

1 SUPREME COURT OF THE STATE OF NEW YORK
2 TRIAL TERM PART 1A-2 : COUNTY OF BRONX

3 -----X

4 MICHAEL PADILLA,
5 Plaintiff(s), Index # 20645/13
6 TESTIMONY OF DR. DAVID DELMAN

7 -against-
8 GEORGE O. NKUMAH AND HIGH THOR TAXI CORP.,
9 Defendant(s).

-----X

10 851 Grand Concourse
11 Bronx, New York, 10451
12 May 21, 2019

13 B E F O R E:

14 HON. ELIZABETH A. TAYLOR, and a jury.
15 J U S T I C E.

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

17 ROTH & ROTH, LLP.
18 192 Lexington Avenue, Suite 802
19 New York, New York 10016
20 Attorneys for Plaintiff
21 BY: ELLIOT D. SHIELDS, ESQ.,

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BY: TIMOTHY F.X. JONES, ESQ.,

Michel e Henl ey,
SENIOR COURT REPORTER

1 (Whereupon, the following proceedings take place on the
2 record, in open court, in the hearing and presence of the
3 jury:)

4 THE COURT: Mr. Jones.

5 MR. JONES: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JONES:

8 Q Doctor, my name is Timothy Jones. I represent the
9 defendant and I'm going to have some questions for you. If you
10 don't understand my question, let me know. Okay?

11 A Okay.

12 Q Can you hear me all right?

13 A Just a little bit. Your enunciation is a little bit
14 off for my hearing but I'm going to try my best.

15 Q Did you hear Mr. Shields okay?

16 A The intonation of his voice was better for my hearing.

17 Q So it's my intonation that is off?

18 A Yeah.

19 Q Okay.

20 A In terms of my hearing, with my hearing aid, yeah, it's
21 a little bit off.

22 Q All right.

23 Doctor, you're not a Board Certified radiologist,
24 are you?

25 A I'm not a Board Certified radiologist, no.

1 Q You are not a Board Certified Physical and Medicine
2 Rehabilitationist, are you?

3 A That's correct.

4 Q You are not Board Certified in neurology either, are
5 you?

6 A That's correct.

7 Q You are Board Certified in emergency room medicine.
8 Correct?

9 A Yes.

10 Q And internal medical?

11 Right?

12 A That's correct.

13 Q So as between yourself and a Board Certified
14 radiologist, who has better credentials to interpret
15 radiological films?

16 A Depends on the area of interpretation you're talking
17 about.

18 Q Doctor, do you have any credentials in reading films?

19 A Yes, sir. I went to medical school and I studied and I
20 learned how to read MRI films.

21 Q When is the first time you read the films involving Mr.
22 PadiIIa?

23 A When I was asked to look at them.

24 Q This past week. Correct?

25 A That's correct.

1 Q So he has an accident in 2011 and the first time you
2 looked at those films is in May of 2019. Correct?

3 A That's correct. I relied--

4 Q That's a yes or no.

5 So the first time you saw him, doctor, was in
6 2015. Correct?

7 A That's correct.

8 Q But you gave an opinion, in 2015, as to the causation
9 and permanency, didn't you?

10 A Absolutely.

11 Q Without even having read the films. Correct?

12 A I didn't think I needed to.

13 Q You don't think you needed to read the films, is that
14 what you're telling the jury?

15 A I do not think I needed to read the films at the time
16 that I saw--

17 THE COURT: One at a time. We have a reporter.
18 Ask a question.

19 Q Did I hear you correctly, you don't think you needed to
20 read the films to give an opinion in 2015; is that correct, yes
21 or no?

22 A At the time I saw the patient, in 2015, I didn't need
23 to read the films because I relied on the reports.

24 Q Did you review the films in 2016?

25 A No.

1 Q How about when you saw him in 2017?

2 Or did you see him in 2017?

3 A I saw him in 2017. Yes.

4 Q And you didn't read the films then either, did you?

5 A No, sir.

6 Q But you did give an opinion as to causation and
7 permanency in that report, didn't you?

8 A Yes, I did.

9 Q And with all of the information that was available to
10 you, you gave an opinion on causation and permanency without
11 reviewing the most important piece of medical information that
12 we have which is the MRI.

13 Correct?

14 A I believe you're incorrect in that question, sir.

15 Q Well, how many diagnostic tests did the plaintiff
16 undergo following this accident?

17 A He underwent MRIs and multiple physical examinations.

18 Q Doctor, do you know what a diagnostic test is?

19 A Yes. It's a diagnostic-- is a physical examination.
20 It's diagnostic testing in terms of x-rays. These are all
21 diagnostic tests.

22 Q Doctor, here's what we're going to do. I'm going to
23 ask you questions and you're going to answer yes or no without
24 explaining--

25 MR. SHIELDS: Objection.

1 THE COURT: Overruled.

2 Q Do you understand the instructions, doctor?

3 A If I can answer the question with a simple yes or no, I
4 will do so.

5 Q Let's back it up a second.

6 Now the plaintiff's referred to you by his
7 attorneys. Correct?

8 A Yes, sir.

9 Q And you're aware that he had medical insurance at or
10 about or shortly after this accident, aren't you?

11 MR. SHIELDS: Objection.

12 THE COURT: I didn't hear the question.

13 Q Do you know if the plaintiff had his own private
14 medical insurance?

15 A At what time are we talking about?

16 Q 2015.

17 A 2015. Let's-- according to my notes it does not look
18 like he had his own medical insurance.

19 Q Look at Doctor Jano's note, 2012, when she refers him
20 to his own primary care physician. Did you read that note?

21 A In June of 2012--

22 Q Doctor Jano refers him to his own primary care
23 physician, doesn't she?

24 A That is incorrect, sir. The patient is advised to
25 continue following up with his regular doctor or a clinic for

1 any other medical concerns.

2 Q His own medical doctor--

3 A Or a clinic.

4 Q Doctor, is a regular doctor a primary care physician?

5 A If he had one.

6 Q Does it suggest in that statement that he had his own
7 regular physician?

8 A Absolutely not. It says a regular medical doctor or a
9 clinic, implying that she does not know whether he's got a
10 regular medical doctor. If not, he has to go to a clinic.

11 Q But it says his own regular medical doctor. Correct?
12 Yes or no?

13 A If he has one.

14 Q Does it say if he has one?

15 A It says the patient is advised to continue following up
16 with his regular medical doctor or a clinic for any other
17 medical conditions or concerns. That does not imply to me that
18 he has a regular medical doctor. It implies Doctor Jano may not
19 know whether he's got a regular medical doctor. So he's being
20 advised to see a doctor, his regular medical doctor or a
21 clinic.

22 Q Are you finished, doctor?

23 Are you finished?

24 A Yes, sir.

25 MR. SHIELDS: Objection.

1 THE COURT: Sustained.

2 Q When Mr. Padilla went to see you in May of 2019, who
3 paid for that visit?

4 A Say it again?

5 Who paid for it?

6 Q Who paid for the visit?

7 A I was paid as part of the preparation for trial.

8 Q The attorney paid. Correct?

9 A Correct.

10 Q And the attorneys paid you for the visit in 2015.

11 Correct?

12 A Actually that's not correct.

13 Q Who paid you for 2015?

14 A Nobody.

15 Q Just for free?

16 A That's correct.

17 Q How do you know that?

18 A Because that's the policy of my company.

19 Q Where does it say in your notes that you did it for
20 free?

21 A It's the policy of DHD Medical, to allow a patient to
22 come back one time for what we call a final evaluation,
23 evaluation to see how they're doing one time, and we do that
24 gratis.

25 Q Is that noted anywhere in your reports, doctor?

1 A It has no need to be noted in the report. There's no
2 billing at all noted in any of these reports.

3 Q Who paid for the visit in 2017?

4 A That I cannot tell you.

5 Q The attorney as well?

6 A I cannot tell you. I don't know.

7 Q How many times has the Law Firm of Roth and Roth
8 referred their clients to you?

9 A I don't know that number.

10 Q Well, have you worked with Mr. Shields' firm on
11 occasions prior to coming to court today?

12 A I believe I have.

13 Q How many times in the past year have you worked with
14 Roth and Roth?

15 MR. SHIELDS: Objection. What does work with
16 mean?

17 THE COURT: Overruled.

18 A I can't tell you, maybe once. I'm not sure.

19 Q Over the course of how many years have you worked with
20 the Firm of Roth and Roth?

21 A I don't keep that number in my head, sir.

22 Q You said you were being paid for your time out of the
23 office. How much are you being paid for your testimony here
24 today?

25 A Four thousand dollars.

1 Q How much were you paid for the other day?

2 A No. No. I got paid one time four thousand dollars.

3 Q You got paid for your testimony today and last week?

4 A That really hasn't been settled.

5 Q You're going to bill them for the time you spent here
6 last week plus four thousand dollars for today?

7 A That's incorrect. I'm not sure what I'm going to do.

8 Q Well, doctor, I'm not trying to ask confusing questions
9 but could we be clear today, that your time today you're
10 charging four thousand dollars?

11 MR. SHIELDS: Objection. Asked and answered.

12 THE COURT: Can you repeat that, please?

13 Q Yes.

14 You're being paid four thousand dollars for your
15 testimony today?

16 A No. I was paid four thousand dollars to testify in
17 this case. That's it. Four thousand dollars.

18 Q That includes your testimony today and your testimony
19 last week?

20 A Yes, sir.

21 Q All right.

22 You just said that needs to be determined. So
23 what bill is outstanding, as far as you're concerned, for the
24 testimony you're going to provide in court?

25 A I think I just made it very clear-- leave it at four

1 thousand dollars.

2 Q So you're going on the record saying you're only going
3 to charge the firm four thousand dollars?

4 A What I is said I may do that.

5 Q You may not?

6 A I may not.

7 Q You may give them a bill?

8 A That's a possibility.

9 Q Now, doctor, I want to go over your CV a little bit.
10 Would it be fair to say that for the years of 1990 to 2003 you
11 were an emergency room physician?

12 A Yes, sir.

13 Q And that was in North Shore?

14 A Excuse me?

15 Q That was North Shore University?

16 A At the time it wasn't called North Shore University
17 Hospital.

18 Q But it says that in your CV?

19 A Yeah. In 1990 I was an emergency room physician. I
20 worked in Plainview, New York, at a hospital. In 1990 that
21 hospital was Central General Hospital. At some point, maybe in
22 the 1990s or whenever, I'm not sure, it was brought out, North
23 Shore University Hospital.

24 Q Thank you, doctor.

25 A Which changed its name several times and now it is

1 called Northwell.

2 Q Doctor, from 1993 to the present, according to your CV,
3 it says you're a medical consultant with CNS Bio Services doing
4 clinical research.

5 Correct?

6 A That's correct.

7 Q Do you still hold that position today?

8 A Yes.

9 Q It's a yes or no?

10 A Yes.

11 Q Okay.

12 And you hold a Ph.D. at the facility at which the
13 plaintiff treated from 2008 to the current time. Correct?

14 A Yes.

15 Q Have you published any articles in the field of
16 radiology?

17 A No.

18 Q And have you published any articles in the field of
19 physical medicine and rehabilitation?

20 A No.

21 Q Have you published any articles in the field of
22 internal medicine?

23 A Yes.

24 Q But you have published articles in the field of the
25 canine biliary tree. Is that correct?

1 A That's correct.

2 Q That pertains to dogs?

3 A Yes.

4 Q And you published two articles in the field of canine
5 medicine. Correct?

6 A That's correct. That was before I got my medical
7 degree.

8 Q And since you got your medical degree, you have
9 published no articles in the field that you practice in.
10 Correct?

11 A That's correct.

12 Q And you hold no board certifications in the field of
13 medicine for which you were treating the plaintiff, that being
14 physical medicine and rehabilitation.

15 Correct?

16 A Correct.

17 Q Now, as an emergency room Board Certified physician,
18 doctor, you can understand the importance of doing a proper
19 intake.

20 Correct?

21 A Yes, I do.

22 Q And as a Board Certified emergency room physician you
23 have, on occasion, referred patients in the emergency room to
24 specialists within the hospital.

25 Correct?

1 A Yes, sir.

2 Q And you're aware that when the plaintiff presented to
3 Bellevue, and prior to his discharge, he was not referred to any
4 specialists. Are you aware of that?

5 It's a yes or no?

6 Are you aware of it?

7 A Please repeat the question.

8 Q Are you aware that prior to discharge from Bellevue the
9 plaintiff was not referred to any specialists?

10 Are you aware of that?

11 A That's correct.

12 Q And you're also aware that he was not administered any
13 x-rays?

14 A That's correct.

15 Q No. He was not x-rayed for his neck, lower back or
16 thoracic spine. Are you aware of that?

17 A Yes, I'm aware.

18 Q Have you heard of the concept of secondary gain,
19 doctor?

20 A Yes, sir.

21 Q And secondary gain means somebody may do or say
22 something in order to achieve a desired outcome. Correct?

23 A Yes, sir.

24 Q And in this case the plaintiff's first treating doctor
25 was who?

1 A The emergency room doctor.

2 Q And those are the people to whom he reported what
3 happened?

4 A I'll say yes.

5 Q And now on direct examination last week, during the
6 intake, the initial consultation at your DHD facility, you
7 mentioned that your doctor was told that the plaintiff's car
8 spun around as a result of a significant collision.

9 Correct?

10 A Yes.

11 Q That's a pretty high speed impact, wouldn't you agree?

12 A Excuse me?

13 Q That's a pretty high speed impact?

14 A It depends on the circumstances. You can't tell
15 whether it's high speed or not just by the statement.

16 Q Now, did you read the Bellevue Hospital record in
17 detail?

18 A Say it again.

19 Q Did you read the Bellevue Hospital record in detail?

20 A I believe I did.

21 Q Well, did you or didn't you?

22 A I believe so.

23 Q Well, when do you believe you may have read the
24 Bellevue Hospital record?

25 A When do what?

1 Q When do you believe you may have read the Bellevue
2 Hospital record?

3 A I'm not sure what you mean by that.

4 Q Did you read it for the first time last week when you
5 reviewed the MRI films?

6 A I'm not sure. I think I may have read them earlier
7 because they were part of the chart.

8 Q Doctor, let's take a look at the triage note, the
9 provider note. It says here that the plaintiff was side swiped
10 at a low speed.

11 Do you see that?

12 A Yes.

13 Q Now, you can agree that this statement, referring to a
14 low speed collision, is different than what the plaintiff told
15 your intake physician the first time he went to your facility.

16 MR. SHIELDS: Objection.

17 THE COURT: I'll allow it.

18 MR. SHIELDS: It was the same objection from last
19 time--

20 THE COURT: I'll allow it.

21 A Say the question again, please.

22 Q Read what the plaintiff told your intake physician with
23 regards to the collision alone.

24 A The patient states he was driving with a seat belt on
25 in his car when his car was side swiped by another vehicle

1 causing his car to swing. At the moment of impact he loss his
2 consciousness for a couple of seconds. He woke up, his car was
3 facing the other way. The patient states he immediately felt
4 pain in his lower back-- upper. He was taken to ambulance by
5 Bellevue, given some pain medicine and discharged with a
6 recommendation to follow up.

7 Q Let's take this one at a time. Here, in Bellevue, he
8 says he was side swiped at a low speed.

9 Do you see that?

10 A Yes.

11 MR. SHIELDS: Objection. There's nothing saying
12 that he said that.

13 THE COURT: Rephrase your question.

14 Q Well, doctor, as an emergency room physician, where
15 does the information come from that is recorded in the hospital
16 record?

17 A It comes from the patient and is transcribed by whoever
18 talked to the patient. So, I don't know the provider. Whoever
19 the provider is wrote that information down.

20 Q And it comes from the patient him or herself.

21 Correct?

22 A That's what should happen, yes.

23 Q Now--

24 A It's also inconsistent--

25 Q There's no question, doctor. On redirect you'll be

1 able to say whatever you want but right now I'd like you to
2 answer my questions.

3 MR. SHIELDS: Objection.

4 THE COURT: Sustained.

5 Q Now, doctor, Mr. Padilla stated to your intake
6 physician that he loss consciousness.

7 Did you just read that?

8 A He loss consciousness for a couple of seconds.

9 Q All right.

10 What does it say here in the hospital record?

11 A Whoever wrote that wrote that the patient did not loss
12 consciousness.

13 Q Whoever wrote that also wrote no loss of consciousness
14 and no head trauma and no neck pain.

15 Did you read that?

16 A Whoever wrote that wrote that.

17 Q Doctor, does it say this in the hospital record?

18 A Excuse me?

19 Q Does it say there's no loss of consciousness, no head
20 trauma and no neck pain?

21 A That's what it says.

22 Q It says something different in the intake with respect
23 to your physician. Correct?

24 That's a yes or no?

25 A I need to review the triage. Complains of neck and

1 back pain.

2 Q Good.

3 A So it's in the note.

4 Q Doctor, let's take a look at this note here. Does it
5 say no loss of consciousness?

6 A That's what it says there in that particular spot. It
7 says different things in different places in these records.

8 Q Doctor, are you here to give an objective opinion--

9 MR. SHIELDS: Objection--

10 THE COURT: Sustained.

11 Ask a question.

12 Q Are you here to give an objective opinion, doctor?

13 A I'm here to tell the truth and get the truth out.

14 Q Okay.

15 Doctor, in order to tell the truth does it mean
16 that you should review all of the records?

17 A Say it again?

18 Q In order to tell the truth does it indicate, as a
19 physician, that you should read all the records?

20 A That's helpful.

21 Q If you read all the records, before coming to testify
22 today--

23 A I reviewed the records before coming to testify.

24 Q Okay.

25 Now, doctor, we can agree it says here no loss of

1 consci ousness.

2 Right?

3 A I agree that that person wrote that it says no loss of
4 consci ousness. I don't agree that that's true but I agree
5 that's what it says.

6 Q Doctor, let's take a look.

7 As an emergency room physi ci an--

8 MR. JONES: We can take a break at this time, Your
9 Honor.

10 THE COURT: Members of the jury, we're going to
11 take our lunch recess and I ask that you return promptly at
12 2:15 waiting for the court officer to escort you upstairs.
13 Enjoy your lunch.

14 (Whereupon, the jury exited the courtroom.)

15 (Whereupon, the following proceedings take place
16 on the record, in open court, out of the hearing and
17 presence of the jury:)

18 THE COURT: Doctor, I am reminding you that as you
19 are still under oath and providing testimony in this
20 courtroom, you are not to discuss your testimony with anyone
21 during the recess.

22 Do you understand that?

23 THE WITNESS: Yes, sir.

24 THE COURT: Thank you.

25 Enjoy in your lunch.

1 (Whereupon, the luncheon recess was taken.)

2 A F T E R N O O N S E S S I O N.

3 THE COURT OFFICER: All rise, jury entering.

4 (Whereupon, the following proceedings take place
5 on the record, in open court, in the hearing and presence of
6 the jury:)

7 THE COURT: You may be seated.

8 Good afternoon, members of the jury.

9 THE JURY: Good afternoon.

10 THE COURT: Doctor, I would like to remind you
11 that you're still under oath.

12 Do you understand that?

13 THE WITNESS: Yes.

14 THE COURT: You may inquire, Mr. Jones.

15 MR. JONES: Thank you, Judge.

16 Q I'd like to continue with the Bellevue Hospital
17 records. All right. And I'm looking at page 2 of 9.

18 And now, doctor, as part of the physical
19 examination the plaintiff was asked to move his extremities.
20 Correct?

21 Take a look right up here. It will be faster for
22 you. Can you see it?

23 A I'm looking for something entitled physical
24 examination.

25 Q According to this note, was he examined, doctor?

1 A I'm sorry?

2 Q According to this note, was the plaintiff examined at
3 the hospital?

4 A It says pre hospital treatment. Focused Assessment.

5 Q Right here, doctor. He was asked to move his
6 extremities and he moved them all, correct, according to this
7 note?

8 A That note says patient moves all extremities.

9 Q He is grossly neurologically intact.

10 Can you read that?

11 A Yes. That's what that says.

12 Q And denies any musculoskeletal complaints and exam is
13 normal.

14 Have you read that before today?

15 A Yes.

16 Q That's a yes or no.

17 Did you read it before today?

18 A Yes. It doesn't make sense.

19 Q Doctor, I'm going to ask you-- I don't want to argue
20 with you, doctor. I just want you to answer yes or no to my
21 questions. Okay?

22 Fair enough?

23 A Fair enough.

24 Q All right.

25 According to this note, doctor, he had a normal

1 neurological examination on the day of the accident. Correct?

2 MR. SHIELDS: Objection.

3 THE COURT: Overruled.

4 A It says the patient is grossly neurologically intact.
5 That doesn't mean it's normal. That means it's grossly normal.

6 Q Doctor, looking at another note in the Bellevue
7 Hospital records.

8 Have you seen this note before today?

9 A I believe I have.

10 Q All right.

11 And it indicates this is a low speed collision.
12 Over the last hour he developed lower back pain without any
13 numbness, tingling or weakness.

14 Have you read that note before today?

15 A Yes, I read that note.

16 Q Now, doctor, according to this note, the emergency room
17 physician found no evidence of trauma or facial trauma.

18 Have you read that note before today?

19 A This is in regard to the patient's abdomen. In regards
20 to the patient's abdomen the emergency room provider found no
21 evidence of trauma.

22 Q No, doctor. The top part is the abdominal exam. The
23 next line is no evidence of trauma.

24 Are you telling us facial trauma is an examination
25 of his abdomen, doctor?

1 A No.

2 Q Is that what you're telling us?

3 A No.

4 MR. SHIELDS: Objection.

5 THE COURT: Sustained.

6 Q So, doctor, this is obviously an examination of his
7 head and face. Do you agree with that?

8 A Let's take a look. Patient has soft, non-tender
9 abdomen exam. No evidence of trauma/facial trauma. That
10 sentence seems to indicate to me that they're talking about the
11 abdomen. No trauma in the abdomen and no facial trauma. That's
12 the way I read that.

13 Q Now, with the Court's permission, I'm going to ask you
14 yes or no questions. Okay?

15 A If I can answer yes or no, I will.

16 Q That's good.

17 You've testified how many times in court?

18 A Twenty to thirty times.

19 Q You've been instructed on the rules of cross
20 examination. Correct?

21 A Excuse me?

22 Q You've been instructed on the rules of cross
23 examination?

24 MR. SHIELDS: Objection.

25 THE COURT: Ask a question.

1 Doctor, if you're unable to answer a question with
2 a yes or no, just let the attorney know you're unable to
3 answer the question yes or no.

4 THE WITNESS: Thank you, Your Honor.

5 Q Doctor, here it says full range of motion, all
6 extremities.

7 Do you see that?

8 A Yes. I see that it says that.

9 Q And this is part of a physical examination done at the
10 hospital on the date of the accident.

11 Correct?

12 A Yes.

13 Q And part of this examination was a neurological
14 examination, wasn't it?

15 A Excuse me?

16 Q This part of the examination was a neurological
17 examination, wasn't it?

18 A I'm sorry.

19 You're saying this part. Which part?

20 Q Right here where I'm pointing to?

21 A Cranial nerves 2 to 12. Cranial nerves 2 to 12 is part
22 of a neurological examination.

23 Q And the neurological examination, doctor, was
24 completely normal. Correct?

25 A That's what they--

1 Q It's a yes or no question.

2 Doctor, can you answer yes or no?

3 A I can't answer yes or no to that question.

4 Q Doctor, does it say here intact motor exam within
5 normal limits. Sensory exam within normal limits. Did you read
6 that?

7 A Yes.

8 Q That's a normal motor exam and a normal neurological
9 exam?

10 A Did you say normal motor examination?

11 A Yes. Yes. That's a normal motor examination.

12 Q And also a normal neurological examination. Correct?

13 A No. That's incorrect. What you're saying is
14 incorrect, sir.

15 Q Essentially the sensory examination is part of the
16 neurological examination, isn't it?

17 A Yes.

18 Q And that was normal. Correct?

19 A Yes.

20 Q No bruising, no abrasions, no lacerations. Did you
21 read that before today?

22 A Yes.

23 Q And moved within normal limits. That's also part of a
24 neurological examination?

25 A Yes. Those are parts of the neurological examination.

1 Q So far we have a total normal motor examination and a
2 total normal neurological examination, according to this note.
3 Correct?

4 A I heard the second part of the question. They didn't
5 do a total neurological examination, however, so I can't answer
6 that question correctly.

7 Q All right, doctor.

8 What is the likely diagnosis here, have you read
9 this before today?

10 A Yes, I read that before today.

11 Q A muscular strain. Correct?

12 A The assessment is 32 year old--

13 Q No, doctor. He was diagnosed with what, muscular
14 strain.

15 Correct?

16 A I don't see where it says that, sir.

17 Q Have you seen that anywhere in the emergency room
18 report, that he was diagnosed with a muscular strain?

19 That's a yes or no question.

20 A I would have to look through it again.

21 Q So you're not sure as you sit here today.

22 Correct?

23 A I'm not sure whether I even understand your question,
24 sir.

25 Q Doctor, the absence of numbness and tingling, that's

1 part of neurological examination, isn't it?

2 A Yes. That is part of the neurological examination.

3 Q And there are several parts of a neurological
4 examination in this case, as we've gone through?

5 A Sir, you're talking in that direction and I'm having
6 difficulty hearing you.

7 THE COURT: It's also very difficult to hear in
8 the courtroom because of the high ceilings and if we move
9 the chairs.

10 Q Doctor, the components of this note, which compromise
11 neurological examination, are all normal.

12 Correct?

13 A Those components which is part of a neurological
14 examination, some are normal.

15 Q Is that correct?

16 A It's correct.

17 MR. SHIELDS: Asked and answered.

18 THE COURT: Overruled.

19 Q Is it correct, doctor?

20 A It's correct that those components that they checked
21 were normal. They didn't check all of the things. What they
22 checked they said was normal.

23 Q Take a look at the report. Any narrative reports you
24 prepared for the examination of this plaintiff, and tell us
25 where it says, in your report, that he was given an incomplete

1 examination at the hospital?

2 A It doesn't say that.

3 Q Okay.

4 Have you seen this note before today, doctor, the
5 one I'm showing from Defendant's A, the Bellevue Hospital
6 record? You can look at it right on the screen, you don't have
7 to go fumbling through the chart?

8 A You've asked me, so I have to compare my notes.

9 Q Have you seen this note before today?

10 A I am checking.

11 Is there a page number on that?

12 Q 6 of 9.

13 Doctor, have you seen it before?

14 A Thank you, sir.

15 Yes, I have seen that.

16 Q And the diagnosis, secondary diagnosis here, back
17 strain. Have you seen that note before today?

18 A Secondary diagnosis, yes. I have seen that note.

19 Q And according to this note, right here, there was no
20 evidence of neurovascular injury. Have you read that note?

21 A Yes. I read that note.

22 Q Looking here at page 7 of 9, the plaintiff is diagnosed
23 with a lumbar muscle strain on the day of the accident.

24 Correct?

25 A That was a secondary diagnosis.

1 Q And what is the primary?

2 A Motor vehicle accident involving collision with other
3 vehicle injuring driver of motor vehicle other than motorcycle.

4 Q A lumbar muscle strain.

5 Now, doctor, you're an emergency room Board
6 Certified physician.

7 Correct?

8 A That's correct.

9 Q And the plaintiff is not sent for any x-rays based upon
10 his complaints of pain here at the hospital.

11 Correct?

12 A Correct.

13 Q Which means that the emergency physician did not think
14 his complaints were serious enough to warrant diagnostic tests?

15 A X-rays show broken bones. He didn't think there were
16 any broken bones.

17 Q You only do x-rays when you suspect broken bones. Is
18 that what you're telling us?

19 A That's the major issue in the emergency room.

20 Q Are x-rays ordered for internal bleeding?

21 A Absolutely not.

22 Q Are diagnostic tests order for internal bleeding?

23 A Yes.

24 Q Were any diagnosis tests ordered for this plaintiff on
25 the day of the accident. Correct?

1 That's a yes or no?

2 A Correct.

3 Q And he was told to stay active, no bed rest and get a
4 heating pad to the effected area. Correct?

5 A Yes.

6 Q And how was his pain categorized in this note?

7 THE COURT: Repeat the question.

8 Q And how was his pain categorized in this note.

9 What does that say, doctor? Defendant's A in
10 evidence.

11 A That says mild pain. We don't know when that was taken
12 but that's what it says.

13 Q Doctor, let's talk about this MRI for a moment. You
14 mentioned to us, earlier this morning, the first time you saw
15 the MRI's of the plaintiff was about a week ago.

16 Correct?

17 A Approximately.

18 Q One week ago.

19 A Yes, approximately a week ago.

20 Q That would have been in the courtroom. Correct?

21 A Excuse me?

22 Q That would have been in the courtroom. Correct?

23 A No, sir. Incorrect.

24 Q All right.

25 Where did you see these films?

1 A I saw them in my office.

2 Q Do you have a chart with you that you brought to court?

3 A Say it again?

4 Q Do you have a chart with you that you brought to court?

5 A Yes, sir.

6 Q Go through your chart and show the jury where the films
7 are?

8 A Where the films are?

9 Q Yeah.

10 A Here are the films.

11 Q Now, doctor--

12 A On this disc.

13 Q Now, go to your narrative reports, the 2015 and 2017
14 and tell us where you interpreted the films on those reports?

15 MR. SHIELDS: Objection. Asked and answered.

16 THE COURT: This is cross examination.

17 Overruled.

18 A I didn't examine those films back in 2014.

19 Q Or 2017. Correct?

20 A That's correct. There was no need to.

21 Q Doctor, I'm going to remind you, one more time, that
22 I'm asking you questions in yes or no format. I would ask the
23 Court to admonish the doctor and stop with the commentary
24 outside of my question.

25 THE COURT: Doctor, please answer the question of

1 the attorney. If the attorney asks you for a yes or no,
2 just provide him with a yes or no. If you're unable to
3 provide him with yes or no, just tell him that you're unable
4 to answer the question yes or no and the attorney will
5 choose whether or not to ask you another question.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Is that okay?

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: You may continue, Mr. Jones.

10 MR. JONES: Thank you, Judge.

11 Q Doctor, we can agree that an MRI is a very useful
12 diagnostic tool in determining whether some part of the body has
13 been subjected to a trauma.

14 Do we agree with that?

15 A Yes.

16 Q And notwithstanding the fact that you're not a Board
17 Certified radiologist and you only reviewed the films last week,
18 you, nevertheless, gave an opinion on causality in your January
19 2015 report.

20 Correct?

21 A That's correct.

22 Q That's a yes. Correct?

23 A Yes.

24 Q And you gave that opinion stating that the accident has
25 a direct causal relationship to the patient's injuries.

1 Correct?

2 A Correct.

3 Q Without having reviewed the films. Correct?

4 A That's correct.

5 Q And you're aware, doctor, that radiologists, Board
6 Certified radiologists, are trained to determine whether the
7 film shows evidence of trauma or whether the film shows evidence
8 of degeneration?

9 Are you aware of that?

10 A Yes.

11 Q Now, doctor, having reviewed the MRI reports from
12 Stand-Up MRI?

13 A Yes.

14 Q And you reviewed them before today?

15 A Yes.

16 Q Now this is a copy of the plaintiff's MRI report based
17 upon the cervical spine MRI taken only approximately 11 days
18 post accident.

19 Are you aware of that?

20 A I'm sorry, sir. I'm having difficult hearing you.
21 You're talking in a different direction.

22 Q When was this MRI taken, doctor?

23 A November 9th, 2011.

24 Q When was the accident?

25 A The accident was October 29th, 2011.

1 Q Now, doctor, take a look at the report. Where does the
2 word trauma appear anywhere on this report?

3 A No. I don't see that word listed.

4 Q It does not appear in the report?

5 A Correct.

6 Q Not that you don't see it. It's not there.

7 Correct?

8 A I don't see it.

9 Q Now, doctor, there are certain words in this report
10 that indicate long-standing conditions. Are you aware of that?
11 I'll point them out to you. Disc hydration loss. That's also
12 known as desiccation.

13 Correct?

14 A That's correct.

15 Q And that occurs over a long period of time. Correct?

16 A Correct.

17 Q That means the disc is drying out due to degeneration.

18 Correct?

19 A Drying out, yes.

20 Q And that condition preexisted the date of this accident
21 by medical definition, didn't it?

22 A Yes.

23 Q Now, doctor, we also have a Schmorl's Node. Have you
24 heard that term before?

25 A Yes.

1 Q Now, the nodes that appear, they can intrude into the
2 plaintiff's spinal column, can't they?

3 A I'm not going to agree with that statement. I'm not
4 sure I understand what you're saying but it doesn't sound
5 correct.

6 Q How would you describe a Schmorl's Node?

7 A A Schmorl's Node is a defect in the bone of the back.

8 Q Which can also protrude into the disc space sometimes.
9 Correct?

10 A Yes.

11 Q And they can cause pain, can't they?

12 A I have never heard of Schmorl's nodes causing pain.

13 Q Are you up on the medical literature with respect to
14 Schmorl's Nodes?

15 A Yes.

16 Q What is the last article you read on Schmorl's Nodes?

17 A I'd have to look back and think back. Probably within
18 the past year.

19 Q You know that if the Schmorl's Nodes becomes large
20 enough it can impinge on the disc and thereby cause impingement
21 and pain.

22 Correct?

23 A I don't believe that's correct.

24 Q You didn't mention the Schmorl's Node on direct
25 examination?

1 A We did not discuss Schmorl's Nodes.

2 Q And you also didn't discuss dehydration loss, did you?

3 A Correct.

4 Q Now, we also have here a word called congenital. What
5 does that mean, doctor?

6 A Born with.

7 Q All right. He has a congenital deformity in his
8 cervical spine?

9 A Congenital what, sir?

10 Q Developmental anomaly in his cervical spine?

11 Have you seen that?

12 A Yes.

13 Q You didn't discuss that on direct examination, did you?
14 Yes or no?

15 A No.

16 Q But it's in the chart of your examining physician in
17 2011?

18 A Say that again.

19 THE COURT: Let's step in the back. Let me see
20 the attorneys in the back.

21 (Whereupon, a discussion takes place off the
22 record, in the robing room, among the Court and counsel:)

23 (Whereupon, the following proceedings take place
24 on the record, in open court, in the hearing and presence of
25 the jury:)

1 THE COURT: You may continue, Mr. Jones.

2 MR. JONES: Thank you, Judge.

3 Q So we have a congenital developmental anomaly in this
4 region, posterior element fusion, meaning the bones are coming
5 together.

6 Correct?

7 A Correct.

8 Q Right. There's also valid left foraminal narrowing.

9 Now, doctor, when there's foraminal narrowing that
10 can cause nerve root impingement.

11 Correct?

12 A That's correct.

13 Q And when you have nerve root impingement, can't that
14 also cause pain?

15 A Yes.

16 Q And that, according to this note, is from a congenital
17 developmental anomaly. Correct?

18 A That's correct, sir.

19 Q Where does the word trauma appear in this note, doctor?

20 A I don't see the word trauma. I also don't see that
21 left foraminal narrowing is being caused by that piece.

22 MR. JONES: Your Honor, I'm going to ask the
23 doctor to be reminded if he can't answer yes or no, I'll be
24 happy to rephrase the question.

25 MR. SHIELDS: Objection.

1 THE COURT: Overruled.

2 Q Doctor, have you seen MRI report with regard to the
3 plaintiff's lumbar spine?

4 A Yes.

5 Q All right.

6 Now take a look, where does the word trauma appear
7 in this report?

8 A I don't see the word trauma.

9 Q It does not appear in that report, does it?

10 A I don't see it.

11 Q Now, doctor, the plaintiff has levo convex scoliosis.

12 Are you aware of that?

13 A That's what that says.

14 Q Were you aware of that before I pointed it out to you?

15 A Yes.

16 Q You did not discuss that on direct examination, this
17 morning, in front of the jury, did you?

18 A No.

19 Q Now, levo convex scoliosis, is it bending of the spine
20 to the left?

21 A That's correct.

22 Q And when the spine bends to the left that can also
23 cause nerve root impingement, can't it?

24 A It's possible.

25 Q Now, doctor, when we have nerve root impingement to the

1 left, that can cause left sided back pain, can't it?

2 A I can't answer that question the way you're asking me.

3 Q Now, doctor, we have here something called hypertrophic
4 changes at L4-5. That's an excess of bone growth, isn't it?

5 A Yes.

6 Q That's not caused by a recent trauma, is it?

7 A No.

8 Q He's got a degenerative condition that preexisted the
9 date of this accident known as arthritis. Correct?

10 A Yes.

11 Q And he's got disc space height with a disc bulge at L5
12 S1. Correct?

13 A Yes.

14 Q And he's got right and left facet-- a facet is a bony
15 structure. Correct?

16 A Yes. Yes.

17 Q Hypertrophic changes at this level. Correct?

18 A Yes.

19 Q Which means he's also got facet hypertrophic arthritis
20 as of the date of this MRI. Correct?

21 A Yes.

22 Q And you did not discuss that this morning on direct
23 examination. Could we agree with that?

24 A Yes.

25 Q Plaintiff's thoracic spine. Have you read this report

1 before today?

2 A Yes.

3 Q We could agree the word trauma does not appear in it?

4 A Yes.

5 Q We also have here congenital developmental anomaly in
6 this region as well, T1-2. Do you see that?

7 Do you see that note, doctor?

8 A It says felt presence.

9 Q We also have osseous ridging and narrowing to the left
10 foramen at this level. Let's talk about osseous ridging for a
11 moment. That means the bones are growing and they're riding on
12 the side of the transverse process.

13 A Can you show me.

14 Q I'm pointing here, about the third area?

15 A Yes.

16 Q That's also a degenerative condition. Correct?

17 A That's correct.

18 Q And osseous ridging is the response to the spine of
19 some type of instability in the spine. Correct?

20 A I don't agree with what you're saying exactly.

21 Q In any event, we could agree that's congenital and
22 developmental according to this review?

23 A Finding of congenital or developmental anomaly in that
24 area.

25 Q Congenital means from birth?

1 Right?

2 A Correct.

3 Q Doctor, do you enjoy any hospital privileges anywhere?

4 A No, sir.

5 Q No hospital privileges anywhere in the City of New
6 York, or the State of New York?

7 A No. I don't have hospital privileges at this time.

8 Q Well, have you applied for hospital privileges
9 anywhere?

10 A Am I applying, no.

11 Q So if you wanted to refer the plaintiff to a surgeon,
12 you would have to make sure the surgeon has hospital
13 privileges. Correct?

14 A I don't think that's correct.

15 Q Well, you're going to refer somebody for surgery. If
16 you didn't already check on that surgeon's credentials, would
17 you have done that?

18 A The people that were referred to are qualified to do
19 what they are supposed to be doing in terms of their
20 speciality. I don't go-- I'm not sure how I should elaborate--

21 Q Please elaborate.

22 THE COURT: Ask a question.

23 Q Doctor, if you're going to refer Mr. Padilla to a
24 surgeon, are you going to check the surgeon's credentials?

25 A I know Doctor Brisson and I know he's a good doctor.

1 Q Are you going to check the physician to whom you're
2 referring your patient has hospital privileges when you send him
3 there?

4 A Any surgeons that I referred to has hospital
5 privileges.

6 Q Where are Doctor Brisson's hospital privileges?

7 A I don't know.

8 Q You have no idea.

9 Right?

10 A That's correct. That's not important for me to know.

11 Q It's not important for you to know where your patient's
12 going to have surgery if you're going to send them for a back
13 surgery.

14 Is that what you're telling us?

15 A I'm telling you that I trust Doctor Brisson because
16 he's done surgery on many of my patients and I trust the
17 outcomes have been good. He does surgery whether in a surgery
18 center or hospital. It's not important for me to memorize what
19 hospitals he has privileges in.

20 Q Back this up. You're telling us that Doctor Brisson
21 has done surgeries on several of your patients but as you sit
22 here you have no idea what hospital he did these surgeries in?

23 MR. SHIELDS: Objection.

24 THE COURT: Sustained.

25 Q Where does Doctor Brisson perform back surgeries, what

1 hospital?

2 A You just asked me that, I thought, and I told you I
3 don't know exactly what hospital he had performed surgeries in.

4 Q How many times have you spoken to Doctor Brisson about
5 Mr. Padilla?

6 A Probably none.

7 Q None. Take a moment, look at your notes. Maybe you
8 want to refresh your recollection and tell us how many times you
9 actually spoke to Doctor Brisson about the potential surgery for
10 Mr. Padilla?

11 A I personally have not spoken to Doctor Brisson about
12 this.

13 Q Have you read the note, or the report, generated by
14 Doctor Brisson based upon his consultation with Mr. Padilla on
15 November 20th of 2011?

16 A You say November 20th?

17 Q Yes.

18 Is this the first time you're seeing that note,
19 doctor?

20 A No, it is not.

21 Q Well, who prepared the chart that you have in front of
22 you, was that done by Doctor Jano?

23 A My staff.

24 Q You didn't prepare this chart, your staff did?

25 A Correct.

1 Q Now, you say you trust Doctor Brisson.

2 Correct?

3 A Yes.

4 Q And you trust his ability to interpret films?

5 A Yes.

6 Q Do you trust his ability to handle your patients to
7 your satisfaction?

8 A Yes.

9 Q And you trust his opinion?

10 A I trust his opinion but I also use it as part of a
11 global picture.

12 Q You'd have to agree that in terms of one's ability to
13 read a film, his credentials are far superior to yours, correct,
14 he's a surgeon?

15 A That's correct.

16 Q Now, Doctor Brisson, are you aware that he performed
17 x-rays of your patient, Mr. Padilla?

18 A Yes. They were normal and showed no degeneration.

19 Q Are you aware of them now that you just read the note
20 or you knew before you came into court last week?

21 A I knew it before.

22 Q Well, if you knew it before, we can agree you didn't
23 discuss the normal x-rays taken by Doctor Brisson on direct
24 examination today.

25 Correct?

1 A Correct.

2 Q All right.

3 A I didn't discuss the normal x-rays, that did not show
4 degeneration, taken by Doctor Brisson.

5 Q All right.

6 Now, Doctor Brisson took an x-ray of the lumbar
7 spine and several views, AP views, lateral and they were
8 normal.

9 Correct?

10 A This is a normal, unremarkable study.

11 Q And he also took an x-ray of the cervical spine which
12 was also unremarkable.

13 Correct?

14 A Yes. Right. Unremarkable.

15 Q And he also reviewed the MRI films of the plaintiff's
16 lumbar spine?

17 A Yes, he said he did.

18 Q Tell us, tell me, the jury, where Doctor Brisson does
19 identify a disc herniation in the plaintiff's lumbar spine?

20 A He didn't document that.

21 Q He didn't find it, according to this note.

22 Correct?

23 A I had the opportunity to review an MRI. Lumbar spine.
24 The study revealed slight desiccation. He does not discuss
25 whether there's a herniation or not.

1 Q Doctor, according to Doctor Brisson's interpretation of
2 the MRI film, there is no lumbar disc herniation.

3 Correct?

4 A I can't interpret-- come to that conclusion from this
5 note.

6 Q I thought you said-- and you told the jury that you
7 trust Doctor Brisson so far as interpretation and ability far
8 superior to your own.

9 Did I hear you say that?

10 A Yes, you did.

11 Q We can agree that this note, it is plaintiff's--
12 Defendant's B in Evidence, states I, meaning Doctor Brisson, had
13 the opportunity to view an MRI. Lumbar spine. The study
14 reveals slight desiccation and narrowing of the L5 S1 level.

15 Did I read that correctly?

16 A Yes.

17 Q You can agree, there's no herniation involved in his
18 interpretation of this MRI?

19 A Yes.

20 Q That's a yes or no?

21 A I agree it does not say that.

22 Q And we were aware of only one lumbar MRI taken of Mr.
23 Padi lla, following this case, taken on November 9th of 2011.

24 Correct?

25 A Yes.

1 Q Now, let's take a look at this note even a little
2 further.

3 He finds desiccation. We discussed a few moments
4 ago what desiccation is, didn't we?

5 A Yes.

6 Q And that's a drying up of the disc.

7 Correct?

8 A Yes.

9 Q Drying up of the disc that occurs as part of the
10 degenerative process.

11 Correct?

12 A Yes.

13 Q And the degenerative process, which by medical
14 definition, preexisted this accident.

15 Correct?

16 A That's correct.

17 Q And the L5 S1 level is one of the levels at which
18 plaintiff received an injection, isn't it?

19 Let me stop you right there. Hold on. Let me
20 stop you right there.

21 Could you tell the jury at what levels the
22 plaintiff received his injections?

23 A No, I'd have to look on the record.

24 Q Oh, boy.

25 MR. SHIELDS: Objection.

1 THE COURT: Overruled.

2 Q You mean to tell us, doctor, that as you sit here
3 today, now in your second day of testimony, you can not recite
4 for this jury, despite the fact that you claim to be so
5 prepared, the levels at which he received injections in his
6 lumbar spine.

7 Correct?

8 MR. SHIELDS: Objection.

9 THE COURT: You may answer.

10 A I don't recall ever saying I was so prepared.

11 Q Let me stop--

12 A Number one. Number two, I did not memorize the pain
13 management doctor's notes. If you'd like me to answer the
14 question, I will review the pain management to give you a
15 hundred percent truthful answer, not something that is in my
16 head in terms of whether I memorized it correctly or not. I
17 like to get the facts out.

18 Q We can do that in a few minutes but I want to examine
19 this a little further.

20 So you're here on the second day of your testimony
21 and someone that you claimed to be your patient. Correct?

22 You claim that Mr. Padilla is your patient?

23 A That's correct.

24 Q And you don't know the levels at which he received his
25 injections?

1 A That's correct. I did not memorize that information.

2 Q On how many occasions did you speak with the individual
3 or individuals who performed the injections?

4 A I'm not sure I understand the question.

5 Q Did you speak with the doctor who administered?

6 A Did I speak to Rafeman or Eldes. I spoke with them many
7 times.

8 Q About Mr. PadiIIa?

9 A No.

10 Q So, according to this note, doctor, if the injection
11 was performed at L5 S1, that means that an injection was
12 administered to a level of the plaintiff's spine which,
13 according to Doctor Brisson, had nothing but degenerative
14 changes.

15 Correct?

16 A You are incorrect, sir.

17 Q Well, doc, let's take a look. Desiccation. Just
18 stated a degenerative preexisting process.

19 Correct?

20 A Yes.

21 Q At the L5 S1 level.

22 Correct?

23 A Correct.

24 Q And when a disc desiccates, it can also cause narrowing
25 at the L5 S1 level.

1 Correct?

2 A That's one of the possibilities.

3 Q Well, doctor, these conditions are chronic and
4 degenerative in nature, aren't they, and by that I mean
5 desiccation and narrowing at the L5 S1 level?

6 A The narrowing could be from his herniation.

7 Q Doctor, last time. Does the word herniation appear in
8 this doctor's interpretation?

9 A I saw the herniation, sir.

10 Q Does it appear in the Board Certified orthopedic
11 surgeon's interpretation?

12 Does it appear there, yes or no?

13 A No.

14 Q So, according to this note, Mr. Padilla had an
15 injection administered to a preexisting degenerative condition.
16 Correct?

17 A I can't answer that with a yes or no without
18 explanation.

19 Q Now, doctor, you're familiar with a clinical exam, you
20 know what that means?

21 A Yes. I know what that means.

22 Q All right.

23 It means you do a physical examination with the
24 plaintiff and try to determine whether he or she may have some
25 type of pathology or injury.

1 Correct?

2 A If I understand your question correctly, yes.

3 Q Now, certain clinical examinations were performed, not
4 by you, but before you met Mr. Padilla, with respect to his
5 lumbar spine.

6 Correct?

7 A Yes.

8 Q And could you tell us, whether or not you memorized it,
9 if you're familiar with any of the clinical examinations
10 performed on Mr. Padilla with respect to his lumbar spine?

11 A Yes.

12 Q And what would that test be?

13 A Range of motion, checks for spasm, checks for strength,
14 lower extremities.

15 Q Anything else?

16 Excuse me?

17 Q Anything else?

18 A If you'd like, I can go through and look at the chart,
19 physical examination performed.

20 Q I'll get right to it, doctor.

21 Have you heard of a straight leg raising test?

22 A Yes.

23 Q And straight leg raising test, it is done in two
24 different ways.

25 Correct?

1 A More than two different ways.

2 Q Among some of the ways it is done is if you're laying
3 down or seated.

4 Correct?

5 A Yes.

6 Q And those tests were performed by Doctor Jano?

7 A I'd have to check.

8 Q As you sit here, you're not aware of it. Right?

9 You have to look at the notes?

10 A I want to give you an accurate answer. I'd have to
11 check.

12 Q My question is this, as you sit here right now, without
13 looking at the notes, are you aware of the results of the
14 straight leg raising test performed by Doctor Jano on your
15 patient, Mr. Padi lla?

16 A I'd have to look at my notes.

17 Q Let's take a look at the note from January 25th, 2012.
18 It's right up here on the screen.

19 A January 25th.

20 Q Now, doctor, would it be fair to say that a straight
21 leg raising test, one of the functions of it is to determine
22 whether or not a patient has signs, clinical indications of
23 herniated discs?

24 A I'm not sure I agree with the way you said that
25 statement.

1 Q Let me try it again.

2 Would one of the functions of a straight leg
3 raising test be to determine whether or not a patient has nerve
4 root impingement caused by a herniated disc?

5 A That would be a better, accurate statement.

6 Q Now, in January of 2012, three months post accident,
7 Mr. Padilla had a negative sitting straight leg raising test on
8 both sides.

9 Correct?

10 A Correct.

11 Q So the clinical examination to determine whether or not
12 he has nerve root impingement, or clinical indications of a
13 herniated disc were negative?

14 A You just combined two different things. I can't answer
15 that question the way you asked it. They're two separate
16 things.

17 Q Doctor, sometimes herniated discs can be totally
18 asymptomatic?

19 A Excuse me?

20 Q Doctor, sometimes herniated discs can be totally
21 asymptomatic.

22 A At some point in time herniated discs hurt. They don't
23 hurt every second of the day.

24 Q Doctor, isn't it true that up to fifty percent of the
25 population, over 40 has a herniated disc?

1 A Eighty percent of the population has had back pain.
2 Your correlation is correct.

3 Q I'm not correlating anything. I asked one question.
4 Isn't it true, doctor, that fifty percent of the
5 population, above 40, has a herniated disc?

6 A That may be possible.

7 Q All right.

8 And even a larger percentage, more than fifty
9 percent, have no clinical indication or pain from that herniated
10 disc?

11 A At some point in their lifetime they may be pain free.
12 At some point they're going to have pain.

13 Q Doctor, the negative sitting straight leg raising test
14 was done on both sides of Mr. Padilla.

15 Correct?

16 A That's correct.

17 Q And it was negative, both sides.

18 Correct?

19 A That's correct.

20 Q And he had manual muscle testing, five out of five for
21 both arms and legs.

22 Correct?

23 A Correct.

24 Q That's as good as it gets.

25 Right?

1 A Excuse me?

2 Q That's as good as it gets?

3 A That's correct.

4 Q And his reflexes were completely normal.

5 Correct?

6 A That's correct.

7 Q And sensation, neurological test?

8 A Sensation was intact to light touch.

9 Q It was normal.

10 Correct?

11 A It was normal to light touch. Correct.

12 Q So as of this day, three months post accident, he had
13 negative clinical indication of nerve root impingement from a
14 herniated disc, a normal motor system examination, normal
15 reflexes and normal sensory exam.

16 Correct?

17 A You're incorrect again.

18 You keep combining herniated disc with nerve root
19 impingement, so you're incorrectly--

20 Q Doctor, does a straight leg raising test indicate or is
21 it used to determine whether or not one has nerve root
22 impingement?

23 A Yes.

24 Q Those are negative incidents?

25 A That's right.

1 Q November 30, 2011. Have you seen this examination
2 report before today?

3 A Yes, I have.

4 Q Then it states that there's no radiation of the lower
5 back, pain down the leg. No tingling, numbness. Did you read
6 that?

7 A Yes.

8 Q Did you bring that up today in direct examination?

9 A Had no bearing on whether a person has a herniated disc
10 or not.

11 Q Same date, doctor. He underwent straight leg raising
12 test. Negative.

13 Correct?

14 A Correct.

15 Q And in March 7th of 2012, again reading from
16 Defendant's B in Evidence, the plaintiff underwent another motor
17 system examination. The results of which were five out of
18 five.

19 Correct?

20 A Motor. Correct.

21 Q And that's perfect, isn't it?

22 A That's normal.

23 Q And the scale only goes up to five.

24 Correct?

25 A That's correct.

1 Q And his reflexes positive too. Symmetric bilateral up
2 and lower extremities?

3 A That's correct.

4 Q Normal reflex examination.

5 Correct?

6 A That's correct.

7 Q And normal sensory examination?

8 A Sensation is intact to light touch. Normal to light
9 touch.

10 Q That means it's normal.

11 Right, doctor?

12 A That means it's normal to light touch.

13 Q That means the test that your doctor saw fit to perform
14 was normal.

15 Correct?

16 A Yes.

17 Q You're the owner of this facility?

18 A Excuse me?

19 Q Are you the owner of this facility?

20 A Yes, I am.

21 Q You trust that your doctors are doing the proper
22 examinations?

23 A Yes, I do.

24 Q Is there some other examination you would have done,
25 doctor?

1 A Say it again.

2 Q Is there some other examination that you would have
3 done?

4 A I do things a little bit differently.

5 Q Let's take a look at your exams and see how differently
6 you did them. Let's take a look at your examination, doctor,
7 dated May 30th, 2017. Are you with me?

8 You did a motor exam.

9 Correct?

10 A Yes, sir.

11 Q Five out of five.

12 Correct?

13 A That's correct.

14 Q You did a reflex examination.

15 Correct?

16 A Yes.

17 Q Positive too.

18 Correct?

19 A Yes.

20 Q As good as it gets.

21 Right?

22 A That's right.

23 Q And you did a sensory examination.

24 Correct?

25 A I did a sensation examination to pin prick.

1 Q Right.

2 A Yes.

3 Q Exact same examination as done by the other
4 physicians.

5 Correct?

6 A Absolutely incorrect, sir. You are incorrect.

7 Q You did a pin prick examination on the sensory--

8 A I did a pin prick. Doctor Jano did a light touch.

9 Q But everything was normal?

10 A They were normal.

11 Q Did you criticize Doctor Jano for her care and
12 treatment of Mr. Padilla?

13 A No.

14 Q Take a look at the chart right there, doctor. Tell us,
15 how many prescriptions, for any type of pain medication, was
16 issued by your facility? Whether it be through e-mail or on
17 paper? The actual prescriptions?

18 A Excuse me?

19 Q I want to see the prescriptions, please.

20 A The patient was taking Aleve. He did not need a
21 prescription.

22 Q How many prescriptions are in the chart?

23 A I don't see any.

24 Q You mentioned before, you were referring to Doctor
25 Singh's report on direct examination for Mr. Shields.

1 Do you recall that?

2 A Doctor Singh's report?

3 Q Yes.

4 A Yes.

5 Q Have you seen Doctor Singh's report before today?

6 A I'm not sure if I actually saw it or not.

7 Q Did you discuss Doctor Singh's testimony with
8 Mr. Shields before today?

9 A Maybe the first time we met.

10 Q Did you discuss it before today and after your
11 testimony last week in court?

12 A No, sir.

13 MR. JONES: Nothing further at this time, Your
14 Honor.

15 THE COURT: Thank you.

16 Members of the jury, we're going to take a
17 bathroom break.

18 (Whereupon, the jury exited the courtroom.)

19 (Whereupon, the following proceedings take place
20 on the record, in open court, out of the hearing and
21 presence of the jury:)

22 THE COURT: Doctor, I am reminding you that, as
23 you are still under oath, you are not to discuss your
24 testimony with anyone during the recess.

25 Do you understand that?

1 THE WITNESS: Yes, Your Honor. Thank you.

2 THE COURT: Thank you.

3 (Whereupon, a recess was taken.)

4 THE COURT: Bring the jury out.

5 THE COURT OFFICER: All rise, jury entering.

6 (Whereupon, the following proceedings take place
7 on the record, in open court, in the hearing and presence of
8 the jury:)

9 THE COURT: You may inquire, Mr. Shields.

10 MR. SHIELDS: Thank you, Your Honor.

11 Q Doctor Delman, in this case why did you rely on the
12 Stand-Up MRI radiological reports?

13 A The reports were consistent with the patient's
14 complaints. There was no need for me to look at the films at
15 the time.

16 Q And why do you refer patients to see a radiologist?

17 A We refer patients-- I refer patients to see
18 radiologists for certain tests, whether it be x-ray or MRIs.

19 Q I just ask you to keep it slow for the court reporter.

20 Would you have treated Mr. Padilla differently if
21 he had described the crash as a low speed side swipe?

22 MR. JONES: Outside the scope, Judge.

23 THE COURT: Rephrase your question.

24 Q Were Mr. Padilla's injuries consistent with somebody
25 that was in a low speed side swipe collision?

1 MR. JONES: Objection.

2 THE COURT: Rephrase the question.

3 Q In the ER documents-- withdrawn.

4 In the emergency room, can doctors get information
5 from the ambulance EMS personnel?

6 MR. JONES: Objection. Again, outside the scope,
7 Judge.

8 THE COURT: Rephrase the question.

9 Q Who brought Mr. Padilla to the hospital?

10 A The ambulance did.

11 Q Could the ambulance personnel have spoken with the ER
12 physicians?

13 A Yes.

14 MR. JONES: Objection.

15 THE COURT: Sustained.

16 Q When you reviewed the ER records, what did you notice?

17 A That the patient complained of neck pain and back pain,
18 as documented in the ER records, that he was brought in by EMS
19 on a long board and collared. That means the EMS people, at the
20 scene, felt it was severe enough that there may be some major
21 injuries and they put him on the board.

22 THE COURT: One second, doctor.

23 Ask a question.

24 Q How was he brought into the ER?

25 MR. JONES: Objection. This was done last week.

1 THE COURT: Sustained.

2 Q Did Mr. Padilla report, in the hospital, that there was
3 significant property damage to his vehicle?

4 A Did he report that there was significant property
5 damage?

6 I don't see that. It does say that there was
7 significant damage to the side of his car, yes.

8 Q At the ER, did they conduct a full neurological exam?

9 A I don't see any mention of deep tendon reflexes being
10 performed in the emergency room. So it's unclear right now.

11 Q When would an ER doctor order x-rays?

12 A If the doctor wanted to do a check, see if there were
13 broken bones. As an ER physician, if you were concerned that
14 there are broken bones, a fracture, you order x-rays. If you
15 didn't think there was a fracture, on your clinical examination,
16 you wouldn't order x-rays. You wouldn't radiate the patient for
17 no reason.

18 Q When would an ER physician order MRIs?

19 A It's very rare for an ER doctor to order an MRI unless
20 there was some significant neurologic loss. An MRI is not
21 appropriate for an ER doctor.

22 Q Now, how old was Mr. Padilla on the date of the
23 accident?

24 A 33.

25 Q Can you tell us his date of birth?

1 MR. JONES: Already asked and answered.

2 THE COURT: Overruled.

3 Q Could he have been 32, not 33?

4 A I'm sorry. Say that again.

5 Q Could he have been 32 and not 33?

6 A Accident was on November 29th, 2011. Right. So it
7 was-- actually it was a little bit before his birthday, yeah.

8 Q Is nerve root impingement the same thing as a herniated
9 disc?

10 A No, sir.

11 Q Can you explain the differences?

12 A A herniated disc is a physical characteristic of the
13 disease. As I showed you, there are definite herniations in
14 his. You saw them, I saw them. The radiologist that read the
15 films saw them. Nerve root irritation is something-- is
16 irritation of the root which is the nerve that comes outside of
17 the spinal cord, it can be caused by a herniated disc and it can
18 be caused by other things as well.

19 Q Can someone have degenerative disc disease and be
20 asymptomatic?

21 A Of course.

22 Q Can they then have a trauma and experience pain?

23 MR. JONES: Objection. No claim for aggravation.

24 THE COURT: Sustained.

25 Q Did Mr. Padilla have degenerative disc disease

1 according to his MRIs?

2 A He had some, yeah.

3 Q Was he experiencing pain, according to the complaints
4 he made to you, prior to the accident?

5 MR. JONES: Objection.

6 THE COURT: Sustained.

7 Q Is it possible that he was asymptomatic before the
8 crash?

9 MR. JONES: Same objection.

10 Q And experienced pain after the crash.

11 THE COURT: Rephrase the question.

12 Q Do you think that the trauma caused his pain after the
13 crash?

14 A Yes, I did.

15 MR. SHIELDS: No further questions.

16 THE COURT: Any recross?

17 RECROSS-EXAMINATION

18 BY MR. JONES:

19 Q Doctor, you can appreciate the difference between a
20 disc that could herniate from a trauma and a disc that could
21 herniate from the degenerative process.

22 Correct?

23 A I'm not sure what you mean.

24 Q Can a disc herniate absent trauma?

25 A Absent trauma?

1 Q Yeah?

2 A I don't believe so. There has to be enough force to
3 herniate that disc, whether it's trauma that's known, like a car
4 accident or cough or sneeze, you bend over too much.

5 Q Doctor, we can agree that's MRI reports never said the
6 word trauma.

7 Correct?

8 A That's correct. They don't say the word trauma.

9 Q They say no other word even synonymous with trauma,
10 isn't that correct?

11 A That's correct.

12 MR. JONES: Thank you, nothing further.

13 THE COURT: Thank you.

14 Thank you, doctor. You may stand down.

15 THE COURT: May I see the attorneys in the back.

16 (Whereupon, a discussion takes place off the
17 record, in the robing room, among the Court and counsel:)

18 THE COURT: Mr. Shields, anything further?

19 MR. SHIELDS: No, Your Honor. The plaintiff rests
20 at this time.

21 THE COURT: Thank you.

22 Members of the jury, we're going to take our
23 recess for the day and I ask that you return tomorrow, at
24 9:30 A.M., in the designated area, waiting for the court
25 officer to escort you upstairs. Enjoy the rest of the day.

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This is to certify that the foregoing is a true and accurate transcript of the stenographic minutes taken within.

MICHELE HENLEY,
Senior Court Reporter