'm going to object, I don't know if
9 it's clear he looked at films as opposed to the reports.

10 THE COURT: Well, you're specifically asking about
11 the films; correct?

12 MS. STAVRAKIS-HANSEN: I'm specifically asking for
13 the results of his review of the films of the MRIs.

14 THE COURT: And those are specific ones that you
15 mentioned.

16 MS. STAVRAKIS-HANSEN: He just indicated --

17 THE WITNESS: I didn't review the films.

18 MS. STAVRAKIS-HANSEN: The reports?

19 THE WITNESS: I reviewed the reports, I didn't have
20 the films.

21 MS. STAVRAKIS-HANSEN: Okay. Can I ask my question
22 again?

23 THE COURT: Ask it again.

24 MS. STAVRAKIS-HANSEN: Okay.

25 Q The findings on the MRI, which you had just indicated

1 were what, what was the last MRI that you reviewed?

2 A It was on 12/1/2017, which showed a broad-braced
3 midline posterior disc herniation at L5-S1.

4 Q Is that something that's consistent with a fall from a
5 height for a traumatic accident?

6 MR. SHEEHAN: Objection. He's basing it on reports
7 he hasn't read the films.

8 MS. STAVRAKIS-HANSEN: He can review the reports
9 and he reviews, he spoke to the client for the pain.

10 THE COURT: You haven't gotten --

11 MS. STAVRAKIS-HANSEN: Can we have a side bar,
12 please?

13 (Whereupon, an off the record bench discussion was
14 held.)

15 Q Dr. Grimm, at your initial encounter with Mr. Paulino,
16 in that history, did you know if he was involved in an accident
17 or not?

18 A Yes.

19 Q And yes, did he tell you what kind of accident he was
20 involved in?

21 A I believe my note says a fall from a height.

22 Q Okay, and in your experience, from taking the history
23 where you were advised that he was involved in an accident from
24 falling from a height, reviewing MRI reports from MRIs that were
25 taken, complaints of pain that Mr. Paulino himself gave you, is

1 that consistent, are these diagnostic films consistent with a
2 fall from a height as he was, as Mr. Paulino told you himself?

3 MR. SHEEHAN: Objection.

4 THE COURT: Sustained.

5 MS. STAVRAKIS-HANSEN: Okay.

6 Q Are disc herniations, when you see disc herniations of
7 a report of an MRI, is that consistent with a fall from a
8 height?

9 MR. SHEEHAN: Objection.

10 THE COURT: Sustained.

11 MS. STAVRAKIS-HANSEN: Can we have a side bar,
12 please?

13 (Whereupon, an off the record bench discussion was
14 held.)

15 Q Dr. Grimm, in your custom and practice, do you review
16 diagnostic films?

17 A Yes.

18 Q Do you use the history provided to you by patients also
19 to formulate a treatment plan?

20 A Yes.

21 Q And when you have the history and when you look at
22 diagnostic films, do you typically, can you assess what type or
23 what caused the injuries or the findings in those diagnostic
24 films?

25 A I mean, I mean not to a precise manner without a

1 preinjury film and post, but a herniation can be caused by
2 trauma or it can be caused by other things, but his symptoms, he
3 didn't have prior to the accident and he's having the symptoms
4 now, so I would attribute the symptoms related to the herniation
5 related to the accident.

6 Q Thank you.

7 MR. SHEEHAN: Objection, move to strike the answer.

8 THE COURT: In terms of the specificity, it was a
9 general question, so from when it started to get specific to
10 Mr. Paulino, that was nonresponsive; is that enough for you
11 to do that Madam Reporter?

12 THE REPORTER: Yes.

13 THE COURT: So we're going to disregard what was
14 said with respect to Mr. Paulino specifically, but the rest
15 of the answer that was general, you can keep in your mind.

16 Q And generally, can you just explain to the jury what
17 that means?

18 A I mean a herniation is a disruption of the disc, the
19 disc is like fibrous outside and it's a jelly on the inside, and
20 generally, it can be just in everyday life, the jelly gets
21 contained in the disc, that's what gives you the ability to move
22 and also it gives cushioning like shock absorbers for your
23 spine.

24 The herniation will occur when something disrupts those
25 fibers, puts too much pressure on the jelly, and it will cause

1 it to push out for one reason or another, so it can be due to
2 trauma, a lot of times, sometimes just through life people can
3 get it, you can be in a car accident, anything, will cause the
4 fibers to push down, put too much pressure on it and sort of pop
5 up, like a tire popping or something or a balloon.

6 Q Do you have an opinion either way, to a reasonable
7 degree of medical certainty, whether the fall and the traumatic
8 accident was the cause of Mr. Paulino's need for medical
9 treatment?

10 MR. SHEEHAN: Objection.

11 THE COURT: Sustained.

12 Q Throughout your treatment with Mr. Paulino, did he
13 complain of continuing pain?

14 A Yes.

15 Q And did you refer Mr. Paulino to other physicians?

16 A Yes.

17 Q What physicians did you refer him to?

18 A After treatment, conservatively with myself and with
19 continued pain, he was referred to in ortho spinal surgeon.

20 Q And you just mentioned conservative treatment, why do
21 you go with conservative treatment?

22 A It is a step-wise process, you'll start with
23 noninvasive generally, I mean depending on every patient, but
24 you usually start with physical therapy, medications.

25 If the pain persists, then you go to the injections

1 treatments which I told, with Mr. Paulino, those did not resolve
2 his pain, and so we sort of exhausted the more conservative
3 treatments, he was having continued pain, so he was sent to
4 Dr. Joseph Weinstein, who I believe then did surgery.

5 Q So he wasn't able to avoid surgery for his problems
6 with pain?

7 MR. SHEEHAN: Objection to the leading, Judge.

8 MS. STAVRAKIS-HANSEN: I will withdraw.

9 Q Dr. Grimm, Mr. Paulino was 33 years old at the time of
10 the accident, did you take a history of his age, were you aware
11 of his age at your initial encounter?

12 A Yes, at my initial encounter is after his birthday I
13 guess, yes, I saw him on 1/23, his birthday was on 1/12, I saw
14 him when he was 34.

15 Q Was that significance in any way when you were treating
16 Mr. Paulino?

17 A To some extent, yes.

18 Q Why was that?

19 A Well, you -- you generally you wouldn't expect a
20 34-year-old to have too much pathology in his back, but he was a
21 construction worker so he can, but usually if it's something
22 age-related due to multiple levels, but not always, but in
23 trauma-related, often it will be one level.

24 Q Typically, in your experience, when would you say that
25 age-related degenerative changes, if you can give me a range,

1 when would you see them?

2 A I mean it's -- it would be generally later in life, I
3 would say, I can't say an exact date, because everybody is
4 different, but probably usually, 40, 50, 60's.

5 Q When you do see herniated discs like you do in the
6 reports from the diagnostic exams -- actually withdrawn, give me
7 one second.

8 Dr. Grimm, in your practice of pain management, the
9 treatment that you provide, does it stop the pain or something
10 else?

11 A It depends on the patient, I mean the goal is to stop
12 the pain, but some patients, it doesn't, and so then they
13 generally transition to a chronic pain patients, but I have
14 patients they come in, we do an injection or what not, and goes
15 away, they followed up with some physical therapy and then won't
16 see them for years.

17 Q What category does Mr. Paulino fall in, is he the one
18 you treated once and that was it?

19 A No, he's a chronic pain patient, he had surgery, he had
20 continued pain, and we then did a spinal cord stimulator, which
21 is a device, that wires or leads are put into the spine, and
22 this is actually a model for, it's used to describe to the
23 patient the stimulator that you can't really see it, there are
24 small little leads that are put in here and you put in through
25 needles in the spine, thread them up, it is a procedure that I

1 do, and then they're powered by a battery and these leads fire
2 at a very fast rate to try to overstimulate the pain sensors in
3 your brain so nerve pain isn't perceived.

4 It's usually end range treatment for patients who have
5 chronic pain who have failed all other treatments options
6 including surgery. He had that, it took a while to sort of
7 program and get it working, but presently it seems to be helping
8 him.

9 Q Do you have a prognosis for Mr. Paulino?

10 A Yes.

11 Q What is that prognosis?

12 A I mean it's a guarded to poor prognosis, as he ages.

13 Q And would you say that this is a progressive injury or
14 condition?

15 A Yes.

16 Q And can you explain to the jury what that means?

17 A Well, in his lower spine, he now has hardware in his
18 back, and so before all of the forces in your spine are meant to
19 sort of be distributed amongst all of the joints, in a manner,
20 if you're moving, now this bottom area is fixed and so there's a
21 little bit more force that gets placed on the joints and the
22 discs sort of adjacent to the lowest one, and then also the
23 joints, sort of in your lower pelvis area, just because the
24 mechanics now involved, so, as that progresses, he can develop
25 what they call adjacent disc disease, which fortunately does has

1 the stimulator, hopefully that would manage that pain, but he
2 can also develop arthritis in the joints above his fusion and
3 also in the joints, the sacroiliac joint which is the joint
4 between the coccyx and your pelvis, and those generally aren't
5 covered as much by the stimulator, so he may need treatment for
6 that in the future as it progresses, because he will likely sort
7 of age at a faster rate due to the hardware in his back.

8 Q Do you anticipate declining health over the course of
9 the rest of his life?

10 A Pardon me?

11 MR. SHEEHAN: Objection.

12 Q Do you anticipate --

13 THE COURT: He already objected, I will sustain it,
14 you can rephrase that one.

15 Q Do you anticipate his health will get worse in relation
16 to his spine from what you just testified?

17 A The spine --

18 MR. SHEEHAN: Objection.

19 THE COURT: Sustained.

20 Q His back, lower back?

21 THE COURT: He's objecting to the form, I sustained
22 it.

23 Q Do you anticipate that as you testified it's
24 progressive, do you anticipate that it can possibly get worse in
25 the future?

1 MR. SHEEHAN: I'm going to object to again
2 possibly, Judge.

3 Q Do you anticipate it getting worse in the future?

4 A Yes.

5 Q And you just mentioned the stimulator, can you explain,
6 did you recommend the stimulator?

7 A Yes.

8 Q And usually in your common practice, and experience, at
9 what point in treating a chronic patient like Mr. Paulino would
10 you recommend a stimulator?

11 A In his case, the stimulator is sort of an end range
12 treatment. With him, we did physical therapy, medication,
13 injections, surgery, postsurgical, sometimes even when everybody
14 gets everything cleaned out, the nerves can still be inflamed,
15 so we will do postsurgical epidurals to put some medication on
16 the nerves to try to take the inflammation down, we did those
17 with him, they didn't help, for at least any extended timeframe
18 enough to have those be a chronic treatment option.

19 So then we do, there's a trial with a stimulator, so
20 there are two parts to it, permanent and a trial, and the reason
21 for the trial is for you to test drive the stimulator for a
22 week, to see if you like it, before putting anymore issues,
23 devices in your body, so you're using a needle, in the X-ray
24 machine sort of similar to the epidural, you go down to the
25 epidural space, but instead of medication in there, that's where

1 I thread these leads in to the spine, and they get threaded up
2 to an area corresponding to where his pain levels are, and a
3 representative from the company, device company will sit down
4 with a patient, usually for a good hour and sort of map their
5 pain, and fire specific of these electrodes to make sure they're
6 covering the specific area where their nerve pain is.

7 Once they get it covered, the patient wears the trial
8 for a week to see if they like it, to see if it helps. Usually
9 it's considered a success if they note that they're sleeping
10 better, if they're get at least a 50 percent reduction of pain
11 and generally overall improving their quality of life.

12 In his case, he did receive improvement with these
13 trials, and then he was referred to a neurospinal surgery, Dr.
14 Montivala who then put in the permanent device. The only
15 difference between the permanent device and the trial is at
16 least in his case is instead of the battery being worn on the
17 outside, they now put a battery sort of in a pocket just
18 underneath the fatty tissue usually in your lower backside and
19 then tunnel the leads under your skin and everything is internal
20 in your body, then the battery gets recharged wirelessly.

21 Q Doctor, you mentioned that he did have surgery to his
22 lower back; is that correct?

23 A Yes, with Dr. Weinstein.

24 Q Did you speak with Dr. Weinstein after the surgery or
25 before?

1 A Yes.

2 Q Did he help you in assisting a treatment plan?

3 A Yes, he would refer patients, he would refer him for
4 specific tests, either presurgery and postsurgery.

5 Q And you had indicated that postsurgery, you also did
6 epidural shots for Mr. Paulino?

7 A Yes, I believe we did two.

8 Q And was that because he continued to complain of pain
9 postsurgery?

10 A Yes.

11 Q And do you anticipate or after your discussions with
12 Dr. Weinstein and speaking with Mr. Paulino, do you anticipate a
13 further lumbar surgery necessary?

14 MR. SHEEHAN: Objection.

15 THE COURT: Overruled.

16 A Further lumbar surgery, the only further surgery thus
17 far would hopefully would be to replace the battery for the
18 stimulator, depending on use, it is something that wears out, so
19 it will need to be placed every three to seven years or so,
20 depending how strong they have it programmed and how often he
21 uses it, but as far as another lumbar spinal surgery, I would
22 hope not, because the adjacent level hopefully wouldn't get too
23 severe would warrant another surgery and if it did, hopefully
24 the stimulator would cover it, I would ask Dr. Weinstein for a
25 more -- what percentages he thought he might need it, hopefully

1 the stimulator for would be able to cover that pain.

2 Q How about the neck, do you anticipate any surgery for
3 the neck?

4 MR. SHEEHAN: I object.

5 THE COURT: Sustained.

6 Q And can you describe the treatment for his neck?

7 A For his neck, it's all been conservative treatment,
8 medication, physical therapy, and just, I've given him what we
9 call musculature trigger point in his neck, just due to the
10 pain, tension, your muscles can sort of spasm like I was saying,
11 it can form a tight taut pain, painful bands of inflamed muscle
12 and trigger point is just, consider this is the needle and put
13 it into the muscle and you get it to release, it's usually
14 secondary to pain, so that's something that can be done, I've
15 done those to him.

16 Epidurals were recommended by Dr. Weinstein, but he was
17 kind of scared to stick a needle into his neck, we never did
18 those, so his neck pain has been waxed and waned over time, and
19 I know Dr. Weinstein then did discuss surgery with him, and I
20 believe they did request it, but I'm not sure if he was afraid
21 to proceed with the surgery for the neck and whatnot, so right
22 now, I'm not sure what the plan is necessarily for that.

23 Q Anything for the shoulder, any treatment plan?

24 A I know Dr. Kaplan had recommended surgery for his
25 shoulder, I believe in 2021, but I believe Jonathan was scared

1 to proceed with another surgery due --

2 MR. SHEEHAN: Objection, I'm going to object to him
3 characterizing the patient's, the patient is going to
4 testify about that, I object to him.

5 THE COURT: Okay, sustained on this particular
6 answer, especially to the second part of the answer you
7 might want to ask the question again.

8 MS. STAVRAKIS-HANSEN: I need the question and
9 answer read back.

10 THE COURT: Okay, it started to go off into a
11 tangent at the end.

12 (Whereupon, the question and answer were read back
13 by the Court Reporter.)

14 THE COURT: Up until 2021, we're good, we will
15 strike the response after that, I will have you disregard
16 the response about what was recommended in 2021.

17 Q Dr. Grimm, recommending the stimulator, is Mr. Paulino
18 going to use any of that stimulator for the rest of his life?

19 A Yes.

20 Q Will Mr. Paulino require medication for the rest of his
21 life?

22 A Yes.

23 Q What type of medication, antiinflammatory, muscle
24 relaxants?

25 A The medications that I'm recommending, if he were to

1 get are neuropathic medication is often helpful called
2 gabapentin, it helps calms the nerves, doesn't treat it, it
3 masks pain, nerve pain and antiinflammatory, the one I would
4 recommend is Celebrex, just because it doesn't affect the
5 stomach as much and a muscle relaxer, cyclobenzaprine would be
6 helpful and topical antiinflammatory as well.

7 Q Is there a cost associated with that?

8 A Yes.

9 Q And what is that cost?

10 A I'd estimate the cost to be roughly \$230 a month.

11 Q And will Mr. Paulino continue to treat with his spine
12 surgery for the rest of his life?

13 MR. SHEEHAN: I'm going to object, Judge.

14 THE COURT: Sustained.

15 Q Will he be continuing treatment in general for the rest
16 of his life for his lower back?

17 A Yes.

18 Q Is there a cost associated with that?

19 A Yes.

20 Q What is that cost?

21 A I'd recommend he follow-up with a pain management
22 doctor four times a year, at a cost of \$250 per visit.

23 Q Anything else, any other visits?

24 A I'd recommend spine surgery visit, once a year, about
25 approximately \$500 per visit.

1 Q Is there any cost associated with the battery or the
2 surgery you mentioned to take out the battery and put it back in
3 and anything related to the battery of the stimulator?

4 A Yes, the stimulator battery is quite expensive, they
5 cost roughly \$30,000, and then the surgery to take it out, costs
6 \$5,000, and then you need to go to a facility for anesthesia,
7 and the facility fee, the facility to do the surgery, and that's
8 cash price of \$2,000, and like I said, depending on battery use
9 if they have it turned way up and like those leads are firing
10 very fast at a high rate and he's using it 24 hours a day, it
11 will wear out of faster, anywhere between three to seven years.

12 Q And any recommendation in terms of diagnostic testing
13 in the future?

14 A Yes.

15 Q And what is that recommendation?

16 A I was recommending MRI of the lumbar spine, at a cost
17 of \$1300 roughly every five year, MRI of the cervical spine a
18 cost of \$1300 every five years.

19 Q And Dr. Grimm, for the right arthroscopy surgery that
20 you indicated earlier, was not done. If done in the future, do
21 you have a cost of what that would be?

22 A Yes.

23 Q How much would that be?

24 A And this is a cash price, if someone was paying out of
25 pocket, in the New York area, a cost of \$41,580 and that

1 includes facility, anesthesia, equipment and surgeon.

2 Q Any other suggestions that you made to Mr. Paulino for
3 any future medical plans or treatment?

4 MR. SHEEHAN: I'm going to object, I don't know
5 that he has made them to Mr. Paulino.

6 THE COURT: Rephrase.

7 Q Any other recommendations for treatment for this
8 patient?

9 A I would recommend X-ray films of his neck and his lower
10 back once a year, and a cost of \$400, and then I would recommend
11 the -- one EMG nerve conduction study to evaluate progression
12 every five years in that it is a cost of \$2,000.

13 Q And Dr. Grimm, if you were not here with us today, what
14 would you be doing?

15 A Well, today, I was supposed to go to my kids' field
16 day, but I cancelled my patients for that, but my office made me
17 come here, but normally I would be seeing patients.

18 Q Is your office charging a fee for you to be here today?

19 A My office is charging 48500 for my time here.

20 Q And is there a fee also associated with your review of
21 reports, your formulation of reports, things like that, and what
22 is that fee?

23 A Yeah, I would write a narrative report, that fee, I
24 think it recently, they changed it, I think last year, I think
25 now it's \$2,000, my office charges before that, I think it was

1 something in the 850 to \$1250 range.

2 Q Dr. Grimm, are you familiar with a physical capacity
3 form?

4 A Yes.

5 Q And can you tell the jury what a physical capacity form
6 is?

7 A It's a form just to, sometimes I'm asked to fill out
8 based on my expertise to determine what patients are capable of
9 doing for a job.

10 Q Do you ordinarily do that in the custom and practice?

11 A Yes.

12 Q And can you tell us, did you fill one out for
13 Mr. Paulino?

14 A Yes.

15 Q And when was it filled out?

16 A It looks like March of 2020.

17 Q And in that form, did you make any findings or did you
18 make any determinations?

19 A Yes.

20 Q And can you tell us what those are?

21 MR. SHEEHAN: I'm going to object.

22 THE COURT: Sustained, a little more background.

23 Q In the physical capacity form, what kind of questions
24 do you have to make determination for in relation to a patient?

25 A Just what recommendations at that time would be for a

1 profession.

2 Q And what examples of questions do they ask whether or
3 not he can stand, he can sit, for how long, how heavy, things
4 that he can lift are or something else?

5 A Yes, it's questions regarding that and then
6 recommendations on what they should be able to do.

7 Q And did you make a recommendation as to how long
8 Mr. Paulino can stand in terms of employment?

9 A For an eight hour workday, I recommended one to two
10 hours of standing.

11 Q How about sitting, any recommendation about sitting?

12 A Three hours of sitting and this also allows for
13 reasonable breaks, so not straight through.

14 Q And how about for lifting objects, what's the maximum
15 capacity you would recommend?

16 A For a job, ten pounds occasionally, and frequently it
17 would just be small, probably less than five pounds.

18 Q Are you familiar with the Department of Labor and the
19 types and categories of work that an individual can do?

20 A Yes.

21 Q And what are those categories?

22 A I mean sedentary, light duty, heavy duty.

23 Q And what were your findings for Mr. Paulino?

24 MR. SHEEHAN: I'm going to object, Judge.

25 THE COURT: What's the objection?

Dr. Grimm - Plaintiff - Direct

1 MR. SHEEHAN: He's not a vocational rehab expert.

2 MS. STAVRAKIS-HANSEN: He filled out the form
3 asking what his recommendation were.

4 THE COURT: You have to give some background on how
5 he knows.

6 Q Prior to filling out this physical capacity form, what
7 do you incorporate in before you make determinations to fill out
8 the form?

9 A Well, as parts of my specialty of physical medicine and
10 rehabilitation, in our residency, I mean we discussed quality of
11 life issues and assessing patients so it is part of the physical
12 medicine and rehabilitation to evaluate for things like this,
13 and I discuss it with the patient what they're capable of doing.

14 Q You also perform a physical examination; is that
15 correct?

16 A Yes.

17 Q Based on all of that information, do you make certain
18 recommendations for the physical form, physical capacity form;
19 is that correct?

20 A Yes.

21 Q And did you make a determination in this case as to
22 what type of work you recommend Mr. Paulino would be able to do
23 in the future?

24 A I -- I recommended sedentary work.

25 Q Can you describe for the jury what sedentary is in

1 relation to other categories?

2 A Sedentary is sitting, like, no major bending, lifting,
3 pushing, pulling, it's just a job that, like desk work.

4 Q And what's the difference, do you know what light work,
5 what that category is, what would that incorporate?

6 A Light work you're lifting on a more frequent basis, I
7 think up to ten pounds, occasional basis up to 20 pounds, doing
8 occasional bending, climbing.

9 Q That wasn't your recommendation; is that correct?

10 A Correct.

11 Q Do you, have you done work or represented patients from
12 my firm before?

13 A Yes.

14 MS. STAVRAKIS-HANSEN: I have no other questions,
15 thank you.

16 THE COURT: Okay, thank you.

17 Do you want some time between cross?

18 MR. SHEEHAN: Yes.

19 THE COURT: Let's take a ten minute break, please.

20 COURT OFFICER: All rise.

21 (Whereupon, the jury exited the courtroom.)

22 THE COURT: Just remember my charge not to talk
23 about anything, don't look anything up, we will see you in a
24 few minutes.

25 (Whereupon, Dr. Grimm exited the witness stand.)

Dr. Grimm - Plaintiff - Cross

1 (Whereupon, a short break was taken.)

2 (Pause in the proceedings.)

3 (Whereupon, Dr. Grimm resumed the witness stand.)

4 COURT OFFICER: All rise, jury entering.

5 (Whereupon, the jury entered the courtroom.)

6 THE COURT: Please be seated. So when you're ready
7 with cross, go ahead.

8 MR. SHEEHAN: Yes, thank you, your Honor.

9 CROSS-EXAMINATION BY

10 MR. SHEEHAN:

11 Q Good morning, doctor.

12 A Good morning.

13 Q We've never met?

14 A Nope.

15 Q I'm going to ask you some questions, many of them may
16 call for a yes or no, if you can, please answer yes or no, if
17 you can't, let me know, and I will stumble around and try to ask
18 another question; okay?

19 A Okay.

20 Q Now, the first thing that happened with respect to
21 Mr. Paulino with you was that you got a referral from
22 Dr. Kaplan; is that right?

23 A Yes.

24 Q And when you got that referral, you had Dr. Kaplan's
25 records available to you, because you're in the same office;

1 right?

2 A Yes.

3 Q And would you agree, doctor, that lower back pain is
4 more frequent, probably one of the most prominent reasons why
5 patients go see their physicians?

6 A Yes.

7 Q And low back pain has many causes, does it not?

8 A Yes.

9 Q And natural age, and or degeneration of discs or bones;
10 right?

11 A Yes.

12 Q And trauma for sure, too; right?

13 A Yes.

14 Q Sometimes it's not really known why people have low
15 back pain; true?

16 A Yes.

17 Q One of the more frequent suspects in the low back pain
18 problem, if it's related to the discs, is the L5-S1 area; is
19 that correct?

20 A Yes.

21 Q And that's because that's lower in the spine and
22 there's a lot of rotational flexing and bending, things like
23 that, that all come to bear on those lower joints in the lower
24 lumbosacral area; right?

25 A Well, it's, yeah, it's where the most curvature of the

1 spine is.

2 Q That's another reason, the spine is not a flat straight
3 line; right, it curves?

4 A In the neck and the low back.

5 Q It curves in the cervical region and then it curves in
6 the thoracic, and then it comes, curves with the lumbar area and
7 back to the sacrum; right?

8 A The thoracic region is -- doesn't really curve much in
9 the thoracic, that's why most disc issues are not in that area.

10 Q Okay.

11 A It's fairly straight with thoracic, then it does curve
12 again in the low back.

13 Q You mentioned surgery, if back pain is caused by a
14 protruding herniation that's compressing on a nerve or the
15 thecal sac, that's the covering where the spinal cord sits
16 inside of; right?

17 A Yes.

18 Q If back pain was caused by that herniation, when you
19 have a fusion surgery, such as what was done on Mr. Paulino,
20 that disc during the surgery, and its herniating parts are
21 removed; right?

22 A Yes, it should be.

23 Q And then hardware is placed to keep the spine in order
24 and its normal height; correct?

25 A Yes, to provide support.

1 Q And there are reasons why a fusion surgery might not
2 work; correct?

3 A Yes.

4 Q Sometimes it's a fusion of bone and the fusion doesn't
5 take, that is that could be a reason why it doesn't work?

6 A Yes.

7 Q Sometimes screws that are placed can back out and cause
8 problems that way?

9 A Yes.

10 MS. STAVRAKIS-HANSEN: Note my objection, your
11 Honor, he's a pain management expert not a spine surgeon
12 expert.

13 THE COURT: So you're objecting?

14 MS. STAVRAKIS-HANSEN: Yes, I'm objecting.

15 THE COURT: It is a deposition --

16 MS. STAVRAKIS-HANSEN: I'm sorry.

17 THE COURT: So sustained.

18 Q So you evaluated Mr. Paulino after the surgery that was
19 done in this case in May of 2018, did you not?

20 A Yes, for his pain.

21 Q One of the things you might want to learn or learn
22 about is whether the fusion took; right?

23 A Yes.

24 Q And in this case, it took; right, it fused, did it?

25 A Yes.

1 Q So the source of the pain, if it was a disc herniation,
2 had been removed by the surgery and after the surgery was done,
3 the fusion took; correct?

4 A Yes.

5 Q And one of the things that you could put in your
6 differential diagnosis causing the pain if a patient had a
7 cervical problem and a herniation problem and was removed by
8 surgery and the surgery fused, would you not want to consider
9 maybe the problem wasn't the disc herniation to start with?

10 MS. STAVRAKIS-HANSEN: Objection, your Honor.

11 THE COURT: Let's -- I think you can rephrase it,
12 counsel.

13 Q In this case, doctor, we know that a fusion was
14 performed, the disc was according to the operative report
15 removed, and the patient continued to have pain postoperatively
16 despite the fact that the fusion took; do you agree?

17 A Yes.

18 Q And one of the things that you might think of, in
19 evaluating the patient for his pain after the surgery is
20 perhaps, the disc herniation was not the problem to begin with;
21 isn't that something you would consider?

22 MS. STAVRAKIS-HANSEN: Objection.

23 THE COURT: Overruled.

24 A Yes.

25 Q Now, the first visit that you saw the patient on, in

1 the New York Ortho records, which is Exhibit 1, your first visit
2 was on January 23, 2017; is that right?

3 A Yes.

4 Q So, again, remembering the Judge's admonition
5 yesterday, remember the yellow stuff on these pages is from
6 Sheehan; right.

7 So January 23rd, 2017; correct?

8 A Yes.

9 Q And in that in that visit you say "patient is a 34-year
10 old male who presents with neck pain, referred by Dr. Kaplan for
11 pain management evaluation."

12 Mr. Paulino had a fall from height while working on
13 September 4th; correct?

14 A Yes.

15 Q And then let me do that again, so here you write
16 treatment thus far has been with physical therapy and medication
17 only and an MRI; right?

18 A Yes.

19 Q "He was offered epidural injections but the pain was
20 not severe enough at that point, the pain has been progressing";
21 right?

22 A Yes.

23 Q When you say "treatment thus far with physical
24 therapy," did you get any records or find any information as to
25 how much physical therapy the patient had in terms of how long,

1 how many times per week and things of that sort?

2 A I don't remember.

3 Q Now, I'm going to go to page, this one, this talks
4 about a physical examination and here, sorry for the delay, you
5 said here straight leg raise, I think you mentioned that
6 briefly, in testifying before, positive to the right past
7 45 degrees; right?

8 A Yes.

9 Q And now straight leg raise test is something that a
10 physician such as yourself would administer to a patient to see
11 if perhaps there is a suggestion that there is disc disease
12 going on possibly impinging on a nerve; correct?

13 A Yes.

14 Q If I'm correct, the patient is lying down, right, on
15 their back?

16 A Yes.

17 Q On a table?

18 A Yes.

19 Q And it's a passive test; right?

20 A Yes.

21 Q Meaning, the patient can't lift the leg themselves,
22 because that could interfere with the test; right?

23 A Correct, yes, the physician will lift the leg.

24 Q So you're standing by the patient, you're lifting the
25 leg up, and looking for a response from the patient; right?

1 A Yes, I'm asking the patient what they're feeling what
2 they're feeling.

3 Q You're not suggesting to them what they feel; right?

4 MS. STAVRAKIS-HANSEN: Note my objection.

5 THE COURT: Sustained.

6 Q When you ask the patient what they're feeling, it would
7 not be appropriate if you were to suggest what they --

8 MS. STAVRAKIS-HANSEN: Objection.

9 THE COURT: Sustained.

10 Q Is it appropriate --

11 MS. STAVRAKIS-HANSEN: Objection.

12 THE COURT: Sustained.

13 Q You do when you examine patients follow the standard of
14 care; right?

15 A Yes.

16 Q Always; right?

17 A Yes.

18 Q Okay, so it is the standard of care not to suggest to
19 the patient --

20 MS. STAVRAKIS-HANSEN: Objection.

21 Q -- what kind of patient -- what kind of pain they're
22 experiencing?

23 MS. STAVRAKIS-HANSEN: Objection.

24 THE COURT: Side bar.

25 (Whereupon, an off the record bench discussion was

1 held.)

2 Q A positive test would have the patient not just tell
3 you that they have pain when you raise their leg past
4 45 degrees, but actually it's pain that radiates down from the
5 back into the leg; correct?

6 A Yes.

7 Q If they just had pain in the back area, but doesn't
8 radiate, that's not a positive test; right?

9 A Correct.

10 Q Now, there's something also known as a CSTRT, in other
11 words, you're doing the opposite leg, the contralateral leg, the
12 unaffected leg?

13 A Yes.

14 Q That would in this case be the left leg?

15 A Yes.

16 Q And did you do that test in this case?

17 A Yes.

18 Q Is there any results of raising the left leg up in this
19 note?

20 A He did not elicit a response so I did not include it.

21 Q So you just said it's pain on the right, you don't
22 mention one way or the other whether the left leg was tested
23 positive or negative; correct?

24 A No, in the note.

25 Q But you're saying customarily you would have done it?

1 A Yes.

2 Q Now, this -- if a patient is having pain from a
3 herniated disc or protruding disc, one that is impinging upon
4 the thecal sac or nerve, that is not something you would expect
5 to go away right away; correct?

6 A Depends on the patient.

7 Q Well, in terms of the straight leg test, if someone
8 were to have the week before or a week after, it should, if the
9 pain is actually being caused by a disc pain, the straight leg
10 test should be the same result; correct?

11 A Depending the day, if it was still affecting them.

12 Q If the patient went away, obviously the test would be
13 negative?

14 A Yes.

15 Q But from your notes, as far as you can tell, visit to
16 visit, the patient never told you, by the way, the pain went a
17 way or a week or two; right?

18 A Right.

19 Q For him the pain was constant, as far as you know?

20 A Yes.

21 Q If that's the case, the pain is constant and due to a
22 disc problem, then the straight leg raise results should always
23 be positive, would you agree?

24 A By pain is constant, I mean, that's -- the straight leg
25 test is a provocative test to sort of irritate a nerve.

1 Patients cannot have pain at rest and you can do the straight
2 leg raise and then it irritates it, and so, I'm not quite sure
3 what you're --

4 Q If the irritation factor is still able to be reproduced
5 from your test, and the patient has had themselves pain the
6 entire time, you would not expect to have different results on
7 straight leg tests that are done month one versus month two
8 versus month three; right?

9 A Sure.

10 Q When you first saw the patient, were you aware whether
11 or not other physicians had seen and evaluated the patient and
12 performed straight leg tests?

13 A I believe he had been seen by another doctor.

14 Q Do you know if he was seen by Dr. Brisson?

15 A I know he had seen Dr. Brisson, I don't remember if it
16 was before or after my visit.

17 Q Did you get a chance to look at those records at all?

18 A I may have, I don't remember, right now.

19 Q If you looked at them and you saw there were results of
20 straight leg tests, is that something that would interest you?

21 MS. STAVRAKIS-HANSEN: Objection.

22 THE COURT: Overruled.

23 A Not really.

24 Q Did know that the patient had already been evaluated
25 earlier in October at a physical therapy place by a physiatrist?

1 A Okay.

2 Q Were you aware of that?

3 A I don't remember right now. I may have been.

4 Q This is the Premiere Physical Therapy records, I'm
5 sorry, do you have the exhibit?

6 MS. STAVRAKIS-HANSEN: Number 16.

7 MR. SHEEHAN: Thank you.

8 Q This is Premiere Physical Medicine & Rehab, October 6th
9 of 2016, right, so that's about two months or so, maybe a little
10 more before the patient saw you; correct?

11 A Okay.

12 Q And here it says straight leg test raise was negative
13 bilaterally; did you notice that?

14 A Okay.

15 Q So that would not be consistent with the examination
16 that you conducted upon him on January 23rd; correct?

17 MS. STAVRAKIS-HANSEN: Objection.

18 THE COURT: Sustained.

19 Q That's a different finding than you found; right?

20 MS. STAVRAKIS-HANSEN: Objection.

21 A Yes.

22 THE COURT: Overruled.

23 A I mean it is a subjective test done on a different day
24 from a different physician.

25 Q So now if a patient has disc pain radiating down into

1 their leg from an irritated nerve root, you're saying that
2 because it's a different physician on a different day, they're
3 going to get a different result on a straight leg test; is that
4 your testimony?

5 A I mean that was two months prior, I would need to have
6 examined the patient on that day to determine if I would have a
7 different examination or the same.

8 Q Now, I think you read, I think you read from this
9 report earlier; right, in terms of the MRI report that you have
10 viewed on January 23rd of 2017, this is the Stand Up MRI report
11 from November of 2016, do you remember reading the results
12 earlier?

13 A Yes.

14 Q So let's just do this here, we're talking about one
15 place so a diffuse disc bulge is noted at the L5-S1 level;
16 right?

17 A Yes.

18 Q Which extends into the ventral epidural fat; correct?

19 A Yes.

20 Q Now, extending into the ventral epidural fat, that's
21 not the spinal cord; right?

22 A It's the covering of the spinal cord.

23 Q It's a buffer between the discs and the thecal sac
24 itself?

25 A Yes.

1 Q But it's not the spinal cord or the thecal sac?

2 MS. STAVRAKIS-HANSEN: Objection.

3 THE COURT: I'm sorry.

4 MR. SHEEHAN: I will rephrase, Judge.

5 Q The epidural fat being the buffer between the disc and
6 thecal sac, it's not the thecal sac; correct?

7 A It's the covering.

8 Q So the covering, so a bulge going into the ventral
9 epidural fat, that does not mean that the thecal sac and the
10 spinal cord roots inside of it would be compressed, can't make
11 that assumption; right?

12 MS. STAVRAKIS-HANSEN: Objection.

13 THE COURT: Can you answer that question?

14 MS. STAVRAKIS-HANSEN: It's --

15 A I mean I would say I would be more concerned about
16 the foramen, which is where the nerve roots come out of the
17 spine.

18 Q Okay, but I didn't ask you about the foramen, I asked
19 you about the epidural fat and its position and place in the
20 thecal sac; right, and the fact that there's a bulge that
21 extends into the ventral epidural fat, I'm talking about that
22 fact in and of itself is not particularly remarkable; would you
23 agree?

24 MS. STAVRAKIS-HANSEN: Objection, it is not a fact,
25 it is a finding on a report.

1 THE COURT: He can answer that as a doctor.

2 A I would disagree it's not something that could be
3 remarkable, this is a MRI of a patient in a neutral position,
4 and so if there's a bulge there, it's not -- it's in a position
5 we're not provoking it, we're not doing something that's sort of
6 pushing it, causing that sort of bulge to be compressed down
7 which will cause it to push out further, and so, I mean there
8 are findings on this, that being one of them, and the foramen as
9 well, so if it's pushing the epidural fat, if he were to do a
10 maneuver straining or something that pushes down on that bulge,
11 it can cause that bulge. I mean think if you're pushing down on
12 a balloon, it will compress out further and that can cause pain.

13 Now if a patient came in without complaints of pain
14 radiating, and I saw that, then I might not think of it, if, but
15 if I have patients coming in complaining of pain radiating, then
16 I would consider that as possibly one of the sources, it's a
17 piece of the puzzle.

18 Q But in and of itself, just the fact that there is a
19 bulge that extends into the ventral epidural fat, just that
20 finding in and of itself, there's no basis for any physician to
21 say if a patient has pain, it's caused by that particular
22 finding; wouldn't you agree?

23 A I don't quite understand your question.

24 Q Okay. I will ask another or I will move on.

25 I think you indicated that conservative measures had

1 failed, right, at the end of your note?

2 A Yes.

3 Q But you're not sure what exactly the extent of the
4 conservative treatment was?

5 MS. STAVRAKIS-HANSEN: Objection.

6 Q Other than physical therapy and I think you said there
7 were some injections?

8 A I said he was, he told me, based on my note, he
9 reported that he was offered epidural injections, but the pain
10 was not severe enough at that point, but it had progressed
11 further.

12 Q So all you knew was he had some physical therapy;
13 right?

14 A We discussed it at the visit, so physical therapy and
15 medication.

16 Q And is it your opinion that just some physical therapy
17 and medication, no epidural injections, just from those two
18 things alone conservative treatment had failed; is that your
19 position?

20 A Yes, the standard of care is generally six weeks, of
21 physical therapy, medication, antiinflammatories, rest.

22 Generally, at physical therapy they do ice, heat,
23 modalities, with six months of treatment of that conservative
24 treatment, and you generally offer injection treatments, as the
25 standard of care.

1 Q If the patient --

2 A If the pain is severe enough.

3 Q Okay. Now, you basically ordered an EMG study; is that
4 correct?

5 A Yes.

6 Q That I think you said was done in February, right, of
7 2021?

8 A Okay.

9 Q Let's go first to your note, this would be your visit
10 of May 31st; right?

11 A Okay.

12 Q Going to page three, which is the last page of that,
13 you say MRI shows disc herniation; right?

14 A Yes.

15 Q Now, the patient up until that point only had the MRI
16 from October of 2016; right?

17 A Okay.

18 Q And that report said and read shows disc bulge not
19 herniation?

20 MS. STAVRAKIS-HANSEN: Objection, it was
21 November 1st of 2016.

22 MR. SHEEHAN: Okay.

23 Q The November 1st of 2016 MRI report that you read
24 earlier said disc bulge; correct?

25 A Yes.

1 Q Now you're saying disc herniation; right?

2 A Yes.

3 Q There was no other MRIs in between those two time
4 periods meaning the one done on November 1st, and your visit of
5 May 31st; right?

6 A I don't believe so.

7 Q So would you agree that that determination -- excuse
8 me, that terminology, disc herniation, that's not what the
9 report said; right?

10 A Yes.

11 Q You also said EMG confirmed radiculopathy; right?

12 A Yes.

13 Q And that means radiculopathy refers to the pain
14 starting in the back and going down into one of the extremities;
15 right?

16 A Yes.

17 Q Am I correct, did you do the test?

18 A Yes.

19 Q Am I correct that you're not certified in doing
20 electrodiagnostic tests; is that correct?

21 A I'm not board certified, but it's part of my practice
22 and I was trained in it in my residency.

23 Q There's an additional board certified in
24 electrodiagnostic medicine?

25 A There can be.

1 Q You didn't undertake that training?

2 A I didn't, I'm looking for radiculopathies for my
3 treatment, people who undergo the board certification are
4 generally looking for more advanced diseases, so, I'm -- that's
5 not a scope of my practice, so, I didn't feel it necessary.

6 Q So doctor, the answer to my question would have been
7 no; right?

8 A No.

9 Q Now, would you agree that the American Association of
10 Neuromuscular Diagnostic Medicine would be an authoritative
11 source for how to perform EMGs; isn't that right?

12 A I don't know.

13 Q You don't know?

14 A I -- I -- I can't say that I remember reading that.

15 Q Well, you have been asked that question?

16 MS. STAVRAKIS-HANSEN: Objection.

17 Q Before, have you ever been asked that question before?

18 A Possibly.

19 THE COURT: Hold on a second.

20 MS. STAVRAKIS-HANSEN: Objection.

21 THE COURT: Side bar for a second.

22 (Whereupon, an off the record bench discussion was
23 held.)

24 THE COURT: So I will overrule the objection for
25 now.

1 Q Do you remember testifying in the Incencio Martinez
2 versus Yeshiva matter on January 23, 2025, of this year, in the
3 Bronx?

4 A Yes.

5 Q And do you remember being asked this question and
6 giving this answer on page 466 --

7 THE COURT: Counsel, if you're going to read from
8 an EBT --

9 MS. STAVRAKIS-HANSEN: Objection.

10 THE COURT: -- I should charge the jury.

11 MR. SHEEHAN: It's trial testimony.

12 THE COURT: So you're just going to ask, you're not
13 going to start reading from it?

14 MR. SHEEHAN: I am.

15 THE COURT: I'm sorry, from trial testimony?

16 MR. SHEEHAN: Do you want to approach on that?

17 THE COURT: No, go ahead.

18 Q (Continuing:)

19 Question, line nine:

20 "Would you agree with me that the American
21 Association of Neuromuscular Electrodiagnostic Medicine
22 would be an authoritative source for how to perform EMGs;
23 isn't that right?

24 ANSWER: Yes."

25 A Okay, I mean I remember being asked about EMGs, but,

1 okay, sure, that's -- I'm sure the guide is fine, but I don't
2 know that I've read it.

3 Q Well, I just asked you, I'm not going to, I will stop,
4 Judge.

5 Would you also agree with me that that would be an
6 authoritative source not only to perform an EMG, but the way in
7 which you should conduct them; correct?

8 A Sure.

9 Q And you agree that their guidelines indicate that the
10 patient's body temperature should be recorded during the test?

11 A Yes.

12 Q And temperature is important; true?

13 A Yes.

14 Q And temperature is important because it can affect
15 conductivity, the way that the EMG test results are given;
16 correct?

17 A It affect conductivity not the pin insertion portion of
18 the test.

19 Q The pin insertion is the part that you're doing, you're
20 sticking a pin in certain areas that you figured out through
21 your expertise are the right areas to try to place that needle;
22 right?

23 A The pin, yes.

24 Q Now, now, the process of doing an EMG already has a
25 subjective component to it, does it not, because the patient is

1 reporting the sensations to you from your placing the pin --

2 A No.

3 Q -- at various locations?

4 A No.

5 Q It's actually recording electronically?

6 A Yes.

7 Q What they're doing, so the only subjective part then
8 would not be what the patient is reporting, but rather what
9 you're doing and where you're putting the pin?

10 MS. STAVRAKIS-HANSEN: Objection.

11 THE COURT: Can you rephrase that?

12 MR. SHEEHAN: Okay.

13 Q Am I correct that your report of the EMG, in other
14 words, you have a report in your chart; right?

15 A Yes.

16 Q And am I correct that you did not record the
17 temperature, the patient's temperature in that report?

18 A No, most reports don't.

19 Q Now, I think you indicated that the patient had muscle
20 spasms when you were trying to palpate along the cervical region
21 and lumbar region?

22 A He had palpable trigger points.

23 Q And muscle spasms can be caused by many things, do you
24 agree?

25 A Yes.

1 Q It can be caused by pain; right?

2 A Yes.

3 Q It can also be caused by stress?

4 A Yes.

5 Q And by degeneration; right?

6 A Yes.

7 Q And he had no evidence of disc abnormalities at
8 L3-4 or L4-5 at that time, as far as you knew; correct?

9 A Correct.

10 Q But you administered trigger point injections in the
11 muscles that overlay those areas, L3-4 and L4-L5; right?

12 A I may have, yes, I don't know where you're referring
13 to.

14 Q You indicated that you did trigger points injections I
15 believe on this visit, did you not?

16 A Okay.

17 MS. STAVRAKIS-HANSEN: What visit?

18 Q We're talking about May 31, 2017, which is a visit you
19 started in, I'm sorry I went back to the EMG from earlier, so
20 the confusion is my fault.

21 A I mean yes, I reported that I did lumbar trigger point
22 injections.

23 Q Now --

24 A I don't list exactly the exact location, just I wrote
25 that the lumbar paraspinal musculature.

1 Q You next saw the patient on January 17th -- I'm sorry,
2 July 12th?

3 A Yes.

4 Q And at this visit, let me see what else is going on,
5 the lower back pain was the greatest concern to the patient on
6 that visit; would you agree?

7 A Yes.

8 Q Here we go, at the end of the visit, I think you said
9 referring for surgical second opinion with Dr. Weinstein; right?

10 A Yes.

11 Q Now, Dr. Weinstein was a colleague of yours in the
12 medical profession; would you agree?

13 A Yes.

14 Q And you're also friends?

15 A Yes, I am, I was, I have been friends with him for
16 years.

17 Q And just at the outset, having friends in any
18 profession is not a bad thing, it's a good thing; right?

19 A Yes.

20 Q But you would agree that even though you're friends,
21 you both have to maintain professional boundaries when it comes
22 to patient and patient care; right?

23 A Absolutely.

24 Q So sometimes colleagues can ask other, hey, can you do
25 me a favor and perform this --

1 MS. STAVRAKIS-HANSEN: Objection.

2 MR. SHEEHAN: I will withdraw it.

3 Q Have you ever asked a colleague in your profession for
4 a favor, can you help me out with a patient, can you do a test,
5 can you do a consult, that's normal; right?

6 A I mean I wouldn't call it asking him for a favor, you
7 refer a patient, I mean it's with any colleague.

8 Q But I mean you might ask a favor, maybe the doctor is
9 booked up, can you help them get in?

10 MS. STAVRAKIS-HANSEN: Objection.

11 THE COURT: Sustained.

12 Q Have you ever helped a patient get in to see a doctor
13 and help them maybe jump the line and let them in when maybe the
14 physician might, otherwise, have been booked; is that something
15 you might do a favor for a colleague for?

16 A If a patient is having an emergency and they need to
17 get in, I will call.

18 Q Sure; right?

19 A Sure.

20 Q Now, whatever you're doing with respect to a patient
21 and referring them to another colleague or they're asking you to
22 perform a test or you're asking them to do a consult, whatever
23 the request may be, you would agree that the primary interest of
24 such requests have to be in the patient's best interest right,
25 always?

1 A Yes.

2 Q Now, you next saw the patient on, I believe it is
3 August 8th?

4 A Yes.

5 Q Of 2017, I'm sorry; right?

6 A Yes.

7 Q Now, here is something, it says he sought a surgical
8 second opinion with Dr. Weinstein who is recommending
9 discography; right?

10 A Yes.

11 Q Now, a discogram is a test that if a positive result is
12 obtained, could signify that perhaps spinal surgery is
13 justified; right?

14 A Yes.

15 Q You would agree though that the discogram procedure
16 itself back then and possibly even now is itself somewhat
17 controversial?

18 A It depends on who you ask, yes.

19 Q It's origins predate the widespread use of MRI in
20 evaluating lumbar disc disease; would you agree?

21 A I don't remember when it was, I don't know the entire
22 history of it, so.

23 Q As you would agree though, as MRIs have become more
24 sensitive to picking up spinal canal and foraminal nerve
25 compression, the use of discograms has waned or lessened over

1 the years; would you agree with that?

2 MS. STAVRAKIS-HANSEN: Objection.

3 THE COURT: Overruled.

4 A I mean discogram is, is not a test that is done on a
5 regular basis.

6 Q In fact, you write in your note later a request to have
7 that discogram procedure performed; am I correct?

8 A Yes.

9 Q And the reason you had to write that request was
10 because the entity that would approve it does not usually --

11 MS. STAVRAKIS-HANSEN: Objection.

12 Q -- allow such procedures to be performed?

13 THE COURT: If there's an objection, just give it a
14 second.

15 Why don't you rephrase it, counsel.

16 MR. SHEEHAN: I will just go to the next question,
17 if I could, if I can withdraw that, Judge.

18 THE COURT: Sure.

19 Q I'm on the last page of the note.

20 Again, "referred for surgical second opinion with
21 Dr. Weinstein who has recommended further diagnostic evaluation
22 with a lumbar discogram"; right?

23 A Yes.

24 Q You also write in your note the following, "I am
25 requesting a variance for further evaluations of the patient's

1 radicular symptoms with a lumbar discogram focusing on the
2 L4-5, L5 -- L5-S1 disc utilization in determining the patient's
3 painful discs. The study has been recommended by Dr. Weinstein
4 to assist in determining if invasive surgery is warranted."

5 You go on to say "there's precedence for the efficacy
6 of this study," right, I read at the bottom?

7 A Yes.

8 Q And you had to literally, would you agree with me, make
9 an argument to get this test approved?

10 MS. STAVRAKIS-HANSEN: Objection.

11 THE COURT: Overruled.

12 A I put a request in for a test that wasn't a
13 preauthorized test, so I was asking for, for, can I say
14 insurance? I was asking the insurance to do the test.

15 Q But you're requesting a various, meaning normally those
16 tests don't get approved; is that right?

17 MS. STAVRAKIS-HANSEN: Objection.

18 THE COURT: Overruled.

19 A No, there's preauthorized tests, procedures where you
20 don't need to request, you can just do them, and then with this
21 insurance, there's tests that you need to ask, and this is one
22 where he had to ask or you won't get paid.

23 Q Did you cite a medical article and study in this
24 request; didn't you do that?

25 A Yes.

1 Q And didn't you do that because the reason these tests
2 aren't approved is because there's high false positive rates in
3 the discogram; isn't that true?

4 MS. STAVRAKIS-HANSEN: Objection.

5 THE COURT: Overruled.

6 A No.

7 Q You argued look at this medical study and you can
8 contain the false positive problem; isn't that what you did?

9 MS. STAVRAKIS-HANSEN: Objection.

10 THE COURT: Sustained.

11 MS. STAVRAKIS-HANSEN: Objection.

12 THE COURT: If I rule on an objection, counsel,
13 please don't continue.

14 MR. SHEEHAN: My apologies, your Honor.

15 THE COURT: Okay.

16 Q You cite studies done by others which paint discography
17 in a negative light --

18 MS. STAVRAKIS-HANSEN: Objection.

19 Q -- isn't that what you wrote?

20 MS. STAVRAKIS-HANSEN: Objection.

21 THE COURT: Sustained.

22 Q When appropriately interpreted procedural data --

23 MS. STAVRAKIS-HANSEN: Objection.

24 Q -- from these studies --

25 THE COURT: Overruled.

1 Q -- yield false positive rates; that's what you wrote;
2 right?

3 THE COURT: You can answer.

4 A Yes, it's -- stating that the journal article is
5 reporting that it would yield false positive rates, so it was in
6 favor of utilizing discography.

7 Q You're making an argument the way that you were going
8 to do the test, you can contain and control an issue about low
9 false positive rates; isn't that what you did?

10 MS. STAVRAKIS-HANSEN: Objection.

11 THE COURT: Sustained.

12 Q False positive rates for any test, right, where the end
13 result of the test could induce the patient to undergo surgery,
14 would you agree that's a concern to any physician?

15 A Yes.

16 Q If, in fact, any test that you would recommend to a
17 patient has false positive rates, you would want to be able to
18 assure the patient that that's not going to be a problem in this
19 case; right?

20 A I mean I discuss the test with the patient and that's
21 why there's a control level and a testing level, and L4-5
22 doesn't have pathology, L5-S1 does have pathology, and the
23 reason you use two different levels is because there is inherent
24 pain in performing the test, because you're sticking a needle
25 into the disc, and then you're trying to temporarily try to blow

1 it up, to try to aggravate the nerve.

2 Like I said before on the MRI, it's in a neutral
3 position, and the way it may or may not be causing pain, and
4 thus far, the epidural, he didn't note too much relief. I also
5 did something called a medial branch block to see if it can be
6 something else causing pain in his back, possibly the joints.
7 That's a test that is the gold standard for testing for joint
8 issues being the cause of pain, that came back negative, so that
9 ruled out the joints being the cause of his pain.

10 MR. SHEEHAN: Judge, I don't know where the witness
11 is going.

12 THE WITNESS: I'm explaining the discogram.

13 THE COURT: Ask it again, do you want that stricken
14 as nonresponsive?

15 MR. SHEEHAN: Yes.

16 MS. STAVRAKIS-HANSEN: Your Honor, it was
17 responsive.

18 THE COURT: Strike a portion of the answer as not
19 responsive, it was a yes-or-no question.

20 Do you want it read back?

21 MR. SHEEHAN: If we can read back the question,
22 Judge, that would be great.

23 THE COURT: And then can you read back the answer,
24 please.

25 (Whereupon, the question and answer was read back

1 by the Reporter.)

2 THE COURT: It was a yes or no, there is a lot more
3 to the answer. If you want to ask it again, we can just
4 strike the answer as not responsive.

5 MR. SHEEHAN: Okay.

6 Q The discogram procedure itself has risks to it, would
7 you agree?

8 A Yes.

9 Q There are short-term risks, meaning when you're doing
10 the procedure because you're placing a sharp instrument into
11 like the patient's back and then into certain levels, right,
12 getting very close to the spinal cord; would you agree?

13 A You're not getting close to the spinal cord.

14 Q Well, you're going into the disc, because you're going
15 in an angle that you avoid the spinal cord; right?

16 A Yes.

17 Q But you're going into the disc and on the way there,
18 you could damage blood vessels, nerves, right, that's a
19 possibility?

20 A Yes.

21 Q There's also long-term complications associated with
22 discogram too, meaning injecting anything into the disc is,
23 there's concern about long-term effects on that disc later on;
24 would you agree?

25 A There's concern, yes, and well, not injecting into the

1 disc but penetrating the disc.

2 Q But also injecting any material into the disc, that is
3 also a concern, would you agree, particularly radiopaque
4 material?

5 A You're concerned about infection, so they're given
6 antibiotics.

7 Q Not infection, just injecting --

8 MS. STAVRAKIS-HANSEN: Objection.

9 Q -- that material into a disc?

10 THE COURT: Sustained.

11 Q Injecting that material --

12 MS. STAVRAKIS-HANSEN: Objection.

13 THE COURT: Okay, counsel, ask a question.

14 Q Injecting material into the disc itself, radiopaque
15 material, that is, does not come without risks; would you agree?

16 A Yes, you wouldn't do it in -- if you didn't have a
17 reason, I wouldn't do it if I didn't feel it would be helpful,
18 correct.

19 Q Now, ultimately, I think you made further requests for
20 this procedure utilizing the same language in your visits of
21 September 20th, and November 7th; correct?

22 A Okay, I see September, I mean I believe you.

23 Q This is essentially the same paragraph that you wrote
24 before with the study and the arguments and things like that?

25 A Yes.

1 Q These were repeated in the next two visits; right?

2 A Yes, we hadn't done it yet.

3 Q And now a discogram is a test that involves identifying
4 the proper area on the spine; correct?

5 A Yes.

6 Q And it's verified by fluoroscopy to make sure you're in
7 the right spot?

8 A Yes.

9 Q And then you're injecting the radiopaque substance into
10 the disc and that can be viewed also in pictures, little
11 pictures can be taken by the fluoroscope; right?

12 A Yes.

13 Q And then in withdrawing, you're coming out of the disc,
14 some of the material can leak when you pull the needle out;
15 correct?

16 A Yes.

17 Q But that's not a concern, what would be a concern is if
18 you inject the disc and the material leaks out during that time,
19 that would be a concerning finding; right?

20 A I guess I don't --

21 Q If there's a herniation of the disc and the radiopaque
22 dye starts going all over the place, that would be something you
23 don't want to happen; right?

24 A That could mean there's a tear in the disc.

25 Q Yes.

1 A An annular tear.

2 Q Okay, now, when you're injecting this material, am I
3 correct that you're watching and listening to the patient's
4 reaction, once the fluid is introduced into the disc; correct?

5 A Yes.

6 Q Am I correct that this is what's known as a provocative
7 injection; right?

8 A Yes.

9 Q And "provocative" means you don't kind of warn the
10 patient before you put the needle into the disc; right?

11 MS. STAVRAKIS-HANSEN: Objection.

12 THE COURT: Overruled.

13 A No, I warn the patient before I put the needle in the
14 disc.

15 Q But the patient doesn't know exactly when you're going
16 to push the material in?

17 A The needle they know, the material, I mean I will tell
18 them that I'm pushing it in.

19 Q Okay.

20 A They just don't know which disc I'm doing.

21 Q Okay.

22 A It's a blind test.

23 Q Now, it's normal for a patient to experience some kind
24 of feeling of pressure, right, because there's material being
25 injected into the disc area, that's normal?

1 A Yes.

2 Q And it can be normal for a patient to experience some
3 pain in the back during that procedure as well; right?

4 A Yes.

5 Q But just feeling pressure or just pain in the back from
6 the introduction of the material into the disc, do you agree
7 with me that's not a positive reaction, that's not a positive
8 result?

9 A Correct.

10 Q To get a positive result, it has to reproduce that pain
11 shooting down into the leg that they experienced, that's a
12 positive test; right?

13 A Positive test is reproducing their -- their normal
14 pain.

15 Q Now, that discogram was done by someone else; am I
16 correct?

17 A Yes, there was one done by another doctor.

18 Q It was done on, we're now on Dr. Weinstein's record,
19 which is an exhibit in evidence, I think it's number 6?

20 THE COURT: Yes.

21 Q That was done October 13, 2017; am I correct?

22 A Correct.

23 Q Your note of November which requests authorization, am
24 I correct you may not have known it was done; am I correct?

25 A I remember discovering it was done, but he only did a

1 single level, which is not the standard of care in performing a
2 discogram.

3 MR. SHEEHAN: I move to strike that later response
4 as not being responsive to the question.

5 THE COURT: Sustained. You can disregard the last
6 portion that talked about the standard of care.

7 Q Now, it says "provocative injection of the L5-S1 disc
8 was negative. Patient noted mild pressure without pain. The
9 injection was repeated."

10 So in other words, more material was put into the disc
11 after the patient reported just pain or just mild pressure
12 without pain; am I correct?

13 A Yes, more pressure was applied not more -- there's only
14 so much you can put in.

15 Q Yes, but after the initial injection, it indicates that
16 more material was placed in after the patient already reported
17 no pain; correct?

18 A It just means he was continuing to apply pressure.

19 Q So this is a negative, a negative discogram; right?

20 A I mean that's how they -- I wouldn't accept that as a
21 proper test.

22 Q Well --

23 A So he wrote negative. I would not call that negative
24 based on the -- what I said before, based on one level being
25 tested.

1 Q This is the level you're concerned about, L5-S1;
2 correct?

3 A Without a control, you can't.

4 Q If you got a positive result, you would need a control
5 disc?

6 A Yes.

7 Q Because of the false positive problem?

8 A The standard of care is a control level.

9 Q Okay, but when you get a negative result, you don't
10 need to put it into another disc, because you're not worried
11 about false negatives; would you agree?

12 MS. STAVRAKIS-HANSEN: Objection.

13 THE COURT: Overruled.

14 A No, because you're relying on the patient's response so
15 the patient, you would want to know what the response is when
16 testing the control level, because the perception of pain is
17 different, every patient's perception of pain is different.

18 Q You later repeated this test, did you not yourself?

19 A Yes, with a control level.

20 Q And you tested an adjacent level; right?

21 MS. STAVRAKIS-HANSEN: Objection.

22 THE COURT: Overruled.

23 A I used a control level L4-5 and tested the pathological
24 level at L5-S1.

25 Q It was negative at the control level when you did it;

1 right?

2 A Yes, he reported feeling different sensations at the
3 control versus the pathological level.

4 Q Therefore, from that, you could infer, can you not, had
5 they done a control level here, you would have got the same
6 result --

7 MS. STAVRAKIS-HANSEN: Objection.

8 Q -- negative; correct?

9 THE COURT: Overruled.

10 A I cannot infer that.

11 Q Do you think it would have been positive; is that what
12 you're saying?

13 A I feel based on if this doctor would have put a needle
14 in L4-L5 and one in L5-S1, the patient would have provided him a
15 different response saying L5-S1 felt different than L4-L5.

16 Q But it's not the difference, that's the issue, the
17 issue is whether or not they reproduced the pain traveling down
18 their leg and the affected disc, that's the goal of the test; do
19 you agree?

20 A Yes.

21 Q And particularly when that result is negative, the need
22 for a control level is far less; wouldn't you agree?

23 A No, it's not the standard of care, which you would
24 agree is important.

25 Q Now, would you agree at least at this point on

1 October 13, 2007, that a negative result was a setback for
2 Dr. Weinstein's plan to do surgery?

3 MS. STAVRAKIS-HANSEN: Objection.

4 Q Agreed?

5 THE COURT: Overruled.

6 A No, I would say he appropriately wouldn't trust that
7 test.

8 Q Well, he asked you to do a second discogram; right?

9 A He asked me to do a discogram testing and a control
10 level as well which is the standard of care?

11 MR. SHEEHAN: Move to strike the nonresponsive
12 responsive portion.

13 Q He asked you to do a second discogram?

14 A Yes.

15 Q This is a test, again, we have already spoken about,
16 has risks to the patient short and long-term; correct?

17 A Yes.

18 Q And this is a test that you had to make a request for
19 and cite medical literature for in order to conduct the test; am
20 I correct?

21 A Yes.

22 Q And the first test was negative and you were being
23 asked by a colleague to perform it again; correct?

24 A Yes.

25 Q And you were okay with that request?

1 A Yes, based on it being improperly performed on the
2 first one.

3 Q You didn't think Dr. Weinstein was putting you in a bad
4 spot to do this for the second time?

5 MS. STAVRAKIS-HANSEN: Objection.

6 THE COURT: Sustained.

7 Q And did you do the discogram at one level, two levels
8 or more?

9 A Two levels.

10 Q And the other level, as you indicated before, was
11 negative; correct?

12 A Correct.

13 Q So what we're left with is that Dr. Schoenberg's
14 discogram test at L5-S1 was negative and yours was positive;
15 correct?

16 MS. STAVRAKIS-HANSEN: Objection.

17 THE COURT: Overruled.

18 A Yes.

19 Q And Dr. Weinstein performed the lumbar fusion in May of
20 2018; correct?

21 A Yes.

22 Q Now, you had seen the patient thereafter, after this
23 time, after the surgery of 2018; correct?

24 A Yes, I have continued to treat the patient.

25 Q Do you know how many times you saw him in 2023?

1 A Multiple.

2 Q Can you take a look?

3 A Yes, well, maybe not.

4 THE COURT: Counselors, can we have a quick side
5 bar?

6 (Whereupon, an off the record bench discussion was
7 held.)

8 MR. SHEEHAN: Your Honor, may I withdraw the
9 question?

10 THE COURT: Yes, that's fine, we're going to take a
11 quick five-minute break, and then we will come back and go
12 straight into lunch.

13 COURT OFFICER: All rise, jury exiting.

14 (Whereupon, the jury exited the courtroom.)

15 (Whereupon, a short break was taken.)

16 (Whereupon, Dr. Grimm exited the witness stand.)

17 (Pause in the proceedings.)

18 (Whereupon, Dr. Grimm resumed the witness stand.)

19 COURT OFFICER: All rise, jury entering.

20 (Whereupon, the jury entered the courtroom.)

21 THE COURT: Please be seated, when you're ready
22 counsel.

23 MR. SHEEHAN: Yes, thank you, your Honor.

24 Q Doctor, I'm going to talk about some of these medical
25 care costs you talked about earlier.

1 Initially am I correct that you were seeing Mr. Paulino
2 as a treating physician; is that true?

3 A Yes.

4 Q And at some point though you made plans for future
5 medical costs, that was done for the purposes of this
6 litigation; correct?

7 A Yeah, I was asked to provide a report, yes.

8 Q That was done kind of as an expert witness; right?

9 A I guess.

10 Q Would you agree with me that certain items that you
11 list particularly the administration of trigger point
12 injections, visits to a pain management specialist, those would
13 be things that you would do; right?

14 A Yes.

15 Q And with respect to orthopedic surgery visits of
16 Dr. Kaplan or shoulder arthroscopy surgery, which was a
17 procedure that he was recommending, would you agree with me that
18 those procedures would benefit financially Dr. Kaplan's --

19 MS. STAVRAKIS-HANSEN: Objection.

20 Q -- company?

21 MS. STAVRAKIS-HANSEN: Objection.

22 THE COURT: Sustained.

23 Q You're not going to do these things for free, future
24 trigger points injections, future surgery, you're not doing them
25 for free; right?

1 A No, we charge for services.

2 Q So you're recommending as a person preparing a report
3 for litigation, you're recommending items that as a treating
4 physician, you or the person that employs you, would benefit
5 from if the patient went to see you; do you agree?

6 A Yes, whoever they go to see, I wouldn't say benefit.

7 Q You don't think that's a conflict that you're telling
8 the Court --

9 MS. STAVRAKIS-HANSEN: Objection.

10 THE COURT: Rephrase it, counsel.

11 Q Do you believe that for you to request that this
12 patient be compensated for future medical costs if you're the
13 company --

14 MS. STAVRAKIS-HANSEN: Objection.

15 Q -- that's going to do the medical costs --

16 MS. STAVRAKIS-HANSEN: Objection.

17 Q -- that would be inappropriate?

18 MS. STAVRAKIS-HANSEN: Objection.

19 THE COURT: Sustained.

20 Q You're advocating MRIs in four different areas, are you
21 not, of the body?

22 A I'm actually, I think I only spoke of the two.

23 Q You spoke of two?

24 A Yes, lumbar and cervical when she was asking me.

25 Q Okay.

1 Would you agree that MRIs should not be used just for
2 the status of checking up on a patient and their condition,
3 that's not an appropriate use of an MRI; would you agree?

4 A For an asymptomatic patient.

5 Q So you're saying if there's no change in the patient's
6 condition or he doesn't have symptoms, you would agree an MRI
7 wouldn't be warranted; correct?

8 A For a patient without symptoms, yes.

9 Q Now, when you say a patient is a candidate for surgery,
10 or could get pain injections, that doesn't mean that the patient
11 actually will have them; right?

12 A Correct.

13 Q It doesn't mean that the patient will even agree to
14 have them; right?

15 A Just treatment recommendations.

16 Q And you would agree that the ultimate choice whether or
17 not to have these treatments is up to the patient; right?

18 A Yes.

19 Q And are there not many occasions in the past year or
20 two where the patient has indicated that he doesn't want some of
21 the treatments that you or Dr. Kaplan had suggested; correct?

22 A Yes.

23 Q On your last visit, which is April 28th?

24 A April 28th of what?

25 Q Of this year.

1 A Okay.

2 Q Right, which is also in your records?

3 A Let me find it; okay.

4 Q I'm on the last page, "Dr. Weinstein has recommended
5 epidural injections for treatment of his cervical pain. They
6 were never done. Patient presently does not wish for cervical
7 epidural injections"; do you see it?

8 A Yes, I'm not recommending cervical injections in my
9 future care.

10 Q "Dr. Kaplan had right shoulder arthroscopy authorized.
11 Patient elected not to proceed"; correct?

12 A Correct.

13 Q So that \$41,000 item we know the patient doesn't want
14 it; correct?

15 A At the present time, correct.

16 Q Now, some of these costs, did you get them from a
17 website?

18 A Yes, there's a website called Fair Consumer Health,
19 which was created in order to -- by a non-profit to provide
20 transparency in patient costs.

21 Q Are you aware that by providing these costs to the
22 Court that an economist is going to come in later and discuss
23 projections and growth rates for these proposed expenditures;
24 are you aware of that?

25 A I know that they do that, I have never actually seen

1 his reports.

2 Q In terms of patients that you refer, could I --
3 withdrawn, Judge, if I can withdraw that.

4 You and Dr. Kaplan, would it be fair to say, do send
5 patients to each other; would that be correct?

6 A Yes.

7 Q And you also have sent patients to Kolb Radiology?

8 A Yes.

9 Q And you've also sent patients to Dr. Weinstein; am I
10 correct?

11 A Yeah, among a lot of doctors, yes.

12 Q Well, you've sent a lot of patients to Dr. Weinstein,
13 wouldn't you agree?

14 MS. STAVRAKIS-HANSEN: Objection.

15 THE COURT: Overruled.

16 A Yeah, I think he has a very good outcomes in his
17 surgeries compared to other surgeons that I've worked with, so.

18 MR. SHEEHAN: Again, move to strike the
19 nonresponsive portion.

20 THE COURT: It was kind of a subjective question to
21 begin with, I will allow it.

22 MR. SHEEHAN: Okay, Judge.

23 Q Would it be fair to say 20, 25 patients a year you
24 refer to Dr. Weinstein?

25 A Sure, I don't have an exact number, but I don't keep a

1 tally.

2 Q Well, you have been asked questions like this before;
3 right?

4 A Yes.

5 Q And you have admitted to sending hundreds of patients
6 to Kolb Radiology; right?

7 A Over my 15 years of practice, yes.

8 Q I'm just saying, you've admitted that number, if
9 someone says hundreds of patients --

10 MS. STAVRAKIS-HANSEN: Objection.

11 Q -- and you've said yes, that's right?

12 THE COURT: Overruled.

13 A I don't remember, but I would agree.

14 Q But when it comes to Dr. Weinstein, you haven't been
15 willing to agree with said number; would you agree with that?

16 MS. STAVRAKIS-HANSEN: Objection.

17 THE COURT: Can you rephrase that, counsel?

18 Q You could, if you want, say I refer to him two patients
19 a month or one patient a month, you could give an answer like
20 that --

21 MS. STAVRAKIS-HANSEN: Objection.

22 Q -- right?

23 THE COURT: Sustained.

24 Q Have you ever given an answer like that?

25 MS. STAVRAKIS-HANSEN: Objection.

1 THE COURT: Sustained.

2 Q You have referred patients to Dr. Lenzo; right?

3 A Dr. Lenzo, I have referred patients to Dr. Lenzo.

4 Q Now, you've testified in court before, right, about the
5 times that you've come in to testify; isn't that right?

6 A Yes.

7 Q Am I correct that 100 percent of the time that you
8 testified on behalf of patients or plaintiffs; right?

9 A Yes.

10 Q And you've never testified on behalf of a defendant;
11 right?

12 A Yes, it is a service I offer to my patients, I don't
13 really enjoy doing it, so.

14 Q And you've worked with and testified for the Gorayeb
15 firm before?

16 A Yes.

17 Q You have agreed that you've testified for them around
18 20 times or so; right?

19 A Yes, I don't know an exact number, I don't keep a
20 tally.

21 Q You were questioned about this at your last, well, at a
22 previous trial in January 23rd in the Bronx in the Martinez
23 matter?

24 A Yes.

25 Q You were questioned about the number of pending

1 litigation cases that you had prepared for future or life care
2 plans for the Gorayeb firm; do you remember that?

3 A Not really.

4 Q Do you remember it being suggested to you there were 62
5 life care plans that you had prepared for the Gorayeb firm in
6 pending cases, and you agreed that sounded about right; do you
7 remember that?

8 A I don't remember, I remember being questioned, I don't
9 remember what my answer, I couldn't give you a number.

10 Q So I would like to ask you if you recall giving this
11 question, an answer to this question, page 471 --

12 MS. STAVRAKIS-HANSEN: Objection. I don't know
13 what he's reading from, what cases he's referring to.

14 MR. SHEEHAN: I'm reading from Martinez versus
15 Yeshiva, January 23, 2025, Bronx Supreme Court, page 471,
16 line 24.

17 Q (Continuing:)

18 "And, so, I actually -- I went through with the
19 permission of Mr. Zizzamia, to look through the records of
20 his firm and actually found there are 62 pending litigation
21 cases where you have authorized life care plans for the
22 Gorayeb firm; does that sound about right?

23 ANSWER: If that's the case, okay."

24 Do you remember giving that answer?

25 A Yeah, but actually, I was incorrect, I actually do

1 future care plans not life care plans, but --

2 Q You didn't correct it at that time but you're
3 correcting it now?

4 A If that's what you say, okay -- the -- alright.

5 Q Would you agree, do you remember being asked that of
6 those 62 cases, in 37 of them, Dr. Kaplan was the orthopedic
7 surgeon, Dr. Kolb was the radiologist and Dr. Weinstein is the
8 spinal surgeon; do you remember being asked about that?

9 A I don't, but okay.

10 Q And you agree that that was fair, because you work with
11 those people; right?

12 MS. STAVRAKIS-HANSEN: Objection.

13 THE COURT: Overruled.

14 A Yeah.

15 Q Okay. Now, you were in the Bronx on January 23rd for
16 Gorayeb firm, and you were also there May 19th of this year,
17 just two weeks ago; do you remember that?

18 A Yes.

19 Q And then in Brooklyn in June of '23, do you remember
20 testifying in, I'm sorry, June of 2023, do you remember
21 testifying with Dr. Kaplan, Dr. Weinstein, and Dr. Kolb?

22 MS. STAVRAKIS-HANSEN: Objection.

23 THE COURT: Sustained.

24 Q Would you agree that sometimes when you come in to
25 testify you're testifying on the same day that another medical

1 provider testifies?

2 MS. STAVRAKIS-HANSEN: Objection.

3 THE COURT: Sustained.

4 Q On some days you testify like today by yourself, but on
5 other days, there's another witness that comes in, in the
6 afternoon; are you aware of that?

7 A I never know whose testifying, I didn't even know I was
8 myself today, sometimes Dr. Kaplan will tell me when he's
9 testifying, sometimes he won't, so.

10 Q In that recent case, the Rivera case, just two weeks
11 ago, you and Dr. Weinstein --

12 A Yes.

13 Q -- did, in fact, talk about the fact he had testified?

14 A Yes.

15 Q And I don't mean to suggest you did anything wrong, you
16 just asked how did it go, right, something like that?

17 MS. STAVRAKIS-HANSEN: Objection.

18 THE COURT: Sustained.

19 Q You didn't talk about the details of your case, he just
20 told you he had testified in that case; right?

21 MS. STAVRAKIS-HANSEN: Objection.

22 THE COURT: Sustained.

23 Q So you wouldn't know that in the Martinez case you and
24 Professor Goldman testified the same day?

25 MS. STAVRAKIS-HANSEN: Objection.

1 THE COURT: Sustained.

2 MR. SHEEHAN: I don't think I have anything
3 further, thank you.

4 THE COURT: Redirect.

5 MS. STAVRAKIS-HANSEN: Yes.

6 REDIRECT EXAMINATION BY

7 MS. STAVRAKIS-HANSEN:

8 Q Dr. Grimm, earlier you testified that Dr. Kaplan
9 referred the patient to you, Mr. Paulino; right?

10 A Yes.

11 Q And you had read his records before meeting
12 Mr. Paulino?

13 A Yes.

14 Q And is that because you are in the same office or is
15 that a general practice of yours you want medical records, prior
16 medical records before you actually see a patient?

17 A Yeah.

18 Q So it doesn't matter if it was Dr. Kaplan, whoever was
19 treating the patient before you seeing him, you would get the
20 records; is that correct?

21 A I try to, I don't always get them, but Dr. Kaplan's are
22 easier because they're on my computer screen.

23 Q But that is your general practice you get documentation
24 from doctors whether or not they're in the same building,
25 whether or not they're across the state?

1 A Yes, I try to.

2 Q The leg raise test that you did, you performed that
3 yourself; right?

4 A Yes.

5 Q Remind me again, you're a physician?

6 A Yes.

7 Q How often do you perform those exams?

8 A Every day.

9 Q And earlier you also testified and we saw there was a
10 leg raise test at a physical therapy place; is that correct?

11 A Yes.

12 Q Are physical therapists doctors?

13 A No.

14 Q How many leg raise tests do you do, in general, in say
15 a month, how many would you do?

16 A A lot, probably, I'm, 20, 30 a day, 20 a day, I don't
17 know.

18 Q And EMG tests, how often do you perform those tests?

19 A Usually two, three, but, two or three days a month.

20 Q And with your board certification and with your
21 training, you're allowed to perform these EMG tests; right?

22 A Yes.

23 Q And the EMG tests that you perform, they're confirming
24 radiculopathy; is that correct?

25 MR. SHEEHAN: Objection to the leading.

1 THE COURT: Sustained.

2 Q Radiculopathy, what are some indications of
3 radiculopathy other than the EMG test prior to getting to the
4 EMG; are there any indications of radiology?

5 A Patients complaining of radiating pain, straight leg
6 raise.

7 Q And those are subjective; is that correct?

8 A Yes.

9 Q An EMG test is objective --

10 A Yes.

11 Q -- would you say?

12 A Yes.

13 Q And objective meaning that once you perform the EMG
14 test, there's no question that there is radiculopathy; is that
15 correct?

16 MR. SHEEHAN: Objection.

17 THE COURT: Sustained.

18 Q Is it questionable prior to an EMG -- could
19 radiculopathy be questionable prior to an EMG exam?

20 A Yes.

21 Q Once an EMG test is performed, and you get the results,
22 is then the radiculopathy questionable at that point?

23 MR. SHEEHAN: Objection.

24 THE COURT: Rephrase.

25 Q What is the purpose of an EMG exam if you've been told

1 by a patient and there are indications of radiculopathy?

2 A I'm using it as a piece of the puzzle to verify a
3 diagnosis.

4 Q Is it like a confirmation?

5 MR. SHEEHAN: Objection.

6 THE COURT: Sustained.

7 Q Discogram, you performed a discogram; is that correct?

8 A Yes.

9 Q And we -- there's something called low false positive
10 and high false positive; is that correct?

11 A Yes.

12 Q What's the difference?

13 A I mean you don't want a high false positive test like I
14 would say a straight leg raise could be high false positive,
15 just because you're relying on the patient telling you, and some
16 patients don't understand stretch pain from radiating pain, and
17 whereas, I guess you would call like low false positive is a
18 test that every time you do it, if it's positive, then it's
19 going to be correct.

20 Q And discogram, generally, as a test, according to what
21 we read in the standard is a low false positive exam; is that
22 correct?

23 MR. SHEEHAN: Objection.

24 THE COURT: Sustained.

25 Q Is a discogram a low risk, according to your research

1 and according to your experience and what you know about an EMG
2 exam, is it a low false positive test or high false positive?

3 A EMG?

4 Q The discogram.

5 A It needs to be interpreted properly.

6 MS. STAVRAKIS-HANSEN: Just give me one second,
7 Judge.

8 (Pause in the proceedings.)

9 Q For your future medical costs that you indicated in
10 your report, does that necessarily mean that the patient has to
11 come to the current treating physicians?

12 A No, it's just a recommendation for.

13 Q So Mr. Paulino can go anywhere he wants?

14 A Yes.

15 Q And historically, in your opinion, as a medical
16 professional, do -- does medical costs go up as time go on or do
17 they go down?

18 MR. SHEEHAN: Objection.

19 THE COURT: Overruled.

20 A Costs go up generally.

21 Q There's no way of you knowing where Mr. Paulino will
22 treat in the future?

23 A No.

24 Q For the remainder of his life, you don't know if he's
25 going to come to you, you don't know if he's going to go to

1 Dr. Kaplan, you don't know if he's going to go to Dr. Lenzo, you
2 have no idea?

3 A No, I would be happy to treat him.

4 Q And even though currently maybe some of the symptoms
5 are not there, do we know what symptoms he's going to have ten
6 years from now?

7 A No.

8 Q Does anyone know?

9 A No.

10 Q And do you know if maybe he didn't want to have the
11 shoulder surgery that Kaplan recommended at that time, do we
12 know if he's going to want to have it later on?

13 MR. SHEEHAN: Objection.

14 THE COURT: Overruled.

15 A No, that's up to him.

16 Q So he may have it later on?

17 MR. SHEEHAN: Objection.

18 THE COURT: Overruled.

19 A Yes, if his shoulders gets worse and he feels he's not
20 scared, then he could get it.

21 MS. STAVRAKIS-HANSEN: Nothing else, your Honor.

22 THE COURT: Counsel.

23 MR. SHEEHAN: Just briefly.

24 THE COURT: Go ahead.

25 (Pause in the proceedings.)

1 RECROSS EXAMINATION BY

2 MR. SHEEHAN:

3 Q We're in the Premiere Physical Therapy note, this was
4 the straight leg test that was just spoken about, last page,
5 signed by a physician, John Velez; correct?

6 A Yes.

7 Q Not a physical therapist; correct?

8 A Correct.

9 MR. SHEEHAN: Thank you. Nothing further.

10 MS. STAVRAKIS-HANSEN: Nothing further.

11 THE COURT: Thank you so much for your testimony
12 today, doctor.

13 THE WITNESS: I hope I can make some field day. I
14 will run there.

15 THE COURT: Take care, be careful on your way down.

16 (Whereupon, Dr. Grimm exited the witness stand.)

17 THE COURT: I don't believe there's anything
18 further for today.

19 MS. STAVRAKIS-HANSEN: Judge.

20 THE COURT: Wonderful, so you are all free to go
21 today, and I will see you tomorrow at 2:30.

22 COURT OFFICER: All rise, jury.

23

24 (Whereupon, the proceedings were continued on the
25 next page.)

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THE COURT: Actually, if we can do 2:15 tomorrow,
that would be great, just the last thing don't discuss
anything you heard today, don't look anything up, take care.

(Whereupon, the proceeding were adjourned to
June 5, 2025, at 2:15 p.m.)

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
MINUTES TAKEN OF THIS PROCEEDING.



LAURA HUTZEL DELVAC
Senior Court Reporter

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