

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF QUEENS : CIVIL TERM : PART 35
-----X
3 GONG MING ZHANG,
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5 Plaintiff,
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7 -against- Index No. 4741/15
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9 YING LIU AND UNIWARE HOUSEWARE CORPORATION,
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11 Defendants.
12 -----X
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14 Supreme Courthouse
15 88-11 Sutphin Boulevard
16 Jamaica, New York 11435
17 February 15, 2018
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19 B E F O R E:
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21 THE HONORABLE TIMOTHY DUFFICY,
22 J U S T I C E
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24 A P P E A R A N C E S:
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36 900 Merchants Concourse
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38 BY: THOMAS R. CRAVEN, ESQ.
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41 LORRAINE MARINAZZO
42 Senior Court Reporter
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1 (Whereupon, the following takes place on the
2 record, in open court:)

3 COURT CLERK: All rise. The Honorable Timothy J.
4 Dufficy presiding.

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.

9 (Whereupon, the jury entered the courtroom and the
10 following occurred:)

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:

17 THE CLERK: You may be seated. Please state your
18 name and your business address for the record.

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 malingerer 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 malingerer 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.

20 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.

23 THE COURT: It has to be disclosed. We'll have to
24 take a break.

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.

8 (Whereupon, a short recess was taken, after which
9 the following occurred:)

10 THE COURT: Okay, I will hear argument.

11 MR. CRAVEN: Your Honor, it is my understanding
12 that this sole piece of paper is the only record of any
13 exam that took place yesterday. He intends on dictating it
14 and having it transcribed, has not been done because the
15 exam was done at 3 o'clock; am I correct?

16 MR. ZOHAR: Correct.

17 MR. CRAVEN: Based on that, based on me not
18 knowing there was an exam and being no report until the
19 doctor is testifying, it is inappropriate to let this
20 doctor testify about it. I was not on notice. The defense
21 was not on notice, therefore, we are legally prejudiced by
22 that, not only by looking at the piece of paper, there is a
23 lot of scribbles, I don't know what this is, so the defense
24 is prejudiced by being unable to effectively cross-examine
25 because I can't read what is on this report.

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--

8 THE COURT: Why couldn't it have been done a week
9 ago?

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?

17 MR. CRAVEN: Objection, your Honor. It calls for
18 speculation. He only saw him the day after the accident,
19 nothing further, therefore, to comment on anything about a
20 month or later, two months later or four months later would
21 be pure speculation.

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 on 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.

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THE COURT OFFICER: All rise, jury exiting.
(Whereupon, the jury exited the courtroom and the
trial was adjourned to February 16, 2018.)

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