

1 SUPERIOR COURT OF NEW JERSEY
 2 LAW DIVISION - BERGEN COUNTY
 3 DOCKET NO. BER-L-6219-22

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 5 RAFAEL PITA, :
 6 Plaintiff, : DE BENE ESSE
 7 -VS- : DEPOSITION OF:
 8 : JOSEPH W. DRYER, MD
 9 : (VIA ZOOM)
 10 : MAY 15, 2025
 11 WEGMANS FOOD MARKETS, INC., :
 12 WEGMANS FOOD MARKETS; :
 13 MONTVALE WINE, LIQUOR & :
 14 BEER; THE S. HEKEMIAN GROUP, :
 15 LLC; S. HEKEMIAN & CO., :
 16 INC.; DEPIERO DEVELOPMENT :
 17 COMPANY, LLC; DEPIERO FARMS :
 18 OF NEW JERSEY, LLC; JOHN :
 19 DOES 1-10; and ABC CORPS. :
 20 1-10, :
 21 :
 22 Defendants. :
 23 -----

24
 25
 26 Videotaped deposition was taken via Zoom
 27 videoconferencing, before ANNA MARIA FASCIANO,
 28 License No. 30XI00200300, a Certified Court Reporter
 29 of the State of New Jersey, on the above date,
 30 commencing at 10:06 a.m.

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<div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <div>INDEX</div> <div>WITNESSPAGE</div> <div>JOSEPH W. DRYER, MD (VIA ZOOM)</div> <div>VOIR DIRE EXAMINATION BY MR. FEINSTEIN9</div> <div>DIRECT EXAMINATION BY MR. FEINSTEIN14</div> <div>CROSS-EXAMINATION BY MR. CLARK43</div> <div>REDIRECT EXAMINATION BY MR. FEINSTEIN94</div> <div>EXHIBITS</div> <div>NUMBERDESCRIPTIONPAGE</div> <div>(NONE MARKED)</div> </div>	<div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <div>rocks or lifting cases of beer is not pertinent to</div> <div>diagnosis and treatment, and, therefore, the doctor</div> <div>should not try to get in -- or the defense should</div> <div>not try to get in through the doctor hearsay</div> <div>statements and medical records about whether or not</div> <div>he was injured lifting kegs or lifting cases up</div> <div>stairs.</div> <div>So I'm objecting at the outset for that so</div> <div>that I don't have to unnecessarily interrupt the</div> <div>testimony.</div> <div>Now, if the defense does go through and</div> <div>attempt to solicit testimony from the doctor as to</div> <div>how specifically he was injured in terms of whether</div> <div>it be kegs or cases of beer from hearsay in medical</div> <div>records as opposed to from the plaintiff's testimony</div> <div>or Interrogatories, then I'm going to go through and</div> <div>do a whole bunch of cross-examination on that issue,</div> <div>and I'm only doing it -- so if -- if it does happen</div> <div>by the defense and my objection is not sustained,</div> <div>but if my objection is sustained, then I will also</div> <div>move to redact out my related cross-examination on</div> <div>that stuff.</div> <div>Okay. That's all I have. Thank you.</div> <div>I just wanted to get that out at the outset</div> <div>so I don't have to do it in the middle.</div> </div>

6

1 MR. FEINSTEIN: And so that we have a
2 somewhat complete record on the issue if this
3 transcript needs to be presented to the Court at the
4 time of trial, I believe the objection that has been
5 noted should have been more properly been presented
6 to the Court through a formal motion in limine which
7 did not occur in this case.

8 That -- that issue aside, I believe that
9 the -- the issue regarding the mechanism of injury,
10 not whether it occurred on a loading deck outside of
11 Wegmans or somewhere else, is a relevant issue in
12 this case that was testified to by the plaintiff's
13 medical expert last week, and there may well be
14 questions asked on direct examination of the doctor,
15 not about statements that were provided in medical
16 records by the plaintiff, but that pertain to
17 materials that are in this record that were reviewed
18 as part of the doctor's formation of his opinions in
19 the report that pertain to mechanism of injury. And
20 to the extent that mechanism of injury is an issue
21 in this case, it's an issue that the plaintiff's
22 doctor has spoken to and the defense doctor will
23 likewise, should have entitlement to speak to as
24 well.

25 So I guess, Gerald, we'll deal with the issue

7

1 further as it may arise during the course of the de
2 bene esse.

3 MR. CLARK: Listen, I pretty much agree
4 with everything you said. All I'm trying to keep
5 out is hearsay in medical records. And I was
6 looking at the expert's report or the doctor's
7 report and it says, Medical records contain
8 conflicting information as to exactly what happened
9 on January 8, 2021. That's what I think is
10 impermissible through the doctor that's --

11 MR. FEINSTEIN: I think he says more
12 than that. He also references the plaintiff's
13 deposition testimony and text messages that we have
14 in evidence in this case that was part of --

15 MR. CLARK: I'm not objecting to that.
16 I'm not objecting to that. I'm just objecting to
17 the medical records part. But whatever, we'll deal
18 with it as it comes because he says there's
19 conflicting information in the medical records. I
20 didn't see any conflicting information in the
21 medical records, but whatever.

22 MR. FEINSTEIN: All right.

23 MR. CLARK: All right. Thanks.

24 VIDEOGRAPHER: All right. I'll let you
25 know.

8

1 (On the video record.)

2 VIDEOGRAPHER: We're now going on the
3 video record. Today is May 15th, 2025. The time
4 now is 10:12 a.m. This deposition is being held
5 virtually on Zoom. This is the virtual video
6 deposition of Dr. Joseph W. Dryer. The Docket
7 Number in this case is BER-L-6219-22.

8 My name is Steve Cullen, your Certified Legal
9 Videographer with Stellar Recording Services, and
10 our Certified Court Reporter is Anna Maria Fasciano
11 with Twin Court Reporting.

12 Will the attorneys state their appearances.

13 MR. CLARK: Good morning. It's Gerald
14 Clark from the Clark Law Firm. I'm here for RJ
15 Pita. Thank you.

16 MR. FEINSTEIN: Jason Feinstein from
17 Eckert Seamans for Defendant Wegmans Food Markets.

18 VIDEOGRAPHER: Will the court reporter
19 swear the doctor.

20

21 J O S E P H W. D R Y E R, M. D., HAVING BEEN
22 DULY SWORN ACCORDING TO LAW, WAS EXAMINED AND
23 TESTIFIED AS FOLLOWS:

24 COURT REPORTER: Thank you.

25 VIDEOGRAPHER: Go ahead.

9

1 VOIR DIRE EXAMINATION

2 BY MR. FEINSTEIN:

3 Q. Hello, Dr. Dryer. Would you please
4 tell the jury what you do for a living?

5 A. I -- I am an orthopedic surgeon. I've
6 been in practice 30 years. My practice is 100
7 percent spinal surgery. Half of that is in
8 children. I correct curvatures of the spine known
9 as scoliosis. And the other half of my practice is
10 routine adult surgery, such as lumbar fusion,
11 cervical fusions, decompressions, trauma, tumors,
12 and so on. I operate about two and a half days a
13 week, do about 200 cases per year.

14 Q. Okay. Where -- where is your
15 orthopedic practice?

16 A. My orthopedic practice is about
17 two-thirds in New York City. So my operating
18 privileges are at NYU Medical Center. So I operate
19 at the Tisch Hospital, the Kimmel Hospital, and the
20 Hospital For Joint Disease, occasionally down the
21 street at Bellevue. I do about one-third of my
22 surgery in New Jersey, and that is divided between
23 Morristown Memorial Medical Center and St. Barnabas
24 in Livingston.

25 Q. All right. And do you have with you

1 for your testimony today a copy of the report that
2 you rendered in connection with the case of Rafael
3 Pita?

4 **A. I do. That report is dated March 20th,**
5 **2024, and I do have that.**

6 Q. All right. And do you have a copy of
7 your curriculum vitae with you?

8 **A. Somewhere.**

9 Q. Okay.

10 **A. Not right in front of me, but I -- I**
11 **know what's in it.**

12 Q. I -- I ask those questions only to
13 indicate to you, sir, that if you need to refer to
14 either of those documents as you're testifying
15 today, you should feel free to do so. Okay?

16 **A. Thank you.**

17 Q. Would you please describe to the jury
18 your educational history?

19 **A. College, Lafayette College, graduated**
20 **in 1985. Medical school, Columbia University,**
21 **graduated 1989. Orthopedic surgery residency, 1989**
22 **through 1994 at Kings County Medical Center, SUNY**
23 **Downstate in Brooklyn.**

24 **At the end of year five years of residency,**
25 **you can do one extra year of training called a**

1 **fellowship where you may choose to subspecialize in**
2 **an area, pediatrics, trauma. So I did the NYU spine**
3 **and scoliosis fellowship, 1994 through 1995 where we**
4 **just did one year of surgery focused on the spine.**
5 **And I have been in continuous practice since then.**

6 Q. Okay. Where do you hold a medical
7 license?

8 **A. In New York since 1989, in New Jersey**
9 **since 1996.**

10 Q. All right. Are you certified by any
11 medical board?

12 **A. I am board certified by the American**
13 **Board of Orthopedic Surgery in 1997, recertified in**
14 **2007, recertified in 2015, recertified for the third**
15 **time in 2024. I will remain board certified until**
16 **2037 or I'm dead, whichever comes first.**

17 Q. All right. Fair enough.

18 What -- what is the American Board of
19 Orthopedic Surgery?

20 **A. The American Board of Orthopedic**
21 **Surgery is a group of orthopedic surgeons that**
22 **examine -- who -- that examines young surgeons. And**
23 **if your work is found to be acceptable, you become**
24 **board certified.**

25 Q. And what -- what does it mean to hold a

1 certification with that particular board?

2 **A. With that -- so the way that works is**
3 **you -- you're in practice for two years. The**
4 **American Board of Orthopedic Surgery reviews your**
5 **list of surgery. They pick 12 cases. You get the**
6 **X-ray, the chart, the CAT scan, the MRI. You go to**
7 **Chicago. The board reviews your work, and if it's**
8 **found to be acceptable in quality, you become board**
9 **certified which means you're -- the standard and**
10 **quality of your work meets the expectation of the**
11 **board. And then you have to take the exam over**
12 **every ten years.**

13 Q. All right. Now, you may have mentioned
14 this a moment earlier, but where -- where do you
15 currently have hospital privilege?

16 **A. NYU Medical Center, which is the Tisch**
17 **Hospital, the Kimmel Hospital, and the Hospital For**
18 **Joint Disease, Bellevue Hospital, at St. Barnabas**
19 **Livingston, and Morristown Memorial Medical Center.**

20 Q. Do you have any hospital staff
21 appointments?

22 **A. Well, all at the same hospitals. Those**
23 **same -- operating and staff at all the hospitals I**
24 **just mentioned.**

25 Q. All right. Are you a professor at all?

1 **A. I'm assistant professor of orthopedic**
2 **surgery and neurosurgery at NYU Medical Center and**
3 **NYU Medical School.**

4 The reason is, I'm part of the residency
5 training program. We have 12 residents per year, 72
6 residents in total. The residents scrub with us
7 during surgery. We teach them how to operate. And
8 so it's not classroom teaching. There's a little
9 classroom teaching, but it's 95 percent in the
10 operating room. And because I'm part of the
11 teaching program, I have that appointment.

12 Q. All right. Do you have prior
13 experience serving as a medical expert in legal
14 cases?

15 **A. I do.**

16 Q. In what jurisdictions?

17 **A. New York and New Jersey.**

18 Q. Have you previously been qualified as
19 an expert in orthopedic medicine and surgery in New
20 Jersey Superior Court?

21 **A. That is correct.**

22 Q. Are you being compensated for your time
23 in this matter?

24 **A. That's correct. I'll receive \$2,000**
25 **which is what I would have earned if I was operating**

1 or seeing patients.

2 Q. In your private practice, have you had
3 occasion to diagnose and treat patients with
4 cervical injury?

5 A. I do. It's about one-third of my
6 practice. It's about one -- it's about 25 percent
7 of my surgical practice.

8 Q. Have you personally performed the
9 surgical procedure that was done to Mr. Pita, an
10 anterior cervical discectomy and fusion?

11 A. That is correct. It's a routine part
12 of my practice. In the last 30 years, I've done
13 that surgery over a thousand times. I continue to
14 do it monthly.

15 MR. FEINSTEIN: At this time, the
16 defense would like to offer Dr. Dryer as an expert
17 in the field of orthopedic medicine and surgery.

18 MR. CLARK: No objection.

19 MR. FEINSTEIN: Thank you.

20
21 DIRECT EXAMINATION

22 BY MR. FEINSTEIN:

23 Q. All right. Could you please explain to
24 the jury, Dr. Dryer, the role of someone serving in
25 the position you're serving in in this case where

1 you've been asked to review a case as a medical
2 expert, how do you go about that sort of work?

3 A. Yeah, so it's actually -- it's an --
4 it's almost the same as my private practice except
5 at the very end.

6 So we examine the individual. We take a work
7 history, you know, was it a work-related injury, was
8 it a car accident, what, you know, what happened,
9 general history as we would for a private patient.
10 We record their medical and surgical history, any
11 prior surgeries they've had, any medical problems as
12 we would for a private patient. We then review any
13 medical records which are available to us, we review
14 any films, and then we do the physical exam.

15 To be clear, I often do the physical exam
16 first and review the films later, but the films
17 always get reviewed one way or the other.

18 And then the only difference is at the end.
19 If it's a private patient, I'm going to issue a
20 diagnosis and then educate the patient on the
21 diagnosis and then educate the patient on the
22 treatment alternatives that are available.

23 In a case such as this, I write my opinion as
24 to whether there's been a permanent injury or not.

25 Q. All right. And I'm looking at your

1 report on the bottom of Page 2 through the top of
2 Page 3, and is that where you list the materials
3 that you reviewed as part of your review of the case
4 of Mr. Pita?

5 A. That is correct.

6 Q. All right. And looking at that list,
7 it includes both Mr. Pita's treatment records,
8 imaging studies, and certain materials that were
9 exchanged in the litigation. Would that be an
10 accurate statement?

11 A. That is correct.

12 Q. All right. And did you review all
13 those materials?

14 A. I did.

15 Q. And did you also examine Mr. Pita?

16 A. That is correct, on March 20th, 2024.

17 Q. Do you hold the opinions you're going
18 to offer to the jury in this matter to a reasonable
19 degree of medical probability?

20 A. That is correct.

21 Q. And what does the phrase medical
22 probability mean to you?

23 A. It -- it means that if there was ten
24 board certified orthopedic surgeons and we all had
25 the same information in front of us, we would all

1 reach the same conclusion.

2 Q. Before we get to your opinions in this
3 case, I'd like you to explain to the jury your
4 understanding of the accident involving Mr. Pita.

5 A. Yeah, so by history -- so he -- I
6 always take a history and I ask him what happened,
7 and he said that he was injured at work on January
8 8th, 2021. He was pulling cases of beer on a hand
9 truck at which point he felt soreness in his neck.
10 The pain eventually proceeded to radiate down his
11 right arm and right forearm. He did not seek
12 emergency room treatment that day, he did, however,
13 go to CityMD on January 13th, 2021.

14 Q. Is the manner or the mechanism by which
15 Mr. Pita suffered the cervical injury involved in
16 this case important to your opinions in this matter?

17 A. That's correct.

18 Q. And why is the manner in which the
19 injury was suffered important to your opinions?

20 A. Just for consistency. In other words,
21 there -- there are certain mechanisms of injury that
22 really shouldn't injure your neck and there's others
23 that should or can, and so we just want to make sure
24 that -- that the history he's offering is consistent
25 with the complaints, the medical records, the films,

1 **and -- and -- and all of that.**

2 Q. And here, based on the history given,
3 is it fair to say that the injury involving Mr. Pita
4 was suffered in, a term that I think is used in your
5 profession, Doctor, in an acute manner?

6 A. That is correct.

7 Q. And could you describe what that means,
8 an -- an acute injury?

9 A. Yeah, so the -- the symptoms manifest
10 over time. So what that -- what that means is an
11 acute injury -- I'll just give an example is a
12 patient is in a car accident and they have some
13 soreness in their neck, they were fine, they walked
14 around, they went home. The next day, they wake up
15 and their neck really hurts, and then they go to the
16 emergency room the day after. And -- and that's
17 classic for an acute injury.

18 You know, did they have, you know, pain right
19 away, not all of it, but -- but what acute injury
20 means, the symptoms manifest within 24 to 48 hours.

21 Q. All right. Which leads to my next
22 question. When a person suffers an acute cervical
23 disc herniation, will the pain associated with that
24 injury necessarily be immediate?

25 A. No. It could -- it could be immediate,

1 **but it could be later in the day, and quite
2 commonly, it could be the next day.**

3 Q. What area or areas of the body do you
4 understand Mr. Pita to claim that he injured?

5 A. His cervical spine, which is his neck.

6 Q. And you reviewed some of Mr. Pita's
7 imaging studies; is that correct?

8 A. That's correct.

9 Q. And that included both X-rays and an
10 MRI?

11 A. That is correct.

12 Q. And they were of the cervical region;
13 is that correct?

14 A. That's correct.

15 Q. And what were the findings you reached
16 following your review of the imaging studies?

17 A. So -- so I'll describe what I found. I
18 also have the images available for review and I can
19 do a screen share if that is desired.

20 So the -- the cervical MRI from March 6,
21 2021, showed an extruded disc herniation at C4-5.
22 So what does that mean? That means that in between
23 the bones in your neck, there's discs. They are
24 like jelly donuts, stronger than a jelly donut, but
25 the point is, there's jelly in the middle of the

1 **disc and the jelly can leak out. If it leaks out,
2 it can impinge on the spinal nerve.**

3 So in this case, there is a disc herniation
4 at C4-5. The jelly has leaked out. It is
5 compressing the spinal nerve. And the extruded disc
6 material migrated over towards the right C5 nerve
7 root, which does consist -- which is consistent with
8 the complaints that he had.

9 Q. And did you make any other findings
10 from your --

11 A. So he -- I did. So he -- so he also
12 had a, what's called a chronic disc osteophyte
13 complex. The next disc down, he had basically an
14 old herniation at C5-6 which was smaller. And --
15 and that was not operated on, it was not addressed.
16 So the next level does have a small disc herniation,
17 but it was judged to be not symptomatic.

18 And then I went on to review the X-rays in
19 this case.

20 Q. And what were your findings as it
21 related to the X-rays?

22 A. So I saw -- the initial X-rays were
23 preoperative. No evidence of acute trauma or
24 injury. It shows some cervical degeneration.

25 Then I saw a series of X-rays extending from

1 May 17th -- from February -- well, let me just give
2 you the dates of what I saw. So February 4th, 2021,
3 May 25th, 2021, July 29th, 2021, September 3rd,
4 2021, and May 17th, 2022. So those are
5 postoperative X-rays, and they demonstrated fusion
6 which had been performed at C4-5. And then the
7 point of the X-rays is to prove that the fusion
8 occurred. It did occur, and that the anterior
9 instrumentation, meaning the plate and screws,
10 remained in the appropriate position, which they
11 did.

12 So the X-rays demonstrate a good result with
13 good healing intact hardware.

14 Q. Thank you.

15 Could you please describe to the jury your
16 findings from your physical exam of Mr. Pita?

17 A. Yeah, so his physical exam is -- is
18 first before you do any orthopedic examination you
19 do a neurologic examination because there are
20 bodies, whether it's the elbow or the spine or the
21 knee, the nerves are always right near the bone. So
22 before you examine any bones or ligaments, you
23 examine the nerves.

24 So I'll just demonstrate one area. The
25 examinee is going to hold his arm up like this. I'm

1 going to pull down with my fist. If I can't pull
2 down, the C5 nerve root is intact. They're going to
3 pull in against resistance. If I can't push out,
4 the C6 nerve root is intact. They're going to hold
5 their finger straight. If I cannot push down, the
6 seventh nerve root is intact. They're going to hold
7 their fingers apart. If I cannot collapse those
8 fingers, the eighth nerve root is intact. So that's
9 called a motor exam. So you're looking for a
10 difference left to right or a weaker muscle on one
11 side versus the other.

12 We also repeat that testing in the lower
13 extremities.

14 So in sum total, the motor exam was normal
15 showing full strength of both arms, both upper
16 extremities and both lower extremities.

17 Then we do some other neurologic tests. We
18 test reflexes. You can tap on the back of the
19 elbow, triceps reflex; front of the elbow, biceps
20 reflex; at the knees, quadriceps reflex; at the
21 ankles, Achilles reflex. You're looking for an
22 absent reflex.

23 So you've all had this done. The doctor hits
24 your arm, it jumps like that, that's the biceps
25 reflex. You're looking for an absent reflex or a

1 difference from left to right. All the reflexes
2 were normal.

3 We test coordination. Coordination is a
4 question of how fast your nerves are functioning,
5 are your nerves operating at the correct speed. So
6 if you ask people to walk on their tiptoes and their
7 heels, if you can walk on your toes and heels
8 without falling over, without holding onto the exam
9 table, then your coordination function is normal.

10 So all of these tests are called the
11 neurologic exam, and they showed no evidence of
12 nerve injury or nerve damage from this case.

13 In particular, the herniation is at C4-5.
14 That gets the fifth nerve root. The fifth nerve
15 root does this. The fifth nerve root makes your arm
16 go up. So you can test it by pulling down hard.
17 I -- I really can't pull my arm down with one fist.

18 So in this case, we tested that, along with
19 everything else, and we found intact neurologic
20 function and intact C5 nerve root.

21 And then we went on to do the actual
22 orthopedic component of the exam.

23 Q. And would you briefly describe the
24 surgical procedure that was performed to Mr. Pita?

25 A. Yeah, so it's a day surgery. The

1 patient goes home the same day. You can do it in a
2 hospital or surgery center, but it's a -- it's a day
3 surgery.

4 So you make a small incision right here,
5 about one inch, 1.5 inch. The -- so a neck surgery
6 is called a gentleman's surgery because it's
7 actually easier for the surgeon and the patient.
8 The reason is, the -- the structures you're trying
9 to get at are only about an inch and a half below
10 the skin. So skin incision. You have your Adam's
11 apple here, which is your windpipe, and your
12 esophagus. If you keep pushing your hand right
13 here, you can actually get down to the spine. I --
14 I wouldn't do that just now because -- but anyway,
15 you pull this way and move over the windpipe, and
16 then the carotid artery is over this side. You can
17 actually feel that pulsating. You push that the
18 other way. Then you put your retractors in. Now
19 you're looking at the spine. The retractors go
20 under muscles called longus colli. Those are
21 longitudinal muscles that are along the spine. Now
22 you're looking at the disc.

23 You can use a microscope. You can use your
24 eyes. You can use your eyes with magnification,
25 that's called loupe magnification, however you

1 choose to do it. You remove the disc. As you get
2 backwards, meaning you go deeper into the disc, you
3 take out the entire disc and then you look for loose
4 fragments that are near the nerve. You locate those
5 fragments, you know where they are because of the
6 MRI, and then pull them out. And then when you're
7 done, there's a gap in the disc. And then you put a
8 piece of bone in there. You can do two things, you
9 can either put in a -- a bone, that's called a
10 fusion, and then you put a small metal plate about
11 the size of a postage stamp over it with four screws
12 to hold it in place, or you can put in a disc
13 replacement, which is an artificial disc. And for
14 that, there's no plate, you just slide in the
15 artificial disc and then you're done. The -- the
16 closure is three or four minutes.

17 In my practice, no collar on the neck. I --
18 for a single level fusion we do not place a cervical
19 collar. The patient goes home the next day.

20 Back to work for office job is generally five
21 days to six days. Back to work for -- let's say you
22 work at FedEx and you're moving boxes all day,
23 you're out of work for eight weeks.

24 Q. All right. Here Mr. Pita's surgery was
25 performed by a Dr. Yeon, Y-e-o-n, at Summit Medical

1 Group.

2 Do you know that doctor?

3 **A. I don't.**

4 Q. All right. Did you review his
5 treatment and surgical records for Mr. Pita?

6 **A. That is correct.**

7 Q. And did they appear to you to be
8 complete and accurate?

9 **A. They were complete and accurate, that
10 is correct.**

11 Q. Do you know how long Mr. Pita was put
12 out of work in connection with his surgery?

13 **A. I don't have that fact in front of me.**

14 **In my practice, I would have put him out for
15 eight weeks. 12 weeks would be about the max.**

16 Q. And for someone like Mr. Pita who at
17 the time was working both in a microbrewery taproom
18 and as a delivery person, are they able after eight
19 to 12 weeks, in your experience, to return to full
20 work duty?

21 **A. That is correct.**

22 Q. Okay.

23 MR. CLARK: Can we just go off the
24 record for a second?

25 VIDEOGRAPHER: All right. Going off

1 the video, 10:35 a.m.

2 (Off the video record.)

3 MR. CLARK: We're off the video?

4 VIDEOGRAPHER: Yeah.

5 MR. CLARK: Can you just read back the
6 last question and answer, please?

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

9 MR. CLARK: Okay. So I'm going to
10 object to that question. Basically what the
11 question was is, do other people who have that
12 surgery, are they able to go back to work within
13 eight weeks, and that is -- we object to that on the
14 basis of relevance. That would be like saying do
15 most drivers not speed, ergo my guy wasn't speeding
16 because most guys don't speed.

17 What other patients experienced in terms of
18 going back to work is not relevant to -- to RJ Pita
19 here in this case, so I object to that on the basis
20 of relevance. To the extent it has some tangential
21 relevance, it causes the jury to speculate and --
22 and think about or consider, and it's really
23 speculate, about what other people in the population
24 and how much they go back to work or not and, ergo,
25 RJ Pita should have been able to go back to work.

1 That is irrelevant and unduly prejudicial and cause
2 for speculation, so I object to that question.

3 Thank you.

4 MR. FEINSTEIN: Go back on the record.
5 (Back on the video record.)

6 VIDEOGRAPHER: All right. Back on the
7 video, 10:37 a.m.

8 BY MR. FEINSTEIN:

9 Q. Dr. Dryer, based on your review of the
10 record that you had for Mr. Pita, coupled with your
11 exam, how long do you believe he needed to be out of
12 work for to recover from his injury?

13 **A. 12 weeks.**

14 Q. Are you aware that Dr. Yeon did not
15 return Mr. Pita to work on a full-time basis until
16 May of 2022, one year after the surgery was
17 performed?

18 **A. Yeah, that's the surgeon's judgment and
19 that -- that was his choice, and I don't dispute it.
20 But every -- every surgeon has a different way of
21 doing things in certain ways. So mine is 12 weeks.
22 For this case, it was one year.**

23 Q. Okay. Would you please tell the jury
24 of your opinions reached regarding Mr. Pita's
25 condition as of the time you performed your

1 examination?

2 **A. Yeah, so my -- my overall finding was a
3 minimal functional limitation. And so the reason
4 for that is, he had a nice result from the surgery.
5 It's a single level surgery, meaning only one disc
6 was operated. So there's seven discs in your neck,
7 if you fuse one of them, you loose very, very little
8 range of motion. So you have minimally diminished
9 range of motion, and that is the reason that I
10 stated he had a minimal functional limitation. And
11 he is absolutely capable of resuming his original
12 employment.**

13 **My practice includes military officers.
14 After a one level fusion, they go back to combat.
15 My practice --**

16 MR. CLARK: Can we -- can we go off the
17 record for a moment?

18 VIDEOGRAPHER: Off the video, 10:38
19 a.m.

20 (Off the video record.)

21 MR. CLARK: Okay. So he's doing it
22 again. He's saying, oh, I've had combat people that
23 were in combat and were able to go back, or I had
24 some unexplained person who had a crazy surgery and
25 they went back, therefore, RJ Pita should may have

1 been able to go back. That is unfair irrelevant
2 testimony. We don't have the medical records of
3 these supposed other patients. They're not
4 available for cross-examination. We're not able to
5 compare their medical histories and all the
6 particular details to RJ Pita. So to -- to do that
7 is unfair, unduly prejudicial, and irrelevant.

8 And I would also note that there's nothing in
9 his report about some military hero that had their
10 neck blown up and then went back to work, you know,
11 the next day. That's just not fair, it's not
12 relevant, and it's unduly prejudicial, and we object
13 to that line.

14 Thank you.

15 MR. FEINSTEIN: Your characterization
16 is unfair, and the doctor's answer was interrupted
17 without being completed. I'm going to give the
18 doctor an opportunity to complete his answer, if he
19 hasn't, when we're back on the record.

20 (Back on the video record.)

21 VIDEOGRAPHER: All right. Back on the
22 video, 10:40 a.m.

23 **A. So overall, this gentleman has a**
24 **minimal functional limitation following a successful**
25 **surgery at a single level in the spine and he is**

1 **capable of returning to his original employment**
2 **without restriction, in my opinion.**

3 Q. All right. Dr. Dryer, have you
4 reviewed the report of Mr. Pita's medical expert in
5 this case, Dr. Landa?

6 **A. I have.**

7 Q. All right. And you understand that Dr.
8 Landa offers certain opinions regarding Mr. Pita's
9 future medical care?

10 **A. That is correct.**

11 Q. Do you agree with Mr. Landa's opinions?

12 **A. I don't. I put down in my report Dr.**
13 **Landa noted the possibility of three cervical**
14 **epidural injections per year for the rest of his**
15 **life. In my private practice, I've never seen that**
16 **of 30 years. I've never encountered an individual**
17 **who had three cervical injections per year for their**
18 **entire life. So I -- I just -- that is**
19 **contradictory to what I've seen in my practice for**
20 **30 years. So I'm going to say three injections per**
21 **year is unrealistic and unlikely.**

22 **Physical therapy two to three times a year,**
23 **physical therapy once a year, I think, is reasonable**
24 **as a tune-up. These people do need to have**
25 **refreshers on -- on -- on strengthening of their**

1 **neck muscles. So if they go to therapy once a year,**
2 **they learn their exercises, they do them at home,**
3 **that's reasonable.**

4 **An MRI every two years, no. So an MRI every**
5 **four years generally would be required.**

6 **So those were my observations regarding his**
7 **opinion.**

8 Q. All right. Based on your review of Mr.
9 Pita's records, do you know when it was that he was
10 last treated by his surgeon, Dr. Yeon?

11 **A. So the last visit with Dr. Yeon was --**
12 **let me look at my thing here -- May 17th, 2022.**

13 Q. Okay. And as far as you know, there's
14 been no return to treatment with the surgeon since
15 that time; is that right?

16 **A. That is correct.**

17 Q. And, in fact, has there been any
18 medical treatment received by Dr. Pita since May of
19 2022?

20 **A. Nothing in -- after 2022.**

21 Q. All right. I have no further
22 questions. Thank you, Doctor.

23 MR. CLARK: All right. Let's just go
24 off the record for a bit. Thank you.

25 VIDEOGRAPHER: All right. Off the

1 video, 10:42 a.m.

2 (Off the video record.)

3 MR. CLARK: Just give me another three
4 minutes. Thank you. Appreciate your patience.

5 Hey, I'm just going to do a test her. I'm
6 playing audio. I want to make sure you can hear it.

7 What do we have to do so they can hear it?

8 MR. ANTONACCIO: And then go back to
9 Zoom, then hit share.

10 MR. CLARK: Zoom.

11 MR. ANTONACCIO: Then share.

12 MR. CLARK: Share.

13 MR. ANTONACCIO: And then you go to
14 application. Click that one.

15 MR. CLARK: Application.

16 MR. ANTONACCIO: Yeah, you need to make
17 sure you're in the actual application.

18 MR. CLARK: Got it.

19 MR. ANTONACCIO: And then that will
20 play.

21 MR. CLARK: All right. I just -- I
22 just want to make sure you can hear the audio. This
23 is the audio of the defense medical exam.

24 (Audio played.)

25 MR. FEINSTEIN: I cannot hear anything.

34

1 (Audio played.)

2 MR. CLARK: All right. Can anyone hear

3 that on the other side?

4 THE WITNESS: I can hear it.

5 MR. FEINSTEIN: It's not entirely

6 clear, Gerald, but --

7 MR. CLARK: Are you able to hear that?

8 MR. FEINSTEIN: I can hear something.

9 MR. CLARK: I just paused it.

10 MR. FEINSTEIN: Yeah.

11 MR. CLARK: Weird. I'm not hearing

12 anyone.

13 VIDEOGRAPHER: There's a little box on

14 the bottom left corner that you have to hit for

15 audio. I don't know --

16 MR. CLARK: Oh, sorry, hold on one sec.

17 Hold on a sec.

18 (Audio played.)

19 MR. CLARK: All right. So I didn't

20 hear anything of what you guys said, but -- hold on.

21 (Audio played.)

22 MR. CLARK: All right. Sorry, I didn't

23 hear what you were talking but now I can hear you.

24 Were you able to hear the video I was

25 playing?

35

1 MR. FEINSTEIN: Gerald, I can hear

2 voices. I can't say I can make out what they're

3 saying, but I can hear voices.

4 MR. CLARK: Steven, are you able to

5 hear? What's the deal?

6 VIDEOGRAPHER: No. There's a little

7 box on the left lower side that you hit for audio.

8 I don't know if that's -- if that's checked, in the

9 share box.

10 MR. CLARK: Let me share my screen.

11 VIDEOGRAPHER: The bottom left.

12 MR. ANTONACCIO: Yeah, just stop

13 sharing real quick, go to application.

14 MR. CLARK: Hold on.

15 MR. ANTONACCIO: Click that over there

16 where you hit share sound.

17 MR. CLARK: Share sound.

18 MR. ANTONACCIO: Yeah.

19 MR. CLARK: Okay. And then --

20 MR. ANTONACCIO: Then you go on to

21 applications.

22 MR. CLARK: All right. Now hold on.

23 So I'm going to share my screen.

24 MR. ANTONACCIO: Go to the exhibits.

25 MR. CLARK: All right. Now hold on,

36

1 let me just share my screen. So I'm going to go --

2 all right, let's do this again. Settings -- wait.

3 MR. ANTONACCIO: It's in the share

4 settings.

5 MR. CLARK: It's in the share settings.

6 All right. Share.

7 Let me just share the screen just so they can

8 see. All right. So this is this. Let me close my

9 email. This is the audio of the DME I want to play.

10 I'm going hit play now and tell me if you can hear.

11 (Audio played.)

12 MR. CLARK: All right, Steven, are you

13 able to hear that?

14 VIDEOGRAPHER: Yeah, very low, but...

15 MR. CLARK: All right. Very low.

16 Okay. Now I'm going to try to share the --

17 MR. ANTONACCIO: Stop sharing, up top.

18 MR. CLARK: I'm going to try to share

19 the application.

20 VIDEOGRAPHER: In the box where -- in

21 the share box where the application is, on the

22 bottom left corner is a -- is a little box that says

23 audio.

24 MR. CLARK: Yeah, I think I'm pretty

25 good on that.

37

1 All right. Now I'm going to play it again

2 and --

3 VIDEOGRAPHER: Do you have it checked?

4 MR. CLARK: Yes.

5 VIDEOGRAPHER: Okay. Then it's --

6 MR. CLARK: Let's play it again.

7 (Audio played.)

8 MR. CLARK: All right. So he said

9 where is your pain, neck, head and -- and right

10 shoulder.

11 Did you guys hear that?

12 MR. FEINSTEIN: I did, but just so I'm

13 clear, Gerald, if you play this audio, is it your

14 expectation that it's going to be transcribed by our

15 court stenographer?

16 MR. CLARK: No, just heard to the jury.

17 MR. FEINSTEIN: All right. Listen,

18 some of it, like the clip you just played, I heard

19 that four or five seconds pretty clearly. There are

20 other things you've played where it came out to me

21 to being muffled and I couldn't make out the words

22 being spoken.

23 MR. CLARK: Okay. All right. Thanks.

24 MR. FEINSTEIN: But before we get

25 going, and I'll wait till you tell me you're ready

<p style="text-align: right;">38</p> <p>1 to get going, I'll want to put an objection on the 2 record.</p> <p>3 MR. CLARK: All right. Why don't you 4 do that now if you don't mind.</p> <p>5 MR. FEINSTEIN: Anna, are you ready?</p> <p>6 COURT REPORTER: I've been on the 7 record --</p> <p>8 MR. CLARK: I'm ready.</p> <p>9 COURT REPORTER: -- because nobody said 10 to go off, so I'm ready.</p> <p>11 MR. FEINSTEIN: Okay. That's fine.</p> <p>12 It appears, although it's not clear to me 13 because there's been foundation set for it, but it 14 appears that on cross-examination plaintiff is going 15 to present to Dr. Dryer a recording that was made of 16 the medical examination performed of Mr. Pita, 17 although that's the best I can presume what's going 18 to be played. I've only heard maybe a total of ten 19 seconds of it so far.</p> <p>20 MR. CLARK: Just so I can represent, 21 it's the audio from the defense medical exam that 22 our nurse, our accompanying nurse, audio recorded 23 it. That's what it is.</p> <p>24 MR. FEINSTEIN: Okay.</p> <p>25 MR. CLARK: The total -- the total --</p>	<p style="text-align: right;">40</p> <p>1 it's cross-examination, and we sent a notice letter 2 that we were sending a nurse to the defense medical 3 examination, that the nurse reserved -- that we 4 reserved the right to audio or video record the 5 defense medical examination and if we were sitting 6 in court.</p> <p>7 So we've just emailed it now, and that's not 8 an admission that we needed to do so in discovery, 9 but it's for purposes of cross-examination. I don't 10 think the recording was ever requested in discovery. 11 Even if it was, it's still cross-examination 12 material. And certainly if you want the opportunity 13 to listen to it, it's -- it's in both your email 14 boxes now, or at least it should be because we sent 15 some it some moments ago, feel free to do so and 16 talk to him about it.</p> <p>17 MR. FEINSTEIN: Then we should go off 18 the record.</p> <p>19 Dr. Dryer, do you have the email from 20 plaintiff's counsel with this audio attachment in 21 your email inbox?</p> <p>22 THE WITNESS: I'll look and see.</p> <p>23 COURT REPORTER: Excuse me, Jason, did 24 you want to go off the stenographic? 25 MR. FEINSTEIN: Yes.</p>
<p style="text-align: right;">39</p> <p>1 I'll just tell you how long it is. The total is 11 2 minutes and 16 seconds. Less than three minutes of 3 it is the physical exam part.</p> <p>4 MR. FEINSTEIN: All right.</p> <p>5 MR. CLARK: But the total -- the total 6 audio is about 11 minutes. Thank you.</p> <p>7 Sorry, go ahead.</p> <p>8 MR. FEINSTEIN: That's fine.</p> <p>9 So -- no, I appreciate the representation.</p> <p>10 The objection from the defendant is this is 11 presumably material that's been in the possession of 12 the plaintiff since the exam was performed in this 13 matter in March of 2024. We're now in May of 2025. 14 We've known of a trial date in this case for quite 15 some time. This recording has never been produced 16 to the defense. Producing it for the first time 17 without affording the defense an opportunity to even 18 hear it prior to the doctor being confronted with it 19 is unfair, prejudicial, and goes against all the 20 tenets of the rules of court and the discovery 21 process.</p> <p>22 So the defense position is it should not be 23 permitted and any testimony elicited from Dr. Dryer 24 related to this recording should be stricken.</p> <p>25 MR. CLARK: Jason, my response is is</p>	<p style="text-align: right;">41</p> <p>1 (Off the stenographic record.) 2 (Back on the stenographic record.)</p> <p>3 MR. CLARK: At the defendant's request, 4 we are taking a break so that the doctor has an 5 opportunity to listen to the video. And I'm also, 6 although the doctor is on cross-examination, I am 7 consenting to the lawyer speaking to the doctor 8 about the video, or about the audio of the DME 9 recording during the break. And the defense is 10 seeking about 15 minutes to look at it, I have no 11 objection.</p> <p>12 Thank you.</p> <p>13 MR. FEINSTEIN: All right. We'll go 14 off the record.</p> <p>15 (Whereupon a discussion was held off 16 the video and stenographic record and a brief recess 17 was taken.)</p> <p>18 MR. FEINSTEIN: Okay. Dr. Dryer and I 19 are both back.</p> <p>20 Anna, I want to stay on the stenographic 21 record for a minute before we go on the video 22 record.</p> <p>23 MR. CLARK: Let me just run -- let me 24 just run to the men's room. Hold on. 25 (Whereupon a brief recess was taken.)</p>

MR. FEINSTEIN: So we went on a break and Dr. Dryer called me a few minutes into the break where he advised me that the audio recording that was emailed to him would not play for him. He tried to get it to play at multiple sections of the recording and none of it played for him. So Dr. Dryer has not heard the recording that counsel intends to confront him with during cross-examination.

I did play it for myself on my system, and while I think Mr. Pita's voice for the most part came across relatively clearly, there were certainly portions of it where the doctor, in my hearing of it, was muffled, and I could not make all -- out all the words being said.

So subject to the objection I already stated that this was not previously provided, and certainly ample opportunity existed for it to be provided, the defense objects to it, and we'll deal with that at the time of trial.

VIDEOGRAPHER: You ready?

THE WITNESS: Yes.

VIDEOGRAPHER: Okay. Mr. Clark -- oh, okay, great. Thanks. I was going to tell you to take down the share.

All right. I'll let you know. Hold on.

(Back on the video record.)

VIDEOGRAPHER: Back on the video, 11:19 a.m.

CROSS-EXAMINATION

BY MR. CLARK:

Q. Okay, Doctor. Now, you are here today as a sort of forensic expert witness paid by the defense; is that right?

A. I'm not a sort of forensic witness. So forensic is on dead people, I examine living people. And it's not sort of, it's an independent medical exam. It's 25 percent of my practice and 25 percent of my time.

Q. Well, when we say forensic, we mean for purposes of court testimony and litigation.

A. Right, that's your definition. Forensic to a doctor means dead. So that's -- we'll just have to disagree on that.

Q. Okay. That's fine.

And now -- let me just grab my notes here.

You were retained by the defense in this case, correct?

A. We agree.

Q. All right. And in these -- in these cases, these injury cases, you will see the plaintiff and typically prepare a report of your exam and findings; is that right?

A. We agree.

Q. And if asked, you will then testify at a deposition; is that right?

A. We agree.

Q. And then if asked, you will also testify in court on behalf of the defense for whom you have written a report; is that fair?

A. We agree.

Q. Okay. And as of August of 2024 -- well, let me just step back for a second.

When you testify at a deposition you understand that there are -- transcripts are created by a court reporter?

A. We agree. All my depositions over the last 20 years have been recorded in some form.

Q. Okay. And do you recall the testimony that you gave in a case called Mullins on August 6 of 2024?

A. I don't recall it, but it was just emailed to me, so I looked at it. I gave it a general look-over and so now I recall parts of it.

Q. Okay. And do you recall testifying in Mullins that you conduct about 500 to 750 of these exams each year? Does that sound --

A. Correct. That's correct, and it hasn't changed.

Q. And you testified in Mullins that 90 percent of those -- those exams are on behalf of the defense; is that right?

A. Correct, and unchanged.

Q. And do you remember testifying in a case called Howell, and that testimony was in a case called Howell versus Green, and you gave that testimony, looking at the transcript, on February 15, 2023?

A. I don't remember that. I don't have that transcript, but please continue.

Q. All right. Well, if -- I can screen share it here, at least the cover page.

A. Sure.

Q. Do -- do you see this here?

A. I do.

Q. All right. And the date is February 15, 2023?

A. We agree.

Q. And it looks like a transcript prepared

1 by a court reporting company?

2 **A. We agree.**

3 MR. CLARK: For the record, it's marked
4 Plaintiff's Exhibit 30.

5 Yeah, and that's -- that's, I understand,
6 been sent to you by Jake in the email. Okay.

7 BY MR. CLARK:

8 Q. Now, isn't it true that you testified
9 in that case that every time you testify it's for
10 the defense and you never testified on behalf of
11 someone actually injured in the State of New Jersey;
12 do you remember that testimony?

13 **A. I do.**

14 Q. Okay. Now, do you remember in the
15 Mullins case, when you testified in 2024 in Mullins,
16 that you estimated that you've done over -- as of
17 2024, that you've done over 15,000 exams over your
18 career?

19 **A. That is correct.**

20 Q. And I'm assuming the price for your
21 exams has gone up since Mullins. There, I believe
22 you testified you charge \$500 per exam?

23 **A. Agreed. It's still the same.**

24 Q. Okay. Well, how come it hasn't go up
25 given all the inflation stuff we're hearing about?

1 **A. It went up right before that. You
2 know, 20 years ago it was 250, now it's 500. It
3 goes up every once in a while.**

4 Q. Well, if I just do the simple math and
5 if I do 15,000 exams -- well, let me just step back.

6 And also you -- you testified in Mullins that
7 you would, on average, testify about 24 times a
8 year, twice a month?

9 **A. We agree.**

10 Q. One on Zoom and -- one on Zoom and one
11 in person?

12 **A. We agree.**

13 Q. And your price for testifying now is up
14 to, I think you said \$2,000?

15 **A. We agree.**

16 Q. All right. Well, if I just do the
17 simple math just on the exams and I do 15,000 exams
18 times \$500 each, that comes out to 7.5 million
19 dollars you have made testifying predominantly on
20 behalf of the defense in cases like this; is -- is
21 that correct?

22 MR. FEINSTEIN: Object to the form.

23 VIDEOGRAPHER: Going off the video,
24 11:25 a.m.

25 (Off the video record.)

1 MR. FEINSTEIN: It's -- this is a
2 mischaracterization. The doctor testified that the
3 \$500 per exam has been charged for a period of time.
4 Before that, there was a different charge per exam.
5 Counsel's calculation is misleading and prejudicial.

6 MR. CLARK: Well, the doctor's
7 definitely a lot smarter than me, so I'm sure he
8 will call us out on that for sure.

9 Okay.

10 (Back on the video record.)

11 VIDEOGRAPHER: Back on the video, 11:26
12 a.m.

13 **A. So the best answer is, generally
14 speaking, including in those depositions somewhere
15 that you showed me, I generally earn about \$300,000
16 per year doing independent medical exams. Some
17 years less, some years more. Some years I have more
18 surgery, some years I have less surgery.**

19 **On average, \$300,000 a year. Over ten years,
20 that would be 3 million dollars. Over 20 years,
21 that would be 6 million dollars. I think the
22 estimate of 7.5 million is excessive, but, on
23 average, \$300,000 per year.**

24 Q. So you've made millions of dollars
25 writing reports and testifying in court on behalf of

1 the defense; is that fair?

2 **A. We agree.**

3 Q. Now, it's funny, you -- you say that
4 these are independent exams?

5 **A. Correct.**

6 Q. Well, how can it be independent if the
7 side on the other side of the courtroom on that
8 other table over there is paying you millions of
9 dollars, the defense, how -- how -- how can you be
10 independent when they're the ones paying you?

11 **A. Because I'm free to render my opinion
12 in any way that I see that it -- that makes sense in
13 terms of the medical records and my physical exam
14 and my review of the films. So no matter what I
15 write, I get the same fee, so that means it's
16 independent.**

17 Q. Now, a lot of the cases that you
18 testify on behalf of the defense for are auto crash
19 cases, right?

20 **A. Auto crash, generally two-thirds of
21 cases I see are auto crash. One-third is other
22 types of injuries.**

23 Q. And frequently a medical issue in those
24 cases is whether or not the injury is permanent,
25 right?

A. We agree.

Q. All right. And if you find the injury is permanent, that would be bad for the defense loosely speaking or generally speaking in those cases, right?

A. No. So did -- when -- if it's permanent, I put it down in my report and then the case gets resolved faster for everybody. So I find permanent injuries every week. I write it down in my report, permanent, not permanent. I don't think it's going one way or the other. I think that when I find a permanent injury, the case gets resolved faster, and I find permanent injuries all the time.

MR. CLARK: All right. Let's go off the record for a minute.

VIDEOGRAPHER: All right. Off the video, 11:28 a.m.

(Off the video record.)

MR. CLARK: Okay. I'm sorry. We can go back on. I'm at the Howell -- if you want to pull up the Howell deposition transcript, I'm going to be at Pages 27 and 28 about changing reports.

(Back on the video record.)

VIDEOGRAPHER: All right. Back on the video, 11:31 a.m.

MR. CLARK: Ms. Fasciano, could you read back his answer to the last question?

(Whereupon the requested portion was read back by the court reporter.)

BY MR. CLARK:

Q. Okay, Doctor, but do you remember testifying in the Howell case that it had been your practice that if you found a permanent injury, you would call the defense attorney and then give the defense attorney the -- you would -- you would ask the defense attorney, I found a permanent injury, do you want me to not put that in the report, or do you want me to not send you the report at all; didn't you testify to that --

A. No --

Q. Well, just -- just so I'm clear in the question, so if you found a permanent injury, you would either take it out of the report at the request of the defense attorney or not provide the report at all, isn't that true, and you testified to that?

A. No, and if you read my direct testimony, as I understand it, if there was a permanent injury, I would call the attorney and say there's a permanent injury. Never would I offer to

take out of the report that there's a permanent injury, so that's never happened. And then they don't have to receive the report if they don't want to. But when there's a permanent injury -- this is probably 15, 20 years ago, we had tape dictation, the reports took a while to come out, if I found a permanent injury, I would call the defense attorney and say, this is a permanent injury, and then they could receive the report or not. At no point did I say I would take it out of the report.

Q. But you did give them the option to not write the report, right?

A. No, it always gets written. They just don't have to receive it. I write the report every time.

Q. Okay. I'm going to show you your testimony and read along with me in the Howell case and tell me if I read it correctly. I'm going to pop it up on the screen and I have the pertinent section highlighted. It's from Page 27 in your testimony in Howell, and 28. Actually, skipping down to 28.

MR. FEINSTEIN: Hey, before -- before you do this, Gerald, I -- I have the Howell transcript marked as Exhibit 30; is that correct?

MR. CLARK: Yes, that's correct.

MR. FEINSTEIN: All right. So the highlighting that you're showing the doctor, I'm guessing, doesn't exist in the copy that was circulated to me this morning?

MR. CLARK: Right, I just highlighted that --

MR. FEINSTEIN: Okay.

MR. CLARK: -- for here. We can -- we can unhighlight it, or I can highlight it again. And --

MR. FEINSTEIN: I just wanted to understand. I got it now.

BY MR. CLARK:

Q. Doctor, taking a look at Page 28, Line 5, Question: Right. And that's what you previously testified is that -- testified that when you found a permanent injury it was your custom to call a defense attorney and give them a heads-up, right? Answer: I -- you can call it a heads-up. I would simply say, I'm going to dictate my report and this is a permanent injury. That's what I told them. Question: And your testimony was that at that point the attorney would tell you, quote, I don't want to the report; is that right? Answer: That was the --

1 not every time. I would say that was 20 percent of
 2 the time they would say that, but 80 percent of the
 3 time they said put it down. Question: And when
 4 they told you, you know, I don't want -- I don't
 5 want a report, you didn't write that report, right?
 6 Answer: If they didn't want it, that's correct. I
 7 have to tell you that -- that -- that -- back then
 8 it was maybe 20 percent. Now it's zero. So now --
 9 so no matter what I write, they want the report.

10 Did I read that correctly?

11 **A. Yes, and I still agree with it.**

12 Q. Great.

13 So the purposes of calling the defense report
 14 if you find a permanent injury is to give them a
 15 heads-up so that they have the option of not getting
 16 a report and sending it to the other side, right?

17 **A. That is correct.**

18 Q. And nevertheless, you still maintain
 19 that although you've made millions of dollars over
 20 the years doing that kind of thing, including giving
 21 the defense the opportunity to not have the other
 22 side see those reports, you still say that you're
 23 independent?

24 **A. That's correct for two reasons. I**
 25 **get -- my pay -- I get paid the same no matter what**

1 **opinion I reach. So if I find a permanent injury,**
 2 **the pay is the same. If I don't find a permanent**
 3 **injury, the pay is the same. So that is why it's**
 4 **independent.**

5 Q. And if you're known in the defense
 6 injury for testifying 95 percent plus for the
 7 defense, including giving them the option to not
 8 tell the other side you found a permanent injury,
 9 then it's more likely you'll get more business from
 10 the defense, right?

11 **A. That's not -- so if you want to read**
 12 **that back to me, there's a couple of falsehoods in**
 13 **there. If you want to read the question back, I can**
 14 **answer it piece by piece.**

15 Q. Well, I don't want to argue with you,
 16 Doctor, but -- but you say that you get paid no
 17 matter what, right?

18 **A. Correct, so I get -- the report gets**
 19 **paid no matter what opinion I reach.**

20 Q. Right. But it's more likely that
 21 you'll get more business from the defense if you are
 22 known in the defense circles of writing reports that
 23 typically help the defense, including giving the
 24 defense the opportunity to -- including giving the
 25 opportunity to have a report that finds permanency

1 never see the light of day?

2 **A. I told you --**

3 Q. Isn't it just more -- sir, excuse me,
 4 let me just finish the question.

5 Isn't it just more common -- common sense
 6 that you'll get more business if you're known for
 7 that kind of thing?

8 **A. No. What they really want to know is,**
 9 **was there a permanent injury or not, that's what**
 10 **they really want to know, and that's what -- the**
 11 **answer I'm going to give them, permanent, not**
 12 **permanent. That's what they really want to know.**

13 Q. And are you aware that as attorneys, we
 14 have access to case reports on programs called Lexus
 15 or West Law that give reports about your testimony
 16 in -- in -- in prior cases; are you aware that that
 17 kind of thing is out there?

18 **A. I am not.**

19 Q. Isn't it true that if we were to go
 20 through your prior case report testimonies that it
 21 would be a very common thing that you find people
 22 that are claiming injuries to their spine, that they
 23 have no permanent injury; isn't that sort of common
 24 testimony of yours?

25 **A. In court. In court --**

1 MR. FEINSTEIN: Object to form. Object
 2 to the form.

3 VIDEOGRAPHER: Going off the video,
 4 11:40 a.m.

5 (Off the video record.)

6 MR. FEINSTEIN: The doctor testified
 7 that he is not familiar with case report histories
 8 pertaining to himself, yet the question asks him
 9 about his case report histories. It's just -- it's
 10 a prejudicial question because he's already said
 11 he's not familiar with them, and he's not being
 12 presented with those histories or any specific
 13 cases.

14 MR. CLARK: Ms. Fasciano, did the
 15 pending question specifically reference prior case
 16 reports?

17 (Whereupon the requested portion was
 18 read back by the court reporter.)

19 MR. CLARK: Okay. We can go back on.
 20 (Back on the video record.)

21 VIDEOGRAPHER: Okay. Back on the
 22 video, 11:41 a.m.

23 BY MR. CLARK:

24 Q. So if we were to go through your prior
 25 testimony in those cases over the years, it would be

1 very common, would it not, that you would tell
2 juries that the person with the injuries or the
3 plaintiff suffered no permanent injury, that's kind
4 of a common theme in your testimony, right?

5 **A. If we were in court, that is correct.**

6 Q. Okay. Great.

7 Now, you did your defense medical exam on --
8 what date was that?

9 **A. The date was -- let me just pull my
10 report here for a second.**

11 Q. I have March 20, 2024?

12 **A. Correct.**

13 Q. And now the exam was scheduled for 9:45
14 a.m.; is that right?

15 **A. I would -- I have no recollection, but
16 keep going.**

17 Q. All right. Well, do you recall -- do
18 you -- by the way -- well, let me ask you this. Do
19 you recall that our office sent a nurse to observe
20 the exam and audio record it?

21 **A. I don't recall one way or the other.
22 I'd say that's maybe five percent of the exams that
23 I do a nurse is present. It doesn't change
24 anything.**

25 Q. So about five percent of the exams, the

1 law firm for the plaintiff will send an observer to
2 watch the exam and possibly record it; is that what
3 you're saying?

4 **A. That is correct.**

5 Q. All right. And in this case, I'm going
6 to represent to you that our office sent Amanda
7 Gaffney to the exam to take notes and audio record
8 it.

9 Do you have any reason to say that that's not
10 true?

11 **A. I -- no, I'm sure it was true.**

12 Q. All right. Now, the defense exam was
13 scheduled for 9:45 a.m.; is that right?

14 **A. I don't know. Keep going.**

15 Q. Okay. Well, isn't it true that you
16 were delayed and you took another patient into the
17 exam room at the scheduled time of 9:45, but you
18 didn't see RJ Pita until 10:01; isn't that right?

19 **A. It's irrelevant. If you're -- I accept
20 that as true, but keep going.**

21 Q. Okay. Now, when you brought RJ into
22 the exam room, he told you that he had been out of
23 work since the incident; isn't that right?

24 **A. That's correct.**

25 Q. And then you asked him if he injured

1 himself by pulling something heavy on a hand truck
2 and he said -- and he said that I already said that
3 in my kind of sworn Answers to Interrogatories, he
4 referred to that, right?

5 **A. Yes.**

6 Q. And RJ swore in his Answers to
7 Interrogatories that when he -- when he pulled the
8 material up the stairs, that he felt a sharp --
9 sharp stabbing pain in his neck upon moving the
10 product up the stairs. The following morning he
11 woke up with a lot of pain and stiffness in his
12 neck, shoulder, and upper back, and he had trouble
13 moving. That's -- that's a fair characterization of
14 what his sworn statement as to what happened says,
15 right?

16 **A. That is correct.**

17 Q. Okay. And during the -- when you saw
18 him, there's the kind of history you take, that's
19 where you ask him questions, right?

20 **A. Yes.**

21 Q. All right. And then after the history,
22 then you go into a physical exam, right?

23 **A. No, I think I usually ask for his
24 current complaints before the physical, but keep
25 going.**

1 Q. And the physical exam -- okay, great.

2 So anyway, during the questioning part, he
3 said that he's got no allergies, he gave you his
4 height and weight and his age, right?

5 **A. Yeah, that's correct. I don't think I
6 wrote down his height and weight, but keep going.**

7 Q. Incidentally he was 21 years old when
8 this happened, right?

9 **A. We...**

10 Q. 29. Did I say -- I said -- did I say
11 29? I meant 29.

12 **A. You said 21 and he was 29, we agree.**

13 Q. Sorry. I don't why I said 21.

14 Okay. So he's 29 years old when this
15 happens, right?

16 **A. We agree.**

17 Q. All right. And you testified on direct
18 that it was an acute injury, right?

19 **A. We agree.**

20 Q. And acute means, like, this is not
21 something that happened over time, it's not like the
22 normal -- this isn't normal for a 29-year-old,
23 right, it's not the normal part of aging?

24 **A. That's right. We can agree that it
25 occurred on January 8th, 2021.**

1 Q. All right. And also RJ -- he goes by
2 RJ, by the way. His friends call him RJ.

3 The -- he never had any problems with his
4 neck before this as far as you could tell, I mean,
5 he told you that and the records sort of support
6 that, right?

7 **A. We agree.**

8 Q. All right. Never had any treatment,
9 chiropractor, surgery, nothing, to his neck
10 before --

11 **A. We --**

12 Q. -- as best you can tell from the
13 records?

14 **A. We agree.**

15 Q. All right. And he told you at the exam
16 that he's got pain in the neck, head, and right
17 shoulder, right?

18 **A. We agree.**

19 Q. All right. Now, if we go to the last
20 physical therapy appointment -- by the way, my -- my
21 review of the records indicates that he had about 12
22 physical therapy appointments. Can we agree on that
23 number or do you have -- is yours --

24 **A. No.**

25 Q. -- much more or less?

1 **A. 12 is reasonable.**

2 Q. All right. So we have up on the screen
3 Plaintiff's Exhibit 7. I just want to pop up the
4 daily note from January 12, 2022.

5 Now, before we do that, the incident happened
6 on January 8, '21, right?

7 **A. Yes.**

8 Q. And then he had the surgery on May 3rd,
9 '21, right?

10 **A. Yes.**

11 Q. I guess that's four months after?

12 **A. We agree.**

13 Q. He had the first treatment on January
14 13, 2021, when he went to that urgent care, right?

15 **A. We agree.**

16 Q. All right. So let's -- with that being
17 said, I want to pop up Page 86 of Plaintiff's
18 Exhibit 7 which would be that last treatment note.

19 Are you able to see that on the screen?

20 **A. I have it.**

21 Q. Okay. And this is from -- this is
22 about a year after the incident, a little over a
23 year after the incident, right?

24 **A. Correct.**

25 Q. All right. And are you looking at my

1 screen or your own notes, your own paper?

2 **A. I'm looking at what you are screen
3 sharing.**

4 Q. All right. Great.

5 So at the time of this visit number 12, the
6 current complaints/gains, just the highlighted
7 section -- now, if -- if you think it's unfair about
8 what I highlighted and you want to bring in
9 something before or after, feel free to call me out
10 on that. Okay? I'm just trying to kind of get to
11 the heart of things.

12 **A. Yes.**

13 Q. All right?

14 All right. He states he's got improvement
15 reaching, he's got difficulty driving, sitting for
16 prolonged period of time, difficulty with reaching,
17 retrieving things, lifting, pushing and pulling,
18 right?

19 **A. Correct.**

20 Q. It says he's a bar manager slash does
21 deliveries at a brewery where his job requires
22 lifting, pushing, and carrying cases of beer,
23 pulling kegs, and constant reaching, right?

24 **A. Correct.**

25 Q. It states the weight has to -- that

1 has to -- that he has to lift, push or pull ranges
2 between 30 to 200 pounds, and that he hasn't been
3 back to work since his injury.

4 You see that, right?

5 **A. I do.**

6 Q. And as of his last physical therapy
7 appointment -- and by the way, I want to step back
8 for a second.

9 Do you remember the defense counsel said,
10 well, you know, he hasn't had this treatment since,
11 you know, whenever he last had treatment; do you
12 remember that kind of line of questioning?

13 **A. I do. The questioning was for his
14 surgeon, with his surgeon. So I answered that he
15 had not seen his surgeon in '23, so. But anyway,
16 keep going.**

17 Q. And we all know that medical treatment
18 costs money, right?

19 **A. We agree.**

20 Q. And in 2025, 2024, 2023, it costs a lot
21 of money, right?

22 **A. I'm an employed --**

23 Q. I mean, medical treatment is expensive,
24 right?

25 **A. It is. I agree with that.**

Q. Yeah, that's -- that's all.

One thing I did -- I got, you had said that you make the same thing doing surgery as you do testifying, and I think you said \$2,000. But what you meant was, you make money doing both, but clearly surgery costs a lot more than \$2,000, right?

A. We -- correct. That is correct. The all in total cost would be more than that.

Q. All right. So as of his last appointment here, he's got trouble cleaning himself. I suppose that they -- that means reaching around and turning, that kind of thing, that's at least what's indicated in the record?

A. That's correct.

Q. And you had these records in your review of the case, right?

A. That's correct.

Q. And the American Medical Association has guidelines that you're supposed to follow when you do exams like this, right?

A. That is correct.

Q. And those guidelines require you to review the pertinent medical records, right?

A. We agree.

Q. All right. And also, let me just pause

something for a second. If I can sort of not kill everyone with my messing around with the computer screen here.

MR. CLARK: Let's just go off the record for a second, please.

VIDEOGRAPHER: Okay. Going off the video, 11:51 a.m.

(Off the video record.)

MR. CLARK: All right. Let's go back on.

(Back on the video record.)

VIDEOGRAPHER: Okay. Back on the video, 11:51 a.m.

BY MR. CLARK:

Q. And the AMA, that's the American Medical Association, right?

A. Correct.

Q. And what -- what is the AMA? I mean, that's an authority in the field of medicine in the United States, right, obviously?

A. No, it's not an authority. So no, that's -- that's incorrect. The American Medical Association is a group of physicians. I am not a member of the AMA, I never have been, so I really can't answer any questions beyond that. And no,

it's not an authority.

Q. Well, do you disagree that it was founded in 1847 and it's the largest and only association that convenes 190 plus state and specialty medical societies and other critical stakeholders?

A. I agree with all that.

Q. And throughout its history, the AMA has always followed its mission which is to promote the art and science of medicine and -- medicine and the betterment of public health?

A. Sounds reasonable.

Q. All right. And you know it has guidelines that you -- I think you just -- you already testified, that it has guidelines that you're supposed to follow when you do exams like this, right, you testified to that moments ago?

A. Not that I'm supposed to. I'm aware of the guidelines, but keep going.

Q. All right. Well, I have the guidelines marked as Exhibit 57 and I'd like to pop them up on the screen. And you -- these are -- these appear to be these guidelines, so it's Exhibit 57. And it says, Independent Medical Evaluation Best Practices, and it gives the standards for doing these exams,

right?

A. I see that.

Q. Okay. Now, when you're doing these exams, did you agree that it's imperative that the examiner demonstrate the highest possible standards of ethics, objectivity, and impartiality; personal bias, prejudice, slanting, or partiality are not tolerated? Do you agree with that?

A. I do.

Q. And do you agree that indications of bias may disqualify the evaluator; do you agree with that?

A. I totally disagree with that.

We are teaching our medical students right now that everybody has bias. What you need to do is learn to recognize your bias and then that improves your treatment and your analysis and your opinion.

So everybody has bias. Doctors have bias. Medical students have bias. We make them aware of it. When they become aware of it, they minimize it. So I totally disagree with that. It is not with the current teaching of our medical students.

Q. Okay. Okay. So let's go back to plaintiff's -- this is Exhibit 7, the physical therapy records on the last date of treatment.

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1 Now -- by the way, do you know whether or not
 2 RJ is able to afford medical treatment? Do you know
 3 if he's got the money to pay for that or not,
 4 mindful that you --
 5 **A. I --**
 6 Q. -- that you said he hasn't had the
 7 treatment defense counsel pointed out?
 8 **A. I do not know what his current**
 9 **financial status is and I do not know whether he has**
 10 **self-insurance or not.**
 11 Q. All right. And if he -- if he
 12 bumped -- like, would you be able to point him out
 13 of a line-up?
 14 **A. No.**
 15 Q. So -- so if he was sitting in a room
 16 and there's four or five people sitting there, you
 17 wouldn't even be able to say, oh, there's RJ, right?
 18 **A. I could look at their necks and if I**
 19 **found one of them had an incision, that's RJ.**
 20 Q. Because most 29-year-olds will not have
 21 an incision and plates and screws put into their
 22 neck, right?
 23 **A. We agree.**
 24 Q. All right. And you said it was a
 25 gentleman's surgery. Let's take a look if we can

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1 at --
 2 MR. CLARK: Jake, what is the exhibit
 3 of the -- demonstrative exhibit of the medical
 4 illustration?
 5 BY MR. CLARK:
 6 Q. So we're going to pop up --
 7 MR. CLARK: Thanks, Jake, I got it.
 8 BY MR. CLARK:
 9 Q. So we're going to pop up Plaintiff's
 10 Exhibit 2 on the screen. This is --
 11 MR. FEINSTEIN: Go off of --
 12 MR. CLARK: Sorry?
 13 MR. FEINSTEIN: I need to go off the
 14 record.
 15 MR. CLARK: Oh, okay.
 16 VIDEOGRAPHER: Going off the video,
 17 11:56 a.m.
 18 (Off the video record.)
 19 MR. FEINSTEIN: The demonstrative
 20 exhibit -- and my apologies that I cut counsel a
 21 little bit short, but am I correct that you're going
 22 to be showing the doctor the exhibit that was used
 23 at Dr. Landa's de bene esse, the interior cervical
 24 discectomy and fusion?
 25 MR. CLARK: Yes.

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1 So the doctor said that this was a
 2 gentleman's surgery, no big deal, you know, piece of
 3 cake, walk in the park. And I think it is only fair
 4 that he be cross-examined on a demonstrative medical
 5 illustration that demonstrates the nature and extent
 6 of the surgery and the procedure, and that I be
 7 permitted to ask questions to explore the doctor's
 8 opinion that this surgery is really no big deal.
 9 MR. FEINSTEIN: The demonstrative
 10 exhibit was objected to on the record at Dr. Landa's
 11 de bene esse. The demonstrative exhibit is the
 12 subject of a pending motion in limine by the
 13 defense. I'm not going to restate the objections
 14 and the motion that have already been presented in
 15 this case other than to note them now and to reserve
 16 all rights with regards to this line of questioning.
 17 MR. CLARK: Okay. Just hold on, I just
 18 need to respond to that.
 19 Okay. With respect to demonstrative
 20 exhibits, demonstratives are typically the type of
 21 thing that are not produced in discovery, they are
 22 used for demonstration purposes only. Plaintiff's
 23 Exhibit 2 is akin to essentially a spine model where
 24 a doctor might bring in a spine model or a
 25 demonstrative of a -- of a -- of a disc.

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1 So, for example, under the case of Cross V.
 2 Lamb, 16 N.J. Super 53, Appellate Division 1960, and
 3 Renzo versus Jacobs, an Appellate Division
 4 unpublished case from 1977, the use of the
 5 demonstrative exhibits has been held to be proper
 6 and not misleading and helpful to the jury to
 7 determine the nature and extent of the injury and to
 8 assist the jury in its fact-finding function.
 9 So based upon that and other law that we will
 10 submit to the Court, we -- it's our position that
 11 the use of the demonstrative is -- will assist the
 12 jury. It's proper. It's frankly common in -- in
 13 cases like this. It doesn't provide new evidence or
 14 new things. It is simply illustrating or
 15 demonstrating the evidence that is already in the
 16 case, i.e., the cervical neck surgery.
 17 Thank you.
 18 But before we go on, can -- can you -- can
 19 you please -- unless defense counsel needs to say
 20 anything else, can you just please read back the
 21 pending question, or the prior question and answer
 22 and then the pending question because I think they
 23 were related?
 24 (Whereupon the requested portion was
 25 read back by the court reporter.)

1 MR. CLARK: Just hold on one sec. Just
2 give me a second.

3 What number is Mullins?

4 MR. ANTONACCIO: 2.

5 MR. CLARK: 2.

6 Okay, sorry. We're ready. You can go back
7 on. Thanks.

8 (Back on the video record.)

9 VIDEOGRAPHER: Okay. Back on the
10 video, 12:01 p.m.

11 BY MR. CLARK:

12 Q. And so the surgery, this anterior
13 discectomy and fusion, requires actually cutting
14 open the front of the patient's neck, correct?

15 A. We agree.

16 Q. And in order to do that, the surgeon
17 has to take an instrument and move the patient's
18 windpipe off to one of the sides, right?

19 A. Usually it's your finger. Keep going.

20 Q. All right. Well, listen, I am not
21 going to do this that well because I am not a doctor
22 or nearly as smart as you, so definitely correct me
23 if I get anything wrong.

24 The doctor has got to be sure not to hit the
25 artery and have the guy bleed to death, right?

1 A. You never hit the artery. It's your --
2 the exposure is done with your finger. So -- and
3 once you have the retractor in, the artery is behind
4 it, so it is exceedingly difficult to hit the
5 artery.

6 Q. All right. But you have to move those
7 to the side to get -- get to the spine, that would
8 be the carotid artery and the trachea, right?

9 A. We agree.

10 Q. Okay. And the doctor has to be sure
11 not to hit any of those nerves or things so that the
12 person is not paralyzed the rest of their life,
13 right?

14 A. We agree.

15 Q. All right. Because if that happens,
16 those are risks of the surgery, right, bleeding,
17 infection, paralysis, death is risks of those
18 surgeries, right?

19 A. We agree.

20 Q. Okay. And once the doctor gets to the
21 stuff, gets to the -- gets to the disc, which is
22 in -- in those bones, and again, I'm -- I'm
23 struggling with this because I'm not a medical
24 doctor, but it requires removing the disc using
25 burrs, right?

1 A. There's three different ways to do it.
2 So it's a combination of burrs and something called
3 pituitary, yes.

4 Q. Okay. And it requires a grinding the
5 part of the disc, right?

6 A. Yes.

7 Q. And I'm -- I'm using your own words
8 from one of your prior depositions, so bear with me
9 here.

10 You'd have to drill the disc out to get to
11 the bleeding bone, right?

12 A. Agreed.

13 Q. All right. And then it requires
14 placement of a metal plate and screws into the bone
15 like was done here?

16 A. Agreed.

17 Q. All right. And Plaintiff's Exhibit 2
18 is a fair and accurate depiction of what we just
19 described by way of a demonstrative exhibit; would
20 you agree with that?

21 A. I can't see it, so I don't know.

22 Q. All right. Subject to counsel's
23 objection, which has already been articulated, I'm
24 just going to pop that up on the screen.

25 Now, mindful, it's not case specific, but

1 this more or less is a fair and accurate depiction
2 of the nature and extent of such a procedure?

3 A. Partially. So the problem with this
4 illustration is they're -- they're -- the incision
5 is too big, right? So this in case, the
6 illustration is showing two discs. You're not --
7 you should not and you are not seeing two discs
8 during the surgery. So the incision is only an inch
9 and you're only seeing one disc.

10 So the -- the illustration is -- is a
11 misrepresentation in the sense that two discs have
12 been exposed in the illustration whereas during the
13 surgery, that should not be done. During the
14 surgery, you're only seeing one disc. So the
15 illustration is too extensive.

16 Now, if you're doing a two-level fusion, it
17 would be perfect. But it's just in this case,
18 you're only doing one disc, you should only be
19 seeing one disc and the incision should be smaller.

20 Q. All right. Anything other than it
21 being two discs as opposed to one that is different
22 from this case?

23 A. Everything else is reasonable.

24 Q. All right. Great. Thank you.

25 Okay. So going back to Exhibit 7 -- and

1 by -- by the way, you said it was a gentleman's
2 surgery. Who's the gentleman, is that the doctor or
3 the patient? And -- and I guess we could also call
4 it a gentle person's surgery or a gentle women's
5 surgery as well, or are we -- like, what are we
6 referring to there when you say it's a gentleman's
7 surgery?

8 **A. It's just for the surgeon. So if I**
9 **operate on the back all day, at the end of the day,**
10 **I'm tired. If I operate on the neck all day, I'm**
11 **not tired. So it's an easier -- it's physically an**
12 **easier surgery for the surgeon and it is easier for**
13 **the patient, the recovery is faster. That's what I**
14 **meant.**

15 Q. But all patients are different, right,
16 and people respond to injury, pain, and invasive
17 surgery in different ways, right?

18 **A. So no. No, the -- the neck surgery**
19 **in this -- and my answer to you is, in this**
20 **particular case, a cervical surgery, they go home**
21 **the same day. Now, I don't care who the patient is.**
22 **So 99 percent of the time, they're going to go home**
23 **the same day, so that's what I meant.**

24 Q. Okay. So --

25 **A. And people -- in other words, they can**

1 **respond differently after the surgery. So, for**
2 **example, not everybody heals. So two months later**
3 **there can be nonunion, and that could be a different**
4 **response. But the surgery for a single level is**
5 **fairly uniform.**

6 Q. Okay. Thanks for describing the
7 surgery, but the question is, like, a tad different.

8 The question is very simple. Like, different
9 people respond to trauma and surgery and invasive
10 surgeries -- different people have different results
11 and different recovery periods and different levels
12 of permanency, right? Is that fair?

13 **A. Yes.**

14 Q. All right. Great.

15 So going back to Plaintiff's Exhibit 7, when
16 he last saw the physical therapist a year after this
17 happened, he was having trouble cleaning himself,
18 sleeping, doing things around the house, driving
19 for, you know, long periods, and it took him longer
20 time to do self-care things, at least according to
21 the records that you reviewed and relied on in the
22 case, right?

23 **A. No, I did not rely on these records. I**
24 **reviewed them. I rely on my history, my physical**
25 **exam, and my personal review of the films, that's**

1 **what I rely on. I do read these records. I'm aware**
2 **of them, but I did not rely on them in reaching my**
3 **opinion.**

4 MR. CLARK: All right. Let's just go
5 off the record for a minute. Thank you.

6 (Off the video record.)

7 VIDEOGRAPHER: All right. Off the
8 video, 12:08 p.m.

9 MR. CLARK: Can you just read back his
10 answer to the pending question or to the last
11 question, please? Thank you. And then we can go
12 back on.

13 (Whereupon the requested portion was
14 read back by the court reporter.)

15 MR. CLARK: All right.

16 (Back on the video record.)

17 VIDEOGRAPHER: Back on the video, 12:11
18 p.m.

19 BY MR. CLARK:

20 Q. So why do you read the records if you
21 don't rely on them?

22 **A. Because patients forget their treatment**
23 **all the time. They forget their old surgeries, they**
24 **forget their old MRIs, they forget that they have**
25 **diabetes, they -- they forget a lot of stuff. So**

1 **the records fill me in on the totality of their**
2 **medical condition.**

3 Q. But what about the stuff that's put in
4 the records by the medical doctors and the medical
5 providers, is that reliable information?

6 **A. It's reliable. I don't rely on it. In**
7 **other words, I accept it as true, but I'm -- I don't**
8 **rely -- when I read the opinion of another doctor or**
9 **a document, I don't rely on it.**

10 Q. All right. But -- but you read the
11 records in every case and every page; is that right?

12 **A. Yes.**

13 Q. I'm just a little confused as to why
14 you do that if you don't actually rely on it or use
15 it. Do you use it --

16 **A. I use -- yeah, I -- I use it to get the**
17 **totality of the patient's condition. So yeah, I --**
18 **I use it. It -- it helps direct my physical, it**
19 **helps direct my review of the films, it helps direct**
20 **my history, so that all of that is -- is important**
21 **information.**

22 But -- so, for example, in other words, I'm a
23 surgeon, right, so if I'm going to do a surgery, I
24 rely on my history, my physical, and my review of
25 the films. If I'm going to give an opinion on

permanency, it's the same thing, my history, my physical, my review of the films, and nothing else.

Now, I do read that stuff and I do want to know about it because it helps me do my history and physical better than I would otherwise have done.

Q. All right. And your -- your history and your physical and your physical exam, that's data in, right?

A. Yes.

Q. And your report is then produced and that's data out, right? So you bring in your information, that's your data in, and then you give your report, that's your data out with your opinions and conclusions, right?

A. I agree.

Q. All right. So let's -- let's just -- just real briefly, just going back to this Exhibit 7, which is the last physical therapy note, at the time of his last -- RJ's last physical therapy, he had a pain scale. The worst was six, and sometimes his best was two, and at the last thing, he was at three, right? Is that what that indicates?

A. Yes.

Q. And -- and you also noted that he still had some pain when you saw him, right?

A. That is correct.

Q. And with an injury like this, the pain can kind of ebb and flow, go up and down, maybe the weather is bad, it can be worse, if the weather is good -- I mean, is that a common thing in your -- in this area?

A. Yes.

Q. Okay. And it was also noted that aggravating factors was sitting, lying down, reaching, moving his neck or right arm.

Do you see that?

A. I do.

Q. And medical -- and there was no significant prior medical history that was accounting for the situation, right?

A. That's correct.

Q. All right. Great.

So let's go back to your physical exam and the nurse -- the nurse being there. He told you at the time that his current complaints were pain in the neck, head, and right shoulder, right?

A. Correct.

Q. Now, you then had RJ walk on his heels and then his toes, right?

A. That was part of the exam.

Q. And is this refreshing your recollection that Amanda Gaffney was there observing -- observing this and taking notes?

A. No, it doesn't matter either way. It's always the same exam. So I -- whatever her notes are, they are. My exam is the same every time. Obviously I'll modify it for a specific surgery, but my -- this is a pretty standard exam.

Q. And a typical thing when you say your exam is the same every time, a typical thing, what you'll do is you will say that the person had a good recovery, resolved, things like had a good recovery, resolved remarkably well; isn't that kind of a typical thing you'll say after these exams?

A. No. So it's -- it's case specific. So the answer is that's a -- as a general question, I can't answer that. I can -- I can refer you to my report, but no, I don't say that generally.

Q. Isn't it true that as of the Espinosa testimony that you gave in 2014, that you testified that you never once related a plaintiff's neck or back problems to an accident; didn't you -- do you recall testifying to that in the Espinosa case?

A. In court, that's correct.

Q. Okay. Now, isn't it true that when he

walked on his heel and then his toes, he did so slowly?

A. He may have. Again, I haven't heard the -- the -- the actual transcript of the audio tapes, so I haven't heard that. But if he walked on his heels and toes, it might have been slow. My -- the point is, he's got to get his ball of his foot off the ground, that's normal toe walking, and he's got to get his heel off the ground, so he did that.

Q. All right.

A. Slow -- and slowly is okay.

Q. And -- and I'm looking at your report and you wrote in your report on Page 3, The examinee was able to bend forward to within 25 inches from the floor and promptly regain the upright position.

A. That's correct.

Q. You wrote that, right?

A. That is correct.

Q. Isn't it -- isn't it true what happened actually at the exam is then Dr. Dryer began -- strike that.

Isn't it true that what actually happened at the exam was Mr. Pita was then asked to bend forward as far as he can; he could not do it because of neck pain? Isn't that what actually happened at the

1 exam?

2 **A. No.**

3 MR. FEINSTEIN: Objection.

4 Hold on.

5 THE WITNESS: Go ahead.

6 MR. FEINSTEIN: Off the record.

7 (Off the video record.)

8 VIDEOGRAPHER: Going off the video,

9 12:17 p.m.

10 MR. FEINSTEIN: It appears that counsel
11 may be quoting or reading from a report of the nurse
12 who was present at the examination. If that is what
13 is occurring, one, it hasn't been shared in -- in
14 this case, and two, it's a -- it's a hearsay
15 statement.

16 So if you want to question the doctor about
17 the exam, of course you're free to do so, but
18 quoting the hearsay of someone who was the
19 accompanying nurse is -- is not the proper way to go
20 about that.

21 MR. CLARK: Well, so I'm not quoting
22 anything. I am cross-examining the doctor, and
23 there's a fair proffer for it because we have an
24 audio recording of the exam and we will also intend
25 to call as a proper rebuttal witness, assuming you

1 play this video at trial, Amanda Gaffney herself.
2 So we have a good faith proffer for this based upon
3 other evidence in the case. And it's -- and it's
4 our position that it's fair cross-examination
5 supported by the rules of evidence.

6 MR. FEINSTEIN: We can go back on,
7 Steve.

8 (Back on the video record.)

9 VIDEOGRAPHER: Back on the video, 12:18
10 p.m.

11 BY MR. CLARK:

12 Q. Now, after you asked him to bend
13 forward, isn't it true that you then began to touch
14 his neck?

15 **A. Maybe. So in other words, I don't**
16 **do -- it's the same exam, but I don't do it in the**
17 **same order. So depending upon the patient and the**
18 **situation, I might examine other areas first. So as**
19 **to exactly the order of the exam, I can't tell you,**
20 **but I can tell you that it was all done. So**
21 **sometimes I'll do other things first.**

22 **So to answer your question, I'm not sure that**
23 **I touched his neck at that moment. At some point, I**
24 **did, but I don't know when.**

25 Q. And by the way, isn't it true that the

1 exam only -- the physical exam part was only about
2 three minutes?

3 **A. That's true, but three to five minutes**
4 **would be typical. So three minutes, I'll agree with**
5 **that.**

6 Q. Okay. So -- so at some point, you did
7 touch his neck, right?

8 **A. I -- yes.**

9 Q. And what's that all about, please, if
10 you don't mind?

11 **A. So the -- that would have been the --**
12 **the head axial compression. So the point is you**
13 **want to put some pressure on the head and see if**
14 **that causes pain. It did not.**

15 Q. What about touching the neck, though,
16 you said -- you said the head, is it the top of the
17 head or what --

18 **A. That includes the neck, so.**

19 Q. Okay. And how are you supposed to
20 touch the neck, what -- what is that exam and how
21 are you supposed to do it?

22 **A. So it depends. In other words,**
23 **every -- some patients are heavy and you can't see**
24 **the exam. I might stretch the skin so I can the**
25 **incision, sometimes I might not. If it's a young**

1 **person, it's -- you might be able to -- it's readily**
2 **apparent that it's there. So it all depends on the**
3 **case.**

4 Q. So after you touched his scar, didn't
5 you then ask RJ to look up, down, left, and right as
6 far as he could?

7 **A. Yes, I did. And I'm not saying I**
8 **touched his scar, so I may or I may not have, it**
9 **depends on the case. What I am saying is, I did ask**
10 **him to look up and down, I'm sure he did, but I'm**
11 **not saying that I definitely touched it because I'm**
12 **not sure if I did or not. I'm sure I looked at it.**

13 Q. And when you asked him to look up,
14 down, left, and right, you concluded that everything
15 was normal and painless; is that right?

16 **A. No, I said cervical range of motion was**
17 **minimally diminished consistent with single level**
18 **anterior cervical fusion. Cervical range of motion**
19 **was otherwise normal and painless, that's correct.**

20 Q. So you just said he had a little bit of
21 inability to move his neck as he normally would if
22 he had not had this injury?

23 **A. That's correct. You're only fusing one**
24 **disc, that is correct.**

25 Q. All right. But isn't it true that when

1 you asked him to look up, down, left, and right as
2 far as he could, that he could barely look left nor
3 up; isn't that what actually happened at the exam?

4 **A. No. Cervical range of motion was**
5 **minimally -- minimally diminished. He had a single**
6 **level fusion, that's what happened.**

7 Q. And then at some point you asked him if
8 he could reach his arms down and back behind -- down
9 and back behind his back; isn't that right?

10 **A. That's correct.**

11 Q. And what's that exam, what's that all
12 about?

13 **A. That's part of the shoulder exam. So**
14 **when you're examining the shoulder -- in other**
15 **words, there's various motions, but to test internal**
16 **rotation, we usually ask the patients to put their**
17 **hand behind their back as far as they can. So**
18 **it's -- it's -- you're examining three things at**
19 **once. You're examining the shoulder, it's part of**
20 **the nerve exam, and you're also examining the**
21 **rotator cuff. So it's a -- it measures multiple**
22 **things. But anyway, it's part of the exam.**

23 Q. So to be clear, there's no shoulder
24 injury being claimed in this case. So how does the
25 shoulder in terms of that exam relate to the neck

1 injury that is being claimed?

2 **A. So the -- it -- all that means is if I**
3 **examine his right shoulder -- so before I go in the**
4 **room, I look at the medical records. If I suspected**
5 **somewhere in the record that there might have been a**
6 **shoulder injury, I'm going to examine the shoulder.**

7 **So if there's a shoulder exam in there, that**
8 **means somewhere in the records he had a shoulder**
9 **complaint. So the shoulder is going to get examined**
10 **for sure.**

11 Q. So how's that exam done, you pull the
12 arms behind the back? Like, how does that work?

13 **A. No, he does that.**

14 Q. And -- and would he have a problem with
15 that if there's a neck injury, like, can the neck --
16 I'm just wondering because it's a shoulder, but
17 there's a neck injury. Are the two related in any
18 way?

19 **A. No, because you're -- when you're**
20 **examining the neck, you're always going to exam the**
21 **shoulder. There's a lot of overlap in the**
22 **neurologic function, so you're -- you're examining**
23 **both all the time.**

24 Q. So could doing that with the shoulder
25 cause pain in the neck depending on how the movement

1 is being done?

2 **A. It could.**

3 Q. All right. And you didn't note that it
4 caused pain when you did that in your --

5 **A. I did not.**

6 Q. -- report, right?

7 **A. I did not.**

8 Q. But isn't it true that after you asked
9 RJ if he could reach his arms down and behind his
10 back, that he could not do either arm because of the
11 pain it caused in the shoulder/neck area; isn't that
12 what actually happened at the exam?

13 **A. No. What happened is whichever is in**
14 **my report, so that means the right shoulder had a**
15 **full active and passive range of motion without**
16 **pain.**

17 Q. Now, going back to the -- to the AMA
18 Guideline 57, the AMA says that in doing these exams
19 and writing these reports in cases like this, very
20 simply, the process is data in and data out. Data
21 in is information specific to the case, meaning
22 obtained from history, medical records, other
23 documents, physical examination, and diagnostic
24 studies, and information used to assess that data,
25 evidence-based medicine, other current science, and

1 applicable guidelines. And then skipping ahead it
2 says, The data must be correctly analyzed. Data out
3 is the report. It is essential that accurate and
4 appropriate data are used since the quality of the
5 output, meaning the report, is determined by the
6 quality of the input. The computer science and
7 mathematics concepts of GIGO, garbage in/garbage
8 out, is equally applicable to performing IMEs.
9 Flawed or nonsense input data provides nonsensical
10 output.

11 Do you agree with that from the American
12 Medical Association?

13 **A. I don't agree with one word of it.**

14 **This is a very simple process --**

15 Q. All right. I don't have any --

16 **A. -- my history --**

17 Q. All right. I don't have any -- I don't
18 have any other questions. Thank you for your time
19 today, Doctor.

20 MR. FEINSTEIN: You cut off his answer,
21 so he's -- he's allowed to finish his answer and
22 then I'll do my redirect.

23 Go ahead.

24 **A. I -- I don't agree with anything in**
25 **that statement, it's a very simple process. My**

1 **history, my physical exam, my review of the films,**
2 **just as if I was planning a surgery.**

3 Q. And you've made millions of dollars
4 from the defense over the years doing that kind of
5 thing; isn't that right, Doctor?

6 **A. That's true.**

7 MR. FEINSTEIN: Objection. Asked and
8 answered.

9 **A. That's correct.**

10 Q. No further questions.

11 MR. CLARK: Thank you very much,
12 everyone.

13
14 REDIRECT EXAMINATION

15 BY MR. FEINSTEIN:

16 Q. Dr. Dryer, very, very briefly, you were
17 asked a number of questions about your permanency
18 opinions in other medical legal cases that you have
19 worked on. As it relates to your work in the case
20 of Mr. Pita, did you call me after the examination
21 and prior to the issuance of your report to discuss
22 any permanency finding?

23 **A. I did not.**

24 Q. All right. And did you offer me the
25 option in the case of Mr. Pita whether or not you

1 would issue a report in that matter?

2 **A. I did not.**

3 Q. I have nothing further.

4 VIDEOGRAPHER: No more questions?

5 MR. FEINSTEIN: No.

6 MR. CLARK: No.

7 VIDEOGRAPHER: No more questions, this
8 ends the video deposition of 12:27 p.m.

9
10 (Whereupon the videotaped deposition
11 was concluded at 12:27 p.m.)

CERTIFICATE

I, Anna Maria Fasciano, a Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, JOSEPH W. DRYER, MD was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me via Zoom videoconference at the time and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.

Anna Maria Fasciano, C.C.R.
Certificate No. 30XI00200300

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