

GUIDA
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX : CIVIL TERM : IA-5

-----x
STANLEY PINA, : Index:
 : 350430/11
Plaintiff(s). :

-against- : MED MAL

MELEEN CHAUNG, MD; ERIN CONROY, M.D.,
MONTEFIORE MEDICAL CENTER.

Defendant(s). :

-----x
851 Grand Concourse
Bronx, New York 10451
May 18, 2015

B E F O R E:
HONORABLE ALLISON Y. TUITT
Justice of the Supreme Court

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

FOR THE PLAINTIFF:

KRENTSEL & GUZMAN
BY: Anthony Hirschberger, Esq
17 Battery Place, 6th Floor
New York, NY 10004

FOR THE DEFENDANT:

SHAUB, SHMUTY, CITRIN & SPRATT, LLC
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New York, NY 10005

Lorraine L. Ramsey
Senior Court Reporter

1 THE COURT OFFICER: All rise, jury entering.
2 (Whereupon, the sworn jurors enter the courtroom
3 and take their respective seat.)

4 THE COURT: Good afternoon, members of the jury.
5 Please be seated. We're going to continue on with our
6 trial at this moment. The plaintiff has a witness that
7 they'd like to call. I know that you guys are hungry, so
8 we are going to be able to wrap it up by lunch time.

9 Go ahead.

10 MR. HIRSCHBERGER: Plaintiff calls Robert A.
11 Guida, GUIDA, MD, to the stand.

12 DOCTOR ROBERT A. GUIDA, a witness called by and on behalf of the
13 PLAINTIFF, upon being duly sworn, testified as follows:

14 THE WITNESS: Yes.

15 THE COURT OFFICER: State your name and
16 occupation.

17 THE WITNESS: Robert Guida, physician.

18 THE COURT OFFICER: Please be seated, sir.

19 MR. HIRSCHBERGER: Your Honor, at this time I ask
20 that what's been marked for identification as Plaintiff's
21 Exhibit 4, be handed to the witness.

22 THE COURT: Have you seen this, counsel?

23 MR. PATERNITI: Yes, Judge.

24 Judge, can I just clarify this document dated
25 December 8, 2014.

1 MR. HIRSCHBERGER: Yes.

2 MR. PATERNITI: Yes, Judge.

3 DIRECT EXAMINATION

4 BY MR. HIRSCHBERGER:

5 Q Good afternoon, Mr. Guida.

6 A Good afternoon.

7 Q Doctor Guida I ask you to please speak up in a loud,
8 clear voice. Okay?

9 A Okay.

10 Q Little bit louder.

11 A All right.

12 Q All right. Doctor Guida, where did you go to medical
13 school?

14 A Hahnemann university in Philadelphia, Pennsylvania.

15 Q Is that now called something else?

16 A It's called Drexel University.

17 Q And that's medical school, correct?

18 A Yes.

19 Q And did you have residency after that?

20 A Yes, I did a residency a year of internal medicine, a
21 year of general surgery, four years of otolaryngology head and
22 neck surgery, and then further training in facial plastic
23 surgery.

24 Q And are you board certificated?

25 A Yes.

1 Q In what specialty?

2 A Otolaryngology, head and neck surgery, and then facial
3 plastic surgery.

4 Q Now, how long have you been practicing plastic surgery?

5 A Approximately 22 years.

6 Q And do you run a private practice?

7 A Yes.

8 Q Where is that practice?

9 A In Manhattan, upper eastside of Manhattan.

10 Q What's the address?

11 A 1175 Park Avenue.

12 Q And in your plastic surgery practice, you know, do you
13 -- well, withdrawn. Did there come a time when you examined a
14 child by the name of Stanley Pina?

15 A Yes.

16 Q And was that examination setup by my office?

17 A Yes.

18 Q What was the date of that examination?

19 A I have here December 8, 2014.

20 Q Now, you look at what's been marked for identification
21 as Plaintiff's Exhibit Four. Is that an accurate representation
22 of the records that you developed for that examination?

23 A Yes.

24 MR. HIRSCHBERGER: Your Honor, at this time I ask
25 that Plaintiff's Exhibit 4, be moved into evidence.

1 THE COURT: Any objection?

2 MR. PATERNITI: Objection.

3 THE COURT: What's the objection?

4 MR. PATERNITI: May we approach, Judge?

5 THE COURT: Beg pardon?

6 MR. PATERNITI: Can we approach?

7 THE COURT: Yes.

8 (Whereupon, the following discussion
9 takes place at sidebar among the Court and
10 Counsel, outside the hearing of the defendant and sworn
11 jurors.)

12 THE COURT: Objection's sustained.

13 Q All right, doctor, you could feel free to refer to that
14 medical record, okay.

15 Now, when you examined him, did you observe a scar?

16 A Yes.

17 Q Where was that scar?

18 A It was in the left midcheek.

19 Q And in addition to examining his scar, what else did
20 you do in conjunction with that office visit?

21 A Well, spoke with the family regarding the circumstance
22 of how the scar was obtained, and I examined the scar by looking
23 at it and touching it.

24 Q Now, did you measure it?

25 A Yes.

1 Q What were the results of the measurement?

2 A It was 2 and a half -- about two and a half centimeters
3 long, and two centimeters wide.

4 Q When you touched it, what were you able to determine by
5 touching it?

6 A It was a scar within the epidermis, and dermis of the
7 skin, and it was somewhat thick.

8 Q Was that somewhat thick?

9 A Thick.

10 Q Now, what significance, if any, did it have that the
11 scar was in the epidermis and the dermis of the skin?

12 A The significance is that it's a permanent scar. It
13 will never disappear or magically go away.

14 Q Now, in your twenty some-odd-years of being a plastic
15 surgeon, approximately how many patients have you treated with
16 scars on the face similar to the one Stanley Pina has?

17 A Several hundred.

18 Q Now, in your opinion, to a reasonable degree of medical
19 certainty, is the scar permanent?

20 A Yes.

21 Q In your opinion, to a reasonable degree of medical
22 certainty, was that scar caused by the C-section -- the
23 laceration during the C-section?

24 A Yes.

25 Q Now, sir, what treatments, surgical treatments, or

1 other kind of treatments are available for a scar like the one
2 Stanley has?

3 A Well, the scar could be surgically excised, and then
4 re-stitched.

5 Q What does that mean?

6 A Sewed up again in another manner.

7 Q When you say surgically excised, what do you mean by
8 excised?

9 A Well, the child has to be anesthetized. The area has
10 to be made numb with anesthesia, and then a surgeon would cut
11 out the scar, and then re-stitch it. That's one option.

12 Q Now, what are the risks associated with that option?

13 A Well, there are risks with anesthesia, or more
14 importantly with the scar itself there's a risk that the scar
15 would look longer or worse.

16 Q What other options besides excising and re-stitching?

17 A There are a variety of laser treatments that could help
18 the appearance of the scar, but they run the risk of making the
19 scar either lighter or darker or very red.

20 Q And so we have laser? We have surgical excision. What
21 else?

22 A Another option for scars is to inject it with a steroid
23 medication, but it causes a depression of the scar.

24 Q What do you mean by depression?

25 A Like the skin looks sunken in or hollowed out like a

1 crater, like a crater in the skin.

2 Q So, are there any other treatment options that you're
3 aware of?

4 A Not that I know of.

5 Q Now, based on your experience and your examination of
6 the kind of scar Stanley has, do you recommend any of those
7 treatments?

8 A No.

9 Q Explain to the jury why not?

10 A Sorry?

11 Q Can you, please, explain to the jury why you came to
12 that conclusion?

13 A I think any office option the surgical excision, and
14 stitching at the laser or injection with a steroid have risks
15 that could possibly make it worse, and I would not take those
16 risks for this scar.

17 Q What are the potential benefits of any of those
18 procedures?

19 MR. PATERNITI: Objection.

20 A Well --

21 MR. PATERNITI: Objection.

22 THE COURT: What's the objection?

23 MR. PATERNITI: Doctor's already testified he
24 doesn't recommend the treatment in question, Judge.

25 THE COURT: Overruled. You can testify.

1 Q What are the potential benefits?

2 A Could you repeat the whole question? The potential
3 benefits of --

4 Q No problem. Why don't we go one by one. What are the
5 potential benefits of excision and re-stitching?

6 A The potential benefits of that procedure is that the
7 scar would be possibly a little thinner and less noticeable.

8 Q In your opinion, do the costs of or -- withdrawn. Do
9 the risk of excision and re-stitching outweigh the potential
10 benefits?

11 A Yes.

12 Q Regarding the laser treatment, what are the potential
13 benefits of that?

14 A The theoretical potential benefits are it could blend
15 in more appropriately with the skin and texture, the skin color
16 and it's texture of the surrounding skin. But the risk is that
17 it can also become too light, too dark or too red.

18 Q In your opinion, do the risks outweigh the benefits
19 regarding the laser procedure?

20 A Yes.

21 Q And the third procedure with the steroid injection,
22 what are the potential benefits of the steroid injection?

23 A The potential benefits, it could thin-out the scar and
24 make it less noticeable. Steroid injections are better when
25 scars are relatively fresh, less than a year old. This scar is

1 older than that. So, I would not recommend this treatment.

2 Q Now, do you have experience with patients who come to
3 you with scars on the face and basically asking you to make them
4 look better?

5 A Yes.

6 Q Now, obviously, Stanley Pina is three and a half, going
7 on four years old. But is it, the kind of scar he has,
8 something that you see in your practice that older people come
9 to you and say, hey, this is bothering me. Can you make it
10 better?

11 MR. PATERNITI: Objection.

12 THE COURT: Rephrase that, please.

13 MR. HIRSCHBERGER: Sure.

14 Q I mean were you able to have a conversation with
15 Stanley Pina?

16 A Not really.

17 Q Okay, but the scar on his face is that the kind of scar
18 that you treat in your practice for cosmetic purposes?

19 A I see people with those type of scars. They ask for my
20 opinion.

21 Q Now, how many times have you testified besides today?

22 A I'm sorry?

23 Q Actually, I withdraw the question. Including today how
24 many times have you testified in court?

25 A Approximately seven or eight times.

1 Q And has that always been on behalf of your patients?

2 A Uh, not always.

3 Q So, describe for jury the circumstance under which
4 you've testified?

5 A I'm sorry, I'm not hearing with you -- the echo.

6 Q Could you please describe for the jury the circumstance
7 under which you've testified?

8 A Uh, in the past.

9 Q Right?

10 A Patients I've testified for some of my patients or
11 physicians at the hospital or law firm will ask me to testify
12 because of my expertise in a particular area.

13 Q Have you testified on behalf of a doctor before?

14 A Yes.

15 Q Approximately how many times?

16 A Three.

17 Q So, of the eight times you testified, three of them
18 were on behalf of doctors in medical malpractice cases?

19 A Yes.

20 Q And how much are you being paid to testify?

21 A \$7,500.

22 Q And does that number include the visit? The office
23 visit?

24 A Yes.

25 Q And are you a licensed physician, in the State of New

1 York?

2 A Sorry?

3 Q Are you a licensed physician, in the State of New York?

4 A Yes.

5 MR. HIRSCHBERGER: I have nothing further.

6 THE COURT: Cross examination.

7 MR. PATERNITI: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. PATERNITI:

10 Q Good afternoon, doctor. Doctor, are you a member of
11 the American Society of Plastic Surgeons?

12 A No.

13 Q Now, doctor, you testified you were retained by
14 plaintiff's attorney in this case, correct?

15 A Right.

16 Q When you said you'd been paid \$7,500, that was you were
17 paid \$7,500 by the plaintiff's attorney, correct?

18 A Right.

19 Q And you saw Stanley Pina a total of one time, correct?

20 A Right.

21 Q And other than your piece of paper, your report from
22 December 8, 2014, visit, do you have any other documents from
23 this visit with you?

24 A No.

25 Q Did you review anything other than this report before

1 coming to court today?

2 A No.

3 Q Did you review any records in conjunction with this
4 case whatsoever?

5 A No.

6 Q Do you recall the examination of Stanley Pina?

7 A Yes.

8 Q Other than the young boy being present, was his mother
9 present?

10 A There was a woman there. I believe it was his mother.

11 Q Okay, you believe it was but you're not sure; is that
12 fair to say?

13 A Right.

14 Q And was an attorney or representative from his
15 attorney's office there?

16 A No.

17 Q Now, fair to say your report is eight lines long in
18 total, correct?

19 A Right.

20 Q And you mentioned several, generally speaking,
21 treatment options that exist in the world of plastic surgery,
22 correct?

23 A Right.

24 Q And one of the things you mentioned was steroid
25 injection? You don't mention that in your report do you?

1 A No.

2 Q Now, fair to say that the purpose -- withdrawn. You've
3 written reports like this in the past, correct?

4 A Yes.

5 Q You've been asked to examine somebody in conjunction
6 with a lawsuit, and then write a report about your exam,
7 correct?

8 A Right.

9 Q How many times in the past have you done that?

10 A Maybe five or seven.

11 Q And you've done that for both plaintiffs and
12 defendants?

13 A Yes.

14 Q And you know going into the exam, and when you write
15 the report, that it's important to document all of your findings
16 and recommendations in the report, correct?

17 A Right.

18 Q And it's important to be thorough in the report,
19 correct?

20 A Correct.

21 Q It's important to be complete?

22 A Correct.

23 Q Include -- it's important to include all relevant
24 information that you obtained during your examination?

25 A Correct.

1 Q Now, you'd agree with me, you mentioned earlier that
2 something about the texture of the scar, correct?

3 A Correct.

4 Q You'd agree with me your report makes no mention of the
5 word "texture" correct?

6 A Correct.

7 Q And you'd agree with me that it's important to --
8 withdrawn. Would you agree with me that it would be important
9 to document in your report any complaints that the patient may
10 have?

11 A Yes.

12 Q You'd agree with me, you don't document any complaints,
13 correct?

14 MR. HIRSCHBERGER: I'm going to object. The
15 patient's three and a half years old. I mean how could he
16 document complaints.

17 THE COURT: If he had spoken to him.

18 MR. HIRSCHBERGER: Okay.

19 THE COURT: Overruled.

20 You can answer.

21 Q Did you try to speak to the three and a half year old?

22 MR. HIRSCHBERGER: At the time he was -- he wasn't
23 three and a half. I'm going to object to this line of
24 questioning.

25 THE COURT: I beg your pardon?

1 MR. HIRSCHBERGER: First of all, at the time he
2 was not three and a half. At the time, he was less than
3 three and a half, and I object to this line of questioning.
4 How could he be asked what he asked a toddler? This is
5 ridiculous.

6 THE COURT: It's overruled.

7 Q Did you speak to the boy?

8 A Yes.

9 Q Did you speak to whoever the adults was with him?

10 A Yes.

11 Q And you would have to asked him if he had any
12 complaint, right?

13 A Yes.

14 Q And if there were complaints, you'd document it in your
15 report, right?

16 A Correct.

17 Q And you document no complaints, right?

18 A Correct.

19 Q No one ever told you or commented to you anything about
20 having to put mittens on the boy, did they?

21 A I'm sorry?

22 Q Did anyone ever say to you anything about ever having
23 to put mittens on the boy?

24 A Mittens?

25 Q Mittens?

1 A No.

2 Q So, he would stop -- okay. Thank you.

3 Doctor, you'd agree with me that your report makes no
4 mention in any way of the scar being discolored, correct?

5 A Correct.

6 Q And prior to testifying here today, did you speak with
7 the plaintiff's attorney?

8 A I'm sorry.

9 Q Prior to testifying, did you speak with the plaintiff's
10 attorney who retained you?

11 A Prior? No.

12 Q Prior to coming into the courtroom to testify?

13 A Yes.

14 Q Okay, and are you aware of the fact that this jury has
15 had a chance to see the left cheek of Stanley Pina with their
16 own eyes?

17 A I'm not aware of that.

18 Q Did you use any special equipment to try to visualize
19 this scar?

20 A I wear magnifying loops. Magnifying glasses.

21 Q So, you had on magnifying glasses to get up and see the
22 scar, correct?

23 A Yes.

24 Q You'd agree with me you have to look very close to see
25 the scar, correct?

1 A Uh, yes.

2 Q Doctor, generally speaking, would you agree with me
3 that scars such as this will fade over time, correct?

4 A Not necessarily.

5 Q Would it surprise you, doctor, that the appearance of
6 this scar in just the first three years of life has improved
7 dramatically? Would that surprise you?

8 A I can't tell. I see it early on.

9 Q No one showed you anything about what it looks like
10 earlier on?

11 A I'm sorry?

12 Q No one showed you early on what it looked like earlier
13 on?

14 A I did not see earlier pictures.

15 Q You didn't look at it again in the last couple of days
16 to see how much it may have improved since December, correct?

17 A No. Correct.

18 MR. PATERNITI: Okay, thank you, doctor. I have
19 nothing further.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MR. HIRSCHBERGER:

23 Q I mean, doctor, is it true that scars like this can
24 improve over time?

25 A They can.

1 Q They can? Will it ever completely go away?

2 A No.

3 MR. HIRSCHBERGER: Nothing further.

4 THE COURT: Anything?

5 MR. PATERNITI: I have nothing, Judge.

6 THE COURT: Okay. Thank you so much, doctor.

7 Please, step down.

8 (Whereupon, the following discussion takes place
9 at sidebar among the Court and Counsel, outside the hearing
10 of the defendant and sworn jurors, off the record.)

11 THE COURT: All right, members of the jury.
12 You're going to get what you asked for. We're going to
13 recess for the day at this time. Please remember my
14 admonitions about speaking amongst yourself or with others
15 about the case. Have a good nutritious lunch, and we're
16 going to have a doctor this afternoon. So, don't get
17 anything too heavy for lunch, so we can pay attention to
18 the doctor's testimony. Have a good lunch. Return at two,
19 two o'clock.

20 THE COURT OFFICER: All rise jury exiting.

21 (Whereupon, the sworn jurors exit the courtroom.)

22 MR. PATERNITI: Judge, it's my understanding
23 that's the last witness for plaintiff. So, when we come
24 back from lunch, I assume he's going to be resting.

25 MR. HIRSCHBERGER: Yes.