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Feb 10 2023 08:39 AM
Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

**THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF
CHEYENNE, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES,
LLC**

Respondents.

Appeal from the Eighth Judicial District Court for Clark County
District Court Case No. A-16-735550-C
(Honorable Mark Gibbons)

Nevada Bar No.: 5041
CAP & KUDLER
3202 West Charleston Blvd.
Las Vegas, NV 89102
(702) 878-8778
Counsel for Appellants
Jeffrey A. Myers and Andrew James

APPELLANTS' APPENDIX
VOLUME 5
CHRONOLOGICAL ORDER

Document	Index Number	Bates Number
Amended Complaint [Filed 05/06/2016]	1	AA000001 - AA000007
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22	Trial - Day 4, Friday, 06/03/2022		AA000809
23	[Filed 08/08/2022]		
24	Recorder's Partial Transcript of Jury	7	AA000810 -
25	Trial - Day 4, Friday, 06/03/2022:		AA000854
26	Testimony of Leroy Comstock		
27	[Filed 07/07/2022]		

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APPELLANTS' APPENDIX
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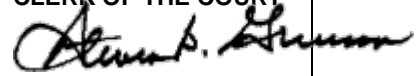
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10	Defendants		AA000976
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12	Order Denying Plaintiffs' Motion for New Trial	8	AA000985 -
13	[Filed: 9/23/2022]		AA000996
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15	Plaintiffs' Motion for a New Trial		AA000984
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17	Plaintiffs' Third Motion to Compel Discovery	1	AA000008 -
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 JEFFREY MYERS, ET AL.,
8 Plaintiffs,

CASE#: A-16-735550-C
DEPT. XVII

9 vs.

10 THI OF NEVADA AT CHEYENNE,
11 LLC, ET AL.,
12 Defendants.

13 BEFORE THE HONORABLE DAVID BARKER
14 DISTRICT COURT JUDGE
15 THURSDAY, JUNE 2, 2022

16 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 3**

17 APPEARANCES

18 For the Plaintiffs:

DONALD C. KUDLER, ESQ.

19 For the Defendants:

ALEXANDER F. GIOVANNIELLO, ESQ.
CHRISTOPHER J. GIOVANNIELLO, ESQ.

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25 RECORDED BY: KRISTINE SANTI, COURT RECORDER

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Las Vegas, Nevada, Thursday, June 2, 2022

[Case called at 8:58 a.m.]

[Outside the presence of the jury]

THE COURT: A-735550, Myers v. THI. The record should reflect the presence of representatives of Plaintiff and Defense. Outside the presence of the jury.

All right. So are we talking about 31.1464?

THE CLERK: Yeah. And the Plaintiffs' 3 that one we (indiscernible) as well.

THE COURT: 3 -- Plaintiffs' 3-8?

THE CLERK: Yeah. So --

THE COURT: That's a photo of Myers in a workman's comp form?

THE CLERK: Yeah. So it'd be 3A, Plaintiffs' 3A and then Plaintiffs' 31A.

THE COURT: So we're going to call it 31A?

THE CLERK: Yeah, 31A and 3A.

THE COURT: 31A and 3A.

THE CLERK: Yeah.

THE COURT: So we've renamed those two exhibits. The clerk needs that for clarification of the record. So it's 3A-8 or just --

THE CLERK: It'll just be just 3A.

THE COURT: 3A.

THE CLERK: Yeah. And --

1 THE COURT: And that's the photo of Mr. Myers.
2 THE CLERK: Yeah.
3 THE COURT: And then 31A is -- instead of calling it 31 --
4 THE CLERK: Yeah.
5 THE COURT: --1464, it's 31A.
6 THE CLERK: Yeah.
7 THE COURT: It's the same form.
8 THE CLERK: Yes.
9 THE COURT: All right. That's the workman's comp form.
10 THE CLERK: Yeah. So if anymore gets pulled from 31, it'll be
11 31B and then so forth.
12 THE COURT: So yes. Does that make sense?
13 THE CLERK: Just to clarify.
14 THE COURT: All right, good. All right. Anything else outside
15 the presence? Seeing no hands. Randy, when you're ready.
16 THE MARSHAL: Stand for the jury.
17 [Jury in at 9:00 a.m.]
18 THE COURT: Be seated, ladies and gentlemen.
19 We're on the record in A-735550, Myers v. THI. Record
20 should reflect the presence of representatives of Plaintiff and Defense.
21 All members of the jury panel do appear to be present. Do parties
22 stipulate to the presence of the entire panel? Plaintiff?
23 MR. KUDLER: Plaintiff does, Your Honor.
24 THE COURT: And Defense?
25 MR. A. GIOVANNIELLO: We do, Your Honor.

1 THE COURT: Thank you.

2 Good morning, ladies and gentlemen. Does everybody have
3 your note pads and ready to go? Oh we have ears on. Good.

4 JUROR 4: These aren't working.

5 THE COURT: Okay. That's what we got to straighten out
6 then.

7 Oh by the way, our marshal said he was -- had some issues
8 he had to deal with, so we've got Randy. He's been around a lot of
9 years, worked quite a few juries. You can rely on him just like you
10 would -- all right. The record should further reflect we remain in
11 Plaintiffs' case in chief. Call your next witness.

12 MR. KUDLER: Plaintiffs call Sheryl Cipollini.

13 THE COURT: Record should reflect it appears the witness
14 called is on BlueJeans.

15 Ma'am, my name is Senior Judge District Judge Barker. I'm
16 presiding over a trial action in Department 17th of the 8th Judicial
17 District Court. You've been summoned to testify as a witness in this
18 case. Before we get into that there are certain unique responsibilities
19 that I need to confirm with you.

20 One, that you are in a room with a closed door; is that
21 correct?

22 MS. CIPOLLINI: That is correct.

23 THE COURT: That no one is in the room with you?

24 MS. CIPOLLINI: That is correct.

25 THE COURT: That you have no documents in front of you

1 currently or -- and if we have to move that direction that we clarify the
2 record on what you have so I'm certain that you're not drawing to any
3 independent materials, is that fair? Do you understand that?

4 MS. CIPOLLINI: Yes. The only documents I have are
5 documents that are medical records that pertain to the case.

6 THE COURT: Okay. And we'll go there. Right now I'd prefer
7 that you -- I direct that you close those documents --

8 MS. CIPOLLINI: Okay.

9 THE COURT: -- so whatever testimony we elicit from you is
10 from your memory and not from the document. But counsel's obviously
11 free to go there as circumstances require.

12 MS. CIPOLLINI: Okay.

13 THE COURT: If your situation changes at all, please notify
14 me if somebody walks in or something changes so I can make sure that
15 we're hearing your words, all right?

16 MS. CIPOLLINI: Okay.

17 THE COURT: All right. Let's have you raise your right hand
18 to be sworn by the clerk.

19 SHERYL CIPOLLINI, PLAINTIFFS' WITNESS, SWORN

20 THE CLERK: Please state and spell your first and last name
21 for the record.

22 THE WITNESS: Sheryl Cipollini, S-H-E-R-Y-L C-I-P-O-L-L-I-N-I.

23 THE COURT: Counsel, your witness.

24 MR. KUDLER: Thank you.

25 DIRECT EXAMINATION

1 BY MR. KUDLER:

2 Q Ms. Cipollini, I'd like to go a little bit into your background.
3 Where did you go to college?

4 A I got my associate's degree in nursing at Community College
5 of Southern Nevada. And then I did my bachelor's degree at Great Basin
6 College, which is in Pahrump in Northern Nevada. And I did my master's
7 degree with Walden University.

8 Q What is your bachelor's degree in?

9 A Nursing.

10 Q And how about your master's?

11 A Nursing as well with a focus on family nurse practitioner.

12 Q Were you initially licensed in the State of Nevada as a nurse?

13 A Yes.

14 Q And when did you first become licensed as a nurse?

15 A In 2006.

16 Q And at that point you had already finished your AA?

17 A Correct.

18 Q Okay. Have you finished your bachelor's at that point?

19 A I finished my bachelor's in 2010.

20 Q Okay. And then at some point you upgraded your nursing so
21 to say, when was that?

22 A I finished my master's in 2016.

23 Q Okay. And then you got a new license?

24 A So I'm a registered nurse and I always have been since 2006,
25 but in 2016 I became a board certified nurse practitioner.

1 Q And you retain that until today?

2 A Yes.

3 Q And what did you have to do to become board certified?

4 A I had to take a board exam.

5 Q Okay. And that was --

6 A And then I have to maintain that with CEU's, and they have a
7 few other requirements, either precepting, community service,
8 publishing an article. A few different things will qualify as for renewal.

9 Q Okay. And you maintained your license since 2016?

10 A Correct.

11 Q Okay.

12 A I just renewed last year.

13 Q Do you renew every year or bi-annually --

14 A Every five years for the board certification of the nurse
15 practitioner and every two years for the actual Nevada State Nursing
16 license.

17 Q Okay. Have you ever had your license revoked or
18 suspended?

19 A No.

20 Q How about your board certification, has anybody ever
21 attacked that?

22 A No.

23 Q Okay. Are there any specializations within the board
24 certification?

25 A So mine is family nurse practitioner. There's different board

1 certifications and that's the one that I chose.

2 Q As a family nurse practitioner what are your areas of
3 practice?

4 A So I can practice across the life span, so zero to death
5 basically.

6 Q Okay. And what kind of conditions do you treat?

7 A I can treat pretty much anything. I do a lot of diabetes, high
8 blood pressure, weight loss management, chronic pain, hormones and
9 then I also have opened an aesthetics practice, so I do stuff with medical
10 aesthetics as well.

11 Q Okay. Now how long have you had your own practice?

12 A It will be two years this August.

13 Q And why did you decide to open your own practice two years
14 ago?

15 A Because I wanted to have the independence and go a
16 different direction. I did co-own a practice prior to opening this one and I
17 was in that one for about three years, but I wanted to take it a different
18 direction than what we were at when I was with a different partner.

19 Q Okay. And prior to this practice who did you work for, to
20 your current practice?

21 A Do you mean who did I work with in the prior practice?

22 Q No. Prior to --

23 A Oh.

24 Q -- opening your own practice who were you working with?

25 A I did primarily emergency medicine.

1 Q Okay.

2 A So I worked at the hospital out here in Pahrump for several
3 years. I've done OBGYN with Women's Health Associates of Southern
4 Nevada. I have worked at Round Mountain Gold Mine doing employee
5 health. And I worked before I was a nurse practitioner I was an ER
6 manager and prior to that I was a staff nurse in the ER.

7 Q Okay. At some point did you work with Dr. Craig at
8 Reflections?

9 A Yeah. So that was the prior practice that I co-owned before
10 opening this one.

11 Q Okay. So you were co-owner with Dr. Craig?

12 A Correct.

13 Q Okay. As a nurse practitioner are you licensed to diagnose?

14 A Correct, yes.

15 Q Are you licensed to treat?

16 A Yes.

17 Q Is there any requirement as a nurse practitioner that a doctor
18 intervene or oversee you in your practice?

19 A Not in the State Of Nevada, no.

20 Q Okay. And that's why you have your own practice without a
21 doctor currently?

22 A Yes.

23 Q Okay. Now at Reflections do you recall treating Andrew
24 James?

25 A Yes.

1 Q Okay. Do you recall when he first came to see you?

2 A So he was Dr. Craig's patient initially and at times I would be
3 involved in the care. We began seeing him in -- well, we opened our
4 practice in 2017 and he was already a patient of Dr. Craig's at that time.

5 Q Okay. And what was Dr. Craig seeing him for?

6 A For chronic pain related to an arc flash injury.

7 Q Okay. Were there at that time when you started seeing him
8 in 2017 did you start -- did you review the notes of prior treatment?

9 A Yes.

10 Q Okay. Do you recall seeing notes in 2016 of Mr. James
11 experiencing mood disorders?

12 A Yes. There are notes reflecting aggressive behavior and
13 irritability and at that time he was actually started on Depakote for
14 management.

15 Q Okay. And when was that?

16 A That was in -- I believe it was in 2016.

17 Q Okay. And at some point were there more issues with mood
18 disorders and behavioral changes?

19 A Yes. There are notes that reflect a PTSD diagnosis and I
20 know that Dr. Craig trialed several medicals to treat the PTSD and mood
21 disorder. Medications were discontinued because of adverse side
22 effects. It took a trial and error trying to find the right medications and
23 the right treatment plan from what I recall.

24 Q Okay. And at some point during that was Mr. James referred
25 out?

1 A Yes. He was referred to see a psychotherapist and also a
2 psychiatrist.

3 Q Okay. And were you involved in that referral?

4 A I do not recall being involved in that referral, but I am aware
5 of that referral.

6 Q Okay. Just for the jury's edification, what happened to Dr.
7 Craig?

8 A In September of 2021, which was just a few months after I
9 left that practice Dr. Craig passed away from COVID complications.

10 Q Okay. And has Mr. James continued care with your practice
11 since then?

12 A Yes. So after Dr. Craig passed away some of the patients
13 that I had -- we shared care on several patients and the ones that I was
14 involved in their care as well transitioned over to me at my practice and
15 Andrew James was one of them.

16 Q Okay. And what are you currently treating him for?

17 A I treat him for the chronic pain in the left arm. I do also
18 prescribe his Depakote. And I prescribe him Ambien for sleep because
19 he does have difficulty with sleep due to nightmares.

20 Q Okay. And what does Depakote do for somebody who has
21 PTSD?

22 A It's basically a mood stabilizer.

23 Q Okay. Keeps them calm?

24 A Uh-huh. Yes.

25 Q That's a yes, thank you. And he's been on Depakote since

1 about 2016?

2 A Yes.

3 Q Okay. In regards to the pain, what kind of pain was he
4 complaining of back in 2017, physical pain?

5 A Pain in the left arm and Dr. Craig diagnosed him with having
6 CRPS, which is a regional pain syndrome that causes basically an
7 amplified pain reaction or pain response.

8 Q Okay. What area of his body is that in?

9 A The left arm.

10 Q Okay. Any particular part of the left arm?

11 A The forearm.

12 Q Okay. And --

13 A From the elbow down.

14 Q Okay. And you're treating him for that as well, continuing?

15 A Yes. I -- he takes Lyrica, Gabapentin, Hydrocodone and
16 Oxycodone for breakthrough pain.

17 Q Okay. Those things he takes daily or the breakthrough pain
18 medication only when necessary?

19 A The breakthrough -- the Oxycodone only when necessary.

20 Q Okay.

21 A The other medications are fairly routine.

22 Q Okay. And do you have an opinion as to what caused the
23 CPRS?

24 A It is --

25 Q Or CRPS.

1 A My medically opinion and it was also Dr. Craig's medical
2 opinion that is was related to the arc flash injury.

3 Q Okay. And the PTSD that was diagnosed, what in your
4 opinion caused that?

5 A Again, the arc flash injury.

6 Q Okay. Do you have a set of exhibits -- did we send you a set
7 of exhibits that have numbers on them?

8 A No.

9 Q Okay. So you only have your original record?

10 A Correct.

11 Q Okay. Do you recall a letter from May of 2019?

12 A Yes, I do.

13 Q Okay. And that was a letter that was written to me?

14 A Yes. It was a letter written by Dr. Craig addressed to you
15 regarding the CRPS.

16 Q And was that a letter you were involved in drafting?

17 A Yes. He composed the letter by hand, and I typed the letter.

18 Q Okay. And being a nurse practitioner did you agree with the
19 contents of the letter?

20 A Yes, I do.

21 Q And what did that letter basically say?

22 A Oh gosh. It referred to him having the CRPS in the left
23 forearm as a result of the arc flash injury. I believe it mentioned the
24 different medications that were trialed for management of the pain.

25 Q Okay. Do you recall if it discussed PTSD at all?

1 A Oh gosh. Honestly I can't recall at the moment if it
2 mentioned the PTSD in the letter.

3 Q Okay. Did you ever use any laser treatment on Mr. James?

4 A Yes, I did.

5 Q And what was that for?

6 A We were trying to treat some lesions on his face.

7 Q Okay. And that's part of your current practice?

8 A It is, yes.

9 Q Okay. Anything unusual happen during that treatment?

10 A Yes. He immediately became very quiet and withdrawn and
11 started shaking his hand and we realized that it was a reaction, basically
12 like a flashback incident to the arc flash injury because of the zapping
13 noise of the laser.

14 Q Okay. And when was that?

15 A That was about 18 months ago.

16 Q Okay. So 2020ish?

17 A Yeah.

18 Q Okay.

19 A It was shortly after I opened here in 2020.

20 Q Okay. So last part of 2020 he had -- he was triggered?

21 A Correct.

22 Q Okay. Do you recall anything else about Mr. James's PTSD
23 care that he's been given?

24 A He's -- like I said there's been several medications that have
25 been trialed. The current one is the Depakote and then the Ambien for

1 sleep because of adverse effects that he's experienced along the way.
2 And then he's got a different treatment plan with his psychiatrist that I
3 am not involved in.

4 Q Okay. And the regional pain syndrome.

5 A Uh-huh.

6 Q We discussed everything, he's -- that has been done to help
7 him with that?

8 A So from my perspective we've discussed the medication
9 management. I know that he has been seen by ortho and there was a
10 treatment plan proposed by them as well.

11 Q Okay. Are you familiar with the term reasonable degree of
12 medical probability?

13 A Yes.

14 Q Okay. And you understand that anything in the body is
15 possible, almost anything is possible?

16 MR. A. GIOVANNIELLO: Objection --

17 THE WITNESS: Yeah, no.

18 MR. A. GIOVANNIELLO: -- speculation.

19 THE COURT: Overruled.

20 BY MR. KUDLER:

21 Q And you understand that other than death perhaps nothing is
22 absolutely certain?

23 A Correct.

24 Q And that when we use the term reasonable degree of
25 medical probability we're talking more likely than not?

1 A Correct.

2 Q Okay. Have the opinions you've been giving here been
3 within a reasonable degree of medical probability?

4 A Yes.

5 Q And that's based on your examinations, treatment, review of
6 the notes and your experience and training as a nurse practitioner?

7 A Yes.

8 Q Okay. Do you have an opinion as to whether that treatment
9 was reasonable and necessary given Mr. James's conditions?

10 A The treatment that we are -- that we've been given him since
11 2016?

12 Q Yes.

13 A Yes.

14 Q Okay. And is that opinion within a reasonable degree of
15 medical probability?

16 A Yes, it is.

17 Q Do you know how much you have billed him in your own
18 practice?

19 A Since I have moved over here to this space I have billed him
20 for I would say four office visits.

21 Q And how much is an office visit?

22 A The Medicare rate for an office visit is \$115.

23 Q Okay.

24 A But the reimbursement rate of course is not --

25 Q Okay.

1 A -- that amount.

2 Q The --

3 A It's probably about 65.

4 Q The 115 that you bill, is that within a reasonable and
5 customary charge for the types of services rendered?

6 A Yeah. It's the Medicare rate. It's rates set by Medicare.

7 Q Okay. It's not something that you made up?

8 A Nope.

9 Q Okay. Do you know what he was billed in the prior practice?

10 A It should have been the same because when we started the
11 prior practice we also were using the Medicare rate schedule.

12 Q Okay. And do you know the total amount that he was billed
13 there?

14 A Oh gosh. I would say in that time he was probably being
15 seen every two to three months and over a period of about three to four
16 years. So four visits a year, 16 visits maybe. 20 visits.

17 MR. A. GIOVANNIELLO: Your Honor, I'm going to object. It's
18 a guess.

19 THE COURT: Counsel's response?

20 MR. KUDLER: She's not 100 percent sure, so -- but she's
21 giving her recollection.

22 THE COURT: I'm going to sustain.

23 MR. KUDLER: Thank you, Your Honor.

24 BY MR. KUDLER:

25 Q Are there plans for future care for Mr. James in regards to

1 the regional pain syndrome or the PTSD through you?

2 A Well, I will continue in medication management. There has
3 been discussion of possible surgery as recommended by Ortho. But
4 that's not something I would do, of course. He would be referred to an
5 orthopedic surgeon for that.

6 Q Okay. Is there a requirement when somebody is taking these
7 types of medication how often you have to see them? I mean, can you
8 write a prescription for five years or do you have to see them
9 periodically?

10 A No. I have to see him every three months.

11 Q Okay. And that's something that's going to continue for how
12 long?

13 A For as long as he's a patient under my care.

14 Q Okay. Do you see any end to -- outside of him having
15 surgery, do you see any end to him having the regional pain syndrome?

16 A No, I do not. And surgery wouldn't be a guarantee either.

17 MR. A. GIOVANNIELLO: Objection, Your Honor. Move to
18 strike. Speculation.

19 THE COURT: Overruled.

20 MR. KUDLER: Thank, Your Honor.

21 BY MR. KUDLER:

22 Q And as to the PTSD, are you continuing to treat him?

23 A Well, I -- like I said I treat him with the Depakote and the
24 Ambien, but he does see psychiatry and a psychotherapist.

25 Q Okay. But you -- as of right now you will continue to be

1 seeing him for the medical management of the Depakote and Ambien?

2 A Correct.

3 Q Okay. And how often will you have to see him for that, same
4 three months?

5 A Correct.

6 Q Okay. And just to make one quick wrap up question. Have
7 all the opinions you've given here today been within a reasonable
8 degree of medical probability?

9 A Yes, they have.

10 Q Thank you.

11 THE COURT: Witness is passed. Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. A. GIOVANNIELLO:

14 Q Good morning, Ms. Cipollini.

15 A Good morning.

16 Q My name is Alex Giovanniello. I represent the Defense in
17 this case. I'm going to ask you a couple questions, okay?

18 A Okay.

19 Q You stated that you started treating Mr. James in 2016?

20 A Dr. Craig started treating him in 2016 and we opened a
21 practice together in 2017.

22 Q Okay. All right. For some reason I just don't have those
23 records.

24 MR. KUDLER: Your Honor, can we not have the
25 commentary?

1 THE COURT: Questions asked, questions answered. No
2 commentary in the middle.

3 MR. A. GIOVANNIELLO: Okay.

4 BY MR. A. GIOVANNIELLO:

5 Q When did you -- you said you opened a practice -- excuse
6 me. You began your practice with Dr. Craig in 2017?

7 A Correct.

8 Q Okay. So is that when you started treating Mr. James?

9 A Dr. Craig was the one treating Andrew James and at times I
10 would be involved in his care.

11 Q Okay. We have a lot of records here as far as, you know,
12 each visit. Who wrote in those records, in other words who prepared
13 those records?

14 A The records that were created at Reflections would have
15 been created by Dr. Craig.

16 Q Okay. So it was Dr. Craig seeing the patient and creating the
17 records?

18 A During the time at Reflections, yes. And at times I would be
19 involved with drafting letters or with sending in prescriptions as needed.

20 Q Okay. But let me ask you this, do you have firsthand
21 knowledge of what -- of actually firsthand knowledge of what the doctor
22 was actually writing in the records?

23 A Yes, I do.

24 Q Okay. How do you have firsthand knowledge?

25 A Because I was discussing the case with Dr. Craig at times,

1 and I was also reviewing his notes.

2 Q Okay. So did you review each and every note?

3 A I wouldn't say that I reviewed each and every note, no.

4 Q Okay. I'm going to jump ahead a little bit and then I'm going
5 to come back. You testified that he was getting some laser treatment
6 and he had a reaction to it?

7 A Yes.

8 Q How do you know it's a flashback?

9 A It seemed consistent with a PTSD type reaction.

10 Q Okay. Are you basing that on medical knowledge or are you
11 guessing?

12 A I'm basing that on medical knowledge.

13 Q Okay. Was there -- when did that happen with that?

14 A I would have to look at my chart notes to see exactly what
15 day it was.

16 Q Okay. I would like you to look at your chart notes because I
17 want to know the day. Is that --

18 A Okay.

19 Q -- okay?

20 A Yeah, that's fine. So I'm going minimize my screen here and
21 -- July 15th of 2021.

22 Q July 15th of 2021. And that's when you started your own
23 practice, correct?

24 A No. I started it in 2020.

25 Q 2020. The last note that I see from Reflections is January

1 18th, 2021, okay. Was Mr. James still a patient with Dr. Craig at that
2 time?

3 A In January?

4 Q Yeah, of 2021.

5 A Yes. He was a patient of Dr. Craig's up until his death, which
6 was in September of 2021.

7 Q Okay. But he started seeing you -- do you have a date when
8 he first started seeing you?

9 A For the medical care --

10 Q Yes.

11 A -- at my office?

12 Q Yeah. Yes.

13 A I need to look in my chart again.

14 Q Okay. While you're looking at the chart, what's the name of
15 your business?

16 A It's Aesthetic Enhancements.

17 Q I'm sorry, say that again?

18 A Aesthetic Enhancements.

19 Q Aesthetic Enhancements. That almost sounds like plastic
20 surgery, you don't do that do you?

21 A No. I don't, no.

22 Q So what's the -- how did you get that name? How did you
23 find that name?

24 A Because I wanted to focus on aesthetics, medical aesthetics.

25 Q And what's that?

1 A Like Botox and filler, laser treatments, laser hair removal.

2 Q Okay. Thank you.

3 A You're welcome. So my first documented visit with Andrew
4 James after Dr. Craig's death in my office was in October of 2021.
5 October 28th of 2021.

6 Q Okay. Were you ever asked to provide those records to
7 anybody?

8 A Not that I recall.

9 Q Okay.

10 MR. A. GIOVANNIELLO: May I approach -- or may we
11 approach?

12 THE COURT: Yes.

13 [Sidebar begins at 9:30 a.m.]

14 THE COURT: I'm assuming they were never disclosed?

15 MR. A. GIOVANNIELLO: Never disclosed. And this was long
16 after discovery cutoff, which was in May of 2000 -- 2020. These records
17 were never disclosed. We had no idea that she treated --

18 THE COURT: What's your response?

19 MR. KUDLER: I have to check and see. I thought they were
20 disclosed. I'd have to check and see. They were well aware that she was
21 taking the place and that she was continuing care.

22 MR. A. GIOVANNIELLO: We were -- no.

23 MR. C. GIOVANNIELLO: [Indiscernible] laser treatment
24 though.

25 MR. A. GIOVANNIELLO: Not well aware of that at all. I can

1 tell you that. The only one I'm aware of is Dr. Craig's records up to 1/18.

2 THE COURT: Listen, why don't you straighten it out?

3 Because if the testimony's not been -- if the records haven't been
4 disclosed --

5 MR. A. GIOVANNIELLO: Yeah.

6 THE COURT: -- I'm not going to let the witness testify any
7 further with regard to those records.

8 MR. KUDLER: And that's [indiscernible] --

9 MR. A. GIOVANNIELLO: Well, and I would move to strike her
10 testimony because she's testifying as to those records.

11 MR. KUDLER: Well, she's testified as to the prior stuff and --

12 MR. A. GIOVANNIELLO: Right.

13 MR. KUDLER: -- the PTSD and which they were in
14 possession of. They have to understand that the whole time we've been
15 dealing with this, they've been complaining that I was producing records
16 and I shouldn't be producing records and they should be fine with her
17 testifying without records knowing that she's a witness. You know how
18 many times I got motions and oppositions --

19 THE COURT: I don't -- I've --

20 MR. A. GIOVANNIELLO: I have no idea what he's talking
21 about.

22 THE COURT: It doesn't matter. Right now I'm trying to
23 figure out what to do with this witness.

24 MR. A. GIOVANNIELLO: Okay.

25 MR. KUDLER: And I don't have an issue with, you know, just

1 more (indiscernible) you know, what she testified to in regards to the
2 treatment with Dr. Craig.

3 THE COURT: So I'm going to tell you what. We're going to
4 go outside the presence right now. We're going to straighten out the
5 parameters and the witness's ability to testify. I'm going to consider
6 when I hear you guys, maybe a motion to strike, I don't know. It's not
7 going to be all of it, but it would be something of it.

8 MR. A. GIOVANNIELLO: I would say from the time she left
9 Dr. Craig forward because we don't have those records. And the whole
10 testimony --

11 THE COURT: Maybe.

12 MR. A. GIOVANNIELLO: -- about the laser treatment and --

13 THE COURT: Maybe. Let's just build the record on it --

14 MR. A. GIOVANNIELLO: Okay.

15 THE COURT: -- without standing here.

16 MR. KUDLER: And I have to check with the office and see,
17 but I believe we did --

18 THE COURT: Okay.

19 MR. KUDLER: -- produce some of her records.

20 [Sidebar ends at 9:32 a.m.]

21 THE COURT: Ladies and gentlemen -- let's go off please.
22 Ladies and gentlemen, this issue's going to have to come up and go -- I
23 need to go outside your presence, so I'm going to direct that during this
24 recess you must not discuss or communicate with anyone including
25 fellow jurors in any way regarding the case or its merits by voice, email,

1 text, phone, internet or other means of communication or social media.
2 You may not read, watch, or listen to any news or media accounts or
3 commentary about the case. Do not do any research, consult
4 dictionaries, internet, or reference materials, or make any investigation,
5 test theories, recreate any aspect of the case or in any other way
6 investigate the case on your own, or form or express any opinion until
7 the case is submitted to you.

8 Now I need you to stay on the floor, ladies and gentlemen.
9 This -- what I need to do with the lawyers is what -- it'll take the time it
10 takes. It shouldn't be terribly long. And then we'll just come back in and
11 get to work.

12 Follow the Marshal, please.

13 THE MARSHAL: Please stand for the jury.

14 [Jury out at 9:33 a.m.]

15 [Outside the presence of the jury]

16 THE CLERK: Your Honor, you want me to mute the witness?

17 THE COURT: Yes. I'm going to -- let's mute the witness
18 because I want to talk to the lawyers before we bring her back in.

19 Record should reflect we're outside the presence of the jury.
20 Minutes should further reflect the parties have approached with some
21 concerns regarding disclosure of certain records that the witness is being
22 cross-examined on.

23 So let's tighten up what was disclosed to the best of each
24 side's knowledge. Now Mr. Giovanniello, you said that this is all a
25 surprise to you.

1 MR. A. GIOVANNIELLO: Yes, Your Honor.

2 THE COURT: All of it or just some of it?

3 MR. A. GIOVANNIELLO: No. What is a surprise to me is
4 anything from 1/18/21 to the present? She testified that she started him
5 in October of 2021.

6 THE COURT: After the death of the other doctor.

7 MR. A. GIOVANNIELLO: Right. And with the name of, what
8 -- aesthetic enhancements.

9 THE COURT: Okay.

10 MR. A. GIOVANNIELLO: We do not have any records from
11 Aesthetic Enhancements. What came as a complete surprise to me is
12 everything from 1/21/18 -- excuse me. 1 --

13 MR. C. GIOVANNIELLO: 18.

14 MR. A. GIOVANNIELLO: -- 18/21 to the present. So in other
15 words she also testified that he had a flashback when she was treating
16 him in, you know, in her practice. None of that was ever disclosed to
17 me.

18 THE COURT: All right. Was the witness ever deposed?

19 MR. A. GIOVANNIELLO: No, Your Honor. The witness was
20 not deposed mainly because -- I don't even think she was disclosed.

21 THE COURT: Well, she's testifying so there had to have been
22 some 16.1 disclosure, but okay.

23 MR. A. GIOVANNIELLO: I think she's testifying because Dr. --

24 THE COURT: She's treating. As what?

25 MR. A. GIOVANNIELLO: Yeah. Because Dr. Craig just died

1 and that's why she's testifying because she's basically doesn't even have
2 really firsthand knowledge. She's just going over the records.

3 THE COURT: All right. Well, let's -- I understand that, but it'll
4 be subject to further discussion and argument with the jury. I want to
5 know whether the records -- so we're looking at January 18th, '21
6 forward. Were the records ever disclosed to the Plaintiffs -- by the
7 Plaintiffs?

8 MR. KUDLER: Let me see what we have as soon as my
9 computer wants to do whatever it's going to do.

10 THE COURT: And this laser treatment with the PTSD
11 reaction, when was that, I didn't -- oh it was July 15th of 2021 --

12 MR. A. GIOVANNIELLO: Right.

13 THE COURT: -- if my note is correct.

14 MR. A. GIOVANNIELLO: Yeah. I'm okay with her testifying
15 to Dr. Craig's records because he's dead.

16 THE COURT: Right.

17 MR. A. GIOVANNIELLO: So she can go over them.

18 Were the 2016 records disclosed? Because I don't have those
19 either. And Your Honor, to bring up another matter and I think
20 Christopher is checking, we'd ask that Mr. Kudler check as well. I have
21 records starting in 2018, I don't have records from 2016. I don't believe
22 those were ever produced either. That came as a bit surprise to me as
23 well.

24 THE COURT: But the '18 records arguably might reference
25 back to '16?

1 MR. A. GIOVANNIELLO: They don't. Otherwise I would have
2 said where's the -- I would have asked Mr. Craig where's the -- Mr.
3 Kudler, excuse me, where's the '16 records. And even the letter that I
4 guess that he was talking about, which is not in evidence, but was
5 written in '19, so.

6 THE COURT: Okay.

7 MR. A. GIOVANNIELLO: And I guess the reason being is
8 because the records I have don't mention PTSD beginning in 2016.

9 THE COURT: Mr. Kudler, I know we're all staring at you, but
10 how's it going?

11 MR. KUDLER: I'm just trying to get through everything
12 because this was done in parts and because it was continuing care I have
13 to try and figure out when the first disclosure was.

14 THE COURT: Okay. Tell you what, I'll give you five minutes.
15 I'm not going to stare at you, I'm going to warm up my coffee and then
16 I'll entertain a -- potential motions to strike and admonishment to the
17 jury as circumstances might require.

18 We're off the record.

19 THE CLERK: Yes, Your Honor.

20 THE MARSHAL: Court's in recess.

21 [Recess taken from 9:39 a.m. to 9:44 a.m.]

22 [Outside the presence of the jury]

23 THE COURT: All right. So we're back on the record in --
24 where' my jury sheet. 735550, Myers v. THI. Again, record should reflect
25 the presence of representatives of Plaintiff and Defense. Outside

1 presence of jury.

2 Mr. Kudler?

3 MR. KUDLER: Exhibit 12 is the May 9th -- May 29th letter that
4 was disclosed.

5 THE COURT: Okay.

6 MR. KUDLER: And Dr. Craig notes in that letter:

7 "Several months after the arc injury, which is 2014, he
8 developed a new onset of mood instability with irritability and
9 impatience that have seriously affected his relationships at home and
10 work in negative ways. This represented a radical break in his previously
11 applicable and corporative nature. Depakote was started with salutary
12 effect, but forgetting even one dose will result in a return to irrational
13 behavior, character disorders. We can only point were direct results of
14 the work-related injury on 6/6/2014. About six months after the injury
15 with constant left arm pain, mood instability and the burden of
16 medication administration he developed symptoms and signs of post-
17 traumatic stress disorder, PTSD."

18 THE COURT: I'm going to let -- well, what I hear is that
19 communication relates back from 2019, so. But I don't hear anything
20 about the treatment of Nurse Cipollini from January 18th, '21 when she
21 first met the Plaintiff through today. Those records were never
22 disclosed.

23 MR. KUDLER: I don't believe we've ever gotten those.

24 THE COURT: So then they're subject to a motion to strike.

25 MR. A. GIOVANNIELLO: And I make a motion to strike on

1 that, Your Honor. But I also make a motion strike any records from 2016
2 to 2018, they were not produced. This letter does not say that those
3 records were produced to me.

4 MR. KUDLER: And we're not putting in any of these records
5 because --

6 THE COURT: Right.

7 MR. A. GIOVANNIELLO: Well, she testified.

8 MR. KUDLER: But she can testify as to her knowledge.

9 THE COURT: I'm going to grant the motion to strike January
10 18th forward. I'm going to deny your motion to strike for the earlier
11 treatment of the doctor and Cipollini's involvement. Okay?

12 I think the letter at least lays foundation for the witness's
13 testimony, so that's my ruling. Let's get the jury in here. And I'll let you
14 build the record if you need to more.

15 MR. A. GIOVANNIELLO: No. I made the motion and you
16 denied it. It's --

17 THE COURT: I have.

18 MR. A. GIOVANNIELLO: The records made.

19 THE COURT: That's where we are.

20 MR. A. GIOVANNIELLO: Yeah.

21 THE COURT: Yeah.

22 MR. A. GIOVANNIELLO: The jury -- are you going to
23 admonish the jury?

24 THE COURT: Yes.

25 THE COURT RECORDER: Can I bring the witness back on,

1 Your Honor, or should I wait?

2 THE COURT: Yeah. Let's bring the witness back in.

3 [Jury in at 9:47 a.m.]

4 THE COURT: Please be seated, ladies and gentlemen. We
5 are back on the record in 735550, Myers v. THI. Record should reflect the
6 presence of representatives of Plaintiff and Defense. All members of the
7 jury panel do appear to be present. Do parties stipulate to the presence
8 of the entire panel, Plaintiff?

9 MR. KUDLER: Yes, Your Honor.

10 THE COURT: And Defendant?

11 MR. A. GIOVANNIELLO: Yes, Your Honor.

12 THE COURT: Thank you.

13 MR. A. GIOVANNIELLO: Your Honor, may I say one more
14 thing?

15 THE COURT: Acknowledging that the witness is in the
16 witness box and within the four corners of what we discussed, yes.

17 MR. A. GIOVANNIELLO: I want to object to the letter as
18 hearsay.

19 THE COURT: The letter's not been offered.

20 MR. A. GIOVANNIELLO: Okay.

21 THE COURT: So the letter's not in currently as an exhibit. It
22 was discussed --

23 MR. A. GIOVANNIELLO: Then I object to the testimony as
24 hearsay.

25 MR. KUDLER: Your Honor, it would also be the current

1 medical treatment, current care. All of that would be exceptions.

2 THE COURT: That objection's overruled. The witness was
3 contemporaneous to the creation of the document and the information
4 pertained therein.

5 But ladies and gentlemen, before you took the break I want
6 to you to reassert your objection to -- and your motion and so we can
7 have a proper foundation for the jury.

8 MR. A. GIOVANNIELLO: Okay. My objection is to anything
9 that was -- well, any testimony of this witness from -- between 1/18/21 to
10 the present because those documents were never produced to us. So I
11 make a motion to strike all the testimony from 1/18/21 to the present.

12 THE COURT: Ladies and gentlemen --

13 MR. A. GIOVANNIELLO: And that includes the testimony of
14 laser treatment.

15 THE COURT: As a consequence I am granting that motion to
16 strike and direct you to disregard any testimony of the witness for
17 treatments from January 18th, 2021 forward.

18 But the witness is still a percipient and subject to cross-
19 examination on the balance of the treatments for the doctor that -- the
20 decedent doctor. And you have the witness on cross.

21 MR. A. GIOVANNIELLO: Okay.

22 BY MR. A. GIOVANNIELLO:

23 Q Ms. Cipollini, there was a letter that was discussed that was
24 written by Dr. Craig on May 19 -- excuse me. On the --

25 MR. A. GIOVANNIELLO: May 19th?

1 MR. JAMES: 20.

2 MR. A. GIOVANNIELLO: May 19th, 2020?

3 MR. JAMES: May 20, 2019.

4 MR. A. GIOVANNIELLO: May 20th, 2019. Thank you.

5 BY MR. A. GIOVANNIELLO:

6 Q Do you have any part in writing that letter?

7 A I didn't write the letter, but I typed it after Dr. Craig composed
8 it.

9 Q Okay. But other than typing the letter, were you -- did you
10 have any part in any of the opinions that were set forth in that letter?

11 A No.

12 Q Okay. So all you did was really type it up?

13 A Correct.

14 MR. A. GIOVANNIELLO: Your Honor, move to strike the
15 letter as hearsay then or her testimony as to that as hearsay.

16 THE COURT: Reply?

17 MR. KUDLER: Again, Your Honor, this is a medical record
18 and current time, and this is a deceased witness. So the hearsay, the
19 guy can't come in talk.

20 THE COURT: All right. This was produced as a consequence.
21 Your objection's overruled. Noted and overruled.

22 MR. A. GIOVANNIELLO: Okay. Thank you. All right.

23 BY MR. A. GIOVANNIELLO:

24 Q You have medical records in front of you, but you don't have
25 like a bate stamped copy, correct?

1 A I don't have what?

2 Q Like a Bate stamped copy that was given to you by one --
3 well, the only attorney would be Mr. Kudler?

4 A No.

5 Q Okay. So you just have medical records there?

6 A Correct.

7 Q You have Dr. Craig's medical records, right?

8 A I have a copy of the letter.

9 Q Okay.

10 A And then I have two chart notes.

11 Q His what?

12 A I have two chart notes.

13 Q Just two?

14 A Just -- yeah. I didn't print off everything.

15 Q Okay. That might make this a little difficult. Do you have the
16 chart note of 1/25/18?

17 A No, I do not.

18 MR. A. GIOVANNIELLO: Is it possible to show her this while
19 she's on BlueJeans?

20 THE COURT RECORDER: That's why I said that you have to
21 make sure that she had everything beforehand. Unless you can share it
22 from your computer screen, but I don't have the ability to do it, because
23 she's on --

24 MR. A. GIOVANNIELLO: All right.

25 THE WITNESS: I may be able to pull that up.

1 BY MR. A. GIOVANNIELLO:

2 Q Can you try?

3 A Yeah.

4 Q Can you try to pull --

5 A What was the date?

6 Q I'm going to -- I want to go over Dr. Craig's chart notes with
7 you.

8 A Let me see if it's in this EHR. What was the date again?

9 Q Well, I want to start with, which was the records I have, is
10 1/25/2018.

11 A No. I don't have access to that chart. No.

12 MR. A. GIOVANNIELLO: Do you want to try and see if you
13 can do this? Okay. Excuse us, we're having some technical difficulties.
14 He's going to see if he can --

15 THE COURT: Parties approach.

16 [Sidebar begins at 9:53 a.m.]

17 THE COURT: We're going to -- I'm going to direct her to be
18 present here in person to complete the examination, both the cross and
19 redirect. It's just going to be an easier way to do it because remote
20 doesn't work on this -- at this level. I'm not going to bit and piece it,
21 okay?

22 MR. GIOVANNIELLO: Okay. I'm good with that.

23 THE COURT: So that's where I'm headed.

24 [Sidebar ends at 9:53 a.m.]

25 THE COURT: Nurse Cipollini, can you hear me?

1 THE CLERK: Hold on. I'm getting there. My mouse is not
2 cooperating. There.

3 THE COURT RECORDER: She's on.

4 THE COURT: Nurse Cipollini, can you hear me?

5 THE WITNESS: I can.

6 THE COURT: As a consequence of circumstances that have
7 developed, I'm going to direct that you report to Las Vegas. You're
8 coming to Vegas to testify in person. I need you this afternoon or
9 tomorrow. Can you make that happen?

10 THE WITNESS: Well, I -- yes. I will make that happen.

11 THE COURT: Can you make that happen this afternoon?

12 THE WITNESS: Let me look at my schedule. I -- I cannot
13 because I have somebody driving three hours for a treatment this
14 afternoon.

15 THE COURT: How about tomorrow morning?

16 THE WITNESS: Yes, I can do that.

17 THE COURT: All right. We're going to convene tomorrow
18 morning at 9 a.m. I need you to be present to continue with cross-
19 examination and redirect. Do you have any questions about that?

20 THE WITNESS: No.

21 THE COURT: All right. We can step away from the witness
22 at this point with the intention of recalling her tomorrow morning at 9
23 a.m. You can hang up now, Nurse Cipollini.

24 THE WITNESS: Okay. Thank you.

25 THE COURT: Plaintiff, we remain in case-in-chief. Do you

1 have an additional witness that you can call at this time?

2 MR. KUDLER: I don't know if Dr. Richter is outside. I believe
3 he's appearing personally.

4 MR. A. GIOVANNIELLO: We had him at 10:30 but --

5 THE COURT: Well, we may have to take a break. You have
6 to try your case but -- ladies and gentlemen, during this recess, you must
7 not discuss or communicate with anyone including fellow jurors in any
8 way regarding the case or its merits by voice, phone, email, text,
9 internet, or other means of communication or social media.

10 You may not read, watch, listen to any report of media
11 accounts or commentary about the case. Do not do research, consult
12 dictionaries, internet, reference materials, make any investigation, test a
13 theories, recreate any aspect of the case, or in any way investigate the
14 case, learn about the case on your own. You may not form or express
15 any opinion regarding the case until it's finally submitted to you.

16 I'd say -- I'm going to direct you to return -- you can leave the
17 floor. Let's do 10:30 since that's the time the witness was called with the
18 hopes that we can continue this effort this morning. 10:30, ladies and
19 gentlemen. Follow the marshal, please.

20 THE MARSHAL: Please stand for the jury.

21 [Jury out at 9:56 a.m.]

22 [Outside the presence of the jury]

23 THE COURT: All right. Record will reflect we're outside the
24 presence of the jury. Any additional record need to be made by either
25 side as a function of our efforts this morning? Plaintiff?

1 MR. KUDLER: Not at the time.

2 THE COURT: Defense?

3 MR. GIOVANNIELLO: Not at this time.

4 THE COURT: All right. Leave the floor. Do what you need
5 to do. I have been -- I have started my work on the jury instructions.
6 You guys are fairly close on those. We've got to work through Judge
7 Bluth enter a *Bass Davis* decision some time ago. I was working on that.
8 Other than that, most of it seems fairly straightforward. That's kind of
9 where my mind is at. I see us -- from this information on witnesses, I'd
10 like to have you argue this case and submit it to the jury on Tuesday. Do
11 you --

12 MR. KUDLER: I would think that's probably where we are.

13 THE COURT: Do you think that that's realistic? I'd love to do
14 it Monday, but you've got -- you've got this witness --

15 MR. GIOVANNIELLO: Your Honor, I've got maybe about, I
16 don't know, an hour.

17 THE COURT: Of testimony?

18 MR. A. GIOVANNIELLO: Maybe an hour-and-a-half. That's
19 about it.

20 THE COURT: Oh, good.

21 MR. GIOVANNIELLO: I mean, I think we might be able to
22 argue Monday afternoon.

23 THE COURT: That'd be fine. You have -- I see -- who is Sam
24 Zand, D.O.?

25 MR. KUDLER: He is the psychiatrist.

1 THE COURT: Okay. And Shanker Dixit?

2 MR. KUDLER: He's a neurologist. We're having trouble
3 getting ahold of both of them. I spoke to Dr. Zand, and he seemed on
4 the line and then he's gone incommunicado. We've got both of them
5 served with subpoenas.

6 THE COURT: Okay. All right. So -- but you have Smith --
7 he's your economist, correct?

8 MR. KUDLER: No --

9 THE COURT: Who --

10 MR. KUDLER: -- Smith is the owner of the company.

11 THE COURT: Oh, that's right. All right. So you have Richter.
12 You've got Patti --

13 MR. KUDLER: And Dr. Patti is out in a remote area, and he
14 doesn't have access to a computer so it would be telephonic, and I know
15 that I sent him a Bates-stamped set because that went out last week.

16 THE COURT: Oh, so he's just telephonic. Any objection to
17 that?

18 MR. A. GIOVANNIELLO: Well, I want this to move along but I
19 would like to see his face.

20 THE COURT: That's not really an objection. If you want it to
21 move along -- I don't see the rule -- I hesitate to because I -- and juries
22 like to see faces too, but the rule does not limit telecommunication to
23 video --

24 MR. KUDLER: Correct. In fact, it talks about telephonic, the
25 original --

1 THE COURT: -- so I think we're going to let that happen. But
2 I'd like it to happen in regular course so we're not delaying.

3 Who is Luke Crawford?

4 MR. KUDLER: Luke Crawford is one of the EMTs that saw
5 both of them in the ambulance.

6 THE COURT: Can you -- and you had him -- on here you said
7 final date to be determined but you had him under Tuesday.

8 MR. KUDLER: I checked with my office. I believe he's
9 confirmed for tomorrow.

10 THE COURT: Oh, good. Good. So maybe we can get this
11 case to the jury on Monday.

12 MR. KUDLER: I'm thinking that you know, even if I have to
13 bring Dixit and Zand in on Monday. But I still have my clients that have
14 to testify and --

15 THE COURT: That's right. Yeah.

16 MR. KUDLER: -- and I can guarantee his cross-examination is
17 going to be lengthy.

18 THE COURT: All right. So Monday or Tuesday, we're going
19 to get this to the jury somehow.

20 MR. KUDLER: Yeah, definitely by Tuesday.

21 THE COURT: So I'm just kind of -- I'm just kind of thinking of
22 when we're going to sit down and finalize instruction. But let's -- I don't
23 want to get in front of that. Let's let you do what you need to do. Find
24 your witness. Let's keep moving forward. All right. 10:30.

25 THE COURT: Court's in recess.

1 [Recess taken from 10:00 a.m. to 10:23 a.m.]

2 THE COURT: You guys good? All right, do your work. Tell
3 me when you're ready.

4 MR. KUDLER: Let me see if my clients are outside.

5 THE MARSHAL: Stand for the jury.

6 [Jury in at 10:24 a.m.]

7 THE COURT: Be seated, ladies and gentlemen. We're on the
8 record A735550. Myers v. THI. Records reflect the presence of
9 representatives of the Plaintiff and Defense. All members of the jury
10 panel do appear to be present.

11 Will the parties stipulate to the presence of the entire panel?
12 Plaintiff?

13 MR. KUDLER: I attest.

14 THE COURT: And Defense?

15 MR. A. GIOVANNIELLO: Yes.

16 THE COURT: The record should -- thank you. The record
17 should reflect we remain in Plaintiffs' case in chief. Call your next
18 witness.

19 MR. KUDLER: Dr. Michael Richter.

20 MICHAEL RICHTER, PLAINTIFFS' WITNESS, SWORN

21 THE CLERK: Please be seated. Please state and spell your
22 first and last name for the record.

23 THE WITNESS: Michael M-I-C-H-A-E-L. Last name is Richter,
24 R-I-C-H-T-E-R.

25 THE COURT: Counselor, your witness.

1 MR. KUDLER: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. KUDLER:

4 Q Doctor, you want to go through your background. Where did
5 you go to college?

6 A Emory University, Atlanta, Georgia. That was my --

7 Q Okay. And what -- Pardon?

8 A That was my undergraduate.

9 Q And what was your major?

10 A Art history and biology.

11 Q Okay. And then did you continue your education on to
12 medical school?

13 A Yes. I went to University of Miami in Miami, Florida.

14 Q Okay. And when did you graduate from there?

15 A 1999.

16 Q Okay. And following that or during that did you start
17 working in the hospital doing internships?

18 A Yes, nest step was residency, that was at Thomas Jefferson
19 Hospital in Philadelphia for three years and specializing in emergency
20 medicine.

21 Q Why did you choose emergency medicine?

22 A I felt like it could make a big difference in people's lives, you
23 know, be there when people needed help the most, and hopefully be
24 able to do some good and save people.

25 Q And when did you finish your residency?

1 A 2002.

2 Q And when did you graduate from medical school?

3 A Medical school was 1999.

4 Q Okay. Thank you. And then, after completing your
5 residency, did you start to work as a doctor?

6 A Yes, that's when I moved to, relocated to Las Vegas.

7 Q Okay. So in 2002 you came to Las Vegas?

8 A Uh-huh.

9 Q And where did you start working?

10 A I started working at UMC.

11 Q Okay. And in the ER?

12 A Yes. In adult emergency room and the trauma center.

13 Q Okay. Now, when you were working at UMC are you an
14 employee of UMC or do you work for an outside company?

15 A We work for a physician group, and the physician group is
16 contracted with the hospital to provide emergency services.

17 Q And what's the name of that physician group?

18 A It went through several names while I was there. It started
19 out as Emergency -- boy, to be honest with you I'm having a hard time
20 remembering -- Emergency Medicine Physicians or something like that.
21 It was EMP -- then it was EMPG and the last one was USACP, United
22 States Care Physicians, I think it was.

23 Q Okay. Did you ever have an ownership interest in that
24 company?

25 A No.

1 Q Okay. So you were an employee and then you were
2 stationed at UMC?

3 A Yes.

4 Q You weren't on call --

5 A I apologize. I think they did call us physician owners or
6 something like that. But I never actually had an equity stake.

7 Q Okay. Are you still working there?

8 A No.

9 Q Are you retired?

10 A Yes.

11 Q How long have you been retired?

12 A Since 2006.

13 Q Okay. And have you practiced any medicine since 2006?

14 A No, I have not. 2016, I'm sorry.

15 Q Okay. Thank you. It would have been hard for you to see
16 them in 2014 if --

17 A Yes, that would be hard.

18 Q As a doctor you have to take continuing education courses.

19 A Uh-huh.

20 Q Were you board certified?

21 A Yes.

22 Q What were you board certified in?

23 A Emergency medicine.

24 Q Okay. When were you first board certified in emergency
25 medicine?

1 A 2003.

2 Q And you retained that until you retired?

3 A I did. In fact, actually, my board certification doesn't expire
4 until next year.

5 Q Okay. And did you ever have your license suspended or
6 revoked?

7 A No.

8 Q Okay. Now, going back to, we'll go back to 2014, do you
9 recall when, we'll start with Andrew James, when he came in to see you?

10 A I don't have specific memory of these patient encounters,
11 just what's in that -- records.

12 Q Okay. And those records have Bates stamps on the bottom?

13 A Yes, they have date and time, it's for the dictations.

14 MR. KUDLER: And if I may approach?

15 THE COURT: Yes.

16 BY MR. KUDLER:

17 Q By the Bates stamps, I'm talking about the number that say
18 Plaintiff --

19 A Oh, yeah. Okay. Yes.

20 Q And if I can get you -- and you reviewed records that I sent
21 you, complete records?

22 A I reviewed the emergency department records that I was
23 involved in.

24 Q Okay. So Exhibit 6, which has been marked as Exhibit 6,
25 includes the records that you -- your dictation.

1 A Yes.

2 Q And those are the records from University Medical Center
3 that were generated for the treatment of Mr. James?

4 A They appear to be, yes.

5 Q And likewise, Exhibit 26 and those are the records that were
6 generated for the treatment -- at least as far as you understand, the
7 emergency room department, for -- actually they're for Jeffrey Myers.

8 A They appear to be, yes.

9 Q Okay. Now, just kind of get a general overview here. Burn
10 victim comes in to UMC. You're the attending physician?

11 A Yes.

12 Q In general, what's your job at that point?

13 A So the procedure would be that person would present to the
14 trauma center where burn patients were received. The attending
15 physician, if I was working with a resident, and the resident would
16 usually initially evaluate the patient with the attending physician in
17 attendance to make sure that no immediate emergency intervention is
18 needed to save the life.

19 We would then do a physical examination and the history,
20 meaning getting details of what happened with the incident and talking
21 to the patient. Any initial emergency treatments that might need to be
22 done can be administered at the same time. And then, after that, it's
23 determined whether the patient needs to be admitted to the hospital or
24 they can follow up as an outpatient.

25 Q Okay. And the determination as to whether to send them to

1 the hospital or discharge them from the hospital is in the attending
2 physician's purview?

3 A There are some criteria that you're supposed to follow, but
4 there is some leeway, sometimes things just don't fit in to specific
5 categories.

6 Q Correct. But that decision --

7 A That ultimately is the attending emergency physician, yes.

8 Q Okay. Let's look at Andrew James. And so the jury can look
9 at this later, could you tell the jury what page numbers in the bottom
10 right-hand corner that you're looking at?

11 A I have Plaintiff 71 and 72 is what I'm looking at at the
12 moment.

13 Q And this was your dictation in regards to Mr. James?

14 A Yes.

15 Q Okay. And that is based on, that dictation is based on what
16 the resident did?

17 A No. This dictation is my interaction with the patient. It does
18 reflect my talking to the person, doing my own physical examination,
19 laying hands on them, you know.

20 Q And therefore, you talked to the resident as well and see
21 what she had?

22 A The resident would go and talk and usually do a physical
23 examination. And then they would present the patient to me, meaning
24 they would come in and talk to me and say what they had seen.

25 Certainly, if someone was more urgent we wouldn't wait and do it

1 in that order, but if somebody has less severe injuries which are not
2 immediately life-threatening, that's part of the education process for the
3 resident where they would do their own assessment, come up with a
4 plan, discuss it with me, and then I would go and see the patient, talk to
5 them, examine them and confirm their findings. And you know, at that
6 point any changes to the -- that might be necessary to the plan would be
7 made.

8 Q Okay. And again, this is all looking at the record, because
9 this is from eight years ago.

10 A Yeah.

11 Q What was your understanding of what happened to Mr.
12 James that evening?

13 A Having read the records, it said that there was work being
14 done on an electrical box. There was a flash, some sort of arc or
15 explosion, or something along those lines, that seemed to have caused
16 the injuries.

17 Q And what injuries did not note that Mr. James had suffered?

18 A In Mr. James it's noted, specifically under the physical exam,
19 that he's got about a three to four percent body surface area.

20 And just to clarify in general, body surface area is considered
21 about one palm. For the person, not me, for them. So there was about
22 that much body surface area that was on the left upper arm. It was
23 considered -- the final diagnosis is less than five percent body surface
24 area. So you know obviously we don't take a person's hand and do this,
25 it's an estimation. That it was more towards the outside, or I mentioned

1 specifically the extensor surface, which is this part of the arm
2 [indicating]. So out in that direction.

3 Q And this is what you visually saw?

4 A Yes. That's under the physical examination. That would be
5 when I go, and I lay my hands on the person, and I see the injuries and
6 the extent and then I will describe it in the physical examination on the
7 dictation.

8 Q And then did you see any other burns or any other marks?

9 A From what I believe in reading this, there was -- it's noted
10 under history of present illness, which is the part where I discuss how
11 they're feeling and what the history was, that there was a little bit of
12 burning behind his left ear, but I didn't -- I don't believe I noted anything
13 on the -- I'm sorry, I do.

14 Left ear very mildly erythematous on the pina. So the pina is the
15 actual ear part, meaning that there was a little bit of redness there that
16 could indicate something along the lines of like a first degree burn, like a
17 sunburn. But redness is pretty non-specific so it's difficult to say.

18 Q Okay. And then what was your diagnosis?

19 A Left arm less than 5 percent body surface area. Partial
20 thickness means that there's some blistering, meaning that it's basically
21 like a second degree burn. Is essentially what most people would
22 consider it. But it does show some blistering, it goes deeper than just
23 the epidermis and down into the first layers of the dermis there.

24 Q And that is your first impression, correct?

25 A Yes.

1 Q Okay. Did you discharge him from care that night?

2 A Yeah. He received debridement, which means any skin that's
3 already dead, like the top of a blister essentially, is removed. There was
4 antibiotic ointment placed on that, a bandage. He was given pain
5 management and he was referred to the burn clinic as an outpatient
6 where they could evaluate him further and do further care.

7 Q And that was based on the fact that it was time for him to go
8 home.

9 A He did not meet criteria for admission. There are certain
10 specific things that you would look for that, you know, in the second case
11 were met, in the first one that did not require admission to the hospital.
12 So he was, you know the continuous treatment with the burn specialist
13 as an outpatient.

14 Q And I just want to confirm that, in regards to Mr. James'
15 records, Exhibit 6, that those are -- appear to be, you reviewed them all,
16 but you haven't commented on them all because they pertain to other
17 things, but that is the records from UMC?

18 A Yes.

19 Q Okay.

20 MR. KUDLER: Your Honor, I'd like to offer for admission at
21 this time Exhibit 6.

22 THE COURT: 6 is offered, any objection?

23 MR. A. GIOVANNIELLO: No objection.

24 THE COURT: 6 is received without objection.

25 [Plaintiffs' Exhibit 6 admitted into evidence]

1 MR. KUDLER: Thank you.

2 MR. A. GIOVANNIELLO: Your Honor?

3 THE COURT: Yep?

4 MR. A. GIOVANNIELLO: Was that -- is that the entirety of 6
5 or --

6 THE COURT: 6 was offered, I would assume that means
7 everything in 6.

8 MR. A. GIOVANNIELLO: I'm sorry. I just didn't hear that.

9 THE COURT: Okay.

10 MR. A. GIOVANNIELLO: No objection.

11 THE COURT: 6 is in.

12 MR. KUDLER: Thank you, Your Honor.

13 BY MR. KUDLER:

14 Q The rest of those notes have to do with what the nurses did
15 and such, correct?

16 A Some of them are orders that were placed for like pain
17 medicine or to place a bandage, the antibiotic and those kind of things.
18 Any medications that would require prescriptions would require
19 physician order. Most of what's in there is documentation of vital signs,
20 nursing care, disposition, whether the patient goes home or not. That
21 sort of thing.

22 Q Nothing in there indicated that he needed any further care in
23 regard to the emergency department?

24 A Correct.

25 Q Or an admission?

1 A Correct.

2 Q Okay. Now, the care that he was given, what that
3 appropriate care?

4 A I believe so.

5 Q Are you familiar with the term reasonable and necessary?

6 A [No audible response.]

7 Q Okay. And in regards to medicine --

8 A Uh-huh.

9 Q -- that's basically the appropriate care?

10 A I mean it's usually when I was practicing there was always
11 standard of care is really what you were aiming for, which is what any
12 reasonable physician in that time and place would do.

13 Q Okay. And the care that he was given at UMC that night was
14 reasonable and necessary?

15 A I believe so.

16 Q And the -- do you have an opinion as to what caused the
17 burns?

18 A What I can say is from what I was told by the people who
19 came in, it seemed reasonable that it was consistent with that. But not
20 being there and not visualizing myself, it's impossible to say a hundred
21 percent. But it does seem reasonable based on the result.

22 Q Okay. You're familiar with the term within a reasonable
23 degree of medical probability?

24 A I've heard it before, yes.

25 Q More likely than not?

1 A It seems consistent with what I was told.

2 Q Okay. The opinions that you've given are they within a
3 reasonable degree of medical probability in regards to Andrew James?

4 A I believe so.

5 Q Okay. Now, let's go in to look at the larger record, which I
6 believe has already been admitted into evidence.

7 Now you, obviously, never -- once a patient leaves the ER
8 that's the extent of what you do. Whatever happens after that, whether
9 it's a burn or whether it's some neonatal emergency or something, you
10 never look at those records.

11 A Basically, yes. Because mean generally the procedure
12 would be if it's determined that the patient needs to stay in the hospital,
13 we would consult the admitting service, the appropriate service, in this
14 case the burn service. And they would come down and, even if the
15 patient's in the ER, they generally take over the care, even if the patient
16 is physically stated there. Because I mean I think everybody's heard
17 about emergency department boarding, where patients have to be
18 staying in the ER because the rooms are full.

19 You know, if the person's there for a couple of days, the care is
20 generally directed by the admitting service at that point. And certainly if
21 someone needed an emergency intervention we wouldn't sit there and
22 do nothing, but --

23 Q Correct.

24 A -- the ongoing care and orders for services are generally
25 done by the admitting service at that point.

1 Q Okay. Now, looking at Mr. James' record, your dictation's on
2 what pages?

3 A I have Plaintiff 1061 and 1062.

4 Q Okay. And this was the same procedure, you saw him as the
5 attending physician?

6 A Correct, with a resident, yes.

7 Q Okay. And the same resident, Dr. Beckman?

8 A Yes.

9 Q When Mr. Myers came in, what were the complaints?

10 A He was involved in the same incident with this burn. In his
11 history of present illness in the records, it shows that he was
12 complaining of for extensive burns involving the face, potentially the
13 airway, as well as his arm.

14 Q Okay. And that was his --

15 A That was the chief complaint --

16 Q Which arm?

17 A -- meaning like what he showed up with. Oh left arm, sorry.

18 Q Thank you. And what did your exam show?

19 A Well, in this case he had, as far as the arm concerned, he had
20 a burn which is described in the dictation as almost circumferential,
21 meaning it's almost all the way around. When it comes to burns, that's
22 more concern because one of the things burns will do is they will scar,
23 and they will shrink. And if it's circumferential around an extremity
24 there's potential for it to cut off the circulation to the extremity which can
25 result in the loss of the limb. That would require potentially an

1 intervention where they would have to make an incision to relieve the
2 pressure.

3 So if something is almost -- like really close to circumferential or
4 circumferential that could be an indication the person needs observation
5 to have neurovascular checks. Meaning they would check the
6 circulation, check the pulse and the nerves in that arm to make sure it's
7 not worsening and repeated exams at the arm itself to make sure that
8 there's not significant scarring.

9 He also appeared to have burns about the face. The burns did
10 show that there was some singeing of nasal hairs, which as emergency
11 physician is a significant concern because that could indicate that there
12 is thermal injury to the airway. And that's another indication for
13 admission and observation because with a lot of these kind of injuries,
14 just as with the arm with the circumferential, sometimes these things
15 take time to develop and you can have somebody who shows up that is
16 not appearing to be in any distress, and then they develop difficulty
17 breathing and require intervention to save their life.

18 Q Okay. At this point you -- do you recall looking at your
19 medical decision making what did you decide to do?

20 A Well, pain medicine initially, because burns are quite painful.
21 You know, there's noted repeated examinations, there's consultation
22 with the burn service pretty quickly because it was -- my read of the
23 records is it was pretty clear early on that he was going to need
24 admission to the hospital for at least observation.

25 Q And that was Dr. Ozobia you spoke to?

1 A Yes.

2 Q Okay. Did he have to -- it says he was on call. He showed up
3 later or --

4 A I believe --

5 Q If you recall.

6 A I mean I don't want to speculate because the procedures as
7 far as the attending being in the hospital for burn care and things, I'm
8 not familiar with what they were. I believe -- my general recollection is
9 that they were there pretty much all the time anyway. And they had
10 their on call room and they would sleep there and, you know, if a trauma
11 came in, somebody needed to be there pretty quickly. They were not far
12 away.

13 Q Okay. And then what was your last interaction from the
14 emergency room department with Mr. James?

15 A With Mr. James or Mr. Myers?

16 Q Excuse me. Mr. Myers. Thank you.

17 A He would have been -- again, I don't have specific
18 recollection of this interaction, but in general, looking at the record and
19 reviewing, you know, just kind of general procedures of how we would
20 operate there, he would have had the burn service come down and see
21 him. Upon agreeing to admission they would have taken over the
22 majority of care. But it was a little bit more fluid than that. The burn care
23 is a small -- the trauma center where burns are seen is relatively small.
24 Patients with potential airway injuries are generally brought to the front
25 where we can visually see them and observe them and make sure that

1 everything is okay.

2 And if there were any specific emergency things, which it doesn't
3 appear were, as far as I can tell here, I would have been involved with
4 those. But generally after I spoke to Dr. Ozobia, the burn care service
5 would have taken over the care of the person, the patient.

6 Q And so he was admitted into the hospital?

7 A Yes.

8 Q And that was the end of your interaction?

9 A Yes.

10 Q Okay. And so he was in the -- looking at the 1062 --

11 A Uh-huh.

12 Q -- that --

13 A He -- sorry, go ahead.

14 Q What was your impression?

15 A Partial thickness burn of approximately 10 percent of the
16 body surface area involving the head and the left arm.

17 Q Now, was that using the palm method or was that using the
18 rule of nines?

19 A Kind of a combination of both. Because rule of nines -- so
20 the rule of nines is essentially you can divide the body up into certain
21 segments that will give you an approximate value of 9 percent for the
22 body. You can, it's 'a combination of rule of nines and someplace like
23 the arm, where it's not meeting the full sort of thing, it's you kind of try
24 to estimate.

25 Q Okay. So you estimated 10 percent?

1 A Yes.

2 Q And then what was the plan?

3 A Admission for monitoring for the arm for neurovascular
4 checks and airway management potentially.

5 Q Okay. Do you have an opinion as to what caused, based on
6 what you have in the record, what caused his injuries?

7 A Again, I would say, you know, not being there, can't say
8 specifically what happened, but being told what happened and looking at
9 the injuries, I would say it seemed consistent with what I was told.

10 Q Okay. And the treatment that he was given in the ER, the
11 observation -- what other treatment was he given, by the way?

12 A I believe he was updated on his tetanus shot, which is
13 standard. He was given pain management. He had multiple
14 observations to make sure that his airway didn't show signs that it was
15 closing. He had some blood work that was done. He -- that's most of
16 what we did. I think a lot of that -- generally, when someone was
17 admitted to the burn service, we would allow the burn service to do any
18 kind of debridement they would of the wounds or specifics as far as wo
19 und management that they would want.

20 We usually would not put a bandage over someone before the
21 burn care team could see it because they would just have to take it off to
22 evaluate it. So most of what we would do would be to monitor the
23 patient, pain management and that's -- some additional blood work and
24 that's about it.

25 Q Okay. Was that treatment reasonable and necessary for

1 these burns?

2 A I believe so, yes.

3 Q Okay. Are those opinions within a reasonable degree of
4 medical probability?

5 A I believe so, yes.

6 MR. KUDLER: Thank you. That's all I have.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MR. A. GIOVANNIELLO:

10 Q I need my glasses to see you and I have to take them off to
11 read.

12 Doctor, I introduced myself before to you. I'm Alex
13 Giovanniello. I'm defending the -- I am representing the Defendants in
14 this case.

15 A Okay.

16 Q Just have a couple of questions for you.

17 Let's talk about Andrew James first, okay?

18 A Sure.

19 Q And then Andrew James is, you said, Exhibit -- Plaintiffs'
20 Exhibit 6, 71 and 72.

21 A Yes.

22 Q Right? There was also some other records -- hold on one
23 second. You also showed me Plaintiffs' 69 and 70. Can you tell me what
24 that is? Those are the numbers you told me you reviewed. And that
25 looks like it's -- also looks like it's --

1 A I have them up here. I just had them mixed up.

2 Q Is this from the resident or you?

3 A What was the question?

4 Q Is this from the resident or you?

5 A This was the resident's dictation.

6 Q So 69 and 70 is what the resident observed?

7 A 69 and 70 is Dr. Beckman's.

8 Q Okay. So we'll go to yours.

9 And you said you did an independent examination, correct?

10 A Yes.

11 Q And in your independent examination you found that he had

12 a second degree burn to his arm?

13 A Uh-huh.

14 Q Okay. And that was above the elbow?

15 A As far as the records indicate, yes.

16 Q Okay. Did the records indicate or, obviously, you're going by

17 the records, right? You have no memory of this patient.

18 A No specifics. No.

19 Q And in going by the records, did you see that there was

20 anything embedded in his arm?

21 A There's nothing documented about that, so --

22 Q Okay. So if there's nothing documented about that, then it's

23 just not there, right?

24 A There's an old saying if you didn't write down, it didn't

25 happen. So best I can --

1 Q Okay.

2 A -- say is it's not in the record. That's the best I can say.

3 Q Sure. So if you found something embedded in his arm, like
4 copper or any metal, you would have noted that, right?

5 A If I saw anything significant, it wouldn't be normal that I
6 wouldn't note it, yes.

7 Q Okay. Great.

8 A Especially if it was something that I had to pull out.

9 Q Okay. Great. And like you said, if it's not documented, it
10 wasn't done. Right?

11 A I can't comment that it was or wasn't done, I can say that it's
12 not in the record. That's all I can say.

13 Q Okay. So if it's not -- Well, if it's not in the record --

14 A I have no proof that anything was done.

15 Q Okay. Thank you. Let's -- and then he was -- and then Mr.
16 Myers was -- excuse me, Mr. Jones was released that day.

17 A Correct.

18 Q That night, correct?

19 A It appears so, yes.

20 Q Okay. Let's talk about -- let's switch to Mr. Myers.

21 But you know what, wait a second. Go on back to Mr.
22 James, I'm sorry.

23 A Sure.

24 Q I forgot something.

25 A Uh-huh.

1 Q In looking at page 71.

2 A Okay.

3 Q Under respiratory

4 A Uh-huh.

5 Q That says, clear and equal -- clear and equal bilaterally,
6 unlabored.

7 A Uh-huh.

8 Q Can you tell me what that means?

9 A When you use a stethoscope, you listen to both lungs,
10 meaning that there's no difference between both lungs, it seems equal
11 air is getting into it. That there's no signs of any problems that could
12 relate to any mucus buildup of any kind of pneumonia or anything like
13 that. Sometimes you can hear things. Unlabored meaning just the
14 person's not having difficulty breathing

15 Q Okay. And then looking also under history of present illness.

16 A Uh-huh.

17 Q It says it does not believe there was any burn to his face,
18 nose or airway. Is that correct?

19 A Yeah.

20 Q And that's what the patient would have told you, right?

21 A Uh-huh.

22 Q And here no reason _-

23 A Well, it's -- this is also sometimes prompted by questions
24 that were asked. But yes, that would have been an answer that he might
25 have said or to a question or he might have offered it freely.

1 Q Okay. But either way, that comes from the patient. You
2 don't just --

3 A That's information --

4 Q -- put that down because --

5 A -- from the patient, yes.

6 Q -- that's what you think, right?

7 A Correct.

8 Q Okay. And it says he has no chest pain, correct?

9 A Uh-huh.

10 Q No difficulty breathing.

11 A Uh-huh.

12 THE COURT: Doctor, I need you to say yes or no.

13 THE WITNESS: Okay. Yes.

14 BY MR. A. GIOVANNIELLO:

15 Q Oh, I'm sorry. You're saying, uh-hum and uh-huh. That's not
16 the way to do it in court.

17 A Okay. Yes.

18 Q Okay. So he has no -- well, let's just get the record straight.

19 He has no chest pain, correct?

20 A Correct.

21 Q And no difficulty breathing, correct?

22 A Correct.

23 Q Okay. His arm has no numbness, weakness, or tingling,
24 correct?

25 A Correct.

1 Q And then it talks about a tetanus shot.

2 A Correct.

3 Q All right. Thank you. Now, let's switch a little bit of gears
4 and we'll go to Mr. Myers. All right. We'll look at your record and not
5 the -- and this is the same thing here. We have Plaintiffs' 1050 -- excuse
6 me. I forgot what exhibit this was. This is Exhibit 14, 1059 and 1060. Is
7 that a record that's written by the resident as well?

8 A It appears that 1059 and 1060 are, yes, the resident.

9 Q Okay. All right. And then, once again, and I know the
10 purpose of this, but the whole purpose for the resident to examine the
11 patient is really for teaching purposes, right?

12 A In general, yeah.

13 Q And get them used to being like a doctor, right?

14 A Yeah, it's kind of like an apprenticeship. It's on the job
15 training. They -- I mean --

16 Q Right.

17 A -- you know, there are certain procedures where it's useful to
18 have an extra set of hands. So they do help in other ways, but you
19 know.

20 Q Right. But in this case, then, even though the resident did an
21 examination of the patient, you did your own examination, right?

22 A I always examine the patients. I'm not allowed to document
23 something I don't do.

24 Q Okay, perfect. So then, if you documented you did the
25 examination.

1 A Yes.

2 Q All right. Good. Now, let's look at Mr. Myers, that exhibit
3 was talked about, it's 1061 and 1062, that's your record, right?

4 A Correct.

5 Q Okay. Let's see. In looking at this, let's look at the history,
6 present illness. And in particular, I'm looking at the middle part where it
7 says no shortness of breath. Okay?

8 A Correct.

9 Q That would be your -- would that be what -- something he
10 told you or is that your examination of him?

11 A That's subjective. I would ask him; do you feel like you're
12 having trouble breathing?

13 Q Okay. And then it says, does not feel like the back of his
14 throat is swollen.

15 A Same thing, subjective.

16 Q Same thing

17 A Yes, I would ask him.

18 Q And then he has no swelling of his neck or feeling like his
19 throat is closing.

20 A Again that's what I would ask him, do you feel like you're
21 having this?

22 Q Okay. No chest pain?

23 A Again, that's what I would ask.

24 Q Okay. And no difficulty breathing?

25 A Same thing, is what I would ask.

1 Q Okay. And then -- well, and he also has pain in his left arm
2 and face only, correct?

3 A Correct.

4 Q Okay. Then let's look at respiratory.

5 A Uh-huh.

6 Q That says, clear and equal bilaterally, unlabored and that
7 wouldn't be something he told you, that would be your examination,
8 right?

9 A Correct. That's an objective finding where I listen to his
10 lungs.

11 Q Okay. Because that's under the physical exam part. So
12 physical exam is what you did.

13 A Correct.

14 Q Okay. And then we already discussed that, he was going to
15 be admitted. Actually, at the end of this it says, he has no -- let's see.
16 Where it says medical decision making.

17 A Okay.

18 Q The last sentence, he appears hemodynamically stable,
19 appears otherwise well and will be discharged at this point in time to
20 follow up as an outpatient. But he was admitted. So --

21 A Yeah.

22 Q -- why would that be in there?

23 A Most likely I misspoke.

24 Q Okay. Because at that point you said you did -- if you look
25 further up, you did discuss the case with Dr. Ozobia, who also testified

1 here.

2 A Uh-huh.

3 Q Okay. And he was admitted, correct?

4 A Correct.

5 Q And after he was admitted, that's it, you don't see him
6 anymore.

7 A Again, if they stay in the emergency department before they
8 go to their room, that I would see them and potentially intervene if there
9 was something emergently, but the care is directed by the burn care
10 team at that point.

11 Q And that would be in the emergency department. So just to
12 be clear about this. After he leaves the emergency department and is
13 admitted, your --

14 A When he physically goes to another room I would be very
15 unlikely to ever lay eyes on that person again.

16 Q Unless he has an emergent condition and had to come back
17 to the emergency department?

18 A They don't ever come back to the emergency department,
19 but there are certain cases in the hospital where emergency physicians
20 would have been called to a floor. For instance if someone needed to be
21 intubated. In the burn unit and the trauma ICU they would take care of
22 that themselves. That's not an area we would have gone to.

23 Q Okay. And obviously, if you had a call that Mr. Myers
24 intubate, that's something you would have written down?

25 A There would have been a dictation for it."

1 Q There would have been a dictation. So that didn't happen.

2 A Not by me.

3 MR. A. GIOVANNIELLO: Okay. Thank you. That's all I have
4 for you.

5 THE COURT: Redirect?

6 MR. KUDLER: Nothing, Your Honor.

7 THE COURT: Please step down. Oh, excuse me.

8 Ladies and gentlemen witness' examination has concluded.
9 I see one hand up.

10 THE MARSHAL: Do you want the names on it?

11 THE COURT: Just badge number, or seat number. He
12 should be 4.

13 [Sidebar begins at 11:00 a.m.]

14 MR. KUDLER: They certainly have a lot of questions.

15 THE COURT: It's factual.

16 [Sidebar ends at 11:00 a.m.]

17 THE COURT: Based upon your initial observation of Mr.
18 Myers' facial burns, was there any burn marks just below his eyes?

19 THE WITNESS: I would not be able to answer that question
20 based on what's on the dictation. And since I don't have a very specific
21 recollection of the interaction, I wouldn't want to really specifically
22 comment on it. I mean best I can tell you is what is here. And there's
23 not a specific comment about the eyes. It simply says that there's partial
24 thickness burns all over -- over all of the face, but nothing in mucosa. So
25 the dictation tends to describe most of the face. So that's the best I can

1 answer.

2 THE COURT: Any additional questions from the jury?

3 Seeing no hands, follow-up Plaintiff?

4 MR. KUDLER: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. KUDLER:

7 Q Did you make any examination of his eyes themselves?

8 A So there is a listing for eyes here, and it basically says
9 anicteric, meaning there's no signs of jaundice, which is usually a liver
10 problem. It wouldn't necessarily relate to this area.

11 Generally in the case of burns, if you were to get a thermal injury
12 to the cornea, it's exceedingly painful usually. You can do an
13 examination where you put a little dye in the eye and look for any
14 inflammation or scarring. There's no indication that was done.

15 Q If it was -- if you felt it was necessary because there was
16 some exposure directly to the eyes --

17 A Yes.

18 Q -- you would have noted that?

19 A Yes, it's an examination that's routinely done in the
20 emergency room for any kind of eye injuries. So yes, if we thought it
21 was necessary at the time we would have done it.

22 MR. KUDLER: Thank you.

23 THE COURT: Follow-up juror question, Defense?

24 MR. A. GIOVANNIELLO: No follow-up.

25 THE COURT: Please step down.

1 [Testimony of Jeffrey Myers, transcribed under separate cover]
2 THE COURT: Call your next witness.
3 MR. KUDLER: I need to step out and call Dr. Patti.
4 THE COURT: Okay.
5 MR. KUDLER: And have him call in.
6 THE COURT: Okay.
7 [Pause]
8 MR. KUDLER: He should be calling in momentarily.
9 THE COURT: Very good. What exhibit is Patti's on yours?
10 MR. KUDLER: 11.
11 THE COURT: Thanks.
12 [Pause]
13 THE COURT: We had a phone number to just jump in. Is
14 your contact information 5106, last four?
15 MR. KUDLER: Yes, sir.
16 THE COURT: So that means the witness is present on the
17 remote. The witness can hear me remote. Who is it, Dr. Patti?
18 MR. KUDLER: Correct.
19 DR. PATTI: Yes, I can hear you.
20 THE COURT: All right. Good, Dr. Patti, it looks like we're just
21 going to take you verbally.
22 Dr. Patti, this is Senior District Judge Barker. I'm presiding
23 over an action in the Department 17 of the 8th Judicial Court. You've
24 been summoned to participate as a witness in the matter from Plaintiff.
25 There are certain rules that I need to discuss with you on the record in

1 front of your jury or in front of the jury. Are you in a secured room
2 without -- with doors closed to limit interruptions?

3 DR. PATTI: Yes, that's correct, I am.

4 THE COURT: Is there anybody in the room with you?

5 DR. PATTI: No.

6 THE COURT: If you have any documents relevant to the case
7 or otherwise, please set them aside, close the book so you're not looking
8 at them unless there's specific direction as a consequence of the
9 examination to do so. Does that make sense to you?

10 DR. PATTI: I've done that.

11 THE COURT: All right, good.

12 DR. PATTI: Yes, I think so.

13 THE COURT: All right. If circumstances change, please
14 inform me right away so we can adjust this again if circumstances
15 require.

16 I'm not going to have my clerk swear you in as we do all
17 witnesses, so please raise your right hand and be sworn by my clerk.

18 ROBERT PATTI, PLAINTIFFS' WITNESS, SWORN

19 THE CLERK: Please state and spell your first and last name
20 for the record.

21 THE WITNESS: My first name's Robert, R-O-B-E-R-T, Patti,
22 P-A-T-T-I. M.D.

23 THE COURT: Thank you.

24 Counsel, your witness.

25 MR. KUDLER: Thank you.

DIRECT EXAMINATION

BY MR. KUDLER:

Q Dr. Patti, before I get into anything, I sent you last week a package of exhibits being your medical records and bills.

A You did.

Q Okay. And those are numbered Plaintiff, PLTF000188 to 000, I believe, 269.

A 267 I have. Mine goes to 268.

Q 268, yes. Okay, that is the last page. Thank you.

Are those your medical records?

A Yes, they are.

Q Okay. And those are the records pertaining to Andrew James?

A Yes.

Q Let me go into your background a little bit. Where'd you go to college?

A I went to University of Akron in Akron, Ohio, and then I went to Ohio State for my medical school. And then my residence training at UCSD in -- it was actually my internship there, UCSD and then my orthopedic training in Akron, Ohio, Akron City Hospital, four years.

Q When did you complete all of that medical training?

A 1974.

Q And you were licensed as a medical doctor in Ohio?

A Yes, I was.

Q And as a specialist in orthopedic medicine?

1 A Yes.

2 Q Okay. How long did you practice in Ohio?

3 A Ten years.

4 Q Okay. From '74 to '84-ish?

5 A Yes.

6 Q And then where did you go after leaving Ohio?

7 A I went to Las Vegas where I practiced the rest of my time.

8 Q Okay. So from around '84 till when did you retire?

9 A Three years -- well, two or three years ago, somewhere in
10 there.

11 Q Okay. And the entire time you practiced in Las Vegas you
12 were in an orthopedic practice?

13 A I was in a sole practice by myself.

14 Q Okay. And the name of that practice was Orthopedic --
15 excuse me. Occupational Orthopedic Health Center?

16 A Yes.

17 Q Okay. And that was the name of the practice in 2014?

18 A Yes.

19 Q Okay. And until you retired a couple of years ago.

20 A Correct.

21 Q Okay. Now, having looked at these -- well, let me ask you
22 this first. Do you have an independent recollection of Mr. James?

23 A His story yes, because it's unusual. But not -- I don't
24 remember the person himself.

25 Q Okay. So having read the records and refreshed your

1 recollection as to what had happened and what your opinions were and
2 such.

3 A Yes.

4 Q Okay. And you'll be basing your testimony on that
5 recollection as well as the medical records that you produced at the
6 time?

7 A That's correct.

8 Q And these medical records and reports and things would
9 have been filled out contemporaneous or near contemporaneous with
10 your treatment of Mr. James?

11 A Yes.

12 Q Okay.

13 MR. KUDLER: Your Honor, I would offer in for admission the
14 entire Exhibit 4.

15 THE COURT: I have it under Tab 11.

16 MR. KUDLER: Is that 11?

17 THE WITNESS: It's 11.

18 MR. KUDLER: 11, I'm sorry, yes.

19 THE COURT: Bates stamp 188 through 268. So offered 11,
20 Plaintiffs' 11, any objection?

21 MR. A. GIOVANNELLO: No objection.

22 THE COURT: Received.

23 [Plaintiffs' Exhibit 11 admitted into evidence]

24 MR. KUDLER: Still stuck on the last exhibit.

25 BY MR. KUDLER:

1 Q Were you board certified?

2 A Yes.

3 Q And when were you first board certified?

4 A 1974.

5 Q Okay. And that was in orthopedic medicine?

6 A Yes.

7 Q Within --

8 A No, it might have been 1975 because it takes about a year to

9 go through your board stuff.

10 Q Okay. And --

11 A Some I --

12 Q I'm sorry, Doctor, finish.

13 A I'm sorry.

14 Q That's okay. I'll go.

15 You had to take a test?

16 A Yes, there's a series of tests you take for your board

17 certification.

18 Q Okay. And what board were you certified back in 1975 when

19 it was official?

20 A American Board of Orthopedic Surgery.

21 Q Okay. And is that the board that you maintained until you

22 retired?

23 A Yes.

24 Q Okay. At any time did you ever have your license either here

25 or in Ohio involuntarily revoked or suspended?

1 A No.

2 Q Okay. Once you left Ohio, did you maintain your license
3 there or did you let it lapse?

4 A I maintained it for a while and then I let it lapse.

5 Q Okay. Decided you were going to stay in Vegas and didn't
6 need to be a doctor in Ohio?

7 A Right.

8 Q Okay. You recall, and I will point you at -- do you recall how
9 you first came to meet Mr. James?

10 A He was sent to me, and I don't know by whom, for
11 independent medical examination.

12 Q Okay. Kind of like a second opinion?

13 A Well, it's in-depth evaluation and second opinion, yes.

14 Q Okay. And back then you would have been paid for your
15 time.

16 A Yes.

17 Q Okay. And having done that -- do you have that in front of
18 you?

19 A Yes, I do.

20 Q Okay. Could you tell me what page number that is, so the
21 jury has it?

22 A It's 001.

23 Q Okay. There's a second copy in the bigger exhibit I was
24 looking for, so we don't have to have a copy of it twice. If you could look
25 at page 200. If you could look at page 200.

1 MR. A. GIOVANNELLO: I think you're looking at the wrong
2 one. What are you trying to find?

3 MR. KUDLER: The independent medical examination.

4 MR. A. GIOVANNELLO: You have it as Exhibit 1.

5 MR. KUDLER: Okay. I thought it was in there a second time.

6 MR. C. GIOVANNIELLO: It was Exhibit 1001.

7 MR. KUDLER: Okay.

8 THE WITNESS: I was sent some records that were paper
9 clipped separate.

10 BY MR. KUDLER:

11 Q Okay. Let's look at then --

12 A They're people.

13 Q Let's look at the exhibit that starts with Plaintiffs' 1 through 4.
14 Is that the independent medical examination --

15 A Yes.

16 Q -- that you --

17 A Yes, it is.

18 Q Okay. And you authored this?

19 A Yes, I did.

20 Q Okay. And you authored this shortly after the examination
21 that you performed on Mr. James.

22 A Right away.

23 MR. KUDLER: Your Honor, I would ask that Exhibit 1 be
24 admitted.

25 THE COURT: Plaintiffs' 1 is offered. Any objection?

1 MR. A. GIOVANNELLO: No objection.

2 THE COURT: 1 is received.

3 [Plaintiffs' Exhibit 1 admitted into evidence]

4 BY MR. KUDLER:

5 Q The first thing I want to know is, at the top, under
6 independent medical examination, it notes date of injury of 6-14-15. Is
7 that correct or is that an error?

8 A That's an error somehow.

9 Q Okay. So in the report itself, when it talks about history of
10 present illness, what was it that your understanding of what happened?

11 A The history of it? This man was an electrician, was at some
12 sort of a panel. There was an electrical explosion, and it threw him to
13 the side and burnt his left arm, mostly at the elbow.

14 Q You did an examination on him?

15 A I did on 2-2-16. So that's about, you know, 20 months later
16 or so.

17 Q Okay. So you essentially did the examination for the
18 purpose of a second opinion. What were you asked to do?

19 A I'm asked to evaluate the patient, look at the records, look at
20 the tests and come to conclusion as to whether and how sick he is from
21 an orthopedic standpoint.

22 Q Did you --

23 A And then give suggestion as to care.

24 Q Okay. So what did your examination show in regards to
25 injuries caused -- or injuries that he was claiming were caused by the

1 explosion?

2 A This is his left non-dominant side, elbow primarily. And you
3 want me to give a physical exam or what do you want me to do here?

4 Q Just, you know, what were your important findings?

5 A Well, he had some evidence of a partial burn over his lateral
6 elbow area on the surface. And then he had a pretty classic tennis elbow
7 findings. Which means he -- the insertional area of his wrist steady
8 muscles park there, and they give him pain with use in the local area.

9 He's an electrician so he pushes and pulls and squeezes and
10 he had much trouble doing that.

11 Q Okay. Does an injury such as this would it completely
12 disable a person?

13 A Well, he continued to work in fact.

14 Q It just makes things -- made things difficult.

15 A Yes, correct.

16 Q Okay. With an injury such as this, could he carry something
17 in his arm?

18 A Yes.

19 Q Okay.

20 A He's going to have mostly trouble gripping, and then
21 pushing and pulling stuff with that hand -- with that arm. His motion
22 was actually pretty normal. So it was a physical problem at the elbow.

23 Q Okay. And that was your findings?

24 A Yes.

25 Q Okay. And did you come to a conclusion, or did you have an

1 opinion as to what caused the physical problem at the elbow?

2 A Well, I think it was, having reviewed all the records that were
3 sent to me, and the patient, he had a, you know, he had a direct injury
4 from an electrical explosion and electrical burn. He had electrical burn
5 on the surface and also deep, I believe.

6 Q Okay. And is that deep injury which caused the difficulties he
7 was experiencing gripping and the pain?

8 A Yes. It's the tennis elbow stuff come up now.

9 Q Okay. And I believe that's an injury to the epicondyle area.

10 A Yes, lateral epicondyle.

11 Q Okay. And for those of us that aren't doctors, lateral is on the
12 inside or the outside of the elbow?

13 A Outside.

14 Q Okay. And you noticed burning and scarring there?

15 A He had some sort of superficial scarring. I don't have it well
16 supported, but that was -- minor. He had a secondary burn which really
17 pretty much corrects itself immediately, but surface discoloration, but
18 that wasn't a problem. But the surface burn was not a problem.

19 Q It was that deeper burn?

20 A Yes.

21 Q Okay. Based on what you found did you have a
22 recommendation, a plan?

23 A Well, I x-rayed the man, they were normal at the time, and I
24 recommended that he get an MRI of his elbow. Probably go through
25 some injection therapy which is our first conservative approach to that

1 diagnosis, and possibility of a surgery to be considered depending on
2 the response.

3 Q Okay. And at that point, having written the report and
4 completed your task, performing the medical examination were you
5 expecting him to return to care with you?

6 A Well, he had that possibility. I wasn't sure. Some people
7 come back, some people don't. So I was just giving my opinion. This
8 was not a referral for therapy, it was referral for diagnosis.

9 Q Okay. At some point he did come back and start treatment
10 with you?

11 A He did.

12 Q Okay. Do you recall when he came back?

13 A I have several dates that he --I narrowed it down and see
14 what -- he came back February 2nd, 2016, and I saw him one, two, three,
15 four, five, six, seven, eight times --

16 Q Oh, yeah, February --

17 A -- in total.

18 Q February 2nd is the date you saw him for the IME.

19 A Okay. I'll make sure that's correct. That is correct. 2-2-16 is
20 when I saw him for the IME.

21 Q Did he have the MRI done?

22 A Eventually he did. It had to be approved. So I recommended
23 it, eventually it got approved and done.

24 Q What did that MRI show?

25 A Well, it showed some actually some injuries. Usually an MRI

1 of the elbow, a tennis elbow doesn't show a whole lot. This showed a
2 moderate amount of stuff. Let me get the exact and read the report.
3 Reports on 233 -- number 233. It showed he had some mild
4 degenerative changes at the elbow. That could be from the injury or
5 other things. But it's in the lateral side of the elbow for tennis elbow so it
6 may well be related to the tennis elbow symptoms, just that part.

7 And then he had some thickening of his common extensor tendon.
8 This about where the tennis elbow comes from. And a small gray partial
9 tear of the common extensor tendon in that same region. Approximately
10 50 percent of the tendon thickness -- this is a fairly prominent change at
11 the [indiscernible]. We wouldn't normally see hardly anything there,
12 maybe a little scarring, but this was a prominent finding.

13 Q Was this consistent with your opinion in the IME that he had
14 tennis elbow?

15 A Yes, it is.

16 Q And this MRI finding, that was also consistent with this
17 having occurred during this flash injury which caused the scarring, the
18 burn?

19 A I would presume it's all related.

20 Q That opinion, is that more likely than not that it's all related?

21 A Yes.

22 Q Okay. Now, based on that, you continued to see him. Did
23 you refer him out for any care?

24 A Well, first of all, yes, he went out for some care, but he had
25 some care from me. We injected his elbow, which is typically what we

1 do for tennis elbow. He got a very good initial response to that, it didn't
2 hold.

3 And then, of course, we saw some medicine helped.
4 Gabapentin. I didn't give it to him, somebody did. That's for nerve, and
5 that seemed to help for a while.

6 And then, of course, we ordered the MRI, got that, and
7 reviewed that.

8 Q The fact that the --

9 A I could quote my answers.

10 Q Yeah. The fact that the injection initially worked, but then
11 didn't hold, what does that tell you, if anything?

12 A Well, the diagnosis was spot on, I think. Just it's an anti-
13 inflammatory injection. Which means if there's an injury or insulation of
14 the tissues, it takes it down. It typically does help tennis elbows. You
15 know, at least for a while. Which is what happened here, it helped for a
16 while.

17 Q Okay. Did that short-term relief from the injection again
18 confirm your diagnosis?

19 A Yes. And everything made sense, the whole process made
20 sense, it was insular.

21 Q At some point you sent him out for physical therapy?

22 A Yes, I did. He went to Pahrump, I think with Kelly Hawkins, I
23 believe in Pahrump. And that didn't really help him much he stated. To
24 me

25 Q What would normally the goal of physical therapy be?

1 A Well, he was certainly weak in his grip. So I tried to build
2 that up. Because when you grip with your wrist, it starts at the elbow, it
3 starts at the elbow. So they try to work on that. Apparently made some
4 progress with that, but didn't help his symptoms.

5 Then they used modalities, things to try to calm the
6 inflammation part down.

7 Q Okay. Him having gone through the therapy and having the
8 lack of resolution you just spoke about, what was your next
9 recommendation?

10 A Well, he's been through -- he went through all reasonable
11 conservative stuff. I mean pills by mouth, for the inflammation, and the
12 injection and the physical therapy and time. And he didn't -- he got no
13 significant relief. I Recommended a surgery at that point.

14 Q And what would that surgery be?

15 A Well, that's what's on the record says modified Bosworth.
16 That means you open up the lateral elbow through a small incision,
17 about two finger breadths in width, maybe three, it depends on how big
18 the person is. And then inspect the joint.

19 You open the joint, look at the joint's surface. We have some
20 evaluation on the MRIs it's not going to be quite normal. We look at the
21 joint, joint surface, and then looking for that glint, that tissue disruption
22 in his [indiscernible] neck. Then we proceed and shave down the bone
23 so it's flat. It's usually a very sharply -- like a little mountain shape and
24 we often will shave that down so the reattachment of the tissues when
25 we close the person can be attached to a flat and wide enlarged, larger

1 surface.

2 So we also remove some of, you know, we look and inspect the
3 soft tissues and remove that which is abnormal. In this case, from the
4 deep surface of the [indiscernible].

5 Q Now, did Mr. James have that surgery?

6 A No, he did not. He was set up for it. And he said a friend of
7 his had died with the surgery, so he didn't want to go ahead with that.

8 So even though the risks actually minimal, he elected not to do the
9 surgery.

10 Q And that was in 2017?

11 A I last saw him I'll give you the date, I think, 5/25, I think. '17 is
12 when I last saw him.

13 Q At that point he had told you, thanks, Doctor, but I don't think
14 I could do the surgery?

15 A Yeah, he didn't want to take the risk of doing the surgery.

16 Q Okay. Is the surgery guaranteed to resolve the issue?

17 A No, it's a very helpful surgery usually, but nothing is
18 guaranteed in medicine. But usually overall it's a very effective
19 operation.

20 Q Okay. You're familiar with the term reasonable degree of
21 medical probability?

22 A Yes, I am.

23 Q Have all the opinions that you've given here today been
24 within a reasonable degree of medical probability?

25 A Yes.

1 Q Okay. And just to make sure were clear on it, your opinion
2 regarding the injury, what was the nature of the injury?

3 A Well, it was a thermal injury. The electricity causes a heat
4 injury into the tissues. So that was the source of what he had. You
5 know, I outlined it and the joint [indiscernible] probably came from that
6 in his rent in the tissues indicated on the MRI came from that.

7 Q Okay. And all this is consistent with the diagnosis of tennis
8 elbow being caused by the incident in June of 2014?

9 A Yes. I want to make clear, that tennis elbow is our common
10 term for this. It's lateral epicondylitis really is what the true term is
11 medically. Same thing.

12 Q And what is your opinion as to what caused that?

13 A I think this thermal injury. This acute injury at work caused it.

14 Q And that opinion is with a reasonable degree of medical
15 probability?

16 A Yes, it is.

17 Q Looking at your bills that are on Plaintiffs' 188 and 189.

18 A Yes.

19 Q Those are the amounts that he was billed?

20 A Yes.

21 Q And during the time that you practiced, were you familiar
22 with the reasonable and customary charges of the types of services you
23 rendered?

24 A Yes.

25 Q Are the amounts here within the reasonable and customary

1 charges for Clark County, Nevada?

2 A Very much so.

3 MR. KUDLER: Okay. Thank you.

4 That's all I have, Your Honor.

5 THE COURT: Cross?

6 MR. A. GIOVANNELLO: Yes.

7 THE WITNESS: Am I done here?

8 MR. KUDLER: You're not.

9 THE COURT: No. I need to have you cross-examined.

10 THE WITNESS: Okay.

11 CROSS-EXAMINATION

12 BY MR. A. GIOVANNELLO:

13 Q Dr. Patti, good afternoon. This is Alex Giovanniello. I
14 represent the Defense in this case. I'm --

15 A Yes.

16 Q -- going to ask you a couple of questions.

17 A Okay.

18 Q How does one get a small moderate grade partial tear distal
19 to the tendon origin involving 20 percent of the total tendon lift? How
20 does one get that tear?

21 A I think it's very unusual to on an MRI to see a tear, very
22 unusual with this diagnosis. But so I have to relate it to the electrical
23 burn, deep tissue burn that would have happened at this injury.

24 Q Okay. Now, Doctor, how often have you diagnoses tennis
25 elbow resulting from a burn injury?

1 A I don't think -- burn injury is very uncommon. So the answer
2 is not very common at all. Usually this is --

3 Q Have you dealt with burn injuries in your practice?

4 A Yes, somewhat.

5 Q Okay. And to what degree?

6 A What do you --

7 Q When you say yes, somewhat --

8 A -- mean -- first degree, second degree --

9 Q I'm sorry. Go ahead.

10 A How many times?

11 Q Yes.

12 A Oh, I -- this is about electrical burn injury or just a burn
13 injury?

14 Q Just a burn injury, right. A burn's a burn, isn't it?

15 A Well, it can be, yes, sort of. I don't know how to answer your
16 question. It's kind of general. In practice, some, but these are not
17 common injuries. Burns are not common injuries that end up in my
18 practice.

19 Q But you're an orthopedist, you don't really deal with burn
20 injuries, do you?

21 A No, I'm not the first, no. They go to -- in Las Vegas, to UMC
22 to the burn ward and all that stuff.

23 Q Right.

24 A Entirely different -- non-orthopedic service.

25 Q Right. Dr. Ozobia is where they used to go, at UMC?

1 MR. KUDLER: Your Honor, is there a question or are we
2 commenting again?

3 THE COURT: Questions are asked, answers are given, no
4 narrative in the middle.

5 Ask the question, Counsel.

6 BY MR. A. GIOVANNELLO:

7 Q Do you know whether they go to Dr. Ozobia in UMC? I
8 should have said --

9 A I don't know that doctor.

10 Q Okay. Now --

11 A Well, I don't know --

12 Q I'm sorry. I didn't know you weren't finished.

13 A I don't know that doctor. I don't know -- I know they have a
14 beautiful service over at UMC for burns in general, but I don't know the
15 physicians over there at all.

16 Q Okay. Now, do you know the difference between a first and
17 second degree burn?

18 A Yes.

19 Q Okay. I'm not trying to be facetious, Doctor, I'm just trying to
20 lay foundation. Okay?

21 A You want an answer to that, then? Is that what you want?

22 Q Yes. And I'm --

23 A There's three degrees of

24 Q Go ahead.

25 A There's three degrees of injury: first degree, second degree,

1 and third degree. Third degree is the full thickness dermis and
2 subdermal and deeper tissue burn, injury.

3 Q Right.

4 A In this case a burn. And then a second degree is -- well, a
5 first degree is just a very superficial thing like a little bit of a little bit of a
6 sunburn. The surface part of the -- the surface layers of the skin. A
7 second degree burn goes in deeper into that first layer, but not into the
8 third layer. So it's a degree, these are degrees of injury, depths of injury,
9 if you will and amount of tissue damage from the burn.

10 Q Right. It goes into the second layer of the skin, correct?

11 A Yes.

12 Q Okay. Doesn't go any further. If it goes -- it doesn't go any
13 further, otherwise it wouldn't be a second degree burn, correct?

14 A The deeper part of the dermis also is considered to be these
15 other tissues we have outlined on the MRI. If you go anywhere it can be
16 in one spot a first degree burn, a second spot a third degree burn, and
17 second degree you have to be very involved, depending on where it
18 comes to the surface from the electrical injury.

19 Q Okay. Now, where's the tendon? How deep is that?

20 A Just below the skin.

21 Q Below the third layer of the skin?

22 A Yes.

23 Q Okay. So you would expect a third degree burn, perhaps, to
24 damage a tendon and not a second degree burn?

25 A Well, that's kind of a loaded question. Now, that the second

1 degree -- by its very nature, third degree can be an awful injury with
2 tissues all the way down through the bone, all the muscle, all the
3 tendons and ligaments around the bone, the whole darn thing could be
4 dead.

5 Whereas, the second degree is the amount the skin is
6 injured. The skin part is injured, and it doesn't relate to the -- necessarily
7 to the deeper injury.

8 Q Right. And wouldn't the tear of a tendon actually occur from
9 something other than a burn?

10 A It could. You know, it was pulling away from the injury or
11 something, but the injury to the actual tissue can weaken the tissue, of
12 course. And he -- you know he was jolted to the side. He was thrown a
13 bit. I don't know how much, but some from the explosion from the
14 electrical panel he was working on.

15 Q How often do you see tears of the tendon like this in your
16 practice?

17 A Not very often. The usual tennis elbow has soft spot or a --
18 obviously, a generated spot looking at it, so the tissues are aged or
19 whatever. But this is an actual tear. Actual tear is unusual. And I think it
20 relates to the degree of injury.

21 Q Doesn't an actual tear come from trauma?

22 A Well, it is trauma if you're pulling away from, you know, all
23 of a sudden something happens. And then he's, you know, he's moving
24 to the side, moving away, he's jerking his arm away, so I think the whole
25 process of an injury is not simple here or many times.

1 Q So you're saying you could tear a tendon just by jerking your
2 arm.

3 A Yes, sir. I am saying that. This is a partial injury. This is not
4 a complete through and through injury.

5 Q And you examined him two years post?

6 A Yeah, it was approximately two years later.

7 Q Okay.

8 A And so was the MRI.

9 Q Right. Then he chose not to have surgery, you did not see
10 him again, correct?

11 A Did not see him after that last date I gave you, which I'll
12 review --

13 Q Which was?

14 A -- I believe it is, 5-15-17.

15 Q Okay. And were you treating him for anything else, other
16 than what we just talked about?

17 A No.

18 MR. A. GIOVANNELLO: All right. Thank you doctor.

19 THE COURT: Redirect? Any redirect?

20 MR. KUDLER: Yes.

21 REDIRECT EXAMINATION

22 BY MR. KUDLER:

23 Q Doctor, real simple question. Did anything Defense counsel
24 just go over with you change your opinions whatsoever?

25 A No.

1 MR. KUDLER: Thank you.

2 THE COURT: Anything else for this witness? Seeing no
3 hands. Doctor --

4 THE WITNESS: Yes?

5 THE COURT: -- you may hang up.

6 THE WITNESS: Okay. Thank you very much. Have a n ice
7 day. Bye.

8 THE COURT: Bye.

9 Call your next witness.

10 [Testimony of Andrew James, transcribed under separate cover]

11 [Proceedings adjourned at 4:24 p.m.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

22 

23 Maukele Transcribers, LLC

24 Jessica B. Cahill, Transcriber, CER/CET-708

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