

B E F O R E :

18 HONORABLE LISA LEWIS,
Justice of the Supreme Court

19 A B B E A B A N G E S .

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25 (Appearances Continued on Next Page.)

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18
19 LAURA DELVAC
20 SENIOR COURT REPORTER
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24 COURT OFFICER: Come to order.

25 THE COURT: Everyone can have a seat.

26 THE CLERK: Good morning, calling Perez versus 176

1 East, Index Number 515104 of 2017.

2 Counselors, please give your appearance.

3 MR. KELLY: Frank Kelly for the Plaintiff.

4 MR. ALVARADO: Alfredo Alvarado, Lester, Schwab,
5 Katz & Dwyer for attorneys for Defendant/Third-Party
6 Plaintiff, 176 East 116th Street, LLC.

7 MR. RAMIN: Good morning, your Honor, Farzad Ramin,
8 Song Ramin LLC for the Third-Party Defendant, 178 JJH, Inc.

9 MR. JOHNSON: Good morning, your Honor, C. Briggs
10 Johnson, from Gallo, Vitucci & Klar LLP, Appellate Counsel
11 to Lester, Schwab, Katz & Dwyer.

12 THE COURT: Alright, so there are several motions
13 that have been made which I will address now.

14 The first is the respondent's request to admit the
15 Workers Compensation Board decision into evidence.

16 So the trial court may restrict and limit inquiry
17 into collateral matters, which are not directly relevant to
18 the issues at trial, I've heard the oral arguments of both
19 counsels, and read the decisions cited.

Even when the Court permits the cross-examination, limited inquiry into the collateral matters, the use of extrinsic evidence to refute the witness's testimony or support the collateral issues is prohibited.

24 However, the rule prohibiting the use of extrinsic
25 evidence to impeach a witness on a matter that is merely

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1 collateral has no application where the
2 conservative treatment, to which the evidence relates is
3 material in the sense that it's relevant to the very issues
4 the jury must decide such as motive, intent, absence of
5 mistake or accident.

6 In the instant matter, the witness will testify as
7 to his dual role, as the performing surgeon and expert.
8 Defendants' Counsel inquired into the Workers Compensation
9 Board's final decision to bar the witness from treating
10 injured workers.

11 Specifically, Counsel inquired about improper
12 medical treatment, failure to comply with decision-making,
13 as well as financial irregularities.

14 Is this line of questioning is not merely
15 allegations relevant to the witness's credibility, but
16 involves sustained findings of medical and financial
17 improprieties which tend to prove motive to fabricate.

18 Furthermore, it demonstrates a motive of the
19 medical treatment of the doctor, which places his own
20 self-interest and advancement above the Plaintiff's care.

21 So for these reasons, I'm going to allow the
22 Workers Compensation Board final decision to be admitted
23 into evidence.

24 With respect to Respondent's Counsel motion to
25 strike Dr. Weinstein's testimony that there's a 20 to

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1 30 percent likelihood that Plaintiff will suffer from
2 adjacent disc disease in the future, that is granted as
3 speculative.

4 Damages for past and future medical expenses must
5 be supported by competent medical -- competent evidence that
6 establishes the need for medical care; 20 to 30 percentage
7 likelihood is too speculative to be admitted, and that
8 question and answer will be stricken.

9 There's also Plaintiff's motion to dismiss the
10 claims of fraud, so I'll hear, I did receive a decision from
11 Plaintiff counsel, so at this time, I will hear respondent's
12 oral argument.

13 MR. JOHNSON: One second, your Honor, I'm sorry.

14 Your Honor, in opposition to the motion to dismiss
15 our counterclaims for fraud, there's a Court of Appeals case
16 called CDR Creances.

17 THE COURT: CDR?

18 MR. JOHNSON: CDR space Creances C-R-E-A-N-C-E-S,
19 S.A.S versus Cohen, 23 New York 3rd 307/311, and it states
20 that a trial court has discretion to strike pleadings under
21 31 -- CPLR 3126 when a party's repeated noncompliance with
22 an order is dilatory, evasive, obstructive or ultimately
23 contumacious, but the Court has inherent power to dismiss a
24 complaint or to find that a counterclaim for fraud is valid,
25 because the Court has inherent power to address actions

1 undermine the truth seeking function of the judicial system
2 and place into question the integrity of the courts of our
3 justice system, so the Court has inherent power based on
4 facts and circumstances before it, to not only strike a
5 complaint for fraud but to find based on the evidence as it
6 was accepted in trial, to find that a fraud has been
7 committed in the court.

8 Now PJI 320, 3:20, talks whether an intentional
9 misrepresentation, and the pattern charges intended to apply
10 where Plaintiff brought a counterclaim and seek damages and
11 tort for fraud and must be modified if fraud is asserted as
12 a defense to enforcement of an obligation.

13 So we need to prove that there was a representation
14 that Plaintiff, in this case that Plaintiff represented that
15 he was totally disabled and unable to work, there was
16 falsity that he was, in fact, working. We did, we did
17 elicit testimony that he drove 19,000 miles for Uber in
18 2019, signed here he knew this representation was false when
19 he gave to Dr. Grimm, and Dr. Weinstein we talked yesterday
20 that Dr. Weinstein has records from '19 to '22 where he
21 repeatedly tells Dr. Weinstein that he's not working, and
22 reliance that the Defendant or its insurance carriers relied
23 on these medical reports to their detriment; for example, by
24 paying for unnecessary defense of the case and increasing
25 settlement reserves, I also think, you know, there's another

1 PJI 3:20.1, called fraudulent concealment, where in this
2 case, Plaintiff has admitted critical information such as
3 the second accident omitted which we found out before in
4 late December, that's why the trial was adjourned and also
5 that he was working or even that the preexisting alleged
6 black disc disease identified by Dr. Weinstein.

7 So under that PJI, he had a legal obligation to
8 disclose his true work activities to his doctors which he
9 repeatedly failed to do, and so the failure to do so is a
10 fraudulent concealment intend to inflate the value of the
11 life care plan or he had a duty to disclose his true medical
12 condition to diagnosis and fraudulent concealment intended
13 to inflate the value of the life care plan.

14 I think based on the testimony and that we've
15 received so far in this case, along with the finding from
16 your Honor that the Workers Compensation Board findings are
17 now in evidence, where the chief medical officer from the
18 Workers Compensation Board did a thorough review of
19 Dr. Weinstein's patients, and found repeatedly that his
20 records contradict themselves, that surgery was unnecessary
21 or unwarranted, that his records were in incomplete, and so
22 there's a pattern there, and when you combine that with the
23 testimony that Plaintiff has given in this case, where he
24 has concealed multiple material facts to this Court that
25 were only came out on cross-examination, I think we've at

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1 least met our burden to have those charges on the verdict
2 sheet, and to have a few questions, excuse me, and in your
3 instructions to the jury to have questions about them on the
4 verdict sheet.

5 THE COURT: Before I hear Mr. Kelly, I would, I'm
6 just asking, what document has the fraud allegation, because
7 I've read the answer and the answer with cross claims.

8 MR. RAMIN: It's --

9 MR. JOHNSON: It was amended in 2024.

10 THE COURT: Amended.

11 MR. ALVARADO: Can you pull it up on NYSCEF?

12 MR. JOHNSON: Can you pull it up on NYSCEF?

13 MR. ALVARADO: I guess when you got the pleadings,
14 Judge, that was omitted.

15 THE COURT: Yes, I didn't see.

16 MR. ALVARADO: Give us a second. I think
17 Mr. Frittola submitted another set as well. I'm almost sure
18 he did that, he said I want the Judge to see it.

19 MR. JOHNSON: Docket Number 218 on the NYSCEF
20 document and do you have a paragraph, and we will give you
21 the paragraph, your Honor, it's As and For Twelve
22 Affirmative Defense on page seven.

23 THE COURT: "Fortieth: The claimed injury and his
24 subsequent medical treatment are and were fraudulent --

25 MR. RAMIN: It's Thirty-Six through Fortieth, the

1 fraud affirmative defense.

2 THE COURT: One moment.

3 MR. JOHNSON: The motion was never opposed, your
4 Honor, so arguably it's waived, the motion to strike the
5 affirmative defense, plenty of case law on it.

6 MR. KELLY: This is a trial, this is not a motion
7 to oppose the amendment of the pleadings, that ship has
8 sailed, nobody cares about motion to amend pleadings, that's
9 freely given and very liberal, we don't care about that.

10 We're here at trial and whether or not Mr. Abreu
11 Perez made any affirmative misstatements relied upon by the
12 defendants, not the insurance industry, not the cabal of
13 whoever they work for over there, the Defendant, and the
14 Defendant's representative was on the stand and said
15 essentially, I don't know anything about anything, I own the
16 property, it was a contractor who developed the supermarket,
17 I didn't go there, I didn't see anything, I didn't talk to
18 anybody, I don't know anything.

19 There's absolutely no reliance that can be shown in
20 any, way, shape or form on any representation or
21 misrepresentation by the Plaintiff in this case.

22 I, respectfully aere that our version of what went
23 on in this trial vastly departs from the Defendants' version
24 and throughout the entire development of the litigation,
25 Mr. Abreu Perez at no time hid from anybody he was working,

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1 at no time, and you can see from the depositions developed
2 that he told them he was working, they know that. There was
3 periods of time he wasn't working and periods of time of
4 time he was working. They insist on some other version of
5 realty, they're not entitled to their own facts.

6 So the issue of fraud is completely outside of this
7 case, there's no reliance to, certainly no reliance to a
8 clear and convincing standard which is a fraud standard in
9 New York, it's not more likely than that, it's clear and
10 convincing standard that the Defendant in this case relied
11 on representations made by the Plaintiff, and there's no
12 showing of that, that's completely devoid on the record and
13 allowing that to go to the jury would have the jury solely
14 speculate bootstrap upon these other items that they allege
15 against Dr. Weinstein, which I have my own problems with
16 their allegations there, and well, I will end there on the
17 fraud thing, okay.

18 THE COURT: Okay.

19 MR. KELLY: I do want to talk about the motion to
20 strike Dr. Weinstein's testimony, so their initial motion
21 was to strike his testimony and for any need for future
22 surgery with respect to the adjacent joint disease. They
23 didn't move that he can't talk about adjacent joint disease,
24 because he does say to a reasonable degree of medical
25 certainty, that he will develop adjacent joint disease, but

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1 in addition, to just, Dr. Grimm said he will develop
2 adjacent joint disease, and they didn't oppose Dr. Grimm's
3 statement that he will develop, to a reasonable degree of
4 medical certainty, adjacent joint disease.

5 So regardless of future surgery, and I haven't put
6 in future surgery, I haven't asked for future surgery,
7 because I know that he's not going to say future surgery is
8 required, but the evidence in this case shows and Dr. Grimm
9 says it, he will develop adjacent disc disease, they didn't
10 challenge that.

11 THE COURT: One moment, so the -- when counsel
12 submitted their, when counsel made their motion, they didn't
13 have the testimony.

14 MR. KELLY: Right.

15 THE COURT: What the testimony is when I looked
16 back at the testimony, it actually doesn't talk about
17 surgeries, which is what counsel referred to, it talks about
18 adjacent disc disease.

19 MR. KELLY: Right.

20 THE COURT: Which is what the answer is, and that
21 is the part that's stricken.

22 MR. KELLY: So the future surgery, I don't intend
23 to argue to the jury for future surgery.

24 THE COURT: No, the question was likelihood
25 adjacent disc disease.

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1 MR. KELLY: Yes, but Dr. Grimm, not Dr. Weinstein
2 did say that he'll develop adjacent joint disease, and
3 Dr. Grimm is a treating physician.

4 THE COURT: Well, what's the difference between
5 adjacent joint disease and adjacent disc disease?

6 MR. KELLY: No, the issue I have is, that I can see
7 that I cannot argue to the jury for future surgery for
8 adjacent joint disease, or adjacent disc disease.

9 He will develop it, according to Dr. Grimm, and
10 according to Dr. Weinstein to a 20 30 percent probability,
11 they can argue that the doctors differ, but the unchallenged
12 testimony of Dr. Grimm is that he will develop, to a
13 reasonable degree of medical certainty, adjacent disc
14 disease, which I can argue to the jury, I can't argue for
15 future surgery, I get it, because nobody said that.

16 THE COURT: But I'm only striking Dr. Weinstein's
17 testimony.

18 MR. KELLY: Okay, that's fine, I want to be clear.

19 THE COURT: Yes, it's just Dr. Weinstein's
20 testimony.

21 MR. KELLY: Okay.

22 THE COURT: The 20 to 30 percent likelihood.

23 MR. KELLY: Okay, I just wanted, maybe it's my
24 misunderstanding, Judge, I just want to be clear.

25 MR. ALVARADO: I'm sorry, I'm a little confused,

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1 Judge, with the decision, what is being stricken?

2 THE COURT: One moment, let me get the transcript.

3 MR. ALVARADO: I want to be clear.

4 (Pause in the proceedings.)

5 THE COURT: So the testimony was this was from
6 January 27th.

7 MR. KELLY: Right.

8 THE COURT: The question was:

9 "You talked about adjacent disc disease, what is
10 the likelihood that Mr. Abreu Perez will suffer from
11 adjacent disc disease in the future?

12 ANSWER: The likelihood according to the literature
13 is 20 to 30 percent."

14 That question and answer is stricken.

15 MR. KELLY: Okay, that's fine.

16 MR. ALVARADO: What page is that, Judge?

17 THE COURT: That's page 736, line three through
18 line seven.

19 MR. ALVARADO: Judge.

20 THE COURT: He said he's not.

21 MR. ALVARADO: We had moved on that, and I heard
22 something else.

23 THE COURT: So you moved on future surgery, but
24 that wasn't the testimony, and there was no testimony about
25 future surgery, and Mr. Kelly is representing he's not going

1 to ask about future surgery.

2 MR. KELLY: Going to put it in the economist's
3 chart because it's expensive.

4 THE COURT: Okay, going back to the fraud, so I'm
5 reading the amended verified, the verified amended answer
6 for the counterclaims with respect to fraud.

7 The misrepresentations are not to the Defendants,
8 they are to the Workers Compensation Board, and his medical
9 doctors.

10 What is the fraud that Defendants relied upon?

11 MR. KELLY: The silence is deafening.

12 THE COURT: I'm going to go get my PJI, because I
13 want to, that's why I was asking for the charges, but let me
14 get the PJI, you said 3 --

15 MR. KELLY: 3:20.

16 (Pause in the proceedings.)

17 THE COURT: Okay, so I'm looking at the charges,
18 and I've heard the oral argument of both parties, I'm
19 inclined to dismiss the fraud claims; one, because the
20 answer does not allege any fraud against the parties in the
21 case, also, if the contention as stated is that the
22 Plaintiff excessively or overly misrepresented his injuries,
23 we're on trial regarding his injuries relative to damages,
24 so it seems as if it would be duplicative, because the jury
25 is going to decide the extent of his injuries, whether he

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1 overstatement them or misstated them, so that's already being
2 decided, so for those two reasons, I'm inclined to dismiss
3 any allegations of fraud, unless there's something else.

4 MR. JOHNSON: Nothing further, your Honor.

5 THE COURT: Okay. So can we get the jury now?

6 MR. ALVARADO: We're ready? Judge, I need that
7 decision, because you have the marked one, that's the only
8 one I can show, and then I'm kind of ready to go after that.

9 THE COURT: Okay. You can get the jurors.

10 (Whereupon, Dr. Weinstein resumed the witness
11 stand.)

12 MR. ALVARADO: Can we mark this?

13 THE CLERK: This will be defendant's Exhibit M, as
14 in Mary.

15 (Pause in the proceedings.)

16 THE CLERK: What are we labeling it?

17 MR. ALVARADO: You can just say abbreviated Workers
18 Comp board, WB decision.

19 THE CLERK: Workers Comp decision 4/2/25.

20 CONTINUED CROSS-EXAMINATION BY

21 MR. ALVARADO

22 COURT OFFICER: All rise, jury entering.

23 (Whereupon, the jury entered the courtroom.)

24 THE COURT: Welcome back, everyone can have a seat.
25 This is the continued examination of Dr. Weinstein.

1 Sir, you're still under oath, and let's continue.

2 Q Good morning, Dr. Weinstein.

3 A Good afternoon.

4 Q When you and I last spoke, I should brief today, we
5 were talking about that Workers Compensation Board decision,
6 dated April 2, 2025, that's where we left off; do you remember?

7 A Yes.

8 Q And again, I'm going to ask you some questions today,
9 keep in mind they'll be leading, keep in mind they call for a
10 yes or no. If you can answer yes or no, do so please, if you
11 can't, let me know; okay?

12 A Yes.

13 Q Brian, the last page, since you and I first met and now
14 we're here, that Comp Board decision is in evidence, and the
15 jury can see, so you and I don't have to grapple with what's
16 written or not, page 18, I'm sorry, Brian, that's where we left
17 off.

18 Okay, where you and I left off, I was asking you the
19 last paragraph, I think the sentence we left off is, that the
20 Board as part of its decision and essentially denying your
21 application to continue to treat patients that were seeking at
22 least on behalf of the Workers Compensation Board, you
23 repeatedly submitted, you resubmitted PAR's.

24 What is PAR's again?

25 A Prior authorization requests.

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1 Q For services that have already been denied, even when
2 there has been no substantial interim change in the patient's
3 clinical or functional status to warrant such reconsideration;
4 did I read it correctly?

5 A You're reading what's there.

6 Q Then the Board also found that you performed
7 invasive/risky procedures, without adequately exhausting more
8 conservative -- and less risky treatment modalities; is that
9 correct?

10 A You're reading what's there.

11 Q That you failed to follow -- I'm sorry strike that.

12 You that you repeatedly provided incomplete and/or
13 inconsistent medical documentation; is that correct?

14 A You're reading what's there.

15 Your Honor, I just want to say that this is under --

16 MR. ALVARADO: Move to strike.

17 THE COURT: One moment, one moment.

18 Your attorney will have the opportunity --

19 THE WITNESS: He doesn't represent me though. My
20 point is I just wanted to let you say that this is under
21 adjudication in a different court.

22 THE COURT: Okay.

23 MR. ALVARADO: Judge --

24 THE WITNESS: I can talk to you privately.

25 THE COURT: I understand, but right now, we're only

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1 talking about this report.

2 THE WITNESS: Okay.

3 MR. KELLY: Judge, I'm going to object to the
4 nature of the questions, because he's saying is it correct,
5 but this is a litigated case, it's not correct, he wants to
6 know if he read it.

7 THE COURT: Counsel, counsel, we're going to
8 proceed with this decision. I understand what the other
9 argument is.

10 MR. KELLY: My objection is to the form of the
11 questions, he's saying things in here and he's saying is it
12 correct, but it's not correct, it's read the way it's read.

13 THE COURT: It's the phrasing, and your witness
14 answered, he's reading what's there; okay.

15 MR. KELLY: That's fine.

16 MR. ALVARADO: I can't read what's not there.

17 THE COURT: That's the answer, he's reading what's
18 there.

19 MR. ALVARADO: What was that last question?

20 (Whereupon, the record was read back by the
21 reporter.)

22 Q The Board found and wrote in its decision that you
23 failed to follow published Board procedures for the submission
24 of medical bills and you repeatedly billed in excess of Board's
25 published fee schedule, at times for services that were

1 questionably necessary; is that correct?

2 MR. KELLY: Objection. You told him not to do it
3 that form, he's reading an answer, is it correct.

4 MR. ALVARADO: Is it correct, that's there.

5 MR. KELLY: We will concede that the writing is
6 what the writing is, it's in the English language and the
7 words have the customary dictionary meaning in the structure
8 in which they're put forth.

9 THE COURT: Counsel, okay. The document states
10 what it says. Any questions about the document --

11 MR. ALVARADO: I'm talking about the document.

12 Q One other thing, they said that part, that you had a
13 clear pattern of these behaviors being repeated and that also
14 constituted sufficient grounds, I'm going to the next page,
15 Brian, to deny you authorization to treat injured workers; is
16 that correct?

17 MR. KELLY: Again, we just went through this.

18 THE COURT: One moment.

19 MR. KELLY: Is it correct.

20 THE COURT: Counsel, counsel concedes that the
21 statement, the decision says what it says.

22 MR. KELLY: We do concede that, he's asking about
23 allegation, he says is the allegation correct, he can't say
24 that.

25 THE COURT: Mr. Kelly, Mr. Kelly.

1 MR. ALVARADO: These aren't the allegations. These
2 are findings.

3 MR. KELLY: Whatever they are, they're disputed.

4 MR. ALVARADO: Okay, he can say that, the doctor
5 can say they're disputed.

6 MR. KELLY: Well, that's not how he phrased the
7 question, he phrased the question yesterday --

8 THE COURT: Counsel, it is the question and answer,
9 your witness has said that's what it says.

10 MR. KELLY: Right, okay, well.

11 THE COURT: That's the answer.

12 MR. KELLY: Okay.

13 Q Doctor, do you have to, correct me if I'm wrong, in
14 order to treat patients and be compensated by the Workers
15 Compensation Board, you have to renew your application every
16 couple of years; correct?

17 A The application needs to be renewed every two years.

18 Q Two years, and you renewed it, that's what this led to
19 it, you renewed it with the Workers Compensation Board; correct?

20 A I renewed my application; however, that's not what lead
21 to this, that's something different, what lead to this, if
22 you're asking me --

23 Q I didn't ask you.

24 A You asked.

25 THE COURT: No, he said --

Dr. Weinstein-Plf-Cross-Deft/Third-Pty Plf-Mr. Alvarado

1 A You said that's what led to this, the answer.

2 THE COURT: Yes or no.

3 A I can't say, no, I can't say no, I don't know what
4 Workers Compensation does behind closed doors, they're very not
5 clear about it.

6 Q Are you done?

7 When they review your application, only if you know, do
8 they have medical professionals look at your application, review
9 it; yes or no or if you don't know, you don't know?

10 A I don't know what the Board's -- I don't know.

11 Q In this, with respect to this decision, they actually
12 reviewed and cited a number of patients that you examined;
13 correct?

14 A They actually took --

15 Q Just yes or no?

16 A Let me explain.

17 Q It's just yes or no; it is a yes or no?

18 THE COURT: Your attorney will have the opportunity
19 to ask you questions.

20 A What was the question, again, please?

21 MR. ALVARADO: What was the question?

22 (Whereupon, the record was read back by the
23 reporter.)

24 A In this paper there are four pages.

25 Q The four patients that were referenced in this

Dr. Weinstein-Plf-Cross-Deft/Third-Pty Plf-Mr. Alvarado

1 decision, they were all patients who had spinal injuries, and
2 you treated with spinal fusions; yes or no?

3 A I don't have the whole thing in front of me, whatever
4 the paper says, it says.

5 Q Do you want to see a copy?

6 A No, it would be belaboring the point. Whatever it says
7 it says, you're saying what it says, so whatever it says, it
8 says.

9 Q If it's in the decision, you don't dispute that that's
10 in the decision?

11 A That's not what I said. Whatever the paper says it
12 says, I dispute the whole paper, as I guess we will get to hear
13 later. Whatever the paper says, it says.

14 Q We will get to, you said you dispute, you appealed
15 this; correct?

16 A I am in litigation and suing Workers Compensation Board
17 and the State about it.

18 Q You said you appealed it?

19 MR. KELLY: Objection.

20 THE COURT: Did you appeal it?

21 THE WITNESS: That was appealed, yes.

22 Q Okay. Mr. Kelly asked you about it, but I get to come
23 back.

24 The decision references four patients of his all with
25 spinal injuries that resulted in spinal fusions; yes or no?

Dr. Weinstein-Plf-Cross-Deft/Third-Pty Plf-Mr. Alvarado

1 A The paper says what it says.

2 Q In fact, if you go to page two, Brian, before Detailed
3 Summary, under that, one of the patients below that, please,
4 below that, one of the patients they examined of yours had a
5 decompression and lumbar disc fusion at L4-L5; yes or no?

6 A Whatever the paper says.

7 Q And the patient had a disc herniation at the same
8 level, by the way that Mr. Abreu Perez had; correct, yes or no,
9 if you don't know, you don't know?

10 A The level of the herniation or the level of the
11 surgery?

12 Q The level of the herniation.

13 A I can look.

14 (Pause in the proceedings.)

15 A He did have a herniation at L4-5.

16 Q And that patient that's with referenced here, you also
17 diagnosed with discogenic changes and black disc disease; is
18 that correct?

19 A The paper states what it states.

20 Q And you told the patient, at least he recommended that
21 they would benefit from spinal decompression and fusion; is that
22 correct?

23 A The paper states what it states.

24 Q Turn to page three, Brian, middle of the page, the
25 decision also says that they looked or examined both the MRI and

1 CAT scans that were attached to your request; correct, from the
2 middle of the first paragraph there; is that correct?

3 A The paper states what it states.

4 Q And they found that despite your diagnosis, they found
5 that the diagnostic standards were unremarkable at levels
6 requested for the fusion, and they write shallow disc
7 herniation, only mildly impinging on the anterior epidural fat
8 and thecal sac; neuro foramina and exiting L4 nerve roots are
9 unremarkable, no stenosis stated, no instability noted, no
10 neurogenic claudication noted; does it say that?

11 A It states what it says.

12 Q Were the findings similar to what you reported as to
13 Mr. Abreu Perez; yes or no?

14 MR. KELLY: Objection.

15 THE COURT: Overruled.

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

17 Q And they also quite like what you recommended here,
18 that patient, also underwent epidural steroid injections; is
19 that correct?

20 A The paper states what it states.

21 Q And the decision says that there did not appear to be
22 any substantial conservative care attempted; correct?

23 A The paper states what it states.

24 Q In the decision, you keep calling it a paper, I call it
25 a decision, and it indicates you failed to adequately failed to

1 determine the etiology of the pain and numbness felt in the
2 lower extremity and distinguish between pain radiating from disc
3 compression on a spinal nerve versus pain originating in the
4 left lower extremity itself; is that correct?

5 A It states what it states.

6 Q Go to bottom of page four, Brian, and the Board
7 actually wrote in its decision in bold, that they found that the
8 treatment by of you that claimant consisted of an invasive and
9 potentially life-altering, in parenthesis, these for the worse,
10 closed parenthesis, spinal fusion, which appears to have been
11 insufficiently justified, and, indeed, medical unnecessary.

12 Did I read that correctly?

13 A It states what it states.

14 Q Go to page five, Brian, where it starts February 10th,
15 now they reference another patient here that was of yours that
16 they examined the records; correct?

17 A The paper states what it states.

18 Q And in it they looked at an MRI that was taken of the
19 lumbar spine, apparently claimed it indicated there was an L4-5
20 disc bulge with left foraminal herniation, bilateral foraminal
21 impingement and anterior thecal sac impingement; and at L5-S1
22 there was a slight disc bulge with left foraminal herniation
23 with left foraminal impingement; is that true?

24 A It states what it states.

25 Q Okay. Would you agree that those findings are similar

Dr. Weinstein-Plf-Cross-Deft/Third-Pty Plf-Mr. Alvarado

1 to what you have here with Mr. Abreu Perez?

2 MR. KELLY: Objection.

3 THE COURT: Overruled.

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

5 Q According to the first bullet point, the Board found
6 that your medical documentation and/or lack thereof failed to
7 present documentation of imaging studies sufficient to establish
8 these diagnoses; is that what it says?

9 A It states what it states.

10 Q The board also in the second bullet point says, move it
11 up a little bit, says putting aside the MTG violation, which
12 means medical treatment guidelines, the failure to provide
13 specifics as to the date of the MRI and its findings raises
14 serious concerns about the sufficiency of your clinical
15 evaluation as well as your clinical recordkeeping; is that what
16 it states?

17 A It states what it states.

18 Q And it found that this was a significant deviation from
19 established standard of care from both a clinical judgement and
20 medical recordkeeping standpoint; is that what it states?

21 A It states what it states.

22 Q And what is ESI?

23 A Epidural steroid injection.

24 Q Go to the next page. June 26th, June 26th, Brian, move
25 it up, next page, I'm sorry, page seven.

1 Correct me if I'm wrong, doctor, one of your patients,
2 may be the same one, you recommended that the patient have ESI,
3 the claimant apparently refused, and then you recommended that
4 they undergo a cervical discectomy and fusion at C6-7, so you
5 recommended procedures that he already refused to do; correct,
6 that's yes or no?

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

8 Q Go to page ten.

9 Now, again, I'm not going to read in bold, but
10 apparently the Workers Compensation Board, and you can read it
11 or the jury can read it as well, found, again, that you did
12 procedures that were unnecessary, you had already done a lumbar
13 fusion -- no, he had done a cervical fusion and now recommending
14 a lumbar fusion; correct?

15 A The paper states what it says.

16 Q And the Board called in question your procedures and
17 your diagnosis and treatment; isn't that correct?

18 A The paper states what it states.

19 Q Is it fair to say that you no longer treat patients for
20 the Workers Compensation Board; is that correct?

21 A I do not treatment Workers Comp patients.

22 Q You had said on direct examination, on page 719 of your
23 transcript, Judge, that in response to Mr. Kelly's questions
24 that when you saw Mr. Abreu Perez, on April 18, 2018, that's
25 when you determined he needed cervical surgery; correct?

Dr. Weinstein-Plf-Cross-Deft/Third-Pty Plf-Mr. Alvarado

1 A That's correct.

2 Q If you turn to that page, that chart entry in your
3 notes, I know you brought it with you, correct me if I'm wrong,
4 there's no entry there that indicates, just yes or no, that you
5 had reviewed any MRIs film of the cervical spine before you
6 rendered that opinion?

7 A That's incorrect, it states here extensively reviewed
8 imaging studies; Number two --

9 Q It doesn't say you reviewed any cervical spine films?

10 A It says imaging studies --

11 Q Yes or no?

12 A What is it supposed to be?

13 Q I'm asking if it says cervical spine?

14 A It says imaging studies.

15 Q You saw him also on, you said that you arrived at the
16 opinion that he needed lumbar surgery on February 9, 2022; is
17 that right?

18 A I believe so.

19 Q At least that's what you said on direct examination?

20 A I believe so.

21 Q How many times, and please call them out by date --
22 strike that, strike that.

23 Would you characterize Mr. Abreu Perez as a good
24 historian?

25 A You asked me this question already.

Dr. Weinstein-Plf-Cross-Deft/Third-Pty Plf-Mr. Alvarado

1 Q Okay. What is the answer?

2 MR. KELLY: I object, because what's a historian?

3 THE COURT: Sustained.

4 Q When you see patients, is it part of your practice to
5 jot down and ask them questions and obviously take their answers
6 as to their history?

7 MR. KELLY: Judge, we did this already, he's
8 getting a second day now.

9 MR. ALVARADO: No.

10 MR. KELLY: You did.

11 THE COURT: Overruled, you can answer.

12 A Yes, you said that already, your Honor --

13 THE COURT: I know, you can answer it.

14 MR. ALVARADO: Whatever.

15 Q Please answer the question.

16 A I'm going to refer you to my answer before, if you want
17 to read it back, it will be the same thing.

18 MR. ALVARADO: Is this guy for real?

19 MR. KELLY: Can we not have the editorial?

20 MR. ALVARADO: I don't want to go back and forth.

21 Q How many times, I'm sorry -- strike that.

22 Is it your practice to take down everything that your
23 patient states when they tell you the history; yes or no?

24 A Yes, I take down whatever is in the note.

25 Q How many times did you see Mr. Abreu Perez in 2019, and

1 call them out by date?

2 A Five --

3 Q Are you looking --

4 A Can he let me answer?

5 5/29/2019, 6/19/2019, and those are the dates.

6 Q Those two dates, did you take a statement from
7 Mr. Abreu Perez as to whether he was working?

8 A Yes.

9 Q What was his statement?

10 A "5/29/2019, patient is currently not working.

11 6/19/2019, patient is currently not working."

12 Q If I assume for purposes of my questioning that
13 Mr. Abreu Perez testified before this jury that he was actually
14 working in 2019, my question is, if that's what he told you that
15 he wasn't working, that would have been incorrect, that he lied
16 to you?

17 MR. KELLY: Objection.

18 THE COURT: Sustained as to "lie".

19 Q If you wrote that he was not working, but yet he told
20 this jury that he was, would your statement and entry in your
21 medical chart be incorrect?

22 A Yes.

23 Q And that would -- you said you had taken a history from
24 him, that would have come from him?

25 A Correct.

1 Q If he told you that he wasn't working, that would have
2 been incorrect?

3 A Correct.

4 Q How many times did you see him in 2020, again, call out
5 by date?

6 A I did not see him in 2020.

7 Q Any reason why you didn't see him in 2020?

8 A I think there was this thing called Covid.

9 Q Any reason why you didn't see him --

10 A I can't tell you exactly why.

11 Q Can you wait until I finish my question?

12 A I was answering your first question, so you actually
13 interrupted me.

14 Q Okay, excuse me.

15 Any reason why you didn't see and tell that?

16 A I can't answer that, I don't know.

17 Q Did you see him in 2021?

18 A Yes.

19 Q How many times?

20 A 2/24/21, that was it.

21 Q Did he tell you then that he wasn't working?

22 A "Patient is currently not working."

23 Q If he told this jury that he was, I guess what he told
24 you would have been incorrect?

25 A That's correct.

Dr. Weinstein-Plf-Cross-Deft/Third-Pty Plf-Mr. Alvarado

1 Q How many times did you see him in 2022?

2 A 2/9/22, 8/10/22, 11/23/22, 12/21/22, that was it.

3 Q During any of those visits, what did he tell you in
4 terms of his work?

5 A "Patient is currently not working."

6 Q Again, so each of those visits where he told you he
7 wasn't working, and he told this jury he was; that would have
8 been incorrect to you?

9 A Correct.

10 Q The next time you saw him, doctor, I think was
11 January 8, 2023?

12 A 1/18/23.

13 Q 1/18/23?

14 A I didn't see him, my partner saw him.

15 Q Did he ever tell you or your partner that he was
16 involved in a motor vehicle accident -- strike that. Let me ask
17 it again.

18 Does your chart indicate that Mr. Abreu Perez told you
19 at any point in time that he was involved in a motor vehicle
20 accident on December 27th of 2022?

21 A I think this was asked and answered last time.

22 THE COURT: The witness --

23 MR. KELLY: It was, he's going to want it read
24 back.

25 THE COURT: You can answer the question.

Dr. Weinstein-Plf-Cross-Deft/Third-Pty Plf-Mr. Alvarado

1 A I don't believe so.

2 Q Now, that we've established that Mr. Abreu Perez never
3 told you he was working, and never informed you that he was
4 involved in another accident, would you still think he's a good
5 historian?

6 MR. KELLY: Objection. We talked about this, what
7 is a good historian?

8 MR. ALVARADO: Let me ask it a different way,
9 Judge.

10 Q Now, that you know and you confirmed for this jury that
11 Mr. Abreu Perez never told you he had, that he was working, and
12 that he was involved in another accident, would you say that you
13 trusted him to be accurate in terms of his history?

14 A A doctor is only --

15 Q I just asked a yes or no.

16 A I can't answer it in a yes or no.

17 Q Did you ever ask to review what he testified under
18 oath, whether -- strike that, let me ask it again.

19 Did you ever receive any of his sworn testimony under
20 oath at his depositions?

21 A I don't believe so, it's not ever given to me.

22 Q It's not referenced in your file; no, it's not?

23 A No.

24 Q It's also not referenced in your file that you reviewed
25 his trial testimony; that is correct?

Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

1 A I don't believe so.

2 MR. ALVARADO: I have nothing further.

3 THE COURT: Counsel.

4 REDIRECT EXAMINATION BY

5 MR. KELLY:

6 Q Before we get to all of the irrelevant stuff, I'm going
7 to go over some things with you, doctor.

8 When was Mr. Abreu Perez indicated for cervical
9 surgery?

10 A 4/18/2018.

11 Q And that's four years before the automobile accident;
12 correct?

13 MR. ALVARADO: Note my objection, leading.

14 MR. KELLY: I ask the Court to take notice that 22
15 minus 18 is four.

16 THE COURT: Overruled.

17 Q You can answer?

18 A Correct.

19 Q And so I think last time we were here, you looked at
20 the Mount Sinai medical records, where it's indicated no serious
21 injury and no radiology was taken; do you remember that?

22 A I did review them.

23 Q Did the motor vehicle accident have any impact on his
24 indication for surgery four years before it happened?

25 A I believe I stated it did not.

Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

1 Q And when was he indicated for lumbar surgery?

2 A 2/9/2022.

3 Q The motor vehicle accident obviously had no impact on
4 that surgery; is that correct?

5 MR. ALVARADO: Again, note my objection.

6 THE COURT: Sustained.

7 MR. KELLY: You reviewed it the last time if it
8 was, he's asking on cross if he's a good historian.

9 Q Did the motor vehicle accident and the Mount Sinai
10 records, including your review indicating no serious injury and
11 no radiology was done, have any impact on the lumbar spine?

12 MR. ALVARADO: Objection.

13 THE COURT: Sustained. Rephrase.

14 Q Did it have any impact on the lumbar spine surgery?

15 A No, I stated no before.

16 Q Okay. You said that a presurgical MRI was done for
17 Mr. Abreu Perez, within one year; is that correct?

18 A That is correct.

19 Q And is that the standard of care?

20 A I believe so.

21 Q Would there be any reason to supervene the standard of
22 care for any reason?

23 A In his case no.

24 Q And a discogram was done on Mr. Abreu Perez; correct?

25 A Yes, that's correct.

Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

1 Q Remind the jury what is a discogram?

2 A A discogram, remember when we were talking about
3 injecting multiple discs and the patient is blinded, they don't
4 know which disc you're injecting and then if you get a positive
5 response, the Plaintiff says that's the pain I have all the
6 time, that's what a discogram is.

7 Q That's a significant diagnostic test?

8 A In my opinion, yes.

9 Q They asked you about hospital privileges, tell the jury
10 what is that all about?

11 A Hospital privileges are basically signing up to a club,
12 you go there, you bring patients, you don't bring patients,
13 people leave hospitals all the time, they go to different
14 hospitals. It's like people leaving jobs, I don't work for
15 anyone, I can go wherever I want. There's a lot of different
16 reasons people leave, so I left a couple, and I'm at others,
17 it's normal course of business.

18 Q Does every doctor have privileges at every hospital?

19 A Of course not.

20 Q Well, tell me is it regionally directed like you have
21 ones near your home?

22 A Well, one of the hospitals is right near my house,
23 15 minutes, much more convenient.

24 Q There was some discussion of films and films not being
25 in your subpoenaed file.

Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

1 Does anyone use films anymore?

2 A No, the whole thing is a ridiculous situation, I'm a
3 doctor, I don't handle subpoenas that come to my office, I hire
4 people to do that stuff.

5 The films if they want, they supposed to get from the
6 radiologist, I'm not to get the films from the radiology place,
7 I give them what's in the chart, that's it, I have a person who
8 does it, I don't rely on them, the whole thing is ridiculous.

9 Q We went far afield, we say things on films, nobody uses
10 film anymore, they don't put up celluloid?

11 A No.

12 Q It's all done electronically; correct?

13 A All done electrically or on CD.

14 Q So you wouldn't expect a celluloid 16 by 14, so they
15 wouldn't, so films wouldn't be in your file?

16 MR. ALVARADO: Note my objection to these leading
17 questions.

18 THE COURT: Sustained.

19 Q How do you look at films?

20 A We look at them on the computer, people don't bring in
21 films anymore.

22 Q Now, there was a lot of talk about the Workers
23 Compensation Board.

24 Does that impact your license to practice medicine in
25 any way?

Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

1 A My license is in good standing without subject to any
2 disciplinary actions.

3 Q What is the Workers Compensation Board, is that merely
4 a gatekeeper for an insurance cabal?

5 MR. ALVARADO: Note my objection.

6 THE COURT: It's stricken.

7 MR. ALVARADO: I ask it be stricken.

8 Q Tell us what the Workers Compensation Board is?

9 A Workers Compensation Board --

10 MR. ALVARADO: Note my objection.

11 THE COURT: Sustained.

12 MR. KELLY: Sustained? They opened the door and
13 spent two days talking about it, Judge.

14 MR. ALVARADO: It's funny, because when I asked him
15 about the Workers Compensation Board he knew nothing.

16 THE COURT: Sustained.

17 MR. KELLY: Okay.

18 MR. ALVARADO: Interesting.

19 Q Tell us about the number of patients you've handled in
20 the course of your career, doctor?

21 A Thousands.

22 Q And do they all come from Workers Compensation, or
23 something else?

24 A No, they're a mix of all different types of patients.

25 Q How many patients do you think you've handled for

Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

1 Workers Compensation Board?

2 A I've handled a lot, thousands.

3 Q And in this letter, they -- they take four; is that
4 correct?

5 A That's correct.

6 Q None of them are Mr. Abreu Perez; is that also correct?

7 A I don't believe they are.

8 Q We will go through it in a minute, if we can, the dates
9 of accident are stated in the letter, but none of them are
10 June 27, 2017; correct?

11 A I don't believe they are.

12 Q Now, in kerfuffle that you're having with the Workers
13 Compensation Board, did the insurance carriers approach you with
14 an offer to settle and let you go back on the Board if you agree
15 to just testify the way that they wanted you to?

16 MR. ALVARADO: Objection.

17 THE COURT: Sustained and stricken from the record.

18 It's prohibited from mentioning any litigation, negotiations
19 or insurance.

20 MR. KELLY: Your Honor, we're far afield from
21 mentioning insurance.

22 THE COURT: Don't mention it again.

23 Q Doctor, you have a verified petition, do you not, to
24 overturn this finding of four patients by the Workers
25 Compensation Board?

Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

1 A Yes, of course, I do.

2 Q In that petition, do you seek to have your --

3 THE COURT: Counsel, you are getting ready to
4 repeat the statement I told you not to repeat.

5 MR. KELLY: Your Honor --

6 THE COURT: Sustained.

7 MR. KELLY: I will deal it, your Honor, you let
8 them put in something that accuses him of something.

9 THE COURT: Remove the jury from the courtroom.

10 MR. ALVARADO: Judge, we have to have a side bar.

11 COURT OFFICER: All rise.

12 THE COURT: Actually --

13 COURT OFFICER: Jury exiting.

14 (Whereupon, the jury exited the courtroom.)

15 THE COURT: It's ten minutes, we're not going to
16 finish today, there's juror that has a remote meeting at
17 twelve o'clock, so that juror is going to be out. In
18 addition, there's a juror that's unavailable this afternoon
19 for medical reasons, so that's two jurors out. So we're not
20 going to be able to finish today, now we have to do this
21 conference, so I was hoping to go a little past 11:30, I
22 don't think we're going to get to do that, I didn't tell the
23 jury anything, so, let's hear the arguments before.

24 MR. KELLY: Your Honor, you allowed them --

25 MR. ALVARADO: Just wait --

Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

1 MR. KELLY: I'm on the affirmative case now.

2 THE COURT: Mr. Kelly goes first.

3 MR. ALVARADO: I was going to say scheduling.

4 MR. KELLY: The first thing is, we have a
5 representation he's going to be ten minutes. I would like
6 him to pay for the next appearance for the doctor.

7 THE COURT: Denied.

8 MR. KELLY: He spent basically a day and a half or
9 most of his cross-examination concerning a letter, which has
10 now been admitted into evidence.

11 THE COURT: Okay.

12 MR. KELLY: A letter, findings from the Workers
13 Compensation Board, and you allowed this collateral hearing,
14 now you're going to foreclose the other side from arguing
15 about the hearing.

16 I mean he's entitled to put on a defense, they
17 beseeched him in front of the jury and I need to clarify it.

18 THE COURT: One moment, Mr. Weinstein -- I'm sorry,
19 Dr. Weinstein, I am, doctor, I'm going to ask you to step
20 outside.

21 THE WITNESS: Your Honor, this has to do with me.

22 THE COURT: I understand.

23 THE WITNESS: It's not fair.

24 THE COURT: I will, the testimony --

25 MR. KELLY: He's not on.

1 Dr. Weinstein - Plaintiff - Redirect/Mr. Kelly

2 THE COURT: I don't want to talk about the
3 testimony.

4 THE WITNESS: I know but this trial became about
5 me, not about him.

6 THE COURT: We don't want to have --

7 THE WITNESS: And it's also --

8 MR. KELLY: Doctor, I will take care it. Doctor, I
9 will take care of it.

10 THE WITNESS: And I have --

11 THE COURT: I understand your --

12 THE WITNESS: These are the guys.

13 MR. ALVARADO: What did you say?

14 MR. KELLY: Mind you, Judge --

15 MR. ALVARADO: You have to admonish him, he's
16 pointing at us, these are the guys --

17 MR. KELLY: He's not an officer of the court, you
18 are, so don't engage him, it's your fault for engaging him.

19 MR. ALVARADO: It's mine?

20 MR. KELLY: It is.

21 MR. ALVARADO: No, glad, you're here, let him get
22 him.

23 THE COURT: Mr. Kelly, you can finish your
24 argument.

25 MR. KELLY: Your Honor, they opened this can of
26 worms and started the collateral hearing about the findings

1 that the Workers Compensation Board in an attempt to
2 bootstrap that on to Mr. Abreu Perez. None of the findings
3 concern Mr. Abreu Perez or anything remotely like it, I'm
4 going to ask, I intend to ask the doctors about the dates of
5 service, the dates of accident for the four people mentioned
6 in the letter, none of the dates of accident are June 17,
7 2017.

8 This letter is hotly opposed, and it's part of a
9 conspiracy by the Compensation carriers for the -- for the
10 Workers Compensation Board to prevent Dr. Weinstein from
11 testifying, and they did offer a settlement to him if he
12 would alter his medical records to not find causation.

13 THE COURT: Who offered him a settlement?

14 MR. KELLY: Workers Compensation carriers, I have
15 the proof right here, confidential agreement and general
16 release. He didn't sign it, because it's unethical to do
17 it, I'm going to offer it into evidence at this time.

18 MR. JOHNSON: You're going to offer an unsigned
19 settlement agreement into evidence?

20 COURT OFFICER: Counselors, one at a time.

21 THE COURT: One moment, with respect to the dates
22 of the accident contained with respect to the -- with
23 respect to the patients in the decision, I believe the
24 answer is it states what it states, but you can ask him the
25 question, because the dates are in there, you can read them.

Motions

1 MR. KELLY: Okay.

2 THE COURT: With respect to the argument, counsel,
3 you want to --

4 MR. KELLY: Your Honor, I'm not quite finished, not
5 at all.

6 MR. JOHNSON: Please continue.

7 MR. KELLY: He went line by line with the findings,
8 the petition goes line by line to oppose the findings, with
9 justification, including Dr. Weinstein's own expert
10 physician's opinions, it also talks about, they talked about
11 epidural procedures.

12 Dr. Weinstein doesn't do epidural procedures and
13 that's part of the petition. Most, most of what is
14 contained in the findings are wrong, and pursuant to A FOIL
15 request we obtained an email from an outside carrier
16 stakeholder to the Workers Compensation Board saying that
17 they were going to blow him up, wiping these guys out, make
18 a big win for the industry.

19 THE COURT: For the record, it's now 11:30, how
20 much time because I do want to try to bring the jurors back
21 and try to finish him, but if you're not finished, I will
22 have the officer excuse him for the day.

23 MR. KELLY: That's fine, I'm not even remotely
24 done.

25 THE COURT: The jury is excused for the day, come

1 back on Monday at ten a.m.

2 MR. KELLY: The plan is to go through this entire
3 thing, oppose line by line, oppose everything in that
4 letter. They got the opportunity during that collateral
5 hearing to raise the issues, and I'm going to oppose them by
6 the sworn testimony in the petition.

7 THE COURT: Okay, are you finished with your
8 argument?

9 MR. KELLY: I am.

10 THE COURT: Okay.

11 MR. JOHNSON: Counsel, your Honor, what Plaintiff's
12 attorney is doing right now is saying the word "insurance"
13 over and over and over and over again, because he's unhappy
14 that, at your rulings, at the way the trial is going, he's
15 gunning for a mistrial.

16 So at this point based on the conduct of
17 Plaintiff's attorney, I believe that there are grounds based
18 on the gross misconduct to dismiss the entire complaint. I
19 have never seen anything like this in my entire life. We
20 made a motion at the beginning of the trial because you
21 can't talk about insurance, because it's prejudicial.

22 The Workers Comp findings are in evidence because
23 it shows a pattern that this doctor has done over and over
24 again to at least six patients, it's one of the main issues
25 in this trial. What he wants is a mistrial and what -- he's

1 doing is so outside the realm of professional and ethically
2 acceptable that I don't know how we unring this bell at this
3 point without dismissing the entire complaint.

4 I mean, your Honor he's getting up there, he says
5 it's an insurance cable and --

6 MR. KELLY: Cabal.

7 MR. JOHNSON: Objection sustained, sorry, whatever,
8 thank you. Then he's saying it again and again and again.
9 I mean I don't know how to fix this issue at this point, and
10 I'm at kind of a loss as to where we go from here at the
11 moment.

12 MR. KELLY: Judge, first day of the trial, I didn't
13 even participate, they were mentioning insurance from the
14 stand in questioning the -- Mr. Azar who appeared here.

15 THE COURT: Who?

16 MR. KELLY: Mr. Azar, the landlord, the guy who
17 showed up here, the first thing they asked him, the
18 Third-Party Defendant, well somebody asked him about the
19 contracts and the insurance agent, he's an insurance agent,
20 did you through the insurances, he said no, I didn't know if
21 they had insurance or didn't have insurance.

22 THE COURT: One moment, is that what happened?

23 MR. KELLY: We can read it.

24 THE COURT: With respect to any medical insurance,
25 I'm not sure what kind of insurance.

Motions

1 MR. KELLY: Insurance was mentioned by them.

2 MR. ALVARADO: At the beginning of the trial, not
3 the damages portion, the liability portion.

4 THE COURT: One moment.

5 MR. KELLY: Yes.

6 THE COURT: This isn't liability.

7 MR. ALVARADO: We were talking in the liability
8 phase of this trial.

9 THE COURT: Mr. Kelly, please focus on this trial
10 in front of this jury, in front of this court.

11 MR. KELLY: Sure.

12 THE COURT: Because you're mentioning things that
13 didn't happen in this trial.

14 MR. KELLY: Well, it happened before this jury,
15 Judge, talking about insurance, who had insurance, it's
16 liability insurance, they moved for indemnity for fail --
17 for breach of contract and for failure to provide liability
18 insurance, that's what they moved on, they put that in front
19 of the jury, which is not supposed to be there, but there
20 they did, they did it first.

21 Not only that, Workers Compensation is not supposed
22 to be mentioned in front of the jury, they opened the can of
23 worms on it, and now they're saying I have a problem because
24 I'm reading the thing they started.

25 THE COURT: With respect to the Workers

Motions

1 Compensation, there are two distinct issues, one is a
2 decision that was final decision that was entered by the
3 Board, and the second compensation, Workers Compensation
4 that was mentioned by Mr. Kelly is whether or not the
5 Plaintiff received or applied for financial benefits to
6 supplement his income, that's two different things.

7 MR. KELLY: I didn't ask that.

8 THE COURT: So, I believe yesterday there were
9 questioning to the Plaintiff or attempts at questions with
10 respect to how the Plaintiff supplemented his income.

11 MR. KELLY: They asked it.

12 THE COURT: Whether it was application.

13 MR. KELLY: They asked it, where he gets his money
14 from, they asked him.

15 THE COURT: Was that your question?

16 MR. KELLY: It was his question. They asked him
17 where he gets the money from.

18 THE COURT: From the Plaintiff?

19 MR. KELLY: They asked him where he gets the money
20 from. They opened the door for it. I mean they have been
21 opening the door every single day of this trial.

22 THE COURT: Okay, I don't have yesterday's
23 transcript.

24 (Pause in the proceedings.)

25 THE COURT: I do have the transcript.

Motions

1 MR. ALVARADO: I have my radiologist coming Monday.

2 MR. KELLY: I'm not done with my case, you're going
3 to have to wait, this is your fault.

4 MR. ALVARADO: Judge, look at page 946, he in the
5 pages before he talked about how they made him work, and I
6 think he was pointing to his attorneys and on page 946, I
7 thought I asked a legitimate question, because he said, you
8 know he couldn't live, he couldn't eat, I said didn't you
9 borrow money, it was objected.

10 MR. KELLY: That's the last thing.

11 MR. ALVARADO: Then Mr. Kelly gets up on redirect,
12 and he's the one that mentions Workers Compensation.

13 THE COURT: Okay, one moment, one moment. Page
14 946, Mr. Kelly.

15 "QUESTION: Did Workers Compensation tell you, you
16 have to work?"

17 Objection.

18 MR. ALVARADO: That wasn't me.

19 MR. KELLY: Well, before that, it's well before
20 that, that he's talking about, I have to find it.

21 THE COURT: Mr. Kelly is looking for it.

22 MR. ALVARADO: I never mentioned the words "Workers
23 Compensation" with the Plaintiff, never.

24 I do have one other, to be fair to Mr. Kelly in
25 terms of this petition, he wants to introduce, there's more,

1 there's more.

2 (Pause in the proceedings.)

3 THE COURT: So I did review the transcript, and the
4 first time Workers Compensation is mentioned in front of the
5 jury was by Mr. Kelly on page 946.

6 MR. KELLY: No, it was mentioned days before that.

7 THE COURT: Okay. Well, in front of the jury --

8 MR. KELLY: Days before that.

9 THE COURT: Okay.

10 MR. KELLY: Nonetheless, well, Dr. Weinstein went
11 before this cross-examination. They were talking about
12 Workers Compensation with Dr. Weinstein the first day he was
13 here.

14 THE COURT: So as I stated, the decision is
15 something separate from the benefits or the financial
16 application of the Plaintiff.

17 MR. KELLY: Right, and the application of
18 Dr. Weinstein has to do with the petition, that's why we're
19 in a collateral hearing about the application, it's not
20 about whether Mr. Abreu Perez got money from Workers
21 Compensation, we all agree he did.

22 THE COURT: So counsel's application with respect
23 to the questioning is the improper mentioning of Workers
24 Compensation as a part of the finances which is something
25 different. I'm looking at the prior transcripts from prior

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1 days, and I'm going to see if we're talking about what's
2 mentioned in front of the jury.

3 MR. ALVARADO: Judge, he also said in addition to
4 the Workers Compensation, he said something about an
5 "insurance cabal," I mean, that's why my appellate counsel
6 moved to dismiss his complaint at this point.

7 MR. JOHNSON: Because's looking for a mistrial.

8 MR. KELLY: They have moved three times for a
9 mistrial, we moved twice, we should develop a full record
10 here.

11 MR. JOHNSON: I think the conduct rises to a level
12 of misconduct at this point.

13 MR. KELLY: I think it goes to immediate award of
14 inquest, and they can't question anything on damages.

15 THE COURT: I don't believe a mistrial is warranted
16 in this case, nor dismissal of the complaint.

17 MR. JOHNSON: Your Honor, what are we going to do
18 if he keeps doing it? Do we have a dismissal of the
19 complaint?

20 MR. KELLY: The petition, he's entitled to defend.

21 THE COURT: One moment, we didn't get to that part
22 yet.

23 MR. RAMIN: Your Honor, Mr. Kelly mentioned
24 something about the first portion of the trial that dealt
25 with Third-Party Plaintiff's breach of contract claim to

1 procure insurance, they put Mr. Hyman Azar on the stand.

2 THE COURT: Whose "they," whose "they"?

3 MR. RAMIN: Third-Party Plaintiff, the principal of
4 176 East 116th Street, LLC on the stand, and asked whether
5 he saw a COI from my client, the tenant.

6 MR. KELLY: Certificate of insurance.

7 MR. RAMIN: I put my client's officer on the stand,
8 Daniel Min, and I said did you provide insurance, and he
9 said yes.

10 MR. KELLY: That was before the jury.

11 MR. RAMIN: That was before the jury.

12 MR. KELLY: Before I even started talking.

13 THE COURT: One moment, one at a time.

14 MR. RAMIN: Then Third-Party Plaintiff moved for a
15 directed verdict which your Honor granted. When the jury
16 came back in, they were instructed that that part of the
17 case has been resolved, they, your Honor, purposely I think
18 never mentioned to them that you granted a directed verdict
19 for the Third-Party Plaintiff.

20 So far as the jury is concerned, there was, there
21 was disputed issues of fact as to whether, at least my
22 client had insurance or not, I don't know why that is an
23 issue at all.

24 MR. KELLY: You're not supposed to mention
25 insurance in front of the jury, and you did it first.

1 MR. RAMIN: The cause of action is failure to
2 procure insurance, what are you going to do?

3 MR. KELLY: It is not a jury question as we all
4 probably agree.

5 THE COURT: That was on the indemnification
6 portion.

7 MR. KELLY: Yes.

8 MR. RAMIN: Yes.

9 MR. KELLY: Right, but still in front of the same
10 jury, they heard it, they heard the issue of insurance, they
11 raised it first.

12 Not only that, they raised the issue of Workers
13 Compensation insurance before I did with Dr. Weinstein, and
14 they have to live by the sword, die by sword. They raised
15 the issue and I have to be able to contest it, they're
16 having this extraneous hearing and the extraneous hearing is
17 trying Dr. Weinstein over his renewal application, he's got
18 to be allowed to defend in front of the jury, in all equity
19 and fairness.

20 MR. ALVARADO: When we came before, your Honor, and
21 we were trying the indemnity issue first, Mr. Kelly
22 participated in jury selection, and he never objected to
23 that. We came before, we said, Judge, we have to try this,
24 and you gave him the opportunity to stand up and make any
25 statements you want. He said he's not participating, we

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1 have no objection here, so now he doesn't like it.

2 MR. KELLY: No, no.

3 MR. ALVARADO: And somehow he equates with our
4 clients prosecuting a contractual claim that we had to --
5 let me finish please.

6 MR. KELLY: Go ahead.

7 MR. ALVARADO: Prosecute a contractual claim, now
8 he doesn't like the way the evidence is going in, he's going
9 back to day one and saying whoa, whoa, I have a problem now,
10 how can that be?

11 Second, he equates with your Honor's permission,
12 cross-examining a doctor, they call it a letter, it is a
13 decision from the Workers Compensation Board, which we argue
14 that pretrial, we made motions, you can cross him on it,
15 it's findings as to his methods of practice, his
16 methodology, his recordkeeping, his financial interest, all
17 of which go to his credibility, all of which go to the
18 issues we have been arguing here, okay, but you never just
19 go out and say you know, oh, "Workers Compensation," we did
20 it in with him in terms of the decision and we stuck to the
21 decision.

22 Judge, we didn't even go outside the scope of the
23 decision, and then he tried to argue with you, that I was
24 the one that mentioned it and you looked at the records and
25 you said that's not true, that's not true at all. I didn't

1 ask his client about Workers Comp.

2 In fact, when his client said he couldn't even
3 work, I never asked him about Workers Comp.

4 MR. KELLY: So I don't object to they're mentioning
5 insurance, in fact I love it, I don't care they mentioned
6 insurance, it is their mistake, they have to live with it.

7 In fact, they opened the door with Workers
8 Compensation, and they jumped through it, we're having a
9 hearing on it, my client is -- not my client, the doctor is
10 entitled to defend it.

11 THE COURT: With respect to a collateral hearing,
12 there is no collateral hearing, Mr. Kelly, you're bringing
13 it up.

14 MR. KELLY: Well --

15 THE COURT: One moment. You've spoken several
16 times, no one is questioning whether or not the Board's
17 decision with respect to Dr. Weinstein is correct or
18 incorrect; in fact Dr. Weinstein is appealing it.

19 That's not the issue, the only issue is whether or
20 not he engaged in unnecessary medical treatment as a motive
21 with respect to other patients and how it impacts his
22 medical treatment of the Plaintiff in this case, that's it,
23 no one is asking about whether or not he's a good doctor.

24 In fact, he testified he still has a license, he
25 still practices, he still treats other patients as you

1 brought out on cross-examination. This is not about
2 Dr. Weinstein's license, this is not about whether or not he
3 is a good doctor. This is about whether or not he has an
4 incentive or reason to misrepresent the treatment with
5 respect to the plaintiff/patient in this case.

6 MR. KELLY: He's entitled to meet that allegation,
7 Judge, they've made the allegation, they hung it out there
8 in front of the jury, and he's entitled to meet it.

9 THE COURT: It's denied.

10 MR. KELLY: Exception.

11 | THE COURT: Noted.

12 MR. KELLY: Your Honor, they went through the whole
13 thing that's in evidence. If you want, I will go through
14 the letter, did you dispute this, tell us how you dispute
15 it, why did you dispute it. You want me to do it this way?

16 THE COURT: No.

21 MR. ALVARADO: Judge, here is the problem with
22 this. If he wants to do that, and he doesn't need the
23 petition, he can just ask him, do you dispute this, why, but
24 if he goes through his petition, in the petition the doctor
25 mentions all of these fraud claims against him, and if he's

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1 going to open the door, I will gladly jump through that
2 door, and I will bring the pleadings, and I will
3 cross-examine him for three days --

4 MR. KELLY: Sure.

5 MR. ALVARADO: -- on those fraudulent claims which
6 by way --

7 MR. KELLY: I will offer the proposed release.

8 MR. ALVARADO: I think, I think, and I may be
9 wrong, your firm is named, we will bring it up, we will
10 bring it up, but I'm telling you right now, either he should
11 have, he should be putting on -- saying he's going to assert
12 his Fifth Amendment, maybe you guys should get separate
13 counsel.

14 THE COURT: Okay.

15 MR. KELLY: I will offer the general release where
16 they asked him to commit a felony.

17 THE COURT: Please, we're not doing anything with
18 the petition.

19 MR. ALVARADO: Okay.

20 THE COURT: We're not going to go into it.

21 MR. KELLY: But I can ask him how he disputes this
22 letter.

23 THE COURT: You can ask him if he disputes it.

24 MR. KELLY: I will ask him eaches of how and why he
25 disputes this. They make an allegation that he did

1 epidurals without requesting prior approval, he doesn't do
2 epidurals.

3 This finding is completely ridiculous, and he's
4 about entitled to meet that allegation, they just leave it
5 hanging out there, that it's ipso facto.

6 THE COURT: No, no, the problem is, if you go
7 through each one and ask how he disputes it.

8 MR. KELLY: Yeah.

9 THE COURT: That's not an issue before the jury and
10 it doesn't allow respondents an opportunity to
11 cross-examine, what he's doing on appeal, that's a separate
12 litigation.

13 If you want to ask him if he disputes it, yes, he
14 disputes it, is it on appeal, yes, it's on appeal, but going
15 through each one and asking how he's do it, if you want to
16 say do you do epidurals, no, that's different, but going
17 through and asking how he's disputing it is something
18 separate, that will not be allowed.

19 MR. KELLY: Well, your Honor, they just spent two
20 days on this letter and saying it says this, it says that,
21 but most of that is incorrect and that he's entitled to say
22 why it's incorrect.

23 THE COURT: Incorrect, how? You said he doesn't do
24 epidurals, that's fine.

25 MR. KELLY: There's that, and one is failure to

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1 submit prior approvals, he did submit prior approvals, they
2 failed to look at administrative --

3 THE COURT: How do you know, how do you know, how
4 are you going to prove?

5 MR. KELLY: Because he has copies of the
6 Administrative, well, the PAR requests.

7 THE COURT: We're not litigating that.

8 MR. KELLY: All then all we're saying is that we
9 believe what the Board said, and that's going to impeach his
10 credibility without his ability to answer.

11 THE COURT: It's not only to impeach his
12 credibility.

13 MR. KELLY: What else is it for if it's not to
14 impeach his credibility?

15 MR. JOHNSON: Your Honor, I agree with your ruling,
16 I thought it was outstanding.

17 We need to address the issue of him still talking
18 about insurance cable -- I'm sorry, "cabal insurance," you
19 know, I want us on the record saying, you know if he
20 mentions it one more time, the complaint should be dismissed
21 based on attorney misconduct.

22 I mean like you said the Workers Compensation
23 hearing, we're not mentioning Workers Comp because we want
24 Workers Comp in front of the jury, we're mentioning a
25 decision by the chief medical officer of the Workers

1 Compensation Board impeaching his credibility.

2 The reason he's mentioning insurance is for no
3 other reason than to prejudice our clients, because there's
4 no insurance issue before this jury, because we won our
5 motion already.

6 I really think I have no choice under CPLR 3126,
7 and this Court's inherent powers of equity, to move for a
8 conditional order of dismissal of the complain if the word
9 "insurance" is mentioned anymore by Mr. Kelly. I don't see
10 any other option, because he's blowing through your orders
11 telling him not to say it, and he doesn't care, because he
12 keeps doing it.

13 MR. KELLY: It seems to be a hyperbolic, I don't
14 know what he's talking about, but you said it once, and I
15 said it once.

16 MR. JOHNSON: You said eight times.

17 MR. KELLY: No, no, there's more to it, an offer of
18 proof, something about -- something about an insurance
19 cabal. I have an email which basically is a conspiracy that
20 they offered the MCO --

21 THE COURT: Counsel, we're talking about what is
22 before the jury.

23 MR. KELLY: Yes, right.

24 THE COURT: I don't want to hear about emails, I
25 don't want to hear about hearings and things that happened

Motions

1 at another phase. We're only talking about what this jury
2 heard.

3 MR. KELLY: They should be able to hear --

4 THE COURT: That's something separate.

5 MR. KELLY: They should be able to hear his
6 contentions in opposition to these findings.

7 THE COURT: I said what you can ask him, that's it.

8 Anything else?

9 MR. JOHNSON: So is our motion granted?

10 THE COURT: With respect to dismissing the
11 complaint?

12 MR. JOHNSON: Like conditionally, if he says it
13 again.

14 THE COURT: No, if -- we will see how it goes.

15 Mr. Kelly, you're instructed not to mention any
16 outside litigation or, you can -- well, strike that.

17 You can ask him if he's appealing the decision,
18 that's fine.

19 MR. KELLY: This is a separate interest, it's an
20 Article 78 petition, he has an appeal, but he is an
21 Article 78 petition to overturn the Board decision.

22 THE COURT: Okay, you can ask him if he's disputing
23 it, that's fine.

24 MR. KELLY: Again, I will ask him the things about
25 the epidurals, did you submit the PAR's, I mean they said he

1 didn't. *Ipso facto* it's proof because they said it.

2 THE COURT: Wait a minute, wait a minute. Are you
3 going to ask him if he submitted it in the decision, are you
4 asking him --

5 MR. KELLY: No, does the decision contemplate the
6 fact that he actually submitted them, he has dates when he
7 submitted them, they just missed it.

8 THE COURT: Okay. Is that in the decision?

9 MR. KELLY: Yeah, it's in the decision of you
10 didn't submit a PAR for this, that and the other thing. He
11 has the dates the PAR's, I submitted them to you.

12 THE COURT: Now, we're only talking about the
13 decision.

14 MR. KELLY: Judge, now you're preferring one
15 version over the other.

16 THE COURT: I'm not preferring one version over the
17 other. You're talking about disputing the findings in this
18 case about a separate case, that's not what we're doing.

19 If you want to ask him if he disputes that, that's
20 fine.

21 MR. KELLY: Judge, there's no --

22 THE COURT: If you want to ask him if he has
23 litigation about it, that's fine. If you want to ask him if
24 he does these type of procedures, the answer is no, that's
25 fine.

Proceedings

1 But to say what he submitted to the Board what, he
2 provided with his billing, that is not allowed.

3 MR. KELLY: See, Judge that's the problem, you said
4 that's a finding in his case, that's not a finding in this
5 case, that concerns four patients, none of whom are the
6 Plaintiff.

7 THE COURT: We're talking about this case.

8 MR. KELLY: Yeah, right.

9 THE COURT: Not.

10 MR. KELLY: They used the finding of the Board
11 doesn't concern this case, it concerns four other patients.

12 THE COURT: Counsel, that's my ruling, don't
13 mention it. Alright.

14 See you Monday at 10:00.

15 MR. JOHNSON: Thank you.

16 MR. ALVARADO: Judge, scheduling before you let us
17 go, I was supposed to bring in my radiologist Monday
18 morning.

19 THE COURT: Okay, well --

20 MR. ALVARADO: I don't know how much Mr. Kelly has.

21 THE COURT: I believe you have one witness on
22 Monday.

23 MR. ALVARADO: Yes.

24 THE COURT: I don't believe this is going to take
25 all day.

Proceedings

1 MR. KELLY: He can't be here Monday, Dr. Weinstein
2 can't be here Monday, he has surgery scheduled.

3 THE COURT: Okay.

4 MR. ALVARADO: I will bring my witness anyway.

5 THE COURT: Okay.

6 MR. ALVARADO: I have the officer Tuesday, last we
7 spoke yesterday, you were going to let us sum up to the jury
8 yesterday, because we lose a juror Wednesday.

9 THE COURT: Okay.

10 MR. ALVARADO: And that could risk then the whole
11 thing blowing up.

12 THE COURT: Can Dr. Weinstein come Tuesday?

13 MR. KELLY: I can ask him, it's he's gone, I think
14 it's too late.

15 THE COURT: On the record, if this case does not
16 finish by Tuesday, you're going to lose a juror. We have a
17 witness -- I'm sorry, we have a juror who is leaving
18 Wednesday.

19 MR. ALVARADO: Wednesday.

20 THE COURT: And will not be back until Sunday, so
21 whatever you do with your witnesses, however you schedule
22 it, that's the issue the jurors are facing, so Monday,
23 Mr. Alvarado, you will have your witness.

24 MR. ALVARADO: Dr. Sherman.

25 THE COURT: Tuesday, you'll have the police

1 officer.

2 MR. ALVARADO: Police Officer Linares.

3 THE COURT: Yes. We still have Dr. Weinstein.

4 MR. ALVARADO: I don't think it will take long.

7 MR. KELLY: I will find out.

8 THE COURT: That's the question, alright.

9 MR. ALVARADO: Are we excused, Judge.

10 THE COURT: Yes.

11 MR. RAMIN: Have a good weekend.

12 (Pause in the proceedings.)

13 THE COURT: Don't forget counsel, I need your
14 verdict sheet by the end of the day.

15 MR. KELLY: I submitted my mine.

16 MR. JOHNSON: I have a completed verdict sheet and
17 I will email it to you.

18 THE COURT: Proposed charges also.

19 MR. JOHNSON: Yes.

20 (Whereupon, the trial as adjourned to February 2,
21 2026, at ten a.m.)

22 *****
23 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
24 MEMBERS, FRIENDS OF THIS PROGRESSIVE

24 Laura Delvac
25 LAURA DELVAC
SENIOR COURT REPORTER

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