

ORIGINAL

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CAMDEN COUNTY  
DOCKET NO. L-1884-14

ALDO ALLEGRINI,

Plaintiff,

v.

DEPOSITION OF  
JEFFREY F. LAKIN, M.D.

AYESHA Y. REDDICK and  
LIBERTY MUTUAL FIRE  
INSURANCE COMPANY,

Defendants.

SEPTEMBER 16, 2015

Oral sworn deposition of JEFFREY F.  
LAKIN, M.D, with professional offices located  
at 642 Broad Street, Clifton, New Jersey, was  
taken at the Wells Fargo Building, 800 West  
Main Street, Suite 201, Freehold, New Jersey,  
before Mary Q. Irelan, Certified Court Reporter  
#1515, Registered Professional Reporter #8090,  
and Notary Public of the State of New Jersey,  
on the above date, commencing at 11:50 a.m.,  
there being present:

- - -

MARY Q. IRELAN, CCR  
Certified Court Reporters  
1429 East Wheat Road  
Vineland, New Jersey 08360  
(856) 205-0967

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APPEARANCES:

LAW OFFICES OF DAVID K. CUNEO  
BY: DAVID K. CUNEO, ESQUIRE  
885 Haddon Avenue  
Collingswood, New Jersey 08108  
Attorneys for Plaintiff Allegrini

LAW OFFICES OF STYLIADES & JACKSON  
BY: MICHELLE D. LIEBNER, ESQUIRE  
9000 Midlantic Drive, Suite 105  
Mount Laurel, New Jersey 08054  
Attorneys for Defendant Reddick, et als

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I N D E X

WITNESS

PAGE

JEFFREY F. LAKIN, M.D.  
By Mr. Cuneo

- - -

E X H I B I T S

NO.

DESCRIPTION

PAGE

Lakin-1

Curriculum Vitae

4

(Exhibit Attached To Transcript.)

- - -

ITEMS REQUESTED BY COUNSEL

PAGE

LINE

ITEM

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1  
2 (Curriculum Vitae marked as Exhibit  
3 Lakin-1 for identification.)

4 JEFFREY F. LAKIN, M.D., being duly  
5 sworn, was examined and testified as  
6 follows:

7 BY MR. CUNEO:

8 Q Good morning, Doctor. My name is Dave  
9 Cuneo. I'm an attorney, obviously. I represent a  
10 gentleman named Aldo Allegrini in connection with a  
11 lawsuit arising from a motor vehicle accident.

12 You performed an independent medical exam  
13 on Aldo and I have asked for the opportunity to take  
14 your discovery deposition, which was what we are  
15 doing here today.

16 You understand that; right?

17 A Yes, I do.

18 Q And I assume that you have participated in  
19 depositions in the past?

20 A Yes, I have.

21 Q Many times?

22 A Ah, times, yes.

23 Q Times, but not many times?

24 A I can't tell you how many times.

25 Q More than a few?

1           A       I can say in the past six months probably  
2 five.

3           Q       Okay. Five. Okay. Well, the purpose of  
4 that question, anyway, was to ask you if you were  
5 familiar with the rules that we operate under for  
6 purposes of deposition, so I am going to ask you  
7 questions, you are going to provide answers, and I  
8 think you are familiar with the process.

9                    The most important instruction, one  
10 instruction that I consider most important, is take  
11 your time and listen carefully to the question. If  
12 for any reason you're not certain what I'm asking  
13 you, please tell me that. I will be happy to re-ask  
14 or rephrase. I just don't want you to answer a  
15 question that you are not certain about; fair  
16 enough?

17           A       Fair enough.

18           Q       So I have had -- I have been provided with  
19 a copy of your curriculum vitae, which is marked as  
20 Lakin-1 there in front of you. Is that an updated  
21 C.V.?

22           A       Yes, it is.

23           Q       Okay. So I do want to ask you some  
24 questions about it.

25                    It appears from the C.V. that you have

1 some expertise, perhaps a specialty, in the area of  
2 hands. Are you a hand specialist?

3 A I'm a general orthopedist that did  
4 fellowship training in hand surgery.

5 Q Okay. And I've seen, in fact, reports,  
6 correspondence, other documentation, wherein, you do  
7 describe yourself as a hand specialist. Do you  
8 consider yourself a hand specialist?

9 A I'm a general orthopedist, and when I  
10 recertified, I recertified as a general orthopedist,  
11 and I did a one year hand fellowship.

12 Q One year hand fellowship.

13 A Correct.

14 Q So the question, however, was do you  
15 consider yourself a specialist, and from your  
16 answer, I am going to assume the answer is no. Was  
17 that a no? You're not a hand specialist?

18 A If you listen to the question carefully, I  
19 will give you the answer. I'm a board certified  
20 general orthopedist, recertified pathways in General  
21 Orthopedics, and I did a one year fellowship in hand  
22 surgery, so my practice is General Orthopedics with  
23 a subspecialty in hand.

24 Q So if you were to have described yourself  
25 in the past as a hand specialist --

1           A        Again, that would mean I did extra  
2 training in hand. My practice demographics is about  
3 50% General Orthopedics, 50% hand.

4           Q        Well, I guess maybe I should rephrase  
5 that. If you did use the term hand specialist, what  
6 did you mean by that?

7           A        If I used the term hand specialist, I did  
8 extra training in hand.

9           Q        Does that mean you consider yourself a  
10 specialist?

11          A        Correct.

12          Q        In hand?

13          A        Correct.

14          Q        But you also practice in the area of  
15 General Surgery?

16          A        General Orthopedics.

17          Q        General Orthopedics.

18          A        Right.

19          Q        As opposed to surgery?

20          A        General Orthopedics includes surgery.

21          Q        And do you, in fact, perform surgery?

22          A        Yes, I do.

23          Q        When is the last time you performed  
24 surgery?

25          A        Probably last week.

1 Q What type of surgery did you perform?

2 A Either an arthroscopy of the knee or  
3 shoulder or else a shoulder surgery or else a  
4 rotator cuff tear or else it was a knee arthroscopy.  
5 I can't recall which case.

6 Q And is that because you did perform  
7 multiple surgeries last week or you just --

8 A In the past two weeks. There's been a  
9 holiday this week so my time frame I reference --  
10 you know, a tennis elbow release in the past two  
11 weeks. So it's the time frame in the past two  
12 weeks. I couldn't give you specific weeks.

13 Q Where would you do those procedures?

14 A I do it at Chilton Memorial Hospital.

15 Q What is it?

16 A Chilton Memorial Hospital.

17 Q Chilton?

18 A Yes, and I also operate at Saint Mary's, a  
19 hospital in Passaic, and also a surgery center in  
20 Clifton; same day surgical procedures.

21 Q What county are those facilities?

22 A Passaic.

23 Q And your main office I think you said at  
24 the beginning of the deposition --

25 A My office is in Clifton.



1 Q Is your primary practice then your primary  
2 practice in Passaic County?

3 A Correct.

4 Q One other instruction. Let me finish the  
5 question before you begin to answer so that we are  
6 not both speaking at the same time.

7 A No problem.

8 Q How about -- tell me about your area or  
9 your experience in treating neck and back injuries.  
10 First of all, have you performed surgery on the  
11 spine --

12 A Yes --

13 Q -- in the past?

14 A Yes.

15 Q When have you last performed spine  
16 surgery?

17 A Probably over ten years ago.

18 Q When did you do your residency?

19 A I did my residency from -- graduated  
20 medical school in 1985 so my residency would be from  
21 1986 to approximately 1991.

22 Q And so certainly 1991 is more than ten  
23 years ago. Did you perform spine surgery after your  
24 residency?

25 A Yes, I did.

1 Q And where did you do that?

2 A At Saint Mary's. It might have been  
3 Passaic General then.

4 Q So when would that have been?

5 A Over ten years ago.

6 Q Like 20 years ago or --

7 A Over ten years ago --

8 Q -- maybe 11?

9 A Over ten years ago. I couldn't give you  
10 an exact date.

11 Q Was there a particular reason why you  
12 stopped performing spine surgery?

13 A Yes.

14 Q Why?

15 A Again, cost benefit analysis. My  
16 malpractice -- it was a significant savings dropping  
17 the spine from my malpractice.

18 Q So, now, I've been supplied with a couple  
19 -- two reports. You've authored in this case two  
20 reports, is that right, dated -- they're really not  
21 dated, but the date of evaluation on it is dated May  
22 13th, 2015, and then you did an addendum on 6/12/15;  
23 is that right?

24 A And also an addendum on 6/5/15.

25 Q Can I take a look at that? I'm not sure

1 if I saw that.

2 MS. LIEBNER: Before you show it to  
3 Counsel, can I see it because I have not seen  
4 that?

5 BY MR. CUNEO:

6 Q All right. So I'm not sure if I saw this  
7 one before, but the 6/5 addendum, basically,  
8 indicates that you've reviewed certain x-rays of the  
9 cervical spine and that it doesn't change your  
10 opinion as set forth in your prior report; is that  
11 correct?

12 A Correct.

13 Q And, in fact, the June 12th report  
14 indicates that you've reviewed an MRI of the  
15 cervical spine and that it was unremarkable. There  
16 was no -- there were no fractures, dislocations,  
17 herniations, bulging, the spinal cord had normal  
18 signal and, again, that review did not change your  
19 opinion from your June -- May 13th report; correct?

20 A Correct.

21 Q And what's notable about that is that  
22 there was a report -- or, rather, a study of the  
23 cervical spine on Mr. Allegrini from 2007, which did  
24 show significant findings, including herniations  
25 and -- bulging and herniations at C4-5, C5-6,

1 bulging at C2-3 and C3-4; is that right?

2 A Yes, it is.

3 Q So it would appear that his condition  
4 actually improved sometime between 2007 and 2013  
5 with respect to the cervical spine.

6 A Correct.

7 Q I jumped ahead a little bit. I want to  
8 ask you some questions about -- you mentioned your  
9 main office there. Now, the reports that I have  
10 reference an address -- actually, it references a  
11 corporate mailing address under your name and under  
12 your letterhead, 1700 Paoli Pike, Malvern. Do you  
13 have offices there?

14 A No, I do not.

15 Q All right. Your letterhead says Jeffrey  
16 F. Lakin, Board Certified in Orthopedic Surgery,  
17 Cherry Hill, New Jersey.

18 A Correct.

19 Q Why is that?

20 A Again, I'm doing the exams on -- for IMX.  
21 The arranged exams and locations I see patients for  
22 IMX are Cherry Hill, Freehold, where we are today,  
23 and in Monmouth County.

24 Q So when you prepared this report, and I  
25 will ask you more about the term prepared, I

1 suppose, but when this report was prepared you put  
2 in Cherry Hill, New Jersey because that's where you  
3 saw the patient?

4 A Correct. What happens the locations --  
5 sorry about that. I made a mistake. For the  
6 locations to go to for IMX are Cherry Hill, Freehold  
7 and Ewing, and then this particular -- this person  
8 was seen in Cherry Hill, and when I -- this is  
9 dictated by myself, and when I dictate the report, I  
10 dictate the location where I saw the patient.

11 Q All right. And what is that IMX?

12 A IMX is a third party that arranges exams.

13 Q Okay. And do you have a contract with  
14 them or are you an independent contractor? What, if  
15 any, relation do you have with IMX?

16 A Independent contractor.

17 Q So they will send you an assignment, if  
18 you will?

19 A That's not a proper phrase.

20 Q Well, how does -- how does it work when  
21 you -- how did you get involved in the examination  
22 about Aldo Allegrini? Phrase it however you like.

23 A Again, it was a -- doing -- I got a  
24 request letter from IMX to do an independent  
25 evaluation on this patient at that date and that

1 location.

2 Q And how does that differ from an  
3 assignment?

4 A Well, how do you use the word assignment?

5 Q They assigned you to perform a task.

6 A They assigned me -- it was a request to do  
7 an exam.

8 Q All right. And when they sent you that  
9 request was it in writing?

10 A Again, the request come with a -- comes  
11 with a chart, records are supplied to me, and it's  
12 to evaluate that -- this person on that date.

13 Q And the records that were supplied to you;  
14 are they the records that are referenced in your  
15 report of 5/13?

16 A 5/13/15.

17 Q I am going to call it the report of  
18 5/13/15. It's actually not dated; right?

19 A Was seen for an independent evaluation on  
20 that date 5/13/15.

21 Q And is that when you dictated the report?

22 A Usually -- usually within that week it's  
23 done. I couldn't tell you the exact date.

24 Q So you're not sure when the report was  
25 dictated.

1 A Correct.

2 Q So it's really not dated, but what it  
3 references is a date of evaluation of 5/13/15, and  
4 that's what document we are talking about; right?  
5 It's a five page report, six page report referencing  
6 an evaluation on 5/13/15?

7 A Correct.

8 Q The report itself references in the  
9 beginning submitted for my review. Then there's an  
10 itemized list of 24 items, and then also submitted  
11 two additional items; namely, MRI films. Were they  
12 all supplied by IMX?

13 A Yes, they were.

14 Q And is that everything that was supplied  
15 to you by IMX?

16 A Again, at that time, yes.

17 Q Were there items subsequently supplied to  
18 you?

19 A As requested. As noted in the addendums.

20 Q All right. And they're the items that are  
21 referenced in the two addendums we've already  
22 mentioned.

23 A Correct.

24 Q And were there any other items submitted  
25 to you?

1 A No, there wasn't.

2 Q And did you review all those items as  
3 referenced in your report of May 13, 2015 and your  
4 two addendums?

5 A Yes, I did.

6 Q All right. So, now, IMX. When did you  
7 first start doing work at the request or conducting  
8 exams at the request of IMX?

9 A Approximate date I couldn't give you. The  
10 exact date I couldn't give you.

11 Q Okay. How about an approximate date?

12 A I would say it must be about anywhere  
13 between two to three years.

14 Q And what type of matters do they refer to  
15 you?

16 A Do you want to be more specific?

17 Q Is it -- first of all, they are medical,  
18 obviously; right?

19 A In the field of Orthopedics. Correct.

20 Q All right. And are they for defendants in  
21 various cases?

22 A Again, it could be -- it could be a case  
23 of an auto case for the defendants. It could also  
24 be a case for disability.

25 Q Workers compensation?



1           A     Workers compensation. Also, for pension  
2 or disability cases.

3           Q     Okay.

4           A     And also for -- it could be cases for  
5 permanency ratings.

6           Q     And always --

7           A     Workers comp.

8           Q     Always for the defense; right?

9           A     Yes.

10          Q     Does IMX provide any additional services  
11 that you take advantage of such as either  
12 preparation of reports, editing of reports,  
13 educational seminars, anything along those lines?

14          A     Again, my report is dictated and it's  
15 proofread by myself.

16          Q     All right. Do you on occasion get  
17 contacts from IMX subsequent to the submission of  
18 the draft to clarify or to revise, anything along  
19 those lines?

20          A     Again, the revisions are -- revisions are  
21 conducted by myself in the report.

22          Q     Did you not understand that question?

23          A     No, I didn't.

24          Q     I asked you whether IMX asked for  
25 revisions, clarifications, edits. I understand that

1 you're saying the revisions are yours, but my  
2 question is do they ask you to clarify, revise, edit  
3 on occasion?

4 A Again, if my dictation doesn't go through  
5 in the transcription I will be asked to clarify it.  
6 If they're unsure about a spelling, I'm asked for  
7 clarifications, so there are times that I'm asking  
8 for clarifications.

9 Q How about issues such as permanency,  
10 proximate cause?

11 A It would -- it could be transcribed --  
12 when you dictate it it goes to the transcriptionist.  
13 Sometimes there could be a discrepancy or there's  
14 blanks in the reports that they ask to clarify,  
15 they're unsure of a word that they ask to clarify.

16 Q So do you keep your drafts and revisions?

17 A No, I do not.

18 Q Do you know whether you did any revisions  
19 in any of the reports here in the case of Mr.  
20 Allegrini?

21 A No, I'm not sure.

22 Q You're not sure? Is that -- I missed your  
23 answer.

24 A I don't keep -- I don't keep my drafts.  
25 It's all done on the computer.

1 Q So you're not sure whether you would have  
2 revised any of the reports in this case at the  
3 request of IMX?

4 A No, I'm not sure.

5 Q Do you have a file on Mr. Allegrini at  
6 this time?

7 A I have a file.

8 Q A hard file?

9 A It's a file. It's a file of the records  
10 that were sent to me from IMX.

11 Q And is that all on your computer or is  
12 that a hard paper file?

13 A It's a hard paper file. It's stored by  
14 IMX.

15 Q Stored by IMX?

16 A Right.

17 Q So what do you do; return it to them?

18 A Correct.

19 Q So we are here in an office in Freehold.  
20 You said that this was one of the locations where  
21 you do some work for IMX?

22 A Correct.

23 Q And what type of work do you do for IMX at  
24 this location?

25 A Again, examine -- examining examinees that

1 were asked for me to be examined by IMX.

2 Q All right. So the only work you would do  
3 here in this Freehold office is independent medical  
4 exams at the request of IMX.

5 A Correct.

6 Q IMX actually leases this space, I take it.

7 A All I can tell you is I don't lease this  
8 space.

9 Q All right. When you get a request to  
10 perform an exam sometimes they tell you that the  
11 exam is going to take place in Freehold.

12 A Correct.

13 Q So you don't have any files here, for  
14 example?

15 A No, I do not.

16 Q You don't see any of your own patients  
17 here?

18 A No, I do not.

19 Q Do you have any staff that work here?

20 A No, I do not.

21 Q How about in the Cherry Hill office? Do  
22 you see any patients of your own there?

23 A No, I do not.

24 Q Again, you perform IMEs at the request of  
25 IMX at the Cherry Hill location?

1           A     Correct.

2           Q     And there are numerous other locations  
3 listed on your letterhead or, rather, on your report  
4 of May 13, 2015: Paramus, Bergen County; Piscataway,  
5 Middlesex; this location in Monmouth; Cherry Hill in  
6 Camden County; Atlantic County; Hudson County; and  
7 Mercer County. Seven different locations.

8                     Do you see patients at the request of IMX  
9 at those various seven locations?

10          A     No. The only locations I mentioned are in  
11 Ewing and Freehold and Cherry Hill.

12          Q     Okay. And tell me about the financial  
13 arrangements you may have with IMX. Do they pay you  
14 by the piece, by the job, or is there a monthly  
15 stipend? How does it work?

16          A     Again, there's a flat fee per the  
17 examination for the examination, and then if there's  
18 an extensive review, there's an additional fee. If  
19 there's additional charts or additional x-rays,  
20 additional MRIs, there's an additional fee.

21          Q     Would you say that the review in this case  
22 was a substantial review?

23          A     Again, I don't have the billing records in  
24 front of me.

25          Q     What is the standard flat fee for an IME

1 charged by you?

2 A I believe for IMX it's \$400.00.

3 Q For IMX. In other words, that's what you  
4 are charging IMX.

5 A That's the contracted fee for IMX.

6 Q Between yourself and IMX.

7 A Correct.

8 Q How about for what we're doing today; a  
9 deposition?

10 A I couldn't tell you that.

11 Q That's something, again, arranged by IMX?

12 A Again, my office manager.

13 Q But is the fee set by IMX?

14 A You'd have to ask -- I'm not sure. My  
15 office manager knows the arrangement.

16 Q Well, are you a sole practitioner, if you  
17 will?

18 A Correct.

19 Q And you're performing IMEs at the request  
20 of IMX; right?

21 A Correct.

22 Q And you are also appearing for  
23 depositions. Perhaps, even testimony in court;  
24 true?

25 A Correct.

1 Q And you don't know what charge -- what the  
2 fee is for those various services?

3 A Again, my office manager -- you know,  
4 ballpark figure I can tell you. My office manager  
5 knows the details for it.

6 Q So that's a no?

7 A Exact fee I couldn't tell you.

8 Q Can you give me a ballpark?

9 A For dep -- it varies for a deposition. It  
10 could be anywhere from a range of, let's say, from  
11 \$1,500.00 to \$3,500.00.

12 Q Okay. That's a pretty wide range, and you  
13 don't know anything -- you can't be anymore specific  
14 than between \$1,500.00 and \$3,500.00?

15 A I couldn't tell you.

16 Q And how many IMEs are you performing on a  
17 weekly basis?

18 A For IMX?

19 Q For IMX. Exactly. Good question. Yes.  
20 For IMX.

21 A Okay. Again, from -- in the -- seen in  
22 Cherry Hill one day a month, in the Freehold  
23 location seeing IMEs a half day, and Ewing is a half  
24 a day a month.

25 Q Your testimony is for IMX you perform IMEs

1 on two days a month.

2 A Three days a month.

3 Q One full day, two half days; correct?

4 A Correct.

5 Q All right. And you perform IMEs for other  
6 other companies including ExamWorks and there's a  
7 third company. You perform IMEs for other companies  
8 as well?

9 A Yes, I do.

10 Q And what other companies?

11 A ExamWorks, Prizm, and Medical Consultants  
12 Network.

13 Q And do you similarly have locations to  
14 travel to for purposes of IMEs at the request of  
15 those various companies?

16 A No. The only company I do see outside my  
17 office for is ExamWorks.

18 Q I have some reports that I believe you  
19 prepared for ExamWorks because the -- I'm looking at  
20 a report on a patient named Mark Kava (ph.), where  
21 you prepared or submitted a report with an address  
22 of 4 Becker Farm Road in Roseland, New Jersey. Do  
23 you personally have an office at that address?

24 A No, I do not.

25 Q Is that, to your knowledge, an ExamWorks



1 address?

2 A Correct.

3 Q And do you have any idea where this  
4 Mr. Kava (ph.) may have been examined?

5 A If you want to show me the chart.

6 Q I am going to show you the report. It  
7 actually references my office. "My office." What  
8 would that have meant in the case of ExamWorks?

9 A Clifton.

10 Q So Mr. Kava (ph.) came to your address in  
11 Clifton you think.

12 A Right.

13 Q What locations do you travel to for exams  
14 for ExamWorks?

15 A Again, location is in Manalapan, in  
16 Englishtown, and then there's also -- for them it's  
17 also Bergen County.

18 Q Is that two -- I missed you. Is that two  
19 locations or three?

20 A Uhm, this cur -- it's Bergen County, which  
21 is North Arlington, and then there's also, again, a  
22 location in -- in -- in Englishtown, and then  
23 there's also a location in New Brunswick.

24 Q So three --

25 A Correct --

1 Q -- three locations?

2 A Correct.

3 Q And is that -- I think you started to say  
4 currently. Has that changed in the recent past?

5 A No. It's -- I'm just thinking back.

6 Q And how often do you perform exams at  
7 those locations?

8 A Again, New Brunswick is about half a day.  
9 Again, it's a half day at -- in North Arlington and,  
10 again, in Englishtown also a half a day.

11 Q And those locations are a half a day  
12 travel, some of them, from your location in Clifton;  
13 true?

14 A Again, I'm usually -- when I'm scheduled  
15 there in the morning or I start in the morning I'm  
16 back in my office in the afternoon.

17 Q How about when you travel from Clifton to  
18 Mays Landing, for example?

19 A Again, I don't go to Mays Landing.

20 Q Okay. I'm sorry. You go to Cherry Hill,  
21 though; right?

22 A Correct.

23 Q And that would be about two hours each  
24 way; is that right?

25 A Well, that's the day -- we discussed it in

1 the deposition before; my answer. That's a day I do  
2 a whole day in Cherry Hill.

3 Q Okay. And, now, how much work do you do  
4 for Prizm and for -- what was the fourth company you  
5 mentioned?

6 A MCN?

7 Q MCN? Medical Consultants?

8 A Correct.

9 Q All right. Do you -- is the work for  
10 Prizm -- first of all, is that a particular type of  
11 work? Is that the workers compensation type work?

12 A Prizm is -- again, it's defense work.

13 Q Any particular type of case?

14 A Majority of it is auto.

15 Q Auto. Okay. How often do you see  
16 patients in your office at the request of Prizm?

17 A It varies. It could be sometimes no  
18 times, zero times a week; sometimes it could be one  
19 to two times a week. It varies.

20 Q Do you allocate certain days of the week  
21 or the month to perform independent medical exams in  
22 your office?

23 A No, I do not.

24 Q So they have to -- these companies would  
25 then contact your office to schedule?

1 A Correct.

2 Q Is it the same for Medical Consultants?

3 A Correct.

4 Q Do you know the difference between a --  
5 well, a PIP exam and an IME in a liability case? An  
6 exam where you are determining whether the  
7 additional treatment is reasonable and necessary?

8 A Correct.

9 Q You do that as well?

10 A Correct.

11 Q How often do you do that?

12 A I couldn't tell you.

13 Q And who do you do that for?

14 A Again, it would be -- the major is for  
15 ExamWorks and also for IMX.

16 Q And, now, you have a relationship with --  
17 you mentioned four different companies that  
18 specialize in arranging independent defense medical  
19 exams.

20 A Correct.

21 Q How did that come to be? Did you  
22 advertise for that? Did they seek you out? If  
23 there is a way to explain that how did that come to  
24 be?

25 A It's just -- I never -- I never sought out

1 the work. Just it's -- where people asked me if I  
2 was interested in doing the work.

3 Q Any idea why they asked you as opposed to,  
4 let's say, somebody at one of the hospitals or one  
5 of the other orthopedic surgeons? How did they  
6 locate Jeffrey Lakin?

7 A I'm not sure how they do that.

8 Q Okay. Did you ever advertise?

9 A Never did.

10 Q Did you ever attend any either seminars,  
11 meetings, lunches, other events by any -- put on by  
12 any of these companies?

13 A No, I do not.

14 Q ExamWorks, for example, they put on  
15 seminars, they distribute materials relating to or  
16 regarding how to do a better exam, how to perform a  
17 better report. Have you ever attended any of those  
18 events?

19 A No, I did not.

20 Q Never?

21 A Never.

22 Q Tell me about your practice in Clifton.  
23 Do you see patients in Clifton?

24 A Correct.

25 Q And I take it you're going to tell me that

1 you see persons with various types of injuries,  
2 including necks, backs, shoulders, arms, knees,  
3 legs?

4 A Correct.

5 Q How long have you been at that location?

6 A That location probably about 15 years.

7 Q And are you by yourself?

8 A Correct.

9 Q And how often do you see patients at that  
10 location?

11 A Four or five days a week.

12 Q Four or five days a week. I thought you  
13 had earlier testified today that you're in a couple  
14 different locations at the request of IMX one full  
15 day and two half days a month, and you are traveling  
16 about, for ExamWorks, a few days a month; right?

17 A Correct.

18 Q Do you do any -- I mean do you work on the  
19 weekends?

20 A No.

21 Q Do you have office hours on the weekends?

22 A No, no. Like I said, those are half days  
23 and I'm back to my office -- the half days I get  
24 back to my office in the afternoon.

25 Q Do you have hospital privileges somewhere?

1 A Yes, I do.

2 Q Where?

3 A At Chilton Medical Hospital.

4 Q Anywhere else?

5 A And Saint Mary's Hospital.

6 Q Okay. And Chilton is what town?

7 A Pompton Plains.

8 Q What county is that?

9 A Passaic.

10 Q Saint Mary's is where?

11 A In Passaic, Passaic County.

12 Q Do you by chance track what percentage of  
13 income you derive from performing independent  
14 medical exams?

15 A No, I do not.

16 Q Have you been asked that before?

17 A I can't recall.

18 Q Have you ever had occasion to research  
19 that issue at the request of, let's say, a litigant  
20 or attorney?

21 A No.

22 Q You gave up performing spinal surgery as a  
23 result of a cost benefit analysis; is that true?

24 A Correct.

25 Q Did you ever perform a cost benefits

1 analysis as it relates to independent medical exams?

2 MS. LIEBNER: I am going to object to the  
3 form of the question, but you can answer.

4 THE WITNESS: Again, cost benefit, again,  
5 it made straightforward sense. Do I do as many  
6 spine surgeries as my malpractice savings can  
7 be, and my malpractice savings were  
8 significantly more than spine surgery that I  
9 could perform.

10 BY MR. CUNEO:

11 Q And so the question was a similar analysis  
12 as it relates to independent medical exams?

13 A No.

14 Q You haven't done that.

15 A No.

16 Q Do you recall Aldo Allegrini at all as you  
17 sit here today?

18 A No, I cannot.

19 Q And you saw him at the Cherry Hill office  
20 where you say you will spend a whole day; true?

21 A Correct.

22 Q How many patients would you see in the  
23 course of a full day at the Cherry Hill office  
24 typically?

25 A It varies.



1 Q It varies from what to what?

2 A It varies how many people are scheduled  
3 and how many people actually show up for exams.

4 Q How many would be scheduled?

5 A It varies.

6 Q Give me a range.

7 A It could go anywhere from ten to 20.

8 Q So you have as many as 20 people scheduled  
9 and 20 independent medical exams scheduled in one  
10 day.

11 A That's the highest. You asked me a range.

12 Q Right.

13 A And I couldn't give you the median; I  
14 couldn't give you the mode. I just gave you a  
15 range.

16 Q Okay. Fair enough. So you could have as  
17 many as 20 scheduled in one day at the Cherry Hill  
18 location?

19 A That's probably the highest.

20 Q Is that --

21 A You're asking for a range.

22 Q Is that a yes?

23 A You're asking for a range. The highest  
24 could be up to 20. You're asking for a range.

25 Q Yeah.

1 A The range is usually between ten and 20.

2 Q Let me --

3 A I couldn't give you the mode or the  
4 median. Which is the answer you're looking for? I  
5 can't give you that.

6 Q No, I'm not looking for the mode. I'm  
7 asking for the highest. What's the highest number  
8 of patients you would schedule for your Cherry Hill  
9 location in one day?

10 A The highest -- the highest I think that's  
11 ever been scheduled there is approximately 20.

12 Q All right. And what time do you start in  
13 the morning?

14 A 9:00.

15 Q And what time do you schedule through to?

16 A Sometimes 4:30.

17 Q So how far apart do you schedule; half  
18 hour, 20 minutes?

19 A They usually -- these exams usually are  
20 allotted time space for about 20 minutes to a half  
21 hour.

22 Q You have this -- you have my exam -- my  
23 deposition scheduled today at 11:20, and that's at  
24 the request of IMX; true?

25 A The time -- the time for deposition was at

1 11:20.

2 Q Right. Do you have another proceeding  
3 scheduled for later today?

4 A Again, another deposition for today.

5 Q And that's through IMX as well or is that  
6 a different company?

7 A I believe so. It's IMX.

8 Q And how often are you called upon to  
9 testify at either in deposition or trial?

10 A Infrequently. I think depositions done  
11 here in this office for IMX in the past -- past four  
12 months less than a handful.

13 Q But two today. Is there more than two  
14 today, by the way?

15 A No, two. This is --

16 Q Just two? All right. With regard to your  
17 examination of Mr. Allegrini, I see that you  
18 reference as items that you reviewed it includes EMG  
19 studies; true?

20 A Correct.

21 Q But you didn't comment on the EMG studies  
22 in your report; true?

23 A Correct.

24 Q And why is that? Is there any particular  
25 reason for that?

1           A     Again, in this case, the patient was  
2 neurologically intact. Again, my review of the MRI  
3 films there was no disc herniations.

4           Q     So you deemed the EMG irrelevant?

5           A     No. Just the -- all the facts here --  
6 EMGs can be -- have a lot of false/positives and a  
7 lot of false/negatives and, again, if I was ordering  
8 an EMG it's to confirm my clinical impressions. In  
9 this case, the patient is neurologically intact so  
10 an EMG is not going to affect my opinion.

11          Q     So did you review it?

12          A     If it was listed there I reviewed it.

13          Q     Well, you reviewed, apparently, the  
14 Collisionmax Supercenter auto estimate; didn't you  
15 --

16          A     Correct --

17          Q     -- item 24 on the list?

18          A     Correct.

19          Q     Why is that?

20          A     Well, I was just listing for -- for --  
21 that was given -- all the records that were given to  
22 me.

23          Q     So you reviewed everything, went through,  
24 without regard to whether it was relevant or not to  
25 your examination?

1           A     Again, I looked at the records that were  
2 given to me.

3           Q     Well, what was the purpose of reviewing  
4 the materials that were given to you?

5           A     Again, the exam is my exam of the claimant  
6 and it's my opinions of the claimant.

7           Q     And so would you in the course of  
8 examining a patient at your Clifton office, one of  
9 your patients, would you typically review the auto  
10 estimate, the property damage estimate?

11          A     Well, whatever people bring with them I  
12 will look at.

13          Q     Would you consider that in any way  
14 relevant, the auto estimate, to your review?

15          A     Again, that was just something that was  
16 given to me by IMX.

17          Q     I understand that, and you said that, but  
18 my question is do you deem it relevant to your  
19 review?

20          A     Again, my exam is based on my physical  
21 examination of the patient, my history taking, my  
22 review of the objective tests by him, the MRIs.

23          Q     Okay. So I think that's a no then. It  
24 wouldn't -- your exam would not entail a review of  
25 the property damage estimate?

1           A     Again, it's just extra information  
2 submitted for my review.

3           Q     Did it make any difference to your  
4 determination in this case?

5           A     No, it did not.

6           Q     How about the photos referenced in item  
7 20? Can you describe for me at all what the photos  
8 depicted? They are not referenced in your report.

9           A     No. Without looking at the photos again I  
10 couldn't.

11          Q     Well, did they make -- I mean if you did  
12 look at the photos, again, would you expect it to  
13 change your report?

14          A     No, I do not.

15          Q     And do you think that the review of the  
16 photos when you did this exam back in May of 2015  
17 had any impact on your findings?

18          A     Again, no, it did not.

19          Q     Did you charge to look at the  
20 Collisionmaxx Supercenter and the photos, for  
21 example?

22          A     Again, that's part of a fee for the  
23 independent medical evaluation.

24          Q     All right. Referring to page 5 of your  
25 report --

1 MS. LIEBNER: Is this the May report?

2 MR. CUNEO: Yes, it is.

3 MS. LIEBNER: Okay.

4 MR. CUNEO: I'm sorry.

5 MS. LIEBNER: That's okay.

6 MR. CUNEO: I think it's the only one with  
7 page 5, though.

8 BY MR. CUNEO:

9 Q With regard to page 5 of your May 13, 2015  
10 report, you reference that you reviewed the MRI  
11 studies; true?

12 A Correct.

13 Q And you specifically indicated that your  
14 review differs from the opinions of the radiologist;  
15 true?

16 A Correct.

17 Q And the radiologist found upon the  
18 review -- his or her review -- a broad based central  
19 posterior disc herniation with annular tear at L5-S1  
20 indenting the ventral thecal sac, and that the disc  
21 -- further, that the disc was contacting the  
22 bilateral existing L5 nerve roots; right?

23 A Correct.

24 Q The radiologist also saw a central  
25 posterior disc herniation at L4-5 with an annular

1 tear; true?

2 A Correct.

3 Q And you did not see any of that.

4 A I saw a bulging L4-L5 and L5-S1.

5 Q And no herniations; true?

6 A Correct.

7 Q Bulging only at one level.

8 A Two levels. L4-L5 and L5-S1.

9 Q Okay. And you saw, I take it, no  
10 impingement on the exiting nerve roots.

11 A Correct.

12 Q No indentation on the thecal sac?

13 A Correct.

14 Q And did you -- there was a report of a  
15 neuroradiologist named Lisa Sheppard, M.D. in this  
16 case offered by myself, and that's not referenced in  
17 your review. Is that something that you saw?

18 A No, I did not.

19 Q What type of -- do you have any specialty  
20 training in the review of MRIs?

21 A Again, it's part of the practice of  
22 Orthopedics.

23 Q So would the answer then be that your  
24 training is, in effect, on the job training? In the  
25 course of your practice of Orthopedics --



1 A No, it's not --

2 Q -- you, in fact, review MRIs?

3 A No. MRIs are taught, reading MRIs, during  
4 your residency program.

5 Q Well. Let me ask you. I mean that's the  
6 kind of information I'm looking for you to give me  
7 when I ask you a question.

8 A You're -- you -- you're vague with your  
9 questions.

10 Q Okay. Well, let me be more specific  
11 because I've heard orthopedists, perhaps older than  
12 yourself, say, well, we didn't have MRIs back when I  
13 went to medical school. Did you have MRIs when you  
14 went to medical school?

15 A Yes.

16 Q And did you have training --

17 A Yes --

18 Q -- in that --

19 A -- yes, we did.

20 Q Tell me about the training.

21 A Again, you're train -- you have sessions  
22 with the radiologist, you're reviewing films.  
23 Again, there's textbooks you read in MRIs. Again,  
24 you're expected to be able to read MRIs for your  
25 cert -- board certification, your board

1 recertification. It's part of the practice of  
2 Orthopedics.

3 Q You're not a radiologist; right?

4 A Correct.

5 Q And have you had any specialty training in  
6 the field of Radiology that would qualify you to be  
7 deemed a radiologist?

8 A Again, I'm an orthopedist that reads  
9 radiologic films and trained to read orthopedic --  
10 films in the field of Orthopedics.

11 Q Would you say that your expertise in the  
12 area of reading MRIs is similar to your expertise in  
13 the field of hand surgery?

14 A Again, it's part of my practice.

15 Q You deemed yourself a specialist in the  
16 area of --

17 A I did a one year fellowship devoted to --  
18 devoted to the hand and upper extremity.

19 Q Would you characterize that as specialty  
20 training in that field?

21 A Again, yes, it is, and reading MRIs is  
22 something that you are trained to do in your  
23 residency, expected to know, and it's something that  
24 you continually -- continually learn, that you  
25 continually do, continually updated. It's part of

1 your -- it's part of being board certified.

2 Q But you didn't do a fellowship, for  
3 example, in that area.

4 A No, I did not.

5 Q In the course of your practice do you  
6 refer patients out for MRI studies?

7 A Correct.

8 Q Did you ever put any weight or rely upon  
9 the read by the radiologist or do you rely solely  
10 upon your own independent review?

11 A I always -- I always like to look into the  
12 films myself.

13 Q Are the findings of the radiologist of any  
14 importance to you?

15 A They are important, but, again, there can  
16 be an interobserver or difference in readings that's  
17 pretty high -- that's pretty high in the -- and it's  
18 well-reported in literature.

19 Q Okay. What literature would you rely  
20 upon, for example, to -- is there any particular  
21 literature you would point to when you say it's  
22 reported in literature?

23 A I can't give you a specific. Different  
24 journals. It could be anywhere from 10 to 15%,  
25 sometimes even higher, interpretation of radiology

1 files.

2 Q 10 to 15% what?

3 A Difference.

4 Q Okay. Would you say that incidents of  
5 disagreement between yourself in performing  
6 independent exams and those of the reading --  
7 findings of the reading radiologist would be in the  
8 range of 10 to 15%?

9 A I can't tell you -- there's -- there's an  
10 interobserver, you know, difference between what a  
11 radiologist can read or what an orthopedist can  
12 read. There's also a difference between two  
13 radiologistss can read on the same MRI.

14 Q Would you agree with me that your reading  
15 of the radiology studies are typically more  
16 conservative than that of the treating radiologist?

17 MS. LIEBNER: Objection to form. You can  
18 answer.

19 THE WITNESS: Again, I read the films as I  
20 see the films.

21 BY MR. CUNEO:

22 Q Would you agree with me that more often  
23 than not your read of the films disagrees with the  
24 radiologist?

25 MS. LIEBNER: Again, objection to form.

1           You can answer.

2           THE WITNESS: Again, I read the films as I  
3           read them. If they agree, they agree. If they  
4           disagree, they disagree.

5 BY MR. CUNEO:

6           Q       I understand that, but the question is do  
7           you find -- is it your experience that more often  
8           than not your findings differ from the treating  
9           radiologist such as they do in this case?

10          A       Again, I can't answer that question.

11          Q       Why is that? Why is it that you can't  
12          answer that question?

13          A       Because I read the films as I read them  
14          and they read the films as they read them.

15          Q       Certainly that's true, and you have  
16          indicated that, but sometimes they differ, and in  
17          the case of Jeffrey Lakin, M.D., they differ more  
18          than sometimes. They differ quite frequently; true?

19          A       No. In --

20                 MS. LIEBNER: Objection to form.

21                 THE WITNESS: In this case they differ.

22 BY MR. CUNEO:

23          Q       All right. Is there a particular reason  
24          you don't want to answer that question?

25          A       No. There's -- there's -- you know, just

1 to give you a specific in this case, the MRI of the  
2 lumbar spine we differ in our findings from the  
3 radiologist. I read the MRI of the cervical spine  
4 from 10/9/13, and I agree with the radiologist. We  
5 agree.

6 Q And coincidentally that -- in that case,  
7 there's no herniation or disc bulging.

8 A They found a normal MRI, I found a normal  
9 MRI, so we agreed.

10 Q Okay. And moving on in your report, you  
11 indicate that this patient suffered sprains and --  
12 sprains to the cervical lumbar and left shoulder  
13 areas which were causally related to the accident;  
14 true?

15 A Correct.

16 Q You also indicate that the treatment  
17 related to this accident of July 19, 2013 to the  
18 cervical, lumbar and left shoulder was -- the  
19 treatment was related.

20 A Correct.

21 Q Is that another way of saying it was  
22 reasonable and necessary?

23 A Again, you know, I wasn't examining the  
24 person at that time and it appears the treatment was  
25 related.

1 Q What does related mean?

2 A Again, the patient had complaints of pain  
3 in the neck, shoulder and the -- and the lower back,  
4 and had surgery. As far as causality and medical  
5 necessity, I didn't examine the patient before --  
6 before those treatments. I examined him afterwards.

7 Q Okay. So I don't understand your answer  
8 then. What does -- what do you mean when you say  
9 the treatment was related?

10 A The patient had subjective complaints of  
11 pain to the neck, to the left shoulder, and to the  
12 lower back.

13 Q That's certainly true.

14 A Correct.

15 Q And he also received certain treatment and  
16 you say that the complaints and the treatment were  
17 related; true?

18 A Correct.

19 Q And is that -- and what do you mean by  
20 that?

21 A The patient was having complaints. He was  
22 seeing doctors at those times and doctors -- that  
23 doctor performed treatments or recommended  
24 treatments, and it seemed related to his subjective  
25 complaints.

1 Q It seemed related.

2 A It's related to his subjective complaints.

3 Q Okay. I mean that's an entire paragraph  
4 in the conclusion of your report. The treatment was  
5 related to the accident of July 19th, 2013 for the  
6 cervical spine, the lumbar spine and left shoulder.

7 A Correct.

8 Q And that's -- all you mean to say is that  
9 they had complaints and they had treatment?

10 A Correct.

11 Q You don't -- and the term related,  
12 apparently, means nothing?

13 A Again, it's -- the treatment was related  
14 to me. You asked me to comment specifically -- we  
15 can read it back -- on medical necessity and  
16 causality, and I said I can't -- I can't answer  
17 that.

18 Q Actually, I didn't use those terms. You  
19 used those terms. My term was was it reasonable and  
20 necessary?

21 A Well, again, I can't comment on it. Just  
22 that it's related.

23 Q Fair enough. You indicated in your report  
24 that this patient has no signs of any cervical or  
25 lumbar radiculopathy; correct?



1           A     Right.

2           Q     And you do realize that there was an EMG  
3 of the lower extremities; true?

4           A     Again, there was an EMG. I don't have it  
5 in front of me exactly.

6           Q     Well, yeah, and, interestingly, you did  
7 review it and, yet, you didn't comment on it. My  
8 question for you is do you know whether the EMG  
9 demonstrated a lumbar radiculopathy?

10          A     Again, I wouldn't change my opinion. As I  
11 tried to explain to you before, EMGS have a high  
12 false/positive rate and a high false/negative rate.  
13 In this case, if I was seeing a patient that was  
14 neurologically intact, I would never even have  
15 ordered the test to begin with myself.

16          Q     In your practice when you order EMGs why  
17 do you do so?

18          A     Again -- in my practice? If someone has  
19 complaints of pain in the neck that's radiating into  
20 their arms, and I'm concerned about a double crush  
21 or they might have a nerve pressed at the wrist,  
22 carpal tunnel, or it might be coming from the neck,  
23 to help define the problem I would get a -- a nerve  
24 study test.

25                 Then, again, if someone has a systemic

1 disease such as diabetes or a systemic disease that  
2 affects their nerves that might be causing a  
3 neuropathy to help differentiate a central problem  
4 or peripheral nerve problem from the neuropathy I  
5 would get an EMG at that time and, again, those are  
6 the times that I'm using an EMG to help clarify the  
7 clinical -- clinical setting.

8 Q If one of your patients had an MRI and the  
9 radiologist said in the report that there's a  
10 herniation there and impinging on the exiting nerve  
11 root, and then that same patient had an EMG which  
12 demonstrated a radiculopathy at the same level,  
13 let's say, L5-S1, would you, nonetheless, be guided  
14 by your clinical exam and potentially make a  
15 determination that the patient is neurologically  
16 intact?

17 A Again --

18 MS. LIEBNER: Objection to form. You can  
19 answer.

20 THE WITNESS: The clinical exam is  
21 paramount, you know. There's -- it's  
22 well-known that many patients have herniated  
23 discs on their MRI, many patients have bulges  
24 on their MRI, and the majority of the time they  
25 are asymptomatic. The most important thing is

1           your clinical examination.

2       BY MR. CUNEO:

3           Q       You said the majority of times?

4           A       Well, a significant portion of times.

5           Q       Do you have any support for that?

6           A       If you look at the literature, it could be  
7 anywhere from 30 to 40%.

8           Q       What literature do you rely upon? Is that  
9 supplied to you by perhaps IMX or --

10          A       No --

11          Q       -- ExamWorks?

12          A       Even if you look in the -- if you look in  
13 the orthopedic journals. You can even look in the  
14 -- as far as Orthopedic Knowledge Updates.

15          Q       Do you recognize an authoritative source?

16          A       Again, I review a variety of different  
17 orthopedic journals.

18          Q       Yeah. Do you recognize an authoritative  
19 source?

20          A       Again, they're all -- if you look at them  
21 all the common denominator is 30% of the time.

22          Q       Yeah. Do you recognize an authoritative  
23 source --

24          A       Again, no. I just do -- I just do reading  
25 all the time.

1 Q So you don't recognize an authoritative  
2 source?

3 A Again, there's a variety of sources that I  
4 look at. I look at the orthopedic knowledge  
5 updates.

6 Q You are unable to cite an authoritative  
7 source at this --

8 A No. There's a variety of sources that I  
9 use.

10 Q Yeah. Can you name one?

11 A Yeah. There's the orthopedic knowledge  
12 update.

13 Q Orthopedic Knowledge Update?

14 A Correct.

15 Q Do you recognize the Orthopedic Knowledge  
16 Update as an authoritative source?

17 A Describe authoritative.

18 Q Do you recognize the source as being an  
19 authority in the field?

20 A Again, it's -- it's a -- it's a  
21 significant publication that is put out by the  
22 academy.

23 Q Got you.

24 A There's also a journal --

25 THE COURT REPORTER: I'm sorry. There's

1           also --

2           THE WITNESS: There's also a journal on  
3           joint surgery. There's also the Journal of the  
4           American Academy of Orthopedic Surgery.

5 BY MR. CUNEO:

6           Q       These are all journals that you deem an  
7           authoritative source?

8           A       Again, these are all significant  
9           publications. There's also -- there's Orthopedic  
10          Knowledge on-line.

11          Q       All right. And your testimony is that  
12          these journals would document false/positive in the  
13          area of 30 to 40%; Is that your testimony?

14          A       No. That's your statement.

15          Q       No. I thought that was your testimony.

16          A       You said --

17          Q       Clarify it for me, please.

18          A       Again, they're going to show abnormalities  
19          in significant portions of patients with herniations  
20          or bulging.

21          Q       All right. How about what is your  
22          experience with regard to your findings where there  
23          is a positive MRI and, yet, a normal clinical exam?

24          A       It's quite common in the practice.

25          Q       Is it more common when you are performing

1 independent medical exams than it is in your private  
2 practice?

3 MS. LIEBNER: Objection to form.

4 THE WITNESS: Again, I treat -- when I am  
5 doing an independent exam I do it the same way  
6 as I treat my patients.

7 BY MR. CUNEO:

8 Q Do you find that there's a high percentage  
9 of incidents where the treating -- in the case of an  
10 independent medical exam where the treating  
11 physician has documented a positive MRI and you have  
12 found a normal clinical exam?

13 A I can't --

14 MS. LIEBNER: Same objection.

15 THE WITNESS: I can't answer that  
16 question.

17 BY MR. CUNEO:

18 Q It's something that you haven't tracked?

19 A Again, the same way I treat my patient is  
20 the same way I examine an independent medical  
21 evaluation.

22 Q All right. So in this case you've  
23 indicated that the sprains to the cervical, lumbar  
24 and left shoulder were related to the accident. The  
25 treatment was related to the accident, but you found

1 no permanent injury; true?

2 A Correct.

3 Q And is that because you disagree with the  
4 reading of the MRI? Is it because you differ --  
5 your reading found no herniation, whereas, the  
6 treating radiologist documented herniations  
7 impinging on the exiting nerve roots?

8 MS. LIEBNER: Objection to form. You can  
9 answer.

10 MR. CUNEO: Let me rephrase that.

11 BY MR. CUNEO:

12 Q Had your reading documented the same as  
13 the reading radiologist; that is, disc herniation  
14 impacting on the bilateral exiting nerve roots,  
15 would your opinion be different with regard to a  
16 finding of permanency?

17 A No, it wouldn't.

18 Q And the same question with regard to the  
19 EMG. Had you read the EMG -- and, for that matter,  
20 documented any finding with regard to your review of  
21 the EMG -- had your review been consistent with the  
22 doctor who performed the EMG, would that have  
23 changed your opinion?

24 A Again --

25 MS. LIEBNER: Objection to form.

1 THE WITNESS: Again, what I can answer is  
2 this patient had a normal orthopedic  
3 examination.

4 BY MR. CUNEO:

5 Q Right. And that's paramount --

6 A And it's well-known that most people with  
7 disc herniations are asymptomatic.

8 Q Okay. So we went --

9 A On MRI. On MRI.

10 Q We went back to -- before you said  
11 majority and now you said most. Are you standing by  
12 that?

13 A Well, see, you can't -- you can't -- if  
14 you look at the MRI, it's about 30% in the  
15 literature, but you would have to -- you know, if  
16 you -- you can't -- you can't MRI everybody in the  
17 world.

18 Q Well, what's 30%? What do you mean by  
19 30%? 30% of all people walking around have  
20 herniations?

21 A Correct.

22 Q 30% of all people --

23 A Herniations or bulges.

24 Q Okay. Well, there's a big difference;  
25 isn't there, between a herniation and a bulge?



1           A       It depends on who is reading -- it depends  
2 on the radiologist that's reading it, what they're  
3 finding a bulge, what they're finding a herniation,  
4 but there's abnormalities in MRIs and there's a  
5 significant portion of patients with MRI  
6 abnormalities, bulges or herniations, that are  
7 asymptomatic.

8           Q       What percentage of persons with  
9 herniations are asymptomatic?

10          A       You really can't -- you really can't --  
11 you really can't answer that question.

12          Q       What percentage of persons with  
13 herniations impinging on the exiting nerve roots are  
14 asymptomatic?

15          A       Again, you -- you can't -- I can't  
16 answer -- give you exact details for that, but at  
17 least there are -- you'll find abnormalities --  
18 any -- you know, an average -- a number that's  
19 referenced a lot in the literature is 30% -- it  
20 could even be higher -- of patients with  
21 asymptomatic herniations even if it's -- you know,  
22 as in this case.

23          Q       This person has an asymptomatic  
24 herniation?

25          A       Correct.

1 Q And how do you define asymptomatic?

2 A Again, on clinical examination.

3 Q And the clinical examination; would you  
4 consider that objective or subjective?

5 A Well, the objective part of the  
6 examination, again, the motor, the sensory  
7 examination, reflexes, range of motion, are all  
8 normal.

9 Q These are all tests that you are  
10 performing and you're documenting the findings;  
11 true?

12 A Correct.

13 Q Is there any objective back-up for your  
14 findings; that is -- I mean what you record is  
15 subject to your personal interpretation?

16 A No. I think because these are objective  
17 testing. A straight leg raise test is an objective.

18 Q Well, why is it that a treating physician  
19 would differ from your findings on certain tests  
20 such as the Tinel's test or Spurling's test or any  
21 of any of these other tests, Fabere's test? Why  
22 would a treating physician, treating orthopedic  
23 surgeon, have such different findings from your  
24 findings if it's such an objective test?

25 MS. LIEBNER: Objection to form. You can

1 answer.

2 THE WITNESS: Again, I can just comment on  
3 examination of the objective tests that I did  
4 and my findings.

5 BY MR. CUNEO:

6 Q So in the event then -- I asked you this  
7 before. I'm not sure you answered it. In the event  
8 that your findings were consistent with the  
9 radiologist; that is, that this -- that the lumbar  
10 MRI study revealed herniations impinging on the  
11 nerve root, your opinion would, nonetheless, be that  
12 the person did not suffer permanent injury.

13 A Again --

14 MS. LIEBNER: Objection to form. You can  
15 answer.

16 THE WITNESS: Again, you just -- you just  
17 read that wrong. It says the radiologist  
18 found -- he didn't say impinging. It says  
19 indenting the ventral thecal sac with bilateral  
20 neural foramina with the disc contacting the  
21 bilateral exiting nerve roots. He didn't  
22 mention anywhere that it's impinging the nerve  
23 roots, so I think you made a mistake, you know.

24 BY MR. CUNEO:

25 Q Well, let me rephrase that then. In the

1 event your reading was consistent with the  
2 radiologist in that there was a broad based central  
3 posterior disc herniation with annular tear at L5-S1  
4 indenting the ventral thecal sac, lateral recess and  
5 bilateral neural foramina with the disc contacting  
6 the bilateral existing L5 nerve root --

7 A Again --

8 A -- would your opinion still be that the  
9 person did not suffer permanent injury?

10 MS. LIEBNER: Same objection.

11 THE WITNESS: And, again, if you're -- I  
12 can't testify -- you know, his report says  
13 contacting, so if he says it's contacting, he's  
14 not even going to say it's impinging or putting  
15 pressure on it, so by using his language, he's  
16 describing to me a disc bulge, which is similar  
17 to mine.

18 BY MR. CUNEO:

19 Q Well, same question --

20 A So -- no. So maybe -- so to just turn  
21 this around, maybe the reading radiologist would  
22 agree with my findings. He's saying -- he's using  
23 the word contacting.

24 Q Right.

25 A He's not putting pressure, and a

1 herniation is when it's putting pressure on a nerve  
2 root.

3 Q Right.

4 A So he's not even putting -- he's not even  
5 committing that there's any pressure on the nerve  
6 root so maybe he'd want to turn around and use the  
7 word bulge instead of herniation.

8 Q Maybe. How about if he said impingement?

9 A Again, it's what he describes as  
10 impingement. I can just comment on my report and my  
11 review of the films.

12 Q All right. But you did differentiate  
13 between impingement and contacting, so what if that  
14 radiologist in his report said that at L5-S1 there's  
15 an annular tear with a disc bulge and impingement of  
16 the exiting L5 nerve root --

17 A Again --

18 MS. LIEBNER: Objection to form --

19 THE WITNESS: -- I can't go on his  
20 language. I can just -- I can just go on my  
21 report, my review of the films.

22 BY MR. CUNEO:

23 Q So you don't know what is meant -- if you  
24 were to send a patient for an MRI and you got back a  
25 report that read that there's an L5-S1 annual tear

1 with an impingement on the exiting L5 nerve root you  
2 wouldn't know what that meant because it's not your  
3 language. It's the radiologist's language.

4 A Again --

5 MS. LIEBNER: Objection to form.

6 BY MR. CUNEO:

7 Q Is that what you are saying?

8 A I can't answer that question.

9 Q Why is it you can't answer that question?

10 A Again, because like we discussed before,  
11 the clinical exam is paramount.

12 Q So what is the purpose of an MRI in the  
13 first place then?

14 A It's to confirm the clinical findings.

15 Q And so, in this case, because you  
16 performed a clinical exam and you found the patient  
17 to be neurologically intact, you would not have  
18 referred for an MRI of the lumbar spine; is that  
19 true?

20 A If somebody is neurologically intact and  
21 they had a normal exam, like I examined them on  
22 physical examination, there would be no need for an  
23 MRI.

24 Q So you would not have ordered one.

25 A At the time I saw this patient.

1 Q Same question as to the EMG.

2 A I wouldn't have ordered EMGs.

3 Q So the patient comes to you. They say,  
4 Doc, I was in an accident. I never had any back  
5 pain before the accident. Ever since the accident I  
6 have got back pain that's running down my left leg.  
7 You perform an exam. It turns out to be clinically  
8 normal. You wouldn't order an MRI.

9 MS. LIEBNER: Objection to form.

10 BY MR. CUNEO:

11 Q Does that summarize your testimony?

12 A Again, I can't answer that question.

13 Q Well, I mean isn't the purpose of going to  
14 an orthopedic surgeon such as yourself to get a --  
15 to solve a problem sometimes?

16 A Again, in that hypothetical role, when I  
17 first saw the patient that had those complaints,  
18 again -- and they had a normal neurological  
19 examination and I first saw them for the first time  
20 I wouldn't order an MRI.

21 Q What would you order? PT?

22 A It -- you know, in a hypothetical patient  
23 complaining of pain you try conservative modalities.

24 Q Okay. And this patient actually had  
25 conservative modalities, as you know, because you

1 have reviewed all those documents listed in that  
2 report right there --

3 A Correct --

4 Q -- chiropractic treatment, even had a  
5 lumbar epidural steroid injection by the time you  
6 saw the patient; true?

7 A Correct.

8 Q And the patient, according to you, was  
9 still complaining of low back pain radiating into  
10 his left leg; am I right?

11 A Again, from my report, his lower back pain  
12 improved. He had occasional pain with prolonged  
13 positions such as sitting. He rarely gets pain with  
14 prolonged standing or walking. The pain  
15 occasionally radiates into his lower legs into his  
16 mid-calves.

17 Q Okay. So he is -- do you know how old he  
18 is?

19 A 40 years of age.

20 Q So he's a 40 year old man with no history  
21 of low back pain, gets in an accident. He's got --  
22 as of your exam, which is two years post-accident --  
23 he's got low back pain, especially when standing,  
24 sitting for prolonged periods of time, which  
25 occasionally runs down his left leg.



1           A     Again, we can take back something you  
2     said.  He does have a prior history of neck and  
3     lower back pain.

4           Q     Oh, okay.  And by that do you mean that he  
5     was involved in an accident in 2003?

6           A     2006.

7           Q     2006, wherein, you indicate that he  
8     reported that he resolved -- that those -- any  
9     complaints arising from that accident resolved.

10          A     Correct.

11          Q     So that would somehow differ from your  
12     treatment of this hypothetical patient that walked  
13     into your office with the same complaints --

14          A     No, no.  You just said to me before.  I  
15     just wanted to clarify for you that he had no  
16     history of lower back pain and I wanted --

17          Q     Well, let's define history.  You say he  
18     had an accident in 2006.  He was treated with  
19     physical therapy and was doing well until the most  
20     recent accident of July 19, 2013.  Would you  
21     consider that a history of low back pain?

22          A     Again -- well, just -- you're going on the  
23     MRIs and the patient -- he had -- you know, he had  
24     findings in the MRIs.  Again, he had an accident in  
25     2006 which would account for those findings in the

1 MRIs.

2 Q Okay. So we're getting away from the  
3 question. Let's see if we can focus in on the  
4 question here.

5 This patient who tells you that he's doing  
6 well from an orthopedic standpoint, hasn't had any  
7 pain in his low back in years, comes to you and says  
8 he's in an accident. He's got low back pain. It  
9 radiates into his left leg. You do a clinical exam.  
10 You wouldn't send him out for an MRI.

11 A For -- the first time I met him?

12 Q Yes.

13 A No, I would not.

14 Q How about after two years after he has had  
15 chiropractic care, a lumbar steroid epidural  
16 injection, this same patient is still complaining of  
17 low back radiating into his left leg? Would you  
18 send him out for an MRI then?

19 A Again, you're asking what I'd do when a  
20 person -- not this -- presents to my office for  
21 evaluation?

22 Q So anybody who comes to you, Doctor, for  
23 an independent medical exam, who upon your clinical  
24 exam is neurologically intact, that person by  
25 definition has not suffered a permanent injury

1 arising from the incident.

2 MS. LIEBNER: Objection to form. You can  
3 answer.

4 THE WITNESS: That's paraphrasing my  
5 words. I can't answer that.

6 BY MR. CUNEO:

7 Q Well, I don't want to paraphrase. I mean  
8 I think your exact words were that the clinical exam  
9 is paramount.

10 A In this setting, based upon my exam and  
11 review of the records, there was no permanent  
12 injury.

13 Q And I am trying to understand how that  
14 might relate to this and any other case that you  
15 examined. Is there any way to sway Doctor Lakin  
16 from his conclusion that there's no permanent injury  
17 in the face of a normal clinical exam upon your  
18 clinical exam?

19 MS. LIEBNER: Objection to form.

20 THE WITNESS: Again, this is my report and  
21 my opinions.

22 BY MR. CUNEO:

23 Q And I asked you before. I just wanted to  
24 be clear about the answer. The radiology findings  
25 as reported by the radiologist does not impact your

1 opinion and that is because of the normal clinical  
2 exam; true?

3 A Again, you know, I didn't find -- if he  
4 called it a disc bulge -- I call it a disc bulge; he  
5 calls it a herniation. I call it a herniation; he  
6 calls it a bulge. There's a high interobserver --  
7 you know, interobserver variance again.

8 Q But my question is whether or not --

9 A When you read his report, specifically, he  
10 doesn't even put there's any pressure on it. It's  
11 just contacting the nerve root so...

12 Q Well, my question is whether or not --  
13 whether it's a herniation, whether it's an  
14 impinging, whether it's a contacting, all that is  
15 irrelevant to you because of the normal clinical  
16 exam; true?

17 A Again, his exam is asymptomatic for disc  
18 herniation.

19 Q So -- I know you got other things to do  
20 today, but what I am going to do right now is I'm  
21 going to ask that same question again until you  
22 answer it, and then I will ask it again if you don't  
23 answer it, and I'll keep asking you that same  
24 question until you get -- until you answer it.

25 A No problem.

1           Q     The finding of the MRI study, whether  
2 they're positive, negative or anything in between,  
3 are irrelevant to you because of the normal clinical  
4 exam; true?

5           A     Again, in this case, the patient has --  
6 whatever you want -- I wrote disc bulging, which  
7 most -- the majority -- the vast majority of disc  
8 bulges are asymptomatic, so in this case, my review  
9 of the films, he has a disc -- he has a disc bulge,  
10 which is asymptomatic. His clinical exam is  
11 asymptomatic, so based upon my exam, my review of  
12 the films, the patient has no permanency.

13          Q     Okay. So whether you want to answer that  
14 question or not, it sounds to me like the answer is  
15 yes because of your clinical exam. It doesn't  
16 matter to you what the MRI findings were.

17          A     No. His MRI revealed bulging, which is  
18 the vast majority of the time asymptomatic, so my  
19 review of the films and my review of the clinical  
20 exam are conclusive that there's no permanency in  
21 this case.

22          Q     Okay. So -- I'm sorry. It does sound  
23 like we're making progress then. Your opinion is  
24 based upon two things; the findings that you -- the  
25 fact that you see only bulging in the MRI study, and

1 the clinical exam?

2 A The clinical exam is most important and  
3 the bulging verifies my clinical findings.

4 Q So if your findings are wrong, for  
5 example -- if your findings -- your findings are  
6 in -- let me rephrase.

7 It makes a difference to your  
8 determination that your findings with regard to the  
9 MRI study differ from that of the reading  
10 radiologist.

11 A No. Again, I am just commenting on my  
12 review of the records, you know, my review of the  
13 information brought to me. Again, the patient has  
14 an exam essentially unremarkable. His MRI to me  
15 doesn't correlate, you know, again with any  
16 herniations, and I review bulgings consistent with  
17 that so...

18 Q And how is it significant in the end to  
19 your opinion that there are bulges versus  
20 herniations?

21 A Again, the vast majority of patients --  
22 you know, I use the term of 30% of patients with  
23 bulges and herniations in MRIs are asymptomatic.

24 Q So even if it was a herniation it wouldn't  
25 make a difference to you.

1 A Correct.

2 Q There you go. That was easy.

3 Same question as to EMG. It wouldn't make  
4 a difference to you whether or not the reading  
5 neurologist found a positive radiculopathy at L5-S1.

6 A That's a test I wouldn't have even ordered  
7 in this case.

8 Q And that's because of the normal clinical  
9 findings.

10 A There's no reason -- he's neurologically  
11 intact. You asked me when in my practice I would  
12 order an EMG. It's when I suspect a double crush or  
13 there's a polyneuropathy. In this case I wouldn't  
14 have even ordered the test because there's a high  
15 false/positive rate.

16 Q You wouldn't order the test because  
17 there's a high false/positive?

18 A It's clinically not indicated because he's  
19 neurologically intact.

20 Q What if it wasn't clinically indicated.  
21 Would you order it, I mean, bearing in mind that  
22 it's got a high false/positive?

23 A I mean if I'm using the different -- in  
24 the settings you're asking me. If I'm looking for  
25 someone who has a polyneuropathy, metabolic

1 neuropathy, if I'm looking to differentiate between  
2 a carpal tunnel and a central nerve problem or a low  
3 back and peripheral nerve problem, yes, but in this  
4 case there's no reason to order it. It's not going  
5 to affect the way I treat the patient.

6 Q Do you perform epidural steroid  
7 injections?

8 A No, I do not.

9 Q Do you refer patients for pain management  
10 treatment?

11 A Yes, I do.

12 Q And I assume that in this case you would  
13 not have referred this patient; that is, as of the  
14 time you examined him, for such a -- such treatment?

15 A At the time I saw him, no, I would not.

16 Q Do you know whether the patient reported  
17 improvements subsequent to the epidural steroid  
18 injection?

19 A Not specifically.

20 Q You don't know specifically or it didn't?  
21 You don't --

22 A It's not mentioned in the report.

23 Q In your report.

24 A Correct.

25 Q Can you tell me, if you know, what, if



1 anything, is causing this patient to have pain with  
2 prolonged positions such as sitting, pain with  
3 prolonged standing and walking, pain radiating into  
4 the lower extremities?

5 A Again, on this case, he said his lower  
6 back pain improved, and as for his lower back, he  
7 states that he rarely gets pain with prolonged  
8 standing and sitting, and he occasionally gets pain  
9 that radiates into his mid-calves.

10 Q So what is causing that rare or occasional  
11 pain; if you know?

12 A Again, it could be coming from a strained  
13 or a sprained muscle.

14 Q Two years later?

15 A Again, I -- you know, if that's his  
16 subjective complaints. I couldn't find anything  
17 objectively that would be responsible for those  
18 subjective complaints.

19 Q What is the basis for the determination  
20 that his sprains to the cervical lumbar and shoulder  
21 have resolved?

22 A Again, on his physical examination his  
23 motion is full, he has full strength, and  
24 essentially, an unremarkable orthopedic examination,  
25 except for some minimal tenderness.

1 Q And that's based upon your various tests  
2 that are referenced in the physical exam; the  
3 Tinel's test, the Spurling's test, the Fabere's  
4 test; right?

5 A Correct.

6 Q Do you know whether your findings on those  
7 various tests do differ from the treating orthopedic  
8 physician?

9 A I can just comment on my report.

10 Q Fair enough.

11 MR. CUNEO: All right. Thank you, Doctor.

12 THE WITNESS: You're welcome.

13 MR. CUNEO: I have no other questions.

14 MS. LIEBNER: I have no questions.

15 (Deposition concluded at 1:05 p.m.)

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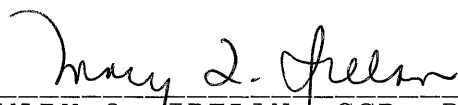
## C-E-R-T-I-F-I-C-A-T-I-O-N

STATE OF NEW JERSEY :

COUNTY OF MONMOUTH :

I, MARY Q. IRELAN, Certified Court Reporter, Registered Professional Reporter and Notary Public, do hereby certify that I reported the deposition in the above captioned matter; that the said witness was duly sworn by me; that the foregoing is a true and correct transcript of the stenographic notes taken by me in the above captioned matter.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with this action, nor financially interested in the action.

  
\_\_\_\_\_  
MARY Q. IRELAN, CCR, RPR  
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OCTOBER 21, 2015  
DATE

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Name: Jeffrey F. Lakin M.D.  
Home Address: 8 Starview CT.  
Wayne, New Jersey 07470  
Home telephone number: (973) 616-7139  
Cell phone number: (201) 805-5222

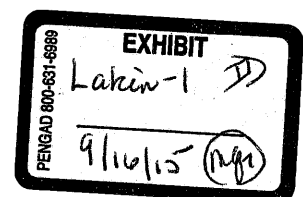
Undergraduate Education: Muhlenberg College, Allentown, Pennsylvania  
Date attended: 9/77 – 5/81  
Date graduated: 5/81  
Degree: B.S. (Natural Science)  
Academic Honors: Summa Cum Laude  
Elected to Phi Beta Kappa, 1981  
Dean's List, 7/8 semesters

Medial Education: University of Medicine and Dentistry  
New Jersey Medical School, Newark, New Jersey  
Date attended: 9/81 – 5/85  
Date graduated: 5/22/85  
Degree: M.D.

Research: 1985: "Bovine Tendon Allograft"  
J. Tauro, M.D., H. Alexander, Ph.D.  
and J. Riccio, Ph.D.

Post Graduate:  
Medical Education: University of Medicine and Dentistry  
New Jersey Medical School, Newark, New Jersey  
Orthopaedic Surgery Residency Program  
(Preliminary Year – General Surgery)  
Date attended: 7/85 – 6/91  
Date graduated: 6/91  
License: New Jersey, 9/86; New York 3/91  
Diplomate of the National Board of Medical  
Examiners, 7/1/86

Research: "Intraarticular Fractures of the Distal Radius:  
A Cadaveric Study to Determine the Effectiveness  
Of Ligamentotaxis in Restoring Articular  
Congruity."  
Sponsor: Richard Mackessy, M.D.



Fellowship: Robert E. Carroll Hand Fellowship,  
Columbia University  
College of Physicians and Surgeons,  
Columbia Presbyterian Medical Center,  
New York, NY

Date attended: 8/91 – 7/92

Research: Carroll, R.E. and Lakin, J.F., “Fracture of the Hook  
of the Hamate: Acute Treatment”,  
Journal of Trauma, June 1993, pp. 803 – 805.

Private Practice: Orthopaedic and Sports Medicine Associates  
Of North Jersey, P.A., Clifton, New Jersey

Dates: 8/1/92 – 7/31/93

Jeffery F. Lakin, M.D.  
1777 Hamburg Turnpike  
Wayne, New Jersey

Dates: 8/2/93 – 3/14/03

Jeffrey F. Lakin, M.D.  
642 Broad Street  
Clifton, New Jersey

Dates: 11/2003 – present

Phone: (973) 365-1139

Academic: UMDNJ – New Jersey Medical School  
Dept. of Orthopaedics, Section of Hand Surgery  
Guest Lecturer: 1992 to present

Board of Certified: American Board of Orthopaedic Surgery

Date: 9/94

Recertified: 7/04  
1/1/15

Fellow American Academy of Orthopaedic  
Surgeons  
New Jersey Orthopaedic Society Member