appearances remain the same. Is the witness here?

MR. KAUFFMAN: Yes. Yes, your Honor. Shall I have him take the stand?

THE COURT: No. We got to make it like TV. He has to come up while they're watching.

MR. KAUFFMAN: I definitely caught the commercial. Thanks.

(Laughter.)

COURT OFFICER: All rise. Jury, come on in.

(Whereupon, the jury entered the courtroom.)

COURT OFFICER: Okay. Jurors. Take your seats. Be seated, please. Part 9 is back in session.

THE COURT: All right. You may call your next witness.

MR. KAUFFMAN: Plaintiff calls Dr. Laith Jazrawi.

(The witness entered the courtroom.)

COURT OFFICER: Okay. Raise your right hand.

L A I T H J A Z W A R I, M.D.

called as a witness and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

COURT OFFICER: Okay. Be seated. State your name and business address and your occupation for the record.

THE WITNESS: Laith M. Jazrawi, 333 East 38th Street. Orthopedic Surgeon.

THE COURT: Is that in Manhattan?

THE WITNESS: Yes. Sorry. New York, New York.

THE COURT: How do you spell your name?

THE WITNESS: Laith, L-a-i-t-h. And the Last name is, J-a-z-r-a-w-i.

THE COURT: Okay. You may inquire.

MR. KAUFFMAN: Thank you.

COURT OFFICER: Would you like some water?

THE WITNESS: Please.

DIRECT EXAMINATION

BY MR. KAUFFMAN:

Q Good afternoon, Dr. Jazrawi.

A Good afternoon.

Q It's 2:30 now, we've got -- I have got to ask you questions and defense counsel got to ask you questions, so that you are done this afternoon; so we're going to cut right to it, okay?

A Okay.

Q Are you a physician licensed to practice medicine in the State of New York?

A Yes.

Q Okay. What is your medical specialty?

A Orthopedic surgery with the added qualification of sports medicine.

Q And, generally speaking, what is orthopedics and

orthopedic surgery?

A Orthopedic surgery involves the care of musculoskeletal injuries in patients and it ranges both from non-operative care --

COURT OFFICER: Hold on a second, Doctor.

Everybody's phone is off now?

A It ranges from both non-operative care to operative care.

Q Okay. And before we get to the anatomy of the shoulder, the x-rays and the MRI's, your examination and your findings, tell us about your educational history, your background, residency, internships and what those are all about?

A Sure. I graduated locally here. I went to high school in Brooklyn at Poly Prep and went to Pennsylvania for college, and I came back medical school, graduated in 1995 at Mount Sinai Medical School, did my internship at NYU, which was in orthopedic surgery internship combined with an extra year of research and then I went down to --

THE COURT: Okay. You got to slow down.

THE WITNESS: Oh, I'm sorry.

THE COURT: The court reporter is typing all of this down as you speak. Breathe. Sorry. Okay. Continue.

A Okay. And then I went to -- I'm kidding. Then I went to complete my fellowship, which is an extra year in sports medicine training, down with this guy Jim Andrews in Alabama.

Q Who is Jim Andrews?

A He is a world renown sports medicine surgeon. And then since then I have been at NYU, where I'm currently the chief of sports medicine, and that's pretty much it.

Q Okay. And your practice of orthopedics and orthopedic surgery, do you particularly specialize in one body part?

A Three body parts: Shoulder, elbow and knee.

Q And are you what's known as board certified in orthopedic surgery?

A Yes.

Q And would you tell the jury what, generally speaking, board certification is and when you became a board certified orthopedic surgeon?

A Board certification involves a two-step process which part one involves a test, written test examination, which you need to pass. You then go and practice for three years and they collect all your cases, and they usually pick the cases that are more challenging and complicated and you're supposed to get up in front of a panel of your peers and present your cases, and they question you and they quiz you and they make sure that you're practicing ethically, and then that happened in 2004 I received my board certification.

Q Did you ever have to become recertified as normal in the normal course of practicing medicine?

A Right. Every 10 years we're required to undergo

recertification process. That process entails presenting all your cases again as well as continuing CME material, meaning documentation showing that you're keeping up with your education, and I just took that -- it's a written examination which I just took and completed. I have yet to hear the results of that.

Q Do you expect any problems?

A It was easy, actually.

Q Have you held any teaching positions in your specialty of orthopedics?

A I'm an associate professor at NYU School of Medicine.

Q And very briefly, are you a member of any medical societies or associations in orthopedics or otherwise?

A Yes, multiple societies. These include the American Academy of Orthopedic Surgeons, the Arthroscopy Association of North America, the American Orthopedic Society for Sports Medicine. I think that's it.

Q Okay. And because we're dealing with the shoulder and the arm in this case, have you published any articles or scholarly journals or given any presentations with regard to shoulder and orthopedic injuries?

A Yes. It's detailed in my CV there are multiple book chapters relating to shoulder injuries: Adhesive capsulitis and rotator cuff injuries around the shoulder.

Q Okay. We'll talk about adhesive capsulitis --

COURT REPORTER: I'm sorry.

Q Okay. We'll talk about adhesive capsulitis and rotator cuff tears and things like that in a little bit. In order, though, to publish an article, must it be reviewed or can I submit an article or somebody else submit an article and it just automatically gets published?

A The publication process requires a peer review where you basically submit your papers for publication. It gets reviewed by your peers and usually get sent back with either rejection notice or an acceptance with major revisions or minor revisions.

Q Now, I want to now talk about your involvement in this case. To be clear, are you a treating doctor of Mary Lou Knoch?

A No.

Q However, did there come a time that you at my office's request did review medical records and films regarding Mary Lou Knoch?

A Yes.

Q Specifically, did you review the ambulance call report and the Long Island College Hospital records?

A Yes.

Q Did you also review the medical records of the treating orthopedist, a Dr. Tabershaw of Suffolk Orthopedics?

A Yes.

Q Did you also review an MRI film and the corresponding

radiological report that was done on Mrs. Knoch's left shoulder on June the 5th, 2007?

A Yes.

Q Did you also review certain physical therapy records from South Shore Physical Therapy?

A Yes.

Q Did you also review the report that was done and completed, by the way, by Dr. Alan Zimmerman, the Defendant's orthopedist who examined Mrs. Knoch back in November of 2008?

A Yes.

Q Okay. And in forming the opinion, the expert opinion, that you'll be giving today, did you base your opinions upon these medical records, which are generally accepted in orthopedics as reliable as a basis for forming your opinions?

A In addition to those records my own examination of her as well.

Q Okay. And you did physically examine Mrs. Knoch; when was that?

A 7/24/2012.

Q And turning to your report, I think that's the date of the report, but if you can take a look underneath that?

A Oh, I'm sorry. 6/27/2012.

Q After reviewing all these records and after conducting physical examination of your own, did I ask you if you'd be willing to come in and testify in court on behalf of Mrs. Knoch?

A Yes.

Q And did you also secure certain information that was provided to you by Mrs. Knoch at the time of your June 2012 examination, about five, six months ago?

A Yes.

Q Now, whenever you come to court to review medical records or perform a physical examination or come to court to testify of your time, are you compensated for your time?

A Yes.

Q Are you being compensated today?

A Yes.

Q And would you tell the jury how much?

A $10,000.

Q And how is that determined?

Let me rephrase it. If you weren't here in court for your time, what would you be doing?

A Generally, we see patients; today is a patient day where we would see patients throughout the day to six, seven o'clock at night. Generally ranges from anywhere from 50 to 70 patients that come in, and during that time surgeries are scheduled, so we schedule during that time anywhere from five to twelve surgeries.

Q Now, have you ever testified in court before today?

A Yes.

Q And have you ever been hired as an expert witness, in

other words, not a treating doctor, but someone to simply review the records and perform a physical examination, offer an opinion like you are today?

A Yes.

Q On how many other occasions?

A One.

Q Have you ever come into court on behalf of your patients who sustained injury to testify on his or her behalf?

A Yes.

Q How many times was that?

A Twice.

Q And this is over how long a period of time during your career?

A Since I have been in practice, which has been since 2001.

Q And before today, have you ever testified for my office in any way?

A No.

Q I now want to talk about the anatomy of the shoulder, and I have a diagram that you and I had reviewed earlier.

MR. KAUFFMAN: May we have this simply marked for identification?

THE COURT: Sure.

MR. KAUFFMAN: That was a 2009 file not involving Dr. Jazrawi.

THE COURT: 21 for ID, anatomical charts, called muscles of rotator cuff.

COURT OFFICER: Cover up this old sticker?

MR. KAUFFMAN: Yes. Thank you.

THE COURT: Fine.

COURT OFFICER: You want it on the tripod?

MR. KAUFFMAN: I think so.

THE COURT: Well, okay. So, this is demonstrative?

MR. KAUFFMAN: Strictly demonstrative, your Honor.

THE COURT: Okay. Any objection?

MR. GREY: If he didn't lay the foundation, I'm sure he'll ask him if it would help the jury; he'll say, yes. I'll save him the time. No objection, your Honor.

THE COURT: Okay.

MR. KAUFFMAN: Okay. May I ask Dr. Jazrawi to step down with the Court's permission?

THE COURT: Can he stay there?

MR. KAUFFMAN: Of course.

Q Dr. Jazrawi, do -- if you could explain to the jury --

THE COURT: Is there a glare?

THE JURY: No.

THE COURT: You're all good with the glare? All right. I'm sorry, Mr. Grey, you need to move around.

So, this is an anatomical chart. This is not prepared specifically for this Plaintiff, right?

THE WITNESS: No.

THE COURT: Okay. So, this is just a generic -- I'm sorry. I'm not sure what the right terminology is.

THE WITNESS: It's a classic picture because it's by Frank Netter who is considered -- he was one of the first pioneers in drawing anatomical figures for medicine.

THE COURT: All right. Okay. As long as it wasn't prepared specifically for the Plaintiff's case.

MR. KAUFFMAN: It was not.

THE COURT: Fine.

Q And can you tell us what we see here with regard to the shoulder itself in terms of the -- first of all, what is the superior view?

A The top picture is basically a patient lying on his back, and what Dr. Netter is trying to accomplish here, showing you a view looking from the top of the shoulder down. So, superior meaning in this case what he is showing that you're looking superiorly down.

So, you're literally looking if you were standing on top of the patient, looking straight down on his shoulder.

Q And whatever is best for you, either using it yourself demonstratively on your shoulder or pointing to this, whatever works better for the jury, can you tell us about the bones, the tendons, the ligaments, things of that nature, when we're dealing with the shoulder, including the humerus, by the way?

A Sure. I think the top views are very challenging view. I think the bottom views are a little easier. This is --

MR. KAUFFMAN: Can everybody see?

THE JURY: Yes.

THE COURT: So, sometimes witnesses can do this, like the retired doctors and they do this all the time, they get like this little red laser pointer things and then they don't have to get up, but you don't have anything --

THE WITNESS: I don't do this much.

THE COURT: I don't want to torture you.

THE WITNESS: I don't mind getting up. I teach a lot

THE COURT: No, the court reporter is tired of moving so everybody can hop up and sit down, not you.

THE WITNESS: Shall I move it closer to --

THE COURT: Why don't you just let him -- give it to him.

A So, the shoulder is a wonderful joint, and if you look at these two views, what you're looking at is from a directly, you know, from -- if I'm standing here and the patient is standing here, so, this is the humerus.

This is your bone, right here, and the only way that it can move is the muscles that are connected, basically, to your scapula bone, which is that bone along the back, and it starts as muscles, goes into tendon and attaches to the humerus, which

is basically a ball and socket joint.

And in order for your arm to lift up, these muscles which connect to the bone here via tendons, are required to fire, and they allow you to lift your arm up. If this is torn completely or it's broken, it will cause difficulty in raising your arm.

Q What is the rotator cuff?

A The rotator cuff is basically the confluence of these muscles.

Q Confluence is where they all come together?

A Right, where they all come -- there are four of them and they attach at different points along the bone, and they each have a different function, whether it's raising it straightforward, bringing your arm to the side. And you can actually specifically determine which ones are torn based on limitations in motion.

Q Okay. Now, before we get to Ms. Knoch's case, are you familiar with the term "adhesive capsulitis"?

A Yes.

Q What does it mean?

A Adhesive capsulitis is a condition where underneath this rotator cuff there is a thin flimsy tissue that sort of keeps the shoulder in place. It's not necessarily -- it's not a muscle or a tendon. It's what we call a capsule, and without it the shoulder would just fall out of place regardless of the

muscles that are there.

And in the condition of adhesive capsulitis it's not necessarily the rotator cuff that's damaged, it's this tissue that gets inflamed that actually contracts. So, normally it's like a sort of a sac covering the ball and socket, and it needs to be sort of loose to allow you to move.

In the condition of adhesive capsulitis it scars down and it basically doesn't allow you to move your shoulder, and it get -- basically sticks the ball and socket joint together.

Q Adhesive capsulitis is the same thing as frozen shoulder, it's also known as?

A Yes.

Q And what is the cause of adhesive capsulitis, generally speaking, or are there multiple causes?

A Right. There are multiple causes. The most common is we don't knew why people get it, that's number one. Number two, are alcoholics, and Number three -- well, Number two are diabetics, that's the second most common. And Number three are alcoholics, and then there are variety of other causes ranging from trauma, where people fall down and hurt their shoulder to other more rarer causes that it's unnecessary to get into here.

Q And in this particular case, after reviewing all the records and conducting your physical examination, do you have an opinion as to whether Mary Lou Knoch, as a result of this accident, had adhesive capsulitis?

A Yes.

Q What is that opinion?

A She did.

Q And what is the basis for your statement?

A The basis of the statement is the diagnosis of adhesive capsulitis is a clinical diagnosis. There are few MRI findings for it. It's mostly based on the restriction of motion with the arm at the side.

Patients with extreme restriction in motion, particularly at the side, with the arm in the neutral position, if they can extend beyond the neutral position, that's considered adhesive capsulitis.

Q Now, I want to skip over to Mrs. Knoch's accident, and I'm going to ask you to assume certain things --

THE COURT: Okay. I got to stop you. Can you, please, define neutral position because I think that the jury is going to thank you for speaking --

THE WITNESS: Sure. The neutral position is with the arm just at the side like when you are sitting. So, the inability to rotate it out from the side.

Q Is that called the external rotation?

A Correct.

Q And we'll talk about the different movements of the shoulder itself in terms of internal rotation and things like that later on when we get to your physical exam of Ms. Knoch.

Right now I'd like you to assume that there's been testimony that Ms. Knoch was involved in an accident on May 2nd of 2007. She fell with her arms outstretched, sustaining an injury to her left shoulder and also the left humerus. She was taken to Long Island College Hospital.

I'd like you to further assume that physical examination revealed swelling and deformity of the left arm. She was given pain medications and x-rays revealed the fracture of what's known as the greater tuberosity of the left humerus; what is that?

A The greater tuberosity of the humerus is a bone where the rotator cuff inserts. Can I use the model, the picture again? It will be easier to show.

MR. KAUFFMAN: Sure.

A Here is the humerus, and as it goes up and ends here, this piece of bone is called the greater tuberosity. The reason why it's given a term it's because it's where one specific muscle unit attaches, and it's a very common fracture that we see in patients who fall down.

Q I'd like you to further assume, Doctor, that the x-ray showed displacement of the fracture; what does that mean?

A If there's any shift in position of the fracture-line on an x-ray, the radiologist who was ever reading it, if it's not in -- if it's not in perfect position will call it displaced. So, that means that it's moved a little from its

normal position.

Q Okay. Now, and, generally speaking, what is the prognosis for that type of a fracture, again, a fracture of the humerus or the greater tuberosity of the humerus with displacement?

A Well, depending on the degree of displacement. If it's significantly displaced it requires surgery. If it s minimally displaced the outcomes are actually very good, assuming no other complications occur, and patients could do quite well with minimal displacement of these fractures.

Q And to be clear, we're talking about the humerus at this point, not the shoulder; am I right?

A They are interchangeable. I consider the greater tuberosity part of the proximal humerus.

Q Okay. Now, I want to talk about Mrs. Knoch's treatment in 2007. I'd like you to assume based on your review of the records. Withdrawn.

I'd like you to assume that Mrs. Knoch came under the care of Dr. Tabershaw out in Suffolk County of Suffolk Orthopedics, and she treated there in 2007, 2008, 2009, and that when she first treated, her complaints again, left -- severe left shoulder pain, swelling, limited range of motion, et cetera. Generally speaking, what is the treatment plan for both the humerus, that's the fracture as well as the shoulder?

A A minimally displaced greater tuberosity fracture is

placed in a sling for approximately two to three weeks, and then with a gradual physical therapy program with the attempt of regaining motion.

The initial two to three weeks in a sling allow the fracture to sort of begin to heal so that when you do start doing motion exercises, that the fracture won't move out of position. And you gradually build up, followup x-rays are obtained to make sure that the fracture doesn't displace, and as long as things are progressing nicely you can then increase the physical therapy and be more aggressive in trying to regain motion.

Q I think you have answered it, but what is the purpose of physical therapy?

A It's to regain motion and optimize the patient's outcome.

Q And with regard to the shoulder injury, what, if any, is the significance of ordering an MRI?

A Usually an MRI is obtained to see if there's any further damage other than the greater tuberosity or the bone. X-rays are great for bone, but you don't see the soft tissue, particularly the tendons and the rotator cuff.

So, in this case usually if patients -- it's very rare to have complete damage to both the bone and the tendon, but if patients are not improving or getting better with this fracture pattern where they usually get better, we then obtain an MRI to

see what is going on.

Q Now, in this particular case, I'd like you to assume that the accident happened while Mrs. Knoch was working and things were covered by Worker's Compensation. Are there any particular concerns or considerations for a patient who is covered by Worker's Compensation for an orthopedic injury and treating with an orthopedist?

A The issue always with Worker's Compensation cases, my office staff always cringes when --

MR. GREY: I'm going to object, your Honor. He doesn't seen the Worker's Compensation records, and any testimony on generally what Worker's Compensation do doesn't apply to this case --

THE COURT: Why are you making a speech?

MR. GREY: -- and, therefore, would be irrelevant.

THE COURT: Why are you making a speech?

MR. GREY: Objection, your Honor.

THE COURT: Sustained.

Q In this particular case, on your review of the records, did you note whether it was a Worker's Compensation case?

A Yes.

Q And what is the significance of that in this case?

MR. GREY: Same objection.

THE COURT: Overruled.

Q You can answer.

A The significance in this case is after reviewing it it's unclear to me why with a patient not improving, with a diagnosis of adhesive capsulitis made, why surgery wasn't approved at that time, based on the records that I reviewed.

Q Upon your review of the records, was there an indication for surgery?

MR. GREY: Again, your Honor, we're talking about records that aren't in evidence. It's hearsay.

THE COURT: Overruled.

Q You can answer.

A The records that I reviewed showed that there was request for surgery because the patient was not improving, and based on the review of records at the time, that she had a diagnosis of adhesive capsulitis, and secondary to her fracture that she sustained.

Q And so we're dealing with a humerus surgery or a rotator cuff and adhesive capsulitis surgery?

A It's a rotator cuff and adhesive capsulitis surgery. The fracture had healed by that point, and what we're dealing here with is the sequelae or the potential complication that occur in a patient that has generally a fracture that should heal very well, but the main problem in her was that she developed this condition of frozen shoulder. She couldn't move her shoulder after the surgery -- sorry, after the injury, despite the fracture healing.

Q And before we get to the MRI film, would you tell us just, generally speaking, what MRI is and how it differs from, let's say, a standard x-ray?

A Very simply, x-rays are for looking at bones. MRI's are for looking at soft tissue, tendons and ligaments.

Q And as a board certified orthopedic surgeon, do you review MRI's?

A Yes.

Q Do you order them for your patients?

A Yes.

Q And when you get it back, does it have a radiological report by the reviewing radiologist?

A Yes.

Q And do you review that in conjunction with you personally reviewing the films?

A Yes.

MR. KAUFFMAN: And, your Honor, with the Court's permission, we have the MRI films in evidence, and Dr. Jazrawi would be able to show the jury what we see with regards to the findings of the MRI.

THE COURT: Of course. Can you try not to let the court reporter move.

THE WITNESS: You got it.

MR. KAUFFMAN: May I identify the films for the record?

THE COURT: No, let him do that.

MR. KAUFFMAN: Okay.

THE COURT: And I'll just tell the jury that all of the films are in one envelope labeled Plaintiff's 13.

Q So, let me ask one question.

A You got it.

Q Threshold question first. I should have asked this. Have you reviewed these films before? This isn't the first time?

A Yes, correct.

Q Okay. And in your medical opinion, do these films fairly and accurately portray what Mrs. Knoch's left shoulder looked like on the date that they were taken, on June the 5th, 2007, by Medical Arts Radiology?

A Yes.

Q Okay. And what do we see there?

A Okay. Basically, what MRI's try to do is get a 3-D view of the shoulder, but these are, you know, no more than two dimensions, you know. So, you get -- you try to put this together with all the views. But the view that really shows it the best is what was seen in the -- sort of that poster board that we showed, here is the bone. And what you can clearly see, white is fluid, and that showed that something happened there.

And you can see the fracture-line. There is a crack here, on the side. It's supposed to be nice and smooth and a

perfect circle, but you can see that there is a little bump there, right at the tip. And that's the greater tuberosity and that's the fracture.

The rotator cuff attaches right at that level, right where the bone is. So, in her fall, the rotator cuff basically pulled this bone off or another way it happens is whether she directly impacts on it and the crack propagates through there.

Q What do you mean by "propagate", and that's really for me more than anybody else?

A Travels through the bone.

Q Okay.

A So, she has a fracture of her greater tuberosity, which is the bone there. It's displaced. I would say minimally, but it's displaced nonetheless. And right where that fracture is occurring is where the rotator cuff is inserting is also damaged.

Q And do we see any fluid within the subdeltoid or subacromial sac?

A Yes, this white fluid on top points to fluid above the rotator cuff.

Q And what's the significance of that in this case?

A It just points to the fact that she has inflammation above the rotator cuff, which is, you know, fairly typical, you know, in these patients.

Q And do we see anything -- any tears -- first of all,

what is the labrum?

A The labrum is -- to usually we see the labrum we go to several other views. This is a view looking from the top of the shoulder. There is the ball. Here is the socket. And what this is showing again is the fracture, the white that you see over there, and then it shows these little two triangles in front.

This is the glenoid, and these little two triangles that are connecting to this glenoid, which is bone, are tissue, and this tissue -- you're supposed to see this tissue smoothly transition into the bone, and you see a disruption because there's fluid coming underneath that triangle, which is indicative of a tear.

Q And with regard to the items that you reviewed, the fracture of the greater tuberosity, displacement of the torn labrum, the fluid, and also the other tear as well; do you have an opinion with a reasonable degree of medical certainty as to the cause of these MRI findings?

A It was related to the fall.

Q Okay. And by the fall, we're talking about May 2nd, 2007?

A Yes.

Q Okay. When you reviewed these films, did you also review the radiological report that was issued by the initial reviewing radiologist?

A Yes.

Q Okay. And does that confirm your findings?

A Yes.

Q Okay. And I think at this point, unless there is something further that you feel the jury should see, I think we're done with the shadow box.

A That's it.

Q Well, Doctor, I want to talk about the rest of the 2007 treatment that Mrs. Knoch had, and I'd like you to assume that throughout 2007 Mrs. Knoch continued to have left shoulder pain, swelling, limited range of motion, pain, would still do physical therapy, home exercises, she would be taking Vicodin and/or other pain medications or anti-inflammatories; home exercises, I believe I mentioned, what's the significance -- and followup with Dr. Tabershaw; what's the significance of that with regard to Mrs. Knoch trying to get better?

A Well, it showed that she was making an attempt to improve her condition, and that's the generalized treatment protocol for patients who are healing from this fracture, is they take pain medication and get into physical therapy.

Q And we talked earlier of adhesive capsulitis -- are you able to, based on your review of the medical records, are you able to approximate when Mrs. Knoch was diagnosed with that and when that condition manifested itself?

A Generally, if patients are not improving to the extent

that they should be and they are not reaching milestones, there are reasons for it. And one of them could be that they're not compliant with therapy or not compliant with their treatment regimen, and then the other reason is that they are developing a capsulitis or an inflammation of their capsule restricting their motion.

And generally you start to see this about the three or four month mark where they haven't regained the majority of their motion, and they don't seem to be progressing in therapy, and at that point you have to make a decision as a physician that if they're not progressing you need to intervene and do something.

Q Now, you used the term "compliance"; what do you mean by compliance, patient compliance?

A Doing the required things that she's supposed to do, like attending physical therapy sessions and taking anti-inflammatory and pain medication as needed to allow the therapist to stretch her shoulder.

Q And based on your review of her medical records with treating --

COURT REPORTER: I'm sorry, Counsel.

Q I'm sorry. Based on your review of the treating -- the medical records of the treating individuals or facilities in this case, do you have anything to indicate that Mrs. Knoch was anything less than one hundred percent compliant?

A Based on the records she seemed to have gone to all her physical therapy sessions.

Q And medications, was she compliant with that as well, to the best of your understanding?

A Yes.

Q What is arthroscopic surgery?

A Arthroscopic surgery is where we take microscopic instruments and insert them into the shoulder and run fluid through the shoulder to increase the space so we can work in a very small space with small instruments and not make big incisions around the shoulder.

Q And what is arthroscopic manipulation under anesthesia; is that the same thing, just phrased differently?

A Manipulation under anesthesia is where you actually take the shoulder and try to break up the scar tissue while she's asleep or if she's given a regional nerve block where she doesn't feel the pain, and you are actually able to break the scar tissue.

Sometimes it's too far gone, meaning the scar tissue is so thick; that's when you will insert the arthroscope, the camera, and you will use instruments to cut the thick capsular tissue that sort of keeping the shoulder contracted.

Q What is known as -- what is lysis, l-y-s-i-s, of adhesions?

A That means cutting the scar tissue.

Q Okay. And in this particular case, do you have an opinion after reviewing all the medical records, whether surgery such as arthroscopic manipulation under anesthesia with lysis of adhesions, was indicated for Mrs. Knoch back in late 2007?

A Yes.

Q What are the indications for that surgery?

A Number one, failure to progress with a physical therapy regimen after an injury she sustained, a clinical examination consistent with the diagnosis of adhesive capsulitis --

THE COURT: Slow down.

A -- an MRI findings, demonstrating rotator cuff pathology, which may be contributing to the diagnosis of frozen shoulder.

Q When you mentioned that there were indications for this surgery, is your opinion confirmed by any other records that you have reviewed in this case?

A Yes.

Q Which records are those?

A The records of Dr. Tabershaw.

Q And are there any risks to a surgery such as this?

A Yes.

Q What are they?

A One is failure for the surgery to completely allow the regaining of all her motion. Two, is all the arthroscopic risks that are associated with the capsular release. For example,

when you are cutting the tissue there is a delicate nerve that runs right next to the capsule which is being cut that you can damage and cause permanent paralysis in the shoulder.

Three, the risk of infection and other complications associated with traumatic insertion of the arthroscope, secondary to the contracted space, and the last --

THE COURT: Which would be what in English?

(Laughter.)

THE WITNESS: Basically, premature arthritis.

THE COURT: Okay.

A And lastly, the ultimate thing is failure of the surgery and recurrence of the frozen shoulder. Basically, the scar tissue recurring.

Q Okay. And my last question on that, I think you answered it, are there any guarantees for the surgery that the patient is going to be a hundred percent better as if the accident had never occurred?

A No.

Q And in reviewing the records, do you have an understanding as to whether or not Mrs. Knoch was ready, willing and able to go forward with the surgery?

MR. GREY: Objection.

Q Based on your review of the medical records?

THE COURT: Not from --

MR. KAUFFMAN: Okay. Well, let me rephrase the

question.

Q Based on your review of the medical records, based on conversations that you've had with Mrs. Knoch when you examined her, and I'd like you to assume that Mrs. Knoch testified earlier today that she wanted to have the surgery; do you have an opinion as to why the surgery wasn't performed?

A The only thing that I saw on the records as to why it wasn't performed is because it was denied by Worker's Compensation.

Q And as you sit here today, do you know why it was not approved?

A I was not able to find any documentation to that.

Q Okay. Now, I want to talk about Mrs. Knoch's condition and treatment in 2008 and 2009, I want to cover just generally. I'd like you to assume that Mrs. Knoch's complaints of left shoulder pain, tenderness, weakness, range of motion problems continued, that her adhesive capsulitis continued, and that there came a time that an injection into what's known as the subacromial space was given, what is that?

A The subacromial space is the space above the rotator cuff. On the MRI I had pointed out an area of inflammation, and that's where the injection is injected into, and the local Cortizone is in effect trying to decrease that inflammation, give her pain relief and potentially allow her to go to physical therapy and try to break that scar tissue with the pain relief.

The medication that she took by mouth, Motrin, Aleve, works the same way in attempting to control inflammation and control pain.

Q What's the purpose of the home exercise in addition to physical therapy in a case like this?

A It continues to try to maintain her motion throughout this. And it showed that she was trying, at least, attempting to regain her motion.

Q And what is acromioplasty and bursectomy?

A In that area above the rotator cuff it's basically the bone that sits on top of the rotator cuff, and in conditions like this, not necessarily frozen shoulder, but when the rotator cuff is damaged, the concept of cleaning up the bone above the rotator cuff to open up that space and allow it to glide more freely without restriction is what an acromioplasty attempts to do. It's basically resecting bone from the acromion.

Q And do you have an opinion with a reasonable degree of medical certainty that in 2008 and 2009 whether that type of surgery was indicated for Mrs. Knoch's condition?

A I think the combination of releasing the scar tissue, debriding the rotator cuff, doing the acromioplasty, like you mentioned, as well as the bursectomy, and that is removing the inflamed tissue, was indicated.

Q And, Doctor, to be clear, did you review all of Dr. Tabershaw's 2007 medical records?

A I'm assuming the ones that were sent to me were all the ones that he wrote.

Q Okay. Did you also review his 2008 medical records?

A Yes.

Q And also his 2009 medical records as well?

A Yes.

Q Doctor, in cases where Worker's Comp is asked to approve or deny a surgery, is that a doctor making the decision or some other type of person?

MR. GREY: Again, the same objection.

MR. KAUFFMAN: Based on his knowledge and experience as a board certified orthopedist --

MR. GREY: The records aren't in evidence. There is no way the jury can tell whether what he is saying is true.

MR. KAUFFMAN: Objection to the speech.

THE COURT: Would you stop making a speech. One word, objection. Overruled. Subject to connection. Continue.

MR. KAUFFMAN: Thank you.

A The reason for denial or acceptance of the procedure could be as simply as not following certain guidelines, not producing certain notes or not reaching certain things that are required by the Worker's Compensation Board to go forward to surgery. So, it may never even end up on a physician's lap

before it's denied.

Q Now, as part of your medical examination, and I'm sorry -- as part of your testimony in this case and review of all the records, did you also review the medical report -- I believe I'd ask but I'm not sure -- I apologize if I did -- of Dr. Alan Zimmerman who conducted physical examination of Mrs. Knoch back in November of 2008?

A Yes.

Q Turning to 2010 and 2011, I'd like you to assume that Mrs. Knoch no longer followed up with Dr. Tabershaw of Suffolk Orthopedics, instead she continued to take pain medication, do home exercises, anti-inflammatory she would take, and I'd like you to assume that despite this, her left shoulder pain and the adhesive capsulitis persisted with limitations, pain, restrictions; do you have an opinion as to why that is?

A She should have had the surgery back when the initial diagnosis was made.

Q And, Doctor, now I would like to turn to your 2012 examination, do you have your report, okay. Very good. Would you tell the jury again the date that you examined Mrs. Knoch?

A 6/27/2012.

Q And do you have a report in front of you that summarizes your findings?

A Yes.

Q When Mrs. Knoch presented to you about five and-a-half

months ago or so, did she have certain complaints that she told you about?

A Yes.

Q And what were those complaints?

A She talked about initially her injury, how she sustained it, that her recovery was complicated, but why a diagnosis of adhesive capsulitis, and that her main complaint was both pain and loss of motion.

Q Okay. And what body part are we talking about?

A The left shoulder.

Q And did you conduct what's known as an orthopedic examination?

A Yes.

Q Now, in a case like this where the injury is to the shoulder and to the arm, what are you doing if you could explain to the jury to orthopedically check out the patient, what are you asking that patient to do for you, what type of an examination you conduct?

A I conduct a generalized physical examination, looking at motion, looking at strength, and essentially looking at the degree of motion lost, combined with an assessment of the motor and sensory aspects of the shoulder.

Q I'd like you to assume that the injured shoulder and arm was her dominant shoulder, and that in the sense that she's left-handed, what, if any, significance do that have to

Mrs. Knoch's condition?

A Well, the more the motion restriction on that side, patients with their dominant arm utilize that for majority of their activities of daily living. So, if there's a significant motion restriction then it becomes problematic for them doing the simplest of tasks.

Q I want to talk about your shoulder examination, your range of motion examination, if you can explain what the range of motion is in terms of the actual movement of the arm or the shoulder, what the normal range of motion is, and also what Mrs. Knoch's range of motion was upon orthopedic testing?

A Right. So, normally we look at several fields with forward elevation, external rotation with the arm at the side, and internal rotation being our -- sort of our hallmarks.

Q Can you explain what those different motions are just for the jury?

A Oh. So, basically, the first one is forward elevation, and normally you're able to get up to about 170 degrees. Some people can get it up to 180, gymnasts. The patient was only able to get up to about 120 degrees, which was here (indicating).

Q Okay.

A In terms of external rotation, she was only able to put her arms out to about 30 degrees, which is about there (indicating).

Q And we are talking about her left, am I right?

A Her left. I'm using my right.

Q That's okay.

A And internally she was able to get right to about L2, which is one of the lumbar spinal units, and normally they are able to get up all the way up to their scapular border. Basically, they can take their arm up and bring it in and unhook their bra. That's sort of the classic height that they can get to, so she was significantly below that.

Q And what is abduction?

A Abduction is when you take your arm and bring it up to the side here. And normally get it up to about 100 degrees; she was only able to get up to about 60 degrees.

Q And when you test for strength, what does that mean?

A Basically, we have the patient put their arms out in different positions and we push down on their arms. When they have full strength, it's five over five. When they have less than full strength, but still strong, is four over five. And when they're able -- they are weak and only able to resist gravity, it's three over five.

Q When you tested Mrs. Knoch's non-injured shoulder and arm, that's her right, what was the strength testing?

A Five over five.

Q What about when you tested her left shoulder, left arm?

A Three over five.

Q And what is an AC examination?

A The acromioclavicular joint is -- I have to show the model.

Q Sure.

A On the shoulder joint it's the clavicle and it connects via the rest of the shoulder, via the acromioclavicular joint, that's the AC joint.

Q And in this particular testing -- in this case, when you're doing your AC exam of her left shoulder, what, if any positive findings, in other words bad for Mrs. Knoch, did you observe?

COURT REPORTER: I'm sorry?

Q What, if any, positive findings, meaning the ones that were negative for Mrs. Knoch in the sense that her recovery or condition did you find?

A She had pain over the AC joint, which is on the top of her shoulder. She had pain over that area with sort of what we call provocative maneuvers where we try to elicit the pain. So, in terms -- so this was just another added thing to her overall problem.

Q And do all these symptoms are they all consistent with her condition and injury?

A Yes.

Q When you tested her right shoulder, range of motion, what, if anything, did you find?

A It was normal.

Q Okay. Now, did there come a time that you reached an impression or a diagnosis?

A Yes.

Q Would you tell the jury what your diagnosis was at the conclusion of your review of all the medical records and also upon examination of Mrs. Knoch?

A I believe she had a greater tuberosity fracture, which was displaced, but not displaced enough requiring surgery. She has a partial rotator cuff tearing, and because of this injury that she sustained she developed post-traumatic capsulitis, which is basically a contracture of the capsule in the shoulder as a complication from the injury. And because she didn't have the surgery, she essentially had this disability that hasn't resolved over the past several years, making it, in essence, permanent because she has not been improving.

Q What is loss of use?

A Loss of use is the determination based on Worker's Compensation guidelines to apply a percentage of loss to the affected extremity. And this is based on range of motion restriction, strength loss and whether previous surgery has been performed.

Q And did you arrive at an opinion as to what, if any, loss of use Mrs. Knoch has with regard to her left arm and shoulder?

A Right. I came up with the percentage of 75 percent loss of use, not complete loss, because she was able to do certain things with the arm at the side, but very -- and the 75 percent comes from a calculation based on her restrictions, based on strength deficits, and based on the injury she sustained.

Q Did you form an opinion as to her prognosis or what the future holds for her?

A The diagnosis of post-traumatic adhesive capsulitis and the damage she sustained, which was seen on the MRI, is generally a guarded diagnosis, because the results of surgical intervention with post-traumatic adhesive capsulitis are unpredictable, the results are guarded.

You know, even if she did have the surgery, it's unclear as to her eventual outcome with this, as some of them do have some restrictions of motion despite surgery and do have residual pain. But, certainly, the results are still better than non-surgical treatment.

Q And in your report, do you qualify Mrs. Knoch's prognosis as either good, fair, poor, something else? I'm referring to under impression, second to last line?

A No, her prognosis is poor because it's been so long and she has had this motion restriction, that it causes abnormal mechanics in the shoulder and abnormal loading of the cartilage which can predispose to arthritis.

Q Did you form an opinion as to what, if any, medical treatment Mrs. Knoch requires in the future?

A Extensive physical therapy. Surgery. At this point she's tried a lot of therapy, so surgery is indicated with both anesthesia. More physical therapy after the surgery, possibly additional surgeries with manipulations to try to maintain her motion.

Q Any of those with any guarantees?

A No.

Q What are the costs of, for example, lump anesthesia and surgery together, what is the cost of something like that?

MR. GREY: Objection. Outside of the scope of his report, your Honor.

MR. KAUFFMAN: It's actually not. Your Honor, may we approach?

THE COURT: No, but you could give me the copy. This I have. The objection is overruled.

MR. KAUFFMAN: Thank you.

Q Doctor, and I'll ask the question again with regard to the cost, and let's say surgery and anesthesia together, are you able to approximate what a reasonable cost for something like that would be for surgery that's indicated for Mrs. Knoch?

A With anesthesia and surgery it's about 15 to $18,000.

Q And is there physical therapy that's required after surgery such as that for a certain length of time?

A Generally about three to four months.

Q And what is the approximate cost of something like that?

A Several thousand.

Q When you say "several thousand", can you be more specific or give a range?

A Seven to nine.

Q And with regard to any medications that are required, post-operatively and during the physical therapy recuperation period, what is the approximate range or reasonable cost for something like that?

A Generally, it's about three months of medication afterwards, ranging from 2 to $3,000.

Q And do you have any opinion as you sit here today, whether Mrs. Knoch would require more likely than not a second surgery after that?

MR. GREY: Objection.

THE COURT: Sustained.

Q Doctor, based upon the evidence you've seen and observed, the medical records, the MRI report, films, your physical examination, orthopedic records, in your professional expertise, do you have an opinion with a reasonable degree of medical certainty as to the cause of Mary Lou Knoch's condition, complaints, et cetera, and I'd like you to assume that up until today she continues to have the same pain and limitations and

weakness of the left shoulder and left arm?

A She sustained a fracture from the fall which damaged, displaced both her -- a piece of her bone in her humerus as well as damaged her rotator cuff. They healed. The bone healed, but she developed a secondary capsular contracture, which is in this case is frozen shoulder or adhesive capsulitis, which she still has based on her restricted motion, and that the only way at this point to provide her with any increased motion and her potential pain relief would be surgical intervention.

Q And when you say that the cause of this condition was the fall, you're referring to May 2nd of 2007?

A Yes.

MR. KAUFFMAN: I have nothing further. Thanks for your time.

THE COURT: We are going to take our break for five minutes or so, which never really ends up being five minutes, but maybe ten. So, don't leave the building or anything. Jury is excused. Stretch.

(Whereupon, the jury exited the courtroom.)

MR. GREY: Do you mind if I take a look at his records?

THE COURT: Sure. It looks like he only brought his report.

(Recess.)

COURT OFFICER: All rise. Jury, come on in.

(Whereupon, the jury entered the courtroom.)

THE COURT: Okay. Our five minute break was 15.

COURT OFFICER: Have a seat. Take your seats, please. Part 9 is back in session.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. GREY:

Q Good afternoon, Dr. Jazrawi.

A Good afternoon.

Q Mrs. Knoch didn't come to see you because she was seeking treatment from you, correct?

A Correct.

Q She came so you would come here and testify, right?

A At the time I didn't know that it was going to require coming here to testify. It was just a narrative report, and at the time I was told.

Q So, you didn't know when you were first hired that you were going to come to court and testify as to what your report would contain?

A Yes, I do narrative reports, not infrequently.

Q You didn't develop a doctor patient relationship with her, correct?

A Correct.

Q You didn't specifically suggest or administer any treatment, correct?

A I suggested that she should do certain things after I saw her, but since I'm not the treating physician, you know, for her, it was just talking to her when, you know, as a doctor, as a physician who cared for her.

Q I want you to turn your report, the disclaimer on the back?

A Yes.

Q And the disclaimer, you would agree with me, says that no treatment was administered or specifically suggested, correct?

A Correct.

Q And that's your disclaimer, you stamped that on there?

A Right. That's my standard Worker's Compensation disclaimer.

Q Let's talk about Worker's Comp a little bit. Worker's Comp they do IME's of the patient, correct?

A Correct.

Q And an IME is an independent medical examination of the patient, correct?

A Correct.

Q And, so in this case did you see those IME's?

A My understanding is that federal case doesn't require an IME, so I think this was a federal case.

Q Do you have those records with you today?

A No.

Q You knew you were coming to testify, and you were going to be talking about them, right?
A Talking about the records that I reviewed already?
Q Correct.
A Yes.
Q And you didn't bring them with you?
A No.
Q And they are part of your normal file that you would keep on someone after you examined them, correct?
A The only file that I have is the notes that I wrote, and, I guess, I reviewed the notes prior to create this note, but I don't bring it to court usually.
Q And in the what, three times, four times you testified, you don't bring the records that you are going to talk about?
A I've never have.
Q But you keep them back at your office though, right?
A Until the case is over, yes.
Q And have you seen Dr. Walsh's records?
A I'm not sure if I have.
Q So, you may have seen them, you may have not seen them?
A I don't recall.
Q Do you know who Dr. Walsh is?
A He's an orthopedic surgeon.
Q Do you know specifically who he is in relation to Ms. Knoch?

A No.

Q When a patient has a physician that they have been seeing over time, and when I say over time, I mean from before an incident and also after an incident, you would want to see those records, correct?

A I'd like to see all the records, yes.

Q And it would be important because one of things you're doing here today is you're talking about ranges of motion, right?

A Correct.

Q And a range of motion you're comparing it to what a normal person may do, correct?

A Correct.

Q And if a person hasn't had a reduced range of motion say before an incident, you'd like to see that, right?

A Correct.

Q Because if you're saying that this incident caused a reduced range of motion, it could be less than what you're saying, correct?

A Correct.

Q And you saw her once on 6/27/12, correct?

A Yes.

Q And you say you see about 50 to 70 patients a day, right?

A Yes.

Q And sometimes you'll have surgeries in between though, right?

A No.

Q Okay. I thought you said that. And when you do see those 50 to 70 patients a day, how many hour day is that? How long -- excuse me. Let me withdraw that.

When you do see those patients, how long a day is that?

A With just the patient related? We start seeing patients at eight and end at about six or seven.

Q So, how many times -- how much time do you have to spend with each patient?

A I have two PA's that assist me, so they write all my notes, so I'm able to spend more time with the patient.

Q And how much time is that?

A New patients about 20 minutes; followup patients, generally five minutes.

Q And the $10,000 that you talked about, is that in total or do you get money for reviewing the records also?

A It's in total.

THE COURT: I'm sorry. Can you explain what a PA is?

THE WITNESS: Oh, I'm sorry. Physician's assistant. They assist me. And can I correct myself on the previous question that you asked?

MR. GREY: Sure. If you have a correction I'm sure

the jury would like to hear.

A The narrative reports I do charge a price for that because I don't know that this case is going to trial.

Q How much did you charge for this narrative report?

A I think $1,200.

Q So, you've been paid $11,200 for that?

A Yes.

Q How long did it take you to write the narrative report?

A Approximately 45 minutes.

Q Are you the person who writes that or do you sit down and write it out or someone do it for you?

A On these narrative reports I write them out.

Q So, the typos then are yours?

A Yes. Microsoft Word, no.

(Laughter.)

Q I want you to turn to the second page of your report?

A Yes.

Q I want you to look at the line starting with normal.

A Correct.

Q And, actually, before I go into that, can you tell the jury what healed -- like arthroscopic portals are?

A Arthroscopic portals are the incisions that we make around the shoulder. They are sort of the entry point that we insert the small instruments into the shoulder.

Q Okay. If someone has arthroscopic portals in their

shoulder, what would that indicate to you?

A That they had previous surgery.

Q Is there any way someone could get arthroscopic portals in their shoulder without having previous surgery that you know of?

A No.

Q And when you examined Ms. Knoch you found that she had healed arthroscopic portals on her left shoulder, correct?

A That's probably a typo.

Q So, healed arthroscopic portals on left shoulder was a typo?

A Yes, because it's a template because I don't recall her having arthroscopic portals.

Q But you wrote it here, right?

A Well, yes, like I say, it's probably a typo.

Q Well, I think you and I -- what you consider a typo? I consider a typo, for instance, on the first page where when you wrote, MRI confirmed the fractured "dip" placement, you forgot the "S"? That's a typo. A full sentence, that's a typo to you?

A Where are you referring to it, if you can point it out to me on the note.

Q Sure. See dip placement there?

A No, I'm talking about the healed arthroscopy --

Q I know. I know. I'm talking to you, right, you forgot the "S?

A Yes.

Q Okay. And so your understanding also typos in full sentences that are put into your report?

A No.

Q What -- did you ask her about her arthroscopic portals?

A I'm asking you to show it to me in here because I write with templates.

Q No problem. See where it says, healed arthroscopic portals, left shoulder?

A Right below it, yes.

Q And you are saying that she doesn't have healed arthroscopic portals in her left shoulder?

A Correct.

Q That's a pretty big mistake isn't it?

A No, not if you use templates like we utilize now in medicine.

Q So, you make lots of mistakes in your report where you have sentences in there that shouldn't be in there?

A Possibly, yes.

Q Did you see her insurance records?

A No.

Q Wouldn't you have liked to have seen her insurance records?

A No.

Q So, I want you to assume that on the stand earlier this

morning she said she made a claim to her insurance company to get this surgery, and after hearing that would you have liked to have seen her insurance records?

A I saw the denial letter.

Q I'm not talking about Worker's Comp, I'm talking about her insurance records. They are different records.

THE COURT: You have to ask a clear question or you are not going to get a clear answer.

MR. GREY: No problem.

Q You didn't see her insurance records, right?

A No.

MR. KAUFFMAN: Health insurance --

THE COURT: You're both talking at the same time, please. Mr. Kauffman, have a seat.

MR. KAUFFMAN: Sure.

Q I want you to assume that she testified this morning that she made a claim to her insurance company to get the surgery and they denied it. As a doctor, wouldn't you want to see why they denied it?

A In order to get her better, if I was the treating physician I would want to know that.

Q But as the examining physician you don't want to know that because it might change your opinion, right?

A No.

THE COURT: Argumentative.

A It's irrelevant to me. I base my decision based on her examination. The insurance company has denied many surgeries that I have requested and they were wrong, so it's not important to me.

Q What if another doctor had looked at her and done an examination, that would be important to you right?

A Not necessarily.

Q So, what other doctors say you don't worry about that, right?

A That's not true. That's not what I said.

Q You said not necessarily, but without seeing the records or without knowing whether someone looked at her and made an examination, you don't really know, right?

MR. KAUFFMAN: Objection. Unless he has something to say that he didn't review a particular record.

THE COURT: I'm sorry. Rephrase.

Q Okay. If those insurance company records had three independent medical examinations from world renowned physicians, maybe the guy you went down to learn sports medicine from, you would want to see that in forming your opinion, correct?

A It doesn't form my ultimate opinion if that specific physician has denied surgery. I base my opinion bared on the facts, and the facts on this case were that, one, she had a greater tuberosity fracture. That was clearly seen on the MRI.

She had rotator cuff damage on her MRI. She's

clinically not gotten better based on my examination and based on the records that I reviewed, so another physician documenting on the fact that, yes, the greater tuberosity fracture is not the source of her pain or her problems, is wrong and irrelevant to me. That's what I'm trying to explain.

Q So, if the doctor doesn't agree with you they are wrong and irrelevant?

THE COURT: Mr. Grey, you are off on a tangent here, and you also mischaracterized the question so that if you're asking completely speculative questions that has nothing to do with this case.

MR. KAUFFMAN: Objection.

THE COURT: So, can you please ask -- you're not going to understand what I'm saying, so I'm just going to ask the question.

So, what the Plaintiff testified, Doctor, was that her private insurance would not pay for the surgery because they told her, although they never apparently put it in writing, that because it's an accident that occurred during the course of her employment, that she was limited to Worker's Comp.

So, does that make sense to you? Is that like an insurance thing that you are aware of?

THE WITNESS: I have seen that before, yes.

THE COURT: Okay. So, I mean, there were no

independent doctors. There were no report from her private insurance company.

MR. GREY: We don't know, your Honor. We haven't seen the records.

MR. KAUFFMAN: If Counsel --

THE COURT: She testified they told her on the phone you have to go to Worker's Comp, and that's as far as it went; so all of your questions are completely speculative and improper. Move on.

Q Doctor, I believe you testified earlier that you don't remember why Worker's Comp denied her surgery, correct?

A Correct.

Q So, it could have been because they didn't feel that it was necessary, right?

MR. KAUFFMAN: Objection. Speculative.

THE COURT: Oh, for Heaven's sake.

If he says he doesn't remember, then there is no question beyond that.

Q Doctor, I'm going to hand you the medical evidence, Plaintiff's 11, 13, and 10. These are all the medical records that are in evidence. Can you look through there and show me where there is an indication that she got an injection?

COURT OFFICER: You want me to give him the film also?

MR. GREY: Please. If it's in there.

THE COURT: Hold on. Improper question.

Q Do you know if there is a record in there that shows he got --

THE COURT: How would he know?

MR. GREY: Because he reviewed all the medical records, your Honor.

THE COURT: We don't have all the medical records right not. The Plaintiff is not -- this is just one witness.

MR. GREY: That's my issue, your Honor.

THE COURT: No.

MR. GREY: He's talking about records that aren't in evidence.

THE COURT: You are not entitled to have issues. You have a board certified orthopedic surgeon, ask him a medical question, don't ask him a legal question.

How is he supposed to know which things have been admitted so far?

Q Where did you read that record about her injection?

A I'm trying -- it was in the stack of files that I got that she had gotten one injection along the course of her treatment.

Q But who gave it to her?

A I don't recall.

Q When did she get it?

A It was in 2008 or 2009.
Q Sometime in that 24 month period?
A It shouldn't matter, but she got an injection; that's what I recall.
Q When did she stop going to physical therapy?
A I don't recall.
Q Why did she stop going to physical therapy?
MR. KAUFFMAN: Objection.
MR. GREY: If he knows.
Q All right. Do you know why she stopped going to physical therapy?
A Other than what she told me at the time of her visit that she wasn't progressing in physical therapy, that was the only answer she gave me.
Q Did you read her transcripts?
A I did not read her transcripts.
Q Would you be surprised to learn that she was asked questions about why she stopped physical therapy in her transcripts?
A I'm sure that's a valid question.
Q Wouldn't you want to know that?
A I spoke to her and she answered the question.
Q So, I want you to assume that she may have given a different answer in her EBT, wouldn't you want to have read that?

Q Tell the jury what a drop-arm test is?

A Generally, when you have a full thickness rotator cuff tear, you lift the arm up and ask them to hold it up here. With a full thickness rotator cuff test -- tear, meaning the entire tendon is detached, they drop their arm, and that's called a drop-arm test. Her rotator cuff was intact, so she shouldn't have a positive drop-arm, she should be able to hold her arm up, and she did.

Q It's a good thing. It would be a bad sign for her if she has a drop-arm test, right?

A It would be a worse sign, yes.

Q Correct. Tell the jury what a lag test is, please?

A A lag test is basically testing another rotator cuff is when you put the arm up in the abducted position and they would basically drop their arm down, and that's the lag. That would indicate damage to a full thickness damage to one of the other rotator cuff tendons.

In this case her rotator cuff tendons were only partially damaged, so that would be working so it would be negative.

Q And she had negative lag test at zero degrees and ninety degrees?

A Correct.

Q And she had a negative lift-off sign, another good sign, right?

A Correct.

Q Would you tell the jury what a lift-off sign is?

A A lift-off sign is when they have a damage to the subscapularis rotator cuff tendon, and her MRI showed that that was intact, so we would not expect that to be damaged.

Q She had a negative and superior gait sign, would you tell the jury what that is?

A Right.

THE COURT: Slow down.

A If they have a full thickness rotator cuff tear, which she didn't have, you would expect as they're lifting their arm up you would see their socket, the ball, just kind of popping through under their skin because they have no rotator cuff to hold their shoulder in place.

Q And a Napoleon test, she had a negative Napoleon test, tell the jury what that is.

A A Napoleon test is another term for the subscapularis tendon, which is an internal rotator. Napoleon used to hold his arm like this, so the Napoleon test, basically, you ask the patient to push their arm out like this, and if the could hold it without breaking their wrist, that means that it's a negative Napoleon test.

Patients with subscap tears go like this(indicating). They can't do it and so we call it a positive Napoleon test.

Q And she had a negative Napoleon test, right?

A Yes.

Q Can you tell the jury what a-deen-o-pathy is?

A Adenopathy.

Q Adenopathy.

A Yeah, that's when you have the lymph nodes that are enlarged. Again, that's in my standard template. It's part of the requirement for medical records. You have to include that.

Q And she didn't have it, correct?

A Correct.

Q There weren't any problems with biceps either, right, you would agree?

A Biceps was fine.

Q She had a negative AC deformity testing, can you tell the jury what a AC deformity test is?

A Basically, when you separate your collarbone joint it will be elevated and you can actually see the deformity there. She did not have that.

Q That's a good sign, right?

A It's a good sign.

Q You performed a lot of tests for the instability of her left shoulder, correct?

A Correct.

Q And she was negative across the board on those, right?

A Correct.

Q Tell the jury why you performed those tests?

A Generally, you perform those tests it's part of my standard routine. It's actually the opposite of frozen shoulder. When you're really loose you would get a positive exam under the instability test, so her frozen shoulder actually was probably responsible for a lot of her negative instability examination, because instability is looseness. Capsulitis is contracture.

Q What's the test for frozen shoulder?

A It's restriction in motion.

Q So, there is no test that will tell you yes or no she has frozen shoulder, right?

A It's a clinical diagnosis.

Q And in order to do a clinical diagnosis, again you would want to see all of her medical records, correct?

A The initial treating doctor based on the initial examination it's usually suffice plus an examination with me.

Q But let's say there were records from Dr. Walsh that may have indicated something else, you would want to see that, right?

A Indicated, for example?

Q I don't know, Doctor, because we don't have those records or can see them. What I'm asking you is, if you're diagnosing a patient it is better for you to have all the records than just a subset of records, correct?

A It would certainly would be helpful with the assumption

that the examination under his care would have been different or that she had surgery with him or something else. So, the answer to your question is, yes.

Q Did you inquire with her as to whether she could afford surgery or not?

A I did not ask that question.

Q Let's talk briefly about Dr. Tabershaw's findings. Would you agree with me that her range of motion from the first visit with Dr. Tabershaw until the last visit with Dr. Tabershaw increased?

A Yes.

Q What was her range of motion when she first visited him?

MR. KAUFFMAN: I'm not objecting. I would just ask that the doctor be permitted to take a look at the medical records that he is referring to.

MR. GREY: He's not looking at any of the other records. I'm asking his memory, your Honor, because he didn't bring the records with him. Let's see what his memory is.

MR. KAUFFMAN: Doctor, you can use my copy. I don't mind.

MR. GREY: I'll conduct my examination, please.

THE COURT: Mr. Kauffman, just have a seat. If you can't recall, just say you can't recall.

A I recalled the general trend that because of the fracture her motion was, basically, zero when she first started, and then improved, but stopped progressing, and by the three month marker she lacked progression and lacked resumption of near normal motion that she was indicated for the operative intervention.

Q Do you know if she had a second fall?

A She had a second fall well after the initial fall.

Q Can you tell me about that fall?

A She still had the symptoms, from my recollection of the initial accident, with restriction in motion. The fall basically changed nothing in her -- the fall changed nothing in her presentation and her motion restriction.

Q No, I'm asking you can you tell me about her fall, what happened?

A Other than falling on an outstretched arm, that's all I recall.

Q And she even showed improvement again after that fall, correct?

A I don't recall.

Q And Dr. Tabershaw had indicated that she had a 25 percent temporary impairment, correct?

A If that's what it says there, then I'll have to go with that. I don't have the records in front of me.

Q Did you put that in your report at all?

A No.

Q And Dr. Tabershaw had indicated on January 9th of 2009 that she had minimal residual adhesive capsulitis; can you tell me what minimal residual adhesive capsulitis is?

MR. KAUFFMAN: I'm just wondering if he's reading from a record that's not in evidence.

MR. GREY: I'm not reading from anything.

MR. KAUFFMAN: No?

THE COURT: Is there an objection or not an objection?

MR. KAUFFMAN: I'd like the medical records in evidence. I withdraw -- if it was an objection I'll withdraw it.

THE COURT: Okay. You may answer the question.

A If he felt that she had minimal residual adhesive capsulitis that he thought that her symptoms were mild and that her deficits secondary to adhesive capsulitis were mild.

Q That's different from your diagnosis, correct?

A Correct.

Q And his 25 percent temporary impairment is different from your diagnosis, correct?

A Correct.

Q And he did form a doctor patient relationship with her, correct?

A Correct.

Q How many times did he see her?
A Oh, it looks like at least a dozen times.
Q Do you know what records he looked at?
A I'm assuming his own records.
Q Do you know if he looked at all the records, including Mr. Walsh's records?
A I'm not aware.
Q Do you know when she started driving again?
A No.
Q Do you know when she was cleared to go back to work?
A No.
Q Do you know what she does for work?
A No.
Q Do you know when she started boating again?
A No.
Q Do you remember whether she made an indication to Dr. Tabershaw she had a lot less pain in September of 2007?
A I remember reading along the course of her treatment, that whether it was immediately after the injection, that she had sustained some relief at some point during the course of physical therapy and medication.
Q But you don't remember when that injection was?
A I can't recall.
Q So, you don't know if it was before or after 9/24 of '07, correct?

A I know that she had gotten better sometime during her course.

Q Did she ever deny any injections from Dr. Tabershaw?

THE COURT: Any what?

MR. GREY: Injections from Dr. Tabershaw

A I don't recall.

Q Now, you would agree with me that there is more than one way to pay for surgery, correct?

MR. KAUFFMAN: Objection.

THE COURT: Sustained.

Q Did you do any investigation as to whether she could afford the surgery or not?

MR. KAUFFMAN: Objection.

THE COURT: Asked and answered.

Q I'm going to give you my last question. We talked a little bit about the mistakes that you made in your report. I want to give you an opportunity to tell the jury, are there any other mistakes that are in your report, any typos, any errors, any other mistakes you committed?

MR. KAUFFMAN: Objection.

THE COURT: Sustained.

Q You looked over this report, right?

A Sure.

Q And, in fact, you made a disclaimer when you signed this report, right?

A Uh-huh.

Q I'm sorry. I need a yes or no, for the court reporter.

A Yes. Sorry.

Q And can you generally tell the jury why you made that disclaimer?

A Because I'm independently examining her for a report.

Q And it's under the penalties of perjury, right?

A Yes.

Q And so when you sat down and you read back over your report and you saw, healed arthroscopy portals, did anything go off in your head, oh, maybe I should check the records for her surgery?

A If I saw it I would have removed it because I was not aware that she had surgery before, so to me when --

Q So, you affirmed that these contents of the above report were as your own, you didn't read through each sentence?

MR. KAUFFMAN: Objection.

A It's obviously a mistake, and I'm explaining to you as a mistake.

Q I'm asking you. How long after you did your examination did you do your report?

A Within a week.

Q And your understanding when you did the examination was she had no prior surgery, right?

A Yes.

Q And when you did your report it indicated she did have prior surgery, correct?

A Correct.

Q And that would be a pretty big difference, right?

A Not if you have templates that have -- I see a lot of shoulder patients, so there are patients that have healed up arthroscopic portals, so it makes perfect sense.

Q Sometimes you mix up your patients; is that what you are saying?

MR. KAUFFMAN: Objection.

THE COURT: Overruled.

A It's not that you mix up the patients, is that the one sentence lines in templates can sometimes get carried over; so what I'm explaining to you is that she didn't have surgery. I didn't recall the arthroscopic portals and that it's put in there incorrectly.

Q Well, let me ask you, did you review your report before coming here today?

A Yes, but I didn't pick that up.

Q So, you reviewed it, did you read each page?

THE COURT: Argumentative.

A I skimmed --

Q You skimmed through it?

A Yes.

Q And you didn't bring any of the records with you?

A Correct.

MR. KAUFFMAN: Objection.

MR. GREY: No further questions.

MR. KAUFFMAN: Just a few questions, your Honor.

THE COURT: Redirect.

MR. KAUFFMAN: Thank you.

REDIRECT EXAMINATION

BY MR. KAUFFMAN:

Q Dr. Jazrawi, I will be brief. I'd like you to assume that Dr. Tabershaw authored -- the first time that you saw Mrs. Walsh authored a letter -- I'm sorry. Mrs. Knoch authored a consultation report to Dr. Walsh, who never treated Mrs. Knoch for her injuries; is that typically what's done if Dr. Walsh were an internal medicine doctor?

A Correct.

Q Okay. If Dr. Walsh is her internal medicine doctor, someone she sees for coughs and colds, but never treated her for this case or this accident or these injuries, would his records have any bearing on your review of the records and your opinions in this case?

A Why would he ask me all these questions about a medical doctor's intervention? I assume there was an orthopedic surgeon.

Q Other than Dr. Tabershaw, are you aware of any orthopedist with whom Ms. Knoch ever treated for this case other

than yourself?

A No.

Q Based on your review of all the records you have seen, have you seen anything to indicate Mrs. Knoch not only didn't ever have left shoulder surgery, but ever had any problems or limitations prior to May 2nd, 2007?

A No. There is no documentation that she had previous surgery. That is a typo or it was a line that was kept in there from a previous template. It's wrong. If she's had surgery, I certainly don't know about it. I didn't see any records attesting to that, and she did not tell me that she had surgery.

Q In a case where it's Worker's Compensation, and Worker's Comp has to approve whether it's treatment, medication, surgery, et cetera, would private health insurance typically cover a Worker's Compensation case?

A Yes.

Q And under what circumstances?

A Generally, the rejection of surgery for Worker's Comp, it's -- I wouldn't say it's fairly typical, but it happens a lot, and the private -- the reasons for the rejection are based on not following certain guidelines that are unique to Worker's Compensation, whereas the other insurance companies, private insurancers don't have these certain restrictions on them.

Even though they have independent medical reviewers reviewing their things, it's based on pure scientific findings,

i.e., MRI findings and clinical exam findings, whereas Worker's Compensation may only look at purely objective findings as its meaning, i.e., the MRI findings.

And in a case such as this, adhesive capsulitis is a clinical diagnosis and possibly, and this is just conjecture that the rejection may have been based on an MRI --

MR. GREY: I'm going to object, if it's just conjecture, your Honor, it shouldn't be done in front of the jury.

THE COURT: That's another speech. Sustained.

Q Doctor, counsel reviewed with you certain testing that you had done on Mrs. Knoch's left rotator cuff, and some of the testing were negative, in other words --

A Right.

Q -- they weren't bad for Mrs. Knoch. Does that mean she doesn't have a rotator cuff tear that was traumatically induced from this accident?

A She has a partial rotator cuff tear, which those tests confirmed.

Q Okay. And counsel also asked you about things like adenopathy and biceps weakness; should Ms. Knoch be expected to have adenopathy or biceps weakness for an jury such as this?

A No.

Q The fact that her left shoulder wasn't unstable, does that change your diagnosis or opinion in this case?

A No.

Q Why is that?

A Because she has adhesive capsulitis, which is actually a constricture of -- contracture of the shoulder. When we talk about a laxity examination, those are for patients who dislocate their shoulders. I include it as part of my routine examination. It's part of my template.

Q Now, Doctor, the -- when I'd asked you questions initially, we talked about the purpose of an injection to the what's known as the subacromial space; counsel, I believe had asked you, just to set the scene, whether you were aware as to whether Mrs. Knoch ever decided not to undergo a second injection.

I'd like you to assume that after the first injection Mrs. Knoch's pain returned. What is the significance of administering a second injection; is that more likely than not going to work or is she going to end up the same?

A Generally, when the first injection doesn't work or works minimally, I'm unlikely to repeat a second injection, as the likelihood of a successful second injection is basically unlikely.

So, we really -- if she's had improvement with this that was significant and then the pain returns, then that's a good indication to do another injection.

Q And in this particular case, assuming that the pain did

return after that first injection, is there any significance to the fact that she decided not to undergo the second injection that was offered to her?

A It's certainly not uncommon for patients to refuse a second injection especially when the amount of pain relief was insignificant or they didn't have sustained relief from it.

Q And after the patient has a certain amount of complaints for certain period of time despite orthopedic visits, MRI's, x-rays, pain medications, home exercises, anti-inflammatories, physical therapy, I believe I said, and injections, what is the next option?

A Generally, after a failure of conservative course like you described, the next discussion is to basically talk about surgical options.

MR. KAUFFMAN: Nothing further. Thank you.

MR. GREY: Just have a brief followup, your Honor.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. GREY:

Q I want you to assume that Ms. Knoch came in and she testified that Dr. Walsh was currently prescribing her medicine for her shoulder, would you consider that treatment?

THE COURT: I'm sorry, doctor who?

MR. GREY: Dr. Walsh was prescribing her anti-inflammatories currently for her shoulder, would you

consider that treatment?

THE WITNESS: Yes.

Q So, if he was doing that then he did treat her, correct?

A Yes.

Q What's the last date that you know of that she received any treatment from a medical provider for this injury?

MR. KAUFFMAN: Objection. Scope.

MR. GREY: He asked about the future of surgery, going into the future. I'm sure --

THE COURT: On redirect?

MR. GREY: Yes. He asked about this surgery on redirect that goes into the future. Of course, what she's done from 2009 to the present would be within that --

THE COURT: Excuse me.

MR. KAUFFMAN: Speech.

THE COURT: The objection is sustained. Beyond the scope of redirect.

Q During the redirect he just asked you about the different treatments she received, correct?

A Correct.

Q And when did that treatment end?

A I don't recall.

Q So, you don't know if it ended yesterday or if it ended five years ago?

A I don't recall the last date of treatment for her.

Q Do you recall the date of treatment in 2010?

MR. KAUFFMAN: Objection. Scope.

THE COURT: Mr. Grey, if he says he doesn't recall you have to stop with that. You are stuck with that answer.

MR. GREY: No more questions.

MR. KAUFFMAN: Nothing further, your Honor.

THE COURT: You are free to go.

THE WITNESS: Thank you.

THE COURT: And so is the jury, but let the doctor go first.

So, all right. We're going to resume at 10 o'clock tomorrow. We will not be having trial in the afternoon tomorrow, just the morning, and then on Thursday not the morning, just the afternoon.

I don't think nobody relied on my telling them yesterday that we would not be doing anything tomorrow; is anybody not able to come? Okay. Good. Nobody.

So, 10 o'clock tomorrow we'll continue. We have the Plaintiff to continue her testimony and one short other witness and we'll definitely be done by lunchtime, and good night, and don't look anything up and don't talk about the case.

COURT OFFICER: All rise. Jury can exit the courtroom.