In The Matter Of:

Luis Colon and Kareen Colon v
Metropolitan Transportation Authority, et al

C. Mandelbaum, M.D.
March 12, 2019

Bronx County Supreme Court

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX : CIVIL TERM : PART IA-2

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LUIS COLON and KAREEN COLON,

Plaintiffs,

- against -

METROPOLITAN TRANSPORTATION AUTHORITY and THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Defendants.

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Index No. 300140/08

TESTIMONY OF C. MANDELBAUM, MD

851 Grand Concourse
Bronx, New York 10451
March 12, 2019

B E F O R E :

HONORABLE ELIZABETH A. TAYLOR, J u s t i c e .

and a jury.

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

SACKS & SACKS, LLP
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150 Broadway, 4th Floor
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BY: JAMES J. McCRORIE, Esq.
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BY: DONALD DERRICO, Esq.

(Whereupon, Plaintiff's Exhibit 63 for Identification is pre-marked, demonstrative illustration, injections.)

(Whereupon, Plaintiff's Exhibit 64 for Identification is premarked, demonstrative illustration, spinal cord).

(Whereupon, Plaintiff's Exhibit 65 in Evidence is premarked, subject to redaction, records of Dr. Chaim Mandelbaum.)

(Whereupon, the following transpired in open court, in the presence of all parties:)

THE COURT: Good morning, everyone.

THE COURT OFFICER: Be seated. Come to order.

THE COURT: Are we ready for the jury?

MR. DERRICO: I just want to put something on the record, briefly, if possible.

THE COURT: We're on the record.

Mr. Derrico.

MR. DERRICO: Your Honor, with regard to Dr. Mandelbaum, who's going to take the stand today, we had been provided with trial authorization for medical records for Dr. Mandelbaum, which is required and was provided. We only had records that went through October 2018. We had some discussions yesterday with Plaintiff's counsel and they very nicely last night emailed me a complete set

of records, which include records from October through February of 2019.

We would object at this point in time from the doctor discussing any medical treatment from October 2018 to February of 2019.

MR. McCRORIE: As of yesterday, Mr. Derrico said he had no records, we have proved that we've given 3122(a)s and we gave records and authorizations. They are, the Travelers is, I know it's not his carrier, but the party, Travelers is the carrier, and they have authorization to go in through the end of the file for the comp. file to get all the updated records.

No one asked us for the updated. We gave them what we had up until the point we had it and now that we're at trial I met him again and his complete file, I don't even know if we had the last one. We gave them up until early February 2019. We've given over to them. We gave authorizations, we gave the full records, even before this. And it's no different than any other doctor coming on the stand. They're on full notice of everything he's going to testify to. There's nothing new in any of the notes, nothing added. There's no added future treatment, there's-- nothing has changed. It's still Suboxone, treat him regularly, continue treatment. So it's once a month that he sees a physician.

THE COURT: Mr. Derrico, you get the last word, if you choose.

MR. DERRICO: No, I think I've set forth my position that while they did serve the 3122(a), that 3122(a) was only up to October. We're talking about November through February. We didn't have the records until last night.

THE COURT: Thank you.

Your application is denied. If you would like time, a continuance after the doctor testifies, the Court will consider it. Would you like the continuance?

MR. DERRICO: Let me see how it goes, your Honor.

THE COURT: Okay.

MR. DERRICO: I don't want to waste any more of the Court's time with continuance, or the jury's time. If I'm able to muddle through with the cross-examination of the doctor, I will do so.

THE COURT: Thank you. We're off the record.

(Whereupon, there was an off-the-record discussion among the Court and counsel at this time.)

(Whereupon, the following transpired in open court, in the presence of all parties:)

THE COURT: We're ready for the jury.

THE COURT OFFICER: All rise. Jury entering.

(Jurors enter.)

THE COURT: You may be seated.

Good morning, members of the jury.

At this time, the Court will recognize Mr. McCrorie.

MR. McCRORIE: Thank you, your Honor.

Plaintiff calls Dr. Mandelbaum, Chaim Mandelbaum.

C H A I M M A N D E L B A U M, M.D., having been called as a witness by and on behalf of the Plaintiff, having been first duly sworn/affirmed by the Clerk of the Court, took the witness stand and testified as follows:

THE COURT OFFICER: Please remain standing. Direct your attention to the Court Clerk.

THE CLERK: Please raise your right hand.

Do you swear to tell the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes, I do.

THE CLERK: Please be seated.

Please state and spell your first and last name for the Court.

THE WITNESS: It's Chaim, C-H-A-I-M, Mandelbaum, M-A-N-D-E-L-B-A-U-M.

THE CLERK: Please state your business address including county.

THE WITNESS: My business address is 75 Maiden Lane, Suite 1206, New York, New York 10038, New York City.

THE CLERK: The witness has been sworn.

THE COURT: Thank you.

Good morning, Dr. Mandelbaum.

THE WITNESS: Good morning.

THE COURT: I ask that you keep your voice up when speaking in the courtroom as it is very difficult to hear in here and we have a court reporter transcribing the proceedings.

We also have a microphone there, if it's necessary to help you keep your voice up.

THE WITNESS: Okay.

THE COURT: Thank you.

You may inquire.

MR. McCRORIE: Thank you.

DIRECT EXAMINATION

BY MR. McCRORIE:

Q. Good morning, Dr. Mandelbaum.

A. Good morning.

Q. We spoke this morning, but good morning.

Please direct all your responses to the jury. And just so we could move it along as best we could, another doctor has testified. The instructions, you don't have to define any medical term unless anyone asks you to, okay?

A. Yes.

Q. Can you please tell the jury for how long you've been licensed to practice medicine in the State of New York?

A. Yes. I've been licensed to practice since 1993 in New York, so over 20 years.

Q. Taking from college all the way up through your current practice, without leaving anything out, just take us through residency, internship. You could stop at board certification and we'll do that separately, but could you please tell the jury as succinctly as you can your educational and work history background?

A. Okay.

Q. And slowly, for the court reporter, as well.

A. College, attended Yeshiva University, which is here in New York City, in Washington Heights. From there, I went to State University Hillside Center in Brooklyn, otherwise known as Downstate, for medical school for four years, graduating in 1992. I did an internship in internal medicine in Staten Island.

Q. Slightly slower for the reporter, please.

A. Staten Island University Hospital for a year followed by a residency in anesthesiology at Mount Sinai Medical Center here in New York City for three years, which was followed by a fellowship in pain management for a year.

After that, I was an attending in a hospital in New

Jersey for a little over four years then moving to a practice here in New York City, which I am currently at, which is Comprehensive Pain Management for -- since then for about 20 years now.

Q. The address that you gave when you swore in, that is the address for Comprehensive Pain Management/Anesthesia Services, PC?

A. Yes.

Q. And who is that business -- who are the members of the business?

A. We have two physicians, there's Dr. Gary Thomas and myself. There's a third physician that has also recently started, Dr. Johnson. We have three nurse practitioners that are currently working and medical assistants and secretaries.

Q. For how long have you been working within that practice?

A. About 20 years.

Q. Was Dr. Thomas there before you?

A. Yes.

Q. I thank you for coming in and I understand, if you just briefly could indicate what, if anything, occurred, just briefly, with Dr. Thomas in the last two weeks?

MR. DERRICO: Objection.

THE COURT: Step to the side.

(Whereupon, there was an off-the-record

discussion in the robing room, among the Court and counsel.)

(Whereupon, the following transpired in open court, in the presence of all parties:)

MR. DERRICO: Your Honor, pursuant to our discussion in chambers, I'll withdraw that objection.

THE COURT: Thank you.

Q. And just very succinctly, in case any issue comes up, what if anything occurred, and then we'll move on.

A. Unfortunately, he had recently passed away two weeks ago.

Q. Okay. So in the practice now, are you the senior physician?

A. Yes.

Q. Prior to you, the practice, was the senior physician Dr. Thomas?

A. Yes.

Q. Are you board certified in any fields?

A. Yes. I am board certified in anesthesiology and subspecialty board certified in pain medicine.

Q. Can you please define for the jury what the specialty of anesthesiology is and entails and do the same for pain management, what it is and what it entails?

A. Okay. The specialty of anesthesiology deals with patients who are undergoing surgery. It deals with the

sedative practice of giving anesthesia to these patients to keep them stable, hemodynamically stable while undergoing surgery, and comfortable, make sure they're breathing okay and that their vascular, their heart is pumping and blood pressure is good, et cetera, so entails that.

The practice of pain medicine deals specifically with issues of chronic pain, which is the sole essence of our practice, versus acute pain. Chronic pain is typically pain that is prolonged longer than a three-month period after somebody had an event. So they may have had surgery, for instance, and the pain lasts longer than what you would expect as the healing time, which may be four to six weeks or eight weeks, it's gone beyond that and the patient continues to have pain. So we deal with a lot of pain issues, including nerve related pain, including back, neck pain, chronic headache pain, a lot of different neuropathies, issues like that that go beyond the scope of other practices and physicians.

Q. Back in May of 2011 through today, present, does your office and did your office accept work-related accidents and the rules and procedures that are involved in accepting such a case?

A. Yes. During that --

Q. Yes.

During your -- as you said, you've been practicing 20 plus years. In your 20 plus years, have you ever come into

court and testified on behalf of a patient who has had a case, be it construction worker or not?

A. Yes.

Q. How many times has that occurred in 20 years?

A. Approximately ten times in the past 20 years.

Q. And have you ever come into court and testified on behalf of a patient of yours that was a client of Sacks and Sacks, a construction worker in the union trades?

A. Yes.

Q. And on how many occasions has that occurred in that time period?

A. Twice.

Q. And today would be the third?

A. Correct.

Q. Did you and I meet briefly to discuss this matter sometime in the past?

A. We had discussed it sometime in the past, yes.

Q. Did our office provide you with copies of medical records from this case?

A. Yes.

Q. Prior motor vehicle accident and subsequent motor vehicle accident?

A. Yes.

Q. Okay. Are you being paid for your time away from your practice at an hourly rate?

A. Yes.

Q. Could you just tell the jury the rate you're being paid?

A. Our -- my rate is $400 per hour, again, to -- because of time scheduling and cancelling patients and moving things around within the office.

Q. So does that include any preparation time that has gone on before this testimony today?

A. Correct. There's a lot of prep time, review medical records and my medical records, and just in preparation to be in here.

Q. Your file is in evidence. We marked it as Plaintiff's 65. So can you refer to the file and can you tell the jury -- well, first, did I ask you to completely review the file and all the medical records in anticipation of giving opinions to this jury today?

A. Yes.

Q. Can you tell the jury what is the date Mr. Colon became a patient of yours?

A. Okay. The first time we had seen him was on May 2nd, 2011.

Q. And who is listed as the referral to you? How did -- not how did he get there by car, but it says referred by. Who is that?

A. Yes, he was referred by Dr. Merola, who is an

orthopedic spine surgeon.

Q. And who do you have listed as his primary care physician on that date?

A. That I have to double-check.

Q. The intake should have the sticker on it. It would be the first -- if you turn it around.

A. Yes, Dr. Shivdasani.

Q. Okay. So on the date Mr. Colon came to you, had he already -- withdrawn.

MR. DERRICO: Objection.

MR. McCRORIE: I withdrew.

Q. What, if any, medication was Mr. Colon on, that as listed in your records when he first came to you? Not what you did, when he first came to you.

A. Okay. When he had first come to me, again on May 2nd, 2011, he -- I'm just looking at my list here. Hold on just a second.

He was taking some pain medication after his surgery, OxyContin, 40 milligram tablets. I believe that's all I have listed on this initial intake.

Q. Okay. And do you have another section?

Again, I don't know where yours is, like this -- if you just look over?

A. Correct.

Q. Whatever medications he was on, let's do it this

way, Doctor, you list, is that correct?

A. Correct.

Q. Typically.

Why don't you just go to the history of 5/2/2011?

A. Yes.

Q. So we're not going to do this with every note, but why don't you go through the history and, first off, is that your handwriting?

A. That is one of the nurse practitioner's handwriting, but I did sign the note on the bottom.

Q. And are you familiar with the handwriting and can you read it?

A. Yes.

Q. So your signature would be on the bottom right, is that right, sir?

A. Correct.

Q. So just the history of present illness, why don't you read that?

A. Okay. So he was at that time a 31 year-old gentleman who was involved in a work-related accident on 6/19/2008. He stated he fell about 14 feet --

MR. DERRICO: Objection. The question was diagnosis, what he told him.

Q. As a treating physician --

MR. McCRORIE: And it's part of the history,

your Honor.

MR. DERRICO: It's not responsive to the question.

MR. McCRORIE: I said to read.

THE COURT: Ask a question.

Q. Continue reading the history as related to your office.

A. Patient fell 14 feet from a height while working in construction. He was taken by ambulance to St. Barnabas Hospital.

Q. Okay. Before that, what does it say? What does that mean, it's an acronym, but what does that mean?

A. Denies loss of consciousness, LOC.

Q. So before we go further, was that ever corrected?

A. Yes.

Q. When, in relation to May 2nd, 2011?

A. It was corrected on -- in November 2011 in the office note.

Q. By who?

A. By myself.

Q. Okay. Continue.

A. He was taken to the hospital by ambulance. He was treated and released. He had underwent already an anterior/posterior cervical fusion in September of 2010. He had already undergone a posterior lumbar fusion in March of

2011. Again, that was by Dr. Merola.

At the present time when he came to our office he was complaining of lower back pain with pain and spasm with pain shooting into his left lower extremity greater than the right. He described it as stabbing and shooting pain. He was complaining of sharp sensations, tingling sensations. He was also complaining of neck pain, cervical C3 through C7, which is of the cervical spine, with pain and spasm going into his upper extremities bilaterally. He said that some of the symptoms, at least with regard to the neck, did improve after surgery, but he was still complaining of pain.

Q. Okay. Can you just, if there's an arrow down and the acronym ADL after that, ADLs, what does that mean?

A. He had diminished activities of daily living because of the ongoing pain.

Q. Just if you could continue. Some of these are you're reading what the medical term means, like plus, and the jury's heard things like that, but you could just continue reading.

A. So patient had already prior to our office visit underwent cervical epidural steroid injections, three. He had some lumbar epidural steroid injections. He also reports having very little benefit from those. We were awaiting authorization for physical therapy at that time. He was taking OxyContin for pain at 40 milligrams at that time, stating that

it was helping slightly with his symptoms. He denied any prior injuries and limitations to the cervical and lumbar spine.

Patient reports that he did go back to work initially, eight to nine months after the accident, and he hasn't worked since May of 2009.

Q. So at the time he saw you was only two months post back surgery, but was he working, just for the record?

A. No.

Q. What, if any, medical significance does the fact of someone complaining of radiating, tingling, pulling pain in the neck or the back? What, if any, medical significance as a board certified pain management physician does that indicate?

A. Well, with radiating pain, it signifies that there's some nerve damage because pain, for instance in the neck area will radiate into the upper extremity when the nerve is affected. Pain in the lower back will -- I'm sorry, I will slow down.

THE COURT: Yes, slow down, and then also remember one at a time for the reporter.

MR. McCRORIE: Yes, your Honor.

A. So pain in the lower back, when a nerve is affected, will radiate into an extremity, in a leg. That is otherwise known as sciatica pain or radiculopathy, which is that radiating type pain.

Q. When seeking a prior medical history from a patient,

do you and your office ask 'have you ever had back pain in your life' or do you ask about the symptoms he's coming to see you about?

MR. DERRICO: Objection. Leading.

MR. McCRORIE: Withdrawn.

Q. What do you, in a case such as this, what did you ask, what do you ask?

A. Yes. Well, we want to know any prior history, if he had, at least prior to surgery, if he had any similar symptoms with radiating pain to his upper extremity or lower extremity.

Q. Okay. What was the impression and plan? The jury has heard what that means, so if you could just give the impression and plan on that date.

A. Okay.

Q. The first visit.

A. So our impression was this is a post fusion patient, both in the neck and the lower back, with what we term a post fusion syndrome because he still has continued pain with radiculopathy. And that was his diagnosis for both the cervical and the lumbar spine as well as myofascial pain which refers to muscular spasm both he was having in the neck and lower back.

Q. Myofascial is a word the jury hasn't heard. Just define that, please.

A. Well, the myofascial pain really refers to the musculature, which there are a lot of muscles both in the neck and the lower back that are associated with movement and when there's an injury those muscles can spasm, tighten up, become inflamed, and limit range of motion.

Q. So please continue. That was number 2. If you go to number 3.

A. He was also diagnosed with facet syndrome. On physical examination, he did have facet pain. I don't know how familiar you are --

Q. The jury heard what facet is. What part of the body did he have facet pain?

A. Both related to the neck and lower back, but mostly the lower back because that's where most of his symptoms were. And because he had that positional type pain, he had symptoms that were characteristic of facet syndrome.

He was then started on different medications to help with his ongoing pain. One of the medications is Celebrex, which was an antiinflammatory medication. He was continued on the OxyContin at 40 milligrams that he was taking three times a day.

Q. Could I have you define something?

A. Sure.

Q. Just instead of saying. When you say number 7, consider LOA, not when you say it, when it's written, could you

tell the jury what LOA, the acronym, stands for, and if permitted you could then define it and what the consideration was?

A. Okay. So part of our treatment was, one of the considerations because we had just first seen him, was a procedure called a lysis of adhesion, which is a procedure in particular for the lower back which we take a wire catheter into the space where he had surgery and we go in below the surgery level, we could actually take that wire and catheter and guide it up into the epidural space which is close to where the nerves are.

Q. Slower.

A. Close to where the nerves are, and once we get into that space we could use the catheter to open up that space, because inevitably there's scar tissue that happens after surgery as it heals.

Once we open up that epidural space we could inject the steroid medication through that catheter to help diminish inflammation and help with pain, especially symptoms that are shooting down into lower extremity.

So that procedure is called an epidural lysis of adhesion. It could be done of both the neck and lower back.

Q. Lastly, let's discuss R/RA. Another word, why don't you just define that, please?

A. Discuss risk, benefits, alternatives and

restrictions.

Q. Okay.

So if we can, the jury's already heard what some of these terms mean. Could you just go to the other side of the page during the physical examination.

Any positive objective findings? Okay. So do you know what the words mean? Positive and objective that were found on Mr. Colon that day to the neck or the back?

A. Yes. So he did have spasm, which could actually be palpated both in the lower back and the neck area along the paraspinal muscles, in the lower back L-3 through S-1, those are the levels.

Q. Just slower.

A. As well as the cervical spine C3 through C7.

He did have diminished range of motion in his lower back with flexion, which is forward flexion, at 60 degrees. Extension he had pain at 10 degrees on physical examination. He also had in the cervical spine, again, spasm with diminished range of motion with flexion at 10 degrees, extension at 20 degrees. He had pain palpated over the facet joints in the lower back as well as the cervical spine. And what also is positive is he had a positive straight leg raise on -- with regard to the lower back, at 60 degrees on the right and 45 degrees on the left. That is typically significant for some type of nerve compression against the nerve. When we actually

raise a leg and get reproduced shooting pain into his lower extremity, because what happens when you raise the leg when he's laying down is your stretching the nerve and when I say inflamed you're actually moving the nerve and reproducing and causing the pain.

Q. Okay. You could go to pain assessment form. It's a picture of a person.

For the first section, what is the problem you would like us to help you with. Question. You could just read for the jury that. It's still the first note, sir, Doctor?

A. Yes. He stated quote, pain all over, mostly in lower back, left leg and hips.

Q. And you don't have to read, but there was the list of the medications he was on before he came to you because you've listed what your plan was to prescribe him, correct?

A. Correct.

Q. Okay. So on the next date, on 5/16/'11, it goes from pretty neat handwriting to probably like my handwriting. Is that your handwriting on that?

A. Yes.

Q. Okay. On 5/16/'11 on the assessment part, number 7, can you please tell the jury what number 7 reads or what is said there?

A. It says consider spinal cord stimulator and given video.

Q. And does it say the word "spinal cord stimulator" or does it give an acronym? Did you give an acronym?

A. It gives an acronym, SCS.

Q. Just tell the jury what a spinal cord stimulator is and why you were asking Mr. Colon to consider it at that point?

A. A spinal cord stimulator is a technology advanced device that gets implanted in a patient, especially and it's most suitable for somebody who's had back surgery who still has ongoing back pain, especially pain into the lower extremity as well as someone whose had neck pain.

Q. If you can.

A. What the stimulator is is a wire, and it's done in two parts. One is a trial, so there's a trial wire that is placed in the epidural space in the back and the wire is guided with x-ray. So you put a needle into the epidural space and you take the guide wire and you thread it up in the epidural space to the area that we want. It happens to be in the thoracic spine. So we're using and we'd place two wires into the thoracic epidural space. That wire gets hooked up to a generator or programmer. In the trial, the programmer is outside of the skin.

When it's hooked up to the programmer, the programmer actually sends electrical sensations through the wire to the spinal cord essential diminishing what the patient perceives as pain. So it's covering up that sensation of pain

that he may have, again across the lower back and into the lower extremities.

The permanent -- so we leave that in for five days. If it's deemed successful, and we want at least a 50 percent decrease in pain, then we decide okay, let's put the permanent one in. What that entails is permanently implanting a wire, or two wires in this case. There's also different leads called a panel lead which is one wire but it has electrodes on both sides so it's bilateral. That is placed surgically. The wire is tunneled underneath the skin where a generator, and it looks like a pacemaker, is implanted typically by the buttock area, by the gluteal muscles underneath the skin. And what the patient then has is a remote control, they could turn the device on and off. It has to be reprogrammed occasionally because different sensations that can have up to ten different programs or more. And he has to re-charge it at least once a week, depending on usage of the spinal cord stimulator. There have been --

Q. We'll continue on and we'll come back to that.

Okay. So moving to the next note - we're not going to do it for every note, but we're going to try to hit notes. On the impression and plan for 6/8/'11, could you just tell the jury the names of the prescriptions that you prescribed to Mr. Colon now that he'd been your patient for a few visits?

A. Okay. He was prescribed OxyContin, which is a

long-acting opiate medication, 40 milligrams three times a day. For breakthrough pain, which is typical of any patient who has chronic pain, we gave him a prescription of Percocet which was 10 milligram tablets that he could take inbetween as needed every 6 hours. And he was given a prescription for 60 tablets.

Q. What does F slash U one month mean?

A. Follow-up in one month.

Q. What is the purpose of following up with a patient that your prescribing medication to, particularly narcotic medication, as a board certified pain management physician?

A. Yes. It's very important to follow up. One, we want to ascertain or know if the medication is working. Also, we want to know if he's taking the medication appropriately. And we do a lot of that monitoring and counseling about, especially with opiate medication, and so when he needs it.

Q. July 1, 2011. Could you go to that note?

A. Yes.

Q. Tell me when you're there.

A. I am there.

Q. I just want you to read it. It says PT concerned. Could you please tell the jury, what does PT mean?

A. Patient.

Q. What did the patient tell you as written in your handwriting that he was concerned about?

A. Patient was concerned about being dependent on

opiates.

Q. Did the patient ever share with you issues he had with opiods in the past, prior to even the accident?

A. Yes.

Q. When I say "the accident," July 19, 2008. Yes?

A. Yes.

Q. Was that taken into consideration in your overall treatment of Mr. Colon from the time you knew it through today?

A. Yes.

Q. Okay. So, now I'm going to have you, when I say go to, it's not the next note but go to September 16, 2011, okay?

A. Yes.

Q. On number 5 of the -- we'll call it the impression and plan of care, okay?

A. Yes.

Q. First, number 3, what was continued?

A. He was given a prescription for OxyContin, the 40 milligrams.

Q. What is number 5?

A. Number 5 states given Suboxone info, information.

Q. Okay. And can you tell the jury what Suboxone is and what -- well, first tell them what it is?

A. Suboxone, generic name is called buprenorphine.

Q. Spell that.

A. Buprenorphine.

Q. That's fine. Okay. Continue. Tell them what it is?

A. It is an opiate medication. It can be used for pain. It's unique in the sense that it's a very long-acting opiate medication and it binds to the open -- partially binds to the opiate receptors, but it binds so strongly that it can actually prevent other opiates from working.

It is typically used in our office, one, for pain management in someone who may not tolerate other opiate medications. It's not as strong as some of the other opiates, but again, it's a stable long-acting medication and it can be very helpful.

Q. In explaining that to me, did you also explain something called antegu (phonetic), something he's not on, something that could get someone sick?

MR. DERRICO: Objection.

MR. McCRORIE: Well, withdrawn.

Q. Just so we're clear, because they're both mentioned, is he prescribed both of them or is he taking one as opposed to the other on that date?

A. He wasn't prescribed Suboxone. He was given information about Suboxone.

Q. Okay. So if you could go to October 4, 2011. I believe that word "Suboxone" is in there again on the right, your handwriting, is that right?

A. Yes.

Q. And then if you could go to November 11, 2011.

Just so the record is clear, the notes go from your handwriting to now typewritten notes, is that fair?

A. Yes.

Q. Can you first tell the jury, did your system, meaning Comprehensive Pain Management, did your system change over from a handwritten note system to what's called an EMR?

A. Yes, it did.

Q. What is an EMR?

A. An EMR is electronic medical system.

Q. And just explain that to any -- in any way you can, what the difference would be?

A. Well, it's a means of documenting via computer. It actually starts out as a template where you could document the history, past medical history, physical examination, social history, and once it in the computer all that information is stored and stays in the computer so that it can be used in subsequent office visits. It makes life slightly easier. Also, prescriptions can be sent electronically via the electronic medical system.

Q. With the EMR is a new note completely generated each visit from scratch, or is information left over and carried over, or something else?

A. Yes.

MR. DERRICO: Objection, your Honor. Leading.

Q. Explain the EMR system as far as follow-up visits with a patient, especially someone you see over years?

A. Correct. So there are parts of the EMR system that are updated every time a patient comes in. There are parts of the note that are brought forward from the prior office visit to the current office visit. And that's typically how the information gets transferred or carried forward from one office visit to the other.

Q. So let's go to November 1, 2011, the first typed note in the EMR system, okay?

A. Yes.

Q. Could you just, because it's the first typed one, could you read the history of present illness?

A. Yes. So he was complaining of lower back pain and neck pain.

Q. Why don't you just read it, the history of present illness, date of accident?

A. Date of accident, June 19, 2008. Severity on a visual analog scale from 0 to 10 was an 8 out of 10.

Work history: Not working at the present time. What makes it better: Medications, lying down, ice. What makes it worse: Range of motion, activity, walking, standing, lifting, bending. Disability: Total. Parts of body injured: Neck, back. Patient is unable to walk greater than one to two

blocks secondary to pain. Treatment consisted of opiate meds now tapered off to Suboxone. Doing okay with current regimen though still in pain.

Q. When had Mr. Colon been -- I don't know if the right term is transferred, but taken off the opiods and put onto Suboxone?

A. He was started on Suboxone on October 4, 2011.

Q. Okay. So what did you -- withdrawn.

Is that based on your prescription?

A. Yes.

Q. Why did you prescribe Suboxone to Mr. Colon, for what conditions?

A. It was prescribed for ongoing chronic pain.

Q. Okay. We're not going through each, but what other medications other than Suboxone on that date was he taking?

A. He was taking Naprelan, which is Naproxin, which is an oral anti-inflammatory medication. We had switched him to a different formulation of naproxen called Vimovo, which is also an antiinflammatory but it's a combination medications to protect his stomach because anti-inflammatory medications could, especially with chronic use, cause gastritis or an ulcer in the stomach and that has to be taken under consideration.

Q. What I'm going to do is now, so we could get to opinion questions a little later, I'm going to have you jump to July 13, 2012.

Okay. So if you could just find that typewritten note so we could discuss other.

THE COURT: One second.

(Brief pause in proceedings.)

THE COURT: You may continue.

Q. I'm going to have you go back to July 6 of 2012.

A. Yes.

Q. On July 6, 2012, I'm just going to, as an example of what you said, the EMR follows through sometimes with information. You'll be testifying about this event?

MR. DERRICO: Objection. Can we have a question?

Q. Okay. What did Mr. Colon relate to you that day?

A. Mr. Colon stated that his mother died the prior evening.

Q. And what does it state about whether his mother is alive or not in the family history on that date?

A. Under the family history, it says mother alive, 49 years, Non-Hodgkins lymphoma.

Q. In the many notes after that date, what does it state about his mother, whether she's alive or not?

A. It continually stated that she was alive.

Q. Okay. So let's go to the note of July 13, 2012.

A. Yes.

Q. Can you -- you don't have to read the first line.

Only because -- you could say what the words mean if there's an acronym there, but just start with patient stated, the second sentence.

A. Patient stated that he has increased pain and did take oxycodone he had at home. Patient encouraged to continue with current meds. Plan, to treat with trigger point injections and repeat lysis of adhesion. Will follow up next week and re-evaluate. Trigger point injections are effective in pain relief and help facilitate range of motion in therapy. Patient stated there was a 75 decrease in pain and spasm after the injections lasting for a significant amount of time.

Q. And patient is taking Suboxone, correct?

A. Correct.

Q. And he took oxycodone. What effect, if any, would the oxycodone have, if he was using leftover oxycodone, had taken it, what effect would it have if taking the Suboxone?

A. Almost no effect.

Q. And did you do urine screens on him to make sure he was taking the Suboxone each month?

A. Yes.

Q. Okay.

All right. So why don't we -- oh, on that date what, if anything -- continue reading it and tell us what, when you get to the word TPI, you already defined LOA, but tell us what was being discussed with the patient on that date?

A. As I said before, the plan to treat with trigger point injections and repeat lysis of adhesion.

Q. What I'm going to do, Doctor, we're going to take a break and when we come back I'll have you explain trigger point injections. Keep that page there, okay?

A. Yes.

THE COURT: Members of the jury, we're going to take a brief recess. Thank you.

THE COURT OFFICER: All rise. Jury exiting.

(Jury exits.)

THE COURT: Doctor, as you're still providing testimony in this courtroom, you are not to discuss your testimony with anyone during the recess. Do you understand that?

THE WITNESS: Yes.

THE COURT: Thank you.

We're off the record.

-Transcript continued on next page-

(Whereupon back on the record.)

THE COURT: Ready for the jury.

COURT OFFICER: All rise. Jury entering.

(Whereupon the jury enters the courtroom.

THE COURT: You may be seated. Doctor, I would like to remind you that you're still under oath. Do you understand that?

THE WITNESS: Yes.

THE COURT: Thank you. You may continue.

Q Doctor, July 13, 2012, why don't you just read the sentence that begins trigger point in the history?

A Trigger point injection.

Q Slowly, please.

A Are effective in pain relief and help facilitate range of motion and therapy. Patient stated that there was a 75 percent decrease in pain and spasm after the injections, lasting for a significant amount of time.

Q Can you tell the jury what trigger point injections are and what purpose they serve in a situation such as this?

A Trigger points are areas of muscle that are spasmed and cause a lot of pain. So trigger point injections are taking a needle that is significantly long, in his case, it's three inches, that can be actually inserted and placed in that trigger point, that spasm muscle, in which a muscle relaxant and numbing medication can be injected via that needle to help relax the

musculature and help facilitate range of motion.

Typically lasts for anywhere between a week to two weeks, depending on the patient, that is done in multiple areas. For instance, the lower back. It's done typically six or seven areas. We did have trigger point injections done during that office visit in eight spots that were done along the lumbovertebral spinal muscle, both right and left side.

Q Doctor, why don't you skip a few notes to November 9, 2012?

A Yes.

Q Okay. Not the first sentence and follow-up, can you just read the second sentence, please?

A Pain is located...

Q No. In the follow-up, history of present illness, the first line, not the first sentence. The second sentence. 11/9/2012, right above pain is located?

A While patient has...

Q No. The next sentence, Doctor, sorry.

A He had increased pain and spasm since the hurricane.

Q He is highlighting, he had indicated that to you, correct?

A Correct.

Q Now, I want to point something out, the medications on that date, I believe the date before, what is the medication he was on, was he on Suboxone, or something else?

A He was on a different medication during that particular office visit.

Q Not the first three, those weren't prescribed by you, right, what is the last medication?

A OxyContin.

Q Okay. Throughout the time period of mid-November, 2012, for some time after, was there an issue attaining authorization to continue Suboxone?

A Yes.

Q And so, was there an issue in disruption of his benefits?

MR. DERRICO: Objection. Leading.

Q Withdrawn. Shortly, several visits later, was there a period of time that Mr. Colon did not see you for a period of time?

A Yes.

Q Can you tell the jury, so if we went to March 22, 2013, understanding there's visits between there, can you tell the jury the next time Mr. Colon came to see you?

A He saw us on February 7, 2014.

Q Okay. And did you note the reason why he had been there?

A Yes, there were barriers to his continuing to come to our office because the work accident system was not providing care.

MR. DERRICO: Objection. Move to strike.

THE COURT: The response is stricken.

Q Did he indicate -- we will have Mr. Colon ask why he didn't come, explain to the jury. But did he indicate the reason to why he was not there for that year time period, or whatever the time period was?

A Yes.

Q Can you start with this sentence, you don't have to read any of the sentences before in follow-up, just PT report following: I'm not going to have you go through everything, but what does patient report, just from that sentence on, midway through?

A Patient...

Q This is 2/7/14 correct, Doctor?

A Correct.

Q Okay. Please?

A Patient reports ongoing pain in the lower back with radiation into the leg, right greater than left, with numbness and tingling, and neck soreness and stiffness with pain in bilateral upper extremities, left greater than right, with numbness in hands.

Patient states that he has been depressed. No, there is an acronym, SI, suicidal ideation, was taken Wellbutrin with helps, but needs a prescription.

Q Okay. So, can you tell the jury, you don't have to

tell them, again, what he told you, after giving you those reasons why he was away that year time period, when did you next see him from February, 2014, when is the next date?

A June 2, 2015.

Q Okay. So from June 2, 2015, through the present, have you seen -- withdrawn. Have you been allowed to see Mr. Colon --

MR. DERRICO: Objection to form. "Allowed."

MR. McCRORIE: Was authorization required for all of your treatment to see Mr. Colon, "yes or no"?

MR. DERRICO: Objection, your Honor.

THE COURT: Rephrase it, Counsel.

MR. McCRORIE: Did you submit your forms, you don't have to tell us what forms, for authorization to continue to treat him on a monthly basis?

THE WITNESS: Yes.

MR. DERRICO: Objection, your Honor.

THE COURT: I'll allow it.

Q So from June 2, 2015, through present, approximately how often had you seen Mr. Colon?

A Monthly, or every other monthly basis, every two months.

Q Let's start, June 2, 2015?

A Yes.

Q Why don't you give us the history so we can start from

there, again, not going to do every note, skip a bunch of them, you are now seeing him again June 2, 2015, follow-up please?

A Patient had not been here in the prior year. He has been seeing a pain management doctor in New Jersey nearer to where he lived. He was taking Suboxone eight milligrams, twice a day, Wellbutrin, Adderall.

Doctor no long in practice, so patient came back to our office. He did not have Suboxone. He was seen by a medical doctor who prescribed Percocet for pain.

Q When you say medical doctor, it says PMD, what does that mean?

A Primary medical doctor.

Q Only because they heard PCP before, what you called it, PMD, same thing?

A Correct.

Q Okay. Continue please?

A Patient is advised to see a psychiatrist if he wants to be prescribed Adderall. Patient complaining of fatigue. Will prescribe Provigil. Patient complaining of neck pain, and spasm radiating into bilateral upper extremities, with numbness, and tingling.

Patient complaining of lower back pain radiating to bilateral lower extremities with occasional weakness in the lower extremities, when he gets up and after prolonged sitting. Patient complaining of pain in both sacroiliac joints.

Pain level is 6 out of 10 without medication, and pain level is 2 out of 10 on the visual analog scale with medication. Pain is improved with resting, taking pain medication.

Pain is made worse with rain, cold weather, weather changes, bending, lifting, prolonged sitting, or standing. Pain medication allows patient to perform his usual activities of daily living.

Q Okay. On that date, did you discontinue any medications for him, 6/2/15, current medications, there's something called discontinued?

A Correct.

Q Which medications did you discontinue?

A He was stopped on Adderall, Percocet, Provigil and Duexis, which is an oral antiinflammatory medication.

Q On that date did you re-prescribe any medication you had previously prescribed to Mr. Colon?

A Yes.

Q What were they?

A He was prescribed Suboxone, 8 milligram tablets, twice a day, and he was regiven a prescription for Wellbutrin, which is an anti-depressant medication, to be taken once a day.

Q Okay. The Suboxone, can you tell the jury why you restarted Mr. Colon on Suboxone?

A Suboxone again is a medication that is used for pain. He had issues with OxyContin in the past. He is very tolerant

to the medication from prolonged usage in the past, Suboxone is a nice medication in that it's super long-acting medication.

It is a stable medication, and both could help with pain without the need for other types of opiate medication which would actually be ineffective if he took together with the Suboxone.

Q From that date on, have you continued to prescribe Suboxone to Mr. Colon?

A Yes.

Q To today?

A Yes.

Q And do you continue to test whether or not he's taking the Suboxone through urine tests?

A Yes.

Q And has there been any disruption in his being allowed to get the Suboxone at a pharmacy?

MR. DERRICO: Objection.

Q Withdrawn. Has he continued to take Suboxone that you prescribed?

A Yes.

Q From 2015, through today?

A Yes.

Q Okay. I'll just jump to a random note, 9/18/15, and we will jump maybe through the years, but let me just get to the present, if you would tell me when you're there, Doctor?

A Yes.

Q Could you just read the lumbar section in the history of present illness as relayed to you what was going on in his lumbar, there's other things noted for other body parts, but just that?

A Yes. Pain located L3 through S1, which refers to the lower back musculature. Pain and spasm which radiates down to bilateral buttocks and posterior thighs. Pain began after a work-related accident on 6/19/2008. Description of pain is constant, dull, ache, with occasional sharp pain with certain movement.

Severity, 6 to 7 out of 10 on the visual analog scale. What makes it better, resting. What makes it worse, lifting, bending, walking for certain amount of time, going up and down stairs. Staying in one position for too long.

Particular symptoms include in both buttocks and posterior thighs, previous back problems, he denies. Past therapy outcome lumbar fusion by Dr. Merola on 2/17/2011.

Q Did you -- withdrawn. At least from the time you first saw him in 2011, a few months past his back surgery, through that date, had he returned to work in any capacity as noted?

A We had discussed returning to work, but not at that time.

Q Okay. So that note you were reading, was that the September 18, 2015?

A Correct.

Q Can you please go to May 24, 2016, so understanding there are notes in between, I'm just going to have you jump to May 24, 2016, okay?

A Yes.

Q Tell me when you're there?

A I am there.

Q Can you read the history of the follow-up?

A Yes. Patient seen today for follow-up visit. Patient stated that he did return to work as an ironworker. He is working in New York City. He does have episodes of increased severe back pain and spasm. The pain as to both hips and lower extremities, he does take Suboxone and spits it out during the day.

He is tolerating the pain medication. He did request Adderall or Vyvanse to counteract lethargy that he feels during the day. Patient told that this is addictive, an addiction medication, dependency issue, and should not be using it at the present time.

He had complaints of neck pain and spasm radiating into the upper extremities, with pain shooting into the thumb. Complaints of lower back pain and spasm, radiating into bilateral lower extremities, right greater than left, with tingling in thighs and going up steps. Pain is improved with resting and taking pain medication.

Pain is worse with physical exertions and working construction. Pain medication helps him function and perform his usual activities of daily living.

Q What medications did you prescribe him on that date, or note that he was prescribed?

A He was given Suboxone, a prescription for Suboxone during that office visit. He was also taking Wellbutrin. This is an anti-depressant medication and Ambient, which he was using for sleep.

Q Doctor, I believe you've already testified, you already testified the treatments he received. Why don't we just come to May 14, 2018, and we will do 2019, and I'll ask you some other questions. Okay?

MR. DERRICO: What were the pages?

MR. McCRORIE: May 14, 2018, history of present illness.

Q You can tell us when you're there, Doctor?

A I am.

Q Okay. Did mister -- at least up until that date, in your notes, had you noted as to whether or not Mr. Colon had continued working as an ironworker from the time he returned in 2016 on each of the visits, did you note that?

A Yes.

Q Had he, "yes or no"?

A Yes.

Q Okay. So why don't you read on May 14, 2018, the history of the present illness?

A 38-year-old-male. He was involved in a workers' comp injury.

Q Just a little slower.

A On 6/19/2008. Patient had fallen approximately 13 feet injuring his neck and lower back. Returned to the office today with complaints of severe and lower back pain and neck pain, which has only progressively gotten worse since he returned back to work approximately one year ago.

He's having acute exacerbation of his symptoms, with increased lower back pain, L3 through S1, with increased pain shooting into both lower extremities and increased back spasm.

Patient with increase pain, C3 through C7, with pain shooting into the left upper extremity, with numbness and tingling into the left hand, along the C6 and C7 nerve distribution.

Patient currently is working as an ironworker, which entails heavy lifting, greater than 20 to 30 pounds with bending. Patient also has to go up and down ladders during the day. Pain is 7 to 8 out of 10 on a visual analog scale. On medication. No side effects. Patient is alert and oriented.

Q If you can go to, it may be notes before, September 26, 2018, and closer to the present, we're not going to, on each of the days Mr. Colon came to you, did you note what, if any,

complaints of pain and limitation he was giving to you?

A Yes.

Q Did you note what, if any, medications you were prescribing to him?

A Yes.

Q Did you know whether or not he was working or not?

A Yes.

Q Looking at the section marked assessments, on September 26, 2018, you have that?

A Yes.

Q Can you please tell the jury underneath all of the seven diagnosis you gave, can you read that?

A Patient is currently not working. He does have exacerbation of his symptoms with increased neck and lower back pain with radicular symptoms into his lower extremities, as well as his upper extremities.

Patient stopped working on May 14, 2011 as he is causing further progression, less degeneration of the cervical and lumbar spine. Recommend reevaluation with MRI of the cervical and lumbar spine.

Restriction discussed with no lifting greater than 15 pounds, no bending, twisting, kneeling, climbing, prolonged standing or sitting. Addendum, patient on 10/23/2018, that he is temporarily 100 percent disabled for all jobs pending evaluation and treatment.

Q Okay. Mr. Reeve was just pointing something out to me, sometimes I don't hear things. Can you read, it's in the evidence, patient stopped working on what date?

A 5/14/2018.

Q Okay. Thank you. Let's just go to this year, 2009, 1/9/2019.

A Yes.

Q Did Mr. Colon continue to complain about pain to his neck and back?

A Yes.

Q Did Mr. Colon ever relay to you his efforts to --

MR. DERRICO: Objection. Leading.

Q Okay. Was he working -- withdrawn. What, if any, knowledge do you have of Mr. Colon returning to some form of employment that day or any day thereafter?

A He did return to some form of employment thereafter from when he had stopped.

Q Okay. Do you know -- withdrawn. Do you know what it is?

A Yes, he was working in a pizza shop, a store.

Q As what, do you know?

A I believe delivering pizza.

Q Okay. So, even through today, you could take the last note, and on the date you last saw him, what is the date?

A On February 7, 2019.

Q And on February 72019, one final time, if you can, what was Mr. Colon's, what were his complaints to you with regard to his neck or back?

A He was still complaining of significant lower back pain, right greater than left. Pain radiating to his, both feet, right greater than left, with numbness and tingling. We discussed medication, alternative medication from what he was on.

He was complaining still of neck pain and spasm, both right and left side, radiating into both upper extremities and down into the right arm, greater than the left. Again with numbness and tingling.

He was trying to go back to work with restrictions and having a difficult time. He had just recently started a new job, and he's able to manage, though, with restriction.

Q What were the new meds you were discussing putting him on?

A So we had discussed putting him on Gabapentin and Lyrica. Both of these medications are used for a nerve-type pain. They are anti-seizure medications, and what they do is settle nerve symptoms such as the shooting pain into upper and lower extremities, with numbness and tingling, and help settle that down.

Q Were these being considered in addition to the Suboxone?

A Yes.

Q Okay. Doctor, if I could just...

MR. McCRORIE: With the court officer's permission, can I put this board up?

THE COURT: Yes.

Q Contained within your file would be in evidence, did Mr. Colon have pain management treatment before he came to you in the form of injection?

A Yes.

Q Okay. This is 63 for identification, and just you've already told the jury he started seeing you May of 2011, correct?

A Yes.

Q So it appears everything on the right side of the board was before you and bottom right, okay; is that true?

A Yes.

Q Can you see that clearly?

A Yes.

Q All right. Can you please, I think they are the same but, lumbar interlaminar ESI and cervical interlaminar ESI. What does ESI stand for?

A It stands for epidural steroid injection.

Q And what is the purpose of an epidural steroid injection to either the neck or back presurgery?

A The idea is that there is inflammation coming from the

disc that's hitting against the nerve root. That nerve root gets inflamed. So a needle can be placed in the epidural space which is very close to where the nerve roots are coming out through the spinal cord, and that is called the epidural needle.

When that needle is in the space, an injection of steroid medication can be placed at the level of where the pain is, based on the MRI result, based on that level.

That can be done both in the neck and the lower back. The idea again is to decrease inflammation, and to help with the sharp shooting pain that's shooting down into the legs, and hopefully over time will promote healing of that inflamed disc.

Q Can that at times prevent the need for surgery?

A Yes.

Q Okay. And just it's on here, but if you can read the dates, it's on -- this is not in evidence, but what are the dates he had the cervical epidural injection?

A He had it done on the cervical, November 11, 2009. December 21, 2009, and January 18, 2010.

Q How about lumbar?

A To the lower back he had one on October 5, 2009, one on October 14, 2009, and one on November 4, 2009.

Q Can you tell the jury why pain management physician does a series of three epidural injection?

A They tend to build up on itself. So one injection may offer 30, 40, 50 percent relief. A second injection enhances

that first injection, and provides hopefully 60, 70 percent relief. And the third injection will offer hopefully even more relief.

Each injection is usually followed by a follow-up, make sure that they are actually having benefits. If there's no benefits, there would be no point in repeating the injection, and maybe do something a little bit different.

Q Okay. On the bottom right, SI joint injection, you described the word is there, but tell the jury what that is and what the purpose of that would be six months after the epidural?

A Okay. So he does exhibit pain, lower back pain, sometimes lower back pain. In this case, the pain management doctor wanted to do a joint in the back. It's a joint called the sacroiliac joint. It's the joint that's between the back and what is involved in the hip and was actually a joint space there.

That can be very inflamed, especially if somebody is having ongoing back problems or gait problems and that joint in itself could become inflamed and can be injected and treated by doing an injection with steroid medication.

Q Are each of these procedures notes from the prior physicians in your file?

A Yes.

Q And what is on the left prior to seeing you, what is a lumbar medial branch nerve block, an MBB, what is the purpose of

it, and what is done?

A Okay. So in the spine, there are joints called facet joints. Facet joints are the joints between the vertebral body so that you can actually move around. So the spinal process and the spine itself is a movable joint.

So the little nerve that goes to these joints are called the median nerves, medial branch nerves, and they are little nerves that can be injected with local anesthetic. The idea is you can subside some of his back pain, again, there's different sources of pain.

So back pain in itself is not necessarily shooting pain into the leg, can come from at least the facet joints. If you can block those nerves and determine whether there's relief, you would be able to tell that, okay, some of this pain is coming from the facet joints. That's why they did this median nerve block at those levels and prior to coming to our office in March of 2010.

Q Now, we are going to go to the top, the trigger point injections. You've already described for the jury what they were up there, are those the dates, they correspond with dates in your notes where it's indicated that Mr. Colon was given trigger point injections?

A Yes.

Q Can you tell the jury the part of the body where you injected his trigger points?

A In the lower lumbar paraspinal muscle. These are the muscles that are on both right and left sides of the spinal column in the lower back.

Q Understanding there are two years where he only saw you once for a reason, but you had seen him before and after those dates to the present, can you tell the jury was Mr. Colon's neck or back bothering him more throughout the course of your treatment?

A Yes, it was.

Q Which one?

A Neck and lower back.

Q What was bothering him more?

A The lower back.

Q Now, let's go, I think you already told them the lumbosacral lysis of adhesions LOA, the dates that you performed them, can you just read them into the record?

A Yes. On April 19, 2012. On February 11, 2013, and March 22, 2013.

Q And what does that lysis mean, l-y-s-i-s in medicine?

A It means destroying some tissue.

Q What does adhesions mean?

A Adhesions refer to scar tissue, tissues adjoining itself that should be actually separate, separating.

Q Can you describe for the jury either how or why scar tissue forms or can form in the lower back after such a back

surgery as Mr. Colon had, two level lumbar --

MR. DERRICO: Objection. Leading.

Q Can you describe how the adhesion forms in someone's back?

A Yes. So, with surgery you are actually going through many layers, or different layers of tissue. With the healing process, that includes epidural space. With healing process because you destroyed the entire tissue, or even that epidural space, there is scar tissue that can develop as part of the healing process.

That means the tissues that's flamed, that is normally a space, is now filled up with scar tissue. So doing that procedure, actually using a catheter, and you can remove some of that scar tissue, open up the space, thereby injecting medication more freely so it's spread to where you want it to go to in that same space.

Q Was authorization required to do all of those procedures?

A Yes.

Q I would like you to just discuss with the jury, you said, you asked Mr. Colon to consider spinal cord stimulator. I'm just going to use an exhibit, Plaintiff's 64 for ID, can you describe -- withdrawn.

First of all, if Mr. Colon were to get a spinal cord stimulator, would he remain on Suboxone?

MR. DERRICO: Objection. Can we speak to you, please?

THE COURT: Sure. Let's step in the back.

(Whereupon discussion was held in the robbing with all attorneys present.)

(Whereupon back on the record.)

COURT OFFICER: Come to order.

THE COURT: You may continue, Mr. McCrorie.

MR. McCRORIE: Yes, your Honor.

Q Doctor, before we've been moving fast, I'm going to get to ask you your opinions about certain things. Okay?

A Yes.

Q Prior to coming here today, did you review the Saint Barnabas Hospital records, the fire department, city of New York from this case, as well as Dr. Merola, and all the other records that were sent to you for this case?

A Yes.

Q As well as your own notes, and the notes of the prior pain management physicians?

A Yes.

Q Okay. And did you review in evidence the notes of Dr. Shivdasani's from 2006, 2007 through present, up through 2013?

A Yes.

Q As well as the notes of Saint Joseph Hospital in

January of 2009, and Dr. Vitolo in New Jersey from March of 2009 through October of 2009?

A Yes.

Q Did you, in fact, look at x-ray films from both this case and from 2007?

A Yes.

Q Okay. I have to ask you a long hypothetical question before asking you the opinion questions. Okay? I would like you to assume that on the date of the accident, 6/19/08, Luis Colon was 28 years old, just shy of his 29th birthday. Okay?

A Yes.

Q I would like you to assume that previous to the accident, he was complaining to his primary care or primary medical care, what you call a PMD, primary care physician, on 6/13/06, that he hurt his back at work, that if he turned his neck it hurts, and he was prescribed Relafen, 800 milligrams, that's been described to the jury, what that is, okay, nonnarcotic?

A Yes.

Q I would like you to assume that his work history indicates he missed no time from work in 2006, after that time period and that he's been a member of ironworkers union Local 40 since 2004.

I would like you to assume his work records is also in evidence from 2004 through present. I would like you to assume

on 2/7/07 there was an accident on the service road of Grand Central Parkway, he was hit in the rear by a vehicle.

I would like you to assume that there's no emergency room, but he does see Dr. Shivdasani the next day. His primary care physician is the only physician he sees after that accident, and that very day he was sent for x-rays to his left shoulder, his neck and his back at New Rochelle Radiology. Okay?

A Yes.

Q I would like you to assume that those x-rays show what's called degenerate or minimal or mild degenerative changes to the neck and the back. I would like you to assume that no missed time from work 2/7/07. He's once again put on Relafen and Flexeril for that time period by a primary care physician. Okay?

A Yes.

Q I would like you to assume that he is referred out to see a Dr. Kirschenbaum on that day, but never goes to see him, an orthopedic doctor. Okay?

A Yes.

Q I would like you to assume that in May 29th of 2007, he is at Dr. Shivdasani's office complaining of a work-related accident where he twisted his knee at work, stepping in a shower hole. Okay?

A Yes.

Q I would like you to assume that there's no mention of neck or back, and that, that very day he is sent to a facility called the Sports Spine & Pain Treatment Center of Westchester where he is treated and seen for his knee only and that there are no complaints of neck or back pain at that Sports Spine & Pain Center. Okay?

A Yes.

Q I would like you to assume that in addition to that visit, he follows up with Dr. Kirschenbaum, the same doctor that Dr. Shivdasni had referred him to in February of 2007.

And that this time he sees him in 9/17/07, and that the chief complaint is pain in my left knee. There's a complete physical exam that there's no treatment or exam or complaint to the neck or the back. Okay?

A Yes.

Q I would like you to assume that shortly around that time period, one of the doctors starts prescribing him for the first time Percocet, and that Mr. Colon will tell this jury as we've told the jury --

MR. DERRICO: Objection. Assumes facts not in evidence.

Q I would like you to assume, subject to connection, that Mr. Colon voluntarily in November of 2007, that there is a 28 day time period where he is not at work in the work record, and that subject to connection, Mr. Colon entered a rehabilitation

center voluntarily for alcohol and opioid drugs, Percocet. Okay?

A Yes.

Q I would like you to assume that after getting out of the rehabilitation center, Mr. Colon was immediately to work and has a consistent work history from the day or week that he's out in the end of November, 2007, straight through the day of this accident, June 19, 2008. Okay?

A Yes.

(Continued on next page...)

Q. I'd like you -- are you fully familiar with the contents of the emergency room record and the Fire Department New York ambulance call from this accident?

A. Yes.

Q. Okay. So very briefly, it's in evidence so --

MR. DERRICO: Objection. Could we have the hypothetical, or --

THE COURT: One second. One second.

Q. Previously with Dr. Merola, he had went through this with the jury. I'm trying to save time so, but we'll do it this way.

Are you familiar that he denied neck and back pain after telling the ambulance attendant that he had lost consciousness?

A. Yes.

Q. Are you familiar with the fact that he had a positive back and left flank ecchymosis?

A. Yes.

Q. I'd like you to assume that within a five days or so of getting out of the hospital emergency room of this incident he appears before Dr. Steven Touliopoulos at University Orthopedics and he's complaining of radiating lower back pain as well as neck pain, okay?

A. Yes.

Q. I'd like you to assume that he appears at Dr.

Merola's office several days after that or within a week of that and he complains of radiating back pain that has -- radiating back pain and neck pain, okay?

A. Yes.

Q. I'd like you to assume that, subject to connection, he'll testify that there are no records that indicate he's ever had radiating neck or back pain prior to that fall of date June 19, 2008, okay?

A. Yes.

Q. I'd like to you assume that Mr. Colon appears for a hearing under oath in December of 2008 and indicates, when questioned, that he has been back at work, working in pain, that his neck and back have been hurting since the fall of the 6/19/'08, okay?

A. Yes.

Q. I'd like to you assume that that very month Mr. Colon starts officially his work accident benefit case and he signs the paperwork in December of 2008 indicating his entire back is hurting him, okay? Since the accident.

A. Yes.

Q. Okay?

I'd like to you assume that on January 19th, 2009 there is a motor vehicle accident, where his vehicle on the way to work slides on ice against a guard rail, and that his chief complaint is his left shoulder, okay?

A. Yes.

Q. You've seen the St. Joseph's record and Dr. Vitolo's, right?

A. Yes.

Q. I'd like to you assume that a week before that, his lawsuit had been filed for this case, okay?

A. Yes.

Q. I'd like you to assume that Mr. Colon complains in the emergency room of chief complaint of left shoulder and he says his neck hurts, that his neck is x-rayed and that his back is not, okay?

A. Yes.

Q. And that as when he's released it says, as far as pain, none for back, okay?

I'd like you to assume that he starts to treat under the motor vehicle accident benefits with a Dr. Vitolo, in New Jersey, for his left shoulder, initially just his left shoulder, okay?

A. Yes.

Q. I'd like you to assume that by the summer of that year, 2009, he also complains about his neck to Dr. Vitolo, okay?

A. Yes.

Q. I'd like you to assume that he doesn't mention his back to Dr. Vitolo but instead goes back to Dr. Touliopoulos

in March of 2009 and indicates that he has been having issues with the radiating pain since the accident that we're here about today, okay?

A. Yes.

Q. I'd like you to assume that Dr. Merola -- Dr. Touliopoulos re-refers him to Dr. Merola and that he repeats that information to Dr. Merola in May of 2009, okay?

A. Yes.

Q. I'd like you to assume that in the summer of 2009 Mr. Colon comes back, brings his neck back into treatment in the work accident case, it hadn't been treated by Dr. Touliopoulos or Merola up to that point, and he sees a Dr. Sciortino, and it is now back in this case, okay?

A. Yes.

Q. I'd like you to assume that he stops treating with his doctor in New Jersey after an MRI in October of 2009?

A. Yes.

Q. And that there's no lawsuit involved in that case, okay?

A. Yes.

Q. All right. And then I'd like you to assume that everything that is in evidence, everything you've testified here to today, including Dr. Merola's records in evidence, all those things you've reviewed, that they've all occurred, you've reviewed them and you're familiar with them, okay?

A. Yes.

Q. All right. The first -- are you familiar with degeneration?

A. Yes.

Q. And did Mr. Colon at the age of 29 have -- if he didn't have an x-ray, did Mr. Colon have degeneration in his back at the age of 29, to some level?

A. Yes.

Q. And did he have degeneration in his neck to some level, at the age of 28 or 29, on the date of the accident?

A. Yes.

Q. And did you see that noted and actually see it yourself in the -- on the x-rays?

A. Yes.

Q. Do you have an opinion -- well, withdrawn.

Before we ask your opinions about this case, as a medical board-certified pain management physician, can trauma activate or aggravate previously asymptomatic degeneration and cause it to be symptomatic?

A. Yes.

Q. And in this particular matter, in the notes and the evidence that's in evidence and the records you've seen from the time of the accident, the radiating symptoms to his neck and his back -- well, we'll start with just his back.

The radiating symptoms from his back from the date

of the accident up until the time he saw you, with what's in evidence and the hypothetical and all you've seen, do you have an opinion with a reasonable degree of medical certainty as to the cause of the radiating symptoms that Mr. Colon had since the date of this accident?

A. Yes.

Q. Will you please tell the jury, first, what your opinion is?

A. Yes. Within a reasonable degree of medical certainty, his lower back pain and pain shooting into his lower extremity, as well as the neck pain shooting into his upper extremity --

Q. Excuse me, Doctor, I'm sorry, for the record, just the back.

A. The back, is resultant from the accident he sustained on June 19, 2008.

Q. Now, we just need the basis for the aggravation or the cause of the symptoms?

A. The cause of the symptoms are the fall that he sustained during that date of the accident.

Q. I need your basis. So, in other words, are you basing this on the fact that your a medical doctor?

A. Yes. So the fact that I am a medical doctor, I specialize in pain management, I deal a lot with these chronic pain disorders. This is not a degenerative process. It is a

process that occurred from the accident as stated.

Q. With a reasonable degree of medical certainty, assuming Mr. Colon did not have any radiating pain, did not have any pain on the day before the accident, the week before the accident, the month before the accident, to his neck or back, do you have an opinion with a reasonable degree of medical certainty, assuming that after the accident he now has pain and radiating pain, do you have an opinion as to whether or not this accident would have aggravated any preexisting asymptomatic degenerative conditions and caused them to become symptomatic?

A. Yes. So within a reasonable degree of medical certainty, this asymptomatic patient that sustained the accident now has become symptomatic. Within a reasonable degree of medical certainty, with whatever prior degeneration he had, the accident aggravated and caused his worsening lower back pain and pain shooting into his lower extremities.

Q. And you have to do it each time: Could you give the jury the basis, if it's your education, training, experience; if it's your examination of the patient and review of records, please tell them your complete basis.

A. Okay. These -- I mean the base for my decision is really my experience with ongoing patients, seeing a lot of degenerative problems as well as acute post injury issues and problems. Degenerative symptoms do not present this way, by

any capacity. It's more of a slow progression that occurs much later in life, not somebody who's in their 20's and 30's. The accident is the causative factor that aggravated his ongoing or caused his ongoing worsening lower back pain and pain shooting into his lower extremities.

Q. Any subsequent accident did not help him, true?

A. True.

Q. Do you have an opinion with a reasonable degree of medical certainty as to whether or not his ongoing symptoms since this accident are from this accident as opposed to a car accident that happened where he complained of shoulder and neck pain?

A. Well, the --

Q. To the lower back, let's do that.

A. The inciting event was the accident, that fall that he sustained, regardless of subsequent motor vehicle accident for which he was not -- he banged his shoulder. Again, could that aggravate things? Of course. But the reality is that the accident on June 19, 2008 was the inciting event that caused the ongoing disc changes and ongoing shooting pain into his lower extremities from his back.

Q. For the record, we just need the basis on each question. Sorry.

A. The basis is on my history of treating ongoing, again, chronic patients both degenerative processes, especially

in older patients, versus acute injuries after a fall, a trip, some type of traumatic event.

The typical presentation that he's presenting after a traumatic event is, again, the inciting event that just caused all of his ongoing lower back pain and the pain shooting into his lower extremity.

Q. Do you have an opinion with a reasonable degree of medical certainty as to whether, beyond the date of this trial, Mr. Colon will experience pain to his neck and or back?

A. Yes. Within a reasonable degree of medical certainty, his condition is chronic and he will continue, unfortunately, to have pain in his neck and lower back for the rest of his life.

Q. Basis?

A. The basis is history of a lumbar fusion, both neck and lower back, history of a chronic condition that I follow patients routinely throughout, again I've been doing pain management for over 20 years, and these chronic conditions, unfortunately, just do not get better over time.

Q. I asked you specifically before to leave out the neck. Do you have an opinion with a reasonable degree of medical certainty as to whether or not this accident would have aggravated or activated any preexisting conditions in his neck if they were asymptomatic and caused them to become symptomatic?

A. Yes.

MR. DERRICO: Objection. Asked and answered.

MR. McCRORIE: I asked about the back only.

THE COURT: I'll allow him.

Mr. McCrorie, before you go on, slow down.

MR. McCRORIE: Sure. I'm sorry, I was trying to get done before lunch.

THE COURT: You may answer.

MR. McCRORIE: Thank you, your Honor.

A. Within a reasonable degree of medical certainty, whatever degenerative processes he had prior to the accident was not a factor in his ongoing pain that he had subsequent to the accident on June 19, 2008.

Again, the basis for that is the clinical experience that I have with chronic conditions, especially post traumatic conditions, versus a degenerative process. He does not fit the degenerative process profile for ongoing pain.

Q. Can you tell the jury, with a reasonable degree of medical certainty, the time period in the future that you opine that he will have pain to his neck and back? You already told them that he would. What is the time period into the future, with a reasonable degree of medical certainty?

A. Within a reasonable degree of medical certainty, he will continue to have pain for the rest of his life.

Q. Is the basis any different than you previously told

them?

A. No.

Q. Do you have an opinion with a reasonable degree of medical certainty as to whether or not beyond the date of this trial Mr. Colon should be in treatment with a pain management physician, doesn't have to be you, but such as yourself, into the future?

A. Yes, within a reasonable degree of medical certainty, he will need to continue with pain management treatment.

Q. With what -- for what time period into the future, with a reasonable degree of medical certainty?

A. For the rest of his life.

Q. Can you tell the jury with what frequency on a yearly basis is your opinion he should continue to treat with a pain management physician?

A. He needs constant re-evaluation. He's been coming to our office every other month. That is the minimum amount of time that we will extend, usually, a pain management follow-up. Most patients do come monthly. He's --

Q. What do you recommend that he do, going forward?

A. At least every two months coming to the office.

Q. What is the cost out-of-pocket, not in any system, private pay, for a patient to come see yourself or a board certified pain management physician in the tri-state area? But

let's do you. What is the cost?

A. Two hundred dollars per office visit.

Q. Is that average?

A. Yes.

Q. With what frequency? Did you already state it? You already stated.

Okay. Do you have an opinion with a reasonable degree of medical certainty as to whether or not there will be need for future medications for the pain you say Mr. Colon will have in his neck and his back?

A. Yes.

Q. What is the opinion?

A. The opinion is that he will need to continue on pain medication for which he is currently on, Suboxone, and he will need to continue that for the rest of his life.

Q. Is the basis the same as you previously stated?

A. Yes.

Q. What is the frequency Mr. Colon is taking the Suboxone and what is the cost of each pill, out-of-pocket private pay? And you could go on the conservative side.

A. He takes Suboxone --

Q. With a reasonable degree of medical certainty.

A. Within a reasonable degree of medical certainty, he will continue to take Suboxone 8 milligram tablets. He takes three tablets a day. The average cost is 7 dollars per pill,

for which he needs ninety pills her month as he takes it three times a day.

Q. Do you have an opinion with a reasonable degree of medical certainty as to whether or not, in addition to Dr. Merola talked about MRIs, any other diagnostic testing should be performed with any frequency going forward?

MR. DERRICO: Objection.

MR. McCRORIE: It's in the BP.

THE COURT: Overruled. I'll allow it.

A. Yes, he will need to continue to have x-rays, both of his lower back and cervical spine.

Q. With what -- for what time period?

A. Every year, for the rest of his life.

Q. For what -- what is the current cost of a series, be it the neck or the back, to do a complete series for that body part?

A. It's $250 per site.

Q. And that would be, you said, yearly for life?

A. Yes.

Q. The basis for that, is that any different? We're almost done.

A. The basis is the same, because it was ongoing condition.

Q. Do you have an opinion with a reasonable degree of medical certainty as to whether or not Mr. Colon should have

the spinal cord stimulator?

A. Yes. Within a reasonable degree of medical certainty, he should undergo a spinal cord stimulator trial and permanent.

Q. You've already told the jury the purpose of it, I believe, correct?

A. Yes.

Q. Can you please tell the jury, with a reasonable degree of medical certainty, with what -- assuming private pay, assuming no permission required, when with a reasonable degree of medical certainty do you opine he should have that?

MR. DERRICO: Objection.

THE COURT: I'll allow it.

A. Within a reasonable degree of medical certainty, within the next five years.

Q. Okay. This is something you actually do, correct?

A. Yes.

Q. Meaning you do this procedure, corrrect?

A. Yes.

Q. Could you tell the jury the cost currently -- withdrawn.

What body part would he be getting it done to or what -- is it done for both the neck and the back, is it just one spinal cord stimulator for the whole spine?

A. No, there would be two separate stimulators, one for

the lower back and one for the neck.

Q. Okay. Just for the lower back, do you have an -- withdrawn.

Do you have an opinion as to which body part he would need?

A. Certainly for the lower back, as that's his worst pain.

Q. So if he were to get the spinal cord stimulator in the lower back, could you please tell the jury the cost of the -- let's do the spinal cord stimulator trial?

A. Yes.

Q. And if you could give the jury all of the costs, I know you said within the next five years, but give them all of the costs associated with that procedure?

A. So with the trial, the trial entails two leads, at a cost of $2,550. Plus the surgical fees of $4,000. And the anesthesiologist who's involved of $2,000. Plus there is a facility fee with an approximate cost of $8,000. Again, within the next five years.

Q. When you say anesthesia fee, is that a fee -- it's important to the economist -- for the anesthesia itself or is the fee for the medical costs for the anesthesiologist?

A. It's the fee for the anesthesiologist.

Q. Okay. And for the permanent implantation, how soon after the trial would the permanent implantation for the lower

back be done, with a reasonable degree of medical certainty?

A. Within a month.

Q. Can you tell the jury the costs of the permanent implantation of the spinal cord stimulator plus the generator, or just go through the costs. And if it's for a doctor fee, please tell the jury, delineate that.

A. Okay. So the actual cost for the generator plus the leads are $35,600. The surgical fee is approximately $15,000. Plus the anesthesiologist fee of $3,000. And a facility fee, operating room fee, of forty to fifty thousand dollars, depending on the facility and hospital costs.

Q. Finally, Doctor, does that permanent implantation stay in there for life or does it require replacement, with a reasonable degree of medical certainty?

A. Yes, within a reasonable degree of medical certainty, the generator in itself has a longevity of approximately 10 years, depending on usage.

Q. Can you just tell the jury the costs of the generator replacement, just again delineating if it is a doctor's cost or a facility cost?

A. Correct. So the cost of just the generator the $32,600. Plus the physician, the surgical cost of $3,000. Plus the anesthesiologist cost of a thousand dollars. Plus facility fee of at least $10,000. Again, the facility fee is the operating room, because it is an operative procedure, and

that fee will again vary depending on the type of facility.

Q. Do you have an opinion within a reasonable degree of medical certainty as to whether or not he will continue to develop scar tissue in the area where you did the lysis of adhesion?

A. Yes, within a reasonable degree of medical certainty, he will and has shown that he has scar tissue within the epidural space where he had the prior surgery.

Q. Which part of the body?

A. In the lumbar spine.

Q. Reasonable degree of medical certainty do you anticipate and opine that he will require future lysis of adhesions, assuming --

A. Yes.

Q. Assuming no permission necessary?

A. Within a reasonable degree of medical certainty, the ongoing scar tissue can be helped or resolved with ongoing epidural lysis of adhesion and would be needed in him to help at least diminish or get rid of some of that adhesions from the epidural space.

Q. With what frequency, how many, if you could give us the cost, with a reasonable degree medical certainty?

MR. DERRICO: Objection. This all goes beyond the scope.

MR. McCRORIE: You know what, Judge, I don't

believe it's beyond the scope. Since it's one, could we finish, just with these two questions after.

THE COURT: Sure, sure.

MR. McCRORIE: I don't want to rush it.

THE COURT: Go ahead.

A. The cost is $2,000 for the epidural lysis procedure. We're talking one procedure every two years, conservatively. Plus the anesthesiologist fee of approximately a thousand dollars.

Q. For what period of time?

A. One procedure every two years.

Q. For what period of time?

A. Oh, for the rest of his life.

Q. Is that with a reasonable degree of medical certainty?

A. Yes.

Q. And is the basis the same that you've previously noted?

A. Yes.

Q. You've testified to.

One last question is do you have an opinion with a reasonable degree of medical certainty as to from the date of the accident through today, all of the complaints of pain that Mr. Colon has relayed in the records from both before you that are in evidence and relayed to you since you've been treating

him, do you have an opinion as to the cause of the radiating pain and ongoing pain to his back and neck?

A. Yes.

Q. With a reasonable degree of medical certainty, tell us what it is and the basis, and I'll be done.

A. Within a reasonable degree of medical certainty, the cause of his ongoing lower back pain and shooting pain into his legs are from the accident on June 19, 2008. The basis is my professional experience with ongoing injury-type cases as well as versus degenerative cases and his disorder and issues are resultant from that accident as he stated.

Q. Thank you, Doctor.

MR. McCRORIE: Thank you, your Honor.

Thank you.

THE COURT: Thank you.

Members of the jury, we're going to take our luncheon recess and I ask that you return promptly at 2:20 p.m. in the designated area, waiting for the court officer to escort you upstairs. Enjoy your lunch.

THE COURT OFFICER: All rise. Jury exiting.

(Jurors exit.)

THE COURT: Doctor, as you are still providing testimony in this courtroom, you are not to discuss your testimony with anyone during the recess. Do you understand that?

THE WITNESS: Yes.

THE COURT: Thank you. We're off the record.

(Luncheon recess taken.)

-Transcript continued on next page-

A F T E R N O O N S E S S I O N

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(Whereupon, the following transpired in open court, in the presence of all parties:)

THE COURT: Good afternoon, everyone.

We're ready for the jury --

MR. McCRORIE: Yes, your Honor.

THE COURT OFFICER: All rise. Jury entering.

(Jurors enter.)

THE COURT: You may be seated.

Good afternoon, ladies and gentlemen of the jury.

Doctor, I would like to remind you that you're still under oath. Do you understand that?

THE WITNESS: Yes.

THE COURT: Thank you.

You may inquire, Mr. Derrico.

MR. DERRICO: You very much, Judge.

CROSS EXAMINATION

BY MR. DERRICO:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. I'm going to stand back here, okay?

A. Yes.

Q. So I have just a couple quick rules to go over with

you. I'm going to stand back here and I'm going to keep my voice up nice and loud because I want the jury to hear what I have to say and I also want them to hear what you have to say, okay?

A. All right.

Q. So sometimes you may know the question I'm going to ask you and even if you know the question, I'm going to ask you just wait until I ask it so we're not speaking over each other and the court reporter could take down what you're saying and the jury could hear what you have to say, okay?

A. Okay.

Q. All right. Now, another one I always ask is no hand gestures or nodding of the head. You have to give verbal responses, okay?

A. Okay.

Q. Always get the yes. Okay. Good.

And, Doctor, some of my questions will be phrased as yes or no questions, and I'll phrase it that way, okay? If I want you to explain, I'll ask you to explain, okay?

A. Okay.

Q. All right. And if you don't understand my question, just tell me and I'll repeat it or rephrase it or we'll get it out to you the right way, okay?

A. Okay.

Q. All right, great.

Now, you treated Mr. Colon in this matter, correct?
A. Yes.
Q. Okay. And you're here as one of his treating doctors, correct?
A. Yes.
Q. And as an expert, correct?
A. Yes.
MR. McCRORIE: Objection.
THE COURT: Overruled.
Q. Now, did you meet with Mr. McCrorie before you testified here today?
A. Yes.
Q. Did you meet with him today?
A. Yes.
Q. Did you discuss the case?
A. Yes.
Q. For how long did you talk?
A. About a half-hour.
Q. Okay. Prior to that, did you have any discussions with Mr. McCrorie or anyone from his law office regarding Mr. Colon?
A. Yes, yes.
Q. So let's -- who did you speak to?
A. Mr. McCrorie.
Q. When was that?

A. Once in the past two weeks and then prior to this trial, maybe a month or two, somewhere in the past.

Q. Did you go over records?

A. I went over records this morning and then briefly as I went over by myself, but not with him, on my own.

Q. I'm just confining it to conversations with Mr. McCrorie. So you went over some records with Mr. McCrorie today?

A. We briefly looked over some additional records and we looked over -- we actually did not go through every single piece of the records.

Q. Not what I asked you. You went over some records, right?

A. Yes.

Q. Do you recall what records you reviewed this morning with Mr. McCrorie?

A. My office notes.

Q. Okay. Any specific ones or just in general you looked at them?

A. Just in general, the initial office note and some of the ones in between that we had discussed earlier.

Q. All right. Because I notice that Mr. McCrorie skipped around a little bit. He was talking about when you initially saw him in 2011 and then he jumped to specific entries, correct?

A. Yes.
Q. Are those the entries that you went over with him?
A. No.
Q. All right. Did you speak to anyone else from Mr. McCrorie's office or Sacks and Sacks before you testified here today about this case?
A. No.
Q. And so you met like two weeks ago?
A. We didn't meet. It was a brief discussion over the phone about the case that's coming up.
Q. Did you and Mr. McCrorie ever discuss what questions he was going to ask you and responses?
A. No.
Q. And I believe you testified this is your third time testifying in total or third time testifying for Sacks and Sacks?
A. Third time with Mr. McCrorie.
Q. Okay. And do you have other matters -- are you familiar with the firm of Sacks and Sacks?
A. Yes.
Q. They're actually attorneys for Mr. Colon, correct?
A. Yes.
Q. And Mr. McCrorie works with them, correct?
A. Correct.
Q. And are you treating any other patients that are

clients of Sacks and Sacks?

A. I do not know.

Q. Have you ever treated any patients that were clients of Sacks and Sacks?

A. The two patients that I testified for Mr. McCrorie.

Q. Okay.

A. Yes.

Q. And none other than that?

A. The truth of the matter is I'm totally not aware of which lawyers are dealing with specific cases, personal injury cases.

Q. And, Doctor, do you do a lot of personal injury cases?

A. We have a lot of patients in our office that are personal injury. Personally, I do not testify often.

Q. But you handle a lot of cases involving person injury claims?

A. Yes.

Q. Correct?

A. Yes.

Q. And different types of claims, would that be fair to say?

A. Yes.

Q. Automobile accidents?

A. Yes.

Q. Maybe slips and falls?
A. Rarely.
Q. Okay. And with these automobile accidents, that would be -- would primarily involve injuries to the neck and lower back, correct?
A. It's -- that is the typical automobile accident, but yeah.
Q. You say that's -- would you say that's a significant portion of the cases that you have that involve automobile accidents are neck and back?
A. Every case is different, so there may be different injuries depending on the type of accident.
Q. But what I'm saying is an automobile accident that you handle, wouldn't you agree with me, Doctor, that a significant portion of the cases that you handle that involve motor vehicle accident injuries involve the neck and the back, yes?
A. To some degree, yes.
Q. Okay. And now do you testify for any other firms?
MR. McCRORIE: Objection to "testify for firms." He's testified for patients.
MR. DERRICO: I'll withdraw the question and rephrase it.
Q. Have you testified, have you been called as an expert witness by any other law firms?

A. On behalf of patients, yes.

Q. Okay. And could you tell us the names of some of these firms that you've testified for?

A. The only ones that I recall, there was one for Gorayeb and I'm not sure which attorney.

Q. The Gorayeb, Chris Gorayeb?

A. Okay.

Q. Okay.

A. I don't know any of these lawyers in particular, I just know the firms.

Q. Okay.

A. There was one from William Schwitzer, I believe.

Q. Bill Schwitzer?

A. Yes. And we have some of his patients. And there are various other attorneys. But again, I have some correspondence with them, I don't have anything -- I rarely know the Schwitzer or the Sacks and Sacks, so.

Q. Okay. And Dr. Thomas, who just obviously recently passed away, was your partner, right?

A. Yes.

Q. And he did the same thing, he treated patients that were involved in different types of accidents, correct?

A. Correct.

Q. And he also testified, correct?

A. He did most of the testifying. I am thrown into

this position.

Q. You're really comfortable up there?

A. I'm fine.

Q. Having fun?

A. A blast.

Q. Okay. All right. So what's the name of your company, Comprehensive?

A. Pain Management.

Q. And you've been there twenty years?

A. Yes.

Q. Was Dr. Thomas your partner for 20 years?

A. Yes.

Q. And is that -- are you the sole shareholder, so to speak, of the company?

A. He was the sole shareholder, yes.

Q. He was the sole shareholder?

A. Yes.

Q. You were a partner?

A. We'll see. Unfortunately, now we're negotiating.

Q. Negotiating. Okay.

A. But he was the owner of the practice.

Q. Well, are you in negotiation to buy the practice?

A. Yes.

Q. And how long have you been practicing medicine for?

A. I graduated in 1992.

Q. You're going to make me do the math?
A. Yes.
Q. Twenty-six. 26 years?
MR. DERRICO: What, 27? Thank you. I'm not good at math.
Q. Twenty-seven years, correct?
A. Yes.
Q. Did you pass your boards the first time out?
A. Yes.
Q. And you've worked in emergency rooms and rotation?
A. Yes.
Q. And, obviously, I would assume Mr. Colon is not your only patient that you've ever treated in that 27 years, correct?
A. Correct.
Q. And so a patient comes to you, you do like an examination, they tell you what's wrong with them, right?
A. Yes.
Q. You take a history and then you want to come up with some sort of diagnosis?
A. Correct.
Q. So in the 27 years that you've been been doing this, have you ever made a mistake in the diagnosis, yes or no? Yes?
A. It's an unanswerable question. I would not say I've ever made a mistake in the diagnosis, but sometimes you have a

preliminary diagnosis and follow-up workup and make a subsequent diagnosis. So it's not a fair statement to actually stay say you made a mistake in the diagnosis.

Q. Your initial diagnosis?

THE COURT: One at a time.

MR. DERRICO: Got it, Judge. Maybe I broke the rule, I don't know.

THE WITNESS: You broke the rule.

MR. DERRICO: I did. Thank you, Doctor.

THE WITNESS: You're welcome.

MR. DERRICO: Like home. I get blamed for everything.

Q. All right. Let's talk about an initial diagnosis, a preliminary diagnosis.

You've had situations where you've made a preliminary diagnosis or initial diagnosis for the patient, correct?

A. Yes.

Q. And subsequently you found out that things were not exactly as you thought them to be and your initial diagnosis may have been wrong, yes or no?

A. That is correct.

Q. And when -- have you ever made an assumption, whether it's a medical assumption or something else, have you ever made an assumption that turned out to be wrong, yes or no?

A. Again, in medicine you make a preliminary working diagnosis, confirmation of that diagnosis, decision making process. So again, it's not a yes or no answer, but there is a thought process to a diagnosis and further treatment.

Q. I'm talking about life in general: an assumption. You made an assumption and it turned out your assumption was incorrect. Has that ever happened to you, yes or no?

A. Of course.

Q. Okay. Now, one of the terms that was used during the direct examination by Mr. McCrorie was degeneration. You heard that, right?

A. Yes.

Q. Okay. And you, I believe, testified that Mr. Colon, when the accident happened in June of 2008, had already had some cervical and lumbar degeneration going on, correct?

A. Correct.

Q. Okay. And now when you see a new patient, like Mr. Colon, you saw him for the first time February 2nd, 2011, does that sound right?

A. May 2nd, 2011.

Q. My apologies, did I say February?

A. Yes.

Q. May. May 2nd, 2011, correct?

A. Correct.

Q. And you saw him or did Dr. Thomas see him?

A. I had seen him.
Q. And who referred you?
A. Dr. Merola.
Q. Now, Dr. Merola had referred him back to you in March, didn't he? March, somewhere in March, isn't that correct? Do you know?
A. I have a copy of the referral, but I don't know the date on it.
Q. Well, I want you to assume for the purpose of this question - and Dr. Merola's records are in evidence - that actually the referral from Dr. Merola was in March of 2011.
He didn't actually see you until May, correct?
A. Correct.
Q. Did you call Dr. Merola after you got the referral?
A. I had spoken to Dr. Merola and I do speak to him quite frequently and send him a consult.
Q. I want to confine it to specific questions, if you don't mind.
When Dr. Merola gave you the referral, did you call him and to discuss Mr. Colon's case, when you initially got the referral, yes or no?
A. When after he came to the office, I did discuss it with Dr. Merola.
Q. Okay. After?
A. Yes.

Q. Okay. And would you agree with me that when you see a new patient, one of the things that you're going to do is you're going to do a physical evaluation and examination, correct?
A. Yes.
Q. Okay. And that would entail like a neurological examination?
A. Yes.
Q. You want to check strength in the extremities, right?
A. Yes.
Q. The lower extremities, we call the legs the lower extremities, right?
A. Yes.
Q. And the upper extremities?
A. Yes.
Q. You might want to do like a pin prick test to check sensation?
A. Yes.
Q. You want to check reflexes, like when they hit you with that, when you go to the doctor and they make you put your knee up and they hit you with that hammer right here, where I could never get the spot, and your leg kicks up, that's checking the reflexes, right?
A. Yes.

Q. Do you do that when you do a physical examination?
A. Yes.
Q. It's important to do, right?
A. Yes.
Q. You also, one of the things you do is you take a history from the patient, correct?
A. Yes.
Q. Because that's important, isn't it?
A. Yes.
Q. You want to know about past medical conditions, right?
A. Yes.
Q. Family history would be pertinent, work pertinent, right? What they do for a living?
A. Yes.
Q. Okay. And you want your patient, the patient should be -- you're hoping your patient will be forthright, honest with you, in terms of their prior history, correct?
A. Correct.
Q. Now, if the patient is not accurate or honest with you regarding their past history, that could, could have an impact on your diagnosis, couldn't it?
A. Yes.
Q. And we know now, based upon the questions that Mr. McCrorie asked you and other doctors who have testified, that

Mr. Colon had substance abuse issues prior to this accident, correct?

A. Correct.

Q. And that first time that you met with him, did you ask Mr. Colon, yes or no, whether or not he had any substance abuse issues at all? Did you ask him at that first visit?

MR. McCRORIE: I'm sorry, are you asking him yes or no or is that the way he asked.

MR. DERRICO: I'm asking him.

Q. Did you ask him?

A. Yes.

Q. You did ask him?

A. Yes.

Q. And do you have your first -- your reference up there with you from the first visit?

A. Yes.

Q. Does it say anywhere in your records there that he admits to having a prior history with substance, substance abuse?

A. It says he did not have or denied any current drug dependence or abuse.

Q. He denied?

MR. McCRORIE: That's any current.

A. Correct.

Q. That's not what I asked you.

I asked you did you ask him about any prior issues with substance abuse, yes or no?

A. Okay. All I have in my chart is that he denied any current alcohol or drug abuse.

MR. DERRICO: Judge, could you ask the doctor just to answer the question that I'm asking? It's a pretty simple question.

MR. McCRORIE: I think he answered the question.

THE COURT: Doctor, do you understand the question?

THE WITNESS: Yes.

THE COURT: Please taken the question.

THE WITNESS: And I answered the question to the best of my ability.

THE COURT: There's your answer.

Q. Okay. He denied any current --

A. Correct.

Q. Substance abuse issues.

My question is did you ask him about any past substance abuse issues, yes or no?

A. Again, and my answer --

Q. It's a yes or no or I can't answer it that way.

A. I can't answer it that way.

Q. Is there anywhere in your records from that initial consult that you put down that he had prior substance abuse

issues, yes or no?

A. No.

Q. Now, when he came to you on May 2nd, 2011, we agree that's three years, approximately or two years and eleven months after his accident, correct?

A. Correct.

Q. And when he came to your office, did he bring any medical records with him?

A. We did have some medical records. Not all of them, but yes, we had some medical records.

Q. Okay. Did he bring them with him or you had them?

A. I do not recall, but we always inquire about past medical records and try to get prior MRIs, scans, office notes from Dr. Merola, et cetera.

Q. All right. So what records did you have with you when you first met with him?

A. That were reviewed? We did have some of his prior MRIs. I don't believe at that first office visit we had the other medical records, but I don't recall exactly what we had. Over time we did end up with his entire past medical records.

Q. So you had some MRIs, maybe, when you first saw him the first time, correct?

A. We had the MRIs up to and before -- prior to the surgery, and I don't believe he had one initially right after surgery and then we had seen him.

Q. Do you remember when the MRIs was done, the MRIs of the lumbar spine and the cervical spine?

A. I do have copies of the MRIs. I don't remember the exact dates.

Q. 4/28/2009, does that sound about right, for the lumbar?

A. Okay.

Q. Sounds about right. And then May 2nd, 2009 for the cervical, do you remember that?

A. Yes, I have.

Q. Does that sound right?

A. Sounds right.

Q. Did you have Dr. Merola's record at this point in time?

A. No, not at the initial office visit.

Q. Does it indicate anywhere in your file when you received Dr. Merola's records, yes or no?

A. No.

Q. Now, Mr. McCrorie asked you some questions about the prior accidents. We're going to get to that in a little bit and some prior --

MR. DERRICO: I just want to be clear.

THE COURT: Ask the question. The reporter.

Q. The cervical spine MRI was actually September 2nd, 2009. I misspoke. Remember that?

Not me misspeaking. I'm talking about me giving you the wrong date, inc{}orect. Yes?

A. I remember the MRI, again, but I don't remember the exact date.

Q. Okay.

MR. McCRORIE: Stipulate.

-Transcript continued on next page-

Q Now, did you speak to Dr. Shivdasani, his general practitioner?

A No.

Q Okay. And you recall when you got his records, "yes or no"?

A I don't recall exactly, but I did review the records, yes.

Q Do you have them with you here?

A No.

Q When did you review them?

A I reviewed them over, definitely recently. Over the past...

Q Couple weeks?

A No. Probably over the past few months, which we have the records available prior to testimony.

Q And what about Dr. Sciortino, S-c-i-o-r-t-i-n-o, did you ever speak to him?

A No.

Q Did you ever review his medical records?

A No. I did review the medical records. I misspoke.

Q Okay. It's all right. It happens. Just recently, though, right?

A Again, I did have it in the past. I don't know when the records came in.

Q That's not what I asked you. The question I asked you

is, when did you review Dr. Sciortino's, records, last couple of months?

A I do not know exactly when, but I did have them available for review definitely way prior to today's date.

Q What does that mean?

A Again, I have reviewed his past medical records, same thing with the MRIs. Same thing with Dr. Merola's notes.

Q I'm asking you -- all right.

A I don't recall the exact dates.

Q All right.

A You can't pinpoint me on specific dates. I just don't know exactly dates.

Q Well, you'll agree with me that when you're going to make, when you meet a patient for the first time, you take a history, you want to get as much information as you can, correct?

A Correct.

Q Accurate information, correct?

A Correct.

Q You want to know about prior accidents, prior injuries, correct?

A Correct.

Q And isn't it true, Doctor, that you were only recently in the last couple of weeks or months found out Mr. Colon had been involved in an accident in 2006, 2007 and then 2009; isn't

that true, Doctor, "yes or no"?

A No.

Q It's not?

A No.

Q When did you find out about the 2006 accident?

MR. McCRORIE: 2006 is not an accident, Judge.

Q The injury at work, when did you find out about that?

A I don't recall.

Q You don't recall?

A No.

Q Was it this year?

A I really don't recall, but again...

Q Okay. There's no, again. You don't recall, you don't recall, Doctor.

A No.

Q The 2007 accident where he was involved in a motor vehicle accident where he made complaints of neck and back pain, do you recall, as you sit here today, "yes or no," do you recall when you got those records, do you recall?

A I don't.

Q Was it this year, 2019?

A I don't recall when, if it was 2019. Most likely 2018.

Q You don't recall, you don't recall. Okay. Now, you then learned that he was involved in another accident in January 19, 2009, correct?

A Correct.
Q Another motor vehicle accident, correct?
A Correct.
Q And do you recall, "yes or no," when you received those records from that motor vehicle accident, "yes or no"?
A No.
Q Did you speak to that Dr. Vitolo in New Jersey, you ever speak to him?
A No.
Q Now, the extent of degeneration can vary in people, can't it?
A Yes.
Q And I think Dr. Merola said that when we stop growing, that's when the degeneration starts; is that a fair statement?
A I would say is from when you're born, yes.
Q You think it starts when you're born?
A It does. Gravity effects on the body are detrimental.
Q Okay. Now, a couple of things that can impact degeneration, the type of work you do, correct?
A Yes.
Q If you're involved in a physical, heavy labor-type of job, lifting heavy things, climbing ladders, working on steel, that can have a detrimental, that can make you more susceptible to degeneration coming quicker, correct?
A Correct.

Q And weight, weight, if you are heavy, that can have an impact on your spine, can't it?

A Yes.

Q And can exacerbate or speed up the degeneration process; isn't that true?

A Yes.

Q And one of your recommendations actually, in your medical records, one of your recommendations to Mr. Colon was to lose weight, correct?

A Correct.

Q And I believe that on direct examination you indicated to Mr. McCrorie, in response to one of his questions, that these accidents that he had, these other motor vehicle accidents, they were not a good thing, correct?

A They were not -- repeat that, please?

Q It wasn't a good thing for him to have had the accidents, right?

A No.

Q And you know one of those motor vehicle accidents involved a whiplash injury, did you know that, "yes or no"?

A It was an injury to the shoulder and he was complaining of neck pain, I'm aware of that, yes.

Q You've testified, have you ever had a patient that was involved in a hit in the rear end motor vehicle accident sustained whiplash injury?

MR. McCRORIE: Objection. That's a guardrail.

MR. DERRICO: I'm talking about the hit in the rear end. I'm not talking about the guardrail accident. Have you ever had a situation where you treated a patient who was involved in a hit in the rear end motor vehicle accident, "yes or no"?

THE WITNESS: Yes.

THE COURT: I need the two of you to speak up a little louder.

MR. DERRICO: I'm sorry.

THE COURT: And then also remember, one voice at a time.

MR. DERRICO: Okay. I apologize.

THE COURT: For the record.

MR. DERRICO: Usually I'm never told that I have to speak up, Judge.

THE COURT: Okay.

Q Okay. So you've treated patients who have been involved in a rear end collision wherein they sustained whiplash cervical injury, correct?

A Yes.

Q And you know now, as you sit here today, one of the accidents he had was a hit in the rear motor vehicle accident wherein he alleged to have sustained injury to his neck, "yes or no," you know that, right?

A I believe it was a guardrail.

Q No. That's the other accident. We will talk about that after.

A Sure.

Q Okay.

A Yes.

Q We are talking about the hit in the rear, you remember that one?

A Yes.

Q Okay. That was the whiplash injury, right? Remember that?

A Yes.

Q And then the other one, which is in 2009, is when he hits the guardrail on the Garden State Parkway, one of the parkways?

MR. McCRORIE: Grand Central.

MR. DERRICO: Grand Central Parkway.

Q And he totaled the car as a result of that. He's taken via ambulance to the hospital, a neck collar is put on him, he is put on the backboard, and he's taken to the hospital, and he then, he makes also complaints of, not only shoulder pain, but of neck and back pain, did you know that, "yes or no," Doctor?

A Yes.

Q What about knee issues, knee problems, if someone has a torn meniscus or a torn ligament tendon in their knee and they

walk around for a long period of time with a bad knee, that can impact the back, can't it?

A It can.

Q Because it throws what is called the gait off, you familiar with the term gait?

A Yes.

Q And gait, just for the ladies and gentlemen of the jury, is how someone walks, right?

A Yes.

Q And that's one of the things when you're doing your examination of him, your initial examination and subsequent examination, that's one of the things you look to, right, you look at?

A Yes.

Q You examine that, because if someone has an altered gait, that can be indicative of a problem, correct?

A Correct.

Q A back problem, right?

A Yes.

Q Or some other type of problem, right?

A Yes.

Q Okay. And you will call that an antalgic gait, correct?

A Yes.

Q Now, are you aware, as you sit here right now, whether

or not Mr. Colon has any type of congenital defect with his spine, "yes or no"?

A No.

Q No, he doesn't, or no, you're unaware of that?

A I am unaware that he has a congential defect.

Q You never discussed any kind of a congenital defect with Dr. Merola?

A No.

Q What you do as a pain doctor, or a pain specialist is you're treating obviously people for the pain, correct?

A Yes.

Q And the source of pain in some instances can be the nervous system, the nerves, correct?

A Yes.

Q Okay. I know Mr. McCrorie didn't ask you a lot of questions about the spine, but I'm just going to go over a couple of things for foundational purposes, we have a spine. Do we have that spine?

MR. DERRICO: Judge, can I approach?

THE COURT: You may.

MR. DERRICO: Thank you.

Q Forty-eight in evidence, you're familiar with what this is, right?

A Yes.

Q Okay. It's a spine. All right. And we did discuss

this was Dr. Merola the other day, these are the vertebrae, correct?

A Yes.

Q Okay. So we have the cervical vertebrae here, right?

A Yes.

Q And you have the thoracic in the middle, right?

A Yes.

Q Then we have the lumbar here, correct?

A Correct.

Q Then these neat little -- so what we have here is the gelatinous of substances of the discs, correct, right?

A Yes.

Q And then these little yellow things that are sticking out of each vertebrae, each level, those are the nerve roots, correct?

A Correct.

Q And then the holes inside are called the foraminal, correct?

A Correct.

Q Thank you, Doctor. So, you've heard the expression called pinched the nerve, you've heard that?

A Yes.

Q Some people get some pain, they may bend over the wrong way, or bend over in a bad ankle, or try to pick something up or they work all day moving furniture or something, and they get

some pain in their back, correct, you've seen that happen, right?

A Yes.

Q And that could be an inflammation of one of those nerves where we were just talking about, right?

A Yes.

Q And then what happens is, is that the nerve calms down, so to speak, sometimes, the inflammation goes away, and the pain stops, right?

A Yes.

Q Have you ever heard the term wax and wane?

A Yes.

Q Come and go?

A Yes.

Q Okay. Because Dr. Merola used that expression, pain can come and go, correct?

A Correct.

Q Okay. Now, have you ever heard the term foraminal stenosis?

A Yes.

Q Okay. Now foraminal...

MR. DERRICO: May I approach, again, your Honor?

THE COURT: You may.

Q Foraminal stenosis is, so we've got the hole, the foraminal, and the nerve root coming out, right. And the, let's

say the hole is like a pipe. Have you ever heard the analogy that the foraminal is like a pipe where the nerve goes through, right, you've heard that before?

A No, but okay.

Q But it's a pretty good analogy, right?

A Sure.

Q Okay. So ultimately you never want the nerve touching the pipe, right?

A Correct.

Q Because if it touches the pipe, that can inflame the nerve, correct?

A Correct.

Q Causes some pain, correct?

A Correct.

Q Okay. Now, there are instances with some people where the pipe starts to close down, correct?

A Correct.

Q That's called foraminal stenosis?

A In that case, yes.

Q Okay. So when it starts to close down, that's when it can start to impact the nerve roots, not all the time, but sometimes, correct?

A Correct.

Q And we call those radicular signs, correct?

A If they're having pain that's radicular in nature, just

the closing of the foraminal is not a radicular sign.

Q I agree, you're right. What I'm saying, when it closes and it pinches or inflames the nerve, that can result in radicular signs, radicular pain, correct?

A Correct.

Q Radiculopathy, correct?

A Correct.

Q And did you ever actually review his x-rays from February of 2007 of the cervical and lumbar spine?

A Yes.

Q When did you review those, Doctor?

A When we had the entire chart sent over to our office, in the past year.

Q A couple weeks?

A No. Again, I don't recall exactly when.

Q So, we're in 2018?

THE COURT: Doctor, it is very difficult to hear in this courtroom, so please, if you can raise your voice or you can take the microphone to speak.

THE WITNESS: Okay.

Q Okay. So it's 2018, and you're saying within the last year or so you got the chart?

A Yes.

Q That would include those x-rays from 2007, correct?

A Correct.

Q So you started treating him in 2011, and you didn't have those x-rays until 2018, correct?

A Correct.

Q Okay. And now, those x-rays were ordered by Dr. Shivdasani after the motor vehicle accident where he's hit from behind on the Grand Central Parkway, and the MRI of the cervical spine, the neck, "yes or no"?

A Yes.

Q It showed foraminal stenosis of degenerative disease?

MR. McCRORIE: You're talking about the x-rays, you just said MRI.

MR. DERRICO: I'm sorry. Did I say MRI?

MR. McCRORIE: You're talking about 2007, it's an x-ray.

Q 2007 x-ray, right, of the cervical spine, "yes or no"?

A Yes.

Q Showed foraminal stenosis from degenerative disease, correct?

A That's what the report said, yes.

Q That's what it says?

A I believe so.

Q Did you ever speak to the radiologist?

A No.

Q Okay. And then the x-ray of the lumbar spine, which is done the same day, ordered by his general practitioner,

Dr. Shivdasani, also showed degenerative changes on the lumbar spine, correct?

A Correct.

Q Spurring, correct?

A Correct.

Q That's the growth of bone, correct?

A Correct.

Q On the vertebrae. And, in fact, Dr. Shivdasani prescribes him some medication for the inflammation and the pain back in 2007, as a result of that accident, correct?

A Correct.

Q Okay. And the second accident -- strike that. I just want to go on a timeline here. I will just use this rail. So, starting point says right here, June 19, 2008, okay, that's the date of Mr. Colon's work accident that he is suing for, correct?

A Yes.

Q Then he goes and sees Dr. Touliopoulos and Dr. Merola in June of 2008, correct?

A Correct.

Q I think June 24, 2008, he sees Dr. Touliopoulos and then he sees Dr. Merola June 30, 2008, correct?

A Correct.

Q They order, Dr. Merola orders an MRI of the lumbar and cervical spine, correct?

A Correct.

Q Those are not done, we know, until April of 2009, and September of 2009, correct?

A Correct.

Q Okay. So, you know what a clinical diagnosis is, right?

A Yes.

Q Clinical diagnosis is, correct me if I'm wrong, Doctor, is what we describe, the patient comes in, you take a history, you do a physical examination, and you make a clinical diagnosis, and this clinical initial diagnosis of what you think the problem is, correct?

A Correct.

Q Okay. And then because you want to be sure, you do there's a diagnostic diagnosis, correct?

A Correct.

Q You have heard that. So what we do, you do, is you say, I suspect this patient may have this issue, but I want to be certain so I'm going to confirm it, and I'm going to order a diagnostic test, right?

A Yes.

Q So what you want to do is you want to take the diagnostic test and the clinical, and see if they're consistent, correct?

A Correct.

Q Okay. So we agree that he has the degeneration in the

neck, in the back, as far as back as we can see, 2007, right, before this accident, correct?

A Yes.

Q And he hadn't in 2006 made a compliant to Dr. Shivdasani about his back and his neck, right?

A Yes.

Q Okay. And then the accident happens, but then he has the other accident in January of 2009, after Dr. Merola has made a clinical diagnosis, and prior to the diagnostic study being done in 2009, correct?

A Correct.

Q Do you recall seeing anywhere in Dr. Shivdasani's medical records where Mr. Colon had reported to him that he only had a burning sensation in his leg for about a month, and it was after straining his back over the weekend, do you remember that entry, "yes or no"?

MR. McCRORIE: Do you have the time period?

MR. DERRICO: Sure. I'll give it to you in a second.

MR. McCRORIE: Remember that?

THE WITNESS: I remember that complaint in the notes when I reviewed it, yes.

MR. DERRICO: October 16, 2009.

Q Legs burning for about a month, back pain strain over weekend, diagnosis is lumbar strain, you remember that, getting

Percocet, remember that one?

A Yes.

Q So we agree that he says that he's only had this burning or radiating for about a month.

MR. McCRORIE: Objection. Burning is not radiating. It doesn't say burning or radiating. Objection.

THE COURT: Okay. Rephrase the question.

Q You reported -- strike that. Have you ever heard of patients "yes or no," referring to radiating pain as burning pain, "yes or no"?

MR. McCRORIE: Objection.

MR. DERRICO: "Yes or no?"

MR. McCRORIE: Objection.

THE COURT: Overruled.

Q "Yes or no?"

A They are different symptoms.

Q Have you ever had a patient refer to radiating pain as burning pain, "yes or no"?

A Again, they are different symptoms.

Q So the answer is no?

A The answer is it needs an explanation.

Q I'm sure Mr. McCrorie is going to ask you. Now, when you worked in the emergency room in your rotations, right, you have someone come in that's been involved in some type of accident, you want to ask them about their prior PMH, prior

medical history, right? It's important, right?

A Yes.

Q Because, you know, if they've been involved in some type of accident involving the neck or the back, you want to know if they have any prior injuries to the neck or back, maybe they had a prior surgery, maybe they broke the neck, right, you wants to know, correct?

A Correct.

Q Standard question, right?

A Yes.

Q That's one of the things they teach you in medical school when you're going to go in the emergency room, Look, one of the things you want to ask them, one of the things, you're going to treat this patient, one of the things you want to ask them, sir, do you have any prior medical history that we should be aware of, right? That's a standard question, correct?

A Correct.

Q Okay. So, did you review the Saint Joseph's medical record from January 19, 2009, after his motor vehicle accident on Route 80, did you review those?

A Yes.

Q Just recently, correct?

A Again with review of the entire chart.

Q Within the last year or so?

A Correct.

Q Okay. Did you happen to note that in there in the Saint Joseph's medical records, one of the questions they asked him was about his prior medical history, did you note that?

A Okay.

Q Did you note it, "yes or no"?

A Again, I don't recall that specific question, but I'm sure they did ask him about his prior medical history.

Q Do you recall that it said none, "yes or no," do you recall that?

A Again, I don't recall the specific wording in the document.

Q Well, he's at Saint Joseph's Medical Center, after having just been involved in a motor vehicle accident on January 19, 2009, which is six months after he has this accident at the construction site, he's in this motor vehicle accident --

MR. McCRORIE: Just object to the yelling.

MR. DERRICO: Sorry.

THE COURT: Just slow down.

MR. DERRICO: Okay. Now, I'm getting crazy, right? It's the afternoon.

Q So let me get this right, okay. So, he has this motor vehicle accident on Route 80, January 19, 2009, which is six months after he has the accident at the construction site. He goes to the hospital.

They've got him on a backboard, they've got a cervical

collar on him, he's complaining of neck and back pain, right, and they say to him, Mr. Colon, do you have any prior medical history with neck and back pain?

MR. McCRORIE: Objection. It's a shoulder, chief complaint.

THE COURT: Overruled.

Q Do you have any prior medical history -- strike that. I want you to assume that someone's been involved in a motor vehicle accident, and they are brought to the emergency room on a backboard with the neck collar on, cervical collar, with complaints of neck and back pain, in addition to other things, okay, or assumes?

A Okay.

Q You, as the emergency room physician, "yes or no" would you ask him about a prior medical history involving neck and back issues, "yes or no"?

A Yes.

Q And we can agree that in the Saint Joseph's medical records which are in evidence, January 19, 2009, Mr. Colon denied any prior medical history, correct?

A As stated in the notes, yes.

Q Okay. So, let's go to the date of this accident. So, January 19, 2008, he is involved in the accident at the work site, he walks to the ambulance because that's the testimony we got, he gets in the ambulance, he's taken to the emergency room

at Saint Barnabas Hospital, correct?

A Yes.

Q Now, you've seen in your experience as a doctor treating patients involved in accidents, motor vehicle accidents and whatnot, you've reviewed ambulance records, haven't you?

A Yes.

Q You review the ambulance records in this case?

A I did.

Q Was that within like the last year or so?

A Yes.

Q Okay. And, Doctor, correct me if I'm wrong, but in the FDNY ambulance records, Mr. Colon denied neck and back pain, "yes or no"?

A Yes.

Q And his chief complaint was elbow pain, correct?

A Correct.

MR. DERRICO: You want me to stop?

THE COURT: You can wrap up your point.

MR. DERRICO: Okay.

Q One other question, then we will take our break. And you reviewed the Saint Barnabas records themselves, correct, from that accident?

A Correct.

Q And we can agree that he also denied neck and back pain to the Saint Barnabas Hospital in the emergency room, correct,

"yes or no"?

A Correct.

MR. DERRICO: Can we break now, Judge.

THE COURT: Yes. Member of the jury, we are going to take a brief recess. Officer.

COURT OFFICER: All rise. Jury exiting.

(Whereupon the jury exits the courtroom.)

THE COURT: Doctor, I would like to remind you that as you're still providing testimony in this courtroom, you're not to discuss your testimony with anyone during the recess. Do you understand that?

THE WITNESS: Yes.

THE COURT: Thank you.

(Whereupon a short recess is taken.)

(Whereupon back on the recess.)

COURT OFFICER: Come to order.

(Whereupon the witness retakes the stand.)

COURT OFFICER: All rise. Jury entering.

(Whereupon the jury enters the courtroom.)

THE COURT: You may be seated, Doctor. I am reminding you that you're still under oath. You understand me?

THE WITNESS: Yes.

THE COURT: Thank you. You may continue, Mr. Derrico.

MR. DERRICO: Thank you very much.

Q If someone is experiencing radiculopathy, would their sensation, would you note that as being intact or not intact?

A It depends on the radiculopathy and the extent of the nerve compression, so it may or may not occur with decreased sensation. Every patient is slightly different.

Q Okay. Thank you, Doctor. Now, after he sees Dr. Merola on June 30, 2008, he then follows up with Dr. Touliopoulos, Dr. Merola's office mate at the time, or suite mate, whatever you want to call it. He doesn't go back to him until March 31, 2009, correct?

A Correct.

Q Did you review those records as well?

A Yes.

Q Okay. And in that record, that entry from 3/31/09 the note that he had returned to work, correct, as an ironworker?

A Correct.

Q Okay. And then it looks like in Dr. Merola's records on March 25, 2011, Merola refers Mr. Colon to you, correct?

A Correct.

Q Okay. And by the way, did you know when you reviewed the Saint Joseph's medical records from January 19, 2009, when he was treated in the emergency room for the automobile accident, they prescribed him in the emergency room Percocet, did you note that, "yes or no"?

A Yes.
Q Okay. And he ordered to get that from Merola, right, "yes or no"?
MR. McCRORIE: 2009.
MR. DERRICO: Sorry. He was seeing Merola in 2008.
Q Did he see Dr. Merola on June 30, 2008?
A June?
Q June 30, 2008, he saw Dr. Merola, didn't he?
A I believe he saw him sometime in June, after the accident.
Q Okay. Now, did you ever speak with a Dr. Moosazadeh?
A No.
Q You know who that is, right?
A I recall the name, yes.
Q I think they call him Moose. He actually became affiliated with Dr. Merola's former practice, do you know that, "yes or no"?
A I don't recall.
Q Okay. Did you ever review any records from Dr. Moosazadeh with regard to Mr. Colon?
A Yes.
Q Okay. And you recall seeing an entry in August of 2011 where Dr. Moosazadeh -- that Mr. Colon is considering going to rehab again because of the Percocet issues, "yes or no"?
A Yes.

Q And, in fact, the following month when Mr. Colon goes to Dr. Moosazadeh, December of 2011, it says, patient is seeing other doctor who is also prescribing him medication, correct?

A Correct.

Q Dr. Moosazadeh finds out for the first time that he's getting Percocet from you and Percocet from him, right, yes?

A Correct.

Q And once again, there's an entry in there that he should go to detox, correct?

A Correct.

Q At this point?

MR. McCRORIE: Objection to go to detox. It says drug detox plan.

Q Drug detox plan, right? There is a drug detox plan, right?

A Yes.

Q Is that a good assessment?

A Yes.

Q Okay. And now, did you review any physical therapy records for him?

A Yes.

Q Okay. You remember a place called Morris Avenue Rehab PT?

A Yes.

Q You reviewed those?

A I believe so, yes.
Q In the last year or so, correct?
A Correct.
Q I guess you know what I'm going to ask you with my follow-up question, right?
MR. McCRORIE: Objection.
THE COURT: Sustained.
MR. DERRICO: Withdrawn.
Q So your first visit with him is on May 2, 2011, right?
A Yes.
Q You do a physical examination, correct?
A Yes.
Q He's not working, correct?
A Correct.
Q And you found some physical limitation, correct?
A Correct.
Q When you reviewed the Morris Area Rehab PT records June 6, 2011, did you know that he missed physical therapy because he took a two week vacation, did you note that, sir, "yes or no"?
A Yes.
Q In fact, in a subsequent record from Morris Area Rehab PT where it says, they repeatedly were trying to call him to follow-up to see what was going on with physical therapy, he just never responded to any of the phone calls, you remember

that?

A Yes.

Q Okay. Did you ever speak to anyone from Morris Area Rehab PT?

A No.

Q Now, let's just jump back up. Now, we are going to talk a little bit about your records, we are going to jump around a little bit, okay.

When you met with him on May 2, 2011, he indicated to you, he told you that he had not worked since the date of the accident; isn't that true?

A Yes.

Q And we know that's not true, isn't that true, Doctor?

A Yes.

Q Now --

A Actually...

Q On November 1st, 2011, I think that's about your third visit there, correct?

A I'm going to correct what I just said because in the note it says that he reported he went back to work eight to nine months after the accident, and he wasn't working until May of 2009.

Q May of 2009?

A Correct.

Q Okay. I want to talk to you about 11/1/11, that's

about your third visit, correct?

A Yes. It's not the third visit, but...

Q Approximately third or fourth visit?

A Eighth visit.

Q Okay. So, correct me if I'm wrong, if I misstate this, and these are "yes or no" questions. In that date, 11/1/2011 you did a physical examination, correct?

A Correct.

Q You found that his gait was normal, correct?

A Correct.

Q Okay. And you found that he was in no acute distress, correct?

A Correct.

Q And that he had intact sensory in the lumbar spine, correct?

A Correct.

Q In fact, one of the things that you check...

MR. DERRICO: May I approach, your Honor?

THE COURT: You may.

Q One of the things that you check is you want to check the strength in their extremities, legs, right?

A Yes.

Q Make them put the leg up, push down, right?

A Yes.

Q Put the leg up, push down, and 5/5 is normal, 5/5

strength?

A Correct.

Q And you did that to him on that day, right?

A Yes.

Q This was normal, right?

A Yes.

Q Okay. And just going back, December 2, 2011, same four tests, all normal, correct?

A Correct.

Q January 6, 2012, same thing. I can just read the dates if you'd like?

A Correct.

Q It looks like January 6, 2012, February 7, 2000 -- I'm sorry. March 22, 2000, and 12/7, right, normal gait no acute distress, bilateral strength 5/5, correct?

A Yes.

Q Okay. And then it looks like you had the same finding on March 23, 2012, correct?

A Yes.

Q Okay. Same thing for May 15, 2012, June 8, 2013, looks like you were ordering some -- during this time period, when you were meeting with him, you're ordering what we call tox screens, urinalysis, correct?

A Correct.

Q And you're doing that to make sure that you want to see

if the patient is abusing or misusing the medication, right?

A Making sure he's taking the medication appropriately, yes.

Q Do you do that with every patient or just some of the patients?

A Every patient.

Q Okay. And looks like we have the same findings, July 6, 2012, and then July 13th, this is after his mom has passed away, right, July 13th, you note that he admits to you that he's taken Oxy, OxyContin, right?

A Correct.

Q He didn't have a prescription at that point in time, nobody is giving it to him, correct?

A Correct.

Q But he takes it. And you told him not to do that, correct?

A Correct.

Q You said, don't do that, right?

A Correct.

Q But you also told him, didn't you tell him that, it doesn't make a difference because it doesn't work when you're taking Suboxone, right?

A It's relatively contraindicated with the use of the Suboxone, correct.

Q When you say contraindicated, what does that mean?

A It only has a partial effect. When Suboxone is combined with the opiate receptors, a subsequent opiate may have some effect but it's not going to have the same effect that it would if you were not on Suboxone.

Q Is it dangerous?

A No.

Q Now, we talked about radicular signs, remember we talked about waxing an waning, sometimes they come, sometimes they go, correct?

A Correct.

Q Meaning you could have patients that have it, you know, pretty often, and some people that have it every couple of months they have the symptoms, correct?

A Correct.

Q We agree also that the narrowing of the neural foramina, right, can cause that to occur, correct?

A Correct.

Q Activities, job, work, going to the beach, whatever, right, picking up a pair of shoes, correct?

A That's not going to cause the narrowing. Regular activities don't cause narrowing. It can exacerbate spasm of the back, like we have all had, even giving a coughing spat attack can increase the lower back.

Q Exactly. What I'm saying is, but you're more prone to have radicular issues if you have a narrowing foramina, correct?

A Again.
Q "Yes or no" or you can't answer it that way?
A It depends on the case.
Q All right. Well, do you remember on August 21, 2012 that you indicated that his radicular signs or symptoms in the lower extremities coming up, you remember saying that, on and off, do you remember that, "yes or no"?
A I don't remember -- if it states it in the note wherever you're reading from, then yes.
Q It says off and on?
A Okay.
MR. McCRORIE: Page please.
MR. DERRICO: August 21, 2012.
Q Do you remember saying lumbar spine radiculopathy symptoms in lower extremities off and on, "yes or no," do you remember saying that?
A Okay. Yes.
Q Okay. You remember talking about this cervical spine radicular symptom "occasional," correct?
A Correct.
Q Okay. He indicated to you that he was becoming frustrated with Suboxone, correct, at some point?
A Correct.
Q He wanted to go back to OxyContin, correct?
A Correct.

Q You agreed to do that, correct?
A Because of exacerbation of pain, yes.
Q Okay. But you also indicated in your notes from September 25, 2012, when you said he was frustrated with Suboxone, that the wife will have to control all of the meds and make sure he takes the prescriptive amount, correct?
A Correct.
Q Abusing it, correct?
A Making your sure he takes it appropriately, correct.
Q By this point were you aware that he had previously been to rehab for abusing medication, "yes or no?
A Yes.
Q Looks like on October, 2012, October 16th, once again, gait normal, no accuse distress, sensory intact, bilateral strength 5/5, lumbar spine radicular symptoms in lower extremities off and on. Cervical spine radicular symptoms occasional. You see that, yes?
A Yes.
Q Okay. Did he ever tell you why his spasms increased during the hurricane, "yes or no"?
A No.
Q Just jumping over to December 4, 2012, gait normal, no accuse distress, sensory intact, bilateral strength 5/5. Lumbar radicular symptoms off and on, cervical radicular symptoms occasional, correct?

A Correct.
Q Same thing for December 21, 2012, correct?
A Correct.
Q Now, it says he's unable to control the use of the OxyCotin, correct?
A Correct.
Q Now, you got to go back to the Suboxone, right?
A Correct.
Q You indicated to us earlier when you were testifying on direct examination that you noted that you made a mistake in your records, in that you put down that there was no loss of consciousness, correct?
A Correct.
Q Then you went back and you corrected it, subsequently in your records, correct?
A And a few office visits later we got the correct history that he did have a loss of consciousness, yes.
Q You thought that was important?
A It indicates severity of the injury.
(Continued on next page...)

Q. Did you, after you had indicated his mom had passed away and he was upset, did you ever put down any records after that she was still alive?

A. That was from a prior notation in the past or social history, I believe.

Q. It was several times, actually. You made the same mistake several times over and over again, correct?

A. I would not call it a mistake. It is a reiteration. If you look at our EMR system, on the different sections of the EMR system, whether we do the history of present illness which is a section that is always -- it's dynamic section, it's always being changed, the social history unfortunately gets carried forward.

Q. Regenerates?

A. From office visit to office visit, correct.

Q. So it just keeps repeating?

A. It's a fault of the EMR system, yes.

Q. But you eventually corrected that on the system with regard to his mom's status?

A. It was eventually corrected, yes.

Q. Were there any other mistakes that you're aware of?

A. Not that I am aware of. But again, there are sections of the EMR system that get carried constantly forward.

MR. DERRICO: Judge, I just asked if he was aware of, yes or no.

THE COURT: Doctor.

A. I'm not aware of any other that I recall at the present moment.

Q. So it looks like we go up to February 2013. On February 11, 2013, once again gait normal, no acute distress, sensory intact, lumbar spine bilateral strength 5/5, lumbar spine, correct?

A. Yes.

Q. And now let's just talk briefly -- and we're just going to jump around a little bit and then we'll be done.

You then, after you see him on 2/11/'13, there's a break, correct?

A. Yes.

Q. Pretty substantial break, correct?

A. Yes.

Q. It looks like you don't see him again until 2/7/2014, correct?

A. We saw him on March 22nd, 2013.

Q. Yes, and then there's a break.

I apologize. You are correct, Doctor.

Let's talk about the March 22nd, 2013 visit.

Once again, normal gait, normal reflexes, sensation intact, lower strength 5/5, correct?

A. Correct.

Q. And then eleven months later you see him and once

again we -- you see him eleven months, you see him on February 7, 2014, normal gait, normal sensation, lower extremity strength 5/5, normal gait, correct? Right, normal gait?

A. Yes.

Q. And then let's jump to June 22nd, 2015. Right?

Now, the prior visit was 2/7'14, correct?

A. Yes.

Q. Now, on June 22nd, 2014 he admits to you that he's been seeing a doctor in New Jersey, correct?

A. Correct.

Q. Now, that's where he lives, correct?

A. Correct.

Q. You knew that, right?

A. Yes.

Q. And he's coming all the way down to New York City, when he was treating with you he was coming all the way down to New York City from New Jersey, correct?

A. Correct.

Q. By the way, do you know what the name of the pain management doctor was in New Jersey that he was seeing, yes or no?

A. I'm looking in the note. I did see his name, but I'm not sure it's in this particular note, so.

Q. Did you ever speak to him?

A. No.

Q. Did you ever get any of his records, yes or no?
A. I believe I did see some of his records, yes.
Q. Well, can you show them to us?
A. I don't have all the alternate -- the other records, the physician records here.
Q. You didn't bring them with you?
A. No.
Q. And you can't remember his name?
A. I'm looking in the note to see if his note is actually here, but I do not recall. I could look back.
Q. All right.
A. I think it was mentioned in some of the notes.
Q. Well, if you figure it out you'll tell us?
A. I shall.
Q. Now, one of the issues that comes up in your records is this opiod dependence, unspecified abuse, correct?
A. Yes.
Q. Okay. And when someone's taking opiods that they're not prescribed or taking too many of opiods, they can have an impact, can they not?
A. Yes.
Q. They can affect the way you function, correct?
A. Correct.
Q. Concentration, yes?
A. It may have good or negative side effects, depending

on the usage, yes.

Q. Coordination, yes?

A. In some patients, yes.

Q. Judgment?

A. Again, in some patients, yes.

Q. Now, on June 30, 2015 you saw him again, correct?

A. Yes.

Q. And correct me if I'm wrong, that record says not working since date of accident, doesn't that? Does it say that, Doctor?

A. Correct.

Q. Okay. But we know that's not right, correct?

A. Correct.

Q. Because we know 2009 he worked like 1300 hours?

A. Correct.

Q. Did you know that?

A. Yes.

Q. 2010 he worked, correct?

A. Correct.

Q. Now, 9/18/'15 you see him again and you discussed with him a return to work in a sedentary job, right?

A. Correct.

Q. Sedentary is kind of like a non-physical job, correct?

A. Correct.

Q. Okay. And it also says that radiculopathy was occasional you found at this point in time. Again, see that, occasional?

A. Correct.

Q. Okay. And did you discuss with him any specific sedentary jobs that you thought he should do, yes or no?

MR. McCRORIE: Objection.

THE COURT: Let's step in the back.

(Whereupon, there was an off-the-record discussion in the robing room, among the Court and counsel at this time.)

(Whereupon, the following transpired in open court, in the presence of all parties:)

MR. DERRICO: Could I continue?

THE COURT: You could continue.

MR. DERRICO: The Judge said I'm quiet. I've got to get a little bit more animated here. So I'm going to try to move this along.

Q. Okay. All right. So it looks like in March 2016, your notes, he resumed work, correct?

A. Correct.

Q. Okay. And same thing, May 4th, 2016, returned to work, he's returned to work as ironworker, correct?

A. Correct.

Q. It indicates he's working full-time, correct?

A. Correct.
Q. Same thing, it says 9/14/2016, he's working full time as an ironworker, correct?
A. With limitations, yes.
Q. Now, December 16, 2016, once again working as an ironworker full-time, correct?
A. Correct.
Q. Yes, no?
A. With restrictions, yes.
Q. You also did a tox screen, urine tox screen that day, correct?
A. Correct.
Q. Up came amphetamines in his tox screen?
MR. McCRORIE: Objection.
Q. Which was unexpected. That's exactly what the records --
THE COURT: One second. Sustained. Rephrase the question.
Q. Did you review the results from the tox screen urinalysis that was done and ordered by you on December 16, 2016, yes or no?
A. Yes.
Q. And, yes or no, Doctor, when you did the analysis it came back and it showed that he was actually positive, tested positive for amphetamines, which was an unexpected

thing, yes or no?

MR. McCRORIE: Objection. He's saying amphetamines.

MR. DERRICO: Amphetamines, that's what it says in the report.

THE COURT: Is that --

MR. McCRORIE: It does, but I object to it.

THE COURT: Step to the side.

MR. McCRORIE: Well, he's going to have to explain it now but.

MR. DERRICO: I'll clear it up

Q. It was positive for amphetamines, yes?

A. Correct.

Q. And did you know at this point in time that he was taking Adderall in addition to all the other medication he was taking?

A. Yes.

Q. Did you prescribe the Adderall to him?

A. No.

Q. Who prescribed the Adderall to him?

A. He was seeing a psychiatrist.

Q. Okay. 9/26, he indicates to you he's got pain, it's achy and constant and at times it radiates in his lower extremities, at times, yes?

A. Yes.

MR. McCRORIE: '17, he didn't say '17. That's okay, we're all going fast.

Q. January 16, 2018, indicates started working again as an ironworker, correct?

A. Correct.

Q. And but you did a check of his cervical spine and a check of his lumbar spine on that day, and I'm confused because in one note under the cervical spine it says his gait is normal and then when you did the check, right underneath there, under lumbar spine examination you say gait is antalgic. You see that?

A. Right.

Q. Those are contradictory, aren't they?

A. Correct.

Q. So that's mistake, right?

A. Again, the gait is done --

Q. Is that a mistake, yes or no?

A. It's an error by the cervical spine.

Q. Thank you.

Now, in fact, on May 14, 2018, you indicate that his pain has gotten progressively worse since return to work, correct?

A. Correct.

Q. Has to go up and down ladders all day and lifting in excess of 20 to 30 pounds, correct?

A. Correct.

Q. And then it further says that same day, working full-time without restriction. Doesn't it say that, Doctor? Yes or no?

A. Yes.

Q. You've recommended at this point that he stop working because he's causing further progression and degeneration of the cervical and lumbar spine, correct?

A. Correct.

Q. Continuing to work, correct?

A. Correct.

Q. Have you ever made a recommendation to a patient and they didn't listen to you?

A. Yes.

Q. That's not good, is it?

A. Again, every circumstance is different and depends on the recommendations.

Q. You recommended he stop working, Mr. Colon, didn't you?

A. We were -- I was concerned about his causing further issues with his neck and lower back.

Q. Continuing to work was causing more problems with his neck and back, yes or no?

A. Continuing to work --

Q. Yes or no?

A. With bending, lifting, climbing, which are not a good idea for him, correct.

Q. 6/21/'18, still working. His weight is 275 pounds, working full-time without restrictions, right?

A. Correct.

Q. Still hasn't listened to you, correct?

A. Correct.

Q. By the way, did you know that -- just jumping back to 5/14/'18. Did you know that this matter was first on for trial on May 24, 2018?

MR. McCRORIE: Objection.

THE COURT: Sustained.

Q. Just a week before?

MR. McCRORIE: He was asking for the adjournments.

Q. November 30, 2018. Stopped working on 5/14/'18 as he was causing further progression/degeneration of his cervical spine and lumbar spine. Is that correct? Did I read that correctly, yes or no, Doctor?

A. Yes.

Q. But didn't you just tell us that he worked, that your records indicate that he was working in June 2018? June 21st your records say he's working, yes or no?

A. Correct.

Q. Okay. But here you're saying he stopped. So

there's another mistake, yes or no?

A. Which note says that he stopped?

Q. November. November 30, 2018. Stopped working May 14, 2018 as he was causing further progression slash degeneration of cervical spine and lumbar spine. Do you see that?

A. What I do see is a notation on July 3rd, 2018 doing an addendum to the 8 -- that was done 8/30/2018 stating that the patient stopped working on 5/14/2018 as recommendeded.

Q. But then we go to June 20th -- 21st -- I don't want to fight about it. I'm just showing you what it says in the record.

A. Okay.

Q. June 21st, 2018, your records indicate that he's still working full-time without restrictions. And if it says that, would you agree with me that's a mistake, yes or no?

A. Again, it was a corrected mistake, yes.

Q. Last visit you saw him 2/7/'19. You noted that on the MRIs, the recent MRIs that were done, there were no new findings, correct? You recall that?

A. There were --

Q. No new findings?

A. There were significant findings on the MRI.

Q. But no new findings as compared to the other ones, the prior ones, yes or no?

A. These are -- no, I wouldn't say that.

Q. You don't agree with it. If that's what the record says, you don't agree with it?

A. Again, there were significant findings.

Q. No new findings, is that what the record says, yes or no?

A. That's what the record says. But the findings were significant.

MR. DERRICO: I move to strike anything after the answer to the original question, your Honor. And I'm just about done.

THE COURT: The remaining portion is stricken.

MR. DERRICO: And the jury will disregard, please?

THE COURT: And the jury is directed to disregard it.

MR. DERRICO: I think I may be done. Just let me check with learned counsel here.

I think I'm done. Thank you, your Honor.

THE COURT: Thank you.

MR. McCRORIE: May I start?

THE COURT: Yes, you may.

MR. McCRORIE: Do you mind if I just start.

MR. DERRICO: Yes, start.

REDIRECT EXAMINATION

BY MR. McCRORIE:

Q. Doctor, Mr. Derrico was asking you about the prior medical history. He was using the word "pertinent." Isn't it called a pertinent prior medical history, not anything that's gone on in your life; pertinent?

MR. DERRICO: Objection.

Q. Pertinent to what you're complaining about?

MR. DERRICO: Objection. Leading.

Q. Isn't it called a pertinent prior medical history among doctors?

A. Yes.

MR. DERRICO: Objection. Leading.

THE COURT: I'll allow it.

Q. You were asked if you reviewed Dr. Sciortino's notes when I was showing you -- I think that's his name -- when I was showing you the board of all the injections that had been done before you, and you said that's part of your records.

If Dr. Sciortino did two of the injections, one to the neck, one to the back in 2009, is that part of your records?

MR. DERRICO: Objection, your Honor. I didn't ask about the injections.

MR. McCRORIE: He asked if he reviewed his records, your Honor, and he said he didn't know exactly what he reviewed.

THE COURT: I'll allow one question.

Q. Are all the injection reports, procedure reports, part of your record?

A. Yes.

Q. Here in court?

A. Yes.

Q. You were asked about could ironworking or types of work lead to degeneration.

Absent this accident that we're here about, would you expect a 28 year-old man that had been ironworking for only four years within a span of two years to require a two-level back fusion absent falling 12 feet landing on his back?

MR. DERRICO: Objection, your Honor. Goes way beyond the scope.

THE COURT: Rephrase the question.

Q. You were asked if certain work, if ironworking could contribute to degeneration leading to problems in the future.

Absent this injury in June of 2008, would you expect Mr. Colon, who had been in the union for only four years at that time, to require a two-level back fusion within two years?

A. No.

MR. DERRICO: Objection, your Honor.

THE COURT: Rephrase the question.

Doctor, wait until I respond.

MR. McCRORIE: Okay.

Q. If this accident didn't occur, with a reasonable degree of medical certainty, do you believe he would have required a two-level back fusion?

MR. DERRICO: Objection.

Q. In 2011?

MR. DERRICO: Objection, your Honor. It goes way beyond the scope.

THE COURT: I'm going to allow it.

A. No.

THE COURT: You may answer, Doctor.

A. No.

Q. Real quick. Okay. Mr. Derrico was reading from Dr. Shivdasani's record, the New Rochelle Radiology, and he said that there was a left-sided foraminal stenosis in the neck. In the back, the impression is mild degenerative changes. And it also says there is no spondylolysis, S-P-O-N-D-Y-L-O-L-Y-S-I-S. What does that mean?

A. The spondylolysis is sometimes there is part of the bone, of the bony structure of the body that could actually crack and that sometimes can occur in some patients and sometimes it's something that you're born with.

Q. So if it says none, there is?

A. There is none.

Q. What about the intervertebral discs are unremarkable with no evidence of loss of height to the back. What does that

mean?
A. It's a normal disc.
Q. So mild degenerative changes is the lowest type of degenerative changes?
MR. DERRICO: Objection. Leading.
A. Correct.
THE COURT: I'll allow it.
Q. The degrees are mild, moderate, severe, right?
A. Yes.
MR. McCRORIE: Okay. Almost done.
Q. Was it significant to you that there were no prior radiating complaints of pain in any of the records?
MR. DERRICO: Objection, your Honor. Leading.
THE COURT: I'll allow it.
A. No, it was significant.
Q. Was it significant to you that Mr. Colon had never been recommended for an MRI to his neck or his back prior to the fall on June 19, 2008?
A. Yes.
Q. I just want to -- you were asked a lot of questions about the St. Joseph's records and what you saw and didn't see. Did you see in there - and I'm going to be through in just a few questions - did you see in there that the patient was restrained, had a shoulder harness, the airbag did not deploy, the vehicle was impacted on the front left side traveling at a

moderate speed, did not rollover, patient was not ejected and extracation was not required. Did you see that?

A. Yes.

Q. Did you see this sentence: At their worst the symptoms were mild, in the Emergency Department the symptoms remained unchanged. Did you see that?

A. Yes.

Q. At their worst that day they were mild, any of the body parts. Did you see, when Mr. Derrico said he was prescribed Toradol and Percocet by these doctors, Toradol is an injection that was given to him into his shoulder that he was claiming injury on, correct?

A. Correct.

Q. It's not a prescription, it actually says Toradol injection, correct?

A. Correct.

Q. Did you see on the second page back: Pain is absent. Range of motion normal. Normal spinal alignment. Did you see that?

A. Yes.

Q. And did you see the fact that there was a neck x-ray but not a back x-ray?

A. Yes.

Q. And when they spoke about the neck and back, they spoke about the upper back. Did you see that?

A. Yes.
Q. Did you see the records of Dr. Vitolo that he followed up with and in his handwriting Mr. -- or someone's handwriting, on the intake sheet they wrote pain in left shoulder as the main complaint?
A. Yes.
Q. And that sometimes there was a pain in his neck?
A. Correct.
Q. And did you see all of the records of Dr. Vitolo, every single record, including other physicians sent him to where the only complaint of pain is the left shoulder in the Jersey motor vehicle accident?
A. Correct.
Q. And one -- and then in the summer it becomes the neck and it goes over to Dr. Sciortino in this case?
A. Correct.
Q. Did you see in this emergency room record that he came in with cervical immobilization, the same thing he had in that other case? Did you see that?
A. Yes.
Q. That's a pretty common thing to do, correct?
MR. DERRICO: Objection.
A. Correct.
THE COURT: Overruled.
Q. Do you know that his hard hat broke when he fell

onto the ground?

MR. DERRICO: Objection, your Honor. This is going way beyond the scope.

Q. Did you know that?

THE COURT: I'll allow it.

A. Yes.

THE COURT: We're wrapping it up, right?

MR. McCRORIE: Yes, your Honor.

Q. You told the jury before burning is a different complaint than radiating, correct?

A. Correct.

Q. From the time he first reported to Dr. Touliopoulos through all the times with you, did he always have some form of radiating pain into his leg or legs?

A. Yes.

Q. You were asked about a visit for Dr. Touliopoulos who prescribed the Vicodin not Percocet ten months before he had seen Dr. -- six months before the accident. Could Vicodin be given for six months if it says it was 40 tablets, or would it be you have to refill the prescription?

A. You'd have to refill it.

Q. Back to the doctor?

A. Yes.

Q. And because this is a work accident record and he has coverage under his own union --

MR. DERRICO: Objection.
THE COURT: Sustained.
MR. DERRICO: Move to strike.
THE COURT: That is stricken.
Q. Did you see anywhere that he filled those prescriptions that would be on record?
MR. DERRICO: Objection, your Honor. That's like a negative.
THE COURT: Ask a question.
Q. Just so it's clear, Adderall is an amphetamine and he's still on it today, indicating in your notes, correct?
A. Yes.
Q. From a psychiatrist for depression?
A. Correct.
Q. He's had since the accident at least?
MR. DERRICO: Objection, your Honor. That's not claimed in this case.
MR. McCRORIE: It is, your Honor. The --
THE COURT: Okay. He answered the question.
MR. McCRORIE: Nothing further.
MR. DERRICO: I have one question.
THE COURT: Sure.
MR. DERRICO: May I approach the witness?
THE COURT: You may.
RECROSS EXAMINATION

BY MR. DERRICO:

Q. I'm going to show you a portion of the St. Joseph's medical records after the motor vehicle accident, okay? In January 19, 2009. I'm going to ask you to read something to the jury, okay?

A. Yes.

Q. Start right where it says the patient. Right there. Read it to the jury?

A. The patient sustained neck injury, pain, injury to lower back, pain, left shoulder, painful injury.

Q. It says low back, doesn't it?

A. It does.

Q. Thank you, Doctor.

MR. DERRICO: Nothing further.

THE COURT: Thank you, Doctor. You may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Members of the jury, we are going to take our recess for the afternoon and I ask that you return tomorrow at 9:30 a.m. in the designated area, waiting for the court officer to escort you upstairs.

Enjoy the rest of the your day.

THE COURT OFFICER: All rise. Jury exiting.

(Jurors exit.)

(Whereupon, the matter is adjourned to March 13, 2019.)

* * * *

The above is certified to be a true and accurate transcription of the within stenographic minutes.

LINDA FITZNER CSR

Senior Court Reporter

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