MR. ZLOTOLOW: Thank you. I'm going to call Dr. Paul Alongi, please.

THE COURT OFFICER: Step this way, Doctor. Please remain standing and face the clerk.

THE COURT CLERK: Raise your right hand.

P A U L A L O N G I, MD, the witness herein, having been duly sworn, testified as follows:

THE COURT CLERK: Your name and business address, please, spelling your last name.

THE WITNESS: Alongi, A-L-O-N-G-I, Paul. First name is Paul, address 206 East Jericho Turnpike, Huntington Station, New York 11746.

THE COURT CLERK: Thank you.

THE COURT: Please be seated, Doctor.

Doctor, I offer a few tips -- that chair turns.

THE WITNESS: Okay.

THE COURT: I offer a few tips to every witness that testifies. As you know, you're going to be asked questions this

morning. Listen carefully to the question that's put to you and limit your answer to the contents of the question; okay?

THE WITNESS: Okay.

THE COURT: Although in life it is not impolite, I repeat, in life it is not impolite to commence an answer before a question is complete because oftentimes we know exactly where a question is going, we save time that way, however, my stenographer only has two hands. She has to take everybody's words, so even though you know where a question is going, wait for it to be complete before you commence your answer; okay?

THE WITNESS: Okay.

THE COURT: If you hear the word objection, stop until you get further direction from me.

THE WITNESS: Okay.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. ZLOTOLOW:

Q. Morning, sir. How are you?

A. Good morning.

Q. For the record, what is your occupation?

A. I'm an orthopedic spine surgeon.

Q. And how long have you been an orthopedic spine surgeon?

A. I started practice in 2000.

Q. And what is your -- what does it mean to be an orthopedic spine surgeon?

A. Orthopedic surgery is a specialty that involves surgery on the bones. In addition to training for orthopedics, you can go on to train to specialize in spine surgery. Actually, you're training, so it's just more training, just specialized in the spine.

Q. And that's what you specialize in, spine surgery?

A. Yes, my whole practice is focused on the treatment of neck and spine disorders.

Q. And what does it mean to be an orthopedic spine surgeon?

A. Two types of doctors can work on the spine. There is neurosurgeons and then there is orthopedic spine surgeons. A lot of it overlaps, what they can do and what orthopedic surgeons can do and neurosurgeons can do.

Orthopedic surgeons deal more with bone, bone fusions, instrumentation.

Neurosurgeons, although they can do that,

their realm is more soft tissue of the brain and within the spinal cord, within the nerves themselves.

Q. Okay. And tell us a little about your training.

A. I went to medical school at SUNY Downstate in Brooklyn. After that, I did a year internship in general surgery at Westchester County Medical Center. And after that, I did a four-year residency at orthopedic surgery at Monmouth Medical Center in New Jersey and then a year fellowship, University of Colorado in Denver for spine.

Q. Is there -- is there some sort of board certification?

A. Yes, there's an America Board of Orthopedic Surgery. I'm board certified.

Q. And what does it mean to be board certified?

A. There is some requirements. You've got to finish a residency program that's accredited. You have to pass two parts of a board, one is a written and one is an oral and I passed those. Every 10 years you have to recertify. I just recently recertified.

Q. Currently, are you engaged in the private practice of orthopedic spine surgery?

A. Yes.

Q. And where is that?

A. That's in Huntington Station on Jericho

Turnpike.

Q. What's the name of your practice?

A. Orthopedic Spine Care of Long Island.

Q. Just on a daily basis, what is it that you do?

A. You know, we -- we're open five days a week. Three days a week I see patients in the office. The other two days I'm operating. And we just treat patients with either neck or back disorders.

Q. Do you do surgery on anything else, other than necks or backs?

A. No.

Q. And could you estimate how many neck surgeries you do in a year?

A. I mean, I probably do in total about 200 spine surgeries a year, so half of that is probably neck, so 100 surgeries a year.

Q. For how long?

A. Since 2000. 12 years.

Q. And if you could, we have a model here.

MR. JEFFREYS: It's behind there.

THE COURT: We will deem it marked and when the court officer gets back, we'll take the appropriate steps.

MR. ZLOTOLOW: Yes. Thank you.

Q. Sir, I'd just like to discuss before we get

into discussion of treatment of Mr. Cicola, I'd like to have you discuss a little of the anatomy, so that we can better understand what you're talking about later, if you could.

A. Okay.

MR. JEFFREYS: Your Honor, there is an objection. If we could approach for one second, please? There is a foundation issue.

THE COURT: Yeah. I understand. You don't have to approach.

You've got his training in, you've got he's board certified. There is a little tiny step you've got to take.

MR. ZLOTOLOW: I'd like to offer him as an expert in the field of orthopedic surgery, spine surgery.

MR. JEFFREYS: No objection, your Honor.

THE COURT: Okay. You may testify.

MR. ZLOTOLOW: Thank you.

A. So this is a model of the spine. There are three basic sections of the spine. There is the cervical spine, which is your neck, you thoracic spine is your mid back, and the lumbar spine is your lower back. So this

is the back -- this is looking from the back, this is looking at it from the side. So in-between each -- you know, there is multiple segments, which are vertebral bodies. In-between each vertebral body, there is a disk, kind of cushions your spine, allows it to move, and that runs the whole course of the spine.

THE COURT: Excuse me, Doctor, if you -- you're not cemented to that, if you're comfortable standing up, you can.

THE WITNESS: Oh, it may be better.

BY MR. ZLOTOLOW:

Q. Yes, teach us, go ahead.

A. Again, there are disks in-between each level in the neck and in the cervical spine there is seven vertebral bodies. And if you were to look down the center, that's where -- your brain is here, your spinal cord runs that whole length of the spine.

So again, the bones are to protect the spinal cord. And from the cord, all these nerves kind of project out and they go down into your shoulders and your arms, or they go into your lower back and into your legs.

And again, if you injure a disk you could have neck pain or it can pinch one of these nerves, gives you arm pain or a lot of times both.

Q. Now, what are -- what are the purpose of the

disks?

A. Disks, again, it cushions impact and -- 'cause there's motion, although it's very little in-between each level, it allows for motion.

Q. And the -- in the cervical region, how many disks are there?

A. There is seven cervical vertebra. So in-between each level there are disks. There is a -- I mean, there is no disk between C1 and C2, so there is from C2 down to C7. So C2/3, C3/4, C5/6, C6/7, so that's four disks.

Q. Now, in your practice, do you read MRI films?

A. Yes.

Q. Do you read x-rays?

A. Yes.

Q. Is that something you do every day?

A. Yes.

Q. Do you have special training in that field?

A. It's part of the residency and fellowship programs.

Q. Okay. Before you do surgery on anyone, do you make sure you get films?

A. Yes.

Q. Do you read them yourself?

A. Yes.

Q. And -- do we have a shadow box?

THE COURT: Let's do some housekeeping first. Let's mark the model plaintiff's --

THE COURT OFFICER: Plaintiff's 7.

MR. ZLOTOLOW: Thank you.

THE COURT: Plaintiff's 7.

MR. ZLOTOLOW: Thank you, sir.

THE COURT OFFICER: That's in evidence, your Honor.

THE COURT: Yes.

THE COURT OFFICER: Plaintiff's 7 marked and received in evidence.

Q. Now, are you familiar with the course of treatment and diagnostic studies that Mr. Cicola had?

A. Yes.

Q. And what's the first study -- I'm sorry, you understand that he had an MRI early, shortly after his accident?

A. Yes. Yes.

Q. We're going to start by discussing the initial MRI that Mr. Cicola had from Suffolk MRI, dated 2/13/07; okay? You understand he had an accident on 11 -- 1/11/07; correct?

A. Yes.

Q. All right. If you could, could you --

MR. JEFFREYS: Objection, your Honor.

THE COURT: Let me see both of you at sidebar.

(Whereupon a sidebar discussion was held)

THE COURT: Gentlemen, it's my understanding that we're arrived at a stipulation that for all purposes, both plaintiff and defense, the MRI films are in evidence; correct?

MR. ZLOTOLOW: All x-rays, all MRI's, we are agreeing, fair game.

MR. JEFFREYS: All physicians can look at them and render their opinions about them.

THE COURT: Very good. We all harmonize. Very nice.

MR. ZLOTOLOW: Why not? Why fight?

Q. So the first one we're going to look at is the initial MRI from -- we'll call this --

MR. ZLOTOLOW: What are we calling this one, number --

MR. JEFFREYS: I believe it's eight.

MR. ZLOTOLOW: It's eight.

(Witness steps into the well of the courtroom)

MR. ZLOTOLOW: Do you want to mark the envelope Plaintiff's 8?

THE COURT: We'll mark the envelope Plaintiff's 8. Let's get -- let it get a uniform protocol. We'll mark it first for I.D. and then we'll have the witness, plaintiff or defendant's witness, proceed.

MR. ZLOTOLOW: Yes.

THE COURT: So we're going to mark the envelope Plaintiff's 8 and it's in.

MR. ZLOTOLOW: In.

THE COURT: Mr. Jeffreys, please feel free to position yourself anyplace in the room.

MR. JEFFREYS: Thank you, your Honor.

THE COURT OFFICER: Plaintiff's 8, marked and received into evidence.

A. You want me to review this?

Q. Please, if you could.

A. This is an MRI dated February 13th, 2007. So this is called sagittal images. They are side views

looking from side to side.

MR. ZLOTOLOW: Before we get into this, tell the jury what an MRI is.

A. So, you know, a lot of times the patient gets x-rays or they get MRI. X-rays look at the bones, doesn't look at the disks. I mean, you could see disk height, but you can't see the actual disk, the nerves. You can't really see the soft tissues. So X-rays are good for just bone, bone anatomy, fractures and alignment.

MRI shows the soft tissue better, shows the disk, shows the nerves, and it's a little better study for that.

Q. Why is that?

A. It's just a different image which looks at all the soft tissues, where the x-rays really just looks at bone.

Q. How is an MRI taken?

A. It's in a special machine, uses a magnetic field, and by magnetizing certain elements in the soft tissues the computer can generate an image to look at soft tissues.

Q. That's the gold standard of how we diagnosis spinal issues?

A. For a herniated disk, yes.

Q. All right. And was it appropriate for an MRI to be taken of Mr. Cicola shortly after his accident?

A. Yes. Yes.

Q. Okay.

THE COURT: Is there a date on the MRI?

A. February 13th, '07.

THE COURT: Thank you.

Q. February 13th, '07?

A. So again, this is side profile of the neck. So if you can see here, you've got the brain up here, then the face is over here. This is looking to the right. This is the back of the neck, the front of the neck, and the cuts are going left to right all the way through.

Q. What do you mean by cuts? How does that work?

A. So the computer just takes like a slice, one after the other, millimeters apart, through the spine and generates these images.

If you look down here, this is kind of a small picture, so you have the brain. Again, up at the top, the face would be facing this way. This is your brain. You know, this is the brain and the spinal cord runs the whole length. That's dark.

The white all around it, you know, the spinal

cord, all the nerves are bathed in a fluid, CSF. It kind of protects the spinal cord, that's what's white. So the white is the spinal fluid. The dark is the nerve.

In the front, you have -- your vertebral bodies which showed on that model and in-between each body there is a disk here, here, and these are numbered on here. Let's see, C2 vertebra, C3, C4, C5, C6. The disks are numbered just by which two vertebral body they are. So in-between C2 and C3 is the C2/C3 disk, and so on.

If you look here, again it's hard for you to see because it's so small, but when I look at this --

Q. I'm sorry, can anybody see?

A JUROR: Yeah.

THE COURT: Can we make it closer?

Q. Can we make it closer?

A. Can we move it here?

MR. ZLOTOLOW: Is there an outlet on this side? I don't know if it will help.

Q. I could probably --

A. That might be better.

Q. I can stand here.

A. This one is numbered, numbered on the computer. But -- I don't know think you can see. These are the disks in-between and, you know, when someone is

having persistent neck pain or arm pain, you know, a couple of things we look at. One of the things is the disks, look at that disk height and see if the disk is irritating or pushing on anything. So when I reviewed these films, I felt this is C4 and C5, you kind of see C4/C5 is a little bit protruding in the canal as opposed to the rest of them. You can kind of see that. I mean, it's very small image.

A JUROR: Right there, right there.

Q. What does that mean?

A. So it could be a source of someone's pain.

Q. And so the -- at that C4/5 level there is - what would you diagnosis?

A. I call it a small disk herniation at C4/5.

Q. Okay. And what does that mean for the patient?

A. It could be a source of pain, numbness. You could have weakness that's really bad.

Q. Now, with regard to other levels, do you see any issues at the other levels?

A. Really minimal stuff. I mean, that's the most impressive to me. There is a small disk bulge below --

MR. JEFFREYS: Excuse me. Can we take a quick break and -- thank you. We have an extension cord.

A. There is a small disk bulge below. I didn't feel it was clinically an issue for him. You know, there is different degrees of how much the disk is protruding. If it's a herniated disk, it's a little bit bigger. A bulge is just a slight protrusion of the disk as well.

Q. You used the term protrusion and herniation. Is there a difference between the two?

A. I technically don't use protrusion. To me, it is almost like a bulge, it's like a small -- the disk is just a little protrusion a little bit.

Herniation, it's -- when someone says they have a herniated disk -- the disk is a ring. There is an outer anulus and an inner anulus. So when someone has a herniated disk, it's likes a herniated nucleus pulposus.

So what they are saying is this nucleus pulposus is herniated through the anulus. So when it's bulging, that material is still in there but it's just kind of pushing out a little. It's kind of like a tire in your car. If you start losing air, it kind of bulges out a little bit, still functional, still works, but just bulging out a little bit.

Q. So could you show us on there why it's a herniation as opposed to a bulge?

A. I mean, if you look on here, I called it a herniation just because it is indenting the white part of

the -- of the spinal cord. You can see that. And we typically want to see a straight line. And that disk is indenting on the thecal sac is where the fluid is.

Q. Do you have other films?

A. Yes. So -- and the computer also generates different contrasted images of the same structure. These are one set and this is a little bit different, where it -- it shows the cuts a little bit out on either side.

And again, still that same side profile, that sagittal view shows the fluid a little bit more. You can see a little indent there at 4/5. And these are just cross sections called axial views.

Q. These are harder for the layman to understand?

A. Yeah, so they are just cross sections --

Q. If you could just explain to the rest of us --

THE COURT: Gentlemen, only one person can speak at that time.

A. So these are cross sections, so if you took a slice of the cross-section and looked down that way...

Q. So rather than looking to the side, this is looking straight down?

A. Straight down.

Q. Like right through your head?

A. Yeah, taking a slice right through your neck. So you see this is that side profile, and it shows --

these lines show you where the slices are made. So if you look at one right here, again, that white with the black dot in the middle, that's the spinal cord.

This is the back of your neck. This is the front of your neck. You see this is the jaw, and as it cuts down, it goes lower and lower.

Now, if you look at that level, it looks like it's right here, is a little indentation of where that disk is just pushing into that white portion there. This is putting such pressure on this thecal sac.

Q. I'm sorry. For the record, which -- which --

A. C4/5.

Q. You're looking at C4/5?

A. Yes.

Q. And on the film, which box is the --

A. I may have to --

MR. JEFFREYS: Second row, second box?

THE WITNESS: Yeah, let me --

A. It's -- I'm looking at image six, six of 32. Second row.

Q. All right, I'm sorry. Continue.

A. And that's pretty much it for the study. There are some other studies where it gives you a little more contrasted views. This doesn't have that. So it's

basically just some side profile shots and some cross-section shots.

Q. Is your diagnosis based on the MRI film the same for this view as it is for the other view?

A. Yes.

Q. Does it show basically the same thing from a different angle?

A. Yes.

Q. All right. And -- all right. Thank you.

Now, before I -- before you turn it off, can MRI films show degenerative disk disease?

A. Yes.

Q. Okay. And can you look at these films, do you see any evidence of degenerative disk disease?

Before we get into that, what is degenerative disk disease?

A. Degenerative disk disease is just wear and tear of the disk. Everybody's disks, after the age of 20, you start losing hydration, which is water. You start losing water in your disks. They can become a little narrowed. They become a little more prone to injury and become painful. But again, that's the normal process of just living.

Q. And what is the progression of that?

A. I mean, it can get severe where it's painful

and the disk totally wears out and there is no disk at all and there is just bone on bone, big bony spurs and things like that.

Q. And does that show up on MRI films?

A. It can when it's severe.

Q. Is there anything on this film to indicate a degenerative disk disease?

A. Looking at this MRI, I did not feel there was significant degenerative -- degenerative changes. This all looked the same, in terms of the quality of the material. It's not really collapsed. When I say severe degenerative disk, the disk is collapsed. Again, it's big bony spurs which you can see on an MRI. I don't really see that on this film.

Q. And is there at any level?

A. No.

Q. Okay. Is there anything on this MRI film that would indicate that Mr. Cicola had a longstanding disease in his neck?

A. No, not that I saw.

Q. Okay. Is there anything on this film that would indicate a trauma?

A. Typically if you have a trauma --

MR. JEFFREYS: Objection.

THE COURT: Time out.

Give me the question.

(Whereupon, the requested portion of the record was read back.)

THE COURT: The basis of your question?

MR. JEFFREYS: Foundation, your Honor.

THE COURT: Sustained.

Q. Now, can you -- all right, let's continue.

THE COURT: Can he resume the seat or do you need him there?

MR. ZLOTOLOW: He can resume the seat for now. We're going to go through different films at different points. So we could leave --

THE COURT: Sure.

(Whereupon witness returns to the witness stand.)

MR. ZLOTOLOW: Actually, let's do the early films now, too.

THE COURT: Okay.

(Witness steps back into the well of the courtroom.)

Q. Sir, you understand that Mr. Cicola had some x-rays, as well, shortly after his accident, too?

A. Yes.

Q. Let's mark these.

MR. ZLOTOLOW: That's the protocol.

THE COURT: Mark them first.

MR. ZLOTOLOW: Let's mark these --

MR. JEFFREYS: Nine.

MR. ZLOTOLOW: Nine and -- you want to mark them both?

Mark it nine. Nine and 10.

These are 4/26/07 and January 15th of '07.

THE COURT OFFICER: You want the January one marked nine and April marked 10?

MR. ZLOTOLOW: Yes:

THE COURT OFFICER: Plaintiff's Exhibit 9.

Plaintiff's Exhibit 9 and 10 marked and received into evidence.

Q. Let's look at the x-ray that was taken January 15th of '07. This was four days after his accident.

A. These are multiple views of the neck. This is looking at the neck from the front.

THE COURT: Excuse me, any jurors that need to move around in order to get a

better view, please feel free, as long as you return to home base.

A. Looking at the neck from the side, this is just an x-ray with the mouth open to see the upper cervical spine.

So when I look at these, especially when a person has a car accident, we're looking at the alignment, make sure everything lines up okay, and it does. Make sure nothing looks like it's fractured or broken. Nothing looks like it's broken on here.

Again, if you're counting, the skull is here. This is C1, this is C2, three, four, five, six, seven.

The only thing I see is there is a little, it's called a little bony spur called an osteophyte. This is two, three, four at C4/5. Not too impressive. Not uncommon for someone whose aged to have a little osteophyte. The disk heights look pretty good. Again, the alignment looks good.

Q. What is the clinical significance of that?

A. Typically, not much. Again, it's a very common finding and, you know, there's always the patient -- if we saw a patient like this who has no pain and it's just a normal finding of the patient's age.

Q. Any evidence on this of any longstanding degenerative condition?

A. Not that I would say, no.

Q. Is his body breaking down?

A. No.

Q. Failing on him?

A. No.

Q. Nothing like that?

A. First would have really bad degenerative disk disease, there is almost no disk height. There is a big osteophyte and a lot of reactive changes, meaning the N plates get thickened. It's a lot more changes. This is very subtle.

Q. What's the significance of the disk heights?

A. It's just indicates if the disk is worn out. The disk wears out, it gets narrower and narrower until bone is touching bone.

Q. So what -- I'm sorry.

A. This is just an -- different views. They are oblique views looking at that spine from different angles. Again, not too impressive. Nothing really serious that I could see going on with these views.

And this is an x-ray of the shoulder.

MR. JEFFREYS: Which shoulder, Doctor?

A. Right shoulder. Let me turn around so you guys can read it.

Again, you want to make sure there is no fracture. I don't see a fracture. There is some calcification.

There is a tendon that runs from the shoulder and the rotator cuff and it looks like there may be some tendonitis there and some calcification in that tendon, but nothing that looks acute, a recent trauma.

Q. And that's the shoulder?

A. That's the right shoulder, yes.

The next -- April 26th, 2007.

This is just a neck film and it looks like they did flexion/extension x-rays. Sometimes -- you know, when taking an x-ray a person is either sitting or laying down. They are laying still. Sometimes we want to make sure there is no underlying instability, so we get flexion/extension views, put the head forward, backwards, make sure there is no instability. And that's what these are, looking from the side, patient bending forward, bending back.

Again, the alignment looks good, and this is just to see if there is any type of underlying instability or ligamentous injury, which it wouldn't pick up.

Q. Did you see anything on that film?

A. No, basically the same as the initial film.

Q. Okay, the same as the January -- there is no change since January?

A. No change.

Q. All right, thank you.

(Witness returns to the witness stand.)

Q. Now, let's take it through some of the treatment that Mr. Cicola had. He first came under the care of Dr. Sinha. Were you able to see Dr. Sinha's records?

A. Yes.

Q. If you could, what is the significance of those records?

MR. JEFFREYS: Objection.

THE COURT: Sustained.

It's a foundational -- I assume it's a foundational objection?

MR. JEFFREYS: It is, your Honor.

MR. ZLOTOLOW: Your Honor, I don't want to have a dialog. I'd rather not. Could we figure out the ground rules?

THE COURT: Gentlemen, sidebar, please.

(Discussion held off the record.)

Q. Sir, did you review Dr. Sinha's records?

A. Yes.

Q. And you are the doctor who treated Mr. Cicola when he had his surgeries; correct?

A. Yes.

Q. And did you rely on his records to formulate your opinion in this case?

A. Dr. Sinha's records?

Q. Yes.

A. No.

Q. Did you review them in -- did you review them before coming?

A. Today?

Q. Yes.

A. Yes.

Q. Did you find anything significant about them?

A. Nothing that I didn't know already.

Q. Did they change your opinions in any way?

A. No.

Q. Did -- is there anything in there inconsistent with what you believe?

A. No.

MR. JEFFREYS: Objection.

THE COURT: It's sustained. The answer is stricken.

Q. Was Dr. Sinha's treatment appropriate for this

individual?

MR. JEFFREYS: Objection.

THE COURT: Sustained as to form.

Q. Do you have an opinion as to whether Dr. Sinha's treatment was appropriate?

MR. JEFFREYS: Objection.

THE COURT: Sustained.

Q. Did -- was it your understanding that Dr. Sinha referred this patient for that MRI?

A. I don't recall that.

Q. Did you have an opportunity to see radiological reports regarding the films that you just demonstrated?

A. Yes.

Q. Are your opinions in any way different than the radiologist who read those films shortly after the accident?

MR. JEFFREYS: Objection.

THE COURT: You're objecting. We have a stipulation as to the films itself. Is it my understanding there is no stipulation as to the radiologist's reports and/or findings; is that correct?

MR. JEFFREYS: Correct, your Honor.

THE COURT: Okay. Lay a foundation.

Lay a foundation for the radiologist's -- I assume we're talking about the written reports?

MR. JEFFREYS: Yes.

THE COURT: Lay a foundation.

MR. JEFFREYS: Okay.

Q. You, yourself, rely on radiological reports?

A. Usually not, no.

Q. Do you read the films yourselves?

A. Yes.

Q. Is your opinions here today based on your review of the films?

A. Yes.

Q. Now, going on to -- tell us the other things that you reviewed prior --

A. Radiologically?

Q. No, the prior medical records of Mr. Cicola. What have you reviewed? Just tell us what you reviewed.

MR. JEFFREYS: Just objection to form, your Honor.

THE COURT: It's a -- it's a short foundational question. Just ask him.

Q. I just want to know what it is you reviewed.

A. My office records and some of his previous medical doctors' records.

Q. For instance?

A. Dr. Sathi and some physical therapy notes and just MRI reports, and that's about it.

Q. Are you opinions your own or are you relying on what you reviewed?

A. My opinions are my own.

Q. Very well.

Now, let's talk about, then, your treatment of Mr. Cicola.

A. Okay.

Q. Are you okay with that?

A. I'm okay with that.

Q. All right. Mr. Cicola, when he came to you, what were his complaints?

A. His complaint was of neck pain and also right shoulder pain.

Q. And what did you do for him at that point?

A. At that point we tried treating him conservatively, medication and also sent him for some more imaging studies.

Q. When he came to you, when was that?

A. I'd have to check his chart.

Q. Go right ahead.

THE COURT: You brought your complete chart with you today, Doctor?

THE WITNESS: My office chart, yes.

THE COURT: Okay. That chart will be made available to you if not already.

MR. JEFFREYS: I have the entire chart, your Honor.

THE COURT: Okay.

A. I have November 11th, 2008.

Q. Okay. Could you just take us through that visit, if you could?

A. November 11th, 2008. Mr. Cicola is a 37 year old -- you want me to just go through the whole note?

Q. Just if you could outline the highlights to you. All right. It's your note.

A. Mr. Cicola --

MR. JEFFREYS: Your Honor, if the witness is going to read from the document, I would have an objection. If he's going to use it to refresh, I'm not.

THE COURT: One of two things. Look at the document to refresh his recollection or mark the document as an office record.

Doctor, take a moment to look at the report you're looking at.

THE WITNESS: Okay.

THE COURT: When you're done looking

at it, let us know. Look at it, read it.

THE WITNESS: Okay. Sure.

A. Okay, so he came in to me --

THE COURT: Time out. Ask the question now.

MR. ZLOTOLOW: Okay.

Q. Having reviewed that, does that refresh your recollection of the first visit?

A. Yes.

Q. Okay, if you could just recount the important parts.

A. So he came to me complaining of neck and right shoulder pain. He was referred by Dr. Silverberg. Dr. Silverberg was treating his shoulder and he apparently thought it was more neck related, so he sent him to me for evaluation.

He had an MRI of his neck, but at that time only the report was available and that showed a moderate sized disk herniation at C4/5 and a smaller left-sided disk herniation at C5/6.

I felt the C4/5 level was his primary problem, and that was my assessment, that he had a herniated disk at C4/5. I was concerned with his shoulder, so I sent him for a new MRI of his shoulder, and we talked about different treatment options, injections.

Sometimes you can, with patients with a herniated disk, they can be teated with epidural steroid injections, or when it's bad enough, they could have surgery. We discussed that. He was interested in surgery at that point because his symptoms were going on for a while, but I wanted him to bring the films so I could review them myself and get a new MRI of his shoulder.

Q. Okay. Did he come back to you?

A. Yes.

Q. And what was -- what happened the next time?

A. Came back on November 14th, 2008. He had an MRI of his shoulder, which showed calcific tendonitis, which is just inflammation in the shoulder with some calcium deposits and a small rotator cuff tear, and also some bursitis, which is inflammation of the bursa, which lies over the tendon. He did bring his MRI films for review and I felt it showed a small disk herniation at C4/5.

Q. When was that MRI taken?

A. That was -- I do not have a date listed here.

MR. JEFFREYS: November.

MR. ZLOTOLOW: The neck MRI?

MR. JEFFREYS: November 12th.

BY MR. ZLOTOLOW:

Q. I'm talking about the neck, when was that taken?

A. I don't have a date listed.

Q. Did you look at that film?

A. Yes.

THE COURT: Gentlemen, we're not running a Starbucks here. Let's move on.

Q. What was your recommendation at that point?

A. At that point, I was concerned that he had a lot of shoulder symptoms and I wanted to make sure it wasn't more of his shoulder, as opposed to his neck, and I sent him back to Dr. Silverberg for further evaluation with his new MRI of his shoulder.

Q. And when was the next time you saw Chris?

A. The next time was in the hospital, at Huntington Hospital. His pain became so severe he went to the emergency room at Huntington Hospital.

MR. ZLOTOLOW: We have the Huntington Hospital. I'll offer these.

THE COURT: You're offering the Huntington Hospital records for identification?

MR. ZLOTOLOW: I think we're stipulating, correct.

MR. JEFFREYS: We stipulated, your

Honor. We split Huntington into two sets. This is the 2008 hospitalization and I'll stipulate that as Plaintiff's 11.

THE COURT: So stipulated.

THE COURT OFFICER: Plaintiff's Exhibit 11 marked and received into evidence..

BY MR. ZLOTOLOW:

Q. All right, now we're at Huntington Hospital. Under what circumstances were you called to Huntington Hospital?

A. Mr. Cicola ended up in the emergency room just with increased neck pain and right shoulder pain.

Q. Are you on the -- are you -- what are you, an attending at Huntington Hospital?

A. Yes, I'm on staff.

Q. Tell me how that works, so I know.

A. I have privileges to operate out of Huntington, along with other hospitals, but I do the majority of my surgery at Huntington.

Q. What other hospitals are you affiliated with?

A. I'm affiliated with Plainview Hospital and St. Catherine of Sienna in Smithtown.

Q. Is that like your home hospital, Huntington?

A. Huntington Hospital, I do 95 percent of my

surgeries in Huntington.

Q. And did you advise Chris if he had any problems to go to Huntington Hospital?

A. All my patients I say, if the pain gets bad enough and you can't deal with it, just come to the emergency room and we'll get the pain under control.

Q. And when were you called to Huntington Hospital?

A. I believe on November 18th, 2008, when he was admitted.

Q. And tell us, did you see Chris at that time?

A. Yes.

Q. And what -- what was --

A. He was just having increasing neck pain and shoulder pain and again pain so severe that he came to emergency. We discussed different treatment options again.

Again, at that point the options would be either a steroid injection to the neck, which may only be temporary or surgery.

We did a repeat MRI, which showed a disk herniation at C4/5, which I felt was the most serious issue in his neck and causing his symptoms, and so we discussed surgery, the risks, the benefits, and he wished to proceed with surgery since he was dealing with this

for a long time.

Q. This MRI -- this MRI at Huntington Hospital, why did you take that?

A. Just because his pain was getting more severe, make sure nothing has changed.

Q. Did you read those films at the time?

A. Yes.

Q. Was there a report in the hospital?

A. Yes, there is. This is the MRI reported dated November 18th, 2008.

Q. Okay. What did that MRI show?

A. The impression was a small central disk herniation C4/5 indenting the ventral subarachnoid space and a small left paracentral disk herniation, C5/6.

Q. That was that the same herniation you saw on the films right after his accident?

A. Yes.

MR. JEFFREYS: Objection, your Honor.

THE COURT: You have an objection?

MR. JEFFREYS: Objection to the form of the question.

THE COURT: Yes. Sustained.

The objection is sustained.

MR. ZLOTOLOW: I understand.

THE COURT: On the basis of form, there is a form objection, assuming a fact not in evidence or a compound question. So I'm sustaining the objection.

Q. Was that MRI film consistent with the MRI film that you just reviewed here?

A. Yes.

Q. And was the herniated disk at the same level?

A. Yes.

MR. JEFFREYS: Objection, your Honor. It's a form objection. It's assuming a single herniated disk. I believe we're talking about two, so there is a form objection here.

THE COURT: May I have the question back?

(Whereupon, the requested portion of the record was read back.)

THE COURT: Okay, I'm not precluding you. I'll sustain the objection. Ask a couple -- appropriate foundational questions.

Q. The herniated disk noted at C4/5, was that the same level that was present on the MRI of 2/13/07?

A. Yes.

Q. And did you notice by looking at it any progression?

A. It seemed about the same.

Q. And did you then have a discussion with Chris about his options?

A. Yes.

Q. And what did you tell him?

A. The options were either just live with it like he's been doing, steroid injection or surgery.

Q. And what is a steroid injection?

A. An epidural steroid injection, they inject some steroid into the spinal canal, right in the nerves, gets rid of some of the inflammation in the nerve, hopefully helps with the pain. Typically, they are temporary, meaning multiple injections. It doesn't cure the problem.

Q. Did you discuss with him his risks involved in surgery?

A. Yes.

Q. And what did you tell him?

A. Any patient that has surgeries, we always discuss the risks, the benefits, the alternative surgery.

Risks include infection, injury to a nerve, injury to the spinal cord, paralysis, you can get a tear of the sheath around the cord, which results in a spinal

fluid leak. He can get headaches, get infected, get meningitis. You can have blood loss. The surgery may not help with his pain. We're trying to fuse the bones together. The bones may not fuse. We use instrumentation; that can fail. So we discussed all of this.

Q. And did he go forward with the surgery?

A. Yes.

Q. Did he tell you why?

A. He was just dealing with this for a long time and he was frustrated that the symptoms continued to persist and they weren't seeming to be getting better, they seemed to be getting worse.

Q. And what type of surgery did you recommend?

A. I recommended a diskectomy, where we remove the entire disk and a fusion. We fused the two vertebrae together.

Q. And what went into your recommendation of that surgery? Why did you recommend that surgery?

A. Typically, that's the gold standard for treating surgically, is do a diskectomy and a fusion.

Q. And did you set up a time to do that?

A. Yes.

Q. And when did you do it?

A. He underwent surgery on November 19th, 2008.

Q. If you could, as best you could, could you describe what you did?

A. So the surgery, we go through the front of the neck, make an incision about an inch, inch-and-a-half. Patient is totally asleep. It's general anesthesia. We go down to the disk level that's involved, C4/5. We get an x-ray, make sure we're at the right level. Take out that entire disk.

And by taking out that disk, we get rid of any pressure on the nerve, on the spinal cord, but now you've got a space there, so you have to fill that space in.

We use a space, a high grade plastic, called PEEK. It goes into the disk space and we put a plate on top.

What's going to happen, the bone from one vertebra is going to fuse through the space into the vertebra below, so that acts as one piece of bone, one vertebrae. So it's a diskectomy and fusion.

Q. And how long does that operation take?

A. About three hours; two, three hours.

Q. Do you do a report?

A. Yes.

Q. And did you do a report?

A. Yes.

Q. Is that contained in the hospital record?

A. Yes.

Q. Anything unusual?

A. No, it was a very standard case, no complications. He tolerated the procedure well.

Q. Now, why did you elect to do one level, as opposed to more?

A. I felt clinically that that was the most clinically significant level. I try to minimize as many, you know, fusion levels we do.

We don't want to do multiple levels if we don't have to.

The bulge below was kind of going to the left. He had mostly right-sided pain. It was minimal. I thought clinically most of the symptoms were coming from C4/5.

Q. And so the -- the fusion you did was just one level?

A. Yes.

Q. And how long was he in the hospital for?

A. Typically, you go home the following day. Let me just double-check. He was discharged home on November 20, 2008, the day after surgery.

Q. Now, following the surgery, when was the -- were there images taken in the hospital?

A. Just in the operating room and the MRI before

surgery.

Q. After the surgery, do you know when the next MRI was taken?

A. I mean, he did well following that surgery and then he developed some recurrent symptoms.

MR. JEFFREYS: Objection, your Honor, and move to strike the witness' answer.

THE COURT: Okay, may I have the question, please?

(Whereupon, the requested portion of the record was read by the reporter.)

THE COURT: Okay, sustained.

Doctor, over here. Listen to the question and answer that question.

Can we have it back?

(Whereupon, the requested portion of the record was read back.)

A. No.

Q. Okay. Now if you could, did you see -- the next time you saw him following the surgery was when?

A. December 4th, 2008.

Q. Could you tell us what, if any, were his complaints at that time?

A. He was two weeks following surgery. He was

doing well. His shoulder pain and arm pain had improved since surgery. He just had some neck discomfort.

Q. And what did you do for him at that time?

A. Typically, at two weeks, we start him at physical therapy and that's what he did. Gave him some -- prescription for Flexeril, which is a muscle relaxant so he doesn't have spasm after the surgery and he was to advance to activities and he was going to come back in three or four weeks.

Q. Did you prescribe any medications?

A. Flexeril, a muscle relaxant.

Q. All right. Did you take x-rays?

A. Yes.

Q. How did everything look?

A. X-rays looked good. He had an instrumented fusion, which is plate at C4/5, and the instrumentation was in good position and he had good alignment.

Q. Did you see him -- when was the next time you saw him after that?

A. I have listed February 26th, 2009.

Q. Okay. Now if you could, just take us through his treatment, up until the next surgery. How was he doing, and what were you doing for him?

MR. JEFFREYS: Objection to the form, your Honor.

THE COURT: All right. That's sustained. Ask a couple of foundational questions.

MR. ZLOTOLOW: Okay.

A. So following February, this treatment --

THE COURT: No, no.

Q. Just tell us about your treatment following surgery.

A. He was treated with physical therapy and some medication and he was released to full activities.

Q. Okay. And when was the next time you saw him? I think we were at 2/26/09?

A. Yes.

Q. All right, did you examine him at that time?

A. Yes.

Q. How was he doing at that point?

A. He was doing well. He was three months after surgery. He had no pain in his neck. His numbness had improved. He had some shoulder discomfort, but he was under the care of Dr. Silverberg for that.

We got x-rays, which again showed a good fusion at C4/5. He was -- at that point he was just to continue his activities as tolerated and typically I have him come back in three months just for a follow-up x-ray.

Q. Did you see him six months after surgery?

A. Three months after surgery it was.

Q. Okay.

A. May 26th, 2009.

Q. I missed one. All right, May 26th, 2009. All right. Tell us what happened that day.

A. He was six months after surgery. He had some neck complaints. He was taking Flexeril for muscle spasms and some Percocet for pain. He did have x-rays which showed the diffused segment. There was some loss of disk height at C5/6, which is below his fusion. He was just started on an antiinflammatory to help with inflammation.

Q. Is that a new finding?

A. Yes, on this x-ray.

Q. What was the significance of that?

A. Sometimes adjacent to a fusion you can have -- it puts a little more pressure to above or below, and you can start to develop some degeneration. And so he was started on a antiinflammatory, he was to continue with his muscle relaxant, also given a prescription for Percocet for any pain, and if his symptoms didn't improve we were going to get an updated MRI.

Q. Okay. And did he have an updated MRI?

A. Yes, he did.

Q. When was that?

A. I do not have the exact date.

Q. Why did you refer him for another MRI at that point?

A. He was complaining of increasing neck pain and now with left trapezial, which is the muscle at the base of your neck, and shoulder pain.

Q. Okay. Did you look at the films?

A. Yes.

Q. Can you demonstrate for us what you found?

(Document handed to the witness)

THE COURT: While that's being set up, jurors, if any of you need a break at any time, just give my court officer a high sign or me the high sign and we will accommodate you.

THE COURT OFFICER: Plaintiff's 12 marked and received in evidence.

A. This is the MRI. This is June 6th, 2009. Again, this is looking from the side again. This is where he had his surgery. There's the screws. You can see the dark structures in the bone (indicating). I felt the level below was a little more prominent, the disk herniation on the left. It was kind of correlating with his new left-sided symptoms.

And this the cross-sections again. As you

come down, this is the disk herniation right through there (indicating). This image, this looks to be -- it's third row first -- I need the actual image -- image 16 out of 20.

So you see this kind of on the left side pushing down here (indicating). So this is opposite of where you're looking. Even though it's on the right side of this image, it's actually the left side of the disk.

Q. And how did the findings at C5/6 differ than the findings that you had in the hospital before his original surgery?

A. It was much more prominent now. Larger.

Q. And do you know why that is?

A. Sometimes adjacent to a fusion --

MR. JEFFREYS: Objection, your Honor.

THE COURT: As to form, I'll sustain.

Q. Do you have an opinion based upon a reasonable degree of medical certainty why the disk appeared the way it did when you read that film?

A. It was my opinion because of the adjacent -- he had a fusion, the adjacent level could be affected and that's what happened. That put a little more pressure to the level below and you can have new disk herniation, a

more prominent herniation after a surgery.

Q. Did you recommend a course of treatment for that?

A. Look at my records.

THE COURT: There is an open question on the record, correct.

MR. ZLOTOLOW: I believe.

Q. Did you recommend a course of treatment?

(Witness steps to the witness stand.)

A. Again, we discussed epidural steroid injections and at that point he agreed to proceed with that.

Q. And when was the next time you saw Mr. Cicola?

A. My next note that I have is in the hospital, Huntington Hospital, October of 2009.

Q. What happened there?

A. Again, his pain became more severe and he ended up in the emergency room at the hospital.

Q. And did you see him there at that time?

A. Yes.

MR. ZLOTOLOW: I offer --

THE COURT: Can't hear you.

MR. ZLOTOLOW: I offer the 2009 Huntington Hospital as 13.

THE COURT: As per stipulation?

MR. JEFFREYS: Stipulated, your Honor.

THE COURT OFFICER: Plaintiff's 13 marked and received in evidence.

Q. If you can, just recount what went on in the hospital at that time.

A. Again, he had increased neck and left-sided symptoms. Came to the emergency room, was admitted.

Again, we discussed treatment options, injections, therapy, just living with it and he felt the pain was severe enough to proceed with additional surgery.

He underwent surgery on October 16th. Same procedure, just a level below.

So with that procedure, typically we go from the other side. His initial surgery we go from the left side. This surgery we go from the right to avoid all the scarring that was there from his previous surgery, take out his previous plate at 4/5, take out the disk at 5/6, put a longer plate in and fuse those two segments together.

Q. So when that procedure is done, what is he left with?

A. He's left with two disk levels that are fused.

Q. And what do you mean by fused?

A. Fused. They don't move. So you would lose a little bit of motion. But again, the point of that is to get the pressure off the nerves and to help with his pain.

Q. How were they fused?

A. It's the same way as the first procedure, you take out the disk, put a spacer into the disk space and a plate, and eventually the bone is going to grow from one vertebral level to the next.

Q. So where his disks were are now --

A. Bone.

Q. Bone?

A. Yeah.

Q. And you said there is spacers. What is that?

A. Spacers, once the disk is taken out, there is a space left open, so to prevent that from collapsing down, you want to try to maintain the alignment. So when the disk is removed, we put something of similar height back in there. Use a high grade plastic called PEEK. It's like a ring, put into the disk space, and through that ring the bone is going to grow and become a solid piece of bone.

Q. Okay. And so did you take -- you took out the -- the first implantation?

A. Took out the old plate at L4/5 and put a new plate from C4 to C6.

Q. Is that like a double plate?

A. It's a longer plate, probably about that long (indicating).

Q. Do you have anything that would show what that looks like?

A. I have an x-ray. I'll give that to you. That's an x-ray after surgery showing the implant.

(Document handed to counsel)

Q. When was this taken?

A. This is the most recent x-ray I had of him, which was July, 2010.

MR. ZLOTOLOW: Can we mark this?

THE COURT OFFICER: You want to mark them separately?

MR. ZLOTOLOW: We can mark them as one group.

MR. JEFFREYS: I've never seen them before.

THE COURT: They are being marked for I.D. only, at this point.

MR. JEFFREYS: Thank you, your Honor.

THE COURT: As a group? As a group.

THE COURT: Doctor, they were taken at the same time?

THE WITNESS: Yes.

THE COURT: Mark them as a group.

THE COURT OFFICER: Plaintiff's 14 marked for identification purposes only.

Q. Sir, did you request these x-rays be taken?

A. Yes.

Q. And when they were taken, were they sent to you?

A. Yes.

Q. And did you use them in your diagnosis and treatment of Mr. Cicola?

A. Yes.

Q. And are those fair and accurate representations of the x-rays you received?

A. Yes.

MR. ZLOTOLOW: Your Honor, I offer this into evidence.

THE COURT: Doctor, when were these -- what date were these x-rays taken?

THE WITNESS: July 27th, 2010.

THE COURT: Okay. Show them to Mr. Jeffreys.

MR. JEFFREYS: We actually have the

films, which would be the best evidence, so I have an objection to the photographs.

THE COURT: So you have the film and you have this?

MR. JEFFREYS: These are the films from 7/27/2010.

MR. ZLOTOLOW: These are actually easier to see.

THE COURT: Take the film, show the witness the film and then you can coordinate the films --

MR. ZLOTOLOW: I understand.

THE COURT: -- the film to the pictures.

(Document handed to the witness)

A. This is an MRI. These are x-rays.

MR. JEFFREYS: Keep looking. They are not the same thing.

MR. ZLOTOLOW: Keep looking, maybe they are.

THE COURT: Excuse me, locate the same thing. It's around here someplace.

MR. JEFFREYS: Here they are. Smaller.

THE COURT: Okay.

(Document handed to the witness)

THE COURT: The film that the doctor is holding, is this part of the stipulated submission?

MR. JEFFREYS: Yes.

THE COURT: Let's mark it.

MR. ZLOTOLOW: Does that have a separate --

THE COURT: Are we up to 15?

MR. JEFFREYS: It doesn't have a separate folder. Do you want to put in it here?

MR. ZLOTOLOW: We'll just put it in here for now. We might run out of envelopes.

THE COURT: Are we up to 15?

MR. JEFFREYS: 15, your Honor.

THE COURT: Let's mark it 15, I.D. and in.

THE COURT OFFICER: In evidence?

THE COURT: Yeah, it's in.

THE COURT OFFICER: Plaintiff's 15 marked and received in evidence.

THE COURT: Go ahead.

BY MR. ZLOTOLOW:

Q. Sir, those x-rays in front of you, are those the --

THE COURT: 15.

Q. -- 15, can you demonstrate the findings, please?

A. Yes. I can use the --

Q. Well, are those x-rays the same as the ones that you have?

A. Yes, they are just printed on paper.

Q. Are they just printed on paper?

A. Yes.

Q. Would it be easier to see for the jury?

MR. ZLOTOLOW: We ask permission.

THE COURT: You're asking permission?

MR. ZLOTOLOW: Yes.

THE COURT: Show the pictures to Mr. Jeffreys. The doctor testified that the pictures he has are representations of 15.

(Document handed to counsel)

MR. JEFFREYS: Your Honor, can I also have the original films?

THE COURT: Yes, you can.

(Document handed to counsel)

MR. JEFFREYS: Thank you.

There are two missing, your Honor. I can't stipulate to this.

THE COURT: Okay, let's assume two are missing. Are three the same? Do three match up?

MR. JEFFREYS: Three match, your Honor.

THE COURT: Okay, you may -- an objection, Mr. Jeffreys?

MR. JEFFREYS: No objection.

THE COURT: Limited to the three, they are in.

Mr. Zlotolow --

THE COURT OFFICER: Plaintiff's Exhibit 14 now marked and received in evidence.

THE COURT: You may inquire.

Q. Sir, could you demonstrate the findings of those x-rays, please?

THE COURT: Demonstrate the findings? You're asking what do they show?

Q. Yes, what do they show.

A. This is a plane x-ray of the patient's neck, one of the views, the side view (indicating). This goes

up here. He's looking this way (indicating).

Here are the disk spaces, above and below the fusion.

This is the fusion right here, so this is C2, C3, C4, C5, C6. This is where the disk spaces were.

These lines right here, they are just markers, because the implant we use is like a plastic, so you didn't really see that in the x-ray, so they put the metal markers in there so we know where it is, to make sure it's in the right position. So the spaces are at C4/5, C5/6, there is a plate on top with screws that hold it in place, and we're looking for, on these x-rays, you kind -- you can barely even see what the disk spaces were because all the bone has filled out that whole disk spaces.

There is a solid fusion there. That's looking from the side.

This is just another side profile and this is looking from the front (indicating).

Again, those are the spacers, those are the markers for the spacers. Two screws at each level, C4 and C55 and C6 and a plate.

Q. So is that what he's left with, currently?

A. Yes.

Q. Does this demonstrate the results of the

surgery?

A. Yes.

Q. All right, thank you.

THE COURT: Resume the seat, Doctor.

(Witness returns to the witness stand.)

THE COURT: Ladies and gentlemen, we're going to take a ten-minute recess.

As you know, I have to tell you this, don't discuss the case among yourselves or with anyone else, including each other, until you get the case.

You'll get the case for your deliberations when both sides have completed their cases, then have made their summations and you've gotten the final instructions from me.

Take 10, stretch your legs. Thank you.

(Jury leaving the courtroom)

THE COURT: Doctor, you can step down.

THE WITNESS: Okay.

(Whereupon, a short recess was taken.)

THE COURT OFFICER: Rise, please. Jury entering.

(Jury entering the courtroom)

THE COURT: Please, everybody, be seated. Doctor?

BY MR. ZLOTOLOW:

Q. Okay, I think we were -- where were we?

THE COURT: You want the last question read?

MR. ZLOTOLOW: Yes, please.

(Whereupon, the requested portion of the record was read back.)

Q. If you could, after the surgery, did Mr. Cicola follow-up with you?

A. Yes. I need to grab my chart.

Q. You left your chart --

A. It's on the table over there.

Q. Is that it over here?

A. Yeah, I just put it over on the table.

THE COURT: Somebody will get it for you, Doctor.

(Document handed to the witness)

A. Repeat the question?

Q. Yes. Did he follow-up with you following the surgery?

A. Yes.

Q. He's still a patient of yours?

A. Yes.

Q. Have you seen him -- have you seen him fairly consistently since the second surgery?

A. Yes.

Q. Did you outline for him like a course of treatment, a protocol?

A. Yes.

Q. What was your recommendation to him?

A. Initially after surgery, it was similar to the first surgery. He did physical therapy and advanced his activities, and that was again pretty similar to the first surgery.

Q. Okay. And was he to see you on a regular basis?

A. Typically with any fusion patient, we follow them intermittently. Every several months just get an x-ray, make sure everything is healing the way it's supposed to. Usually like every three months to six months, he should come back for an x-ray.

Q. And did he?

A. Yes.

Q. And what -- what were the highlights of his treatment up until today?

A. I mean overall he's doing better than he did preoperatively. Still has some intermittent numbness and some pain. He takes Lyrica, which is a medication that helps irritated nerves, and that seems to help, and he's just encouraged to maintain his activities as he can tolerate.

Q. Did you put any restrictions on him?

A. Just as tolerated.

Q. So he self limits?

A. Yes.

Q. Do you -- did you give him anything else, other than that?

A. Also give him some Percocet. If his pain ever gets severe, he has medication to take if he needs to.

Q. Have you monitored him since that time?

A. Yes.

Q. Did he have any other issues or setbacks?

A. Since his last surgery?

Q. Yes.

A. Occasionally he'll have flare-ups where he has increased pain, increased numbness, and he'll take the medication and therapy and that will help. And when it calms down, then he reduces the medication.

Q. Okay. Does he make complaints to you?

A. Yes.

Q. What type of complaints?

A. Intermittent pain in the neck and numbness.

Q. Is that to be expected?

A. Yes.

Q. And do you know what causes that?

A. It could be -- once the bone is fused solid, the patient is having persistent pain, a lot of times it's some residual, just injury to the nerve that sometimes it heals, sometimes it never heals, so they have some pain or numbness, and sometimes it's just muscular and they need to rehab.

Q. Are there certain residuals that are expected after this type of surgery?

A. There is certain residuals that are not uncommon, such as numbness, pain.

Q. And the actual fusion, how does that effect his mobility?

A. You do lose some loss of motion. Not a significant amount, but a two-level fusion, you know, 50 percent of your motion comes from the base of your skull, C1 and C2, so that's 50 percent of your motion. The other 50 percent is distributed between C2 and C7, so we break it down, you know, maybe 30 percent of motion he's lost.

Q. All right. Now, when was the last time you

saw him?

A. My last office visit was March 9th, 2012.

Q. And how was he doing at that time?

A. He still had some neck pain and arm pain and shoulder pain.

Q. Does he have a future appointment to see you?

A. It was recommended he come back for follow-up in two months.

Q. Now the -- is there any more treatment?

A. His treatment right now is medication and exercise.

Q. As far as his current condition, do you have an opinion based on a reasonable degree of medical certainty whether his neck condition is permanent?

A. Yes, it is.

Q. And what's your opinion?

A. It's permanent in nature, his condition that he has.

Q. And what is the basis of that? It may seem obvious to you, but what is the basis?

A. The basis of that is his condition to the spine, his herniated disk at C4/5 and C5/6, his multiple surgeries.

Q. And does -- will there be any restrictions on his activities?

A. Again, his restrictions are just what he can tolerate pain-wise and range of motion.

Q. Did you tell him any things he really should try to avoid?

THE COURT: Just yes or no.

A. No.

Q. Now, as far as the restrictions going forward into the future, are they going to improve or get better or are they going to get worse? Do you have an opinion?

A. They are probably not going to improve from this point forward.

Q. Do you have a prognosis for the future?

A. Fair.

Q. And what do you mean by fair?

A. Fair, meaning that his symptoms are where they are and they are probably not going to get much better than what he has right now.

Q. Did you discuss with him further treatment options?

A. Only treatment options we discussed is, like I mentioned, just conservative treatment at this point, physical therapy, medication, exercise and just treating the symptoms. He's not indicated for any additional surgery at this point.

Q. Does it appear that he's exercising?

A. Yes.

Q. Now, do you have an opinion, based upon a reasonable degree of medical certainty, whether this condition in his neck is a result of his accident on January 11th, 2007?

A. It's my opinion that it is.

Q. And what is the basis for that opinion?

A. This patient, he was active, asymptomatic before the accident, has an accident, now his symptoms, his pain, MRI after the accident, demonstrates disk herniation. It's based upon my opinion.

Q. Okay. Now, the fact that he appears to have exercised quite a bit in his life, does that go into your opinion at all?

A. No.

Q. How many surgeries have you done on people's necks?

A. Over a thousand.

Q. Have you ever seen someone who looks like him?

A. Typically, not.

Q. Do you think that the fact that he's been weight-lifting or anything like that plays a role in his injury?

A. No, if anything, it helps him out by -- by strengthening his muscles, it helps protect the spinal

column.

Q. I'm just asking, do you see -- is it typical in your practice to see people who lifted weights and stay in shape coming in for spinal fusions?

A. Usually not, no.

Q. How many times have you seen it?

A. Other than him, maybe one other patient that's like a pretty avid body builder that I operated on.

Q. Okay. Do you think that had any role in his findings?

A. No.

Q. Now, with regard to the cause of his injury, did you note any -- any -- on any of the films, did you note any degenerative process, any significant --

A. Nothing.

THE COURT: Wait, there is two questions here. Any, and then you added significant. Break it down. If you want to make it two separate questions, that's fine.

MR. ZLOTOLOW: Thank you.

Q. Did you notice any degenerative process?

A. Minimal degenerative process on his initial x-ray.

Q. Did that play a role in his injury or your

treatment of him in any way?

A. No.

Q. Do you know of anybody who ever, any -- any medical doctor who treated him that diagnosed him with degenerative disk disease?

MR. JEFFREYS: Objection.

THE COURT: Do you -- you can answer yes or no. Overruled. Just yes or no answer.

A. Just repeat the question.

THE COURT: We'll get it back from my stenographer.

(Whereupon, the requested portion of the record was read back.)

THE COURT: Just yes or no.

A. No.

THE COURT: Next question.

Q. Did you ever --

A. No.

Q. Now, when you -- in performing surgery on this gentleman, did you ever note any out of the ordinary degenerative conditions that may have predated his accident?

A. No.

Q. Do you think it played any role at all?

A. No.

Q. Now I'm going to ask you to look, if you could, at these photographs.

(Document handed to the witness)

THE COURT OFFICER: Plaintiff's Exhibits 1 through 6 marked in evidence.

A. Okay.

THE COURT: Just look at the photographs.

Do you have a question.

MR. ZLOTOLOW: Yes, I do.

THE COURT: And you're standing up, so you're about to make an objection?

MR. JEFFREYS: I am indeed, your Honor.

THE COURT: Articulate the question.

Q. Sir, you just previously testified to the cause between the accident and Mr. Cicola's neck injury. I'd like you to assume that these are the photographs placed in evidence depicting the damage to the vehicle involved and ask you, having looked at that, whether it changes your opinion in any way?

MR. JEFFREYS: Objection.

THE COURT: You're asking if looking at the pictures changes his medical opinion

in any way?

MR. ZLOTOLOW: Yes.

THE COURT: And Mr. Jeffreys, the nature of your objection is what?

MR. JEFFREYS: The level of expertise that's required to make that determination.

THE COURT: It's competency; right?

MR. JEFFREYS: Yes.

THE COURT: I sustain the objection. He's an M.D.

MR. ZLOTOLOW: Yes.

Q. You're a doctor, correct?

THE COURT: He's permitted to give opinions as to medical things; diagnoses, prognoses, differential diagnoses and the like.

Q. Okay. Sir, have you had some training involving the mechanics of injuries?

A. Some.

MR. JEFFREYS: Objection, your Honor. Can we approach on this?

THE COURT: Actually, mechanics of injuries, the answer will stand. I'll see you both at the sidebar.

(Discussion held off the record.)

BY MR. ZLOTOLOW:

Q. Sir, are you familiar with the mechanics of what it takes to herniate a disk in the cervical spine?

A. Yes.

Q. And did you learn that in school?

A. Yes.

Q. Is that part of your training?

A. Yes.

MR. JEFFREYS: Your Honor, I have to object at this point.

THE COURT: Overruled for now. The answer is yes. Go ahead.

Q. What are some of the causes of a herniated disk in a cervical spine?

A. There is multiple causes.

Q. Okay.

A. You can have an axial load, pressure from the top down; you can have flexion extension, which is bending forward and backwards; you can have flexion distraction, which is bending forward and pulling the head forward, so there is multiple causes.

Q. And aside from -- and in this case, do you understand what the mechanism of injury is?

A. Yes.

Q. And what is the mechanism of injury in this case?

MR. JEFFREYS: Objection, your Honor.

THE COURT: Sustained.

Not necessarily -- not necessarily on competence, but on foundation.

MR. ZLOTOLOW: Okay.

Q. I'm going to ask you to assume that Mr. Cicola was in an accident, a rear-end accident, where he was struck from behind and even -- even assuming a low impact, do you believe that that is the competent cause of his accident?

MR. JEFFREYS: Objection.

THE COURT: Sustained. Sustained.

Q. Do you believe there is a relationship between the damage to one's vehicle and the damage to their neck?

MR. JEFFREYS: Objection.

THE COURT: Sustained.

Q. Do you have an opinion as far as -- do you have any experience with lower speed impacts?

MR. JEFFREYS: Objection.

Relevance.

THE COURT: Overruled.

You can answer that.

A. Yes.

Q. Is a low speed impact, could that be a cause of a cervical herniated disk?

MR. JEFFREYS: Objection.

THE COURT: Sustained.

Q. Is that one of the causes?

MR. JEFFREYS: Objection.

THE COURT: Sustained. Let me see you both at sidebar.

(Discussion held off the record)

Q. Sir, I'm going to ask you your opinion based upon a reasonable degree of medical certainty whether this accident caused Mr. Cicola's neck injury.

A. Yes.

Q. And what is the basis for that opinion?

A. The basis is it's a rear impact, you get a flexion.

THE COURT: Okay, do you have an objection?

MR. JEFFREYS: There is an objection. I move to strike anything with --

THE COURT: The answer is -- the objection is sustained. The answer is stricken. You can ask it generically.

MR. ZLOTOLOW: Generically, okay.

THE COURT: Which you already have, but do it again.

Q. I ask you sir, generically, if I could, your opinion based on a reasonable degree of medical certainty the cause of Mr. Cicola's neck injury.

A. Was this motor vehicle accident.

Q. And the basis, please?

A. I think I mentioned before --

THE COURT: Doctor, forget about those pictures.

THE WITNESS: I am.

Q. Just give us all the pieces to the puzzle, please.

A. The patient had no symptoms before an accident, has an accident, then has symptoms, has an MRI that demonstrates disk herniation, that's how I formulate my opinion.

Q. Okay. Anything you've seen to alter your opinion?

A. No.

MR. ZLOTOLOW: Thank you very much.

THE COURT: We'll commence cross-examination now. We'll break at 12:30 for lunch.

CROSS-EXAMINATION

BY MR. JEFFREYS:

Q. Doctor, if you would be so kind to please keep your voice up, it's difficult hearing you at counsel table, so please keep your voice up.

A. Okay.

Q. And if during your testimony, Doctor, you need to refer to your office records as you did when Mr. Zlotolow was questioning you, please feel free to do so. Just let us know when you're looking down at your records; okay?

A. Okay.

Q. Doctor, I believe the easiest way to understand this, your involvement, is we'll do it chronologically, much like Mr. Zlotolow did. So we're going to be beginning at November 11th, 2008. That's your first date of treatment with Mr. Cicola; correct?

A. Correct.

Q. Doctor, can you tell the jury why you keep office notes? What's the purpose of them?

A. To document the patient's symptoms, his complaints and the plan.

Q. And you did that in this case; correct?

A. Correct.

Q. So on each visit that we spoke about earlier

you had an office note to go along with that?

A. Yes.

Q. And is it also to help to remember things of significance in your client's treatment?

A. Yes.

Q. I'm assuming that you had many clients, other than Mr. Cicola?

THE COURT: They have patients, we have clients.

Q. Many patients --

THE COURT: Excuse me, I used to have. You guys do --

Q. And your chart is being used to help you go through your testimony here today; correct?

A. Yes.

Q. Would it be fair to say, Doctor, that everything that you believed was significant concerning Mr. Cicola's condition would be in your office notes?

A. Yes.

Q. That's the reason why you keep it, to put the significant things in there; correct?

A. Correct.

Q. In your records, Doctor, you have some abbreviations. Before we start to talk about them, I'd like you to explain them to the jury a little bit. There

is an abbreviation called PMH in your records. Is that past medical history?

A. Yes.

Q. And could you please tell the jury what past medical history means?

A. If a patient has any medical conditions, hypertension, high blood pressure, heart disease, any type of medical conditions.

Q. Conditions that would have occurred at some point before your initial visit?

A. Medical conditions.

Q. And that would be the past medical history and you'd note that there; correct?

A. Correct.

Q. And is it important for you to know and to chart, just as a physician in your practice, past medical history?

A. Yes.

Q. And why is that important?

A. Certain conditions can be linked with other conditions.

Q. Such as what, Doctor?

A. High blood pressure could be linked with a heart attack. Diabetes can be linked with vascular disease.

Q. And these are things that you're concerned about in your field?

A. Yes.

Q. There are many past medical conditions that are important to you in your medical field; correct?

A. Correct.

Q. And you also have something in there called PSH; that's past social history?

A. Past surgical history.

Q. And is it important for you to understand in your practice whether your patient's had a past surgical history?

A. Yes.

Q. And why is that?

A. Any type of surgery the patient had, we'd like to know. If the patient had any surgeries on their spines, we want to know, or any surgeries in general.

Q. But why do you want to know that?

A. It's part of the patient's evaluation, just -- it's one big picture, the medical history, the surgical history, the social history is one big pictures. It helps us out.

Q. And your goal as a physician is to paint the big picture for your patient; correct?

A. Correct.

Q. So if you understand all their background, you can help treat them in the future; correct?

A. It's helpful.

Q. Now, there is something called family history; correct?

A. Correct.

Q. And what's family history?

A. If a patient -- a patient's family has any medical conditions.

Q. And why is that important in what you do?

A. Because there are some conditions that are hereditary, genetic, you know, disposition, and patients may develop it if their mother had it or father had it.

Q. What sort of conditions would we be talking about that would be significant in family history?

A. Certain cancers, you know, especially my practice certain cancers spread to the bone, so we're concerned with that.

Q. Anything else, other than cancers?

A. That's a most concerning one.

Q. Family history of arthritis, would that be a problem?

A. We like to know but it's not -- it's not a big hereditary process with that.

Q. Would that be the same, whether it's

osteoarthritis or rheumatoid arthritis?

A. Correct.

Q. Nice to know, but not critical for you?

A. Yes.

Q. I think we covered some of the preliminaries that are in your report. Let's go to your initial consultation; okay?

A. Okay.

Q. On November 11th, 2008, that was your first date of treatment for Mr. Cicola; correct?

A. Correct.

Q. And he had been referred to you by another orthopedist; correct?

A. Correct.

Q. And that's Dr. Silverberg?

A. Correct.

Q. And who is Dr. Silverberg?

A. Dr. Silverberg is a general orthopedist in Plainview.

Q. And did you know him before Mr. Cicola's case?

A. The doctor?

Q. Yes.

A. Yes.

Q. What's his first name?

A. I believe it's Scott.

Q. And where does he work?

A. In Plainview.

Q. In Plainview?

A. Plainview.

Q. And had you ever received referrals from Dr. Silverberg before Mr. Cicola?

A. Yes.

Q. And since Mr. Cicola, have you received referrals from Dr. Silverberg?

A. Yes.

Q. The referral that you got from Dr. Silverberg, was it in writing or was it oral?

A. I believe it was oral.

Q. And do you remember the sum and substance of what the referral was when you -- withdrawn.

Did you speak to Dr. Silverberg or somebody in his office about this referral?

A. I didn't speak to anybody.

Q. Well, you were referred at some point; correct?

A. The patient was referred by Dr. Silverberg.

Q. Did you speak to Dr. Silverberg before you saw Mr. Cicola?

A. No.

Q. So when Mr. Cicola came to you on November

11th, 2008, you had not spoken with his then treating orthopedist, Dr. Silverberg?

A. No.

Q. And when Mr. Cicola came to you on November 11th, 2008, had you spoken with his treating orthopedist, Dr. Sinha?

A. No.

Q. Were you aware that you were the third orthopedist that he was seeing or somebody with a specialty in orthopedics?

A. No.

Q. And at the point of his referral to you, did you believe that he was being referred to you as a surgical client?

A. No, some patients are referred for surgery, others just for nonoperative treatment.

Q. And when Mr. Cicola came to you, you weren't sure at that point whether he was being referred to you for surgery or not; correct?

A. Correct.

Q. This despite the fact that you actually did surgery on him eight days after you first saw him?

A. Correct.

Q. Correct. But on that initial evaluation, you didn't know at that point that you were going to do

surgery yet; correct?

A. Correct.

Q. In your initial past medical history section of that initial consultation of November 8th -- of November 11th, 2008, you state there that it's unremarkable. What does unremarkable mean?

A. There is nothing to remark about. There is nothing to list.

Q. So you asked for past medical history, but as far as you were concerned, whether Mr. Cicola told you anything or not, there was nothing significant for you to put in your report?

A. Correct.

Q. Do you remember him telling you anything about his past medical history whatsoever?

A. I have nothing listed, no.

Q. And from your best recollection, it would have to be from referring to your records rather than an independent recollection of something that happened three or four years ago?

A. Correct.

Q. As an orthopedic surgeon, would it be important for you to know if the plaintiff had any cardio or pulmonary problems before you saw him?

A. It's helpful.

Q. And why is that?

A. Just to get an understanding of the patient's background.

Q. And did Mr. Cicola say that he either had cardio or pulmonary problems before you saw him?

A. Not that I recall.

Q. Are you aware or have you since become aware that Mr. Cicola had a prior medical history of two spontaneous lung collapses in 1988 and 2005?

A. I'm aware of it now.

Q. And when did you become aware of that fact?

A. Just today.

Q. When I told you?

A. Yeah.

Q. Would that be one of those cardio or pulmonary problems that would be a significant past medical history?

A. It's significant.

Q. But that's not there in your initial consultation of his --

A. No.

Q. And do you have any independent recollection of Mr. Cicola telling you that he had two prior collapsed lungs?

A. I don't recall, no.

Q. And the scientific term for a collapsed lung, would that be a pneumothorax?

A. Yes.

Q. But if you believed that was significant and Mr. Cicola had told you that, that would have been one of those things that you would have put under past medical history; correct?

A. Correct.

Q. Now, we'll get into this a little better later, in more detail, but just the very basics. When Mr. Cicola saw you at some point in your treatment during the three years you treated him or approximately three years, at any point did he make complaints to you of left shoulder pain?

A. Yes.

Q. Was this left shoulder pain initially when he saw you or did it develop later in your treatment of him?

A. Later in my treatment.

Q. And when Mr. Cicola came to you at whatever point it was and made complaints to you about pain in his left shoulder, did he tell you that he had previously dislocated his left shoulder on at least two or three prior occasions?

A. I don't recall that.

Q. And if he did tell you that and you were

treating that left shoulder, would that be something significant that you would put in past medical history?

A. To be honest with you, I typically don't put about dislocations or fractures in the note.

Q. Why don't you do that, sir?

A. Because it doesn't effect my treatment.

Q. Did you treat his left shoulder?

A. No.

Q. So you weren't involved whatsoever in the treatment of the left shoulder?

A. I was treating his spine.

Q. He had pain referable from the spine into the left shoulder; correct?

A. Correct.

THE COURT: Doctor, everybody has to hear you.

THE WITNESS: Okay.

THE COURT: Keep it up.

Q. And for this initial visit with Mr. Cicola, you note that past family history was significant for breast cancer and arthritis; correct?

A. Correct.

Q. So arthritis was significant enough for you to put in Mr. Cicola's chart for a family history; correct?

A. Correct.

Q. And tell the jury what arthritis is.

A. It's the breakdown of the cartilage, wear and tear, and so the cartilage wears out and you start getting a lot of inflammation and eventually it's bone rubbing on bone and it's painful.

Q. Now, there is a difference between osteoarthritis and rheumatoid arthritis; correct?

A. Correct.

Q. Osteoarthritis is -- I'll do it this way, rheumatoid arthritis is a swelling in the joint; correct?

A. They both can have swelling in the joint.

Q. Tell the jury the difference between osteoarthritis and rheumatoid arthritis?

A. Rheumatoid arthritis is an inflammatory condition, so it's inflammation that causes all the soft tissues around the joint to become inflamed.

Osteoarthritis is just a wear and tear process where the cartilage gets worn out. It affects mostly the weightbearing surfaces of the joints, like the hips, the knees, just from wear and tear.

Rheumatoid is more systemic. It effects multiple joints in the hands and throughout your body and it's more an inflammatory condition and they treat it a little differently.

Q. Is rheumatoid arthritis a disease?

A. It's considered a disease.

Q. Is osteoarthritis a disease or is it a condition?

A. It's a condition.

Q. But the osteoarthritis that you told us about, the general definition, that's from wear and tear?

A. Correct.

Q. When the patient first came to you on November 11th of 2008, he made complaints of pain in his right shoulder -- excuse me, in his right trapezius muscle, limited cervical range of motion and pain in his right shoulder; correct?

A. Correct.

Q. Can you point out to the jury where that -- those particular parts of the body are where he was causing pain? And when you point, describe it in words, if you can, please.

A. So the neck, the right trapezius is like the base of the neck and shoulder and then the shoulder (indicating).

Q. And you tested Mr. Cicola's shoulder range of motion; correct?

A. Correct.

Q. And you tested both shoulders, I believe; correct?

A. Correct.

Q. And the left shoulder had a good painless range of motion; correct?

A. Correct.

Q. So was that a normal finding in the left shoulder?

A. Yes.

Q. Now, at some point during your treatment with Mr. Cicola that normal finding in the left shoulder got significantly worse; correct?

A. The physical exam?

Q. On physical exam.

A. Not that I recall.

Q. Do you remember Mr. Cicola reporting to you significantly increased pain in range of motion when you were testing his left shoulder?

A. I recall increased pain in the left shoulder.

Q. But when you did your initial exam of him, there was painless range of motion in the left shoulder; correct?

A. Correct.

Q. So it was -- the left shoulder got worse over time?

A. In regards to pain, but I cannot comment on range of motion.

Q. Okay. We'll get to range of motion because that's very much later in your treatment, sir.

And on the right side there was pain in the right shoulder; correct?

A. Correct.

Q. And what was the movement that caused the pain in the right shoulder?

A. According to my note, severe pain with abduction.

Q. And explain to the jury what abduction is.

A. Abduction is pulling your arm away from your body.

Q. Would that be pulling out from, if your arm was down at your right side, going out 90 degrees out from your body, is that abduction?

A. Yes.

Q. Was that the only place where he was experiencing pain in that right shoulder, was on abduction?

A. That's all I have listed, noted on my note.

Q. And, Doctor, is that the same range of motion, that abduction range of motion, that one would have when lifting weights?

A. Repeat the question.

Q. Is that abduction motion to the side that you

just told us about, from the leg raising up 90 degrees, is that the same motion that you would have lifting weights?

A. Some exercises you abduct your shoulder, yes.

Q. Did you ask Mr. Cicola if he did exercises to his right shoulder concerning that abduction?

A. No.

Q. Never came up?

A. No.

Q. Did he volunteer that information to you at any point?

A. Not that I recall.

Q. Did he volunteer the information that he had been doing exercises involving abduction of the right shoulder for 15 years before you even saw him?

A. Not that I recall.

Q. Did he tell you that he had lifted those weights for an average of five days per week?

A. No.

Q. Would that be something that you may note in past medical history or some other place in your notes, if he had told you?

A. Possibly.

THE COURT: Mr. Jeffreys, start looking for a place.

MR. JEFFREYS: Yeah, I'll -- four questions, your Honor.

THE COURT: Go ahead.

Q. You also tested strength in that right shoulder; correct?

A. Correct.

Q. And you found that the strength was normal; correct?

A. Correct.

Q. That's a five out of five finding?

A. Yes.

Q. And tell the jury how that scale works, that one through five scale for strength?

A. It's zero through five. Five is full motor strength. Four is a little bit of weakness. Three is you can move it against gravity but it's still weak. Two, you can move it but you can't move your extremity against gravity. If you eliminate gravity, then you can move it. That's two out of five. One is like a flicker and then zero is nothing.

Q. But for Mr. Cicola, you found that he was normal because he had a five out of five in that right shoulder; correct?

A. Yes.

MR. JEFFREYS: Your Honor, I think

this is a good place to stop.

THE COURT: Okay. Jurors, we're going to break for lunch right now.

Again, don't discuss the case among yourselves or with anybody else until it's time, and that time will be after both sides rest, you've heard their summation and you receive the Court's charge to you on the law.

We'll reconvene downstairs at 2:00 p.m. We'll get you right up. Thank you.

(Jury leaving the courtroom).

(Whereupon, a luncheon recess was taken).

THE COURT OFFICER: All right, remain standing, come to order.

THE COURT: Please be seated.

Doctor, resume the stand, please. Whenever you're ready, George.

I assume there is no application prior to the jury coming in?

MR. ZLOTOLOW: No, your Honor.

MR. JEFFREYS: No.

THE COURT OFFICER: Rise, please. Jury entering.

(Jury entering the courtroom)

THE COURT: Please be seated, everybody. Good afternoon.

THE COURT: You may proceed.

MR. JEFFREYS: Thank you, your Honor.

THE COURT: Doctor.

CONTINUED CROSS-EXAMINATION

BY MR. JEFFREYS:

Q. Doctor, before we took our break we talked a little bit about your first note with the plaintiff. I'd like you to just review that topic for a second and we'll come back to it and talk a little bit about bulges, herniations and protrusions; okay?

On direct examination you told us that folks over 20 years of age you would begin to see some form of process over time, some sort of degeneration; correct?

A. Yes.

Q. And would that be the same whether there is a bulge, a protrusion or herniation?

A. Typically, it results in a bulge, initially.

Q. Okay. And, Doctor, for Mr. Cicola, when you saw him, did you note that he had some bulges in his back?

A. In his back?

Q. Sorry, in his neck. I'm sorry.

A. On my note from November 11th, I just -- I reviewed the report. I didn't have the actual films.

MR. JEFFREYS: Can the doctor be shown the hospital record, Plaintiff's 11, the 2008 hospitalization?

Q. And, Doctor, to speed things along, I put some tabs on that to alert you to the pages that we're going to be referencing. And if you go to the bottom, the bottom tag, I think I have a bottom tag there for your 11/18/08 admission note. Do you see that there?

A. Yes.

Q. And, Doctor, your note reads, "Initially, symptoms began about" -- is that what that sign is, about one year ago? It's a squiggle.

A. I'm on the wrong page.

THE COURT: The tag was on the side, not the bottom.

Q. Are you on the 11/18/08 at 11:00 a.m. note?

A. Yes.

Q. The third line down, it says, "Initially, symptoms began" and then there is a squiggle. What does that squiggle mean?

A. Approximately.

Q. "Initially symptoms began approximately one

year ago with neck and right shoulder pain. Over past month, symptoms much worse. Had MRI C spine with multiple levels of disk bulges and herniation C4/5." Do you see that there?

A. Yes.

Q. And when you noted in your note, your hospital note on October 18th of 2008 that there were multiple levels of disk bulges, where were those levels?

A. Just to clarify, this is the physician's assistant's note.

Q. Okay. It's in evidence. Any idea where that came from, sir?

A. The only bulge that I recall was at C5/6.

Q. That was the one below the one you did surgery on; correct?

A. Below, correct.

Q. And that existed when you first saw him; correct?

A. Correct.

Q. And, Doctor, if you can go to the side tag that's there, that's a consultation report. It's a consultation report with an admit date of 11/18/2008 at the top of it and says Christopher Cicola. Do you see that?

A. Yes.

Q. Second full paragraph, last line, quote, "He is an active athlete and weight-lifter, although he has been unable to engage in weight-lifting in the past several months due to his neck pain." Do you see that?

A. Yes.

Q. Doctor, did Mr. Cicola tell you that he was an avid athlete and weightlifter when you saw him?

A. I don't recall that, no.

Q. If he had told you that, is that something you would have noted in your chart, your own chart?

A. Possibly.

Q. And when we're speaking about past medical history or past social history or things like that, that you actually put in your own personal chart, your own office notes, is that based on what the patient tells you?

A. Yes. For the most part, yes.

Q. So if the patient is not forthright with you, you would have no way to find out about that on your own; correct?

A. Correct.

MR. JEFFREYS: Can the doctor please be shown the 2009 records?

(Document handed to the witness)

THE COURT OFFICER: Exhibit 13 in

evidence.

Q. Doctor, on your direct examination, as I recall, you indicated that you had never heard or noted that Mr. Cicola had degenerative changes in his back at any point; correct?

A. In his back or his neck?

Q. His neck, I'm sorry, in the neck.

A. Can you repeat that?

Q. When you spoke on direct this morning, you indicated that you had never heard of the fact that Mr. Cicola had degenerative changes in his neck?

A. I don't remember that.

Q. Okay. If you could turn to the 2009 hospital record, the first tag, it's a consultation report with an admit date of 10/14/2009.

A. It's a consultation?

Q. It's a consultation report.

THE COURT: Indicated it was the first tag, Doctor.

THE WITNESS: This is the first tag, your Honor.

MR. JEFFREYS: We'll do the cover page.

Q. What's MDC, Doctor, what does that mean?

A. I'm sorry?

Q. On the first page of the record, what does MDC mean?

A. This is a diagnosis code.

Q. And for the particular diagnosis code for Mr. Cicola for his 2009 hospitalization, is that diseases and disorders of the musculoskeletal system connective tissue?

A. Yes.

Q. Anything in there about the auto accident that you can see on this initial page, anything in there about an auto accident?

A. No.

Q. Can you turn to the next tab, please, Doctor?

By the way, Doctor, disease, that's something different from acute trauma; correct?

A. Yes.

Q. There is nothing on this first page to show anything about an acute trauma, is there?

A. I mean, a displacement of the disk can be acute or chronic.

Q. Correct, but there is nothing that says that displacement of the disk is traumatic; correct?

A. It does not say that, no.

Q. It's silent on whether it's traumatic or chronic; correct?

A. Correct.

Q. If you would turn to the first tab that's on the side, it's a consultation note dated October 14th, 2009. Do you have that there? Is it there, sir? I just want to make sure you have it.

A. Yeah, I mean, it's in the back.

Q. We're going to go through a few pages of that record.

A. Yeah, but all I have is this, this one paragraph from the 14th.

Q. No, it just shows an admit date on the 14th.

MR. JEFFREYS: Your Honor, may I approach and get the page for the witness?

THE COURT: I can see where the tabs are, but --

THE COURT: Please approach the witness and show him the pages that -- the suggested pages you're pointing out.

A. The 14th, that's the only one date I had, the 14th.

BY MR. JEFFREYS:

Q. There is one that has an admission note. See all of them say admit date and they are all the same?

A. Okay.

Q. Want to make sure that's the one. I just want

to make sure I have the right one. Okay.

THE COURT: Are we literally on the same page now?

MR. JEFFREYS: I believe we are, your Honor.

THE COURT: All right, good.

Q. Okay, that is a consultation report in the Huntington Hospital record from Jalil Anwar; correct?

A. Correct.

Q. And if you look down the fourth paragraph from the bottom, it starts with the word MRI. Do you see that there?

A. Yes.

Q. And that says, quote, MRI of the cervical spine shows interval anterior cervical fusion at the 4/5 level, degenerative changes with new disk and osteophytes complexes resulting in new mild central canal stenosis and bilateral foraminal narrowing at the C5 and C6 level and multi-level foramen narrowing; do you see that?

A. Yes.

MR. ZLOTOLOW: Can I have the date?

MR. JEFFREYS: It's Jalil Anwar, and the date on the top, is 10/14/09.

MR. ZLOTOLOW: '09.

Q. Do you see that there?

A. Yes.

Q. Now, that notes that there is a new finding there of degenerative changes; correct?

A. According to Dr. Anwar, but he's a pulmonologist.

Q. Right, but these are the Huntington Hospital records and you were his principal physician at Huntington Hospital during both admissions; correct?

A. Correct.

Q. You were the one that admitted him and you were the one that was responsible for his care and treatment at Huntington Hospital; correct?

A. Correct.

Q. So anything that was done here was under your direction and supervision; correct?

A. Correct.

Q. So when Dr. Anwar is talking about degenerative changes, do you have a disagreement with Dr. Anwar about that diagnosis?

A. Yeah, that's not my diagnosis.

Q. But did you have a disagreement with him?

A. No.

Q. Did you speak with him at the hospital to say, Dr. Anwar, when you put that note in there about degenerative changes, that's just wrong?

A. No.

Q. Now, he also talks about multi-level foramen narrowing; do you see that?

A. Yes.

Q. When you're talking about multi-level narrowing, what are you talking about in medical terms?

A. More than one.

Q. More than one. So, you told us earlier that he had the herniated disk at C4/5 that you operated on initially, and then he had a bulge at C5/6; correct?

A. Initially, correct.

Q. Would multi-level narrowing be consistent with just those two or could it be more?

A. It could be or it could be more.

Q. If you'd flip to the next tag, please, Doctor? It's the surgical pathology report.

MR. ZLOTOLOW: Is '09?

MR. JEFFREYS: Yeah, these are all '09.

Q. Do you have that there?

A. Yes.

Q. After you did the surgery in 2009, did you send some of the material that you took out of Mr. Cicola's neck to the laboratory for analysis?

A. Yes.

Q. And, sir, did the laboratory find on that particular occasion that the fibrocartilaginous tissue had degenerative changes?

A. Yes.

Q. And that would be consistent with degeneration where you did the surgery; correct?

A. Correct.

Q. And if you would flip, please, to the next tab? It looks like it's a cervical CT report dated October 15th, 2009; correct?

A. Correct.

Q. And four paragraphs from the bottom, quote, "At C5/6 level, again noted is an asymmetric disk osteophyte complex, left greater than right, mildly contacting the anterior cervical cord resulting in a minor central canal stenosis and bilateral foraminal narrowing without significant change." Is that what it says?

A. That's what it says.

Q. Now, those osteophyte complexes that are referenced there, that's a degenerative condition; correct?

A. Correct.

Q. And that happens over time; correct?

A. Correct.

Q. And as people get older, those things happen; correct?

A. Correct.

Q. And if you flip to the next page on that, right at the top, the top paragraph, does it say, quote, stable degenerative spondylosis of the cervical spine with mild central canal stenosis at C5/6 level?

A. Yes, it says that.

Q. Now, degenerative spondylosis, what is that?

A. That's just degeneration.

Q. It's a degeneration and it's in his cervical spine; correct?

A. According to this report, yes.

Q. And, again, you were the doctor who was in charge of his care at the time this report was prepared; correct?

A. Correct.

Q. And Dr. Chan prepared this report; correct?

A. Correct.

Q. And it says that you were the doctor that ordered this report; correct?

A. Correct.

Q. Did you dispute Dr. Chan's finding that he had stable degenerative spondylosis of the cervical spine?

A. I didn't dispute it, no.

Q. And if you would flip to the next note, it's an MRI of the cervical spine?

MR. ZLOTOLOW: This is still '09; right?

MR. JEFFREYS: Yes, we're all '09.

MR. ZLOTOLOW: Okay.

Q. October 14th, 2009, do you see that there?

A. Yes. Yeah.

Q. If you flip to the second page, the second page of that, quote, "Degenerative spondylosis of the cervical spine with new disk osteophyte complex resulting in new mild central canal stenosis and bilateral foraminal narrowing at the C5/6 level, multi-level foraminal narrowing as described above. No evidence of cord compression." Do you see that?

A. Yes.

Q. Is that degenerative spondylosis the same degenerative condition that we spoke about earlier?

A. Earlier when?

Q. Two minutes ago.

A. Yes.

Q. And the same multi-level foraminal narrowing, that's the same diagnosis that was found when the CT scan was reviewed; correct?

A. Yes.

Q. And there was no evidence of cord compression; correct?

A. Correct.

Q. Does that mean that whatever condition existed in his spine at the time, it was not impinging on his spinal cord?

A. Not on the cord, no.

Q. Doctor, having looked at this, these hospital reports and records, does that refresh your memory concerning that Mr. Cicola had degenerative changes in his spine?

A. I don't understand.

Q. Did he have degeneration in his spine at some point?

A. Yes. Like I mentioned before, yes.

Q. Now we're going to go back to your initial test, the 2008, November 11th exam. You tested his range of motion in his back; correct?

A. Yes.

Q. And that was normal; correct?

A. Correct.

Q. And you tested the range of motion in his hips, knees and ankles; correct?

A. Correct.

Q. And that was normal; correct?

A. Correct.

Q. And you tested something with Mr. Cicola called a pinprick test; correct?

A. I don't have that listed, no. Where do you see that?

Q. Did you do a pinprick test on him?

A. I don't have that listed. It just says --

Q. Do you remember doing a pinprick test on him?

A. No.

Q. I see that -- oh, sorry, after the initial examination on 11/11/08, you made an initial diagnosis; correct?

A. Correct.

Q. And that's what you would call your assessment; right?

A. Correct.

Q. And you assessed that as herniated nucleus pulposus, C4/5; correct?

A. Correct.

Q. And I see that you also note a, quote, small left-sided disk herniation at C5/6, which does not correlate with the patient's present symptoms; is that correct?

A. Correct.

Q. When you say it doesn't correlate with his

symptoms, does that mean that the complaints that he was making didn't match up with the problem at C5/6?

A. He had right-sided complaints and that was a left-sided herniation.

Q. So anything that was going on at C5/6 at that point, if Mr. Cicola had complaints, at least from your perspective it wasn't related to C5/6?

A. Again, that's just going on the report. I didn't have the films at the time, but yes, according to the report, I felt it was more C4/5.

Q. He was making right-sided complaints and the C5/6 disk would have been left-sided complaints; correct?

A. Correct.

Q. And what symptoms was Mr. Cicola experiencing that you said didn't correlate with the C5/6 disk?

A. The side.

Q. The wrong side, as far as --

A. Opposite.

Q. -- as far as the disk would have been concerned? So all of his complaints were to the right side?

A. At that time I felt they were all consistent with the C4/5 disk.

Q. Was he making complaints of anything else, other than the right side?

A. Not that I know of. Not that I'm aware of.

Q. And I see that you recommended that the plaintiff undergo a right shoulder MRI; correct?

A. Correct.

Q. And that was done on November 12th, 2008; correct?

A. Correct.

Q. And, Doctor, you reviewed those MRI films; correct?

A. Correct.

Q. And that was a right shoulder MRI; correct?

A. Correct.

Q. And, sir, would you agree with me that the right shoulder MRI showed extensive calcific tendonitis of the supraspinatus tendon?

A. Correct.

Q. Tell the jury where the supraspinatus tendon is?

A. It's one of the tendons in the rotator cuff in the shoulder.

Q. And how many tendons are there in the shoulder; four?

A. Yes.

Q. And this was one of them?

A. Yes.

Q. And one of them was enough that, when you saw him, to be extensive calcific tendonitis; correct?

A. I just have listed calcific tendonitis.

Q. At the supraspinatus tendon; correct?

A. According to my office report, the way I have interpreted it, it demonstrates calcific tendonitis, small partial tear of the rotator cuff tendon and bursitis.

Q. Doctor, do you have that MRI report there with you in your records? Do you have them there?

A. I don't believe so.

Q. The November 12th, 2008 report.

A. No.

Q. Any reason why you don't have that report with you today, Doctor?

A. I couldn't tell you, no.

Q. When everybody asked you for copies of your records, Doctor, are you aware that your office provided that report to everybody?

A. Okay, I'm not aware of that.

Q. Did you edit things that were in your file before bringing them to court today so that they are not here?

A. No.

Q. Did you respond to the subpoena that the

County served upon your office to send your records here to court?

A. I'm sure I did.

Q. And when did you do that, Doctor?

A. I don't know. My office takes care of that.

Q. Well, Doctor, when did you respond to the subpoena that was served upon your office; do you know?

A. I don't know.

Q. And are you aware that it asked for all of your records to be brought here today?

MR. ZLOTOLOW: Objection.

THE COURT: Overruled.

A. I don't know.

Q. You don't know one way or the other, that you were personally subpoenaed to come here and bring your records? You don't know that?

A. Again, my office took care of all of the paperwork aspect of it. I assumed it was all taken care of.

MR. JEFFREYS: Your Honor, can the MRI report of the right shoulder of 11/12/08 be marked for I.D. as Defendant's H?

THE COURT: Yes, it will.

THE COURT OFFICER: Defendant's H

marked for identification purposes only.

(Document handed to the witness)

Q. Thank you. Doctor, please take a look at the report that's in front of you. Do not read it out loud, but when you're done with it, please look up.

A. Okay.

Q. Now, Doctor, have you ever seen that report prior to today?

A. I don't recall.

Q. Did you discuss the MRI that you ordered for Mr. Cicola with him?

A. I assume I did.

Q. And when you discussed it with him, had you reviewed the MRI report?

A. I don't remember.

Q. Did you have any reason --

A. Possibly.

Q. -- when you reviewed it with him to disagree with the MRI report?

A. No.

Q. Sir, having looked at it, does it refresh your recollection concerning that there was extensive calcific tendonitis in the right arm?

A. It doesn't refresh my memory at all.

Q. If you flip the page, sir, to the second page,

does that refresh your recollection concerning that Mr. Cicola had acromial clavicular joint disease?

A. It doesn't refresh my memory, no.

Q. Acromial clavicular joint, sir, that's the shoulder; correct?

A. Correct.

Q. And at any point did you tell Mr. Cicola that he had acromial clavicular joint disease?

A. There is nothing noted in my note that I did.

Q. Why not? Why didn't you tell him?

A. Because I didn't. I'm -- I'm a spine specialist. I -- I ordered an MRI to make sure if it was more his neck or his shoulder. There was a lot of things going on in his shoulder, so he was referred back to Dr. Silverberg to take care of all of the shoulder issues, that's why.

Q. So, Doctor, if I understand it, your particular level of specialty is in the spine. Are you not equipped to testify about the shoulders?

A. I'm not equipped to interpret shoulder MRI's.

Q. So, Doctor, can you offer any opinion, whatsoever, about the shoulders in this case?

A. There's just what I told you.

Q. I didn't hear the response.

A. Just as I told you prior, he had some

tendonitis in the shoulder.

Q. Other than that, you can't offer any opinion, whatsoever, correct, because that's not your level of specialty, that's not what you do?

A. I can differentiate if it's -- if I think it's more shoulder or neck.

Q. And, sir, when you met with Mr. Cicola on 11/14/08, after he was sent for that MRI report, did you discuss with him that MRI report?

A. I assume I did discuss it with him. I don't remember.

Q. Did you tell Mr. Cicola that it was your belief that the majority of his symptoms were arising from his right shoulder?

A. Yes, at that time I did.

Q. And at some point did you change your thought process there or was that a true statement and it remains a true statement, that the majority of his symptoms were coming from the right shoulder?

A. Yeah, at that visit I believe a lot of his symptoms, majority of his symptoms were coming from his right shoulder.

Q. And that's the right shoulder that had the degenerative changes in it?

A. Yes.

Q. And it was your belief, sir, that Mr. Cicola should explore that more with Dr. Silverberg; correct?

A. Correct.

Q. And you wanted to see him back in two to three weeks --

A. Correct.

Q. -- after your November 4th of 2008 visit; correct?

A. Correct.

Q. But Mr. Cicola didn't come back to you in two to three weeks, did he?

A. No.

Q. Isn't it true, sir, that seven days after your first visit, despite the fact that you wanted him to go to Dr. Silverberg, the next time you saw him was in Huntington Hospital; correct?

A. Correct.

Q. And at that point he was having surgery; correct?

A. Correct.

Q. And that surgery took place on November 19th, 2008; correct?

A. Correct.

Q. And the day before you performed that surgery on Mr. Cicola, did you have a conversation with him

concerning the risks and benefits associated with the surgery?

A. I'm sure I did, yes.

Q. And did you chart that, sir?

A. I'm sure I did.

Q. Could you turn, please, to your chart note of November 18th, 2008?

A. 2008.

Q. Just make sure you have the whole chart there; okay?

A. Yes, I have my note.

Q. At the top of it, it says spine --

A. Addendum.

Q. -- addendum.

And is that page and the following page all in your handwriting?

A. Yes.

Q. At the end of this second page of that note is it signed Alongi?

A. Alongi, yes.

Q. That's your signature on the bottom?

A. Correct.

Q. And that's your handwriting; correct?

A. Correct.

Q. Now, sir, turning to the second page of your

note, third line down, it says, Mr. Cicola, and then there is a little squiggle there. Is that an arrow up, a squiggle? What is that before the word symptoms?

A. That's just a mistake.

Q. Okay. "Mr. Cicola's symptoms have now persisted for some time greater than one year, despite conservative treatment. Surgery was discussed. Surgery would include ACDF, C4/5, PEEK device, P light." What's the next word, please?

A. PEEK device, plate, bone graft, BMP.

Q. BMP?

A. BMP

Q. What is that?

A. Bone morphogenic protein.

Q. And that is what you were anticipating doing; correct?

A. Correct.

Q. And at the point the plaintiff had said that his pain had persisted for greater than one year; correct?

A. Correct.

Q. And it was, your continued note, that was stressed with the plaintiff that even with surgery, he may still have right shoulder pain due to his underlying shoulder pathology; correct?

A. Correct.

Q. And what was the underlying shoulder pathology that would have been causing Mr. Cicola his pain?

A. The calcific tendonitis, the rotator cuff tear and the bursitis.

Q. And that would be all degenerative problems in that right shoulder; correct?

A. Correct.

Q. So when you wrote this note, you weren't even sure that what you were going to do would help the pain that he was having in his right shoulder; correct?

A. Incorrect.

Q. You thought what you were doing would help?

A. Correct.

Q. But you warned him that the underlying shoulder pathology was in the background; correct?

A. Correct.

Q. And that could cause continued problems for him; correct?

A. Correct.

Q. And that's why you wanted him to see Dr. Silverberg instead of you, because that's not what you do; correct?

A. According to my note, he saw Dr. Silverberg the week prior, and who felt that his symptoms more

related to his neck than his shoulder, on the first page of that consult.

Q. Right, Dr. Silverberg says it's his neck. You're saying it's shoulder; fair?

A. No.

Q. So why did you want to go back to Dr. Silverberg if it wasn't shoulder?

A. He did in-between my office visit and this, according to this note, saw Dr. Silverberg, who felt it wasn't his shoulder, it was his neck.

Q. Did you ultimately say, I was wrong, It's not Dr. Silverberg's issue, this is my issue?

A. Well, that's why he had surgery.

Q. So ultimately you changed your thought process about this from being a right shoulder problem, now it became a cervical problem; is that fair?

A. Well, not necessarily. You know, a lot of patients can have both. They can have a shoulder issue, they can have a neck issue, they both overlap. You treat one, they may still have some issues because of, you know, the shoulder. Or if they treat the shoulder, they may still have issues because of the neck, so it's not cut and dry.

Q. Was that Mr. Cicola, that you said some patients have problems with both?

A. Well, yes, he had pathology in the shoulder and his neck, yes.

Q. Doctor, we've talked about your treatment of the plaintiff from November 11th, 2008 up to the date of your surgery on November 19th, 2008. We've reviewed your office notes and you've taken a look at the hospital record; fair enough? So far, that's what we've done?

A. Yes.

Q. Are there any additional office notes that you have that we haven't reviewed yet up to your surgery?

A. Not that I'm aware of, no.

Q. Doctor, could you please point out to the jury at this point where you made any notation in your office notes concerning that this incident arose from a motor vehicle accident? Just point that out to the jury. Just tell them where that is.

A. I'm sorry, say that again.

Q. In your office notes, just point out to the jury where you make any notation that this is from a motor vehicle accident. Any notation, whatsoever?

A. I can't find one, no.

Q. Okay. Do you have anything in there that there was a car, that there is a car, may not say motor vehicle, maybe a car?

A. I don't believe so, no.

Q. Is it fair to say, Doctor, that you didn't record that in your office notes anywhere, nothing about a car accident?

A. In my office visits, no.

Q. Doctor, could you look at the entire hospital report, please, Plaintiff's 11, the 2008 hospital report?

A. I have it. Okay.

Q. Doctor, I know you may not have had the opportunity to review that whole thing today, but I'll give you the opportunity now. Could you point out in there to the jury anywhere in that hundred pages of hospital notes and reports and your notes and everything that's in there, anything, anything that shows that Mr. Cicola was involved in a car accident? Just anything whatsoever?

A. In this hospital visit, no.

Q. In the 2008 hospital record, just point to the jury anywhere where there is even the word mentioned car, motor vehicle or accident.

A. I don't believe it's mentioned.

Q. Doctor, is that a significant past medical history that you might want to put in a record somewhere if somebody told you about it?

A. Sure. Yes.

Q. And now, Doctor, in the hospital records, the

one that you just read to me, your 11/18/08 note, it notes that Mr. Cicola's symptoms had persisted for some time greater than a period of one year. Do you remember reading that? We had that greater sign and the one year?

A. Yes.

Q. Now, are you aware, sir, that when you first saw Mr. Cicola on November 11, 2008 and you had the surgery eight days later, his car accident was two years before you saw him? Are you aware of that?

A. No. At that time, no.

Q. Okay. If the injuries had been reported to you as being from a car accident -- you put down the pain had persisted for greater than a year. Wouldn't it just have been easier if you were ever told that this pain came from a car accident, a very specific date, a very specific time, January 11th, 2007? Wouldn't that be easier to write that?

A. It was easier not, but, yeah, it would be helpful.

Q. Right, and it's nowhere there, is it?

A. No.

Q. There is nothing at any point in any of your records up to the time of your first surgery that this accident is in any way involved in Mr. Cicola's condition; correct?

A. Correct.

Q. Now, when you did the surgery the day before, was it your good medical practice to make certain you had some diagnostic films before you did your surgery; correct?

A. Correct.

Q. Because you want to see exactly what's going on in that back -- in the neck before you cut him; correct?

A. Correct.

Q. And you did that; right?

A. Which surgery are you talking about?

Q. The 2008 surgery. We're going to focus on 2008 for a while. We're going to go chronological again.

A. Yes.

Q. And at that point, did you take a look at the films that were done associated with your preoperative care?

A. Yes.

Q. And did you review the MRI of the cervical spine on November 18th, 2008?

A. Yes.

Q. And did you also review the report of that prepared by your colleagues at Huntington Hospital?

A. I may have.

Q. And that report is part of the Huntington Hospital record; correct?

A. Correct.

Q. And, sir, does that report say, quote, "Small central disk herniation at C4/C5 which minimally indents the ventral subarachnoid space"?

A. Yes.

Q. Does it also say, quote, "Smallest left paracentral disk herniation at C5/6 which does not exert significant mass effect upon the cervical cord"?

A. Yes, it does.

Q. And does it also say that the remainder of the disk levels are unremarkable?

A. Yes.

Q. And when it's unremarkable, does that mean that there is no pathology there to report, there is nothing going on at the other levels?

A. Yes.

Q. So as far as the 11/18/2008 MRI of Huntington Hospital, Mr. Cicola had two problems; one at C4/5 and one at C5/C6; fair?

A. Correct.

Q. Fair enough?

A. Correct.

Q. And you were going to operate on the first

one; correct?

A. Correct.

Q. When you did your surgery on Mr. Cicola on November 19th, 2008, you used a piece of equipment that's called a Kerrison rongeur; correct?

A. Rongeur, correct.

Q. Could you tell the jury what a -- you pronounce it rongeur, I pronounce it rongeur. I'm sorry, I don't speak French; okay?

Could you tell the jury what a Kerrison rongeur is?

A. A rongeur is an instrument to remove bone or disk material.

Q. And did you use that Kerrison rongeur in your surgery to remove some osteophytes that had developed on Mr. Cicola's spine?

A. I mean, I use it to remove disk and portions of the anterior portion of the vertebral body.

Q. But do you remember specifically removing osteophytes that had developed with the Kerrison rongeur?

A. Let me read the report.

Q. Do you have your surgical report in front of you, Doctor?

A. Yes, I'm looking.

Q. Go down to the bottom of that report where

you're using the Kerrison rongeur. Do you see that there?

A. No. Page 2, correct.

Q. I'm just looking at the page. Second to last paragraph on page 2. Do you see that there? "A Kerrison rongeur was used to remove any anterior osteophytes."

A. Correct.

Q. Do you see that?

A. Yes.

Q. Were there anterior osteophytes on the C4 or C5 vertebrae that you had to remove?

A. I assume so, yes.

Q. And that's why you would use a Kerrison rongeur; correct?

A. Correct.

Q. And an osteophyte, you told us earlier, was a degenerative condition; correct?

A. Correct.

Q. So at that point you were taking this Kerrison rongeur and removing some degenerative problems that were at the C4/C5 vertebrae; correct?

A. Some excessive bone, correct.

Q. And that was the vertebrae that you were operating on as the first operation that you did; correct?

A. Correct.

Q. So is it fair to say, sir, when you did the surgery at that point, on November 19th, 2008, you knew that there was some sort of degenerative process going on at C4/5 or you wouldn't have used a Kerrison rongeur to take off osteophytes?

A. Well, I mentioned initially on the initial x-ray there was some minimal degenerative changes.

Q. And you ultimately had to use a device to take those degenerative changes off?

A. Well, we use that on every surgery, whether there is osteophytes or not.

Q. But in this case, I know you want to say that you used it for everything, but you specifically said you used it to remove anterior osteophytes; correct?

A. I did.

Q. And that's because Mr. Cicola had anterior osteophytes at the C4/C5 level; correct?

A. Correct.

Q. And that is a degenerative change at C4/C5; correct?

A. Correct.

Q. Doctor, you're aware that you were not his first orthopedist or orthopedic surgeon; correct?

A. Correct.

Q. And you're aware that the plaintiff saw a doctor named Dr. Sinha on January 15th, 2007, four days after this accident; correct?

A. I know of it a little bit, correct.

Q. Doctor, are you aware that four days after this accident the plaintiff had already been diagnosed with that osteophyte formation at C4/5?

MR. ZLOTOLOW: Objection.

THE COURT: Give me the question back.

(Whereupon, the requested portion of the record was read back.)

THE COURT: Sustained. You may rephrase the question.

Q. Doctor, when did you first become aware that Mr. Cicola had osteophyte formation at C4/C5?

A. I don't recall.

Q. Did you ask Dr. Sinha whether he had found any degenerative osteophyte formation at C4/C5 when he treated the plaintiff?

A. No, I did not.

Q. Did you look at any of the diagnostic films that were taken when the plaintiff was under the care of Dr. Sinha so you could focus in to see how long those osteophytes were there?

A. No, I didn't.

Q. Did you also ask Dr. Sinha at any point if the plaintiff had degenerative disk disease at C5/C6?

A. No, I did not.

Q. Did you review any of the films that Dr. Sinha had taken to see if this gentleman had degenerative disk disease from four days after the accident or was it caused at some other time? Did you ever look?

A. No.

MR. ZLOTOLOW: Other than the ones he saw today?

Q. Now, after the initial surgery, you discharge Mr. Cicola from the hospital; correct?

A. Correct.

Q. One day post surgery, that's -- I think that's the practice, one day post surgery?

A. Correct.

Q. Fair to say that he was in the hospital from 11/14 to 11/20 or was it a different time period?

A. Admit date was 11/18 to 11/20, I believe.

Q. And your surgery was right in the middle at 11/19; correct?

A. Correct.

Q. And you arranged a follow-up visit with him on November (sic) 4th; correct?

A. Correct.

Q. And in that follow-up visit, was Mr. Cicola making some complaints of pain?

A. What was the date?

Q. 12/04.

THE COURT: Year?

MR. JEFFREYS: 2008.

A. He's complaining of some neck discomfort.

Q. Other than that neck discomfort, was he making any complaints of pain?

A. That's all I have listed.

Q. If he was making more complaints than just in this neck discomfort, you would have listed that; correct?

A. Correct.

Q. And after seeing him on November -- December 4th, 2008, did you conclude that overall he was doing well?

A. Yes.

Q. And you wanted to follow up with him in three to four weeks; correct?

A. Correct.

Q. But Mr. Cicola didn't come back to you in three to four weeks, did he?

A. No.

Q. Is it fair to say that Mr. Cicola next came back to you 11 weeks later?

A. On February 26th, 2009.

Q. So your visit when you told him to come back in three to four weeks was December 4th and he comes back to you at the end of February; correct?

A. Correct.

Q. Did he tell you why he waited 11 weeks when you wanted to come back -- when you wanted him to come back in three or four?

A. No, he didn't.

Q. And at the point when he came back to you on 02/26/09, did you find any pain referable to his neck?

A. He had no pain referral to his neck;

Q. That's right at the top of your report, second line; correct?

A. Correct.

Q. He had no pain referable to his neck; correct?

A. Correct.

Q. And during this visit Mr. Cicola had a good range of motion in his cervical spine; correct?

A. Correct.

Q. And he had good strength in his extremities; correct?

A. Correct.

Q. And at this appointment, at that point, did Mr. Cicola advise you that he was planning on undergoing a shoulder arthroscopy in two weeks with Dr. Silverberg?

A. That's what is listed, yes.

Q. And did he tell you why he wanted to have the shoulder arthroscopy with Dr. Silverberg?

A. Because he was having shoulder discomfort.

Q. And was that one of those things that you had written in your initial note in the hospital, 11/18/08, that your surgery may not heal or make these shoulder pains that he had better?

A. Correct.

Q. So what you had foreseen in your note, your handwritten hospital note, had come true; his shoulder pain persisted, despite your surgery?

A. Correct.

Q. Now, at some point Mr. Cicola comes back to you again three months later, correct, on May 26th, 2009?

A. Yes.

Q. And at that time Mr. Cicola was complaining to you about neck pain; correct?

A. Correct.

Q. And you took multiple x-rays of his spine, his neck; correct?

A. Correct.

Q. And you had an AP view, the lateral view and the flexion extension view; correct?

A. Correct.

Q. Could you please tell the jury what each of those views are?

A. AP view, like we looked at before with the plate on it, is a frontal view. Lateral is looking at the side, and then flexion extension is a lateral x-ray with the patient bending forward, that's flexion, and extension. That's backwards.

Q. So he had him move his neck forward, move his neck back, that was the plan; correct?

A. Yes.

Q. And you reviewed those x-ray films; correct?

A. Correct.

Q. And you discussed those x-ray films with Mr. Cicola; correct?

A. Correct. I believe so.

Q. And when you discussed those x-ray films with Mr. Cicola, did you advise him that he had degenerative disk disease at C5/6?

A. I don't remember.

Q. Looking at your 05/26/09 office note, the third paragraph down, where it says x-rays in the beginning of it. Do you see that there?

A. Yes.

Q. And it says, quote, "X-Rays AP and lateral and flexion extension views of the cervical spine shows a fused segment C4/5 with degenerative disk disease at C5/6"; correct?

A. Yes. Correct.

Q. So at that point you were sure that he had degenerative disk disease at C5/6; correct?

A. I was interpreting the x-rays then, yes.

Q. Yes. At that point it was your medical opinion that he had degenerative disease at C5/6; correct?

A. Correct.

Q. And then you referred him for an MRI?

A. Correct.

Q. On June 6th, 2009; correct?

A. Correct.

Q. Before I just talk about the MRI, just one additional point about disks and disk material. You spoke a little bit about it on direct exam, but are disks composed of some fibers as part of the exterior of disk material?

A. Yes.

Q. Are they called anular fibers?

A. Yes.

Q. And the anular fibers, can you tell the jury how they wrap around the disk to hold the disk material in?

A. Just like a ring that contains the inner portion of the disk.

Q. When you say ring, the anular fibers wrap around; correct?

A. Yes, like a ring, like a circle around the disk.

Q. And the disk is like a washer between the bones to make sure they don't hit on each other?

A. Like a cushion.

Q. And those fibers, you used the analogy of a tire during your direct exam. Are those fibers, those anular fibers, like what we see in a steel-belted radial tire?

A. Yeah, they're fibers, they're strong and keep the disk in place.

Q. I didn't hear. I'm sorry.

A. They are strong and they keep the inner disk in place, the nucleus.

Q. And over time as we age, do those fibers dry out and fray?

A. Yes.

Q. And that would be a normal thing that happens

over time to all of us?

A. Yes.

Q. And that fraying would start when we're just outside of our teens?

A. Yes.

Q. And it would continue on for the rest of our lives; correct?

A. Correct.

Q. And that would be anular tears or anular fraying, would that be what that is?

A. Not so much anular tear, but it's more disk desiccation.

Q. And disk desiccation, that's a degenerative condition that happens over time; correct?

A. Yes.

Q. Now, when you did that, when you took that MRI of the plaintiff or had him go for the MRI on June 6th, 2009, you then had a follow-up appointment with him; correct?

A. Correct.

Q. I believe that follow-up was August 21st of 2009?

A. Yes.

Q. And you reviewed that MRI in detail with the patient; correct?

A. Correct.

Q. And when you say you reviewed it in detail with the patient, did you tell him everything that was in that MRI?

A. I reviewed it in detail. I reviewed it in detail.

Q. Did you tell him that at C2/3 there is disk desiccation in his spine?

A. I don't recall. All I recall is what's noted in my report.

Q. Okay. Did you tell him that at C3/4 there is a very tiny central disk protrusion?

A. It's not noted in my report, no.

Q. Did you tell him at C5/6 there was disk desiccation and a bulge with more focal proximal left foraminal disk herniation?

A. No, I did not tell him that.

Q. And did you tell him at C6-C7 there was a central anular tear?

A. No, it's not listed in my note.

Q. Well, sir, before you spoke to Mr. Cicola concerning his June 6th, 2009 cervical MRI, did you look at the report that was sent to your attention from Zwanger-Persiri Radiology?

A. I review the films myself. I don't rely on

the radiology report.

Q. I asked, did you look at the report?

THE COURT: Excuse me, let him finish his answer.

A. I typically do not look at the reports, unless there is a question I have. I read -- I review the films myself. I interpret them myself, how clinically it correlates to the patient's symptoms.

Q. Can we agree, sir, that reasonable medical professions in your particular field could differ concerning what is shown in an MRI film?

A. Yes.

Q. Is it important for you to understand if your colleagues have a significant disagreement with your conclusions, is that something important that you want to know?

A. If it's significant, yes.

Q. Because at some point, just like with Dr. Silberberg, you can change your position based on what your colleagues tell you; correct?

A. Correct.

Q. So at no point -- withdrawn.

At any point did you look at the Zwanger-Pesiri Radiology report from the cervical MRI on June 6th, 2009 to see what those particular folks were

saying concerning this cervical MRI?

A. I may have looked at the report, but I'm just more concerned on my interpretation.

Q. When you may have looked at the report, do you remember there being degenerative notations from C2 to C7 in your patient's spine?

A. When I looked at the report?

Q. When you looked at the report.

A. I don't remember looking at the report.

Q. And I guess you don't have that with you today, do you?

A. No.

MR. JEFFREYS: Can this be marked for I.D. as Defendant's Exhibit I, please?

THE COURT: Yes, it will.

THE COURT OFFICER: Defendant's I marked for identification purposes only, being shown to the witness.

(Document handed to the witness)

Q. Doctor, would you kindly take a look at Defendant's Exhibit I and look up when you're done so I know you've had the opportunity to review it?

(Document handed to the witness)

A. Yes.

Q. Does that refresh your recollection concerning

any differences of opinions that may have been presented to you concerning the degenerative conditions and the extent of it that existed in the plaintiff's cervical spine?

A. No.

Q. It doesn't refresh your recollection?

A. No.

Q. Do you remember seeing that report at any time prior to today, when I'm showing it to you?

A. No, I don't recall seeing this.

Q. Did you speak with the examining radiologist at Zwanger-Pesiri MRI who completed that MRI report?

A. No.

Q. Why not?

A. Because I'm concerned about my interpretation, not his.

Q. But you told me earlier that if a doctor disagrees with you, you could change your opinion; correct?

A. Correct.

Q. And were you aware when you rendered your opinion to Mr. Cicola on August 21st, 2009 that there was another physician that disagreed with you?

A. But it's not another spine surgeon.

Q. Now -- is it just limited to spine surgeons?

A. Correct.

Q. So if a spine surgeon disagrees with you, then you'll change your position, but if a qualified radiologist disagrees with you, you don't change your position?

A. Well, when it comes to surgery, yes, a spine surgeon.

Q. Well, did the spine -- the radiologist who did these films on May 6th, 2009, did they make any recommendations because of the spine surgery?

A. No.

Q. Is that why you sent Mr. Cicola to have an MRI, to get a consultation on whether he should have spine surgery?

A. No.

Q. No, you wanted the films, right, you wanted to see films?

A. I wanted to see films, correct.

Q. And you wanted a radiologist's expert opinion concerning those films; correct?

A. Like I said, I review the -- interpret the films myself. I don't rely -- the majority of the times I do not rely on a radiology report to what I need to do clinically or surgically.

Q. You just said a majority of times you don't

rely on it. Are there times when you do?

A. Occasionally, yes.

Q. And what draws the distinction between you relying on it sometimes and for Mr. Cicola's June 6th, 2009 MRI report you're not relying on that at all?

A. When there's conditions that I'm not familiar with, they are not -- intradural tumors, lesions of that nature, which I don't see frequently, but not degen -- not disk herniations, not nerve root impingement. I typically review the films myself and make a clinical judgment what needs to be done.

Q. At the beginning of that sentence you were going to use the word degenerative conditions. Is that something that you handle yourself?

A. I handle it myself as well.

Q. So for this particular case, the May -- the June 6th, 2009 MRI, can we agree that you just didn't consider the results from Zwanger-Pesiri Radiology?

A. I cannot say I did or didn't. I don't remember seeing the report and I obviously differ from what the report says.

Q. Okay. Now, it's my understanding, sir, that your next time that you saw Mr. Cicola was for the second surgery; correct?

A. Let's see. Yes.

Q. And when did you see him next? Was it when he was first admitted to the hospital on October 14th, 2009?

A. Yes.

Q. And when you saw him, did you have that same sort of discussion with him that you had from his first surgery concerning the risks and benefits associated with proceeding with surgeries?

A. I'm sure I did, yes.

Q. And that's also charted in the chart; correct?

A. It should be, yes.

Q. Because that's what your job is, that's a significant discussion you would have had with the patient; correct?

A. Correct.

Q. And that admission for that second surgery, that was October 14th, 2009, with a discharge on October 17th, 2009; correct?

A. Correct.

Q. And you did the second surgery on October 16th, 2009, correct, one day before the discharge?

A. Correct.

Q. And before this surgery, just like before the first surgery, you ordered some diagnostic films to be done; correct?

A. Correct.

Q. But on this one you ordered a chest x-ray. Why did you order a chest x-ray?

A. That's pretty typical, any patient having surgery has a chest x-ray.

Q. Okay. Did you see, when you were looking at the 2008 records, a chest x-ray before surgery?

A. I don't recall.

Q. At the point when you ordered the chest x-ray for Mr. Cicola on October 14 of 2009, were you aware at that point that he had previously suffered from two collapsed lungs?

A. I don't remember. I may know that now and Dr. Anwar saw him for the first surgery because of the history of pneumothorax, but do I remember at that time? I don't remember.

Q. But you also, in addition to the chest x-ray, ordered a cervical CT scan; correct?

A. Correct.

Q. And that was also done on October 14th, 2009; correct?

A. Correct.

Q. And that CT scan, if you can take a look at the hospital record, please, because the report is in the hospital record.

A. Is it tagged?

Q. No, those are not tagged, sir. The CT scans are not tagged, but they are generally located in the back.

A. Yes, I see it.

Q. And do you see as far as C3/C4, the diagnosis is uncovertebral joint hypertrophy? Do you see that?

A. I see it, yes.

Q. And could you tell the jury what uncovertebral joint hypertrophy is?

A. Hypertrophy is it's enlarged, so it's a joint between vertebral bodies that's enlarged, you know, due to wear and tear. They can become enlarged. They can cause nerve root compression.

Q. And that wear and tear that you're telling us about, that was at the level above where your surgery was, the first surgery was; correct?

A. At C3/4, yes.

Q. And that, since it's due to wear and tear, is that a degenerative condition?

A. Yes, it could be.

Q. For Mr. Cicola, you say it could be. For Mr. Cicola was it a degenerative condition?

A. It looks like it is.

Q. And the CT scan showed asymmetric disk and osteophyte complex at C5/6; correct?

A. Correct.

Q. And that's a degenerative change also; correct?

A. Correct.

Q. And the CT scan also said degenerative spondylosis and spinal stenosis at C5/6; correct?

A. Correct.

Q. And that's also a degenerative change; correct?

A. Correct.

Q. And you also ordered an MRI of Mr. Cicola's cervical spine on October 14th, 2009; correct?

A. Correct.

Q. And you told us earlier that a CT scan is primarily concerned with bone because it's in the family of an x-ray, while an MRI scan is primarily concerned with soft tissue because that's what it's concerned with; correct?

A. Correct.

Q. And the report of the MR scan that was done on October 14th, 2009 is also in the Huntington Hospital record; correct?

A. Correct.

Q. And in that particular report it says they compared it to the MR scan that was done on November

18th, 2008 at Huntington Hospital; correct?

A. Correct.

Q. And it shows at C2/C3 there was no significant change; correct?

A. Yes, correct.

Q. So at that point the diagnosis was uncovertebral joint hypertrophy, so that's a degenerative condition; correct?

A. Correct.

Q. And since there was no change from the first set of MRI's, we can say that it existed at least when you did the first surgery; correct?

A. Correct.

Q. So he had a degenerative change at the level above where you did the surgery in November of 2008; correct?

A. Correct.

Q. Now, at C3/4 there is an increase in the uncovertebral joint hypertrophy; correct?

A. Correct.

Q. So that means that at C3/4 the degenerative change is getting worse from the initial MRI study in November of 2008; correct?

A. Correct.

Q. And he has a new broad based disk osteophyte

complex, correct, at C5/6?

A. Correct.

Q. But ultimately, sir, didn't that MRI from Huntington Hospital conclude that he had degenerative spondylosis of the cervical spine?

A. Yes. And a herniated disk.

Q. And degenerative spondylosis, that's exactly what it says, it's a degenerative condition; correct?

A. Correct.

Q. You did the surgery, correct, on October 16th, 2009?

A. Correct.

Q. And when the surgery was done, you sent a piece of the disk material to the lab for analysis; correct?

A. Correct.

Q. And they found that to be -- have degenerative changes; correct? I can -- we looked at that fibrocartilage.

A. I think it usually does, correct.

Q. So is it fair to say that each of the disks that you did the second surgery on, that was degenerative, because that's what the lab had found?

A. Pathology report, yes, showed as degenerative.

Q. So, Doctor, what you've told me so far is Mr.

Cicola had degenerative changes at C3/C4, C4/C5, C5/C6; fair?

A. According to the MR report and the CAT scan report, yes.

Q. And do you have any reason to disagree with those reports as you're sitting here today?

A. No.

Q. In other words, those are the reports that are in the Huntington Hospital record, the records that you asked for and the records that you were responsible for administering as Mr. Cicola's surgeon; correct?

A. Correct.

Q. Now, we've gone through all of your records; correct? You don't have any other office notes before the second surgery, do you?

A. No.

Q. I think we've gone through them all at this point.

A. Yes. Yes.

Q. So we've gone through all of your records concerning this plaintiff from November 11th, 2008, which is the date that you first saw him, we've gone through two cervical surgeries and now we're all the way up to October 16th, 2009 in your treatment of the plaintiff.

Now, so -- we've got a year of treatment that

we're going through at this point, that we've already spoken about. Could you now point to the jury where in your notes or in the hospital record for that entire period of time is there any notation that the plaintiff was in a car accident?

A. What date?

Q. Anywhere in your notes of the hospital or the hospital records from between 11/11/08, all the way through the date of your second surgery, 10/16/09, just point out to the jury where you have in your notes or in the hospital record anything to say that the plaintiff had a car accident.

A. Yeah, there is nothing noted.

THE COURT: Ladies and gentlemen of the jury, we're going to take 10. Stretch your legs.

And when I say 10, I really mean 10 and we'll continue.

Again, don't discuss the case among yourselves or with anybody else until you get the case and you've heard from both sides, both sides put in their case, they put in their summations and you get the law from me. Okay, thank you.

(Jury leaving the courtroom)

THE COURT: You may step down, Doctor.

(Whereupon, a short recess was taken.)

THE COURT OFFICER: Jury entering.

(Jury entering the courtroom)

THE COURT: Please be seated, everybody.

All right, continue.

MR. JEFFREYS: Thank you, your Honor.

Q. Doctor, after you did the second surgery on the plaintiff and you continued to see Mr. Cicola on a somewhat frequent basis; correct?

A. Correct.

Q. And without going into a great deal of detail, you saw him on November 2nd, 2009, November 24th, 2009, July 5th, 2010 and August 3rd, 2010; correct?

A. Correct.

Q. And on any of those records, Doctor, the office notes from 11/02/09, 11/24/09, 7/5/10 or 8/03/10, do you make any notation in any of those office notes that Mr. Cicola had been involved in a car accident?

A. No.

Q. Doctor, is it fair to say that the first time

you make any note in any of your records that the plaintiff was involved in a motor vehicle accident was a report that you wrote to Mr. Cicola's plaintiff's attorney?

A. Correct.

Q. And that was September 16th, 2010; correct?

A. Correct.

Q. So between 1/11/07 and three-and-a-half years later on 9/16/2010 you had not made any conclusion about this being from an auto accident; correct?

A. Correct.

Q. Doctor, how did you know to send a report to the plaintiff's attorney?

A. It was requested.

Q. By who?

A. By the attorney.

Q. And at that time did you know Mr. Cicola's attorney's name and address?

A. I don't remember, no.

Q. Do you know how you came to know the address, since it's in your records?

A. They sent us a note, a letter, I assume.

Q. Do you have that letter with you today?

A. No.

Q. Why not?

A. Because I don't have it on me. It should be part of the office notes, the court notes, I would assume.

Q. That's assuming that subpoenaed records made it here; correct?

A. Correct.

Q. That note that you got from the attorney, do you remember what it asked for?

A. No.

MR. ZLOTOLOW: Objection.

THE COURT: Overruled.

Q. By the way, Doctor, when you wrote that report three-and-a-half years after this accident, you were paid for that; right?

A. Correct.

Q. And how much were you paid to write that report?

A. I don't recall. It's somewhere around $1,000.

Q. A thousand dollars for one report?

A. Yes.

Q. And in that report did the plaintiff's counsel or anybody ask you to do a physical exam of the plaintiff or to summarize what you had done previously?

A. I don't remember. I don't have the copy of the report in front of me.

Q. Well, after you continued -- after you wrote that report to the attorney, did you continue to see Mr. Cicola?

A. Yes.

Q. And Mr. Cicola would come to your office and you'd write the same history notes as you always wrote; correct?

A. Correct.

Q. And in any of those history notes, after you wrote the letter to plaintiff's attorney talking about a car accident, did you put anywhere in your history notes that Mr. Cicola had a car accident?

A. No, I don't believe so.

Q. Well, on 3/24/11 -- we're going to jump right to that so I can get done with this quickly. You saw Mr. Cicola in your office; correct?

A. Correct.

Q. And you prescribed some medication for Mr. Cicola; correct?

A. Correct.

Q. You prescribed something called Lodine; correct?

A. Yes.

Q. Are you aware, Doctor, that the only permitted use of Lodine by the National Institute of Health and the

Food and Drug Administration is for osteoarthritis and rheumatoid arthritis?

A. I use it as an antiinflammatory, like Advil or Motrin.

Q. But are you aware that's not a use that's permitted by the label?

A. It's a use that I use it for.

Q. I know it's a use that you use it for, Doctor, in your practice, but you're aware that all drugs come with label restrictions; correct?

A. Correct.

Q. And all drugs tell you what they are supposed to be used for; correct?

A. Correct. And there is also off-label use as well.

Q. And so you decided that this drug that is only available for use in osteoarthritis and rheumatoid arthritis should be given to Mr. Cicola in the place of Aleve?

A. It's an antiinflammatory that I've been using since my residency, works like any other antiinflammatory, to reduce inflammation. So it works pretty well and I do use it.

Q. Did you believe that Mr. Cicola had osteoarthritis?

A. No, I believe he had inflammation.

Q. But at any point, did you ever come to the belief that Mr. Cicola had osteoarthritis?

A. It never really crossed my mind. It's really -- the point of the loading was for -- it's an antiinflammatory, it's to reduce inflammation, for multiple causes.

Q. Doctor, you say it never crossed your mind but your first note when you first saw Mr. Cicola on November 11th, 2008, you have past family medical history as significant for arthritis; correct?

A. Correct.

Q. So why wouldn't arthritis or osteoarthritis never cross your mind considering Mr. Cicola had a past medical history of arthritis that was significant enough for you to chart it?

A. Because everybody from the age of 20 older has some degree of osteoarthritis, so that's not a diagnosis I can use to treat the patient effectively for what I need to do to kind of pinpoint the level that I need to address surgically or nonsurgically.

Q. When you say everyone over the age of 20 has osteoarthritis, that would include Mr. Cicola?

A. Yes.

Q. And where did you find his osteoarthritis,

what parts of his body?

A. Well, according to the records, in his neck and his shoulders.

Q. So it would be the entire neck from C2 to C7?

A. No, I disagree with that. Only place I found it minimally was at C4/5, initially.

Q. You say initially. Did you subsequently find it elsewhere?

A. I did not find it. You pointed out in the CAT scan, which again, you can do a CAT scan on a 100 people his age, 85 percent are going to have those findings of uncovertebral hypertrophy, foraminal narrowing. That's just a common finding. I'm looking for what's clinically significant for each patient.

Q. So the 85 percent of the people that would have these degenerative changes, Mr. Cicola happened to fall into that group of 85 percent; right?

A. Yes.

Q. And on May 24th, 2011 you prescribed Mr. Cicola with Lyrica; correct?

A. Correct.

Q. Doctor, can you tell the jury what fibromyalgia is?

A. I'm not a rheumatologist, so no, I can't give a good definition of it.

Q. That's a systemic disease?

A. There is no way to diagnosis it, other than exclusion, meaning you try -- try to figure out why a person has pain, you can't find a diagnosis, they become fibromyalgia. It's a diagnosis of exclusion. There's no test for. It's a very difficult diagnosis. I very rarely diagnose a patient with fibromyalgia because of that.

Q. What are the symptoms of fibromyalgia?

A. I'm not a rheumatologist, I can't really give you a good...

Q. You don't know the symptoms?

A. They are vague; chronic diffuse pain, multiple -- multiple presentations.

Q. Where is that chronic diffuse pain located?

A. Anywhere.

Q. Are you aware the only permitted use of Lyrica is actually for the treatment of fibromyalgia pain?

A. It also has off-label use for any type of neuritis, inflammatory issues, chronic RSD, things like that.

Q. You said earlier in your direct exam when the plaintiff's counsel was questioning you that Mr. Cicola had nerve pain throughout his whole body and that's why you prescribed him with Lyrica; correct?

A. No, I didn't stay that.

Q. Well, why did you prescribe him with Lyrica?

A. He was having some numbness and nerve symptoms in his arms.

Q. Nerve symptoms. Where were his nerve symptoms?

A. I don't recall. I assume it's in his arm and in his hand.

Q. Which arm?

A. I don't recall.

Q. Don't recall right or left?

A. No.

Q. At the point where you prescribed him with Lyrica, was he making any complaints, whatsoever, about the right arm?

A. On March 24th?

Q. At the point where you prescribed him with Lyrica.

A. Was that at March 24th?

Q. 5/24/11 is my notation when you gave him Lyrica.

A. It does not list -- what side? I don't see a side listed, right or left, but that's typically why I give Lyrica, if a patient has any persistent like numbness, tingling. A lot of times that helps.

Q. And it did help Mr. Cicola; correct?

A. Correct.

Q. At any point did you believe that Mr. Cicola had fibromyalgia?

A. No.

Q. Did you refer him to anybody, a specialist in the field of rheumatology, Doctor, to see if that was causing his problems?

A. No.

MR. JEFFREYS: Thank you, Doctor.

Nothing further, your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. ZLOTOLOW:

Q. Good day, sir. Are you okay?

A. Yep.

Q. We'll go through it, we have to get out of here by 4:30; all right?

Now, first let's talk about the shoulder for a second, the right shoulder. I think he left off on that. Did Mr. Cicola's complaints, did they resolve relative to his right shoulder?

A. Following surgery?

Q. Following your surgery, yes.

A. Following this surgery, yes. He had

improvement of his shoulder symptoms.

Q. Does he -- you still treat him. Does he still complain of any issues with his shoulder?

A. No.

Q. Does it seem the surgery solved the issues with his right shoulder?

A. Yes.

Q. Now, you were asked a lot of questions about the right shoulder. What role did the right shoulder play in this puzzle that we have here?

A. I mean, he had obviously, he had some underlying issues of his shoulder, like tendonitis, that's the calcium in there and the bursitis. That was an ongoing issue, maybe exacerbated by the accident, but I mean in terms of --

MR. JEFFREYS: Objection.

THE COURT: Basis?

MR. JEFFREYS: It would have to be a sidebar, your Honor, so the jury doesn't hear.

THE COURT: Give me the question back.

(Whereupon, the requested portion of the record was read back.)

THE COURT: Okay, is the objection

to the question or to the answer?

MR. JEFFREYS: It's the response.

THE COURT: Okay, start the response all over again.

THE WITNESS: Read the question.

(Whereupon, the requested portion of the record was read back.)

A. He had tendonitis, bursitis, small rotator cuff tear. It's kind of separate from the neck, but again, patients can have neck issues with shoulder issues. Take care of one, they can still have issues with the other.

Again, if -- a lot of that could have been -- there's more wear and tear on the shoulder, as opposed to something that's a traumatic, but I think his main issue was the neck.

Q. Is that common in your -- in your practice, issues with necks and shoulders?

A. Yes.

Q. Is that like something that has to be figured out all the time?

A. Yes.

Q. And why is that, like from a medical standpoint?

A. Because patients with neck conditions can have

pain that radiates into the shoulder and arm, and patients with shoulder conditions can have pain that radiates into the neck. And so sometimes you can distinguish it with your exam and also tests, but sometimes you find pathology on MRI of the shoulder and the neck, like we did with Mr. Cicola. But sometimes clinically, you can figure it out or, you know, when it comes to surgery, how the patient responds is a good indication of what's causing the symptoms.

Q. So as far as your treatment of the shoulder, was it just peripherally to head up the investigation purposes?

A. Yes, diagnosis.

Q. Okay. And ultimately are you satisfied that the problem was in his neck, not in his shoulder?

A. Yes.

Q. Did that bear out over the course of time?

A. Yes.

Q. All right. Now, with regard to -- the term degeneration has been thrown around a lot; okay? You tell us what your -- what you consider degeneration.

A. Like we talked about it in the beginning, everybody -- everybody's disks are degenerating, whether you're, you know, playing contact sports or just reading a book. You lose hydration of your disks. They

desiccate, they lose hydration, they wear out a little bit, which is what degeneration is, just normal wear and tear.

So, like I said, you get an MRI or CAT scan, 100 people different ages, a lot of them have degenerative conditions, doesn't mean it's symptomatic. So the big thing is you try to find what the patient's MRI shows and how it clinically correlates to the patient's symptoms.

Q. Is there any way to predict the normal process, degeneration process?

A. No, it's very difficult.

Q. Is there any thing that changes the normal degeneration process?

A. A trauma can.

Q. Now, in this case they are talking about in 2009 going through the MRI's or CAT scans to show degeneration. Do you have any opinion as to whether any of the degeneration that you talked about in 2009 predates this accident?

A. I mean, I have no studies before the accident to indicate that. Like I said, normal wear and tear, a patient is going to get degeneration. Adjacent to a fusion, they may get a little accelerated degeneration. All that can happen.

Q. Now, looking at the films that we looked at, from the x-rays from four days after the accident, the MRI, which was less -- about a month after the accident, did you see any evidence of that type of degeneration?

A. There was mild degeneration, which is a little anti-osteophyte, that was about it.

Q. Any significance at all?

A. No.

Q. And the ones that you found later, we went through all of that stuff that you found in 2009, any of that predate this accident in any way?

A. I mean, not that I'm aware of.

Q. Now, the process, did you see a process, any sort of process with this, you know, as you treated this patient over time? You had multiple x-rays, MRI's, CAT scans --

A. The C5/C6 --

THE COURT: Whoa. Wait for him to finish.

MR. ZLOTOLOW: I'm sorry. I'm just trying to get to 4:30.

THE COURT: Please let him finish the question.

Q. All right. In the time that you treated this gentleman and in all -- everything that you saw, did you

see a progression?

A. The only thing that progressed was the C5/6 level got a little worse.

Q. That's the level that's adjacent --

A. Yes.

Q. -- to the original fusion site?

A. Yes.

Q. Okay. And the degeneration that you noted at C5/6, your first note of degeneration, which I think was in '09, is that related to his fusion?

A. It's contributed to, correct.

Q. Now, a question was asked whether Chris was forthright with you. You treated him for four years. Have you ever known him to not be anything less than forthright to you?

A. No.

Q. As far as the disk degenerative process, could that speed up after trauma?

A. Yes.

Q. Now, the mention of a pathology report in '09, tell us from your medical standpoint, what does that mean, when it says what the -- the pathology report?

A. Every time we remove a disk, it comes -- the report is always some myxoid degeneration. I'd be concerned if they didn't say that because that means I

took out a healthy disk, because there is always some form of degeneration, whether it's herniated or degenerative, there is always some form of degeneration in the pathology report, that they look through the microscope and see these microscopic changes.

Q. Very well. So this is the disk that was taken out, the actual disk that was taken out?

A. Correct.

Q. Was looked at to assure that it was the correct disk, is that it?

A. And the correct tissue.

Q. So when they speak of degenerative changes in that disk, what does that speak of?

A. That's typical for this type of surgery.

Q. That doesn't mean preexisting or deceased or anything like that, does it?

A. No, there is no way to tell what's preexisting or not.

Q. All right. Now, you were asked some questions about -- oh, yeah, the report that you wrote to the attorneys. I just ask you, did you ever meet me before, like two days ago?

A. No.

Q. All right. Have we ever done any work together?

A. No.

Q. Do you know me at all?

A. No.

Q. Do I coach any of your kids or anything like that?

A. No.

Q. No?

A. No.

Q. All right. Have I ever sent you a patient?

A. Not that I know of.

Q. Have you ever sent me one?

A. No.

Q. What about the original attorneys that he had? He had other attorneys; do you know them either?

A. Yeah, no.

Q. Do you have any relationship with any of his attorneys?

A. No.

Q. Did anybody coerce you in any way, you know, to ask for your opinion in any way?

A. No.

Q. Would you, if I asked you to?

A. No.

Q. I didn't think so.

Now listen, this report that you wrote,

somebody sent you a request for a report; correct?

A. Correct.

Q. And you wrote a report?

A. Correct.

Q. The fee to write the report, is that contingent upon writing what somebody else wants?

A. No.

Q. Do you have any stake in this action in any way?

A. No.

Q. Do you hope I never call you again?

A. No comment.

THE COURT: Don't answer that.

Q. Now, with regard to -- it was asked about your subpoenaed records. I know you're an orthopedic spine surgeon; right?

A. Correct.

Q. Do you handle subpoenas in the office?

A. No.

Q. Tell us about the office that you have, just so we know.

A. What do you mean?

Q. How many doctors do you have?

A. There is four doctors, about 20 full-time employees.

THE COURT: 20 what?

A. Full-time employees.

Q. So you have 20 full-time employees and --

A. Four doctors.

Q. -- four doctors, and you don't handle things other than surgery, for the most part?

A. For the most part.

Q. Now, he was asking you about a car accident. Do you treat injuries or car accidents? What do you treat?

A. Typically we treat the injuries.

Q. Would you have treated this gentleman any different if he told you about a car accident?

A. No.

Q. Would any of your opinions change?

A. No.

Q. Now, with regard to the Huntington Hospital MRI of 11/18, anything on there that you believe was some sort of longstanding degenerative condition?

A. 11/18?

Q. That was right before your surgery.

A. What was treated surgically, I felt was not longstanding.

Q. Okay. Now --

THE COURT: Doctor, it's getting

late. You have to keep your voice up. If I can barely hear you from here, they've got to have a problem over there.

MR. ZLOTOLOW: Okay. That's it.

THE COURT: Recross within the scope of redirect, of course?

MR. JEFFREYS: Yes.

RECROSS-EXAMINATION

BY MR. JEFFREYS:

Q. The plaintiff's counsel asked you about what Mr. Cicola told you and you believe he was forthright in speaking with you; correct?

A. Correct.

Q. Did he tell you about treatment that he had with a doctor named Dr. Adhami?

A. Who?

Q. Adhami.

MR. ZLOTOLOW: Objection.

THE COURT: Okay, you have an objection. Overruled.

A. Can you repeat the name?

Q. Adhami, A-D-H-A-M-I.

A. Adhami, no.

Q. Did he tell you about a subsequent hospitalization to your treatment at Huntington Hospital

in 2010?

A. Not that I'm aware of, no.

Q. And plaintiff's counsel asked you a little bit about the report that you wrote to the attorneys in this case. Do you remember being asked those questions a couple of minutes ago?

A. Yes.

Q. How did you come to learn that he had a car accident?

A. When I prepared the report, there was additional medical records in that which I reviewed and included that in the report.

Q. So up to the point of all of your treatment from 2008, through two cervical surgeries and all of your follow-up care, that was not of importance to you to include it in your medical history; correct?

A. Correct.

MR. JEFFREYS: Nothing further, your Honor.

THE COURT: In the scope of those three questions, do you have anything?

MR. ZLOTOLOW: I don't think so. Thank you.

THE COURT: Doctor, you're excused. Appreciate you coming in. You may step