Transcript of the Testimony of
Sebastian Lattuga, M.D. - Volume 2

Date: October 25, 2017

Case: Jose Bauta v. Greyhound Lines, Inc., et al.

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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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JOSE BAUTA,

Plaintiff,

-against-

GREYHOUND LINES, INC., et al.,

Defendants.

Case No.: 14-3725(FB)(RER)

----------X

90 Broad Street
New York, New York

October 25, 2017
10:20 a.m.

Continued Deposition of Expert Witness, SEBASTIAN LATTUGA, MD, taken pursuant to Notice, before Rita Persichetty, a Notary Public of the State of New York.

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(EXHIBITS TO BE PRODUCED)

(Lattuga Exhibit 1, Office records, premarked for identification.)

(Lattuga Exhibit 2, Multi-page document, premarked for identification.)

S E B A S T I A N L A T T U G A, MD, called as a witness, having been sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. BARMEN:

Q Dr. Lattuga, as you know, I'm Brad Barmen, one of the lawyers representing Greyhound Lines Inc. and Sabrina Anderson in the Bauta matter pending in federal court in Brooklyn. We're here to take your deposition again today.

How are you this morning, sir?

A Good morning, I'm well, thank you.

Q Good. I'm going to dispense with all the preliminaries because you've heard them from me before; is that okay?

A Yes, sir.

Q All right. Look, I'm not really here

to talk to you about your treatment of or your services as an expert in the case on behalf of Mr. Bauta. What I want to talk to you today about are the billing practices of your practice in general and as it relates to Mr. Bauta. Okay?

A Yes, sir.

Q If you don't understand my question at any point in time, just let me know and I'll rephrase, okay?

A Yes, sir.

Q If you do answer my question I'm going to assume you understood it and I'm going to rely on the answer; is that fair?

A Yes, sir.

Q All right. Everything is still the same since the last depo with you and what I mean by that, you're still the principal of New York Spine?

A Yes, sir.

Q Okay. Same professional address?

A Yes, sir.

Q Okay. That is as far as I need to go on that then.

When I took your deposition the last

time and that was on April 19th of 2017, I started asking you questions about the billing practices of New York Spine and you told me that Daneshia Cypress was your billing coordinator; do you recall that testimony?

A Yes.

Q Before I get into specifics, did you review your prior testimony before coming in here today?

A No.

Q Did you review anything prior to coming in here today?

A Just my office record and the records that I brought in today.

Q Okay. So what has been marked as Lattuga 1?

A Yes, sir.

Q As far as you know, is that the entire chart for your practices' treatment of Mr. Bauta from intake until today?

A Yes, sir.

Q When was the last time Mr. Bauta was in your office for any follow-up or treatment?

A 12/22/16.

MR. COHEN: I think there was --

MR. BARMEN: Yeah, I believe there was a subsequent treatment in April where he was --

A I just went over that, I was looking at that document there.

Q Seen by somebody in your office other than you. But other than that, the most recent record you have here today is December of '16; is that fair?

A Yeah, 12/26/16, yes.

Q Okay. As you sit here today do you know if Mr. Bauta has an appointment to be seen in your office again?

A No, sir, I don't know.

Q Have you talked to Daneshia Cypray (phonetic) -- am I pronouncing that right?

A Cypress.

Q Cypress, about her deposition?

A No.

Q Have you ever seen her transcript?

A No.

Q Okay.

MR. COHEN: By the way, I still haven't seen her transcript. I spoke to Mr. Saal, S A A L, yesterday because it's

not been served on me. He was going to send it to me yesterday but I haven't received it. But we can take care of that housekeeping later on.

MR. BARMEN: You can make a copy of it.

MR. COHEN: We'll deal with it later.

Q Is Ms. Cypress still working for you?

A Yes.

Q Is she the only billing coordinator for your office?

A Yes.

Q Okay. How many other people in your office work in billing?

A I mean she's the supervisor and then we've had two or three people under her in the past year. So I would say three people on average.

Q Okay. Who are those people currently working today under Miss Cypress for billing in your office?

A I don't know their names.

Q Do you have any role in hiring them?

A I mean, yes, but I don't have, you know, I don't recall their names, you know, I

don't -- yes, I'm involved in their hiring but no, I don't recall their names.

Q What are Miss Cypress' duties as your billing coordinator and when I say you, obviously I'm talking about the practice.

A She's the revenue -- she's considered revenue cycle manager. So her job is to oversee the collections for the practice.

Q Is your position that her primary function is to deal with collections rather than actual invoicing or billing?

A I mean a majority of her efforts are devoted to collections.

Q Okay. She testified that a hundred percent of her duties are collection-related and she only deals with insurance companies; is that your understanding?

A Yes.

Q Okay. Do you, in your practice, see collections and billing as synonymous?

A I mean for the most part, yes.

Q Well, Miss Cypress says she doesn't generate bills to send out, who does?

A By the individual billers that work in that department.

Q Okay. Those are the people you can't identify?

A I mean they're employees of mine, I mean, I don't recall their names unfortunately but as bills are generated, you know, by visits and by surgeries and they go out, you know, electronically. That information is inputted by individuals. Those individuals that do that work that I was referring to and then they get sent to the insurance companies and then the insurance companies -- then Daneshia is responsible for overseeing the collections.

Q Do you use a payroll company?

A Yes.

Q Who is the payroll company?

A ADP.

Q Do you keep personnel files in your office of your employees?

A I would say my -- I can't answer that yes or no but my understanding of the word personnel file would be that, yeah, we keep basic information on our personnel, obviously names and Social Security numbers, et cetera, et cetera. I don't know if that means personnel file but we obviously keep basic

employee information and we record that.
Q So somewhere there would be a file with these billing people that were hired, their applications, their names and their general --
A Obviously we have the names of those people on file.
Q Where are those files kept?
A They're kept in the office.
Q Which office?
A In my office at 2001 Lake Success.
Q Do you have an office manager?
A Well, I have a surgical -- I don't have an office manager per se but I have a -- no, I don't have an office manager overall.
Q Who is Melissa Moscol, M O S C O L?
A I don't know.
Q Does the name Rejeanne Salnave, S A L N A V E, mean anything to you?
A No.
Q What about Sabrina Parthucek, P A R T H U C E K?
A I don't recognize their names.
Q Monica Calle, C A L L E?
A I don't recognize the name.

Q Holly Hakima, H A K I M A?
A I don't recognize the name.
Q Anna Sime, S I M E?
A I don't recognize the name.
Q Who is Gloria Gordon?
A Surgical coordinator.
Q Okay. Tell me what her job duties are as surgical coordinator?
A She scheduled surgeries for the practice.
Q Is that all she does?
A I mean, from time to time she'll also do office visits, she'll coordinate the phone department and scheduling, you know, she oversees the phone department as well with scheduling patients.
Q Okay. Miss Cypress said that Gloria Gordon is the office manager, you don't consider her the office manager?
A No.
Q Does your practice still use The Complete Medical System TCMS for its billing?
A Yes.
Q Is that hosted on site or off site?
A I don't know the answer to the

question, sir.

Q Okay. Daneshia was very clear that she only handles collections for insurance companies. Who handles collections for noninsurance patients?

A I mean --I guess I do.

Q Do you ever communicate with Medicare or Medicaid personally?

A No, those are insurance companies.

Q Okay. Well, Miss Cypress says she never does communicate with Medicare or Medicaid?

A We don't do any Medicare or Medicaid in our practice, we don't bill Medicare Medicaid, that's not part of my practice.

Q Okay. How long has that been the case?

A Ten years.

Q We know as it relates to Mr. Bauta that he was on a lien or is on a lien.

A Yes, yes.

Q How do you determine when a patient is going to be treated on a lien?

A Well, if the patient has no insurance, then either the patient will pay

cash for his services or if it's related to a personal injury case from time to time it goes on what's called a lien.

Q Okay. You have what we marked as Lattuga 1 in front of you.

A Yes.

Q On the top of that packet is a notice of lien dated -- actually I don't see that it's dated. It has the date of the accident as 10/9/13.

Do you know why the date at the top is blank?

A No.

Q This is not signed by anybody on behalf of your practice, correct?

A No.

Q Now is the lien with Mr. Bauta personally or is it with the law firm of McElfish & Associates or a combination of both?

A It's with the patient.

Q Okay. Why is it important to have the attorney name on here?

A Just so that they're aware that there's -- the patient has a lien and so that to notify them that in the event that there's a

settlement that there's money outstanding owed to me.

Q Okay. Somebody signed it on behalf of Mr. McElfish, do you know whose signature that is?

A No, sir.

Q As you sit here today how much money is owed to your practice for services provided to Mr. Bauta?

A 15,000.

Q And where do you get that amount?

A I'm sorry, it's more than 15,000. It's 15,000 left from the original surgery --

Q Sorry, just for the record what are you looking at there?

A I'm looking at the billing record.

Q Which we marked as Exhibit 2?

A Yes. And then there's a subsequent surgery and subsequent procedures that were done. So --

Q Well, what can I look at in the stack that tells me what is currently owed?

A Right here, total due based on the original procedure and the follow-up procedure that was done.

Q So you're looking at page one of three?
A Yes.
Q In Exhibit 2, where it says total due from insurance $44,750750?
A Yes.
Q The last date of service though on that record is 6/16 of '15. I'm looking at page two of three that goes through January of -- 11 of '17 and it also indicates $44,750, right?
A Yes, that's --
Q So as you sit here today is it a fair statement that your practic is owed $44,750 for treatments for Mr. Bauta?
A Yes.
MR. COHEN: Off the record.
(Discussion held off the record.)
A So it was the original 15 and I'm sorry if I didn't make myself understood, I apologize. The original 15 and then the subsequent services added up to 44,000.
Q Okay. And looking at page three of three in this packet it goes through April 12th of 2017 and it's still indicating $44,750 being

owed, right?
A Yes.
Q And your practice hasn't seen him since then; is that fair?
A That's correct.
Q Okay. Now let's talk about that 15,000. Go back to page one here.
A Yes, sir.
Q In Exhibit 2.
A Yes, sir.
Q First, the surgery from May of 2015 was billed at $20,000; is that correct?
A No.
Q No? Tell me why that's not correct.
A So, you know, these are computer generated and they -- the fees, the billed amount that's posted comes off of each code, the diagnosis code or the procedure code.
Q Sure.
A You see there's a series of procedure codes --
Q Yes, sir.
A And it's associated with a specific dollar amount, right?
Q Uh-huh.

A To the right of that it says adjusted. So each of these -- you know, there may, for whatever reasons, for example in certain prenegotiated contractural relationships with an insurance company, for example they may have their own defined rates. So in order to adjust our standard rate to their prenegotiated rate, then those billed fees are adjusted down and that's what that represents, the adjustments down. So for example in the next line it says, 226141, post -- $20,000 but adjusted 20,000 with a net of zero. So no net fee is charged on that and that's because this surgical fee was prenegotiated and this particular circumstance at $30,000. So what was the real billed fee for the surgery was 30,000 and this just represents the mechanism by which we adjust on the computer the standard rates down to the, you know, prenegotiated rate, whether it be with insurance company or with the private -- with somebody that pays out of pocket where those fees are -- are different from our standard fees for whatever reason.

Q Look, I certainly understand how

stuff gets adjusted, prenegotiated bills with the insurance companies, et cetera. Here we're dealing with a patient who didn't have insurance?

A Yes.

Q Right. So you're telling me that prior to Mr. Bauta undergoing the procedure there was a deal struck between Mr. Bauta and your practice that the whole thing was going to cost 30 grand?

A Yes, sir.

Q Where is the documentation evidencing that?

A I mean, I think this represents the documentation for that, that we have a standard set of fees, they've been adjusted down to $15,000 so the only thing due after the surgery would have been the 15,000.

Q Okay. But you don't have anything in writing between you and Mr. Bauta or you and Mr.McElfish's office that says, we're going to do this at 30 grand?

A Yes, and that's this document here.

Q When you say this document, can we identify it again, we're still in the packet --

A Again, this is Lattuga 2 which I believe you had and it says, to whom it may concern, the fee for this procedure is $30,000 and that we would accept 15,000 prior and then $50,000 at the conclusion of the case.

Q Okay.

A So that's, you know, document that...

Q Okay. And at the bottom of this document it says, see appendix. Where is the appendix?

A There was no appendix, sir. Oh here, it just says here, appendix on the next page Jose Bauta $15,000.

Q That's the appendix?

A Yes.

Q Okay. And then behind that document there is a check for $15,000 from April 3, 2015 made out to Sebastian Lattuga, MD, right?

A Correct.

Q Is there any reason it's made out to you personally and not your practice?

A I mean, my practice is Sebastian Lattuga MD PC and frequently the checks come to Sebastian DMP, that's generally how they write checks.

Q Okay. Do you know what Prime Case Funding LLC is?

A I mean, other than what the title would imply, that it's a prime case funding. So it's the source of the funds for the 15,000.

Q So this was the upfront 15,000 contemplated in the Sebastian Lattuga MD document that evidences the agreement for $30,000; is that fair?

MR. COHEN: Just note my objection to the form and ask if you would rephrase.

You want to hear it back? I'll tell you why?

MR. BARMEN: No, I can rephrase.

MR. COHEN: Okay, thank you.

Q Is it your understanding, Dr. Lattuga, that this check for $15,000 contained in Exhibit 2 and I wish it had a Bates stamp on it but it doesn't, dated April 3, 2015, is the upfront payment articulated or anticipated in the document detailing the $30,000 agreement for the procedure which is this document in the packet?

MR. COHEN: Now the problem I have with that, I'll explain if it's okay?

MR. BARMEN: Please.

MR. COHEN: Is that I was going to say the upfront payment, the check according to the records wasn't received until after the surgery, even though it's dated before the surgery. So it says it was received on June 1, 2015. So when you say the upfront payment...

MR. BARMEN: Okay.

MR. COHEN: That was the only problem I was having.

MR. BARMEN: And I appreciate that because frankly I hadn't noticed that, you're right.

BY MR. BARMEN:

Q You have a check dated April 3, 2015 but according to your records it was received on June 1, 2015; is that your understanding?

A Yes.

Q Okay. As you sit here today do you know if the check received on June 1, 2015 was the first check or the second check?

A I believe it's the only check that I received, correct? Because we have 15,000 still pending based on the records that I

showed you in the prior question and I don't believe that I received any other checks.

Q Take a look at what's page one of three in that document.

A Yes, sir.

Q If you go down about halfway down, June 1, 2015, you'll see laminectomy?

A Yes.

Q $30,000?

A Yes.

Q No adjustment, balance $30,000?

A Yes.

Q Okay. So that 15,000 hadn't been posted yet at that point; is that fair?

A This is a subsequent -- I think this relates to the subsequent procedure.

Q Is there any agreement you have, any document that evidences the cost of the second procedure?

A No.

Q So was the second procedure billed at the same rate as the first just because it was the same patient?

A I mean, I can't answer that yes or no but the total -- but it's very clear what the

bill is, right, it's -- so it's as you follow each line for 11/17 there's an open balance of $500. For 1/22/15 there's an open balance of 350 and, you know, down the line and then, 6/1/15 there was a surgery, so 30,000 is billed on that surgery so these -- this is what makes up the 44,000. That's what's an open balance. And no money has been received. There's no record of any money posted other than for medical records. You'll see on page two of three, you'll see check payment for medical records. So that would reflect that there was a check paid or something but nothing is for the surgery.

Q Okay. And I appreciate that but I guess the confusion I'm having is that the 44750 at the bottom of this page, does it include the other 15,000 from your initial procedure or doesn't it?

MR. COHEN: Objection as asked and answered. I'll let him answer it again.

A Again, the answer is, no. I mean you could manually add it but if you just do the math 500, 350, 250, just go down the line, all of that should tally to 44,000. I mean, the

computer did the addition but that should tally the 44,000.

MR. COHEN: I don't think that was the question. I think the question was is it the 15,000 plus the 44,000 and change?

THE WITNESS: Yes.

MR. COHEN: Totaled together to a higher number?

THE WITNESS: That is my understanding of the way the bill reads, yes.

MR. COHEN: Is that what you were looking for, Counsel?

MR. BARMEN: Yes, thank you.

BY MR. BARMEN:

Q The second procedure that was done on June 1st was not the same as the first procedure, right?

A No.

Q It was to take care of a hematoma and remove some hardware?

A Yes, sir.

Q Why is that billed at the same rate as the first surgery?

A It's not billed at the same rate, is

it? I mean the numbers are different. Are you saying the $30,000?

Q Yes, sir.

A Oh. I mean, that's just the fee that we charge for that -- for the surgery. That's the fee that I decided was appropriate for that level of complication and duration of surgery.

Q Do you know how long the second surgery took, the June 1st procedure?

A Do you have the op record?

MR. COHEN: Don't guess. If you know tell him, if you don't, don't guess.

A I mean --

MR. BARMEN: What he said.

A There is no notation. I can estimate based on looking at the operative record. I don't have the actual OR document to tell you the duration of time in surgery.

Q Okay, that's fair. Still working from Exhibit 2 just because it's what I have and had marked, taking a look at what I believe to be the first treatment record for Mr. Bauta, is that your understanding of what this is because it indicates Dr. Nicholas.

A Let me make sure it matches up with

the first date.

Q I'll tell you what, let's try to do it this way, maybe it will help to clarify, looking at exhibit --

A I found it. I just wanted -- this document corresponds to the office visit record.

Q Okay.

A So I want to make sure the date matched.

Q Okay.

A So 11/17/2014 was the first day the patient was seen. And yes, by Dr. Mikelis, yes, sir.

Q Okay. Going back to Exhibit 2, you say, this document that corresponds with the office. Now, what is this document for purposes of the record?

A It's a cover sheet.

Q Cover sheet for what?

A For the visit.

Q On this cover sheet in Exhibit 2, referring doctor says, unknown/McGowan.

Why would that be notated in that fashion?

A I mean I didn't write it so I can't tell you. I can -- I mean, I didn't write it so I can't tell you but obviously, you know, it says what it says.

Q Do you know who McGowan is?

A I believe he's [sic] a physician but more than that I can't really tell you.

Q Geraldine McGowan, who used to be affiliated with 110 West 34th Street?

A Again, I believe she's a physician, yes, or treating doctor.

Q Is it your offices' practice if they don't know how a patient got to you that they just put somebody down that they're familiar with?

A No.

Q Because I just don't understand the unknown/McGowan.

A Well, my explanation would be that the patient is asked at one time and we weren't getting a clear answer and that subsequent to that somebody was able to determine that Dr. McGowan was a treating doctor.

Q Okay.

A So that's what happened, so rather

than cross it out they just put a slash and put the additional information.

Q That's reasonable. Down at the bottom of this intake or this cover sheet it says, follow-up Dr. Lattuga, right?

A Yes.

Q We know you never saw the patient, fair?

A Yes.

Q You testified very clearly that you've never met the man, let alone treated him?

A Yes, sir.

Q Is that still the case, you've never seen him, met him?

A Yes, sir.

Q Okay. How was it determined in an intake, this case by Dr. Mikelis, who he's going to see at the office?

A It really depends on the patients' availability, the doctors' availability. So, for example, he's a member of the team and, you know, wrote my name down but it could have been that because of the patient's availability I wasn't available to see the patient

expeditiously so the patient was given, you know, a sooner appointment with Dr. Cordiale, that's one option. It could also do with the location. There's a lot of -- I mean, I don't know specifically, I'm giving you different hypotheticals.

Q Sure.

A But we're all on the same team so Dr. Cordiale or I could see patients in the practice and we don't really have any protocols for division of patients as they come in.

Q But fair to say that the treatment and procedures that Dr. Cordiale did you were capable of doing and you do do?

A Yes.

Q So it's more just kind of random, fair?

A Yes.

Q Take a look at this next page here in Exhibit 2, another cover sheet.

Can you tell me what visit this corresponds to?

A Yes. So it says on the top dated 1/22/2015 is written on top.

Q Right.

A And then it appears that the next visit was indeed 1/22/2015 and I'm looking at my medical records to confirm that and patient was indeed seen by Dr. Cordiale on that date, 1/22/2015.

Q Why is Dr. Lattuga circled on the cover sheet? Just a mistake?

A I would say so, yes.

Q And, again, this indicates Dr. McGowan as the referring or McGowan whoever it is the referring doctor, clear?

A Yes.

Q Would you agree with me that every subsequent cover sheet indicates that McGowan was the referring doctor?

A I mean, nothing is written on 5/5/2015 and then so -- and then on 6/1/16 the name appears again. And then you're asking me to look at every one, right? So 7/28 I see McGowan's name, on 4/6 I don't see Dr. McGowan's name, I see Dr. Scilaris' name.

Q Who is Dr. Scilaris?

A He's an orthopedic surgeon.

Q Do you know where his practice is located?

A In the New York metropolitan area.
Q I'm sorry?
A In the New York metropolitan area. I don't know the exact office address, no.
Q Do you know if he's affiliated with 110 West 34th Street?
A No.
Q No, you don't know or no, he's not?
A No, I don't know.
Q Okay. If you would look at the cover sheet dated May 5, 2015?
A Yes, sir.
Q See on the top left there's a notation, awaiting funding?
A Yes, sir.
Q What is that referring to?
A Well, awaiting funding refers to two things, either waiting for the patient to pay for his surgery -- that's what it means actually, just awaiting for the funding for the surgery.
Q Okay. If you go to the cover sheet for July 28, 2015?
A Yes, sir.
Q You'll see a notation on the bottom

left-hand corner that's handwritten total temp disability letter.

Do you see that?

A Yes.

Q What is that referencing?

A It's just a letter that we gave the patient that they were temporarily totally disabled from their regular occupation. That's what -- and that the doctor requested that that be written -- wrote that for the patient on that day.

Q Okay, and is that typically something that happens that the patient requests?

A Yeah, I mean -- yes.

Q That's not just something that you physicians do as a matter of course, somebody has to ask you for that; is that fair?

A Usually somebody is asking for the document.

Q Right, the letter.

A It's usually people are -- well someone is asking for the document to the patient. So someone has asked this patient for a document like that and they want the doctor to provide, you know, a letter saying what his

status is and his disability status and so we provide those letters to the patient. But it's usually when someone has asked the patient to provide that letter to them.

Q Well, in this case you know from two prior depositions that Mr. Bauta was not working for approximately a year before his injury, right?

A Yes.

Q So in this case that request --

A Actually I don't remember that but at this point in the juncture I accept that as a premise for your question, sir.

Q Well, I think that's undisputed. If that was, Mr. McElfish would be screaming.

MR. McELFISH: Well, I'm not screaming but it's actually not true.

MR. BARMEN: It's not true?

MR. McELFISH: No. He testified that a year before the accident he had been let go by McDonalds, he had been working labor jobs for cash for various individuals. I think that is a deposition that Harold was on and you were not at.

MR. BARMEN: Yeah, I read that, yeah,

he did that a couple of times.

MR. McELFISH: Well, objection misstates testimony.

MR. BARMEN: Okay. Your objection is noted.

BY MR. BARMEN:

Q So if he was just working under the table such a request would have come from Mr. Bauta himself or his lawyer; is that fair?

A I mean, I don't know the answer to that question, sorry.

Q That's okay. You don't have to apologize. I do notice that when we go to the next sheet in this packet, Exhibit 2, the form changes.

Can you tell me why the form changed?

A I mean just, I guess we updated the form.

Q Okay. And on the updated form one thing it has that the prior form doesn't is a time out, appointment time, time in, time out; do you see that?

A Yeah.

Q Why is the time out never noted on the forms that have a space for time out?

A I don't know, sir.
Q Is it something that should be recorded?
A No, not necessarily. I mean, I run the practice, I don't think that date is critical for the patient.
Q Okay. There's been testimony in this case that an office visit to your office for a follow-up is $200 a pop; is that accurate?
A Actually it's $350 an hour, it's for the visit and then you have the billing record --
Q An hour?
A Well, for the visit, I'm sorry, I didn't mean an hour. And we have the billing record reflects what we were charging per visit here.
Q Okay. And that's $350 per visit whether the visit is three minutes or a half-hour; is that fair?
A I mean, not necessarily. I mean, my follow-up fee for a follow-up visit is $350. We don't always charge that. I don't always charge that but, you know, on average that's what I would charge for an ordinary follow-up

visit.

Q All right. Well, how do you determine when you're going to charge the ordinary rate or something different?

A Well, you know, from time to time patients will come in, I'll ask them to come in just for a quick visit if I'm going to check a wound -- there are many, many circumstances that don't fit in a box which I'll just tell the patient to come in because I need to speak to them a few minutes, if they have questions about a surgery very quickly, they have a few last minute questions, I might not charge them at all. It might just be like a courtesy visit. Other times when it is a standardized follow-up these are the standard charges that we would charge.

Q Okay. Well, in looking at this document that you're referring to, page one of three in Exhibit 2, where you are referencing a follow-up visit at 350 an hour, there are no adjustments for that, right, that's not included in the 30,000 flat fee agreement for the initial surgery?

A That's correct. Like I answered

before, these are the existing charges per visit that remain an open balance to the patient.

Q Okay. And if Mr. Bauta is still treating with your practice, then on average it's going to be another 350 every time he comes in the door; is that fair?

A Yeah, that's my usual and customary rate for any patient that follows up in my practice.

Q Is that the case whether he sees an actual MD or DO or not?

A Well, yes. Yes, the DO is a licensed physician in the state.

Q I understand that. I'm sorry, I think it was an inartful question.

You're an MD, Dr. Cordiale is a DO, right?

A Yes.

Q Are there times when a patient will come in for a follow-up and not see an MD or a DO, like a medical assistant or --

A I mean is it possible? Yes.

Q And on those circumstances are they going to be charged at 350?

A I mean, they could be, they might not be. It depends -- I mean if -- these are all hypothetical situations so...

Q Well, no --

A In general we --

Q -- they are based in fact --

A I'm saying, in general we make every effort for the physician to see the patient. It could be occasions when either the doctor is late or -- and when the patient only sees a PA and then either they could receive a full fee because the PA has to correspond with the physician. The physician is still responsible for that visit. So it's still an interaction with the physician. Or it might be adjusted based on what I explained to you, if it's just a quick follow-up, some questions, we might not make any charges.

So the same principles apply to the PA visits is my answer, short answer to the question.

Q Okay. When is the determination made, well -- strike that.

You've performed the same type of procedure, the double level fusion laminectomy

that Mr. Bauta had, correct?
A Yes, sir.
Q When you -- how many -- in the last five years how many of those types of procedures do you estimate you performed?
A Over a thousand.
Q Okay. And of those over a thousand procedures how many of those people are you still seeing, how many of those patients do you still see?
A Give me a time frame. For five years or --
Q Of the over a thousand in the last five years, how many of those patients do you think you're still following?
A At least half of them I would say.
Q Okay. How is the determination made when they discharge a patient?
A There are no specific criterion, it's case by case basis.
Q What would you be looking for in a patient that had the type of procedure that Mr. Bauta had in order to discharge them or make them PRN?
MR. McELFISH: I thought you weren't

going to ask him about his treatment, you were just going to ask him about his billing?

MR. BARMEN: This certainly goes to the billing, Ray.

A I mean it really -- there are no specific criterion. We, as physicians -- I as a physician as well as Andrew, have a relative open-door policy that any patients that we operated on have the ability to come back and see us if they feel that they have questions that need to be answered or if there are any open issues that they may have. And so some patients are more aggressive at coming back to see the doctor regularly and other patients might be more stoic and not feel a need to come back. We generally don't discharge patients. We have but we don't generally ever tell a patient not to come back which is de facto discharging a patient only because we maintain an open relationship with all our patients. Like most doctors do, you know, if you ever have a problem, come back and see me, that's sort of the conversation that occurs.

Q Okay. And I understand, I appreciate

that. Take a look at -- let's do it this way because it doesn't have any kind of number on it but I guess it would be the new form cover sheet for April 6th of 2017 which is the last or one of the last times you saw this patient or your office saw this patient.

A Yes.

Q Looking at the document dated April 6, 2017, which we believe is the last time he was seen in your office?

A Yes, sir.

Q Says, patient to follow-up in three months; do you see that?

A Yes.

Q Okay. So this is not a situation where the patient is being told give us a call if you need something, he's being told every time he comes in to come back on a certain date, right, or a certain time period; is that fair?

A I'm just going to take a moment to review Dr. Cordiale's record.

Q Please take all the time you need.

A Yes, he was told to come back in three months.

Q At what point is this patient or similar patient told, call us if you need us but isn't actively scheduled or told to come back in in a certain time period?

A There is no specific rule. It's the physician and the patient make a relationship and based on what their interaction is they'll make -- the doctor at the time with the patient's, you know, with the patient input, will make some agreement as to when the next time the patient is to come in and that's generally how it happens.

Q I want to take a look now at Exhibit 1, the records that were provided today and I want to go towards the back where there are some documents labeled, patient checklist. I don't think I have ever seen these before so I want to talk about what they are.

MR. COHEN: 12/22/16, you have a date on that or?

MR. BARMEN: I do not see a date on it, yeah, I do see 12/22/2016 cover checklist --

A Okay.

Q First off, is this patient checklist

something that you have for every patient of your practice?

A Yes. This is the custom and practice -- this is supposed to be created and I can't say that it is on every visit but it is supposed to be created, several working checklists for the front desk people to have an understanding about what's open, if there are anything open. So -- and what are the issues and that's what this reflects. In this particular case I'm referring to this document. If you want to mark it, you're welcome to mark it that this is the third post-op visit. The patient had a revision surgery on 6/1/15. Also had a prior surgery back of 5/27/15. Surgery on 451 [sic] and the last description of the X-ray and they're referring back to the last note, that it was satisfactory. That there were no outstanding -- in the absence of checks in any of the other, sir, the absence of checks means that we're not waiting, they're not waiting for anything else but we didn't order a test last time or something. It's just a work sheet for the -- it's really a nonphysician work sheet.

Q Okay. And this has nothing to do with billing; is that fair?

A Yeah, nothing to do with billing.

MR. McELFISH: What is your estimate, I'm not trying to limit your time but I was just curious.

MR. BARMEN: I'll make my flight at 5:30. I'm almost done, Ray.

MR. McELFISH: No, I mean do whatever you got to do, I was just curious.

MR. BARMEN: No, I'm almost done probably ten, 15 minutes.

(Short recess taken.)

Q Doctor, do you know if your practice has sent any bills directly to Mr. Bauta for services provided?

A I mean -- I mean not specifically. I think that it wouldn't be our custom and practice. I mean, I don't -- I'm not aware of any bills being sent directly to Mr. Bauta. I mean, at this point we are -- it is the custom and practice to wait until the case is over to bill the patient and once the case is over then we bill the patient, that's the -- generally what happens in this type of scenario.

Q In this type of scenario is it your -- the practice of your practice to not discharge a patient until the case is resolved?

A Not necessarily.

Q Let's go back to Exhibit 2. On page two of four dated 5/27/15, which I believe, well, not believe, the date of the first procedure that he had, the double level fusion, there's an entry for autograft from same incision for 10,000 out and then an entry for allograft for 5,000.

Is that in addition to the 30,000 that was for the surgery?

A No, sir.

Q What do those entries represent?

A Just represent the two charges that total $15,000 applied to those two particular procedures but for no specific reason that would account for the balance of 15.

Q Ah, got it. So, I mean, is any time you put in code 20936 which is the code for the autograft is that going to come up $10,000?

A Yeah, bill, that's the bill -- that's the -- that's my usual customary charge for that particular procedure is $10,000.

Q What is that procedure?
A That is the harvesting of bone graft during the surgery.
Q And allograft for spine surgery only, $5,000, that's the typical charge for any time code 209 --
A That is what I charge.
Q -- for 20930?
A Yes.
Q And what as an allograft?
A Allograft is additional bone that is -- comes from transplant patients or cadaver patient that's brought into the operating room and then we take that bone and then we process it. We will fashion it, there's some -- we will manipulate that bone and then incorporate it with the autograft which was the other part of the procedure and then that's introduced into a specific area when we do the grafting for the fusion. So it's an additional procedure that's billed for during the surgery.
Q On the same page down at the bottom on 5/27/15 entry: Post fusion each additional segment TL or C and then it says, check payment of $0 with a check number received on 6/1 paid

by funding coinsurance or copay $4,000.

What does that represent?

A I'm not sure.

Q Who would know the answer to that question?

A Me.

Q Well, you don't know the answer to that question.

A I mean, I don't know, sometimes these are computer generated records and sometimes things come up on the computer.

MR. COHEN: Can we go off the record a second?

MR. BARMEN: Sure.

MR. COHEN: Off the record.

(Discussion held off the record.)

Q We had a brief discussion off the record and Counsel explained to me what this entry is from 5/27/15 with a check payment of $0 but having the same check number as the $15,000 check reference on the prior page and that the $4,000 zeroed out was for a physician assistant.

Can you explain that to me, Doctor, how do we know from looking at this that it's

for a physician assistant?

A It's just the standard operating procedures, the bill's generated both for the doctor and our assistant, that is the employee of the practice, the PA. And so -- and that's just the way we record -- because -- and the way you know it it's just billed at a lower rate. That's how you know it. The same code is 22612, the physician fee would be 20,000 hypothetically and then the PA fee is 4,000 which -- whatever that is, 20 percent of that fee. So that's how you know it's the PA code, it's a PA bill.

Q Okay. And that's perfectly reasonable but you would agree there's nothing on this bill that indicates that charge is for a PA, right?

MR. COHEN: Other than what he said before regarding the --

A Other than what I told you, I mean that's just the custom and the practice, the way it works, that's what we do.

Q How do we know from looking at this who that PA was that was in that surgery.

A You just got to look at the operative

record, it will tell you on the document who the PA was.

Q Do you know as you sit here what the term N A R R means, with a code No. 99275?

A Can you refer me to the document?

Q I can try.

A I found it.

Q What does it mean?

A Narrative. That is the narrative fee N A R, narrative.

Q Okay. So that's your expert report in this case?

A Yes.

Q That was added to the patient bill?

A Yes.

Q Do you know as you sit here if you've been paid for your work as an expert in the case or is that going to come out of the funding at the end of the case too?

A I mean, I'm not sure of the question, you have to be more specific. I mean any future work that I may have -- I apologize for trying to clarify the question.

Q No, no, don't apologize, I want you to clarify.

A It's future work for me as an expert on this case or Dr. Cordiale.
Q No, no, you did the narrative report in this case?
A Yes.
Q We've been over that ad nauseam. And you told me that you charge a flat rate for that narrative report, right?
A Yes, sir.
Q So is the fact that it's included on the bill mean you've yet to be paid for that report?
A Yes.
Q Okay.
A It's my understanding.
Q That's what I'm getting at.
Take a look at the statement from 7/7/17, it's page one of three.
A The date --
Q Tell me when you're there.
A Page one of three, yes, sir.
Q And the top says 7/7/17?
A Yes, sir.
Q If you look at date of service 11/17/14, it just says, lien, lien $500, what

does that mean?

A I think that's just the first patient, the first visit that's the $500 and that's the same date that corresponds to the first date that they came in. So that's the first, just means that there was the first date the patient came in.

Q Okay. And is it fair to say then that the next two entries 1/22/15 and 3/10/15 where it says, lien follow-up, lien follow-up those are just follow-up appointments and you're just noting on the bill that it's a lien patient.

A Yes, sir.

Q And that was the $350 office visits that we talked about already, right?

A Yes, sir.

Q Next entry, 3/10/15, with a billing code of 72114, complete including bending views.

Are those films?

A Yes, sir.

Q On the same page we already talked about the $30,000 charge for the follow-up procedure, the evacuation of the hematoma and

the removal of the hardware.

There's another charge for deeper complicated incision. What does that represent?

A So it's -- so the surgery is in multiple parts. So one is that the patient -- that Dr. Cordiale -- the operative record would be more clear on this but, you know, if you really want a deeper explanation, but based off the codes, you know, one is he did more of a laminectomy, number two he did a deep evacuation and repair of the incision, that's the 0005. The 22852 would be removal, so some of the screws. The 13101, repair wound is a complicated, a complex scar revision because he had to go back in and then they closed this infected wound up. 72110 are just, you know, X -- I believe interoperative X-ray charges. Oh, no, sorry, that's a different date 6/16. So all those 6/1 charges are different parts of the operation.

Q Okay. And that second procedure totaled $38,000?

A Yes, sir.

Q And it's of the 44750 still owed, not

accounting for the 15,000 from the first procedure?

A Yes, sir.

Q The second procedure accounts for 38,000 of that 44 and change; is that fair?

A Yes, sir.

Q All right. The narrative report that you provided, why is that billed to Mr. Bauta and not his attorney?

A I mean, the patient is the person responsible for all of the charges, right? And so obviously they're in connection with the attorney and there is, you know, there might be communication from an attorneys office to a physicians office in general. But the patient is the one that is responsible for the bill, not the attorney. That's generally how it works.

Q Even when you're retained as an expert, when you haven't treated the patient?

A I mean our relationship really is with the patient and so generally what happens is that the bill -- just -- and it's maybe my custom and practice, I mean, there may be another way to do it. We generally send the

bills -- we make the patient personally responsible. We do send information to the attorneys when requested, obviously, they want to be involved with it. But the patient is the one that is responsible for the fees. He's the one that receives the money at the end, that's the conversation that we have with the patients, and the patient has the responsibility to me. What his relationship is to his attorney or attorneys is really that's their relationship, not ours.

Q So based on that is it fair to say that you have not received any money at all for your services as an expert in this case from Mr. McElfish's law firm as of today?

A I mean as far as these records indicate, no. All I've received is what you've seen.

Q Okay. Are you still or -- strike that.

Have you ever performed surgeries at Franklin Hospital?

A Yes.

Q Do you still?

A I am still on staff at Franklin

Hospital, yes.

Q When was the last time you did a procedure at Franklin Medical Center?

A Two years ago.

Q Is there a reason you haven't done anything there since two years?

A I mean mostly because I moved -- I was recruited to New York Presbyterian Hospital and I joined the academic, I received -- I'm now an assistant clinical professor at Weil Cornell which is affiliated with New York Presbyterian Hospital so that's where I do all my surgeries but I have not -- I continue to maintain my privileges there in the other hospital.

Q What about Dr. Cordiale, does he still have privileges at Franklin Medical Center?

A Yes.

Q Do you know the last time he did anything there was?

A I mean so we both came together over to the NYP system.

Q Are you familiar with an entity called North Shore LIJ?

A That's the -- that's Franklin. Franklin North Shore LIJ, it's part of their system of hospitals.

Q Got it.

Relative to Mr. Bauta, is it fair to say that any money owed to Franklin Medical Center for the procedures he had have been paid?

A Oh, I don't know. I don't know if there's outstanding fees to Franklin.

Q Is there anything in your records to indicate that?

A No, I wouldn't have any access to their billing.

Q What is EmblemHealth?

A It's an insurance carrier.

Q Do you know if it has anything to do with Medicare Medicaid?

A No, I don't know specifically.

MR. BARMEN: I don't have any other questions for you. I appreciate your time once again.

MR. COHEN: Let me ask you this, do you have any other questions regarding the billing records regarding Mr. Bauta?

MR. BARMEN: I do not.
MR. COHEN: Thank you.
MR. BARMEN: Ray, anything?
MR. McELFISH: No, I don't have anything.
MR. COHEN: The exhibits that were marked today, the doctor -- I just want to make sure it's clear who is maintaining the marked exhibits.
MR. BARMEN: My practice is the court reporter and they'll be attached to the transcript which I am ordering.
MR. COHEN: Okay. So the court reporter, well, first of all, the doctor's records that were marked on the April 19, 2017, he brought them in today, were in his possession because he has to maintain a record for this patient.
MR. BARMEN: Absolutely. Anything he brought he can take with him, I don't --
MR. COHEN: Okay. So the doctor is going to take back the April 19, 2017 marked records from that deposition and what was marked today as Exhibit 1 which is --

MR. BARMEN: One is what he brought today, two is what I brought.

MR. COHEN: Okay, and 2 you want to give to the court reporter?

MR. BARMEN: I want the court reporter to take them both because that's what I marked today.

MR. COHEN: Except that is his chart for this patient that he has to maintain off the record.

MR. BARMEN: I thought that was a copy?

(Discussion held off the record.)

(Time noted: 11:35 a.m.)

A C K N O W L E D G M E N T

STATE OF)
:ss
COUNTY OF)

I, SEBASTIAN LATTUGA, MD, hereby certify that I have read the transcript of my testimony taken under oath in my deposition; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____
SEBASTIAN LATTUGA, MD

Signed and subscribed to before me
this _____ day of _____, ____

_____
Notary Public, State of _____

C E R T I F I C A T E

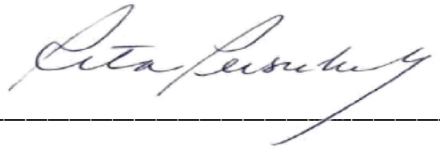
STATE OF New York)
:ss
COUNTY OF RICHMOND)

I, RITA M. PERSICHETTY, a Notary Public within and for the State of New York, do hereby certify:

That SEBASTIAN LATTUGA, MD, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of November, 2017.



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RITA M. PERSICHETTY

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