**In The Matter Of:**

*Allegrini v.*

*LMFIC*

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*Jeffrey Lakin, M.D.*

*March 9, 2016*

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*Thomas G. Oakes Associates*

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

ALDO ALLEGRINI, :
Plaintiff, :
-vs- :
AYESHA Y. REDDICK and LIBERTY :
MUTUAL FIRE INSURANCE COMPANY, :
Defendants. :
----------X

CIVIL ACTION

Videotape
Deposition of:

JEFFREY F. LAKIN, M.D.

TRANSCRIPT of the deposition of the witness, called for Oral Examination in the above-captioned matter, said deposition being taken pursuant to Superior Court Rules of Practice and Procedure by and before CHERYL ANN RAKAUSKAS, Certified Court Reporter, (License No. X102030), and Notary Public of the State of New Jersey, at the offices of WELLS FARGO BUILDING, 800 West Main Street, Suite 201, Freehold, New Jersey, on Wednesday, March 9, 2016, commencing at approximately 12:56 p.m.

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I N D E X



* * *

E X H I B I T S





THE VIDEOGRAPHER: We are now on the record. This begins DVD Number 1, in the deposition of Jeffrey Lakin, M.D. In the Matter of Allegrini versus LMFIC, in the Superior Court of New Jersey, Law Division, Camden County, Docket Number L-1884-14.

Today is Wednesday, March 9, 2016, and the time is 12:56 p.m. This deposition is being taken at 800 West Main Street, Suite 201, Freehold, New Jersey, at the request of Styliades & Jackson. The Videographer is Robert Behrens of Thomas G. Oakes & Associates, and the court reporter is Cheryl Rakauskas of Thomas G. Oakes Associates.

Will counsel and all parties present state their appearances and whom they represent.

MR. CUNEO: Yes. Thank you. David Cuneo. I represent Plaintiff, Aldo Allegrini.

MS. McDONALD: Jacqueline McDonald, Styliades & Jackson, representing the Defendant.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

THE COURT REPORTER: Doctor, raise your right hand, please. Do you solemnly swear that the testimony you're about to give today is the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, I do, so help me God.

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JEFFREY F. LAKIN, M.D.,
Wells Fargo Building, 800 West Main Street, Suite 201, Freehold, New Jersey 07728, having been first duly sworn, was examined and testified as follows:
EXAMINATION
VOIR DIRE EXAMINATION BY MS. McDONALD:
Q. Good afternoon, Doctor. As you know, my name is Jacqueline McDonald. And we're here today to talk about an examination you performed on the Plaintiff on May 13, 2015. Before we get into the substance of our discussion, I would like to give the Jury the benefit of your background.
Would you please tell us about your educational background?
A. Yes, I can. I graduated Muhlenberg College in 1981, Summa Cum Laude, Phi Beta Kappa. I attended the University of Medicine and Dentistry, the New Jersey Medical School. I graduated in 1985. I did a two-year residency in general surgery at the Medical School, followed by four years of orthopedics at the Medical School, and I completed a one -- one-year fellowship at Columbia University Hospital.
Q. Okay. And, Doctor, are you currently in the practice of orthopedics?
A. Yes, I am.

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Q. Where do you practice?
A. In Clifton.
Q. And do you practice alone, or with associates?
A. A solo practice.
Q. Doctor, how long have you been in private practice?
A. For about 24 years.
Q. And what states do you have licenses in?
A. In -- in New Jersey.
Q. And is that license in good standing?
A. Yes, it is.
Q. Doctor, I see that on your curriculum vitae, which is a fancy word for a resume, you are board certified. Can you explain what that means?
A. Yes, it is. I'm a board -- I'm a board certified orthopedic surgeon, and my -- my specialty is in orthopedic surgery. After completing an approved residency program, you have to take a written examination afterwards, which I successfully passed. Then you have to wait to be in practice, two years private practice, so that you can be peer reviewed by your peers, and also take an oral examination. At the year I passed my examination, there was no longer any grand -- grandfathering of your board certification,

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you had to recertify. I took the recertification test, and recertified for 2000 and -- 2004, and also just recently passed my recertification, which is good for 2024. The recertification process, you have to submit your operative cases to be peer reviewed by the American Board of Orthopedic Surgery, you have to be peer reviewed by your peers, and then you have to complete a written examination.
Q. So when you say "peer review," in other words, Doctor, other doctors in your specialty take a look at your cases and review the work that you did?
A. Correct.
Q. And does -- do all orthopedic surgeons have board certification?
A. No, they do not.
Q. Is it possible to go through in your whole career and not be board certified?
A. Yes, it is.
Q. And, Doctor, do you have any academic appointments?
A. I was just a guest lecturer at the -- at the medical school.
Q. And that's UMDNJ?
A. Correct.
Q. And do you have any hospital privileges,

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Doctor?
A. Yes, I do.
Q. Where?
A. I actively have privileges at Children Memorial Hospital in Pompton Plains, and I also practice at same day surgical procedures in Clifton.
Q. Doctor, you mentioned that you are in private practice. What kind of cases do you see in your private practice?
A. Again, I take care of people with complaints in the musculoskeletal system, the spine, the extremities, and treatment of -- and the diagnosis of those problems, and treatment whether it be operative or nonoperative.
Q. Do you see patients who have complaints of pain in their neck and back?
A. Yes, I do.
Q. Do you have -- see patients who have complaints of nerve pain in their arms and legs?
A. Yes, I do.
Q. Do you see patients who've been involved in motor vehicle accidents?
A. Yes, I do.
Q. Do you see patients who have those complaints who have not been involved in motor vehicle

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accidents?
A. Yes, I do.
Q. In the course of your practice, do you utilize MRIs?
A. Yes, I do.
Q. In fact, in medical school, were you trained in the reading of MRIs?
A. Yes, I was.
Q. And in the course of your practice, do you utilize a test called an EMG?
A. Yes, I do.
Q. In the course of your practice, do you refer people out for pain management injections?
A. Yes, I do.
Q. In the course of practice, do you perform surgeries?
A. Yes, I do.
Q. What kind of surgeries do you perform?
A. Again, surgeries to the -- to the extremities, to the shoulders -- shoulders to the digits, and from the pel -- from the pelvis to the lower extremities.
Q. Okay. During the course of your career, have you performed spinal surgeries?
A. Yes, I have.
MS. McDONALD: Okay. At this time, I

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would like to offer Dr. Lakin as an expert in orthopedic surgery.
MR. CUNEO: Okay.
VIOR DIRE EXAMINATION BY MR. CUNEO:
Q. Yes, I have a few questions about what makes you uniquely qualified to examine Mr. Allegrini in this case.
Doctor, you -- you said that your office is in Clifton, New Jersey?
A. Correct.
Q. And you have admission privileges at Children's Hospital, that's in Pompton Plains?
A. Correct.
Q. And that's -- what county is that?
A. I believe that's Morris County.
Q. Okay. So that's pretty far north of Camden; am I right?
A. It -- it's -- it's about an hour and a half drive.
MS. McDONALD: Objection. Go off the record.
THE VIDEOGRAPHSER: Off the record.
1:03, we're going off the record.
(Discussion held off the videotape record.)

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MS. McDONALD: This is voir dire. It's about the Doctor's qualifications, not about his geographic location. Dave, I know where you're going with this. If you want to ask those questions on cross, you can, but not now. And motion to strike
THE VIDEOGRAPHER: Ready to go back on the record?
MS. McDONALD: Yes.
THE VIDEOGRAPHER: Just so you guys know, I forgot to mention it earlier, I have a 60-minute tape, so I'll give you a 5-minute warning when I need to change the tape.
MS. McDONALD: Thanks.
THE VIDEOGRAPHER: All right. The time is 1:03. Back on the record.
BY MR. CUNEO:
Q. Okay. So, Doctor, that's in -- that's not in New York City?
A. Excuse me?
Q. That's not in New York; right?
A. Do you want to repeat the question again?
Q. Is Morris County outside of New York City?
A. Mor -- Morris County is in -- if we want to talk geography, I think it's northwest New Jersey.

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Q. Northwest. Okay. All right. And -- and you're aware that Mr. Allegrini resides in Camden?
MS. McDONALD: Objection.
MR. CUNEO: Yeah, I --
MS. McDONALD: Off the record.
MR. CUNEO: Go ahead.
THE VIDEOGRAPHER: The time is 1:04. Going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: Let's make it a continuing objection, the same grounds as before.
MR. CUNEO: Okay.
MS. McDONALD: Okay.
THE VIDEOGRAPHER: The time is 1:04. Back on the record.
BY MR. CUNEO:
Q. All right. Doctor, I'll -- I'll ask -- I'll reserve questions about why you were asked to perform this exam in total a bit later.
Regarding your qualifications, is there anything unique about your practice that would make you uniquely qualified to ex -- conduct an examination of a gentleman who was -- who resides in Camden, and was involved in an accident in Camden, New Jersey, any

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unique qualifications?
MS. McDONALD: Objection to form. You can answer, if you understand what Counsel means.
BY MR. CUNEO:
A. I -- I think, you know, to explain to the Jury, I'm a board certified orthopedic surgeon. And I also completed the recertification process --
Q. Okay.
A. -- twice. So if you want to talk about my credentials, we can talk about my credentials. I'm a board certified orthopedic surgeon.
Q. Okay. And you -- you mentioned that you were a guest lecturer at UMDNJ?
A. Correct.
Q. And if you have a subspecialty, it appears that that would be in hand surgery; is that right?
A. Correct.
Q. You've identified yourself in the past as a hand specialist?
A. Again, I practice -- my scope of practice, I'll explain it to you very nicely, very calmly, is that I'm a -- I'm an orthopedic surgeon. I did four years of orthopedics. I did an extra year in hand -- hand -- hand and upper extremities. My practice consists of

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general orthopedics 50 percent, and 50 percent is devoted to the upper extremities.
Q. Okay.
A. And my board certification is in general orthopedics.
Q. General orthopedics?
A. Correct.
Q. So you're a general orthopedic surgeon?
A. Board certified.
Q. Okay. And the reason I mentioned the guest lecturer, and you -- and you mentioned it, you are a guest lecturer at the Department of Orthopedics in New Jersey -- in New Jersey Medical School, section of hand surgery; correct?
A. I gave a lecture -- I gave lectures at the beginning of my practice, in my fellowship at that time.
MR. CUNEO: Okay. All right. Well, like I said, I'll reserve -- reserve some further questions regarding why it is you were asked to examine Mr. Allegrini in this case. No objection to his qualifications at this time.
MS. McDONALD: Okay. Go off the record for a second.
THE VIDEOGRAPHER: The time is 1:06.

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Going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: Motion to strike counsel's argumentative remarks at the end of voir dire. We can go back on.
THE VIDEOGRAPHER: The time is 1:07. Back on the record.
DIRECT EXAMINATION BY MS. McDONALD:
Q. And, Doctor, now that we talked about your qualifications, I would like to turn our attention to the substance of the examination you performed on the Plaintiff. That examination was performed on May 13, 2015?
A. Yes, it was.
Q. And you wrote up a report for that examination?
A. Yes, I did.
Q. And that report is currently in front of you; correct?
A. Yes, it is.
Q. And along with some records that you also reviewed in conjunction with your examination?
A. Yes, it is.
Q. And you'll be referring to those from

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time to time during our discussion today to refresh your memory?
A. Yes, I will.
Q. Okay. And, Doctor, you performed this examination at the request of a company called IMX; is that correct?
A. Correct.
Q. And that's a company that arrange -- makes arrangements for independent medical examinations?
A. Yes, it is.
Q. And your role in this case is as an independent medical examiner?
A. Yes, it is.
Q. And when you perform your examination, there are certain rules governing those examinations; correct?
A. Correct.
Q. And that's that you can't contact the treating physicians of the Plaintiff; correct?
A. Correct.
MR. CUNEO: Objection to form.
BY MS. McDONALD:
Q. And that you are not permitted to -- you know, strike that.

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And this was an examination you performed on one occasion; correct?
A. Correct.
Q. And I believe you did issue a second report on June 12, 2015 regarding an additional record review you performed; correct?
A. Correct.
Q. Doctor, during our time together today, I'm going to be asking you to make conclusions and render opinions regarding the Plaintiff and their medical conditions. I would ask that you keep those opinions and conclusions within a reasonable degree of medical certainty. Can we agree on that?
A. Yes, we can.
Q. And if for any reason you can't make a conclusion within a reasonable degree of medical certainty, you'll let me know?
A. Yes, I will.
Q. Great. Thank you, Doctor.
Turning our attention now to your examination. The examination was performed in Cherry Hill?
A. Yes. Yes, it was.
Q. Okay. And we've already kind of touched on this, but in conjunction with your examination, you

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had certain records made available to you; correct?
A. Yes, I did.
Q. Can you tell us what some of those records were?
A. Again, I had notes of the accident report, the police report. Notes of Dr. Marc Kahn from 12/1/03 through 2/23/04. Notes of a chiropractor at Pennsauken Spinal Rehab from 1/2/07 to 8/18/04. Notes of Dr. Barry Gleimer, an orthopedic surgeon, from 4/12/07 to 9/17/03. Notes of Dr. Lipnack --
Q. Doctor, I'm just going to stop you for a minute, because you're reading -- I know you're reading from your report, but you've indicated Pennsauken Spine and Rehab. Those dates were until August of 2014, and for Dr. Gleimer, through September of '13; correct?
A. Correct.
Q. Okay. You said it was '03 and '04.
A. Sorry about that.
Q. Sure. Go ahead. I'm sorry.
A. And -- and notes of Dr. Eric Lipnack from 6/12/07 to 12/16/13. Notes of a pain management specialist, Dr. Lee, from 10/17/13. Notes of Kennedy Hospital System from 1/12/04. An operative report of Dr. Marc Kahn from 1/12/04. History and physical of Dr. Marc Kahn from 7/8/04. Procedures performed by

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Dr. Lee on 3/12/14, 4/19 -- 4/9/14. MRI reports of the left shoulder, 11/20/03. Cervical spine from -- MRI from 3/15/07. Electrical diagnostic testing from 7/10/07. MRI of the cervical spine report from 10/9/13. MRI report of the lumbar spine from 12/6/2013. EMGs on 1/28/2014. Notes of Cooper Occupational Health Physical Medicine from 10/14/03 to 11/8/13. Notes of rehab physical therapy from 2/4/04 to 2/13/04. Photographs and Interrogatories of Mr. Allegrini, as well an auto estimate.
Q. Okay. Thank you, Doctor.
You also had some diagnostic films submitted for your review, as well; correct?
A. Yes, I did.
Q. And what studies were they?
A. I had the MRI of the cervical spine from 10/9/2013, as well as a M -- X-rays of the cervical spine from 3/15/07. And I also had an MRI of the lumbar spine.
Q. Okay. And that was from December 6, 2013?
A. Correct.
Q. And --
A. And -- and an MRI of the cervical spine from 3/15/07.

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Q. Great. Thank you, Doctor.
At the time of your examination of the Plaintiff, did you obtain a history from him?
A. Yes, I did.
Q. And that was obtained directly from the Plaintiff?
A. Yes, it was.
Q. And when you took that history, were you dependent on his veracity when -- regarding what he told you?
A. Yes, I did.
Q. And what was the history that he gave you?
A. Again, at that time, he was a 40 year old male that was a driver of a car that was struck on the driver's side door by another vehicle. He did not go to a hospital following the accident. And a couple of days later, he went to a chiropractor, where he treated approximately three times a week for six months. He also saw various other physicians, including Dr. Barry Gleimer, an orthopedic surgeon. He did not have any surgery to his neck, or to his lower back, or to his left shoulder. He was also seen by a physical medical and rehab specialist, Dr. Lipnack. He was eventually referred to a pain management specialist, Dr. Lee, who

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was the last doctor to treat him. And he had one injection to his neck and to his lower back.
Q. And those injections were performed in 2014?
A. Correct.
Q. And did you have any -- did the Plaintiff indicate to you that he had had any treatment after 2014?
A. No, he did not.
Q. Did the Plaintiff also tell you what his present complaints were at the time of your examination?
A. Yes, he did.
Q. And, again, did you rely on his veracity in telling you those present complaints?
A. Yes, I did.
Q. What did he tell you?
A. He told me that the -- no -- there was -- there was no pain in his shoulder at that time. He just had occasional discomfort with over activities to his left shoulder. His neck pain was occasional, made worse with sleeping. It didn't radiate into the upper extremities. There was no numbness, no tingling, no altered sensation. He just avoided heavy lifting. He stated that his lower back pain improved. He

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occasionally got some lower back pain with sitting, rarely gets it with long standing and walking. And it occasionally radiates to his legs, to his mid calves, and he avoids any heavy lifting, as it causes some increase in lower back pain.
Q. Did he indicate what his past medical or surgical history was?
A. Again, his past medical history, he denied any medical problems to his hypertension, diabetes, peptic ulcer disease, or any respiratory problems, metabolic problems. As far as his past surgery, he had no recent surgery in the past five years, but he did have a left shoulder surgery in 2004.
Q. And did he indicate to you if he had had any previous injuries?
A. Yes, he did.
Q. And what did he tell you in that regard?
A. He had a work accident that -- in 2003, that required surgery in 2004 by Dr. Kahn, for his left shoulder. And he was involved in a prior motor vehicle accident in 2006. And, again, at that time, he -- it was noted to have neck and lower back pain from that accident.
Q. Okay. And did he give you any idea of what his social and work history was?

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A. At the time of -- of the accident, he was working repairing jewelry, and he did not miss any time from work following the accident.
Q. Okay. And did he tell you that he had previously been employed as a butcher?
A. No, he did not.
Q. Okay. At that point, Doctor, did you begin your examination?
A. Yes, I did.
Q. And before we get into your examination, I would like to talk to you about two concepts, which is the concept of subjective complaints versus the concept of objective findings. Can you remark and explain the importance of that to the Jury?
A. Again, subjective complaints is something the -- the patient is telling you. It's their description of what hurts. And it has the word subjective, subjective, it doesn't have a reproducible quality. It can't be reproduced from one person to another, it's for that individual.
Objective is a test that you can actually physically see, or physically perform, that's reproducible.
Q. Okay. And reproducible from examination to examination, as well as within the same examination?

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A. Correct.
Q. Okay. Which would be reproducible from doctor to doctor, as well?
A. Correct.
Q. Okay. Doctor, what did you find when you began your physical examination of the Plaintiff?
A. Again, in this case, you know, just that he -- he had complaints of pain in his neck, and he had complaints of pain in his lower back. And when I examine patients with pain in their neck and lower back, we want to find out is there any neurological involvement, which is important.
And what happens is the -- the nerves, they come out of the spinal cord, and they go to specific motor regions, which gives you a strength. They go to specific sensory regions, which gives you sensation, and they go to different reflexes. So when you're examining someone with the spine and -- complaints, and lower back complaints, you have to do a detailed neurological evaluation. And, besides that, you have to look for range of motion, to see if there's any limitation of motion, and you palpate for areas of tenderness. And then you do special tests to see if there's pressure on a nerve in the neck or the lower back.

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Q. And is that what you did on that occasion -- on May 13th?
A. Yes, I did.
Q. And what did you find?
A. Again, as far as range of motion, Mr. Allegrini had full range of motion of his cervical spine. And when I did a detailed neurological examination testing, each motor group, again, his shoulders, his elbow strength, his wrist strength, and hand strength, they were all normal. And his reflexes were symmetrical, and his sensation was all intact. And that's important, because if you have, for example, a herniated disc in your neck between the fifth and sixth vertebral body, it commonly presses on a C6 nerve root. And the C6 nerve root is going to apply sensation to these fingers, and it's also going to affect the wrist extension, and it's also going to affect the biceps reflex. So that all his motor examination was intact, and all his sensation was intact, shows that objectively there's no pressure on any nerve root. And I, also, saw if there was any complaints of nerves being trapped in his arms, such as Tinel's testing and Phalen's testings for peripheral nerve entrapments, and they were all normal.
Q. How do you perform Tinel's testing and

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Phalen's testing?
A. Again, Tinel's testing, you tap over the nerve, and if there's a shooting pain in the distribution, that means the nerve is under pressure at the wrist. The Phalen's testing, you keep your hands like this for 60 seconds, if it reproduces pain, it's consistent with carpal tunnel. So all the testing was negative. And then we also -- I did a Spurling's test. And what you do is we have your neck go back, and rotate it to one side, and if there's a pinched nerve, you'll have pain that will shoot down that one side. And then I did more complicated tests, such as a Hoffman's and a Lhermitte's sign, to see if there's any problems with the spinal cord itself.
Q. And how do you perform those tests?
A. Again, a Hoffman, you flick the third finger up, and if you see an abnormal motion in the thumb, that means the spinal cord is under pressure. And Lhermitte's, you go down with your neck, and if causes a burning sensation into your hands and feet, it means your -- your -- your -- or a shooting sensation, there's pressure in the -- in the -- in the spinal cord -- cord and spinal canal.
Q. And what were the results of those tests?
A. Everything was all negative.

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Q. And I know you already talked about the -- the motor examination being normal, but just to kind of express it in the nitty-gritty, you -- you indicate five out of five motor examination. What does that mean?
A. Five out of five is full strength.
Q. Okay. And that -- does that mean the person can give resistance?
A. Strength -- strength against about 75 percent resistance.
Q. Okay. And, reflexes, you indicate they were one plus equal and react -- reactive bilaterally, are you looking for reflexes that are the same on each side?
A. Sym -- sym -- symmetrical, correct.
Q. Okay. And what did you find when you examined the thoracic and lumbar spine?
A. Again, the range of motion was excellent. When I asked him to keep his knees straight, and to bend over to touch his toes, he was able to go within one finger -- one inch of his fingertips to toes, with the normal of six inches.
He also had, again, just a minimal tenderness on palpation. Again, the neurological examination, again, we test all the motor groups that

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are supplied by the lumbosacral nerve roots. And, again, for a classic example, the -- between the L5 and S1 disc becomes the S1 nerve root. And if the S1 nerve root is involved, you're going to have a decrease of the ankle reflex, which is S1. When you have decreased sensation in the sole of your foot, then you're also going to have decreased strength in plantar flexion, which is when you're kind of standing on your tippy-toes.
And, again, I tested the nerve roots that go to each muscle group, they were all normal. I tested the nerve roots that go to each sensory level, all the sensation was intact. And when I tested the reflexes that go to the lower extremities, they were all normal. And then, again, there is a special test done to see if there's any pressure in the spinal cord. And those tests are, again, Clonus. And Clonus, if I can describe it, is when you take the foot, and you go up, your foot goes like that repetitively. If it's more than six beats, it's positive. That means there's a lot of pressure for -- in the spinal cord. And there's also called a Babinski sign, where you take your finger, or the end of a reflex hammer, and go across, the toe is going to -- if they splay up, that means the spinal cord is under a lot of pressure. And,

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again, downward Babinski, which was all negative. And, again, we do a straight leg raising test, to try to stretch the nerve to see if that reproduces pain.
Q. How was that performed?
A. The patient is lying supine, flat on their back, and you raise their leg 45 to 70 degrees. If that reproduces pain that shoots down into a dermatoma level, that's considered positive. I also do a sitting straight leg raise test, where I have them sit, and raise their leg up. And, in all these cases, it was all negative.
Q. And then sitting in the -- the supine straight leg raising, is essentially the same movement; correct?
A. Correct.
Q. So it's the same test performed two different ways?
A. Exactly.
Q. Okay. And what would you expect to find in a positive test?
A. Well, in a positive test, if someone had pressure on a nerve root, they would have sense -- loss of sensation in that nerve -- nerve root. They would have a loss of motor strength in that nerve root, and they would have a reflex loss.

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Q. Okay. I'm sorry, I -- I interrupted you, Doctor, I -- I think. Please continue with your discussion of the thoracic and lumbar examination.
A. And, again, also for completeness sack, sometimes some people can have a pain in their hips that can be referred to their back. So we do a FABER's testing, which is bringing their leg up, and -- and placing it in external rotation and flexion, to see if that reproduces any hip pathology, or any pathology in the sacroiliac joints.
Q. And how did that turn out?
A. Negative.
Q. And does that conclude your discussion of your exam of the thoracic and lumbar spine?
A. Yes, it does.
Q. Did you examine any other area of the Plaintiff?
A. Yes, his left shoulder.
Q. And what did you find on your examination of the left shoulder?
A. Again, the range of motion testing. I did a full range of motion of his left shoulder, as compared to the right. There was no loss of motion. There was no tenderness to his shoulder at all in palpating the different structures, the muscles, and the bones.

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His strength, again, was all -- was all normal. And then we do special tests to see if you had a tear of a rotator cuff, such as a dropped arm test, where you bring the arm up, and then let it go down. If it goes down rapidly, it means you have a tear of the muscle of the shoulder. And there's four other muscles of the rotator cuff that were all individually tested. I did an external leg sign. I did the lift-off test for the subscapularis, as well as Hornblower's test for the -- also testing the rotator cuff, which were negative. And tried to reproduce pain with a -- to see if there was any problems with the biceps tendon, with his shoulder. Speed's testing, O'Brien's test were all negative. And he had no deformity and no atrophy of the left shoulder.
Q. Okay. So is that, again, a normal examination of the left shoulder?
A. Yes, he had a normal exam.
Q. Okay. So, in sum, Doctor, your physical examination of the Plaintiff, was it essentially normal?
A. Yes, it was.
Q. And, again, what would you have expected to find if -- in a Plaintiff that was complaining of a traumatically induced clinically active herniated disc

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with radiculopathy?
A. Again, you would -- you would find a -- a loss of sensation, a loss of strength, or asym -- asymmetry of the reflexes, or an absent reflex.
Q. And would those -- would those findings be reproducible from examination to examination?
A. Yes, they would.
Q. Would you be -- expect his findings to be consistent from examination to examination?
A. Yes, you would.
Q. And that would be true whether the Plaintiff was having a good day or a bad day with regard to what his subjective complaints were?
A. Correct.
Q. Okay. Doctor, in addition to your physical examination, did you have the opportunity to review the films of the Plaintiff's MRIs?
A. Yes, I did.
Q. Let's discuss the -- your review of the films of the cervical MRIs first. I think you -- you reviewed the cervical MRI from the Plaintiff's prior accident in 2007, and then later reviewed the -- the examination that was performed in 2013?
A. Correct.
Q. Could please discuss them, and -- and

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what your findings were?
A. Again, in the MRI of 2007, after the accident in 2006, he did have a herniated disc at two levels, at C4-C5 and C5-C6. And, again, that was -- and his spinal cord was otherwise unremarkable.
Q. Okay. Did they find, or, I'm sorry, did the prior MRI, the one that was performed in March of 2007, indicate that there were degenerative findings?
A. Yes, there was.
Q. Okay. And would that be something you would expect to see in someone's of the Plaintiff's age and -- and history?
A. Yes.
Q. And how about the 2013 cervical MRI, what did you find when you reviewed those films?
A. Again, it was a -- it was a normal MRI.
Q. Okay. And did those findings agree with what the reading -- reading radiologist saw?
A. Yes, they did.
Q. Okay. Did you also have a chance to review the lumbar MRI study from December of 2013?
A. Yes, I did.
Q. And is that study available for our review today with the Jury?
A. Yes, it is.

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MS. McDONALD: Let's go off the record for a moment so we can set that up.
THE VIDEOGRAPHER: The time is 1:28. Going off the record.
(Discussion held off the videotape record.)
THE VIDEOGRAPHER: The time is 1:30. We're back on the record.
BY MS. McDONALD:
Q. So, Doctor, what are we looking at?
A. Again, we're looking at the -- the lumbar spine, the lower spine. And we're looking at a cut, what we call a sagittal cut, which is going this way.
Q. Okay. From the -- as if we cut the person in half from their head to their feet?
A. Correct.
Q. Okay. I'm sorry for the macabre image -- imagery.
Can you explain a little bit about the general anatomy of the lumbar spine, so -- so the Jury can get acclimated?
A. Yes -- yes, I can. In the lumbar spine, there are bones, what we call vertebral bodies, and in between those vertebral bodies, there is disc, which are shock absorbers. And we have -- this over here is

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a bone, a vertebral body, a vertebral body, a vertebral body, and these are the discs. The white fluffy is the -- the white fluffy are the discs in between. And then behind the discs, you have the spinal cord. And this is a T2 image, so water is going to show up very, very, very brightly. And you can see the spinal cord has a lot of fluid it in, so it shows up very, very brightly. And the discs on the top, this is the top of the lumbar spine, these discs are very, very fluffy, very, very fluffy, and they have a lot of signal, and that shows that they have a lot of water, that they're well-hydrated.
Q. Doctor, just before we continue on a more specific discussion, the -- I've seen in -- in the radiology reports in this case, and in other matters, something called the thecal sac. Can you discuss what that is, and what the function of that is?
A. Okay. Well, the thecal sac, or another word is dural sac, that's a -- that contains -- that is a covering that contains the -- the spinal cord, and the nerve roots.
Q. So is it possible for a nerve to be touching a thecal sac and not be touching the spinal cord?
A. Could -- can -- do you want to repeat that again

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for me, please?
Q. I guess I'm -- I'm -- I'm putting the question poorly, and I apologize. Is -- is the thecal sac there to protect the spinal cord?
A. Well, the nerve roots -- what happens, below the L1 vertebral body, it's all just nerve roots.
Q. Okay.
A. And they're all encased in fluid in the thecal sac, and the nerve roots come at -- at specific levels between the intervertebral foramina.
Q. Okay. Doctor, in this case, we're -- we're mostly concerned with the discs at the L4-5 and L5-S1 level. Can you point them out for the Jury?
A. Right over here.
Q. Okay. Now, I notice they're darker in appearance than the other discs, is there some significance to that?
A. Yeah -- yes, it -- it happens as we age, you lose water content. And when you lose water content, it's not going to show up as dark. And you can see these spaces also are narrower than the spaces over here. So -- so that's consistent in what we call degenerative disc disease.
Q. Okay. And is that something that happens over years, months, weeks, days, which -- which is it?

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A. Years. Years. It's -- there's a genetic basis. It's degenerative disc -- disc -- degenerative disc disease.
Q. So this examination was taken in December, and the -- the accident was in July. Would this degenerative process be something that was in existence before the motor vehicle accident?
MR. CUNEO: Objection. Go off the record.
THE VIDEOGRAPHER: The time is 1:34. Going off the record.
(Discussion held off the videotape record.)
MR. CUNEO: I'm going to object, and move to strike testimony about degenerative changes, degeneration, age related, or otherwise. Insofar, as it's not mentioned, referenced, or alleged anywhere in the Doctor's prior -- in his reports, including his review of the MRI study.
MS. McDONALD: We can go back on.
THE VIDEOGRAPHER: Counsel, the computer fell asleep.
MS. McDONALD: What was the pending question?
(Whereupon, the following question was

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read back by the court reporter:
"QUESTION: So this examination was taken in December, and the -- the accident was in July. Would this degenerative process be something that was in existence before the motor vehicle accident?")
THE VIDEOGRAPHER: The time is 1:37. Back on the record.
BY MS. McDONALD:
Q. Go ahead, Doctor, you can answer.
A. Yes, there are -- yes, there are, because it takes years, and years, and years for these discs space to narrow, and the water content is -- is lost over time.
Q. Okay.
A. And we know that with degenerative disc disease, there's a genetic component. Also, trauma can accelerate it, such as occupations as a heavy laborer is associated with accelerated degenerative disc disease.
Q. Okay. Now, Doctor, when you reviewed the films, what did you see?
A. Well, again, there's just a little bit of bulging. There's a little bit of a bubble pressing out of the -- of the disc. Now, the disc itself is -- you

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can think of it as a jelly doughnut. And the outer covering is what we call the annulus fibrosus of the jelly doughnut. The inside of the jelly doughnut is the -- what we call the nucleus pulposus, which is the soft -- soft -- which is gelatinous material. And a bulge is just a little out pouch, and the jelly is just pushing a little bit on the outer aspect of the doughnut, you'll see like a little bubble. And a herniation is when the jelly busts through that outer coat, and presses on a nerve root. So, in this case, there's just a little, little out -- bubbled a little out pressing causing no significant neural compression.
Q. So based on your review of the MRI of the lumbar spine, do you see anything there that would be a pain generator?
A. No, he just has some disc bulging.
Q. Okay. Now, you remark in your report that your reading of the MRIs films is in disagreement with what the radiologist saw? And I'm -- I'm directing you to Page 5 of your May 13th report.
A. Correct.
Q. Even if the -- and -- and just to put it out there, the radiologist found herniations at L4 and L5 -- L4-5 and L5-S1 with an annular tear. Are all herniations traumatically induced?

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A. No. No, most -- most are -- most come over degenerative aging process.
Q. And are all herniations symptomatic?
A. No, they're not.
Q. And how about annular tears, are they all traumatically induced?
A. No, they can be assoc -- they're -- they're -- they're -- they are -- they are commonly associated with degenerative disease process.
Q. And are all annular tears pain generators?
A. No, they're usually not. There is -- in -- in the an -- annulus itself, there is not that many nerve fibers to it, so they're usually not -- they're -- they're usually not pain generators.
Q. Okay. And, in any case, here, did you see a -- a herniation or an annular tear?
A. No, I did not.
Q. Okay. And do you see anything on this study again that would be a pain generator?
A. No, I did not.
Q. We can -- let's close up the computer, and we'll -- we'll continue our discussion.
MS. McDONALD: Let's go off the record.
THE VIDEOGRAPHER: The time is 1:40.

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Going off the record
(Discussion held off the videotape record.)
MS. McDONALD: Okay. Ready to continue?
THE WITNESS: Yes.
MS. McDONALD: Let's go back on the record.
THE VIDEOGRAPHER: The time is 1:41. We are back on the record.
BY MS. McDONALD:
Q. Now, Doctor, in your course of your practice as an orthopedic surgeon, do you read -- well, we've already discussed this, but you read MRI films; correct?
A. Yes. Yes, I do.
Q. How often do you do that?
A. Every day.
Q. And when you do that, are you doing this in a way to help you decide whether to render treatment such as surgery?
A. Yes.
Q. And would you say that it's important to put an MRI study in context with a clinical examination?
MR. CUNEO: Objection, leading.

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MS. McDONALD: I'll rephrase it.
BY MS. McDONALD:
Q. Doctor, is an MRI study the only thing in which you base your conclusions or diagnoses on?
A. No. Again, to explain to yourself, and also to the members of the Jury, the most important part of the exam is your taking the history, and you doing the physical examination, and the MRI is done to confirm your clinical impression, and to help guide care.
Q. Now, in this case, your clinical -- what was -- what was the result of your clinical examination?
A. Absolutely normal clinical examination.
Q. And does that -- does that dovetail with your reading of the MRI study?
A. Yes, it does.
Q. Now, in this case, there was also a test called an EMG; correct?
A. Correct.
Q. And you reviewed that test; correct?
A. Correct.
Q. And what was the result of that test? Do you want to go off the record for a second so you can --
A. Yeah.

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MS. McDONALD: Let's go off the record so the Doctor can get to that study.
THE VIDEOGRAPHER: The time is 1:43. Going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: It was done by Dr. Lipnack on January 28th. Do you want to look at my copy?
THE WITNESS: No, I got it.
MS. McDONALD: Okay. Ready?
THE WITNESS: Yes.
MS. McDONALD: Okay. I'm sorry.
THE WITNESS: I was waiting for you.
MS. McDONALD: Sorry.
THE VIDEOGRAPHER: The time is 1:44. Back on the record.
BY MS. McDONALD:
Q. So I believe the pending question, Doctor, was what was the result of that test?
A. It was read by Dr. Lipnack as L5 radiculopathy on the left.
Q. Okay. Was that consistent with your physical examination of the Plaintiff?
A. Again, when you look at the body of the report, usually when you have a radiculopathy, you're going to

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notice some fibrillations, you know, to those areas of the EMGs. I didn't see any here.
Q. Okay.
A. And then Dr. Lipnack, in the body of the report, he puts that there's polyphasic changes, which means that's a chronic radiculopathy, it's not acute radiculopathy.
Q. Okay. And do EMG studies ever pick up findings that are not present on clinical examination?
A. It's -- it's -- it's a poor test to -- to -- to order in this case.
Q. Why is that, Doctor?
A. Because when you have a normal -- normal neurological examination, there's no reason to get an EMG. If you don't suspect any peripheral nerve entrapment, like carpal tunnel, I examined for, or any peripheral nerve entrapment of the lower extremities, that would be an indication. If someone was a diabetic, or if someone has a thyroid disease, or you think the nerves are going to be, you order -- you can order it in those cases. But, in this case, in a normal exam, you can't, because there's a high incidence of people that -- what we call false/positive, they test positive, but don't have the disease. So it's not -- in -- in -- in this case, I

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wouldn't have ordered the test. And, again, it's a very -- a low priority. It's a very, very low priority test.
Q. Okay. And, again, would it be important to place the findings on the EMG in context with the clinical examination?
A. Correct.
Q. And, again, in this case, your clinical examination was normal?
A. Correct.
Q. Doctor, now that we've had a chance to discuss your review -- your examination of the Plaintiff, and your review of his treatment records, and especially your review of his diagnostic test results, did you reach any conclusions with regard to the Plaintiff's conditions?
A. Yes, I did.
Q. And what were they?
A. That within a reasonable degree of medical certainty, he just sustained sprains to the cervical spine, the lumbar spine, and the left shoulder as a result of the motor vehicle accident of 7/19/2013. And, also, within a reasonable degree of medical probability, he sustained no permanent injuries, in my field of speciality, that's related to this motor

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vehicle accident.
Q. Okay. And, again, Doctor, that -- that is within a reasonable degree of medical certainty?
A. Yes, it is.
MS. McDONALD: I have no further questions at this time.
CROSS-EXAMINATION BY MR. CUNEO:
Q. Okay. Doctor, as you know, I represent --
THE WITNESS: Can we just go off the -- take a bathroom break, please?
MS. McDONALD: Oh, yes.
THE WITNESS: You know, when you're 50, you got to take some water.
THE VIDEOGRAPHER: The time is 1:47. Going off the record.
(Brief recess was taken.)
THE VIDEOGRAPHER: The time is --
THE WITNESS: Hold on.
THE VIDEOGRAPHER: The time is 1:51. We are back on the record.
BY MR. CUNEO:
Q. So, Doctor, again, I represent the Plaintiff, Aldo Allegrini, as you know. And what I started to ask you earlier was that -- about your

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location. Your -- your office is Passaic -- in -- is it Passaic County, or Morris County?
A. Passaic.
Q. Passaic County. Okay. And your admission privileges are up there, as well; correct?
A. Correct.
Q. You don't have any offices down in Camden County; correct?
A. No, I do not.
Q. And -- and you are -- you -- one of the items that you did review was the police report; correct?
A. Correct.
Q. And you saw that the Plaintiff is -- resides in Camden, the Defendant resides in Camden, the accident happened in Camden, New Jersey; correct?
MS. McDONALD: Objection.
THE VIDEOGRAPHER: Off the record?
MS. McDONALD: Yes.
THE VIDEOGRAPHER: The time is 1:52. Going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: Just for the future, all objections, we'll go off the record.

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THE VIDEOGRAPHER: Okay.
MS. McDONALD: Just note my objection to the line of questioning, and continuing objection to the line of questioning on the grounds of relevancy. Go ahead.
BY MR. CUNEO:
Q. Right. Now, Doctor, you -- I'm sorry.
THE VIDEOGRAPHER: The time is 1:53. Back on the record.
BY MR. CUNEO:
Q. And, Doctor, you -- you characterized your exam as an independent exam; am I right?
A. Correct.
Q. And you're aware that there's many hospitals in the Camden County area; correct?
A. Correct.
Q. You're familiar with Cooper Hospital, Our Lady of Lourdes Hospital, Virtua has three different hospitals in Camden County, you've heard of Underwood, Inspira Network; right? Do you understand the question?
A. Yes, I do.
Q. Okay. Well, I see you look -- you're looking at counsel. You're aware of --
MS. McDONALD: Objection. Go off the

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record.
THE VIDEOGRAPHER: 1:53, going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: Argumentative remark. Motion to strike.
THE WITNESS: You know what, I got to go to the bathroom again.
MS. McDONALD: Okay.
(Brief recess was taken.)
THE VIDEOGRAPHER: The time is 1:56. Back on the record.
BY MR. CUNEO:
Q. Okay. Doctor, before the break, I asked you whether you were familiar with the various hospitals in Camden County?
A. I've heard their names.
Q. Okay. And you -- you realize they're all associated with orthopedic practices? I'm sure you've heard of Regional Orthopedics, and Garden State in Cherry Hill, and South Jersey Orthopedics, Reconstructive Orthopedics, Central Orthopedics; am I right?
A. Yeah, I've heard of them.

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Q. Okay. So I was asking about what subspecialty or specialty, other than general orthopedics you had, but your -- it appears that your subspecialty, if any, is in hand surgery; am I right?
A. Again, I did four years of orthopedic training. I did, in orthopedic residency, an extra year in hand. My extra year in hand, a fellowship was devoted to study and research the upper extremity, but also I was at Columbia Presbyterian since I was a fellow. I took trauma call for Columbia Presbyterian Hospital, which involved every part of the body, for my attending. All I took was trauma call.
Q. Now --
A. And -- and -- and my path, and I certified, original exam in general orthopedics, which encompassed orthopedics, and also recertified -- re -- re -- recertification in general orthopedics.
Q. Okay. And then, in general, all orthopedic surgeons go through that gen -- general training, do they not?
A. Correct.
Q. And, in this case, you weren't hired by the Defendant? You weren't hired by the Defendant's attorney, you were hired by a company called IMX, I think you said; am I right?

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A. Correct.
Q. And you do work for many services, I think you've testified in the past. IMX being one of them, another company called ExamWorks, another company call Prizm, another company called Medical Consultants. These are all companies that arranged for, as you characterized it, independent exams; am I right?
A. Correct.
Q. And when you do these independent exams, you always do them for Defendants involved in litigation; correct?
A. No.
Q. Always for Defendants?
A. No, I -- I do exams also for Plaintiffs.
Q. Are these your own patients?
A. No, they're not.
MR. CUNEO: Okay. Can we go off? Go off the record a second.
THE VIDEOGRAPHER: The time is 1:58. Going off the record
(Discussion held off the videotape record.)
MR. CUNEO: I apologize.
THE VIDEOGRAPHER: The time is 1:59, and we're back on the record.

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BY MR. CUNEO:
Q. Doctor, do you remember I asked -- I asked to take what's called a discovery deposition, or a deposition of you earlier, of you -- of you in September of 2015 in the same room?
A. Correct.
Q. All right. And I asked you if you did exams for this IMX company. I asked you about whether you do exams for Defendants in -- in Workers' Comp. cases, and disability cases, do you recall?
A. I can't recall the specifics.
Q. All right. And I can show you, perhaps, beginning at the bottom of 16, I only have the one copy, but I asked you about Workers' Compensation; am I right?
A. Again, I have to read through the whole transcript to get to the -- the context of where you're asking about.
Q. You have to read through the whole transcript?
A. Well, you're going to -- you're -- you're taking things out of -- I have to stay --
MS. McDONALD: Why don't we go off the record until the Doctor reviews the relevant testimony.
MR. CUNEO: Sure.

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THE VIDEOGRAPHER: The time is 2:00. Going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: You don't have to go through the whole transcript.
MR. CUNEO: All right. Yes, I don't want you to have to do that. Doctor, I asked you about IMX, and what types of matters do they refer you to? Perhaps, you can read along.
THE WITNESS: Well, if you ask your question now, do I do Plaintiff work? Why don't you ask me that question, and I'll tell you the Plaintiff work that I did.
MS. McDONALD: Doctor, just read Page 16 and 17, and I think the context is pretty obvious, but go ahead and read it.
THE WITNESS: Okay.
MS. McDONALD: And Dave will ask you about it.
THE WITNESS: Okay. Okay.
MR. CUNEO: Have you read enough?
THE WITNESS: Yeah.
MR. CUNEO: Thank you.
THE VIDEOGRAPHER: Ready to go back on?

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MR. CUNEO: Yes.
THE VIDEOGRAPHER: The time is 2:01. We are back on the record.
BY MR. CUNEO:
Q. All right. So, Doctor, you had a chance to read over as much of the transcript you felt you needed to read; am I right?
A. Correct.
Q. All right. And in the end, you read page -- part of Page 16, and part of Page 17; correct?
A. Correct.
Q. And I asked you about this company IM -- IMX, who you're -- you're doing work -- you do work for. In fact, that's who hired you to examine my client, Aldo Allegrini; correct?
A. Correct.
Q. And back in the previous deposition, I asked you what type of matters they refer you to. And they refer you to matters in the field of orthopedics; am I right?
A. Correct.
Q. And they refer you disability cases?
A. Correct.
Q. And Workers' Compensation cases?
A. Correct.

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Q. And it could be cases for permanency ratings?
A. Correct.
Q. And Workers' Comp. cases, as I -- I think that's repetitive. And my question was, And is it always for the defense. And your answer was, Yes?
A. Right, for -- for IMX, yes.
Q. All right. Okay. Well, ExamWorks, ExamWorks hires you to do exams, as well; correct?
A. Correct.
Q. That's another company arranging for exams; correct?
A. Correct.
Q. And that's always for the defense, is it not?
A. Correct.
Q. And the other companies, Medical Consultant Network, that's always for the defense, is it not?
A. Correct.
Q. And there was only one other company -- company that you mentioned during the course of your deposition, and that was Prizm?
A. Correct.
Q. And that's always for the defense, is it

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not?
A. Correct.
Q. Okay. So when you say you do exams for Plaintiffs, when is that?
A. Again, that's referred to me by outside attorneys.
Q. Okay. Would that be in Passaic County?
A. Again, in Passaic County. It could be -- it -- it could be Passaic County. It could be in -- in Bergen County.
Q. And you -- you -- you said "again," did I ask you this before?
A. What?
Q. You said "again," you started the question with "again"?
A. No, you said -- you asked me a question, I'm answering your question.
MS. McDONALD: Objection.
THE VIDEOGRAPHER: The time is 2:03. Going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: Argumentative, and badgering the witness. And it's pretty evident that the Doctor has a habit of saying again at the beginning

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of his sentences, because he's done it throughout his deposition.
THE WITNESS: Again.
MS. McDONALD: Yes. So motion to strike.
MR. CUNEO: I mean, I don't know if that's grounds to strike. I mean, I wasn't sure what he was referring to when he said "again."
MS. McDONALD: Well, it pretty clearly is, but we'll argue later.
MR. CUNEO: Okay.
THE VIDEOGRAPHER: The time is 2:04. Back on the record.
BY MR. CUNEO:
Q. All right. And -- and, Doctor, the reports that you rendered in this case, they have at the top of the report, Cherry Hill. But you don't have an office in Cherry Hill, do you? The caption is Jeffrey Lakin, board certified orthopedic surgery, Cherry Hill, New Jersey. You don't have an office in New Jersey, do you?
A. That's where I see the --
Q. I mean -- I mean in Cherry Hill, New Jersey?
A. No.
Q. Okay. That's where you started to say

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you see patients?
A. Right, for -- for IMX.
Q. For IMX. Okay. And you'll -- you'll travel down to Cherry Hill, New Jersey to see patients on -- on one day a month, is it?
A. Correct.
Q. And, as I understand it, you'll see anywhere between 10 to 20 patients in a single day in the Cherry Hill location?
A. It -- it can vary -- it can vary between -- in a range -- to a range of two to five, to five to twenty, a range.
Q. Well, you -- you realize you did previously testify that the range was 10 to 20?
A. Well, approximate. These are all approximate numbers, they vary.
Q. Well, you did testify previously 10 to 20, so why are you saying 5 to 20 now?
A. It could -- it could be. There's some -- there's some months, like this month, I'm not going to Cherry Hill. So is it once a month, no, it's not once a month.
Q. All right. And -- and you travel at the request of these companies, IMX, and ExamWorks, to see patients in -- in Monmouth County, and Bergen County,

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and Middlesex County, Piscata -- in Mercer County, Atlantic County; am I right?
A. Not Atlantic County.
Q. Not anymore?
A. I never saw patients in Atlantic County.
Q. Okay. But all the other counties?
A. At three locations for IMX, Cherry --
Q. Yes, but I asked you about other companies, as well, you see them --
A. The -- the counties -- the counties were -- were the loc -- the locations, again, if you want to repeat the locations, we'll go through them one by one to see if you're right.
Q. Well, you know what, I can refer to your letterhead. Jeffrey Lakin, board certified orthopedic surgery. It says New Jersey locations, Paramus, in Bergen County, Piscataway, in Middlesex County, Freehold, in Monmouth County, Cherry Hill, in Camden County. It says Mays Landing, in Atlantic County, and it says Kearney, in Hudson County, and Mercerville and Ewing, in Mercer County. Do you want to take a look at your letterhead?
A. No, I think we went over this in -- in the -- in the deposition before, that I told you very clearly, and if you want to read the transcripts, you can do

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that.
Q. No, I'll --
A. No, let's -- let's -- let's not be argumentative. If you want a redeposition, for IMX, I go one day a week, one day a month to Cherry Hill, some months there's none. Like this month, I'm not there. I go a half a day to see patients for IMX in Freehold, which we're here today, and I go a half a day in Ewing. Some months there might not be as many times as I go to those locations.
Q. Okay. I'm not --
A. Those are generalities.
Q. Believe me, Doctor, I'm not trying to be argumentative. What I asked you, however, was not about IMX, I asked you about for the various companies you do work for?
A. And --- and, again, in ExamWorks, there is three half days, there is a half day in -- in Bergen County, there is a half day in -- in Manalapan, and then there is a -- a half day in New Brunswick.
Q. Okay. But you agree with me that you travel to various other counties for the other companies you do work for?
A. Correct. Yeah.
Q. And in those places, let's say, for

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example, in Cherry Hill, you have no staff there; am I right?
A. Correct.
Q. You have no files there?
A. Correct.
Q. No charts?
A. Correct.
Q. Do you take notes in connection with your exams?
A. Yes, I do.
Q. For example, these various findings that you reported at the time of your clinical exam, do you have notes reflecting your findings?
A. I take notes when I dictate. So when I dictate the report, I have my notes.
Q. All right. And you don't keep those notes?
A. No, I don't.
Q. And you don't have those notes with you?
A. No, I do not.
Q. If I asked you questions about those notes, you wouldn't be able to answer those questions; right?
A. Correct.
Q. And one -- one of the things that -- and

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this may be somewhat off point, but one thing that struck me about your testimony was you said that the patient, when asked about -- let me find it -- work history, that he didn't tell you that he had previously worked as a jeweler?
MS. McDONALD: Objection.
THE VIDEOGRAPHER: The time is 2:08. Going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: That was not the testimony.
MR. CUNEO: Yeah, it was the testimony. It was in direct response to your question.
MS. McDONALD: Butcher. Butcher was the testimony.
MR. CUNEO: Butcher. You're right.
MS. McDONALD: You said jeweler.
MR. CUNEO: Okay. Butcher. I'll correct that.
THE VIDEOGRAPHER: The time is 2:09. Back on the record.
BY MR. CUNEO:
Q. Correction, Doctor, you testified that he didn't tell you he worked as a butcher?

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A. Correct.
Q. Now, under work history, it says -- do you have it?
A. Yes, I do.
Q. It says he repairs jewelry, and did not miss time from work. He is presently working full-time, full duty. Now, that refers to the present; correct?
A. Correct.
Q. And there's no indication, at least in your report at that location, at that point in your report, that you asked him about his previous work experience?
A. Correct.
Q. And you -- you can't refer to your notes now, to determine whether or not you asked him about whether he ever worked in different fields before; am I right?
A. Correct.
Q. And with regard to your clinical findings -- well, no, let me save that for a minute.
With regard to the cervical MRI studies that you looked at, you said that the 2007 study of the cervical spine, the MRI study of the cervical noted degenerative findings; correct?

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A. Correct.
Q. And you said that that would be expected for a person of his age, and history?
A. Correct.
Q. And -- and then you said with regard to the 213 -- 2013 MRI, it was normal?
A. Correct.
Q. And so I'm confused, would you not be expected to find certain deg -- as you described them, degenerative findings in the 2013 study for him? I mean, after all, he's even older now, and he has the same life history, and he's older. So why don't you see any degenerative findings in the 2013 study?
A. Again, there's -- there's -- they weren't done at the same location, the -- the same -- same technology, the same machine. It could -- it could be a variance, whatever -- whatever those films that were produced for that machine that day.
Q. Okay. Well, you -- you said today that when you -- when you are -- reviewed the 2013 lumbar study, you noted certain degenerative findings; correct, that was your testimony today?
A. Correct.
Q. Now, in your report, you comment, and I'm going to refer you to your May 13, 2015 report, under

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review of special tests, which is Page 5.
A. Correct.
Q. You refer in the bottom paragraph to the cervical MRI. And you see -- you see that according to your report, contrary to what you testified today, you -- you say revealed minal -- min -- mild degenerative changes. I'm sorry, I misspoke. The 2007 report revealed mild degenerative changes; correct?
A. Correct.
Q. All right. And the 2013 report, you don't note any findings --
A. Correct.
Q. -- of degeneration?
A. Correct.
Q. And today you testified that the lumbar MRI study showed degenerative findings?
A. Correct.
Q. But you don't mention that in your report, do you?
A. It is not mentioned.
Q. In fact, you say the -- you say your review of the lumbar MRI was unremarkable, the spinal cord was unremarkable?
A. Correct.
Q. All right. And you further say during

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your testimony, you pointed out on that -- that video you -- you had -- we had the opportunity to look at, that you see only a bulge?
A. Correct.
Q. And interestingly you say -- interestingly you say that that's -- your review disagrees with, or is in variance with the -- the radiologist who looked at the MRI studies?
A. Correct.
Q. And, in particular -- by the way, the radiologist who looked at the MRI studies, he doesn't have the benefit of a clinical exam, as you do; correct?
A. Correct.
Q. That person is looking at MRI studies all day long; correct?
A. It -- it -- it -- it depends. Radiologists, they look at other films, too.
Q. All right. But --
A. I can't -- they -- they -- they usually look at X-rays, they look at ultrasounds.
Q. Fair -- fair enough.
A. Like bone scans. So I don't know what the radiologist was looking at all day.
Q. True. Okay. You would expect, though,

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that a radiologist at AIMS Diagnostic who looked at the MRI film of the lumbar spine in this case quite frequently looks at MRI studies? I mean, that's what the patient does -- I mean, the -- the doctor does, as a radiologist?
A. I can't -- I can't -- I can't qualify myself on what someone else does during their day.
Q. Okay. With regard to that MRI study that you disagreed with, the MRI report you disagreed with, that person would be a neur -- a -- a radiologist whose area of expertise is in reviewing diagnostic studies, be it X-ray, ultrasound, CAT scans, MRIs; correct?
A. Correct.
Q. Again, with no familiarity or relationship to the patient, correct, never met the patient, more -- more likely than not?
A. I -- I can't -- I can't comment on someone else's practice. I can't comment on someone else's, who they know, what they know. I can't --
Q. Well --
A. I can't do that.
Q. Well, let's talk -- talk about your practice.
A. Okay.
Q. You see a patient, you decide you should

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send them from an MRI, you send them to an MRI center, the person goes in for an MRI.
A. Correct.
Q. What's your experience, in terms of how that works, if you know?
A. In -- again, if I -- I think someone has a -- a neurological finding, or they have a problem that I think, or a -- a problem that I think warrants ordering an MRI, I'll write a prescription for an MRI. The -- the patient gets an MRI. With the insurances today, they have to make sure -- it has to get precertified, if it's a private insurance. Then there are facilities they go to, it depends which facilities which fits in their network, out of their network, which facility they can go to. Then they get the MRI study. I always put in my films, provide films, so when they -- they get -- they -- they go, when I write the prescriptions, they come back with the films, so I can personally look at their films.
Q. And I'm talking about the patient experience. They walk into an MRI facility, they meet with a technician, they go into a tube, and they have the study done, and the report comes to you; correct?
A. Correct.
Q. They don't meet with the radiologist,

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they don't have a history taken by the radiologist, they are not examined by the radiologist; am I right?
A. Correct.
Q. The radiologist --
A. Well, you know, that's up to the individual radiologist. I can't -- you know, I can't -- you know, typically, you know, that -- that can happen. I've seen some radiologists examine patients.
Q. Okay.
A. So I can't say that all the time.
Q. So you don't necessarily agree with the proposition?
A. No. No, because sometimes I've -- I've actually seen radiologists examine patients.
Q. And you agree with me that in this case, the MRI study, according to the radiologist, re -- revealed a broad based central posterior disc herniation, extending 2 millimeters posteriorly, with annular tear at L4-L5?
A. Correct.
Q. Also, in L5-S1, broad based disc herniation with annular tear indenting the thecal sac, which you talked about, the lateral recess and bilateral neural foraminal with the disc contacting the bilateral exiting L5 nerve root; correct?

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A. Correct.
Q. So according to the radiologist that read the MRI study, (A) sees annular tears at -- at both L4 and L5-S1; correct?
A. Correct.
Q. And what's an annular tear?
A. Again, it's a high signal intensity in the annulus. It could be -- it's -- it's commonly associated with degeneration. It can also be associated with trauma, and it's usually asymptomatic.
Q. So where you have an annular tear and a herniation of the disc, which is contacting the exiting nerve root, you say it's typically asymptomatic?
A. Again, if we could just back off, and I could explain something to the Jury. Again --
Q. No, you don't -- you don't need to do that, what you need to do is just answer the question.
A. No, well, you --
Q. Do you disagree with that?
A. I -- I can't answer the question in that format, because --
Q. Okay. Let me rephrase it. Do you disagree with the proposition that pressure on the nerve root is going to cause pain?
A. Pressure on the -- it could cause pain.

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Q. Okay. Would you consider an MRI an objective study?
A. Yes, I would.
Q. And another objective study that you said that you ordered in the case of neurological type complaints would be an EMG study; correct?
A. In this case, I wouldn't. Again, there has to be neurological findings, or a clinical indication, again, because there's high false/positives.
Q. Right. And so you wouldn't?
A. In -- in this case, I wouldn't order an EMG.
Q. But you agree with me that in this case the treating physician did?
A. Correct.
Q. And, in this case, you disagree with the report, which revealed -- the EMG study, also an objective study; am I right?
A. Correct.
Q. I mean, you can't fake the findings, it's based on scientific data?
A. But it -- it varies from -- it varies from day to day, it varies from exam -- it -- it varies on different examinations, it varies on the technique and how you did it.
Q. But it's considered an objective --

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A. But there's a -- there's a -- there's a -- there's a -- there's a -- there's a -- there's a -- there's a variably way they place the needles. Where -- where they place the needles, what the -- where they -- the place of the studies, who's reading it, the time of the day. Your EMG can change throughout the day.
Q. I see. In -- in this case --
A. That's why it's not a great study, and we very rarely rely on it in a case. Unless you -- you -- when you look at the orthopedic literature, the times to get an EMG, a nerve conduction study test. Again, commonly if you think someone has a peripheral nerve entrapment, and a herniated disc. Or, commonly, if you think someone has a metabolic neuropathy from diabetes. Again, because we know there's a high false/positive rate with -- with EMGs. It's not a great test.
Q. In this case, however, the doctor found it was reasonable and necessary to order the test; correct?
A. I can't comment on the doctor's indications for ordering a test.
Q. And you disagree with the finding? I think you disagree, or take issue with the objective data?
A. Again, some of the objective data, usually if

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you're going to have a radiculopathy, you'll see fibrillations, it wasn't there. It will show polyphasic response. When there's polyphasic response, that means there's pressure on the nerve for a long-standing time.
Q. Uh-huh.
A. So I just read his report. But, you know, I -- I -- you know, it -- I -- I -- to quantitate -- you know, you would have to ask the doctor that did it how he got to that reasoning.
Q. Right. But his finding was a L5 radiculopathy?
A. That was his finding, correct.
Q. And that would be consistent with pressure on a L5 nerve root, as reported in the MRI study; correct?
A. I don't think -- the clinical exam is the most paramount.
Q. Okay. I'm going to give you a chance to talk about the clinical exam again. But the doctor who was treating this patient, he ordered an MRI, which according to the radiologist revealed an L5 -- pressure on the L5 nerve root, which was consistent with the other objective test done, the EMG, which revealed --
A. Here's -- here's --

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Q. -- an L5 radiculopathy --
A. Here's where I would like to back off just --
Q. -- am I right?
A. No, I would just like to back off a little bit here, because I only can commentate on my interpretations of films.
Q. Fair enough.
A. And I -- and, again, we know that a disc herniation is the way as I described it. And the classic is when the disc material comes outside of that covering, and presses on a nerve root.
Q. And you don't see that?
A. I don't see that.
Q. Okay. And one -- one last --
A. And, again, -- and, again, there's -- there's a high -- and what -- what -- what this doctor -- with some doctors, there's a high -- what someone -- what -- there's a controversy on what someone calls a bulge, and what someone calls a herniation.
Q. Okay.
A. It's very, very controversial. And there's a -- and -- and different people -- one person will call it a bulge, another person might call it a herniation.
Q. Uh-huh.
A. When the -- the disc comes out, and it's -- it's

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squeezed when it comes out the spinal cord. There's no difference in opinion of that. And when it comes sequestered, when the disc material separates from the spinal cord, from -- from the disc, and goes into the spinal cord, there's no difference. Between bulges and herniations, what one person calls a bulge, another person can call it a herniation.
Q. Okay. And, Doctor, one last question --
A. And I can comment on what I saw on the films. In my films, there was no press --
Q. And you did -- you have commented.
A. There was no pressure on the nerve roots.
Q. We've talked about the false/positives three, or four, or five times now. Can I ask you another question?
A. Yes, you may.
Q. All right. The L5 radiculopathy, you characterized it as chronic?
A. It could be. I -- I --
Q. Would you agree with me that findings in excess of three months on an EMG study would be considered chronic?
A. It depends. It varies in tech -- in technique. I didn't do the exam. I don't know where they placed the needles. Again, there's a lot of subjective

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components to the test.
Q. But this test was done six months after the injury. Would any finding be determined to be considered chronic six months after the injury?
A. Again, I didn't do the exam.
Q. I'm -- I'm -- I'm not --
A. I didn't -- I didn't --
Q. -- asking you about what your exam revealed.
A. I can -- I can read the reading. The most important thing is that the patient is absolutely normal neurologically.
Q. I get that, that's your opinion, Doctor. But you characterized --
A. But that's an objective -- that's an objective test that's -- that -- that we're look -- this is -- that's an objective test.
Q. Okay. Now, let me finish the question, and just if you can --
A. That's doesn't have a false/positive.
Q. I understand that you think there's false/positives. I just want to ask you about your testimony, that the finding was chronic, and what you implied by that?
A. It -- it could be.

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Q. It could be. But the test was done six months after the injury; correct?
A. Correct.
Q. And isn't it commonly known, or commonly agreed upon orthopedic surgeons that a finding on an EMG would always be chronic if after six months?
A. It varies. You can't -- you can't --
Q. You disagree with that?
A. Some terms of chronic that they use -- chronic, it varies.
Q. Well, the -- the -- the terms that you might use would be acute or chronic; correct? Right, chronic versus acute, that's -- I'm asking you, that's the two terms that --
A. Correct.
Q. -- you might use?
And acute would only be capable of being determined within the first three months after the inj -- injury; correct?
A. It depends. You can't see any changes on an EMG the first three weeks. You have to wait three weeks to see at least changes on the EMG.
Q. All right. So what was the significance then -- then of you char -- characterizing the finding as chronic?

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A. Again, I said -- I didn't say chronic, I said there was some -- there was increased polyphasic activity, which goes along to pointing there were signs that it might be chronic.
Q. All right. So you did not mean to suggest --
A. And then --
Q. -- that because the finding, although you believe it may have been a false/positive, you did not mean to suggest the finding would be inconsistent with trauma?
A. Correct.
Q. All right. Let's -- let -- let me talk about the clinical exam that you -- you -- you characterized as paramount; correct?
A. Correct.
Q. You -- you conducted as many as -- as 20 exams on patients in the Cherry Hill office in -- at one time?
A. Correct.
Q. And it -- it would be my speculation, perhaps, that your clinical exam was normal on all 20 of those patients?
MS. McDONALD: Objection.
THE VIDEOGRAPHER: The time is 2:24.

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Going off the record.
(Discussion held off the videotape record.)
MS. McDONALD: We don't have the records of all 20 patients. It's speculative, and it's argumentative. You can go back on.
THE VIDEOGRAPHER: The time is 2:24. Back on the record.
BY MR. CUNEO:
Q. Let me -- let me rephrase that, Doctor, that question.
Do you -- you don't keep your notes on your various exams; correct?
A. Correct.
Q. But, in this case, you say that the clinical findings were completely normal?
A. Correct.
Q. And, based upon that, you wouldn't have even ordered an EMG study; correct?
A. Correct.
Q. In fact, considering your findings on clinical exam, I believe it would be unlikely that you would have even ordered an MRI; am I right?
A. No, usually in -- in -- in a setting of -- if -- if -- with a normal neurological examination, and I saw

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this patient, I wouldn't -- I wouldn't order a -- an MRI. Again, there's other factors that might -- if the patient had, you -- you know, a -- a -- a weight change, or it was considered cancer, you would consider susceptible lesion, or is under a great amount of pain, I might consider it. But --
Q. But let me ask you about this patient, rather than some other hypothetical patient. Considering the history, and considering your clinical exam of this patient, would you have ordered an MRI?
A. No, I wouldn't have.
Q. And would you have ordered an EMG?
A. No, I wouldn't have.
Q. And you're aware that Aldo Allegrini had no history leading up to this accident of ongoing neck or back complaints; correct?
A. He did have a motor vehicle in 2006.
Q. Right. But his -- his contention was that those complaints, if any, resolved very soon thereafter; correct?
A. Correct.
Q. And I'm sure that you've worked with Ms. McDonald before; correct?
A. No, I haven't.
Q. You've worked with her office, I'm sure,

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many times?
A. I -- I can't recall.
Q. You've worked with many, many defense lawyers; true?
A. Correct.
Q. And if there is a history of complaints, a history of injury, a history of prior injury -- accidents, that -- those records are supplied to you, correct, typically?
A. Again, I -- I take a history, and -- and records that are supplied to me, I use those records as part of the review.
Q. And you have not seen any records reflecting any ongoing complaints leading up to this accident; true?
A. Correct.
Q. Mr. Allegrini contends that he was in a motor vehicle accident, and, thereafter, developed neck and back pain; correct?
A. Correct.
Q. And his primary ongoing complaint relates to the low back; correct?
A. Correct.
Q. Now, his doctor chose to order some studies, as you know, the MRI, the EMG; correct?

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A. Correct.
Q. And his doctor's clinical findings also differed from yours; am I right?
A. I reviewed some of the records, and the clinical findings, and -- and the -- and the records I reviewed were pretty consistent with my findings.
Q. Okay. Well, this patient, Aldo Allegrini, had an accident, went to his doctor, and said, Doc, I was in an accident, I have all of this pain that's radiating in my -- to my extremities. And that was his complaints, right, he complained of numbness and tingling into his hand, pain in the low back, and he received chiropractic care; correct?
A. Correct.
Q. Now, this patient's physicians referred him for studies, and then provided treatment; correct?
A. Correct.
Q. And the treatment included pain management care; correct?
A. Correct.
Q. And part of the treatment of the pain management care involved a lumbar epidural steroid injection, and a cervical nerve block?
A. Correct.
Q. This patient also tells you, according to

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your testimony, that his doctors treated him, and that his complaints have improved?
A. Correct.
Q. Now, by contrast, you would have examined this patient, and sent him home; am I right?
A. Again, you asked me about my examination of the patient. I didn't find anything neurologically, and would I order these tests, and the answer is, no.
Q. You agree with me that this patient indicates that the treatment helped him?
A. Yes.
Q. And the treatment was -- included not only conservative care, but invasive care?
A. Correct.
Q. What -- what the doctors characterize as operative procedures?
A. Correct.
Q. And those operative procedures, including an epidural injection, they're generally done under general anesthesia?
A. No.
Q. Okay. Not always, sometimes?
A. They're usually local and IV sedation.
Q. IV sedation. Okay.
A. Sometimes it's just straight local.

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Q. And what you're doing is you're injecting a steroid into the spinal canal?
A. Correct.
Q. And the doctors -- I don't know, do you do any -- any -- any pain management procedures?
A. No, I do not.
Q. But you do surgery?
A. Correct.
Q. And you -- you explain risks and side effects associated with the procedures?
A. Correct.
Q. And are you familiar that side effects and risks associated with an epidural injection, for example, include death, paralysis, many different types of side effects?
A. Correct.
Q. Would you agree with me that a patient would likely be in some great degree of discomfort in order to undergo such a procedure?
A. Again, they couldn't -- the -- the risks or those possibilities are very, very, very, very, very, very, very, very, very rare.
Q. Okay.
A. That you described about. And, again, that's an individual's choice whether a patient wants to go for a

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procedure or not, an elective procedure.
Q. All right. So you -- you -- you believe -- well, strike that.
The -- the last question on that. Your opinion in this case is primarily based upon your clinical exam; correct? You find that the MRI is somewhat insignificant, you find that the EMG, which demonstrates a false/positive, is irrelevant, you wouldn't have even ordered it, so your finding of no permanency in this case is primarily based upon this clinical exam of yours?
A. No, again, I examined the patient, and the history and physical are the most paramount portion of the exam. Again, we know that even the general population, any of us, 50 to 60 percent of us can have a disc herniation or a disc bulge in the MRI. So looking at the MRI alone is very, very dangerous, based on if you just look at the MRI, that means 50 to 60 percent of the population is going to get injections, or going to get surgery. So you have to correlate with the clinical findings.
Q. Right. And --
A. No. No, let me finish. Don't interrupt, you asked me a question.
Q. I'm sorry. Go ahead.

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A. Sorry about that. Again, in this patient, there's normal neurological findings. I found no pressure on the nerve roots in my exam. The -- the MRI supported my clinical findings of showing no pressure on a nerve root. So the MRI was in agreement with my clinical findings.
Q. And the same can be said for the EMG, which you -- which you disregard, and -- and pointed out on a few occasions, often have false/positives; correct?
A. I wouldn't have -- it's -- yeah, I wouldn't have ordered them under the circumstance.
Q. So -- so, Doctor, you are conducting independent -- what you characterize as independent medical exams throughout the State of New Jersey at the request of four different companies that do nothing but defense exams; correct?
A. No, that's mischaracterizing it. It's for companies that I just see for -- for -- outside of my office, I just see ExamWorks patients, and -- and the -- and the -- and the IMX patients. Just two companies.
Q. Okay. And the other companies you do defense exams for your office, I guess, is what you mean to say?

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A. Correct.
Q. So you're doing defense exams for four different companies?
A. Correct.
Q. And you are a doctor who is able to testify that it doesn't really matter what the MRI shows, it doesn't really matter what the EMG shows, as long as my testimony is that the clinical exam was normal?
A. Again, it's a mischaracterization. I treat -- when I first do an independent medical evaluation, I tell the patient this is an independent medical evaluation. It's the same way I examine a patient in my own practice, but the only thing is I can't discuss treatment with you, and I can't answer any questions. When I examine somebody in my practice, I do a complete history, I do a complete physical examination. Again, if the patient is -- if I think an MRI is indicated for that patient, I'll order an MRI to -- to support my clinical findings, and not clinical findings. If someone is completely normal neurologically -- normal neurological, and there's no other indications, I wouldn't order an MRI. But if a patient has neurological findings suggestive, I would order an MRI.
Q. Okay. So, again, this patient comes to

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you, and says, I had a motor vehicle accident, now I'm in all kinds of pain, it's in my arms, it's in my legs, you, even with your own patients, would have relied upon your clinical exam, and not ordered any studies?
A. History, physical exam --
Q. And history?
A. History, physical examination, and objective testing.
Q. That's your testimony?
A. Yes, it is.
MR. CUNEO: All right. Thank you, Doctor.
MS. McDONALD: Okay. I'm going to have some redirect.
REDIRECT EXAMINATION BY MS. McDONALD:
Q. Doctor, you were asked a bunch of questions not about your examination itself, but about the location in which your examination was performed. Do people in Camden County have diff -- physical or anatomical differences from people in Morris or Bergen County?
A. No, just preferences, Giants versus Eagles.
Q. And do your orthopedic examinations change depending on your locality?
A. No, it does not.

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Q. And how many days a month, on average, are you out of your office doing examinations for an -- an entity like IMX or ExamWorks?
A. About four -- four days.
Q. And that's four days in total a month?
A. Correct.
Q. What percentage of your practice is devoted to your private prac -- practice, which is how I'm going to refer to it, versus your practice doing IMEs?
A. Approximately 75 percent.
Q. So 75 percent is your private practice?
A. Correct.
Q. And in the course of your private practice, do you treat Plaint -- people who are Plaintiffs in lawsuits?
A. Yes, I do.
Q. And when you treat people who are Plaintiffs in lawsuits, do you sometimes deal with Plaintiff's attorneys, as well?
A. Yes, I do.
Q. Okay. So, in your -- in the course of private practice, you deal with Plaintiff's attorneys?
A. Correct.
Q. Okay. And would it be fair to say that

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you've dealt with many Plaintiff's attorneys?
A. Yes, I have, many.
Q. Would it be fair to say you've dealt -- you've -- you've been involved in many cases in which your Plaint -- patient is a Plaintiff?
A. Correct.
Q. Okay.
A. Or else -- or else -- or else referred to me by Plaintiff's attorneys.
Q. Okay. You were asked about how many patients you see in the course of the day when you're performing IMEs. How many patients can you see in the course of a day in your private practice?
A. Anywhere up -- up to 30, the average is about 20.
Q. Okay. And when you perform an examination, is there any difference in what -- in what you do, depending on whether you're doing an IME, or you're seeing a patient in your private practice?
A. No, there is not.
Q. You were asked about what -- what you do with your notes on an examination. Are your notes reflected in your report?
A. Yes, they are.
Q. And are -- are the reports then, in

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essence, an amalgamation of your notes from the examination?
A. Correct.
Q. You were also asked about the fact that you performed a -- a fellowship in -- in hand surgery. 50 percent of your practice is devoted to general orthopedics?
A. Correct.
Q. And your education covered every part of the body?
A. Yes, it did.
Q. And in the course of your -- the 50 percent of your practice in which you devote to general orthopedics, you treat every part of the body?
A. Yes, I do.
Q. Okay. When you have patients who have negative clinical examinations, but are complaining of pain, do you sometimes refer them for treatment, like physical therapy?
A. Yes.
Q. Do you sometimes await the results of that physical therapy before you make opinions about further testing?
A. Yes, I do.
Q. You were asked about the presence of

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degenerative findings, or the remark about a presence of a -- of degenerative findings in Plaintiff's 2007 cervical MRI versus the 2013 MRI. Do you recall that discussion on cross-examination?
A. Yes.
Q. If you -- would you expect to see degenerative findings in a 40 year old with the Plaintiff's general history?
A. Yes.
Q. If you saw findings on an MRI, which you had expected to see, would you consider them normal?
MR. CUNEO: Objection.
THE VIDEOGRAPHER: The time is 2:38. Going off the record.
(Discussion held off the videotape record.)
MR. CUNEO: Okay. A continuing objection to this line, which is leading, unless you want me to object to each question?
MS. McDONALD: You can continue to object, but I'm not suggesting an answer. Go ahead.
THE WITNESS: Yes.
MS. McDONALD: And we're not --
MR. CUNEO: Do you want me to continue to object?

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MS. McDONALD: No, you can have a continuing objection.
MR. CUNEO: Okay. Continuing objection. Okay. Fair enough.
THE VIDEOGRAPHER: Going back on the record. The time is 2:38. Back on the record.
BY MS. McDONALD:
Q. Doctor, you can answer the question.
A. Yes.
Q. You were asked about the objective nature of an MRI. And can explain what about an MRI test, or -- yeah, test is objective?
A. Again, it's -- it's -- it's -- it's -- it's taken. It's done. It's part of something you feel. It's -- it's -- it's something -- it's something you feel, it's something you would see, something to put your eyes on.
Q. Is it possible for different doctors to interpret what they see on those films differently?
A. Very common.
Q. And is that part, that interpretation, is that somewhat objective on the part of the doctors?
A. Yes. Yes. And, again, it's also use of terminology.
Q. Okay. And that use of terminology,

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you're saying, can be objective -- subjective?
A. Correct.
Q. Is it the same with EMGs? Well, first, can describe how an EMG is an objective test?
A. Again, it -- it gives -- it -- it -- it -- it -- it gives out data that's measurable.
Q. And can interpretation of that data vary from doctor to doctor?
A. Yes, it can.
Q. And, in that way, is the interpretation of the EMG subjective?
A. Yes.
Q. In this case, does the EMG jive with your physical examination of the Plaintiff?
A. No, it does not.
Q. So regardless of whether the findings on the EMG are described as chronic, or not, do they jive with your physical examination?
A. No, they do not.
Q. Doctor, I'm going to ask you to refer to some of the Plaintiff's treatment -- well, strike that, before I get to that.
Doctor, does the -- the fact that treatment was rendered, or an injection was performed necessarily indicate that there was a -- a specific

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underlying injury?
A. No, it does not.
Q. Okay. In this case, in fact you noted that the Plaintiff's MRI of the cervical spine performed in 2013 was -- was normal; correct?
A. Correct.
Q. And that also agreed with the findings of the radiologist; correct?
A. Correct.
Q. But the Plaintiff had -- had, nevertheless, had injections to the cervical spine; correct?
A. Correct.
Q. And -- and when we talk about an -- an injection being an operative procedure, we're not talking about cutting someone up -- open --
A. No.
Q. -- we're talking about a needle?
A. Correct.
Q. All right. Getting back to the Plaintiff's treatment records. I'm going to ask you to refer to reports. Would you like time to go -- to get to there in your file?
A. Yes.
MS. McDONALD: Let's go off the record.

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THE VIDEOGRAPHER: The time is 2:41. Going off the record.
(Discussion held off the videotape record.)
MR. CUNEO: Are we going beyond the scope of cross here with treatment records?
MS. McDONALD: I don't think so. You can argue it, but you're talking -- well, yes, about it. Do you want to object now, or later?
MR. CUNEO: Well, I don't know what you're going to ask.
MS. McDONALD: Okay. Well, let's go back on. Are you there, Doctor?
THE WITNESS: Yes, which ones do you want?
MS. McDONALD: September 17, 2013, with Dr. Gleimer.
MR. CUNEO: All right. And you think we've covered that on direct and cross?
MS. McDONALD: Yes.
MR. CUNEO: Okay. Yes, well, I do object to questions about that.
MS. McDONALD: Okay. We can go back on. I'm sorry, Doctor, are you ready?
THE WITNESS: Yes.

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THE VIDEOGRAPHER: The time is 2:42. Back on the record.
BY MS. McDONALD:
Q. Doctor, looking at the -- the report by Dr. Gleimer, the only other orthopedic surgeon to have -- to have examined the Plaintiff in this case, I'm going to direct you to his physical examination, in particular, his neurological examination performed on September 17, 2013. Can you discuss the results of the neuro -- neurological examination?
A. Again, he revealed in the upper extremities normal deep tendon reflexes, strength and sensation, the same as myself. And for the lower extremities, he put the deep tendon reflexes, the patellar and achilles, were intact bilaterally. And, again, he just gives a -- a straight leg raising test going to the thigh on the left, which is not a positive finding. It has to go down to the toes, as I described the test before.
Q. Okay. So -- and is that examination consistent with your neurological examination of the Plaintiff?
A. Yes, it is.
Q. Going to Dr. Lee's treatment records.
MS. McDONALD: And we can go off the

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record for a second so the Doctor can get that.
THE VIDEOGRAPHER: The time is 2:44. Going off the record.
(Discussion held off the videotape record.)
MR. CUNEO: I renew the objection, regarding questions about Dr. Lee's treatment, which wasn't discussed on direct or cross.
MS. McDONALD: Okay. We'll go to October 17, 2013.
THE WITNESS: Correct.
MS. McDONALD: Ready to go back on?
THE WITNESS: Yes.
MS. McDONALD: Okay.
THE VIDEOGRAPHER: The time is 2:44. Back on the record.
BY MS. McDONALD:
Q. Doctor, I'd -- I'd like to direct you to Dr. Lee's examination of the Plaintiff done a month after Dr. Gleimer on October 17, 2013. Can you discuss Dr. Lee's neurologic exam of the Plaintiff's lumbar spine?
A. Again, he found -- we're talking about October --
Q. The 17th?

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A. 2013?
Q. Yes, it's his first examination.
A. Yes. Again, the reflexes were the same as mine, one out of four. The motor examination was five over five for the right. And, again, the same as myself, he found one over four reflexes, and motor, five over five.
Q. Okay. And he doesn't comment on sensation; correct?
A. Correct.
Q. And I'm going to -- rather than go through every examination, I'm going to go to the March 20, 2014 examination.
A. Which doctor?
Q. Dr. Lee, I'm sorry.
A. Correct.
Q. Can you comment on Dr. Lee's exam -- neurological examination of the lumbar spine at that time?
A. Again, it was the same as mine, one out of four, reflexes. Motor strength, five over five, in the right lower extremity. And the same with the left lower extremity, one out of four, which I found. And, also, motor strength, five over five, which I found.
Q. And the straight leg raising test on that

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date?
A. Was negative.
Q. What -- looking at Dr. Lee's last reported examination of the Plaintiff on May 1, 2014, was there any change in the lumbar examination?
A. No.
Q. Okay. Was there any reports of examinations that you reviewed, or physical examinations of the Plaintiff, clinical examinations of the Plaintiff after Dr. Lee's examination of May 1, 2014?
A. No, there wasn't.
Q. Other than your own?
A. No.
MS. McDONALD: Okay. Nothing further. Thank you.
MR. CUNEO: I just have one follow-up question.
RECROSS-EXAMINATION BY MR. CUNEO:
Q. Doctor, you've -- you've testified that you did a clinical exam of the patient's shoulder?
A. Correct.
Q. The -- the exam -- the -- the shoulder that he had surgery on?
A. Correct.

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Q. And your findings were completely normal with regard to this shoulder that he had surgery on?
A. Yeah, and so was it by his treating physician when he released him from care.
Q. Which -- which treating physician?
A. Marc Kahn.
Q. From 2007?
A. Correct, he -- he found a normal examination at that time, also.
MR. CUNEO: Okay. Off the record.
THE VIDEOGRAPHER: The time is 2:47. Going off the record.
(Discussion held off the videotape record.)
MR. CUNEO: Move to strike the response and the reference to Marc Kahn. It's nonresponsive, as well as inadmissible under -- I'm drawing a blank on the name, the case name right now, but move to strike that.
MS. McDONALD: Okay. You opened the door, but go ahead.
MR. CUNEO: No, I understand that. He's relying upon records that are not in the record.
MS. McDONALD: He did say that he reviewed them.

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THE WITNESS: I reviewed them.
MR. CUNEO: Not in the record, I know that you reviewed them. There's a case, you can't testify to some other doctor's findings, which I was shocked to see that you asked him about the MRI and the EMG studies, frankly. But, you're right, you did open that door. But, in any event, let's go back on the record.
THE VIDEOGRAPHER: The time is 2:48. We're back on the record.
MR. CUNEO: No further questions.
THE VIDEOGRAPHER: That concludes the deposition. The time is 2:48. Going off the record.
(Videotape deposition was concluded at 2:48 p.m.)

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CERTIFICATE OF OFFICER

I, CHERYL ANN RAKAUSKAS, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness was duly sworn by me.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcription of the testimony as taken stenographically by and before me on the date, time, and place aforementioned.

I DO FURTHER CERTIFY that I am neither a relative, employee, attorney, not counsel to any parties involved; that I am neither related to nor employed by any such attorney or counsel; and that I am not financially interested in the outcome of this action.

_____
CHERYL ANN RAKAUSKAS, C.C.R.
A NOTARY PUBLIC OF THE STATE OF NEW JERSEY
C.C.R. License No. X102030

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