SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CIVIL TERM : PART 16
----------X
MARIA OROZCO,

Plaintiff,

-against- Index No. 717397/2019

ROBERT ALFONSO, JURY TRIAL

Defendant.
----------X
Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435
April 2, 2025

B E F O R E:

THE HONORABLE CLAUDIA LANZETTA,
J U S T I C E

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

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CHERYL GELLIS
KENNETH PERSCHKE
Senior Court Reporters

(Whereupon, Plaintiff's Exhibits 8 through 15 were premarked into evidence.)

THE CLERK: Continuing case on trial, Index Number 717397 of 2019, In the Matter of Maria Orozco versus Robert Alfonso, et al.

Let the record reflect that all counsel are present.

COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: You can be seated when you get there, guys.

Thank you. You can be seated.

Good morning, once again. Thank you so much. We're going to get started right away so we can be efficient today and get done what we need to get done.

Counsel, you may call your next witness.

MR. FORDE: Yes, counsel calls Dr. Barbara Steele.

THE CLERK: Please remain standing. Raise your right hand.

B A R B A R A S T E E L E, a witness called on behalf of PLAINTIFF, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: You may have a seat. Into the microphone, in a loud, clear voice, please say your first and last name, and please spell it.

A Barbara Steele, B-A-R-B-A-R-A. Steele, that's S-T-E-E-L-E.

THE CLERK: And your business address.

THE WITNESS: 99-01 63rd Road, Rego Park, New York 11374.

THE CLERK: Thank you.

THE COURT: Thank you, Dr. Steele.

If you could just speak slowly and clearly, loudly as well, so our court reporter can take down what you have to say. Listen to the questions that are asked and answer those questions. If you don't know or you don't understand, those are perfectly good answers and the attorneys will adjust, okay?

THE WITNESS: Okay.

THE COURT: Mr. Forde.

MR. FORDE: Thank you, Judge.

DIRECT EXAMINATION

BY MR. FORDE:

Q Good morning, Dr. Steele.

A Good morning.

Q Dr. Steele, are you licensed to practice medicine in the State of New York?

A Yes.

Q When did you become so licensed?

A 2014.

Q And do you have a particular specialty in the practice of medicine?

A Yes, orthopedic surgery.

Q Can you give us an idea of your educational background?

A Sure. I did my undergrad at Brown University, where I majored in neuroscience with honors. I did my medical school at Cornell. I graduated with honors in research. I did my orthopedic surgery residency at Westchester Medical Center. I was the chief resident in my last year. I did my fellowship at University of Pennsylvania in orthopedic surgery sports medicine. Residency was orthopedic surgery.

Q Have you done any kind of publications or given any lectures in the field of orthopedics?

A Yes.

Q Can you just tell us a little bit about that?

A Yes, so, I did research on vitamin D. I did research on labral tears combined with rotator cuff tears. I did research on rotator cuff tears in patients with diabetes. Those are, generally, my publications. I did research also about HIV prophylaxis before it became as used as it is now, before it was used as widely as it is now.

Q Have you ever testified in court before?

A No.

Q This is your first time?

A This is.

Q Now, back in 2018, 2019, were you affiliated with an entity known as Citi Medical?
A Yes.
Q What type of facility was Citi Medical?
A A multi-specialty facility.
Q And multi-specialty facility, could you just elaborate what kind of services they perform for patients?
A Sure. There are doctors with many different specialties that treat the patients for their individual conditions, which is pain management, orthopedics, physiatry, internal medicine, there is podiatry as well, spine pain management, orthopedic surgery. There is MRI and other imaging, X-ray facilities. There is physical therapy. Those are the general.
Q And how long were you at Citi Medical as of February of 2019?
A Two years.
Q What was your role with CitiMed?
A Orthopedic surgeon.
Q Are you still affiliated with CitiMed?
A Yes.
Q What is your current position with CitiMed?
A Still orthopedic surgeon.
Q Do you also have a private practice?
A Yes.

Q And when did you start your private practice?
A August of 2024.
Q And have you ever treated or evaluated patients that have been involved in personal injury cases?
A Yes.
Q What about workers' compensation?
A Yes.
Q Any other types of cases that you're aware of where someone is making a claim for injuries?
A What do you mean?
Q Well, any other types of litigation that people are involved in that you're aware of?
A There is many types of injuries. I'm not sure about the litigation part.
Q Now, back in February of 2019, are you aware of Maria Orozco going to CitiMed for treatment?
A Yes.
Q When did she begin her treatment?
A That's when she began at CitiMed.
Q And when she started her course of care at CitiMed, again, what type of course of treatment was she getting at that point?
A Conservative treatment, physical therapy. She had imaging done.
Q What was her history, as far as you recall?

A She had a trip-and-fall injury.
Q And as far as the nature of the injuries that she came to CitiMed for, what was the nature of her complaints?
A She was complaining of pain in multiple body parts.
Q Once she started that course of treatment at CitiMed, did she also have medical imaging done at CitiMed?
A Yes.
Q What kind of medical imaging did she have done there?
A I know she had MRIs done.
Q When did you first see her in any kind of orthopedic setting?
A The exact date, October 17, 2019.
Q At that point, when you saw her in October of 2019, what were her relevant complaints?
A On that day, I saw her for bilateral shoulder and bilateral knee pain.
Q Bilateral, meaning both sides?
A Both sides, yes.
Q And did you perform a physical exam of her at that time?
A Yes.
Q And what did your physical exam reveal?
A So, for the knees, she had on the right knee, moderate tenderness to palpation of the posterior medial joint line and minimal tenderness to palpation in the anterior lateral joint

line and lateral patella facet. And on the left knee, there was moderate tenderness to palpation of the posterior medial joint line. And posterior lateral joint line. And minimal tenderness to palpation of the lateral patella facet.

Q That was for the right knee?

A That was both right and left knee.

Q Just focusing on her right shoulder, what were the complaints that she had with her right shoulder?

A On the right shoulder, she had decreased range of motion. She had tenderness to palpation. The shoulder-specific test of Jobe, O'Brien, Neer, Hawkins, Speed, Yergason and they are shared test caused pain.

Q Hold up for a moment. That list of tests that you listed, just generally, what are those tests?

A Those are shoulder-specific tests that we do to see what kind of conditions in the shoulder could be the source of the pain. So, each test tests for something different.

Q Those tests are named after doctors that developed those tests; is that correct?

A Yes, typically.

Q So, based upon your clinical exam, the physical exam that you did, did you have an idea of what you thought the problem was with the right shoulder?

A Yes, based on her physical exam and method of injury, it appeared that she had tearing in her shoulder, either or both

the labrum or rotator cuff.

Q Now, did you also have available to you any MRIs from earlier when she originally had her accident?

A Yes.

Q What MRI images did you have?

A At that date, I viewed the right shoulder MRI, dated December 23, 2018.

MR. FORDE: I think, your Honor, we have left MRI films up as Plaintiff's Exhibit 11, which has been premarked into evidence.

THE COURT: Thank you.

THE WITNESS: I can't really see.

MR. FORDE: Your Honor, could the doctor step down in order to use the computer?

THE COURT: Yes.

Q So, Doctor, if you would, if you could find an image on the MRI disc so that you can describe what you're seeing on the disc in reference to the right shoulder?

A So, you look here, this the humeral head. This right here this the glenoid. This it the ball, and this is the socket of the shoulder. This tissue coming over this way is the rotator cuff, and you see it attaching onto the bone here. However, there is an area in here and here where it becomes less clear that it's fully attached. That was the concern. The white fluid in here, the white that you see here is fluid in the

shoulder. There's an irritation in the shoulder. Right here, this is the labrum. This is the triangular structure that should be fully attached to this bone right here. The white structure that would be here is the tear of the superior labrum.

Q So, now, looking at that image, are you able to tell whether there were any significant degenerative changes or arthritic changes in this patient's shoulder?

A No, there do not appear to be any degenerative or arthritic changes. If you look at the humeral head here, it's nice and round. If you look at the glenoid, it's smooth as well. On the humeral head, there are signs of where degenerative osteophytes, extra bone that forms all over the body of the humeral head here. Other things we see is the joint space, the space between the humeral head and the glenoid, that would be reduced. This light grey space in here, this bone, we would see next to this bone. We could see no space in between. This is actually not free space, it's actually cartilage between the bones showing that the cartilage is intact. There is space in between. We don't have any bone on bone here. So, I don't see degenerative changes in this shoulder.

Q So, for a 69-year-old woman, how would you say her right shoulder is, as far as arthritic changes or degeneration?

A I don't see any arthritic changes here.

Q Based on your clinical exam, the physical exam you did, and what you were able to see on this MRI from December of 2018,

did you have an opinion, within reasonable degree of certainty, as to whether or not her complaints were related to trauma?

A Yes, these all look like traumatic injuries.

Q You can step back up to the stand now.

So, based on that exam that you did, and looking at this MRI, what was your course of treatment for her with regard to the right shoulder?

A So at that first visit -- let me see here -- I spoke to her about doing surgery for the shoulder to address these traumatic tears. Continued physical therapy as well.

Q And so, did she continue with physical therapy at CitiMed?

A Yes.

Q When did you see her next?

A September 2, 2020.

Q How was she doing at that point?

A She still had pain.

Q What were your recommendations at that point as to what she should do?

A So, at that point, I ordered a new right shoulder MRI. I recommended she continue physical therapy, and I also spoke to her about the surgery again.

Q When did she have that new MRI done?

A That was done on September 20, 2020.

MR. FORDE: We're going to load that one up. We

have that MRI image which is on a disc that's been premarked as Plaintiff's Exhibit 15 into evidence.

THE COURT: Thank you, counsel.

MR. FORDE: Judge, may the doctor step down?

THE COURT: Yes.

Q So, Doctor, this is the MRI from September of 2020, I believe you referenced?

A Yes.

Q And if you can find an image or images that best will enable you to describe what your findings were at that time.

A So, if we look at the humeral head here, the socket here, which is the glenoid ball, the ball here is the humeral head. The glenoid here is the socket. This triangular tissue on the top is the superior labrum. It should be attached to the glenoid. This white stuff in between, it is indicating the tear of the superior labrum from the glenoid. This tissue coming over here is the rotator cuff attaching onto the humeral head. In this area, it's intact.

As we go over more, we see here, this is where it's torn. We see this kind of thin structure right here barely connecting this, which is the rotator cuff to where it should attach. So, there is a partial tear right here of the rotator cuff. This white stuff here is fluid within the shoulder.

Q Now, again, looking at that image, can you comment on whether there are any signs of degeneration, arthritis, or

anything like that that would have been causing shoulder pain for her?

A So, again, I see no signs of arthritis in the shoulder. The humeral head is nice and round over here. There's no osteophyte which would be the extra bone forming off the bilateral humeral head, arthritis, that's not present here. There is space between both bones. The space is actually filled with cartilage between the bones, which shows that there is no bone-on-bone arthritis. The cartilage here is intact. There is no sign of arthritis of this shoulder.

Q So, again, based upon your clinical exam and at least two MRIs that you saw, did you have an opinion, within a reasonable degree of certainly, as to whether her shoulder problems were related to the trauma of the accident?

A Yes, they were.

Q You could step back up.

Now, after you had this MRI, in September of 2020, what was your course of treatment after that?

A She had surgery for the right shoulder on July 16th of 2021.

Q In the interim, did she continue with conservative care, physical therapy, things like that?

A Yes.

Q Now, the right shoulder surgery that you performed, where was that surgery performed?

A That surgery was at Hudson Regional Hospital.
Q Where is that located?
A In Secaucus, New Jersey.
Q And if you can describe, what was the surgery that you performed at that -- withdrawn.
In the course of doing the surgery on July 16th of 2021, did you also take any kind of images for intraoperative photos?
A Yes.
Q Is that part of your notes in your chart?
A Yes.
Q Is that also part of the CitiMed chart?
A Yes.
MR. FORDE: Your Honor, I would note that the CitiMed chart has been marked into evidence as Plaintiff's Exhibit 12. And also, the Hudson Regional chart has been premarked into evidence as Plaintiff's Exhibit 13.
THE COURT: Thank you
MR. FORDE: I'm going to set these up to show the doctor. These would have to be marked individually now, 16A, B and C.
THE COURT: Were these agreed to?
MR. GOLDSMITH: Yes, your Honor. I have no objection.
MR. FORDE: Yes, we can mark them as evidence.

THE COURT: Let's mark. How many are there, counsels?

MR. FORDE: This one is A, B and C. Three exhibits.

THE COURT: 16 A through C marked in evidence.

(Whereupon, the items referred to were marked in evidence as Plaintiff's Exhibit 16A, B and C.)

COURT OFFICER: Plaintiff's Exhibit 16A, B and C and 17A, B and C marked into evidence.

(Whereupon, the photograph referred to were marked in evidence as Plaintiff's Exhibit 17A, B and C.)

THE COURT: Thank you.

Q Doctor, before we look at these intraoperative photos, what is the value or the use of an MRI as a diagnostic tool?

A It gives us an idea of the damage or tears within the shoulder.

Q Can you diagnose a patient with an orthopedic injury, just based upon any MRI alone?

A I never do that. I always combine it with a physical exam.

Q What about the history of the patient?

A Exactly. All of that is included. History and physical exam in combination with the MRI results.

Q So, when you're looking at images, like we see up here on the screen that you showed to the jury, the MRIs, what kind

of detail does it show?

A On the MRI or on the arthroscopy pictures?

Q On the MRI.

A So, the MRI is showing us details of the soft tissues. It's showing - it does show us bone as well. But it's still taking a 3D structure and putting it on a 2D image, which is why we have multiple slices. Each slice is, approximately, 3-millimeters apart, so it kind of merges the information from every 3-millimeters together in each slice.

Q So, when you do the MRI, have you ever had occasion to do an MRI on a patient, and then, when you do the surgery, you see something different?

A Absolutely, unfortunately.

Q Why is that?

A Because MRIs are not perfect. Like I said, it's taking a 3D structure into a 2D image.

Sometimes, the tear can line up evenly. At the time of the MRI, you're laying flat, but when you move, it could show the tear can expand. You're not actually moving for the MRIs. You can't see that. So, there are times it doesn't show up on an MRI.

Q So now, if you could look at the images that we have up here the intraoperative photos --

A Do you want me to step down?

Q If you could step down and just explain. They're

numbered sequentially here. Here's a laser. You can use this for pointing it, okay?

A So, this here, I'll give you -- this is looking at the glenoid. That's the socket of the shoulder. This is the labrum, the tissue that I was showing up there that was detached from the socket, that we can see on the MRI. And this frayed tissue in here is all tearing of the superior labrum. It should be nice and smooth. And we can kind of see here, this area is nice and smooth. This is the normal area of the labrum. Compared that to where it's torn.

Again, this tissue here is torn labral tissue right in here. That part is normal, as we're looking around the shoulder. This is part of the subscapularis. The rotator cuff has four tendons. This is one of the four tendons. This is an inflammation. It's synovitis. More inflammation in the shoulder.

Q So, before you go to the next image, while we're looking here, that's what you saw when you first went in to visualize the joint?

A Yes.

Q And based upon those images, you're actually looking at the inside of the woman's shoulder, correct?

A Yes.

Q Are you seeing any arthritis or degenerative changes here?

A No.

Q If you can go to the next one.

A This is tearing of the rotator cuff. This tissue here, if you can see, it's frayed, it's torn and it's hanging down. It should be attached over here. So, this is the rotator cuff here. This is where, as we continue looking around the rotator cuff, this is where it's attached again. So, this is an acute area. The tear is right here. And then, that's where it's attached. You could keep looking around if it's attached in other areas.

This is the biceps tendon, and this is partial tearing of the biceps tendon. You could see how it's smooth here, but it's frayed here. So, this is tearing of the biceps tendon.

This is after I removed the inflammation of synovitis of the shoulder. This is after I removed the superior labral torn tissue, and then we're left with a more stable base. I also cut the biceps tendon, what is attached right here so that's not pulling on that torn superior labral tissue that was scarring in the shoulder, and it removes the pain generator within the shoulder.

Q If you could go to the next series.

A This is after I removed that frayed tearing of the supraspinatus. That's the torn rotator cuff. This is the tear. We can see here. This tissue should be attached here. This should all be connected here. This is where it's torn. When

I'm looking from the top, I can take the probe and put it underneath the torn tissue into the space between the rotator cuff and humeral head. When the rotator cuff is intact, I can't stick that probe through there. This is attached to the bone.

Q So, doctor, the image that you were just pointing to there, the metallic pieces, are those instruments you're using for the surgery?

A Yes, this is just a probe to see how far I could take the probe through the tear, and I took the probe out and removed some of the inflammation. You could see this is a tear. This hole right here is a tear in the rotator cuff. This should be attached to here. There should not be any hole in that area.

So, this is after I did the repair. So, I tied these two ends of the rotator cuff together, and then I put another stitch to put in here to repair into an anchor that went into the bone. You can see that here. To hold the rotator cuff down to the bone to repair it back to the bone.

(Whereupon, the following was recorded by Senior Court Reporter Kenneth Perschke:)

(Continued on following page.)

* * *

Q Is that the last image that we have from that surgery?
A Yes.
Q You can go back to the stand. If you could use this model to illustrate the area of the shoulder that you were doing surgery on.
A Sure.
Q Where are the structures located within the shoulder?
A This the humoral head, this is the ball right here, this is the socket and this is the glenoid, that's the bone back there. These tendons over here are part of the rotator cuff, this one up here is the supraspinatus, this is the one that was torn. You can imagine for her, this piece is not attached to the bone at all, it's completely off the bone, that's the hole we saw in the images.

Underneath, which is hard to see in a model like this but deep down underneath is the labrum, you can see that and on the top part of the labrum, the superior part, that was torn off the glenoid. So my camera, my instrument is looking inside this area and that's where we see the tear here and we look up and see the tear here and look at the top and see the tear there.
Q Doctor, the kind of injuries that you saw and the trauma that you were trying to repair, was that consistent with the mechanism of someone falling forward?
A Yes.
Q How does that happen, what is the mechanism of damage

in the shoulder?

A When you fall on an outstretched arm, the base of your hand puts the momentum, the force through your arm which jams the humeral head into the glenoid. When these hit into each other it can cause tearing of the rotator cuff and the labrum.

Q After you performed this surgery, what was her postoperative course of treatment?

A She did physical therapy postoperatively but she did continue to have pain.

Q Did you continue to see her after she had that surgery for a period of time?

A Yes.

Q Did there come a time when you had to perform a second surgery on Ms. Orozco?

A Yes. Unfortunately, she continued to have pain after the surgery. We did a repeat MRI and I indicated here for a second surgery to do a repeat repair of the rotator cuff.

Q Why did she need to have the second surgery?

A Unfortunately the rotator cuff repair did not heal. What I do in the surgery is I take the torn tissue, put stitches through it and attached the stitch to the bone with an anchor. The stitch attaches to an anchor, holds the rotator cuff next to the bone like this but unfortunately it has to grow together like this in order for it to heal. If it just sits on top of each other and doesn't grow together then it will not heal

properly and without it healing it will still be torn.

Q When did you perform the second surgery?

A August 8, 2022.

Q Where was that surgery performed?

A Integrated Specialty Ambulatory Surgery Center.

MR. FORDE: I believe we also have the Integrated Specialty Surgery records that have been premarked into evidence as Plaintiff's Exhibit 14.

THE COURT: Thank you.

Q Doctor, if you want to step down and take us through the second procedure that you did on Ms. Orozco.

A Sure. This is the stitch that I did to repair the torn rotator cuff but as you can see it's not in the rotator cuff tissue. So because the rotator cuff didn't heal, it's not in the tissue anymore, it's floating around within the shoulder so I had to remove that so I removed that tissue.

This is looking at the superior labrum, we can see a little bit of fraying of the anterior superior labrum right here and I did end up treating that. This is the recurrent rotator cuff tear. This is unfortunately not attached to the bone which is where I did the repair and that stitch over here. The rest of the shoulder was still normal.

Q Go to the next one.

A This is the superior labrum, you see some tearing I took care of here, the torn tissue is gone. This is the rotator

cuff, this is the stitch I put in to repair it from before but unfortunately it's not in the rotator cuff tendon anymore so it's not healed. I took that stitch out as well.

Q Go to the next one.

A This is looking at the stitch from the top portion of the shoulder. This is after I did a repeat repair, this time I put two anchors in in order to repair the rotator cuff back to the bone.

Q In image 20 that you have up there, those silver and blue structures, what are those?

A Those are stitches that I put into the rotator cuff, the torn tissue that get secured into the anchors in the shoulder to hold it to the bone. This time I used two anchors.

Q Those stitches, are they permanent?

A Yes.

Q The anchors that you're talking about, what are those?

A It's called biocomposite, it's like a plastic and the bone grows into it to secure it.

Q Is it some kind of screw?

A Yes.

Q At this point after the surgery how many screws and wires or stitches did she have?

A Two screws and three stitches -- these two are connected so it's two stitches and this is a separate stitch.

Q You can take the stand again, doctor. After she had

this second surgery did she have a course of physical therapy?

A Yes.

Q How did she respond to that?

A She was improving initially but she did continue to have pain.

Q When was her last visit where you saw her and evaluated her?

A October 13, 2022.

Q How was she doing at that point?

A She was still having some pain with carrying and laying on the shoulder. She was doing physical therapy, she was using meloxicam, an antiinflammatory and pain medication.

Q At that point in time did you anticipate that she was going to need any future surgery?

A At that point I wouldn't really be able to tell.

Q Are you aware of any future complaints that she made with regard to her care to other doctors?

MR. GOLDSMITH: Objection.

THE COURT: What's the objection?

MR. GOLDSMITH: Hearsay.

THE COURT: Sustained.

Q Have you reviewed any other records other than your own notes before coming to testify today?

A Yes.

Q Based on your review of those records are you aware of

whether she continued to see other health care providers, whether she saw other health care providers after she saw you?

MR. GOLDSMITH: Same objection.

THE COURT: Overruled.

A I did view other reports and I saw she was still complaining of right shoulder pain.

Q With regard to the surgeries that you performed as of 2022, she would have been 72 years old. For someone 72 years old, what would your prognosis be for a woman of that age that's had two shoulder surgeries so far?

A It's tough at that age to go through two rotator cuff repair surgeries. I do the surgery because I expect and hope that patients will do better but it is a hard recovery, especially at 72 years old, it's a big surgery, big recovery.

The rotator cuff is weakened when it's torn, it's weakened after surgery because we have to immobilize the shoulder for six weeks, we can't allow any active movement of the rotator cuff so we have to do strengthening which doesn't start until three months after. The rotator cuff is much weakened and with it not healing the first time it never had a chance to build up strength so it's harder to build up strength after the second surgery because it's a long period of time it hasn't been attached.

It's a hard recovery. I do the surgery to try to improve her, to make her better but it is a hard recovery.

Q What is muscle atrophy?

A It's when a muscle degenerates because it's not being used.

Q Does that come into play with someone who has surgery like this to their shoulder?

A It's possible but typically it occurs when the tears are bigger.

Q In addition to her right shoulder, did you also make any observations or treat her in any way with regard to any other part of her body?

A Yes, I did look at her knees and left shoulder.

Q With regard to her knees, what were your observations as far as her knees?

A She had pain in her knees, she had tenderness to palpation in different areas of both knees and she had MRI findings that were significant in both knees as well.

Q With regard to the left knee, what were the findings of significance on the MRI?

A She had a tear of the medial meniscus, she had a popliteal cyst.

Q What is that?

A It's fluid in the knee, in the back of the knee. She had a cyst on the bone of tibial plateau, the leg bone. She had a small joint effusion and cartilage defect of the patella.

Q With regard to the left knee, based on the MRI report

was there any indication of extensive degeneration or arthritis in her left knee?

A No.

Q What about her right knee?

A Her right knee showed a tear of the medial meniscus, it did show chondral loss, high grade chondral loss which is cartilage degeneration of the inside of the knee and the patella under the kneecap. It also showed small to moderate joint effusion and an ACL tear.

Q She had degenerative changes and arthritis in the right knee but not the left?

A Correct.

Q Doctor, based on your treatment of the patient, her course of care at CitiMed, your examinations, the surgeries you did and your follow ups, do you have an opinion with a reasonable degree of certainty as to whether the conditions to her shoulder were permanent in some way?

A Yes, they were.

Q In what way would they be permanent?

A At this point she has had two rotator cuff repair surgeries so this is a permanent condition.

Q Could she be excepted to have limitations of motion as she gets older?

A Yes.

Q How does the aging process affect an injury like this

to a joint like the shoulder?

A It's a harder recovery as we're older to recover from the surgery like this. As I said, the rotator cuff is not fully attached, the muscle is weakened and it takes a lot longer to build the muscle back up.

Q Doctor, are you being compensated for your time today?

A Yes.

Q Do you know how much that compensation is?

A Yes.

Q How much?

A $7,500.

Q What does that include, the work that you've done?

A Coming here today, cancelled the patients I was seeing in the office during this time.

Q Did you review records before coming here today?

A Yes.

Q Have you had conversations with my office about your testimony here today?

A Yes.

Q Have we ever met before today?

A No.

Q Had you ever done any consultation or anything for any patients that were also clients of Omrani and Taub?

A No.

Q Thank you, doctor.

MR. FORDE: I have nothing further.

THE COURT: Mr. Goldsmith.

MR. GOLDSMITH: Thank you.

CROSS-EXAMINATION

BY MR. GOLDSMITH:

Q Good morning, doctor.

A Good morning.

Q You said you worked at CitiMed in 2018?

A Yes.

Q And you got fully licensed in 2014?

A Yes.

Q Where did you work, if anywhere, before CitiMed?

A I started at CitiMed in 2017. Before that I was with another practice in Suffolk County, then I was with another practice in the New York City boroughs. That practice closed down right before I started at CitiMed, that's why I changed.

Q You operated on the right shoulder, not the left; correct?

A Correct.

Q That's because from your evaluations there was no need to operate on the left at all?

A The right shoulder was causing more pain so that was my focus at that time.

Q The left shoulder, if you felt it was in need of surgery you would have done so?

A I don't know if I would have done so because of the limitation in time because she has to recover from one shoulder surgery and then another but I didn't indicate her for left shoulder surgery.

Q You were talking a few minutes ago about the limits of recovery that Ms. Oroszco had. Even before the first surgery, what is the expectation of recovery on a 72-year-old patient with rotator cuff surgery?

A I expect them to improve which is why I do the surgery. If they had the kind of tear that I didn't expect improvement then I wouldn't do it.

Q When you say improvement, that's not recovery, that's not curing, it's just helping it; right?

A The shoulder will never be the same as it was before it was injured. Even if you do the rotator cuff repair, there's still recovery from the incisions. I hope to make it better but I can't tell someone it's going to be 100 percent after surgery even in the best of situations. My prediction after surgery for a good result is 80, 90 percent better. That's a very good result.

Q That 80 to 90 percent is for someone within what age range?

A Anybody.

Q The films that you reviewed prior to surgery, did you notice any fraying?

A I can't really see fraying per se on the MRI. I see tearing, that was it.

Q When you were interoperative, I noticed you mentioned even on the second surgery you noticed there was some fraying that needed to be repaired?

A No, the fraying wasn't repaired, I removed the torn tissue. The second surgery, that was what I removed from before and there was some fraying, now it's because the joint mechanics aren't the same because of the rotator cuff tear, it's not moving like it should and that's going to cause wear on the labral tissue.

Q The fraying that you found in the second surgery is because the joint itself is not moving properly?

A Yes.

Q That's a breakdown of the tendon itself; right?

A No, the tendon didn't heal, that's different. That had another tear, the first tear didn't heal and we saw the tear again. The fraying of the labrum is a different area of the shoulder, that's due to the altered joint mechanics.

Q Is it common to see fraying for altered mechanics, even before the first surgery?

A It's possible.

Q Did you notice fluid buildup in any of the MRIs before the surgery?

A Yes.

Q That fluid buildup, is that something from the first MRI that you reviewed, did that look like a lot of fluid, a little bit of fluid, something in between?

A In between.

Q Typically when there is an acute trauma to the shoulder, that would cause fluid buildup; correct?

A Initially, yes.

Q And over time that would dissipate?

A Sometimes. It dissipates if the cause of the fluid is resolved. If there is a tear or stretch of a tendon or tissue that can heal itself and the shoulder isn't irritated anymore the fluid goes away. If the tear is still present and causing irritation in the shoulder then the fluid could still be present.

Q So if there is a tear to the labrum and to the rotator cuff that's not resolved, the fluid could be there for any given amount of time?

A It could.

Q It could be years?

A It could.

Q Even in this case, the difference between the first surgery and second surgery was over a year and there was still fluid present; right?

A Yes.

Q So what you're saying is that unless or until that

injury is repaired there's going to be fluid from all the inflammation in the joint?

A It's not clear cut. It can be, it doesn't always tell us one way or the other. It can be there or it may not be.

Q Is it also fair to say when there is a torn rotator cuff in the patient that they are going to lose some strength in that arm?

A Oftentimes, yes.

Q You took a patient history from Ms. Orozco when you first saw her; correct?

A Yes.

Q Did you review any records prior to or as part of that initial evaluation?

A I may have, I don't remember now, it's been a number of years.

Q Do you remember if you reviewed emergency room records from when she went to Elmhurst Hospital on September 28, 2018?

A I don't remember now if I reviewed that.

Q Do you remember if you reviewed records from her primary care physician, Dr. Rozo?

A I don't remember.

Q If I were to tell you that her primary care physician found that she had normal strength in both arms in early October of 2018, would that change any of your opinion about the conditions as you found them a little over a year later?

A Absolutely not. Orthopedic surgeons specialize in doing shoulder specific tests that a primary care doctor is not specialized in. In some motions she did have full strength, she had that even in my exam but not the shoulder specific tests that I tested her for.

Q The surgery that you did the first time, that was in New Jersey; correct?

A Yes.

Q The second surgery, was that also in New Jersey?

A Yes.

Q Your practice is based in Queens?

A Multiple locations, yes.

Q Were you based in the Queens office?

A I went there, yes.

Q Did you go to other offices with CitiMed?

A Yes.

Q Which offices with CitiMed did you go to?

A The Bronx and Brooklyn as well.

Q Were all of your surgeries performed in the New Jersey location?

A At that time, possibly.

Q Is there a reason why you make a patient from Queens drive to New Jersey?

A Because CitiMed was affiliated with those locations.

Q When you say affiliated, did CitiMed own or operate

them, how did that work?

A I'm not sure the exact business arrangement they have but I know they have an affiliation which is why we go there.

Q You're still working at CitiMed?

A Yes.

Q Back in 2018-19, how many patients do you remember seeing for that year?

A For the year?

Q Yes.

A I don't know.

Q More than 50?

A Yes.

Q More than 100?

A Yes.

Q More than 200?

A Yes.

Q More than 500?

A Yes.

Q How many surgeries did you perform in 2018-19 on shoulders?

A Just on shoulders?

Q Yes?

A I would say more than 100 but I don't know exactly.

Q Are those numbers pretty consistent for the years after?

A Yes, roughly.

Q Of those let's say 500 patients and 100 surgeries, how many of them were accident patients -- let me break that down a little better.

How many of those patients had been in car accidents?

A I don't know the number specifically, I would guess 40 percent, 45, something like that.

Q How many of those patients had Workers' Compensation cases?

A Another 40, 45 percent.

Q And the remaining 10 to 15 percent, how many of them had lawsuits?

A Ten percent or so.

Q So basically all of your patients were either in car accidents, had Workers' Compensation cases or had civil lawsuits like this?

A Correct.

Q Do you know how patients were referred to CitiMed?

A No.

Q You mentioned there were multiple different kinds of doctors within the house of CitiMed. Do the patients at CitiMed also get acupuncture?

A Some of them.

Q But they can get acupuncture, is that a better way to put it?

A Some locations have acupuncture, some do not.
Q Is there physical therapy also in those locations?
A Yes.
Q Within the structure of CitiMed where you are working, do you have a supervising doctor above you?
A The doctor who owns the practice, Dr. Regina Moshe.
Q Other than the history that was given to you by Ms. Orozco, did you have any information whatsoever that would give you a sense of how the injuries that you repaired in the right shoulder could have happened?
A No. She told me what happened.
Q So as you sit here today, do you have a degree of medical certainty as to the exact cause of the tear in her labrum and rotator cuff?
A It was due to the fall.
Q The other evidence you have of that is her explanation to you; correct?
A It's everything. It's her explanation of how the fall occurred, her pain, the MRI studies and the surgery to confirm all that.
Q But you don't remember seeing or reviewing records that were taken from before your visit; right?
A I don't remember that.
Q So you can't sit here today and tell us to a degree of medical certainty that there were any indications in any prior

existing records that could have contributed to the injuries that you treated?

MR. FORDE: Objection, that's asked and answered.

THE COURT: Overruled.

A Can you reask the question.

MR. GOLDSMITH: Can I have it read back.

(Whereupon, at this time, the requested portion of the record was read back by the reporter.)

A I'm not sure I understand.

Q If you hadn't read any of her records prior to coming to CitiMed, you cannot conclusively tell the jury to a degree of medical certainty that nothing contributed to her injuries other than what she provided to you?

A As a doctor I take what the patient tells me and I combine that with the physical exam with MRI images to form my understanding as to what happened and my degree of medical certainty. That is what I relied on and that's what I concluded.

Q You testified a little bit about her knees?

A Yes.

Q You testified that her right knee showed some degenerative changes but her left knee did not?

A That's correct.

Q Did she tell you in your initial evaluation that prior to September of 2018 that she needed a walker?

A I know when I saw her she was using a cane sometimes, later she was using the walker.

Q Did she tell you that prior to September 2018 that she experienced significant knee pain bilaterally?

A I don't know the specifics on that.

Q Did she tell you that prior to September of 2018 she had substantial back and neck pain?

A I didn't any ask her anything about that.

Q Did she tell you in August of 2018 that she had breast reduction surgery to address neck, shoulder and back pain?

A I don't know the specifics on that.

MR. GOLDSMITH: No further questions.

THE COURT: Any redirect?

MR. FORDE: Yes.

REDIRECT EXAMINATION

BY MR. FORDE:

Q Dr. Steele, on that last point. As far as breast reduction surgery, what would that have to do with someone's right shoulder, the kind of injuries that you saw here?

A Nothing.

Q What is the purpose of breast reduction surgery as far as you understand it, it's being done to address some issue of pain in part of the body?

A It's to reduce the weight of the breasts.

Q Does that have anything at all to do with either the

left or the right shoulder?

A No.

Q Would it play a part of any kind of diagnosis that you would make?

A No.

Q What about with regard to the cervical spine, would that have any impact on treatment to the cervical spine if someone was in a trauma?

A No.

MR. FORDE: Nothing further.

THE COURT: Any recross?

MR. GOLDSMITH: No.

THE COURT: Thank you doctor, you can step down.

Mr. Forde, what do you have next?

MR. FORDE: Can we approach for a second?

THE COURT: Sure.

(Whereupon, at this time a discussion was held at sidebar.)

THE COURT: Ladies and gentlemen, again the issues are of doctor scheduling which we work around mostly. While I would love to be able to fill in this time, the next doctor is coming this afternoon so we're going to break for lunch. We're going to take care of some things that will make this afternoon go smoother, we'll return at 2:00, get started by 2:15 and take it from there. Thank

you.

THE COURT OFFICER: All rise, jury exiting.

(Whereupon, the jury exited the courtroom.)

(Whereupon, at this time, a luncheon recess was taken.)

(Whereupon, the following was recorded and transcribed by Senior Court Reporter Cheryl Gellis.)

(Continued on next page.)

* * * * *

COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: You can be seated when you get there. If you need to close that window when you get there, please feel free.

Mr. Forde, when you're ready, you can call your next witness.

MR. FORDE: Plaintiff calls Dr. Weinstein.

THE CLERK: Please remain standing. Please raise your right hand.

J O S E P H W E I N S T E I N, a witness called on behalf of PLAINTIFF, after having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: You may be seated.

In a loud, clear voice, please say and then spell your first and last name and then give your business address.

THE WITNESS: Joseph Weinstein, J-O-S-E-P-H W-E-I-N-S-T-E-I-N. Business address is 1150 Park Avenue, New York, New York 10128.

THE CLERK: Thank you.

THE COURT: Thank you, Dr. Weinstein. If you could just continue speaking in a loud, clear voice, that would be great. Answer the questions that are asked. If you don't know or you don't understand a question, you can

simply state that, and the attorneys will adjust, okay?

THE WITNESS: No problem.

THE COURT: Thank you so much.

Mr. Forde, you can continue.

MR. FORDE: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. FORDE:

Q Good afternoon, Dr. Weinstein.

A Good afternoon.

Q Dr. Weinstein, are you licensed to practice medicine in the State of New York?

A Yes.

Q And when did you become so licensed?

A I was licensed in New York in 2009.

Q And do you have a particular specialty?

A Yes.

Q What is that specialty?

A Orthopedic surgery.

Q Can you give us an idea of your educational background, please?

A Sure. Well, I'm from Queens, actually. Not too far away from here. I'm from Flushing. I went to Queens College. Local boy. And after Queens College, I graduated and went to New York College of Osteopathic Medicine, which is medical school. That's four years. And after medical school, I did a

residency in orthopedic surgery. That's five years. I did that in the Northwell Health System. And after the five-years residency in orthopedic surgery, I did a one-year fellowship subspecialty training at the Hospital for Special Surgery in the City in spine surgery.

Q Are you board certified?

A Yes.

Q What are you board certified in?

A I am board certified in orthopedic surgery.

Q And what is board certification? How does a physician become board certified?

A So, board certification is a multi-step process. There is a written exam that you have to take and pass. There is an oral exam. And actually, then afterwards, they come and they look through your charts and they watch you do surgery. And I completed all of those.

Q Did you have to periodically be re-qualified to be board certified?

A Yes, actually, I'm going tomorrow to a board meeting.

MR. FORDE: Your Honor, I'd ask that Dr. Weinstein be recognized as an expert the field of orthopedic surgery.

MR. GOLDSMITH: Well, is he a treating or is he an expert?

MR. FORDE: Both.

MR. GOLDSMITH: I'm going to object to both. He

treated the Plaintiff. He could testify as a treating.

THE COURT: Counsel, anything?

MR. FORDE: We've -- can we approach?

THE COURT: Uh-huh.

(Whereupon, an off-the-record conference was held between all counsel and the Court at the Bench.)

THE COURT: Counsel, Mr. Goldsmith, would you like to ask any questions relative to him being qualified as an expert?

VOIR DIRE EXAMINATION

BY MR. GOLDSMITH:

Q How many times have you testified in court?

A I don't know. About ten or so.

Q How many of those times that you've testified in court have you been qualified as an expert?

A Almost all, I believe. I can't tell you.

Q Of those ten or so times, those are patients that you've treated?

A I believe so.

Q And those encompass the entirety of every time you've testified about a patient in court?

A Sorry? What was the question?

Q Those ten times encompass the entirety of every time you've testified in a courtroom proceeding about one of your patients?

A As an expert?
Q No, my question was: How many times have you testified about your patients in court?
A My patients, for workers' compensation, for this, in general?
Q Let's go through how many times you've testified in a workers' compensation proceeding.
A In depositions, many times. I don't know the number.
Q In depositions. How about for hearings in workers' comp?
A I don't know.
Q You don't know? How about more than a hundred?
A We just do depositions, and I don't know what the lawyers or the judge does with that.
Q So, those are for your patients, as you say, depositions in a workers' comp case, but how many times?
A Many.
Q What's many? More than five hundred?
A I don't know.
Q More than a thousand?
A I don't know.
Q More than 5,000?
A I'm not sure.
Q No fault cases, motor vehicle accidents. How many times have you testified in a courtroom proceeding for those?

A In a courtroom, as I've said before, approximately, ten or so.

Q So, for again, no fault courtroom proceeding only, ten times?

A I can't break it down for you. I'm saying --

Q Why couldn't you break it down for me if they're your patients?

A I just want to answer the question before you ask another one, if you don't mind.

THE COURT: Yes.

A All the times that I've been in court, the first question you asked me about testifying, I said approximately around ten. That's for everything, workers' comp related, like a third party, no fault, whatever. It's approximately about ten or so.

Q So, then, for no fault, you haven't had to be in a courtroom testifying more than those ten times, in the entirety, including workers' comp and personal injury cases?

A I don't understand your question.

Q So the entirety of the number of times where you've testified in a courtroom, at all, regarding your patients, is ten?

A Ten, ten to fifteen. Something about that.

Q And on each and every one of those times, you were qualified as expert by the court?

A I don't remember. It's over an 11-year practice.
Q So, for those ten times, were they all testifying about your patient or about somebody else's?
A No, I only testify about my patients.
Q And you can't recall for us today of how many of those times the court where you testified in actually qualified you as an expert?
A How am I supposed to know that?
Q Well, you're the one who did it. It's ten times. I would think you might remember that.
A No, I don't see why I would remember that.
Q Well, you're an orthopedic surgeon. How often do you go into a courtroom over those 11 years --
MR. FORDE: Your Honor, I have to object at this point.
MR. GOLDSMITH: Your Honor, I'm objecting. He can't testify as to how often he's been qualified.
THE COURT: Anything to add, counsel?
MR. FORDE: No, your Honor.
THE COURT: Over objection, he is qualified as an expert.
CONTINUED DIRECT EXAMINATION
BY MR. FORDE:
Q Dr. Weinstein, do you currently maintain a private practice for orthopedics?

A Yes.
Q Where is that practice?
A I have a couple of offices. As I stated before, one is 1150 Park Avenue in the City. I have an office in Queens, in Rego Park. I have an office in Long Island. And I have an office in New Jersey.
Q And are you being compensated for your time here in court today and your preparation for testifying at that trial?
A Yes.
Q What is the amount of the compensation?
A I'm not sure, because I haven't got paid, as far as I know, but my usual is probably about $10,000.
Q What does that include?
A That includes my time.
Q Time here in court?
A Time here in court, yes.
Q And for preparation?
A For preparation as well.
Q Now, can you describe the nature of your practice now, your patient base at the various locations?
A Sure. I treat people that have injuries. I treat people that have workers' compensation injuries. I treat people that have car accident injuries. I treat people that trip and fall. I treat people that get injured when they go skiing. I treat all different types of injuries of people when they injure

themselves. When they wake up and they pull their neck the wrong way. I treat those type of people. Anyone and everyone, basically. Anyone who has an injury or some sort of pain in the musculoskeletal system, that's who I treat.

Q In the past, have you treated patients that have also been represented by my office, Omrani and Taub, that have personal injury cases?

A I believe so.

Q Approximately, how many patients have you treated that have also been clients of Omrani and Taub?

A That, I cannot tell you.

Q Over what period of time would that have been?

A I have no idea.

Q And have you been asked to testify before or to come to court on behalf of any patients that were also represented by Omrani and Taub?

A I don't believe that I ever testified in court for any of your clients, as far as I know.

Q Now, in the course of your practice, did you come to treat a lady by the name of Maria Orozco?

A Yes.

Q When did you first see Maria Orozco?

A 11/12/2018.

Q Do you know how she came to be referred to your office?

A No.

Q Was she referred to you by another doctor or someone else? Are you aware?
A I have no idea.
Q So, when you first saw her on November 12th of 2018, did you take a history from her?
A Yes.
Q What was the history that she gave?
A She was injured on 9/28/2018 in a trip-and-fall accident.
Q And at the time she saw you, do you know if she had been under any active care anywhere else?
A I believe she was seen in the emergency room.
Q And after the emergency -- withdrawn please.
Which emergency room did she go to?
A I believe, Elmhurst.
Q Now, after she went to the emergency room, do you know if she had any follow-up visit at Elmhurst before she saw you?
A I'm not a hundred percent sure.
Q So, when she came to you, what were her complaints?
A She complained of neck pain, right-shoulder pain, and right and left-knee pain.
Q Was that consistent with the mechanism of the fall by history?
MR. GOLDSMITH: Objection.
THE COURT: What's the objection?

MR. GOLDSMITH: Assuming of facts.

THE COURT: Sustained.

Q Did she describe for you the manner in which she fell?

A I believe she fell forward.

Q And as far as your examination of her at that time, in November, what if any significance did you find on the physical exam?

A Regarding the cervical spine, there was pain to palpation at the paraspinal musculature of the cervical spine. She did have decreased sensation in the C5-C6 distribution. Range of motion was decreased regarding the right shoulder. There was pain to palpation around the right shoulder. She had positive testing for impingement and Hawkins, which are tests for impingement. Meaning, there is a space in the shoulder where the rotator cuff is basically like a layer above the rotator cuff. You have the shoulder, the humerus, and the glenoid, which is the bone. And then, on top, you have the rotator cuff that is in that area. So, when the humerus comes up, that is impingement. When the rotator cuff goes into the chromium bone on top, that causes impingement. So, that was positive.

There was a positive Jobe's and Decan's. Those are tests for rotator cuff and labral pathology. The rotator cuff is the muscle that stabilizes the shoulder. A labrum is like the O-ring, also a stabilizer of the shoulder. There was also

decreased range of motion regarding the right knee. There was pain at the medial and lateral joint line. The knee in the joint, again, there is a --

Q Doctor, if I could interrupt you a moment. Would a model help to demonstrate what you're saying?

A Sure.

Q You can step down if you want.

A So, this being the knee, like this. So, this would be this knee. So, touching here at the -- this would be the medial part. If you touch the area that the meniscus is in, that's another stabilizer of the knee. There was pain when that was palpated. There was pain on the outside. The lateral portion of the knee was palpated as well. There was a positive McMurray's exam, which is an exam for meniscal pathology. Basically, you take the knee, flex it, internally and externally rotate the knee, put stress on the meniscus. If there is a tear there, you get a positive response. That was positive. And there was decreased range of motion regarding the left knee. There was also pain to palpation both on the inside and outside of the meniscus, the medial and lateral meniscus. There was also positive McMurray's exam, which is the exam for meniscal pathology. And there was decreased range of motion as well.

Q You can sit down, Doctor.

Was there anything else in your initial physical examination of Ms. Orozco of any significance?

A Nothing majorly significant that I could see.

Q So, based on that exam, what was your plan for her at that point?

A My plan was for her to undergo X-rays and MRIs of these body parts. The cervical spine, the right shoulder, the right knee and the left knee, for her to continue a course of physical therapy, and I recommended anti-inflammatories, and that she should come back after the MRIs were done.

Q And did she go for MRIs?

A Yes.

Q Where did she go for the MRIs?

A She went to Lennox Hill Radiology.

Q Doctor, I believe what we have up on the screen right now is an MRI disc that's been marked as Plaintiff's Exhibit 11 from Lennox Hill. If you'd like, you could step down to illustrate the findings of those MRIs. Maybe starting with the cervical spine.

A This is an MRI of the neck or the cervical spine, dated December 10, 2018, for Ms. Orozco. There are two views on the MRI. This is of a view that basically goes up and down like this. And this is a cross-sectional view like this. I don't know if you guys have heard about MRIs before, but basically, an MRI, it's good to see soft tissue, very good to see disc pathology, ligaments, spinal cord. CAT scan is better to see the bony pathology.

So, what we see here is this is the front, this is the back, there is the front, this is the back, this is the spinal cord, this is the spinal cord.

We will go to a normal level first so you can orient yourself. Again, the front, back, front, back. These grey things on the bone, this is a vertebrae. And the black over here is the disc. So, this is at the level of the C2-C3 disc.

So, you could see here that this disc is pretty normal. Meaning, there is no herniation here. Usually, discs are bright, but there is certainly a little degeneration here. It's a little darker, but there's no herniation here. The spinal cord here likes to be there in the white fluid here, just not being touched by anything floating there. This is where the nerves come out. Everything is open here. Very nice. Then you'll come down to this level. You could see there's a little bit more encroachment on this level, C3-C4. Then you have C4-C5, where you can see also a little bit more compared to that first level where it was nice and open. Open here. See here, at this level, it's not so nice, and there is also you could see here that there's a herniation here on the right side at C4-C5.

Then, you come down to C5-C6. Basically, like a bulge, some would say, but you could see it's open up a little bit more that herniation, that C4-5. It's not there at C5-C6. And then C6-C7, you could see there's some narrowing here on the left side. This is the left side and the right side on the picture,

and it's sort of open here, and a little bulge or herniation here on the left side. So, that's the cervical spine.

Q And with regard to the right shoulder?

A It's only knees here.

Q If the knee is open, we could discuss the knee if it's open. It will just be easier. So, if you could find the images relating to the left knee.

A This is the left knee. So, this is the -- let me do the right knee first, if that's okay with you.

Q Sure.

A So, this is the right knee. So, this is the same thing. The bone is dark grey-ish, as you see here. Fluid is white. This is a cut that goes through the body like this, and this is like a side picture of the knee from a cross-sectional view. So, you could see here that this is the meniscus. There is degeneration in this knee, certainly. This is the meniscus. It's supposed to look like this. There is a medial lateral meniscus, as I said before. So, this is the lateral meniscus. It's supposed to look like a triangle. Her's doesn't really look like a triangle so much. Over here, on the inside of the knee, the medial meniscus, it's almost not there. It's very torn.

You could see also that her ACL is torn, her anterior cruciate ligament is torn. This is the posterior cruciate ligament. Those are stabilizers of the knee. And there is an

extensive tear of the medial meniscus, with also some lateral meniscus tearing. This is a better example of what's sort of normal. You have the triangle. It could also look like a bowtie. So, there's a tear right here. You could see that white in the picture. Right there is a tear, and this part in the back is sort of normal.

Q That's all for her right knee?

A This is the right knee, yes.

And then, we'll open up the same pictures, but the other side. This is the left knee. This is the knee that she had surgery on. And here you could see that there is a lot less degeneration, very mild degeneration on this knee. Again, you could see this is the outside meniscus. It's more robust on that side. Inside the meniscus is there. The medial meniscus is there, but the torn -- the lateral meniscus does have this white signal in it, which also signifies a tear.

You could see here that ACL is here. Before, we didn't see those fibers on the other knee. The ACL is here. That's the anterior cruciate ligament. And the ACL is here. You could see inflammation. You see could see fluid in the knee. This white area here is fluid. You could see fluid here as well. All in the knee. You could see some, even some fluid here. Compared to here, this area is certainly whiter than here. So, there's some fluid in the soft tissue as well.

Q And with regard to the shoulder, the right shoulder?

A So this is an MRI of the right shoulder. Same situation. So, you have the bone is like a darker grey. Fluid, inflammation. Tears are white. White is bright. Water. And you could see here there is a tear of the rotator cuff. So, we'll go over what I was talking about before, the signs, the impingement. So, this is the acromion that comes down over here. And then, when you have the rotator cuff over here, and when you move the shoulder up, imagine the shoulder moving up, so the muscle is going to go into this rotator cuff. And I'm sorry, it's the bone over here, and it's going to cause impingement or there could be inflammation, there could be a tear. That also causes a lot of pain. So, here, there's a full thickness tear of her rotator cuff tendon. There's a lot of inflammation in here, a lot of tearing in there.

We could also look at the labrum. The labrum is detached over here, actually. There's a tear here. You could see the same way on the knee, it's supposed to be like a black triangle. It doesn't look like a black triangle here too much. And it's supposed to be connected to the bone, and there's clearly white fluid in there. So, there's damage there as well.

There's not really much arthritis in the shoulder that I could see here. We could see this is a side view. You could see there's inflammation here. You could see there's possibly a cyst there. There is also just a lot of fluid and inflammation around the rotator cuff tendons.

Q Doctor, thank you. I think you touched on it a moment ago. In this particular MRI, do you see degenerative changes or any kind of extensive arthritis in the shoulder?

A Certainly not extensive arthritis. There's not much arthritis in the shoulder that I'm seeing right now.

Q What about with regard to the left knee. You looked at that MRI a few moments ago. How would you compare the condition of the left knee to the right?

A Well, the right knee was much more arthritic. The left knee, mild arthritis at the time.

Q And as far as the cervical spine, as far as any kind of degenerative or age-related changes to the cervical spine, what were you able to tell from those MRIs?

A There's certainly some age-degeneration. There's no question, but I would hope that my neck now looks as good as that neck. Certainly, it's not horrible for an elderly woman, for sure.

Q All right, Doctor, you can sit down now.

Also, Doctor, did your office provide a copy of your office chart to court, pursuant to a subpoena?

A I'm not sure.

MR. FORDE: We do, your Honor, have premarked as Number 19, a chart from Dr. Weinstein from Comprehensive, which has been premarked as Number 19.

THE COURT: In evidence?

MR. FORDE: In evidence.

THE COURT: Thank you.

Q Now, based upon your physical exam and the MRIs, the diagnostic testing, what was your plan for Maria at that point?

A So, she came to see us the first time 11/12/2018. She followed up with the MRIs on 12/14/2018. And the plan was that I reviewed the MRI of the cervical spine and X-rays at that time. I guess she didn't have the MRI of the shoulder or knees. So, I recommended those. I recommended physical therapy. I recommended anti-inflammatories. I recommended a neurological consultation with an neurologist. I also recommended a podiatrist consultation and a pain management consultation with cervical epidural injection, and to follow up after it was done.

Q Do you know if she went to a place called Corona Chiro North Coast Physical Therapy?

A I believe she did.

Q Did you refer her to that place?

A I don't believe so.

Q Do you know how she came to go to that location?

A No.

Q So, as far as any referrals that you made, did you refer her to any other healthcare providers for further assessment?

A Yes.

Q Who did you send her to?

A I sent her to New York Med, Dr. Ventrudo, for cervical epidural. I sent her to Dr. Persich, I believe, for podiatrist.

Q So, did you evaluate her with regard to her right ankle?

A No, I don't treat the ankle.

Q Had you referred patients to Dr. Persich before?

A Yes.

Q And what about Dr. Ventrudo at New York Med?

A Yes.

Q Had you referred patients to him before?

A Yes.

Q What was the purpose of referring her to Dr. Ventrudo?

A To get a consultation, and if he deemed that it was necessary to give her pain management solutions, whether it be medication prescribed, certain therapies, or an epidural injection.

MR. FORDE: Your Honor, also, we have premarked into evidence a record from Corona Chiro as Number 20, and the physical therapy place is premarked into evidence as Exhibit 20.

THE COURT: Thank you.

Q Now, when you referred her to Dr. Persich, did you ever receive any feedback from him, as far as his treatment of the patient?

A I'm not sure.

Q Now, what about her continuing treatment with regard to either her, well, let's start with her knees. What did you do as far as treating her with regard to her knees?

A Conservative care, physical therapy, anti-inflammatories.

Q How long did she continue under your treatment for the knees?

A Well, she saw me, I guess, 'till 1/18/2019, and then she came back on 1/17/2022. And then I treated her 'till about -- the last visit was with my partner on 9/14/2022.

Q Now, when she saw you in January 17th of 2022, did you send her for any more MRIs?

A Yes.

Q What MRI did you send her for at that point?

A I believe I would have sent her for all of the MRIs. I know I sent her for an MRI of both knees and possibly the shoulder. Her MRIs were more than a year old. She was still complaining about pain. Certainly, you want to have the most up-to-date information when treating a patient, so she needed new MRIs to be treated.

Q So, specifically, you had mentioned you did surgery on her left knee, correct?

A Correct.

Q So, prior to doing the surgery on her left knee, did you send her for an updated MRI for that?

A Yes.

Q And when was that done?

A Left knee MRI was done on 1/24/2022.

Q And what finding, if any significance, were in that MRI?

A Sure. Large complex medial meniscal tear throughout the posterior horn and adjacent body of the meniscus with partial extrusion of the meniscal body. Extensive complex lateral meniscus tear or meniscal tear with partial extrusion of the torn meniscal body. Tricompartmental chondral loss more marked involving the lateral compartment since the prior study.

Mucoid ACL degeneration and probable arthro ACL tear. Moderate joint effusion synovitis and large leaking ruptured popliteal cyst.

Q Now, as a result of that MRI and your examinations at that point, did you make a determination that she needed surgery?

A Well, we had a conversation about it. She continued to have pain in her knee for a long time. At this point, years. She has undergone extensive physical therapy, was taking anti-inflammatories. I offered her a knee injection. That would be all the nonoperative treatment. She complained of severe pain in the knee. We discussed a knee arthroscopy so it will alleviate her pain.

Q Did you do that arthroscopy?

A Yes.

Q When did you do that?

A I did it on 6/16/2022.

Q What was the nature of the surgery? What did you do? And if you need to use the model to illustrate, you can.

A Knee arthroscopy is a surgery where we look inside the knee and treat whatever issues we find. So, the patient needs to undergo general anesthesia. So, it's done within a surgical center with an anesthesiologist. The patient doesn't eat before surgery, preps for surgery, no eating from midnight before. She has to undergo medical clearance, get blood taken, go see a doctor, make sure everything is okay, that the surgery is going to be safe. She's seen by the nurses, she's seen by the anesthesiologist. They talk to her about the procedure and about her health. And they bring her in. I talk to her beforehand. She signs the consent. Any questions. The nurses bring her in, or the patient into the operating room, and she's put on the operating table on her back. She's put to sleep. It's complete anesthesia. They put what's called an LMA, or basically like a tube into the throat in order for her to breathe. Her vitals are monitored. Her pulse, her blood pressure, oxygen saturation. The knee is prepped. Meaning, we wash the knee with a special cleanser, and we wash our hands to make sure everything is clean. And then, what we do is, we prep the patient. So, all those blue drapes that you see on TV, we

put all new drapes. We take the time out.

And then, the actual procedure is two holes that we put in the knee, and we work with instruments that are, approximately, about a pencil in thickness, and we go inside the knee and we look in the knee. And in her knee, we found extensive tearing of the meniscus on the inside, and extensive tearing of the meniscus on the outside. We did find some chondral damage or damage to the cartilage inside the knee.

There was some, what's called lose bodies, just floating debris in the knee, and a lot of inflammation in the knee as well. After that, we do the whole procedure and look throughout the knee and all its compartments. There's three compartments in the knee, as I said. The patella femoral compartment, the medial and lateral compartment, and that is all. We addressed everything.

The knee is then closed with a suture. We put on a dressing, and the patient is taken out of the operating room.

Q Now, after the surgery, did Ms. Orozco have physical therapy?

A Yes, I believe so.

Q And when did you see her again after that?

A She was seen in my office on 6/24/22.

Q And how was she doing at that point?

A She stated that the preoperative pain has eased. She complained of some stiffness. Denied any fever, chills, or

sickness.

Q And when was the last time you saw her before today?

A I believe I saw her for the narrative.

(Whereupon, the following was recorded by Senior Court Reporter Kenneth Perschke:)

(Continued on following page.)

* * *

Q When was that?
A I don't have that with me.
Q Did you perform an examination of her at that time?
A Yes.
Q What findings, if any, did you have of any significance with regard to the knee?
A Do you have that? I don't have it in my chart.
MR. FORDE: Can I see the subpoenaed records for a moment --
Q Let me ask you this, do you recall examining her in 2024?
A I know I did, I don't have an independent recollection of that exam.
MR. FORDE: Your Honor, can we take a break for a minute? I don't want to keep the jury waiting.
THE COURT: Sure.
THE COURT OFFICER: All rise, jury exiting.
(Whereupon, the jury exited the courtroom.)
(Whereupon, a brief recess was taken.)
THE COURT OFFICER: All rise, jury entering.
(Whereupon, the jury entered the courtroom.)
THE COURT: You can continue.
MR. FORDE: Thank you, your Honor.
Q Dr. Weinstein, did you do an exam on April 15, 2024?
A Yes.

Q What did your examination consist of?

A I examined the cervical spine, right shoulder, right knee and left knee.

Q Starting with the right shoulder, what findings of significance, if any, did you have with regard to the right shoulder?

A There was pain to palpation around her right shoulder. She did have the same positive signs she had before of impingement, rotator cuff and labral tear and she also decreased range of motion.

Q At that point were you aware that she already had surgery to her right shoulder?

A Yes.

Q Where did she have that surgery done?

A I believe it was done by Dr. Steele.

Q Do you know where Dr. Steele was from, where she worked out of?

A I believe CitiMed.

Q Did you have the records available to you for the right shoulder arthroscopy from July 16, 2021?

A I believe so.

Q And August 8, 2022?

A I have her operative records, yes.

Q Based upon your examination, did you find any restriction of motion?

A Yes, I did.
Q What type of restriction of motion did you find?
A Pretty extensive, I would say moderate.
Q At that point she was 75 years old; yes?
A Yes.
Q What about with regards to the cervical spine, what findings, if any, of significance did you have to the cervical spine?
A Pain to palpation of the paraspinal musculature of the cervical spine. She had sensation decrease bilateral C5-6 distribution and decreased range of motion.
Q With regard to her left knee, what findings of significance, if any, did you have to her left knee?
A She had some decreased range of motion.
Q Based upon your examinations of the patient, the testing that she had done, the surgical interventions that were done, do you have an opinion within a reasonable degree of medical certainty as to whether the injuries to her neck and shoulder and knee were related to trauma?
A Yes, within a reasonable degree of medical certainty, if the history provided is correct it's related to trauma.
Q Is it consistent with a fall as described?
A It can be, yes.
Q As far as her condition at that point, did you consider her condition to be permanent?

A Yes.

Q Were there any options that she had available to her as far as her cervical spine at that point when you examined her in 2024?

A She had options.

Q What options were available to her for her neck?

A She should see an orthopedic surgeon I believe five times a year, continue physical therapy, 20 to 30 visits per year to diminish pain and spasms. I believe cervical epidurals --

Q Back up for a second. You said she should see an orthopedic surgeon five times a year, what would the cost of that be based on prevailing medical charges?

A I think a conservative cost would be $350.

Q You said 20 to 30 physical therapy sessions per year. What would the current medical cost of that be based on your knowledge?

A Approximately $150.

Q Cervical epidural injections, three per year, what is the cost of that type of procedure?

A Each one approximately $2,500.

Q Any other recommendations that you feel could apply to her in the future?

A If she fails all nonoperative treatment, she does have herniation in the cervical spine, she would be a candidate for a

cervical discectomy and fusion which would cost approximately $150,000 to $180,000.

Q What is that, a candidate for that type of fusion surgery?

A The disc herniation that is there, we would go from the front, open the neck, move all the vital structures, the carotid artery, the big artery that goes to the brain, the esophagus, the windpipe, the trachea, move that all to the side, take out the disc, take out the herniation, make sure the nerves are free, the spinal cord is not impinged, put a spacer inside, put a plate on the front and that's anterior cervical discectomy and fusion.

Q What about for the cervical spine, any CT scan or diagnostics?

A She would need new MRIs, she would need a CT scan prior to surgery as well.

Q As far as the knee surgery, any follow-up type of treatment for her left knee or right knee?

A The right knee had more advanced ostarthritis in it, the left knee from that original injury, certainly now the left knee has a much more advanced arthritis so I believe, should she choose to do it, she would be a candidate, due to her posttraumatic arthritis, for a total knee arthoplasty or knee replacement surgery.

Q For both knees?

A Yes.
Q What is the current cost for a total knee replacement?
A $50,000 to $75,000.
Q Is there any kind of medication that might help her?
A She would need medications for pain, she would need medication for nerve pain, antiinflammatories, muscle relaxers, possibly patches, lidocaine patches.
Q What would the approximate cost of that be per year?
A Conservatively $3,000 per year.
Q Again, she is currently 75 years old. What effect, if any, does the aging process have on the kinds of injuries that she had from this trauma?
A It doesn't make it better.
Q Thank you, doctor.

MR. FORDE: I have no further questions.

THE COURT: Mr. Goldsmith.

CROSS-EXAMINATION

BY MR. GOLDSMITH:

Q Dr. Weinstein, the first time you saw her was November of 2018; right?
A Yes.
Q And you last saw her in 2022?
A I last saw her for the narrative report.
Q You last saw her in 2022 as a patient?
A As a patient and then for the narrative report, yes.

Q You said earlier the $10,000 you received to come testify also takes into account rescheduling patients, that kind of thing; right?

A I didn't say that but yes, it does.

Q Did you get a fee for performing the 2024 evaluation of her?

A I'm sure I did.

Q Any idea how much you received for that?

A No.

Q In that report you evaluated her neck, her shoulder, knees. Your treatment was confined to her knees; right?

A No.

Q You saw her and treated her shoulder?

A Yes, I did.

Q You performed surgery on her shoulder?

A No.

Q You did injections on her neck?

A No.

Q How many times did you see her altogether as a patient between 2018 and 2022?

A By the way, treating a patient doesn't mean doing surgery on them, it can be directing care, sending for physical therapy, talking to them.

MR. GOLDSMITH: Move to strike as nonresponsive.

Q How many times did you see her between 2018 and 2022?

A My office saw her approximately 13 times.
Q How many times did you see her after you operated on her knee?
A Six or seven times.
Q The six or seven times you saw her before her knee surgery with you, the first time was an initial evaluation; right?
A Correct.
Q As a result of that evaluation you sent her out for MRIs; right?
A MRIs, x-rays, physical therapy and antiinflammatories.
Q And you sent her to Lenox Hill Radiology for that?
A That's where she went, yes.
Q No, that's where you sent her?
A I'm not sure if that's where I sent her or that's where she went but she had a history of going there prior.
MR. GOLDSMITH: Can I have 19.
(Whereupon, the document was handed to the witness.)
Q I'll have you take a look at Plaintiff's Exhibit 19, you can look at the referral forms for MRIs to Lenox Hill Radiology. Do you see them?
A I don't know what you want me to look at.
Q The referral form for Lenox Hill.
A I know she went to Lenox Hill Radiology.

Q You sent her there?
A I gave her a referral, correct.
Q You also referred to to Dr. Persich for her ankle?
A That's correct.
Q You referred her to Dr. Ventrudo for epidurals for her neck?
A Yes.
Q You also referred her to Dr. Hausknecht; correct?
A For neurology, correct.
Q Hausknecht is typically associated with traumatic brain injury; right?
A I don't know about that.
Q You refer a lot of patients to Dr. Hausknecht and Dr. Ventrudo; right?
A I don't know what a lot means. I certainly refer them patients.
Q You refer them often enough that on your chart form for referral the names are preprinted so all you have to do is circle it; right?
A I definitely refer them patients, yes.
Q That was the first visit. The second visit she came back, x-rays to the cervical spine were there --
THE COURT: Pause for two minutes please.
(Whereupon, a brief recess was taken.)
THE COURT: My apologies, thank you.

MR. GOLDSMITH: Can I have a read back of the last question.

(Whereupon, at this time, the requested portion of the record was read back by the reporter.)

Q The second visit she came back to you, you had spine studies done but not the rest; correct?

A That's what it says.

Q The third visit, you had the remaining studies done of her knees and shoulders; right?

A That's correct.

Q And you referred her to physical therapy; right?

A That's correct.

Q That's the standard practice and procedure that you have with most patients; right?

A It depends on their issue.

Q Did you refer her to a specific place for physical therapy?

A Not that I know of.

Q You testified earlier that you were aware that she had had shoulder surgery and Dr. Steele had done that shoulder surgery; is that correct?

A Yes.

Q Did you refer Ms. Orozco to CitiMed?

A No.

Q You also testified, you had looked and shown the jury

several images from MRIs about her shoulder. Do you recall saying there was some evidence of arthritis?

A I stated I believe there was not much arthritis in the shoulder.

Q But there was some evidence?

A You're asking me what I stated.

Q You did state there was some evidence?

A Correct.

Q For the knees, you mentioned there was a substantial difference between the condition of both of her knees when you started treating her. Can you describe that?

A Her right knee was certainly more arthritic than her left knee. Her left knee had mild arthritis, as per x-rays, that's the best way to see the arthritis in the knee. The right knee had much more advanced arthritis, mild to moderate arthritis.

Q But there was some arthritic changes in both; right?

A Yes.

Q When you performed surgery on her left knee did you perform any techniques to assist with the arthritis there?

A We cleaned up whatever was causing insult in the surrounding tissues, the meniscus. As I stated, there were floating bodies consistent with articular cartilage, we cleaned that up. We cleaned up any loose cartilage on the knees. We cleaned up whatever was there to hopefully stop her pain and

whatever we could do for arthritis, we did what we could do.

Q When Ms. Orozco presented to you she provided you with an explanation of a fall; is that correct?

A Yes.

Q Did she provide any further explanations to you about her medical history?

A She said past medical history of cancer, high cholesterol, high blood pressure and ulcer.

Q Did she explain to you that she had been to Elmhurst Hospital?

A I believe so.

Q Did you look at the Elmhurst Hospital records?

A I have.

Q Did you look at them at the time you were treating her or in preparation for your testimony here?

A I don't remember the fist visit so I don't know if I did at that point. I don't remember.

Q Did you review those records in preparation or as part of the review that you performed of Ms. Orozco in 2024?

A Yes.

Q Do you recall there were a number of diagnostic tests that were performed on Ms. Orozco at Elmhurst Hospital?

A Many, yes.

Q You recall there was a number of positive findings on those tests with respect to her neck and thoracic spine and

lumbar spine?

A There were findings, yes.

Q When it says that there were significant degenerative changes at C5, C6 and C7, more severely at C6 and C7 with small anterior osteophytes, small degenerative cysts and narrowing of the intervertebral spaces, that's what you are qualifying as some findings?

A They are findings, yes.

Q You had testified earlier that you referred her to Dr. Ventrudo for those cortisone injections in her neck. Do you recall the Elmhurst Hospital findings at the time that you referred her?

A I don't know.

Q As part of your treatment of Ms. Orozco were you aware that she had a history of using a walker?

A No.

Q Were you aware that she had a history of back pain prior to September of 2018?

A It's in the hospital records that it states chronic back pain.

Q Were you aware that she had been involved in a motor vehicle accident years before?

A I believe so.

Q Also as part of your evaluation in 2024, you reached a conclusion. Do you recall testifying moments ago that the

injuries related to her neck, back, shoulders and knees could be related to trauma?

A Yes -- what's the question?

Q Do you recall testifying to that effect?

A Yes.

Q That conclusion was based upon your clinical evaluation and treatment of Ms. Orozco, as well as the evaluation you performed in 2024; is that correct?

A It was based on my clinical evaluation, reviewing all the studies, talking to the patient, doing the physical exam, looking at the other records as well. It was overall on the whole patient.

Q You also came to a conclusion as part of your 2024 evaluation that all of those conditions and injuries were causally related to a trip and fall in September 2018. Do you recall that?

A Yes.

Q Based upon your clinical evaluation and the review of all of the other records that you had, including the Elmhurst Hospital records, do you still maintain that her neck, her back, her shoulders and her knees were all related to a trip and fall in September of 2018?

MR. FORDE: Objection, asked and answered.

THE COURT: Can I have that read back.

(Whereupon, at this time, the requested portion of

the record was read back by the reporter.)

THE COURT: Sustained.

Q Do you have a copy of the report in front of you?

A I gave it back to the judge.

(Whereupon, the document was handed to the witness.)

Q Take a look at the last page.

A Go ahead.

Q Does that last page have a conclusion in it?

A I don't understand.

Q The top paragraph of the page, is there a medical conclusion?

A The last page says disability and prognosis, is that what you're talking about?

Q Yes. Does that have a conclusion in it?

A Would you like me to read it?

Q Sure.

A The patient has reached maximum medical conservative and nonconservative management. The patient has a permanent disability, the patient warrants further treatment as indicated prior. The patient's prognosis is guarded.

Q You had listed before during your testimony that you believe as part of that 2024 evaluation that Ms. Orozco may need a spinal cord stimulator?

A It's possible.

Q What would that be used to treat?

A A spinal cord simulator is use after a spinal procedure. Sometimes it doesn't even need to be a spinal procedure, a person could have pain and not be able to undergo a spinal procedure. It's used to modulate pain. It is leads for a paddle that's put around the spinal cord, actually touching the spinal cord and sends electric signals to trick your spine and your brain that you're not having the pain that you're having. Certainly it's possible if her pain continues and she elects to she would possibly need this device.

Q What pain would that help to alleviate?

A Neurogenic pain. Sometimes it's for back pain, it depends on the patient.

Q For Ms. Orozco specifically, what would that recommendation be for?

A For her radiating pain, numbness. It could help that.

Q For what parts of her body?

A For her cervical spine.

Q Her cervical spine that had substantial degeneration that was noted in the hospital on the day of her accident?

MR. FORDE: Objection to form.

THE COURT: Can you rephrase?

Q You believe this treatment in the future, that you believe is related to an injury that was caused by a trip and fall, even though her hospital emergency room within hours later

showed significant degenerative changes to the same body part; is that correct?

A I don't understand. Can you repeat the question?

Q You are recommending in your 2024 report that she's going to need a $50,000 procedure to treat pain caused by a trip and fall that happened in September 2018; correct?

A That's correct.

Q And you are making that recommendation based upon your findings that included substantial findings from the emergency room on the same day of her fall?

A Yes. Certainly she has degeneration, she's not a 20-year-old female. You did state about the back pain -- I never stated anything about her back, I never treated her back. She certainly has degeneration and had degeneration then. She has disc herniations, she has trauma. As far as we know prior to seeing me and prior to having her trauma she didn't have any major complaints of neck pain prior to that. She had a trauma, she had treatment, she has pathology, certainly there is degeneration. The reason that she would need this is not due to the degeneration. She had a trauma, only after that trauma was her neck hurting her.

Q You also recommended that she have a number of CT scans and those would be for continuing treatment of her cervical spine in the future; correct?

A I think in the appropriate settings, CT scans, MRIs --

you didn't ask me about MRIs but MRIs you need to get any time the patient presents with a continuation of pain after that MRI is a year old, you need to get another MRI so I put two to three years, I thought that was reasonable.

CT scan also, we want to see how the degeneration is going. We use these tools to direct overall treatment of the patient, to see what we can do for her, does she need an epidural, does she need something else. We need to evaluate the bony anatomy which is the CT scan and the soft tissue anatomy which would be the MRI.

Q Again, the cervical spine, even though there was degeneration, you think the degree of changes to her spine was related to falling?

A Again, she had no issues with her cervical spine as far as I know prior to this accident. Now she has pathology, certainly with degeneration there.

Q Let's focus on her knees because that's what you did operate on. You testified earlier that you were not presented with the history of a walker prior to your treatment of her. Did you learn that at any point prior to operating on her?

A She never presented to me with a walker.

Q You testified about the presence of arthritic changes in both of her knees. Do you think her weight contributed to her conditions at all?

A Who can say? Certainly it can, there are people that

are skinny that have severe arthritis, it's genetic. It could be trauma, a lot of different variations can contribute to knee osteoarthritis.

Q Talking about her knees and shoulder and her neck, is it possible the motor vehicle accident could have contributed to those injuries?

A If there were complainants after the motor vehicle accident for those parts it can be a small contribution.

Q Look at the last page of the report that you have there. Is there anything else on the last page of the report?

A Yes.

Q What is that?

A It states: "I, Joseph Weinstein, D.O., affirm under the penalty of perjury pursuant to CPLR rule 2106 that the statements contained herein are true and accurate and that I have reached these conclusions to within a reasonable degree of medical certainty as a dually licensed orthopedic surgeon in the State of New York."

Q Did you sign it?

A It's not signed.

Q You prepared this for litigation; right?

A I believe so.

Q You were paid to; right?

A Correct.

Q You also had mentioned during your direct testimony in

looking at the left knee which is the knee that you operated on that there were indications of a popliteal cyst?

A I believe there were cystic structures, yes.

Q Cystic structures are caused by what?

A It could be due to different reasons. Usually popliteal cysts could form if there is a tear in the meniscus. What happens is the joint capsule is like a bag around the knee and when there is a tear that bag is open and fluid leaks out of the knee and is deposited behind the knee.

Q It's also something associated with degenerative changes; right?

A Not necessarily. It can be, possibly.

Q It can be; correct?

A Usually as far as I know it has to do with tears and capsular injuries to the knee.

Q And you also noted some degenerative changes to the left knee that you operated on; right?

A Correct.

Q Doctor, how many patients did you have in 2018?

A I have no idea.

Q 200, 300?

A I have no idea.

Q More than 1,000?

A Same answer.

Q How about 2019?

A Same answer.
Q 2020?
A Same answer.
Q 2021?
A Same answer.
Q How many patients that you saw in 2018 had either a Workers' Compensation claim, a no-fault claim or a personal injury lawsuit?
A I don't know.
Q How many for 2019?
A Same answer.
Q You would agree it's a lot; right?
A I don't know, I can't tell you.
Q You are familiar with the firm of Gorayeb and Associates; right?
MR. FORDE: Objection.
THE COURT: Basis?
MR. FORDE: We have to approach, Judge.
THE COURT: Overruled but be very careful, counsel.
Q How many of your patients are also represented by Gorayeb and Associates?
A I have no idea.
Q Are you familiar with the firm Wingate Russotti?
A Yes.

Q How many of your patients are also clients of Wingate Russotti?

A I have no idea.

Q How many of your patients are also clients of Subin Associates?

A I don't know Subin.

Q How many of your clients are also patients of William Schwitzer and Associates?

A I have no idea.

Q Have you ever seen any litigation documents from the Gold Law Firm?

A Who?

Q Pretty much the response I was hoping to get. The Gold Law Firm?

A I have no idea what you are talking about.

Q That's the firm I work with. Would it surprise you to know there are 35 of our files in which you are a treating orthopedist?

A Not surprising.

Q Would it surprise you that we have 35 files just in our office where not only are you the treating orthopedist but Lenox Hill Radiology performed all of the testing?

A Okay.

Q Would it surprise you that in those same files, in almost all of them, Thomas Cole also performed radiological --

MR. FORDE: Judge, I'm going to object to this.

THE COURT: Sustained.

Q You don't know how many of your patients are involved in Workers' Compensation or no-fault or personal injury cases but you would agree it's a substantial portion of your practice?

A I can't give you numbers.

Q I didn't ask for specific numbers. I asked a substantial portion of your practice?

A What do you consider substantial?

Q I don't know. Would you give me percentages if you can't give me raw numbers?

A I can't give you anything definite.

Q Can't or won't?

MR. FORDE: Objection.

THE COURT: Sustained. Doctor, you do have the answer uncomfortable questions.

THE WITNESS: It's not uncomfortable, I really don't know.

THE COURT: You may continue.

MR. FORDE: Judge, if there is a document that's going to be shown or used without being marked for identification --

THE COURT: Is this something that's in evidence?

MR. GOLDSMITH: It's not, it's a website. I need the doctor to see it first.

THE COURT: What is this?

MR. GOLDSMITH: It's his website.

THE COURT: Okay.

Q Doctor, is this your website?

A It looks like it.

Q It says Comprehensive Orthopedic and Spine Care on it. That's your picture?

A There I am.

Q You see there is portion on here called patient resources?

A Sure.

Q And under patient resources there are several subheadings?

A Yes.

Q Of those subheadings, one is commercial private insurance?

A Correct.

Q One says personal injury?

A Correct.

Q One says Workers' Compensation?

A Correct.

Q One says no-fault?

A Correct.

Q What is no-fault?

A It's for motor vehicle accidents.

Q Workers' Compensation is?
A Someone is injured on the job.
Q And personal injury is?
A I don't know, I didn't make this website.
Q You didn't make the website?
A Not me personally. It's people who get injured in a trip and fall.
Q You would agree with me that as a physician you are required to know and understand the public materials on your website; right?
A Sure.
Q If we go to personal injury, a form pops up; right?
A Okay.
Q What is the form?
A It's an intake form.
Q There's a portion of that intake form for attorney information?
A Correct.
Q And there's an insurance assignment and release form on it; right?
A Correct.
Q It says basically that the patient is responsible for charges for all services; right?
A Okay.
Q What it also says is they are assigning or giving you

the right to try to get after whatever fees there may be from other sources?

A I believe those three signing places, Medicare patients insurance assignment and release, that's for all patients. If you go to the one for regular patients they have the same thing. It's standard.

Q This part says: "I fully understand that payment for services is not contingent upon recovery and does not relieve me of my primary obligation to pay." What does that mean?

A It's an insurance assignment, it's a standard release that they have to pay for services, insurance has to pay for services.

Q Recovery, is that only for insurance?

A I don't understand the question.

Q The word recovery, is that only for insurance?

A I don't understand.

Q When I say recovery in that form as we read, does that refer to recovery from insurance only?

A I'm not sure what that blurb was stating.

Q But it's your intake form?

A Correct. I explained to you it's a standard form for insurance, to collect for insurance.

Q I'm hovering over it right now, do you see on the left corner where it has the file name?

A Yes.

Q The last four digits of that file are 2025?

A Yes.

Q Is this a form that you have changed every year?

A I'm not sure, I would have to speak to the IT people.

Q Do you know if it was changed in the last two months?

A I'm not sure. It says 2025 so probably after January 1.

(Whereupon, the following was recorded and transcribed by Senior Court Reporter Cheryl Gellis.)

(Continued on next page.)

* * * * *

Q Do you know if Ms. Orozco had to fill out a form like this?

A I'm not sure.

Q Well, take a look at Exhibit 19. It's your chart.

A Is it in here?

Q Take a look.

MR. GOLDSMITH: Your Honor, while the doctor is looking, I just request permission to publish this. We can't really admit it as evidence, but the doctor has clearly testified that it's his website.

MR. FORDE: I don't have any objection to it. I just -- yes, I don't have an objection.

THE COURT: I'll just ask you be cognizant of the time.

Q Doctor, did you see any intake form?

A No.

Q Did you see the waiver or release form in there?

A What's the waiver and release?

Q That clause that we were just reading from.

A No, I didn't see the form.

Q So, given those things, I don't see an entry in here for ski accidents, like you mentioned on direct.

A Well, it wouldn't be under ski accidents. If would be under, if it's someone who has commercial insurance, it would be under commercial insurance. These are very standard

subcategories in any orthopedist's or most medical doctor's intakes.

Q You've also got a tab on your website called testimonials. Are you aware of that?

A Yes.

Q Here, you've got four or five phrases from some patients. Do you know who these patients are?

A No.

Q You don't remember?

A No. Do you know them?

Q I have some information on them. It might help jog your memory.

A Sure.

Q There is a Robert Williams coming up now. Remember if Robert had a motor vehicle accident in a lawsuit in Rockland County?

A No, I have no idea.

Q Now, there is Denice Tracey. Do you remember if she had a trip and fall in a lawsuit in Rockland County?

A I mean, I have no idea. Maybe it's someone else's information.

Q Keisha Holmes just walked by or strolled by. Do you know if she had a lawsuit, a trip and fall against Macy's, right here in Queens.

A I have no idea.

Q What's a runner, Doctor?
A Someone who runs.
Q In the context of a medical profession, with people who are claiming injury in legal actions, what's a runner?
A I have no idea.
Q Is that who you call a person who recruits people from the hospital for patients?
A I have nothing to do with anything. I have no idea what you're talking about.
Q Well, would it surprise you to learn that Ms. Orozco was approached by an individual at Elmhurst Hospital, and you were referred as a good doctor?
A Okay.
Q Okay, would it surprise you or not?
A Other patients refer patients all the time.
Q Did you ever falsify records for the purpose of establishing more patient appointments?
MR. FORDE: Objection.
THE COURT: Overruled.
A Of course not.
Q Did you ever include generic descriptions in your visit entries just so that you can encourage more visits?
MR. FORDE: I'm going to object to that question. I don't understand it. Objection to form.
THE COURT: Rephrase, counsel.

MR. GOLDSMITH: Sure.

Q Did you ever put repetitive generic descriptions in your patient visit charts for the purposes of having more visits with the patient?

A I never have people come to see me any more often than is necessary.

Q Because with every time that you see a patient, you get to charge an insurance company if they have private insurance, right?

A I don't know what you're accusing me of. Do you have any basis for that?

THE COURT: You have to answer the question, not ask questions back.

Q When you have a no-fault patient, you submit bills to the no-fault carrier, right?

A Of course.

Q And when you have a workers' compensation patient, you submit those bills to the Workers' Compensation Board, correct?

A Correct.

Q And when you have someone with private insurance, you can submit those bills to their insurance carrier?

A Of course.

Q And if there is a circumstance with a personal injury lawsuit -- withdrawn.

When you're submitting those bills to no-fault

insurance, they get paid out within a sort of regularity, right?

A I don't know what you're referring to.

Q Did you ever perform surgery on someone that didn't really need the surgery?

A Of course not.

Q Did you ever perform surgery on someone who maybe needed the surgery, or could benefit from the surgery, but write in your notes that it's related to an accident?

A I do not understand your question.

Q Like for someone who's got a history of arthritis, doing the surgery can certainly can help the person with their symptoms from the arthritis, but put in your notes that it's related to a trip and fall?

A Again, I don't understand your question.

Q Ever put in your note for Ms. Orozco that her treatment, as much as it might have helped with her neck, was related to a trip and fall, totally ignoring the signs and symptoms from her preexisting changes to her neck?

A No, of course I didn't. I told you today about degeneration in her neck.

Q How about for patients that you have in common with Gorayeb and associates?

MR. FORDE: Objection.

THE COURT: Sustained.

Q Doctor, have you ever -- I guess we'll put it in little

more -- do you ever ignore the preexisting or degenerative conditions in order to continue your own treatment protocol that you want to use?

A I don't ignore anything.

Q Have you ever done any of that so that you could bill insurance companies, either private commercial, or no-fault, or workers' comp, or other, for more expensive procedures than are necessary?

A Again, I'm not understanding your question.

Q I don't know how else to say it.

Have you ever ignored degenerative or preexisting conditions for the sake of billing a more expensive procedure for your patients?

A I never ignore anything, and I'm not doing expensive procedures just to enrich myself.

MR. GOLDSMITH: No further questions.

THE COURT: Counsel, can you ask given the time?

MR. FORDE: Yes, absolutely, Judge.

REDIRECT EXAMINATION

BY MR. FORDE:

Q Doctor, Dr. Weinstein, on the medicine that you were cross-examined about, just the medicine, Mr. Goldsmith was asking you questions about the degenerative findings that were in the Elmhurst Hospital records. Do you remember that?

A Yes.

Q Okay. Now, those diagnostic tests, what kind of tests were they done to determine the osteophytes and the degenerative bone changes?

A I believe, CAT scans.

Q What's the difference between CAT scans and MRI?

A As I stated before, CAT scans are very good at looking at the bones. MRI is very good at looking at the soft tissue.

Q And when a person presents to an ER, and they do X-rays, and they do CAT scans for the bony areas, what are they looking for?

A They're looking for fractures. They could look for degenerative changes. They're looking for any sort of abnormalities.

Q Now, Doctor, you first saw her in November of 2018, correct?

A I believe so, yes.

Q And how long did you continue to see her before you decided that you needed to do the surgery?

A Well, it wasn't until years later that she had surgery.

Q Could you have sent her for surgery earlier?

A I didn't feel it was necessary.

Q Would you have sent her for surgery regardless of whether you felt it was necessary or not?

A No, I do not send people for procedures that are unnecessary.

Q Mr. Goldsmith asked you about that spinal cord stimulator. You said that that would cost about $50,000 if she needs it?

A Correct.

Q Is that something that needs to be replaced periodically during someone's lifetime?

A The battery could need to be replaced. Sometimes, they do have modules that you could charge within the body. However, it may need to be replaced as well.

Q And those forms that you were looking at on the screen, are those forms that almost every doctor's office in New York uses?

A Yes, I believe so --

MR. GOLDSMITH: Objection.

A -- and the Medicare form, I believe --

THE COURT: Dr. Weinstein, there is an objection. What's the objection?

MR. GOLDSMITH: It's speculative.

THE COURT: Overruled.

Q You can answer the question.

A You go to any doctor, they have you sign an assignment of benefits. This way, they could collect from the insurance company. It's standard. Medicare has the doctor assign that. That's why it says Medicaid. These are standard forms that are in every doctor's office.

Q And there was a section of where those forms were, where it was talking about regardless of recovery. Did that mean regardless of the recovery from the injuries, or the treatment, or the physical condition, or recovery from the insurance company?

A It's regardless of what happens. If they see me, and they don't like me, they still have to pay for it.

MR. FORDE: Thank you, Doctor.

I have nothing else.

THE COURT: Nothing further, correct, Mr. Goldsmith?

MR. GOLDSMITH: Nothing further.

THE COURT: Thank you, Dr. Weinstein. You can step down.

THE WITNESS: Thank you.

THE COURT: Mr. Forde, do you have anything further?

MR. FORDE: No, your Honor.

THE COURT: So, Plaintiff?

MR. FORDE: I believe if I could just look at the subpoenaed records.

THE COURT: Mr. Forde, again, as I mentioned, I am emergency judge, and we do have an emergency with both sides present. So, you get a little reprieve. You could decide whether you rest tomorrow morning.

MR. FORDE: Thank you.

Ladies and Gentlemen, we're going to break for the day. I believe tomorrow you'll be hearing from another doctor, and potentially a defense case, and then we will set expectations for how long it's going to proceed further.

So, tomorrow, I'm going to say -- let's say 10:00 for tomorrow. Hopefully, we'll get started by 10:15. I will just let counsels come in a little early and iron anything out anything out that they need to, and then we will get started by 10:00.

Same instructions as always. Thank you very much for your continued patience and attention.

COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exited the courtroom.)

(Whereupon, the proceedings were adjourned to April 3, 2025, at 10:00 a.m.)

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