SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX: CIVIL TERM PART IA-6

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JENNIFER GENTILE,

Plaintiff,

-against-

Index No.

304657/2011

GILRARDO GALLO, JR. and BOSTON ROAD TOWING & RECOVERY SERVICES, INC., d/b/a BOSTON ROAD TOWING,

Defendants.

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TRIAL EXCERPT - DR. RICHARD PEARL

851 Grand Concourse
Bronx, New York 10451
December 5, 2017

B E F O R E:

HON. JAMES W. HUBERT, JSC, and a jury of six plus two alternates.

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

HALPERIN & HALPERIN, P.C.
Attorneys for Plaintiff
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BY: TIMOTHY JONES, ESQ.

JANET CAMPOLO, RPR
Senior Court Reporter

THE COURT OFFICER: Come to order.

THE COURT: Be seated.

I'm going to bring the jury down. Juror number 6 was a little late, and indicated that her daughter fell down at school or something to that effect, and they're going to come down and we're going to start, but it's possible she'll get a call from the school. She said she'll raise her hand and we'll take a break so she can call. So he's bringing the jury down.

THE COURT OFFICER: Jury entering.

(Jurors entered the courtroom.)

THE COURT: All right, please be seated.

We will continue with the presentation of evidence. We are still on the Plaintiff's case.

Counsel for Plaintiff, are you calling a witness?

MR. HALPERIN: Yes, your Honor. At this time Plaintiff calls Dr. Richard Pearl.

THE COURT: Please give your attention to the court officer.

THE COURT OFFICER: Please raise your right hand.

D R. R I C H A R D P E A R L, a witness called on behalf of the Plaintiff, having been first duly sworn, took the witness stand and testified as follows:

THE WITNESS: Yes, I do.

THE COURT OFFICER: Please be seated. In a loud,

clear voice, state your name and business address for the record.

THE WITNESS: Richard Pearl, P-E-A-R-L, 333 East 56 Street, New York, New York, 10022.

THE COURT: All right. Doctor, during your testimony, please keep your voice up. It's a big courtroom and we don't have any audio assistance here. So keep your voice up so everyone can hear you. Also, speak slowly enough so the reporter seated in front of you can accurately record your testimony.

Please wait until a question is fully asked before you give your response so that the question and answer can be accurately reported. Finally, if you don't understand a question, I ask you please so indicate and I will have them rephrase.

Counsel, you may inquire.

MR. HALPERIN: Thank you.

DIRECT EXAMINATION

BY MR. HALPERIN:

Q. Good afternoon, Dr. Pearl.

A. Good afternoon.

Q. Are you a physician?

A. Yes, I am.

Q. And where did you attend medical school?

A. University of Guadalajara.

Q. And what year did you graduate?

A. 1974.

Q. And can you very briefly take the jury through your post medical school training to be a physician?

A. Yes. I did my internship at Coney Island Hospital, Brooklyn, in general surgery. Then I did a residency in general surgery at Mount Sinai Medical School from 1976 to 1977. Then I did my orthopedic training at New York University Medical Center where I did my residency in orthopedic surgery. I then did a fellowship for three months in Switzerland to learn fracture management trauma, and then I came back and did a fellowship in Boston the year of 1980 at the New England Baptist Hospital in joint replacement surgery, specifically surgery of the hip and the knee and revisions and primary surgeries.

Q. And, Doctor, are you licensed to practice medicine in the State of New York?

A. Yes, I am.

Q. And are you licensed to practice in any other state at the present time?

A. New Jersey.

Q. And, Doctor, do you have offices for the practice of orthopedic surgery in New York?

A. Yes, I do.

Q. And where is your office?

A. My primary office is at 333 East 56 Street, New York

City. My secondary office is at the Brooklyn Hospital, where I'm the chief of joint replacement surgery.

Q. And do you see patients elsewhere in the city apart from those two places?

A. As a rule, I don't, but occasionally I go to another office where I see patients in -- it's not -- in Brooklyn.

Q. Okay. And, Doctor, do you have operating privileges at a hospital?

A. At three hospitals.

Q. And what are they?

A. The Brooklyn Hospital, Mount Sinai Hospital of Brooklyn on Kings Highway, and Kingsbrook Jewish Medical Center.

Q. Okay. And, Doctor, are you board certified?

A. Yes.

Q. And in what are you board certified in?

A. Orthopedic surgery.

Q. And when did you first become board certified in orthopedic surgery?

A. I believe it's 1986 or 1987.

Q. Now, Doctor, you had a license issue at some point in your career?

A. Yes.

Q. And can you explain to the jury what that was and when that happened?

A. In 2001, my license was taken away because I had issues

with poor recordkeeping.

Q. And did there come a time that your license was restored?

A. Yes.

Q. And approximately when was that?

A. 2008.

Q. And when it was restored, are there any limitations in your practice or operating privileges?

A. None, whatsoever.

Q. And since your license was restored, have you been performing surgery regularly?

A. Yes.

Q. What is your regular schedule these days in terms of surgery and seeing patients?

A. Well, week to week it changes. Yesterday I did total hip replacement, two total knee replacements. This morning I saw patients. Tomorrow I do --

MR. JONES: Objection. Relevance, Judge.

THE COURT: I'm sorry?

MR. JONES: Relevance.

THE COURT: I know what he's building up to. Go ahead.

Q. You can continue, Doctor.

A. Yes. Tomorrow I'm doing about 13 arthroscopies and then on Thursday I come back and I do another 14 arthroscopies.

That's basically sports medicine, rotator cuffs, shoulders, knees, arthroscopy, not replacement.

Q. What is your specialty, Doctor?

A. Well, my specialty is surgery of the -- I'm a joint surgeon and the joints that I specifically do a lot of surgery in are the shoulders, the hips and the knees.

Q. Okay. And, Doctor, have you testified as an expert in the State of New York in the past five years?

A. Yes.

Q. And have you been accepted as an expert in New York State and Federal courts?

A. Yes.

MR. HALPERIN: Your Honor, I offer Dr. Richard Pearl as an expert in orthopedic surgery.

THE COURT: Counsel?

MR. JONES: No objection, Judge.

THE COURT: He's so deemed.

Q. Doctor, I'm going to be asking you some questions regarding care and treatment of Miss Gentile.

Can we agree all of your responses will be within a reasonable degree of medical and orthopedic certainty?

A. Yes.

Q. Now, Doctor, do we have an agreement regarding the fees that you're going to charge for appearing and testifying today?

A. I think so.

Q. Okay. And do you recall what our agreement is?
A. Yes. That I would charge you $4,500 to be here today.
Q. Okay. And did you have appointments scheduled this afternoon?
A. I had my office hours.
Q. And did you cancel those appointments?
A. I saw the morning hours till about 11, then I came here.
Q. Now, Doctor, did there come a time that Miss Jennifer Gentile was referred to your care as an orthopedic surgeon?
A. Yes.
Q. And do you recall who referred her to you?
A. It could have either been you or her husband -- her friend, boyfriend.
Q. Boyfriend?
A. Who I replaced his knee.
MR. JONES: Objection.
THE COURT: I'm going to let the answer stand.
Q. Doctor, I'm going to just hand you Plaintiff's exhibits 19A and 19B in evidence. They are your office chart.
THE COURT: Counsel, have you seen it?
MR. JONES: I'm not sure.
(Pause in the proceedings.)
MR. JONES: No objection.
THE COURT: No objection? Are they going to be

received in evidence?

MR. HALPERIN: They've already been stipulated in evidence.

THE COURT: I'm sorry, what number was that?

MR. HALPERIN: 19A and 19B.

THE COURT: 19A and B in evidence.

Q. Okay. And, Doctor, let's just start with the first date that you saw Miss Gentile. And I'll just direct your attention to May 6 of 2011.

A. May I look at the records?

Q. Yes, please. And I don't know if it will be easier, but I'm putting the record up on the screen.

A. Oh, sure, a lot easier.

Q. So directing your attention to the first office visit on May 6, 2011, can you tell me first what Ms. Gentile's complaints were when she presented?

A. She complained of pain in her chest, her groin area, her shoulders and her ankle.

Q. What history did she provide?

A. Medically she had a ruptured appendix and a tubal ligation which was done previously.

Q. And did she complain of an acute event when she presented on May 6 of 2011?

A. Yes.

Q. And what was that, Doctor?

A. Well, she said she was a passenger in a car and she was involved in a motor vehicle accident, a car broadsided her, her car.

Q. Okay. Was she a passenger or was she the driver?

A. She was a passenger.

Q. Now, Doctor, did you perform an examination of Ms. Gentile on that date?

A. Yes, I did.

Q. And what was your examination and what were your pertinent findings on May 6 of 2011?

A. Well, she had a black eye. Starting from the head, she had pain in her chest where the seventh and eighth ribs were, and her right and left shoulders at that time seemed to be moving well.

Q. Okay. And I want to direct your attention to another part of your record on that date, May 6 of 2011. And do you recall this?

A. Yes.

Q. And what were her complaints of pain when she presented on May 6 of 2011?

A. Well, she said she had pain in her shoulders.

Q. And what level of pain?

A. Eight out of ten.

Q. Okay. Now, Doctor, in your office, did you have the ability to do X rays?

A. Yes.
Q. And did you perform on that date an X ray of her right ankle?
A. Yes, I did.
Q. And what complaints was she making to her right ankle?
A. She said she had pain on the outside of her ankle.
Q. Okay. Now, do you have -- do we have those X rays today for right ankle?
A. I believe you have them.
Q. Okay. I'm going to direct your attention to exhibits 30A and 30B for identification.
Are these the X rays of her right ankle taken on May 6 of 2011?
A. This is her knee, but this is her ankle, this is the one you want.
Q. Okay. That's because I'm a lawyer. Okay.
THE COURT: Is that B or A?
THE WITNESS: This is B, the ankle.
Q. Okay. And these were taken in your office?
A. They were taken by my technician in my office.
Q. And this is the original X ray?
A. These are the originals I brought.
MR. HALPERIN: I offer this particular X ray into evidence, this is 30B.
MR. JONES: No objection.

THE COURT: All right. Received and so marked.

(Plaintiff's Exhibit 30B was received in evidence.)

Q. And, Doctor, did you have an opportunity to review the X rays during the course of your appointment with Miss Gentile?

A. Yes, I did.

Q. And if I gave you a light box today, could you just show them to the jury and what your findings are?

A. Show the?

Q. The film.

A. Sure.

MR. HALPERIN: May I have the doctor step down, Judge?

THE COURT: Sure.

Just before the two of you proceed, it would be best if the doctor stands by the jury and the court reporter can hear him more readily and you can face him from the opposite direction.

A. So this is the tibia bone, the big shin bone.

THE COURT: You have to keep your voice up, Doctor.

A. This is the tibia bone, the big shin bone, and this is a fibula bone.

THE COURT: Indicating on the X ray as shown in the box, there are two screws of the ankle. From a view on

the right, he is pointing to the larger bone as the?

THE WITNESS: Tibia.

THE COURT: And the smaller skinnier bone, if you will as the?

THE WITNESS: Fibula.

THE COURT: And it's a frontal view of the foot and ankle?

THE WITNESS: Right.

A. Now, any time two bones come in contact with each -- one another, it's called a joint, any two bones. So when these two bones come down to the bottom, to the top of the talus bone, this is called the ankle joint.

The ankle joint is between the fibula and the talus, the fibula, tibia and the talus, tibia. And right over here, you can see some bone that's not connected to this big piece of bone, and that's called an avulsion fracture. The ligaments, not tendons, but ligaments connect bone to bone. So the ligament going from this bone to this bone tore off violently and pulled off a piece of bone with it, and that's called an avulsion fracture.

Q. And can you see that from the side view, Dr. Pearl?

THE COURT: What are we referencing now?

MR. HALPERIN: I guess the lateral view.

A. Not well, and that's why we take multiple views when a patient complains.

Q. And, Doctor --

THE COURT: Can the jurors see this? Yes? Okay.

A. Can you all see the little ball here?

Q. Okay. Doctor, you can take a seat.

Now, Doctor, do you have an opinion within a reasonable degree of medical certainty whether that avulsion fracture represents an acute injury?

A. Yes.

Q. And what is your opinion, Doctor?

A. That the fracture happened within a two or three week period of time either that day or before.

Q. Okay. And do you have an opinion within a reasonable degree of medical certainty whether that fracture or that pathology that you just pointed out to the jury was a competent producing cause of pain and suffering to the patient?

A. Yes.

Q. And what is your opinion?

A. That it caused her -- it caused her discomfort and pain.

Q. Okay. And, Doctor, what is the prognosis for an injury such as this one?

A. Generally fairly good, if there's no extenuating circumstances.

Q. Okay. Now, Doctor, were any other fractures diagnosed by you on May 6 of 2011 apart from this avulsion fracture of the

tibia?

A. Well, to be specific, they were diagnosed before by the hospital, I guess.

Q. Okay.

A. But confirmed by myself when I took my X rays and I saw rib fracture.

Q. Okay. And were those evident in films that you took as well?

A. Yes.

Q. And Doctor, did there come a time --

MR. HALPERIN: Withdrawn.

Q. Did there come a time that you reviewed pictures of the pelvis?

A. Yes.

Q. And what type of fracture were diagnosed in the pelvis?

A. It's called a pubic ramus fracture.

Q. And what is a pubic ramus fracture? And let me just put up a board.

Doctor, I have a picture of the pelvis. Would that assist you in showing the jury what a pubic ramus fracture is?

A. Very much so.

MR. HALPERIN: Your Honor, may I use this?

THE COURT: Counsel, any objection?

MR. JONES: No objection, Judge.

THE COURT: Has it been marked as an exhibit?

MR. HALPERIN: It hasn't, but I'm not going to be offering it into evidence.

THE COURT: You still need to identify it.

MR. HALPERIN: So could we mark this as Plaintiff's 31?

(Poster board was marked Plaintiff's Exhibit 31 for identification.)

Q. So, Doctor, directing your attention to Plaintiff's exhibit 31 for ID, can you explain to the jury what a pubic ramus fracture is?

A. Yes. Well --

Q. And you might want to step down so everybody could see or step over.

A. Yes. I can step over like this.

Q. Okay.

A. So this is the pubic bone over here, this is the pubic bone, and we always use terminology like what's the ramus. A ramus is a hole. And so this is the ramus here and here. It's one ramus and two rami, I guess.

So a pubic ramus fracture is when you have a fracture through the superior and inferior ramus. And that's where the fracture was.

Q. Okay. And was there a diagnosis of an ischium fracture?

MR. JONES: Objection. Leading, Judge.

THE COURT: Overruled.

A. Well, yeah, you know, it's --

Q. Can you see it on this view?

A. Well, yes. The ischium, it's the lateral part of the bone.

Q. Okay.

A. So it's yes, I mean --

MR. JONES: Objection. Unresponsive.

THE COURT: No, that's overruled.

Were you finished in your response?

A. Yes. The fracture is there, it's a matter of terminology. Sometimes radiologists and surgeons, we look at the same thing and call it different things, but yes, there was a fracture there.

Q. Okay. Thank you.

Now, Doctor, did you come up with a plan of care for Miss Gentile on this first office visit?

A. Yes.

Q. And what was that?

A. Will, what I wanted to do is the person, overall history, even before the accident, patients like this, you want to give them a pain medication and bedrest as much as possible, because any time you get an injury, a punch to the face, anything, you get an inflammation. If you have a patient who already has an inflammatory condition, this becomes severely

magnified. You don't want to do anything aggressive; bedrest and pain management.

Q. And when you said an inflammatory condition, what are you talking about, Doctor?

A. Well, she has -- I guess I'm able to say?

Q. Lupus?

A. Yes. Is there a HIPAA law? I can reveal everything, right?

Q. Yes.

A. So she has a condition known as lupus, which is an autoimmune disease, which is an inflammatory condition. Very similar to rheumatoid arthritis, but it's a more rare condition. And often times you can lead a very normal life, but if you have a traumatic situation, it flares up tremendously, more so than someone without this condition.

Q. And, Doctor, did you prescribe pain medication to Miss Gentile?

A. Yes, I did.

Q. And what did you prescribe to her on this day?

A. Oxycontin.

Q. Oxycontin, is that 80 milligrams?

A. Yes.

Q. And, Doctor, did there come a time that you were asked to refill this prescription for Oxycontin?

A. I did, but I have to look.

Q. Let's see if I can find it.

I direct your attention to the May 20th note, is that your note?

A. Yes.

Q. And is that a refill of her prescription for Oxycontin?

A. Yes, it is.

Q. Now, I want to direct your attention to --

MR. HALPERIN: Withdrawn.

Q. I want to direct your attention August 23, 2011. Did you see your patient on August 23rd, 2011?

A. Yes, I did.

Q. And is this visible to you?

A. Yes, it is.

Q. Okay. What was the patient's presentation on August 23rd, 2011?

A. Well, essentially, she had pain in both shoulders and limited range of motion.

Q. Okay. Now, Doctor, you examined her on May 6 of 2011 and there weren't any complaints in her shoulder.

Do you have an opinion within a reasonable degree of medical certainty why one would develop this type of complaint after the fact?

A. Yes. Well, to correct you, she did have complaints of pain as she filled out the form. I didn't focus on that, because of her overall appearance, she had a black eye and everything,

but it was noted she did complain of pain in her shoulders, but she did have more range of motion. And then what happened is when I saw her at this time, she had almost no motion in her shoulders and she was in severe pain.

Q. And what is that condition called, Doctor?

A. Well, it's called bursitis, synovitis, tendinitis. All those structures are inflamed in her shoulder.

Q. Doctor, do you have an opinion, within a reasonable degree of medical certainty, whether that bursitis or those complaints of pain in the shoulders were related to the motor vehicle accident of April 28, 2011?

A. Yes.

Q. And what is your opinion, Doctor?

A. That those complaints were causally related to the accident of that date.

Q. Now, Doctor, I want you to assume that the patient did present to you with lupus when she first came in in May 6.

How can you distinguish joint pain from lupus from this pain that she presented with on August 23rd, 2011?

A. In other words, was it caused?

Q. Yeah. In other words, did it have anything to do with her lupus?

A. Yes and no.

Q. And can you explain that to the jury?

A. Well, the best way to explain it, to talk a little bit

about something else. Say a football player gets tackled and he's 19 years old. The same guy starts to play football when he's 50 years old and gets the same exact tackle. When he's 19 or 20, he gets up. When he's 45 or 50, he might not get up for three weeks.

And her underlying condition was such that she had an inflammatory condition, but she was fine. Now she gets a car accident and it wakes up this disease in her shoulders and even if she didn't have this disease, she would be in pain and she would present very -- in a similar way, but in this particular case, it roars back at a much more ferocious way, and you have to be very careful on how you treat when they have underlying inflammatory condition.

Q. And, Doctor, did you provide Miss Gentile with treatment on August 23rd, 2011?

A. Yes, I did.

Q. And what was the treatment on that date?

A. I injected both shoulders with 40 milligrams of Depo-Medrol, which is a steroidal antiinflammatory medication.

Q. And?

A. And with lidocaine, as well.

Q. What is that designed to do?

A. Well, it's to reduce the inflammation, but you have to put it into a specific area, and I injected her in the subacromial space.

Q. And let me just show you --

MR. HALPERIN: May I use your shoulder?

MR. JONES: Yes.

MR. HALPERIN: Your Honor, do we have to mark this for identification?

THE COURT: Let's identify it at least.

MR. HALPERIN: This is a model of the shoulder.

THE COURT: A model of the shoulder, okay.

MR. HALPERIN: Okay. I'd like the doctor to point out the subacromial space.

THE COURT: Do you have any objection?

MR. JONES: No, not at all. It's my shoulder, Judge.

Q. All right. Doctor, just before you point out the subacromial space, maybe you can give a general anatomy lesson of the shoulder.

A. This is the humerus bone of the arm, the elbow would be down here and this is a ball and socket joint. This is a head of the humerus and this is the glenoid. And this is the acromion.

And in Mrs. Gentile's situation, not only does she have lupus, but she has something known as a down sloping acromion.

Now, why do we point this out?

Because many of you might have a down sloping acromion, but you weren't in a car accident. But if you're in a car accident and you have a down sloping acromion, the rotator cuff,

which attaches to the humerus, which allows you to go like this, slides under this area and it becomes swollen, but because there isn't that much space because the bone is here, it hits the bone and the bone exacerbates the inflammation, so it gets worse and worse and worse with movement.

It's like a vicious cycle, the more inflammation, the more pain, the more pain, the more inflammation. And you start to tear the rotator cuff. That's how rotator cuffs tear. You heard people have rotator cuff tears.

So she had this autoimmune disease, she gets into a car accident, now she has a down sloping acromion. You have to be very careful how you treat these individuals. So I put the injection right in the space here right above the cuff to reduce the inflammation and to make it better.

Q. Okay.

A. That's what I did.

Q. And, Doctor, apart from those injections, did you have a plan for her future care on that day?

A. Yes.

Q. And what was that, Doctor?

A. I also wanted her to have physical therapy, as well.

Q. Okay.

A. Can I -- before I came here, I had some coffee and I have to go to the bathroom. May I?

THE COURT: Sure. We'll take a very brief

recess.

THE WITNESS: Sorry.

(Pause in the proceedings.)

THE COURT: All right, Doctor. You're reminded you're still under oath.

Counsel, you may resume questioning.

Q. Doctor, just with respect to the left and right shoulder, on August 23rd, 2011, do you have an opinion within a reasonable degree of medical certainty whether the injuries described in your note of August 23rd, 2011 were related to the motor vehicle accident of April 28, 2011?

A. Yes, I do.

Q. And your opinion, Doctor?

A. That the injuries were caused by the car accident of 2011.

Q. Okay. Now, Doctor, I want to direct your attention to September 9, 2011.

And was this an office visit?

A. Yes, it is.

Q. And what occurred in this office visit, Doctor?

A. Well, I saw her with regard to her recurring pain in the right shoulder and the lateral mal -- the ankle fracture.

Q. Okay. And did you refer her for physical therapy, Doctor?

A. Yes, I did.

Q. And do you recall where she was referred for physical therapy?

A. I don't recall that.

Q. Okay. And what was the goal in referring the patient for physical therapy?

A. To get motion back, to restore motion to the shoulder. You don't want to get a frozen shoulder. After inflammatory condition, you can get what is known as a frozen shoulder. And what happens in that situation, after the inflammation, the capsule, the joint capsule contracts and then you lose motion.

Q. Okay. Now, Doctor, did there come a time that the patient returned to your practice with complaints?

Is that visible?

A. Yes.

Q. So that date is dated November 18, 2011?

A. Yes.

Q. And do you have any recollection of what might have transpired between the last appointment in September and that day?

A. I believe she had a fall.

Q. Okay.

A. And sustained fractures, compression fractures in the lumbosacral spine, which would cause radiculopathy or nerve pain down her legs.

Q. Okay. And what were her complaints on that day?

A. Leg pain.

Q. Leg pain?

A. Radiculopathy, as I mentioned.

Q. Now, when you saw her previously, did she have any injury to her spine?

A. No.

Q. So this was the first injury to her spine?

A. Correct.

Q. Okay. Now, Doctor, do you ordinarily treat patients with spinal injuries?

A. Well, I treated simply -- in other words, I see it in my office. If it's something I can take care of nonoperatively, I'll do that, such as giving somebody an antispasmodic muscle spasm or for pain, I might work it up and get an MRI or CAT scan, but then I refer to a spine specialist or a pain management specialist depending on what I think is a better treatment.

If I think the patient is going to require surgery, I'll send them to a spine surgeon. If I think it's something that can be treated conservatively, I'll send them to a pain management specialist who will inject the back with some form of antiinflammatory medication.

So, in effect, I'm sort of -- I will decide and so I will in effect treat the patient, but in that conservative manner only.

Q. Now, Doctor, I'm directing your attention to an MRI of

the lumbar spine dated October 22, 2011, which was part of your records. Do you see that?

A. Yes.

Q. And what's going on here?

A. I really --

Q. It's hard to read?

A. Yes. I better get it out of my record.

Q. Here --

A. Thank you.

Yes. These are -- basically it shows a compression fracture of the L1, lumbar 1 and 3 body.

Q. And directing your attention to my little spine here, can you point out which one L1 and L3 are?

A. Yes. This is 5, 4, 3. So this is 3 and 1.

Q. Okay.

A. 1 and 3.

So it was compressed down. Usually you get this when you fall down hard on your sacrum, either the force goes up, either you break the tip of the sacrum, coccyx or the force goes up and you compress the body. Someone who might have an inflammatory condition, who might have been on steroid medication, the bones are a little bit more prone to get a compression fracture, because they're softer. Also, people that are elderly, people in their eighties, I used to say sixties, but now that I'm in my sixties, that's not old, we have to talk about

people in their eighties.

Q. All right. And, Doctor, who did you refer Miss Gentile to?

A. Dr. Leff, Alan Leff. He's a pain management specialist.

Q. And to your knowledge, what type of treatment does Dr. Leff provide?

A. Typically injects the spine either in the joint or in the epidural space.

Q. And what is that designed to treat?

A. It's designed to take care of the pain, reduce the pain inflammation. And many times -- remember, these nerves, they go through holes called foramen, so if the nerve is swollen, the nerve is going through a bony hole, it doesn't get bigger, it doesn't get smaller, the nerve gets inflamed, it loses its electrical conduction. So you can get weakness, you can get pain. So if you inject the nerve with an anti-inflammatory, the inflammation goes down, and now it's not touching the bone and the conduction becomes normal again. So that's what that's designed to do.

Q. Doctor, I want you to assume that there was testimony in this courtroom that Ms. Gentile fell down a flight of steps in the ladder part of October 2011.

Do you have an opinion within a reasonable degree of medical certainty whether the pathology that we just looked at in

the MRI was a competent-producing cause of that injury?

A. Yes, I do.

Q. And what is your opinion, Doctor?

A. I would say that was the cause of the compression fractures.

Q. Okay.

A. The fall.

Q. Now, Doctor, I want to direct your attention to May 22nd, 2012. I don't know if this helps.

A. Yes, I can see it.

Q. So May 22nd, 2012. Did you see the patient on that day in your office?

A. Yes, I did.

Q. And what were the complaints when she presented on May 22nd, 2012?

A. She complained of a raised area under the skin that I examined and it was hard. Like when I touched it, I probed it, it felt like a metallic or glassy object in her knee.

Q. And were you able to determine what that was?

A. At that time, I knew it was a foreign object, that it was a piece of metal, plastic, glass, something like that.

Q. And is there any particular reason why that wasn't noted or observed on any of your prior office visits?

A. I guess because we never talked about it ever.

Q. Okay. And, Doctor, did there come a time that you

decided to perform a surgery to remove that object?

A. Yes, I did.

Q. And I want to direct your attention to a procedure note from June 4, 2012. Let's see.

And is this the procedure note for that surgery?

A. Yes, it is.

Q. And where was the surgery done?

A. In an ambulatory care center.

Q. And what exactly was done in connection with this June 2012 procedure, June 4th, 2012 procedure? If you need me to turn over the page, I can do that too.

A. I'm sorry?

Q. Do you need me to turn over the page?

A. Yes.

Well, what -- no, what I did basically is I removed the foreign body from the knee. I mean, it's -- in essence, that's what I did.

Q. Okay.

A. It's just I'm going into detail about the anatomy and the cyst formation that forms around the object.

Q. And could you explain that to the jury, please?

A. Well, when you have a foreign body and people, we've learned that from Vietnam, if you have bullet wounds or metal objects, you get a soft tissue, you get a cyst around it, and even though the bullet, you wonder, gee, how come sometimes

people get infected, sometimes people don't get infected. And if the bullet goes in deep, there's very good vascular supply, the body immediately puts out antibodies and it gets very hyper emmenic and quickly formed into a cyst, it walls off the area, the foreign object from the rest of the body so you can actually have an infection in the cyst, but the rest of the body didn't get infected. Not that this was infected, but it was completely walled off by a cyst.

So I took out this wrapping of soft tissue around the metal object.

Q. And how long does it take for a foreign object such as what you removed to form a cyst and wall itself off?

A. When the whole process is -- I think I actually -- I can tell you with a degree of certainty, six weeks.

Q. Okay. And is that something that moves around or gets --

MR. JONES: Objection, leading, Judge.

THE COURT: You can focus in on certain aspects of it.

Q. Is that something that would develop what's called serosanguineous fluid or serosanguineous fluid from it? In other words, is the cyst filled with anything?

A. Yes.

Q. And what was it?

A. The cyst is filled with serosanguineous fluid.

Q. Now, Doctor, after this surgery, did you retain the object or the foreign object that was removed?

A. Yes.

Q. And --

MR. JONES: Can we approach, Judge? Objection.

THE COURT: Sure.

(Whereupon, the following takes place on the record in the robing room in the presence of the Court, plaintiff's counsel and defense counsel.)

(Metal object was marked Plaintiff's Exhibit 32 for identification.)

Q. Doctor, I show you what's been marked as exhibit 32 for ID. Can you identify that?

A. Yes, I can.

Q. And what is it, Doctor?

A. It's what appears to be metallic object.

Q. Okay. And is this the object that was -- that was the product of your surgery of June 4th, 2012?

A. Well, you know, it's been a while, but it looks exactly like what I took out there.

Q. Okay. And was that object furnished to my office?

A. What's that?

Q. Was that object furnished to my office?

A. Yes, it was.

Q. And was it furnished by your office to my office?

A. Yes.

MR. HALPERIN: I offer this exhibit into evidence.

MR. JONES: Over objection.

THE COURT: You want to voir dire at all?

MR. JONES: I do, Judge, yes.

THE COURT: You do you said?

MR. JONES: Yes.

THE COURT: Sure, go ahead.

VOIR DIRE EXAMINATION

BY MR. JONES:

Q. Doctor, as a surgeon, you consider yourself somebody who pays attention to detail?

A. Yes.

Q. And you consider yourself somebody who takes detailed notes?

A. Yes, I try to.

Q. You do.

And would it be sound medical practice when one performs a surgery to send anything that is removed to pathology? That's a yes or no.

A. I can't answer it like that.

Q. Okay. Well, did you send what he removed to pathology to have it examined?

A. No, I didn't.

Q. Do you have an anesthesia record for this particular surgery?

A. Yes.

Q. And do you have that with you?

A. No. The anesthesiologist has it. We don't keep it.

Q. So, Doctor, you're telling us you removed those items, but didn't send them to pathology, but kept that in your own possession, correct?

A. Correct.

Q. How long did you maintain them in your possession before you sent them to Plaintiff's counsel?

A. Approximately a week.

Q. Okay. And of the items or whatever is in that vial right there was maintained in your possession for one week before you sent it to Plaintiff's counsel?

A. Correct.

Q. Now, Doctor, would it be sound medical practice to forward whatever foreign bodies were removed to pathology as a surgeon?

MR. HALPERIN: Objection. Beyond the scope of voir dire.

MR. JONES: For custody.

THE COURT: I'm going to allow the question.

A. Would it be sound if I did it?

Q. If you do, would it be sound medical practice to send

what you removed to pathology?

A. Yes, it would be.

Q. Did you do that?

A. No.

Q. Why not?

A. Because it's sound medical practice not to in certain cases. I wasn't looking for cancer, I wasn't looking -- that's when you send it to pathology. If you do a biopsy, you want to know if it's cancer or not, but when you have a metal object that you want to remove, you just remove it. I remove bullets the same way, sign out for them, give it to the hunter who got shot by his friend.

Q. Try and stay on point here, Doctor.

You didn't send it to pathology, correct?

A. No, I didn't.

MR. JONES: Nothing further, Judge.

THE COURT: You still object?

MR. JONES: I do, yes.

THE COURT: Okay. The objection is overruled. It will be admitted and received, Plaintiff's 32.

MR. HALPERIN: Thank you.

MR. JONES: Could we mark the envelope, as well, please?

MR. HALPERIN: The envelope is something I kept it in, it was just a padding.

MR. JONES: Oh.

(Plaintiff's Exhibit 32 was received in evidence.)

BY MR. HALPERIN:

Q. Okay. So, Doctor, I want to direct your attention now to June 2nd, 2012.

And what happened on June 2nd, 2012 -- I'm sorry, June 12, 2012?

A. Yes, I see it.

Q. Is that a post surgical visit?

A. Yes.

Q. Okay. And what happened on that day?

A. Well, the sutures were out, removed, and at this point she went to physical therapy.

Q. And there was another visit on June 26, 2012?

A. Yes.

Q. And did this object and the subsequent surgery result in a scar?

A. Yes.

Q. And was that scar described in your June 26, 2012 note?

A. Yes.

Q. And to what did you ascribe or to what did you ascribe that foreign object and the surgery and the subsequent scar?

A. Why did she have a scar?

Q. Yes. What was it? Was it related to the April 2011

accident?

A. Yes.

MR. JONES: Judge, note my objection to continued leading.

THE COURT: It's overruled as far as leading goes. I don't know any other way to ask that question. I mean, there are other ways to do it, but we'll be here all day trying to answer it the long way.

THE WITNESS: So I can answer?

THE COURT: Yes.

Q. Now, Doctor, I want to direct your attention now --

A. I want to answer the question.

Q. I'm sorry.

A. So she had a cyst formation because of the foreign body. Cysts grow around the foreign body and the skin was inflamed, so she developed a scar from that, because of that situation.

Q. Okay. Next I want to direct your attention to July 24th, 2012.

And does this note represent an office visit that the patient had with you on that day?

A. Yes.

Q. And what was happening on that day?

A. Well, she was -- she came in complaining of left shoulder pain.

Q. Now, to what did you relate the left shoulder pain and what was your treatment that you rendered?

A. Well, I felt that the shoulder pain was getting worse. And I injected the shoulder area with lidocaine and again, Depo-Medrol, the same treatment I gave before.

Q. And did the patient have any relief?

A. Yes, she did have relief from that injection.

Q. Now, when you give a patient an injection such as this one, is that designed for a complete cure, a temporary treatment or something else?

A. Well, it's interesting. It's called Depo-Medrol, you give it to cure the patient, but you also give it to make the diagnosis.

Q. And can you explain that?

A. Well, if you put an analgesic medication like lidocaine and the pain immediately goes away, you know there's something physically in the shoulder that's causing the pain. In this case, you make the diagnosis of a subacromial spur. I come from the days before we had MRI's, so we would do these things to help make us determine -- help determine what the problem was.

So by injecting the area, and having the pain go away immediately with this analgesic medication, you know there's a spur there. Of course that was confirmed by MRI. So I did it for the pain went away after the injection and the secondary medicine reduced the inflammation, and often times if it gets

reduced and there's some rest with ice, it's a treatment, it goes away.

Q. And, Doctor, I want to direct your attention now to August 14th, 2012, a follow-up appointment.

Did you see that?

A. Yes.

Q. And so what happened at this follow-up appointment regarding the left shoulder?

A. Well, with regard to the left shoulder, without an MRI and it did show the spur, however, the situation seemed to be resolving from my injection, it actually worked.

Q. And so did the patient require any further treatment of her left shoulder?

A. No.

Q. Now, did there come a time, Doctor, that the patient came in with further complaints on the right shoulder?

A. Yes, Mrs. Gentile came in for complaints of the right shoulder.

Q. Okay. And that was -- did there come a time that you scheduled a surgery of the right shoulder?

A. Yes.

Q. And I'm going to put before you the July 22, 2015 surgical note. And if you could, please first explain to the jury what the complaints were with the right shoulder and what your diagnosis was?

A. Well, she complained of pain and loss of motion in the right shoulder. And what I did is I did an arthroscope of the shoulder.

Q. And would it be helpful to use that model to show what you did?

A. Sure. With an arthroscope you make one hole in the back, you make one hole in the side, and one hole in the front about the size of the tip of this pen. And you put a camera in and you can see 3600 degrees in the back, 360 degrees in the side and 360 degrees in the front. So it's counter intuitive.

If you make a big incision you, can see farther but you can see more with the arthroscope. You can see everything, you can't only see in the front, you could see in the back, you make the incision in the front. And I did that, and there's something called the labrum. You can see it well in here. But it's like a gasket that goes around that, seals the joint, and the labrum was torn and that was torn in the car accident.

I would not have known that had I not scoped the shoulder, but when we saw it, we saw what is known as a slap lesion. And the biceps tendon over here, it's attached to the labrum, and the biceps tendon was partially torn, but we didn't do anything with regard to that, you know, we just left it alone, we took pictures, but we didn't do anything.

But what we did do is synovectomy, the inflamed synovium we took out. There was scar tissue. We did what is

known as a lysis of adhesions in the shoulder, and then the labrum, which was torn, we took out the torn pieces and left the main piece behind.

In addition, as I pointed out about 20 minutes ago, this sloped acromion was digging into the rotator cuff and it didn't respond to the injection like the other side did. So what we did is what it's known as acromioplasty. We take a burr and burr this piece down, so instead of having this down sloping piece, this piece is removed in the back and she's free to move, and you don't want -- you take nature into your hands and get rid of the offending piece of bone.

Q. Okay. Now, Doctor, when you do this type of a surgery, do you take pictures?

A. Yes, I do.

Q. And I'm going to show you -- now, before I ask you that, when you do a procedure like this, you do something called a procedure note; is that correct?

A. An operative note.

Q. Operative note?

A. Yes.

Q. And is that what we're looking at here?

A. Yes, it is.

Q. And it's almost a three page operative note?

A. Yes.

Q. And you also take pictures?

A. Yes, I do.

Q. And I know it's not quite as easy to see, but what are we looking at? Are you able to tell what we're looking at in these pictures?

THE COURT: Do they have an identifying number or note or letter?

MR. HALPERIN: Well, these are all part of the doctor's office records.

THE COURT: Okay.

MR. HALPERIN: And these are just color photos of the procedure.

THE COURT: The office record, does that overall have a number?

MR. HALPERIN: 19A and 19B.

THE COURT: So Plaintiff's 19A and B contain generally speaking what?

MR. HALPERIN: These are arthroscopic images.

Q. Is that correct, Doctor?

A. Yes, imaging of shoulder.

MR. HALPERIN: Arthroscopic images of the shoulder from a surgery of 7/22/15.

THE COURT: Okay.

Q. Okay. So, Doctor, what are we looking at here?

A. Well, there's different views of the shoulder. Each picture is a different part of the anatomy of the shoulder. So I

can go box by box.

Q. Sure.

A. Maybe I could hold it in my hand and show the jury.

Q. Could we do that?

A. Because from here, I'm pointing in the general direction. It's like --

Q. Yes, Doctor.

MR. HALPERIN: If it's all right with the Court, could the doctor step down?

THE COURT: Sure.

MR. JONES: Before we went to this, we had simple photographs.

THE COURT: I'm saying we had photographs before we had use, so if you want to hold it in your hand and show it, you can do that.

Q. Okay.

A. So this is the labrum, this is --

THE COURT: Take sort of a step back this direction.

A. So this is the labrum over here, and you can see it's rough, it's torn. And what I did is I trimmed this back, make it regular. This is the good stuff over here, so this is the acromion after -- you see the space here, that nice space, this is a space over here, this is the humeral head and top of the acromion.

Remember I showed you that bone sloping down, now we created a space, it's no longer sitting, in between here is the rotator cuff, so this was before touching the rotator cuff. Now, the rotator cuff is free to fly. So the rotator cuff goes under the acromion here, and it's like a pulley. You pull it, the arm goes up, but if the bone is touching it, it irritates it and then it gets inflamed.

Q. All right. Now, Doctor, do you have an opinion within a reasonable degree of medical certainty whether the pathology which you described in your operative report of July 22, 2015 related to the motor vehicle accident of April 28, 2011?

A. Yes.

Q. And what is your opinion?

A. My opinion is that the right shoulder injury was definitely related to the car accident, and I say definitely, because she was sitting in the car and the car hit her on the right side where her shoulder was. When I looked in her shoulder, as you can see, there was structural damage to the labrum, the labrum was torn, the bicep tendon was torn, she never had a problem before.

Q. Now, Doctor, in what way or in what manner did her lupus impact upon the injuries that you repaired on July 22, 2015?

A. Well, her tissues probably would not be as strong as somebody her age who didn't have lupus. So the car accident

might have affected someone without lupus differently, could have -- I don't know how much force was used, but she still could have ended up with a bicep tendon rupture, still could have ended up with a labrum tear without having lupus, but certainly having lupus and being on steroids weakens the tissue, so it probably was magnified in her case.

Q. And in what way and in what manner did the underlying condition of a laterally down sloping acromion process impact on the injuries sustained on April 28, 2011 to the right shoulder?

A. Well, it exacerbated it, made it worse, because the space -- the normal space was already diminished, but functioning well, but now with a little bit of inflammation, the rotator cuff was touching the bone, and now it's -- she's not functioning well. So it's kind of like it already had a head start in deteriorating the rotator cuff, because it was down slope, but not touching until after the accident and the rotator cuff got swollen and didn't have a whole lot of way to go before it would touch the bone and become pathologic.

Q. And, Doctor, was this surgery of July 22, 2015 performed under anesthesia?

A. Yes, it was.

Q. And did it cause pain and suffering from the patient, was there pain and suffering associated with the procedure and the recovery therefrom?

A. Yes.

Q. Now, Doctor, did there come a time when your patient returned with further complaints to her right shoulder?

A. Yes.

Q. And did you perform another procedure -- well, let's just take a look at January 24th, 2017.

What happened? What was her presentation to you on January 24th of this year?

A. Well, she was complaining of right knee pain from her accident of 2011. She also had an MRI which showed a high grade partial tear of the bicep tendon at the anchor, which means that the biceps tendon, biceps, bi means two. So the biceps has two connections, one in the coracoid and one in the shoulder joint where it attaches to the labrum, which was already torn.

So because of the car accident, the biceps tendon attached to the labrum was torn, the labrum was torn before the biceps tendon damages, so the biceps tendon was also torn.

Q. And, Doctor, was this -- was that condition causing this patient pain?

A. Yes.

Q. And was it -- was there any loss of rotation or loss of movement?

A. Yes.

Q. And what was that?

A. Well, she normally can abduct your arm to 175 degrees. She could only abduct to 100 degrees, normally you can forward

flex your arm to 175, 180, hers was 100 degrees.

External rotation was also diminished. In other words, we say it's to the waist line as opposed to L1, L2. So L1 would be normal. Remember L1, 2, that's higher up, but her arm went down to the waist line, it couldn't go all the way up, so that was also diminished.

Q. And, Doctor, did you have -- did you schedule a further surgery of Ms. Gentile's right shoulder?

A. Yes, I did.

Q. And I'm going to show you the surgical report, as soon as I can find the surgical report. Okay.

And was the surgery performed on the right shoulder on February 22, 2017?

A. Yes.

Q. And does this appear to be the surgical report?

A. Yes, it is.

Q. And where was it performed, could you tell?

A. In an ambulatory care center, it says on top which one.

Q. Is that in Jersey City?

A. Yes. Jersey City, yes.

Q. And what type of procedure was performed on that day?

A. Well, I did an arthroscopy, I did again a synovectomy of the inflamed synovium or lining of the joint. Remember I did a debridement of the rotator cuff, which was partially called a partial tear, it was rubbing against the bone, so the outside of

it I made it smooth, I did something called a Mumford procedure.

Q. And what is a Mumford procedure? Maybe you can use the model to show?

A. So you have the clavicle. Clavicle bone attaches to the acromion over here and when she got hit, the joint between this bone, the acromion and the clavicle, the AC joint, that joint became damaged severely.

So if you go to cross over like this that you can compress this area, it becomes very painful. So arthroscopically you're now able to arthroscopically reset the joint. You take the end of this bone as it goes into here, you take off about 5-millimeters, so this bone is no longer touching this bone.

In two arthritic -- arthritis is when the end of one bone has diminished cartilage and turns the end of another bone that has reduced cartilage. But if the two bones don't touch, there's no arthritis. So what we do is take the end of the bone off so no longer touches the acromion, no touch, no pain.

Q. Okay. And Doctor, do you have an opinion within a reasonable degree of medical certainty whether the pathology which you repaired on February 22, 2017 was related back to the accident of April 28, 2011?

A. Yes, I do.

Q. And what is your opinion?

A. That the pathology in the shoulder was caused by the car accident of 2011.

Q. And do you have an opinion within a reasonable degree of medical certainty whether the pathology which you repaired in the surgery of February 22, 2017 was a competent-producing cause of pain to the patient?

A. Yes.

Q. And what is your opinion?

A. That it did cause pain.

Q. Now, Doctor, we've now talked about three separate procedures of the right shoulder, injection, a procedure in 2015 and a procedure in 2017; is that correct?

A. Correct.

Q. What is the prognosis for this patient?

MR. JONES: Objection.

THE COURT: I'm not sure what the objection is, because I haven't heard the full question.

MR. JONES: If we could speak privately, side bar, please.

THE COURT: Sure.

(Whereupon, the following takes place on the record in the robing room in the presence of the Court, plaintiff's counsel and defense counsel.)

THE COURT: All right. I don't think we got through with the question, but if you want, please ask it again.

Q. Doctor, will this patient have further pain and

suffering in her right shoulder in the future?

A. Yes.

Q. And why is that, Doctor?

A. Well, she has a lot of injury, she had a lot of damage to the shoulder due to the accident, and we've kind of patched it up, but going down the road, down the future, we can expect more problems, specifically with the rotator cuff and probably the humeral head against the glenoid, it was impacted violently so cartilage is lost, it will deteriorate.

Q. And will this -- even after this surgery, has her range of motion been changed or reduced in any way?

A. Well, it got better, but it's still far from normal.

Q. And -- okay. And I want to direct your attention to March 7th of 2017, which I think at least is the last office note I have.

Did you see her in the office on that day?

A. Right.

Q. And --

A. There's an error in this I say.

Q. What is that?

A. Well, it says status post left shoulder, it's status post right shoulder.

Q. All right. And you made a reference to analgesic medication. What type of medication is she taking, to your understanding?

A. I'm not -- I don't remember what the last prescription was, but it was some sort of pain medicine.

Q. Okay. All right. And is Jennifer Gentile still your patient?

A. Yes.

Q. And do you know when you last saw her, any idea?

A. I don't remember.

Q. Okay. And, Doctor, we briefly talked about the L1, L3 lumbar fracture, compression fracture.

What is the prognosis for a patient with an L1, L3 lumbar fracture?

MR. JONES: Objection, Judge. My reason?

THE COURT: All right, let me see both sides.

MR. JONES: All right.

(Whereupon, the following takes place on the record in the robing room in the presence of the Court, plaintiff's counsel and defense counsel.)

THE COURT: All right. Your objection is sustained.

MR. HALPERIN: And would you note my exception, your Honor?

THE COURT: I do.

MR. HALPERIN: Thank you. Okay. I have no further questions.

THE COURT: Do you need five minutes, ladies and

gentlemen of the jury? I'm getting some nods. The nods win.

Five minutes and then we'll bring you back, so please follow the direction of the court officer.

THE COURT OFFICER: Jury exiting.

(Jurors exited the courtroom.)

(Recess taken.)

(Document was marked Defendant's Exhibit C for identification.)

THE COURT OFFICER: Jury entering.

(Jurors entered the courtroom.)

THE COURT: All right. Please be seated.

All right. We're going to resume questioning of the witness.

Doctor, you're reminded you're still under oath. This is cross examination.

Counsel, you may proceed.

MR. JONES: Thank you, Judge.

CROSS-EXAMINATION

BY MR. JONES:

Q. Good afternoon, Doctor. How are you?

A. Good, thank you.

Q. You and I have never met before in a courtroom, right?

A. Never.

Q. Doctor, I want you to assume there's been testimony

that Miss Gentile stated she was referred to you by her attorney. Would you accept that as true?

A. Yes.

Q. Now, Doctor, you mentioned before about an issue with your license back in 2001, and you stated it was for reasons related to poor recordkeeping, right? In fact, it was more than that, wasn't it, the reason for your suspension?

A. Yes. I mean, there was a whole slew of things.

Q. As a matter of fact, you were found to have been grossly negligent in the treatment of some of your patients, correct?

A. Well, that was the accusation, I don't know if that was the finding.

Q. You were found to have failed to maintain accurate records, correct?

A. Right.

Q. You were found guilty of fraud, right, have committed fraud?

A. I don't believe I did.

Q. Well, you altered a patient's records as part of the charges against you, isn't that true?

A. Not true. I mean, it was a charge but --

Q. And that charge was sustained, wasn't it?

A. I believe so.

Q. So you altered a patient's records and you later

learned that they went to an attorney and then you whited out the alteration, isn't that correct?

A. I whited out what was already written six other times in the chart, because it was unnecessary to be in that area, but what I whited out, I never -- it just said the risk alternative benefits were explained to the patient. So I wrote it four other times, and because I used White Out -- it wasn't the fact I whited out, it was the fact you weren't supposed to use White Out at all.

The rules changed from the time I was charged to the time I whited it out. It wasn't the essence of the fact that I whited out, it was the fact that I used the White Out. Doctors can't use White Out.

Q. Doctor, is it true you were found to have altered records several months after the patient's records and then altered the alteration by applying White Out, isn't that true?

A. Yes, I used the White Out, correct.

Q. And you were found to have intentionally deceived a particular hospital by failing to disclose that your privileges had been terminated, is that also true?

A. No, it's not true.

Q. Doctor, you applied for hospital privileges at Mount Sinai Hospital, correct?

A. I never applied to Mount Sinai at that time. I think it was --

Q. Your filed charges were sustained that you knowingly filed a false application to Mount Sinai, isn't that true?

A. Yes.

Q. And the issue --

A. Was it Mount Sinai?

Q. And the issue at hand was that your operating -- you failed to disclose your operating privileges had been suspended at Hospital for Joint Diseases?

A. No, it's not true.

Q. And, Doctor, you were also charged with having performed unauthorized and contraindicated surgeries, isn't that true, that's the reason for your suspension?

MR. HALPERIN: Objection, compound question.

A. Well, the answer is --

THE COURT: He can answer the question.

A. Yes, 1985.

Q. That's a yes, right, Doctor?

A. Yes. 2001, it was found I did something wrong in 1985.

Q. So in addition to just keeping bad records, the charges that resulted in your suspension of your license would be practicing medicine fraudulently, correct, yes or no?

A. Whatever you read there. I don't know, I mean, I don't remember. It was 21 years ago, so I don't remember.

Q. Willfully filing a false report, correct?

A. Don't remember, don't recall.

Q. Gross incompetence, correct?
A. Never accused of incompetence. In fact, they said I was an excellent surgeon.
Q. Yes or no, Doctor?
MR. HALPERIN: Objection.
A. No, the answer is no.
THE COURT: The answer will stand.
Q. And during the pendency of your suspension, you decided to open a business to consult with attorneys in personal injury cases, isn't that correct?
A. That's correct.
Q. So you worked in the personal injury field while you were suspended from the practice of medicine, correct?
MR. HALPERIN: Objection.
THE COURT: Overruled. Overruled. You can answer.
A. Yes, I did. I assisted personal injury, all sorts of medical legal problems, explaining medicine to attorneys.
Q. And you applied for and then were reinstated in approximately 2008, correct?
A. Correct.
Q. So your license was suspended for a period of seven years, correct?
A. Correct.
Q. And initially it was going to be suspended for one

year, but then it was reviewed and they thought that the charges were so egregious, they made it seven years, isn't that correct?

MR. HALPERIN: Objection.

A. No. I refused to pay the fine, and I never paid the fine and I never will pay the fine.

THE COURT: Overruled.

Q. But you were suspended for seven years?

A. Because I didn't pay the fine, correct.

MR. HALPERIN: Objection. Asked and answered.

THE COURT: Overruled. Cross examination.

A. I had that principle.

Q. So, Doctor, on several occasions while you were a professional, you placed your own personal financial needs above those of your own patients, would that be fair?

A. Never. Where do you get financial? Where is financial? You're just making stuff up.

Q. I'm making stuff up?

A. Where does it say financially. I never took a penny illegally.

Q. Did you make money as a physician?

A. Of course I'm making money as a physician. Are you making money as a lawyer?

Q. I'll ask the questions.

Did you falsify documents?

A. Yes, of course.

Q. You were found to have intentionally deceived your patients, isn't that correct?

MR. HALPERIN: Objection.

A. Never deceived a patient.

THE COURT: Question and answer will stand.

Q. You lost your license for moral unfitness, isn't that correct?

A. They said that, yes.

Q. Carelessness in treating certain patients, isn't that correct?

A. They wrote that down, yes.

Q. Unnecessary surgery, isn't that correct?

A. Yes.

Q. Fraudulent conduct, isn't that correct?

A. If you're reading it. I don't remember.

Q. Well, it's your recollection, Doctor, right, isn't that correct?

A. I guess.

Q. And being deceitful and lacking remorse, isn't that also correct?

A. Yes.

Q. Yet you sit here today and want the jury to believe you about your review of Miss Gentile's case, correct?

MR. HALPERIN: Objection.

THE COURT: That's sustained.

Q. Now, Doctor, you saw Miss Gentile for the first time on May 6, 2011, correct?

A. Correct.

Q. And that was on a referral from the attorney, but she became your patient, fair enough?

A. Correct.

Q. So she's your patient. And as her physician, you consider yourself one who is well versed in her entire history?

A. Well, with regard to the accident, for what I saw her for, yes.

Q. Only the accident?

A. What are you alluding to?

Q. I'm not alluding to anything. I'm asking, what are you familiar with, treatment from the accident or something else?

A. Treatment for the accident pretty much, yes. I did a knee replacement on her friend.

Q. Not interested, Doctor.

Are you familiar with her history?

THE COURT: Stop, stop. Don't cut him off.

A. She might have accompanied her friend to the office, so I don't remember anything else I discussed with her at that time. I'm trying to be perfectly honest with you.

Q. Doctor, for purposes of all of your testimony, I'm only talking about Miss Gentile, okay?

A. All right, sure.

Q. And as her physician and somebody who is coming into a jury and offering an opinion on causation, in other words, what caused her ailments and injuries, do you think as a physician you should be versed in her entire history and not just the treatment from the accident, that's a yes or no?

A. To be an effective physician, I have to know about the accident, because I'm treating her about the accident. I wouldn't know about anything that happened before that.

Q. Okay. Did you review the medical records of St. John's Riverside Hospital, yes or no?

A. I don't recall doing that, no.

Q. Did you review the ambulance call reports?

A. No, I didn't.

Q. Did you review the medical records of Dr. Scott Haig or Eric Golden?

A. Gordon.

Q. Excuse me?

A. Eric Gordon, yes.

Q. You reviewed his records?

A. Yes.

Q. How about Dr. Brook Nevins, did you review those records?

A. No.

Q. How about the Burke Rehabilitation records, did you review those?

A. I know she was there, but I didn't review the records there.

Q. Did you review the Hudson valley Radiology notes?

A. I did see them, but I don't remember when, but I did review them. For some reason, I saw them.

Q. We saw all your notes on direct examination from your office visits with plaintiff?

A. Correct.

Q. Did you see any reference to Dr. Gordon, Dr. Haig, Lawrence Hospital or St. John's Riverside in those records, your records?

A. In my records, no, but I --

Q. Did you review the records of Dr. Perry Weinstein?

A. Perry Weinstein, no.

Q. Did you review her radiological history from Lawrence Hospital?

A. No.

Q. Did you review the records of Dr. Alan Leff?

A. He sent me a note that he took care of it, but I didn't review his records.

Q. Did you review the records of Northern Dutchess Hospital?

A. No, I didn't.

Q. Did you review any of the films other than the ones you took in your office on May 6, 2011?

A. She might have brought me a disk, but I don't remember what they were, so it could have been.

Q. So, Doctor, would it be fair to say that you're not familiar with her history of injury prior to the automobile accident of 4/28/2011?

A. Correct.

Q. Okay. Would it also be fair to say you're not familiar with her subsequent injury history after the accident of 4/28/2011?

A. Well, she told me about some things that happened, but I don't -- in other words, I know that she fell at Burke or she fell when she was coming back from Burke or something, but I don't remember. No, nothing formally.

Q. I'm asking about medical records, Doctor, so try and focus on the question. Okay?

Did you review any medical records, films, X rays or MRI's of accidents and injuries after 4/28/2011?

A. Other than my own notes, I don't remember doing that, no.

Q. So would it be fair to say that you're not familiar with her pre-accident history of 4/28/2011 or her post-accident history of 4/28/2011, would that be a fair statement?

A. Well, preop, pre, I would agree with you, but post, I was seeing her post for six years after her accident.

Q. I'm talking about review of records, Doctor.

A. Other people's records?
Q. Yes.
A. No. Right, you're right.
Q. You have no knowledge of those?
A. No.
Q. But you come here and you're offering the jury an opinion on causation, in other words, what caused her ailments without having reviewed all her medical records, correct?
MR. HALPERIN: Objection.
A. I guess, yes.
THE COURT: I'm going to allow the answer to stand.
MR. HALPERIN: Okay.
Q. And if you don't have an accurate history, Doctor, wouldn't be it fair to say you could give a flawed opinion on causation, yes or no?
A. It's possible.
Q. When Miss Gentile arrived at your office on May 6 of 2011, she filled out a questionnaire, correct?
A. Correct.
Q. And at that time, she informed your staff that she was disabled as of May 9, 2010, correct?
A. Yes.
Q. All right. Now, that's an important medical note, isn't it, that she's disabled?

A. Sure.
Q. Now, you consider yourself one who is a careful medical practitioner?
A. Sure.
Q. Did you see this note?
A. Sure.
Q. So you knew she was disabled, right?
A. Yes.
Q. Did you know the nature of her disability?
A. Well, yes. I mean we discussed it.
Q. All right. Lupus?
A. Lupus, yes.
Q. Did you know whether or not it involved her shoulders, hips, joints, did you know anything in particular or just accepted her word as disabled?
A. Well, I accepted her word that the injuries she had were new, that they weren't something she had been treated for before.
Q. You took her word for it?
A. I certainly did, yes.
Q. But you didn't ask to see records of disability once you started treating her, fair enough?
A. No, I didn't.
Q. Yet you knew you were coming to court to give a professional opinion to a jury in Supreme Court, but you didn't

think it wise to review all her records?

MR. HALPERIN: Objection.

THE COURT: Can I hear the question read back?

(Whereupon, the last question was read back by the Reporter.)

THE COURT: The question will stand. You can answer the question.

A. Well, I don't spy on my patients. When they come to me and tell me something, I believe them. I could spend all day spying on my patients and asking if they're telling the truth or not. It doesn't make sense, does it?

Q. Well, Doctor, so you would consider it spying on your own patient if you were to ask for prior medical records?

THE COURT: No, that's sustained, sustained.

Q. Doctor, did you compare any of her pre-accident X rays, pre-accident, meaning before 4/28/11 to say the X ray you took?

A. No.

Q. Did you review her application or did you ask to see her application for Social Security disability to determine what the nature of her disability was, yes or no?

A. No. It's nonsense, of course not.

Q. You think that's funny?

A. I think it's nonsense, I think everyone else does, too.

Q. Okay. Well, are you aware, Doctor, that as part of her application for Social Security disability, she reported pain in

her hips and shoulders which awakens her at night and this was prior to the accident, were you aware of that?

A. No, I never saw that before.

Q. Are you aware she required assistance getting in and out of a tub to prevent falling or slipping?

A. No, I wasn't aware of that.

Q. Were you aware that she was already on Percocet?

A. Yes.

Q. As a treating physician, one of the questions you would ask is what medications you were on, right?

A. Correct.

Q. So that's important?

A. That's important.

Q. Because you don't want to prescribe a medication that could be contraindicated to Percocet, right?

A. Well, that and other reasons, yes.

Q. So you didn't think it was important to review this, right?

MR. HALPERIN: Objection.

THE COURT: Review what?

MR. JONES: Review her application.

A. Review her application for disability?

Q. Yes.

A. No.

Q. You still think this is nonsense, Doctor?

THE COURT: Sustained.

A. Yes.

Q. Let's continue.

Do you think it's important that she reported as part of the reason for her disability her vision blurred at times, would you want to know that?

A. For treating her shoulder problems, she -- no, it's not important to me, no.

Q. Would it be important if maybe you don't want to prescribe medication that could aggravate a vision compromise?

A. Medications I prescribe don't cause blurring.

Q. So you just said something, treating her for shoulder. So you think it would be important to know whether or not she had a history of shoulder injury, correct?

A. Yes.

Q. That would be important?

A. That would be important.

Q. Did you ask her if she had a history of shoulder problems?

A. Well, yes. She said she was okay, her shoulders were fine before the accident.

Q. But I just read you a portion of her Social Security disability application when she stated that her shoulders hurt her.

A. Is that at times, all the time, sometimes? I don't

know. I mean --

Q. Well, Doctor --

A. I mean, it's out of context.

Q. Well, Doctor, it formed the basis of her disability, so it would be pretty severe, right?

A. I'm sorry?

Q. She stated as one of her reasons for applying for disability bilateral shoulder pain, would you want to know that?

A. Okay, yes, I know that.

Q. You would want to know that?

A. It wouldn't help me in treating her.

Q. But, Doctor, if you want to give an opinion as to whether or not an automobile accident caused shoulder injury, you'd want to know she had prior shoulder problems, correct?

A. Sure, that would help me determine.

Q. So this is now important to you, right, meaning the Social Security disability application?

MR. HALPERIN: Objection, asked and answered.

THE COURT: It's cross examination.

A. To determine whether or not the accident was a sole cause of her problem?

Q. Yes, one of the reasons.

A. It would help me make a decision, yes.

Q. So this is no longer nonessential, we can agree with that?

THE COURT: Sustained, sustained, sustained, sustained, sustained, sustained, sustained.

Sustained means you don't have to answer the question.

THE WITNESS: I'm sorry.

Q. Now, you mentioned, Doctor, on direct examination that the plaintiff appeared to have had a fracture of her right ankle as a result of this accident?

A. Correct.

Q. What records, if any, up until today have you reviewed that demonstrated any prior right ankle injuries other than your own?

A. No others.

Q. Nothing.

So as you sit here today, you are completely unaware of how many times, if any, the plaintiff may have sustained ankle fractures before or after the accident of 4/28/2011, correct?

A. No. I know she had an injury, she had another injury when she fell at home coming back from Burke, I believe.

Q. From Burke? That would be after the accident.

A. I'm sorry?

Q. That would be after the accident.

A. Correct.

Q. Well, how about February 25th of 2011, are you aware that Miss Gentile suffered an ankle fracture, right ankle

fracture and presented to Lawrence Hospital?

You are now, right?

A. No, I was aware of that.

Q. Where in your notes, Doctor, does it reflect you were aware of that?

A. Not in my notes, but I was aware. She did tell me that.

Q. So as a careful medical practitioner, someone who takes detailed notes, knowing she had a right ankle fracture prior to the accident, you must have reported it somewhere in your own notes, did you?

A. No. I didn't, no.

Q. And one of the reasons for your suspension was bad recordkeeping, correct?

MR. HALPERIN: Objection.

THE COURT: Overruled.

A. Yes.

Q. And you're still keeping bad records as it pertains to the Plaintiff, aren't you?

MR. HALPERIN: Objection.

A. Well, for my purposes, it wasn't bad, but maybe for the court, it could be better.

Q. Well, let's continue with this particular note, Doctor.

She presented to Lawrence Hospital February 25th, 2011, that would be two months before this accident, correct?

A. Correct.

Q. And on that day, she reported or the physical examination revealed antalgic gait. This is not a yes or no question.

Tell the jury what an antalgic gait is?

A. That's basically when somebody limps, when somebody limps, it's called an antalgic gait.

Q. It's a severe limp, isn't it?

A. Yes, it could be a severe limp.

Q. A limp, but it's a severe limp to not bear weight at all on the foot or ankle, correct?

A. No, that's not true. That's your definition. That's not true. I never heard that before.

Q. She was diagnosed with right ankle fracture, do you see that?

A. Yes.

Q. And you're seeing this report for the first time today, Supreme Court, at your patient's trial, correct?

A. Yes.

Q. Now, there's a note, trauma assessment, patient states she fell last night and turned her right ankle, no obvious bruising to the right ankle, patient has a history of fractures due to D3 insufficiency and systemic lupus. Has an air boot from her foot from a previous injury.

Were you aware of any of that when she presented to

your office on May 6, 2011?

A. Of all the different injuries, no.

Q. So, Doctor, had you known about this, would you have, as a careful medical practitioner, taken a look at your X ray that you took on May 6, 2011 and asked to see the X ray taken at Lawrence Hospital on this particular date, 2/25/2011 to compare the two?

A. Well, I mean --

Q. That's a yes or no.

MR. HALPERIN: Objection. If he can't answer with a yes or no, he's been interrupted many times when he's trying to answer the question.

THE COURT: Can you answer the question yes or no?

THE WITNESS: No, I can't.

Q. As a careful medical practitioner, Doctor, if you knew your patient had a previous X ray of her right ankle taken before you were about to administer an X ray, would you want to see it? That's a yes or no question.

A. Can't answer that.

Q. If you wanted to give an opinion as to whether or not an ankle was refractured or made worse by the automobile accident, would you want to see the previous X ray, yes or no?

A. Yes, I would.

Q. All right. You told the jury that the ankle fracture

occurred in the accident of 4/28 of 2011, correct?

A. Yes.

Q. You didn't say it was refractured, you said it was fractured, correct?

A. Correct.

Q. So in order to diagnose a refracture, you'd have to see the previous X ray, wouldn't you?

A. Yes. To say it was a refracture, I'd have to know it was a fracture before.

Q. But we can agree you did not see that X ray or ask for it, correct?

A. We can agree on that, yes.

Q. And her pain scale on 2/25 of '11 of her right ankle two months before the accident was a ten out of ten, right?

A. Correct.

Q. Doesn't get any worse than that, right?

A. No.

Q. That's breakthrough extreme pain?

A. That's what?

Q. That's breakthrough pain, isn't it?

A. Yes. Um-hum, yes.

Q. Now, you were very particular in your direct examination in describing the fracture you saw on the film you took on May 6 of 2011, right?

A. Correct.

Q. You called it an avulsion fracture?

A. Correct.

Q. And an avulsion fraction means a piece of ligament, there's a piece of a bone, because it's a very violent type of maneuver correct, right?

A. Correct.

Q. I'm going to show you the X ray report taken at Lawrence Hospital on February 25th of 2011.

Plaintiff was diagnosed with avulsion fracture two months before this accident, correct?

A. Correct.

Q. You were unaware of that until today, correct?

A. Correct.

Q. Does that cause you to change your opinion, Doctor, as to whether or not the accident was the competent-producing cause of the ankle fracture that you saw on your film?

A. It would -- I would think that maybe it was refractured.

Q. Well, Doctor, too late for that. Answer my question.

MR. HALPERIN: Objection.

THE COURT: You can't make comments. It's purely about questions and answers.

Q. Would you need this film to compare it to your film to diagnose a refracture?

A. A refracture, but not a fracture?

Q. Yes. You would need that?

A. Well, to diagnose a fracture, I don't need any previous fractures -- X rays of previous fractures. I just know when I see a fracture, a fresh fracture. So there's an old fracture and a fresh fracture, there's a difference.

Q. And, Doctor, in order to diagnose an aggravation or refracture, would it be fair to say, as you stated before, you would need to compare the two sets of X rays?

A. To diagnose the refracture, correct.

Q. You didn't have two sets of X rays, correct?

A. No, I didn't.

Q. So you cannot diagnose or state that it is a refracture within a reasonable degree of medical certainty, correct?

A. No, I can't say it was a refracture.

Q. Once she left your office on May 6, 2011, she wasn't casted, was she?

A. No.

Q. And she did not have an air boot on, did she?

A. Not an air -- I don't remember, but I don't think so.

Q. So she walked out of your office, right?

A. Yes.

Q. And her right ankle was not x-rayed on the day of the accident at Lawrence Hospital, are you aware of that?

A. Yes.

Q. You're aware of that because I just told you or because

you reviewed the reports?

A. Well, because you just told me.

Q. She'd been previously provided an air boot from the fracture in February 2011, did she tell you about that?

A. No.

Q. So it would be fair to say, Doctor, that the diagnosis that you provided to the jury earlier today of an avulsion fracture of the right ankle is the exact same diagnosis provided to the plaintiff at Lawrence Hospital on 2/25 of 2011, two months prior to this accident?

A. Yes.

Q. Let's talk about the right shoulder.

Now, you told the jury that the plaintiff suffered right shoulder injuries as a result of this particular accident, that's your opinion, correct?

A. Yes, it is.

Q. And you also stated on direct examination that she never had any problem with it before, was that your understanding?

A. That was my understanding, yes.

Q. Did she ever tell you that she had presented to Lawrence Hospital on at least two previous occasions for right shoulder, severe right shoulder pain?

A. No.

Q. Would it be fair to say, Doctor, that if you are

uninformed by your own patient about her right shoulder history, through no-fault of your own, you could possibly provide a flawed opinion to the jury about causation, correct?

MR. HALPERIN: Objection.

THE COURT: Overruled.

A. I don't understand the question.

Q. Well, if you don't have an accurate history about the Plaintiff's right shoulder, it could cause you to give a flawed opinion to the jury about causation, correct?

A. Yes, that's possible.

Q. As you sit here today, have you reviewed any medical records from Lawrence Hospital prior to the accident pertaining to the plaintiff's right shoulder?

A. No, I haven't.

Q. I'm going to show you what's been marked as Plaintiff's in evidence, a record from Lawrence Hospital dated 8/3 of 2008 regarding Miss Jennifer Gentile.

She made complaints of right shoulder pain, scale seven out of ten. That's pretty high, isn't it, Doctor?

A. Yes, um-hum.

Q. And the pain is described in her right shoulder as chronic and stabbing.

Were you aware of that up until today?

A. No.

Q. Now, if something is chronic and stabbing, it causes

someone to go to the emergency room, that is a significant amount of pain for a right shoulder, isn't it?

A. Yes, it is.

Q. On November 9 of 2008, are you aware that Miss Gentile presented to Lawrence Hospital again because of shoulder complaints?

A. I'm sorry, what was the date?

Q. 11/9 of 2008?

A. I wasn't aware of that.

Q. I'll show you what's been marked as Plaintiff's in evidence, Lawrence Hospital record 11/9/2008, Miss Jennifer Gentile, the date is highlighted here on the top right of the document.

You're familiar, Doctor, with the emergency physician record of a hospital?

A. Of a hospital?

Q. Of a community hospital, you've seen this report before?

A. Yes.

Q. And this is specifically named an upper extremity injury, do you see that?

A. Yes.

Q. Now, on this date, the plaintiff had limited range of motion secondary to pain in the deltoid area.

Do you see that?

A. Yes.

Q. And the emergency room physician drew a little diagram here and identified where the pain is.

Do you see that?

A. Yes.

Q. And that's the right shoulder, isn't it?

A. Correct.

Q. And that's in the vicinity of the labrum and rotator cuff, too, isn't it?

A. Yes.

Q. The areas you addressed during your operation, correct?

A. Correct.

Q. So, Doctor, let's talk about the indications for surgery. All right? Indications, meaning the reasons why an orthopedic surgeon would administer a surgery to a patient. All right?

A. Correct.

Q. Would one of the indications for surgery be severe pain?

A. One of the indications, yes.

Q. And what I've just shown you with these two records from Lawrence Hospital, Miss Gentile had severe pain in her right shoulder from 2008, correct?

A. Correct.

Q. And another indication for surgery after a right

shoulder, in addition to severe pain, would be limited range of motion, would that be fair?

A. That's fair, yes.

Q. And so as of August 2008 and November of 2008, the Plaintiff Jennifer Gentile was a surgical candidate for her right shoulder, correct?

A. No. That's just two indications.

Q. Would you also need a diagnostic test maybe?

A. Yes.

Q. Very good.

Are you aware of whether or not she had any diagnostic tests to her right shoulder before the accident?

A. I'm not aware of that.

Q. Are you aware she underwent an X ray of her right shoulder which demonstrated -- actually both shoulders, which demonstrated bilateral arthritis, are you aware of that?

A. No.

Q. So if someone has a positive diagnostic test for arthritis, severe pain and limited range of motion, that person is now a candidate for surgical intervention, would that be fair?

A. No, not at all.

Q. Doctor, when you performed a surgery, one of the indications was complaint of pain by plaintiff, correct?

A. That was one of the complaints.

Q. And the second was limited range of motion, correct?

A. Correct.
Q. And the third was a positive diagnostic test, correct?
A. Any test?
Q. No. It was an X ray, you had an MRI.
A. It was an MRI.
Q. You had an MRI?
A. I had an MRI.
Q. Of the right shoulder, correct?
A. Yes.
Q. Do you have that report with you, the MRI report? Do you have it?
A. I don't know if I have it here. I might have it.
Q. Last item before you get to that report, I want to get back to 11/9/2008 entry from Lawrence Hospital.

Were you aware that the Plaintiff had a right arm twisting injury which caused her to go to the hospital with an abrasion on the right shoulder, were you aware of that?
A. No, I wasn't.
Q. A trauma to a shoulder did cause a need for surgery even years later, right?
A. Sure, yes, it can.
Q. As a matter of fact, you performed a surgery on the Plaintiff's right shoulder on what year?
A. 2015.
Q. And the accident was in 2011, correct?

A. Correct.

Q. So, Doctor, we now have an injury in 2008. Injuries can then lead to degeneration, correct, Doctor?

A. Yes.

Q. And degeneration can lead to the need for surgery, correct?

A. Yes.

Q. Let's take a look at the MRI report ordered by you and performed at White Plains Hospital Center, Department of Radiology.

Now, Doctor, did you review the MRI yourself?

A. Yes, I did.

Q. Why is it not part of the records you brought to court with you today?

A. Because the patient brings in a disk and I look at the disk and then give it back to the patient.

Q. So you didn't think it was important for you to bring the MRI to show to the jury if it's the diagnostic test you relied upon to perform surgery?

MR. HALPERIN: Objection.

THE COURT: Sustained.

Q. You didn't think it was important to bring the actual MRI from 2015 of the Plaintiff's right shoulder?

MR. HALPERIN: Objection. That's in evidence.

MR. JONES: No, it's not.

MR. HALPERIN: White Plains Hospital was in evidence.

Q. Did you think it was important to show it to the jury, Doctor?

A. The MRI itself?

Q. Yes.

A. It's hard to read an MRI for laymen. They can't read an MRI.

Q. Oh, okay.

A. You have to be trained to read it.

Q. Let's go through it. All right.

Now, let's talk about the rotator cuff. The rotator cuff, no definite rotator cuff tendon tear is seen. Do you see that entry?

A. Yes.

Q. Mild supraspinatus tendinopathy. Do you see that?

A. That's part of the rotator cuff.

Q. Right. In fact, there are four muscles which form the rotator cuff, correct?

A. Yes.

Q. Supraspinatus, infraspinatus, teres minor and subscapularis, correct?

A. Yes, correct.

Q. And those four muscles all meet right under here under the acromion, correct?

A. Correct.
Q. And they function and give the shoulder strength?
A. Um-hum.
Q. Correct?
A. Yes, yes.
Q. And because she had a type 2 acromion, it means this bone was a little bit too close to those four muscles, correct?
A. Correct.
Q. And if she were to abduct or roll her shoulder, it could sometimes cause what's called an impingement syndrome, correct?
A. Yes.
Q. All right. And if this gets too close, it restricts the range of motion in the shoulder, correct?
A. Causing pain and tearing.
Q. Right, but, Doctor, the type 2 acromion was something she was born with, correct?
A. Absolutely.
Q. Not caused by the accident, correct?
A. Correct.
Q. So you operated on a condition that she was born with, right?
A. No, no, not at all.
Q. We'll get to your report in a moment, Doctor.
A. I think I explained it previously.

Q. On redirect, you can say anything you want, Doctor, but I'd like you to answer my questions.

A. Okay. Sure, sure.

Q. Let's talk about the biceps tendon of the right shoulder that you said was ruptured.

Did you say that?

A. Yes.

Q. Let's read this. The long head of the biceps tendon appears unremarkable. Do you see that?

A. Yes.

Q. Small amount of fluid accumulation within the bicipital tendon sheath, do you see that?

A. Yes.

Q. Now, there's no mention of a bicep tendon tear so far, correct?

A. Correct.

Q. As a matter of fact, this report does not diagnose a bicep tendon tear, correct?

A. Correct.

Q. It states there's a labral tear in the right shoulder, correct?

A. Correct.

Q. And this was taken in 2015, correct?

A. Correct.

Q. And the complaints the plaintiff had in 2008 were also

consistent with a labral tear, weren't they?

A. It's possible. I didn't examine her then.

Q. And the labrum is -- to explain for the jury -- is a ring of cartilage, and I'm looking at this shoulder model, right at the glenoid humeral joint, correct?

A. Circumferential, around.

Q. And it allows motion in the shoulder so you don't have bone running on bone, correct?

A. Cartilage on cartilage, yes, I'll accept that.

Q. And it allows the joint to move freely, because it is a ball and socket joint, correct?

A. Right.

Q. So continuing the impression of this radiologist that you relied upon, by the way, correct, you relied upon this review, no?

A. I use --

Q. That's a yes or no. Did you rely upon the review?

A. I can't answer it like that, no.

MR. HALPERIN: Objection. He was trying to answer.

Q. Then I'll continue.

The impression of the radiologist is no definite rotator cuff tendon tear, correct?

A. That's his impression, correct.

Q. Supraspinatus tendinosis, correct?

A. That's his impression, correct.
Q. One labral tear, correct?
A. Yes.
Q. And small amount of fluid in the bicipital tendon, which is a non specific finding, isn't it?
A. Correct.
Q. Anybody could have fluid in their shoulder, correct?
A. At any given time, sure.
Q. Little bit of joint effusion in the glenoid humeral joint, which we pointed to before, again, a non specific finding, not indications of injury or otherwise, correct?
A. Correct.
Q. And trace amount of fluid within the subacromial, subdeltoid bursa.

The bursa is a sac that provides lubrication for the shoulder, correct? Again, that's a non specific finding, correct?

A. Yes, non specific.
Q. So with the exception of the labral tear, this is almost a normal read of the Plaintiff's right shoulder, correct?
A. No, I wouldn't say that. It's giving all these -- no, I wouldn't say that.
Q. You performed an operation on the Plaintiff's right shoulder, right, Doctor, July 22, 2015?
A. Correct.

Q. And did you base your decision to perform a surgery on this particular MRI?

A. No.

Q. Did you order your own repeat MRI?

A. What's that?

Q. Did you order your own repeat MRI after this one?

A. At that time, no.

Q. No. So you didn't rely upon the MRI, but --

A. Solely, no, not solely.

Q. But you told the jury one of the indications for surgery would be a positive diagnostic test, correct?

A. Correct.

Q. And we don't have one here, do we?

A. What I meant by test is my examination, radiology input, all the things. A doctor doesn't just get on the phone. Otherwise, every time a radiologist read something, we would operate or not operate. We use it as only part of making a diagnosis and treat somebody.

MRI's, they're called images, not pictures. It's like taking a silk screen and putting it in front of the jury. I can't see the details, so I could miss a lot of things. Are you aware an MRI is only 70 percent accurate?

Q. I'm going to ask you the questions, Doctor. When you're finished with your answer, let me know.

A. Sure.

Q. Are you finished?
A. Yes.
Q. Would it be fair to say, Doctor, the MRI report I just read to you was not one of the indications for surgery, yes or no?
A. Can't answer it.
Q. Okay. But you did not order your own MRI, correct?
A. I think I did order an MRI.
Q. Your own MRI before the right shoulder surgery?
A. I don't remember the sequence, but I remember ordering an MRI, a few MRI's, I think.
Q. Let's see it -- before your surgery of 7/22/15, let's see the MRI in addition to this one of 6/27/15?
A. Well, that one I saw.
Q. Is there another one?
A. I think there's another MRI afterwards, before I did -- there was two surgeries.
Q. Doctor, I'm asking about how many MRI's did you review before the surgery of 7/22/15 of the right shoulder?
A. I think just one.
Q. And that's the one we're looking at now, correct?
A. Correct.
Q. And you actually reviewed the film yourself, correct?
A. Yes.
Q. And can we agree that based upon your review of the MRI

and the content of this report, that the indications for your right shoulder scope are not present in and of itself?

A. Just of the MRI?

Q. Yes.

A. I would say yes, just the MRI, sure.

Q. It's almost a normal finding, correct?

A. No, it's not a normal finding, it's abnormal, but given in the context of an examination, you use that plus physical examination to determine what's going on, and then when you make -- you do the MRI, you actually find something that's actually different from the report, because you're looking at it and you actually take pictures to prove it.

Q. Let's talk about your surgery, Doctor, okay?

A. Sure.

Q. You did what's called a diagnostic arthroscopy, correct?

A. Yes.

Q. Which means you did the arthroscope to see what was wrong, right?

A. In part, yes.

Q. Because you didn't know what was in there, you were going in to say, I'm not sure what's wrong, but I'm going to diagnose it once I'm in?

A. Some things I was sure about, some things I was not sure about in part, yes.

Q. You were sure she did not have any rotator cuff damage, correct?

A. No, I wasn't sure, not before I diagnosed it, before I did my arthroscope.

Q. Let's take a look at what you found, okay?

A. Sure.

Q. With regard to the rotator cuff, rotator cuff was shown to be intact without tears and stable?

A. Correct.

Q. Correct?

A. Yep.

Q. And with respect to the labrum, there was a slap two lesion of the labrum with degeneration and a partial bicep tendon tear, correct?

A. Correct.

Q. Now, we can also agree that there was no repair of the bicep tendon during the course of the surgery, correct?

A. Yes. You don't do that, no. Yes, I agree with that.

Q. You didn't repair it?

A. No.

Q. Let's talk about the subacromial decompression.

Now, the subacromial decompression refers to the shaving of the bone under the acromion to allow more room for the rotator cuff?

A. Correct.

Q. To let those muscles articulate freely inside the shoulder joint?

A. Freely.

Q. We can also agree, Doctor, that this portion of your operative report and the procedure you performed was on a condition she was born with and not caused by the accident, correct?

A. The structural part she was born with.

Q. This portion of your operative report, subacromial decompression with acromioplasty was performed using a 5.5 conical burr, which means you actually burred out the bone, correct?

A. Yes.

Q. To make more room for the rotator cuff?

A. Correct.

Q. That was something she was born with, right?

A. She was born with that, yes. That bone, yes, correct.

Q. From the position it was in, the type 2 position, correct?

A. Correct.

Q. The undersurface of the acromion right here was resected to a flat smooth surface to allow unrestricted exertion of the rotator cuff, hence changing the acromion type 2 to acromion type 1, right?

A. Yes.

Q. So we can agree she was born with the acromion 2 and you made an acromion 1 during the course of the procedure, correct?

A. Correct.

Q. And this portion of her shoulder is a condition that she was born with, correct?

A. Correct, um-hum.

Q. Doctor, let's talk a little bit about that left knee removal of metallic item.

Now, you haven't reviewed any St. Lawrence Hospital records, correct?

A. Correct.

Q. Now, on May 28, 2011, the Plaintiff had -- excuse me, April 28, 2011, Plaintiff testified yesterday that she had no abrasions to her left knee. Will you accept that as true?

A. Yes.

Q. And she also stated she did not bang her left knee on the door of the car, will you accept that as true?

A. Yes.

Q. And what part of the car was she sitting in based upon the history given to you?

A. I think she was driving the car.

Q. You think so?

A. I think, I believe so.

Q. You stated on direct she was in the passenger side or

you just don't know?

A. I think she was sitting on the passenger side.

Q. Okay. Now, Doctor, did she tell you about an emergency room visit to Lawrence Hospital on May 8, 2012?

A. Before the accident or?

Q. May 8 of 2012 would be after the accident.

A. After the accident, no, I don't remember seeing that.

Q. Okay. May 8 of 2012, is almost a full year after our accident, we can agree with that?

A. Yes.

Q. And on May 8, 2012, the Plaintiff complains that she was the victim of a motor vehicle accident a few months ago and now has a foreign body in her leg that she wants removed.

Were you aware of this visit?

A. No, I wasn't.

Q. Were you aware that she went to or did she tell you that she may have had another accident after the accident of April 28, 2011?

A. I wasn't aware of that.

Q. And when she went there, she now had, and this is May 8, 2012, a 3-millimeter open wound to her left knee, were you aware of that?

A. No.

Q. Seeing this for the first time, Doctor, last entry and I'll get to my question, left knee pain times six months.

Now, six months before May 8 of 2012 would make it about six months after our accident, correct?

A. Correct.

Q. Which means that if this is true, this hospital entry, that means that the left knee complaints and your subsequent surgery have nothing to do with our accident, fair enough, if this is true?

A. Yes.

Q. But you are looking at this for the first time, correct?

A. Correct.

Q. So now that you know this, Doctor, meaning the hospital visit to Lawrence Hospital on May 8 of 2012, that would possibly cause you to change your opinion that the removal of the foreign body was in some way related to the April 28, 2011 accident, wouldn't it?

A. Well, yes. If you're saying there was another car accident that caused this wound, then it would be caused by that car accident.

Q. I'm just reading what is here the same as you are, Doctor.

If this is true, then there was another event, correct?

A. Correct.

Q. Doctor, you saw the Plaintiff from May 6, 2011 through November 18 of 2011, correct, for a total of seven visits, right?

A. Yes.

Q. And then you didn't see her again until May 22nd of 2012 for a period of six months, correct, from November 18th, 2011 to May 22nd, 2012, right?

A. Yes.

Q. And then she comes back to your office after her hospital visit to Lawrence Hospital on May 8 of 2000 -- withdrawn it's 2012. There was a six month, yeah, six months between 11/18 and 11/11 and 5/22 of '12, so she had this intervening event before her next visit to you, correct?

A. Yes.

Q. And then on 6/4 of '12, you removed something from her knees.

Are you aware, Doctor, that she fell in July of 2011 and October of 2011 and bruised her knees?

A. No.

Q. Well, a foreign body can get lodged in the knees from a fall on those knees, right?

A. It's possible.

Q. And you saw her June 4th of '12, June 12 of '12, the 26th of June, 2012, July 24th of '12 and then August 14th of '12, so for a total of six visits in 2012, correct, and then you --

A. Yes.

Q. From August 14th of 2012 until June 30th of 2015, you don't see the plaintiff at all, that's almost three years, right?

A. Correct.

Q. And then you perform an MRI on her right shoulder on June 27th of 2015.

Did you ask her if she had any intervening events when she came to see you after three years?

A. I did, but I asked how she was doing and she told me.

Q. So you relied upon her words and truthfulness?

A. I relied on her word.

Q. And yet now knowing that she has at least two prior incidents to her right shoulder, two falls, two of which led to knee abrasions, a possible intervening automobile accident, would that cause you to change your opinion as to whether or not the ailments and injuries she is claiming are actually related to the accident of 4/28/2011?

MR. HALPERIN: Objection.

THE COURT: He can answer that.

A. Well, certainly helps me, gives me an overall view of what's happening and it changes my opinion somewhat that there are a lot of other factors as well as the accident.

Q. Now --

THE COURT: I need to see both counsel.

(Whereupon, the following takes place on the record in the robing room in the presence of the Court, Plaintiff's counsel and defense counsel.)

THE COURT: Back on the record.

MR. JONES: Your Honor, no further questions.

THE COURT: Any redirect?

MR. HALPERIN: Briefly, your Honor.

THE COURT: You may redirect.

REDIRECT EXAMINATION

BY MR. HALPERIN:

Q. Doctor, since your license was reinstated in 2008, how many surgeries have you performed? Thousands?

A. Well, I want to be accurate. I don't want to be accused of being a liar, so I would say over 2,500.

Q. And has your license been limited in any way?

A. No, no limitations.

Q. Now, Doctor, you were asked about -- a bunch of questions about a bunch of records relating to the patient's history, St. John's Riverside, ambulance.

You're treating physician for Miss Gentile. Do you ordinarily get called upon to review all of the patient's medical history, records and medical history before you treat a patient?

A. The only time I do that is if someone comes to me who had a hip replacement previously and it's not working out and I have to review the hip, then I take an X ray and see what was done previously, but no, the answer is no, I don't usually.

Q. Does a treating doctor such as yourself ask for the entire medical history of the patient when she comes in for treatment?

A. That's what I was leading to before. Nobody does that. You can't do that, it's impossible.

Q. Does a treating physician generally ask for the rheumatologist or GP's records prior to treating her for orthopedic injuries?

A. No, only if it pertains to the actual operation. If someone refers me a patient and they say, well, a patient has rheumatoid arthritis, they need a hip replacement, we discuss very briefly, but I just do my operation.

Q. You were shown a bunch of reports of MRI's and then you were asked whether you relied on those MRI's.

Doctor, do you just rely on the records of MRI's?

A. No.

Q. Do you actually review the MRI's yourself?

A. Yes.

Q. And the White Plains Hospital MRI of June of 2015, did you actually review the CD of that MRI?

A. Yes, I reviewed the CD.

Q. And in your experience as an orthopedist, does the review by radiologist of an MRI, is it always the same as your review as an orthopedic surgeon of an MRI?

A. No, it's not the same. It's as if an MRI is a picture, and if six different people go to the Museum of Modern Art and look at a picture, someone will see an apple, someone will see an elephant, someone will see a tiger, but it's the same picture. I

have the advantage, because I examine the patients and then I look at the picture.

Radiologist can be home in his bathrobe looking at the picture and saying what he sees. I have the advantage of examining the patient.

Q. Now, Doctor, you were asked questions about a diagnostic arthroscopy.

Where there was pathology found in your operation different than the pathology in the MRI report, is that something that's unusual?

A. No, it's not unusual.

Q. And why, Doctor?

A. Why is?

Q. Why do you see different things in a diagnostic arthroscopy that you don't necessarily see in an MRI report?

A. Okay. An MRI report, as I said, it's one man's interpretation of what he sees. When I -- and that's an image at best, and an image is not a picture. So if you have two people five foot ten, and you put them behind a silk screen, you can't identify the details of one from another, because it's not a picture, it's just an image.

That's why an MRI sometimes you get 70 percent false positive and 50 percent false negative.

Q. Okay. Now, Doctor, you were asked questions about shoulder injuries that the patient may have had.

When a patient has some pain in the shoulder, does not necessarily mean she has a shoulder injury, is it one in the same or are they two different things?

A. If you have pain in your shoulder, it could be referred pain from your neck going down to the shoulder. It may not be anything intrinsic to the shoulder.

Q. Do patients who have lupus present with arthritis or pain in the shoulder on occasion?

A. Yes.

Q. And does that necessarily mean that there was a traumatic injury of the shoulder?

A. No, it doesn't mean that.

Q. And I want you to assume, Doctor, that this patient presented with previous complaints of pain in the shoulder with no history of trauma to the shoulder.

Would your opinion change as to whether the injuries sustained by her to the shoulder were related to this accident?

A. If there's no history of previous trauma, what I found at my surgery would indicate there was trauma. So if there's no history of previous at all, and the only history of trauma we have is the car accident, then it would have to be the car accident.

Q. Okay. And, Doctor, you were asked a bunch of questions about the right ankle.

A. Yes.

Q. We looked at a film together. Do you see -- did you see a fracture of the right ankle?

A. Yes.

Q. And did that appear to you to be a fresh fracture of the right ankle?

A. That's a good question.

MR. JONES: Objection. Outside the scope, Judge.

THE COURT: Overruled. He can answer it.

A. I can answer?

Yes, if there's a fracture that happened, say, eight weeks ago, the body produces something called callus, which is bone glue. So now this could be an old fracture where the bone glue came and went, and there was no healing, that's why it remains avulsed, or it could be a fresh fracture and I'm looking at it a week, two weeks, three weeks, four weeks after the injury and there's no bone glue put out yet, because it takes about six weeks to see -- six to eight weeks before you can see it on X ray.

So I'm caught between and betwixt because I don't know. Now, the good attorney over here said there was previous history of fractures, so it could be previous fracture long time ago never healed or fresh fracture. The only thing is I did look at the X ray and the bone is sharp. Usually if it's an old fracture it gets to be smooth, it gets resorbed.

If you look at it, we can look at it again now if you

want, it's a sharp ending, so I would tend to think it's rather fresh.

Q. We don't have to look at it. That's okay. And fresh meaning?

A. Recent.

Q. Within the last four weeks?

A. Four weeks.

MR. JONES: Objection.

MR. HALPERIN: I said fresh.

THE COURT: Overruled.

Q. Doctor, when a patient presents with pain to the shoulder, does that automatically make that patient a surgical patient?

A. No.

Q. Why not?

A. Why not? I would be doing, gosh, more then 40 surgeries a week. It's just they come in because they have pain and then it could be referred pain, it could be a bursitis, a tendinitis, they're not a surgical candidate. This has to be proven over a period of time that nothing else is getting better.

You take an MRI, you see something in the MRI, it just doesn't look right. You look at the MRI, look at the report, you put it all together, do an examination. We have specific tests, I don't know if you saw, Yergason Sign, I wrote down in my notes, we didn't bring that up, but these are tests for the labrum to

show labral tears.

There's different tests, the Neer Sign. The Neer Sign is for when you have a type 2 acromion, you raise it up and they have pain, because it's digging into the rotator cuff. Now, people walk around, it's as I mentioned before with type 2 acromion, Miss Gentile had a type 2 acromion. It's only when the rotator cuff is traumatized, it swells and now there's very little space to begin with, so she becomes affected sooner than another person would who has a lot of space.

So it's a vicious cycle at that point and something is going to get worse, because rotator cuff is in constant contact with the acromion. What you do is go in, do an acromioplasty, create the space and the problem goes away.

Q. And is that what happened when you injected both shoulders in this case?

A. Right. I tried to reduce it with inflammatory medication. It worked on the left, didn't work on the right.

THE COURT: We're going to have to stop.

MR. HALPERIN: I have no further questions. Thank you.

MR. JONES: Finished, Judge.

THE COURT: All right, you may step down.

(Whereupon, the witness was excused.)

THE COURT: Ladies and gentlemen, we went overtime today, that was to try to finish this witness.

You're done now for the day.

Let me see everybody briefly.

(Pause in the proceedings.)

THE COURT: Ladies and gentlemen, don't discuss anything among yourselves or with anybody else. We'll resume tomorrow. Please report back here 9:30.

Have a good, safe trip home. Sorry to keep you late. We're trying to balance things out by moving through the case. At the same time, sometimes we go over a little bit and sometimes we end early. Today we went over. My apologies.

We'll see you back here tomorrow. Enjoy your evening. Please follow the court officer.

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Certified to be a true and accurate record of the within proceedings.

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JANET CAMPOLO, RPR
Senior Court Reporter