

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF QUEENS : CIVIL TERM : PART 35

2 -----X  
3 GONG MING ZHANG,

4 Plaintiff,

5 -against-

Index No. 4741/15

6 YING LIU AND UNIWARE HOUSEWARE CORPORATION,

7 Defendants.

8 -----X  
9 Supreme Courthouse  
10 88-11 Sutphin Boulevard  
Jamaica, New York 11435  
February 15, 2018

11 B E F O R E:

12 THE HONORABLE TIMOTHY DUFFICY,

13 J U S T I C E

14 A P P E A R A N C E S:

15 NAPOLI SHKOLNIK, PLLC  
16 Attorneys for the Plaintiff  
17 400 Broad Hollow Road  
Melville, NY 11747  
18 BY: GIL ZOHAR, ESQ.

19 PICCIANO & SCAHILL, P.C.  
20 Attorneys for the Defendants  
21 900 Merchants Concourse  
Westbury, New York 11590  
22 BY: THOMAS R. CRAVEN, ESQ.

23  
24 LORRAINE MARINAZZO  
25 Senior Court Reporter

(Whereupon, the following takes place on the record, in open court:)

5 THE COURT: Are we ready to go?

6 MR. ZOHAR: Yes, your Honor.

7 THE COURT: Okay.

8 THE COURT OFFICER: All rise. Jury entering.

11 THE COURT: Please be seated. Plaintiff.

12 MR. ZOHAR: Yes, your Honor. We have Dr. Dowd.

13 THE COURT: Okay.

14 D R. A N D R E W D O W D, called as a witness by  
15 and on behalf of the Plaintiff, after having been first duly  
16 sworn, was examined and testified as follows:

19 THE WITNESS: Andrew Dowd. 3771 Nesconset  
20 Highway, Suite 213, South Seatauket, New York 11720.

21 THE CLERK: Thank you very much. If you could  
22 keep your voice up so we can hear you.

23 THE WITNESS: Sure.

24 DIRECT EXAMINATION

25 || BY MR. ZOHAR:

1           Q    Good morning, Dr. Dowd.

2           A    Good morning.

3           Q    A few things, first of all, could you just tell us,  
4 what do you do for a living?

5           A    I'm an orthopedic surgeon.

6           Q    Can you tell the jury a little bit about your  
7 educational background in chronological order?

8           A    I went to the College of Long Island University at C.W.  
9 Post, Downstate Medical Center for medical school, internship at  
10 Kings County Hospital for one year, residency programs at George  
11 Washington followed by St. Vincent's Hospital, followed by one  
12 year fellowship in hand surgery at Stony Brook Hospital.

13          Q    Do you currently maintain an office?

14          A    Yes.

15          Q    Where is that office located in?

16          A    South Seatauket, the address I just gave.

17          Q    Are you licensed to practice medicine in the State of  
18 New York?

19          A    Yes.

20          Q    In your profession, have you been board certified?

21          A    Yes, I was board certified starting in 1993 to 2003.

22          Q    Does that, in your profession, have you also conducted  
23 surgery?

24          A    Yes.

25          Q    Can you tell us, are there specific types of surgeries

1 or body parts that you specialize in?

2 A I did a fellowship in hand surgery, for many years did  
3 almost exclusively, hand surgery. Of late I have been doing  
4 arthroscopic surgery of shoulders, knees, ankles and wrists.

5 MR. ZOHAR: Your Honor, we offer Dr. Dowd as an  
6 expert in orthopedics and orthopedic surgery.

7 THE COURT: Any objection?

8 MR. CRAVEN: No.

9 Q Are you familiar with Triborough Orthopedics and Sports  
10 Medicine?

11 A Yes.

12 Q Is that an office of which you operated at?

13 A That is my professional P.C., Triborough Orthopedics.

14 Q Is that facility at 40th Road in Flushing?

15 A It was.

16 Q At some point did you ever come into contact or have a  
17 patient by the name of Gong Ming Zhang?

18 A Yes.

19 Q Now, with regards to just your practice itself, what  
20 percentage of your practice deals with actually treating  
21 patients, not just examining on behalf of someone, but just  
22 treating patients that come to you with a variety of complaints  
23 and issues?

24 A 99 percent.

25 Q And do you recall--

1                   First of all, have you brought some of your own  
2 records?

3 || A Yes.

4 Q And you could look at those records, but I don't want  
5 you to read. You could take a look and refresh your  
6 recollection and look up.

7 At some point had Mr. Zhang come to your facility,  
8 Triborough Orthopedics and Sports Medicine?

9 A Yes, in 2013.

10 Q Do you recall the specific date that he came?

11 A I have to look.

## 12 Q Talking about the initial.

13 A I have to look in the notes.

14 Q Feel free to do so.

15 (Witness complies)

16 A The note has 5/7, 2013.

17 Q And did you take a history at that time?

18 A Yes.

19 Q Can you tell us-- before getting into the history, can  
20 you tell the jury what is the importance of a history?

21 A History gives the doctor a line of thought on what  
22 occurred and how to diagnose a problem. A history is the first  
23 part of all evaluations in medicine, regardless of whether it is  
24 a car accident or not.

25 || Q What was the history that was taken with regards to

1       Mr. Zhang on this May 7, 2013 date?

2       A     He reported being a driver of a car struck from the  
3 rear.

4       Q     What date was that accident?

5       A     5/6/13.

6       Q     Would this exam that you had of Mr. Zhang in front of  
7 you, based on one day the day after the accident?

8       A     Yes.

9       Q     Did you conduct an exam?

10      A     Yes.

11      Q     Before conducting an exam, were there any complaints  
12 that Mr. Zhang had made to you?

13      A     Multiple.

14      Q     Can you tell the jury what those complaints were?

15      A     Moderately severe neck pain with radiation to right and  
16 left shoulder with numbness, moderately severe low back pain  
17 with radiation down right and left legs. Bilateral shoulder  
18 pain, left greater than right and dizziness.

19      Q     Now, did you conduct an exam?

20      A     Yes.

21      Q     And can you tell us what were the findings of that  
22 exam?

23      A     Cervical spine range of motion was limited. Orthopedic  
24 impression test was positive. Motor exam showed weakness on the  
25 right and left deltoids. Diminished reflexes were noted at the

1 biceps and brachioradialis muscles in the arms. Sensory exam  
2 right C5, left C6 dermatomes were diminished. Lumbar exam  
3 showed restricted motion in all planes. Tenderness was noted,  
4 multiple levels.

5 Q Now, getting to the ranges of motion with regard to the  
6 cervical spine, can you tell us what the norms were and what  
7 your findings were with regard to the different-- we're talking  
8 about flexion, extension, rotation so forth?

9 A Flexion normally is about 60; varies between person to  
10 person. Extension about 50. Rotation roughly 80.

11 Q As you say the norm, I apologize, if you could just say  
12 what norm was and what your finding was for each one?

13 A Flexion, normal 60. His range was 35. Extension,  
14 normal 50. The range reported was 30. Right rotation, normal  
15 80. Reported as 40. Right lateral bend, 40. Reported as 20.  
16 Left lateral bend 40. Reported as 20.

17 Q Those findings that you had -- first of all, how did  
18 you come about to finding what the range of motion was, did you  
19 use any type of devices?

20 A Usually a goniometer. I do not have a recollection of  
21 2013 specifically today.

22 Q As you look at those numbers, as you sit here today and  
23 based upon a reasonable degree of medical certainty, are those  
24 significant in some manner?

25 A Yes, they show restriction in all planes which

1 typically follows an injury, as this man had.

2 Q And would they have some what of a consequential  
3 limitation of that individual's ability to function?

4 A Yes.

5 MR. CRAVEN: Objection, your Honor.

6 THE COURT: Sustained.

7 MR. CRAVEN: I move to strike that.

8 THE COURT: Stricken.

9 Q Did you find, first of all, what Mr. Zhang does for a  
10 living?

11 A I believe he was a driver.

12 Q And you also took some other testing here, and we're  
13 talking about focusing on the cervical. Can you tell us what a  
14 cervical depression test is?

15 A Cervical axial compression on the top of the head  
16 causes symptoms down the nerve root.

17 Q And what are those specific symptoms?

18 A Pain.

19 Q Is that something that an individual- first of all, is  
20 this a subjective or objective finding?

21 A Subjective.

22 Q And the sensory exam, when you say diminished in right  
23 C5 and left 6C dermatomes; is that a subjective or objective  
24 finding?

25 A Subjective.

1           Q     Now, you took also range of motion with regard to the  
2 lumbar spine?

3           A     Yes.

4           Q     When we say "lumbar spine", we are talking about the  
5 lower back?

6           A     Yes.

7           Q     Can you tell us what the of ranges of motion for the  
8 different ranges is and what the norm is?

9           A     Normal flexion is roughly 90 degrees. The patient  
10 showed 50. Extension normally 30 degrees. He showed 15. Right  
11 lateral bends of 20 degrees. Patient had 15 degrees. Left  
12 lateral bend, normal 20 degrees. He had 15 degrees.

13           Q     Are these reductions, we're talking about 90 reduced to  
14 50, we're talking over 40 percent?

15                            MR. CRAVEN: Objection, that is not a correct  
16 calculation.

17                            THE COURT: Sustained.

18           Q     That would be approximately 44 percent. And if you  
19 want I could make the calculation on the calculator, if that is  
20 what you prefer. Approximately 44 percent reduction in range of  
21 motion on flexion of the lumbar spine, is that a significant  
22 limitation or restriction?

23           A     Yes.

24           Q     Will that have an immediate impact on that individual's  
25 ability to function with regards to any activity dealing with

1 the lower back?

2 A Sure, hard to put on shoes, change socks.

3 Q Would that include things such as standing for  
4 prolonged periods?

5 A Yes.

6 Q Sitting for prolonged periods?

7 A Yes.

8 MR. CRAVEN: Objection. These are leading  
9 questions.

10 THE COURT: Sustained.

11 Q Can you tell us some of those functions besides just  
12 tying shoes and bending, what are some of the upper functions  
13 that this significant restriction in the range of motion of the  
14 lumbar spine would have?

15 A Getting up and down out of a bed or chair, anything  
16 squatting or kneeling, any issues regard shoe wear or socks or  
17 washing feet, clipping toenails; that kind of foot care would be  
18 difficult with that restriction.

19 Q If you found out, prior to this date of the accident,  
20 that Mr. Zhang had testified that he was a driver that had to  
21 drive out of state from Queens; besides the boroughs, he would  
22 drive to New Jersey, Connecticut. Some of those drives were  
23 lengthy, would this type of restriction have an effect in  
24 sitting in a motor vehicle for lengthy periods of times to what  
25 the plaintiff testified to?

1       A    It would make it more difficult, for sure. Restricted  
2 motion would be aggravated by prolonged driving.

3       Q    If the testimony also was that he had conducted  
4 deliveries, he would have individuals sometimes helping him with  
5 heavy items, actual lifting and carrying of packages, would this  
6 type of finding and restriction have an effect with regards to  
7 his ability to lift and carry?

8       A    Yes.

9       Q    And would that restriction or his ability be impacted  
10 in a significant manner or something other?

11      A    Yes.

12      Q    When you say "yes", are we talking about significant or  
13 something else?

14      A    Significant.

15      Q    Now, there was also orthopedic tests done, the  
16 Milgram's. Can you tell us what specifically is the Milgram's  
17 test?

18      A    Pain is elicited with a valsalva type maneuver where  
19 breath is held down the lumbar area.

20      Q    What is the valsalva maneuver, for the jury?

21      A    Holding one's breath and pushing.

22      Q    What is the pushing coming from?

23      A    Increases the intraabdominal pressure causing more  
24 pressure on the nerve roots.

25      Q    We're talking about the nerve roots on the lower back

1 and lumbar area, correct?

2 A Yes.

3 Q Now, you also said deep tendon reflexes were tested,  
4 correct?

5 A Yes.

6 Q What were the findings with regard to that test?

7 A They were reported as diminished.

8 Q Is that a subjective or objective result?

9 A Objective.

10 Q And when you say "objective", is that something that  
11 someone can fake the result, or is it something that exists  
12 because of the injury?

13 A It is a difficult -- reflex is difficult to fake. It  
14 is a reaction to a deep tendon stretch from a reflex hammer.

15 Q Did you see, during the course of your examination, at  
16 any point any type of actions by the plaintiff that would  
17 indicate to you that he was a malingeringer in any manner?

18 MR. CRAVEN: Objection. It is a leading question.

19 THE COURT: Overruled.

20 A I didn't see any evidence of that.

21 Q Can you explain to the jury what a malingeringer is?

22 A Someone who exaggerates their symptoms and makes more  
23 of them that naturally exist.

24 Q You didn't see any of that with regard to your  
25 examination?

1       A    I typically will give a patient the benefit of the  
2 doubt and try to record the complaints and their problems as  
3 they report them to me without trying to overly interpret their  
4 motives or any other issues. I write down and record what is  
5 told to me.

6       Q    As a result of the history taken and your examinations  
7 and objective findings, did you have any type of diagnoses  
8 rendered as a result of this first initial examination of  
9 Mr. Zhang on May 7, 2017?

10      A    Lumbar myofascitis with radiculopathy, traumatic  
11 paracervical myofascitis with radiculitis and internal  
12 derangement of left shoulder.

13      Q    At that point did you recommend any type of treatment  
14 for Mr. Zhang?

15      A    I believe physical therapy was instituted.

16      Q    What modalities of therapy were instituted from that  
17 date, the day after the subject accident?

18      A    Range of motion, heat, probably TENS unit. Acupuncture  
19 was done.

20      Q    Did the treatment begin on that date or the following  
21 day or some other day?

22      A    It looks like that date, 5/7 is the first PT therapy  
23 note here.

24      Q    Were there any restrictions and recommendations by you  
25 to Mr. Zhang with regards to his activities?

1 || A None that I-- One second.

2 || (Short pause)

3 A Daily living modifications, avoid heavy lifting,  
4 bending, straining, prolonged sitting were recommendations given  
5 that day.

6 Q Now, you have in your records also the dates from which  
7 Mr. Zhang had treated with Triborough?

8           A       I have some of the therapy notes, there were quite a  
9 few of them.

10 Q Can you tell us-- you already told us the beginning  
11 date was May 7, 2013. Did that treatment continue into June of  
12 2013?

13           A     If the record indicates. I don't have all the therapy  
14 records with me.

15 MR. ZOHAR: Your Honor, if I may.

16 MR. CRAVEN: Can we approach?

17 THE COURT: Yes.

18 (Whereupon, an off the record bench conference  
19 took place.)

20 MR. CRAVEN: We're going to mark those for I.D.

21 THE COURT: We'll mark them for I.D.

22 (Whereupon, the PT notes were marked as  
23 Plaintiff's Exhibit 9 for identification by the  
24 reporter.)

25 THE COURT OFFICER: Plaintiff's Exhibit 9 marked

1 for I.D. only and being shown to the witness.

2 (Handing)

3 Q What you have before you, besides the documents you  
4 brought with you, Plaintiff's identification number 9. First of  
5 all, does that refresh your recollection as to the dates of  
6 service?

7 A Yes.

8 Q Okay. Is that part of the file from Triborough  
9 Orthopedics and Sports Medicine with regard to Mr. Zhang?

10 A Yes, these are physical therapy notes written by the  
11 physical therapist.

12 Q And those physical therapists are part of the facility,  
13 Triborough Orthopedics and Sports Medicine?

14 A Indirectly.

15 Q They're the ones for which you oversee all the  
16 treatment that Mr. Zhang undertakes?

17 A Yes.

18 Q They're the ones that you direct the type of therapy to  
19 could be conducted and the initial script of what should be  
20 done?

21 A Yes.

22 MR. ZOHAR: Your Honor, we're going to ask to have  
23 both the records that Dr. Dowd had presented and  
24 Plaintiff's Exhibit 9 submitted into evidence.

25 MR. CRAVEN: I just have a couple of questions.

1 THE COURT: Sure.

## 2 || VOIR DIRE EXAMINATION

3 | BY MR. CRAVEN:

4 Q Do you know if those are the full and complete physical  
5 therapy records?

6 A If this is --

7 Q Do you know if those are the full and complete physical  
8 therapy records?

9 A Full and complete, I don't know that.

10 Q Have you ever seen those records before?

11 A Yes.

12 Q When did you see them?

13 A This morning.

14 Q This morning?

15 A Right.

16 Q You saw all of those records this morning?

17 A I reviewed a whole bunch of physical therapy notes but  
18 didn't carry them all with me because it was pretty heavy, so I  
19 looked them over this morning.

Q Were there more notes than what is there in your hand?

21 A I don't know. I didn't count these.

22 Q This morning is the first time you looked at any of  
23 those physical therapy notes?

24 A Since 2013, yeah.

25 || Q When in 2013 did you look at the physical therapy

1 notes?

2 A When? Around the time that I saw the patient, I  
3 presume. I don't have a recollection of 2013 events, to be  
4 honest.

5 Q You only saw him on the 7th of May, correct?

6 A That is what the records appear to show.

7 Q So if you looked at the records when you saw him, then  
8 you did not see any of those records; is that correct?

9 A I don't know how many times I saw him. I'm looking at  
10 a chart in front of me and that is all I could comment on.

11 Q Do you have any recollection of seeing him?

12 A No recollection of him whatsoever.

13 Q Okay. Do you have any recollection of ever seeing any  
14 of those records besides this morning?

15 A Like I said from this morning, I reviewed them this  
16 morning.

17 Q So you did not rely upon any of those records other  
18 than to testify today, correct?

19 A What is the question?

20 Q You did not rely upon any of those records in  
21 connection with this individual other than to testify today; is  
22 that correct?

23 A When you say "rely upon the records", what do you mean  
24 by "rely upon the records"?

25 Q You didn't see them in any of your treatment with him

1 because you only saw him on the 7th of May, correct?

2 A Right. These are the physical therapy notes, not my  
3 notes.

4 MR. CRAVEN: I object. They are not his notes and  
5 he has never seen them before.

6 THE COURT: Are they part of the file?

7 Q Doctor, are those records part of the file maintained  
8 for Mr. Gong Ming Zhang?

9 A Yes.

10 THE COURT: They're in evidence as a supplemental.

11 MR. CRAVEN: Even though we don't know if they are  
12 full and complete, your Honor?

13 THE COURT: Well, the other ones weren't complete  
14 either.

15 MR. CRAVEN: I understand.

16 THE COURT: This completes the supplements.

17 MR. CRAVEN: Right, but--

18 THE COURT: They are kept in the ordinary course?  
19 Are these kept in the ordinary course of business in your  
20 practice?

21 THE WITNESS: Yes, kept in the chart.

22 THE COURT: And you rely on this?

23 THE WITNESS: Yes.

24 THE COURT: For your treatment and diagnosis of  
25 this patient?

1                   THE WITNESS: Yes.

2                   THE COURT: Okay.

3                   MR. CRAVEN: Your Honor, he respectfully said he  
4 did not rely upon them because he never saw them.

5                   THE COURT: They're medical records, they're  
6 admissible and that's my ruling. You have your objection.  
7 Thank you.

8                   (Whereupon, the records were marked as  
9 Plaintiff's Exhibit 9 in evidence by the reporter.)

10                  MR. ZOHAR: To be included within the doctor's  
11 records with regards to Mr. Zhang and also the notes and  
12 documents he had brought with him today, your Honor.

13                  MR. CRAVEN: I don't know what notes he is  
14 referring to.

15                  THE COURT: You have to give counsel before.

16                  MR. ZOHAR: I did, your Honor.

17                  MR. CRAVEN: I saw them but I don't know which  
18 notes he's referring to.

19                  MR. ZOHAR: Your Honor, the same ones I showed him  
20 before we came in.

21                  THE COURT: Let him look at them.

22                  (Handing)

23                  MR. CRAVEN: That's fine, your Honor.

24                  THE COURT: Okay. Those will go into evidence.

25                  MR. CRAVEN: Your Honor, I object to the witness

1 having the piece of paper in front of him, it is not in  
2 evidence.

3 THE COURT: What piece of paper is that?

4 MR. CRAVEN: I believe it is notes he made this  
5 morning.

6 THE COURT: Okay.

7 MR. ZOHAR: These are not notes from this morning,  
8 they are notes with regard to Mr. Zhang and not from today,  
9 but they're part of that record that we're having admitted  
10 into evidence.

11 THE COURT: If he needs them to refresh his  
12 recollection.

13 MR. ZOHAR: For that purpose only.

14 THE COURT: Okay.

15 MR. CRAVEN: May we approach so you could look at  
16 the document?

17 THE COURT: Okay.

18 (Whereupon, an off the record bench conference  
19 took place.)

20 (Whereupon, the item was marked as Plaintiff's  
21 Exhibit 10 in evidence by the reporter.)

22 Q Mr. Dowd, you could take a look to refresh your  
23 recollection in the notes and what's been marked as Plaintiff's  
24 Exhibit 10, which are the Triborough records with regard to  
25 Mr. Zhang, are there any records that reflect dates that

1 actually treatment was rendered?

2 A Are there records with dates that reflect treatment?

3 Q Yes.

4 A Yes.

5 Q And again, you could review those.

6 By looking at those records -- of all, can you tell us  
7 what the first date was that there was treatment rendered to  
8 Mr. Zhang following the subject accident?

9 A The first physical therapy note is 5/7.

10 Q Did the physical therapy treatment extend into June of  
11 2013?

12 A Yes.

13 Q Did that physical therapy treatment for Mr. Zhang also  
14 extend into July of 2013?

15 A Yes.

16 Q In August of 2013?

17 A Yes.

18 Q Into September of 2013?

19 A Yes.

20 Q Into October of 2013?

21 A Yes.

22 Q Thank you.

23 And were there other modalities other than physical  
24 therapy that were rendered at Triborough Orthopedics to  
25 Mr. Zhang as a record of the accident that was sustained, the

1       injuries?

2       A     There was acupuncture, but the acupuncture treatment is  
3       not part of Triborough Orthopedics.

4       Q     Was there any type of chiropractic treatment rendered  
5       to Mr. Zhang as a result of these injuries?

6       A     Similarly, that is another entity rendered to him, not  
7       part of Triborough Orthopedics.

8       Q     At some point was Mr. Zhang referred to an orthopedist  
9       with regard to the complaints that he had communicated to you  
10      and for which he was receiving treatment at Triborough  
11      Orthopedics--

12                    MR. CRAVEN: Objection.

13                    Q     -- from the accident of May 6, 2013?

14                    THE COURT: Overruled.

15                    A     Yes.

16                    Q     And who would that orthopedic doctor be?

17                    A     I don't have the spelling of his name, it is a spine  
18       specialist.

19                    Q     And if I said Dr. Merola, would that refresh your  
20       recollection?

21                    A     Yes.

22                    Q     As a result of that referral from Triborough, and are  
23       you aware of any type of procedures that were conducted upon  
24       Mr. Zhang?

25                    MR. CRAVEN: Objection, your Honor.

1 THE COURT: Overruled.

2 MR. CRAVEN: May we approach?

3 THE COURT: Yes.

4 (Whereupon, an off the record bench conference  
5 took place.)

6 Q Are you familiar with any type of operative procedure  
7 that had been conducted on Mr. Zhang?

8 A He had a lumbar fusion.

9 Q How did you become aware of that?

## 10 A The history given to me.

11 Q Now, since 2013, and you said the last physical therapy  
12 type of treatment rendered from Triborough was in October of  
13 2013, had you seen Mr. Zhang from that point until today?

14 A No. Yesterday.

15 Q Okay. And what was the purpose of you seeing Mr. Zhang  
16 yesterday?

## 17 A Final evaluation.

18 Q And had you conducted or can you elicit in what manner  
19 you conducted this final examination?

20 MR. CRAVEN: I'm going to object. We were not on  
21 notice of this and I do not have a report of this.

22 MR. ZOHAR: Or I.

25 || MR. ZOHAR: Okay.

1                   THE COURT: Ladies and gentlemen, we need to solve  
2 some legal issues here. We're going to take a ten-minute  
3 break. Please don't discuss the case among yourselves or  
4 with anyone else, okay? See you in a few minutes.

5                   THE COURT OFFICER: All rise. Jury exiting.

6                   (Whereupon, the jury exited the courtroom and the  
7 following occurred:)

8                   THE COURT: Please be seated.

9                   So you had the interview yesterday?

10                  MR. ZOHAR: Correct.

11                  THE COURT: And he did a full examination?

12                  MR. ZOHAR: I don't know what the full extent of  
13 the examination was.

14                  THE COURT: You sent him for it.

15                  MR. ZOHAR: He asked that he would like to see him  
16 before he comes in to testify. We had him go there and the  
17 first page, which has the date yesterday that this was  
18 conducted and those findings. All, everything was provided  
19 to counsel before we came in this morning.

20                  THE COURT: Is that the extent of his notes?

21                  MR. ZOHAR: From my understanding, yes, that's it.

22                  THE COURT: Okay. That was--

23                  MR. CRAVEN: Your Honor, he did not prepare a  
24 report. That was not given to me. I asked to see his full  
25 record. I can't even read his scribble, so I don't know

1 what that is and it would be improper.

2 MR. ZOHAR: Your Honor--

3 MR. CRAVEN: It was not disclosed that he was even  
4 seen yesterday until testimony.

5 MR. ZOHAR: Counsel just said he doesn't even read  
6 the scribble. He went there. It has on the top right, the  
7 date, which was yesterday. It has age, it has the date of  
8 accident, it has the location with regard to surgery, it  
9 has degrees and findings, so I don't understand when he  
10 said he couldn't read these things. He read things on here  
11 before this, that statement.

12 THE COURT: You have to talk to the doctor to find  
13 out if there is anything else.

14 MR. ZOHAR: Yes, your Honor, of course.

15 THE COURT: You have to disclose it to counsel.  
16 Why don't you do that now?

17 MR. ZOHAR: This is it and I provided--

18 THE COURT: I don't know if it was transcribed  
19 into a written report.

20 MR. CRAVEN: Even if he did it, it should have  
21 been, so I have a copy of a transcription, not just  
22 scribbled notes on a piece of paper.

23 THE COURT: If that is all that exists, that is  
24 all that exists. We have to find out. We'll take our  
25 break now.

1 MR. CRAVEN: Before we do that, your Honor, some  
2 of the records that were admitted, I believe, should be  
3 taken out. One of the records that was admitted was  
4 acupuncture records where he testified --

5 MR. ZOHAR: No problem.

6 THE COURT: We'll redact those then.

7 MR. CRAVEN: Just pull them out.

10 THE COURT: Okay, I will hear argument.

16 MR. ZOHAR: Correct.

1 MR. ZOHAR: Your Honor, there is no report for  
2 which he was prejudiced and did not receive. The document  
3 and sole document, which has the date there and the  
4 document was available.

5 THE COURT: What is the purpose of waiting so long  
6 during the trial, to ambush the defendant?

7 MR. ZOHAR: No, to make sure, by no means--

10 MR. ZOHAR: My request was put in a week ago and  
11 they were not, for whatever reason, not conducted until  
12 yesterday. But my request is even months ago, a month plus  
13 ago, and they had not been able to get the client.

14 THE COURT: What do you intend to prove from this  
15 examination of yesterday?

16 MR. ZOHAR: Nothing; that he saw the client, that  
17 he took in its numerical value, which I will question him  
18 about his findings. That's it. And there is no report.

19 THE COURT: You want to prove that the condition  
20 was permanent? That's the only purpose for eliciting the  
21 exam, so he knows what he is talking about, not that he saw  
22 him four and a half years ago.

23 MR. ZOHAR: Absolutely, your Honor. Comment to  
24 have a doctor see a patient and sometimes there is no  
25 report ever that is made, especially when it is this -- it

1           would be prejudicial for me to bring in some type of  
2           thorough report at this last minute without providing it,  
3           but this was provided before he came up to the stand. I  
4           even introduced--

5           THE COURT: I will let him testify as to the  
6           examination, but not as numerical findings. He could  
7           testify in general, but not as to the numerical finding.

8           MR. ZOHAR: That's fine.

9           THE COURT: Okay. His general condition from the  
10          time he saw him till now, that is it. You can't bring in  
11          this prejudicial and you have to disclose it.

12          MR. ZOHAR: Your Honor, this is disclosing as soon  
13          as we are aware of it, your Honor.

14          THE COURT: It happened yesterday, it must have  
15          been planned before. These things don't happen unless you  
16          cause them to happen and they are caused to happen for a  
17          legal result. It is not just that he wasn't feeling well  
18          and he wanted this doctor. That would have been different,  
19          but it is for a legal result. That is my ruling.

20          MR. CRAVEN: Just so--

21          MR. ZOHAR: Note our exception, your Honor. It is  
22          specifically, since I know for a fact that, first of all,  
23          we don't communicate directly with this individual. We  
24          have individuals that speak his language and are able to  
25          assist and communicating, assist in whatever it is, and

1 from my understanding he had been taken to the doctor  
2 before and was not able to have been examined, and I, soon  
3 as I receive that notification and in advance of coming  
4 into this court this morning to render any testimony  
5 advised these are the records, this is the date he saw  
6 Mr. Dowd-- Dr. Dowd beforehand. This wasn't something that  
7 we kept apart or hidden in any manner.

8 THE COURT: You didn't inform him of any of your  
9 actions, okay?

10 MR. ZOHAR: Note our exception, your Honor.

11 MR. CRAVEN: Just to be clear, when you say he  
12 cannot talk about the numeric findings, is he allowed to  
13 talk about the range of motion at all?

14 THE COURT: Only in general.

15 MR. CRAVEN: Thank you.

16 THE COURT: Not as to the numerical findings.

17 MR. CRAVEN: Thank you.

18 MR. ZOHAR: Thank you, your Honor.

19 THE COURT: You want to instruct your witness? I  
20 think he heard everything.

21 THE WITNESS: No numerical information.

22 THE COURT: Right.

23 MR. CRAVEN: Thank you, your Honor.

24 THE COURT: Bring the jury down.

25 MR. ZOHAR: It is just part of it to refresh your

1                   recollection, that is all it is.

2                   THE COURT: If they're going to be transcribed,  
3                   they have to be immediately forwarded to defense counsel.

4                   MR. ZOHAR: Under the circumstances that were  
5                   being told that we can't use any of these things, we're not  
6                   asking for a report and not paying for a report, your  
7                   Honor, especially under the circumstances of this ruling.

8                   THE COURT: Whatever report he is doing or his  
9                   notes are transcribed, they're not going to stay like this,  
10                  they are transcribed into some sort of form. Doctors  
11                  usually dictate and they're transcribed.

12                  MR. ZOHAR: We're going to ask that the Court give  
13                  the same direction to counsel, to not use any type of  
14                  numerical values of any kind; not to say anything other  
15                  than generalities with regard to that; and under the  
16                  circumstances they're not admitted into evidence, we're  
17                  going to object to them not only provided, because they  
18                  will not be brought into evidence, but to be commented in  
19                  any manner since they're not going to be in evidence under  
20                  any circumstance.

21                  THE COURT: The document with the numeric  
22                  findings, his notes, okay.

23                  MR. CRAVEN: Which is not in evidence.

24                  THE COURT: Not in evidence.

25                  MR. ZOHAR: Correct. Correct.

1 MR. CRAVEN: Okay.

2 (Whereupon, the jury entered the courtroom and the  
3 following occurred:)

4 THE COURT OFFICER: All rise. Jury entering.

5 THE COURT: Please be seated.

6 Dr. Dowd, you could resume the stand.

7 (Witness complies)

8           Q     Before, Doctor, I asked you about yesterday's  
9 examination, which you conducted of Mr. Zhang, I want you to  
10 just answer this question with regard to, based upon your  
11 examination of Mr. Zhang, conducted after the accident of May 6,  
12 2013, based upon the records which are in evidence with regard  
13 to the treatment, within a reasonable degree of medical  
14 certainty, have the injuries that Mr. Zhang sustained prevented  
15 him from conducting his usual activities in the function of a  
16 delivery person that deals with packages, lifts, stays in the  
17 car for long periods of time?

18 MR. CRAVEN: Objection. Calls for pure  
19 speculation, your Honor.

20 THE COURT: Sustained.

21 MR. ZOHAR: May we approach?

22 THE COURT: Yes.

23 (Whereupon, an off the record bench conference  
24 took place.)

25 || MR. ZOHAR: If we could have the question read

1 back?

2 (Whereupon, the reporter read back the previous  
3 question.)

4 MR. ZOHAR: I will withdraw that because I did not  
5 state the exam that he conducted that I'm referring to.

6 Q Based upon your examination following this accident in  
7 May of 2013, we're talking about May 7, 2013 where you gave the  
8 jury those objective findings with regard to range of motion--

9 MR. CRAVEN: Objection, your Honor. That is not  
10 the testimony. He specifically testified that the range of  
11 motion was subjective, not objective.

12 THE COURT: Okay. Sustained.

13 Q Doctor, we're talking about the exam of May 7, 2013  
14 where there is ranges of motion that you took of the plaintiff  
15 that showed significant reduction in that range of motion. You  
16 recall that exam?

17 A Yes.

18 Q Based upon your examination and those instructions that  
19 you had given the plaintiff, and now knowing, and he's already  
20 testified to his inability to drive, as he did beforehand with  
21 regard to work, to lift, bend, sit for prolonged periods, within  
22 a reasonable degree of medical certainty, are the injuries a  
23 competent cause for his inability to carry out his usual duties  
24 in his capacity as a driver for this restaurant supply company?

25 A Yes.

1 MR. CRAVEN: Objection, calls for speculation.

2 THE COURT: It is sustained. You have to have a  
3 time period, you know, a year, and month.

4 Q The testimony that Mr. Zhang had testified was that he  
5 missed approximately four months. He said, two times he said  
6 more than three months, approximately four months and I think it  
7 was read in the deposition approximately four to five months  
8 immediately following the May 6, 2013, accident; he was  
9 incapable of carrying out his work and did not go and work at  
10 all for that time period. Within a reasonable degree of medical  
11 certainty, and based upon your records of treatment, your exam  
12 of May 7, 2013, are you able to say, within a reasonable degree  
13 of medical certainty if the injuries sustained of that May 6,  
14 2013 accident were a competent cause for his inability to carry  
15 out his usual duties during that period of time that he was out  
16 of work?

22 THE COURT: He would have to review the records.

23 Q Those records are before you, correct?

24 A Yes.

25 || Q In going all the way to the treatment of October of

1 2013, well encompassing this 3 to 5-month period, would that be  
2 correct?

3 A There would be notes going through October.

4 Q Based upon those records that cover this period of time  
5 that I'm talking about, within a reasonable degree of medical  
6 certainty, are the injuries sustained in that May 6, 2013  
7 accident a competent cause for the plaintiff's inability to  
8 carry out those functions that he has described and testified to  
9 necessary to work in his capacity as a driver for this  
10 restaurant company?

11 A Yes.

12 MR. CRAVEN: Objection. Calls for speculation.

13 THE COURT: Overruled.

14 MR. CRAVEN: May we approach?

15 THE COURT: Yes.

16 (Whereupon, an off the record bench conference  
17 took place.)

18 MR. CRAVEN: I withdraw my objection.

19 Q Go ahead.

20 A Yes.

21 Q Now, getting back. You have the records before you.  
22 You saw Mr. Zhang yesterday, correct?

23 A Correct.

24 Q And was that to be done so you'll be able to--

25 MR. CRAVEN: Objection, your Honor. Calls for--

1                   it is a leading question.

2                   THE COURT: Sustained.

3           Q     What is the purpose of you examining Mr. Zhang  
4 yesterday?

5           A     Final evaluation.

6           Q     What is that?

7           A     It is called a final evaluation.

8           Q     And why would that be necessary for you, as you sit  
9 here today?

10          A     They're done at the request of attorneys, typically.

11          Q     And why would that be important to you as you sit here  
12 and testify before this jury?

13          A     Why is a final important?

14          Q     To have seen the client recently?

15          A     More of a legal question, I think. Why would the final  
16 examination four years later be useful? It would be useful for  
17 the legal ramifications of the injury, given that the treatment  
18 has ended long ago.

19          Q     Did you examine him yesterday, Mr. Zhang?

20          A     Yes.

21          Q     And based upon your examination, did you find, and  
22 again, within a reasonable degree of medical certainty, did you  
23 find any type of limitations, significant limitation with regard  
24 to Mr. Zhang?

25          A     Yes.

1           Q     And this significant limitation that you found as of  
2 yesterday, is it the type of limitation that is of consequence,  
3 consequential to an individual, such as Mr. Zhang, functioning  
4 with regards to his lumbar spine, his lower back?

5                   MR. CRAVEN: Objection, your Honor. Calls for a  
6 legal conclusion.

7                   THE COURT: Overruled.

8           A     Yes.

9           Q     And now, you would agree that this accident we're  
10 talking about, almost approaching five years, are those findings  
11 that you had, of a significant limitation in, and one of the  
12 consequential limitations of the permanent nature?

13          A     Yes. If they're restricted five years later, one  
14 presumes it is permanent.

15          Q     Is that based upon a reasonable degree of medical  
16 certainty?

17          A     Yes.

18                   MR. ZOHAR: Nothing further, your Honor.

19                   THE COURT: Okay. Cross-examination.

20                   CROSS EXAMINATION

21                   BY MR. CRAVEN:

22          Q     Good morning, Dr. Dowd. How are you today?

23          A     Good morning.

24          Q     Good morning, Dr. Dowd. How are you today?

25          A     Good morning.

1 Q Doctor, November of 2006 you agree you committed  
2 professional misconduct; is that true?

3 A I agreed to a consent order, that's what you are  
4 referring to?

5 || Q Yes.

6 A There was a consent order that was agreed to, yes.

7 Q A consent is an agreement, correct?

8 || A Yes.

9 MR. ZOHAR: Your Honor, can we approach?

10 Q You agreed you committed professional misconduct?

11 A No, it is not what I agreed to.

12 (Whereupon, an off the record bench conference  
13 took place.)

14 Q So getting back to my question, back in November of  
15 2006, you agreed you committed professional misconduct; is that  
16 true?

17 MR. ZOHAR: Objection. Asked and answered.

18 THE COURT: Overruled.

19 A I agreed to a consent order. The details are in front  
20 of you. I haven't read it in ten years so I can't answer it  
21 accurately.

22 Q Are you telling this jury you don't remember if you  
23 committed professional misconduct?

24 A I remember signing the consent order. I don't know the  
25 details. It is written in the consent order exactly what I was

1 signing. You could read it yourself, if you would like since it  
2 is public record.

3 MR. CRAVEN: All right. Your Honor, may I mark  
4 this for identification?

5 THE COURT: You could mark it for I.D.

6 (Whereupon, the consent order was marked as  
7 Defendant's Exhibit A for identification by the  
8 reporter.)

9 THE COURT OFFICER: Defendant's A marked for I.D.  
10 only.

11 (Handing)

12 Q Doctor, take a look at document. Does it refresh your  
13 recollection as to whether or not you admitted to committing  
14 professional misconduct?

15 A The consent order was to agree to a period of  
16 probation, a fine and other issues, in lieu of a trial or a  
17 continuation of any other court appearance, so that is what was  
18 signed, called a consent order and it is in front of you.

19 Q Based on 21 specific charges of professional  
20 misconduct?

21 A Charges, and only one, if you read it carefully. There  
22 was one issue in there that we agreed to that I signed to, not  
23 21, 1 that could not be proven, could not be disproven, rather,  
24 excuse me.

25 Q Well, that included misconduct involving failure to

1 maintain accurate records, correct?

2 A No.

3 Q No?

4 A Those are charges. There is only one charge that we  
5 signed the consent order for.

6 Q Well, isn't it true, Doctor, there were multiple  
7 charges?

8 A Charges are charges.

9 Q Isn't it true, Doctor--

10 A As you know, charges are charges.

11 Q Is it true, Doctor--

12 A Until proven.

13 Q Doctor, you testified before, correct?

14 A Yes.

15 Q And you know how this works. I ask the question, you  
16 give answer and we don't talk over one another because it makes  
17 the court reporter's job difficult, right? You understand that,  
18 correct?

19 A Yes.

20 Q All right. Isn't it true that you said that you could  
21 not successfully defend at least one of the acts of misconduct?

22 A That is true and that is what I said before, one out of  
23 21.

24 Q There is a difference between saying you are only  
25 agreeing to one out of 21 than saying you can't defend against

1 at least one of them, correct?

2 A Perhaps you would read it.

3 Q I will.

4 A Why don't you do that?

5 Q Is that a full and accurate copy of the consent?

6 A Yes.

7 MR. CRAVEN: Your Honor, I move that into  
8 evidence.

9 MR. ZOHAR: I'm going to object to an item such as  
10 this.

11 THE COURT: It doesn't belong. It doesn't go in  
12 evidence. You could examine him, but it does not go into  
13 evidence.

14 MR. ZOHAR: Thank you very much.

15 Q Initially your license was suspended for three years,  
16 correct?

17 A Wrong.

18 Q Your license was not suspended for three years?

19 A No, it was not.

20 Q You want to take a look at that document?

21 A I know my license, I don't have to take a look at it.

22 Q Page 1 of that document. Can you read it?

23 A You could read it.

24 MR. ZOHAR: Objection.

25 Q Is it true--

1           A    Am I on trial? What is going on here?

2                   THE COURT: It is not in evidence. You can't read  
3                   from it.

4           Q    Isn't it true that pursuant to New York Public Health  
5                   Law Section 230A A sub 2, your license to practice medicine in  
6                   the State of New York was suspended for 36 months?

7                   MR. ZOHAR: Objection.

8           Q    Isn't that true?

9                   THE COURT: Overruled.

10          A    Wrong, no.

11          Q    You want to take a look at that and see if it refreshes  
12                   your recollection?

13          A    Does it say entirely stayed, yes or no? That is what  
14                   it says, so it was not suspending. I am answering your  
15                   question.

16                   THE COURT: It was suspended but stayed and he  
17                   paid a fine.

18          A    Thank you, sir. That is enough.

19          Q    Well, I think the jury is entitled to know what the  
20                   penalties for your misconduct were, don't you, Doctor?

21          A    I don't think it is relevant to Mr. Zhang's medical  
22                   care.

23          Q    It is relevant to your credibility, you would agree  
24                   with that?

25          A    I don't agree with it.

1 Q And in addition to your license being suspended--

2 A It was not suspended. Can we stop this? It was not  
3 suspended.

4 Q And then stayed?

5 MR. ZOHAR: Your Honor, there is an objection.

6 Again--

7 THE COURT: Overruled.

8 Q In addition to your license being suspended and then  
9 stayed, you did probation?

10 A There was probation, yes.

11 Q And in addition to the probation you had to pay \$30,000  
12 in fines; is that correct?

13 A That's correct.

14 Q In 2001 you submitted to the New York State Board for  
15 your license registration to be renewed, correct?

16 A I presume so.

17 Q And you failed to not provide the State of New York  
18 with your prior criminal convictions, correct?

19 MR. ZOHAR: Objection, your Honor.

20 A This is--

21 MR. ZOHAR: Just directed by the Court. It is  
22 highly prejudicial. I'm talking.

23 THE COURT: It is stricken from the record.

24 MR. ZOHAR: Can we approach?

25 THE COURT: The jury will disregard any mention of

1                   it.

2                   MR. ZOHAR: Can we approach, your Honor?

3                   (Whereupon, an off the record bench conference  
4                   took place.)

5                   Q     In the interest of time I'm going to ask you blanket  
6                   questions as opposed to about each individual violation. You  
7                   understand that?

8                   A     Yeah.

9                   Q     All right. So isn't it true that to multiple entities,  
10                   the State of New York and various hospitals, you lied on your  
11                   application?

12                  A     No.

13                  MR. ZOHAR: Objection, your Honor.

14                  THE WITNESS: You know, I'm going-- I'm not going  
15                  to stay much longer. I have office hours at 1.

16                  THE COURT: You are required to stay here.

17                  THE WITNESS: I have patients waiting for me.

18                  THE COURT: You are required to stay here. You  
19                  can't leave.

20                  MR. CRAVEN: Can I have the question read back? I  
21                  don't think there was an answer.

22                  A     What is the question?

23                  (Whereupon, the reporter read back the requested  
24                  testimony.)

25                  Q     Isn't it true that you lied on those applications and

1 you did so knowingly and with intent to deceive?

2 A There was no intent. There was an error. The issue  
3 was was there a misdemeanor? Which was answered no, and there  
4 was a misdemeanor and it was checked off as no, and it was  
5 actually a misdemeanor. That is the essence of the error and  
6 that is why the consent order was signed.

7 Q You were asked specifically if there was any  
8 misdemeanors and you said no, which is false, correct?

9 A Correct.

10 Q You did that to the State of New York, as well as  
11 multiple hospitals?

12 A That is correct.

13 Q And then isn't it true that you were treating a patient  
14 in August of 2005, specifically from August 29, 2005 to  
15 September 16th of 2005 and you failed to maintain records that  
16 accurately reflected the care and treatment of that patient?

17 A I don't have a comment. I don't know.

18 Q If you look at the consent agreement, would that  
19 refresh your recollection?

20 A Maybe.

21 Q Please do that then.

22 A I don't think so. I don't know which patient you are  
23 referring to.

24 Q All right. Look at page 2 of the statement of charges.  
25 It is Exhibit A, if that helps you.

1 (Witness complies)

2 A Okay. What is the point?

3 || Q You see page 2?

4 || A Yes.

5 Q You see paragraph F?

6 A No, I don't see it.

7 MR. CRAVEN: May I approach, your Honor?

8 A Yes, I see it.

9 Q All right. Please read through paragraph F to  
10 yourself.

11 (Witness complies)

12 Q He can't help you, Doctor.

13 MR. ZOHAR: Your Honor, we're going to ask that  
14 that be stricken and an instruction to be given to those  
15 kind of comments by counsel.

16 THE COURT: No comments.

17 A You want me to read it. I read it.

## 18 Q To yourself?

19 A I did.

20 Q Does that refresh your recollection that you failed to  
21 maintain proper records?

22 A Yes. That was another charge, that was not proven, by  
23 the way. It was only one thing that was a charge that could not  
24 be refuted that I signed the consent for. These were a list of  
25 all the charges that were in there. They were unproven at the

1 time of the signature.

2 Q You done?

3 A Yeah.

4 Q Okay. Doctor, isn't it true in November of 2013 you  
5 conducted an examination of, we'll call the patient B and that  
6 you knowingly and intentionally prepared and submitted a report  
7 of this examination that was false and did not accurately report  
8 the nature and scope of the examination?

9 A Don't recall anything of the sort.

10 Q Look at page 3.

11 A 2013 was seven years after this document.

12 THE COURT: You are making a mistake.

13 A Yes, this document.

14 THE COURT: You have another--

15 A This is 2006. You are asking about 2013.

16 Q Right. I'm looking at page 3.

17 A This was a 2006 consent order.

18 Q Right.

19 A How is this consent--

20 Q This consent order was entered into in November of 2006  
21 based on things that happen before November of 2006?

22 A And you are talking about 2013.

23 MR. ZOHAR: Did I say 13?

24 A Yes.

25 THE WITNESS: Your Honor, by the way, your Honor,

1                   that is after 2006 by eight years.

2                   THE COURT: I know and he is mistaken.

3                   MR. CRAVEN: I apologize. November of 3, 2003 I'm  
4                   referring to. My apologies of the miss date.

5                   Q     So in November of 2003 you saw Patient B and prepared  
6                   and submitted a report of that examination that was false and  
7                   did not accurately report the nature and scope of the  
8                   examination; is that true?

9                   A     Another charge unproven.

10                  Q     And you did that with the intent to mislead the  
11                  recipient?

12                  A     I did not. This charge remains unproven.

13                  Q     Again, in November of 2003 you saw patients who we will  
14                  call Patient C, isn't it true you prepared and submitted a  
15                  report of Patient C which you knew to be false and did not  
16                  accurately report the nature and scope of that evaluation?

17                  A     No.

18                  Q     And isn't it true that you prepared that report with  
19                  the intent to mislead the recipient of that report?

20                  A     Wrong.

21                  Q     And then in October-- strike that. In September of 3,  
22                  2003--

23                  MR. ZOHAR: Objection.

24                  THE COURT: I think.

25                  THE WITNESS: Is this going to go on?

1                   THE COURT: You don't have to go into all 21 and  
2 now you're going into each one.

3                   MR. CRAVEN: That was going to be my last one, the  
4 last one.

5                   Q    Isn't it true that in September of 2003 you saw a  
6 Patient D and that you knowingly and intentionally prepared and  
7 submitted a report of the examination which you knew to be false  
8 and did not accurately report the nature and scope of the  
9 examination?

10                  A    No.

11                  Q    Isn't it true that report that you submitted, you did  
12 so with the intent to mislead the recipients of that report?

13                  A    Did not.

14                  Q    That was part and parcel of that consent order for  
15 which your license was affected and you paid a \$30,000 fine,  
16 correct?

17                  A    Wrong.

18                  Q    That wasn't part and parcel?

19                  A    That was a charge that remained unproven. I said it  
20 before and I said it about six times now, charges are -- excuse  
21 me, sir, as you know, charges are different than convictions.

22                  Q    Sure. The only reason why it wasn't proven is because  
23 you decided not to go to a trial on it and signed a consent  
24 order, where may I ask--

25                  A    Innocent until proven guilty in the U S.

1 Q And you consented that you were guilty of some things?

2 A One of the 21, and I said this many times now and you  
3 are being redundant and badgering, quite frankly.

4 THE COURT: He admitted to one of the charges.

5 His license was suspended but then they gave it back to  
6 him. He was on probation for three years and he paid a  
7 \$30,000 fine. That's it.

8 MR. CRAVEN: Thank you.

9 THE COURT: Move on to something else.

10 Q Now, concerning Mr. Zhang, you only saw him twice.  
11 Now, we've learned, right, the first time was the day after the  
12 accident on May 7, and the second time was yesterday, almost  
13 five years later?

14 A That is what the records indicate.

15 Q Do you have any reason to doubt those records?

16 A I don't.

17 Q So it is true that you only saw him twice, once the day  
18 after the accident and then once the day before you testified?

19 A The records indicate that, I don't know it to be  
20 absolutely true.

21 Q All right. And you listed your specialties when you  
22 were giving direct examination, correct?

23 A Correct.

24 Q And none of those specialties listed the spine, such as  
25 the neck and back?

1       A    Orthopedic surgeons typically treat neck and back  
2    injuries as routine.

3       Q    But none of your specialties involve the neck or the  
4    back, correct?

5       A    I treat patients with neck and back pain every day for  
6    35 years. I don't operate on the neck and back.

7       Q    When you were asked your specialties, you did not say  
8    anything about the spine?

9       A    That was subspecialties or areas of extra expertise.

10      Q    You have no idea of his condition on May 5, 2013,  
11    correct, which is the day before the accident?

12      A    I don't have-- no.

13      Q    And you specifically only know his condition as it was  
14    on the day you saw him, the day after the accident, correct?

15      A    Yes.

16      Q    And you have no personal knowledge of his condition  
17    from the day after the accident until perhaps you saw him  
18    yesterday; isn't that true?

19      A    Yes.

20      Q    And you know that he did not go to a hospital, correct?

21      A    Correct.

22      Q    You examined him, correct?

23      A    Yes.

24      Q    And you indicated that there was hyperflexion and  
25    hyperextension of the cervical and lumbar spine. What does that

1 mean?

2 A It means that his head was jerked backward and forward.

3 Q His head. Anything with the lumbar spine?

4 A Yes. Yes.

5 Q Describe what hyperflexion and extension means?

6 A If you see photos of car accidents and people's heads  
7 and their bodies get thrown forward and backwards with a  
8 whiplash type injury, that is what occurred during accidents,  
9 that is what that sentence is referring to.

10 Q So you are referring to mostly the head and neck area;  
11 is that correct?

12 A Yes. The entire body gets wrenched, as you are well  
13 aware.

14 Q Was there a hyperflexion and extension of the lumbar  
15 spine in the accident of May 6th?

16 A According to the history given, there was.

17 Q Describe for me what hyperextension of the lumbar spine  
18 is?

19 A When you lean all the way back as far as you can.

20 Q So extension is leaning back?

21 A Yes, that is hyperextension, correct.

22 Q So somebody sits in a car, they can't lean all the way  
23 back because there is a seat there?

24 A That's right.

25 Q So there would be no hyperextension?

1           A    Depends upon the way the body is bounced around.

2                   A history is written as described to me, that is what a  
3 history is, so I wasn't there. I wrote down the history that  
4 was described to me and that is what you are referring to in  
5 questioning me on. You question me on his history given to me,  
6 recorded by me. It is written.

7           Q    The history is completely subjective?

8           A    It is a history given to my by the patient since I was  
9 not in the car.

10          Q    History is completely subjective?

11          A    A factual representation given by a party.

12          Q    You have no way of verifying that history?

13          A    I do not. I do not have any way of verifying almost  
14 anything.

15          Q    And flexion, what is that?

16          A    Bending.

17          Q    Hyperflexion, what is that?

18          A    Hyper-bending.

19          Q    Hyper meaning more than?

20          A    Yes.

21          Q    More than what?

22          A    More than, I don't know. He said hyperflexion. I  
23 wrote it down.

24          Q    Mr. Zhang came to you and said he had hyperflexion in  
25 the accident?

1       A    You want to read the history there? The history is his  
2 reporting hyperextension and flexion. It is in the history.  
3 That is what he reports.

4       Q    It is your testimony that on May 7th Mr. Zhang came in  
5 and he said I have hyperextension, hyperflexion and  
6 hyperextension of my lumbar spine. That is what he told you?

7       A    Are you questioning me on what he said?

8       Q    Yes.

9       A    It is written.

10      Q    That is what the history is?

11      A    That is what he said. Nothing more I can tell you. He  
12 said it.

13      Q    So there is it no doubt in your mind that Mr. Zhang  
14 came into--

15      A    We are getting into, I believe--

16      Q    -- that he told you he had hyperflexion and  
17 hyperextension of your lumbar spine? That is your testimony?

18      A    The point is that is what is in the history given to me  
19 by the patient and recorded as such. I was not in the car and  
20 you are asking me silly questions about what is this that he is  
21 reporting. He reported it, it is written, so I don't know this  
22 line of questioning, where you are going with this. He reports  
23 it, I wrote it. Simple.

24      Q    You examined him, correct?

25      A    Yes.

1           Q    You found muscle spasm, correct?

2           A    Yes.

3           Q    Isn't it true you find muscle spasm if you had a sprain  
4 or strain of a muscle?

5           A    Yes.

6           Q    If somebody was involved in an accident, if they were  
7 just jostled around, they could have a sprain or strain,  
8 correct?

9           A    What is the question?

10          Q    I'll have her read it back if. Do don't understand it?

11          A    I don't understand it. Make it clear.

12                 THE COURT: Ask another question. He doesn't  
13 understand the question.

14          Q    Isn't it true that if somebody who is jostled about  
15 could have a strain or sprain of the cervical spine?

16          A    The answer is yes and everybody knows the answer is  
17 yes.

18          Q    Isn't it true that someone who is just simply jostled  
19 around can have a sprain or strain of the lumbar spine?

20          A    Yes, that is true, as everybody knows.

21          Q    If somebody is jostled about in a car accident and has  
22 muscle spasm the next day, it could be because they have a  
23 sprain or strain of that body part, correct?

24          A    Correct.

25          Q    You mentioned before that you did range of motion

1 testing. You did not do that with any type of tool such as a  
2 goniometer?

3 A I don't recall. It was in 2013.

4 Q If you did it, it would be in your report, right?

5 A May or may not.

6 Q Do you often leave things out that--

7 A I sometimes leave out whether a goniometer was used or  
8 not, yes.

9 Q So we don't know if these numbers that you gave were  
10 just based upon your visual observation or an actual tool used?

11 A That's correct, yes.

12 Q And range of motion, that is subjective, correct, you  
13 testified to that?

14 A Range of motion is objective.

15 Q Well, isn't range of motion within somebody's control?

16 A Yes, it is, that doesn't mean the numbers are  
17 subjective. Range of motion, the evaluation is objective.

18 Q It is objective?

19 A Yes.

20 Q Based on the history that--

21 A Based upon your-- it is a range of motion examination.  
22 It is a physical exam of your elbow; does it extend fully, does  
23 it not, so it is subjective. Objective.

24 Q I want you to look at me. Can I touch my toes?

25 A Yeah, you could touch your toes.

1           Q     And if I come to you for an exam and you tell me to  
2 bend over and touch my toes and I go down there, you write that  
3 as the number, correct?

4           A     Yes.

5           Q     So you have, it is my control as to how far I move,  
6 correct?

7           A     You can control your own movement, yes.

8           Q     So range of motion is within somebody's control,  
9 correct?

10          A     Yes.

11          Q     Therefore, it is subjective and not objective?

12          A     The written number is objective, in other words, range  
13 of motion, like anything else, if you are measuring the angle of  
14 the floor, it is an objective number. The floor doesn't move  
15 and the floor can't control its angle, so it is fixed. The  
16 patient--

17          Q     The floor can't change its angle, but a person can,  
18 right?

19          A     Yes, they can, so the -- but the evaluation or the  
20 range of motion assessment is objective, meaning that it is a  
21 number. It is a number that one measures, that means objective.

22          Q     Because you see something, and if the person says that  
23 is as far as they could move, you write that number down?

24          A     Correct.

25          Q     Okay. And then you gave certain recommendations,

1 correct?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes.

5 Q And you did not recommend that he not work, correct?

6 A Modifications, including avoiding any bending lifting  
7 straining and prolonged sitting were given.

8 Q Did you recommend that he not go to work?

9 A I don't see that I recommended that he not go to work.

10 Q You're aware his neck is fine now, right?

11 A I saw him the other day. He has some restrictions, but  
12 I'm not here to give you any numbers, according to the Judge's  
13 request.

14 Q He's not making any claims before this jury about his  
15 neck; are you aware of that?

16 A I'm not aware of your case.

17 Q You can't testify knowledgeably about any of his  
18 limitations that he had other than on the day that you saw him  
19 on May 7, 2013?

20 A Exactly.

21 Q And you have no idea what his limitations are today on  
22 February 15th, 2018, correct?

23 A I have his complaints from yesterday, if that matters.

24 Q Well, it doesn't because my question is about today.  
25 You have no idea what his limitations are, if any,

1 today, right?

2 A No. They may have changed from yesterday. You are  
3 right. Could have changed dramatically in one day.

4 Q And your examination of him yesterday, I think you said  
5 was strictly for this lawsuit, correct?

6 A Yes.

7 Q And you're aware he has not had any medical treatment  
8 whatsoever in the past four years?

9 A Yes.

10 Q Any restrictions that he did have on May 7, 2013, the  
11 day after the accident, you don't know if those persisted into  
12 May 8th, May 9th or 10th or any other time; isn't that true?

13 A Yes.

14 MR. CRAVEN: Thank you, Doctor.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MR. ZOHAR:

18 Q Doctor, defense counsel wanted to focus in on some  
19 issues with regard to the consent order and I want to ask you a  
20 few questions with regard to that.

21 Is it realistic to that, after having a consent order  
22 and agreeing to one charge, that the review of your records and  
23 your license would be at a higher scrutiny than another doctor?

24 MR. CRAVEN: Objection, your Honor. Is it  
25 realistic? I don't know what that means.

1           A    Can you clarify the question slightly?

2           Q    Would a reveal of the records following that accident  
3 be a greater capacity of review than another doctor in the same  
4 capacity?

5                            MR. CRAVEN: Objection. Beyond his expertise.

6                            THE COURT: Overruled.

7           A    Well, when you have a consent order or probationary  
8 period, hospitals and other entities will review your records  
9 very carefully to make sure that they're not inviting trouble  
10 with a doctor coming in. So that is routine. That comes with  
11 the punishment of the probation. And I have been dealing with  
12 that for a long time and there have been no events or issues  
13 since this point in time back in 1997 whatsoever. I have full  
14 privileges at two hospitals without any restrictions or any  
15 trouble, any problems or any difficulties.

16           Q    In every one of these facilities who is familiar with  
17 this, and they look it very thoroughly, has there since that  
18 time--

19                            MR. CRAVEN: Objection as to what anybody knows or  
20 doesn't know. He is making allegations that everybody  
21 knows.

22                            THE COURT: Sustained. Ask another question.

23           Q    Under this scrutiny that you just described, has there  
24 ever been any one indication in any manner with regards to your  
25 ability to maintain records properly in your capacity?

1       A    There have been no complaints, nothing verbalized,  
2 nothing submitted. There is nothing in writing. There is no  
3 hospital file. There is nothing, absolutely zero since this  
4 point in time.

5       Q    And have you maintained your license to practice and  
6 continued to maintain that license without any incident since  
7 this one event that defendant brought forward to you?

8       A    That is correct, without any incident.

9                    MR. CRAVEN: Objection. There was more than one  
10                    event.

11                    THE COURT: Overruled.

12       A    Without incident of one event since this period of  
13 time.

14       Q    Has anybody, included the defendants, in any manner  
15 found there was some discrepancy with regard to your records  
16 from 2006 to today?

17       A    No issues since then whatsoever.

18       Q    Now, you're familiar-- I think there was a question if  
19 plaintiff had gone to the hospital and the answer was no, the  
20 evidence reflects and this is evidence before the jury that  
21 there was surgery conducted to the lower back by Dr. Merola and  
22 Dr. Cerabona at New York Presbyterian to the L5-S1 where there  
23 is hardware, screws and rods, and that there was  
24 hospitalization. And this is per the testimony before this  
25 Court and the jury in the past, for a couple of days thereafter.

1 So are you aware if there was hospitalization with regard to Mr.  
2 Zhang, as we sit here today?

3 A Yes.

4 Q Now, I'll assume, because the question wasn't very  
5 specific by counselor, I think, assuming that the client,  
6 Mr. Zhang, your patient, didn't go to the hospital immediately  
7 after the accident, but by your professional opinion is it  
8 required and the only time someone can sustain an injury is if  
9 they present themselves to a hospital?

10 MR. CRAVEN: Objection. Leading question.

11 THE COURT: Sustained.

12 Q You said you treat 99 point, so of the patients you are  
13 treating, you are the treating doctor, does everybody go to a  
14 hospital that is injured?

15 A No.

16 Q When you had Mr. Zhang in that facility on that first  
17 day May 7th, of 2013, at that time did you speak Chinese and  
18 have an understanding of Chinese?

19 A Only a few words, not a thorough understanding.

20 Q Did you communicate with Mr. Zhang in Chinese?

21 A With the assistance of the office manager, Ray.

22 Q So there was someone else that actually communicated  
23 those words to you; they weren't things you had created,  
24 correct, not your translation?

25 A Excuse me, what was the last question?

1 Q It is not your translation? You didn't hear something  
2 and translate; it was translated by someone else?

3 A Yes.

4 MR. ZOHAR: Nothing further.

5 THE COURT: Okay.

6 MR. CRAVEN: Nothing, your Honor. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: You could step down.

9 (Witness excused)

10 THE COURT: Plaintiff rests?

11 MR. ZOHAR: Plaintiff rests, your Honor.

12 THE COURT: Plaintiff has rested at this point.

13 We'll start the defendant's case tomorrow. We're finished  
14 for today. We'll have another doctor at 10 o'clock  
15 tomorrow morning, which we should finish the case either  
16 Friday or Wednesday; probably Wednesday, okay?

17 So you're going to be released right now. Thank  
18 you very much for your attention and please don't discuss  
19 the case among yourselves or with anyone else. Please  
20 don't go on the Internet or look anything up. I know you  
21 are curious, but wait until the trial is over and there's a  
22 verdict, and then you can do whatever you want to do, but  
23 right now you can't go on the Internet or near the location  
24 of the accident. And we'll see you tomorrow at 10:00 A.M.  
25 Thank you very much.

1                   THE COURT OFFICER: All rise, jury exiting.

2                   (Whereupon, the jury exited the courtroom and the  
3 trial was adjourned to February 16, 2018.)

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