

1 medical certainty, whether or not the accident of June 27, 2017,
2 was the cause of the clinical and diagnostic findings on your
3 examination?

4 A Again, if the history provided was correct, then within
5 a reasonable degree of medical certainty, yes.

6 Q Can Mr. Abreu Perez have been suffering from a
7 degenerative condition without symptoms?

8 A By the time --

9 Q Prior to the accident, I'm sorry, prior to the
10 accident?

11 A Certainly, everyone who is more than born, at some age,
12 a 30-year-old has degeneration, I have seen 18-year-olds with
13 degeneration, then I have seen 80-year-olds with severe, severe
14 compression, and they feel fine, they come to me because someone
15 found an MRI that says they have severe compression.

16 We don't operate on MRIs, that's not, that's not, you
17 know, you show an MRI, let's do surgery, that's great, we
18 operate on people, so you have to put everything together, MRIs
19 are one tool that we have, that's one, to say okay, that's
20 probably where the problem is, that's one of the reasons I
21 ordered a discogram, I wanted to find out where is that guy's
22 problems, he's suffering for a long time, where's his issue.

23 Q What you found out, was that consistent with Mr. Abreu
24 Perez's history of having fallen from a height on June 27, 2017?

25 A Within a reasonable degree of medical certainty, yes.

1 Q Do you have an opinion, within a reasonable degree of
2 medical certainty, whether or not the pain that Mr. Abreu Perez
3 was complaining of was caused by the fall from a height?

4 A Yes.

5 Q Tell the jury what that opinion is?

6 A Well, within a reasonable degree of medical certainty,
7 as far as I know, he had no pain in his back or neck prior to
8 this accident, he went through all of this treatment, and he
9 still had pain, so as a doctor, I'm supposed to respond to the
10 pain.

11 Q You said neck, is it neck and back or just the back?

12 A The neck and the back.

13 Q So you raise a good point there, so Mr. Abreu Perez was
14 treating with other physicians during this time; correct?

15 A Yes.

16 Q And is that what's known as conservative treatment
17 before he sees you?

18 A Usually, patients will do conservative treatment before
19 they go to a surgeon, yes.

20 Q Why do we try to do that?

21 A We try to do everything not to do surgery, I see many
22 more patients that I don't do surgery on than I do, do surgery
23 on.

24 Q Who are the other physicians, who are the other
25 physicians that Mr. Abreu Perez was seeing?

1 A He was seeing doctor, Dr. Grimm and Dr. Kaplan.

2 Q And was Mr. Abreu Perez indicated for surgery?

3 A Yes.

4 Q And approximately when did you determine that he
5 required lumbar or cervical surgery?

6 A The cervical surgery I saw him on the second visit
7 4/18/2018, and the lumbar, I believe it was later.

8 MR. ALVARADO: Can you read that back.

9 (Whereupon, the record was read back by the
10 reporter.)

11 A I believe that was lumbar 2/9/22.

12 Q February 9, 2022?

13 A Yes.

14 Q So in this case, Mr. Abreu Perez had an automobile
15 accident December 27, 2022, with a finding by the hospital of no
16 significant injury; does that impact your indication for surgery
17 four years earlier?

18 A No.

19 Q It's not possible for it to have done that; correct?

20 A He didn't have any pain because of the accident.

21 Q Now, why would Mr. Abreu Perez move from conservative
22 treatment to all indications for surgery?

23 A It's a very good question, you know everyone, everyone
24 has their own pain scale, everyone has whatever they want to do
25 in their life, some people never want to have surgery, that's

1 okay, they just have to understand the risk and benefits.

2 Other people are open to surgery if everything that
3 they've tried beforehand didn't work, so if someone goes to
4 physical therapy, two or three times a week for X amount of
5 times, takes medication, and has injections, and there is a
6 possibility that they could get better, not saying they can get
7 100 percent better.

8 I always tell the patient, I can't make you like you
9 were born, but you can be 50 percent better, you can be
10 80 percent better, so many people will be 30 percent, I told one
11 patient you would be 20 percent better, I don't know if you're
12 going to get better, I was honest with her, and she said you
13 know let's do it. She woke up feeling better. So everyone,
14 everyone is better, and everyone is open to things or not open
15 to things which is I fine, always, we have to give the option of
16 nonoperative before going to surgery, because surgery has
17 inherent risks, we don't know what can happen, so we always tell
18 people to go for nonoperative treatment, unless it's an
19 emergency, the arm doesn't work or something like that,
20 certainly, we always try the nonoperative before going to
21 surgery.

22 Q Can you tell the jury what are some of the risk of
23 cervical or lumbar back surgery?

24 A Any time anyone has surgery, one of the risks is
25 infection, any time you cut the skin, there's risk for

1 infection, with cervical surgery, you're dealing with a lot of
2 highway here, from the neck to the body, the body to the neck,
3 blood vessels, nerves, esophagus, the trachea, there could be a
4 hematoma.

5 There's risk of death in surgery, thank God that has
6 never happened with me, but there's a risk, and I don't think
7 any surgeon wants to put someone under unnecessarily under any
8 risk, so we always have the conversation with the patient about
9 these risks and tell them about them prior to going through the
10 surgery and sometimes we talk about it many times.

11 Q Did Mr. Abreu Perez continue to follow-up with you
12 until the time of surgery?

13 A Yes.

14 Q Was surgery actually performed on Mr. Abreu Perez?

15 A Yes.

16 Q Doctor, we've developed some demonstrative aids, and
17 you had an opportunity to look at them; correct?

18 A Yes.

19 Q Would the demonstrative aid assist you in describing
20 your procedures to Mr. Abreu Perez to the jury?

21 A Sure.

22 MR. KELLY: Your Honor, we neglected to mark these,
23 we're up to 30 and 31 for the Plaintiff.

24 THE COURT: Counsel, did you see them?

25 MR. KELLY: Notice of intention gave them to you

1 many years ago.

2 MR. ALVARADO: I just want to look at them real
3 quick, I see.

4 Objection, subject to injection, he has to lay a
5 foundation.

6 MR. KELLY: Can I get an easel?

7 COURT OFFICER: (Hanging.)

8 MR. KELLY: We will mark that as 30.

9 THE COURT: Plaintiff's Exhibit 30.

10 MR. ALVARADO: 30.

11 THE COURT: For demonstrative aid.

12 MR. ALVARADO: Demonstrative aid.

13 THE CLERK: What is this?

14 MR. KELLY: This is 30 on the easel.

15 THE CLERK: What is it?

16 MR. KELLY: I would say lumbar spine surgery
17 1/3/2003.

18 THE COURT: You can inquire, counsel.

19 Q Doctor, I will ask you to come down and take a look at
20 the demonstrative aids that we've developed, you can take your
21 notes, if you want to.

22 (Whereupon, Dr. Weinstein exited the witness
23 stand.)

24 Q Doc, this demonstrative aid that we're going to mark as
25 Plaintiff's Exhibit 30 in a second, does that fairly and

1 accurately represent the surgeries performed, and the surgery
2 performed by you on Mr. Abreu Perez on January 3, 2023?

3 A Yes, this is for the lumbar surgery.

4 Q Okay. And now, doctor, could you kindly sort of orient
5 us, help us with the anatomy, function, and we can understand
6 what's going on, you can use the marker if you wish?

7 A I will show you what this is, this is the MRI study
8 here, and this is just a depiction of that MRI study, it's --
9 it's a cut that goes like this, through the body, like a side
10 view, and this is the surgery, and I will just go through the
11 surgery and if I need this, to show you something, I will refer
12 to it.

13 But basically when a person goes into surgery,
14 obviously they talk to the surgeon beforehand, the hospital
15 gives them a call beforehand, they come in, in the morning,
16 usually, and they don't eat anything past midnight, they get
17 seen by the anesthesiologist, and by the nurses that are going
18 to be in the room, we sign the consent, and any last questions
19 are answered.

20 After that, the patient gets an IV for fluids and other
21 medications that go in during the surgery and the patient is
22 brought to the operating room.

23 In the operating room, there's various monitors that
24 are put on the patient, again, this just goes to it, it's like a
25 big production, it is a big deal, everyone gets the same

1 treatment, you get a pulse oximetry, which is the oxygen level
2 in your blood, we monitor that, and then you get a
3 blood pressure cuff, which monitors your blood pressure, and the
4 pulse oximetry, also monitors the pulse, and you also get the
5 EKG, which monitors your heart rate, and the patient is then
6 given medication, goes to sleep and then for the back surgery
7 they're put on their belly in the Superman position, the arms
8 are up and the back is open.

9 The area is then prepped and draped like we see on TV
10 with all of the blue drapes, and then we take an X-ray, we
11 localize the area and make an incision straight down, right over
12 the spinous process, that bumpy part of the back and it's a very
13 muscular area, if you see on yourself, and we take, we take
14 that, and we dissect off all of the muscle out to the transverse
15 processes, to these, these spiky things here, that also are
16 insertions for various muscles, and we clean off this whole
17 area, because we want to decompress where the spine is, and we
18 also want to do the fusion, because remember, in this case,
19 the -- his disc is the problem that's causing the pain so we
20 have to do a fusion in order to stabilize the disc so it doesn't
21 move anymore.

22 So we take off all of the area, we do a laminectomy
23 which takes off all of the bone around where the nerves are, and
24 we do an osteotomy a little bit, taking off the joints in order
25 to, again, open up the area a little bit for the nerves, as well

1 as to serve as a good fusion bed. Fusion is when you connect
2 two things that were not connected before, we fuse them
3 together, we make the bone grow together.

4 Now, in order to do that, we take -- it's like doing a
5 cast, but an internal cast, so whenever we see someone breaks a
6 bone, they put like a plate and screws in, this is the same
7 thing, we put screws inside, it's like an internal fixator, we
8 put the screws inside, in order to hold that area, and we put
9 rods here, and lock them down in order that that area doesn't
10 move. Afterwards we do something called ^ dequaraterate which
11 is take off the top of the bone to make it all nice and like a
12 bleeding bed, because bleeding causes healing, and the bone we
13 put some bone graft here, in order for the bone to grow together
14 and that's a lumbar decompression, taking off the pressure, and
15 then a fusion to fuse that area.

16 Q You used a couple of words called an "osteotomy,"
17 describe what you had to do?

18 A We take an osteotome and a mallet and we take off area
19 that's like an overhang into the lateral recess area, and we
20 take off the bone in order to make sure that everything is free
21 of any compression.

22 Q Doctor, is that fusion, is that a permanent condition?

23 A Yes.

24 Q And the lumbar surgery you performed on January 3,
25 2023, was that a result of Mr. Abreu Perez's accident on

1 June 27, 2017?

2 A Within -- within a reasonable degree of medical
3 certainty, yes.

4 Q I'm going to ask you to kindly take a look at what
5 we're going to mark as Plaintiff's Exhibit 31, which is the
6 cervical spinal surgery.

7 Doctor, did you perform this cervical spinal surgery?

8 A Yes, I did.

9 Q And the demonstrative aid, we've developed, did you get
10 a chance to look at that?

11 A Yes.

12 Q Does that fairly and accurately represent the process
13 of the surgery to Mr. Abreu Perez on June 18, 2023?

14 A Yes.

15 Q Describe for us a little bit what this does, tell us
16 what we're looking at, the functions and that sort of thing?

17 A Yes, the same process, going into the surgery, but this
18 time the patient is on their back with their neck exposed, and
19 the same drapes come up, and we make an incision like this
20 "indicating", on the body, the -- like a longitudinal incision,
21 and we open up to the muscle, and then we go through, there's
22 muscles here, sternomastoidal muscles, we go through that and
23 the strap muscles between them, and we go forward to the spine.

24 We have to move over the trachea, esophagus, and make
25 sure we don't injure it and then we identify where the disc is.

1 After we identify where the disc is, we put in these Casper
2 pins, and distract that area, it's like changing a flat tire, so
3 we distract, we put the jack in, and we take out the diseased
4 disc, and then put a spacer in, that has bone graft inside of
5 it, and we're doing the same thing, taking off the pressure from
6 the nerve and we are changing the tire and putting in a new
7 tire, but this one is a permanent tire and putting a plate on
8 the front with four screws, in order that the cage does not
9 come out, as well as make sure it's like a cast on there again,
10 to make sure that area does not move and heals as good as
11 possible.

12 Q Okay. So the cervical spinal injury and surgery on
13 June 18, 2024, was that caused by Mr. Abreu Perez's accident of
14 June 27, 2017?

15 A Within a reasonable degree of medical certainty, yes.

16 Q Doctor, you can take the seat, thank you.

17 (Whereupon, Dr. Weinstein resumed the witness
18 stand.)

19 Q Doctor, the aftermath of both of these surgeries, is
20 that painful?

21 A We try to minimize pain, but I would imagine, there's
22 pain involved, yes.

23 Q When you say you "try to minimize pain," how do do
24 that?

25 A The patient is either in the hospital or they go home,

1 with the lumbar spine, it's a bigger surgery, usually in the
2 hospital, out two or three days, they have to get physical
3 therapy, and they're put on, usually opioid, some strong
4 powerful pain medication, with the cervical it's a little less
5 painful, sometimes they do go home, sometimes they stay, but
6 still they need to have medication for spasms and pain.

7 Q Was Mr. Abreu Perez discharged from the cervical
8 surgery with a collar?

9 A Yes.

10 Q Tell us why you do that, what is the purpose?

11 A The collar is for a number of different purposes,
12 Number one, we want, even though we put in the plate, and that
13 causes it not to have much movement, we still want the patient
14 to protect, and in order for him to heal, we put a collar on him
15 for six weeks.

16 Another reason is so no one bumps into him, if you see
17 someone with a collar, you're probably not going to go into it
18 them, it's self-protective, they don't get bumped around if
19 walking around outside.

20 Q Did Mr. Abreu Perez follow-up with you postsurgery?

21 A Yes.

22 Q Tell us a little bit about his follow-up visits?

23 A Sure, after his surgeries, certainly, he was in pain,
24 however, he did feel better than preoperatively, which is we
25 hopefully expect.

1 Q Do you have a prognosis for Mr. Abreu Perez within a
2 reasonable degree of medical certainty?

3 A His prognosis, should be better than it was before the
4 surgery hopefully.

5 Q Remind the jury, what does "prognosis" mean?

6 A The outcome.

7 Q Mr. Abreu Perez, the conditions from which he currently
8 suffering including the fused levels, is that permanent?

9 A Yes.

10 Q Is the permanence a result of the accident of June 27,
11 2017?

12 A Within a reasonable degree of medical certainty, yes.

13 Q Tell us, Mr. Abreu Perez suffers from diabetes and some
14 high cholesterol and hypertension.

15 Does that have anything to do with his course into the
16 future, as far as you can tell?

17 A Sure, I mean, it does add risk factors to things like
18 what we call adjacent level disease, so, what we have here is a
19 vertebra that was moving, and now we fused it, it's not moving,
20 now there's more stress above, so there's a chance of the
21 adjacent level disease to happen especially with a diabetic.

22 Q Is that for the lumbar as well as the cervical?

23 A It's more for the lumbar than the cervical, but it can
24 happen to both.

25 Q Assume there Roberto Abreu Perez continues to have pain

1 of some level of pain.

2 Do you have an opinion, to a reasonable degree of
3 medical certainty, as to whether Mr. Abreu Perez will require
4 continued medical care and treatment for the rest of his life?

5 MR. ALVARADO: Note my objection, we went through
6 this with Dr. Grimm already.

7 MR. KELLY: He is the spinal surgeon.

8 MR. ALVARADO: I'm sorry, we can approach?

9 THE COURT: Let's stop outside out.

10 (Whereupon, an off the record bench discussion was
11 held.)

12 THE COURT: You can step down.

13 THE WITNESS: Should I leave?

14 THE COURT: Yes.

15 COURT OFFICER: All rise, jury exiting.

16 (Whereupon, the jury exited the courtroom.)

17 (Whereupon, Dr. Weinstein exited the witness stand
18 and the courtroom.)

19 THE COURT: I ask you to wait in the hall until we
20 come get you, everyone else can have a seat.

21 Mr. Kelly, do you have 3101(d.)?

22 MR. KELLY: I do, it's -- it's 56 pages, but yes.

23 MR. ALVARADO: Judge, can we on the record?

24 THE COURT: Yes.

25 MR. ALVARADO: So Dr. Weinstein mentions in a note

1 that he may require future orthopedic spinal surgery, so I'm
2 going to withdraw my objection, that's fair to do, if he
3 goes into costs, then I have a problem, because Dr. Grimm
4 already testified, and he laid out his treatment plan,
5 Dr. Grimm referred Mr. Abreu Perez to Dr. Weinstein, so
6 obviously, they communicate, and you'll see in his cross
7 that's not the only time they communicate, and my problem
8 is, now, we're going to let him put in that he may need
9 further surgery without a cost associated with it, but
10 Dr. Grimm didn't say he needed it and that's his pain
11 management specialist, and he's the one what set out the
12 treatment plan, my doctor already testified.

13 THE COURT: With respect to Dr. Goldman, did
14 Dr. Goldman --

15 MR. ALVARADO: I can't hear you.

16 THE COURT: Did Dr. Goldman's assessment include
17 future surgeries?

18 MR. ALVARADO: No.

19 MR. KELLY: It did no.

20 MR. ALVARADO: It did not.

21 MR. KELLY: It did not, none the them, this is his
22 treating physician, he's entitled to opine he requires
23 future surgery, if they weren't --

24 THE COURT: The notice of expert witness does say
25 on the second page, his prognosis for this patient, his

1 fees, and fees that would have been incurred by the
2 Plaintiff for his medical care and treatment and fees that
3 may be incurred in the near future, the surgery is performed
4 on Plaintiff and/or need for surgery.

5 MR. ALVARADO: Judge, where are you reading from,
6 tell me what page?

7 THE COURT: The second page, this doesn't look like
8 what you have.

9 MR. ALVARADO: That doesn't look like what I have.

10 MR. KELLY: I also don't have hole punches --

11 THE COURT: One moment.

12 MR. ALVARADO: Is that a notice of expert witness?

13 MR. KELLY: As an affidavit of service.

14 MR. ALVARADO: Dated October 17, 2024.

15 THE COURT: October 17, 2024.

16 MR. ALVARADO: What page?

17 THE COURT: The second page.

18 MR. ALVARADO: Yep, got it, I'm with you.

19 MR. KELLY: So he's entitled to talk about it,
20 okay.

21 THE COURT: I will allow the question.

22 MR. KELLY: Just to be clear, I can ask him what
23 the cost is.

24 THE COURT: Yes.

25 MR. ALVARADO: I have my objection on the record.

1 (Whereupon, Dr. Weinstein resumed the witness
2 stand.)

3 THE COURT: Mr. Alvarado, you're withdrawing your
4 objection with respect to future surgeries, but not as to
5 the fees?

6 MR. ALVARADO: Correct.

7 THE COURT: Obviously, Mr. Alvarado, that is an
8 argument you can make to the jury this wasn't included, but
9 he's going to be allowed to question.

10 MR. ALVARADO: Yes, understood.

11 (Pause in the proceedings.)

12 COURT OFFICER: All rise, jury entering.

13 (Whereupon, the jury entered the courtroom.)

14 THE COURT: Alright, everyone, you may be seated.
15 Mr. Kelly, you can continue.

16 MR. KELLY: Thank you. Can I have the last
17 question read back?

18 THE COURT: Madam Reporter, reread the last
19 question.

20 (Whereupon, the question was read back by the
21 Reporter.)

22 A If he has pain, he should see a doctor, that would be
23 commonsense.

24 Q Well, will Mr. Abreu Perez require testing for the
25 balance of his life?

1 A It's possible.

2 Q To a reasonable degree of medical certainty, do you
3 think Mr. Abreu Perez based upon his complaints to you and his
4 postsurgical course will require testing, treatment and medical
5 care for the rest of his life?

6 A It's possible.

7 MR. ALVARADO: Judge, objection, we spoke about
8 this in the back.

9 MR. KELLY: You said I could.

10 THE COURT: Yes.

11 MR. ALVARADO: No, I have my objection.

12 THE COURT: You can answer.

13 A It's possible, yes.

14 Q And you said possible, so?

15 MR. ALVARADO: Note my objection.

16 Q To a reasonable degree of medical certainty, will
17 Mr. Abreu Perez benefit --

18 THE COURT: Sustained.

19 MR. ALVARADO: I ask that be stricken.

20 MR. KELLY: I oppose that.

21 MR. ALVARADO: He said, it's possible.

22 THE COURT: He says it's possible.

23 MR. ALVARADO: He may require testing and anything
24 else.

25 THE COURT: That's overruled, the next question is

1 sustained.

2 MR. KELLY: Okay.

3 Q I would like you to assume that Mr. Abreu Perez
4 continues to complain of pain at some level, not quite the level
5 before surgery, do you have an opinion, to a reasonable degree
6 of medical certainty, whether or not Mr. Abreu Perez should be
7 treated for that pain for the balance of his life?

8 A Yes.

9 Q Tell the jury what the opinion is?

10 A I think that if someone has pain, you have to address
11 their pain, so they would need to be evaluated, possibly get
12 imaging, and possibly other tests or treatments.

13 Q Is that to a reasonable degree of medical certainty?

14 A Yes.

15 Q Is the fact that Mr. Abreu Perez suffers from diabetes,
16 hypertension and high cholesterol factor into your opinion
17 whether or not in view of his ongoing pain will continue to
18 require medical care, testing for the rest of his life?

19 A Certainly can.

20 Q In this case, does it?

21 A Yes, that's his ailments, so it affects him.

22 Q And that's to a reasonable degree of medical certainty?

23 A Yes, as you said, it's all to a reasonable degree of
24 medical certainty.

25 Q With respect to his future medical care testing and

1 treatment, all of that has a cost, does it not?

2 A Of course.

3 Q You talked about adjacent disc disease, what is the
4 likelihood that Mr. Abreu Perez will suffer from adjacent disc
5 disease in the future?

6 A The likelihood according to the literature is 20 to
7 30 percent.

8 Q Does Mr. Abreu Perez have a heightened probability due
9 to his diabetes, hypertension, hyper- cholesterol?

10 A It's possible.

11 Q To a reasonable degree of medical certainty, does
12 Mr. Abreu Perez have a higher probability of requiring future
13 surgery for adjacent disc disease due to his constellation of
14 medical condition, including diabetes, hypertension and
15 hyper-cholesterol?

16 A To a reasonable degree of medical certainty, he can
17 possibly have further treatments, yes.

18 Q And all of these future treatments, are they the
19 results of accident to a reasonable degree of medical certainty?

20 A To a reasonable degree of medical certainty, if the
21 history provided was correct, then yes.

22 Q Will Mr. Abreu Perez require cervical epidurals in the
23 future?

24 A It's possible.

25 Q To a reasonable degree of medical certainty, should he

1 still complain of pain and limitations including radicular pain,
2 would he benefit from cervical epidurals into the future?

3 A To a reasonable degree of medical certainty, yes.

4 Q Do you anticipate Mr. Abreu Perez will suffer some pain
5 for the rest of his life?

6 A It's --

7 MR. ALVARADO: Note my objection, it calls for
8 speculation now.

9 THE COURT: Sustained.

10 A Certainly possible.

11 THE COURT: Don't answer.

12 Q Within your practice --

13 THE WITNESS: Sorry, your Honor.

14 THE COURT: It's okay.

15 Q Within your practice, doctor, when you do surgery, that
16 lessens somebody's pain, does it ever go away or stay with them
17 forever?

18 MR. ALVARADO: Note my objection, relevance.

19 Q In your practice, doctor?

20 THE COURT: Overruled, you can answer that.

21 A Sometimes it goes away, sometimes they still have pain,
22 it depends on the person, everyone is different.

23 Q And we're now three years after Mr. Abreu Perez's
24 lumbar surgery, with respect to his difference, do you
25 anticipate he will continue to suffer from pain into the future?

Dr. Joseph Weinstein - Plaintiff - Direct

1 MR. ALVARADO: Objection, speculation.

2 THE COURT: Sustained, don't answer it.

3 THE WITNESS: Thank you, your Honor.

4 Q Doctor, are you charging a fee for your time away from
5 the office today?

6 A Yes.

7 Q Tell us what the fee is?

8 A For my time it's \$10,000.

9 Q If you are not here, what would you be doing?

10 A Today is Tuesday, usually a surgery day.

11 Q Are you seeing Workers Comp accidents anymore?

12 A I'm not seeing Worker Compensation any longer, no.

13 Q Were you actually paid for the work you did to
14 Mr. Abreu Perez?

15 A I am not the CFO of my company, but I believe so.

16 Q Can you tell us how those approvals and payments work?

17 A Sure. So the way it works with Workers Compensation,
18 is, first the body part needs to be established, and so that's
19 established, by lawyers and judges and a process that I'm not
20 really involved in, and after that, the patient has treatment,
21 as he went through nonoperative treatment, and after the
22 nonoperative treatment, if surgery is indicated, there's an
23 approval process.

24 So in his case, or in all cases, we will do all cases
25 first, we send in the notes, our notes, we send in whatever pain

1 management notes we have, whatever physical therapy notes we
2 have, and we send in the MRI, all of his treatment and then
3 either it gets approved or denied.

4 In his case, his lumbar --

5 MR. ALVARADO: Note my objection. We can approach.

6 THE COURT: Okay, come up.

7 (Whereupon, an off the record bench discussion was
8 held.)

9 THE COURT: So don't answer the question, and part
10 of the question and answer is stricken from the record.

11 Q By the way, were you paid for your work, for your
12 medical care and treatment with Mr. Abreu Perez?

13 A I believe so.

14 Q Is that because it was proximally caused by the
15 accident?

16 MR. ALVARADO: Note my objection, he doesn't know
17 if he was paid.

18 THE COURT: Sustained.

19 Q Doctor, were you not paid for the work that you did?

20 MR. ALVARADO: Objection, note my objection.

21 THE COURT: Sustained.

22 MR. ALVARADO: I mean --

23 Q Doctor, do you have a lien on this accident case, in
24 this case?

25 MR. ALVARADO: Note my objection, if we can

1 approach?

2 THE COURT: Sustained.

3 MR. KELLY: Okay.

4 Q Doctor, in order for a case to be established, does it
5 have to be shown to an independent medical examining body that
6 the injuries were proximally caused by the accident?

7 MR. ALVARADO: Note my objection. I ask that
8 question be stricken from the record, and let's approach.
9 If he's going to go into this area, let's make a record.

10 THE COURT: Alright. I'm going to ask the jurors
11 to step out.

12 (Pause in the proceedings.)

13 MR. KELLY: Your Honor, I have two more minutes, so
14 we can make the record later or whatever.

15 MR. ALVARADO: No, no, I don't know where he's
16 going.

17 THE COURT: He wants a record on the question, you
18 want to ask that question; otherwise, it's sustained right
19 now.

20 MR. KELLY: I'm two seconds from being done, and we
21 can get him out of here.

22 THE COURT: Objection sustained.

23 MR. ALVARADO: Yeah, I was going to suggest I will
24 do it, if we argue or not, I can take the two minutes, look
25 at his files so we don't have to let the jury go.

1 THE COURT: We can do it after.

2 MR. ALVARADO: It will take a minute to get --

3 THE COURT: Let him stay here.

4 MR. ALVARADO: Then we will do it when you let them
5 out for two minutes.

6 Q Doctor, what is black disc disease?

7 A Black disc disease is degenerative disc disease.

8 Q And does that impact in any way Mr. Abreu Perez's care
9 and treatment under your treatment?

10 A Sure, of course.

11 Q Tell us?

12 A So, black disc disease is, again, we were talking about
13 the discogram, so the disc is actually itself degenerative, and
14 black disc disease can happen naturally, it can happen after a
15 trauma, where someone was fine and then they had a trauma and
16 then their back hurts, and that's what happens with black disc
17 disease, and the answer for black disc disease is the fusion
18 that we did.

19 Q So if Mr. Abreu Perez suffered from black disc disease,
20 is that perfectly consistent with your opinions previously as to
21 the care and treatment being caused by the accident?

22 A Yes, within a reasonable degree of medical certainty,
23 because he didn't have this pain before the accident, it only
24 makes sense.

25 Q Doctor, he was, Mr. Abreu Perez was indicated for

1 surgery prior to his motor vehicle accident of December 27,
2 2022; is that correct?

3 A Yes.

4 Q And does the motor vehicle accident of December 27,
5 2022, have any impact at all on your care and treatment with
6 respect to Mr. Abreu Perez?

7 A I don't believe he injured his low back or neck in that
8 accident, so I don't think so.

9 MR. KELLY: Doctor, I have no further questions for
10 you, thank you very much.

11 THE COURT: Now, you can take the jury out.

12 COURT OFFICER: All rise, jury exiting.

13 (Whereupon, the jury exited the courtroom.)

14 (Whereupon, a short break was taken.)

15 (Pause in the proceedings.)

16 COURT OFFICER: All rise, jury entering.

17 (Whereupon, the jury entered the courtroom.)

18 THE COURT: Alright, everyone can have a seat,
19 Mr. Alvarado, you may inquire.

20 CROSS-EXAMINATION BY

21 MR. ALVARADO:

22 Q Dr. Weinstein, we have never met before?

23 A Yes.

24 Q They say I look like Mario Lopez; is that --

25 A Could be, maybe a little bit.

1 Q But this is not the first time you testified for
2 Mr. Kelly?

3 A That is correct.

4 Q And this is not the first time you testified for the
5 for Gorayeb firm?

6 A That is correct.

7 Q This is not the first time you have been retained by
8 the Gorayeb firm for anything?

9 A That is correct.

10 Q Now, tell me, or this jury, how many times you have
11 testified for the Gorayeb firm before today?

12 A I can't give you an exact number, but somewhere in the
13 ballpark of 20-ish.

14 Q 20-ish, how many times have you been retained by the
15 Gorayeb firm in connection with a medical/legal case, but not
16 testified for them?

17 A I don't know a number, but more than 20.

18 Q More than 20, more than 50?

19 A I can't give you an accurate number.

20 Q About 50?

21 A Maybe, I can't tell you 100 percent.

22 Q Do you recognize the name Winter Vilanueva?

23 A The name sounds familiar.

24 Q Hermes Soto?

25 A Sounds familiar.

1 Q Jaime Alexander Gonzalez Rodriquez?

2 A It's possible.

3 Q Do these sound like patients that you have seen in
4 connection with your work for the Gorayeb firm?

5 A I don't work for them.

6 Q And does this sound like names that you have treated of
7 patients that are clients of the Gorayeb firm; does that sound
8 better?

9 A I would have to check my records; if they are, then
10 they are.

11 Q You didn't bring those records with you today?

12 A No, of course. I'm only here for this gentleman.

13 Q By the way, real quickly, my office served your office
14 with a subpoena and I saw the chart that you brought today, and
15 I saw the file that you sent in; did you ever correspond with
16 the Gorayeb firm in connection with this matter?

17 A I never did, no.

18 Q You know that for sure?

19 A Well, I never did, I don't know if my office did, I
20 don't handle subpoenas, my office, people in the office handles
21 those.

22 Q Before you came to testify before Judge Lewis, that's
23 the judge?

24 A I know.

25 Q Did you ask your office if you were served with a

1 subpoena?

2 A No.

3 Q Why not?

4 A We get subpoenas all the time.

5 Q I get it, I understand, why wouldn't you ask your
6 office if you were served with a subpoena to make sure you
7 complied with a subpoena?

8 A I assume if I don't hear anything from them, everything
9 is in working order, and they comply with what their job is
10 supposed to be.

11 Q You rely on them to comply with a legal order?

12 MR. KELLY: Objection.

13 THE COURT: Overruled.

14 A I don't rely on them.

15 Q You just said he did?

16 MR. KELLY: Objection.

17 THE COURT: Overruled, you can answer.

18 THE WITNESS: Thank you, your Honor.

19 A If they didn't comply with the subpoena, you would have
20 reached out or someone in your firm would have reached out, I
21 probably would have heard it. If there's no issue, I don't get
22 involved, I'm doctor.

23 Q Let me get this right, your Honor, your way of checking
24 is to rely on my defense firm to say hey, you guys didn't comply
25 with the subpoena as opposed to walking over to your assistant

1 and say did we get served with a subpoena, I want to know
2 because I'm going to testify before Judge Lewis?

3 MR. KELLY: Objection.

4 THE COURT: Overruled.

5 A That's not what I said.

6 Q Well, that's what you just told me.

7 A No.

8 Q So your way of checking to see if you comply with a
9 subpoena is to see if my office or defense firm will notify you
10 and say hey, did you comply with a subpoena?

11 MR. KELLY: Objection, it's argumentative, it's
12 about the eighth time he said the same thing.

13 THE COURT: Overruled.

14 A That's not what I said.

15 Q How do you know whether you comply with a subpoena?

16 A My office sends out whatever records is asked for, and
17 that seemed to be it.

18 Q And if they don't comply, how do you know?

19 A If they don't comply, do you not ask for it again?

20 Q I'm asking you, please, this is cross-examination, so I
21 get to -- could you look this way?

22 MR. KELLY: Objection. He can look wherever he
23 wants, Judge.

24 Q For the record you keep looking at Mr. Kelly, and I'm
25 not saying he's doing anything wrong, but I would like you to

1 look here.

2 MR. KELLY: Objection, he can look wherever he
3 wants.

4 MR. ALVARADO: Okay, then look at Mr. Frittola.

5 MR. KELLY: Don't look at him.

6 MR. ALVARADO: Mr. Frittola, can you wave your
7 hand, look at him.

8 THE COURT: Overruled, you can answer the question.

9 Q I want you to look at me, this is cross-examination.

10 MR. KELLY: He can look at the jury.

11 Q Please, please, this is cross-examination, okay, and
12 I'm going to ask you questions and I know you testified before,
13 you already said it, you know the instructions, my questions
14 call for a yes or no, if you can't answer it in a yes or no,
15 just ask me, just ask me, I will give you the opportunity to
16 answer, that's all, but I need to get a yes or no first?

17 A That's not a problem.

18 Q Good.

19 So if, if, my last question, if your office doesn't
20 comply with a subpoena, before you appear to testify, how would
21 you know?

22 A I wouldn't know.

23 Q Can I mark for ID, I figured I would do it this way?

24 MR. ALVARADO: Just ID not anything else,
25 Defendant's Exhibit.

1 THE CLERK: E, according to what I have on my
2 sheet.

3 MR. ALVARADO: Me to too, yes, you're right.

4 THE CLERK: What is this called, counselor?

5 MR. ALVARADO: I have the title right on the
6 document, but I don't know if it's too long.

7 THE CLERK: Sorry.

8 MR. KELLY: Just call it a list.

9 THE CLERK: What do you want to call it?

10 MR. ALVARADO: List of cases, officer.

11 Q I will ask the Officer to hand you what we have marked
12 as Defendant's Exhibit E?

13 THE WITNESS: Thank you, officer.

14 Q For identification, just briefly, it's a list of cases
15 from my office, where you appeared as an expert for the Gorayeb
16 firm, but my question before you read the list, how many times
17 have you been involved in cases where you are an expert along
18 with Dr. Grimm, Dr. Kaplan, and yourself, in cases for the
19 Gorayeb firm before today?

20 A I can't give you an exact number. Is this a list of
21 them? You're asking the questions, I'm sorry.

22 Q That's okay, that's okay, thank you.

23 So the answer is you don't know?

24 A I can't tell you, no.

25 Q I want you to take look at that list, that is the list

1 compiled of my office of the active matters where you're
2 currently involved with those doctors for the Gorayeb firm, and
3 just tell me if you recognize the names?

4 A I recognize some of the names.

5 Q Who do you recognize?

6 A I mean these are just names, I can't tell you without
7 birthdays, it's like a shot in the dark.

8 Q I ask, you said I recognize some, who do you?

9 A Fernandez, but there are a million Cesar Fernandez's.

10 Q I get it, I get it, you're going beyond my questions,
11 they're common names in some instances?

12 A Roberto Abreu Perez, I know him, right there.

13 Q That's one.

14 But you know that's him, it's not another Roberto Abreu
15 Perez?

16 A I can't tell you that.

17 Q Well, I'm just going by your logic, okay.

18 How many cases is that?

19 A I don't know.

20 Q Would you agree --

21 A It looks like.

22 Q -- it looks like 45 maybe?

23 A Maybe something like that.

24 Q Now, you testified on direct examination in response to
25 Mr. Kelly's questions, you can put the list down, in fact, let

1 have it back?

2 A Can I keep it?

3 THE COURT: You can take it.

4 Q I will put it right here.

5 He testified on direct you became aware that Mr. Abreu
6 Perez was involved in a subsequent motor vehicle accident; yes
7 or no?

8 A Yes.

9 Q And you became aware that that accident occurred on
10 December 27th of 20 --

11 MR. KELLY: -- 22.

12 Q - 22?

13 MR. ALVARADO: 22. Thank you, Frank.

14 A I believe so.

15 Q Now, Mr. Kelly's office served us with a notice of
16 expert witness exchange with respect to you; okay, were you
17 aware of that?

18 A No.

19 Q It's dated October 17, 2024; okay?

20 A Okay.

21 Q Are you with us so far, I will show it to you.

22 MR. ALVARADO: Can I show it to him, Judge?

23 THE COURT: Yes.

24 Q I'm going to ask you to tell me where anywhere in there
25 does it say that you were aware of the subsequent motor vehicle

1 accident that occurred in 2022, involving your patient?

2 MR. KELLY: Objection. He said he doesn't know
3 about it, that's not the one that was served we handed to
4 the Court as the Court pointed out before. Unless this is a
5 reading exercise, and you want him to read 100 pages.

6 THE COURT: One moment, you can answer.

7 A I'm going to trust him, you know for the time it
8 doesn't say it in here.

9 Q It doesn't.

10 Take your time.

11 A No, I trust you.

12 Q Show me -- so strike that.

13 Correct me if I'm wrong, you never read at least
14 according to your expert exchange, the police records that were
15 created as a result of that motor vehicle accident; correct?

16 A That is correct.

17 Q And you never saw any photographs that were taken of
18 the vehicles involved in that accident as a result of that
19 accident; correct?

20 A Correct.

21 Q And you never read, according to that expert exchange,
22 the hospital where Mr. Abreu Perez was treated after this
23 accident; correct?

24 A I can't answer that in the yes or no.

25 Q Well, is it there, that's my question, is it there, is

1 it mentioned there?

2 A You have already established I trust you that you said
3 it's not there, you said it.

4 Q You don't have to trust me, you can look at it, and I
5 will ask you, so it's either a yes or no, isn't it true that
6 doesn't, please stop looking at that way, isn't it true that
7 there's no mention that you reviewed any hospital records in
8 your expert witness exchange, hospital records at the hospital
9 Mr. Abreu Perez was treated following the motor vehicle
10 accident?

11 A Yes, we've established that.

12 Q No, that isn't; right?

13 A That's correct, yes.

14 Q Now, did you know Mr. Kelly's office served a notice of
15 medical exchange with respect to the records you have in your
16 file; did you know that?

17 A No, I have nothing to do with his office.

18 Q Dated October 8, 2024?

19 A No.

20 Q You didn't know it?

21 A No.

22 Q I will hand it back to you, I have some similar
23 questions.

24 A Can I get a peek at your questions?

25 Q I will ask you again, anywhere in there, you have no

1 mention that Mr. Abreu Perez was involved in a motor vehicle
2 accident on December 22, 2024, --

3 MR. KELLY: Objection, he's unaware of it entirely,
4 unless he's going to read every page.

5 THE COURT: Overruled.

6 A No.

7 Q You have no photographs there, no testimony, no police
8 records, no photographs in connection with that accident;
9 correct.

10 A That is correct, yes.

11 Q You have no mention of a hospital that he was treated
12 at following that motor vehicle accident?

13 A For the motor vehicle accident, that is correct, yes.

14 MR. ALVARADO: May I have both back?

15 COURT OFFICER: (Hanging.)

16 Q Do you know whether Mr. Abreu Perez is a good
17 historian, you took a history from him, do you know whether if
18 he's a good historian?

19 MR. KELLY: Objection, what's a "good historian"?

20 THE COURT: Sustained.

21 Q Do you take a history from your patients?

22 A Yes, of course.

23 Q Do you know how accurate Mr. Abreu Perez was in telling
24 you about his history of accidents, do you know how accurate he
25 was; yes or no?

1 A Is that a yes or no?

2 Q Yes.

3 Do you know how accurate he is?

4 A I can't answer that in yes or no.

5 Q Does that mean you don't know?

6 MR. KELLY: Objection, yes or no, now he wants I
7 don't know.

8 A I can't answer it yes or no, your Honor, it's a more
9 complicated complex answer than yes or no.

10 Q Would you agree with me if he wasn't an accurate
11 historian that could affect your diagnosis; correct?

12 A I can't answer that in a yes or no.

13 Q Would you agree with me it is important to take an
14 accurate history from your patient; correct?

15 A Of course.

16 Q Why is that important?

17 A Well, you have to know what's going on.

18 Q Let's go through a few things, you're not an expert in
19 biomechanics?

20 A Correct.

21 Q You never witnessed his accident; is that correct?

22 A Correct.

23 Q And you never treated him after the accident; correct?

24 A That is correct.

25 Q You relied on his history as he reported to you

1 regarding the accident?

2 A That's not a yes-or-no answer.

3 Q Okay. Are disc bulges, aren't disc bulges common in
4 asymptomatic people?

5 A They can be, yes.

6 Q Especially someone of Mr. Abreu Perez's age?

7 A Can be, yes.

8 Q And the conditions that you saw and you observed on the
9 MRIs, you would agree with me that you can't rule out whether
10 they're degenerative or traumatically related?

11 A That's not a yes-or-no answer.

12 Q Let me ask you this way, they could be degenerative;
13 correct?

14 A Yes.

15 Q And they could be traumatic?

16 A Correct.

17 Q But you can't tell one way or the other?

18 A Not a yes-or-no answer.

19 Q Now, you testified on direct examination, that you were
20 being compensated \$10,000 for today's testimony?

21 A That is correct.

22 Q Has that always been your fee?

23 A I believe so.

24 Q Have you testified before for the Gorayeb firm and
25 charged them more?

1 A I don't think so, I'm not sure though.

2 Q Before you operated on Mr. Abreu Perez's lumbar spine,
3 how old was the MRI that you relied on?

4 A Sorry, there are a lot of MRIs in here.

5 Q That's okay, take your time.

6 A The last one I think I see is 2/3/22.

7 Q What's the date?

8 A 2/3/22.

9 Q How old was that before the surgery?

10 A 11 months.

11 Q You would agree with me it's important for you to get
12 the most recent MRI before you commit to that surgery, the
13 lumbar spine?

14 A Standard of care is within a year.

15 Q Within a year, you try to get the most recent?

16 A If there's a recent one, of course.

17 Q Did you ask if there was a more recent one than
18 11 months before?

19 A Well, this is the only one that I know of. As far as I
20 know, the only one I have.

21 Q Did you request another MRI be taken of your
22 lumbar back -- of his lumbar spine, I'm sorry?

23 A I have a CAT scan.

24 Q I didn't ask that, we're deviating from my instruction.
25 Did you ask anyone that the patient should have another

1 more recent lumbar MRI?

2 A If there was a chance, you want a yes or no, I can't
3 answer in a yes or no.

4 Q Did you ask for another lumbar MRI be taken of
5 Mr. Abreu Perez's lumbar spine before you operated on him?

6 A I asked for multiple MRIs of his lumbar and
7 cervical spine.

8 Q Did you ask for a more recent one other than the one
9 you referenced which is 11 months old; yes or no?

10 A I have to look.

11 Q Okay.

12 A I don't see it.

13 Q Doctor, would you agree with me that if, before you
14 performed the surgery, before you performed the surgery on
15 Mr. Abreu Perez's lumbar spine, would you agree with me that if
16 the MRI is approximately a year or old or so before that
17 surgery, you should have ordered a new one?

18 A Under what, no, I don't think it's necessary.

19 Q Not necessary?

20 A If it's within a year, and he has a positive discogram
21 in this situation, I don't think it's necessary. Obviously, I
22 didn't, I didn't order one.

23 Q My question is if it's a year, approximately a year,
24 more or less, would you order another MRI before the surgery?

25 A As long as it's within the year, it's fine.

1 Q Did you testify for the Gorayeb firm in the Rivera case
2 in Bronx County Judge Bianca Perez?

3 A Yes.

4 Q On May 16th, 2025?

5 A It's possible.

6 Q Do you have any reason to doubt that you did testify?

7 A No.

8 Q Maybe there's some kind of --

9 THE COURT: You can answer.

10 Q Please, do you doubt what I'm telling you?

11 A No.

12 Q Do you remember being asked on page 142 of that trial,
13 and you were asked by Mr. -- you were asked by Mr. Vargas, from
14 the Gorayeb firm, question, line 24, on page 142.

15 "QUESTION: Was there a reason you ordered another
16 MRI?

17 "ANSWER:" Line 25. "Yes, because we always want
18 the most recent one information."

19 So if the MRI is about a year old or something,
20 about that, we always order another MRI.

21 So would you agree with me, that this MRI was about
22 a year old or less?

23 A 11, it was 11 months old.

24 Q You're saying if it's 11 months old, it's good, you can
25 use it, but if it's 11 months and almost a year old, no, no

1 good, you order another one?

2 A I think you're splitting hairs.

3 Q What's the answer?

4 A Every patient is different.

5 Q I see.

6 So Mr. Abreu Perez was different than Mr. Rivera --

7 A That's correct.

8 Q -- in terms of your procedure and protocols?

9 A No.

10 Q Oh, okay.

11 Doctor, was there a time, I listened to what you said
12 on direct, and at one time you had hospital privileges; correct?

13 A I still have hospital privileges.

14 Q Where?

15 A At Mercy Hospital and Hudson Regional Hospital.

16 Q That's it, those two?

17 A That's correct.

18 Q At one time you had hospital privileges, just yes or
19 no, please, at Lenox Hill Hospital?

20 A Correct.

21 Q At Mount Sinai Hospital?

22 A Correct.

23 Q And New York Hospital of Queens?

24 A Correct.

25 Q Yes or no, did you lose those privileges?

1 A No.

2 Q The Hudson Regional, are you part owner of that?

3 A No.

4 Q Do you need privileges to operate there?

5 A Yes.

6 Q And Mercy, that's the only other hospital you have
7 privileges at?

8 A Yes, correct.

9 Q At one time you had three more; yes or no?

10 A Yes.

11 Q Now, I know that, oh, I'm sorry, during your surgeries,
12 do you take photographs during your surgery, whether it's lumbar
13 spine or cervical?

14 A We take X-rays.

15 Q You don't takes films at all, photographs of what
16 you're doing?

17 A No.

18 Q You didn't do that here?

19 A Not during spine surgery, no.

20 Q I know Mr. Kelly asked you about Workers' Compensation.
21 Do you recall those questions, he was asking about
22 Workers' Compensation?

23 A Yes.

24 Q Now, correct me if I'm wrong, just yes or no, on April
25 2, 2025, the Workers' Compensation Board issued a 19-page

1 decision with respect to your practice; correct?

2 A That is correct.

3 Q And correct me if I'm wrong, you applied for renewal,
4 you applied to renew an authorization to treat injured workers;
5 correct?

6 A Correct.

7 Q And they reviewed your application; correct?

8 A I can't answer that in a yes or no.

9 Q Why?

10 A I am not involved with their review process.

11 Q Okay, but you were given a 19-page decision, weren't
12 you?

13 A That is correct.

14 Q So going off the decision again, they reviewed your
15 application, correct, just based on the decision, if you got it,
16 it's in there; yes?

17 A I can't answer that in a yes or no.

18 Q Why, it's in the decision?

19 MR. KELLY: What do you mean "why"? Objection.

20 THE COURT: Overruled.

21 Q Based on the decision and the written words, they
22 reviewed your application; yes or no?

23 MR. KELLY: Objection. He's asking to go into the
24 minds and processes of someone not him.

25 THE COURT: Overruled.

1 Q I'm just asking to see if it's written.

2 MR. KELLY: Objection.

3 THE COURT: Counsel, do you want to show it to him,
4 see if it refreshes his recollection.

5 COURT OFFICER: (Hanging.)

6 Q I will show you the 19-page decision?

7 A What's the question again?

8 Q Okay. They reviewed your application, that's a very
9 simple question?

10 A It's a simple question, but it's not a simple answer, I
11 can't give you a yes or no.

12 Q Do they say in the first paragraph --

13 MR. KELLY: Objection, it's not in evidence.

14 THE COURT: Overruled.

15 Q -- that they received your application and they
16 reviewed it?

17 A It does not say that, no.

18 Q Does it say that the Workers' Compensation Board
19 Medical Director's Office recently received your application for
20 renewal of your authorization to treat injured workers?

21 MR. KELLY: Objection.

22 Q Yes or no?

23 THE COURT: Overruled.

24 A Yes, it says that.

25 Q Does it say "upon review of your history, since your

1 last application, outlined briefly below in the executive
2 summary of this letter, and in greater detail below in the
3 detail summary of this letter, the Board declines to grant your
4 application for renewal of your authorization"; yes or no?

5 MR. KELLY: Objection.

6 THE COURT: Overruled.

7 A Where do you see that?

8 Q The same paragraph, just the next sentence that I read
9 you before, very first paragraph.

10 A That is correct, yes.

11 Q My partner wants to make sure, if I ask, what is the
12 date of that decision?

13 A April 2, 2025.

14 Q And in it, if you read below what I read you, there's
15 an executive summary; right?

16 A Yes, correct.

17 Q Again, I don't need to bore the jury with the details
18 of the 19 pages, but if you go to page two, now I want to make
19 sure we understand each other and I'm reading this correctly;
20 are you there with me?

21 A Yes, go ahead.

22 Q Actually, let's go back to page one, that last
23 paragraph.

24 A Go ahead.

25 Q "Upon a review of series" -- and if I misread it, you

1 let me know -- "of claims filed by the MDO" -- that would be the
2 Medical Director's Office, "and the Board of Office of General
3 Counsel OGC, the noted treatment of injured workers and the
4 claims set forth below, both individually and in the aggregate,
5 does not comport with the applicable MTG" -- that would be the
6 medical treatment guidelines -- "and constitutes a violation of
7 your pledge to comply with the provisions of the Workers
8 Compensation Law regulation and medical treatment guidelines and
9 constitutes sufficient grounds to deny your authorization to
10 treat injured workers."

11 Did I read that correctly?

12 MR. KELLY: Objection.

13 Q Yes or no?

14 THE COURT: Overruled.

15 A Yes.

16 Q "Indeed, taking in aggregate, these claims appear to
17 indicate a consistent series of noncompliant behaviors that
18 deviate from the expected standard of care and administrative
19 standards of professional behavior"; did I read that criminal?

20 MR. KELLY: Objection.

21 THE COURT: Overruled.

22 A Correct.

23 Q Broadly speaking, next paragraph, "your conduct
24 frequently and in many instances repeatedly," and they list six
25 things, let's go through them.

1 "Exposes patients to risks of injury and complications
2 from invasive procedures; and at the same time, Number 2, lacks
3 adequate and/or credible probable documentation, frequently
4 failing to meet generally acceptable standards of medical
5 recordkeeping; am I reading it so far correctly?

6 A Correct.

7 Q "And lacks medical justification or clinical
8 indications for these procedures, calling into question the
9 clinical judgement utilized in this medical decision-making; and
10 am I reading it correctly?

11 A Yes.

12 MR. KELLY: Objection.

13 THE COURT: Overruled.

14 Q "Number 4, demonstrates submission of prior
15 authorizations request, (PAR) to perform procedures outside of
16 those generally provided within the MTG," and I already
17 explained what that is, right? "Variance again prior
18 authorization request, without the requisite supporting medical
19 justification"; and am I reading it so far correctly?

20 A You're doing a great job.

21 Q "And performed such procedures in a pattern, quantity
22 or frequency that are greater than recommended, again, without
23 providing medical justification to do so; and exhibit billing
24 irregularities in your billing practices for such procedures";
25 did I read anything wrong?

1 MR. KELLY: Objection.

2 A You did good.

3 Q Good.

4 As part of your application, right, I guess they must
5 have looked at several of the injured workers you treated,
6 because they go on, without naming them by name, they actually
7 go on to address each one that you did; correct?

8 MR. KELLY: Objection.

9 THE COURT: Overruled.

10 Q You can look at it.

11 A That is correct.

12 Q And several of them, I don't know, correct me if I'm
13 wrong, are the same types of procedures you performed here,
14 fusion surgeries; correct?

15 MR. KELLY: Objection.

16 THE COURT: Overruled.

17 Q You can look at the same type; am I right?

18 MR. KELLY: Objection.

19 THE COURT: Overruled.

20 A These are procedures that spinal surgeons do.

21 Q Yes or no, I get it, I know you're a doctor, you can
22 answer me; okay, right?

23 A Okay.

24 Q It's the same types the procedures you performed here,
25 they looked at it, they actually graded you on it, and they

1 found you didn't comply?

2 MR. KELLY: Objection.

3 THE COURT: Overruled.

4 Q Just yes or no, yes or no?

5 A It is not a yes or no answer.

6 Q But again, you failed this application, correct, they
7 didn't approve you?

8 MR. KELLY: Objection.

9 THE COURT: Overruled, you can answer.

10 A They did not renew, that's correct.

11 Q In fact, one of the specific patients that you treated,
12 you performed a cervical fusion?

13 MR. KELLY: Objection. We're not talking about the
14 Plaintiff here, he can't ask this.

15 MR. ALVARADO: I'm not, I'm not.

16 MR. KELLY: Objection.

17 THE COURT: Counsel, one moment, come up.

18 (Whereupon, an off the record bench discussion was
19 held.)

20 Q Let's try this again.

21 Doctor, actually, one of the patients that they
22 examined, I guess in connection with your application, was one
23 that you actually performed the cervical fusion and now you
24 wanted to perform a lumbar fusion; right, just yes or no?

25 A I don't know what you're referring to, where are you

1 referring to?

2 Q Page ten.

3 A Okay, go ahead.

4 Q I said one of the patients that you, that they had
5 looked at, actually performed cervical fusion surgery, and you
6 want to perform lumbar fusion surgery; yes or no?

7 A Yes.

8 Q And in fact, when they examined the record of that
9 patient, and I guess it was, I guess your medical records, they
10 found that your treatment, the claimant consisted of unnecessary
11 and unsupportive surgical fusion and an attempt to perform
12 secondary similarly unnecessary back/unsupported surgery; all in
13 a 33-year-old construction worker all of which appeared to be
14 predetermined?

15 MR. KELLY: Objection.

16 Q Is that true?

17 MR. KELLY: Objection.

18 THE COURT: Overruled.

19 Q Is that true, that's what it says?

20 A I can't answer it yes or no --

21 MR. KELLY: Objection.

22 A -- as a yes or no.

23 Q Is that what it says?

24 MR. KELLY: Objection.

25 Q You don't know if you can answer that.

1 You keep looking over my shoulder when I'm here, you
2 know what, here.

3 MR. KELLY: I resent the implication, this is
4 ridiculous, I haven't looked at this man once. I don't know
5 what he's trying to prove, I don't know what he's trying to
6 be about.

7 THE COURT: Overruled, you can answer.

8 Q Does it say it yes or no?

9 A If you're reading from paper it says --

10 Q Yes or no, Dr. Weinstein?

11 MR. KELLY: Objection.

12 THE COURT: Overruled.

13 A Certainly, the story is much larger than this paper.

14 Q I will ask the Judge if you don't follow my
15 instructions, to admonish you to answer yes or no. If you can't
16 answer yes or no, just please tell me I can't answer yes or no.

17 A I have told you that.

18 Q Does it say that on the paper what I just read?

19 A I can't answer it yes or no.

20 Q I'm sorry, you want to read it for yourself?

21 MR. KELLY: Objection.

22 THE COURT: Overruled.

23 Q Read it out loud?

24 MR. KELLY: You told him he can't read it, you told
25 him it's not in evidence.

1 Q Read it to the jury?

2 MR. KELLY: Objection to the form.

3 Q Read it to the jury?

4 MR. KELLY: Objection.

5 THE COURT: Don't read it.

6 Q Answer my question?

7 MR. KELLY: Objection, he said he can't answer it
8 yes or no.

9 Q Does it say that as a finding on that patient; yes or
10 no?

11 MR. KELLY: Objection.

12 THE COURT: Overruled.

13 A You read what you read.

14 Q Does it say that; yes or no?

15 MR. KELLY: Objection.

16 THE COURT: Overruled, you can answer.

17 A I already answered it yes or no, your Honor.

18 Q Does it say that; yes or no?

19 MR. KELLY: Objection.

20 A I can't answer it yes or no.

21 MR. KELLY: Objection.

22 THE COURT: Overruled.

23 Q You can't tell the jury whether those words are on that
24 paper; yes or no?

25 MR. KELLY: Objection.

1 A That's not --

2 MR. KELLY: Objection.

3 THE COURT: Overruled.

4 Q You can't answer that yes or no.

5 I will give you one more shot before I'm done, does it
6 say that on the piece of paper?

7 MR. KELLY: Objection.

8 THE COURT: Overruled.

9 Q Does it say that as a finding of what you did on that
10 patient?

11 MR. KELLY: Objection.

12 THE COURT: Overruled, you can answer.

13 A The paper states what it states.

14 Q You don't want to answer that yes or no?

15 MR. KELLY: Objection.

16 THE COURT: Overruled.

17 Q Do you want to answer that yes or no?

18 MR. KELLY: Objection.

19 THE COURT: Overruled.

20 A I told you I can't answer as a yes or no.

21 Q Why, because it says that on the paper; is that not
22 written in English?

23 MR. KELLY: Objection.

24 THE COURT: Overruled.

25 Q Can you answer that, is it written in English?

1 MR. KELLY: Objection.

2 THE COURT: Overruled.

3 Q You keep looking over here, and I'm here, you keep
4 looking over there, let's go over here.

5 A He's making a mockery of this court, your Honor.

6 Q I want you to answer my question.

7 THE COURT: Madam Court Reporter, can you read back
8 the question.

9 (Whereupon, the record was read back by the
10 reporter.)

11 Q Is it written in English?

12 A Yes, it's written in English, yes.

13 Q Did I read it correctly?

14 MR. KELLY: Objection.

15 THE COURT: Overruled.

16 A I have already answered that.

17 Q I will move on.

18 Going to page 18 of that decision, okay, I want you to
19 just say yes or no, if you can't, just say it, and I will read
20 from this, it looks like the Workers Compensation Board after
21 reading your application and going through those cases, they
22 made a finding; yes or no?

23 MR. KELLY: Objection.

24 THE COURT: Overruled.

25 A I can't answer that in a yes or no.

1 Q By the way, that one of the claimants that you
2 submitted, the Board said that the surgeries you performed were
3 already predetermined, was that the case here with Mr. Abreu
4 Perez, was his surgeries predetermined before anything?

5 A Of course not.

6 Q The Board said that, paraphrasing that, after reviewing
7 all of the information you submitted in examining the patients,
8 the analysis of your records in connection with the patients you
9 treated, they said you consistently failed to provide and
10 maintain medical documentation and recordkeeping; is that true,
11 is that what it says?

12 MR. KELLY: Objection.

13 THE COURT: Overruled.

14 A If you're reading from it, I mean, you asked me if
15 that's true, no, it's not true.

16 Q Does it say that?

17 A It says words, yes.

18 Q "You also consistently failed to provide clinical
19 rationales for seeking variance from MTG's," meaning again,
20 medical treatment guidelines, "to justify the medical necessity
21 of the variance of your requests"; did I read that correctly?

22 A I don't know where you're read.

23 Q The next sentence that I just read.

24 A Would you just like to tell me where you're reading as
25 opposed to yelling?

1 Q Can I approach?

2 THE COURT: Yes.

3 Q (Approaching.)

4 Right there?

5 A Go ahead.

6 Q Did I read that correctly?

7 A Read it again.

8 Q Why don't you read it?

9 A Sure. "You also consistently failed to provide or
10 maintain adequate medical documentation or recordkeeping."

11 Q I read that, next sentence?

12 A But that's what you pointed to for me, you're off.

13 "You also consistently failed to provide clinical
14 rationale for seeking variance from the MTG's to justify the
15 medical necessity of the variance that you're requesting.

16 You repeatedly submit pars for services you have
17 already been denied, even when there are been no substantial
18 interim change in the patient's clinical or functional status to
19 warrant such reconsideration --

20 Q Can you stop one second.

21 In this particular case, did you see any change in the
22 MRI films from the time that Mr. Abreu Perez had the accident
23 until the date that you performed the surgeries?

24 A I can't give you a yes-or-no answer on that.

25 Q Because you didn't review all of the films; correct;

1 did you review all of the films?

2 A I reviewed all of the films I have.

3 Q By the way, you don't -- I got your record here, you
4 don't have any films in your file, would you agree with me, at
5 least it wasn't sent to court?

6 A I don't know what was sent to court.

7 Q Do you want me to show you and see if you had films?

8 A I will trust you if it wasn't there. You wouldn't lie
9 to the Court, would you.

10 Q There were no films in your file, your medical file?

11 A There were no films or no --

12 Q Films, there were no films in your medical file?

13 A You mean the actual MRIs?

14 Q The actual MRIs, X-rays, CAT scans, there were none of
15 your file?

16 A That's not in my medical record, that's in the
17 radiology medical record.

18 Q I'm not asking where it is. I'm asking about your
19 file. There were none in your file, I'm asking about your file?

20 A It's not in the file, the file is just words, it's not
21 pictures.

22 Q So it's not part of your file?

23 A I review each MRI films and reports.

24 Q Are the films, MRIs or CAT scans, in your file?

25 A Some are, some are not.

Proceedings

1 MR. ALVARADO: Judge, should I continue or do you
2 want me to stop?

3 THE COURT: You need to stop here, alright.

4 Members of the jury, we're going to continue the
5 trial tomorrow at 2:30 p.m., so before you go, I will repeat
6 the instruction, do not discuss the case among yourself or
7 with anyone else. The trial is continuing, you're not to,
8 you're to keep an open mind until you've heard all of the
9 evidence in the case, heard all of the testimony, and heard
10 the summations by the attorneys and the final charges on the
11 law that the Court will give you. I will ask you to keep an
12 open mind and return tomorrow at 2:30 p.m., have a good
13 night.

14 COURT OFFICER: All rise, jury exiting.

15 (Whereupon, the jury exited the courtroom.)

16 THE COURT: Dr. Weinstein, can step down.

17 MR. FRITTOLA: Can we have two minutes?

18 THE COURT: What are we doing with this witness,
19 what are we doing with this witness?

20 MR. ALVARADO: For the record --

21 MR. FRITTOLA: She wants to know about schedule.

22 MR. ALVARADO: I don't want to waive the right to
23 argue something.

24 Judge, there may have been some opinions offered by
25 this doctor that were not to a reasonable degree of medical

1 certainty, and I want to reserve the right to make that
2 argument and I don't want to do it now, Judge, I want to
3 make sure I get the transcript from the Court Reporter so
4 you see it as well, so we make the argument, we are both --

5 THE COURT: Is this with respect to this case?

6 MR. KELLY: The words are not required. He doesn't
7 have to say a word.

8 MR. JOHNSON: Your Honor, I disagree, I have briefs
9 on it, so I'm not worried about it, he said to a reasonable
10 degree of magical certainty.

11 THE COURT: Medical.

12 MR. JOHNSON: I'm sorry, he said, to a reasonable
13 degree of medical certainty, there was a 20 to 30 percent
14 chance that he would possibly need future surgery to address
15 disc disease, that's speculative, that testimony should not
16 be in front of the testimony. When we got his expert
17 report, it said future surgery, as if it was 100 percent.

18 But he got up there on the stand and said 20 to
19 30 percent possibly, that testimony should not be in front
20 of the jury right now.

21 MR. KELLY: He's a treating physician, he can base
22 his opinions on anything developed at trial, including any
23 argument or anything else.

24 MR. JOHNSON: Your Honor, it has to be reasonably
25 certain, that's far from reasonably certain, I have 15 cases

1 on point.

2 THE COURT: Okay, alright, I will review the
3 transcript, I do recall the answer, I don't remember what
4 the question was.

5 MR. JOHNSON: Okay.

6 THE COURT: Okay.

7 MR. JOHNSON: Do you want a brief on it?

8 THE COURT: Well, if you --

9 MR. JOHNSON: Or just the cases?

10 THE COURT: Just the cases, I don't need a full
11 brief.

12 MR. ALVARADO: 2:30 tomorrow, Judge, you wanted to
13 talk scheduling.

14 THE COURT: 2:30, we have Dr. Grimm and the police
15 officer.

16 MR. ALVARADO: Yes.

17 THE COURT: What are we doing with this witness?

18 MR. ALVARADO: Frank, do you want me to put the
19 police officer on first or go with Dr. Grimm first? I'm
20 doing as a courtesy because.

21 MR. KELLY: Grimm is coming at 2:30.

22 MR. ALVARADO: I'm sorry, what?

23 MR. KELLY: Grimm coming at 2:30, probably best to
24 do Grimm.

25 THE COURT: So Thursday.

Proceedings

1 MR. ALVARADO: So tomorrow, again Dr. Grimm and the
2 officer.

3 THE COURT: Thursday we have Dr. Fuentes.

4 MR. ALVARADO: Yes.

5 MR. FRITTOLA: In the afternoon.

6 MR. ALVARADO: What do you want in the morning.

7 THE COURT: Do we have --

8 MR. ALVARADO: I'm sorry, Dr. Sherman for Monday,
9 that's my last witness.

10 THE COURT: What happened to Friday?

11 MR. ALVARADO: He's not available Friday. I tried
12 to get him Friday.

13 THE COURT: But we still have Dr. Weinstein, we
14 still have Plaintiff.

15 MR. ALVARADO: Yes.

16 THE COURT: We only have one witness on Thursday
17 or --

18 MR. ALVARADO: It's up to you.

19 MR. KELLY: He's here every day, whenever he fits
20 in.

21 MR. ALVARADO: We can finish him Thursday and
22 finish our economist, so we don't have a down day on Friday,
23 if you want to have like a charge conference or something,
24 Monday Dr. Sherman is my last witness.

25 THE COURT: Dr. Weinstein on Friday.

Proceedings

1 MR. KELLY: I don't know, I have to call him and
2 see when he's available.

3 THE COURT: I'm saying, you can find out if it's a
4 possibility.

5 MR. KELLY: Okay.

6 THE COURT: And Monday to Dr. Sherman.

7 MR. KELLY: That's it morning, done. Obviously, I
8 haven't made any motions, Mr. Kelly is not done with his
9 case.

10 THE COURT: Friday is a question mark, tomorrow is
11 a motion day, papers have to be away, there's a cart
12 available.

13 MR. ALVARADO: Sorry.

14 THE COURT: There's cart, your papers have to be
15 put away, tomorrow is motion day.

16 MR. FRITTOLA: Before we go off record, I would
17 like to talk to Mr. Alvarado for two minutes.

18 (Pause in the proceedings.)

19 (Whereupon, the proceedings were adjourned to
20 January 28, 2026, at 2:30 p.m.)

21 *****
22 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
23 MINUTES TAKEN OF THIS PROCEEDING.

24

25

Laura Delvac

LAURA DELVAC
SENIOR COURT REPORTER

<p>\$1,000 ^[1] - 680:4 \$10,000 ^[2] - 738:8, 755:20 \$20,000 ^[1] - 648:8 \$2520 ^[1] - 679:12 \$300,000 ^[2] - 687:18, 687:24 \$5,000 ^[1] - 687:9 \$50,000 ^[1] - 687:10 \$80,000 ^[1] - 687:25 1 ^[1] - 657:20 1/18/22 ^[1] - 691:8 1/3/2003 ^[1] - 722:17 10/17/17 ^[1] - 695:12 100 ^[6] - 639:22, 640:4, 720:7, 743:21, 751:5, 777:17 10003 ^[1] - 643:5 10005 ^[1] - 640:4 10038 ^[1] - 639:23 11 ^[10] - 663:6, 663:7, 695:1, 756:10, 756:18, 757:9, 758:23, 758:24, 758:25 11201 ^[1] - 639:15 113 ^[1] - 639:1 11361 ^[1] - 640:10 11374 ^[1] - 708:10 116 ^[3] - 639:6, 639:8, 640:3 116th ^[4] - 641:12, 641:13, 641:20, 641:23 11797 ^[1] - 640:14 11th ^[2] - 663:4, 663:8 12 ^[6] - 646:6, 682:7, 682:12, 682:15, 690:17, 690:18 12/27/22 ^[1] - 684:20 1205 ^[1] - 639:22 125th ^[1] - 684:21 12:00 ^[1] - 640:25 12:30 ^[1] - 689:8 12:45 ^[1] - 689:12 140 ^[1] - 640:13 142 ^[2] - 758:12, 758:14 15 ^[11] - 653:4, 653:9, 666:21, 666:22, 667:2, 667:11, 667:12, 675:25, 691:12, 716:18, 777:25 16 ^[1] - 690:21 1641 ^[1] - 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