assess whether or not the patient has achieved a solid fusion, that is one reason, the second reason if the patient has any continued complaints, sometimes we will get an X-ray to make sure that one of those adverse issues hasn't occurred or popped up in the post-operative period, those are the reasons why I might be obtaining an X-ray.

Q. Can we agree those X-rays showed satisfactory alignment of the implants?

A. Yes, sir.

Q. Doctor, as you sit here today do you recall taking further X-rays down the line?

A. You know, the answer is yes, I recall, not independently, however, I have -- certain of my offices don't have an X-ray machine, so I have to send them out, so in reviewing the record I see we have multiple reports of X-rays post-operatively and that would be consistent with my custom and practice in that office to send the

patient out for that X-ray.

Q. Let's go to your next visit which is May 20, 2010.

A. Yes.

Q. Just so we're clear, that was approximately eight days, a little more than a week, after surgery, right?

A. Yes, sir.

Q. What do you mean you indicated first thing patient is doing well post-operatively; however, continues to have pain and symptoms with preoperative conditions, what do you mean by that she was doing well post-operatively?

A. In the context of having surgery one week ago it's more illustrated a little lower in the next paragraph but what we're looking for are post-operative complications, blood clots in the leg, fevers, weakness that is different than was before surgery and so within the context of the occurrence which is a post-op visit, she was doing reasonably well, there wasn't anything unusual about this particular

patient, this post-operative patient, a week after surgery.

Q. She had some improvement, right, with lumbar pain, isn't that noted there?

A. Yes.

Q. Do you know what your reference to that she was still having residual pain and symptoms consistent with the preoperative conditions?

A. Frequently a week after surgery patients will have incisional pain, that is the most common pain that they have. A lot of times once you put the screws in, their instability pain goes, like that pain when they move, they feel that sharp because the screws are holding everything in place, so that is what that is referring to, the fact that that is my way of saying she is feeling some relief from the instability; however, the nerve pains take many months to go away, it can take a year to go away, I am acknowledging the fact this patient, that is the rule, not the exception, to

continue to have the nerve symptoms post-operatively and that is what I am alluding to, again, this note is reminding, me, is telling me, this patient is, basically, saying I still have some leg symptoms like I had before surgery, it's exactly what you would expect, it's the rule, not the exception, so this is a standard post-op note at least to this point so far.

Q. Then you conducted an exam, correct?

A. Yes.

Q. You already told me post-operatively the wound was fine, no complications or infection or anything like that?

A. That is what is documented, yes.

Q. The spine exam was that similar to the exam you talked about earlier during the first visit, the way you conducted that?

A. Actually, it's a little less,

we don't really take the patient through a full range of motion, that is why it's abbreviated here. We don't list range of motions because in reality a week after surgery I am restricting my patient from bending and lifting, you know, I don't take them through a full range of motion, I didn't in this particular case, obviously, so what you would expect for her incision if I just took the stitch out and it was still raw and if I touched her back it would still hurt to a certain extent and she's still going to have spasms, so all of these things, again, although they sound abnormal, it's exactly what she should have a week after or ten days after surgery.

Q. Were you satisfied with the results of the surgery at that point?

A. Yes.

Q. Neurological exam, she had normal coordination?

A. Yes.

Q. That was consistent with her initial neurological exam?

Lattuga

A. Yes.

Q. Motor strength, sensation, reflexes consistent with pre-op, is it fair to say that the results of those exams were consistent with when you first saw her?

A. Yes.

Q. So, along those lines motor strength was abnormal, EHL, 4/5, sensation was still decreased in the L5 nerve root and the examination of the reflexes were asymmetrical, correct?

A. Yes.

Q. There was some improvement, correct?

A. Yes.

Q. Was this the first time you had prescribed medication for her, Doctor?

A. Well, we discharged the patient on pain killers, on narcotics.

Q. Was this Percocet prescription a continuation of that?

A. Yes.

Q. Then did you recommend that she begin physical therapy right after that?

Lattuga

A. Yes, yes.

Q. Do you have a physical therapy facility in your office?

A. No.

Q. Where did you send her for physical therapy or recommend that she --

A. I don't really have the facility. I just hand them a prescription and tell them to go back from whence they came.

Q. What kind of physical therapy are you looking at at that point?

A. It's really limited. We limit the range of motion. I don't want them bending or lifting. I want them to do modalities, remember I mentioned it earlier on in some of the treatments she had prior, massage, ice packs, heat packs, they had a lot of local -- when you have your back cut open, you have a lot of local pain, we like to do strengthening of the lower extremities. Patients post-op get, what is the word I am looking for, they really, they lose their cardiovascular fitness, so

we like them to get walking and moving again because that is an important part of healing and nutrition to the wound, et cetera, et cetera, we get them on the treadmill and moving, so that is the kind of things we prescribe post-operatively.

Q. Do you know if she began physical therapy at that point?

A. I know that she went. I couldn't tell you when she started, I couldn't tell you, you know, too much detail on that.

Q. Then your next visit was June 25, 2010, correct?

A. Yes.

Q. What was her condition at that point?

A. Essentially the same on this date as the previous visit consistent with, again, in the context of someone that recently, that had surgery, you know, about six weeks ago, that all of the findings here and all of the description, this is, essentially, my, yeah, everything is fine,

she is progressing as one would expect, she still has the symptoms, the nerve symptoms again as I describe here.

Q. Do you know if her pain had gotten better, decreased or remained the same since the last time you saw her after the surgery?

A. I would say it was about the same, you know, generally, there is some, you know, I did prescribe Percocet again it says here, so she was continuing to have pain and, you know, we generally -- I do generally expect patients to say they continue to have significant symptoms for about three, it could be three to six months, it varies on the patient, so I am not picking anything off of this note, again, not having an independent recollection that there was anything unusual with respect to her pain, it's pretty much what one would expect.

Q. Any improvement since the last visit in May?

A. I wrote doing well with

improvement, so what we tend to see is a gradual diminution of the degree of pain and a gradual increase in the level of function. That would be improvement.

Q. So, that is what you reference there?

A. That is what I am referencing, yes.

Q. Then you saw her approximately a month later?

A. Yes.

Q. By the way, just going back to June 25th, you took further X-rays that day, correct?

A. Right.

Q. They were satisfactory as far as again alignment and position of the implants?

A. Yes, sir.

Q. July 23, 2010, your fourth visit with Ms. Tchelidze, the third since the surgery, what was her condition at that time?

A. Essentially the same, she is a

post-op patient recovering from her spinal fusion, her symptoms are consistent with someone that had an operation and her physical exam continued to show evidence of neurological dysfunction in the lower extremities, it continued to show abnormalities with respect to her lumbar spine in terms of tenderness and spasm which, again, is still consistent with, you know, an operation which is a little over two months old.

Q. Let me just stop you there, the tenderness and spasm, do you attribute that to the procedure that she underwent?

A. I still at this point I would say, yes. At this point, yes, I would attribute it to recent surgery.

Q. Do you know if she was, in fact, attending physical therapy at this time, Doctor?

A. I believe she was, yes.

Q. You took X-rays on that day as well?

A. Say it again.

Q. You took X-rays on that day as well?

A. Yes.

Q. They were satisfactory?

A. Yes.

Q. Her neurological exam had the same results as your last visit in June?

A. Yes, sir.

Q. Now, where you say the right and left lower extremities are not within normal limits on inspection as described below, you're again referring to the various tests, motor strength, sensation, reflexes?

A. Yes.

Q. Now, it says here motor strength, sensation and reflexes improved since pre-op or with pre-op, so she had an improvement of her neurological exam?

A. Where are you referring to?

Q. If you look down on the July 23, 2010 report?

A. So, that is my way of saying that there is some improvement in those

Lattuga

findings, meaning some improvement.

Q. More so than it was a month before?

A. In distinction to consistent with pre-op, this characterizes that there is some improvement.

MR. CERUSI: Do you mind if we just take a quick break?

(Whereupon, a recess was taken.)

Q. So, we're up to September 3, 2010 which was your fifth visit with Ms. Tchelidze and the fourth one since you had performed the surgery. Had there been any improvement during this visit from the last visit of July 2010?

A. I can't answer your question the way you're asking it because it suggests you want me to compare 7 to 9 because it really isn't that clear in my notes. What is stated in my notes is that there is improvement compared to the pre-op exam, not necessarily to the prior exam, and so that is the most accurate way to

answer the question.

Q. Typically do you reflect in your report for someone who you have performed surgery on do you note whether or not there has been improvement each time that you see them post-operatively?

A. I don't do it that way usually, that is why I said that, I usually just -- I am just -- I am evaluating them with respect to overall how they are doing compared to pre-op, whether or not their spine is fusing on X-ray and whether or not they are noticing a difference from before surgery. I generally don't make any incremental decisions unless I state it and I didn't specifically.

Q. So, there is nothing that is contained in the September 3, 2010 record which indicates any improvement since the July exam; is that fair to say?

A. Yes.

Q. Now, the visits that we have spoken about both the one before the surgery was performed and the four

afterwards, the only one which reflects thus far any further examination with regard to the cervical spine is the first consultation, why is that?

A. I think it's just for obvious reasons that we just focus on the big event here was the surgery, so when they come in, I am just talking about the back, they could have co-existing other injury, but I am not addressing that in the note because I am really focused on how they are doing with the back.

Q. If she did have continued complaints of pain with regard to her neck, would you note that as part of her chief complaints?

A. Not necessarily.

Q. So, again, using your own testimony, it's fair to say at this point you were focusing on the lower back, correct.

A. Yes, sir.

Q. Next visit, October 15, 2010, anything noted, Doctor, with regard to a

change in Ms. Tchelidze's condition since the appointment one month before?

A. It's, essentially, the same thing, no change, no change.

Q. So, there is nothing that you noted in any way, correct?

A. No.

Q. Now, we have X-rays that were taken on that date, really no change in the X-rays?

A. That's correct.

Q. Just going back one minute to September 3rd, the same thing, X-rays were taken that day, really no change since the original?

A. Yes, sir.

Q. We have visits each 30 days following the surgery and then after July it goes to a period of a little more than that, is there any frequency that you typically see patients that you perform surgery on after surgery?

A. It is quite variable. I like to see them a week after surgery, you know,

Lattuga

a week in medicine terms is anywhere from 7 to 14 days.

Q. What about after that?

A. A month to six weeks thereafter and then at some point when I think that they are out of the woods, meaning, I don't have to see them every six weeks, I will bump it up to three months but it can be very variable. Some patients need more hand holding, I have them come more often. There is so many variables, there is no standard of care, it is how you feel the patient needs you in their life.

Q. At this point you're seeing her approximately every 30 days, right?

A. Yes.

Q. Do you know if around October 15, 2010 that Ms. Tchelidze was continuing to go to physical therapy, is there anything noted in your records to indicate that?

A. I mean, I am saying it in my note. I have a PT slip from 10/15/10.

Q. Was that a renewal of a

Lattuga

prescription?

A. Yes, so, I mean.

Q. Is it generic or written out to any particular facility?

A. We don't write to any facility, we write prescriptions and then they bring it to whatever facility they want to go to.

Q. What was the prescription written on 10/15, specifically what does it say?

A. Physical therapy, it has the patient's name -- the date, the patient's name, the fact that we were recommending physical therapy, evaluating treater is just, basically, let them make an assessment to what the patient would progress as they see fit, what is the diagnosis, the patient had a lumbar fusion, what to avoid, range of motion, no bending, include core strengthening, you know, just to give some general recommendations.

Q. Anything as far as the frequency or duration of the physical therapy?

Lattuga

A. Yes. It says three times a week for four to eight weeks. That is how it's written.

Q. Now, going back to the October 15, 2010 record, you indicate in the lower portion of that report impression/plan, patient is doing well post-operatively with improvement. Now, do you mean there she has improved just since the operation or that she has improved since September 2010, the visit that you had before that?

A. Yes, it's always referred to -- the baseline would be the presurgical state and that is what it would be referring to.

Q. Next visit, November 12, 2010, now, in that, on that particular day or that particular visit, you do perform an exam of the cervical spine, why is that?

A. You know, at this point it's six months from surgery and six months -- yeah, it's about six months from surgery and at six months it probably occurred to me that at this point, you know, I need to

Lattuga

be a little more inclusive, and I am being candid, a little more inclusive in my note taking to include all of the relevant history, we have focused on her back from her surgery and now we're in a zone of where it's not so acute the surgery, so I can begin to open up the discussion of what her other issues are and so, again, in reference to my prior answer, not necessarily, I don't always include it, then there are times when I feel it becomes something I should discuss. It could have come up in conversation also, she could have said it to me, I mean, I don't know, I don't recall what the impetus was, so I included it in this part of the narrative.

Q. Was she complaining of pain in her neck at that time? Do you have any note on that?

A. I don't have a note of that.

Q. Looking at the neurological exam she had normal coordination and normal gait, correct?

A. Yes.

Lattuga

Q. She was ambulating with a cane/walker?

A. Again, this is an incomplete note, this is saying either -- and I don't know what the genesis, is it because there is a blank record in the Dictaphone, did their computer freeze when the transcriptionist was transcribing, I don't know what it is, but this is the best they can do, my transcription department, in providing me with this record.

Q. So, you don't have an updated or corrected record with regard to the November 12, 2010 --

MR. STODUTO: Proofread version.

Q. -- record, correct?

A. That's correct.

Q. Do we know if X-rays were taken that day?

A. No. P means pending, they were not taken.

Q. Does the record reflect any improvement since the last exam in October,

Lattuga

on October 15th?

A. Again, no reference is made to the last exam. The reference would be -- the reference point would be a baseline -- her baseline would be presurgery.

Q. She is still taking the Percocet and as far as you knew still attending physical therapy, correct?

A. That's correct.

Q. That was in November of 2010 and as you said approximately six months from when she had the surgery?

A. Yes, sir.

Q. Now, the next visit that we have is almost 60 days later in January, correct?

A. Yes, sir.

Q. Is there anything noted with regard to that particular record which indicates any improvement of Ms. Tchelidze's condition?

A. Again, not referable to the prior visit.

Q. Well, you performed a

Lattuga

neurological examination on that day, correct?

A. That's correct.

Q. It indicates patient had normal coordination and normal gait, correct?

A. That's correct.

Q. She was still ambulating with a cane, right?

A. Yes.

Q. Motor strength was normal at this exam?

A. Yes.

Q. Correct?

A. Yes.

Q. Which was an improvement from the last exams, right?

A. I thought you were referring to a subjective complaint, I am sorry, yes, so that this neurological exam was different than the prior one.

Q. In fact, the sensation is also noted as normal, correct?

A. Yes, sir.

Q. So, there was an improvement in

Lattuga

that regard since the last time you had seen her?

A. Yes, sir.

Q. Now, again, going down to the reflex examination, it says examination of the reflexes are symmetrical/asymmetrical, is that an incomplete test result?

A. Yes, sir.

Q. Again, do you attribute that to dictation?

A. Dictation foible.

Q. Do you have an opinion as you sit here today, Dr. Lattuga, as to what the results of the reflexes would have been based upon the results of the sensation, motor strength coordination and gait test?

A. No, I don't have an independent recollection, so I don't want to guess as to what it was.

Q. Can we agree though that her condition had improved since the surgery with regard to motor strength and sensation and since her last visit which was in November of 2010?

Lattuga

A. It was a change from the prior in the direction of improvement, yes.

Q. Being normal in motor strength?

A. Yes.

Q. And being normal in sensation?

A. Yes, sir.

Q. Next visit, two months later, March 4, 2011, now, you indicated there patient is follow-up chronic low back pain into lower extremities, what do you mean by chronic?

A. Well, I mean, I think it's just -- when I dictate, I just use different words because she's been in my practice now for a long time, I would say a year, so I just think it's the way I, you know, the fact she had this problem for a year and she continues to have the symptoms like she was, you know, similar complaints as she has had before, although there has been some improvement as we document, she continues to have those symptoms and so, you know, anything over six months you can really start to characterize as chronic.

Lattuga

Q. So, is it fair to say that the chronic you're referring to there is, basically, going back to since the first time you had seen her?

A. Yes.

Q. There is no indication on March 4, 2010 with regard to complaints of neck pain, correct?

A. Right, I made no notation of neck pain.

Q. Now, you did a neurological exam that day. She had normal coordination, correct?

A. Yes.

Q. But abnormal gait, right?

A. Yes.

Q. That is a change since the last exam, correct?

A. Yes.

Q. Do you know what that is based upon?

A. That is just my observation.

Q. What do you recall observing?

A. I don't independently recall, I

Lattuga

am just, I am sorry, I am reading from the narrative on that date that I noticed the patient had an abnormal gait.

Q. You note motor strength was normal which is consistent with the January 2011 exam, correct?

A. Yes.

Q. Now this time you indicate sensation is abnormal L5?

A. Yes.

Q. What is that based upon?

A. Again, the physical exam as I described it to you earlier, how I performed the sensory examination using a neurological hammer. On this day she said that the feeling was different.

Q. Well, the January 2011 exam which was approximately eight months after you had performed the surgery you noted that sensation was normal, do you typically see a fluctuation with regard to sensation in a period like that?

A. Yes.

Q. Why is that?

Lattuga

A. We don't really know why it happens but it definitely happens that from time to time patients that have neurological injuries have a fluctuation in both, for example, strength, motor strength, sensory changes and the reflex, some people think it has to do with intermittent degrees of inflammation of the nerve roots, recovery, sometimes recovery of the nerve roots is another theory, but it is not uncommon that post-op patients can have sort of different exams on different days, it tends to settle out after a year or two but you will see this not uncommonly.

Q. The sensation test is also a test that you rely on the patient to cooperate with, correct?

A. Yes, sir.

Q. Now, you had switched her medication at that point from Percocet to Ultram?

A. Yes.

Q. Why is that?

Lattuga

A. I mean, two reasons, number one is I don't like patients on narcotics for that long and I will do everything that I can to get them off.

Q. What is Ultram?

A. It's a non-narcotic pain killer, it's still a pain killer but much less addictive, number one, number two, and I don't have an independent recollection, she could have had a little less pain, I mean, I am just guessing, so let me not guess, but it's either that I tried to get her off the Percocet or she didn't need to -- or somehow it came out that she didn't need as much pain killer and I was bumping -- knocking her down to a less powerful pain killer. Those are the really only two options.

Q. Now, with the exception of we have an incomplete response with regard to the reflex examination, with the exception of the abnormal sensation, the motor strength was consistent with the last exam, correct?

Lattuga

A. Yes.

Q. Now, the next visit you had was approximately 60 days later in May, approximately May 6, 2011, there is also an indication that there is a follow-up of chronic low back pain into lower extremities, the neurological exam that day that you performed that day there was normal coordination, correct?

A. On 5/6?

Q. Yes.

A. Yes.

Q. Abnormal gait?

A. Yes, sir.

Q. Motor strength was again normal?

A. Yes, sir.

Q. The sensation was abnormal L5 in right lower extremity?

A. Yes.

Q. Was that tested the same way that you did it previously?

A. Yes.

Q. Why is that entry more specific

than the previous with regard to what the abnormality was?

A. It's not more specific, it's just it happens to be -- it happened only to be on the right side on that date at that time.

Q. Well, looking quickly, referencing back to March 4, 2011, where you say sensation is abnormal, L5, is that in a specific extremity or are you referring to it bilaterally?

A. Unless I specify it's bilateral.

Q. Is that something that you typically see in patients who have these type of complaints, in other words, an abnormal sensation finding in one of the extremities as opposed to bilaterally?

A. It's not uncommon. It can easily happen. It's in the same distribution, so, for example, so it wouldn't have raised any specific alarms for me. The neurological, the motor strength, being normal on that day, for

example, you know, it's consistent with, you know, again, with someone that had all of these prior findings, had surgery, it's all consistent with that so.

Q. Then you note examination of the reflexes are diminished in bilateral lower extremities?

A. Yes.

Q. As you referred to that is the hammer test, correct?

A. Correct.

Q. No indication of any complaints of neck pain, correct?

A. No, there is not.

Q. Now, June 17th of 2011 which was your eleventh visit, the tenth since you had performed the surgery, you also performed a spinal exam on her cervical spine, correct?

A. Yes.

Q. If you compare it to the previous test that you performed on 5/6/11, there is an improvement noted, correct, and let's look at it specifically? There is

15 degrees of flexion?

A. Right.

Q. Now it's 40 degrees?

A. Yes.

Q. Then June 17, 2011, ten degrees of extension which was the same as in May?

A. Yes.

Q. And then there is an improvement left and right turning from 20 degrees to 40 degrees, do you see that?

A. Yes.

Q. Again, there is no indication of any neck pain on that day, right?

A. It's not written in the report, no.

Q. Neurological exam was consistent with the previous one, normal coordination, abnormal gait, correct?

A. Yes, sir.

Q. Motor strength was normal?

A. Yes.

Q. Sensation, again, was abnormal L5 in the right lower extremity, correct?

A. Right.

Lattuga

Q. Then the examination of the reflexes was diminished bilaterally in both lower extremities which is consistent with the previous exam, right?

A. Yes.

Q. I don't see any reference to medication on the second page of the June 17, 2011, would that lead us to believe that she was no longer on medication?

A. I mean, not necessarily but, you know, I mean, it could mean that, it probably means that, but sometimes we don't always put the medicines that we give so.

Q. She was not, as far as you knew, she was no longer on the narcotic Percocet though?

A. As far as I know, yes.

Q. As far as you know she was attending physical therapy, correct?

A. Yes.

MR. CERUSI: Off the record for a second.

(Whereupon, a discussion was

Lattuga

held off the record.)

Q. Doctor, looking at the September 16, 2011 report, the complaints were the same, chronic low back pain into lower extremities, correct?

A. Yes.

Q. As far as the neurological exam, the same as the previous exam which was normal coordination and abnormal gait, correct?

A. Yes, sir.

Q. She was still using the cane?

A. Yes.

Q. Motor strength was normal?

A. Yes.

Q. Sensation was abnormal at L5 in the right lower extremity?

A. Yes.

Q. The same thing with the reflexes, they were diminished bilaterally in the lower extremities?

A. Yes.

Q. Next, neck measurements if you want to compare them they seem to have

Lattuga

remained the same since the last exam?

A. Yes.

Q. There is no indication of neck pain which was articulated during that visit, correct?

A. No, it's not written in the report.

Q. The appointments that are scheduled here do you usually have a patient schedule them when they finish the prior appointment?

A. Yes.

Q. Is that typically how that works?

A. Yes.

Q. Again, under the September 16, 2011 you prescribed Ultraset for her?

A. Yes.

Q. What is that?

A. That is similar to Ultram, it's, essentially, the same medicine.

Q. Non-narcotic?

A. Non-narcotic pain killer, yes.

Q. No X-rays taken at that exam,

Lattuga

correct?

A. No.

Q. Just going back there was an X-ray taken on June 17, 2011 which, again, revealed satisfactory alignment of the implants, correct?

A. Yes.

Q. Then the last visit that you have is December 16, 2011, do you recall that being the last time that you saw her before today?

A. Yeah. I don't have any recollection of seeing her other than what is documented.

Q. Do you know if there is a future scheduled appointment to see Ms. Tchelidze?

A. I don't know if there is one scheduled. I wouldn't doubt that at some point she is going to come back. You see, I told her to get an X-ray and come back (Indicating).

Q. Just looking at that last visit which was the thirteenth visit that she had

with you, similar entry to the previous one of September which is chronic low back pain to the lower extremities, correct?

A. Yes.

Q. Same results as far as coordination normal and abnormal gait?

A. Yes.

Q. Motor strength was normal?

A. Yes.

Q. Then the same abnormalities noted with regard to sensation and reflexes, correct?

A. Yes, sir.

Q. Now, her status at the last time, at the last visit, that you had seen her on December 16, 2011, that was approximately a year and seven months since you performed the surgery on her, typically when do you see the results maximized as far as when a surgery is performed?

A. In general it's about a year, you know, I mean, if they are healed, that is considered maximal medical improvement, if they have not completely healed, then

you -- it's sort of an open -- it's an open question still, they are still in the active phase of healing. What is notably absent on my X-ray reports is consistent with fusion, that is the word I am looking for, that is how I make an assessment as to that the patient is fused and it's definitely -- it's as far as we can go with surgery, so that is why I am obtaining another X-ray on that follow-up visit but in general, you know, it's consistent with Worker's Compensation guidelines about a year is maximal medical improvement if they healed. If they didn't heal, then that problem with continued ongoing treatment until you can get them to heal or you just say there is no -- they have never seen any improvement.

Q. Do you have an opinion as to what her current prognosis is today or since you saw her last on December 16th?

A. I am concerned, it's guarded is how I would characterize it, I don't have a documentation of a solid fusion which is

unusual but not unheard of, it's a risk of surgery, she still has some symptoms, I am waiting for that X-ray to come back and I am trying to get an idea of whether or not this is solidly fused or not and so it's not unusual some patients, you know, some patients get better in six months or a year and they are gone, other patients for whatever circumstances continue to need to be treated, so this is the nature of her condition.

Q. Do you know how much Ms. Tchelidze weighs?

A. I can't give you pound value.

Q. Would you characterize her as somewhat overweight?

A. I think -- I would say she is a little stocky, that is how I would characterize her.

Q. Do you believe that that condition that she has, has either hindered or caused her prognosis to be guarded?

A. Not necessarily.

Q. Would you like to see her lose

weight to help her back condition?

A. The answer is there is no firm science on this, you know. In this particular context I don't believe it's specifically her weight that is interfering with her recovery, although in general, in general, it's always to be more fit than not fit if you're going to make a characterization about people's health and well-being.

Q. Have you seen any MRI's taken of her lumbar spine that were taken post-surgery?

A. No, I don't see any record of that, no.

Q. Is that something that you typically do?

A. Not ordinarily, you know, if I -- it's not -- it's not a uniform standard post-operatively.

Q. Have you ever seen any X-rays or MRI's that were taken prior to July 11, 2009 to indicate the condition of her back?

A. No.

Lattuga

Q. Did Ms. Tchelidze ever tell you that she had pain in her right leg before the date of this accident? Do you have any notation in there?

A. No.

Q. Have you ever given her an opinion as to whether or not she will need future surgery up until this point?

A. It's not recommended in the record. I have not made that as a recommendation in my record that she needs more surgery.

Q. Well, have you made a recommendation to her verbally about it that you recall?

A. Any patient that once the patient hits a year from surgery and they had a fusion, if they haven't had what we call satisfactory fusion on X-ray which she had not, then we always have a conversation about exploratory surgery, in other words, are the X-rays capable of assessing a solid fusion or are they not, sometimes they are not, and sometimes the only way to see if

it's solidly fused is by reoperating, so it's my custom and practice and I always have this conversation if I don't have a solid fusion on X-ray.

I have had this conversation with her. We have not scheduled surgery, we have not talked further about the operation; however, this is, again, this is always an open question in the absence of solid fusion that there is a possibility for more surgery down the line. I have not rendered an opinion as to whether I think she needs it at this point. I think it's an open question. I am hoping on this follow-up X-ray she has a solid fusion. If she doesn't, then I will not make that recommendation.

Q. Where in your records is it noted that there has not been a solid fusion thus far?

A. The way I note in my chart on X-ray I write satisfactory if I think it appears to be satisfactory and when it hits -- when it achieves a solid fusion, I write

consistent with fusion, generally, that is what I write.

Q. So, is it fair to say that everything that you have noted with regard to the X-rays that you have taken in your file has been to comment on the alignment of the implants used in the fusion?

A. That is correct and, I mean, there is evidence of fusion but not a solid fusion which is what I am hoping to see on the next X-ray.

Q. Is this next X-ray scheduled?

A. Yeah. If you saw the last note I dictated, I was sending her for another X-ray.

Q. When you say sending, are you going to send her somewhere other than your facility?

A. We don't have X-ray in that Brooklyn office, so I am giving her a prescription for the X-ray.

Q. What about further medical treatment have you spoken to her, surgery aside, have you suggested any additional or

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further medical treatment for her?

A. Well, I mean, it's certainly predicated on her ability to heal; however, it appears that without therapy she seems to be less functional and so I would recommend she continue doing some type of modalities with therapy, she does need the intimate use of medicines to control her pain, so I would recommend continuing with that, those are the types of things.

Q. When you say that, are you talking about non-narcotic medications?

A. Yes, sir, yes, sir.

Q. Anything else?

A. No.

Q. Have you had an opportunity to review a medical report by a neurosurgeon in this case by the name of Douglas Cohen?

A. No.

Q. Do you know who Dr. Cohen is?

A. No.

Q. Doctor, you don't have any training or education in the field of vocational rehabilitation, right?

A. No.

Q. As you sit here today do you know how much, what the total, of Ms. Tchelidze's medical bills have been with regard to your treatment of her?

A. No, sir.

Q. Have you been compensated in any way by the law firm of Wingate, Russoti & Shapiro with regard to this matter?

A. I do not believe so, no.

Q. Well, when you say you don't believe so, what do you mean?

A. I did not ask for any -- I mean, I haven't spoken to this firm at all about receiving compensation for my deposition today. That has not transpired so.

MR. CERUSI: Off the record.

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

Q. Other than the things in your file, Doctor, that we have looked at and talked about, your records, the Beth Israel records and some other miscellaneous

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records that you were provided by Mr. Stoduto's office, is there anything else that you have looked at in this case such as any of the legal documents in this case before coming here today?

A. No.

Q. Have you ever looked at any deposition transcripts or anything like that?

A. No.

Q. Any other diagnostic studies that we haven't spoken about?

A. No.

Q. Have you ever put any ballpark number on any type of future medical treatment that she is going to need?

A. I have not been asked to do that.

Q. Would that be the same for giving me the costs or expenses related to any future surgery?

A. Nobody has asked me to do that.

Q. Do you know anything about Ms. Tchelidze's work history?

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A. She is a home attendant.

Q. I think that is on the questionnaire?

A. Yes, that is what I would know.

Q. Would you agree with me that is the extent you would know about what she did for a living?

A. And what home attendants would do. I would just opine as to my understanding of what a home attendant's duties would be.

Q. Would you agree with me there are different variations of home attendants' duties depending upon where they are an attendant?

A. Absolutely.

Q. There are different ones for nursing homes, right?

A. Yes.

Q. There are different ones for personal residences, correct?

A. Yes.

Q. As you sit here today you don't know about what she did or where she did

it, right?

A. Not specifically, no.

Q. Did you ever know a doctor by the name of Gregory Lieberman?

A. Yes.

Q. Did you know him from Orlin & Cohen?

A. Yes.

Q. We're going to talk about something which you mentioned earlier, have you ever been sued for malpractice?

A. Yes.

Q. On how many occasions approximately?

A. A dozen.

Q. That is over a period of how long?

A. Since I went into practice in 1998.

Q. Since you went into private practice?

A. Yes, sir.

Q. What about when you were employed at Orlin & Cohen?

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A. Oh, no, since 1998.

Q. When were you at Orlin & Cohen?

A. 1998 to 2004.

Q. Out of the 12 times which you mentioned how many arose during the six years that you were at Orlin & Cohen?

A. You know, I don't remember. I couldn't tell you, you know, each one, when it happened.

Q. How many have occurred since you have been in private practice?

A. Well, I have always been in private practice even from 1998.

Q. By yourself?

A. Four, five.

Q. So, the rest would have occurred when you were at Orlin & Cohen?

A. Yes, sir.

Q. Did any of those cases involve procedures where you performed surgery on someone's neck or back?

A. Yes.

Q. Did all of them?

A. I only do spinal surgery.

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Q. So, the answer would be yes?
A. Yes.
Q. Have you had any judgments against you by verdict?
A. Yes.
Q. How many?
A. One.
Q. When was that?
A. 2011.
Q. Where was that case?
A. Bronx.
Q. Do you include that in the twelve?
A. Yes.
Q. So, the other eleven --
A. That was actually not a spine case.
Q. What kind of case was it?
A. That was an ankle fracture from 1998.
Q. Was that when you were at Orlin & Cohen?
A. Yes.
Q. Did you have the verdict

against you personally in that case or was it against the practice?

A. It was me and, you know, me and my partner in the practice.

Q. Who was that?

A. Dr. Lieberman.

Q. So, that is one verdict. Have you had any others go to verdict that were rendered in your favor?

A. Yes.

Q. How many?

A. I think eight.

Q. So, eight defense verdicts?

A. Yes. It's very painful, yes, something like that, six to eight.

Q. Have you had any that were settled?

A. Yes.

Q. How many?

A. The remainder was settled.

Q. Now, have you had claims that were brought against you not in the form of a lawsuit but that were settled?

A. No.

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Q. Are you licensed to practice medicine anywhere else besides New York?

A. No, sir.

MR. CERUSI: Thanks, Doctor.

(Whereupon, at 1:55 p.m., the examination of this witness was concluded.)

_____
SEBASTIAN LATTUGA

Subscribed and sworn to before me this _____ day of _____ 2012.

_____
NOTARY PUBLIC

Lattuga

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Mr. Cerusi	3

E X H I B I T S

DEFENDANT'S EXHIBITS:

EXHIBIT	DESCRIPTION	PAGE
A	CV	14
B	Chart	24
C	X-rays	26
D	Second page of report	52
E	Second page of report	52

INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS	PAGE/LINE
Copy of 9/16/11 & 12/16/11 visits	3/7

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C E R T I F I C A T E

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

I, MARLEINE LAMEY, 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 20th day of January, 2012.

Marleine Lamey
MARLEINE LAMEY

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