Bronx, New York 10463.

THE COURT: Thank you, Doctor. Please have a seat.

THE WITNESS: Sure.

THE COURT: Counsel, you may inquire.

MR. FRANKEL: Thank you, your Honor.

G A U T A M K H A K H A R, after having been sworn by the Court Officer, testified as follows:

DIRECT EXAMINATION BY

MR. FRANKEL:

Q. Good afternoon.

A. Good afternoon.

Q. What is your -- tell the jury your present occupation.

A. I am currently a medical doctor, and I'm board certified in --

THE COURT: Doctor, so, we have a big problem with this space here.

THE WITNESS: Speak loudly?

THE COURT: Speak loudly, and speak just a little slowly so that your words will separate.

THE WITNESS: I apologize. I will.

A. I am a medical doctor, and I am board certified in physical medicine and rehabilitation.

Q. What is board certified in physical medicine and rehabilitation? Could you explain that to the jury, please?

A. Sure.

So after medical school, everyone -- most physicians become specialized in the field. So my field is physical medicine and rehabilitation. To be board certified in my field, you have to have -- be licensed to practice medicine in New York State. You have to fulfill a residency program after medical school. In my field, it's four years of training after medical school. You have to then pass a written portion of an exam, a board exam. Then you have to practice medicine for at least one year to qualify for the oral exam. Then they fly you to Minnesota --

THE COURT: Did you say "fly"?

A. Yes, you have to fly to Minnesota or drive to Minnesota, if you want to drive there, and you take an oral exam with the panel. And if you pass the oral exam, then you become board certified. So that's what I am.

Q. Could you please give us a background, your educational background, as well?

A. Sure.

I went to Downstate Medical Center S.U.N.Y. Health Science Center, Brooklyn. I went to a specialized program, a seven-year program where you do your undergrad and medical school in seven years instead of eight. You get a -- there are 25 people in the country that made it into that program, and I was lucky enough to get into that program.

Then I did my residency at Cornell -- Columbia Presbyterian/Weill Cornell Medical Center. I was lucky enough to be the chief resident there during my last year. That's my background.

Q. And after your educational experience, can you please tell the jury a little bit about your professional experience and how long you have been doing it?

A. I graduated residency in 2003, and since then, I have been practicing medicine in musculoskeletal medicine, which is medicine of the neck, back, shoulders, knees, ankles. And I am currently the medical director of Physical Medicine and Rehabilitation of New York, and I have been so since 2005.

Q. Do you have any memberships in any organizations?

A. Sure.

I am member of the American Association of Physical Medicine and Rehabilitation, American Board of Physical Medicine and Rehabilitation, medical associate for the State and City of New York.

Q. Have you authored any articles or publications?

A. Yes, I have.

The Archives of Physical Medicine and Rehabilitation, I have publications on different topics, the lumbar spine, low back, and nerves.

Q. Can you please just briefly explain specifically what kind of ailments that physical medicine and rehabilitation

medicine deals with?

A. Sure.

Basically, physical medicine and rehabilitation works together as a specialty within medicine, and it deals with physical body, so it deals with muscles, ligaments, tendons, discs, bones, and rehabilitation is how to bring them back to functioning. So my whole goal in my subspecialty is to figure out what the problem is within these body parts and how to get them back to normal.

Q. And when did you graduate from medical school?

A. 1999.

Q. And have you been practicing physical medicine and rehabilitation since that time?

A. Since 2003, right -- well, since that time, I did my residency in physical medicine and rehabilitation, and then you consider yourself practicing physical medicine and rehabilitation once you are board certified. So I have been practicing since I became board certified.

Q. And you were board certified when?

A. In 2004.

Q. And since two thousand --

MR. FRANKEL: Well, withdrawn.

Q. How many patients, approximately, have you seen that have come to you with back, neck, or knee problems over the course of your career?

A. Wow.

Well, I started -- actually, I started practicing in 2003, not 2004. I see about 100 patients a week. I would say about 75 percent, if not more, have injuries to either the back or the knee, so about 50 weeks a year times nine years, that's about 33 -- over 30,000 patients.

MR. FRANKEL: Your Honor, I move to have Dr. Khakhar considered an expert before this Court.

THE COURT: Any objection?

MS. MOORE: No objection, your Honor.

THE COURT: The witness is deemed an expert witness.

THE WITNESS: Thank you.

MS. MOORE: In the field of?

THE COURT: In the field of physical medicine and rehabilitation.

MR. FRANKEL: Thank you, your Honor.

MS. MOORE: Thank you, your Honor.

Q. Did there come a time when you examined Cassandra Grace?

A. Yes, I did.

Q. And are you here to testify about your examination and evaluation of Ms. Grace?

A. Yes, I am.

Q. And when did you first see Ms. Grace?

A. In May 2012.

Q. Upon her presentation to you, did she have any complaints?

A. Yes, she did.

MS. MOORE: Objection.

THE COURT: Overruled.

A. Yes, she did.

Q. What were her complaints when she presented to you in May of 2012?

A. She had complaints of low back pain, left knee pain, and left ankle pain.

Q. Would looking at your records refresh your recollection?

A. Yes.

Q. Okay, so if you need to look down to refresh your memory, feel free to do so.

A. Okay, thank you.

Q. I'm sorry. Could you please say what her complaints were again?

A. Sure. Low back pain, left knee pain, and left ankle pain.

Q. Oh, by the way, are you being compensated to come here today, to travel to the Bronx to testify?

A. Yes, I am.

Q. Okay.

And if you weren't testifying, what would you be doing?

A. I would be at my practice seeing patients, treating them.

Q. And what are you being compensated?

A. $4,000.

Q. Have you testified before in court on behalf of patients?

A. Yes, I have.

Q. Why?

A. Because I was asked to testify, and they're my patients, and I know about them, so I testify.

Q. All right.

So let's get back to Ms. Grace. She came in with complaints, and did you review any materials in connection with your examination of her?

A. Yes, I did.

Q. And what is it that you reviewed?

A. I reviewed reports of x-rays, MRIs. I reviewed reports of other specialists that the patient had seen.

MS. MOORE: Your Honor, objection. And may we approach?

THE COURT: Sure.

(Whereupon, there is a discussion held off the record, in the robing room, among the Court and counsel.)

THE COURT: So I'm overruling the objection, but

let me say the following: The doctor will not necessarily be able to testify about all the things that he reviewed. He is going to be able to testify about what he saw himself. So let's see how it goes.

MS. MOORE: Thank you, your Honor.

Q. Back to where we were before, what is it that you looked at in connection with your examination and evaluation in arriving at your opinions in this case?

A. Sure.

So I looked at reports of other physicians that the patient had seen. I reviewed the reports of x-rays. I reviewed the reports of MRIs. I reviewed the films of the MRIs of the lumbar spine. I reviewed the other physicians [sic] that saw the patient.

Q. And you reviewed the actual films along with the reports as well?

A. Yes.

Q. Those are the MRI films?

A. Of the lumbar spine.

Q. And what was the purpose of that review?

A. It helps us to understand what's going on with a patient. It helps us understand where the pain is coming from. Helps us to understand how to treat the patient. Part of the process.

Q. Did you take a medical history from her as well?

A. Yes.

Q. Okay.

And what did the medical history indicate to you?

MS. MOORE: Objection.

THE COURT: Sustained.

Come to the side a second, please.

Jurors, you can stretch. Doctor, you can stretch too.

(Whereupon, there is a discussion held off the record, at the sidebar, among the Court and counsel.)

THE COURT: So the objection is sustained.

Q. Doctor, why did Ms. Grace come to see you in May of 2012?

A. Because she had pain in her back, left knee, and left ankle.

Q. What did you do for her?

A. I examined her, I made some recommendations for her, and I scheduled her to follow up with me, and that's what we did.

Q. Have you seen her again?

A. She's scheduled -- actually, she was supposed to come in to see me today, believe it or not. She is on my schedule, but we are here today instead of in my office.

Q. Can you please tell the jury what your physical examination consisted of and go through it with them?

A. Sure.

So when we do a physical examination, we look at the different body parts that are injured. We do a range of motion test on the body parts to see how the body is moving. We do a neurologic examination of the patient to see what kind of problems there are.

So Ms. Grace, when we looked at the left knee, the first thing we saw was a little swelling in the left knee compared to the right knee. Second thing we saw is there was tenderness -- that's pain in the inside -- the medially joint line had tenderness there, and there was painful range of motion.

Q. Can you explain what the significance of the tenderness and the pain from range of motion and everything else you just said to the jury?

A. Sure.

What's significant is the fact that the patient has pain localized to a particular area within the knee. The fact that there's edema, meaning there is ongoing injury going on in that area, ongoing problem in that area.

Tenderness means that something, that when you press it, there's pain that's being elicited. So once again gives you a sense of what's going on, how to direct the patient for different types of treatment and care.

Same thing for the left ankle, there was tenderness,

edema, painful range of motion.

In the lumbar spine, not only was there tenderness, but there was also spasming. There was also painful range of motion. And there is something called a straight leg raise test that we do --

Q. Doctor, let me stop you there for one second. You say spasming of the lower back, right?

A. Yes.

Q. Can you please explain to the jury what that is and why it's significant?

A. Sure. Spasm is basically when you have injuries to an area, the muscles around the area of the spine, they contract to try to stabilize the spine.

So when you feel spasming is the muscles feel hard. They feel hard compared to the muscles along different areas of the spine. So when you have spasming, it indicates ongoing pain and injury. And the significance is that it causes restrictions in range of motion, restrictions in function. It gives you a sense of what's going on with the patient.

So on top of that, there was something called a straight leg raise that we did, which basically looks to see if there is any nerve damage in the low back, and that was positive on the left side.

Q. And when you say "positive on the left side," what does that mean?

A. That means it was there. That means there was a nerve on the left side of the low back that was still being affected and still irritating in the lumbar spine.

Q. Is that a form of some kind of nerve damage?

A. Yes.

MS. MOORE: Objection.

Q. What is that --

THE COURT: Could you rephrase, please?

MR. FRANKEL: Sure.

Q. What is that a form of?

A. That's a type of nerve damage irritation.

Q. The straight leg test, is that an objective test, subjective test, something else?

A. Objective test. You physically have to maneuver the patient's leg, and they let you know when the pain shoots down the leg.

Q. You mentioned range of motion with regard to the lumbar or back area. What was the -- what did you find in that regard? Without going through details; we'll get there later.

A. So, basically, the range of motion testing, we found diminished range of motion up to 33 percent loss of range of motion in the lumbar spine. We found -- I found 25 percent loss of -- sorry, 29 percent loss of left knee function, and up to 33 percent loss of left ankle function.

Q. In fact, Doctor, would you please take us through each

one of your loss of range of motion findings and explain each one to the jury, one by one, please?

A. Sure.

So, basically, the low back, we move the patient in different directions. Bending forward is flexion. She had 60 degrees bending forward out of 90. You have the patient bend backwards. She was at 20 degrees out of 30.

Q. What does that correspond to?

A. Thirty-three percent loss in both bending forward and bending backward. Bending left was 20 out of 25. Bending right was 20 out of 25. That corresponded to a 20 percent loss.

In her left rotation, she was 35 out of 45, which is 22 percent loss, and rotating right, she was 40 out of 45, which is eleven3 percent loss.

Her left knee bent backwards, flexing the left knee, got up to 100 degrees, normal being 140 degrees. That corresponded to a 29 percent loss.

The left ankle, we have her lift up the ankle, which is dorsiflexion, push down on the ankle, invert the ankle, move in, and evert the ankle, move out. So for those, we found 15 percent dorsiflexion out of 20, which is 25 percent loss . The plantarflexion, it was 30 out of 40, which is 25 percent loss. The eversion, moving out, was within normal. The inversion, moving in, was 33 percent loss.

Q. Do you have an opinion within a reasonable degree of

medical certainty as to the significance of these percentages of losses in range of motion?

A. Yes.

Q. And what is your opinion?

A. These are significant. Anytime you have a loss greater than 20 percent, that's when you really start having diminished functioning of the body part to a point where it's significant. It affects daily living.

Q. Is that 20 percent or higher or 20 percent?

A. Anything higher than 20 percent is usually when we start seeing symptoms of activities of daily living disability.

Q. What about anything between eleven percent and 20 percent?

A. You can have some pain. You are able to function and able to do a lot more than you can over 20 percent. There's still a loss. There's still some things that can get affected. So, yes, it's still a diminished finding.

Q. Anything 20 percent or higher is significant; what is anything between eleven and 20 percent?

A. It's present, but usually doesn't affect the body part as much so. It's still present, but not to a point where it's overly significant.

Q. Can that still affect how a person functions?

A. It can.

Q. Can it impair how a person functions?

A. It can.

Q. I am talking about just between eleven and 20 percent.

A. It can, yes.

Q. Now, were you able to observe her gait?

A. Yes.

Q. Did you observe her gait?

A. Yes, the way she walks. I observed her gait, which is the way someone moves, yes, I did.

Q. I am having a little bit --

MR. FRANKEL: Can you hear him?

THE JURY: No.

A. The answer is yes, I observed the way she walks.

Q. What is it that you noticed about the gait or the way she moved?

A. I documented that she walked with an antalgic gait; antalgic gait, meaning a limp.

Q. And why is that significant?

A. Well, at this point, she was walking with a limp to protect her left lower extremity. That's significant in understanding what's going on with a patient. When someone walks with a limp, you have to understand which body part is being affected. You have a sense how badly the patient is being affected.

So usually, when you walk with a limp, weight-bearing, pressure that you put on the leg, causes pain, so you walk with

diminished stride, so it's called a limp or an antalgic gait. It's significant.

Q. When you mentioned tenderness and the edema and diminished range of motion in the left knee before, what significance, if any, does it have that this incident that she tripped and fell --

MS. MOORE: Objection.

Q. -- almost four years ago --

THE COURT: Rephrase, please.

Q. Do you know how long -- I want to you assume that Ms. Grace tripped and fell in a subway station back in March of 2008, okay?

A. Yes.

Q. And I want you to assume that when she tripped and fell, she injured her left knee, her lower back, and her left ankle.

A. Yes.

Q. I also want you to assume that she had had a course of treatment after that incident up until to date at various times for the lower back, the left ankle, and the left knee.

I want you to also assume that she had surgery on her left ankle in October of 2008 by Dr. Steven Yager, okay?

A. Yes.

Q. By the way, do you know Dr. Steven Yager?

A. Yes.

Q. Who is he?

A. He is podiatric surgeon.

Q. How do you know him?

A. I refer patients to him.

Q. Doctor, what significance, if any, does it have that you found an antalgic gait when you examined her, when the incident occurred four years ago?

A. That's quite significant. If someone is still walking with a limp, protecting the leg four years after an accident, if someone still has the swelling and the painful range of motion and the spasming, it's a significant injury. It's affecting her quality of life. It's very significant.

Q. Now, same question, but with regard to the tenderness and edema and the decreased range of motion that you found with regard to her left knee, what significance, if any, does it have that, again, you saw her over four years after the incident?

A. Same. It's very significant. It's causing her to have limitations and pain. It's affecting the quality of life.

Q. And same question with regard to the lower back, the spasming, tenderness, range of motion decrease.

A. Same answer, and it's significant, the fact that it's ongoing spasming that you are feeling, the muscles contracting, the fact you can't move the way you are supposed to move. It's significant. It's affecting her body.

Q. And how does that affect one's average daily activities

to have such limitations?

A. You are going to have pain as, once again, when you ambulate, which is walking. You are going to have pain with sitting, because when you sit, that gives pressure on the knee because you are bending the knee. Also sitting increases the intradiscal pressure. So when you have injuries to the disc and you sit, it actually compresses the disc more, so it can cause pain sitting or standing, ambulating, motion activity, when you bend.

Usually, when you have back pain, you are instructed to bend with your knees, not with your back. In this case, it was complicated because of the knee injury too. You can't just tell a patient to bend with the knee, because now there is a knee involved also, so it's a complicated situation.

Q. What else did you -- did you have any other exam --

MR. FRANKEL: Withdrawn.

Q. Did you perform any other exam on Ms. Grace?

A. Yes.

Q. What else did you do?

A. We did a neurologic exam.

Q. I'm sorry, I can't hear you.

A. We did a motor strength exam where we look at the strength of the different muscles of the body, a reflex exam, a sensory exam. The good thing is that the sensation was intact to touch.

The reflexes, you knock on the knee and the leg jumps up. Those were symmetric, equal, but the motor strength test showed that she had weakness in five different muscle groups on the left lower extremity had persisted.

Q. Did your physical exam include anything else?

A. Other than that, that was pretty much it. The range of motion, we did with objective handheld goniometer where we can get the measurements.

Q. Let me jump in for a second. You were telling the jury about the significant loss of range of motion in the various body parts. And anything that was eleven to 20 percent, is that mildly significant? How would you describe that?

MS. MOORE: Objection to the form.

A. Usually --

THE COURT: Yes. Could you rephrase that, please?

Q. You said anything over 20 percent was very significant?

A. Right.

Q. What term could we use to describe something between eleven percent and up to 20 percent?

A. You have me at a loss of words. Usually, over 20 percent affects almost everything, a lot of things you do with that body part. Between eleven and 20 percent, it will affect some of the things that you do. And once again, it depends on which body part and what we do.

Usually, when you have a loss of range of motion over

20 percent, the quantity, the amount of time you can spend walking is limited more so than eleven to 20 percent. So eleven to 20 percent limitation is present, but not with every movement or every motion.

Q. Does what somebody does for a living --

MR. FRANKEL: Withdrawn.

Q. These limitations that you mentioned in the various body parts, would that have any significance in connection with what somebody does for a living?

A. Of course.

Q. How? Explain that.

A. Different people --I have patients that range from maybe security guards where they just have to sit, and they have an ankle fracture and they can try to go back to work with some capacity because they are spending most of their time sitting and checking people in as a security guard. If other people are manual laborers that are actually drilling all day long and you have a small disc bulge or major disc herniation and you can have pinched nerves where the patient cannot function at all, so it varies with what you do.

A lot of my patients are police officers that have to be limited to desk duties instead of being out in the field because of their injuries.

So depending on what you do for a living, different injuries can affect you when you are doing work.

Q. What significance was it that Ms. Grace over here was a dance performer?

A. Dancing is significant. Dancing, from my seeing on TV and understanding dancing, you have to move everything. You have to move your back, knees, ankles, you jump around, so the fact that she is a dancer is going to affect her ability to work as a dance teacher.

Q. So a dance teacher might be different than, you know, maybe a lawyer who just comes to court?

A. Yes.

Q. Right?

A. Yes.

Q. I am just using myself.

Now, these range of motion losses that you found in Ms. Grace, what did you use to determine the range of motion loss; can you tell the jury that?

A. Sure. It's an instrument called a goniometer. It's a hand-held instrument that we use, and when the patient moves, you can get an accurate measurement of the exact degree of loss so you can measure it.

Q. Now, based upon your physical examination of her, based upon the medical history that you took, based upon her presenting complaints of pain and other limitations, and based upon the medical records of the prior treatment that you reviewed, were you able to form an opinion within a reasonable

degree of medical certainty as to what the diagnosis is that she has?

A. Yes.

Q. Okay, so please tell the jury what that diagnosis of her present condition is.

A. Sure.

She had a list of injuries. One, she had an L3-4 disc herniation, which is slipped disc between the L3 and 4 of the vertebral body.

Q. Since you are talking about the herniated L3-L4, did you review the MRI from the actual film in addition to the report?

A. Yes.

Q. The report wasn't written by you, right?

A. The report wasn't written by me.

MS. MOORE: Objection, your Honor, in line with your Honor's prior ruling.

THE COURT: Yes, we are only going to deal with the film because it's not his report.

MS. MOORE: Move to strike that last portion.

THE COURT: Yes.

Q. You also reviewed the MRI film of her lumbar, lower back, right?

A. Yes.

THE COURT: Actually, I don't want to strike that

last part. It's in keeping with what we've said. The doctor will be able to testify about what he actually saw as opposed to other reports that he reviewed, and I explained that to the jury at the outset, so just be mindful of that.

Q. So in addition to what another doctor said in the MRI report --

MS. MOORE: Your Honor, objection to the form.

THE COURT: Yes. Let's -- I agree, so change your question, please.

Q. You looked at the film?

A. Yes.

MR. FRANKEL: May I approach, Judge?

THE COURT: Yes.

MR. FRANKEL: These are in evidence as Plaintiff's Exhibit 3 and 4 and 16. I think you'll find them here. Can I put these up, too, Judge?

THE COURT: Yes.

MR. FRANKEL: Maybe we can set up the shadow box.

THE COURT: Officer, can we set up the shadow box, please?

COURT OFFICER: (Complying.)

THE COURT: Jurors, you can stand and stretch while the doctor is setting it up.

MS. MOORE: Judge, is it all right if I sit so

that I can be able to see?

THE COURT: We'll figure it out as soon as it's set up.

Jurors, you can sit or stand in order to see the film. You choose what you want to do. The important thing is to make sure that you can see it. You can arrange yourself anyway you like. I just want to make sure you see it. If you can't, then we have to do something else.

MR. FRANKEL: You guys can see this?

THE JURY: Yes.

Q. So, Doctor, these -- this is a film that you looked at in connection with your exam and evaluation of Ms. Grace?

A. Yes.

Q. Is that an MRI of the lumbar spine?

A. Yes.

Q. And can you tell -- can you explain what the MRI of the lumbar spine shows?

A. Sure.

Q. Slowly.

A. So, basically, MRI, magnetic resonance imaging, is basically a picture of what's inside your body. You lie in a magnetic field and get a picture of what's going on inside the body.

Q. Now, the MRI, is that 100 percent of what's going on inside the body or some other percent?

A. Well, there's no percentages. MRIs are known to miss some, you know, the slices that get taken, so theoretically, there's an infinite number of slices that you can take throughout the body. Over here (indicating), we have twelve different pictures of the low back, so there's twelve different pictures taken.

So MRI's are the gold standard, other than actually visualizing the low back without actually cutting open and looking, which is the gold standard. There's nothing better than MRI to see what's inside the body.

Q. And cutting open and looking would be some sort of surgical procedure?

A. Correct.

So the low back, known as the lumbar spine, has five vertebral bodies. These are the five vertebral bodies (indicating). That's called L5, L4, L3, L2, and L1.

The low -- the lumbar covers the sacrum. That's the S1, S2, and it goes down.

If you look at this disc, which is the L3-4 disc, it looks different than the other discs. If you look at it -- how does it look different? In a couple of ways. See this area over here (indicating)? This disc material has popped backward. And what lies right backward of the vertebrae? Is the spinal cord and the nerves that come off the spinal cord. So when you have an L3-4 disc that looks different in color because the

material is not there right now, the material has popped backwards into this ball just at this level, at the L3-4 level, popping backwards into the spinal canal, that's an L3-4 disc herniation. You can see in this image where it's popped out. You can see a little in this image, but this is a very clear disc herniation in the L3-4 region.

Q. Explain, if you will, what a disc herniation is.

A. Sure.

So between each bone is a disc, and that's the way the body is formed. You have a bone and a disc, a bone and a disc, a bone and a disc. The disc is cushioned between the bones. When you jump, move, walk, the bones don't grind into each other. That's the way the body is made.

So the disc has an outer portion which is fibrous and an inner portion which is like jelly, so when you have a disc herniation, it's almost like compare it to a jelly donut. When you squash the donut, the jelly comes popping out.

So in this particular case, this disc got squashed, the color changed because the material popped out, and it's now going backwards into the area where the spinal cord is. That's L3-4 disc herniation.

Q. When it goes back towards the spinal cord, why is that important?

A. Well, at that level, nerves come off the spinal cord, and the nerves that come off the spinal cord, spinal cord

connects to the brain and all the nerves to the extremity, so you have a nerve -- when you have a nerve coming off of the spinal cord, that nerve from the low back goes into the leg and causes function of the leg. Your strength, your sensation, and different things of your legs are transmitted through these nerves that go into the spinal cord and straight to the brain. And that disc is going backwards into the region where these nerves are. That's why it's significant.

Q. And what, if any, would that correlate to in a physical finding in a patient, Ms. Grace?

A. Diminished range of motion, diminished strength in the left leg, spasm to the muscles in that region, which is exactly what you saw.

Q. And what can cause -- what is one of the causes of disc herniation like the one we see on the film?

A. Sure.

You can have disc herniations from any type of force pushed on the patient.

Q. When you say "force," what do you mean?

A. Trauma. In this case, a fall. There are a lot of people that have discs that are affected just from age, from wear and tear, which can also affect the discs in the lower back, but those usually affect all of the discs and all the colors of the disc. This is one particular disc that we are looking at that's affected.

Q. And do you have an opinion within a reasonable degree of medical certainty as to what caused this disc herniation at this level, the L3-L4 level?

A. Yes.

Q. And can you tell the jury what that opinion is?

A. Yes, the trip and fall from March 2008.

MS. MOORE: Your Honor, objection, in line with your Honor's ruling.

THE COURT: You can do a hypothetical.

Q. I want you to assume, like I said before, that Ms. Grace tripped and fell in a subway back in 2008, okay. And I want you to assume that she injured her lower back, her ankle, her left ankle, lower back and left knee in that trip and fall. I want you to assume that she fell on concrete or very hard tile, essentially like concrete, okay. I want you to assume that she had complaints immediately thereafter in the following weeks thereafter with regard to these injuries, including her lower back. I want you to assume that you know MRI films were taken of the various body parts --

MS. MOORE: Your Honor, objection.

MR. FRANKEL: It's a hypothetical, Judge.

THE COURT: They were taken.

MS. MOORE: In line with your Honor's ruling about the reports.

THE COURT: Oh.

MR. FRANKEL: I am not talking about the reports.

THE COURT: We are not talking about reports. We're talking about the MRI, okay?

Q. Doctor, have you reached a conclusion within a reasonable -- an opinion within a reasonable degree of medical certainty as to the cause of the L3-L4 disc herniation that you found in Ms. Grace --

A. Yes.

Q. -- and that's reflected on this MRI?

A. Yes.

Q. Can you please tell the jury?

A. Sure. It was from the accident of March 2008, the fall.

Q. Now, when you were talking about this --

THE COURT: I'm sorry, March of what?

THE WITNESS: 2008.

THE COURT: Thank you. If you could just keep your voice up.

THE WITNESS: I will keep trying.

THE COURT: Thank you.

Q. When you were talking about discs -- I'm sorry, herniation --

MR. FRANKEL: Withdrawn.

Q. You said some herniations can cause -- can be caused by age?

A. Correct.

Q. And some can be caused from a trauma such as the trip and fall in this case?

A. Correct.

Q. Just explain the difference between the two, why you think this is from a trauma, the fall in 2008.

A. Sure.

Once again, there's two things. The first that I mentioned is that, usually, when it's just some degeneration, you have discs that are affected from old age is usually all the discs or several of the discs that are affected, not just one particular disc. That's number one.

Number 2, usually, the discs that degenerate from old age is not this disc (indicating); it's the L4-5 and S1. Those are the discs affected in degeneration.

Plus, there's a nerve test that specifically shows nerve damage to the L4 nerve. The L4 nerve specifically comes out between the L3 and the L4 (indicating) vertebral body. There is a nerve test that shows specific nerve damage to the L4 nerve which correlates to this L3-4 disc herniation. So when you put all that together along with the examination finding of diminished range of motion, spasming, and weakness, it all fits.

Q. What is left L4 radiculopathy?

A. That's the nerve damage to the left L4 nerve.

Q. Is that what we are talking about regarding the nerve

test that you just explained?

A. Correct.

Q. Was that part of your finding in this case?

A. Yes.

Q. And your finding of left L4 radiculopathy, was that a finding within a reasonable degree of medical certainty?

A. Yes.

Q. And within a reasonable degree of medical certainty, did you formulate an opinion as to what the cause of that left L4 radiculopathy was?

A. Yes.

Q. What is that; can you tell the jury?

A. Same as before, the fall from March 2008, from the disc popping out and touching that nerve.

Q. Doctor, is there anything else you want to show us on this film?

A. There's more pictures of the same disc if you want to see in different views. I can go through different views unless we're good with this view.

Q. Are there a couple of views you can show real quickly just of the lower back?

A. Sure.

Q. By the way, you regularly review MRI films back in your practice for the last -- since 1999?

A. Correct.

Q. It's a routine part of your practice?

A. Correct.

Once again, you see the L3-4 disc here looks different than the ones around it? It's popped backwards, it's popped backwards, it's popped backwards.

Q. It's popped backwards doing what?

A. From pressing the L4 nerve.

Q. When the L4 nerve is compressed, what happens?

A. Causes pain, weakness and diminished range of motion.

Q. And what part of the body would it cause pain, weakness, and diminished range of motion to?

A. Down the left leg.

Q. Was that one of the presenting complaints that she had when she saw you in May of 2012?

A. Yes.

Q. Continue, Doctor.

A. Once again, you can see over here (indicating), the L3-4 disc is popped backwards in comparison to the other discs. But once again, the other two images were better pictures.

Q. Did you also look at the MRI of her knee?

A. No.

Q. You examined her knee, correct?

A. Yes.

Q. Did you have a diagnosis with regard to what was wrong with her knee?

A. Yes.

Q. What was that -- was that diagnosis within a reasonable degree of medical certainty?

A. Yes.

Q. What was that diagnosis?

A. That there was a tear in the knee.

Q. Just explain to the jury what that means.

A. Usually, when you have swelling with joint line tenderness, it usually comes from a tear. It could be a sprain or a strain, but that usually goes away in a few months' time to a year.

When you have swelling four years later with joint line tenderness, it's not just from a sprain; it's a tear.

Q. And part -- by the way, as part of your exam/evaluation, do you ask the patient -- did you elicit whether she ever had any complaints or issues with regard to any of those body parts that you were examining?

A. Yes, I did.

MS. MOORE: Objection.

THE COURT: Read back the question.

(Whereupon, the requested portion was read back by the Reporter.)

THE COURT: That's been asked and answered, counsel, when you asked about the subjective complaints.

MR. FRANKEL: I can ask a hypothetical, Judge.

MS. MOORE: Your Honor, same objection, and it's also in line with your Honor's ruling.

MR. FRANKEL: How so?

THE COURT: Just ask a different question.

MR. FRANKEL: Okay.

Q. I want you to assume that prior to March of 2008, Ms. Grace never had any problems with her lower back, her left knee, or ankle before.

A. Okay.

Q. Is that information important to you in formulating your diagnosis and opinion and evaluation in this case?

A. Yes, plus there's more.

Q. Please tell us.

A. Sure.

So in addition to finding out whether or not there's any prior injuries or problems to that body part, I also asked if there were any subsequent problems or injuries to that particular body part. So I know that the causation of the injury is from the March of '08 accident and not from something before or after. That's my natural course of questioning.

Q. And you found that out because you found out what?

A. I found out when I asked her was there ever any prior injuries or after that of March 10, 2008.

Q. And did you -- when you found that you thought there was a tear in -- diagnosed with a tear in the left knee, did you

formulate an opinion within a reasonable degree of medical certainty as to what the cause of that tear was?

A. Yes.

Q. And please tell the jury what that is, please.

A. From the trip-and-fall injury of March 2008.

Q. What other diagnoses did you have after your examination and evaluation of her and all the relevant records?

A. In addition to the disc herniation, the nerve damage of the left L4 level, the left knee defect, the left ankle derangement with the ligament tear, and the left ankle arthroscopic procedure.

Q. Now, you say left arthroscopic procedure; is that a surgery?

A. Yes, that's a left ankle operation.

Q. Did you look at her ankle?

A. Yes.

Q. And what did you see?

A. Her ankle, on examination, was found to have edema, which is swelling, tenderness, painful range of motion. Luckily, there was no instability.

Q. Were you --

MR. FRANKEL: Withdrawn.

Q. Were you under --

MR. FRANKEL: Withdrawn.

Q. Have you received any information that Ms. Grace is

being treated by a podiatric surgeon by the name of Steven Yager --

MS. MOORE: Objection.

Q. -- with regard to her ankle?

A. Yes.

MS. MOORE: Objection.

THE COURT: Hold on. You can't answer.

(Whereupon, there is a discussion held off the record, at the sidebar, among the Court and counsel.)

THE COURT: The objection is sustained.

Q. Did you observe any of the scarring on her ankle, left ankle?

MS. MOORE: Your Honor, objection to form.

THE COURT: Yes. Rephrase, please.

Q. You noted left ankle arthroscopic procedure; how is it that you came to that diagnosis?

A. From examining the patient and speaking to the patient, getting a history of the patient. I didn't document any specific scar formation. I did document the swelling that persisted, as it does after an operation.

Q. What were your recommendations to --

MR. FRANKEL: Withdrawn.

Q. Doctor, with regard to her disc herniation on her lower back, did you form an opinion within a reasonable degree of medical certainty as to the permanency of this condition?

A. Yes, I did.

Q. Can you tell the jury what that opinion is?

A. Yes. That at this point, it's permanent in nature.

THE COURT: I'm sorry, I just lost track. Are we dealing with the ankle?

MR. FRANKEL: No, we're back to the lumbar, the lower back.

A. The low back permanently injured.

Q. Did you formulate an opinion within a reasonable degree of medical certainty as to the left L4 radiculopathy?

A. Same thing; it's permanent in nature.

Q. And what about the issues with regard to her knee, did you formulate an opinion within a reasonable degree of medical certainty as to her knee problem?

A. Same thing; it's permanent in nature.

Q. Now, what recommendations, if any, did you have for the patient?

A. Well, at that point, because of all these injuries, I recommended the patient go back to see an orthopedic surgeon for the knee; otherwise, this is not going to just get better and go away by itself.

I recommended the patient see the podiatric surgeon. Once again, it's not going to just go away. There's got to be some other intervention.

Q. With regard to what?

A. The left ankle procedure.

I also recommended she follow the spine surgeon. At this point, it's been four years with ongoing findings. This is not going to just go away by itself, so I recommended that she see a spine surgeon, orthopedic surgeon, and a podiatric foot surgeon, a specialist for those body parts.

Q. What are epidural injections?

A. Right. I also recommended --

MS. MOORE: Objection, your Honor.

THE COURT: Rephrase, please.

MS. MOORE: Well, your Honor, may we approach?

MR. FRANKEL: Judge, she is constantly interrupting --

MS. MOORE: Your Honor, it's in line with your ruling, because we're going outside the scope of his examination.

THE COURT: Yes.

(Whereupon, there is a discussion held off the record, in the robing room, among the Court and counsel.)

THE COURT: The objection is sustained. Please rephrase.

MR. FRANKEL: Sure.

Q. Doctor, what other recommendations did you have?

A. I also recommended the patient see a pain management specialist for epidural steroid injections.

Q. What are those?

A. Epidural steroid injections are --

THE COURT: I'm sorry?

A. Epidural steroid injections are basically cortisone steroid injections in the spine that gets rid of the pain and the inflammation. That's one of the things you usually do to hold off the pain until you can do something more permanent, so you can do about three injections a year.

Each injection will probably last a couple of weeks to a couple of months in duration, so for pain relief, I recommended she try to see a pain specialist to do the injections in conjunction with seeing a spine specialist.

Q. Do you know what those costs?

A. Epidural steroid injections?

Q. Yes.

A. Yes.

Q. Typically --

A. If you do it without anesthesia, it could be $1,000 per injection. If you do it with anesthesia, it could be upwards -- I see people charge $10,000 for those injections. So they can be anywhere in that ball -- it's not going to be over $10,000. It's usually not under $1,000.

Q. Is that per injection?

A. Correct.

Q. Did you --

THE COURT: Excuse me. Stand and stretch.

THE JURY: (Complying.)

MR. FRANKEL: Judge, can we approach for one second.

THE COURT: Why?

MR. FRANKEL: Why have we been approaching all the other times?

(Whereupon, there is a discussion held off the record, at the sidebar, among the Court and counsel.)

THE COURT: Jurors, take ten.

COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom.)

(Whereupon, a recess was taken.)

COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Thank you, jurors. Please be seated, everyone.

Q. Doctor, what are home exercises?

A. Home exercises are basically exercises that we recommend a patient to do by themselves at home outside our office.

Basically, it's something we recommend that they can stay within the limits of their injuries, which means don't get it worse, because there are home exercises for different body parts.

Q. Did you make such a recommendation with regard to Ms. Grace?

A. Yes, I did.

Q. Doctor, you formed an opinion within a reasonable degree of medical certainty as to the competent producing cause of the injuries that you mentioned that Ms. Grace sustained in this incident?

A. Yes.

Q. And what was that? And when I say "injuries," I mean the back, the left ankle, and the left knee and the radiculopathy.

A. Right. The trip and fall of March 2008.

Q. And did you form an opinion within a reasonable degree of medical certainty as to the competent producing cause of the permanency of these conditions that you testified earlier?

A. Yes.

Q. And what was that?

A. Same, the March 2008 fall.

Q. What was your prognosis?

A. The prognosis was poor. These body parts are not going to get better by themselves.

Q. And when you say "by themselves," what does that mean?

A. Healing has taken place to as much as it's going to heal by itself.

Q. What else needs to be done?

A. Like I said, at this point, she can try to get injections to cure some of the pain. And the main thing is to see a spine surgeon, podiatric surgeon, orthopedic surgeon for intervention.

MR. FRANKEL: Thank you, Doctor.

THE COURT: Thank you, Mr. Frankel.

Ms. Moore?

CROSS-EXAMINATION BY

MS. MOORE:

Q. Doctor, before I --

THE COURT: Ms. Moore, you need to speak up.

Q. Before I start with my questioning, may I see your file, please?

A. (Handing).

Q. Were there any other documents that you brought with you in connection with this patient?

A. Yes.

Q. You have other records?

A. Yes, I do.

Q. May I see those, please?

A. Sure. Those are my medical records, and these are other records in association with this trial (handing).

Q. And you reviewed these records in preparation for your testimony here today?

A. Yes.

Q. How many times have you testified for plaintiff's firm?

A. I believe once before.

Q. And would you say that most of your testimony that you provide is on behalf of (handing) --

THE COURT: Our court officer usually hands up documents to the witnesses.

MS. MOORE: I apologize.

Q. Most of the time that you testify are on behalf of the patients that you see or those people that you examine, correct?

A. Yes, that would be on behalf of my patient.

Q. Would you say that's 90 percent of the time that you testify or more or less or something else?

A. No. Every single time I testify is for a patient that I've examined.

Q. And how many times have you testified in court?

A. This is in the last nine years practicing, about four or five times a year, maybe 38 or so times testifying.

Q. Would you say out of the 38 times that you have testified, this is the first time that you are testifying for this law firm, correct?

A. I believe this is the second time --

MR. FRANKEL: Objection.

THE COURT: Sustained. The witness is not testifying for a law firm.

MS. MOORE: I apologize.

THE COURT: Please, please, please, absolutely disregard that last question.

Q. This is the second time that you're testifying for a patient or a person who's being represented by this law firm; is that fair to say?

A. Yes.

Q. Now, you indicated that the 20 percent loss of range of motion that you found during your examination was a significant finding; is that fair to say?

A. I believe it was a different number, but I said usually when you get to 20 or more is when you start seeing more and more activities being limited.

Q. And so a person who has the limitations or the percentage of limitations that you found in the plaintiff's case would be affected in their average daily living -- or their activities of daily living; is that fair to say?

A. Yes.

Q. So a person with these types of limitations, they wouldn't be able to continue to instruct in dance instruction; is that fair to say?

MR. FRANKEL: Objection.

THE COURT: Sustained.

Q. Would a person who has the types of limitations that this patient had be able to instruct in dance?

A. With pain.

Q. Okay.

But that wouldn't prevent them from -- based upon your findings and limitations, those limitations would not affect the patient from continuing to do these activities; is that fair to say?

MR. FRANKEL: Objection.

THE COURT: Sustained.

Q. Now, if I were to tell you that the plaintiff was examined in 2009, and the dorsiflexion, the movement -- you demonstrated the movement of the dorsiflexion of the ankle; is that correct?

A. Yes.

Q. That's where the ankle goes up or (indicating) in a 90-degree angle; is that fair to say?

A. It's usually less than 90, but it goes up.

Q. Where the ankle goes up?

A. Yes.

Q. In 2009, if I were to tell you that there was a finding of 13 degrees out of 20 degrees, and then your examination indicated a 15 degrees out of 20 degrees, would it be fair to say that that is an improvement in the range of motion?

A. Yes, two degree improvement.

Q. Okay.

And if I were to tell you that in 2009, that there was an examination of the plaintiff and she did not exhibit any

antalgic gait or any limping, how would you find that in your examination -- would you find that that was significant in your examination of the plaintiff, that in 2009, she wasn't limping, and then in 2012, she was limping when she was examined by you?

A. Was it significant in my examination? No, because my examination is independent of what I saw.

Q. But is it fair to say that someone having an antalgic gait could be subjective in nature?

A. Well, usually, it's not subjective in nature. Usually, it's the way they move. There could be days when there's more pain than other days. I'm not sure who or why the patient wasn't limping, but if there was no limping back then, she did have when I saw her in May 2012.

Q. So you really don't know what happened during the period of time from 2009 up until the time of 2012 when you saw her in May of this year, correct?

A. Other than the records that I have.

Q. Okay.

Do you know anything about the plaintiff's activities as far as obtaining a Master's degree in dance education?

A. I do have down that she is currently a dance teacher. I didn't know that she had a Master's, though.

Q. So it's fair to say that someone who has a Master's in dance education, they would have to exhibit some sort of mastery of those --

MR. FRANKEL: Objection.

Q. -- movements; is --

THE COURT: Sustained. Calls for speculation.

Q. You don't know what the curriculum of a dance education at NYU entails, correct?

A. Correct.

Q. But based upon your findings of the limitations of this patient, would you opine, or have you formulated an opinion as to whether or not a person with these types of limitations would be able to complete a Master's in dance education?

MR. FRANKEL: Objection.

THE COURT: Sustained.

Q. Did you formulate any opinion as to whether or not the plaintiff could continue her education?

MR. FRANKEL: Objection.

THE COURT: Sustained.

Q. Now, you also found that her -- the patient's reflexes were equal in your examination, correct?

A. Yes.

Q. Now, reflexes are not a subjective test; it's something that we do involuntarily; is that fair to say?

A. Unless they're guarded, correct.

Q. But you didn't find that there were any guarded reflexes in your examination of the plaintiff in this case?

A. Correct.

Q. So based upon your examination, they were normal?

A. Right.

Q. And you also indicated that based upon your examination and your review of the MRI films, that there was an L3-4 disc herniation, correct?

A. Correct.

Q. And you also indicated that a disc herniation can occur in normal wear and tear as we age, correct?

A. Yes, it can.

Q. And did you find that there was any desiccation from the herniation that you saw in the L3-L4?

A. Desiccation is a term that basically talks about the change in color, so there was a change in the color of the disc. We saw that that disc looked different, and desiccation can occur from either one of two things: Number 1, from degeneration, right, but once again, it occurs at all levels; and, secondly, when a disc material pops out, it causes a change in color, and a lot of the times people call that desiccation also because the color looks different than the other discs.

Q. What did you call it?

A. I called it a disc herniation. Desiccation would be misleading because you know by using the word "desiccation" what's causing the pain. The pain is from the herniation. The treatment would for the herniation, not for desiccation.

Q. But you don't know whether that herniation came about

through normal wear and tear or through a traumatic event?

A. I believe it was a traumatic event.

Q. And you also indicated that based upon our anatomy -- and we are all different -- sometimes our body or our spine can be affected differently than with other people; is that fair to say?

A. It can, yes.

Q. So you don't know exactly what activities the plaintiff had performed or had undergone from the time that she had the MRI that you reviewed until the time that you examined her back in two thousand -- this year?

MR. FRANKEL: Objection.

THE COURT: Sustained. Come over here one second, please.

(Whereupon, there is a discussion held off the record, at the sidebar, among the Court and counsel.)

THE COURT: Let's continue.

Q. Doctor, based upon your examination of the plaintiff, did you refer her to another radiologist?

A. Another radiologist?

Q. Right, for another MRI of her spine.

MR. FRANKEL: Objection.

THE COURT: Sustained. The doctor is not a radiologist. You said "another radiologist."

MS. MOORE: Oh, I'm sorry.

Q. Did you refer her to a radiologist when you examined her?

A. No, I did not.

Q. Okay.

And is it fair to say that a person can have a herniated disc and not have any symptoms at all?

A. It's possible.

Q. Now, regarding the left knee tear, you didn't review any films to come to this diagnosis, correct?

A. No.

Q. And you also indicated it could be a sprain or a strain, correct?

A. No.

Q. No?

A. (Nonverbal response.)

Q. Now, you also indicated there was left ankle ligament -- there was a left ankle ligament tear, correct?

A. Yes.

Q. But you also didn't review any film to formulate that opinion?

A. Not by looking at a film, no.

Q. And you also, based upon your examination, you didn't find that there was any instability, correct?

A. Correct.

Q. And what was the significance of not finding any

instability?

A. The fact that the operation was done in such a manner where they operated so that there was no loose motion, that the joint -- that the bones were in connection, that there was no loss of -- I don't know how to explain it -- there's no instability. There's no -- one bone did not move in relation to another bone.

Q. And what test did you perform in order to come to that diagnosis?

A. It's called an anterior drawer sign.

Q. And so the anterior drawer sign on this patient was negative?

A. Right.

Q. Normal?

A. Correct.

Q. Would that be significant in finding that the surgery was successful?

A. That would be one of several things you would look at so that one particular finding would be a sign of something being a successful procedure, that that particular sign was a success.

Q. And another thing is that you indicated that you recommended the plaintiff for a pain management specialist, correct?

A. Correct.

Q. But you don't know whether the plaintiff went to see any pain management specialist or follow up on your recommendation, correct?

A. I don't know if she went to see a pain specialist, correct.

Q. Okay.

And you also didn't recommend that the plaintiff go for any physical therapy treatment other than the home exercises that you recommended at your examination, correct?

A. Correct.

Q. And although you indicated that based upon your examination, there was some nerve damage, correct?

A. Correct.

Q. And how did you determine that there was nerve damage?

THE COURT: Doctor, your voice is beginning to drop.

THE WITNESS: Sorry.

A. Several different ways.

Q. What tests did you perform in order to determine that there was nerve damage?

A. Physical exam.

Q. And what examinations -- what tests did you perform in your physical examination to indicate that there was nerve damage?

A. Straight leg raise, the diminished range of motion, the

diminished muscle strength of the left lower extremity, and the tenderness and the spasming of the lumbar spine.

Q. So although you found these indications of nerve damage, you also indicated that her sensations were intact, correct?

A. Correct, touch.

Q. What tests did you perform to indicate that her sensations were intact or to find out --

MS. MOORE: Sorry, withdrawn.

Q. What tests did you perform that would indicate to you that her -- that the patient's sensations were intact?

A. Very simply, you touch one side of her leg, and you touch the other leg, and you ask if there's a difference in sensation, and she said no, it feels the same.

Q. So although there was a sign of this nerve damage, her sensation was fine, normal?

A. Correct.

Q. And you also indicated that her -- the healing of plaintiff had reached maximum medical improvement?

A. Correct.

Q. And you also didn't recommend that she go for any further surgery based upon your examination, correct?

A. Well, I recommended her to surgeons because they determine what surgery is needed. So I never determine --

Q. You yourself, I am just talking about you yourself,

your own recommendation --

A. I am not a surgeon, so I never recommend surgery.

Q. Now, before the plaintiff came to see you back on May 14th, you had never seen this patient before, correct?

A. Correct.

Q. And this patient was recommended to you, correct?

A. Correct.

Q. And the plaintiff was recommended to you by someone, correct?

A. Right.

Q. And that was her attorney, right?

A. Correct.

Q. And the reason why she came to see you was anticipating -- in anticipation for your testimony here based upon your examination of her, correct?

A. Well, it was for treatment. I didn't know I had to testify until last week. She is a patient of mine.

Q. But you didn't actually treat her other than performing the examination, correct?

A. And make recommendations, correct.

Q. And you haven't seen her since the May date?

A. Well, I saw her -- I'm seeing her today.

Q. I'm talking about as far as an examination, you haven't --

A. Right.

Q. -- examined her since that day, and you didn't see her before her lawyer sent her to you?

A. Correct.

Q. Now, you also prepared a report in this case, in this -- in relation to your examination, correct?

A. I made a report. I have a report that I made, yes.

Q. And you testified that you are receiving a $4,000 fee for your testimony here today?

A. For my time away from the office, yes.

Q. And you also received a fee for your report that you prepared back in May of this year, correct?

A. I billed her for it. I guess I got paid for it. I don't know if I got paid or not, but she was billed for it.

Q. Okay.

But my question is in addition to the $4,000 for coming here to testify, you also --

A. Right.

Q. -- or have billed, maybe haven't received --

A. The medical treatments were billed separately. Me coming here to testify, time away from my office is separate.

Q. How much did you charge for your report?

A. To evaluate her, it's about $200, $250 for an evaluation.

Q. And you also testified that most of your patients that you see, 75 percent of those patients have injuries to the back

and the knee, correct?

A. If not more.

Q. I'm sorry?

A. If not more.

Q. So the 75 percent, it would be more than 75 percent of your patients have back and knee injuries?

A. At least 75 percent of my patients have either back and/or knee injuries.

Q. And the patients that you see are referred to you by attorneys, correct?

A. Some of them.

Q. What percentage would you say are referred to you by attorneys? Would you say it's 50 percent, would you say it's 60 percent, 75 percent are referred by attorneys to you?

A. I'm not really sure. I don't keep track. We take Blue Cross, Oxford, United. We take so many insurance carriers, so I don't know how many percentage come to me from -- it doesn't matter where they come from. When a patient comes in, I treat the patient individually based on what we see. I don't really keep track of where or who they come from. Each patient is an individual, and each patient has his or her own injury to treat, so I'm not sure what percentage comes from where.

MS. MOORE: Your Honor, move to strike that whole thing as unresponsive.

THE COURT: Your application is denied, counsel.

You opened the door.

Q. But my point is most of the patients that come to see you are being referred by their attorneys?

MR. FRANKEL: Objection.

THE COURT: Sustained. Let's move on, please.

Q. Now, during your range of motion examination, you came to -- you utilized a goniometer to establish the range of motion, correct?

A. Correct.

Q. And with a lumbar flexion movement, which is bending down; is that fair to say?

A. Correct, bending forward.

Q. Bending forward. You found that Ms. Grace exhibited 60 degrees out of a normal 90 degrees?

A. Right.

Q. So that would be a 30 degree limitation, correct?

A. Thirty-three percent.

Q. Well, 60 from 90 is 30.

A. Thirty degrees, right.

Q. Right, 30 degrees, right.

And regarding the lumbar, you found that --

THE COURT: I have to have a clarification for the record. You are saying a 30 degree loss is --

THE WITNESS: Equivalent --

THE COURT: -- to a 33 percent loss?

THE WITNESS: Right.

THE COURT: Thank you.

Q. And lumbar extension was 20 degrees that Ms. Grace exhibited out of a normal 30 degrees, right?

A. Yes.

Q. So that's a ten degree loss in her extension movement, correct?

A. Correct.

Q. And the left lateral bending was 20 degrees out of a normal 25 degrees, correct?

A. Correct.

Q. So that's a five degree limitation in the left lateral bending, meaning bending to the left side; is that correct?

A. Correct.

Q. And right lateral bending was also 20 degrees out of the normal 25 degrees, so that would be also a five degree limitation, correct?

A. Right, in terms of degrees.

Q. Would it be fair to say that these limitations could occur in normal people without any traumatic injury or without any traumatic event occurring to them?

A. Not in this age group and not in these percentages.

Q. But you also don't know what Ms. Grace's activities were before --

MR. FRANKEL: Objection.

THE COURT: Sustained.

Q. Now, you also examined the left rotation, which was 35 degrees out of a normal 45 degrees, correct?

A. Right.

Q. So that's also a ten degree limitation, correct?

A. Correct.

Q. And the lumbar right rotation was -- Ms. Grace exhibited a 40 degree examination out of a normal 45 degrees?

A. Correct.

Q. So that would be a five degree limitation, correct?

A. Correct.

Q. So based upon what you testified that anyone with a, I believe you said it was a 20 percent --

A. Right, percent is different than degrees.

Q. Right, but in terms of degrees, five to ten degree limitation, in your opinion, to a reasonable degree of medical certainty, yes or no, that would be significant in your mind?

A. That will be significant.

Q. Five degree and ten degree limitation in the lumbar spine?

A. For example, if normal ankle dorsiflexion is 20 and you find ten, there's only a ten degree loss, but that's a 50 percent loss. So I don't go by degree loss; I go by percentage loss.

So when you look at all these numbers, the five, ten

degrees that you're talking about, the 30 degrees you are talking about corresponded up to 33 percent loss of range of motion in the low back.

Q. But we are just talking about in terms of degrees as far as what was the difference between the examination that Ms. Grace exhibited -- or the degree of limitation that Ms. Grace exhibited versus a normal examination, and those degrees were between five to 30 degrees, correct?

A. Correct.

Q. Okay, thank you.

Now, also, we mentioned already about the left ankle dorsiflexion. She exhibited a 15 degree finding out of a normal 20 degree finding, so that was a five degree limitation?

A. Twenty-five percent loss, five degree loss, correct.

Q. Well, just in terms of degrees, we are talking about --

A. We usually don't do degrees.

Q. Well, you examined her in terms of degrees, correct, with a goniometer?

A. Yeah, but the purpose of finding percentage loss is what we would look at, percentage loss.

Q. But we are just talking about in terms of degrees here. You found that there was a 15 degree finding, and the normal degree finding would be a 20 degree finding, correct?

A. Correct.

Q. So that would be a difference of five degrees?

A. Correct.

Q. And the other thing that you examined was the left ankle plantarflexion, which is movement where the foot goes down; is that fair to say?

A. Correct.

Q. And in that examination, you found that there was a 30 degree finding out of a normal 40 degree finding?

A. Correct.

Q. So that was a ten degree difference, correct?

A. Correct.

Q. And the left ankle eversion, which, correct me if I'm wrong, Doctor, which would be the ankle -- or the foot moving more toward an outwardly direction --

A. Correct.

Q. -- as opposed to inward?

A. Correct.

Q. That was a normal finding, right?

A. Correct.

Q. It was a 20 degree finding out of a normal 20 degree finding?

A. Correct.

Q. So nothing wrong with the finding as far as moving the ankle toward an outwardly direction, correct?

A. Correct.

Q. Now, regarding the inversion, you found a 20 degree

finding out of a normal 30 degree finding, correct?

A. Correct.

Q. And that's a difference of ten degrees?

A. Correct.

Q. And the inversion would be moving the ankle toward the inner -- toward the inside as opposed to the outside; is that fair to say?

A. Correct.

Q. And you found that these were significant?

A. Correct.

Q. Now --

THE COURT: Counsel, step up.

(Whereupon, there is a discussion held off the record, at the sidebar, among the Court and counsel.)

Q. And, Doctor, when you saw Ms. Grace back in May, you didn't recommend any pain medication for her or anything such as that, any pain medication, correct?

A. I did make recommendations.

Q. Did you prescribe any pain -- did you prescribe any pain medication for her?

A. No. I told her to take Aleve and to see a pain specialist about epidural injections.

Q. Okay, but we are specifically talking about did you write a prescription or tell her to take any pain medications to help alleviate what it is that she was experiencing when you

examined her.

A. Aleve.

Q. Did you write a prescription for Aleve?

A. It's over the counter.

Q. Now, also, you didn't prescribe her with any medical equipment such as crutches or a cane or a back brace or an ankle brace or a knee brace; you didn't prescribe any durable medical equipment to her?

A. Correct. I usually don't do that.

THE COURT: Doctor, your voice is dropping.

Q. And so your recommendation was that she follow up with these other doctors and continue with what she had been doing, which was the home exercises, correct?

A. Correct.

MS. MOORE: Okay. Nothing further.

THE COURT: Thank you. Any redirect?

MR. FRANKEL: Just a few, Judge.

REDIRECT EXAMINATION BY

MR. FRANKEL:

Q. Doctor, remember you were asked before by counsel regarding whether Ms. Grace's ankle was -- withdrawn -- whether the surgery on Mrs. Grace's ankle was a success?

A. Correct.

Q. Do you remember that?

A. Yes.

Q. Does success mean returning the person to 100 percent to where they were prior to the surgery?

A. Yes.

Q. Was she 100 percent as where she was before?

A. No.

Q. So it's not a success?

A. It was not a success.

MS. MOORE: Objection, your Honor.

THE COURT: I will allow it.

Q. Would you say that the surgery had some improvement?

A. Well, I don't know if there was any instability before, but once again, I found that there was no instability which shows some success.

We found swelling, which shows that there is not a success because it's still swollen four years after. We found diminished range of motion, which is not a success. We found diminished strength, which is not a success. So you have to look at everything, not just one particular portion of the exam.

Q. Now, I think you were asked by counsel that you found the sensations intact, but you also found nerve damage?

A. Correct.

Q. What is the difference? Can you explain to the jury what the difference is?

A. Sure.

You can have nerve damage and have sensation intact.

Like I said, nerve damage can cause diminished strength along with pain, so you can have a person feeling the skin, but still have nerve damage manifest by spasming, a straight leg raise, and weakness in that leg. And that's what we have.

Q. So the fact that the sensation is intact is not inconsistent with the fact that you found nerve damage?

A. Correct.

MS. MOORE: Objection to form.

THE COURT: I'm sorry?

MS. MOORE: Objection to the form of the question, your Honor.

THE COURT: Rephrase.

Q. Please explain the consistency of finding nerve damage as you found with your finding of sensation intact.

A. Again, anytime you have an injury to a body, there's many things that you look at. Some may be normal, some may be abnormal.

When you have nerve damage, you can have sensation which is normal or abnormal, you can have strength which is normal or abnormal, reflexes which are normal or abnormal, straight leg which is normal or abnormal.

With her, the nerves were pinched and damaged in such a manner where they affected the tenderness, the spasming, the straight leg raise, and motor system, strength, but the nerves were not injured in such a way where it affected the sensation.

That's what you have.

Q. Now, you were asked about maximum medical improvement, remember?

A. Correct.

Q. What does that mean?

A. That means maximum medical improvement from conservative management is what I said. In other words, conservative management, just therapy alone is not going to cure her.

So I said at this point, therapy alone is not going to cure her, she has to see the surgeons.

Q. You were asked also by counsel that you had only seen Ms. Grace one time, correct?

A. Correct.

Q. Did you have a follow-up visit?

A. Today was the follow-up visit. She was on the schedule, so it had to get cancelled because she's here today.

Q. Does that need to be rescheduled?

A. She is going to be seen by me again.

Q. You are not going to examine her in the courtroom?

A. Not today, I can't examine her, but at some point over the next few weeks.

Q. By the way, you were asked about billing for a report. Did you bill for a report or did you charge for your treatment and evaluation of the patient?

A. Correct, for the treatment and evaluation for a patient. It's not for a report.

Q. It wasn't for a report?

A. No.

MS. MOORE: Objection, your Honor, to the form, and it's asked and answered.

THE COURT: Sustained.

Q. What did you charge the $200 or $250 for?

A. Anytime I charge anything, it's for evaluation and treatment of an individual. You don't charge for the report.

Q. You were asked about getting cases from attorneys. Where else do you get patients from; can you tell the jury?

A. Patients come to me -- I mean, a lot of times, patients have brothers, sisters, family members get referred to me. I have orthopedic surgeons that do operations on patients that come to me for postoperative therapy, spinal surgeons that do surgery on the neck and back. Patients come to me who need treatment from the community, people that live around me from spine surgeons, orthopedic surgeons, neurologists, family members, primary-care doctors, dentists, attorneys, next-door neighbors. The guy that has a deli next door, he comes to me. It goes on and on. I can't think of every situation.

THE COURT: We need to wrap up, counsel, please.

Q. Why look at percentage loss rather than, as counsel kept going through, certain degree loss?

A. Because percentage gives you an accurate value of the loss, so if you have someone whose normal should be 20 and you have ten, that's a 50 percent loss of that body part. You can say, oh, it's ten degrees, but you don't look at the fact that it's ten degrees, because that body part's normal is 20.

Same thing for the plantarflexion, if it's 40 degrees, you get 30. That's a 25 percent loss of that body part. You look at the percentage loss, not just the degrees.

MR. FRANKEL: Thank you, Doctor.

MS. MOORE: Nothing further, your Honor.

THE COURT: Doctor, you may step down. Be well.

(Whereupon, the witness exits the stand.)

Okay, jurors, we will see you tomorrow. Same routine. We need you here on time, please, so we can start at ten. And don't discuss the case with anybody, nobody at all, no matter how much you love them, nobody.

See you tomorrow. Get sleep. Come in bright and bushy-tailed.

(Whereupon, the matter was adjourned to July 31, 2012, and the transcript continues on the following page.)

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