SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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FRANK VACCARINO, M.D.

PLAINTIFF,

- against -

Index No.: 017417/09

ANDREW MEROLA, M.D.

DEFENDANT.

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DATE: March 24, 2010

TIME: 9:08 a.m.

EXAMINATION BEFORE TRIAL of the Defendant, ANDREW MEROLA, taken by the Plaintiff, pursuant to a Court Order, held at the offices of Diamond Reporting, 16 Court Street, Suite 907, Brooklyn, New York 11241, before Leonard Sweet, a Notary Public of the State of New York.

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

ERLITZ & ERLITZ, LLP
Attorneys for Plaintiff
FRANK VACCARINO
2623 East 16th Street
Brooklyn, New York 11235
BY: STEPHEN ERLITZ, ESQ.

KEVIN R. GORRY, ESQ.
Attorney for Defendant
ANDREW MEROLA
660 Stowe Avenue
Baldwin, New York 11510

ALSO PRESENT:

FRANK VACCARINO

221. UNIFORM RULES FOR THE CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

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

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

221.2 Refusal to answer when objection is made

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

221. UNIFORM RULES FOR THE CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

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

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

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

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

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

MEROLA

A N D R E W M E R O L A, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. ERLITZ:

Q. Please state your name for the record.

A. Andrew Merola.

Q. Where do you reside?

A. I'll give you my business address, if I can 36 Seventh Avenue, Suite 502, New York, New York 10011.

Q. Dr. Merola, good morning.

A. Good morning.

Q. My name is Steve Erltiz and I'm the attorney for the plaintiff in this case.

I'm going to ask you a series of questions relating to the dispute between you and the plaintiff, Dr. Frank Vaccarino. If there's any question I ask you that you don't understand, please ask me to either repeat it or rephrase it and I will do so.

Please allow me to finish the

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question before you give your answer, and for the sake of the Court Reporter, I would suggest that you not make any gestures, or facial expressions or anything. You've got to say it, so he can put it on the record. Anything other than that he cannot put on the record.

Okay?

A. Yes.

Q. What is your occupation?

A. I'm an orthopedic reconstructive spinal surgeon.

Q. Where did you go to medical school?

A. Howard University College of Medicine.

Q. Where is that located?

A. Washington, D.C.

Q. When did you graduate?

A. May of 1990.

Q. Where did you do your residency?

A. SUNY Downstate Medical Center, Brooklyn, New York.

Q. Is that on Clarkson Avenue in Brooklyn?

A. Yes, it is.

Q. In what area of medicine did you do your residency?

A. Orthopedic surgery.

Q. Did you elect to continue your residency and do a subspecialty?

A. Yes, I did.

Q. What was that?

A. Spinal surgery.

Q. When was that completed?

A. That was completed in June of 19 -- 1995, '96. '96, June of 1996.

Q. After the completion of your studies, did you start your own practice?

A. Yes, I did.

Q. Were you alone in the practice or did you have any associates or partners?

A. I was a sole practitioner with an academic appointment at SUNY Downstate Medical Center.

Q. After you terminated this particular aspect of your practice, what did you do next?

A. I don't understand the question.

Q. In other words, did you continue being a sole practitioner right up to the

MEROLA

present time?

A. Yes.

Q. Do you know Frank Vaccarino?

A. Yes.

Q. How do you know him?

A. I was introduced to Frank Vaccarino via a gentleman by the name of Albert St. George.

Q. Who is he?

A. Albert St. George was an orthotist here in Brooklyn, New York.

Q. How did you meet, through this introduction?

A. I'm sorry, how did who meet?

Q. How did you and Dr. Vaccarino meet, through this introduction that you've just told me about?

A. Yes.

Q. When was that?

A. That was -- that was in the spring or summer of 19 -- no, I'm sorry, spring/summer 2003.

Q. At the time that you met Dr. Vaccarino, where was your practice located?

MEROLA

A. I was located in New York City as well as Brooklyn.

Q. Did there come a time when you and Dr. Vaccarino started discussing your renting of space that he owned?

A. Yes.

Q. When was that?

A. I don't recall the exact date.

Q. Approximately?

A. I think it was spring or summer of 2003.

Q. Where was this practice located?

A. Now, I don't understand that question.

MR. ERLITZ: Withdrawn.

Q. Where was the office located that you were contemplating renting?

A. 55 Eighth Avenue in Brooklyn, New York.

Q. Could that be accurately described as the Park Slope area?

A. Yes.

Q. At the time that you started talking about leasing out his premises, did you discuss

MEROLA

taking over his practice?

A. No.

Q. Did there come a time that there was a discussion about your possibly purchasing his practice or taking over his practice?

A. I can't answer the question in the form in which you've asked it to me.

MR. ERLITZ: I request that is this be marked Plaintiff's Exhibit 1 for identification.

(Whereupon, a document entitled, "Purchase Agreement," was marked Plaintiff's Exhibit 1 for identification by the Reporter, as of this date.)

Q. Dr. Merola, I show you Plaintiff's Exhibit 1 for identification. Are you familiar with this document?

A. I have seen this document, yes.

Q. This document was never signed by you; is that correct?

A. That is correct.

Q. In what capacity or in what way were you shown this document, were you given this document?

MEROLA

A. That is correct, I was given this document by Dr. Vaccarino.

Q. Under what circumstances?

A. Dr. Vaccarino offered me this document after I was also offered the rental at the 55 Eighth Avenue address.

Q. So, are you telling us that there did come a time where there was a discussion as to your taking over his practice as well as leasing the premises.

A. Once again, I don't think I can answer the question in the form you've asked it of me. I can tell you this document was given to me.

MR. ERLITZ: Time out.

(Whereupon, a brief recess taken, after which the following proceedings were had:)

MR. ERLITZ: Read back the last question and answer, please.

(Whereupon, the requested question and answer were read back by the Reporter.)

Q. Did you ever have a discussion with

MEROLA

Dr. Vaccarino with respect to the subject matter of your taking over his practice?

A. Dr. Vaccarino and I discussed his practice.

MR. ERLITZ: Objection, question asked and not answered.

Would you repeat the question?

(Whereupon, the requested question was read back by the Reporter.)

Q. It's either a yes or no, Dr. Merola.

A. Once again, it's difficult to answer in the form that you've asked me.

Q. Give us a yes or a no.

A. I'll say no.

Q. So, can you tell us, what was the reason for the preparation of that agreement?

A. Dr. Vaccarino offered the sale of his practice to me, and that's why -- well, I don't know -- other than that, I can't tell you what the purpose of that document is, other than the fact that Dr. Vaccarino had offered the sale of his practice to me.

Q. Did you discuss the subject matter of a $50,000 purchase?

MEROLA

A. Dr. Vaccarino presented the document to me and we had discussions regarding this document at a subsequent time, yes.

Q. When did you have those discussions?

A. I don't recall exactly the date of those discussions.

Q. What was the gist of those discussions?

A. The gist of those discussions?

Q. What did he say to you and what did you say to him?

A. In -- are we talking about after I met with him in spring or summer of 2003 regarding the rental of his --

Q. When was the first time the subject matter of the possible purchase of his practice came up?

A. I don't recall the exact time that we spoke about that.

Q. Approximately?

A. I would have to say summer of 2003, spring/summer of 2003.

Q. So, this is around the time that the lease discussions were being held also; is that

correct?

A. Yes.

Q. Once again, what did he say to you and what did you say to him solely with respect to the possible purchase of his practice?

A. I told Dr. Vaccarino that I would be happy to see his patients for him because he was retiring from practice.

Q. Where did a $50,000 purchase price come up?

A. It came up with Dr. Vaccarino's offering of this document.

Q. Did you ever indicate that the terms of the document were acceptable to you?

A. I never indicated that the terms of the document were acceptable to me.

Q. In your first affidavit in support of your motion to dismiss this case, you stated that you had doubts as to whether you wanted to purchase his practice; is that correct?

A. That is correct. I --

Q. I've asked it and you've answered it.

Those doubts were based in general

on the fact that your practice and Dr. Vaccarino's did not seem to complement each other; is that correct. It wasn't a great fit?

A. That is correct, yes.

Q. Would you explain the difference between your practice and his practice and why that was so?

A. Primarily, my practice is that of orthopedic reconstructive spinal surgery, an Dr. Vaccarino's was a general orthopedic surgeon.

Q. At the time of your negotiations, did you know how old Dr. Vaccarino was?

A. I did not know his exact age, no.

Q. Did you know that he was seriously contemplating retiring?

A. He told me that he was retiring, yes.

Q. Now, in that same affidavit in support of your motion to dismiss, you stated that you had learned through your own research that Dr. Vaccarino had been disciplined by the New York State Board for Professional Misconduct; isn't that true?

MEROLA

A. Yes.

Q. Specifically, when did that occur, your discovery?

A. I don't know the exact date of my discovery.

Q. Approximately?

A. I would say that sometime between fall of 2003 and early spring of 2004.

Q. Could you be more specific with reference to your latter description of the time? "Early spring," what does that mean?

A. Perhaps March or so of that year, but I can't give you exact dates because I do not recall.

Q. When a doctor consents to halt his practice of medicine through a Consent Order, as Dr. Vaccarino did, do patients have to be notified of that fact?

A. That's a question that -- I don't know the exact medical-legal answer to that question, but I can tell you that from an ethical point of view, a physician should notify his patients that that has occurred.

Q. Why would it not suffice to simply

MEROLA

notify that he's ceasing his practice?

A. Because -- well, once again, that's a medical-legal question based on New York State law, which I am not an expert in.

Q. I believe that all the patient has to be told is that he's retiring from the practice; isn't that true?

A. You have stated a belief. I do not believe that you're actually quoting the law regarding this topic.

Q. But you don't know?

A. I have not researched the law regarding this topic, nor am I an expert on the law regarding this topic.

Q. Now, you state in your affidavit because of the Consent Order, his practice was in essence worthless, no good will, and that was why you didn't sign the proposed purchase agreement nor send the down payment; is that correct?

A. That is one factor involved.

Q. Are you familiar with the Consent Order that Dr. Vaccarino signed?

A. I have seen it, yes.

MEROLA

MR. ERLITZ: I request that this be marked Plaintiff's Exhibit Number 2 for identification.

(Whereupon, a document entitled, "Consent Agreement and Order," was marked Plaintiff's Exhibit 2 for identification by the Reporter, as of this date.)

MR. ERLITZ: By the way, I request that Exhibit 1 be marked in evidence.

Q. Dr. Merola, I show you Plaintiff's Exhibit 2 for identification. Have you ever seen that before?

A. Yes.

Q. Can you tell us what it is?

A. This is the -- this is a New York State Department of Health, State Board For Professional Medical Conduct, Consent Order and Agreement regarding the matter of Frank Vaccarino, M.D.

Q. You have stated in more than one affidavit that this order prohibited Dr. Vaccarino from selling his practice. Can you kindly point out to me where in that document there is such a prohibition?

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A. It's Number 9. It says, "If respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine, and if his license is revoked, surrendered or suspended for a term of six months or more under the terms of this order, respondent shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the effective date of this order."

Q. If I tell you that Dr. Vaccarino was not a shareholder, but an individual practitioner, kindly show me where in that order, as an individual practitioner, he's prohibited from selling his practice.

A. It indicates "professional services corporation," of which Dr. Vaccarino is a member of because he is listed as Frank P. Vaccarino, M.D., F.A.C.S., P.C., meaning

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professional corporation.

Q. Dr. Vaccarino was selling you his practice in an individual capacity; isn't that so?

A. I can't answer that question the way you've proposed it to me.

Q. Well, why don't you look at Exhibit Number 1. Who is the seller under the purchase agreement, a corporation or an individual?

A. It says, Frank P. Vaccarino, M.D.

Q. So, Dr. Vaccarino was selling you his practice in an individual capacity; isn't that so?

A. He was selling me -- he was offering a sale in his name.

Q. In his individual capacity?

A. As it is written on the purchase agreement.

Q. And is there anything in the Consent Order that you can point to that prohibits an individual, a sole practitioner, from selling his practice?

MR. GORRY: Can I stop and can we take a break for a second?

MEROLA

MR. ERLITZ: Yes.

MR. GORRY: I want to take a break for a second with my client.

MR. ERLITZ: That's fine.

THE WITNESS: Come outside.

(Whereupon Mr. Gorey and the witness left the deposition room for an off-the-record conference, after which the following proceedings were had:)

MR. ERLITZ: Mr. Sweet, would you repeat where we were?

(Whereupon, the requested question was read back by the Reporter.)

A. No.

Q. Your affidavits, plural, never mentioned that you discussed the Consent Order with Dr. Vaccarino; is that correct?

A. Yes.

Q. So, you did not, in fact, ever discuss the Consent Order with him?

A. I recall having asked Dr. Vaccarino about the suspension of his license.

Q. When was that?

A. I do not recall the exact date.

MEROLA

Q. Is there any reason you never mentioned that in either of your affidavits?

A. Not that I can recall.

Q. And yet you agreed to rent his office space, did you not?

A. I rented Dr. Vaccarino's office space.

Q. And it came with all the furniture and fixtures, equipment, inventory of narcotics, pharmaceuticals, medications and patient files and records, did it not?

A. No, it did not.

Q. What was missing in what I just itemized?

A. Shall we go through the items?

Q. Just tell me what was missing?

A. You'd have to go through the items one by one for me.

Q. Furniture?

A. Yes.

Q. Fixtures?

A. Yes.

Q. Equipment?

A. Yes.

MEROLA

Q. Inventory of narcotics?
A. No.
Q. Pharmaceuticals?
A. No.
Q. Medications?
A. No.
Q. Patient files?
A. No.
Q. He gave you no patient files?
A. I did not assume care of patient files.
Q. I didn't ask you that. Were you the recipient physically of patient files?
A. I did not physically receive patient files.
Q. Did you receive any of the medical records from Dr. Vaccarino's practice?
A. I did not physically receive any of the medical records from Dr. Vaccarino's practice.
Q. What was the gist of the conversation you had with Dr. Vaccarino about the Consent Order?
A. All I can recall is asking Dr.

MEROLA

Vaccarino to explain what happened with his suspended license.

Q. In what manner did he respond?

A. He did not give me a clear response or explanation.

Q. What did he say?

A. He didn't say much at all.

Q. Did he say anything?

A. Not that I can recall, no.

Q. Refresh my recollection. When did that conversation take place, approximately?

A. Once again, I'm not sure of the date of that conversation.

Q. Approximately?

A. I would be guessing only. I can't tell you. I don't know.

Q. 2003 or 2004?

A. Somewhere between 2003 and 2004.

Q. You can't narrow it down for me at all?

A. I've already asked and answered that question.

Q. Is the answer no?

A. I think I've just given you my

answer.

Q. When did you discover it?

A. Once again, I can't pin down the exact date.

Q. Approximately?

A. I think we already discussed that before, if I'm not mistaken.

Q. When did you discover it?

A. Somewhere between 2003 and 2004.

Q. And you can't narrow it down for me any further?

A. I cannot give you the exact date.

Q. What did you do to ascertain that it existed?

A. A Google search.

Q. Was there any reason you did that search?

A. When you're dealing with people in the twenty-first century, it is quite common to Google search them.

Q. And that's when you discovered the Consent Order?

A. Correct.

Q. In your first affidavit, dated

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July 27, 2009, you led us to the belief that you learned about Dr. Vaccarino's problem by the time you moved into his offices; is that correct?

A. I don't understand the temporal relationship in that question.

Q. When exactly did you move into the premises?

A. I believe I moved in in September of 2003.

Q. In your first affidavit, you indicated that you were already aware that his license had been terminated or that he had signed a Consent Order to that effect; is that correct?

MR. GORRY: Excuse me, let me just let him look over his affidavit so he can see if that's, in fact, what he said.

A. To my knowledge, there is no temporal relationship or date indicated in the affidavit.

Q. Excuse me?

A. There is no temporal relationship or date indicated in the affidavit.

MEROLA

Q. What does that mean, a "temporal relationship"?

A. Temporal relationship.

Q. I don't know what that means.

A. That means there is no time or date indicated as to when I became aware of the fact that Dr. Vaccarino had lost his license.

Q. When you discovered that he had lost his license, and you had this, what I would describe as a rather unsatisfactory conversation with him about it, what, if anything, did you do in furtherance of that discovery?

A. The discovery was made, I mentioned it to Dr. Vaccarino, and that was it. I don't understand that question.

Q. Did you, in essence, put that issue to bed?

A. The issue was never put to bed in the sense that it was -- it was an issue.

Q. What did you do about it?

A. I don't understand the question.

Q. Above and beyond your conversation with Dr. Vaccarino, what is it that you did

MEROLA

after you discovered that he had signed that Consent Order?

A. One of the ultimate occurrences of having discovered that Consent Order was that the purchase and sale of a practice that no longer existed would not be feasible.

MR. ERLITZ: Objection. You've not answered the question.

A. I can't answer the question the way you're asking it.

Q. What did you do, other than have a conversation with Dr. Vaccarino?

A. I hung up the phone and went on with my life.

Q. And you didn't do anything else with respect to that order; is that correct?

A. Your question is too broad the way you've asked it and I can't answer it in the form you've proposed it to me.

MR. ERLITZ: I request that this be marked Plaintiff's Exhibit 3 for identification.

(Whereupon, a one-page letter under the letterhead of Frank P. Vaccarino,

dated July 1, 2003, was marked Plaintiff's Exhibit 3 for identification by the Reporter, as of this date.)

Q. Dr. Merola, in July 2003, Dr. Vaccarino sent a letter to his patients regarding your takeover of his practice.

I show you Plaintiff's Exhibit 3 for identification. Did you ever see that letter?

A. I have seen this letter.

Q. Did you in any way, shape or form react to that letter?

A. I did not -- I can't tell you --

Q. Yes or no?

A. Well, I'm reacting to it now, if you ask me a question about.

Q. I'm asking you a yes or no question. Did you in any way react to that letter?

A. I suppose as a human being we all have reactions.

Q. Did you do anything about that letter?

A. There was nothing for me to do about this letter.

Q. May I ask you, was that letter

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accurate when written by Dr. Vaccarino?

A. You're asking me to comment on something that Dr. Vaccarino wrote. I can't comment upon that, that's what Dr. Vaccarino wrote.

Q. I'm asking you whether he accurately portrayed the situation, in your mind?

A. No.

Q. What's inaccurate about that letter?

A. First of all, it says that he was retiring. He lost his license, he wasn't retiring. I would say that that's one of the principal inaccuracies of that letter.

Q. Is that it?

A. Yes.

MR. ERLITZ: I request that Plaintiff's Exhibit 3 or identification be marked in evidence.

Q. Did there come a time that you provided Dr. Vaccarino's patients with a letter of your own?

A. Yes.

MR. ERLITZ: I request that this be marked Plaintiff's Exhibit 4 for

identification.

(Whereupon, a letter under the letterhead Andrew R. Merola, M.D., undated, was marked Plaintiff's Exhibit 4 for identification by the Reporter, as of this date.)

Q. I show you Plaintiff's Exhibit 4 for identification. Is this the letter that we just made reference to?

A. Yes.

Q. Is that letter undated?

A. Yes.

Q. Do you know when it went out or question it was distributed?

A. This letter was posted in the office at 55 Eighth Avenue.

Q. When was that, approximately?

A. September of 2003.

Q. Didn't you start this letter by saying, and I quote, "It is with great pleasure and enthusiasm that I assume the practice of Dr. Frank Vaccarino?

A. That is the first sentence, correct.

Q. Wouldn't you think that after

reading this letter, Dr. Vaccarino's patients would assume that you took over his practice?

A. You're asking me to make an assumption and I don't know that I can under those terms.

Q. Well, you assumed the practice. You said so; is that not so?

A. I was there to care for Dr. Vaccarino's practice because he had explained to me that he retired.

Q. But that is not what that letter says. The letter says, "I assume the practice of Dr. Frank Vaccarino; is that correct.

A. That's what that says, yes.

Q. Fine. Now, in more than one of your affidavits, you had stated that the lease between you and Dr. Vaccarino had never been signed; is that correct?

Did you sign such an affidavit?

A. Yes.

Q. Could you quote for me verbatim what the affidavit says with respect to this subject matter?

A. "That based on the fact that the

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lease agreement was never signed by either party, and the term of the lease exceeded one year, the plaintiff's claim for the tax escalation should be dismissed based on the grounds of statute of frauds."

Q. Unquote; correct?

A. Yes.

MR. ERLITZ: I request that this document be marked Plaintiff's Exhibit 5 for identification.

(Whereupon, a lease was marked Plaintiff's Exhibit 5 for identification by the Reporter, as of this date.)

Q. Dr. Merola, I show you Plaintiff's Exhibit 5 for identification. Would you peruse through it, please?

A. Yes.

Q. Is that the lease?

A. Yes.

Q. Is that a copy of your signature at the end of the lease?

A. Yes.

Q. Is that a copy of your signature on the rider?

MEROLA

A. Yes.

Q. So, when you told us in your affidavit on more than one occasion that you never signed the lease, that was not true; is that correct?

A. This is one occasion that we just pointed out, and on this one occasion that was an error, correct.

Q. An error?

MR. ERLITZ: I request that the lease be marked in evidence.

Q. Now, under the terms and conditions of your purchase of the practice, what was the purchase price?

A. $50,000.

Q. And the purchase agreement was open dated for August 2003, was it not?

A. Yes.

Q. And August 2003 was the same month that you actually signed the lease with Dr. Vaccarino; is that correct?

A. Yes.

MR. ERLITZ: Off the record.

(Whereupon, an off-the-record

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discussion was held.)

Q. Did you ever consider notifying Dr. Vaccarino's patients about his loss of his license?

A. It was not my duty to advise his patients.

Q. The answer calls for a yes or no.

A. No, the answer calls for me to tell you what my answer is.

Q. No, did you ever consider --

A. Yes.

Q. I didn't ask you the reasons why. Did you consider it?

A. Yes.

Q. What did you decide to do?

A. I decided that Dr. Vaccarino should be the person to advise and notify his patients that he lost his license because it would --

MR. ERLITZ: I move to strike as not responsive.

Q. You're notifying his patients of his loss of his license would not have been in your interest; is that correct?

A. No, it would not have been in Dr.

Vaccarino's interest.

Q. It would not have been in your interest?

A. It would have been in my best interest to advise them that he lost his license.

Q. I don't think so.

A. That's your opinion.

Q. The letter that Dr. Vaccarino sent to his patients notified them that he was retiring; is that correct?

A. Correct.

Q. And it did not inform them about the Consent Order; is that correct?

A. Correct.

Q. Essentially, Dr. Vaccarino's patients did not know about the loss of his license; is that correct?

A. Correct, Dr. Vaccarino did not inform his patients about the loss of his license.

Q. Well, that you don't know, whether he did or didn't, but that letter didn't?

A. Correct.

MEROLA

Q. If they didn't know about the loss of his license, then your statement that the practice was worthless because of the loss of his license would be an inaccurate statement; isn't that so?

A. No.

Q. Did you send Dr. Vaccarino a letter in or about March 2004?

A. Yes.

MR. ERLITZ: I request that this be marked Plaintiff's Exhibit 6 for identification.

(Whereupon, a letter dated March 14, 2004 from Dr. Merola to Dr. Vaccarino was marked Plaintiff's Exhibit 6 for identification by the Reporter, as of this date.)

Q. Dr. Merola, I show you Plaintiff's Exhibit 6 for identification. Is that the letter you sent to Dr. Vaccarino?

A. Yes.

Q. What is the date of that letter?

A. March 14, 2004.

Q. Would it be your testimony that on

MEROLA

or about March 14th you sent him such a letter?

A. Yes.

Q. In that letter, Plaintiff's Exhibit 6, you discuss three things, the lease which you did not know you had signed, the purchase agreement and the fact that you had changed your mind about the purchase of his practice and you wished to relegate the purchase to his furniture and equipment; is that correct?

A. Yes.

Q. This letter does not in any way refer to the Consent Order, does it?

A. Correct.

Q. It refers to your disappointment that your income would not offset purchasing Dr. Vaccarino's practice; is that correct?

A. Correct.

Q. The letter also goes on to state that you are benefiting Dr. Vaccarino by assuming his practice responsibilities, but that you cannot purchase the practice for the agreed to $50,000; is that correct?

A. Yes.

Q. Finally, doesn't the letter ask Dr.

Vaccarino to help you out by allowing you to forego the purchase of the practice?

A. Yes.

Q. It does. And limit the agreement to the purchase of the office furniture and equipment; is that correct?

A. Yes.

Q. So, you had changed your mind about the purchase of the practice; is that correct?

A. I was never going to purchase a practice.

Q. When you sent out that letter, were you aware of the Consent Order?

A. I don't recall.

Q. In your initial affidavit, you suggested that the reason you didn't purchase Dr. Vaccarino's practice was your knowledge of the Consent Order, which you found through diligent research; is that correct?

A. Yes.

Q. But in your reply affidavit, you stated that by March 14, when the letter was written, you were still unaware of the Consent Order; is that correct?

MEROLA

A. I said I don't recall the exact date that I found out about the Consent Order and that this letter was written to Dr. Vaccarino to tell him that I was not going to buy his practice.

Q. But you made no reference to the Consent Order?

A. I did not make reference to the Consent Order in this letter.

Q. Didn't you agree to purchase Dr. Vaccarino's practice in or about August 2003, but for various reasons, subsequently changed your mind?

A. I did not agree to purchase Dr. Vaccarino's practice in August of 2003.

Q. What exactly did you mean when you said, and I quote, the next to last line in that letter, "Please help me by foregoing the purchase of the practice"? What did that mean if you weren't purchasing the practice previously?

A. This letter was written in a gentle tone to a senior colleague.

MR. ERLITZ: Objection, not

MEROLA

responsive.

Q. I'd ask you to tell me exactly, not the manner in which it's written, or the tenor or anything of the sort. I'm asking you to tell me specifically, what does it mean when you said, and I quote, "Please help me buy foregoing the purchase of the practice"?

A. I'm not buying your practice.

Q. Doesn't it also mean that previously you had an agreement to buy the practice?

A. No.

Q. What is the word "foregoing" used for then?

A. I'm not buying your practice.

MR. ERLITZ: Can I speak with my client?

(Whereupon, a brief recess was taken, after which the following proceedings were had:)

BY MR. ERLITZ:

Q. Dr. Merola, I'd like to once again make reference to your undated letter, which is Plaintiff's Exhibit 4 in evidence. Would you kindly take a look at that letter?

MEROLA

Do you see the first sentence in that letter?

A. Yes.

Q. It says, and I quote, "It is with great pleasure and enthusiasm that I assume the practice of Dr. Frank Vaccarino."

Isn't that what it says?

A. Yes.

Q. What does that mean?

A. It means I'm here to take care of Dr. Frank Vaccarino's patients for him as he requested of me.

Q. When it says, "I assume the practice," doesn't it mean you're taking over the practice?

A. No. When a doctor talks about assuming care, it means that he will follow those patients.

(Continued on next page to include jurat.)

MEROLA

MR. ERLITZ: Except the word "care" isn't used, the word practice is used. I have no further questions.

(Whereupon, at 10:07 a.m., the Examination of this Witness was concluded.)

_____

ANDREW MEROLA

Subscribed and sworn to before me

this _____ day of _____ 20___.

_____

NOTARY PUBLIC

E X H I B I T S

PLAINTIFF'S EXHIBITS

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
1	Purchase Agreement	10
2	Consent Agreement and Order	18
3	Letter	28
4	Letter	31
5	Lease	33
6	Letter	37

I N D E X

EXAMINATION BY	PAGE
MR. ERLITZ	5

INFORMATION AND/OR DOCUMENTS REQUESTED

(NONE)

QUESTIONS MARKED FOR RULINGS

(NONE)

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

I, LEONARD SWEET, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of April, 2010.

_____
LEONARD SWEET
Court Reporter

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Dr. Bryk is board certified by the American Board of Orthopaedic Surgery and is a fellow of the American College of Surgeons and the American Orthopaedic Association. He is a member of many academic societies and boards, including the American Association of Hip and Knee Surgeons, the Arthroscopy Association of North America, and the International Cartilage Repair Society. He was a founding member of the Academic Orthopaedic Society and a member of the American Academy of Orthopaedic Surgeons Research Committee. Dr. Bryk also serves as chairman of the section on orthopaedic surgery of the New York Academy of Medicine and is the author of 50 publications and abstracts in peer-reviewed orthopaedic journals, including the *Journal of Bone and Joint Surgery* and *Clinical Orthopaedics and Related Research.* He is a professor of clinical orthopaedic surgery at New York Medical College.

After receiving his bachelor of arts degree from Columbia College and his medical degree from the Columbia University College of Physicians and Surgeons, Dr. Bryk trained in both general surgery and orthopaedic surgery at Columbia Presbyterian Medical Center. Dr. Bryk is currently chairman of the Academic Affairs Committee of Columbia College.

Dr. Bryk specializes in arthroscopic and reconstructive surgery of the knee and hip in adults.

SRINO BHARAM, M.D.

Orthopaedic Surgery and Sports Medicine

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Dr. Bharam is board certified by the American Board of Orthopaedic Surgery. He is an active member of the American Academy of Orthopaedic Surgeons, the American Orthopaedic Society for Sports Medicine, and the International Association for Dance Medicine and Science. He also serves as associate instructor in hip arthroscopy to the Arthroscopy Association of North America.

Dr. Bharam has made numerous national presentations on hip arthroscopy and trauma. He is an author and an investigator, with articles appearing in peer-reviewed journals, and he has served as guest editor for both the *Orthopaedic Clinics of North America* and *Clinics of Sports Medicine.* He was the year 2000 recipient of the Partners in Excellence Award for Orthopaedic Trauma Service from Massachusetts General/ Brigham and Women's Hospital.

After earning his medical degree from New Jersey Medical School, Dr. Bharam completed his surgical internship at the Mount Sinai Medical Center and orthopaedic surgery residency at Lenox Hill Hospital. He then completed a trauma fellowship at Brigham and Women's Hospital and a sports medicine and hip arthroscopy fellowship at the University of Pittsburgh Medical Center.

Dr. Bharam specializes in arthroscopy, sports medicine, and trauma.

DANIEL CALIGIURI, M.D.

Hand Surgery

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Dr. Caligiuri is board certified by the American Board of Orthopaedic Surgery and is the author of numerous articles that have been published in scientific journals, including the *Journal of Orthopaedic Trauma,* the *Journal of Hand Surgery,* and the *Journal of Shoulder and Elbow Surgery.* He has made presentations to peer groups throughout the region.

Dr. Caligiuri earned his medical degree from the State University of New York (SUNY) Health Science Center at Brooklyn and completed internship and residency-training programs at that institution. He subsequently completed a fellowship in hand surgery at Thomas Jefferson University Hospital.

Dr. Caligiuri specializes in wrist and hand surgery.

FRANCO P. CERABONA, M.D.

Spinal Surgery

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Dr. Cerabona is board certified by the American Board of Orthopaedic Surgery and the American Board of Spine Surgery. He is a member of the American Academy of Orthopaedic Surgeons and the North American Spine Society. He has published in *State-of-the-Art Spine Surgery*, in which he contributed to several chapters on spinal biomechanics. He has written chapters in other textbooks on spinal instrumentation and surgical techniques. Dr. Cerabona has also presented at the North American Spine Society, the American Spinal Injury Society, and the American Academy of Orthopaedic Surgery.

After graduating from the University of Pittsburgh School of Medicine, Dr. Cerabona completed a general surgery residency at St. Luke's-Roosevelt Hospital Center and an orthopaedic surgery residency at St. Vincent's Hospital Manhattan. He subsequently completed a fellowship in spinal surgery at the Hospital for Special Surgery.

Dr. Cerabona specializes in adult reconstructive spinal surgery, including cervical and lumbar degenerative conditions, deformities, tumors, and trauma. He has completed training programs in advanced surgical techniques for complex spinal deformity, minimally-invasive surgery, kyphoplasty, and disk-replacement surgery.

KAUSHIK DAS, M.D.

Spinal Surgery

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Dr. Das is board certified by the American Board of Neurological Surgery.

After earning his medical degree from the State University of New York (SUNY) Health Science Center at Brooklyn, Dr. Das completed a residency in neurosurgery at Westchester Medical Center/ New York Medical College. He subsequently completed a spinal surgery fellowship at the Barrow Neurological Institute, St. Joseph's Hospital in Phoenix, Arizona.

Dr. Das is a member of many academic societies. A noted writer and lecturer, Dr. Das has written chapters for a number of neurosurgical textbooks and has had articles published in prestigious medical journals, including *Journal of Neurosurgery (Spine), Neurosurgery, Neurological Research*, and *Neurosurgical Focus*. He has made presentations to peer groups throughout the country.

Dr. Das specializes in neurological spinal surgery.

CHARLES A. DeMARCO, M.D.

Orthopaedic Surgery and Sports Medicine

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Dr. DeMarco is board certified by the American Board of Orthopaedic Surgery.

After earning his medical degree from the State University of New York (SUNY) Health Science Center at Brooklyn, Dr. DeMarco completed his orthopaedic residency there and at Kings County Hospital. He subsequently pursued a fellowship in sports medicine at Pennsylvania State University.

Dr. DeMarco specializes in sports medicine.

ARASH EMAMI, M.D.

Spinal Surgery

95 University Pl., New York, NY 10003
212.604.1360

Dr. Emami is board certified by the American Board of Orthopaedic Surgery.

After earning his medical degree from the University of Chicago Pritzker School of Medicine, Dr. Emami completed the orthopaedic surgical residency program at the University of Chicago. He subsequently completed a spinal surgery fellowship at the University of California at San Francisco.

Dr. Emami specializes in spinal surgery.

DENNIS FABIAN, D.O.

Adult Reconstructive Joint Surgery

95 University Pl., New York, NY 10003
212.604.1350

Dr. Fabian is board certified by the American Board of Orthopaedic Surgery. He has been an invited lecturer and presenter to many professional societies throughout the country, and his patient-education lectures on topics such as shoulder and neck pain and hip-replacement surgery have been broadcast on the radio to the greater New York metropolitan area.

After earning his medical degree from the Philadelphia College of Osteopathic Medicine, Dr. Fabian completed surgical and orthopaedic surgical residency programs at St. Vincent's Hospital Manhattan and Flower Fifth Avenue Hospital. He subsequently completed a fellowship in knee surgery at the Hospital for Special Surgery.

Dr. Fabian specializes in reconstructive surgery of the hip and knee.

ANDREW FELDMAN, M.D.

Sports Medicine
New York Rangers Head Team Physician

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Dr. Feldman is board certified by the American Board of Orthopaedic Surgery and serves as head team physician for the New York Rangers hockey team. He is also head team physician for the Paris Basketball Racing Division 1 team and consults with college and professional athletes around the world. A recognized expert in his field, Dr. Feldman is often called upon to comment on the latest sports medicine techniques. He has been quoted in magazines and newspapers and has made numerous appearances on national television. Dr. Feldman has served as an orthopaedic consultant to the Cirque du Soleil and is a medical editor for *Men's Health* magazine. He has presented to peer groups both nationally and internationally, has authored textbooks, and has had articles published in *Orthopaedics, Sports Medicine Update*, and *The Physician and Sports Medicine*.

Dr. Feldman earned his medical degree from Cornell University Medical College and completed an internship in general surgery at Roosevelt Hospital and a residency in orthopaedic surgery at the University of Illinois. He then pursued a fellowship in arthroscopic knee and shoulder surgery at the University of Pittsburgh.

Dr. Feldman specializes in knee and shoulder surgery, arthroscopic surgery, and sports medicine.

DAVID FLEISS, M.D.

Sports Medicine

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Dr. Fleiss is board certified by the American Board of Orthopaedic Surgery. He is a fellow of the American Academy of Orthopaedic Surgeons, American College of Surgeons, Arthroscopy Association of North America, and the American Academy of Sports Physicians. He has authored articles that have been published in professional journals, including *The Journal of Arthroscopic and Related Research* and *The Journal of Bone and Joint Surgery*.

Dr. Fleiss earned his medical degree from Columbia University College of Physicians and Surgeons. He completed a residency in orthopaedic surgery at the Hospital for Special Surgery and was a fellow in orthopaedic trauma at St. Vincent's Hospital Manhattan.

Dr. Fleiss specializes in sports medicine.

JESSICA GALLINA, M.D.

Foot and Ankle Surgery

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Dr. Gallina earned her medical degree from the Mount Sinai School of Medicine and completed a residency in orthopaedic surgery at Mount Sinai Hospital in New York. She then completed a fellowship in foot and ankle surgery at Union Memorial Hospital in Baltimore, Maryland, as well as the Roger Mann, M.D. foot and ankle fellowship in Oakland, California.

Dr. Gallina specializes in foot and ankle surgery.

SALIL GUPTA, M.D.

Hand and Upper Extremity Surgery

95 University Place, New York, NY 10003
212.604.1350

After earning his medical degree from the Mount Sinai School of Medicine, Dr. Gupta completed his orthopaedic residency at New York University-Hospital for Joint Diseases. He subsequently completed a pediatric hand and upper extremity fellowship at the Texas Scottish Rite Hospital in Dallas, Texas, followed by the C.V. Starr Hand and Upper Extremity Fellowship at St. Luke's-Roosevelt Hospital Center in New York City.

Dr. Gupta specializes in hand and upper extremity surgery.

FREDERIC HELBIG, M.D.

General Orthopaedic Surgery and Orthopaedic Trauma

36 7th Ave., Ste. 401, New York, NY 10011
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Dr. Helbig is board certified by the American Board of Orthopaedic Surgery and a fellow of the American College of Surgeons and the New York Academy of Medicine. He serves as an adjunct clinical professor of orthopaedic surgery at New York Medical College and assistant clinical professor of orthopaedic surgery at the Columbia University College of Physicians and Surgeons.

Dr. Helbig earned his medical degree from Boston University's School of Medicine and completed a surgical residency at St. Vincent's Hospital Manhattan. After completing military service, he finished another residency at St. Luke's-Roosevelt Hospital and a fellowship in reconstructive joint surgery at Peter Bent Brigham and Robert Breck Brigham Hospital.

Dr. Helbig specializes in general orthopaedic surgery and orthopaedic trauma.

ALAMGIR ISANI, M.D.

Hand Surgery

345 E. 37th St., Ste. 306, New York, NY 10016
212.986.9494

Dr. Isani is board certified by the American Board of Surgery with added qualification in surgery of the hand. He is a member of both the American and the New York Societies for Surgery of the Hand. He has authored articles that have been published in professional journals, including *Sports Medicine, Surgical Rounds, Emergency Medicine Clinics of North America,* and *Hand Clinics of North America.*

Dr. Isani earned his medical degree from Dow Medical College in Pakistan. He subsequently completed a residency at Cabrini Medical Center and a hand surgery fellowship at NYU Medical Center.

Dr. Isani specializes in surgery of the hand.

SAMUEL KENAN, M.D.

Orthopaedic Oncology and Joint-Replacement Surgery

317 E. 34th St., 9th Fl., New York, NY 10016
212.684.5511

Dr. Kenan is a member of the American Musculoskeletal Tumor Society, the Israel Orthopaedic Association, the International Skeletal Society, and the Orthopaedic Research Society. He is the author of more than 75 articles that have been published in prestigious medical journals, including the *Journal of Bone and Joint Surgery* and the *Journal of Surgical Oncology.* In addition, he has made more than 60 presentations to professional societies in America and throughout Europe and the Middle East.

Dr. Kenan earned his medical degree from the Hebrew University Hadassah Medical School in Israel. He subsequently completed an orthopaedic surgical residency and fellowships in orthopaedic pathology, orthopaedic oncology, and joint replacement at the Hospital for Joint Diseases Orthopaedic Institute/New York University School of Medicine.

Dr. Kenan specializes in orthopaedic oncology and limb reconstruction.

YONG KIM, M.D.

Spinal Surgery and Pain Management

1245 Madison Ave., New York, NY 10128
212.427.3986

Dr. Kim is board certified by the American Board of Orthopaedic Surgery.

After earning his medical degree from New York University School of Medicine, Dr. Kim completed his orthopaedic residency at the Hospital for Joint Diseases in New York. He subsequently pursued a fellowship in spinal surgery at the Texas Back Institute in Plano, Texas.

Dr. Kim specializes in spinal surgery including reconstruction of the cervical and lumbar spine in adults. He also specializes in pain management and spinal procedures including advanced fluoroscopic techniques in spinal injection.

STEVE K. LEE, M.D.

Hand and Upper Extremity Surgery

301 E. 17th St., New York, NY 10003
212.598.6697

Dr. Lee is board certified by the American Board of Orthopaedic Surgery. He is a member of the American Academy of Orthopaedic Surgeons and the American Society for Surgery of the Hand.

After earning his medical degree from Duke University School of Medicine in North Carolina, Dr. Lee completed his orthopaedic residency at Yale-New Haven Hospital in New Haven, Connecticut. He subsequently pursued a fellowship in hand, upper extremity, and microsurgery at the Hospital for Joint Diseases Orthopaedic Institute/ New York University School of Medicine.

Dr. Lee specializes in hand and upper extremity surgery including microsurgery.

ANDREW MEROLA, M.D.

Spinal Surgery

36 7th Ave., Ste. 502, New York, NY 10011
212.924.6644

Dr. Merola is board certified by the American Board of Orthopaedic Surgery, is a fellow of the American Academy of Orthopaedic Surgeons, and a charter member of the American Board of Spine Surgery. He is a member of many academic societies and has been honored by the American Orthopaedic Association for best scientific poster exhibit. He has also received both the Russell S. Hibbs Award and the John H. Moe Award for clinical excellence in spinal reconstructive surgery from the Scoliosis Research Society and the Bernard Freundlich Mercer Rang Paper Competition Award from the Brooklyn Orthopaedic Society. A noted writer and lecturer, Dr. Merola is the author of a number of textbooks and has had articles published in prestigious medical journals, including *Spine, Journal of Spinal Cord Medicine,* and the *Journal of Bone and Joint Surgery.*

Dr. Merola earned his medical degree from Howard University College of Medicine and completed a residency in orthopaedic surgery at the State University of New York (SUNY) Health Science Center at Brooklyn and a fellowship in spinal surgery at the University of Colorado Health Science Center.

Dr. Merola specializes in reconstructive spinal surgery, disk surgery, and scoliosis.

ROBERT MEYERSON, M.D.

Orthopaedic Surgery and Sports Medicine

170 W.12th St., Spellman 7, New York, NY 10011
212.604.6264

Dr. Meyerson is board certified by the American Board of Orthopaedic Surgery and is a fellow of the American Academy of Orthopaedic Surgeons and the American College of Sports Medicine. He served as sports medicine program coordinator for the Kingsbrook Jewish Medical Center Orthopaedic Surgical Residency Training Program for 12 years. He is a past president of the Brooklyn Orthopaedic Society.

After receiving his bachelor of arts degree from Columbia College, Dr. Meyerson earned his medical degree from the State University of New York (SUNY) Health Science Center at Brooklyn. He then completed a general surgery internship at Kings County Hospital in Brooklyn, an orthopaedic surgery residency at Kingsbrook Jewish Medical Center, and a sports medicine fellowship at the Hospital for Joint Diseases Orthopaedic Institute/New York University School of Medicine.

Dr. Meyerson specializes in arthroscopic and reconstructive surgery of the knee and shoulder as well as orthopaedic trauma.

ROBERT PAE, M.D.

Hand and Upper Extremity Surgery

170 W. 12th St., Spellman 7, New York, NY 10011
212.604.6265

Dr. Pae is board certified by the American Board of Orthopaedic Surgery and is a member of the American Academy of Orthopaedic Surgeons and the American Society for Surgery of the Hand. A respected author and lecturer, Dr. Pae's articles have been published in professional journals including *Principles of Orthopaedic Practice,* and he has made presentations to peer groups throughout the country.

After earning both his undergraduate and medical degrees from the University of Connecticut, Dr. Pae completed his orthopaedic surgery residency training at the State University of New York (SUNY) at Stony Brook and a hand and upper extremity fellowship at Washington University in St. Louis.

Dr. Pae specializes in surgery of the upper extremity, including the shoulder, elbow, wrist, and hand, with a special interest in congenital hand problems.

AFSHIN RAZI, M.D.

Spinal Surgery

1245 Madison Ave., New York, NY 11374
212.427.3986

After earning his medical degree from Albert Einstein College of Medicine, Dr. Razi completed his orthopaedic residency at the Hospital for Joint Diseases Orthopaedic Institute/New York University School of Medicine where he subsequently pursued a spinal surgery fellowship.

Dr. Razi specializes in reconstructive spinal surgery and surgical management of spinal deformity.

ANDREW K. SANDS, M.D.

Foot and Ankle Surgery

170 W. 12th St., Spellman 7, New York, NY 10011
212.604.6266

Dr. Sands is board certified by the American Board of Orthopaedic Surgery. He is a member of the American Academy of Orthopaedic Surgeons and serves on its board of surgical subspecialties. He serves on the board of directors of the American Orthopaedic Foot and Ankle Society, is a founding member of the Spinoza Society, and is a member of the AO-ASIF Foot and Ankle Expert Group, a prestigious international scientific think tank. He is a past president of the Brooklyn Orthopaedic Society.

Dr. Sands earned his bachelor of science degree from Rensselaer Polytechnic Institute where he became interested in structure, function, and biomechanics. After earning his medical degree from New York Medical College, he completed a surgical internship at St. Luke's-Roosevelt Medical Center and an orthopaedic residency at Lenox Hill Hospital. Dr. Sands subsequently served with the Marines in Saudi Arabia during Operation Desert Shield and Storm. After completing active duty, he received advanced clinical experience in lower extremity trauma and reconstruction in Seattle at the University of Washington/Harborview Medical Center.

Dr. Sands specializes in orthopaedic trauma and reconstructive surgery of the foot and ankle, including sports medicine, arthroscopy, and total ankle replacement.

RONALD M. SELBY, M.D.

Orthopaedic Surgery and Sports Medicine

20 W. 13th St., New York, NY 10011
212.255.3233

Dr. Selby is board certified by the American Board of Orthopaedic Surgery and serves on the board of directors of the Arthroscopy Association of North America. Dr. Selby is the chairman of a subcommittee for sports medicine and arthroscopy for the American Academy of Orthopaedic Surgeons. He is an advisor and orthopaedic consultant for the National Institute of Sports, serves as associate editor for *Arthroscopy: The Journal of Arthroscopic & Related Surgery,* and is a reviewer for the *Journal of Athletic Training, Physicians and Sports*

Medicine, and the *American Journal of Sports Medicine*. Dr. Selby's articles have been published in many professional journals, including *Medicine & Science in Sports & Exercise, Arthroscopy Practice, and Arthroscopy: The Journal of Arthroscopic & Related Surgery.*

Dr. Selby earned his medical degree from the Autonomous University of Guadalajara Medical School and completed a residency in orthopaedic surgery at St. Vincent's Hospital Manhattan. He served as the James A. Dickson fellow in adult reconstructive surgery at the Cleveland Clinic Foundation and as a sports medicine fellow at Bayley Seton Hospital on Staten Island.

Dr. Selby specializes in joint-replacement surgery and sports medicine.

RICHARD M. SELDES, M.D.

Adult Reconstructive Joint Surgery

95 University Pl., New York, NY 10003
212.604.1367

Dr. Seldes is board certified by the American Board of Orthopaedic Surgery. He is a member of the American Academy of Orthopaedic Surgeons, Eastern Orthopaedic Association, and Arthroscopy Association of North America.

After earning his medical degree from the University of Pennsylvania, Dr. Seldes completed his orthopaedic residency at that institution. He subsequently pursued a fellowship in orthopaedic adult reconstruction at the Hospital for Special Surgery in New York.

Dr. Seldes specializes in adult reconstructive surgery.

STEVEN SHESKIER, M.D.

Foot and Ankle Surgery and Orthopaedic Trauma

95 University Pl., New York, NY 10003
212.604.1366

Dr. Sheskier is board certified by the American Board of Orthopaedic Surgery and a fellow of the American Academy of Orthopaedic Surgeons. He currently serves as a consultant to the New York Rangers. Dr. Sheskier has had articles published in many scientific journals, including the *American Journal of Sports Medicine, Arthritis Reporter,* and *Journal of Bone and Joint Surgery.* He has also made presentations to peer groups throughout the country.

After graduating from Baylor College of Medicine, Dr. Sheskier completed a residency in orthopaedic surgery at the University of Pittsburgh and a fellowship in foot and ankle surgery at the University of Texas at Dallas.

Dr.Sheskier specializes in foot and ankle surgery as well as orthopaedic trauma, and he has a special interest in dance medicine and neuropathic foot disorders.

CHARLES SPERO, M.D.

Pediatric Orthopaedic Surgery

36 7th Ave., New York, NY 10011
212.924.6644

Dr. Spero is board certified by the American Board of Orthopaedic Surgery and is a member of a number of professional societies, including the Pediatric Orthopaedic Society of North America, the American Academy of Orthopaedic Surgeons, and the American Academy for Cerebral Palsy and Developmental Medicine. He is the author of several textbooks and has had articles published in a variety of scientific publications, including the *Journal of Bone and Joint Surgery,* the *Journal of Orthopaedic Trauma,* and the *Journal of Pediatric Orthopaedics.*

After earning his medical degree from George Washington University, Dr. Spero completed a residency in orthopaedic surgery at Lenox Hill Hospital and a fellowship in pediatric orthopaedic surgery at the Hospital for Special Surgery.

Dr. Spero specializes in pediatric orthopaedic surgery, with a special interest in cerebral palsy.

HENRY M. TISCHLER, M.D.

Adult Reconstructive Joint Surgery

170 W. 12th St., Spellman 7, New York, NY 10011
212.604.6268

Dr. Tischler is board certified by the American Board of Orthopaedic Surgery and is a member of the Association of Hip and Knee Surgeons and the American Academy of Orthopaedic Surgeons. He has made presentations to peer groups throughout the country and chairs an annual nationally attended course on revision hip and knee arthroplasty.

After graduating from the State University of New York (SUNY) Health Science Center at Brooklyn, Dr. Tischler completed a residency in orthopaedic surgery and a fellowship in adult reconstructive surgery at the Florida Orthopaedic Institute in Tampa, Florida.

Dr. Tischler specializes in adult reconstructive joint surgery, with a special interest in revision joint replacement of the hip and knee.

STEVEN TOULIOPOULOS, M.D.

Orthopaedic Surgery and Sports Medicine

36 7th Ave., Ste. 502, New York, NY 10011
212.924.6644

Dr. Touliopoulos is board certified by the American Board of Orthopaedic Surgery and is a member of several professional associations, including the American Academy of Orthopaedic Surgeons and the Brooklyn Orthopaedic Society. He has had articles accepted for publication in *Sports Medicine* and the *Journal of Hand Surgery.*

Dr. Touliopoulos earned his medical degree from the State University of New York (SUNY) Health Science Center at Brooklyn. After completing a residency in orthopaedic surgery at that institution, he pursued a fellowship in orthopaedic sports medicine at Lenox Hill Hospital, serving as sports fellow for the New York Jets, New York Rangers, Hofstra University, and Hunter College.

Dr. Touliopoulos specializes in joint-replacement surgery, orthopaedic trauma, and sports medicine.

JAMES J. TUCCI, M.D

Pediatric Orthopaedic Surgery

170 W. 12th St., Spellman 7, New York, NY 10011
212.604.6267

Dr. Tucci is board certified by the American Board of Orthopaedic Surgery, a fellow of the American Academy of Orthopaedic Surgeons, and a member of the Pediatric Orthopaedic Society of North America. He has published articles in the *Journal of Sports Medicine, Orthopaedics,* and the *Journal of Pediatric Orthopaedics* and has presented to peer groups throughout the country.

Dr. Tucci earned his medical degree from Downstate Medical Center of the State University of New York (SUNY) and completed residency training programs in both surgery and orthopaedic surgery at St. Vincent's Hospital Manhattan. He subsequently completed a fellowship in pediatric orthopaedic surgery at the Alfred I. Dupont Institute in Wilmington, Delaware. He has been an attending pediatric orthopaedic surgeon affiliated with many area medical centers, including SUNY Downstate, Brookdale, Kings County, Kingsbrook, and Beth Israel Medical Center.

Dr. Tucci specializes in pediatric orthopaedic surgery, with a special focus on scoliosis, clubfeet, children's fracture care, and correction of deformities.

JEAN S. YUN, M.D.

Shoulder and Elbow Surgery

254 Canal St., Ste. 5001, New York, NY 10013
212.925.2121

After earning her medical degree from University of Medicine and Dentistry of New Jersey, New Jersey Medical School, Dr. Yun completed a residency in orthopaedic surgery at University Hospital in Newark, New Jersey. She subsequently completed a fellowship in shoulder and elbow surgery at Thomas Jefferson University Hospital's Rothman Institute in Philadelphia, Pennsylvania.

Dr. Yun specializes in the surgical management of problems of the shoulder and elbow.

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ST. VINCENT'S HOSPITAL MANHATTAN

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Steven Sheskier, M.D.

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Salil Gupta, M.D.
Alamgir Isani, M.D.
Steve Lee, M.D.
Robert Pae, M.D.

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Eli Bryk, M.D.
Dennis Fabian, D.O.
Frederic Helbig, M.D.
Richard Selden, M.D.
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Henry Tischler, M.D.

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Samuel Kenan, M.D.

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Andrew Merola, M.D.
Robert Meyerson, M.D.
Andrew Sands, M.D.
Steven Sheskier, M.D.
Steven Touliopoulos, M.D.

Pediatric Orthopaedic Specialists

Charles Spero, M.D.
James Tucci, M.D.

Scoliosis Specialists

Andrew Merola, M.D.
James Tucci, M.D.

Shoulder and Elbow Specialists

Andrew Feldman, M.D.
Robert Meyerson, M.D.
Robert Pae, M.D.
Jean Yun, M.D.

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Kaushik Das, M.D.
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Yong Kim, M.D.
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Afshin Razi, M.D.

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Andrew Sands, M.D.
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Steven Touliopoulos, M.D.

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About Our Doctor

Dr. Andrew Merola

Dr. Andrew Merola is Board Certified by the American Board of Orthopaedic Surgery as well as the American Board of Spinal Surgery. Dr. Merola is uniquely qualified to treat all types of spinal disorders. His training and expertise encompass all of the latest surgical techniques including minimally invasive surgery and same day surgery. Dr. Merola is a fellow of the Scoliosis Research Society and also is President of the Brooklyn Orthopedic Society.

Medical Degree:

Howard University College of Medicine
Washington, DC

Residency Orthopaedic Surgery:

SUNY Health Science Center at Brooklyn
Kings County Medical Center
Brooklyn, New York

Spinal Surgery Fellowship:

University of Colorado Health Science Center
Denver, Colorado

Academic Rank:

Associate Professor of Orthopaedic Surgery
Department of Orthopaedic Surgery
S.U.N.Y. Downstate Medical Center
Brooklyn, New York

Clinical Assistant Professor of Orthopaedic Surgery
New York Medical College
Valhalla, New York

Affiliations:

- Diplomat, American Board of Orthopaedic Surgery
- Scoliosis Research Society - Member
- American Academy of Orthopaedic Surgeons
- Brooklyn Orthopaedic Society
- Diplomat, National Board of Medical Examiners

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About the Practice

Andrew Merola, MD is committed to excellence by pledging to provide the highest quality of orthopaedic care possible. Along with the treatment of immediate or chronic problems, Dr. Merola strives to integrate the doctrine of prevention in all his treatment plans as a way to alleviate possible future difficulties.

Dr. Merola's Specialties Include:

- Scoliosis
- Disc surgery
- Spinal Stenosis
- Tumor
- Fracture
- Neck & Back Pain
- Reconstructive Surgery

Dr. Merola is pleased to have you as a patient. If you have any questions, always feel free to contact his office and his trained staff will assist you in any way possible.

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ANDREW MEROLA, MD

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Patient Education

Your Spine Deserves Special Care

Your spine is at the center of a delicately balanced system that controls all of your body's movements. Bones, muscles, ligaments, tendons, and nerves all work together to balance the weight of your body. Even minor damage to one component of your back's structure can upset this fragile balance and make movement painful.

It is not surprising, then, that back pain is second only to headache as the most common cause of pain, or that 8 out of 10 people will have a problem with back pain at some time. The causes of back pain can be simple or complex; the vast majority can be treated nonsurgically, but in some serious cases, surgery is necessary.

The Spine:

- Kyphosis
- Scoliosis
- Herniated Disk
- Low Back Pain
- Spinal Stenosis
- Sciatica
- How to Prevent Back Pain
- Osteoporosis
- Back Pain Exercise
- IDET
- Cervical Fracture
- Cervical Radiculopathy
- Neck Pain
- Herniated Disk
- Spondylolysis and Spondylolisthesis

Orthopaedic Spinal Treatment Pathway

To ensure the most accurate diagnosis, Dr. Merola has access to a complete range of advanced diagnostic equipment such as high-speed magnetic resonance imaging (MRI), computerized tomography (CT scan), bone densitometers, myelography, and discography. More than 90% of back and neck pain responds to conservative interventions, so we also keep current with and provide the latest physical and occupational therapy programs and equipment, including:

- Individualized spine rehabilitation program
- Back school instruction
- Exercise physiology
- Job site evaluation
- Aquatic therapy
- Posture correction

Nonsurgical interventions such as epidural steroids, trigger point injections, nerve root blocks, and facet joint injections offer additional therapeutic alternatives when more conservative measures prove inadequate.

Surgical procedures are chosen only after non-surgical options have been exhausted, and are individualized to your particular condition and situation. Dr. Merola is board certified and qualified to perform a full spectrum of spinal procedures. Dr. Merola has performed thousands of spinal surgeries, including the latest minimally invasive procedures. In this type of surgery, microscopic camera lenses and specialized instruments are inserted through very small incisions. While viewing the transmitted image on a video monitor, Dr. Merola is able to repair the damaged area of the spine. Most patients with disc surgery are able to go home the same day and can resume regular activity within 1 to 2 weeks.

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