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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: CIVIL DIVISION - PART IA-23

-----x  
HARRIS WALLACE,

Plaintiff,

-versus-

Index # 21032-2014

CIPPIAN LIMOUSINE, INC. and ALIEU BARRY,

Defendant(s)

-----x  
April 4, 2017  
851 Grand Concourse  
Bronx, New York 10451

CROSS EXAMINATION OF DOCTOR LOUIS C. ROSE

B E F O R E : Honorable JOSEPH E. CAPELLA,  
J U S T I C E

APPEARANCES :

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Victoria Efferen  
Senior Court Reporter

1      CROSS EXAMINATION

2      BY MR. JONES:

3            Q      Good afternoon, Doctor.

4            A      Good afternoon.

5            Q      You and I never met; is that correct?

6            A      That's correct sir.

7            Q      I am going to ask you some questions with regard to the  
8      plaintiff Mr. Wallace and unless I ask you for an explanation, I  
9      am going to ask you to keep your answers to a yes or no.

10          A      I will do my best.

11          Q      If you cannot, let me know and we will try to work it  
12      out, okay?

13          A      Okay.

14          Q      You testified in court before, have you not?

15          A      Yes, I have.

16          Q      For how many years have you been testifying in court?

17          A      I would say I was called into court the first time  
18      probably I was in practice five years and I am in practice 30  
19      years this July.

20          Q      So about 25 years?

21          A      Yes.

22          Q      When you do testify, you testify exclusively on behalf  
23      of plaintiffs?

24          A      No, sir.

25          Q      When was the last time you testified on behalf of a

1 defendant in a personal injury lawsuit?

2 A Within the last five years.

3 Q For the last five years you have been exclusively  
4 plaintiffs?

5 A For patients that I treat which were involved in  
6 litigation.

7 Q In the last ten years how many times did you testify on  
8 behalf of a defendant?

9 A Three times.

10 Q In the last 20 years?

11 A I only testified three times as an expert in a medical  
12 malpractice case.

13 Q In that case you were testifying on behalf of a doctor  
14 being sued?

15 A That's correct.

16 Q When you testify for personal injury cases you testify  
17 exclusively on behalf of plaintiffs; correct?

18 A I am the treating doctor, as such I get asked to  
19 testify.

20 Q That's a yes; right?

21 A The answer is yes.

22 Q For how many years have you been charging a fee of 7500  
23 dollars for an appearance?

24 A I would say the last ten years.

25 Q And how many times per year do you testify on

1      average?

2      A      Once a year or twice a year.

3      Q      How many cases do you review for plaintiff's attorneys  
4      for their clients that have personal injury lawsuits in the  
5      course of a year?

6      A      A handful.

7      Q      Five or six?

8      A      Yes, maybe five or six.

9      Q      Doctor, you consider Mr. Wallace your patient?

10     A      He is my patient, yes.

11     Q      I assume that you conducted a very extensive interview  
12    with him when you met him for the first time?

13     A      I did.

14     Q      And did you ask him about his medical history?

15     A      Yes.

16     Q      And do you think you obtained an accurate medical  
17    history from the plaintiff?

18     A      I would say that it was accurate, yes.

19     Q      Are you aware that Mr. Wallace had a prior lawsuit in  
20    2010 for a motor vehicle accident?

21     A      He had advised me that he had a past history of neck  
22    pain but no other specific orthopedic surgeries or other  
23    surgeries or past medical history. The cause of that neck pain I  
24    don't have a specific history.

25     Q      Let me get to that. You are here to give the jury an

1       opinion on causation; correct?

2       A      Yes.

3       Q      And you gave an opinion already that you think his  
4       symptoms that he complains about with respect to his neck, back  
5       and shoulder are related to the 2013 accident; correct?

6       A      Correct.

7       Q      That was your opinion?

8       A      It is.

9       Q      Now in order to do that, give that opinion, would you  
10      agree that you need to have an accurate history from the  
11      plaintiff?

12      A      I would agree.

13      Q      And if you don't have an accurate history it would  
14      cause you to give a mistaken opinion on causation, possible?

15      A      It is possible.

16      Q      So when the plaintiff informed you that he had a prior  
17      neck problem --

18      A      Yes.

19      Q      -- did it arouse any curiosity in you to start asking  
20      some questions about how he got it; yes or no?

21      A      I don't have an independent recollection about that  
22      conversation.

23      Q      Take a look in your notes. You saw him June 10, I  
24      believe?

25      A      Yes, my notes don't reflect that conversation.

1           Q     Which means do you consider yourself a detailed medical  
2     historian?

3           A     Yes, I taught medical school for ten years.

4           Q     Do you pay close attention to detail?

5           A     Generally speaking.

6           Q     Do you think if you were going to testify in a personal  
7     injury case and a patient tells you that he has a prior injury in  
8     a body part that he is complaining of that would be important to  
9     not; yes or no?

10          A     I cannot answer it that way.

11          Q     Look in your notes and tell us what you asked him about  
12     his prior injury?

13          A     I don't have a recollection of it. But my point I take  
14     somewhat offense to is that you are asking me back when he first  
15     presented to me assuming that there is a personal injury matter  
16     involved here. I have no knowledge that he told me he was in a  
17     car accident, that's all I know. Whether I would be testifying or  
18     not, I had no knowledge whether I would be testifying or not.

19          Q     Doctor, at some point you knew and it continues to  
20     repeat through your notes that there was a prior injury; right?

21          A     Yes, sir.

22          Q     So would it be fair to say that throughout the course  
23     of the notes that we are looking at, let's look at the office  
24     dates that he presented to you, June 10th, June 25th, August  
25     13th, September 5th, October 9th, December 4th and January 15th

1 of 2014. Are you telling us that all of those visits you never  
2 learned from the plaintiff as to what body parts were injured in  
3 2010? That is a yes or no answer please.

4 A The answer is no.

5 Q Are you aware that Mr. Wallace had a very long period  
6 of therapy for the prior accident? That is a yes or no.

7 A No.

8 Q Are you aware that he had MRIs as a result of the prior  
9 accident?

10 A Not aware of that.

11 Q Are you aware that he had a lawsuit?

12 A I am not aware of that, no.

13 Q Are you aware that he went for x-rays?

14 A I am unaware of anything that pertained to his neck  
15 issue.

16 Q Would it be fair to say as you sit here today you are  
17 not properly versed in the plaintiff's medical history? That is  
18 a yes or no?

19 A It cannot be answered that way.

20 Q Would it be fair to say, Doctor, that you are not  
21 properly versed or well aware of his prior injury history; yes or  
22 no?

23 A I don't think I can answer that yes or no either.

24 Q Doctor, if you had asked him if he had prior MRIs,  
25 would you have asked for them?

1           A    Yes.

2           Q    If you had asked him if he had prior therapy to his  
3    neck or back would you have asked for those records?

4           A    I would not just arbitrarily ask someone if they had  
5    MRIs unless there was a specific history of a treatment to an  
6    area that they informed me of then I would ask for specific  
7    MRIs.

8           Q    I am going to ask you to assume that the plaintiff  
9    testified previously at his deposition, page 30 line 7 through 10  
10   that he suffered neck and back injuries as a result of a 2010  
11   accident. Had you asked him or taken a proper medical history is  
12   that something that you would have wanted to know about; yes or  
13   no?

14          A    Yes.

15          Q    Because that helps you give the jury an accurate  
16   causation opinion; correct?

17          A    Yes.

18          Q    And without it you can make a mistake in the causation  
19   opinion, fair enough?

20          A    Fair enough.

21          Q    When you used the word aggravation or exacerbation  
22   before on direct examination of a prior condition?

23          A    Yes.

24          Q    In order to find out if something has been aggravated  
25   or exacerbated you have to compare it to the prior records, fair

1 enough?

2 A No.

3 Q If you wanted to see if a neck or back injury was made  
4 worse based upon an interpretation of a prior MRI and a  
5 subsequent MRI you would have to compare both MRIs; correct?

6 A Are you speaking specifically about MRIs, that's  
7 correct.

8 Q That's fine, let's move on Doctor. In order to obtain  
9 an MRI for a body part, the patient has to complain of  
10 pain; correct?

11 A Usually.

12 Q You are not going to volunteer that people go for a 700  
13 dollar exam unless they complain about it; right?

14 A Correct.

15 Q The reason for an exam in medical terms is called an  
16 indication for an exam; correct?

17 A Correct.

18 Q So if the plaintiff had an MRI of his neck and back as  
19 a result of the 2010 accident that means that some physician  
20 determined he had significant enough pain to warrant giving him  
21 that expensive exam; correct?

22 A Yes.

23 Q And if he had an x-ray of his neck and his back that  
24 means that some physician decided he had enough complaints of  
25 pain with respect to those body parts that I better give him an

1      x-ray; right?

2      A      Yes.

3      Q      Did he tell as a result of the 2010 accident that he  
4      went to the Jacobi emergency room?

5      A      No.

6      Q      Did you ask him?

7      A      I did not.

8      Q      Okay.

9      A      I don't have a recollection of it. I said that numerous  
10     times.

11     Q      Do you know Doctor Pintauro?

12     A      Yes.

13     Q      Do you know him personally?

14     A      Yes.

15     Q      Because he also has privileges at Montefiore Medical  
16     Center; correct?

17     A      Yes, he does.

18     Q      And he is the treating physician of the  
19     plaintiff; correct?

20     A      His primary care doctor, yes.

21     Q      Have you spoken to Doctor Pintauro about Mr. Wallace?

22     A      I have no recollection about whether I have or have  
23     not.

24     Q      You are aware that he is the plaintiff's primary care  
25     physician and you happen to know him personally because you have

1      privileges at the same hospital?

2      A      Yes.

3      Q      You find out from the plaintiff that he has a prior  
4      neck injury but you never consult with Doctor Pintauro about it;  
5      is that correct?

6      A      I just said I don't have a recollection of it.

7      Q      It is a yes or no.

8      A      I cannot answer it that way, counselor.

9      Q      Did you ask Doctor Pintauro for any medical records  
10     relative to the past medical history of Mr. Wallace; yes or no?

11     A      It cannot be answered that way.

12     Q      Because you don't remember you or you don't want to  
13     answer it?

14     A      Because I told you I don't have any independent  
15     recollection of a conversation with Doctor Pintauro about  
16     Mr. Wallace so I don't recall that conversation. I cannot  
17     evidence about the sum and substance of that conversation.

18     Q      As a detailed historian and teaching medical school and  
19     knowing how to take detailed notes, tell us if you requested the  
20     notes of Doctor Pintauro of your patient Mr. Wallace?

21     A      I can make it crystal clear it cannot be answered that  
22     way.

23     Q      It cannot be answered?

24     A      No, that is right.

25     Q      Let's do it one at a time. Look at your office note of

1       June 10, 2013 through June 25, 2013. Any requests of Doctor  
2       Pintauro for his past medical records?

3           A       No, sir, none. Excuse me, counselor, let me finish  
4       please. Counselor, I did not finish my answer.

5           Q       You have been in court before? It is a yes or no.

6           A       You mentioned Doctor Pintauro, he was in the loop on  
7       every consult that was here on this patient, that's all I wanted  
8       to say.

9           Q       Doctor, I know you testified in court before and I  
10       don't want us to speak over each other so I will not speak over  
11       you and afford me the same courtesy?

12          A       I ask you to do the same.

13          Q       August 13, 2013 office chart. Any requests for Doctor  
14       Pintauro's notes, anything about that consult?

15          A       We can go through the whole chart, there is not one  
16       request for an MRI, anything to Doctor Pintauro. I thought I  
17       made that clear.

18          Q       You have not, so I will move on.

19          A       Thank you.

20          Q       Now you are aware, in fact, Doctor Pintauro referred  
21       the plaintiff to you; correct?

22          A       He did.

23          Q       Now let's go to June 2, 2013. Are you aware that the  
24       plaintiff went to Montefiore Hospital?

25          A       Yes.

1           Q     And that when he got there, a full physical examination  
2     was conducted; correct?

3           A     Yes.

4           Q     Now did you review this record?

5           A     I don't recall if I did or not, I believe I did.

6           Q     You believe you did?

7           A     Yes, I believe I did.

8           Q     Well do you have any notes in your office charts of  
9     having reviewed specifically the physical examination taken of  
10    the plaintiff when he presented to Montefiore on June 2, 2013?

11          A     No, sir.

12          Q     Can we assume if it is not in your records that you did  
13    not review it?

14          A     You cannot assume that, no.

15          Q     If anything had aroused your curiosity and made an  
16    impression on you if you had reviewed that record as a detailed  
17    medical professional, would you have reported it in your notes?

18          A     If there was something that was significant to me, I  
19    might have recorded it.

20          Q     Let's move on from that. You are telling the jury that  
21    the shoulder, the rotator cuff was torn in this accident?

22          A     Yes.

23          Q     Okay.

24          A     That's correct.

25          Q     A seven millimeter tear in that muscle?

1           A    The tendon.

2           Q    May I borrow your model?

3           A    Certainly.

4           Q    Which tendon was it, Doctor?

5           A    That was in the supraspinatus tendon.

6           Q    The rotator cuff has four muscles; correct?

7           A    Yes.

8           Q    Supraspinatus, infraspinatus, teres minor and

9    subscapularis?

10          A    That's correct.

11          Q    How thick is the tendon that you say was torn?

12          A    The tendon itself ranges approximately in thickness six

13    to eight millimeters.

14          Q    In terms of inches, what would that be for us who are

15    not too familiar with the metric system, half inch?

16          A    Three eighths of an inch.

17          Q    Almost a half inch; right?

18          A    Yes.

19          Q    You are telling us that a half inch of muscle, seven

20    millimeters in length was torn as a result of this automobile

21    collision; correct?

22          A    Correct.

23          Q    Now, if that had occurred you would expect some type of

24    activity inside the shoulder muscle which would have presented on

25    an MRI; correct?

1           A    Yes.

2           Q    You would expect some type of a bleed from that  
3   muscle; correct?

4           A    No, tendon.

5           Q    To tear a muscle it represents a change in velocity or  
6   an impact?

7           A    Counselor you said muscle so many times it is not the  
8   muscle it is a tendon. There is a difference. Tendons have  
9   minimal vascularity so there is no hemarthrosis or blood in the  
10   joint in association with a tendon tear, that's why I am making  
11   this distinction.

12          Q    I will adopt the distinction, Doctor. Let's call it a  
13   half inch of tendon material what you say was torn in this  
14   accident?

15          A    Correct.

16          Q    Now someone who is a careful reviewer of records, was  
17   there anything in the June 2, 2013 emergency room chart that was  
18   inconsistent with someone having torn almost a half inch of  
19   tendon in his right shoulder?

20          A    I don't recall.

21          Q    Did he undergo a physical examination on June 2,  
22   2013?

23          A    He did.

24          Q    Did it include his right shoulder?

25          A    I don't recall if it did or not.

1           Q     He had full range of motion of his right shoulder when  
2     he presented there, did you know that, Doctor?

3           A     As I said I don't recall the specifics.

4           Q     Someone with full range of motion of the right  
5     shoulder, is that consistent with a tear of a tendon?

6           A     No.

7           Q     What was his level of pain in the right shoulder when  
8     he arrived at the hospital?

9           A     I don't recall what the reports said. If I saw that  
10    report it was three or four years ago, I have not seen it  
11    since. I cannot give you the details of the report.

12          Q     Doctor, you are saying that the injury occurred on this  
13    day or the day before; right?

14          A     Correct.

15          Q     But you did not take one note about the first physical  
16    examination that was taken after the accident with regard to his  
17    shoulder?

18          A     No, that is why they call me a consultant. That is why  
19    his primary care physician sent him to me as an expert in the  
20    upper extremity.

21          Q     I am going to remind you what I asked you to do before.  
22    I started questioning you, I am going to ask you for a yes or no  
23    answer?

24          A     There is going to be a lot of yes or no or I cannot  
25    answer.

1           Q     Either you ignored or didn't review or didn't review at  
2     all, Doctor, the fact that he had a full range of motion in his  
3     right shoulder on June 2, 2013?

4           A     I cannot answer that yes or no.

5           Q     Do you agree, Doctor, someone with a full range of  
6     motion in his right shoulder a day after the alleged injury took  
7     place is inconsistent with a trauma to that shoulder?

8           A     No.

9           Q     Extremities that would include the shoulder; right,  
10     Doctor?

11          A     Yes.

12          Q     Mild tenderness in the shoulder, did you read that in  
13     the ER report?

14          A     I may have read it, I don't recall if I read it or the  
15     not.

16          Q     Mild tenderness is inconsistent with an acute tear,  
17     isn't it?

18          A     I cannot answer it that way, the way you are proposing  
19     it.

20          Q     He underwent an x-ray at the hospital on June 2,  
21     2013; correct?

22          A     He may have, I don't recall, how many times do I have  
23     to say that?

24          Q     You don't know if your own patient underwent an x-ray  
25     of the right shoulder on the day the injury supposedly took

1 place?

2 A I don't recall the specifics of the report that's what  
3 I said ten times, counsel. If you want to afford me the  
4 opportunity to review it I will be glad to review it again but to  
5 ask me questions about something that I may have reviewed four  
6 years ago, how could I possibly agree or disagree with it, it is  
7 a ridiculous question.

8 Q I am going to stay away from ridiculous questions.

9 A Thank you.

10 Q And ask you to answer my questions regardless of your  
11 opinion --

12 A If I can.

13 Q -- yes or no, okay?

14 A If I can.

15 Q Look through your chart and find for us a copy of the  
16 June 2, 2013 Montefiore emergency room evidence.

17 A I told you I don't have it. That question was asked  
18 earlier and I already answered that question.

19 Q The results of the x-ray were, "no acute injury", are  
20 you aware of that?

21 A That is not surprising.

22 Q You are hearing that the first time today or were you  
23 aware of that?

24 A There was no fracture, x-ray looks at your bones, there  
25 is no fracture when I x-rayed him in my office.

1           Q     What about the need for follow up as a result of the  
2     June 2, 2013 visit.  Are you aware of what it said in that  
3     record; yes or no?

4           A     I said this 15 times, I have no independent  
5     recollection of that report.

6           Q     No follow-up care needed. Now, that is inconsistent  
7     with someone having sustained a traumatic injury to a body part  
8     and needing further treatment, would you agree, Doctor, that  
9     statement right there?

10          A     Well, his primary care physician didn't feel that  
11     way.

12          Q     Plaintiff came to you the first time on June 10,  
13     2013?

14          A     That's correct.

15          Q     Did you have a copy of Doctor Pintauro's physical  
16     examination?

17          A     I did not.

18          Q     You did not?

19          A     I don't have a copy of his physical examination, that's  
20     the reason he sent him to me because I am an orthopedic  
21     surgeon.

22          Q     You are not aware when the plaintiff went to Doctor  
23     Pintauro he had full range of motion in his right shoulder?

24          A     I just told you I did not have a copy of his exam or  
25     his consult or his office note so how could I know anything that

1 is on the office note.

2 Q And so you did not review the medical records of the  
3 referring physician; is that correct?

4 A That's correct.

5 Q Do you have Doctor Pintauro's physical examination  
6 anywhere in your chart?

7 A No, sir.

8 Q If I told you Doctor, when Doctor Pintauro examined the  
9 plaintiff he found full range of motion in the right shoulder, no  
10 edema and no back pain that would be inconsistent with your  
11 opinion that there was a traumatic injury suffered on June 1,  
12 2013 wouldn't it?

13 A Yes.

14 Q Now let's talk about pain scale?

15 A Okay.

16 Q It goes from one to ten?

17 A Zero to ten.

18 Q Ten being break through pain, I cannot stand it?

19 A Correct.

20 Q Someone with ten out of ten, break through pain would  
21 be running around your office like his hair is on fire,  
22 excruciating pain; correct?

23 A It is just painful.

24 Q When the plaintiff left that day, what medication did  
25 you give him?

1       A    The patient was placed on Feldene.

2       Q    Feldene is anti-steroidal, non-inflammatory,  
3   anti-inflammatory?

4       A    Non-steroidal anti-inflammatory.

5       Q    Not a pain medication; right?

6       A    Oh, it helps with pain.

7       Q    Do you have the prescription for the Feldene in your  
8   chart?

9       A    I don't have a prescription for it, no.

10      Q    So did you give him samples that you had in the  
11   office?

12      A    No, it is sent out electronically.

13      Q    You don't have any copies of the electronic  
14   prescription in your chart?

15      A    I do not, no. It is just memorialized that it is sent  
16   out.

17      Q    Let's go through this. You are telling us that you gave  
18   a controlled substance --

19      A    It is not a controlled substance.

20      Q    -- anti-inflammatory non-steroidal to the plaintiff and  
21   there is no record of it anywhere in your chart; correct?

22      A    That is not true. If you turn to the last page of my  
23   note it says "RX orders, Feldene 20 milligram capsules, quantity  
24   30, one Capsule PO times two."

25      Q    Where is the record of it?

1           A    It goes right to the pharmacy.

2           Q    What pain medication did you prescribe for him?

3           A    That was the only medication that he was prescribed.

4           Q    What you are telling us is that his pain was ten out of  
5   ten?

6           A    I am telling you what the patient told me, whatever the  
7   patient tells me as a historian the person taking the history,  
8   that's what I write.

9           Q    As a careful medical practitioner someone with a pain  
10   scale of a ten out of ten, wouldn't you prescribe them pain  
11   medication?

12          A    No, I don't prescribe pain medication.

13          Q    Is that because you did not believe him?

14          A    No, sir.

15          Q    Look through your notes from June through December, did  
16   you write any or prescribe any pain medication for the plaintiff  
17   other than when he had the surgery in October?

18          A    The only time I prescribe in my practice narcotic pain  
19   medication is when a patient has surgery, other than that I send  
20   the patient to a pain management physician.

21          Q    So no pain medication prescribed by you?

22          A    It is my custom and practice not to give people a  
23   problem they don't need.

24          Q    Let's talk about the MRIs that you prescribed for the  
25   plaintiff after this first visit, okay.

1           A    Yes.

2           Q    Those MRIs were done at Montefiore Westchester  
3    Square; correct?

4           A    Correct.

5           Q    And the MRI of the plaintiff's right shoulder was  
6    performed on June 12, 2013; correct?

7           A    That's correct.

8           Q    Now Doctor, you agreed that certain terms used in MRI  
9    reports are consistent with trauma and some terms are consistent  
10   with old and degenerative conditions; correct?

11          A    Yes.

12          Q    Let's go through them. The word old, that means what it  
13    says it is old; right?

14          A    Correct.

15          Q    And it says that here, sentence two of the MRI report  
16    of the plaintiff's right shoulder that there was an old distal  
17    clavicular fracture deformity?

18          A    Yes.

19          Q    You read that?

20          A    I did.

21          Q    And in fact it appears in your June 25 office note in  
22    the second page?

23          A    Correct.

24          Q    And the plaintiff at that time was seen by Noreen  
25    Farnan, is that your physician's assistant?

1       A     She is my office manager that took the report and put  
2     it into our electronic chart.

3       Q     Did you even see the plaintiff on this day?

4       A     The next time the patient was seen was June 25th,  
5     that's the date that he was seen.

6       Q     Did you see the plaintiff that day?

7       A     Yes.

8       Q     The word old distal clavicular fracture deformity?

9       A     Yes.

10      Q     When you read that did you question the plaintiff as to  
11     how he got a fractured shoulder; yes or no?

12      A     I don't recall.

13      Q     Well, as a detailed medical historian and someone who  
14     is giving the jury an opinion on the cause of a shoulder injury,  
15     do you think you should have questioned the plaintiff about his  
16     history of a prior shoulder injury if you are going to come to  
17     court and testify and give an opinion on that body part? That is  
18     a yes or no?

19      A     I am not going to answer it that way.

20      Q     Take a look at your notes and tell us what questions  
21     you asked the plaintiff when you read the MRI report which  
22     revealed that he had an old right shoulder clavicle fracture with  
23     a deformity?

24      A     I am not going to answer it that way.

25      Q     I want you to look through your notes and tell us what

1       you asked him?

2           A    Counsel, the bottom line is I explained it very well  
3   earlier this morning. I had my own independent x-ray of the man's  
4   shoulder. The fact that he had a completely normal appearing  
5   clavicle on his x-ray that he had some sort of a fracture maybe  
6   when he was a kid and it got picked up, had no impact on this,  
7   zero.

8           Q    I am going to ask you the following question.

9           A    That's why I said I cannot answer it that way.

10          Q    I am going to keep it even simpler for you. Did you ask  
11   the plaintiff how he fractured his shoulder; yes or no?

12          A    I don't recall.

13          Q    If you had asked him how he fractured his shoulder?

14          A    He did not fracture his shoulder, his clavicle.

15          Q    Is the clavicle part of the shoulder?

16          A    It is a component.

17          Q    When you found that, would it be fair to say that you  
18   never asked him how he got it?

19          A    I don't recall, it had no bearing because there was no  
20   deformity.

21          Q    Did you say there was no deformity?

22          A    There was no deformity.

23          Q    I am quoting from the 6/12/13 right shoulder MRI. "Old  
24   distal clavicular fracture deformity."

25          A    There is no deformity.

1 Q Did you read that?

2 A I read that.

3 Q In order to fracture a component of the shoulder,  
4 trauma has to occur; correct?

5 A Yes.

6 Q And in order to diagnose a fracture you need some kind  
7 of a diagnostic test; correct?

8 Q You being a careful medical practitioner, the plaintiff  
9 is claiming he has an injury to the shoulder and he underwent  
10 some type of an x-ray for it; correct?

11 A Yes.

12 Q You did not ask him either, did you?

13 A I did not ask him what.

14 Q How he fractured it or where he got the x-ray; right?

15 A On this particular injury you are talking about June 1?

16 Q Yes.

17 A I knew that he was seen in the emergency room and I  
18 said he had x-rays, it is in my first paragraph.

19 Q I am going to try it again. When you read that portion  
20 of the MRI report that he had an old shoulder fracture you never  
21 asked him how he got it, did you?

22 A I am going to say this for the fifth time, I don't have  
23 any independent recollection of any conversation I had with him  
24 pertaining to how he had an old fracture that had no bearing on  
25 his present problem.

1       Q     Would it be fair to say, Doctor you that don't have an  
2     accurate history from the plaintiff with regard to his  
3     shoulder?

4       A     I would not say that, no.

5       Q     Would it be fair to say, Doctor, that you failed to  
6     inquire of the plaintiff of a right shoulder injury with regard  
7     to his etiology and his treatment; yes or no?

8       A     I cannot answer it yes or no.

9       Q     Let's move on in this report, midway through.  
10     Subscapularis tendonosis, that's a degenerative condition?

11      A     Tendonosis can be caused by trauma.

12      Q     It can be a degenerative condition also?

13      A     It can be caused by trauma as well.

14      Q     We will get the trauma in a moment. Did you read there  
15     is an old distal clavicular fracture deformity adjacent to the AC  
16     joint?

17      A     Yes, old injury.

18      Q     Did you read there is minimal AC joint degenerative  
19     change with capsular hypertrophy, did you read that?

20      A     Yes.

21      Q     That sentence I just read is totally consistent with a  
22     chronic long standing condition; correct?

23      A     The degeneration to the joint, to the AC joint, yes.

24      Q     That sentence I just read is inconsistent with trauma,  
25     isn't it?

1           A    I am sorry?

2           Q    That sentence I just read to you is totally  
3   inconsistent with trauma, isn't it?

4           A    No, you can have traumatically induced degenerative  
5   joint disease.

6           Q    What date was this MRI taken?

7           A    The MRI was taken June 12, 2013.

8           Q    Ten days after the accident; right?

9           A    Correct.

10          Q    So you are not trying to tell the jury that these  
11   degenerative conditions taken ten days after the accident  
12   happened in that ten day period, are you?

13          A    No, not at all.

14          Q    You know within a reasonable degree of medical  
15   certainty that what I just read to you, his degenerative  
16   conditions were by medical definition present before this  
17   accident; correct?

18          A    I will agree with the AC, joint that's the only thing  
19   that I can agree with.

20          Q    Hypertrophy, that's excessive bony growth; correct?

21          A    Yes.

22          Q    Which occurs, Doctor, as a result of prior  
23   trauma; correct?

24          A    You can see it for a million reasons.

25          Q    For repetitive use?

1           A    Yes.

2           Q    Brief trauma?

3           A    It is capsular, it is of the capsule if you read it,  
4   under interpretation second paragraph second line from the  
5   bottom, "there is minimal AC joint degenerative change with  
6   capsular hypertrophy."

7           Q    Can we agree the capsular hypertrophy pre-existed this  
8   accident?

9           A    Yes.

10          Q    Now there is a statement here, we covered it on direct,  
11   there is no fracture or marrow contusions?

12          A    Correct.

13          Q    You read that before?

14          A    Yes.

15          Q    The absence of marrow contusions means there is no  
16   bruise; right?

17          A    In the marrow, that's correct.

18          Q    Which is inconsistent with trauma; isn't it?

19          A    No.

20          Q    Doctor, aside from what you said, bursitis, there is  
21   nothing on this MRI report which is consistent with a trauma  
22   having occurred to this shoulder only ten days prior; yes or  
23   no?

24          A    No.

25          Q    Any reference to high signal intensity on this MRI

1 report?

2 A Obviously there was signal intensity such that the tear  
3 in the rotator cuff tendon was identified, right.

4 Q I am asking you Doctor whether there is high signal  
5 intensity which would indicate a recent trauma?

6 A There is no way to distinguish on MRI a tear in a  
7 tendon whether it is old or new based on signal intensity, that  
8 is incorrect.

9 Q There are ways to tell on an MRI whether an injury or a  
10 condition is traumatic or chronic; correct?

11 A Sometimes.

12 Q And the word "old" by definition means it pre-existed  
13 this accident, doesn't it?

14 A Pertaining to the clavicle fracture, yes.

15 Q Degenerative pre-existed the accident?

16 A No, it does not say degenerative, you say  
17 degenerative. It is pertaining to his AC joint, we conceded that  
18 pertaining to the tendon he has tendonitis, you don't know that  
19 was not as a result of the injury.

20 Q Are you saying tendonitis developed within ten days of  
21 this accident?

22 A Absolutely the peak of inflammation following a trauma  
23 is 24 to 72 hours.

24 Q Are you telling us the AC joint, clavicular change is  
25 as a result of this accident?

1       A     How many times are you going to ask me that? I already  
2     conceded that to you, counsel.

3       Q     Doctor, eventually you performed an operation on the  
4     plaintiff; correct?

5       A     Correct.

6       Q     Is there an anesthesia report associated with the  
7     operative report in October?

8       A     That would be in the hospital chart.

9       Q     You don't maintain it as part of your records?

10      A     No, sir.

11      Q     How about a pathology report?

12      A     I don't see one here. It is probably in the hospital  
13     chart. I am sure there is a pathology report.

14      Q     You told us that you took out a piece of bone in that  
15     surgery?

16      A     So there has to be a pathology report.

17      Q     You are telling us that you don't have a copy of your  
18     own pathology report in your chart?

19      A     That's correct.

20      Q     Are you telling us that you don't have a copy of your  
21     own anesthesia record?

22      A     It is not my anesthesia record, it is the  
23     anesthesiologist's record.

24      Q     The anesthesia record tells us exactly how long the  
25     operation lasted; correct?

1           A    Yes, it would.

2           Q    What time he was wheeled in and out as distinguished  
3       with the length of the operation; correct?

4           A    Correct.

5           Q    We don't have that?

6           A    No, it is in the hospital record. Nobody in private  
7       practice keeps that in their chart.

8           Q    At least you don't; right, Doctor, as part of your  
9       chart?

10          A    I practice customary medicine.

11          Q    You knew you were coming to testify today; right?

12          A    Yes.

13          Q    And you did not bring it for us, fair enough?

14          A    I did not go to the hospital and go through the  
15       records, that is somebody else's job, not my job.

16          Q    Let's talk about what was done during the course of  
17       this operation, okay.

18          A    Okay.

19          Q    You performed a debridement of the rotator  
20       cuff; correct?

21          A    Correct.

22          Q    Not a repair?

23          A    That's correct.

24          Q    You performed a debridement of the labrum, not a  
25       repair; is that correct?

1           A    That's correct.

2           Q    Looking at page two of your operative report I am going  
3    to begin with the sentence "it was apparent that there was  
4    extreme narrowing of the subacromial space region with inspection  
5    of the rotator cuff which did have tearing on his dorsal  
6    surface." The narrowing of the acromial space, you are not saying  
7    that was caused by this accident, are you?

8           A    Yes, I am.

9           Q    Do you have your shoulder model, Doctor?

10          A    Yes, it is right here.

11          Q    You heard of type one two and three acromion?

12          A    Yes, I have.

13          Q    Type one is there is plenty of space for the rotator  
14    cuff muscles to move between the acromion; correct?

15          A    Type one means --

16          Q    That's a yes or no?

17          A    No. That is not what it means.

18          Q    Type two means there is less space between the acromion  
19    and the rotator cuff; is that correct?

20          A    No.

21          Q    Type three means it is even less space?

22          A    That is not what it means.

23          Q    Type one, two and three acromion is a congenital  
24    condition, isn't it?

25          A    Yes, they are.

1 Q What you were looking at in the report is a type two or  
2 type three?

3 A Type one acromion I have an x-ray of it right here, it  
4 is flat as a board. The type one, two and three classification.

5 Q I ask you to limit the answers to my questions.

6 A You are talking about apples and oranges you and I.

7 Q You can answer yes or no?

8 A No.

9 Q On redirect you can say whatever you want or we are  
10 going to be here all day.

11 A It has nothing to do with his problem.

12 Q What you did was shave down some of the bone to allow  
13 more space between the rotator cuff and the acromion?

14 A I removed a segment of the clavicle.

15 Q The portion of the clavicle that you removed was in  
16 that condition before the accident wasn't it, wasn't injured, the  
17 clavicle was not injured in the accident; correct?

18 A I believe the clavicle was injured in this  
19 accident. The reason the degenerative part, the arthritic part,  
20 minimal arthritic component pre-existed the accident, however,  
21 when you took his arm through the range of motion it came down  
22 and occluded on to the space and as such I removed it because the  
23 ligaments were obviously injured and it allowed for hyper  
24 mobility of the clavicle to occur.

25 Q You had excess bone growth in the clavicle that was

1 removed during the course of this operation?

2 A Yes.

3 Q And that excess bone growth was caused by this  
4 accident, is that what you are telling us?

5 A No.

6 Q In fact, the excess bone growth that you removed was as  
7 a result of of a prior injury to the shoulder; yes or no?

8 A Nobody knows that.

9 Q Wasn't a normal clavicle; correct?

10 A The clavicle had minimum AC joint degenerative change  
11 which is within normal range for a person that age.

12 Q The clavicle is a bony structure; right?

13 A And it is cartilage at the end, but it is a flat  
14 bone.

15 Q To remind you Doctor the x-ray taken on the day of the  
16 accident, no fractures; correct?

17 A Correct.

18 Q No acute injuries to the bones; correct?

19 A That's correct.

20 Q If there is an impingement on the rotator cuff caused  
21 by excess bone growth, that could cause the rotator cuff to  
22 tear?

23 A It can.

24 Q Is that what happened here?

25 A No, sir.

1           Q     A portion of the rotator cuff that was torn was right  
2     next to the part of the clavicle that you excised, wasn't it?

3           A     No, sir.

4           Q     What you operated on, Doctor was an old degenerative  
5     condition and nothing caused by this accident; correct?

6           A     No, sir, I disagree with that.

7           Q     You found severe joint arthrosis in the acromial  
8     clavicular joint; isn't that correct?

9           A     Yes.

10          Q     Severe arthrosis means severe arthritis?

11          A     Right.

12          Q     You are not going to tell us that the arthritis was  
13     caused by this accident, are you?

14          A     No, sir.

15          Q     Arthritis can result as a prior trauma?

16          A     Arthritis --

17          Q     That's a yes or no.

18          A     I cannot answer it that way.

19          Q     You don't know if arthritis can be caused by injury of  
20     the joint and develop over time?

21          A     That's one of the mechanisms which it can occur.

22          Q     We know based on the MRI that there was an old injury  
23     to this man's shoulder; correct?

24          A     Yes, we do.

25          Q     Severe, it does not get worse than severe?

1           A    At the AC joint?

2           Q    That's the worst it can get?

3           A    That's correct.

4           Q    How many years do you think severe arthritis has been  
5    in Mr. Wallace's shoulder?

6           A    I don't know.

7           Q    When you use the acromionizer, you cleared out that  
8    arthritic condition, didn't you?

9           A    Yes, I did.

10          Q    And that accounts for quite a bit of your operation,  
11    doesn't it?

12          A    A big portion of it, yes.

13          Q    So you operated on a pre-existing condition for a big  
14    part of your operation, fair enough?

15          A    A component of it, yes.

16          Q    Until you were satisfied that you had removed enough  
17    arthritic bone to permit the rotator cuff to move easily within  
18    the AC joint?

19          A    It is below the AC joint.

20          Q    But you removed bone for that purpose to allow the  
21    rotator cuff muscles to move within that joint space, fair  
22    enough?

23          A    That's correct.

24          Q    Did you continue to see the plaintiff?

25          A    Yes, I continued to see the patient, yes.

1 Q Did you see the patient on October 16, 2013?

2 A Yes.

3 Q There were no complications from the  
4 operation; correct?

5 A That's correct.

6 Q Now Mr. Wallace testified at his deposition that he was  
7 100 percent better and you told him that he would be 100 percent  
8 better as a result of the operation, is that accurate?

9 A I don't have any recollection of telling a person that  
10 they would be 100 percent better, there is no way that I could  
11 predict how someone could be 100 percent better.

12 Q Well do you find him to be a truthful man,  
13 Mr. Wallace?

14 A I would say so.

15 Q So if he says he is 100 percent better would you take  
16 his word for it?

17 A I would.

18 Q Especially under oath?

19 A Of course.

20 Q As his treating physician and one who has privileges at  
21 Montefiore Hospital, Doctor, did you received copies of his  
22 records from Montefiore on a periodic basis?

23 A I did not.

24 Q If you went to Montefiore, you would not get them?

25 A No, I did not.

1           Q     Incidentally, did you prescribe him any pain medication  
2     following the operation?

3           A     Yes, sir.

4           Q     How many tabs and for how long, how many refills did  
5     you have?

6           A     40 tablets of Vicodin with no refills and  
7     anti-inflammatory that goes with it, that goes out for a month  
8     with a refill on that.

9           Q     Did you review the Montefiore records as it pertains to  
10    the plaintiff?

11          A     No, sir.

12          Q     It is not part of your chart; correct?

13          A     That's correct.

14          Q     So in addition to not having any of his records from  
15    the 2010 accident, you are not aware of any treatment he may have  
16    had at Montefiore from the day of your operation to the present  
17    time; correct?

18          A     That's correct.

19          Q     Are you aware that he went to Montefiore Hospital on  
20    December 12, 2013?

21          A     I don't see that anywhere in my records.

22          Q     Just a little bit of a background. You told the jury  
23    that the plaintiff has pain in his neck and back and right  
24    shoulder and that it is permanent; correct?

25          A     Yes.

1           Q     And that every time he has seen you he made those  
2     complaints; right?

3           A     That's correct.

4           Q     And that's your medical opinion; correct?

5           A     That is a memorialization of what the patient stated.

6           Q     Have you seen anything in the Montefiore record, any  
7     record inconsistent with with that opinion that you gave the  
8     jury?

9           A     As I said I never seen the Montefiore records so I  
10     couldn't comment on that whatsoever. In my records I have nothing  
11     that would be inconsistent with these records.

12          Q     When he went to Montefiore Hospital on December 12,  
13     2013 are you aware that he went there for symptoms consistent  
14     with shingles?

15          A     Unaware.

16          Q     Are you aware that he was not on any pain medication  
17     when he went there?

18          A     That would surprise me because I only gave him 40  
19     tablets.

20          Q     The fact that he is not on pain medication would be  
21     consistent with someone not being in any pain, fair enough?

22          A     I would not say that.

23          Q     A physical examination Doctor, was conducted. If I told  
24     you Doctor that a physical exam was done and reportedly there was  
25     no back tenderness, that is inconsistent with the opinion that

1 you gave the jury; right?

2 A It is.

3 Q And the examination of his extremities on July 12, 2013  
4 state "no swelling, tenderness in the extremities, no edema,"  
5 that's inconsistent with the opinion that you gave the jury?

6 A No, you would not expect to have any type of swelling  
7 two months post surgery.

8 Q If I told you that the entire physical examination --  
9 and we can review it in a moment -- made no complaints of neck  
10 pain, back pain or shoulder pain that would be inconsistent with  
11 the opinion that you gave the jury, fair enough?

12 A Yes.

13 Q And this exam was conducted only six months after the  
14 accident; right?

15 A If you say so.

16 Q If it is taken on December 12, 2013; right?

17 A If you say so.

18 Q And only two months after your surgery; right?

19 A If the dates are right it is two months after my  
20 surgery.

21 Q Based on this physical examination, would you agree  
22 that the plaintiff is not a candidate for a second surgery on the  
23 shoulder based on this physical exam?

24 A I would agree.

25 Q He was given Percocet for pain caused by the shingles,

1 not for any complaints of pain to his neck back or shoulder, that  
2 would be inconsistent with the opinion that you gave the  
3 jury; correct?

4 A I cannot answer it that way.

5 Q Well if you are telling the jury and all of us that the  
6 pain he experienced is permanent and he is going to have it every  
7 day for the rest of his life, this exam is inconsistent with  
8 that; correct?

9 A Again you cannot answer that that way.

10 Q Do you know if there were any other intervening events  
11 involving the plaintiff --

12 A None that I am aware of.

13 Q -- for which he had to go to Montefiore Hospital?

14 A Obviously if you go there for shingles which is a very  
15 painful disease it has nothing to do with your shoulder or other  
16 areas. And if you are in acute pain for shingles and you see a  
17 dermatologist or one of their doctors and they want to prescribe  
18 you pain medication, the thing that is on your mind is those  
19 shingles.

20 MR. JONES: I move to strike, Judge.

21 Q Please focus on the question.

22 A That is the answer. He went there for shingles.

23 Q Nearest office visit to December 12, 2013?

24 A I saw him January 15th.

25 Q He made complaints of neck, back and shoulder pain at

1       that examination; right?

2       A     Yes, he did.

3       Q     And that is totally inconsistent with the physical exam  
4     done only a month prior; correct?

5       A     As far as -- I cannot answer it that way.

6       Q     If I told you Doctor, on December 12, 2013 there was no  
7     complaints of neck, back or right shoulder pain and your exam a  
8     month later there were complaints of neck, back and shoulder  
9     pain, those complaints are inconsistent, fair enough?

10      A     No.

11      Q     January 1, 2014, why did he go to Montefiore  
12     Hospital?

13      A     I have no idea.

14      Q     Look at your office note of January 15, 2014. Any  
15     reference there to another motor vehicle accident?

16      A     I have no memorialization of another motor vehicle  
17     accident.

18      Q     Do you routinely question your patients about any  
19     change in their condition since the prior visit?

20      A     Yes.

21      Q     And when you asked the plaintiff that question what did  
22     he respond?

23      A     I can only say I have nothing written down pertaining  
24     to another motor vehicle accident.

25      Q     Doctor, I want you to assume that on January 1, 2014

1 the plaintiff presented to Montefiore Hospital. He had been on  
2 medication for shingles and he came to the ER for the evaluation  
3 of a loss of consciousness and dizziness while driving three days  
4 ago, he passed out while he was driving and the next thing he  
5 remembers he hit a parked car on the side of the road. His  
6 dizziness was associated with chest pain and palpitation prior to  
7 the episode.

8 A I am not aware of that.

9 Q Are you aware that he got into an argument after that  
10 and got assaulted and suffered further physical injury?

11 A I have no record of that in my records.

12 Q Well, Doctor, getting back for a moment to the December  
13 12, 2013 visit to Montefiore, who is the consulting physician on  
14 that. Look at the highlighted portion.

15 A It cannot be me.

16 Q Who is Doctor Louis Rose?

17 A That would be me but I am not involved with the rash.

18 Q Are you listed as the consulting physician on that?

19 A Yes.

20 Q Do you have privileges at this hospital?

21 A I do.

22 Q Did you get a copy of that?

23 A No.

24 Q You are a consulting physician, you did not get a copy  
25 of it?

1       A    First of all --

2       Q    Yes or no?

3       A    I cannot answer it that way.

4       Q    Continuing with the January 2, 2014 admission. It  
5       states "The plaintiff was on opiates, Percocet for shingle pain  
6       and that there is no complaints of any neck, back or shoulder  
7       pain." That is inconsistent with what he had been telling you at  
8       the office visit; is that correct?

9       A    That's correct.

10      Q    Does your patient have any prior medical history of  
11       hypertension?

12      A    I don't have that here.

13      Q    It is listed in the Montefiore chart. Are you telling  
14       us that you are not aware of that?

15      A    Unaware of that.

16      Q    Your patient?

17      A    Correct.

18      Q    Now, page 12 of the January 2, 2014 admission where he  
19       denies neck pain, no mention of shoulder pain, no lower back  
20       pain, that would be inconsistent with your physical examination  
21       of the plaintiff only two weeks after this presentation to the  
22       emergency room; correct?

23      A    It would be.

24      Q    Are you aware that the plaintiff underwent a CT scan of  
25       his head at that emergency room visit?

1           A     No, sir.

2           Q     Doctor, if someone is punched in the head as a result  
3     of an assault, that can cause neck pain; correct?

4           A     Yes.

5           Q     If he had no neck pain in December 13, he gets punched  
6     in the head on January 1, 2014, presents to your office two weeks  
7     later, as a careful medical practitioner can we assume that the  
8     cause of his neck pain is most probably related to the assault?

9           A     He had neck pain prior --

10          Q     That's a yes or no.

11          A     I cannot answer it yes or no.

12          Q     During the triage, Doctor, on January 1, 2014, the  
13     plaintiff made complaints of pain on his left rib cage area, he  
14     denied any pain to his neck, he denied any pain to his shoulder,  
15     is that consistent or inconsistent with what he told you two  
16     weeks later?

17          A     It is inconsistent.

18          Q     Now knowing this, Doctor, the fact that plaintiff was  
19     involved in another motor vehicle accident you saw him only two  
20     weeks after this motor vehicle accident, does it cause you to  
21     question his honesty?

22          A     No.

23          Q     Does it cause you to question whether or not he is  
24     being honest with you about his reported symptoms when he comes  
25     to your office?

1           A     No.

2           Q     Are you familiar with the term of secondary gain,  
3     Doctor?

4           A     Certainly.

5           Q     Secondary gain means somebody may say something or do  
6     something to gain an award?

7           A     Yes.

8           Q     And the plaintiff is involved in a lawsuit; right?

9           A     He is.

10          Q     And at the end of the lawsuit he is going to be asking  
11     for money; correct?

12          A     Yes.

13          Q     On the issue of secondary gain, when he reports his  
14     symptoms to physicians that are not coming to court they are  
15     different than the doctors who are coming to court, do you find  
16     that odd?

17          A     I cannot answer it that way.

18          Q     Do you think secondary gain may be at play here with  
19     regard to this plaintiff?

20          A     No, sir.

21                   THE COURT: We will take a break at this point.

22                   (Whereupon, the jury exits the courtroom)

23                   (Whereupon, a brief recess was held)

24                   THE COURT: Bring in the jury, please.

25                   (Whereupon, the jury enters the courtroom)

1                   THE COURT: You may continue, counsel.

2                   MR. JONES: Thank you, Judge.

3                   Q     Doctor, continuing with the emergency room visit on  
4     January 1, 2014, it appears to be a 147 page chart and at page 47  
5     a physical examination was performed and plaintiff was found to  
6     have normal muscle strength on the right and left and normal  
7     sensation. Now the fact that normal sensation is noted in this  
8     chart is inconsistent with what you told the jury before about  
9     the reported symptoms of numbness; correct?

10                  A     Yes.

11                  Q     So the examination here by a physician that does not  
12    come to court to testify is different than what the plaintiff  
13    told you, a doctor who came to court to testify, would you agree  
14    with that?

15                  A     I am going to say I cannot answer it yes or no.

16                  Q     Doctor, do you agree that an auto accident can make  
17    something worse?

18                  A     Yes.

19                  Q     And until about 20 minutes ago you were not aware that  
20    the plaintiff had another automobile accident; correct?

21                  A     That's correct.

22                  Q     And he did not tell you about it?

23                  A     I have no recollection of whether he did or didn't,  
24    that's what I said.

25                  Q     Well either he told you and you did not think it was

1 important or he did not tell you Doctor, which one was it?

2 A It could be one or the other I have no idea.

3 Q Either one, Doctor, would mean either the plaintiff is  
4 not being honest or you are not telling the jury about details  
5 they should know about, is that fair to say?

6 A No.

7 Q Were you aware that the plaintiff fell down a flight of  
8 stairs prior to the visit of 2014?

9 A No, sir.

10 Q Would you agree a fall down a flight of stairs can  
11 cause neck, back and shoulder injuries?

12 A It can.

13 Q Were you aware that he was taking a medication called  
14 Cymbalta?

15 A I am not aware.

16 Q You are his treating physician?

17 A I am sorry.

18 Q You are telling us that you are his treating  
19 physician?

20 A One of them, yes.

21 Q You tell us that you take a detailed medical history  
22 from the plaintiff?

23 A Can't be answered yes or no.

24 Q Did you actually see the plaintiff or have some  
25 physician's assistant see him?

1           A    I see the patient.

2           Q    And knowing what you know now, Doctor, what you told us  
3    about the history until about an hour ago you were not aware,  
4    does that cause you to question your ability to take an accurate  
5    history from a patient?

6           A    No, sir.

7           Q    After January of 2014 when is the next time you saw the  
8    plaintiff?

9           A    He was next seen on June 24, 2014.

10          Q    On June 24, 2014 was there any reference to having had  
11    another car accident or a fall down a flight of stairs from  
12    Mr. Wallace to you?

13          A    I would have to look at the note to refresh my  
14    recollection but I have no recollection of that.

15          Q    And then is that the last visit meaning June of 2014  
16    before you performed the surgery on him?

17          A    I believe the surgery was in 15, 2015 counsel.

18          Q    How many times did you see the plaintiff between June  
19    of 2014 and the date of the surgery?

20          A    He was next seen November 4, 2014 and then December 30,  
21    2014.

22          Q    That's a day before he went to the emergency room at  
23    Montefiore; correct?

24          A    I guess so.

25          Q    What complaints of pain did he have on that day?

1       A     December 30, 2014 "Complains of neck pain zero to ten,  
2     scale seven, lower back seven, right shoulder was a seven."

3       Q     That's pretty bad pain; correct?

4       A     It is moderate to marked pain.

5       Q     What he told you on the 30th you would agree is  
6     completely inconsistent with what he told the examining  
7     physicians at Montefiore the very next day or two days later?

8       A     I was not there so I couldn't comment on what he told  
9     them.

10      Q     I want you to assume that what I just told you is  
11     accurate from the Montefiore records on January 3, 2014, "The  
12     plaintiff as a result of a motor vehicle accident and an assault  
13     presented to Montefiore Hospital and that based upon physical  
14     examinations he made no complaints of neck, back or shoulder  
15     pain." Would it be fair to say, Doctor, that the complaints at  
16     Montefiore in January of 2014 were completely inconsistent with  
17     what he told you in December of 2014?

18      A     That was December 14th, he must have presented January  
19     15; correct?

20      Q     He presented January 1, 2015? No, 14.

21      A     This is December 30, 2014.

22      Q     No complaints of --

23      A     This is twelve months later, that is my point.

24      Q     And there was no complaints of neck pain as we  
25     established at Montefiore; correct?

1       A    What he complained of twelve months earlier I couldn't  
2   comment on, I was not there but the note you are trying to make  
3   seem is the day before is actually a year later.

4       Q    That's correct, Doctor. I stand corrected. When was  
5   the next time you saw him before the surgery?

6       A    June 5th.

7       Q    2014?

8       A    2015.

9       Q    So between December 30, 2014 and June 5, 2015 how many  
10   visits did he have with you?

11      A    He had four visits.

12      Q    What were those dates?

13      A    You are kidding right? You ask me to count the number  
14   of the visits and you don't ask for the dates.

15      Q    Is that a hardship, Doctor?

16      A    February 16, 2015, April 13, 2015, May 22, 2015, June  
17   5, 2015.

18      Q    Your second surgery was performed in August of  
19   2015; correct?

20      A    Yes.

21      Q    When was your x-ray taken pre-surgery?

22      A    May 22, 2015.

23      Q    We agree, Doctor, that the complaints of pain reported  
24   to Montefiore in December of 2013 and January of 2014 do not  
25   provide an indication for a further follow up x-ray of the right

1 shoulder?

2 A I would agree with that.

3 Q But the complaints he made to you in your office lead  
4 you to conclude that he needs a right shoulder x-ray; correct?

5 A A year and a half later, yes.

6 Q And now we have an intervening event an automobile  
7 accident and an assault; correct?

8 A Yes.

9 Q Is it more likely than not, Doctor, with a reasonable  
10 degree of medical certainty that the knee or complaints of pain  
11 to you of neck, back and shoulder pain are more closely related  
12 to the subsequent automobile accident and the assault in January  
13 of 2014 and the fall down the stairs?

14 A I cannot answer it yes or no.

15 Q But it is possible; right?

16 A I cannot answer it yes or no.

17 Q I am asking you if it is possible?

18 A The shoulder problem --

19 Q Yes or no?

20 A I cannot answer it yes or no.

21 Q Is it possible; yes or no?

22 A I cannot answer it yes or no, I am not going to say  
23 that.

24 Q Having now just found out that there's a fall down the  
25 stairs and a motor vehicle accident, right, would you agree that

1 you would want to see or interview the plaintiff with regard to  
2 those incidents to see if there was any aggravation of the  
3 symptoms?

4 A I cannot answer that yes or no.

5 Q You want to give an accurate opinion on causation to  
6 the jury?

7 A Excuse me?

8 Q Do you want to give an accurate opinion on causation to  
9 the jury?

10 A Yes.

11 Q You are telling us that it would not be important for  
12 you to know about those incidents and I am referring to the  
13 automobile accident of June of 2014 and a fall down the stairs?

14 A I never said that, I said I cannot answer it yes or  
15 no.

16 Q Is it possible, Doctor, that any complaints of pain  
17 that he now feels are related to the subsequent motor vehicle  
18 accident and a fall down the stairs?

19 A It is possible.

20 Q And also possible, Doctor, that the need for the second  
21 surgery is related to the subsequent automobile accident and the  
22 fall down the stairs?

23 A No.

24 Q Do you have your operative report for August of 2015?

25 A Yes, I do.

1 Q May I see it?

2 A Certainly.

3 Q You are telling us that there is a new partial tear?

4 A Yes.

5 Q Of the rotator cuff; right?

6 A That's correct.

7 Q Something that was not there when you closed him up  
8 back in October of 2013; correct?

9 A That's correct.

10 Q And you are telling us now that there is a new labral  
11 injury too?

12 A That's correct.

13 Q Something that was not there when you closed him up in  
14 2013?

15 A Yes.

16 Q But now it is there in 2015?

17 A Yes.

18 Q And now we have two intervening events, a fall down the  
19 stairs and an automobile accident?

20 A Yes.

21 Q Isn't it possible Doctor, those are the reasons for the  
22 surgery and not the automobile accident of June of 2013?

23 A I cannot answer it yes or no.

24 Q Is it possible, Doctor?

25 A I cannot answer it yes or no.

1 Q The impingement syndrome that was caused by bony  
2 growth, Doctor?

3 A That's correct.

4 Q Is that maybe just bone that you forgot to remove  
5 during the first surgery and you are trying to blame it on this  
6 accident?

7 A No, I don't think so.

8 Q Is it possible, Doctor, that the further impingement  
9 was caused by a fall down the stairs or a subsequent motor  
10 vehicle accident?

11 A I don't believe so.

12 MR. JONES: Nothing further.

13 (Certified to be a true and accurate transcript of  
14 the stenographic notes.....)

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