SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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YOLANDA AQUILINO,

Plaintiff,

-against- Index No.
805331/2017

MICHAEL CHRISTOPHER GERLING, M.D., individually and d/b/a SPINECARE NYC ORTHOPEDIC, SPINECARE NYC ORTHOPEDIC PC and NY ORTHOPEDICS, P.C.,

Defendants.

Original

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555 5th Avenue
New York, New York

October 15, 2019
12:43 p.m.

EXAMINATION BEFORE TRIAL of

MICHAEL CHRISTOPHER GERLING, M.D., a Defendant herein, taken by the Plaintiff, pursuant to Order.

ADMIRAL REPORTING & VIDEO SERVICES
Two Bay Club Drive
Bayside, New York 11360
(718) 631-0707

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

LEAV & STEINBERG, LLP
Attorneys for Plaintiff
75 Broad Street, Suite 1601
New York, New York 10004

BY: PHILIP R. PAPA, ESQ.

RUBIN, PATERNITI GONZALEZ KAUFMAN LLP
Attorneys for Defendants
555 5th Avenue, 6th Floor
New York, New York 10017

BY: JOHN PATERNITI, ESQ.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that:

All rights provided by the C.P.L.R. and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any questions, except as to form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of rights provided by Rule 3116 of the C.P.L.R. and shall be controlled thereby.

The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED that a copy of this examination shall be furnished to the attorney for the Witness without charge.

M. GERLING, M.D.

M I C H A E L C H R I S T O P H E R G E R L I N G, the Witness herein, having been first duly sworn by a Notary Public in and of the State of New York, was examined and testified as follows:

EXAMINATION BY MR. PAPA:

MR. PAPA: Let's mark the doctor's CV as Plaintiff's Exhibit 1 for identification.

(Whereupon, at this time, the reporter marked the above-mentioned Plaintiff's Exhibit 1, Curriculum Vitae, for identification.)

MR. PAPA: Let's mark the chart as Plaintiff's Exhibit 2.

(Whereupon, at this time, the reporter marked the above-mentioned Plaintiff's Exhibit 2, Chart, for identification.)

Q Please state your name for the record.

A Michael Gerling.

Q Please state your address for the

record.

A 506 5th Avenue, Brooklyn, New York, 11215.

Q Good morning, Dr. Gerling. My name is Phil Papa from the law firm of Leav & Steinberg. We represent the plaintiff in this action. I'm going to be asking you some questions today with regard to the care and treatment that was rendered to Yolanda Aquilino.

If at any time you don't understand my question, just let me know and I will rephrase them. Wait until I finish my question completely so the reporter can get down the question and the answer. If the question calls for a yes or no response, you need to verbalize your answer. She cannot take down a nod of the head or any body movements.

If you need to take a break, we will certainly accommodate you. The only exception to that is if there's an outstanding question on the record, you need to answer the question before you take your break, okay?

A Yes.

Q Thank you for providing me with a

CV. We've marked this and your office records.

Before we begin, prior to coming here to testify, other than speaking to your attorney about this case, did you speak to anyone else about this case?

A No.

Q Prior to coming here to testify, did you review any documents concerning any treatment you rendered to Ms. Aquilino?

A I reviewed my chart.

Q Other than your chart, did you review any other charts, documents, testimony of Ms. Aquilino, anything like that?

A No.

Q Before you reviewed your chart in preparation for this deposition, did you have any independent recollection of any treatment you rendered to her?

A Yes.

Q Independent meaning not refreshed by your review of the records, but if someone had said to you, "Do you know Ms. Aquilino and did you treat her?" You would have had an independent recollection of that?

A Yes.

Q You provided me with your CV. Is this an updated CV, current?

A Well, it's dated on the top.

Q Since November of 2018, have you had any additional hospital affiliations?

A I don't believe so.

Q Since that date, November 2018, have you published any other articles in your field that are not listed here?

A Definitely.

Q Do you have a separate list of those articles that you can provide your attorney?

A No.

Q You don't have a list?

A We can --

Q Could you make one up?

A You can just do a Google search. They're all in there. It would be easy to get them.

Q Are you licensed in any other states other than New York and New Jersey at present, currently?

A No.

Q Other than being board certified in orthopedics, are you board certified in any other area of medicine?

A No.

Q Do you limit your practice of orthopedics to any specific type of orthopedic surgery?

A Yes.

Q What is that?

A Spinal surgery.

Q How long have you limited your practice of orthopedics to spinal surgery?

A Twelve years.

Q Now, you produced what we marked as Exhibit 2, a copy of your office records. Is this a complete copy of your office records?

A I believe so.

Q Was this copy generated off of a computer?

A I'm not sure.

Q How did you generate this?

A I didn't. My office did.

Q What instructions did you give your

office in terms of generating this; did you ask them --

A I didn't give them any instructions.

Q Just wait until I finish my question so we can get the question and answer down.

Do you know how your office generated this? Did they generate this from a computer? Did they generate it from a hard copy of records, made copies of it?

A I don't know exactly how they generated it.

Q How do you create your office records? Do you do that on a computer? Do you do that handwritten? Does someone type it?

A Some of them are handwritten, and some of them are in the computer.

Q The ones that are handwritten, are they contained in these office records, this copy?

A Yes.

Q Did you in 2015 utilize any type of computer program to generate your office notes?

A I think so. I'm pretty sure I did, yes.

Q Do you know what the name of that program was?

A I think it was Phoenix at that point.

Q How long were you using that program prior to 2015 to generate office notes?

A Not for very long, maybe a year, not even.

Q Less than a year?

A Less than a year, six months probably.

Q Once you started using that program to generate your office notes, did you continue as a matter of custom and practice to also sometimes generate handwritten notes?

A Only what would be included in the chart.

Q So the answer is yes, you would use handwritten notes on occasion?

A Yes. But mostly just for the communication purposes in the office and also mostly just to collect patient information when

they came into the office, and as much as possible, it would be transferred into some type of electronic medical record.

Q Would you maintain a hard copy of a patient's medical records or would it all be an electronic copy?

A It should have been maintained electronically, but it may initially have been handwritten, and it may have then been transferred via scanner into electronic version, usually.

Q My question is more along the lines of if a patient came to visit you, as a matter of custom and practice, would you ask someone to pull a chart, and you would have a chart in front of you, or would you use a computer screen to pull up the record?

A Well, at this time, I don't even -- I've been in my practice, my current practice, for about six months, so it would have likely been an electronic computer chart, but there would have been pieces of paper in a folder that I would have been handed; some of which are records brought by the patient; some of which

are forms filled out by the patient, so there would be a combination of the two.

Q Would those be part of this record that we have here?

A Yes. They should be.

Q Did you have the ability to take X-rays or CT scans or MRIs in your office or did you use an outside facility?

A In one of my offices at the time, I did have X-ray that was not mine. It was part of the facility that I subleted.

Q What was the name of that facility?

A I think at the time that would have been -- it likely would have been controlled by NYU.

Q In 2015, how many offices did you have?

A I think I had two.

Q What were their addresses?

A I believe it was 6900 4th Avenue in Brooklyn and 64th Street in Manhattan, but I'm not a hundred percent sure at the time.

Q At the time you performed surgery on Ms. Aquilino, which was November 16th of

2015, did you have an office at both of those locations?

A I'm not sure. I believe so.

Q During the time you treated her, did you see her at more than one location?

A I don't recall.

Q Could you check your records and let us know?

A I'm not sure if the records reflect it. I know that I -- I directly recall in my mind from my memory seeing her in my Brooklyn office.

Q That's the one on 4th Avenue?

A Yes. But I don't think the notes reflect another office.

Q In what facility did you perform the surgery of November 2015?

A At NYU.

Q In the city?

A Yes.

Q Now, based on either your recollection or your office records, when did you first see Ms. Aquilino for any medical care and treatment?

A You know, I have to make a correction. I did have a Staten Island office at the time, 2052 Richmond Road.

Q Do your notes indicate that you saw her at that facility as well as the Brooklyn office?

A No.

Q With regard to my last question, when do your notes indicate you first saw her for any care and treatment?

A April 3rd, 2015.

Q Can you tell or do you recall whether that was at the Brooklyn office?

A No.

Q Was she referred to by a Dr. Chapman?

A Yes.

Q Who is Dr. Chapman?

A Can you rephrase that? What type of question are you asking?

Q Was he an orthopedist? Was he a primary care physician? What type of doctor was he?

A He's a pain management specialist.

Q At the time you saw her, were you practicing as a sole practitioner?

A Yes.

Q Were you practicing under a professional corporation name?

A Yes.

Q What was that name?

A New York Orthopedics.

Q New York Orthopedics, P.C.?

A Yes.

Q How long had you been practicing under that P.C. name?

A I believe the end of October of 2014.

Q Do you presently practice under that P.C. name?

A Yes.

Q Did you receive any correspondence from Dr. Chapman concerning this referral?

A Not that I know of.

Q Do you have an independent recollection of any conversations you had with Dr. Chapman about the referral?

A No.

Q Do you have an independent recollection of that first visit on April 3rd, 2015?

A Fuzzy.

Q Did you generate a note?

A Yes.

Q Was it a handwritten note or a computer-generated note?

A Computer-generated.

Q Is it a one-page note?

A No.

Q How many pages do you have for that note?

A Three pages.

Q Now, turning to the first page of that note, under history, other than the history that you generated in that note, do you have any recollection of any additional medical history that she provided you?

A Yes. The conservative management section, the review of systems, and then also she filled out a questionnaire that day, which has additional information on it.

Q Before we get to conservative

management and review of systems, just based on that first paragraph where you dictated a history, do you recall any additional history that she gave you with regard to what her complaints were, her work ability, how she injured herself, et cetera?

A Yes.

Q What else do you recall?

A That she had excruciating pain from her back radiating into bilateral legs, that she was a retired clerk. She had difficulty with activities of daily living, walking 15 minutes at a time. She had problems with balance, with tripping. She was still going to Dr. Chapman for pain management and chiropractic care. She was taking anti-inflammatories and muscle relaxers. She rated her back pain at beyond excruciating, and her leg pain at beyond excruciating, so back pain was visual analog scale, approximately, 8.5, leg was 8.5.

Q Are you taking those measurements off of that handwritten questionnaire that she filled out?

A Yes.

Q Can I take a look at that?

A (Handing.)

Q Did she complain of any numbness in either of the legs?

A I don't recall that.

Q How far down the legs did the pain radiate?

A I'm not sure.

Q Did she complain about an inability to walk up and down stairs?

A Well, she said she had difficulty walking just on a flat surface, so when somebody has difficulty on a flat surface, I don't really go further than that. If someone has difficulty on a flat surface, it's only going to be worse on an uneven plane or mounting or climbing.

Q Do you have any independent recollection, other than what's dictated in your April 3rd note, of other additional complaints she made?

A Just what I said already.

Q Did you perform a physical exam that day?

A Yes.

Q Under physical exam, other than what you generated in this office visit note, do you recall any other signs or symptoms of your examination that's not listed here?

A I don't believe so.

Q You indicated in your note that there was an MRI of the lumbar spine, films and report, from February 6th, 2013, correct?

A Yes.

Q Did you review those --

A I believe so.

Q -- or was it just a report; do you recall?

A I believe it was the films and the report.

Q Now, under causality on the second page of your report, you indicated that there was no prior history of injuries to the neck or low back; do you recall any history she gave you of having an on-the-job injury that precipitated her back pain?

A Yes. That's what I'm referring to in that section. She was a workman's compensation patient who had an injury

October 1st, 2010, and I was opining as to whether or not there was a preexisting condition prior to that accident. In other words, whether or not workman's compensation should rightfully be paying for the care of that patient.

Q Did you prescribe any further testing concerning her complaints of her back pain?

A Yes.

Q What did you recommend?

A Lumbar X-rays.

Q Did you send her somewhere for that?

A Yes.

Q Where did you send her?

A I don't know.

Q Did you get the results of that X-ray?

A I believe so.

Q Did you set up an appointment for her to return?

A Yes.

Q When did you see her after this?

A May 1st, 2015.

Q There's a letter in your office records that you generated to Dr. Larisa Malisova; do you see a copy of that?

A Yes. From the first visit.

Q There was also a letter that you generated to Dr. Chapman based on that referral, correct?

A Yes.

Q Did you send any other letters to any other doctors concerning this visit, other than these two?

A Not that I know of.

Q Is there anything else about that visit before we move on to the next visit that you recall that you haven't told us about concerning any complaints she had or any conversations you had with her?

A No.

Q May 1st was a follow-up visit; did you generate a note?

A Yes.

Q I have a three-page note here; is that correct?

A Yes.

Q If you had generated any handwritten notes other than this note, would that be something that you would have in your office records?

A Yes.

Q Now, with regard to the history and present illness, you have down here primary history; is that basically a paragraph that you cut and pasted from the first note?

A Yes. It's just a -- it's referring to the initial history from her first note.

Q Did you cut and paste the conservative management portion from the first note?

A I believe I did.

Q Do you have an independent recollection of this second visit?

A Not really.

Q The note documents an exam that you performed, correct?

A Yes.

Q Did you cut and paste any of the findings from your exam from the first note?

A Well, my customary practice at the

time was to take the exam and validate or verify that nothing had changed.

Q Did you make any changes to this examination?

A I'm not sure.

Q Could you check with the first note and let us know if you made any changes to her exam?

A I don't see a change.

Q Going back to that first visit under follow-up. In addition to telling her to return in two months, if approval has not been received prior to that; what approval are you referring to?

A Well, we discussed surgical intervention.

Q Do you recall that conversation about surgical intervention that you had with her on April 3rd?

A Vaguely.

Q Tell me what you recall.

A Describing the surgery to her, discussing risks and benefits.

Q Do you recall what specific surgery

you discussed with her? Was it a surgery involving instrumentation being implanted in her spine? What do you recall telling her?

A That's what it would have involved. It would be a lumbar decompression and fusion.

Q Did you discuss any risk of surgery with her on that first visit?

A I always do.

Q Do you have a custom and practice of what you tell patients about the risks of the surgery?

A I do.

Q Is that documented anywhere in that first visit?

A No.

Q Did you have an opinion that she was a candidate for a lumbar decompression when you first saw her on that first visit on April 3rd?

A Yes.

Q What were you basing that on?

A Standard gold medical practice.

Q Were you basing it on her history?

A Basing it on her entire clinical

picture.

Q That included X-rays or CT scans or MRIs that you reviewed?

A It includes everything I had in my note.

Q On the second visit, did you further discuss surgery?

A I believe we did.

Q Did you recommend any further testing at that second visit?

A Yes.

Q What did you recommend?

A New lumbar X-rays and a new lumbar MRI.

Q Had you received approval for surgery as of that May 1st visit?

A I don't believe so.

Q Do you recall any conversations you had with Ms. Aquilino concerning the surgery, if any, on the May 1st visit, other than telling her that you were waiting for approval?

A I don't recall the details of whether we -- whether I repeated the conversation that we already had.

Q Do you recall anything she said to you up to this second visit about the surgery, any questions she may have had?

A Nothing out of the ordinary, no.

Q When you say nothing out of the ordinary, do you recall anything she said to you about any concerns she may have had, any issues about the surgery, anything?

A No, not right now.

Q When did you next see her after May 1st?

A June 5th.

Q Between those two visits, May 1st and June 5th, did you receive any results of any radiological studies?

A I believe so.

Q Are they contained in your office record?

A Yes.

Q Did you receive an MRI dated May 7th, 2015?

A Yes.

Q Did you review the actual MRI and/or the report?

A The films and report.

Q Did you agree with the impression of the radiologist, Dr. Diamond?

A You know, I don't -- let me see if I have his report.

Q I can show it to you.

A Yes, I did.

Q After you received that report and reviewed it, had it changed any of your plan concerning what type of decompression you were going to perform once you had the authority or the approval?

A Well, there were other reports that I received that would have weighed into any decisions that were made that day.

Q That you received up to June 5th?

A Yes.

Q What other reports?

A Electromyographic report from April 1st, 2015, X-rays of lumbar spine, X-rays of hips.

Q Now, with regard to the June 5th visit, do you have any specific recollection of this specific visit?

A Very fuzzy fog, foggy memory.

Q Do you recall any conversations that you had with her at that visit?

A Well, I believe we had a conversation that the X-rays and the new imaging was significantly worse than the prior, and that she would -- that she would require more extensive surgery than we discussed initially, and that I would like to have more studies done on her in order to evaluate her further for surgery.

Q What was it that was worse about her condition that you saw in the MRI?

A The L-3/4 and L-4/5 discs looked much worse; the L-5/S-1 looked worse; the facet joints looked terrible.

Q How is that going to impact what you had originally recommended in terms of the initial surgical procedure?

A It just made it more extensive.

Q More extensive in what way - more hardware, a different approach; how was it made more extensive?

A More involved levels of the spine

that would require stabilization and correction of deformity and decompression, higher risk.

Q Higher risk of what?

A Of everything.

Q Now, under plan for the June 5th visit, is that what you dictated or what you generated indicated the type of surgery you were going to perform or recommend?

A Yes.

Q When did you next see her after June 5th?

A September 4th.

Q Between those two visits, did you request that she receive other radiology studies or did you have everything that you needed?

A Yes.

Q What did you ask her to have done between those two visits?

A I wanted her to do an EOS scan and the DXA scan. I believe she had that done. I just wanted the results.

Q Did you get the results?

A I'm not sure if I did. I didn't put them in my note.

Q Do you recall if you eventually got the results before the surgery?

A I believe so.

Q Turning to that September 4th visit, do you have an independent recollection of this visit?

A Not very strong recollection. I don't think there was a lot of new items I covered during that visit.

Q Had her condition in terms of your exam changed in any significant way as compared to what you found on June 5th?

A Well, she had reported in June that her symptoms had worsened from the initial visit in May, and that between June and September, they remained relatively stable at that more excruciating level.

Q Was she on any type of pain medication at that time?

A I believe she was on muscle relaxers and anti-inflammatory medication.

Q Had you prescribed any of that or was it prescribed by the pain management doctor?

A I don't recall. I may have

supplemented it, but she was on them when she came to me.

Q Had you, as of September 4th, given her a date for the surgery?

A I'm not sure.

Q In this note, I think you refer to medical clearance, correct?

A Yes.

Q Did you receive the medical clearance at some point subsequent to September 4th?

A At some point before surgery, yes.

Q Is the next visit November 5th?

A Yes.

Q Do you have any independent recollection of that visit?

A Very vague recollection.

Q Do you recall any conversations with her on November 5th about the date for scheduling surgery?

A I believe we had a specific discussion of surgery that day.

Q What do you recall was said?

A Standard discussion of what the

procedure is, exactly how we do it, what the risks and benefits are.

Q What did you tell her about the risks of the surgery?

A That there's no guarantee that she's going to have improvement of her back or leg symptoms, that people frequently have significant residual back pain, that my hope is that her leg symptoms that had been there for a long time were not permanent, that neurologic symptoms can get worse. Sometimes you can have neurologic damage from surgery; sometimes we have to do revision surgery, take out the implants and put reimplant them; sometimes we have to adjust them. She could have medical complications from surgery, things such as lung problems or wound problems or other types of perioperative problems, that she could have more difficulty with her activities of daily living. In other words, nothing is guaranteed.

Q Did you discuss benefits of the surgery?

A Of course.

Q Tell me what you told her about the

benefits of the surgery.

A Well, the hope is that she would have improvement of her symptoms and improvement of her functional level.

Q Did you give her any percentages - 50 percent chance that she could be worse, a 50 percent chance that she could be better? Did you talk about percentages at all?

A I don't recall.

Q Did you recommend surgery?

A Yes, I believe I did.

Q What were you basing your recommendation of surgery; what did you think you were going to be able to accomplish?

A Well, primarily to stabilize her spine because her spine had substantial instability on X-rays and MRI imaging, which I believed was the source of most of her problems, to correct some of the deformity she had, to try to open up the spaces where the nerve roots were.

Q Do you recall any questions she had about the risks of the surgery when you spoke to her on this November 5th visit?

A No.

Q Up to this point, do you remember if anybody had accompanied her to the office and sat in the office while you were talking to her?

A I do vaguely remember somebody being with her, but I'm not sure.

Q Do you know if it was a man or a woman?

A Not sure.

Q Do you know if it was a relative or a friend?

A I vaguely remember someone being there, but I don't remember who it was.

Q Do you remember anything that that person said?

A No.

Q Was the next time you saw her in the operating room on November 16th?

MR. PATERNITI: Do you mean specifically the operating room or in the hospital?

Q Well, let's talk about the hospital. Was the next time you saw her when she was admitted for the surgery?

M. GERLING, M.D.

A You know, I apologize. I have to go back a step. You had asked me earlier whether or not I prescribed her medication. I'm seeing in my notes that I did prescribe her Valium and Percocet.

Q Valium and Percocet?

A Yes.

Q When was that?

A November 5th, 2015.

Q The date that we were just on?

A Yes.

Q Is that documented in the office visit note?

A It's documented in the handwritten note that was accompanying it.

Q Can I see the handwritten note?

A (Handing.)

MR. PATERNITI: What date is that from?

THE WITNESS: November 5th, 2015.

Q Doctor, this note that you handed me indicates under plan treatment it says postoperative meds, Percocet, Valium; did you prescribe any medication before you did surgery?

A This was before the surgery. It says surgical recommendations L-3 to S-1. I think that I -- it wasn't postoperative, but we prescribed those medications that day.

Q For her to take before the surgery?

A For her to have and for her to use, yeah. She had excruciating pain in the back and legs that was progressive and extended past her knees in some of these visits on both sides.

Q Where is that documented?

A In some of the pain diagrams. For example, from September 4, 2015.

Q Let me see what you're referring to.

A (Handing.)

Q Just for the record, Doctor, is that a diagram you prepared, that you marked?

A That's a diagram the patient prepared; they mark it.

Q With regard to the pain that you said was radiating below the knee, would you describe for the record, if you can, what this diagram depicts in terms of the location of the radiating pain?

A Yes. It shows the pain from across the back, down the right lateral thigh and then down the left lateral thigh and down to the left lateral shin and calf area.

Q Up to this point, based on any of the records you generated or the client generated, was there any report of any numbness in the area of the lower extremities?

A Well, it looks like she made marks on the side of the legs on these diagrams for numbness and on the posterior thigh and buttock area on the right side, and then beside the shins on both sides, but it's not a great copy, so it's difficult to fully assess.

Q Can I see what you are referring to?

A (Handing.)

Q Where would the original of this form be?

A I don't know.

Q Would it be maintained in any chart that you have in the office?

A No.

Q What happens to the original

diagrams that the patient fills out after they are scanned into the record like this?

A Back then, that would have been -- it would have been shredded, probably because we didn't maintain a paper chart ourselves.

Q Looking at the numbness chart as opposed to the pain chart, do you see that she marked anything about numbness in her legs?

A Yeah. It looks like on either side of her legs, she made some markings beside her legs, but it's fuzzy, so it's hard to tell for sure.

Q Do you have any independent recollection that she complained to you of numbness in any of her legs?

A Vague recollection.

Q Vague as --

A I know she complained of numbness, but to say that I remember exactly where it was on her leg is difficult, but I know that she complained of numbness in her legs.

Q Do you have any recollection of her complaining of any numbness going down to the lower part of her leg into her foot or feet?

A Vague recollection.

Q You have a vague recollection of her complaining of numbness going down to her feet?

A (No verbal response.)

Q Did you document that anywhere in your notes?

A I don't think so. I didn't really describe any of those pain patterns or numbness patterns in my notes.

Q Would this be a significant sign and symptom concerning the extent of the neurological damage that you were going to be operating on that she had numbness going down to her feet?

A She didn't have dense numbness at any point when she was examined in my office.

Q What do you mean by dense numbness?

A Well, numbness is a word that we use in a relatively not specific way. In a sense that if you had an injection in your gum by a dentist, you could still feel yourself touching it; it just doesn't feel normal, and it could be completely numb where you can't feel a

thing, or it can be where you just have a little bit of blunted sensation, and so numbness can be a whole spectrum of that, so if a patient has mild numbness, severe numbness, dense numbness means they can hardly feel anything in that distribution, but at no time did I examine her where she couldn't feel me touching her leg.

Q Did you document in your notes any kind of degree of numbness in her legs either above the knee or below the knee?

A I'd have to look through all of them, but I don't recall her ever having dense numbness. I recall her having vague numbness, and she had documented that in the pain diagrams, so I really didn't recreate the pain diagrams in my written note.

Q Other than that one diagram which you say we really can't tell what she marked, do you have any other diagrams where she's marking that she has numbness anywhere? This is before the surgery.

A May 1st, 2015, in the diagram she clearly says that she has numbness.

Q Can I see that diagram?

A You just looked at it.

Q This is the one we just looked at before. Other than that?

A The following visit on June 5th, 2015.

Q Let me see that. Again, this is marking about numbness?

A Yes (handing).

Q This diagram that you are referring to, are you referring to the area that she marked on the right leg near the hip?

A The buttocks and thigh, yes.

Q On this diagram, is there any markings that she made below the knee concerning numbness?

A You know, it's hard to tell. There are markings on the calf area and foot area, but I'm not sure if those are speckle marks or if those were circles. It's hard to tell.

Q Based on your custom and practice, Doctor, if you ask a patient to make a marking on a diagram concerning signs and symptoms of neurologic injuries such as numbness, would that be something if it was positive, if she did mark

something, that you would document somewhere in the record that she was complaining of numbness in the left leg?

A Well, we know that she was, you know. You know, I'd love to, if it would make this easier, then yeah, I guess I wish I had, but I didn't. If I thought it was -- if I thought it was dense numbness, then yes, I would think it's extremely important. If it's just vague numbness, if it's partial numbness, then I'd like to and I try to, but I don't go into the depths of details of these diagrams. They stand for themselves, and they're in the records.

Q But you agree, Doctor, the copies of these diagrams are hard to read because they're not the originals?

A Right. And when I'm making clinical decisions on patients, I don't really consider whether or not you're going to have difficulty reading scans five years later.

Q Again, my question with regard to signs and symptoms that you documented, other than these scans of diagrams that are hard to

read, is there anywhere in the record documented by you that she was complaining of numbness in her legs below the knee?

A I don't recall seeing any documentation of that.

Q Let's turn to the next --

A Do you want me to finish?

Q Finish? I thought you did finish.

A No.

Q Go ahead.

A So September 4th, 2015, you already looked at that one, right?

Q Yes.

A And again, November 5th, 2015, there's shade on the legs in the numbness area, so it's not dictated in my notes, but it's clearly in the patient's history on their form.

And also, I was referring her to Dr. Stiler, I believe, during that last visit, who is a neurologist.

Q You referred her to Dr. Stiler for what reason?

A I'm just looking at my note here. It says refer Dr. Stiler.

M. GERLING, M.D.

Q Do you have a recollection of referring her to Dr. Stiler?

A He was somebody that I regularly did refer people to.

Q And he was a neurologist?

A Yes.

Q Why did you refer her to him?

A Probably because of her neurological complaints.

Q For what specific neurological complaints did you refer her to him for? Was it the leg --

A There were extremities --

MR. PATERNITI: If you recall, Doctor.

Q The lower extremities? Did you ever send him any letters about this? Do you recall any conversations with him?

A No.

Q Do you have a specific recollection that the reason you referred her to Dr. Stiler at that time was due to numbness that she was complaining about in her legs other than any other neurological complaints?

A No.

Q Do you recall either way?

A No.

Q Did you ever receive a report from Dr. Stiler concerning the referral?

A I'm not sure. I don't see one in the chart.

Q Do you recall any conversations with him?

A No.

Q Do you recall any conversations with Ms. Aquilino about referring her to Dr. Stiler about any neurological complaints that she had?

A Not specifically.

Q Was this before the surgery or after the surgery that you referred her?

A Before.

Q That was on a handwritten note?

A Yes.

Q Let's turn to the surgery. Do you have a copy of the operative report?

A Okay.

Q Is this a four-page note, operative

note?

A Yes.

Q Did you dictate this?

A I think so.

Q On the last page it says dictated November 17th, transcribed November 18th, signed by Michael Gerling; would that indicate that you dictated it?

A Yes.

Q Now, the operative note refers that you had an operative assistant named Bryan Beutel, correct?

A Yes.

Q What part of the surgery did he perform?

A Little, if any.

Q Did he insert any of the hardware?

A No.

Q This is a relatively detailed extensive operative report. I'm not going to go through the whole report, but I'd like you to take a look at the procedure portion, and let us know if it accurately reflects the surgery that you performed?

A Yes, it does.

Q When was the last time you looked at this before today?

A I don't recall.

Q Did you change any of your operative plan in terms of what hardware you were going to use intraoperatively?

A Not that I know of.

Q Had you considered at any time using an anterior lumbar implant cage at L-5/S-1?

A I don't recall.

Q Did you use an implant cage at that level?

A I don't believe so.

Q Do you know whether there was a reason that you didn't use one there? Did you consider using it and decide not to?

A No, I don't believe so.

Q Did you insert any pins or screws?

A Yes.

Q Where?

A In the lumbar spine.

Q What level?

A L-3/4/5 and S-1, bilaterally, I believe.

Q Did you have any trouble inserting any of those screws?

A No.

Q Did you check to see if they were in proper position?

A Yes.

Q Did you take any intraoperative or immediate postoperative X-rays?

A Yes.

Q Did you review them subsequent to the surgery?

A Yes.

Q Did you find any problem with the placement of the screws?

A Well, when you say problems, can you be more specific by what you mean by that?

Q Misplaced.

A Well, one of the screws, as we all know, was not perfectly placed.

Q Which one was that?

A The left L-5 screw.

Q When you say it wasn't perfectly

placed, what do you mean?

A Well, it was in bone, but it was not ideally through the pedicle.

Q Was it impinging on any nerve roots?

A No.

Q You can tell that based on what, your review of the X-ray?

A No. When I put in the pedicle screw, after I put it in, I directly palpate the area, and I explored the area afterwards, so I actually went into that area and confirmed that the screw was not in the space. It was not impinging on the nerve root, that I decompressed the area.

Q Were you comfortable that that screw was placed properly enough to remain there?

A That it was acceptable, yes.

Q Were there any other concerns that you had about any of the instrumentation that you placed at the end of the surgery?

A No.

Q Is there anything that you did with

regard to the implantation of any hardware that is not accurately described in your operative report?

A Not that I know of.

Q Did you mention anywhere in the operative report that the screw at L-5/S-1 was not ideally placed?

A No. Nor did I mention anywhere that any screws were ideally placed.

Q Point to where you're discussing the implantation of that operative screw. What paragraph is it in?

A On the third page in third paragraph, placement of the screws.

Q You're saying at the right side of the L-5/S-1, that sentence, starting with that sentence?

A No. After the completion of the first stage of the procedure, that paragraph.

Q Just so we're clear, Doctor, your assistant, did he have anything to do with the implantation of any hardware?

A No.

Q When did you next see her after the

surgery? Did you see her in the hospital after she came out of the surgery?

A Yes.

Q Do you recall that visit at all?

A Yes.

Q Do you recall whether she had any complaints upon examination except for the usual postoperative complaints?

A There was nothing unusual.

Q Do you recall if you saw her stand up at all and walk while she was in the hospital after the surgery?

A She did stand up and walk, yes.

Q Was it walking unassisted or with help?

A Most people use a walker or cane while they're in the hospital after a big surgery like this. There was nothing unusual.

Q Do you recall her complaining of any numbness in her left leg?

A She did have complaints of pain and numbness.

Q Do you recall specifically where she was complaining of the numbness and pain

after the surgery before she left the hospital?

A In the same distribution as her symptoms before the surgery.

Q Based on your recollection, she had the same complaints of numbness after the surgery in her left leg that she had before the surgery?

MR. PATERNITI: Objection.

Q Do you recall whether the complaints of numbness that you indicated appear in your record in the diagram were the same, better or worse in terms of what she complained about in the hospital after the surgery?

A They were similar within the spectrum of what you would expect postoperatively.

Q That's your recollection?

A Yes.

Q Did you make any notes about that in the hospital record?

A I don't recall.

Q When did you next see her in your office after the surgery?

A December 11th.

Q Was that a regular postop visit?

A Yes.

Q Did you hear from her or speak to her at all between the surgery and after she was discharged and before you saw her in the office on December 11th?

A No.

Q Did she have any complaints when you saw her on December 11th?

A Yes. She complained of back pain, numbness in the left leg, using her wheelchair or walker.

Q Under history of present illness, could you read into the record what you wrote there about her complaints?

A She is having back pain and difficulty sitting, standing and laying, numbness in the left leg, using a wheelchair and a walker.

Q Based upon whatever expectations you had about her recuperation, did you feel she was on track in terms of her rehab?

A Well, it's normal for people to have those back symptoms. I don't like it when

people have neurologic symptoms in their legs after a surgery. It happens frequently, but I don't like it. Nobody likes it. We wish they all were gone right away. It's not unusual for somebody to use a walker after such a big surgery, especially somebody who is obese, former smoker, who was already significantly disabled to begin with beforehand, so that's completely normal and expected.

Q Was it completely normal and expected she should be using a wheelchair six weeks after the surgery?

MR. PATERNITI: Objection. I don't think we're six weeks.

Q Approximately a month after the surgery, you have documented that she was using a wheelchair and a walker. Was she using a wheelchair and walker on December 11th?

A It wasn't a month afterwards.

Q The surgery was November 16th, so it's a few days short of the month. You documented that she was using a wheelchair.

A Right, she had been using it postoperatively. That's not unusual for

somebody that had a difficult postoperative course. She had a lot of complications in the hospital. She had a difficult time, and I didn't say she was using it that day. She was able to use a walker. I don't know if she was using the wheelchair to go shopping with her kids. I don't know what she was using it for.

Q Do you have any recollection of when she was using a wheelchair when you saw her on December 11th whether it was shopping or in the house or whatever; do you have any recollection?

A Well, I don't believe she was using it in the office, so she was walking as far as getting into the office.

Q She was using a walker?

A Right.

Q Now, you said on this note that she had numbness in the left leg. Did you examine her to determine that she had numbness in the left leg or was that just a statement that she made?

A That was a statement she made.

Q Did you perform any neurological

examination to determine where the numbness was and whether it was dense numbness and whether it extended down her leg?

A Yes, I did.

Q Where is that documented?

A In the examination portion of the note from that day.

Q Are you referring to under where it says neurologic?

A Yes.

Q Could you read what you wrote there?

A There is blunted heel cord reflexes bilaterally; blunted biceps reflexes bilaterally; weakness of the right lower extremity, four out of five, and grip strength weakness.

Q Where does it document in that note that she had numbness in the left leg?

A It doesn't because she didn't have any on examination.

Q So based on your note, even though you documented that she's complaining of numbness in the left leg, you didn't find any on

examination?

A Right. So it's common for people to complain of symptoms that come and go. That's not unusual at all.

Q Based on your note, do you have an independent recollection of when you examined her on December 11th, you found that she had no numbness in her left leg?

A I do not recall detecting any numbness in her left leg.

Q Did you order any tests or radiological studies on December 11th?

A No, I don't believe I did.

Q Under your plan, other than what you dictated there, was there any other treatment that you recommended or testing?

A Yes.

Q What?

A We recommended physical therapy; we recommended pain management, including medications, and we recommended her using a brace as needed, which she had tried in the office and fitted that day. We also that day discussed the fact that her symptoms -- the fact

that she was having numbness was concerning, and that it would be reasonable if she thinks the symptoms are significant enough for me to go back in and explore the wound and confirm that whether or not there's anything I could improve upon or somehow change.

Q Did you document this discussion in your office note?

A I documented most of it.

Q Where did you document the offer for the surgery to deal with any neurological numbness that she was having?

A I didn't document that.

Q You prescribed Neurontin for her, correct?

A Yes.

Q Is that for numbness, people complaining of numbness and neurological complaints?

A No.

Q Why did you recommend Neurontin?

A Neurontin is helpful for neurologic pain.

Q Did she complain of any

neurological pain?

A I believe she did.

Q Did you document that anywhere?

A No. It's just in the handwritten notes again.

Q Can I see which notes you're referring to?

A (Handing.)

MR. PAPA: Can we mark this? This is part of 2, so let's mark it as 2A.

(Whereupon, at this time, the reporter marked the above-mentioned Plaintiff's Exhibit 2A, Handwritten Chart Note, for identification.)

Q Doctor, this handwritten note, is this something that Ms. Aquilino filled out on December 11th?

A Yes.

Q Under reason returning, what did she check off under new neurologic symptoms?

A Pain, mobility, numbness.

Q Did she check off under new the box that said "yes"?

A Yes.

Q So she had new neurologic complaints on December 11th, correct, based on her note?

A Based off of your interpretation of that line, yes.

Q My interpretation, Doctor, that's what the note says. You gave her this to indicate the reason she was returning, and she checked off that they involved that she had increased pain with an arrow pointing up, decreased mobility with an arrow pointing down and numbness.

MR. PATERNITI: Is that all reflected on the document, Doctor?

THE WITNESS: Yes.

Q It's not an interpretation. That is what is documented. Do you recall her complaining --

A All of your verbiage around it was your interpretation. What you just said was written there, yes.

Q Do you have a recollection of her complaining of increased neurological symptoms on December 11th?

A Yes.

Q Based on what you recall, not any interpretation, what were those increased neurological symptoms that she was complaining about?

A She had pain in both legs; she had back pain; she had neurologic -- she had numbness. All of the things that are written there.

Q Did the diagram describe the area that she was complaining of numbness and pain?

A Yes.

Q What's your interpretation of what these diagrams show, the extent of the numbness and pain? Where did it go from and to based on her diagram?

A From the back down her left leg.

Q How far down?

A Down to the foot.

Q So that's what she was complaining about based on her diagram and on this handwritten note, that she had pain and numbness going down her left leg to her foot from her back?

A As has been stated multiple times already, yes.

Q There was no diagram that we saw that showed this type of extension of the numbness and pain before, was there, Doctor, that we saw?

A No.

Q Now, did you have an opinion as to what was causing this increased neurological pain and numbness and increased immobility on December 11th?

A Yes.

Q What was your opinion?

A Her surgery.

Q What was it about her surgery that you felt was causing this increased numbness and pain going down to her left leg to her foot?

A It actually doesn't say that her leg pain was increased from preop in this note here.

Q It's got an arrow pointing up, doesn't it?

A It doesn't say leg pain, and it's normal for someone who has a four, five-hour

back surgery to have increased pain. That's normal.

Q A month later?

A Yeah. That is normal.

Q Did you have any opinion that maybe the screw you indicated may be causing some kind of problem or might cause a problem that has anything to do with this?

MR. PATERNITI: I have an objection.

Read that back.

(Whereupon, at this time, the last question was read by the reporter.)

MR. PATERNITI: He didn't indicate that the screw was causing a problem.

MR. PAPA: I'll rephrase it.

Q Did you have any opinion that the screw that you inserted at L-5/S-1 could be causing these increased symptoms?

A I had an opinion that I was in that space and that there were a lot of different things that could be causing the symptoms, so that's why it's reasonable to go back in and take a look.

M. GERLING, M.D.

MR. PAPA: Move to strike as nonresponsive.

MR. PATERNITI: Object to that.

Q Could you just answer the question, Doctor? Did you think that the placement of the screw that you inserted had anything to do with these complaints?

A It could.

Q It was your opinion that that could have been the cause of these complaints?

A It's possible.

MR. PATERNITI: Objection. There's multiple other possibilities there are, Counsel. You can't strike the guy's answer.

MR. PAPA: I want an answer in terms of the screw. He's given me an answer, and that's fine.

MR. PATERNITI: You don't want to allow him to answer as to the multitude of other possibilities when someone undergoes this type of extensive back surgery as to what else could possibly be causing these types of symptoms.

M. GERLING, M.D.

MR. PAPA: He's answered the question. He told me --

MR. PATERNITI: You struck it.

MR. PAPA: I didn't strike that part of it.

MR. PATERNITI: You requested to strike it.

Q Doctor, when you indicated that you recommended further surgery on December 11th, was it due to what her complaints were concerning this left leg numbness and pain?

MR. PATERNITI: Hold on. I'm going to object to that.

Off the record for a second.

(Discussion held off the record.)

Q Tell me exactly what you told her on December 11th, if you recall, about any further surgery?

A Well, I do have a vague recollection of it. I told her that I was very concerned about her symptoms, that nobody is happy that she's having those symptoms, and as spine surgeons, we see those symptoms after big surgeries such as this. She had a large lateral

exposure, where we go through the iliopsoas muscle, where there is entire lumbar plexus. We go through a lot of different areas where there are nerves and where she could have sources of symptoms, and it is appropriate at times to explore that area, and if she wanted me to go back in and explore and see whether or not I thought the nerve was directly being pinched in any place, whether where it was where the screw was or in the area where the surgery was, because there were a lot of different areas where the nerves could be pinched, and I could explore them. I wouldn't just go in and take out a screw and that would be it because, quite frankly, I don't think that is the key to success.

Q Did you recommend any radiologic studies to determine if that screw was probably the cause for the increased neurological problems in her leg?

A I don't recall right now.

Q If you ordered an MRI or a CT scan or an X-ray of the back to determine if that screw was causing these problems, wouldn't that

be documented?

A I don't think those would help confirm whether or not the screw was causing those symptoms.

Q Did you ever review any subsequent MRIs concerning your surgery after you performed the surgery?

A I don't believe so.

Q When did you next see her after this visit of December 11th?

A February 5th, 2016.

Q Between December and February, did you order any type of radiological studies?

A No. That's not my customary practice.

Q Did you recommend any specific treatment for this pain, such as any medications, any follow up with a neurologist or anything like that?

A Of course.

Q What did you do?

A We gave her medications, numerous medications.

Q What medications did you give her?

A We gave her narcotic pain pills, Valium, muscle relaxer, antianxiety medication, anti-inflammatories, and we gave her neuroleptic pain type medications.

Q Was that Neurontin?

A Yes. We also sent her for physical therapy. She already had a pain management doctor, and she already had a neurologist.

Q Did you ever receive any reports from the physical therapist or the neurologist concerning any visits she made to them between December and February?

A I don't recall.

Q Could you check your record? Would it be in your record if you received a report from them?

A I don't believe they're in my record. I don't see any.

Q Let's go to February 5th, that was the next visit.

A Okay.

Q Was this a regular follow-up visit?

A I don't know what you mean by that.

Q Had you told her to come back to

see you after the last visit and this was the visit she returned for?

A Roughly, I mean, I asked her to come back June 20th, and she came back on February 5th.

Q So that was much sooner?

A I'm sorry. Not June, January 20th.

Q Where does it say you wanted her to come back in January?

A In the plan from the last visit.

Q Do you know why she didn't return in January and came in February?

A I don't recall.

Q Did she have any additional films with her when she returned?

A I don't believe so.

Q Did she have any complaints when you saw her on February 5th?

A Yes.

Q Did you document them in the record?

A She complained of back pain with numbness in the left leg ongoing. She was using a wheeled walker. She wasn't working.

M. GERLING, M.D.

Q Did she fill out any kind of a diagram or sheet concerning her complaints that day?

A Yes.

Q Can I see that?

A (Handing.)

Q Does this diagram indicate where she was feeling the numbness and the pain?

MR. PATERNITI: If she was.

MR. PAPA: He said that she was complaining of ongoing numbness of the left leg in his note.

MR. PATERNITI: And there's a diagram for the patient to check off if she has numbness, yes or no. So this is to indicate whether she was having numbness on this day.

Q I think it says no change, ongoing; is that correct?

MR. PATERNITI: And here she didn't check off anything for numbness.

Q Item two is with regard to numbness and complaints on that sheet, correct, Doctor?

A Yes.

M. GERLING, M.D.

Q What did she document?

A New neurologic symptoms, no.

Q She didn't check off that she had new neurologic symptoms, but she says that in item one have her symptoms changed since your last visit, and she checked off no change; what does that indicate to you with regard to any complaints she had of numbness in her left leg going down to her left foot; had it changed? Had it not changed?

MR. PATERNITI: I'm going to object to that. You're asking him to get inside your patient's head. She's obviously giving contradictory information as a history and what she's checking off on the chart, and now you want him to interpret what she meant by all of that. I'm going to object.

MR. PAPA: There's no contradictory information. I just want him to read what the record shows.

MR. PATERNITI: You did that, and we can all agree the piece of paper shows what the piece of paper shows.

You asked him to interpret what it means by the fact that she checked off or she didn't check off that she was having any numbness.

MR. PAPA: The record will speak for itself. We documented that she said that she had no change with regard to her complaints. It's there; it's checked off.

MR. PATERNITI: We didn't document that.

MR. PAPA: She documented it.

MR. PATERNITI: She checked a box that said no change. She also did not check a box for numbness when in the past she had, so --

MR. PAPA: The record will speak for itself.

MR. PATERNITI: The record speaks for itself.

MR. PAPA: Exactly.

MR. PATERNITI: Are you disputing that, Counsel?

MR. PAPA: No. I'm standing by

those, and also by the fact that he documented that she had numbness in the left leg ongoing.

Q That is what you documented, correct?

MR. PATERNITI: Objection. Asked and answered.

Q Doctor, do you recall --

MR. PATERNITI: We're fighting about what the records say. It's on the pieces of paper.

Q Do you recall this visit?

A Yes.

Q Do you recall any conversations you had with her about her complaints?

A Yes.

Q Tell me what you recall she said and what you said to her.

A I recall her saying she had symptoms in her back, and she had symptoms in her leg. She wasn't in a good place. I felt that we should go back, and I encouraged her to go back and explore the wound.

Q What did she say? Did you document

it anywhere or do you recall?

A I think she said -- you know, I recall her saying that she agreed that it was appropriate.

Q She wanted to have further surgery?

A I believe so.

Q Did she tell you why?

A I believe it was just part of our conversation maybe. I don't think I questioned her why. I think it was obvious why.

Q Did you recommend any other treatment to relieve her pain other than reexploration?

A Yes.

Q What did you recommend?

A We discussed physical therapy, medications.

Q Did you have an opinion whether physical therapy and medications were going to improve her complaints of this numbness in her left leg?

A Well, during that office visit, I did not find any numbness, and she was not having numbness that day.

M. GERLING, M.D.

Q Well, Doctor, when you say you didn't find any numbness, that's based upon what?

A Physical exam.

Q The physical exam, under neurologic --

A I'm sorry.

Q -- did you document that she had numbness in the left shin and calf diffusely predominantly in L-4 derm and paresthesia in the left anterior thigh?

MR. PATERNITI: I'm going to object. He was in the middle of correcting himself, Counselor. Don't cut him off.

MR. PAPA: Counselor, I was just correcting him because --

MR. PATERNITI: He said I'm sorry, and you jumped all over him. If the guy is trying to correct his answer or clarify something. I'm going to object to that. I think it was a little argumentative.

A I did find numbness in her left

shin and calf diffusely predominantly in the L-4/L-5 dermatome and paresthesia in the left anterior thigh.

Q Did you have an opinion as to what the cause of that numbness was?

A I believed that it could be associated with the surgery, so that's why we discussed an exploration.

Q Had you changed or added to your opinion as to the specific cause of this problem with regard to what you did during the surgery? Is there anything specific in terms of the surgery that you felt was causing this problem?

A No change from my thoughts in December.

Q Did you recommend any follow-up radiological studies, MRIs or CAT scans?

A No.

Q Did you discuss a specific date for the surgery?

A No, because she has workman's compensation.

Q What does that mean?

A You have to get authorization.

M. GERLING, M.D.

Q Did you apply for authorization for surgery at any time after February 5th?

A At that time, we applied for it.

Q Did you fill out any paperwork for that surgery?

A Not personally, my staff did though.

Q Is that contained in your office records?

A Yes.

Q Can I see what they filled out?

MR. PAPA: We're going to mark for identification the attending doctor's request for authorization and carrier's response dated March 17th, 2016.

(Whereupon, at this time, the reporter marked the above-mentioned Plaintiff's Exhibit 2B, Attending Doctor's Authorization and Carrier's Response dated March 17th, 2016, for identification.)

(A brief recess was taken.)

Q Did you ever receive authorization for that surgery from that comp carrier?

A I'm not sure.

Q When did you next see her after that February 5th visit?

A I don't believe I did.

Q Did you see her in June at all?

A June of 2015, so that would have been preop.

Q Do you recall any telephone conversations or any communication with her after that visit of February 5th?

A No.

Q Did you ever, other than conversations with your lawyer, learn that she had a subsequent revision surgery by some other physician?

A Yes. Well, no, not other than my lawyer. Just from my lawyer.

Q Did you ever review any operative reports of that surgery?

A I think I did, but only through my attorney.

Q Do you recall the name of the surgeon who performed the revision surgery?

A Paul Brisson, I believe.

M. GERLING, M.D.

Q Did you review, in addition to the operative report of Dr. Brisson, any MRIs of the lumbar spine that were performed prior to that surgery?

A No.

MR. PAPA: We'll mark this as Plaintiff's Exhibit 3 for identification. It's the six-page operative report dated October 18th, 2016, from Dr. Paul Brisson concerning Yolanda Aquilino.

(Whereupon, at this time, the reporter marked the above-mentioned Plaintiff's Exhibit 3, Operative Report of Dr. Paul Brisson, for identification.)

Q Doctor, is this the operative report that you reviewed --

MR. PATERNITI: Note my objection to the extent that his attorney read him any portions of an operative report. That is privileged.

MR. PAPA: I'm not asking him anything --

M. GERLING, M.D.

MR. PATERNITI: Whether there's an actual document that he reviewed or whether there were things that were conveyed to him by his legal counsel.

Q Did you review this document or portions of this document?

A It's possible.

MR. PATERNITI: Just yes or no, Doctor.

THE WITNESS: I'm not sure. I mean, I don't have site recognition of this. I mean, if I read through it, I might recognize it. I'm not sure what the point is.

Q The point is that you said that you reviewed the operative report --

MR. PATERNITI: Did you see that document itself, Doctor, as opposed to conversations with your attorney, which are privileged?

Q Do you understand the difference, Doctor? I'm not asking you to tell me what you and your lawyer spoke about --

A Right.

Q -- concerning this surgery. I'm only interested in if you ever reviewed the actual operative report.

A I believe that I've seen it. I did not read it in --

Q In any detail?

A In any detail, and we discussed it. I know at some point I've seen part of the operative report.

Q Doctor, I'm just going to refer you to page one of the operative report under postop diagnosis, item number three, do you recall reading or reviewing that portion of this operative report?

MR. PATERNITI: You, yourself, Doctor, do you recall reading it?

A No.

Q Postoperative diagnosis number three, it says lumbar root irritation mechanical due to misplaced screw left L-5 confirmed intracanal?

A Whoa, whoa, whoa. I was reading the wrong section. You're talking about in the postop diagnosis.

Q Right. Did you ever come to an opinion as to the complaints of pain and numbness that the patient complained of postoperatively?

A No.

MR. PAPA: I think we're just about finished, Doctor. I just want to go through the portions of your office records that you bought with you today.

You'll e-mail that to me, right, Counsel?

MR. PATERNITI: Yes.

(Continued on next page to include jurat.)

M. GERLING, M.D.

Q Do you recall any conversations with the neurologist that you referred her to at all about his findings?

A No.

Q Do you recall any conversations with the pain management doctor, Dr. Chapman, who referred you to her concerning her postoperative complaints?

A No.

MR. PAPA: I have no further questions. Thank you, Doctor.

(Time noted: 2:56 p.m.)

_____
MICHAEL CHRISTOPHER GERLING, M.D.

Signed and subscribed to before me this

_____ day of _____, 2019.

_____
Notary Public, State of New York

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CERTIFICATE OF NOTARY

STATE OF NEW YORK)
COUNTY OF QUEENS)

I, SHANNON BEVIN, a Stenotype Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that the within Examination Before Trial of MICHAEL CHRISTOPHER GERLING, M.D., was held before me, and I faithfully and impartially recorded stenographically the questions, answers, and colloquy.

I further certify that after said examination was recorded stenographically by me, it was reduced to typewriting under my supervision, and I hereby submit that the within contents of said examination are true and accurate to the best of my ability.

I further certify that I am not a relative of nor an attorney for any of the parties connected with the aforesaid examination, nor otherwise interested in the testimony of the witness.

SHANNON BEVIN

M. GERLING, M.D.

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MR. PAPA: I have no further questions. Thank you, Doctor.

(Time noted: 2:56 p.m.)

MICHAEL CHRISTOPHER GERLING, M.D.

Signed and subscribed to before me this 5th day of December, 2019.

Notary Public, State of New York