

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James Brogan</p> <p>Notice of Filing Deposition Transcript of Richard Gunning, M.D.</p>
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Now come Plaintiffs, by and through undersigned counsel, and hereby give notice that the attached Deposition Transcript of Richard Gunning, M.D., taken on December 12, 2018, has been filed with the Court.

Respectfully submitted,

/s/ Rachel Hazelet

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Certificate of Service

The foregoing document was filed on December 20, 2018, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Rachel Hazelet

Attorney for Plaintiffs

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IN THE COURT OF COMMON PLEAS
OF SUMMIT COUNTY, OHIO

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MEMBER WILLIAMS, et al.,

Plaintiffs,

vs. Case No. CV-2016-09-3928

KISLING NESTICO & REDICK, LLC, et al.,

Defendants.

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Video Deposition of
RICHARD GUNNING, M.D.

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December 12, 2018
10:07 a.m.

Taken at:
The Pattakos Law Firm, LLC
101 Ghent Road
Akron, Ohio 44333

Tracy Morse, RPR

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1 APPEARANCES:

2

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On behalf of the Defendants Kisling
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ALSO PRESENT:

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John J. Reagan, Esq.

17

Joseph VanDetta, Videographer

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1 VIDEOGRAPHER: We are now on the
2 record. The date is December 12, 2018. The
3 time is 10:07 a.m. The caption of this case is
4 Member Williams, et al. versus Kisling
5 Nestico & Redick, LLC, et al.

6 The attorneys present, please, identify
7 themselves and the parties they represent.

8 MR. PATTAKOS: Peter Pattakos for
9 the plaintiffs.

10 MS. COHEN: Josh Cohen for the
11 plaintiffs.

12 MS. HAZELET: Rachel Hazelet for
13 the plaintiffs.

14 MR. BARMEN: Brad Barmen for
15 defendant Ghoubrial.

16 MR. BEST: David Best for KNR
17 and Ghoubrial, Inc.

18 MR. MYERS: John Myers for
19 Dr. Gunning.

20 MR. MANNION: Tom Mannion for Rob
21 Nestico.

22 MR. REAGAN: John Reagan, also
23 present, party representative for defendant
24 Kisling Nestico & Redick.

25 RICHARD GUNNING, M.D., of lawful age,

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1 called for examination, as provided by the Ohio
2 Rules of Civil Procedure, being by me first
3 duly sworn, as hereinafter certified, deposed
4 and said as follows:

5 EXAMINATION OF RICHARD GUNNING, M.D.

6 BY MR. PATTAKOS:

7 Q. Good morning.

8 A. Good morning.

9 Q. My name is Peter Pattakos and I
10 represent the plaintiffs in the lawsuit in
11 which you're here today to provide testimony.
12 I'll ask you first to please state your name
13 for the record.

14 A. Richard H. Gunning, M.D.

15 Q. Thank you, Dr. Gunning. Have you
16 taken any medication or ingested any other
17 substances that would impair your ability to
18 remember events accurately or testify
19 truthfully today?

20 A. No.

21 Q. Is there any other reason you would
22 be unable to remember events accurately or
23 testify truthfully today?

24 A. No.

25 MR. MYERS: Keep your voice up.

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1 THE WITNESS: Okay.

2 BY MR. PATTAKOS:

3 Q. Have you ever had your deposition
4 taken before?

5 A. I've been deposed before.

6 Q. How many times?

7 A. I think possibly three, two or
8 three.

9 Q. What was the circumstances of these
10 depositions?

11 A. If I recall, they were insurance
12 companies that had challenged settlements and I
13 was deposed to provide whatever information I
14 had.

15 Q. So you had treated a plaintiff in a
16 personal injury case and you were being deposed
17 about that treatment. Is that correct?

18 MR. BARMEN: Objection.

19 Go ahead.

20 A. I was not questioned about the
21 treatment. I was questioned about the billing
22 practices, of which I knew nothing, because I'm
23 not involved in the billing practices.

24 Q. Okay. Remember what years those
25 depositions took place?

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1 A. Offhand, I do not recall, but I do
2 know they were within the past seven years,
3 because they were both held at our office in
4 Wadsworth and we've only been there seven
5 years.

6 Q. Was it the same attorney that took
7 those depositions or was it different
8 attorneys?

9 A. I don't honestly recall.

10 Q. Okay. Well, so you understand how
11 it generally goes at a deposition, is that I
12 ask the questions and you answer them?

13 A. That's right.

14 Q. It's important for you to give an
15 audible answer like, "Yes," or "No," as opposed
16 to, "Um-hum," or, "Uh-huh" --

17 A. Okay.

18 Q. -- because the latter doesn't show
19 up in the transcript, not that you've done
20 that. It's just something we go over at the
21 beginning.

22 A. All right.

23 Q. And if you don't understand a
24 question, I'd ask you to please tell me so and
25 I can do my best to rephrase it for you. Okay?

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1 A. Okay.

2 Q. Now, your attorney here today
3 may -- or attorneys may register objections to
4 the questions that I ask you today, but that is
5 only to preserve those objections for the
6 record. And you are still required to answer
7 my question, even when your attorney objects,
8 unless your attorney specifically instructs you
9 not to answer the question, in which case the
10 Court will decide whether you have to answer
11 the question. Do you understand?

12 A. Yes, I do.

13 Q. Okay. So you called my office on
14 October 2, 2018, at 6:32 p.m., correct?

15 A. I called your office that day. I
16 don't recall the time, but, okay.

17 Q. If my records reflect that it took
18 place at 6:32 p.m., would you have any reason
19 to doubt that?

20 MR. BARMEN: Objection.

21 Go ahead.

22 A. I would not doubt it.

23 Q. And you spoke with my receptionist
24 first who then connected you with me, correct?

25 A. That's correct.

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1 Q. And we proceeded to speak on the
2 phone for approximately two hours, correct?

3 A. I don't recall how long the
4 conversation was.

5 Q. If I told you that my records of
6 our conversation showed that we spoke for one
7 hour, 54 minutes and 40 seconds, would you have
8 any reason to doubt that was true?

9 MR. BARMEN: Objection.

10 Go ahead.

11 A. No.

12 Q. And the number that you called me
13 from, that was 330-860-7215, correct?

14 A. That's most likely true, yes.

15 Q. And why is that, "Most likely,"
16 true?

17 A. I have two cell phones and that's
18 one of the numbers.

19 Q. Okay. And that's your personal
20 mobile phone?

21 A. Yes.

22 Q. Who's the carrier for that account?

23 A. Verizon, I think.

24 Q. When you called and first spoke
25 with my receptionist, you told the receptionist

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1 that you were calling regarding a current case
2 against Dr. Sam Ghoubrial and a document that
3 was sent to my office regarding that lawsuit
4 that you signed against your will, correct?

5 MR. BARMEN: Objection.

6 Go ahead.

7 A. I felt pressured to sign it. I did
8 sign it. I didn't want to sign it, but I did
9 sign it.

10 Q. And that is what you told my
11 receptionist, correct?

12 A. That's correct.

13 Q. And after you told my receptionist
14 this, my receptionist then connected you with
15 me and you told me the very same thing,
16 correct?

17 MR. BARMEN: Objection.

18 Go ahead.

19 A. I did.

20 Q. About the document that you signed,
21 but you did not want to sign, that you were
22 pressured to sign it by Dr. Ghoubrial, correct?

23 MR. BARMEN: Objection.

24 Go ahead.

25 A. I felt pressured to sign the

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1 document. I did not want to sign the
2 document --

3 Q. Okay.

4 A. -- I was nervous. I was worried
5 about signing it.

6 Q. And from there, we had a
7 conversation about Dr. Ghoubrial's practice and
8 more specifically his treatment of KNR clients,
9 correct?

10 A. That did come up.

11 Q. You are Dr. Ghoubrial's employee,
12 correct?

13 A. That's correct.

14 Q. You are not his partner, correct?

15 A. That's correct.

16 Q. He may refer to you as his,
17 "Partner," sometimes, but that does not mean
18 you have an ownership interest in his business,
19 correct?

20 MR. BARMEN: Objection.

21 Go ahead.

22 A. I do not have any ownership in his
23 business.

24 Q. Do you have an employment contract?

25 A. Actually, I don't.

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1 Q. Are you an at-will employee?

2 MR. BARMEN: Objection.

3 Go ahead.

4 A. Yes.

5 Q. One of the things that you told me
6 about Dr. Ghoubrial's business of treating KNR
7 clients was that at some point, he excluded you
8 from that practice because you were not
9 administering as many injections to these
10 clients as he wanted you to administer,
11 correct?

12 MR. BARMEN: Objection.

13 Go ahead.

14 A. I don't know if that was the
15 reason. I assumed that it was the reason, but
16 it also turned out that that was right about
17 the time that we lost one of our other
18 physicians in our office and he came back in
19 the office.

20 Q. These KNR clients are treated as
21 part of a separate practice that Dr. Ghoubrial
22 has set up, correct?

23 MR. BARMEN: Objection.

24 Go ahead.

25 A. I understand that they are separate

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1 from our office practice, yes.

2 Q. And the KNR clients were treated at
3 separate locations from the Wadsworth office
4 where Dr. Ghoubrial's family practice was set
5 up, correct?

6 A. Not always.

7 Q. "Not always," can you explain?

8 A. I did see patients at the other
9 office where a lot of these clients were, but I
10 also would see them in my own office at
11 Wadsworth a lot. In fact, after he pulled me
12 out of that office and brought me back to the
13 Wadsworth office, I actually saw more personal
14 injury clients in the Wadsworth office. And I
15 still do. I'm just not going to the other
16 office. On a rare occasion, I still do, if
17 Ghoubrial is out of town or something and he
18 needs me to cover, but otherwise I stay
19 primarily at our Wadsworth office.

20 Q. When you say, "The other office,"
21 what are you referring to?

22 A. He had a room set up over at the
23 chiropractor's office and if there were
24 patients who were seeing the chiropractor who
25 were also in Dr. Ghoubrial's personal injury

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1 clinic, rather than trunk them across town,
2 they would just sit in the waiting room, see
3 the chiropractor, sit in the waiting room and
4 then see either Dr. Ghoubrial or myself.

5 Q. Now, when you would treat these
6 clients in the Wadsworth office -- and I'll
7 call that -- I'll refer to, "The personal
8 injury practice," and, "The family practice,"
9 to distinguish between the two, if --

10 A. Okay --

11 Q. -- that works.

12 A. -- yeah.

13 Q. When you treated the personal
14 injury clients at the Wadsworth office, how did
15 you know they were personal injury clients?

16 A. They had a separate chart. That's
17 my first indication.

18 Q. What makes it separate?

19 A. Patients who are not personal
20 injury, there's a chart and it's hung outside
21 the door in the little compartment. And when I
22 see that, I automatically know it's a family
23 practice patient. And I take that, if I need
24 to order a lab or something, I'll obviously
25 enter it in the computer, but I'll also check

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1 something on the chart. And I'll leave that in
2 the door after I'm done with the patient. And
3 the nurse will come and take that and deal with
4 it.

5 If it's a personal injury patient,
6 they're not in our family practice computer
7 system. They actually have a separate chart
8 and that chart would be in the little folder
9 outside of the patient's door. And so my first
10 indication is, oh, a personal injury client. I
11 look and I'll see a charge slip, charge slip
12 and then there's that chart hanging out of the
13 door.

14 Q. So it's a different format, the
15 chart itself is a different format?

16 A. Yes, it is.

17 Q. Okay. What's different about it?

18 A. It's a manila folder and you open
19 it and on the right-hand side, there's the
20 notes. They're typically typed by the
21 transcriptionist and signed by the doctor and
22 the history and physical will be there. And
23 then on top of that will be any subsequent
24 visits that they have. Behind those notes
25 would be the copies of reported x-rays, MRIs,

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1 any copies of emergency room records we might
2 have would be back behind there. And on the
3 other side of the chart would be the patient's,
4 you know, consent form where they sign their
5 name and sign that they were, you know, part of
6 this clinic.

7 Q. Would the letter of protection be
8 in there, too?

9 MR. BARMEN: Objection.

10 Go ahead.

11 A. I honestly don't know what the
12 letter of protection looks like.

13 Q. Okay. Can you tell from the chart
14 what law firm the client is represented by?

15 A. I don't know. I don't look for
16 that.

17 Q. Do you think that's something
18 that's on the envelope or in the envelope?

19 MR. BARMEN: Objection. He said he
20 didn't know.

21 Q. Do you recall?

22 A. I don't know where they keep that
23 information.

24 Q. Okay.

25 MR. BARMEN: Peter, before you

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1 ask the next question, because you're asking
2 questions about medical practice in general,
3 but are your clients, relative to the claims
4 against Ghoubrial, waiving their medical --
5 their physician-patient privilege?

6 MR. PATTAKOS: I don't think that
7 we have to address that issue now. I'll get
8 back to you on that. I don't see why that's
9 relevant at this point.

10 MR. BARMEN: Because you're
11 asking questions about how the practice works
12 and about patients in general, but if you're
13 going to get relative to specifics on these two
14 patients, I'd like to know that before he gets
15 there, because there are issues obviously. I
16 think it's a reasonable request.

17 MR. PATTAKOS: Yeah, we'll --
18 we'll -- we'll deal with that, when we get
19 there. I don't think we're there at this point
20 and I don't know that we will get there, so.

21 BY MR. PATTAKOS:

22 Q. Okay. So you mentioned that -- you
23 mentioned that there was -- that these personal
24 injury clients would be treated in Wadsworth at
25 the family practice's office as well as at the

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1 chiropractor's office. That's Akron Square
2 Chiropractic, Dr. Floros's office?

3 A. Yes.

4 Q. Okay. You also mentioned on the
5 phone that there was a building on Brown Street
6 and a building on Waterloo Road --

7 A. Yes.

8 Q. -- where these clients were
9 treated.

10 A. Periodically, yes.

11 Q. And that's just the personal injury
12 clients that are treated there?

13 A. That's right.

14 Q. Did you ever treat the patients
15 there?

16 A. Yes, I did.

17 Q. Okay. And why didn't you mention
18 those?

19 A. Why did I mention them?

20 Q. Why didn't you --

21 A. Why didn't I?

22 Q. -- just now, when we were talking
23 about the various locations? Was there --

24 MR. BARMEN: Objection.

25 Q. -- is it because we don't use --

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1 you don't use those anymore?

2 MR. BARMEN: Well, you didn't
3 really --

4 Wait a minute.

5 -- you didn't ask that specific question.
6 He answered the question you asked him, so
7 don't represent that somehow he's not answering
8 your questions, when he is. Ask the direct
9 question and he'll give you the answer.

10 MR. PATTAKOS: I'm sorry, Brad, I
11 didn't get that impression. Sorry. My
12 apologies.

13 MR. BARMEN: Thank you.

14 BY MR. PATTAKOS:

15 A. Well, most of the time, we did see
16 the patients and we had the Brown Street office
17 briefly, until the owner of the building sold
18 it, and then we had the Waterloo office
19 briefly. I think each place was for a period
20 of a number of months and that's about it. So
21 most of the time, when we were not seeing
22 patients in the family practice, we were at
23 Dr. Floros's office.

24 Q. Okay. Dr. Ghoubrial made clear to
25 you that when you were treating these personal

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1 injury clients, he wanted you to administer as
2 many injections to these clients as was
3 possible, correct?

4 MR. BARMEN: Objection.

5 MR. MANNION: Objection.

6 MR. BARMEN: Go ahead.

7 A. He wanted to use trigger point
8 injections as a way to use less narcotics. I
9 gave trigger point injections. He gave more
10 than I did. And I had no objections to giving
11 trigger point injections, but if the patients
12 didn't want them, I wouldn't give them. And if
13 they did, I would. I think they're helpful and
14 they're part of the standard practice and part
15 of the standard of care for treating these car
16 accident patients.

17 Q. When we spoke on the phone on
18 October 2, you told me that Dr. Ghoubrial
19 instructed you when treating these patients to
20 sneak the needles into the client's back when
21 they weren't looking --

22 MR. BARMEN: Objection.

23 Q. -- did you not, Dr. Gunning?

24 MR. BARMEN: Objection.

25 Go ahead.

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1 A. What I said was, he has his own way
2 of dealing with these clients, especially
3 people who might be needle-phobic. He would
4 say, "Don't necessarily say the word 'needle'
5 to them. Don't necessarily say, 'shot.'" Tell
6 them that you want to put the medication right
7 where the pain is." And that was his approach
8 to informed consent. I tended to be more
9 likely to show the patient the needle. And of
10 course, as a result, some patients who
11 otherwise would have been helped by an
12 injection sometimes declined the shot. And
13 I'll admit, I'm not as good a salesperson in
14 getting people to take shots, whether it's
15 trigger point injections or diabetics who need
16 to start insulin or any of that. Some people
17 are just needle-phobic.

18 Q. You didn't mention anything about
19 the needle-phobic issue, when we spoke on the
20 phone, did you?

21 A. I don't recall.

22 Q. If my records of our conversation
23 showed that you didn't, would you have any
24 reason to doubt that?

25 MR. BARMEN: Objection.

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1 MR. MANNION: Objection.

2 A. I don't know what your records are.

3 Q. That's not the question.

4 MR. MANNION: Objection. That was
5 the question.

6 Q. No, the question wasn't, what are
7 my records. The question is: If my records of
8 our conversation show that you did not ever say
9 anything about Dr. Ghoubrial worrying about a
10 patient being needle-phobic, would you have any
11 reason to doubt that?

12 MR. MANNION: Objection.

13 MR. BARMEN: Objection.

14 MR. BEST: Are you saying he
15 didn't write it down or --

16 MR. MANNION: Are you a witness
17 now?

18 THE NOTARY: Are we all going to
19 talk at the same time?

20 MR. PATTAKOS: Please read the
21 question back to the witness, Tracy.

22 Your objections are noted.

23 THE NOTARY: Which question the
24 last one or --

25 MR. PATTAKOS: Yes, the last one I

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1 asked.

2 (Record was read.)

3 THE NOTARY: I'm sorry. Oh, lord,
4 can you just read -- I'm sorry.

5 BY MR. PATTAKOS:

6 A. I'm sorry. I don't recall what
7 particular words I said. The phone call was
8 two months ago. We do have different
9 approaches toward treating patients. I never
10 administered any treatments that I thought was
11 unnecessary. I gave them whatever treatments I
12 thought was helpful, which included trigger
13 points, when I could convince the patients to
14 get the trigger point. Sam has a different
15 approach toward getting the patients to accept
16 trigger points than I do and I'll admit he was
17 more successful at it.

18 Q. If you --

19 MR. MANNION: One moment before
20 your next question. If you're going to ask
21 questions about your notes, I request a copy of
22 those now, before you keep going.

23 MR. PATTAKOS: That's great, Tom.

24 MR. MANNION: I'm serious. You
25 can't ask questions about documents that you

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1 haven't provided.

2 MR. PATTAKOS: I certainly can,
3 Tom.

4 MR. MANNION: No, you can't.

5 BY MR. PATTAKOS:

6 Q. You told me, Dr. Gunning, that
7 Dr. Ghoubrial constantly -- you used the word,
8 "Constantly" -- told you that the practice did
9 not make money if you didn't administer
10 shots --

11 MR. BARMEN: Objection.

12 Q. -- is that correct?

13 MR. MANNION: Objection,
14 argumentative.

15 A. He did mention that, you know, we
16 were being paid to deliver these patients care
17 and that -- that we had a responsibility not to
18 just dispense percocet prescriptions to
19 everybody; in that setting, if I could do
20 something other than just write prescriptions,
21 give them the care they needed, which would
22 include trigger points, which might include
23 TENS units, et cetera, then that would be
24 appropriate. In fact, frankly, if some of the
25 patients had been more willing to accept

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1 trigger points, I suspect their care might have
2 come to a conclusion sooner and in the end
3 charged less.

4 Q. That's great, but I want you to
5 answer the question. Did you or did you not
6 tell me that Ghoubrial constantly -- and you
7 used the word, "Constantly" -- told you that
8 the practice didn't make money if you didn't
9 administer shots --

10 MR. BARMEN: Objection.

11 Q. -- did you or did you not tell me
12 that?

13 MR. BARMEN: Objection. Asked
14 and answered. Now I'm going to join Tom's --
15 if you're going to try and cross-examine him on
16 notes you have on a conversation from two
17 months ago, provide him the notes. Otherwise,
18 accept the answer he gives you and move on.

19 MR. PATTAKOS: Guys, that's not how
20 it works. First of all, he didn't answer the
21 question --

22 MR. BARMEN: He did answer the
23 question.

24 MR. PATTAKOS: -- and I'm not
25 cross-examining him on the notes.

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1 MR. BARMEN: First of all, don't
2 raise your voice.

3 MR. PATTAKOS: I'm
4 cross-examining --

5 MR. BARMEN: Don't raise your
6 voice to me.

7 THE NOTARY: I can't take you
8 guys both at the same time.

9 MR. PATTAKOS: Please don't speak
10 while I'm speaking. I am examining --

11 MR. BARMEN: I was speaking and
12 you started talking over me, Peter, so these
13 things work both ways. If you're going to
14 cross-examine him on notes you have from a
15 conversation when you interrogated him on the
16 phone two months ago then waited until two
17 hours in to tell him he should probably have a
18 lawyer, then give him those notes or accept the
19 answer he gives you, because his answer is not
20 going to change. He told you he doesn't
21 remember the specific language from a
22 conversation --

23 MR. PATTAKOS: Stop testifying for
24 the witness, Brad.

25 MR. BARMEN: I'm reminding you --

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1 MR. MANNION: Let him make his
2 objection, please.

3 MR. PATTAKOS: This is not an
4 appropriate objection. This is in no way an
5 appropriate objection.

6 MR. BARMEN: Your questioning is
7 not appropriate.

8 MR. PATTAKOS: Your behavior is not
9 appropriate.

10 MR. BARMEN: When you ask the
11 question and you don't like the answer, so
12 now --

13 MR. PATTAKOS: Tracy, let's go off
14 the record, if he's going to do this.

15 MR. BARMEN: No, no, no. Stay on
16 the record.

17 MR. BEST: No. We're not going
18 off the record.

19 MR. BARMEN: Stay on the record.
20 He will answer every question that you ask him
21 to the best of his ability. Accept the answer
22 and move on. If you're going to cross-examine
23 him on some notes you have from this
24 conversation, let him see the notes or ask the
25 next question.

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1 MR. PATTAKOS: Two things. Okay.
2 Number one, I'm not cross-examining him on the
3 notes.

4 MR. BARMEN: Clearly you are.

5 MR. PATTAKOS: No, I'm not. I'm
6 asking him to remember our conversation and to
7 remember what he said. That's number one.
8 Number two, he didn't answer the question and
9 I'm entitled to get a straight answer out of
10 him --

11 A. Well, the answer is --

12 MR. PATTAKOS: -- so if you don't
13 like it --

14 MR. BARMEN: Wait.

15 MR. PATTAKOS: -- you can object,
16 but you can't tell him not to answer. And you
17 can't testify for the witness, because it's
18 inappropriate, and we will take this to the
19 Judge, if you keep it up. Okay?

20 MR. BARMEN: First off, I have
21 yet to instruct him not to answer a question.

22 MR. PATTAKOS: Well, you're
23 testifying for him, is what you're doing.
24 You're telling him that you don't -- that you
25 like the answer he gave, the nonanswer that he

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1 gave --

2 MR. BARMEN: Peter --

3 MR. PATTAKOS: -- and you're --

4 MR. BARMEN: Peter --

5 MR. PATTAKOS: -- keeping him from
6 telling the truth.

7 MR. BARMEN: Peter, don't --

8 MR. MANNION: Oh, come on, stop
9 that.

10 MR. BARMEN: Peter, don't tell me
11 not to talk over you and then interrupt me
12 three words in. You asked a question. He gave
13 you his answer. You asked him again and
14 because you didn't like the answer --

15 MR. PATTAKOS: He didn't answer the
16 question. I'm going to ask it one more time.

17 BY MR. PATTAKOS:

18 Q. Dr. Gunning, did you or did you
19 not, when we spoke on October 2, say that
20 Dr. Ghoubrial constantly told you that the
21 practice didn't make money if you didn't
22 administer the shots?

23 MR. BARMEN: Objection. Asked and
24 answered.

25 Tell him again.

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1 A. I don't recall the actual words I
2 said that day. I was very anxious, upset,
3 angry. I had taken some Ativan, prior to
4 talking with you, and the conversation was two
5 months ago. I don't think I can recall the
6 actual quotations.

7 Q. That's an answer to the question,
8 so thank you.

9 MR. BARMEN: That's the second --

10 MR. MANNION: Move to strike the
11 commentary.

12 Q. You also told me, when we spoke on
13 the phone on October 2, that Dr. Ghoubrial lost
14 his temper at you, because you saw a certain
15 number of KNR clients in one day and you only
16 gave two shots --

17 MR. BARMEN: Objection.

18 Q. -- did you not tell me that,
19 Dr. Gunning?

20 A. I don't recall those particular
21 words.

22 Q. Anything you do recall about that?

23 A. Same --

24 MR. BARMEN: Wait a minute.

25 Objection. About what, because, again --

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1 are you asking him the same question again?

2 MR. PATTAKOS: About the issue of
3 whether Dr. Ghoubrial lost his temper at him,
4 because he only gave a certain number -- that
5 he saw a certain number of KNR clients in one
6 day and only gave two shots.

7 MR. BARMEN: Objection. Asked
8 and answered.

9 Go ahead.

10 A. Sam is a volatile person and can
11 lose his temper frequently, and has. He feels
12 bad about it afterwards. I don't recall having
13 said that particular comment.

14 MR. BARMEN: Next question.

15 Q. Dr. Gunning, you also told me over
16 the phone on October 2 that you have said to
17 Dr. Ghoubrial a million times, "Sam, you can't
18 just be sneaking up on these people with
19 injections." Do you recall saying that?

20 MR. BARMEN: Objection.

21 Go ahead.

22 A. I don't recall saying that. I do
23 recall telling him about my practice of
24 informing patients of the medication being in
25 the form of a shot and a needle and showing

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1 them the needle; and that Dr. Ghoubrial said,
2 "You sometimes need to realize, these people
3 are needle-phobic and" -- or not -- I don't
4 know if I said, "Needle-phobic," "but don't
5 like needles and sometimes you have to approach
6 these patients a different way." And --

7 MR. BARMEN: You answered it.

8 THE WITNESS: Okay.

9 MR. PATTAKOS: Why are you
10 interrupting the witness, while he's giving
11 testimony, Brad?

12 MR. BARMEN: He answered your
13 question.

14 BY MR. PATTAKOS:

15 Q. What else were you going to say,
16 Dr. Gunning?

17 A. Well, what I was going to say was:
18 People who get their first shot know that
19 they're going to get a second and probably a
20 third and possibly a fourth shot. And the
21 first shot does enable them to realize that the
22 shots aren't all that bad and they're more
23 agreeable to getting subsequent shots, which is
24 what I was going to say.

25 Q. You also told me on October 2 that

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1 the personal injury clients would complain to
2 you about having these needles injected into
3 them against their will, correct?

4 MR. BARMEN: Objection.

5 MR. MANNION: Objection.

6 MR. BARMEN: Go ahead.

7 A. I think I had about six patients
8 during that time over the years who said that,
9 you know, they didn't want shots necessarily;
10 and the next thing I knew, was that they were
11 getting a shot. I also know that -- again, I
12 might not have said it during that
13 conversation, but every person who got one shot
14 most likely got another shot. It's rare that
15 we ever gave one shot. Most people got two,
16 four. There have been some who've had six
17 shots. And not only did they accept the
18 subsequent shots, but most of them, when they
19 came back two weeks later for a follow-up
20 visit, got more shots.

21 Q. When these clients would complain
22 to you, you told me that you would advise them
23 to report these incidents to the state medical
24 board. Isn't that correct?

25 MR. BARMEN: Objection.

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1 A. I don't recall that.

2 Q. You don't recall telling me that?

3 A. I don't recall telling you that and
4 I don't recall advising anybody.

5 MR. BARMEN: Something funny, Pete?

6 Q. You told me that Ghoubrial would
7 coerce the patient into accepting the
8 injections by threatening to withhold
9 prescriptions for pain pills. Specifically
10 that he would say, "If you're not in enough
11 pain to get a shot, you're not in enough pain
12 for narcotics." Isn't that correct?

13 MR. BARMEN: Objection.

14 MR. MANNION: Objection to form.

15 Q. Go ahead.

16 A. It was also true that patients who
17 said that they thought they had to choose
18 between one or the other -- I hate to say it --
19 did tend to be drug seekers. We have a lot of
20 patients. Sometimes it's hard to tell who's
21 going to -- that's one of the reasons why
22 Ghoubrial didn't like giving narcotics. It's
23 sometimes hard to tell who's a drug seeker and
24 who isn't. If you ask them, "What's your pain?
25 Rate your pain 1 to 10," and their pulse is

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1 normal and their blood pressure is low and they
2 say their pain is an 11, we have a problem with
3 that, but sometimes it's not quite so obvious.
4 And yet, typically people who didn't want shots
5 and wanted percocet were still demanding their
6 percocet and Sam did not want to give them
7 percocet.

8 Q. Are you aware, Dr. Gunning, that
9 perjury is a felony?

10 MR. BARMEN: Objection.

11 MR. MANNION: Objection.

12 A. Yes.

13 MR. MANNION: Stop trying to
14 intimidate the witness.

15 MR. PATTAKOS: Okay.

16 MR. MANNION: Peter, stop trying
17 to intimidate the witness.

18 MR. PATTAKOS: I'm concerned --

19 MR. MANNION: You've raised your
20 voice. You're threatening criminal action now.

21 MR. PATTAKOS: I'm just concerned
22 at this point about the perjury -- I'm
23 concerned about knowingly false statements
24 being entered into these proceedings. I'm
25 going to read the perjury statute. "No person

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1 in" --

2 MR. MANNION: No, no, no, no, no.

3 THE NOTARY: I can't take --

4 MR. BARMEN: Wait, wait, wait,
5 wait, wait.

6 Peter, can you ask your questions? He'll
7 give you answers and we'll move on, but stop
8 the grandstanding, stop the garbage, stop the
9 intimidation. He understands he's under oath.
10 Ask your questions.

11 BY MR. PATTAKOS:

12 Q. Dr. Gunning, do you understand that
13 Ohio Revised Code Section 2921.11 --

14 MR. BARMEN: Objection. Let's take
15 a break.

16 Q. -- provides that --

17 MR. BARMEN: Take a break.

18 Q. -- "No person, in any official" --

19 MR. BARMEN: Come on. Let's get
20 the hell out of here.

21 Q. -- "proceeding" --

22 (Mr. Barmen exits.)

23 (Witness exits.)

24 (Mr. Myers exits.)

25 Q. -- shall knowingly make a false

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1 statement under oath or affirmation or
2 knowingly swear or affirm the truth" --

3 MR. BEST: You are out of your
4 natural -- there is something mentally wrong
5 with you. Do you have medical care? Do you
6 need medical care, because you are obviously
7 unstable? You need to have someone reign you
8 in.

9 MR. PATTAKOS: Really?

10 MR. BEST: There's something
11 desperately wrong with your brain. You really
12 need psychological care. If you think you can
13 pull this nonsense, we'll see how the Judge
14 likes this, because fortunately there is a very
15 nice video recording of this.

16 MR. MANNION: Peter, your
17 clients --

18 THE NOTARY: Are we on the record
19 or --

20 VIDEOGRAPHER: Yeah, are we on the
21 record?

22 THE NOTARY: -- because this is
23 getting crazy.

24 MR. PATTAKOS: Stay on the record.

25 THE NOTARY: I really need to

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1 know.

2 MR. MANNION: Stay on the record.

3 MR. BEST: Absolutely --

4 MR. MANNION: Your clients lied --

5 MR. BEST: -- the video, audio
6 and shorthand.

7 MR. MANNION: Your clients
8 completely lied at their depositions.

9 MR. PATTAKOS: Take this off the
10 record. This is off the record.

11 This is ridiculous.

12 MR. BEST: No, it's not. You
13 cannot go off the record when I say --
14 disagree. It's got to be on the record. That
15 is the law.

16 MR. PATTAKOS: You just walked your
17 client out of the room.

18 MR. BEST: Maybe you don't
19 know, but it's the law. When I'm talking and
20 when I don't agree to go off the record, we're
21 not off the record.

22 MR. PATTAKOS: So you're allowed to
23 pull your client out of the room and go off the
24 record, but you're allowed to stay on the
25 record whenever you want?

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1 MR. MANNION: What?

2 MR. BEST: The law says unless
3 all lawyers agree, you stay on the record.

4 MR. PATTAKOS: Yeah. So why was
5 your client allowed to just walk right out of
6 here?

7 MR. BEST: Because you are
8 psychologically impaired and you are doing
9 inappropriate things in a legal proceeding.

10 VIDEOGRAPHER: Can we go off the
11 record now or --

12 MR. BEST: Yeah, we can go off
13 the record.

14 MR. PATTAKOS: Yeah.

15 VIDEOGRAPHER: Off the record
16 10:41.

17 (Recess taken.)

18 VIDEOGRAPHER: On the record 10:50.

19 BY MR. PATTAKOS:

20 Q. Okay. Dr. Gunning, back to this
21 issue of Dr. Ghoubrial telling the personal
22 injury clients that if they're not in enough
23 pain to get a shot, then you're not in enough
24 pain for narcotics. You told me, when we spoke
25 on the phone, that it was improper to say

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1 anything like that to a patient, did you not?

2 MR. BARMEN: Objection.

3 Go ahead.

4 A. I don't recall my words.

5 Q. Do you believe that it was improper
6 to say anything like that to a patient?

7 MR. BARMEN: Objection. He's not
8 here as an expert.

9 Go ahead.

10 A. I think it's true; if they're not
11 in that much pain, they don't need a narcotic.
12 Now, the question whether that means they have
13 to have a trigger point isn't necessarily so.
14 There are different ways of treating trigger
15 points. There's the injection with the steroid
16 and the aesthetic, which we use. There's dry
17 needling. There's turning them to a
18 massotherapist to work on the knot for an hour,
19 but the quickest, fastest way to address a
20 trigger point successfully is -- are
21 injections.

22 Q. You recall telling me on the phone
23 that Dr. Ghoubrial would refer to the trigger
24 point injections as, "Nigger point injections,"
25 referring to the racist slur for black people?

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1 MR. MANNION: Objection.

2 MR. BARMEN: Objection.

3 Don't answer that question.

4 MR. MANNION: Yeah, I'm going
5 to -- I'm going to object. And for the record,
6 when I asked one of your clients about their
7 use of that word, you instructed them not to
8 answer. So what's good for the goose is good
9 for the gander.

10 MR. BARMEN: Well, and under
11 Local Rule 1702.5B, it's not relevant to any
12 issue in this case. He's not going to answer
13 any question like that. Move on.

14 Q. You did tell me that, didn't you,
15 Dr. Gunning?

16 MR. BARMEN: Objection.

17 Don't answer that question.

18 Move on, Peter. He's not going to answer
19 anything like that. If it's not relevant and
20 it's just meant to try and throw mud and smear
21 people, he's not going to answer any questions.

22 MR. PATTAKOS: Oh, it is certainly
23 relevant.

24 MR. BARMEN: Explain to me how.

25 I've instructed him not to answer, under the

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1 local rules. You can take it up with the
2 Judge. Move on.

3 BY MR. PATTAKOS:

4 Q. Did Dr. Ghoubrial actually refer to
5 these trigger point injections as, "N-i-g-g-e-r
6 point injections"?

7 MR. BARMEN: Same objection.

8 MR. MANNION: Objection.

9 MR. BARMEN: Do not answer that
10 question. If it's good enough for Plaintiff
11 Johnson, it's certainly good enough for a
12 nonparty witness.

13 MR. PATTAKOS: That's a great
14 argument. I'm sure the Judge is going to love
15 it.

16 MR. BARMEN: Take it up with the
17 Judge.

18 MR. MANNION: You instructed your
19 client not to answer that question.

20 BY MR. PATTAKOS:

21 Q. It's true, Dr. Gunning, that the --
22 that the personal injury practice treated a
23 larger proportion of black people than the --
24 than the family practice, correct?

25 MR. BARMEN: Objection.

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1 Go ahead.

2 A. That is true.

3 Q. And you also said to me that
4 Ghoubrial would refer to his practice as,
5 "Afro-puncture," correct?

6 MR. BARMEN: Objection.

7 Don't answer that question.

8 Same objection. Local rule, it's not
9 relevant.

10 Q. Dr. Gunning, you also recall the
11 time when you were at Rob Nestico's house for a
12 social event and Rob Nestico's sister had just
13 been in a car accident and Dr. Ghoubrial and
14 your former co-worker Frank Lazzerini were
15 joking in front of Nestico that they were going
16 to shoot her up with a bunch of injections and
17 send her home with a back brace, et cetera. Do
18 you remember telling me that?

19 MR. BARMEN: Objection.

20 Go ahead.

21 A. I -- I think I may have mentioned
22 something of that, yeah.

23 Q. So what did you -- what do you
24 remember about that?

25 A. We were sitting in the living room.

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1 Sam, Frank, Rob and his sister were there. She
2 described her accident and they were saying how
3 they would go ahead and give her shots and get
4 her, you know, a back brace that she needed.
5 And I don't recall if they said anything else
6 about other treatments. And I remember talking
7 with her about her injuries. She wasn't there
8 as a patient. And I don't think she ever
9 became our patient.

10 Q. Why did you tell me that, when we
11 spoke on the phone? Why was it significant for
12 you to tell that to me?

13 MR. BARMEN: Objection. Assumes it
14 was.

15 But go ahead.

16 A. I don't know. I don't recall. I
17 know that we had different manners of treating
18 patients. I did tend to use fewer trigger
19 points than the other two. I have no problem
20 using them. I occasionally even use them on my
21 nonpersonal injury patients, in my regular
22 practice, if they need a trigger point
23 injection. But I do know that I never was as
24 good a, if you want to call, a salesman of that
25 technique. If people tell me the slightest

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1 that they didn't want a shot, I wouldn't try to
2 convince them.

3 I'll admit, I have the same problem with
4 my diabetic patients. If they get to the point
5 where orals are no longer working and they need
6 insulin, I struggle trying to get them to
7 accept giving themselves insulin. I'm just not
8 that good a salesman.

9 Q. When you told me about this
10 conversation about Rob Nestico's sister, you
11 told me that they were joking about this. Do
12 you recall that?

13 MR. BARMEN: Objection.

14 Go ahead.

15 A. I don't recall their intent.

16 Q. Well, the reason this upset you and
17 the reason that you said this to me on the
18 phone is because they were laughing at the
19 notion that Nestico's sister would receive the
20 same treatment that these personal injury
21 clients received. Isn't that true,
22 Dr. Gunning?

23 MR. BARMEN: Objection.

24 MR. BEST: Objection. What has
25 this got to do with class action? How is this

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1 relevant to class certification or any class
2 claim? This is outrageously beyond the pale in
3 terms of the scope of the questioning. I
4 object to it.

5 MR. MANNION: I would ask for a
6 copy of your notes; a copy of any recording, if
7 there is one; you can let us know if there is a
8 recording, and if it keeps going like this, for
9 your deposition, Mr. Pattakos.

10 MR. BEST: Do you have notes?
11 Do you have a tape?

12 BY MR. PATTAKOS:

13 Q. What's your answer to the question,
14 Doctor?

15 MR. BEST: Mr. Pattakos, answer
16 the question. Do you have a tape?

17 MR. PATTAKOS: I'm not here to
18 answer your questions, Mr. Best.

19 MR. BEST: Well, you were
20 threatening perjury a little while ago. Do you
21 have some tape where you claim that there's
22 some nefarious conduct here? Confess.

23 MR. BARMEN: Did you tape his
24 phone call, without letting him know?

25 BY MR. PATTAKOS:

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1 Q. Dr. Gunning, answer the question.

2 MR. BARMEN: Wait a minute.

3 Don't.

4 Did you tape the phone call that you keep
5 referring to, without letting the witness know
6 that you were taping the phone call?

7 MR. PATTAKOS: I'm not here to
8 answer your questions. Thank you.

9 MR. BARMEN: I --

10 MR. PATTAKOS: You simply have no
11 right to know that, so.

12 MR. BARMEN: I think it's just
13 common courtesy. You're sitting here -- first
14 off, you talked to the guy for almost two
15 hours. You wait until the end of the
16 conversation to suggest he get counsel, which
17 is questionably appropriate to begin with --

18 MR. PATTAKOS: Um-hum.

19 MR. BARMEN: -- when you know
20 that he's part of a practice that was
21 represented by --

22 MR. PATTAKOS: When I know that he
23 told me that his boss made him sign an
24 affidavit that he didn't want to sign?

25 MR. BARMEN: Did you ask him if

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1 the affidavit was true? You still haven't
2 asked that here today, because I know that's
3 the kind of answer you don't want --

4 MR. PATTAKOS: Brad, we'll get
5 there.

6 MR. BARMEN: -- but if you taped
7 his conversation, he has a right to know that.
8 Why don't you want to tell him that?

9 BY MR. PATTAKOS:

10 Q. Dr. Gunning --

11 MR. BARMEN: What are you --

12 MR. PATTAKOS: Because I want this
13 witness to tell the truth.

14 MR. BARMEN: He is telling the
15 truth and your implication otherwise is
16 offensive and inappropriate.

17 THE WITNESS: Well, the thing is,
18 I didn't --

19 MR. BARMEN: You can roll your
20 eyes all you want, Pete.

21 MR. PATTAKOS: I spent two hours on
22 the phone with him, Brad.

23 MR. BARMEN: Right, which is
24 inappropriate, in and of itself.

25 MR. PATTAKOS: I'm sure you're not

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1 happy about it. I wouldn't be either, if I
2 were you.

3 MR. MANNION: Do you mind if I
4 video you, Peter, during this to document the
5 rolling of the eyes and the laughing?

6 MR. PATTAKOS: That's great, Tom.

7 MR. MANNION: Well, no.

8 MR. PATTAKOS: Why don't you get a
9 two-way camera? Okay. Let's move on.

10 MR. MANNION: Yes, let's.

11 BY MR. PATTAKOS:

12 Q. Please answer the question.

13 MR. BARMEN: Wait a minute. Ask
14 the question again.

15 Q. The truth, Dr. Gunning, is that the
16 reason you told me about this conversation at
17 Rob Nestico's house was because Nestico,
18 Ghoubrial and Lazzerini were laughing at the
19 notion that Nestico's sister would receive the
20 same treatment that the KNR clients received
21 from Dr. Ghoubrial's personal injury practice.
22 Isn't that true?

23 MR. BARMEN: Objection to your --

24 A. You're reading into my context.

25 MR. BARMEN: Wait a minute.

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1 Objection. Your predicate -- the
2 question assumes the truth is inappropriate.

3 MR. PATTAKOS: Why are you making
4 speaking objections?

5 MR. BARMEN: Because you're
6 asking inappropriate, ridiculous questions.

7 MR. PATTAKOS: Review the local
8 rules. That's inappropriate.

9 MR. BARMEN: Okay. [Inaudible]
10 your questions.

11 BY MR. PATTAKOS:

12 Q. Dr. Gunning, please --

13 MR. BARMEN: Don't assume facts
14 not in evidence. Don't make false assumptions
15 in your questions. Just ask the question.

16 BY MR. PATTAKOS:

17 Q. Please answer the question.

18 MR. PATTAKOS: Tracy, please read
19 my last question.

20 THE NOTARY: It's going to take
21 me a minute.

22 (Record was read.)

23 MR. BARMEN: Objection.

24 Go ahead.

25 A. First of all, I don't recall their

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1 intent. Secondly, if she had an injury that
2 required those treatments, she should get the
3 same treatments. As far as whether they were
4 laughing or why they were laughing, I don't
5 recall ever saying anything as to the reason
6 why they would have done that, if they did
7 that.

8 Q. Do you remember that they were
9 laughing?

10 A. I remember they were discussing it.
11 I don't -- I can't say whether they were
12 laughing. And even if they were, it's the
13 normal standard of care treatment that she
14 would have got.

15 Q. Um-hum. Why else would you have
16 told me that, Dr. Gunning?

17 MR. BARMEN: Objection.

18 MR. MANNION: Objection. Again,
19 assumes facts not in evidence. He said he
20 didn't remember.

21 A. Well, I don't remember why I said
22 that. I do know that both Sam and Frank were
23 better at convincing their patients to get
24 shots than I was. Everybody's got a different
25 style.

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1 Q. During our conversation, you also
2 provided detail about your own relationship
3 with Dr. Ghoubrial and how you have wanted to
4 leave his practice, but for various reasons
5 have found it difficult to do so. Isn't that
6 correct, Dr. Gunning?

7 MR. BARMEN: Objection. Wait a
8 minute. Again, I don't see how that's in any
9 way relevant to the issues of class
10 certification, TENS units, trigger point
11 injections. His personal relationships are not
12 in any way relevant. Can you explain to me why
13 they are?

14 MR. PATTAKOS: It goes to his
15 credibility and the credibility of this
16 testimony today as well as the appropriateness
17 of your purported representation.

18 MR. BARMEN: My, "Purported
19 representation"?

20 MR. PATTAKOS: Yes.

21 MR. BARMEN: That's cute. You're
22 adorable sometimes, with your little comments.
23 Tell me why this is relevant, before I decide
24 whether to let him answer the question.

25 MR. PATTAKOS: I just told you, it

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1 goes to his credibility --

2 MR. BARMEN: No.

3 MR. PATTAKOS: -- and the pressure
4 that he's under here to testify today -- in
5 testifying today.

6 MR. BARMEN: Well, then ask him
7 that question rather than these roundabout
8 things that are really hard to figure out where
9 you're going.

10 MR. PATTAKOS: Brad, I'm sorry that
11 you don't like my questions, but the witness is
12 required to answer them.

13 MR. BARMEN: Not if I tell him
14 not to.

15 MR. PATTAKOS: Well, right. And
16 then we'll get a court order.

17 MR. BARMEN: Okay. What's the
18 question?

19 MR. PATTAKOS: Are you instructing
20 the witness not to answer the question or not?

21 MR. BARMEN: Rephrase it.

22 BY MR. PATTAKOS:

23 Q. I will read it again. During our
24 conversation, Dr. Gunning, you also provided
25 detail about your own relationship with

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1 Dr. Ghoubrial and how you have wanted to leave
2 his practice but for various reasons have found
3 it difficult to do so. Isn't that correct?

4 MR. BARMEN: Objection. You can
5 answer to the extent that you recall telling
6 him that.

7 A. I did find it difficult to leave
8 him.

9 Q. And you have wanted to leave him?

10 A. From time to time, yes.

11 Q. One of the reasons you have found
12 it difficult to leave Dr. Ghoubrial's
13 employment was fear of personal retaliation
14 from him, correct?

15 MR. BARMEN: Objection.

16 Again, I'm going to instruct you not to
17 answer that question, under the local rule.

18 It's in no way relevant and you're just
19 trying for dirty sound-bytes right now.

20 MR. PATTAKOS: It is absolutely
21 relevant, again, to the -- to the credibility
22 of this testimony, Brad. I would really advise
23 you to reconsider that or we're going to have
24 to come back here.

25 MR. BARMEN: Okay. Then we'll

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1 come back here, once the Judge says so, but you
2 can try and explain to the Judge why his
3 personal relationship with his employer is in
4 any way relevant to the claims you've raised
5 against his employer.

6 MR. PATTAKOS: Who is -- his
7 employer is a defendant in this case --

8 MR. BARMEN: Correct.

9 MR. PATTAKOS: -- who is accused of
10 serious misconduct.

11 MR. BARMEN: This witness is not.
12 That doesn't --

13 MR. PATTAKOS: -- and Dr. Gunning
14 has firsthand knowledge about this misconduct
15 and he just now today can't remember anything
16 that he told me on the phone, when we spoke for
17 two hours --

18 MR. BARMEN: First of all --

19 MR. PATTAKOS: -- I think this goes
20 directly to the reasons why. So if you want to
21 take that up to the Court, we can -- we can
22 brief it. I'll have it briefed tomorrow -- or
23 as soon as Tracy can get me the transcript and
24 we'll do it that way. You can consider Rob
25 Nestico's deposition off next week, if that's

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1 how you want to do this.

2 MR. MANNION: What are you talking
3 about? What's this have to do with Rob
4 Nestico's deposition?

5 MR. BARMEN: That's right. Look,
6 you're looking for excuses to keep kicking Rob
7 down the road, because you're grasping at
8 straws you don't have is a different issue --

9 MR. PATTAKOS: Uh-huh.

10 MR. BARMEN: -- if you want to
11 ask this witness about things relevant to the
12 claims you have raised, do that.

13 MR. PATTAKOS: I'm asking him about
14 the fact that he's being --

15 MR. BARMEN: If you want to sit
16 here --

17 MR. PATTAKOS: -- intimidated by
18 his employer and that intimidation is impacting
19 his testimony today.

20 MR. BARMEN: Which you haven't
21 asked that question. You're asking a bunch of
22 ancillary stuff that's really so you can get
23 some dirty sound-bytes so you can run to the
24 press like you do --

25 MR. PATTAKOS: I know --

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1 MR. BARMEN: -- and try and get
2 some exposure to get people to pile in to this
3 morass you've created. Ask a question that's
4 relevant. I'll let him answer it. If you're
5 just here to sling mud, you can take it up with
6 the Court.

7 MR. PATTAKOS: Tracy, read the
8 question again.

9 If you're going to instruct the witness
10 not to answer, then do so.

11 MR. BEST: Why don't you ask
12 him if he's been intimidated by his employer.

13 MR. PATTAKOS: This isn't your
14 deposition, Brad.

15 This isn't your deposition, please. This
16 is ridiculous.

17 MR. BARMEN: I'm trying to move
18 it along. You're right; it is ridiculous.
19 That's the one thing we agree upon.

20 THE NOTARY: Everybody ready?
21 It's going to be a minute.

22 (Record was read.)

23 MR. BARMEN: Same objection.

24 Are you comfortable answering that
25 question?

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1 A. What employee isn't to some extent
2 intimidated by his employer? There were
3 several reasons why I found it difficult to
4 leave Sam. One, I was afraid that he could
5 potentially retaliate, give a bad
6 recommendation, et cetera. Also, I've had
7 previous bosses and none of them have been
8 angels. All of them have been problematic in
9 some way or other. Sam is really no different
10 than previous bosses I've had. And then
11 finally, there are precious few opportunities
12 available in Northeast Ohio.

13 My cell phone is full of emails, Come to
14 Missouri, \$400,000 a year, Vermont, \$300,000 a
15 year, Oregon, same thing, over and over.
16 Nothing is available in Northeast Ohio.
17 University Hospitals of Cleveland invited me to
18 be their hospitalist a couple of years ago. I
19 don't see myself running codes at 2 a.m.
20 That's not me, so I declined. Mercy Hospital
21 offered me a position well over an hour away
22 from my house. I declined that. So there are
23 multiple reasons why I have stayed with Dr.
24 Ghoubrial. He's sometimes a jerk. Sometimes
25 he's very hard to work for, but he's no devil.

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1 And sometimes he can be very, very good.

2 Q. Dr. Gunning, you specifically used
3 the word, "Terrorize," in describing the way
4 Dr. Ghoubrial would sometimes treat you, did
5 you not?

6 MR. BARMEN: Objection.

7 A. I don't recall the word.

8 Q. You said that in 2011, you
9 interviewed for a job with Walid Lababidi, but
10 ultimately did not take that job because you
11 believed that if you did, Ghoubrial would
12 destroy both of you, both you and Dr. Lababidi.
13 You used the word, "Destroy." Is that correct,
14 Dr. Gunning?

15 A. I --

16 MR. BARMEN: Objection. Again,
17 Peter, how is this relevant to the claims for
18 class certification? Wait --

19 MR. PATTAKOS: Are you instructing
20 the witness not to answer the question?

21 MR. BARMEN: I'm asking -- I'm
22 trying to decide. I'm asking you to explain to
23 me how this is in any way relevant to class
24 certification or the claims against my client.

25 MR. PATTAKOS: You can refer to my

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1 previous response to that question. This goes
2 to his credibility, the credibility of this
3 testimony today.

4 MR. MANNION: Well, I'm just going
5 to say, you're not attacking his credibility
6 with this. You're trying to attack
7 Ghoubrial's.

8 MR. PATTAKOS: Right.

9 Are you instructing the witness not to
10 answer the question, or not?

11 MR. BARMEN: And, again, you're
12 cross-examining him on notes from a
13 conversation you refuse to provide him.

14 THE WITNESS: Which was two months
15 ago. I was anxious. I was angry. I was
16 upset. I was nervous and I was under the
17 influence of some medication.

18 MR. BARMEN: I'll give you very
19 little leeway on this, but if you keep going
20 down this road then I am going to instruct him
21 because I just -- it's not relevant to
22 anything. You're just trying to create mud
23 here.

24 MR. PATTAKOS: Tracy --

25 THE NOTARY: Can you just, if

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1 it's okay. (Indicating.)

2 MR. PATTAKOS: Do you want me to
3 just read the question back?

4 THE NOTARY: If you could.

5 MR. PATTAKOS: Okay. That's fine.

6 BY MR. PATTAKOS:

7 Q. You told me on the phone that
8 in 2011, you interviewed for a job with Walid
9 Lababidi, but ultimately you did not take that
10 job because you believed that if you did,
11 Ghoubrial would destroy you. You said to
12 Dr. Lababidi that, "He -- you know, well, if I
13 take this job, he will destroy us both." Is it
14 not true that you said that to me, Dr. Gunning?

15 MR. BARMEN: Objection.

16 Go ahead.

17 A. I don't recall the very words I
18 said. I do know at the time our worry of
19 retaliation did cause us to shelve that
20 opportunity. I don't recall the specific words
21 I said.

22 Q. You did say that part of the reason
23 you hadn't left -- when we spoke on the
24 phone -- strike that. When we spoke on the
25 phone on October 2, you did tell me that part

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1 of the reason you haven't left is that it has
2 been hard for you to find comparable employment
3 in the area, as you've just explained. And you
4 provided further detail by explaining that you
5 don't want to leave your home in Richfield,
6 which is a place where you've planted 460
7 trees, 800 bushes and 12,000 bulbs at the
8 property. Isn't that correct?

9 MR. BARMEN: Objection.

10 Go ahead.

11 A. That sounds accurate.

12 Q. And you told me that The Tree
13 Doctor told you that you had better diversity
14 of trees than they have at Stan Hywet Hall.

15 MR. BARMEN: Objection.

16 Go ahead.

17 A. That's probably true, because
18 I've -- I've known that and I've said that to
19 lots of people.

20 MR. BARMEN: Peter, are trees and
21 bulbs relevant to class certification and your
22 allegations in this case?

23 Q. You told me toward the end of our
24 conversation that our conversation was
25 cathartic for you, Dr. Gunning. Isn't that

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1 correct?

2 MR. BARMEN: Objection.

3 Go ahead.

4 A. I don't recall, but it might have
5 been. I made the phone call, because I was
6 very afraid that I was going to be pulled into
7 this lawsuit. I made the phone call in an
8 attempt to make sure I wasn't pulled into this
9 lawsuit.

10 Q. Was the conversation -- was our
11 conversation in fact cathartic for you?

12 MR. BARMEN: Objection.

13 Go ahead.

14 A. I regretted the conversation, as
15 soon as I hung up.

16 Q. And you called Mr. Myers the next
17 day --

18 MR. BARMEN: Objection.

19 Q. -- Attorney Myers?

20 MR. BARMEN: Objection.

21 You can tell him when you called Myers,
22 but that's as far as you're going to go
23 relative to the attorney-client issue. Go
24 ahead.

25 A. I did. I did call the next day.

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1 Q. For the purpose of seeking legal
2 advice, correct?

3 MR. BARMEN: Objection.

4 Go ahead.

5 A. You told me to --

6 Q. Okay.

7 A. -- at the end of the conversation.

8 Q. You said during our conversation
9 that you were concerned about the practice,
10 Dr. Ghoubrial's practice. I don't believe you
11 distinguished between the personal injury or
12 family practice, but you said that you were
13 concerned about the practice, because recently
14 Ghoubrial was running the practice in a way
15 that would cause it not to make money
16 deliberately so that he could avoid paying his
17 wife, Julie, in his divorce proceedings --

18 MR. BARMEN: Objection.

19 Don't answer that question.

20 Q. -- isn't that correct, Dr. Gunning?

21 MR. MANNION: Don't answer that
22 question, under the local rule.

23 That is absolutely out of bounds.

24 Please don't keep staring at him. He was
25 instructed not to answer, Peter.

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1 MR. PATTAKOS: Can you see my eyes
2 right now, Tom?

3 THE WITNESS: I can.

4 MR. MANNION: Ever since I said I
5 was going to videotape you, you've covered your
6 face.

7 MR. BEST: You can and he's
8 staring at you, right?

9 BY MR. PATTAKOS:

10 Q. You told me, Dr. Gunning, on the
11 phone on October 2 that someone named Melissa
12 in your office heard Dr. Ghoubrial plotting
13 with someone to say -- to make sure that
14 Julie's name stays on their home mortgage so
15 her debt-to-asset ratio stays so high that she
16 has to live in an apartment for the rest of her
17 life --

18 MR. MANNION: Objection.

19 MR. BARMEN: Objection.

20 MR. MANNION: This is outrageous.

21 MR. BARMEN: Don't answer that
22 question.

23 Q. -- you told me that, didn't you,
24 Dr. Gunning?

25 MR. BARMEN: Objection.

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1 Do not answer that question, under the
2 local rule.

3 This -- you're so far off base.

4 MR. PATTAKOS: You think I'm making
5 this up, Tom?

6 MR. BARMEN: No. Whether you're
7 making it up or not, which remains to be seen,
8 it is in no way relevant to anything in this
9 case and --

10 MR. MANNION: [Inaudible.]

11 MR. BARMEN: -- I am giving
12 you -- I am giving you some leeway here, but
13 now you're just way, way, way, way over the
14 line. Ask him something about the case. Ask
15 him something relative to the claims or tell us
16 we're done and we can go home.

17 THE WITNESS: Ask me about
18 something that --

19 MR. BARMEN: Wait, wait, wait.

20 A. -- about what someone else said.

21 MR. BARMEN: You're fine. Just
22 don't answer that. It's ridiculous and he
23 knows it.

24 MR. PATTAKOS: Okay.

25 MR. MANNION: Well, can you

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1 explain how Dr. Ghoubrial's --

2 MR. PATTAKOS: I [inaudible]. This
3 is going to be --

4 MANNION: -- divorce is
5 somehow relevant to the class allegations?

6 MR. PATTAKOS: It goes to
7 credibility --

8 MR. MANNION: What?

9 MR. PATTAKOS: -- it goes to bias.

10 MR. MANNION: Whose?

11 MR. PATTAKOS: -- very clearly.

12 [Three attorneys speaking [Inaudible]]

13 MR. PATTAKOS: It goes to the
14 credibility of Dr. Gunning's testimony --

15 MR. MANNION: No.

16 MR. PATTAKOS: -- and it goes to
17 Dr. Ghoubrial's credibility as a witness --

18 MR. MANNION: No.

19 MR. PATTAKOS: -- it goes to his --

20 MR. BARMEN: That's the second
21 time you said that.

22 MR. PATTAKOS: -- Dr. Gunning's
23 need to be untruthful --

24 MR. MANNION: What?

25 MR. BARMEN: That's a bush

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1 league, second-year trial team tactic --

2 MR. PATTAKOS: Boy.

3 MR. BARMEN: -- to try and go to
4 that to be able to ask questions that you know
5 are inappropriate.

6 MR. MANNION: We all have personal
7 lives. We all have issues in our personal
8 lives. That should not be part of this.

9 MR. PATTAKOS: I know you guys have
10 your opinions and that's fine. If you're
11 instructing the witness not to answer --

12 MR. BARMEN: I am.

13 MR. PATTAKOS: -- these questions.
14 Okay. Let's mark Exhibit 1.

15 - - - - -
16 (Thereupon, Deposition Exhibit 1,
17 Affidavit of Dr. Richard Gunning
18 With Attachments, was marked for
19 purposes of identification.)

20 - - - - -
21 MR. BARMEN: So your client is
22 waiving privilege relative to her medical care,
23 if you're going to question him on this and
24 there is a signed authorization? because he did
25 treat this patient, if you're going to ask

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1 questions about the medical records attached.
2 So I'm assuming you're waiving privilege -- or
3 your client is waiving privilege?

4 MR. PATTAKOS: I am not waiving any
5 privilege right now and I haven't asked him any
6 question about the medical records. These
7 documents are on file in this case under seal.
8 Okay?

9 MR. MANNION: Well, I'm going to
10 ask questions on her care.

11 MR. BARMEN: Wait a minute. Wait
12 a minute. Wait a minute. Wait. You just
13 entered this as an exhibit in this deposition.
14 It is not under seal. It includes the medical
15 chart of the plaintiff, Ms. Norris, so I'm
16 assuming she's waiving her privilege.

17 MR. PATTAKOS: I think Ms. Norris
18 has put her medical care at issue in this case,
19 so it is --

20 MR. BEST: Do you have a
21 written authorization regarding this issue,
22 before disclosing in a nonsealed environment
23 this confidential document?

24 MR. PATTAKOS: We can put this
25 under seal right now.

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1 MR. BEST: No, it's too late.

2 MR. PATTAKOS: It is not too late,
3 David. Give me a break.

4 MR. MANNION: I just want to know
5 whether it's waived.

6 (Three attorneys speaking at once [Inaudible]).

7 MR. PATTAKOS: We're not going
8 to --

9 MR. BEST: It's a simple
10 question.

11 MR. PATTAKOS: I think it's
12 probably waived by operation of law, but we can
13 address that issue later. I'll talk to my
14 client about it.

15 MR. BARMEN: Why don't you call
16 her now, before you go down this road?

17 MR. BEST: Well, a phone call
18 doesn't help. Without a written HIPAA
19 compliant consent -- I represent the
20 corporation -- he's not answering questions
21 regarding his care of this patient, period.

22 MR. MANNION: I'm going to ask
23 questions about the care of the patient.

24 MR. BEST: Well, he's not
25 answering, unless he's going to give me a HIPAA

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1 compliant authorization.

2 MR. PATTAKOS: I'm just asking --

3 MR. BEST: -- it's not
4 happening.

5 MR. PATTAKOS: -- right now I'm
6 just asking him about the affidavit.

7 MR. BARMEN: Yeah, but you
8 entered the exhibit with the medicals attached.

9 MR. BEST: But you submitted
10 all of it. So either take this crap out and
11 get back to the affidavit or we're done talking
12 about this. So remove from his document,
13 remove from this record the confidential,
14 privileged information that this very Judge
15 Brogan said can be excluded from these
16 proceedings. And it is privileged. So it is
17 now excluded by my representation of the
18 corporation.

19 MR. BARMEN: It really is a
20 simple solution. If you just pull the
21 affidavit -- withdraw this exhibit, mark the
22 affidavit and then there's no issue.

23 MR. PATTAKOS: Well, that's fine.
24 I do want to ask him questions about the
25 medical records, but it doesn't have to be

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1 about the treatment.

2 MR. BARMEN: Well, how can you
3 separate the two?

4 MR. MANNION: Hey, Guys, I'm going
5 to ask questions about the treatment. I mean,
6 is your client not waiving?

7 MR. PATTAKOS: I really don't think
8 it's going to be an issue. I really don't
9 think it's going to be an issue, but let me
10 confer with my client.

11 MR. BARMEN: Clearly it is an
12 issue.

13 MR. PATTAKOS: Well, let's just
14 talk about the affidavit.

15 MR. BARMEN: But, again, you've
16 entered an exhibit that includes the rest.
17 Withdraw the exhibit. Let's mark the --

18 MR. PATTAKOS: That's fine. The
19 exhibit has already been filed in this lawsuit.

20 MR. BEST: Under seal.

21 MR. BARMEN: Under seal.

22 MR. PATTAKOS: -- and it can be
23 marked as confidential subject to filing under
24 seal. Right now we can say that. Okay? And
25 then we can go back and designate portions of

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1 the testimony that need to be treated the same
2 way. We don't need to make this more
3 complicated than it is.

4 MR. MANNION: I don't know that
5 that protects the doctor, though, on privilege
6 issues --

7 MR. BARMEN: That's my concern.

8 MR. MANNION: -- I don't know --

9 MR. PATTAKOS: That's fine. And I
10 haven't asked him a single question about a
11 privilege issue. So let's just move on, until
12 we get there. Okay?

13 MR. BARMEN: Tread lightly.

14 BY MR. PATTAKOS:

15 Q. Okay. Dr. Gunning, do you
16 recognize this document?

17 MR. BEST: He's not talking
18 about this document. If you want to separate
19 the medical record, then separate it and ask
20 him about an affidavit.

21 MR. PATTAKOS: It's not privileged
22 for him to say whether he recognizes this
23 document, David. You are --

24 MR. BEST: You are
25 submitting -- there is no waiver by the patient

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1 of this record. So I'm going to tell you, he's
2 not answering any questions about this. Take
3 the medical record away from him and ask him
4 about the affidavit and I won't object.

5 MR. BARMEN: Agree.

6 MR. PATTAKOS: That's fine, my God.

7 MR. BARMEN: I'm so exasperated.

8 MR. PATTAKOS: Let's just mark the
9 affidavit as Exhibit 1. Why don't you go
10 ahead, Brad, and do that.

11 MR. BEST: So you're
12 withdrawing the prior exhibit?

13 MR. PATTAKOS: That's fine.

14 MR. BEST: And what you're
15 marking is the affidavit Dr. Ghoubrial?

16 MR. PATTAKOS: The affidavit of
17 Richard Gunning.

18 MR. BEST: So the Richard
19 Gunning affidavit is Exhibit 1 --

20 MR. PATTAKOS: Yes.

21 MR. BEST: -- is that what
22 you're saying?

23 - - - - -

24 (Thereupon, Deposition Exhibit 1,
25 Affidavit of Dr. Richard Gunning,

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1 was re-marked for purposes of
2 identification.)

3 - - - - -

4 Q. Okay. Dr. Gunning, do you
5 recognize this document?

6 A. Yes, I do.

7 Q. What is this document?

8 A. This is an affidavit which I signed
9 on October 1, notarized by Erin.

10 Q. And this was the document that you
11 said that you felt pressured to sign?

12 A. That's correct.

13 Q. Pressured by Dr. Ghoubrial to sign?

14 A. That's correct.

15 Q. Okay. And can you please explain
16 what happened here? How were you pressured?

17 MR. BARMEN: Objection.

18 Go ahead.

19 A. I was presented with this affidavit
20 with no explanation as to what it was about and
21 I was told to sign it. And when I read the
22 affidavit, I took issue with number 6 and
23 number 7. Number 6 saying, "My office has
24 never received a request for Monique Norris'
25 medical records from the law offices,"

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1 blah-blah-blah.

2 And number 7, "Had Attorney Pattakos
3 requested the records from my office, he would
4 have learned that I was Monique Norris'
5 treating physician, NOT Dr. Ghoubrial."

6 I objected to that, because at that time
7 no one had told me or given me reason to
8 believe that number 6 was actually true. I
9 didn't know until afterwards.

10 And as far as number 7, the language
11 appeared to me unnecessarily antagonistic and I
12 didn't want to sign it, because I was afraid
13 that signing that would drag me into a lawsuit.
14 I was afraid that the antagonistic language in
15 number 7 would be the equivalent of me waving a
16 red cape in front of a bull and would basically
17 instigate you including me in this situation,
18 so I had reworded it.

19 I had crossed out number 6, because at
20 the time I didn't know it was accurate. And
21 number 7, I had changed the words. I didn't
22 make it sound as inflammatory. Instead of, Had
23 you done your job, you would have know that I
24 was, I just changed it to, "I was Monique
25 Norris's treating physician, not

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1 Dr. Ghoubrial." That was it. That became the
2 new number 6. I signed that. Erin notarized
3 it.

4 Sam Ghoubrial got word of it and he
5 objected. He wanted the affidavit left in its
6 original form. And he told me that there was
7 no reason I shouldn't sign it. And I'll admit,
8 I felt a little bullied, a little pressured,
9 because there were other people around in the
10 office at the time, but they told me by then
11 that number 6 actually was true. And even
12 though I didn't like the language of number 7,
13 I went ahead and signed it.

14 Q. Who else was there in the office?

15 A. Erin was there. I don't recall the
16 other people, but I think at least two other
17 staff people were there.

18 Q. Who were they?

19 A. I don't recall.

20 Q. Who would it have been? Who could
21 it have been?

22 MR. BARMEN: Objection.

23 Don't guess.

24 He doesn't remember.

25 Q. Well, there's only so many people

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1 that work in that office, correct?

2 A. There's thirty people who work in
3 that office.

4 Q. Okay. Well, who could it have been
5 likely to be that was back in whatever area you
6 were where this was happening?

7 MR. BARMEN: Objection. Wait a
8 minute. He's not going to guess or speculate.
9 If he knows, he'll tell you what he knows. If
10 he doesn't know, that's his answer. He's not
11 going to guess.

12 MR. PATTAKOS: He can narrow down
13 probabilities for me, Brad.

14 MR. BARMEN: He's not going to
15 guess. He told you -- he answered the
16 question. He told you he doesn't recall who
17 was there, period. You want to depose Erin,
18 maybe she knows. Talk to Erin. He's answered
19 your question. Next question, please.

20 BY MR. PATTAKOS:

21 Q. Do you have any recollection at
22 all, Dr. Gunning, of who else would have been
23 there?

24 MR. BARMEN: Objection. Asked
25 and answered.

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1 Tell him again.

2 A. Erin was there. Dr. Ghoubrial was
3 there. I can't -- like I said, I would be
4 guessing --

5 MR. BARMEN: Don't guess.

6 A. -- so I won't, yeah. I mean --

7 MR. BARMEN: That's it. You're
8 done.

9 THE WITNESS: Okay.

10 MR. PATTAKOS: Okay.

11 MR. BARMEN: Okay.

12 BY MR. PATTAKOS:

13 Q. When I asked you on the phone if it
14 was possible that the medical records to which
15 this affidavit refers were fraudulently altered
16 to falsely portray that you treated Ms. Norris
17 instead of Dr. Ghoubrial, you could not rule
18 out that possibility, could you?

19 MR. BARMEN: Objection.

20 Don't answer that question.

21 MR. MANNION: Unbelievable.

22 MR. PATTAKOS: "Don't answer that
23 question," why?

24 MR. BARMEN: Don't answer that
25 question.

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1 MR. PATTAKOS: As to whether he
2 told me that, whether these medical records
3 that you introduced as evidence were
4 fraudulently altered or not?

5 MR. BARMEN: So don't answer the
6 question of you asking him to speculate whether
7 or not something could have happened. That's
8 highly inappropriate. He's not going to answer
9 that question. Move on. Among everything
10 else, there are potential Fifth Amendment
11 implications there.

12 BY MR. PATTAKOS:

13 Q. Do you want to take the Fifth,
14 Dr. Gunning?

15 MR. BARMEN: No, I didn't say
16 that, but you're asking him to try an answer a
17 question for you so you can circle back around
18 and continue your wild goose chase.

19 MR. PATTAKOS: I'm asking him to
20 confirm what he told me on the phone on
21 October 2.

22 MR. BARMEN: No.

23 THE WITNESS: You took notes
24 apparently. I did not.

25 MR. BARMEN: Wait a minute.

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1 Stop, stop, stop.

2 You asked a question that was
3 inappropriate. He told you he can't rule
4 something out, because who could, and now
5 you're trying to spin that into something
6 nefarious. We're not going down that road.
7 Move on.

8 BY MR. PATTAKOS:

9 Q. Dr. Gunning, did you not tell me,
10 when we spoke on the phone on October 2, that
11 it was possible that those medical records
12 could have been fraudulently altered?

13 MR. BARMEN: Objection.

14 Don't answer the question.

15 Q. Okay. Dr. Gunning, when we spoke
16 on the phone on October 2, you told me that
17 Dr. Ghoubrial would sometimes brag about the
18 fact that he could make his own evidence when
19 he needed to.

20 MR. BARMEN: Objection.

21 Go ahead.

22 A. That's not what I said. I said, he
23 has the witness production program. And what I
24 meant by that is, at least in two cases, there
25 were women in our office who had been

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1 inappropriately touched by -- I won't name them
2 but other people. He encouraged those women to
3 come forward and report their story and
4 supported them.

5 MR. BARMEN: Hashtag, me too, Pete.

6 A. That was even before hashtagging,
7 too.

8 Q. Okay. Did you say anything to me
9 over the phone on October 2, that you believe
10 was not true?

11 MR. BARMEN: Objection.

12 Go ahead.

13 A. I don't recall everything that I
14 said on October 2. I do know that I was very
15 upset and angry and anxious, when I called.
16 And I don't think I overstated or exaggerated
17 anything, but I suppose it's possible. I -- as
18 I said, I took some Ativan beforehand and I
19 don't recall the actual things that I said.
20 But I do see that in some cases, you seem to be
21 attributing intent or context that I did not
22 include in the conversation and did not intend.

23 Q. You and I have not spoken again,
24 after our conversation of October 2, correct?

25 A. That's correct.

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1 Q. Have you spoken with anyone else
2 about our phone call?

3 MR. BARMEN: Outside anything you
4 would have discussed with counsel.

5 A. Well, I mentioned it to Sam. And I
6 mentioned it to some friends of mine.

7 Q. Which friends?

8 A. Tom Dukes and Stu Harter. I
9 mentioned that there had been a phone call.
10 And I mentioned them to my counselor.

11 MR. BARMEN: Again, that's
12 privileged.

13 A. That's privileged.

14 Q. When did you tell Dr. Ghoubrial
15 about our phone call?

16 A. I do not recall.

17 Q. Was it the next day? Was it the
18 next month? Was it the next --

19 A. It was --

20 MR. BARMEN: Objection. Asked and
21 answered.

22 Go ahead.

23 Q. Go ahead.

24 A. -- I don't recall exactly.

25 Q. Well, do you remember if it was the

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1 next day or if it was within a week or within a
2 month or within two months?

3 MR. BARMEN: Objection. Asked and
4 answered.

5 Don't guess.

6 How many times does he got to tell you
7 the same thing, Pete?

8 Q. Do your best, Dr. Gunning.

9 MR. BARMEN: I don't want you to
10 guess. If you know when you did, tell him. If
11 you don't know, you don't know.

12 A. It was probably within the first
13 month. It's been two months.

14 Q. So you waited several weeks, before
15 you said anything to him?

16 A. No. I don't recall exactly when I
17 said something.

18 Q. You have no memory at all of how
19 long you waited?

20 A. No.

21 MR. BARMEN: Objection. How many
22 times are you going to ask him the same damn
23 question?

24 Q. So what was it --

25 MR. BARMEN: Wait. You're

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1 getting to the point where you're badgering him
2 over something that's silly. Move on.

3 Q. What was it that precipitated your
4 decision to tell Dr. Ghoubrial about our phone
5 call?

6 MR. BARMEN: Objection.

7 Go ahead.

8 A. I spoke with my lawyer --

9 MR. BARMEN: Wait, wait, wait.
10 Then, no. If it comes from any discussions you
11 had with any of the lawyers, it's privileged.

12 Q. Okay. So you didn't speak with
13 Dr. Ghoubrial, until after you had conferred
14 with a lawyer --

15 MR. BARMEN: Objection. That
16 gets into the privilege.

17 Don't answer the question.

18 I mean, if you're going into that thought
19 process, clearly that invokes privilege.

20 MR. PATTAKOS: I'm not going into
21 that thought process.

22 MR. BARMEN: Sure, you are,
23 because you're asking him, you talked to a
24 lawyer, and then -- so ergo, no. You're
25 getting into attorney-client issues. He's told

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1 you his best recollection of when.

2 BY MR. PATTAKOS:

3 Q. Did you tell Dr. Ghoubrial about
4 this conversation, before or after you met
5 Mr. Barmen?

6 MR. BARMEN: You can answer that
7 question.

8 A. Yeah, I'm not sure I even recall
9 that. All I can say is that since the first
10 person I talked to about our conversation was
11 Mr. Meyers, then obviously I must have told
12 Dr. Ghoubrial after that.

13 MR. PATTAKOS: Okay. Let's take a
14 break.

15 VIDEOGRAPHER: Off the record
16 11:33.

17 (Recess taken.)

18 VIDEOGRAPHER: On the record 12:04.

19 BY MR. PATTAKOS:

20 Q. Okay. Dr. Gunning, I want to talk
21 more generally about Dr. Ghoubrial's business
22 of treating personal injury clients. How did
23 it work that the practices were separated? I
24 guess for starters, I'll ask you to explain
25 broadly the differences between the two

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1 practices.

2 MR. BARMEN: Objection.

3 A. I really don't know any details
4 about the billing or the practices. I just
5 know that at some point we had our -- our
6 family practice and then there was this -- I
7 don't know if it's called Clearwater, or
8 something, practice that represented the
9 personal injury side of it. I don't know how
10 it came to being or what the significance was
11 of the separation, if any.

12 Q. Do you remember when that came into
13 being?

14 A. No, I don't.

15 Q. Would you receive separate checks
16 for your work for the different entities?

17 A. No.

18 MR. BARMEN: Objection. Wait a
19 minute. Wait a minute. Him personally for his
20 payment --

21 MR. PATTAKOS: Yes.

22 MR. BARMEN: -- or --

23 A. No --

24 MR. BARMEN: Go ahead.

25 A. -- I have a yearly salary and I get

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1 paid every half a month. And I have no idea
2 how much of that comes from what I do. I mean,
3 I see patients in the office. I see patients
4 in the hospital. I see nursing home patients.
5 I see personal injury patients. I have no idea
6 how they decide all that.

7 Q. And you get paid from one entity?

8 A. I get one check. I couldn't even
9 tell you who it's from, because it's direct
10 deposit. I just notice it in my bank
11 statement --

12 Q. Okay.

13 A. -- I know I'm not paid separately
14 by separate entities.

15 Q. Do you receive payment based on the
16 number of patients you treat or any kind of
17 metric-based payment at all?

18 MR. BARMEN: Objection.

19 Go ahead.

20 A. No.

21 Q. Okay. Do you get a bonus payment
22 at all?

23 MR. BARMEN: Objection.

24 Go ahead.

25 A. Every Christmastime, there may be

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1 an end-of-year bonus; 500, 1,000. Not every
2 Christmas.

3 Q. It's never been more than 500
4 or 1,000?

5 MR. BARMEN: Objection.

6 MR. BEST: I don't think his
7 pay is relevant --

8 A. I don't think I've ever gotten --

9 MR. BEST: -- I object to this.
10 I think it's private.

11 A. -- anything more than 1,000.

12 THE NOTARY: I didn't get the
13 witness's answer.

14 MR. BARMEN: I'm not going to let
15 him answer what he's getting paid.

16 THE NOTARY: He said something.
17 I didn't hear him. I can't hear you either,
18 sir.

19 A. I don't think I've ever gotten a
20 bonus more than \$1,000.

21 Q. Okay. Are all -- are you aware
22 that any of the employees that you work with
23 Dr. Ghoubrial, are you aware of whether they're
24 employees of the family practice or the
25 personal injury practice, one or the other?

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1 MR. BARMEN: Objection.

2 Go ahead.

3 A. I don't know. I don't know how he
4 separates the other employees. I honestly
5 don't.

6 Q. You're not aware that he separates
7 them in any way?

8 A. I don't know. I do know that some
9 people go with him to the clinics and that's
10 all I know. When I was in that clinic, I had,
11 you know, a nurse and a receptionist come with
12 me, but oftentimes it would be different
13 people. It might not always be the same
14 people.

15 Q. When you had a nurse and
16 receptionist come with you, those nurses and
17 receptionists were also people who work for the
18 family practice?

19 A. Yes.

20 Q. Do you know if the same person
21 handles the books for both of these companies?

22 A. That I do not know. I know nothing
23 about the books.

24 Q. Well, you know that Erin Elefritz
25 works on the billing --

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1 MR. BARMEN: Objection.

2 Q. -- for Dr. Ghoubrial?

3 A. That I don't know. I know she's a
4 notary public.

5 Q. Do you know anything else about
6 what she does?

7 A. No.

8 Q. Do you know what any of the other
9 back office people do at all, anyone who is not
10 involved directly in the patient care?

11 MR. BARMEN: Objection. You're
12 asking him any -- does he know what any one
13 person does?

14 MR. PATTAKOS: Anyone. Can he
15 identify a role for any of these women or
16 people who work in the back office or do
17 anything for Dr. Ghoubrial, apart from directly
18 provide patient care?

19 MR. BARMEN: Objection.

20 Go ahead, if you know.

21 A. Sue Smith is the office manager.
22 Lanita Dunnenworth is the one who gives me my
23 nursing home dictations to sign, once they've
24 been transcribed. If I have to get an OARRS
25 report, I either go to Erin or Amber to ask

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1 them if they can remember what my password was.
2 And that's pretty much it. I don't know who
3 else does what back there. I know Nicole
4 frequently goes with Sam to his personal injury
5 clinic, but she's in her office obviously when
6 he's not there. I don't know what she does.

7 Q. When you say, "With Sam to his
8 personal injury clinic," what are you referring
9 to as his, "Personal injury clinic," there?

10 A. Well, he still goes to Dr. Floros's
11 office on Wednesdays, I think. And I don't
12 know if -- I don't know if he still does, but
13 he had a personal injury clinic close to
14 Columbus that he would go to, I think it may
15 have been Friday mornings. I don't know if he
16 still goes there or not.

17 Q. That's at Town & Country
18 Chiropractic, correct?

19 A. I don't know the name of the place.

20 Q. Did you ever go to Columbus?

21 A. I did. I covered for him once.
22 That was one of those days when he couldn't go
23 and he needed me to go down and cover for him.
24 I barely remember the directions. I certainly
25 don't remember the name, but it was in a long

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1 strip mall.

2 Q. Do you remember a chiropractor
3 named Nazreen Khan?

4 A. I don't remember the name.

5 Q. Okay. Did you fly in a plane to
6 get to Columbus?

7 A. I'm afraid of planes. I don't
8 fly --

9 Q. Okay.

10 A. -- I don't even visit my family in
11 Florida or California.

12 Q. So you said there were about thirty
13 people that worked for Dr. Ghoubrial.

14 A. We just had a big Christmas party
15 and I'm trying to remember how many Christmas
16 cards I wrote and I think it was just under
17 thirty. That included the doctors, the nurse
18 practitioners, all the staff, their
19 transcriptionists, receptionists, nurses.

20 Q. Would you say there's people that
21 provide care and then people who handle the
22 business side? Is that a fair way to divide
23 this into two groups --

24 MR. BARMEN: Objection.

25 Q. -- is there any other element of

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1 this?

2 A. Well, the transcriptionists don't
3 provide medical care either. They're just in
4 their office typing up everything we've
5 dictated --

6 Q. Uh-huh. Okay.

7 A. -- you've got the receptionists up
8 front. Obviously they handle the referrals and
9 the re-appointments and the patients who come
10 in. We've got the MAs, the medical assistants
11 who room the patients, do the EKGs and bladder
12 scans and wound care and whatever else we need.
13 There's a transcriptionist. There's women in
14 the back. I assume that they're involved in
15 billing. And then there's the nurse
16 practitioners and the other doctors, of course.

17 Q. How many other doctors are there in
18 the practice?

19 A. There are three doctors in the
20 practice, besides myself.

21 Q. Who are they?

22 A. Sam Ghoubrial, who owns the
23 practice; and then there's Dr. Lisa Esterle,
24 E-s-t-e-r-l-e, and Dr. Mike Bianco,
25 B-i-a-n-c-o.

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1 Q. Do Drs. Esterle and Bianco
2 participate in the personal injury clinic?

3 A. Bianco does not. He only joined us
4 about a year ago. At one point Lisa Esterle
5 did. I don't know if she still does or not. I
6 don't recall her going to any facilities and I
7 don't recall her having any of those charts
8 hanging outside her door.

9 Q. You started working for
10 Dr. Ghoubrial in 2006?

11 A. October of 2006.

12 Q. October of 2006. And what other
13 doctors have worked for the practice who have
14 treated personal injury -- who have treated
15 personal injury clients through the personal
16 injury practice?

17 MR. BARMEN: Objection.

18 Go ahead.

19 A. James -- I'm sorry. Not James.
20 Frank Lazzerini and Joshua Jones. And Frank
21 Lazzerini left our practice in August of 2012.
22 And I think Josh Jones had joined our practice
23 just a few months before that, in July, and
24 left a year and a half ago.

25 Q. Okay. No other doctors?

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1 A. Not that I can recall, no --

2 Q. Okay.

3 A. -- we've had some nurse
4 practitioners who've come. One left. We have
5 two others.

6 Q. Who are they?

7 A. Erin, E-r-i-n, Metcalf and Charlene
8 Moyer.

9 Q. Those are the ones that are still
10 with the practice?

11 A. Yes.

12 Q. Who's the one who's left?

13 A. Leslie Yeomans. I couldn't spell
14 her last name, if I tried.

15 Q. Y-e-o-m-a-n-s perhaps?

16 MR. BARMEN: Objection.

17 A. Possibility.

18 Q. Okay. So how would it work when
19 you would participate in the personal injury
20 practice? Would he tell you -- Dr. Ghoubrial
21 tell you simply one day that you're going to go
22 work for the personal injury practice and then
23 you would do that? How much notice would you
24 have?

25 A. I had a weekly Friday morning

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1 clinic. I would go every Friday morning. I
2 would go to the hospital first and then I would
3 go to the Friday morning clinic. As far as
4 other patients, they would filter in my
5 schedule with my family practice patients in
6 the office. On any given day, I might see one
7 or two or three or none on my routine day in
8 the office, which is --

9 Q. You mean of the family practice
10 patients?

11 A. Yeah, yeah.

12 Q. But the personal injury clients
13 were all treated in one --

14 A. Well, as I said, sometimes I'd be
15 in my family practice afternoon, but, you know,
16 if the ten patients I have, maybe one of those
17 patients was actually a personal injury patient
18 who I saw in my family practice office but
19 still with the personal injury chart, because
20 they're not in our computers.

21 Q. Um-hum. Okay. And where would you
22 conduct this Friday morning clinic?

23 A. For the most part, at Floros's
24 office, except for those brief interludes when
25 I was at Browns Street or Waterloo, Waterloo

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1 Road.

2 MR. BARMEN: Try and keep your
3 voice up just a little bit.

4 THE WITNESS: I'm sorry.

5 MR. BARMEN: That's okay.

6 Q. Floros's office is on Arlington
7 Road in Akron, correct?

8 A. That's right.

9 Q. What was the purpose of the
10 separate Brown Street and Waterloo Road
11 facilities, if you know?

12 MR. BARMEN: Objection.

13 Go ahead.

14 A. We have other patients in the
15 personal injury clinic who have different
16 chiropractors and it would be obviously
17 inappropriate for them to show up at
18 Dr. Floros's office, when they're being treated
19 by another chiropractor. And so we had to have
20 them seen somewhere. So if we had a clinic on
21 Brown Street or at Waterloo Road, it was
22 relatively close enough to Dr. Floros's office
23 so that his patients could get there easily,
24 but it was also a facility where I could see
25 the other personal injury clinic patients. Now

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1 I'm seeing all of those personal injury
2 patients, whether at Floros's or other
3 chiropractors, at the Wadsworth office.

4 Q. Since when has that been the case?

5 A. I would say, summerish of 2017, as
6 I said, about the time that Josh Jones left.
7 So I've actually seen more personal injury
8 clinic patients at Wadsworth, as a result of me
9 no longer going to a freestanding clinic.

10 Q. And, to your knowledge,
11 Dr. Ghoubrial no longer -- he only does this at
12 the chiropractor's offices now, when it's not
13 done at the Wadsworth office? I mean -- by
14 "This," I mean the personal injury clinic.

15 MR. BARMEN: Objection.

16 Go ahead.

17 A. I don't know who he sees at the
18 office. He's in our office on Monday mornings
19 and Wednesday mornings. I'm never there
20 Wednesday morning, because that's my hospital
21 day, so. On Mondays he has his patients there.
22 And I think from time to time, he, too, has had
23 a personal injury patient in the office. You
24 goes from each room and if that little blue
25 chart slip isn't there and a manila folder is,

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1 then you know that's a personal injury patient
2 instead of an office patient. But I'm not
3 there on Wednesdays. The only two half days
4 that Sam sees patients in the office is Mondays
5 and Wednesdays.

6 Q. Do you have any sense of how
7 frequently Ghoubrial conducts his clinics --
8 personal injury clinics off site?

9 MR. BARMEN: Objection.

10 Go ahead.

11 A. I understand that he goes to
12 Floros's office every Wednesday early afternoon
13 and I think he's still going to the Columbus
14 office every Friday morning.

15 Q. On the average day, when you go to
16 these chiropractor's offices or when you go off
17 site to your Friday morning clinic, how many
18 patients would you see on the average day,
19 would you estimate?

20 A. I've seen as few as eight and as
21 many as twenty, twenty-two. I never know in
22 advance who I'm going to see.

23 Q. Do you have -- do you take anything
24 with you, when you go to these clinics?

25 A. I don't, because the staff who come

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1 with me bring everything.

2 Q. And what do they bring?

3 A. They bring the box of records of
4 the patients, their charts. They bring their
5 paperwork that they want the patients to sign
6 or have them sign; any new patients, that is.
7 There's typically a box of TENS units.
8 Sometimes they bring along a box full of back
9 braces. And then there's a box of the things
10 that I would need: alcohol swabs, latex or
11 nonlatex gloves and the syringes for drawing
12 up -- the syringes that have the cortisone and
13 Marcaine in them. Then they have some extra,
14 you know, unused clean syringes, in case we
15 need to draw any more while we're there --

16 Q. Draw up any more?

17 A. Draw up any more syringes with the
18 trigger point solution, the Marcaine, the
19 methylprednisolone.

20 Q. So you have that -- you have the
21 medication there as well, in a separate
22 container to draw into the needles, if you need
23 to?

24 A. Yes, yes.

25 -- and then finally they bring

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1 prescription pads. They have an extra
2 Dictaphone handy, in case I forgot mine, which
3 has happened. And I think that pretty much
4 covers it.

5 Q. How do you know how many syringes
6 to bring, if you don't know how many clients
7 you're going to see?

8 A. I don't, I don't. They set
9 aside -- or they think, well, maybe he'll need
10 six syringes. Maybe he'll need ten. It's
11 going to be a busy day, let's give him twelve.
12 And if I use them all and I need more, then
13 they will draw up new. If I don't get to use
14 them all, then they discard what's left over.

15 Q. Okay. Who are the employees that
16 would come with you to those personal injury
17 clinics?

18 A. They would change from time to
19 time. It depends on who is available. And
20 what's more is, you know, since I haven't gone
21 to those clinics routinely in the last year and
22 a half, some of the folks who used to come with
23 me are no longer working with us. I have seen
24 Amber come along --

25 Q. Can you give me first names and

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1 last names, please?

2 A. I don't know Amber's last name.

3 I'm sorry.

4 Q. Okay. Who is Ms. Morris?

5 A. Ms. Morris?

6 Q. Didn't you just say -- I'm sorry.

7 I misunderstood you.

8 A. I said, "Amber" --

9 Q. Okay.

10 A. -- "Amber."

11 -- I'm trying to think who else has come
12 with me recently. I think Nicole might have
13 come with me, but I can't be certain, but I do
14 remember Amber. And, like I said, it changes
15 over the years.

16 Q. Nicole Thefing?

17 A. I don't know Nicole's last name.
18 Whenever I write Christmas cards, I just write
19 first names. We've got two Crystals. I don't
20 know either one's last name.

21 Q. You told me about a Nicole Thefing,
22 when we spoke on the phone. So who is that, if
23 it's not the same Nicole?

24 MR. BARMEN: Objection.

25 Go ahead.

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1 A. Thefing?

2 Q. T-h-e-f-i-n-g.

3 A. That's Thefing --

4 Q. Ah, okay.

5 A. -- and that's not Nicole. That's
6 Samantha --

7 Q. Okay.

8 A. -- Samantha Thefing. She no longer
9 works with us. She was associated with the
10 billing side of things --

11 Q. Okay.

12 A. -- Samantha Thefing. I'm sorry.

13 MR. BEST: Those notes must
14 have been wrong, huh?

15 MR. BARMEN: I was just thinking
16 the same thing.

17 MR. PATTAKOS: Um-hum.

18 Q. Who else would go with you to the
19 personal injury clinic?

20 A. That's pretty much it. Sometimes
21 they'd only be one woman in there, only one
22 staff member but sometimes two.

23 Q. Only Amber and Nicole, are the only
24 two people that you've mentioned.

25 A. Well, when I was at Brown Street,

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1 if I recall, I think Elizabeth would accompany
2 me. And Elizabeth -- and I don't remember her
3 last name -- she used to be one of our two
4 transcriptionists. Marshall, Elizabeth
5 Marshall. I'm sorry. And, as I said, she used
6 to be one of our two transcriptionists. She
7 left our office, when she graduated from
8 nursing school and now she's working as a nurse
9 somewhere else, but she frequently was the one
10 who would accompany me to -- not Brown
11 Street -- Waterloo -- sorry -- Waterloo Road.

12 Q. Which was first, Brown Street or
13 Waterloo Road?

14 A. Brown Street was first.

15 Q. And you stopped treating -- the
16 clinic stopped operating at Waterloo Road, as
17 you said, in around the summer of 2017?

18 A. No. That's when Sam finally pulled
19 me out of the personal injury clinics
20 altogether. And at that point I was still
21 going to Floros's office. I don't recall when
22 Waterloo Road stopped being used, but it was
23 well before that. And I don't remember why it
24 wasn't being used.

25 Q. Okay. Do you know who owned these

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1 facilities?

2 A. No. I do know that we moved out of
3 the Brown Street facility, when the owner of
4 that building sold that building.

5 Q. How did these clients for the
6 personal injury practice end up coming to you?

7 MR. BARMEN: Objection.

8 Go ahead

9 A. I have no idea. I don't know.

10 Q. You have no idea how the clients
11 knew to go to these facilities to meet with
12 you?

13 MR. BARMEN: Objection.

14 Go ahead.

15 A. No, I do not.

16 Q. Are you aware that there was any
17 advertising done for this separate practice?

18 A. I'm not aware of any advertising --

19 Q. Okay.

20 A. -- I've not seen any.

21 Q. Do you have any idea as to why
22 these practices were kept separate?

23 MR. BARMEN: Objection.

24 Go ahead.

25 A. Which practices?

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1 Q. The personal injury and family
2 practices.

3 A. I don't understand it completely,
4 no. I -- all I understand is that primary care
5 doctors don't like to do personal injury cases
6 and that's why some of these patients ended up
7 coming to us, because their own primary care
8 doctors weren't handling it. And I imagine
9 that that may have something to do with why the
10 primary care side of our practice was kept
11 separate, but I don't know the details.

12 Q. Apart from -- well, strike that.
13 Are you aware of what proportion of the clients
14 that you treated -- do you have any idea, I
15 should say -- strike that. Do you have any
16 idea what proportion of the personal injury
17 clients came from the KNR firm?

18 MR. BARMEN: Objection.

19 Go ahead.

20 A. The majority. I would venture,
21 maybe between 60 and 70 percent, but that's a
22 guess.

23 MR. BARMEN: Don't guess.

24 THE WITNESS: I'm sorry.

25 MR. BARMEN: It's okay.

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1 A. The ones I saw or the ones the
2 practice saw?

3 Q. The ones that the practice saw.

4 A. Well, then I -- that I don't know,
5 because I don't know about the other doctors'
6 clinic.

7 Q. So when you say, "Between 60 and 70
8 percent," you're talking --

9 A. Myself.

10 Q. Okay. What percentage of the
11 clients came from Dr. Floros --

12 MR. BEST: Objection.

13 Q. -- or were also patients of
14 Dr. Floros? Let's put it that way.

15 MR. BARMEN: Same objection.

16 THE WITNESS: Can I answer?

17 MR. BARMEN: Yeah, yeah, yeah, if
18 you know.

19 A. Again, I would say, probably
20 about -- I don't know -- the majority, 60, 75
21 percent.

22 Q. And how would you know that these
23 clients came from KNR?

24 A. Oftentimes the patients would tell
25 me. Sometimes I would ask. Same with the

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1 chiropractor.

2 Q. Well, sir, you'd want to know who
3 the chiropractor was --

4 A. Yes.

5 Q. -- because you'd want to know about
6 the client's chiropractic treatment, correct?

7 A. Yes. Plus, I could pretty much
8 predict what questions I would need to ask.
9 Some chiropractors routinely x-ray all of their
10 patients on the first visit, which I believe
11 they should. Some chiropractors did not, which
12 meant then I needed to.

13 Q. Did Floros?

14 A. Yes.

15 Q. Okay. And why would you ask about
16 the law firm? Why would that matter to you?

17 MR. BARMEN: Objection.

18 Go ahead.

19 A. I would ask patients if they were
20 being represented. I would ask patients if
21 they felt they needed to be represented and
22 then they would tell me or not.

23 Q. What would you do with that
24 information?

25 MR. BARMEN: Wait a minute. I

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1 mean, if this gets into things patients told
2 you in the course of your care, I think that's
3 privileged.

4 MR. PATTAKOS: I'm not asking him
5 about a specific patient.

6 MR. BARMEN: Go ahead.

7 A. Would you repeat the question?

8 Q. What would you do with the
9 information -- I mean, tell me in either
10 case -- if they told you they weren't being
11 represented?

12 A. If they told me they were, end of
13 story. If they told me they weren't, I would
14 ask them if they felt the need to. I would
15 tell them that they might potentially want to
16 consider it. And it had absolutely nothing to
17 do with KNR or Floros or Ghoubrial but about my
18 own personal experience with car accidents.

19 Q. Okay. Do you know what other law
20 firms these clients would be represented by?
21 Was there another law firm that represented a
22 significant portion of these clients?

23 MR. BARMEN: Objection.

24 Go ahead, to the extent you know.

25 A. I don't know about a significant

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1 portion or not, but I do remember the name
2 Slater & Zurz. And there was another lawyer
3 whose an Italian guy whose name started with
4 a "G," but I can't recall what that name was.

5 MR. BARMEN: Vincent Gambini?

6 Q. Gallucci?

7 MR. MANNION: Galeotti?

8 A. They don't sound familiar.

9 Q. It's fine. Do you know whether
10 there were any agreements between the personal
11 injury practice and KNR for any of the law
12 firms?

13 MR. BARMEN: Objection.

14 Go ahead.

15 A. I've heard of something called the
16 lean, but I don't -- I don't know what that is.
17 And I don't know if that's something we even
18 use, but I've heard the term.

19 Q. Okay. Do you know if there are any
20 agreements between the personal injury practice
21 and the -- and any of the chiropractors,
22 including Dr. Floros?

23 MR. BARMEN: Objection.

24 Go ahead.

25 A. Well, to the extent that a

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1 chiropractor would let us use one of their
2 offices to see patients, I guess that
3 constitutes some kind of agreement. We don't
4 want to just barge into a chiropractor's office
5 and say, Hi, we're here, but as far as anything
6 beyond that, I'm not aware of anything.

7 Q. Okay. Are you aware of any other
8 cities where Dr. Ghoubrial would travel to
9 conduct the personal injury clinic, besides
10 Columbus and Akron?

11 MR. BARMEN: Wait. Are you
12 talking about at any point in time?

13 MR. PATTAKOS: Yeah.

14 MR. BARMEN: Go ahead.

15 A. Dayton, Youngstown, I think maybe
16 Warren, but I could be wrong. There was some
17 place up on the east side of Cleveland called,
18 I think Warrensville Heights. There was
19 St. John West Shore. I think that was up by
20 Cleveland somewhere, too --

21 Q. Could that have been Toledo?

22 A. I have no idea.

23 Q. Okay.

24 A. -- those are the only ones I recall
25 hearing about. Oh, and Canton.

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1 Q. How frequently would he go to these
2 places?

3 A. That I don't know. And what's more
4 is, it wasn't always him who went. I remember
5 that Josh Jones used to go to Canton. And I
6 think Esterle may have been the one to have to
7 go to Youngstown, but I don't recall, other
8 than that.

9 Q. Do you recall the dates when these
10 clinics would take place in these cities, the
11 time period?

12 A. Mid decade. That's the best I can
13 say.

14 Q. Are you aware if any of these
15 locations have been discontinued?

16 A. I don't know for sure. I don't
17 recall anyone going to Youngstown recently. I
18 don't think anybody goes to Dayton at this
19 point. The others, I don't know.

20 Q. Are you aware that Dr. Ghoubrial
21 would fly by private plane to go to these
22 clinics?

23 A. Yes.

24 Q. How do you know that?

25 A. It was common knowledge.

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1 Q. Do you know who owns the plane?

2 MR. BARMEN: Objection.

3 Go ahead.

4 A. I understood that the plane had a
5 number of co-owners, Ghoubrial being one of
6 them. He owned a small part of the plane. I
7 don't know which part. Knowing him, it was the
8 right wing. I don't know. I don't know.

9 Q. Who else owned the plane?

10 A. That I don't know.

11 Q. Do you know if Rob Nestico owned
12 part of the plane?

13 A. I do not know that. He never told
14 me who else the other owners were.

15 Q. Okay. Apart from what we discussed
16 earlier about Dr. Ghoubrial's instructions to
17 administer more trigger point injections, were
18 there any other guidelines or instructions that
19 you were provided by Dr. Ghoubrial or the
20 practice in treating the personal injury
21 clients?

22 MR. BARMEN: Objection.

23 MR. MANNION: Objection to form.

24 MR. BARMEN: Objection, form.

25 Go ahead.

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1 A. Well, the important thing was to
2 treat the patients, to try to not keep them on
3 too long, get them better, refer them off to
4 wherever they needed to go. If they needed
5 referrals be it orthopedic, neurosurgeons or
6 whether the patients were still having pain and
7 not getting better, he would instruct me to try
8 to get -- move them over to a chronic pain
9 management clinic.

10 He told me to not prescribe narcotics, if
11 I could help it. He encouraged me to use the
12 trigger points. He encouraged me to -- he
13 would specifically make sure that I mentioned
14 that they were in chiropractic care or not and
15 that we felt they should probably continue with
16 that, if I felt they should. And then of
17 course we had TENS units and back braces, which
18 were also available.

19 Q. Did he give you any instructions
20 about the distribution of the TENS units and
21 back braces?

22 MR. BARMEN: Objection.

23 Go ahead.

24 A. He wanted to make sure that we used
25 the back braces appropriately, that we used

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1 them in patients who were trying to work and
2 their work involved things that may have --
3 that needed lifting or pushing and they were
4 going back to work and obviously that their
5 pain was back related. There was no point
6 giving a back brace to someone whose primary
7 pain is in his knee.

8 As far as the TENS units, if they didn't
9 already have one, because sometimes
10 chiropractors would give their patients TENS
11 units, what I would do is, I would ask the
12 patient if they had already received any TENS
13 unit treatments from the chiropractor. And
14 most chiropractors had those units in their
15 offices. And if they said they were helpful, I
16 offered them. I said, "If you needed to, you
17 could continue these treatments at home. We
18 have portable TENS units available," and that
19 was that.

20 Q. You said what you would do, but
21 were you instructed to do anything in
22 particular --

23 MR. BARMEN: Objection.

24 Q. -- with respect to distributing the
25 TENS units?

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1 A. I was told if they didn't want one
2 modality, then possibly another would work. If
3 they -- if they steadfastly didn't want trigger
4 points, then maybe a TENS unit would at least
5 help alleviate the pain. So I was encouraged
6 to use whatever we had at hand, whatever was
7 available. We didn't always have TENS units to
8 give out. And we also didn't always have back
9 braces.

10 Q. Why not?

11 A. I don't know. One time I was told,
12 "Sam gave out the last one yesterday."

13 Q. Okay. Did the practice follow
14 any -- require you to follow any published
15 guidelines in administering the injections?

16 MR. BARMEN: Objection.

17 Go ahead.

18 A. There were no published guidelines
19 that were available, no instruction sheets or
20 anything like that, no.

21 Q. Did the practice rely on any
22 evidence-based studies, medical research or
23 surveys that informed this practice?

24 MR. BARMEN: You're talking about
25 the trigger points, again, and the TENS units?

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1 MR. PATTAKOS: Yes.

2 MR. BARMEN: Go ahead.

3 A. I'm sure we did.

4 Q. Are you aware of any?

5 A. I can't give you the names of the
6 reports, but I know the reports are out there.
7 I know it's been controversial. Some claim
8 that it doesn't work. Some reports say that it
9 does. Part of it depends on the skill of the
10 administrator. I mean, you have to feel a
11 trigger point to know you actually got one.
12 And you have to make sure that you're putting
13 the needle in it. There are studies that
14 suggest improving accuracy by doing
15 ultrasound-guided needlepoint -- trigger point
16 injections, but that's only experimental and
17 theoretical at this point. There's nothing
18 that's saying that that's necessary or should
19 be done. Chiropractors don't use ultrasound
20 guidance to feel the bones that are out of
21 place. Eventually you develop a feel for these
22 things.

23 Q. Okay. So a trigger point is a
24 specific condition that exists in the --

25 A. Yes.

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1 Q. -- in the patient, correct?

2 A. Yes.

3 Q. Can you describe what that is?

4 A. It's an area of muscle that has
5 gone into spasm and doesn't release. It feels
6 like a knot under the surface. When you're
7 palpating a muscle, you can feel a certain area
8 that's tight and typically tender. Now, not
9 all trigger points are active. Not all trigger
10 points are actually causing the patient to have
11 pain. I can guarantee that every person in
12 here has trigger points and it wouldn't take
13 too much to find them. And they do tend to be
14 tender, even if you never complained of any
15 pain. But oftentimes you find a trigger point
16 in a patient and I say, "Is this the pain
17 you're having?" Yes. Is this the pain that
18 you've been complaining of? Yes. That's a
19 trigger point you want to go after with a
20 needle.

21 Or, as I said, there are massotherapists
22 and certain special physical therapists who
23 will do deep-kneading technique, but that takes
24 an hour and that requires repetitive treatments
25 oftentimes weekly. Another technique is dry

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1 needling, taking a sizable needle -- actually,
2 it's bigger and nastier looking than the ones
3 we have -- that has no fluid in it. There's no
4 injectable material. You're just basically
5 stabbing frequently, repeatedly into the
6 trigger point or the muscle in order to help
7 relieve it. So those are the various
8 modalities. So of the -- of the treatments
9 that are available, the methylprednisolone and
10 Marcaine injection that we use is probably the
11 most effective, quickest, the simplest.

12 MR. BARMEN: Peter, I assume
13 you've got more than a little bit left. Break
14 around 1 for lunch?

15 MR. PATTAKOS: Yeah, we'll break
16 at 1.

17 MR. MANNION: How much -- do you
18 have an estimate on how long?

19 MR. PATTAKOS: I don't think I'll
20 have much more than an hour after lunch.

21 MR. BARMEN: If you just have an
22 hour left, do you want to press through?

23 To me, I defer to the witness.

24 MR. PATTAKOS: I prefer to press
25 through myself.

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1 MR. MANNION: Yeah, I only have
2 about 15 minutes.

3 THE WITNESS: The only thing I was
4 hoping to do, is at lunchtime, let my office
5 know to give the go-ahead to Dr. Bianco to see
6 my Barberton patients, if someone could call
7 Dr. Bianco.

8 MR. PATTAKOS: Let's take --

9 MR. MANNION: You have to get that
10 release anyway, so.

11 MR. PATTAKOS: Yeah. So let me
12 just finish this line of questioning and then
13 we can take a break at around 1 and then we can
14 decide whether to take lunch or not.

15 MR. MANNION: Great.

16 MR. PATTAKOS: Okay.

17 BY MR. PATTAKOS:

18 Q. Where was I? Okay. Of the
19 patients that you see -- so explain to me
20 how -- well, strike that. There's two
21 different things I want to ask you about.
22 Let's do it one at a time. You find a trigger
23 point. How do you decide whether it's worth
24 injecting or not?

25 A. As I said, if the person tells me

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1 that their neck and their shoulders are
2 hurting, I get my hands up there and I'm
3 feeling around. Sometimes the whole muscle
4 feels tight. Sometimes while you're feeling in
5 that tight muscle, you feel an area that's
6 unusually tight. And what's more, is when you
7 touch it, they're either wincing or they're
8 complaining of pain. And I'm saying, "Is this
9 the pain you're feeling?" Yeah. That would be
10 a good target for a trigger point injection.
11 Or if it's down in their low back and you feel
12 around. If it's not hurting and there's -- if
13 you feel a trigger point and it's not hurting
14 them, there's no point in sticking a needle in
15 it. If you feel a trigger point and that's
16 what's causing their pain, that's a good
17 candidate for a trigger point --

18 Q. Okay.

19 A. -- injection.

20 Q. And where do you put the injection?

21 A. Right into where the pain is, which
22 is what Sam tells the patients.

23 Q. Right into the trigger point?

24 A. Right into the trigger point.

25 Q. Okay.

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1 A. -- and so obviously, if you feel
2 something that feels like a 1 centimeter,
3 diameter knot 2 centimeters below the surface
4 of the skin, that's obviously where you want to
5 aim your needle. You're not going to stick
6 a 4-inch needle all the way in to reach
7 something that's just a half a -- a centimeter
8 and a half below the surface. And then you'll
9 make sure the area is not bleeding. What you
10 do first is, obviously draw back on it, make
11 sure you're not in a vein. And then you throw
12 the needle, clean it off and then you feel
13 around for others.

14 And so generally most -- almost all
15 patients have received more than one shot.
16 Some receive two. I think very few have
17 received as many as eight. They can come back
18 in two weeks. Usually don't want to shoot the
19 same place more than once a month, so -- but by
20 then they may very well be complaining of other
21 areas that are hurting or you find new trigger
22 points. And I would prefer using the Marcaine
23 and the steroid to dry needling in any case,
24 except for maybe somebody who is pregnant or is
25 a brittle diabetic.

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1 You know, obviously, depending on who the
2 patient is, you're not going to give somebody
3 like that an injection. They're relatively
4 simple. They're generally very free of
5 complications. The complication rate is
6 exceedingly low. In fact, in all the years
7 that I've done them or followed up on Sam's
8 patients who has done them, the only thing I
9 ever heard some people say, "I was sore for a
10 few days," which is a normal, expected --

11 MR. MANNION: I'm sorry. Did you
12 say, "Normal," or, "Abnormal"?

13 THE WITNESS: It is a normal side
14 effect of those to feel sore.

15 MR. MANNION: Thank you.

16 THE WITNESS: -- like you feel
17 sore, after you get your flu shot --

18 Q. And when you administer the trigger
19 point injections, it's always a mixture of
20 Marcaine and steroid?

21 A. Almost always. Sometimes -- I
22 know -- back to Dr. Lababidi -- he came to our
23 office and was telling us that it's possible to
24 just use a trigger point that has nothing but
25 Marcaine in it and those, he said could be

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1 equally effective. I think -- and maybe we did
2 that once but generally went back to using the
3 Marcaine and the methylprednisolone.

4 Q. And the methylpred --

5 A. I'm sorry. Cortisone, steroids.

6 Q. But will you spell that?

7 A. M-e-t-h-y-l-p-r-e-d-n-i-s-o-l-o-n-e

8 Q. And that's the steroid?

9 A. Yes --

10 Q. Okay.

11 A. -- that's the steroid.

12 Q. But typically you, in
13 Dr. Ghoubrial's personal injury practice,
14 wouldn't use anything else, apart from the
15 steroid and the Marcaine, correct?

16 A. For injections, pretty much,
17 yeah --

18 Q. Okay.

19 A. -- I --

20 Q. What else would there be, when you
21 say, "Pretty much"?

22 A. This gets into my own medical care.

23 THE WITNESS: Am I allowed to
24 mention --

25 MR. BARMEN: I'd recommend that

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1 you don't. He has no reason to know that, but
2 it's your privilege.

3 Q. I'm not that interested in your
4 medical care, but if you have --

5 A. Well, it's just that I didn't use
6 it on other patients, but at one point there
7 was an acupuncturist who shared Dr. Floros's
8 office and I received acupuncture once. That's
9 it.

10 Q. Okay. And that doesn't have any --
11 that's not any chemical being injected inside
12 of you?

13 A. Right.

14 Q. Those are dry needles, too?

15 A. Very tiny needles. You don't even
16 feel them go in.

17 Q. Yeah. Okay. And those --
18 acupuncture could be used to treat trigger
19 point injections as well, correct?

20 A. Yes, except none of us --

21 Q. I'm sorry. I mean, acupuncture
22 could be used to treat trigger point.

23 A. Treat pain, not necessarily trigger
24 point but to treat pain. And none of us are
25 trained to do acupuncture.

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1 Q. So you find that it's common that a
2 patient that has one trigger point will have
3 more than one trigger point?

4 A. Oh, yeah. I -- I would venture
5 that if I were to massage any one of you here
6 today, I would probably find half a dozen or
7 more trigger points in every one of you.

8 Q. Even if they're not causing us
9 pain?

10 A. Exactly, exactly.

11 Q. But you would only --

12 A. Those are inactive trigger points.
13 They don't need injection --

14 Q. Right.

15 A. -- it's the active ones that do.

16 Q. Okay. But each trigger point only
17 gets one injection?

18 A. Yes --

19 Q. Okay.

20 A. -- well, except if -- except if a
21 month goes by and that trigger point is still a
22 problem, you can inject it again.

23 Q. But you don't want to do more than
24 one a month per trigger point?

25 A. Of that particular shot. Sometimes

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1 they'll get something a little further on out
2 or whatever, try a different trigger point.

3 Q. Okay. Okay. So you were speaking
4 about modalities -- other modalities, apart
5 from trigger point injections. There's dry
6 needling. You mentioned massotherapy. You
7 mentioned acupuncture. What other alternative
8 modalities are there for treating trigger
9 points or --

10 MR. BARMEN: Wait a minute. Are
11 you talking about modalities that he provides
12 or just generally?

13 MR. PATTAKOS: What he's aware of
14 as a doctor.

15 MR. BARMEN: Not that he
16 provides?

17 MR. PATTAKOS: Correct.

18 MR. MANNION: But I do want to --
19 before, Peter, he did say that acupuncture was
20 to treat pain and not necessarily trigger
21 points --

22 THE WITNESS: Yeah, right.

23 MR. MANNION: -- and now you're
24 saying, "Other modalities," for, "Trigger
25 points."

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1 MR. PATTAKOS: Okay. Well, then
2 let me back up.

3 MR. MANNION: Yeah.

4 BY MR. PATTAKOS:

5 Q. You could also treat trigger points
6 with acupuncture, too, correct?

7 A. I'm not an acupuncturist --

8 Q. Okay.

9 A. -- all I know is that when I got
10 the treatment, it was for a general area --

11 Q. Okay.

12 A. -- but I've seen -- I've actually
13 experienced the dry needling. It's no fun.
14 Massotherapy, sure. And there's two forms of
15 that. There's where you just sort of find the
16 spot and you push real hard on it and pressure
17 it and you hold it there and mash away on it
18 until it pretty much loosens up and then you go
19 find another one. Or it's a combination of
20 pressing and stretching where you can actually
21 massage, stretch the muscle out. So there's
22 different massotherapy techniques for doing
23 this, too.

24 Q. I just want to be clear that you're
25 testifying about modalities for treating

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1 trigger points, correct?

2 A. Yes --

3 Q. Okay.

4 A. -- and I have in fact on occasion
5 referred patients who didn't want the
6 injections to several massotherapy specialists
7 that I know. So if you can't get rid of it one
8 way, try another.

9 Q. What other ways are there to treat
10 trigger points?

11 MR. BARMEN: Objection, to the
12 extent he's not here as an expert.

13 Go ahead.

14 A. Well, let's see, we've covered the
15 various forms of massotherapy. We've covered
16 the injections, the dry needling. To some
17 extent TENS units can relieve muscle pain and
18 tense muscles. They don't necessarily relieve
19 a trigger point, but oftentimes it's the pain
20 of the trigger point that keeps it going.

21 Q. What about chiropractic?

22 A. Chiropractic adjusts the bones that
23 are potentially out of place. And the
24 chiropractors offer other treatment modalities.
25 They have their own electrical stimulation

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1 units that they use. They have massage beds,
2 roller tables, et cetera, to give a mild
3 stretch to some of these muscles.

4 Q. Whirlpool?

5 A. I don't know any chiropractors who
6 have one, but if I find them, I'll go.

7 Q. Would that be something that could
8 be used to treat trigger points?

9 MR. BARMEN: Objection.

10 Go ahead.

11 A. I don't know.

12 Q. Hot packs?

13 A. We tell people to apply ice or heat
14 in various combinations to various areas, sure.

15 Q. And all of these other modalities
16 are less invasive than the trigger point
17 injections, correct?

18 MR. BARMEN: Objection.

19 MR. MANNION: Objection.

20 MR. BARMEN: Go ahead.

21 A. They're less effective, far less
22 effective.

23 Q. I'm not asking about your opinion
24 on whether they're effective. I'm asking about
25 whether they're more or less invasive.

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1 A. Some are more invasive. Some are
2 less invasive. I'd rather get a trigger point
3 than have a dry needle jammed into my muscle
4 over and over again, and I've had that done.

5 Q. Apart from the dry needle, are any
6 of these other alternative modalities that
7 you've discussed more invasive than a trigger
8 point injection?

9 MR. BARMEN: Objection.

10 Go ahead.

11 A. No, but more painful. Going to a
12 massotherapist and have her work on your
13 trigger points can be agonizing. And, again, I
14 can speak from personal experience. I have
15 left their bruised. I've left there with
16 soreness that lasted three days. And after she
17 worked on my symptomatic left shoulder,
18 sometimes she would work on my asymptomatic
19 right shoulder and she found trigger points I
20 never knew I had, because I never felt them and
21 they were equally as tender as the ones on the
22 left. Trust me, that's no fun. These
23 injections, if they hurt at all, they hurt for
24 a mere few seconds. Having a massotherapist
25 mash away on your trigger point, it's a

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1 nightmare.

2 Q. Do you know how much the patients
3 were charged for the injections?

4 A. I do not.

5 Q. Do you know how much the practice
6 paid for the injections?

7 A. I do not.

8 Q. Do you know if the practice
9 followed any published guidelines in
10 distributing TENS units or back braces to the
11 personal injury clients?

12 MR. BARMEN: Objection.

13 Go ahead.

14 A. I don't know if the practice had
15 any particulars about that. It was just, you
16 know, where they felt that they were needed. I
17 would ask the patients if they already received
18 TENS unit treatments at the chiropractor. And
19 if they felt them completely unhelpful and
20 painful, I wouldn't offer them ours. If they
21 were helpful but they were down to twice a week
22 and they -- at the chiropractor and they wanted
23 to use the TENS units more often, they would be
24 a good candidate for getting the TENS unit.

25 Q. How many of the patients that you

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1 would see, like what proportion would you
2 estimate had trigger points?

3 A. Mine, probably -- depending on the
4 day, generally 30 percent or less. There would
5 be a rare day when maybe 60 or 70 percent of my
6 patients would come in and either agree to or
7 even ask for more trigger points. I would
8 offer it to everyone. Some would say, ah, no.
9 Or others would say, Yeah, they really worked
10 last time, but I don't think I need them today,
11 or, I don't like shots, or --

12 Q. How many years did you treat
13 clients in the personal injury practice off
14 site?

15 A. Off site?

16 Q. I mean, out of Wadsworth. I mean,
17 I understand that you are -- let me back up. I
18 understand that in 2017, you were pulled out of
19 treating them off site.

20 A. Right.

21 Q. So before you were pulled out and
22 you were doing your weekly Friday clinics, how
23 many years did you do that?

24 A. At least five. I don't know if we
25 started going to these clinics in 2011, '12

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1 or '13, so I'm saying, probably about five.

2 Q. Okay. Did the practice follow --
3 that you're aware of -- any evidence-based
4 studies, medical research or surveys in
5 distributing TENS units or back braces?

6 MR. BARMEN: Objection.

7 Go ahead.

8 A. I don't -- I can't speak for what
9 the rest of the practice did. I know as far as
10 myself, I can recognize when a person needs a
11 back brace and under what circumstance. As I
12 said, we wouldn't give them to somebody who
13 wasn't having back pain. And if they were but
14 they were not using their back for any purpose,
15 they probably didn't need a back brace. But if
16 they were having some back issues and they
17 intended on continuing to work, they would find
18 it helpful. As far as the TENS units, they're
19 helpful. They work. I know there's some
20 controversy about that and some reports say
21 that they do and some reports that say they
22 don't. There's a legitimate reason why they
23 would work. And, again, I, myself, have
24 personally used them and found them helpful, so
25 I make them available. I don't force anybody

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1 to take them. If they want them, fine. If
2 not, that's just as fine.

3 Q. But you didn't review any research
4 in making this decision or anything like that?

5 A. I've -- over the years, I've looked
6 them up to see what people are saying about
7 trigger points and I've read some of the
8 stories and some of the recommendations and how
9 they work and why they're felt to work. And
10 some people think they're no better than
11 placebos and other agencies, other tests have
12 shown them to be helpful.

13 Q. When you saw the personal injury
14 clients, do you have a sense of how frequently
15 after the car accidents you would see them?

16 MR. BARMEN: Objection.

17 Go ahead.

18 You mean frequently --

19 A. How soon after the accident they
20 first came to me?

21 MR. BARMEN: Yeah.

22 Q. Yeah.

23 A. That varied very widely. There
24 were some people who -- let's say, I'd go to
25 Floros's office on a Friday morning and someone

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1 had shown up there for their very first
2 appointment with Dr. Floros that day, because
3 they had an accident that past Wednesday, so.
4 And if they were having that much pain, that
5 would be one of my new patients that day.
6 There were other times where the patient would
7 be with the chiropractor for a month or two or
8 not with any chiropractor or anybody. And a
9 month or two later, they're still not feeling
10 better and then they would finally come to me.
11 So there was no routine in that at all. It
12 depended on the different patient --

13 Q. Sure. Okay.

14 A. -- if they were late, I'd say, "Why
15 did you wait so long?" Well, I thought I'd get
16 better, and then they didn't.

17 Q. I understand. Thank you.

18 MR. PATTAKOS: Let's take a break.

19 VIDEOGRAPHER: Off the record 1:05.

20 (Lunch recess taken.)

21 VIDEOGRAPHER: On the record 2:15.

22 BY MR. PATTAKOS:

23 Q. Dr. Gunning, do you know whether
24 Dr. Ghoubrial accepts insurance -- the client's
25 insurance -- medical insurance in treating the

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1 personal injury clients?

2 MR. BARMEN: Objection.

3 Go ahead.

4 A. I do not know.

5 Q. Are you aware of a reason why he
6 wouldn't accept the patient's own insurance --
7 medical insurance in treating them?

8 MR. BARMEN: Objection.

9 MR. MANNION: Objection,
10 stipulation.

11 MR. BARMEN: Wait, wait.

12 You asked him if he knows if he accepts
13 and he said he didn't. So how would he know --
14 I mean, now you're asking him to prove a
15 negative?

16 MR. PATTAKOS: No. I'm asking if
17 there would be any reason why he wouldn't.

18 MR. BARMEN: So you're asking him
19 to speculate?

20 MR. BEST: On what
21 Dr. Ghoubrial would --

22 MR. PATTAKOS: I'm asking him to
23 answer whether he knows of any reasons why
24 Dr. Ghoubrial would not accept the insurance of
25 the personal injury clients, their own medical

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1 insurance.

2 A. I have no idea --

3 MR. BARMEN: Objection.

4 A. -- I don't deal with the insurances
5 myself.

6 Q. Okay. Well, the practice -- the
7 family practice also treats patients for acute
8 pain resulting from auto accidents, wouldn't
9 it?

10 A. We haven't. Any auto accident
11 patient I've seen has been in the personal
12 injury sphere.

13 Q. But what if someone was already a
14 part of the family practice and they were in a
15 car accident, would the practice then say, no,
16 you have to be treated through the personal
17 injury practice, or would they just be treated
18 with a regular chart under the family practice?

19 MR. BARMEN: Objection. So now
20 you're asking hypothetically?

21 A. And I'm trying to recall. I think
22 there was one time that a patient of mine had a
23 car accident, but I don't think she was
24 pursuing any case and, I mean, her injuries
25 were minor, so I think we just -- it's like,

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1 you know, she jammed her foot on the pedal or
2 something like that. It was pretty minor --

3 Q. Um-hum.

4 A. -- and that was the only time I
5 remember one of my patients who had an
6 accident. I don't recall when it was. It was
7 probably three or four years ago.

8 Q. Do you recall whether she was
9 treated through the family practice or through
10 the personal injury practice?

11 A. I think she was treated through the
12 family practice, because she hadn't -- as I
13 said, it was just a mild bump. She wasn't
14 pursuing the other driver. She wasn't doing
15 anything of that sort.

16 Q. Have you ever administered a
17 trigger point injection in the family practice?

18 A. Often.

19 Q. Often?

20 A. Yeah.

21 Q. Under what circumstances?

22 A. Someone comes in, my shoulder
23 hurts, my back hurts, whatever. I'll go
24 examine them. And I'll say, "Can you move
25 this? Can you shrug your shoulders, raise your

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1 arms, touch my hand with your foot," and then
2 I'll palpate whatever seems to be the problem.
3 And guess what? If I find a trigger point and
4 it's an active trigger point -- in other words,
5 it's one that's reproducing the pain that
6 they're complaining about -- I'll offer them an
7 injection.

8 Or they'll come in and say, "I need an
9 injection," I'll say, "Well, what for?" and
10 then I'll find out the reason. We also give
11 joint injections to patients. We do minor
12 surgeries in our practice. The usual things
13 that family practice practitioners do.

14 Q. Dr. Ghoubrial's instructions that
15 you should be administering more of these
16 injections, did that apply to the family
17 practice as well or did it just apply to the
18 personal injury practice?

19 MR. BARMEN: Objection, form.

20 Go ahead.

21 A. If they were helpful, he would
22 support me doing it. Again, these are people
23 who otherwise might need narcotics or need
24 antiinflammatories or other pain medications,
25 modalities or whatever. Trigger points is one

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1 of the things that we use in the office. If
2 they don't want trigger points, I'll offer them
3 other things. I'll say, "You can go to
4 physical therapy. See what they can do."
5 Sometimes they give trigger points. I've got a
6 patient seeing me now who is getting her
7 trigger points up at Medina, Medina Ortho,
8 Spine, something or other clinic and they're
9 giving trigger points. And she found out that
10 place on her own --

11 Q. That's a patient in the family
12 practice?

13 A. Yeah, patient in the family
14 practice.

15 -- and if they don't want trigger points,
16 fine. I can refer them, just like the personal
17 injury patients, to the massotherapy specialist
18 that I know.

19 Q. Did you administer TENS units to
20 patients in the family practice?

21 A. Yeah, I did.

22 Q. Often?

23 MR. BARMEN: Objection.

24 Go ahead.

25 A. Well, what's, "Often"? I mean, you

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1 know, in the personal injury clinic, I'm seeing
2 people who primarily are there because they
3 hurt because they've had car accidents or other
4 injuries. In my primary care practice, you
5 ordinarily got somebody who has got pain, but
6 there's -- they're mixed in with people who
7 have hypertension, diabetes. They just had a
8 stroke or a heart attack or whatever. And so I
9 would say, less often in the primary care
10 setting, because they're a smaller percentage
11 of the overall patients that I see.

12 Q. Well, I said -- I asked, often,
13 because you just testified that you often
14 administer trigger point injections to patients
15 in the family practice, so if you --

16 A. Well, it's not every one, no, but
17 if people come in and they have back pain or
18 neck pain or whatever and I find a trigger
19 point, I'll be as likely to offer them a
20 trigger point as I would someone in the
21 personal injury clinic, but it's just that, you
22 know, I might have three patients in the day
23 who have such back pain or neck pain and, you
24 know, the other twenty patients have diabetes
25 or hyperthyroidism or whatever.

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1 MR. BEST: I object to this line of
2 questioning. This has nothing to do with the
3 class action lawsuit.

4 Q. Do you offer trigger point -- do
5 you offer a TENS unit to every patient that you
6 offer trigger point injections to?

7 A. Not every one, but a lot of them.

8 Q. Most of them?

9 MR. BARMEN: Objection.

10 Go ahead.

11 A. Are we talking personal injury now
12 or are we talking family practice?

13 Q. Would there be a difference?

14 A. Not really, but, you know, I mean,
15 as far as often, I mean, as I said, I don't see
16 that many patients in the family practice;
17 because, as I said, all of my patients have
18 other issues. The personal injury clinic is
19 pretty much concentrated on people who've had
20 injuries where these would be more helpful.
21 And if I'm giving trigger points, fine. And I
22 will still ask them, "Are you getting TENS unit
23 treatments from the chiropractor?" Yes. Do
24 you find them helpful? Yes. You know, you
25 could potentially use these more often, if you

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1 need to, at home now that you're only seeing
2 the chiropractor once a week or whatever. So,
3 sure. I don't see how I wouldn't offer them
4 TENS units if they had trigger points. There'd
5 be really no difference. And I sometimes refer
6 them to my massotherapist.

7 Q. So you at least suggest the TENS
8 units to every patient that you administer the
9 trigger point injections to?

10 MR. BARMEN: Objection.
11 Misrepresents what he just said.

12 Go ahead.

13 MR. PATTAKOS: Well, I'm trying to
14 understand, so.

15 MR. BARMEN: No. You're trying
16 to put words in his mouth.

17 But go ahead.

18 A. I offer them TENS units. If they
19 are going to work and they have back pain
20 issues, I'll ask them if they think a back
21 brace would help them and I'll check out and
22 I'll say, It probably would, or, wouldn't, or
23 whatever. Not everybody needs a TENS unit. I
24 mean, if you go in there because your knee is
25 swelling, I mean, that's not necessarily a TENS

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1 unit issue. It depends on where their pain is
2 or what's going on with the patient. Everybody
3 is different.

4 Q. I understand that. I'm talking
5 about just the patients to whom you administer
6 the trigger point injections --

7 A. Um-hum.

8 Q. -- so --

9 A. Well, again, that's not even the
10 majority of the patients. And, as I said,
11 maybe as many as 30 percent or on certain days
12 less than that --

13 Q. In the personal injury practice?

14 A. In the personal injury practice.

15 -- on an unusual occasion, maybe more. I
16 think there was one day, I think 60-some
17 percent of the patients got shots, but if I
18 think that they would benefit from further
19 treatment with TENS units in that particular
20 patient, I'm going to recommend that they
21 consider it. And, as I said, if they've used
22 the TENS units at the office and they've
23 already found it helpful, why wouldn't they
24 want to continue it? Why wouldn't I offer it?

25 Q. Well, I suppose -- what I'm trying

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1 to get at is: Under what circumstances would
2 you believe that a trigger point injection
3 would be helpful where a TENS unit would not
4 be?

5 MR. MANNION: I'm going to object.
6 Incomplete hypothetical.

7 MR. BARMEN: Join.

8 A. I find that --

9 THE WITNESS: Is it okay to
10 answer?

11 MR. BARMEN: Yes.

12 A. I would find it not helpful if the
13 patient had already told me, "Jeez, they put
14 that pad on me here and it tingled and I really
15 didn't like it. So, bingo, I'm not going to
16 give them one. If they said it was helpful,
17 I'd say, "Well, you can use that on your own at
18 home. We have portable units."

19 Q. What if they had never tried?

20 A. Usually I let them make that
21 decision on their own. If they want to try it,
22 then they can. If they want to see what
23 happens at the chiropractor's office first,
24 they can --

25 Q. But --

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1 A. -- if they -- if they don't want
2 it, I don't prescribe it, but I'll make it
3 available to them.

4 Q. So you always make it available?

5 MR. BARMEN: Objection.

6 MR. BEST: Object. He just --

7 A. Again, if somebody comes in there
8 because their toe is black and swollen and
9 their wrist is swollen --

10 Q. Again, Dr. Gunning, I'm only
11 talking about --

12 MR. MANNION: Wait, let him finish
13 his answer. Please do not interrupt his
14 answer.

15 MR. PATTAKOS: I'm only --

16 MR. MANNION: No. Stop. Please
17 let him answer the question.

18 MR. PATTAKOS: I'm going
19 to strike -- I'm going to strike the question
20 and I'm going to ask a new question.

21 MR. MANNION: Peter, it doesn't
22 matter. You can't strike the question in the
23 middle of an answer. He was answering the
24 question.

25 MR. PATTAKOS: He was obviously

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1 misunderstanding my question. I'm going to
2 clarify it for him --

3 MR. MANNION: Let him finish his
4 answer.

5 MR. PATTAKOS: That's fine.

6 -- that I'm only talking about --

7 MR. MANNION: Doctor, you're
8 allowed to finish your prior answer.

9 MR. PATTAKOS: Doctor, I'm not
10 interested in the rest of what you were going
11 to say.

12 MR. MANNION: Wow.

13 MR. BEST: I am --

14 MR. PATTAKOS: You can ask
15 questions, when it's your turn.

16 MR. MANNION: No. He was in the
17 middle of an answer.

18 MR. BARMEN: He was in the middle
19 of an answer.

20 BY MR. PATTAKOS:

21 Q. Dr. Gunning, I am only referring to
22 the patients that received trigger point
23 injections --

24 MR. MANNION: Oh, my gosh.

25 Q. --- okay. So this going to the

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1 thumb or the knee is irrelevant.

2 A. Okay, Okay. Assuming that we've
3 whittled down to 30 percent of the people on
4 average, whatever. Okay.

5 MR. BARMEN: And are you limiting
6 this to the PI clinic, Peter?

7 MR. PATTAKOS: Well, he's telling
8 me there's no difference. So, you know, unless
9 there's a difference -- he's telling me there's
10 no difference in how he treated trigger points
11 in the PI clinic and in the family practice, so
12 I don't see why there would be a difference,
13 so --

14 BY MR. PATTAKOS:

15 A. There really isn't. If they've got
16 pains that require certain treatments or would
17 benefit from certain treatments, I make it
18 available whether they're in one room or
19 another, if they're in one clinic or another --

20 Q. Right.

21 A. -- so.

22 Q. So if there's trigger points and
23 you administer the trigger point injection,
24 will you always at least suggest a TENS unit?

25 MR. MANNION: Objection. Asked

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1 and answered.

2 MR. BARMEN: Join.

3 A. I can't say, "Always." I would
4 say, it depends on my evaluation of the
5 situation and what I think would be helpful or
6 what I think -- can I say with certainty that
7 every single -- one hundred percent of the time
8 I've touched on every single issue? No. Some
9 people -- I mean, as I said, every patient is
10 different.

11 Q. Well, and I understand that you've
12 already testified that sometimes the patient
13 will tell you that they don't want a TENS
14 unit --

15 A. Right.

16 Q. -- or the patient has said, "I've
17 tried a TENS unit and" --

18 A. Sometimes they already have a TENS
19 unit or -- yeah.

20 Q. Or they already have one or they
21 tell you that they don't like it --

22 A. Right.

23 Q. -- but you at least suggest it to
24 get that information. Isn't that correct?

25 MR. MANNION: Objection.

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1 MR. BARMEN: Objection. Asked
2 and answered. He already told you that's not
3 the case. Why do you keep asking him the same
4 question?

5 A. I can ask them. I don't
6 necessarily absolutely automatically do it a
7 hundred percent of the time. I'm sure I've
8 missed a few here and there --

9 Q. So -- go ahead.

10 A. -- it depends on my particular
11 conversation with the patient. If some people
12 look like they're in a rush to get out, it's
13 like, okay, we can maybe touch on that next
14 time if they come or not at all or whatever.

15 Q. What I'm trying to understand,
16 Dr. Gunning, is: Apart from those situations
17 where the patient has told you that they don't
18 like the TENS unit or that they already have a
19 TENS unit or that they don't want the TENS
20 unit, what other reasons would there be for you
21 to not at least suggest a TENS unit to a
22 patient to whom you have already administered
23 trigger point injections or were going to
24 administer trigger point injections?

25 MR. BARMEN: Objection.

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1 MR. MANNION: Objection.

2 MR. BARMEN: Go ahead.

3 A. Sometimes it's a matter of time.
4 Sometimes the patient has to go. Sometimes I'm
5 behind, and I can say, "Well, we can discuss
6 that next time," or whatever. There's no set
7 law or rule that says I must give TENS units to
8 everybody, I must give trigger points to
9 everybody. They're helpful modalities. I
10 offer the patient all the help that I think
11 that would help them. And so oftentimes I do
12 mention these treatments. And, as I said, if
13 they don't want them, fine. I'm not going to
14 push it. If they want to do something else,
15 see a physical therapist, see a massotherapist,
16 fine. I don't have any set rules or formula.
17 It's not an assembly line. It's just whatever
18 the patient and I happen to agree on at that
19 time.

20 Does every patient who comes into my
21 personal, private office with diabetes, do I go
22 through the same dietary recommendations every
23 time I see them? No. It depends on what's
24 going on that day. Maybe that day they want to
25 talk about something else. So I don't have a

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1 set pattern of, you know, do this, do this, do
2 this. It doesn't -- you know, not every
3 patient fits into that. But, yeah, there have
4 been patients who've had trigger points who
5 have also had TENS units. There are patients
6 who haven't had one or the other or neither.
7 And how that's determined is based on the
8 conversation I'm having with the patient at
9 that time. And everybody is different.

10 Q. Of course. So, you know, I want to
11 make sure that you're understanding my
12 question. And I want to make sure that I'm
13 understanding all of the reasons there would
14 be -- apart from what you've mentioned about,
15 the patient doesn't want them, the patient
16 already has a TENS unit, or, you run out of
17 time, is there any other medical reason why a
18 TENS unit would not be helpful to someone to
19 whom a trigger point injection would be
20 helpful?

21 MR. MANNION: Objection.

22 MR. BARMEN: Objection.

23 MR. BEST: You should go to
24 medical school and practice for twenty years.
25 Then you'll have the same judgment he has.

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1 MR. MANNION: But I'm going to
2 object, because you didn't list all the reasons
3 he gave you.

4 MR. BARMEN: Go ahead. Subject
5 to those objections, go ahead.

6 A. The question is, why wouldn't I
7 give a TENS unit to everybody I gave a trigger
8 point?

9 Q. No, no, no, that's not the
10 question. The question is --

11 MR. BARMEN: That was the
12 question.

13 Q. -- are there any medical reasons
14 why a TENS unit would not be helpful to a
15 patient to whom trigger point injections would
16 be helpful, apart from what you've discussed
17 about when the patient doesn't want one or you
18 don't have time?

19 MR. BARMEN: There was more --
20 there were more reasons he gave you, Peter.
21 He's already answered this question several
22 times. Why is it necessary to answer it again?

23 Q. Please answer the question,
24 Dr. Gunning.

25 A. I don't know if there really is any

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1 major medical reason why the one would be
2 indicated and the other not. If I wouldn't
3 want to give one, I probably wouldn't want to
4 give the other, depending on the patient's
5 conditions, depending on what's going on with
6 the patient. But more often than not, they
7 seem appropriate to at least offer it --

8 Q. Okay. So I was asking --

9 A. -- I still have my TENS units.

10 Q. When was the last time you used it?

11 A. Oh, probably -- well, let's see,
12 the accident was 2011, so probably September,
13 October 2011.

14 Q. Do you have any understanding of
15 what the legal requirements are for you to
16 maintain your patient records --

17 MR. BARMEN: Objection.

18 Q. -- as a doctor in the state of
19 Ohio?

20 A. I have to maintain complete medical
21 records.

22 Q. Do you understand for how long?

23 A. I didn't know there was a limit.

24 Q. So it's your understanding that you
25 have to maintain the records forever?

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1 MR. BARMEN: Objection.

2 A. That's my understanding.

3 Q. And that's treatment and billing?

4 A. I would imagine, sure.

5 Q. Okay. Have you ever talked about
6 that with Dr. Ghoubrial?

7 A. No.

8 Q. Okay. You began working for
9 Dr. Ghoubrial in 2006.

10 A. That's correct.

11 Q. And the circumstances there were
12 that you had -- the practice you were with was
13 in Wadsworth, correct?

14 A. That's right.

15 Q. And who was the --

16 A. Jeffrey Kontak, K-o-n-t-a-k --

17 Q. Okay.

18 A. -- a nice man who ran into
19 financial difficulties.

20 Q. And because of those financial
21 difficulties, he had to close his practice?

22 A. No. Because of those financial
23 difficulties, he was pocketing our 401(k)
24 pretax retirement account set-asides. They
25 weren't going to the company who was building

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1 up our 401(k)s. They were ending up in his
2 back pocket --

3 Q. So he was stealing from you?

4 A. He was stealing from us.

5 -- we also had pretax money taken out for
6 little things like dental insurance and
7 whatever. I went to see my dentist and I told
8 him about my insurance company and they said,
9 They're not covering you. He was pocketing
10 that money also. So even though I liked the
11 guy -- I don't hate him, but I realized I
12 couldn't trust him to work for him anymore and
13 that's when I switched.

14 MR. BEST: I object. This has
15 nothing whatsoever to do with the class action
16 lawsuit. This is so far afield, it's
17 embarrassing.

18 Q. So you began to work for
19 Dr. Ghoubrial -- you were looking for a job.
20 You knew Dr. Ghoubrial from being in the
21 community and you explained your predicament to
22 him and he offered you a job, correct?

23 A. Yes.

24 Q. What time of year in 2006?

25 A. I started with him in early

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1 October 2006.

2 Q. Was there a personal injury
3 practice in 2006?

4 A. No.

5 Q. When do you first recall meeting
6 Rob Nestico?

7 A. I really can't say. I don't
8 remember.

9 Q. Was it before or after the firm
10 began -- was it before or after Dr. Ghoubrial
11 began running a separate personal injury
12 practice?

13 A. I don't even know when Sam started
14 running that personal injury practice.

15 Q. You said that you participated in
16 that practice for about five years, correct?

17 A. Possibly longer, because I think we
18 were already involved doing it before we moved
19 from our old location in Rittman to our new
20 location at Wadsworth Hospital, and that was in
21 July of 2011. So I'm assuming that the
22 personal injury clinics may have started
23 sometime shortly before that. I don't remember
24 exactly.

25 Q. Shortly before you moved?

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1 A. Sometime before we moved.

2 Q. How long before you moved?

3 A. I don't know. It could have been
4 2010. It might have been 2009. I don't know.

5 Q. But not 2008?

6 A. I don't recall --

7 Q. Okay.

8 A. -- I don't remember that far back.

9 Q. When we spoke on the phone, you
10 said that Dr. Ghoubrial was doing chart review
11 for defense attorneys; and he was doing such a
12 good job on behalf of the defense attorneys,
13 that plaintiff's attorneys started asking for
14 his advice on cases; and the next thing you
15 knew, Rob Nestico was his best friend. Do you
16 recall saying that?

17 MR. BARMEN: Objection.

18 Go ahead.

19 MR. MANNION: Objection to form.

20 A. I don't recall those words, but I
21 do think that's what was happening. I know he
22 was doing expert witness work for defense
23 attorneys. He even asked me to review two
24 cases. And then I heard that the plaintiff's
25 attorneys were running their cases by Sam,

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1 before they placed their suits, because they
2 afraid that Sam would get to them anyway.

3 And all I know is, it was after that,
4 that I heard the name, Nestico. I don't recall
5 in what context, whether he was one of the
6 plaintiff's attorneys or if he had heard about
7 Sam from earlier avenues. I really do not
8 know. And I don't recall when -- I don't even
9 remember when I did those two expert witness
10 cases, but that was somewhere between 2007
11 and 2010, is my best estimate.

12 Q. Do you recall, now that you've gone
13 back over this in your head, whether the
14 personal -- Dr. Ghoubrial's separate personal
15 injury practice began before or after you first
16 heard the name, Nestico?

17 MR. BARMEN: Objection.

18 A. I can't even say that. I don't
19 know.

20 Q. When you said they were best
21 friends, what did you mean by that?

22 A. They are good friends. I mean, I
23 know they've -- they've been to each other's
24 birthday events. Their wives were best
25 friends, Julie and Patty. They got along well.

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1 In fact, when I met Nestico, I got along well
2 with him. He seems to be genuinely a nice guy.

3 Q. Are you aware that Dr. Ghoubrial
4 would go on trips out of town and out of the
5 country with Nestico and his KNR colleagues?

6 MR. MANNION: Objection.

7 MR. BARMEN: Objection.

8 Go ahead.

9 A. Well, I do know that, yes. I wish
10 I could have gone with them, but sometimes had
11 to watch the office. Besides, I don't fly.

12 Q. What do you know about these trips?

13 A. There was -- I think there was one
14 to -- was it Las Vegas? I think there was one
15 to New Orleans. There may have been one to
16 Mississippi. And I think there was one
17 overseas -- I forget -- at one of those resort
18 countries over in Europe. I don't know if it's
19 Monaco or Monaco or something like that, a
20 place that James Bond hangs out.

21 Q. Do you remember that they took a
22 trip together to -- Nestico and Ghoubrial and
23 other KNR lawyers to Cancun?

24 A. I don't recall that trip, but it
25 wouldn't surprise me.

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1 Q. Okay. What about a trip to Punta
2 Cana in the Dominican Republic?

3 A. I never heard that one.

4 Q. Okay. Do you have any
5 understanding of what happened on these trips?

6 MR. BARMEN: Objection.

7 MR. MANNION: Yeah, same
8 objection.

9 MR. BARMEN: Go ahead.

10 A. I know Sam bought an expensive
11 watch in Europe. I know that they frequented
12 some pretty nice restaurants in New Orleans.
13 And I think I remember even seeing a video
14 being shot of some street performer who was
15 playing some drums and some instrument.

16 Q. Were you aware that Dr. Floros and
17 the Lababidi brothers or any of the other
18 healthcare providers that KNR would work with
19 would be on these trips as well?

20 A. I've heard that Floros may have
21 been on one of them. I don't know about the
22 others. And I didn't know if the Lababidi's
23 ever went.

24 Q. Did you know that other KNR lawyers
25 would go on these trips, too?

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1 A. That I did not know --

2 Q. Okay.

3 A. -- I think Lazzerini went to New
4 Orleans with them, but that's really all I
5 know.

6 Q. How many times have you personally
7 interacted with Mr. Nestico?

8 A. I haven't kept count, but probably
9 less than ten. He and his company represented
10 me, when I had a car accident.

11 Q. When we spoke on the phone, you
12 mentioned that you believed that there were
13 times when Mr. Nestico has tried to reign
14 Dr. Ghoubrial in. Do you recall saying that?

15 MR. MANNION: Objection.

16 MR. BARMEN: Objection.

17 A. I don't recall that. I'm trying to
18 think if there would be any reason why I would
19 have said anything like that. Sam can be a
20 volatile person. Other than that, I cannot
21 recall any particulars. So I wouldn't be
22 surprised if maybe he did at one point. I
23 don't know, so I --

24 Q. Do you have any knowledge of
25 Dr. Ghoubrial's relationship with a company

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1 called Tri-Tech that distributes medical
2 supplies like the TENS units and back braces?

3 MR. BARMEN: Objection.

4 MR. MANNION: Object. That
5 implies there is one.

6 MR. BARMEN: Correct.

7 Go ahead.

8 A. I've never heard -- I've never
9 heard the term, "Tri-Tech."

10 Q. Do you have any familiarity with
11 Scott Wilson or Richard Wilson?

12 A. I know a Scott Wilson. I've never
13 heard of a Richard Wilson. I think I recall
14 Scott Wilson coming to our practice a few
15 times. And I ran into him once at a
16 body-building show up in Lakewood.

17 Q. What was he coming to the practice
18 for?

19 MR. BEST: Objection. He's a
20 medical --

21 A. I don't recall.

22 MR. BEST: -- patient. You
23 can't talk about him either.

24 MR. PATTAKOS: Why are you
25 testifying for the witness, if he's a medical

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1 patient --

2 MR. BEST: Because I'm his
3 lawyer and I'm going to keep him out of
4 trouble. He can't talk about whether he even
5 has a patient, so he doesn't understand that.
6 He's a doctor. He's not a lawyer. I know the
7 rules.

8 THE WITNESS: Well, he's not my
9 patient.

10 MR. BEST: But if he coming to
11 the practice as a patient, you can't talk about
12 it. That's what I'm instructing you.

13 MR. BARMEN: And he can't be
14 expected to know, Peter, every patient that
15 comes into the practice.

16 Q. Are you aware, Dr. Gunning, as to
17 whether Scott Wilson came to the practice for
18 any reason, apart from -- to receive treatment?

19 A. That I do not know.

20 Q. How did you come to be familiar
21 with him?

22 A. I saw him at the office and I ran
23 into him --

24 MR. BEST: Doctor, I advise you
25 not to say anything else.

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1 Q. Did you treat him?

2 A. No.

3 Q. Did Dr. Ghoubrial treat him?

4 A. I don't know.

5 Q. So you seen him at the office
6 several times, but you have no idea why he was
7 there?

8 A. True. Why would I ask?

9 Q. Okay. So why did Frank Lazzerini
10 leave the practice?

11 A. Frank Lazzerini wanted to become
12 Sam's partner and Sam wanted him to remain as
13 his employee and they had some rather heated
14 exchanges over that. And Sam finally put his
15 foot down, wrote up a new contract for him and
16 said, "You will never ask this again," and
17 Lazzerini declined to sign it. And I remember
18 the day. It was August 17, 2012, because I was
19 one of the first people that Frank called
20 afterwards to say goodbye. And I remember what
21 I was doing that day.

22 Q. What were you doing?

23 MR. BARMEN: How is that relevant
24 to anything here?

25 THE WITNESS: Can I answer the

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1 question? No, yes?

2 MR. BARMEN: Objection.

3 No, you don't have to.

4 MR. MANNION: I mean, if it's
5 private --

6 MR. BARMEN: If it's personal or
7 private, you don't have to.

8 THE WITNESS: No.

9 A. I was watering my friend's garden,
10 when he was out of town on his birthday, which
11 is why I remember. It was his birthday.

12 Q. What was Dr. Lazzerini's -- well,
13 Mr. Lazzerini's involvement in the personal
14 injury practice?

15 MR. BARMEN: Objection.

16 Go ahead.

17 A. He also saw personal injury clinic
18 patients. I don't recall if he had a clinic,
19 but he very well might have. And I don't
20 recall where that clinic or those clinics might
21 have been.

22 Q. Is it possible they were in Canton?

23 A. Possible.

24 Q. How many days would he be in the
25 Wadsworth office a week? Do you have any

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1 memory of that?

2 A. I don't think I remember anymore.

3 Q. Do you have any memory of a certain
4 day of the week he was out of the office
5 treating at a personal injury clinic?

6 A. I couldn't even tell you that about
7 where Lisa Esterle is right now and she's with
8 us currently. I don't know her schedule, what
9 days she's there and what days she's not. I
10 don't think I ever knew and I certainly don't
11 remember where Frank was and when.

12 Q. So you're aware, of course that
13 Lazzerini was indicted on 272 felony counts --

14 MR. MANNION: Objection.

15 Q. -- including two counts of
16 involuntary manslaughter, dozens of counts of
17 drug trafficking of various medications as well
18 as Medicare fraud?

19 MR. BEST: I object --

20 MR. BARMEN: Objection.

21 MR. BEST: -- this has nothing
22 to do with the class action lawsuit.

23 MR. MANNION: More mudslinging.
24 That's all it is.

25 A. I'm aware of all that, yes.

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1 Q. And are you aware that the Stark
2 County prosecutor has accused Lazzerini of
3 overprescribing pain medications for profit?

4 MR. BARMEN: Objection. How is
5 this relevant to any issues in this case,
6 Peter?

7 A. I know there are --

8 MR. BARMEN: Wait a minute, Doc.

9 THE WITNESS: Okay.

10 MR. BARMEN: Seriously, Peter,
11 how is this relevant to anything in the case?

12 MR. MANNION: Especially when it's
13 after he left Ghoubrial's? I mean, that's
14 ridiculous, seriously, Peter.

15 MR. PATTAKOS: Are you instructing
16 the witness not to answer the question?

17 MR. MANNION: I can't.

18 MR. BARMEN: No, not yet. I'm
19 trying to understand from you how it's relevant
20 to the issues in the case for class
21 certification, before I make a determination
22 whether I tell him not to answer it or not.

23 MR. PATTAKOS: I don't need to
24 engage with you on this. Are you going to
25 instruct him to answer the question or not?

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1 MR. BARMEN: Since you're
2 unwilling to discuss with me the relevance, I'm
3 going to instruct him not to answer.

4 MR. PATTAKOS: Okay. That's fine.
5 BY MR. PATTAKOS:

6 Q. Do you believe the charges against
7 Lazzerini are substantiated --

8 MR. BARMEN: Objection.

9 MR. MANNION: Objection.

10 Q. -- based on your personal
11 experience with him?

12 MR. BARMEN: Don't answer that
13 question. Don't answer it.

14 THE WITNESS: (Nodding.)

15 MR. BARMEN: It's not relevant.
16 He's -- it's inappropriate and he knows it and
17 he doesn't care.

18 MR. MANNION: He also knows that
19 it was after he left Ghoubrial's practice.

20 MR. PATTAKOS: You guys have any
21 more testimony you want to add?

22 MR. MANNION: It's not
23 testimony --

24 MR. PATTAKOS: Okay.

25 MR. BARMEN: -- he's putting on

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1 the record the complete outrageous improper
2 conduct in questioning you have.

3 MR. PATTAKOS: You can put it in
4 your brief, Tom.

5 Q. Why did Josh Jones leave the
6 practice?

7 A. He found greener pastures in
8 Columbus.

9 Q. Why did he find those pastures to
10 be greener?

11 MR. BARMEN: Objection.

12 MR. MANNION: Objection. State of
13 mind.

14 A. He's from Columbus.

15 Q. You told me on the phone that
16 Dr. Jones was not comfortable with the
17 practices that he was instructed to undertake
18 at Dr. Ghoubrial's office. Do you recall that?

19 MR. BARMEN: Objection.

20 MR. MANNION: Objection.

21 MR. BARMEN: Go ahead.

22 A. He wasn't happy in Wadsworth. You
23 could tell. He used to be a jokester and then
24 the jokes stopped. He became morose. We
25 assumed that it was family troubles. His wife

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1 had two kids and she became a different person
2 after that, but he wasn't happy with the
3 practice.

4 Q. What else do you remember about
5 that?

6 A. I know he didn't like the personal
7 injury clinics. He didn't like the way things
8 were going in the office. He didn't like
9 the -- basically the talk-back with the staff.
10 They didn't like him. He didn't like some of
11 them. He was generally unhappy.

12 Q. How do you know he didn't like the
13 personal injury clinics?

14 A. He mentioned it, from time to time.

15 Q. Why didn't he like the personal
16 injury clinics?

17 MR. BARMEN: Objection.

18 To the extent you know.

19 A. I don't think he liked that kind of
20 care, prescribing narcotics. I know he didn't
21 like that kind of patient.

22 Q. What do you mean by, "That kind of
23 patient"?

24 A. Personal injury cases, the same
25 thing; accident requiring pain medications,

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1 sometimes getting better, sometimes not getting
2 better, needing to refer on to chronic pain
3 management. It can get to you.

4 Q. Did he complain about the propriety
5 of administering trigger point injections?

6 MR. BARMEN: Objection.

7 A. I don't recall. I don't think so.
8 I don't recall.

9 Q. Did he complain about the propriety
10 of prescribing certain narcotics to the
11 personal injury patients?

12 MR. MANNION: Objection.

13 A. He did not like prescribing
14 narcotics. Sam doesn't like prescribing
15 narcotics. I prefer not to, but sometimes they
16 have a place, but, again, how do you
17 distinguish between legitimate pain and someone
18 who is a drug seeker? And that's very
19 difficult and it's taxing and it's exhausting
20 sometimes.

21 Q. So he did complain about
22 prescribing narcotics --

23 A. Narcotics.

24 Q. -- in the personal injury practice?

25 A. Yes.

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1 MR. BARMEN: Objection.

2 Q. You said, "Yes"?

3 A. Yes, he did.

4 Q. So why didn't he just simply not do
5 it?

6 MR. BARMEN: Objection.

7 A. I don't -- he probably didn't do
8 it.

9 MR. BARMEN: Wait a minute. Do
10 you know?

11 THE WITNESS: I don't know.

12 A. I don't know. But, as I said, he
13 had other reasons for leaving. His family was
14 from Columbus. He was from Columbus. He did
15 his residency there.

16 Q. Did you ever hear Dr. Jones
17 complain directly to Dr. Ghoubrial about the
18 practice --

19 A. No.

20 Q. -- the personal injury practice?

21 A. No, no.

22 Q. Pardon me. You told me that others
23 in the office overheard your complaints to
24 Dr. Ghoubrial about the pressure that he would
25 put on you to administer the trigger point

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1 injections. Do you recall telling me that?

2 MR. BARMEN: Objection.

3 MR. MANNION: Objection.

4 A. Other people in the practice -- I
5 don't recall. I don't recall saying that.

6 Q. Do you recall that that happened,
7 that some of the ladies in the back office
8 would have overheard you complaining to
9 Dr. Ghoubrial about sneaking needles into the
10 patient's backs or pressuring you to administer
11 these injections?

12 MR. BARMEN: Objection. Wait a
13 minute. Wait a minute. You're asking him
14 whether it's possible that other people
15 overheard conversations?

16 MR. PATTAKOS: No. I'm asking him
17 whether he specifically remembers that and
18 knows that.

19 MR. BARMEN: How --

20 MR. BEST: He's already explained
21 what those whole discussions were about. I
22 don't know why we're going back to almost five
23 hours ago.

24 MR. BARMEN: Right. And how
25 would he know whether he overheard something or

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1 not? I don't understand how he can --

2 MR. PATTAKOS: We'll find out.

3 A. I don't know. I don't recall. I'm
4 sorry.

5 Q. You have no memory of whether
6 Nicole or Erin or Samantha would have overheard
7 you complaining to Dr. Ghoubrial about the
8 injections?

9 MR. BARMEN: Same objection.

10 MR. BEST: Objection. He just
11 answered that question. He said he didn't
12 recall.

13 MR. BARMEN: Tell him one more
14 time.

15 A. I don't know if they overheard
16 anything. I don't know if they overheard me
17 talk to Ghoubrial about anything. It's
18 possible. I mean, it's a big office, but --
19 it's possible, but I don't particularly recall
20 any particular incident, no, not right now.

21 Q. Okay. I have this authorization
22 that's filled out.

23 MR. BEST: Let's take a break.
24 I want to look at this and make sure.

25 MR. PATTAKOS: That's fine.

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1 VIDEOGRAPHER: Off the record 2:58.

2 (Recess taken.)

3 VIDEOGRAPHER: On the record 3:05.

4 MR. PATTAKOS: Are you all okay
5 with this authorization?

6 MR. BARMEN: If you're
7 representing that Monique Norris signed this
8 today and she understands that her medical
9 information is going to be discussed in this
10 deposition and she consents to that, then, yes,
11 I'm okay with that.

12 MR. PATTAKOS: Yes, she does. And
13 we're going to designate it as confidential
14 subject to the protective order for now. And
15 then we can decide later whether this needs to
16 be filed under seal or not.

17 MR. MANNION: That's fair.

18 MR. PATTAKOS: Okay.

19 MR. BARMEN: No issue.

20 MR. PATTAKOS: Okay. So I guess
21 let's just enter it as an exhibit. I don't
22 need to ask Dr. Gunning any questions about it.
23 It's just Plaintiff's 2.

24 - - - - -

25 (Thereupon, Deposition Exhibit 2,

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1 HIPAA Compliant Authorization For
2 The Release of Patient Information
3 Pursuant to 45 CFR 164.508, was
4 marked for purposes of
5 identification.)

6 - - - - -

7 Q. So then let's go back to the
8 records themselves and let's --

9 MR. PATTAKOS: Okay. Well, let's
10 mark this as Exhibit 3. And this is simply the
11 supplemental filing of October 2 with
12 Dr. Gunning's affidavit removed and that
13 affidavit has already been marked as Exhibit 1.
14 Okay? There's Exhibit 3.

15 THE NOTARY: Is this copies or --

16 MR. PATTAKOS: No, that's all one
17 exhibit. That'll be Exhibit 3. Do you want a
18 paper clip for that, Tracy, or a stapler or --

19 THE NOTARY: I'll get one later.

20 MR. PATTAKOS: Okay. Just don't --
21 it's all one exhibit.

22 - - - - -

23 (Thereupon, Deposition Exhibit 3,
24 Dr. Ghoubrial's Supplemental
25 Information In Support Of His Motion

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1 To Deny Addition of Dr. Ghoubrial To
2 This Suit, was marked for purposes
3 of identification.)

4 - - - - -

5 BY MR. PATTAKOS:

6 Q. Okay. So, Dr. Gunning, I'll
7 represent to you that this is the filing that
8 was made that included your affidavit in it.
9 This was the filing that was made on October 2
10 and it included your affidavit and it also
11 includes, as you can see, the medical records
12 for Monique Norris. And I believe those start
13 on what's numbed page 6 at the top. If you
14 look in the top right, there's numbered, "...6
15 of 9."

16 MR. BARMEN: It looks like this.
17 (Indicating.)

18 A. Okay.

19 Q. So let's look at page 6. Is your
20 handwriting on this document?

21 A. Yes, it is.

22 Q. Okay. Do you have any independent
23 recollection of treating Monique Norris?

24 A. No, I do not.

25 Q. What do these notes mean, on this

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1 page 6?

2 A. When I interview a patient, I want
3 to get their story: their name, their age,
4 when was their injury, was it due to a car
5 accident. If so, were they a driver, a
6 pedestrian or a passenger. Were they
7 seat-belted or not seat-belted. What was the
8 actual accident that occurred, was she
9 broad-sided, head on, rear-ended, et cetera.
10 Did EMS come to the scene, did the police come
11 to the scene, did they evaluate her, did they
12 take her to emergency room, did she go home,
13 did she take herself to an emergency room.
14 If so, when; that day, the next day.

15 Which emergency room, where did they --
16 did she go. Did they do any x-rays. Did they
17 evaluate her. Did they find anything wrong.
18 Did they give her any medicines, while she was
19 in the emergency room. Did they prescribe her
20 any medications leaving the emergency room
21 assuming that she wasn't admitted. After that,
22 did any of it help. Where is she still having
23 pain. Where did she have pain then. Can she
24 rate the pain 1 to 10. Does the pain radiate
25 anywhere. Does it cause any problems. Does it

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1 interfere with her sleep, her ability to
2 perform ADLs, her ability to work. And all of
3 this, the past medical history, allergies,
4 review of systems, et cetera, before I get to
5 the actual physical examine.

6 And when I'm gathering this kind of
7 information from the patient, I will often
8 write little chicken scratchings to myself as a
9 reminder so that later, when I'm done with the
10 session and she's leaving, I'll grab my
11 Dictaphone and I'll say, Patient was
12 da-da-da-da, she's got this going on, she's got
13 that going on, blah-blah. And I'll pretty much
14 quickly review -- these little notes will be a
15 reminder to me and that will enable me to
16 dictate all of that information up to the part
17 where I do an exam.

18 Q. So what do these notes say?

19 A. Well, it's kind of hard to read
20 now. "SBD," up in the right, that stands for,
21 seatbelt driver. It looks to me like she --
22 that little box and the other box, it looks to
23 me like she rammed another car and that she was
24 the seat-belted driver. Over on the left, it
25 says, "A-L-L," dot dot, "Perc," allergies to --

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1 a percocet allergy. I didn't scribble it here,
2 but she also mentioned obviously that she's
3 allergic also to Vicodin. Back pain -- and I'm
4 sorry -- neck, EMS, general x-rays, no meds,
5 loss of normal lordotic curve; left shoulder,
6 left hip. Apparently that's where she's having
7 pain. Right side of neck hard to turn to the
8 right, has pain.

9 Down here it says, "Dizziness." It looks
10 like her past medical history involved -- is
11 that a hysterectomy on August 12?
12 Endometriosis. So that's the little notes that
13 I've written to myself, which then I reflect
14 when I do my dictation. And then the next note
15 is, "No show," and I didn't write that. The
16 nurses must have.

17 Q. Do you recall making these notes on
18 August 2, 2013?

19 A. I don't recall making anybody's
20 notes, but I can attest to the fact that they
21 are definitively my notes. First of all,
22 that's my handwriting. Second of all,
23 Dr. Ghoubrial doesn't write notes. He dictates
24 immediately. That's been his habit --

25 Q. With a recorder?

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1 A. With a recorder.

2 Q. Okay.

3 A. -- so the fact that there's
4 scribbled notes there, even if I didn't see
5 them, I would have to say, It's my chart. When
6 I look at them, yeah, that's my awful
7 handwriting.

8 Q. So you would do a chart without
9 seeing a patient?

10 MR. BARMEN: Objection.

11 A. What are you talking about?

12 Q. Even if you didn't see the notes,
13 what do you mean?

14 A. If --

15 MR. BARMEN: Wait, wait, wait,
16 whoa.

17 Can you rephrase that, because I don't
18 understand what you're saying?

19 Q. Even if you didn't see them, what
20 did you mean by that?

21 A. If you told me there was a chart,
22 you said, "I have a chart over, Dr. Gunning,"
23 and I said, "What?" On the first yellow page
24 under, "Initial visit," there's a whole bunch
25 of chicken scratches, I would say, "Okay,

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1 that's mine," because I'm the only one who does
2 that. And this has chicken scratchings and
3 that's my handwriting. Even if Sam wrote
4 notes, which he doesn't, he's got a vastly
5 different signature. It looks like a bunch of
6 circles. This is definitely not Sam's
7 handwriting.

8 Q. These typewritten notes on pages 7
9 and 8?

10 A. That's right.

11 Q. Is this a form that you use?

12 A. They have a template that we fill
13 in. And, you know, if things are normal, we
14 let it be. If there's something that's
15 particularly significant for that exam, we
16 dictate it. For instance, under, "Upper
17 extremities," shoulders, wrists and elbows,
18 there's no scars, no gross deformities. Pulses
19 are fine, but then -- that's part of the
20 template, but then what did I find? She has
21 tenderness about her left shoulder joint;
22 lateral, posterior and interior, there's
23 reproducible pain with movement of her shoulder
24 in all directions. This is less so in the
25 right shoulder. And then under,

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1 "Neurological," you know, I said there's
2 negative straight leg raise, negative posturing
3 sign. Assessment. Parts of this is dictated.

4 And then plan is dictated. And of course
5 she will fill that in later. So I'm pretty
6 much dictating all of this down to, "Physical
7 Exam," and anything from, "Assessment," on.
8 And anything in the physical is, you know, what
9 I'm adding to a template that's already there,
10 unless I have a problem with what's in the
11 template, which, and then I'll change in my
12 dictation.

13 Q. Ms. Norris tells me that she was
14 offered trigger point injections and she
15 declined trigger point injections. I don't --
16 that's not reflected in here. Would it
17 necessarily be?

18 MR. BARMEN: Objection.

19 MR. MANNION: Objection. It is.

20 MR. BARMEN: It is, under,
21 "Plan."

22 A. She declined --

23 MR. BARMEN: Wait a minute. Wait
24 a minute. Wait a minute.

25 Please don't misrepresent. Look under,

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1 "Plan," "She declined shots." It's right
2 there.

3 MR. PATTAKOS: Oh, okay. Under,
4 "Plan." Oh, I see.

5 MR. MANNION: That's another
6 misrep.

7 MR. BEST: Oh, I see.

8 MR. BARMEN: I'm sure it's an
9 oversight.

10 MR. BEST: Yes, I'm sure,
11 because he thoroughly prepared by reading this.

12 BY MR. PATTAKOS:

13 Q. She declined shots. So that's
14 typical for you to put that in the records,
15 when a patient declines the shots?

16 A. Typically. Sometimes I don't, but
17 I frequently, most often do. She declined
18 shots. And I prescribed her some muscle
19 relaxers and some antiinflammatories, but she
20 was going to be having, I guess that
21 hysterectomy on August 12, whenever it was. So
22 she would have to stop it a week before and not
23 restart it until after her gynecologist cleared
24 her from the hysterectomy.

25 Q. Okay. Would there be a reason not

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1 to put in whether a patient declined shots or
2 not?

3 MR. BARMEN: Objection.

4 A. There wouldn't be a reason not to,
5 but I admit, it might possibly sometimes be an
6 oversight. I mean, I didn't put in here she
7 didn't get narcotics either. You know,
8 granted, over here, she's allergic to percocet
9 and she can't tolerate Vicodin, but I could
10 have potentially given her Ultram or Tylenol
11 with Codeine and chose not to. I didn't write
12 down here, "She didn't get any narcotics," but
13 I could have --

14 Q. But --

15 A. -- there's no set dictation. It's
16 what I happen to put in at the time.

17 Q. But if she received the
18 narcotics --

19 A. Then I would have put it in --

20 Q. Right.

21 A. -- like she received Flexeril, I
22 wrote that. She received ibuprofen, I wrote
23 that.

24 Q. And had she received the shots, you
25 would have certainly written that, correct?

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1 A. Yes.

2 Q. Okay. And this special note, you
3 provided the patient with a TENS unit, "I gave
4 instructions on its use." Does the practice --
5 well, first of all, I'll ask: Do you put that
6 in every time you provide a patient with a TENS
7 unit?

8 A. No. If I provide a patient with a
9 TENS unit a note goes back to the office that,
10 this patient got a TENS unit, and that line is
11 automatically added to the chart. I don't
12 dictate that line --

13 Q. Okay.

14 A. -- but I did provide her with a
15 TENS unit. And my instructions are the
16 preliminary instructions. And then what
17 happens is the nurse comes in with a TENS unit,
18 opens the box up, takes everything out, hooks
19 everything up, shows her how to apply this,
20 shows her how to apply this, shows her which
21 knobs to turn, which to turn off, where the
22 battery fits, what to do when she needs new
23 pads and new batteries. So most of those
24 instructions are given by the nurse and then
25 the patient leaves.

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1 Q. Why wouldn't that just go under the
2 plan?

3 A. It is under the plan.

4 Q. The TENS unit?

5 A. Anything after the plan is under
6 the plan --

7 Q. Okay.

8 A. -- if I had given trigger point
9 injections, sometimes that's put in its own
10 separate paragraph as well but not always. I
11 guess it depends on what the transcriptionist
12 is doing that day.

13 Q. What did you do to prepare for your
14 deposition today?

15 A. I reviewed the affidavit -- both
16 affidavits. I reviewed some of your lawsuit.
17 And I had met with my counsel.

18 Q. How many times did you meet with
19 your counsel?

20 MR. BEST: Objection. It's
21 irrelevant how many times he talked to his
22 lawyers. It's completely privileged. It's
23 none of your business.

24 A. Phone calls, emails, visits; I
25 don't know if I can give you a number. I don't

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1 remember. I'd have to go back through my
2 records and count them.

3 Q. How much time do you think you
4 spent conferring with Mr. Barmen or any of your
5 other attorneys, in preparing for this
6 deposition?

7 MR. BEST: Objection. It's
8 none of your concern what he does with his
9 attorneys. It's privileged.

10 MR. PATTAKOS: It's not privileged.

11 MR. BEST: It is privileged.

12 MR. PATTAKOS: The amount of time
13 he spent with his attorneys is not privileged.

14 MR. BEST: Well, fortunately
15 you're not the judge.

16 THE WITNESS: Do I answer that?

17 MR. MANNION: I think he's asking
18 for direction.

19 THE WITNESS: Okay. I can't do
20 that.

21 MR. MANNION: No. I'm letting
22 them know, I think you're asking for direction
23 as to whether you should answer or not. I
24 can't tell you that.

25 MR. BARMEN: No, don't answer

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1 that. Just add it to the brief.

2 MR. PATTAKOS: Okay. I don't think
3 I have anything else.

4 Do you want to talk?

5 MR. COHEN: No.

6 MR. PATTAKOS: Okay.

7 MR. MANNION: I have a few
8 questions.

9 VIDEOGRAPHER: Can we go off the
10 record for just one second?

11 Off the record 3:20.

12 (Recess taken.)

13 (Discussion held off the record.)

14 VIDEOGRAPHER: On the record 3:26.

15 MR. PATTAKOS: So, Mr. Barmen,
16 you're going to withdraw your instructions to
17 the witness to not answer questions about what
18 he did to prepare?

19 MR. BARMEN: No. I'm withdrawing
20 the objection to the question, how long he
21 spent with his lawyers. That was the
22 objection.

23 MR. PATTAKOS: Okay.

24 BY MR. PATTAKOS:

25 Q. Dr. Gunning, how long did you spend

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1 with your lawyers preparing for this
2 deposition?

3 MR. BEST: Objection.

4 MR. BARMEN: Objection.

5 Go ahead.

6 A. Several hours, several hours.

7 Q. On how many different days?

8 MR. BEST: Objection.

9 MR. BARMEN: Same objection.

10 A. That I'd have to go through my
11 records and see.

12 Q. Can you do your best to estimate,
13 to remember?

14 MR. BEST: Objection.

15 A. Most of it was emails, so I don't
16 recall how many. I'd have to go back and
17 check.

18 Q. When you say, "Several hours," is
19 that ten hours or is it five hours?

20 MR. BEST: Objection.

21 A. I would -- probably at least five
22 hours. I don't think it was anywhere near
23 ten --

24 Q. Okay.

25 A. -- between all of the

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1 communications.

2 Q. Who all did you speak with, in
3 preparing for this deposition?

4 MR. BEST: Objection.

5 A. John --

6 MR. BARMEN: You can tell him
7 who, just not what.

8 A. John Myers, Brad Barmen and Colonel
9 David Best.

10 MR. BEST: Accurate.

11 MR. PATTAKOS: Okay. I think
12 that's all I have subject to cross.

13 MR. MANNION: Right.

14 EXAMINATION OF RICHARD GUNNING, M.D.

15 BY MR. MANNION:

16 Q. Good afternoon.

17 A. Hi.

18 Q. I'm sure you thought that you'd be
19 out of here by now.

20 A. I thought I was going to be here
21 until 10:00 tonight.

22 Q. Can you look at Exhibit 1, please,
23 your affidavit.

24 A. Yes.

25 Q. Do you have that in front of you?

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1 A. Yes, I do.

2 Q. Can you read the first paragraph?
3 Well, let me first ask you: You were sworn to
4 tell the truth, when you signed this, correct?

5 A. That's right.

6 Q. Okay. Can you read the first
7 paragraph?

8 A. "I am a board-certified medical
9 doctor, family physician, licensed in the State
10 of Ohio."

11 Q. Was that true, when you signed
12 this?

13 A. It still is. Yes.

14 Q. And was it true at the time you
15 treated Ms. Norris?

16 A. Yes.

17 Q. Okay. Can you read number 2,
18 please?

19 A. "I have been provided and read a
20 copy of the motion to add Dr. Sam Ghoubril as
21 a party defendant in Summit County Common Pleas
22 case CV-2016-09-3928."

23 Q. And that was true as well, when you
24 signed this?

25 A. Yes.

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1 Q. "The plaintiff is alleging that" --
2 I'm sorry. Read number 3.

3 A. "The plaintiff is alleging that
4 Dr. Ghoubrial provided care and treatment to a
5 patient named Monique Norris."

6 Q. Is that something you learned from
7 the motion that you read?

8 A. Yes. And from what I was also told
9 at the office that day.

10 Q. Okay. Number 4, can you read that?

11 A. "I have searched my patient care
12 records for a patient named Monique Norris."

13 Q. Was that true?

14 A. I had the help of the office in
15 searching --

16 Q. Okay.

17 A. -- but, yes.

18 Q. And number 5, can you read that?

19 A. "On August 2, 2013 I provided care
20 and treatment to a patient named Monique
21 Norris. The records are attached."

22 And, yes, it's true. And, yes, I saw
23 those records that day.

24 Q. Okay. Can you read number 6,
25 please?

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1 A. "My office has never received a
2 request for Monique Norris' medical records
3 from the law offices of Attorney Peter
4 Pattakos."

5 Q. Did you ask your office about that?

6 A. I first -- well, at first they just
7 said for me to sign this and I said, "I'm not
8 going to sign this, because I don't know
9 whether that's true or not," and they assured
10 me that it was. It took a little more assuring
11 before I felt comfortable signing it --

12 Q. Okay. You made sure --

13 A. -- there is only so much I can do
14 to prove a negative, I'm sure. But on the
15 other hand, I mean, one of my not so favorite
16 presidents, Ronald Reagan, said, "Trust but
17 verify." So I was doing my best to see what I
18 could do to verify the truth of number 6. And
19 at the moment I saw that, I couldn't. Later
20 on, when I learned it was true, then I was
21 okay.

22 Q. Okay. So at the time you signed
23 this with number 6 in there --

24 A. I knew it was true.

25 Q. Excellent. Can you read number 7?

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1 A. "Had Attorney Pattakos requested
2 the records from my office, he would have
3 learned that I was Monique Norris' treating
4 physician, NOT Dr. Ghoubrial."

5 Q. Was that true?

6 A. Technically, yes --

7 Q. Okay.

8 A. -- I didn't want to sign it,
9 because I thought the words were not my
10 language. They were unnecessarily
11 antagonistic. As I said before, it was like
12 waving a red flag in front of a bull. This
13 kind of language, as I'm sure not at all
14 unusual to you attorneys -- I heard you guys
15 carrying on earlier -- this is not my
16 language --

17 Q. Okay.

18 A. -- I don't speak to my patients
19 that way, my colleagues that way, Sam, the
20 nurses. Even if I think they're absolute
21 jerks, I don't use that language.

22 Q. But it is true, correct?

23 A. It is true.

24 Q. Okay. And what you were worried
25 about by using that language --

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1 A. That this was going to drag me into
2 the lawsuit.

3 Q. And that obviously concerned you?

4 A. Yeah. So much so, I couldn't sleep
5 that night --

6 Q. Okay.

7 A. -- my pulse was 132 the next
8 morning, which is why I took the Ativan --

9 Q. Wow.

10 A. -- an hour later, my pulse was down
11 to 80.

12 Q. When you signed this affidavit,
13 these statements were true, fair?

14 A. They were very true.

15 Q. Okay. Now, let me ask you some
16 questions, and you can refer to Ms. Norris's
17 records, if you want to. Well, before I ask
18 about her, you had mentioned something earlier
19 about sometimes you refer to chronic pain
20 management clinics.

21 A. Yeah.

22 Q. So you're not a chronic pain
23 management physician, fair?

24 A. No, I'm not.

25 Q. What's the difference between acute

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1 pain management and chronic pain management?

2 A. Usually a matter of a couple of
3 months.

4 Q. Explain, please.

5 A. Well, certain things should clear
6 up with time, sometimes a month, sometimes a
7 couple of months. I've tried warning my
8 patients that their pains aren't going to go
9 away as fast as a strep throat with
10 antibiotics. It's going to take several weeks
11 or several months. My own case lasted four
12 months. Sometimes they last longer than that.
13 Sometimes people don't get any better.

14 In fact, sometimes people get worse,
15 despite maximum therapy, with all these things;
16 with the shots, with the TENS units, with the
17 back braces and the chiropractor and at that
18 point probably physical therapy and whatnot.
19 If they're not getting better, it's basically
20 at point recognize it as more than what we can
21 handle and I want to refer them on to someone
22 who is better capable to help them, especially
23 if they're going to need long-term care, and
24 that's chronic pain management clinics.

25 Q. Okay. Thank you. Now, in your

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1 treatment of Monique Norris, did you exercise
2 your own professional medical judgment in
3 treating her?

4 A. Of course.

5 Q. Okay. Based on your education,
6 training and experience?

7 A. Yes.

8 Q. Based upon your evaluation of the
9 patient?

10 A. Of course.

11 Q. And do you believe you had proper
12 informed consent for the treatment that you
13 gave Ms. Norris?

14 A. That's what all those other pages
15 are on the other side of the chart. It's got,
16 you know, the consents informed and all that
17 sort of stuff, some demographics about the
18 patient; you know, what's her name, what's her
19 age. I try and look at that, because I hate
20 asking women how old they are.

21 Q. If you consult with another
22 physician, during your treatment of a patient,
23 do you document that usually?

24 A. Oh, yeah.

25 Q. Okay. I didn't see any

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1 documentation that you consulted with any other
2 physicians --

3 A. I didn't need to --

4 Q. -- because you didn't?

5 A. -- at that point. I didn't -- knew
6 she already had a gynecologist who was going to
7 take her uterus out the week after that. And
8 it was -- the only thing I told her is, "Make
9 sure you don't take anything that can cause you
10 the bleed within a week of your surgery." But
11 she didn't need -- at that point anyway didn't
12 need any other referrals. She was already
13 seeing the chiropractor. This was her first
14 visit, so basically wanted to wait and see how
15 things went.

16 If things went well, that's all she would
17 have to see. If they didn't go well, then
18 depending on her problem, it might require
19 further studies, further radiographic exams,
20 further referrals at that point. If her low
21 back isn't getting better or if she starts
22 getting numbness or tingling or weakness down
23 the leg, I would order an MRI. If the MRI
24 shows she's got some horrible torn disk that's
25 pushing up against the nerve root, I'm going to

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1 refer her to a neurosurgeon.

2 Q. Every patient is different?

3 A. Every patient is different. If she
4 had a knee problem that wouldn't get better,
5 I've got a couple of orthopedic specialists
6 that I find very effective. I've referred
7 people to hand specialists. I've referred
8 people to psychiatrists because of PTSD --

9 Q. Okay.

10 A. -- it depends on what their
11 particular situation called for.

12 Q. And just so you know, I wasn't
13 being critical of you not consulting. I just
14 wanted to confirm that the lack of a note that
15 you consulted with someone means you did not
16 consult with any other physicians regarding
17 your care and treatment of her, correct?

18 A. That's right.

19 Q. So when Ms. Norris was -- you were
20 evaluating and treating her, you didn't call
21 Dr. Ghoubrial to ask what you should do, did
22 you?

23 A. No, no. If I have someone who
24 needs a referral, I tell the women upfront, the
25 receptionist, I say, "This person needs to see

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1 so-and-so." In that box of papers that they
2 have, they have pink referral sheets. She'll
3 make out a referral, but she doesn't know why.
4 She has to go back to my note to find out why,
5 which is why in my note I will say, "You know,
6 the patient's MRI showed a torn disk that's
7 pressing against the L4 nerve root. I'm going
8 to refer this patient to neurosurgery." She
9 takes that information, fills out the rest of
10 the pink sheet back at the office and that's
11 how referrals are made. So of course I have to
12 document referrals.

13 Q. Okay. So your diagnoses of
14 Ms. Norris and your recommended treatment plan
15 was your own independent professional judgment?

16 A. Yes.

17 Q. Okay. Likewise, you certainly
18 didn't call the lawyer who was handling
19 Ms. Norris's personal injury case to ask how
20 you should treat her, fair?

21 A. I -- I don't think I ever call a
22 lawyer.

23 Q. You don't let lawyers dictate how
24 you treat patients, do you?

25 A. No.

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1 Q. Okay. And certainly didn't with
2 Ms. Norris, did you?

3 A. No. There have been occasions
4 where I've had a situation where the patient
5 says, "This is going to cost too much," or, she
6 doesn't want to get the MRI because the MRI is
7 \$4,000 or whatever. I say, "Well, you need to
8 talk to your lawyer about that," and that's --
9 I tell the patients to call their lawyers. I
10 don't call the lawyers for them, but I have
11 recommended to some of my patients, clarify
12 some of their situation with the lawyers. If
13 you can't have this or if you need this thing
14 for work or whatever, you need to contact your
15 lawyer.

16 Q. Okay. Because you don't get
17 involved with those issues?

18 A. No.

19 Q. Okay. And from looking at your
20 records, I didn't see any mention of the law
21 firm that represented Ms. Norris at the time.

22 A. Well, it wouldn't be on that part
23 of the record --

24 Q. Okay.

25 A. -- if it was anywhere, it might be

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1 on the other side.

2 Q. Is that something that you would
3 even pay attention to?

4 A. No.

5 Q. And regardless of -- even if it
6 listed who the law firm was, would that impact
7 your professional judgment in any manner in
8 your treatment of Ms. Norris?

9 A. Of course not.

10 Q. Now, you talked about different
11 treatment modalities for pain and for trigger
12 points, during Mr. Pattakos' questioning of
13 you --

14 A. Uh-huh.

15 Q. -- and the three I want to talk to
16 you about are pain medications, narcotics,
17 trigger point injections and TENS units, just
18 to give you some background where I'm going
19 now.

20 A. Okay.

21 Q. Is it true you discussed all three
22 options with Monique Norris, based on the
23 records?

24 A. On these records, yes, I would
25 have. First of all, she's allergic to some of

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1 the pain medications. She can't take percocet.
2 She doesn't tolerate Norco. I don't know if I
3 discussed Ultram with her or not, but, as I
4 said, I don't necessarily always document that
5 patient is refusing narcotics. Sometimes I do.
6 But in her case, we didn't prescribe any kind
7 of opioid.

8 Q. Okay. The reason you discuss these
9 different treatment alternatives was because
10 Ms. Norris was in pain, true?

11 A. Of course.

12 Q. And she wanted treatment for her
13 pain, fair?

14 A. Yes.

15 Q. And you believed, as a physician,
16 exercising your own independent professional
17 medical judgment that it was reasonably and
18 medically necessary for her to receive
19 treatment for her pain, true?

20 A. To not to do less would be to
21 torture her with it.

22 Q. Okay. And when -- you also
23 discussed trigger point injections with her,
24 fair?

25 A. I did. She didn't want them.

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1 Q. I assume you don't recall now why
2 she didn't want them?

3 A. No, no --

4 Q. Okay.

5 A. -- sometimes we bring it up, but
6 it's -- sometimes they say, Let me try the meds
7 first and see. And if they don't work, then
8 I'll let you give me the shot.

9 Q. We know she didn't say, right?
10 Because she wasn't going to take the meds.

11 A. Right.

12 MR. BEST: She took some.

13 Q. Well, no. I --

14 A. Well, she took the
15 antiinflammatories.

16 Q. Oh, I see what you said, yeah --

17 A. Yeah.

18 Q. -- as far as the narcotics. Okay.
19 I see what you mean. Sometimes they say, let
20 me try the antiinflammatories.

21 A. Whatever meds I prescribe first,
22 yeah --

23 Q. Yeah. Before I --

24 A. -- or I even try the TENS unit
25 first, before I agree to the shots or whatever.

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1 Q. The fact that you offered her
2 trigger point injections, though, means that
3 you thought that it would have been reasonably
4 medically necessary for her to get those, if
5 she wanted them?

6 A. Yes.

7 Q. And that would have been based upon
8 your own independent, professional judgment,
9 fair?

10 A. Yes.

11 Q. So even if you thought they were
12 reasonably and medically necessary, you weren't
13 a good salesman on that particular issue?

14 A. That's right.

15 Q. Okay. That's what you meant by,
16 "Salesman," fair?

17 A. Well, you have to convince patients
18 sometimes to do things they don't want to do.
19 Sometimes I'm not as good at that as other
20 doctors. As I said, there are some patients of
21 mine who really need to be on insulin and I'm
22 still fighting with them.

23 Q. But ultimately, you wouldn't give
24 them the treatment, if they didn't want it,
25 fair?

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1 A. If they didn't want it, I don't
2 badger them. I don't force them. I just say,
3 "Fine. We can talk about it another time, or
4 not."

5 Q. And you didn't force Ms. Norris,
6 true?

7 A. No, no, but I did present her with
8 the option.

9 Q. Okay. Now, you mentioned about how
10 sometimes 30 percent of the personal injury
11 patients would get trigger point injections and
12 some days it was 60 percent. It varied day to
13 day?

14 A. It varied, yeah. Sometimes I'd
15 have patients come in and say, "Wow, those
16 shots really helped. Can I get more," before I
17 even have a chance to say, hello. Others are
18 like, you know, I don't want no shots --

19 Q. Okay.

20 A. -- it depends on the patient.

21 Q. It varies on patient?

22 A. It depends on the day. It depends
23 on the patient.

24 Q. If I wanted to look at your
25 patients and determine whether or not trigger

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1 point injections were necessary from a medical
2 perspective for them, I'd have to look at each
3 individual patient's records and talk to you
4 about each patient?

5 A. Pretty much, pretty much, yeah.

6 Q. Okay. And you mentioned some
7 patients who had talked about the trigger point
8 injections, you said like six patients over the
9 years with Dr. Ghoubrial. Now, in all six of
10 those, did you say that they also received
11 multiple injections, though?

12 A. Yes. Not a one of them just got
13 one shot.

14 Q. And did they come back for more?

15 A. Most of them did.

16 Q. Okay. And you weren't trying to
17 say that there was no informed consent. You
18 were just saying --

19 A. His informed consent is different
20 from my informed consent --

21 Q. Okay.

22 A. -- I'm like, You see this needle --
23 well, not quite that bad, but, I mean, I'm sure
24 that's what they're thinking. And, you know,
25 this is a formula, an injection and a shot.

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1 They say, Oh, I don't want no shots, but
2 really? And I will say, "It helps. It's what
3 we give the athletes" --

4 Q. Right.

5 A. -- you know, I've had them. They
6 don't always work, but most of the time they
7 do. I've gotten relief from mine. And that's
8 my spiel, when I try to convince someone to
9 accept trigger point shots, but I probably -- I
10 tend to be more meek and mild and I back off
11 more easily than other doctors might.

12 Q. And your weren't in the room with
13 the patients and Dr. Ghoubrial, fair?

14 A. No, no.

15 Q. My statement was true?

16 A. What statement did you make?

17 Q. That you were not in the room with
18 Dr. Ghoubrial and these patients.

19 A. Yes, that's true.

20 Q. Okay. So --

21 A. Sorry.

22 Q. -- although he may have received
23 informed consent for these, he didn't approach
24 the first injection the way you would have.
25 That's what you were referring to?

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1 A. That's true.

2 Q. Okay. You also discussed -- oh, by
3 the way, and so I think I asked it, but to make
4 sure. You believe that trigger point
5 injections are reasonably and medically
6 necessary, if she wanted them because of her
7 pain, fair, Ms. Norris?

8 A. Yes.

9 Q. Okay. You then discussed a TENS
10 unit with Ms. Norris, true?

11 A. Yes.

12 Q. Okay. And did you believe that
13 those were reasonably and medically necessary,
14 a TENS unit was?

15 A. I find them to be very helpful,
16 yes.

17 Q. Okay. And, again, was that your
18 own independent, professional judgment?

19 A. Yes.

20 Q. Did Dr. Ghoubrial tell you to give
21 her a TENS unit?

22 A. He wasn't there.

23 Q. Okay. And you explained to her why
24 you recommended a TENS unit, fair?

25 A. Of course.

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1 Q. You explained to her what a TENS
2 unit does and how it helps with pain?

3 A. I probably didn't get into the
4 nitty-gritty. Her eyes would have glazed over.

5 Q. Okay. But what would you explain
6 to her, about how a TENS unit helps?

7 A. You put this on where the pain is.
8 You turn it up until you feel it tingling, try
9 to get it up a little bit higher, if you want.
10 Leave it on for a few minutes, see how it is,
11 take it off. It may very well help relieve
12 your pain.

13 Q. Okay. And you instructed her on
14 some of the basics of the use and told her a
15 nurse would be in to explain it in more detail?

16 A. Exactly.

17 Q. Okay. And she agreed to this
18 treatment?

19 A. Yes.

20 Q. Now, if -- I noticed that when she
21 didn't want pain medications and she didn't
22 want trigger points, you documented her
23 objection to those treatment modalities.

24 A. Yes.

25 Q. Because you said she allergic in

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1 the one and you said she declined shots on the
2 other.

3 A. That's right.

4 Q. If she had objected to a TENS unit,
5 would you have prescribed it to her?

6 A. Of course not.

7 Q. Would you have documented her
8 objection?

9 A. I might have said, I offered a TENS
10 unit, but she declined --

11 Q. Okay.

12 A. -- I probably would have said that.
13 I don't -- I can't say that I would have
14 absolutely said it every single, hundred
15 percent of the time; because I may have been
16 backed up by 18 patients and had to rush, but
17 in general, I would have.

18 Q. Okay. It's clear from your record,
19 that Ms. Norris did not object to the TENS
20 unit, fair?

21 A. That's right.

22 Q. In fact, she consented to it, true?

23 A. She accepted it. If she had not
24 accepted it, they would have withdrawn that --
25 they wouldn't have put that line in there.

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1 Q. And you didn't push her into using
2 that, did you?

3 A. No.

4 Q. You didn't coerce her?

5 A. No. Plus, she had the right to
6 tell me, no, and she also had the right to tell
7 the nurse, no.

8 Q. Looking at that handwritten portion
9 of your notes again, these -- you already said
10 this is your handwriting, fair, other than
11 where it says, "No show"?

12 A. Right.

13 Q. And you would have done these
14 contemporaneously at the time you were
15 evaluating Ms. Norris?

16 A. I'm listening to her. She's
17 telling me her story and I'm scribbling, which
18 is why I didn't particularly follow lines.

19 Q. And, sir, do you believe that the
20 care you provided to Ms. Norris in your opinion
21 was within the standard of care?

22 A. Yes.

23 Q. Okay. And do you hold that opinion
24 to a reasonable degree of medical certainty?

25 A. Yes.

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1 Q. And do you believe all of the care
2 that you provided to her was based upon your
3 own independent, professional judgment?

4 A. Yes.

5 Q. Okay. Now, at some point you
6 talked with Mr. Pattakos, correct?

7 A. Yes.

8 Q. And at the time you were pretty
9 worried about being brought into the suit.

10 A. I was panicked. I was in
11 self-preservation mode.

12 Q. And you were so panicked you took
13 medication.

14 A. Yes --

15 Q. And I take it that --

16 A. -- all over the wording of
17 number 7.

18 Q. Okay. That's what it was about?

19 A. Yes.

20 Q. Because you were afraid that was
21 going to --

22 A. Yes.

23 Q. -- wave a red flag in front of a
24 bull?

25 A. Yes.

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1 Q. You told Mr. Pattakos initially
2 that you were employed by Dr. Ghoubrial or his
3 company?

4 A. Sure.

5 Q. Okay. Did he tell you at that
6 point to get a lawyer?

7 A. No.

8 Q. How long did he wait?

9 A. He mentioned it at the end of the
10 conversation.

11 Q. Do you know why he waited until the
12 end of the conversation?

13 A. I have no idea.

14 Q. Did you ask him why he waited?
15 Probably not, but --

16 A. No.

17 Q. Okay. Okay. Can you hold on just
18 one second. And, by the way, you were asked a
19 question earlier about the medical records.
20 Did you alter these medical records in any way?
21 (Indicating.)

22 A. No, not at all.

23 Q. Okay. And when you had the phone
24 call with Mr. Pattakos, did he tell you that he
25 was recording it?

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1 A. No.

2 Q. Okay. Do you know if he recorded
3 it?

4 A. I don't know that.

5 Q. Did he have you hang on while he
6 typed out notes or tell you he was taking notes
7 or anything like that?

8 A. No, no.

9 Q. Okay. Did he tell you at the
10 beginning of the conversation that you had a
11 right to counsel, because of potentially being
12 named in the lawsuit?

13 A. No.

14 Q. Did you tell him you were concerned
15 about being named in the lawsuit?

16 A. Yes.

17 Q. And what did he tell you in
18 response?

19 A. I recall he said that when he first
20 received the affidavit that I signed, his
21 inclination was that he was going to add my
22 name to the lawsuit --

23 Q. Did that make you even more
24 nervous?

25 A. -- but then he said, since I called

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1 him, I would look forward to a deposition.

2 Q. Okay. Anything else you remember
3 about what Mr. Pattakos told you that day?

4 A. He told me to get a lawyer.

5 Q. At the end of the conversation?

6 A. Yes.

7 MR. MANNION: Okay. That's all I
8 have. Thanks.

9 EXAMINATION OF RICHARD GUNNING, M.D.

10 BY MR. PATTAKOS:

11 Q. Dr. Gunning --

12 MR. BARMEN: Wait a minute,
13 because I'm going to be having to -- you can
14 stay there. Just give me the mike.

15 MR. MANNION: Oh, yeah.

16 MR. BARMEN: Thanks.

17 BY MR. PATTAKOS:

18 Q. -- you didn't tell Ms. Norris that
19 she would be charged for the TENS unit, did
20 you?

21 A. I think that's left up to the
22 nurse. I don't talk about costs or prices with
23 any of my patients. I don't know the prices.

24 Q. So you didn't talk about the charge
25 for the TENS unit or the cost of the TENS unit

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1 at all?

2 A. No.

3 Q. Okay. You keep saying you're not a
4 good salesman, but of course you're not a
5 salesman. You're a doctor. And there's of
6 course a big difference between those two
7 things, correct?

8 A. No. When you're a doctor, you have
9 patients and they require certain treatments.
10 Sometimes it takes some convincing to get them
11 to agree. As I said, I seem to have just as
12 much trouble getting my diabetics to accept
13 insulin shots, when it's time for insulin.

14 Q. Well, you would agree that if it's
15 in your patient's best interest to do
16 something, that if their health is going to be
17 damaged if they don't do something --

18 A. I tell them.

19 Q. -- that you should do everything
20 within your power to convince them to do that
21 thing. Isn't that correct?

22 MR. MANNION: Objection. That
23 misstates the standard of care.

24 MR. BARMEN: Join.

25 MR. MANNION: I can't tell you

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1 not to answer.

2 A. I do. I tell them. I tell them
3 what -- it's like with my diabetics. I say,
4 "Look, your A1C is 10.4. You're not following
5 a diet. You're on five orals. They're not
6 working. It's time to start insulin."
7 Sometimes I win out. Sometimes I don't. And I
8 document it and see them the next time.
9 Hopefully they will come around. I don't sit
10 there and force the insulin down their throats.
11 I -- I don't yell at them and scream at them. I
12 just tell them. I tell them that, the risks of
13 not taking their insulin or not getting their
14 diabetes under control is, this, this, this and
15 this.

16 As far as the trigger points, if they
17 don't want the trigger points, I tell them,
18 "This will help you. This -- this will help
19 decrease your pain where you might need fewer
20 other treatments. Your course of care might be
21 shortened if you get the shots." Some people
22 don't want shots. Some people just say,
23 uh-huh, and that's --

24 Q. And in the end, it doesn't really
25 matter all that much whether they accept the

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1 trigger point injections or the TENS units,
2 correct?

3 MR. MANNION: Wait a minute. I'm
4 going to object --

5 MR. BARMEN: Objection.

6 MR. MANNION: -- which patient are
7 you talking about? Objection.

8 Q. I'm talking about in general --

9 MR. BEST: There is no in
10 general for patients.

11 Q. When a patient -- when a patient --

12 MR. MANNION: Stop yelling at the
13 witness.

14 Q. -- when a patient in the personal
15 injury practice says, Look, I don't want a TENS
16 unit, or, I don't want injections --

17 A. Okay.

18 Q. -- it's really not that big of a
19 deal, is it, Dr. Gunning?

20 MR. BARMEN: Objection.

21 A. No. Of course it's a big deal.
22 They're going to have more pain. They might be
23 requiring more pain medications and they might
24 take longer to get well. And, as I said, if
25 they consistently refuse, I try to offer them

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1 other things. Well, why don't you go see a
2 massotherapist. Maybe they can work on it. Or
3 see a physical therapist. Maybe they can work
4 on it. There are other options, in case they
5 refuse, but I also, you know, know that their
6 care -- you know, six visits may become eight
7 or ten visits, because it may take longer on
8 just medications for them to get to the point
9 where they no longer need to come and see us.
10 Yeah. A lot of them -- most of them do get
11 better, but they'll get better faster and
12 sooner with less meds, less visits, less cost
13 if they got the shots, if they got the TENS
14 units, whatever we offer them. I mean, these
15 are all options of treatment. This is going to
16 help you.

17 Q. Sitting here today, you can't
18 identify a single evidence-based study that
19 actually proves that, can you?

20 MR. MANNION: Wait. Objection.

21 MR. BARMEN: Objection.

22 MR. MANNION: [Inaudible.]

23 A. I can't name a study, but I've read
24 them.

25 Q. Okay. And just one more thing.

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1 When you see the abbreviation, "TPI," what do
2 you understand that that stands for?

3 A. I've not seen that abbreviation.

4 Q. You haven't seen the abbreviation,
5 "TPI," for, "Trigger point injections"?

6 A. No, I can't say I have --

7 MR. PATTAKOS: Okay. That's all I
8 have.

9 A. -- TPI?

10 MR. BARMEN: He'll read.

11 MR. BEST: We're done.

12 VIDEOGRAPHER: Off the record 3:55.

13 (Thereupon, the deposition
14 was adjourned at 3:55 p.m.)

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1 Whereupon, counsel was requested to give
2 instruction regarding the witness's review of
3 the transcript pursuant to the Civil Rules.

4

5 SIGNATURE:

6 Transcript review was requested pursuant to the
7 applicable Rules of Civil Procedure.

8

9 TRANSCRIPT DELIVERY:

10 Counsel was requested to give instruction
11 regarding delivery date of transcript.
12 Peter Pattakos ordered the original transcript
13 regular delivery.
14 Copy--Brad Barmen

15

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REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Tracy Morse, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, RICHARD GUNNING, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

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1 I do further certify that I am not
 2 a relative, counsel or attorney for either
 3 party, or otherwise interested in the event of
 4 this action.

5 IN WITNESS WHEREOF, I have hereunto
 6 set my hand and affixed my seal of office at
 7 Cleveland, Ohio, on this 19th day of
 8 December, 2018.

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Tracy Morse, Notary Public
 within and for the State of Ohio

My commission expires 1/26/2023.

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1 Veritext Legal Solutions
2 1100 Superior Ave
3 Suite 1820
4 Cleveland, Ohio 44114
5 Phone: 216-523-1313

6 December 19, 2018

7 To: Mr. Myers

8 Case Name: Williams, Member, Et Al. v. Kisling, Nestico & Redick, Llc,
9 Et Al.

10 Veritext Reference Number: 3028229

11 Witness: Richard Gunning , M.D. Deposition Date: 12/12/2018

12 Dear Sir/Madam:

13 The deposition transcript taken in the above-referenced
14 matter, with the reading and signing having not been
15 expressly waived, has been completed and is available
16 for review and signature. Please call our office to
17 make arrangements for a convenient location to
18 accomplish this or if you prefer a certified transcript
19 can be purchased.

20 If the errata is not returned within thirty days of your
21 receipt of this letter, the reading and signing will be
22 deemed waived.

23 Sincerely,
24 Production Department

25 NO NOTARY REQUIRED IN CA

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 3028229

CASE NAME: Williams, Member, Et Al. v. Kisling, Nestico & Redick, Llc, Et Al.

DATE OF DEPOSITION: 12/12/2018

WITNESS' NAME: Richard Gunning , M.D.

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date Richard Gunning , M.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 3028229

CASE NAME: Williams, Member, Et Al. v. Kisling, Nestico & Redick, Llc, Et Al.

DATE OF DEPOSITION: 12/12/2018

WITNESS' NAME: Richard Gunning , M.D.

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date Richard Gunning , M.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

- They have read the transcript;
- They have listed all of their corrections in the appended Errata Sheet;
- They signed the foregoing Sworn Statement; and
- Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 12/12/2018

PAGE/LINE(S) / CHANGE /REASON

Date Richard Gunning , M.D.

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

Notary Public

Commission Expiration Date

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[& - abbreviation]

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[ability - ahead]

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[ahead - asking]

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Ohio Rules of Civil Procedure

Title V. Discovery

Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless examination and reading are waived by the witness and by the parties. Any changes in form or substance that the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. The witness shall have thirty days from submission of the deposition to the witness to review and sign the deposition. If the deposition is taken within thirty days of a trial or hearing, the witness shall have seven days from submission of the deposition to the witness to review and sign the deposition. If the trial or hearing is scheduled to commence less than seven days before the deposition is submitted to the witness, the court may establish a deadline for the

witness to review and sign the deposition. If the deposition is not signed by the witness during the period prescribed in this division, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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