

1 Do I have a full complement of jurors upstairs?

2 THE OFFICER: Yes.

3 THE COURT: We're not bringing them down yet.

4 We're back on the record in the matter of Mr. Jesus Buestan
5 versus 550 Washington LLC and Turner Construction. Prior
6 to bringing the jury down for the of examination of Dr.
7 Weinstein, the orthopedic surgeon, the Court has before it
8 a motion in limine filed by Defendants and I'll allow the
9 defendants to make their argument and then we will hear
10 from Plaintiff in opposition.

11 MR. ROSENZWEIG: Sure, Your Honor.

12 THE COURT: You may remain seated. Slide the
13 microphone all the way to your face. Okay. Let's hear in
14 favor of the motion.

15 MR. ROSENZWEIG: I thought we had argued it
16 yesterday, but I am ready to do it again.

17 THE COURT: You made some preliminary arguments
18 yesterday and fine; if you want to rest --

19 MR. ROSENZWEIG: No. I'll give a brief summary.
20 I won't burden the record much, but I will certainly
21 mention that -- let me just get the dates right. Bear with
22 me one second. For the record, this is a motion to permit
23 the defendants to cross-examine Dr. Joseph Weinstein in
24 connection with the Workers' Compensation Board's
25 determination to withdraw his authorization to treat

1 Workers' Compensation plaintiffs; not for truth of the
2 matter asserted, but for cross-examination impeachment
3 purposes and to show bias.

4 It is a critical issue in the trial because
5 causation is a critical issue in the trial and the Workers'
6 Compensation Board determination is directly on point with
7 issues in terms of causation. On March 13 2025, Dr.
8 Weinstein applied for renewal of his authorization to treat
9 injured workers. On April 2nd, the Board denied that
10 authorization in a 20-page letter detailing various
11 findings that they had made during an intensive
12 investigation into Dr. Weinstein's practices.

13 THE COURT: We can agree that this is a
14 collateral issue that's being used for the purpose of
15 impeachment, correct?

16 MR. ROSENZWEIG: I don't know about collateral,
17 but certainly for the purposes of impeachment, not for the
18 truth of the matter asserted.

19 THE COURT: All right. And we can agree that
20 this appears to be an effort to use prior bad acts to show
21 that the doctor may have acted in conformity therewith in
22 this instance, correct?

23 MR. ROSENZWEIG: It is both for the purposes of
24 bias and credibility in terms of that the doctor's findings
25 should not be credited --

1 THE COURT: I don't understand bias here. If you
2 want to say motive, I understand, but what do you mean?
3 Bias in favor of who? His pocket?

4 MR. ROSENZWEIG: In his pocket and the fact that
5 he's treating --

6 THE COURT: That would be motive, not bias. We
7 have to start with the premise that prior bad acts are
8 impermissible to show that an individual acted in
9 conformity therewith with the exception of some small
10 circumstances.

11 In fact, People v. Smith, which both of you seem
12 to cite, not only states the premise that I just stated,
13 but outlines the exceptions, which are to show -- where did
14 I underline it here -- the exceptions from what I know are
15 motive, intent -- there we go -- and forgive me; this is
16 from Mazzella actually.

17 It says, and I will read it. "The trial court's"
18 -- well first its finding that the trial court's admission
19 of the consent order into evidence, which was the critical
20 issue that case, was improper. We're not seeking to admit
21 anything here, so Mazzella is distinguishable on that
22 ground. However, it does provide a framework for the
23 analysis of what we are dealing with here today.

24 I'm reading from Mazzella. "Generally, it's
25 improper to prove that a person did an act on a particular

1 occasion by showing that he did a similar act on a
2 different, unrelated occasion."

3 Now, it goes on to note very few exceptions to
4 that rule, which include your ability to establish motive,
5 intent, the absence of mistake or accident, a common scheme
6 or plan or identity.

7 Now, given the rule, the Court has hesitation at
8 this moment, given the record before it, to permit such
9 cross-examination. Without the record establishing at
10 least some foundation to suggest that there was an improper
11 motive for the doctor's conduct -- I'm not saying that some
12 questioning in all cases would be improper upon
13 cross-examination.

14 However, without a proper foundation or some
15 specter of motive or common scheme or practice in the
16 record, we'd just be broadsiding him with prior bad acts to
17 impeach his credibility and that, in this Court's
18 estimation, would be improper.

19 I am not going to tell you how to run the case or
20 how to run your cross-examination, but there are
21 circumstances in which I would allow some leeway with
22 regards to the Workers' Compensation finding. In no
23 circumstance would I allow any cross-examination involving
24 specific individual patients treated by Dr. Weinstein.

25 There is no basis to find that whatever he did

1 with the other patients absent to common scheme or practice
2 has any relevance here. Let me hear from Plaintiff, by the
3 way.

4 MR. VARGAS: Well, Your Honor, regarding his
5 surgeries on any of these people that we are talking about,
6 not just Mr. Buestan, but any of the allegations of the
7 four people that Workers' Comp tried to not renew his
8 license for. All the surgeries were approved by Workers'
9 Comp, by IME doctors not connected to Dr. Weinstein who
10 approved all the treatment, all the surgeries, and then
11 they turn around and say, oh, you're not going to be
12 renewed for your license because you did unnecessary
13 surgeries that Workers' Comp approved. So it's a catch 22.
14 It's unreasonable --

15 THE COURT: Well, the record doesn't reflect
16 whether he was paid for treating Mr. Buestan, who he was
17 paid by.

18 MR. VARGAS: We have all the Workers' Comp
19 records here. We can admit them into evidence. It shows
20 he gets paid. It shows the surgeries were approved. In
21 fact, I will move for them to come into evidence.

22 MR. ROSENZWEIG: Your Honor, the Board found the
23 common scheme and practice from deviating from acceptable
24 standards of care in the report. I have no interest in
25 bringing up the four --

1 THE COURT: Well, they found that he had violated
2 on certain amount of circumstances -- excuse me -- of
3 occasions, their medical treatment guidelines. That they
4 found, and therefore they refuse or declined to renew his
5 privileges. However, we don't know that -- well, let me
6 rephrase this.

7 We don't know the number or the scope or
8 regularity with which he treated Workers' Compensation
9 patients. It may have been ten out of 10,000 that they
10 found were inappropriate and ten out of 10,000 hardly, in
11 this Court's estimation, establishes a common scheme and
12 practice. But there are other ways that you may show that
13 he was motivated for reasons other than the well-being of
14 the plaintiff.

15 MR. ROSENZWEIG: Your Honor, just in terms of
16 clarity, I just think there are two distinct things. One
17 is the fact that he no longer has authorization to treat
18 Workers' Compensation patients and that fact should come
19 out to the jury in terms of his credibility.

20 There is a different question about how deep I
21 can get into those questions and I agree with Your Honor
22 that I should tread carefully and try my best to establish
23 motive and the exception in Mazzella, but the fact that he
24 is no longer authorized to treat Workers' Compensation
25 patients is a fact and it is a final determination and it

1 goes to his credibility.

2 MR. VARGAS: I disagree. That's not a final
3 determination. It is still within litigation --

4 THE COURT: Don't try to conflate the federal
5 regulation with the final determination that I agree with
6 Counsel was handed down by the Workers' Comp Board.

7 MR. VARGAS: Their determination is not
8 controlling on this Court as I cited to you in the Workers'
9 Comp 118(a).

10 THE COURT: No. The plain language of that
11 statute is wholly inappropriate. It says that any
12 determination made about a claim by the Workers' Comp Board
13 will not have preclusive effect in any other place. We are
14 not disputing a claim here in their determination of the
15 payment or nonpayment of a claim as having merit or having
16 any other significance in another forum.

17 This is about whether the privileges of Dr.
18 Weinstein were terminated and so I don't find that -- what
19 is it -- Section 118 that you relayed us to, 118(a)? I
20 don't find that that applies to this case. The plain
21 language of the section is with respect to an action for a
22 Workers' Compensation claim permissible under this chapter,
23 no finding or decision by the Workers' Compensation Board,
24 judge, or other arbiter shall be given collateral estoppel
25 effect in any other action or proceeding arising out of

1 that same occurrence.

2 MR. VARGAS: This is a finding or a decision.

3 THE COURT: It's not about a claim and
4 furthermore, the reason it's not given, I presume,
5 collateral estoppel effect is because of all of the
6 requirements of collateral estoppel. I haven't dusted it
7 off of my head, but I believe you have to have the same
8 parties. Both sides have to have a full opportunity to
9 litigate the matter to settle the issue. It's issue
10 preclusion. And in this instance, it is very clear that
11 the Workers' Compensation Board consists of a reasonable
12 investigation. It is not a two-sided contest as to the
13 validity of their findings. It is a one-sided unilateral
14 determination after a reasonable investigation.

15 MR. VARGAS: Their determination is still being
16 litigated. It has not come to a final conclusion. He is
17 contesting that determination in court and he has not
18 gotten a decision from a court --

19 THE COURT: The fact that he is attempting to
20 appeal or overturn that decision doesn't make it less than
21 final. As far as the Worker's Comp Board is concerned,
22 they made a final determination. He can go off and try to
23 reverse it.

24 It's just like when I make a final determination.
25 It is final and you can go then. In fact, there are

1 statutes that say until there is a final determination, you
2 don't have the rights to challenge it. Well, he made a
3 final determination and I don't know what all the Workers'
4 Comp procedural rules are, but now he's challenging it.
5 But that final determination is not less final because he
6 is challenging it in another forum.

7 So to baldly start questioning him on the
8 circumstances of the Workers' Compensation Board's decision
9 not to renew his privileges to treat their patients is
10 going to be improper unless some specter of an exception
11 that, as outlined in Mazzella and its progeny, can be
12 established in the record.

13 Otherwise, we'd just be using that denial of his
14 right to renew his license before the Board to show that
15 whatever acts he did there had to have happened with Mr.
16 Buestan. So this is kind of a splitting the baby until we
17 need to change direction. I don't think there is no
18 circumstance under which he can use the Workers'
19 Compensation Board's final determination that he can no
20 longer treat Workers' Compensation benefit recipients or
21 patients.

22 However, at this time, I don't feel that that is
23 relevant. I think that right now, just like any other
24 doctor, you would be cross-examining him as to what he did,
25 how did he it, why he did it. And what you do other than

1 that is up to you, Counsel. That is your work product and
2 trial strategy.

3 MR. VARGAS: Just so we're clear. He's not going
4 to be asking him, are you licensed to treat Workers' Comp
5 patients right now, because then he'll say no and he'll ask
6 why. That's what he did with Dr. Grimm.

7 MR. ROSENZWEIG: I think that is what you are
8 saying is proper for me to inquire about. If there is a
9 motive here, that would be an exception in Mazzella that
10 I'm allowed to inquire --

11 THE COURT: I don't see why that question is
12 improper and as long as he tells the truth, we don't have
13 to go too far.

14 MR. VARGAS: In order for him to tell the truth,
15 we will end up going too far.

16 THE COURT: I don't think so. That's why they
17 pay me what they pay me, to make sure we don't --

18 MR. ROSENZWEIG: Your Honor, listen. I agree
19 that this is not -- I've got a lot to work with on
20 cross-examination of Dr. Weinstein. This is a part of that
21 examination. I don't want to mislead the Court, but it is
22 not the major part of this examination and it's something
23 to be inquired on and if he is truthful, to be moved on
24 quickly.

25 THE COURT: Nor should it be the major part, but

1 I understand how critical it is to defense's theory in this
2 action. However, to the extent that there is any question
3 about the professional decisions made by Dr. Weinstein, I
4 presume you're going to have your own orthopedic surgeon
5 come forward and disagree with him. So that is my interim
6 ruling.

7 MR. VARGAS: Your Honor, one more question.

8 THE COURT: Yes.

9 MR. VARGAS: So he asks him why are you not
10 licensed to practice for Workers' Comp. If he says because
11 I have a dispute ongoing with Workers' Comp, that is
12 truthful and the inquiry should end right then, correct?

13 MR. ROSENZWEIG: No. There is a final
14 determination.

15 MR. VARGAS: That's the problem.

16 THE COURT: No. No. No. No. No. I don't want
17 to predict what's going to happen.

18 MR. VARGAS: I know what's going to happen. You
19 know what's going to happen, Your Honor.

20 THE COURT: I don't. I left my crystal ball home
21 sadly this morning. However, we'll have to see how it
22 comes up. There is no way for me to whole-clause curtail
23 his cross-examination until I see where it goes and how far
24 it goes, but just without basis to bring the Workers' Comp
25 determination in would be to accuse him of prior bad acts

1 in other places without suggesting that there was some
2 basis to believe that he acted in accordance there with in
3 this case.

4 And I caution you, Counsel, that you are going to
5 have to show this Court that there is some question in
6 terms of the chronology of treatment, how rapidly he may
7 have undertaken certain decisions, his knowledge of the
8 history. I caution you that if I don't feel that there is
9 any specter of improper motive here, I am not going to
10 allow you to bring in bad acts that happened elsewhere to
11 suggest that his treatment of Mr. Buestan without a
12 foundation were similarly infirmed.

13 MR. ROSENZWEIG: Fair enough.

14 THE COURT: All right. Let's see how it goes.
15 Let's see if we can get the jury down and get Dr. Weinstein
16 on the stand. Counsel, I'm sure you want to have a moment
17 your witness.

18 THE OFFICER: All rise. Jury entering.

19 (Whereupon, the jury entered the courtroom.)

20 THE COURT: Good morning, ladies and gentlemen of
21 the jury. Be seated. Thank you for being here in a timely
22 fashion. Once again, I thank you for your attention to the
23 matters that are about to unfold before you.

24 Please rest assured that we were busy handling
25 legal matters that were important to this case so that the

1 presentation of evidence would be in this Court's
2 estimation what it should be before you hear it and what
3 you consider when you retire to deliberate is properly
4 before you. That said, Plaintiff, call your next witness.

5 MR. VARGAS: I call Dr. Joseph Weinstein to the
6 stand.

7 THE COURT: Good morning, Doctor. Please have a
8 seat and follow the court officer's instructions.

9 THE OFFICER: Remain standing for a second.

10 J O S E P H W E I N S T E I N, a witness called
11 on behalf of the Plaintiff, after having been first duly sworn,
12 testified as follows:

13 Court sworn.

14 THE OFFICER: In a loud clear voice, please state
15 and spell your full name.

16 THE WITNESS: Joseph Weinstein. J-O-S-E-P-H
17 Weinstein, W-E-I-N-S-T-E-I-N.

18 THE OFFICER: Please state your full business
19 address for the record, sir.

20 THE WITNESS: 62-64 97th Place, Rego Park, New
21 York 11374.

22 THE COURT: The witness has been sworn. You may
23 inquire.

24 MR. VARGAS: Thank you, Your Honor.

25 DIRECT EXAMINATION BY

1 MR. VARGAS:

2 Q Good morning, Doctor. Can you tell the jury your
3 educational background?

4 A Sure. Good morning. Well, first I'm from Queens. I
5 know we're in the Bronx, but I'm from Queens. I went to Queens
6 College. I finished my undergraduate studies there. After
7 Queens College, I went to New York College of Osteopathic
8 Medicine, a four-year medical school in Long Island where I
9 finished that as well in the four years.

10 After medical school, I did a residency, a five-year
11 residency in orthopedic surgery in the Northwell Health System
12 in various hospitals that they have there and I served as the
13 chief resident in the last year and a half of that. After the
14 orthopedic residency, I chose to do a fellowship in spine
15 surgery in the city at the Hospital for Special Surgery and
16 that was my last year of training. So four years of college,
17 four years of medical school, five years of residency, and then
18 one year of fellowship subspecialty training in spine surgery.

19 Q Doctor, are you licensed to practice in New York
20 State?

21 A Yes, I am.

22 Q Are you board certified?

23 A Yes, I am. I'm board certified in orthopedic surgery.

24 MR. VARGAS: Your Honor, I offer Dr. Weinstein as
25 an expert in orthopedic spinal surgery.

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MR. ROSENZWEIG: No objection.

THE COURT: All right. The Court so recognizes the doctor.

Q Doctor, did there come a time you treated a Mr. Jesus Buestan?

A Yes.

Q And, for the record, in front of you is a copy of your chart marked for ID as Plaintiff's 22, which is a copy of what's already in evidence, which is Plaintiff's 10. You may refer to that at any time if you need to.

A Sure.

Q The first time you saw Mr. Buestan?

A First time I saw him was 9/2/2020.

Q And at that time, did you take a history from Mr. Buestan?

A Yes.

Q What was that history?

A He was injured while at work on 9/13/2019.

Q And did you also see that -- somewhere that his accident date was 9/27/2019?

A I'm not sure.

Q Did you take -- did he have any complaints at the time?

A Yes.

Q What were his complaints?

1 A Neck pain and back pain.

2 Q And did you review any records when you first saw him?

3 A Yes, I did.

4 Q What records did you review?

5 A He was sent to me by Dr. Matthew Grimm, so I reviewed
6 his records as well as MRI reports and films.

7 Q And what films did you review?

8 A I believe at that time it was Kolb Radiology reports
9 and films.

10 Q Do you know what body parts?

11 A Of the neck and the back.

12 Q Did you examine Mr. Buestan at that time.

13 A Yes, I did.

14 Q What were your findings of your exam?

15 A Regarding the cervical spine, his skin was clean, dry,
16 and intact. There was pain to palpation at the paraspinal
17 musculature of the cervical spine. Power was five out of five
18 except for the right biceps which showed some weakness, four
19 out of five. Sensation was decreased in the C4-5 distribution.

20 Reflexes are brisk and symmetrical. He had a negative
21 Hoffmann's test, which is a test for severe spinal cord
22 compression, and he had a positive Spurling test, which is a
23 test for spinal cord or spinal root compression. Decreased
24 range of motion found in all planes.

25 Regarding the lumbar spine, the skin was clean, dry,

1 and intact. There was pain to palpation at the paraspinal
2 musculature of the lumbar spine. Power was intact. Sensation
3 was decreased in the bilateral L4 and L5 distribution.
4 Reflexes are brisk and symmetrical. He had a negative clonus
5 and a downgoing Babinski, which are normal tests. He was able
6 to heel-walk and toe-walk and he did have a positive straight
7 leg raise test which shows tension on the nerves both on the
8 right and left leg with decreased range of motion.

9 Q Did you have a diagnosis at that time?

10 A My diagnosis was cervical radiculopathy and lumbar
11 radiculopathy.

12 Q Can you define that for the jury?

13 A Radiculopathy is any sort of issue with the nerves, if
14 there's any compression on the nerves, any radiating pain, any
15 numbness, any weakness, and he had these type of symptoms of
16 radicular pain or nerve pain.

17 Q Did you have recommendations for him at that time?

18 A Yes. His MRI was approaching a year old. So I
19 ordered X-rays and a MRI and I recommended surgery at that
20 time.

21 Q Did he get the MRI?

22 A Yes, he did.

23 Q Do you know the date of that MRI?

24 A The MRI date was 9/15/2020.

25 MR. VARGAS: And, Your Honor, with the Court's

1 permission, if I may approach the monitor?

2 THE COURT: You may.

3 MR. VARGAS: Doctor, with the Court's permission,
4 if you can step down to the monitor.

5 THE COURT: Is it already set on one of the
6 images?

7 MR. VARGAS: Yes.

8 THE COURT: Doctor, do you have a laser or
9 pointer or anything or do you need to come down and
10 manually illustrate?

11 THE WITNESS: I can use the mouse if you want me
12 to stay here.

13 THE COURT: This way you won't block anyone.
14 It's a tight space.

15 THE WITNESS: No problem, Your Honor.

16 MR. ROSENZWEIG: I'm just going to look on on
17 this computer.

18 THE COURT: Feel free to move about.

19 Q I don't know if everyone can see the mouse. Okay. So
20 this is an MRI. A couple of things about an MRI. MRI is good
21 for seeing water. It's different than a CAT scan. A CAT scan
22 is very good at seeing bone. MRI is good at seeing -- what it
23 does is it actually orients the water molecules in your body
24 and it can see the soft tissue. It can see discs; it can see
25 ligaments; it can see meniscus. So it's much better at seeing

1 the soft tissue.

2 So if you see here, this part of the MRI is a cut that
3 goes like this through the body and this part of the MRI is a
4 cut that goes like this through the body. Okay? So a normal
5 portion of the MRI is like this. So we see here this is the
6 bone, the discs are the darker areas here, and this is the
7 spinal cord. This is the front. This is the back. Now here
8 this is the front. This is the back. This is the level of the
9 disc you can see here and this is the spinal cord.

10 The spinal cord wants to just float there. It doesn't
11 want anything to touch it. If there is more than four pounds
12 per square inch force on the spinal cord, there can be
13 permanent damage, so it doesn't want anything to be touched.
14 And you see that the nerves come out through these things call
15 foramen, and this is completely wide open.

16 So then we can come down here and you see that there
17 is a disc herniation here and you see how it's pushing on the
18 spinal cord. This level is C4, C5. If you come down here, you
19 can see that the disc is also pushing on the spinal cord. You
20 can see that the area for the nerve to go out is a bit small,
21 smaller than before, and you can see how the spinal cord here
22 is round and you can see here that spinal cord looks a jelly
23 bean. So there is force on this spinal cord and that would be
24 this MRI, I believe.

25 MR. VARGAS: Just for the record, this is

1 Plaintiff's 8 in evidence, Lenox Hill Radiology MRI film.

2 Q And, Doctor, from looking at this film, what would be
3 your diagnosis?

4 A It would be a disc herniation at C4-C5. There are
5 other disc herniations also, but we are talking about here is
6 C4-C5.

7 Q IF we can go to the lumbar film that was performed on
8 the same day, also Plaintiff's 8.

9 A So this is fairly the same thing just in a bigger
10 model. The lumbar spine has to hold up the whole body. So
11 it's much bigger and stronger, the bones and the discs and
12 there is no spinal cord at this level. It's is called the
13 cauda equina or the horse's tail. The same premise though does
14 fit where you have the nerves that exit through the foramen.

15 You can see this is a healthy disc. You see how it's
16 white and bright, white and bright. These are all healthy and
17 then you have darkening here, darkening, dark disc. These are
18 degenerative discs. And another thing you see here is that
19 everything is symmetrical. If I put a line down the middle
20 here, you can sort of superimpose it and it all looks good.
21 And then you come down here to L4-L5 and you can see here this
22 white thing which we didn't see at any of the other discs.

23 First you see a herniation here. You can see that
24 it's actually narrowing both sides of the foramen. There's
25 less space than there was up here. You see how much space is

1 up here and you see how the space is less as well as the
2 herniation with a tear in the disc at L4-5. This is called a
3 high-intensity zone. You don't see it on the other levels, and
4 this high-intensity zone is very painful. L5-S1 also has a
5 smaller disc here and also with degeneration at these levels as
6 well.

7 Q From looking at this film, your diagnosis?

8 A I would say that it certainly is a degenerative spine
9 with lumbar disc herniations and a high-intensity zone.

10 Q And after reviewing these films, did your
11 recommendations for Mr. Buestan change or were they the same.

12 A Well, the -- my recommendations were the same.
13 Correct.

14 Q And you had recommended surgery. In what body part
15 were you recommending surgery?

16 A So he came into me with neck and back pain and I
17 recommended surgery for the neck. He underwent prior
18 nonoperative treatment. He underwent physical therapy,
19 anti-inflammatories, and epidural injections which were only
20 transiently successful. I recommended the surgery the first
21 time I saw him, because surgery takes a while to get authorized
22 by the insurance as well as I wanted to get a new MRI to make
23 sure that nothing significantly had changed, worsened or got
24 better, from the prior MRI.

25 Q After the first visit, the next time you saw him?

1 A The next time I saw him was on 9/30/2020.

2 Q By that time, you had reviewed the MRIs, correct?

3 A I reviewed the MRIs as well as I reviewed it with the
4 patient as well.

5 Q And then the next time you saw Mr. Buestan?

6 A Was 11/11/2020.

7 Q And at that time did you examine him?

8 A Yes, I did.

9 Q Had anything changed?

10 A Not significantly, no.

11 Q The next time you saw him after that.

12 A And he still had not had surgery at this point.

13 Q And the next time after that?

14 A The next time I saw him 12/2/2020.

15 Q What was the purpose of that visit?

16 A Preoperative consultation. Check in to see what's
17 going on, how he's doing, if he still had the pain, etc.

18 Q Had anything changed at that moment?

19 A Not significantly, no.

20 Q When was the surgery?

21 A The surgery was approximately four months after I
22 first met him on 12/15/2020.

23 MR. VARGAS: And, Your Honor, with the Court's
24 permission, if I may use the easel?

25 THE COURT: Yes, you may. Of course.

1 MR. VARGAS: Hopefully it will work better this
2 time. With the Court's permission, if the witness may step
3 down.

4 THE COURT: Yes, he may. Why don't you set up
5 first? And yes, you may move, Counsel.

6 MR. ROSENZWEIG: Thank you.

7 Q If you can tell the jury what we're looking at.

8 A Okay. So this is a bunch of animations of the surgery
9 and this is preoperatively obviously. Here's the disc
10 herniation we were talking about at C4-C5, and this is an
11 animation of it.

12 So to describe the surgery, basically what happens is
13 that the patient from midnight before does not eat, comes into
14 the hospital and is seen by anesthesia, seen by me. We sign a
15 consent, explain the procedure again. If there's any questions
16 or concerns, it's addressed at that time. The nurses see the
17 patient and then the patient is brought into the operating
18 room.

19 In the operating room, there's various monitors that
20 are put on the patient. There is a blood pressure cuff. We
21 monitor the blood pressure throughout the surgery. There is a
22 pulse oximetry. We monitor the oxygen in the blood throughout
23 the surgery and there's EKGs that are put on the chest as well
24 to monitor the heart right. So all that is put on. The
25 patient is put to sleep and the area is prepped and draped in a

1 sterile fashion. It's all those blue drapes you see on TV.

2 Then I go wash my hands. We mark the point where the
3 surgery is going to be done and the surgery starts. Obviously,
4 the patient is also intubated. There is a tube that's put into
5 the trachea, the windpipe, in order to breathe for the patient
6 during the surgery.

7 We make an incision on the neck that goes down through
8 the skin and the fat area, the subcutaneous tissues, comes down
9 to this muscle called the platysma and the platysma is divided.
10 Next, we go through the intravel. There's an intravel here.
11 An intravel means that there are two muscles that are side by
12 side and we basically split that area and we move aside, and we
13 have to be careful about the carotid area, the esophagus, the
14 trachea. We move these all aside. The carotid artery stays
15 there.

16 We identify it. We identify the disc, the C4-C5 disc,
17 and then we put in a retractor in order to open up that disc.
18 It's sort of like changing a spare tire. You have to lift the
19 car. So we open up the disc. We take out the herniation, and
20 next what we do is take bone, some of the patient's bone, some
21 cadaver bone, put it in a cage, and fill that void.

22 Now, we don't leave it like that because it may come
23 out the front and what we do to stabilize it and to help it
24 also heal is we put a plate on the front. We put a plate on
25 the front as well as placing four screws to stabilize the area

1 that we just did surgery on.

2 Now, when we take out the disc we visualize, make sure
3 that there is no more pressure on the spinal cord, there's no
4 pressure going out on any of the nerves, and that everything is
5 free and basically gets a new tire, but this tire stays and
6 it's fused. It doesn't move. After that, we close up the
7 patient, put a drain sometimes, and the patient gets awakened
8 from anesthesia and goes to the recovery room.

9 Q Thank you, Doctor.

10 Now, after a surgery such as this, Doctor, what is
11 usually the normal course of treatment?

12 A Depending on the patient. Everyone is different.
13 Either they stay in the hospital overnight or go home. Then
14 they stay in a brace for approximately six weeks to help the
15 healing. We see them in the office approximately two weeks
16 after the surgery, make sure everything is okay, call them
17 obviously to make sure everything is okay. They have
18 restrictions of no bending, lifting, or twisting immediately
19 after the surgery and then start physical therapy eventually.

20 Q For a surgery such as this, what would be your
21 expectation of how long will it take to see the benefits from
22 it, if there are?

23 A Sometimes with this type of surgery, anterior cervical
24 discectomy and fusion, they are immediate benefits. Patient
25 say that their pain that they had before, either completely

1 gone or lessened. It really depends on his preoperative
2 symptoms and how long they have been going on for.

3 Certainly when someone is strangling someone, if you
4 let your hand off them right away, they recover no problem.
5 If you strangle them within an inch of death, they're going to
6 have a hard time getting better. So time is a very crucial
7 element as well as how bad the symptoms were before the
8 surgery.

9 Q The next time you saw Mr. Buestan after the surgery?

10 A The next time I saw -- my partner saw him on the 18th,
11 12/18/20. The next time I saw him was 12/30/2020.

12 Q You practice with Dr. Carlos Castro?

13 A Yes.

14 Q That's who saw him on the 18th?

15 A That's correct.

16 Q And then on December 30th, 2020, did you examine Mr.
17 Buestan?

18 A Yes.

19 Q And what were the findings?

20 A He was better preoperatively from the cervical spine
21 and still had complaints of the lumbar spine.

22 Q When you state he was better, how was he better? His
23 pain level or something else?

24 A His physical exam was much better as well. His
25 physical exam was much better.

1 Q Did he have any complaints at that time?

2 A He had complaints of back pain, low back pain.

3 Q And the did you have recommendations for his treatment
4 at that time?

5 A I recommended continuation of his cervical brace with
6 restrictions of no bending, lifting, or twisting. I
7 recommended X-rays of the cervical spine, recommended
8 anti-inflammatories as needed for pain, and to follow up in
9 six weeks for reevaluation.

10 Q And the next time you saw him?

11 A The next time I saw him was 2/10/2021.

12 Q And at that time you examined him?

13 A Yes.

14 Q And your findings?

15 A The findings were for his cervical spine, the skin was
16 clean, dry, and intact. There was pain to palpation at the
17 paraspinal musculature of the cervical spine, power was intact,
18 sensation was grossly intact. Reflexes are brisk and
19 symmetrical with a negative Hoffmann's test.

20 Regarding the lumbar spine, the skin is clean, dry,
21 and intact. There is pain to palpation at the paraspinal
22 musculature of the lumbar spine. Power was intact; five out of
23 five. Sensation was decreased in the bilateral L4 to S1
24 distribution. The reflexes are brisk and symmetrical. He had
25 a negative clonus and a downblowing Babinski. Patient is able

1 to heel-walk and toe-walk, positive straight leg raise test on
2 the left and right with decreased range of motion.

3 Q You continued seeing him for 2021, correct? I'm not
4 going to go through every visit.

5 A That's correct.

6 Q I'm going to draw you're attention to August 25, 2021.
7 And as far as -- now it's eight months after the surgery. Did
8 he report back as to how he was feeling at least regarding the
9 in neck?

10 A I believe he felt better than preoperatively.

11 Q At that time, what were his main complaints?

12 A Low back pain.

13 Q How did he rate his pain at that time for the lower
14 back?

15 A Eight to nine out of ten.

16 Q Did you have a plan of when or if he was going to have
17 surgery on his lower back at that time?

18 A We did submit for surgery for his lumbar spine.

19 Q Was that surgery performed?

20 A Yes, it was.

21 Q And when was that surgery performed?

22 A It was performed on 1/18/ 2022.

23 Q Before that surgery, were there any diagnostic films
24 performed?

25 A Yes.

1 Q When was -- what kind of films or what kind of tests
2 were done?

3 A He had an MRI and a CAT scan.

4 Q When were they performed?

5 A He had an MRI, like we said before, 9/15/22 -- I'm
6 sorry -- 9/15/2020 of the lumbar spine. He had a CAT scan
7 11/16/2021 and he had a lumbar MRI the same date, 11/16/2021.

8 Q What's the purpose of the MRI in 2021?

9 A Well, again, it's been some time since his accident.
10 It's been some time since his last MRI. The standard of care
11 is to have an MRI within a year, and that's what I do.

12 Q And the CAT scan, the purpose of that?

13 A So it's a very good question. CAT scan, because we
14 want to see -- on the MRI, like I said, we see the soft
15 tissues. The CAT scans, we see the bones actually. So the
16 surgery I was planning to do is we put screws into the bone in
17 order to know if there's any anomalies with the bones or to
18 know the trajectory of these pedicle screws. The proper thing
19 to do is to order a CAT scan prior.

20 MR. ROSENZWEIG:

21 THE OFFICER:

22 MR. VARGAS: If we can show, with Your Honor's
23 permission, the witness the MRI.

24 THE COURT: It's identified in evidence?

25 MR. VARGAS: It's in evidence, yes.

1 A As I said before, we went over the original MRI and
2 you can see here that high-intensity zone. You can see the
3 differences in the discs. These are black. This one is a
4 little less black, and then these are all healthy discs and you
5 could see again the broad-based herniation here going and
6 pushing the nerve roots in the foramen. And then here as well
7 broad-based herniation at L5-S11 as well.

8 Q Was there any change from the original MRI?

9 A Not hugely significant.

10 Q After this MRI, you performed the surgery?

11 A Yes, I did.

12 MR. VARGAS: This is for ID Plaintiff's 24 and
13 the last one, the illustration was Plaintiff's 23.

14 A So this is the lumbar spine. Very similar pictures to
15 the last exhibit. On the left side are -- that's the
16 preoperative over here and this is a larger surgery than the
17 neck.

18 What happens is the same until the operating room.
19 The patient is still put to sleep, general anesthesia, and then
20 they are put into a -- placed on their belly in the Superman
21 position, like that, and the area is prepped and draped. The
22 blue sheets go up and the incision is made straight down the
23 back and again through the skin and the soft tissues.

24 And everyone knows that the back has a lot of muscle.
25 That muscle is dissected off of the spine. So it's literally

1 lifted off the spine and retractors are put in. We take off
2 the pressure from the spinal area, the cauda equina, as I said,
3 making sure that all the area is free of any pressure.

4 After that, we put in the screws, called the pedicle
5 pedicle screws and that secures the spine. The purpose of this
6 is to fuse the spine, to make those areas that were pain
7 generators for him not move after the surgery because movement
8 was causing pain, one of the reasons why. And you have these
9 pedicle screws that go in and then you place the rods with caps
10 on them.

11 It's like an internal external fixator. You see
12 people have for fractures some pins in them sometimes. So this
13 is the same thing, just inside the body. Then we put bone
14 graft inside in order to make sure that the bones fuse together
15 and then we put a drain into this, into the patient, and the
16 patient stays in the hospital about two, three days, has
17 physical therapy in the hospital, and then goes home.

18 Q Thank you, Doctor. After both of these surgeries, the
19 X-rays are performed to see the placement?

20 A Yes.

21 MR. VARGAS: If we can show also on Plaintiff's 8
22 on the screen, with the Court's permission, the X-ray of
23 the cervical spine after the placement of the plates and
24 screws.

25 THE COURT: This is also part of Plaintiff's 8 in

1 evidence.

2 MR. VARGAS: Yes.

3 THE COURT: And the blowup we just saw is.

4 MR. VARGAS: 24.

5 THE COURT: Plaintiff's 24 for ID.

6 MR. ROSENZWEIG: Are we done with 24. Your Honor?

7 MR. VARGAS: Yes. I'll take that.

8 THE COURT: This is post surgery?

9 MR. VARGAS: Post surgery X-ray of the cervical
10 spine dated 8/24/22.

11 A This is the lumbar spine and you see the screws here
12 with the rods stabilizing of L4, L5, and S1. This is a side
13 view and then you have a front view you and you can see the
14 same thing. You can actually see in this that he has a good
15 fusion here. So he has nice healing, and then here, this is
16 his neck, his cervical spine. This is front view. You can see
17 the plate and the interbody cage in there at C4-5.

18 Q And Doctor, you continued seeing Mr. Buestan after the
19 second surgery, correct?

20 A Yes.

21 Q Do you know the last time you saw him?

22 A The last time I have in here that I saw him is
23 4/10/2024.

24 Q And over the course of the two years leading up to the
25 last time you saw him, every time you would see him, would you

1 order X-rays like these?

2 A I don't know every time, but almost every time, yes.

3 Q What was the purpose of those X-rays?

4 A We want to see progression the progression. He was
5 still complaining about pain. You want to make sure that
6 there's no hardware failure or migration or something else
7 going on in the bones. So it's smart to order an X-ray.

8 Q Did you order or did you prescribe physical therapy
9 over those two years.

10 A Yes I did.

11 Q Did you see over the course of those two years an
12 improvement in his cervical spine and lumbar spine?

13 A Yes, I did.

14 Q Can you tell the jury the improvement?

15 A Well, his pain level went down from an eight to nine
16 to a five out of ten. His physical exam was essentially normal
17 there was no numbness, no weakness, no issues regarding his
18 strength, and he had good healing.

19 Q And, Doctor, do you have an opinion within a
20 reasonable degree of medical certainty as to whether the
21 herniations and surgeries to L4-L5, L5-S1, C4-C5 were causally
22 connected to the accident of September 27, 2019?

23 A If the history provided to me --

24 THE COURT: Counsel, I don't know that he ever
25 testified about the accident or there was established any

1 facts from this doctor about the accident. If you want to
2 give him hypotheticals, fine.

3 Q Doctor, I want you to assume that Mr. Buestan -- well,
4 I'm sorry. I'll back up. Did you review the plaintiff's trial
5 testimony before coming here today?

6 A Yes, I did.

7 Q Did you review his prior treatment records from 2014
8 to 2018?

9 A Yes, I did.

10 Q Upon reviewing those records and testimony, did it
11 change any of the opinions you had before reviewing those
12 records and testimony?

13 A No.

14 Q Based on that testimony -- I'm going to give you a
15 hypothetical. I want you to assume Mr. Buestan testified that
16 on September 27, 2019 he was in a cellar at 550 Washington
17 Street, where a cement ceiling fell on him causing injuries to
18 him, subsequently getting treatment from other doctors such as
19 Dr. Kaplan, Dr. Grimm and eventually being referred to you.

20 Assuming all those facts, do you have an opinion
21 within a reasonable degree of medical certainty as to whether
22 the herniations at L4-L5, L5-S1, C4-C5 and the subsequent
23 surgeries you performed were causally connected to this
24 accident?

25 A Within a reasonable degree of medical certainty, if

1 the history provided was correct, yes.

2 Q Doctor, do you have an opinion within a reasonable
3 degree of medical certainty as to the future prognosis for Mr.
4 for Mr. Buestan?

5 A I think his future prognosis is good. Reading his
6 testimony I think speaks volumes. He did have pain before,
7 musculoskeletal pain. He's a hard-working guy. He worked a
8 hard job. This accident caused the pain to become much worse.
9 He had radiculopathy confirmed. He had EMGs, nerves tests,
10 that showed that he had radiculopathy from Dr. Hausknecht. He
11 had surgeries that he says he is doing better. He's trying to
12 find work. He may not work in demolition, but certainly he can
13 contribute to society and work.

14 Q Doctor, I want you to assume that Dr. Grimm testified
15 yesterday and some of the treatment he recommended going
16 forward in the future was maintaining a physical therapy
17 regimen of one to two times a month for the rest of his life.
18 Would you agree with that?

19 A I think that if he has periods when he has flare-ups,
20 which could happen, he can have some physical therapy. I think
21 that's very reasonable.

22 THE COURT: How is this not cumulative and
23 bolstering testimony?

24 MR. VARGAS: I didn't think it was.

25 MR. ROSENZWEIG: I don't have an objection to him

1 saying he's recovered. It's fine with me.

2 Q I want you to also further assume that Dr. Grimm
3 testified that having an MRI every five years for the rest of
4 his life. Would you agree with that?

5 A It's reasonable.

6 Q And I want you to assume that Dr. Grimm recommended
7 X-rays every six months for the rest of his life. Would you
8 agree with that?

9 A If there is pain and he comes in for an evaluation,
10 then it's reasonable, yes.

11 MR. VARGAS: Thank you. I have no further
12 questions.

13 THE COURT: Do you need a break or you want to go
14 right in?

15 MR. ROSENZWEIG: I think everybody probably can
16 use a restroom break. Ten minutes is fine.

17 THE COURT: Do you need a restroom break? All
18 right. Let's have it then. Hold on. It is 11:07. Let's
19 start at 11:20.

20 THE OFFICER: All rise. Jury exiting.

21 (Whereupon, the jury exited the courtroom.)

22 THE OFFICER: All rise. Jury entering.

23 (Whereupon, the jury entered the courtroom.)

24 THE COURT: Okay. Be seated everyone. Thank
25 you. All right. We're ready for cross-examination.

1 MR. ROSENZWEIG: May I inquire, Your Honor?

2 THE COURT: Yes, you may.

3 CROSS-EXAMINATION BY

4 MR. ROSENZWEIG:

5 Q Good morning, Doctor.

6 A Good morning.

7 Q Are you being paid for your time here today?

8 A Yes, I am.

9 Q How much are you being paid for your time?

10 A \$10,000.

11 Q Did you also prepare a narrative report in this case?

12 A Yes, I did.

13 Q Did you charge for that?

14 A Yes, I did.

15 Q How much did you charge for the narrative report in
16 this case?

17 A I'm not sure.

18 Q Can you give us a ballpark? What range do you charge?
19 What's the least; what's the most?

20 A I don't know. I can't give a ballpark.

21 Q You own Comprehensive Orthopedic and Spine Care?

22 A That's correct.

23 Q It is your business?

24 A Yes.

25 Q Do you have any idea how much you charge for a

1 narrative report?

2 A I can't give you an exact figure it's probably a
3 thousand, \$2,000. Something like that.

4 Q A portion of the patients that are referred to your
5 office are referred by attorneys?

6 A What time?

7 Q Back in 2019.

8 A Yes. I got referrals from a lot of different places.

9 Q How about from attorneys?

10 A Sure.

11 Q How about today? Is that the same?

12 A No.

13 Q Why is that?

14 A Well, you want the answer?

15 THE COURT: He asked you a question.

16 A Okay. So basically there's been a concerted effort by
17 the insurance companies to malign and to try and stop --
18 insurance companies and others, I should really say.

19 THE COURT: All right. You're not going to make
20 this a soap box moment, Dr. Weinstein. You know, why, in
21 very succinct terms, has your referral process changed?

22 THE WITNESS: Yes. So, Your Honor, I'm
23 definitely saying that. I'm not trying to be a soap box.
24 I'm just stating facts.

25 MR. ROSENZWEIG: Objection to that, Your Honor.

1 THE COURT: Go ahead, Dr. Weinstein.

2 A Sure. So the insurance companies -- maybe this
3 insurance company -- I don't know.

4 MR. ROSENZWEIG: Objection, Your Honor.

5 THE COURT: Sustained. In what way has your
6 referral process presently changed within your office?

7 A There's many lawyers, other doctors, regular people on
8 the street that no longer come to my practice.

9 Q Back in 2019, did the Gorayeb firm refer patients to
10 your office?

11 A Yes, they did.

12 Q Other plaintiffs' personal injury firms referred
13 patients to your office, correct?

14 A As I said, I had referrals from a lot of different
15 places.

16 Q But I'm asking about attorneys.

17 A I said attorneys.

18 Q And back in 2019, about 60 to 70 percent of your
19 practice was based on patients with work-related accidents.
20 Fair?

21 A It's possible. You probably got that from a prior
22 transcript. I can't tell you that for fact.

23 Q I got that from your sworn testimony from a prior
24 transcript.

25 A Okay.

1 Q You were telling the truth then?

2 A That's what I said.

3 Q So we agree that 60 to 70 percent of your practice is
4 based on patients with work-related accidents, correct?

5 A Okay.

6 THE COURT: In 2019.

7 MR. ROSENZWEIG: In 2019, correct.

8 Q That was the majority of your practice back then,
9 correct?

10 A It's possible. Yes.

11 Q How many patients back then did you see a day?

12 A I can't give you an exact number.

13 Q If I said from the same transcript it's about 30 to
14 60, does that sound right?

15 A Again, I can't give you an exact number.

16 Q Back then, how many spinal surgeries did you perform
17 per week?

18 A I cannot give you an exact number right now.

19 Q I'm not asking for an exact number. The jury just
20 want to hear a ballpark.

21 A I can't give you a ballpark. I can say most probably
22 two, three surgeries twice a week. Maybe three, four twice a
23 week. I can't give you -- something about that.

24 Q Were there some weeks where you did 20?

25 A No.

1 Q Ten?

2 A No.

3 Q Five?

4 A I said two to three twice a week. That would be --
5 again, this is a ballpark. Two to three twice a week would be
6 four to six. Maybe eight.

7 Q Again, I know you're going to say you don't know the
8 exact amount, but a ballpark range for how much you charge for
9 a fusion surgery.

10 A With Workers' Compensation, they have their own fee.

11 Q What's that?

12 A I can't give you exactly what it is.

13 Q I know you can't give me exactly what it is. The jury
14 just wants to hear a ballpark.

15 A I don't know exactly a ballpark. I would say
16 depending on the surgery, it could be 2000 to possibly 10,000.

17 Q 10,000; you're doing eight a week. That's about
18 \$80,000 a week, correct?

19 A Correct.

20 Q A lot of money.

21 A Well, that depends.

22 Q What does it depend on?

23 A What's your scale?

24 Q Do you consider \$80,000 to be a lot of money?

25 A Certainly it's a lot of money, but you have to run a

1 business. You have to pay people. You have to pay taxes. So
2 80,000 goes into 40,000.

3 Q So it makes sense for you to do more and more
4 surgeries, correct?

5 A No.

6 Q The more surgeries you do, the more money you make.

7 A The more lawsuits that you work for, the more you get
8 paid as well.

9 Q So the more plaintiff's that are referred to you by
10 Mr. Gorayeb's firm and others, the more money you make,
11 correct?

12 A No.

13 Q How is that not correct?

14 A Because many times we are actually not even paid for
15 the surgery because Workers' Comp denies it or doesn't pay for
16 it as well as I don't just do surgeries on anyone that they
17 send me. As a matter of fact, I probably don't do surgery on
18 most of the people that they sent me.

19 Q Where do you come up with those statistics?

20 A I'm telling you from my own personal being there at
21 every single surgery and seeing every single patient myself.

22 Q How many patients do you see -- back then.

23 A I can't give you an exact number.

24 Q Are you friends with Dr. Kaplan?

25 A No.

1 Q Friends with Dr. Grimm?

2 A Yes.

3 Q How long have you known Dr. Grimm?

4 A I've known him -- I can't give you an exact. I've
5 known him for a long time.

6 Q He refers you a lot of patients?

7 A He used to, yes.

8 Q And those patients you would do surgery on, correct?

9 A Not every person that he referred me.

10 Q What percentage would you do surgery on?

11 A I have absolutely no idea.

12 Q More than half?

13 A I said I have no idea.

14 Q The records that you brought with you today, they
15 don't have any handwritten notes, correct.

16 A I don't believe so.

17 Q Do you keep handwritten notes?

18 A No.

19 Q When you are treating a patient, no one is writing
20 anything down by hand?

21 A I'm there myself with my medical assistant.

22 Q When do the records get created?

23 A I create them the same day.

24 Q Typing, dictating?

25 A Dictating.

1 Q There's no handwritten records we can look at,
2 correct?

3 A There's no handwritten notes, no.

4 Q How about billing records? Any billing records in the
5 file?

6 A Not here, no.

7 Q How about an intake form? Is there an intake form?

8 A Not here.

9 Q Do you keep an intake form for your patients?

10 A Of course.

11 Q Why is the intake form not here?

12 A These are just my notes, the radiology, and the
13 surgery.

14 Q So you didn't bring the intake form?

15 A I didn't bring my whole chart.

16 THE COURT: We're talking about for the
17 plaintiff.

18 MR. ROSENZWEIG: For Mr. Buestan. Correct.

19 Q You brought a portion of your chart?

20 A That's correct.

21 Q Why did you only bring a portion of your chart?

22 A I didn't know I have to bring the whole thing.

23 Q You've done this before?

24 A Yes.

25 Q How many times have you testified?

1 A I don't know. I'm sure you do.

2 Q I'm sure I do. I have a stack transcripts here, but
3 the jury just want to know a ballpark.

4 A I don't know. You keep asking for ballparks. I don't
5 know because the next time I testify, someone is going to ask
6 the same thing. I can't give you an exact number.

7 Q Because you don't want to tell people how many times
8 you testified.

9 A I didn't say that.

10 Q That's what I'm saying. You don't want to tell people
11 how many times you testified, right?

12 A Negative.

13 Q Let's just take last year. How many times did you
14 testify last year?

15 A I don't know.

16 Q More than ten?

17 A I don't think so.

18 Q Do you know?

19 A I just said I don't know.

20 Q It is something you do regularly though. Can we at
21 least agree on that?

22 MR. VARGAS: Objection, Your Honor.

23 MR. ROSENZWEIG: He won't give me an answer.

24 THE COURT: He seems to be combative on providing
25 specific answers or even ballparks. Go ahead, Counsel.

1 THE WITNESS: I have no problem giving every time
2 I testified. I cannot -- the thing is that what happens is
3 like here, I'll say I saw 30 patients and then the next
4 time they'll say, well, you said you saw 30 patients. So I
5 can't do that and be 100 percent accurate. I want to be
6 accurate. I want to portray the truth.

7 THE COURT: Doctor, there is a way to provide a
8 general estimate and facts are facts. They shouldn't
9 change.

10 THE WITNESS: A hundred percent.

11 THE COURT: So provide your estimates.

12 A It was definitely less than ten last year, 2025, I
13 believe.

14 Q In the last five years, can you estimate how many
15 times you testified?

16 A Estimated my whole career, I testified probably less
17 than 20 times.

18 THE COURT: In your whole career as a physician?

19 THE WITNESS: Correct.

20 Q How long is that?

21 A I graduated from fellowship in 2014. Twelve years.

22 Q When was it that you stopped --

23 A I wouldn't say I do it regularly.

24 Q Two or three times a month sound right?

25 A No. How does that make any sense? Twenty times in 12

1 years.

2 Q Are you familiar with the concept garbage in, garbage
3 out?

4 A No.

5 Q Have you ever heard that before?

6 A No.

7 Q What I mean by that is poor quality input data leads
8 to poor quality, unreliable, faulty output data. Would you
9 agree with that?

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

11 Q I'm saying if you have bad information to start, you
12 have bad information coming out. Would you agree with that?

13 A Regarding what?

14 Q Regarding your medical treatment of patient. If you
15 don't have the right information in the beginning, you can't
16 give a correct diagnosis, correct?

17 A Are you talking about my treatment of patients?

18 Q Correct.

19 A On an overall?

20 Q Yes.

21 A You're telling me that I have bad information from all
22 my patients?

23 Q I am asking you in general, sir, that if you don't
24 have good information --

25 THE COURT: Stop, Counsel. Obviously he is

1 alluding to the fact that if you have inaccurate
2 information provided by a patient at the beginning, it
3 would affect or somehow impact your treatment going forward
4 under those circumstances. Is that correct, Doctor?

5 THE WITNESS: Yes, Your Honor, of course. If you
6 ask a question like that, I can give an answer. Yes.

7 Q Just try to answer my questions, okay?

8 MR. VARGAS: Objection.

9 THE COURT: Sustained. He should answer mine
10 too. Go ahead, Counsel.

11 MR. ROSENZWEIG: Absolutely.

12 Q You first saw Mr. Buestan on September 20, 2020,
13 correct?

14 A 9/2/2020.

15 Q Within that report, you take a history of present
16 illness, correct

17 A Correct.

18 Q The date of loss you have is September 13, 2019,
19 correct?

20 A That's correct.

21 Q That's not right.

22 A That's what I was informed of, yes.

23 Q Is there anything else you read in your records that's
24 incorrect?

25 A I don't believe so. Besides the fact that he said he

1 never had any problems with his neck or back prior to the
2 injury.

3 Q You know that's not true, correct?

4 A Correct.

5 Q Can you read for the jury the sentence that starts
6 patient states?

7 A Patient states that the issue is worsening and the
8 pain keeps him up at night.

9 Q The middle paragraph. Patient states that he has
10 never --

11 A Patient states that he has never had any problems with
12 the neck or back prior to the jury.

13 Q You directly asked him, did you have any problems with
14 your neck and your back prior to the injury, correct?

15 A Correct.

16 Q He said no, correct?

17 A That's correct.

18 Q That's not true, correct?

19 A That's correct.

20 Q How long was your initial consultation on September 2,
21 2020.

22 A I don't know. Half hour.

23 Q And your record from September 2, 2020, you provide an
24 opinion on causation; do you not?

25 A Yes.

1 Q And, again, it's prefaced by that phrase, if the
2 history provided is accurate, correct?

3 A That's correct.

4 Q Here the history provided was not accurate, correct?

5 A That's correct.

6 Q You have made this determination as to causation
7 without a review of Dr. Lal's records from 2014 to 2018?

8 A No. I didn't have access to those records.

9 Q You didn't have access to the acupuncture records for
10 four years prior to this accident, correct?

11 A That's correct.

12 Q Are you aware of Plaintiff's occupation?

13 A Yes.

14 Q Demolition worker?

15 A That's correct.

16 Q Heavy blue collar hard job, correct?

17 A That's correct.

18 Q It can degenerate the back; wear and tear on the back?

19 A Yes.

20 Q Are you aware he played soccer?

21 A I don't know his extracurricular activities.

22 Q Did you read his transcript from a couple of days ago?

23 A Yes.

24 Q Did you read that he played soccer?

25 A Yes. You are reminding me of it now.

1 Q He played on a weekly basis, right?

2 A Correct.

3 Q That can wear and tear on the back, right?

4 A Yes.

5 Q Same thing with pre-accident work doing farming,
6 correct? Wear and tear, bending, and lifting.

7 A Correct.

8 Q Without a full medical history, you can't provide a
9 causation determination, can you?

10 A I can only provide a causation with the information
11 that I have.

12 Q If that history is not accurate, the information is
13 not accurate, the determination of causation, correct?

14 A Well, we have to always take all of the facts and then
15 come up with a hypothesis.

16 Q And if you don't have some of those facts, you can't
17 come up with a hypothesis, correct?

18 A Well, again, we would like to know all information.

19 Q It's possible the herniations and bulges preexisted
20 the accident, correct?

21 A If there was an MRI study that you had, I would love
22 to see it.

23 Q We don't have a MRI study, right, that you're aware
24 of?

25 A Right. Not as far as I know. If you don't mind me

1 asking you; when were these records obtained?

2 MR. ROSENZWEIG: Objection, Your Honor. You
3 can't ask me questions.

4 THE COURT: Sustained. You just answer the
5 questions, Doctor.

6 Q You're not aware of MRIs?

7 A No.

8 Q We don't know whether the herniations and bulges you
9 saw after the accident preexisted the date of loss, correct?

10 A We have no idea.

11 Q Did you review the initial hospital records?

12 A I don't remember right now, but it's possible I did.

13 Q Can we speak about them? Do you have any knowledge of
14 what they contain

15 A If you have a copy, I would love to see it.

16 Q I'm asking you just from your knowledge. Do you have
17 any knowledge --

18 A I can't testify to them. No.

19 Q Did you bring -- were they part of your file?

20 A They're not in here, no.

21 Q Do you agree that most people have some level of
22 degeneration of their spine as they age?

23 A There is a subset of people, yes, that have
24 degeneration of their spine, yes.

25 Q The older you get, the more chance of degeneration,

1 fair?

2 A One thousand percent correct.

3 Q More acute for blue-collar workers rather than lawyers
4 sitting in a courtroom.

5 A Well, it depends on a lot of different things. It
6 depends on genetics; it depends on work; it depends on a lot of
7 different things.

8 Q More common for blue color workers to have
9 degeneration of a back or a neck than someone who is sitting in
10 an office?

11 A I can't give you an absolute. I have seen blue collar
12 workers that have amazing backs and I see people that sit and
13 have horrible backs. So I can't give you an absolute for that,
14 no.

15 Q Does your occupation matter.

16 A It can certainly contribute, yes.

17 Q If you are doing the same type of repetitive work
18 every day, that can strain your neck and your back, correct?

19 A It's possible. Yes.

20 Q I want to talk about the surgeries that you performed.
21 You mentioned something about guidelines talking about surgery
22 in terms of when you should an MRI, correct?

23 A When you should do an MRI?

24 Q How long you need an MRI before surgery. I think you
25 said it was a year.

1 A Within a year, yes.

2 Q In this case you saw Mr. Buestan about a year after
3 his accident, right?

4 A A little bit less, but yes.

5 Q You saw him before he had new MRIs?

6 A He already had an MRI when I saw him.

7 Q That was from 2019, correct.

8 A It was within the year.

9 Q You also recommended a new MRI, correct?

10 A That's correct.

11 Q But that very first time, after 30 minutes, you
12 recommended surgery?

13 A Correct.

14 Q How much do you charge for surgery?

15 A Whatever the Workers' Comp guidelines are, as I said
16 before.

17 Q You perform surgery in the hospital?

18 A Yes.

19 Q I looked at your resume. You state you have
20 privileges at certain hospitals, correct?

21 A That's correct.

22 Q What you does it mean to have privileges?

23 A To operate, admit patients.

24 Q You performed this surgery at Lenox Hill?

25 A Correct.

1 Q Do you still have privileges at Lenox Hill?

2 A No, I don't.

3 Q Why not?

4 A I left a bunch of different hospitals around that time
5 and I focused on being in Long Island and being closer to home.

6 Q You know longer have privileges at Lenox Hill?

7 A Correct.

8 Q You no longer have privileges at Mount Sinai Beth
9 Israel?

10 A Correct.

11 Q You no longer have privileges at New York Queens.

12 A Correct.

13 Q Where are you left?

14 A At Mercy Hospital and Hudson Regional Hospital.

15 Q After the neck surgery, back surgery was performed?

16 A Yes.

17 Q Mr. Vargas was questioning you. He had a great
18 recovery, correct?

19 A I believe he did.

20 Q Neck pain improved?

21 A Yes.

22 Q Range of motion improved?

23 A Yes.

24 Q Lower back, same thing? Better range of motion, less
25 pain.

1 A He himself said he feels better.

2 Q He now says his pain is two of ten when he takes
3 medication?

4 A That's right.

5 Q Do you believe he can return to work doing something?

6 A Yes. Of course.

7 Q You last saw him on April 10, 2024?

8 A Yes.

9 Q Was the pain mild?

10 A That's correct. Mild paper.

11 Q You haven't seen him since. Fair?

12 A Fair.

13 Q No appointments in 2025?

14 A I don't know what date I did the narrative, but I
15 haven't seen him.

16 Q Almost two years since you saw him?

17 A That's correct.

18 Q You read in the transcript. He is able to travel?

19 A I believe so.

20 Q He went to Ecuador twice?

21 A Correct.

22 Q He went to the Dominican Republic?

23 A Yes.

24 Q Treatment works.

25 A Okay. Thanks.

1 Q Did you see the surveillance video?

2 A No.

3 Q Did you see the social media posts?

4 A No.

5 Q As part of your ability to treat injured workers like
6 Mr. Buestan, you have to be authorized to do so, correct?

7 A That's correct.

8 Q As part of the authorization, you agree to abide by
9 certain rules and regulations including certain medical
10 treatment guidelines. Fair?

11 A That's correct.

12 Q You sign your reports under penalty of perjury,
13 correct?

14 A That's right.

15 Q On March 13, 2025 you applied for a new authorization
16 to treat injured workers, correct?

17 A I don't know if that was the date, but if you say so?

18 MR. VARGAS: Objection.

19 THE COURT: Overruled.

20 Q Your request for authorization was denied, correct?

21 A I was not reauthorized. That is correct.

22 Q You were no longer authorized to treat injured
23 workers. Fair?

24 A I was no longer authorized. That is under
25 adjudication.

1 Q In fact, you were provided with a 20-page letter
2 listing why your authorization was denied?

3 THE COURT: Sustained.

4 Q Treatment lacked adequate and credible documentation.
5 Fair?

6 THE COURT: Read the question please.

7 (Whereupon, the requested portion was read by the
8 reporter.)

9 THE COURT: Overruled. Was that one of the
10 findings or the basis for denying your renewal for
11 authorization?

12 THE WITNESS: I don't have it in front of me, Your
13 Honor, but I can certainly explain if you would like me to.

14 THE COURT: No. I want you to answer the
15 question.

16 Q Was one of the other justifications that your
17 treatment lacked medical justification or clinical indications
18 for certain procedures?

19 A I don't have in front of me.

20 Q I would be happy to provide a copy if you want to look
21 at it.

22 THE COURT: No.

23 MR. VARGAS: Objection, Your Honor.

24 THE COURT: Overruled and the basis for those
25 loss of privileges, you can explore this without going too

1 far.

2 MR. VARGAS: Note my objection. I have a
3 continuing objection.

4 THE COURT: Overruled.

5 Q They also found that you performed medical procedures
6 in a pattern, quantity, and frequency greater than recommended
7 and without medical justification? Was that one of the
8 findings that resulted in the revocation of the authorization?

9 THE COURT: Sustained as to form. I don't know
10 if they revoked his authorization.

11 Q One of the findings in that letter is that you perform
12 medical procedures in a pattern, quantity, or frequency greater
13 than recommended and without medical justification. Was that
14 one of the findings?

15 THE COURT: Which served as the basis to deny
16 renewal of your authorization.

17 A If you're reading from the 19-page letter, then it
18 says what it says.

19 Q Many of the injured workers you treat are plaintiffs
20 in personal injury litigation back in 2019, correct?

21 A I have no idea who goes to litigation and who doesn't.

22 Q Some subset of your patients are plaintiffs in
23 personal injury litigation?

24 A Yes.

25 Q Some from the Gorayeb firm, correct?

1 A That's correct.

2 Q You're aware, are you not, that undergoing surgical
3 procedures, as defense contends here, increases the value of a
4 lawsuit?

5 A Well, we are here today, so I imagine yes.

6 Q In your practice, you prioritize surgery over
7 conservative treatment to maximize the value of lawsuits,
8 correct?

9 A That is completely incorrect.

10 MR. VARGAS: Objection.

11 THE COURT: Overruled.

12 Q You said you had an extensive conversation with the
13 plaintiff prior to the surgery. Do you remember that?

14 A Yes.

15 Q Now we know extensive is 30 minutes, correct?

16 A However much time the patient needs to understand the
17 surgery. He visited multiple times before he had the surgery
18 and we discussed it at all the appointments.

19 Q In your first report of 9/2/20, it says you had an
20 extensive conversation with him and recommended surgery?

21 A That's right.

22 Q The length was at most 30 minutes?

23 A Yes.

24 Q This is a serious surgery, right, putting in hardware?

25 A It's a surgery, yes.

1 Q Within 30 minutes you decided that this man needed
2 surgery, correct?

3 A Okay.

4 Q Is that in keeping with the medical guidelines?

5 A Is there a standard for how long --

6 Q I'm asking you.

7 MR. VARGAS: He is cutting him off.

8 THE COURT: Sustained. Don't get combative,
9 Counsel.

10 MR. ROSENZWEIG: My fault, Your Honor.

11 THE COURT: Why don't you ask the question in a
12 form that asks whether there is a standard or not for how
13 much time.

14 Q Is there a standard for how much time you need to
15 consult with the patient?

16 A The standard is to go over the imaging, talk to the
17 patient, do a physical exam, and to have a conversation with
18 the patient. However long that takes.

19 Q In this case it took 30 minutes?

20 A It's what I stated. Yes.

21 Q You have said you read the records from Dr. Lal's
22 office?

23 A I said I didn't.

24 Q I thought you said that Mr. Vargas showed it to you.

25 A I thought you meant at the time I first saw him.

1 Q No. As of now. As we are sitting here today.

2 A Yes.

3 Q The pain level was six to ten?

4 A I don't have an independent recollection. I will
5 trust what you say.

6 Q Constant pain and discomfort in the lower back?

7 A If that's what it says.

8 Q Tried and failed physical therapy, rest, ice, heat?

9 A If that's what it says.

10 Q Cervical spine range of motion decreased 25 to 30
11 percent?

12 A If that's what it says.

13 Q Tenderness to the lumbar spine?

14 A If that's what it says.

15 Q Two trigger-point injections?

16 A If that's what it says.

17 Q Based on those findings, you would have recommended
18 surgery in 2017, correct?

19 A Absolutely not.

20 MR. ROSENZWEIG: That's all I have.

21 THE COURT: Any redirect?

22 MR. VARGAS: Yes, Your Honor.

23 REDIRECT EXAMINATION BY

24 MR. VARGAS:

25 Q While we're on the subject of Dr. Lal's records, why

1 wouldn't you have recommended surgery based on what he told
2 you.

3 A Very simple. He did not fail conservative treatment,
4 as I have said. He didn't have at that point a full course of
5 physical therapy as far as I am concerned. He did not, as far
6 as I know, take a full course of anti-inflammatories. He did
7 not have epidural injections, and most importantly or not most
8 importantly, one of the other factors is he didn't even have an
9 MRI. So how did the doctor even know what was going on? For
10 sure I would have never recommended surgery.

11 Q As far as the letter cited by Counsel, the
12 justifications, are any of those true?

13 A Certainly not. It's very nice he was asking questions
14 and quoting from a letter. We have to know the basis of the
15 letter and the truth. So the truth is --

16 THE COURT: You answered the question.

17 Q What is the truth, Doctor?

18 MR. ROSENZWEIG: Objection, Your Honor.

19 MR. VARGAS: He brought it up.

20 MR. ROSENZWEIG: It's not an opportunity for a
21 soap box moment.

22 THE COURT: Doctor, you contest the findings of
23 the letter?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: You feel it doesn't represent the

1 truth of your practice?

2 THE WITNESS: We have facts.

3 THE COURT: I asked a question.

4 THE WITNESS: That is correct.

5 THE COURT: There you go.

6 Q What do you contest about it?

7 MR. ROSENZWEIG: Objection.

8 THE COURT: Do you really want to go --

9 MR. VARGAS: Yes, Your Honor. He brought it up.

10 THE COURT: Go ahead.

11 THE WITNESS: So I'm allowed to speak freely,

12 Your Honor?

13 MR. VARGAS: Yes. He said go ahead.

14 THE COURT: I will determine whether he speaks
15 freely or not. Testify, Doctor.

16 A It's very clear. The Workers' Comp Board stated that
17 they -- this is all in a lawsuit I have sued the State. The
18 Workers' Comp Board stated they did an investigation. They did
19 not provide any investigation note. There isn't even a spine
20 Southern that went over these surgeries to say they were not
21 needed. Not only that. The people that did go over this, the
22 doctor who is a not a practicing doctor, who is a doctor of
23 environmental medicine --

24 THE COURT: We're not going to litigate that
25 here.

1 THE WITNESS: Can I say one more thing, Your
2 Honor?

3 THE COURT: No. Go ahead.

4 Q Doctor, for any of these surgeries that you do, are
5 they approved by Workers' Comp?

6 A Yes.

7 Q How are they approved?

8 A The process is we have to send in all of the notes,
9 all of the pain management notes, whatever physical therapy
10 notes we can get, all the MRIs and then the insurance company
11 approves it or doesn't approve it. My surgeries I did were
12 approved.

13 Q When they come to that determination, they have the
14 person go see one of their doctors that they hire, correct?

15 A There are independent medical exams in order to
16 authorize surgeries, yes.

17 Q And those doctors submit the reports to Workers'
18 Compensation?

19 A Correct.

20 Q And for every one of the surgeries you've done, they
21 approved it. They said yes, it is necessary; go ahead and do
22 the surgery, correct?

23 THE COURT: Sustained. Let's keep it to Mr.
24 Buestan.

25 Q Mr. Buestan, they approved his surgery, correct?

1 A The insurance company approved the surgery.

2 MR. ROSENZWEIG: Objection.

3 THE COURT: Let's take it this way. Were you
4 paid by the Board for the surgery you performed?

5 THE WITNESS: I believe so, yes.

6 THE COURT: That's the end of that. We're not
7 going --

8 MR. VARGAS: I'm sorry, Your Honor. He gets to
9 bring it up. I object that he is not allowed to explain
10 fully.

11 THE COURT: You rehabilitated that issue.

12 MR. VARGAS: I take exception the that.

13 THE COURT: And you may.

14 MR. VARGAS: No further questions.

15 MR. ROSENZWEIG: One question, Your Honor.

16 THE COURT: It's never just one, but try.

17 RECROSS-EXAMINATION BY

18 MR. ROSENZWEIG:

19 Q You mentioned surgeries have to be approved by the
20 Board?

21 A Yes.

22 Q In the letter, it says your approval rate was 27
23 percent, correct?

24 THE COURT: You're not objecting.

25 MR. VARGAS: I have a standing objection to the

1 letter, that he won't be allowed to talk about.

2 THE COURT: It has nothing to do with the
3 approval rating. It is sustained. You don't have to
4 answer the question. Doctor, you may step down.

5 Do we have any other witness we can call at this
6 time?

7 MR. VARGAS: Not until this afternoon.

8 THE COURT: You should be back after lunch 2:15.
9 That means as they say in the old days, executive speaking,
10 you can eat fish. It takes time. You have to take out the
11 bones. Be safe. Enjoy your lunch. We will see you at
12 2:15.

13 THE OFFICER: All rise. Jury exiting.

14 (Whereupon, the jury exited the courtroom.)

15 THE COURT: All right. Is there any housekeeping
16 that we need to attend to?

17 MR. VARGAS: No, Your Honor.

18 THE COURT: See you at 2:15.

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